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ROY COOPER Governor MICHAEL S. REGAN

Secretary

WILLIAM F. LANE General Counsel

RE:	Variance Request by Mark E. Schmunk (CRC-VR-20-01)
DATE:	May 27, 2020 (for the June 10-11, 2020 Virtual CRC Meeting)
FROM:	Christine A. Goebel, DEQ Assistant General Counsel
TO:	The Coastal Resources Commission

Petitioner Mark E. Schmunk ("Petitioner") owns a residence at 8613 East Tide Drive (the "Site") in the South Nags Head area of the Town of Nags Head. The property is located within the Commission's Ocean Hazard Area of Environmental Concern ("AEC"). This area of Nags Head is subject to a "static line" following a large-scale beach nourishment project in 2011.

In October of 2019, Petitioner filed a CAMA Minor Permit application seeking to construct a 75 square foot bathroom addition to the main floor of the piling-supported residence under an existing covered porch, and to add a 60 square foot deck cantilevered from the existing oceanfront deck. On November 6, 2020, the Town of Nags Head's Coastal Area Management Act ("CAMA") Local Permitting Officer ("LPO") denied Petitioner's CAMA Minor Permit application as the proposed additions did not meet the applicable setback from the static line. On February 25, 2020, Petitioner, through counsel, filed this variance petition to request the Commission vary the oceanfront setback rules so it can develop the bathroom enclosure and deck additions as proposed.

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.):	Charles D. Evans, Esq., Petitioner's Counsel, electronically Mary Lucasse, Special Deputy AG and CRC Counsel, electronically Margaux Kerr, Town of Nags Head CAMA LPO, electronically



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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 (updated 4-1-20)

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 the 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 90; 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 180 feet landward from the first line of stable and 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 "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in 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.

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.

(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;

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 (Updated 4-1-20)

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

(3) elevated decks not exceeding a footprint of 500 square feet;

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 of local zoning, subdivision or health regulations; and meets all other non setback requirements of this Subchapter.

STIPULATED FACTS

ATTACHMENT B

1. Mark E. Schmunk ("Petitioner") and his wife Tonya A. Schmunk own property at 8613 East Tide Drive (the "Site"), also known as Lot 5 of the Tides Time Subdivision, located in the Town of Nags Head, Dare County. Petitioner is represented in this variance by Charles D. Evans, Esq. of Kellogg and Evans, PA., Manteo.

2. Petitioner and his wife purchased the property through a deed dated March 5, 2019 and recorded in Deed Book 2288, Page 663 of the Dare County Registry, a copy of which is attached. The Site is shown on a plat of Tides Time Subdivision dated February 7, 1978 and filed in Plat Book A, Page 69 in the Dare County Registry, a copy of which is attached. The Site was platted to the mean high water line.

3. As part of his due diligence, Petitioner exchanged emails with town staff before purchasing the home and following the purchase to understand the ability to get a CAMA permit for the proposed addition and about the variance process. A copy of this email chain is attached.

4. As part of the permit review, Petitioner provided a copy of a preliminary plat (not a signed survey) by Manson Ray Meekins, PLS, a copy of which is attached. It indicates that the site was surveyed on February 27, 2019 and was amended in August and September of 2019 to add on the site plan and deck. This preliminary plat shows the location of the static vegetation line, which was the location of the first line of stable and natural vegetation ("FLSNV") surveyed before the first Town of Nags Head nourishment project in 2012.

5. The approximate location of the FLSNV on the Site as of DCM Field Representative Yvonne Carver's December 10, 2019 site visit is between 8'- 12' waterward of the location of the static line. The Nags Head CAMA LPO Margaux Kerr flagged the FLSNV in mid-November of 2019.

6. The Town of Nags Head does not have a static line exception or a development line, and so the static line is the line from which oceanfront erosion setbacks are measured.

7. The Site is currently developed with a 2055 square foot two-story, piling-supported single family residence built in 1982 and consisting of five (5) bedrooms and three (3) bathrooms as shown on the attached tax card. The house is serviced by septic tank and by city water. Other development includes a dune boardwalk and steps extending waterward from the porch, a paver parking area and a driveway shared with Lot 6. There is also a pool and hot-tub surrounding by a fence and decking and an associated pump room.

8. The portion of the site where the proposed development is located has a Base Flood Elevation of 11 feet (NAVD 88) and is located within a VE Flood Zone, based on the Elevation Certificate dated, 2/21/2020, a copy of which is attached.

9. The site is located within the Ocean Erodible portion of the Ocean Hazard Area of Environmental Concern (AEC). The applicable erosion rate at the site is 3 feet per year. The applicable setback for any development under 5000 square feet total floor area (TFA) in this area is 90 feet landward of the static line. However, under the "grandfather provision" of 15A NCAC

7H .0309(b), if the conditions of that provision are met, a structure on a lot platted before 1979 could meet just a 60-foot setback from the static line.

10. The Town of Nags Head funded its first large-scale beach nourishment project resulting in sand being placed at the site during the summer of 2011. Before the 2011 project began, the FLSNV was surveyed, becoming the static line, and is shown using DCM's GIS mapping tool, overlain on aerial photography, copies of which are attached. Subsequently, the Town of Nags Head has nourished its beaches including this Site in its second large scale nourishment project in the summer of 2019.

11. Pursuant to N.C.G.S. § 113A-118, any development proposed in an AEC on the Site requires authorization through the issuance of a CAMA permit.

12. On or about October 22, 2019, Petitioner, through his authorized CAMA Agent, Ben Cahoon, applied for a CAMA Minor Development Permit with the Town of Nags Head Local Permit Officer (LPO) seeking to renovate the structure at the Site by enclosing part of the covered porch to create a new bathroom and adding 60 square feet of new oceanfront decking. Both of the proposed additions described above are on the east side or oceanfront side of the residence.

13. The bathroom addition consists of approximately 75 square feet of Total Floor Area and is created by enclosing an area under the existing roof line of the covered porch. The footprint of the residence will remain the same and no new piling work will be necessary. A copy of the Permit Application, including the Meekins Preliminary Plat, is attached as a Stipulated Exhibit. The bathroom addition of 75 square feet represents approximately a 3.6% increase in Total Floor Area (75/2055=3.6%).

14. Petitioner is also requesting to add 60 square feet of new decking to the existing deck, which will be cantilevered off the existing deck and adjoining walkway with no new pilings or foundation required. Petitioner contends that this new decking which is near the proposed bathroom addition will compensate for the area used for the new bathroom.

15. The applicable 90' ocean erosion setback measured landward from the applicable static vegetation line results in the setback line falling landward of the existing residence in the parking area and just waterward of the pool area, as shown on the 2019 Meekins Preliminary Plat as the "90' CAMA structure setback."

16. The static vegetation line is also shown on the Meekins Preliminary Plat, and the static line bisects the proposed bathroom addition where approximately three-quarters of the bathroom addition fall waterward of the static line. The entire proposed deck addition is waterward of the static line. While 15A NCAC 7H .0309(a)(3) allows up to 500 square feet of elevated decking waterward of the setback line, it must also be landward of the static line (which is applicable at this Site). In this case, the proposed deck is waterward of the static line and would not fall within this exception.

17. At the time of Petitioner's permit application to the Town of Nags Head in October, 2019, Petitioner sent notice of the CAMA minor permit application for the proposed additions to the two

adjacent riparian property owners. The Town of Nags Head received no objections from the adjacent riparian property owners or from any member of the public.

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18. Through a November 6, 2019 denial letter, the Nags Head CAMA LPO denied Petitioner's proposed additions as they were structural additions which were not located landward of the 90' setback from the static vegetation line, or 60' landward of the static line if the grandfather conditions were met, as required. A copy of the denial letter is attached as a stipulated exhibit.

19. Petitioner chose not to seek a variance from the Town of Nags Head local setbacks as required by the Commission's Variance Rules as part of a complete variance petition per 15A NCAC 7J .0701. Petitioner explains that because the bathroom addition is under the existing roofline on the porch/deck, and because the proposed extension of the existing deck also requires no new pilings or foundation work in the ground, they decided not to seek a local variance as reduced local setbacks would not change their design plans.

