



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

JAMES H. TROGDON, III
SECRETARY

March 22, 2018

Permit # 2731

Subject: Driveway Permit – Nu-Quality Ice Cream Shop
County: Dare

Spiros S. Giannakopoulos – 5415 OBX, LLC
800 N. Hughes Blvd.
Elizabeth City, NC 27909

Dear Applicant,

Attached for your files is a copy of a Commercial / Residential Driveway Permit, which has been properly executed. Please note any comments, which may appear on the reverse side of the permit form.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Midgett", written over a large, light-colored oval shape.

Randy Midgett, P.E.
District I Engineer

Attachments

Cc: Division Engineer (W/Attachments)

1929 North Road Street, Elizabeth City, NC 27909
4739

Phone: (252)331-4737; Fax: (252)331-



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

JAMES H. TROGDON, III
SECRETARY

March 22, 2018

011-028-18-4928

Siros S. Giannakopoulos – 5415 OBX, LLC
800 N. Hughes Blvd.
Elizabeth City, NC 27909

County: Dare

Subject: Encroachment to allow you to install a 30 square feet concrete walkway along with a 22' commercial entrance.

Dear Applicant,

Attached for your records is a copy of the approved encroachment package to allow you to install a 30 square feet concrete walkway along with a 22' commercial entrance. **Any and all damages done to State Routes must be properly repaired.** This approval will expire on March 22, 2019 unless construction has started or been completed prior to that date.

Please feel free to contact Randy W. Midgett at (252) 331-4737 if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. Midgett", written over a large, stylized circular flourish.

Randy W. Midgett, PE
District Engineer

Attachments

Cc: Division Engineer (W/Attachments)
County Maintenance Engineer (W/Attachments)



Encroachment Special Provisions

Our mission is to safely and efficiently manage and facilitate as much as practicable the accommodation of utilities along NCDOT Highways while protecting our public infrastructure.

US 158 DARE COUNTY

- M 4** All driveways/sidewalks/multi-use paths/curb & gutter altered or disturbed during construction shall be returned to a state comparable with their condition and integrity prior to construction to the satisfaction of the District Engineer. Any replacements shall be done with like or better materials as approved by the District Engineer.
- M 7** All roadway signs which are removed due to construction shall be reinstalled as soon as possible and must be replaced the same day. If necessary, temporary signage shall be provided by the encroaching party for regulatory functions such as stop signs, yield signs, etc.
- M 8** All temporary and final pavement markings are the responsibility of the encroaching party. Final pavement markings and sign plans shall be submitted to the Division Traffic Engineer. All installation shall be by an approved NCDOT pavement-marking contractor. Pavement markings shall match the existing pavement markings along the route unless approved or directed by the District Engineer.
- M 11** All roadway sections, ditch lines and slopes, and shoulders affected by the operations under this encroachment shall be restored to the satisfaction of the District Engineer.
- RD 4** Concrete curb and gutter shall be constructed in accordance with Standard Drawing No. 846.01.
- RD 6** Curb cuts and ramps shall be constructed in conformance with the NCDOT Guidelines for Curb Cuts and Ramps for Handicapped Persons manual, Standard Drawing No. 848.01 and 848.05



Encroachment General Provisions

Our mission is to safely and efficiently manage and facilitate as much as practicable the accommodation of utilities along NCDOT Highways while protecting our public infrastructure.

