

# CAROLINA BEACH

Board of Adjustment Meeting

Tuesday, May 02, 2023 – 6:00 PM

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



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## AGENDA

### CALL TO ORDER

### APPROVAL OF MINUTES

1. September 20th, 2021 – BOA Minutes

### PUBLIC HEARING

2. Variance to Chapter 30 Flood Damage Prevention, ARTICLE V. - Provisions for Flood Hazard Reduction

Sec. 30-124. - General standards. (d) and Sec 30-125 Specific Standards (d) (4)

### NON-AGENDA ITEMS

### ADJOURNMENT



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Gloria Abbotts, Senior Planner

**DEPARTMENT:** Planning &  
Development

**MEETING:** Board of Adjustment – May 2<sup>nd</sup>, 2023

**SUBJECT:** September 20<sup>th</sup>, 2021 – BOA Minutes

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**Action:**

Approve the September 20<sup>th</sup>, 2021 Minutes

# CAROLINA BEACH

Board of Adjustment Meeting

Monday, September 20, 2021 - 6:00 PM

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



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## MINUTES

### CALL TO ORDER

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

### PRESENT

Vice Chairman Patrick Boykin

Board Member Jullena Shelley

Board Member Paul Levy (arrived at 6:02 PM)

Board Member Teresa Shue

Board Member Ken Thompson

### ABSENT

Chairman Wayne Hartsell

Board Member Amanda Nestor

### ALSO PRESENT

Planning Director Jeremy Hardison

Planner Gloria Abbotts

### APPROVAL OF MINUTES

**Approval of BOA Meeting Minutes from February 2021**

**ACTION:** Motion to approve the minutes as they stand

Motion made by Board Member Shue, Seconded by Board Member Shelley

Voting Yea: Vice Chairman Boykin, Board Member Shelley, Board Member Shue, Board Member Thompson

*Motion passed 4-0*

Vice Chairman Boykin recognized Matt Nichols, attorney for the Board of Adjustment.

### DISCUSSION ITEMS

**Variance to the required 20' front yard setback to 5' for 206 Lake Drive Lot 10R Block 51A**

Individuals planning to speak on the matter were sworn in.

Mr. Nichols explained that Board Members should have no ex parte communication or conflict of interest regarding this matter. All Board Members indicated they had none.

Applicant The Freeman Group LLC is requesting a variance of 5 feet from Section Sec. 40-75. - Dimensional standards for accessory structures that requires a 20-foot front yard setback. The property is located at 206 Lake Drive and is in the R-1 zoning district. A three-story two-unit townhome is currently under construction on the property. The property consists of one 7,656-square-foot lot that was recombined in 2020 (LOT 10R BLK 51A). The lot is considered double frontage because it fronts both Birmingham Avenue and Lake Drive rights-of-way. The minimum front yard setback is to be utilized for both frontages. Staff presented a text amendment in May 2021 proposing a 5-foot setback for pools in the designated rear yard of through lots, and Council decided to take no action on the amendment. To resolve the situation, the applicant is seeking a variance of 5 feet from the front property line on Birmingham Avenue. If approved, the pool would be located out of the wetlands delineated on the lot. The applicant is seeking a variance from the front setback requirement on Birmingham Avenue because it is an unimproved right-of way.

#### 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 following condition for the variance: The variance is granted for the proposed pool only, and any new structures on the property shall conform to the setback requirements.

Ms. Abbotts presented the details.

Sam Franck, who represents the landowner and applicant, said they are asking the Board to treat the back yard of this lot like a back yard. He said the request meets all four required findings and that a back yard is the only reasonable way to interpret what this is. Mr. Franck said the character of the

neighborhood supports the variance, and it will pose no burden on neighboring property owners. He said declining the request would effectively take away 10-15 feet of the property with no benefit.

Board Member Levy asked if the applicant considered turning the pool to 90 degrees or otherwise changing the shape so it comes just within the setback line or very close to it. Vinson Lutheran of Vince Lutheran Homes said because it's a commercial pool, there is a required 6-foot barrier. He said turning the pool would result in shrinking the width of the walkway, which would create unnecessary safety risks relative to the design that's proposed.

Board Member Shelley asked about the wetlands and whether there are living creatures on the property that need to be addressed. Mr. Franck said the project has been designed to protect the wetlands and not encroach on them in any fashion. Board Member Shelley asked if there is a permit for the wetlands. Mr. Lutheran said this was done by the developer prior to his involvement in the project. He said they have followed the process and left the wetlands fully intact and preserved. Mr. Franck said wetlands delineations have a limited life because the U.S. Army Corps of Engineers recognizes that they change and are dynamic. He said the permit is only good for five years.

Board Member Levy asked if the Board would be here six months from now talking about the same variance for the adjacent lot. Applicant Emily Krawiecki said yes, they would also like to add a pool at 204 Lake Drive, which would require a variance. Mr. Franck said variances are granted on a case-by-case basis, and the Board's decision to grant this variance tonight doesn't mean the applicant is guaranteed one on another property. He said the applicant would have to demonstrate facts and circumstances on the other property. Board Member Levy said his personal opinion is that this could set a precedent for the adjacent lot.

No one else requested to speak. Vice Chairman Boykin closed the hearing.

Vice Chairman Boykin said Board Members should go through each required finding.

Regarding finding 1, the following voted yea: Board Member Shelley and Board Member Thompson; the following voted nay: Vice Chairman Boykin, Board Member Levy, and Board Member Shue. Therefore, finding 1 failed 2-3.

Regarding finding 2, the following voted yea: Board Member Shue and Board Member Thompson; the following voted nay: Vice Chairman Boykin, Board Member Shelley, and Board Member Levy. Therefore, finding 2 failed 2-3.

Regarding finding 3, the following voted nay: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 3 failed 0-5.

Regarding finding 4, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 4 passed 5-0.

Vice Chairman Boykin asked what the votes mean for the variance. Mr. Hardison said in order for the variance to be granted, it has to meet all four required findings. Vice Chairman Boykin said with only one of the required findings passing, the variance is not approved.

**Variance to the required 25' front yard setback of 9.1' for 511 Harper**

Individuals planning to speak on the matter were sworn in.

Mr. Nichols again explained that Board Members should have no ex parte communication or conflict of interest regarding this matter. All Board Members indicated they had none.

Applicants Jack and Lisa Greene are requesting a variance of 9.1 feet from Section Sec. 40-74. - Dimensional standards for lots and principal structures, which requires a 25-foot front yard setback. The property is located at 511 Harper Avenue and is in the R-3 zoning district. The property consists of one 8,779-square-foot lot, Lot 7R, that was recombined in 2020 (LOT 7 TRACT 2 and LOTS 8-10 TRACT 1 LK 101). The owner of the property owns both lots, 511 and 515 Harper Avenue. The house under construction was staked incorrectly by the surveyor and built with a setback of 15.9 feet from the front property line along Harper Avenue. The original site plan submitted along with the permit application proposed the home be placed 16 feet from the front property line. Staff asked the applicant to change the site plan and bring it into compliance with the required 25-foot setback. The approved site plan for construction had a proposed setback of 26 feet from the front property line. Per Sec. 40-73(a)(5), a front yard setback may be reduced to no less than the calculated average front yard setback distance for existing buildings on all lots located wholly or partly within 200 feet. All lots must be in the same zoning district, front the same side of the street, be considered as having the minimum required front yard setback if the lot is vacant, and shall not be reduced to less than 50 percent of the required setback. Per the survey submitted by the applicant, the average setback within 200 feet is 22.3 feet. To resolve the situation, the applicant requests a 9.1-foot variance to the required 25-foot front yard setback. The home under construction meets the minimum required side (7.5 feet) and rear (10 feet) yard setbacks. To come into compliance with the ordinance, the home would have to be torn down and rebuilt.

**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 following condition for the variance: The variance is granted for the existing house under construction only, and any new structures on the property shall conform to the setback requirements.

Ms. Abbotts presented the details.

Board Member Levy asked whether the practice of the Town not checking the survey stakes or foundation until framing is typical of just the Town, just the County, just the State, or a general practice. Mr. Hardison said every community handles this situation differently. He said the Town tries to take an approach to reduce these types of errors and require a foundation survey.

Sam Potter, who represents the applicants, said they are here with the unfortunate situation of having a house that's been constructed in a setback. He said it's not something that anybody wanted, and the applicants, who currently live next door to the east of the house under construction, were shocked when they discovered the house was built within the setback. Mr. Potter said Harper Avenue is abnormal because it has an 80-foot-wide right-of-way and the property lines are almost 30 feet from the road, so that's why it was difficult to recognize that the home was being constructed within the 25-foot setback. He said properties to the east are much closer, and if rights-of-way or setbacks were in force here those people wouldn't have driveways at all.

Mr. Greene said he was born in Wilmington and has strong family ties to the Town. He said his parents gave them the lot where the house is under construction, and the Greenses decided to hire Hagood Homes as their builder. Mr. Greene said the house looks like it belongs where it currently sits on the lot and in relation to the road and other houses.

Mr. Potter asked what kind of hardship the Greenses would incur if the Board denies the request. Mr. Greene said it would be a huge loss of time, effort, and resources because the structure is close to being finished. He said they have a goal to get out of the house next door so his parents can move in there. Mr. Greene said he needs to help care for his dad, who has Alzheimer's disease.

Board Member Thompson asked Surveyor Josh Taylor how this mistake happened. Mr. Taylor said the most likely answer is that someone hit the wrong key when the first plan was submitted to Hagood. He said when the error was caught, the stakes were not moved to reflect that change. Vice Chairman Boykin asked who was responsible for moving those stakes. Mr. Taylor said he and his associates would've been responsible for that.

Mr. Potter said Ms. Abbotts pointed out that front yard setbacks can be reduced based on the average, which was not included in this request. He said there is a 2.7-foot difference between 25 feet and what the actual average is, so if you take the current encroachment of 9.1 feet and adjust it for the average of the surrounding properties, that brings the requested variance to 6.4 feet.

Board Member Thompson asked how small the garage would be if it was brought into compliance. Patrick Kennedy of Hagood Homes said it would not be wide enough for two cars.

Mr. Potter asked Mr. Kennedy to describe the events that led up to the need for a variance. Mr. Kennedy said they place the house with the help of a surveyor and then turn it in for a building permit. He said after the Town rejected the building permit due to an incorrect front setback, Hagood Homes revised the plan and assumed Paramounte Engineering had replotted the house based on the new site plan. Mr. Kennedy said they had framed the house and were about to do the foundation survey when they found out this had not been done. He said they stopped work and have not progressed since, so the error was self-reported.

Vice Chairman Boykin opened public comment.

Wayne Rouse of 508 Monroe Avenue, who is the applicants' neighbor, said he has known the Greenes for many years and they have been good neighbors. He said the Greenes were upset when they found out about the mistake, and all of the surrounding neighbors have no objection to this variance being granted. Mr. Rouse said if you were riding down the road, you would never know there was a setback issue. He said not granting the variance would have a negative impact not only on the applicants but also on all the neighbors having to watch the house being torn down and rebuilt. Mr. Rouse asked the Board to find a way to help the Greenes because they have been good to the community.

No one else requested to speak. Vice Chairman Boykin closed the hearing.

Vice Chairman Boykin said Board Members should go through each required finding.

