



BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT

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Currituck County
Board of Adjustment Agenda
Historic Currituck County Courthouse
September 12, 2013, 7:00 p.m.

7:00 p.m.

CALL TO ORDER

- A. Roll Call
- B. Announce Quorum Being Met
- C. Approval of Agenda
- D. Ask for Disqualifications

Item 1

Approval of August 8, 2013 minutes

OLD BUSINESS:

NEW BUSINESS:

Item 2

BOA 13-07 GEE'S GROUP OF NORTH CAROLINA: Variance request for a reduction to the street intersection separation requirement. The property is located at Tax Map 9, Parcel 41, Moyock Township.

Item 3

ANNOUNCEMENTS

Item 4

ADJOINMENT



CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
August 8, 2013

REGULAR MEETING

The Currituck County Board of Adjustment met on August 8, 2013 at 7:00 p.m. in the Historic Currituck County Courthouse. The following members were present: David Palmer, Cameron Tabor, Michael Painter, Vivian Simpson, Donna McCloud, C. Shay Balance, and Theresa Dozier. Brad Schuler, Planner; Stacey Smith, Code Enforcement Officer/Board of Adjustment Clerk; and Ben Gallop, Board of Adjustment Attorney; were also present.

Mr. Tabor called the meeting to order and announced a quorum have been met with five regular members and two alternate members.

Mr. Tabor asked if there were any changes to the agenda.

Brad Schuler stated that the applicant withdrew Item 3.

Item 1: Approval of July 11, 2013 Minutes

David Palmer motioned to approve the July 11, 2013 minutes with no changes. Theresa Dozier 2nd the motion and the motion passed unanimously.

Item 2: BOA 13-05 CHRISTOPHER SUSKO: Appeal of administrator's determination that all vehicle maintenance associated with the non-accessory home occupation for a limousine/taxi service be behind the fence/gate. The property is located at 102 North Sea Breeze, Tax Map 76, Parcel 80B, Fruitville Township.

Brad Schuler, Stacey Smith, Christopher Susko, Todd Whitehead, Mary Whitehead, and Jody Batesole were sworn in before the board.

Brad Schuler reviewed the following memo and attachments to the board:

MEMORANDUM

To: Board of Adjustment
From: Planning Staff
Date: July 3, 2013
Re: BOA 13-05 Susko Appeal

**Minutes are not official until approved by the board.*

Chris Susko is appealing the administrator determination that all vehicle maintenance associated with his non-accessory home occupation for a limousine/taxi service must be behind the fence/gate shown on the approved site plan.

The Board of Adjustment issued a conditional use permit to Mr. Susko on April 11, 2011 to operate a limousine/taxi service at his residence at 102 Seabreeze Lane N in Knotts Island. Additional conditions were placed on the permit including:

“6. The two vehicles associated with the business shall be stored in the back yard as indicated on the site plan.”

Originally, staff interpreted this condition to allow for minor maintenance to be conducted outside of the fenced/gated area due to it being short term in nature. However, that interpretation changed after reviewing the audio recording from the August 11, 2011 BOA meeting as requested by an adjoining property owner. At the August 11, 2011 meeting, Mr. Susko requested modifications to his conditional use permit including to not install the fence/gate from his house to the fence along the property line.

In the audio recording of the meeting, Richard Black of 108 Seabreeze Lane N stated his concerns regarding maintenance of the vehicles and that the vehicle should be maintained behind the fence and gate. Mr. Bryan Bass, Chairman of the BOA, also stated the concern of a neighboring property owner was the visible maintenance of the vehicles including changing oil and washing and that it should adhere to the original condition of storing the vehicles in the back yard. Staff believes it was the intent of the Board to have all maintenance occur behind the fence/gate in the area designated for the limo parking as shown on the approved site plan.

The County submits the following attachments:

Attachment 1: Letter of Determination dated May 21, 2013 from Brad Schuler, Planner I.

Attachment 2: Appeal application.

Attachment 3: Approved site plan.

Attachment 4: Conditional use permit issued April 11, 2011.

Attachment 5: The minutes of the modification request from the August 11, 2011 BOA meeting.

Attachment 6: CD of audio recording:

Track 1: Beginning of agenda items.

Track 2: Richard Black concerns over maintenance of vehicles.

Track 3: Bryan Bass' summary.

DISCUSSION

Mr. Tabor stated that to him it did not sound clear what was meant by storing, and asked is that why we are here.

