

CAROLINA BEACH

Board of Adjustment Meeting

Monday, January 22, 2024 – 6:00 PM

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



AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

- [1.](#) December 5th, and December 18th, 2023 – BOA Minutes

PUBLIC HEARING

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

- [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. & Sec. 40-74. - Dimensional standards for lots and principal structures.

APPOINTMENT OF CHAIR AND CO-CHAIR

NON-AGENDA ITEMS

ADJOURNMENT



AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Senior Planner

DEPARTMENT: Planning &
Development

MEETING: Board of Adjustment – January 22nd, 2024

SUBJECT: December 5th, and December 18th, 2023 – BOA Minutes

Action:

Approve the December 5th, and December 18th, 2023 Minutes

CAROLINA BEACH

Board of Adjustment Meeting

Tuesday, December 5, 2023 - 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 Jullena Shelley
- Board Member Paul Levy
- Board Member Ken Thompson

ABSENT

- Board Member Tim Howard
- Board Member David Marshall

ALSO PRESENT

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

APPROVAL OF MINUTES

1. July 17, 2023 – BOA Minutes

ACTION: Motion to approve the minutes

Motion made by Board Member Shelley, seconded by Board Member Levy

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

Motion passed 5-0

PUBLIC HEARING

2. Variance to the Required 25-Foot Front Yard Setback for 311 Spencer Farlow Drive
 - Deck: 24.56 Feet
 - Pool: 21 Feet
 - Applicant: Lary and Cory Ellis

Applicants Lary and Cory Ellis are requesting a variance of up to 4 feet from Sec. 40-74. -Dimensional standards for lots and principal structures and Sec. 40-75. – Dimensional standards for accessory structures that require a 25-foot front yard setback. The property is located at 311 Spencer Farlow

Drive and is in the R-2 zoning district. The property consists of a 0.171-acre lot, Lot 3B, Block 3, Harbour Point. Two permits were applied for at the property, one for a single-family home and a second for a pool. The contractor scheduled a final inspection of the swimming pool and home. A final survey is required for the final zoning inspection. The final survey depicted the front deck and swimming pool encroaching on the minimum 25-foot front setback.

DECK

The first site plan submitted with the permit application for new construction depicted the incorrect front setback. Staff notified the applicant that the minimum front setback in R-2 is 25 feet and not 20 feet. An updated site plan was submitted to the permit application, and the project was approved. The zoning ordinance requires that a foundation survey be submitted prior to the sheathing inspection. A foundation survey was submitted and approved, but the front deck was not shown and had not yet been built. Upon review of the final survey and during the final zoning inspection, the three front deck pilings were shown encroaching into the minimum front setback. The three pilings for the front deck were built with setbacks of 24.68 feet, 24.70 feet, and 24.56 feet from the front property line along Spencer Farlow Drive.

POOL

In October 2022, the owner applied for a permit for a pool, but it was never approved. The site plan submitted showed the pool meeting the 25-foot front setback. The permit application expired in April 2023. A new permit for the pool was applied for in April 2023, and the site plan showed the pool from the original site plan submittal with the incorrect 20-foot minimum front setback. The front corner of the pool was built with a setback of 21 feet. Pool setbacks are measured to the edge of the water.

To resolve the situation, the applicant requests up to a 4-foot variance to the required 25-foot front yard setback. The home meets the minimum required side (7.5 feet), corner side (12.5 feet), and rear (10 feet) yard setbacks. To come into compliance with the ordinance, the front deck and pool would have to be rebuilt.

REQUIRED FINDINGS

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board shall vary any of the provisions of the ordinance upon a showing of all 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.

If the Board supports the findings, staff recommends the following condition for the variance: The variance is granted for the existing house and pool only, and any new structures on the property shall conform to the setback requirements.

Individuals planning to speak on the matter were sworn in.

Ms. Abbotts presented the details. She reviewed photos of the property, site plans, and the required findings.

Attorney Sam Potter, representing the applicants, said the Ellises were surprised that after receiving the final permit from New Hanover County approving the house as constructed, they received word from Town staff that they could not get a certificate of occupancy because the pool and a portion of the deck had encroached into the setback. He said the pool was built in accordance with the permit issued, and everybody missed the incorrect setbacks. Mr. Potter said the applicants never intended for this to happen, and demolition and rebuilding don't make sense because nobody is hurt by the encroachments.

Chairman Hartsell asked if two different contractors made two different mistakes. Mr. Potter said yes.

Mr. Ellis said he and his wife are trying to complete their retirement homeownership journey and hired Cory Thompson of Thompson Design Build and Doug Hill of Outdoor & More as contractors. He said his family, including four pets, has had to find a place to rent until the issues are resolved, and the delays have resulted in the need to pay the property's mortgage in addition to rent. Mr. Ellis said they would like to move into their new home in time of the holidays.

Board Member Thompson asked if the builder is compensating the applicants for their hardships. Mr. Ellis said no.

Mr. Thompson, the builder, said he is responsible for the three pilings going into the front setback. He said to the best of his knowledge, the issue was related to the building footprint the surveyor provided.

Chairman Hartsell asked Mr. Thompson if he personally staked off the house. Mr. Thompson said no, he never stakes a house and instead leaves it to the surveyor. He said Derek Danford was the surveyor, and there have never been any previous issues with his work. Mr. Thompson said he doesn't understand why the foundation survey came back different from the final survey. He said it's possible someone kicked over or otherwise moved one of the stakes because building sites sit unprotected for weeks before work starts.

Mr. Hill said he requested the survey and drew the pool he was asked to build on the survey. He said he turned in all the information for permitting, it was reviewed and approved, and his team built the pool.

Mrs. Ellis said they hired licensed professionals and entrusted them with this project, which is their first time building from the ground up. She said this is their dream home, and it's also a necessity to provide space for them to care for relatives who are ill and aging. Mrs. Ellis said one of their pets became so

sick and stressed during this process that the animal had to be put down. She said the situation is not her family's fault in any way.

Mr. Potter reviewed the required findings and said his clients meet all four. He said rebuilding would cause unnecessary hardship and waste, the hardship is peculiar to the property because the edge of the pavement sits farther back than the property line, the situation is not the action of the property owner/applicant, and substantial justice would be served by allowing them to move into their house. Mr. Potter said the pilings are inches into the setback, and the pool was issued pursuant to a permit allowing it to be constructed exactly where it is.

Chairman Hartsell opened the public hearing.

Marcus Max Gunkel of 312 Spencer Farlow Drive said there was not proper notice for this proceeding. He said there was a sign on the property, but the dates were not visible so he had to go to Town Hall to get information. Mr. Gunkel said representatives from the N.C. Wildlife Resources Commission and the U.S. Army Corps of Engineers should be present and part of the discussion because of their interest in property near the home. He said this is not a long-term hardship to the Ellises because the mistake was not theirs and they have recourse against the builder and surveyor, who have insurance for such situations. Mr. Gunkel said the situation is not peculiar to the property because everyone in that area has a 25-foot setback. He said he believes the curved design of the pool and the replacement of a spiral staircase with a larger staircase indicates the applicants knew something was amiss. Mr. Gunkel said it defies logic that no one noticed the setback issues. He said the pool could pose a public safety issue, and he believes there are plans for a firepit with a copper gas line to also be within the setback, which he also considers a safety concern. Mr. Gunkel said the variance requests do not address compensation for the Town for a situation that is "like reverse eminent domain" with a private property owner taking something from the public.

Sharon Luehs of Spencer Farlow Drive asked the Board to consider language that the Ellises, if granted the variances, will not contest having the street widened. She said a sidewalk in the area, where large boats on trailers frequently travel, is necessary so people can walk safely to the boat ramp without having to step into private yards.

Chairman Hartsell closed the public hearing and asked for rebuttals.

Mr. Hardison said notice given by the Town of this proceeding meets legal requirements.

Chairman Hartsell asked if there are protocols in place to avoid these types of situations. Mr. Hardison said yes, prior to the final survey a foundation survey is required once pilings are set, but in this instance the pilings were set for the house but not the deck at the time of the foundation survey.

Mr. Potter disputed Mr. Gunkel's claim that the applicants knew they were constructing within the setback. He said they both testified they had no idea about the situation, the builder took responsibility for the issues with the posts, and the pool contractor relayed how the mistake was made with respect to the location of the pool. Mr. Potter said for Mr. Gunkel's argument to be correct, all

four people had to be lying under oath. Mr. Potter also said Mr. Gunkel's testimony was based on suspicion and not fact.

Board Member Shelley asked about the inspection process. Ms. Abbotts said the applicants had all the proper building inspections, but the Town reviewed the project when they came in with the permit for the zoning portion. Mr. Potter said the County makes final building approval, and this would not have been granted if what the plans required was not actually there. He said the County currently handles the Town's permitting. Ms. Abbotts said the Town still reviews zoning, stormwater, and utilities, but the County handles the building inspection and building code portion.

Board Member Levy asked if there are any issues with the fence and concrete deck around the pool being outside of any permitted area. Ms. Abbotts said the fence height is in compliance with the zoning ordinance, which also allows anything under 30 inches to be within the setback area, so that would include the concrete and driveway.

Board Member Levy asked if a sidewalk or multi-use path is ever approved on Spencer Farlow Drive whether the fence would be within the area that the sidewalk or path would go. Ms. Abbotts said no, that would be in the right-of-way, and currently the fence is completely on the applicants' property.

Chairman Hartsell summarized the variance requests and said the Board will address each request separately.

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

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

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

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

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

ACTION: Motion to grant the variance

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

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

Motion passed 5-0

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

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

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

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

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

ACTION: Motion to approve the requested variance for the pool and fencing

Motion made by Vice Chairman Boykin, seconded by Chairman Hartsell

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

Motion passed 5-0

Chairman Hartsell said Board Members understand the hardships people face and try to make fair decisions. He said he wanted to amend the last motion to include stipulations from Mr. Hardison. Vice Chairman Boykin said the idea is to prevent this situation from happening in the future. Mr. Hardison said the variance is only for the pool and deck and cannot include anything else. Vice Chairman Boykin said there should be checks and balances so this doesn't keep occurring. Mr. Hardison said staff can review this and bring back options for discussion. Board Member Thompson said there should be a better process. Chairman Hartsell said he wants to make sure it gets into the minutes that the Board recommends that staff examine procedures for granting permits. Mr. Hardison said tonight's actions do not apply to any future requests. Mr. Nichols said it is not necessary to reopen the motion to add the suggestion for procedural improvements.

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Board Member Thompson

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

Motion passed 5-0

The meeting adjourned at 7:20 PM.

CAROLINA BEACH

Board of Adjustment Meeting

Monday, December 18, 2023 - 6:00 PM

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



MINUTES

CALL TO ORDER

Vice Chairman Boykin called the meeting to order at 6:16 PM.

PRESENT

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

ABSENT

- Chairman Wayne Hartsell
- Board Member Jullena Shelley

ALSO PRESENT

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

PUBLIC HEARING

To consider an appeal from Sections 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 Fur, 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 Carolina Beach Yacht Club and 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.
- 3/8/94: Phase one Oceana subdivision approved for 32 lots.
- 8/9/94: Marina property was rezoned from RA-6 to MB-1.
- 9/23/94: 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: The 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 in regard to buildings and structures, and staff does not believe that it applies to a parking lot in this case.

Board action

The Board of Adjustment 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 said he understands the applicant would like to request continuance, so this would be a good time for the Board to hear this.

Wes Hodges, attorney for the Ocean Owners Association, said with only four Board Members present he thinks this substantially increases the likelihood of a 2-2 tie and poses unfairness to the applicant because of the need to get three of four Board Members to agree instead of three of five. He asked that the matter be continued until a full Board is present.

Mr. Nichols said the next available date when all involved attorneys would be available is January 22. He said he feels this is a reasonable request, but it's ultimately up to the Board.

ACTION: Motion for continuance

Motion made by Board Member Thompson, seconded by Board Member Howard

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

Motion passed 4-0

Mr. Nichols said he wants the record to reflect that the matter is being continued until January 22, 2024.

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Board Member Howard, seconded by Board Member Thompson

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

Motion passed 4-0

The meeting adjourned at 6:35 PM.



AGENDA ITEM COVERSHEET

PREPARED BY: Jeremy Hardison, Planning & Development Director

DEPARTMENT: Planning & Development

MEETING: Board of Adjustment – 12/18/2023

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

BACKGROUND:

One of the roles for 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 Fur, submitted an appeal referencing Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings. & Sec. 40-426. - Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations (Attachment 1 - Appeal Application).

The appeal was submitted after staff received a complaint against staff and the property owner of an existing noncontiguous parking lot located inside the Oceana Subdivision that serves the Carolina Beach Yacht Club Marina with the address of 401 Marina St. (Attachment 2 - location map). The complaint specifically addresses the allowed increase in parking space(s) in a non-conforming parking lot (Attachment - Complaint). A zoning determination letter was sent to Mr. Furr outlining staff's interpretation of Sec 40-425 non-conforming situations (Attachment 4).

Non-conforming

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

In the situation with the Carolina Beach Yacht Club Marina, it consists of two properties. One property is located in a 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. Noncontiguous parking lots located in residential areas are not allowed to serve commercial uses.

History of the property

- February 1982 a CUP was issued for a 372 multi-family residential units in a planned unit development with a marina that was in one ownership for the land that now consist of Spinnaker Point, 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 off and the common area was dedicated to Spinnaker Point HOA, the marina had been excavated, and a building was on site (Carolina Beach yacht club & Marina) according to New Hanover tax records.
- 3/8/94 Phase one Oceana Subdivision approved for 32 lots
- 8/9/94 Marina property was rezoned from RA-6 to MB-1
- 9/23/94 Phase two Oceana Subdivision approved for 17 created the parking lot and easement to access the boat slips for the marina (attachment 5 - Plat)
- 1994 Lots were offered for purchase.
- 1996 the property where Carolina Beach Yacht Club & Marina and the parking lot were sold.
- 2019 September the Marina applied for a Conditional Use Permit to add an eating and drinking establishment and a ship store located on a barge.
- 2019 November, petition by Oceana Owners Association to appeal the allowance of the use of a non-conforming parking lot. The allowance was upheld.
- 2020, January the Conditional Use Permit was not passed by Town Council (2-2 vote).
- 2020, April the Marina Owner filled a petition seeking an appeal.
- 2020, May the Oceana Owners Association then filed a verified motion to Intervene.
- 2020, September the hearing of the appeal was cancelled based upon the parties entering into an agreement and resolution.
- 2020, December the agreement was executed to issue the Conditional Use Permit with conditions (Attachment 6 – CUP Consent Order).
- 2021 – A building permit and site plan approval was issued based off of the Conditional Use Permit authorization that depicted 56 parking spaces located in the Oceana parking lot(Attachment 7 - CUP Site Plan).

- 2023 – The Marina has applied for a Conditional Use Permit modification to expand boat slips and proposes to add 7 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 (Attachment 8 - Encroachments). Neither encroachment was depicted on the approved site plan. The applicant opt 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 to staff's determination that the additional space located in the Oceana Subdivision is not allowed under Sec 40-425 & Sec 40-426 Extension or enlargement of a non-conforming situation. ARTICLE XIV. - Nonconforming Situations, Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings states that "no increase in the extent of nonconformity, 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 nonconformity of a nonconforming situation". The section further states that "the Increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming 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 Article XIV 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 in regard to buildings and structures and staff does not believe that it applies to a parking lot in this case.

BOARD ACTION: The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance.

The board can agree or deny staff interpretation on the ordinance Sec 40-425 & Sec 40-426 Extension or enlargement of a non-conforming situation.

Attachments

1. Appeal Application
2. Location Map

3. Complaint
4. Zoning Determination Letter
5. Subdivision Plat
6. CUP Consent Order
7. CUP Site Plan
8. Encroachments



RECEIVED
NOV 17 2023
Hayden

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

Permit Number: CB A02

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 second (3rd) Monday of each month at 6:00 P.M. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Applicants will be informed of any changes in date, time, or location of meetings. Applications and supplementary time for processing and postings are required by the General Statutes of North Carolina.

Applicant Name: Oceana Owners Association, Inc.

Applicant Mailing Address:
440 Oceana Way Carolina Bch NC 28428
Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): 704-572-2666
mobile/work/home (circle one): _____

Applicant Email Address: DlntFurr@yahoo.com

Property Owner Name: CBYC, LLC

Property Owner Mailing Address:
401 Marina St Carolina Bch NC 28428
Street Address City State Zip

Section(s) of ordinance being appealed: Article XIV Sec. 40-425 Sec 40-426

- 1. Jeremy determination 7/8/19
 - 2. Jeremy determination undated
 - 3. Jeremy determination undated
 - 4. Board of Adjs determination 1/3/20
 - 5. consent order 12/21/20
 - 6. parking lot drawings
7. Google earth pics
- SEE ATTACHMENTS
-

Please give a brief description of the interpretation:

Article XIV Sec 40-425 Jeremy Hardison's interpretation is
completely wrong and is 180° from his determination on this same
situation when he testified under oath on 1/14/20 during the Quasi-Judicial
hearing for the CUP for CBYC. It is illegal to make a nonconforming
situation more nonconforming than when it became nonconforming.

Applicant Signature: Oceana Owners Association, Inc by Olin Furr - Pres.

Date: 11 / 17 / 23

Applicant Printed Name: Oceana Owners Association, Inc by Olin Furr - Pres

Joe Benson
Mayor

Steve Shuttleworth
Council Member

LeAnn Pierce
Council Member



Tom Bridges
Mayor Pro Tem

JoDan Garza
Council Member

Ed H. Parvin
Interim Town Manager

Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428
Tel: (910) 458-2999
Fax: (910) 458-2997

July 8, 2019

Jimmy Sanderford
418 Marina St
Carolina Beach, NC 28428

Cc: Sam Potter

RE: Complaint received 12/14/2018

Dear Mr. Sanderford,

Per section 40-264 of the Town of Carolina Beach Code of Ordinances, I am providing notice of my final determination the violations alleged in your Complaint filed December 14, 2018. The Complaint alleges that Carolina Beach Yacht Club and Marina is not adhering to a conditional use permit and is creating a public safety issue. More specifically, the violation is described as follows:

"The parking area is being used as a typical marina business parking lot: boat parking, trailer parking, equipment parking, space rental, and customer parking. The CUP specifically states the parking is used for boat slip POV parking only. Furthermore, business parking in a residential area zoned parking lot is not a permitted use. The parking spaces were never constructed according to the approved plans and encroach onto Oceana HOA property. Some spaces, if used, becomes a public safety issue for through traffic. Attached are pictures showing property lines and current parking use".

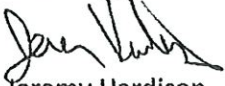
The Conditional Use Permit referenced in the Complaint was issued on November 15, 2005 and allowed for redevelopment of the existing Oceana Marina. The project authorized demolition of the existing structures and construction of a four story structure consisting of residential condominiums, retail units, fitness center, restaurant and offices. However, the project never started construction and the Conditional Use Permit expired on November 15th, 2007. Therefore, to the extent your Complaint references the expired Conditional Use Permit, no alleged violation of those conditions exist.

Staff cannot enforce conditions that pertain to a specific permit that has now expired.

Further, and as we have discussed, the parking located inside the gated Oceana Subdivision is a private parking lot which is owned and operated by the Carolina Beach Yacht Club & Marina. The parking lot has a private access easement to get to the marina in Oceana Subdivision. As both the road and parking areas are private property, the Town has no ability to intervene in the dispute as those matters would be a civil matter.

If you have any questions regarding this matter, please contact me at (910) 458-2991.

Sincerely,



Jeremy Hardison
Planning & Development Director

No mention of nonconforming situation!
He has no idea that he is confused
and lost. He says it is a private
matter!

Cc: Sam Potter

Joe Benson
Mayor

Steve Shuttleworth
Council Member

LeAnn Pierce
Council Member



Item 2.
Tom Bridges
Mayor Pro Tem

JoDan Garza
Council Member

Ed H. Parvin
Interim Town Manager

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1121 N. Lake Park Blvd.
Carolina Beach, NC 28428
Tel: (910) 458-2999
Fax: (910) 458-2997

Sam Potter
Hodges Coxe & Potter, LLP
3907-100 Wrightsville Avenue Wilmington, NC 28403

Dear Mr. Potter,

I am in receipt of your email to Noel Fox, Town Attorney, dated July 12, 2019. **The purpose of this letter is to provide my final determination on the following issue: whether a parking lot used solely to support a property zoned Marina Business, but located in a residentially zoned district, is a permitted use.** As described below, the Town's position is that the use of the parking lot is allowed.

This area was zoned uniformly as RA-6 until August 8, 1994 when the owners of the Marina petitioned the town to rezone the Marina from RA-6 to MB-1.

The parking lot at issue is shown on the Plat for Section 2 of Oceana recorded on September 28, 1994 in Map Book 34, Page 143 of the New Hanover County Register of Deeds. The plat designates the parking area at issue as "reserved for parking by Oceana Limited Partnership" who owned the Carolina Beach Yacht Club & Marina at that time. The parking lot in questioned was approved by the town as a designated parking area that included an easement to access the Marina.

The Town's previous approval of the parking lot being reserved for the Oceana Limited Partnership remains in effect today.

If you have any questions regarding this matter, please contact me at (910) 458-2991.

Sincerely,


Jeremy Hardison
Planning & Development Director

Jeremy still doesn't get it! Mr. Potter wants a code OR zoning determination by ordinance. He still doesn't give a zoning determination, only his opinion. Oh I guess it is grandfathered in. At this time it was an illegal nonconforming situation, because by ordinance to be legal it must have an SUP to make it non conforming legaly.

Lynn Barbee
Mayor

Joe Benson
Council Member

Deb LeCompte
Council Member



Jay H. Item 2.
Mayor Pro Tem

Mike Hoffer
Council Member

Bruce Oakley
Town Manager

Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428
Tel: (910) 458-2999
Fax: (910) 458-2997

Olin Furr
440 Oceana Way
Carolina Beach NC 28428

AS OF 1/3/20 parking lot is nonconforming situation. Jeremy is playing with words. Illegal to make it larger.

Dear Mr. Furr,

I am in receipt of your violation complaint dated October 6, 2023. As I understand your complaint, you do not think that the number of spaces in a non-conforming parking lot facility can be increased. The purpose of this letter is to provide my determination on whether a non-conforming parking lot facility can increase the number of parking spaces.

Your complaint is in reference to the non-conforming parking lot with the address of 401 Marina St (PIN 3131-74-1321.000), located within the Oceana neighborhood. The operator of the Carolina Beach Yacht Club Marina relocated three parking spaces to the referenced parking lot above. Two of the parking spaces were originally located within the parking lot facility and moved within the same facility due to the location of a transformer. Another space was moved from the Marina building parking lot due to an encroachment of a wall from an adjacent property. This increased the total number of spaces from 56 to 57 parking spaces in the non-conforming parking lot.

ARTICLE XIV. - Nonconforming Situations, Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings states that "no increase in the extent of nonconformity, 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 nonconformity of a nonconforming situation". The section further states that "the increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming 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 Article XIV 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 my determination that the non-conforming parking lot at issue is allowed to increase the number of parking spaces. If you believe my determination is in error and would like to appeal it, please find the attached appeal form. Below is the ordinance language for reference.

ARTICLE XIV. - NONCONFORMING SITUATIONS

Sec. 40-425. Extension or enlargement of nonconforming situations, including land uses and buildings.

- (a) *No increase in the extent of nonconformity.* 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 nonconformity of a nonconforming situation.
- (b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

- (c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on land are unlawful if they result in:
- (1) An increase in the total amount of space devoted to a nonconforming use;
 - (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
 - (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- (e) *Increase in volume, intensity, or frequency of nonconforming use may be allowed.* The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.
- (f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

Please be advised that any appeal of my determination must be filed by 11/19/23.

Sincerely,



Jeremy Hardison

Planning & Development Director

LeAnn Pierce
Mayor

Steve Shuttleworth
Council Member

Lynn Barbee
Council Member



Jay Item 2.
Mayor Pro Tem

JoDan Garza
Council Member

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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

TOWN OF CAROLINA BEACH
BOARD OF ADJUSTMENT
FILE NO: 19A-1

**ORDER UPHOLDING INTERPRETATION AND DETERMINATION OF
TOWN PLANNING & DEVELOPMENT DIRECTOR**

The Board of Adjustment for the Town of Carolina Beach, having held a Hearing on November 18, 2019, to consider an Application for Appeal (Application Number 19A-1) submitted by Oceana Owners Association, Inc., appealing Section 40-72 (Table of Permissible Uses) of the Town of Carolina Beach Zoning Ordinance ("Zoning Ordinance") and an interpretation and determination by the Town Planning & Development Director that the parking lot as designated on the Plat for Section 2 of the Oceana Subdivision recorded on September 28, 1994, in Map Book 34 at Page 143 of the New Hanover County Registry (the "Subject Property"), is an approved and legal nonconforming use and can continue to serve as a parking lot for the existing Carolina Beach Yacht Club & Marina located at 401 Marina Street, Carolina Beach, NC.

At the Hearing, Applicant Oceana Owners Association, Inc. was represented by its counsel, Samuel B. Potter; and the property owner, CBYC, LLC, was represented by its counsel, G. Grady Richardson, Jr.

Having heard all the of the evidence and arguments presented at the Hearing, the Town of Carolina Beach Board of Adjustment makes the following:

FINDINGS OF FACT

1. On December 14, 2018, the Applicant, through its president Mr. James Sanderford, PE, filed a Violation Complaint with the Town of Carolina Beach ("Town") regarding the Subject Property's use as a parking lot for the Carolina Beach Yacht Club & Marina located at 401 Marina Street, Carolina Beach, NC (the "Marina").
2. The Subject Property is located within the Town's zoning jurisdiction and is zoned R-1B residential zoning district. The Subject Property is owned by CBYC, LLC.
3. The Marina property is located within the Town's zoning jurisdiction and is zoned MB-1 commercial district. The Marina property is also owned by CBYC, LLC.