Regarding finding 1, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 1 passed 5-0.

Regarding finding 2, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 2 passed 5-0.

Regarding finding 3, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 3 passed 5-0.

Regarding finding 4, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 4 passed 5-0.

Vice Chairman Boykin said with all four of the required findings passing, the variance is approved.



**NON-AGENDA ITEMS**

None

**ADJOURNMENT**

**ACTION:** Motion to adjourn

Motion made by Board Member Shue, Seconded by Board Member Shelley

Voting Yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue,  
Board Member Thompson

*Motion passed 5-0*

The meeting adjourned at 7:20 PM.



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Jeremy Hardison, Planning Director

**DEPARTMENT:** Planning &  
Development

**MEETING:** Board of Adjustment – 5/2/2023

**SUBJECT:** Variance to Chapter 30 Flood Damage Prevention, ARTICLE V. - Provisions for Flood Hazard Reduction  
Sec. 30-124. - General standards. (d) and Sec 30-125 Specific Standards (d) (4)

**PURPOSE:**

The applicant, Town of Carolina Beach is requesting a variance to Chapter 30 Flood Damage Prevention ordinance (Attachment 1- Application), specifically to the elevation requirement for plumbing fixtures and relief from the breakaway wall requirement for just the placement of the utility chases for plumbing.

The Town would like to rebuild the current 1-story brick and cinderblock boardwalk bathroom that is located oceanfront at 9 Boardwalk. The proposed bathroom footprint would be approximately 700 sq. ft. It will be a 2-story structure with access off the elevated wooden walkway for beach goers to access (second level) while also providing access to bathrooms off the concrete area of the boardwalk adjacent to businesses (first level). See attachment 2 – Rendering.

**BACKGROUND:**

The Carolina Beach Boardwalk area has existed for over 100 years. Due to its proximity to the Atlantic Ocean, the Boardwalk is a popular means for the public to view, enjoy and access the public resources of the dry and wet sand beaches, the Atlantic Ocean, and the business district. To provide services to the visiting public 50 years ago the Town built a public bathroom that consisted of three water closets in each men’s and women’s bathroom constructed on the ground floor for easy access. It was built prior to the town having floodplain development regulations. It is now inadequate to meet the demand with the growing number of visitors the town sees each year. The goal of the new bathroom and for the two-story design is to have one facility that can meet the needs of the beach goers without having to go to the boardwalk and for patrons of the business to have a bathroom directly from the boardwalk. It will also improve accessibility with those with disabilities rather you are on the boardwalk or the beach. In recent years the town has promoted and to be more accommodating to those with disabilities in the area by providing parking, beach crossovers, viewing areas and beach mats that meets the American Disabilities Act (ADA). However, the public bathrooms do not. The design would also increase capacity and to better accommodate the citizens and visitors of the Town.

For the town to rebuild the bathrooms in the same location it first obtained a variance in February from the NC Coastal Resource Commission who governs setbacks for development off the coastal shoreline. When the original bathroom was built the State did not have setback regulations. The area where the

bathrooms are located because the ownership of the Town when the Carolina Beach Building Line Act was passed in 1963. The 1963 Session Law granted the Town title to the land between the building line and the low water mark of the Atlantic Ocean subject to the public trust rights. The 1963 Session Law also provides that all made and constructed land lying East of “the building line” shall be at all times kept open for the purpose of street and highways for the use of the public and further for the development and uses as a public square or park, as the governing authorities of the Town of Carolina Beach by ordinance shall determine....” See attachment 3 A copy of the 1963 Session Law and the Building Line Map (Map Book 8, Page 52). The Site for the proposed bathhouse is located just east/oceanward of the development line/building line, on land subject to the 1963 Act which vested title in this land to the Town

### **DESCRIPTION OF VARIANCE**

The bathrooms are located within a special flood hazard area (SFHA) as determined by the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Map (FIRM), Panel 3130 Map # 3720313000, effective August 28, 2018 (Attachment 4 - flood map of the property). The property is designated as a coastal high hazard areas (VE zones) subject to wave actions.

The National Flood Insurance Program (NFIP) variances procedures are designed to help local governments protect their citizens and property from flood damages. Allowing variances to the local floodplain management standards may significantly increase the property’s flood insurance rate and decreased the community’s resilience. Therefore, by implementing the NFIP variance procedures, a community will ensure that alternative actions are taken that protect and encourage safe development in the floodplain.

A variance is an authorization that grants of relief by a community from the terms of a floodplain management regulation. Variances are meant to address unique, site-specific and individual circumstances where the strict application of the ordinance may result in a hardship to a property owner. While the variance is intended to provide relief, it still enables the community to:

- Preserve the purpose and intent of the ordinance;
- Protect the safety, health, and welfare of the public and emergency responders

The authority to grant a variance is delegated to the Board of Adjustment. In some cases, a variance granted for floodplain management purposes can result in a project that does not meet the minimum standards of the NFIP.

The current bathrooms are located in a VE-16 flood zone. The VE means that flooding may result in wave action from storm surge. The 16 number represents the BASE FLOOD ELEVATION (BFE) the height of flooding, including wave height, having a 1 percent chance of being equaled or exceeded in any given year. The BFE is the basis of insurance and floodplain management requirements and are shown on the flood map. The town has adopted added protection to buildings constructed in the floodzone by requiring two feet over the Base Flood Elevation. The added 2 feet above the required elevation is referred to as Freeboard. The property elevation of the grade is 8.3’. The required flood protection level of the building is  $16' + 2' = 18'$ . (Attachment 5 - Elevation of building)

For a variance request to waive the elevation requirement, the community review board must require the “minimum necessary” actions. For example, the minimum actions necessary for a non-residential structure may include meeting the other provisions in the local floodplain management ordinance.

The Proposed design will meet the following flood requirements

Flood vents	Flood Vents protect buildings during floods by preventing hydrostatic pressure buildup that can destroy walls and foundations. This mitigation technique, allows floodwater to freely flow through an enclosure.
Electrical and Mechanical equipment	Will be elevated above freeboard 18' BFE. To allow the electrical and mechanical system to operate after a flood event without damage to floodwaters.
Utilizing piling construction.	Engineered to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy during conditions of flooding.
First horizontal member will meet freeboard (18' BFE).	Horizontal structural members are obstructions and can transmit the force of wave impacts to rest of the structure. This requirement is to keep the entire building in a V Zone above the anticipated breaking wave height of a base flood storm surge.
Constructed using flood resistant materials	The building will be capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage.

**Variance from**

ARTICLE V. - PROVISIONS FOR FLOOD HAZARD REDUCTION

**Sec. 30-124. - General standards.**

(d) All new plumbing equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, water softener units, bath/kitchen fixtures, and water heaters.

The hot water heater will meet flood requirements. The sinks and water closets are proposed to be located below the BFE. The plumbing fixtures and connections will be designed and installed to eliminate infiltration of floodwaters into the sanitary sewage system and discharges from sanitary sewage systems into floodwaters.

**Sec. 30-125. - Specific standards.**

(d) *Elevated buildings.* Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation:

(4) Shall allow, in coastal high hazard areas (Zones VE), either be free of obstruction or constructed with breakaway walls, latticework or insect screening below the regulatory flood protection elevation, provided it is not part of the structural support of the building and is designed to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building on which they are to be used.

Breakaway wall requirements - For enclosures under the BFE the walls are required to be breakaway. The size, placement, and design of the breakaway walls and flood vents will be such to mitigate the effects of the wave and static forces from a flood event. The location of the breakaway walls will be determined by the location of the utilities chases and typical interior fixtures of a restroom facility.

The Town of Carolina Beach respectfully contends that the proposed two-story bathroom facility meets variance criteria specified in Chapter 30 Flood Damage Prevention Ordinance Sec. 30-95 Variance Procedures . In support, the Town presents the following statements and information, and respectfully requests that the Board of Adjustments issue a variance allowing the Town's requested variance from minimum relief of the plumbing and breakaway wall requirements where the plumbing fixtures will be located.

#### **Variance Criteria**

In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and shall consider the following criteria for floodplain variances:

(1) The danger that materials may be swept onto other lands to the injury of others;

Will not have any additional threats to public safety, the new building will be designed to better accommodate flooding than the existing building and will be the minimize possible to afford relief. It will employ flood vents to relieve Hydrostatic forces pressure on the walls to prevent materials from being swept away.

(2) The danger to life and property due to flooding or erosion damage;

The building will be built to be flood resilient. The current building does not meet flood requirements. The facility will be closed to the public when flooding conditions are expected. The federal storm damage reduction project has served the Town well over the last years and continued nourishment of the project will continue to provide storm damage reduction to the Town's infrastructure and development within the Town. The town has a beach management plan approved by the NC Coastal Resources Commission (CRC). The Town must provide a progress report to the CRC every 5 years describing the condition of the project and an update of the requirements that address the funding sources, and construction and maintenance details needed to achieve a design life of shore protection.

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

It will be designed to accommodate water with utilizing water resistant materials. There will not be any finished materials used in the design and a pressure washer will be utilized to clean the facility that will produce large volumes of water that the facility will be designed to withstand.

- (4) The importance of the services provided by the proposed facility to the community;

Lack of access to public bathroom facilities is a detriment to those visiting ocean beach. There is potential negative biological impact from failing to provide adequate access to public bathroom facilities. Lack of convenient access to public bathroom facilities creates a significant hardship. The proposed two story bathroom facility will significantly increase the number of stalls and provide direct access to those facilities from the Boardwalk.

The variance requested by the Town will secure the public safety and welfare. The proposed two-story bathroom facility will replace the inadequate, non ADA compliant, existing facilities. The proposed two-story bathroom facility will provide the disabled public the ability to access a bathroom directly from the Boardwalk. As proposed, the two-story bathroom facility is 1) adjacent to a handicap ramp and 2) in close proximity to the location where the Town installs the beach mats. The Town routinely allows organizations supporting those with disabilities to hold special events and camps in this location. Additionally, the two-story bathroom facility will provide adequate access to the general public.

- (5) The necessity to the facility of a waterfront location, as defined under article II of this chapter as a functionally dependent facility, where applicable;

The proposed location to rebuild the public bathroom is on the uniquely town-owned public beach within the Town's Central Business District. The bathroom serves Beach patrons and the ocean front boardwalk area that is close proximity to the beach and central business district. The expanded bath house will have more total stalls by having two floors and will enhance public access along the beach and the boardwalk by replacing the existing facilities.

The property upon which the proposed two-story bathroom facility is to be located is unique public property. This property was raised from the tides of the Atlantic Ocean by taxpayer funded beach nourishment efforts first undertaken by the Corps in the mid-1960's, and uniquely was deeded to the Town by the North Carolina General Assembly pursuant to the provisions of the governing 1963 Session Law. The 1963 Session Law balances public and private property rights by recognizing that the Corps' publicly funded beach nourishment project extinguished the common law littoral rights of the impacted oceanfront property owners, by deeding the raised lands to the Town, by requiring the Town to use those raised lands for public street and public park purposes. allowed the Town to improve the property in such a manner to significantly increase public access to all able bodied and disabled individuals to better meet the demand to provide capacity to the boardwalk and beach visitors.

- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

The boardwalk area is located in a floodzone and would be impossible to locate a bathroom out of the floodzone in this area to serve the visitors and citizens of the boardwalk and the beach.