20. Adjacent riparian property owners were sent notices of this Variance Petition being filed with the Coastal Resources Commission. Copies of the notification letter and the certified mailing information are attached as Stipulated Exhibits. No comments have been received to date, but if any comments are received prior to the Commission Meeting, they will be provided to the Commission.

21. The Town of Nags Head has provided a February 24, 2020 letter from Town Manager Cliff Ogburn briefly describing the beach nourishment efforts of the town which include the 2011 project and the project completed during the summer of 2019.

22. For purposes of this Variance Petition, Petitioner stipulates that their proposed bathroom and deck additions constitute development that is inconsistent with the CAMA setback rules specified in 15A NCAC 7H.0306.

23. Ground Level and Aerial photographs, both current and historic, are attached as part of a power point presentation.

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Stipulated Exhibits:

- 1. 2019 Deed to Petitioners at 2288/663
- 2. Tides Time Subdivision Plat at A/69
- 3. Email chain between Petitioner and town staff between February 7, 2019 and June 21, 2019
- 4. Dare County Tax Card for the Site
- 5. DCM Mapping Tool showing historic shorelines and the static line at the Site, as well as setback factor confirmation and Flood Zone/Base Flood
- 6. CAMA Minor Permit Application, including site plans and Meekins Plat -permit form
 - -Meekins Plat, original and with LPO notes/highlighting
 - -Site plan showing elevation and top-down plans, dated 9/17/19
 - -Ocean Hazard AEC Notice
 - -CAMA Agent Authorization Form
- 7. Notice to adjacent riparian owners of permit application
- 8. November 6, 2019 denial letter
- 9. Notice to adjacent riparian owners of variance request
- 10. Statement from Town Manager re: Nourishment history/plans
- 11. Powerpoint including historic and current ground & aerial photography

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.

Denial of Petitioner's request to enclose and area of 75 square feet within the building footprint under a existing roofline would cause Petitioner unnecessary hardship. Section 15A NCAC O7H.0306 establishes general use standards for ocean hazard areas and provides setbacks designed to protect life and property calculated on the total square footage of heated/air-conditioned living space. The ocean erosion setback rule is designed to ensure that development within the coastal shorelines is compatible with and cannot do harm to the biological and physical functions of the shoreline system.

The existing residence includes approximately 2055 square feet of heated and cooled living space. Adding 75 square feet to the total would not increase the size of the applicable setback. Without the variance, Petitioner cannot add another working bathroom and create a modest extension to the open deck area to make up for the use of the existing covered porch for the new bathroom. The expansion for the bathroom is modest and represents an increase of 3.6% in enclosed area. The proposed open deck addition of 60 square feet necessary to makeup for the lost deck/porch area for the bathroom is also very modest.

The new bathroom addition will remain within the footprint of the existing house and will remain above the pilings already in place. It will not require any alteration to the roof and will very much appear to be part of the original construction. If these additions had been included in the original 1982 construction, no variance would have been required. For these reasons, Petitioner argues that strict application of this rule would cause Petitioner hardship. The Petitioner further argues that the location of the additions under the existing roofline and attached to the existing deck and porch reduces the likelihood that additional storm debris would be created.

<u>Staff's Position</u>: Enclosure/Bathroom: Yes/Deck No.

Staff agrees that a strict application of the oceanfront erosion setback causes Petitioner an unnecessary hardship where Petitioner has an existing structure and wishes to enclose 75 square feet of Total Floor Area ("TFA") within the footprint of the existing house and without the addition of pilings or alteration of the roof. While Staff notes that the static line bisects the proposed addition, the FLSNV is waterward of the proposed addition, which is de minimis in nature as to the amount of additional structure in the setback, and is located under an existing roofline.

Staff disagrees that the strict application of the oceanfront erosion setbacks and the setback exceptions at 7H.0309, which already allow 500 square feet of elevated decking within the setback, causes Petitioners any hardships. Petitioner argues for this additional deck to "make up" for the area enclosed for the bathroom. Staff notes that the Commission's rule already allows an exception authorizing 500 square feet of elevated decking within the setback, but allows this decking "only if it is landward of the vegetation line or static vegetation line, whichever is applicable." In this case, the proposed 60 square foot deck is located waterward of both the static line and the FLSNV, closest to the ocean hazard and most susceptible to both long-term oceanfront erosion and stormrelated erosion. On this eroding shoreline, it is certainly possible that in a short period of time, this new decking could be encroaching on the public trust beach if the small dune in front of Petitioner's house were eroded. 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 see no unnecessary hardships from not being able to add additional decking to "make up for" the area they are asking and chosing to enclose for a bathroom where it would be located waterward of the static line and the FLSNV given the oceanfront erosion on the Site. Finally, Staff notes that Petitioner already has additional oceanfront porch area that will not be enclosed for the bathroom, side and rear covered porch area, and deck area around their swimming pool.

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.

Petitioner maintains that the hardship results from conditions peculiar to the property. Petitioner argues and maintains that any hardships caused by denying the request to enclose an area of 75 square feet to the house result from conditions peculiar to this property. Specifically, Petitioner argues that because the lot is in an ocean hazard area and due to the erosion that has occurred since the house was built in 1982, it no longer meets CAMA setback rules. Any erosion that occurs on the ocean front beaches cannot be controlled or managed by Petitioner because the area is located in the beach nourishment zone managed and requested by the Town of Nags Head. Petitioner is very much limited and regulated as to their ability to moving sand, enhancing the dunes or adding sand fencing or sandbags to manage erosion.

Staff's Position: No.

Staff disagree that Petitioner's location within an Ocean Hazard AEC is unusual, or that the 3'/year average annual erosion rate at the site is unusual along the high energy northern beaches in the Outer Banks. It is also not peculiar that a house built in 1982, 28 years ago, no longer meets the CAMA setback- especially when the setbacks are calculated based on a 30-year time horizon. Staff

do not necessarily concur that Petitioner is limited in their ability to enhance dunes or add sand fencing, without having seen a proposal for either. Staff therefore find no peculiarities of this property, such as size, location or topography, which cause any hardships to Petitioners.

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

Petitioners' Position: No.

Petitioner maintains that they did not cause the hardship associated with denying their request from and by any action on the part. Petitioner argues that any hardship caused by denying the request does not result from any actions taken by Petitioner. Specifically, the hardships are specific and peculiar to the property over which Petitioner has no control. Petitioner further argues and maintains that Petitioner did not cause the erosion of the vegetation line and dune system oceanward of the lot and acknowledges that the proposed additions will not require new pilings or a new roof. Petitioner also maintains that the structure will remain above the floodplain. The hardship is not based on Petitioner's own actions by results from the location of the house in what is now an ocean hazard area. The house has essentially remained unchanged and has had the same footprint since 1982. The footprint has been in place since before CAMA came into effect.

<u>Staff's Position</u>: Enclosure/Bathroom: No. Deck Yes.

While Staff agree that Petitioners did not cause the erosion of the vegetation line and dune system on their lot, and did not cause the existing covered porch to be located straddling the static line and to be waterward of the FLSNV, long-tern erosion is common for an ocean shoreline, and is contemplated in the Commission's rules for the Ocean Hazard AECs. Those oceanfront setback rules have remained largely the same since initially passed in 1979 and were in effect when this house was built in 1982. However, Staff contend that the addition of 75 square feet of new TFA through the enclosure of an existing roof-covered porch within the footprint of the roof is a reasonable and de minimis addition.

The proposed oceanfront deck waterward of the static line and FLSNV is a hardship caused by Petitioners' choice of design and stated desire to "make up" for their choice of enclosing part of their covered porch. Staff contend that this deck addition is not required in order to enjoy the oceanfront residence where they are choosing to seek the bathroom variance, and also have existing covered porches on the oceanfront, the side and the rear porch, and a pool deck.

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.

