

CAROLINA BEACH

Board of Adjustment Meeting

Monday, March 03, 2025 – 6:00 PM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

1. November 18, 2024 – BOA Minutes

PUBLIC HEARING

2. Variance to Chapter 40. Article VII. Fence Regulations from the required 4' height limitation for fences located within the 20' front yard setback for 201 Fayetteville Ave.

Applicant: Pleasure Island Holdings, LLC

3. Variance to the required 20' front yard setback for 1621 S Lake Park Blvd.

Applicant: Philip Humphrey, pghARCHITECTURE, PC

NON-AGENDA ITEMS

ADJOURNMENT



AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Senior Planner

DEPARTMENT: Community
Development

MEETING: Board of Adjustment – 3/3/25

SUBJECT: November 18, 2024 – BOA Minutes

Action:

Approve the November 18, 2024 minutes

CAROLINA BEACH

Board of Adjustment Meeting

Monday, November 18, 2024 - 6:00 PM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



MINUTES

CALL TO ORDER

Chairman Thompson called the meeting to order at 6:00 PM.

PRESENT

- Chairman Ken Thompson
- Vice Chairman Wayne Rouse
- Board Member Wayne Hartsell
- Board Member Patrick Boykin
- Board Member Dan Adams

ALSO PRESENT

- Community Development Director Jeremy Hardison
- Senior Planner Gloria Abbotts
- Planner Haley Moccia
- Board Attorney Matt Nichols

APPROVAL OF MINUTES

September 18, 2024 – BOA Minutes

ACTION: Motion to approve the minutes as written
 Motion made by Vice Chairman Rouse, seconded by Board Member Adams
 Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member Boykin, Board Member Adams
Motion passed unanimously

PUBLIC HEARING

Variance to Chapter 40, Article VII Fence Regulations from the Required 4-Foot Height Limitation for Fences Located Within the 20-Foot Front Yard Setback for 201 Fayetteville Avenue
Applicant: Pleasure Island Holdings, LLC

Ms. Moccia said after the applicant confirmed the ability to attend tonight, they realized they had a scheduling issue and emailed a letter asking for a continuance. She said the Board may vote tonight or continue this item until the next meeting.

ACTION: Motion to approve the continuance
 Motion made by Vice Chairman Rouse, seconded by Board Member Hartsell
 Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member

Boykin, Board Member Adams
Motion passed unanimously

**Appeal of Article 3: Zoning, Article 5: Flood Damage Prevention, and Article 7: Definitions and Measurement, of the Town's Unified Development Ordinance for 315 Carolina Beach Avenue North
Applicant: Travis Sherry**

Applicant Travis Sherry has filed for an appeal of staff's determination that the structure in the northwest corner of the property at 315 Carolina Beach Avenue North is to be used as storage only. The applicant purchased the property in July 2021. The property consists of the main house, which has been divided into 2 units – 1st floor and 2nd floor – another unit in the southwestern corner, and the storage building in the northwestern corner.

The applicant applied for and received a building permit to renovate the main home on the property. As renovations continued, Town staff noticed that work was being done to the storage structure in the rear. Staff met with the owners to discuss options because the work was not listed on the description of work for the building permit.

In 2015, the previous owners of the property applied for a permit to convert the existing non-conforming northwestern cottage into a storage building. They removed the bathroom and installed 2 large double doors to utilize the building for storage.

The only way the building could be converted into living space would be through a change of use permit. The structure shall meet all current requirements for setbacks, flood elevations, and parking, and have a Type A landscape buffer. Parking must be provided for all 4 units on the property.

The applicant informed staff that they would like the storage area to be used as another living unit. However, because the previous owners converted the cottage to storage, any renovations to make this structure a livable unit must meet current code. The existing structure is non-conforming to setbacks and flood. The structure is located below the base flood elevation (BFE) + 2-foot freeboard. The property is in AE 13 feet, and the topography is approximately 9 feet. The addition of another livable unit on this property requires parking via an approved parking surface and maneuvering requirements. A Type A landscape buffer of 5 feet would have to be installed on the property. Type A buffers are required for 3-5 units on one property.

The applicant could renovate the existing storage building to the 2015 conditions up to 49% of the value of the building. The proposed lofted area shall be used as storage only and not exceed 15 feet in height to meet accessory structure requirements.

Building permit 24-014536 was applied for at New Hanover County, and staff denied the permit on the basis that the existing use for this building is a shed, the structure is in a flood zone, no living space is permitted below BFE + 2, and repairs are permitted for storage only.

The Board shall hear and decide appeals of decisions of administrative officials charged with enforcement of the zoning ordinance. The Board can uphold or reverse staff's interpretation of the Unified Development Ordinance (UDO) Articles 3, 5, and 7.

Individuals planning to speak on the matter were sworn in.

Chairman Thompson asked if any Board Members have any ex parte communication, bias, or conflict of interest to disclose in this matter. Vice Chairman Rouse said the applicant called him asking general questions about the Board, and Vice Chairman Rouse told him he couldn't talk about this matter coming before the Board. Vice Chairman Rouse said the conversation was not substantive. Mr. Sherry, the applicant, said he did not have any objection to Vice Chairman Rouse voting on this matter.

Mr. Hardison presented the details. He reviewed the history of the property and the timeline of events.

Vice Chairman Rouse asked if the applicant may consider other plans to put an additional dwelling unit on this property in another location should the Board affirm staff's decision. Mr. Hardison said yes, as long as it meets zoning and flood requirements for a dwelling unit.

Board Member Boykin asked how much parking would be required if this was turned into a residential building. Mr. Hardison said 6-7 spaces. Board Member Boykin asked if staff has looked at the property to see if the lot can accommodate this. Mr. Hardison said no and added that if the structure is treated as an existing residential unit, current parking would be grandfathered in and there would be no trigger to add more. However, he said if the determination is upheld that the structure is storage and they apply for it to become a residential unit, then that would trigger additional parking requirements.

ACTION: Motion to open the public hearing

Motion made by Vice Chairman Rouse, seconded by Board Member Adams

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member Boykin, Board Member Adams

Motion passed unanimously

Mr. Sherry of 1708 Carolina Beach Avenue North gave background about his family and their interest in the property. He said they put in an offer to buy the Smith Cottages in August 2021 and were selected from 5 other offers because they are not developers and planned to modernize the historic structures while retaining their charm and offering them as an upscale place for island visitors to stay. He said they applied for the permit to renovate the structure in question and it was granted, so they began renovation work, only to be informed by the Town 1 month later that they must stop because the permit would be canceled. Mr. Sherry said he was told Town staff thought the permit was for the front structure, which is a 2-story 25-foot house. He said they had already spent \$7,000 on the renovations.

Mr. Sherry said when he was told he needed a new permit because the structure was considered storage and not residential, he learned someone had applied in 2015 as a contractor on behalf of the previous owners for the change of use. He said the previous owners told him they never applied to change the use and had never hired or even talked to the person who applied on their behalf. Mr. Sherry said the previous owners certified that the previous applicant never did any work for them and

they had never seen the permit application or received any correspondence from the Town about it. In addition, he said there is no copy on file of a finalized permit issued based on this 2015 application, and he presented a November 2020 survey that shows the property as a dwelling. Mr. Sherry also said County tax records list this structure as a dwelling, and it has always and continuously been taxed as a dwelling. He showed examples of work done on the other buildings and said as a dwelling, this structure would bring \$100,000 of annual revenue to the island for restaurants and other businesses. He asked the Board to deem this structure a dwelling based on the facts he presented.

Board Member Adams asked if the previous owners showed any proof of payment to indicate who actually did the work on the structure in question. Mr. Sherry said another contractor – not the one who submitted the 2015 application – did all the work for them, adding that any work done was not based on that application.

Board Member Boykin asked if the former property owners were aware there had been modifications to the structure. Mr. Sherry said yes, but they were not aware there was a change of use from residential to storage.

Chairman Thompson asked how long the previous property owners owned the property. Mr. Sherry said the same family owned the property since the 1950s and operated the structures as rentals.

