

CAROLINA BEACH

Board of Adjustment Meeting

Monday, April 22, 2024 – 6:00 PM

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



AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

- [1.](#) January 22nd, 2024 – BOA Minutes

PUBLIC HEARING

- [2.](#) Variance to Building Setbacks - Sec. 40-74. - Dimensional standards for lots and principal structures.

NON-AGENDA ITEMS

ADJOURNMENT



AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Senior Planner

DEPARTMENT: Planning &
Development

MEETING: Board of Adjustment – April 22nd, 2024

SUBJECT: January 22nd, 2024 – BOA Minutes

Action:

Approve the January 22nd, 2024 minutes

CAROLINA BEACH

Board of Adjustment Meeting

Monday, January 22, 2024 - 6:00 PM

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



MINUTES

CALL TO ORDER

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

PRESENT

Chairman Wayne Hartsell
Vice Chairman Patrick Boykin
Board Member Paul Levy
Board Member Ken Thompson
Board Member Tim Howard

ABSENT

Board Member Jullena Shelley

ALSO PRESENT

Planning Director Jeremy Hardison
Senior Planner Gloria Abbotts
Planner Haley Moccia
Board Attorney Matt Nichols

APPROVAL OF MINUTES

1. December 5 and December 18, 2023 – Board of Adjustment Minutes

For December 5, 2023:

ACTION: Motion to approve

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

Voting Yea: Chairman Hartsell, Vice Chairman Boykin, Board Member Levy, Board Member Thompson,
Board Member Howard

Motion passed unanimously

For December 18, 2023:

ACTION: Motion to approve

Motion made by Board Member Thompson

Voting Yea: Chairman Hartsell, Vice Chairman Boykin, Board Member Levy, Board Member Thompson,
Board Member Howard

Motion passed unanimously

PUBLIC HEARINGS

2. To consider an appeal from Sec. 40-425 - Extension or enlargement of nonconforming situations, including land uses and buildings, and Sec. 40-426 - Reconstruction, maintenance, full or partial demolition, and renovation of nonconforming situations

One of the roles of the Board of Adjustment is to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by staff. The applicant, Oceana Owners Association Inc./Olin Furr, submitted an appeal referencing Sec. 40-425 - Extension or enlargement of non-conforming situations, including land uses and buildings, and Sec. 40-426 - Reconstruction, maintenance, full or partial demolition, and renovation of non-conforming situations.

The appeal was submitted after staff received a complaint against staff and the property owner of an existing non-contiguous parking lot located inside the Oceana subdivision that serves the Carolina Beach Yacht Club and Marina at 401 Marina Street. The complaint specifically addresses the allowed increase in parking space(s) in a non-conforming parking lot. A zoning determination letter was sent to Mr. Furr outlining staff's interpretation of Sec. 40-425.

Non-conforming

A non-conforming situation or use means a situation or use of the property that was in existence prior to a zoning change that would not allow the situation or use to occur under the existing ordinance. Non-conformity allows a landowner that is using land in a certain way prior to the enactment of a zoning ordinance to continue the prior use, even if the existing ordinance does not allow for it. An example is a commercial use operating in a residential zoning district may be non-conforming. If a use or situation is considered non-conforming, then the ordinance outlines if and when that use can be expanded.

In the situation with the marina, it consists of two properties. One property is located in commercial zone MB-1 (Marina Business) that has a building with a residential unit, parking lot, marina with slips, fuel dock, and a retail/eating and drinking barge. The Oceana parking lot that is owned by the same entity as the marina is utilized to meet the required parking. This parking lot is zoned R-1B (residential). The parking lot is considered non-conforming because it is existing and would not be allowed under the current ordinance. Non-contiguous parking lots located in residential areas are not allowed to serve commercial uses.

History of the property

- February 1982: A Conditional Use Permit (CUP) was issued for 372 multi-family residential units in a Planned Unit Development (PUD) with a marina that was in one ownership for the land that now consists of Spinnaker Pointe, Oceana subdivision, and Carolina Beach Yacht Club and Marina. The property was all zoned RA-6 at that time.
- 1985: Four multi-family buildings were built, individual units were sold, the common area was dedicated to Spinnaker Pointe homeowners association, the marina had been excavated, and a building was on the site (Carolina Beach Yacht Club and Marina), according to New Hanover County tax records.

- March 8, 1994: Phase one Oceana subdivision approved for 32 lots.
- August 9, 1994: Marina property was rezoned from RA-6 to MB-1.
- September 23, 1994: Phase two Oceana subdivision approved for 17 lots, which created the parking lot and easement to access the boat slips for the marina.
- 1994: Lots were offered for purchase.
- 1996: The property of Carolina Beach Yacht Club and Marina and the parking lot were sold.
- September 2019: The marina applied for a CUP to add an eating and drinking establishment and a ship store located on a barge.
- November 2019: Petition by Oceana Owners Association to appeal the allowance of the use of a non-conforming parking lot. The allowance was upheld.
- January 2020: The CUP was not passed by Council (2-2 vote).
- April 2020: The marina owner filed a petition seeking an appeal.
- May 2020: Oceana Owners Association filed a verified motion to intervene.
- September 2020: The hearing of the appeal was canceled based upon the parties entering into an agreement and resolution.
- December 2020: The agreement was executed to issue the CUP with conditions.
- 2021: A building permit and site plan approval was issued based on the CUP authorization that depicted 56 parking spaces located in the Oceana parking lot.
- 2023: The marina has applied for a CUP modification to expand boat slips and proposes to add seven parking spaces to the Oceana parking lot.
- 2023: Zoning permit final inspection.

When staff did a final inspection in the Oceana parking lot, a transformer was encroaching on two parking spaces. There was also a neighbor's block fence that was encroaching on a parking space in the parking lot of the marina building. Neither encroachment was depicted on the approved site plan. The applicant opted to relocate these spaces in the Oceana parking lot under a minor modification approved by staff. This increased the total number of spaces from 56 to 57 parking spaces.

Staff's determination

This appeal is regarding staff's determination that the additional space located in the Oceana subdivision is not allowed under Sec. 40-425 and Sec. 40-426. Sec. 40-425 states that "no increase in the extent of non-conformity, except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation." The section further states that "the increase in volume, intensity, or frequency of non-conforming use may be allowed. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind."

Based on Sec. 40-425, staff's determination is that the extent of the facility has not increased in size, just the volume of the number of parking spaces within the boundary of the facility. It is staff's determination that the non-conforming parking lot is allowed to increase the number of parking spaces within the property boundaries. Sec. 40-426 that was referenced in the appeal is regarding buildings and structures, and staff does not believe that it applies to a parking lot in this case.

Board action

The Board shall hear and decide appeals for decisions of administrative officials charged with enforcement of the zoning or unified development ordinance. The Board can agree or deny staff interpretation of the ordinance Sec. 40-425 and Sec. 40-426.

Mr. Nichols went over procedural information and gave an overview of the matter. The following attorneys were in attendance: Wes Hodges, representing Oceana Owners Association; Noel Fox, representing the Town; and Grady Richardson, representing Carolina Beach Yacht Club and Marina.

