



**CITY OF SOUTHPORT  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING AGENDA  
113 W. MOORE STREET  
July 22, 2025  
4:30 PM**

**AGENDA**

**ETHICS STATEMENT:**

“If any members know of any conflict of interest or the appearance of a conflict of interest concerning matters on the agenda, please so state at this time.”

- A. Call to Order**
- B. Pledge of Allegiance**
- C. Swearing In of Members**
  - 1. Jason Robbins
- D. Approval of Agenda**
- E. Explanation of Quasi-Judicial Process**
- F. Explanation of Proceedings**
- G. New Business**
  - 1. Appeal of a Code Enforcement Determination AP-25-02
- H. Other Business**
- I. Adjourn**

**STAFF REPORT  
 APPEAL OF DETERMINATION OF THE CODE ENFORCEMENT OFFICER**

**APPLICATION SUMMARY**

<b>Hearing Date</b>	July 22, 2025 Board of Adjustment
<b>Applicant</b>	Andrew McVey
<b>Property Owner</b>	Howard and Denise Russell
<b>Parcel ID:</b>	238IB02303 & 238IB02304
<b>Parcel Acreage</b>	0.54 acres
<b>Zoning District</b>	R-10

**APPEAL REQUEST**

Andrew McVey, applicant for property owners Howard and Denise Russell, is appealing an administrative development decision made by Maureen Meehan, Planning Services Director, and Derek Mabe, Code Enforcement Officer. The subject violation pertains to the installation of a fence and landscaping rocks located in the city's rights-of-way adjacent to 416 E. Bay Street, Southport, NC.

The applicants were first issued a written violation under Chapter 16 of the City Code of Ordinances and Section 3.17.D of the Unified Development Ordinance in January 2024 with remedies to correct the violation. The most recent notice of violation was issued to the applicants on April 3, 2025. To date, the violation still exists.

**PROPERTY FEATURES AND HISTORY**



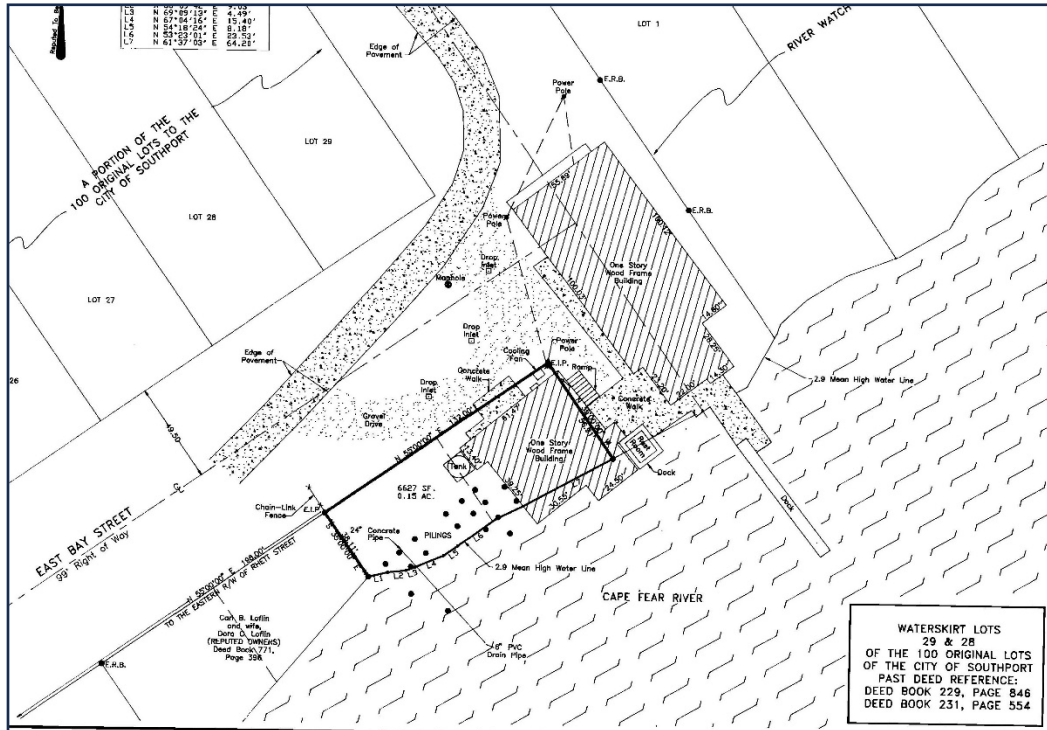
Subject property is located at 416 E Bay Street and further described by parcel numbers 238IB02303 and 238IB02304. The property is an approximately 23,500SF lot zoned R-10 adjacent to the Cape Fear River.

The rights-of-way widths adjacent to the property range between approximately forty-one (41) feet and sixty-five (65) feet to the street line. The street line is defined in Article 8: Definitions and Measurements of the UDO as the right-of-way boundary of a street.

Google Earth Imagery 2023



The applicants became owners of the subject property in December of 2018 (see attached Deed as Exhibit B). The plat map referenced in applicants' deed for the 416 E. Bay Street property description clearly shows the applicant's property line and the City's 99-foot right-of-way for E. Bay Street, which is shown below and attached hereto as Exhibit C:



At the time the applicants purchased the 416 E. Bay Street property, the fence and landscaping rocks were not installed in the City's right-of-way. See Brunswick County GIS map from 2019 showing the aerial view of the property below:



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being appeal from. While some consideration as to the professional judgement of the zoning administrator should be given, ultimately the question of what the ordinance means is a question of law for which the board must make its own decision. In making this determination the key goal should be giving full effect to the terms of the ordinance and the intent of the governing board that originally adopted it, not substituting the opinion of staff as to what the ordinance should say. The Board of Adjustment is an independent Board governed by the UDO.

The board must determine any contested facts and apply relevant legal standards. The board may affirm the staff decision, reverse the staff decision, or modify the staff decision, and the board may “make any order, requirement, decision, or determination that ought to be made.”

Appeals of administrative decisions are decided by a simple majority vote. The decision of the board of adjustment may be appealed to the superior court in certiorari pursuant to G.S. 160D-1402.

**APPLICANT’S JUSTIFICATION FOR APPEAL**

The following statements are submitted by the applicant for justification and explanation for the appeal. Full justification of the appeal is included in the formal Notice of Appeal dated April 17, 2025, attached to this staff report.

In accordance with City of Southport Uniform Development Ordinance §§ 2.7(E) and 2.15(C)(2), Howard L. Russell, Jr. and Denise B. Russell, acting through the undersigned counsel, give notice of their appeal of the April 3, 2025 "Final Notice" of Planning Services Director Maureen Meehan and Code Enforcement Officer Derek Mabe, directing the removal of a fence and landscaping rocks for the property. The grounds for the appeal are set forth in the enclosed correspondence from the undersigned counsel to City of Southport attorney Brady Herman, incorporated by reference as if fully set forth herein.

However, we do not dispute that on December 12, 2024, with an eye toward spot-enforcing the Uniform Development Ordinance ("UDO"), the City approved amendments to Sections 16-8 and 16-10, and gave the directive to staff to have encroachments reviewed from within the right-of-way within six months. Our position is that these amendments and this directive were specifically intended to cause our clients to remove their fence, without regard to the dozens of other fences in the right-of-way throughout the City. Our further position is that the City has acted arbitrarily and capriciously in specifically targeting our clients, both with the enactment of these measures and, more recently, with the Final Notice

## STAFF REVIEW

Applicable code references for this case include Code of City Ordinance Chapter 16 Section 16-8 Obstruction of Public Rights-of-way and Unified Development Ordinance Section 3.17.D. Landscaping on Public Property.

Chapter 16 of the City's Code of Ordinances and UDO Sec. 3.17 language in in effect at the time of the initial violation in January of 2024 is outlined below, which is the same as the section that is now in effect, minus the references to new sections of the ordinance, that do not apply to this case. Copies of the relevant provisions of said ordinances are attached hereto as Exhibits D-1 and D-2).

Sec. 16-8 – Obstruction of public rights-of-way.

(a) Except as specifically set forth in subsection (b) herein or as authorized by a license issued by the board of aldermen, it shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation or other structure, material or substance above the horizontal plane of the existing ground. In addition, it shall be unlawful for any person to take any action whatsoever within any public right-of-way which creates a hazardous condition or safety hazard or which otherwise interferes with or obstructs in any manner the passage of persons or vehicles upon or within said public rights-of-way or which obstructs, interferes with or hinders lawful parking within any public right-of-way.

Unified Development Ordinance Section 3.17.D. Landscaping on Public Property.

D. LANDSCAPING ON PUBLIC PROPERTY It shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk, or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation, or other structure, material, or substance above the horizontal plane of the existing ground.

The following photos were taken on a site visit by the Code Enforcement Officer on October 13, 2023.



While the violation was first documented in October 2023, the first notice of violation was not sent until January 2024, regarding a fence located in the city's rights-of-way, along with extreme overgrowth. The notice included instructions on how to correct the violation, which was to remove the fence. The following timeline provides details on the events that occurred between January 2024 and April 3, 2025, when the final notice of violation was sent to the property owners.

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## 416 Bay Street Code Enforcement of a Rights-of-Way Timeline

- The previous Development Services Director documented the violation in 2023. Here is an excerpt from one of his emails:

We've received a building permit application for the property located at 416 E. Bay Street (owned by the Howards), which is immediately adjacent to and south of Kingsley Park. This is the property where **significant vegetation and fencing has been put up along the eastern edge of the pavement of E. Bay Street, blocking off a large portion of the ROW.** This is the same situation from a few years ago where Code Enforcement tried to take action, the property owners threatened suit, and thus Code Enforcement was told to stand down. **The blockage is egregious - due to where the pavement of E. Bay exists within the ROW, more than half the total width of the ROW is blocked by this fence. To be sure, I see no record of a fence permit ever being issued for the fence, either.**

I do not believe that the City should've backed off years ago, and I definitely do not believe we should now double-down on that mistake.

- In January 2024, Derek Mabe, the City's Code Enforcement Officer ("CEO"), contacted the property owners without success, thus, a formal Notice of Violation was issued and sent to the property owners on 1/11/2024. (See Exhibit E).
- The property owners did not correct or remediate the violation; therefore, the CEO sent a Notice of Hearing to the property owners on 3/7/2024 -- hearing date set for 3/28/2024 at the Nash Street Fire Substation. (See Exhibit F).
- March 2024 staff were approached by the City Mayor requesting information about the violation and removing the fence. The response was we are enforcing a Code Violation. The fence is within the City rights-of-way and dilapidated.
- As a courtesy, more time was given to the property owners to come into compliance. The CEO sent another Notice of Hearing to property owners on 4/23/2024 for a hearing set for 5/3/2024. (See Exhibit G).
- The CEO held a hearing and ordered the property owners to remove the fence because of its condition.
- 6/25/2024 – Findings of Fact/Final Order sent to the property owners

by the CEO. The owners were provided 10 days to come into compliance by removing the fence located in the right-of-way. (See Exhibit H).

- Over the next few months, the CEO and former City Manager Bonnie Therrin had several conversations with the property owners and their attorney.
- The CEO gave the property owners until August 15, 2024, to remove the fence. Below is an excerpt from an email that the property owner, Denise Russel, sent to City staff on 6/27/24, a copy of which is attached (See Exhibit I):

Dear Team,

Good afternoon to all. I wanted to provide you with an update regarding the issue of the fence removal at our project site.

After speaking with Derek Mabe at Alliance Code Enforcement, I have received confirmation that we do not need to proceed with the fence removal until we have received the Certificate of Occupancy (CO). Derek has informed me that he will be dating the notice to the City that removal will be on or before 8/15/24.

I understand that Derek is currently on vacation, but he took the time to return my call and discuss this matter with me. I would like to extend a big thank you to Derek for his assistance and guidance in resolving this issue.

Based on this information, there is no immediate need to take any further steps regarding the fence removal at this time.

Please feel free to reach out to me if you have any questions or require any further clarification. I will keep you updated on any developments regarding the CO and the subsequent fence removal process.

Thank you for your attention to this matter.

Best Regards,

Denise Russell

Tel (910) 762-4262 | denise@wilmingtonrubber.com

Wilmington Rubber & Gasket Co., Inc. 321 Raleigh Street,

Wilmington NC 28412

- The Board of Aldermen began discussion on the enforcement of encroachments within the City's rights-of-way and possible amendments to the City Code of Ordinances and UDO. The fence was

not removed by property owners during this time frame.

- On December 12, 2024, the Board of Aldermen approved amendments to Section 16-8, Obstruction of public rights-of-way, and Section 16-10, Existing Encroachments on rights-of-way, of the City Code of Ordinances. (See Exhibit J).
- This update to the Code of Ordinance by the Alderman on 12/12/24 also came with a directive to have all hardened encroachments within the rights-of-way be removed by June 12, 2025. Further, all open code enforcement cases open prior to December 12, 2024, will be enforced and will not be afforded the grace period for compliance. (See Exhibit K, relevant portions of 12/12/24 Board of Alderman meeting minutes).
- Because 416 E Bay Street violation was an open code enforcement case prior to 12/12/24, the property owners must now comply with notice of violation to remove the fence located within public rights-of-way per the directives of the Board of Alderman.
- Accordingly, the CEO and Planning Services Director, Maureen Meehan, issued property owners another and Final Notice of Violation letter dated 4/3/25 to remove the fence and landscaping rocks from the City's right-of-way within 15 days (See Exhibit L). The Notice of Violation letter also included a majority of the Exhibits listed above.
- The grace period expired for all property owners on June 12, 2025, thus, all hardened structures not meeting the exceptions within the Code of Ordinances within the rights-of-way are required to be removed.

In conclusion, the applicants' fence and landscaping rocks, being hardened structures located in the City's right-of-way on E. Bay Street, constitutes a violation of the City Code of Ordinances and Unified Development Code. Therefore, City staff requests that the Board of Adjustment reaffirm the initial and final Notice of Violation sent on 4/3/25 ordering the applicants to remove the fence and landscaping rocks from the City's rights-of-way adjacent to 416 E Bay Street.