- (7) The compatibility of the proposed use with existing and anticipated development;

The bathrooms will be at the same location as the existing bathroom facility and is convenient to the boardwalk, the beach mats, and on the town-owned area. The variance would secure the public

safety and welfare and preserve substantial justice. The proposed bath house expansion is designed to increase access to the public beach and boardwalk for all disabled visitors and improve restroom access for the public at large through more stalls, including ADA compliant stalls, and is conveniently located next to and connected to the boardwalk. The Town is committed to improving access for the increasing and anticipated visitors and especially those with disabilities and is keeping with the goals of the Town.

- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

The bathrooms are located in the boardwalk commercial area and central recreation district of the town. This area is a pedestrian oriented with street level services. The downtown area and boardwalk are the recreational and social hub of the town, providing a family-friendly experience that has come to define the town for visitors. The appearance of this area was also identified as an opportunity for improvement in the Town's 2020 Land Use Plan with maintaining the pedestrian-scaled environment with active ground floor uses. In the 2023 strategic plan it was listed to expand the public bathroom facilities at the boardwalk for priorities and objectives.

- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

The facility will be closed to the public or if flooding is predicted. Once the area is safe for public to access it will be open.

- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

The first horizontal member will be 18' BFE, 9.7 feet from the ground. The building will be built better to be able to withstand velocity occurrence. The beach management plan and the beach storm reduction project has reduced the wave action and impacts of buildings in this area.

- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

The cost will be minimum as the Fixtures will be designed to accommodate water and the building will be made of flood resistant materials. The electrical and mechanical will be elevated 2 feet above the flood stage. The horizontal member will be located 2 feet above flood stage as well to allow the flow of water. Back flow preventers will be installed to eliminate infiltration of floodwater into the sanitary sewage system.

**CONDITIONS (FLOOD DAMAGE PREVENTION ORDINANCE):**

Upon consideration of the factors listed under the required findings and the purposes of the Flood Damage Prevention Article, the Board of Adjustment may attach such conditions to the granting of variances, as it deems necessary to further the purposes of this Article:

1. Plumbing fixtures and connections are permitted below the BFE provided that the fixtures and connections are designed and installed to minimize or eliminate infiltration of floodwaters into the sanitary sewage system and discharges from sanitary sewage systems into floodwaters.
2. Anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy during conditions of the base flood.
3. Constructed of flood-damage-resistant materials.
4. Install flood vents.
5. Mechanical and electrical systems located above the BFE.
6. Install breakaway walls to the maximum extent possible.

**BOARD ACTION:**

A variance may only be allowed by the Board of Adjustment when considering all technical evaluations, all relevant factors, when substantial evidence in the official record of the application that supports the 11 criteria for issuing a Variance to the Flood Damage Prevention Ordinance.

**ATTACHMENTS**

ATTACHMENT #1: Application

ATTACHMENT #2: Rendering

ATTACHMENT #3: A copy of the 1963 Session Law and the Building Line Map (Map Book 8, Page 52)

ATTACHMENT #4: Flood map of the property

ATTACHMENT #5: Elevation of building

ATTACHMENT #6: Site Plan

ATTACHEMNT #7: Presentation

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

Permit Number: V23-01

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: \$450.00 to be submitted with application

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 (3<sup>rd</sup>) 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.

Applicant Name: Town of Carolina Beach

Applicant Mailing Address:

<u>1121 N.Lake Park Blvd</u>	<u>Carolina Beach</u>	<u>NC</u>	<u>28412</u>
Street Address	City	State	Zip

Applicant Phone Number: mobile/work/home (circle one): 910-458-2999 mobile/work/home (circle one): \_\_\_\_\_

Applicant Email Address: [Bruce.oakley@carolinabeach.org](mailto:Bruce.oakley@carolinabeach.org)

Property Owner Name: Town of Carolina Beach

Property Owner Mailing Address:

<u>Same</u>			
Street Address	City	State	Zip

Property address of variance being requested:

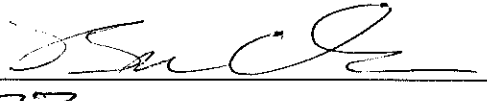
9 Boardwalk

Property Size: N/A sq. ft. Zoning Designation: CBD Floodzone: VE-16

Please give a brief description of requested action:

Flood variance to the minimum extent necessary from the breakaway wall and plumbing requirements located below BFE to rebuild the public bathrooms located at the Boardwalk.

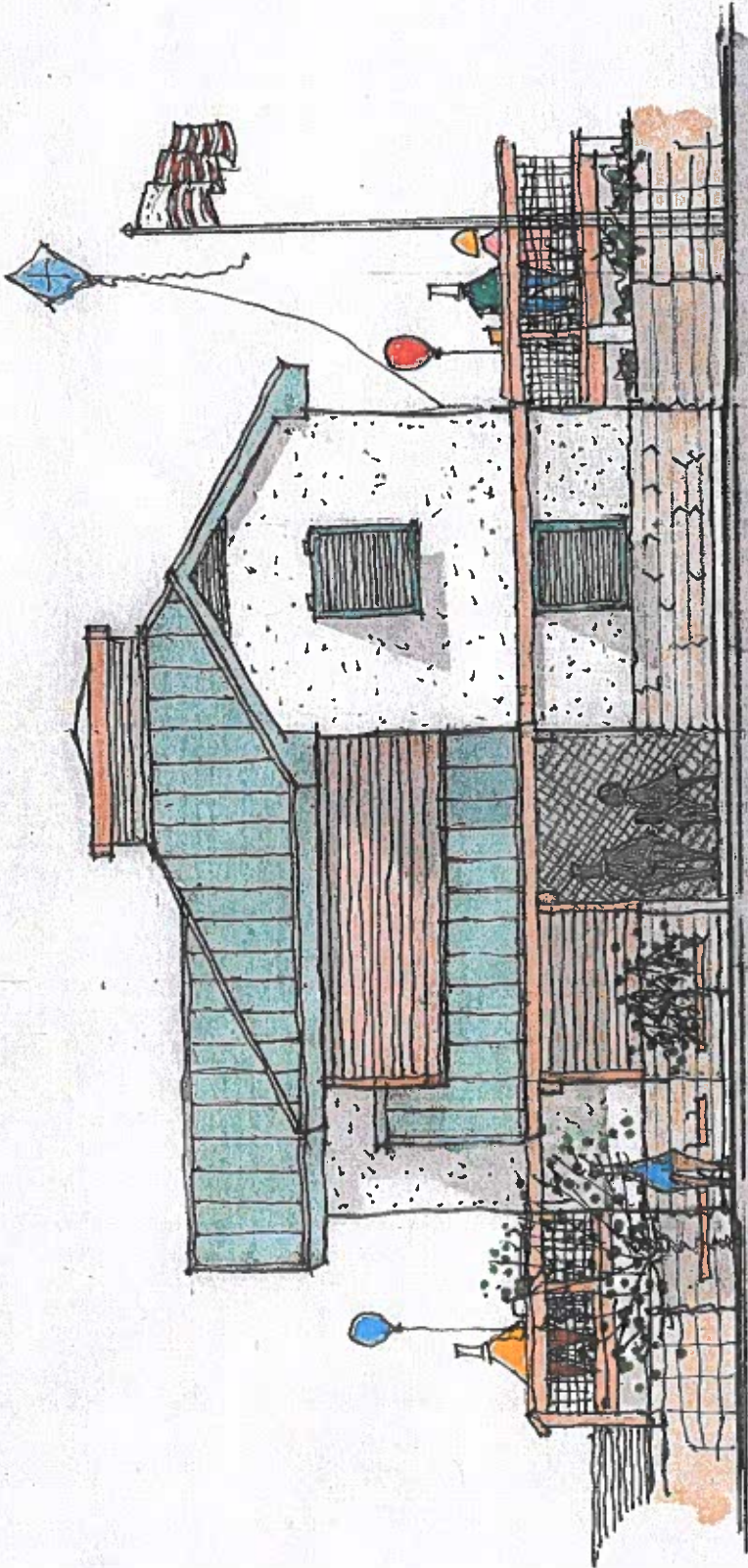
Owner Signature: \_\_\_\_\_

 \_\_\_\_\_, Town ManagerDate: 9/12/23Owner Printed Name: TOWN OF CAROLINA BEACH

### Variance Requirements

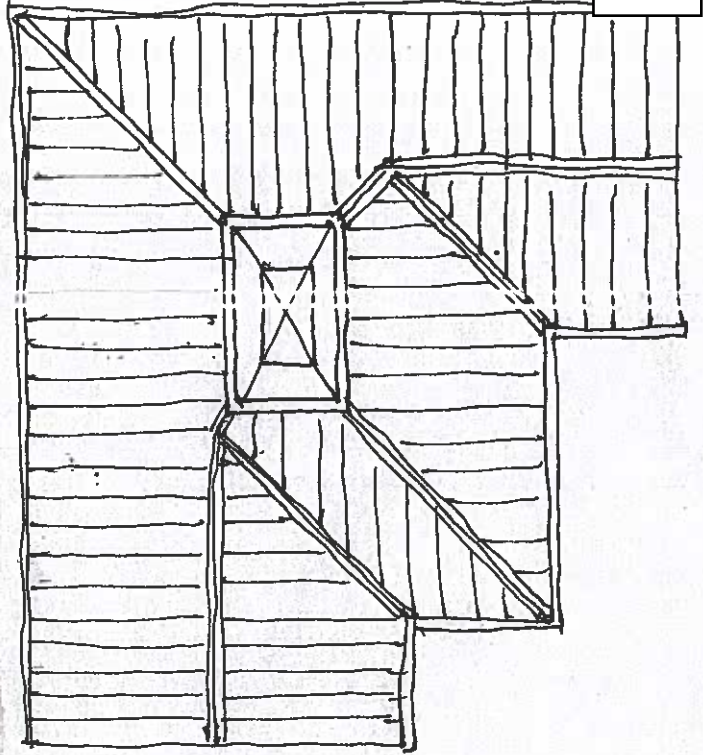
In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, as defined under article II of this chapter as a functionally dependent facility, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.