Mr. Schuler stated yes, the board needs to determine what storage means.

Mr. Tabor commented that a citizen could change their oil in their driveway.

Mr. Schuler stated that yes a citizen can however this is a condition on the permit.

Mr. Palmer asked if this was due to complaints.

Mr. Schuler stated that this appeal was not due to a Notice of Violation it is an appeal of the staff determination.

Mr. Gallop clarified that this case is not an amendment of the permit it is a determination if stored in the backyard means maintenance as well.

Mr. Susko gave some background on the history of his business and stated that county staff told him when he first got my permit that he could do maintenance to my vehicles in my driveway and that is just what he has done. It is no different then washing your personal business in your driveway.

Mr. Susko then went over the letter he received from Code Enforcement Officer Stacey Smith allowing him to perform his maintenance in his driveway. He went on to review emails between Mr. Schuler and Mr. Whitehead regarding the washing and maintenance of vehicles as well as showed pictures of the area in which he currently washing vehicles verses the back view where it would be more visible. He stated that it makes it difficult to clean in the rear yard as he would have to keep the gate open to haul off the supplies to the rear of the property and he felt as long as he was doing the cleaning during the approved business hours he should be able too. Many people drive their work vehicles home and wash them. He took the limos to Moyock Automotive to perform other maintenance such as oil changes.

Mr. Tabor asked the size of the fence and if you could see through it.

Mr. Susko stated that it was a 6-foot stock privacy fence.

Mrs. Simpson asked if there was clutter when washing and how long does it take to wash them.

Mr. Susko stated it takes about 2 hours and I have a pale, some rags, and a shop vac.

Mr. Painter asked if the fence ran down the property line.

Mr. Susko stated that it does on the left side of the property and then went into the history of the requirement of the fence

Mr. Tabor advised Mr. Susko that the fence is another matter and we are not here to address the fence.

Mr. Painter asked how many limos he had.

Mr. Susko stated that he had five however only two were kept at the property.

Mr. Painter asked if the permit limited the number of limos.

Mr. Susko stated that yes the permit only allowed for two limos storage at the property.

Mr. Susko then went on to state that had tried everything he could to work with the neighbor and now he has surveillance cameras watching his house.

Jody Batesole who lives to the right of the Susko's went on to say that, Mr. Susko is a very big contributor to the Knotts Island community. The church right across the street has car washes, other people wash their work vehicles in their driveways, and where do we draw the line. Her son is the loudest driver on the street, not the limos. He is a very generous person and she thinks it is unfair that he cannot wash his vehicles in the driveway like everyone else and she thinks it would be a shame to stop him as he is trying to provide for his family

Todd Whitehead, adjoining property owner stated that it was his understanding that the vehicles were going to be behind the gate at all times and his party bus when parked in the driveway it blocks a lot and it is going to be hard to sell my house. Mr. Bass clarified that all activities should be behind the fence and gate. The Suskos have a nice yard and during the week he cleans them all the time and this is forcing me to move. It is a business no matter which way you look at it and it has been nice the last couple of months since he has been washing in the backyard and would like to see that continue.

Mary Whitehead, adjoining property owner stated that she thinks it is great he volunteers for others but that is not why we are here. She moved here to a quite community not next door to a business. They wash cars all day long and most of the time it is on the weekends. She would like to see the limos begin washed in the backyard.

Rick Susko stated that everyone washes their cars in their driveways

Mr. Tabor asked Mr. Susko what the 104 emails pertained too.

Mr. Susko reviewed sections of the emails regarding this complaint.

Mrs. Batesole stated that she did not want to argue, but what is the difference between the party buses and if she had 18 kids, in which she had a large van. Would she be discriminated against for having a large vehicle? We need to be concerns with other issues on Knotts Island not whether he can wash his vehicles in the driveway or not.

Mrs. Whitehead discussed the reason for the fence.

Mr. Palmer advised the board that we needed to get back to why we are here.

Mrs. Whitehead advised that her main concern is looking at the limos in the driveway.

Mr. Tabor closes the public hearing.

Mr. Palmer asked Mr. Schuler if the section of the audio of Mr. Bass was before the motion.

Mr. Schuler stated that the discussion by Mr. Bass was before the motion.

Mr. Tabor asked for the audio to be played again.

Mr. Schuler played the audio.

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Mr. Palmer asked what the original conditions were.