Individuals planning to speak on the matter were sworn in. Mr. Hardison presented the details.

Mr. Hodges thanked the Board for allowing a continuance from December 18 due to a full Board not being present at that time. He said the legal, non-conforming use of the property is a 56-space parking lot, and the issue now is whether adding parking spaces within the property is a permissible expansion of that non-conforming use. He said Mr. Hardison's determination is that it is permissible, and his client is appealing this.

Mr. Hodges said there are multiple reasons why the determination was wrong, centering his argument around Sec. 40-425(d), which states that non-conformity may not be increased to cover more land. He said public policy of the State is to disfavor non-conforming uses. Mr. Hodges said in the past, Mr. Hardison has said adding parking is increasing land. Mr. Hardison said in this case, the marina is relocating spaces within the parking facility and not adding additional land to the facility.

Mr. Hodges played a video of an excerpt from the January 14, 2020, Town Council meeting in which Mr. Hardison said it's increasing the land if parking is being added, but parking is not being added and the intent is simply trying to conform to the parking standard.

Mr. Hodges asked if a parking lot is a structure. Mr. Hardison said it's never been staff's interpretation that a parking lot is a structure. Mr. Hodges asked Mr. Hardison if Town ordinances state that anything constructed or erected within a fixed location on the ground is a structure. Mr. Hardison said yes.

Ms. Fox asked Mr. Hardison to describe his education and experience in his field. He said he holds a Master of Public Administration and has worked with the Town for 21 years, including 5 years as Planning & Development Director.

Ms. Fox asked Mr. Hardison to characterize what it would mean in terms of the non-conforming use ordinance to move things around within the parking lot area. Mr. Hardison said this would be consistent with the ordinance and would not be a violation. Ms. Fox asked if the total area of the proposed use for a parking lot has increased in acreage or size. Mr. Hardison said no.

Mr. Richardson said he had no questions for Mr. Hardison at that time.

Mr. Hodges called Olin Furr of 440 Oceana Way, President of Oceana Owners Association, to the podium. Mr. Furr asked the Board to allow his presentation into the record to supplement the

information already presented about the history of the property, and he handed out information to Board Members.

Mr. Richardson objected to the handouts because he said they may not be relevant and may contain hearsay. Mr. Nichols said Mr. Richardson is just clarifying that he hasn't seen the material and may have objections. Mr. Hartsell said this was noted into the record.

Mr. Richardson said issues of the parking lot's non-conformity were the prior subject of an appeal that was resolved by this Board in 2020 by a decision that was not appealed. He said this is an attempt to go back in time and re-litigate a decision already made on this issue.

Chairman Hartsell called all counsel forward. He asked them to present good evidence for the Board to make a decision and reminded them that Board Members are not attorneys and should not be smothered with legal talk.

Ms. Fox seconded the objection by Mr. Richardson and said the history is not germane to the Board. Chairman Hartsell said he thinks she is correct.

Mr. Furr also referenced a consent order in the packet and contended that it was violated. Ms. Fox said that is also not relevant to the issue. Chairman Hartsell said he has read the consent order and thinks some of it is relevant and some is not, and he urged Mr. Furr to finish his presentation.

Mr. Furr said the parking lot has increased by 3 spaces, and parking has been added where it shouldn't be. Mr. Nichols asked him to present factual evidence and allow the attorneys to make legal arguments. Chairman Hartsell said Mr. Furr is reiterating things Board Members already know and suggested he has used all the bench time he needs.

Mr. Hodges asked Mr. Furr if the marina has ever had use of the two parking spots where the transformer is. Mr. Furr said no. He said it's important that the parking lot stays as inactive and small as possible because of where it is located. Mr. Hodges asked what issues he expects could arise with the parking lot. Mr. Furr said adding parking spaces will increase traffic and noise and allow unauthorized people to come into a gated residential community.

Ms. Fox asked if all parking spaces are the property of the marina. Mr. Furr said yes.

Mr. Richardson asked if Oceana gets the benefit of non-exclusive use of the parking lot to park in 9 spaces. Mr. Furr said yes.

Chairman Hartsell opened the meeting to others for comment on the matter. No one requested to speak.

Board Member Thompson said the matter boils down to the difference between the definition of a parking lot and a parking space. Mr. Hodges said covering new land with parking spaces is unlawful in this case. He said the facts are not in dispute, just the legal interpretation. He said there are three more

spaces that can now be parked in than when Carolina Beach Yacht Club and Marina acquired the property.

Attorneys gave brief closing arguments and summation of evidence.

Ms. Fox said the Board must make a decision based on competent material and substantial evidence. She said some of tonight's testimony is not material to the issue and asked the Board to uphold staff's determination.

Mr. Richardson said the Oceana Owners Association has not offered any expert testimony or competent evidence but rather some general assertions about traffic, noise, and other undesirable elements. He said no land is being added to the parking lot area and asked the Board to uphold staff's determination.

Mr. Hodges said the 2019 use of the land was a 56-space paved parking lot, and that's the use that was deemed lawful and non-conforming. He said it cannot be expanded unless certain criteria are met. He asked the Board to reverse staff's decision.

Mr. Nichols reminded Board Members that they must determine facts based upon material, substantial, and competent evidence presented this evening, and they must apply these facts to relevant standards and ordinances.

ACTION: Motion that the parking spaces can be moved wherever the owner desires within the existing non-conforming parking lot so long as the total number of spaces does not increase from 56
 Motion made by Board Member Levy, seconded by Board Member Howard
 Voting Yea: Board Member Levy, Board Member Howard
 Voting Nay: Chairman Hartsell, Vice Chairman Boykin, Board Member Thompson
Motion failed 2-3

Hartsell asked if there was another motion.

ACTION: Motion to accept Mr. Hardison's ruling as correct, that we recognize that the non-conformance applies to the lot, and that rearrangement of parking spaces within the lot is an adjustment of the density of parking, which is a question of intensity not an increase in land
 Motion made by Board Member Thompson, seconded by Vice Chairman Boykin
 Voting Yea: Chairman Hartsell, Vice Chairman Boykin, Board Member Levy, Board Member Thompson, Board Member Howard
Motion passed unanimously

3. Variance to building setbacks - Sec. 40-74 - Dimensional standards for lots and principal structures

Variance to building height - Sec. 40-74 - Dimensional standards for lots and principal structures

Variance to lot coverage - Sec. 40-426 - Reconstruction, maintenance, full or partial demolition, and renovation of nonconforming situations and Sec. 40-74 - Dimensional standards for lots and principal structures

On July 27, 2022, applicant North Pier Holdings LLC acquired a fee simple interest in all 42 units within North Pier Ocean Villas Condominiums from North Pier Ocean Villas Homeowners Association Inc. (HOA) for a sales price of \$8.3 million following proceedings in bankruptcy court. The property is at 1800 Canal Drive.