Consistent with the Management Objective of Estuarine Ocean Systems in 15ANCAC07H.0203, the proposed additions would not impact any biological, social, economic or aesthetic values, based on the physical properties of the structure as previously described, in that it does not increase the footprint, add pilings, impact adversely any environmental issues surrounding it (as the bathroom addition is contained under an existing overhanging space), would remain above flood level and does not change the height of the existing structure. Furthermore, the proposed changes would actually enhance the use of the property making it more livable and appealing as a beachfront house, therefore better accommodating the owners and guests and increasing the time spent enjoying and maintaining the home. The fact that additional time and care would be spent enjoying and maintaining the home and particularly so if it becomes a primary residence, perpetuates the conservation of the entire area and minimizes the likelihood of significant loss of private property and public resources. Maintenance of the structure and the enjoyment of the surrounding natural habitat and environment would be Petitioner's priority.

Similarly, as described above, it would preserve and enhance public safety, in that it does not adversely impact the property or the rights of anyone else.

Preserving substantial justice is a unique situation, in that changes or modifications would be specific to accommodating any owners and other occupants or guests and would allow the property to be more appealing and useable and therefore, would be maintained on a regular basis and would not create any known injustice as it would have no adverse impacts on any surrounding properties. In summary, what is being proposed is unique to this property, will promote additional use and appeal of the property by owners and other guests and will not create any known adverse circumstances and should be allowed for the good of the community.

Staff's Position: Enclosure/Bathroom: Yes. Deck No.

Staff agrees that the proposed 75 square foot addition of Total Floor Area created throught the enclosure of an existing covered porch and within the roof footprint will have only a de minimis impact. The proposed addition is within the footprint of the existing house, straddles the static line, and is small in size. Staff contend that this small addition will have no significant impact on public safety and welfare, or on preserving substantial justice.

As to the deck addition, Staff believes that adding a new deck on the oceanside of the existing home waterward of both the static line and the FLSNV is not in the spirit of the oceanfront erosion setback rules. The Commission's rules have provided an oceanfront erosion setback since 1979, and while most structures are required to meet a setback landward of the static line (in this case,

90-feet), the Commission has made exceptions to allow limited development within the setback area (See the nine structures listed in 07H.0309, above), including 500 square feet of elevated decking. However, this exception still requires structures to be landward of the static line or FLSNV. This proposed deck is waterward of both the static line and the FLSNV. Petitioners already have oceanfront covered porch, side and rear covered porches and a pool deck, and Staff believe it would not preserve substantial justice to allow Petitioner to "make up" for the covered porch area they would prefer to convert into a bathroom.

ATTACHMENT D:

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PETITIONERS' VARIANCE REQUEST MATERIALS

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KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

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DELIVERY ADDRESS: 201 ANANIAS DARE STREET MANTEO, N.C. 27954

February 25, 2020

To: Division of Coastal Management Director 400 Commerce Avenue Morehead City, NC 28557 Attn: Angela Willis, Assistant to the Director (transmitted via email only: <u>angela.willis@ncdenr.gov</u>)

Re: CAMA Variance Request Form April 8-9, 2020, CRC Meeting

Dear Ms. Willis:

Enclosed with this letter please find the completed CAMA Variance Request Form, signed and dated by me, Charles D. Evans, as the Petitioner's Attorney. Also enclosed, please find the additional information required for submission with the said Form.

On behalf of my client, the Petitioner, I am respectfully requesting that the enclosed Request Form and attachments and exhibits be considered at the CRC Meeting scheduled to be held on April 8-9, 2020 in Dare County.

After your review of the enclosed documents, if you determine that any supplemental materials are necessary, please let me know and I will provide them promptly. I greatly appreciate your continued assistance and guidance with this matter. Thank you for your acceptance of the enclosed Form on behalf of the Director of the Division of Coastal Management.

Best regards, O. ways

Charles D. Evans CDE/ Enclosures

CAMA VARIANCE REQUEST FORM

DCM FORM 11 DCM FILE No.:

PETITIONER'S NAME Mark E. Schmunk and Tonya M. Schmunk COUNTY WHERE THE DEVELOPMENT IS PROPOSED DARE

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:

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

	•
\checkmark	A copy of the permit decision for the development in question;
\angle	A copy of the deed to the property on which the proposed development would be located;
\checkmark	A complete description of the proposed development including a site plan;
\checkmark	A stipulation that the proposed development is inconsistent with the rule at issue;
\checkmark	Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);
\checkmark	Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
\checkmark	Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
V	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.
\checkmark	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.

Signature of Petitioner or Attorney

<u>Charles D. Evans, Esq.</u> Printed Name of Petitioner or Attorney

PO Box 189 Mailing Address

<u>Manteo</u> <u>NC</u> <u>27954</u> City State Zip February 24, 2020

Date

charlese@kelloggandevans.com Email address of Petitioner or Attorney

(<u>252</u>) <u>473-2171</u> Telephone Number of Petitioner or Attorney

(<u>252</u>)<u>473-1214</u> Fax Number of Petitioner or Attorney

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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:

Contact Information for Attorney General's Office:

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

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

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

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

By Fax: (919) 716-6767

Statement of Petitioners

Mark E. Schmunk and Tonya M. Schmunk

Re: 8613 East Tide Drive, Nags Head, NC

January 25, 2020

My wife and I purchased the house in March of 2019 as a second home and investment property. The house was in bad need of repairs, some of which we have done since owning it. Our long term goal is to retire to this house and live full time in Nags Head.

There are five bedrooms and three baths. The upstairs bath has a sloped ceiling and makes it a tough sink area for adults to use. One of the downstairs bathrooms is attached to the NW bedroom and the other three bedrooms share the remaining bath. That bath only has room for a single vanity making it difficult for more than one person to use at a time.

The existing floor plan does not allow a practical interior expansion of another bathroom as it would take up too much space in an already limited living area.

With the amount of competition and choices for renters, it is critical we keep our house as marketable as possible. Without the rental income, the house would become a financial burden we couldn't afford.

The exterior living area of the house can be as important as the interior when the prime reason for choosing a beachfront house is the beach view. The current beachfront deck is completely covered and somewhat narrow for people to sit and face each other. The cover provides good shade, but having a portion of the deck uncovered would make it possible to sit in the sun and especially enjoy it on cooler days.

The bath addition will be taking up 75 sf of the prime beachfront deck, which we feel will negatively impact that area. If it wasn't for the critical need of the added bath, we wouldn't have even considered compromising the deck.

The proposed 60 sf deck expansion will mostly replace the lost deck space and provide a larger area, both in shade and sun, for guests to use which would be a major plus. The deck construction support would utilize cantilevered beams and the existing pier walkway so as not to impact the dune.

Hardship and Establishing Variance 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.

> Yes. Denial of Petitioner's request to enclose and area of 75 square feet within the building footprint under a existing roofline would cause Petitioner unnecessary hardship. Section 15A NCAC 07H.0306 establishes general use standards for ocean hazard areas and provides setbacks designed to protect life and property calculated on the total square footage of heated/airconditioned living space. The ocean erosion setback rule is designed to ensure that development within the coastal shorelines is compatible with and cannot do harm to the biological and physical functions of the shoreline system. The existing residence includes approximately 2055 square feet of heated and cooled living space. Adding 75 square feet to the total would not increase the size of the applicable setback. Without the variance, Petitioner cannot add another working bathroom and create a modest extension to the open deck area to make up for the use of the existing covered porch for the new bathroom. The expansion for the bathroom is modest and represents an increase of 3.6% in enclosed area. The proposed open deck addition of 60 square feet

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necessary to makeup for the lost deck/porch area for the bathroom is also very modest.

The new bathroom addition will remain within the footprint of the existing house and will remain above the pilings already in place. It will not require any alteration to the roof and will very much appear to be part of the original construction. If these additions had been included in the original 1982 construction, no variance would have been required. For these reasons, Petitioner argues that strict application of this rule would cause Petitioner hardship. The Petitioner further argues that the location of the additions under the existing roofline and attached to the existing deck and porch reduces the likelihood that additional storm debris would be created.

b) DO SUCH HARDSHIPS RESULT FROM CONDITIONS PECULIAR TO THE PETITIONER'S PROPERTY SUCH AS THE LOCATION, SIZE OR TOPOGRAPHY OF THE PROERTY? EXPLAIN.