Vice Chairman Rouse asked how they would be renting out the structure in question after the bathroom was removed. Mr. Sherry said the previous owners were renting out this structure until they decided to put a golf cart in it and have it for their own use. He said although a toilet is not in the structure, the plumbing is still there. Vice Chairman Rouse asked if it is the same structure it was before they began storing the golf cart in it. Mr. Sherry said they switched doors, but it's the same structure.

Chairman Thompson asked if anyone from the public wanted to speak. No one came forward.

Mr. Sherry added that if staff's decision is upheld and the structure is affirmed as storage, they likely will not be able to meet the parking requirements to change the use to residential. He said they have not presented a plan for this because in their mind, the use of the structure was not changed and it is currently residential.

Chairman Thompson asked about the process for changing a use. Mr. Hardison said once an application is submitted, paid for, and approved by staff, then a property would be authorized for the work required to change the use. He said once the work is done, then the change of use has actually occurred, but if the work is never done and the permit is revoked or discontinued, then it would not be considered a change of use.

Chairman Thompson asked if there is a validation process for people authorized to file a change of use permit. Mr. Hardison said the person who filed the 2015 application was a contractor, and he would not think a contractor would rip out a bathroom and store a golf cart in the structure without permission of the property owners. He said he hesitates to believe the previous property owners had

no knowledge of what was occurring on their property. However, Mr. Hardison said a homeowner is not required to sign an application requesting a change of use.

In addition, Mr. Hardison read a real estate advertisement from 2021 that states, “The 4th building that serves as a laundry and storage area could easily be turned into a 4th cottage as it once had a bedroom where the storage area is and a bathroom,” so he contended there was some acknowledgment that the structure was storage.

Mr. Sherry said although the advertisement stated the building was being used for storage, it did not say there was a change of use, and he contended that no one would claim it could “easily be turned into a 4th cottage” knowing the stringent requirements for changing a use from storage to residential. He said the previous owners did not live here and simply wanted a place to store their golf cart when they were not present.

Chairman Thompson asked for a summary of what would have to be done to get the structure considered residential if the current storage interpretation stands. Mr. Hardison said the applicant would have to raise it, move it away from the property lines, and meet the parking requirements. Chairman Thompson asked if any neighbors were opposed to what the applicant is seeking and said he assumed they were not because no one requested to speak earlier. A man from the audience spoke up and was sworn in.

Albert Taylor of 317 Canal Drive, an owner of Joy Lee Apartments, which is next door to the structure in question, said he was not planning to speak but wanted to clear up some missing key components. Mr. Taylor said when the work was being done in 2015, the previous property owners told his family they were turning the structure into a personal garage. He said the man who did the work was not a contractor and speculated that the name on the 2015 application was an alias used by this person because he didn’t want to use his real name. Mr. Taylor said he wants to see the structure put back to something because for the past 3 years it has been a deteriorating open shell and an eyesore allowing elements to enter. He said he is also concerned that if the current owners have to meet setback requirements, the earth being moved could damage his property. Mr. Taylor said he has no objections to the structure being a residential unit and wants to see it get fixed one way or the other, but he contends it was the previous owners’ intention to convert it to storage.

ACTION: Motion to close the public hearing

Motion made by Vice Chairman Rouse, seconded by Board Member Adams

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member Boykin, Board Member Adams

Motion passed unanimously

Mr. Nichols reminded the Board that because this is an appeal, they simply need to vote on whether staff’s determination should be upheld, reversed, or modified. He said unlike a variance hearing, only a simple majority is required, not a 4/5 vote. Mr. Nichols encouraged the Board to state the basis for their decision for the record.

Chairman Thompson mentioned that perhaps the County has been charging residential tax rates for the structure because the process for a change of use does not call for paperwork being shared with the County. Mr. Hardison said he doesn't know what the County's process is for updating records, but they do get copies of the permits.

Chairman Thompson brought up the possibility that the person who applied for the 2015 was not authorized to do so, but he said it seems to him that the criteria to convert this property to storage was met and as a result there are a new set of regulations for changing it back to residential. He said he doesn't see any place where it looks like the Town made a mistake in this scenario.

Board Member Adams said he is concerned that the Town granted the recent permit based on the application that describes the structure as 15 feet tall. Chairman Thompson said he doesn't see that as confirmation that the structure in question is a residential unit, just that it was an error to assume it was for the main house. He asked for some details about how much the applicant has spent on renovating the structure.

ACTION: Motion to open the public hearing

Motion made by Vice Chairman Rouse, seconded by Board Member Adams

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member Boykin, Board Member Adams

Motion passed unanimously

Mr. Sherry said they have spent over \$7,000, and had they not been granted the permit by the Town they would never have done any work, including ripping off the roof and leaving it vacant and exposed as they have tried to find ways to move forward. He said he does not believe the structure is storage, and the previous owner sent a signed letter saying he doesn't know the person who submitted the 2015 application.

Mr. Hardison said staff acknowledges there was not a unit number on the recent permit application, but staff was under the impression from the contractor that the work being applied for was in the main house because the contractor met with Town staff within the main house and work was being done in there.

Mr. Sherry said he thinks it was clear based on the application saying it was for a 1-story 15-foot structure, and that's the permit that was given. He said to his knowledge, there was never any meeting in the main house between the contractor and Town staff.

Vice Chairman Rouse said he has a lot of empathy for the applicant and would like to see a way to make the situation work, but the neighbor's testimony that the structure was changed to storage with intention swings him to think Town staff was not wrong in their determination. He said the work was done, the structure was used for golf cart storage, and the advertisement said the space was being used as storage, so it seems like it's storage and he doesn't see how it can be determined that staff was wrong. Vice Chairman Rouse said it is not uncommon on the island for people to do work under someone else's contractor license if they don't have one.

Board Member Hartsell asked Mr. Taylor if he remembers the structure in question being rented. Mr. Taylor said yes, up until 2015.

A woman from the audience spoke up and was sworn in.

Heather Sherry of 1708 Carolina Beach Avenue North, wife of the applicant and an owner of the property at 315 Carolina Beach Avenue North, said she does think it was the intent of the previous owners to turn the structure into storage, but she doesn't believe they had any idea that by doing that it would create a ripple effect of not being able to convert it back, and she and her husband were not aware of this when they purchased it, again referencing the advertisement that said it could "easily be turned into a 4th cottage," just as it was easily used for storage. Mrs. Sherry said there is a lot of ambiguity with this situation, and if they are not able to make this a residence as it currently is, they will likely have to demolish this structure and lose out on a place to offer for rent to visitors. She said she thinks some mistakes were made, and she has a hard time grasping that they are going to be penalized for those mistakes when they are trying to put something back better than it was to improve the Town and the property.

Mr. Sherry asked what testimony the Board would need to hear to believe that the 2015 permit was not a valid permit based on the previous owners. Mr. Nichols said the applicant has the burden of setting forth evidence and having people present to testify on his behalf, and it's not the Board's position to provide an answer to this type of question. Mr. Sherry said he did this with the signed letter from the previous owners, but Mr. Nichols said that is not the same as having someone here to answer questions of the Board under oath.

ACTION: Motion to close the public hearing

Motion made by Vice Chairman Rouse, seconded by Board Member Boykin

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member Boykin, Board Member Adams

Motion passed unanimously

ACTION: Motion to affirm staff's determination

Motion made by Board Member Adams, seconded by Board Member Boykin

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Boykin, Board Member Adams

Voting Nay: Board Member Hartsell

Motion passed 4-1

DISCUSSION ITEMS

Scheduling Next Meeting for 3rd Week in December

Mr. Hardison said there are a couple of items that will need to go before the Board soon, and the next date for a meeting would be December 16.

Vice Chairman Rouse said he is in favor of December 16 because it's about as far away as they can get from the approaching holidays, and that's the latest it should be scheduled.

Board Member Hartsell said he would like to skip a December meeting and move it to January, but Vice Chairman Rouse said he thinks the two pending matters have the right to be heard in a timely manner. Chairman Thompson agreed that he would rather not have applicants wait until January 20. There was consensus among the Board for the next meeting to be on December 16.

