

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

Memorandum

To: North Carolina Coastal Resource Commission
Fr: Mary L Lucasse, Esq.
Re: Legal Update to the Coastal Resources Commission **(CRC 23-06)**
Date: February 7, 2023

I. NORTH CAROLINA SUPREME COURT

Batson, Baldwin, and Batson/Baldwin Owners' Association v. CRC (Carteret Co.) Docket No. 94A22. The Commission appealed the Court of Appeal's decision based on Judge Tyson's dissent that would have held that no fees should have been awarded because the Commission's decision denying the Petitioners' request for a hearing was substantially justified. The matter is fully briefed, and we are waiting to hear the date for the oral argument.

II. NORTH CAROLINA COURT OF APPEALS

Henry Fonvielle v. CRC (New Hanover Co.) Docket No. COA 22-742. Petitioner Henry Fonvielle is appealing the superior court's order affirming the Commission's final agency decision denying his untimely request for a contested case hearing based on its determination that he was not entitled to notice as an adjacent riparian property owner. The matter is fully briefed. We are waiting to hear if and when the Court will hold an oral argument.

III. PETITIONS FOR JUDICIAL REVIEW

Petition for Rulemaking by Nelson G. Paul (22CVS5974) – Wake Co. Superior Ct. The Commission denied Mr. Paul's Request for Rulemaking to repeal 15A NCAC 07H .0205(e). Mr. Paul appealed the decision. The Commission filed the record with the superior court and filed its Memorandum in Opposition to the Petition for Judicial Review on August 31, 2022. The matter was heard on October 13, 2022. Judge Rozier affirmed the Commission's decision and denied the petition for judicial review based on his holding that as a matter of law: 1) The Commission's rule at 15A N.C. Admin. Code 07H .0205 provides the conditions under which mowing is exempt from the permit requirements under CAMA; 2) The rule describes the conditions under which the CAMA permit requirements become applicable, i.e., when any mowing extends into the agency's authorized jurisdiction to manage possible alterations to the Coastal Wetlands Area of Environmental Concern; 3) The rule complies with the inherent authority of the agency; and, 4) The rule provides notice to the public of what may be defined as the alteration of wetlands and the boundaries of unpermitted mowing. Petitioner did not appeal the decision to the NC Court of Appeal, and I will close my file.

Petitioners Clifton et. al. (22 CVS 1074) – Carteret Co. Superior Court. The Commission denied the request of several owners of a lot in the Beaufort Waterfront RV Park to appeal the permit issued to Collette Properties LLC & Beaufort Waterway RV Park to construct a dock on the waterfront by their lots. The Chair held that the property and contract claims raised by the Petitioners were not within DCM, CRC, or OAH’s jurisdiction to decide. The Petitioners have appealed the decision. However, they have reached a settlement with the permit holder on this and related issues that was brought in superior court. Petitioners’ counsel has requested a stay of the proceedings in the PJR in order to allow time to complete documents for that settlement. The Order to Stay the PJR was filed December 21, 2022. \

IV. OFFICE OF ADMINISTRATIVE HEARINGS (OAH)–None

V. VARIANCES–At your last meeting, the Commission granted the variance request from New Jack Partners, LLC subject to conditions. Attached is the final agency decision documenting your decision. I have also provided a summary of the variances considered by the Commission in 2022.

VI. REQUESTS BY THIRD PARTIES TO FILE CONTESTED CASES IN OAH: Attached is a summary of the TPHRs that were received by the Commission in 2022. Following is the status of the current requests:

William Few (CMT 22-12) submitted a request for a contested case hearing to challenge the issuance of CAMA Permit 10-22 based on a permit application, which included the Division of Water Resources Buffer Authorization Certificate DWR # 202-0572, dated June 24, 2022 , to build a storage/warehouse building in the protected buffer at 603 Isabella Ave, Washington Park, NC 27889. The Petitioner did not appeal this certificate and the time to do so has run. The Chair denied the request on the grounds that the Petitioner had failed to allege facts or make legal arguments to demonstrate that a contested case hearing would not be frivolous. Petitioner did not appeal. I will close my file.

Randy and Lynn Clifton, Dale and Karen Gokel, Dean Gokel, Gregory and Anne Gordon, David and Esther Jones, Earl and Rita Mangum, & James and Mona Moody (CMT 22-14) submitted a request for a contested case hearing to challenge CAMA Major Permit 72-10 issued to Collette Properties LLC & Beaufort waterway RV Park in Carteret County to construct a dock. The Chair’s denied the request finding that the property and contract claims raised by the Petitioners were not in DCM, CRC, or OAH’s jurisdiction. The decision was appealed. (See Petitions for Judicial Review above)

William Requarth (CMT 22-16) submitted a request for a contested case hearing to challenge CAMA Minor Permit No. OI22-33 to build a residence at 4826 W Beach Deive in Oak Island, NC on the grounds that the survey is incorrect. On December 5, 2022, the Chair denied the request based on the Petitioner’s failure to identify any rules that were violated by the permit application and given that his argument is based on claim that property line is incorrect on 2022 survey which is outside the Commission’s jurisdiction. Petitioner did not appeal. I will close my file.

Paula Hoffman (CMT 22-17) submitted a request for a contested case hearing to challenge CAMA Major Permit issued to build condos on a former boatyard in Carteret County. In summary, Ms. Hoffman seeks to challenge the permit on the grounds that improper notice was provided, her comments were not provided to the commenting agencies, the development will cause increased

flooding, and testing for lead should have been required. The Chair denied the petition because the Petitioner was not directly affected by the decision and based on Petitioner's failure to allege facts to demonstrate that CAMA or the Commission's rules were violated by the permit decision. Petitioner did not appeal. I will close my file.

David Whitaker (CMT 22-18) submitted a request for a contested case hearing to challenge a CAMA Permit issued for a bulkhead in Pender County. The Chair's denied the petition because the Petitioner failed to identify any sections of CAMA or the Commission's rules that were inconsistent with the permit. Any appeal of this denial must be filed in superior court by February 19, 2023.

VII PUBLIC RECORDS REQUEST: On March 3, 2022, DCM and the Commission received a second request for public records from the attorney representing Petitioner Henry Fonvielle for, among other things, documents relating to the use of the words "adjacent" and "adjoining." DCM has provided a rolling production of documents in response to this request.



JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

REPLY TO:
MARY L. LUCASSE
ENVIRONMENTAL DIVISION
(919)716-6962
MLUCASSE@NCDOJ.GOV

December 17, 2022

Electronically: icw@dhwlegal.com

I. Clark Wright, Jr., Esq.
Davis Hartman Wright, PLLC
209 Pollock Street
New Bern, NC 28560

**Re: Variance Request for Coastal Area Management Act Permit,
CRC-VR-22-05**

Dear Clark:

At its November 17, 2022 meeting, the Coastal Resources Commission granted Petitioner New Jack Property LLC's request for a variance with conditions. Attached is a copy of the final agency decision signed by the Chair of the Coastal Resources Commission. Thank you for agreeing to accept electronic service of this decision. Prior to undertaking the development for which a variance was sought, Petitioner must first obtain a CAMA permit from the Division of Coastal Management.