Yes. Petitioner maintains that the hardship results from conditions peculiar to the property. Petitioner argues and maintains that any hardships caused by denying the request to enclose an area of 75 square feet to the house result from conditions peculiar to this property. Specifically, Petitioner argues that because the lot is in an ocean hazard area and due to the erosion that has occurred since the house was built in 1982, it no longer meets CAMA setback rules. Any erosion that occurs on the ocean front beaches cannot be controlled or managed by Petitioner because the area is located in the beach nourishment zone managed and requested by the Town of Nags Head. Petitioner is very much limited and regulated as to their ability to moving sand, enhancing the dunes or adding sand fencing or sandbags to manage erosion.

c) DO THE HARDSHIPS RESULT FROM ACTIONS TAKEN BY THE PETITIONER? EXPLAIN.

No. Petitioner maintains that they did not cause the hardship associated with denying their request from and by any action on the part. Petitioner argues that any hardship caused by denying the request does not result from any actions taken by Petitioner. Specifically, the hardships are specific and peculiar to the property over which Petitioner has no control. Petitioner further argues and maintains that Petitioner did not cause the erosion of the vegetation line and dune system ocean-ward of the lot and acknowledges that the proposed additions will not require new pilings or a new roof. Petitioner also maintains that the structure will remain above the floodplain. The hardship is not based on Petitioner's own actions by results from the location of the house in what is now an ocean hazard area. The house has essentially remained unchanged and has had the same footprint since 1982. The footprint has been in place since before CAMA came into effect.

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; (3) PRESERVE SUBSTANTIAL JUSTICE? EXPLAIN.

Yes. Consistent with the Management Objective of Estuarine Ocean Systems in 15ANCAC07H.0203, the proposed additions would not impact any biological, social, economic or aesthetic values, based on the physical properties of the structure as previously described, in that it does not increase the footprint, add pilings, impact adversely any environmental issues surrounding it (as the bathroom addition is contained under an existing overhanging space), would remain above flood level and does not change the height of the existing structure. Furthermore, the proposed changes would actually enhance the use of the property making it more livable and appealing as a beachfront house, therefore better accommodating the owners and guests and increasing the time spent enjoying and maintaining the home. The fact that additional time and care would be spent enjoying and maintaining the home and particularly so if it becomes a primary residence, perpetuates the conservation of the entire area and minimizes the likelihood of significant loss of private property and public resources. Maintenance of the structure

and the enjoyment of the surrounding natural habitat and environment would be Petitioner's priority.

2. Similarly, as described above, it would preserve and enhance public safety, in that it does not adversely impact the property or the rights of anyone else.

3. Preserving substantial justice is a unique situation, in that changes or modifications would be specific to accommodating any owners and other occupants or guests and would allow the property to be more appealing and useable and therefore, would be maintained on a regular basis and would not create any known injustice as it would have no adverse impacts on any surrounding properties. In summary, what is being proposed is unique to this property, will promote additional use and appeal of the property by owners and other guests and will not create any known adverse circumstances and should be allowed for the good of the community.

- 5 -

ATTACHMENT E:

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STIPULATED EXHIBITS

- 1. 2019 Deed to Petitioners at 2288/663
- 2. Tides Time Subdivision Plat at A/69
- 3. Email chain between Petitioner and town staff between February 7, 2019 and June 21, 2019
- 4. Dare County Tax Card for the Site

6.

- 5. DCM Mapping Tool showing historic shorelines and the static line at the Site, as well as setback factor confirmation and Flood Zone/Base Flood
 - CAMA Minor Permit Application, including site plans and Meekins Plat -permit form
 - -Meekins Plat, original and with LPO notes/highlighting
 - -Site plan showing elevation and top-down plans, dated 9/17/19
 - -Ocean Hazard AEC Notice
 - -CAMA Agent Authorization Form
- 7. Notice to adjacent riparian owners of permit application
- 8. November 6, 2019 denial letter
- 9. Notice to adjacent riparian owners of variance request
- 10. Statement from Town Manager re: Nourishment history/plans
- 11. Powerpoint including historic and current ground & aerial photography

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Q.		
POTT-C.	Recorded: 03/11/2019 04:17:03 PM BY: SHAREE WILDER Cheryl L. House, Register of Deeds Dare County, NC	
hu -	Fee Amt \$26.00 NC Excise Tax: \$1,456.00	
DARE REAL ESTATE	BOOK 2288 PAGE 663 (2)	
COUNTY	700062379	
LT 741-19 4 \$ 72802		
	ERAL WARRANTY DEED	
LT# 741-19 X \$ 7,280.00 Revenue Stamps \$1,456.00		
Tax Lot No Parcel Identi Verified by County on the day of	fier No	
by		
	<u></u>	
Mail after recording to Casey & Robbins, PG, P. O. Box 28, Nags This instrument was prepared by Starkey Sharp, Attorney at Law	Head, NC 27959	
Brief Description for the index Lot 5, Section 1, Tides		23156lr
THIS DEED made March 5, 2019 , by and between		
GRANTOR O	GRANTEE	
Stingone Properties, Inc., a North Carolina Corporation	Mark E. Schmunk and wife,	
300 Mamaroneck Avenue, Unit 728	Tonya M. Schmunk	
White Plains, NY 10605	56580 Fletcher Chapel Road South Charleston, OH 45368	
The designation Grantor and Grantee as used herein shall include so singular, plural, masculine, feminine or neuter as required by contex	aid parties, vheir heirs, successors, and assigns, and shall inc at.	lude
WITNESSETH, that the Grantor, for a valuable consideration paid and by these presents does grant, bargain, sell and convey unto the in the Town of Nags Head, Nags Head Township, Dare County, N	Grantee in fee simple, all that certain lot or parcel of land sit	
Being Lot 5, Section 1, Tides Time Subdivision as shown on that pl Deeds, North Carolina.	at recorded in Plat Book A, Page 69, Dare County Register	of
If checked, the property includes the primary 1 105-317.2)	residence of at least one of the Grantors. (NC G	S §
This instrument prepared by Starkey Sharp, a licensed North closing attorney to the county tax collector upon disbursement		i by the

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The property hereinabove described was acquired by Grantor by instrument recorded in Book 1823, Page 282 Dare County Registry.

Amap showing the above described property is recorded in Map Book A, Page 69, Dare County Registry.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in tee 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 except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

Easements and restrictions of record, if any, in the Dare County Registry.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by fishbuly authorized officers by authority of its Board of Directors, the day and year first above written. Stingone Properties, Inc., a North Carolina Corporate of the co

Stingone Properties, Inc., a North Carolina Corporation

By: 12huh Stary Deborah Stingone, Vice President (SEAL)

NY STATE OF

I, a Notary Public of the County and State aforesaid, certify that Deborah Stingone personally came before me this day and acknowledged that she is Vice President of Stingone Properties, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by her as its Vice President. Witness my hand and official , 2019 stamp or seal, this 3 Way of MArch

COUNTY OF

3

My Commission Expires: 9(26/2019

SHIRI LEVI KLUSKA NOTARY PUBLIC-STATE **OF NEW YORK** No. 02LE6248890 Qualified in New York County My commission Expires September 26, 2019 (Place Seal or Stamp Here)