**BOARD OF ADJUSTMENT: DECISION**

Affirms the staff determination based on the following:

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Modifies the staff determination, including the following:

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Reverses the staff determination based on the following:

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**The final decision shall be reduced to writing, reflect the board’s determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board.**

**Attachments Summary:**

**City’s Exhibits:**

- Russell’s 2024 Survey Plat after construction of new home (Ex. A)
- Russell’s property Deed (Ex. B)
- Plat referenced in Russell’s Deed (Ex. C)
- City Code and UDO in effect at the time of initial NOV (Ex. D-1 and D-2)
- Code Enforcement Letters from CEO (Ex.’s E--H)
- Denise Russell email to City staff dated 6/27/24 (Ex. I)
- Updated Code amendment (Ex. J)
- December 12, 2024 Alderman meeting minutes on Code Amendment (Ex. K)
- April 3, 2025 Final Notice of Violation (Ex. L)

**Applicant**

Notice of Appeal letter dated April 17, 2024 by Andrew McVey (following City’s Exhibits)

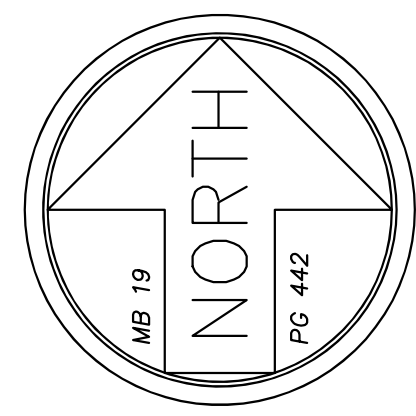
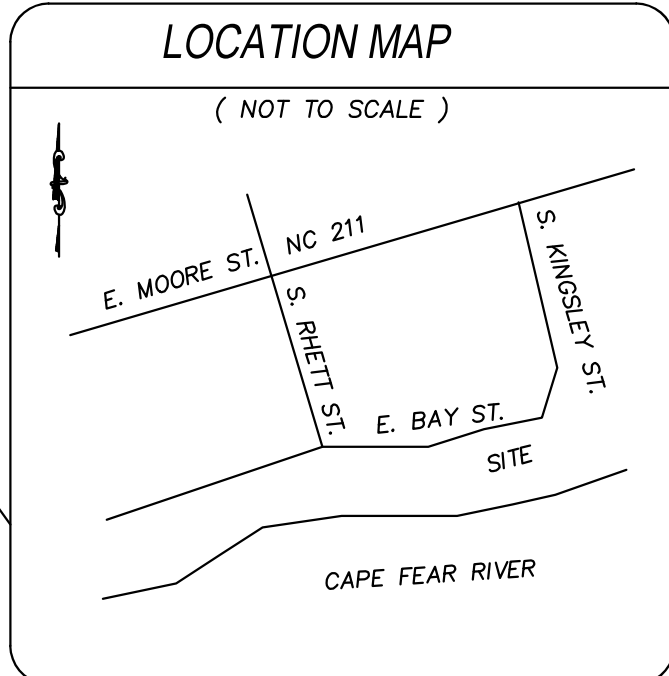
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FINAL SURVEY

# HOWARD L. RUSSELL JR. DENISE B. RUSSELL

CITY OF SOUTHPORT  
BRUNSWICK COUNTY  
NORTH CAROLINA

DATE: SEPTEMBER 10, 2024  
ADDRESS: 416 E. BAY STREET  
SOUTHPORT, NC 28461



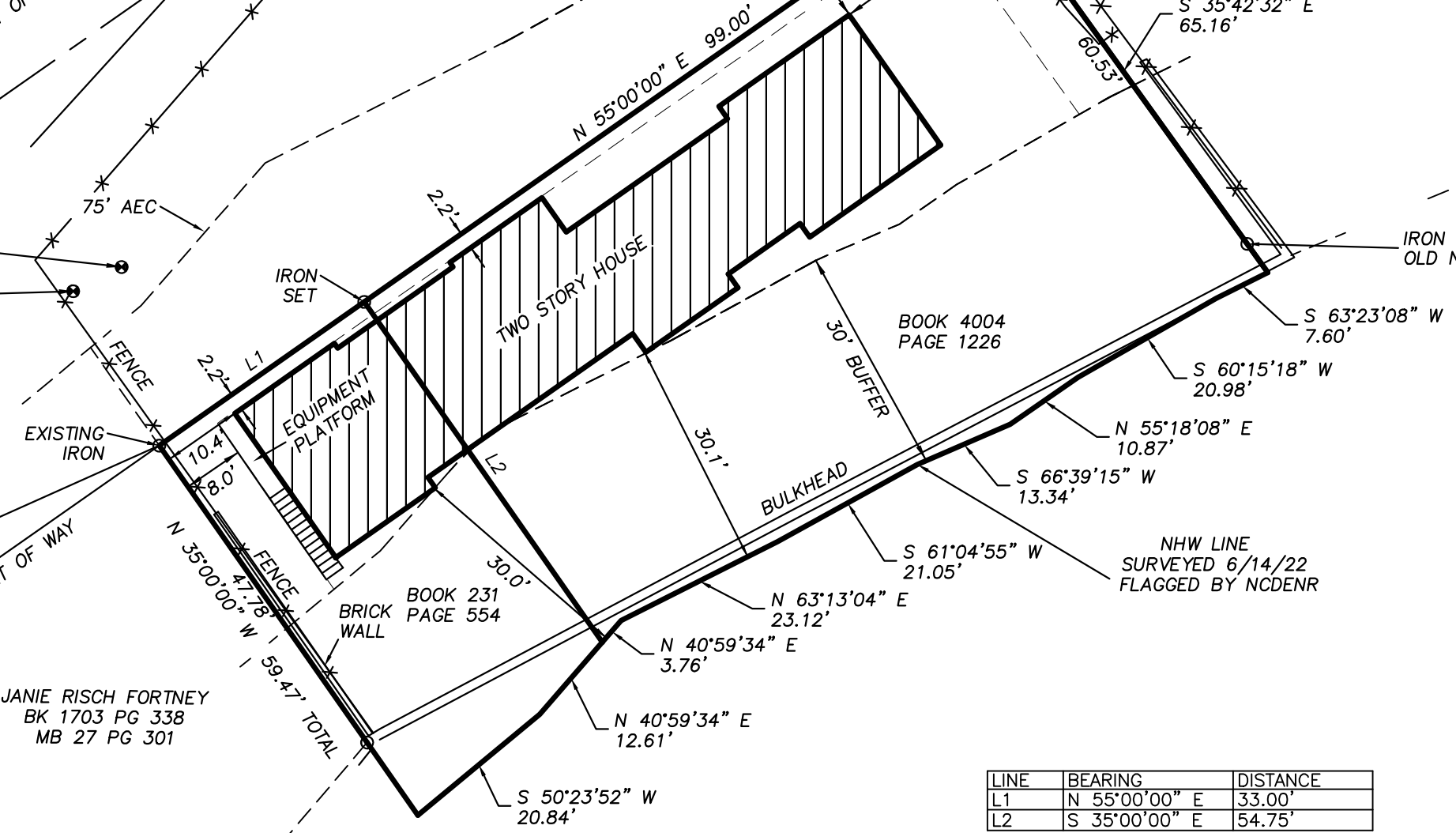
EAST BAY STREET  
99' PUBLIC RIGHT OF WAY

KINGSLEY DRIVE  
99' PUBLIC RIGHT OF WAY

S 65°53'06" W 279.61'  
TO THE CENTERLINE INTERSECTION  
OF EASE BAY STREET AND SOUTH  
RHETT STREET

JANIE RISCH FORTNEY  
BK 1703 PG 338  
MB 27 PG 301

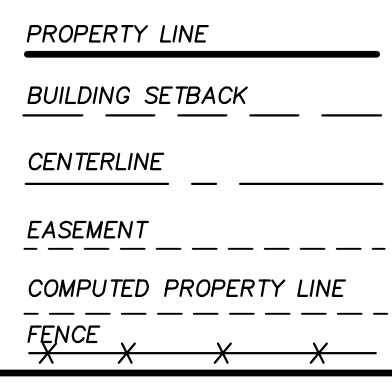
CARL & DORA  
LOFLIN  
BK 771 PG 396  
MB 27 PG 301



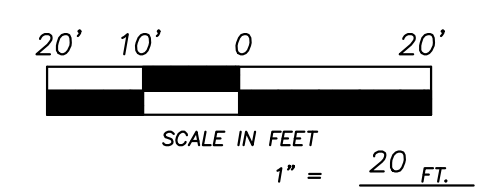
LINE	BEARING	DISTANCE
L1	N 55°00'00" E	33.00'
L2	S 35°00'00" E	54.75'

- NOTES**
1. AREA COMPUTED BY COORDINATE METHOD
  2. ALL DISTANCES ARE HORIZONTAL
  3. FOR REFERENCE SEE BOOK 4004 PAGE 1226, BOOK 231 PAGE 554 & MB 19 PG 442
  4. SURVEYED NOV. 2018 - SEPT. 2024
  5. TOTAL AREA 7,838 SF

- LEGEND**
- E.I.P. = EXISTING IRON PIPE
  - E.I. = EXISTING IRON
  - E.C.M. = EXISTING CONCRETE MONUMENT
  - R\W = RIGHT OF WAY
  - C.P. = COMPUTED POINT



CAPE FEAR RIVER



I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS 1:20,000; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21NCAC 56.1600).  
THIS 27TH DAY OF JULY, 2023.  
*Jonathan L. Wayne*  
JONATHAN L. WAYNE PLS 3391

**HANOVER DESIGN SERVICES, P.A.**  
LAND SURVEYORS ENGINEERS LAND PLANNERS  
1123 FLORAL PARKWAY  
WILMINGTON, N.C. 28403  
PHONE: (910) 343-8002  
FAX: (910) 343-9941  
FIRM CERTIFICATE C-0597  
14903

Return to MTG Type IS  
4 Total 26 Rev 1820 Int. LG  
Ck \$ 1898 Ck # \_\_\_\_\_ Cash \$ \_\_\_\_\_  
Refund \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_



**B4134 P0491** 12-12-2018  
Brenda M. Clemmons 10:09:23.003  
Brunswick County, NC Register of Deeds PROP  
page 1 of 4

- Portions of document are illegible due to condition of original.
- Document contains seals verified by original document that cannot be reproduced or copied.

Excise Tax: \$ 1820.00

Parcel Identifier No.238IB02303  
And 238IB02304

Prepared by: James R. Prevatte, Jr.,(gh)

Return to: MURCHISON, TAYLOR & GIBSON  
16 N. 5<sup>th</sup> Avenue  
Wilmington, NC 28401

**Brief Description for the Index: 416 E. BAY STREET, SOUTHPORT, NC 28461**

**PREPARED WITHOUT OPINION ON TITLE  
NORTH CAROLINA GENERAL WARRANTY DEED**

THIS DEED made this 10<sup>th</sup> day of December, 2018 by and between

**GRANTOR**

**GRANTEE**

**BRYAN KEITH CAROON**  
a/k/a Brian Keith Caroon  
**And wife,**

**HOWARD L. RUSSELL, JR.**  
**And wife,**

**TERRY W. CAROON**  
  
**121 Park Avenue**  
**Southport, NC 28461**

**DENISE B. RUSSELL**  
  
**4821 Drummond Drive**  
**Wilmington, NC 28409**

**“THIS INSTRUMENT PREPARED BY: JAMES R. PREVATTE, JR., a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the Brunswick County Tax Collector upon disbursement of closing proceeds.”**

The designation Grantors and Grantees 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.



B4134 P0492 12-12-2018  
10:09:23.003  
Brenda M. Clemmons PROP  
Brunswick County, NC Register of Deeds page 2 of 4

WITNESSETH:

THAT said GRANTORS, for a valuable consideration paid by the GRANTEES, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey to the Grantees in fee simple, *that* certain lot or parcel of land situated in Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

**SEE EXHIBIT "A", attached hereto and incorporated herein by reference.**

Reference is also made to deed recorded in Book 229, Page 846; Book 231, Page 554; Book 4004 at Page 1226; and Book 4134 at Page 484, Brunswick County Registry.

*If this box is checked, subject property is permanent residence of one or more Grantors.*

TO HAVE AND TO HOLD the above described tract or parcel of land, together with all privileges and appurtenances thereunto belonging, unto the said Grantees, their, heirs and assigns, to the only use and behoof of Grantees and their said heirs and assigns, FOREVER.

AND said Grantors covenant to and with said Grantees that they are seized of the property in fee simple and have the right to convey the same in fee simple; that the title is marketable and free and clear of all encumbrances, and that they do hereby and will forever warrant and defend title to the same against the lawful claims of all persons whomsoever EXCEPT for any exceptions hereinafter stated.

IN TESTIMONY WHEREOF, said Grantors have hereunto set their hand and seal, the day and year first above written.

Bryan Keith Caroon (SEAL)  
BRYAN KEITH CAROON

Terry W. Caroon (SEAL)  
TERRY W. CAROON

B4134 P0493 12-12-2018  
10:09:23.003  
Brenda M. Clemmons PROP  
Brunswick County, NC Register of Deeds page 3 of 4

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

I, Patricia G. McKenna, Notary Public for said County and State, do hereby certify that **BRYAN KEITH CAROON and wife, TERRY W. CAROON**, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes stated therein.

Witness my hand and official seal, this the 10<sup>th</sup> day of December, 2018.

(Affix Notary Stamp/Seal)

Patricia G. McKenna  
NOTARY PUBLIC

PATRICIA G. MCKENNA  
Notary Public, North Carolina  
Brunswick County  
My Commission Expires  
March 19, 2022

My commission expires: 3/19/22



EXHIBIT A

Parcel 1

Parcel #238IB02303

Located in the City of Southport, and BEGINNING at an iron pipe at southwestern intersection of Bay Street and Kingsley Street; runs thence westwardly with the southern line of Bay Street 99 feet to a point; thence southwardly, parallel with the western line of Kingsley Street extended to the channel of the Cape Fear River, thence eastwardly with the channel of the Cape Fear River approximately 99 feet to the western line of Kingsley Street extended; thence northwardly with the western line of Kingsley Street extended to the place and point of BEGINNING, being the waterskirt opposite Lot No. 29 and the eastern 33 feet of the waterskirt opposite Lot No. 28 in the original plan of the City of Southport.

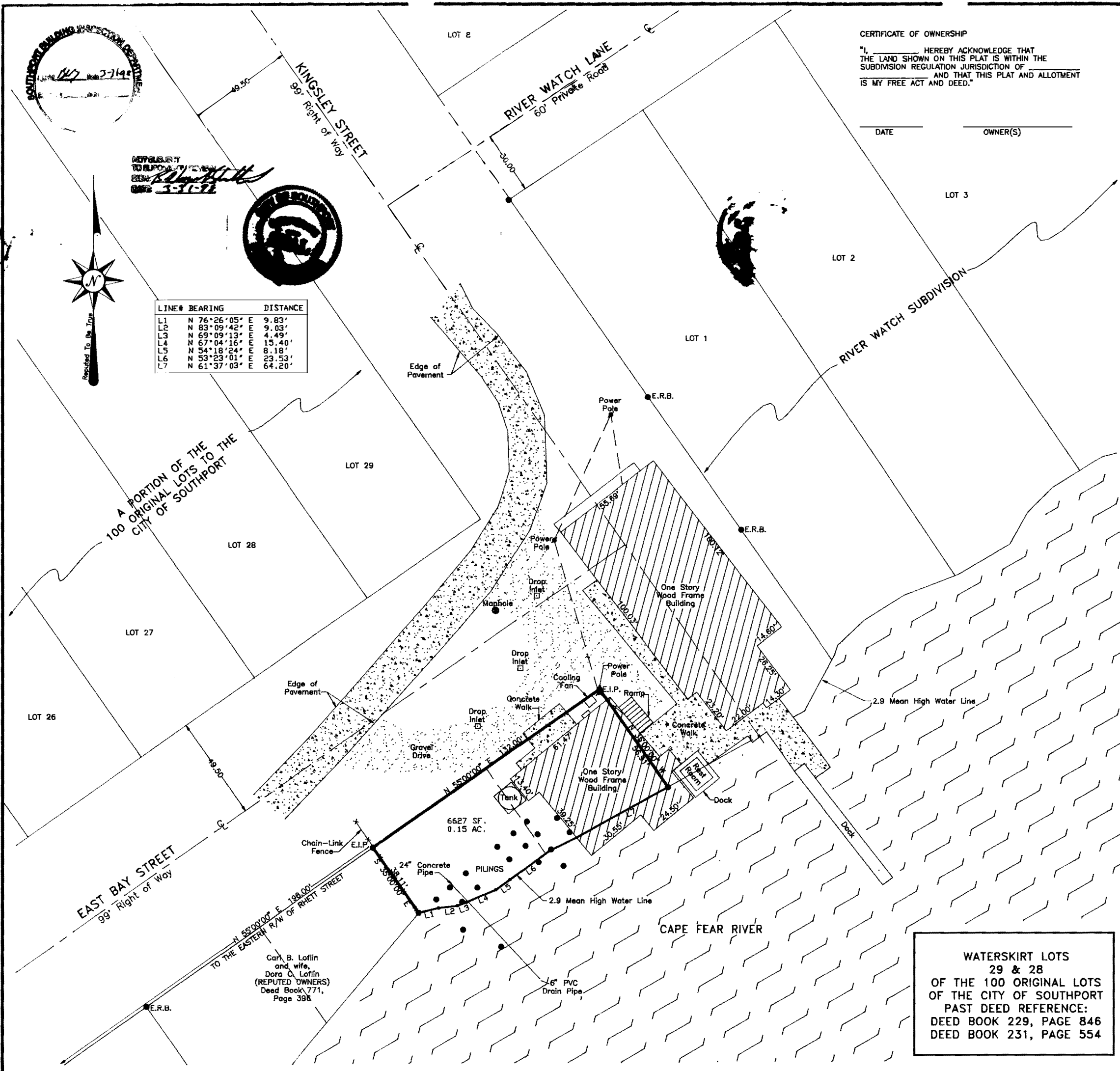
Parcel 2

Parcel #238IB2304

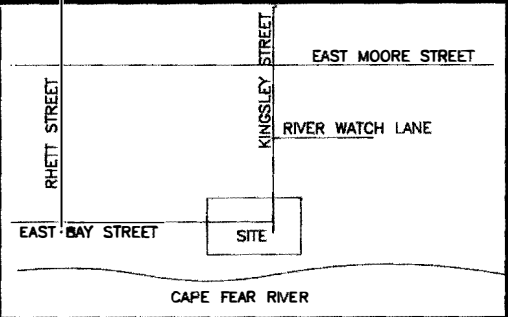
Located in the City of Southport, and BEGINNING at a point in the southern line of Bay Street located 99 feet westwardly, as measured along the southern line of Bay Street, from an iron pipe at the southwestern intersection of Bay Street and Kingsley Street; runs thence westwardly with the southern line of Bay Street 33 feet to a point; thence southwardly, parallel with the western line of Kingsley Street extended, to the channel of the Cape Fear River; thence eastwardly with the channel of the Cape Fear River approximately 33 feet to a point; thence northwardly parallel with the western line of Kingsley Street extended, to the place and point of BEGINNING, being the western 33 feet of the waterskirt opposite Lot No. 28 in the original plan of the City of Southport.