The property, currently improved with condominium units, is an irregularly shaped area containing 33,541 gross square feet or approximately 0.8 acres. The property is bounded by Carolina Beach Pier House, a rock revetment, Carolina Beach Pier, and the Atlantic Ocean to the east, Canal Drive to the west, Island North condominium complex to the south, and a privately owned parking lot (which is leased to the Town for public parking) to the north.

According to Flood Plain Map number 3720313000K, dated August 28, 2018, the property is located within a special hazard flood zone (Zone Coastal AE-12). This structure is considered legal non-conforming because it does not meet current Federal Emergency Management Agency (FEMA) flood requirements, Town ordinance requirements, nor current Coastal Area Management Act (CAMA) requirements. The buildings (1 and 2) are limited in their improvements. The total cost of the improvements is not permitted to exceed 49% of the "as is" market value of the structures (buildings 1 and 2). If the renovation exceeds this cap, the buildings would be required to come into compliance with all Town ordinances, FEMA flood requirements, and CAMA requirements. The current proposed renovations do not exceed 49%, and therefore the applicant was allowed to renovate as long as the existing building (pre-renovation) setbacks and lot coverage were not enhanced.

The property is located within the R-1 zoning district, which usually supports single-family/2-family dwellings. It does not permit multi-family structures.

The condominium structures were constructed beginning in 1984 and 1985 and consist of 2 cosmetically attached but structurally independent 3-level piling-supported wood-frame buildings containing 42 individual residential units: Building 1 consists of 15 (3 floors x 5) individual residential units, and building 2 consists of 27 (3 floors x 9) individual residential units. The pool area was constructed between 1985 and 1992.

Following deferred maintenance by the prior HOA during Hurricane Dorian in 2019, building 1 experienced significant storm damage. The applicant describes it as uninhabitable, but it was not condemned by the Town. The HOA chose not to make the necessary repairs for financial reasons, and building 1 remained in this state of disrepair for several years. Building 2 experienced minor damage from Hurricane Dorian and continued to be used as vacation rentals following the storm.

At the time the applicant acquired the property, the buildings, in particular building 1, were in significant disrepair, including mold and structural issues. The Town's Building Inspector at that time, Darrel Johnson, informed the applicant that he had the authority to require either demolition to prevent the structures from becoming storm debris if a major hurricane neared the coast or to secure.

Shortly after the applicant purchased the property on July 27, 2022, beginning in August 2022, the applicant began maintenance and repair activities of buildings 1 and 2. In addition to these activities, in February 2023 the existing pool plumbing under the in-ground pool's surrounding deck was not functioning, and the applicant contends it needed to be replaced. The concrete pool deck was cracked and created dangerous conditions for pool users. As a result, the applicant removed the pool deck without a demolition or renovation permit and proposes to fix the plumbing, repair the retaining wall, and replace the pool deck.

On April 20, 2023, the Town issued a violation to the applicant for enclosing unheated areas of building 1 within the CAMA setback. The applicant also did not have a renovation permit for this work. The applicant contends there was a misunderstanding with the Building Inspector regarding the ability to enclose the unheated square footage based on their ability to secure the building prior to Hurricane Dorian in 2019. The applicant applied for a CAMA variance to permit the following: enclose the decks located on the northeast corner of building 1, expand the decks on the northeast corner of building 1, add a penthouse to building 1, enclose an entryway into 6 units located on the east side of building 1, and add a smaller proposed pool deck back within the CAMA buffer. CAMA granted a variance for the enclosures and pool deck but denied the expansion of the northeast decks and penthouse on building 1.

To date, a building permit has been issued for the renovation and repair of the buildings. The renovation included combining some residential units, moving interior walls, replacing and fortifying the roof, replacing siding and decking, and adding windows. A second building permit was issued for the addition of 4 penthouse units on top of building 2, the reconstruction of breezeways and a small storage closet, and relocation of the elevators and staircases. The proposed number of units overall decreased from 42 to 40.

HEIGHT

The maximum height limit for the R-1 zoning district, in which this building is located, is 50 feet. Leading up to the variance request, the applicant stated they ran into an unexpected issue with the design of their proposed elevator shafts. The elevators were originally designed and approved to not exceed 50 feet and stay level with the roof line on top of the added penthouses on building 2. The applicant requests a total of 55 feet and 4 inches of height for the elevator shaft.

SETBACKS

The R-1 zoning district allows a minimum front setback of 20 feet and a minimum corner side setback of 12.5 feet. With the change in the design of the elevators and staircases, the applicant also proposes to encroach further into the front and side building setbacks. The front property line would be adjacent to Canal Drive, and the side property line would be adjacent to Salt Marsh Lane. The setbacks required by Town ordinance are a 20-foot front setback and a 12.5-foot side setback. The existing building, before demolition and reconstruction began, was considered legal non-conforming because the building was already encroaching into the front and side setbacks.

The applicant proposes enlarging the staircase, which would cause further encroachment into the building setbacks. The existing most forward staircase along the front property line was located on

building 2 and was 6 feet and 8 inches. The new most forward front setback would be 3 feet and 9 inches. The existing most forward staircase in the side setback was 6 feet and 11 inches. The proposed new most forward side setback would be 6 inches.

LOT COVERAGE

The applicant also desired to enlarge the size of the residential balconies on buildings 1 and 2, add an elevator machinery room/vending room, add a trash chute, enlarge a storage closet between the buildings, and relocate and enlarge the staircases and elevator. These proposed additions and enlargements contribute to the increase in lot coverage proposed by the applicant. The Town ordinance allows lot coverage not to exceed 40%. The building was already legally non-conforming for lot coverage. The existing lot coverage was 15,776 square feet (47%). The lot coverage of the building approved for the renovation and building permits was 15,774 square feet (46.99%). The proposed variance lot coverage would be 16,512 square feet (49.2%). This is an increase of approximately 736 square feet.

SUMMARY

The applicant is seeking 3 separate variances:

- Building height (50-foot maximum) – Exceed the maximum 50-foot height limitation by 5 feet and 4 inches for a total height of 55 feet and 4 inches for the elevator shaft.
- Front and side building setbacks (20 feet for front and 12.5 feet for side) – The front setback would change from the existing (pre-renovation) setback of 6 feet and 8 inches to the proposed variance front setback of 3 feet and 9 inches. The side setback would change from the existing (pre-renovation) setback of 6 feet 11 inches to the proposed variance front setback of 6 inches.
- Lot coverage (40%) – The total lot coverage would expand by approximately 738 square feet and would change from the existing (pre-renovation) lot coverage of 15,776 square feet (47%) to the proposed variance lot coverage of 16,512 square feet (49.2%).

Ms. Moccia presented the details. She showed aerial maps of the project site and summarized the background of the property. Ms. Moccia also reviewed pre-construction plans, approved building plans, plans submitted with variance, and the 4 required findings that must be met for the variances to be granted:

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.

Ms. Moccia also said in granting any variance, the Board may prescribe reasonable and appropriate conditions and safeguards in conformity with the ordinance.