Copry Public Unofficial Document

027

HASSELL LAND SURVEYS P. O. BOX 366 ENTON, NORTH CAROLINA N Crawn Cy: -PAM MERRITT 205 -----, (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER (OWNERS) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY (OUR) FREE CONSENT. FURTHER, I (WE) CERTIFY THE LAND AS SHOWN HEREON IS WITHIN THE PLATTING JURISDICTION OF THE TOWN OF NAGS HEAD. 1m OWNER OR AUTHORIZED AGE DATE OWNER OR AUTHORIZED AGENT I HEREBY CERTIFY THAT THE WATER SUPPLY AND SEWAGE DISPOSAL SYSTEM INSTALLED, OR AND ARE HEREBY APPROVED AS SHOWN. CHOTS ARE EVALUATED SE PARATELY A.T. TO TO POLRAPHY, TO TO POLRAPHY, TO TO POLRAPHY). 1573 1578 DRAINACE, + SOIL POROSITY). PARE GOUNTY HEALTH OFFICER OR LEGAL REPRESENTATIVE DATE PRELIMINARY PLAT APPROVED CONDITIONALLY APPROVED, (STRIKE ONE). 3/9/78 SECRETARY OF PLANNING BOARD DATE i, Constance V. Hardee, THE TOWN CLERK OF NAGS HEAD, NORTH CAROLINA, DO CERTIFY THAT ON THE 215 DAY OF March , 1978, THE TOWN OF NAGS HEAD APPROVED THIS PLAT FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS AND ACCEPTED THE DEDICATION OF THE IMPROVEMENTS, LISTED BY RESOLUTION OF THE BOARD OF COMMISSIONERS BUT ASSUME NO RESPONSIBILITY TO OPEN OR MAINTAIN THE SAME UNTIL, IN THE OPINION OF THE BOARD OF COMMISSIONERS OF NAGS HEAD, IT IS IN THE PUBLIC INTEREST TO DO SO. -onstance U. Hardee TOWN CLERK THE STREETS ON THIS PLAT ARE NOTE: PRIVATE STREETS. (SEE NCGS 136-102 6)





FILED 76 F.M. 21 FM 1 148.00 E Contra MAG.NOR. 1977 **O** -15 WALKING ACCESS EASEMENT FOR PROPERTY OWNERS OF TIDES TIME MONUMENTAL CONTROLS ARE CONCRETE MONUMENTS WITH BRASS (I) R = 30' △ = 89°31' T = 29.75' PLATES LETTERED L-1065. ALL OTHER LOT CORNERS. (2) R = 30' △ = 90° 29' T = 30,25' ARE MONUMENTED WITH IRON RODS. (3) R = 20' \triangle = 60° 53'30" T = 11.76' (4) R = 30' △ = 89° 31' T = 29.75' (5) R = 50' $\Delta = 20^{\circ}00'30''$ T = 8.82' (6) CUL DE SAC R = 50' LC = 148.72' TOPO SURVEY 9/12/77 Jan an W. Henre I, JASPER W. HASSELL, CERTIFY THAT UNDER MY I, VIVIAN P. LIVINGSTON, NOTARY PUBLIC IN DIRECTION AND SUPERVISION, THIS PLAT WAS MADE AND FOR THE COUNTY OF PASQUOTANK AND FROM AN ACTUAL FIELD LAND SURVEY; THAT THE STATE OF NORTH CAROLINA, CERTIFY THAT ERROR OF CLOSURE AS CALCULATED BY LATITUDES JASPER W. HASSELL, REGISTERED LAND SUR-AND DEPARTURES IS _____, THAT THE AREA VEYOR, L-1065, DID APPEAR BEFORE ME WAS COMPUTED BY THE DMD METHOD; THAT THIS AND ATTACH HIS SIGNATURE TO THIS PLAT. PLAT WAS PREPARED ACCORDING TO G.S. 47-30 AS AMMENDED., WITNESS MY HAND AND SEAL THIS _____ DAY OF FEBRUARY 19 28. * DAY OF FEBRUAR AD 1978 THIS -214 DAY OF JUNE 19 78 JASPER W. HASSELL L-1065 REGISTERED LAND SURVEYOR Vivian P. Livington Unper W. Henely SEAL L-1065

029

From: Margaux Kerr <margaux.kerr@nagsheadnc.gov>
Sent: Friday, June 21, 2019 2:40 PM
To: Mark Schmunk; Holly White
Cc: Carver, Yvonne
Subject: RE: 8613 E Tide Dr.- Links from Nags Head Building Department /
Bathroom and Deck Expansion Variance
Attachments: CAMA_Minor_Permit_2015.pdf; Directions For Filling Out A CAMA MINOR
Permit (UPDATED).pdf; FINAL 2017 Local Variance Memo to DCM LPOs
DCM Form 11.pdf

Good afternoon Mark,

You can apply for a permit and then get it denied and then apply for a variance -

I have copied Yvonne Carver, she is our Division of Coastal Management (DCM) field representative for the CAMA Variance.

Thank you,

Margaux Kerr Zoning Administrator CAMA LPO/CFM/CZO Town of Nags Head Department # 252.441.7016 Direct #: 252.449.6045 Fax #: 252.441.4290 margaux.kerr@nagsheadnc.gov www.nagsheadnc.gov

From: Mark Schmunk <marks@foundationsconstruction.com> Sent: Friday, June 21, 2019 1:33 PM To: Margaux Kerr <margaux.kerr@nagsheadnc.gov>; Holly White <holly.white@nagsheadnc.gov> Cc: Mark Schmunk <marks@foundationsconstruction.com> Subject: RE: 8613 E Tide Dr.- Links from Nags Head Building Department / Bathroom and Deck Expansion Variance

Hello, just following up on this.

Thanks!

Mark

From: Mark Schmunk Sent: Friday, June 14, 2019 9:02 AM To: Margaux Kerr <margaux.kerr@nagsheadnc.gov>; Holly White <holly.white@nagsheadnc.gov> Cc: Mark Schmunk (marks@foundationsconstruction.com) <marks@foundationsconstruction.com> Subject: RE: 8613 E Tide Dr.- Links from Nags Head Building Department / Bathroom and Deck Expansion Variance

Hi Margaux and Holly, we did end up purchasing the house so we are now proud to call Nags Head our second home!

I did talk to the attorney that handled the variance for the **other** similar bathroom addition in the area. He suggested I talk to you to see what the first step would be in the process and if it is like what I'm used to in my area, I would need to apply for a permit and have it denied in order to start the variance process. What that be the case? If it is, I will have some more follow up questions, but wanted to start here.

Thanks!

Mark

From: Mark Schmunk <marks@foundationsconstruction.com> Sent: Saturday, February 9, 2019 9:29 AM To: Margaux Kerr <margaux.kerr@nagsheadnc.gov>; Holly White <holly.white@nagsheadnc.gov>; Cory Tate <cory.tate@nagsheadnc.gov>; Steve Szymanski <steve.szymanski@nagsheadnc.gov> Cc: Andy Garman <andy.garman@nagsheadnc.gov>; Mark Schmunk <marks@foundationsconstruction.com> Subject: RE: 8613 E Tide Dr.- Links from Nags Head Building Department / Bathroom and Deck Expansion

Hi Margaux, thanks for the information and quick reply. My hope would be, since we would be maintaining the existing building line and not encroaching any further than what the structure is now, we would be able to obtain a variance. Not being able to add a bathroom in this house may likely be a deal killer for us since the two main bedrooms in the house share a small Jack and Jill type bathroom now.

I am somewhat familiar with the variance process in my location, but am a little confused on what I'm reading here. Could I give you a call on Monday to discuss?

Thanks!

Mark

From: Margaux Kerr <margaux.kerr@nagsheadnc.gov> Sent: Friday, February 8, 2019 4:53 PM To: Holly White <holly.white@nagsheadnc.gov>; Cory Tate <cory.tate@nagsheadnc.gov>; Steve Szymanski <steve.szymanski@nagsheadnc.gov> Cc: Mark Schmunk <marks@foundationsconstruction.com>; Andy Garman <andy.garman@nagsheadnc.gov> Subject: RE: 8613 E Tide Dr.- Links from Nags Head Building Department / Bathroom and Deck Expansion

Good afternoon,

Unfortunately due to the location of the Static line (green line in attached image) running along the east side of the house the additions proposed would need to be approved through a Variance Process – the addition of a bathroom does not meet the 90 ft setback, and the deck addition is proposed east of the static line...... The Variance process would be through the Division of Coastal Management – see attached process.

I have attached also the CAMA Rules for your reference if you are not familiar with the setbacks and exceptions.