WEST ELEVATION

1/8" = 1'-0"

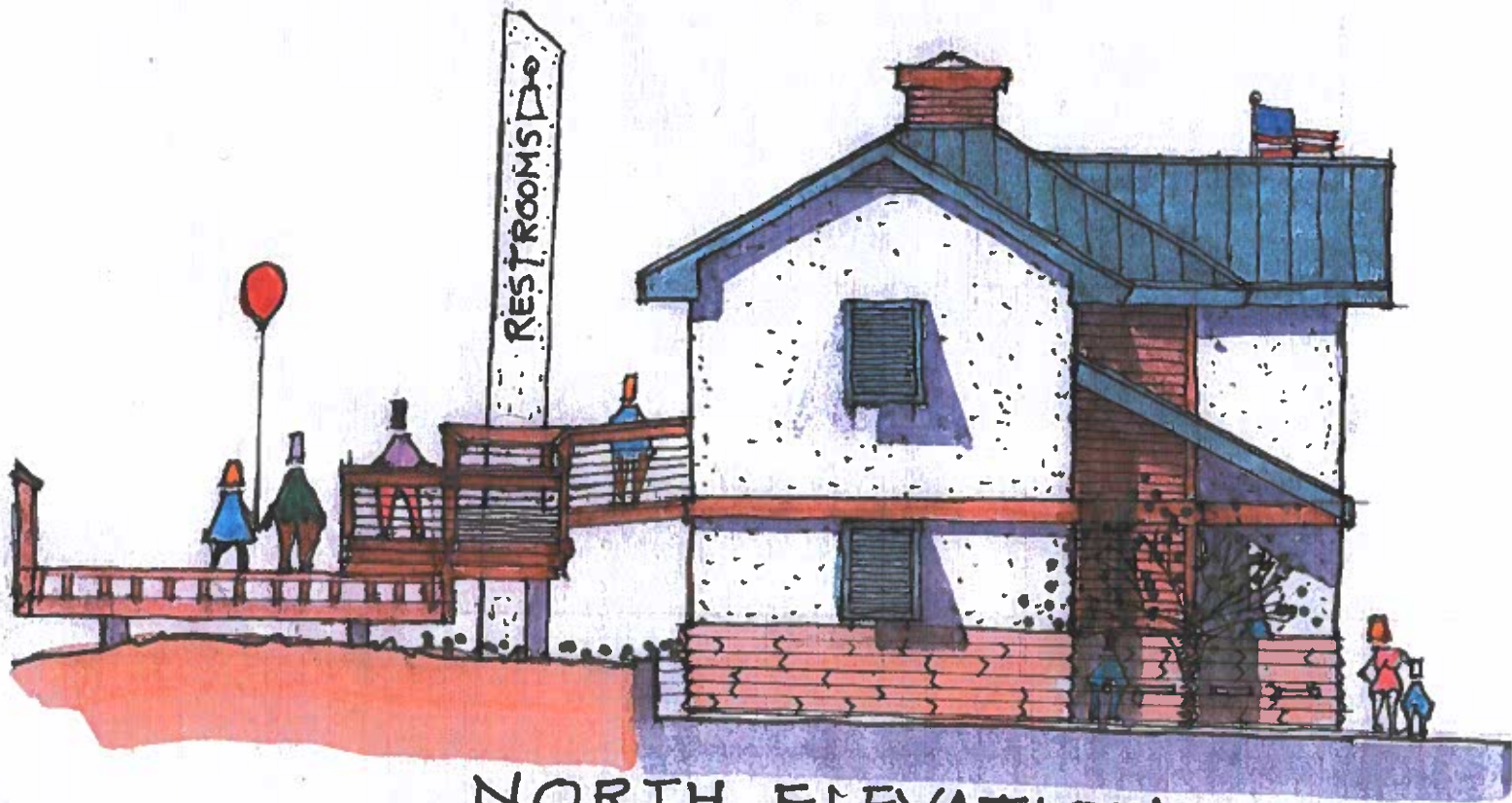




# EAST ELEVATION

BOARDWALK SIDE

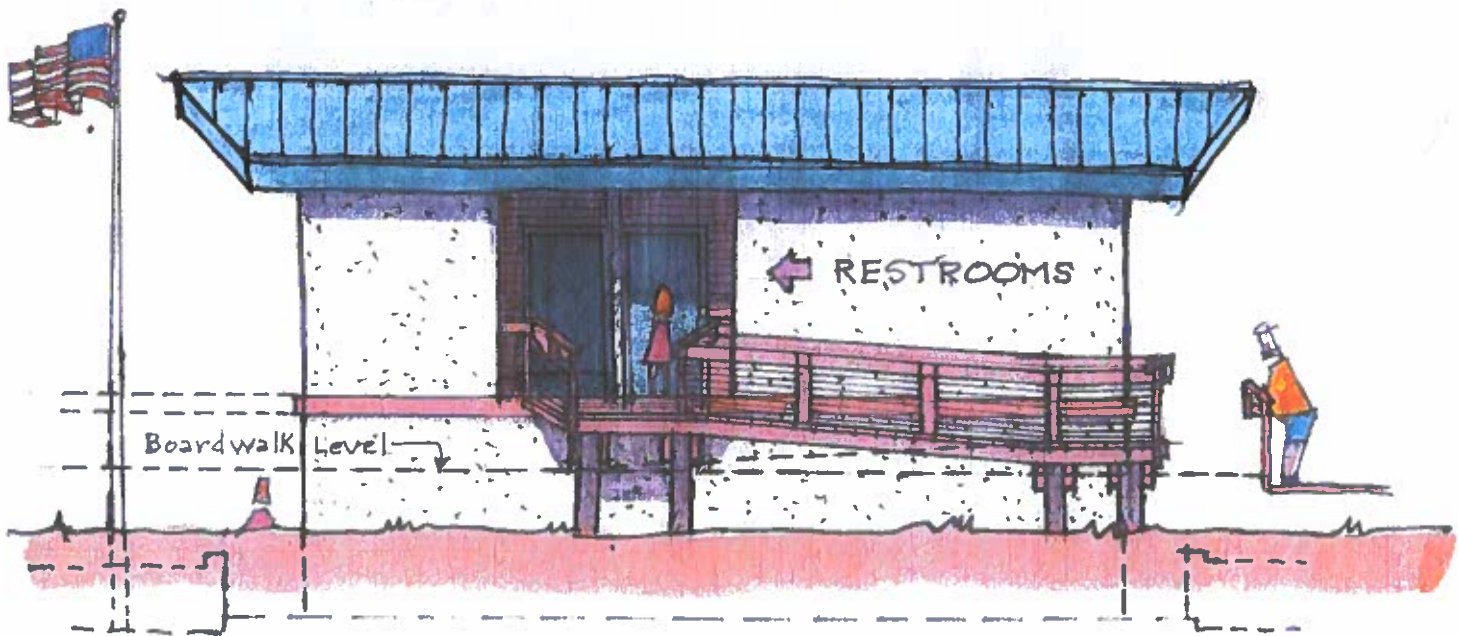
$\frac{1}{8}'' = 1'-0''$



NORTH ELEVATION  
 $\frac{1}{8}'' = 1'-0''$



WEST ELEVATION  
1/8" = 1'-0"





NORTH CAROLINA GENERAL ASSEMBLY  
1963 SESSION

CHAPTER 511  
HOUSE BILL 612

AN ACT RELATING TO THE TITLE TO THE LAND BUILT UP AND  
CONSTRUCTED IN THE TOWN OF CAROLINA BEACH IN THE COUNTY  
OF NEW HANOVER AS A RESULT OF CERTAIN EROSION CONTROL  
WORK IN SAID TOWN.

WHEREAS, during the course of many years in the Town of Carolina  
Beach, in the County of New Hanover, North Carolina, much of the land abutting and  
fronting on the Atlantic Ocean in said town formerly belonging to various property  
owners has been and is now being washed away by successive storms, tides and  
winds; and

WHEREAS, the said Town of Carolina Beach, with aid from the State of  
North Carolina, the United States Government, and with its own funds, has from time  
to time made available funds with which to control the erosion caused by said tides  
and winds and other causes, and to that end the said town has pumped sand from  
Myrtle Grove Sound and also pushed up sand and hauled sand, and as a result thereof  
there has been, is now, and will be made and constructed new land on the ocean front  
of said town which will change the ordinary and usual low water mark of the waters  
of the Atlantic Ocean along the front of said town, and when the work has been  
completed the question will arise as to whom title to the said new land shall belong;  
and

WHEREAS, it is the desire of the authorities of the Town of Carolina  
Beach, as well as the State of North Carolina, to fix and define the title to such new  
land and to fix and determine its use, and to further define the littoral rights of the  
property owners abutting on the ocean front which will be destroyed or taken by and  
through the making of such new made lands: Now, therefore,

The General Assembly of North Carolina do enact:

Section 1. All land filled in, restored, and made, and to be filled in,  
restored, and made, as the result of the recitals in the preamble to this Act, which will  
exist between the present eastern property line of the lot owners at present bordering  
on said ocean and the low water mark of the Atlantic Ocean after the work referred to  
in the preamble hereof is completed, shall be within the corporate limits of the Town  
of Carolina Beach and so much of said lands so filled in, restored and made which  
will lie West of "the building line" to be defined and determined by Section 2 of this



## 024

Act, is hereby granted and conveyed in fee simple to the land owner, to the extent that his land abuts thereon, and the balance of said land lying East of said "building line" to be fixed and determined by Section 2 of this Act is hereby granted and conveyed in fee simple to the Town of Carolina Beach, provided, however, that no building or structure shall be built and erected on said made and built-up land lying East of "the building line" to be defined and set out in Section 2 of this Act, and provided further that all made and constructed land lying East of "the building line" shall be at all times kept open for the purpose of street and highways for the use of the public and further for the development and uses as a public square or park, as the governing authorities of the Town of Carolina Beach by ordinance shall determine; and provided further that if any such property as is hereby granted and conveyed to the Town of Carolina Beach shall cease to be used for the purposes or in the manner prescribed in this Act, it shall revert and become the property of the State of North Carolina, and provided further that the owners of the property abutting on said newly made or constructed land, shall, in front of their said property possess and keep their rights, as if littoral owners, in the waters of the Atlantic Ocean, bordering on said newly acquired and constructed land.

Sec. 2. Within thirty (30) days from the date of the completion of said work to be carried on by the Town of Carolina Beach and referred to in the preamble hereof, the said Town of Carolina Beach shall, at its own cost, survey or have surveyed by a competent engineer a line to be known as "the building line", and which shall constitute and define "the building line" referred to in Section 1 of this Act, and which shall run the full length of the beach within the town limits, and after "the building line" shall have been surveyed and fixed and determined, the said authorities of the Town of Carolina Beach shall immediately cause to be prepared a map showing, fixing, and determining "the building line", which map so prepared shall be immediately recorded in the office of the Register of Deeds of New Hanover County in a map book kept for said purposes, after the engineer has appended an oath to the effect that said line has been truly and properly surveyed and laid out and marked on said map, and the register of deeds shall properly index and cross-index said map, and when so recorded in said map book or entered or placed therein, in lieu of inserting a transcript thereof, and indexed, the said map shall be competent and prima facie evidence of the facts thereon, without other or further proof of the making of said map, and shall conclusively fix and determine "the building line" referred to in Section 1 of this Act.

Sec. 3. Any property owner or claimant of land who is in any manner affected by the provisions of this Act, and who does not bring suit against the Town of Carolina Beach, or assert such claims by filing notice thereof with the governing body of the town, either or both, as the case may be, or any claimant thereto under the provisions of this Act, or their successor or successors in title, within six (6) months after "the building line" is surveyed and established, and the map thereof recorded, as provided for herein, shall be conclusively presumed to have acquiesced in, and to have accepted the terms and conditions hereof, and to have abandoned any claim, right, title or interest in and to the territory immediately affected by and through or as

a result of the doing of act or acts or thing or things herein mentioned, and shall be forever bound from maintaining any action for redress upon such claim.