US 158 DARE COUNTY

- TC 1 NCDOT WORK ZONE TRAFFIC CONTROL QUALIFICATIONS AND TRAINING PROGRAM:** a. Effective July 1, 2010, all flagging operations within NCDOT Right of Way require qualified and trained Work Zone Flaggers; b. Effective July 1, 2011, qualified and trained Work Zone Traffic Control Supervisors will be required on Significant Projects; c. Training for this certification is provided by NCDOT approved training sources and by private entities that have been pre-approved to train themselves. If you have questions, contact our web site at www.ncdot.org/-wztc, or contact Stuart Bourne, P.E. with NCDOT Work Zone Traffic Control Unit at (919) 250-4159 or sbourne@ncdot.gov.
- G 1** The encroaching party shall notify the District Engineer's Office prior to beginning construction and after construction is complete. Contact information: Randy Midgett, P.E. @ (252) 331-4737
- G 3** An executed copy of this encroachment agreement will be present at the construction site at all times during construction. If safety or traffic conditions warrant such an action, NCDOT reserves the right to further limit, restrict or suspend operations within the right of way.
- G 4** NCDOT does not guarantee the right of way on this road, nor will it be responsible for any claim for damages brought about by any property owner by reason of this installation. Encroachment within the Right of Way does not imply approval for encroachment onto adjacent property.
- G 6** The encroaching party is required to contact the appropriate Utility Companies involved and make satisfactory arrangements to adjust the utilities in conflict with the proposed work prior to beginning construction. The encroaching party or its agent shall be responsible
- G 7** The encroaching party shall comply with all applicable local, state, and federal environmental regulations, and shall obtain all necessary local, state, and federal environmental permits, including, but not limited to, those related to sediment control, storm water, wetlands, streams, endangered species, and historical sites.
- G 8** The contractor shall not begin the major portion of work which includes any clearing, grubbing, and/or grading operations until after the traffic control and erosion control devices necessary for the work have been installed to the satisfaction of the District Engineer. The preparatory work for and the installation of erosion control and traffic control devices shall be considered to be part of the construction contemplated in the associated encroachment agreement.
- G 9** Trenching, bore pits and/or other excavations shall not be left open or unsafe overnight.
- G 10** The Contractor shall comply with all OSHA requirements and provide a competent person on site to supervise excavation at all times.
- G 11** All materials and workmanship shall conform to the current NCDOT Standard Specifications for Roads and Structures and the NCDOT Roadway Standard Drawings.
- G 12** Strict compliance with the Policies and Procedures for Accommodating Utilities on Highway Rights of Way manual shall be required.
- G 13** Failure to comply with any portion of the provisions shall be grounds for immediate suspension of all activities in the Right of Way and possible grounds for revocation of the encroachment as determined by the District Engineer.
- G 14** Any alteration or deviation concerning the location, type, material, etc. of the proposed utility as authorized by the signed encroachment agreement and its supplements/attachments shall not be allowed until written approval in the form of an approved revision has been applied for, approved, and made part of the on-site agreement.



Encroachment General Provisions

Our mission is to safely and efficiently manage and facilitate as much as practicable the accommodation of utilities along NCDOT Highways while protecting our public infrastructure.

US 158 DARE COUNTY

- G 15 The NCDOT reserves the right to further limit, restrict, or suspend operations with the Right of Way if, in the opinion of the NCDOT, safety or traffic conditions warrant such action.
- G 16 The encroaching party may delegate the performance of certain provisions of this agreement to contractors or other parties. However, this shall not in any way release the encroaching party from its obligations to the terms and provisions of the encroachment.
- G 17 The encroaching party shall assume all responsibility, obligation, and liability for maintenance and operation of the installation permitted under this encroachment agreement. This condition shall be conveyed in any future buy, lease, sell or rental agreement. In the event that the encroaching party, or any future responsible party should fail to satisfy this condition, NCDOT reserves the right close or remove the installation at the encroaching party's expense.
- G 18 NC DOT Traffic Engineer's Office must be notified by telephone, (252) 482 1850, 8:00a.m.-5:00p.m., Monday-Friday, 48 hours prior to beginning work if encroaching within 500 feet of a signalized intersection.
- G 19 A one-year warranty shall be required on all work performed within the NCDOT right of way. It shall commence after District review and acceptance of the completed work associated with the encroachment.
- TC 2 The party of the second part agrees to provide traffic control devices, lane closures, road closures, positive protection and/or any other warning or positive protection devices necessary for the safety of road users during construction and any subsequent maintenance. This shall be performed in conformance with the latest NCDOT Roadway Standard Drawings and Standard Specifications for Roads and Structures and Amendments or Supplements thereto. When there is no guidance provided in the Roadway Standard Drawings or Specifications, comply with the Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Division Engineer of the party of the first part. The NCDOT reserves the right to require a written traffic control plan for encroachment operations. Proper maintenance of all traffic control shall be required even during periods of inactivity.
- TC 3 Two-way traffic shall be maintained at all times unless designated by the District Engineer. Traffic shall not be rerouted or detoured without the prior written approval from the Division Engineer. No lane closures will be allowed on state holidays and weekends from 7:00 PM the night before through 7:00 AM the day following or local events without prior approval from the District Engineer. All lanes of traffic are to be open during the hours of 6:00-9:00 AM and 4:00-6:00pm.
- TC 5 Construction is authorized to be performed on Monday through Friday during the hours between sunrise and sunset. Night Time operations will NOT be allowed unless written approval is received from the District Engineer. If night time work is allowed, all signs must be retro-reflective.
- EC 1 Vegetative cover shall be established on all disturbed areas in accordance with the recommendations of the Division Roadside Environmental Engineer.
- EC 2 Proper temporary and permanent measures shall be used to control erosion and sedimentation in accordance with all local, State and Federal regulations. All erosion and pollution control devices and measures shall be constructed, installed, maintained, and removed by the encroaching party in accordance with all applicable Federal, State, and Local laws, regulations, ordinances, and policies.
- EC 3 The encroaching party shall be responsible to keep fully informed to comply with the applicable and most current regulations of all legally constituted authorities relating to pollution prevention and control including erosion control. In the event of conflict between laws, regulations, ordinances, policies, specifications, or other requirements, the more restrictive requirement shall apply.