4. The Marina consist of 69 boat slips, a fuel dock and a building with a marina store and office residential unit above.
5. The Subject Property is located inside the gated community of Oceana Subdivision and serves as an off-site parking lot for the Marina.
6. CBYC, LLC and its predecessors in interest have owned the Subject Property in conjunction with the Marina and have used it as a parking lot for the Marina for a period in excess of 20 continuous years.
7. In February 1982, a CUP was issued for 372 multi-family residential units in a planned unit development with a marina that was all held by a common owner, Oceana Limited Partnership, for the land now consisting of Spinnaker Point, Oceana Subdivision, and Carolina Beach Yacht Club & Marina. The property was all zoned RA-6 at that time.
8. In 1985, four multi-family buildings were built and individual units were sold off and the common area was dedicated to Spinnaker Point HOA, the marina had been excavated, and a building was on site (Carolina Beach Yacht Club & Marina), according to the New Hanover Tax Records.
9. Nothing in the record indicates that any person or entity ever challenged the original Oceana master Plan approved by the Town more than thirty years ago, or subsequent plan approvals.
10. On March 8, 1994, Phase one Oceana Subdivision was approved by the Town for 32 residential lots on Oceana's property adjacent to the Marina property.
11. On September 28, 1994, Section 2, Oceana Subdivision was approved with the parking lot and easement to access the boat slips for the Marina (Map Book 34, Page 143, New Hanover County Registry).
12. On August 9, 1994, the Marina property was rezoned by the Town from RA-6 to MB-1.
13. Nothing in the record indicates that any person or entity ever challenged the MB-1 rezoning of the Marina property by the Town in 1994, or the construction of the approved development.
14. The parking lot at issue is shown on the Plat for Section 2 of Oceana recorded on September 28, 1994, in Map Book 34, Page 143, New Hanover County Registry.
15. No person or entity challenged or appealed the Town's approval of Section 2, Oceana or the recorded plat map (Map Book 34, Page 143, New Hanover County Registry) and its contents.
16. In or about 1996, Oceana sold the Marina property and the subject parking lot. The Marina and subject parking lot have been jointly sold and continuously used ever since that time, for more than 23 years.
17. No evidence or arguments were presented indicating that any person or entity has ever challenged or appealed the Marina's use of the subject parking lot prior to the Applicant's December 14, 2018 Violation Complaint.
18. The Applicant's December 14, 2018 Violation Complaint alleged that business parking is not permitted on the Subject Property and that the use of the Subject Property does not adhere to a Conditional Use Permit (CUP) issued by the Town.

- 19. The CUP referenced in the Applicant's Violation Complaint was issued by the Town in 2005 for 401 Marina St. and approved a project consisting of the demolition of an existing building and the development of 24 residential units, restaurant, ship store, sales office, fitness center, laundry and bath facilities, and a marina dry storage area.
- 20. The 2005 CUP project, however, was never built, and the CUP expired in 2007 along with its conditions.
- 21. Town Staff notified Mr. Sanderford that the Town could not enforce conditions in the 2005 CUP because that CUP had expired and the project was never built.
- 22. The Applicant also submitted pictures with the Violation Complaint depicting boat and trailers being stored in the parking lot.
- 23. Town Staff notified the Marina that the subject parking lot should be utilized for parking of vehicles and not for boat parking, trailer parking and equipment parking.
- 24. The owner of the Marina complied with Town Staff's directive and removed the boats and trailers from the parking lot.
- 25. Mr. Potter, attorney for the Applicant, requested that Town Staff clarify whether the use of the Subject Property as a parking lot for the Marina is a permitted use under the Zoning Ordinance.
- 26. In response to Mr. Potter's request, Town of Carolina Beach Planning & Development Director Jeremy Hardison subsequently issued a written determination that the parking lot is allowed based upon the following:
 - a. The area was zoned uniformly as RA-6 until August 8, 1994, when the owners of the Marina petitioned the Town to rezone the Marina from RA-6 to MB-1.
 - b. The parking lot at issue is shown on the Plat for Section 2 of Oceana recorded on September 28, 1994, in Map Book 34, Page 143, New Hanover County Registry.
 - c. The recorded plat designates the parking area at issue as "reserved for parking by Ocean Limited Partnership", which owned the Carolina Beach Yacht Club & Marina at that time.
 - d. The parking lot at issue was approved by the Town as a designated parking area that included an easement to access the Marina.
 - e. The Town's previous approval of the subject parking lot being reserved for the Oceana Limited Partnership remains in effect today.
- 27. On August 26, 2019, the Applicant filed the subject appeal to the Board of Adjustment from Mr. Hardison's interpretation and determination, referencing Section 40-72 Permitted Use Table as the Section(s) of the ordinance being appealed.

Zoning
by Jeremy
If WAS
an illegal
NON CONFORMITY

28. The current Zoning Ordinance Section 40-72, Table of Permissible Uses, addresses parking lots Item 2. uses on noncontiguous lots in the same zoning district but does not address parking lots serving uses that are noncontiguous located in a different zoning district.
29. Pursuant to Zoning Ordinance Section 40-71(b), if a use is not listed in the table of uses, it shall be determined by the Zoning Administrator based upon the Administrator's comparison of similar uses as allowed in similar locations.
30. A parking lot proposed to be located in a different zoning district would not be permitted under the Town's current zoning ordinance. The continued use of the Subject Property as a parking for the Marina is evaluated under the Town's ordinances regulating nonconforming uses.
31. A nonconforming use is a use or nonconforming situation that occurs when a building or use lawfully occupies a property prior to the current ordinance but is no longer permitted under the current ordinance (Zoning Ordinance Section 40-548).
32. A nonconforming use has a right to occupy the property unless it is abandoned and discontinued for a consecutive period of 180 days. Thereafter, the property may only be used only for conforming purposes (Zoning Ordinance Section 40-429).
33. Based upon the development history of the property, previous Town approvals and well-established and continuous use of the Subject Property as a parking lot for the Marina, Town Planning & Development Director determined that the subject parking lot is an approved, legal nonconforming use and can continue to operate as a parking lot to serve the Marina.
34. The parking lot has continued to serve the Marina without abandonment or discontinuance for a consecutive of 180 days since its construction and use.

Based upon the evidence presented at the Hearing, the applicable Town ordinance provisions and the foregoing Findings of Fact, the Board makes the following conclusions:

CONCLUSIONS

1. The current ordinance Section 40-72, Table of Permissible Uses, being appealed by the Applicant addresses parking lots serving uses on noncontiguous lots in the same zoning district but does not address parking lots serving uses that are noncontiguous located in a different zoning district.
2. Pursuant to Zoning Ordinance Section 40-71(b), if a use is not listed in the table of uses, it shall be determined by the Zoning Administrator based upon the Administrator's comparison of similar uses as allowed in similar locations.
3. A proposed parking lot to be located in a different zoning district would not be permitted under the current zoning ordinance. The continued use of the Subject Property as a parking lot for the Marina is evaluated under the Town's ordinances regulating nonconforming uses.

- 4. A nonconforming use is a use or nonconforming situation that occurs when a building or use la occupies a property prior to the current ordinance but is no longer permitted under the current ordinance (Zoning Ordinance Section 40-548).
- 5. A nonconforming use has a right to occupy the property unless it is abandoned or discontinued for a consecutive period of 180 days. Thereafter, the property involved may be used only for conforming purposes (Zoning Ordinance Section 40-429).
- 6. Based upon the evidence presented at the Hearing, the FINDINGS OF FACT stated above, and the Town's ordinances, this Board agrees with the Town Planning & Development Director's interpretation and determination in this matter, including the interpretation of Zoning Ordinance Section 40-72, Permitted Use Table.
- 7. Based upon the evidence presented at the Hearing, the FINDINGS OF FACT stated above, and the Town's ordinances, this Board finds and concludes that the subject parking lot is a legal nonconforming use and has the right to continue to occupy the property unless it is abandoned and discontinued for a consecutive period of 180 days.
- 8. Based upon the evidence presented at the Hearing, the FINDINGS OF FACT stated above, and the Town's ordinances, this Board finds and concludes that Town Planning & Development Director's interpretation and determination in this matter should be affirmed and upheld.

THEREFORE, IT IS ORDERED that the interpretation and determination of the Town Planning & Development Director in this matter is affirmed and upheld.

SIGNED this the 3rd day of JAN., 2020.

Wayne Hartsell, Sr.

Wayne Hartsell, Sr., Chairman

[Signature] 1/3/20

Secretary to the Board

Date Order Filed with Planning Office: JANUARY 3, 2020

Date Order Mailed Certified Mail Return Receipt Requested: JANUARY 3, 2020

We did not appeal to Superior Court because the statute of limitations ran out. So we accept it as a nonconforming situation. But I did notice that you did not include important points made by Mr. Potter. Mr. Potter explained how it was an illegal nonconforming situation because a SUP was never applied for OR issued. Very important. It is now as of this date legal non forming.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

20-CVS-1444

COUNTY OF NEW HANOVER

IN RE REQUEST BY CBYC, LLC,)

Petitioner,)

v.)

CONSENT ORDER

TOWN OF CAROLINA BEACH, a North Carolina Municipal Corporation and Body Politic,)

Respondent,)

OCEANA OWNERS ASSOCIATION, INC.)

Intervenor-Respondent.)

THIS MATTER appears before the Court for entry of a Consent Order granting the application and request for a conditional use permit submitted to the Respondent Town of Carolina Beach ("Town") by Petitioner CBYC, LLC ("CBYC") (collectively, "Consent Order").

ALL PARTIES, including Intervenor Oceana Owners Association, Inc. ("Oceana"), now consent, by and through their undersigned counsel, to the granting of this Consent Order and CBYC's application and request for a conditional use permit that was submitted to the Respondent on or about 25 September 2019, premised upon the following:

FINDINGS OF FACT

1. Jurisdiction and venue of this action are properly before this Court.
2. By virtue of that General Warranty deed dated 31 July 2019 and recorded on 2 August 2019 in Book 6235 at Page 2175 of the New Hanover Country Registry of Deeds

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
BY: *Leni M. Knowles*
Deputy Clerk

("Registry"), CBYC owns the real property located at 401 Marina Street in New Hanover County, North Carolina ("Property").

3. On or about 25 September 2019, CBYC applied to the Town for a conditional use permit (hereinafter "Permit") for certain limited improvements to its Property.

4. CBYC's Property consists of an existing commercial marina including fuel docks, a ship store, an office, residential unit, parking, and related facilities which have been in place for more than 20 continuous years preceding CBYC's Permit application (collectively, "Marina").

5. CBYC's Permit application seeks to (i) extend and widen its existing fuel dock; (ii) add and relocate its fuel pumps; (iii) place a barge adjacent to CBYC's existing dock, where the existing office and ship store will be relocated; (iv) add thirteen (13) parking spaces, a designated loading zone, and two (2) ADA compliant parking spaces within the Property's existing boundary; and, (v) add an outdoor eating establishment to serve hot food and drinks to the Marina's patrons.

6. The 2007 Town of Carolina Beach CAMA Land Use Plan sets forth the Town's desire to encourage "low intensity water-oriented restaurant or other low intensity water-oriented commercial services with public docking and water access."

7. The Town's existing Code of Ordinances permits restaurants, bars, eateries, retail sales, office space, and other marina related uses in the MB-1 zoning district in which CBYC's Property is located.

8. The Town's Ordinances require an applicant for a conditional use permit to meet seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

9. The Town's Ordinances also set forth standards for particular uses such as eating and/or drinking establishments, which are specifically permissive uses within the Property's MB-1 zoning district. *Id.* § 40-261.

10. On 14 January 2020, a quasi-judicial hearing was held on CBYC's application for its Permit.

11. At the hearing, CBYC and Oceana presented evidence concerning the seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

12. On 30 March 2020, the Town issued its written Order denying CBYC's Permit application based on the 2-2 tied vote of the Town's Council's vote.

13. On 29 April 2020, CBYC timely and properly filed its Petition for Writ of Certiorari to this Court seeking to appeal the Town's Order denying its Permit application.

14. On 29 April 2020, CBYC's Petition for Writ of Certiorari was granted; the Town submitted the record for the appeal; and this Court was scheduled to conduct the appellate hearing on CBYC's appeal on 23 September 2020.

15. On 29 May 2020, Oceana filed its Verified Motion to Intervene of Oceana Owners Association, Inc., and its proposed Response of Intervenor-Respondent Oceana Owners Association, Inc (collectively, "Intervention Motion").

16. On September 15, 2020, Oceana filed an Objection to Notice of Hearing and Motion to Continue the noticed appeal hearing. Thereafter, counsel for CBYC informed counsel for Oceana that CBYC would consent to Oceana's Intervention Motion to keep the noticed date for the appeal hearing.

17. Ultimately, the hearing on CBYC's appeal was canceled based upon the parties' agreement and resolution of the matters between them.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the parties and this Court agree to the following Conclusions of Law:

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.

2. Oceana's Intervention Motion is hereby granted, thus binding Oceana to the rights and obligations of this Consent Order.

3. Conditional use permits are issued for uses that an ordinance expressly permits in a designated zone. *Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 467, 202 S.E.2d 129, 136 (1974).

4. To effectuate the parties' settlement and the entry of this Consent Order, the parties agree that CBYC produced competent, material, and substantial evidence establishing that CBYC's Permit application met all relevant standards, specifications, and requirements set forth under the Town's Ordinances for issuance of a conditional use permit.

Based upon the foregoing, including the consent and request of the parties, and upon a review of the terms herein, the Court believes that the entry of this Consent Order is fair, in the interests of justice, and should be entered.


NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. **CBYC's application for a Permit shall be and the same is hereby GRANTED** upon the following conditions/restrictions:

- a. All of the terms and provisions contained in CBYC's Permit Application, except as may be expressly modified hereinbelow and said modifications shall supplement and amend CBYC's Permit Application.
 - b. CBYC shall fully comply with all Town, New Hanover County, State, and/or Federal rules and regulations, including the departments and agencies of each such entity.
 - c. CBYC shall not play music, whether recorded or live, before 12:00 p.m. each day, will stop playing any such music one (1) hour before closing time each day, and will at all times comply with the Town's noise ordinance.
 - d. CBYC's store, restaurant, fueling and other sales and activities shall cease by 9:00 p.m. beginning on the Friday of Memorial Day weekend of each calendar year through and including the Labor Day holiday of each calendar year. At all other times (i.e., the off-season), said activities shall cease by 7:00 p.m.
 - e. CBYC's restaurant operations will open on a daily basis no earlier than 7 a.m.
 - f. Any newly installed lighting within CBYC's Marina shall be directed downward and away from the residential homes in the Oceana Subdivision.
 - g. CBYC will ensure that trash is picked-up on a daily basis within all areas of its operation, including along its walkways along the Marina and also within the parking lot and spaces owned by CBYC within the Oceana Subdivision.
 - h. Any future conditional or special use permit application by CBYC requesting additional uses of the Property not contemplated in the current Permit may be contested by Oceana notwithstanding this Consent Order. Alternatively, Oceana may choose to require the same restrictions specified herein to be imposed on the use proposed by any such future conditional or special use permit application.
2. Nothing herein shall be construed so as to waive, limit or otherwise prejudice CBYC and its successors and assigns from seeking additional uses and/or improvements to its subject property and marina as may be allowed by the Town's ordinances. Nothing herein shall be construed so as to waive, limit or otherwise prejudice the legal and/or factual arguments of any opponents possessing legal standing to any future applications by CBYC and/or its successors and assigns to make any additional uses and/or improvements to its subject property.


- 3. The terms and provisions of this Order shall be fully enforceable by the Court with all of its authority including, without limitation, the Court's powers of contempt, including an award of attorney's fees for any prevailing party.
- 4. Each party shall bear its own respective costs and attorneys' fees, except in any proceedings under Paragraph 3.
- 5. The provisions of this Consent Order shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

So ORDERED this the 21st day of December 2020.



 THE HONORABLE George F. Jones
 Resident Superior Court Judge Presiding
 New Hanover County, North Carolina

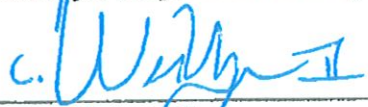
WE CONSENT:



 G. Grady Richardson, Jr.
 Counsel for Petitioner, CBYC, LLC

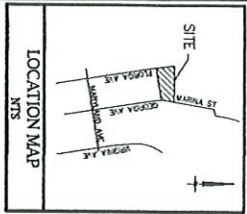


 Charlotte Noel Fox
 Counsel for Respondent Town of Carolina Beach



 C. Wes Hodges, II
 Counsel for Intervenor-Respondent,
 Oceana Owners Association, Inc.

APPROVED Design - CUR



PROPERTY OWNER PER USE

21.34 AC (54,842.97 sq ft)	JOHN MARINA LTD
62.4 AC (136,062.57 sq ft)	RALPH MC 27002
63.9 AC (139,700.57 sq ft)	ROBERTSON-002-024
	ROBERTSON-002-025
	ROBERTSON-002-022

PARCEL QSI:

JURISDICTION: TOWN OF CAROLINA BEACH

COMMITTEE ZONE: MC-1-MARINA

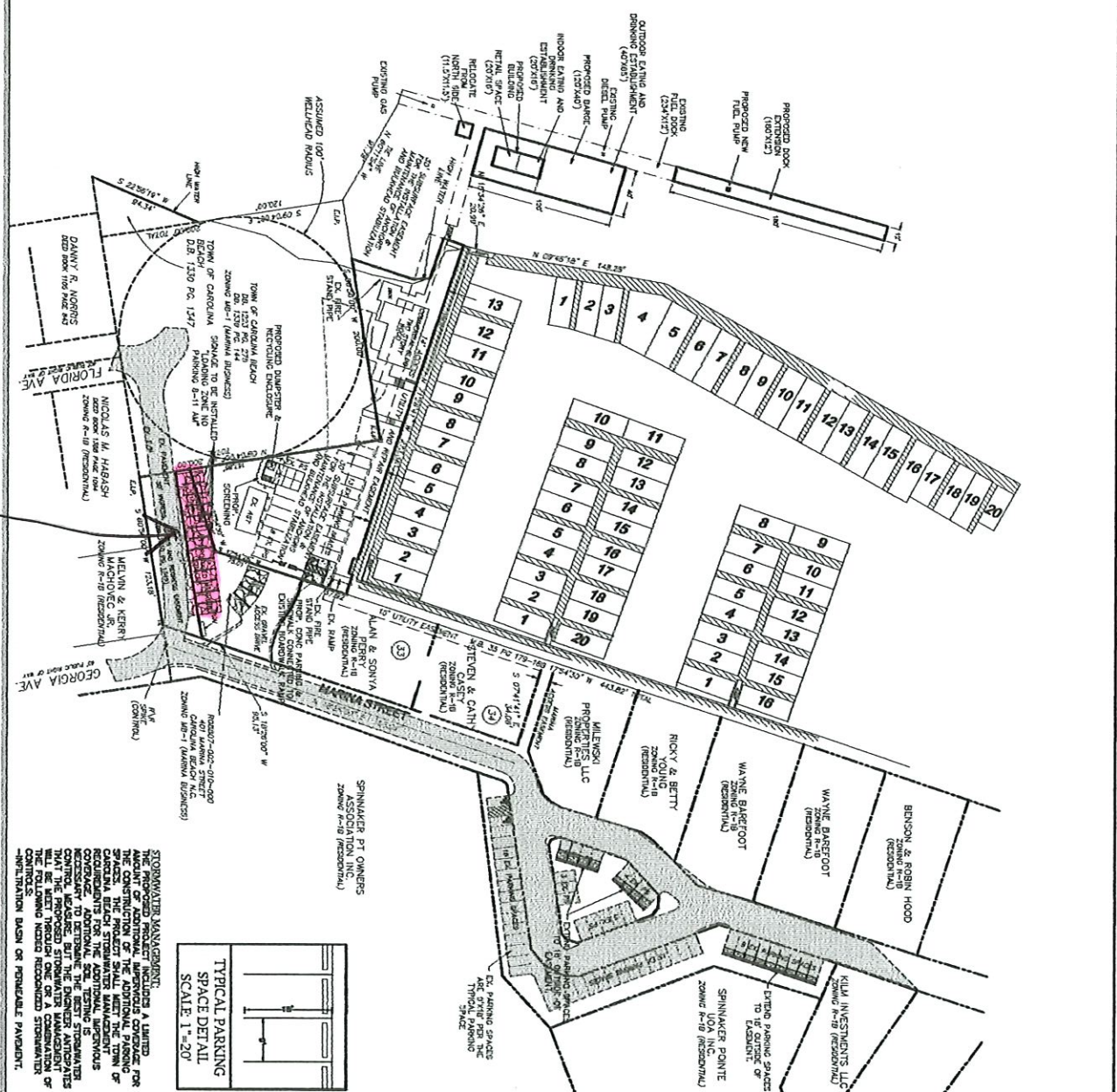
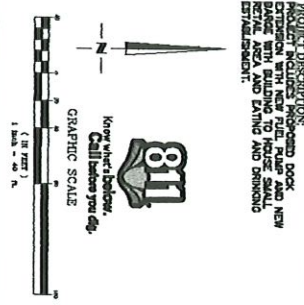
CONSTRUCTION CALCULATIONS:

REQUIRED OFF-STREET PARKING	94 (M.3.2)
PROVIDED OFF-STREET PARKING	99
PROVIDED NEW FILT. PUMP	14
PROVIDED NEW EXTENSION (100'x12')	2.8
PROVIDED NEW FILT. PUMP (234'x17')	11.8
NET TOTAL ABOVE EXISTING COMBINED	11.2
OFFICE (EXISTING COMBINED) BUILDING (1ST FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (2ND FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (3RD FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (4TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (5TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (6TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (7TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (8TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (9TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (10TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (11TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (12TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (13TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (14TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (15TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (16TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (17TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (18TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (19TH FLOOR)	1.0
OFFICE (EXISTING COMBINED) BUILDING (20TH FLOOR)	1.0

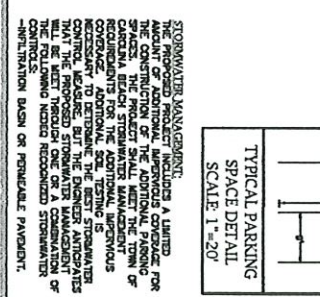
DEVELOPMENT SUMMARY

PROJECT DESCRIPTION:

CONSTRUCTION WITH NEW FILT. PUMP AND NEW EXTENSION TO EXISTING OFF-STREET PARKING AND EXISTING OFF-STREET PARKING.



13 spaces Added



REVISIONS

1	10/10/20	Initial Design
2	11/10/20	Final Design
3	12/10/20	Construction Documents
4	01/10/21	Final Construction Documents
5	02/10/21	Final Construction Documents
6	03/10/21	Final Construction Documents
7	04/10/21	Final Construction Documents
8	05/10/21	Final Construction Documents
9	06/10/21	Final Construction Documents
10	07/10/21	Final Construction Documents
11	08/10/21	Final Construction Documents
12	09/10/21	Final Construction Documents
13	10/10/21	Final Construction Documents
14	11/10/21	Final Construction Documents
15	12/10/21	Final Construction Documents
16	01/10/22	Final Construction Documents
17	02/10/22	Final Construction Documents
18	03/10/22	Final Construction Documents
19	04/10/22	Final Construction Documents
20	05/10/22	Final Construction Documents

SP1.0

CAROLINA BEACH MARINA AND YACHT CLUB

401 MARINA STREET
CAROLINA BEACH, NC

SKETCH PLAN

Mc² ENGINEERING

Mc² ENGINEERS, INC.
2110 ERM DR DR, STE. 400
DAS-0176 NC 28588
PHONE 704.510.9797

Blown up area
OF Parking Design
Allowed

EX. PARKING SPACES
ARE 9'X18' PER TYPICAL PARKING
SPACE

EX. PARKING SPACES

16 EX. PARKING SPACES

EXTEND PARKING SPACES
TO 18' OUTSIDE OF
EASEMENT.

