



**Wrightsville Beach Board of Alderman
REGULAR MEETING**

5:30 PM THURSDAY, JULY 11, 2024

Wrightsville Beach Town Hall Council Chambers
321 Causeway Drive, Wrightsville Beach, NC

AGENDA (ALL ITEMS ARE FOR DISCUSSION AND POSSIBLE ACTION)

1. Call to Order

2. Pledge of Allegiance

3. Invocation

4. Public Comments

Notes on Comment Period: Each speaker is asked to limit comments to 3-5 minutes. Citizens should sign up at Town Hall by 5:00 p.m. the day of the meeting. The Board is interested in hearing your concerns, but speakers should not expect Board action or deliberation on subject matter brought up during the Public Comment segment. Topics requiring further investigation will be referred to the appropriate Town officials or staff and may be scheduled for a future agenda.

5. Consent Agenda

Notes on Consent Agenda: All items on the Consent Agenda are considered routine, to be enacted by one motion without discussion. If a member of the Governing Body requests discussion of an item, the item will be removed from the Consent Agenda and considered separately.

- a. Approval of the minutes of minutes of the 6-13-24 regular meeting, the 6-21-24 special called meeting, and the open and closed session minutes of the 6-24-24 special called meeting.
- b. Acknowledgement of previously-approved special events for August.
- c. Approval of Resolution (2024) 2333 exempting the Town from the requirements of NCGS 143-64.31 to allow for the procurement of engineering services related to the W. Atlanta St. bulkhead project.
- d. Approval of Resolution (2024) 2334 exempting the Town from the requirements of NCGS 143-64.31 to allow for the procurement of engineering services related to the W. Oxford St. bulkhead project.
- e. Approval of Budget Ordinance (2024) 624-B receiving and appropriating ABC grant funding for the Police Department.

- f. Approval of Budget Ordinance (2024) 625-B closing certain capital project funds.
- g. Approval of Budget Ordinance (2024) 626-B funding engineering services for the W. Atlanta St. and W. Oxford St. bulkhead projects.
- h. Approval of Budget Ordinance (2024) 627-B funding projects or purchases that were approved in FY23/24 but were not able to be completed by 6/30/24.
- i. Approval of Budget Ordinance (2024) 628-B funding various Parks & Recreation items.

6. Presentations--None.

7. Public Hearing

- a. Conduct a public hearing and consider approval of a special use permit request by 1 Stone Street Partners, LLC for property located at 4 N. Lumina Ave.
- b. Conduct a public hearing and consider a request for a pier and dock exception for 502-504 N. Channel Dr.

8. Regular Agenda

- a. Consider a report from Alderman Partin and the Ad Hoc Committee regarding the Lighting Ordinance.
- b. Consider adoption, on first reading, of Resolution (2024) 2335 enjoining with New Hanover County to enforce and remove abandoned vessels in waterways.
- c. Consider adoption of Resolution (2024) 2336 approving Amendment Ten to the Option and Lease Agreement between the Town and New Cingular Wireless PCS, LLC.
- d. Discuss and consider authorizing the Acting Town Manager to submit a funding application to NCDEQ for a Find and Replace water service line project.

9. Other Items and Reports

10. Closed Session

- a. Consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege as provided under NCGS 43-318(A)(3).

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

BOARD OF ALDERMEN MINUTES

JUNE 13, 2024, 5:30PM

TOWN HALL COUNCIL CHAMBERS, 321 CAUSEWAY DRIVE, WRIGHTSVILLE BEACH

The meeting was called to order at 5:30pm by Mayor Mills. After the Pledge of Allegiance, the invocation was provided by David Haley, Associate Minister, Wrightsville Beach Baptist Church. The following were present:

Board of Aldermen

F. Darryl Mills, Mayor
Hank Miller, Mayor Pro-tem
Jeff DeGroote, Alderman (absent)
Ken Dull, Alderman (absent)
Vivian (Zeke) Partin, Alderman

Staff

Tony Wilson, Acting Town Manager
Lance G. Heater, Town Clerk
Brian Murray, Finance Officer
Brian E. Edes, Town Attorney

PUBLIC COMMENTS

Norman Akel, 1201 N. Lumina Ave., cited increasing problems with speeding vehicles and unnecessarily loud exhaust systems on vehicles, stating that there was a “drag strip” in front of his home and that this had never been allowed to happen in the past. Akel asked that the Town respond to this issue.

CONSENT AGENDA

Upon motion by Partin, seconded by Miller and carried unanimously, the Board approved the Consent Agenda. It consisted of: 1) approval of the minutes of the 5/9/24 meeting and 5/16/24 budget workshop; 2) approval of recurring special events as recommended by the Parks & Recreation Advisory Committee; 3) setting of special called meetings for 6/21/24 at 10:00am (CFPUA merger presentation and public hearing), 6/24/24 at 10:00am (closed session to review Town Manager applications), and 7/9/24 at 11:00am (closed session to select Town Manager finalists); 4) approval of Budget Ordinance (2024) 623-B (year-end budget adjustments); 5) set a public hearing for 7/11/24 on a Special Use Permit request by Tower 7; 6) adoption of Resolution (2024) 2323 adopting the WB Bicycle and Pedestrian Plan; 7) adoption of Resolution (2024) 2332 adopting the Hurricane Operations Plan; and 8) approval of commemorative bench sponsorship requests.

PRESENTATIONS – None.

PUBLIC HEARING

By consensus, the Board approved the continuation of a public hearing on a pier and dock exception for 502-504 N. Channel Drive.

The Board considered conducting a public hearing on the FY24-25 Town Budget and adoption of Budget Ordinance (2024) 622-B and the proposed FY24-25 Budget in its entirety. Wilson expressed appreciation to the Board and staff for helping him get through the budget process and noted six major budget priorities as follows: 1) public safety (addition of 2 police officers and other enhancements); 2) addition of Public Information Officer position; 3) capital improvements of \$1.68 million; 4) funding of two bulkhead repair projects; 5) addition of beach barrel trash collection; and 6) parks improvements. Wilson stated that the budget was balanced, totaling \$22,011,182. The budget included no ad valorem tax increase but did include a 5% water and sewer rate increase in order to parallel the rates charged by the CFPUA in anticipation of a successful merger.

Murray presented a summary of the budget as follows: 1) presented a summary of the budget process; 2) reviewed changes in the budget since the last budget workshop; 3) reviewed General Fund revenue trends; 4) summarized General Fund revenue sources; 5) reviewed General Fund expenditures; 6) noted that the unassigned General Fund balance was \$23,129,212 as of 6/30/2023; and 7) reviewed Water & Sewer Fund revenues and expenditures.

The Mayor declared the public hearing open at 5:56pm. Neal Briggs, 4 W. Henderson St., expressed appreciation for the budget process, characterizing it as more open than in previous years and also expressed appreciation to the Board and staff. Briggs suggested that, as public safety/quality of life concerns were a large focus of the budget, specific metrics be established to measure the results of the Town's efforts. Sue Bulluck, representing the Chamber of Commerce, stated that residents needed to be better informed about revenues brought in by tourism (such as sales tax and room occupancy tax) of which the Town does not get to keep a large part. There being no other public comments, the Mayor declared the public hearing closed at 6:06pm.

Miller stated that this budget process was the best he had experienced in his 11 years on the Board. Miller said that the budget addressed the quality of life issues of which the citizens have been expressing concern for years. Partin noted that later in the meeting, the Board would be considering an ordinance which would increase the penalties for noise violations, also in response to these concerns. Upon motion by Partin, seconded by Miller and carried unanimously, the Board adopted Ordinance (2024) 622-B and the proposed budget in its entirety. Mills noted that he had spoken with Aldermen Dull and DeGroote, who although they could not attend, were fully in support of the budget.

CONSIDER APPROVAL OF THE FY24-25 MARKETING ADVISORY COMMITTEE BUDGET

Wilson stated that the proposed budget was developed by Wilmington CVB staff and the Marketing Advisory Committee, with funds being provided by the ROT. Wilson stated that the budget was divided into the following categories: 1) advertising/media/services--\$968,719; 2) online management--\$27,049.50; 3) fulfillment--\$2,000; 4) images and video--\$35,000; 5) research--\$6,000; and 6) contingency--\$10,709.50 for a total budget of \$1,049,478. Bulluck suggested some of the funds be directed toward a traffic study or to work with a committee to address the quality of life issues. Upon motion by Miller, seconded by Partin and carried unanimously, the MAC budget was approved.

CONSIDER APPOINTMENTS/REAPPOINTMENTS TO THE WB MARKETING ADVISORY COMMITTEE

Upon motion by Miller, seconded by Mills and carried unanimously, the Board reappointed Ryan Smith and Lisa Corley to 2 year terms ending June, 2026 on the Marketing Advisory Committee. It was noted that Robert Huckabee had served 3 terms and was therefore ineligible to be reappointed and that the Board would consider filling that position at a future meeting.

CONSIDER APPROVAL OF A LETTER OF INTENT TO LEASE THE BORDEAUX COTTAGE TO THE HARBOR ISLAND GARDEN CLUB

Wilson stated that the Town had received a letter of intent from the Harbor Island Garden Club to lease the Bordeaux Cottage. Wilson reminded the Board that it had approved a 3 month lease for the ground floor area of the Cottage to Camp Chris Stone, with an expiration of that lease on 8/15/2024. Wilson said that if the Board were inclined to lease the Cottage to the Garden Club, a lease agreement would be drafted according to the terms described in the letter of intent. Miller reviewed the proposed terms contained in the agenda packet. Upon motion by Miller, seconded by Partin and carried unanimously, the Board approved the lease, subject to a satisfactory lease agreement being drafted.

CONSIDER ADOPTION OF ORDINANCE (2024) 1860 INCREASING CIVIL PENALTIES FOR VIOLATION OF THE NOISE ORDINANCE

Wilson noted that the proposed revision would raise the fine associated with a noise violation from \$100 to \$250 for the first offense and that the fines associated with noise violations would mimic the fines currently associated with graffiti. Upon motion by Partin, seconded by Miller and carried unanimously, the ordinance was adopted.

OTHER ITEMS AND REPORTS

- A. **Alderman Partin:** reported 1) that the Ad Hoc Committee would be bringing a recommendation to the Board for a revised Lighting Ordinance in July; 2) she had attended a memorial service for former Mayor Fran Russ, the first female mayor of Wrightsville Beach; and 3) thanked the Harbor Island Garden Club for hosting a luncheon for Town employees in May.
- B. **Mayor Pro Tem Miller:** noted that the Cape Fear Memorial Bridge (toll option) had scored well in the State's priority system for replacement, thereby making the project eligible for federal funding.
- C. **Mayor Mills:** reported 1) that the Ports, Waterway & Beaches Commission had met and that the Mason's Inlet permit renewal process had begun; 2) Board members would be hearing from the firm preparing the public information plan to get their input; 3) the special called meeting to consider the CFPWA water and sewer merger would be 6/21; and 4) the special called meeting to consider Town Manager applicants would be 6/24.
- D. **Acting Town Manager Wilson:** nothing to report.
- E. **Town Attorney Edes:** nothing to report.
- F. **Town Clerk Heater:** nothing to report.

There being no further business, the meeting was adjourned at 6:40pm.

Respectfully submitted,

Lance G. Heater, Town Clerk

BOARD OF ALDERMEN MINUTES

JUNE 21, 2024, 10:00AM

TOWN HALL COUNCIL CHAMBERS, 321 CAUSEWAY DRIVE, WRIGHTSVILLE BEACH

A duly-noticed special called meeting of the Board of Aldermen was called to order at 10:00am by Mayor Mills. After the Pledge of Allegiance, the invocation was provided by Acting Town Manager Tony Wilson. The following were present:

Board of Aldermen

F. Darryl Mills, Mayor
Hank Miller, Mayor Pro-tem
Jeff DeGroote, Alderman
Ken Dull, Alderman
Vivian (Zeke) Partin, Alderman

Staff

Tony Wilson, Acting Town Manager
Lance G. Heater, Town Clerk
Brian Murray, Finance Director
Bill Fay, Public Works Director
Brian Edes, Town Attorney

BACKGROUND INFORMATION

Mills stated that the purpose of the meeting was to consider presentations on the proposed merger of the Town's Water & Sewer utility with the Cape Fear Public Utility Authority and to consider approval of a Consolidation Agreement. Mills noted that the meeting was the culmination of a multi-year effort to provide a safe and secure source of quality water. Mills asked Dull to review the sequence of events leading up to the meeting, stating that Dull had chaired the ad hoc committee which was formed several years ago to examine issues related to water.

Dull provided a history as follows: 1) Water & Sewer Ad Hoc Committee formed in October, 2014; 2) GMA delivered a 212 page report on the Town's water system in August, 2015; 3) in September 2016, McKim & Creed was contracted to perform a system assessment; 4) in January 2018, a joint meeting between the Ad Hoc Committee and Board of Aldermen was held to review the McKim & Creed results; 5) in January 2019, PFAS was discovered in the main well for WB (#11) and it was immediately shut down; 6) following the shutdown, the Town entered into an agreement to purchase water from the CFPUA; 7) in March, 2019, internal discussions began with staff, McKim & Creed and GMA concerning the future options for the Town; 8) in February 2022, talks began with CFPUA regarding a potential merger of the two systems; 9) in October 2022, a kickoff meeting was held with the Town and CFPUA with third party HDR acting as moderator/mediator; 10) in February 2023, Town officials met with Representative Ted Davis and Senator Michael Lee regarding State funding for a possible merger; 11) in July 2023, the State appropriated \$26 million to help in obtaining clean water for Wrightsville Beach; 12) in November 2023, the Town hired Stantec to represent the Town, conduct a financial analysis and make recommendations; and 13) in March 2024, a deal in principle was agreed to between the CFPUA and the Town.

PRESENTATION

A presentation was made by Jeff Adkins of HDR Engineering. Adkins reviewed the core principles for utility consolidation as 1) Town customers would become CFPUA customers, with the same service expectations; 2) that there would be a transition period prior to the transfer date in which final details would be settled in order to facilitate the transfer; and 3) consolidation costs would be funded by state budget appropriations and Town utility funds. Adkins stated that factors in the success of the consolidation were 1) confidence in determining if consolidation was feasible; 2) that a win-win outcome be achieved for the Town and CFPUA; 3) that the final agreement would be fair and reasonable; and 4) that the Town achieve a dependable, economically feasible, long term water

source. Adkins reviewed the feasibility study perspectives as including 1) a capital plan; 2) organizational/operational considerations; 3) financial pro forma; and 4) agreement terms.

Regarding capital improvements, Adkins noted that the Town relied on prior studies to identify projects that would integrate the Town system into the CFPUA service area and deliver a consistent level of services. The implementation period was stated to be 5-10 years, with a preliminary budget of \$24 million.

Adkins stated that financial factors included 1) that the Town is nearly built out, with growth not being a factor; 2) the State appropriation provided reimbursement for actual costs (\$17M to CFPUA and \$8M to the Town) on a reimbursement basis; 3) the Town's utility fund/capital reserves would be utilized; 4) the pro forma model was developed to map consolidation costs and revenues and the timing to cost recovery; 5) that the Town and CFPUA rate structures differ, but generate similar revenue overall. Adkins then reviewed the rate structures and changes to monthly bills with the conversion to CFPUA rates.

Regarding the consolidation agreement, Adkins stated 1) that it used concepts and draft terms that were included in other prior successful NC utility consolidations; and 2) that the initial consolidation agreement was prepared based on responses to the initial positions questionnaire. Adkins then reviewed the timeline which led to the agreement. In describing the key terms of the agreement, Adkins noted 1) that the target transfer date was 9/30/2025; 2) that the capital plan includes the Town paying water system development charges for existing Town customers; 3) that the Town's cost liability was capped at the sum of the net state direct appropriations and the utility fund balance at the end of the transition period; 4) that Town customers adopt CFPUA rate structure on transfer date and would have the same base monthly rate and consumption rates as CFPUA customers; 5) during the cost recovery period, there would be 1 water/wastewater system with 2 service areas in order to track costs; 6) that the Town will transfer to CFPUA ownership of facilities, property, land, equipment, financial assets, information and data subject to the agreement; and 7) that the Town water/sewer utility staff (7 positions) would be eligible to transfer to CFPUA employment at the transfer date with no loss of pay, leave or years in the retirement system.

Adkins reviewed the transition period timeline as 1) CFPUA Board approval was granted on 6/19/2024; 2) the Board of Aldermen approval was slated for 6/21/2024; 3) that approval was contingent upon technical review by the Wilmington City Engineer and New Hanover County Engineer (projected July 2024) and approval of the Local Government Commission (projected September 2024); 4) a joint staff Utility Advisory Committee be selected (July 2024); 6) approval of a program management contract (October 2024); 7) begin design activities (January 2025); 8) finalize transition reports (July 2025) and 8) transition date of 9/30/2025.

Adkins briefly reviewed transition period activities which would include customer communications, HR collaboration; employee training; modification of CFPUA billing system, beginning the consolidation capital program, finalizing property and easements transfers, evaluating town service-related contracts for transfer, and transferring Town utility records, data and permits to CFPUA. Following the transfer date, the CFPUA would be responsible for the operation of the Town water/wastewater utility and would continue operating the Town's wells for a period of time until key projects were completed. Adkins noted that the wells may remain as a long-term tool for water supply resiliency.

Andrew Burnham of Stantec reviewed the financial analysis done on behalf of the Town. Burnham reviewed the potential rate impacts based on a merger not occurring with two different scenarios: one in which the Town would receive the State appropriation and one in which the Town would receive no State appropriation. Even under the State appropriation scenario, the Town would need to increase rates by 80% over 4 years, with a 100% increase by 2030. Without the State appropriation, the increase would be approximately 160% higher in 4 years and 200% higher by 2030. With the proposed merger, forecasted rate increases were in the range of 3-4% per year.

Members of the Board expressed appreciation to Adkins and Burnham for their report and to the Town and CFPUA staff members who have been involved in the process.

PUBLIC HEARING

The Mayor declared the public hearing open at 10:50am. In response to a question from Lisa Pruim, 834 S. Lumina, the Mayor stated that there would be no assessment if project costs went over the projection, as the Town's total financial investment was capped. Pruim also expressed concern regarding water quality, asking if it would improve under the proposed merger. Kenneth Waldroup, CFPUA Executive Director, noted that the CFPUA had just installed a \$43 million water filtration system which has greatly improved water quality.

Neal Braggi, 4 W. Henderson St., asked about the Town's ongoing responsibility after the transition, to which the Mayor responded that CFPUA would own and operate the system once the transaction is finalized. Braggi also expressed concern that coordination occur between the CFPUA and the Town's Public Works Department after the merger is complete. In response to a question from Braggi, Finance Director Brian Murray stated that revenues received by the Town for leases on its water towers would be CFPUA revenues after the merger, as these funds are now received by the Water and Sewer Fund.

Jeff Turpin, 105 Island Dr., stated that there should have been more notice of the meeting and asked if the CFPUA was taking the property "as is", to which Mills responded that they were. In response to a question from Turpin, Waldroup stated that the utility fund balance (estimated at \$11million) would be utilized for Town projects and activities.

The meeting was adjourned at 11:16am.

Respectfully submitted,

Lance G. Heater, Town Clerk

BOARD OF ALDERMEN MINUTES

JUNE 24, 2024, 10:00AM

TOWN HALL CONFERENCE ROOM, 321 CAUSEWAY DRIVE, WRIGHTSVILLE BEACH

A duly-noticed special called meeting of the Board of Aldermen was called to order at 10:00am by Mayor Mills.

Board of Aldermen

F. Darryl Mills, Mayor
Hank Miller, Mayor Pro-tem (via Zoom)
Jeff DeGroote, Alderman (via Zoom)
Ken Dull, Alderman (via Zoom)
Vivian (Zeke) Partin, Alderman

Staff

Lance G. Heater, Town Clerk

Consultants

Holly Danford Bishop
Steven Strauss
Heather Lee

CLOSED SESSION TO CONSIDER A PERSONNEL MATTER AS PROVIDED UNDER NCGS 143-318.11(A)(6)

Upon motion by Mills, seconded by Partin and carried unanimously, the Board entered into closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee as authorized by NCGS 143-318.11(a)(6).

The Board returned to open session at 11:09, with no action having been taken.

The meeting was adjourned at 11:09am.

Respectfully submitted,

Lance G. Heater, Town Clerk

APPROVED SPECIAL EVENTS August 2024

Distribution List:

Matt Holland, WBFD
Dave Baker, Ocean Rescue
Sam Proffitt, WBFD
Robert Pugh, WBFD
David Squires, WBPD
Jason Bishop, WBPD
James Lowe, WBPD
Brian Neague, WBPD
Daniel Gaither, WBPD

Jordan Smith, WBPD
Bill Fay, Public Works
Evan Morigerato, Public Works
Chris Bannerman, Public Works
Stephen Avante, Public Works
Danny Floyd, Public Works
Tony Wilson, Planning & Parks
Katie Ryan, Parks & Rec
Shannon Slocum, Park Ranger

Scott Sprenger, Park Ranger
WB Marketing Advisory Committee
Wrightsville Beach Museum
Josh Yates, Pivot Parking
Board of Aldermen
SVM Janitorial Solutions
Hannah Almeter, Wilmington CVB
Parks & Rec Advisory Committee

FOR PARKING PURPOSES: Highlighted Events are reservations/events in WB Park.

Bold print indicates event is pending BOA approval.

EVENT DATE	TIME	NUMBER OF PARTICIPANTS	ACTIVITY	NAME	LOCATION	Vehicle on Beach Permit
Thurs 8/1	6:30 - 8:00 pm	500	Concert - CMB	WBPR	WB Park Event Stage	
Fri-Sun 8/2-8/4	8:00 am - 10:00 pm	50	Parking for Carolina Yach Club	Smith	WB Park Overflow Parking Field	
Fri 8/2	8:00 am - 10:00 am	40	Wedding	Yacopino	Beach strand at access 43	
Sat 8/3	8:00 am - 5:00 pm	199	Wahine Classic Surf Event	Pickett	Beach strand at accesses 37-38	
Sun 8/4	8:00 am - 5:00 pm	199	Wahine Classic Surf Event	Pickett	Beach strand at accesses 37-38	
Sun 8/4	8:00 am - 9:00 am	100	Informal Worship	Little Chapel on Boardwalk	Beach strand at access 4	
Sun 8/4	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	
Sun 8/4	4:00 pm - 8:00 pm	25	Youth Group Social	Chirst the King	WB Park Picnic Shelter #1	
Tue 8/6	6:30 pm - 8:00 pm	65	WB Lacrosse	Bendjy	WB Park Soccer & Softball Fields	
Thurs 8/8	6:30 - 8:00 pm	500	Concert - Machine Gun Band	WBPR	WB Park Event Stage	
Fri 8/9	4:00 pm - 7:00 pm	60	Family Reunion	Herbin	WB Park Picnic Shelters 1 & 2	
Sat 8/10	10:00 am - 1:00 pm	28	Child's Birthday Party	Gurl	WB Park Picnic Shelter #2	EVENT CANCELLED
Sat 8/10	2:00 pm - 8:00 pm	50	Family Reunion	Barnhill	WB Park Picnic Shelters 1 & 2	
Sun 8/11	8:00 am - 9:00 am	100	Informal Worship	Little Chapel on Boardwalk	Beach strand at access 4	
Sun 8/11	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	
Thurs 8/15	6:30 - 8:00 pm	500	Jack Jack 180	WBPR	WB Park Event Stage	

APPROVED SPECIAL EVENTS August 2024

Sun 8/18	8:00 am - 9:00 am	100	Informal Worship	Little Chapel on Boardwalk	Beach strand at access 4	
Sun 8/18	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	
Mon 8/19	6:30 am - 4:00 pm	600	Surfer's Healing	Bascome	Beach strand from Stone St. to Birmingham St.	
Tues 8/20	11:00 am - 3:00 pm	4500	UNCW Beach Blast	UNCW	Beach access 36	
Sun 8/25	8:00 am - 9:00 am	100	Informal Worship	Little Chapel on Boardwalk	Beach strand at access 4	
Sun 8/25	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	

* indicates vehicle on beach permit issued to L&L Tent Rentals, Beach Side Occasions,
ETC. Party Rentals, Sweet Water Bamboo, or other rental business

F. Darryl Mills
Mayor

Ken Dull
Alderman

Zeke Partin
Alderman



Hank Miller
Mayor Pro Tem

Jeff DeGroote
Alderman

Town of Wrightsville Beach

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480

June 30, 2024

MEMORANDUM

To: Mayor Mills and Board Members
From: Tony Wilson, Acting Town Manager *TW*
Re: Consider a Town Exception to the RFQ process for Engineering services to design a New Bulkhead at West Atlanta Street

Agenda Item:

I would like the Board to consider the proposal from Andrew Consulting Engineers, P.C. for the design and surveying work for the proposed new Bulkhead at West Atlanta Street. The cost of the design work is estimated at \$35,000.

If the Board wishes to pursue this project, I recommend that the Board consider exempting the Town of NCGS 143-64.31 so we can work directly with this Engineering Company.

Summary:

If the Board wishes to move forward with this project, I am requesting that you allow me to engage the services of Andrew consulting Engineers, P.C. for the design of the Bulkhead.

Requested Action:

1. Discuss the Item and ask questions
2. Andrew Consulting Engineers Proposal
3. Resolution (2024) 2333



June 28, 2024

Town of Wrightsville Beach
321 Causeway Drive
Wrightsville Beach, NC 28480
Attn: Timothy W. Owens, AICP

Reference: Town of Wrightsville Beach - W Atlanta Street Bulkhead Replacement
W Atlanta Street, Wrightsville Beach, NC 28480
ACE Project No. 24028

Dear Mr. Owens:

We are pleased to propose the following Agreement for providing Professional Services on the above referenced project. This proposal will remain open for acceptance for 90 days from the date above.

DESCRIPTION OF PROJECT

The project involves the replacement of the existing bulkhead at the western end of W Atlanta Street in Wrightsville Beach. The new bulkhead will tie into existing bulkheads at the neighboring properties on each end. We will provide structural design and construction documents for the new bulkhead. Construction phase services and Special Inspections are not included in this investigation and design phase.

We have included the services of a professional surveyor to provide us with a topographical survey for the project site to include existing grade, surface, and water elevations, and locations of subsurface utilities in the area surrounding the bulkhead.

We have also included the services of a geotechnical engineer to perform a limited subsurface exploration and prepare a written report with recommendations on design soil parameters for a new sheet pile bulkhead and helical tieback anchors. The geotechnical services consist of these tasks:

1. Advance two soil borings to a depth of 30 feet below existing site grade using a rotary drilling rig. One of the borings will be located adjacent to the existing bulkhead on the landward side, and the other will be advanced 40 to 50 feet behind the bulkhead in order to characterize the subsurface conditions in which the anchors will bear. Split-barrel samples of the in-place soils will be obtained at routine depth intervals and the relative density/consistency of the in-place soils will be determined in general accordance with the procedures set forth in ASTM D1586-99 "Standard Test Method for Penetration Testing and Split-Barrel Sampling of Soils".
2. Classify the soils recovered from the boreholes by visual/manual methods in general accordance with the classification procedures set forth in ASTM D2488-00 "Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)".
3. Prepare drafted boring logs showing the stratigraphy and Standard Penetration Test (SPT) values obtained during the field exploration.
4. Prepare and submit a typewritten engineering report describing field and laboratory procedures, detailing the discovered subsurface conditions, and offering general recommendations for earth

pressure parameters to be used in the design of the bulkhead as well as estimated capacities of the anchors.

5. Retain the soil samples obtained during the exploration for a period of 90 days, after which time they will be discarded.

SCOPE OF SERVICES

These services are more specifically described in the Summary of Services (Exhibit A) and Terms and Conditions (Exhibit B). This agreement does not include services for Special Inspections.

These items are not included in the scope of services or fee:

Shoring and bracing design required for construction of project.

Preparation of construction cost estimates.

The design of anchorage of non-structural elements.

The preparation of as-built drawings after the completion of construction.

The preparation of documents for alternate bids.

Services required because of significant changes in the project, including changes in size, quality, complexity, schedule or methods of bidding.

The modification of specifications to formats other than Masterspec.

Providing details for repair of defective construction.

Preparation of construction contract.

Construction observation.

Special Inspections.

Review of shop drawings.

Contract administration.

Providing calculations.

Material testing.

COMPENSATION FOR PROFESSIONAL SERVICES

Basic Services (Exhibit A)

Compensation for Basic Services shall be a lump sum fee of Thirty-Five Thousand dollars (\$35,000.00).

Additional Services

Compensation for our Additional Services shall be paid monthly and shall be a fee calculated on an hourly rate basis per our current hourly rate schedule.

Our current standard hourly rate schedule is:

Principal	\$ 285.00 /Hr.	Engineering Assistant	\$ 145.00 /Hr.
Registered Engineer	\$ 220.00 /Hr.	Senior Technician	\$ 145.00 /Hr.
Project Engineer	\$ 175.00 /Hr.	Technician	\$ 125.00 /Hr.
Senior Designer	\$ 165.00 /Hr.	Secretary	\$ 90.00 /Hr.

This rate schedule is effective through December 31, 2024.

If the project becomes a Fast Track Project, or if it entails Multiple Bid Packages, the engineering fees stated above shall be subject to renegotiation.

PROGRESS PAYMENTS:

Progress payments for Basic Services shall be made on a monthly basis in accordance with the percentage of professional services completed.

REIMBURSABLE EXPENSES

Reimbursable expenses as defined in the Terms and Conditions shall be billed at a multiple of 1.2 times the cost incurred.

ADDITIONAL PROVISIONS

This Agreement, and Exhibits A and B attached hereto, constitute the entire Agreement between the parties. A digital copy of this Agreement has been provided to you. Please examine these documents and sign and return one copy. We will begin services within 30 days after receipt of the signed Agreement and retainer, if applicable. If this letter correctly sets forth the terms of our agreement regarding compensation, please sign and return a copy of this letter to us acknowledging your acceptance of the above terms. If you do not sign and return this engagement letter and after receipt of this letter you request or accept services from the firm in connection with this or any other engagement, your request or acceptance of such services will be deemed to be an acquiescence or agreement with the terms provided in this letter.

ACE PC will not knowingly contribute in any manner to the violation of the letter or intent of NC General Statute 143-64.31, et seq. By submitting this price proposal, ACE has the full knowledge and belief that, and by accepting this proposal for consideration, you, as the unit of government, are affirming that the city has under G.S. 143-64.32 in writing exempted this particular project from the provisions of G.S. 143-64.31, et seq. based upon the total estimated professional fee being less than \$50,000 or in your sole discretion as the unit of government stating the reasons for such exemption and the circumstances attendant thereto, and have furthermore provided ACE with a copy of such statement of exemption signed or adopted by the contracting authority. Otherwise, this proposal is null and void.

We are looking forward to working with you on this project.

Sincerely:

DocuSigned by:

Neal Andrew

330AAE236A904CC...

(Signature)

6/28/2024

(Date)

Neal W. Andrew, P.E., SECB/President

(Printed Name/ Title)

Andrew Consulting Engineers, P.C.

(For) Structural Engineer

Agreed to and Accepted by:

(Signature)

(Date)

(Printed Name/ Title)

(For) Owner

EXHIBIT A – Summary of Services

This is an exhibit attached to and made part of the Letter Agreement dated June 28, 2024, between

Andrew Consulting Engineers, P.C.
(For) Structural Engineer

Town of Wrightsville Beach
(For) Owner

The services of the Structural Engineer (SE) for this proposal include those summarized below.

See Exhibit B - Terms and Conditions, for further details.

SCOPE OF BASIC SERVICES

Services	Included	Not Included	Remarks
PROJECT DEVELOPMENT PHASE			
1. Assist in Definition of Project	☐	☒	
2. Assist in Scope of Services Definition	☐	☒	
3. Assist in Development of Schedule	☐	☒	
4. Assist in Determining Channels of Communication	☐	☒	
SCHEMATIC DESIGN PHASE			
1. Review Owner's Program to Set Project Requirements	☐	☒	
2. Perform Preliminary Evaluation of Schedule	☐	☒	
3. Perform Preliminary Evaluation of Owner's Budget	☐	☒	
4. Consult with Public Agencies	☐	☒	
5. Perform Special Studies	☐	☒	
6. Study Design Alternatives	☐	☒	
7. Prepare Schematic Design Drawings from Owner Approved Alternates	☐	☒	
DESIGN DEVELOPMENT PHASE			
1. Prepare Design Development Drawings based on approved Schematic Design	☒	☐	
2. Prepare Outline Specifications	☒	☐	
3. Review Results of Special Studies	☐	☒	

4.	Prepare Opinion of Probable Construction Cost	☐	☒	
5.	Participate in Value Analysis (VA) or Prepare Design Revisions Due to VA Process	☐	☒	
CONTRACT DOCUMENTS PHASE				
1.	Complete Drawings and Specification (CD's) Based on Approved Design Development Documents	☒	☐	
2.	Coordinate with Building Code Officials and Other Appropriate Public Agencies	☒	☐	
3.	Prepare Statement(s) of Special Inspection	☒	☐	
4.	Assist in Preparation of General Conditions and Bid Forms	☐	☒	
5.	Revise Opinion of Probable Construction Cost	☐	☒	
6.	Revise to CD's as Required by Building Officials	☒	☐	
7.	Revise to CD's as Required by Project Peer Review	☐	☒	
BIDDING OR NEGOTIATION PHASE				
1.	Reproduce and Distribute Bidding Documents	☒	☐	Digital PDFs only
2.	Assist in Evaluating Bidder Qualifications	☒	☐	
3.	Conduct or Participate in Pre-bid Conference	☒	☐	
4.	Issue Addenda and Clarifications	☒	☐	
5.	Conduct or Participate in Bid Opening	☒	☐	
6.	Assist in Bid Evaluation	☒	☐	
CONSTRUCTION ADMINISTRATION PHASE				
Not included in this phase				
1.	Pre-Construction Services			
	a. Conduct Pre-Construction Meeting	☐	☒	
	b. Establish Communication Procedures	☐	☒	
	c. Establish Submittal Procedures	☐	☒	
	d. Establish Procedures for Testing & Inspection	☐	☒	
	e. Assist in Selection of Testing & Inspection Agency	☐	☒	
	f. Respond to Building Department Comments	☐	☒	
2.	Submittal Review			
	a. Review Specified Submittals	☐	☒	
	b. Review Contractor Proposed Substitutes or Design Alternates	☐	☒	

3. Site Visits			
a. Make Site visits at Intervals Appropriate to the Stages of Construction	☐	☒	
b. Prepare Site Visit Reports	☐	☒	
4. Materials Testing and Inspection			
a. Review Testing and Inspection Reports	☐	☒	
b. Initiate Appropriate Action to Testing and Inspection Reports, if Required.	☐	☒	
5. Review Contractor's Requests for Payment	☐	☒	
6. Respond to Contractor's Requests for Information (RFI)	☐	☒	
7. Provide Recommendations Regarding Claims, Disputes and Other Matters Relating to Execution or Progress of the Work	☐	☒	
8. Determine Whether Non-Conforming Work Shall be Rejected (Investigative or redesign services for non-conforming work shall be considered an "Additional Service")	☐	☒	
9. Review and/or Issue Change Orders	☐	☒	
10. Conduct Inspections to Determine Date of Substantial Completion of the Work	☐	☒	
11. Conduct Inspection to Develop Punch List of Items Required for Final Completion	☐	☒	
12. Verify Completion of Punch List Items and Determine Date of Final Completion	☐	☒	
13. Endeavor to Obtain Required Written Warranties and Related Documents and Submit to Owner	☐	☒	
14. Issue Final Certificate for Payment	☐	☒	

SPECIAL SERVICES			
1. Field Investigation or Surveys of Existing Buildings	☐	☒	
2. Special Consultants or Services			
a. Geotechnical Engineer	☒	☐	
b. Environmental Services	☐	☒	
Discovery, testing, monitoring, clean-up or neutralization of pollutants and hazardous substances.	☐	☒	
Determination, advice or services related to the identification, existence, removal or containment of asbestos or lead based paint; modification, installation, or removal of a product, material or process containing asbestos or lead based paint.	☐	☒	
c. Traffic Studies	☐	☒	
d. Wind Tunnel Tests	☐	☒	
e. Site & Utility Surveys	☒	☐	
f. Seismic Risk Analysis	☐	☒	
g. Studies to Accommodate Special Energy Requirements	☐	☒	
3. Preparation of Demolition Documents	☐	☒	
4. Design for Future Expansion	☐	☒	
5. Design of Swimming Pools	☐	☒	
6. Services Connected with the Preparation of Documents for Alternate bids.	☐	☒	
7. Services Connected with the Preparation of Documents for Segregated Contracts for Phased or Fast-Track Construction.	☐	☒	
8. Tenant Related or Finish out Design Services	☐	☒	
9. Filing Application for and Obtaining a Building Permit	☐	☒	
10. Special Inspections as Required by the Applicable Building Code	☐	☒	
11. Review of Contractor Resubmittals in Excess of the Number of Resubmittals Specified under Basic Services	☐	☒	
12. Design or Field Observations of Shoring and Bracing for Excavations and Buildings or Underpinning of Adjacent Structures.	☐	☒	

13. Preparation of Shop or Fabrication Drawings, for Example, Tilt-up Wall Panel Drawings, Reinforcing and Structural Steel Detailing, etc.	☐	☒	
14. Supply of CAD Files to Contractor(s)	☐	☒	
15. Investigative Services Associated with Nonconforming Construction	☐	☒	
16. Redesign Services Due to Non-conforming Construction	☐	☒	
17. Preparation of Record Drawings	☐	☒	
18. Preparation of Operation/Maintenance/Inspection Manuals	☐	☒	

EXHIBIT B – TERMS and CONDITIONS

This is an exhibit attached to and made part of the Letter Agreement dated June 28, 2024, between

Andrew Consulting Engineers, P.C.
(For) Structural Engineer

Town of Wrightsville Beach
(For) Owner

Section 1 - General**1.1 This Agreement**

- 1.1.1 These Terms and Conditions, along with the signed Agreement, and Exhibit A – Summary of Services form the Agreement as if they were part of one and the same document.
- 1.1.2 The Agreement and Exhibit A may modify the applicability of these Terms and Conditions. Such modification shall take precedence over provisions of this Exhibit.

1.2 General obligations of the Structural Engineer and the Owner

- 1.2.1 The Structural Engineer (SE) shall provide those professional services as specified in Exhibit A and detailed in these Terms and Conditions. In rendering these services, the SE shall apply the skill and care ordinarily exercised by structural engineers at the same time and locale the services are rendered.
- 1.2.2 The SE and Owner shall each designate, in writing, a representative to act with authority on their behalf with respect to all aspects of the Project.
- 1.2.3 Upon written request, the Owner shall verify and provide reasonable evidence in writing, that the project will be financed adequately, including provisions for contingencies, to accomplish the stated and desired goals and commitments.
- 1.2.4 The Owner shall provide all criteria and information with regard to their requirements for the Project. This shall include, but not be limited to, review and approval of design in the schematic design phase, design development phase, and contract documents phase. These approvals shall include a written authorization to proceed to the next phase.
- 1.2.5 The Owner shall provide testing necessary to identify hazardous materials and pollutants, and shall provide test results to the SE, and be responsible for the remediation in accordance with the governing laws, if required.
- 1.2.6 The SE shall request, and the Owner shall provide those geotechnical investigations, property surveys, utility surveys, reports and other data necessary for performance of the project team (unless these services are to be provided through subcontracts to this agreement.).
- 1.2.7 The SE shall submit to the Owner a schedule for the performance of the professional services.
- 1.2.8 Professional services provided by the Owner shall be performed by professionals licensed in the state of the project and experienced with respect to the service being provided.
- 1.2.9 The SE is entitled to rely on the accuracy and completeness of services provided by other design professionals retained by the Owner.

1.3 Definitions

- 1.3.1 **Structural Engineer (SE)** is an individual, partnership, corporation or other legally recognized entity authorized to provide design services for new structures and/or renovations of existing structures.
- 1.3.2 **Fast Track Projects** are projects in which any portion of the contract drawings are released for pricing/bid/fabrication or are submitted for building permit prior to such issuance of the full design team documents.
- 1.3.3 **Multiple Bid Packages** are bid documents which are submitted for phased construction of portions of the project under separate trade contracts.
- 1.3.4 **Owner** is the individual, agency, corporation or other legally recognized entity or the officers, directors, or employee of any of them, which engages the services of the SE.
- 1.3.5 **Reimbursable Expenses** are expenses incurred by the SE directly in connection with the project such as, but not limited to, transportation, out-of-town travel and subsistence, electronic communications, overnight deliveries, courier services, additional specialized professional services, sales taxes, permits and filing fees for securing approvals from government authorities, renderings or models, Owner authorized overtime above the current hourly rates, expenses for professional liability insurance or additional insurance beyond the normal amount carried by the SE and the cost of reproductions.
- 1.3.6 **Site Visits** are visits to the site at intervals appropriate to the stage of construction to observe and become generally familiar with the quality and progress of the work and to endeavor to guard the Owner from defects or deficiencies in the work.
- 1.3.7 **Special Inspections** are those inspections required by governing or local authorities to be performed by a qualified person, approved by the building official, during the construction phase of the project.

Section 2 -- Basic Services**2.1 General**

- 2.1.1 The Basic Services of the SE are those services designated in Exhibit A.

Section 3 -- Extra Services**3.1 General**

3.1.1 Extra Services are those services that arise during the design or construction process and are not included in Basic Services. Examples include, but are not limited to:

- a. Services resulting from changes in scope or magnitude of the project as described and agreed to under the Basic Services Agreement.
- b. Services resulting from changes necessary because of a construction cost overrun which is outside the control of the SE.
- c. Services resulting from revisions which are inconsistent with approvals or instructions previously given by the Owner.
- d. Services resulting from revisions due to the enactment or revision of codes, laws, or regulations subsequent to the start of preparation of construction documents.
- e. Services resulting from Owner initiated Change Orders.
- f. Services resulting from corrections or revisions required because of errors or omissions in construction by the Contractor, or in designs provided by the Contractor or any third party.
- g. Services resulting from construction procedures over which the SE has no control.
- h. Services due to extended design or construction time schedules.
- i. Services in connection with litigation, mediation, arbitration or public hearings, with respect to the project.
- j. Services resulting from damage, as the result of fires, man-made disasters, or acts of God.
- k. Review and design of alternate or substitute systems.
- l. Review of additional shop drawing submittals when occasioned by improper or incomplete submittals.
- m. Services required to make changes resulting from value analysis review or project peer review.
- n. Services for conditions discovered after the execution of this Agreement.

Section 4 -- Fees and Payments**4.1 Fees and Other Compensation**

4.1.1 Fees for Basic Services and Extra Services and Compensation for Reimbursable Expenses are set forth in the Letter Agreement.

4.2 Payments on Account

4.2.1 Invoices for the SE's services shall be submitted on a monthly basis. Invoices shall be payable when rendered and shall be considered past due if not paid within 30 days of the invoice date.

4.2.2 Retainers, if applicable to this project, shall be credited to the final invoice.

4.2.3 Questions concerning the substance or content of an invoice shall be made to the SE, in writing, within 10 days of receipt of the invoice. A failure to notify the SE within this period shall constitute an acknowledgment that the service has been provided and payment is due.

4.3 Late Payments

4.3.1 A service charge will be charged at the rate of 1.5% (18% true annual rate) per month or the maximum allowable by law on the then outstanding balance of past due accounts. In the event any portion of an account remains unpaid 30 days after billing, the Owner shall pay all costs of collection, including reasonable attorney's fees. Payments on account will be credited first to any service charge and then due to any outstanding balances.

4.3.2 In the event that any portion of an account remains unpaid 30 days after billing, the SE may, without waiving any claim or right against the Owner, and without liability whatsoever to the Owner, suspend or terminate the performance of all services and in that event the SE will in no way be responsible for any resultant delay.

Section 5 - Insurance, Indemnification & Risk Allocation**5.1 Insurance**

5.1.1 The SE shall secure and endeavor to maintain professional liability insurance, commercial general liability insurance and automobile liability insurance to protect the SE from claims for negligence, bodily injury, death or property damage which may arise out of the negligent performance of the SE's services under this Agreement. The SE shall also carry Worker's Compensation Insurance. The SE shall, if requested in writing, provide certificates of insurance to the Owner.