Board Member Thompson asked if staff has an opinion about whether the variances should be granted. Mr. Hardison said staff does not typically give recommendations about variances. He said the purpose of setbacks and lot coverage is to create open space and prevent overbuilding on a property.

Board Member Thompson asked if there are any safety concerns regarding the possibility of large vehicles running into the building. Mr. Hardison said there are some concerns about obstructions when you start going that close to property lines.

Individuals planning to speak on the matter were sworn in. Ms. Moccia reiterated that the statements she previously made in the presentation were true.

Attorney Sam Potter, representing the applicant, said all the properties surrounding the condos are multi-story, multi-family buildings and the zoning code that changed this area to a low-density residential district occurred after a vast majority of development had occurred on the north end of Canal Drive. Mr. Potter said this is exactly the type of project that goes along with the Town's Future Land Use Plan. He reviewed the variance requests and said the applicant is actually reducing the number of units from 42 to 40 and not selling more square footage in the buildings.

Architect Rob Romero talked about functional aspects of the project and said trucks will have plenty of clearance.

Board Member Levy asked why elevator height and placement were not addressed when the building was first designed. Mr. Romero said there were initially plans for a traditional elevator, and the change was a technicality driven by the elevator company. Board Member Levy asked why the stairwells could not be turned 90 degrees at the top so they won't protrude so far out toward the street. Mr. Romero said they experimented with different orientations and felt this was the best.

Chairman Hartsell asked why things changed after the original plans were approved. Mr. Romero said this was based on owner decisions.

Builder Griffin Kievit said the project has been complex and called for solutions that would fix issues the right way instead of just putting a Band-Aid on them. He said the number one objective is safety and detailed the problems that have been encountered. Mr. Kievit said the goal is to bring a project to the Town that takes something old and decaying and turns it into a gem.

Mr. Romero expanded on Chairman Hartsell's previous question about why things were changed. He said the original stairs were too narrow and were widened to make ease of access for people who live there. Chairman Hartsell asked if the original plans could be built. Mr. Romero said yes, but they think this is a better option.

Mr. Potter reviewed how he contends the applicant meets all 4 required findings for the variances to be granted.

Ms. Moccia asked for some clarifications for the record. She asked what additional height is being requested. Mr. Potter said 5 feet and 4 inches. Ms. Moccia asked if the lot coverage request is for an additional 736 square feet or 910 square feet. Mr. Romero said all pieces of the pie add up to 910. Ms. Moccia asked if additional decking is going where the main platform was on any of the levels. Mr. Romero said no. Mr. Hardison noted those changes as well as the addition of a staircase to the lot coverage.

Mr. Hartsell opened the floor for public comment.

Tracey Kendrick of 1812 Canal Drive #6 said he is happy someone is cleaning up the property because it has been an eyesore, but he said since the property went to bankruptcy court his 6-unit condo community has been fighting for their deeded easement that goes behind one of the buildings. He said bankruptcy court tried to take it by eminent domain, which resulted in his community having to spend money to try to keep the easement intact. Mr. Kendrick said he is concerned that a stairwell 6 inches from Salt Marsh Lane will cause problems, and if the project had not added penthouses the extra height would not be necessary. He also expressed concerns about flooding.

Andy Goodman of 1205 Canal Drive, who also owns a condo at 1801 Canal Drive, said if he were the applicant he would want to know how the neighbors feel. He said he has no issues with the coverage expansion and thinks the setbacks are close but OK, but he really doesn't like the idea of the extra height.

Mr. Potter said nobody is changing the raised walkway easement that Mr. Kendrick previously referenced. He said access is the same as it has always been, and there is nothing new in the easement.

Board Member Thompson asked if the easement issue is relevant to tonight's variance requests. He said this seems more like a legal issue between the two parties. Mr. Potter said it might be relevant if anything new was going in the easement, but that's not the case.

Board Members went through each required finding for the building height variance request.

Regarding finding 1, the following agreed: Board Member Thompson and Board Member Howard. The following disagreed: Chairman Hartsell, Vice Chairman Boykin, and Board Member Levy. Therefore, finding 1 failed 2-3.

Regarding finding 2, the following agreed: Chairman Hartsell, Vice Chairman Boykin, Board Member Thompson, and Board Member Howard. The following disagreed: Board Member Levy. Therefore, finding 2 passed 4-1.

Regarding finding 3, the following agreed: Chairman Hartsell, Vice Chairman Boykin, Board Member Thompson, Board Member Levy, and Board Member Howard. Therefore, finding 3 passed 5-0.

Regarding finding 4, the following agreed: Vice Chairman Boykin, Board Member Thompson, and Board Member Howard. The following disagreed: Chairman Hartsell and Board Member Levy. Therefore, finding 4 passed 3-2.

The building height variance request was denied.

Board Members went through each required finding for the setbacks variance request.

Regarding finding 1, the following agreed: Board Member Thompson. The following disagreed: Chairman Hartsell, Vice Chairman Boykin, Board Member Levy, and Board Member Howard. Therefore, finding 1 failed 1-4.

Regarding finding 2, the following agreed: Board Member Thompson and Board Member Howard. The following disagreed: Chairman Hartsell, Vice Chairman Boykin, and Board Member Levy. Therefore, finding 2 failed 2-3.

Regarding finding 3, the following agreed: Chairman Hartsell, Vice Chairman Boykin, Board Member Thompson, and Board Member Howard. The following disagreed: Board Member Levy. Therefore, finding 3 passed 4-1.

Regarding finding 4, the following agreed: Board Member Thompson and Board Member Howard. The following disagreed: Chairman Hartsell, Vice Chairman Boykin, and Board Member Levy. Therefore, finding 4 failed 2-3.

The setbacks variance request was denied.

Board Members went through each required finding for the lot coverage variance request.

Regarding finding 1, the following disagreed: Chairman Hartsell, Vice Chairman Boykin, Board Member Levy, Board Member Thompson, and Board Member Howard. Therefore, finding 1 failed 0-5.

Regarding finding 2, the following disagreed: Chairman Hartsell, Vice Chairman Boykin, Board Member Levy, Board Member Thompson, and Board Member Howard. Therefore, finding 2 failed 0-5.

Regarding finding 3, the following agreed: Chairman Hartsell and Vice Chairman Boykin. The following disagreed: Board Member Levy, Board Member Thompson, and Board Member Howard. Therefore, finding 3 failed 2-3.

Regarding finding 4, the following agreed: Board Member Levy. The following disagreed: Chairman Hartsell, Vice Chairman Boykin, Board Member Thompson, and Board Member Howard. Therefore, finding 4 failed 1-4.

The lot coverage variance request was denied.

APPOINTMENT OF CHAIR AND CO-CHAIR

Chairman Hartsell opened the floor for nominations for Chairman. Vice Chairman Boykin nominated Chairman Hartsell; Board Member Levy seconded. Chairman Hartsell was elected Chairman.

Chairman Hartsell opened the floor for nominations for Vice Chairman. Board Member Levy nominated Vice Chairman Boykin; Chairman Hartsell seconded. Vice Chairman Boykin was elected Vice Chairman.