EX. PARKING SPACES

5 EX. PS

4 EX. PS

3 EX. PS

SPINNAKER F
UOA INC
ZONING R-1B (RES)

EXTEND PARKIN
TO 18' OUTS
EASEMENT

9 EX. PARKING SPACES

KILM INVESTMEN
ZONING R-1B (RES)

WAYNE BAREFOOT
ZONING R-1B
(RESIDENTIAL)

WAYNE BAREFOOT
ZONING R-1B
(RESIDENTIAL)

RICKY & BETTY
YOUNG
ZONING R-1B
(RESIDENTIAL)

MILEWSKI
PROPERTIES LLC
ZONING R-1B
(RESIDENTIAL)

ACCESS EASEMENT
MARINA

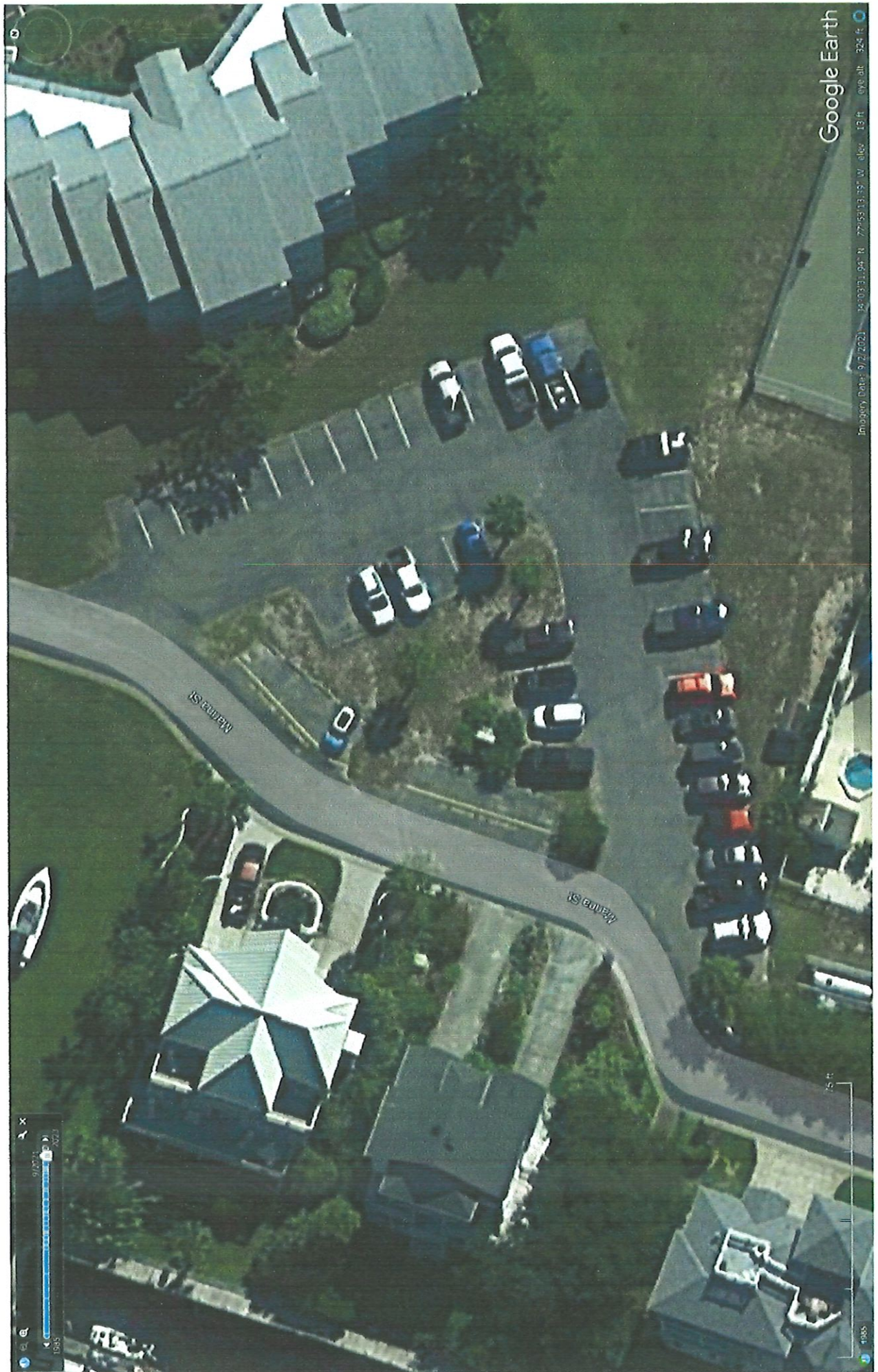
41'4" E
34.06'
(34)

CATHY
R-1B
(RESIDENTIAL)

Agenda Item - Consider a Conditional Use Permit at 401 Marin...

Hoan

9/2/21
NO CHANGE!
Sec. 16-153 Designated Parking



Item 2.

12/31/2001



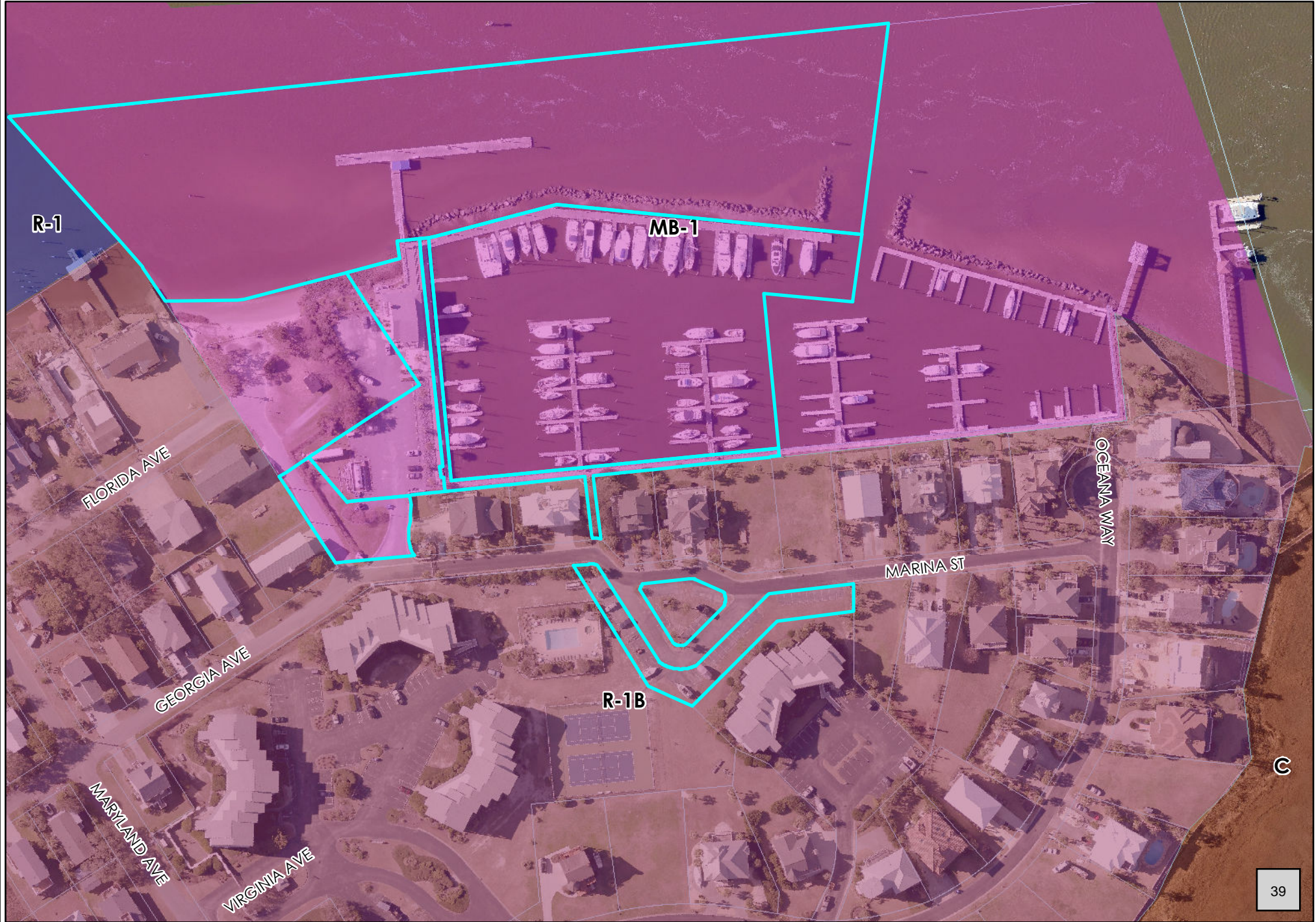
Item 2.



401 Marina Street

Attachment 2

Item 2.





1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 8492

VIOLATION COMPLAINT FORM

In accordance with Section 19.6 of the Carolina Beach Zoning Ordinance the following information is required from all complainants who request the Town to investigate and resolve issues associated with potential zoning violations. Furthermore, by completing and signing this form you acknowledge that the information provided becomes public record and may be distributed to any individual requesting this information.

Complainant's Name Oceana Owners Association, Inc

Contact Information: Address 440 Oceana Way
Carolina Bch, Nc 28428
Telephone Number 704-572-2666
Email Address OlinFurr@yahoo.com

Location and/or Address of alleged violation:

Street Address 401 Marina St. CB, NC 28428
Name of Violator (if known) CBYC, LLC and Jeremy Hardison

If the above is unknown, please describe the location or draw the location on the back of this form with street or road names and any other identifiable feature.

Below, please describe the nature of the alleged violation as you have witnessed it.

The 56 space non conforming parking lot behind
Oceana Private gate. Parking lot is owned by
CBYC, LLC. Jeremy Hardison has Allowed a blatant
Zoning violation concerning permit # COM21-061
I have attached Ample documents + Pictures to prove my
point. List Incl:

1. 4 emails
2. 8 Pages of testimony
3. 10 Pages of drawings + Pictures
4. My complaint written out

Olin Furr President Oceana Owners Association, Inc
Signature of Complainant

Date 10/6/23



October 6,2023

PERMIT #COM 21-061

Mr. Hardison I have waited since July to get a response on a very important issue with this permit. You said on 7/18 and 7/25 you would check it out and go verify my complaint but I have not heard from you. A red flag went flying when you posted a zoning notice for a new CUP at CBYC, LLC at 401 Marina street and at the parking lot inside of Oceana. The original CUP is far from finished and has lots of issues and you are already entertaining a new one. I now know why you didn't respond after 3 months! In an email between you and Ed Parvin on 10/2/23 you responded to his question about the nonconforming parking lot and the addition of parking spaces that have been added. Your response Quote" The parking facility is existing, and 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.”
End quote. I had to pick my jaw up off the floor.
Complete dereliction of your duty as the director not to uphold the ordinances of our Town. You talk out of both sides of your mouth. I have included many pages of documentation to prove my point. Under Oath on 1/14/20 you had intense conversations in front of Town council, Town Atty. and the other Attorneys that questioned you for quite some time about this CUP and all of its implications. You stated very specifically and often as others did that this is a 56 space parking lot in Oceana. On the drawing attached to the application you allowed CBYC to extend the existing out of compliant spaces by moving the cement bumper into the grass and using gravel to fill the gap. By the way it is very unsightly. We disagreed with your premise but after you explained your position we moved on. You were questioned by council and attorneys concerned about increasing parking inside of Oceana and you said there would be no increase emphatically. But Mr. Potter got you to answer the question that leaves no doubt about the truth to this non conforming parking lot when he asked you that by adding to the spaces in order to bring them into compliance you were violating the ordinance and you said, “I would argue that if there was additional information that those parking spaces were encroaching into a right of way that

making those spaces more conforming or to bring them up to conformity and you are only increasing more land if you're adding parking. They are not adding any parking." End quote. Mr Cooke also under oath said no spaces would be increased beyond the 56. This Town does not deserve a planning director like you! You are a trouble maker. I do not take it lightly when someone in your position distorts, misleads taxpayers for the sake of your pet projects. You should be ashamed! I am requesting that you instruct CBYC or your town staff to remove the cement bumpers and gravel on the three parking spaces that have been added to this non conforming 56 space parking lot immediately.

I hope you understand Oceana will pursue this to the end.

Olin Furr

Subject Parking lot in Oceana

From olin furr <olintfurr@yahoo.com>

To: Jeremy Hardison
<jeremy.hardison@carolinabeach.org>,
James Sanderford
<jksanderfordhoa@gmail.com>, John
Hearn <john.hearn.home@gmail.com>

Date Jul 17 at 2:55 PM


Jeremy,


I was reviewing progress at CBYC concerning the CUP and noticed the drawings for the paved parking lot in Oceana are not accurate. CBYC expanded the parking spaces as noted on the plans but also added 2 additional parking spaces. One existing space is unusable due to a transformer. So it is a net increase of one space. The issue is the length of 3 spaces. Two are 17' long and one is 15' long.


Thanks

Sent from Yahoo Mail for iPad

Subject RE: Parking lot in Oceana

From  Jeremy Hardison
<jeremy.hardison@carolinabeach.org>

To:  olin furr <olintfurr@yahoo.com>,
James Sanderford
<jksanderfordhoa@gmail.com>, John
Hearn
<john.hearn.home@gmail.com>

Date  Jul 18 at 12:26 PM


Thanks Olin,


I will check it out.


Jeremy Hardison
Planning & Development Director
1121 N. Lake Park Blvd.
Carolina Beach NC 28428
[910 458 2991](tel:9104582991)

[View more](#)

Subject RE: Parking lot in Oceana

From  Jeremy Hardison
<jeremy.hardison@carolinabeach.org>

To:  olin furr <olintfurr@yahoo.com>,
James Sanderford
<jksanderfordhoa@gmail.com>, John
Hearn
<john.hearn.home@gmail.com>

Date  Jul 25 at 11:32 AM

Thanks Olin,

I will go out and verify.

Jeremy Hardison
Planning & Development Director
1121 N. Lake Park Blvd.
Carolina Beach NC 28428
910 458 2991

[View more](#)

Nonconforming parking lots

Jeremy Hardison <jeremy.hardison@carolinabeach.org>

Mon 10/02/2023 4:09 PM

To: Ed Parvin <ed.parvin@carolinabeach.org>

Ed,

The parking facility is existing, and 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.

a. *No increase in the extent of nonconformity.* 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 nonconformity of a nonconforming situation.

(b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

(c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:

- (1) An increase in the total amount of space devoted to a nonconforming use;
- (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
- (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.

(d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

(e) *Increase in volume, intensity, or frequency of nonconforming use may be allowed.* The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.

(f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

Jeremy Hardison
Planning & Development Director
Town of Carolina Beach

it quick.

Ms. Fox: And just as a reminder this is a quasi-judicial hearing so, Council, you should use a restroom separate and apart from the rest of the building and not speak with anybody about this matter.

Mayor Pierce: Don't talk to anybody. We'll go to the back. OK, guys, we're gonna go ahead and get started with our staff presentation. Yeah, go ahead.

Quasi-Judicial
Hearing 1/11/20
Item 2.

Mr. Hardison: Mayor, Town Council, good evening. This is a conditional-use permit for Carolina Beach Yacht Club and Marina, which is located at 401 Marina Street, formerly Joyner Marina and before then it was Oceana Marina. I wanna just go over some of the issues that we've heard and hopefully answer some questions. I'm gonna start off just by looking at what's existing there. So regardless of what would happen tonight, what's existing is existing. They're operating today. They can operate tomorrow. But they're 69 boat slips within this marina. There is one building with a residential unit above with a marina store and an office. There is a fuel dock, and there is

an existing off-site 56-space parking lot, which is the triangle area. That is owned by the applicant. So I wanted to just give kind of a brief history of this area to kinda see how we got here. And different elements of the marina were developed at different times and this area, it's currently there's three entities that you've heard tonight. There's the Carolina Beach Marina and Yacht Club, the applicant, the Spinnaker Point, which is a 72-unit multi-family consisting of four buildings, and the Oceana subdivision, which is a 49-lot subdivision. And but this at one time was all owned by one entity. In 1982 the entity came to Town Council, was granted a conditional-use permit for 372 multi-family units, which mirrored what Spinnaker Point is today. They were, it was approved with their excavating the land for the boat slips, they were approved for parking, tennis courts, swimming pool. As you can see, they had the beach access. There was a marina store associated with it, and certainly after the CUP they went to build and in 1985 they completed four of the buildings, which consist of the 72 units, the tennis courts, the swimming pool, the beach walkway, and the boat slips. But after 1985, the development stalled. There were multiple ideas and plans that were developed for the rest of the area. The original ideas was abandoned until 1994, when a subdivision plat was approved by Town Council for the 49-units Oceana subdivision, or 49 sub lot. At that time, that's when the reference triangle parking lot was created from this plat for this parking, and there was also an easement that was grated to access to the boat slips, where the owners or people leasing the slips would park here and they could access to the marina. At that time, there, with this approval there were gates that were erected, and that was, from testimony from the minutes, is because Spinnaker Point was promised when they were developed to be a gated community. As part of that also subdivision plat, there were slips that divided the section of the slips approximately in half that some went with the marina and some of 'em went with the lot of Oceana Marina. So brings us to the conditional-use permit for the expansion of the marina by adding an eating and drinking establishment. This is not considered a restaurant. It is, by definition, a bar from the zoning ordinance, which does require the CUP. The zoning district of the marina is in the Marina MB-1, the Marina Business District. The parking lot that services the boat slips is in a, the residential gated community of Oceana and Spinnaker

Point. The proposed addition for you to consider tonight is a 40-by-120 barge that they would like to bring in and dock, that's behind the fuel, existing fuel docks. This will be registered as a vessel. They want, would like to put a 40-by-16 building on there that would consist of a concession stand, an office, a retail area. It would have a horseshoe service area for outdoor seating. They'd like to provide hot dogs, sandwiches, and beer and wine, according to their application. They'd also like to expand the fuel docks by 180-by-12 foot to the north. That's shown here. The existing building would be utilized as an office and storage area with remaining, remaining the residential unit above. They are going to be providing additional parking spaces, proximity at the, at the entrance of their parking lot and around the Georgia Avenue bend. It's just an aerial of the existing site. With the additional parking spaces, the 13 parking spaces are gonna be adjacent to what is known as the Georgia Avenue, where it does bend. Georgia Avenue bends and then it terminates into the subdivision of Marina Street. That is a private gated right-of-way, a 30-foot right-of-way. Georgia Avenue, it does open up to a 40-foot right-of-way in that area. The property of where Georgia Avenue was extended is actually owned by the applicant. The Town does have an access easement, 30 foot of that property, which terminates into the Town property, which is the well site that connects back up to Florida Avenue. This was prior to the development of the, of Oceana or of the Spinnaker Point. It was a dirt road. In the early 90s it was improved. Here's the existing condition of the road, and the proposed parking will be to the north. Just adjacent uses, there is a single-family on Georgia Avenue to the south, the Town well to the south, and this was put in in in 1983 and just staff had concerned about adequate water in that area, adding 372 units originally, so the developer donated land and the Town did put in a well to provide water. To the northeast, see a single-family is the Oceana subdivision along the adjacent to the marina. East is Spinnaker Point, and the north is as you can see here is the Oceana gate and the beginning access to Carolina Beach Yacht Club. So the applicant must make, there are seven specific standards that make provisions for. One is ingress and egress. There is just an existing drive to get to the marina

off of Georgia Avenue. The existing approved parking lot inside the gate of Oceana subdivision along, with the would provide the parking for the boat slips, and there's also 13 newly designed parking spaces as mentioned between Florida and Georgia Avenue. The parking area that was brought up earlier of with the parking spaces, this is the triangle area inside the gated community pictures of. When I went out there I observed the bold yellow line with letters that says no parking here. Looks like that at one time there were where the stripe there was parking spaces, so I asked the applicant, I said if you do not have a right to park in that area, then you would need to accommodate to make sure you have room for a standard parking space. And on the application you see here in the bold area is where the applicant has adjusted those parking spaces to meet standard parking size. Parking regulations is based off the existing boat slips, the proposed retail, the eating and drinking establishment, and the existing uses on site, which come to 94 parking spaces.

Mayor Pierce: Jeremy, can you go back to that? How, so you figure, so the proposed retail space, is that in the existing building, or are you talking about just on the barge?

Mr. Hardison: That is on the barge:

Mayor Pierce: OK, and so does, you based it on the square footage?

Mr. Hardison: Correct.

Mayor Pierce: How many spaces they would need?

Mr. Hardison: Correct. That's how the parking is calculated.

Mayor Pro Tem Healy: So is that 2.9, is that how many people can be in the bar?

Mr. Hardison: That is based on square footage, so you would round up to the parking. That's just for 110 square feet or 200 square feet for outdoor area.

Mayor Pierce: But you have accounted for the spaces needed for the existing building?

Mr. Hardison: Correct. Yes, the existing uses and proposed uses.

Council Member Barbee: So Jeremy, can you connect the dots? I'm, I'm, I'm back on the issue of if this permit is or this CUP is for putting the barge in place and the people going to the barge don't have access to the parking lot, I'm just trying, going by what I heard here, why is extending those park, how is that connected? I missed something on how the.

Council Member Garza: Get in more boat slips.

Council Member Barbee: How the additional, what is driving the need for additional parking inside the gate. That's really my question.

Mr. Hardison: They are not providing anymore parking spaces than what's already there. There was just a land dispute on if half of that space was actually owned by the association versus the applicant.

Mayor Pierce: So.

Council Member Barbee: So are those parking spaces required as a condition of this CUP?

Mr. Hardison: They are of the, correct, yes, of the marina 'cause there is a 69-slip marina, so you have to have a space for every slip; 56 of those spaces are provided inside the marina gate; 13 of 'em are provided outside of the gate onto, to meet the parking requirement.

Council Member Barbee: I, I gotcha. Yeah.

— Mayor Pierce: So they don't have to access that parking lot?

— Mr. Hardison: Correct.

— Mayor Pierce: You're saying they're providing that parking outside of the community, outside of Oceana and that parking lot?

Mr. Hardison: For the, the use of the eating and drinking establishment.

Mayor Pierce: The barge.

Council Member Barbee: But the Town is trying to fix another problem not specific to the barge in that there's not sufficient parking for the existing.

Mr. Hardison: This problem exists regardless of the conditional-use permit.

Mayor Pierce: Right.

Mr. Hardison: If it was in front of you or not.

Council Member Barbee: OK, so it is a separate issue, but your.

Mr. Hardison: Correct.

Council Member Barbee: Solving them together? OK, thank you.

Mr. Hardison: Trash and recycling containers will service the site. It is required to be screened on all three sides. The new building will connect to the existing utilities. No upgrades are required. No landscaping is required from this proposal. At this point, no additional signage is part of the application. There's no new upland structures that are proposed. It's just the barge and the extension of the fuel dock. There are four general conditions they must satisfy before you. The use will not materially endanger the public health or safety. The use will meet all required conditions and specs of the code. That the use will not substantially injure the value of adjoining or abutting property. And that the location and character of the use if developed according to the plan and as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Town planning policies. This area is in the Marina Business District. The district is there to establish around the water's edge for maritime uses, water-dependent uses, water-oriented. It also provides for certain residential areas other than non-water-dependent uses as well to align closely with water-oriented uses with the marina. And in, in the Land Use Plan this area's classified as Marina Mixed Use, which does include commercial uses for intensity water-oriented restaurant and services. Can I answer any questions that you may have?

Council Member Barbee: Does general, really a zoning question for you, but where the new proposed parking places are on, I guess that's Georgia. Is that what that is? Is there any sort of land, for that, the way the current zoning ordinance read is there no sort of landscape buffer that's required. I'm thinking about the gentleman across the street. Is there any sort of landscape buffer required there?

Mr. Hardison: It's definitely a unique situation where there's a road on the adjoining property, and normally landscaping would go about the property line. Since this is his, the applicant's property and that they could just about those parking spaces up.

Council Member Barbee: So what you're saying is if they only own to the street and the Town own the street, they would probably have to have landscape buffer, but since the street itself is where their landscape buffer would go.

Mr. Hardison: On the perimeter of the property. Correct.

Mr. Hardison: Correct.

Mr. Richardson: And as we sit here tonight has Town staff made its opinion known in its report that it believes that the marina's application satisfies the seven specific criteria under the Town code as well as the four general requirements for granting by the Council body of the conditional-use application that's been applied for?

Mr. Hardison: Correct, from a the site plan requirements and the conditional-use permit submittals.

Mr. Richardson: Turning your attention because this was a key point in the motion to dismiss on standing issues. Behind you I'm flagging in red the triangular parking lot. Do you agree that that parking lot is located behind the private gate of the Oceana subdivision?

Mr. Hardison: It is.

Mr. Richardson: Do you agree that that parking lot was the subject of the Board of Adjustment hearing we had a few months ago in front of the Board of Adjustment?

Mr. Hardison: Correct.

Mr. Richardson: Do you agree that the applicant, the marina, as part of this application, is not increasing the number of parking spaces in that parking lot?

Mr. Hardison: They are not.

Mr. Richardson: Is the applicant, as part of its application tonight, trying to get approval for every member of the public to be able to access that parking lot inside of the Oceana subdivision?

Mr. Hardison: The Town hasn't or doesn't get involved on who grants access or who gives out the code.

Mr. Richardson: But in the application, is there anywhere where Mr. Cook, on behalf of the applicant, has said that he's trying to get unfettered access to that parking lot for members of the public?

Mr. Hardison: I have not heard that.

Mr. Richardson: And in fact, in order to support, there's 69 boat slips in the marina. Is that correct?

Mr. Hardison: Correct.

Mr. Richardson: And those 69 boat slips have been there for over 25 years, correct?

Mr. Hardison: Yes.

Mr. Richardson: And in order to support the boat slip owners and/or their renters' use of the boat slips, they must have the ability to park in the 56 spaces in that parking lot in the Oceana, correct?

Mr. Hardison: Correct.

Mr. Richardson: Just as they've been doing for over 25 years, correct?

Mr. Hardison: That's correct.

Mr. Richardson: And just so we're clear, with the parking lot inside of the Oceana with the 56 spaces, plus the 13 proposed spaces on the marina's own property, does the marina's application satisfy the Town's code of ordinances for parking?

Mr. Hardison: Correct.

Mr. Richardson: In this Town's, in the staff's review of the marina's application, did you also review the Town's governing Land Use, CAMA Land Use Plan?

Mr. Hardison: Correct.

Mr. Richardson: Did you find the marina's application to be consistent with the Town's CAMA Land Use Plan?

Mr. Hardison: It was consistent with the desired uses in that classification area.

Mr. Richardson: I have no further questions of Mr. Hardison at this time. Again, we would move into the record the staff's presentation that we've just gone through as Exhibit 1 for the applicant. I'll, I'll I'm sure Mr. Potter has some questions. I'm gonna sit down. I'll leave my stuff up here.

Mr. Potter: Mr. Hardison, I'm gonna be brief 'cause I'll just recall you on direct, but just a couple follow-up questions to Mr. Richardson's. Mr. Hardison, it's fair to say that Town staff viewed the applicant's CUP application as holistic for all of the property that's part of this project. Is that correct?

Mr. Hardison: Correct.

Mr. Potter: So you added the, all the parking spaces together to come up with 95 parking spaces that are required for the overall project. Is that correct?

Mr. Hardison: In order to accommodate the, the proposed additions for parking we had to consider the existing uses on site.