5.1.2 The Client shall secure commercial general liability insurance, and automobile liability insurance to protect the Client from claims for negligence, bodily injury, death or property damage which may arise out of the Client's performance under this Agreement. The Client shall also carry worker's compensation insurance and procure all-risk or builder's risk property insurance and include the interests of the SE on such policy. The Client shall provide certificates of insurance to the SE.

5.2 Indemnification

5.2.1 The SE shall indemnify and hold harmless the Owner and its officers, members, directors, partners, agents, employees, and subconsultants against any and all claims, damages, losses and expenses to the extent they are caused by the negligent acts, errors, or omissions of the SE or its officers, members, directors, partners, agents, employees, and subconsultants in the performance of its services under this Agreement, subject to the Risk Allocation provisions in Article 5.3 below. The Owner shall indemnify and hold harmless the SE and its officers, members, directors, partners, agents, employees, and subconsultants from and against any and all claims, damages, losses and expenses arising out of or resulting from the Owner's performance of its obligations under this Agreement, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of the Owner, anyone directly or indirectly employed by the Owner (except the SE) or anyone for whose acts any of them may be liable. This indemnification shall include any claim, damage or loss due to the presence of hazardous materials. Neither party shall have any obligation to defend or pay for the defense costs of the other party until such time as there is a determination of fault of the parties and in that event, the party found at fault shall only be obligated to reimburse the other party for its reasonable defense costs on a percentage basis in direct proportion, as determined by the court, to the percentage of fault of the party who was found at fault.

- 5.2.2 The Owner shall indemnify and hold harmless the SE and all of its personnel, and other design team members, from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising from the presence, discharge, release or escape of asbestos, hazardous waste, or other contaminants at the site.
- 5.2.3 For third party claims, to the fullest extent permitted by law, the Owner hereby agrees to indemnify, hold harmless and defend the SE, including its officers, members, directors, partners, agents, employees, and subconsultants from and against all third party claims, including bodily injury, property damage, products liability, demands, damages and losses, causes of actions, judgments, fines, penalties and claims expense including attorney fees litigation costs, expert witness fees and any other expenses, caused by or alleged to have been caused by anything other than negligent performance by the SE of services under the agreement related to this project. Said indemnification shall also apply to any deductible that the SE may be obligated to pay under its Professional Liability Policy resulting therefrom.
- 5.2.4 The indemnifications as stated in Articles 5.2.1, 5.2.2 and 5.2.3 shall apply to the respective officers, members, directors, partners, agents, employees, and subconsultants of the SE and the Owner.
- 5.2.5 The Owner shall require that its construction contractor(s) endorse commercial general liability coverage to include the Owner, the SE and the SE's consultants as additional insureds for claims caused in whole or in part by the contractor's negligent acts or omissions during the contractor's operations. All such additional insured coverage shall be primary and non-contributory, with provision for separation of insureds.

5.3 Risk Allocation

- 5.3.1 In recognition of the relative risks, rewards and benefits of the Project to both the Owner and the SE, the risks have been allocated such that the Owner agrees that, to the fullest extent permitted by law, the SE's total liability to the Owner or any third party for any and all injuries, claims, losses, expenses, damages, expert fees, court costs or claim expenses arising out of this Agreement, from any cause or causes, inclusive of all costs including attorney and expert fees, shall not exceed the amount of \$50,000, or the amount of the SE's fees (whichever is greater). Such cause or causes include, but are not limited to, the SE's negligent acts, errors, omissions, strict liability, breach of contract, breach of expressed or implied warranty, or any other theory of legal liability. This limitation of liability shall apply to the SE and its officers, members, directors, partners, agents, employees, and subconsultants. Owner understands that SE's fee is based, in part, on Owner's agreement to limit SE's liability in accordance with this paragraph and that greater limits of liability are available for increased SE fees, but that Owner has agreed to forego those greater limits of liability in exchange for the SE fee herein.

Section 6 - - Miscellaneous Provisions

6.1 Ownership and Use of Documents

- 6.1.1 All documents, drawings, specifications, computer files, CAD files, design calculations and survey notes are instruments of service and belong to and remain the property of SE, regardless of whether the instruments were copyrighted or whether the Project for which they were prepared is executed. The SE retains all copyright interests and rights in all such documents. The Owner may, at its expense, obtain reproducible copies of drawings and copies of other documents, in consideration of which there will be mutual agreement that the Owner will use them solely in connection with the specific Project for which they were prepared.
- 6.1.2 Any reuse of the Drawings or Specifications for, among other things, development of another project, or completion of this project by others, revisions, alterations, deletions from, additions to, or other modifications of the Drawings or Specifications, shall constitute an "unauthorized reuse" and be prohibited unless performed by or at the written consent of the SE. The Owner further agrees to defend, indemnify and hold the SE harmless from and against any and all claims, demands, damages, losses or expenses, including court and arbitration costs, and attorneys' fees, arising out of or resulting from any such unauthorized reuse.
- 6.1.3 CAD files shall not be used by the Contractor for the preparation of shop drawings without the written consent of the SE and such fee that the SE may establish.

6.2 Opinion of Probable Construction Cost

- 6.2.1 The SE's evaluations of the Owner's probable project budget and any opinions of probable construction costs, if rendered as a service under this Agreement, will be made on the basis of the SE's experience and qualifications and will represent the SE's best judgment as a qualified design professional familiar with the construction industry. Because the SE has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over the competitive bidding process or future market conditions, the SE does not guarantee or represent that proposals, bids, negotiated prices, or actual construction costs will not vary from the opinions of probable construction costs prepared or agreed upon by the SE. The Owner is strongly encouraged to engage the services of an independent cost estimator to provide estimates of construction costs.

6.3 Deficient Conditions

- 6.3.1 If the SE has reason to believe that a deficient condition may exist, the SE shall notify the Owner who shall authorize and pay for all costs associated with the investigation of such a condition, and, if necessary, all costs necessary to correct said condition. If (1) the Owner fails to authorize such investigation or correction after due notification, or (2) the SE has no reason to believe that such a condition exists, the Owner is responsible for all risks associated with this condition, and the SE shall not be responsible for the existing condition nor any resulting damages to persons or property. The SE shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.

6.4 Review of Contractor's Work

- 6.4.1 The SE shall not supervise, direct, or have control over the Contractor's work. The SE shall not be responsible for the Contractor's means, methods, procedures, techniques, or sequences of construction, nor for safety programs and procedures employed by the contractor on the job site. The SE shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents.

6.4.2 If included in the SE's Scope of Services (Exhibit A), the SE shall review and take appropriate action with respect to shop drawings, product data, samples, and other submittals required under the contract documents to be submitted by contractor. The SE's review shall be only for the limited purpose of ascertaining general compliance with the design concept for the project and the information given in the contract documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions, quantities, weights, gauges, or fabrication processes, nor for substantiating instructions for installation or performance of systems designed by contractor, nor for coordination with the work of other trades. Review of a specific item shall not indicate acceptance of an assembly of which the item is a component. When professional certification, by other licensed professionals or the Owner or contractor for performance characteristics of materials, systems, or equipment is required by the contract documents, the SE shall be entitled to rely upon such certification as verification that the materials, systems, or equipment will meet the performance criteria set forth in the contract documents.

6.5 Termination, Successors, Assigns and Third-Party Beneficiary

6.5.1 This agreement may be terminated upon 10 days written notice by either party should the other party fail to perform its obligations hereunder. In the event of termination, the Owner shall pay the SE for all services rendered to the date of termination, all reimbursable expenses and reasonable termination expenses.

6.5.2 The Owner and the SE each binds themselves, partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations of this Agreement.

6.5.3 Neither the Owner nor the SE shall assign, sublet or transfer any rights under, or interest in (including, but without limitations, monies that may be due or monies that are due) this Agreement, without the written consent of the other, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the SE from employing such independent consultants, associates and subcontractors as he or she may deem appropriate to assist in the performance of services hereunder.

6.5.4 The SE and the Owner agree that the services performed by the SE pursuant to this Agreement are solely for the benefit of the Owner and are not intended by either the SE or the Owner to benefit any other person or entity. To the extent that any other person or entity is benefited by the services performed by the SE pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third-party beneficiary to this Agreement.

6.6 Dispute Resolution

6.6.1 The SE and the Owner agree to negotiate any claim(s) or dispute(s) arising out of or related to the agreement between them in good faith prior to exercising any other provision of this Agreement.

6.6.2 If a claim or dispute between the SE and the Owner cannot be settled within 30 days by good faith negotiations the SE and the Owner agree to submit it to mediation in accordance with the mediation rules of the American Arbitration Association.

6.6.3 If the claim or dispute cannot be settled by good faith negotiations or mediation, then either party may exercise their rights under law.

6.6.4 In no event shall a claim or dispute be made or sustained if it would be barred by the applicable statute of limitations.

6.7 Governing Laws

6.7.1 This Agreement shall be governed by the laws of the principal place of business of the SE.

6.8 Waiver of Certifications

6.8.1 No party to this Agreement shall be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement. No party to this Agreement shall be required to sign any documents which would result in that party having to certify, guarantee, or warrant the existence of conditions which they cannot ascertain.

6.9 Corporate Protection

6.9.1 It is intended by the parties to this agreement that the SE's services in connection with the project(s) shall not subject the SE's individual owners, officers, or employees to any legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the client agrees that as the client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the SE firm, and not against any of SE firm's individual owners, officers or employees.

6.10 Claim Validation

6.10.1 The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the SE unless the Client has first provided the SE with a written certification executed by an independent consultant currently practicing in the same discipline as the SE and licensed in the state where the project is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be an express condition precedent to initiation of any claim by mediation, arbitration or litigation and shall be provided to the SSE not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. Failure to comply with this Art. 6.10 shall constitute a waiver of any such claims.

6.11 Electronic Document Provisions

- 6.11.1 Client and SE may transmit, and shall accept, project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure project website, in accordance with a mutually agreeable protocol.
- 6.11.2 If this Agreement does not establish protocols for electronic or digital transmittals, then Client and SE shall jointly develop such protocols.
- 6.11.3 Original electronic document files will be retained by SE for a period of time determined by SE. Client may be permitted to retain copies of drawings and specifications prepared on electronic document files for Client's information in its use of the project. Due to the potential that the information set forth in the electronic document files can be modified by Client, unintentionally or otherwise, SE reserves the right to remove all indicia of its ownership and/or involvement from each electronic display.
- 6.11.4 SE's electronic document files are compatible with the current release of SE's software, using SE's current operating system.
- 6.11.5 Data stored on electronic media can deteriorate undetected or be modified without SE's knowledge. Therefore, Client agrees that it will accept responsibility for the completeness, correctness, and readability of the electronic media after an acceptance period of 7 days after delivery of the electronic files. Client also agrees that upon the expiration of this acceptance period, Client will indemnify and hold harmless SE for any and all claims, losses, costs, damages, awards or judgments arising from the use of electronic media files or output generated from them.
- 6.11.6 In the event that a conflict arises between the signed/certified documents prepared by SE and electronic document files, the signed/certified documents shall govern.
- 6.11.7 Electronic document files will be prepared by SE and delivered to Client in accordance with SE's standard electronic document specification. All costs associated with providing electronic document files to comply with Client's electronic document specification are considered Additional Services and may require the extension of the project design phase schedule.
- 6.11.8 Information set forth in the electronic document files will not be used by the Client on other projects, for additions to this project, or for completion of this project by another design professional. Any such use or reuse by Client or others, without written verification or adaptation by SE for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to SE. Furthermore, Client shall, to the fullest extent permitted by law, indemnify and hold harmless SE from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle SE to further compensation at rates to be mutually agreed upon by Client and SE.

Section 7 - Supplemental Conditions**7.1 Supplemental Conditions:**

- 7.1.1 Inasmuch as the remodeling and/or rehabilitation of the existing structure requires that certain assumptions be made by the Consultant regarding existing conditions, and because some of these assumptions may not be verified without the Client's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless to Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this Project, excepting only those damages, liabilities or costs attributed to the sole negligence and willful misconduct by the Consultant.
- 7.1.2 Services performed under this agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances. No warranties, express or implied, are made in connection with services performed under this Agreement. Nothing in this Agreement shall be construed to establish a fiduciary relationship between the parties.
- 7.1.3 All legal actions by either party against the other arising out of or in any way connected with this Agreement of the services to be performed hereunder shall be barred and under no circumstances shall any such legal action be initiated by either party after two (2) years from the date of Substantial Completion, unless the Agreement shall be terminated earlier, in which date in which case the date of termination of this Agreement shall be the date on which such period shall commence.
- 7.1.4 The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services which the Client becomes aware, so that the Consultant may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contracts in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Should legal liability for the defects exists, failure by the Client and Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of any liability for costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

RESOLUTION NO. (2024) 2333

Board of Aldermen
Town of Wrightsville Beach, North Carolina
Date: July 11, 2024



A RESOLUTION OF THE BOARD OF ALDERMEN OF
THE TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
EXEMPTING THE PROFESSIONAL SERVICES RELATING
TO ENGINEERING SERVICES TO DESIGN A NEW BULKHEAD
AT W. ATLANTA STREET

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively "design services") to be based on qualifications and without regard to fee; and

WHEREAS, the Town proposes to enter into a contract for engineering design services for a new bulkhead at the end of W. Atlanta St.; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for services for the above-described project is less than \$50,000.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina as follows:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31.

Section 2. This resolution shall be effective upon adoption.

This Resolution adopted this 11th day of July, 2024.

F. Darryl Mills, Mayor

ATTEST:

Lance Heater, Town Clerk



F. Darryl Mills
Mayor

Hank Miller
Mayor Pro Tem

Ken Dull
Alderman

Jeff DeGroote
Alderman

Zeke Partin
Alderman

Town of Wrightsville Beach

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480

June 30, 2024

MEMORANDUM

To: Mayor Mills and Board of Aldermen
From: Tony Wilson, Acting Town Manager *TW*
Re: Consider a Town Exception to the RFQ process for Engineering services to design a New Bulkhead at West Oxford Street

Agenda Item:

I would like the Board to consider the proposal from Andrew Consulting Engineers, P. C. to design a new Bulkhead at the West Oxford Street end. The cost of the design work is estimated at \$ 40,000.

If the Board wishes to move forward with this project, I recommend that the Board consider exempting the Town from NCGS 143-64.31 so we can work directly with this engineering company.

Summary:

If the Board wishes to move forward with this project, I am requesting that you allow me to engage the services of Andrew Consulting Engineers to design the Bulkhead at West Oxford Street.

Requested Action:

1. Discuss the item and ask questions
2. Andrew Consulting Engineers Proposal
3. Resolution (2024) 2334



June 28, 2024

Town of Wrightsville Beach
321 Causeway Drive
Wrightsville Beach, NC 28480
Attn: Timothy W. Owens, AICP

Reference: Town of Wrightsville Beach - W Oxford Street Bulkhead Replacement
W Oxford Street, Wrightsville Beach, NC 28480
ACE Project No. 24029

Dear Mr. Owens:

We are pleased to propose the following Agreement for providing Professional Services on the above referenced project. This proposal will remain open for acceptance for 90 days from the date above.

DESCRIPTION OF PROJECT

The project involves the replacement of the existing bulkhead at the western end of W Oxford Street in Wrightsville Beach. The new bulkhead will tie into existing bulkheads at the neighboring properties on each end. We will provide structural design and construction documents for the new bulkhead. Construction phase services and Special Inspections are not included in this investigation and design phase.

We have included the services of a professional surveyor to provide us with a topographical survey for the project site to include existing grade, surface, and water elevations, and locations of subsurface utilities in the area surrounding the bulkhead.

We have also included the services of a geotechnical engineer to perform a limited subsurface exploration and prepare a written report with recommendations on design soil parameters for a new sheet pile bulkhead and helical tieback anchors. The geotechnical services consist of these tasks:

1. Advance two soil borings to a depth of 30 feet below existing site grade using a rotary drilling rig. One of the borings will be located adjacent to the existing bulkhead on the landward side, and the other will be advanced 40 to 50 feet behind the bulkhead in order to characterize the subsurface conditions in which the anchors will bear. Split-barrel samples of the in-place soils will be obtained at routine depth intervals and the relative density/consistency of the in-place soils will be determined in general accordance with the procedures set forth in ASTM D1586-99 "Standard Test Method for Penetration Testing and Split-Barrel Sampling of Soils".
2. Classify the soils recovered from the boreholes by visual/manual methods in general accordance with the classification procedures set forth in ASTM D2488-00 "Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)".
3. Prepare drafted boring logs showing the stratigraphy and Standard Penetration Test (SPT) values obtained during the field exploration.
4. Prepare and submit a typewritten engineering report describing field and laboratory procedures, detailing the discovered subsurface conditions, and offering general recommendations for earth

pressure parameters to be used in the design of the bulkhead as well as estimated capacities of the anchors.

- 5. Retain the soil samples obtained during the exploration for a period of 90 days, after which time they will be discarded.

SCOPE OF SERVICES

These services are more specifically described in the Summary of Services (Exhibit A) and Terms and Conditions (Exhibit B). This agreement does not include services for Special Inspections.

These items are not included in the scope of services or fee:

- Shoring and bracing design required for construction of project.
- Preparation of construction cost estimates.
- The design of anchorage of non-structural elements.
- The preparation of as-built drawings after the completion of construction.
- The preparation of documents for alternate bids.
- Services required because of significant changes in the project, including changes in size, quality, complexity, schedule or methods of bidding.
- The modification of specifications to formats other than Masterspec.
- Providing details for repair of defective construction.
- Preparation of construction contract.
- Construction observation.
- Special Inspections.
- Review of shop drawings.
- Contract administration.
- Providing calculations.
- Material testing.

COMPENSATION FOR PROFESSIONAL SERVICES

Basic Services (Exhibit A)

Compensation for Basic Services shall be a lump sum fee of Forty Thousand dollars (\$40,000.00).

Additional Services

Compensation for our Additional Services shall be paid monthly and shall be a fee calculated on an hourly rate basis per our current hourly rate schedule.

Our current standard hourly rate schedule is:

Principal	\$ 285.00	/Hr.	Engineering Assistant	\$ 145.00	/Hr.
Registered Engineer	\$ 220.00	/Hr.	Senior Technician	\$ 145.00	/Hr.
Project Engineer	\$ 175.00	/Hr.	Technician	\$ 125.00	/Hr.
Senior Designer	\$ 165.00	/Hr.	Secretary	\$ 90.00	/Hr.

This rate schedule is effective through December 31, 2024.

If the project becomes a Fast Track Project, or if it entails Multiple Bid Packages, the engineering fees stated above shall be subject to renegotiation.

PROGRESS PAYMENTS:

Progress payments for Basic Services shall be made on a monthly basis in accordance with the percentage of professional services completed.

REIMBURSABLE EXPENSES

Reimbursable expenses as defined in the Terms and Conditions shall be billed at a multiple of 1.2 times the cost incurred.

ADDITIONAL PROVISIONS

This Agreement, and Exhibits A and B attached hereto, constitute the entire Agreement between the parties. A digital copy of this Agreement has been provided to you. Please examine these documents and sign and return one copy. We will begin services within 30 days after receipt of the signed Agreement and retainer, if applicable. If this letter correctly sets forth the terms of our agreement regarding compensation, please sign and return a copy of this letter to us acknowledging your acceptance of the above terms. If you do not sign and return this engagement letter and after receipt of this letter you request or accept services from the firm in connection with this or any other engagement, your request or acceptance of such services will be deemed to be an acquiescence or agreement with the terms provided in this letter.

ACE PC will not knowingly contribute in any manner to the violation of the letter or intent of NC General Statute 143-64.31, et seq. By submitting this price proposal, ACE has the full knowledge and belief that, and by accepting this proposal for consideration, you, as the unit of government, are affirming that the city has under G.S. 143-64.32 in writing exempted this particular project from the provisions of G.S. 143-64.31, et seq. based upon the total estimated professional fee being less than \$50,000 or in your sole discretion as the unit of government stating the reasons for such exemption and the circumstances attendant thereto, and have furthermore provided ACE with a copy of such statement of exemption signed or adopted by the contracting authority. Otherwise, this proposal is null and void.

We are looking forward to working with you on this project.

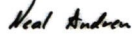
Sincerely:	DocuSigned by:  330AAE236A904CC...	Agreed to and Accepted by:
_____	_____	_____
(Signature)	(Signature)	
6/28/2024		
_____	_____	_____
(Date)	(Date)	
Neal W. Andrew, P.E., SECB/President		
(Printed Name/ Title)	(Printed Name/ Title)	
Andrew Consulting Engineers, P.C.		
(For) Structural Engineer	(For) Owner	

EXHIBIT A – Summary of Services

This is an exhibit attached to and made part of the Letter Agreement dated June 28, 2024, between

Andrew Consulting Engineers, P.C.

(For) Structural Engineer

Town of Wrightsville Beach

(For) Owner

The services of the Structural Engineer (SE) for this proposal include those summarized below.

See Exhibit B - Terms and Conditions, for further details.

SCOPE OF BASIC SERVICES

Services	Included	Not Included	Remarks
PROJECT DEVELOPMENT PHASE			
1. Assist in Definition of Project	☐	☒	
2. Assist in Scope of Services Definition	☐	☒	
3. Assist in Development of Schedule	☐	☒	
4. Assist in Determining Channels of Communication	☐	☒	
SCHEMATIC DESIGN PHASE			
1. Review Owner's Program to Set Project Requirements	☐	☒	
2. Perform Preliminary Evaluation of Schedule	☐	☒	
3. Perform Preliminary Evaluation of Owner's Budget	☐	☒	
4. Consult with Public Agencies	☐	☒	
5. Perform Special Studies	☐	☒	
6. Study Design Alternatives	☐	☒	
7. Prepare Schematic Design Drawings from Owner Approved Alternates	☐	☒	
DESIGN DEVELOPMENT PHASE			
1. Prepare Design Development Drawings based on approved Schematic Design	☒	☐	
2. Prepare Outline Specifications	☒	☐	
3. Review Results of Special Studies	☐	☒	

4.	Prepare Opinion of Probable Construction Cost	☐	☒	
5.	Participate in Value Analysis (VA) or Prepare Design Revisions Due to VA Process	☐	☒	
CONTRACT DOCUMENTS PHASE				
1.	Complete Drawings and Specification (CD's) Based on Approved Design Development Documents	☒	☐	
2.	Coordinate with Building Code Officials and Other Appropriate Public Agencies	☒	☐	
3.	Prepare Statement(s) of Special Inspection	☒	☐	
4.	Assist in Preparation of General Conditions and Bid Forms	☐	☒	
5.	Revise Opinion of Probable Construction Cost	☐	☒	
6.	Revise to CD's as Required by Building Officials	☒	☐	
7.	Revise to CD's as Required by Project Peer Review	☐	☒	
BIDDING OR NEGOTIATION PHASE				
1.	Reproduce and Distribute Bidding Documents	☒	☐	Digital PDFs only
2.	Assist in Evaluating Bidder Qualifications	☒	☐	
3.	Conduct or Participate in Pre-bid Conference	☒	☐	
4.	Issue Addenda and Clarifications	☒	☐	
5.	Conduct or Participate in Bid Opening	☒	☐	
6.	Assist in Bid Evaluation	☒	☐	
CONSTRUCTION ADMINISTRATION PHASE				
Not included in this phase				
1.	Pre-Construction Services			
	a. Conduct Pre-Construction Meeting	☐	☒	
	b. Establish Communication Procedures	☐	☒	
	c. Establish Submittal Procedures	☐	☒	
	d. Establish Procedures for Testing & Inspection	☐	☒	
	e. Assist in Selection of Testing & Inspection Agency	☐	☒	
	f. Respond to Building Department Comments	☐	☒	
2.	Submittal Review			
	a. Review Specified Submittals	☐	☒	
	b. Review Contractor Proposed Substitutes or Design Alternates	☐	☒	

3. Site Visits			
a. Make Site visits at Intervals Appropriate to the Stages of Construction	☐	☒	
b. Prepare Site Visit Reports	☐	☒	
4. Materials Testing and Inspection			
a. Review Testing and Inspection Reports	☐	☒	
b. Initiate Appropriate Action to Testing and Inspection Reports, if Required.	☐	☒	
5. Review Contractor's Requests for Payment	☐	☒	
6. Respond to Contractor's Requests for Information (RFI)	☐	☒	
7. Provide Recommendations Regarding Claims, Disputes and Other Matters Relating to Execution or Progress of the Work	☐	☒	
8. Determine Whether Non-Conforming Work Shall be Rejected (Investigative or redesign services for non-conforming work shall be considered an "Additional Service")	☐	☒	
9. Review and/or Issue Change Orders	☐	☒	
10. Conduct Inspections to Determine Date of Substantial Completion of the Work	☐	☒	
11. Conduct Inspection to Develop Punch List of Items Required for Final Completion	☐	☒	
12. Verify Completion of Punch List Items and Determine Date of Final Completion	☐	☒	
13. Endeavor to Obtain Required Written Warranties and Related Documents and Submit to Owner	☐	☒	
14. Issue Final Certificate for Payment	☐	☒	

SPECIAL SERVICES			
1. Field Investigation or Surveys of Existing Buildings	☐	☒	
2. Special Consultants or Services			
a. Geotechnical Engineer	☒	☐	
b. Environmental Services	☐	☒	
Discovery, testing, monitoring, clean-up or neutralization of pollutants and hazardous substances.	☐	☒	
Determination, advice or services related to the identification, existence, removal or containment of asbestos or lead based paint; modification, installation, or removal of a product, material or process containing asbestos or lead based paint.	☐	☒	
c. Traffic Studies	☐	☒	
d. Wind Tunnel Tests	☐	☒	
e. Site & Utility Surveys	☒	☐	
f. Seismic Risk Analysis	☐	☒	
g. Studies to Accommodate Special Energy Requirements	☐	☒	
3. Preparation of Demolition Documents	☐	☒	
4. Design for Future Expansion	☐	☒	
5. Design of Swimming Pools	☐	☒	
6. Services Connected with the Preparation of Documents for Alternate bids.	☐	☒	
7. Services Connected with the Preparation of Documents for Segregated Contracts for Phased or Fast-Track Construction.	☐	☒	
8. Tenant Related or Finish out Design Services	☐	☒	
9. Filing Application for and Obtaining a Building Permit	☐	☒	
10. Special Inspections as Required by the Applicable Building Code	☐	☒	
11. Review of Contractor Resubmittals in Excess of the Number of Resubmittals Specified under Basic Services	☐	☒	
12. Design or Field Observations of Shoring and Bracing for Excavations and Buildings or Underpinning of Adjacent Structures.	☐	☒	

13. Preparation of Shop or Fabrication Drawings, for Example, Tilt-up Wall Panel Drawings, Reinforcing and Structural Steel Detailing, etc.	☐	☒	
14. Supply of CAD Files to Contractor(s)	☐	☒	
15. Investigative Services Associated with Nonconforming Construction	☐	☒	
16. Redesign Services Due to Non-conforming Construction	☐	☒	
17. Preparation of Record Drawings	☐	☒	
18. Preparation of Operation/Maintenance/Inspection Manuals	☐	☒	

EXHIBIT B – TERMS and CONDITIONS

This is an exhibit attached to and made part of the Letter Agreement dated June 28, 2024, between

Andrew Consulting Engineers, P.C.
(For) Structural Engineer

Town of Wrightsville Beach
(For) Owner

Section 1 - General**1.1 This Agreement**

- 1.1.1 These Terms and Conditions, along with the signed Agreement, and Exhibit A – Summary of Services form the Agreement as if they were part of one and the same document.
- 1.1.2 The Agreement and Exhibit A may modify the applicability of these Terms and Conditions. Such modification shall take precedence over provisions of this Exhibit.

1.2 General obligations of the Structural Engineer and the Owner

- 1.2.1 The Structural Engineer (SE) shall provide those professional services as specified in Exhibit A and detailed in these Terms and Conditions. In rendering these services, the SE shall apply the skill and care ordinarily exercised by structural engineers at the same time and locale the services are rendered.
- 1.2.2 The SE and Owner shall each designate, in writing, a representative to act with authority on their behalf with respect to all aspects of the Project.
- 1.2.3 Upon written request, the Owner shall verify and provide reasonable evidence in writing, that the project will be financed adequately, including provisions for contingencies, to accomplish the stated and desired goals and commitments.
- 1.2.4 The Owner shall provide all criteria and information with regard to their requirements for the Project. This shall include, but not be limited to, review and approval of design in the schematic design phase, design development phase, and contract documents phase. These approvals shall include a written authorization to proceed to the next phase.
- 1.2.5 The Owner shall provide testing necessary to identify hazardous materials and pollutants, and shall provide test results to the SE, and be responsible for the remediation in accordance with the governing laws, if required.
- 1.2.6 The SE shall request, and the Owner shall provide those geotechnical investigations, property surveys, utility surveys, reports and other data necessary for performance of the project team (unless these services are to be provided through subcontracts to this agreement.).
- 1.2.7 The SE shall submit to the Owner a schedule for the performance of the professional services.
- 1.2.8 Professional services provided by the Owner shall be performed by professionals licensed in the state of the project and experienced with respect to the service being provided.
- 1.2.9 The SE is entitled to rely on the accuracy and completeness of services provided by other design professionals retained by the Owner.

1.3 Definitions

- 1.3.1 **Structural Engineer (SE)** is an individual, partnership, corporation or other legally recognized entity authorized to provide design services for new structures and/or renovations of existing structures.
- 1.3.2 **Fast Track Projects** are projects in which any portion of the contract drawings are released for pricing/bid/fabrication or are submitted for building permit prior to such issuance of the full design team documents.
- 1.3.3 **Multiple Bid Packages** are bid documents which are submitted for phased construction of portions of the project under separate trade contracts.
- 1.3.4 **Owner** is the individual, agency, corporation or other legally recognized entity or the officers, directors, or employee of any of them, which engages the services of the SE.
- 1.3.5 **Reimbursable Expenses** are expenses incurred by the SE directly in connection with the project such as, but not limited to, transportation, out-of-town travel and subsistence, electronic communications, overnight deliveries, courier services, additional specialized professional services, sales taxes, permits and filing fees for securing approvals from government authorities, renderings or models, Owner authorized overtime above the current hourly rates, expenses for professional liability insurance or additional insurance beyond the normal amount carried by the SE and the cost of reproductions.
- 1.3.6 **Site Visits** are visits to the site at intervals appropriate to the stage of construction to observe and become generally familiar with the quality and progress of the work and to endeavor to guard the Owner from defects or deficiencies in the work.
- 1.3.7 **Special Inspections** are those inspections required by governing or local authorities to be performed by a qualified person, approved by the building official, during the construction phase of the project.

Section 2 -- Basic Services**2.1 General**

- 2.1.1 The Basic Services of the SE are those services designated in Exhibit A.

Section 3 -- Extra Services**3.1 General**

3.1.1 Extra Services are those services that arise during the design or construction process and are not included in Basic Services. Examples include, but are not limited to:

- a. Services resulting from changes in scope or magnitude of the project as described and agreed to under the Basic Services Agreement.
- b. Services resulting from changes necessary because of a construction cost overrun which is outside the control of the SE.
- c. Services resulting from revisions which are inconsistent with approvals or instructions previously given by the Owner.
- d. Services resulting from revisions due to the enactment or revision of codes, laws, or regulations subsequent to the start of preparation of construction documents.
- e. Services resulting from Owner initiated Change Orders.
- f. Services resulting from corrections or revisions required because of errors or omissions in construction by the Contractor, or in designs provided by the Contractor or any third party.
- g. Services resulting from construction procedures over which the SE has no control.
- h. Services due to extended design or construction time schedules.
- i. Services in connection with litigation, mediation, arbitration or public hearings, with respect to the project.
- j. Services resulting from damage, as the result of fires, man-made disasters, or acts of God.
- k. Review and design of alternate or substitute systems.
- l. Review of additional shop drawing submittals when occasioned by improper or incomplete submittals.
- m. Services required to make changes resulting from value analysis review or project peer review.
- n. Services for conditions discovered after the execution of this Agreement.

Section 4 -- Fees and Payments**4.1 Fees and Other Compensation**

4.1.1 Fees for Basic Services and Extra Services and Compensation for Reimbursable Expenses are set forth in the Letter Agreement.

4.2 Payments on Account

4.2.1 Invoices for the SE's services shall be submitted on a monthly basis. Invoices shall be payable when rendered and shall be considered past due if not paid within 30 days of the invoice date.

4.2.2 Retainers, if applicable to this project, shall be credited to the final invoice.

4.2.3 Questions concerning the substance or content of an invoice shall be made to the SE, in writing, within 10 days of receipt of the invoice. A failure to notify the SE within this period shall constitute an acknowledgment that the service has been provided and payment is due.

4.3 Late Payments

4.3.1 A service charge will be charged at the rate of 1.5% (18% true annual rate) per month or the maximum allowable by law on the then outstanding balance of past due accounts. In the event any portion of an account remains unpaid 30 days after billing, the Owner shall pay all costs of collection, including reasonable attorney's fees. Payments on account will be credited first to any service charge and then due to any outstanding balances.

4.3.2 In the event that any portion of an account remains unpaid 30 days after billing, the SE may, without waiving any claim or right against the Owner, and without liability whatsoever to the Owner, suspend or terminate the performance of all services and in that event the SE will in no way be responsible for any resultant delay.

Section 5 - Insurance, Indemnification & Risk Allocation**5.1 Insurance**

5.1.1 The SE shall secure and endeavor to maintain professional liability insurance, commercial general liability insurance and automobile liability insurance to protect the SE from claims for negligence, bodily injury, death or property damage which may arise out of the negligent performance of the SE's services under this Agreement. The SE shall also carry Worker's Compensation Insurance. The SE shall, if requested in writing, provide certificates of insurance to the Owner.

5.1.2 The Client shall secure commercial general liability insurance, and automobile liability insurance to protect the Client from claims for negligence, bodily injury, death or property damage which may arise out of the Client's performance under this Agreement. The Client shall also carry worker's compensation insurance and procure all-risk or builder's risk property insurance and include the interests of the SE on such policy. The Client shall provide certificates of insurance to the SE.

5.2 Indemnification

5.2.1 The SE shall indemnify and hold harmless the Owner and its officers, members, directors, partners, agents, employees, and subconsultants against any and all claims, damages, losses and expenses to the extent they are caused by the negligent acts, errors, or omissions of the SE or its officers, members, directors, partners, agents, employees, and subconsultants in the performance of its services under this Agreement, subject to the Risk Allocation provisions in Article 5.3 below. The Owner shall indemnify and hold harmless the SE and its officers, members, directors, partners, agents, employees and subconsultants from and against any and all claims, damages, losses and expenses arising out of or resulting from the Owner's performance of its obligations under this Agreement, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of the Owner, anyone directly or indirectly employed by the Owner (except the SE) or anyone for whose acts any of them may be liable. This indemnification shall include any claim, damage or loss due to the presence of hazardous materials. Neither party shall have any obligation to defend or pay for the defense costs of the other party until such time as there is a determination of fault of the parties and in that event, the party found at fault shall only be obligated to reimburse the other party for its reasonable defense costs on a percentage basis in direct proportion, as determined by the court, to the percentage of fault of the party who was found at fault.

- 5.2.2 The Owner shall indemnify and hold harmless the SE and all of its personnel, and other design team members, from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising from the presence, discharge, release or escape of asbestos, hazardous waste, or other contaminants at the site.
- 5.2.3 For third party claims, to the fullest extent permitted by law, the Owner hereby agrees to indemnify, hold harmless and defend the SE, including its officers, members, directors, partners, agents, employees, and subconsultants from and against all third party claims, including bodily injury, property damage, products liability, demands, damages and losses, causes of actions, judgments, fines, penalties and claims expense including attorney fees litigation costs, expert witness fees and any other expenses, caused by or alleged to have been caused by anything other than negligent performance by the SE of services under the agreement related to this project. Said indemnification shall also apply to any deductible that the SE may be obligated to pay under its Professional Liability Policy resulting therefrom.
- 5.2.4 The indemnifications as stated in Articles 5.2.1, 5.2.2 and 5.2.3 shall apply to the respective officers, members, directors, partners, agents, employees, and subconsultants of the SE and the Owner.
- 5.2.5 The Owner shall require that its construction contractor(s) endorse commercial general liability coverage to include the Owner, the SE and the SE's consultants as additional insureds for claims caused in whole or in part by the contractor's negligent acts or omissions during the contractor's operations. All such additional insured coverage shall be primary and non-contributory, with provision for separation of insureds.

5.3 Risk Allocation

- 5.3.1 In recognition of the relative risks, rewards and benefits of the Project to both the Owner and the SE, the risks have been allocated such that the Owner agrees that, to the fullest extent permitted by law, the SE's total liability to the Owner or any third party for any and all injuries, claims, losses, expenses, damages, expert fees, court costs or claim expenses arising out of this Agreement, from any cause or causes, inclusive of all costs including attorney and expert fees, shall not exceed the amount of \$50,000, or the amount of the SE's fees (whichever is greater). Such cause or causes include, but are not limited to, the SE's negligent acts, errors, omissions, strict liability, breach of contract, breach of expressed or implied warranty, or any other theory of legal liability. This limitation of liability shall apply to the SE and its officers, members, directors, partners, agents, employees, and subconsultants. Owner understands that SE's fee is based, in part, on Owner's agreement to limit SE's liability in accordance with this paragraph and that greater limits of liability are available for increased SE fees, but that Owner has agreed to forego those greater limits of liability in exchange for the SE fee herein.

Section 6 - - Miscellaneous Provisions

6.1 Ownership and Use of Documents

- 6.1.1 All documents, drawings, specifications, computer files, CAD files, design calculations and survey notes are instruments of service and belong to and remain the property of SE, regardless of whether the instruments were copyrighted or whether the Project for which they were prepared is executed. The SE retains all copyright interests and rights in all such documents. The Owner may, at its expense, obtain reproducible copies of drawings and copies of other documents, in consideration of which there will be mutual agreement that the Owner will use them solely in connection with the specific Project for which they were prepared.
- 6.1.2 Any reuse of the Drawings or Specifications for, among other things, development of another project, or completion of this project by others, revisions, alterations, deletions from, additions to, or other modifications of the Drawings or Specifications, shall constitute an "unauthorized reuse" and be prohibited unless performed by or at the written consent of the SE. The Owner further agrees to defend, indemnify and hold the SE harmless from and against any and all claims, demands, damages, losses or expenses, including court and arbitration costs, and attorneys' fees, arising out of or resulting from any such unauthorized reuse.
- 6.1.3 CAD files shall not be used by the Contractor for the preparation of shop drawings without the written consent of the SE and such fee that the SE may establish.

6.2 Opinion of Probable Construction Cost

- 6.2.1 The SE's evaluations of the Owner's probable project budget and any opinions of probable construction costs, if rendered as a service under this Agreement, will be made on the basis of the SE's experience and qualifications and will represent the SE's best judgment as a qualified design professional familiar with the construction industry. Because the SE has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over the competitive bidding process or future market conditions, the SE does not guarantee or represent that proposals, bids, negotiated prices, or actual construction costs will not vary from the opinions of probable construction costs prepared or agreed upon by the SE. The Owner is strongly encouraged to engage the services of an independent cost estimator to provide estimates of construction costs.

6.3 Deficient Conditions

- 6.3.1 If the SE has reason to believe that a deficient condition may exist, the SE shall notify the Owner who shall authorize and pay for all costs associated with the investigation of such a condition, and, if necessary, all costs necessary to correct said condition. If (1) the Owner fails to authorize such investigation or correction after due notification, or (2) the SE has no reason to believe that such a condition exists, the Owner is responsible for all risks associated with this condition, and the SE shall not be responsible for the existing condition nor any resulting damages to persons or property. The SE shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.

6.4 Review of Contractor's Work

- 6.4.1 The SE shall not supervise, direct, or have control over the Contractor's work. The SE shall not be responsible for the Contractor's means, methods, procedures, techniques, or sequences of construction, nor for safety programs and procedures employed by the contractor on the job site. The SE shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents.

6.4.2 If included in the SE's Scope of Services (Exhibit A), the SE shall review and take appropriate action with respect to shop drawings, product data, samples, and other submittals required under the contract documents to be submitted by contractor. The SE's review shall be only for the limited purpose of ascertaining general compliance with the design concept for the project and the information given in the contract documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions, quantities, weights, gauges, or fabrication processes, nor for substantiating instructions for installation or performance of systems designed by contractor, nor for coordination with the work of other trades. Review of a specific item shall not indicate acceptance of an assembly of which the item is a component. When professional certification, by other licensed professionals or the Owner or contractor for performance characteristics of materials, systems, or equipment is required by the contract documents, the SE shall be entitled to rely upon such certification as verification that the materials, systems, or equipment will meet the performance criteria set forth in the contract documents.

6.5 Termination, Successors, Assigns and Third-Party Beneficiary

6.5.1 This agreement may be terminated upon 10 days written notice by either party should the other party fail to perform its obligations hereunder. In the event of termination, the Owner shall pay the SE for all services rendered to the date of termination, all reimbursable expenses and reasonable termination expenses.

6.5.2 The Owner and the SE each binds themselves, partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations of this Agreement.

6.5.3 Neither the Owner nor the SE shall assign, sublet or transfer any rights under, or interest in (including, but without limitations, monies that may be due or monies that are due) this Agreement, without the written consent of the other, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the SE from employing such independent consultants, associates and subcontractors as he or she may deem appropriate to assist in the performance of services hereunder.

6.5.4 The SE and the Owner agree that the services performed by the SE pursuant to this Agreement are solely for the benefit of the Owner and are not intended by either the SE or the Owner to benefit any other person or entity. To the extent that any other person or entity is benefited by the services performed by the SE pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third-party beneficiary to this Agreement.

6.6 Dispute Resolution

6.6.1 The SE and the Owner agree to negotiate any claim(s) or dispute(s) arising out of or related to the agreement between them in good faith prior to exercising any other provision of this Agreement.

6.6.2 If a claim or dispute between the SE and the Owner cannot be settled within 30 days by good faith negotiations the SE and the Owner agree to submit it to mediation in accordance with the mediation rules of the American Arbitration Association.

6.6.3 If the claim or dispute cannot be settled by good faith negotiations or mediation, then either party may exercise their rights under law.

6.6.4 In no event shall a claim or dispute be made or sustained if it would be barred by the applicable statute of limitations.

6.7 Governing Laws

6.7.1 This Agreement shall be governed by the laws of the principal place of business of the SE.

6.8 Waiver of Certifications

6.8.1 No party to this Agreement shall be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement. No party to this Agreement shall be required to sign any documents which would result in that party having to certify, guarantee, or warrant the existence of conditions which they cannot ascertain.

6.9 Corporate Protection

6.9.1 It is intended by the parties to this agreement that the SE's services in connection with the project(s) shall not subject the SE's individual owners, officers, or employees to any legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the client agrees that as the client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the SE firm, and not against any of SE firm's individual owners, officers or employees.

6.10 Claim Validation

6.10.1 The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the SE unless the Client has first provided the SE with a written certification executed by an independent consultant currently practicing in the same discipline as the SE and licensed in the state where the project is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be an express condition precedent to initiation of any claim by mediation, arbitration or litigation and shall be provided to the SE not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. Failure to comply with this Art. 6.10 shall constitute a waiver of any such claims.