Said Parcels 1 and Parcels 2 are a portion of Parcel No. 3 conveyed to Kirby Sullivan by Holston Land Company, Incorporated, by deed dated December 31, 1963, recorded in Book 176, Page 601, Brunswick County Registry.

For reference purposes, see map recorded in Map Book 19, Page 442, Brunswick County Registry.



CERTIFICATE OF OWNERSHIP  
 "I, \_\_\_\_\_ HEREBY ACKNOWLEDGE THAT THE LAND SHOWN ON THIS PLAT IS WITHIN THE SUBDIVISION REGULATION JURISDICTION OF \_\_\_\_\_ AND THAT THIS PLAT AND ALLOTMENT IS MY FREE ACT AND DEED."  
 DATE \_\_\_\_\_ OWNER(S) \_\_\_\_\_



VICINITY MAP - NOT TO SCALE

- NOTES:
- "I, WILLIAM W. DELANEY II, R.L.S. CERTIFY THAT THE OWNER OF THIS LAND IS \_\_\_\_\_ AND THAT THE SURVEY AS SHOWN ON THIS PLAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND."
  - ACCORDING TO FLOOD INSURANCE RATE MAP 37002B, PANEL NO. 0004, SUFFIX C, DATED 12/18/85, THE LAND SHOWN ON PLAT IS IN FLOOD ZONE A10 (EL 11).
  - SURVEY DATE: 04/14/97 FOR CHARLES DEAN.
  - E.R.B. = EXISTING RE-BAR.
  - E.I.P. = EXISTING IRON PIPE.
  - REVISED TO C.B. CAROON AND IRMA R. CAROON ON 12/22/97.
- Scale: 1" = 30'  
 0' 30' 60' 90'

NORTH CAROLINA BRUNSWICK COUNTY  
 I, WILLIAM W. DELANEY II, R.L.S. CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK \_\_\_\_\_ AT PAGE \_\_\_\_\_ IN BRUNSWICK COUNTY REGISTER OF DEEDS OFFICE); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK \_\_\_\_\_ AT PAGE \_\_\_\_\_; THAT THE RATIO OF PRECISION AS CALCULATED BY COMPUTER IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.  
 WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 18TH DAY OF APRIL, 19 97.  
 REGISTERED LAND SURVEYOR L-2973  
 WILLIAM W. DELANEY II

NORTH CAROLINA BRUNSWICK COUNTY  
 I, A NOTARY PUBLIC OF BRUNSWICK COUNTY, NORTH CAROLINA CERTIFY THAT WILLIAM W. DELANEY II, R.L.S. PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT.  
 WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS 18TH DAY OF APRIL, 19 97.  
 MY COMMISSION EXPIRES OCTOBER 25, 2000  
 NOTARY PUBLIC  
 TARA O. ROGERS

Surveyed and Mapped By  
**Tide Water Engineering and Surveying, P.A.**  
 P.O. Box 11506  
 802 North Howe Street  
 Southport, North Carolina 28461  
 Phone: 910-457-9580

SURVEY FOR  
**C.B. Caroon AND WIFE, Irma R. Caroon**  
 CITY OF SOUTHPORT  
 SMITHVILLE TOWNSHIP  
 BRUNSWICK COUNTY  
 STATE OF NORTH CAROLINA  
 DRAWN BY: TARA O. ROGERS

WATERSKIIRT LOTS 29 & 28 OF THE 100 ORIGINAL LOTS OF THE CITY OF SOUTHPORT  
 PAST DEED REFERENCE:  
 DEED BOOK 229, PAGE 846  
 DEED BOOK 231, PAGE 554

STATE OF NORTH CAROLINA  
 COUNTY OF BRUNSWICK  
 I, \_\_\_\_\_ Notary Public for Brunswick County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording, this the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

## **Sec. 16-8. Obstruction of public rights-of-way.**

- (a) Except as specifically set forth in subsection (b) herein or as authorized by a license issued by the board of aldermen, it shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation or other structure, material or substance above the horizontal plane of the existing ground. In addition, it shall be unlawful for any person to take any action whatsoever within any public right-of-way which creates a hazardous condition or safety hazard or which otherwise interferes with or obstructs in any manner the passage of persons or vehicles upon or within said public rights-of-way or which obstructs, interferes with or hinders lawful parking within any public right-of-way.
- (b) Nothing herein shall prevent any business or other legal entity located in areas zoned CBD and BD from (i) placing objects which are not otherwise prohibited under the Southport Code of Ordinances on that portion of a sidewalk which is directly abutting the building occupied by such business or entity, provided that said items do not extend more than thirty-six (36) inches into the sidewalk and do not violate section 16-7 of the Code of Ordinances prohibiting the display of goods, or (ii) placing A-frame signs on a sidewalk or right-of-way where specifically allowed under the Southport Unified Development Ordinance. Notwithstanding this, however, no business or other entity may place or cause to be placed any object on a sidewalk so as to violate the provisions of the ADA regarding unobstructed clearance.

(Code 1974, § 5.31; Ord. of 12-11-03; Ord. of 9-9-10; Ord. of 10-11-12)

## Landscaping and Buffers

### A. Purpose

1. The governing body and advisory boards of the City of Southport recognize the importance of the contribution made to the community by the abundance of native trees and vegetation. It is this vegetation that gives the city an aesthetic appeal that contributes to its growth and economic prosperity. As economic growth occurs, the removal of this valued vegetation sometimes results, contributing to a depletion of a most valuable resource. The city feels it is necessary to both conserve and restore those valuable assets and declares the objective of this section to be as follows:
  - a) To provide visual and spatial buffering between adjoining and competing uses;
  - b) To enhance the beautification of the city;
  - c) To enhance property values and protect public and private investment;
  - d) To provide a habitat for living things that might not otherwise occur in an urban environment; and
  - e) To ensure that planting areas are distributed within developing sites in a manner which will provide shade, buffer noise, and filter glare.

### B. Applicability

1. Landscape installation is required for all new construction non-residential and multi-family uses or a change in use or redevelopment where such change would result in the addition of 10 or more parking spaces. The following site areas are required to be addressed in accordance with the provisions of this section:
  - a) Street yards
  - b) Foundation planting
  - c) Parking facility landscaping
  - d) Bufferyards

### C. General Provisions

1. All planted and retained living material, required to meet the provisions of this section, shall be maintained by the owner of the property on which the material is located. Any planted material which becomes damaged or diseased or dies shall be replaced by the owner within 60 days of the occurrence of such condition. If, in the opinion of the UDO Administrator, there are seasonal conditions which will not permit the timely replacement

# EXHIBIT D-2

City of Southport  
Unified Development Ordinance (UDO)

- of the vegetation (e.g., too hot or too cool for successful replanting), this requirement may be administratively waived until a time certain.
2. All planted material subject to the provisions of this ordinance shall be of a native species and in accordance with the planting material list as provided in Tables 3.5 through 3.7.
  3. Nonliving screening buffers shall be maintained, cleaned, or repaired by the owner of the property on which the buffer is located. Such buffers shall be kept free of litter and advertising.
  4. Up to 15% of the area to be landscaped may be covered with surfaces specifically intended to afford intensive use and enjoyment by employees or the public (such as sidewalks, walking paths, bench and table pads, etc.).
  5. It is encouraged that stormwater management systems be integrated into landscaping areas.
  6. Prior to the issuance of a certificate of occupancy, the property owner shall submit a final planting plan to the UDO Administrator demonstrating compliance with this ordinance.

## D. Landscaping on Public Property

It shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk, or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation, or other structure, material, or substance above the horizontal plane of the existing ground.



## COURTESY LETTER / 1<sup>ST</sup> NOTICE OF VIOLATION

Case Number: 202310004

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
January 11, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that your property may be in violation of the City Ordinance. This letter is to inform you that the structure and/or property located at **416 E Bay St**, appears in violation of the City of Southport Minimum Housing/Nuisance Code of Ordinance. On **10/19/23**, the Code Enforcement Inspector observed the following violation(s): **Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**

As the owner/occupant of the property, **you have 12 days to correct the violations** or the City will take further steps to enforce the requirements of the Code of Ordinances, which may include levying civil penalties and seeking a court order from the Brunswick County Courts requiring you to correct the violation. If the City determines the any of the violations constitute a public nuisance, the city may also summarily abate the nuisance and bill you for the cost of abatement pursuant to the Southport Code of Ordinances.

To correct the violation, you must do the following: **Remove the fence from the (City Right of Way).**

Please note that if any of the work described above requires Zoning, Building and/or Demolition Permits, they must be obtained from Southport Building Inspections office. All required inspections must be completed within the timeframe listed above.

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [mabe@alliancecodeenforcement.com](mailto:mabe@alliancecodeenforcement.com)

Sincerely,

*Derek Mabe*

Derek Mabe  
Code Enforcement Inspector

# EXHIBIT F



## COMPLAINT - NOTICE OF HEARING

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
March 7, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that the structure and/or property located at **416 E Bay St** is in violation of the City of Southport Code of Minimum Housing and/or Nuisance Ordinance because:

The Code Enforcement Inspector conducted a preliminary inspection on **10/19/23** and sent the first Notice of Violation on **01/11/24**. Based on that investigation, the Officer found violations of: **Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**

To abate, you must complete the following: **Remove the fence from the (City Right of Way) and cut all overgrowth.**

A Hearing will be held on **03/28/24**, at **10:00 am**, at the Nash St Substation, located at 111 E Nash St Southport, NC 28461, before the Code Enforcement Inspector. The owner; mortgage holder, if any; occupant, if any; and any other parties in interest are entitled to be heard in person or through an attorney and to present arguments and evidence pertaining to the matter. Following the hearing and depending on the violation, the Officer may issue such order to repair, close, vacate, remove, or demolish the house as appears appropriate and/or require cleanup and/or removal of violating conditions and/or items. **If the violation stated above is remediated prior to the hearing, the hearing will be cancelled.**

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Code Enforcement Inspector

# EXHIBIT G



## COMPLAINT - NOTICE OF HEARING

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
April 23, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that the structure and/or property located at **416 E Bay St** is in violation of the City of Southport Code of Zoning Ordinance because:

The Code Enforcement Inspector conducted a preliminary inspection on **10/19/23** and sent the first Notice of Violation on **01/11/24**. Based on that investigation, the Officer found violations of: **Zoning Violation to wit: Fence located in the (City of Southport Right of Way / on City of Southport property.)**

To abate, you must complete the following: **Remove the fence from the (City of Southport Right of Way / property owned by the City of Southport).**

A Hearing will be held on **05/03/24**, at **10:00 am**, at the Nash St Substation, located at 111 E Nash St Southport, NC 28461, before the Code Enforcement Inspector. The owner; mortgage holder, if any; occupant, if any; and any other parties in interest are entitled to be heard in person or through an attorney and to present arguments and evidence pertaining to the matter. Following the hearing and depending on the violation, the Officer may issue such order to repair, close, vacate, remove, or demolish the house as appears appropriate and/or require cleanup and/or removal of violating conditions and/or items. **If the violation stated above is remediated prior to the hearing, the hearing will be cancelled.**

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at Mabe@AllianceCodeEnforcement.com.

Sincerely,

*Derek Mabe*

Code Enforcement Inspector

# EXHIBIT H



## FINDING OF FACT / FINAL ORDER

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
June 25, 2024

On 03/28/24, the City of Southport, NC Code Enforcement Inspector held a hearing to consider the condition of the structure on the property located at 416 E Bay St. Based on the evidence presented, I make the following Findings of Fact:

1. All persons presenting evidence at the hearing were/**were not** sworn in.
2. The City staff **did**/did not present written and/or oral evidence regarding the condition of the structure.
3. The owner and/or mortgage holder of the property was/**was not** present and **was**/was not represented by counsel.
4.  Not Applicable.

The occupant of the building ~~was~~/was not present and ~~was~~/was not represented by counsel.

5. The owner and/or occupant, or their attorneys, **did**/did not present written and/or oral evidence.
6. The building is/**is not** currently occupied.
7. Based on the evidence presented, the Inspector finds that the following violations exist:  
**Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**
8. Based on the evidence presented, the Inspector finds that the structure is/**is not** an imminent danger to life or other property.
9. These conditions are violations of the following provisions of the City of Southport Code of Ordinance.
10.  Not Applicable.

If repairs are allowed, continued occupancy during the time allowed for repair will/will not present a significant threat of bodily harm. In making this Finding of Fact, the Officer has considered the nature of the necessary repairs, alterations, or improvements; the current

SERVICE – Regular Mail, Certified Mail & Posting on the Property

# EXHIBIT H



state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities.

11. I make the following additional Findings of Fact: **The property owner did remove the overgrowth from the fence but has made no attempt to remove the fence from City Property (Right of Way).**

**ZONING VIOLATION** – Based of these Findings of Fact, I hereby determine that the violations **can**/cannot be brought into compliance with the City of Southport Code of Ordinance. **Please use the allowed time 10 Days to remove the fence from City Property (Right of Way) and bring the property into compliance.**

Extra notes regarding the Order: **The Board of Alderman voted on 5/9/2024 to fully enforce all Right of Way violations within the City. This property is one of many in violation for Right of Way encroachment.**

Please note that you must obtain the proper building/zoning permits from the City of Southport before any demolition or major repair work can begin, and all required inspections must be completed within the timeframe listed above.

