



**Wrightsville Beach
Board of Adjustment Meeting**

5:00 p.m. WEDNESDAY, JUNE 29, 2022
Wrightsville Beach Town Hall Council Chambers
321 Causeway Drive, Wrightsville Beach, NC

AGENDA (The Board will follow quasi-judicial procedures for hearings.)

1. Call to Order.
2. Approval of minutes of August 26, 2021.
3. Conduct a public hearing to consider an appeal from a decision by the UDO Administrator regarding the interpretation of lot frontage for a new structure proposed for 14 Mallard Street
4. Adjournment

CITIZENS WITH DISABILITIES REQUIRING SPECIAL NEEDS TO ACCESS THE SERVICES OR PUBLIC MEETINGS OF WRIGHTSVILLE BEACH GOVERNMENT SHOULD CONTACT THE TOWN MANAGER'S OFFICE FIVE DAYS PRIOR TO THE MEETING BY CALLING (910) 256-7900.

MINUTES
BOARD OF ADJUSTMENT
AUGUST 26, 2021

Alderman Partin called the meeting to order at 5:00 p.m. in Council Chambers of Town Hall, 321 Causeway Drive, Wrightsville Beach, North Carolina.

Attendance: Alderman Zeke Partin, Former Mayor Bill Blair, First Alternate Catherine Brunjes, Second Alternate Cheryl Koballa, and Third Alternate Jeff Turpin; together with Town Attorney Brian E. Edes, Town Manager Timothy W. Owens and Town Clerk Sylvia J. Holleman.

ELECTION OF ACTING CHAIRMAN.

Mr. Blair made the motion to elect Alderman Partin to serve as Acting Chairman for this meeting. The motion was seconded by Mrs. Brunjes and unanimously approved.

Pledge of Allegiance.

APPROVAL OF MINUTES OF JULY 22, 2021.

Mrs. Koballa made the motion to approve the minutes of July 22, 2021 as presented. The motion was seconded by Mr. Turpin and approved with a 4-0 vote. (Mr. Blair did not vote; he said he was not present on July 22, 2021.)

CONTINUED PUBLIC HEARING FOR THE BOARD OF ADJUSTMENT TO CONSIDER A REQUEST FROM IAN AND LAURA BLAIR OF 103 WEST SALISBURY STREET FOR A 2' VARIANCE FROM THE REAR SETBACK REQUIREMENTS. FOR THE CANTILEVER SECOND FLOOR TUB AREA. (CONTINUED FROM JUNE 24 AND JULY 22, 2021 MEETINGS.)

Town Attorney Brian Edes: "This is going to be applicable to both variance items. The applicants are entitled to a fair and impartial decision-making body. So, we're going to conduct this in a quasi-judicial manner. First, we'll have an evidentiary hearing. The applicant has the burden of proof to meet the criteria as stated in the agenda packet. Although, with the passage of 160-D as of July 1st, the second criteria also states, 'A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.' We'll get to that later. But to the extent the applicant is entitled to a fair and impartial decision-making body, I need to ask you a few questions. To the Board as a whole, with respect to this first variance, does anyone have a financial interest in the subject matter of that variance? (All responded no.) Does anyone have a close or familial relationship with the applicant? (All responded no.) Has anyone made a site visit to the site for the purposes of this variance application?" Following a brief discussion to clarify the question for the Board members, Mr. Edes asked if the Board members had made a site visit for the purposes of assessing the subject matter of this application. (All responded no.) Mr. Edes continued, "Has anyone had any ex parte conversations with the staff about the subject matter of this application; by ex parte I mean outside of the context of tonight's hearing? (All replied no.) Same question, have you had any ex parte contact with any of the folks that are with the applicant? (All responded no.) Can any of you think of any reason why you cannot be fair and impartial tonight and base your vote solely on the competent and relevant evidence that's produced during this hearing? (All responded no.) We're going to conduct this in a manner to insure due process, but substantive due process with procedures. All witnesses that want to provide testimony must first be sworn in. They will then be subject to cross examination and questions from the Board. I suggest, and I think our Code of Ordinances requires, that staff will go first. Mr. Wilson will introduce the item. He will be subject to cross examination and then any questions from the Board. I would recommend that we let the cross examination occur first; that way the Board has heard all of the witness testimony, then you can ask questions. You will then proceed to hear from the applicant, and anyone else after the applicant. Again, the applicant will

be subject to cross examination and questions from the Board. Then we will hear from anyone else who's sworn in that has standing with respect to this subject matter. Do you have any questions of me before we get started? (All replied no.) At the conclusion of the evidence, I'll do a quick inventory of the evidence. I'll give the applicant an opportunity to point out any errors I've made. We will then close the evidentiary hearing and you will begin your deliberation. Unless there are any questions, I would ask all those who intend to provide testimony to come forward and be sworn in."

Acting Chair Partin administered the oath to those wishing to provide testimony.

Planning and Parks Director Tony Wilson introduced the item as follows: "This is a variance hearing to 155.6.5.1(F) Zoning District Development Standards in the R-1 Residential District. Ian and Laura Blair are requesting a variance to this zoning ordinance – Zoning District Development Standards in the R-1 District. The property is located at 103 West Salisbury Street. It is also in the R-1 Residential District. The applicant is requesting a variance to this section. Their attorney, Samuel Franck (the authorized agent for Ian and Laura Blair) is not here tonight. His partner is. So we see the setbacks; this is a conforming lot so the setbacks are fifteen feet front, sides and rear. The zoning permit and the site plan were approved on June 7, 2021. The site plan indicated that the setbacks were fifteen feet front, fifteen feet sides and rear. The roof overhang and the HVAC stand were also indicated on the site plan. The cantilevered tub area was not indicated on the original site plan but the cantilevered tub was shown – we'll go over that in a few minutes – was shown on the second floor building plan that was submitted. At Wrightsville Beach, we did get multiple surveys. We received a foundation survey on January 13, 2021 indicating no encroachments at that time. Of course, it wouldn't have shown up at that time but it showed up later down the road; months and months later. So, sometime around April 7, 2021. Whit Honeycutt, of North State Custom Homes, who is the contractor for 103; he did notify me in August that he felt there was an issue with the cantilever tub area on the second floor. After a site visit and discussion about this encroachment with the contractor and the designer, staff met with the Town Manager. We directed that the contractor get legal advice on how to proceed, either with a variance, text amendment, or move the encroachment. The applicant is seeking a two-foot variance from their rear lot setback for just the six-foot tub area at 103 West Salisbury Street. Again, the setback is fifteen feet. Analysis: The majority of the residential lots at Wrightsville Beach are nonconforming properties due to the lot size and lot width. The setbacks for these nonconforming properties are fifteen feet front; seven and a half for the sides and rear. Most structures, if they adhere to those setbacks on the nonconforming lots, there's a fifteen-foot separation. Typically, if you had the conforming lots, it would be a thirty-foot separation. If this variance is granted, this property is separated by at least seventy-five feet from the rear properties; that would be the Lookout Harbor Townhouses. The variance request is authorized by the zoning code regulations in the Town Code. In order to grant a variance, the applicant must meet all four findings of fact outlined in 155.4.4.2 of the zoning code and that's on page three of your packet. Also, on page four, you have the 155.4.4.8 Board of Adjustment Action on Appeals and Variances, it gives you some direction. The legal notice for this hearing was first announced on June 24th. As you know, it's been opened and continued the last two meetings. We changed the dates on the sign just recently before this meeting for tonight. Requested Action is, 'As deemed appropriate by the Board of Adjustment.' I'm going to go through my power point on the TV screen here. So you see, this is the rear of the house facing Lookout Harbor. You see this area here is the roof overhang, which is allowed in the setbacks. And this is the six-

foot tub area here on the second level that we see that is the encroachment. This is from the side looking at it here from the water side. You can see that two-foot encroachment for the tub area. And, this is the existing survey for the pilings. Of course, like I said, it would not show up here at all. You see all the numbers look good. In your attachments, you have the application and supporting documentation; sections of the zoning code; site plan; second floor floorplan; the left side elevation; the foundation survey; and then emails between myself, the contractor, and the designer of this. If you've got any questions for me, I'll be glad to try to answer them or for the attorney, either one."

Mr. Bill Blair: "I've got a few." Acting Chair Partin: "I have one..."

Mr. Bill Blair: "Tony, when did you issue the building permit for that house?" Acting Chair Partin asked if this was the proper time for questions. Mr. Edes: "It is proper but I thought we agreed at the beginning that we're going to let....." Acting Chair Partin: "Okay." Mr. Bill Blair: "Okay. That's fine." Mr. Edes: "...wait for cross examination. That way, you've heard everything from the witness." Acting Chair Partin: "Right." Mr. Edes: "Any cross?" Mr. Cogburn: "I have no questions." Mr. Edes: "Madam Chair, no one wishes to cross Mr. Wilson, so he is now subject to questions from the Board."

Mr. Bill Blair: "When was the building permit issued, Tony?" Mr. Wilson: "The zoning permit was issued June 7, 2021. I'm assuming, Mr. Blair, it was a week or so after that. I don't have that information right in front of me." Mr. Bill Blair: "And when you approved this zoning permit in June, did you have an approved set of plans?" Mr. Wilson: "Yes, we had that set of plans that showed – if you look in your packet, let's go to our packet for that information. If you go to page 22 – on page 22, you see the site plan there. And on the site plan, it shows the roof overhang; the HVAC stand; it does not show the cantilever tub area on that one. But you turn to page 23, and on 23 on the lower diagram there, you see the tub area there – the six-foot tub area that sticks out there. Staff should have picked that up; we didn't see that; I didn't see that. So, if we had looked real careful there, we could have seen that, but we did not. And sometimes the cantilevers are difficult to see."

Acting Chair Partin: "This was in the original?" Mr. Wilson: "Yes. When they submitted the zoning documents, they submitted the site plan and the drawings with that, yes." Acting Chair Partin: "Would you go back to that first picture, please, that shows the side view? It looks like to me, it doesn't go past the overhang that was approved." Mr. Wilson: "Right." Acting Chair Partin: "If it wasn't there....." Mr. Wilson: "Yes. If that wasn't there, it would be fine. The roof overhang and gutters. There's like twelve things that can be in the setback. You see your HVAC stand on the bottom there; they're allowed four feet into the setback. It's just that cantilever is not there." Mr. Bill Blair: "The AC standards are allowed in the code, right?" Mr. Wilson: "Yes." Mr. Bill Blair: "The cantilever is not." Mr. Wilson: "Exactly. Yes, sir." Mr. Bill Blair: "I've just got to ask; this set of prints here, you say were approved a week or so after the zoning permit?" Mr. Wilson: "No, they were submitted the same time as the zoning permit." Mr. Bill Blair: "You signed off on these?" Mr. Wilson: "Yes." Mr. Bill Blair: "And you signed off on the plans with the cantilever on the plans, is that what I'm hearing?" Mr. Wilson: "Yes, sir." Mrs. Brunjes: "You don't see it on page whatever that is.." Mr. Bill Blair: "It's on 23." Mrs. Brunjes: "On 22, you don't see the second floor; you only see the first floor. So then when you turn it over, you get to the second floor floorplan, it's there..." Mr. Wilson: "And also on page 24. If you go to page 24, of course it gets easier to see that now after staff looked at it. But on page 24, you see it also." Mrs. Brunjes: "Was

it there when you....” Mr. Wilson: “Yes.” Mrs. Brunjes: “It was there.” Mr. Bill Blair: “Obviously staff didn’t pay much attention to looking at the plans.” Mr. Wilson: “Well, no, you know, we’re very busy. Looking at it, we could have done a better job.” Acting Chair Partin: “But it doesn’t extend beyond the gutter area.” Mr. Wilson: “No.” Mrs. Koballa: “Tony, when was it brought to your attention that this was an issue?” Mr. Wilson: “By the contractor on April the 7th.” Mrs. Brunjes: “And how did he realize it?” Mr. Wilson: “You know, when they get up here, I think you can ask him that question. I’m not sure exactly when he saw it but he came in and brought it right to my attention.” Mrs. Brunjes: “And owned up to it?” Mr. Wilson: “Yes.” Mrs. Koballa: “So, the zoning stuff was done June 7th but he brought it to your attention before that.” Mr. Wilson: “June 7th was 2020. (*Everyone speaking at once.*) Acting Chair Partin: “I was confused, too.”

Mr. Turpin: “I’ve got a question. You can build a house like this all the time; it’s just if it had been slid forward two feet, and there’s plenty of room in the front; he could have slid it forward two feet and built it this way all day long, right? In fact, he could have built it six feet out as long as it was forward six feet, right?” Mr. Wilson: “Yes, sir.” Mr. Turpin: “Okay. So, you looked at the survey... not that picture but the other one where it shows the survey..... you can’t really tell from that because the house could have been built forward.” Mr. Wilson: “Yes, sir.” Mr. Turpin: “You could move it forward as much as you want. If you could have ten feet out in the back – as long as it fits, right?” Mr. Wilson: “Yes, sir.” Mr. Turpin: “Okay. So, when he designed the house, there was nothing inherently wrong with this cantilever system; there’s nothing wrong with it. It’s just that when he actually built it, the two feet back should have been two feet forward?” Mr. Wilson: “Yes, sir.” Mr. Turpin: “Okay. And I could see you missing that because there’s not a problem with it. It’s not uncommon. The house on Lumina is being built that way.” Acting Chair Partin: “But it must have been slid forward.” Mr. Turpin: “Yes, it was. That was the compromise; it got moved. It was going to be in the setback and it got moved.” Mr. Bill Blair: “Prior to the plans being approved?” Mr. Turpin: “That’s right. Well, it was part of this process.”

Mrs. Koballa: “Did they have any room to move it forward?” Mr. Wilson: “Yes, I think there was some room there.” Mrs. Koballa: “Well, the fifteen-foot setback – what there is, maybe five feet to the utility easement.” Mrs. Brunjes: “Now, are you saying move the whole house forward?” Mr. Turpin: “When it was built.” Mrs. Brunjes: “I was going to say I think it’s a little late for that.” Mrs. Koballa: “He just wanted to clarify that it could have been.” Mr. Turpin: “I just wanted to say that the cantilever is not the issue; the issue is when it was constructed; it was constructed two feet over. They could have built it over two feet and there wouldn’t have been a problem.” Mrs. Brunjes: “I got that part.” Mr. Bill Blair: “It looks like to me they were built per the plans that were approved by the Town in the place that it was approved for. They could have done a lot of stuff there. Am I wrong, Tony?” Mr. Wilson: “No. I think you’re right. For me, and then for others, we should be catching these things when we don’t. In a perfect world, it doesn’t have to come down to this. So, where we could have caught it, just saying – okay, you’re not showing it on your foundation plans, can you move it up?” Mr. Bill Blair: “I mean, it’s a different set of circumstances if somebody could have cantilevered the tub, but the set of plans that you approved that wasn’t there to start with; that’s a whole different thing, I think.” Mrs. Brunjes: “Yes, I agree.” Mr. Wilson: “It is.” Mr. Bill Blair: “That’s all I’ve got.” Mr. Edes: “Any other questions?” Acting Chair Partin: “Any other questions?” (No response) Mr. Edes: “Does the applicant wish to cross Mr. Wilson based on this testimony to the Board?” Mr. Cogburn: “I have no questions.”

Mr. Edes: “Before we start, does the applicant have any objections to receiving pages 2-27 of the agenda packet into evidence as Exhibit A?” Mr. Cogburn: “No.” Mr. Edes: “And the power point Mr. Wilson just showed as Exhibit B.” Mr. Cogburn: “No objections.” Mr. Edes: “Madam Chair, we will receive into evidence both pages 2-27 in the agenda packet relating to this application as Exhibit A and Mr. Wilson’s power point that he displayed for the Board a few moments ago as Exhibit B without objection.” Acting Chair Partin: “Okay.”

Mr. Cogburn: “Good evening Madam Chair and distinguished members of the Board of Adjustment. My name is Clint Cogburn. I’m a land use attorney with the Law Firm of Ward and Smith, here on behalf of the applicant for this variance. The owner of 103 West Salisbury Street, Mr. Ian Blair, is here with me this evening; Additionally, here with me as well, is Mr. Whit Honeycutt..... the owner of State Custom Homes and the contractor for this project, you’ll hear from him shortly and he’ll provide testimony on some of the specifics regarding the submittal of the plans, the review of plans, when this was caught, the build-out of the upper structure, and so on. As Mr. Wilson laid out in detail – and we appreciate his very thorough staff report – we are here seeking an 18-inch variance to the rear setback requirement in R-1; which as Mr. Wilson sent forward is a 15-foot setback. And that’s to allow for an existing cantilever portion of a second-floor bathroom located in the roofline of the structure. And, we’re seeking this request to avoid substantial expense, time delay, labor that the Blairs and Mr. Honeycutt and others would incur, if forced to potentially tear out a large portion of the back of the house and of the existing structure to remediate that minor encroachment into the setback. As Mr. Wilson set forth, this is a single-family residential structure located between two other residential structures along West Salisbury. And it’s located right where the old Pizza Hut used to be located. It’s bounded by a home owned by the Jacksons to the west and a home owned by Guy Wiggins to the east, and by the common elements of Lookout Harbor to the south – and to the south is where there’s the most immediate adjoined parcel – so the common elements to the south. I will now call up Mr. Whit Honeycutt to provide some testimony into the specifics regarding the project and the encroachment.” (5:20 p.m.)