Mr. Potter: And we talked a little bit about this previously, or Mr. Richardson asked you, again looking, I know you can't see but you can probably imagine what I'm pointing at here, are these parking spaces within the Oceana subdivision. Do you see those?

Mr. Hardison: Correct.

Mr. Potter: OK, and we've talked a little bit about the Board of Adjustment hearing and your opinion as to that parking lot previously, is it your opinion that the parking lot within the Oceana subdivision that we're talking about here is a nonconforming use under the Carolina Beach Town ordinances?

Mr. Hardison: Correct.

Mr. Potter: OK, so currently as it sits it's nonconforming, in your opinion, previously and currently is that it's a permitted or a legal nonconforming use because it was previously approved by Town Council. Is that correct?

Mr. Hardison: That's correct.

Mr. Potter: OK, and you would agree, would you not that the applicant has agreed with my client and with you that the current parking spaces encroach onto Oceana property and need to be moved within the applicant's property. Is that correct?

Mr. Hardison: I saw lines that it would be very confusing to the public or to a boat owner on

where to park, so I would want that clarified to make sure that those spaces could meet a standard parking space.

Mr. Potter: And the applicant has agreed as part of this to modify their parking spaces, to move them into the open space adjacent to the current parking spaces. Is that correct?

Mr. Hardison: Correct. I'd say if there was an issue and that is actually the private drive of the right-of-way, then those spaces would need to accommodate a standard space.

Mr. Potter: Mr. Hardison, I, I don't know that you have the code committed to memory, but I'm gonna ask you if you are familiar with Section 40-425 of the Carolina Beach ordinances entitled extension or enlargement of nonconforming situations.

Mr. Hardison: I'm familiar with it.

Mr. Potter: Can I approach and show it to you?

Mr. Hardison: Yeah, certainly.

Mr. Potter: Mr. Hardison, in particular I'd direct your attention to 40-425d, and I, I'm gonna ask you this, if I read this correctly. Does 40-425d of the Carolina Beach code of ordinance state that a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

Mr. Hardison: That is, you want me to just confirm that's what it says?

Mr. Potter: That's what it says. Yes.

Mr. Hardison: Yes, sir.

Mr. Potter: And the applicant is proposing to cover more open land than they previously covered by moving these parking spaces into the open undeveloped land that's adjacent to them, are they not?

Mr. Richardson: Objection. Number one, this has been litigated at the Board of Adjustment. A ruling has been made. You're bound to the ruling. This isn't before this Council tonight on the board on the application for a conditional-use permit, and it's also not covering the land distinct in the footprint of the parking lot. On those bases, I will render my objection.

Mr. Potter: Just, just so, I guess.

Ms. Fox: Well, Mr. Potter, to the extent you're getting ready to re-litigate issues that have been taken up by the Board of Adjustment where an order's been entered, where you have a right of appeal, I would suggest that you steer clear of that.

Mr. Potter: And I would submit this was not part of that at all. That had to do with a zoning issue. This has to do with whether or not the paving is going to be extended to land, which it was not current previously on as part of this project.

Mr. Richardson: He's had the right of the affluent. They can appeal to the Superior Court, 'cause they challenged this very thing at the Board of Adjustment.

Mr. Potter: That's absolutely false, Grady.

Mr. Richardson: It is not false.

Mr. Potter: Did not say a word about that.

Mr. Richardson: He did. The whole night was about it.

Mr. Potter: Well, the good thing, great thing is there's a record, so.

Mr. Richardson: And 34 findings of fact.

Mr. Potter: Well, show me. Where are the findings of fact in the order, Grady, that have to do with the expansion of the parking lot?

Mr. Richardson: What I know is you challenged the parking lot. You lost. Your remedy.

Mr. Potter: Challenged the zoning of the parking lot.

Mr. Richardson: Your remedy, exactly. Your remedy.

Mr. Potter: This is not a zoning question.

Mr. Richardson: Your remedy is to the Superior Court on appeals.

Mr. Potter: Well, let him answer the question and then you, we can deal with that. Mr. Hardison, is the proposed plan submitted by the applicant, does it contemplate covering more land for the parking lot than it previously did?

Mr. Hardison: Yeah, and so, Ms. Attorney, is it to proceed?

Ms. Fox: Yes.

Mr. Hardison: I would argue that if there was additional information that those parking spaces were encroaching into a right-of-way that the making those spaces more conforming or to bring 'em up to conforming is not, this is increasing more land if you're adding parking. They are not adding any parking. They are just simply trying to conform to the parking standard of what a dimensional standard parking space is.

Mr. Potter: Irrespective of the language in the ordinance, are they expanding the parking lot to cover more land than it previously covered as part of this?

Mr. Hardison: They're not expanding the number of parking spaces or intensity of the use.

Mr. Potter: But are they covering more land, more dirt?

Mr. Hardison: You could say they're subtracting from where their parking spaces were, they're just moving, but I don't, I don't believe they're in violation of the nonconforming section. We're simply bringing the parking spaces to conform with dimensional requirements.

Mr. Potter: Mr. Hardison, you have that notepad, I mean, that notebook up there in front of you. You testified earlier that there were no landscape buffering requirements that this proposal does not meet. Is that correct?

Mr. Hardison: Correct.

Mr. Potter: That was not your opinion back in October, though, was it?

Mr. Hardison: For the Planning and Zoning?

Mr. Potter: That's correct.

Mr. Richardson: Mr. Cook, let's get one thing into the record on top of what Mr. Hardison has already testified about. For the parking lot inside of the Oceana, are you in any way as part of this application seeking to increase the number of parking spaces of beyond 56 spaces that have been there for 25 years or longer?

Mr. Cook: No, sir.

Mr. Richardson: In, is any part of your application on behalf of the marina seeking to have members of the public who have no ownership of boat slips, no rental right in boat slips to just gain access into the Oceana and use that 56-lot parking, parking lot inside of the Oceana?

Mr. Cook: No, sir. In fact, can I expand on that?

Mr. Richardson: Sure.

Mr. Cook: So, over the past six eight months we've had this issue come up. How are we gonna handle this? And so during the P&Z we, I wish we'd have brought 'em tonight, but we brought the stickers that our slip holders will get, and we informed the Oceana's president several months back that they had every right to tow anybody that does not have a sticker that's inside of that 56-lot parking lot, that we'll police it with our dock master and our dock hands. They'll go be cleaning up trash or anything that's inside of there on a, we do it on a weekly basis anyway, but we will go in there and if there's someone in there that doesn't have a sticker, we'll tow 'em. We've given Oceana permission. If you see someone in there that does not have a sticker, tow 'em.

Mr. Richardson: And do you stand by that as part of your application tonight?

Mr. Cook: Yeah, we've already made the stickers, and they're, we plan on sending them out as soon as this is over.

Mr. Richardson: As part of the marina that your acquisition, did you have to acquire financing to buy it?

Mr. Cook: We did.

Mr. Richardson: And what was the approximate amount of the financing?

Mr. Cook: First round was 2 million.

Mr. Richardson: And are, are you under kind of a construction advance loan where, based upon progress then you get a draw to finish out the improvements to the marina?

Mr. Cook: So we refinanced late 2019, and we secured a \$800,000 expansion loan to do the improvements to the marina.

Mr. Richardson: And if you get approval, you'll be able to begin implementing those improvements.

Mr. Cook: Yeah, we're under the gun to start as soon as possible.

Mr. Richardson: Behind you and I've got a hard copy is what I've marked in advance as Application Exhibit 2, does that appear to be a PowerPoint slide presentation that Ms. Carpenter and I have assembled on your behalf leading into tonight?

Mr. Cook: It is.

Mr. Richardson: Have you reviewed the PowerPoint slide presentation for its accuracy?

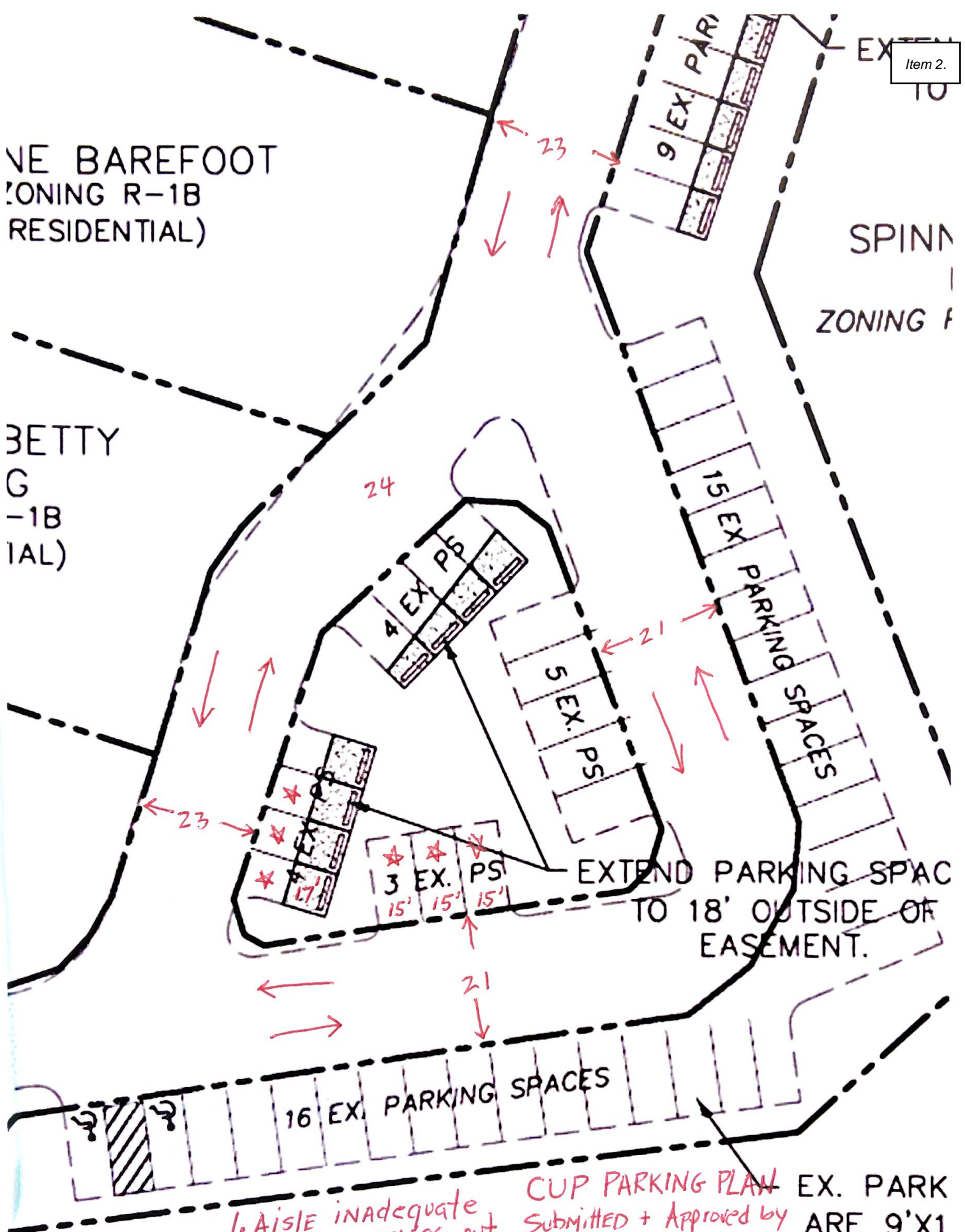
Item 2.
The App
Statement under
oath.

NE BAREFOOT
ZONING R-1B
(RESIDENTIAL)

BETTY
G
-1B
(RESIDENTIAL)

SPINN
ZONING F

Item 2.



EXTEND PARKING SPAC
TO 18' OUTSIDE OF
EASEMENT.

1. Aisle inadequate
2. 6 PARKING SPACES out
of spec.

CUP PARKING PLAN
Submitted + Approved by
Planning 1/14/20

EX. PARK
ARE 9'X1
TYPICAL



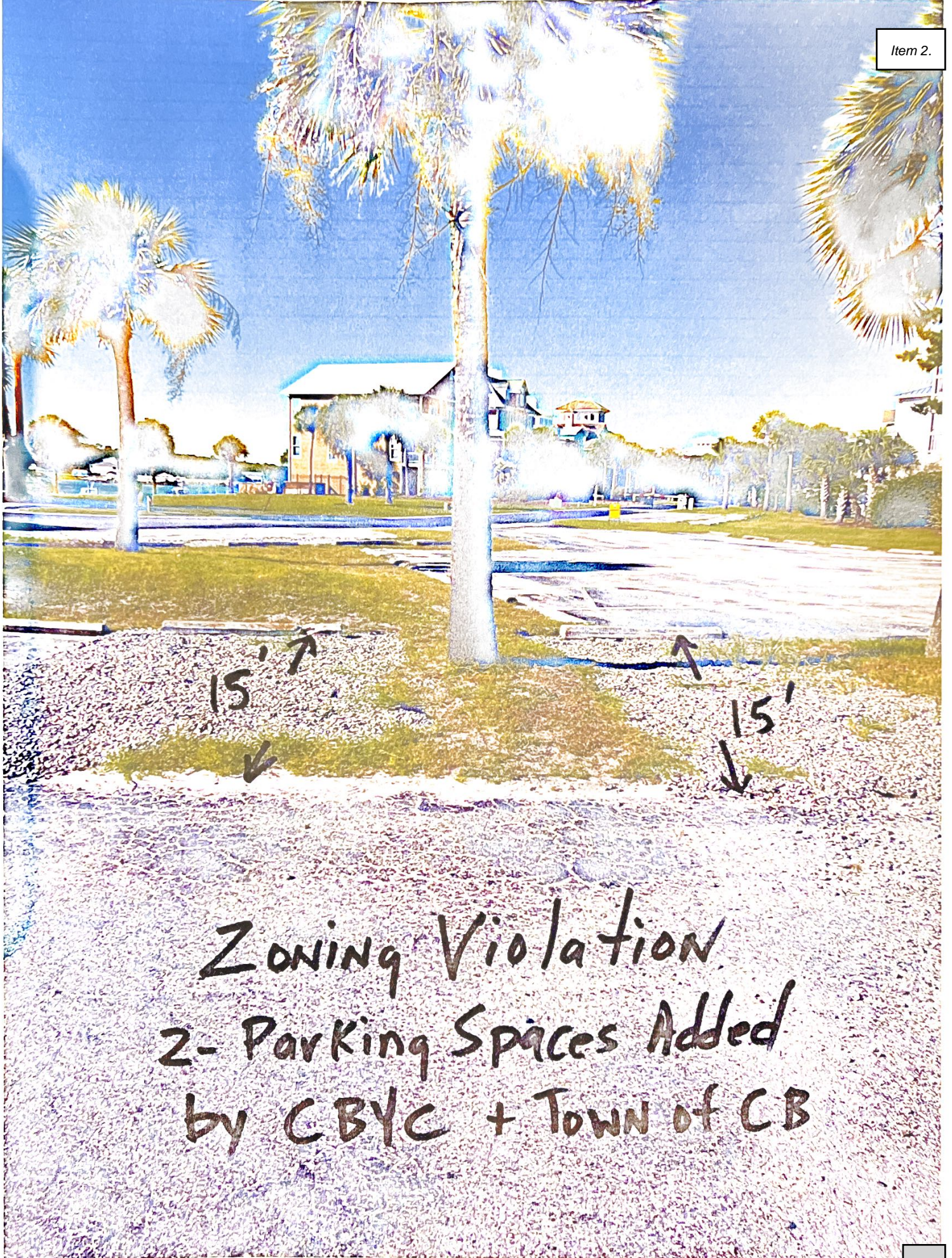
Non Compliant Parking Spaces

3- Non Compliant + Parking Spaces
ONLY 15' Long

1

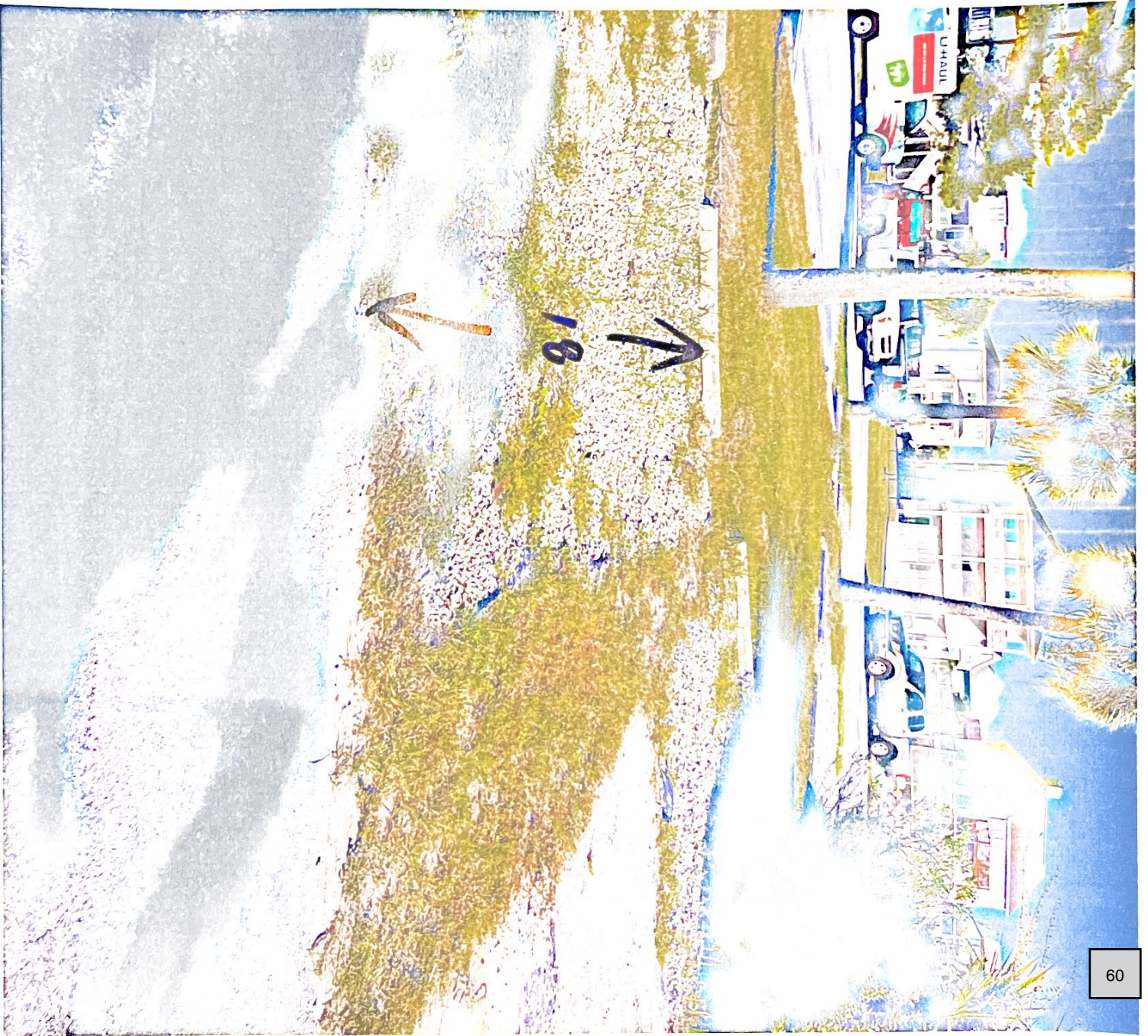
2

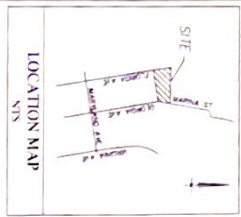
3



Zoning Violation
2- Parking Spaces Added
by CBYC + Town of CB

Zoning Violation
Parking Space Added
by CBYC + Town of CB

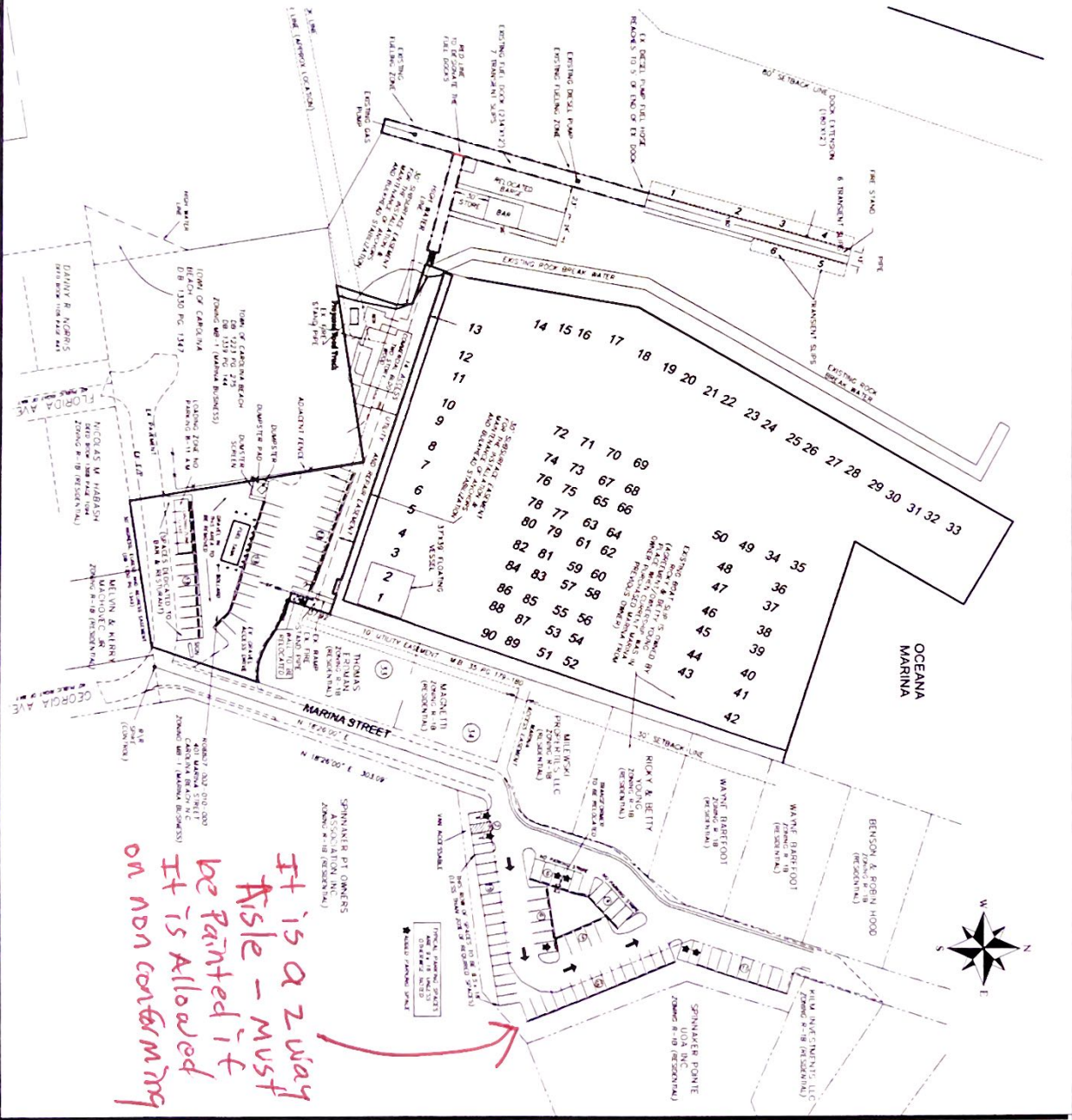




ZONING CALCULATIONS

PLAT NO.	073-00177	PARCEL NO.	102 (102.2)
PLAT DATE	07/11/2007	AREA (AC)	8.0
PLAT PER	MR. J. H. HARRIS	AREA (SQ. FT.)	547,200
PLAT NO.	073-00177	AREA (SQ. FT.)	547,200
PLAT DATE	07/11/2007	AREA (AC)	8.0
PLAT PER	MR. J. H. HARRIS	AREA (SQ. FT.)	547,200
PLAT NO.	073-00177	AREA (AC)	8.0
PLAT DATE	07/11/2007	AREA (SQ. FT.)	547,200
PLAT PER	MR. J. H. HARRIS	AREA (SQ. FT.)	547,200

HANOVER DESIGN SERVICES, PA NOTES 7/6/2023
 The original as-built survey was completed in May of 2008
 by Hanover Design Services, PA
 This survey updated the following items only
 1 Barge re-location
 2 Dumpster re-location - Asbuilt
 3 Updated Parking based on recent addition & future
 Additions/Alterations



*It is a 2 way
 Aisle - must
 be painted it
 it is allowed
 on non conforming*

HANOVER DESIGN SERVICES, PA.
 LAND SURVEYORS, ENGINEERS & LAND PLANNERS

1123 FLOAL PARKWAY
 WILMINGTON, N.C. 28402
 PHONE: (910) 841-5002
 LICENSE # C-0597

As-Built/Parking Layout
CAROLINA BEACH MARINA
AND YACHT CLUB
 401 MARINA STREET
 CAROLINA BEACH, NC

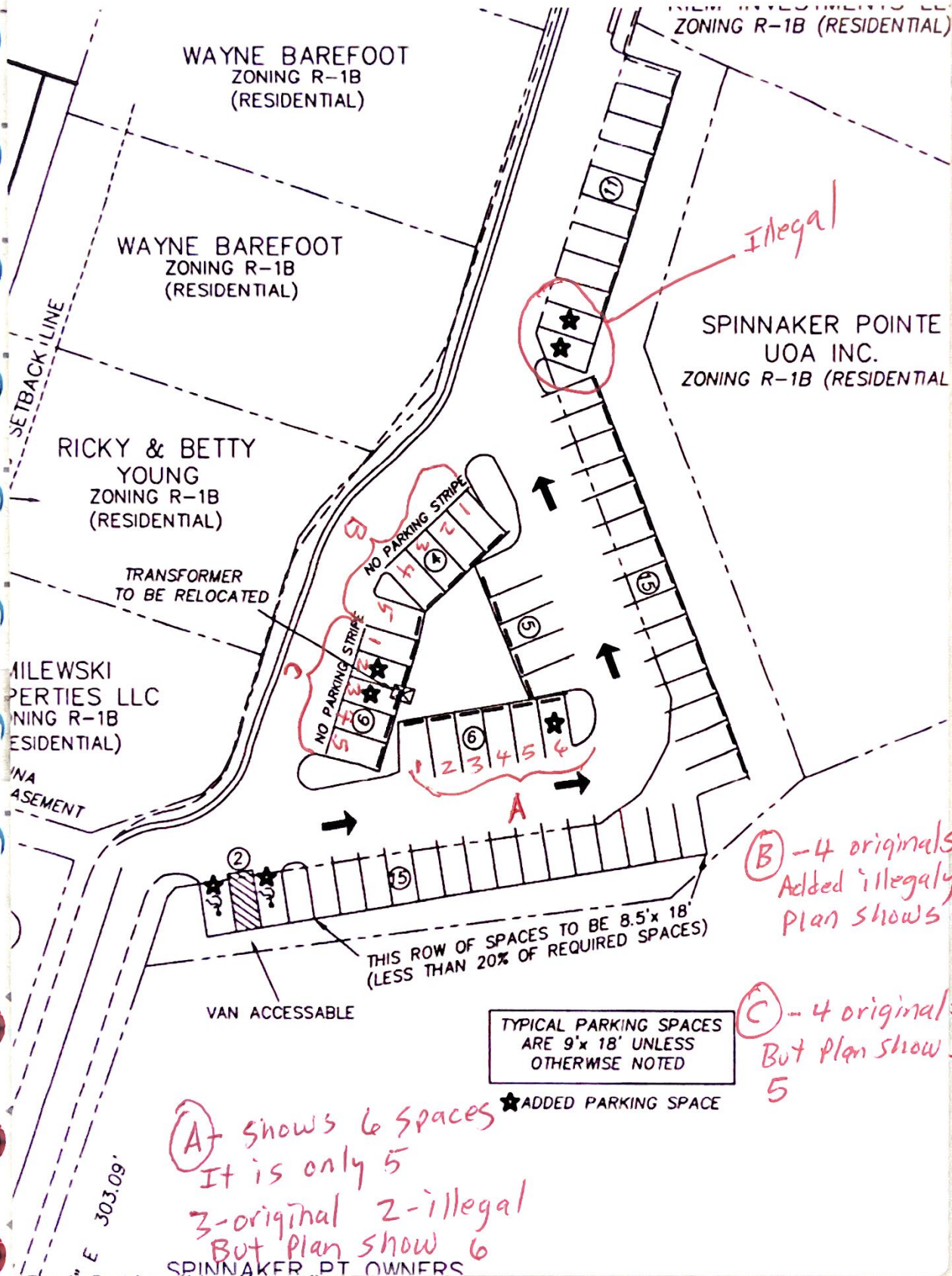
NO.	REVISIONS	DATE

Hoa M...

site plan.pdf

9/28/23

Item 2.