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Derek Mabe  
Code Enforcement Inspector

# EXHIBIT I

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

From: **Denise Russell** <[Denise@wilmingtonrubber.com](mailto:Denise@wilmingtonrubber.com)>

Date: Thu, Jun 27, 2024, 4:30 PM

Subject: 416 E Bay Fence Russell

To: [amcvey@murchisontaylor.com](mailto:amcvey@murchisontaylor.com) <[amcvey@murchisontaylor.com](mailto:amcvey@murchisontaylor.com)>, Scott M. Holmes <[sholmes@murchisontaylor.com](mailto:sholmes@murchisontaylor.com)>, Joseph O. Taylor <[JTaylor@murchisontaylor.com](mailto:JTaylor@murchisontaylor.com)>

Cc: [mabe@alliancecodeenforcement.com](mailto:mabe@alliancecodeenforcement.com) <[mabe@alliancecodeenforcement.com](mailto:mabe@alliancecodeenforcement.com)>

Dear Team,

Good afternoon to all. I wanted to provide you with an update regarding the issue of the fence removal at our project site.

After speaking with Derek Mabe at Alliance Code Enforcement, I have received confirmation that we do not need to proceed with the fence removal until we have received the Certificate of Occupancy (CO). Derek has informed me that he will be dating the notice to the City that removal will be on or before 8/15/24.

I understand that Derek is currently on vacation, but he took the time to return my call and discuss this matter with me. I would like to extend a big thank you to Derek for his assistance and guidance in resolving this issue.

Based on this information, there is no immediate need to take any further steps regarding the fence removal at this time.

# EXHIBIT I

Please feel free to reach out to me if you have any questions or require any further clarification. I will keep you updated on any developments regarding the CO and the subsequent fence removal process.

Thank you for your attention to this matter.

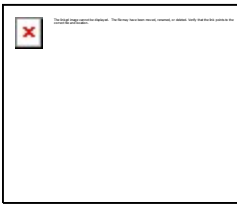
Best Regards,

**Denise Russell**

Tel (910) 762-4262 | [denise@wilmingtonrubber.com](mailto:denise@wilmingtonrubber.com)

Wilmington Rubber & Gasket Co., Inc. 321 Raleigh Street, Wilmington NC 28412

[www.wilmingtonrubber.com](http://www.wilmingtonrubber.com)



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**AN ORDINANCE AMENDING CHAPTER 16. OF THE SOUTHPORT CODE OF ORDINANCES**

**BE IT ORDAINED**, by the Board of Aldermen of the City of Southport that Chapter 16, of the Code of Ordinances entitled “STREETS AND SIDEWALKS” Sections 16-8 through 16-11 is hereby amended to remove, replace, and add the following:

**Sec. 16-8. Obstruction of public rights-of-way.**

(a) Except as specifically set forth in subsections (b), (c), (d), and (e) herein or as authorized by a license issued by the board of aldermen, it shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation or other structure, material or substance above the horizontal plane of the existing ground. The installation of turf grasses on grade is allowed within the right-of-way. In addition, it shall be unlawful for any person to take any action whatsoever within any public right-of-way which creates a hazardous condition or safety hazard or which otherwise interferes with or obstructs in any manner the passage of persons or vehicles upon or within said public rights-of-way or which obstructs, interferes with or hinders lawful parking within any public right-of-way.

(b) In residentially zoned areas without off-street parking requirements, property owners shall be permitted to improve up to two (2) parking spaces no more than twenty (20) feet total in width within the right-of-way in front of their property. ~~Dimensional standards of~~ These parking spaces shall follow the provisions for driveways as described in the Unified Development Ordinance (Section 3.12.B.1). Surfacing materials for these parking spaces shall be limited to one of the following: turf grass, ~~brick~~, pervious pavers, and pervious number 57 driveway slate gravel with wood borders no more than 2 inches above grade, ~~or concrete~~. ~~Allowable non-pervious surfacing materials (brick, pavers, or concrete) may only be used in an area that is a minimum of 50 feet from a City Tree. The UDO Administrator may waive the requirement of a wood border if it is not appropriate due to existing conditions.~~ Parking spaces constructed by a property owner within right-of-way shall remain open for public parking and shall not be reserved for the property whose owner constructed the spaces. Such parking shall require the review and written approval of the ~~Development Services Director~~ UDO Administrator, Public Services Director, and Fire Marshal. The City reserves the right to remove these parking areas for any reason in accordance with Section 16-10. Parking surfaces existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazardous condition or safety hazard to the public.

(c) Nothing herein shall prevent any business or other legal entity located in areas zoned CBD and BD from (i) placing objects which are not otherwise prohibited under the Southport Code of Ordinances on that portion of a sidewalk which is directly abutting the

building occupied by such business or entity, provided that said items do not extend more than thirty-six (36) inches into the sidewalk and do not violate section 16-7 of the Code of Ordinances prohibiting the display of goods, or (ii) placing A-frame signs on a sidewalk or right-of-way where specifically allowed under the Southport Unified Development Ordinance. Notwithstanding this, however, no business or other entity may place or cause to be placed any object on a sidewalk so as to violate the provisions of the ADA regarding unobstructed clearance.

(d) Vegetation or other protective measures consistent with current arboricultural best management practices (ANSI A300 standards) and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan shall be permitted to be placed within a ten (10) feet foot radius of the base of a City tree by an adjoining property owner, or by the City, for the purpose of limiting damage to the tree by nearby parked vehicles.

Such action shall require review and written approval by the ~~Development Services Director~~ UDO Administrator, the Public Services Director, and the Fire Marshal.

(e) Nothing herein shall prevent the City to install drainage or safety structures for protection of private property.

## **Sec. 16-9. Construction near sidewalk.**

Before building or remodeling any place where the same is in close proximity to the sidewalk, a passageway shall be constructed so as to leave the sidewalk unobstructed and provide safe and easy passage.  
(Code 1974, § 5.32)

## **Sec. 16-10. Existing encroachments on rights-of-way.**

a) In the event that the Southport Code Enforcement Officer determines that there exists any encroachment, obstacle, vegetation, wares, goods or other condition within a public right-of way or sidewalk in violation of section 16-7 or section 16-8 of this Code or which interferes with the free passage of persons or vehicles within said right-of-way or sidewalk, or which otherwise creates a hazard to the public, said code enforcement officer shall attempt to identify the person(s) responsible for said obstacle or encroachment. This includes hardscapes, decorative rock walls, fountains, and similar items. Upon identification, the code enforcement officer shall notify in writing said responsible person(s) who shall have seventy-two (72) hours from the date of notification to remove nonpermanent installations of said encroachment or condition. Permanent installations shall be removed within 90 days from the date of notification of said encroachment. In the event that the responsible party fails to remove said obstacle or encroachment within the time allowed, and in addition to other remedies as allowed by law, the city may promptly remove said obstacle or encroachment and shall charge the cost of said removal to the party responsible for said obstacle, encroachment, or condition. In the event that the code enforcement officer is not able to identify the responsible party, or if the condition or encroachment creates an imminent and immediate danger to the public, the city may summarily remove said encroachment or other condition within the right-of-way without

notice. Following removal, any future encroachment must be done in accordance with the provisions of all applicable ordinances.

## b) Vegetative Encroachments

- I. Vegetative right-of-way encroachments existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazard to the public. Such encroachments shall not be permitted to be expanded, and the City reserves the right to remove a right-of-way encroachment for any public purpose and shall not be liable for the removal of those encroachments. Existing vegetation right-of-way encroachments removed at any time by the City for a public purpose are allowed to be reconstructed, if possible, at the property owner's expense.
- II. Private installation of native trees within the right-of-way is permitted when city trees must be removed for construction or when a tree must be removed due to the health of the tree. Canopy and understory installation shall follow

standards found in the UDO, current arboricultural best management practices (ANSI A300 standards), and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan. Such action shall require review and written approval by the UDO Administrator in consultation with the Forestry Committee.

(c) Where curb and public sidewalks exist, private fences, walls, and vegetation installed up to the private property side of the sidewalk existing at the time of the adoption of this ordinance may remain. All approvals and building permits must be obtained for maintenance or replacement of existing fences and walls.

(d) Any wall or fence located in the right-of-way in the designated National Historic Register or in the adopted local historic district(s) built on or before December 31, 1980, may remain after written determination by the UDO Administrator and Historic Preservation Commission that the structure contributes to the historic character of the district.

(e) The City reserves the right to remove a right-of-way encroachment for any public purpose and shall not be liable for the removal of those encroachments and shall levy the cost of removal in accordance with Section 16-10(a) above.

### **Sec. 16-11. Gates opening on streets and sidewalks.**

No gate to any residence, lot or other enclosure in the city shall swing or open outward over the street or sidewalk. Each day any gate is allowed to open outward over the sidewalk or street, shall constitute a separate offense.

(Code 1974, § 5.35)

# EXHIBIT J

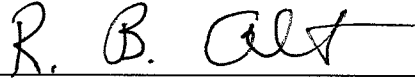
There shall be a 6-month grace period for enforcement of this ordinance. All code enforcement cases open prior to adoption of this ordinance shall remain open and processed consistent with the ordinance prior to this adoption.

The foregoing Ordinance, having been submitted to a vote, received the following vote and was duly adopted this the 12<sup>th</sup> day of December 2024.

Ayes: 4

Noes: 1

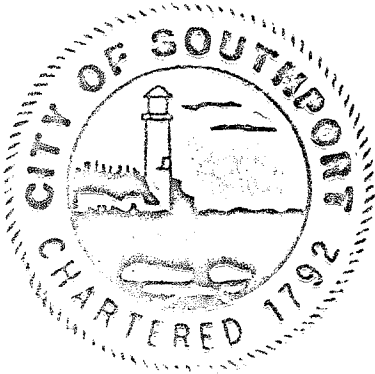
Absent or Excused: 1



Rich Alt  
Mayor



Noah Saldo  
City Clerk



# EXHIBIT K

December 12, 2024

BOARD OF ALDERMEN    REGULAR MEETING  
December 12, 2024      223 E. BAY STREET  
SOUTHPORT, N.C.        6:00 PM

## REGULAR MEETING

### Present:

Mayor Rich Alt, Mayor Pro-Tern Rebecca Kelley, Aldermen Karen Mosteller, Lowe Davis, Robert Carroll, and Frank Lai.

### Absent:

Marc Spencer

### Staff:

City Manager Stuart Turille, City Clerk Noah Saldo, Public Information Officer ChyAnn Ketchum, City Engineer Tom Zilinek, Police Chief Todd Coring, Community Relations Director Allayna Dail, Police Major Tony Burke, Fire Chief Charles Drew, City Attorney Brady Herman, and Deputy City Clerk Tori Deviney.

- A. Mayor Alt called the meeting to order at 6:00 PM.
- B. Rev. Sally Learned, Executive Director of Brunswick County Partnership for Housing, gave the invocation.
- C. Mayor Alt led the Pledge of Allegiance.
- D. Special Recognition
  - 1. Recognition of Police Major Tony Burke on the occasion of his retirement Mayor Alt and Police Chief Coring presented Major Burke with a resolution and other items on the occasion of his retirement.
  - 2. Recognition of Chris Schnell for his extraordinary volunteer service as Chair of the Southport Wooden Boat Show

Mayor Alt presented Mr. Schnell with a resolution in recognition of his dedication to volunteering at the wooden boat show.

### E. Public Comment

Mayor Alt read the ethics statement

# EXHIBIT K

Kay Ross of 5205 White Ibis Ct spoke about the action of the Aldermen related to the old city hall building at the special Aldermen December 12th meeting. She stated she was disappointed the arts group was not able to have a meeting with the Aldermen regarding their vision for the building.

Brad

Sevaldson of 226 Sand Dollar In spoke about his dissatisfaction with the Aldermen's decision on the old city hall building.

City Clerk Saldo read an emailed public comment from Bonnie Bray of 515 Quarter Master Drive regarding her disappointment with the Aldermen's decision on the old city hall building.

Aldermen Carroll made a motion to close public comment, seconded by Mayor Pro-Tern Kelley.

Unanimous Vote; Motion Carried.

## F. Approval of Agenda

Aldermen Carroll made a motion to approve the agenda with the removal of item H4 Franklin Square Park, seconded by Mayor Pro-Tern Kelley.

Unanimous Vote; Motion Carried.

## G. Approval of the Consent Agenda

Mayor Pro-Tern Kelley made a motion to approve the following consent agenda items, seconded by Aldermen Lai.

Unanimous Vote; Motion Carried.

1. Minutes of the November 4th Regular Aldermen Meeting
2. Minutes of the November 14th Regular Aldermen Meeting
3. 2025 Aldermen Meeting Schedule

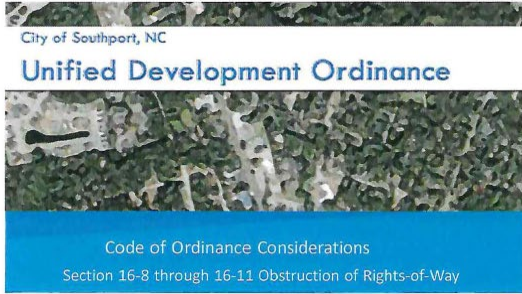
## H. Agenda

### 2. Right of Way Ordinance Update

Planning Services Director Maureen Meehan presented the following:

|

# EXHIBIT K



## Updated Text for City Code of Ordinances Sections 16-8 through 16-11

- Clarify parking pad standards including size and surfacing.
- Provide a provision for existing parking surfaces to remain so long that they are not a safety hazard.
- Clarify how vegetation and protective measures can be placed around trees in the ROW.
- Increase compliance timing for permanent installation of encroachments.
- Add a provision for private installation of native trees in the right-of-way when a tree must be removed for construction or if the tree is diseased or dead.
- Provide clarification that private fences and vegetation may be installed up to the edge of a sidewalk where on street parking with curb and sidewalk exist.
- Allow the continuance of walls and fences that were erected on or before December 31, 1980, if they are deemed contributing to the historic character of the National Historic Register or local historic district(s).

The Board discussed the proposed ordinance and asked the question of Director Meehan.


Mayor Alt stated "I am categorically against this action, I see no reason to incur the wrath of an Untold number of citizens for no immediate need. We have the right to go in, we have the right to rip the right away up if we want to. I see no reason to go through this because we're going to do nothing except have hoot nanny going on for months to come and we have so many issues in front of us that are more . . .nding and more important than to get bogged down in this action I am categorically against it.


Aldermen Mosteller made a motion to adopt the proposed ordinance with a six-month grace from enforcement, and any active code enforcement cases started prior to the adoption of this ordinance shall remain in place, seconded by Aldermen Carroll. Motion carried 4-1 with Mayor Pro-Tem Kelley Voting No.

### O. Adjourn

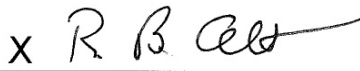
Aldermen Carroll made a motion to adjourn, seconded by Mayor Pro-Tern Kelley.

Unanimous Vote; Motion Carried at 10:12:11 PM.



x 

Noah Saldo  
City Clerk

x 

Rich Alt  
Mayor



## City of Southport

April 3, 2025

**Via First-Class and Certified Mail and E-mail to:**

Mr. Howard L. Russell  
Mrs. Denise B. Russell  
1044 Ryans Ct  
Wilmington, NC 28412

RE: 416 E Bay Street – Case Number: 202310001 – Zoning Violation and Code Violation – Final Notice

Dear Mr. and Mrs. Russell:

The subject code enforcement violation has been ongoing since 2022. Multiple City Managers and City Staff have made numerous attempts to bring this violation into compliance. These different contacts are not motivated by anything other than bringing a known violation into compliance. A formal timeline of the process, including all written code enforcement notifications, is attached to this letter.

