Environmental Quality

PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant General Counsel

DATE: June 28, 2016 (for the July 12-13, 2016 CRC Meeting)

RE: **Variance Request by Mark A. Davenport (CRC-VR-16-02)**

Petitioner Mark A. Davenport ("Petitioner") owns a lot with his wife on the west end of the Town of Oak Island. The property is located within the Commission's Ocean Hazard Area of Environmental Concern ("AEC"). Since Petitioner purchased the property in 2013, the lot experienced acceleration in 2014, which necessitated the placement of a "supersized" sandbag structure in late-2014 and early-2015, and then the existing 3,000 square foot home was destroyed by fire on October 31, 2015.

On February 16, 2016, Petitioner filed a CAMA Minor Permit application in order to reconstruct a home of the same size and in the same location as the home lost to the fire. On March 8, 2016, the Town of Oak Island's Coastal Area Management Act ("CAMA") Local Permitting Officer ("LPO") denied Petitioner's CAMA Minor Permit application as it was inconsistent with the applicable setback rules, where the home would be almost entirely waterward of the current vegetation line. On May 24, 2016, Petitioner, though counsel, filed this variance petition in order to have the oceanfront setback rules varied so he could build a new home of the same size, and in the same location as the one lost in the fire, as proposed in his permit application.

The following additional information is attached to this memorandum:

Attachment A:	Relevant Rules
Attachment B:	Stipulated Facts
Attachment C:	Petitioner's Positions and Staff's Responses to Variance Criteria
Attachment D:	Petitioner's Variance Request Materials
Attachment E:	Stipulated Exhibits including powerpoint

cc(w/enc.): Meredith Jo Alcoke, Petitioner's Attorney, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Donna Coleman, Town of Oak Island CAMA LPO, electronically

RELEVANT STATUTES OR RULES **APPENDIX A**

15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. **Ocean hazard areas include beaches,** frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY

(a) The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, **the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them.** The value of each landform lies in the particular role it plays in affording protection to life and property. (The role of each landform is described in detail in Technical Appendix 2 in terms of the physical processes most important to each.) Overall, however, the energy dissipation and sand storage capacities of the landforms are most essential for the maintenance of the landforms' protective function.

15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

(a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

(b) **The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.**

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 60; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “2011 Long-Term Average Annual Shoreline Rate Update” and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory, or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net; and (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

(1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.

(2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.

(3) In no case shall a development line be created or established below the mean high water line.

(4) The setback distance shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;

(B) The total square footage of parking elevated above ground level; and

(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met: [none of these includes a residential structure]

***

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements

STIPULATED FACTS **ATTACHMENT B**

1. Petitioner Mark A. Davenport ("Petitioner") owned an oceanfront home and property at 6617 West Beach Drive (the "Lot") between 66th and 69th Place West in the Town of Oak Island ("Town"), Brunswick County, North Carolina. (Lot 13 and Part of 14, West Long Beach, Block 35, Brunswick County Registry). The Lot was platted in June of 1963.

2. Petitioner purchased the Lot on May 24, 2013, as evidenced by a deed recorded at Book 3410, Page 421 of the Brunswick County Registry, a copy of which is attached as a stipulated exhibit.

3. A photo provided by Petitioner and taken October 25, 2013, 5 months after Petitioner purchased the property, shows the beach in front of Petitioner's Lot and is attached as an exhibit. At the time Petitioner purchased the Lot, measurements were not taken or requested to locate the first line of stable and natural vegetation ("FLSNV") which existed at that time. However, measurements were taken in August of 2013 on the adjacent Golob property which showed that the waterward pilings supporting the Golob residence were located 68 feet from the FLSNV.

4. The Lot as platted is approximately 75 feet wide by 150 feet deep, for a total of 10,454 square feet (or .24 acres), as shown on a survey prepared by Licensed Professional Land Surveyor William W. Delaney II of Tide Water Land Surveying (the "Site Survey"), a copy of which is included as part of Petitioner's CAMA Minor Permit application. The topographical data was measured by the surveyor on December 29, 2015. The CAMA Minor Permit application including the Site Survey is attached as stipulated exhibits.

5. The elevation of the Lot in the area of the proposed residence is approximately 11-12 feet above MSL, as shown on the Site Survey.

6. The Lot is in Flood Zone VE (Elevations 17, 18, and 20) as shown on the Site Survey.

7. The Lot is in a developed area along the oceanfront, with existing residences on either side. The residence to the east was built in 2004, and the residence to the west was built in 2002.

8. The Lot is within the Ocean Erodible Area of Environmental Concern ("AEC"), a subcategory of the Ocean Hazard AEC designated by the Coastal Resources Commission ("CRC") in 15A NCAC 7H .0304. The Lot is not located within the Inlet Hazard AEC, but lies just east of the Inlet Hazard AEC for the Lockwood Folly Inlet.

9. N.C.G.S. § 113A-118 requires that a CAMA permit be obtained before any development takes place in an AEC.

Former Residence

10. Petitioner's 2-story home was built in 2005 and comprised approximately 3,000 square feet of heated residential space, 576 square feet of covered porch and 438 square feet of decking, based on the tax appraisal card, attached. The site also included a concrete driveway, a ground level storage room, and an outdoor shower. A photo of the former home is included in Petitioner's CAMA Minor Permit application, attached as a stipulated exhibit.

11. On October 31, 2015, the home was destroyed by fire and was considered a "total loss" by Petitioner's insurer. Photos of the fire and aftermath are attached as stipulated exhibits.

12. In November 2015, Petitioner demolished the remains of the home except for approximately 33 support pilings, which were cut down to approximately 1-2 feet in height.

Proposed Residence

13. Petitioner proposes to rebuild his home in the same footprint of the home destroyed. If Petitioner rebuilds in the same location, the oceanward side of the proposed residence will be located along the "average line of construction," which is the approximate line formed by the oceanward sides of the adjacent residences. Petitioner's enclosed area will be located almost exactly even with the enclosed area of the neighbor's house to the west (Lot 15 and P/O Lot 14 owned by Litz), and slightly landward of the enclosed area of the neighbor's house to the east (Lot 12 owned by Golob).

14. The proposed residence is a two story, 5-bedroom residence with a total floor area of 3,001 square feet as defined by 15A NCAC 7H .0306(a)(4). Petitioner also proposes 576 square feet of covered porches and 438 square feet of open decking- the same size as the former residence.

CAMA Permit Application

15. On February 16, 2016, Petitioner applied to the Town’s CAMA Local Permit Officer (LPO) for a CAMA minor development permit to rebuild a single family residence as described above.

16. As required, Petitioner sent notice of the application to the two adjacent riparian property owners and to the public through onsite posting. Neither of the adjacent owners objected to the proposed project, and no public comments were received.

17. On March 8, 2016, the Town’s CAMA LPO denied Petitioner's application as the proposed development does not comply with 15A NCAC 7H .0306(a) which prohibits construction of a single family residence seaward of the FLSNV. Petitioner's application was also denied under 15A NCAC 7H .0601 which states that no development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations or laws of the State of North Carolina or of local government in which the development takes place. The LPO found that the development would contravene the Town's Local Land Use Plan Policy 2.A.17 since it did not

meet the CRC's Ocean Hazard standards for development. A copy of the denial letter is attached as a stipulated exhibit.

Applicable Setback Rule

18. The CRC has adopted an erosion setback ("Erosion Setback") requirement that applies to development along the oceanfront. 15A NCAC 7H .0306(a).

19. The Erosion Setback is generally measured from the FLSNV. "This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and more stable upland areas. [It] is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment." 15A NCAC 7H .0305(a)(5).

20. The FLSNV on the Lot was staked by CAMA LPO Donna Coleman for this permit application. It is located diagonally across the back of the Lot, cutting across the driveway and back corners of where the former home was located. This FLSNV is depicted on Petitioner's Site Survey as "CAMA Line as Found Flagged on 12/29/2015."

21. Generally, structures measuring less than 5,000 square feet must be set back at a distance of 30 times the long-term annual erosion rate affecting the Lot from the FLSNV. 15A NCAC 07H .0306(a)(5)(A).

22. The average annual erosion rate for the Lot is 2 feet per year. Therefore, the Erosion Setback applicable to the Lot, for the 3,001 square foot total floor area, is 60 feet (30 years x 2 feet).

23. On Petitioner's Lot, the 60-foot setback from the FLSNV is located within the right-of-way of West Beach Drive.

24. There is no "building envelope" within the boundaries of the Lot once the Erosion Setback is applied to the lot, based on the December 2015 FLSNV call. Without a variance from the CRC, Petitioner's Lot is unbuildable for a residential structure based on the December 2015 FLSNV location.

Site Conditions

25. Beginning in early 2014, Petitioner's Lot was affected by accelerated erosion. DCM Field Representative Heather Coats visited the Lot on April 30, 2014, May 7, 2014 and May 16, 2014 during the accelerated erosion event. Over the span of those visits, her measurements from the escarpment to the two oceanward corner pilings were 40', 38' and 28' for the eastern corner and 35', 30', and 21' for the western corner. This demonstrates a rate of erosion of 12'-14' over this 16-day period. Ms. Coats took similar measurements for neighboring Golob property on April 17, 2014 and May 16, 2014, and found that the distance from the escarpment to the oceanward house pilings went from 47' to 30' and 42' to 25'. A copy of Ms. Coats' field notes is attached.

26. On May 21, 2014, Petitioner and three adjacent property owners were each issued a CAMA General Permit for the installation of sandbags measuring the standard 20 feet in width by 6 feet in height. The sandbags were installed by May 31, 2014.

27. The erosion continued and the sandbag structure was, at times, overtopped by the ocean. This overtopping caused scouring behind the sandbags and threatened the foundation piles of the homes.

28. On or about September 18, 2014, Petitioner and the adjacent neighbors jointly applied for a CAMA Major Permit seeking approval to install additional sandbags with a maximum width of 30 feet and a maximum elevation of 15.7 feet NAVD 88, protecting four homes for a distance of 250 linear feet. The permit was denied due to inconsistency with the CRC's rules governing size of sandbags in 15A NCAC 7H .0308.

29. Petitioner and the adjacent neighbors filed a variance petition and request for expedited hearing with the CRC and were heard during a November 12, 2014, special meeting of the CRC ("2014 Variance Request").

30. A key fact supporting the 2014 Variance Request was that the Town of Oak Island was pursuing a beach nourishment project on the west end of Oak Island that would place sand in front of the petitioners' lots.

31. The CRC granted the 2014 Variance Request with the condition that construction begin on the sandbags within 6 months. DCM issued the CAMA Major Permit November 21, 2014, and installation of the bags began soon thereafter. The larger sandbag structure was completed in January of 2015. A copy of the CRC's Variance Order is attached as a stipulated exhibit.

32. A photo taken December 6, 2014, shows the vegetation present in front of the last three houses by the inlet. An aerial photo taken by DCM on January 29, 2016, shows Petitioner's vacant Lot and other properties to the ease and west. Copies of these photos are attached as stipulated exhibits.

33. The Town of Oak Island received CAMA Major Permit No. 21-15 for the Lockwood Folly River Habitat Restoration Project which authorized the disposal of approximately 229,000 cubic yards of beach compatible material from the Eastern Channel and the Lockwood Folly River on the western end of Oak Island, including in front of Petitioner's Lot. This project took place in March and April of 2015. Sand was placed just oceanward of the sandbags protecting Petitioner's Lot but not behind the bags.

34. Separately, Petitioner and his adjacent neighbors purchased 7,000 cubic yards of beach compatible sand to build up the dune over and behind the bags, and to distribute under the four houses. The work was done by the dredging contractor doing the Habitat Restoration Project.

35. As shown on the Site Survey, this man-made dune measures approximately 16 feet MSL height at its crest.

36. Coastal Transplants is a Brunswick County company that has specialized in dune building and vegetation for almost two decades. Beginning in July 2015, Coastal Transplants installed sand fences and a natural mix of native dune grasses along the newly formed dune utilizing a long-term approach to dune management. The plantings included Sea Oats, Seashore Elder, Bitter Panicum, and American beachgrass.

37. At the time of the fire in October of 2015, the vegetation in front of Petitioner's Lot had been planted but was not sufficient to qualify as a FLSNV for purposes of the Erosion Setback rules.

38. After the fire destroyed Petitioner's home, Coastal Transplants shifted to a more aggressive approach to help re-establish a FLSNV that would allow Petitioner to re-build in the same footprint.

39. Coastal Transplants planted native dune species in July and October of 2015, and in January and April of 2016. Petitioner and his neighbors share the cost of having these plants fertilized twice a month and watered as needed. Coastal Transplants has planted 10,788 individual plants on Petitioner's lot as shown on the invoices attached as stipulated exhibits.

40. At the time of this request, Coastal Transplants is under an open contract with Petitioner to do whatever is required to establish a FLSVN for CAMA permit approval. Petitioner continues to work aggressively with his neighbors to protect and enhance the vegetation. See the recent ground level photos in the powerpoint, attached.

41. Since completion of the nourishment project in the spring of 2015, high-tide events such as the rare super moon high tides September 27, 2015, the side effects of Hurricane Joaquin in early October 2015, and the typical occurrence of winter storms, the ocean has not been observed overtopping the man-made dune.

42. As recently as May 2016, the sand had built up sufficiently around the sand fences that Petitioner and his neighbors were allowed by the LPO to move the sand fences seaward and add new plantings to the dune.

43. A photo taken at low tide on April 9, 2016, shows the beach at low tide approximately one year after the nourishment project. This photo is attached as a stipulated exhibit.

44. The vegetation continues to grow but still does not qualify as a FLSNV as of a December 29, 2015 visit by the LPO and a May 17, 2016 visit by a DCM staff person.

45. Petitioner stipulates that the proposed development is inconsistent with the applicable Erosion Setback rule.

Local Variance from Front Yard/Street Setback

46. The CRC's rules governing variance procedures require that "[b]efore filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot." 15A NCAC 7J .0701(a).

47. The Town has a front yard/building setback of 15 feet ("Town Setback"). Petitioner has not sought relief from the Town's Setback because even with a variance from the Town Setback, there would be no building envelope within the boundaries of the Lot for a residential structure, based on a 60-foot setback from the December 2015 FLSNV call.

48. Petitioner could locate the proposed residence further landward without the need to obtain a variance from the Town's Setback, but this would not make the Lot buildable for a residential structure, based on a 60-foot setback from the December 2015 FLSNV call. Petitioner proposes to rebuild in the same footprint as the house that burned down so that the new home, like the old home, will be along the average line of construction.

49. Petitioner seeks a variance from the Commission to construct the 3,001 square foot residence as proposed in his CAMA minor permit application, along with 576 square feet of covered porches and 438 square feet of open decking- the same size as the former residence.

50. Aerial and ground-level photographs of the Lot and the surrounding properties are attached as exhibits and as part of the powerpoint exhibit.

51. In this matter, the Division of Coastal Management is represented by Christine Goebel, Assistant General Counsel for DEQ. The Petitioner is represented by Meredith Jo Alcoke, Esq. of the New Bern firm of Ward and Smith, P.A.