Illegal

(B) - 4 originals + one Added illegally Plan shows 5

(C) - 4 originals But plan shows 5

*(A) shows 6 spaces It is only 5
3-original 2-illegal
But plan show 6*



1 | 2 | 3

original

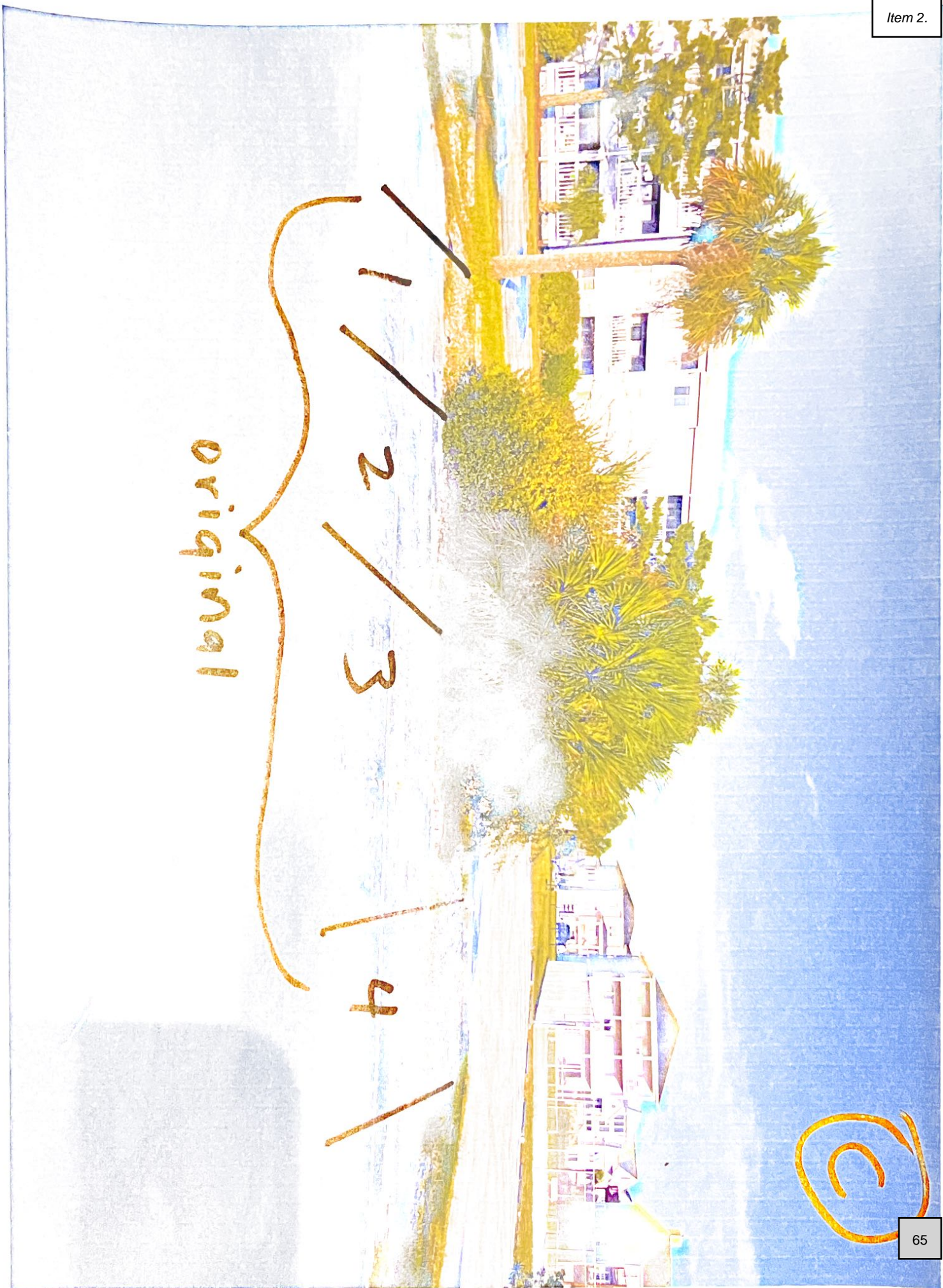
4
Added

5
Added

A

B





original

1

2

3

4

@

Lynn Barbee
Mayor

Joe Benson
Council Member

Deb LeCompte
Council Member



Jay Item 2.
Mayor Pro Tem

Mike Hoffer
Council Member

Bruce Oakley
Town Manager

Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428
Tel: (910) 458-2999
Fax: (910) 458-2997

Olin Furr
440 Oceana Way
Carolina Beach NC 28428

Dear Mr. Furr,

I am in receipt of your violation complaint dated October 6, 2023. As I understand your complaint, you do not think that the number of spaces in a non-conforming parking lot facility can be increased. The purpose of this letter is to provide my determination on whether a non-conforming parking lot facility can increase the number of parking spaces.

Your complaint is in reference to the non-conforming parking lot with the address of 401 Marina St (PIN 3131-74-1321.000), located within the Oceana neighborhood. The operator of the Carolina Beach Yacht Club Marina relocated three parking spaces to the referenced parking lot above. Two of the parking spaces were originally located within the parking lot facility and moved within the same facility due to the location of a transformer. Another space was moved from the Marina building parking lot due to an encroachment of a wall from an adjacent property. This increased the total number of spaces from 56 to 57 parking spaces in the non-conforming parking lot.

ARTICLE XIV. - Nonconforming Situations, Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings states that "no increase in the extent of nonconformity, 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 nonconformity of a nonconforming situation". The section further states that "the Increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming 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 Article XIV 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 my determination that the non-conforming parking lot at issue is allowed to increase the number of parking spaces. If you believe my determination is in error and would like to appeal [it](#), please find the attached appeal form. Below is the ordinance language for reference.

ARTICLE XIV. - NONCONFORMING SITUATIONS

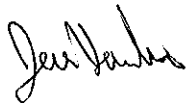
Sec. 40-425. Extension or enlargement of nonconforming situations, including land uses and buildings.

- (a) *No increase in the extent of nonconformity.* 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 nonconformity of a nonconforming situation.
- (b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

- (c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on land are unlawful if they result in:
- (1) An increase in the total amount of space devoted to a nonconforming use;
 - (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
 - (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- (e) *Increase in volume, intensity, or frequency of nonconforming use may be allowed.* The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.
- (f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

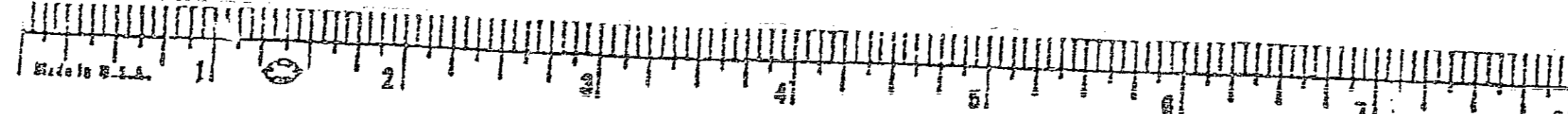
Please be advised that any appeal of my determination must be filed by 11/19/23.

Sincerely,



Jeremy Hardison

Planning & Development Director



STATE OF NORTH CAROLINA NEW HANOVER COUNTY

I, Robert H. Goslee, certify that this plat was drawn under my supervision from an actual survey made under my supervision from information found in the New Hanover Co. Registry, as noted hereon, that the error of closure as calculated by latitudes and departures is 1/10000' that the boundaries not surveyed are shown as broken lines, that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this 28th day of September, 1994.

Robert H. Goslee
Registered Land Surveyor
N.C. Registration # 1189

STATE OF NORTH CAROLINA NEW HANOVER COUNTY

I, Manley D. Carr, a Notary Public for said County and State, do hereby certify that Robert H. Goslee, a registered land surveyor, personally appeared before me this day and acknowledged the foregoing instrument. Witness my hand and official seal on this 28th day of September, 1994.

Manley D. Carr
Notary Public
My Commission Expires December 30, 1997

CERTIFICATE OF OWNERSHIP AND DEDICATION
I hereby certify that I am the owner of the property shown and described hereon and that I adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, alleys, walks, parks, and other sites and easements to public use as noted. Furthermore, I dedicate all public sewer lines and all water lines to the Town of Carolina Beach, if applicable.

9/28/94
Date
Owner

CERTIFICATE OF WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS
I hereby certify that the water supply and sewage systems installed, or proposed for installation, fully meet the requirements of the Town of Carolina Beach and applicable agencies of the State of North Carolina.

9/28/94
Date
Owner

I, ROBERT H. GOSLEE, A REGISTERED LAND SURVEYOR, CERTIFY THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

Robert H. Goslee
ROBERT H. GOSLEE, R.L.S., L-1189

STATE OF NORTH CAROLINA NEW HANOVER COUNTY

The foregoing certificates of Manley D. Carr, a Notary Public of New Hanover County, is certified to be correct. This the 28th day of September, 1994.

MARY SUE OOTS
Phyllis Lynn Oots
By: Phyllis Lynn Oots

STATE OF NORTH CAROLINA NEW HANOVER COUNTY
Filed for registration on the 28th day of September, 1994, at 2:33 P.M. (P.S.) and duly recorded in Map Book 34, at Page 143.

MARY SUE OOTS
By: Phyllis Lynn Oots

STATEMENT OF THE DESIGN AND INSTALLATION OF STREETS
I hereby certify that all streets shall be installed in an acceptable manner and according to the specifications and standards of the Town of Carolina Beach.

9/28/94
Date
Owner

CERTIFICATE OF APPROVAL OF THE DESIGN AND INSTALLATION OF STREETS, UTILITIES, AND OTHER REQUIRED IMPROVEMENTS.

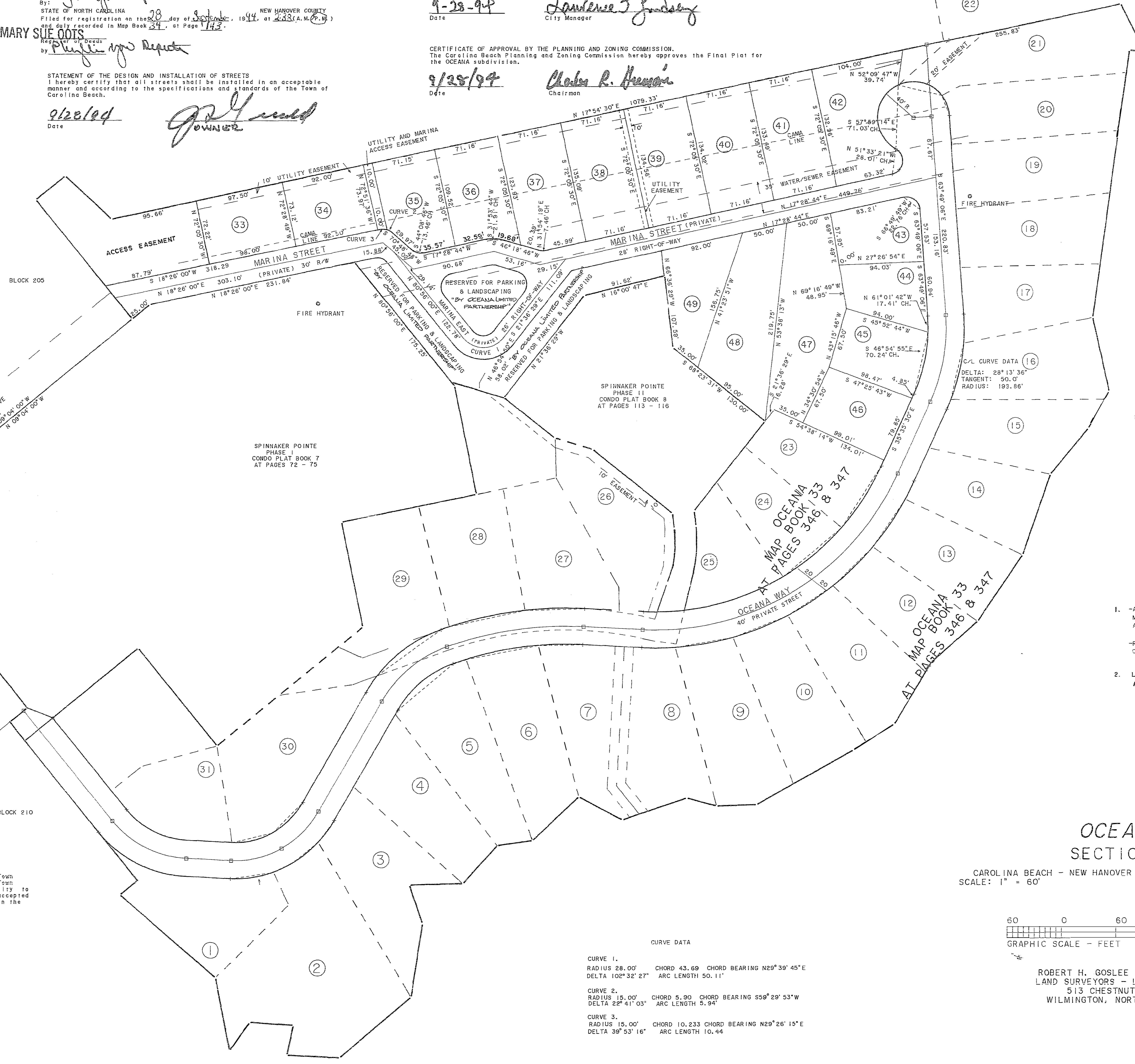
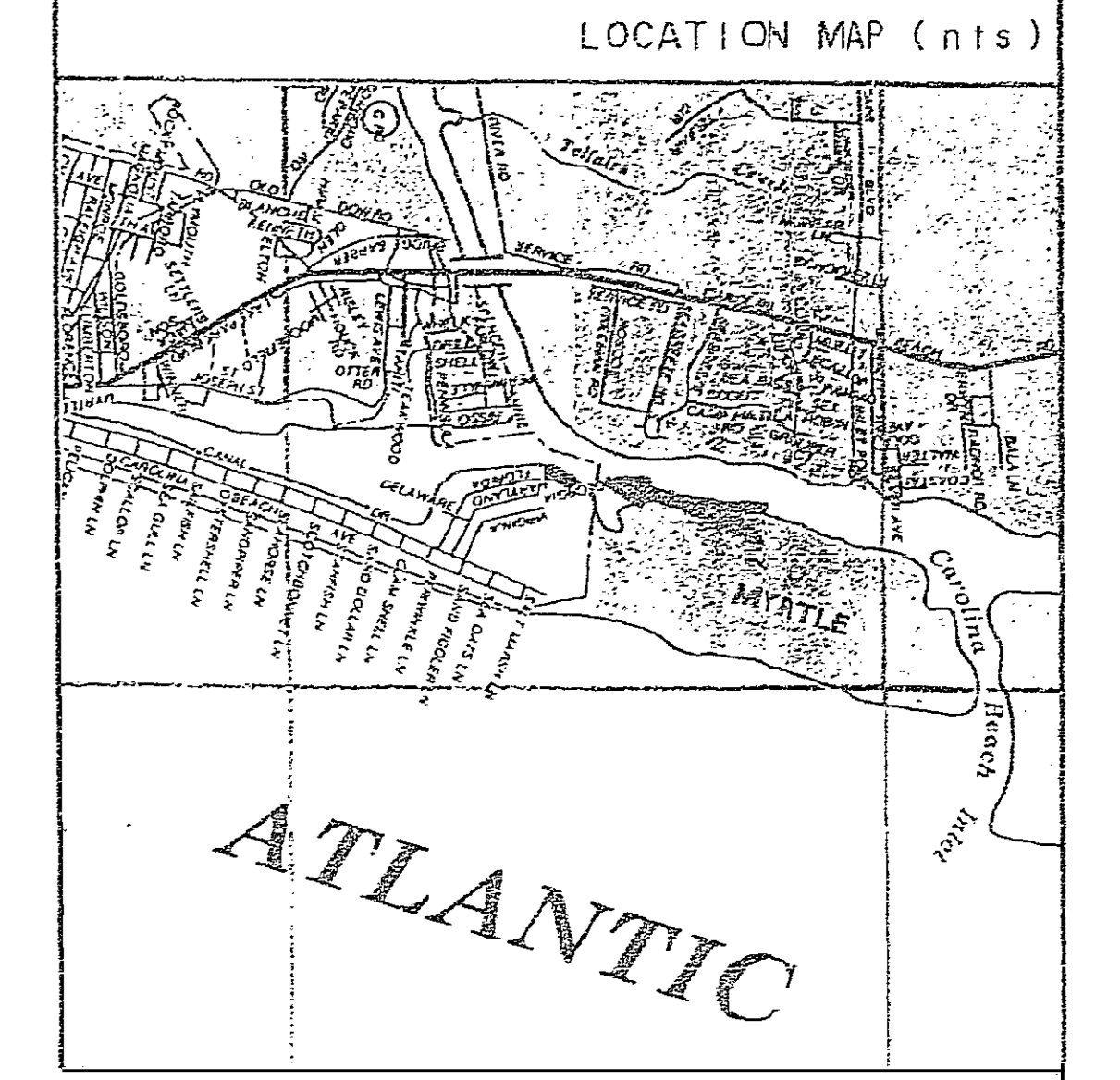
I hereby certify that all streets, utilities, and other improvements have been installed in an acceptable manner and according to town specifications and standards in the OCEANA subdivision or that a guarantee of the installation of the required improvements in an amount and manner satisfactory to the Town of Carolina Beach has been received.

9-28-94
Date
Lawrence J. Lindsey
City Manager

CERTIFICATE OF APPROVAL BY THE PLANNING AND ZONING COMMISSION.
The Carolina Beach Planning and Zoning Commission hereby approves the Final Plat for the OCEANA subdivision.

9/28/94
Date
Charles R. Humeau
Chairman

Attachment 5



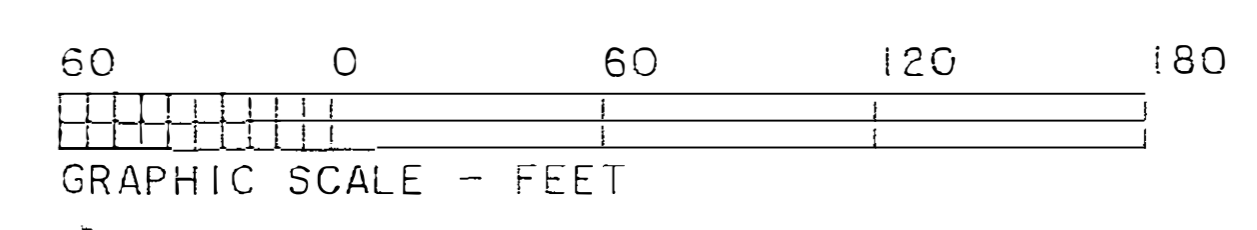
143

- NOTE:
- ALL STREETS AND OTHER COMMON AREA SHALL BE MAINTAINED BY A LEGALLY FORMED HOMEOWNERS ASSOCIATION.
-RECORDED IN BOOK 227 PAGE 1756 NEW HANOVER COUNTY REGISTRY
 - LOT CORNERS OF LOTS THAT FRONT ON THE MARINA ARE SET 10.0' BACK FROM CORNER ON 10.0' EASEMENT LINE.

000116

OCEANA SECTION 2

CAROLINA BEACH - NEW HANOVER COUNTY - NORTH CAROLINA
SCALE: 1" = 60' SEPTEMBER 8, 1994



ROBERT H. GOSLEE & ASSOCIATES
LAND SURVEYORS - LAND PLANNERS
513 CHESTNUT STREET
WILMINGTON, NORTH CAROLINA

CURVE DATA

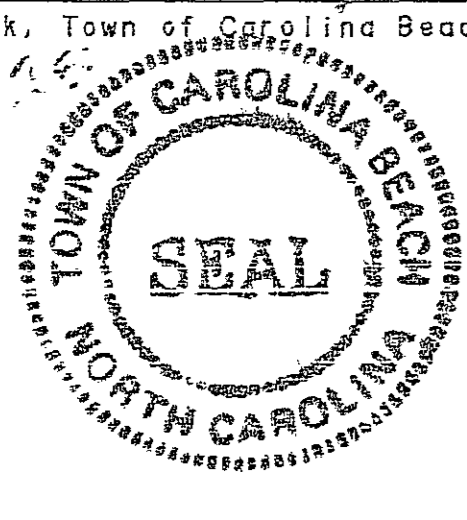
CURVE 1.	RADIUS 28.00'	CHORD 43.69'	CHORD BEARING N29°39'45"E
	DELTA 102°32'27"	ARC LENGTH 50.11'	
CURVE 2.	RADIUS 15.00'	CHORD 5.90'	CHORD BEARING S59°29'53"W
	DELTA 22°41'03"	ARC LENGTH 9.94'	
CURVE 3.	RADIUS 15.00'	CHORD 10.233'	CHORD BEARING N29°26'15"E
	DELTA 39°53'16"	ARC LENGTH 10.44'	

RECORDED BY: [Signature]

Map Book 34 Page 143

DEVELOPER:
OCEANA LTD.
401 VIRGINIA AVE.
CAROLINA BEACH, N.C. 28428

SURVEYOR:
ROBERT H. GOSLEE & ASSOCIATES
513 CHESTNUT STREET
WILMINGTON, N.C. 28401



STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF NEW HANOVER **2020 DEC 21 A. 9 50** 20-CVS-1444

IN RE REQUEST BY CBYC, LLC,)
)
Petitioner,)
)
v.)
)
TOWN OF CAROLINA BEACH, a North)
Carolina Municipal Corporation and)
Body Politic,)
)
Respondent,)
)
OCEANA OWNERS ASSOCIATION,)
INC.)
)
Intervenor-Respondent.)
_____)

CONSENT ORDER

THIS MATTER appears before the Court for entry of a Consent Order granting the application and request for a conditional use permit submitted to the Respondent Town of Carolina Beach (“Town”) by Petitioner CBYC, LLC (“CBYC”) (collectively, “Consent Order”).

ALL PARTIES, including Intervenor Oceana Owners Association, Inc. (“Oceana”), now consent, by and through their undersigned counsel, to the granting of this Consent Order and CBYC’s application and request for a conditional use permit that was submitted to the Respondent on or about 25 September 2019, premised upon the following:

FINDINGS OF FACT

- 1. Jurisdiction and venue of this action are properly before this Court.
- 2. By virtue of that General Warranty deed dated 31 July 2019 and recorded on 2 August 2019 in Book 6235 at Page 2175 of the New Hanover Country Registry of Deeds

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
BY: *Leni M. Knowles*
Deputy Clerk

(“Registry”), CBYC owns the real property located at 401 Marina Street in New Hanover County, North Carolina (“Property”).

3. On or about 25 September 2019, CBYC applied to the Town for a conditional use permit (hereinafter “Permit”) for certain limited improvements to its Property.