A Final Order from Derek Mabe, Code Enforcement Officer, issued on June 25, 2024, provided timing and corrective actions to bring Case Number 202310001, a zoning violation, into compliance. The corrective action in the order is the removal of the fence in violation installed within the public rights-of-way (ROW) adjacent to your property. Communication from Mrs. Russell, dated August 15, 2024, speaks of the fence removal after the issuance of the CO. To date, the violation has not been corrected.

Further, the Board of Aldermen updated Chapter 16 of the City Code of Ordinances, outlining allowable uses within public ROW. As part of this update, the Aldermen directed staff to remove hardened structures that encroach upon the City's ROW, which includes the subject fence and landscaping rocks. The Board of Aldermen also directed staff to ensure all open code enforcement cases with ROW encroachment violations are abated. I have attached the updated City Code of Ordinance language to Chapter 16 and the draft Unified Development Ordinance (UDO) language that mirrors the City Code of Ordinance updates which the Aldermen are considering at their May 8, 2025, regular meeting.

UDO Section 3.17(D) that exists today, which states as follows: "It shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk, or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation, or other structure, material, or substance above the horizontal plane of the existing ground." **Accordingly, this letter is a final notice that you are in violation of both UDO Section 3.17(D) and City Code Section 16-8(a) since your fence and landscaping rocks are currently within the City's ROW.**

Section 3.10.B. Fences and Walls of the City of Southport UDO allows four (4) foot fences along front property lines. Your final as-built survey of building permit B-23-19 delineates your property lines and the fence within the ROW. Upon removal of the subject fence, a fence that meets the UDO requirements is allowed with the issuance of a fence permit. City staff are available to help you if you have any questions about future improvements to your lot.

In order to come into compliance, you must remove the portions of the fence and landscaping rocks that are located in the City's ROW within 15 days. If the fence and rocks are not removed within said time frame, daily fines will be assessed per Section 2.15 of the UDO and/or the City will initiate any appropriate action to correct or abate the violation, including, but not limited to the City removing the fence and rocks and charging you, the responsible party, for the cost of removal per City Code Section 16-10.

Pursuant to UDO Sections 2.7(E) and 2.15(C)(2) you have a right to appeal this final notice of violation to the Southport Board of Adjustment.

If there is anything else our office can assist you with, please don't hesitate to let us know. You can reach Maureen Meehan at (910) 457-7900 and Derek Mabe at (336) 569-9988

Sincerely,



Maureen Meehan  
Planning Services Director

Derek Mabe  
Code Enforcement Officer



**Attachments**

Code Enforcement Correspondence  
Timeline of Events  
Code of Ordinance Updated Language

## 416 Bay Street Code Enforcement of a Rights-of-Way Timeline

- When Bonnie Therrien, former City Manager started, the Director of Development Services (Travis Henley) was more proactive about enforcement. Here is an excerpt from one of his emails:

*“We’ve received a building permit application for the property located at 416 E. Bay Street (owned by the Howards), which is immediately adjacent to and south of Kingsley Park. This is the property where **significant vegetation and fencing has been put up along the eastern edge of the pavement of E. Bay Street, blocking off a large portion of the ROW.** This is the same situation from a few years ago where Code Enforcement tried to take action, the property owners threatened suit, and thus Code Enforcement was told to stand down. **The blockage is egregious - due to where the pavement of E. Bay exists within the ROW, more than half the total width of the ROW is blocked by this fence. To be sure, I see no record of a fence permit ever being issued for the fence, either.***

*I do not believe that the City should’ve backed off years ago, and I definitely do not believe we should now double-down on that mistake.”*

- Travis left, and we went without Code Enforcement for a while. Derek Mabe, with Alliance Code Enforcement, has been handling this more than staff. In November 2023, Derek was asked to contact the property owners.
- In January 2024, Derek tried to contact the property owners or speak to them, but no one would contact him, so he sent a formal Notice of Violation.
- 1/11/2024 – 1st Notice of Violation was sent to the property owners – 10/13/2023 observance of overgrowth and fence in rights-of-way
- The Notice of Violation was not responded to, so he sent a Notice of Hearing in March 2024.
- 3/7/2024 – Notice of Hearing sent to property owners – hearing set for 3/28/2024 at the Nash Street Fire Substation
- Mayor Alt got involved in March 2024 and asked about the city's motives for removing the fence. We were doing our job of enforcing a Code Violation. The fence is dilapidated.
- As a courtesy to the Mayor, Derek started the code enforcement process again by issuing a Notice of Violation.
- 4/23/2024 – Notice of Hearing sent to property owners – hearing set for 5/3/2024
- Derek held a hearing and ordered the property owners to remove the fence because of its condition.
- 6/25/2024 – Findings of Fact/Final Order sent to the property owners – the owners were provided 10 days to come into compliance by removing the fence located in the rights-of-way

- Over the next few months, Derek and Bonnie had several conversations with the property owners and their attorney.
- Derek agreed to give them until August 15, 2024, to remove the fence. Here is an email that the property owner sent out:

*Dear Team,*

*Good afternoon to all. I wanted to provide you with an update regarding the issue of the fence removal at our project site.*

*After speaking with Derek Mabe at Alliance Code Enforcement, I have received confirmation that we do not need to proceed with the fence removal until we have received the Certificate of Occupancy (CO). Derek has informed me that he will be dating the notice to the City that removal will be on or before 8/15/24.*

*I understand that Derek is currently on vacation, but he took the time to return my call and discuss this matter with me. I would like to extend a big thank you to Derek for his assistance and guidance in resolving this issue.*

*Based on this information, there is no immediate need to take any further steps regarding the fence removal at this time.*

*Please feel free to reach out to me if you have any questions or require any further clarification. I will keep you updated on any developments regarding the CO and the subsequent fence removal process.*

*Thank you for your attention to this matter.*

*Best Regards,*

*Denise Russell*

*Tel (910) 762-4262 | [denise@wilmingtonrubber.com](mailto:denise@wilmingtonrubber.com)*

*Wilmington Rubber & Gasket Co., Inc. 321 Raleigh Street, Wilmington NC 28412*

- On December 12, 2024, the Board of Aldermen approved amendments to Section 16-8, Obstruction of public rights-of-way, and Section 16-10, Existing Encroachments on rights-of-way, of the City Code of Ordinances. This update to the ordinance also came with a directive to have all hardened encroachments within the rights-of-way be removed by June 12, 2025. Further, all open code enforcement cases open prior to December 12, 2024 will be enforced and will not be afforded the grace period for compliance.
- 416 E Bay Street must comply with the written order to remove the fence located within public rights-of-way.



**COURTESY LETTER / 1<sup>ST</sup> NOTICE OF VIOLATION**

Case Number: 202310004

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
January 11, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that your property may be in violation of the City Ordinance. This letter is to inform you that the structure and/or property located at **416 E Bay St**, appears in violation of the City of Southport Minimum Housing/Nuisance Code of Ordinance. On **10/19/23**, the Code Enforcement Inspector observed the following violation(s): **Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**

As the owner/occupant of the property, **you have 12 days to correct the violations** or the City will take further steps to enforce the requirements of the Code of Ordinances, which may include levying civil penalties and seeking a court order from the Brunswick County Courts requiring you to correct the violation. If the City determines the any of the violations constitute a public nuisance, the city may also summarily abate the nuisance and bill you for the cost of abatement pursuant to the Southport Code of Ordinances.

To correct the violation, you must do the following: **Remove the fence from the (City Right of Way).**

Please note that if any of the work described above requires Zoning, Building and/or Demolition Permits, they must be obtained from Southport Building Inspections office. All required inspections must be completed within the timeframe listed above.

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [mabe@alliancecodeenforcement.com](mailto:mabe@alliancecodeenforcement.com)

Sincerely,

*Derek Mabe*

Derek Mabe  
Code Enforcement Inspector



## COMPLAINT - NOTICE OF HEARING

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
March 7, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that the structure and/or property located at **416 E Bay St** is in violation of the City of Southport Code of Minimum Housing and/or Nuisance Ordinance because:

The Code Enforcement Inspector conducted a preliminary inspection on **10/19/23** and sent the first Notice of Violation on **01/11/24**. Based on that investigation, the Officer found violations of: **Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**

To abate, you must complete the following: **Remove the fence from the (City Right of Way) and cut all overgrowth.**

A Hearing will be held on **03/28/24**, at **10:00 am**, at the Nash St Substation, located at 111 E Nash St Southport, NC 28461, before the Code Enforcement Inspector. The owner; mortgage holder, if any; occupant, if any; and any other parties in interest are entitled to be heard in person or through an attorney and to present arguments and evidence pertaining to the matter. Following the hearing and depending on the violation, the Officer may issue such order to repair, close, vacate, remove, or demolish the house as appears appropriate and/or require cleanup and/or removal of violating conditions and/or items. **If the violation stated above is remediated prior to the hearing, the hearing will be cancelled.**

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Code Enforcement Inspector



## COMPLAINT - NOTICE OF HEARING

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
April 23, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that the structure and/or property located at **416 E Bay St** is in violation of the City of Southport Code of Zoning Ordinance because:

The Code Enforcement Inspector conducted a preliminary inspection on **10/19/23** and sent the first Notice of Violation on **01/11/24**. Based on that investigation, the Officer found violations of: **Zoning Violation to wit: Fence located in the (City of Southport Right of Way / on City of Southport property.)**

To abate, you must complete the following: **Remove the fence from the (City of Southport Right of Way / property owned by the City of Southport).**

A Hearing will be held on **05/03/24**, at **10:00 am**, at the Nash St Substation, located at 111 E Nash St Southport, NC 28461, before the Code Enforcement Inspector. The owner; mortgage holder, if any; occupant, if any; and any other parties in interest are entitled to be heard in person or through an attorney and to present arguments and evidence pertaining to the matter. Following the hearing and depending on the violation, the Officer may issue such order to repair, close, vacate, remove, or demolish the house as appears appropriate and/or require cleanup and/or removal of violating conditions and/or items. **If the violation stated above is remediated prior to the hearing, the hearing will be cancelled.**

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Code Enforcement Inspector





## FINDING OF FACT / FINAL ORDER

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
June 25, 2024

On 03/28/24, the City of Southport, NC Code Enforcement Inspector held a hearing to consider the condition of the structure on the property located at 416 E Bay St. Based on the evidence presented, I make the following Findings of Fact:

1. All persons presenting evidence at the hearing were/were not sworn in.
2. The City staff did/did not present written and/or oral evidence regarding the condition of the structure.
3. The owner and/or mortgage holder of the property was/was not present and was/was not represented by counsel.
4.  Not Applicable.

The occupant of the building ~~was~~/was not present and ~~was~~/was not represented by counsel.

5. The owner and/or occupant, or their attorneys, did/did not present written and/or oral evidence.
6. The building is/is not currently occupied.
7. Based on the evidence presented, the Inspector finds that the following violations exist:  
**Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**
8. Based on the evidence presented, the Inspector finds that the structure is/is not an imminent danger to life or other property.
9. These conditions are violations of the following provisions of the City of Southport Code of Ordinance.
10.  Not Applicable.

If repairs are allowed, continued occupancy during the time allowed for repair will/will not present a significant threat of bodily harm. In making this Finding of Fact, the Officer has considered the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities.

SERVICE – Regular Mail, Certified Mail & Posting on the Property



11. I make the following additional Findings of Fact: **The property owner did remove the overgrowth from the fence but has made no attempt to remove the fence from City Property (Right of Way).**

**ZONING VIOLATION** – Based of these Findings of Fact, I hereby determine that the violations **can**/cannot be brought into compliance with the City of Southport Code of Ordinance. **Please use the allowed time 10 Days to remove the fence from City Property (Right of Way) and bring the property into compliance.**

Extra notes regarding the Order: **The Board of Alderman voted on 5/9/2024 to fully enforce all Right of Way violations within the City. This property is one of many in violation for Right of Way encroachment.**

Please note that you must obtain the proper building/zoning permits from the City of Southport before any demolition or major repair work can begin, and all required inspections must be completed within the timeframe listed above.

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Derek Mabe  
Code Enforcement Inspector

## Sec. 16-8. Obstruction of public rights-of-way.

(a) Except as specifically set forth in subsections (b), (c), (d), and (e) herein or as authorized by a license issued by the board of aldermen, it shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation or other structure, material or substance above the horizontal plane of the existing ground. The installation of turf grasses on grade is allowed within the right-of-way. In addition, it shall be unlawful for any person to take any action whatsoever within any public right-of-way which creates a hazardous condition or safety hazard or which otherwise interferes with or obstructs in any manner the passage of persons or vehicles upon or within said public rights-of-way or which obstructs, interferes with or hinders lawful parking within any public right-of-way.

(b) In residentially zoned areas without off-street parking requirements, property owners shall be permitted to improve up to two (2) parking spaces no more than twenty (20) feet total in width within the right-of-way in front of their property. ~~Dimensional standards of~~ These parking spaces shall follow the provisions for driveways as described in the Unified Development Ordinance (Section 3.12.B.1). Surfacing materials for these parking spaces shall be limited to one of the following: turf grass, ~~brick,~~ pervious pavers, and pervious number 57 driveway slate gravel with wood borders no more than 2 inches above grade, ~~or concrete. Allowable non-pervious surfacing materials (brick, pavers, or concrete) may only be used in an area that is a minimum of 50 feet from a City Tree.~~ The UDO Administrator may waive the requirement of a wood border if it is not appropriate due to existing conditions. Parking spaces constructed by a property owner within right-of-way shall remain open for public parking and shall not be reserved for the property whose owner constructed the spaces. Such parking shall require the review and written approval of the ~~Development Services Director~~ UDO Administrator, Public Services Director, and Fire Marshal. The City reserves the right to remove these parking areas for any reason in accordance with Section 16-10. Parking surfaces existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazardous condition or safety hazard to the public.

(c) Nothing herein shall prevent any business or other legal entity located in areas zoned CBD and BD from (i) placing objects which are not otherwise prohibited under the Southport Code of Ordinances on that portion of a sidewalk which is directly abutting the building occupied by such business or entity, provided that said items do not extend more than thirty-six (36) inches into the sidewalk and do not violate section 16-7 of the Code of Ordinances prohibiting the display of goods, or (ii) placing A-frame signs on a sidewalk or right-of-way where specifically allowed under the Southport Unified Development Ordinance. Notwithstanding this, however, no business or other entity may place or cause to be placed any object on a sidewalk so as to violate the provisions of the ADA regarding unobstructed clearance.

(d) Vegetation or other protective measures consistent with current arboricultural best management practices (ANSI A300 standards) and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan shall be permitted to be placed within a ten (10) feet foot radius of the base of a City tree by an adjoining property owner, or by the City, for the purpose of limiting damage to the tree by nearby parked vehicles.

Such action shall require review and written approval by the ~~Development Services Director~~ UDO Administrator, the Public Services Director, and the Fire Marshal.

(e) Nothing herein shall prevent the City to install drainage or safety structures for protection of private property.

### **Sec. 16-9. Construction near sidewalk.**

Before building or remodeling any place where the same is in close proximity to the sidewalk, a passageway shall be constructed so as to leave the sidewalk unobstructed and provide safe and easy passage.

(Code 1974, § 5.32)

### **Sec. 16-10. Existing encroachments on rights-of-way.**

a) In the event that the Southport Code Enforcement Officer determines that there exists any encroachment, obstacle, vegetation, wares, goods or other condition within a public right-of way or sidewalk in violation of section 16-7 or section 16-8 of this Code or which interferes with the free passage of persons or vehicles within said right-of-way or sidewalk, or which otherwise creates a hazard to the public, said code enforcement officer shall attempt to identify the person(s) responsible for said obstacle or encroachment. This includes hardscapes, decorative rock walls, fountains, and similar items. Upon identification, the code enforcement officer shall notify in writing said responsible person(s) who shall have seventy-two (72) hours from the date of notification to remove nonpermanent installations of said encroachment or condition. Permanent installations shall be removed within 90 days from the date of notification of said encroachment. In the event that the responsible party fails to remove said obstacle or encroachment within the time allowed, and in addition to other remedies as allowed by law, the city may promptly remove said obstacle or encroachment and shall charge the cost of said removal to the party responsible for said obstacle, encroachment, or condition. In the event that the code enforcement officer is not able to identify the responsible party, or if the condition or encroachment creates an imminent and immediate danger to the public, the city may summarily remove said encroachment or other condition within the right-of-way without notice. Following removal, any future encroachment must be done in accordance with the provisions of all applicable ordinances.