NON-AGENDA ITEMS

Mr. Hardison brought up the possibility of scheduling training for the Board before the January meeting. There was consensus among the Board for the training to be on January 10 at 1:00 PM, although Board Member Boykin said he would not be available that day.

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Board Member Boykin, seconded by Board Member Adams

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member Boykin, Board Member Adams

Motion passed unanimously

The meeting adjourned at 7:20 PM.



AGENDA ITEM COVERSHEET

PREPARED BY: Haley Moccia, Planner **DEPARTMENT:** Community Development

MEETING: Board of Adjustment – March 3rd, 2025

SUBJECT: Variance to Chapter 40. Article VII. Fence Regulations from the required 4’ height limitation for fences located within the 20’ front yard setback for 201 Fayetteville Ave.

Applicant: Pleasure Island Holdings, LLC

BACKGROUND:

The applicant, Pleasure Island Holdings, LLC, is requesting a variance to allow fencing over 4’ within the 20’ front yard setback from Sec. 40-204. - Height restrictions that require no fence shall exceed four feet in height when located in the front yard setback.

The property is located at 201 Fayetteville Ave and is in the MX zoning district. The Dry Dock Inn and its pool are located on the property. The Dry Dock Inn consists of two buildings and two pools that span across two parcels of land (300 Lake Park Blvd S & 201 Fayetteville Ave.). Each parcel has its own building and pool. The property associated with this variance is located at 201 Fayetteville and is a 12,499.7 sq ft lot. This property is adjacent to Fayetteville Ave. The building and pool on the lot are considered legal non-conforming structures since they do not meet the minimum setback standards for the zoning district for pools and buildings. Any fencing located within 20’ of the front property line can be no taller than 4’ or 48” (see attachment 2).

The pool decking the fence is located on is raised above the natural grade of the lot. The town ordinance requires fence height to be measured from the highest point of the fence, not including columns or posts, to the existing natural grade. NC Building Code requires, “the top of the barrier shall be at least 48 inches above grade measured on the side of the barrier that faces away from the swimming pool.” Since the elevated pool deck is raised above the natural grade of the lot and could be used as a step to climb a shorter fence, the fence height would need to be measured from the height of the raised pool deck. Therefore, the town would approve a 4’ fence measured from the pool deck rather than the natural grade because NC Building Code requires an adequate barrier.

Kyle Sears, with Sears Fence LLC, is the contractor who applied on behalf of the property owner in March 2024 to replace the fencing surrounding the pool located on the property. The

application and supporting site plan materials proposed a 52" tall fence, approximately 4" over the allowed 48" height. Kyle Sears was advised by the town plan reviewer that the fencing within the front setback could not exceed 48". They were told they would need to provide an updated fence section with an adjusted fence height to meet the town ordinance regulations.

On April 9th, 2024, Kyle reached out to the town plan reviewer and asked for a permit update. The plan reviewer reminded Kyle the fence railing cannot go over 48" and the town would need a new fence height. May 10th, 2024, Kyle replied to the town planner and asked if a variance would be possible. The town reviewer told Kyle the owners of the Dry Dock Inn already went through a variance a year prior for a similar issue where the fence was installed without a fence permit and it was installed too tall, so the owners should be aware of this issue. The plan reviewer suggested they try and find other alternatives to avoid a variance. The town reviewer suggested installing a different type of fence that would meet the height requirements. The reviewer also asked if it was possible to anchor the fence posts on the outside of the pool deck, so the bottom horizontal bar sits flush with the pool deck.

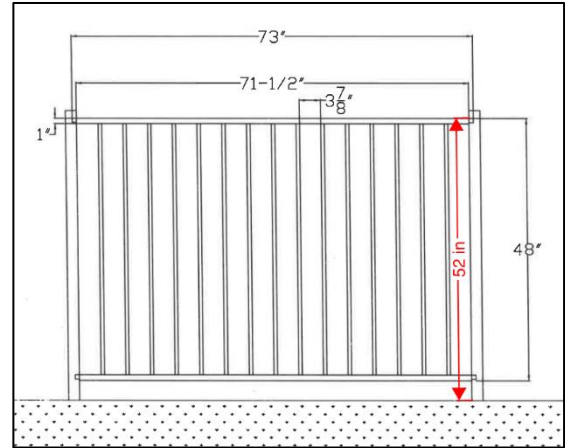


Figure 1. Fence elevations submitted with fence permit application.

The town reviewer told Kyle the owners of the Dry Dock Inn already went through a variance a year prior for a similar issue where the fence was installed without a fence permit and it was installed too tall, so the owners should be aware of this issue. The plan reviewer suggested they try and find other alternatives to avoid a variance. The town reviewer suggested installing a different type of fence that would meet the height requirements. The reviewer also asked if it was possible to anchor the fence posts on the outside of the pool deck, so the bottom horizontal bar sits flush with the pool deck.

After emailing the contractor, the town reviewer gave Andrea Thomas, New Hanover County Health & Human Services reviewer, a call to check if the suggested fencing would meet NC Building Code and Health Department requirements. She said the suggestions were valid and could meet NC Building Code and Health Department requirements while also adhering to the Town Ordinance. She also mentioned she had heard a new fence was already installed onsite. Upon hearing a new fence had been installed, the town reviewer conducted a site visit and confirmed a new fence was installed without a permit and the fence was over 48". The town reviewer emailed the fence contractor and the owner of the property about the fence height violation. When told what their options were, the owner Deanna Lanni, decided they would pursue a variance (See attachment 3).

To resolve the violation situation, the applicant is seeking a variance to the required 4' fence height limitation for fences located within the 20' front yard setback for 201 Fayetteville Ave. If approved, the fence would not need to be replaced or altered to meet the 4' fence requirement.

REQUIRED FINDINGS:

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

CONDITIONS:

In granting any variance, the Board may prescribe reasonable and appropriate conditions and safeguards, in conformity with this ordinance. Violation of any such conditions or safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Article 19 of the Zoning Ordinance:

If the board supports the findings staff recommends, the below condition for the variance would apply:

The variance is granted for the proposed pool fencing only and any new fencing on the property shall conform to the setback height requirements.

ATTACHMENTS:

1. Variance Application
2. Setback Site Plan
3. Email Communications
4. Photos



Application for Variance
TOWN OF CAROLINA BEACH, N.C.

Item 2.

Permit Number: _____

Each application must be printed or typewritten and have all information answered. **It is strongly recommended that the applicant set up a meeting with Planning Staff prior to the submission deadline to ensure the application is complete.** The Town of Carolina Beach requires a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation who is the applicant/owner of record.

Fee: to be submitted with application in accordance with the Town's annually adopted Rates and Fee Schedule

This petition will be scheduled for the next possible regular Board of Adjustment meeting. The applicant or a representative should be present at the meeting to answer any questions the Board may have. Board of Adjustment meetings are held on the third (3rd) Monday of each month at 6:00 P.M. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Applicants will be informed of any changes in date, time, or location of meetings. Applications and supplementary time for processing and postings are required by the General Statutes of North Carolina. **Application Deadline: 25 days prior to next scheduled meeting.**

Applicant Name: Dry Dock Inn

Applicant Mailing Address:

<u>300 Lake Park Blvd S.</u>	<u>Carolina Beach</u>	<u>N.C.</u>	<u>28428</u>
Street Address	City	State	Zip

Applicant Phone Number: mobile/work/home (circle one): 910-408-8390 mobile/work/home (circle one): _____

Applicant Email Address: deanna@reachprop.com

Property Owner Name: Pleasure Island Holdings, LLC

Property Owner Mailing Address:

<u>1001 Military Cutoff Rd Ste 101</u>	<u>Wilmington</u>	<u>N.C.</u>	<u>28405</u>
Street Address	City	State	Zip

Property address of variance being requested:

201 Fayetteville Ave, Carolina Beach N.C. 28428

Property Size: _____ sq. ft.

Zoning Designation: _____

Please give a brief description of requested action:

We are requesting a variance for the back pool fence. The rails are standard 48" but the total height of the fence is 49-1/2" due to the fact our gates need to function and swing open.