If for some reason Petitioner does not agree to the variance as issued, Petitioner may appeal the Coastal Resources Commission's decision by filing a petition for judicial review in the superior court as provided in N.C.G.S. § 150B-45 within thirty days after receiving the final agency decision. A copy of the judicial review petition must be served on the Coastal Resources Commission's agent for service of process at the following address:

William F. Lane, General Counsel
Dept. of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

If Petitioner files a petition for judicial review, please send me a copy at the email address listed in the letterhead. Let me know if you have any questions.

Sincerely,

Mary L. Lucasse
Special Deputy Attorney General and
Counsel for the Coastal Resources Commission

I. Clark Wright, Jr., Esq.

December 17, 2022

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cc: M. Renee Cahoon, Chair electronically
Christine A. Goebel, Esq. electronically
Braxton C. Davis, electronically
Angela Willis, electronically
Christine Bouffard, electronically

STATE OF NORTH CAROLINA)	BEFORE THE NORTH CAROLINA
)	COASTAL RESOURCES COMMISSION
COUNTY OF NEW HANOVER)	CRC-VR-22-05
)	
)	
IN THE MATTER OF:)	
PETITION FOR VARIANCE)	FINAL AGENCY DECISION
BY NEW JACK PARTNERS, LLC)	

On October 4, 2022, Petitioner New Jack Partners, LLC submitted a request for a variance from the North Carolina Coastal Resources Commission’s (“Commission”) rules at 15A N.C. Admin. Code 07H .0207(c) and 15A N.C. Admin. Code 07H .0208(a)(2)(G) and (b)(6)(G)(iii) to construct a community docking facility at its shoreline property located on Masonboro Sound in New Hanover County. Pursuant to N.C. Gen. Stat. § 113A-120.1 and 15A NCAC 7J .0700, et seq., this matter was heard on oral arguments and facts stipulated to by Petitioner and Respondent Department of Environmental Quality, Division of Coastal Management (“DCM”) at the regularly scheduled meeting of the Commission on November 17, 2022 in Beaufort, North Carolina. Assistant General Counsel Christine A. Goebel, Esq. appeared for Respondent DCM. Attorney I. Clark Wright, Jr. appeared for Petitioner.

When reviewing a petition for a variance, the Commission acts in a quasi-judicial capacity. *Riggings Homeowners, Inc. v. Coastal Resources Com’n*, 228 N.C. App. 630, 652, 747 S.E.2d 301, 314 (2013) (Commission has “judicial authority to rule on variance requests [] ‘reasonably necessary’ to accomplish the Commission’s statutory purpose.”); *see also Application of Rea Const. Co.*, 272 N.C. 715, 718, 158 S.E.2d 887, 890 (1968) (discussing the Board of Adjustment’s quasi-judicial role in allowing variances for permits not otherwise allowed by ordinance). In its role as judge, the Commission “balance[es] competing policy concerns under CAMA’s statutory framework.” *Riggings*, 228 N.C. App. at 649 n.6, 747 S.E.2d at 312.

Petitioner and Respondent DCM are the parties appearing before the Commission. The parties stipulated to facts and presented relevant documents to the Commission for its consideration. *See*, N.C. Admin. Code 15A 07J .0702(a). If before coming to the Commission the parties had been unable to reach agreement on the facts considered necessary to address the variance request, the matter would have been forwarded to the North Carolina Office of Administrative Hearings (“OAH”) for a full evidentiary hearing to determine the relevant facts. *Id.* 07J .0702(d). As in any court, the parties before the decision-maker are responsible for developing and presenting evidence on which a decision is made. If DCM and Petitioner had entered into other stipulated facts, it is possible that the Commission would have reached a different decision. In this case, the record on which the Commission’s final agency decision was made includes the parties’ stipulations of facts, the documents provided to the Commission, and the arguments of the parties.

FACTS STIPULATED TO BY PETITIONER AND DCM

1. Petitioner is New Jack Partners, LLC, a North Carolina Limited Liability Company organized in 2021. Nancy Grier is both the Registered Agent and a Member according to the Articles of Organization, a copy of which was provided to the Commission as a stipulated exhibit.
2. Petitioner acquired title to the relevant property by means of a General Warranty Deed, dated September 28, 2021, recorded in Book 6505, Page 533, New Hanover County Registry. The Property is further described as 4601 New Jack Road and 4607 New Jack Road, Wilmington, New Hanover County, NC (“The Property”). A copy of this deed was provided to the Commission as a Stipulated Exhibit.
3. On April 22, 2022, Petitioner transferred title to New Tract 1, shown as 1.059 acres

identified on a certain Plat Map entitled “Lot Recombination for New Jack Partners, LLC” by James A. Lewis, PLS, dated March 10, 2022 and recorded in Map Book 71, Page 227, New Hanover County Registry. The General Warranty Deed documenting the transfer of title to Property Company 3, LLC is dated April 22, 2022 and is recorded in Book 6565, Page 939, New Hanover County Registry. New Tract 1 was the northern-most area of the New Jack land. Copies of this recorded deed and the Lot Recombination Map were provided to the Commission as Stipulated Exhibits.

4. For the remainder of these Stipulated Facts, the term “The Property” shall refer to the remaining portions of the New Jack Landing Subdivision, which Petitioner is planning to subdivide into four lots, served by a single community pier and docking facility. The Property is bounded by Masonboro Sound to the east, which in this location is also the Atlantic Intracoastal Waterway (“AIWW”). The Property is also bounded by New Lot 1 to the north, New Jack Road to the west, and three properties to the south, including 4613 New Jack Road (Malpass), 4615 Serenity Point Road (Olatidoeye), 4619 Serenity Point Road (Wilson), 4623 Serenity Point Road (Shamp Family Trust), and 4627 Serenity Point Road (owned by Olatidoeye).

5. The Property is currently developed with a 2,657 square foot residence built in 1980, which is currently rented. The Property is also developed with an approximately 200-foot-long pier and dock facility with two boat slips. The current pier was developed pursuant to CAMA General Permit No. 60725D issued on September 13, 2012 and authorizing a 10-foot by 10-foot platform, an L-Head floating dock and a 117-foot-long pier as measured from the waterward extent of the wetlands (and 163-foot as measured from normal high water (NHW)). On August 6, 2015, a second slip with a lift was added to make it a two-slip pier through CAMA General Permit No.

64785D. Copies of these two permits were provided to the Commission as Stipulated Exhibits.

6. Petitioner intends to remove the existing residence, pier, and docks. After removal, Petitioner is planning to redevelop The Property with four residential home sites not included in this permit application. The subject of this permit application and variance is the proposed shared community pier and docking facility designed to accommodate four boats, with lifts, a gazebo and fifth slip for a kayak/canoe launch-loading/unloading area as depicted in the application materials discussed below.