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Chairman Hartsell, seconded by Board Member Howard

Voting Yea: Chairman Hartsell, Vice Chairman Boykin, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed unanimously

The meeting adjourned at 9:52 PM.



AGENDA ITEM COVERSHEET

PREPARED BY: Haley Moccia, Planner

DEPARTMENT: Planning & Development

MEETING: Board of Adjustment – April 22nd, 2024

SUBJECT: Variance to Building Setbacks - Sec. 40-74. - Dimensional standards for lots and principal structures.

BACKGROUND:

The applicant is Chiaki Ito, the property owner of 307 Florida Ave. The subject property is located on the northern end of the peninsula that juts out from Canal St. The parcel is located in the R-1B zoning district which supports single-family and allows a density of 8.7 units per acre. The property consists of .24 acres from the High-Water Line, which makes this a large enough lot to allow up to 2 living units on the property.

The property is a sound side facing property and is bordered by single family homes. The property has a main single-family house and a detached garage with a single-family unit. The main house was built in 1947, before flood maps and zoning setbacks were established. Since this house was built before zoning setbacks were established, it was built encroaching into the right-side setback. The front of the house currently meets the 20' front setback requirements but the current front staircase encroaches too far into the front setback, it encroaches 4' (See Attachment 2). The termination of a staircase (the last two steps) is the only part of a staircase that the ordinance allows to encroach into a building setback. The ordinance allows the last 2.5' of the end of a staircase to encroach over the setback line, but this does not include any stair landings or any other part of the staircase column except the bottom termination.

REASON FOR THE VARIANCE:

The Town applied for a FEMA Flood Mitigation Assistance grant (FEMA FMA) on the property owner's behalf. The FEMA FMA grant funds for the raising of houses to bring them into flood compliance to meet the current flood elevation requirements established by the 2018 Flood Insurance Rate Map (FIRM). The Town was awarded the grant, and Mrs. Ito's house was among 6 others on the island approved by the grant to be elevated to meet Flood Base Flood Elevation (BFE). Houses accepted into the FMA grant are evaluated by an engineer and the engineer determines if the house is structurally strong enough to be lifted. The engineer determined the house could be lifted, but they confirmed the house could not be moved back from the front

property line because the structure was located too close to the detached garage for it to be safe to move (See Attachment - 3).

When houses are raised, they require new staircase access. Unfortunately, due to the house's close proximity to the front building setback line, any new access added to the front of the building would encroach into the front setback. Many different designs were proposed by the engineer and town staff, but none were able to meet the town setback ordinance requirements. A front staircase access to the existing front door is required by NC Building code, which is why Mrs. Ito is seeking a variance to allow the new stair to encroach into the front setback. Without the variance, the house will not be able to be lifted and it would continue to pose potential flood damage risks to it and surrounding properties.

SUMMARY:

The applicant is seeking a variance to allow a front staircase and staircase landing encroachment into the 20' front building setback. The variance would allow a new staircase landing and staircase column to encroach into the front setback up to 1' 10" or have a front setback of 18' 2" (See Attachment - 4).

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.

Attachments

1. Variance Application
2. Survey of Existing Structure
3. Engineer Letter
4. Site Plan of Proposed Encroachment



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.

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.

Applicant Name: Chiaki Ito

Applicant Mailing Address:

307 Florida Avenue Carolina Beach NC 28428
Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): 910-262-0490 mobile/work/home (circle one):

Applicant Email Address: chiakiito@mac.com

Property Owner Name: Chiaki Ito

Property Owner Mailing Address: 307 Florida Ave., Carolina Beach, NC 28428

Street Address City State Zip

Property address of variance being requested: 307 Florida Ave., Carolina Beach, NC 28428

Property Size: 13,200 sq. ft. Zoning Designation: R1B

Please give a brief description of requested action:

I am requesting to encroach into the front building setbacks for staircase access to the house because the house is being raised out of the flood zone by a FEMA grant and requires new access to the existing front door.

Owner Signature: _____

Chiaki Ito

Date: 3/20/2024

Owner Printed Name: Chiaki Ito

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.

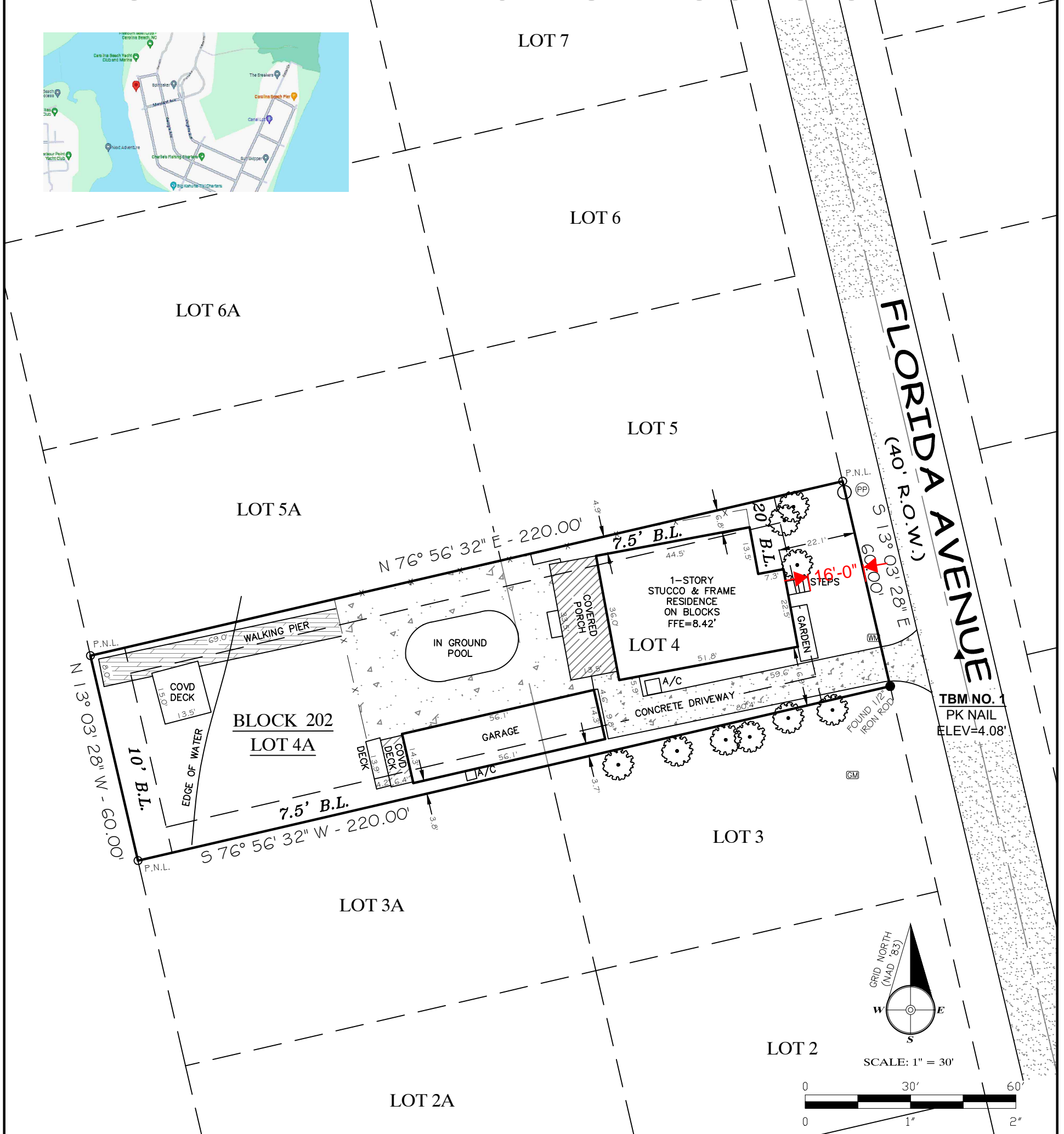
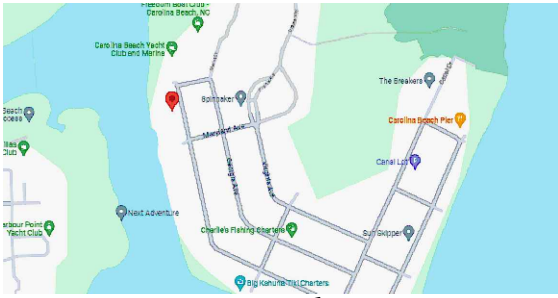
1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made from the property.
We would not be able to raise the house without the variance because we would not be able to access the existing front door and the front staircase is required per building code. In addition, per the engineering report, the hosue cannot be moved into the setbacks to allow the new staircase to be out of the front setback.