Encroachment General Provisions

Our mission is to safely and efficiently manage and facilitate as much as practicable the accommodation of utilities along NCDOT Highways while protecting our public infrastructure.

US 158 DARE COUNTY

- EX 1 All backfill shall meet the Statewide Borrow Criteria and shall be placed in accordance with section 300-6 of NCDOT Standard Specifications for Roads and Structures latest version. All fill areas/backfill shall be compacted to 95% density in accordance with AASHTO T99 as modified by the North Carolina Department of Transportation. All material to a depth of 8 inches below the finished surface of the subgrade shall be compacted to a density equal to at least 100% of that obtained by compacting a sample of the material in accordance with AASHTO T99 as modified by the Department. The subgrade shall be compacted at a moisture content which is approximately that required to produce the maximum density indicated by the above test method. The contractor shall dry or add moisture to the subgrade when required to provide a uniformly compacted and acceptable subgrade.
- UG 1 Existing utilities shall be shown on the plan sheets to mitigate future issues with conflicts in particular relating to our facilities. Level C SUE is required which is defined as the visual survey of above-ground facilities and correlates with utility records. For crossed sewer, storm sewer, and water utilities; provide size and type of conduits and associated cover.
- UG 2 The installation must be nearest to the R/W line as possible. Markers shall also be placed at the R/W line. If this cannot be achieved, justification must be provided. Large groves of trees, conflicts with nearby utilities, CA fence preservation are a few examples.
- UG 4 If areas where placing utility cannot be within 5' of the Right of Way line, the following shall be adhered to: i) the installation shall be placed nearest the tree line (outside the NCDOT maintained area) and/or on the backside of any ditch. ii) Directional borings and hand holes/vaults shall be at least 5' on the backside (away from traffic) of guardrail assemblies with 10' preferred. iii) Markers shall be placed at tree line.
- CO 1 Note that this review is intended for the general conformance with the policies and procedures concerning the protection of current and potential future facilities located within the NCDOT rights of way and easements. This review and associated plan comments in no way construes any design, design change, or change in the intent of the design by the Owner, Design Engineer, or any of their representatives.

ROUTE U.S. 158 PROJECT NU-QUALITY ICE CREAM SHOP COUNTY OF STATE OF NORTH CAROLINA TOWN OF SOUTHERN SHORES, DARE COUNTY

DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY ENCROACHMENT AGREEMENT

-AND-
5415 OBX, LLC

PRIMARY AND SECONDARY HIGHWAYS

THIS AGREEMENT, made and entered into this the 22 day of March 20 18 by and between the Department of Transportation, party of the first part; and 5415 OBX, LLC

party of the second part,

WITNESSETH

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as Route(s) N. CROATAN HIGHWAY - US 158, located ± 2,135 FT WEST OF THE INTERSECTION OF OCEAN BOULEVARD (N.C. 12) AND N. CROATAN HIGHWAY (US 158)

with the construction and/or erection of: ±450 SQUARE FEET OF 22' WIDE COMMERCIAL ENTRANCE CONNECTING TO US 158, AND 30 SQUARE FEET CONCRETE WALK INSTALLATION.

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part in the exercise of authority conferred upon it by statute, is willing to permit the encroachment within the limits of the right of way as indicated, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment as shown on attached plan sheet(s), specifications and special provisions which are made a part hereof upon the following conditions, to wit:

That the installation, operation, and maintenance of the above described facility will be accomplished in accordance with the party of the first part's latest POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS-OF-WAY, and such revisions and amendments thereto as may be in effect at the date of this agreement. Information as to these policies and procedures may be obtained from the Division Engineer or State Utility Agent of the party of the first part.