Mr. Honeycutt: “Good evening. I was retained by the Blairs to build a custom home on 103 Salisbury Street. Sullivan Design Company created the structure for the Blairs.” Mr. Edes: “Excuse me, sir. If you would just identify who you are for the record.” Mr. Honeycutt: “My name is Whit Honeycutt. I’m an unlimited general contractor. My company name is officially the North State Partners Construction, LLC. We do business as North State Custom Builders. I’m the owner, sole – it’s a single member LLC and I am the owner.” Mr. Edes: “I’m just saying that Madam Clerk there is the one taking down the minutes and this is for her sake.” Mr. Honeycutt: “This is my first time.... So, did you hear all of that Ms. Holleman?” Ms. Holleman: “Yes.” Mr. Honeycutt: “So, the Blairs retained me; they retained Sullivan Design Company independently. Sullivan Design Company created the structure – a great house. It’s a nice asset for Salisbury Street and anchors that corner of Banks Channel. I’m proud of the house. I think it turned out great. Scott Sullivan confessed to a mistake when it was brought to his attention where he did his site plan, he did not include a second-story bump out of a shower-tub on his site plan. We began looking at these plans months before we submitted for a permit and half a year before we actually laid out the house – to build a house. There was nothing to be gained by it being crowding in the back. There was absolutely no benefit by the house encroaching into the setback. The house could have, to your point Mr. Turpin, it could have easily been 18 inches forward. It wouldn’t

have changed anything. It didn't improve the view. It didn't do anything whatsoever. There was no gain, no incentive to leave that off the site plans. It was an honest mistake. So, to catch that honest mistake, Mr. Wilson and my company and whoever was surveying would have had to take that site plan and then flip back through as we're laying out the house much later and as he's looking at the plans with all the plans that he's looking at, go up to the top floor floorplan and a bell would have to go off that that's cantilevered out. Nothing showed up on the roof plan. When you look at the roof plan, which he looks at, I don't look at, it doesn't show any cantilever because it's inside the roof – it's inside the soffit. So, your one chance to catch it would have been to look at that top floor floorplan and then understand that you've got a cantilever and bring that back to Scott's attention that you didn't include that on the site plan. The surveyor could have done that. Zoning could have done that. I could have done that. Nobody caught it. So, when they were laying out the house next to us, that's when we figured out that there was an encroachment. And the day when I found it out, I came to confess to Tony Wilson that there was an honest mistake made and there was an issue and ask what we could do to remedy the situation. He talked it over with his staff and folks and came back and said you'll just have to apply for a variance. That's why we're here today. I guess I could have hoofed it. We've already been through half of the inspections. We've already been through a framing inspection – it's about six different inspections and nobody caught it. If they hadn't laid off Guy's house, I probably still wouldn't have caught it. So, whether they would have caught it on the Certificate of Occupancy inspection, who knows. Would somebody have complained about it later? I can't tell you..... The neighbors to left and to the right both felt strongly enough to write letters of support for us. I'm a resident of Wrightsville Beach. I live right behind it in Lookout Harbor. I sent a letter out to all of our homeowners and confessed my mistake. I took responsibility for it as the general contractor. And, at least to my knowledge, I didn't get any negative comments. Everybody was pretty sympathetic and could see how that could happen. How we could miss it. How Tony could miss it. And, once the house is built, there's not a whole lot we can do other than rip the back of the house off. I would hate to do that; the house is completed. They're waiting to move in. It's going to delay their move by a month and somebody is going to end up spending a whole lot of money to do that. We're going to weaken the structure by ripping the back of the house off. It's an honest mistake that was confessed and begged for leniency that the Board would understand that we weren't trying to ask forgiveness rather than permission. It just was a mistake that their architect or home designer made. The surveyor didn't catch it. I didn't catch it and Zoning didn't catch it. We built the house per the approved plan exactly in the position that it was approved. My mistake was not catching the home designer's mistake. I'd be happy to answer any questions. That's really all I know about it. It's pretty simple; we just didn't catch a mistake – an honest mistake that the home designer made. We built it per the approved plan and that was with about an 18-inch encroachment into the rear setback."

Mr. Edes: "You are subject to questions. Tony, do you have any questions?" Mr. Cogburn: "Can we save cross examination until completion of our presentation?" Mr. Edes: "I want to do it witness by witness. That's the way we normally do it." Mr. Cogburn: "We had planned a presentation and we will all be available for cross examination at the end, if it's agreeable." Mr. Edes: "Well, I don't think staff is going to have any cross. The Board may and the way we normally do it is as each witness testifies." Mr. Cogburn: "Okay." Mr. Edes: "Madam Chair, if you want to vary from that procedure, that's fine." Acting Chair Partin: "No...." Mr. Edes: "And I'm not trying to be difficult."

Mr. Edes: “I just have one quick question. Mr. Honeycutt, I believe you just addressed it for me; Mr. Wilson said approximately two feet and I think I just heard you say it’s 18 inches.” Mr. Honeycutt: “The bump out is two feet but the home designer placed the six-inch buffer; he didn’t go all the way to – he didn’t lay the house out – he gave us six feet for margin for error. Unfortunately, he made a two-foot mistake. So, the net of that is an 18-inch encroachment – approximately. It’s really hard to get up there.” Acting Chair Partin: “In our information, it’s two feet and now you’re saying basically it’s 18 inches.” Mr. Honeycutt: “I think that was probably misconstrued from the two-foot bump out. That is easy to see because that part is on the plan. What’s not really easy is that it was 15 feet 6 inches from the main structure to the rear setback. From the best of my recollection.” Mr. Edes: “And Exhibit A contains the representation that it is 18 inches and in testimony, it’s 18 inches. Mr. Wilson, do you have reason to contest that?” Mr. Wilson: “No.” Mr. Edes: “I think we can stipulate that it’s 18 inches. That’s all I have. Does the Board have any questions of Mr. Honeycutt?” Acting Chair Partin: “Anybody have any questions?” (No questions.)

Mr. Cogburn: “I will keep my remaining remarks brief. We appreciate Mr. Honeycutt for providing additional background. Going off of what Mr. Honeycutt just testified to, I want to speak to what requirements and obligations we’re required to meet before the Board here tonight. The Town’s requirements of the issuance of a variance are set forth in section 155.4.4.2 of the Town’s UDO which are consistent with the statutory requirements set forth in the North Carolina General Statutes. Those are the four distinct prongs. Now, I’ll go over them prong by prong applying what you just heard from Mr. Honeycutt and from staff and show you why we meet each of those distinct requirements and why a variance should be granted in this case. The first prong is showing that an unnecessary burden would occur if a variance is not granted. Based upon the testimony of Mr. Honeycutt, it’s clear that strict application of the UDO and requirements related to the setback, would require significant reconstruction of the residence as Mr. Honeycutt testified to. They, essentially, would have to go in and tear out the back portion of the house. It would cost a significant amount; it would keep the Blairs from moving in and fully moving in to their residence. It would cost time and money to Mr. Honeycutt and the associated trades there, so it would be a very difficult process for a very minor encroachment. The second prong that we have to meet says if this resulted from peculiar conditions. Here the violation of the UDO or the minor encroachment exists because of the distinct location of the residence on the property. This is not an issue common to the neighborhood and it’s not an issue that the Blairs caused. The third prong is that the violation or the encroachment does not result from the applicant’s actions. Again, as Mr. Honeycutt testified to and as Mr. Wilson testified to, the Blairs did not create this problem. They relied on the building plans proposed by their designer and contractor and also relied upon the Town’s variance approval and reviews during this process. The final prong that we are required to meet is that the request and the variance is consistent with the spirit, purpose and intent of the UDO. Variances provide a way to properly balance undue hardship; essentially balancing the equities here related to strict application of the UDO and impact to the applicant. In this case, the Blairs reasonably believed that they had fully complied with the UDO; again, relying on their designer, contractor and Town officials. And, now they are facing the prospect, if this variance is not granted, of demolishing the back portion of their house, having to spend thousands and thousands of dollars to remediate this very, very minor issue. And, facing the prospect of not moving into their home compared to the relief this Board could grant with the 18-inch variance allowing that variance to move forward with an encroachment that, as Madam Chair pointed out, is

within the overhang of the roof. It's not even jutting out there. It's consistent and lines up with that overhang. Finally, we just want to touch on consistency with the neighborhood and kind of the relative burdens here. For slide two, we just want to point out that no one else is harmed by this encroachment or by our request. There is no disruption of the new view line and the encroachment is adjacent to common elements... and nowhere near the closest home in Lookout Harbor. So, it's not negatively impacting anyone. Additionally, we're only seeking a slight adjustment from the UDO and the setback is only violated by those 18 inches as we discussed here today. And that encroachment is entirely within the permitted roofline of the structure here. You've already seen pictures of the house but here are some additional pictures and views of how minor the encroachment is. Specifically on the view line, view shed, and the like; it is barely distinguishable from the photos you've seen this evening. Again, we're not asking for a considerable variance. The lot would still have a 15-foot side setback complying with the UDO. It would just have an approximately, closer to a 13-foot setback with that 18-inch variance. Additionally, as Mr. Honeycutt pointed out, we do have letters from the adjoining property owners. Both the Jacksons and Guy Wiggins, who own the adjoining properties – I don't know if the Board has those." Mrs. Brunjes: "Yes, they're in our packet." Mr. Cogburn: "I just wanted to make sure so I brought copies just in case. But, as you can see in those letters, they have no issue with it. Not only do they not have an issue, they support our request here tonight, which we think is an important part of our evidence. Finally, the relative burdens here, to kind of sum it up; the additional burden that's on the neighbors is negligible. Again, the neighbors are entirely in support of it. There is no impact, really, to anybody – any adjacent property owner or anybody in the community. There's no negative impact whatsoever that we can see..... However, if the Board elects to deny this request... the impact to the Blairs will be significant; time, money, loss of use of their house. It is a considerable cost to them if this variance isn't granted. So, we believe that this is the exact type of situation that variances were made for. A minor violation without the knowledge or intent of the Blairs, and where denying the request would cost them a significant amount. So, we respectfully ask that the Board grant this variance. We appreciate the Board's time and I'm happy to answer any questions." Acting Chair Partin: "Does anyone have any questions?" Mr. Edes: "Madam Chair, I have one." Acting Chair Partin: "Okay." Mr. Edes: "Mr. Cogburn, would you like to introduce your power point as Exhibit C?" Mr. Cogburn: "Yes I would. And as you pointed out, I don't know if you needed to do that if it's already in there – but those letters as well." Mr. Edes replied, "Yes, they are part of the agenda packet in Exhibit A. Normally, that's hearsay because those neighbors aren't here. But they received proper notice and..... if they objected to it, we'd likely hear from them tonight; so I don't mind the letters coming in; they're already in the evidence."

Mr. Turpin: "I have a question." Mr. Edes: "Yes, sir." Mr. Turpin: "I'm having difficulty with number three. It says 'the hardship did not result from the actions taken by the applicant or the property owner.' Does that extend to the property owner's contractor because the property owner selected the contractor; the property owner selected the architects. So, if the architect made the mistake or the builder made the mistake, does that extend to the property owner? Or is it just the property owner proper?" Mr. Cogburn: "We would submit that it does not. The applicant here, I'm speaking on behalf of the Blairs as the property owners. Again, our point is that they reasonably relied upon their contractor, their designer, and even the Town approvals here." Mr. Turpin: "I got that. So, this definition doesn't extend; it only relates to the property owners themselves?" Mr. Cogburn: "We would

submit that,,,,” Mr. Turpin: “Is that right?” Mr. Edes: “Well, that’s for the Board to decide but I” Mr. Turpin: “That’s not clear.” Mr. Edes: “Right, and I think under these facts, and I’m not the decision maker but you asked me; I do not think the property owners created this hardship.” Mr. Turpin: “Okay. So, to answer my question, if the contractor makes a mistake and it’s not of the knowledge of the property owner, it doesn’t count.” Mr. Edes: “I think it’s case-by-case basis, sir. But in this case, not only did the contractor not catch it, or the architect, the Town, itself, issued a permit allowing them to build what was depicted on those plans and it’s in that configuration.” Mr. Turpin: “So, you think he meets the test in number three?” (Everyone talking at once.) Mr. Turpin: “I understand. I think that’s a point of – I’m reading the statute here. This is the statute; I’m not an attorney, I was reading the statute.” Mr. Edes: “I understand and I applaud you for it but...” Mr. Turpin: “Okay. Understand.” Mr. Cogburn: “But we would, again, submit that the mistake was not made by the Blairs..... But, if it’s denied, they’re shouldering the burden...” Mr. Turpin: “We can understand all that, but that doesn’t really figure into this decision process on that. On this number three, it says if they make the mistake...” Mr. Cogburn: “And I understand.” Mr. Edes: “As Town Attorney,if the conclusion of the Board of Adjustment is that they meet the third criteria, I don’t have any heartburn about that. If that answers your question.” Mr. Turpin: “Okay. That’s what I was looking for. Thank you.”

Mr. Edes: “Staff has no cross. Do you have any other witnesses, Mr. Cogburn?” Mr. Cogburn: “That’s the conclusion of our evidence.” Mr. Edes: “Any other questions? Does anyone else in the audience signed up to speak on this matter?” A gentleman in the audience raised his hand. Acting Chair Partin: “He didn’t swear in.” Mr. Edes: “Have you been sworn in.” Acting Chair Partin: “No. Put your hand on the bible. Do you swear or affirm to tell the whole truth, nothing but the truth, so help you God?” The gentleman replied, “I do.” Mr. Edes: “Let me ask you a few questions to determine whether you having standing. Would you identify yourself?” Gentleman: “Yes. My name is Tom Hanna.” Mr. Edes: “And do you own property near the subject property?” Mr. Hanna: “Yes, right behind it.” Acting Chair Partin: “Would you want him to give his street address?” Mr. Edes: “If you would.” Mr. Hanna: “Yes, right behind the house.” Acting Chair Partin: “What’s your street address?” Mr. Hanna: “Lookout Harbor.” Mr. Edes: “If it is adjacent to the property, I think he would have standing. So, I recommend the Board allow – I’m sorry, your name again, one more time.” Mr. Hanna: “Sure, Tom Hanna – H-a-n-n-a.” Mr. Edes: “Thank you, sir. I find that Mr. Hanna has standing based on the proximity of his property to the subject property, so we’ll hear your testimony now.”

Mr. Hanna: “I’ve been on this beach since the mid-1980s.... I’ve known Whit for probably eight or ten years and from my dealings with him, he’s a straight up guy. He’s not trying to gain the system or try to gain any type of advantage or do anything underhanded with this bump-out here. I’m not even sure I’d consider it a mistake. It’s more of an oversight..... This stuff can happen easily. I live, basically, about a hundred feet behind that and I drive by that building three or four times a day and I wasn’t even aware of it until we got the letter. So, that’s how big a deal it is as far as I’m concerned. I think it really is not an issue and I’d just like for you to know my opinion on that.” Acting Chair Partin: “Thank you, Mr. Hanna.” Mr. Edes: “Any cross examination? (No response) Any questions from the Board? (All replied no.) Anyone else in the audience like to speak on this matter or provide evidence? (No response). Madam Clerk, let the record reflect no one has indicated that they want to testify. Madam Chair, at this point, I’m going to inventory the evidence unless Mr. Cogburn has anything else he’d like to add.” Mr. Cogburn: “No.”

Mr. Edes: “We first heard from Tony Wilson who introduced the matter; we then accepted into evidence Exhibit A, which is pages 2-27 of the agenda packet related to this application; we accepted as Exhibit B Mr. Wilson’s power point, again without objection; we then heard from the applicant’s attorney, Mr. Cogburn; he described the request; we then heard from Mr. Honeycutt; we then heard from Mr. Cogburn again, I would classify it as somewhat of a summation; we received into evidence Exhibit C, which is Mr. Cogburn’s power point; we then heard from Mr. Tom Hanna. Mr. Cogburn, is there anything you’d like to add or comment on in the inventory?” Mr. Cogburn: “No.” Mr. Edes: “Thank you, sir. Madam Chair, at this point, I would recommend we close the evidentiary portion of the hearing and begin the deliberations. Is there a motion to close?” Acting Chair Partin: “Yes. Is there a motion to close?” Mrs. Brunjes: “I move. (5:44 p.m.)” Mr. Blair: “Second.” Acting Chair Partin: “All in favor.” (Vote recorded as 5-0 in favor of the motion to close the hearing.)

Mr. Edes: “As you know from prior variance hearings, you can do this several ways. Someone can make a motion to approve or deny and then discuss; or we can take it criteria by criteria for the four criteria. If someone feels strongly that the variance should be granted..” Mrs. Brunjes: “I feel strongly.” Acting Chair Partin: “So, we want to take it criteria by criteria?” Mr. Edes: “Or you can make a motion to approve if you’d like and then if someone disagrees, we can discuss.” Mrs. Brunjes: “I’m going to make a motion to approve the variance.” Acting Chair Partin: “Do we have a second?” Mrs. Koballa: “I’ll second.” Acting Chair Partin: “So, do we need to ask for any further discussion?” Mr. Turpin: “I just want to make sure y’all are comfortable with number three. I think all the rest of them – I think he meets the test on all the rest except for number three. It says that the actions result from the applicant or the property owner. And, if we... if he did not contribute, then I think this is an easy decision – it did not result – in other words, he did not contribute to this – the property owner.” Acting Chair Partin: “The applicant?” Mr. Turpin: “The applicant.” Acting Chair Partin: “Which is kind of confusing because he didn’t really contribute but his builder has.” Mrs. Koballa: “I think the fact that the Town approved it.” Mrs. Brunjes: “Yes.” Mrs. Koballa: “...is the Achilles Heel. Had that not happened, then to me, the fact that they hired the builder...” Mrs. Brunjes: “It would be a whole different case if it had not been approved by the Town. Absolutely.” Mrs. Koballa: “That’s the deal breaker.” Acting Chair Partin: So, Mr. Edes, we have a motion to approve and a second, so, do y’all now want to vote? Everybody ready to vote? (All replied yes.) All in favor of approval.” Mr. Edes: “Let the record reflect that it’s unanimous. Mr. Cogburn, I would ask that you draft the proposed variance or order and send it to me. Sam has my email.” Mr. Cogburn: “Not a problem.”