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.
This house was built in 1947, which was before flood maps were created for this area and also before setbacks were established by the Town. The current house encroaches into the setbacks and would not allow the front staircase to be built to access the hosue without a variance to the current setback regulations.

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.
We are trying to do the right thing by correcting and lifting the house out of the flood zone but the engineer said that the house could not be moved and that is why we are requesting the variance to be able to access the house. This house was built in 1947 before setbacks were established. I purchased the home in 1996.

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.
Allowing an encroachment into the front building setback would allow us to raise the house out of the flood zone, which would conform with our Chpater 30 Flood Regulations to reduce flood hazards and secure the safety of the public. If the variance is not approved, the house cannot be raised out of the flood zone and would remain a hazard to the public.

FOR PERMITTING PURPOSES ONLY

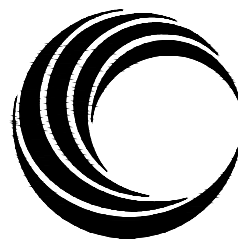


LEGAL DESCRIPTION:

JOB# 22-0659-226
DRAWN BY JZAN

LOTS 4 & 4A, BLOCK 202, OF NORTHERN SECTION O CAROLINA BEACH IN CAROLINA BEACH, NEW HANOVER COUNTY, NORTH CAROLINA, ACCORDING TO THE MAP THEREOF RECORDED IN MAP BOOK 3, PAGE 67, OF THE PLAT RECORDS OF NEW HANOVER COUNTY, NORTH CAROLINA.

PREPARED EXCLUSIVELY FOR: DSW
PROPERTY CAD ADDRESS: 307 FLORIDA AVE.
INSIDE THE CITY LIMITS OF CAROLINA BEACH, NORTH CAROLINA.



COBALT

ENGINEERING AND INSPECTIONS, LLC

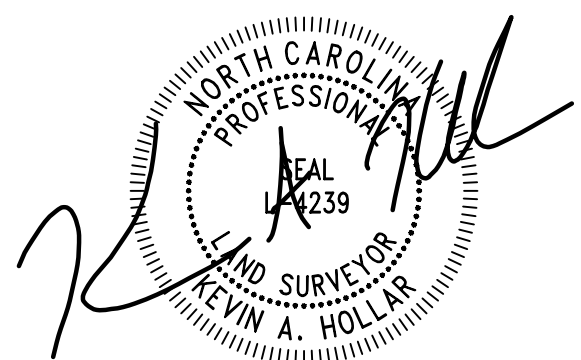
NCBELS REG. #: P-2609

LEGEND

— x — WOOD FENCE	(GM) GAS METER(GM)	(LP) LIGHT POLE(LP)	CMP = CORRUGATED METAL PIPE
— o — CHAIN-LINK	(MB) MAIL BOX(MB)	(WW) WATER WELL(WW)	RCP = REINFORCED CONCRETE PIPE
— □ — IRON FENCE	(FH) FIRE HYDRANT(FH)	(TP) TRAFFIC SIGNAL POLE(TSP)	S.S.E. = SANITARY SEWER EASEMENT
— . . . — PIPELINE	(WM) WATER METER(WM)	(CO) CLEAN OUT(CO)	STM.S.E. = STORM SEWER EASEMENT
— — — BUILDING LINE	(WV) WATER VALVE(WV)	(CB) COMMUNICATIONS BOX(CB)	A.E. = AERIAL EASEMENT
— — — EASEMENT LINE	(GI) GRATE INLET(GI)	(PP) POWER POLE(PP)	B.C. = BACK OF CURB
— — — OVERHEAD POWER	(SAN) SANITARY MANHOLE(SAN.M.H.)	(UP) UTILITY POLE(UP)	B.L. = BUILDING LINE
— — — LINES SURVEYED	(SM) STORM MANHOLE(S.M.H.)	(SP) SERVICE POLE(SP)	(D) = DEED
— — — LINES NOT SURVEYED	(PV) PRESSURE VALVE(PV)	(EB) ELECTRIC BOX(EB)	D.E. = DRAINAGE EASEMENT
ASPHALT	P.N.L. POINT NOT LOCATED	(EM) ELECTRIC METER(EM)	F.F.E. = FINISH FLOOR ELEV.
COVERED		(SE) SPOT ELEVATION(SE)	I.P. = IRON PIPE
CONCRETE			I.R. = IRON ROD
GRAVEL			(M) = MEASURED
WOOD-DECK			(P) = PLAT
			R.O.W. = RIGHT-OF-WAY
			T.B.M. = TEMPORARY BENCHMARK
			U.E. = UTILITY EASEMENT
			W.L.E. = WATER LINE EASEMENT
			● = MONUMENT POINT

GENERAL NOTES:

1. THE LEGAL DESCRIPTION, PROPERTY LINES, & SIMILAR INFORMATION SHOWN HEREIN ARE DERIVED FROM THE RECORDED PLAT AS SHOWN OR FROM READILY AVAILABLE RECORDED DOCUMENTS. THE INTENT OF THIS DRAWING IS TO LOCATE IMPROVEMENTS WITHIN THE PROPERTY LINES FOR FUTURE CONSTRUCTION PURPOSES.
2. ALL BEARINGS ARE BASED ON NORTH CAROLINA STATE PLANE COORDINATES (NAD 83) FOR HORIZONTAL CONTROL.
3. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE COMMITMENT PER CLIENT REQUEST.
4. ALL EASEMENTS AND BUILDING SETBACK LINES PER PLAT OR ORDINANCE UNLESS NOTED OTHERWISE.
5. IF SHOWN, TBM AND OR SPOT ELEVATIONS SHOWN HEREON ARE BASED ON TOPNET LIVE - RTK + SOUTHEAST.(NAVD88)