7. The proposed project involves proposed development within the Estuarine Waters, Coastal Wetlands, Estuarine Shoreline and Public Trust Areas of Environmental Concern (“AEC”). There are Coastal Wetlands AECs along the shoreline, as seen in aerial photos provided to the Commission. Per N.C.G.S. § 113A-118, a CAMA permit is required for development proposed in an AEC.

8. The Public Trust waters of Masonboro Sound in the area of the proposed project are classified as Outstanding Resource Waters (SA-ORW) by the Environmental Management Commission and are designated as Primary Nursery Area (PNA) by the Marine Fisheries Commission. These waters are closed to the harvest of shellfish. There are no known SAV or shellfish beds within the footprint of Petitioner’s proposed community docking facility. The mean tidal amplitude as measured at the Wrightsville Beach tidal gauge is approximately 4 feet.

9. The shoreline of Masonboro Island, located to the east across Masonboro Sound and the AIWW from The Property, consists of a series of spoil islands and barrier islands, and is part of the North Carolina Coastal Reserve’s Masonboro Island Reserve. As it is part of the Reserve, development of this shoreline is limited. There are no piers or docks present along this

shoreline.

10. The shoreline of The Property is concave or cove-like in shape. The cove shoreline is shared by six riparian property owners north of The Property up to Sound View Road. Immediately south of The Property is a residential property known as the Serenity Point condominiums. Serenity Point is served by a community pier and eight slip docking facility. South of Serenity Point's pier are two additional piers as well as a spit of land where Channel Haven Road dead-ends. Aerial photographs depicting the cove area, including The Property, the properties to the north, and the Serenity Point community pier and docking facilities to the south (as well as the two additional piers to the south) were provided to the Commission as Stipulated Exhibits.

11. The current pier on The Property ends at a channel which follows the concave shoreline to the north and to the south of The Property. This channel is located landward of a sandbar shown on the project survey. DCM Field Representative Bryan Hall notes depths in the channel of two feet to three feet in his field report, and states "Vessels associated with these docking facilities [to the north of The Property] use the back channel to access the AIWW to the northeast. The southern extent of the back channel south of the existing docking facility at 4601 New Jack Road appears to have begun shoaling in and no longer provides vessel access to the AIWW, however it appears to be navigable at high tide." Mr. Hall's Field Investigation Report concludes by stating that "DCM recommends a bridged section approximately 170 linear feet waterward of the edge of the waterbody to preserve historical navigation. The proposed structures would accommodate up to five (5) vessels at this location within water depths of approximately - three to four feet relative to NLW. The nearest docking facility is approximately 70 feet to the

south. There are potential navigation impacts for canoes/kayaks without a bridged section over the historic back channel.”

12. The Serenity Point community pier and eight slip docking facility was permitted by DCM in 2014 pursuant to a Variance Order issued by the Commission to COBA Ventures, LLC on March 24, 2014. Facts found by the Commission in that Variance Order state that the 8-slip 4-finger community pier and docking facility extends approximately 315 feet, or approximately 72 feet beyond the $\frac{1}{4}$ width of Masonboro Sound. Fact 8 in the Variance Order notes that “Located within this cove is a natural channel, which restricts the location of the existing docking facilities along this cove to the edge of deep water.” A copy of the March 24, 2014 COBA Ventures, LLC Variance Order and the Coba Ventures Major Permit was provided to the Commission as a Stipulated Exhibit, as was the subsequently issued CAMA permit. The proposed community pier and docking facilities are proposed to be located within approximately 70 feet of the Serenity Point docking facility.

13. On the six parcels north of The Property to Sound View Road, there are five existing piers and one short, visibly damaged dock. Copies of permits for these piers were provided to the Commission as Stipulated Exhibits. The permitting details of these five properties and piers are:

- 175 Whipporwill Lane, owned by the McCormicks has a pier.
- 174 Sound View Drive, owned by the Edwards has a pier.
- 184 Sound View Drive, owned by the Browns has a pier.
- 185 Sound View Drive, also owned by the Browns, has a pier and a visibly damaged dock shown on the GIS photos
- 185 Sound View Drive, owned by the Soundview Property Owners Association, has a pier and boat ramp at the end of Sound View Drive.

14. Just north of the cove area and Sound View Road is an existing community pier and docking facility, with the address of 195 Sound View Road. This structure is owned by Jean-

Claude Corbi, of the Sound View Boat Owners Association, which manages this pier and docking facility on behalf of the owners of four lots in the Sound View subdivision. This community pier and docking facility extends eastward into the public trust waters of Masonboro Sound approximately 211 feet measured from edge of wetlands to waterward end of the pier (and approximately 300 feet as measured from normal high water NHW). This existing pier and dock are visible in aerial photographs provided to the Commission as Stipulated Exhibits. Mr. Corbi has written a letter dated July 28, 2022 describing this community pier and docking facility and stating that he does not oppose Petitioner's proposed community pier and docking facility. A copy of this permit was also provided to the Commission as a Stipulated Exhibit.

15. In furtherance of its redevelopment plans, Petitioner recorded a recombination plat of The Property, resulting a creation of a single parcel of land capable of being further subdivided into four new residential lots, each containing a single home site set back more than 50 feet from the shoreline. This plat, dated March 10, 2022, is recorded in Map Book 71, Page 227, New Hanover County Registry. A copy was provided to the Commission as a Stipulated Exhibit.

16. Attached as Stipulated Exhibits to the PowerPoint are a series of six Google Earth aerial photographs depicting The Property and surrounding areas as they existed on different dates, ranging from February 2, 1993 to September 2, 2021. These aerial photographs are attached to the October 4, 2022 Letter by Nancy Grier on behalf of, and as agent for, Petitioner.

17. Before a complete CAMA Major Permit application was submitted, on October 25, 2021, a Scoping Meeting was conducted. The following people/agencies were present: DCM, Division of Marine Fisheries, Wildlife Resources Commission, Division of Water Resources, Division of Energy, Minerals and Land Resources-Stormwater from the state and the Corps,

National Marine Fisheries Service. Immediately prior to this meeting, Petitioner's surveyor sent draft site plans. Many resource agency personnel participating in the zoom meeting were not able to view them. The plans show a proposed pier extending beyond the sand bar to reach deeper water and expanding the number of permitted slips from two to five to serve five subdivided lots. The discussion at the scoping meeting focused on Petitioner's plan for a longer pier over the channel and closer to the AIWW to create a community pier and docking facility to serve five subdivided lots. Representatives of DMF, WRC and DWR all raised concerns about what was the purpose and need for the longer pier as there was an existing pier on The Property. Mr. Hall recalls that Mr. Riggs suggested the idea of having the pier near the southern shoreline of The Property. DCM District Manager Tara MacPherson emailed Mr. Riggs on October 27, 2021 and stated "We have seen the water depths in the back channel and there appears to be sufficient water to support a docking facility. Any proposals to go out over it to the AIWW that exceed the ¼ width would have to be denied by rule and pursued by CRC Variance." A copy of Mr. Hall's scoping meeting notes was provided to the Commission as a Stipulated Exhibit, as is Ms. MacPherson's email.