CONTINUED PUBLIC HEARING FOR THE BOARD OF ADJUSTMENT TO CONSIDER A REQUEST FROM DR. HENRY TEMPLE AND MARGARET TEMPLE, OF 210 NORTH CHANNEL DRIVE, FOR A 4’ VARIANCE FROM THE SIDE YARD SETBACK OF 7.5’ ON THE SOUTH SIDE OF THE HOME TO INSTALL AN ELEVATOR. (CONTINUED FROM JUNE 24 AND JULY 22, 2021 MEETINGS.)

Mr. Edes: “Mr. Nichols, you and your client, I believe, were here at the beginning of the prior variance hearing, is that correct?” Mr. Nichols: “Yes, sir.” Mr. Edes: “You heard my admonition to the Board as to what the rules were and the procedures?” Mr. Nichols: “Yes, sir.” Mr. Edes: “I’ll do it all over again for this hearing if you’d like; or if you would like to waive that.” Mr. Nichols: “We waive that.” Mr. Edes: “Thank you. Whenever you’re ready, we’ll proceed.” Acting Chair Partin: “Brian, can you elaborate, since I wasn’t at the last meeting, what are you waiving?” Mr. Edes: “Waiving that spiel I give about the quasi-judicial

proceedings.” Acting Chair Partin: “Okay, thank you.” Mrs. Brunjes: “He just meant at the first hearing.” Mr. Edes: “Matt was here, I know Matt.” Acting Chair Partin: “We understand.”

Mr. Edes: “Just for the record, Mr. Wilson, you are still under oath from the prior first hearing. Matt, are you okay with that?” Mr. Nichols: “Yes.”

Mr. Wilson: “Madam Chair and Members of the Board of Adjustment, this is a request for a variance to 155.6.5.1(E) to Zoning District Development Standards in an R-1 District; 155.8.9(D)(G) and 155.8.1 Minimum Lot Requirements. Dr. Henry Temple and Margaret Temple are requesting a variance to Section 155.6.5.1(E) in the zoning districts there. This property is located at 210 North Channel Drive in the R-1 Residential District and the applicant is requesting a 4-foot variance to this section. Attorney Matt Nichols is the authorized agent for Dr. Henry Temple and Margaret Temple. On page 28 under 155.6.5.1; you see that the side yard setbacks are 15 feet for a conforming lot. Then you look under (D) and (G) under 155.8.9; it says ‘such expansion or enlargement shall not cause an expansion or encroachment into the existing or required setback.’ And in (G), it talks about expansion or enlargement there. Then 155.8.1 Minimum Lot Requirements, it’s 7.5 feet on a nonconforming lot which is what this lot is. The applicant is seeking a 4-foot variance from the side yard only for the setback for the proposed elevator. If the variance is approved, the proposed elevator would have a 3.6 side yard setback to the property line and would be more than 10 feet from the adjacent property to the south. Analysis: it is possible that the applicant could install the proposed elevator in the front right hand corner of the house or in the front porch area and meet the required setbacks without a variance. If the variance is granted, the proposed elevator would be more than 10 feet from the adjacent property. So, that’s important – the 10-foot separation. Again, on page 29, the variance request is authorized by the zoning code regulations in the Town of Wrightsville Beach. It must meet all four findings of fact in 155.4.4.2 of the Zoning Code. On page 30, you see the Board of Adjustment Action on Appeals and Variances. Public notice, again, this has been opened and continued for the last two meetings. It has been advertised. The sites are still posted today for this meeting tonight. Attachments: you have the application and supporting documentation. I’m going to go through my power point real quick. So, we are requesting a 4-foot variance to the side yard setback. This is the house facing on North Channel and on the right-hand corner of the house where the palm tree is, that’s where it’s going there – planning to go if they get the variance.”

Acting Chair Partin: “So, you said it could go on the porch?” Mr. Wilson: “Well, staff’s opinion is it would take up a parking space, Let’s say if you come out here, it may be in the front setback here. If they put it here, it may interfere with their decking. So, the question is, could it go over here? It may could; so, there may be a possibility right there.” Acting Chair Partin: “So, is it going in the very back of that?” Mr. Wilson: “It’s going right in here.” Acting Chair Partin: “So, it’s going in the front of it.” Mr. Wilson: “It’s going on the side. So, you see the survey here in the yellow, that’s that front right-hand corner like we were looking at. You see a marking there – the elevator. You see the 3-foot 6-inch setback there. That’s the end of that slide show. That corner I showed you, is this right here. This has the 7-foot 9-inch setback now. This is the area where they would like the location. This porch is pretty narrow; it’s six and a half feet. So, there could be some issues if they put it in the porch area. If they put it here, it may block a parking spot. This is North Channel here; so you’re looking this way. If you have any questions, I’ll be glad to try to answer them.”

Mr. Edes: “Mr. Wilson, would you like to introduce pages 28-44 of the agenda packet as relating to this item as Exhibit A?” Mr. Wilson: “Yes.” Mr. Edes: “How about the power point as Exhibit B?” Mr. Wilson: “Yes, sir.” Mr. Edes: “Mr. Nichols, do you have any objections?” Mr. Nichols: “No, sir.” Mr. Edes: “Madam Chair, staff Exhibit A and Exhibit B into evidence without objection.” Acting Chair Partin: “Yes.” Mr. Edes: “Any cross examination, Mr. Nichols, of Mr. Wilson?” Mr. Nichols: “No, sir.” Mr. Edes: “Any questions from the Board for Mr. Wilson?” Mrs. Brunjes: “I have one. The word ‘could’ bothers me. It really bothers me a lot because it’s real important.” Mr. Wilson: “So, the porch... is there a possibility; the question is how much of the parking would this affect if you put it here?” Acting Chair Partin: “Have they had an architect come in and advise?” Mrs. Brunjes: “I think that would be important for us to know that.” Mr. Edes: “It’s probably best to put the applicant’s intentions and actions – those questions to the applicant. You can certainly ask Mr. Wilson what he knows.” Mr. Wilson: “Typically, they don’t. When we see elevator projects, and we see them all the time, unless it’s interior, typically, they fit them on the outside. And you’ll see it when Matt gets up, he’ll show you the power point on what they’re proposing there. So, typically, an architect is not involved.” Acting Chair Partin: “So, the owner kind of has a specific place he wants it?” Mr. Wilson: “Yes.” Acting Chair Partin: “And he will share that with us?” Mr. Wilson: “Yes.” Mr. Blair: “You said architects aren’t involved in elevators. Is it in this case or not as a rule?” Mr. Wilson: “Not in this case. In a lot of cases – no.” Mr. Blair: “Really.” Mr. Wilson: “You’ll see this one is fit on the outside of the house. Typically, that’s what we’ve been seeing on retrofits.” Mr. Blair: “You’re talking about the older houses?” Mr. Wilson: “On older houses, you see that. On newer houses, you do see architects.” Acting Chair Partin: “I believe this house was built in the seventies; is that what I was reading?” Mr. Wilson: “Sixties.” Acting Chair Partin: “Anybody else have any questions at this time?” Mr. Edes: “Mr. Nichols, do you have any cross based on Mr. Wilson’s response to the Board’s questions?” Mr. Nichols: “No.”

Mr. Edes: “Before we start, I want to hand out – as I mentioned earlier prior to the first hearing, the General Assembly passed N.C.G.S. 160-D and in doing so, they added a sentence to the second criteria. I’ve underlined it. Mr. Nichols has a copy of that as well. And this is applicable whether it’s contained in our UDO or not.” Mr. Blair: “When was this passed?” Mr. Edes: “July 1st.” Mr. Blair: “Of this year?” Mr. Edes: “Yes, sir. Madam Chair, are we ready to proceed to hear from the applicant.” Acting Chair Partin: “Is everyone ready to proceed? Yes we are, Mr. Edes.”

Mr. Nichols: “Good afternoon, Madam Chair and Members of the Board. Should I first be sworn in?” Mr. Edes: “No.” Mr. Nichols: “Thank you. I’m here tonight representing Dr. Temple and his wife, Margaret Temple, who are the owners and residents of the property at 210 North Channel Drive. We have a series of slides that I think will help explain the request. We appreciate your time and consideration. Essentially, Dr. Temple and Mrs. Temple would like to make their older home more accessible by installing a residential elevator. Allowing the proposed elevator will ensure easy and safer access to their home. (Shows slide of where the elevator would be.) Setbacks in that vicinity are not uniform. I know the Board members are very familiar with North Channel Drive. This is an aerial view of the Temple residence as shown in yellow. The next slide shows it a little bit closer. Maybe talk about this as the presentation goes on. It is unique in the sense that the side that the elevator is going to be proposed – the setbacks of the houses in that vicinity are not uniform. So, the property that you would say would be most affected is the property neighbor to the south, who does not object to this. In fact, he supports this request and I’ve

got a letter from that property owner that I can hand out. His house is not set in line with the Temple's. And I think that adds some unique characteristics to the request." Acting Chair Partin: "Which house is this?" Mr. Nichols: "Dr. Temple, his house is in yellow and the neighbor that I'm speaking of is to the south of that or to the bottom of the page. In fact, if I may, I'll just hand that letter out now. (Distributes copies of the letter to the Board.) And it's from Richard E. Rowe, who's the manager of the LLC, and I don't think he referenced his own property in there. So, what I did, I have a copy of his deed, which I'd like to hand out as an Exhibit and also a printout of the tax card showing that he is in fact the owner of the property at 208 North Channel Drive. So, I've got two copies of that deed." Mr. Edes: "Can we make that all one packet as Exhibit C?" Mr. Nichols: "Yes." Mr. Edes: "This is so it's easier on Madam Clerk. Madam Chair and Board members, just like the prior hearing, this packet will be hearsay but since proper notice was provided and no one is here – it doesn't appear that anyone is here to testify. Mr. Nichols would like the Board to receive the letter, the deed and the tax card into evidence as Exhibit C." Mr. Nichols: "That would be great. Thank you." Mr. Edes: "And Madam Chair, I can hand this out if you'd like." Acting Chair Partin: "Please."

Mrs. Brunjes: "Did you say this is the manager of the property instead of the owner?" Mr. Nichols: "It's an LLC. Do the Rowes live there?" Dr. Temple: "They're from Raleigh. It's his fulltime beach house.....been there for many years." Mr. Edes: "Matt, has your client been sworn in?" Mr. Nichols: "No, he hasn't." Mr. Edes: "Madam Clerk, we need to swear Dr. Temple in." Acting Chair Partin administered the oath to Dr. Temple. Mr. Edes: "Dr. Temple, now that you're under oath, do you stand by your responses to the Board that you gave before you were sworn in? The answers that you just gave." Dr. Temple: "Oh, yes." Mr. Edes: "You didn't testify under oath at that point, I just want the record to reflect that you're endorsing what you already said, and now you are under oath." Thank you."

Mr. Nichols: "I was using the term 'manager' sort of in a legal sense....and to be the manager of the LLC, it's not like the property manager." Mrs. Brunjes: "Well, I'm the manager of my children's LLC but I'm not the owner. Rowe is the owner, right?" Mr. Nichols: "That's what I understand." Acting Chair Partin: "Sometimes people do put property in an LLC....." Mr. Nichols: "So, the neighbor that I would say would be the most affected, again, not only doesn't object, he actually supports the request. We think that's significant. The other thing I would mention and Mr. Wilson mentioned this, the lot is nonconforming. It's in the R-1 District but it doesn't meet the dimensional requirements, which requires seventy feet of width and, in that sense, it falls under a different section of this code, which the setback there is 7.5 feet. I think that's significant to point out, too. Here is the front street view of the house. It's a very classic Wrightsville Beach cottage. It was, I think, built in the sixties; so, it's over a half a century old. It's a wrap-around porch. It's a beautiful house. Dr. Temple and Mrs. Temple have owned it since 1988, and from what I understand, it was a summer house and Dr. Temple, when he retired, they moved there full time. So, they have lived there and have been in the home and residents of the Town for some time. The location of the proposed elevator is shown on this slid here and we really think that's the optimal, most efficient location for the elevator from utility and function of the property and also architectural viewpoints of the house. So, that is what we have identified and we're asking for a variance to put the elevator there. Here's another vantage point to sort of show you and, as Mr. Wilson mentioned, you would, I think, interfere with the parking in the front, if it was in the front. I think having it on the side can give us some opportunities to do some landscaping and perhaps some lattice work, if the Board permits, and we show that in some

of the slides coming up. This is in the Board's packet and, based upon the model of the elevator that has been selected, we believe is Exhibit B in the Board's packet, we have identified that that's the variance we would need, which is roughly four feet to allow the elevator to be put there. So, that's the essence of the variance request. Again, this is Exhibit D in the Board's packet and a photograph of a similar-type unit that we received from the contractor. Here's an example: Joe Smith, with Beach Butler, is the contractor and he provided most of these photos. I don't believe any of the photos are of Wrightsville Beach property; these are other coastal properties as I understand it where he's installed elevators. Here's another version; this would be the ground floor. Again, we think the location that's been selected would make it sort of less conspicuous and would not detract from the architecture of the house. And then this is how it would essentially meet up with the deck on the second floor. And I've got some more close-up photos of the Temple residence coming but these are examples of the elevator. Then, this is a picture we had of some screening and Dr. Temple certainly would be open to that if that's something the Board would want to see or if the landscaping is preferred instead of this. If we did do the screening, I would say this generally, that the variance request, if the Board is inclined to grant the variance, and we certainly hope that you all are, but if you are inclined to grant this variance, in talking with Tony before the hearing, it might not be a bad idea to have a couple of extra inches in there so we're not back asking for another inch variance in case we have to make a field adjustment and that sort of thing. We tried to ask for as minimal a variance as we could get. So, it's maybe three or four additional inches that would allow the lattice work. And maybe, once we get into the installation of it, the model that's selected in Exhibit D would not change. We're not asking to put in a bigger elevator; we just want to make sure we're covering the request if the variance is granted. And this is an example of..” Dr. Temple: “It's the lattice we have in detail around the house. So, it would be more like this kind of a covering from the street...” Acting Chair Partin: “Would match your other lattice.” Dr. Temple: “Yes, instead of the flat.” Acting Chair Partin: “So, the whole thing would blend.” Dr. Temple: “Yes.” Mr. Nichols: “So that would be something if the Board wanted to see that, then they can match that and it would match their house. Here's an aerial view of the house. This is a good example of how, right at the Rowe property, the LLC property to the south, is not a uniform front..... We're not putting this right directly next to their residence.” Mrs. Brunjes: “I don't understand that. Say that again.” Mr. Nichols: “The elevator will not be immediately adjacent to their residence. It's going to be pulled forward. So, in other words, they're not looking out of their side window at the elevator. It's not immediately next to their residence. Granted, it is next door..... but an elevator on the side would be sort of impacting space and it doesn't create a safety issue between structures and things like that because the Temple residence is pulled forward and there's a setback. So, there's more than I think is in the staff report; there's going to be at least ten feet, if not more, between the elevator, if allowed, and the other residence. So, we would contend that there's sufficient space in there so it's not too crowded, so to speak.”

Mr. Edes: “Matt, I'm not trying to tell you what to say, but if you're referring to the alignment of the houses...” Mr. Nichols: “Yes.” Mr. Edes: “Your client's house is landward of the adjacent house so the configuration of the elevator would not block the view as if they were all in the same alignment.” Mr. Nichols: “Yes, sir. You said it better than I did. But that's right; the houses are not aligned like in many places on the beach. So, I think that makes this request – as a unique component to it. You may not see another like that.”