Stipulated Exhibits

1. Davenport Deed recorded at Book 3410, Page 421 of the Brunswick County Registry
2. Petitioner’s October 25, 2013 photo of the Lot
3. CAMA Minor Permit Application, including Site Survey and photo of prior home
4. Appraisal Card from Brunswick County with as-built house sketch
5. Photos of the fire and of the destroyed residence
6. Notice of CAMA minor permit application and notice to adjacent riparian owners
7. March 8, 2016 CAMA permit denial letter
8. 2014 CRC Variance Order for larger sandbags
9. Petitioner’s December 6, 2014 photo of the Lot
10. DCM’s January 29, 2016 aerial photo of the area around the Lot
11. Invoices from Coastal Transplants to Petitioner
12. Petitioner’s April 9, 2016 photo of the Lot
13. Ms. Coats’ field notes for 2014 accelerated erosion
14. Powerpoint presentation

PETITIONERS' and STAFF'S POSITIONS **ATTACHMENT C**

I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.

Petitioners' Position: Yes.

Petitioner purchased his oceanfront home in 2013. At that time, the beach in front of his Lot was wide and had plenty of vegetation. The home was set back at least 60 feet from the first line of stable natural vegetation, and the Lot was "buildable."

Petitioner expected to enjoy the home with his wife and young children for many years to come. There was no way of knowing what the near future held for the property. Within a year of purchase, the Lot experienced significant accelerated erosion, which Petitioner addressed by installing two sets of sandbags. Then, the Town received a beach nourishment project that reversed the pattern of erosion and allowed Petitioner to build up a substantial vegetated dune to protect his home. As this dune-building continued, Petitioner's home was lost to a devastating fire on Halloween night while Petitioner and his family were out trick-or-treating.

Without a variance, Petitioner's property cannot be developed with a single family residence or any other habitable or economically viable structure. Unless a variance is granted, Petitioner can make no reasonable and significant use of his property. Strict application of Rule 15A NCAC 7H .0306 causes Petitioner unnecessary hardship in this case.

Staff's Position: No.

Petitioners seek a variance from the Commission's oceanfront setback rules, which prohibit development waterward of the First Line of Stable and Natural Vegetation (FLSNV) except in the limited cases of oceanfront piers providing public access and state-owned bridges. While there are some exceptions (15A NCAC 07H .0309) to the oceanfront erosion setback rules (60-feet landward from FLSNV in this case) that allow limited development within the setback area, the listed structures must be located landward of the FLSNV. However, the Commission's rules regarding the Ocean Hazard AEC acknowledge that shoreline erosion is part of the oceanfront system, and the intent of the rules is "minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development" (15A NCAC 07H .0303(b)).

Staff contend that while Petitioner faces a hardship by not being able to re-build a house similar to that lost in the fire, given the recent oceanfront erosion on the lot which caused the recent landward movement of the FLSNV and subsequently required the 2014-15 installation of "supersized sandbags through a variance from the CRC, the strict application of the Commission's oceanfront

setback rules does not cause Petitioner an *unnecessary* hardship. Petitioner has taken steps to address the erosion on his Lot, including receiving nourishment, paying to place additional sand on his lot, and planting vegetation. Baring additional erosion events at this location, the vegetation will have an opportunity to grow and may be sufficient to support a FLSNV determination that allows construction of a new house which meets a 60-foot setback on the lot. However, until the vegetation has time to recover enough to be part of a protective dune system, Staff contends that allowing Petitioner to build a new home waterward of the FLSNV would constitute inappropriately sited development.

II. Do such hardships result from conditions peculiar to the petitioner's property, such as location, size, or topography of the property? Explain.

Petitioners' Position: Yes.

The hardships result from the Lot's location along a limited stretch of beach that has experienced accelerated erosion that appears to be more severe than the erosion on properties to the east and west. The Lot is among approximately four lots that suffered disproportionately from the effects of storms and lunar tides beginning in early 2014. Petitioner recognizes that although his Lot is not within the Inlet Hazard AEC, it is still affected by nearby inlet forces. However, these forces appear to have affected Petitioner's Lot more severely than other properties on the west end of the island. Thus, the hardships result from the Lot's unique location within an area that experienced accelerated erosion greater than other properties on the west end of the island.

Staff's Position: No.

Staff agrees that the Lot is located in an area that experienced acceleration in 2014. However, it is the combination of the erosion event and the intervening event of the house fire which combine to cause Petitioner's hardship. This variance request is to waive oceanfront erosion setbacks on lot with a history of erosion in order to build a new house which is not only seaward of the setback, but also seaward of the FLSNV. Staff notes that the hardship of the shoreline erosion on the lot, and specifically that which has occurred since Petitioners' purchase of the lot in 2013, is not atypical for an ocean shoreline, especially those affected by nearby inlet forces, and is contemplated in the Commission's rules for the Ocean Hazard AECs. Staff identify no other peculiar conditions on the property which cause Petitioners' hardship.

III. Do the hardships result from the actions taken by the Petitioner? Explain.

Petitioners' Position: No.

Petitioner has taken no actions that caused the hardships. Petitioner has done everything possible to reverse the erosion that the Lot experienced after he purchased.

Staff's Position: No.

Staff agree that Petitioner did not cause the hardship of the erosion of the vegetation line and dune system on their lot.

IV. Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Petitioners' Position: Yes.

The variance will be consistent with **the spirit, purpose and intent** of the Commission's rules. The primary purpose of the ocean hazard rules is to protect life and property. 15A NCAC 7H .0303(a). Here, life and property will be protected by the substantial frontal dune and the recently nourished beach in front of the property. Petitioner is not seeking to rebuild a home taken by the ocean. His home was destroyed by fire. At the time of the fire, Petitioner had already made significant investments in rebuilding the dune by installing large sandbags, pushing sand over the dune, and planting the dune regularly. This frontal dune has continued to stabilize and will protect life and property as contemplated by the Commission's rules.

Public safety and welfare will be secured by this variance because the proposed development will have no adverse impact on the public's safe use of this beach.

Substantial justice will be preserved by this variance. This is not a situation where a person bought an unbuildable lot and is now looking for a handout. Petitioner bought a buildable lot that experienced accelerated erosion. He then spent a tremendous amount of money to install two sets of sandbags, to bring in beach compatible sand and build up the dune, and to plant and maintain native dune vegetation. In the midst of these efforts, his house burned down through no fault of his own. Petitioner now seeks simply to build back exactly what he had before in line with his neighbors. Justice will be preserved if he is allowed to rebuild his home.

For the reasons stated above, granting Petitioner the requested variance will be consistent with all four (4) of the criteria stated in N.C. Gen Stat. § 113A 120.1 and in NCAC 7J .0700. Accordingly, Petitioner respectfully requests that the Commission issue a variance in accordance the permit application.

Staff's Position: No.

Staff contends that granting a variance to the Petitioner in order to vary the Commission's oceanfront erosion setback rules so that Petitioner can build a new home waterward of the current location of the FLSNV is not consistent with the spirit, purpose, and intent of the Commission's rules. The Commission's rules have provided an oceanfront erosion setback since 1979 and since that time, while most structures have to meet a setback landward of the vegetation line (in this case, 60-feet), the Commission has made limited exceptions for some development to be sited within the setback (See the nine structures listed in 07H .0309). However, the Commission has strictly limited development waterward of the vegetation line, allowing only oceanfront piers providing public access and state-owned bridges (See 07H. 0309(d)). While Staff are sympathetic to Petitioner's unfortunate circumstances, Staff believes the Commission should strictly enforce the near-ban on development waterward of the vegetation line. In time, if the planted vegetation continues to grows to the point it can be considered "stable and natural" as the Commission's rules contemplate in the definition of a vegetation line at 07H .0305(a)(5), Petitioner may be able to meet the setback and rebuild.

Staff contends that granting a variance will not secure public safety and welfare. Allowing a new 3,000 square foot home waterward of the FLSNV will not secure public safety and welfare since the variance would be authorizing inappropriately sited development which can interfere with the public trust beach, be at greater risk for loss of property of the Petitioner, may become a cost to local government should the structure need to be removed from the beachfront, and may become a cost to the public in the form of future post-storm debris removal.

Finally, Staff contends that granting a variance would not preserve substantial justice where the Commission's rules already make several exceptions for development that does not have to meet the oceanfront erosion setback rule, but this variance would go further as an exception and allow new development on the public trust beach waterward of the vegetation line. Petitioner has taken steps in order to help stabilize the dune, re-growing vegetation and rebuilding elevation. Given time the FLSNV may re-establish and if so, the proposed development may meet the oceanfront setback and receive a CAMA permit.

ATTACHMENT D:

PETITIONERS' VARIANCE REQUEST MATERIALS

WARD AND SMITH, P.A.

MEREDITH JO ALCOKE, Attorney at Law

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

P: 252.672.5507
F: 252.572.5477
MJAlcoke@wardandsmith.com

May 24, 2016

Mr. Braxton Davis
Director, Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

RE: Petitioner Mark Adams Davenport
CAMA Variance Request Form
Our File 151381-00001

Dear Mr. Davis:

We represent Petitioner Mark Adams Davenport in his endeavor to obtain a variance to undertake the reconstruction of his home lost to fire in October 2015. In this regard and on his behalf, we are submitting the enclosed original Variance Petition together with supporting documents. We respectfully request that this variance request be scheduled for the July meeting of the Coastal Resources Commission in Beaufort, North Carolina. Petitioner has not sought relief from local setbacks restricting use of the property because doing so would be futile since there is no building envelope within the boundaries of the lot, and further because Petitioner proposes to rebuild his home in the exact same location. Please let us know if there is anything else you need from us to ensure this matter will be heard as requested.

Thank you for your consideration of this matter.

Yours truly,

Meredith Jo Alcoke

Meredith Jo Alcoke

ND: 4820-7950-1361, v. 1
Enclosures
cc: Mr. Mark Adams Davenport (w/encs.)
Attorney General's Office (w/encs.)
Eric J. Remington, Esq.

CAMA VARIANCE REQUEST FORM

DCM FORM 11
DCM FILE No.:_____

PETITIONER'S NAME Mark Adams Davenport

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Brunswick

Pursuant to N.C.G.S. § 113A-120.1 and 15A N.C.A.C. 07J .0700 *et seq.*, the above named Petitioner hereby applies to the Coastal Resources Commission (CRC) for a variance.

VARIANCE HEARING PROCEDURES

A variance petition will be considered by the CRC at a regularly scheduled meeting, heard in chronological order based upon the date of receipt of a complete petition. 15A N.C.A.C. 07J .0701(e). A complete variance petition, as described below, must be *received* by the Division of Coastal Management (DCM) a minimum of six (6) weeks in advance of the first day of a regularly scheduled CRC meeting to be eligible for consideration by the CRC at that meeting. 15A N.C.A.C. 07J .0701(e). The final set of stipulated facts must be agreed to at least four (4) weeks prior to the first day of a regularly scheduled meeting. 15A N.C.A.C. 07J .0701(e). The dates of CRC meetings can be found at DCM's website: **www.nccoastalmanagement.net**

If there are controverted facts that are significant in determining the propriety of a variance, or if the Commission determines that more facts are necessary, the facts will be determined in an administrative hearing. 15A N.C.A.C. 07J .0701(b).

VARIANCE CRITERIA

The petitioner has the burden of convincing the CRC that it meets the following criteria:

(a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.

(b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.

(c) Do the hardships result from actions taken by the petitioner? Explain.

(d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. *The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.*

For this variance request to be complete, the petitioner must provide the information listed below. The undersigned petitioner verifies that this variance request is complete and includes:

_X_ The name and location of the development as identified on the permit application;

_X_ A copy of the permit decision for the development in question;

_X_ A copy of the deed to the property on which the proposed development would be located;

_X_ A complete description of the proposed development including a site plan;

_X_ A stipulation that the proposed development is inconsistent with the rule at issue;

_X_ Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);

_NA_ Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;

_X_ Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;

_X_ A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.

_X_ This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

**Please contact DCM or the local permit officer for a full list of comments received on your permit application. Please note, for CAMA Major Permits, the complete permit file is kept in the DCM Morehead City Office.*

Due to the above information and pursuant to statute, the undersigned hereby requests a variance.

Meredith Jo Alcoke
Signature of Petitioner or Attorney

May 24, 2016
Date

Meredith Jo Alcoke
Printed Name of Petitioner or Attorney

mjalcoke@wardandsmith.com
Email address of Petitioner or Attorney

Post Office Box 867
Mailing Address

252.672.5400
Telephone Number of Petitioner or Attorney

New Bern, NC 28563-0867
City State Zip

252.672.5477
Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

This variance petition must be **received by** the Division of Coastal Management at least six (6) weeks before the first day of the regularly scheduled Commission meeting at which it is heard. A copy of this request must also be sent to the Attorney General's Office, Environmental Division. 15A N.C.A.C. 07J .0701(e).

Contact Information for DCM:

By mail, express mail or hand delivery:
Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By Fax:
(252) 247-3330

By Email:
Check DCM website for the email address of the current DCM Director
www.nccoastalmanagement.net
Revised: July 2014

Contact Information for Attorney General's Office:

By mail:
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By express mail:
Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Fax:
(919) 716-6767

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing CAMA VARIANCE REQUEST FORM by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail addressed to the following persons at the following addresses which are the last addresses known to me:

Mr. Braxton Davis
Director, Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

Attorney General's Office
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

This the 24th day of May, 2016.

Meredith Jo Alcoke
N.C. State Bar I.D. No.: 24090
email: mjalcoke@wardandsmith.com
For the firm of
Ward and Smith, P.A.
Post Office Box 867
New Bern, NC 28563-0867
Telephone: 252.672.5400
Facsimile: 252.672.5477
Attorneys for Petitioner Mark Adams Davenport

151381-00001
ND: 4832-8116-9201, v. 1

WARD AND SMITH, P.A.

MEREDITH JO ALCOKE, Attorney at Law

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

P: 252.672.5507
F: 252.572.5477
mjalcoke@wardandsmith.com

May 24, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Barry Golob
10820 Hob Nail Court
Potomac, MD 20845

RE: CAMA Variance Request by Mark Davenport
Our File 151391-00001

Dear Mr. Golob:

This is to notify you that Mark Davenport is applying for a variance from the North Carolina Coastal Resources Commission to allow construction of a single family residence on his property located at 6617 West Beach Drive, Oak Island, North Carolina. He intends to build a home of the same size and in the same footprint as the home that burned down last fall. The variance is projected to be heard at the July 12-13, 2016 meeting of the Coastal Resources Commission. If you wish to receive further information concerning the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management headquarters at 400 Commerce Avenue, Morehead City, North Carolina 28557. You may also contact the Division of Coastal Management at 252-808-2808.

Yours very truly,

Meredith Jo Alcoke
Attorney for Mark Davenport

ND: 4825-3981-3682, v. 1

WARD AND SMITH, P.A.

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

CERTIFIED MAIL

7015 3010 0000 7528 2188

neopost
05/24/2016
US POSTAGE
$06.47⁰

ZIP 28562
041L11225794

Mr. Barry Golob
10820 Hob Nail Court
Potomac, MD 20845

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CERTIFIED

RETURN RECEIPT REQUESTED

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

1684355

DCM- MHD CITY

RETURN RECEIPT REQUESTED

MAY 26 2016

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X ☐ Agent ☐ Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
1. Article Addressed to: Mr. Barry Golob 10820 Hob Nail Court Potomac, MD 20845	
9590 9401 0166 5234 8435 57	3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery Mail Mail Restricted Delivery
2. Article Number (Transfer from service label) 7015 3010 0000 7528 2188	
PS Form 3811, July 2015 PSN 7530-02-000-9053 151391.1 TOE/TSL	Domestic Return Receipt

RECEIVED

WT-199

WARD AND SMITH, P.A.