18. During the Scoping Meeting, Petitioner's surveyor Charles Riggs presented the results of a hydrographic survey confirming the existence of a sand bar and water depths ranging from less than -1 to -2.3 feet NLW in the area near the existing pier and docks located on The Property, though it was not viewable by the Corps, NMFS and other resource agencies at that meeting. A copy of Petitioner's hydrographic survey contained in the CAMA Permit Application, which was provided to the Commission as a Stipulated Exhibit.

19. On or about February 9, 2022, Petitioner sent notice to adjacent riparian property owners of its intent to submit a CAMA permit application seeking approval for its proposed

community pier and docking facilities, including Mr. McCormick (Property Company 3, LLC to the north), Ms. Malpass, and four Serenity Point owners for 4615, 4619, 4623 and 4627 Serenity Point. In its notice letter, Petitioner included copies of the proposed subdivision plat and an aerial view of the cove overlain with a detailed drawing of the proposed community pier and docking facilities. Copies of the certified mail receipts and tracking information documenting delivery of such notices were provided to the Commission as a Stipulated Exhibit.

20. Adjacent Riparian Property Owner (north side) Property Company 3, LLC, owned and controlled by Mr. James McCormick, responded stating no objections to the proposed project and, in his amended riparian notice form dated February 26, 2022, waiving the 15-foot riparian setback between his property and The Property. A copy of this signed Adjacent Riparian Property Owner Notification/Waiver Form, dated February 26, 2022, was provided to the Commission as a Stipulated Exhibit.

21. Adjacent Riparian Property Owner (south side) COBA Ventures, LLC 4616 Serenity Point Road (containing the Serenity Point Community Docking Facility), acting through its representative Dr. Babatunde Olatidoye, submitted a form stating no objections and did not waive the 15-foot riparian setback. A copy of this signed Adjacent Riparian Property Owner Notification/Waiver Form, dated February 14, 2022, was provided to the Commission as a Stipulated Exhibit.

22. Property Owner (south side) 4615 Serenity Point Road, acting through its owner Dr. Babatunde Olatidoye, submitted a form stating no objections and not waiving the 15-foot riparian setback. (Petitioner notified this Property Owner due to its rights to the Serenity Point Community Docking Facility.) A copy of this signed Adjacent Riparian Property Owner

Notification/Waiver Form, dated February 14, 2022, was provided to the Commission as a Stipulated Exhibit.

23. Property Owner (south side) 4619 Serenity Point Road (Wilson) was notified by Petitioner due to its rights to use and enjoy the Serenity Point Community Docking Facility. No riparian notice form was returned by this property owner.

24. One person Mr. Jason Shamp of 4623 Serenity Point Lane (commenting as part of the Shamp Family Trust) submitted an objection to DCM. Mr. Shamp asked that the proposed community pier and docking facilities be located where the existing pier is located, expressed privacy concerns regarding visibility into his home, and expressed concerns regarding the small size of the drawing attached to his notice letter. A copy of Mr. Shamp's objection letter was provided to the Commission as a Stipulated Exhibit.

25. In response to Mr. Shamp's concerns regarding the size of the drawing, on March 19, 2022, Petitioner emailed Mr. Shamp multiple digital files of the project drawings, which could be enlarged.

26. Adjacent Riparian Property Owner (south side) 4627 Serenity Point Road, acting through its owner Dr. Babatunde Olatidoye, submitted a form stating no objections and not waiving the 15-foot riparian setback. A copy of this signed Adjacent Riparian Property Owner Notification/Waiver Form, dated February 14, 2022, was provided to the Commission as a Stipulated Exhibit.

27. On April 20, 2022, DCM Field Representative Bryan Hall signed a letter to Petitioner's Registered Agent/Member acknowledging receipt of a complete CAMA permit application on April 11, 2022. A copy of this letter, including the required notice sign to post, was

provided to the Commission as a Stipulated Exhibit.

28. According to Petitioner, the CAMA Notice Sign was posted on The Property on April 26, 2022. A photograph documenting the posting of this notice was provided to the Commission as a Stipulated Exhibit.

28. On April 25, 2022, notice of the proposed development was published in the Wilmington Star News.

29. Petitioner is proposing the removal of the existing two-slip dock and development of a new five-slip community dock, with one slip assigned to each of the four lots on The Property as well as a kayak launch slip. The proposal includes the development of:

- A 6-foot by 650-foot pier/walkway with 465 feet extending past normal high water
- A 6-foot by 86-foot fixed T-head
- Two 6-foot by 24-foot finger piers
- A 31-foot by 8-foot floating platform with a slip for loading and launching kayaks with a 4-foot by 8-foot ramp
- A 20-foot by 20-foot covered gazebo
- Four 12-foot by 12-foot boat lifts

30. Petitioner's proposed community pier and docking facilities do not extend into the AIWW channel or the AIWW 80-foot setback boundaries, as shown on an aerial photograph overlain with these lines, a copy of which was provided to the Commission as a Stipulated Exhibit.

31. Petitioner is proposing to increase the number of existing boat slips serving The Property from two to five (four plus the kayak launch slip), and adding motorized boat lifts, a gazebo and loading/unloading area. Each slip will be assigned to a single platted lot.

32. The water depths shown on the application materials are mostly -1.5 feet to -2 feet NLW by the proposed community pier and docking facility, including portions of the channel. The waterward end of the proposed community docking facility are at depths of -3 feet to -4 feet NLW.

33. A copy of Mr. Hall's Field Investigation Report dated April 20, 2022, which describes the site of the proposed development as well as the proposed project, was provided to the Commission as a Stipulated Exhibit. This Field Report was included with the permit application materials circulated to the commenting agencies. Regarding the channel, Mr. Hall recommends that the pier bridge over the existing navigable channel, though that was not proposed by Petitioner because Petitioner was not made aware of the recommendation at the time the application was submitted. On June 16, 2022, Petitioner committed to a bridge section of the pier to accommodate canoes and kayaks.

34. The proposed pier exceeds further than both the $\frac{1}{4}$ width and $\frac{1}{3}$ of the waterbody. Per 15A N.C. Admin. Code 07H .0208 (b)(6)(H) DCM Staff measured the width of the waterbody at the site of the proposed pier to be 1104 feet across and length of the proposed community pier and docking facility waterward of coastal wetlands to be 495.9 feet or 45 percent of the width of the waterbody at this location.

35. On June 6, 2022, Ms. Holly Snider, acting on behalf of the Division of Water Resources, issued a concurrence letter stating that no further authorization or approval was necessary from DWR for the proposed community pier and docking facilities. A copy of this concurrence letter was provided to the Commission as a Stipulated Exhibit.

36. Also on June 6, 2022, Ms. Kimberlee Harding, acting on behalf of the Division of Marine Fisheries, submitted comments on the proposed project. These comments raised concerns about blocking the existing channel for navigation and suggested adding a bridge component to any permitted pier to allow navigation through the channel. A copy of the WRC comments was provided to the Commission as a Stipulated Exhibit.