#### **b) Vegetative Encroachments**

- I. Vegetative right-of-way encroachments existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazard to the public. Such encroachments shall not be permitted to be expanded, and the City reserves the right to remove a right-of-way encroachment for any public purpose and shall not be liable for the removal of those encroachments. Existing vegetation right-of-way encroachments removed at any time by the City for a public purpose are allowed to be reconstructed, if possible, at the property owner's expense.
- II. Private installation of native trees within the right-of-way is permitted when city trees must be removed for construction or when a tree must be removed due to the health of the tree. Canopy and understory installation shall follow

standards found in the UDO, current arboricultural best management practices (ANSI A300 standards), and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan. Such action shall require review and written approval by the UDO Administrator in consultation with the Forestry Committee.

(c) Where curb and public sidewalks exist, private fences and vegetation installed up to the private property side of the sidewalk existing at the time of the adoption of this ordinance may remain. All approvals and building permits must be obtained for maintenance or replacement.

(d) Any wall or fence located in the right-of-way in the designated National Historic Register or in the adopted local historic district(s) built on or before December 31, 1980, may remain after written determination by the UDO Administrator and Historic Preservation Commission that the structure contributes to the historic character of the district.

(e) The City reserves the right to remove a right-of-way encroachment for any public purpose and shall not be liable for the removal of those encroachments and shall levy the cost of removal in accordance with Section 16-10(a) above.

#### **Sec. 16-11. Gates opening on streets and sidewalks.**

No gate to any residence, lot or other enclosure in the city shall swing or open outward over the street or sidewalk. Each day any gate is allowed to open outward over the sidewalk or street, shall constitute a separate offense.

(Code 1974, § 5.35)

## 3.14 Parking

### C. Minimum Off-Street Parking Requirements

1. The number of exclusive off-street residential parking spaces required by this section shall be provided on the same lot with the principal use, unless otherwise permitted by this ordinance, and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum.
2. In residentially zoned areas without off-street parking requirements, property owners shall be permitted to improve up to two (2) parking spaces no more than twenty (20) feet in width within the right-of-way in front of their property. These parking spaces shall follow the provisions for driveways as described in the Unified Development Ordinance (Section 3.12.B.1).
  - a. Surfacing materials for these parking spaces shall be limited to one of the following: turf grass, pervious pavers, pervious number 57 driveway slate gravel with wood borders no more than 2 inches above grade. Parking spaces constructed by a property owner within right-of-way shall remain open for public parking and shall not be reserved for the property whose owner constructed the spaces.
  - b. Such parking shall require the review and written approval of the UDO Administrator, Public Services Director, and Fire Marshal. The City reserves the right to remove these parking areas for any reason in accordance with Section 16-10. Parking surfaces existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazardous condition or safety hazard to the public.
3. In the case of mixed uses (an establishment comprised of more than one (1) use; e.g. restaurant and hotel), which may include a principal and accessory use, the total requirements for off-street parking shall be the sum of the requirements of the various uses computed separately and the off-street parking space for one (1) use shall not be considered as providing the required off-street parking for any other use, except as provided for in the shared parking criteria in this article.
4. Handicapped parking spaces shall be in accordance with the regulations set forth by the Americans with Disabilities Act and shall be identified by appropriate signage. The minimum number of spaces shall be provided in accordance with the state building code.
5. Fractional space requirements shall be rounded up to the next whole space.

### 3.17 LANDSCAPING AND BUFFERS

#### D. LANDSCAPING ON PUBLIC PROPERTY

1. It shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk, or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation, or other structure, material, or substance above the horizontal plane of the existing ground. The installation of turf grasses on grade is allowed within the right-of-way. In addition it shall be unlawful for any person to take any action whatsoever within any public rights-of-way which creates a hazardous condition or safety hazard or which otherwise interferes with or obstructs in any manner the passage of persons or vehicles upon or within said public rights-of-way or which obstructs, interferes with or hinders lawful parking within any public right-of-way.

2. Vegetation or other protective measures consistent with current arboricultural best management practices (ANSI A300 standards) and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan shall be permitted to be placed within a ten (10) foot radius of the base of a City tree by an adjoining property owner, or by the City, for the purpose of limiting damage to the tree by nearby parked vehicles. Such action shall require review and written approval by the UDO Administrator, the Public Services Director, and the Fire Marshal.

3. Private installation of native trees within the right-of-way is permitted when city trees must be removed for construction or when a tree must be removed due to the health of the tree. Canopy and understory installation shall follow standards found in the UDO, current arboricultural best management practices (ANSI A300 standards), and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan. Such action shall require review and written approval by the UDO Administrator in consultation with the Forestry Committee.

FINAL SURVEY

# HOWARD L. RUSSELL JR. DENISE B. RUSSELL

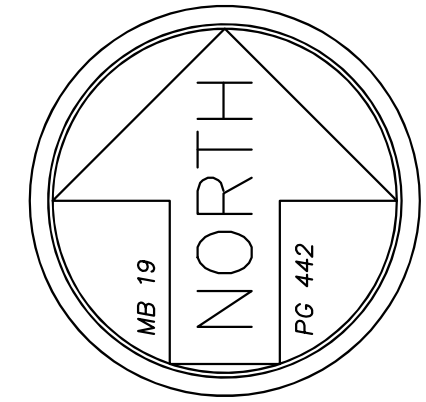
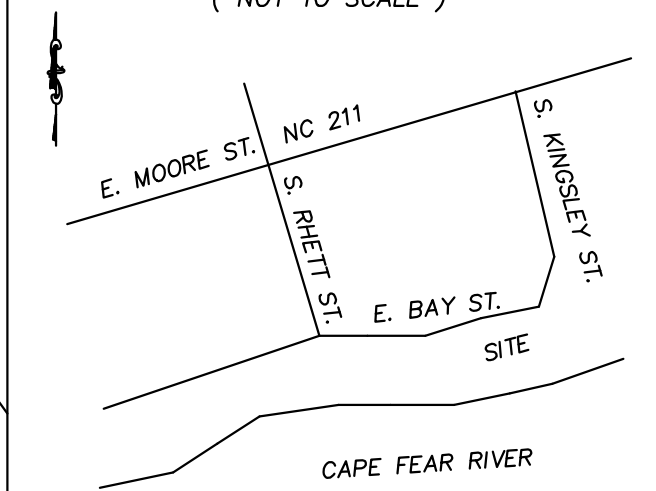
CITY OF SOUTHPORT  
BRUNSWICK COUNTY  
NORTH CAROLINA

DATE: SEPTEMBER 10, 2024

ADDRESS: 416 E. BAY STREET  
SOUTHPORT, NC 28461

### LOCATION MAP

( NOT TO SCALE )



EAST BAY STREET  
99' PUBLIC RIGHT OF WAY

KINGSLEY DRIVE  
99' PUBLIC RIGHT OF WAY

S 65°53'06" W 279.61'  
TO THE CENTERLINE INTERSECTION  
OF EASE BAY STREET AND SOUTH  
RHETT STREET

JANIE RISCH FORTNEY  
BK 1703 PG 338  
MB 27 PG 301

CARL & DORA  
LOFLIN  
BK 771 PG 396  
MB 27 PG 301

#### NOTES

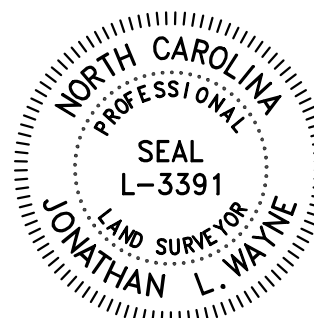
1. AREA COMPUTED BY COORDINATE METHOD
2. ALL DISTANCES ARE HORIZONTAL
3. FOR REFERENCE SEE BOOK 4004 PAGE 1226, BOOK 231 PAGE 554 & MB 19 PG 442
4. SURVEYED NOV. 2018 - SEPT. 2024
5. TOTAL AREA 7,838 SF

#### LEGEND

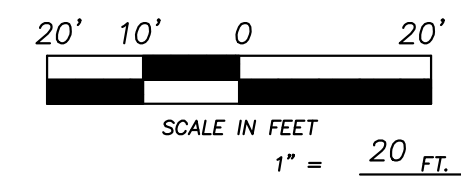
- E.I.P. = EXISTING IRON PIPE
- E.I. = EXISTING IRON
- E.C.M. = EXISTING CONCRETE MONUMENT
- R\W = RIGHT OF WAY
- C.P. = COMPUTED POINT

- PROPERTY LINE
- BUILDING SETBACK
- CENTERLINE
- EASEMENT
- COMPUTED PROPERTY LINE
- FENCE

LINE	BEARING	DISTANCE
L1	N 55°00'00" E	33.00'
L2	S 35°00'00" E	54.75'



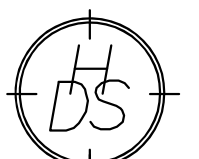
I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS 1:20,000; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21NCAC 56.1600).  
THIS 27TH DAY OF JULY, 2023.  
*Jonathan L. Wayne*  
JONATHAN L. WAYNE PLS 3391



### HANOVER DESIGN SERVICES, P.A.

LAND SURVEYORS ENGINEERS LAND PLANNERS

1123 FLORAL PARKWAY  
WILMINGTON, N.C. 28403  
PHONE: (910) 343-8002  
FAX: (910) 343-9941  
FIRM CERTIFICATE C-0597  
14903



CITY OF SOUTHPORT

IN RE: 416 E. BAY STREET  
CASE NUMBER: 202310001  
HOWARD L. RUSSELL, JR. AND DENISE B. RUSSELL

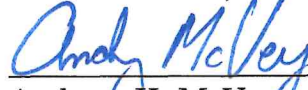
NOTICE OF APPEAL

To: City Clerk  
City of Southport  
1029 N. Howe St.  
Southport, NC 28461

In accordance with City of Southport Uniform Development Ordinance §§ 2.7(E) and 2.15(C)(2), Howard L. Russell, Jr. and Denise B. Russell, acting through the undersigned counsel, give notice of their appeal of the April 3, 2025 "Final Notice" of Planning Services Director Maureen Meehan and Code Enforcement Officer Derek Mabe, directing the removal of a fence and landscaping rocks for the property. The grounds for the appeal are set forth in the enclosed correspondence from the undersigned counsel to City of Southport attorney Brady Herman, incorporated by reference as if fully set forth herein.

This 17<sup>th</sup> day of April, 2025.

MURCHISON, TAYLOR & GIBSON PLLC



Andrew K. McVey *by JLR w/permission*  
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Wilmington, NC 28403

[amcvey@murchisontaylor.com](mailto:amcvey@murchisontaylor.com)

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Enclosure



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910-218-7241 (Direct)

April 17, 2025

Brady Herman  
The Brough Law Firm, PLLC  
P.O. Box 2388  
Chapel Hill, NC 27514

RE: Your Client: City of Southport  
Our Clients: Howard L. Russell, Jr. and wife, Denise B. Russell

Dear Brady:

My purpose in writing is threefold:

- (1) To respond to the April 3, 2025 letter, fashioned as a "Final Notice," from Planning Services Director Maureen Meehan and Code Enforcement Officer Derek Mabe to our clients concerning 416 East Bay Street (the "Russell Property");
- (2) To make a related public records request pursuant to N.C. Gen. Stat. § 132-6; and
- (3) To address your April 2, 2025 e-mail to me.

**The City's Final Notice**

Rather than presuming that the City vetted its letter with you prior to sending it to Mr. and Mrs. Russell and that you are therefore familiar with its contents, I have enclosed a copy for your records. As you will see, the letter threatens the imposition of fines and the removal of a fence and landscaping rocks at our clients' expense if they do not capitulate to the City's demands. The fence is all that prevents the City from making an unreasonable use of the right-of-way seems to defy reasonable logic, and ignore pre-existing conditions.

The City's letter came on the heels of Mr. Russell's communications with Interim City Manager Noah Saldo days earlier, aimed at exploring whether the City might consider selling its

interest in the excessive and unnecessarily wide right-of-way on the Russell Property, and the City Aldermen's rejection of Mr. Russell's proposal on April 3. As you know, the City and Mr. and Mrs. Russell have been at odds for over nearly two years, as several of the City's aldermen have apparently led the charge to convert the right-of-way area on the Russell Property available as parking for Kingsley Park, a small neighborhood park adjacent to the Russell Property.

What you likely do not know is the utter bad faith the City has exhibited over the life of this dispute. As an example, on what appears to be night before or the same day as a Board of Aldermen meeting last year, City personnel whom we are informed were acting at the direction of then-City Manager Bonnie Therrien removed bollards denoting numerous existing designated parking spaces across the street from the park along S. Kingsley Street, presumably so that staff might attempt to report with straight faces at the meeting that the park had no existing parking available. This was and is a misrepresentation of fact. For your reference, I have enclosed a copy of a survey which depicts the location of those previously existing spaces. We have also in person observed the use of those parking spaces, including by City employees.

As a further example, another City representative informed them that they could avoid their dispute with the City if they would just donate their lot to the City. These and other examples definitively refute Ms. Meehan and Mr. Mabe's statement that so-called compliance efforts "are not motivated by anything other than bringing a known violation into compliance." Rather, they support the theory that either the Russells are being targeted and harassed by the City for other reasons, or that if the Russells were not going to give the affected area to the City without consideration, the City would take it from them anyway.

The City's letter also contains an enclosure which purports to be a timeline of events. Some events are accurately reported, and some are not. Rather than detailing the inaccuracy of that timeline here, suffice it to say that we have factual disagreements which can be saved for a more appropriate forum.

However, we do not dispute that on December 12, 2024, with an eye toward spot-enforcing the Uniform Development Ordinance ("UDO"), the City approved amendments to Sections 16-8 and 16-10, and gave the directive to staff to have encroachments reviewed from within the right-of-way within six months. Our position is that these amendments and this directive were specifically intended to cause our clients to remove their fence, without regard to the dozens of other fences in the right-of-way throughout the City. Our further position is that the City has acted arbitrarily and capriciously in specifically targeting our clients, both with the enactment of these measures and, more recently, with the Final Notice.

Contemporaneous with this letter, we are filing a Notice of Appeal of Final Decision on Mr. and Mrs. Russell's behalf with the City of Southport. As we understand the UDO to require filing with the Clerk of the Board of Aldermen, we are providing you a courtesy copy.

If the City continues this ill-advised spot enforcement of its UDO, we intend not only to have its decision reviewed on certiorari to the Superior Court, and the Russells will exercise all other remedies available at law or in equity.

The fence located on the Russell Property is in the same position as a prior fence that was only removed to allow construction on the property to continue, and is in line with other fences located along the same road. There is simply no reason to target the Russells with this incessant harassment under the guise of it being "equal treatment" to that provided to other City residents. This has been a targeted effort made by a few officials who seemingly feel they can abuse the City's powers for their personal agendas. We would also note that the Russells have expended substantial funds to repair and paint the fence, so any argument that it is dilapidated is just false, and it is the same type of fencing that the City itself used for the adjacent Kingsley Park fence.