Acting Chair Partin: “Mr. Edes, can I ask a question while we’ve got this picture up?”
Mr. Edes: “Yes, ma’am.” Acting Chair Partin: “So, you’re saying this is at least ten feet from here to here or from their closet point?” Mr. Nichols: “I think it would be at least ten feet because, right now, the setback from the house to the property line is roughly 7.5 feet and then the elevator is going to be approximately a 4-foot cube.” Mr. Blair: “Well, let’s be clear about that, you’re talking about the setback from somebody else’s house included in that distance, correct – 15 feet total between the houses; 7.5-foot setback from the house south view plus Dr. Temple’s?” Mr. Nichols: “Right, so the 7.5 from Dr. Temple’s house to Dr. Temple’s property line is roughly 7.5 feet. And then on the other side of that, I presume they have setbacks.” Mr. Blair: “So, you’re talking about leaving a setback for Dr. Temple of 3.5 feet on his property?” Mr. Nichols: “Yes, sir. That’s correct.” Acting Chair Partin: “But it’s the property line, it’s not necessarily right beside the house.” Mr. Blair: “It’s still a 7.5-foot setback.” Mr. Nichols: “So, basic math in my head, it has to be at least ten feet because you’d be 7.5 – even if the Rowe house was pulled all the way up, you’d still be over ten feet from the elevator to the house.” Mrs. Brunjes: “Because it’s the neighbor’s 7.5 feet plus his 3.5 feet.” Mr. Nichols: “Correct.” Mrs. Koballa: “But.....if the house was built prior, it could be closer.” Mr. Nichols: “It could be closer.” Mrs. Koballa: “You keep saying four feet by four feet. If you can go back to Exhibit C, the drawing says 7.9 – I’m trying to figure out that square and I can’t make out the numbers.” Mr. Nichols: “And that exhibit, I understand, is based upon a previous submittal to the Town for, I think it was some work that was done on the house in 2007. I think what the contractor did, was to take that as sort of your site plan, so to speak, and drew in the footprint of the elevator. And, the 3.6 feet is the space that would be between the elevator, if built, and the property line.” Mrs. Koballa: “So, the porch is 6.5 feet wide and the elevator is only four feet. Is that what Tony....” Mr. Nichols: “So, based on the exhibit here, again I’m sort of approximating the footprint of the elevator, but the depth of it, I think he’s got it at 48.5 inches; roughly four feet. So, it takes up more space width-wise because it’s got the arms and the mechanical components of it. We mentioned the lattice, here’s another aerial view. You mentioned the alignment of the houses. Then turning to Dr. Temple’s house specifically; this is street level or driveway level of where the elevator would go on the side of the house and where it would end up on the upper deck. Here’s just another viewpoint to show sort of the space it would go. We think having it on the side would allow, again, for some screening. It’s the way that the house is set up, it really makes sense to put it there from a convenience of proximity to the driveway. It would be very difficult – I don’t know if you could put it in the back, from an accessibility standpoint.” Acting Chair Partin: “It looks like he has a walkway.” Mr. Nichols: “It is but...”
Dr. Temple: “See right there, in the straight to our gate, there is a stair right there which makes it difficult to put it on the other side of the house. It’s very narrow on the side forward around that stair. The problem is... and I might be out of line here, but basically, my wife has orthopedic issues and family members in walkers and wheelchairs, we cannot continue to live in this house if we don’t have some kind of elevator. We looked at all the possible sites and Mr. Wilson talked about putting it in the front. Well, that does take away our parking space or makes the person who parked cross the sidewalk.... Also, our water main....the corner of the house is on the porch. Directly below that is our water main and all the water access to the house goes in there. And, I think that was eliminated because it just didn’t seem to be as reasonable as where we have it now.”

Mr. Nichols: “I have a few more photos here. Again, this is underneath the area that Dr. Temple was just referencing. This is looking out toward the street. And then this is a

photo taken on the deck where the elevator would meet the deck.” Dr. Temple: “And I point out that – let’s go back to the one you just had – you can see the palm trees in my yard and in Mr. Rowe’s yard. And these all effectively screen his view from this portion of my house, so, it’s not something that would be an eyesore in here. And he pretty much encourages this placement.” Mrs. Koballa: “Where’s the entrance door on that second level to enter the house? Do they go in on the front of the house or do they go in on the side?” Dr. Temple: “Well, the door on the front of the house is to our bedroom. So, that’s not where people normally would come in. That’s more of a safety issue as an exit for fire and stuff like that.” Mrs. Koballa: “That door right there is your bedroom? Up top?” Dr. Temple: “Yes, the top one; the door is access to our bedroom. It is not an entrance. The entrance to the house is down that corridor and then around to the sound side of the house.” Acting Chair Partin: “But it’s all on that porch area.” Mrs. Koballa: “I’m just trying to understand why you couldn’t have it in the porch area. Or as the elevator comes up and then it exits off towards the water which would take them to the entranceway.” Dr. Temple: “Because that would block the access of the house – the fire exit and the windows.” Mrs. Koballa: “Is there a window on that corner of the deck?” Dr. Temple: “No, but it would block the access to get around the corner to the rest of the house.” Mrs. Koballa: “You’d have 2.5 feet left over. So, it’s 6.5-foot width porch; you’d still have 2.5 feet – and I don’t know if it’s to code – if 2.5 feet is enough width for someone to get around for fire purposes.” Mr. Wilson: “You need 36 inches.” Mr. Nichols: “It seems to be very tight. Madam Chair, I think I have finished with my photographs. I’m glad to try to answer any questions based on those and what I’ve said. I was going to go through the four criteria; I know the Board knows it very well.”

Mr. Edes: “Matt, before you do that, do you want to introduce your power point as Exhibit D?” Mr. Nichols: “Yes, sir, including the criteria and we had the exhibits we already turned in.” Mr. Edes: “So, Exhibit D will be received into evidence without objection from staff. And to clarify, Mr. Nichols made reference to an Exhibit B – that’s already in the agenda packet. If you’ll note some of those things, I just want the record to be clear. When Mr. Nichols was referring to those exhibits, they are exhibits that were part of the application that’s contained in what we’ve marked tonight as Exhibit A.” Mr. Nichols: “And I have a paper copy of that....”

Mr. Nichols: “As to the four criteria, we do think that this is the classic case of a variance and why variances are in the code or in the statute and the code as sort of a safety valve for situations that come up. If you’re trying to write a code to envision every scenario, the code would be as big as the phone book. Then you still wouldn’t cover all the scenarios. So, the variance process is there, I think, to address specific instances and we think this is one of those. Allowing the variance in this case would allow the homeowners to continue to reside in their residence they’ve owned for more than thirty years. I would correct – it hasn’t been their primary residence for thirty years but since their retirement, it’s been their residence for some time. The property is already nonconforming. The house, again, is over fifty years old and it’s not as if you were building a new house.... you would be better able to plan around it. My guess is sixty years ago – fifty years ago – the residential elevator trend probably wasn’t very common. And it’s really just not practical to retrofit sort of the interior of the house for an elevator. It would be very difficult. And the adjacent neighbor to the south not only doesn’t object, they support the variance request. As far as the hardship, again, the house may predate zoning or at least what we refer to as ‘modern zoning’. And it’s a small older home; it’s not designed with any additional space that would be adequate for the interior elevator or retrofitting the house. And there are unique circumstances with the way

it's situated in comparison to the neighbors to the south. The hardship certainly wasn't created by or resulting from the actions taken by the applicant. This is something that we think the Town's policy would support... Certainly, Wrightsville Beach has always been a family-oriented beach with not only generational but multi-generational families and this is an instance where it would allow long-term residents that continue to age in place and have their family members and friends to continue to enjoy their residence that they have had for a long time. In that sense, I think it fits squarely with the fourth criteria – the spirit and intent and purpose of the ordinance. It will not negatively impact the adjacent property. It actually makes the property safer for the Temples and their residence... And I think, again, it's a classic Wrightsville Beach cottage and they want to continue to enjoy it for many, many years. We appreciate your consideration of their request and we're glad to try to answer any questions that you may have."

Mr. Turpin: "One thing I didn't understand – on the elevator, the door will be facing the street, right? The door will be facing south?" Dr. Temple: "The door will be facing north." Mr. Turpin: "So, the maximum width on this is 68.25 inches – that's the maximum width; so you're flipping the other way so the maximum width is 48.50 from your drawing?" Mr. Nichols: "Yes, sir. That's correct." Mr. Turpin: "I guess that's right at four feet, isn't it? Four feet and a half inch, is that what you were speaking to about the half inch?" Mr. Nichols: "Yes, sir." Mr. Turpin: "Because you're right in the setback at 7.5, right? The house is 7.5 so everything off of the house, you're going to have to count, right? The house is right at the 7.5 feet." Mr. Nichols: "Yes, sir. So if you went out four feet; that would leave you with 3.5 feet." Mr. Turpin: "Because this says 48.5 inches so.... You'd have to be over another half an inch. So, I just want to make sure you've got the right size here because it says 48.5 inches on the drawing; so, that was my first question." Mr. Nichols: "Well, the drawing, I think, provides for some clearances in there...." Mr. Turpin: "If you're good on it, I'm good. I'm just bringing it to your attention." Mr. Nichols: "Well, it's a very good point and what I was alluding to earlier is if the Board was inclined to grant the variance, we would appreciate consideration of just a little cushion in there, because when the actual contractor gets in there, we may need a few inches here or there. We wanted to ask for as minimal as we could, based on our drawing of the house. But in thinking more about it, it would make sense for us to have an additional four inches or so. And I don't think it would have any practical impact." Mr. Turpin: "I don't disagree with that. I'm just looking at what your drawing is."

Mrs. Brunjes: "Tell me about the door – what direction is north?" Mr. Turpin: "I didn't know which way he had it but if you look at the drawing, if the door faces the street, you'd need 68.25 inches, if it faces the street; which he said it was not. So, you turn it the other way." Mrs. Brunjes: "Face the neighbor." Mr. Turpin: "Face the neighbor, right? It doesn't matter, either way, face the neighbor or face south, that way is 48.5 inches. I was just saying, he's already at 7.5 feet; he's already over with this. If he goes with 48, he's already off a half an inch so it wouldn't work. But he needs to make sure his inches are correct. That was my first question. Second one was, this revision that was made to the statute only relates to point two, right? It says 'a variance may be granted when necessary', it only relates to point number two; it doesn't override all four of them, right; it just relates to number two?" Mr. Edes: "I don't want to go on record, like I said, this just came into place and effective July 1st. I don't know that there's any case law construing what it means. That sentence has been added to the second criteria." Mr. Turpin: "Okay...." Acting Chair Partin: "Of course, they didn't know that at the time they applied so they could have said, 'Well, you

know, like you just pointed out, my wife has issues.” Mr. Blair: “I think there’s a bigger issue here than that application of this statute. I think it’s a situation for the Town to go back because that’s a whole island issue.” Mr. Turpin: “And I don’t disagree with that. That’s the reason I was saying, if that applies to all four, it’s an easy decision. And so, I didn’t know – that’s my point....” Mr. Nichols: “It’s new and I don’t even think it was in place when we applied for that.” Mr. Blair: “It wasn’t. This was in July; you were in April.”

Acting Chair Partin: “Dr. Temple, do you know what we’re referring to here?” Dr. Temple: “I think you’re talking about disability and whether it predated the application. Well, we were on the agenda for June, so if it didn’t pass until July, we asked for it before then.” Mr. Blair: “But I don’t know that this Board is in the business of deciding what disabled – that’s a Town UDO deal. I don’t think we’re that Board.” Mr. Edes: “Well, the Board can consider and must consider that criteria after July 1st.” Mr. Blair: “In the 160?” Mr. Edes: “Yes, sir.” Mr. Blair: “You’re saying this thing you handed out to us?” Mr. Edes: “Yes, sir. The part I underlined is a new addition by the General Assembly. We have a consultant to bring our UDO up to the newly passed or implemented legislation of 160D. But the law is clear, whether you change your ordinances or not, this is the law for variances.” Mr. Blair: “So, how do we determine whose disabled and who isn’t? What’s the definition of that?” Mr. Edes: “Based on the evidence.” Mrs. Koballa: “What if there are other options and they’re just not choosing that option?” Mr. Edes: “Well, if you read the sentence – I believe the sentence encompasses that. ‘A variance “may” – not “shall” – may be granted.’” Mrs. Koballa: “Okay.” Mr. Edes: “When “necessary”, another operative word, and “appropriate”, another operative word. So, in other words, the General Assembly did not intend that every person with a disability would be able to get a variance. You have to look at the facts in front of you.” Mrs. Koballa: “Okay. Thank you.”

Mr. Turpin: “May I ask one more follow-up question?” Acting Chair Partin: “Yes.” Mr. Turpin: “If the Legislature passed it, it doesn’t matter if local Council passed it. If the Legislature passed it, it’s the law.” Mr. Edes: “Yes, sir.” Mr. Turpin: “Okay. And this is the new law you’re telling us to consider?” Mr. Edes: “Yes, sir.” Mr. Turpin: “Okay. Whether the local City Council and no one accepted it?” Mr. Edes: “We are a creation of the General Assembly. We only have the power that they give us. And they have stated that as of July one, this is the law.” Mrs. Brunjes: “It’s also saying “may” be granted. They’re not saying we have to,” Mr. Turpin: “I fully understand that. I just wanted to make sure we all understood, we’re using this to make our decision tonight. The next thing is, you’re not positive about it. Just making sure I’m clear.... Right now you’re thinking it just relates to number two.” Mr. Edes: “The way it’s written, I think it’s reasonable. We can go into closed session if you want legal advice. We can’t deliberate in closed session. If you want to go into closed session, we can go into closed session to preserve the attorney-client privilege.” Mr. Turpin: “I only have one more question.” Mr. Edes: “I’m not dodging it; I’m just saying there’s going to be minutes....” Mr. Turpin: “Because I think that’s very important because that’s going to override all of this.” Mr. Edes: “I agree with you that the interpretation is important, but since there will be minutes of this; that is attorney-client advice that’s protected by law. So, for a very limited time, we can go into closed session as a Board of Adjustment. I’d be happy to go into that.” There was Board consensus not to go into closed session. Mr. Blair: “It’s not like you have to do anything. You have to consider all of the evidence that’s been given. So, don’t get hung up on this one statute that it means anything other than in the whole context of everything that’s been before us.” Mr. Turpin: “Fair enough.”

Mr. Edes: “I will just say if you look at criteria two, the beginning of it: second sentence, “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.” But then I think the General Assembly’s intent is, “However, a variance may be granted when necessary and appropriate if it’s based on a disability.” In other words, the first sentence says you can’t do it just because Brian Edes has a personal hardship. But if that personal hardship is a disability, then you may do it. Even though it’s personal to me, when appropriate and necessary – there’s no “shall” in there.” Mr. Turpin: “I understand that and based upon the evidence we’ve heard, because we don’t do anything outside of what we hear in here.... He’s got family members that have difficulty getting up the stairs. So, that seemed to me it would meet the test. So, that was clear to me on that. Let me move on to something else, if I could. On number three, can you tell me how you’re meeting the test for number three? How do you meet that test? I think I’m good with one, two and four, but I don’t see three. Tell me how you do three.”

Mr. Nichols: “Number three is: “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.” So, this really is a function of – we all age. I mean, we all are getting older and it’s something where that is what’s necessitating the accommodation. And I do think it’s relative to the criteria that the General Assembly did just put in the statute. It was certainly relevant to them to say, ‘Hey, this is something to consider. It comes down to should anybody be required to move because they are maybe having access issues to their house. To me, it goes to the idea of having your house and being able to enjoy it for many years. Clearly that house was built in the sixties and modern houses would probably have been different or it would have accommodated or foreseen the elevator-type scenario or installed an elevator. But it’s difficult to retrofit the interior of the house for an elevator given its age. It’s just nothing that they created. They didn’t create the situation.” Mr. Turpin: “Can I ask you another way?” Mr. Nichols: “Yes, sir.” Mr. Turpin: “Would that apply to every house in Wrightsville Beach or half the houses on Wrightsville Beach?” Mr. Nichols: “Not necessarily.” Mr. Turpin: “If I want to put wrap-around stairs on my house because it would make it more convenient for me It would extend out into the setback and the city would say no. I’d say it would make it more convenient for me ... they would say no because it’s in the setback. I’m trying to figure out what the difference is.” Mrs. Brunjes: “And another thing, in this case, he just doesn’t want to put it in another place. He wants it on the side. It’s been said, the word “could”, Tony’s word, is he could put it in another place that would make it not need a variance. But he’s chosen – that it really would look better on the side, be more convenient on the side. But it doesn’t mean that, the statement that you used that he’d have to move from his house, he would not have to move from his house. He just wouldn’t like the location of the elevator.” Mr. Nichols: “And I misspoke and I don’t want to say that this is causing them to move from their house..” Mrs. Brunjes: “Right. That was an example, I know.” Mr. Nichols: “But what I’m saying is that in any variance, or in many variances, there may be an alternative to it. But it’s not – is there any alternative under the sun to address this situation. The previous case, the folks could have taken off the back of the house and corrected it, so...” Mrs. Brunjes: “Well, there were some circumstances that made that different from this.” Mr. Nichols: “I’m not comparing the two cases; they’re totally different. But what I’m saying is in many instances, there perhaps is a way to sort of fix it, but is it practical? Is it a hardship? Is that correction creating an unnecessary hardship? And in this

case, with the neighbor supporting the location and given the layout of this house and how it's laid out to the other houses. I think Dr. Temple testified as to the utilities." Mrs. Brunjes: "And we don't know that for sure. It's hearsay."

Dr. Temple: "We did look at every single placement to the house. I don't know if we have for the front but we have a garage on the front that couldn't be blocked. The windows we didn't want to block. The exit door from our bedroom, we didn't want to block. And we didn't want to put it over the water and we didn't want to eliminate a parking place by putting it on the outside of the porch. So, that pretty much takes care of the whole front of the house. The back of the house is more difficult to get access. If you're coming to visit, you'd have to go all the way down the side and around. And that would be objectionable to the Rowes because that's their view of the water just to look at an elevator tower. The place where we're in consultation with – where the best place for us to do it without blocking any other porch access, was to append it to the right where those stairs are. And that is also our neighbors' preferred place to put it because it's not in his direct view; it does not diminish his property. And, on the other side of the house, there is no porch and no access. We did have an architect, some years ago, look at putting.... There is no place on the inside of our house to put an elevator." Mrs. Brunjes: "I know; I've been there." Dr. Temple: "You've been in our house?" Mrs. Brunjes: "I had an old house. I get it." Dr. Temple: "There are other places along the side that it could be put but the place we're showing is most accessible to somebody visiting; most accessible to us.... It's not fifty feet away. It's just the most logical and most appealing to our neighbors." Mr. Blair: "But is it a hardship? I get what you're saying but that's not getting through the hardship piece." Dr. Temple: "The hardship is we can't get up the steps. We need an elevator. And then, the front of the house – there's a reason not to do it all across the front. Either blocking the garage, blocking the access, blocking the window..." Mrs. Brunjes: "We should have a whole picture of the front so we could see it."