The Erosion rate is 3 ft/yr

The calculation $3x \ 30 = 90$ ft setback from the Static line (Green Line) or the Frist Line of Stable Natural vegetation (FLSNV) whichever is greater.

Please let me know if you have further questions,

Thank you,

Margaux Kerr Zoning Administrator CAMA LPO/CFM/CZO Town of Nags Head Department # 252.441.7016 Direct #: 252.449.6045 Fax #: 252.441.4290 margaux.kerr@nagsheadnc.gov www.nagsheadnc.gov

From: Holly White Sent: Friday, February 8, 2019 10:43 AM To: Margaux Kerr <margaux.kerr@nagsheadnc.gov>; Cory Tate <cory.tate@nagsheadnc.gov>; Steve Szymanski <steve.szymanski@nagsheadnc.gov> Cc: marks@foundationsconstruction.com; Andy Garman <andy.garman@nagsheadnc.gov> Subject: FW: 8613 E Tide Dr.- Links from Nags Head Building Department / Bathroom and Deck Expansion

Hey guys,

I spoke with Mark yesterday by phone and he is interested in determining if a bathroom and deck addition can be made to 8613 E Tide Dr. Mark is under contract to purchase this home and is doing his due diligence. I briefly covered how the building code, flood, and CAMA regulations all work together and all the requirements for those have to be met. However, I was hoping you all might be able to give him a little more insight. While I know you can not guarantee until he submits for a permit, if there is an obvious glaring issue he would like to know now. A sketch of what he is proposing is attached.

Any assistance would be greatly appreciated. I have copied Mark on this message. His phone number is 614-390-9699

Thanks so much, Holly

Holly B. White, AICP, CFM Town of Nags Head ?Principal Planner 252.449.6041

From: Mark Schmunk <marks@foundationsconstruction.com> Sent: Thursday, February 07, 2019 4:08 PM To: Holly White <holly.white@nagsheadnc.gov> Cc: Mark Schmunk <marks@foundationsconstruction.com> Subject: RE: 8613 E Tide Dr.- Links from Nags Head Building Department / Bathroom and Deck Expansion Great talking with you too!

Here is what I was thinking on the bathroom and deck.

Talk to you soon.

Mark

From: Holly White <holly.white@nagsheadnc.gov> Sent: Thursday, February 7, 2019 3:07 PM To: Mark Schmunk <marks@foundationsconstruction.com> Subject: 8613 E Tide Dr.- Nags Head

Mark- Great talking with you today. Look forward to additional follow up. Here is the information I mentioned on the phone.

Dare County GIS- https://maps.darecountync.gov/

CAMA-

https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=f5e463a929ed43 0095e0a17ff803e156

Beach Nourishment- https://www.nagsheadnc.gov/shoreline - Andy Garman-

Thanks so much, Holly

Holly B. White, AICP, CFM Town of Nags Head ?Principal Planner 252.449.6041

County of Dare, North Carolina

*Owner and Parcel information is based on current data on file and was last updated on October 18 2019

Primary (100%) Owner Information: SCHMUNK, MARK E EUX SCHMUNK, TONYA M EUX 6580 FLETCHER CHAPEL RD SOUTH CHARLESTON OH 45368 Parcel Information: Parcel: 007138000 PIN: 071909077245 District: 14- NAGS HEAD Subdivision: TIDES TIME LotBlkSect: LOT: 5 BLK: SEC: Multiple Lots: -PlatCabSlide: PL: A SL: 69 Units: 1 Deed Date: 03/11/2019 BkPg: <u>2288/0663</u> Parcel Status: ACTIVE



Property Use: RESIDENTIAL

8613 E TIDE DR

BUILDING USE & FEATURES	Tax Year Bidg Value: \$278,400	
Building Use:	OLD NAGS HEAD	
Exterior Walls:	MODERN FRAME	Actual Year Built: 1982
Full Baths:	3 Half Baths: 0	
Bedrooms:	5	
Heat-Fuel:	3 - ELECTRIC	
Heat-Type:	2 - FORCED AIR	Finished sqft for building 1: 2055
Air Conditioning:	4 -CENTRAL W/AC	Total Finished SqFt for all bldgs: 2055

Disclaimer: In instances where a dwelling contains unfinished living area, the square footage of that area is included in the total finished sqft on this record. However, the assessed value for finish has been removed.

	Tax Year Misc Value: \$16,500	
Misc Bldg a: (RP4) IN GROUND F	POOL Year Built: 2003 sqft: 220	
Misc Bldg b: (PC2) CONCRETE PC	OOL DECK Year Built: 2003 sqft: 483	

Enclose an and a second determined on the balance and the first financial statements of the second	
LAND USE	Tax Year Land Value: \$136,400
When a second data is a construction of the second s	

Land Description : 14-Ocean front

TOTAL LAND AREA: 18500 square feet

Tax Year Total Value: \$431,300

*Values shown are on file as of October 18 2019



from data used for the inventory of the real property for tax purposes. Primary information sources such as recorded deeds, plats, wills, and other primary public records should be consulted for verification of the information contained in this map. 8613 E Tide DR Nags Head NC, 27959 Parcel: 007138000 Pin: 071909077245 Owners: Schmunk, Mark E -Primary Owner Schmunk, Tonya M -Primary Owner Building Value: \$278,400 Land Value: \$136,400 Misc Value: \$16,500 Total Value: \$431,300

Tax District: Nags Head Subdivision: Tides Time Lot BLK-Sec: Lot: 5 Blk: Sec: Property Use: Residential Building Type: Old Nags Head Year Built: 1982










from data used for the information sources such as recorded deeds, plats, wills, and other primary

8613 E Tide DR Nags Head NC, 27959 Parcel: 007138000 Pin: 071909077245

Owners: Schmunk, Mark E -Primary Owner Schmunk, Tonya M -Primary Owner Building Value: \$278,400 Land Value: \$136,400 Misc Value: \$16,500 Total Value: \$431,300

Tax District: Nags Head Subdivision: Tides Time Lot BLK-Sec: Lot: 5 Blk: Sec: Property Use: Residential Building Type: Old Nags Head Year Built: 1982



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Locality <u>Alaas</u> Head Permit Number <u>19-055</u>
Ocean Hazard Estuarine Shoreline ORW Shoreline Public Trust Shoreline Other (For official use only)
GENERAL INFORMATION
LAND OWNER - MAILING ADDRESS
Name Mark E. Schmunk
Address 6580 Fletcher chapel Rd.
City South Charleston State OH Zip 45368 Phone (614) 390-9699
Email Marks a fosch. com
AUTHORIZED AGENT
Name Benjamin Cahoon
Address 118 W. Woodhill Dr.
City Nags Head State NC Zip 27959 Phone 252-441-0271
Bmail ben @ Obxarchitects. Com
LOCATION OF PROJECT: (Address, street name and/or directions to site; name of the adjacent waterbody.)
8613 E. Tide Dr., Nags Head, NC 27959 (Atlantic Ocean)
· · ·
DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.)
of existing east porch for a bathroom. 2) Add GO S.F. decking.
SIZE OF LOT/PARCEL: 2636 square feet 0.605 acres
PROPOSED USE: Residential $[X]$ (Single-family $[X]$ 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:
(1) OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE:
(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: square feet (includes the area of the foundation 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 Energy, Mineral and Land Resources (DEMLR)? 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 ABC 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)

$\underline{\times}$ an owner or record title, Title is vested in nar	me of Mark	E. and	TONYO M. SCHMUNK,
see Deed Book · 1823 page	<u>282</u> in the	Dare	County Registry of Deeds.
an owner by virtue of inheritance. Applicant	is an heir to the est	ate 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 RIPARIAN 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)	Sunnyside Mamt., Mc.	4968 Frying Pan Rd., columbia, NC 27925
(2)	Mark Edward Rigney, Thustee	1733 Beulan Rd., Vienna, Va., 22102
(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 22WC day of Oct. ,2019

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.