Mr. Schuler reviewed the eight conditions on the original permit

Mr. Palmer commented that in the original use permit, it did not say.

Mr. Tabor stated that he sees that it only states they have to store behind the fence

Mr. Schuler restated the condition.

Mr. Painter asked what the reason was for the hours of operation.

Mr. Schuler stated so vehicles were not coming in too late.

Mr. Palmer stated that it is unfortunate this is before us. There are no regulations for kids coming home late, I come home late, and I wash in my front yard. It is his opinion that we did not state that washing had to be performed behind the fence.

ACTION

David Palmer motioned to overturn the decision and find that the Suskos are operating in accordance with his permit conditions. Theresa Dozier 2nd the motion. Motion carried unanimously.

ADJOURNMENT

There being no further business to discuss, David Palmer motioned for adjournment. Theresa Dozier 2nd the motion and the motion passed unanimously. The meeting adjourned at 8:03 pm

Respectfully Submitted,

Stacey Smith

Stacey Smith
Code Enforcement Officer/BOA Clerk



Currituck County

Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
252-232-3055 FAX 252-232-3026

To: Board of Adjustment
From: Planning Staff
Date: September 4, 2013
Subject: BOA 13-07 Gee's Group - Variance

Gee's Group of North Carolina is requesting a variance from Section 6.2.1.C.5.D of the Unified Development Ordinance (UDO), to allow for street intersections to be within 400 feet of each other.

Section 6.2.1.C.5.D states:

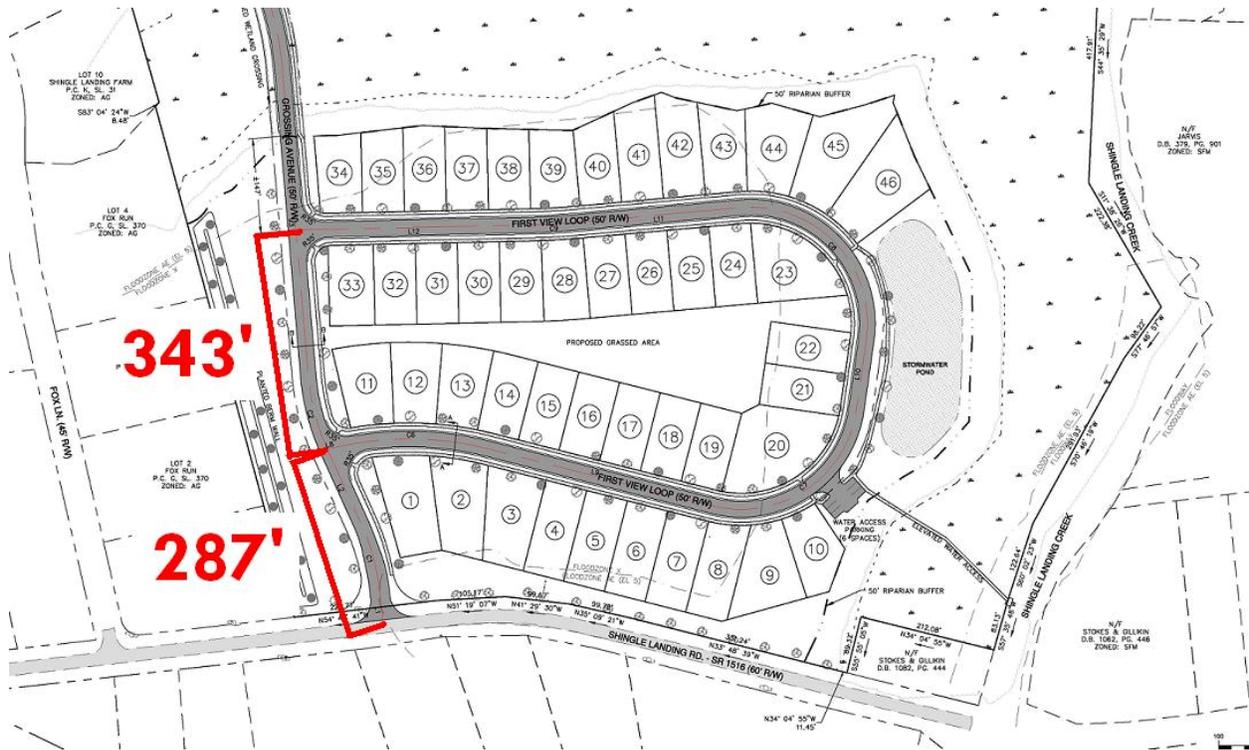
"Intersections with all other streets shall be at least 400 feet from another intersection (all measurements shall be taken from the centerlines of each intersecting street)."