6.11 Electronic Document Provisions

- 6.11.1 Client and SE may transmit, and shall accept, project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure project website, in accordance with a mutually agreeable protocol.
- 6.11.2 If this Agreement does not establish protocols for electronic or digital transmittals, then Client and SE shall jointly develop such protocols.
- 6.11.3 Original electronic document files will be retained by SE for a period of time determined by SE. Client may be permitted to retain copies of drawings and specifications prepared on electronic document files for Client's information in its use of the project. Due to the potential that the information set forth in the electronic document files can be modified by Client, unintentionally or otherwise, SE reserves the right to remove all indicia of its ownership and/or involvement from each electronic display.
- 6.11.4 SE's electronic document files are compatible with the current release of SE's software, using SE's current operating system.
- 6.11.5 Data stored on electronic media can deteriorate undetected or be modified without SE's knowledge. Therefore, Client agrees that it will accept responsibility for the completeness, correctness, and readability of the electronic media after an acceptance period of 7 days after delivery of the electronic files. Client also agrees that upon the expiration of this acceptance period, Client will indemnify and hold harmless SE for any and all claims, losses, costs, damages, awards or judgments arising from the use of electronic media files or output generated from them.
- 6.11.6 In the event that a conflict arises between the signed/certified documents prepared by SE and electronic document files, the signed/certified documents shall govern.
- 6.11.7 Electronic document files will be prepared by SE and delivered to Client in accordance with SE's standard electronic document specification. All costs associated with providing electronic document files to comply with Client's electronic document specification are considered Additional Services and may require the extension of the project design phase schedule.
- 6.11.8 Information set forth in the electronic document files will not be used by the Client on other projects, for additions to this project, or for completion of this project by another design professional. Any such use or reuse by Client or others, without written verification or adaptation by SE for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to SE. Furthermore, Client shall, to the fullest extent permitted by law, indemnify and hold harmless SE from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle SE to further compensation at rates to be mutually agreed upon by Client and SE.

Section 7 - Supplemental Conditions**7.1 Supplemental Conditions:**

- 7.1.1 Inasmuch as the remodeling and/or rehabilitation of the existing structure requires that certain assumptions be made by the Consultant regarding existing conditions, and because some of these assumptions may not be verified without the Client's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless to Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this Project, excepting only those damages, liabilities or costs attributed to the sole negligence and willful misconduct by the Consultant.
- 7.1.2 Services performed under this agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances. No warranties, express or implied, are made in connection with services performed under this Agreement. Nothing in this Agreement shall be construed to establish a fiduciary relationship between the parties.
- 7.1.3 All legal actions by either party against the other arising out of or in any way connected with this Agreement of the services to be performed hereunder shall be barred and under no circumstances shall any such legal action be initiated by either party after two (2) years from the date of Substantial Completion, unless the Agreement shall be terminated earlier, in which date in which case the date of termination of this Agreement shall be the date on which such period shall commence.
- 7.1.4 The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services which the Client becomes aware, so that the Consultant may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contracts in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Should legal liability for the defects exists, failure by the Client and Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of any liability for costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

RESOLUTION NO. (2024) 2334

Board of Aldermen
Town of Wrightsville Beach, North Carolina
Date: July 11, 2024



A RESOLUTION OF THE BOARD OF ALDERMEN OF
THE TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
EXEMPTING THE PROFESSIONAL SERVICES RELATING
TO ENGINEERING SERVICES TO DESIGN A NEW BULKHEAD
AT W. OXFORD STREET

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively "design services") to be based on qualifications and without regard to fee; and

WHEREAS, the Town proposes to enter into a contract for engineering design services for a new bulkhead at the end of W. Oxford St.; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for services for the above-described project is less than \$50,000.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina as follows:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31.

Section 2. This resolution shall be effective upon adoption.

This Resolution adopted this 11th day of July, 2024.

F. Darryl Mills, Mayor

ATTEST:

Lance Heater, Town Clerk



Town of Wrightsville Beach
North Carolina
321 Causeway Drive
Wrightsville Beach, North Carolina 28480
Ph: 910-256-7900

MEMORANDUM

To: Mayor Mills and Board of Aldermen

From: Brian Murray, Finance Officer

Subject: **Budget Ordinance 624-B (2024)**

Date: July 11, 2024

Background: The Town of Wrightsville Beach Police Department recently received an ABC grant for use in fiscal year 24/25. The revenues and expenditure of this ABC grant are not currently in the budget. This budget ordinance will adjust the FY24/25 budget to include the ABC grant revenues, as well as the expenditure of said revenues within the police department budget. The police department plans to use the ABC grant funds for two video cameras to assist in identifying suspects involved in crimes in the bar district.

Recommendation: Staff recommends approving Budget Ordinance 624-B (2024) to receipt ABC grant funds, and appropriate said funds in the 24/25 police department budget for two video cameras.

Requested Action: Consider Approving Budget Ordinance 624-B (2024).

TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
ORDINANCE NO. (2024) 624-B
FISCAL YEAR 2024/2025

BE IT ORDAINED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section I. To amend the General Fund (Fund 10) for unanticipated/unbudgeted expenses during FY 2025. The Town's General Fund (Fund 10) accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
10-4310-5000	Capital Outlay	15,000	
10-3861	ABC Grant - Cops		15,000

Section II. Copies of this Budget Ordinance No. (2024) 624-B shall be furnished to the Town Clerk, the Budget Officer and the Finance Officer, and shall be available for public inspection and audit.

Adopted this 11th day of July, 2024.

DARRYL MILLS
Mayor

ATTEST:

LANCE HEATER
Town Clerk

Seal



Town of Wrightsville Beach
North Carolina
321 Causeway Drive
Wrightsville Beach, NC 28480
910-256-7900

To: Mayor Mills and Board of Aldermen
From: Brian Murray, Finance Officer
Subject: Budget Ordinance (2024) 625-B
Date: July 11, 2024

Background: The Town has three capital project funds that are either complete or no longer active that need to be closed.

Fund 48 was set up many years ago for the Salisbury Street ocean access bathhouse project. This project has been added to the Town's asset listing and should be closed.

Fund 51 was set up for the SCIF (state construction and infrastructure fund) grant that the Town received in 2022. These funds were used in FY23/24 to pay for a portion of the bulkhead improvement on Sweeney and Columbia Street. All of the grant funds have been expended, so this fund can be closed.

Fund 56 was also set up to track grant funds; these were funds received from the Division of Coastal Management to develop a beach management plan. All of the grant funds have been expended, so this fund can also be closed.

The process for closing the capital project funds is to amend the budgeted revenues and expenditures to actual, and if any fund balance is remaining transfer that back to the original parent fund.

Requested Action: Approve Budget Ordinance (2024) 625-B.

TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
CAPITAL PROJECT ORDINANCE (2024) 625-B
FISCAL YEAR 2024/25

BE IT ORDAINED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina, that the following amendment be made to the annual budget ordinance and the following capital project funds closed for the fiscal year ending June 30, 2025:

Section I. To amend the Salisbury Ocean Access Park Project Fund (Fund 48) to inactivate and close said Town Fund and consolidate in the Town's General Fund (Fund 10), the fund accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
48-3831	Interest Earned		6,890.70
48-3991	Appropriated Fund Balance		158,830.12
48-9800-9600	Transfer to Fund 10	165,720.82	

Section II. To amend the SCIF Capital Project Fund (Fund 51) to inactivate and close said Town Fund and consolidate in the Town's General Fund (Fund 10), the fund accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
51-3831	Interest Earned		5,343.20
51-3991	Appropriated Fund Balance		6,550.53
51-9800-9600	Transfer to Fund 10	11,893.73	

Section III. To amend the Beach Management Plan Capital Project Fund (Fund 56) to inactivate and close said Town Fund and consolidate in the Town's General Fund (Fund 10), the fund accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
56-3831	Interest Earned		303.09
56-4110-1800	Consultant Services		3,245.00
56-3991	Appropriated Fund Balance		237.98
56-9800-9600	Transfer to Fund 10	3,786.07	

Section IV. Copies of this Budget Ordinance No. (2024) 625-B shall be furnished to the Town Clerk, the Budget Officer and the Finance Officer, and shall be available for public inspection and audit.

Adopted this 11th day of July 2024.

DARRYL MILLS
Mayor

ATTEST:

LANCE HEATER
Town Clerk

Seal



F. Darryl Mills
Mayor

Hank Miller
Mayor Pro Tem

Ken Dull
Alderman

Jeff DeGroote
Alderman

Zeke Partin
Alderman

Town of Wrightsville Beach

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480

June 30, 2024

MEMORANDUM

To: Mayor Mills and Board of Aldermen
From: Tony Wilson, Acting Town Manager *TW*
Re: Consider approval of Budget Ordinance (2024) 626-B funding engineering services
for the W. Atlanta Street and W. Oxford Street bulkhead projects

If the Board wishes to move forward with these projects, I recommend that the Board consider approving Budget Ordinance (2024) 626-B.

Requested Action:

1. Discuss the item and ask questions
2. Budget Ordinance (2024) 626-B

TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
ORDINANCE NO. (2024) 626-B
FISCAL YEAR 2024/2025

BE IT ORDAINED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section I. To amend the General Fund (Fund 10) for unanticipated/unbudgeted expenses during FY 2025, the Town's General Fund (Fund 10) accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
10-4510-1900	Contracted Services	75,000	
10-3984	Transfer from GF CIP		75,000

Section II. To amend the General Fund Capital Reserve Fund (Fund 63) for unanticipated/unbudgeted expenses during FY 2025, the Town's General Fund Capital Reserve Fund (Fund 63) accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
63-9800-9610	Transfer to Gen Fund	75,000	
63-3991	Appropriated Fund Balance		75,000

Section III. Copies of this Budget Ordinance No. (2024) 626-B shall be furnished to the Town Clerk, the Budget Officer and the Finance Officer, and shall be available for public inspection and audit.

Adopted this 11th day of July, 2024.

DARRYL MILLS
Mayor

ATTEST:

LANCE HEATER
Town Clerk

Seal



Town of Wrightsville Beach
North Carolina
321 Causeway Drive
Wrightsville Beach, NC 28480
910-256-7900

To: Mayor Mills and Board of Aldermen
From: Brian Murray, Finance Officer
Subject: Ordinance (2024) 627-B
Date: July 11, 2024

Background: The following budget ordinance addresses projects or purchases that were approved in fiscal year 23/24, but were not able to be completed by June 30th. These items will need to be added to the fiscal year 24/25 budget. The items are as follows –

Lead and Copper Rule Compliance - \$25,000

Legal Work for Merger w/ David Martin - \$50,000

Town Manager Recruitment - \$35,000

Stantec Consulting on Merger - \$20,000

Withers & Ravenel contract for Stormwater project - \$30,000

Cape Fear Engineering Causeway Dr sidewalk extension - \$15,000

Requested Action: Approve Ordinance (2024) 627-B.

TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
ORDINANCE NO. (2024) 627-B
FISCAL YEAR 2024/2025

BE IT ORDAINED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section I. To amend the General Fund (Fund 10) for unanticipated/unbudgeted expenses during FY 2025. The Town's General Fund (Fund 10) accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
10-3991	Fund Balance Appropriated		80,000
10-4710-1900	Contracted Services	30,000	
10-4110-1801	Professional Services	35,000	
10-4510-1801	Professional Services	15,000	

Section II. To amend the Water/Sewer Fund (Fund 30) for unanticipated/unbudgeted expenses during FY 2025. The Town's Water/Sewer Fund (Fund 30) accounts are to be amended as follows:

30-3991	Fund Balance Appropriated		95,000
30-7130-1900	Contracted Services	45,000	
30-7130-1801	Professional Services	50,000	

Section III. Copies of this Budget Ordinance No. (2024) 627-B shall be furnished to the Town Clerk, the Budget Officer and the Finance Officer, and shall be available for public inspection and audit.

Adopted this 11th day of July, 2024.

DARRYL MILLS
Mayor

ATTEST:

LANCE HEATER
Town Clerk

Seal

TOWN OF WRIGHTSVILLE BEACH

PARKS & RECREATION

4 Fran Russ Drive • P.O. Box 626

Wrightsville Beach, N.C. 28480

(910) 256-7925 • ParksAndRecreation@towb.org • www.towb.org

MEMORANDUM

To: Mayor Mills and Board of Aldermen

From: Katie Ryan, Recreation Program Supervisor *Kate*

Subject: Projects Requiring Budget Adjustments

Date: July 5, 2024

Cape Fear Engineering Bid Alternates \$10,000: The PARTF project (Pickleball courts, lighting, and multiuse path) bids are due on July 17th. The bid package includes three bid alternates: 1) the park parking lot reconfiguration, 2) the Town Hall and Rec Center area parking, and 3) the basketball courts and tennis backwall resurfacing. The alternates require a budget adjustment of \$10,000 for Cape Fear Engineering bid assistance and oversight. The bids will be reviewed and presented to the Board with a recommendation.

Commemorative Bench Program \$20,000: The Board approved continuing with the Commemorative Bench Program at the May 9, 2024 meeting. We have purchased and installed the first twenty benches and will purchase and install close to twenty more as the beach allows. The cost per bench with a plaque is about \$850. A fee of \$1,000 is collected from each bench sponsor.

Historic Square \$50,000: At the February 8, 2024 meeting, the Board approved the design phase of the Historic Square area. The project cost is \$49,400 and includes the design bid documents, surveying, and oversight. The engineering design is based on a conceptual plan funded by the Wrightsville Beach Foundation.

Digital Sign \$46,000: The digital sign was partially funded in FY23/24. The remaining payment is due upon delivery of the sign, which should be mid-July. TDA funds have been requested.

REQUESTED ACTION: Approve budget adjustments as presented.

TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
ORDINANCE NO. (2024) 628-B
FISCAL YEAR 2024/2025

BE IT ORDAINED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section I. To amend the General Fund (Fund 10) for unanticipated/unbudgeted expenses during FY 2025. The Town's General Fund (Fund 10) accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
10-6120-1900	Contracted Services	126,000	
10-3991	Appropriated Fund Balance		126,000

Section II. Copies of this Budget Ordinance No. (2024) 628-B shall be furnished to the Town Clerk, the Budget Officer and the Finance Officer, and shall be available for public inspection and audit.

Adopted this 11th day of July, 2024.

DARRYL MILLS
Mayor

ATTEST:

LANCE HEATER
Town Clerk

Seal

F. Darryl Mills
Mayor

Ken Dull
Alderman

Zeke Partin
Alderman



Hank Miller
Mayor Pro Tem

Jeff DeGroote
Alderman

Town of Wrightsville Beach

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480

MEMORANDUM

To: Mayor Mills and Board Members
From: Tony Wilson, Planning and Parks Director *TW*
Date: June 30, 2024
Re: **Special-Use Permit Application for 1 Stone Street Partners, LLC at 4 North Lumina**

Zoning District:

C-1 Commercial District

Background:

On April 2, 2024, 1 Stone Street Partners, LLC at Wrightsville Beach, LLC submitted an application for a special-use permit located at 4 North Lumina Avenue. Mr. Samuel B. Franck is the authorized agent for the owners and the tenant.

Proposed Project:

- Expansion of kitchen space to include former interior stairwell (A-1)
- **Adapt the use of common area alley between buildings to allow for full restaurant service to include alcohol service (28 seats) (A-1)**
- Adapt interior layout of former Café Del Mar section of restaurant by removing the bar to incorporate additional restaurant seating (A-1)

Technical Review and Comment:

On April 23, 2024, Staff met with Department Heads to discuss the proposed special use permit project located at 4 North Lumina. Listed below are our comments from the meeting:

1. Exterior lighting will be required to meet the lighting ordinance
2. If alcohol sales are approved for Tower 7, does this include the area for Vito's?
3. If any fencing or barriers are installed, they should be no greater than 4 feet in height
4. Any occupancy increase will require a parking exception or a larger grease trap
5. Trash cans will be needed in the area
6. Noise concerns for the residents above Tower 7

155.4.5.4 Board of Aldermen Action.

(A) Special use permits are quasi-judicial decisions approved by a simple majority vote of the Board of Aldermen. Quasi-judicial decisions must be conducted in accordance with subsections [155.4.4.5](#) through [155.4.4.12](#). For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(B) Once the comments of the Planning Board have been made, or the 30-day period elapses without a recommendation, the Board of Aldermen shall hold an evidentiary hearing to consider the application at its next regularly scheduled meeting. A quorum of the Board of Aldermen is required for this hearing. Notice of the evidentiary hearing shall be as specified in subsection [155.4.4.6](#). In addition, notice shall be given to other potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than ten nor more than 25 days prior to the evidentiary hearing.

(C) In approving an application for a special use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Board of Aldermen may impose reasonable and appropriate conditions and safeguards upon the approval. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular development found elsewhere in a similar zoning district.

(D) The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which subsection [155.4.5.4\(E\)](#) below requires.

(E) The Board of Aldermen shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

(1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.

(2) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.

(3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

(4) The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

(5) Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.

(6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

(7) The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

(8) Public access shall be provided in accordance with the recommendations of the town's land use plan and access plan or the present amount of public access and public parking as exists within the town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.

(9) The proposed use shall be consistent with recommendations and policy statements as described in the adopted land use plan.

(F) *Conditions and Guarantees.* Prior to the granting of any special use, the Board of Aldermen may require, conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. In all cases in which special uses are granted, the Board of Aldermen shall require the applicant or land owner's written consent to the conditions as evidence and guarantee that the conditions required in connection therewith are being and will be complied with.

155.4.5.5 Effect of Approval. If an application for a special use permit is approved by the Board of Aldermen, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the special use permit, or develop any other use listed as a permitted use for the general zoning district in which it is located.

155.4.5.6 Binding Effect. Any special use permit so authorized shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Aldermen.

155.4.5.7 Record. Any special use permit issued by the Board of Aldermen shall require recordation with the New Hanover County Register of Deeds within 90 days of its approval.

155.4.5.8 Certificate of Occupancy. No certificate of occupancy for a use listed as a special use shall be issued for any building or land use on a piece of property which has received a special use permit for the particular use unless the building is constructed or used, or the land is developed or used, in conformity with the special use permit approved by the Board of Aldermen. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

155.4.5.9 Change in Special Use Permit. An application to materially change a special use permit once it has been issued must follow the same procedure as the original approval and first be submitted, reviewed, and approved in accordance with subsections [155.4.5.3](#) and [155.4.5.4](#), including payment of a fee in accordance with the fee schedule approved by the Board of Aldermen.

155.4.5.10 Implementation of Special Use Permit. A special use permit, after approval by the Board of Aldermen shall expire one year after the approval date if work has not commenced or in the case of a change of occupancy the business has not opened; however, it may be, on request, continued in effect for a period not to exceed an additional one year by the UDO Administrator. No further extension shall be added except on approval of the Board of Aldermen. If such use or business is discontinued for a period of 12 months, the special use permit shall expire. Any expiration as noted or any violation of the conditions stated on the permit shall be considered unlawful and the special use permit may be repealed through the same hearing process and procedure as the original approval. The applicant will be required to submit a new special use application to the appropriate agencies for consideration and the previously approved special use permit shall become null and void.

Advertisement:

The Legal advertisement announcing the July 11, 2024 BOA meeting ran on June 28, 2024 in the Star news. The site was posted on June 28, 2024 and adjacent property notifications were sent out.

CAMA Land Use Plan Policies:

Section 5. Goals and Implementing Actions:

1. The Town will encourage commercial establishments providing basic goods and service to year-round residents and visitors.
2. The Town supports the concept of mixed-used projects in order to revitalize and preserve the economic viability of existing commercial areas on the Island. Such developments must be designed to be consistent with surrounding neighborhoods/areas. The Town will consider developing small area plans (Maringa, Causeway, CBD, South End and Johnnie Mercer's Pier areas). In order to achieve and maintain the optimal use and land values of properties within the Mixed Use Overlay areas, the Town may consider design flexibility for sites and buildings, Any flexibility should be governed by design controls or guidelines develop within the Town's zoning ordinance.

Planning Board Review:

The Planning Board review the site plan for the SUP for Tower 7 on May 7, 2024 and moved this agenda item to the Board of Aldermen for consideration.

Staff Recommended Conditions:

- All lighting shall meet Town Ordinances
- That the project shall be developed in accordance with the application, site plan and all other materials submitted by the applicant and approved by the Town
- That this Special Use Permit comply with all other supplemental regulations and requirements imposed by the Zoning Ordinance or any other applicable federal, state or local law, ordinance or regulations. In the event of a conflict, the more stringent requirement or higher standard shall apply
- That in the event the applicant violates any of the terms and conditions as set forth herein or develops the property in a manner different than that out lined in the plan submitted by the applicant, this permit shall be subject to revocation
- If the property owner receives two or more citations for noise violations within a twelve-month period, the Special use permit shall be subject to review and possible revocation
- No customers shall be seated after 10:00 p.m. All staff and customers must vacate the premises and the premises must be closed by 11:00 p.m. each night.
- No live music of any kind whatsoever may be permitted in the alley area
- No televisions of any kind shall be permitted in the alley area

- The alley is subject to an easement permitting the public a right of passage through the alley

Staff Recommendation:

Reivew and consider the Special Use Application for the property located at 4 North Lumina and consider Staff's recommended conditions for the SUP.

Attachments:

1. Application
2. Tower 7 Sup's and Utility Easement
3. Response to comments from the technical review Group

127 Racine Dr.
Post Office Box 7068
Wilmington, NC 28406-7068

P: 910.794.4835
F: 910.794.4877
sbf@wardandsmith.com

April 1, 2024

VIA HAND DELIVERY
VIA EMAIL @twilson@towb.org

Town of Wrightsville Beach Planning and Inspections Department
Attn: Tony Wilson
321 Causeway Drive
Wrightsville Beach, NC 28480

RE: Special Use Permit Application for 4 Lumina Avenue N, Wrightsville Beach – HH
LES Opco, LLC

Mr. Wilson:

Please find enclosed the completed special use permit application package as well as the application fee of \$400.00.

If you need any additional information, please let me know. Thank you for your time and consideration of this application.

Yours very truly,

Samuel B. Franck

ND:4861-0833-3491, v. 1

SPECIAL USE PERMIT APPLICATION (SUP 05-01)

Town of Wrightsville Beach, North Carolina

Purpose of Special Use *There are certain land uses which, because of their unique characteristics, cannot be properly classified in any particular district without consideration in each case of the impact of those uses upon neighboring land uses and the public need for the particular use in the particular location*(§155.4.5). The project you are proposing requires a Special Use Permit. The permit is issued only after the application is reviewed by town staff, the Planning Board and the Board of Aldermen and the public by public notice and public hearing.

Applicants must fill out this application entirely and also gather information and material referenced in this application. **The non-refundable fee for this application is \$400.00.** The following guidelines are provided to aid the applicant in preparing a proper application as referenced in Section 155.4.5 as amended, of the Town's Zoning Ordinance.

1. The applicant must prepare and submit **10 hard copies and one electronic copy** of this application and accompanying materials to the Planning and Inspections Director (Town Hall, P. O. Box 626, 321 Causeway Drive, Wrightsville Beach, NC 28480) thirty (30) days prior to the next regular Planning Board meeting. The Planning Board meets the FIRST TUESDAY of each month except November when they meet the second Tuesday.
2. Failure to submit the complete packet of materials will result in return of the application. The application must meet minimum Town Requirements for all local ordinances (zoning, flood, building, etc.). Amended submittals may be held until the next Planning Board meeting if returned less than ten (10) days prior to the current Planning Board meeting.
3. Upon receipt of a valid and complete application, the Planning and Inspections Director will submit the application to department heads for review and also include the application in the next available Planning Board packet.
4. A representative of the proposed project must be present during the Planning Board meeting.
5. No Special use shall be recommended to the Aldermen by the Planning Board unless the Board shall find in the affirmative of the Zoning Ordinance standards §155.4.5.4(E) (See page 5 of this application.)
6. After review and recommendation by the Planning Board, the Board of Aldermen shall hold a public hearing on the Special Use Permit. The Board of Aldermen at the advertised public hearing will consider recommendations from the Planning Board and staff. The Board of Aldermen will also hear objections to or approval of the Special Use Permit application from members of the public. The Board of Aldermen will then grant or deny the permit.

APPLICANT INFORMATION

Property Owner HH LES Opco, LLC
**Property is owned by 1 Stone Partners, LLC with HH LES Opco, LLC as tenant running Tower 7 on the first floor

Owner Mailing Address:
5416 Oleander Drive, Wilmington, NC 28403

Telephone Number (W) 616-821-4652 (H) N/A (FAX) N/A

Representative/Agent for Owner Ward and Smith, P.A. c/o Samuel B. Franck
(ATTACH AUTHORITY FOR APPOINTMENT OF AGENT)

Agent Address
127 Racine Drive, Suite 101, Wilmington, NC 28403

Telephone Number (W) 910-794-4835 (H) N/A (FAX) 910-794-4877

PROJECT INFORMATION

Address:
4 Lumina Ave. N, Wrightsville Beach, NC 28480 - Tower 7 Restaurant

Legal Address: Parcel No. R06308-016-002-000 / Book 6454 Page 1316
(Book and Page as recorded at the New Hanover County Registrar of Deeds Office)

PROPOSED PROJECT

Describe project and use:
- Expansion of kitchen space to include former interior stairwell.
- Adapt use of common area alley between buildings to allow full restaurant service.
- Adapt interior layout of former Cafe Del Mar section of restaurant by removing the back bar to incorporate additional restaurant seating.

Proposed Construction Date Anticipated in 2024

Estimated Completion Date Anticipated by Spring of 2025

State Primary Street Frontage (name) Lumina N. Ave

ZONING INFORMATION

Zoning District of Site C-1, Commercial District Does this project require rezoning? No

Proposed Use Standard Restaurant

DIMENSIONAL INFORMATION

Lot Dimensions Approx. 64' x 110' Total Lot Square Footage 7,040

State Setbacks of ALL Structures:

There are no required setbacks for the structure, however the following setbacks are provided: Front (N. Lumina Ave.) is .01'; Front setback (Stone St.) is 0.1'; Side setback is 7.6'; and there is no Rear setback.

Dimensions of Principal and Accessory Buildings

55' x 56'

Elevation of ALL Structures No change to height of building is proposed.

Total Square Footage of Principal Structure 3,386 sf for princpal building structure

Total Square Footage of Accessory Structures N/A

PARKING AND TRAFFIC MANAGEMENT

Parking Spaces On Site (TOTAL) 10 (Handicapped) _____ (Standard) 10

Parking Space Dimension and Isle Separation 60-deg angled parking, 19' x 8' spaces, with a 14' middle drive aisle. No changes to parking are proposed by this application.

Describe Provisions for Ingress and Egress of Site:

There will be four (4) points of ingress and egress to the interior space and two (2) points of ingress and egress to the courtyard area.

No changes to the location, dimensions, layout, or number of parking spaces proposed by this amendment.

Of the existing parking spaces, three (3) parking spaces are designated to the residential units on the second floor of the structure, and six (6) spaces are designated for the commercial unit (i.e. Town 7 restaurant).

SIGNAGE

Describe (fully) all proposed signs for this project (dimensions, heights, construction materials and location must be provided):

N/A - No new signage is proposed by this SUP application.

INFORMATION FOR DEPARTMENTAL REVIEW

FIRE PROTECTION

Fire Protection - Construction Classification See Attachment A

Describe (fully) Fire Protection Provisions Provided in the Project:
Provisions will be provided in accordance with requirements by the Fire Marshal.

Fire Flow Requirements _____

POLICE REQUIREMENTS

Describe Any Special or Unusual Police Protection Requirements:

None

STORMWATER

Describe any connections to Town drainage systems No changes are proposed by this SUP application.

WATER REQUIREMENTS

Maximum Estimated Water Demand GPD No changes are proposed by this SUP application.

Calculations N/A

Water Main Size Available at Site No changes are proposed by this SUP application.

SEWER REQUIREMENTS

Maximum Estimated Sewage Disposal GPD No changes are proposed by this SUP application.

Calculations N/A

SOLID WASTE REQUIREMENTS

Maximum Solid Waste Disposal (cubic yards) Per Day No change; Calculations No change

Size and Location of Dumpster Pad No changes.

No anticipated changes to solid waste disposal as a result of this project

LANDSCAPING

Describe (fully) All Existing and Proposed Landscaping and Buffering:

There is no existing landscaping on the site except for a single palm tree in the common area alley. The Applicant proposes to add some landscaping in the common area alleyway similar to the images shown on Attachment C.

Describe (fully) All Provisions to Minimize Effects to the Environment and Surrounding Property:

Two (2) of the proposed changes are to the interior space on the first floor. The expansion of full restaurant service to the alleyway will be minimized in that the outdoor restaurant service will end at the same time as the indoor service at 10:00 p.m. As shown on the site plan, there is now a direct point of access from the interior of the restaurant to the courtyard.

OTHER ATTACHMENTS REQUIRED WITH APPLICATION

CONFORMANCE WITH SPECIAL USE PERMIT STANDARDS (§155.4.5.4 (E))

Please attach a statement in writing accompanied by adequate evidence if needed, that the proposed Specialuse will conform to each of the following standards as established in the ordinance:

- (a) That the establishment, maintenance, or operation of the Special use will not be detrimental too endanger the public health, safety, or general welfare.
See Attachment B
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- (b) That the Special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.
See Attachment B
-
-
-
-
- (c) That the establishment of the Special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
See Attachment B
-
-
-
-
- (d) That the exterior architectural appeal and functional plan or any proposed structure will not be soat variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.
See Attachment B
-
-
-
-

-
- (e) That adequate utilities, access roads, parking, drainage and necessary facilities have been or are being provided.

See Attachment B

- (f) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

See Attachment B

- (g) That the Special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

See Attachment B

- (h) Public access shall be provided in accordance with the recommendations of the Town's Land Use Plan and Access Plan and/or the present amount of public access and public parking as exists within the Town now. If any recommendations are found in conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.

See Attachment B

- (i) That the proposed use be consistent with the recommendations and policy statements as described in the adopted Land Use Plan.

See Attachment B

SITE PLAN INFORMATION

A site plan of the proposed project prepared by a professional engineer, registered land surveyor or architect drawn to a scale of not less than one inch equals thirty feet (1"=30'). The site plan shall be based on the latest tax map information. The site plan must contain the following information. ***WE SUGGEST YOU BRING A DRAFT SITE PLAN TO PLANNING AND INSPECTIONS FOR REVIEW PRIOR TO PRINTING THE FINAL COPIES FOR DISTRIBUTION!*** See Attachment A

- 1) A key map of the site with reference to surrounding areas and existing street locations.
- 2) The name and address of the owner and site plan applicant, together with the names of the owners of all contiguous land and of property directly across the street as shown by the most recent tax records.

- 3) Lot line dimensions.
- 4) Location of all structures, streets, entrances and exits on the site and on contiguous property and property directly across the street.
- 5) Location of all existing and proposed structures, including their outside dimensions and elevations.
- 6) Building setback, side line, and rear yard distances.
- 7) All existing physical features including streams, water courses, dunes, existing trees greater than one (1) inch in diameter measured six (6) feet above ground level, and significant soil conditions.
- 8) Topography showing existing and proposed contours at two (2) foot intervals. All reference benchmarks shall be clearly designated.
- 9) Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles and curb radii.
- 10) Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with cross sections, design details, and dimensions.
- 11) Location and design of existing and proposed storm water systems, sanitary waste disposal systems, water mains and appurtenances and methods of refuse disposal and storage.
- 12) Landscaping and buffering plan showing what will remain and what will be planted, indicating names of plants, trees and dimensions, approximate time of planting, and maintenance plans
- 13) Lighting details indicating type of standards, location, radius of light, and intensity in foot-candles.
- 14) Location, dimensions, and details of signs.
- 15) North arrow.
- 16) Public access shall be provided in accordance with the recommendations of the Town's Land Use Plan and Access Plan and public parking as exists within the Town now.
- 17) A rendering or drawing of the proposed building shall be provided showing all sides of the proposed structure.

NOTICE TO ADJOINING PROPERTY OWNERS

The Town of Wrightsville Beach will notify adjoining property owners of presentation of this application to the Planning Board and Board of Aldermen. Adjoining property is all property contiguous and across the street from the subject property. **Please submit with your application two sets of plain letter sized envelopes, stamped (not metered), unsealed and addressed to the adjacent property owners as shown on the New Hanover County tax listing and bearing the return address of the Town of Wrightsville Beach.** Attach a list of the adjoining property owners to this application.

[See Attachments D & E](#)

FEE

The processing fee for a Special Use Permit application is \$400. A check payable to the Town of Wrightsville Beach must accompany this application.

SIGNATURE

This signature accompanies the application, fee, statement of standards and site plan, which comprise the Special Use Permit Application to the Town of Wrightsville Beach.

****I understand that the fee for this application is non-refundable.**** SBF (Initial)

****I furthermore certify that I am authorized to grant and do in fact grant permission to PlanningStaff and his/her agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.**** SBF (Initial)

Owner's Signature

Date

April 1, 2024

Representative/Agent

Date

Date of Submission to Town

Amendments to the original application have been initialed and dated where they appear. This application supercedes the original application as signed and dated above.

Owner's Signature

Date

Representative/Agent

Date

Date of Re-Submission to Town

Town of Wrightsville Beach

AUTHORITY FOR APPOINTMENT OF AGENT

The undersigned owner, does hereby appoint Ward and Smith, P.A. as his, her, or its exclusive agent for the purpose of petitioning the Town of Wrightsville Beach for approval of a Special Use Permit, as applicable to the property having the address of 4 N. Lumina Ave., Wrightsville Beach, NC 28480 and described in the attached petition.

The owner does hereby covenant and agree with the Town of Wrightsville Beach that said agent has the authority to do the following acts for and on behalf of the owner:

- (1) To submit a proper petition and the required supplemental materials; and
- (2) To appear at public meetings to give representation and commitments on behalf of the owner; and
- (3) To accept conditions or recommendations made for the issuance of the Special Use Permit on the owner's property; and
- (4) To act on the owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition.

This agency agreement shall continue in effect until final disposition of the petition submitted in conjunction with this appointment.

Date: January 29, 2024

Agent's Name, Address & Telephone:

Ward and Smith, P.A. c/o Samuel B. Franck

127 Racine Drive

Wilmington, NC 28403

910-794-4835

* Owner

1 Stone Partners, LLC

DocuSigned by:

Ross Tomaselli

7ADA3EB6705C40B
ROSS TOMASELLI

* If the owner is an individual, the owner (or all owners if there is more than one) must sign the authorization. If a corporation, print the name of the corporation and have signed by an authorized officer. If a partnership, print the name of the partnership and have signed by an authorized partner.

*Tenant: HLLS Co, LLC

Brian Patrick Brennan

Brian Patrick Brennan, President

Attachment A

GENERAL NOTES:

01. IF ANY DISCREPANCIES OR CLARIFICATIONS NEEDED, PLEASE CONTACT THE DESIGNER @ 910-479-4179 IMMEDIATELY. DESIGNER IS NOT RESPONSIBLE FOR OTHERS' INTERPRETATIONS OF DRAWINGS.
02. DRAWINGS ARE COLOR-CODED AND ARE BEST UNDERSTOOD IF PRINTED IN COLOR.
03. NO WATER COURSES OR STREAMS, NO DUNES, LEVEL TOPOGRAPHY.
04. NO PROPOSED CHANGES TO PARKING, LOADING AND UNLOADING AREAS, TRAFFIC PATTERNS, ACCESSIBLE, AND CURB RAIL.
05. NO PROPOSED CHANGES TO STORMWATER, WASTE AND REFUSE DISPOSAL, OR WATER MAINS PROPOSED.
06. NO CHANGES TO EXTERIOR LIGHTING ARE PROPOSED.

GINGER
INTERIORS + EXTERIORS

411 Albemarle Drive
Wilmington, NC 28403
910-479-4179
www.gingerinteriors.com

TOWER 7
4 N LUMINA AVE, WRIGHTSVILLE BEACH, NC 28480

Conceptual

project information:

revisions:

notes:

drawn by: JCC

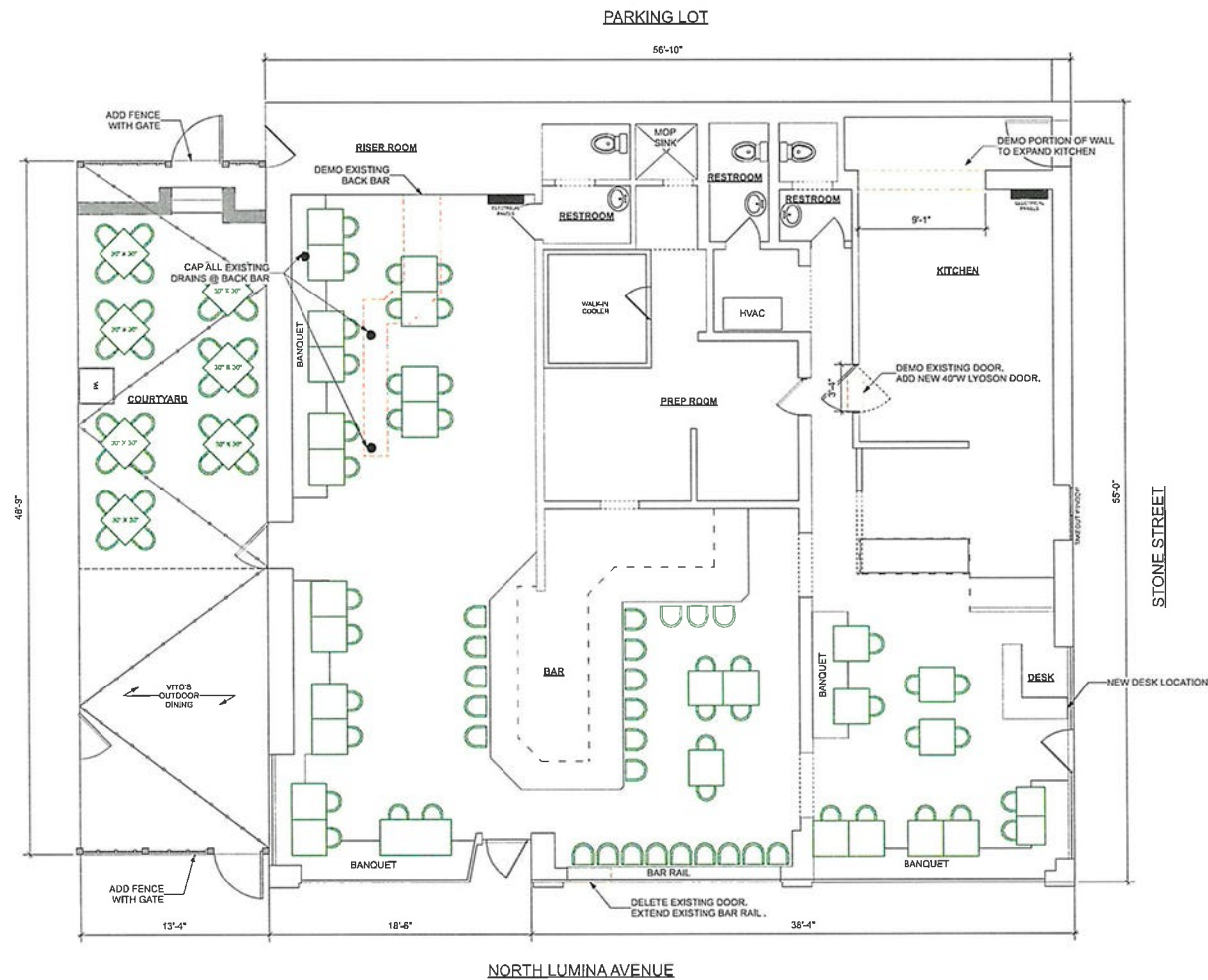
date: 3/19/24

drawing title:

NEW FLOOR PLAN

sheet no.:

ID-2



1 NEW FLOOR PLAN
Scale: 1/8" = 1'-0"



ATTACHMENT B

COMPLIANCE WITH SPECIAL USE PERMITS STANDARDS

- (a) That the establishment, maintenance, or operation of the Special use will not be detrimental to or endanger the public health, safety, or general welfare.

Expansion of space to include former interior stairwell – This change will allow for expansion of the size of the kitchen of the Tower 7 restaurant to include the space previously utilized as a stairwell. This will benefit, and will certainly not be detrimental to, or endanger, the public health, safety, or general welfare. The proposed renovations will allow for more efficient and safer kitchen operations, a beneficial change for both the staff and customers of the restaurant. Applicant has confirmed through a professional engineer that the wall to be removed to achieve this expansion is a non-load bearing wall. Accordingly, there will be no structural impact to the building associated with the renovation and expansion of the Tower 7 space.

Adapt use of common area alley between building to allow full restaurant service
The common area alley (the "courtyard") located between the subject building and Vito's to the north is a shared space between Vito's pizzeria and Tower 7 Baja Mexican Grill. The alley is approximately 15 feet in width and approximately 23 feet to the east in length. The proposed adaptation seeks to optimize the use of the common area alley, transforming it into a functional area for full-service operations, including alcohol service, consistent with the service provided in other areas of the restaurant. Under the existing special use permit, Tower 7 is permitted to have food service in the courtyard. This proposed change in use would allow for full restaurant service to include alcohol service.

The Applicant is committed to implementing measures to mitigate any potential nuisances associated with the full-service operations in the common area alley. This includes addressing concerns related to noise, waste management, and maintaining the overall cleanliness of the space. For illustrative purposes only, images of the courtyard showing a full-service design are shown on Attachments C-1 – C-3. The images shown on C-1 and C-3 are included only for concept to demonstrate the quality of space.

Full service in the courtyard will be a benefit to the general welfare, providing a desirable dining option in an alternative setting, and contributing to the character of this active section of the downtown district. Allowing full service in the courtyard will not be detrimental to or endanger the public health, safety, or general welfare. The Applicant will install a fence with a gate on the western side of the courtyard alleyway. The fence will aid in screening the alleyway from the residential units located to the west of the courtyard across the parking lot.

Remove bar on north side of restaurant for new seating layout – The Applicant proposes to remove the back bar on the north side of the restaurant to allow for additional restaurant seating. This bar is located in the former Café Del Mar (CDM) section of the restaurant. The modified seating plan is shown on Attachment A. The removal of the bar will not be detrimental to or endanger the public health, safety, or general welfare as such removal will enhance the seating layout within the restaurant improving the overall dining experience. The removal of the bar aims to create a more spacious and comfortable environment for restaurant patrons and merges the two former complimentary restaurant uses into a single use.

- (b) That the Special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.**

Expansion of space to include former interior stairwell – Removal of the non-load bearing wall will not impact the use and enjoyment of other property in the immediate vicinity within the neighborhood. This proposed change will allow for additional space within the restaurant and kitchen and will not diminish or impair property values within the neighborhood. The proposed expansion will not change the external impact of the existing restaurant use at all.

Adapt use of courtyard between building to allow full service – Full-service restaurant use in the courtyard will not be injurious to the use and enjoyment of other property in the immediate vicinity. The courtyard is located between two (2) restaurants where outdoor food service already takes place. Vito's Pizzeria allows customers to dine and using existing picnic tables in the courtyard and Vito's offers alcohol service in the courtyard. This pre-existing use aligns with the proposed adaptation for full-service operations. Directly across the street, and shortly down the street, from the courtyard, there are existing food and bar establishments. The proposed full-service use is in harmony with the prevalent commercial character of the neighborhood, and it complements the overall atmosphere of the surrounding area. The second floor of Tower 7, within the subject building, houses residential units. It's important to note that these residential units are already situated above a restaurant. The expanded service in the courtyard aligns with the existing use beneath the residential units.

Remove bar on north side of restaurant for new seating layout – Removal of the bar for additional restaurant seating will not impact the use and enjoyment of the property in the immediate vicinity. This modification is aimed at mitigating longer wait times for seating, in turn allowing restaurant patrons to be seated more quickly. The proposed expansion will not change the impact of the existing restaurant use on adjoining property at all. Additionally, expanded seating aligns with the existing use of the Tower 7 restaurant.

- (c) That the establishment of the Special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**

Expansion of space to include former interior stairwell – This modification will occur fully within the confines of the subject building and will not impede the development and/or improvement of the surrounding property.

Adapt use of common area alley between building to allow full service – The proposed special use, which involves adapting the use of the courtyard for full-service, will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. This adaptation seeks to utilize available space creatively, contributing to the vibrancy of the area while maintaining compatibility with the permitted uses in the district. The right to use the courtyard already exists and is not being expanded here – this change relates solely to manner of use of that space to allow full service for the Tower 7 restaurant.

Remove bar on north side of restaurant for new seating layout – The special use request, focusing on the removal of the bar on the north side of the restaurant to facilitate a new seating layout, is intended to optimize the interior layout and will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the C-1 district.

- (d) That the exterior architectural appeal and functional plan or any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.**

Expansion of space to include former interior stairwell – The proposed renovation will not be at variance with the exterior architectural appeal or functional plan of the surrounding structures. This change will have little to no impact on the exterior appearance of the subject structure.