37. On June 7, 2022 Ms. Christine Hall, acting on behalf of the Division of Energy, Minerals, Land Resources, issued Post Construction Stormwater Management Permit No. SW8 220506 to Petitioner authorizing construction, operation, and maintenance of the built upon areas depicted on the plans and drawings submitted by Petitioner, which set a limit on Built Upon Area (BUA) for The Property to no more than 4,892 square feet. A copy of this permit was provided to the Commission as a Stipulated Exhibit.

38. On June 16, 2022, Ms. Maria Dunn, acting on behalf of the Wildlife Resources Commission, submitted comments on the proposed project. These comments recommended conditions be placed on a permit to prohibit construction during the winter to protect PNA resources, adding a bridge component to any permitted pier to allow navigation through the channel, and a legal document preventing other piers from being developed on The Property. A copy of the WRC comments was provided to the Commission as a Stipulated Exhibit.

39. All other reviewing agencies either had no comments or indicated no opposition to issuance of a CAMA permit for the community pier and docking facilities described in the CAMA Permit Application.

40. On June 24, 2022, Mr. James McCormick, owner of Property Company 3, LLC to the north of The Property prepared and signed a letter addressed to Nancy Grier, managing partner for Petitioner indicating his belief that: (1) “historically boaters to the north of your property do not head south in our channel to access the intracoastal;” (2) “there is a sandbar between our inside channel and the intracoastal which extends south which makes accessing the intracoastal to the south extremely challenging since it is very, very tidal;” and (3) “protecting the inside channel is extremely important to us because it is our primary route north, around the sandbar and into the

intracoastal; and it is our understanding your proposed footprint to the extreme southern end of your property boundary line will have no significant impact to the water flow or navigation into our channel.” Mr. McCormick then closed his letter by stating “I am in full support of your proposed plan.” DCM Staff have not been able to verify these signed but un-sworn statements made by Mr. McCormick, or to cross-examine him, so the parties did not stipulate to the truth of these statements.

41. Also on June 24, 2022, Petitioner’s Registered Agent and Member Ms. Nancy Grier addressed a letter to DCM attaching the McCormick letter. Ms. Grier stated that for two years Mr. McCormick has resided at 175 Whippoorwill Lane, immediately adjacent to the north of the NJP property, that she called Mr. McCormick and shared with him the contents of the comments provided to DCM by Kimberlee Harding (NCDMF) and Maria Dunn (NCWRC); that she then asked Mr. McCormick for assistance in addressing the navigation concerns raised in those agency comments; that she was attaching the June 24, 2022 letter written by Mr. McCormick; that her personal observations confirmed Mr. McCormick’s conclusions; asking that a copy of her letter and the McCormick letter be included in the Petitioner’s CAMA permit file; and affirming the willingness of Petitioner to design its proposed community pier and docks “such that typical canoes/kayaks can pass under in normal water conditions.” A copy of Ms. Grier’s letter was provided to the Commission as a Stipulated Exhibit.

42. On July 20, 2022, DCM Denied Petitioner’s CAMA Major Permit Application. A copy of DCM’s denial letter was provided to the Commission as a Stipulated Exhibit. The denial was based on the proposed project’s inconsistency with 15A N.C. Admin. Code 07H.0208(b)(6)(G)(iii) regarding pier lengths and 15A N.C. Admin. Code 07H.0208(a)(2)(G)

regarding jeopardizing the use of public trust waters for navigation or other public trust rights.

43. On August 2, 2022, Mr. Matt Conner, renter of the existing home located at 4607 New Jack Road on The Property since early spring of 2022, and prior to that frequent user of the waters in the cove area sent a letter addressed to the CRC stating that he is familiar with and regularly boats in the waters in and around the cove, that he has received copies of the plans for the proposed community pier and docking facilities, and that he has been informed that Petitioner will need a variance to construct the proposed facilities. Mr. Conner then states that he supports the variance request, that he has specific knowledge and information indicating no significant navigation impacts, that the historic inner channel “is very tidal and becomes very shallow at low tides,” that in his experience boats enter and exit the channel only from the north, and that the proposed facilities “will not impede access to the ICW or other deeper waterways, nor will it limit navigation on the ICW or the Historic Channel.” Mr. Conner closes his letter by stating that “by extending the New Jack dock out further, it will allow users to reach water depths needed at low tides to safely take boats out further, it will allow users to reach water depths needed at low tides to safely take boats in and out, preventing boats from running aground, and preventing damage to the bottom and marine resources living there especially at low tides.” A copy of this letter was provided to the Commission as a stipulated Exhibit. DCM Staff have not been able to verify these signed but un-sworn statements made by Mr. Conner, or to cross-examine him, so the parties did not stipulate to the truth of these statements.

44. On August 4, 2022, Mr. Coleman Robinson, Construction Coordinator for Mark Johnson Custom Homes, prepared and signed a letter addressed to the CRC supporting Petitioner’s Variance Request. In his letter, Mr. Robinson states that he is renting a boat slip at 4607 New Jack

Road and is very familiar with the Cove area surrounding the (existing) dock. He states in his letter he has seen the drawings, maps, and plans for the proposed “new Jack Dock” and supports the variance request, that he has specific knowledge and information indicating no significant navigation impacts, that the historic inner channel has a “sandbar in front of the existing dock, which in low tide is too shallow to come across. Boaters need to come from the north and hug the shoreline in order to get to the property without hitting bottom.” A copy of this letter was provided to the Commission as a Stipulated Exhibit. According to Ms. Grier, Mr. Robinson has rented portions of the house at 4607 New Jack since early spring of 2022. Ms. Grier also indicated that Mr. Robinson has informed her that he has been using the waters in the area for at least the past five years. DCM Staff have not been able to verify these signed but un-sworn statements made by Mr. Robinson or to cross-examine him. The parties did not stipulate to the truth of these statements.

45. On August 12, 2022, Licensed Merchant Mariner John Theodorakis prepared and signed a letter addressed to the CRC stating that he had reviewed the plans for Petitioner’s proposed community pier and docks, as well as information regarding water depths and aerial photographs, and that on that basis it is his opinion that these structures “should not obstruct navigation into or out of the historic channel at The Property or adversely affect navigation in the ICWW.” A copy of this letter was provided to the Commission as a Stipulated Exhibit. DCM Staff have not been able to verify these signed but un-sworn statements made by Mr. Theodorakis, or to cross-examine him, so the parties did not stipulate to the truth of these statements.

46. On November 4, 2022, Ms. Grier addressed a letter to the Commission and DCM Director Braxton Davis in which Ms. Grier, speaking on behalf of Petitioner states that Petitioner’s members relied on the statements made by Mr. Riggs and others that the proposed community pier

and docking facilities could be permitted under applicable CAMA rules. In her letter, Ms. Grier also states that Petitioner's members intend to record covenants governing the use of The Property in which all purchasers of lots within the New Jack Landing subdivision will be prohibited from constructing any individual piers or docks on such lots. The four Lots to be served by the community pier and docking facilities each will be assigned one slip and motorized lift, and all will have common use of the Gazebo, Kayak Launch and Day Dock. Petitioner contends that the proposed community pier and docking facilities are an integral part of Petitioner's efforts to assure the low impact character of The Property by assuring that lot purchasers will honor low impact requirements by using a single community pier and docking facility, and not building any individual piers and docks. A copy of Ms. Grier's letter was provided to the Commission as a Stipulated Exhibit. DCM Staff have not been able to verify these signed but un-sworn statements, or to cross-examine Ms. Grier, so the parties did not stipulate to the truth of these statements.