MEREDITH JO ALCOKE, Attorney at Law

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

P: 252.672.5507
F: 252.572.5477
mjalcoke@wardandsmith.com

May 24, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David Litz
10924 Sycamore Club Drive
Mint Hill, NC 28227

RE: CAMA Variance Request by Mark Davenport
Our File 151391-00001

Dear Mr. Litz:

This is to notify you that Mark Davenport is applying for a variance from the North Carolina Coastal Resources Commission to allow construction of a single family residence on his property located at 6617 West Beach Drive, Oak Island, North Carolina. He intends to build a home of the same size and in the same footprint as the home that burned down last fall. The variance is projected to be heard at the July 12-13, 2016 meeting of the Coastal Resources Commission. If you wish to receive further information concerning the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management headquarters at 400 Commerce Avenue, Morehead City, North Carolina 28557. You may also contact the Division of Coastal Management at 252-808-2808.

Yours very truly,

Meredith Jo Alcoke
Attorney for Mark Davenport

ND: 4820-5615-8002, v. 1

WARD AND SMITH, P.A.

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

7015 3010 0000 7528 2171

neopost
05/24/2016
US POSTAGE
$06.47
ZIP 28562
041L11225794

RECEIVED
MAY 26 2016
DCM- MHD CITY

Mr. David Litz
10924 Sycamore Club Drive
Mint Hill, NC 28227

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CERTIFIED

RETURN RECEIPT REQUESTED

CERTIFIED

RETURN RECEIPT REQUESTED

1684356

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. David Litz
10924 Sycamore club drive
Mint Hill, NC 28227

9590 9402 0266 5234 8435 64

2. Article Number (Transfer from service label)

7015 3010 0000 7528 2171

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☑ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

PETITIONER MEETS THE FOUR VARIANCE CRITERIA

I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.

Petitioner's Position: Yes.

Petitioner purchased his oceanfront home in 2013. At that time, the beach in front of his Lot was wide and had plenty of vegetation. The home was set back at least 60 feet from the first line of stable natural vegetation, and the Lot was "buildable."

Petitioner expected to enjoy the home with his wife and young children for many years to come. There was no way of knowing what the near future held for the property. Within a year of purchase, the Lot experienced significant accelerated erosion, which Petitioner addressed by installing two sets of sandbags. Then, the Town received a beach nourishment project that reversed the pattern of erosion and allowed Petitioner to build up a substantial vegetated dune to protect his home. As this dune-building continued, Petitioner's home was lost to a devastating fire on Halloween night while Petitioner and his family were out trick-or-treating.

Without a variance, Petitioner's property cannot be developed with a single family residence or any other habitable or economically viable structure. Unless a variance is granted, Petitioner can make no reasonable and significant use of his property. Strict application of Rule 15A NCAC 7H .0306 causes Petitioner unnecessary hardship in this case.

II. Do such hardships result from conditions peculiar to the petitioner's property, such as location, size, or topography of the property? Explain.

Petitioners' Position: Yes.

The hardships result from the Lot's location along a limited stretch of beach that has experienced accelerated erosion that appears to be more severe than the erosion on properties to the east and west. The Lot is among approximately four lots that suffered disproportionately from the effects of storms and lunar tides beginning in early 2014. Petitioner recognizes that although his Lot is not within the Inlet Hazard AEC, it is still affected by nearby inlet forces. However, these forces appear to have affected Petitioner's Lot more severely than other properties on the west end of the island. Thus, the hardships result from the Lot's unique location within an area that experienced accelerated erosion greater than other properties on the west end of the island.

III. Do the hardships result from the actions taken by the Petitioner? Explain.

Petitioner's Position: No.

Petitioner has taken no actions that caused the hardships . Petitioner has done everything possible to reverse the erosion that the Lot experienced after he purchased.

IV. Will the variance requested by the petitioner

(1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Petitioner's Position: Yes.

The variance will be consistent with **the spirit, purpose and intent** of the Commission's rules. The primary purpose of the ocean hazard rules is to protect life and property. 15A NCAC 7H .0303(a). Here, life and property will be protected by the substantial frontal dune and the recently nourished beach in front of the property. Petitioner is not seeking to rebuild a home taken by the ocean. His home was destroyed by fire. At the time of the fire, Petitioner had already made significant investments in rebuilding the dune by installing large sandbags, pushing sand over the dune, and planting the dune regularly. This frontal dune has continued to stabilize and will protect life and property as contemplated by the Commission's rules.

Public safety and welfare will be secured by this variance because the proposed development will have no adverse impact on the public's safe use of this beach.

Substantial justice will be preserved by this variance. This is not a situation where a person bought an unbuildable lot and is now looking for a handout. Petitioner bought a buildable lot that experienced accelerated erosion. He then spent a tremendous amount of money to install two sets of sandbags, to bring in beach compatible sand and build up the dune, and to plant and maintain native dune vegetation. In the midst of these efforts, his house burned down through no fault of his own. Petitioner now seeks simply to build back exactly what he had before in line with his neighbors. Justice will be preserved if he is allowed to rebuild his home.

For the reasons stated above, granting Petitioner the requested variance will be consistent with all four (4) of the criteria stated in N.C. Gen Stat. § 113A 120.1 and in NCAC 7J .0700. Accordingly, Petitioner respectfully requests that the Commission issue a variance in accordance the permit application.

ND: 4836-5657-1696, v. 4

ATTACHMENT E:

STIPULATED EXHIBITS INCLUDING POWERPOINT

B3410 P0421 05-24-2013 10:48:39.000
Brenda M. Clemmons PROF
Brunswick County, NC Register of Deeds page 1 of 3

This certifies that there are no delinquent ad valorem taxes, fees, assessments or other liens which the Brunswick County Tax Collector is charged with collecting, that are a lien on: Parcel Number 233NE033 as notated by the Brunswick County Assessor's Office. This is not a certification that the parcel number matches the deed description.

5-24-13 _____
Date (Asst) Tax Col. / Del. Tax Spec.

Brenda M. Clemmons Register of Deeds
05-24-2013 10:48:39.000 Brunswick County, NC
NC REVENUE STAMP: $1550.00 (#348973)

Pollock Pollock

Presenter _____ Rec'd LS
(3) Total 2.00 Rev 1550.00 .00
Ck $ 1552.00 Ck # 7756 Cash $ _____
Refund _____ Cash $ _____ Balance _____
☐ Portions of document are illegible due to condition of original
☐ Document contains seals verified by original instrument that cannot be reproduced or copied.

NORTH CAROLINA GENERAL WARRANTY DEED

The attorney preparing this instrument has made no record search or title examination as to the property herein described, unless the same is shown by his written and signed certificate.

Excise Tax: $1,550.00

Parcel Identifier No. 233NE033 Verified by _____ County on the ____ day of _____, 20____
By: _____

Mail/Box to: Pollock & Pollock, Attorneys at Law, PLLC, PO Drawer 999, Burgaw, NC 28425

This instrument was prepared by: Pollock & Pollock, Attorneys at Law, PLLC, PO Drawer 999, Burgaw, NC 28425
Brief description for the Index:

THIS DEED made this 16th day of May, 2013, by and between

GRANTOR	GRANTEE
Seth E. Barker **and wife,** **Diane E. Barker** **305 Winchester Creek Road** **Grasonville, MD 21638**	**Mark A. Davenport** **300 Carbonton Road** **Sanford, NC 27332**

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

This property is or X is not the primary residence of the Grantor.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Oak Island, Smithville Township, Brunswick County, North Carolina and more particularly described as follows:

Being all that certain tract or parcel of land located in the Town of Oak Island, Smithville Township, Brunswick County, North Carolina and being more fully described on Exhibit A attached hereto.

The property hereinabove described was acquired by Grantor by instrument recorded in Book _____, page _____.

A map showing the above described property is recorded in Map Book , Page .

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

(Entity Name) (SEAL)

By: Seth E. Barker

Title:

Seth E. Barker (SEAL)

By: Diane E. Barker

Title:

Diane E. Barker (SEAL)

By:

Title:

(SEAL)

SEAL-STAMP

VICKI L. MCHENRY NOTARY PUBLIC BRUNSWICK COUNTY, NC

State of North Carolina – County of Brunswick

I, Vicki L. McHenry, Notary Public of the County and State aforesaid, certify that Seth E. Barker and Diane E. Barker personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 20th day of May, 2013.

My Commission Expires: 3/29/15

Notary Public Vicki L. McHenry

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002
Printed by Agreement with the NC Bar Association – 1981 - Chicago Title Insurance Company

Exhibit A

In Brunswick County: All that certain tract or parcel of land situated in the Town of Oak Island, North Carolina, consisting of a portion of Lots 13 and 14, Block 135, and more particularly described as follows:

Beginning at a point where the Eastern line a parcel now or formerly owned by Madry intersects with the line of vegetation fronting the Atlantic Ocean, said point being located the following courses and distance from the Northeast corner of Lot 13: South 86-24-00 West 68 feet, along and with the southern right of way line of West Beach Drive, to a common corner with the parcel now or formerly owned by Madry: thence South 00-55-32 East 60.36 feet, more or less, along and with the line of vegetation fronting the Atlantic Ocean. THENCE FROM SAID POINT OF BEGINNING, so located North 00-55-32 West 60.36 feet, more or less, along and with the eastern line of the parcel now or formerly owned by Madry, to the southern right of way line of West Beach Drive; thence North 86-24-00 East 68 feet, along and with the southern right of way line of West Beach Drive, to the northeast corner of Lot 13; thence South 03-36-00 East 66.57 feet, more or less, along and with the common boundary between Lot 13 and Lot 12 to the line of vegetation fronting the Atlantic Ocean, to the POINT OF BEGINNING.

Being a portion of Lots 13 and 14, Block 135, as more particularly shown on a plat of survey for Steve and Rose Marie Rennekamp prepared by Robert B. McHenry, Sr., Registered Land Surveyor, dated February 15, 1990 recorded as an attachment to deed recorded in Book 798 Page 105.

Together with all right, title and interest if any, of the party of the first in and to any property lying between the line of vegetation fronting the Atlantic Ocean and the mean high water mark of the Atlantic Ocean, bounded on the East and West by the Eastern and Western lines of the subject property extended to the mean high water mark of the Atlantic Ocean.

Reference is made to the original plat of King's Lynn Subdivision recorded in Map Book 3 Page 113 to assist in locating the property.

Title is subject to an appurtenant easement recorded in Deed Book 1700, Page 303 granting a perpetual pedestrian access easement over the westernmost 8 feet of the tract in favor of Lot 18, Block 136R King's Lynn Subdivision.

SITE DRAWING/APPLICATION CHECKLIST

Please make sure your site drawing includes the following information required for a CAMA minor development permit. The Local Permit Officer will help you, if requested.

PHYSICAL DIMENSIONS

_____ Label roads
_____ Label highways right-of-ways
_____ Label local setback lines
_____ Label any and all structures and driveways currently existing on property
_____ Label adjacent waterbody

PHYSICAL CHARACTERISTICS

_____ Draw and label normal high water line (contact LPO for assistance)
_____ Draw location of on-site wastewater system

If you will be working in the ocean hazard area:
_____ Draw and label dune ridges (include spot elevations)
_____ Draw and label toe of dunes
_____ Identify and locate first line of stable vegetation (contact LPO for assistance)
_____ Draw and label erosion setback line (contact LPO for assistance)
_____ Draw and label topographical features (optional)

If you will be working in a coastal shoreline area:
_____ Show the roof overhang as a dotted line around the structure
_____ Draw and label landward limit of AEC
_____ Draw and label all wetland lines (contact LPO for assistance)
_____ Draw and label the 30-foot buffer line

DEVELOPMENT PLANS

_____ Draw and label all proposed structures
_____ Draw and label areas that will be disturbed and/or landscaped
_____ Note size of piling and depth to be placed in ground
_____ Draw and label all areas to be paved or graveled
_____ Show all areas to be disturbed
_____ Show landscaping

NOTE TO APPLICANT

Have you:

- completed all blanks and/or indicated if not applicable?
- notified and listed adjacent property owners?
- included your site drawing?
- signed and dated the application?
- enclosed the $100.00 fee?
- completed an AEC Hazard Notice, if necessary? (Must be signed by the property owner)

FOR STAFF USE

Site Notice Posted _____ Final Inspection _____ Fee Received _____

Site Inspections

_____ _____
_____ _____
_____ _____

Date of Action: Issued _____ Exempted _____ Denied _____ Appeal Deadline (20 days from permit action) _____

APPLICATION: _____ LOCALITY: _____

PERMIT ISSUED USING STATIC LINE EXCEPTION?
YES ☐ NO ☐

APPLICATION FOR

CAMA MINOR DEVELOPMENT PERMIT

In 1974, the North Carolina General Assembly passed the Coastal Area Management Act (CAMA) and set the stage for guiding development in fragile and productive areas that border the state's sounds and oceanfront. Along with requiring special care by those who build and develop, the General Assembly directed the Coastal Resources Commission (CRC) to implement clear regulations that minimize the burden on the applicant.

This application for a minor development permit under CAMA is part of the Commission's effort to meet the spirit and intent of the General Assembly. It has been designed to be straightforward and require no more time or effort than necessary from the applicant. Please go over this folder with the Local Permit Officer (LPO) for the locality in which you plan to build to be certain that you understand what information he or she needs before you apply.

Under CAMA regulations, the minor permit is to be issued within 25 days once a complete application is in hand. Often less time is needed if the project is simple. The process generally takes about 18 days. You can speed the approval process by making certain that your application is complete and signed, that your drawing meets the specifications given inside and that your application fee is attached.

Other permits are sometimes required for development in the coastal area. While these are not CAMA-related, we urge you to check with the Local Permit Officer to determine which of these you may need. A list is included on page two of this folder.

We appreciate your cooperation with the North Carolina Coastal Management Program and your willingness to build in a way that protects the resources of our beautiful and productive coast.

Coastal Resources Commission
Division of Coastal Management

DCM Form EB1952-2010/Revised April 2010

Locality _____ Permit Number _____

Ocean Hazard _____ Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline _____ Other _____

(For official use only)

GENERAL INFORMATION

LAND OWNER

Name Mark Davenport

Address 300 Carbonton rd

City Sanford State nc Zip 27330 Phone 919-708-8814

Email markdavenport@windstream.net

AUTHORIZED AGENT

Name _____

Address _____

City _____ State _____ Zip _____ Phone _____

Email _____

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 6617 West Beach DR, Oak Island NC

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Rebuild home on same footprint

SIZE OF LOT/PARCEL: 10454 square feet .24 acres

PROPOSED USE: Residential ☑ (Single-family ☒ Multi-family ☐) Commercial/Industrial ☐ Other ☐

COMPLETE EITHER (1) OR (2) BELOW (*Contact your Local Permit Officer if you are not sure which AEC applies to your property*):

(1) OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE: 3001 square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: ____ square feet (includes the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?

YES ☐ NO ☒

If yes, list the total built upon area/impervious surface allowed for your lot or parcel: _____ square feet.