Background

Gee's Group of North Carolina is currently proposing to develop a 92 lot conservation subdivision in Moyock. The proposed subdivision is located off Shingle Landing Road and will connect to Moyock Landing Drive in the Shingle Landing subdivision. It includes two looped streets positioned around wetlands as shown below:



The southern looped street has two instances in which two intersections are within 400 feet of each other as shown below:



The 400 foot intersection separation requirement of the current UDO was also required under the previous 1989 UDO. The purpose of the standard is to preserve the rural atmosphere of the county and allow for safer vehicular travel.

Gee's Group Request

Gee's Group is requesting a variance from Section 6.2.1.C.5.D to allow for the construction of the looped street as shown above. The applicant states that due to the location of the wetlands, there is not sufficient space to accommodate the distance between the intersections as required by the UDO. The applicant also states the above design provides for safer access by emergency services.

Variance Criteria

The purpose of a variance is to allow certain deviations from the dimensional standards of the UDO (such as height, yard setback, lot coverage, or similar numerical standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

A variance shall be approved on a finding the applicant demonstrates all of the following standards are met:

- (1) Strict compliance with the provisions of the Ordinance results in no reasonable use of the land;

- (2) The alleged hardship is suffered by the applicant as a result of the application of this Ordinance;
- (3) The hardship relates to the applicant's land, rather than personal circumstances;
- (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- (5) The hardship is not the result of the applicant's own actions; and
- (6) The variance will neither result in the extension of a nonconformity nor authorize the initiation of a nonconforming use of land.

The following factors do not constitute sufficient grounds for approval of a variance:

- (1) A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- (2) Hardships resulting from factors other than application of standards of this Ordinance;
- (3) The fact that land or a structure may be utilized more profitably or be more marketable with a variance;
- (4) The citing of other nonconforming or conforming uses of land or structures in the same or other zoning districts; or
- (5) Financial hardship.

Staff Recommendation

Below are staff's suggested findings and recommendation.

- (1) Strict compliance with the provisions of the Ordinance results in no reasonable use of the land;
Suggested finding: Strict compliance with the provisions of the Ordinance **does result in reasonable use** of the land. The property can still be developed with a street layout that complies with standards of the UDO.

For example, shown is a layout submitted in 2008 with a street layout that is in compliance with the UDO.



- (2) The alleged hardship is suffered by the applicant as a result of the application of this Ordinance;
Suggested finding: The alleged hardship is suffered by the applicant **is** a result of the application of this Ordinance. The UDO requires the street intersections be spaced 400 feet apart.
- (3) The hardship relates to the applicant's land, rather than personal circumstances;
Suggested finding: The hardship **does** relate to the applicant's land, specifically with the location of wetlands limiting adequate area to meet the street intersection spacing requirement. However, the hardship **also relates** to personal circumstances as the applicant is choosing not to layout the streets to comply with the standards of the UDO. Therefore, the entirety of this finding is **not** met.
- (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
Suggested finding: The hardship **is** unique, or nearly so, rather than one shared by many surrounding properties. While every subdivision or development in the county is subject to the street intersection separation standard, the vast majority do not have wetlands positioned in the middle of the property.
- (5) The hardship is not the result of the applicant's own actions; and
Suggested finding: The hardship is **not** the result of the applicant's own actions. The applicant has not knowingly or unknowingly violated the ordinance.
- (6) The variance will neither result in the extension of a nonconformity nor authorize the initiation of a nonconforming use of land.
Suggested finding: The variance will **not** result in the extension of a nonconformity nor authorize the initiation of a nonconforming use of land.

Staff is recommending **denial** of this request as it does not meet all six criteria needed to be granted. Overall, the applicant has the ability to design the subdivision to meet the standards of the UDO, but is choosing not to through a variance. Therefore, granting a variance would be inappropriate.

The County submits the following attachments:

1. Attachment 1: Variance application submitted August 13, 2013.
2. Attachment 2: 36" x 24" subdivision plan prepared by Hyman & Robey, PC and dated August 12, 2013.
3. Attachment 3: Section 6.2.1.C.1.5 Street Intersections of the UDO.