Acting Chair Partin: "Is there any way to put it slightly inserted – I mean, like bring it in slightly onto the porch?" Mr. Nichols: "Okay, there is the front of the house". Dr. Temple: "And you can see there was a garage which we can't do and the few windows – it would block those bedrooms. There's a door which you don't want to block. It's to the right where Mr. Wilson talked about putting it there. I said we only have three parking places and they're tight and if we eliminate one of our parking places, it just adds to the parking problem on North Channel anyhow." Mrs. Koballa: "The distance from the house to the street is twenty-nine feet. So, four feet would eliminate a parking spot? You could bring that elevator out four feet and that's going to eliminate the entire spot?" Dr. Temple: "But it does interfere with the – it's a waterline to the house which is right behind this..." Acting Chair Partin: "How many cars can you park – six....?" Dr. Temple: "Six!" Mrs. Brunjes: "No; just three." Dr. Temple: "I think there's a picture." Acting Chair Partin: Okay. There you go." Dr. Temple: "There's our parking." Acting Chair Partin: "Okay, got'cha. It looked like it was longer than that." Mr. Nichols: "This is how people park." Mrs. Brunjes: "That's not his property that you saw in that other picture. That was the street." Dr. Temple: "And you can see, from their point of view, this to here is visually blocked by large trees. This is where he would like it and then where we'd like it. And any other place would be less desirable to both...."

Mrs. Brunjes: "Do you have the fire access, Matt?" Mr. Nichols: "I want to make sure I understand what you're asking." Mrs. Brunjes: "Can a fire truck get through enough to maneuver through there?" Dr. Temple: "No, you can't get anything through there." Mrs.

Brunjes: “No, now you don’t want to say that. If you build a home, elevator along the side, is it going to interfere with a fire truck and firefighters trying to get around back? Is there plenty of room left?” Mr. Nichols: “There’s quite a bit of vegetation in there now and there’s a fence there, right?” Dr. Temple: “It’s between the properties.” Mr. Nichols: “The elevator would open up between those two pilings.” Acting Chair Partin: “Were you going to leave the vegetation there? Is that what you were planning?” Dr. Temple: “Pardon.” Acting Chair Partin: “Were you planning to leave all this vegetation there?” Dr. Temple: “I had to take this out and this is where the elevator goes.” Acting Chair Partin: “It looks like a hedge right there would be in the way.” Dr. Temple: “It is.”

Mr. Nichols: “I think I do understand the questions that are being raised. Could you put the elevator somewhere other than where we’re proposing? The answer would be yes you could do that but I don’t think that’s the test, is what I’m saying. Under the circumstances, is a variance request reasonable and does it meet the criteria in this circumstance? And we would respectfully contend that it does.... There are probably other variance requests that you see where there’s perhaps some other way to address the issue. But it doesn’t necessarily mean you can’t come in and ask for a variance because of the unique circumstances of the case; and under all the circumstances that it would meet the criteria of a variance given the facts of the case.”

Mrs. Brunjes: “If somebody comes before this Board in two years and say, ‘Oh, well you let Dr. Temple do so and so, and take four feet in his setback, I don’t see why we can’t do the same thing’.” Mr. Nichols: “Well, I think it would be based on whatever facts they present – does the neighbor’s house present itself in the same way that it does to the Town Board? Is the neighbor objecting? Are there issues with – it’s kind of a configuration of the parking; the access to the bedrooms in the front. Dr. Temple testified some kind of unique things about the layout of the house. So, I think it’s like with all variance requests, I don’t think anyone sets a precedent for any one of the other ones. It’s purely based on the facts of each unique case. But I don’t want to stand before you and say you couldn’t put the elevator anywhere else in this house, because that’s not the case. But, we do think that this request is reasonable and meets the criteria. And it is a unique set of circumstances for why we would want to put it there for this house and it would fit with this house and the neighbors are okay with it. Again, as a practical matter, is it going to have any impact at all on the Town? I don’t think anyone’s here to speak against this either and that’s a great deal – anything that comes before the Board. How do the neighbors feel about it because they would be the ones that would be potentially impacted by it? But, I don’t know if you would even notice it being there if put in that location. Whereas the other way, it is very visible, very sort of conspicuous. I think landscaping wouldn’t really come into play if you put it in the front....you could move landscaping out in the front of it there. So, it’s just under this unique circumstance of the house and how it’s set up in comparison to the other house. It seems to be the optimal spot for it and it would be the most efficient spot for it and the neighbor supports it.” Mrs. Brunjes: “Did each one of these people get a letter? Did they get any notification?” Mr. Wilson: “Yes.” Mrs. Brunjes: “This is a list of adjacent property owners – they all got letters? It came out of your packet – adjacent property owners within 150 feet. All these people received letters, right?” Mr. Nichols: “The Town sends that out.” Mr. Wilson: “We did send the letters out; yes.”

Acting Chair Partin: “Tony or Mr. Edes, if we were to approve this, can we require also that lattice work be required around this elevator to kind of keep it kind of secluded?”

Mr. Wilson: “I think you can put conditions on a variance.” Mrs. Brunjes: “Because they’re pretty ugly. Those things are ugly.” Acting Chair Partin: “I think they need screening around it. I mean like those lattice screening things that he showed us.” Mr. Edes: “You could make that a condition but I would want the applicant to state on the record....Mr. Nichols already said he’d do it and that’s why he wants the extra few inches; that he agrees to that condition – or the applicant agrees to that condition.” Acting Chair Partin: “Did you hear what we were discussing?” Dr. Temple: “I’m trying to talk to....” Acting Chair Partin: “So, I was asking if we were to approve this elevator where you want it, can we also require the lattice work to be put around it.” Mr. Nichols: “Yes, ma’am. Absolutely you could. And the other thing I was going to point out that, we recognize that this variance would be unique to this house. At some point, Dr. Temple realizes that his house may get torn down and rebuilt and the variance would not – it would be unique to the circumstances of this house. And if you all wanted to do this, he’s saying – Dr. Temple is fine with making it unique to his ownership of it....” Mrs. Brunjes: “Remember we did that in that Minute Market thing that if that property sold, that could not be with it. It had to change back.” Acting Chair Partin: “Would that mean then that they’d have to tear the elevator down – whoever owns – whoever bought it?” Mr. Nichols: “There might be some problems with enforcing that. I don’t know but we were just saying – clearly it would be...” Mrs. Brunjes: “But if you tear it down, the next house can’t use that four feet.” Mr. Nichols: “Absolutely not. It’s used specifically” (Everyone talking at once.) Mr. Edes: “We could make it a condition that it is applicable to the present structure. That structure, if modified more than fifty percent of its value, that variance expires. And I would like the applicant to agree on the record to that condition.” Mr. Nichols: “Yes, absolutely....”

Acting Chair Partin: “So, it sounds like to me they need two extra....” Mr. Edes: “We’ve not closed the evidence yet. That would be better discussed during deliberations; we’re still in the evidentiary gathering process. Mr. Nichols, do you have anything else?” Mr. Nichols: “No, sir. I think we’ve covered it. We appreciate the consideration..” Mr. Edes: “And just for clarity, in the event the Board were to consider issuing a variance, does the applicant agree to some sort of lattice covering?” Mr. Nichols: “Yes, sir.” Mr. Edes: “And does the applicant agree that if the variance is issued, that if the existing structure as it sits out there today exceeds the fifty percent rule, for whatever reason – do you understand what I’m saying?” Mr. Nichols: “Yes.” Mr. Edes: “That the variance extinguishes on its own.” Dr. Temple: “Yes. In fact, I had suggested it.” Mr. Nichols: “And the lattice, which we think would be great, we just might need a little bit more” Mr. Edes: “That was my other question I had. What is the actual number of inches you’re asking for?” Mr. Nichols: “I believe we asked for four feet and I was doing the math earlier, but, as we pointed out earlier, it could be close. Is it possible to get an extra – and this is only for the purpose of installing the elevator that we’re proposing.... We need four to six inches for field adjustments and getting the lattice in there or the landscaping, whatever the Board considers appropriate.”

Acting Chair Partin: “Mr. Edes, can you tell us where we are at this point?” Mr. Edes: “I was trying to get a clarification from Tony on something. So, Mr. Nichols, you’re saying 52 inches?” Mr. Nichols: “48 plus 4 inches, I think, would do it...” Dr. Temple: “Whatever it requires....and I don’t know but 48 has some” Mr. Nichols: “Not to exceed a certain amount – it’s just basically whatever needs to be accommodated in that space.” Mr. Edes: “And the lattice you put up there, do you know the brand of whatever?” Mr. Nichols: “We would be glad to make it conditioned on this photograph which was taken straight from his

house. It would match this.” Dr. Temple: “It’s not a brand; it’s made from scratch.” Mrs. Brunjes: “It’s wood. That’s handmade.” Mr. Edes: “What are the dimensions on those?” Dr. Temple: “...with my wife – lattice versus slats.. but it would be something appealing of that nature and that’s what she’s chosen before. So, I think that will probably be what it will be. But there was another picture that showed a slat instead of lattice; it would be a much smaller scale than that.”

Mr. Edes: “Anything else, Mr. Nichols?” Mr. Nichols: “No, sir.” Mr. Edes: “Any questions from the Board?” Mrs. Brunjes: “So you could put a “not to exceed” factor in there?” Mr. Edes: “.... And Mr. Nichols, I believe, is on the record “not to exceed 52 inches” is acceptable.” Mr. Nichols: “That’s four inches. However the Board pleases – I think six inches would more than cover it. I don’t think it would be that but six inches would be ample to put in either the lattice or...” Mr. Edes: “Given that 160D changes it significantly, you either agree or don’t agree on a condition. So, would the applicant agree to a ‘not to exceed 52 inches’?” Dr. Temple: “...It seems reasonable to me. I can’t imagine lattice being more than” Mrs. Brunjes: “Is this thing going to be right up to the house or is it going to come out from the house a little bit?” Mr. Edes: “You mean the lattice?” Mrs. Brunjes: “No, the elevator.” Dr. Temple: “It will be right against the house.” Mrs. Brunjes: “Okay cause four feet is his elevator measurement. Is he going to need a little more to move it away...?” Mr. Nichols: “54 inches would be acceptable – six inches.....” Mr. Edes: “And ‘not to exceed 54’, would you agree that that condition would be up to 54 if it were actually needed.” Mr. Nichols: “If needed, yes...” Mr. Edes: “And if the Town were to request for you to have a professional state that we need 53 inches or 54 inches in a sealed document; to provide that document, do you agree to that condition?” Mr. Nichols: “Yes, sir.”

Mr. Edes: “Any other questions for Mr. Nichols? Does anyone else in the audience, sworn in and signed up to speak? (No response.) At this point, we’ll need a motion to close the evidentiary portion of the hearing. But let me just inventory what I believe the evidence was. We first heard from Mr. Wilson who introduced the item; we received into evidence Exhibit A which was the agenda packet pages 28-44; and then Exhibit B which was Mr. Wilson’s power point; they both came in without objection; we then heard from the applicant’s attorney, Mr. Matt Nichol; he introduced as Exhibit C, a packet of documents which included a letter from the manager of the LLC that owns the adjacent property, the deed as well as the tax card; Dr. Temple then testified by way of answering questions from the Board; Mr. Nichols then put on a power point, we received that into evidence as Exhibit D without objection; then Mr. Nichols, on the record, indicated that he would agree to a condition that’s not to exceed 54 inches; and the condition that it be covered by some sort of lattice exterior. Matt, do you have anything to add to any of that?” Mr. Nichols: “No, sir.” Mr. Edes: “Madam Chair, at this point, it would be appropriate to entertain a motion to close the evidentiary portion of this hearing.” Acting Chair Partin: “Do I have a motion to close?” Mr. Blair: “Motion.” (6:55 p.m.) Mrs. Brunjes: “Second.” Acting Chair Partin: “All in favor.” (Vote 5-0 in favor of the motion.) Mr. Edes: “Now is the time to discuss it. You can take it criteria by criteria or, like in the last one, if someone feels strongly one way or the other, we can make a motion to either approve or deny the application and discuss it.”

Mr. Blair: “Well, I’ll go because I’ve got a strong opinion about it. Number three – Mr. Nichols, you said yourself that – I’m having difficulty with the fact that Dr. Temple has choices, although they’re not good choices; they’re not his first or second choices of where to put that elevator. But because you have choices you don’t want to make, I’m having a

hard time with the hardship part of all of this because I know where you'd like to place your elevator and I think that's probably a good choice. But I just don't think that that's a hardship; I just don't think it is. And, not that this matters, but I've been on this Board for like eight years and I know what a hardship looks like. When you have a choice even though you're not able to do your first choice, you don't like it or it blocks a window, or whatever; we've heard these before. I'm having a hard time getting through number three, to be honest with you. That's my opinion – that's just my opinion." Mr. Nichols: "I know the hearing is closed. If I'm able to speak – If I didn't articulate it.." Mr. Blair: "It's closed." Mr. Edes: "Madam Chair, would you like to reopen the evidentiary portion of the hearing?" Acting Chair Partin: "I think we have a "no" here." Mrs. Koballa: "I'm in agreement with Bill. I wrote down, 'didn't want,' 'less desirable' – those are not hardship words. And, as much as I agree with them, I think it would be a great thing to do, my job is to find the hardship and I don't see it." Mr. Nichols: "Can I..." Mr. Edes: "Mr. Nichols, I'm going to let you, subject to Madam Chair's approval, respond by way of an argument or persuasion but not offer additional evidence." Acting Chair Partin: "If that's appropriate, Mr. Edes, I guess we can."

Mr. Nichols: "I would just be remiss if I didn't feel like I was doing a good job articulating why I think it is a hardship. I think the key word is, and it's in the very first criteria, is 'unnecessary hardship'. Is it necessary? Could you put the elevator in a different place? And you could; we've established that. But is it necessary to do that in this instance? What's it achieving? If you look at all the four criteria as a whole, which is what you look at; and the spirit and intent of the ordinance and the purpose of the ordinance. And the hardship here, he's identified the parking area and the way his house is configured. I guess I just go back to the word 'unnecessary'. Is it necessary to – essentially what's being accomplished here in light of all the circumstances? The neighbor's support of where he wants to put it. No one else against it. The layout of his house. It's just the most logical place to put it. So, again, I don't think the criteria is 'could you find some other place to do it. Has he proven some hardship? And I think he has." Mrs. Koballa: "Can I ask a question? Are we supposed to meet all four criteria or only one has to be met? (The other Board members said – all four.) Okay, I'm just clarifying. Thank you."

Mr. Turpin: "I agree. Unless the disability exception overrides all four, I don't think you meet the test. And I think it's pretty clear you don't meet the test on this, so I don't think I can support your petition for this. You have options on where you want it; some are undesirable. But, sometimes that's what we have to do. If you think about the lots on this island, many of them are in the same situation; they're fifty feet wide; that's all you have to work with. And, if you can't make it fit; it doesn't fit. So, I don't think I can support your position unless this new change in the statute changes one through four." Mrs. Brunjes: "And it doesn't." Mr. Turpin: "That would be the only reason I would say. Right now, we're saying it only does two. So, that's what we've got to go with." Mr. Edes: "I'm saying that the courts haven't issued a blog or say that what it is doing is qualifying the previous two sentences, which is 'hardships resulting from personal circumstances, etc. etc. To me, it's qualifying 'well if that personal circumstance is a disability, then you could meet this criteria when appropriate and necessary.'" Mr. Turpin: "Can I ask one more question? This is not local ordinance; this is state statute, this whole thing. So, when this sentence was inserted, it was inserted in that particular position." Mr. Edes: "This is exactly how it appears in the statute. And arguably, since this application was received prior to July 1, this may not come into play. But out of an abundance of caution, since we're hearing it after July 1, I put this before you." Mr. Turpin: "Fair enough. Thank you for that."

Acting Chair Partin: “Anyone else – Kitty?” Mrs. Brunjes: “No, I’m good.” Acting Chair Partin: “Do we want to have a motion? Does anyone want to entertain a motion – either way – Bill?” Mr. Blair: “What is the process?” Mr. Edes: “We’ve been discussing criteria three. Is there a motion that the applicant has either met or not met criteria three? That would be an appropriate motion at this point.” Acting Chair Partin: Well, have we agreed that he’s met everything but three?” Mr. Turpin: “I think he probably doesn’t meet one and three.” Mr. Blair: “Do you want to make the motion?” Mr. Turpin: “Yes, I’ll make the motion. I don’t support the applicant because I feel like he doesn’t meet the test provided for in one and three.” Acting Chair Partin: “Do I have a second?” Mr. Blair: “Second.” Acting Chair Partin: We have a motion and second on the table, is there any more discussion? So, we’d like to entertain a vote. Okay, let’s all vote. All in favor of denying his application.” Mr. Edes: “The motion was on the grounds that it does not meet criteria one and three. (The vote was unanimous in favor of denying the variance.)

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 7:05 P.M. BY MOTION OF MRS BRUNJES AND SECOND BY MR. BLAIR.