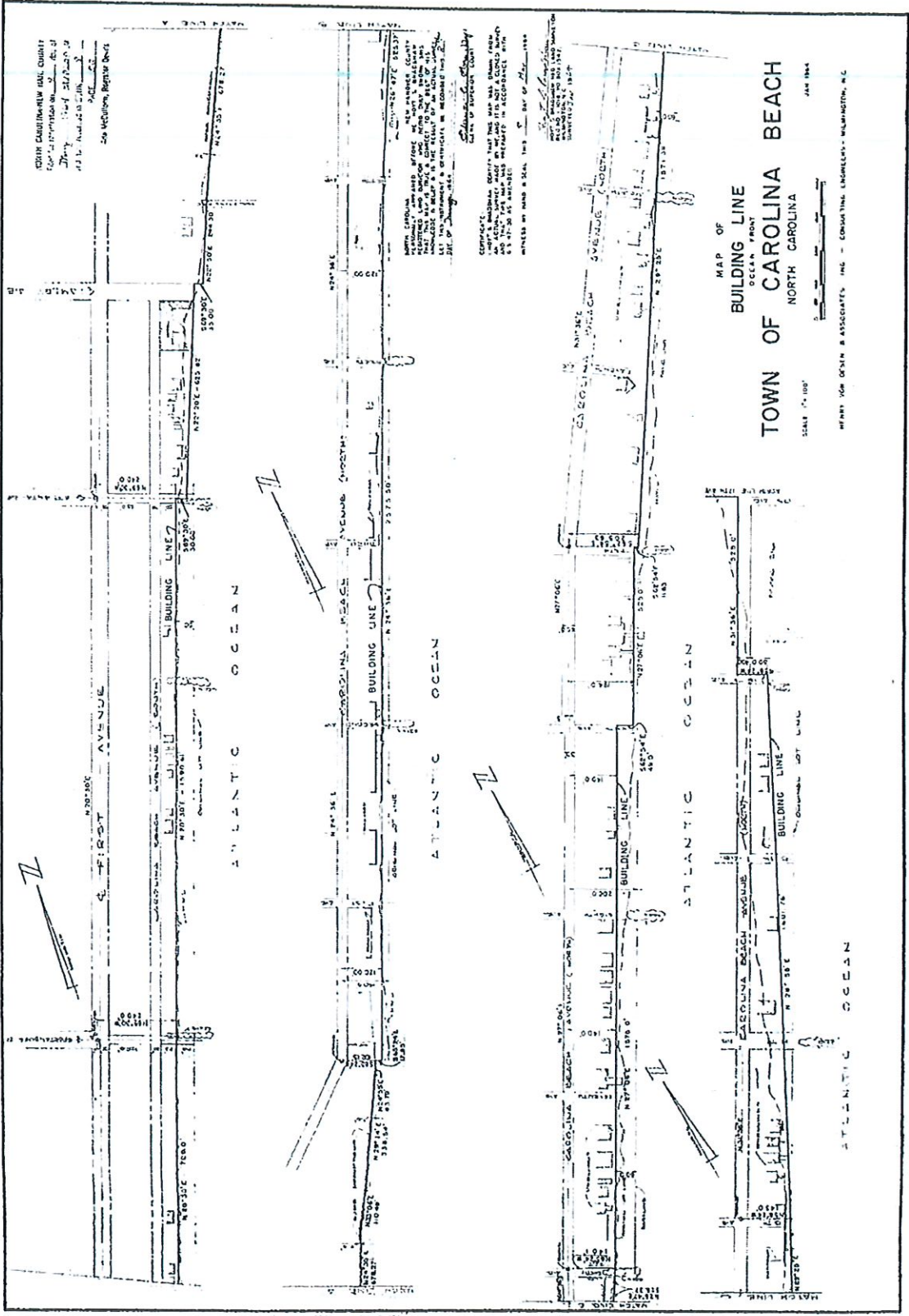
Sec. 4. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 5. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 22nd day of May, 1963.

EXHIBIT

2



027

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 276  
HOUSE BILL 111

AN ACT TO ESTABLISH THE TITLE TO CERTAIN LANDS RAISED FROM  
NAVIGABLE WATERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-6 is amended as follows:

(1) by adding a new sentence at the end of subsection (b) to read:

"Title to land so raised, however, does not vest in the State if the land was raised within the bounds of a conveyance made by the State Board of Education, which included regularly flooded estuarine marshlands or lands beneath navigable waters, or if the land was raised under permits issued to private individuals pursuant to G.S. 113-229, G.S. 113A-100 through -128, or both."; and

(2) by adding a new subsection to read:

"(f) Notwithstanding the other provisions of this section, the title to land in or immediately along the Atlantic Ocean raised above the mean high water mark by publicly financed projects which involve hydraulic dredging or other deposition of spoil materials or sand vests in the State. Title to such lands raised through projects that received no public funding vests in the adjacent littoral proprietor. All such raised lands shall remain open to the free use and enjoyment of the people of the State, consistent with the public trust rights in ocean beaches, which rights are part of the common heritage of the people of this State."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 30th day of May, 1985.

028

tabblier

**EXHIBIT**

3

NEW HANOVER COUNTY

SHERIFF'S DEED

STATE OF NORTH CAROLINA :

COUNTY OF NEW HANOVER :

This deed, made and entered into this the 27th day of November, 1973,  
 by and between H. O. Grohman, Sheriff of New Hanover  
 County, North Carolina, party of the first part, and New Hanover County and  
Town of Carolina Beach, party [parties] of the second part,

**WITNESSETH:**

That whereas the party of the first part, being duly licensed there to by and execution  
 issued upon a certain Judgment docketed in the office of the Clerk of the Superior Court for  
 New Hanover County, N. C. in Judgment Docket Book 7, at page 145, in a proceeding  
 entitled "New Hanover County and

Town of Carolina Beach Vs Mrs George O'Fish (O'Fish)."  
 After due advertisement in accordance with law, did offer for sale and did sell, at public auction  
 for cash to the highest bidder, at the courthouse door in New Hanover County, N. C. on the  
5th day of November, 1973 certain real estate herein described,  
New Hanover County and  
Town of Carolina Beach became the last and highest bidder for the price  
\$1,285.79

NOV 29 11 18 AM '73

Whereas, more than ten days have elapsed since the report of the said sale was filed with  
 the Clerk of the Superior Court and no increased bid has been filed, and said sale having been  
 confirmed by an Order of the Superior Court, and the said New Hanover County and

Town of Carolina Beach  
 party [parties] of the second part has [have] fully paid the amount of the bid to the party of  
 the first party;

NOW, THEREFORE, in consideration of the premises and in further consideration of the  
 sum of Twelve Hundred eighty five and 79/100 \$ 1,285.79  
 in hand paid to the party of the first part by the party [parties] of the second part, the receipt  
 of which is hereby acknowledged, the said party of the first part has given, granted, bargained,  
 sold and conveyed, and does hereby give, grant, bargain, sell and convey unto the party [parties]  
 of the second part, and to its [their] successors and assigns, a 52.3 % undivided  
 interest to the Town of Carolina Beach North Carolina, and a 42.7 undivided  
 interest to New Hanover County, North Carolina, in and to the following  
 described real estate, same lying and being in Town of Carolina Beach TOWNSHIP, New  
 Hanover County, North Carolina, and being more particularly described and bounded as follows:

Beginning at a point in the south margin of a twenty (20) foot Street,  
 (said Street being a prolongation of Cape Fear Boulevard), being the northeast  
 corner of Lot Six (6); thence in a southwardly direction with the eastern line of  
 Lot Six (6) fifty (50) feet to a point, the northeast corner of Lot Nine (9)  
 thence with the northern line of Lot Ten (10) seventeen and fifty-five hundredths  
 (17.55) feet to a point the northeast corner of Lot Ten (10) and the high water mark  
 of the Atlantic Ocean; thence with the high water mark of the Atlantic Ocean north  
 Fifty and Two-tenths (50.2) feet to a point in the south margin of said twenty (20)  
 foot Street; thence west with the south line of said Street Twenty One and Five-tenths  
 (21.5) feet to the point of beginning; the same being known and designated as Lot  
 Number Seven (7) according to a map of property conveyed by P. O. Moore and wife to  
 J. W. Eford, by deed dated July 8, 1926, which said deed is recorded in book 173  
 at page 330; and which said map is entitled "Section of Carolina Beach", prepared by  
 J. L. Becton, C. E., July 1926, and which said map is duly recorded in the office of  
 the Register of Deeds of New Hanover County in Map Book 2 at page 104, to which said  
 map reference is hereby had for a more complete description of the Lot herein  
 conveyed.

029

BOOK 990 PAGE 47

For more particular description, see deed from \_\_\_\_\_

to \_\_\_\_\_, recorded in Deed Book 199, page 491, in the Office of the Register of Deeds of New Hanover County.

To have and to hold the above-described premises and all privileges and appurtenances thereunto appertaining, to the said party [parties] of the second part, his [her, their] heirs and assigns, to their only use and behoof forever free and clear of all encumbrances except all out-standing city and county taxes and all local improvement assessments against the above-described property not included in the execution in the above-entitled cause in as full and ample manner as said party of the first part is authorized and empowered to convey the same,

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[Signature] (Seal)

\_\_\_\_\_ (Seal)

Personally appeared before me this day H.G. GROHMAN Sheriff of New Hanover County, who duly acknowledged the execution of the foregoing deed as his own act and deed.

Witness my hand and notarial seal, this 27 day of NOV

[Signature]  
Notary Public



My Commission Expires August 31, 1976

My commission expires \_\_\_\_\_  
State of North Carolina-- New Hanover County

The foregoing certificate of Thomas H. Evans, a

Notary Public of and for the County of New Hanover, State of North Carolina, is certified to be in due form and according to law. Filed Nov. 28, 1973, and recorded in Deed Book 990, page 46, in the office of the Register of Deeds of New Hanover County.

This 28 day of November, 1973.