047









OCEAN HAZARD A	EC NOTICE
Project is in an:	Inlet Hazard Area
Property Owner: Mark ESchmunk	· · ·
Property Address: 8613 E Tide Dr	
Date Lot Was Platted:	

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 luminently threatened by changes in shoreline configuration. The structure(s) must be telocated 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 ______, feet per year.

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

The flood waters in a major storm are predicted to be about ______, 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.

· 10-25-19

Property Owner's 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 re-measured. 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:

MARGAUX KERR Local Permit Officer O BOX: 5401 CROATAN Address TOWN OF INAUS FEAD

Locality

1252-449-6045

Phone Number

Revised October 2016

AGENT AUTHORIZATION FOR CAMA PERMIT APPLICATION

Name of Property Owner Requesting Permit: <u>Mark も. Schmunk</u>
Mailing Address: <u>6580 Fletcher Chapel Rd.</u>
South Charleston, OH 45368
Phone Number: $(614) 390 - 9699$
mail Address: <u>Marks @ fcsch.com</u>
certify that I have authorized <u>Ben Cahoon, AA</u> Agent / Contractor
o act on my behalf, for the purpose of applying for and obtaining all CAMA permits
ecessary for the following proposed development: <u>Restroom within existing</u>
Porch, Plus new deck.
t my property located at 8613 E. Tide Pr., Nags Head
Dare County.

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.

Property Owner Information:

Signature

Mark Schmunk

Print or Type Name

Owner

× ·

Title

9 / 26 / 19 Date

This certification is valid through _____/

Revised Mar. 2016

053

054

CERTIFIED MAIL, RETURN RECEIPT REQUESTED or HAND DELIVERED

<u>00f. 22 2019</u> Date

Mark Edward Rigney, Trustee
Name of Adjacent Riparian Property Owner
1733 Beulan Road
Address
Vienna, Va. 22182
City, State Zip

To Whom It May Concern:

This correspondence is to notify you as a riparian property owner that I am applying for a CAMA Minor permit to

endose a ba	othroom on	the existing	ezet Porch,	and add	60 S.F. deck.
		•	tead, NC		
1		1		·····	

in ______ County, which is adjacent to your property. A copy of the application and project

drawing is attached/enclosed for your review.

If you have no objections to the proposed activity, please mark the appropriate statement below and return to me as soon as possible. If no comments are received within 10 days of receipt of this notice, it will be considered that you have no comments or objections regarding this project.

If you have objections or comments, please mark the appropriate statement below and send your correspondence to: (LOCAL PERMIT OFFICER, NAME OF LOCAL GOVERNMENT, MAILING ADDRESS CITY, STATE, ZIP CODE) L'IY COM DOG H'EBENCH'NG TOWN OF NOOS HEAD P.O. BOX 99 NOOS HEAD, NG 27957 If you have any questions about the project, please do not hesitate to contact me at my address/number listed below, or contact (LOCAL PERMIT OFFICER) at (PHONE NUMBER), or by email at: (LPO EMAIL). L'IY COMPOS H'EBENCH'NG 252-441-5508 II'Y. N'EBENCH'NG @ NOOSHEAD NC.gov Sincerely,

Mark E. Schmunk Property Owner's Name

(614)	390-9699	-
Tele	phone Number	

Address	City	U.S. Postal Service m	
	e project described in this cc \Box project described in this co \Box	For delivery information visit our websit	Coverage Provided) e at www.usps.coms
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Adjacent Riparian Signature	ی ۵ ۱۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰۰	Cortilied Fae \$0,00 Heturn Receipt Fee \$0,00 (Endorsement Required) \$0,00	Postmark (C) Here
Print or Type Name		Restricted Delivory Feo (Endorsement Required) \$1.45 Total Postage & Fees	10/22/2019
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Address	City D	Street, Apl. Na.; 1733 BELLAN OF PO BOX Na. 1733 BELLAN City, State, ZIP44 VIENNA, VA	+ ROAD 22182
		PS Form 3800, August 2005	Size Bouerse fordisticutions

055

CERTIFIED MAIL, RETURN RECEIPT REQUESTED or HAND DELIVERED

<u>0ct.22</u> 2019 Date

<u>Sunnysi'de Mgmt., Inc.</u> Name of Adjacent Riparian Property Owner <u>4968 Frying Pan Pd.</u> Address <u>COLUMBIA, NC 27925</u> City, State Zip

To Whom It May Concern:

This correspondence is to notify you as a riparian property owner that I am applying for a CAMA Minor permit to

enclose a	bathroom	on the e	<u>kisting</u>	Cost 1	Porch,	and add	60 g.f. deck	
on my property at								

in Dave County, which is adjacent to your property. A copy of the application and project

drawing is attached/enclosed for your review.

If you have no objections to the proposed activity, please mark the appropriate statement below and return to me as soon as possible. If no comments are received within 10 days of receipt of this notice, it will be considered that you have no comments or objections regarding this project.

If you have objections or comments, please mark the appropriate statement below and send your correspondence to: (LOCAL PERMIT OFFICER, NAME OF LOCAL GOVERNMENT, MAILING ADDRESS CITY, STATE, ZIP CODE) Lily Compose Nieberting Tann & Noos Head P.O. Box 99 Nogs Heat, NC 27959 If you have any questions about the project, please do not hesitate to contact me at my address/number listed below, or contact (LOCAL PERMIT OFFICER) at (PHONE NUMBER), or by email at: (LPO EMAIL). Lily Compose Nieberting 252-441-6500 lily. Nieberting @ Nogsheating.gov Sincerely.

MORK E. SCHMUNK Property Owner's Name

(614)	390-9699	-
	hone Number	

Address	. City		U.S. Postal Service m
I have no objection	on to the project described in this (s) to the project described in this c	រីប រប	CERTIFIED MAIL II RECEIPT (Domestic Mail Only; No Insurance Coverage Provided) For delivery information visit our website at www.uspa.coms COLUMBIAY NC 27925 ALUSE
Adjacent Riparian Signatu	re	005 0226	\$3.50 Postage \$ <u>\$ 2.80</u> Contilled Fap \$ 0.00 \$ 0.00 \$ 0.00 \$ 0.00 \$ 0.00
Print or Type Name		1490 00	(Endorsement Required) \$0.00 Feedometric (Construction) Restricted Delivory Feedometric (Endorsement Required) \$1,50 Total Postage & Feeso \$
Address	City	2002	SENT TO SUNNYSIDE MGMT, INC. STREET, ADI. NO. 4968 FRYING PAN ROAD City, State, 21744 (DLUMBIA, NC 27925
			PS Form 3800, August 2006 See Reverse for Instructions



Town of Nags Head

Planning and Development Department

Post Office Box 99 Nags Head, North Carolina 27959 www.nagsheadnc.gov Telephone 252-441-7016 FAX 252-441-4290

November 6, 2019

CERTIFIED MAIL - 7016 0910 0000 6157 2858 RETURN RECEIPT REQUESTED

Mark E. Schmunk Tonya M. Schmunk 6580 Fletcher Chapel Road, South Charleston, OH 45368

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT APPLICATION NUMBER- <u># 19-055</u> PROJECT ADDRESS- <u>8613 E. Tide Drive</u>

Dear Mr. and Mrs. Schmunk,

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 increase the floor area of the existing structure, by adding 76 square feet of heated living on first floor for New Bathroom and adding 60 sqft of decking, all work is proposed on the east side of the house, which is inconsistent with 15 NCAC 7H.0306(a)(1-5)(9), which states that: (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 (Erosion Rate 3.0 ft/ yr) 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. roofcovered 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 (3.0 ft/yr x 30 = 90 ft), whichever is greater;.....(9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

In the case the New Deck addition on east side of the house is proposed to be structurally detached (stated above in 15A NCAC 07H .0309(a)), which is inconsistent with <u>15A NCAC 07H .0309 (a)(3)</u> <u>Use Standards For Ocean Hazard Areas: Exceptions</u> which states, (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: (3) elevated decks not exceeding a footprint of 500 square feet;..... 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 of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

Addition of New Bathroom (76 sqft) proposed increases the total floor area of the building/structure and attached New Deck (60sqft) are both required to meet the 90 ft structure setback – in this case the entire building/structure is within the 90 ft structure setback. Addition of the New Deck (60 sqft) proposed east of the static line and FLSNV, if the new deck were to be attached or detached is inconsistent and does not meet the 90ft structure setback.