Owner Signature: Ladd Gasparovic

Date: 06 / 11 / 2024

Owner Printed Name: Ladd Gasparovic

Variance Requirements

- 1. The Board of Adjustment conducts a quasi-judicial hearing. You may not contact the Board members once the application has been filed.
- 2. The Board of Adjustment is not empowered to modify zoning lines or grant a use variance.
- 3. The Board of Adjustment may attach conditions of approval to a variance to protect surrounding properties.
- 4. Town Staff will place a public hearing sign on the subject property. The sign must be prominently displayed on the property for at least ten days before the hearing. The property owner is responsible for maintaining the sign during this ten day period.

Variance Considerations

The Board of Adjustment will review all variance requests against the criteria below. In the spaces provided, please indicate the *facts* that you intend to show and the *arguments* that you intend to make to the Board.

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made from the property.

We ordered the lowest possible (standard) fence rails in height measuring 48" which would pass County Codes and Carolina Beach Codes. However, our fence cannot sit directly on the pool deck at the 48" as it would cause our gate to be inoperable. The perimeter of the block wall is hollow; the fence had to be installed using posts on plate which the plate will not allow the bottom rail to go any lower. The holes could not be core drilled due to the hollow wall.

2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Unfortunately we can not make the fence the same height by lowering it from its current position without compromising the function of the gate. In order to meet your requirement with the fence in place, the bottom rail will have to rest on the concrete not allowing the gate to function at all. By having the gate stay at its current height and lowering the rest of the fence we still will not have a consistent top rail elevation. Core drilling into the pad is also going to present a challenge to lower the fence further as the block under the pad is hollow, possibly not allowing the concrete for the posts to have somewhere to stop.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

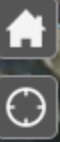
4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

We attempted to install the correct fence as per county and town guidelines of 48" and not to exceed 54". We replaced a fence that had noticable holes and gaps and would not pass inspection with the same size fence and dimensions. Our fence is more secure now to the public with a functioning locked gate.

201 Fayetteville Ave

Show search results for 201 Fayettevil...

Item 2.



205

205

201

20ft
-77.896 34.031 Degrees

17

From: Deanna Lanni <deanna@reachprop.com>
Sent: Thursday, May 30, 2024 11:54 AM
To: Haley Moccia
Cc: Kyle Sears
Subject: Re: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

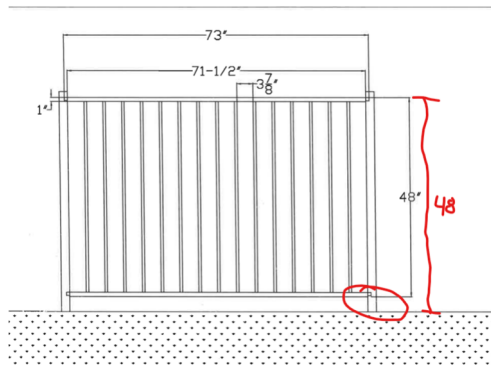
Haley,

I have spoken to Ladd and Kyle regarding our options and Ladd does not want a fence with two different height variations as that will look ridiculous. We are going to go ahead a file for the variance at this point in time. If you could forward the necessary paperwork that would be great. Thank You!

On Thu, May 16, 2024 at 8:39 AM Haley Moccia <haley.moccia@carolinabeach.org> wrote:

Hi Deanna,

In my email to Kyle on April 9th below, the height between cross bars of the fence may be 48", but there is a couple inch gap from that cross section to the concrete pool decking which makes the height of the fence over 48".



Therefore, the proposed fencing would not meet Carolina Beach fencing requirements for fencing within the front set back. I told Kyle this and instead of trying to meet on site or brainstorm other ideas to meet both Town and County pool fencing requirements, you all went ahead and installed the fence without approval... again.

I had asked Kyle if the fence posts could be anchored to the edge of the pool deck instead of on top so the bottom of the cross section could be level with the top of the pool deck (Pic below). I also asked if a different type of fence could be used. When I gave Andrea Thomas a call to check NC Building Code requirements, I asked if a chain link fence could be used to meet NC Building Code requirements and she said it would. There are other options, either possibly through different anchoring or using a different type of fence to meet the Town fence height requirements.



Your options going forward are to either try and anchor the existing fence in a different way (possibly to the side of the pool deck), install a new fence that does not exceed 48", or apply for a variance.

Please let me know which route you will take. I can meet onsite to discuss if needed.

Best,

Haley

[Haley Moccia](#)

Planner

Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428
910-707-2042
www.carolinabeach.org



From: Deanna Lanni <deanna@reachprop.com>
Sent: Wednesday, May 15, 2024 3:45 PM
To: Haley Moccia <haley.moccia@carolinabeach.org>
Cc: Kyle Sears <kyle@searsfence.com>
Subject: Re: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

Haley,

Fencing is sold at heights of 48", 52" and 54" to meet various requirement codes as directed by cities and counties. We went with the lowest one (48") in order to pass code with the town of Carolina Beach AND the county which has less restrictions, as you know. However, you cannot put a 48" fence directly on the ground or pavement or the gates will not function properly and if you move the posts to the exterior it will compromise the integrity of the fencing and the county said we are not allowed to do that. Please advise as we are talking about 1-1/2" variance in order to make sure that our gates work properly otherwise they would be non-functioning.

On Wed, May 15, 2024 at 3:35 PM Haley Moccia <haley.moccia@carolinabeach.org> wrote:

Hi all,

I wanted to check in about my email sent last week. Do you have any updates?

Best,

Haley

Haley Moccia

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

www.carolinabeach.org



From: Haley Moccia
Sent: Friday, May 10, 2024 3:10 PM
To: 'Kyle Sears' <kyle@searsfence.com>
Cc: Deanna Lanni <deanna@reachprop.com>; 'anthomas@nhcgov.com' <anthomas@nhcgov.com>
Subject: RE: 24-004950- Dry Dock pool fence

Hi Kyle,

I went by 201 Fayetteville Ave this afternoon and noticed the fence was already installed without a commercial fence permit being issued. The fence is too tall in the front setback. I spoke with Andrea Thomas today at Environmental Health, after receiving your email, and she confirmed the minimum requirements to meet code is 48". Please contact me as soon as possible with a plan to meet the 48" requirement for the fencing located within the front setback.

Best,

Haley

[Haley Moccia](#)

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

www.carolinabeach.org



From: Haley Moccia
Sent: Friday, May 10, 2024 11:48 AM
To: 'Kyle Sears' <kyle@searsfence.com>
Subject: RE: 24-004950- Dry Dock pool fence

Hi Kyle,

I'll check with NHC Environmental Health Department about the fencing height requirement you mentioned.

Additionally, the Dry Dock Inn has previously done a variance on the fence surrounding the pool on the corner, but this variance was granted after the fence contractor was told it could not exceed 48" and they installed a higher fence anyway. I do not think the Board of Adjustment council members will approve a second one when the owner of Dry Dock already had one granted asking forgiveness after it was installed. This time we have the ability to adhere to the ordinance before the fence is installed. That being said, the owner can go for another variance if they wish, but I would suggest we try and find a way to meet the 48" height before doing that.

Is there a way to put the fence posts on the outside of the pool deck so the bottom horizontal bar sits flush with the pool deck? This way the body of the fence does not exceed 48" from the deck of the pool. Or can you use a different fence type to meet the 48" requirement?

Best,

Haley

[Haley Moccia](#)

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

www.carolinabeach.org



From: Kyle Sears <kyle@searsfence.com>
Sent: Friday, May 10, 2024 10:38 AM
To: Haley Moccia <haley.moccia@carolinabeach.org>
Subject: Re: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

The exact measurements for proper install of the proposed NC pool compliant fence mounted to the concrete with floor flanges is 49 1/2" from the concrete pad. Can we get a

variance for the 1 1/2" difference since this is the minimum height pool fence for a commercial property required by the state of NC?