Respectfully submitted,

Sylvia J. Holleman
Town Clerk



TOWN OF WRIGHTSVILLE BEACH
PLANNING AND INSPECTIONS • 321 CAUSEWAY DRIVE • P.O. BOX 626
WRIGHTSVILLE BEACH, N.C. 28480 • 910-256-7937

Planning and Inspections

MEMORANDUM

TO: Chairman and Board of Adjustment Members
from: Tony Wilson, Director of Planning and Parks ^{TW}
Subject: 14 A & B Mallard Street Appeal
Date: June 20, 2022
Cc: Tim Owens, Town Manager

Background:

WBRP, LLC property owner of unit 1 and Teresa Henry property owner of unit 2, 14 Mallard Street are requesting an appeal from staff's interpretation of lot frontage to the Town of Wrightsville Beach Board of Adjustment.

This appeal is specifically from a decision set forth in a letter dated February 10, 2022 from Tony Wilson, Planning and Parks Director within the Planning Department. The proposed site plan for the new structure located at 14 Mallard Street indicated a setback of 7.5' for the rear, 7.5' on the north side, 7.5' off of Crane Street and 37 feet on the ocean side. After reviewing the submitted CAMA Minor Permit Application, it was discovered that the front setback is not consistent with the Town's definition of lot frontage.

Project History:

Zoning Permits were issued for 3 Duplexes on May 27, 1977 for 10, 12, and 14 Mallard Street. The site plan number 78-12-1 for the 3 duplexes was approved on December 19, 1978 by John Nesbit. The setbacks indicated on exhibit A and B were 7.5' for sides, 7.5' for the rear and a 12' front deeded setback on the ocean side. The main entrance for these properties was from Mallard Street by a private drive.

Town Definitions:

Lot Frontage

The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on through lots, all sides of a lot abutting parallel or approximately parallel streets shall be considered frontages. For landlocked waterfront lots, the side of the lot abutting the water shall be considered the rear lot line and the side opposite this rear lot line shall be considered the front lot line.



Street

Includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and the approaches thereto within the town and shall mean the entire width of the right-of-way between abutting property lines.

Staff Comments:

After reviewing the information in the file for 10, 12 and 14 Mallard Street, Staff based their initial zoning decision and assumed that the original site plan number # 78-12-1 was an approved site specific plan and would be exempt from the current town zoning setback requirements. In a letter from J. Franklin Martin to the Mayor Robert Sawyer and the Board of Aldermen, a request was made to direct the Building Inspector to permit our development of the three ocean front lots between Crane and Mallard Streets in accordance with the attached plan, Exhibit A and Exhibit B, this letter indicates a **twelve foot deed restriction for the front yard requirement.**

Town Staff did have conversations and sent emails with the owners, surveyors and designers of 12 and 14 Mallard Street for the required setbacks for the new structures as approved by the Town on 12/19/1978. When Town Staff reviewed the site plan again submitted concerning the front setbacks we questioned if the original site plan was an approved site plan and had questions about the town's definition of lot frontage that may apply to this site. A letter was sent to High-tide Design LLC on February 10, 2022 denying the site plan for 14 A & B Mallard Street because of the front yard setback of 7.5' from Crane Street.

Board of Adjustment:

Section 155.4.4 Appeals, Variances, and Interpretations.

155.4.4.1 Appeals.

(A) The Board of Adjustment shall hear and decide appeals from decisions of the UDO Administrator concerning the interpretation or administration of [Chapter 155](#) of the Town Code.

(B) Appeals under the provisions of this Section may be filed by any person who has standing under G.S. § 160A-393(d) or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.

(C) Decisions concerning the interpretation or administration of this chapter shall be given in writing to the owner of the property that is the subject of the decision and to the

party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first class mail.

(D) The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(E) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches (6") high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of a sign as described herein is not required but shall be done at the discretion of the landowner or applicant. The Town may post such sign.

(F) The UDO Administrator shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The UDO Administrator shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(G) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(H) Subject to the provisions of subdivision (G) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

(I) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that

ought to be made. The Board shall have all the powers of the official who made the decision.

155.4.4.5 Hearing Required on Appeals, Variances and Interpretations.

(A) Before making a decision on an appeal or an application for a variance or interpretation, the Board of Adjustment shall hold a hearing on the appeal or application.

(B) Subject to subsection (C), the hearing shall be open to the public. All persons presenting evidence or arguments shall be sworn in by the Chairman prior to the presentation of any evidence or arguments.

(C) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(D) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

(E) The required application fee and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

155.4.4.6 Notice of Hearing. The UDO Administrator shall give notice of any hearing required by Section [155.4.4.5](#) as follows:

(A) Notice of hearings conducted pursuant to Section [155.4.4.5](#) shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons owning real property, any portion of which is located within 150 feet of the lot that is the subject of the hearing.

(B) In the absence of evidence to the contrary, the Town may rely on the county tax listings to determine owners of property entitled to be mailed notice.

(C) The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

155.4.4.7 Burden of Proof in Appeals and Variances.

(A) When an appeal is taken to the Board of Adjustment in accordance with Section [155.4.4.1](#), the UDO Administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section [155.4.4.2\(B\)](#), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

155.4.4.8 Board of Adjustment Action on Appeals and Variances.

(A) *Appeals.* A motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include a statement of the specific reasons or findings of facts that support the motion. A favorable vote of the majority of the members shall be required to reverse or modify the order, requirement, decision or determination appealed from.

(B) *Variance.* The Board must take a separate vote and vote affirmatively (by a four-fifths majority-see Section [155.3.13](#)) on each of the required findings stated in Section [155.4.4.2\(B\)](#). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Section [155.4.4.2\(B\)](#) shall include a statement of the specific reasons or findings of fact supporting such motion.

(C) A motion to deny a variance may be made on the basis that any one or more of the criteria set forth in Section [155.4.4.2\(B\)](#) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats).

155.4.4.9 Evidence/Presentation of Evidence.

(A) The provisions of this section apply to all hearings for which a notice is required by Section [155.4.4.6](#).

(B) All persons who intend to present evidence to the Board of Adjustment shall be sworn in by the Chairman.

(C) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary findings) shall be based upon competent, material, and substantial evidence.

(D) The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session.

(E) Parties to a quasi-judicial hearing have a right to cross-examine witnesses.

(F) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.

(G) If a Board of Adjustment member has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the Board and parties at the beginning of the hearing.

(H) The Board of Adjustment, in conducting the hearing, has the authority to issue subpoenas to compel testimony or the production of evidence deemed necessary to determine the matter.

155.4.4.10 Modification of Application at Hearing.

(A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.

(B) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

155.4.4.11 Record.

(A) Accurate written minutes shall be kept of all such proceedings.

(B) Whenever practicable, all documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town for at least two years.

155.4.4.12 Written Decision.

(A) The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.

(B) A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board. The decision of the Board shall be delivered by personal delivery, or electronic mail, or by first-class mail to the applicant, property owner, and to any other person who has submitted a written request for a copy prior to the date the decision becomes effective. The Director of Planning and Parks or his/her designee shall certify that proper notice has been made.

(C) Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G.S. § 160A-393. A petition for review shall be filed with the Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with subsection (B) above. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

Public Notice:

The legal advertisement announcing the June 29, 2022 Board of Adjustment Meeting concerning the appeal application for 14 A& B Mallard Street ran on June 14, 2022 in the Star News. The site was posted on June 14, 2022 and letters to adjacent property owners were sent out on June 16, 2022.

Requested Action:

As deemed appropriate by the Board of Adjustment.

Attachments:

1. Owners Application and Supporting Documentation
2. Original Exhibit A & B site Plan
3. Site Plan # 78-12-1 J.T.N. 12-19-78
4. Zoning approval for 10, 12 and 14 Mallard Street May 27, 1977
5. Letter from J. Franklin Martin
6. 1974 Town Definition of lot Frontage
7. Staff Letter dated February 10, 2022
8. List of adjacent property owners
9. 14 Mallard Street Site Photos

Attachment-1

Owners Application & Supporting Documentation

APPLICATION FOR AN APPEAL

To Be Submitted with Application Fee to the Planning and Inspections Department

PROPERTY INFORMATION

STREET ADDRESS: 14 A + 14 B Mallard St WB, NC
Tax Map R05813-008-012-000 Block Number E9015T Lot Number 316719.62 5205 000

STRUCTURE USE: () COMMERCIAL RESIDENTIAL () OTHER _____

ZONING: R-2 WB Two Family THE USE/LOT IS: Conforming _____ Non-Conforming _____

PROPERTY OWNER: Name: Teresa Henry - WB RP LLC Tom Conley
716 S Lumbina Ave
Wrightsville Beach NC

OWNER'S ADDRESS: (if different) 1900 S. LIVE OAK PKWY ZIP 28403

OWNER PHONE: (910) 297-6796 FAX: _____

APPLICANT IF DIFFERENT FROM OWNER: _____
(attach Authority for Appointment of Agent signed by Owner)

ADDRESS: _____ ZIP _____

PHONE: () _____ FAX: _____

ADJOINING PROPERTY OWNERS (TO BE ATTACHED)

The names and address of all adjoining property owners as listed in the New Hanover County Tax Records is to be attached to this application. This list includes across the street and adjacent parties. It should also include parties in interest, such as applicants, owners and co-owners. For each name listed, provide an envelope printed with the name and address of the adjoining property owner, return address specified as Town Hall, PO Box 626; Wrightsville Beach NC 28480 and stamped with first class, non-metered postage. The envelopes are used for required notice.

THE ISSUE (attach additional information if needed)

Cite Violation: () Building Code Violation Code Reference: _____
() Zoning Code Violation Code Reference: _____
() Fire Code Violation Code Reference: _____
 Other Code Reference: WB wide 155 WDC Sec 155.441

Notice Issued on (date) 2-10-2022 Inspector Tony Wilson

ISSUE DESCRIPTION (TO BE ATTACHED)

Please attach a description of the issue and the case for the appeal.
Please also attach any supporting materials.

Appeal application fee \$500.00 (Non-Refundable) Paid Date: JH

I understand that the fee for this application is non-refundable. JH (Initial)
I furthermore certify that I am authorized to grant and do in fact grant permission to Planning Staff and his/her agents to enter on the aforementioned lands in connection with evaluating information related to this permit application. JH (Initial)

APPLICANT SIGNATURE Teresa Henry
[Signature]

DATE 3/10/2022
5/8/22

PARID: R05813-008-012-001
WBRP LLC

14 MALLARD ST

Parcel

Alt ID	316719.62.5236.000
Address	14 MALLARD ST
Unit	1
City	WRIGHTSVILLE BEACH
Zip Code	-
Neighborhood	E9015T
Class	RES-Residential
Land Use Code	18-Single Fam Alt Townhome
Living Units	1
Acres	
Zoning	R-2-WB TWO FAMILY

Legal

Legal Description	UNIT 1 CLUB COLONY TWHS II & 10' OF UNAMED ALLEY
Tax District	WB

Owners (On January 1st)

Owner	WBRP LLC
City	RALEIGH
State	NC
Country	
Zip	27615

THE DATA IS FROM 2022

PARID: R05813-008-012-000
HENRY TERESA

14 MALLARD ST

Parcel

Alt ID	316719.62.5205.000
Address	14 MALLARD ST
Unit	2
City	WRIGHTSVILLE BEACH
Zip Code	-
Neighborhood	E9O16T
Class	RES-Residential
Land Use Code	18-Single Fam Alt Townhome
Living Units	1
Acres	
Zoning	R-2-WB TWO FAMILY

Legal

Legal Description	UNIT 2 CLUB COLONY TWHS II & 10' OF UNAMED ALLEY
Tax District	WB

Owners (On January 1st)

Owner	HENRY TERESA
City	WILMINGTON
State	NC
Country	
Zip	28403

THE DATA IS FROM 2022



Planning and Inspections

TOWN OF WRIGHTSVILLE BEACH
PLANNING AND INSPECTIONS • 321 CAUSEWAY DRIVE • P.O. BOX 626
WRIGHTSVILLE BEACH, N.C. 28480 • 910-256-7937

February 10, 2022

High-Tide Design LLC
716 S Lumina Avenue
Wrightsville Beach, NC 28480

Re: 14 Mallard Street

Dear, Mr. Conley,

After further review of the site plan for 14 Mallard Street that you submitted for consideration in the CAMA permit process, the zoning setbacks show on the site drawing are incorrect. The front yard setback is 15 feet and it should be measured from the Crane Street right-of-way. The rear and side yards are 7.5 feet. Please see the attached ordinance language that led to this interpretation. A zoning compliance permit cannot be issued for the site as it is proposed.

This zoning interpretation can be appealed in accordance with the Wrightsville Beach Town Code, Chapter 155. Unified Development Code, Section 155.4.4. If you have any questions, I can be reached at 910-239-1746.

Best Regards,

Tony Wilson, Director of Planning and Parks
Town of Wrightsville Beach

Attachments:

1. 155.4.4 Appeals, Variances and Interpretations



constructed (interpreted)

Lot Frontage

The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on through lots, all sides of a lot abutting parallel or approximately parallel streets shall be considered frontages. For landlocked waterfront lots, the side of the lot abutting the water shall be considered the rear lot line and the side opposite this rear lot line shall be considered the front lot line.

Street

Includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and the approaches thereto within the town and shall mean the entire width of the right-of-way between abutting property lines.

Section 155.4.4 Appeals, Variances, and Interpretations.

155.4.4.1 Appeals.

- (A) The Board of Adjustment shall hear and decide appeals from decisions of the UDO Administrator concerning the interpretation or administration of Chapter 155 of the Town Code.
- (B) Appeals under the provisions of this Section may be filed by any person who has standing under G.S. § 160A-393(d) or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- (C) Decisions concerning the interpretation or administration of this chapter shall be given in writing to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first class mail.
- (D) The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (E) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches (6") high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of a sign as described herein is not required but shall be done at the discretion of the landowner or applicant. The Town may post such sign.
- (F) The UDO Administrator shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The UDO Administrator shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (G) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may

grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (H) Subject to the provisions of subdivision (G) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (I) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.

155.4.4.2 Variances.

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the UDO Administrator. Applications shall be handled in the same manner as applications for permits.
- (B) A variance may be granted by the Board of Adjustment if it concludes that, by granting the variance, the following findings are supported by the Board of Adjustment decision:
 - (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.
- (C) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
- (D) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

155.4.4.3 Interpretations.

- (A) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the UDO Administrator, they shall be handled as provided in Section 155.4.4.1.
- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a standard Town of Wrightsville Beach appeal form with UDO Administrator. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- (C) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the rules of interpretation as specified in Section 155.1.10 shall be applied. Where uncertainties continue to exist after application of the above rules, appeal may be taken to the Board of Adjustment as provided in Section 155.4.4.1 of this Ordinance.
- (D) Interpretations of the location of floodway and floodplain boundary lines may be made by the UDO Administrator as provided in Article 155.11, Part 1.

155.4.4.4 Requests to be Heard Expediently. As provided in Article 155.3, the Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations, including map boundaries, as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 155.4.4.6, and obtain the necessary information to make sound decisions.

155.4.4.5 Hearing Required on Appeals, Variances and Interpretations.

- (A) Before making a decision on an appeal or an application for a variance or interpretation, the Board of Adjustment shall hold a hearing on the appeal or application.
- (B) Subject to subsection (C), the hearing shall be open to the public. All persons presenting evidence or arguments shall be sworn in by the Chairman prior to the presentation of any evidence or arguments.

- (C) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- (D) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.
- (B) The required application fee and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

155.4.4.6 Notice of Hearing. The UDO Administrator shall give notice of any hearing required by Section 155.4.4.5 as follows:

- (A) Notice of hearings conducted pursuant to Section 155.4.4.5 shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons owning real property, any portion of which is located within 150 feet of the lot that is the subject of the hearing.
- (B) In the absence of evidence to the contrary, the Town may rely on the county tax listings to determine owners of property entitled to be mailed notice.
- (C) The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

155.4.4.7 Burden of Proof in Appeals and Variances.

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 155.4.4.1, the UDO Administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 155.4.4.2(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

155.4.4.8. Board of Adjustment Action on Appeals and Variances.

- (A) *Appeals.* A motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include a statement of the specific reasons or findings of facts that support the motion. A favorable vote of the majority of the members shall be required to reverse or modify the order, requirement, decision or determination appealed from.

- (B) *Variance.* The Board must take a separate vote and vote affirmatively (by a four-fifths majority-see Section 155.3.13) on each of the required findings stated in Section 155.4.4.2(B). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Section 155.4.4.2(B) shall include a statement of the specific reasons or findings of fact supporting such motion.
- (C) A motion to deny a variance may be made on the basis that any one or more of the criteria set forth in Section 155.4.4.2(B) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats).

155.4.4.9 Evidence/Presentation of Evidence.

- (A) The provisions of this section apply to all hearings for which a notice is required by Section 155.4.4.6.
- (B) All persons who intend to present evidence to the Board of Adjustment shall be sworn in by the Chairman.
- (C) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary findings) shall be based upon competent, material, and substantial evidence.
- (D) The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session.
- (E) Parties to a quasi-judicial hearing have a right to cross-examine witnesses.
- (F) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.
- (G) If a Board of Adjustment member has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the Board and parties at the beginning of the hearing.
- (H) The Board of Adjustment, in conducting the hearing, has the authority to issue subpoenas to compel testimony or the production of evidence deemed necessary to determine the matter.