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from that group, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

OR: Should you wish to appeal my decision to the Coastal Resources Commission or request a Variance from that group, you must complete the enclosed DCM Form 11, CAMA Variance Request, and submit your request to the Division of Coastal Management office in Morehead City. Appeal notices must be received within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,

Margaux Kerr, LPO

MargauxtKerr, LPO Town of Nags Head 5401 S. Croatan Hwy P.O. Box 99 Nags Head, NC 27959

cc: Yvonne Carver, DCM Elizabeth City, Field Representative Benjamin Cahoon, Cahoon& Kasten Architects. 058

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS

MARTIN KELLOGG, JR. 1908-2001 MANTEO, NC 27954

201 ANANIAS DARE STREET

MANTEO, N.C. 27954

P.O. BOX 189

TELEPHONE: (252) 473-2171 FACSIMILE: (252) 473-1214

EMAIL ADDRESS: charlese@kelloggandevans.com pamelat@kelloggandevans.com

February 25, 2020

Mark Edward Rigney, Trustee 1733 Beulah Road Vienna, VA 22182

Dear Mr. Rigney:

As their attorney, I am writing to you today on behalf of Mark E. and Tonya M. Schmunk owners of the property located at 8613 East Tide Drive, Nags Head, North Carolina 27959, which said property is located adjacent to the property you own in Nags Head.

As you may know, the Schmunks are requesting a CAMA Variance in order to construct a bathroom and a small open deck addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent riparian property owners.

Please review the enclosed copy of the Adjacent Riparian Property Owner Notification which is being submitted on February 26, 2020 to the Coastal Resources Commission for review prior to the scheduled hearing on April 8 and 9, 2020.

If you have any questions or comments regarding this letter and/or the enclosures, please do not hesitate to contact me at 252-473-2171 or a member of the Coastal Resources Commission, here in North Carolina.

Best regards,

CDE/ Enclosures CC: Mark E. and Tonya M. Schmunk (transmitted via emai ת

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EMAIL ADDR

KELLOGG AND EVANS, P.A.

P.O. BOX 189

MANTEO, NC 27954

ATTORNEYS AT LAW

CHARLES D. EVANS

MARTIN KELLOGG, JR. 1908-2001 DELIVERY ADDRESS: 201 ANANIAS DARE STREET MANTEO, N.C. 27954 TELEPHONE: (252) 473-2171 FACSIMILE: (252) 473-1214

EMAIL ADDRESS: charlese@kelloggandevans.com pamelat@kelloggandevans.com

February 25, 2020

Sunnyside Management, Inc. 4968 Frying Pan Road Columbia, NC 27925

To Whom It May Concern:

As their attorney, I am writing to you today on behalf of Mark E. and Tonya M. Schmunk owners of the property located at 8613 East Tide Drive, Nags Head, North Carolina 27959, which said property is located adjacent to the property you own in Nags Head.

As you may know, the Schmunks are requesting a CAMA Variance in order to construct a bathroom and a small open deck addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent riparian property owners.

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If you have any questions or comments regarding this letter and/or the enclosures, please do not hesitate to contact me at 252-473-2171 or a member of the Coastal Resources Commission, here in North Carolina.

Best regards,) ways es D. Evans

CDE/ Enclosures CC: Mark E. and Tonya M. Schmunk (transmitted via email

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2	Street and Apt. No., or PO Box No.
•	City State, ZIP+4° OL Frying Pan Koad
	Columbia, NC 27925
	PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



Benjamin Cahoon Mayor

> Michael Siers Mayor Pro Tem

> **Cliff Ogburn** Town Manager



Town of Nags Head Post Office Box 99 Nags Head, NC 27959 Telephone 252-441-5508 Fax 252-441-0776 www.nagsheadnc.gov M. Renée Cahoon Commissioner

J. Webb Fuller Commissioner

Kevin Brinkley Commissioner

Mr. Charles Evans

201 Ananias Dare St. P.O. Box 189 Manteo, NC 27954

February 24, 2020

Dear Mr. Evans,

You have inquired about the status of beach nourishment projects in the Town of Nags Head. This letter serves as a brief history of our projects as well as our commitment to future projects.

As you know, the Town nourished its beach for the first time in the summer of 2011. We placed 4.6 million cubic yards of sand along 10 miles of our ocean front, excluding the northern most mile. In the summer of 2019, we re-nourished our beach with 2.4 million cubic yards along the same project boundaries. Because our project is considered an engineered beach nourishment project and because we are committed to our beach nourishment maintenance and monitoring plan for the long term, we are eligible to receive FEMA funding for sand lost during a Presidentially declared storm. In 2016, Hurricane Matthew resulted in a 1.6 million cubic yard loss of sand from our beach. We were able to receive total of 4 million cubic yards of sand on the beach.

Next month, I will be recommending a project engineer to begin planning for our next project that we would expect to take place as early as 2025, providing not storms accelerate our loss. The town has made clear its intention to re-nourish its beach for as long as it is financially viable and for as long as there is a sand source to borrow from. The policy has been to re-nourish the beach after 50% of the volume is lost or six years after each project is complete – whichever comes last. The future target beach condition will be determined as part of the 30-year shoreline management plan and will be defined by the town's desired goals for storm damage protection, recreational beach width, and overall dune and beach aesthetics.

In addition to beach nourishment, the town actively plans and constructs dune stabilization projects using a combination of sand fencing and dune vegetation. This is typically done on an annual basis using revenue received from Dare County as well as revenue from the Town's shoreline management capital reserve fund. It is anticipated that dune vegetation and sand fencing will be an important component of the town's next beach nourishment maintenance project.

I hope this gives you some indication of the town's commitment to maintaining healthy beaches now and in the future. Please do not hesitate to contact me should you need more information.

Sincerely,

Ceff Ogh

Cliff Ogburn Town Manager



NC COASTAL RESOURCES COMMISSION MEETING June 10, 2020

MARK E. & TONYA M. SCHMUNK (CRC-VR-20-01) NAGS HEAD, OCEANFRONT SETBACK



Kelly Spivey, District Manager Yvonne Carver, Field Representative Washington Regional Office

LOCATION MAP: 8613 E. Tide Dr. Nags Head

8613 E Tides Dr

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1243

8000

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HarvestSI

Image © 2020 Maxar Technologies

SCHMUNK

Bodie Island

Imagery Date: 7/30/2019 35°53'33.99" N 75°35'12.70" W







Show search results for 8613 East Tid...



2016 Imagery

066

2013 Oceanfront Setback Factors:

Feature:	2013 Oceanfront Setback Factors
Setback Factor:	3.0
OEA:	270
100-Yr. Strm. Rec:	25
Effective Date:	1/31/2013

mmunity Maps Contributors, State of North Carolina DOT, BuildingFootprintU...



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PHOTO TAKEN BY DCM STAFF, WEST SIDE OF RESIDENCE

1741

PHOTO TAKEN BY DCM STAFF, EAST SIDE OF RESIDENCE

LOCATION OF PROPOSED BATHROOM

PHOTO TAKE BY DCM STAFF, SOUTHEAST: LOCATION OF PROPOSED DECK

SITE PHOTO TAKEN BY DCM STAFF, NORTHEAST OF PROPERTY



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SITE PHOTO TAKEN BY DCM STAFF, SOUTHEAST OF PROPERTY

12/04/19 Schmunk Site Plan; FLSNV staked on 11/07/19 by Margaux Kerr, Nags Head LPO





Locations of Development Red arrow notes new deck proposed; Green arrow notes new bathroom proposed.

> Excerpt of Schmunk Site Plan

Cross-section/Floor Plan of Proposed 75 sf **Bathroom & 60 sf Oceanside Deck**





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15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

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

- that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
- (2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;
- (3) that such hardships did not result from actions taken by the petitioner; and
- (4) 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.