Variance Application

OFFICIAL USE ONLY:	
Case Number:	_____
Date Filed:	_____
Gate Keeper:	_____
Amount Paid:	_____

Contact Information

APPLICANT:

Name: Gee's Group of North Carolina
Address: 770 Lynhaven Pkwy, #160
Virginia Beach, VA 23452
Telephone: 757-340-7355
Fax Number: _____
E-Mail Address: dscoli@geesgroup.com

PROPERTY OWNER:

Name: Same as applicant
Address: _____
Telephone: _____
Fax Number: _____
E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: _____

Property Information

Physical Street Address: (No assigned address) on Shingle Landing Road, South of Fox Lane
Location: North of Shingle Landing Creek, West of Shingle Landing Subdivision
Parcel Identification Number(s): 0009-000-0041-0000

Request

I, David Gianascoli, Ptnr., hereby request a variance from Section(s) 6.2.1.C(5)(d) of the Unified Development Ordinance.

Provide a narrative of why the variance is needed and what circumstances have lead to the need for a variance:

To provide for the reduction of driveways and connection points to connector roads such as Shingle Landing Road and the proposed connector to Moyock Landing Drive, the development of the property is proposed to incorporate an open space buffer between the backs of the interior lots and each of the aforementioned roads. The development also proposes a more desirable interior loop road for safer access by emergency services. With the limited amount of physical space to construct outside of protected wetlands, there is not sufficient space to accommodate the distance between intersections as required by the ordinance.

Relevant Factors for Issuance of a Variance

A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it makes detailed written findings that:

- A. Strict compliance with the provisions of the Ordinance results in no reasonable use of the land. (It is not sufficient that failure to grant the variance simply makes the property less valuable. Ordinarily some physical problem preventing development of the property in an authorized manner should be shown).

Compliance with Section 6.2.1.C(5)(c) would restrict the use of the interior loop road, which is the safest configuration for development and would result in additional connections along Shingle Landing Road.

- B. The alleged hardship is suffered by the applicant as a result of the application of the Ordinance. (Variances can not be granted if the hardship is the result of restrictions other than those of the ordinance; restrictive covenants are an example).

When the required Section of the UDO is applied, it further compounds the physical limitations of the property.

- C. The hardship is unique, or nearly so, rather than personal circumstances. (Hardships suffered by the applicant should relate to the applicant's land and not result from the ordinance regulations).

The characteristics of the property are unique in that it is surrounded by and bisected by wetlands.

- D. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. (Hardships suffered by the applicant in common with neighbors does not justify a variance, the proper remedy is not a variance, but rather an amendment of the ordinance. Courts have held that a board's granting a variance based on such factors amounts to an attempted usurpation of legislative power).

Few, if any properties within the Full Service District have the same physical limitations as the subject property.

- E. The hardship is not the result of the applicant's own actions. (Where a property owner has either knowingly or unknowingly violated the ordinance by erecting a forbidden structure, he/she cannot cite expenses as a hardship, otherwise no one would ever comply with the ordinance. Similarly, when a person buys property and certain restrictions exist, he/she cannot be said to suffer hardship if those restrictions are enforced; such hardship would be self imposed).

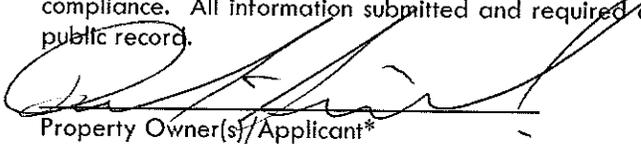
The hardship is due to the application of the ordinance and the physical limitations of the usable land.

F. The variance will neither result in the extension of a nonconformity nor authorize the initiation of a nonconforming use of land. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted will not create a new nonconformity).

All other requirements of the UDO can be met and the development as designed meets or exceeds NCDOT guidelines.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief.

Further, I hereby authorize county officials to enter my property for purposes of determining zoning compliance. All information submitted and required as part of this application process shall become public record.



Property Owner(s)/Applicant*

8.9.13 Date

***NOTE:** Form must be signed by the owner(s) of record, contract purchaser(s), or other person(s) having a recognized property interest. If there are multiple property owners/applicants a signature is required for each.

Owner Verification

If the person who is requesting the Board of Adjustment to take action on a particular piece of property is not the owner of the property, or under contract to purchase, then the actual owner of the land must complete this section. If the owner is the appellant/application please do not complete this section.