OTHER PERMITS MAY BE REQUIRED: The activity you are planning may require permits other than the CAMA minor development permit, including, but not limited to: Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others. Check with your Local Permit Officer for more information.

STATEMENT OF OWNERSHIP:

I, the undersigned, an applicant for a CAMA minor development permit, being either the owner of property in an AEC or a person authorized to act as an agent for purposes of applying for a CAMA minor development permit, certify that the person listed as landowner on this application has a significant interest in the real property described therein. This interest can be described as: (check one)

☑ an owner or record title, Title is vested in MARK DAVENPORT, see Deed Book 3410 page 0421 in the brunswick County Registry of Deeds.

☐ an owner by virtue of inheritance. Applicant is an heir to the estate of _____; probate was in _____ County.

☐ If other interest, such as written contract or lease, explain below or use a separate sheet & attach to this application.

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

I furthermore certify that the following persons are owners of properties adjoining this property. I affirm that I have given **ACTUAL NOTICE** to each of them concerning my intent to develop this property and to apply for a CAMA permit.

	(Name)	(Address)
(1)	Barry Golob	10820 Hob Nail court, Potomac, Maryland 20845
(2)	David Litz	10924 Sycamore Club Dr, Mint Hill NC 28227
(3)		
(4)		

ACKNOWLEDGEMENTS:

I, the undersigned, acknowledge that the land owner is aware that the proposed development is planned for an area which may be susceptible to erosion and/or flooding. I acknowledge that the Local Permit Officer has explained to me the particular hazard problems associated with this lot. This explanation was accompanied by recommendations concerning stabilization and floodproofing techniques.

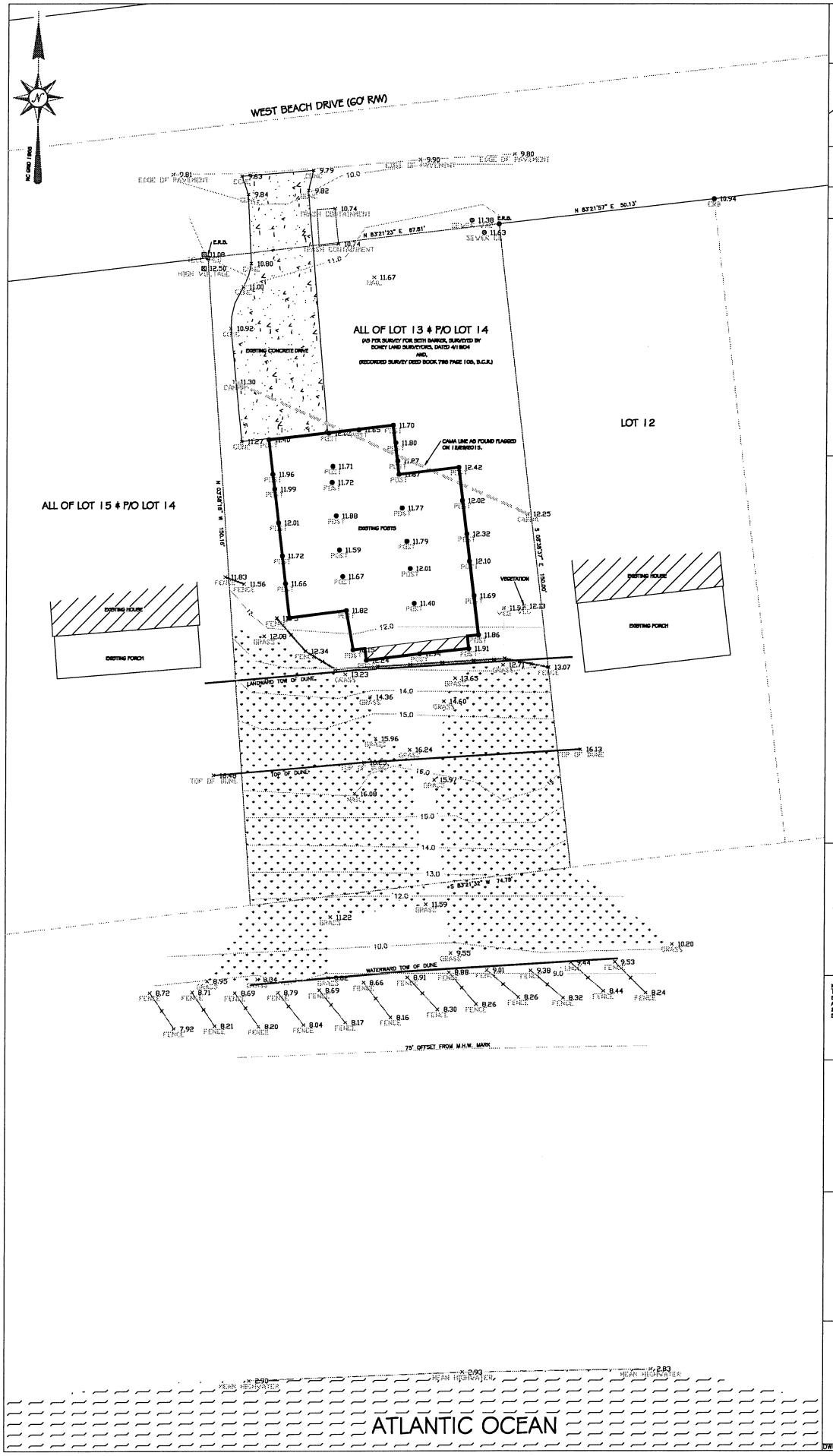
I furthermore certify that I am authorized to grant, and do in fact grant, permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

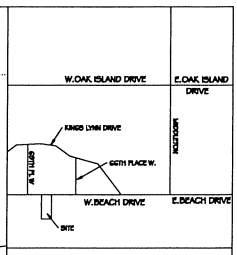
This the Feb day of 10, 2016

Mark A. Davenport

Landowner or person authorized to act as his/her agent for purpose of filing a CAMA permit application

This application includes: *general information (this form), a site drawing as described on the back of this application, the ownership statement, the Ocean Hazard AEC Notice where necessary, a check for $100.00 made payable to the locality, and any information as may be provided orally by the applicant. The details of the application as described by these sources are incorporated without reference in any permit which may be issued. Deviation from these details will constitute a violation of any permit. Any person developing in an AEC without permit is subject to civil, criminal and administrative action.*





VICINITY MAP – NOT TO SCALE

PLAT SCALE: 1" = 10'

0' 10' 27' 30'

NORTH CAROLINA

BRUNSWICK COUNTY

I, WILLIAM W. DELANEY II, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 3410 ON PAGE 421 IN THE BRUNSWICK COUNTY REGISTER OF DEEDS OFFICE); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK ON PAGE ; THAT THE RATIO OF PRECISION AS CALCULATED BY COMPUTER IS 1:10,000+ THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS _____ DAY OF _____ 20____.

_____

PROFESSIONAL LAND SURVEYOR L-2973

NORTH CAROLINA

BRUNSWICK COUNTY

I, A NOTARY PUBLIC OF BRUNSWICK COUNTY, NORTH CAROLINA CERTIFY THAT WILLIAM W. DELANEY II, P.L.S. PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT.

WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS _____ DAY OF _____ 20____.

MY COMMISSION EXPIRES _____

_____

NOTARY PUBLIC

NOTES:
1. THE LAND SHOWN ON THIS PLAT IS IN FLOOD ZONES VE (EL. 17), VE (EL. 18), VE (EL. 20), ACCORDING TO FIRM MAP #37120205J00J, DATED 06/02/2006.
2. TOPOGRAPHICAL SURVEY DATE: 12/29/2015.
3. PLAT SCALE: 1" = 10'.
4. E.R.B. = EXISTING RE-BAR.
5. I.S.S. = IRON STAKE SET.
6. E.O.P. = EDGE OF PAVEMENT.

NOTES:
1. THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAY, COVENANTS, RESTRICTIONS, AND CONDITIONS OF RECORD AFFECTING SAID PREMISES.
2. A TITLE SEARCH WAS NOT PERFORMED ON THE PARCELS SHOWN. THIS PLAT IS NOT A GUARANTEE OF TITLE.

Surveyed and Mapped By

Tide Water
Land Surveying

802 North Howe Street
P.O. Box 11506
Southport, North Carolina 28461
Phone: 910-457-9580

6617 W. BEACH DRIVE

PARCEL ID # 233NE033

WEST LONG BEACH
BLOCK 135
LOT 13 and P/O 14

TOPOGRAPHICAL SURVEY FOR:

Mark
A.
Davenport

TOWN OF OAK ISLAND
SMITHVILLE TOWNSHIP
BRUNSWICK COUNTY
STATE OF NORTH CAROLINA
DRAWN BY: MARYBETH WATKINS

DWG:6617WBEACHDR CRD:6815WBEACHELEVATION

Davenport, Mark

From: Davenport, Mark
Sent: Friday, February 05, 2016 4:13 PM
To: Davenport, Mark
Subject: picture

http://www.neighborcity.com/property/6617-Beach-Dr-West-Oak-Island-NC-28465-656042-7824015/

3,000 Heated Sq. Feet

Water Side


on pilings
elevated
to meet
flood
standard
West Beach

AEC HAZARD NOTICE

Project Is In An: ✓ Ocean Erodible Area ✓ High Hazard Flood Area ____ Inlet Hazard Area

Property Owner: MARK DAVENPORT

Property Address: 6617 West Beach Dr. Oak Island NC

Date Lot Was Platted: June 1963

This notice is intended to make you, the applicant, aware of the special risks and conditions associated with development in this area, which is subject to natural hazards such as storms, erosion and currents. The rules of the Coastal Resources Commission require that you receive an AEC Hazard Notice and acknowledge that notice in writing before a permit for development can be issued.

The Commission's rules on building standards, oceanfront setbacks and dune alterations are designed to minimize, but not eliminate, property loss from hazards. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development. Permits issued in the Ocean Hazard Area of Environmental Concern include the condition that structures be relocated or dismantled if they become imminently threatened by changes in shoreline configuration. The structure(s) must be relocated or dismantled within two (2) years of becoming imminently threatened, and in any case upon its collapse or subsidence.

The best available information, as accepted by the Coastal Resources Commission, indicates that the annual long-term average ocean erosion rate for the area where your property is located is 2 feet per year.

The rate was established by careful analysis of aerial photographs of the coastline taken over the past 50 years.

Studies also indicate that the shoreline could move as much as 325 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 20 feet deep in this area.

Preferred oceanfront protection measures are beach nourishment and relocation of threatened structures. Hard erosion control structures such as bulkheads, seawalls, revetments, groins, jetties and breakwaters are prohibited. Temporary sand bags may be authorized under certain conditions.

The applicant must acknowledge this information and requirements by signing this notice in the space below. Without the proper signature, the application will not be complete.

Mark Davenport 2/5/2016

Applicant Signature *Date*

SPECIAL NOTE: This hazard notice is required for development in areas subject to sudden and massive storms and erosion. Permits issued for development in this area expire on December 31 of the third year following the year in which the permit was issued. Shortly before work begins on the project site, the Local Permit Officer must be contacted to determine the vegetation line and setback distance at your site. If the property has seen little change since the time of permit issuance, and the proposed development can still meet the setback requirement, the LPO will inform you that you may begin work. Substantial progress on the project must be made within 60 days of this setback determination, or the setback must be remeasured. Also, the occurrence of a major shoreline change as the result of a storm within the 60-day period will necessitate remeasurement of the setback. It is important that you check with the LPO before the permit expires for official approval to continue the work after the permit has expired. Generally, if foundation pilings have been placed and substantial progress is continuing, permit renewal can be authorized. It is unlawful to continue work after permit expiration.

For more information, contact:

Donna Coleman
Local Permit Officer

4601 E. Oak Island Dr
Address

Oak Island, NC 28465
Locality

(910) 201-8047
Phone Number

Revised 9/09

BEFORE YOU BUILD

Setting Back for Safety: A Guide to Wise Development Along the Oceanfront

When you build along the oceanfront, you take a calculated risk. Natural forces of water and wind collide with tons of force, even on calm days.

Man-made structures cannot be guaranteed to survive the force of a hurricane. Long-term erosion (or barrier island migration) may take from two to ten feet of the beach each year, and, sooner or later, will threaten oceanfront structures. These are the facts of life for oceanfront property owners.

The Coastal Resources Commission (CRC) has adopted rules for building along the oceanfront. The rules are intended to avoid an unreasonable risk to life and property, and to limit public and private losses from storm and long-term erosion. These rules lessen but do not eliminate the element of risk in oceanfront development.

As you consider building along the oceanfront, the CRC wants you to understand the rules and the risks. With this knowledge, you can make a more informed decision about where and how to build in the coastal area.

The Rules

When you build along the oceanfront, coastal management rules require that the structure be sited to fit safely into the beach environment.

Structures along the oceanfront, less than 5,000 square feet in size, must be behind the frontal dune, landward of the crest of the primary dune, and set back from the first line of stable natural vegetation a distance equal to 30 times the annual erosion rate (a minimum of 60 feet). The setback calculation increases as the size of the structure increases [15A NCAC 7H.0306(a)(2)]. For example: A structure between 5,000 and 10,000 square feet would require a setback from the first line of stable , natural vegetation to a distance equal to 60 times the annual erosion rate (a minimum of 120 feet). The graduated setback continues to increase through structure sizes greater than 100,000 square feet.

The Reasons

The beachfront is an ever-changing landform. The beach and the dunes are natural "shock absorbers," taking the beating of the wind and waves and protecting the inland areas. By incorporating building setbacks into the regulations, you have a good chance of enjoying the full life of the structure. At first, it seems very inviting to build your dream house as close to the beach as possible, but in five years you could find the dream has become a nightmare as high tides and storm tides threaten your investment.

The Exception

The Coastal Resources Commission recognized that these rules, initially passed in June 1979, might prove a hardship for some property owners. Therefore, they established an exception for lots that cannot meet the setback requirement. The exception allows buildings in front of the current setback, if the following conditions apply:

(1) the lot must have been platted as of June 1, 1979, and is not capable of being enlarged by combining with adjoining land under the same ownership;
(2) development must be constructed as far back on the property as possible and in no case less than 60 feet landward of the vegetation line;
(3) no development can take place on the frontal dune;
(4) special construction standards on piling depth and square footage must be met; and
(5) all other CAMA, state and local regulations must be met.

The exception is not available in the Inlet Hazard Area.

To determine eligibility for the exception the Local Permit Officer will make these measurements and observations:

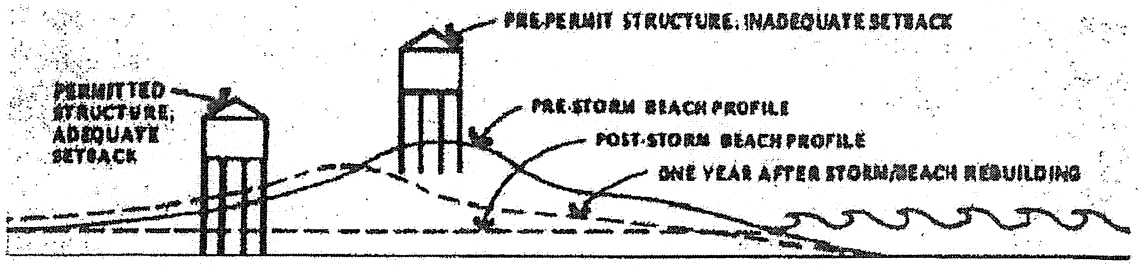
_____ required setback from vegetation line

_____ exception setback (maximum feasible)

_____ rear property line setback

_____ max. allowable square footage on lowest floor

_____ piling length needed to extend 4 feet below MSL



After the storm, the house on the dune will be gone. The other house has a much better chance of survival.