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

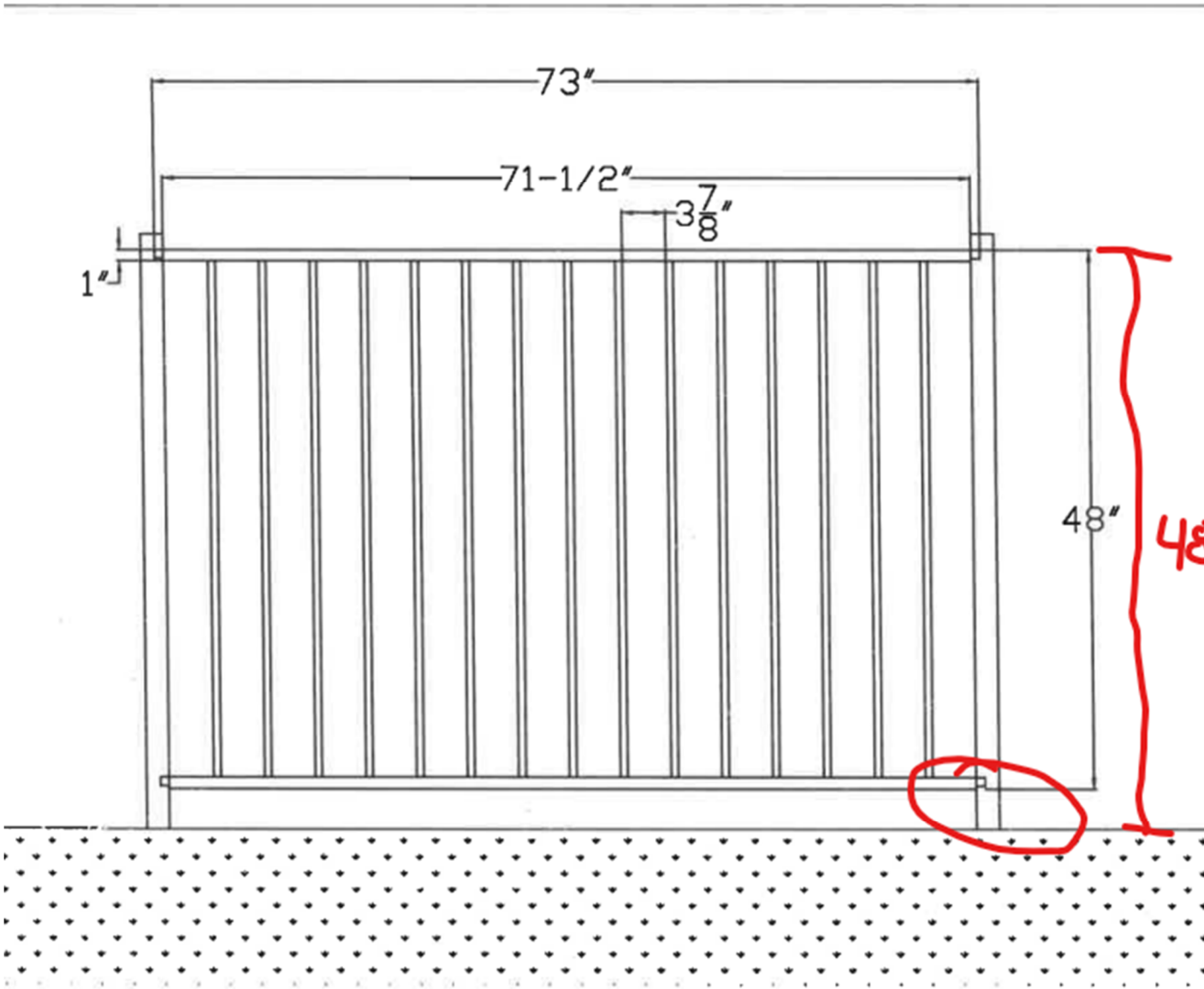
Web: www.searsfence.com

On Tue, Apr 9, 2024 at 1:58 PM Haley Moccia <haley.moccia@carolinabeach.org> wrote:

Hi Kyle,

I took a look at what you are proposing, and our ordinance only allows fences of up to 48" in the front setback measured from the top of the slab or grade. The fence section you submitted shows the main body of the fence being 48" and there is a few inch gap between the main fence section and the slab. Technically, the fence cannot exceed 48" including the gap under the fence. See pic below. I will have to mark it resubmit at the county so you can adjust your plans to meet our fence height requirements for fencing in the front setback.

Let me know if you have any questions.



Haley Moccia

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

www.carolinabeach.org



From: Kyle Sears <kyle@searsfence.com>
Sent: Tuesday, April 9, 2024 8:41 AM
To: Haley Moccia <haley.moccia@carolinabeach.org>
Subject: Fwd: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

H, Good morning. Can you please look into this for me please?

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

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

From: Thomas, Andrea <anthomas@nhcgov.com>
Date: Mon, Apr 8, 2024 at 3:31 PM
Subject: RE: 24-004950- Dry Dock pool fence
To: Kyle Sears <kyle@searsfence.com>

It looks like Town of CB still needs to complete their review.

Andrea Thomas

Env Hlth Prog Specialist
New Hanover County - Health and Human Services
(910) 798-6663 p | (910) 798-7815 f
anthomas@nhcgov.com
230 Government Center Drive, Suite 140
Wilmington, NC 28403
www.NHCgov.com

From: Kyle Sears <kyle@searsfence.com>
Sent: Wednesday, April 3, 2024 3:00 PM
To: Thomas, Andrea <anthomas@nhcgov.com>
Subject: Re: 24-004950- Dry Dock pool fence

**** External Email: Do not click links, open attachments, or reply until you know it is safe ****

Hi Andrea,

I wanted to check and see if this was complete? According to Coast, I have one pending and one complete but I do not see any fees.

Thank you

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

On Fri, Mar 29, 2024 at 9:29 AM Kyle Sears <kyle@searsfence.com> wrote:

Ok, Thank you.

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

On Thu, Mar 28, 2024 at 10:02 PM Thomas, Andrea <anthomas@nhcgov.com> wrote:

Thank you. I approved with a note that bottom gap needs to 2” or less and the magna latch at 54”. We will need to do a final inspection. Also my approval is pending CB and building safety’s reviews and approvals.

Andrea Thomas

Env Hlth Prog Specialist
New Hanover County - Health and Human Services
(910) 798-6663 p | (910) 798-7815 f
anthomas@nhcgov.com
230 Government Center Drive, Suite 140
Wilmington, NC 28403
www.NHCgov.com

From: Kyle Sears <kyle@searsfence.com>
Sent: Thursday, March 28, 2024 10:58 AM
To: Thomas, Andrea <anthomas@nhcgov.com>
Subject: Re: 24-004950- Dry Dock pool fence

**** External Email: Do not click links, open attachments, or reply until you know it is safe ****

Andrea,

Yes, the latch will be a magna latch top pull lockable magnetic latch with the top pull release mechanism located 54" from the concrete pad.

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

On Thu, Mar 28, 2024 at 7:27 AM Thomas, Andrea <anthomas@nhcgov.com> wrote:

Kyle,

Do you have the specifications for what kind of latch will be used for the gate? It will need to comply with .2528 of the rules. If you can send this information today, that would be great.

Thank you.

Andrea

15A NCAC 18A Fences (a)(7)

Access gates shall comply with the dimensional requirements for fences and shall be equipped to accommodate a locking device. Effective April 1, 2011, pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device except where a gate attendant and lifeguard are on duty. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism shall require the use of a key, combination or card reader to open or shall be located on the pool side of the gate at least three inches below the top of the gate, and the gate and barrier shall have no openings greater than 0.5 inch within 18 inches of the release mechanism;

Andrea Thomas
Env Hlth Prog Specialist
New Hanover County - Health and Human Services
(910) 798-6663 p | (910) 798-7815 f
anthomas@nhcgov.com
230 Government Center Drive, Suite 140
Wilmington, NC 28403
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DEE LANNI
*Dry Dock Inn GM
Property Specialist*
☎ 910-408-8390
✉ deanna@reachprop.com
📍 Wilmington, NC
🌐 ipmcarolinas.com
🌐 drydockinn.com

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DEE LANNI

*Dry Dock Inn GM
Property Specialist*

📞 910-408-8390

✉ deanna@reachprop.com

📍 Wilmington, NC

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🌐 drydockinn.com





AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Sr Planner

DEPARTMENT: Community
Development

MEETING: Board of Adjustment – 3/3/25

SUBJECT: Variance to the required 20' front yard setback for 1621 S Lake Park Blvd.