Adapt use of common area alley between building to allow full service – As shown on the conceptual renderings on Attachments C-1 – C-3, the proposed use of the courtyard will further elevate the existing outdoor food use by expanding the existing Tower 7 restaurant operations into the courtyard. The immediately surrounding uses are commercial, commercial mixed use, and some residential to the east of the courtyard across a parking lot and behind a fence. The Applicant has already incorporated minor landscaping improvements, and outdoor dining improvements to enhance the aesthetics of the courtyard area for patrons and passerby's. This proposed change in use will update the overall

appearance of the courtyard and in turn, will likely increase property values within the surrounding area and neighborhood in line with the Town's goal pursuant to Section 5, subsection 8 of the 2019 CAMA Land Use Plan to improve and enhance the Town's neighborhoods.

Remove bar on north side of restaurant for new seating layout – Similar to the expansion to the kitchen, removing the bar on the north side of the restaurant, as shown on Attachment A, will take place wholly within the subject building and will not affect the exterior architectural appeal.

The removal of the non-load bearing wall and removal of the bar on the north side of the restaurant will not result in any exterior changes to the subject building.

(e) That adequate utilities, access roads, parking, drainage and necessary facilities have been or are being provided.

Expansion of space to include former interior stairwell – Adequate utilities, roads and drainage already exist on the subject site. This proposed change does not require any alterations to the existing infrastructure.

Adapt use of common area alley between building to allow full service – Adequate utilities, access roads, parking, drainage and necessary facilities already exist and the proposed expansion for full service in the courtyard does not require any alterations to the existing infrastructure. The Applicant intends to rely on the existing parking exception and no additional changes to parking are contemplated by this change in use.

Remove bar on north side of restaurant for new seating layout – This proposed change will result in capping the plumbing where the bar used to exist, however, this portion of the remodel will not require any additional plumbing or facilities.

(f) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Expansion of space to include former interior stairwell – The removal of the non-load bearing wall at the east end of the kitchen will not impact ingress or egress to the subject site.

Adapt use of common area alley between building to allow full service – The existing bollards will remain on the Lumina Ave side of the courtyard. Restaurant service will be contained to the courtyard area. Ingress and egress to the restaurant and courtyard already exist. There will be no change to the existing ingress and egress configuration.

Remove bar on north side of restaurant for new seating layout – This proposed change will allow for additional seating which will allow patrons to be served

more quickly rather than waiting outside of the restaurant on the sidewalks. This proposed change will not increase traffic. The existing entrances to the restaurant will remain the same.

- (g) That the Special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.**

Expansion of space to include former interior stairwell and Removal of the bar on the north side of restaurant for new seating layout – These proposed changes will not change the existing restaurant use. Accordingly, the use will remain consistent with the existing mixed use commercial uses in the surrounding area. The building height will remain unchanged.

Adapt use of common area alley between building to allow full service – Full service in the courtyard is consistent with the existing restaurant use which is permitted on this site and the restaurant service will comply with other applicable requirements of the Town Code.

- (h) Public access shall be provided in accordance with the recommendations of the Town's Land Use Plan and Access Plan and/or the present amount of public access and public parking as exists within the Town now.**

Expansion of space to include former interior stairwell and removal of bar on north side of restaurant for new seating layout – These proposed changes conform with the Town's Land Use and Access Plan in that the existing public access will remain unchanged. The existing parking will remain unchanged. Specifically, the Applicant intends to rely on the existing parking exception and no additional changes to parking are contemplated by this change in use.

Adapt use of common area alley between building to allow full service – The proposed use conforms with the Town's Land Use and Access Plan in that the existing public access will remain unchanged. The proposed use will not impede the public's ability to pass through the alleyway/courtyard between 4 and 6 North Lumina, as depicted on Attachment A where the gate and fence are located, and the illustrative images showing the fence and gate on Attachments C-1-C-3. Section 4 of the 2019 CAMA Land Use Plan provides that redevelopment and beautification of the commercial areas is an important future land use consideration for the Town. As illustrated by way of example on Attachments C-1 – C-3, the Applicant aims to introduce additional landscaping and upgrade the courtyard to improve the space, aligning with the Town's objective of beautifying commercial areas. This approach contributes to the overall goal of enhancing the aesthetic appeal of the Town's commercial spaces.

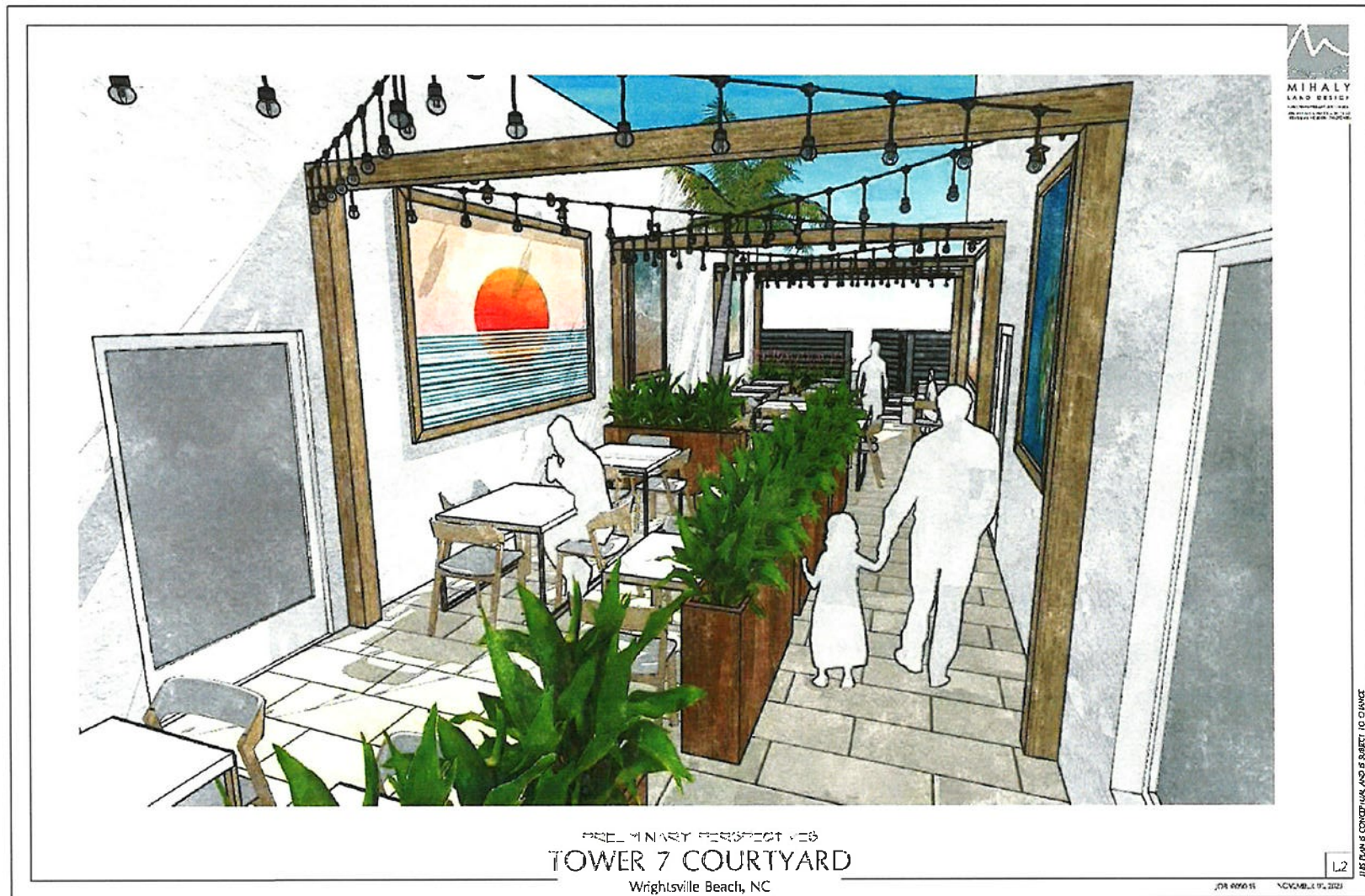
- (i) That the proposed use be consistent with the recommendations and policy statements as described in the adopted Land Use Plan.**

Adapt use of common area alley between building to allow full service – Expanding the existing use of the courtyard between buildings to allow full-service aligns with the Future Land Use Map, which designates the property as Commercial/Mixed Use. The proposed enhancement, offering full restaurant service in the courtyard, aligns with both the Future Land Use Plan and the Town's objectives outlined in Section 6, subsection 4 of the 2019 CAMA Land Use Plan. This proposed expansion of use encourages commercial establishments to provide essential goods and services to both year-round residents and visitors, with sit-down restaurants like Tower 7 being examples of such establishments.

Remove bar on north side of restaurant for new seating layout; and Expansion of space to include former interior stairwell – Expanding the seating and restaurant space through removal of the non-load bearing wall and removal of the bar on the previous CDM side of the restaurant will also further the Town's goal as set forth in Section 5, subsection 4 of the 2019 CAMA Land Use Plan.

Tower 7 provides service to year-round residents and visitors and is a successful restaurant in the Town. Permitting full-service in the courtyard also supports the Town's objectives for addressing local concerns, as stated in the 2019 CAMA Land Use Plan. Specifically, Section 5, subsection 99 of the plan states that the Town will work to protect the Town's existing commercial base. Having been a fixture in the Town since 2001, Tower 7 has contributed significantly to the local commercial landscape and is a staple restaurant for locals and visitors alike. Tower 7 is a core part of the Town's existing commercial base. Allowing for full-service, along with the proposed expansion of the kitchen and seating plan, will enable the restaurant to cater to a larger local clientele and enhance its offerings to visitors.

ATTACHMENT C
SUPPORTING DOCUMENTS – Illustrative Images



C-1



C-2



PRELIMINARY PERSPECTIVE
TOWER 7 COURTYARD
 WRIGHTSVILLE BEACH, NC

ATTACHMENT D
ENVELOPES TO ADJOINING PROPERTY OWNERS

[See Attached]

ATTACHMENT E
ADJOINING PROPERTY OWNERS

List of Property Owners within 300' of Parcel No. R06308-016-002-000

Parcel Number	Owner	Owner Mailing Address
R06308-016-004-000	Stone Street, LLC	7231 Airle Place Wilmington, NC 28403
R06308-016-005-000	Stone Street Seven LLC	2456 Harbor Lane Wilmington, NC 28411
R06308-016-006-000	Adam and Irene Henderson	306 Fair Lakes Drive Wilmington, NC 28405
R06308-016-007-000	Jeffrey Stephenson	11 Stone Street Wrightsville Beach, MC 28480
R06308-016-001-000	SWEETSKI LLC	311 Friday Drive Wilmington, NC 28405
R06308-016-020-000	James Skiba	311 Friday Drive Wilmington, NC 28405
R06308-016-019-000	Robert Freedland & Freeland Properties, LLC	7231 Airle Place Wilmington, NC 28403
R06308-016-018-000	Thomas Edward Cofer	605 Windemere Road Wilmington, NC 28405
R06308-016-010-000	Oceanic Homeowners Association, Inc.	c/o W R Zachary 22 Oceanic Avenue Wrightsville Beach, NC 28480
R06308-016-017-000	Ann and Gregg Howell	12 Oceanic Street Wrightsville Beach, NC 28480
R06308-016-016-000	Michael and Jane Cox	3504 Deep Green Drive Greensboro, NC 27410
R06308-016-015-000	David Jacobs	16 Oceanic Street Wrightsville Beach, NC 28480
R06308-016-014-000	18 Oceanic LLC	7813 Front Nine Drive Stokesdale, NC 27357
R06308-016-013-000	Carolyn Ripley	2712 Lawton Bluff Road Charlotte, NC 28226
R06308-016-012-000	John Sawyer Heirs	7225 Lounsberry Court Wilmington, NC 28405
R06308-016-011-000	Glenda Rose Currin	3231 Shadow Court Wilmington, NC 28409

R06308-015-008-000	Eastern Skateboard Supply, Inc.	6612 Amsterdam Way Wilmington, NC 28405
R06308-015-009-000	Ladoux Rayburn LTD CO.	PO Box 262 Wrightsville Beach, NC 28480
R06308-015-010-000	M & M Family Real Estate, LLC	PO Box 69 Jamestown, NC 27282
R06308-015-014-000	M & M Family Real Estate, LLC	PO Box 69 Jamestown, NC 27282
R06308-015-011-000	Athena Mineo	2531 Glenwood Avenue Raleigh, NC 27608
R06308-015-013-000	Leslie Broome Crist	1544 Reflection Pointe Blvd. Belmont, NC 28012
R06308-015-013-001	Prange Family Marital Trust	29170 Wagon Road Agoura Hills, CA 91301
R06308-015-006-000	North Lumina Holdings, LLC	1201 N Lumina Avenue Wrightsville Beach, NC 28480
R06308-015-005-000	North Lumina Holdings, LLC	1201 N Lumina Avenue Wrightsville Beach, NC 28480
R06308-015-003-000	Cottages at Birmingham Condominium Owners Association, Inc.	1904 Eastwood Road, Suite 212 Wilmington, NC 28403
R06308-015-003-001	David and Deborah Lacy	1715 Pembroke Jones Drive Wilmington, NC 28405
R06308-015-003-002	Gerald Lacy	10 Birmingham Street, Unit B Wrightsville Beach, NC 28480
R06308-015-002-000	Eugenie Waddell Carr ETAL	3631 NE 6th Street Hickory, NC 28601
R06308-015-001-000	Paula S. Carr ETAL	3631 NE Sixth Street Hickory, NC 28601
R06308-017-002-000	Ruth Ann Fredrichs	356 Annandale Trace Hampstead, NC 28443
R06308-017-003-000	Eastern Skateboard Supply, Inc.	6612 Amsterdam Way Wilmington, NC 28405
R06308-017-004-000	Eastern Skateboard Supply, Inc.	6612 Amsterdam Way Wilmington, NC 28405

R06308-017-005-000	Eastern Skateboard Supply, Inc.	6612 Amsterdam Way Wilmington, NC 28405
R06308-017-006-000	Eastern Skateboard Supply, Inc.	6612 Amsterdam Way Wilmington, NC 28405
R06308-012-006-000	Lumina WB, LLC	6612 Amsterdam Way Wilmington, NC 28405
R06308-012-007-000	Lumina WB, LLC	6612 Amsterdam Way Wilmington, NC 28405
R06308-017-001-000	Channel View Condominiums Homeowners' Association, Inc.	104 Headlands Lane Cary, NC 27511
R06308-017-001-001	John and Jackie Martin	5805 Marshview Drive Wilmington, NC 28403
R06308-017-001-002	Nicholas Abbaticchio	20 Channel Avenue, Unit B Wrightsville Beach, NC 28480
R06308-017-010-000	Channel View Condominiums Homeowners' Association, Inc.	104 Headlands Lane Cary, NC 27511
R06308-017-010-001	Larry Neal Beard, Jr.	411 S 2nd Street Wilmington, NC 28401
R06308-017-010-002	Robert and Jennifer Barker	18 Channel Avenue, Unit B Wrightsville Beach, NC 28480
R06308-017-009-000	Channel View Condominiums Homeowners' Association, Inc.	104 Headlands Lane Cary, NC 27511
R06308-017-009-001	KLM Beach Property LLC	4 Loch Ridge Drive Greensboro, NC 27408
R06308-017-009-002	Esa and Leanne Bloedon	1714 Banbury Road Raleigh, NC 27608
R06308-017-008-000	GSS RALEIGH, LLC	5640 Dillard Drive, Suite 300 Cary, NC 27518
R06308-017-007-000	Bridgeport Condo Owners Association, Inc.	16747 US Highway 17 Hampstead, NC 28443

R06308-017-007-001	William and Diana Howard	12 A Channel Avenue Wrightsville Beach, NC 28480
R06308-017-007-002	William and Diana Howard	12 Channel Avenue, Unit B Wrightsville Beach, NC 28480
R06308-012-005-000	Wilmington Light Infantry Club	c/o Gerard Kaiser 10 Channel Avenue Wrightsville Beach, NC 28480
R06308-012-004-000	8 Channel Ave COA Inc.	8 Channel Avenue, #8 Wrightsville Beach, NC 28480
R06308-012-004-001	Channel Avenue LLC	8 Channel Avenue Wrightsville Veach, NC 28480
R06308-012-004-002	James and Roselyn Gregory	3033 SE Loridan Way Atlanta, GA 30339
R06308-019-001-000	One South Lumina HOA Inc.	PO Box 5468 High Point, NC 27262
R06308-019-001-001	Brenda Keany	3004 County Clare Road Greensboro, NC 27407
R06308-019-001-002	Raoul and Theresa Jeanmenne	8708 Fazio Drive Wilmington, NC 28411
R06308-019-001-003	One South Lumina Group LLC	PO Box 15927 Wilmington, NC 28408
R06308-019-001-004	One South Lumina Group LLC	PO Box 15927 Wilmington, NC 28408
R06308-019-001-005	May Squared LLC	1969 Gwyn Road Burlington, NC 27217
R06308-019-001-006	McMillen Properties LLC	1308 Woodfield Court Wilmington, NC 28409
R06308-019-001-007	May Squared LLC	1969 Gwyn Road Burlington, NC 27217
R06308-019-001-008	James Hebron	1 S Lumina Avenue, Unit 203 Wrightsville Beach, NC 28480
R06308-019-001-009	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-010	One South Lumina Group LLC	PO Box 15927 Wilmington, NC 28408

R06308-019-001-011	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-012	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-013	Arlene Pulley	79 Cavalier Drive Apt. 9102 Wilmington, NC 28405
R06308-019-001-014	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-015	Renee Wagoner ETAL	3553 Whitaker Road Boonville, NC 27100
R06308-019-001-016	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-017	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-018	May Squared LLC	1969 Gwyn Road Burlington, NC 27217
R06308-019-001-019	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-020	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-001-021	One South Lumina Group LLC	1816 Newkirk Road Wilmington, NC 28409
R06308-019-002-000	Station One HOA	161 Terrace Avenue Riverside, RI 02915
R06308-019-002-002	Mark and Alison Vliet	6518 Chalfont Circle Wilmington, NC 28405
R06308-019-002-003	The Holmes Trust c/o Sarah Britt and Charles Lee	1919 Prestwick Lane Wilmington, NC 28405
R06308-019-002-004	Judith Hamelburg	2010 Randolph Road Wilmington, NC 28403
R06308-019-002-005	Keith Tsantes	13663 Providence Road Matthews, NC 28104
R06308-019-002-006	Mary Baggett	PO Box 1508 Wrightsville Beach, NC 28480

R06308-019-002-007	Timothy Matt	1924 Lunar Lane Wilmington, NC 28405
R06308-019-002-008	Rambo and Amanda Mackie	95 Lumina Avenue, Apt. 1G Wrightsville Beach, NC 28480
R06308-019-002-009	Marguerite Hussey	1507 Branch Street Wilson, NC 27893
R06308-019-002-010	Timothy and Julie Robey	909 Mound Battery Road Wilmington, NC 28403
R06308-019-002-011	HBD Partners LLC	7231 Airlie Place Wilmington, NC 28403
R06308-019-002-012	Timothy and Myra Matt	1924 Lunar Lane Wilmington, NC 28405
R06308-019-002-013	Homer and Cynthia Coker	2613 Cambridge Road Burlington, NC 27215
R06308-019-002-014	John and Eliza Whitaker	19 Graylyn Place Winston Salem, NC 27106
R06308-019-002-015	HWZ Holdings LLC	509 Ridge Court Mars, PA 16066
R06308-019-002-016	Ruth Van Sickle, Trustee	2113 Harborway Drive Wilmington, NC 28405
R06308-019-002-017	Station One 2E LLC	3607 N Peary Street Arlington, VA 22207
R06308-019-002-018	Kenneth and Suzanne West	221 Glenn Drive Decatur, GA 30030
R06308-019-002-019	Samran Investments LLC	PO Box 1082 Wrightsville Beach, NC 28480
R06308-019-002-020	Isabel Properties of NC LLC	6752 Gordon Road Wilmington, NC 28411
R06308-019-002-021	Kathy Mott	23 Conestoga Drive Bethel Park, PA 15102
R06308-019-002-022	Cornell and Bessie Slade	2029 Graywalsh Drive Wilmington, NC 28405
R06308-019-002-023	Polly Palumbo ETAL	95 S Lumina Avenue, Unit 2-K Wrightsville Beach, NC 28480
R06308-019-002-024	Savara Investments LLC	2913 Skye Drive Fayetteville, NC 28303
R06308-019-002-025	Sarah Frantz	4788 Heath Hill Road Columbia, SC 29206
R06308-019-002-026	Marcus and Suzanne Williams	7420 Nautica Yacht Club Drive Wilmington, NC 28411

R06308-019-002-027	Daniel Hall	132 Weatherhill Pt Carrboro, NC 27510
R06308-019-002-028	Barbara Wichowska	PO Box 15489 Wilmington, NC 28408
R06308-019-002-029	John and Gail Puckhaber	212 Ashley Avenue Brielle, NJ 08730
R06308-019-002-030	Dean and Kristin May	318 S Front Street Wilmington, NC 28401
R06308-019-002-031	Crittenden Properties LLC	1114 Princeton Drive Wilmington, NC 28403
R06308-019-002-032	Peter Underwood	1402 Admiral Way Wilmington, NC 28412
R06308-019-002-033	APT3J Holdings LLC	2109 Anson Drive Wilmington, NC 28405
R06308-019-002-034	Anita Litten Revocable Trust	95 S Lumina Avenue Apt 3K Wrightsville Beach, NC 28480
R06308-019-002-035	Zarnas Family Limited Partnership	2622 Black River Road Bethlehem, PA 18015
R06308-019-002-036	Station One 4-B LLC	2019 Bay Colony Lane Wilmington, NC 28405
R06308-019-002-037	Michael and Melissa Grimaldi	552 Davis Avenue Staten Island, NY 10306
R06308-019-002-038	Dorian and Cynthia West	3121 Rippy Lane Hillsborough, NC 27278
R06308-019-002-039	Cynthia Stephens	1031 Ray Road Raleigh, NC 27613
R06308-019-002-040	Jeremy and Adrienne Craven	96 Sugar Shack Lane Bear Creek, NC 27207
R06308-019-002-041	Todd and Janalynn Beste	1212 Vanderhorst Place Wilmington, NC 28405
R06308-019-002-042	William and Beverly Peacock ETAL	5808 Meadow Brook Court Wilmington, NC 28409
R06308-019-002-043	Forrest and Barbara James	314 Yadkin Drive Raleigh, NC 27609
R06308-019-002-044	David Shick ETAL	7321 Grist Mill Road Raleigh, NC 27615
R06308-019-002-045	Four K by The Sea LLC	PO Box 18 Currie, NC 28435

R06308-019-002-046	Michael Boddie	3613 Hawthorne Road Rocky Mount, NC 28704
R06308-019-002-047	Seaville Properties LLC	6313 Towles Road Wilmington, NC 28409
R06308-019-002-048	Elizabeth and William Stewart	119 Faison Road Chapel Hill, NC 27517
R06308-019-002-049	William Snider	1311 Mercer Avenue Arglye, TX 76226
R06308-019-002-050	Morgan Family Properties LLC	10421 Old Wire Road Laurel Hill, NC 28351
R06308-019-002-051	Eagles Nest Wrightsville LLC	2076 Van Gogh Lane Apex, NC 27539
R06308-019-002-052	Soul Side LLC	1932 Sandwedge Place Wilmington, NC 28405
R06308-019-002-053	Gerald and Peggy Chotiner	2887 Gant Quarters Circle Marietta, GA 30068
R06308-019-002-054	Farrior Family Living Trust	1562 Healdsburg Avenue Healdsburg, CA 95448
R06308-019-002-055	James and Valerie Dorrier	107 Belle Isle Court Cary, NC 27513
R06308-019-002-056	Erik Brockdorff	1100 Harborway Place Wilmington, NC 28405
R06308-019-002-057	Jeri Dlugin	201 Staunton Drive Greensboro, NC 27410
R06308-019-002-058	Juliana and Stephen West, Trustees	6105 Chowning Court Raleigh, NC 27612
R06308-019-002-059	MMC LLC	132 Edgewater Lane Wilmington, NC 28403
R06308-019-002-060	James and Kathleen Lohan	1411 Sweetbriar Road Charleston, WV 25314
R06308-019-002-061	Idle Hour Properties LLC	2724 Clemson Avenue Charlotte, NC 28205
R06308-019-002-062	Lisa and Mark Hendrick	2305 Oasis Drive Wilmington, NC 28409
R06308-019-002-063	Sara and Stephen Bastian	662 Cranbrook Road Raleigh, NC 27609

R06308-019-002-064	James and Miriam Donohue	95 S Lumina Avenue Unit 6H Wrightsville Beach, NC 28480
R06308-019-002-065	John Robert and Laura Bridges	101 Keasler Road Asheville, NC 28805
R06308-019-002-066	Wrightsville Beach Haven LLC	10218 Patrick Henry Lane Charlotte, NC 28277
R06308-019-002-067	Allen and Susan Spalt	300 James Street Carrboro, NC 27510
R06308-019-002-068	Frederick Lewis III	PO Box 7952 Wilmington, NC 28406
R06308-019-002-069	Margaret Emory Haynes, Trustee	240 N Water Street Apt. 452 Wilmington, NC 28401
R06308-019-002-070	Barbara Bell Bowers	617 Airlie Road Wilmington, NC 28403
R06308-019-002-071	Michael and Mindy Ladd	7109 Trenton Ridge Court Raleigh, NC 27613
R06308-019-002-072	Alam Askari Sadaf Badre	95 S Lumina Avenue Apt. 7E Wrightsville Beach, NC 28480
R06308-019-002-073	Robert Morehead III ETAL	800 Marquerite Winston Salem, NC 27106
R06308-019-002-074	MKJ Properties LLC	7221 Blaney Bluffs Lane Raleigh, NC 27606
R06308-019-002-075	Whaley Investment Partners LLC	c/o Gary Whaley 3942 Bristol Road Durham, NC 27707
R06308-019-002-076	Louanne Warrenkeith Living Trust	1547 Fountain Ridge Road Chapel Hill, NC 27517
R06308-019-002-077	IRV LLC	7231 Airlie Place Wilmington, NC 28403
R06308-019-002-078	Donald and Mary Ross	95 S Lumina Avenue Unit 7K Wrightsville Beach, NC 28480
R06308-019-002-079	Bruce Wilhelmsen and Lisa Brenner	311 Bremerton Drive Greenville, NC 27858
R06308-019-002-080	MBB I LLC	2816 Leader Circle Wilmington, NC 28412

R06308-019-002-081	Ronald and Debra Walters	608 Edgewood Circle Whiteville, NC 28472
R06308-019-002-082	Opacic Real Estate Investments LLC	106 Lippershey Court Cary, NC 27513
R06308-019-002-083	Pinehurst Land Investments LLC	916 Ease Street Unit 905 Pittsboro, NC 27312
R06308-019-002-084	Ryan and Carson Hobbs	311 Bradley Creek Point Road Wilmington, NC 28403
R06308-019-002-085	Phillip and Gretchen Kowlaczyk	3725 Willimasborough Court Raleigh, NC 27609
R06308-019-002-086	Deborah Martin LLC	5559 Peden Point Road Wilmington, NC 28409
R06308-019-002-087	Traemoor Properties LLC	1823 Middlebrook Drive Raleigh, NC 27615
R06308-019-002-088	Brian and Monica Cheshire	673 Blue Point Drive Wilmington, NC 28411
R06308-019-002-089	Charles Wilkins	2111 Fairview Road Raleigh, NC 27608
R06308-018-001-000	Shaul & Levy Partnership	2800 NW 125th Street B1 Miami, FL 33167
R06308-018-002-000	Town of Wrightsville Beach	PO Box 626 Wrightsville Beach, NC 28480
R06308-025-007-000	Waynick Sunset LLC	1900 Eastwood Road, Suite 10 Wilmington, NC 28403
R06308-025-006-000	John Drewry III Heirs	c/o Madeline Drewry 2209 Waverly Drive Wilmington, NC 28403
R06308-025-005-000	Family Dogs LLC	806 N 23rd Street Wilmington, NC 28405
R06308-025-003-000	James and Helen Paliouras	303 Wesley Drive Chapel Hill, NC 27516

Addresses obtained from a review of the New Hanover County GIS tax records.

ND:4861-1798-1089, v. 5

GENERAL NOTES:

01. IF ANY DISCREPANCIES OR CLARIFICATIONS NEEDED, PLEASE CONTACT THE DESIGNER @ 910-479-4179 IMMEDIATELY. DESIGNER IS NOT RESPONSIBLE FOR OTHERS' INTERPRETATIONS OF DRAWINGS.
 02. DRAWINGS ARE COLOR-CODED AND ARE BEST UNDERSTOOD IF PRINTED IN COLOR.
 03. NO WATER COURSES OR STREAMS, NO DUNES, LEVEL TOPOGRAPHY.
 04. NO PROPOSED CHANGES TO PARKING, LOADING AND UNLOADING AREAS, TRAFFIC PATTERNS, ACCESS AISLES, AND CURB RADI.
 05. NO PROPOSED CHANGES TO STORMWATER, WASTE AND REFUSE DISPOSAL, OR WATER MAINS PROPOSED.
 06. NO CHANGES TO EXTERIOR LIGHTING ARE PROPOSED.

GINGER
 INTERIORS & EXTERIORS

434 Annapetun Drive
 Wilmington, NC 28405
 910-479-4179
 www.gingerinteriors.com

TOWER 7
 4 N LUMINA AVE, WRIGHTSVILLE BEACH, NC 28480

Conceptual

Project Information

revisions:

notes:

drawn by: JCC

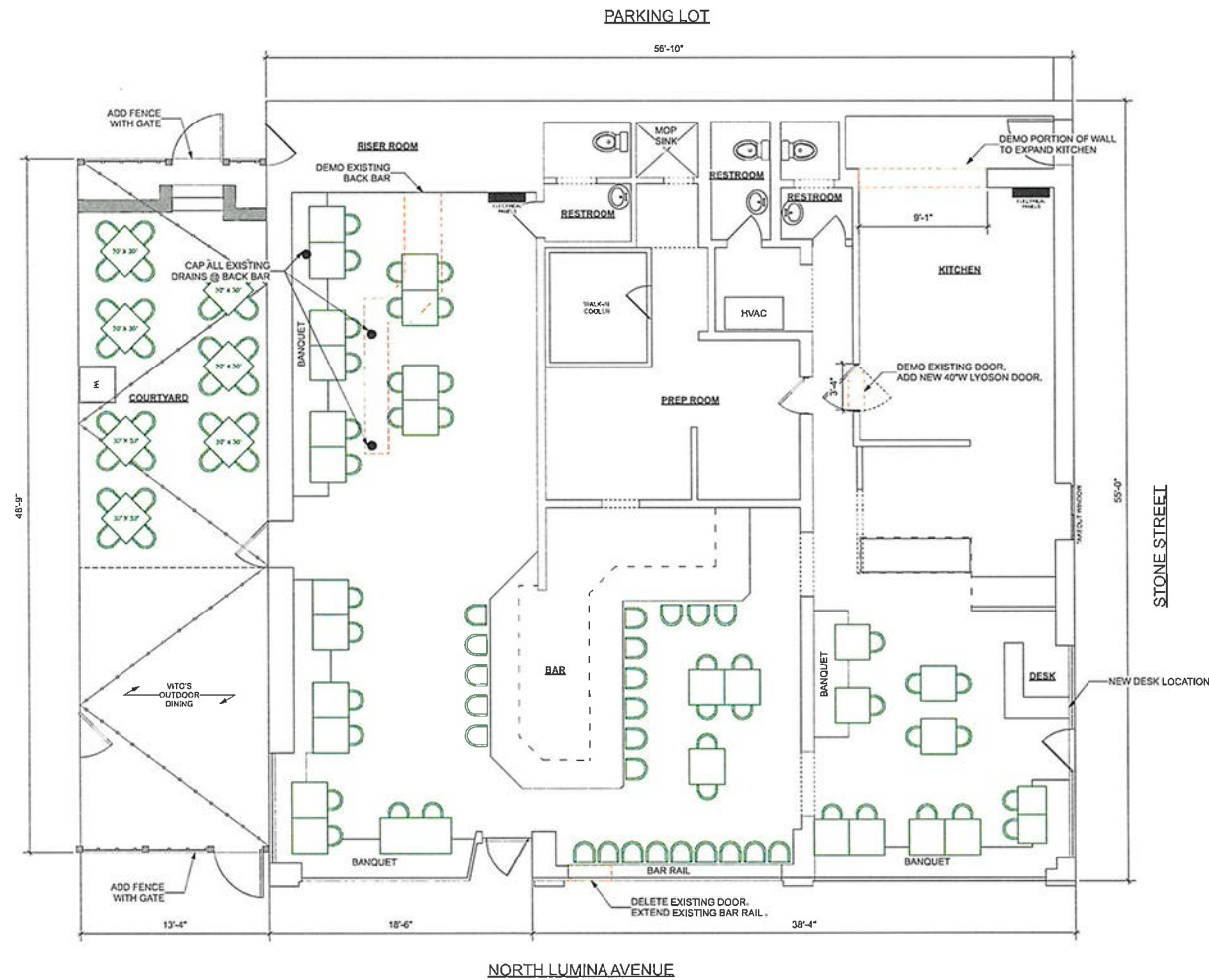
date: 3/19/24

drawing title:

NEW FLOOR PLAN

sheet no.:

ID-2



1 NEW FLOOR PLAN
 Scale: 1/4" = 1'-0"



**TOWN OF WRIGHTSVILLE BEACH
ORDER GRANTING A SPECIAL USE PERMIT
FOR THE PROPERTY LOCATED AT 4 N. LUMINA AVENUE,
WRIGHTSVILLE BEACH, NORTH CAROLINA**

The Board of Aldermen ("Board") of the Town of Wrightsville Beach, North Carolina held a quasi-judicial public hearing on July 19, 2022 to consider the application submitted by 1 Stone Partners, LLC ("Applicant") for an amendment to an existing special use permit requesting a Mixed-Use, Special Use Permit ("SUP") for a mixed-use commercial-residential development at 4 N. Lumina Avenue pursuant to UDO § 155.7.6. Town staff and the Applicant presented sworn testimony and introduced exhibits during the hearing and all those who provided testimony were subject to cross-examination and questions from the Board. The Applicant was represented by attorney Sam Franck.

The record included the following:

1. Exhibit 1 – consists of the portion of the July, 19 2022 Agenda packet related to Applicant's application (pages 73-127) was received into evidence without objection.
2. Exhibit 2 – a PowerPoint presentation presented by Mr. Franck on behalf of the Applicant was received into evidence without objection.
3. The sworn testimony and presentation of Mr. Tony Wilson, Director of Planning and Parks for the Town of Wrightsville Beach, North Carolina.
4. The presentation of Mr. Sam Franck, attorney for the applicant.

The Board, based on the sworn, uncontested testimony and other competent and substantial evidence received at the hearing, makes the following findings of fact:

FINDINGS OF FACT

1. Applicant submitted its application for a Mixed-Use, Special Use Permit ("SUP") to the Town on or about February 4, for a mixed-use commercial-residential development located in the C-1 Zoning District.
2. All advertisements, notices, and property postings pertaining to the quasi-judicial public hearing for this application were adequate, timely, and complied with all applicable statutes.

3. The subject property is located within the C-1 zoning district. The proposed development will remain a mixed use development where the existing commercial unit on the first floor will remain a standard restaurant (Tower 7 Baja Mexican Grill) and the existing office space on the second floor will be restored to residential use with three (3) residential units. The three (3) residential units range in size from 633 square feet to 765 square feet in compliance with the definition of "Mixed Use Commercial Residential in Exhibit A, Section A.3 of the Town's Code of Ordinances. The restaurant will be subject to all North Carolina and New Hanover County Health Code Regulations. The total number of parking spaces for the restaurant will be ten (10) spaces in compliance with Section 155.9.1.5 of the Town's Code of Ordinances.

4. Section 155.6.4, *Table of Permitted/Conditional Uses* of the Town's Code of Ordinances, identifies Mixed Use Commercial-Residential as a Conditional Use with Supplemental Regulations in the C-1 zoning district.

5. Section 155.4.5.4(E) of the Town's Uniform Development Ordinance ("UDO") establishes the standards for the issuance of a conditional use permit which include:

- (1) The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.
- (2) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.
- (3) The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (4) The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.
- (5) Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
- (6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (7) The conditional use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.
- (8) Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.

- (9) The proposed use shall be consistent with recommendations and policy statements as described in the adopted land use plan.
6. Section 155.7.6(E) of the Town's Uniform Development Ordinance ("UDO") establishes additional standards for the issuance of a Mixed-Use Conditional Use permit which include:
 - (1) That the proposed development provides open space in accordance with Section 155.2.10 (Open Space), including the proposed method for the maintenance and conservation of said open space.
 - (2) That all stages contained in the preliminary development plan can exist as a compatible and feasible independent development.
 - (3) That adequate measures have been or will be taken to provide ingress and egress designed so as to minimize traffic congestion in the public streets. This may include provisions for bicycling, walking, and other alternatives to the automobile. In addition, that adequate primary streets and thoroughfares are available to support traffic generated within the proposed mixed use development.
 - (4) That the public benefits derived from the proposed development justify the requested departure from the standard zoning district requirements.
 - (5) That important natural amenities, to include but not be limited to primary dunes as defined by the Coastal Area Management Act (CAMA), trees, vegetative buffers, and scenic views and vistas on the site and in the surrounding area of the proposed development are preserved.
 - (6) That the proposed development meets the spirit and intent of the adopted CAMA land use plan.
 - (7) That the proposed development meets all required parking standards unless such standards are reduced or an exception is granted to such standards in accordance with Article 155.9, Part I.

7. The Town's Director of Planning and Parks, Mr. Tony Wilson testified that the Town's Planning Board reviewed Applicant's application and that on June 7, 2022 the Planning Board voted 5-0 in favor of recommending a favorable recommendation to the Board of Alderman for the issuance of this Mixed-Use Special Use Permit with the following conditions:

1. construction project must meet State building, plumbing and fire requirements;
2. New Hanover County Fire Marshall shall approve plans;
3. Public Works Director will need to approve trash services;
4. must meet FEMA 50% rule;
5. Town shall approve appraisal of the building;
6. the three (3) residential parking spaces must have a sign on each parking space;
7. incorporate a bicycle rack on the site if possible; and
8. the applicant must comply with all Town ordinances.

8. The applicant submitted evidence in the form of both sworn testimony and exhibits. This evidence was received into the record without objection.

9. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the conditional use will not be detrimental to or endanger the public health, safety, or general welfare. The uncontroverted evidence presented at the hearing illustrates that the standard restaurant on the first floor and this commercial use will remain unchanged. The proposed use on the second floor is restoration of the residential use by converting the existing office space on the second floor to residential units. Additionally, this is a low density residential use of three (3) units which will not be detrimental to or endanger the public health, safety or general welfare.

10. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the proposed use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood. The uncontroverted evidence presented at the hearing illustrates the proposed use is a minor departure from the existing use of office space on the second floor and is consistent with the uses of certain surrounding property in the immediate vicinity of the subject property. Specifically, there are residential units located above commercial units in the surrounding area.

11. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. The uncontroverted evidence demonstrates that the mixed-use commercial residential use does not require the construction of any new structures or additions, and the conversion of the existing office space into three (3) residential units will not impede the development and improvement of the surrounding property. Further, the proposed use is consistent with Section 5 of the Town of Wrightsville Beach ("the "Town") 2019 CAMA Land Use Plan, specifically Section 5, subsection 5 of the Town's support of mixed-use projects to revitalize and preserve the economic viability of existing commercial areas within the Town.

12. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the exterior architectural appeal and functional plan of any proposed structure will not be at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood. The uncontroverted evidence demonstrates that the changes to the existing exterior architectural plan are minimal. These minimal changes include painting the exterior of the building. These changes will update the buildings overall appearance and in turn, will likely increase property values within the surrounding area and neighborhood in line with the Town's goal pursuant to Section 5, subsection 8 of the 2019 CAMA Land Use Plan to improve and enhance the Town's neighborhoods.

13. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided. The uncontroverted evidence demonstrates that adequate utilities, access roads, parking, drainage and necessary facilities already exist and the proposed special use does not require any alterations to the existing infrastructure.

14. The applicant presented sufficient, competent, and substantial evidence to demonstrate to the Board that adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. The uncontroverted evidence demonstrates that ingress

and egress to the development already exist. There will be no change to the existing ingress and egress configuration. No new vehicular ingress or egress is proposed or required.

15. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the conditional use conforms to all the applicable regulations of the district in which it is located. The uncontroverted evidence demonstrates that the conditional use is consistent with the existing mixed use commercial-residential uses in the surrounding area and neighborhoods and the proposed use of residential units complies with the dimensional requirements of Exhibit A, Section A.3 of the Unified Development Ordinance of Wrightsville Beach, North Carolina (the "Ordinance"). Further, the building height will remain unchanged.

16. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that public access is being provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern. The uncontroverted evidence demonstrates that the conditional use conforms with the Town's Land Use Plan and Access Plan in that the existing public access will remain unchanged. Specifically, the conditional use will not restrict the public's ability to pass through the alleyway located between 4 and 6 North Lumina Avenue.

17. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the proposed use is consistent with recommendations and policy statements as described in the Town's adopted Land Use Plan. The uncontroverted evidence demonstrates that the conditional use is consistent with the requirements of the Town's CAMA Land Use Plan, specifically the actions set forth in Section 5, subsections 4, 5, and 8 of the 2019 CAMA Land Use Plan. As a mixed-use development, the use aligns with the Town's vision for future land use for commercial/mixed-use developments as depicted in Map 2. Future Land Use of the 2019 CAMA Land Use Plan Update Executive Summary. Additionally, the use of three (3) residential units is consistent with Section 4 of the 2019 CAMA Land Use Plan regarding Commercial/Mixed Use in the Commercial District I which is established to embrace the existing and growing commercial, tourist, and short-term residential uses.

18. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the development provides open space in accordance with Section 155.2.10 (Open Space), including the proposed method for the maintenance and conservation of said open space. The uncontroverted evidence demonstrates that the existing open space conforms to Section 155.2.10 of the Ordinance. The proposed development will not alter or change the existing open space as only the second floor of the building is being converted from commercial office space to three (3) residential units.

19. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that all stages contained in the preliminary development plan can exist as a compatible and feasible independent development. The uncontroverted evidence demonstrates that the conditional use will only result in the reconfiguration of the existing office space on the second floor of the building into three (3) residential dwelling units and the exterior stairwell. Such reconfiguration is limited to the existing building structure and as such, can exist as a compatible and feasible independent development.

20. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that adequate measures have been or will be taken to provide ingress and egress designed as to minimize traffic congestion in the public streets. This may include provisions for bicycling, walking, and other alternatives to the automobile. In addition, that adequate primary streets and thoroughfares are

available to support traffic generated within the proposed mixed-use development. The uncontroverted evidence demonstrates that ingress and egress to the development already exist. There will be no change to the existing ingress and egress configuration. Additionally, any traffic impact will be negligible and the use will not generate any appreciable or harmful traffic congestion to the surrounding primary streets and thoroughfares.

21. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the public benefits derived from the proposed development justify the requested departure from the standard zoning district requirements. The uncontroverted evidence demonstrates that the conditional use and reconfiguration of the second floor to residential units is consistent with Mixed Use Commercial-Residential which is a permitted use in the C-1 zoning district.

22. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that important natural amenities, to include but not be limited to primary dunes as defined by the Coastal Area Management Act (CAMA), trees, vegetative buffers, and scenic views and vistas on the site and in the surrounding area of the proposed development are preserved. The uncontroverted evidence demonstrates that the proposed use/development will not alter or change the existing natural amenities.

23. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the proposed development meets the spirit and intent of the adopted CAMA land use plan. The uncontroverted evidence demonstrates that the proposed use is consistent with the requirements of the Town's 2019 CAMA Land Use Plan, insofar as it supports the implementing actions set forth in Section 5, subsections 4, 5, and 8 of the 2019 CAMA Land Use Plan. Further, the proposed use of three (3) residential units is consistent with Section 4 of the 2019 CAMA Land Use Plan regarding Commercial/Mixed Use in the Commercial District I which is established to embrace the existing and growing commercial, tourist, and short-term residential uses.