47. On November 3, 2022 Petitioner's surveyor Charles Riggs addressed a letter to the Commission and DCM Director Braxton Davis in which he describes his involvement in the New Jack Landing project, including his recommendation that the proposed community pier and docking facilities be located at the southern end of The Property, near the existing Serenity Point community pier and docks. In his letter, after describing his professional background and the background history of The Property, Mr. Riggs states that he informed Petitioner that, in his opinion, the areas around the existing pier and dock were too shallow and the channel too narrow to accommodate the proposed new community pier and docking facilities. Mr. Riggs also states that the first time he was able to review Mr. Hall's Field Investigation Report was June 13, 2022. The parties did not stipulate to the truth of these statements.

48. Petitioner solicited and received additional letters of support addressed to the Commission from: (i) Boat Captain Sam Cleary, Dockmaster at the Wrightsville Beach Marina; (ii) Mr. Charlie Smith, owner of Wilmington Marine Construction; and (iii) Captain Devin Anderson, owner of a boat docked nearby at Inlet Watch. All three stated that they were familiar with the cove area and that they support Petitioner's Variance Request. These letters were not provided to the Commission as Stipulated Exhibits; however, the fact that they support Petitioner's Variance Request is a Stipulated Fact.

49. A copy of an excerpt from the New Hanover County GIS map depicting the various properties located within the cove area was provided to the Commission as a Stipulated Exhibit for illustrative purposes.

50. On November 2, 2022, Petitioner's agent Nancy Grier wrote an email addressed to the Commission attaching an illustrated drawing by Architect Michael Kersting depicting a proposed layout of the four homesites and community pier and docking facilities. A copy of this email and attached drawing were provided to the Commission as a Stipulated Exhibit for illustrative purposes only.

51. Petitioner New Jack Partners, LLC stipulates that its proposed community pier and dock facilities as defined in its amended CAMA permit application are inconsistent with 15A N.C. Admin. Code 07H.0208(b)(6)(G)(iii) and 15A N.C. Admin. Code 07H.0208(a)(2)(G).

52. Notice of this Variance Request has been provided to the adjacent riparian property owners, and a copy was provided to the Commission as a Stipulated Exhibit attached. As of the time of mailout, no objections have been received by DCM/CRC in response to such notices. The Commission has not received any objections to the variance request.

53. Some nearby property owners have communicated in writing that they support the proposed project (Property Company 3, LLC – James McCormick to the north; Dr. Olatidoye on behalf of Serenity Point’s Association and individually to the south). In addition, the northern adjacent riparian property owner has waived the 15-foot riparian setback.

54. A PowerPoint presentative with vicinity map, aerial photographs, and copies of existing, permitted developments was provided to the Commission as a Stipulated Exhibit.

55. Petitioner is represented by attorney I. Clark Wright, Jr. of Davis Hartman Wright LLP, New Bern, North Carolina. The Division of Coastal Management is represented by DEQ Assistant General Counsel Christine Goebel.

EXHIBITS PROVIDED TO THE COMMISSION BY PETITIONER AND DCM

1. New Jack Partners, LLC Articles of Organization
2. Deed into New Jack Partners, LLC at 6505/533
3. Deed selling New Tract 1 to Property Company 3, LLC at 6565/939
4. New Jack recombination map at Map Book 71/227
5. Current Pier CAMA Permits #60725D (2012) and #64785D (2015)
6. 2014 COBA Ventures, LLC Variance Order and Major Permit with the 7-12-13 hydrographic survey
7. CAMA Permits for 175 Whipporwill Lane
8. CAMA Permit for 174 Sound View Drive
9. CAMA Permit for 184 Sound View Drive
10. CAMA Permit for 185 Sound View Drive
11. CAMA Permit for 185 Sound View Drive
12. Jean Claude Corbi Letter of 7-28-22
13. Preliminary plans dated 8-5-21 with piers at both existing location and new location
13. Mr. Hall’s scoping meeting notes
14. Ms. MacPherson’s email of 10-27-21
15. CAMA Major Permit application materials including Hydrographic Survey
16. Six Application Notice letters, mailing receipts and tracking information
17. McCormick signed ARO Notice/Waiver Form
18. COBA Ventures/Serenity Point Notice/Waiver Form from Dr. Olatidoye
19. Dr. Olatidoye Signed Notice/Waiver Forms for two properties (4627 and 4615)
20. Jason Shamp Objection Letter
21. Mr. Hall’s Complete Application Letter
22. Photograph of Posted Notice

23. Aerial showing Corps channel/setback lines
24. Mr. Hall's Field Investigation Report
25. DWR's 401 General Certification letter from Ms. Snyder
26. DMF's Comment letter from Ms. Harding
27. DEMLR's Comment stormwater permit from Ms. Hall
28. WRC's Comment letter from Ms. Dunn
29. McCormick letter of support dated 6-24-22
30. Ms. Grier's letter dated 6-24-22
31. DCM Permit Denial Letter dated 7-20-22
32. Connor letter of support, August 2022
33. Robinson's letter of support dated 8-4-22
34. Theodorakis letter of support dated 8-12-22
35. Ms. Grier's letter dated November 4, 2022 plus invoice
36. Surveyor Riggs' letter dated November 1, 2022
37. Ms. Grier's letter dated November 2, 2022 attaching illustrative site plan drawing
38. Variance Notice letters with certified mailing information
38. PowerPoint containing aerial, ground and historic Google Earth photos

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter.
2. All notices for the proceeding were adequate and proper.
3. Petitioner has met the requirements in N.C.G.S. § 113A-120.1(a) and 15 NCAC

07J .0703(f) which must be found before a variance can be granted as set forth below.

a. Strict application of the Commission's rules will cause unnecessary hardships.

The Commission affirmatively finds that strict application of the Commission's rules would cause Petitioner unnecessary hardship. The Commission's rules found at 15A N.C. Admin. Code 07H .0208(b)(6)(G)(iii) and .0208(a)(2)(G) and its management objective protecting the public's right to navigate and recreate in Public Trust Areas (found at 15A N.C. Admin. Code 07H .0207(c) are designed to ensure that development within the coastal shorelines does not impede navigation and that development is compatible with and does not harm the biological and physical functions of the shoreline system. Without the variance, Petitioner would not be able to build the

proposed community docking facility on The Property. Therefore, the strict application of this rule would cause Petitioner hardship.