4. CBYC’s Property consists of an existing commercial marina including fuel docks, a ship store, an office, residential unit, parking, and related facilities which have been in place for more than 20 continuous years preceding CBYC’s Permit application (collectively, “Marina”).

5. CBYC’s Permit application seeks to (i) extend and widen its existing fuel dock; (ii) add and relocate its fuel pumps; (iii) place a barge adjacent to CBYC’s existing dock, where the existing office and ship store will be relocated; (iv) add thirteen (13) parking spaces, a designated loading zone, and two (2) ADA compliant parking spaces within the Property’s existing boundary; and, (v) add an outdoor eating establishment to serve hot food and drinks to the Marina’s patrons.

6. The 2007 Town of Carolina Beach CAMA Land Use Plan sets forth the Town’s desire to encourage “low intensity water-oriented restaurant or other low intensity water-oriented commercial services with public docking and water access.”

7. The Town’s existing Code of Ordinances permits restaurants, bars, eateries, retail sales, office space, and other marina related uses in the MB-1 zoning district in which CBYC’s Property is located.

8. The Town’s Ordinances require an applicant for a conditional use permit to meet seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

9. The Town's Ordinances also set forth standards for particular uses such as eating and/or drinking establishments, which are specifically permissive uses within the Property's MB-1 zoning district. *Id.* § 40-261.

10. On 14 January 2020, a quasi-judicial hearing was held on CBYC's application for its Permit.

11. At the hearing, CBYC and Oceana presented evidence concerning the seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

12. On 30 March 2020, the Town issued its written Order denying CBYC's Permit application based on the 2-2 tied vote of the Town's Council's vote.

13. On 29 April 2020, CBYC timely and properly filed its Petition for Writ of Certiorari to this Court seeking to appeal the Town's Order denying its Permit application.

14. On 29 April 2020, CBYC's Petition for Writ of Certiorari was granted; the Town submitted the record for the appeal; and this Court was scheduled to conduct the appellate hearing on CBYC's appeal on 23 September 2020.

15. On 29 May 2020, Oceana filed its Verified Motion to Intervene of Oceana Owners Association, Inc., and its proposed Response of Intervenor-Respondent Oceana Owners Association, Inc (collectively, "Intervention Motion").

16. On September 15, 2020, Oceana filed an Objection to Notice of Hearing and Motion to Continue the noticed appeal hearing. Thereafter, counsel for CBYC informed counsel for Oceana that CBYC would consent to Oceana's Intervention Motion to keep the noticed date for the appeal hearing.

17. Ultimately, the hearing on CBYC's appeal was canceled based upon the parties' agreement and resolution of the matters between them.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the parties and this Court agree to the following Conclusions of Law:

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.
2. Oceana's Intervention Motion is hereby granted, thus binding Oceana to the rights and obligations of this Consent Order.
3. Conditional use permits are issued for uses that an ordinance expressly permits in a designated zone. *Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 467, 202 S.E.2d 129, 136 (1974).
4. To effectuate the parties' settlement and the entry of this Consent Order, the parties agree that CBYC produced competent, material, and substantial evidence establishing that CBYC's Permit application met all relevant standards, specifications, and requirements set forth under the Town's Ordinances for issuance of a conditional use permit.

Based upon the foregoing, including the consent and request of the parties, and upon a review of the terms herein, the Court believes that the entry of this Consent Order is fair, in the interests of justice, and should be entered.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. CBYC's application for a Permit shall be and the same is hereby GRANTED upon the following conditions/restrictions:

- a. All of the terms and provisions contained in CBYC's Permit Application, except as may be expressly modified hereinbelow and said modifications shall supplement and amend CBYC's Permit Application.
 - b. CBYC shall fully comply with all Town, New Hanover County, State, and/or Federal rules and regulations, including the departments and agencies of each such entity.
 - c. CBYC shall not play music, whether recorded or live, before 12:00 p.m. each day, will stop playing any such music one (1) hour before closing time each day, and will at all times comply with the Town's noise ordinance.
 - d. CBYC's store, restaurant, fueling and other sales and activities shall cease by 9:00 p.m. beginning on the Friday of Memorial Day weekend of each calendar year through and including the Labor Day holiday of each calendar year. At all other times (i.e., the off-season), said activities shall cease by 7:00 p.m.
 - e. CBYC's restaurant operations will open on a daily basis no earlier than 7 a.m.
 - f. Any newly installed lighting within CBYC's Marina shall be directed downward and away from the residential homes in the Oceana Subdivision.
 - g. CBYC will ensure that trash is picked-up on a daily basis within all areas of its operation, including along its walkways along the Marina and also within the parking lot and spaces owned by CBYC within the Oceana Subdivision.
 - h. Any future conditional or special use permit application by CBYC requesting additional uses of the Property not contemplated in the current Permit may be contested by Oceana notwithstanding this Consent Order. Alternatively, Oceana may choose to require the same restrictions specified herein to be imposed on the use proposed by any such future conditional or special use permit application.
2. Nothing herein shall be construed so as to waive, limit or otherwise prejudice CBYC and its successors and assigns from seeking additional uses and/or improvements to its subject property and marina as may be allowed by the Town's ordinances. Nothing herein shall be construed so as to waive, limit or otherwise prejudice the legal and/or factual arguments of any opponents possessing legal standing to any future applications by CBYC and/or its successors and assigns to make any additional uses and/or improvements to its subject property.

- 3. The terms and provisions of this Order shall be fully enforceable by the Court with all of its authority including, without limitation, the Court's powers of contempt, including an award of attorney's fees for any prevailing party.
- 4. Each party shall bear its own respective costs and attorneys' fees, except in any proceedings under Paragraph 3.
- 5. The provisions of this Consent Order shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

So ORDERED this the 21st day of December 2020.

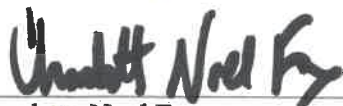


THE HONORABLE George F. Jones
Resident Superior Court Judge Presiding
New Hanover County, North Carolina

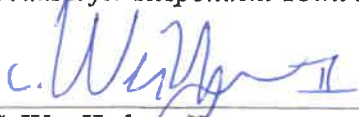
WE CONSENT:



G. Grady Richardson, Jr.
Counsel for Petitioner, CBYC, LLC



Charlotte Noel Fox
Counsel for Respondent Town of Carolina Beach



C. Wes Hodges, II
*Counsel for Intervenor-Respondent,
Oceana Owners Association, Inc.*

Attachment 7

MC² ENGINEERING
 MC² ENGINEERING, INC.
 2110 BEN CRAIG DR., STE. 400
 CHARLOTTE, NC 28262
 PHONE 704.510.1979



THE DESIGNS AND DRAWINGS SHOWN ARE THE PROPERTY OF MC² ENGINEERING, INC. REPRODUCTION OR USE FOR ANY PURPOSE OTHER THAN THAT AUTHORIZED BY MC² ENGINEERING, INC. IS PROHIBITED.

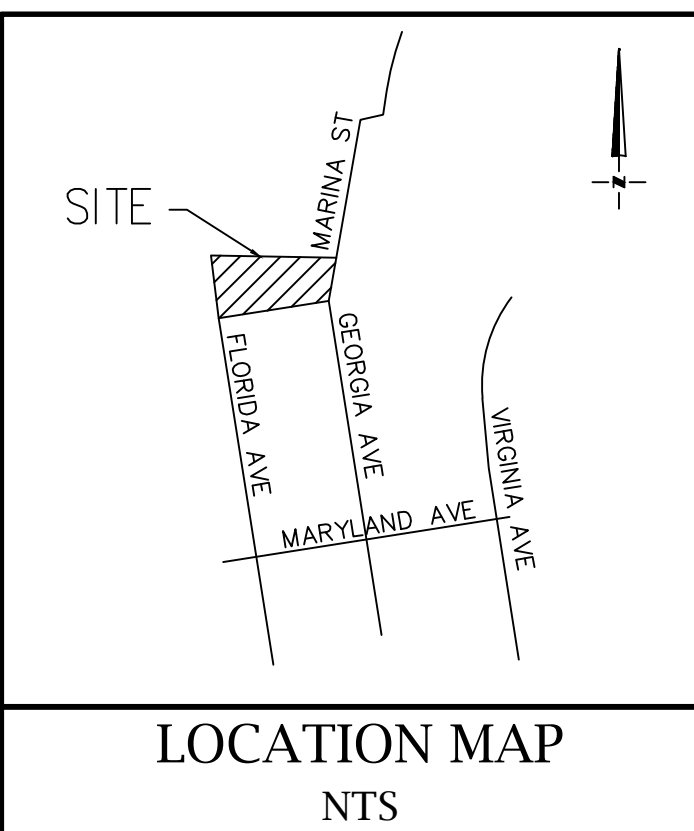
CAROLINA BEACH MARINA AND YACHT CLUB
 401 MARINA STREET
 CAROLINA BEACH, NC

SKETCH PLAN

REVISIONS	
1	9/25/2018 CAROLINA BEACH REVISIONS
2	9/27/2018 CAROLINA BEACH REVISIONS
3	10/17/2018 CAROLINA BEACH REVISIONS
4	11/2/2018 CAROLINA BEACH REVISIONS
5	11/8/2018 CAROLINA BEACH REVISIONS
6	11/20/2018 CAROLINA BEACH REVISIONS
7	12/4/2018 CAROLINA BEACH REVISIONS
8	12/7/2018 CAROLINA BEACH REVISIONS
9	3/5/2019 CAROLINA BEACH REVISIONS
10	9/22/2019 CAROLINA BEACH REVISIONS

CAD FILE: 18-026 BASE.DWG
 PROJECT NO.: 18-026
 DESIGNED BY: TAP
 REVIEWED BY: JDM
 DATE: AUGUST 31, 2018

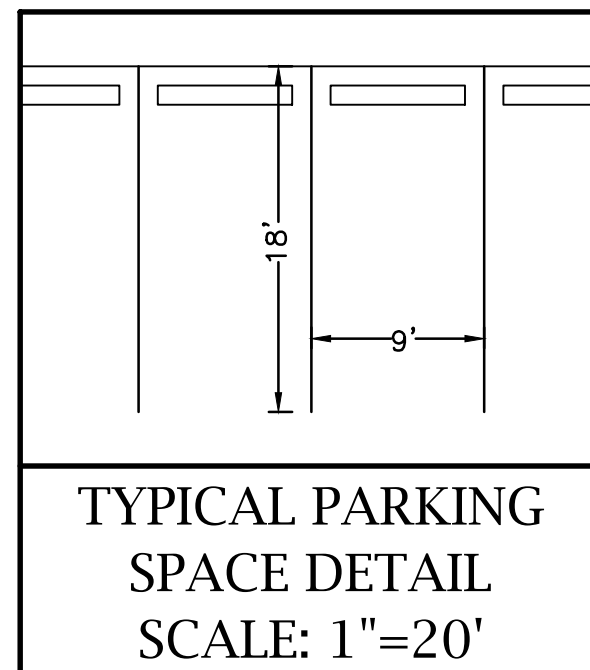
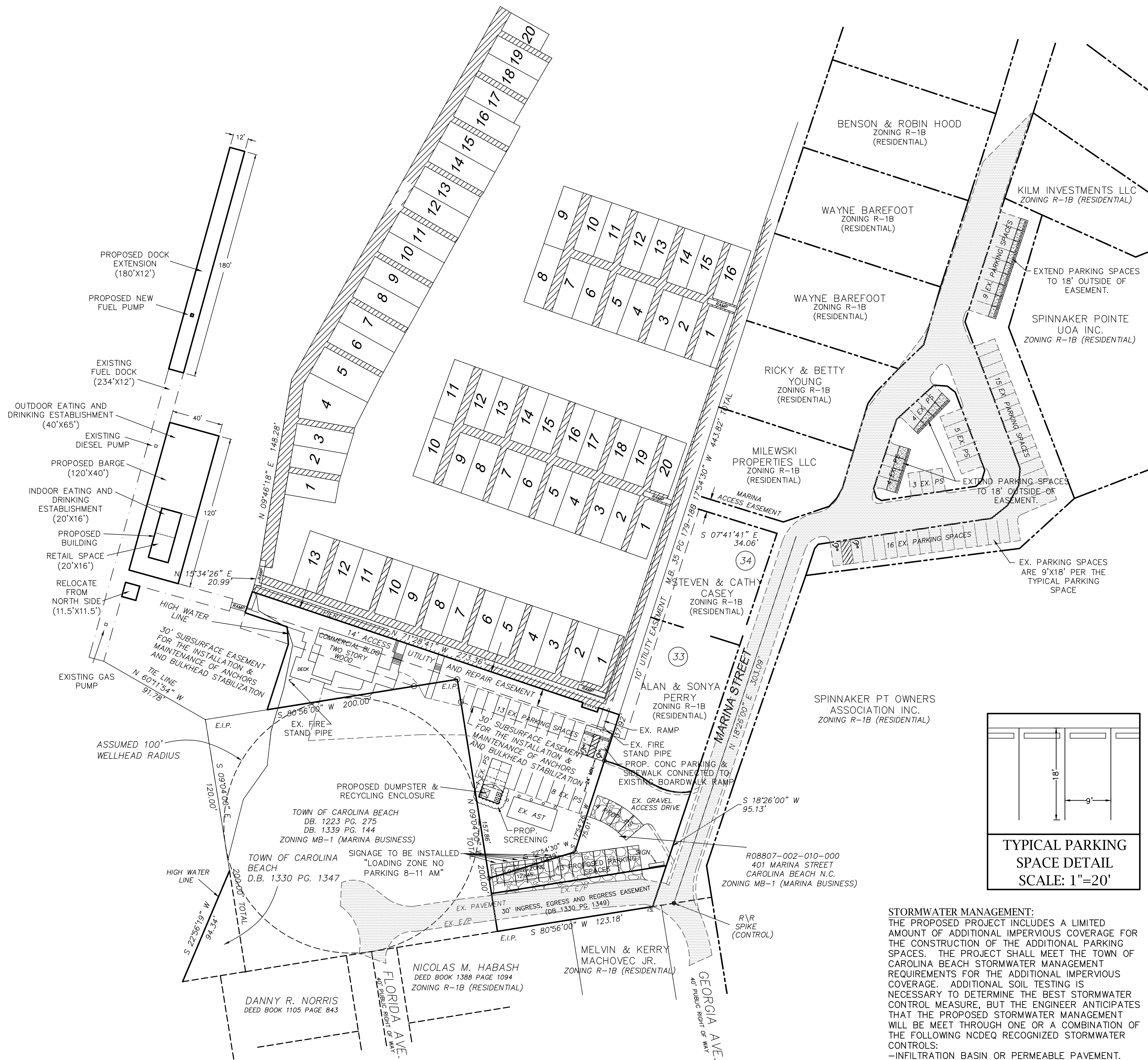
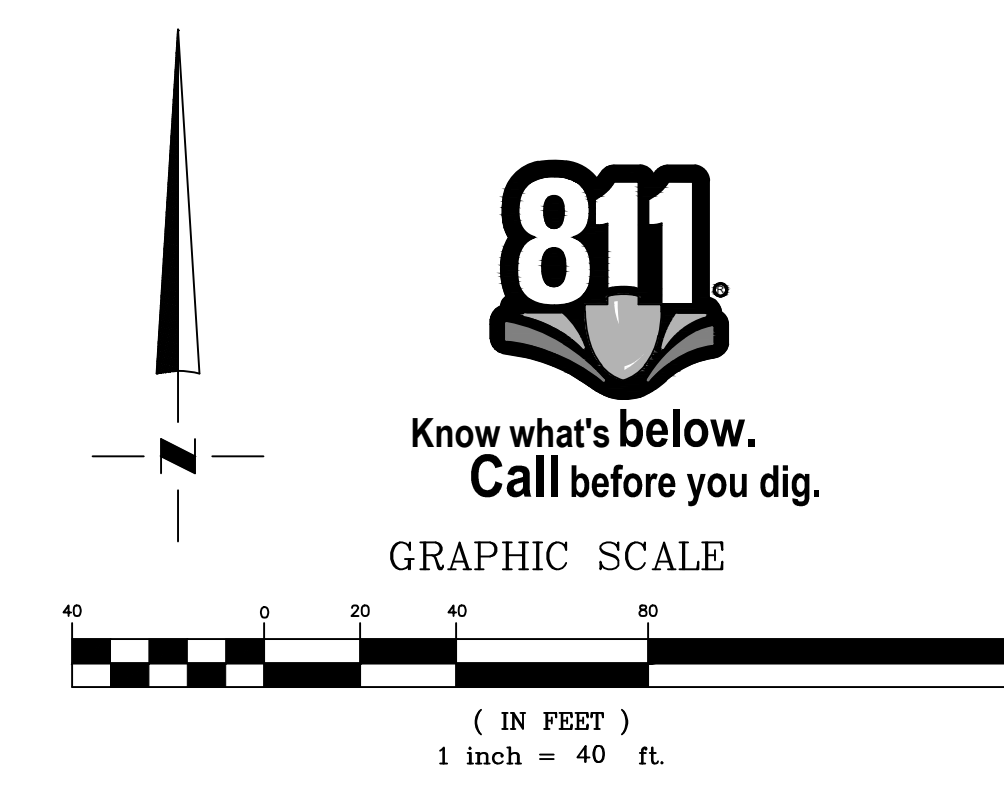
SP1.0



PROPERTY OWNER PER GIS:	
JOYNER MARINA LLC	RALEIGH, NC 27602
SITE AREA:	
±1.36 AC (±59,237 SF)	
0.53 AC (±23,087 SF)	
0.24 AC (±10,450 SF)	
0.59 AC (±25,700 SF)	
PARCEL IDS:	
R08519-002-028,	
R08807-002-010,	
R08519-002-002	
JURISDICTION: TOWN OF CAROLINA BEACH	
CURRENT ZONING: MB-1-MARINA	
PARKING CALCULATIONS	
REQUIRED OFF-STREET PARKING:	94 (93.2)
BOAT SLIP	
-1 SPACE PER WET SLIP	69
RETAIL (BARGE)	
-1 SPACE PER 200 SF	1.6
-1/2 OF STRUCTURE (16' X 20')=320 SF	
EATING & DRINKING ESTABLISHMENTS (BARGE)	
-1 SPACE PER 110 SF (INDOOR)	2.9
-1/2 OF STRUCTURE (16' X 20')=320 SF	
-1 SPACE PER 220 SF (OUTDOOR)	11.8
-(40'X65')=2,600 SF	
RESIDENTIAL ABOVE EXISTING COMMERCIAL	
-1 SPACE PER 1,000 SF	1.2
-1,200 SF APARTMENT	
OFFICE (EXISTING COMMERCIAL BUILDING 1ST FLOOR)	
-1 SPACE PER 300 SF	2
-600 SF	
RETAIL (EXISTING COMMERCIAL BUILDING 1ST FLOOR)	
-1 SPACE PER 200 SF	4.7
-933 SF	
EXISTING OFF-STREET PARKING: 79	
PROPOSED OFF-STREET PARKING:	16
TOTAL OFF-STREET PARKING:	95
LOT COVERAGE	
EXISTING BUILDING/FUEL TANK:	2,144 SF
EXISTING CONCRETE/ASPHALT/GRAVEL:	25,640 SF
TOTAL EXISTING IMPERVIOUS:	27,784 SF
PROPOSED GRAVEL:	1,975 SF
TOTAL PROPOSED IMPERVIOUS AREA:	29,759 SF
LOADING SPACE REQUIREMENTS	
LESS THAN 15,000 SF (MUST SUBMIT A LOADING PLAN)	
-PROPOSED OFFICE, RETAIL AND RESTAURANT USE IS A TOTAL OF 4,973 SF. THE ANTICIPATED DELIVERIES FOR THE OFFICE AND RETAIL SPACE CONSIST OF TYPICAL DELIVERIES FROM UPS/FEDEX. THE RESTAURANT DELIVERIES WILL BE SCHEDULED TO OCCUR BETWEEN 8-11 AM SO AS TO OCCUR PRIOR TO THE NORMAL BUSINESS OPERATING HOURS AND THEREFORE TO NOT IMPACT THE PARKING LOT CAPACITY. SIGNAGE TO BE INSTALLED AS NOTED. THE ANTICIPATED LOADING PERIOD WOULD BE ANTICIPATED TO NOT LAST LONGER THAN 1 HOUR. THE TYPICAL TRUCK FOR DELIVERIES TO THE RESTAURANT WOULD BE A WB-40 WHICH IS A TRACTOR TRAILER WITH A OVERALL LENGTH OF 45 FEET.	

DEVELOPMENT SUMMARY

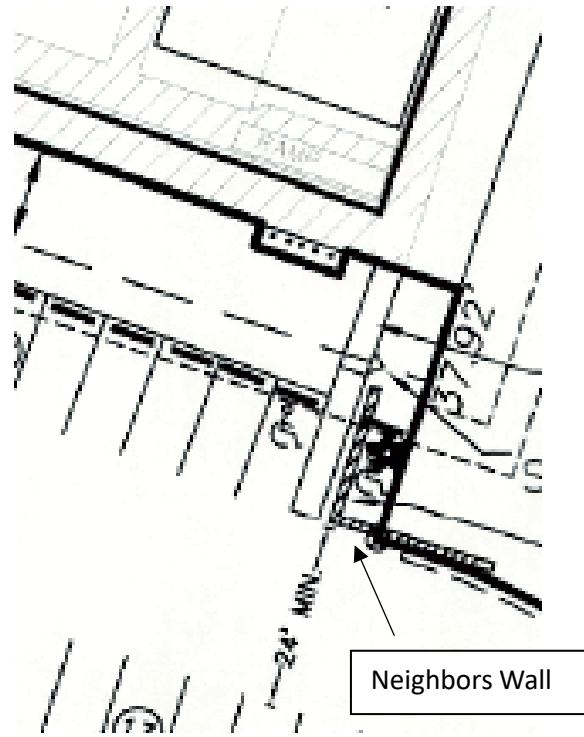
PROJECT DESCRIPTION:
 PROJECT INCLUDES PROPOSED DOCK EXTENSION WITH NEW FUEL PUMP AND NEW BARGE WITH BUILDING TO HOUSE SMALL RETAIL AREA AND EATING AND DRINKING ESTABLISHMENT.



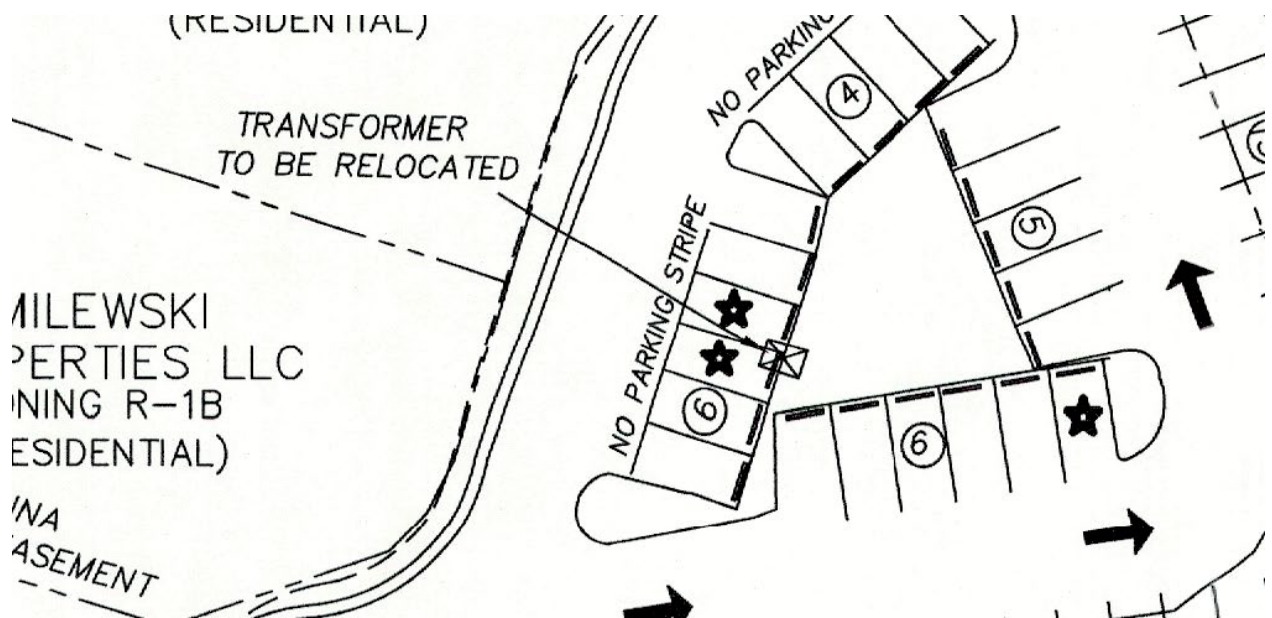
STORMWATER MANAGEMENT:
 THE PROPOSED PROJECT INCLUDES A LIMITED AMOUNT OF ADDITIONAL IMPERVIOUS COVERAGE FOR THE CONSTRUCTION OF THE ADDITIONAL PARKING SPACES. THE PROJECT SHALL MEET THE TOWN OF CAROLINA BEACH STORMWATER MANAGEMENT REQUIREMENTS FOR THE ADDITIONAL IMPERVIOUS COVERAGE. ADDITIONAL SOIL TESTING IS NECESSARY TO DETERMINE THE BEST STORMWATER CONTROL MEASURE, BUT THE ENGINEER ANTICIPATES THAT THE PROPOSED STORMWATER MANAGEMENT WILL BE MET THROUGH ONE OR A COMBINATION OF THE FOLLOWING NCDEQ RECOGNIZED STORMWATER CONTROLS:
 -INFILTRATION BASIN OR PERMEABLE PAVEMENT.