That the said party of the second part binds and obligates himself to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said highway, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways and structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the said facilities, that the said party of the second part binds himself, his successors and assigns, to promptly remove or alter the said facilities, in order to conform to the said requirement, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Division Engineer of the party of the first part.

That the party of the second part hereby agrees to indemnify and save harmless the party of the first part from all damages and claims (or damage that may arise by reason of the installation and maintenance of this encroachment.

That the party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Division Engineer of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; siltling or pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Division of Environmental Management, North Carolina Sedimentation Control Commission, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Division Engineer of the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the Division Engineer of the party of the first part.

That the party of the second part agrees to have available at the construction site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work contained in this agreement is being performed on a completed highway open to traffic; the party of the second part agrees to give written notice to the Division Engineer of the party of the first part when all work contained herein has been completed. Unless specifically requested by the party of the first part, written notice of completion of work on highway projects under construction will not be required.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of authorization by the party of the first part unless written waiver is secured by the party of the second part from the party of the first part.

During the performance of this contract, the second party, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U. S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B

of the Regulations.

- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,
 - (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- f. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs "a" through "f" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

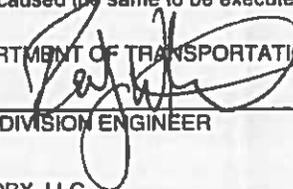
R/W (161) : Party of the Second Part certifies that this agreement is true and accurate copy of the form R/W (161) incorporating all revisions to date.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed the day and year first above written.

ATTEST OR WITNESS:

DEPARTMENT OF TRANSPORTATION

BY:


DIVISION ENGINEER

5415 OBX, LLC

X 

Second Party

INSTRUCTIONS

When the applicant is a corporation or a municipality, this agreement must have the corporate seal and be attested by the corporation secretary or by the empowered city official, unless a waiver of corporate seal and attestation by the secretary or by the empowered City official is on file in the Raleigh office of the Manager of Right of Way. In the space provided in this agreement for execution, the name of the corporation or municipality shall be typed above the name, and title of all persons signing the agreement should be typed directly below their signature.

When the applicant is not a corporation, then his signature must be witnessed by one person. The address should be included in this agreement and the names of all persons signing the agreement should be typed directly below their signature.

This agreement must be accompanied, in the form of an attachment, by plans or drawings showing the following applicable information:

1. All roadways and ramps.
2. Right of way lines and where applicable, the control of access lines.
3. Location of the existing and/or proposed encroachment.
4. Length, size and type of encroachment.
5. Method of installation.
6. Dimensions showing the distance from the encroachment to edge of pavement, shoulders, etc.
7. Location by highway survey station number. If station number cannot be obtained, location should be shown by distance from some identifiable point, such as a bridge, road, intersection, etc. (To assist in preparation of the encroachment plan, the Department's roadway plans may be seen at the various Highway Division Offices, or at the Raleigh office.)
8. Drainage structures or bridges affected by encroachment (show vertical and horizontal dimensions from encroachment to nearest part of structure).
9. Method of attachment to drainage structures or bridges.
10. Manhole design.
11. On underground utilities, the depth of bury under all traveled lanes, shoulders, ditches, sidewalks, etc.
12. Length, size and type of encasement where required.
13. On underground crossings, notation as to method of crossing - boring and jacking, open cut, etc.
14. Location of vents.

GENERAL REQUIREMENTS

1. Any attachment to a bridge or other drainage structure must be approved by the Head of Structure Design in Raleigh prior to submission of encroachment agreement to the Division Engineer.
2. All crossings should be as near as possible normal to the centerline of the highway.
3. Minimum vertical clearances of overhead wires and cables above all roadways must conform to clearances set out in the National Electric Safety Code.
4. Encasements shall extend from ditch line to ditch line in cut sections and 5' beyond toe of slopes in fill sections.
5. All vents should be extended to the right of way line or as otherwise required by the Department.
6. All pipe encasements as to material and strength shall meet the standards and specifications of the Department.
7. Any special provisions or specifications as to the performance of the work or the method of construction that may be required by the Department must be shown on a separate sheet attached to encroachment agreement provided that such information cannot be shown on plans or drawings.
8. The Department's Division Engineer should be given notice by the applicant prior to actual starting of installation included in this agreement.