24. The applicant presented sufficient, competent and substantial evidence to demonstrate to the Board that the proposed development meets all required parking standards unless such standards are reduced or an exception is granted to such standards in accordance with Article 155.9, Part I. The uncontroverted evidence demonstrates that the proposed use conforms to the required off-street parking requirements for residential units in Mixed Use Commercial Residential uses as set forth in Section 155.9.1.5 of the Ordinance. Further, the existing parking spaces for the restaurant located in the commercial unit will remain unchanged.

25. No one spoke nor offered any evidence in opposition to the requested Mixed-Use Special Use Permit during the hearing.

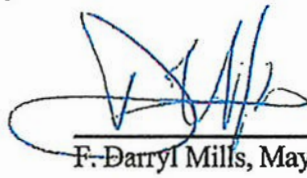
CONCLUSION OF THE BOARD

Based on the sufficient, competent and substantial evidence presented during the hearing and the above findings, the Board of Aldermen hereby unanimously concludes that all conditions precedent to the issuance of a Mixed-Use Special Use Permit have been satisfied. Accordingly, IT IS THEREFORE ORDERED that the subject application for the issuance of Mixed-Use Special Use Permit be GRANTED subject to the following conditions:

1. construction project must meet State building, plumbing and fire requirements;
2. New Hanover County Fire Marshall shall approve plans;

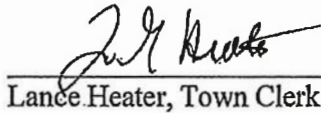
3. Public Works Director will need to approve trash services;
4. must meet FEMA 50% rule;
5. Town shall approve appraisal of the building by a MAI certified appraiser;
6. the three (3) residential parking spaces must have a sign on each parking space;
and
7. the applicant must comply with all Town ordinances.

So ORDERED this 17th day of March, 2023.



F. Darryl Mills, Mayor and Chairman of the Board

ATTEST:



Lance Heater, Town Clerk

[APPLICANT'S SIGNATURE AND ACKNOWLEDGMENT ON FOLLOWING PAGE]

APPLICANT / OWNER ACKNOWLEDGMENT

The signatures of the applicant and property owner below indicate that the applicant and property owner have received this Conditional Use Permit. To be valid, this permit must be signed below by the applicant and owner and returned to the Town Clerk's Office within thirty (30) days of the date of approval as indicated below. This Permit will expire six (6) months from the date expiration begins as indicated below if within that six-month period a building permit has not been granted. The building permit will expire if construction is not commenced within six (6) months from the date of issuance of the building permit.

Date of Approval

APPLICANT

Name: 1 Stone Partners, LLC

Title: by its Authorized Agent Samuel B. Franck, Ward and Smith, P.A.

Date of Expiration

1900 Eastwood Road, Suite 10, Wilmington, NC 28403

Address

OWNER (if other than Applicant)

Address

Date signed by Applicant and Owner

____/____/____
Month Day Year

Note: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of New Hanover County in accordance with the provisions of N.C.G.S. § 160D-1402, N.C.G.S. § 160A- 388, N.C.G.S. § 160A-393. See § 155.4.7 of the Wrightsville Beach Town Code.

**TOWN OF WRIGHTSVILLE BEACH
ORDER GRANTING A CONDITIONAL USE PERMIT
FOR PROPERTY LOCATED AT
4 AND 6 NORTH LUMINA AVENUE, WRIGHTSVILLE BEACH, NORTH CAROLINA**

The Board of Aldermen of the Town of Wrightsville Beach held a public hearing on June 25, 2009 to consider the request submitted by George A. Saffo et al for a Conditional Use Permit for the property located at 4 and 6 North Lumina Avenue, Wrightsville Beach, North Carolina. Having heard all the evidence and arguments presented at the hearing, the Board of Aldermen makes the following Findings of Fact and draws the following Conclusions:

1. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the first general requirement listed in the Ordinance; namely, that the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or general welfare.

Findings of Fact to support this Conclusion:

- A. This request is for an amendment to an existing conditional use permit for the business known as Café Del Mar located at 6 North Lumina Avenue. The property owner requests that a portion of the alley located between 6 and 8 North Lumina Avenue be converted into a common sitting area for patrons of the business located at 6 North Lumina Avenue and patrons of the business located at 8 North Lumina Avenue.
- B. Café Del Mar currently is permitted as a standard restaurant pursuant to a conditional use permit granted on or about August 7, 2008. Café Del Mar operates as a coffee shop in the morning and as a overflow area for the adjacent restaurant, Tower 7 Baja Mexican Grill, in the afternoon and evening.
- C. The building in which Café Del Mar is located is separated from the building to the north located at 8 North Lumina Avenue by an alley approximately 15 feet in width. The applicant and the owner of the property at 8 North Lumina Avenue wish to transform the alley dividing their properties into a common patio area.

- D. The proposed plans includes a gravel ground cover coupled with the use of brick pavers. The improved area will extend from the eastern right of way of North Lumina Avenue approximately 23 feet eastwardly in the alley separating the two properties.
- E. Café Del Mar and Tower 7 Baja Mexican Grill operate in the building located at 6 and 4 North Lumina Avenue. These two uses require a minimum of 13 parking spaces. The conditional use permit issued on August 7, 2008 and referred to hereinabove requires the operator of the uses located at 2, 4 and 6 North Lumina Avenue to provide a total of 8 parking spaces. The operator of the businesses at 2, 4 and 6 North Lumina Avenue currently provide a total of 8 parking spaces in the lot directly behind the building in which these uses are located. Use of the alley in the manner described in this application will result in the loss of one parking space for the uses having addresses of 2, 4 and 6 North Lumina Avenue.
- F. Eliminating vehicular traffic in this alley will enhance public safety.

2. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the second general requirement listed in the Ordinance; namely, that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraph are incorporated herein by reference.
- B. Development of this area will permit patrons of the businesses at both 6 and 8 North Lumina Avenue to more safely congregate in this area.
- C. No alcohol can be served in this alley area at this time. The applicant will be required to post signs prohibiting smoking and drinking in this area.
- D. The alleyway in question is currently subject to an easement permitting the public a right of passage through the alley. The proposed use will not restrict the public's ability to pass through this alley.

3. It is the Board of Aldermen's Conclusion that the proposed

use does satisfy the third general requirement listed in the ordinance; namely, that the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The proposed use is consistent with the surrounding uses and is in compliance with the Town's CAMA Land Use Plan.

4. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the fourth general requirement listed in the ordinance; namely, that the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The use anticipates an improvement to the surface of the alley and the addition of tables and chairs. Additionally, a pergola as described in photographs presented to the Board of Aldermen may be constructed in the alleyway.
- C. The proposed changes will not be at variance with the surrounding buildings.

5. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the fifth general requirement listed in the ordinance; namely, that adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. Any lighting and electrical wiring will need to comply with the provisions of the North Carolina State Building Code.
- C. There is an existing Town water line that runs through this alley. The applicant as a condition of the granting of this permit must convey an easement to the Town for the maintenance and replacement of this water line.
- D. The pergola, if constructed, shall be constructed of noncombustible materials to satisfy the requirements of the fire district in which this property is located.

6. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the sixth general requirement listed in the ordinance; namely, that adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. Public access will not be prohibited and the public's right of passage will continue notwithstanding the granting of this permit.

7. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the seventh general requirement listed in the ordinance; namely, that the conditional use shall in all other respects conform to all the applicable regulations of the district in which it is located.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The use of the property in the manner described herein must comply with all other applicable local, state and federal ordinances, statutes and rules and regulations.

8. It is the Board of Aldermen's Conclusion that the proposed

use does satisfy the eighth general requirement listed in the ordinance; namely, that public access shall be provided in accordance with the recommendations of the Town Land Use Plan and Access Plan and/or the present amount of public access and public parking as exists within the Town now.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The public access through this area, while limited by the tables and chairs, will not be prohibited.

9. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the ninth general requirement listed in the ordinance; namely, that the proposed use shall be consistent with recommendation and policy statements as described in the adopted land use plan.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The proposed use is consistent with the Town's CAMA Land Use Plan.

Therefore, because the Board of Aldermen concludes that all general and specific conditions precedent to the issuance of a Conditional Use Permit have been satisfied, IT IS ORDERED that the application for the issuance of a Conditional Use Permit be granted, subject to the following conditions:

a. That applicant shall fully comply with all of the specific requirements stated in the ordinance for the proposed use, as well as any additional conditions stated below.

b. That if any section, subsection, paragraph, sentence, clause, phrase or portion of this Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the

remaining portions hereof.

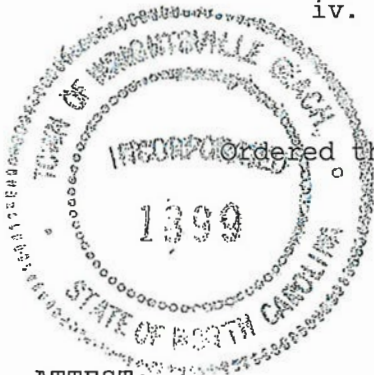
c. That the project shall be developed in accordance with the plan as submitted and approved.

d. That this Conditional Use Permit shall comply with all other supplemental regulations and requirements imposed by the Zoning Ordinance or any other applicable federal, state or local law, ordinance or regulations.

In the event of a conflict, the more stringent requirement or higher standard shall apply.

e. Other conditions:

- i. The applicant will be responsible for placing sufficient trash receptacles in the area and for emptying such receptacles.
- ii. At least two bollards will be permanently erected at both ends of the area in question to prevent vehicular access.
- iii. The applicant shall be required to grant an easement ten 10 feet in width (5 feet on either side of the centerline of the existing water line) to the Town for maintenance, repair and replacement of the existing line.
- iv. The area to be improved shall extend from the eastern boundary of North Lumina Avenue eastwardly for a distance of 23 feet.
- v. The applicant shall post signs prohibiting smoking and drinking within the area.
- vi. A pergola similar to that as described in photographs presented to the Board of Aldermen on the date of this hearing shall be allowed within the area on the condition that the materials of which this pergola is constructed meet all requirements of the Town.
- vii. The applicant proposes a common use of the alleyway with the adjacent property owner. If the adjacent property owner elects to discontinue its use of its portion of the alleyway, then the applicant may continue its use in the manner described herein and subject to all the conditions set forth herein.
- viii. The applicant shall be responsible at all times for maintaining the area subject to this permit in a clean and orderly condition.



- iv. The public's right of passage through the alley shall continue in existence notwithstanding the issuance of this permit.

Ordered this

day of June, 2009.

[Signature]
Mayor

ATTEST:

[Signature]
Town Clerk

The signatures of the applicant and property owner below indicate that the applicant and property owner have received this Conditional Use Permit together with all attachments. Any violations of the stated conditions will render this Permit null and void. To be valid, this permit must be signed below by the applicant and owner and returned to the Town Clerk's Office within thirty (30) days of the date of approval as indicated below. This Permit will expire six (6) months from the date expiration begins as indicated below if within that six-month period a building permit has not been granted. The building permit will expire if construction is not commenced within six (6) months from the date of issuance of the building permit.

June 25, 2009
Date of Approval

November 25, 2009
Date of Expiration Begins

[Signature]
APPLICANT

4+6 N. LUMINA
Address

[Signature]
OWNER

9502 Drive

Wroughtville, N.C.

October 2, 2009

Date signed by
Applicant and Owner

Address

JCW\Wrbch\Order-121



FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
2009 SEP 22 11:16:33 AM
BK:5439 PG:153-157 FEE:\$23.00

INSTRUMENT # 2009033103

GENERAL UTILITY EASEMENT

Prepared by: John C. Wessell, III, Attorney at Law, P.O. Box 1049, Wilmington, NC 28402.

Return to: Return to:
Wessell & Raney
Parcel Nos.: R06308-016-001-000 & R06308-016-020-000

NORTH CAROLINA
NEW HANOVER COUNTY

THIS DEED OF EASEMENT, executed this the 17 ^{September} day of ~~August~~, 2009, by and between JAMES W. SKIBA and wife, DIANE McINTYRE SKIBA (hereinafter individually and collectively referred to as "Grantor") and the TOWN OF WRIGHTSVILLE BEACH, a municipal corporation organized and existing under the laws of the State of North Carolina, whose post office address is P.O. Box 626, Wrightsville Beach, NC 28480 (hereinafter referred to as "Grantee");

WITNESSETH:

For and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration paid by the Grantee to the Grantor, receipt of which is hereby acknowledged, the Grantor has bargained, sold and conveyed and by these presents does hereby grant, bargain, sell and convey into the Grantee, its successors and assigns, the right, privilege and perpetual right-of-way and easement over, through, under and upon the lands and premises hereinafter described for the purpose of constructing, installing, inspecting, maintaining, repairing, removing, extending, improving, replacing, building and/or operating certain public facilities and utilities, including but not limited to, water, sanitary sewer, storm sewers, drainage pipes, valves, catch basins, ditches, and other appurtenances, said premises being a certain parcel or tract of land located in the Town of Wrightsville Beach, New Hanover County, North Carolina, and more particularly described as follows:

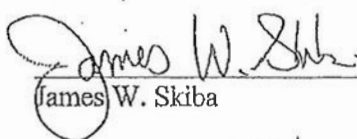
hereunder or to otherwise permit encroachment upon the easement. It is expressly understood and agreed, however, that the Grantor, its heirs, successors and assigns shall retain the right to cultivate the ground lying within the boundaries of the right-of-way and use said easement for any other lawful purpose; provided, however, that such cultivation or use shall not be inconsistent with the rights herein granted to the Grantee, and Grantee shall not be liable for any damages or loss due to the exercise of its rights hereunder within its easement and right-of-way.

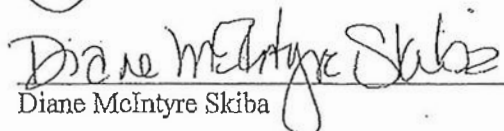
For the purpose of constructing, inspecting, improving, replacing, removing, maintaining, extending, repairing or otherwise using the above-described facilities, the Grantee shall have the right of ingress to and egress from the easement and right-of-way over such private roads, alleys, ways, driveways or paths (hereinafter collectively referred to as "private roads") as may now or hereafter exist on the property of the Grantor. Any damages proximately resulting to such private roads from the negligent use by the Grantee shall be repaired by the Grantee at its expense. The right, however, is reserved to the Grantor or its heirs, successors and assigns to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement and right-of-way, the Grantee shall have such right of ingress and egress over the Grantor's property adjacent to the easement and right-of-way in such manner as shall occasion the least practicable damages and inconvenience to the Grantor. The Grantee shall be liable for any consequential damages proximately caused by its sole negligence in the exercise of the right of ingress and egress over adjoining property.

By acceptance of this Deed of Easement, the Grantee agrees that it will restore the surface of the land to its approximate level prior to construction by fill or grading in the course of construction or maintenance of the aforesaid facilities so long as the same are not inconsistent with and do not interfere with the rights herein granted to the Grantee. It is specifically agreed that any trees removed for construction or maintenance work will not be replaced. The construction or maintenance area may be seeded by the Grantee, but the Grantee shall not be responsible for landscaping or otherwise improving the area. It is understood and agreed that the execution and delivery of this deed by the Grantor and its acceptance by the Grantee shall not obligate the Grantee to construct or maintain any main, line, pipe, lateral or other extension or permit any connection to its water, sanitary sewer, storm sewer, drainage or other public utilities system.

Use of the masculine gender herein includes the feminine and neuter, and the singular number used herein shall equally include the plural.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

 (SEAL)
James W. Skiba

 (SEAL)
Diane McIntyre Skiba



JENNIFER H. MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 09/22/2009 11:16:33 AM

Book: RE 5439 Page: 153-157

Document No.: 2009033103

5 PGS \$23.00

Recorder: CRESWELL, ANDREA

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

2009033103

2009033103

TOWN OF WRIGHTSVILLE BEACH
ORDER GRANTING A CONDITIONAL USE PERMIT
FOR PROPERTY LOCATED AT
8 NORTH LUMINA AVENUE, WRIGHTSVILLE BEACH, NORTH CAROLINA

The Board of Aldermen of the Town of Wrightsville Beach held a public hearing on June 25, 2009 to consider the request submitted by James Skiba for a Conditional Use Permit for the property located at 8 North Lumina Avenue, Wrightsville Beach, North Carolina. Having heard all the evidence and arguments presented at the hearing, the Board of Aldermen makes the following Findings of Fact and draws the following Conclusions:

1. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the first general requirement listed in the Ordinance; namely, that the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety or general welfare.

Findings of Fact to support this Conclusion:

- A. This request is for an amendment to existing conditional use permits for the property located at 8 North Lumina Avenue in which a business known as Vito's Pizzeria is currently located. The property owner requests that a portion of the alley located between 6 and 8 North Lumina Avenue be converted into a common sitting area for patrons of the business located at 8 North Lumina Avenue and patrons of the business located at 6 North Lumina Avenue.
- B. Vito's Pizzeria currently is permitted as a standard restaurant pursuant to a conditional use permit granted on or about April 23, 1987..
- C. The building in which Vito's Pizzeria is located is separated from the building to the south located at 4 and 6 North Lumina Avenue by an alley approximately 15 feet in width. The applicant and the owner of the property at 4 and 6 North Lumina Avenue wish to transform the alley dividing their properties into a common patio area.
- D. The proposed plans includes a gravel ground cover coupled with the use of brick pavers. The improved area will extend from the eastern right of way of North Lumina Avenue approximately 23 feet eastwardly in the alley separating the two properties.
- E. Vito's Pizzeria operates in the building located at 8 North Lumina Avenue. This use currently requires a minimum of 10 parking spaces. Use of the alley in the manner described in this application will result in the loss of 0 parking spaces for the use having an address of 8 North Lumina Avenue.
- F. Eliminating vehicular traffic in this alley will enhance public safety.

2. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the second general requirement listed in the Ordinance; namely, that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraph are incorporated herein by reference.
- B. Development of this area will permit patrons of the businesses at both 6 and 8 North Lumina Avenue to more safely congregate in this area.
- C. No alcohol can be served in this alley area at this time. The applicant will be required to post signs prohibiting smoking and drinking in this area.
- D. The alleyway in question is currently subject to an easement permitting the public a right of passage through the alley. The proposed use will not restrict the public's ability to pass through this alley.

3. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the third general requirement listed in the ordinance; namely, that the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The proposed use is consistent with the surrounding uses and is in compliance with the Town's CAMA Land Use Plan.

4. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the fourth general requirement listed in the ordinance; namely, that the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.

- B. The use anticipates an improvement to the surface of the alley and the addition of tables and chairs. Additionally, a pergola as described in photographs presented to the Board of Aldermen may be constructed in the alleyway.
- C. The proposed changes will not be at variance with the surrounding buildings.

5. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the fifth general requirement listed in the ordinance; namely, that adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. Any lighting and electrical wiring will need to comply with the provisions of the North Carolina State Building Code.
- C. There is an existing Town water line that runs through this alley. As a condition of the granting of this permit, the applicant must convey an easement to the Town for the maintenance and replacement of this water line.
- D. The pergola, if constructed, shall be constructed of noncombustible materials to satisfy the requirements of the fire district in which this property is located.

6. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the sixth general requirement listed in the ordinance; namely, that adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. Public access will not be prohibited and the public's right of passage will continue notwithstanding the granting of this permit.

7. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the seventh general requirement listed in the ordinance; namely, that the conditional use shall in all other respects conform to all the applicable regulations of the district in which it is located.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.

- B. The use of the property in the manner described herein must comply with all other applicable local, state and federal ordinances, statutes and rules and regulations.

8. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the eighth general requirement listed in the ordinance; namely, that public access shall be provided in accordance with the recommendations of the Town Land Use Plan and Access Plan and/or the present amount of public access and public parking as exists within the Town now.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The public access through this area, while limited by the tables and chairs, will not be prohibited.

9. It is the Board of Aldermen's Conclusion that the proposed use does satisfy the ninth general requirement listed in the ordinance; namely, that the proposed use shall be consistent with recommendation and policy statements as described in the adopted land use plan.

Findings of Fact to support this Conclusion:

- A. The Findings of Fact set forth in the preceding paragraphs are incorporated herein by reference.
- B. The proposed use is consistent with the Town's CAMA Land Use Plan.

Therefore, because the Board of Aldermen concludes that all general and specific conditions precedent to the issuance of a Conditional Use Permit have been satisfied, IT IS ORDERED that the application for the issuance of a Conditional Use Permit be granted, subject to the following conditions:

a. That applicant shall fully comply with all of the specific requirements stated in the ordinance for the proposed use, as well as any additional conditions stated below.

b. That if any section, subsection, paragraph, sentence, clause, phrase or portion of this Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

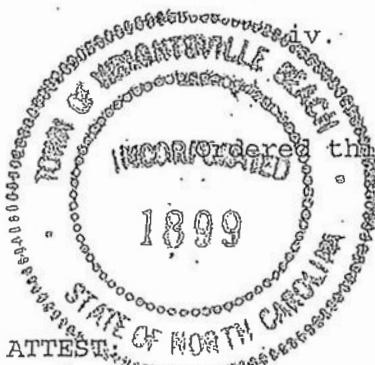
c. That the project shall be developed in accordance with the plan as submitted and approved.

d. That this Conditional Use Permit shall comply with all other supplemental regulations and requirements imposed by the Zoning Ordinance or

any other applicable federal, state or local law, ordinance or regulations.
In the event of a conflict, the more stringent requirement or higher standard shall apply.

e. Other conditions:

- i. The applicant will be responsible for placing sufficient trash receptacles in the area and for emptying such receptacles.
- ii. At least two bollards will be permanently erected at both ends of the area in question to prevent vehicular access.
- iii. The applicant shall be required to grant an easement ten 10 feet in width (5 feet on either side of the centerline of the existing water line) to the Town for maintenance, repair and replacement of the existing line.
- iv. The area to be improved shall extend from the eastern boundary of North Lumina Avenue eastwardly for a distance of 23 feet.
- v. The applicant shall post signs prohibiting smoking and drinking within the area.
- vi. A pergola similar to that as described in photographs presented to the Board of Aldermen on the date of this hearing shall be allowed within the area on the condition that the materials of which this pergola is constructed meet all requirements of the Town.
- vii. The applicant proposes a common use of the alleyway with the adjacent property owner. If the adjacent property owner elects to discontinue its use of its portion of the alleyway, then the applicant may continue its use in the manner described herein and subject to all the conditions set forth herein.
- viii. The applicant shall be responsible at all times for maintaining the area subject to this permit in a clean and orderly condition.
- ix. The public's right of passage through the alley shall continue in existence notwithstanding the issuance of this permit.



ATTEST

Sylvia J. Kellerman
Town Clerk

ordered this 25th day of June, 2009.

Stephen J. Kellerman
Mayor

The signatures of the applicant and property owner below indicate that the applicant and property owner have received this Conditional Use Permit together with all attachments. Any violations of the stated conditions will render this Permit null and void. To be valid, this permit must be signed below by the applicant and owner and returned to the Town Clerk's Office within thirty (30) days of the date of approval as indicated below. This Permit will expire six (6) months from the date expiration begins as indicated below if within that six-month period a building permit has not been granted. The building permit will expire if construction is not commenced within six (6) months from the date of issuance of the building permit.

August 3, 2009

Date of Approval

February 3, 2010

Date of Expiration Begins

7-9-09

Date signed by
Applicant and Owner

W. K. N.

APPLICANT

8 N Luminn Wrightsville Beach 28480

Address

J. H.

OWNER

311 Friday Dr. Wilmington NC

Address

Tony Wilson

From: Madeline C. Lipe <MCLipe@wardandsmith.com>
Sent: Monday, April 29, 2024 6:13 PM
To: Tony Wilson
Cc: Robert O'Quinn; Samuel B. Franck
Subject: RE: Tower 7 SUP

Tony,

Additional responses below in **blue**.

1. Lighting has to meet the town ordinances, bulbs need to be shielded
 - a. We will provide an update on the lighting.
2. If alcohol is approved for the Tower 7 Area, what about Vito's area ?
 - a. This SUP application is not proposing any change to Vito's use and this amendment to the existing SUP will not have any impact on the regulations applicable to Vito's.
3. We need to know the existing seating occupancy and what is proposed ?
 - a. The existing indoor seating occupancy is 86 and there are no proposed changes to the indoor seating occupancy. The proposed outdoor seating for Tower 7 is 28 seats. When combined with Vito's seats, the total outdoor proposed seating count is 58 seats. The existing seating count for outdoors is 36.
4. If any fencing or barriers are installed they should not be no greater than 4 feet in height
 - a. We have confirmed with Tower 7/Applicant that the proposed fence will be no greater than 4 feet in height.
5. Any occupancy increase will require a parking exception or a larger grease trap
 - a. A larger grease trap is being installed. As noted in the application, we intend to rely on the existing parking exception that is noted in the earlier SUP/CUP documents. As a result, we are requesting any necessary renewal to the existing parking exception.
6. Trash cans needed in the area
 - a. Understood – There will be sufficient trash receptacles in the courtyard. The current trashcans are provided by Vito's, however if full service by Tower 7 is offered, all debris/trash from Tower 7 will be maintained by the Tower 7 staff.
7. Noise concerns for the tower 7 upstairs residents ?
 - a. To our knowledge there are no concerns from the owner/operator of the upstairs units. If helpful, we can offer testimony from the owner/operator of the upstairs unit and provide that to the Planning Board. Please let us know if you think this is necessary.
8. Is this a new SUP or is one going to be amended?
 - a. This is an amendment to an existing SUP.



Madeline Lipe
Attorney

F. Darryl Mills
Mayor

Ken Dull
Alderman

Zeke Partin
Alderman



Hank Miller
Mayor Pro Tem

Jeff DeGroote
Alderman

Town of Wrightsville Beach

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480

MEMORANDUM

To: Mayor Mills and Board Members
From: Tony Wilson, Acting Town Manager *TW*
Re: Consideration of an Exception for a Pier Proposal for 502 and 504 North Channel Drive
Date: June 30, 2024

Background:

The Planning and Inspections Department received a request for a Pier and Dock exception from B & D Investments, LLC (Owner of 502 N. Channel Dr.) and Linda B. Grew (Owner of 504 N. Channel Dr.) for the attached proposed pier and dock plan. The Attorneys representing the property owners at 502 N Channel Drive is Ryal W. Tayloe and Madeline Lipe with Ward and Smith and Matthew A. Nichols representing the owners of 504 N. Channel. The proposed redesign of the adjacent residential docks and pier will consist of a new shared boat docking facility for 502 and 504 N. Channel Dr. The existing and redesigned shared docks at 502 and 504 N. Channel will not be in the applicant's property lines projected. It will be closer than 15 feet of the property lines extended, the dock will be closer than 15 feet to the existing pier located at 504 N Channel Drive. Each property owner will have 1 boat lift and 1 wet slip. However, the property owners of 502 and 504 North Channel Avenue will provide a notarized written approval for the proposed pier if the Town will provide an exception for the location of the pier.

The site plan for 502 and 504 North Channel Drive has been revised since the January 9, 2024 Planning Board meeting. During that meeting, board members requested that the covered gazebo on 502 North Channel be moved to the north side and the wet slip be eliminated. The pier/dock, wet slip and boat lift are in the same location at 504 North Channel Drive. The property owners of 504 North Channel do have approval for the proposed location of the pier and dock from the property owners of 506 North Channel Drive.

Revised Site Plan:

The Revised site plans for the 502 and 504 North Channel Docks have an option 1 and option 2 for the Board to review.

Option 1: Proposed shared Dock each property owner will have 1 Boat Lift (12.5' x 12.5') on Center) and 1 Wet Slip on a 60' x 6' Floating Dock with 6' x 6' Platform

Option 2: Proposed shared Dock for 502 N. Channel will have 1 boat lift (12.5' x 12.5' on Center) on a 46' x 6' Floating Dock and 6' x 6" Platform.

504 N Channel will have 1 boat lift and 1 wet slip

Applicable Sections of Town Code:

§150.12 General Pier and Dock Construction Requirements:

(A) All construction, repairs or modification of any pier or dock shall be governed by the following regulations. No pier, dock or other structure shall be constructed which:

- 1) Is not within the applicant's property lines projected. An exception may be made in unusual cases where notarized written approval by adjacent property owners allows the construction or where joint ownership of a facility to be constructed exists.
- 2) Is closer to the owner's property lines extended than 15 feet, except as provided above. All pilings or dolphins, single or multiple, used in any way for mooring, shall conform to this setback requirement.
- 3) Is within 15 feet of any other pier other than one which is a part of the same mooring field.

Planning Staff Summary:

The proposed pier is not compliant with §150.12 General Pier and Dock Construction Requirements. The pier is not within the applicant's lines projected, it will be closer than 15 feet of the property lines extended, will be closer than 15 feet to the existing pier at 504 N Channel. The property owners at 502 and 504 N. Channel will provide a notarized written approval for the proposed pier if the town provides the exceptions required for the piers.

150.21 EXCEPTIONS AUTHORIZED.

The Board of Aldermen, at its discretion and as a result of careful study of unusual and difficult situations which occur, may waive certain limitations as to dimensions and location if it appears to be clearly in the best public interest and safety. Provided that the Board of Alderman shall not be authorized by this exception to permit a pier to be constructed beyond the pier line as shown on the official pier line map. The construction of a pier or dock by the town at the terminus of streets or public areas shall not be limited by the requirements of this chapter.

502 N. Channel Pier and Dock History:

Listed below is an overview of the series of attempts by the owner's of 502 N Channel to construct a pier at this location:

- 4) August 6, 2004, Town granted an encroachment agreement for the pier and dock.
- 5) April 27, 2006, the encroachment agreement is withdrawn. Local residents objected to the permit.
- 6) September 21, 2006, Coastal Resources Commission grants a variance for 502 N Channel
- 7) May 25, 2010, Consideration of an exception to 150.12 for 502 N Channel Drive. Board of Aldermen denied this request.
- 8) May 21, 2012, Town issues a building permit for a pier that does not require any exceptions from property owner.

Public Notice:

The legal advertisement announcing the May 9, 2024, Board of Aldermn meeting concerning a Pier and dock exception for 502 and 504 North Channel ran on April 26, 2024. The site was posted on April 26, 2024, and adjacent property owners letters were sent out. This agenda item was open and continued at the May 9, 2024 meeting and the June 13, 2024 meeting until the July 11, 2024 BOA meeting.

Planning Board meeting:

This agenda item was discussed at the January 9, 2024, Planning Board meeting. At that meeting the Planning Board requested the applicants to make changes to the pier and dock plans and bring them back to the board for review at the March 5, 2024 meeting.

This agenda item was discussed again at the March 5, 2024, Planning Board meeting. During the discussion changes were made to the original pier and dock plan submitted by the applicants.

The Planning Board still had concerns about the two docks connected and recommended to the applicants to bring back another design for one dock that the two property owners could share.

During the discussion the applicants decided to move this agenda item to the Board of Aldermen without a Planning Board recommendation.

Planning Staff Recommendation:

Review and consider the site plans for option 1 or option 2 for the piers and docks located at 502 / 504 North Channel Drive.

Attachments:

1. Application
2. 502 and 504 North Channel Proposed Pier Plan Option 1 and 2
3. August 6, 2004 , Approved Encroachment Agreement
4. April 27, 2006, Pier and Dock Exception Denied
5. March 25, 2010, Pier and Dock Exception Denied
6. May 12, 2011, BOA review the request
7. May 21, 2012, building permit issued for pier and dock.
8. 5th Avenue Quitclaim Deed

**LAW OFFICE OF
MATTHEW A. NICHOLS**

3205 Randall Parkway, Suite 104
Wilmington, NC 28403

Ph: (910) 508-7476
Email: matt@mattnicholslaw.com

VIA HAND DELIVERY

November 30, 2023

Tony Wilson
Planning Director
Town of Wrightsville Beach
321 Causeway Drive
Municipal Complex, Town Hall
Wrightsville Beach, NC 28480

Re: APPLICATION FOR AN EXCEPTION REQUEST – PIER AND DOCK
502 and 504 N. Channel Drive, Wrightsville Beach, NC
(PARID R05720-002-006-000 and R05720-002-005-000)

Dear Tony:

With regard to the above-referenced properties, please find enclosed for filing with the Town an Application for an Exception Request – Pier and Dock pursuant to Town Ordinance §150.21, including the following:

1. Application for an Exception Request – Pier and Dock with attached Exhibit A and Exhibit B (plan sheets);
2. List of property owners within 150 feet of the subject parcels;
3. Two sets of postage paid envelopes addressed to property owners within 150 feet of the subject parcels; and,
4. A check in the amount of \$500.00 for the Exception Request application filing fee.

Please let me know if there are any additional forms or documents that are required to be submitted to the Town with this application and we will promptly provide the additional documents or information.

Tony Wilson
Planning Director
Town of Wrightsville Beach
November 30, 2023
Page 2

We kindly request that this matter be placed on the Town of Wrightsville Beach Planning Board's next available Meeting Agenda for review and consideration.

Thank you for your time and attention to this matter.

Respectfully submitted,



Matthew A. Nichols

Enclosures
MN/hc

CC: Timothy W. Owens, Town Manager
(via email: towens@towb.org)

Robert O'Quinn, Town Planner
(via email: roquinn@towb.org)

Ryal W. Tayloe, Attorney for B&D Investments, LLC
(via email: RWT@wardandsmith.com)

**EXCEPTION REQUEST -- PIER AND DOCK
(TOWN ORDINANCE § 150.21)**

APPLICANT INFORMATION

Property Owners: Linda B. Grew (and successors), as Family Trustee of the Robert S. Grew 2020 Legacy Trust
w/d September 2, 2020 (owner of 504 N. Channel Dr.); and B&D Investments, LLC (owner of
502 N. Channel Dr.)

Owner Mailing Address And Phone Number:	Linda B. Grew 504 N. Channel Dr. Wrightsville Beach, NC 28480 Phone: (910) 508-7476 (agent)	B&D Investments, LLC 502 N. Channel Dr. Wrightsville Beach, NC 28480 Phone: (910) 794-4828 (agent)
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Representative/Agent for Owner
(ATTACH AUTHORITY FOR APPOINTMENT OF AGENT)

Agent Address and Phone Number:	Attorney for Linda B. Grew: Matthew A. Nichols Law Office of Matthew A. Nichols 3205 Randall Parkway, Suite 104 Wilmington, NC 28403 Phone: (910) 508-7476 Email: matt@mattnicholslaw.com	Attorney for B&D Investments, LLC: Ryal W. Tayloe Ward and Smith, P.A. P.O. Box 7068 Wilmington, NC 28406-7068 Phone: (910) 794-4828 Email: rwt@wardandsmith.com
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PROJECT LOCATION AND DESCRIPTION

Address: 502 and 504 N. Channel Dr.
Parcel ID: R05720-002-006-000 and R05720-002-005-000

Describe project:

Proposed redesign of adjacent docks and pier for new shared boat docking
facility for 502 and 504 N. Channel Dr. For residential use only.

REQUESTED EXCEPTION

Applicants request an exception from the following ordinance sections:

UDO §§ 150.05(B), 150.12(A)(2), and any other applicable provisions of Town Code Chapter 150.

Describe the nature of the requested exception and the justification for same:
Please see attached Exhibit A.

Proposed Construction Date To be determined.

Estimated Completion Date To be determined.

OTHER ATTACHMENTS REQUIRED WITH APPLICATION

1. A Site Plan with sufficient detail to fully illustrate the requested exception.
2. A list of property owners within 150 feet of the boundaries of the subject parcel(s) and two (2) envelopes for each of these property owners and the proper amount of first-class U.S. postage.
3. The processing fee for an Exception Request - Pier and Dock application is \$500. A check payable to the Town of Wrightsville Beach must accompany this application.
4. An Authority for Appointment of Agent form when applicable.

SIGNATURE

This signature accompanies the application, fee and site plan, which comprise the Exception Request -- Pier and Dock Application to the Town of Wrightsville Beach.

I understand that the fee for this application is non-refundable. LBS (Initial)

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

Linda B. Grow, Family Trustee
Owner's Signature

11/29/23
Date

Linda B. Grow, Family Trustee

Matthew A. Nichols
Representative/Agent

11/30/23
Date

Matthew A. Nichols, Attorney for Linda B. Grow, Family Trustee

Date of Submission to Town

Amendments to the original application have been initialed and dated where they appear. This application supersedes the original application as signed and dated above.

Owner's Signature

Date

Representative/Agent

Date

Date of Re-Submission to Town

OTHER ATTACHMENTS REQUIRED WITH APPLICATION

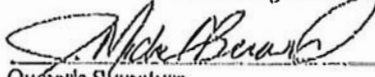
1. A Site Plan with sufficient detail to fully illustrate the requested exception.
2. A list of property owners within 150 feet of the boundaries of the subject parcel(s) and two (2) envelopes for each of these property owners and the proper amount of first-class U.S. postage.
3. The processing fee for an Exception Request -- Pier and Dock application is \$500. A check payable to the Town of Wrightsville Beach must accompany this application.
4. An Authority for Appointment of Agent form when applicable.

SIGNATURE

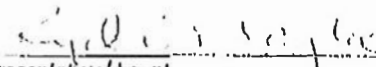
This signature accompanies the application, fee and site plan, which comprise the Exception Request -- Pier and Dock Application to the Town of Wrightsville Beach.

I understand that the fee for this application is non-refundable. _____ (Initial)

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


Owner's Signature
B&D Investments, LLC

11-29-2023
Date


Representative/Agent
Ryal W. Taylor, Attorney for B&D Investments, LLC

11-29-2023
Date

Date of Submission to Town

Amendments to the original application have been initialed and dated where they appear. This application supersedes the original application as signed and dated above.

Owner's Signature

Date

Representative/Agent

Date

Date of Re-Submission to Town

Town of Wrightsville Beach

AUTHORITY FOR APPOINTMENT OF AGENT

The undersigned owner does hereby appoint Ryal W. Taylor as his, her, or its exclusive agent for the purpose of petitioning the Town of Wrightsville Beach for approval of Exception Request -- Pier and Dock, as applicable to the property having the address of 502 N. Channel Dr. and described in the attached petition.

The owner does hereby covenant and agree with the Town of Wrightsville Beach that said agent has the authority to do the following acts for and on behalf of the owner:

- (1) To submit a proper petition and the required supplemental materials; and
- (2) To appear at public meetings to give representation and commitments on behalf of the owner; and
- (3) To accept conditions or recommendations made for the issuance of the Exception Request -- Pier and Dock on the owner's property; and
- (4) To act on the owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition.

This agency agreement shall continue in effect until final disposition of the petition submitted in conjunction with this appointment.

Date: 11-29-2023

Agent's Name, Address & Telephone:

Ryal W. Taylor

Ward and Smith, P.A.

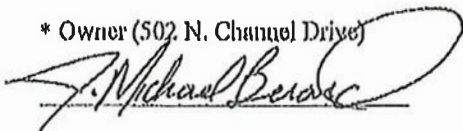
P.O. Box 7068

Wilmington, NC 28406-7068

Phone: (910) 794-4828

Email: rwt@wardandsmith.com

* Owner (502 N. Channel Drive)



B&D Investments LLC

* If the owner is an individual, the owner (or all owners if there is more than one) must sign the authorization. If a corporation, print the name of the corporation and have signed by an authorized officer. If a partnership, print the name of the partnership and have signed by an authorized partner.

Town of Wrightsville Beach

AUTHORITY FOR APPOINTMENT OF AGENT

The undersigned owner does hereby appoint Matthew A. Nichols as his, her, or its exclusive agent for the purpose of petitioning the Town of Wrightsville Beach for approval of Exception Request -- Pier and Dock, as applicable to the property having the address of 504 N. Channel Dr. and described in the attached petition.

The owner does hereby covenant and agree with the Town of Wrightsville Beach that said agent has the authority to do the following acts for and on behalf of the owner:

- (1) To submit a proper petition and the required supplemental materials; and
- (2) To appear at public meetings to give representation and commitments on behalf of the owner; and
- (3) To accept conditions or recommendations made for the issuance of the Exception Request -- Pier and Dock on the owner's property; and
- (4) To act on the owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition.

This agency agreement shall continue in effect until final disposition of the petition submitted in conjunction with this appointment.

Date: 11/29/23

* Owner (504 N. Channel Drive)

Linda B. Grew, Family Trustee

Linda B. Grew, Family Trustee

Agent's Name, Address & Telephone:

Matthew A. Nichols

Law Office of Matthew A. Nichols

3205 Randall Parkway, Suite 104

Wilmington, NC 28403

Phone: (910) 508-7476

Email: matt@matthenicholslaw.com

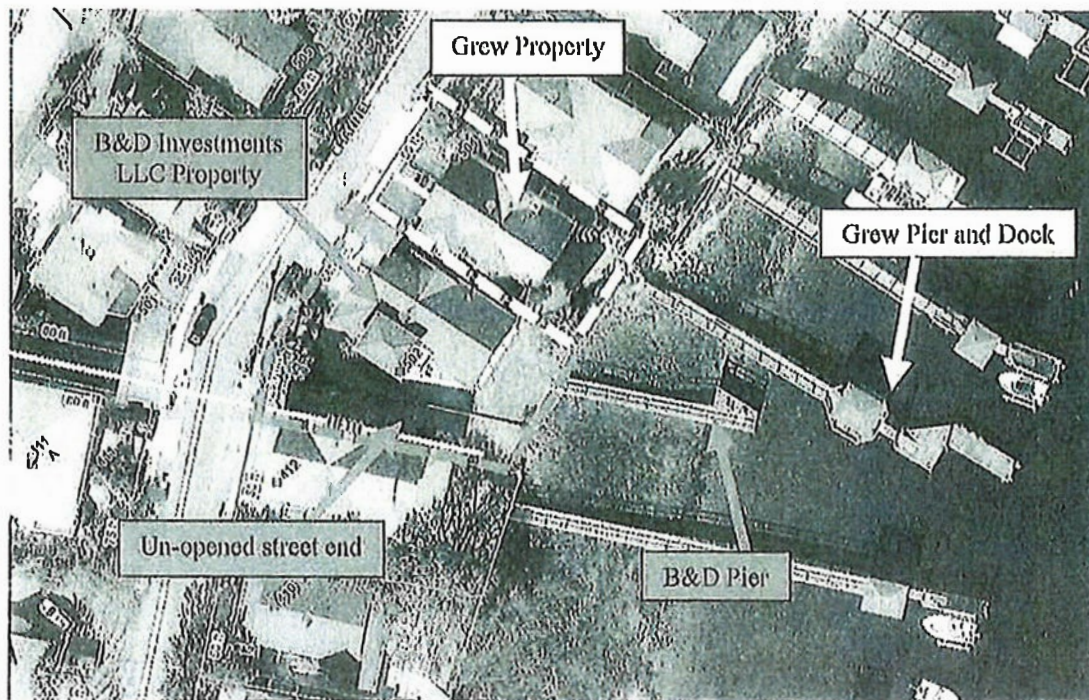
* If the owner is an individual, the owner (or all owners if there is more than one) must sign the authorization. If a corporation, print the name of the corporation and have signed by an authorized officer. If a partnership, print the name of the partnership and have signed by an authorized partner.

Exhibit A

Describe the nature of the requested exception and the justification for same:

As shown in the screenshot from New Hanover County GIS below, the Applicants own adjacent properties on N. Channel Drive. Due to the unique shape of the coastline, lot configuration, water depths, and an un-opened street end in this particular vicinity, the property located at 502 N. Channel Dr. (B&D Investments, LLC Property) does not have an adequate area within which to construct a functional boat docking facility. Accordingly, B&D currently uses a boat slip on the existing Grew pier and dock pursuant to a Joint Dock Use Agreement recorded on September 23, 2013, in Book 5771 at Page 1276, New Hanover County Registry.