### **Public Records Request**

In accordance with N.C. Gen. Stat. § 132-6, on behalf of Mr. and Mrs. Russell, we respectfully request that within fourteen (14) days of the date of this letter, the City afford us the right to inspect, examine, and obtain copies of all public records within the City's care, custody, and control within the following categories:

(1) All documents and communications relating in any manner to parking for Kingsley Park, including, without limitation, any studies regarding the need for any parking expansion and the City's efforts to remove the existing bollards, deny the existence of the existing parking area on S Kingsley Street, and to expand such parking;

(2) All Final Notices sent to City of Southport residential property owners which relate, in any manner, to the removal or threatened removal of encroachments from the City's right-of-way;

(3) All other documents pertaining to City of Southport residential property owners which relate in any manner to the City's efforts to enforce the new UDO in regard to encroachments within the City's right-of-way, including, without limitation, in regard to the following addresses which also appear to have encroachments: (i) 216 N Atlantic Ave, Southport, NC 28461; (ii) 310 N. Atlantic Ave Southport, NC 28461; and (iii) 307 E. Nash Street Southport, NC 28461.

For purposes of this public records request, the relevant time period is April 15, 2022 through the present.

### **Your April 2, 2025 E-Mail to Me**

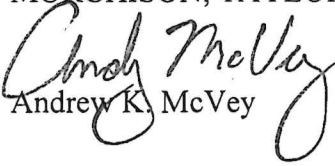
Your e-mail to me followed up on the City's prior request that Mr. and Mrs. Russell execute a release as a condition to the City refunding a \$12,000 impact fee (denominated by the City as a "System Development Fee" or "SDF") which the City had no authority to charge in the first instance. Mr. and Mrs. Russell decline to execute a release and demand that the City refund the full impact fee within seven (7) days of the date of this letter.

This letter is not intended to be a complete statement of Mr. and Mrs. Russell's position. All rights and remedies are expressly reserved.

Thank you in advance for your attention to these matters.

Best regards,

MURCHISON, TAYLOR & GIBSON PLLC

  
Andrew K. McVey *sy JWA*

AKM/430140

cc: Scott M. Holmes, Esq.  
Howard and Denise Russell

#### 416 Bay Street Code Enforcement of a Rights-of-Way Timeline

- When Bonnie Therrien, former City Manager started, the Director of Development Services (Travis Henley) was more proactive about enforcement. Here is an excerpt from one of his emails:

*“We've received a building permit application for the property located at 416 E. Bay Street (owned by the Howards), which is immediately adjacent to and south of Kingsley Park. This is the property where **significant vegetation and fencing has been put up along the eastern edge of the pavement of E. Bay Street, blocking off a large portion of the ROW.** This is the same situation from a few years ago where Code Enforcement tried to take action, the property owners threatened suit, and thus Code Enforcement was told to stand down. **The blockage is egregious - due to where the pavement of E. Bay exists within the ROW, more than half the total width of the ROW is blocked by this fence. To be sure, I see no record of a fence permit ever being issued for the fence, either.***

*I do not believe that the City should've backed off years ago, and I definitely do not believe we should now double-down on that mistake.”*

- Travis left, and we went without Code Enforcement for a while. Derek Mabe, with Alliance Code Enforcement, has been handling this more than staff. In November 2023, Derek was asked to contact the property owners.
- In January 2024, Derek tried to contact the property owners or speak to them, but no one would contact him, so he sent a formal Notice of Violation.
- 1/11/2024 – 1st Notice of Violation was sent to the property owners – 10/19/2023 observance of overgrowth and fence in rights-of-way
- The Notice of Violation was not responded to, so he sent a Notice of Hearing in March 2024.
- 3/7/2024 – Notice of Hearing sent to property owners – hearing set for 3/28/2024 at the Nash Street Fire Substation
- Mayor Alt got involved in March 2024 and asked about the city's motives for removing the fence. We were doing our job of enforcing a Code Violation. The fence is dilapidated.
- As a courtesy to the Mayor, Derek started the code enforcement process again by issuing a Notice of Violation.
- 4/23/2024 – Notice of Hearing sent to property owners – hearing set for 5/3/2024
- Derek held a hearing and ordered the property owners to remove the fence because of its condition.
- 6/25/2024 – Findings of Fact/Final Order sent to the property owners – the owners were provided 10 days to come into compliance by removing the fence located in the rights-of-way

- Over the next few months, Derek and Bonnie had several conversations with the property owners and their attorney.
- Derek agreed to give them until August 15, 2024, to remove the fence. Here is an email that the property owner sent out:

*Dear Team,*

*Good afternoon to all. I wanted to provide you with an update regarding the issue of the fence removal at our project site.*

*After speaking with Derek Mabe at Alliance Code Enforcement, I have received confirmation that we do not need to proceed with the fence removal until we have received the Certificate of Occupancy (CO). Derek has informed me that he will be dating the notice to the City that removal will be on or before 8/15/24.*

*I understand that Derek is currently on vacation, but he took the time to return my call and discuss this matter with me. I would like to extend a big thank you to Derek for his assistance and guidance in resolving this issue.*

*Based on this information, there is no immediate need to take any further steps regarding the fence removal at this time.*

*Please feel free to reach out to me if you have any questions or require any further clarification. I will keep you updated on any developments regarding the CO and the subsequent fence removal process.*

*Thank you for your attention to this matter.*

*Best Regards,*

*Denise Russell*

*Tel (910) 762-4262 | [denise@wilmingtonrubber.com](mailto:denise@wilmingtonrubber.com)*

*Wilmington Rubber & Gasket Co., Inc. 321 Raleigh Street, Wilmington NC 28412*

- On December 12, 2024, the Board of Aldermen approved amendments to Section 16-8, Obstruction of public rights-of-way, and Section 16-10, Existing Encroachments on rights-of-way, of the City Code of Ordinances. This update to the ordinance also came with a directive to have all hardened encroachments within the rights-of-way be removed by June 12, 2025. Further, all open code enforcement cases open prior to December 12, 2024 will be enforced and will not be afforded the grace period for compliance.
- 416 E Bay Street must comply with the written order to remove the fence located within public rights-of-way.



COURTESY LETTER / 1<sup>ST</sup> NOTICE OF VIOLATION

Case Number: 202310004

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
January 11, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that your property may be in violation of the City Ordinance. This letter is to inform you that the structure and/or property located at **416 E Bay St**, appears in violation of the City of Southport Minimum Housing/Nuisance Code of Ordinance. On **10/19/23**, the Code Enforcement Inspector observed the following violation(s): **Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**

As the owner/occupant of the property, **you have 12 days to correct the violations** or the City will take further steps to enforce the requirements of the Code of Ordinances, which may include levying civil penalties and seeking a court order from the Brunswick County Courts requiring you to correct the violation. If the City determines the any of the violations constitute a public nuisance, the city may also summarily abate the nuisance and bill you for the cost of abatement pursuant to the Southport Code of Ordinances.

To correct the violation, you must do the following: **Remove the fence from the (City Right of Way).**

Please note that if any of the work described above requires Zoning, Building and/or Demolition Permits, they must be obtained from Southport Building Inspections office. All required inspections must be completed within the timeframe listed above.

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [mabe@alliancecodeenforcement.com](mailto:mabe@alliancecodeenforcement.com)

Sincerely,

*Derek Mabe*

Derek Mabe  
Code Enforcement Inspector



COMPLAINT - NOTICE OF HEARING

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
March 7, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that the structure and/or property located at **416 E Bay St** is in violation of the City of Southport Code of Minimum Housing and/or Nuisance Ordinance because:

The Code Enforcement Inspector conducted a preliminary inspection on **10/19/23** and sent the first Notice of Violation on **01/11/24**. Based on that investigation, the Officer found violations of: **Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**

To abate, you must complete the following: **Remove the fence from the (City Right of Way) and cut all overgrowth.**

A Hearing will be held on **03/28/24**, at **10:00 am**, at the Nash St Substation, located at 111 E Nash St Southport, NC 28461, before the Code Enforcement Inspector. The owner; mortgage holder, if any; occupant, if any; and any other parties in interest are entitled to be heard in person or through an attorney and to present arguments and evidence pertaining to the matter. Following the hearing and depending on the violation, the Officer may issue such order to repair, close, vacate, remove, or demolish the house as appears appropriate and/or require cleanup and/or removal of violating conditions and/or items. **If the violation stated above is remediated prior to the hearing, the hearing will be cancelled.**

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Code Enforcement Inspector



**COMPLAINT - NOTICE OF HEARING**

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
April 23, 2024

The City of Southport, NC Code Enforcement Inspector has reason to believe that the structure and/or property located at **416 E Bay St** is in violation of the City of Southport Code of Zoning Ordinance because:

The Code Enforcement Inspector conducted a preliminary inspection on **10/19/23** and sent the first Notice of Violation on **01/11/24**. Based on that investigation, the Officer found violations of: **Zoning Violation to wit: Fence located in the (City of Southport Right of Way / on City of Southport property.)**

To abate, you must complete the following: **Remove the fence from the (City of Southport Right of Way / property owned by the City of Southport).**

A Hearing will be held on **05/03/24**, at **10:00 am**, at the Nash St Substation, located at 111 E Nash St Southport, NC 28461, before the Code Enforcement Inspector. The owner; mortgage holder, if any; occupant, if any; and any other parties in interest are entitled to be heard in person or through an attorney and to present arguments and evidence pertaining to the matter. Following the hearing and depending on the violation, the Officer may issue such order to repair, close, vacate, remove, or demolish the house as appears appropriate and/or require cleanup and/or removal of violating conditions and/or items. **If the violation stated above is remediated prior to the hearing, the hearing will be cancelled.**

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Code Enforcement Inspector



## FINDING OF FACT / FINAL ORDER

Case Number: 202310001

Howard L Russell JR  
1044 Ryans Ct  
Wilmington, NC 28412  
June 25, 2024

On 03/28/24, the City of Southport, NC Code Enforcement Inspector held a hearing to consider the condition of the structure on the property located at 416 E Bay St. Based on the evidence presented, I make the following Findings of Fact:

1. All persons presenting evidence at the hearing were/were not sworn in.
2. The City staff did/did not present written and/or oral evidence regarding the condition of the structure.
3. The owner and/or mortgage holder of the property was/was not present and was/was not represented by counsel.
4.  Not Applicable.

The occupant of the building was/was not present and was/was not represented by counsel.

5. The owner and/or occupant, or their attorneys, did/did not present written and/or oral evidence.
6. The building is/is not currently occupied.
7. Based on the evidence presented, the Inspector finds that the following violations exist:  
**Zoning Violation to wit: Fence located in the (City Right of Way) along with extreme overgrowth growing on the fence.**
8. Based on the evidence presented, the Inspector finds that the structure is/is not an imminent danger to life or other property.
9. These conditions are violations of the following provisions of the City of Southport Code of Ordinance.
10.  Not Applicable.

If repairs are allowed, continued occupancy during the time allowed for repair will/will not present a significant threat of bodily harm. In making this Finding of Fact, the Officer has considered the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities.

SERVICE – Regular Mail, Certified Mail & Posting on the Property



11. I make the following additional Findings of Fact: **The property owner did remove the overgrowth from the fence but has made no attempt to remove the fence from City Property (Right of Way).**

**ZONING VIOLATION** – Based of these Findings of Fact, I hereby determine that the violations can/cannot be brought into compliance with the City of Southport Code of Ordinance. **Please use the allowed time 10 Days to remove the fence from City Property (Right of Way) and bring the property into compliance.**

Extra notes regarding the Order: **The Board of Alderman voted on 5/9/2024 to fully enforce all Right of Way violations within the City. This property is one of many in violation for Right of Way encroachment.**

Please note that you must obtain the proper building/zoning permits from the City of Southport before any demolition or major repair work can begin, and all required inspections must be completed within the timeframe listed above.

If you have any questions, please do not hesitate to call me at (336) 569-9988 or email me at [Mabe@AllianceCodeEnforcement.com](mailto:Mabe@AllianceCodeEnforcement.com).

Sincerely,

*Derek Mabe*

Derek Mabe  
Code Enforcement Inspector

**Sec. 16-8. Obstruction of public rights-of-way.**

(a) Except as specifically set forth in subsections (b), (c), (d), and (e) herein or as authorized by a license issued by the board of aldermen, it shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation or other structure, material or substance above the horizontal plane of the existing ground. The installation of turf grasses on grade is allowed within the right-of-way. In addition, it shall be unlawful for any person to take any action whatsoever within any public right-of-way which creates a hazardous condition or safety hazard or which otherwise interferes with or obstructs in any manner the passage of persons or vehicles upon or within said public rights-of-way or which obstructs, interferes with or hinders lawful parking within any public right-of-way.

(b) In residentially zoned areas without off-street parking requirements, property owners shall be permitted to improve up to two (2) parking spaces no more than twenty (20) feet total in width within the right-of-way in front of their property. ~~Dimensional standards of~~ These parking spaces shall follow the provisions for driveways as described in the Unified Development Ordinance (Section 3.12.B.1). Surfacing materials for these parking spaces shall be limited to one of the following: turf grass, ~~brick,~~ pervious pavers, and pervious number 57 driveway slate gravel with wood borders no more than 2 inches above grade, ~~or concrete.~~ ~~Allowable non-pervious surfacing materials (brick, pavers, or concrete) may only be used in an area that is a minimum of 50 feet from a City Tree.~~ The UDO Administrator may waive the requirement of a wood border if it is not appropriate due to existing conditions. Parking spaces constructed by a property owner within right-of-way shall remain open for public parking and shall not be reserved for the property whose owner constructed the spaces. Such parking shall require the review and written approval of the ~~Development Services Director~~ UDO Administrator, Public Services Director, and Fire Marshal. The City reserves the right to remove these parking areas for any reason in accordance with Section 16-10. Parking surfaces existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazardous condition or safety hazard to the public.

(c) Nothing herein shall prevent any business or other legal entity located in areas zoned CBD and BD from (i) placing objects which are not otherwise prohibited under the Southport Code of Ordinances on that portion of a sidewalk which is directly abutting the building occupied by such business or entity, provided that said items do not extend more than thirty-six (36) inches into the sidewalk and do not violate section 16-7 of the Code of Ordinances prohibiting the display of goods, or (ii) placing A-frame signs on a sidewalk or right-of-way where specifically allowed under the Southport Unified Development Ordinance. Notwithstanding this, however, no business or other entity may place or cause to be placed any object on a sidewalk so as to violate the provisions of the ADA regarding unobstructed clearance.

(d) Vegetation or other protective measures consistent with current arboricultural best management practices (ANSI A300 standards) and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan shall be permitted to be placed within a ten (10) feet foot radius of the base of a City tree by an adjoining property owner, or by the City, for the purpose of limiting damage to the tree by nearby parked vehicles.

Such action shall require review and written approval by the ~~Development Services Director~~ UDO Administrator, the Public Services Director, and the Fire Marshal.

(e) Nothing herein shall prevent the City to install drainage or safety structures for protection of private property.