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Barry Golob
10820 Hob Nail Court
Potomac, MD 20845

9590 9401 0166 5234 8435 57

2. Article Number *(Transfer from service label)*

7015 3010 0000 7528 2188

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

WT-199

PS Form 3811, July 2015 PSN 7530-02-000-9053 151391.1 TOE/TSL Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

mr. david litz
10924 sycamore club drive
Mint Hill, NC 28227

9590 9401 0166 5234 8435 64

2. Article Number *(Transfer from service label)*
7015 3010 0000 7528 2171

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* DAVID LITZ
C. Date of Delivery 5-27-16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery
- 00)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 151391.1 ToE/TSL WT-200 Domestic Return Receipt

NC GRID 1983

WEST BEACH DRIVE (60' R/W)

60' OFFSET FROM CAMA LINE

N 83°21'57" E 50.13'

N 83°21'23" E 67.81'

E.R.B.
NC GRID COORDINATES:
N = 60332.72'
E = 2235527.68'
NAD 1983

ALL OF LOT 13 & P/O LOT 14
(AS PER SURVEY FOR SETH BARKER, SURVEYED BY BONEY LAND SURVEYORS, DATED 4/19/04
AND,
(RECORDED SURVEY DEED BOOK 798 PAGE 108, B.C.R.)

CAMA LINE AS FOUND FLAGGED ON 12/29/2015.

EXISTING CONCRETE DRIVE

EXISTING POSTS OF ORGINIAL HOUSE

OPEN DECK AREA

VEGETATION

ALL OF LOT 15 & P/O LOT 14

LOT 12

EXISTING HOUSE

EXISTING PORCH

N 03°58'18" W 150.16'

S 06°38'37" E 150.00'

S 83°21'32" W 74.78'

LANDWARD TOW OF DUNE

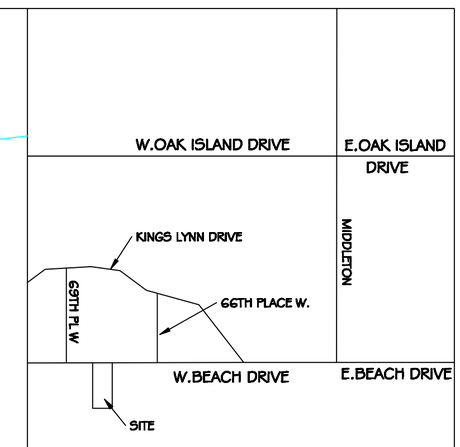
WATERWARD TOW OF DUNE

TOP OF DUNE

75' OFFSET FROM M.H.W. MARK

MEAN HIGHWATER

ATLANTIC OCEAN



VICINITY MAP – NOT TO SCALE

PLAT SCALE: 1" = 10'

0' 10' 20' 30'

NORTH CAROLINA

BRUNSWICK COUNTY

I, WILLIAM W. DELANEY II, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 3410 ON PAGE 421 IN THE BRUNSWICK COUNTY REGISTER OF DEEDS OFFICE); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK _____ ON PAGE _____; THAT THE RATIO OF PRESCISION AS CALCULATED BY COMPUTER IS 1:10,000+ THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS _____ DAY OF _____ 20_____.

This electronic file is not a true copy and is for information purposes only. Only copies from the original of this document, marked with the original signature and original seal of the Surveyor, shall be considered valid and true.

_____
PROFESSIONAL LAND SURVEYOR L-2973

NORTH CAROLINA

BRUNSWICK COUNTY

I, A NOTARY PUBLIC OF BRUNSWICK COUNTY, NORTH CAROLINA CERTIFY THAT WILLIAM W. DELANEY II, P.L.S. PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT.

WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS _____ DAY OF _____ 20_____.

MY COMMISSION EXPIRES _____.

_____
NOTARY PUBLIC

NOTES:
1. THE LAND SHOWN ON THIS PLAT IS IN FLOOD ZONES VE (EL 17), VE (EL 18), VE (EL 20), ACCORDING TO FIRM MAP #3720203600J, DATED 06/02/2006.
2. TOPOGRAPHICAL SURVEY DATE: 12/29/2015.
3. PLAT SCALE: 1" = 10'.
4. E.R.B. = EXISTING RE-BAR.
5. I.S.S. = IRON STAKE SET.
6. E.O.P. = EDGE OF PAVEMENT.
7. BUILDING SETBACKS: FRONT (STREET) = 15', SIDES = 8'.

NOTES:
1. THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAY, COVENANTS, RESTRICTIONS, AND CONDITIONS OF RECORD AFFECTING SAID PREMISES.
2. A TITLE SEARCH WAS NOT PERFORMED ON THE PARCELS SHOWN. THIS PLAT IS NOT A GUARANTEE OF TITLE.

Surveyed and Mapped By

Tide Water
Land Surveying

802 North Howe Street
P.O. Box 11506
Southport, North Carolina 28461
Phone: 910-457-9580

6617 W. BEACH DRIVE

PARCEL ID # 233NE033

WEST LONG BEACH
BLOCK 135

LOT 13 and P/O 14

TOPOGRAPHICAL SURVEY FOR:

Mark
A.
Davenport

TOWN OF OAK ISLAND
SMITHVILLE TOWNSHIP
BRUNSWICK COUNTY
STATE OF NORTH CAROLINA
DRAWN BY: MARYBETH WATKINS

DWG.6617WBEACHDR CRD:6615WBEACHELEVATION

BRUNSWICK COUNTY **6/9/2016 10:52:26 AM**

DAVENPORT MARK A

6617 W. BEACH DR OK

80020307

Return/Appeal Notes:

Parcel: 233N-E-033

PLAT: UNIQ ID / 96087

ID NO: 203619505205

BRUNSWICK COUNTY (100), DOSHER HOSP TAX (100), OAK ISLAND (100), OAK ISLAND FIRE (200)

CARD NO. 1 of 1

Reval Year: 2011 Tax Year: 2014

L-13 P/O 14 B-135 WLB PLAT 3/113 & 798-108

1.000 LT

SRC=

Appraised by A2 on 12/01/2011 306A LONG BEACH WEST

TW-03

CI-14 FR-08 EX- AT-

LAST ACTION 20130723

CONSTRUCTION DETAIL	
Foundation - 3 Piers>8ft w/Con	4.00
Sub Floor System - 4 Plywd/Ptl bd	8.00
Exterior Walls - 16 Wood/Vinyl Shingle	32.00
Roofing Structure - 07 Irregular Ceiling	13.00
Roofing Cover - 06 Arch Shingle	6.00
Interior Wall Construction - 5 Drywall/Sheetrock	21.00
Interior Floor Cover - 12 Hardwood	10.00
Interior Floor Cover - 14 Carpet	0.00
Heating Fuel - 04 Electric	1.00
Heating Type - 09 Heat Pump Only	4.00
Air Conditioning Type - 03 Central	4.00
Bedrooms/Bathrooms/Half-Bathrooms 4/3/1	17.000
Bedrooms BAS - 4 FUS - 0 LL - 0	_
Bathrooms BAS - 3 FUS - 0 LL - 0	_
Half-Bathrooms BAS - 1 FUS - 0 LL - 0	_
Office BAS - 0 FUS - 0 LL - 0	0
TOTAL POINT VALUE	120.000

BUILDING ADJUSTMENTS			
Market/Design	2	Rectangle	1.0000
Quality	3	Average	1.0000
Size	Size	Size	0.8700
TOTAL ADJUSTMENT FACTOR			0.870
TOTAL QUALITY INDEX			104

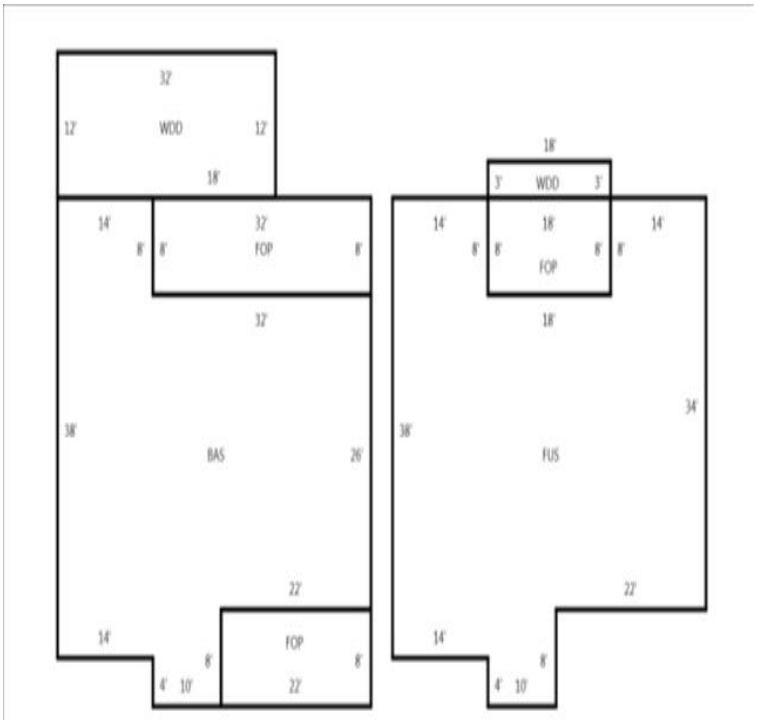
MARKET VALUE

USE	MOD	Eff. Area	QUAL	BASE RATE	RCN	EYB	AYB
07	01	3,139	104	88.40	277487	2004	2004

TYPE: SFR RESORT

SFR CONSTRUCTION

STYLE: 3 - 2.0 Stories



Click on image to enlarge

DEPRECIATION

Standard 0.07000

% GOOD 93.0

CORRELATION OF VALUE

CREDENCE TO	MARKET
DEPR. BUILDING VALUE - CARD	258,060
DEPR. OB/XF VALUE - CARD	3,300
MARKET LAND VALUE - CARD	600,000
TOTAL MARKET VALUE - CARD	861,360
TOTAL APPRAISED VALUE - CARD	861,360
TOTAL APPRAISED VALUE - PARCEL	861,362
TOTAL PRESENT USE VALUE - PARCEL	0
TOTAL VALUE DEFERRED - PARCEL	0
TOTAL TAXABLE VALUE - PARCEL $	861,362

PRIOR

BUILDING VALUE	344,220
OBXF VALUE	0
LAND VALUE	892,500
PRESENT USE VALUE	0
DEFERRED VALUE	0
TOTAL VALUE	1,236,720

PERMIT

CODE	DATE	NOTE	NUMBER	AMOUNT

ROUT: WTRSHD:

SALES DATA

OFF. RECORD BOOK	PAGE	DATE MO	YR	DEED TYPE	Q/U	V/I	INDICATE SALES PRICE
03410	0421	5	2013	SL*	Q	I	775000
01796	0773	7	2003	WD	U	V	420000
01700	0305	2	2003	WD	Q	V	230000
01566	0513	3	2002	WD	U	V	0
00798	0105	3	1990	WD	U	V	7000

HEATED AREA 3,000

NOTES

07ST#49103

SUBAREA

TYPE	GS AREA	%	RPL CS
BAS	1,444	100	127650
FOP	576	030	15293
FUS	1,556	090	123760
LLU	280	020	4950
WDD	438	015	5834
FIREPLACE	1 - None		0
SUBAREA TOTALS	4,294		277,487

CODE	DESCRIPTION	COUNT	LTH	WTH	UNITS	UNIT PRICE	ORIG % COND	BLDG#	AYB	EYB	ANN DEP RATE	OVR	% COND	OB/XF DEPR. VALUE
72	PIER/DOCK (RESID)		60	4	240	16.00	0	1	2004	2004	S2		86	3302
TOTAL OB/XF VALUE														3,302

BUILDING DIMENSIONS FOP=W32S8E32N8Area:256;BAS=W32N8W14S38E14S4E10N8E22N26Area:1444;WDD=E18N12W32S12E14Area:384;FOP=E22N8W22S8Area:176;FUS=S S38E14S4E10N8E22N34W14S8W18N8W14Area:1556;WDD=N3W18S3E18Area:54;FOP=W18S8E18N8Area:144;LLU=Area:280;TotalArea:4294

LAND INFORMATION

HIGHEST AND BEST USE	USE CODE	LOCAL ZONING	FRONTAGE	DEPTH	DEPTH / SIZE	LND MOD	COND FACT	OTHER ADJUSTMENTS AND NOTES RF AC LC TO OT	ROAD TYPE	LAND UNIT PRICE	TOTAL LAND UNITS	UNT TYP	TOTAL ADJST	ADJUSTED UNIT PRICE	LAND VALUE	OVERRIDE VALUE	LAND NOTES
SFR OCEAN	0107	R7	70	150	1.0000	0	1.0000		PS	400,000.00	1.500	LT	1.000	400,000.00	600000	0	
TOTAL MARKET LAND DATA																600,000	
TOTAL PRESENT USE DATA																	


FIRE LINE DO NOT CROSS
FIRE LINE DO NOT CROSS
FIRE LINE DO NOT CROSS
FIRE LINE DO NOT CROSS
FIRE LINE DO NOT CROSS

3/08/2016

SENT VIA E-MAIL
RETURN RECEIPT REQUESTED

Mark Davenport
300 Carbonton Rd.
Sanford, NC 27330

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- OI 16-14
PROJECT ADDRESS- 6617 W. Beach Dr.

Dear Mr. Davenport:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed. This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to build a single family residence seaward of the first line of vegetation which is inconsistent with **15A NCAC 07H .0306(a)(2).**

Your application is also inconsistent with 15A NCAC 07H .0601, which states that no development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations or laws of the State of North Carolina or of local government in which the development takes place. On page 88 of the local Land Use Plan, you will find that:

Policy 2.A.17: Ocean Hazard Areas: The Town supports State policies that do not conflict with the Town's development regulations, for ocean hazard areas as set forth in Chapter 15NCAC subchapter 7H of the State CAMA regulations. Suitable land uses in ocean hazard areas include ocean shoreline erosion control activities, dune establishment and stabilization. Residential, commercial and recreational land uses and parking lots for beach access are also acceptable uses in ocean hazard areas provided they meet all general and specific standards of 15 NCAC: 7H that do not conflict with the Town's development regulations.

If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties and then makes a recommendation to the Coastal Resources Commission (CRC). Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of General Statues of North Carolina, and must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within twenty (20) days from the date of this letter. Please contact me so I can provide you with the proper forms and any other information you may require.

You may also petition for a variance from the CRC by means of the procedures described in 15A NCAC 07J .0700. I have enclosed a copy of the current rules as well as the CAMA Variance Request Form (DCM Form 11).