Applicant: Philip Humphrey, pghARCHITECTURE, PC

BACKGROUND:

The applicant is requesting a variance of up to 7' from Article 3 of the UDO that requires a 10' front yard setback. The property is located at 1621 Lake Park Blvd S and is in the MF zoning district. The property consists of a 0.68-acre lot, Lots 1-3, 20-22 BLK 2 Wilmington Beach. The existing use is a Motel. There is an existing permit for renovation work at the property.

There is an existing walkway structure that is 3'-11¾" from the front property line. The existing walkway is raised and has steps leading up to the front door. The applicant would like to provide an accessible route for entry to the common spaces of the building. The applicant would like to construct an ADA compliant ramp in the current footprint of the walkway. To meet ADA requirements, the ramp would have to be expanded by 10.5". The ramp railing is proposed to be greater than 30" from the adjacent grade. Structures below 30" are permitted within the setback. However, a variance must be granted to accommodate the railing.

To resolve the situation the applicant requests up to a 7' variance to the required 10' front yard setback. The structure meets the minimum required side (7.5'), corner side (12.5') and rear (10') yard setbacks.

REQUIRED FINDINGS:

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

CONDITIONS:

In granting any variance, the Board may prescribe reasonable and appropriate conditions and safeguards, in conformity with this ordinance. Violation of any such conditions or safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under the UDO:

If the board supports the findings staff recommends the below condition for the variance

The variance is granted for the existing house and pool only and any new structures on the property shall conform to the setback requirements.

ATTACHMENTS:

1. Application
2. Plans
3. Photo of existing



Application for Variance
TOWN OF CAROLINA BEACH, N.C.

Item 3.

Permit Number: _____

Each application must be printed or typewritten and have all information answered. It is strongly recommended that the applicant set up a meeting with Planning Staff prior to the submission deadline to ensure the application is complete. The Town of Carolina Beach requires a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation who is the applicant/owner of record.

Fee: to be submitted with application in accordance with the Town's annually adopted Rates and Fee Schedule

This petition will be scheduled for the next possible regular Board of Adjustment meeting. The applicant or a representative should be present at the meeting to answer any questions the Board may have. Board of Adjustment meetings are held on the third (3rd) Monday of each month at 6:00 P.M. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Applicants will be informed of any changes in date, time, or location of meetings. Applications and supplementary time for processing and postings are required by the General Statutes of North Carolina. Application Deadline: 25 days prior to next scheduled meeting.

Applicant Name: Philip Humphrey/pghARCHITECTURE, pc

Applicant Mailing Address: 4006 Park Avenue, Wilmington, North Carolina, 28403

Applicant Phone Number: mobile/work/home (circle one): 910-297-9570 mobile/work/home (circle one): Mobile

Applicant Email Address: pgharchitecture@gmail.com

Property Owner Name: Rob McCord, 1621 Lake Park Boulevard LLC

Property Owner Mailing Address: 676 Swedeford Rd East/Suite 350B, Wayne, PA, 19087

Property address of variance being requested: 1621 Lake Park Boulevard S

Property Size: 30,000 sq. ft. Zoning Designation: MF

Please give a brief description of requested action:

In order to provide an accessible route to common area doors on building's west side, the owner is requesting a variance

to increase the existing front yard setback encroachment by 10"-11".

Owner Signature: *Rob McCord*

Date: 11/04/2024

Owner Printed Name: Rob McCord

Variance Requirements

- | |
|---|
| 1. The Board of Adjustment conducts a quasi-judicial hearing. You may not contact the Board members once the application has been filed. |
| 2. The Board of Adjustment is not empowered to modify zoning lines or grant a use variance. |
| 3. The Board of Adjustment may attach conditions of approval to a variance to protect surrounding properties. |
| 4. Town Staff will place a public hearing sign on the subject property. The sign must be prominently displayed on the property for at least ten days before the hearing. The property owner is responsible for maintaining the sign during this ten day period. |

Variance Considerations

The Board of Adjustment will review all variance requests against the criteria below. In the spaces provided, please indicate the *facts* that you intend to show and the *arguments* that you intend to make to the Board.

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made from the property.

The hardship is created by limiting the opportunity for patrons with disabilities to access common areas provided by the establishment.

2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The structure was built in 1968, prior to the zoning ordinance. Enactment of the ToCB Zoning Ordinance created a non-conforming encroachment on the front yard setback.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The ADA requires that alterations to primary function areas of an existing building also provide an accessible path of travel to the area.

4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved. .

The requested variance will not reduce public safety and will provide equal access to the establishment's amenities to all patrons.

Issue: Local Laws, Ordinances, and Regulations

Common Problem:

City governments may fail to consider reasonable modifications in local laws, ordinances, and regulations that would avoid discrimination against individuals with disabilities.

Result:

Laws, ordinances, and regulations that appear to be neutral often adversely impact individuals with disabilities. For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district, installing a ramp to ensure access for people who use wheelchairs may be impermissible without a variance from the city. People with disabilities are therefore unable to gain access to businesses in the city.

City Zoning



City zoning policies were changed to permit this business to install a ramp at its entrance.

Requirement:

City governments are required to make reasonable modifications to policies, practices, or procedures to prevent discrimination on the basis of disability. Reasonable modifications can include modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks. In addition, city governments may consider granting exceptions to the enforcement of certain laws as a form of reasonable modification. For example, a municipal ordinance banning animals from city health clinics may need to be modified to allow a blind individual who uses a service animal to bring the animal to a mental health counseling session. 28 C.F.R. §§ 35.130(b)(7) and 35.136.

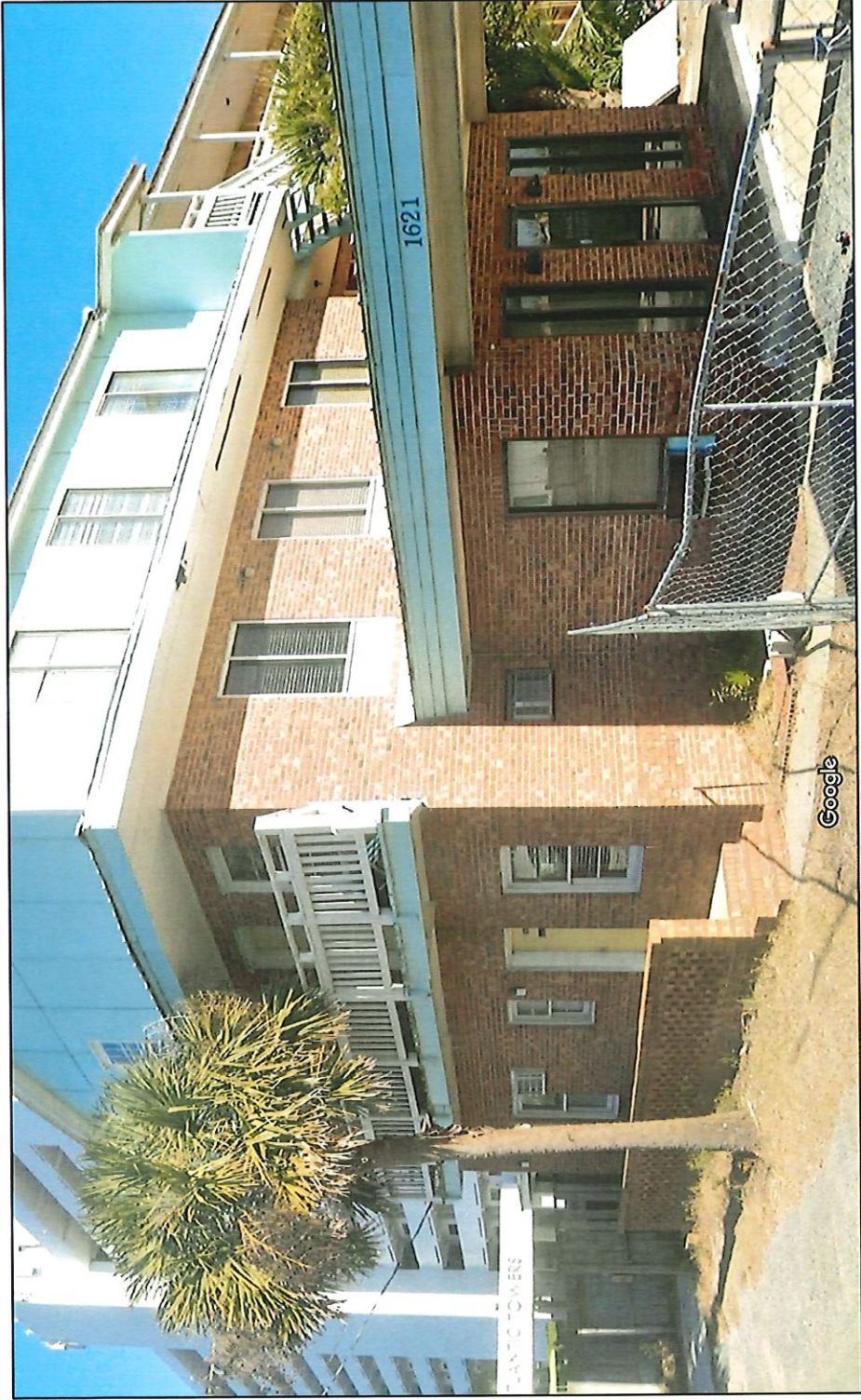
<https://www.ada.gov/resources/ada-city-governments/>