Immediately south of The Property is Serenity Point condominium development, owned by COBA Ventures, LLC, which has an eight-slip community docking facility extending water ward approximately 315 feet into the navigable waters of Masonboro Sound. This distance exceeds the one quarter waterbody width limit contained in 15A N.C. Admin. Code 07J.0208(b)(6)(G). This community docking facility was permitted following the Commission's February 26, 2014 Final Agency Decision granting COBA Ventures, LLC's request for a variance. At the time it purchased The Property on or about October 22, 2021, New Jack Partners was aware that the Serenity Point eight-slip community docking facility had been permitted and built, and that there were two other existing pier/dock structures extending a similar distance water ward into the waters of Masonboro Sound. The Petitioner has agreed to prohibit individual piers and docks on The Property and limit riparian access on The Property to one community docking facility.

Prior to and after its purchase of The Property, New Jack Partners and its consultants/surveyor interacted with a number of local and state agencies who indicated support for the construction of the proposed community docking facility. Specifically, New Jack Partners received New Hanover County approval for its four-home site redevelopment plan; a plat depicting the four residential lots was recorded in Map Book 71 at Page 229, New Hanover County Registry. New Jack Partners also received LID stormwater authorizations from New Hanover County, as well as from North Carolina Division of Water Resources.

The Commission affirmatively finds that Petitioner has shown that the hardship caused by denying a permit for the proposed development is unnecessary insofar as the Commission can

protect navigation and the shoreline system through a condition on the variance allowing a community pier and prohibiting development of individual piers on the four lots which are planned for The Property. For these reasons, the Commission affirmatively finds that Petitioner has met the first factor without which a variance cannot be granted.

b. Petitioner has demonstrated that the hardship results from conditions peculiar to Petitioner's property.

The Commission affirmatively finds that Petitioner has demonstrated that the hardship results from conditions peculiar to the property. Specifically, The Property has an irregular concave shoreline. The Property is located at the southern end of the area's cove-like shoreline configuration. and the submerged lands located immediately in front of The Property have significantly silted in during the past decade. At lower tides, the silting limits the use of the existing pier and dock on The Property. Access to and from navigable waters outside the cove from The Property is reached by traveling north. Another condition peculiar to The Property is the presence of dredge spoil islands directly across from the location of the proposed community docking facilities which narrows the width of the water body. These spoil islands are unlikely to be developed with piers and docks.

The Commission affirmatively finds that Petitioner has shown that the hardship is caused by conditions peculiar to the property and that Petitioner has met the second factor without which a variance cannot be granted.

c. Petitioner has demonstrated that the hardship does not result from its actions.

The Commission affirmatively finds that Petitioner has demonstrated that the hardship does not result from actions taken by the Petitioner. Specifically, New Jack Partners is not responsible for the natural siltation and sand bar formation. Nor is New Jack Partners responsible for the

shoreline configuration and its impact on the application of the relevant CAMA use standards. For these reasons, the Commission affirmatively finds that Petitioner has demonstrated that it has met the third factor required for a variance.

- d. Petitioner has demonstrated that with the imposition of a condition limiting riparian access to a community dock, the proposed variance is consistent with the spirit, purpose, and intent of the Commission's rules, will secure public safety and welfare, and will preserve substantial justice.**

The Petitioner has demonstrated (a) that the requested variance is consistent with the spirit, purpose, and intent of the Commission's rules, (b) that it will secure public safety and welfare, and (c) that it will preserve substantial justice. The principal purposes of the Commission's quarter-width rule and rule protecting the use of public trust AECs is to limit impacts to navigation and to protect the coastal shoreline.

The Commission notes that Petitioner has agreed to include in recorded covenants for The Property a prohibition against the construction of individual piers and docks on any subdivision of The Property enforceable by DCM. In addition, Petitioner's design for the community pier includes a bridge allowing kayaks, canoes, and paddleboards to travel under the pier to protect navigation in the near shore area. The Commission also recognizes that the area across from the proposed pier is unlikely to be developed. As a result, it is likely that as contemplated by the quarter-width rule, half the water body will remain open to public trust uses. Petitioner has also agreed to limit impervious surface development to less than 12.5 percent. Based on the specific facts of this case, the Commission affirmatively finds that the proposed low density LID compliant subdivision served by a single community pier and docking facility is consistent with the spirit, purpose, and intent of applicable CAMA rules, use standards and statutory requirements.

The second assessment to be made is whether the variance proposed by the Petitioner will

impact public safety and welfare. Petitioner submits, and the Commission agrees that the proposed development, if granted a variance subject to the proposed conditions, will have no adverse effect on public safety and welfare.

Finally, the Commission agrees that a variance will preserve substantial justice by allowing a community docking facility in place of four individual piers or docks on the coastal shoreline of The Property.

For these reasons, the Commission affirmatively finds that Petitioner has met the fourth factor required by N.C.G.S. § 113A-120.1(a) as long as the proposed development is permitted to include the conditions set forth below.

ORDER

THEREFORE, the requested variance from 15A N.C. Admin. Code 07H. .0207(c) and .0208(a)(2)(G) and .0208(b)(6)(G(iii)) is GRANTED subject to the following CONDITIONS:

- (1) Before the CAMA permit is issued, the Petitioner shall provide DCM with an executed legally enforceable document preventing piers, other than the approved community docking facility, from being developed on The Property. DCM and Counsel for the Commission will be responsible for determining whether the document provided meets this condition.
- (2) The Petitioner shall record covenants governing the use of The Property and prohibiting future purchasers of lots created from The Property from constructing any individual piers or docks. The holder of that covenant shall be the State and will not be the future Homeowners Association. This covenant shall run with the land and be enforceable by DCM against all future owners of The Property or parts of The Property if it is subdivided.
- (3) The executed legally enforceable document referred to in section (1) above may be the recorded covenants referred to in section (2). DMC shall be provided an opportunity to

review the proposed language before the covenants are recorded and the covenant relating to this issue is only acceptable if it is approved by DCM.

- (3) The permit shall include conditions requested by the commenting resources agencies, including the Wildlife Resources Commission, such as the addition of a bridge section on the pier to accommodate canoes and kayaks.

The granting of this variance does not relieve Petitioner of the responsibility for obtaining any other required permits from the proper permitting authority. This variance is based upon the Stipulated Facts set forth above. The Commission reserves the right to reconsider the granting of this variance and to take any appropriate action should it be shown that any of the above Stipulated Facts is not true.

This the 17th day of December 2022.



M. Renee Cahoon Chair
Coastal Resources Commission

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing FINAL AGENCY DECISION upon the parties by the methods indicated below:

Method of Service

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This the 17th day of December, 2022.