155.4.4.10 Modification of Application at Hearing.

- (A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.
- (B) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

155.4.4.11 Record.

- (A) Accurate written minutes shall be kept of all such proceedings.
- (B) Whenever practicable, all documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town for at least two years.

155.4.4.12 Written Decision.

- (A) The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.
 - (B) A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board. The decision of the Board shall be delivered by personal delivery, or electronic mail, or by first-class mail to the applicant, property owner, and to any other person who has submitted a written request for a copy prior to the date the decision becomes effective. The Director of Planning and Parks or his/her designee shall certify that proper notice has been made.
 - (C) Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G.S. § 160A-393. A petition for review shall be filed with the Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with subsection (B) above. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.
- (Ord. 1695, passed 11-8-12; Am. Ord. 1727, passed 5-13-14)

Section 155.4.5 Conditional Use Permits.

155.4.5.1 Purpose and Applicability. This Ordinance provides for a number of uses to be located by right in each general zoning district subject to the use meeting certain area, height, yard, and off-street parking and loading requirements. In addition to these uses, this Ordinance allows some uses to be allowed in these districts as a conditional use subject to issuance of a conditional use permit by the Board of Aldermen upon recommendation of the Planning Board. The purpose of having the uses being conditional is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria as set forth in this section. All conditional use permits require some form of a site plan as outlined in Section 155.5.3.

155.4.5.2 Application Process/Completeness.

- (A) The deadline for which a conditional use permit application shall be filed with the UDO Administrator is the first business day of the month in the month prior to the meeting at which the application will be heard. Permit application forms shall be provided by the UDO Administrator.

In the course of evaluating the proposed conditional use, the Planning Board or Board of Aldermen may request additional information from the applicant. A request for any additional information may stay any further consideration of the application by the Planning Board or Board of Aldermen.

- (B) No application shall be deemed complete unless it contains or is accompanied by a site plan drawn to scale which complies with the requirements contained in Section 155.5.3 and a fee, in accordance with a fee schedule approved by the Board of Aldermen for the submittal of conditional use permit applications.
- (C) One (1) hard copy and one (1) digital copy of an application, and all attachments and maps, for a conditional use permit shall be submitted to the UDO Administrator.

155.4.5.3 Technical Review Procedure/Planning Board Review and Comment.

- (A) All applications for a conditional use permit, including required site plans, shall follow the technical review procedure (Article 155.3, Part II) before being submitted to the Planning Board for review and comment. The UDO Administrator shall forward any comments received during the technical review process to the Planning Board.
- (B) The Planning Board may, in its review, suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other conditions the Board may find appropriate. The conditions may include dedication of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.
- (C) The Planning Board shall forward its recommendation to the Board of Aldermen within 45 days of reviewing the application. If a recommendation is not made within 45 days, the application shall be forwarded to the Board of Aldermen without a recommendation from the Planning Board.
- (D) All comments prepared by the Planning Board shall be submitted by the UDO Administrator. This representative of the Planning Board shall be subject to the same scrutiny as other witnesses. Review of the conditional use application by the Planning Board shall not be a quasi-judicial procedure. The Planning Board shall include in its comments a statement as to the consistency of the application with the Town's currently adopted Comprehensive Plan. Comments of the Planning Board shall be considered with other evidence submitted at the public hearing.

155.4.5.4 Board of Aldermen Action.

- (A) Conditional use permits are quasi-judicial decisions approved by a simple majority vote of the Board of Aldermen. Quasi-judicial decisions must be conducted in accordance with Sections 155.4.4.9 through 155.4.4.12. For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.



Planning and Inspections

TOWN OF WRIGHTSVILLE BEACH
PLANNING AND INSPECTIONS • 321 CAUSEWAY DRIVE • P.O. BOX 626
WRIGHTSVILLE BEACH, N.C. 28480 • 910-256-7937

February 10, 2022

High-Tide Design LLC
716 S Lumina Avenue
Wrightsville Beach, NC 28480

Re: 14 Mallard Street

Dear, Mr. Conley,

After further review of the site plan for 14 Mallard Street that you submitted for consideration in the CAMA permit process, the zoning setbacks show on the site drawing are incorrect. The front yard setback is 15 feet and it should be measured from the Crane Street right-of-way. The rear and side yards are 7.5 feet. Please see the attached ordinance language that led to this interpretation. A zoning compliance permit cannot be issued for the site as it is proposed.

This zoning interpretation can be appealed in accordance with the Wrightsville Beach Town Code, Chapter 155. Unified Development Code, Section 155.4.4. If you have any questions, I can be reached at 910-239-1746.

Best Regards,

Tony Wilson, Director of Planning and Parks
Town of Wrightsville Beach

Attachments:

1. 155.4.4 Appeals, Variances and Interpretations



Lot Frontage

The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on through lots, all sides of a lot abutting parallel or approximately parallel streets shall be considered frontages. For landlocked waterfront lots, the side of the lot abutting the water shall be considered the rear lot line and the side opposite this rear lot line shall be considered the front lot line.

Street

Includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and the approaches thereto within the town and shall mean the entire width of the right-of-way between abutting property lines.

Adjoining properties

Mary Louise Ramsey

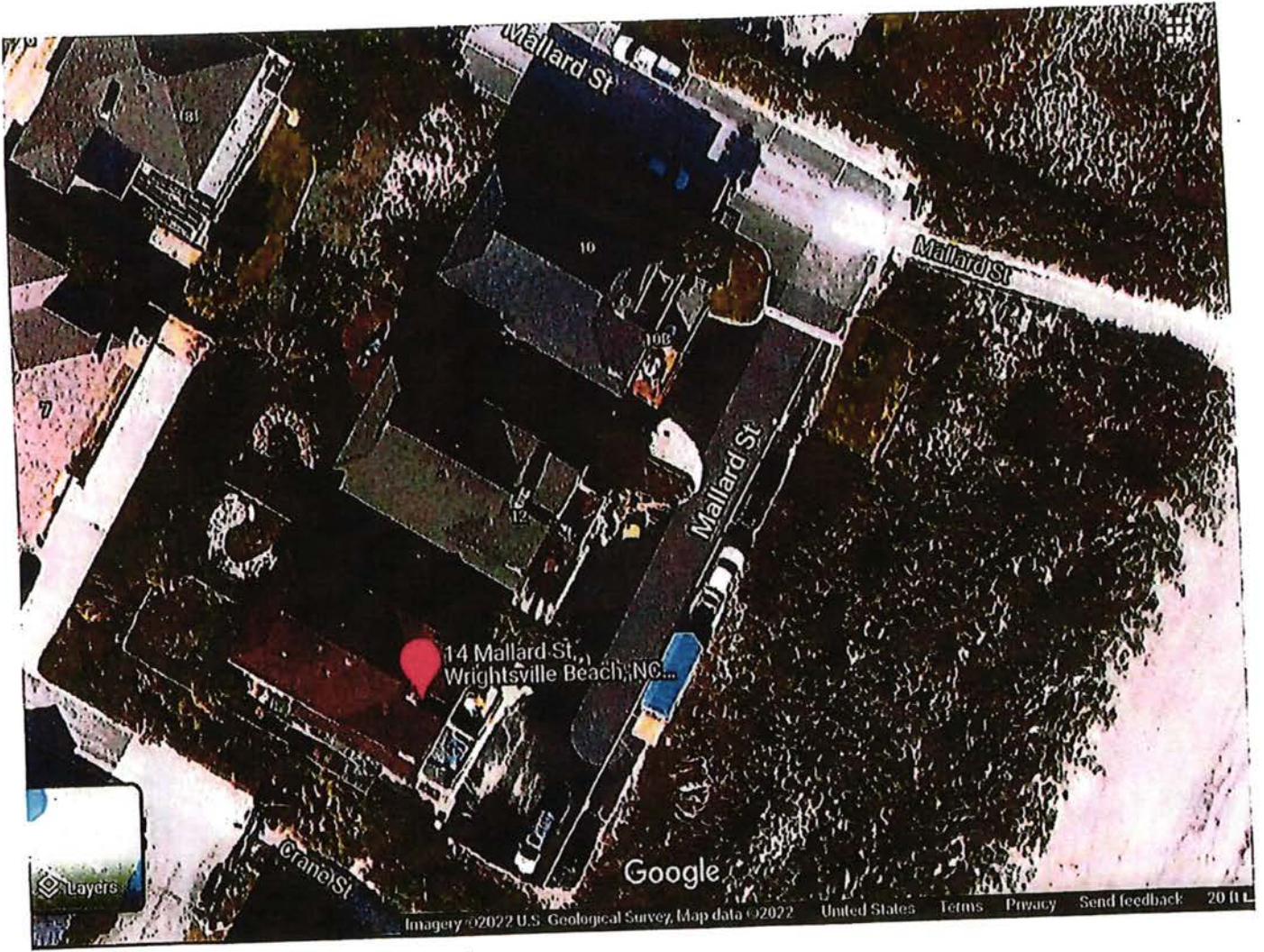
7 Crane St

Wrightsville Beach NC 28480

Mark and Laura Southerland

106 Mallard St

Wrightsville Beach NC 28480



14 Mallard St appeal doc 3-10-2022

14 Mallard St. is a Mallard Street address and is only accessible from Mallard St.—it is not accessible from Crane St. and never has been in as long as I have owned this property (over 30 years) and as clearly evidenced with the attached aerial photo.

As a result, the language attached to your letter referencing lot frontage supports the site plan we submitted, which uses the 15 ft. setback from Mallard St.

This is also in line with your prior representations to us.

There is a private road extending from Mallard Street to the front of this lot that is platted on the Town's records.

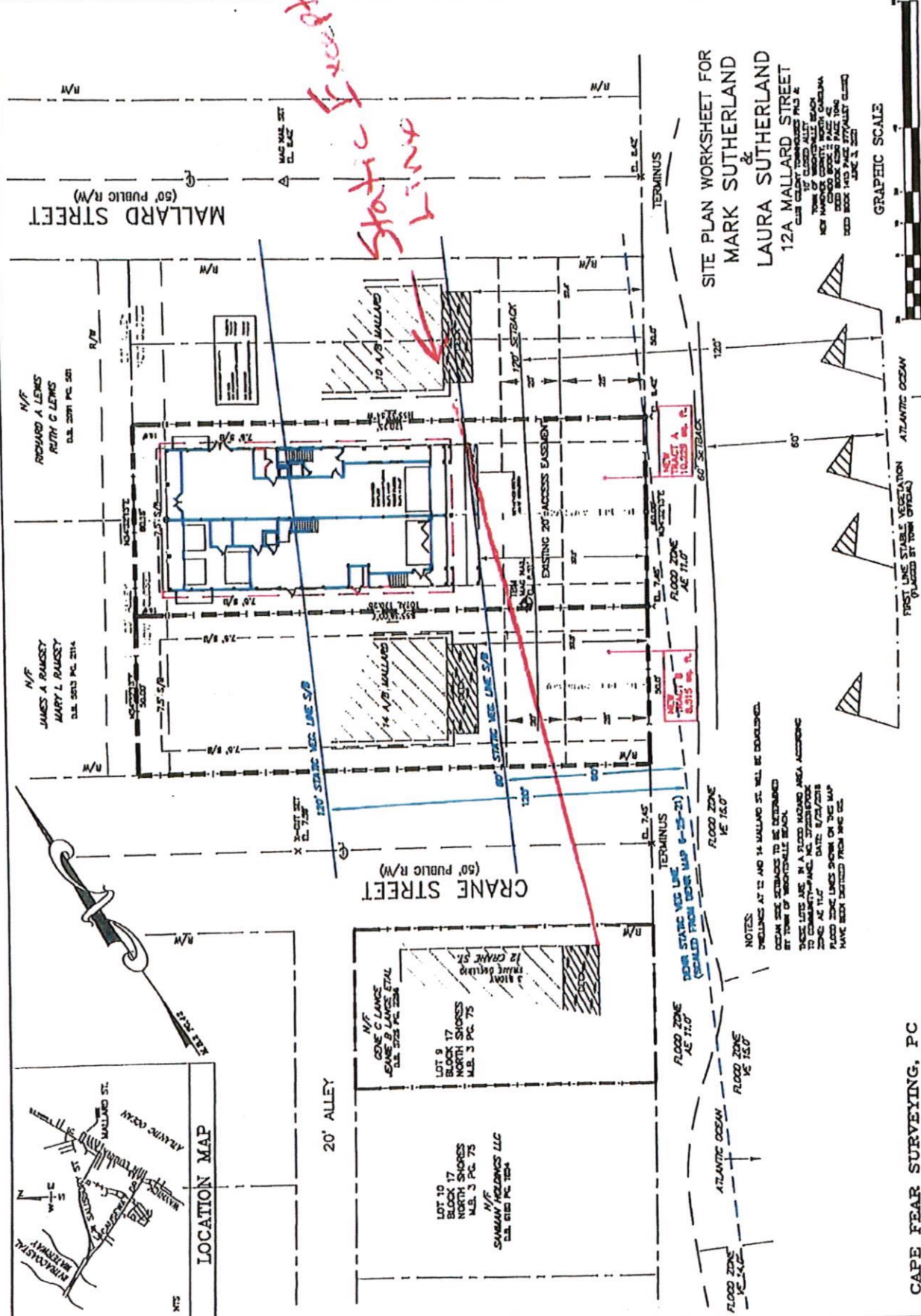
Your letter seems to take the position that the ocean side of Mallard St. does not exist.

The letter's new, unsupported position is contrary to prior decisions, contrary to your representations and **makes the lot unbuildable**. As a result, the Town is arbitrarily depriving my neighbor and myself the ability to use our property.

12 Mallard St.'s setback was just approved on the ocean side of Mallard St.—which is consistent with what you represented to us would be done as to 10 Mallard St. and our property at 14 Mallard St.

12 Mallard was also approved to be built in front of both 14 Mallard and 10 Mallard ?? because it is being built that way?

I have always wanted to get my property in line with the house on the ocean on Crane st that I did not try to stop them from building on that lot in the 90's (not sure why that is not possible now either?



Static Veg Line

**SITE PLAN WORKSHEET FOR
MARK SUTHERLAND
&
LAURA SUTHERLAND
12A MALLARD STREET**

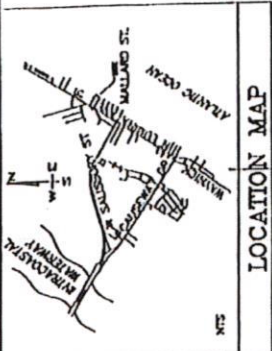
CLEAR CORNER DISTANCE: 10' 0"
THICKNESS OF MASONRY WALL: 12"
NOTHING TO BE MOVED
EXISTING CONDO BOOK 1 PAGE 42
EXISTING CONDO BOOK 2 PAGE 106
EXISTING CONDO BOOK 3 PAGE 106
DATE: 8/23/2018



N/F
RICHARD A LENS
RUTH C LENS
D.L. 2071 P.C. 501

N/F
JAMES A. RAUSEY
MARY L. RAUSEY
D.L. 3013 P.C. 2114

CRANE STREET (50' Public R/W)



LOCATION MAP

20' ALLEY

N/F
GONE C LANCE
GANE B LANCE ET AL
D.L. 3125 P.C. 2384

LOT 10
BLOCK 17
NORTH SHORES
N.B. 3 P.C. 75
N/F
SHAWAN HOLDINGS LLC
D.L. 6163 P.C. 1284

LOT 9
BLOCK 17
NORTH SHORES
N.B. 3 P.C. 75

3 1/2' HIGH
FRUIT BEARING ST.

NOTES:
POLLING AT 12 AND 14 MALLARD ST. WILL BE DOUBLING.
OCEAN SIDE SETBACKS TO BE DETERMINED
BY TOWN OF WILMINGTON BEACH.
THESE LINES ARE IN A DOTTED AREA, ACCORDING
TO COUNTY ZONING MAP. DATE: 8/23/2018
FLOOD ZONE LINES SHOWN ON THIS MAP
HAVE BEEN DERIVED FROM MNC DE.