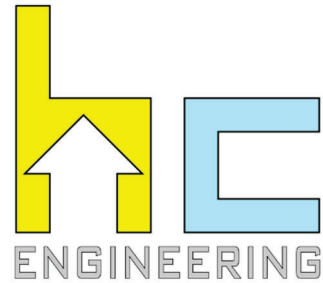
KEVIN A. HOLLAR
PLS 4239

09/15/2023

THIS DRAWING REPRESENTS THE ON-SITE, GROUND CONDITIONS FOUND DURING THE COURSE OF A BOUNDARY SURVEY CONDUCTED UNDER MY SUPERVISION ON 09/12/2023. THIS DRAWING SOLELY REPRESENTS ON-SITE GROUND CONDITIONS AND PREVIOUSLY RECORDED INFORMATION. COBALT ASSUMES NO RESPONSIBILITY OR GUARANTEE FOR USE OF THIS DRAWING BEYOND ITS INTENDED PURPOSE.

March 18, 2024

PROJECT: 307 Carolina Beach
Carolina Beach, NC 28428



Homeowner: Chiaki Ito

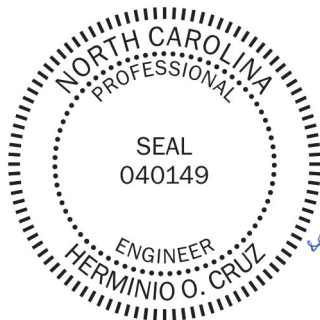
RE: Feasibility Study - House Lifting

To whom it may concern,

This letter is to inform you that HC Engineering has determined that it is not feasible to move or “roll” the structure located on **307 Florida Ave, Carolina Beach, NC 28428** in any direction. Based on the site pictures below and survey provided, there is a high risk of damaging the accessory structure (garage) and compromising the integrity of both structures. Moving the home will also be dangerous for the contractor responsible for the task.

Shall you have any questions or concerns, please contact us anytime at (732)804-1313 and we will be pleased to assist you.

Sincerely,



Digitally signed by
Herminio Cruz, PE
Date: 2024.03.18
20:48:45 -05'00'

Herminio O. Cruz, PE
NC PE 040149
Firm License: C-4651

HC Engineering, Inc. Phone: (504) 454-0500	4650 Washington Ave Suite 352	New Orleans, LA 70125 Cell (732)804-1313
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APPENDIX A

EXISTING REAR & GARAGE PHOTOGRAPHS



Photograph 1



Photograph



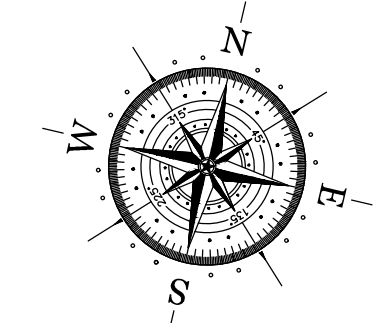
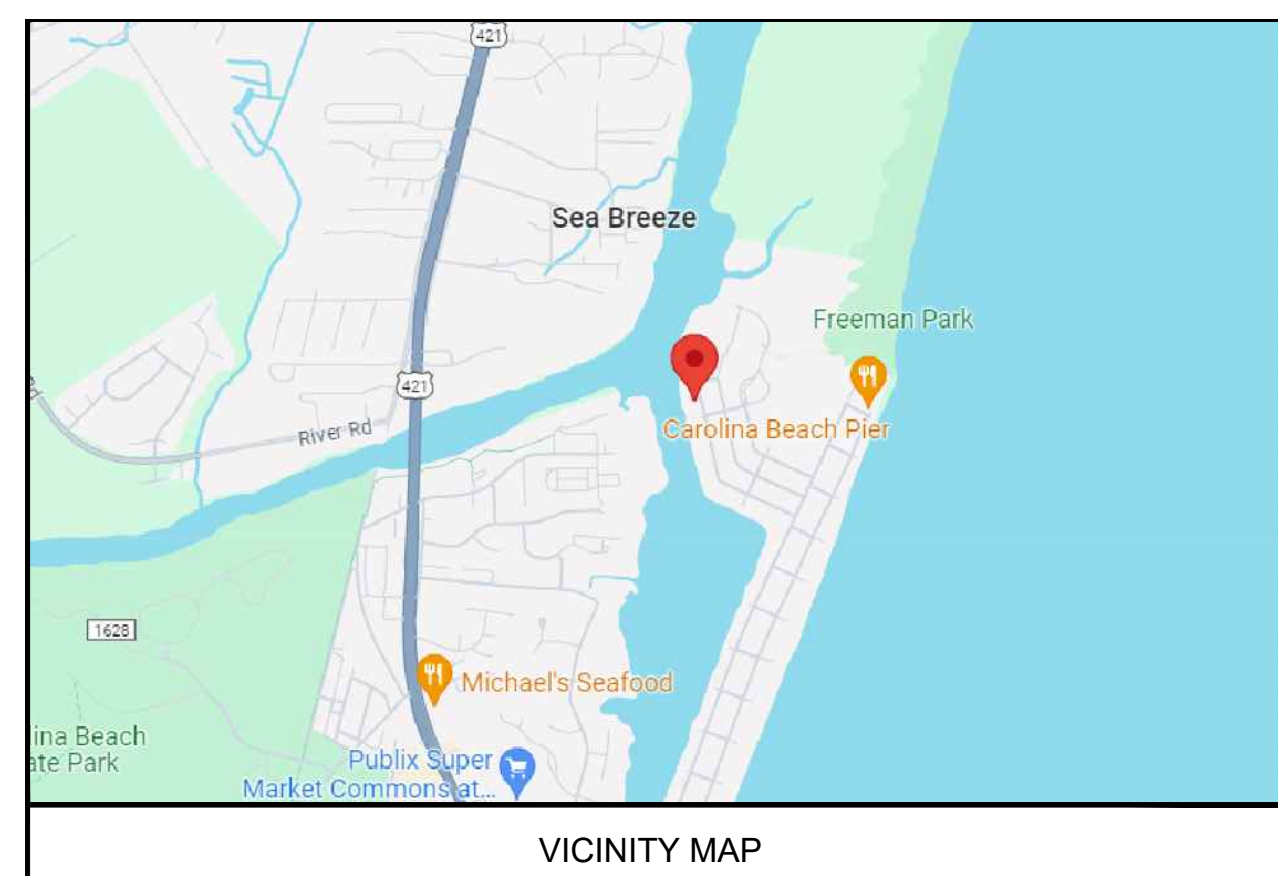
Photograph 3