Existing Conditions:

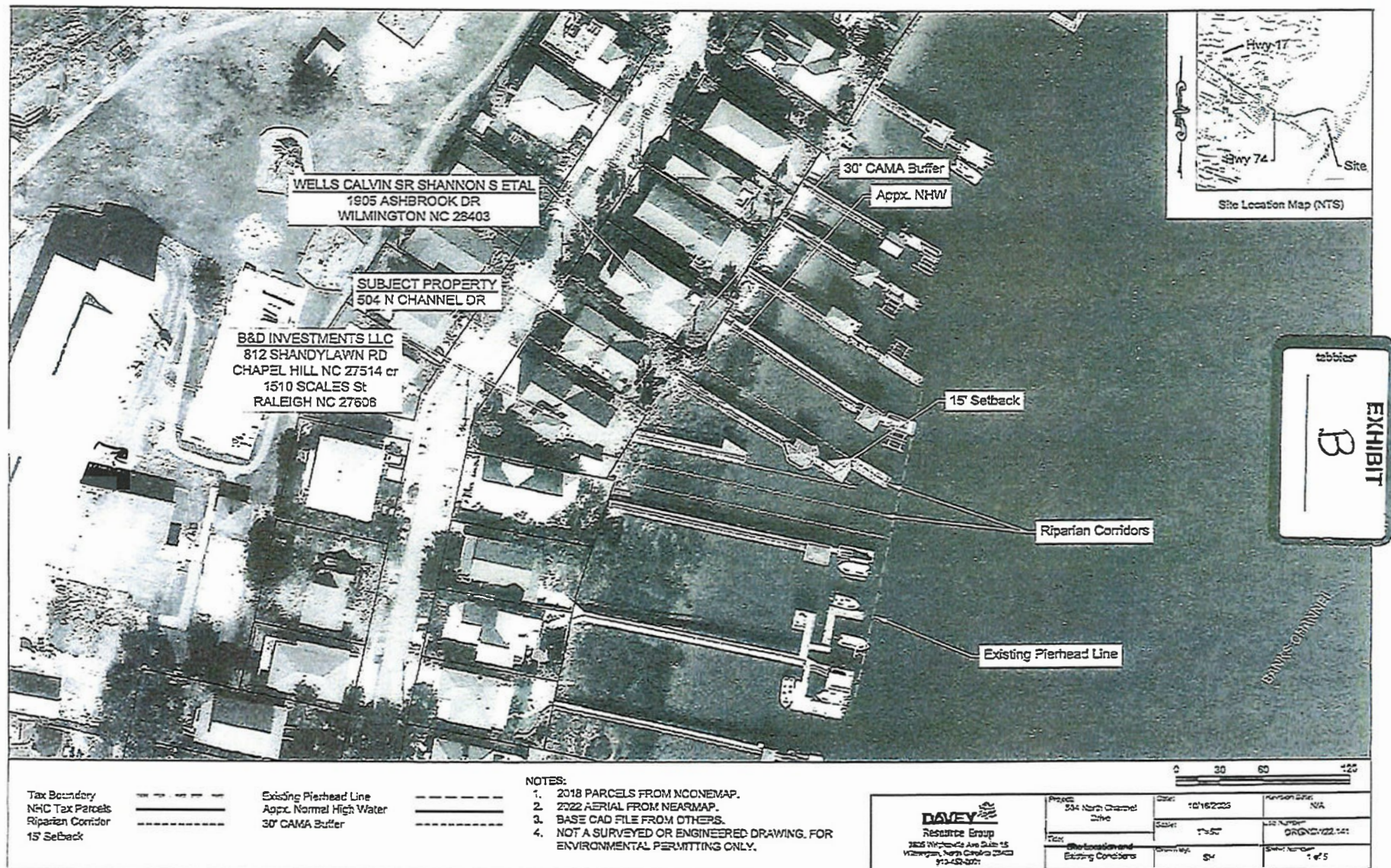


The Grew pier and dock is in need of renovation, and the parties would like to improve and create a more efficiently designed shared dock facility, consistent with current NCDEQ-DCM (CAMA) rules and regulations. The Applicants have worked together with Davey Resource Group to create a new pier and shared dock design, which is shown on Exhibit B (plan sheets) attached hereto.

In order to construct this proposed redesigned shared dock facility, the Applicants would need an exception to UDO sections §§150.05(B) and 150.12(A)(2) due to the location of the Town's riparian area adjacent to the un-opened street end in this vicinity, adjacent to 502 N. Channel Dr. This un-opened street end appears to have never been opened or used as a public

street. The pier and dock plans illustrate where the proposed pier improvements encroach slightly into the Town's 15' riparian setback of the un-opened street end. Depending upon the size of the vessel, docking a boat within proposed B&D boat slip no. 2 could overlap into the riparian area of the closed street end; however, it is anticipated that this encroachment would be minor and the boat slip would likely not be used on a regular and permanent basis, and rather would generally function as a temporary docking area for guests or day-dockage as an alternative to use of the boat lift in proposed B&D slip no. 1.

Accordingly, based upon the foregoing and the proposed shared dock design, the Applicants are respectfully requesting an exception to UIDO §§ 150.05(B), 150.12(A)(2) and any other applicable provisions of Chapter 150 of the Town Ordinances in order to accommodate the proposed pier and joint dock design. No negative impacts are anticipated from this proposed exception. Further, the proposed pier and joint docking facility does not pose any potential public safety, navigability or water access concerns, and the proposed facility is subject to and must meet all NCDEQ-DCM (CAMA) review and permitting procedures and requirements.





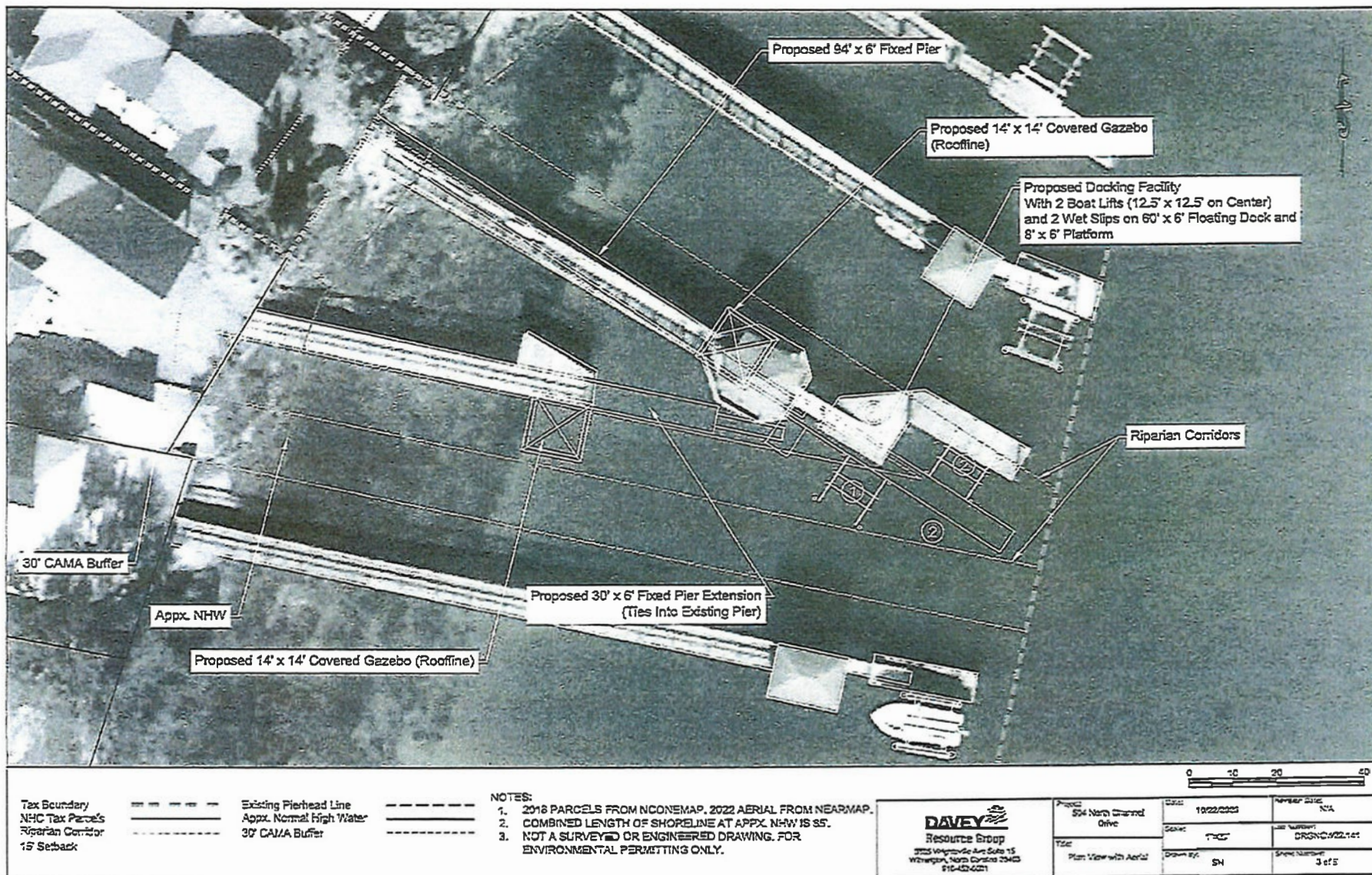
Tax Boundary	---	Existing Pierhead Line	---
NHC Tax Parcels	---	Appx. Normal High Water	---
Riparian Corridor	---	30' CAMA Buffer	---
15' Setback	---		

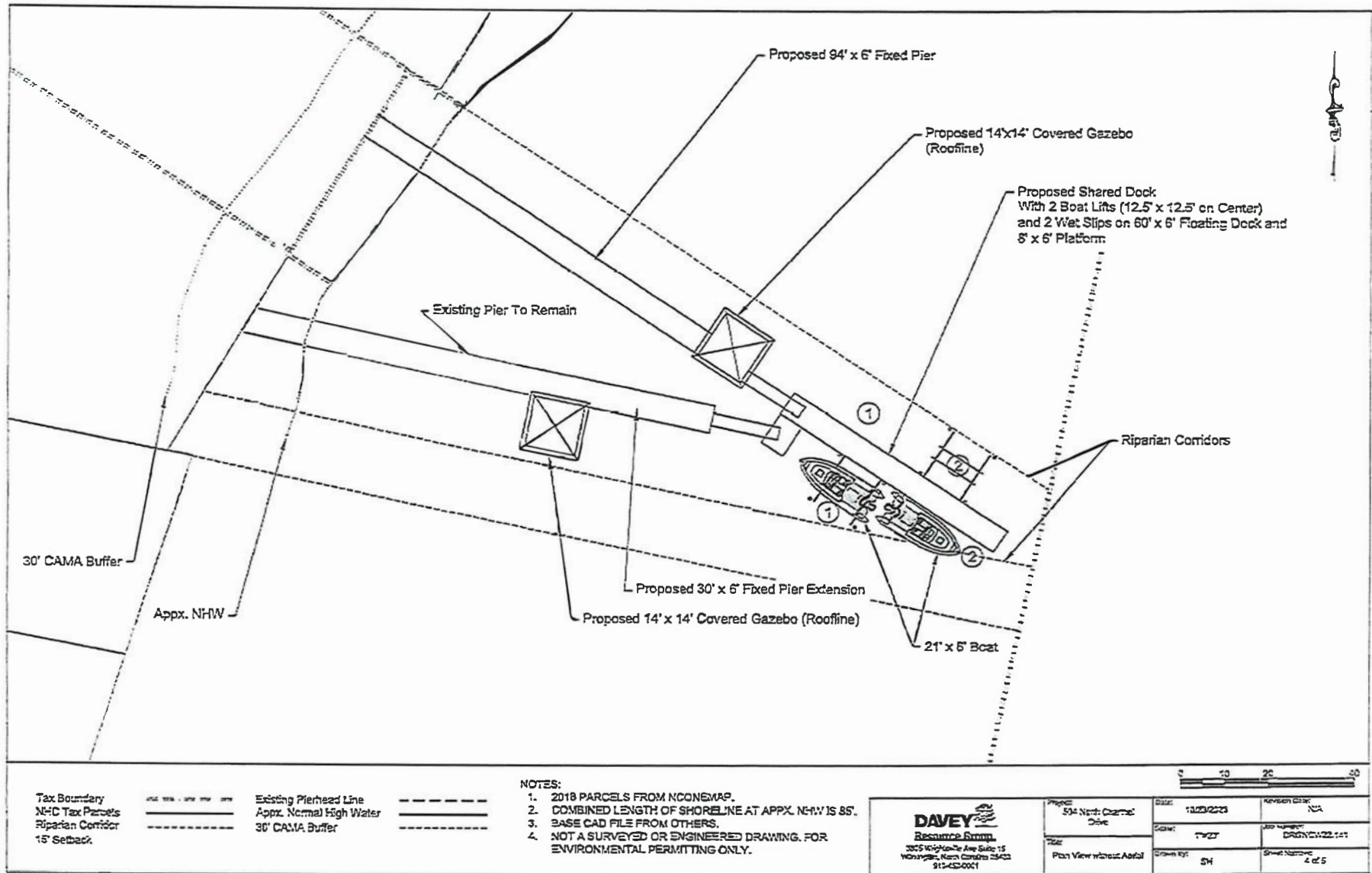
- NOTES:
1. 2018 PARCELS FROM NCONEAP.
 2. BASE CAD FILE FROM OTHERS.
 3. NOT A SURVEYED OR ENGINEERED DRAWING. FOR ENVIRONMENTAL PERMITTING ONLY.

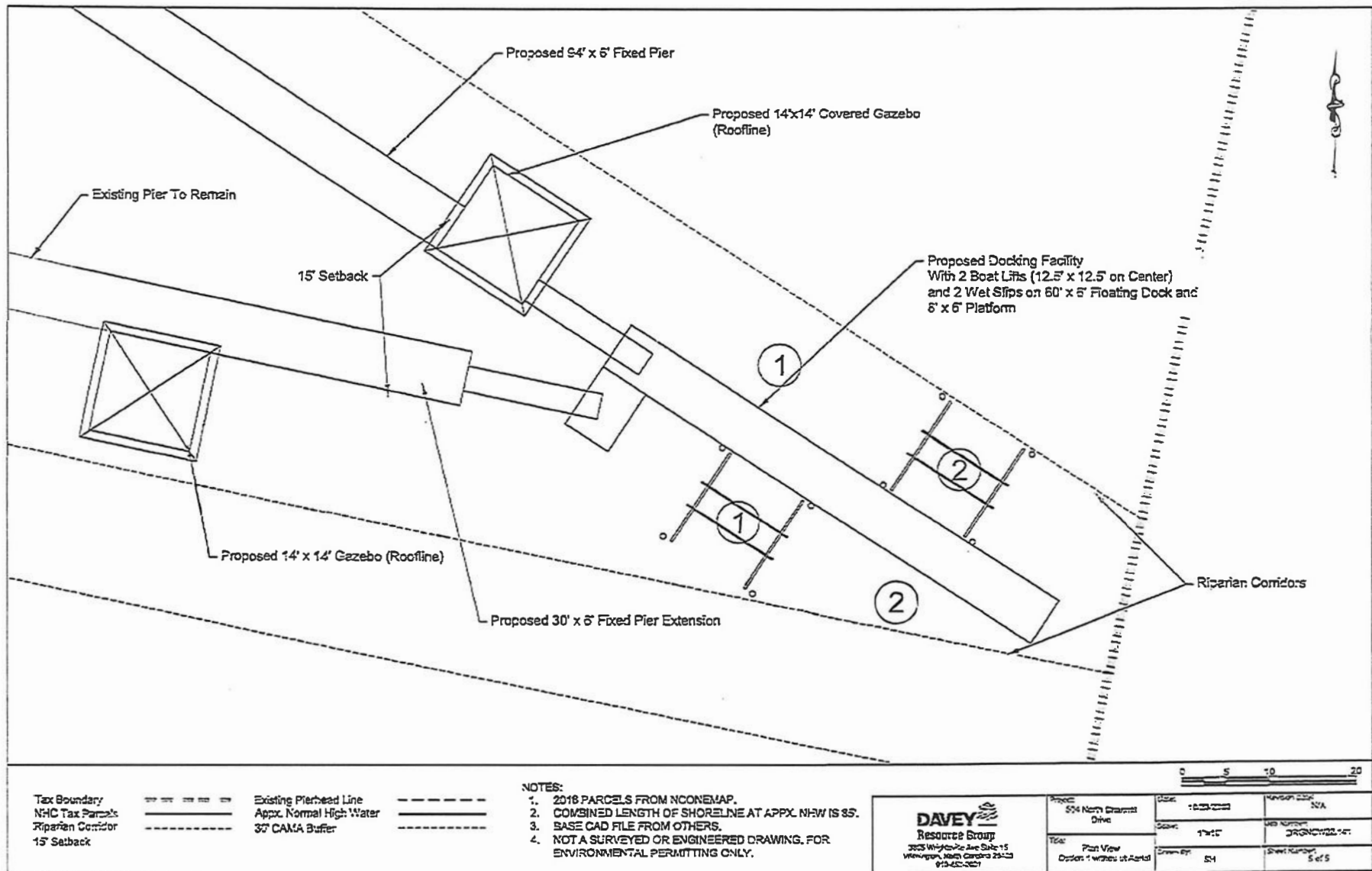
DAVEY
Resource Group
3805 Independence Ave Suite 15
Wilmington, North Carolina 28403
910-352-0001

Project: 504 North Channel Drive	Date: 10/22/2022	Revision Code: N/A
File: Existing View Detail	Scale: 1"=30'	Map Path: C:\PROJECTS\504\1022\141
	Drawn By: SH	Sheet Name: 2 of 5

202409010001 CAMA FILED 10/22/2022 141 - 504 N. CHANNEL DR, LOTS 6 & 7 W/ 504 N. CHANNEL DR

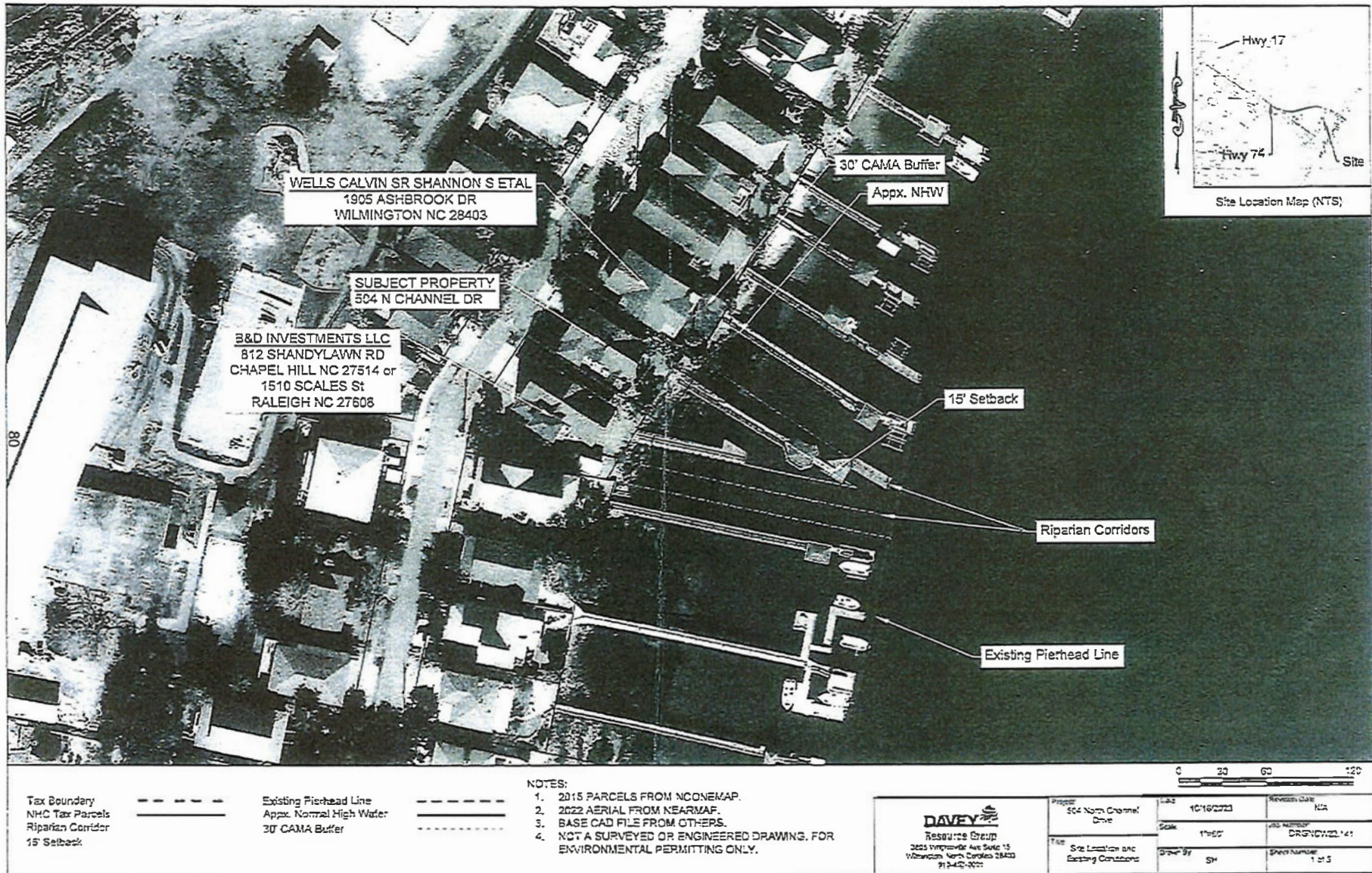


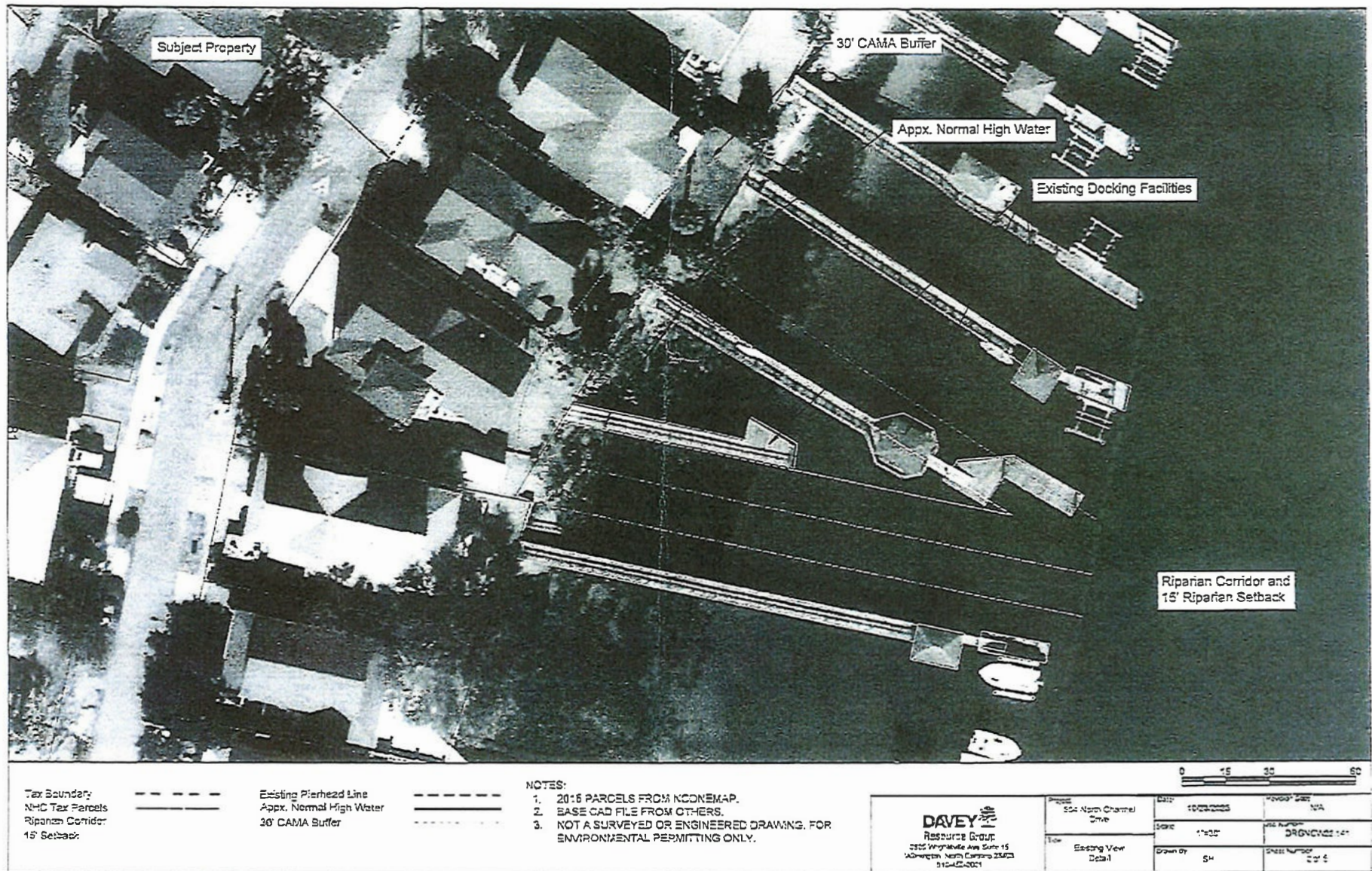


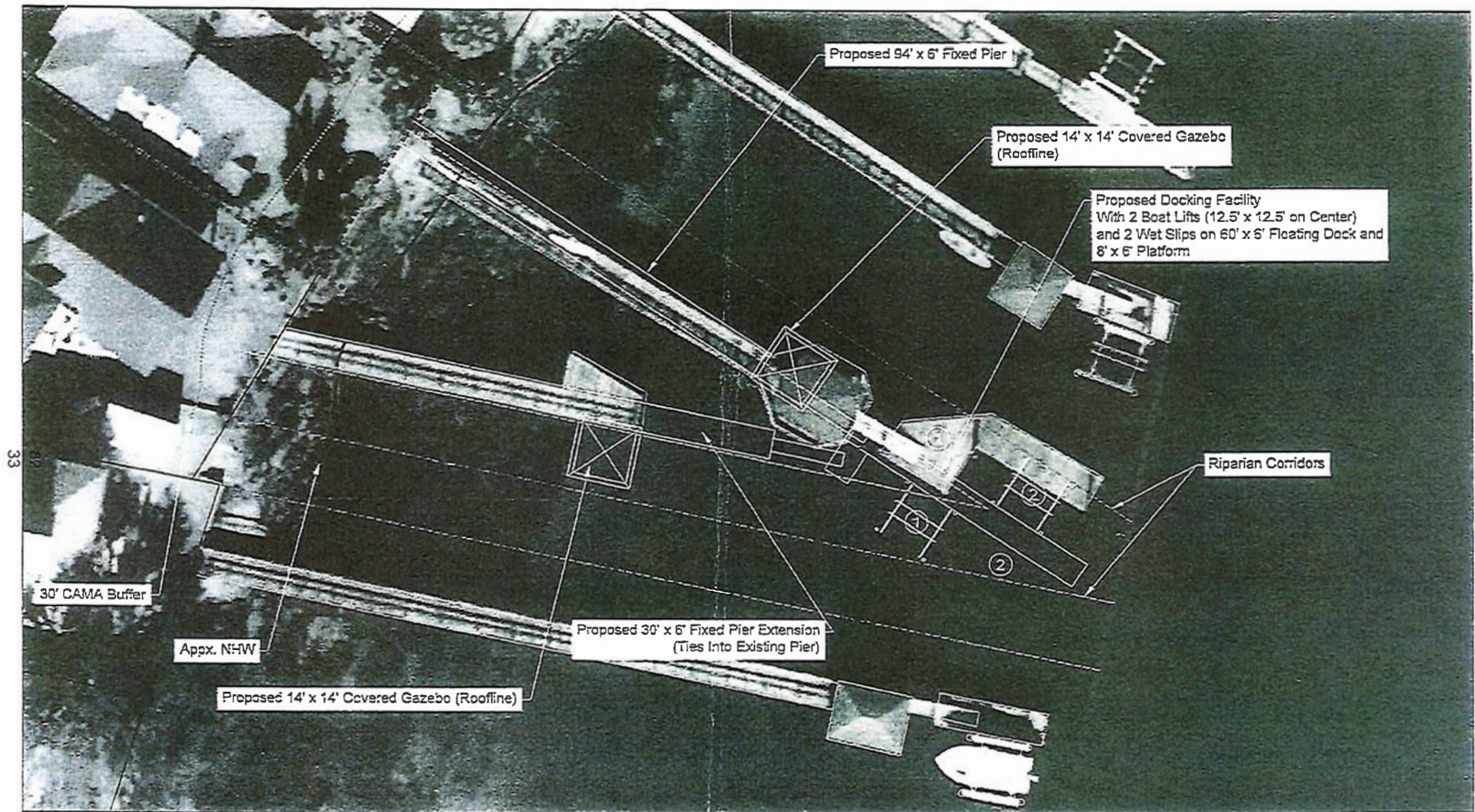


Property Owners within 150 feet

Owner	Mailing Address		Property Address	PARID
AMELIA HUTCHINS	511 CHANNEL DR	WRIGHTSVILLE BEACH NC 28480	511 CHANNEL DR N	R05720-003-006-000
ANDREW S BRYAN	6501 WAKEFALLS DR	WAKE FOREST NC 27587	501 CHANNEL DR N	R05720-003-002-000
NICOLA HILDEBRAND	411 N CHANNEL DR UNIT A	WRIGHTSVILLE BEACH NC 28480	411 CHANNEL DR	R05720-004-005-001
KENT ANDERSON KAY ANDERSON	1919 LONDON LN	WILMINGTON NC 28405	510 CHANNEL DR N	R05720-002-002-000
JLM HOLDINGS LLC	1622 COUNTRY CLUB RD	WILMINGTON NC 28403	508 CHANNEL DR N	R05720-002-003-000
JOHN M BATES CAROLA BATES	505 N CHANNEL DR	WRIGHTSVILLE BEACH NC 28480	505 CHANNEL DR N	R05720-003-004-000
LINDA B GREW TRUSTEE ETAL	2740 SAINT MARYS ST	RALEIGH NC 27609	504 CHANNEL DR N	R05720-002-005-000
CALVIN WELLS SR SHANNON S WELLS ETAL	1905 ASHBROOK DR	WILMINGTON NC 28403	506 CHANNEL DR N	R05720-002-004-000
NAVASSA GUANO LLC	1204 QUEENS RD	CHARLOTTE NC 28207	412 CHANNEL DR N	R05720-005-001-000
CALVIN F WELLS JR ELIZABETH W WELLS	1712 COUNTRY CLUB RD	WILMINGTON NC 28403	507 CHANNEL DR N	R05720-003-005-000
DAVID H HINDS ANNE C HINDS	7308 DENLY CT	WILMINGTON NC 28411	503 CHANNEL DR N	R05720-003-003-000
JOHN ANDERSON OVERTON	6311 TOWLES RD	WILMINGTON NC 28409	407 CHANNEL DR N	R05720-004-004-000
411 NORTH CHANNEL DRIVE COA	PO BOX 661	WRIGHTSVILLE BEACH NC 28480	411 CHANNEL DR N	R05720-004-005-000
ELIZABETH W SKEMP	408 N CHANNEL DR	WRIGHTSVILLE BEACH NC 28480	408 CHANNEL DR N	R05720-005-003-000
STEPHEN C VANETTEN TRACIE M VANETTEN	410 N CHANNEL DR	WRIGHTSVILLE BEACH NC 28480	410 CHANNEL DR N	R05720-005-002-000
PAMELA S RIGSBY HOWARD RIGSBY	10200 OLD CREEDMOOR RD	RALEIGH NC 27613	411 CHANNEL DR N	R05720-004-005-002
B & D INVESTMENTS LLC	812 SHADYLAWN RD	CHAPEL HILL NC 27514	502 CHANNEL DR N	R05720-002-006-000
ROBERT A STOKLEY ANNE N STOKLEY	512 N CHANNEL DR	WRIGHTSVILLE BEACH NC 28480	512 CHANNEL DR N	R05720-002-001-000
ROBERT L PULLEN SHARON L PULLEN	2000 OLD CRAWFORD RD	WAKE FOREST NC 27587	406 CHANNEL DR N	R05720-005-003-001
NEW HAN CNTY BD OF EDUCATION	6410 CAROLINA BEACH RD	WILMINGTON NC 28412	220 CORAL DR	R05720-003-001-000
JOHN P WOFFORD ELLEN M WOFFORD	405 N CHANNEL DR	WRIGHTSVILLE BEACH NC 28480	405 CHANNEL DR N	R05720-004-003-000
JENNIFER C FAYED MICHAEL E FAYED	6016 DEAS DR	BELMONT NC 28012	513 CHANNEL DR N	R05720-003-007-000







33

Tax Boundary
 NHC Tax Parcels
 Riparian Corridor
 15' Setback

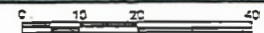
--- Existing Pierhead Line
 --- Appx. Normal High Water
 --- 30' CAMA Buffer

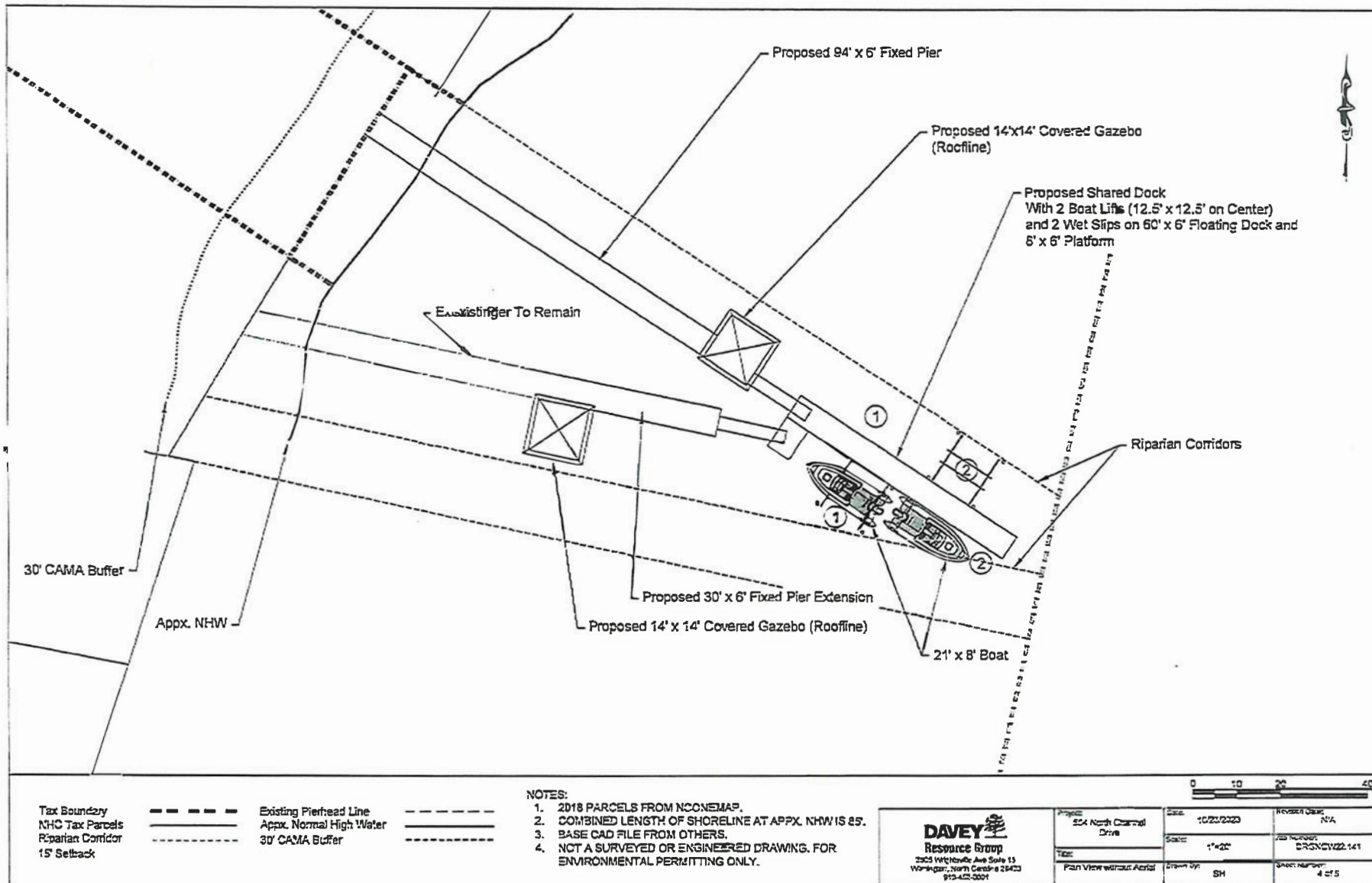
NOTES:

1. 2018 PARCELS FROM NCONEMAP, 2022 AERIAL FROM NEARMAP.
2. COMBINED LENGTH OF SHORELINE AT APPX. N.H.W. IS 25'.
3. NOT A SURVEYED OR ENGINEERED DRAWING. FOR ENVIRONMENTAL PERMITTING ONLY.

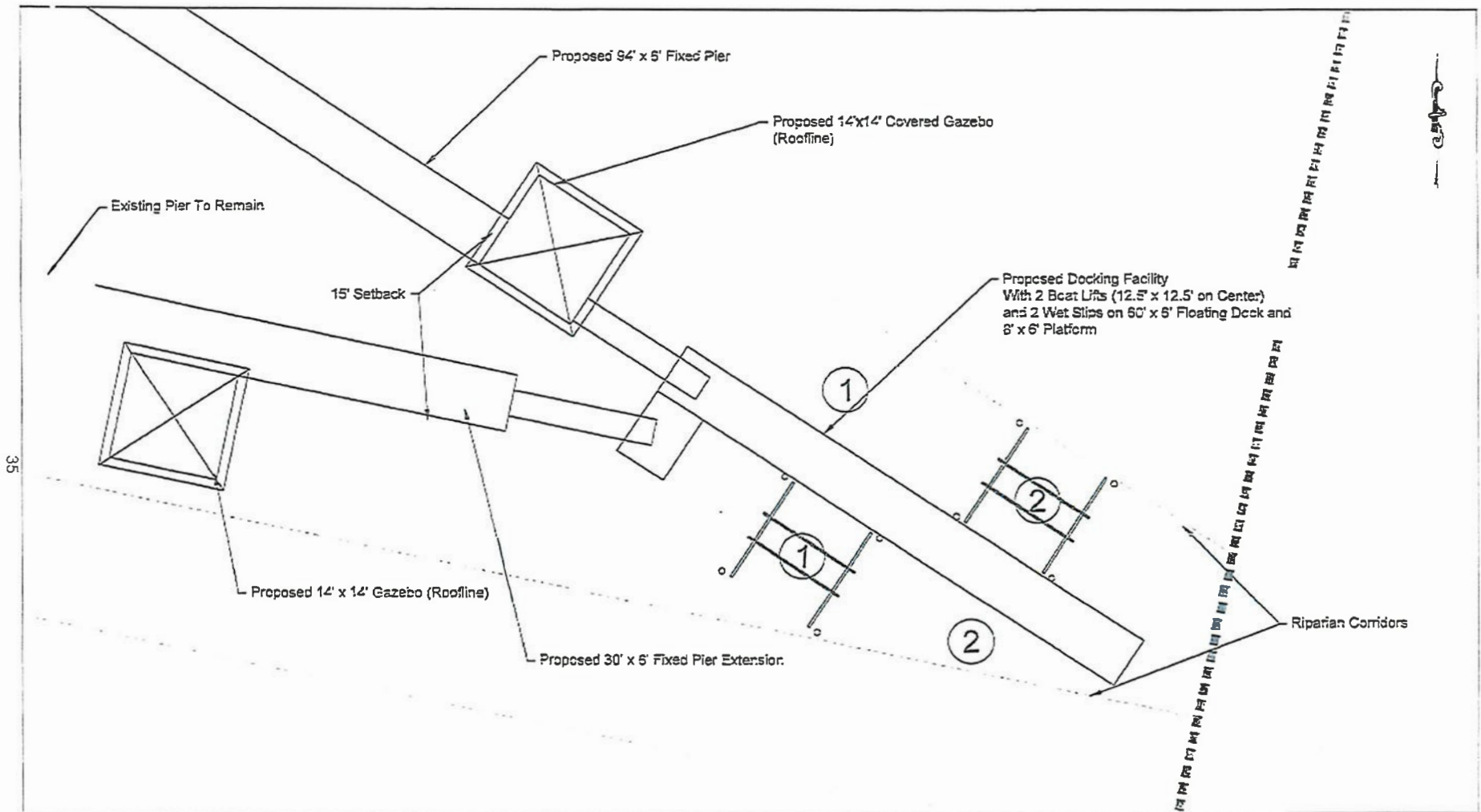
DAVEY
 Resource Group
 2205 Waverly Ave Suite 15
 Wilmington, North Carolina 28402
 910-432-0001

Project	504 North Channel Drive	Date	10/20/2023	Revised	N/A
Scale	1"=20'	Drawn By	SM	Sheet Number	3 of 5
Title	Plan View with Aerial	Drawn By	SM	Sheet Number	3 of 5





\\davey\2022 CAMA FILES\DRG00122-141 - 254 N. Channel Dr. L141 & 254 N. Channel Dr. L142.dwg



Tax Boundary
NHC Tax Parcels
Riparian Corridor
15' Setback

Existing Pierhead Line
Approx. Normal High Water
30' CAMA Buffer

NOTES:

1. 2018 PARCELS FROM NCONEMAF.
2. COMBINED LENGTH OF SHORELINE AT APPX. NHW IS 85'.
3. BASE CAD FILE FROM OTHERS.
4. NOT A SURVEYED OR ENGINEERED DRAWING. FOR ENVIRONMENTAL PERMITTING ONLY.

DAVEY
Resource Group
3805 Whittaker Ave Suite 15
Wilmington North Carolina 28403
919-442-2000

Project	504 North Channel Drive	Date	11/23/2023	Project No.	NCA
File	Plan View Option 1 without Aerial	Scale	"=1"	Job Number	DRONOVIS 141
Drawn By	SH	Sheet Number	5 of 5		

**N.C. DIVISION OF COASTAL MANAGEMENT
ADJACENT RIPARIAN PROPERTY OWNER NOTIFICATION/WAIVER FORM
CERTIFIED MAIL · RETURN RECEIPT REQUESTED or HAND DELIVERY**

(Top portion to be completed by owner or their agent)

Name of Property Owner: Calvin F Wells
Address of Property: 526 N. Channel Dr
Mailing Address of Owner: 1925 Ashbrook Dr
Owner's email: CalvinFwells@gmail.com Owner's Phone#: 910-612-1064
Agent's Name: _____ Agent Phone#: _____
Agent's Email: _____

**ADJACENT RIPARIAN PROPERTY OWNER'S CERTIFICATION
(Bottom portion to be completed by the Adjacent Property Owner)**

I hereby certify that I own property adjacent to the above referenced property. The individual applying for this permit has described to me, as shown on the attached drawing, the development they are proposing. A description or drawing, with dimensions, must be provided with this letter.

X I DO NOT have objections to this proposal. _____ I DO have objections to this proposal.

If you have objections to what is being proposed, you must notify the N.C. Division of Coastal Management (DCM) in writing within 10 days of receipt of this notice. Correspondence should be mailed to 943 Washington Square Mall, Washington, NC 27889. DCM representatives can also be contacted at (252) 946-6481. No response is considered the same as no objection if you have been notified by Certified Mail.

WAIVER SECTION

I understand that any proposed pier, dock, mooring pilings, boat ramp, breakwater, boathouse, lift, or groin must be set back a minimum distance of 15' from my area of riparian access unless waived by me (this does not apply to bulkheads or riprap revetments). (If you wish to waive the setback, you **must sign** the appropriate blank below.)