Respectfully yours,

Donna F Coleman

Donna F. Coleman, LPO
Town of Oak Island

cc: Holley Snider Wilmington-DCM

STATE OF NORTH CAROLINA	)	BEFORE THE NORTH CAROLINA
	)	COASTAL RESOURCES COMMISSION
COUNTY OF BRUNSWICK	)	**CRC-VR-14-15**
	)	
	)	
IN THE MATTER OF:	)	
PETITION FOR VARIANCE	)	**FINAL AGENCY DECISION**
BY BARRY P. GOLOB,	)	
MARK DAVENPORT,	)	
DAVID and VONCILLE LITZ , and	)	
CHRISTOPHER ATKINSON	)	

This matter was heard on oral arguments and stipulated facts at a special meeting of the North Carolina Coastal Resources Commission (hereinafter Commission) on November 19, 2014 in Wilmington, North Carolina pursuant to N.C. Gen. Stat. § 113A-120.1 and 15A NCAC 7J .0700, *et seq*. Assistant Attorney General Christine A. Goebel, Esq. appeared for the Department of Environment and Natural Resources, Division of Coastal Management. Barry P. Golob, Esq. appeared on his own behalf and was admitted *pro hac vice* to appear in this case on behalf of Petitioners Mark Davenport, David and Voncille Litz and Christopher Atkinson. Upon consideration of the Stipulated Facts and Exhibits, the record documents and the arguments of the parties, the Commission adopts the following:

STIPULATED FACTS

1. The Petitioners are Barry Golob, Mark Davenport, David and Voncille Litz and Christopher Atkinson (hereinafter referred to as Golob, Davenport, Litz, and Atkinson individually or Petitioners collectively).

2. Petitioners are represented by attorney Barry Golob who is licensed to practice law in Washington D.C., but is not licensed to practice law in North Carolina. Mr. Golob filed the necessary papers to comply with the requirements of N.C.G.S. 84-4.1 to be admitted to

represent Petitioners *pro hac vice* before the Commission in this case. His request was granted by Order dated November 6, 2014.

3. Petitioners each own one of four adjacent oceanfront properties located at 6615, 6617, 6621 and 6623 West Beach Drive, on the western end of Oak Island. Mr. Golob purchased his lot in October of 2013. Mr. Davenport purchased his lot in May of 2013. Mr. and Mrs. Litz purchased their lot in 1991. Mr. Atkinson purchased his lot in February of 2014. A copy of each deed was provided to the Commission in the stipulated exhibits attached to the DCM Staff Recommendation.

4. The Petitioners' lots (the Site) are within the Ocean Erodible and High-Hazard Flood sub-categories of the Ocean Hazard Area of Environmental Concern (AEC). The Site is just east of the existing Inlet Hazard AEC for Lockwood Folly Inlet. The Site is within the proposed updated Inlet Hazard AEC, which the Coastal Resources Commission (Commission) reviewed, but did not finalize during its November 2010 meeting, pending completion of all of the ocean shoreline erosion rate updates. An exhibit showing these areas and lines were provided to the Commission as a stipulated exhibit attached to the DCM Staff Recommendation.

5. The Site is not subject to a static vegetation line as it was not part of the 2001 large-scale nourishment project which took place on portions of Oak Island to the east of the Site.

6. The long-term average annual erosion rate at the Site is 2-feet per year.

7. Since the beginning of 2014, the Site has been affected by accelerated erosion, which can be seen in Site photographs provided to the Commission as attachments to the DCM Staff Recommendation.

8. Evidence of erosion at the Site was documented in the field notes of Heather Coats, DCM Field Representative, a copy of which was provided to the Commission as an attachment to the DCM Staff Recommendation. Those notes indicate that on April 17, 2014 the distances between the two waterward pilings and the erosion escarpment were 47 feet and 42 feet. By May 16, 2014, these distances were 30 feet and 25 feet (a loss of approximately 17 feet). Similar measurements were taken at the Litz property.

9. Further evidence of the erosion at this site is provided in an August 19, 2013 email from Donna Coleman, Town of Oak Island CAMA LPO to Golob. In this correspondence, Ms. Coleman indicates that she measured the distance from the First Line of Stable Natural Vegetation to "the house pile." At that time, the distance was 68 feet. A copy of this email was provided to the Commission as a stipulated exhibit attached to the DCM Staff Recommendation.

10. On May 21, 2014, each of the four Petitioners was issued a CAMA General Permit for the installation of sandbag structures measuring six feet high and twenty feet wide as authorized by the Commission's rules set forth in 15A NCAC 7H .1700. Installation of these structures was completed by May 31, 2014. Copies of these General Permits were provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation.

11. A condition included in each of the CAMA General Permits notified Petitioners that "Federal authorization is required prior to undertaking work, please contact Ronnie Smith, USACOE."

12. At some time between the May 31, 2014 completion of the sandbag installation and the present, the sandbag structure has been overtopped by the ocean waves. Some scouring behind the sandbag structure has occurred, including scouring around the house foundation piles.

Evidence of this can be seen in photographs provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation.

13. On or about September 18, 2014, Petitioners jointly applied for a CAMA Major Permit seeking to install additional sandbags in order to create a sandbag structure with a maximum width of 30 feet and a maximum elevation of 15.7 feet NAVD 88, which is intended to be the same elevation as the current height of the escarpment. This application was deemed complete on September 24, 2014 by DCM Staff. Mr. Golob acted as agent for the other three lot owners on the permit application. Petitioners' CAMA permit application and supporting attachments were provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation. The application includes an elevation survey from on September 19, 2014.

14. As part of the CAMA Major Permit process, adjacent neighbors and the public were given notice of Petitioners' CAMA permit application. DCM Staff did not receive any objections to Petitioners' application. Copies of the notice to the adjacent riparian owners (Lovejoy and Powell) were provided to the Commission as attachments to the DCM Staff Recommendation.

15. Also as part of the CAMA Major Permit process, Petitioners' application, Staff's Field Report, and other materials were sent to state and federal resource agencies for comment. Upon receipt of these materials on September 24, 2014 Ronnie D. Smith, Project Manager for the US Army Corps of Engineers emailed Kathryn Matthews of the United States Fish and Wildlife Service (USFWS) regarding review of Petitioners' request to place additional sandbags in the same location as the May installation. Mr. Smith reported that the existing "revetment was installed sometime in mid-May without a permit from the Corps. The existing bags were

installed above MHW but the sand was pumped from the ocean." Mr. Smith asked USFWS whether it would concur with a "May Affect, Not Likely to Adversely Affect" determination for sea turtles, piping plover, red know and seabeach amaranth given that the "nesting habitat appears to be degraded and/or absent." Ms. Matthews concurred on behalf of USFWS as long as certain conditions protective of these species were included in the permit. Thereafter, Mr. Smith, USACOE advised DCM that the proposed project to enlarge the sandbag revetment at the Site "qualifies for a GP 48 and the USFWS conditions [which include sand compatibility and timing issues] will be incorporated into our authorization."

16. The Wildlife Resources Commission and DCM's Fishery Resource Specialist raised concerns and proposed conditions about timing and working outside the construction moratorium designed to protect endangered species. Copies of the DCM Field Report and comments received by DCM from these resource agencies were provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation.

17. On October 24, 2014, DCM denied Petitioners' permit application due to its inconsistency with the Commission's rules limiting sandbag structure sizes in 15A NCAC 7H .0308. A copy of the denial letter was provided to the Commission as a stipulated exhibit attached to the DCM Staff Recommendation.

18. On October 29, 2014, DCM received Petitioners' variance petition. At that time, the petition was incomplete as it lacked proof that notice of the variance had been sent to the adjacent riparian property owners as required by 15A NCAC 7J .0701(a). This notice was provided to DCM on November 6, 2014 and the Petition was deemed complete.

19. As part of the variance petition Petitioners stipulated that the proposed development is inconsistent with 15A NCAC 07H .0308.

20. In the variance petition, Petitioners request permission to install additional sandbags in order to construct a larger sandbag revetment with a base width no wider than 30 feet and a maximum elevation of 15.7 feet NAVD 88, as proposed in their CAMA permit application.

21. Given conditions at the Site, Petitioners requested that the hearing on the variance petition be expedited and that the matter be heard before the Commission's scheduled December meeting. A copy of the request and supporting documents, DCM's response, and the Chairman's decision were provided to the Commission in the stipulated exhibits attached to the DCM Staff Recommendation. The Chairman granted the request based on the requirements set forth in North Carolina General Statutes at § 143-318.12(f) which provide that an emergency meeting may be scheduled in situations where "generally unexpected circumstances" are present requiring "immediate consideration by the public body."

22. Petitioners and DCM agree that the Town of Oak Island ("Town") intends to submit a CAMA Major Permit Application for a town-funded beach nourishment project, but as of November 19, 2014 has not done so. Information provided indicates that the Town would like to implement a nourishment project, designed by Moffatt Nichol, in the winter and spring of 2015. A copy of the PowerPoint presentation shown by Moffatt Nichol to various resource agencies at a pre-application meeting on August 27, 2014 was provided to the Commission as an attachment to the DCM Staff Recommendation. The plan proposes dredging the Eastern Channel located on the back-side of the west end of Oak Island and depositing approximately 202,000

cubic yards of sand on the Oak Island oceanfront. According to the contractor's report, half of the estimated $3.5 million project is anticipated to be funded by Division of Water Resources (who has funded $1.1 million already) with the remaining funding anticipated to come from Brunswick County and the Town of Oak Island.

23. Town of Oak Island Town Council meeting minutes, provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation, reflect the Town's approval on July 8, 2014 of the initial $274,925, matched by the Division of Water Resources, to Moffatt Nichol to fund the Eastern Channel project, following a June 2014 vote of the Council to approve pursuing this project. Draft minutes of the Town Council's September 9, 2014 meeting indicate that the Council voted to approve the grant contract with NCDENR-DWR for $1.2 million to partially fund the Lockwood Folly Navigational and Habitat Restoration Project Phase I (Eastern Chanel).

24. All oceanfront property owners on the west beach area from 51st Place to 69th Place were requested to sign an easement for the beach nourishment project. On October 18, 2014, Golob signed an easement to the Town of Oak Island allowing entry and development of the Eastern Channel beach nourishment project on the oceanfront lot. The Commission was provided with a copy of the Golob easement and a letter from Steve Foster, Oak Island Town Manager to Golob explaining the nourishment project as attachments to the DCM Staff Recommendation.

STIPULATED EXHIBITS

Included for the Commission's review were the following Stipulated Exhibits:

- Motion for Admission *Pro Hac Vice* and supporting documents including letters from the parties requesting Barry Golob represent them in this proceeding;

- Petitioners' Deeds
  - Golob: Book 3465 Page 783;
  - Atkinson: Book 3498 Page 604;
  - Litz: Book 847 Page 639; and
  - Davenport: Book 3410 Page 421;

- DCM handwritten field notes from April 9, 2014 to May 13, 2014;

- August 19, 2013 email to Golob from Town of Oak Island CAMA LPO;

- CAMA General Permits:
  - Golob General Permit No. 63907 issued May 21, 2014;
  - Davenport General Permit No. 63906 issued May 21, 2014;
  - Litz General Permit No. 63905 issued May 21, 2014;
  - Atkinson General Permit No. 63904 issued May 21, 2014;

- Petitioners' CAMA Major Permit application dated September 16, 2014 with attachments including site plans;

- Notice to Riparian Owners of CAMA application;

- DCM Field Investigation Report dated September 24, 2014;

- NC Wildlife Resources Commission Comments, Maria Dunn Oct. 24, 2014;

- US Fish and Wildlife Service comments from Kathryn Matthews Sept. 29, 2014;

- DCM Fisheries Resource Comments, Jessi Baker October 24, 2014;

- CAMA Permit Denial Letter dated October 24, 2104;

- Letter requesting expedited hearing from Barry Golob dated October 31, 2014 with 5 color photos marked Exhibit A;

- Response from Frank Gorham, CRC granting request dated November 2, 2014;

- PowerPoint from Moffat Nichol used at pre-app meeting for Eastern Channel project titled "Lockwood Folly Habitat Restoration Project, Dredging Eastern Channel";

- Oak Island Town Council Minutes from July 8, 2014 and Sept. 9, 2014 meetings;

- Beach Nourishment Easement Agreement signed by Barry Golob Oct. 18, 2014;

- Letter to Golob from Town requesting easement dated Oct. 1, 2014;
- Various Site Photographs (21 photos) (PowerPoint format) and DCM GIS photograph showing Site, with static line and Inlet AEC boundaries.

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. Petitioners have 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 Temporary Erosion Control Structures 15A NCAC 7H .0308 Rule will cause unnecessary hardships.

The Commission's Rules set forth in 15A NCAC 7H .0308 (Sandbag Rules) relate to temporary erosion control structures and prohibits sandbag structures more than twenty feet wide and six feet high. The Site has experienced accelerated shoreline erosion which Petitioners describe as between forty and sixty feet since January 2014. This is similar to that documented by DCM representative Heather Coates during a shorter time frame who noted that on April 17, 2014, the distances between the two waterward pilings and the erosion escarpment were 47 feet and 42 feet. A month later, by May 16, 2014, the distances from the two waterward pilings to the erosion escarpment were 30 feet and 25 feet. Similar measurements were taken at the Litz property. In May 2014, Petitioners received a permit to install a sandbag revetment six feet high and twenty feet wide in compliance with Sandbag Rules. Following installation of the sandbags, the ocean has washed over the sandbag structure. Petitioner noted in his application for an enlarged sandbag structure that the escarpment is more than five feet above the sandbags due to the bags settling and shifting. At high tide, the current sandbag structure does not protect the

dune form the wave action causing further erosion. Scouring behind the sandbag structure has occurred including around the house foundation piles. The waves and resulting erosion have destroyed stairs to houses on the Site.

Due to the accelerated erosion and resulting damage, the Town of Oak Island is moving forward with a beach nourishment project that may commence as early as the winter of 2015. The Town has already received significant funding for the project and has requested easements from homeowners who will be impacted by the project.

In its Recommendation, DCM acknowledged that in this case, a strict application of the Sandbag Rules issued by the Commission will cause the Petitioners unnecessary hardships in that there has been accelerated erosion at the site since the May 21, 2014 CAMA General Permits were issued. DCM notes that the existing sandbags installed pursuant to those permits have slowed the effects of erosion on these properties, but the sandbags are regularly overtopped by waves and erosion behind the sandbag structure continues. Given these Site conditions, DCM agreed that the existing sandbag revetment allowed by a strict application of the Commission's sandbag size limits may not be sufficient to protect these four structures until the planned nourishment takes place.

For these reasons, the Commission affirmatively finds that Petitioners have shown that the hardship caused by denying a permit for the proposed temporary enlarged sandbag structure is unnecessary insofar as by allowing a larger sandbag structure Petitioners may protect their residences and the adjacent shoreline while the Town's beach renourishment project is implemented. Once the Town's project is implemented, it is anticipated that the resulting beach nourishment should remediate recent erosion at the Site. For these reasons, the Commission

affirmatively finds that Petitioner has met the first factor without which a variance cannot be granted.

b. Petitioners have demonstrated that any hardship results from conditions peculiar to Petitioners' property.

The Commission affirmatively finds that Petitioner has demonstrated that the hardship results from conditions peculiar to the property. Specifically, the long term average annual erosion rate for the Site is two feet per year according to the DCM erosion rate maps which were last updated in 2011. The rate of erosion at the Site since January 2014 has been significantly higher and has been documented by DCM representative Heather Coates as more than 17 feet during a one-month period from April 2014 through May 2014.