Mary L. Lucasse
Special Deputy Attorney General and Commission Counsel
N.C. Department of Justice
P.O. Box 629
Raleigh, N. C. 27602

Summary of CAMA 3rd Party Hearing Requests – 2022

18 TPHRs filed on 17 separate permits in 8 Counties	Breakdown: 14 Denied / 0 Granted 4 Withdrawn	Appeal Only 1 PJR filed.
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<u>Case</u>	<u>Date</u>	<u>Petitioners</u>	<u>County</u>	<u>Granted</u>	<u>OAH/PJR</u>	<u>Summary of Issues</u>
22-01	Jan 12	Craig Mance	Dare	Withdrawn	No	The request was received before the permit was issued. The request was rejected and treated as an objection after notice to the Petitioner.
22-01 [sic]	Mar 15	Karen and Frank OSaben	Dare	Withdrawn	No	Same permit as above -challenge to elevated deck permit. Permit surrendered and TPHR withdrawn
22-02	Apr 6	Wendy Moll	Hyde	Denied	No	Request to challenge permit authorizing pier. Denied based on failure to allege facts to demonstrate permit inconsistent with riparian setback.
22-4	Apr 13	Kevin and Kendra Knoerschild (Attorney Steve Coggins)	Brunswick	Denied	No	Request to challenge Notice of Violation. Denial based on statutory language that only authorizes challenge to permit decision (as opposed to enforcement by DCM). In addition, challenge involved survey and any claim against surveyor not within jurisdiction of CRC, OAH, or DCM.
22-5	Apr 18	Chuck Jenkins	Onslow	Denied	No	Objection to minor permit for residence oceanfront setback. Denied for failure to allege facts to demonstrate permit is inconsistent with CAMA or the CRC's rules.

Summary of CAMA 3rd Party Hearing Requests – 2022

18 TPHRs filed on 17 separate permits in 8 Counties	Breakdown: 14 Denied / 0 Granted 4 Withdrawn	Appeal Only 1 PJR filed.
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22-06	Apr 24	Mark and Delaine Mead	Brunswick	Denied	No	Request to challenge permit for beach access constructed in street extension by Town based on oceanfront setback. Denied based on failure to allege facts to demonstrate that permit is inconsistent with CAMA or CRC's rules.
22-07	July 9	Richard McMillen	Dare	Denied	No	Request to challenge permit authorizing the relocation of a house. Denied based on failure to allege facts to demonstrate that permit is inconsistent with CAMA or CRC's rules.
22-08	July 25	Gregory Baccari	New Hanover	Denied	No	Request to challenge General Permit for installation of fixed kayak step down to existing pier in Whiskey Creek. Denied based on agreement and failure to demonstrate that permit is inconsistent with CAMA or CRC's rules.
22-09	Aug 2	Edward and Bianca Aniski	Dare-LPO	Denied	No	Request to challenge LPO's issuance of CAMA Minor permit authorizing construction of a house. Denied based on failure to demonstrate that permit is inconsistent with CAMA or CRC's rules.
22-10	Aug 15	William Stewart	Brunswick	Denied	No	Request to challenge LPO's issuance of CAMA Minor permit authorizing development in Ocean Hazard AEC – Oak Island setbacks. Denied based on failure to allege facts to demonstrate development was inconsistent with existing rule at time permit was issued.

Summary of CAMA 3rd Party Hearing Requests – 2022

18 TPHRs filed on 17 separate permits in 8 Counties	Breakdown: 14 Denied / 0 Granted 4 Withdrawn	Appeal Only 1 PJR filed.
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22-11	Sept 29	James Sanderson	New Hanover	Denied	No	Request to challenge permit authorizing marina. Chair denied the request on the grounds that neither the Commission nor OAH have jurisdiction to interpret or enforce the N.C. fire code, the handbook is not an enforceable rule, and the Petitioner failed to allege facts or make legal arguments that the permit was inconsistent with CAMA or the CRC's rules.
22-12	Oct 3	William Few (attorney)	Beaufort	Denied	No	Request to challenge CAMA permit authorizing construction of a building in the protected buffer as permitted by Division of Water Resources Buffer Authorization Certificate DWR # 202-0572. Request denied based on failure to allege facts demonstrating permit decision inconsistent with CAMA or the CRC's rules.
22-13	Oct 9	W. Carter and Janet younger, William and Jane Thorne, Marie Barresi, Herbert and Joyce Holmes, George and Ulrike Reynolds, Robert and Laurie Ross, Alice Hughes, & Leander and Elaine Wick (attorney Stanford Baird)	Dare	Withdrawn	No	Request to challenge CAMA Major Permit 113-21 issued to the Town of Duck to construct and install a vehicle beach access. Request withdrawn after DCM Staff explained what was authorized by the Permit.

Summary of CAMA 3rd Party Hearing Requests – 2022

18 TPHRs filed on 17 separate permits in 8 Counties	Breakdown: 14 Denied / 0 Granted 4 Withdrawn	Appeal Only 1 PJR filed.
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22-14	Oct 9	Randy and Lynn Clifton, Dale and Karen Gokel, Dean Gokel, Gregory and Anne Gordon, David and Esther Jones, Earl and Rita Mangum, & James and Mona Moody (Attorney Neil Whitford)	Carteret	Denied	PJR	Request to challenge that portion of CAMA Major Permit 72-10 issued to Collette Properties LLC & Beaufort Waterway RV Park in Carteret County authorizing construction of a dock. Denied on grounds the appeal is based on property and contract claims that are not within jurisdiction of DCM, OAH, or CRC.
22-15	Oct 16	Ewald and Janet Schulz	Brunswick	Withdrawn	No	Request to challenge permit authorizing boat lift. No rules cited
22-16	Nov 7	James Requarth	Brunswick	Denied	No	Request to challenge CAMA Minor Permit OI22-33 issued to construct a residence in Oak Island. Denied on grounds that DCM, CRC and OAH do not have jurisdiction over claims against licensed surveyor regarding accuracy of sealed survey.
22-17	Nov 28	Paula Hoffman	Carteret	Denied	No	Request to challenge CAMA Major Permit issued to build condos on a former boatyard. Denied on grounds that the Petitioner was not directly affected by the decision and failed to allege facts to demonstrate that CAMA or the Commission's rules were violated by the permit decision.
22-18	Dec 21	David Whitaker	Pender	Denied		Request to challenge CAMA Permit issued to construct a bulkhead. Denied on grounds no rules cited.

Variance Tally with Issues - 2022

Revised Dec 29, 2022

Case #	Petitioner	County	Heard at this Meeting	Commission's Decision	Appeal	Issue
21-05	Spogli Represented by Charles Baldwin, Esq.	Brunswick	Sept 2022	Denied	None	Bald Head Island – Oceanfront setback
22-01	PDL Beach Properties	Carteret	Withdrawn			Oceanfront setback
22-02	Town of Kure Beach	New Hanover	April 28, 2022	Granted with conditions	None	Oceanfront setback 15A NCAC 07H .0306(a)(2) 15A NCAC 07H .0308(c)(5)
22-03	Craig & Linda Farnsworth	Dare	Did not proceed			Requested variance from 113A-120(a)(8) and 15A NCAC 07H .0306(a)((1-5) & (9) to put roof over deck
22-04	Palm Cove HOA Todd Roessler, Esq.	Brunswick	June 8, 2022 (remote)	Granted with conditions	None	Sandbags 15A NCAC 07H .0308(a)(2)(L)
22-05	New Jack Partners I. Clark Wright, Esq.	New Hanover	Nov 15, 2022	Granted with conditions	None	Community pier instead of individual piers.
22-06	Town of Carolina Beach Noel Fox, Esq.	New Hanover	Feb 23			Construction of bathroom 15A NCAC 07H .0306(a)(9) & .0309(a)