Encroachments

Wall



Transformer





AGENDA ITEM COVERSHEET

PREPARED BY: Haley Moccia, Planner

DEPARTMENT: Planning & Development

MEETING: Board of Adjustment – January 22nd, 2024

SUBJECT: 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. & Sec. 40-74. - Dimensional standards for lots and principal structures.

BACKGROUND:

The applicant, North Pier Holdings, LLC, is a North Carolina Limited Liability Company, formed on May 3, 2022. The Registered Agent is Caleb Kratsa.

On July 27, 2022, the applicant acquired a fee simple interest in all of the units (42 units) within North Pier Ocean Villas Condominiums (the “Property”) from North Pier Ocean Villas Homeowners Association, Inc. (the “HOA”) for a sales price of \$8.3 million following proceedings in bankruptcy court. The Property has a physical address of 1800 Canal Drive, Carolina Beach, New Hanover County, North Carolina.

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, the 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 the 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 since it does not meet current FEMA Flood requirements, town ordinance requirements, nor current CAMA requirements. The buildings (1 & 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 (Building 1 & 2). If the renovation exceeds this renovation 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. This zoning district usually supports single-family/2-family dwellings. It does not permit multi-family structures. The table below lists the permitted dimensional standards for lots and principal structures located within the R-1 zoning district:

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width ⁶	Min. Front Yard	Min. Rear Yard	Min. Side Yards* (Corner Lot—Min. 12.5 ft.) ⁴	Residential Max. Density	Max. Height	Max. Lot Coverage
R-1	Single-Family Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. 1	40%

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

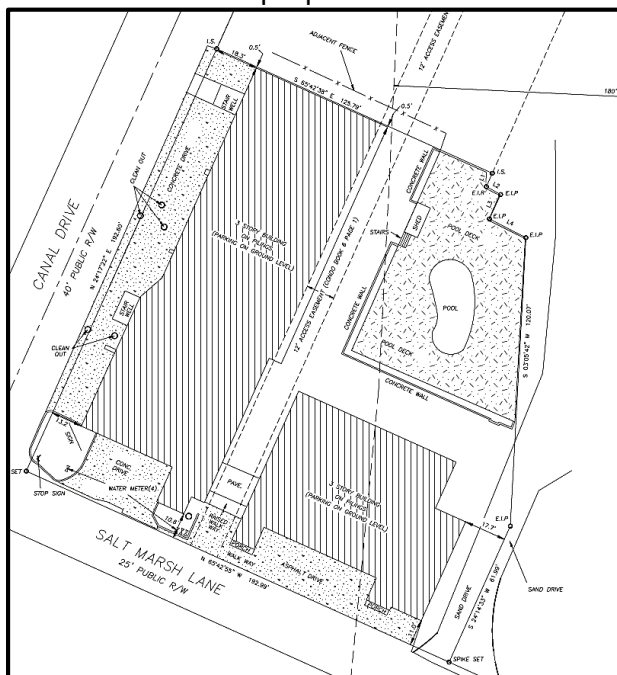
Shortly after the applicant purchased the Property on July 27, 2022, beginning in August 2022, the applicant began maintenance and repair activities of Buildings 1 and 2. See attached timeline of permits.

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 the pool users. Due to these conditions, the applicant removed the pool deck, without a demo or renovation permit, and proposes to fix the plumbing, repair the retaining wall, and replace the pool deck.

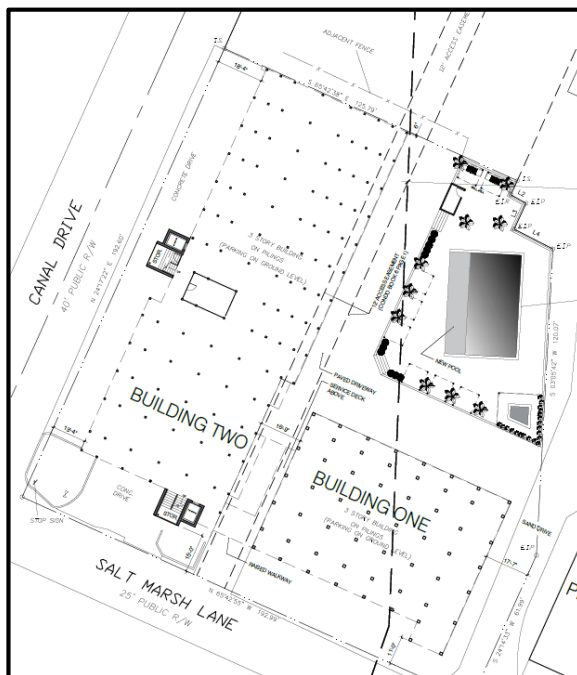
On April 20, 2023, the Town issued a Violation to the applicant for enclosing unheated areas of Building 1 within the State Coastal Area Management setback regulations (CAMA setback). The applicant also did not have a renovation permit for this work. The applicant contends there was a misunderstanding with the building inspector regarding the ability to enclose the unheated sf based on their ability to secure the building prior to Hurricane Dorian in 2019, mentioned above. The applicant applied for a CAMA variance to permit the following: enclose the decks located on the NE corner of building 1, expand the decks on the NE corner of Building 1, add a penthouse to building 1, enclose an entryway into 6 units located on the E 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 NE decks and penthouse on building 1.

CURRENT STATE OF THE PROPERTY:

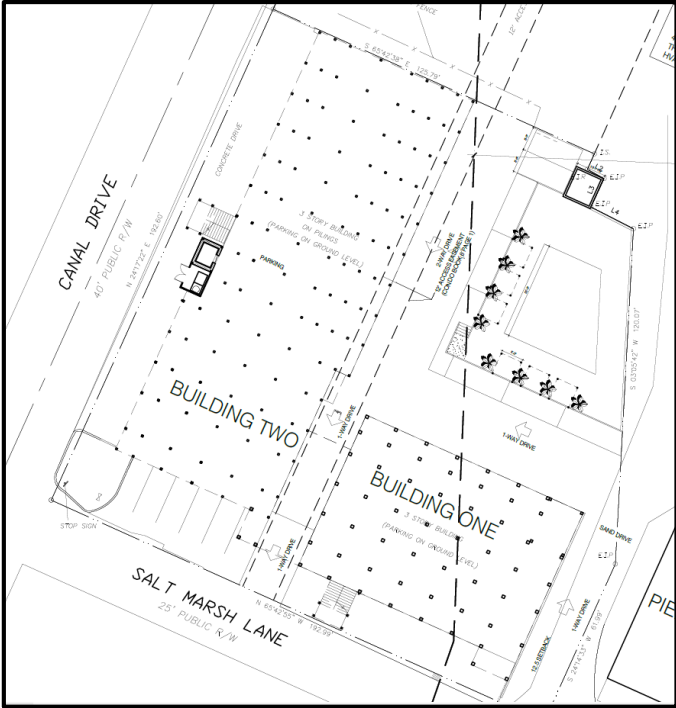
To date, a building permit has been issued for the renovation and repair of the buildings. The renovation included combining some residential units, moving interior walls, replacing and fortifying the roof, replacing siding, decking, and adding windows. A second building permit was issued for the addition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



Pre-construction Site Plan



Approved Building Permit Site Plan



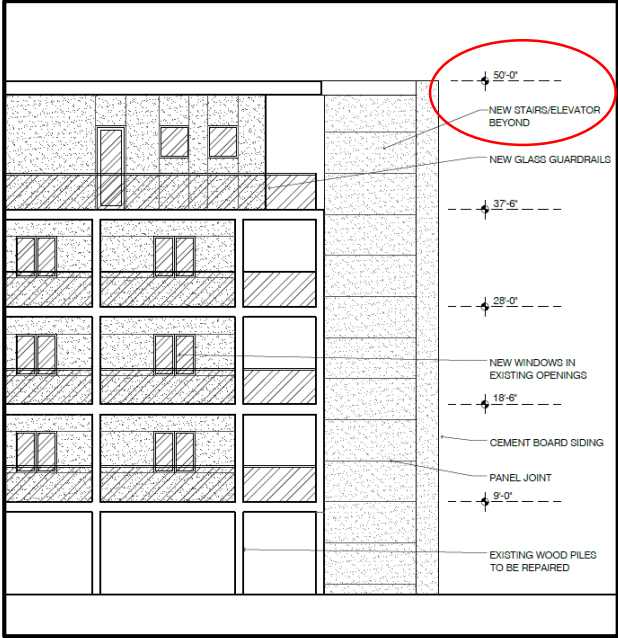
Variance Proposed Site Plan

Height

The maximum height limit for the R-1 zoning district, in which this building is located, is 50' (Sec. 40-74.). 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' and stay level with the roof line on top of the added penthouses on building 2. The applicant requests a total of 55' 4" height for the elevator shaft.



Proposed Height for Variance – 55' 4"



Approved Building Permit Height – 50'

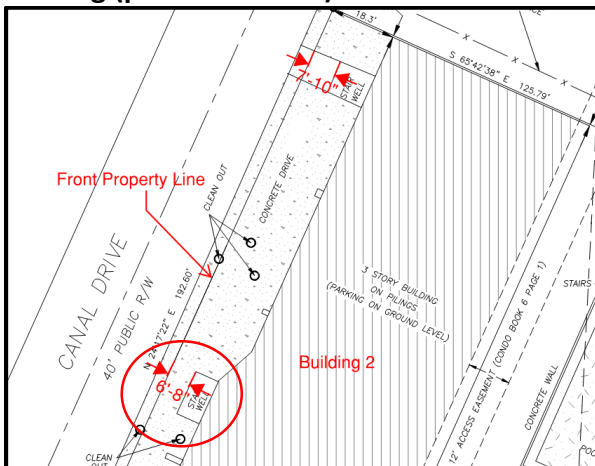
Setbacks

The R-1 Zoning district allows a minimum front setback of 20' and a minimum corner side setback of 12.5' (Sec. 40-74.). 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 Dr. and the side property line would be adjacent to Salt Marsh Ln. The setbacks required by Town ordinance are a 20' front setback and a 12.5' side setback. The existing building, before demo and reconstruction began, was considered legal non-conforming because the building was already encroaching into the front and side setbacks.

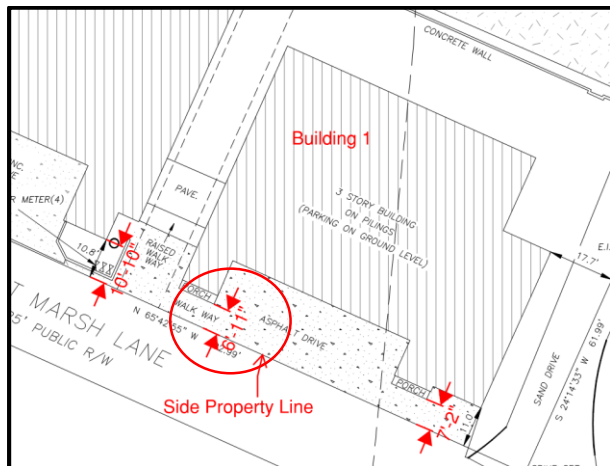
Staircase

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 6'8". The new, most forward, front setback would be 3'9". The existing most forward staircase in the side setback was 6'11". The proposed new most forward side setback would be 0'6". See comparison between the existing setbacks (pre-renovation), the approved building permit setbacks, and the proposed variance setbacks:

Existing (pre-renovation) Setbacks:

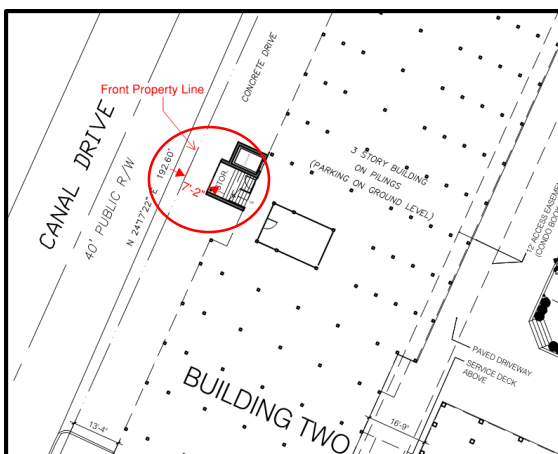


Building 2 (Front Setbacks) – 6'8"

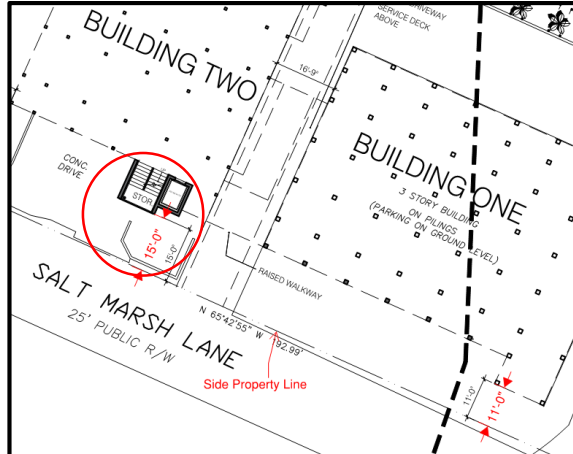


Building 1 (Side Setbacks) – 6'11"

Approved Building Permit Setbacks:

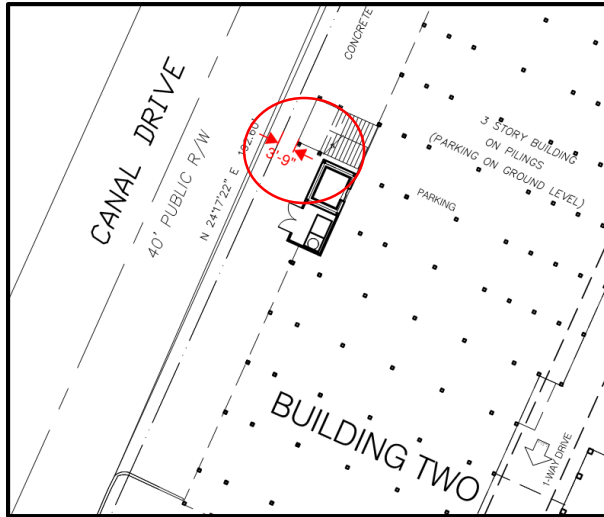


Building 2 (Front Setback) – 7'2"

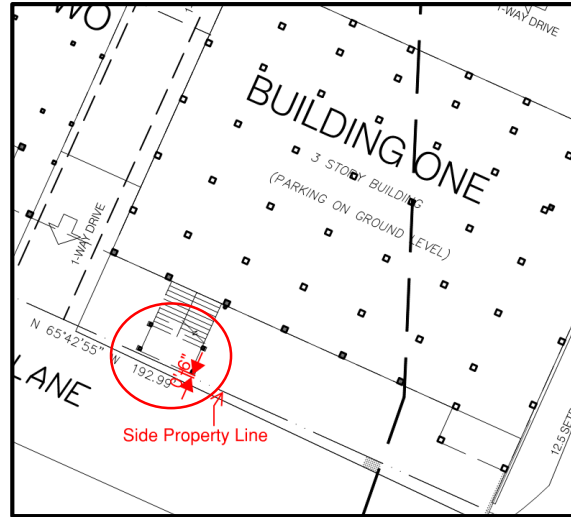


Building 1 & 2 (Side Setback) – 11'0"

Variance Proposed Setbacks:



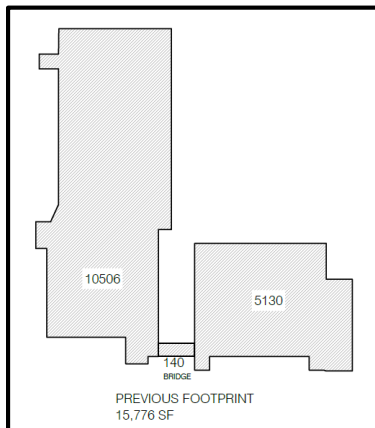
Building 2 (Front Setback) – 3'9"



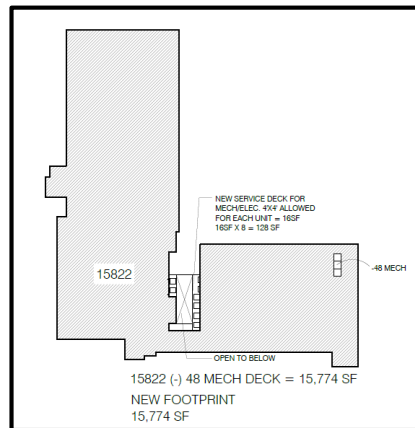
Building 1 (Side Setback) – 6 inches

Lot Coverage

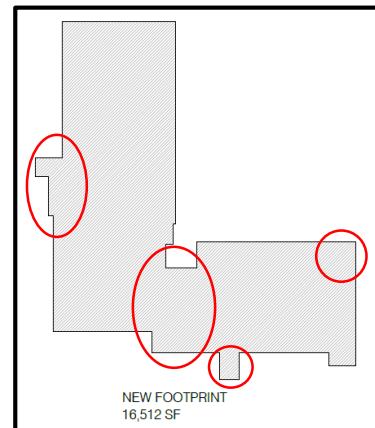
The applicant also desired to enlarge the size of the residential balconies on buildings 1 & 2, add an elevator machinery room/vending room, add a trash chute, enlarge a storage closet between the buildings, and relocate and enlarge the staircases and elevator. These proposed additions and enlargements 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 legal-nonconforming for lot coverage. The existing lot coverage was 15,776 sf (47.0%). The lot coverage of the building approved for the renovation and addition building permits was 15,774 sf (46.99%). The proposed variance lot coverage would be 16,512 sf (49.2%). This is an increase of approximately 736 sf.



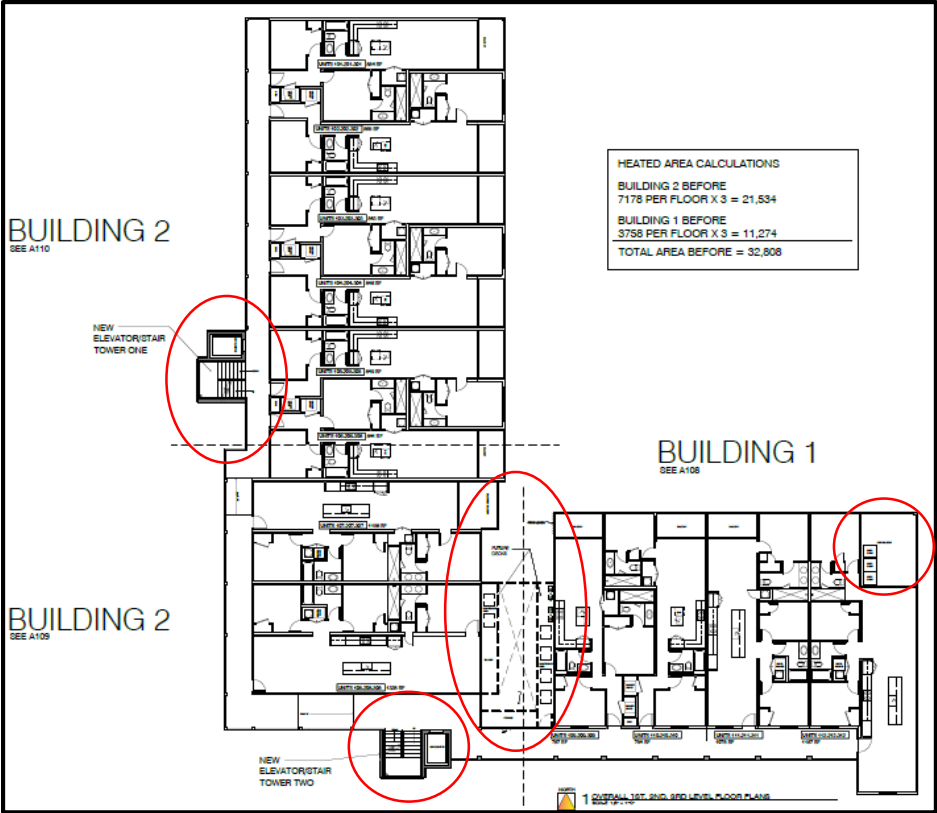
Pre-Construction Lot Coverage



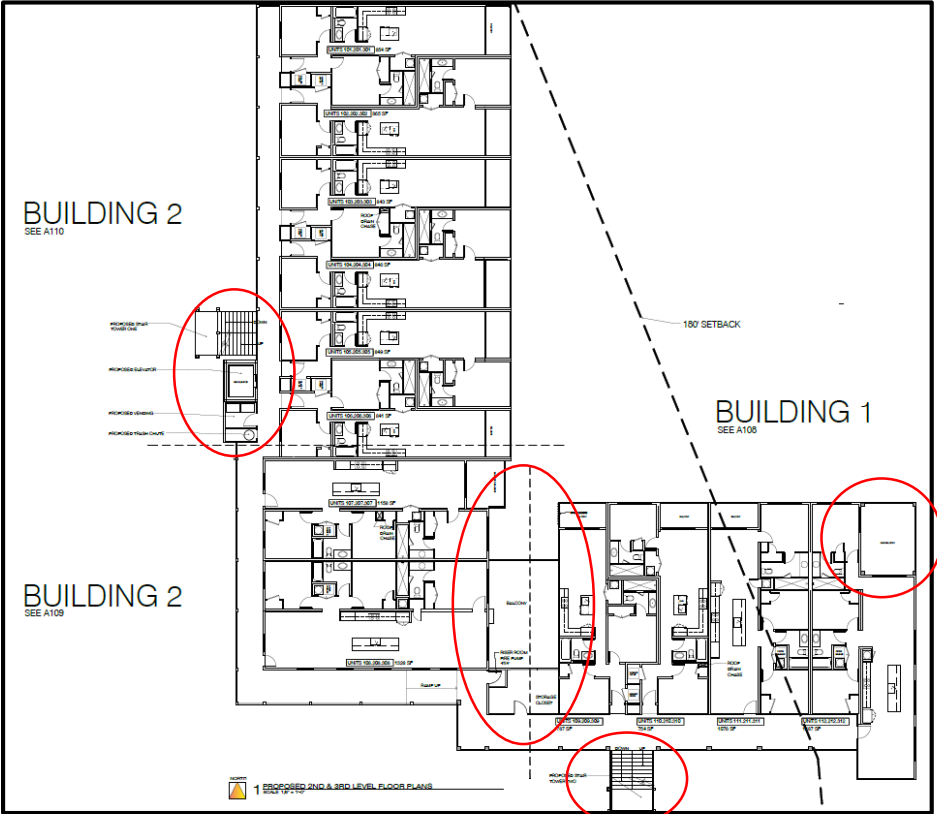
Approved Permit Lot Coverage



Variance Proposed Lot Coverage



Approved Building Permit Lot Coverage



Proposed Variance Expansions to Lot Coverage

SUMMARY:

The applicant is seeking three (3) separate variances:

- **Building Height (50' Max)**– Exceed the maximum 50’ height limitation by 5’ 4” for a total height of 55’ 4” for the elevator shaft.
- **Front and Side Building Setbacks (20’ Front, 12.5’ Side)** – The front setback would change from the existing (pre-renovation) setback of 6’8” to the proposed variance front setback of 3’9”. The side setback would change from the existing (pre-renovation) setback of 6’11” to the proposed variance front setback of 0’6”.
- **Lot Coverage (40%)** – The total lot coverage would expand by approximately 738 sf and would change from the existing (pre-renovation) lot coverage of 15776 sf (47.0%) to the proposed variance lot coverage of 16,512 sf (49.2%)

	Ordinance	Required By Ordinance	Pre Construction	Approved Building Plans	Proposed Variance	Notes
Building Height	Sec. 40-426. & Sec. 40-74.	Up to 50'	<50'	50.0'	55' 4" to top of elevator shaft	
Lot Coverage	Sec. 40-426. & Sec. 40-74.	13,426.8 Sf = 40.0%	15,776 sf = 46.7%	15,774 sf = 46.7%	16,512 sf = 49.2 %	An addition of 736 sf of expanded balconies, trash chute, storage, vending, and mechanical room.
Building Setbacks	Sec. 40-426. & Sec. 40-74.	Front Setback: 20' Side Setback: 12.5'	Front Setback: 6' 8" Side Setback: 6' 11"	Front Setback: 7' 2" Side Setback: 11' 0"	Front Setback: 3' 9" Side Setback: 0' 6"	

Summary Table of Comparisons

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. Building Height Variance Application
2. Setback Variance Application
3. Lot Coverage Variance Application
4. Variance Architecture Plans
5. Building Permit Timeline



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

Item 3.

Permit Number: _____

Each application must be printed or typewritten and have all information answered. It is strongly recommended that the applicant set up a meeting with Planning Staff prior to the submission deadline to ensure the application is complete.

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.

Applicant

Name: Equitas Law Partners, LP, as attorneys for Property Owner, North Pier Holdings, LLC

Applicant Mailing Address:

330 Military Cutoff, A-2, Wilmington, NC 28405

Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): (910) 500-1532 mobile/work/home (circle one): _____

Applicant Email Address:

sam@equitaslp.com

Property Owner Name: North Pier Holdings, LLC

Property Owner Mailing Address:

6316 Marywood Drive, Wilmington, NC 28409

Street Address City State Zip

Property address of variance being requested:

1800 Canal Drive, Wilmington, NC 28428


Property Size: 33,566 sq. ft.

Zoning Designation: R-1

Please give a brief description of requested action:

A variance from Carolina Beach Town Code Section 40-74 limiting the maximum height of a structure in the R-1 zoning

district to 50', to allow for a 55' 4" elevator.

Owner Signature:  Jeff O'Brien (Dec 21, 2023 12:17 EST)

Date: 21/12/2023

Owner Printed Name: North Pier Holdings, LLC, by Jeff O'Brien

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.

Absent a variance, the property owner cannot build an elevator that fully services the entirety of the existing structure. This will deny citizens wishing to live in the building who require the assistance of an elevator from accessing areas requiring elevator access.