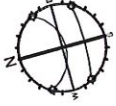
Existing Elevation	
Revision 1	Rev'd Drawing: April 26, 2024
Revision 2	Revised
Revision 3	
Revision 4	
Revision 5	
Revision 6	
Revision 7	
Revision 8	
Revision 9	
Revision 10	

Oceaner Motel
 Aberdeen - Level 3
 1621 Lake Park Blvd S
 Wilmington, NC 28403428



pgH ARCHITECTURE
 910-297-9570
 4005 PARK AVENUE
 WASHINGTON, NORTH CAROLINA
 pg.h@architectural.com



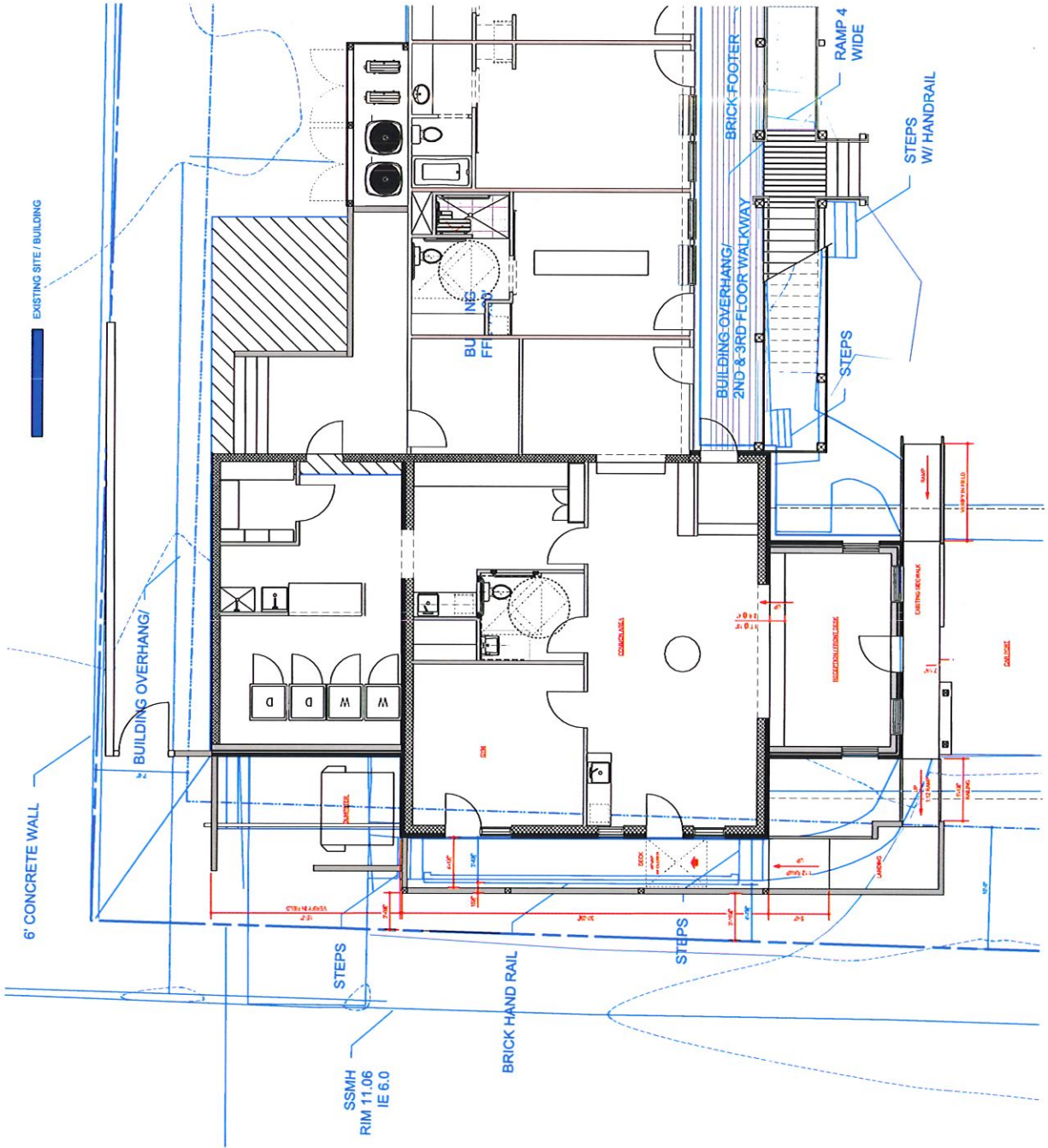


Project Name	Front Seaback
Project No.	
Revision	
Date	April 25, 2024
Drawn By	
Checked By	
Approved By	

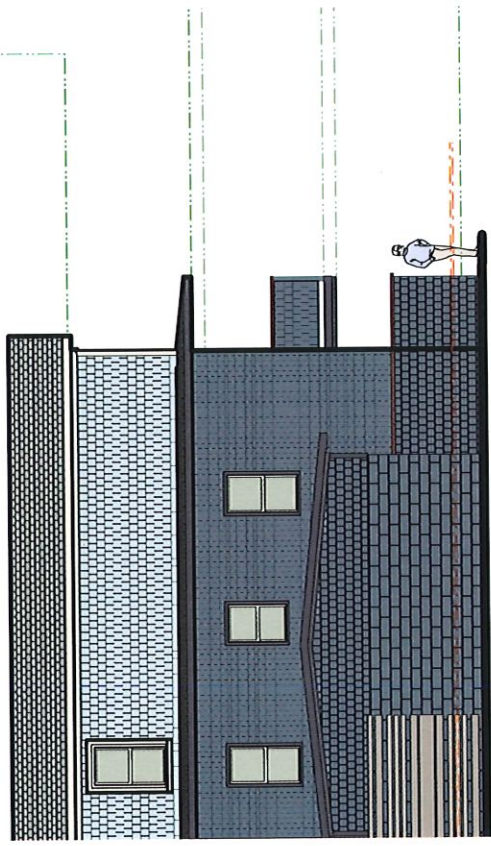
Oceaneer Motel
 Abstraction - Level 3
 1621 Lake Park Blvd S
 Wilmington, NC 28403428