I DO wish to waive some/all of the 15' setback

[Signature]
Signature of Adjacent Riparian Property Owner

-OR-

I do not wish to waive the 15' setback requirement (initial the blank) _____

Signature of Adjacent Riparian Property Owner: _____

Typed/Printed name of ARPO: Calvin F Wells

Mailing Address of ARPO: 1925 Ashbrook Dr. Wilmington NC 28403
CalvinFwells@gmail.com

ARPO's email: _____ ARPO's Phone#: 910-612-1064

Date: 11/25/24 *waiver is valid for up to one year from ARPO's Signature*



Property Boundary
NHC Tax Parcels
Riparian Corridor
15' Setback



Existing Pierhead Line
MHW High Water
30' CAMA Buffer



NOTES:

1. 2018 PARCELS FROM NCONEMAP.
2. 2022 AERIAL FROM NEARMAP.
3. BASE CAD FILE FROM OTHERS.
4. NOT A SURVEYED OR ENGINEERED DRAWING. FOR ENVIRONMENTAL PERMITTING ONLY.

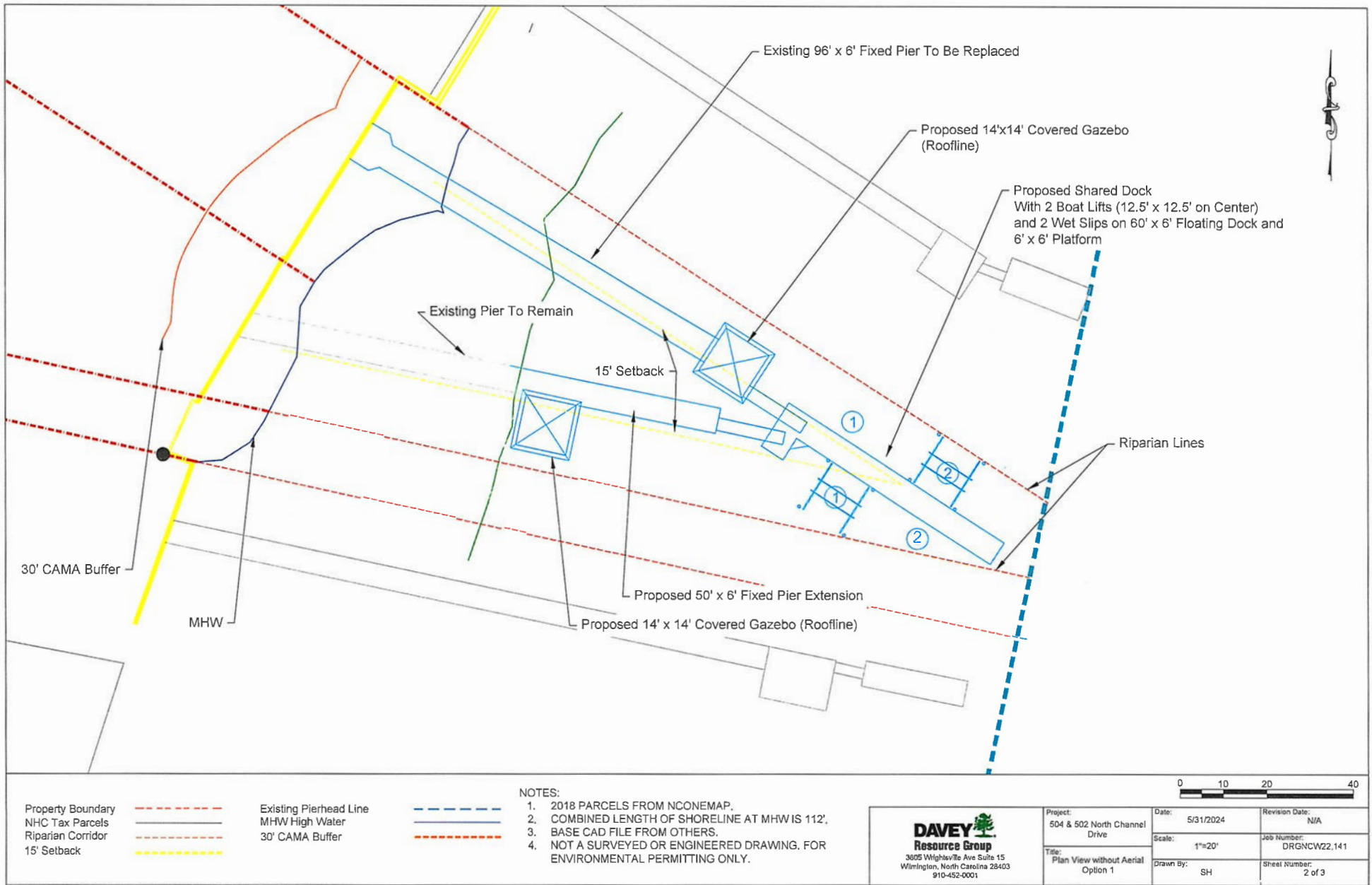
DAVEY
Resource Group
3605 Wrightsville Ave Suite 15
Wilmington, North Carolina 28403
910-452-0001

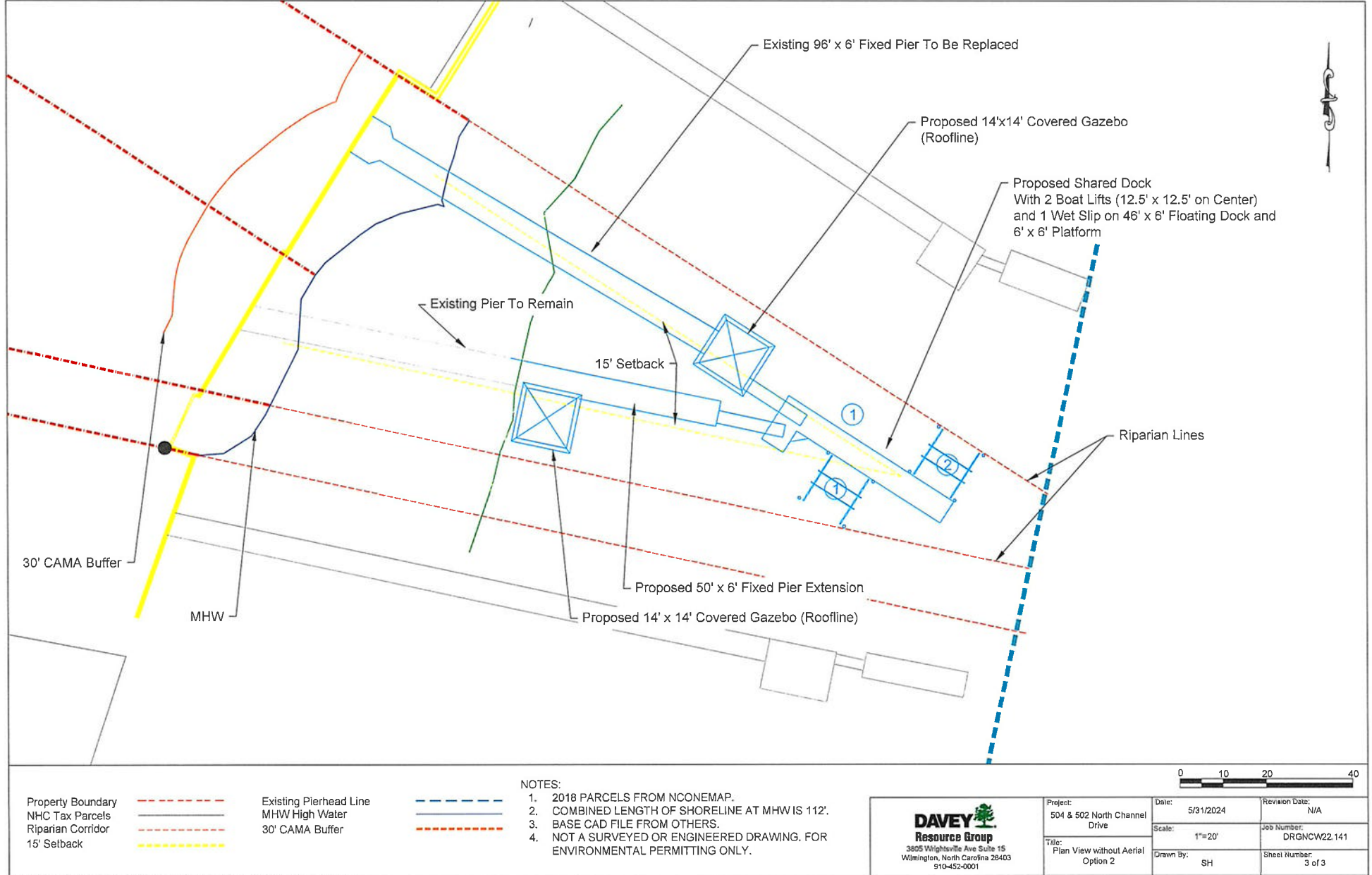
Project:
504 & 502 North Channel
Drive
Title:
Site Location and
Existing Conditions

Date:
5/31/2024
Scale:
1"=60'
Drawn By:
SH

Revision Date:
N/A
Job Number:
DRGNCW22.141
Sheet Number:
1 of 3

L:\CAMA\2022 CAMA FILES\DRGNCW22.141 -- 504 N Channel Dr, Linda B Grew\504 N Channel Dr.dwg





August 6, 2004, Approved Encroachment Agreement

STATE OF NORTH CAROLINA

ENCROACHMENT AGREEMENT

COUNTY OF NEW HANOVER

THIS AGREEMENT made this 6th day of August, 2004 by and between TOWN OF WRIGHTSVILLE BEACH, a North Carolina municipal corporation, having an address of 321 Causeway Drive, Wrightsville Beach, North Carolina 28480 (hereinafter called "Grantor" or "Town") and B&D INVESTMENTS, LLC, a North Carolina limited liability company having an address of _____ (hereinafter called "Grantee").

W I T N E S S E T H:

WHEREAS, the Grantee desires to encroach on the Town's riparian corridor extending in an eastward direction between the north and south lines of Fifth Avenue extended into the waters of Banks Channel, as more particularly shown on that map entitled "Survey Exclusively for B & D Investment Developed by Double Dimension, LLC" prepared by Arnold W. Carson, PLS PC, a copy of which marked Exhibit "A" is attached hereto and incorporated herein by reference; and

WHEREAS, it is to the material advantage of the Grantee to effect this encroachment and Grantee has represented that such use will not substantially impair or hinder the Town's use of its property; and

WHEREAS, the Town in the exercise of the authority conferred upon it by law, is willing to permit the encroachment subject to the conditions stated in this Agreement.

NOW, THEREFORE, IT IS AGREED that the Grantor hereby grants to the Grantee the right and privilege to make this encroachment pursuant to N.C. General Statute 160A-273 and the Code of Ordinances of the Town of Wrightsville Beach, North Carolina, subject to the following:

1. The permitted encroachment shall be as follows:
 - A. The proposed pier to encroach within the riparian corridor shall be constructed as shown on Exhibit "A" attached.
 - B. All parts of the pier encroaching into the Town's riparian corridor shall be made removable in the event the Town requires relocation or removal of the encroachment.
 - C. The docking system shall be a single floating dock parallel to the riparian corridor.
 - D. The proposed gazebo as shown on Exhibit "A" attached shall have no roof and shall not be

enclosed in any fashion whatsoever.

2. The design, construction, installation, operation, maintenance and use of the above-described facility shall be accomplished in accordance with plans and specifications reviewed by the Town Manager or her designee.

3. The Grantee shall design, construct, install and use the encroaching facilities in a safe and proper manner and shall maintain the facilities in a safe and proper condition at all times so that the facilities will not interfere with or endanger the use of the property or surrounding area by the Town or general public. Nor will the Grantee obstruct or interfere with proper maintenance or use of the Town's property and facilities. If at any time the Town shall require the repair, removal, alteration or change in the location and/or design of the encroachment or of its own property and facilities, the Grantee shall at the Town's option promptly repair, alter, remove and/or replace the encroachment without any cost to the Town, or reimburse the Town in full for all costs incurred for the repair, alteration, removal and/or replacement of said encroachment.

5. To the fullest extent permitted by law, Grantee shall release, indemnify, keep and save harmless the Town, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the Town or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the design, construction, installation, maintenance or use by Grantee (or by any person acting for the Grantee or for whom the Grantee is or is alleged to be in any way responsible) whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of the Grantee, its agents, officials and employees or otherwise. The provisions of this section shall include any claims for equitable relief or for damages (compensatory or punitive) against the Town, its agents, officials and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the Town, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the Town, its agents, officials or employees. The Grantee expressly understands and agrees that any performance bond or insurance protection required by the Grantee or the Town shall in no way limit the Grantee's responsibility to release, indemnify, keep and save harmless and defend the Town as herein provided. The intention of the parties is to apply and

construe broadly in favor of the Town the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. §22B-1.

6. Grantee shall take out and maintain during the life of this Agreement comprehensive general liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, and/or property damage for any one occurrence. The insurance must be written on an occurrence basis and must provide for protection against liability arising from the encroachment by Grantee or his contractors upon the public right-of-way. Grantee shall also purchase and maintain contractual liability insurance for protection against liability assumed under the indemnity provisions of this Agreement in an amount not less than that specified above for comprehensive general liability insurance. The Grantee shall furnish the schedule of insurance carried under this Agreement in the form of a document attested by the insurance carrier or his agent stating and itemizing the several coverages as provided above. The Grantee shall have the appropriate insurance carriers attach a copy of the contractual liability endorsements required evidencing the fact that they are providing this coverage. The insurance carrier shall also certify on these documents that it will notify the Town by registered mail at least ten (10) days prior to any cancellation or non-renewal of these coverages. The Town reserves the right to inspect any policy and to approve its form, including all exclusions and endorsements.

7. The Grantee agrees to restore all areas disturbed by the construction, installation, operation, maintenance and use of this encroachment to a condition satisfactory to the Town Manager or her designee. When any such activity disturbs the ground surface or the existing groundcover (improved or unimproved), the Grantee agrees to remove, repair, restore and/or replace the ground surface and cover to a condition satisfactory to the Town Manager or her designee.

8. The Grantee agrees to obtain all the necessary permits, pay any associated permit fees, and assume the actual cost of any inspection of the work required by local, state or federal law, rule or regulation or considered to be necessary by the Town Manager or her designee.

9. The Grantee agrees to have available at the construction site at all times during construction, copies of all required permits and a copy of this Agreement evidencing approval by the Town.

10. In the case of noncompliance with any term of this Agreement by the Grantee, the Town reserves the right to stop all work until the facility has either been brought into compliance or been removed from the Town's utility easement, right-of-way, street or other property and to recover from Grantee all the Town's associated costs and expenses.

11. This Agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of formal authorization by the Town unless the time is extended by the Town.

12. This Agreement shall remain subject to outstanding franchise agreements and the Town Charter provisions related to the granting of franchises. Nothing herein shall be construed to grant any exclusive or perpetual right or property interest to Grantee in or to any area or property which either belongs to the Town or is dedicated to public use.

13. At the termination of this Encroachment Agreement for whatever cause, Grantee shall remove all personal property and/or improvements placed in the public right-of-way, shall restore the Town's property to its original condition (ordinary wear and tear excepted), and shall pay all costs related to such removal and restoration so that the Town's property and the areas dedicated to public use will be returned to the exclusive use of the Town and the public after removal of the encroachment.

14. This Agreement may not be assigned or transferred without the express written approval of the Town. Any obligations of the Grantee under this Agreement shall be binding upon Grantee's heirs, successors, agents, officials, employees, independent contractors and subcontractors and upon any permitted assignees. The Town consents to an assignment of this Agreement by the Grantee to a subsequent purchaser. Grantee shall notify the Town of the name and address of such subsequent purchaser.

15. Grantee will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; soil erosion and sedimentation control; public and private nuisances; health or safety; and zoning, subdivision or other land use regulations. Grantee will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all orders and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes and ordinances or any permits or conditions issued thereunder.

16. Grantee, for purposes of this Agreement, is an independent contractor and not an agent of the Town. As such the Grantee shall not be entitled to any Town employment benefits (including vacation, sick leave, insurance, workmen's compensation or pension and retirement benefits), and the Town shall not assume

vicarious liability for Grantee's acts or omissions.

17. No paid employee of the Town shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of work for Grantee.

18. The Town's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

19. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

20. This Agreement constitutes the entire understanding of the parties.

21. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of this Agreement.

22. This Agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the Town's actual cost and neither party intends to waive the Town's sovereign immunity by reason of this Agreement.

23. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

24. This Agreement shall not be modified or otherwise amended except in writing signed by the parties.

25. The designations Grantee, Grantor and Town as used herein shall include singular, plural, masculine, feminine or neuter as required by context.

IN WITNESS WHEREOF, each of the parties to this Agreement has caused the same to be executed the day and year first above written.

SIGNATURES ON THE FOLLOWING PAGE



(SEAL)

GRANTOR:

TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA

By:

Query Roberts, Jr.
Mayor

ATTEST:

Sylvia J. Holloman
Town Clerk

APPROVED AS TO FORM:

Spencer C. Winsell, Jr.
Town Attorney

GRANTEE:

B&D INVESTMENTS, LLC

By:

[Signature] (SEAL)

NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Carol H. Waldman, a Notary
Public, do hereby certify that
Sylvia J. Holloman personally came before me
this day and acknowledged that she is Town Clerk of the Town of
Wrightsville Beach, North Carolina, and that by authority duly given

and as an act of the municipal corporation the foregoing instrument was signed in its name by Avery Roberts, Jr., its Mayor, sealed with its corporate seal, and attested by her self as its Town Clerk.

WITNESS my hand and notarial seal this 16th day of ~~June~~ ^{August}, 2004.

Carol H. Waldman
Notary Public

My Commission Expires:

July 1, 2006
(SEAL)

STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, W. DANIEL MARTIN III, a Notary Public, do hereby certify that LOUIS DWORSKY, authorized representative of B&D INVESTMENTS, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing Encroachment Agreement on behalf of B&D INVESTMENTS, LLC for the purposes therein set forth.

~~August~~ ^{June} WITNESS my hand and notarial seal this the 6th day of ~~June~~, 2004.

[Signature]
Notary Public

My Commission Expires:

April 3, 2009
(SEAL)

JCH\wrhcl\dworsky



April 27, 2006, Pier and Dock
Exception Denied

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

TOWN OF WRIGHTSVILLE BEACH
BEFORE THE BOARD OF ALDERMEN

In Re: Request by B&D)
Investments, LLC for Waivers)
From the Provisions of)
Chapter 150 of the Town Code)
to Construct a Pier Adjacent)
to 502 North Channel Drive,)
Wrightsville Beach, North)
Carolina,)
_____)

ORDER AFFIRMING DEVELOPMENT
CODE ADMINISTRATOR'S DECISION

THIS MATTER came on for hearing before the Town of Wrightsville Beach Board of Alderman ("Board") at its regular meeting held on April 27, 2006 to consider a request from B&D Investments, LLC ("B&D") the owner of property designated as Lots 66 and 67, Development Number 2, Shore Acres, as shown on that map recorded in Map Book 3 at Page 1, New Hanover County Registry and having an address of 502 North Channel Drive (the "Property") for waivers from certain provisions of Chapter 150 of the Wrightsville Beach Code of Ordinances and from the applicable provisions of the Coastal Area Management Act. Mayor Robert O'Quinn was excused from any consideration of this issue by the Board and Mayor Pro Tem Miastkowski chaired the proceedings following the Mayor's departure. The Petitioner B&D applied to the Board pursuant to the provisions of Sec. 150.21 for exceptions from the provisions of Town Ordinances §150.12(1), §150.12(2), §150.12(4) and §150.05(c). In addition, B&D requested that the Town waive its set-back rights under 15A NCAC §§ 7H.0208(b)(6)(I). The Board having heard and considered the testimony of the witnesses, having reviewed and considered the evidence presented and after consideration of the arguments of B&D, who appeared through its attorney, Michael Green, makes the following

Findings of Fact and Conclusions and enters the following Order regarding this proceeding:

FINDINGS OF FACT

1. The construction of piers and docks within the Town of Wrightsville Beach is regulated under the provisions of Chapter 150 of the Code of the Town of Wrightsville Beach, North Carolina (the "Town Code").

2. Sec. 150.12 includes in part the following requirements which a property owner must meet in constructing a pier or dock:

§ 150.12 GENERAL PIER AND DOCK CONSTRUCTION REQUIREMENTS.

(A) All construction, repair, or modification of any pier or dock shall be governed by the following regulations. No pier, dock, or other structure shall be constructed which:

(1) Is not within the applicant's property lines projected. An exception may be made in unusual cases where notarized written approval by adjacent property owners allows the construction or where joint ownership of a facility to be constructed exists.

(2) Is closer to the owner's property lines extended than 15 feet, except as provided above. All pilings or dolphins, single or multiple, used in any way for mooring, shall conform to this setback requirement.

(4) Is within 15 feet of any other pier other than one which is a part of the same mooring system.

3. Additionally, Sec. 150.05(C) restricts the mooring of boats or vessels beyond any street ends and the pierhead-line within the Town. That Section provides specifically as follows:

§ 150.05 MOORING OF BOATS AND CONSTRUCTION OF PIERS.

(C) It shall be unlawful for any person, firm, or corporation to set pilings for the mooring of boats or vessels of any kind or to moor boats or vessels of any kind, either permanently or temporarily, at or beyond any street ends or street rights-of-way between the shore and the pier-head line within the town.

4. The rules and regulations promulgated under the provisions of the Coastal Area Management Act require piers and docks to be constructed at least 15 feet from the riparian corridor of the adjacent property owner. 15A NCAC §§ 7H.0208(b)(6)(L) allows the Town to waive this setback requirement if it chooses to do so.

5. Sec. 150.21 of the Town Code permits the Board of Aldermen to waive certain of the requirements found in Chapter 150 of the Town Code. This section provides in part as follows:

§ 150.21 EXCEPTIONS AUTHORIZED.

The Board of Aldermen, at its discretion and as a result of careful study of unusual and difficult situations which occur, may waive certain limitations as to dimensions and location if it appears to be clearly in the best public interest and safety. Provided that the Board of Alderman shall not be authorized by this exception to permit a pier to be constructed beyond the pier line as shown on the official pier line map. The construction of a pier or dock by the town at the terminus of streets or public areas shall not be limited by the requirements of this chapter.

6. B&D submitted a request to the Town to construct a pier adjacent to the Property, such construction being shown on that map attached hereto labeled Exhibit "A". The proposed pier as reflected on Exhibit "A" attached, is to be constructed in part as follows:

(a) The proposed pier is not within the property lines of B&D projected as required by Sec. 150.12(a)(1) of the Town Code;

(b) The proposed pier is not 15 feet from B&D's property lines extended as required by Sec. 150.12(a)(2), but rather is proposed to be constructed immediately north of and adjacent to the northern riparian line of Fifth Avenue, the property owned by the Town;

(c) The pier proposed by B&D is within 15 feet of the pier located adjacent to the property to the north of B&D, that property being owned by Deborah E. Walker and having an address of 504 North Channel Drive;

(d) The pier as proposed by B&D provides for the mooring of vessels within the street right-of-way of Fifth Avenue extended in violation of the provisions of Sec. 150.05(C);

(e) B&D must acquire a waiver from the Town of the 15 foot setback from the Town's riparian corridor as required under regulations promulgated pursuant to the North Carolina Coastal Area Management Act.

7. B&D asked the Board to waive the provisions of Sec. 150.05 and Sec. 150.12 which are violated by its proposed plan as described above and further asked the Town to waive the 15 foot setback mandated under the regulations adopted pursuant to the Coastal Area Management Act.

8. B&D presented no evidence to support a finding by the Board that the requested waiver was in the best public interest and safety.

9. The request by B&D, if granted, would set a precedent that would justify similar waivers at other street ends throughout the Town of Wrightsville Beach, a situation that the Board finds clearly not in the best public interest and safety.

10. Further, it is not in the best public interest and safety to permit vessels to be moored within the riparian corridor of Fifth Avenue as proposed by B&D. The Town's riparian corridor could be blocked in whole or in part by vessels moored as proposed by B&D, depending on the width of the vessel.

11. The pier, as proposed by B&D, is not 15 feet from the adjacent pier of Deborah E. Walker to the north and as such, the granting of the requested exception is not in the best public interest and safety.

Based on the foregoing Findings of Fact, the Board of Aldermen makes the following:

CONCLUSIONS

12. All parties are properly before this Board, the request for an exception was timely submitted, and the Board has jurisdiction to consider the request.

13. At issue before the Board is whether the Board should grant the exceptions pursuant to the provisions of Sec. 150.21 of the Town Code as requested by B&D.

14. In addition, B&D has requested the Town to waive the required 15 foot setback established under the provisions of the Coastal Area Management Act.

15. This Board is of the opinion and concludes that granting the exceptions from the provisions of Chapter 150 as requested by B&D is not in the best public interest and safety.

16. Further, this Board concludes that it is not within the best public interest and safety for the Town to waive the 15 foot setback required under the provisions of the Coastal Area Management Act.

VOTE BY THE BOARD

After due deliberation and consideration of the evidence presented, the law and the Town's Code, the Board upon motion duly seconded, unanimously voted to deny the requested exceptions.

ORDER

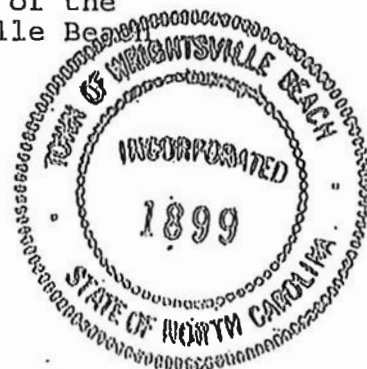
Based on the foregoing Findings of Fact and Conclusions reached by the Board after due consideration and vote, IT IS HEREBY ORDERED that the exceptions from the provisions of Chapter 150 requested by B&D are denied. It is further ordered that the requested waiver of the 15 foot setback under the provisions of the North Carolina Coastal Area Management Act is denied.

This 5th day of ~~June~~ ^{July}, 2006 for the hearing and vote held on April 27, 2006.

Edward Miastkowski
Edward Miastkowski, Mayor Pro Tem
Board of Aldermen of the
Town of Wrightsville Beach

Date filed with Town Clerk: ~~June~~ ^{July} 5, 2006

JCM/wrbch/H05-116-001



March 25, 2010, Pier and Dock Exception Denied

Mr. Rhodenhiser reviewed a list of projects that included:

- Bicycle Facilities: No. 1 of the top ten projects is bicycle lane restriping of the Heide-Trask Drawbridge at Wrightsville Beach.
- Roadway Safety: No. 6 on the list is W17 – Salisbury Street roundabout at Lumina Avenue; and No. 23 on the list is W16 – Salisbury Street roundabout at Causeway Drive.

Alderman Sisson asked if all the work and public input would fall apart if the jurisdictions that have the ability to regulate land use don't have transportation as one of their guiding principles. Mr. Rhodenhiser stated that they wanted to make sure that it was clear that everything has to be tied together with transportation planners and land use planners working together. Mr. Mello stated that they were making a concerted effort to better integrate land use and transportation planning and this plan will expound on that and offer some additional options.

Mayor Cignotti referenced the TIGER grant that we didn't get for the bicycle path and asked what the next step would be. Mr. Mello said the TIGER Grant process was viewed as extremely successful by the federal government and they want to look at that as a new way to award transportation funds on a continuing basis through a competitive grant process so he will continue, with Board support, to submit those projects for funding as additional grant opportunities become available. When asked about the time span for the City and County to bring the bike path to the Heidi-Trask Bridge, Mr. Mello said they were currently designing the UNCW portion of the Cross City Trail from South College Road to Mallard and Rose Avenues; the next phase would be from Burke Avenue to the Heidi-Trask Drawbridge along Eastwood Road; assuming funding continues at current levels, it should be done in the next couple of years. The Board thanked Mr. Mello and Mr. Rhodenhiser for the presentation.

PUBLIC HEARING FOR CONSIDERATION OF AN EXCEPTION TO SECTION 150.12: GENERAL PIER & DOCK CONSTRUCTION: FOR PROPERTY LOCATED AT 502 NORTH CHANNEL DRIVE.

Mayor Cignotti opened the public hearing at 6:35 p.m. and administered the oath to those wishing to address the subject.

Planning and Parks Director Tony Wilson reviewed the following information: Background: On behalf of B&D Investments, LLC, ECS Carolinas, LLP submitted an Exception request to Section 150.12 General Pier and Dock Construction Requirements for the proposed construction of a private pier and Jet-Dock or boatlift for property located at 502 North Channel Drive. The applicant has proposed two options: 1) a private pier with a Jet-Dock; or 2) a private pier with a boatlift. This request was received by the Planning and Inspections Department on March 4, 2010. The proposed private pier and Jet-Dock/boat lift does not meet the applicable requirements set forth in Section 150.12 subsections (A)(1) and (A)(2) in the following manners:

- 1) The proposed pier and jet-dock/boatlift will encroach into the required setbacks from the owner's extended property lines. According to Subsection (A)(2), a pier or dock may not be located within 15 feet of the property lines extended.
- 2) Both the proposed jet-dock and boatlift extend beyond the triangle formed by the extended property lines as determined by the Town.

A similar proposal was submitted by B&D Investments to the Town in 2006 requesting an exception to Section 150.12 General Pier and Dock Construction Requirements (A)(1) and (A)(4) and Section 150.05 Construction of Piers (C). That request was denied with a 4-0 vote. Due to the inconsistency with Section 150.12 (A)(1) and (A)(2), the Planning Staff recommends the Board of Aldermen deny the request for an exception. Using slides, Mr. Wilson showed the area in question and said Wrightsville Beach is an adjacent property owner and has to sign off on anything within 15 feet. He stated that the Town and CAMA look at property line extensions differently. He then read excerpts from Section 150.12 and Section 150.21.

Attorney George Rountree said: "I believe you will find the configuration of North Channel Drive at this particular area such that my client, B&D, has no opportunity at all for a dock. It seems to me that your exception provision is designed exactly for a case such as this where the geography of the land, in consideration of the method the Town has used to determine the riparian corridor, is exactly the situation that would seem to require, and I hope you agree, that an exception be made to the regulatory scheme you've adopted. If the request from B&D is not granted, there will not be a pier for this riparian land owner. One of the essential rights of owning land in North Carolina adjacent to navigable waters is the right of getting to deep water with a pier. I'm not here to criticize the method the Town has used to determine riparian corridors; what I am here to do is ask you, under the circumstances presented by the geography of North Channel Drive, that you avoid the denial of any opportunity of the owner of 502 ever to have a pier. Those of you who have been here for a while will remember the long history of requests of B&D for some relief. I have not been involved in any of those prior requests. What I do know is that my client has hired Rob Myers, who will go over the exact dimensions of what is proposed because he drew the proposal. None of them before you in the past has been as brief in distance and has avoided the land of Ms. Walker to the north as this particular proposal. If you look casually at the proposal, you will see that Ms Walker's pier not only extends past 15 feet from the riparian corridor of my client but also extends within the corridor and that was done by permission. I've been involved in this, however, long enough to understand that Ms. Walker will never give permission. Fortunately, as I view this, the proposal does not come within 15 feet of Ms. Walker's riparian corridor. So, I argue to you that she has no dog in this fight; the dog in the fight is with the Town because the Town owns the riparian corridor extending eastward from the stub end of Fifth Avenue, of which the Town got from Shore Acres Company in the 1920s or early 1930s. I ask you, under all the circumstances, to determine that the fair and equitable thing to do is to allow this land owner an opportunity to put up a pier. It seems to me that the pier that has the boat lift is the least problematic for the Town. *I obviously have talked to your Town Attorney who was kind enough to give me a couple of suggestions about concerns that you might have. One of them is that he felt the Town would be concerned about the capacity of either proposal to permit a vessel to dock on the south side of the proposal and, therefore, go right into the riparian corridor of the Town. So, by letter, in writing, pursuant to authority of my client, my client has agreed that my client will put on record at the Registry of this county, a covenant running with the land that would make it unlawful and objectionable by the Town for any vessel at any time, or any object at any time, to be more aversed on or at that facility that impinges in any way upon the riparian corridor of the Town. Obviously, it doesn't take into consideration the 15 feet, but looking at the way the land lies and the configuration of the riparian corridor for each of the tracks, it does not require a great deal of thought to understand that there isn't any room for anything else.*"

Mr. Rountree continued: "Obviously, if the Town approves the exception, the next step for my client is to make application to the Coastal Resources Commission for a CAMA permit; and, at that point, Ms. Walker, if she wants to object, has a forum with which to object to the permit. But here tonight, the party hurt by the proposal is the Town as an owner of land, not Ms. Walker and not Mr. Taylor. Now, were I either one of them, I would not want a pier close to mine either. It's kind of like 'I've got mine; I don't want you to have yours.' I understand that logic, but I don't think it's fair; I don't think it's reasonable; I don't think it's intended by your ordinances. A draconian application of the provisions of your ordinance would prevent my client from securing any access to the water by a pier. I know that each of you has encountered situations in which fairness and equity dictates some compromise with the strict letter of a proposed regulatory impact. I hope that you will find after Rob Myers explains to you the footage and the impact of each proposal, that the situation, as presented, and the proposal presented by me on behalf of my client warrants your favorable consideration."

With Mr. Rountree holding up a drawing, Mr. Myers said, "To reduce the amount of structure, instead of the initial approach, with all that structure out in the public trust and potential navigational issues, we incorporated dredging limits. To be able to put those dredging limits in place and avoid the wetland impacts, we had to be 10 feet off of the wetland marsh. We basically came up with a low profile pier going out just to that 10-foot area just beyond the marsh and incorporated a boatlift. The boatlift would be slightly to the north of the pier so the bow would actually be on the northern side of the pier and would allow easier access plus it would preclude anybody from docking on the side of the boatlift, especially with barnacles and such on the side of these pilings" When Mr. Rountree referenced the riparian corridor at the end of the Town's corridor and Ms. Walker's corridor, Mr. Myers said, "As you can see, extending the southern line to the Town's pierhead line, that's consistent with the way the Town does it and that's the way the Division of Coastal Management establishes that line." Mr. Rountree said he wanted to deal with the Town's method; not to change it but to show why the Town's method is such that equity suggests approval of the request. He said, "Show us where the Town's method for the 15 feet – the stub at the east end of Fifth Avenue – how that impacts the Walker riparian corridor and what it does to cut off the riparian corridor of B&D." Mr. Myers said, "The riparian line is going to be extended out to the pierhead line so all we have to work with is that corridor; we have to maintain the setback from her riparian line so we need to hug that riparian line to the Town's shared line with B&D and that's where the encroachment is requested. According to this, the way DCM runs the riparian line, we're meeting the 15-foot setback from that interpretation of the line; we're also meeting greater than 15-foot setback from the existing pier to the north."

Mr. Rountree said, "The riparian corridor of 502 runs right through the pierhead of Ms. Walker and that pier was constructed with the consent of the predecessor in title to B&D; so we're not contesting at this hearing, at this time, that there's any illegality of Ms. Walker. We're just asking the Town, under these circumstances, to allow us to put in a shorter pier." Mr. Myers stated that at the time when they originally proposed it in 2006, he didn't think they realized that dredging was an option. He said that's when they sat down with the Division of Coastal Management with the District Manager at the time and came up with something that would be consistent to reduce all that structure out there and to address all that potential navigational concern – just incorporate the dredging with a small enough structure out there just to get a small pier and some sort of dock with a boatlift.

Mr. Rountree showed the jet proposal and said the concern with the jet proposal is that it might admit some vessel docking or berthing on the south side that would impinge directly into the riparian corridor of the extension at Fifth Avenue.

Mr. Bob Robinson, 609 North Channel Drive, said, *"The reason I'm here is when I bought the property in Shore Acres, one of the things that caught my attention was the fact that, although the house I own is not directly on the water, I was told there were streets that gave me access to the water. I had written to CAMA when they first proposed this thing saying this is not just public land, this is my access that you're talking about. So, with all due consideration of Mr. Rountree and the Town's property, basically, anything that would impinge upon my free access to the water, at that point, is essentially demeaning the value of my property. I object to that, particularly part of it. This particular pier that he's proposing is substantially less and I don't know whether or not the blockage there would really be a problem for people like myself who wanted access to the water; I can't really see it in that particular picture but my concerns are more as a property owner."*

Ms. Debra Walker, 504 North Channel Drive, adjacent to the property that B&D Development owns, said, *"Mr. Rountree said some things that were not actually factual. I have tried very hard to negotiate an agreement with B&D Development and, at four times already, have drawn plans that I have agreed to them building, and every time we have an agreement, he then submits a plan that is absolutely against what we verbally agreed on – as is this one. And I truly, up until I saw these plans, had intended to come here and support him building a dock because, I've tried to negotiate with him and he had said that he would pay my attorney's fees, which to date, have been about \$50,000 trying to fight this. And I decided that I would try to compromise with them as long as they would pay for the attorney's fees, so I'm not profiting; I am just coming even with what I've spent and if we could get letters in the files for CAMA and for the Town that said at any future date, whether I own the property or someone else bought the property from me, that they would be able to rebuild my dock exactly as it is, which would also allow him to rebuild his dock exactly as I agree to, in case of a hurricane or damage or just needed repairs. I had sent him all this information and they came back with a drawing and then my attorneys and I sent him a drawing and said we will agree to come this far out if you will meet the other criteria that we asked for; which the only thing that would really benefit me was I asked that he replace my floating dock so that I knew that it could be replaced and there would be no questions because it's in need of repair. So, if you'll notice on the drawing, the problem is that if you look at the little yellow line where the first starting of the dredging starts, let's start with the dredging problem. I was one of the owners of Atlantic Diving Marine Contractors – we built Johnny Mercer's Pier; we do underwater erosion control projects and I've been out of that business for awhile but I was doing that off and on for ten years. So, dredging is something I understand and building piers and docks are something I understand a lot about. In the diagram they have here, their proposed dredging limit, if you'll notice where the diagonal starts and stops; starts to the south of the Town's riparian corridor. If you'll notice the north end of that – the proposed dredging limits – they go right under my boat dock; under my slips; under my pilings. What I do know from being in that business and consulting with engineers; that for every four feet you dredge, you must stay at least twelve feet off of any existing structure in order not to cause a collapse of that structure. And so, they've got their dredging actually going under where my boats are and right up under my pilings and my dock. And, obviously, that's not even common sense that that would be an acceptable thing. The letters I put there (A, B and C), that's about twelve feet off of my existing structures. If dredging were to occur from there over, I would not have had any problem with that had they met any of the other criteria that we outlined."*

Ms. Walker continued: "If you'll notice also where the entire jet dock that they have drawn here, whether it was a jet dock or a boatlift – and honestly a boatlift would have been more palatable to me as well because a giant twenty-three-foot by eight and a half foot long black structure in the middle of the water right in front of my house just really isn't that appealing, but I had told him prior to coming here that I would allow him to build – you see this yellow line here – right where the dredging starts. If he went with that plan that he had and went to that point that I would actually accept that if he paid my attorneys fees and replaced my floating dock and we had the letters on file. So, all these things he's been aware of since our first negotiation after this; and also, the whole proposed jet dock, if you'll notice, is almost completely within my property line extension much less my 15-foot setbacks. So, I had actually agreed that he could come into my 15-foot setbacks with those stipulations. The other thing Mr. Rountree said is that they should be entitled to a dock. We've been to Court and the Judge dismissed their case against me; so apparently, the Judge disagrees with Mr. Rountree that they're entitled to a dock. He also disagrees with them that my dock is a trespass or was improperly built; it was built with the permission of the CRC and the Town; it's built exactly as we said it was going to be. And the other problem: geography as he said is not the problem; the problem is the fact that B&D bought a lot that is thirty-five feet of waterfront. All the rest of us have ... in Wrightsville Beach, well, that's not exactly true; there are some other people that are in this situation in other sections, but he bought a thirty-five-foot wide lot; the rest of us spent significantly more money and paid for a lot that's fifty feet across. Fifty feet across means that they can meet the fifteen-foot setbacks on either side. Had he done that; if his lot was even straight, not even in a curve, there is no way he could meet the setbacks for the Town of Wrightsville Beach or for CRC; even if there was no curve whatsoever ... his property line extensions didn't meet forty feet out. So, as CAMA people have said before in one of these hearings, all he would ever be entitled to, to be able to meet the setbacks for the Town, would be a twenty-foot long dock. The other thing was the CRC has already denied his permit; so, you guys have denied it five times, I believe it's been five times; each time he's come with a different proposal. The only reason I've seen a plan that I could actually study before I got here is because Mr. Taylor emailed it to me. He came and got it from the Town because I couldn't even get them to send me – cause they knew that once I saw it and it wasn't what we'd agreed to, that there would be a problem. So they never sent me even a proposal to show me what they were trying to put there. I actually would still, if they would do what they said they were going to do; pay me what it's cost me; put in my floating dock; us get letters on file; I would still allow them, with the Town's permission of course, to build a dock that went to that first yellow line where they start the dredging, if they didn't dredge. It's what I've been telling them for four years and tens of thousands of dollars for me and probably I don't know how much, hundreds of thousands for them, to fight something that I've agreed to all along. Of course, the Town would still have to give up their 15-foot setbacks in order to do that. And I will not agree to any of it, of course, unless he pays me what it's cost me because it's been a financial hardship for me. It's cost me more money than I have made in the last couple of years."

Mr. William Taylor, 412 North Channel Drive, said, "I purchased this property in July of 2008 and at the time, I was made well aware of the pier matter by the former owner Sabra McNeill. She was extremely open and honest with me. She shared with me her strong opposition to a similar request by B&D by her subsequent litigation with B&D and her extremely difficult and very costly dealings with B&D. She advised me of the changing nature of their story and further advised me to remain very guarded as relative to prospective actions of B&D. Last June, I was approached by one of the B&D owners concerning his desire for a pier – they've got a naïve new owner – let's try again."

May 12, 2011, BOA
Review the Request

Alderman Sisson said, "I don't think that we really care about the access to those back parking spaces except that we don't want you to have to back out onto Causeway Drive under any circumstances. So, as you said, the Superior Court could decide on where the easement is and where it isn't. As far as perception goes, I would prefer to see a lower division between those areas rather than a six-foot fence. But it certainly doesn't give me any heartburn to see some sort of concrete barrier back there separating the two areas provided that we agree that Mr. Wallace has the ten parking spaces." Mr. Richardson agreed that Mr. Wallace has ten parking spaces. So then the easement through The Landing gives him access to both sets of parking spaces. That to me seems to solve the problem and if the church agrees to move the dumpsters, which doesn't necessarily have to be part of this if we give him the two-space parking exemption, then between you, you've solved that problem, too."

With no further comment from the public, the hearing was closed at 7:56 p.m.

Mr. Raney said, "It seems to me that the dumpster is really not an issue, so I would leave that out of your deliberation; if you can make it work with either the five parking spaces or the ten parking spaces with the exemption, then you can do that."

Alderman Sisson made the motion to approve the conditional use permit with the contingency that the concrete barrier between the entrance through The Landing and the existing parking spaces on the west side of the building be removed to give freer access to those parking spaces to prevent any backing out onto Causeway Drive; and to grant the two-space exemption to the operation of the Daily Grind. He said, "If we do both of those things, I think we can make the findings of fact we have to make in order to grant a conditional use permit." Mayor Pro Tem Weeks expressed the need for an "Entry Only" sign or something so that people can only pull in and go out – a one way entrance off of Causeway Drive and then you'd egress out the back. Following clarification from Mr. Raney that the Board could require the direction of the entrance and exit, Alderman Sisson said, Then I'm fine with adding that to the motion in order to make the finding that it doesn't conflict with the public welfare."

Mayor Cignotti then clarified for the record: "We're recommending approval of the conditional use permit for the coffee shop with an exception for two parking spaces based on the ten that they have; along with eliminating the cement wall; and directional signage to improve safety in the parking lot showing that it is entrance only off of Causeway Drive." The motion was then seconded by Alderman Blair and unanimously approved.

Mayor Pro Tem Weeks asked if Public Works would consider putting in the budget for this year to build a sidewalk from the corner of Live Oak down to that piece of property – about 120 plus or minus feet. She said, "If he's counting on a lot of pedestrian traffic, it would be nice to have that corner sidewalk tie into that."

PUBLIC HEARING FOR INPUT REGARDING A PIER PROPOSAL FOR 502 NORTH CHANNEL DRIVE.

Mr. Wilson stated that staff typically signs off on this type of request because it was not for a variance or an exception but since it had been a hot issue in the past, staff wanted to bring it to the Board of Alderman for their input.