Lois C. Le Roy

Register of Deeds

Drawn by New Hanover Co  
Tax office

By [Signature] Assistant

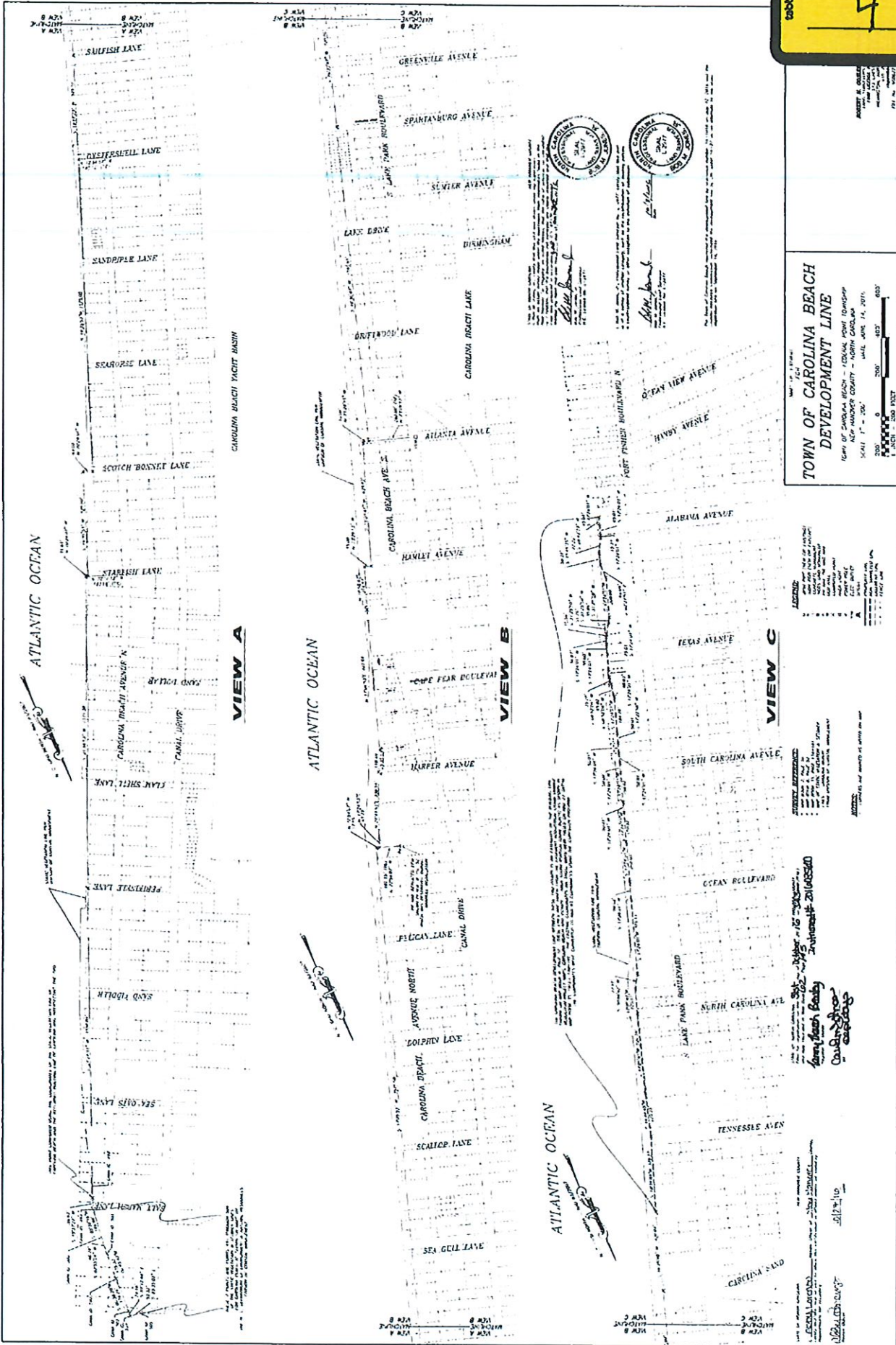
Received and Recorded  
November 20, 1973 at 11:18 AM

[Signature]  
Registrar of Deeds

EXHIBIT

4

tabbies



TOWN OF CAROLINA BEACH  
 DEVELOPMENT LINE  
 TOWN OF CAROLINA BEACH - FEDERAL POINT TOWNSHIP  
 NEW HANCOCK COUNTY - NORTH CAROLINA  
 SCALE 1" = 200'  
 DATE: JUNE 14, 1971  
 0 200' 400' 600'  
 1 INCH = 200 FEET