Nevertheless, in its recommendation to the Commission, DCM argues that Petitioners' hardships were not caused by conditions peculiar to the property because shorelines adjacent to an inlet can be expected to experience volatile conditions including both significant erosion and accretion. For these reasons, DCM argues that accelerated erosion near an inlet should not be considered a condition peculiar to Petitioners' property.

However, while the Site is located *near* the inlet, the Site is not located *within* the currently applicable Inlet Hazard AEC for the Lockwood Folly Inlet. Accordingly, without prejudice to future consideration of conditions at the Site or any other property located in or near an Inlet Hazard AEC, the Commission affirmatively finds that insofar as the Site is not located within the currently applicable Inlet Hazard AEC for the Lockwood Folly Inlet, the accelerated erosion at the Site (which is significantly greater than the long term average annual erosion rate for the Site, i.e., two feet per year) is a condition peculiar to the Property. Thus, the Commission affirmatively finds Petitioners have met the second factor in N.C.G.S. §113A-120.1(a)(2).

c. Petitioners have demonstrated that the hardship does not result from actions taken by Petitioners.

The Commission affirmatively finds that Petitioners have demonstrated that the hardship does not result from any actions taken by the Petitioners. Specifically, Petitioners state that they have done nothing to accelerate or otherwise aggravate the erosion problem at the property. Furthermore, in its recommendation to the Commission, DCM agreed that Petitioners have done nothing to accelerate the erosion affecting the shoreline at the Site and have taken reasonable steps to address the problem. Given the agreement on this issue and based on the facts presented, the Commission affirmatively finds that Petitioners have demonstrated that they have met the third factor required for a variance pursuant to N.C.G.S. §113A-120.1(a)(2).

d. Petitioners have demonstrated that the requested 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 Petitioners have 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. Specifically, the Commission's Sandbag Rules are, in effect, an exception to the General Assembly and the Commission's ban on permanent erosion control structures, and allow the temporary use of sandbags for "imminently threatened structures." While the Commission's Rules, including limitations on the use of sandbags, are sufficient in most cases, in some situations the permitted sandbag structures may not be of sufficient size to offer temporary protection as intended by the rules. In this case, Petitioners have demonstrated that the accelerated erosion has already undermined and destroyed structures on the Site and that structural elements supporting houses on the Site are in "imminent danger as a result of storms . . . or similar occurrence." Petitioners acknowledge that they are

seeking an enlargement of the existing sandbag revetment as a temporary solution to the erosion-related problems facing the Petitioners. Furthermore, Petitioners state that their goal "is to attempt to mitigate harm to the beach, the dune, wildlife and the Properties at the West End until such time as the Eastern Channel Project can be implemented. See 15A NCAC 07M .0202(e)."

In its recommendation to the Commission, DCM agreed the proposed expansion of the sandbag revetment in front of Petitioners' lots is consistent with the spirit, purpose, and intent of the rules. DCM further acknowledge that Petitioners have tried using "regular" sandbags since May, 2014 to slow erosion, but the sandbags have been regularly overtopped and the escarpment is moving closer to the structural pilings of the residences. For this reason, DCM does not disagree with Petitioners' conclusion that larger sandbags are needed as temporary protection while the Town of Oak Island's efforts to implement its Eastern Channel relocation and nourishment project continues to move forward. Given the agreement on this issue and based on the facts presented, the Commission affirmatively finds that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules,

The second assessment to be made is whether the variance proposed by Petitioners will impact public safety and welfare. Petitioners submit that their properties have already suffered significant damage (i.e. the destruction of stairs affixed to one of the properties) and, without a variance, similar damage may impact at least two, and maybe more of the houses located on the Site.

In its recommendation to the Commission, DCM agrees that the variance would protect public safety and welfare since it appears that, despite Petitioners' efforts to protect their structures with the existing sandbags, and the Town's best efforts to address the erosion issue

through pursuit of its Eastern Channel relocation and nourishment plan, the existing sandbags may not be sufficient to protect Petitioners' structures until the Town's plan can be implemented. Given the agreement on this issue and based on the facts presented, the Commission affirmatively finds that the requested variance will serve to protect public safety and welfare.

The third assessment to be made as part of the analysis of the fourth variance factor is whether by granting the requested variance, the Commission will preserve substantial justice. Petitioners claim that by granting the variance substantial justice will be preserved by permitting the Petitioners to install and maintain a sandbag revetment to protect the structures on Site long enough for the Town to implement the proposed Eastern Channel project to place needed sand on this shoreline. DCM does not disagree that granting the variance will preserve substantial justice. In this case, the Commission agrees that a granting the variance will preserve substantial justice as the beach in front of Petitioners' property is already only marginally available for use by the public and as habitat. Therefore, allowing larger sandbags at this Site would not significantly harm public trust and habitat usage but would provide temporary erosion protection until the beach nourishment goes into effect.

For the above stated reasons, the Commission affirmatively finds that Petitioners have met the fourth factor required by N.C.G.S. § 113A-120.1(a) as long as the proposed development conforms to the conditions included in the variance granted below.

ORDER

THEREFORE, the requested variance from 15A NCAC 7H. 0308 is GRANTED with the following CONDITIONS:

(1) All sandbags installed at the Site in conformance with a permit or permit modification issued pursuant to this variance are temporary and may only remain in place for eight years from the date of this final agency decision granting the variance.

(2) Petitioners are required to begin construction on the proposed development at the Site within six (6) months of the date of this final agency decision granting the variance. If construction is not begun by May 21, 2014, the variance is null and void and Petitioners will not be allowed to construct the proposed development as it is inconsistent with the Commission's Sandbag Rules;

(3) The granting of this variance does not relieve Petitioner of the responsibility for obtaining a CAMA permit from the proper permitting authority and all other required permits.

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 or has substantially changed.

This the 21st day of November 2014.

Frank D. Gorham III

Frank D. Gorham, III, Chairman
Coastal Resources Commission

CERTIFICATE OF SERVICE

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

Barry P. Golob
Cozen O'Connor
1627 I Street, NW, Suite 1100
Washington, DC 20006

Certified Mail/ Return Receipt Requested and Electronically: bgolob@cozen.com

Mark Davenport
300 Carbonton Road
Sanford, NC 27332

Certified Mail/ Return Receipt Requested and electronically at markdavenport@windstream.net

David and Voncille Litz
10924 Sycamore Club Drive
Mint Hill, NC 28227

Certified Mail/ Return Receipt Requested and electronically at voncillel@gmail.com

Christopher Atkinson
8811 Fidelis Lane
Raleigh, NC 27613

Certified Mail/ Return Receipt Requested and electronically at christoph34@gmail.com

Christine A. Goebel, Esq.
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602

Electronically at
cgoebel@ncdoj.gov

Braxton C. Davis and Angela Willis
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

Electronically at
braxton.davis@ncdenr.gov
angela.willis@ncdenr.gov

This the 21st day of November, 2014

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

Head Acres Farms Inc
1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.com

Invoice 1022

DATE	PLEASE PAY	DUE DATE
08/03/2015	**$1,728.20**	09/02/2015

BILL TO
Mark Davenport
6617 West Beach Drive
Oak Island, NC

Please detach top portion and return with your payment.

ACTIVITY	QTY	RATE	AMOUNT
Installed Plants Installed Plants	888	1.40	1,243.20
Installed Sand Fence Installed Sand Fence	6	45.00	270.00
Installed Sand Fence Installed Sand Fence linear across top	46	2.50	115.00
Maintenance Maintenance and Fertilization	4	25.00	100.00

Please make check payable to:

HEAD ACRES FARM

TOTAL DUE $1,728.20

THANK YOU.

1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.com

Invoice 1117

BILL TO
Mark Davenport
6617 West Beach Drive
Oak Island, NC

DATE	PLEASE PAY	DUE DATE
10/18/2015	**$2,358.20**	11/17/2015

DATE	ACCOUNT SUMMARY	AMOUNT
08/03/2015	Balance Forward	$1,728.20
	Payments and credits between 08/03/2015 and 10/18/2015	0.00
	New charges (details below)	630.00
	Total Amount Due	$2,358.20

ACTIVITY	QTY	RATE	AMOUNT
Installed Plants Installed Plants. ABG to replace fire damaged plants and to fill hole at deck area	3,000	0.21	630.00

Please make check payable to:

COASTAL TRANSPLANTS, INC

TOTAL OF NEW CHARGES 630.00

TOTAL DUE $2,358.20

THANK YOU.

1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.com

Invoice 1118

BILL TO
Mark Davenport
6617 West Beach Drive
Oak Island, NC

DATE	PLEASE PAY	DUE DATE
01/19/2016	**$4,065.70**	02/18/2016

DATE	ACCOUNT SUMMARY	AMOUNT
10/18/2015	Balance Forward	$2,358.20
	Payments and credits between 10/18/2015 and 01/19/2016	0.00
	New charges (details below)	1,707.50
	Total Amount Due	$4,065.70

ACTIVITY	QTY	RATE	AMOUNT
Installed Sand Fence Installed Sand Fence. Across front of property to prevent damage to vegetation.	100	5.00	500.00
Installed Plants Installed Plants. ABG to fill in spaces from to of dune to toe of dune.	5,750	0.21	1,207.50

Please make check payable to:

COASTAL TRANSPLANTS, INC

TOTAL OF NEW CHARGES 1,707.50

TOTAL DUE $4,065.70

THANK YOU.

1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.com

Invoice 1119

BILL TO
Mark Davenport
6617 West Beach Drive
Oak Island, NC

DATE	PLEASE PAY	DUE DATE
04/23/2016	**$6,000.70**	05/23/2016

DATE	ACCOUNT SUMMARY	AMOUNT
10/18/2015	Balance Forward	$4,065.70
	Payments and credits between 10/18/2015 and 04/23/2016	0.00
	New charges (details below)	1,935.00
	Total Amount Due	$6,000.70

ACTIVITY	QTY	RATE	AMOUNT
Installed Plants Installed Plants. Sea Oats and Bitter Panicum and Elder. Top of dune to bottom of dune.	1,150	1.50	1,725.00
Installed Sand Fence Installed Sand Fence. Moved existing fence 15 feet toward ocean.	6	35.00	210.00

Please make check payable to:

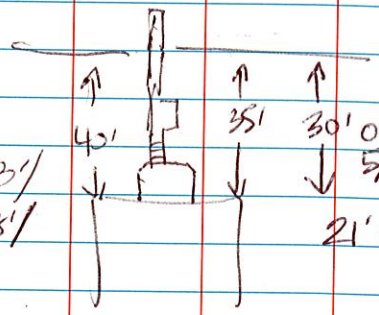
COASTAL TRANSPLANTS, INC

TOTAL OF NEW CHARGES 1,935.00

TOTAL DUE $6,000.70

THANK YOU.

6617 W. BEACH



5/7/ 38'/
5/16 28'/

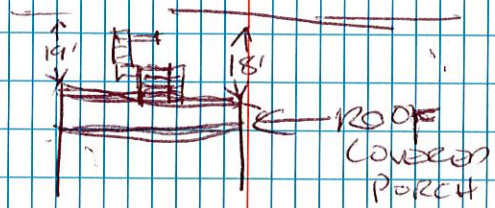
21' on 5/16

5/5/14

NEW INTERN 5/16

5/7/14 6014 W. BEACH

PAUL DAVENPORT



Nothing Compares
NORTH CAROLINA

Davenport Variance Request

July 13, 2016

Department of Environmental Quality

Davenport Variance Request

Department of Environmental Quality

Davenport Variance Request

Google Earth Imagery 10/2014

Department of Environmental Quality

Davenport Variance Request

Reference photo of Davenport access stairs taken from Golob rear deck.

Petitioner's photo dated 10/25/13

Davenport Variance Request

Department of Environmental Quality

April 9, 2016
Photo provided by the Petitioner

Davenport Variance Request

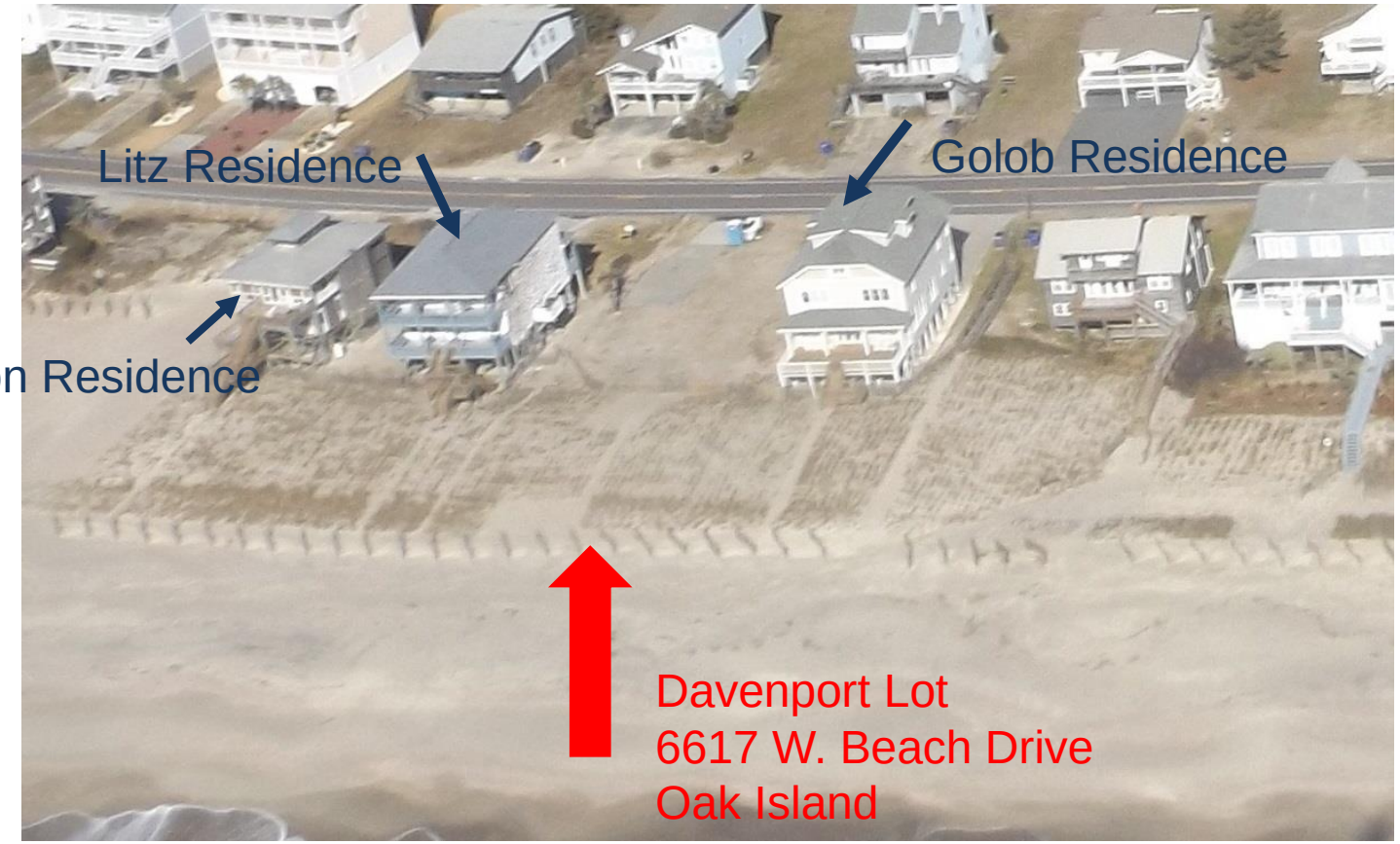
Davenport residence destroyed by fire on October 31, 2015