#### **Sec. 16-9. Construction near sidewalk.**

Before building or remodeling any place where the same is in close proximity to the sidewalk, a passageway shall be constructed so as to leave the sidewalk unobstructed and provide safe and easy passage.  
(Code 1974, § 5.32)

#### **Sec. 16-10. Existing encroachments on rights-of-way.**

a) In the event that the Southport Code Enforcement Officer determines that there exists any encroachment, obstacle, vegetation, wares, goods or other condition within a public right-of way or sidewalk in violation of section 16-7 or section 16-8 of this Code or which interferes with the free passage of persons or vehicles within said right-of-way or sidewalk, or which otherwise creates a hazard to the public, said code enforcement officer shall attempt to identify the person(s) responsible for said obstacle or encroachment. This includes hardscapes, decorative rock walls, fountains, and similar items. Upon identification, the code enforcement officer shall notify in writing said responsible person(s) who shall have seventy-two (72) hours from the date of notification to remove nonpermanent installations of said encroachment or condition. Permanent installations shall be removed within 90 days from the date of notification of said encroachment. In the event that the responsible party fails to remove said obstacle or encroachment within the time allowed, and in addition to other remedies as allowed by law, the city may promptly remove said obstacle or encroachment and shall charge the cost of said removal to the party responsible for said obstacle, encroachment, or condition. In the event that the code enforcement officer is not able to identify the responsible party, or if the condition or encroachment creates an imminent and immediate danger to the public, the city may summarily remove said encroachment or other condition within the right-of-way without notice. Following removal, any future encroachment must be done in accordance with the provisions of all applicable ordinances.

#### **b) Vegetative Encroachments**

- I. Vegetative right-of-way encroachments existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazard to the public. Such encroachments shall not be permitted to be expanded, and the City reserves the right to remove a right-of-way encroachment for any public purpose and shall not be liable for the removal of those encroachments. Existing vegetation right-of-way encroachments removed at any time by the City for a public purpose are allowed to be reconstructed, if possible, at the property owner's expense.
- II. Private installation of native trees within the right-of-way is permitted when city trees must be removed for construction or when a tree must be removed due to the health of the tree. Canopy and understory installation shall follow

standards found in the UDO, current arboricultural best management practices (ANSI A300 standards), and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan. Such action shall require review and written approval by the UDO Administrator in consultation with the Forestry Committee.

(c) Where curb and public sidewalks exist, private fences and vegetation installed up to the private property side of the sidewalk existing at the time of the adoption of this ordinance may remain. All approvals and building permits must be obtained for maintenance or replacement.

(d) Any wall or fence located in the right-of-way in the designated National Historic Register or in the adopted local historic district(s) built on or before December 31, 1980, may remain after written determination by the UDO Administrator and Historic Preservation Commission that the structure contributes to the historic character of the district.

(e) The City reserves the right to remove a right-of-way encroachment for any public purpose and shall not be liable for the removal of those encroachments and shall levy the cost of removal in accordance with Section 16-10(a) above.

**Sec. 16-11. Gates opening on streets and sidewalks.**

No gate to any residence, lot or other enclosure in the city shall swing or open outward over the street or sidewalk. Each day any gate is allowed to open outward over the sidewalk or street, shall constitute a separate offense.

(Code 1974, § 5.35)

## Proposed Amendment to Section 3.14 Parking

### 3.14 Parking

#### C. Minimum Off-Street Parking Requirements

1. The number of exclusive off-street residential parking spaces required by this section shall be provided on the same lot with the principal use, unless otherwise permitted by this ordinance, and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum.
2. In residentially zoned areas without off-street parking requirements, property owners shall be permitted to improve up to two (2) parking spaces no more than twenty (20) feet in width within the right-of-way in front of their property. These parking spaces shall follow the provisions for driveways as described in the Unified Development Ordinance (Section 3.12.B.1).
  - a. Surfacing materials for these parking spaces shall be limited to one of the following: turf grass, pervious pavers, pervious number 57 driveway slate gravel with wood borders no more than 2 inches above grade. Parking spaces constructed by a property owner within right-of-way shall remain open for public parking and shall not be reserved for the property whose owner constructed the spaces.
  - b. Such parking shall require the review and written approval of the UDO Administrator, Public Services Director, and Fire Marshal. The City reserves the right to remove these parking areas for any reason in accordance with Section 16-10. Parking surfaces existing prior to the adoption date of this ordinance shall be permitted to remain so long as the encroachments do not create a hazardous condition or safety hazard to the public.
3. In the case of mixed uses (an establishment comprised of more than one (1) use; e.g. restaurant and hotel), which may include a principal and accessory use, the total requirements for off-street parking shall be the sum of the requirements of the various uses computed separately and the off-street parking space for one (1) use shall not be considered as providing the required off-street parking for any other use, except as provided for in the shared parking criteria in this article.
4. Handicapped parking spaces shall be in accordance with the regulations set forth by the Americans with Disabilities Act and shall be identified by appropriate signage. The minimum number of spaces shall be provided in accordance with the state building code.
5. Fractional space requirements shall be rounded up to the next whole space.

### 3.17 LANDSCAPING AND BUFFERS

#### D. LANDSCAPING ON PUBLIC PROPERTY

1. It shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk, or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation, or other structure, material, or substance above the horizontal plane of the existing ground. The installation of turf grasses on grade is allowed within the right-of-way. In addition it shall be unlawful for any person to take any action whatsoever within any public rights-of-way which creates a hazardous condition or safety hazard or which otherwise interferes with or obstructs in any manner the passage of persons or vehicles upon or within said public rights-of-way or which obstructs, interferes with or hinders lawful parking within any public right-of-way.

2. Vegetation or other protective measures consistent with current arboricultural best management practices (ANSI A300 standards) and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan shall be permitted to be placed within a ten (10) foot radius of the base of a City tree by an adjoining property owner, or by the City, for the purpose of limiting damage to the tree by nearby parked vehicles. Such action shall require review and written approval by the UDO Administrator, the Public Services Director, and the Fire Marshal.

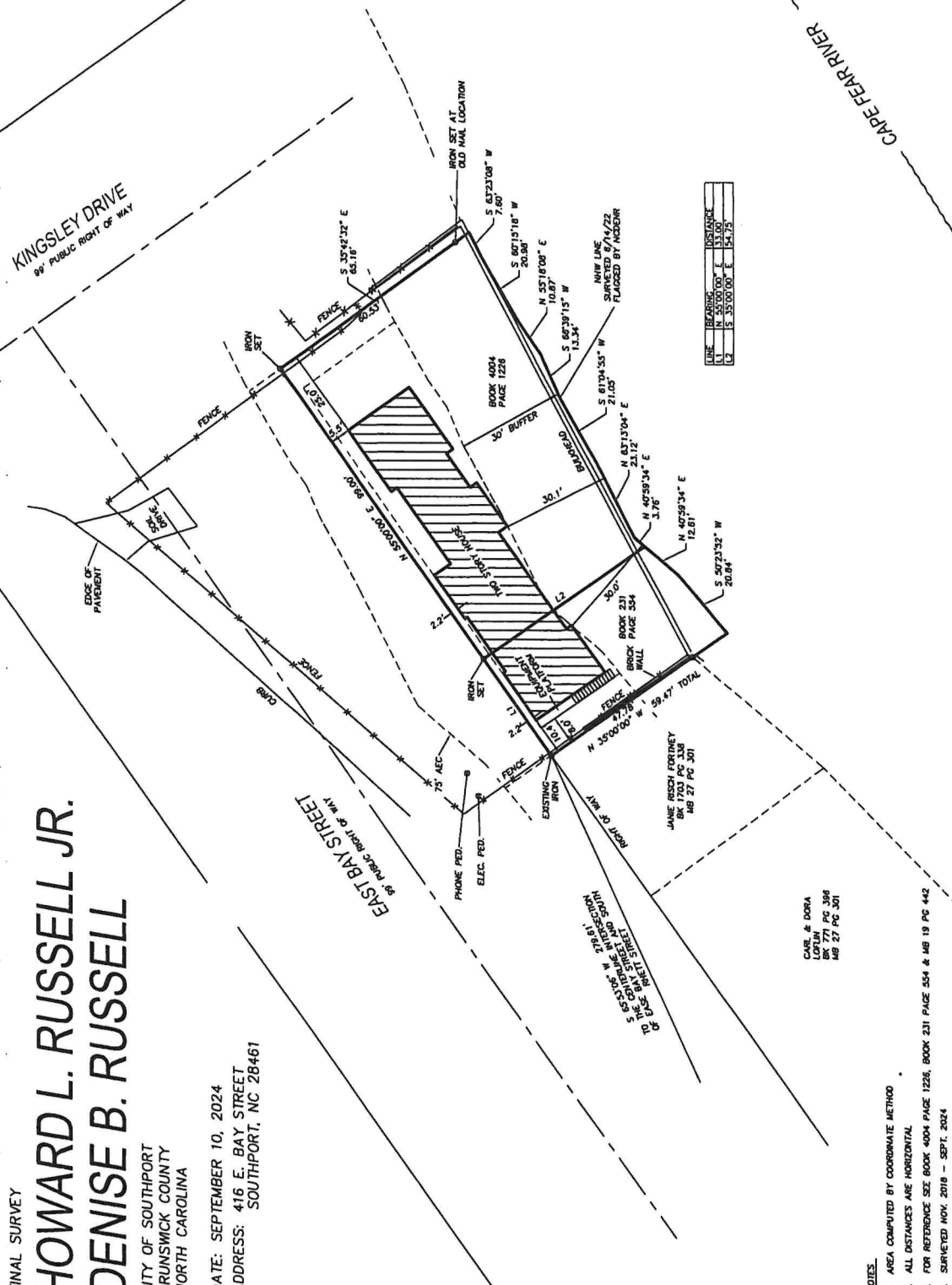
3. Private installation of native trees within the right-of-way is permitted when city trees must be removed for construction or when a tree must be removed due to the health of the tree. Canopy and understory installation shall follow standards found in the UDO, current arboricultural best management practices (ANSI A300 standards), and the guidelines outlined in the most recent City of Southport Urban Forest Management Plan. Such action shall require review and written approval by the UDO Administrator in consultation with the Forestry Committee.

FINAL SURVEY

# HOWARD L. RUSSELL JR. DENISE B. RUSSELL

CITY OF SOUTHPORT  
BRUNSWICK COUNTY  
NORTH CAROLINA

DATE: SEPTEMBER 10, 2024  
ADDRESS: 416 E. BAY STREET  
SOUTHPORT, NC 28461



LINE	BEARING	DISTANCE
1	N 35°00'00" E	33.00'
2	S 35°00'00" E	34.75'



**HANOVER DESIGN SERVICES, P.A.**  
 LAND SURVEYORS ENGINEERS LAND PLANNERS  
 1123 FLORAL PARKWAY  
 WILMINGTON, N.C. 28403  
 PHONE: (910) 343-8002  
 FAX: (910) 343-9941  
 FIRM CERTIFICATE C-0597  
 14903

I HEREBY CERTIFY THAT THIS MAP WAS PREPARED UNDER MY SUPERVISION FROM AN ACTUAL SURVEY AND THAT THE INFORMATION CONTAINED HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AM A LICENSED SURVEYOR IN THE STATE OF NORTH CAROLINA. I AM NOT PROVIDING ANY GUARANTEE OF ACCURACY FOR LAND SURVEYING IN NORTH CAROLINA (ENCL. 18A-0101) BY THE STATE OF NORTH CAROLINA.

*Jonathan L. Wayne*  
 JONATHAN L. WAYNE, PLS. 3381



- NOTES:**
1. AREA COMPUTED BY COORDINATE METHOD
  2. ALL DISTANCES ARE HORIZONTAL
  3. FOR REFERENCE SEE BOOK 4004 PAGE 1226, BOOK 231 PAGE 554 & MB 19 PG 442
  4. SURVEYED NOV. 2018 - SEPT. 2024
  5. TOTAL AREA 7,638 SF

- LEGEND:**
- E.I.P. = EXISTING IRON PIPE
  - E.I. = EXISTING IRON
  - E.C.M. = EXISTING CONCRETE MONUMENT
  - R/W = RIGHT OF WAY
  - C.P. = COMPUTED POINT
- PROPERTY LINE**
- BUILDING SETBACK
  - CENTERLINE
  - EASEMENT
  - COMPUTED PROPERTY LINE
  - EXISTING PROPERTY LINE
  - FENCE

CARL & DORA  
 LORLIN  
 BK 771 PG 306  
 MB 27 PG 301

HUPSES, DON W.  
 S 65°00'00" E 111.11 FT. TO  
 THE 9' R/W LINE  
 TO THE 9' R/W LINE  
 OF EAST BAY STREET

JANIE RISCH CORTNEY  
 BK 1703 PG 238  
 MB 27 PG 301



## City of Southport

April 3, 2025

**Via First-Class and Certified Mail and E-mail to:**

Mr. Howard L. Russell  
Mrs. Denise B. Russell  
1044 Ryans Ct  
Wilmington, NC 28412

RE: 416 E Bay Street – Case Number: 202310001 – Zoning Violation and Code Violation – Final Notice

Dear Mr. and Mrs. Russell:

The subject code enforcement violation has been ongoing since 2022. Multiple City Managers and City Staff have made numerous attempts to bring this violation into compliance. These different contacts are not motivated by anything other than bringing a known violation into compliance. A formal timeline of the process, including all written code enforcement notifications, is attached to this letter.

A Final Order from Derek Mabe, Code Enforcement Officer, issued on June 25, 2024, provided timing and corrective actions to bring Case Number 202310001, a zoning violation, into compliance. The corrective action in the order is the removal of the fence in violation installed within the public rights-of-way (ROW) adjacent to your property. Communication from Mrs. Russell, dated August 15, 2024, speaks of the fence removal after the issuance of the CO. To date, the violation has not been corrected.

Further, the Board of Aldermen updated Chapter 16 of the City Code of Ordinances, outlining allowable uses within public ROW. As part of this update, the Aldermen directed staff to remove hardened structures that encroach upon the City's ROW, which includes the subject fence and landscaping rocks. The Board of Aldermen also directed staff to ensure all open code enforcement cases with ROW encroachment violations are abated. I have attached the updated City Code of Ordinance language to Chapter 16 and the draft Unified Development Ordinance (UDO) language that mirrors the City Code of Ordinance updates which the Aldermen are considering at their May 8, 2025, regular meeting.

UDO Section 3.17(D) that exists today, which states as follows: "It shall be unlawful for any person to place or cause to be placed on any public street, road, alley, sidewalk, or other public right-of-way within the city any wall, fence, gate, brick, stone, wood, rock, vegetation, or other structure, material, or substance above the horizontal plane of the existing ground." **Accordingly, this letter is a final notice that you are in violation of both UDO Section 3.17(D) and City Code Section 16-8(a) since your fence and landscaping rocks are currently within the City's ROW.**

Section 3.10.B. Fences and Walls of the City of Southport UDO allows four (4) foot fences along front property lines. Your final as-built survey of building permit B-23-19 delineates your property lines and the fence within the ROW. Upon removal of the subject fence, a fence that meets the UDO requirements is allowed with the issuance of a fence permit. City staff are available to help you if you have any questions about future improvements to your lot.

In order to come into compliance, you must remove the portions of the fence and landscaping rocks that are located in the City's ROW within 15 days. If the fence and rocks are not removed within said time frame, daily fines will be assessed per Section 2.15 of the UDO and/or the City will initiate any appropriate action to correct or abate the violation, including, but not limited to the City removing the fence and rocks and charging you, the responsible party, for the cost of removal per City Code Section 16-10.

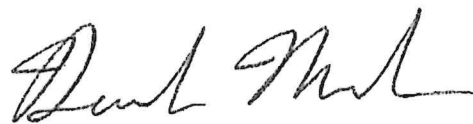
Pursuant to UDO Sections 2.7(E) and 2.15(C)(2) you have a right to appeal this final notice of violation to the Southport Board of Adjustment.

If there is anything else our office can assist you with, please don't hesitate to let us know. You can reach Maureen Meehan at (910) 457-7900 and Derek Mabe at (336) 569-9988

Sincerely,

  
Maureen Meehan  
Planning Services Director

Derek Mabe  
Code Enforcement Officer



**Attachments**

Code Enforcement Correspondence  
Timeline of Events  
Code of Ordinance Updated Language