Dear Sir or Madame:

I am the owner of the property located at _____

I hereby authorize _____ to appear with my consent before the Board of Adjustment in order to request a variance at the above location. I understand that a variance, if granted, is permanent and runs with the land. I authorize you to advertise and present this matter in my name as the owner of the property.

If you have any questions, you may contact me at the following at the address, phone number, or email address listed on this application.

Respectfully yours,

Owner Date

Sworn to and subscribed before me, this the _ day of _____, 20____.

Notary Public

My commission expires: _____

CHAPTER 7

STREET AND DRIVEWAY ACCESS DESIGN CRITERIA

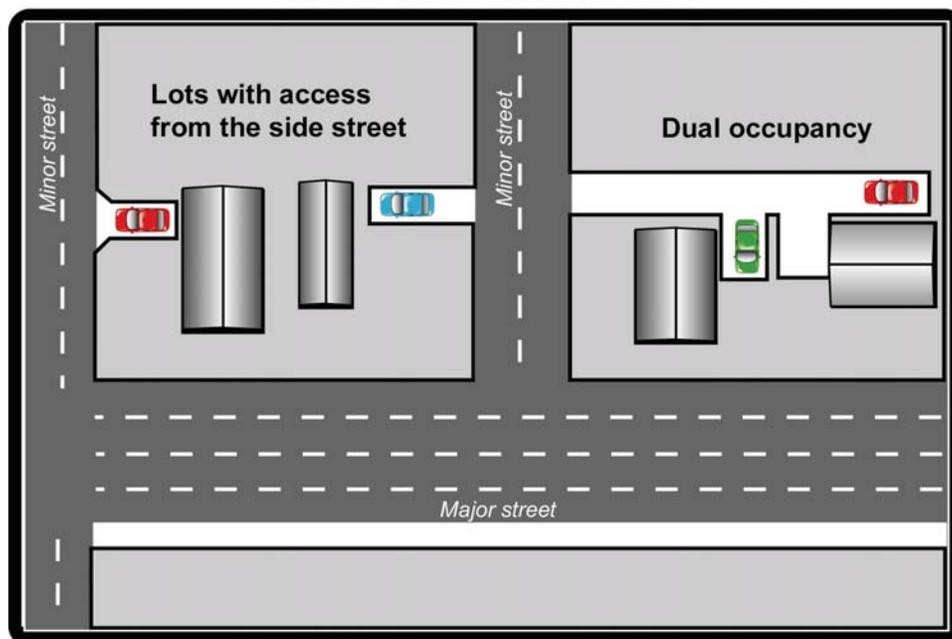
A. General

All work performed on the State Highway System under the terms of a PERMIT is subject to the design criteria of this section and all related NCDOT manuals and guidelines. Design criteria may relate to, but is not limited to, location, spacing, design vehicle storage, and drainage. Each component must be addressed in adequate detail to ensure public safety and mobility.

B. Site Requirements

Location - The location of street intersections and driveways is critical for minimizing potential impact to vehicular and pedestrian traffic. Street and driveway connections to the State Highway System should be clearly visible to all approaching traffic. The location of driveways should be related to nearby street intersections and adjacent driveways. In the interest of public safety and mobility, the NCDOT may prohibit, restrict, or modify the placement of a driveway or street along the property owner's frontage. The NCDOT may also prohibit or restrict access to a State Highway System roadway if alternate access is available through other adjacent public facilities.