CAPE FEAR SURVEYING, PC
ONE NORTH 66A ST., WILMINGTON, NC 28401
(910) 762-9496 FAX: (910) 762-5949
EMAIL: cfsurveying@capefearsurveying.com
LICENSE # C-5189

Attachment-2
Original Exhibit A & B Site Plan

EXHIBIT 'B'
EXISTING SITE & SETBACKS

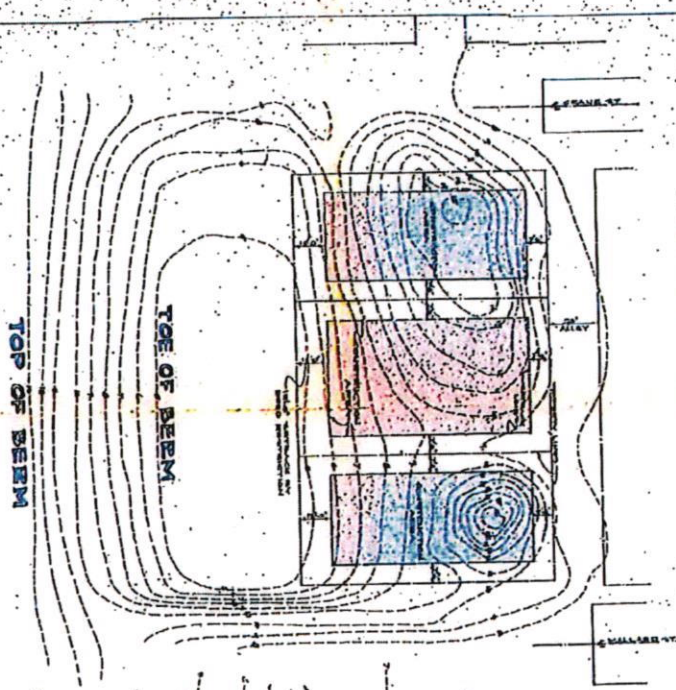
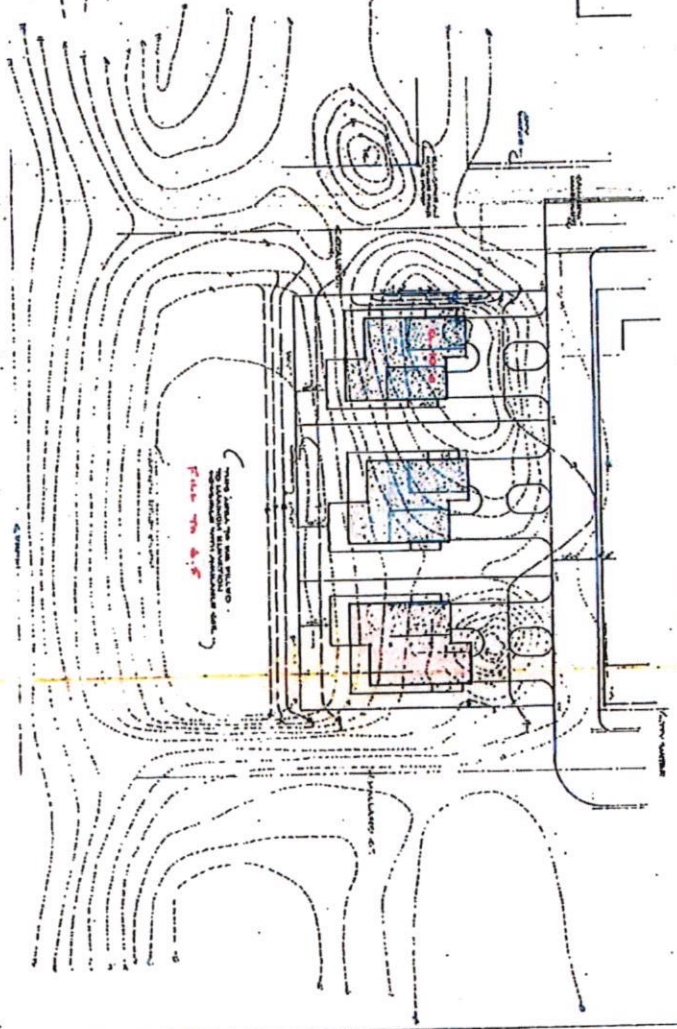


EXHIBIT 'A'
PROPOSED SITE DEVELOPMENT



THE BEACHWALKER TOWNHOUSES

ATLANTIC OCEAN

SITE PLAN

PROPOSED DEVELOPMENT OF 12 TOWNHOUSES
 1. 12 TOWNHOUSES
 2. 12 TOWNHOUSES
 3. 12 TOWNHOUSES
 4. 12 TOWNHOUSES
 5. 12 TOWNHOUSES
 6. 12 TOWNHOUSES
 7. 12 TOWNHOUSES
 8. 12 TOWNHOUSES
 9. 12 TOWNHOUSES
 10. 12 TOWNHOUSES
 11. 12 TOWNHOUSES
 12. 12 TOWNHOUSES

Attachment-3

Site Plan # 78-12-1 J.T.N. 12-19-78

Attachment-4

Zoning Approval for 10, 12, 14 -Mallard Street 5/27/1977



APPLI CATION FOR BUILDING PERMIT Date _____

TOWN OF WRIGHTSVILLE BEACH

TOWN HALL 400 WAYNICK BOULEVARD • P. O. BOX 626
WRIGHTSVILLE BEACH, N. C. 28480

Location: #10, #12, #14 MALLARD ST. Zone: R-2

Owner: V.M.I. ASSOCIATES P.# _____

Address ONE PIEDMONT CENTER, ATLANTA GEORGIA

Business Address _____ P.# _____

Contractor: MUIZZAY CONSTRUCTION COMPANY P.# _____

Address 3205 MARKET ST., KILMINGSTON, N.C.

Type of Structure: _____ Story _____ Roof _____ Pier ()

DESCRIPTION OF WORK: Erect (x) Alter () Repair () Demolish () # Piling ()

ERECT 3 DUPLEX BUILDINGS IN ACCORDANCE WITH PLANS.

State the intended use of the property: DUPLEX UNIT BUILDINGS.

COST OF CONSTRUCTION: \$80,000.00 PER DUPLEX BUILDING (FOR 3 BUILDINGS)

It is understood by the owner that the permit is conditioned on the property being used for the above stated intent and shall in NO way be used to circumvent the Codes and Zoning ordinances of the town of Wrightsville Beach NOR the N.C. State Building Code NOR the National Building Code .

OWNER OR REPRESENTATIVE: V.M.I. ASSOCIATES
BY J. Fred Murray II

Date May 27, 1977 Time needed for completion 1 YEAR

Attachment-5

Letter from J. Franklin Martin

Suite 502, One Piedmont Center
Atlanta, Georgia 30305

Mr. Robert W. Sawyer
Mayor, Town of Wrightsville Beach
Wrightsville Beach, North Carolina 28480

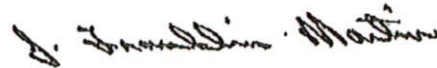
Dear Mayor Sawyer:

We respectfully request that the Board of Aldermen direct the Building Inspector to permit our development of the three ocean front lots between Crane and Mallard Streets in accordance with the attached plan, Exhibit A.

Exhibit B illustrates the buildable area of each lot, given the Town of Wrightsville Beach set back requirements and the twelve foot deed restriction front yard requirement. Exhibit B shows, we believe, that the proposed development does not contravene the Dunes Protection Ordinance for the following reasons:

- a) The contours are not protective in that they lie well behind the primary protective line of the berm and are detached hills rather than a true dune line.
- b) Neither hill is more than sixteen feet in height. They appear to be more significant in part because of the low area (5' MSL) between the lots and the berm.
- c) Without some alteration of these hills, it would be virtually impossible to build upon the lots.

Very truly yours,



J. Franklin Martin

JFM:vwv

CC: Wrightsville Beach Board of Aldermen
Mr. John Nesbitt, Building Inspector
Mr. John Newton, Town Attorney

Attachment-6

1974 Town Definition of Lot Frontage

Duplex. A building designed for or occupied exclusively by two families.

Dwelling, multi-family. A building or portion thereof used or designated as a residence for three or more families living independently of each other and doing their own cooking therein on a site of less than one acre. (See Group Housing Development.)

21 ^{Family} Group housing development. A group of two or more dwelling structures on a single property at least two acres not subdivided into the customary streets and lots and which will not be so subdivided, and designed for occupancy by separate families. Each dwelling structure shall consist of at least three residential units. Examples would be: Cluster-type subdivisions; row houses; apartment courts, and housing projects. A project constructed for unit-ownership as permitted by the North Carolina Unit-Ownership Act, when approved under the requirements for group housing development as set forth in the subdivision regulations of the town.

22 Guest home; tourist home. Any dwelling occupied by owner or operator in which rooms are rented for guests and for lodging of transients and travelers for compensation, where not more than four rooms are used for such purposes.

24 Home occupation. Any use conducted entirely within a dwelling and carried on by one or all of the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and no more than one person, not a resident of the premises, is employed in connection with the home occupation. Such occupation shall be carried on solely within the main dwelling and shall not occupy more than twenty-five percent of the floor area of the dwelling and provided further that no mechanical equipment is installed or used except such that is normally used for domestic or professional purposes.

25 Hotel and motel. A building designed for occupancy by transients and having five or more rooms or suites of rooms for rent to such transients.

28 Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to same.

29 Lot, corner. A lot or portion of a lot at the junction and abutting upon two or more streets.

30 Lot, depth of. The mean horizontal distance between the front and rear lot lines.

31 Lot frontage. The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontages.

32 Lot lines. The line bounding a lot as defined herein.

Attachment-7

Staff letter dated February 10, 2022



Planning and Inspections

TOWN OF WRIGHTSVILLE BEACH
PLANNING AND INSPECTIONS • 321 CAUSEWAY DRIVE • P.O. BOX 626
WRIGHTSVILLE BEACH, N.C. 28480 • 910-258-7937

February 10, 2022

High-Tide Design LLC
716 S Lumina Avenue
Wrightsville Beach, NC 28480

Re: 14 Mallard Street

Dear, Mr. Conley,

After further review of the site plan for 14 Mallard Street that you submitted for consideration in the CAMA permit process, the zoning setbacks show on the site drawing are incorrect. The front yard setback is 15 feet and it should be measured from the Crane Street right-of-way. The rear and side yards are 7.5 feet. Please see the attached ordinance language that led to this interpretation. A zoning compliance permit cannot be issued for the site as it is proposed.

This zoning interpretation can be appealed in accordance with the Wrightsville Beach Town Code, Chapter 155, Unified Development Code, Section 155.4.4. If you have any questions, I can be reached at 910-239-1746.

Best Regards,

Tony Willson, Director of Planning and Parks
Town of Wrightsville Beach

Attachments:

1. 155.4.4 Appeals, Variances and Interpretations



Attachment-8

List of Adjacent Property Owners

MARK AND LINDA SOUTHERLAND
106 MALLARD ST.
WEIGHTSVILLE BEACH, NC 28480



MARY LOUISE KAMISEY
7 DEANE ST.
WEIGHTSVILLE BEACH, NC 28480





Changes in Kattitude Properties
1083 Melkard St
Wrightsville Beach NC 28480



Stan + Maggie Tennant
12 A Melkard
Wrightsville Beach NC 28480



Gene Lang
12 Crane St
Wrightsville Beach NC 28480



Laura & Mark Featherland
123 McHenry
Wrightsville Beach NC 28480



8 Crane St UOA Inc
8 Crane St
Wrightsville Beach NC 28480



Lewis Richard A. Trustee
8 Mallard St
Wrightsville Beach NC 28480

James and Mary Ramsey
7 Crane St
Wrightsville Beach NC 28480



Sanman Holdings Inc
13 Sandpiper St
Wrightsville Beach NC 28480



John and Caroline Powell
10 Crane St
Wrightsville Beach NC 28480



Brown Linda Braswell
5 Crane St
Wrightsville Beach NC 28480



Attachment-9

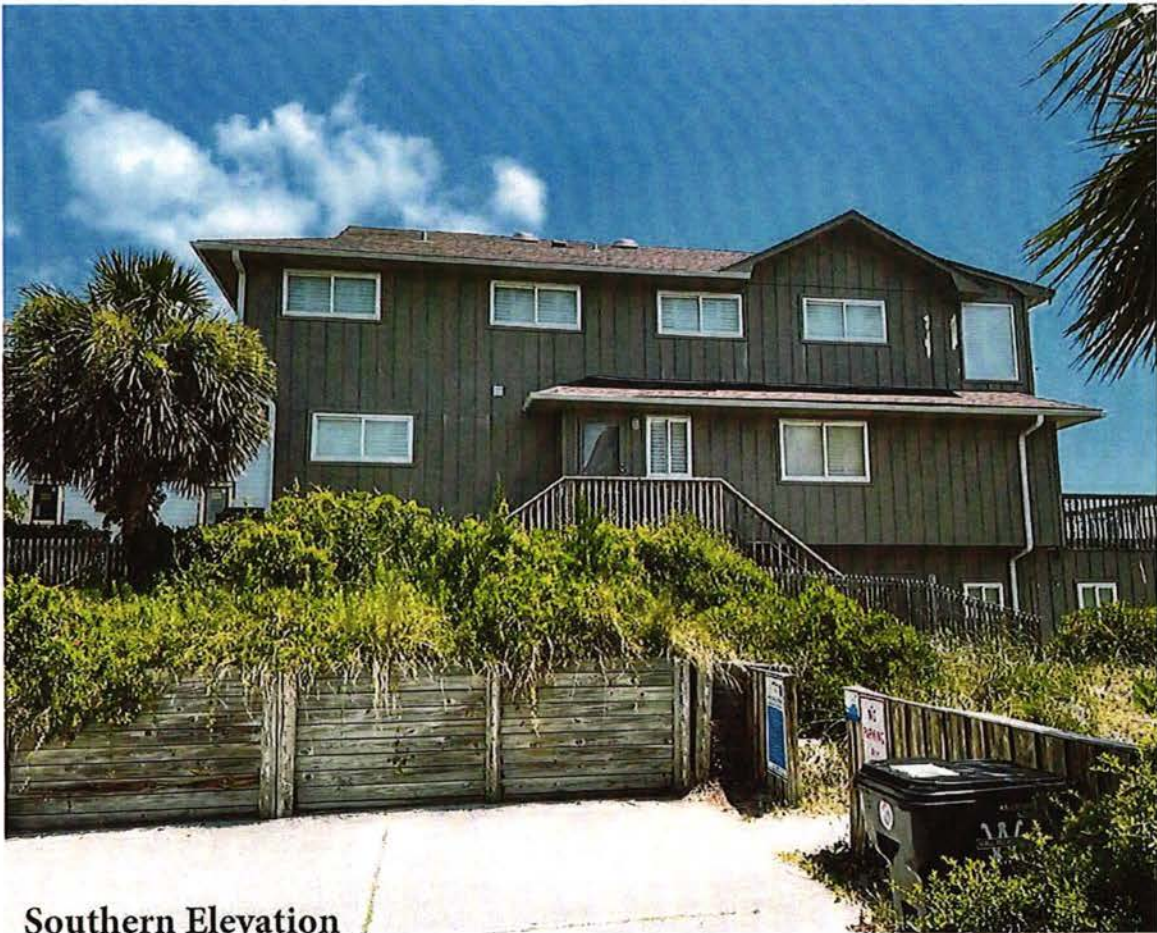
14 Mallard Street Site Photos



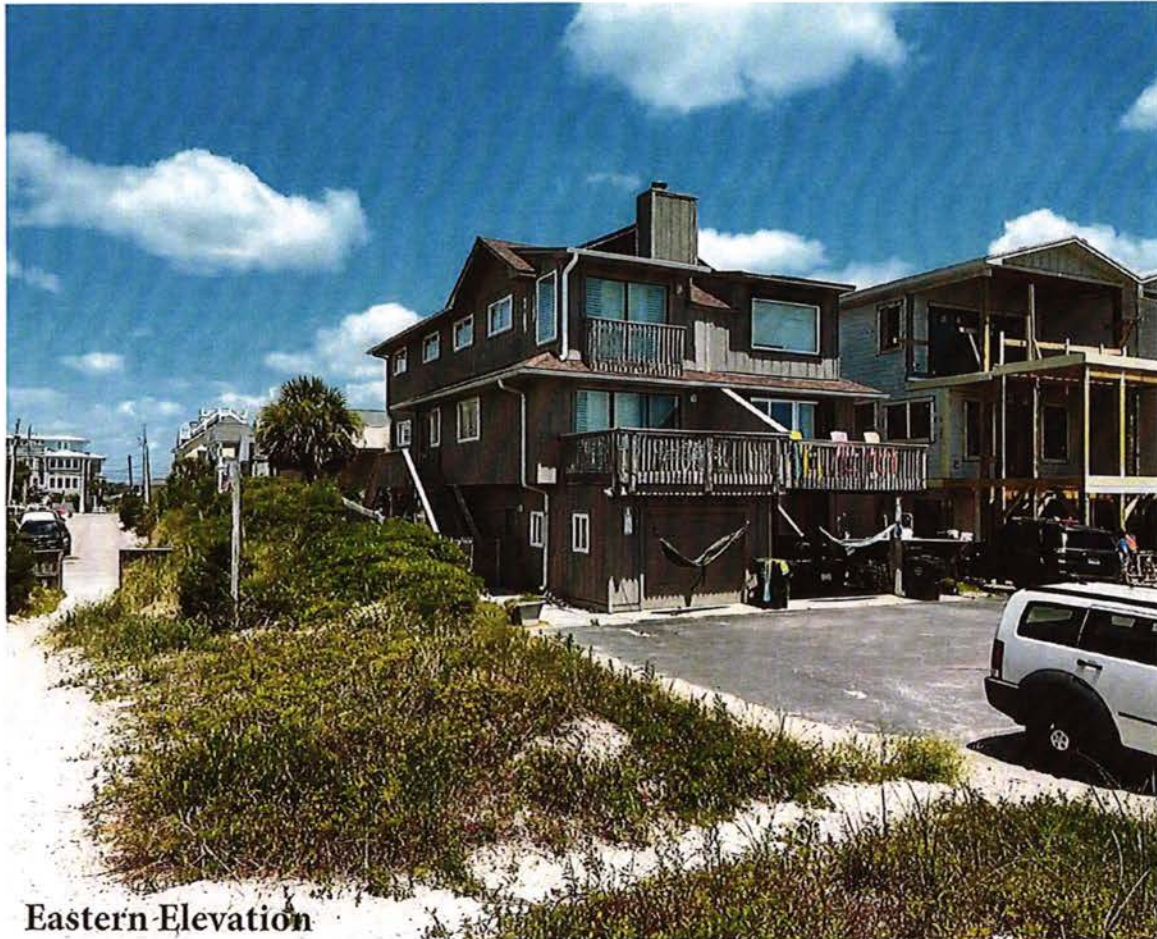
Western Elevation



Southwestern Corner



Southern Elevation



Eastern Elevation