Jeremy Hamilton 458 2991

MAP BOOK U2, PAGE 145

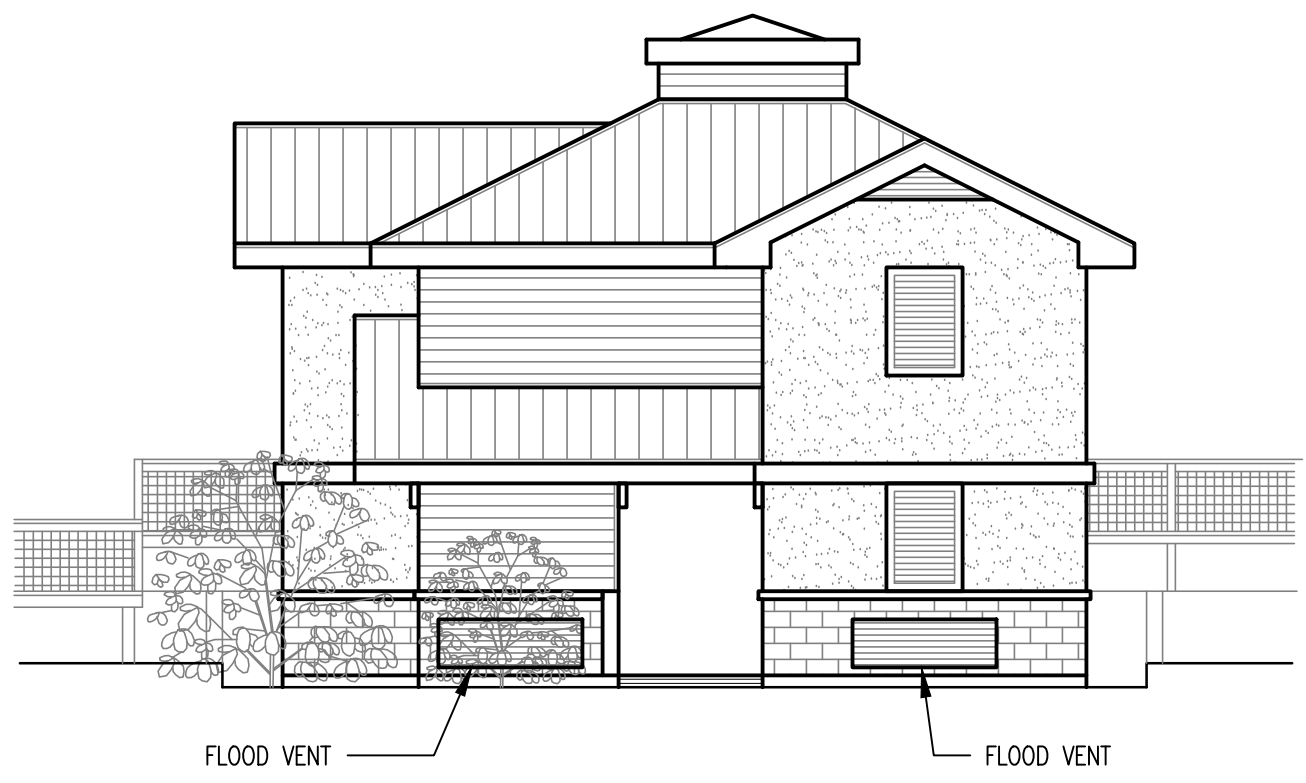
030

# Flood Map

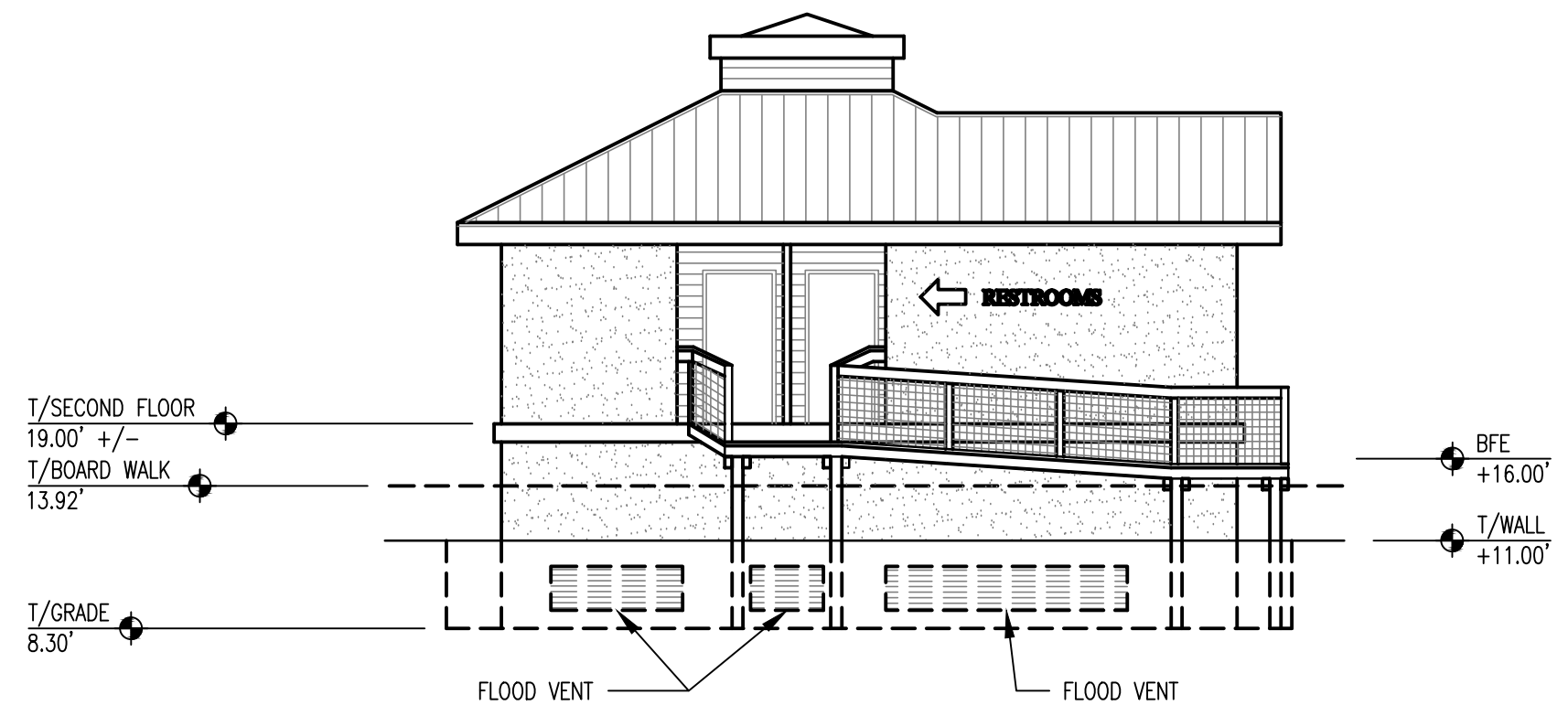




BASE FLOOD ELEVATION (BFE) BASED ON FEMA FLOOD MAP NO. 3130.  
FLOOD ZONE = VE



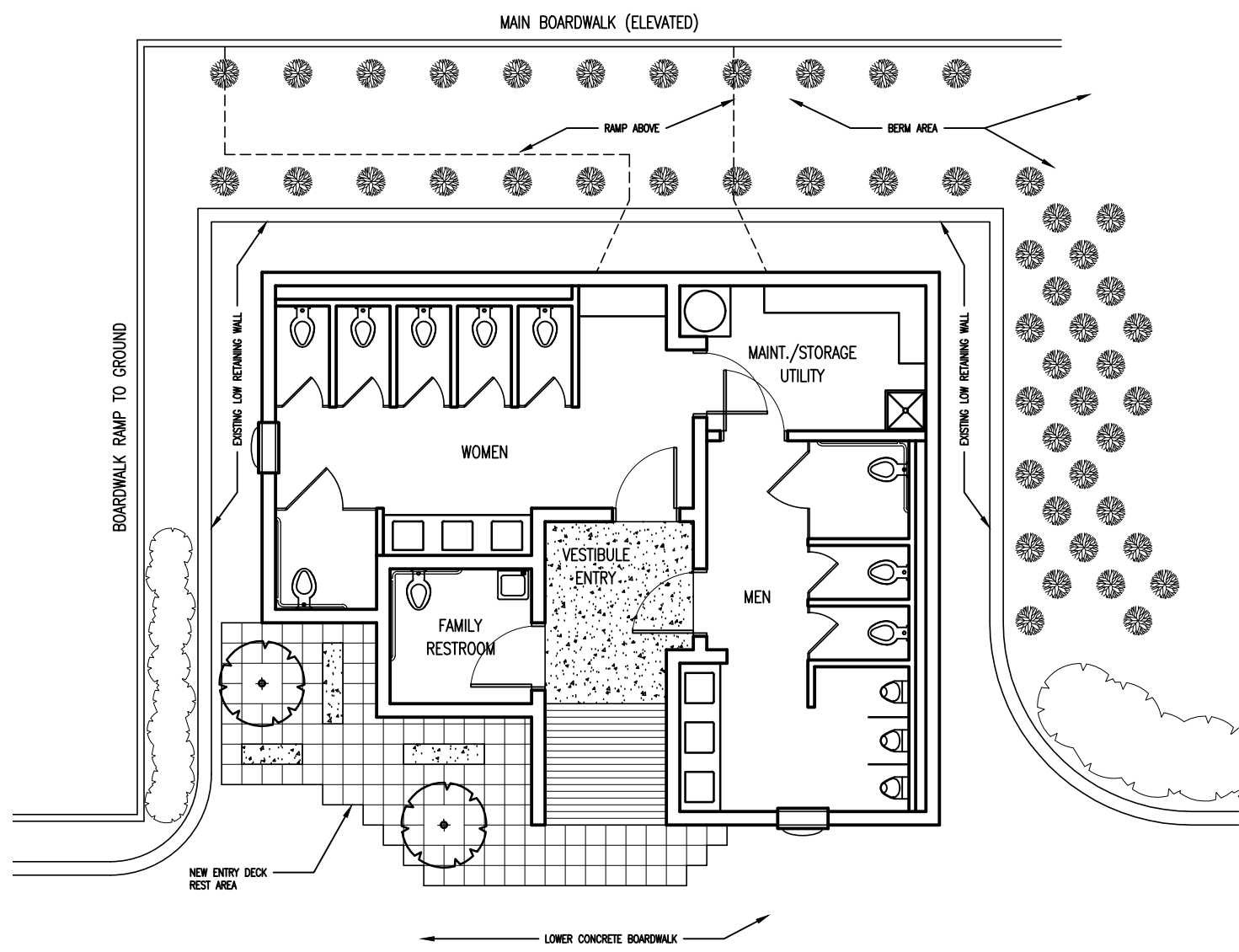
**A** WEST ELEVATION (option A)  
SCALE: 1/8"=1'-0"



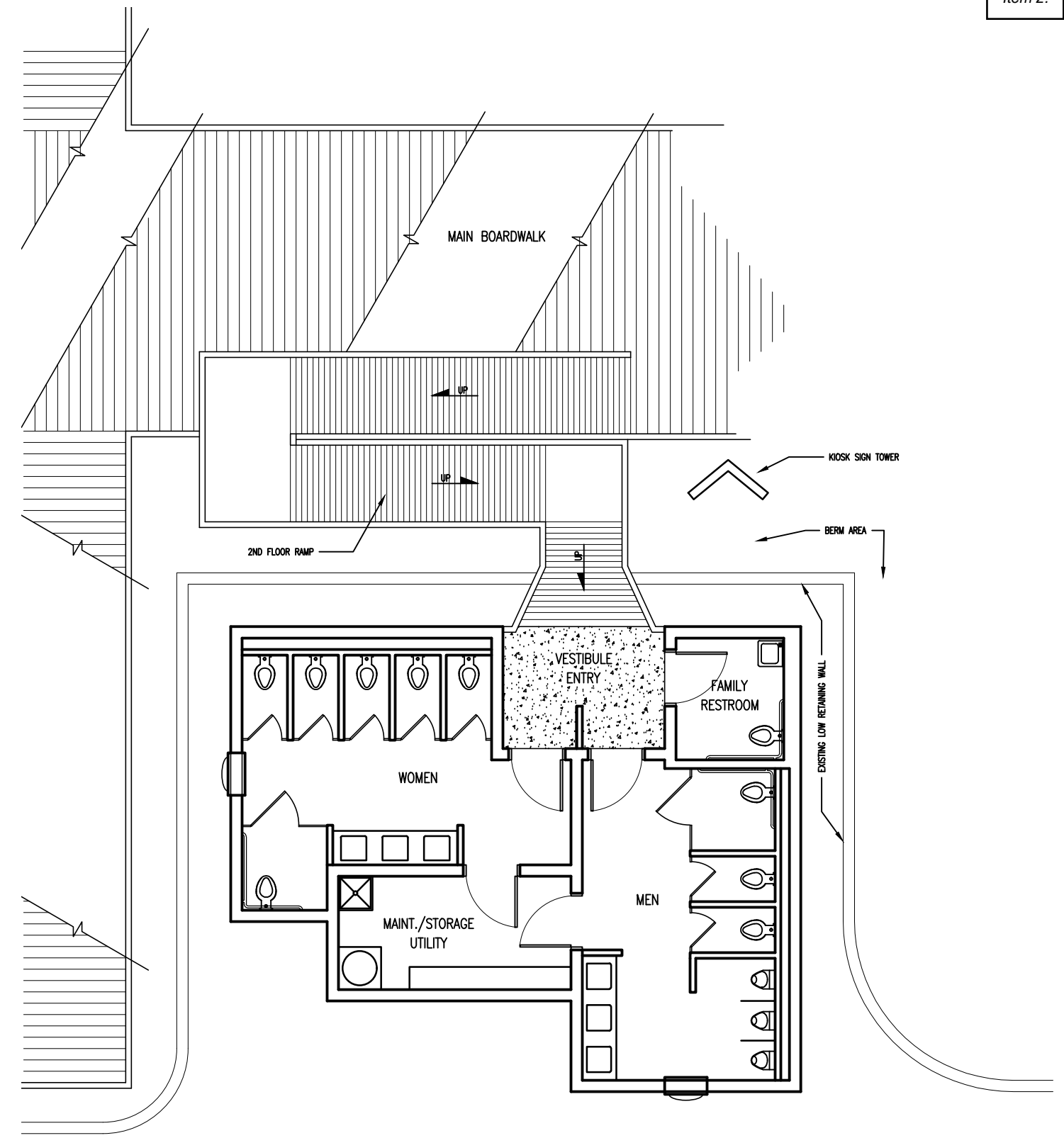
**B** EAST ELEVATION (option A)  
SCALE: 1/8"=1'-0"

THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, PERMIT OR OTHER UNAUTHORIZED PURPOSES. THESE DOCUMENTS/PLANS WERE AUTHORIZED TO BE RELEASED.

CAROLINA BEACH BOARDWALK  
**RESTROOM BUILDING**



**A** GROUND FLOOR PLAN / SITE AREA  
SCALE: 1/8"=1'-0"



**B** SECOND FLOOR PLAN / SITE AREA  
SCALE: 1/8"=1'-0"



# Variance

ARTICLE V. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 30-124. - General standards. (d) - Location of plumbing fixtures

Sec 30-125 Specific Standards (d) (4) – Breakaway wall requirements

MEETING  
MAY 2, 2023

# Ariel view of Bathroom area



# Existing Bathroom

Item 2.



# Ocean Side

Item 2.



# Rendering – West Elevation

Item 2.