Use of Side Street Access



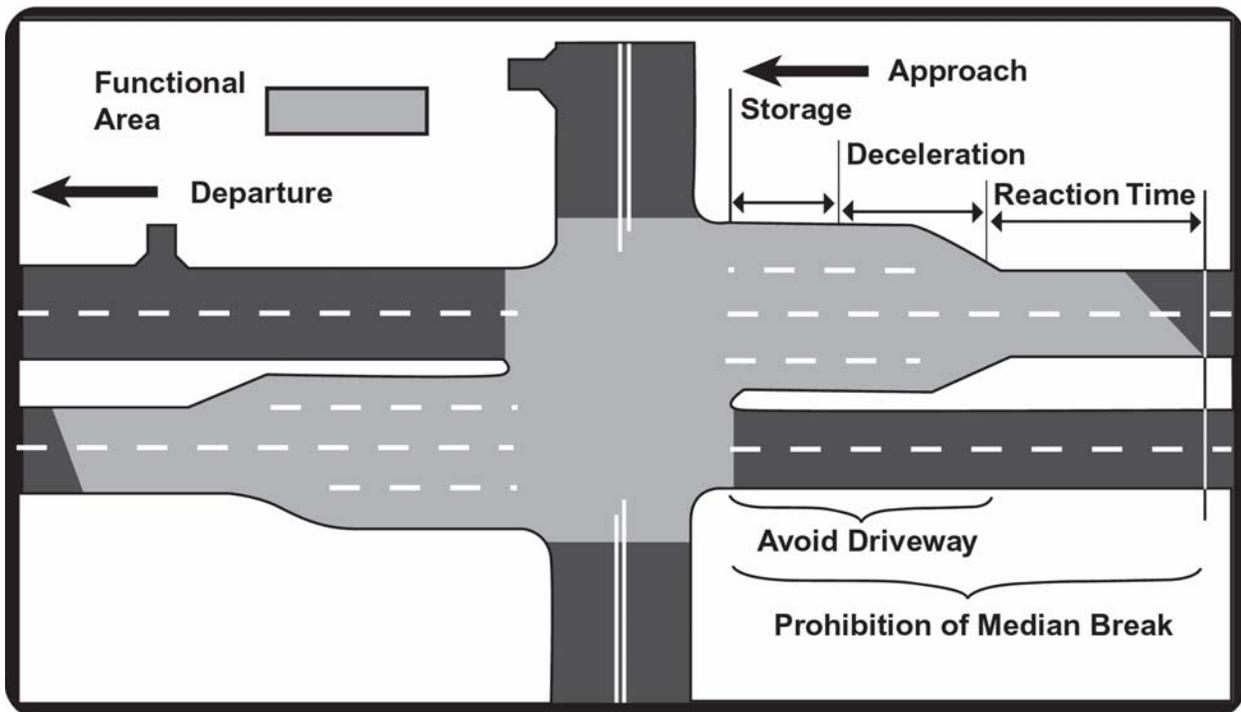
Policy On Street And Driveway Access to North Carolina Highways

Every effort shall be taken to prevent access connections and median breaks within the functional area of an intersection. If access connections have to be located within the functional area due to limited property frontage, the NCDOT may restrict access to “right-in/right-out” or other limited movement treatments. Such driveways must still meet all location and minimum distance requirements.

Functional Area of Intersection - The functional area of an intersection consists of the distance traveled during reaction time, the deceleration distance, and queue storage length. The following reaction time and distances may be used:

Reaction Time and Distances				
Areas	Sec.	35 mph	45 mph	55 mph
Rural	2.5	130 ft	165 ft	200 ft
Urban	1.5	75 ft	100 ft	120 ft

Functional Area of an Intersection



Sight Distance – Street and driveway connections should provide for adequate vertical and horizontal sight distance. The table on page 29 lists minimum sight distance values for various design vehicles. The table summarizes sight distance along arterial roads and streets necessary for a stopped vehicle to cross the arterial and any auxiliary lanes. If the access is located on a divided facility, the median width is not accounted for in the table. Median width may be ignored when the

existing street abutting the subdivision, in accordance with the standards of this Ordinance.

(2) Conformance with NCDOT Standards

The current edition of *Subdivision Roads Minimum Construction Standards*, established for the particular type of street in question, by the NCDOT Division of Highways, unless this Ordinance establishes a stricter standard.

(3) Conformance with Community Form Standards

The applicable street standards in Section 5.6, Community Form Standards.

(4) Connection with State Streets

Provide direct access to an improved street that meets NCDOT design and construction standards or one that has been accepted for maintenance by NCDOT, to the maximum extent practicable.

(5) Street Intersections

- (a)** Streets shall intersect as nearly as possible at right angles and not intersect any other street at an angle less than 70 degrees (see Figure 6.2.1.C, Street Intersections).
- (b)** No more than two streets shall intersect at any one point unless the NCDOT certifies that such an intersection can be constructed with no extraordinary danger to public safety.
- (c)** Intersections with a major arterial street shall be at least 1,000 feet from another intersection.
- (d)** Intersections with all other streets shall be at least 400 feet from another intersection (all measurements shall be taken from the centerlines of each intersecting street).
- (e)** Street jogs shall maintain centerline offsets that are a minimum of 400 feet apart.