Photograph 4

IMPERVIOUS SQUARE FOOTAGE	
PROPOSED SQUARE FOOTAGE	
LOT AREA	13,198 SQFT
EXISTING 1ST FLOOR	2,203 SQFT
EXISTING CONCRETE PAD	2,172 SQFT
EXISTING CONCRETE DRIVEWAY	805 SQFT
EXISTING GARAGE	805 SQFT
EXISTING COVERED DECK	290 SQFT
EXISTING WALKING PIER	536 SQFT
EXISTING IN GROUND POOL	488 SQFT
TOTAL COVERED	7,299 SQFT
APPROXIMATE LAND TABULATION	
LOT AREA	13,198 SQFT
TOTAL COVERED AREA	7,299 SQFT
IMPERVIOUS PERCENTAGE	55.30 %

LEGAL DESCRIPTION:
 LOTS 4 & 4A, BLOCK 202, OF NORTHERN SECTION O CAROLINA BEACH IN CAROLINA BEACH, NEW HANOVER COUNTY, NORTH CAROLINA. ACCORDING TO THE MAP THEREOF RECORDED IN MAP BOOK 3, PAGE 67, OF THE PLAT RECORDS OF NEW HANOVER COUNTY, NORTH CAROLINA.



SCALE: 3/32" = 1'-0"

LEGEND

⊗ GAS METER(GM)	⊗ CORRUGATED METAL PIPE
⊗ GAS VALVE(GV)	⊗ REINFORCED CONCRETE PIPE
⊗ FIRE HYDRANT(FH)	⊗ POLYVINYL CHLORIDE PIPE
⊗ WATER METER(WM)	⊗ CORRUGATED PLASTIC PIPE
⊗ WATER VALVE(WV)	⊗ SANITARY SENDER EASEMENT
⊗ GRATE INLET(GI)	⊗ STORM SENDER EASEMENT
⊗ SANITARY MANHOLE(SAN.M.H.)	⊗ AERIAL EASEMENT
⊗ STORM MANHOLE(S.M.H.)	⊗ BACK OF CURB
⊗ PRESSURE VALVE(PV)	⊗ BUILDING LINE
⊗ LIGHT POLE(LP)	⊗ CONTROL POINT
⊗ WATER WELL(WW)	⊗ DRAINAGE EASEMENT
⊗ TRAFFIC SIGNAL POLE(TSP)	⊗ FINISH FLOOR ELEV.
⊗ CLEAN OUT(CO)	⊗ IRON PIPE
⊗ BURIED CABLE MARKER(BCM)	⊗ IRON ROD
⊗ POWER POLE(PP)	⊗ RIGHT-OF-WAY
⊗ UTILITY POLE(UP)	⊗ TEMPORARY BENCHMARK
⊗ SERVICE POLE(SP)	⊗ UTILITY EASEMENT
⊗ ELECTRIC BOX(EB)	⊗ WATER LINE EASEMENT
⊗ ELECTRIC METER(EM)	⊗ ASPHALT
⊗ SPOT ELEVATION(SE)	⊗ COVERED
⊗ ELECTRIC SHUTOFF	⊗ CONCRETE
⊗ KNOX BOX	⊗ GRAVEL
⊗ EXISTING TREE	⊗ WOOD-DECK
⊗ PROPOSED TREE	⊗ WOOD-FENCE
⊗ HIGH BANK	⊗ CHAIN-LINK
	⊗ IRON FENCE
	⊗ PIPELINE
	⊗ BUILDING LINE
	⊗ EASEMENT LINE
	⊗ OVERHEAD POWER

B.F.E. - BASE FLOOD ELEVATION (100 YEAR)
 D.F.E. - DESIGNATED FLOOD ELEVATION (500 YEAR)
 F.F.E. - FINISHED FLOOR ELEVATION
 P.A.S. - PILING AND STRINGER
 S.O.G. - SLAB ON GRADE
 H.A.G. - HIGHEST ADJACENT GRADE
 L.A.G. - LOWEST ADJACENT GRADE

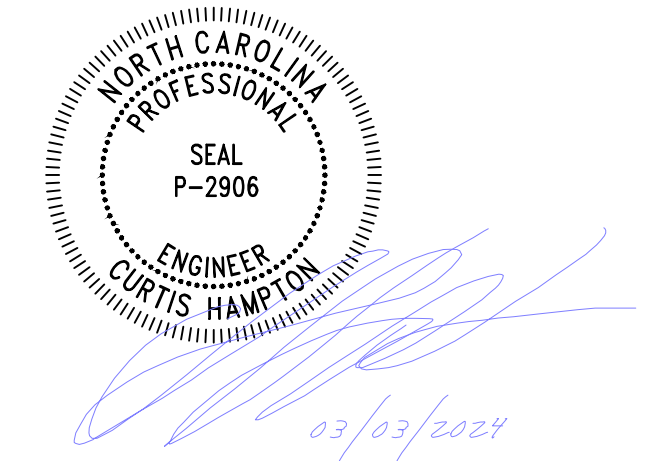
NOTES

1. THE FINISHED FLOOR ELEVATION SHALL BE A MINIMUM OF 2'-0" ABOVE B.F.E.
2. THE FINISHED GRADE AT HOUSE FOUNDATION SHALL PROVIDE POSITIVE DRAINAGE AWAY FROM STRUCTURE AND SHALL START A MINIMUM OF 6" BELOW FINISHED FLOOR OF SLAB OR MINIMUM 6" BELOW PIER FOOTINGS FOR ELEVATED FLOOR.
3. GRADING BELOW ELEVATED FLOOR SHALL PROVIDE POSITIVE DRAINAGE AWAY FROM HOUSE FOOTPRINT AND PREVENT POOLING UNDER HOUSE.
4. NO BUILD LINES OR EASEMENTS SHOWN ON PLAT BEYOND THE R.O.W.
5. FINISHED CONSTRUCTION GRADING PATTERN SHALL CONVEY WATER RUN-OFF AWAY FROM ADJACENT PROPERTIES.
6. ANY WETLAND AREA TO REMAIN UNDISTURBED DURING CONSTRUCTION.
7. IF HANDICAP RAMP FOR ACCESS IS REQUIRED, CONTRACTOR MUST GUARANTEE THAT RAMP AND ACCESS DESIGN MUST BE A.D.A. COMPLIANT.

Revisions:

#	DATE	DESCRIPTION OF CHANGE
0	03/03/2024	ISSUED FOR CONSTRUCTION

ALL RIGHTS RESERVED. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR UTILIZED IN ANY FORM WITHOUT PRIOR WRITTEN AUTHORIZATION OF 'COBALT'.



NOTE: SIGNATURES VALID FOR ONE YEAR ONLY AFTER DATE OF SIGNATURES



CLIENT:
 DSW HOMES
 PROJECT LOCATION OR ADDRESS:
 307 FLORIDA AVENUE,
 CAROLINA BEACH, NORTH CAROLINA 28428

SITE PLAN

DRAWN BY:	J.R.M.	CHECKED BY:	CCH
PROJECT #:	22-0659-226	SCALE:	3/32" = 1'-0"
DATE:	03/03/2024		C-1.00