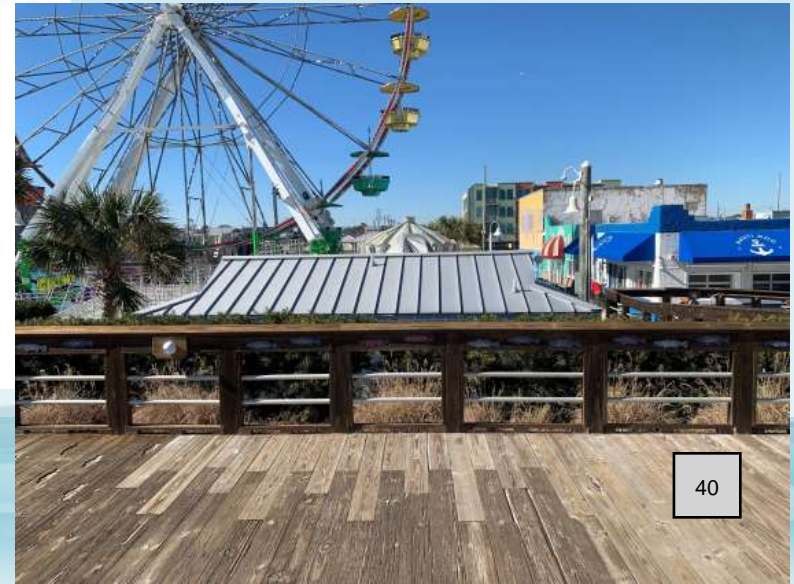




# EAST ELEVATION

## BOARDWALK SIDE

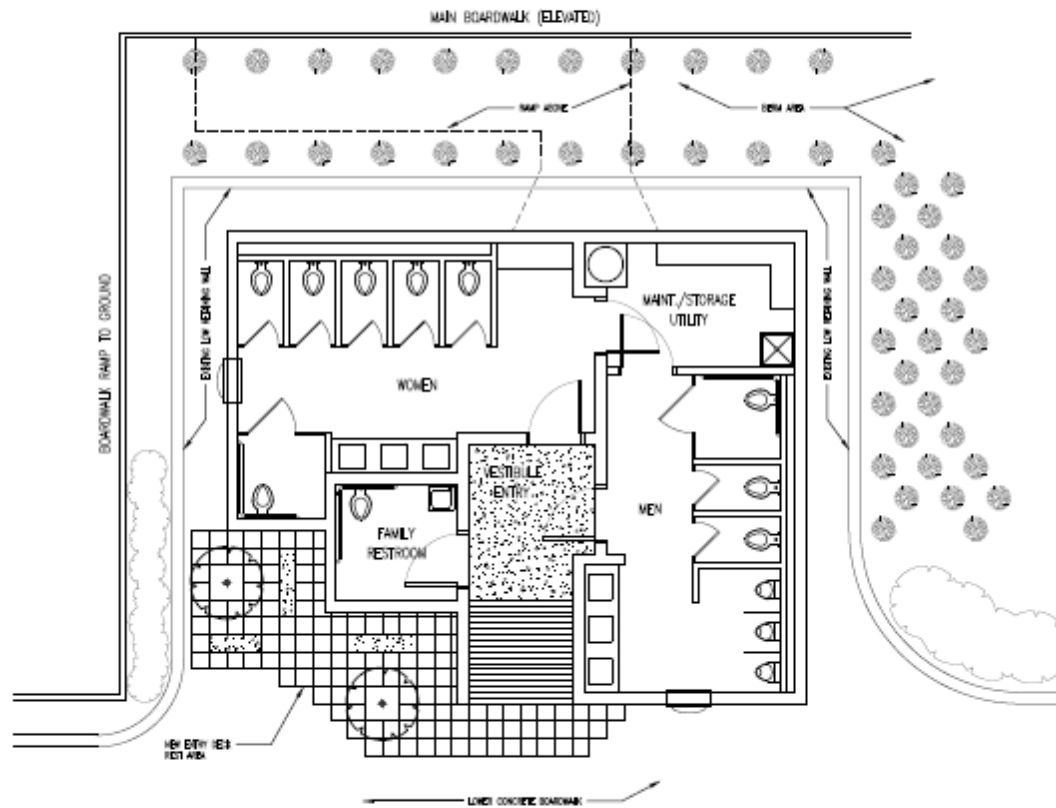
$\frac{1}{8}'' = 1'-0''$



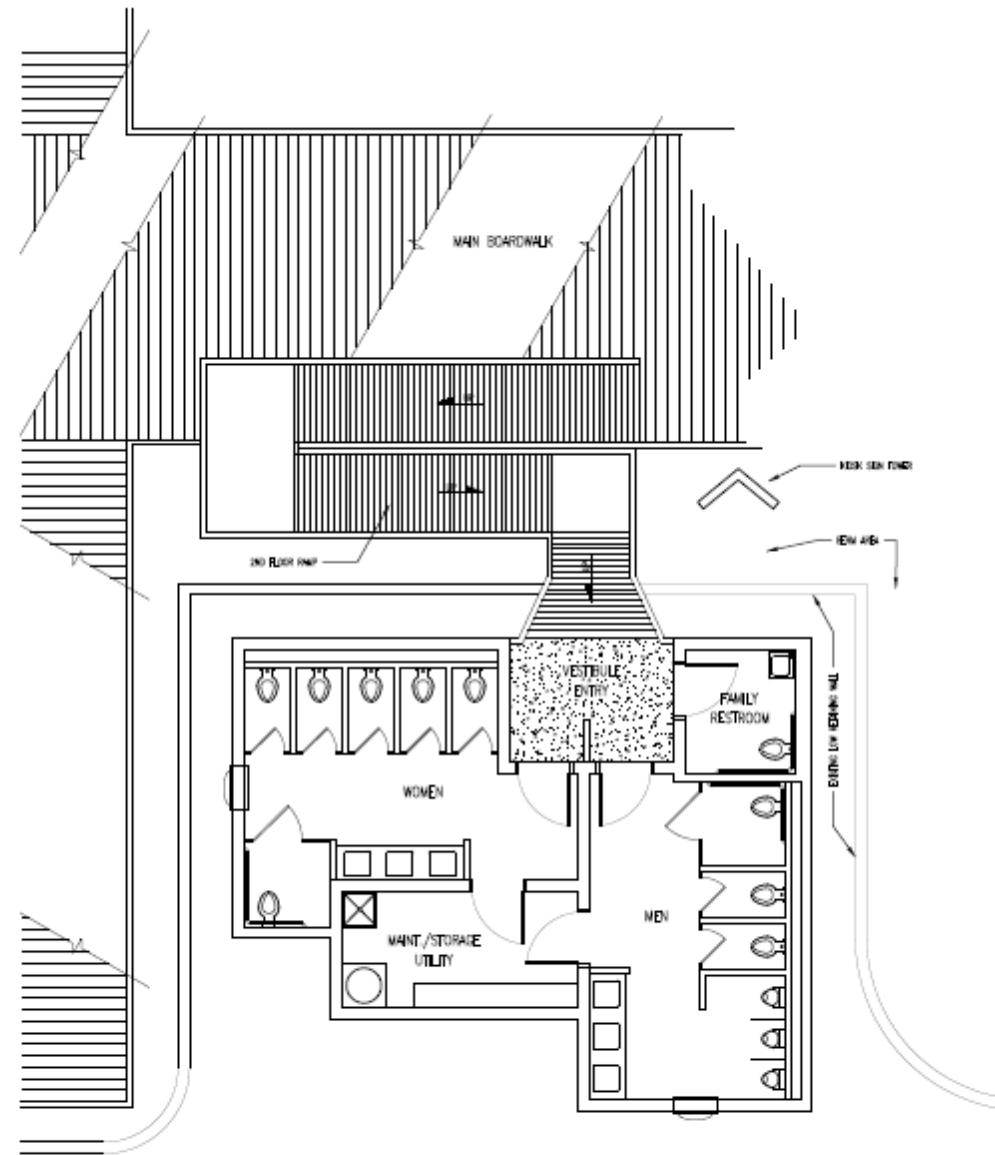


# Site Layout

Item 2.



**A** GROUND FLOOR PLAN / SITE AREA  
SCALE: 1/8"=1'-0"



**B** SECOND FLOOR PLAN / SITE AREA  
SCALE: 1/8"=1'-0"



Item 2.



# Flood Map

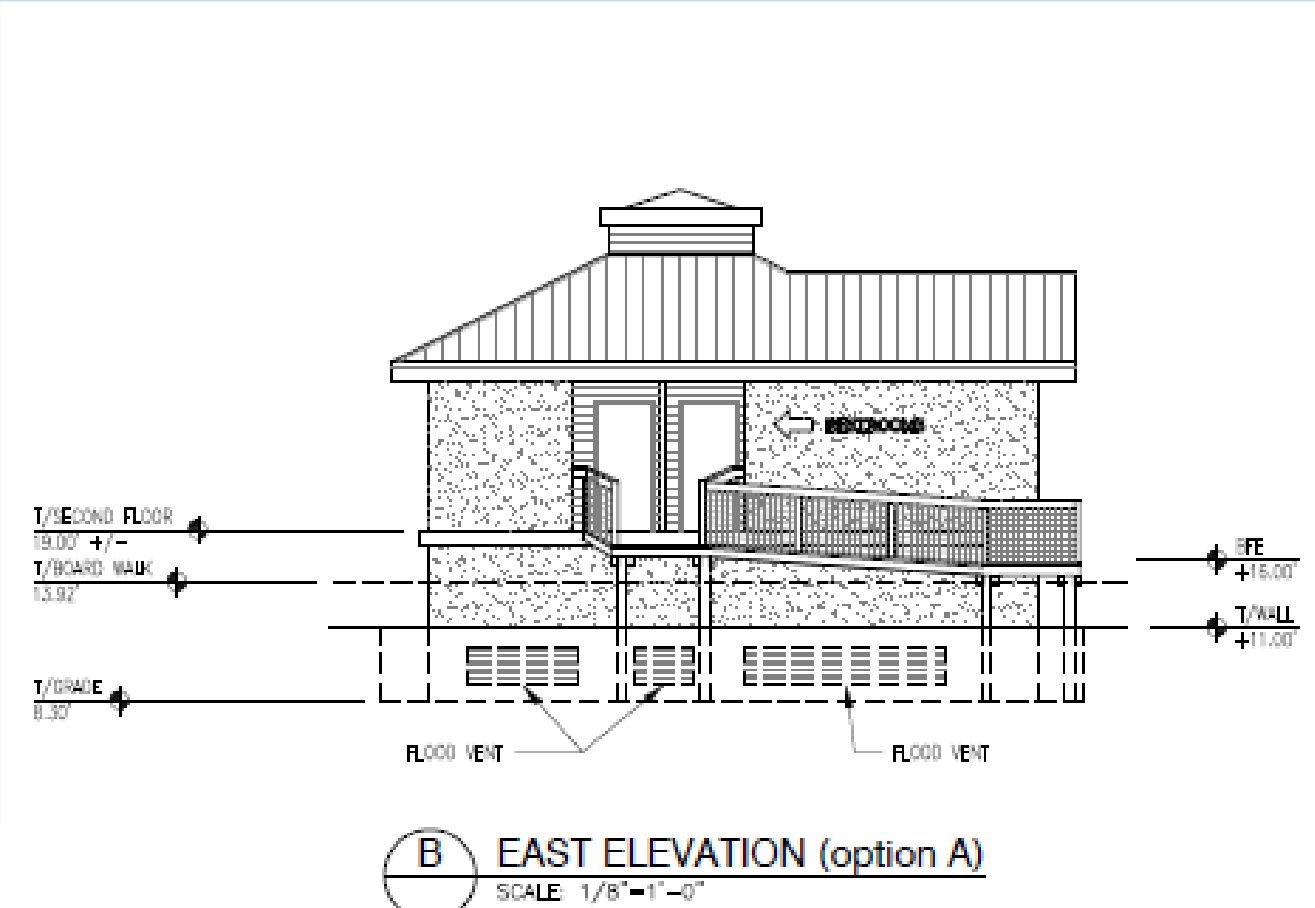
Item 2.



# The Proposed design will meet the following flood requirements

Item 2.

<p><b>Flood vents</b></p>	<p><b>Flood Vents protect buildings during floods by preventing hydrostatic pressure buildup that can destroy walls and foundations. This mitigation technique, allows floodwater to freely flow through an enclosure.</b></p>
<p><b>Electrical and Mechanical equipment</b></p>	<p>Will be elevated above freeboard 18' BFE. To allow the electrical and mechanical system to operate after a flood event without damage to floodwaters.</p>
<p><b>Utilizing piling construction.</b></p>	<p>Engineered to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy during conditions of flooding.</p>
<p><b>First horizontal member will meet freeboard (18' BFE).</b></p>	<p>Horizontal structural members are obstructions and can transmit the force of wave impacts to rest of the structure. This requirement is to keep the entire building in a V Zone above the anticipated breaking wave height of a base flood storm surge.</p>
<p><b>Constructed using flood resistant materials</b></p>	<p>The building will be capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage.</p>



# Variance

**Variance from**

**ARTICLE V. - PROVISIONS FOR FLOOD HAZARD REDUCTION**

**Sec. 30-124. - General standards.**

(d) All new plumbing equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, water softener units, bath/kitchen fixtures, and water heaters.

The hot water heater will meet flood requirements. The sinks and water closets are proposed to be located below the BFE. The plumbing fixtures and connections will be designed and installed to eliminate infiltration of floodwaters into the sanitary sewage system and discharges from sanitary sewage systems into floodwaters.

# Variance

**Sec. 30-125. - Specific standards.**

(d) *Elevated buildings.* Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation:

(4) Shall allow, in coastal high hazard areas (Zones VE), either be free of obstruction or constructed with breakaway walls, latticework or insect screening below the regulatory flood protection elevation, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building on which they are to be used.

Breakaway wall requirements - For enclosures under the BFE the walls are required to be breakaway. The size, placement, and design of the breakaway walls and flood vents will be such to mitigate the effects of the wave and static forces from a flood event. The location of the breakaway walls will be determined by the location of the utilities chases and typical interior fixtures of a restroom facility.

# Variance Criteria

In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and shall consider the following criteria for floodplain variances:

- 1) The danger that materials may be swept onto other lands to the injury of others;
- 2) The danger to life and property due to flooding or erosion damage;
- 3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- 4) The importance of the services provided by the proposed facility to the community;
- 5) The necessity to the facility of a waterfront location, as defined under article II of this chapter as a functionally dependent facility, where applicable;
- 6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 7) The compatibility of the proposed use with existing and anticipated development;
- 8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- 9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- 10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- 11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

# 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 Zoning Ordinance:

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

1. Plumbing fixtures and connections are permitted below the BFE provided that the fixtures and connections are designed and installed to minimize or eliminate infiltration of floodwaters into the sanitary sewage system and discharges from sanitary sewage systems into floodwaters.
2. Anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy during conditions of the base flood.
3. Constructed of flood-damage-resistant materials.
4. Install flood vents.
5. Mechanical and electrical systems located above the BFE.
6. Install breakaway walls to the maximum extent possible.