Davenport Variance Request

DCM Aerial Reference Photo

January 29, 2016

Davenport Variance request



DCM Aerial Reference Photo

January 29, 2016

Davenport Variance Request

Labeled on survey as “CAMA Line as found flagged on 12/29/15”

Located by Donna Coleman
Local Permit Officer
Oak Island

Davenport Variance Request

Litz Residence

Golob Residence

Photo taken facing north
near the toe of
the man-made dune

May 17, 2016

Davenport Variance Request

Photo taken facing east
near the toe of
the man-made dune

May 17, 2016

Davenport Variance Request

Photo taken facing east
from Litz Residence
rear deck of the man-made dune
and vegetation

May 17, 2016

Davenport Variance Request

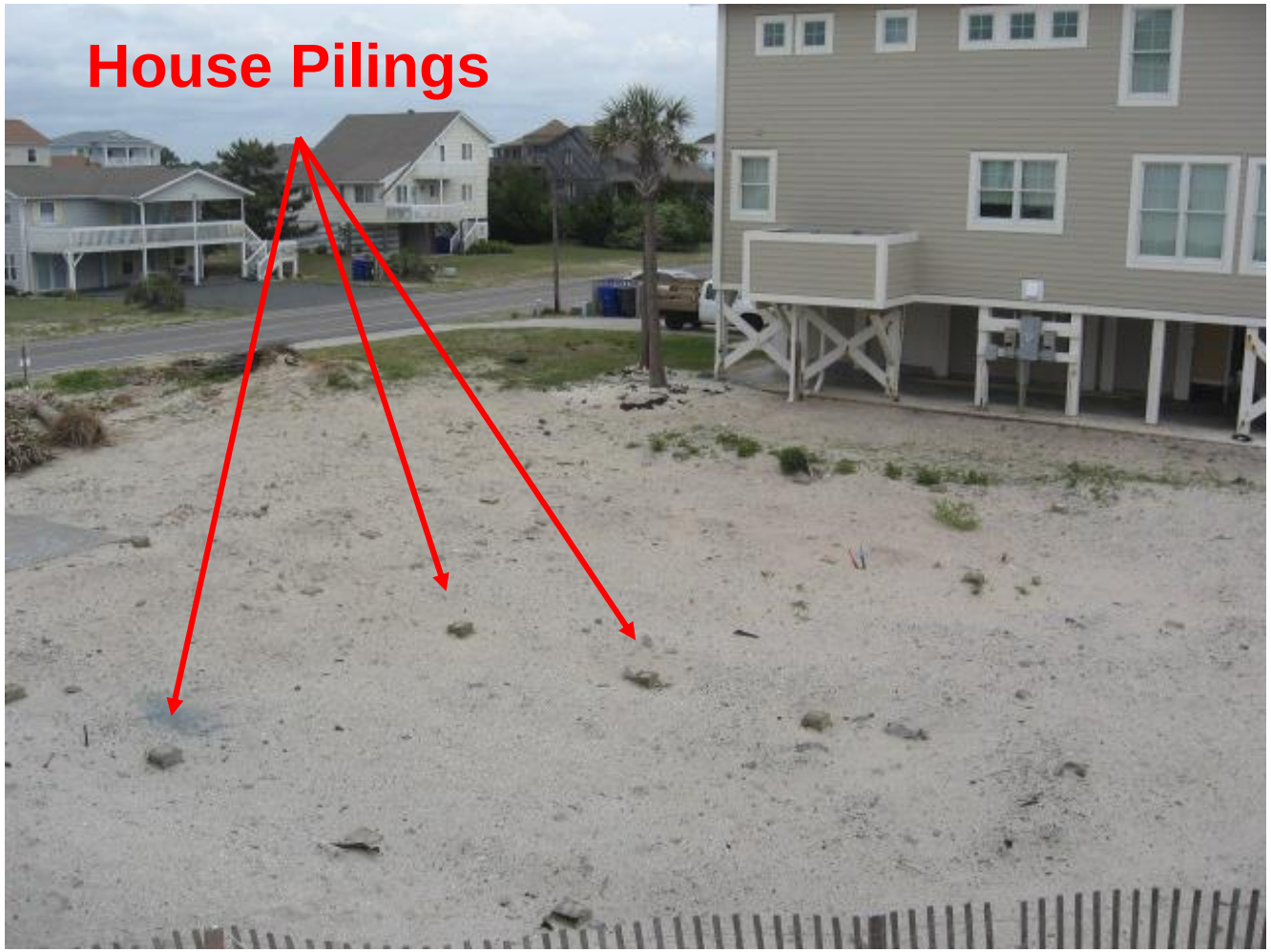
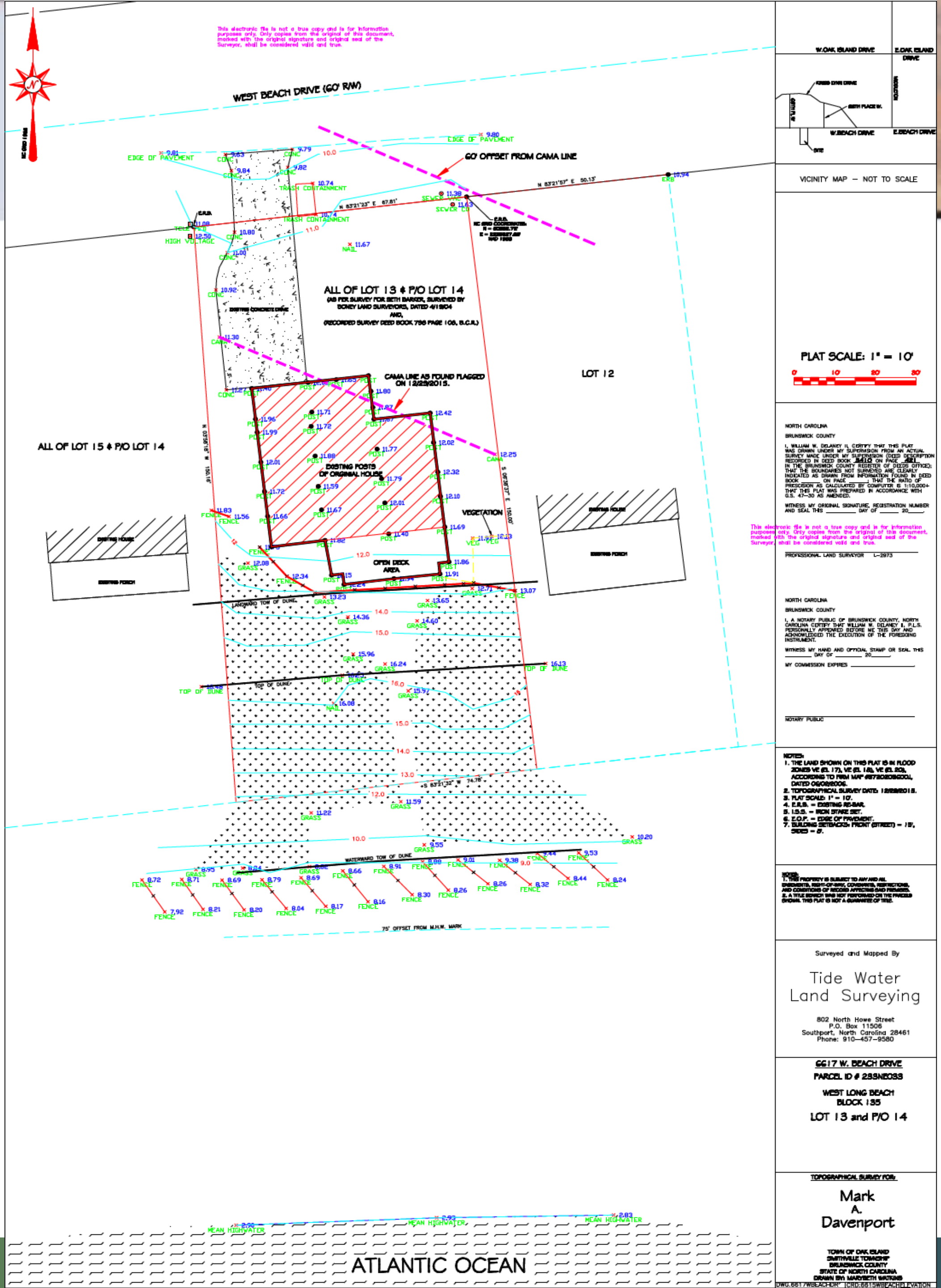
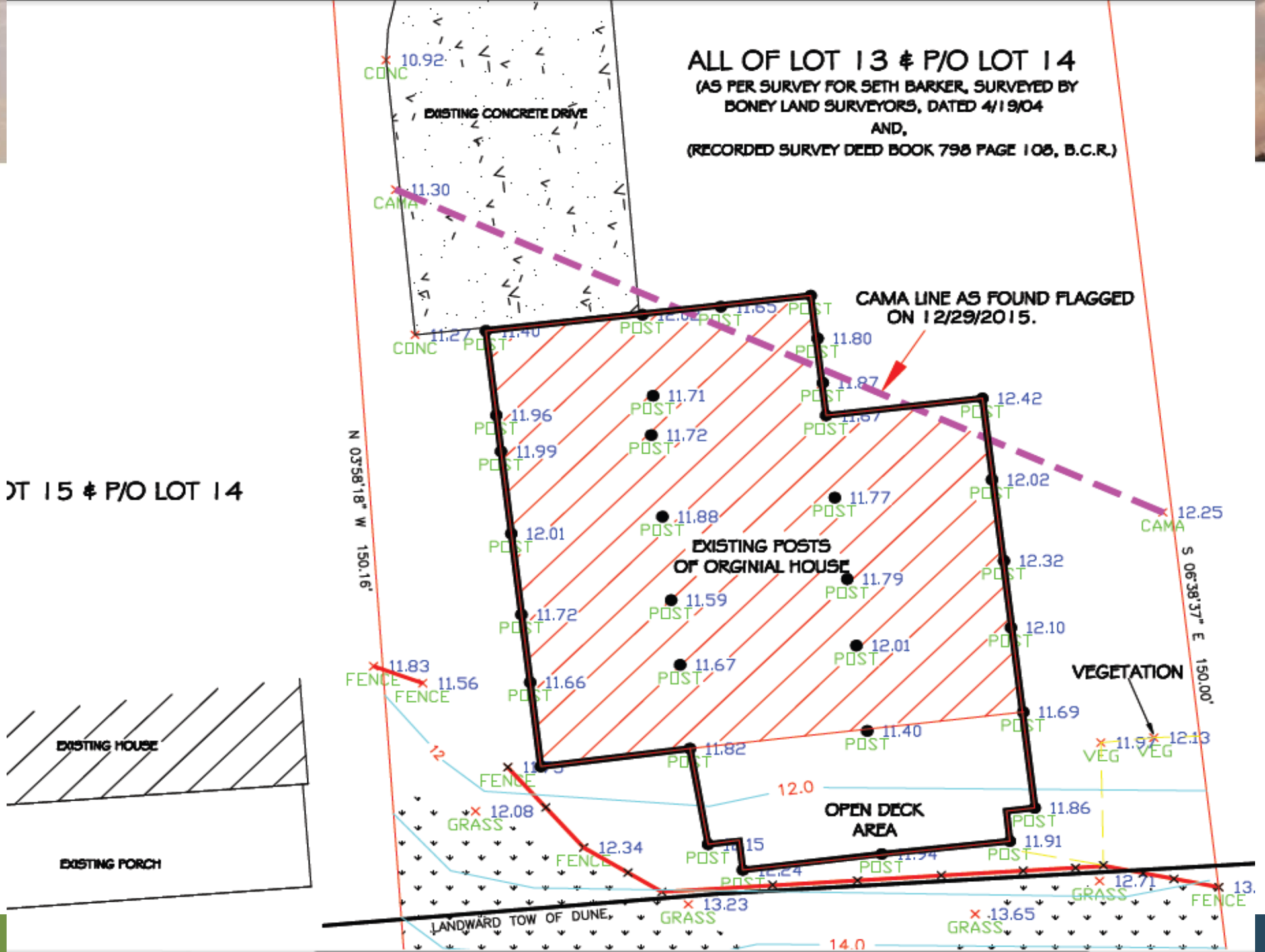


Photo taken facing northeast
from Litz Residence
rear deck of the remnant
house pilings

May 17, 2016


WEST BEACH DRIVE (60' R/W)
60' OFFSET FROM CAMA LINE
ALL OF LOT 13 & P/O LOT 14
LOT 12
ALL OF LOT 15 & P/O LOT 14
CAMA LINE AS FOUND FLAGGED ON 12/22/2015.
EXISTING POSTS OF ORIGINAL HOUSE
OPEN DECK AREA
VEGETATION
LANDWARD TOE OF DUNE
TOP OF DUNE
WATERWARD TOE OF DUNE
ATLANTIC OCEAN
VICINITY MAP – NOT TO SCALE
PLAT SCALE: 1" = 10'
Surveyed and Mapped By
Tide Water
Land Surveying
802 North Howe Street
P.O. Box 11506
Southport, North Carolina 28461
Phone: 910-457-9580
6617 W. BEACH DRIVE
PARCEL ID # 233NE033
WEST LONG BEACH
BLOCK 135
LOT 13 and P/O 14
TOPOGRAPHICAL SURVEY FOR:
Mark
A.
Davenport
TOWN OF OAK ISLAND
SMITHVILLE TOWNSHIP
BRUNSWICK COUNTY
STATE OF NORTH CAROLINA
DRAWN BY: MARYBETH WATKINS


ALL OF LOT 13 & P/O LOT 14
(AS PER SURVEY FOR SETH BARKER, SURVEYED BY BONEY LAND SURVEYORS, DATED 4/19/04
AND,
(RECORDED SURVEY DEED BOOK 798 PAGE 106, B.C.R.)
OT 15 & P/O LOT 14
EXISTING CONCRETE DRIVE
CAMA LINE AS FOUND FLAGGED ON 12/29/2015.
EXISTING POSTS OF ORGINIAL HOUSE
OPEN DECK AREA
VEGETATION
LANDWARD TOW OF DUNE
EXISTING HOUSE
EXISTING PORCH
N 03°58'18" W 150.16'
S 06°38'37" E 150.00'
CONC
CAMA
POST
FENCE
GRASS
VEG
10.92
11.30
11.27
11.80
11.87
12.42
11.71
11.96
11.72
11.99
12.02
11.77
12.25
11.88
12.01
12.32
11.79
11.59
11.72
12.10
12.01
11.83
11.56
11.67
11.66
11.69
11.40
11.82
12.13
11.92
12.0
12.08
11.86
12.34
11.91
12.71
13.23
13.65
14.0

Davenport Variance Request

VARIANCE CRITERIA 15A NCAC 07J.0703 (f)

-to grant a variance, the Commission must affirmatively find each of the following factors listed in G.S. 113A-120.1(a).

(A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

(B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;

(C) that such hardships did not result from actions taken by the petitioner; and

(D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.