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 hardship results from the non-conforming use that the property owner is attempting to maintain in furtherance of the Town's stated goals and objectives, listed below. The non-conforming building presently on the property necessitates an elevator that is the height proposed. Had the existing structure not been in place at the time of purchase, there would not be a necessity to install the structure requested at the height requested. This hardship particular to the property and unique to this case.

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

The stated hardship is not self created as the property owner did not build the existing structure that necessitates an elevator of this height. The property owner, rather, seeks to make meaningful use of an existing building, while providing additional improvements that promote safety, accessibility, and public health.

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

The Carolina Beach Town Code, Section 40-2 states that the purpose of the zoning ordinance is to "promote health and general welfare", and that the Town's vision for land use is to "direct growth such that the quality of [the Town] is continually enhanced". The adopted land use plan also states that a local concern it seeks to address is to "encourage, support, and find a path forward for reuse or renovation of existing structures[.]"

The elevator will promote safety, accessibility, public health and welfare by providing additional accessibility to the existing structure. This variance furthers the Town's stated goals and objectives, and are thus consistent with the spirit of the ordinance, and proposed to be installed in a manner so as to ensure that public safety is secured and substantial justice is achieved.






20231221_1800 Canal Drive, Wilmington, NC 28428

Final Audit Report

2023-12-21

Created:	2023-12-21
By:	Kate Nevins (kate@equitaslp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_T_QSQj7aJ82X2qLmtYyBjt5Xr4F73n_

"20231221_1800 Canal Drive, Wilmington, NC 28428" History

-  Document created by Kate Nevins (kate@equitaslp.com)
2023-12-21 - 5:11:19 PM GMT
-  Document emailed to Jeff O'Brien (jobrienproperties@gmail.com) for signature
2023-12-21 - 5:11:25 PM GMT
-  Email viewed by Jeff O'Brien (jobrienproperties@gmail.com)
2023-12-21 - 5:16:47 PM GMT
-  Document e-signed by Jeff O'Brien (jobrienproperties@gmail.com)
Signature Date: 2023-12-21 - 5:17:15 PM GMT - Time Source: server
-  Agreement completed.
2023-12-21 - 5:17:15 PM GMT



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

Item 3.

Permit Number: _____

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

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

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

Applicant

Name: Equitas Law Partners, LP, as attorneys for Property Owner, North Pier Holdings, LLC

Applicant Mailing Address:

330 Military Cutoff, A-2, Wilmington, NC 28405

Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): (910) 500-1532 mobile/work/home (circle one): _____

Applicant Email Address:

sam@equitaslp.com

Property Owner Name: North Pier Holdings, LLC

Property Owner Mailing Address:

6316 Marywood Drive, Wilmington, NC 28409

Street Address City State Zip

Property address of variance being requested:

1800 Canal Drive, Wilmington, NC 28428


Property Size: 33,566 sq. ft.

Zoning Designation: R-1

Please give a brief description of requested action:

A variance from Carolina Beach Town Code Section 40-74, establishing side setback requirements to

allow the property owner to build a staircase for an additional means of ingress and egress.

Owner Signature:  Jeff O'Brien Jan 7, 2024 14:44 EST

Date: 02/01/____/____

Owner Printed Name: North Pier Holdings, LLC, by Jeff O'Brien

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. Absent a variance, the property owner cannot install the desired staircase to promote accessibility and safety due to the existing setback requirements. Strictly applying the ordinance in this case would preclude the owner's ability to further safety, accessibility, and promote public health on an existing structure.

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 hardship results from the size and dimensions of the existing building on the property that the property owner is attempting to maintain in furtherance of the Town's stated goals and objectives, listed below. This hardship is particular to the property and unique to this case.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. The stated hardship is not self-created as the property owner did not build the original building that it is now renovating in hopes of maintaining an existing structure. The property owner, rather, seeks to make meaningful use of an existing structure, while providing an additional means of ingress and egress to promote safety, accessibility, and public health.

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

The Carolina Beach Town Code, Section 40-2 states that the purpose of the zoning ordinance is to "secure safety from fire" and "promote health and general welfare", and that the Town's vision for land use is to "direct growth such that the quality of [the Town] is continually enhanced". The adopted land use plan also states that a local concern it seeks to address is to "encourage, support, and find a path forward for reuse or renovation of existing structures[.]"

The staircase necessitating the variance promotes safety, accessibility, and public health and welfare by providing an additional improvement that furthers the Town's stated goals and objectives.

This variance furthers the Town's stated goals and objectives, and is thus consistent with the spirit of the ordinance, and proposed to be installed in a manner so as to ensure that public safety is secured and substantial justice is achieved.






BOA Application Variance. Setback

Final Audit Report

2024-01-02

Created:	2024-01-02
By:	Kate Nevins (kate@equitaslp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_qPJPZKQZnbD6b5CWkTQfN9oinqSikHN

"BOA Application Variance. Setback" History

-  Document created by Kate Nevins (kate@equitaslp.com)
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2024-01-02 - 7:32:38 PM GMT
-  Email viewed by Jeff O'Brien (jobrienproperties@gmail.com)
2024-01-02 - 7:34:22 PM GMT
-  Document e-signed by Jeff O'Brien (jobrienproperties@gmail.com)
Signature Date: 2024-01-02 - 7:44:14 PM GMT - Time Source: server
-  Agreement completed.
2024-01-02 - 7:44:14 PM GMT



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

Item 3.

Permit Number: _____

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

Fee: \$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 (3rd) Monday of each month at 6:00 P.M. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Applicants will be informed of any changes in date, time, or location of meetings. Applications and supplementary time for processing and postings are required by the General Statutes of North Carolina.

Applicant

Name: Equitas Law Partners, LP, as attorneys for Property Owner, North Pier Holdings, LLC

Applicant Mailing Address:

330 Military Cutoff, A-2, Wilmington, NC 28405

Street Address

City

State

Zip

Applicant Phone Number: mobile/work/home (circle one): (910) 500-1532 mobile/work/home (circle one): _____

Applicant Email Address:

sam@equitaslp.com

Property Owner Name: North Pier Holdings, LLC

Property Owner Mailing Address:

6316 Marywood Drive, Wilmington, NC 28409

Street Address

City

State

Zip

Property address of variance being requested:

1800 Canal Drive, Wilmington, NC 28428


Property Size: 33,566 sq. ft.

Zoning Designation: R-1

Please give a brief description of requested action:

A variance from Carolina Beach Town Code Section 40-426(b) which prohibits an increase in lot coverage when a non-conforming

use is being renovated at an amount less than 50 percent of the current tax value. This variance requests an increase in the total lot coverage
by 736 sq. ft. from the original construction coverage.

Owner Signature:  Jeff O'Brien (Dec 21, 2023 12:17 EST)
Date: 21/12/2023

Owner Printed Name: North Pier Holdings, LLC, by Jeff O'Brien

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. Absent a variance, the property owner cannot install the additional proposed improvements, including a fire suppression riser, deck for additional structural support between buildings, a trash chute and compactor, or a service deck to move HVAC and meter bases out of the flood zone. Strictly applying the ordinance in this case would preclude the owner's ability to further safety, accessibility, and promote public health on an existing structure.

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 hardship results from the non-conforming use that the property owner is attempting to maintain in furtherance of the Town's stated goals and objectives, listed below. The additional improvements necessitating the additional lot coverage would be allowed on any other property in the R-1 zoning district or to any other property owner, but for this particular property's status as maintaining a non-conforming use. This hardship particular to the property and unique to this case.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. The stated hardship is not self-created as the property owner did not build the original building that constituted the original construction footprint that they are now bound to. They also did not establish the existing non-conforming use. The property owner, rather, seeks to make meaningful use of an existing building, while providing additional improvements that promote safety, accessibility, and public health.

4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved. The Carolina Beach Town Code, Section 40-2 states that the purpose of the zoning ordinance is to "secure safety from fire" and "promote health and general welfare", and that the Town's vision for land use is to "direct growth such that the quality of [the Town] is continually enhanced". The adopted land use plan also states that a local concern it seeks to address is to "encourage, support, and find a path forward for reuse or renovation of existing structures[.]" Each of the additional improvements necessitating the variance promote safety, accessibility, and public health and welfare by providing additional improvements that further the Town's stated goals and objectives. This variance furthers the Town's stated goals and objectives, and are thus consistent with the spirit of the ordinance, and proposed to be installed in a manner so as to ensure that public safety is secured and substantial justice is achieved.






20231221_Application for Variance TOWN OF CAROLINA BEACH. N.C.

Final Audit Report

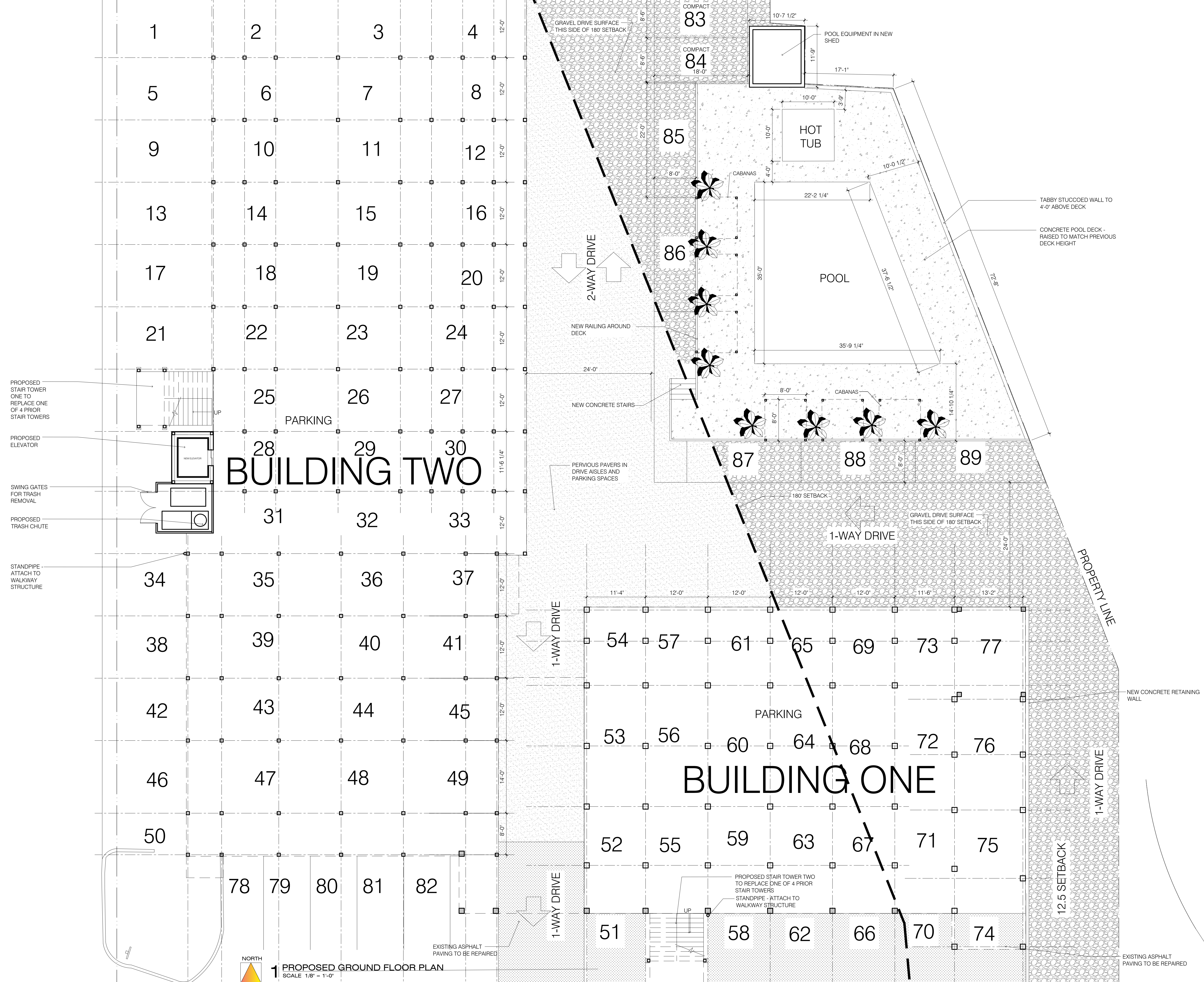
2023-12-21

Created:	2023-12-21
By:	Kate Nevins (kate@equitaslp.com)
Status:	Signed
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"20231221_Application for Variance TOWN OF CAROLINA BEACH. N.C." History

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2023-12-21 - 5:12:17 PM GMT
-  Document emailed to Jeff O'Brien (jobrienproperties@gmail.com) for signature
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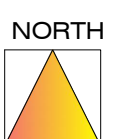
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BUILDING TWO

BUILDING ONE

1 PROPOSED GROUND FLOOR PLAN
SCALE 1/8" = 1'-0"



5 OF 8
A102

PROPOSED GROUND FLOOR PLAN

NORTH PIER OCEAN VILLAS

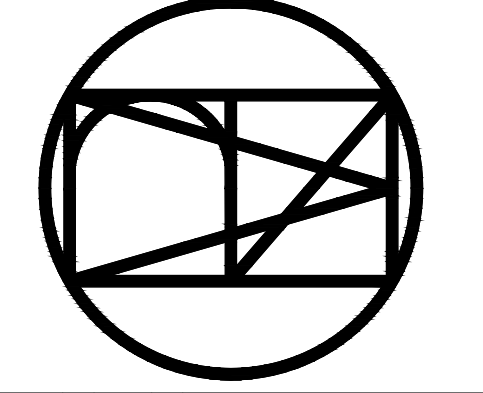
1800 CANAL DRIVE
CAROLINA BEACH, NORTH CAROLINA
28428

DATE	DESCRIPTION	BY	CHECKED
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08/19/2022	ISSUED FOR OWNER REVIEW
08/22/2022	ISSUED FOR OWNER REVIEW
08/23/2022	ISSUED FOR OWNER REVIEW
08/24/2022	ISSUED FOR OWNER REVIEW
08/25/2022	ISSUED FOR OWNER REVIEW
08/26/2022	ISSUED FOR OWNER REVIEW
08/27/2022	ISSUED FOR OWNER REVIEW
08/28/2022	ISSUED FOR OWNER REVIEW
08/29/2022	ISSUED FOR OWNER REVIEW
08/30/2022	ISSUED FOR OWNER REVIEW
08/31/2022	ISSUED FOR OWNER REVIEW
09/01/2022	ISSUED FOR OWNER REVIEW
09/02/2022	ISSUED FOR OWNER REVIEW
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09/27/2022	ISSUED FOR OWNER REVIEW
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09/30/2022	ISSUED FOR OWNER REVIEW

ARCHITECT



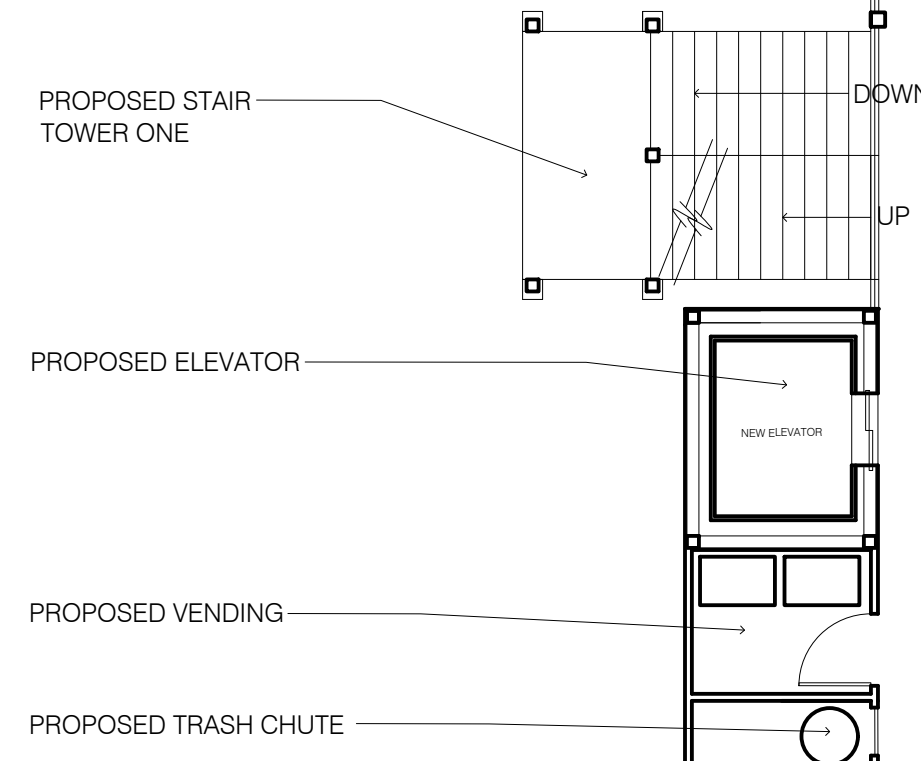
ROMERO ARCHITECTURE
2110 GREENFIELD STREET, #221
WILMINGTON, NORTH CAROLINA 28401
910.228.3137
www.romeroarchitecture.com



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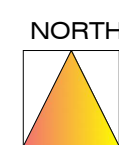
BUILDING 2

SEE A110

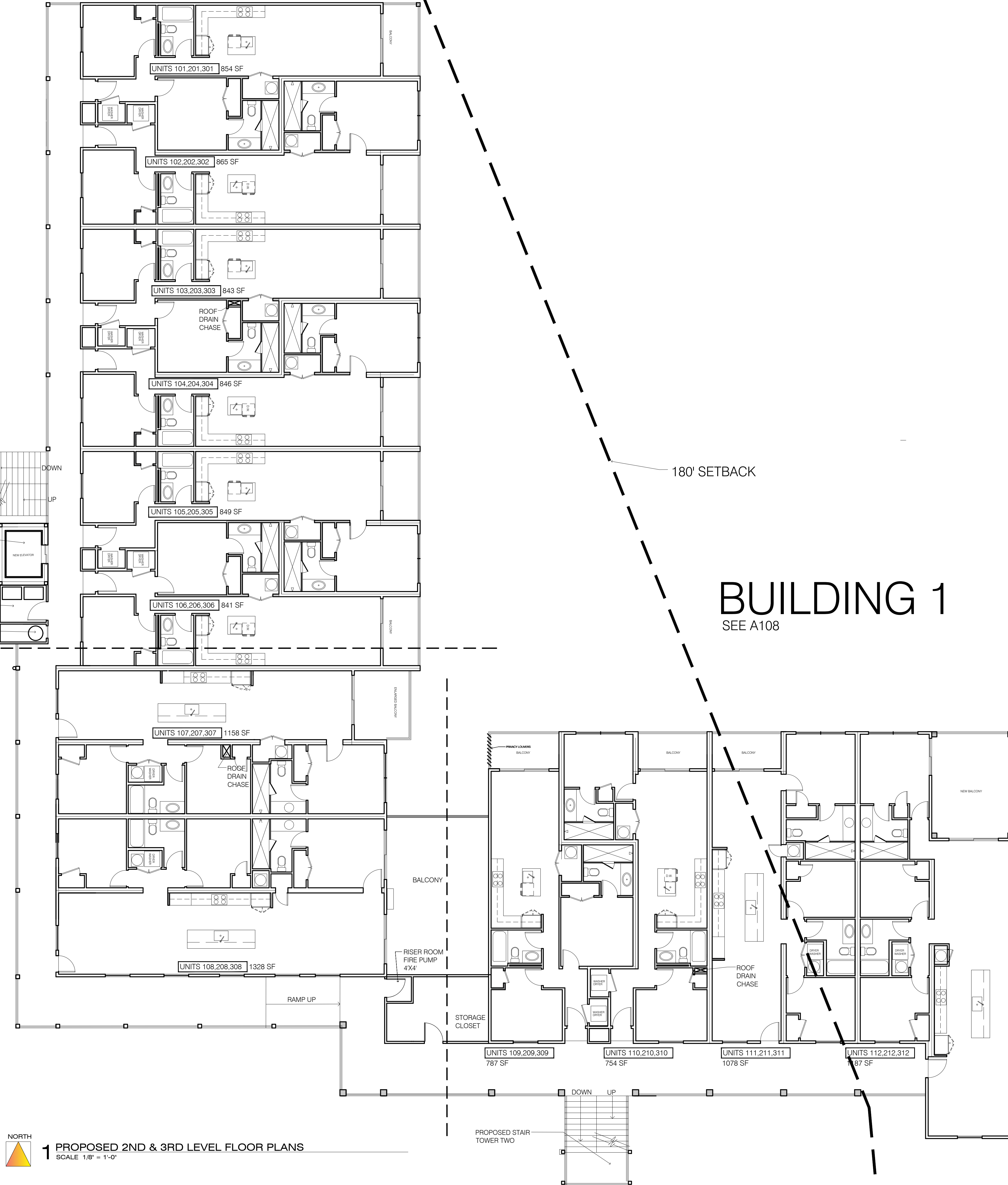


BUILDING 2

SEE A109



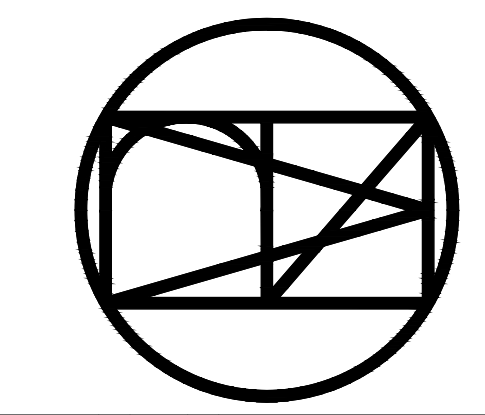
1 PROPOSED 2ND & 3RD LEVEL FLOOR PLANS
SCALE 1/8" = 1'-0"

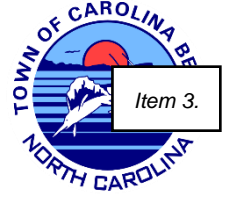


180' SETBACK

BUILDING 1

SEE A108





Timeline of Permits for 1800 Canal

Prepared: 9/12/2023

Between 2018 – 2020 hurricanes Florance (2018) and Dorain (2019) damaged the buildings at 1800 Canal spurring the following permits:

2020

- Reno/Repair Permit COM20-143 - Remove damaged flat roof & replace with new modified Bitumen Roofing System.
 - Applied: 3/9/20
 - Permit Issued: 3/9/20
- Demo Permit COM20-144 - Remove drywall
 - Applied: 3/9/20
 - Issued: 3/12/20
- Revision to COM20-143 – Change in Contractor – COM20-526
 - Applied: 9/11/20
 - Issued: 10.2.20

2022

- Received Reno/Repair Application– COM22-584: Repair & renovate both bldgs. - Foundation, exterior, interior & pool, repairs & renovations.
 - Applied: 7/20/22
 - Never issued – Canceled 8/25/22 due to applicant needing to provide construction plans and an appraisal, as well as plans needing to be revised to meet state building code, town ordinance, and CAMA requirements.
- Reno/Repair Permit COM22-669 – Repair foundation pilings. Demo exterior siding, damaged staircases, breezeways & decks. Demo interior cabinetry, flooring & bathrooms.
 - Applied: 8/19/22
 - Issued: 9/9/22
- Revision to COM22-699 – Change in Contractor COM22-819
 - Applied: 10/26/22
 - Issued: 12/8/22 (Permit was ready to be picked up on 10/31/22, but contractor did not pay for permit until 12/8/22)

2023

- Reno/Repair Permits – Building 1 (COM23-043) and Building 2 (COM23-044) – CANCELED – Phase 1- Building 1- Remove and replace interior finishes, repair and replace rotten exterior sheathing, structural members, remove and replace PME new windows and stucco exterior.
 - Canceled due to plan inconsistencies to meet state building code, town ordinance, and CAMA requirements. Applicants were not able to submit plans which could be approved by the town building inspector before the inspector left 2/8/23. Since the building inspector could not sign off on the applications before leaving, the applicant was told they would need to apply for a building permit through New Hanover County, since the County took over building permit issuance.
 - Applied: 1/26/23
 - Canceled: 2/9/23
- Alteration/Up-Fit/Addition COM23-045 – Penthouse additions on Building 2

- Canceled because Building inspector did not sign off on plans before leaving. Told to reapply at the County for building permit.
- Applied: 1/26/23
- Canceled: 2/9/23
- Reno/Repair COM23-186 (NHC23-00174) – Interior renovation of 36 condo units. Renovation includes insulation, PME, Drywall, cabinets, flooring, interior doors, trim and paint.
 - Permit was approved with the stipulation: INTERIOR AND EXTERIOR RENO ONLY OF EXISTING STRUCTURES, EXCLUDING UNITS 112,212,& 312 in Building 1. NO RENOVATION WORK CAN OCCUR IN OR ON THE EXTERIOR OF UNITS 112,212,& 312 in Building 1. They are combining a few units, moving interior walls, replacing and fortifying roof, replacing siding, decking, and windows.
 - Applied: 3/21/23
 - Town Approved: 4/24/23
 - NHC Issued Building Permit: 4/28/23
 - Town wrote CAMA exemption for reno work (13-23 EX CB) on 4/21/23 – It was amended 4/24/23: “Additionally, work to be included under this amended exemption includes all work outlined in the “Proposed Work to be Completed with Exemption” sections of the attached scope of work and cost estimate document for buildings 1 & 2, received 4/24/2023. These renovations will not occur on the interior or exterior of units 112, 212, and 312 on building 1.”
- Alteration/Up-Fit/Addition COM23-281 (NHC23-00293) - Addition of new penthouses on building 2, Breezeways on building 1, elevators on building 2, decks and storage on building 2.
 - Town issued a conditioned-out CAMA permit 6/28/23 (12-23 CB).
 - Applied 5/4/23
 - Town Approved: 8/4/23
 - NHC Issued Building Permit: 8/10/23