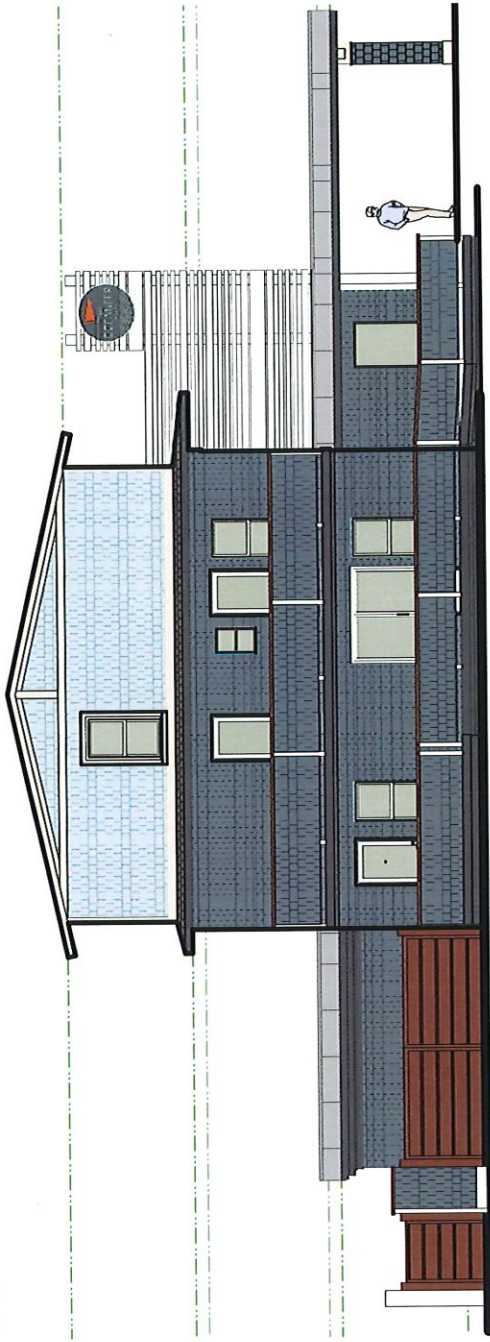
pg|ARCHITECTURE
 910-297-9570
 4006 PARK AVENUE
 WILMINGTON, NORTH CAROLINA
 pg|arch@wilmington.com



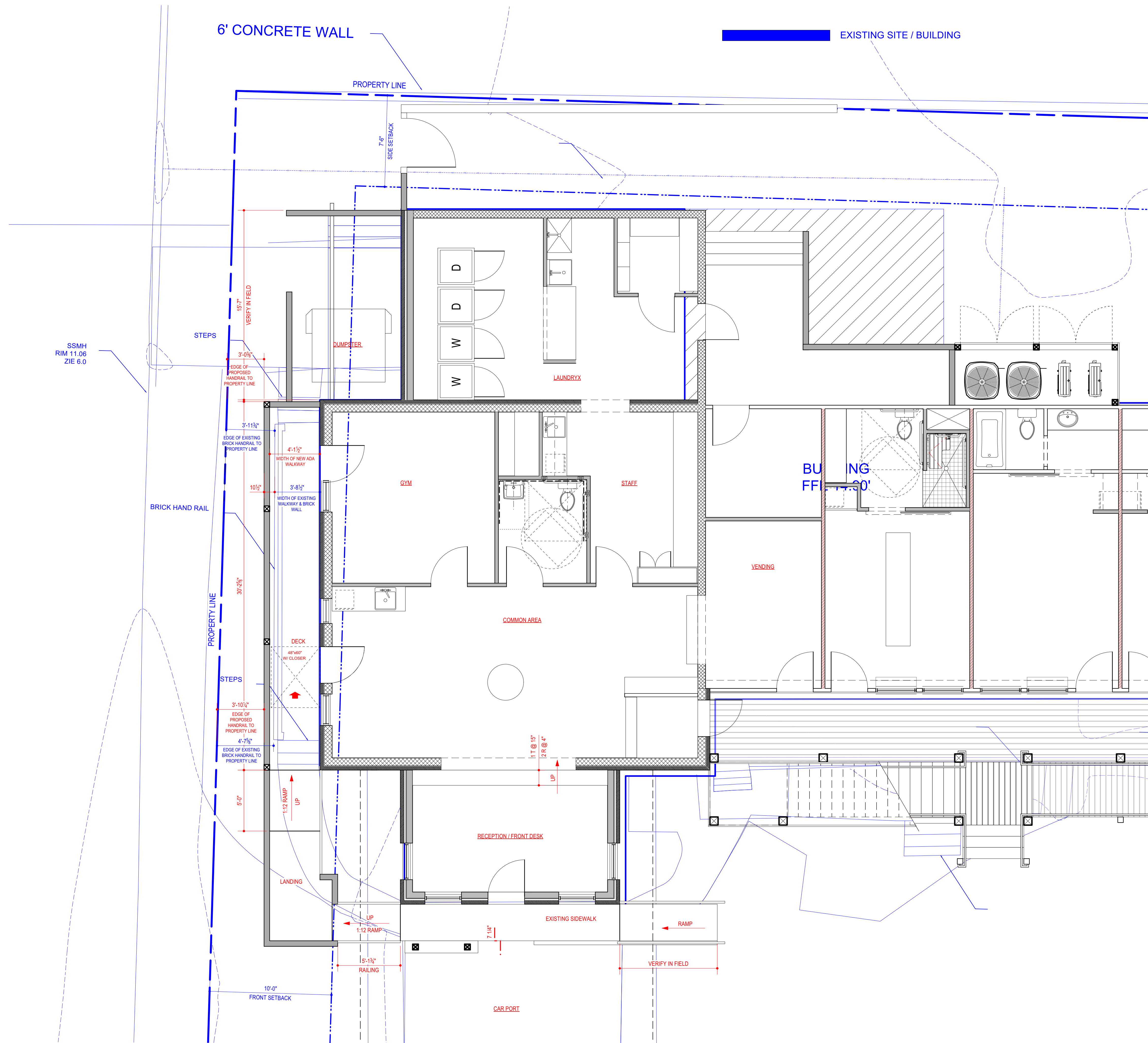
8 Site Plan
 BD2
 scale 1/4" = 1'-0"



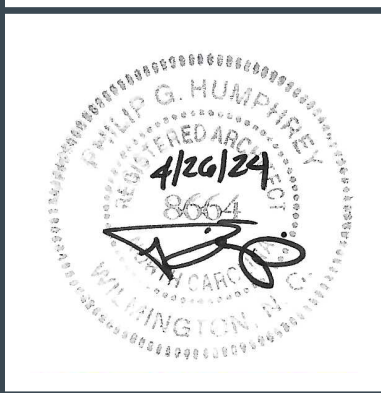
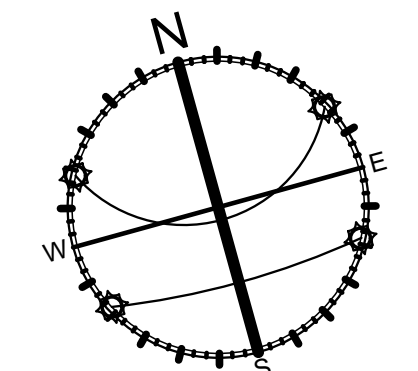
1 North Elevation 0 4 FT
 scale 1/8" = 1'-0"
 BD3



2 West Elevation 0 4 FT
 scale 1/8" = 1'-0"
 BD3



8 Site Plan
 BD1 scale 1/4" = 1'-0"



Front Setback

Permit Drawings - April 26, 2024

Revision	Revisions
Revision 1	
Revision 2	
Revision 3	

W. G. HUMPHREY
 Pgh ARCHITECTURE, P.C. 2024



pg^hARCHITECTURE

910-297-9570
4006 PARK AVENUE
WILMINGTON, NORTH CAROLINA
pg^harchitecture@gmail.com



Oceaneer Motel

Alteration - Level 3
1621 Lake Park Blvd S
Wilmington, NC 28403-428

Existing Elevation

Permit Drawings	: April 26, 2024
Revisions	
Revision 1	
Revision 2	
Revision 3	
Pgh ARCHITECTURE - P.C. 2024	