Mr. Wilson reviewed the following background information: *"The Planning and Inspections Department received a request for a preliminary plan review from B&D Investment, LLC for their proposed pier and dock plan for a pier to be located at 502 North Channel Drive. The proposed pier will be located fifteen feet from the southern property line extended and fifteen feet from the Town's Fifth Avenue right of way. The proposed pier will encroach into the riparian corridor to the north at 504 North Channel Drive. However, Deborah Walker, property owner of 504 North Channel Drive provided notarized written approval for the proposed pier."* Mr. Wilson noted that this would take a general permit from CAMA and with that permit they could have up to two boats there.

Mayor Pro Tem Weeks clarified that it was a piling pier with no floating docks. Mr. Wilson confirmed that. When asked if they could extend a floating dock out, Mr. Wilson replied, "No, the floating dock couldn't go in here; you can park a boat there but you can't have a structure. Following a review with our Town Attorney, staff believes this proposal is consistent with our ordinances and CAMA." Mr. Wilson noted that he did have concern expressed by a citizen (Mr. Taylor) who lives on the other side of Fifth Avenue. He said the Board could make comments on the proposal that would be submitted to CAMA.

Mayor Pro Tem Weeks asked if they could put a boat lift in to the right and Mr. Wilson replied, "No, they couldn't put a boat lift but they could park a boat there." Alderman Blair asked if a beam from their boat could go into our riparian area and Mr. Wilson said it could. Alderman Blair then asked what the low tide depth was at the end of the pier. Mr. Wilson replied, "There could be some issues with dredging there; they could get a permit and do dredging there if it did meet the requirements to put a larger boat in there."

Mayor Cignotti opened the public hearing at 8:09 p.m.

Mr. Michael Berard, property owner of 502 North Channel, said, "We have coordinated with Robb Mairs of CAMA and talked with Tony (Wilson) several times to reduce the size of the pier so it makes sense to work with our north neighbor and to stay fifteen feet away from Fifth Avenue. We are not asking to dredge; we're not asking to put a boat there, I don't think you can get a boat in there unless you dredge. We just want a place that we can go to sit out and have a cocktail. That's all we're asking for."

Mayor Pro Tem Weeks stated that she lived three doors down and she wanted to say how disappointed she was in the process that led up to this. She said she didn't think the property owner was a very good neighbor in the beginning but she was glad that it came to a resolution.

Ms. Debbie Walker, adjacent property owner, said, "We've kind of come to this agreement out of financial necessity for me. I can live with what he is proposing to do. We have another agreement and I'm giving up my setbacks as long as our other agreement goes through. My question is, if our other agreement doesn't go through, do I have fifteen days to withdraw giving them permission." Alderman Sisson stated that the Board was just commenting tonight and it would be up to CAMA to answer that question. A brief discussion followed regarding the possibility of delaying Mr. Wilson's approval until the agreement is finalized.

With no further comment from the public, the hearing was closed at 8:11 p.m.

Alderman Collins said she was glad that it meets the Town's requirements and she hoped the neighbors would be able to work something out.

Mayor Cignotti asked if, in the future, one of the homes is sold and the pier is destroyed, would they be allowed to build it back to where it was if it is intruding. Mr. Wilson stated that if it was more than 50% destroyed, they would have to comply with the rules and regulations and have to get the adjacent property owner's approval again. He said he didn't know if the document would change things or whether it would go with the land. Mr. Raney stated that the Town's ordinance just requires a signed and notarized statement but it doesn't say whether it is recorded or not. He said if it is in the nature of an easement and it gets recorded then it may convey some sort of permanent property rights that go with the property; otherwise, it doesn't.

Mayor Cignotti stated that he would like for us to look at our ordinances and look further into how we approach these issues because he felt it causes more congestion, safety issues and questions years down the line. Alderman Sisson agreed with the need to look at our ordinances and make sure they give the Board maximum flexibility, but as far as this issue was concerned, he was happy to see it put to bed.

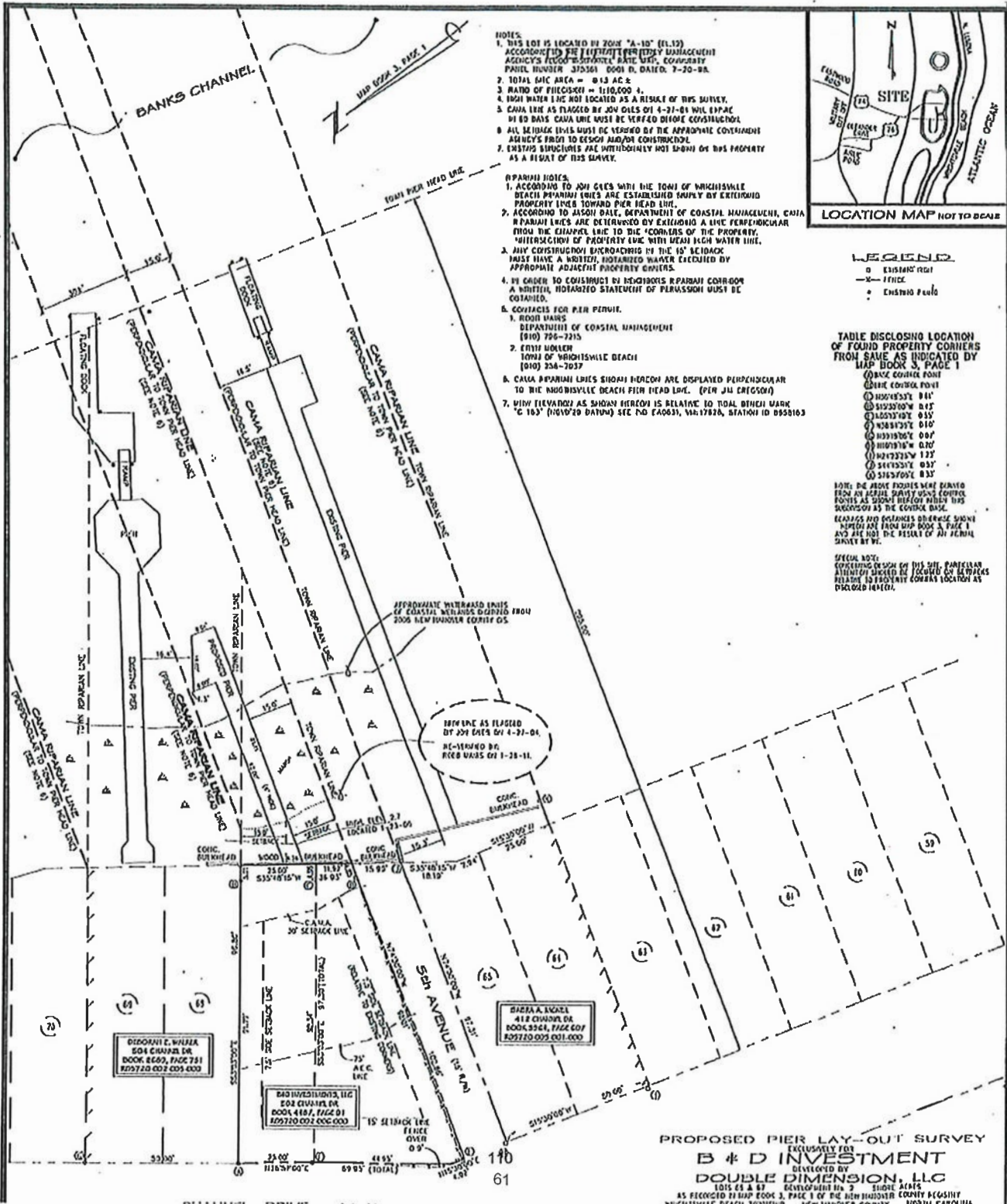
Meeting recessed at 8:14 p.m. and reconvened at 8:19 p.m.

WRIGHTSVILLE BEACH BEAUTIFICATION PROJECT PROPOSAL.

Mr. Simpson referenced the Wrightsville Beach Beautification Project Group's interest in creating a small garden at the corner of Seawater Lane and West Salisbury Street. He said this was brought to the Board's attention at the last meeting and the Board had some questions at that time; so Mrs. Linda Brown was here to explain the scope of the project and answer questions.

Mrs. Brown stated that she would like to withdraw the area that was requested and instead, in memory of Fred Matt with the funds that the Beautification Project had collected, they would like to landscape both sides of the new stage area for the community. She noted that this area was already irrigated. When asked about the tall palm trees, she said a palm tree was moved and placed in another location of the park to make room for the stage but there is a palm tree still on the right hand side of the stage. Mrs. Brown said in keeping with the palm tree that's on the right side, they would like to put two more palm trees to balance it out. She said the Landscape Contractor is willing to do the whole stage area and clean up the area behind the stage and mulch the flower beds where the trees are that surround closest to the stage. When asked what kind of plants would be used, she said it would be indigenous plants like in the drawing; they would use the lantana, the knock out roses, and sabal palms. Mrs. Brown said once those are established, the watering would be minimal and, if they get permission to do the project, they would like to have someone from Public Works there when the plantings are going in to make sure they are not getting too close to any of the waterlines in that area.

Alderman Collins noted that the sabal palms were the large palms. She asked if the Group wanted to add two more of those. Mrs. Brown replied, "We'd like to; one was removed from that area. So we'd like to put one on the other side of the stage just to balance it out."



CONSENT TO PIER AT 502 CHANNEL DRIVE

The undersigned, Deborah E. Walker, owner of the property located at 504 Channel Drive, Wrightsville Beach, North Carolina, does hereby give her consent to the construction and installation of the pier proposed by B&D Investments, LLC, owner of the property at 502 Channel Drive, that has been submitted to the Town of Wrightsville Beach for approval by B&D as shown on Exhibit A attached hereto and incorporated herein by reference. I specifically consent to the pier being constructed within my riparian corridor designated as "Town Riparian Line" and within 15 feet of the "CAMA Riparian Line", all as shown on Exhibit A.

This the 21st day of April, 2011.

Deborah E. Walker
Deborah E. Walker

Horry COUNTY, SOUTH CAROLINA

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document for the purpose(s) stated therein and, if other than in an individual capacity, in the capacity indicated having been first authorized to do so: Deborah E. Walker.

Date 4-21-11

Jimmie Cato, Notary
Notary Public
My commission expires:

Jul 1st, 2021



Notary seal or stamp must appear within this box.

ND: 4841-1898-1897, v. 1

May 21, 2012, building permit
issued for pier and dock

TOWN OF WRIGHTSVILLE BEACH APPLICATION FOR PERMIT (FAY 2007)

FILE COPY

Any change or changes in development, construction, or land use activities as represented in this application and/or accompanying plans will require a re-evaluation and modification of this permit. Applicants, property owners, authorized agents and/or contractors are responsible for compliance with any and all permit conditions. Applications for new/altered service and irrigation will need to be accompanied by a Water, Sewer and Trash Service Addendum.

TYPE OF PERMIT ☐ BUILDING ☐ PLUMBING ☒ PIERS, DOCKS, BULKHEADS
☐ SIGN ☐ DEMOLITION ☐ IRRIGATION

TYPE OF IMPROVEMENT: ☒ ERECT ☐ ALTER ☐ SUB. IMPROVEMENT
☐ REPAIR ☐ ACCESSORY ☐ RETROFIT-ELEVATE

LOCATION OF WORK: _____ **ZONE** _____

PROPERTY OWNER: Bo D Investments

OWNER'S ADDRESS: 2324 Pansy St. 502 N Channel **ZIP** 28480

OWNER PHONE: (919) 949-3722 **FAX:** _____

UNIT TYPE: ☐ MULTI-FAMILY ☐ DUPLEX ☒ SINGLE FAMILY DWELLING

STRUCTURE USE: ☐ RESIDENTIAL ☐ COMMERCIAL ☐ GOVERNMENT

CONTRACTOR NAME: Timmy North

CONTRACTOR ADDRESS: 6314 Wrightsville Ave **CITY** Wilmington **NC** **ZIP** 28403

CONTRACTOR PHONE: (910) 231-8514 **FAX:** 256-6392

AS PER TITLE 11, A PRIVILEGE LICENSE IS REQUIRED **PL #** _____ **EXP** _____

STATE LICENSE NO. _____ **EXP.** _____

***PROJECT DESCRIPTION:** Erect pier

COST OF PROJECT \$ 11,200.- **NO. OF PILING** _____

WATER TAP SIZE _____ **SEWER TAP SIZE** _____

APPLICANT SIGNATURE JD **DATE** 5/21/12

FOR OFFICE USE ONLY

CONDITIONS: <u>AS per exhibit A</u>		PERMIT # _____	
<u>Meet Town's pier & dock ordinance</u>			
<u>Provide AS build survey at final</u>			
<u>15' setback</u>			
WATER TAP FEES		WATER IMPACT FEE	
IRRIGATION TAP FEE		IRRIGATION IMPACT FEE	
SEWER TAP FEES		PILING FEES \$25 each TOTAL \$ _____	
PERMIT FEE		NCHMR FEE \$10.00	
TOTAL \$ <u>225.00</u> <u>check</u>		NOT PAID () PAID (X)	
*Forms required: ☐ Zoning Compliance ☐ Water/Sewer Addendum ☐ Site Plan / Survey ☐ New Const Checklist		RECEIVED COMPLETE BY: <u>TH</u> DATE <u>5-21-12</u> CODE AUTHORIZATION BY: _____ DATE _____ CAMA AUTHORIZATION BY: _____ DATE _____	
ZONING APPROVED BY: _____ DATE: _____		ZONING PERMIT NUMBER: _____	

OVERSIGHT BY ANY INSPECTOR SHALL NOT LEGALIZE ANY VIOLATIONS

66





MCAMA / DREDGE & F GENERAL PERMIT

New Modification Complete Reissue Partial Reissue

As authorized by the State of North Carolina, Department of Environment and Natural Resources and the Coastal Resources Commission in an area of environmental concern pursuant to 15A NCAC

Previous permit #
Date previous permit issued

Applicant Name B.E.D. Investments, LLC Berard
Address 2324 Pansy St.
City Huntsville State AL ZIP 35891
Phone # (919) 949-3722 Fax #
Authorized Agent Jimmy North
Affected ☒ CW ☒ EW ☒ WPTA ☐ ES ☐ PTE
AECI ☐ OEA ☐ HHF ☐ IH ☐ UBA ☐ N/A
☐ FWS ☐ FC
ORW yes ☒ no PNA yes ☒ no Crit. Hab. yes ☒ no

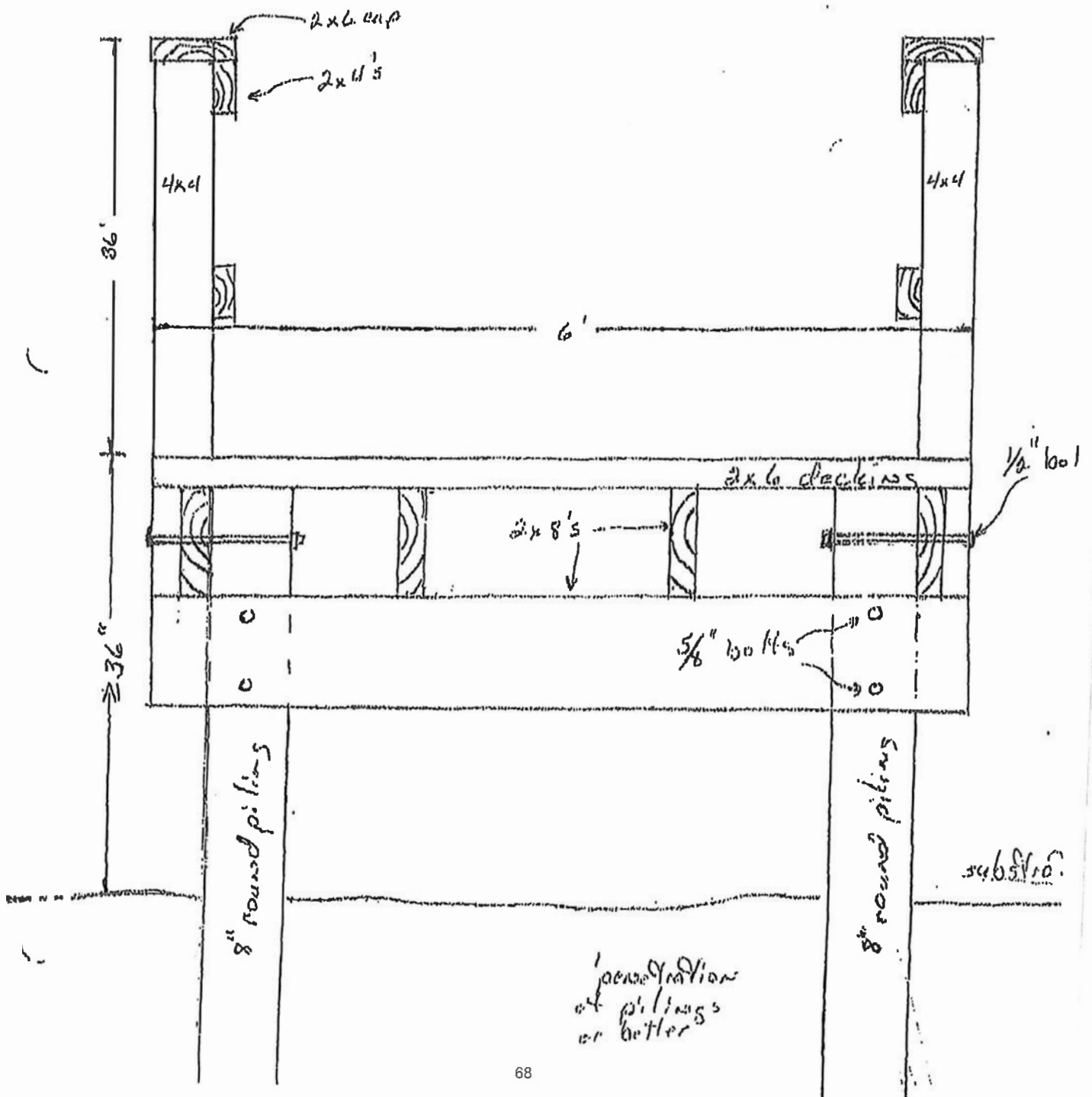
Project Location: County New Hanover
Street Address/ State Road/ Lot # (s) 502 Channel Drive
Subdivision
City Wrightsville Beach ZIP 28480
Phone # (919) 231-6514 River Basin Cape Fear
Adj. Wtr. Body Banks Channel (nat (man) (unkn))
Closest Maj. Wtr. Body Greenville Sound

Type of Project/ Activity Construction of a private pier and platform. (209 sq. ft.) (Scale: 1"=30')

Pier (dock) length 6'x62'
Platform(s) 8'x14'
Filling pier(s)
Gravel length number
Bulkhead/Riprap length avg distance offshore max distance offshore
Basin channel cubic yards
Boat ramp
Boat house/ Boatlift
Beach Bulldozing
Other
Shoreline Length ~36'
SAL not sure yes ☒ no
Sand bags: not sure yes ☒ no
Mortarium: n/a yes ☒ no
Pile os: yes ☒ no
Waiver Attached: yes ☒ no
See agreement
A building permit may be required by: Town of Wrightsville Beach See note on back regarding River Basin rules.
Notes/ Special Conditions Rules 7H.1200 apply. * Work shall be done in accordance with attached Riparian Easement Agreement dated April 19th, 2012.

Agent for Applicant Printed Name Jimmy North
Signature [Signature]
Permit Officer's Signature [Signature]
Issuing Date 05/10/12 Expiration Date 09/10/12
Local Planning Jurisdiction Town of Wrightsville Beach River File Name 0-051811
Application Fee(s) \$200 Check # 18274 116 67

x-section of pier.



TOWN OF WRIGHTSVILLE BEACH

P A Y M E N T

Date: 5/29/2012
Time: 12:05 PM

Jimmy North- Coastal Marine
6314 Wrightsville Ave
Pier And Dock 502 n Channel

Cash:	\$0.00
Check:	\$225.00
Charge:	\$0.00
MoneyOrder:	\$0.00
Total Fee:	\$225.00
Total Paid:	\$225.00
Change Due:	\$0.00

1 BLDGP BUILDING PERMIT	\$225.00
-------------------------	----------

Operator: 81
Receipt#: 36152

T H A N K Y O U !

502 N. Channel - applied for
CMAA Major w/DCM

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DIVISION OF COASTAL MANAGEMENT
ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

I hereby certify that I own property adjacent to B & D Investment's
(Name of Property Owner)
property located at 502 North Channel,
(Lot, Block, Road, etc.)
on Banks Channel, in Wrightsville Beach, N.C.
(Waterbody) (Town and/or County)
Applicant's phone #: _____ Mailing Address: _____

He/She has described to me as shown below the development he/she is proposing at that location,
and I have no objections to the proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT:

(Individual proposing development must fill in description below or attach a site drawing)

A 6' x 62' pier with a 8' x 14' deck area at the
end of pier.

No comments
SKM
5.10.2012

If you have objections to what is being proposed, you must notify the Division of Coastal Management (DCM) in writing
within 10 days of receipt of this notice. Correspondence should be mailed to 127 Cardinal Drive Ext. Wilmington, NC
DCM representatives can also be contacted at (910) 796-7215.

No response is considered the same as no objection if you have been notified by Certified Mail

(Property Owner Information)

[Signature]
Signature

Tracy North (agent)
Print or Type Name

6314 Wrightsville Ave.
Mailing Address

Wilmington, N.C. 28403
City / State / Zip

Telephone Number 910-231-8514

Date 5/8/11

(Riparian Property Owner Information)

Signature

Print or Type Name

Mailing Address

City / State / Zip

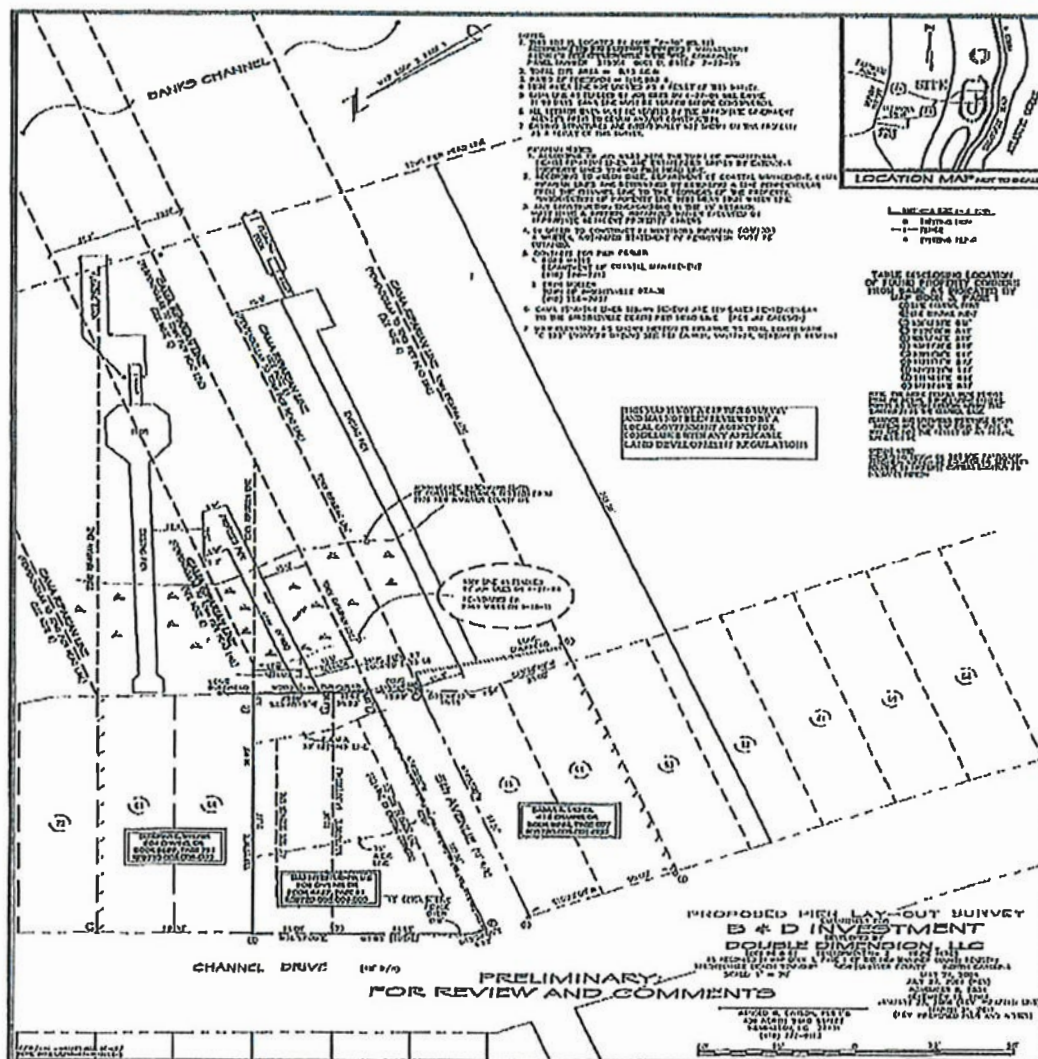
Telephone Number _____

Date _____

127 Cardinal Drive Ext., Wilmington, North Carolina 28405-3845
Phone: 910-796-7215 \ FAX: 910-395-3964 \ Internet: www.nccoastalmanagement.net

An Equal Opportunity \ Affirmative Action Employer - 50% Recycled \ 10% Post Consumer Paper

EXHIBIT A



5th Avenue Quitclaim Deed



FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
2009 AUG 12 11 39 37 AM
BK 5431 PG 658-660 FEE \$17 00
NC REV STAMP \$20 00
INSTRUMENT # 2009029098

Parcel 2D - Adjacent to
PT R05720-002-006-000

\$20.00 RS

Preparer of this document has made no title
examination and makes no representations or
certifications as to any matters affecting title

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**QUITCLAIM DEED AND
ASSIGNMENT OF
RIGHTS OF REVERTER**

Prepared by: Geoffrey A. Losee, Esquire
Return to: Rountree, Losee & Baldwin, LLP
P.O. Box 1409, Wilmington, NC 28402-1409

THIS DEED, made and entered into this 15th day of July, 2009, by and between **Shore Acres Company**, a North Carolina Company, hereinafter called Grantor, and **B & D Investments, LLC**, hereinafter called Grantee, whose permanent mailing address is 1510 Scales St., Raleigh, North Carolina 27608.

WITNESSETH:

That said Grantor, for and in consideration of the sum of Ten Dollars (\$10 00) to him in hand paid, the receipt and sufficiency of which is hereby acknowledged, has remised and released and by these presents does remise, release, convey, and forever quitclaim unto the Grantee, his heirs and/or successors and assigns, all right, title, claim and interest of the Grantor in and to a certain lot or parcel of land lying and being in and more particularly described as follows:

That parcel being all of that portion of 5th Avenue lying and being situated between the eastern right of way of Channel Drive and, as extended eastwardly between Lots 65 and 66, the mean high water line of Banks Channel, all as more particularly shown on the Map entitled "Harbor Island Development No. 2 Shore Acres" recorded in Map Book 3 at Page 1 in the Office of the Register of Deeds of New Hanover County, North Carolina.

Together with an assignment and conveyance of any and all Rights of Reverter that arise out of, touch or concern the property conveyed herein

To have and to hold the aforesaid lot or parcel of land and all privileges thereunto belonging to him, the Grantee, his heirs and/or successors and assigns, free and discharged from all right, title, claim or interest of the Grantor or anyone claiming by, through or under him

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

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 its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.



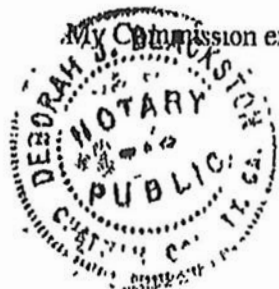
STATE OF GEORGIA

COUNTY OF CHATHAM

I, Deborah J. Blackston, a Notary Public of the State and County aforesaid, certify that Lawrence Lee personally came before me this day and acknowledged that he is President of Shore Acres Company, 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 its President.

Witness my hand and official stamp or seal, this the 15 day of July 2009

Deborah J. Blackston
NOTARY PUBLIC
DEBORAH J. BLACKSTON
Notary Public, Chatham County, GA
My Commission Expires 2/21/11





JENNIFER H MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 08/12/2009 11:39:37 AM

Book: RE 5431 Page 658-660

Document No.: 2009029098

3 PGS \$17.00

NC REAL ESTATE EXCISE TAX: \$20.00

Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

2009029098

2009029098

F. Darryl Mills
Mayor

Ken Dull
Alderman

Zeke Partin
Alderman



Hank Miller
Mayor Pro-Tem

Jeff DeGroot
Alderman

Tony Wilson
Acting Town Manager

TOWN OF WRIGHTSVILLE BEACH

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480
(910)239-1700
FAX (910)256-7910

To: Mayor Mills & Board of Aldermen

From: Zeke Partin, Chair, Ad Hoc Committee

Subject: Revised Lighting Ordinance

Date: June 27, 2024

Objective of the AD Hoc Committee

The ADHOC committee was charged with reviewing and updating Unified Development Ordinance (UDO) Part III 155.9.7 – 155.9.14 which governs outdoor lighting for our town.

Key Objectives conveyed from the BOA were:

- Improve clarity of the existing ordinance.
- Consider the objective of enabling more Night Sky as may be practical.
- Evaluate & strengthen aspects of enforceability.

Executive Summary

Upon review and comparison to other reference ordinances, the committee concluded our current Ordinance is reasonably comprehensive but could benefit from several points of revision to clarify wording, reduce redundant statements, incorporate advances in lighting technology and streamline the ordinance structure. It was determined that the “Purpose Statement” needs to be more comprehensive, as it sets the tone for the Town’s intent.

It is important to note that there are many examples of non-compliance throughout the residential, commercial and municipal sections of our town. The lack of enforcement across existing and especially new construction is a root cause of non-compliance. Uplighting and unshielded lighting are primary causes of non-compliance. The prolific trend towards esthetic building and yard lighting, bright LED technology, fixture choices and affordability have resulted in increased illumination throughout our town. The Policy of compliant driven enforcement has

failed. The 3-year sunset clause of our current ordinance, (adopted 11-8-2012) was never enforced.

The proposed revision to the current ordinance creates minimal new elements of non-compliance. The main issue is future enforcement as will be noted in the Recommendations.

Note: Any Lighting ordinance elements related to sea turtles and nesting birds (beach lighting) are still under review and will be addressed in a future proposal.

Findings

Based on the review of the current Unified Development Ordinance Part III 155.9.7 – 155.9.14 combined with both visual and measured surveys of current lighting around the town by the ADHOC and Planning Staff, the following findings and conclusions have been reached.

- Clarify the Need and Purpose of the Ordinance to set a clear tone and set expectations.
- Remove redundant statements.
- Remove inconsistent and ambiguous use of language and phrasing.
- Adopt the best practices identified among ordinances from other cities and towns.
- Improve accessibility of Definitions by consolidation and location in central UDO Definition Section.
- Update to industry standards (from watts to lumens).
- Update to industry recommendations for LED Brightness (light visual color-Kelvin Value)
- Include graphic examples of compliant and non-compliant lights.
- Improve clarity regarding the methodology for measurement of light, and meeting required standards.
- Update Sunset clause in the New Ordinance to achieve full compliance.
- Address examples of non-compliance throughout the town, including new construction.
- Enforce through a comprehensive and proactive approach which will help to fulfill the purpose of this new proposed ordinance.
- Use of “complaint driven” policy of enforcement has not been effective at correcting long standing non-compliance nor controlling the expansion of non-compliance especially with new construction.

Outcome

The table below outlines a comparison of the current ordinance vs. the new proposed ordinance. **It should be underscored that most of the current non-compliance will continue to be in non-compliance under the new ordinance.** The Yellow Cells below indicate a significant level of non-compliance has been identified.

Comparison of Current & Revised Lighting Ordinance		
Ordinance Item	Current Ordinance	Revised Ordinance
Purpose	Statement included	Expanded to "Need & Purpose" states a rationale
Fully Shielded/ Full Cutoff	Required	No change
Uplighting	Not permitted	No change
Bare Bulb & String Lights	Not Permitted	No Change
Motion Activated Lighting (Flood & Spot lights)	Residential only Permitted unshielded lights (>45 watts 520 lumens)	Expanded to cover both Residential & Commercial max 700 lumens Restricted triggered light duration to max 10 minutes (per event). Removed allowance for non -shielded type fixture.
Pole Mounted lighting	Commercial Parking Lot 30 ft Max from base of pole Resident 16 ft Max	Commercial Parking Lot 18 ft Max from base of pole Reference to Intensity & Uniformity Table Residential no change
Wall Mounted Lighting	Commercial 20 ft Max above grade Resident 16 ft above grade or 10 ft above any 1 st floor	Commercial 10 ft Max above grade Residential no change
Light Color (LED Technology driven)	No standard, no reference	Kelvin Standard definition included. Kelvin Range specified not to exceed 3000 degrees Kelvin
Holiday Lighting	Thanksgiving > January 15	October 15 > January 15
Special Design Areas (architectural, carriage style lights)	Included (None exist in TOWB)	Removed (these do not exist in TOWB)
Docks & Piers	Separate Commercial & Residential sections. Max fixture height Commercial and Residential 25 feet	Added "associated gazebo" to this section. Reduced max fixture mounting height measured at ground level (10 feet height) where the dock or pier meets the land, or 15 feet from the lowest platform of the pier. Combined all sections into one. Added prohibition of underwater fish and decorative lighting.
Gas Station/ Convenience Store Canopies	Permitted (None exist in TOWB)	Removed (these do not exist in TOWB)
Lighting Review By TOWB Planning Dept.	Not Covered	General Requirement - Prior review & approval as part of zoning inspection for final CO Residential Requirement – A lighting Plan (Cut Sheet/ Graphic) required prior to zoning permit issuance. Commercial Requirement – A Photometric plan required prior to zoning permit issuance.
Sign Lighting	No lighting of signs between 1 am and 7 am	No change
Outdoor Sport Fields	Not covered	Added this new Item Pole Lighting Max height 30 ft above grade
Non-conformities	3 years	180 days for Pre-existing non-compliance; 2 years for new ordinance created non-compliance
Definitions	Approx 37	Approx 25 consolidated, reduced ambiguity, added new missing

Recommendations

The opportunity presents itself with adoption of this revised ordinance to establish initiatives that can help to accomplish the stated purpose of the ordinance. There are three such initiatives recommended:

- **Enforcement** – As the lack of enforcement has been a root cause of non-compliance this must be addressed. The Board of Aldermen by Policy must be committed to systematic and regular proactive enforcement. This can be accomplished with multiple strategies:
 - Proactive prevention of new non-compliance through the Permitting and Certificate of Occupancy (CO) process. All this is driven by the Planning & Zoning Dept.
 - Upon adoption and in anticipation of the Sunset clause, advanced notifications aligned with public education can get momentum on property owners self-correcting non-compliance.
 - Based on the assessment/survey work accomplished in developing this ordinance, we know of specific types of non-compliance. These represent very clear enforcement items for active enforcement post Sunset.
- **Public Education** – The lead up to the adoption of the new ordinance through public hearings is only the starting point of Public Education. This can be carried forward through various methods of push communications and specific briefing documents and presentations. (TOWB Website, Town digital sign, Summary pamphlets, Sunshine List, Water Bill notice etc.)
- **Partnerships**- Locally we have key stakeholder organizations that have shown a strong interests in helping accomplish the purpose of this new Lighting ordinance. The WB Sea Turtle Project and NC Coastal Federation, they can assist in helping with education and promotion.

Lighting Ordinance Project Fact Sheet
Ad Hoc Committee Members: Zeke Partin, Jim Smith, Catherine Brunjes, John Wessel, Neal Braggi, Jim Chaffins (part-time)
TOWB Staff Support: Robert O’Quinn & Lance Heater (full-time), Tim Owens & Tony Wilson (part-time)
Expert Support: Nancy Fahey (WB Turtle Project), Kerri Allen (NC Coastal Federation), David Munn (Duke Energy), David Sims (Sims & Associates)
Referenced Lighting Ordinances: (Total 10) Ocean Isle Beach NC, Kure Beach NC, Kiawah Island SC, Sanibel Island FL, Breckenridge CO, Kennebunkport ME, Palm Beach County FL, Wilmington NC, Duck NC, Nags Head NC,
Meetings: 25 Public Noticed meetings, January 2023 through June 2024, agendas and minutes reside on Town Website
Key Activities: Review and Comparison of Referenced Light Ordinances, Presentation and Discussion with subject matter experts, Nighttime photographic & photometric survey of residential, municipal and commercial lighting, Technical information searches.
Other: Lighting Related Definitions Current Ordinance (37); New Proposed Ordinance (25)



F. Darryl Mills
Mayor

Ken Dull
Alderman

Zeke Partin
Alderman

Hank Miller
Mayor Pro Tem

Jeff DeGroote
Alderman

Town of Wrightsville Beach

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480

July 5, 2024

MEMORANDUM

To: Mayor Mills and Board of Aldermen
From: Tony Wilson, Acting Town Manager *TW*
Re: Consider approval of Resolution NO. (2024) 2335 to enjoin with New Hanover County to enforce and remove abandoned vessels in Waterways

Please review Resolution NO. (2024) 2335, this would speed up the process of removing abandoned vessels in the Town' waterways. The Town does not have to adopt any ordinances just needs to adopt the resolution. General Statute 160A-75 requires two readings since this deals with criminal penalties.

Requested Action:

1. Discuss the item and ask questions
2. Resolution NO. (2024) 2335

RESOLUTION NO. (2024) 2335

Board of Aldermen
Town of Wrightsville Beach, North Carolina
Date: July 11, 2024



RESOLUTION TO ENJOIN WITH NEW HANOVER COUNTY TO ENFORCE AND REMOVE ABANDONED VESSELS IN WATERWAYS

WHEREAS, on June 17, 2024, the New Hanover County Board of Commissioners approved an amendment to Chapter 23 of the New Hanover County Code of Ordinances by the addition of Article X Abandoned Maritime Vessel(s), to regulate, enforce and dispose of abandoned vessels as authorized by North Carolina General Statute 153A-132; and

WHEREAS, the ordinance authorizes the New Hanover County Sheriff's Office to investigate, seek remediation, enforce and, if necessary, dispose of abandoned vessels in waterways in unincorporated New Hanover County; and

WHEREAS, the Town of Wrightsville Beach has also identified issues with abandoned vessels on waterways within Town limits; and

WHEREAS, authorizing the New Hanover County Sheriff's Office to investigate, remediate, enforce and dispose of abandoned vessels in the Town would be beneficial to maintaining safety in the Town's waterways; and

WHEREAS, under North Carolina General Statute 153A-122 the Town may adopt a resolution permitting county ordinances to be applicable within Town corporate limits;

NOW, THEREFORE, BE IT RESOLVED, the Town of Wrightsville Beach as authorized by North Carolina General Statute 153A-122, permits Chapter 23, Article X Abandoned Maritime Vessel(s), of the New Hanover County Code of Ordinances and any future amendments to that article, to be applicable within Town corporate limits to be enforced by the New Hanover County Sheriff's Office.

This Resolution adopted this 11th day of July, 2024.

F. Darryl Mills, Mayor

ATTEST:

Lance Heater, Town Clerk



NEW HANOVER COUNTY

COUNTY MANAGER'S OFFICE

230 Government Center Drive, Suite 195, Wilmington, NC 28403

P: (910) 798-7184 | F: (910) 798-7277 | NHCgov.com

Chris Coudriet, County Manager

Tufanna Bradley, Assistant County Manager | **Lisa Wurtzbacher**, Assistant County Manager

Jessica Loeper, Assistant County Manager

May 28, 2024

Darryl Mills, Mayor
Town of Wrightsville Beach
321 Causeway Drive
P.O. Box 626
Wrightsville Beach, NC 28480

Dear Mayor Mills,

The New Hanover County Board of Commissioners is in the process of approving an ordinance authorizing the Sheriff's Office to identify and, when needed, remove abandoned vessels from waterways in the unincorporated areas of the county.

The Board has taken an initial vote on the ordinance and is holding a required second reading and taking a vote on June 17 to fully authorize the ordinance.

The Board asked me to reach out to you to request that the town of Wrightsville Beach Board of Aldermen authorize the Sheriff's Office to remedy abandoned vessels within the town limits. We hope that centralizing this service within the Sheriff's Office will provide for seamless response and reduced customer confusion while reporting abandoned vessels.

For your convenience, a draft of a resolution will be sent to you upon final passage of the ordinance. Because this resolution would have the same effect of a municipality adopting an ordinance that contains criminal penalties, per General Statute 160A-175(b), it would need two readings.

I appreciate your consideration of this request. If you have any questions, please do not hesitate to contact my office.

Chris Coudriet
County Manager

cc: Tony Wilson, Interim Town Manager

NEW HANOVER COUNTY BOARD OF COMMISSIONERS

ORDINANCE

AMENDING NEW HANOVER COUNTY CODE CHAPTER 23 ENVIRONMENT

The Board of County Commissioners of New Hanover County, North Carolina does hereby ordain and enact that the New Hanover County Code of Ordinances, Chapter 23, Environment, be amended as follows:

- I. Add Article X, Abandoned Maritime Vessel(s) to include the following new sections:

Section 23-514. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vessel:

- (a) is a maritime vessel that is in danger of sinking, has sunk, is resting on the bottom, or is located such that it is a hazard to navigation or is an immediate danger to other vessels.
- (b) is a maritime vessel has been left unattended and is in significant disrepair, neglected, dismantlement, or noncompliance with current registration requirements, such that the condition may affect the seaworthiness of the vessel or affect the safety of the public or the environment.

Section 23-515. Abandoned vessels prohibited.

- (a) It shall be unlawful to anchor, moor or ground on the public land or waters of the county or on private property without permission of the property owner, any abandoned vessel.
- (b) Upon identifying an abandoned vessel, the sheriff shall post a notice on board the vessel, if above water, and shall attempt to notify the owner by certified mail or personal delivery of notice. If personal service is not obtained after an attempt to do so, the posting of the vessel shall be deemed full and sufficient personal and in rem service hereunder. The notice shall:
 - (1) Describe the vessel and location of the vessel, however the notice posted aboard the vessel need not include description and location.
 - (2) Identify the condition(s) identified that must be corrected if repairable.
 - (3) Inform the owner that a written plan for correcting identified conditions, or removal of the vessel and restoration of the affected surrounding environmental area must be submitted within ten (10) days of the notice is served.
 - (4) Inform the owner that the identified conditions must be corrected, or the vessel must be removed from the waters or public lands and the affected surrounding environmental area restored, within thirty (30) days of the date the notice posted aboard the vessel.
 - (5) Inform the owner that failure to meet either the ten-day or thirty-day deadlines will result in the vessel being deemed abandoned, subject the owner to civil/criminal penalties, and that all costs associated with removal and disposition of the vessel and restoration of the affected surrounding environmental areas will be the responsibility of the owner.
- (c) Failure of the owner to correct the dangerous condition or remove the vessel from the waters or public lands of the county within thirty (30) days, after notice, shall cause the vessel to be defined as an abandoned vessel.
- (d) Any abandoned vessel located on or below any navigable waters, or beaches, or grounded adjacent thereto may be removed or relocated and impounded by the sheriff.
- (e) The owner shall be responsible for all costs of towing, relocation, removal and storage of the vessel or disposal and restoration of the area surrounding the vessel, including costs owed to a third party, and costs incurred by the county or the sheriff. Any vessel towed, removed, relocated, or impounded shall be subject to a lien pursuant to North Carolina General Statute 44A.

Section 23-516. Exceptions.

- (a) Shipwrecks, vessels, cargoes, tackle, and other underwater archeological remains that have been in place and unclaimed for more than ten (10) years shall not be considered abandoned vessels unless approved by the North Carolina Department of Cultural Resources, which is the legal custodian of these properties pursuant to North Carolina General Statutes 121-22 and 121-23.
- (b) Any vessel within an enclosed building boathouse, or upon the premises of a business enterprise being operated in a lawful place and manner if the vessel is necessary to the operation of the enterprise.

Section 23-517. Enforcement responsibility and authority.

- (a) The sheriff of the county, or any law enforcement officer with territorial jurisdiction, is authorized and empowered to enforce this article.
- (b) The sheriff is authorized to board any vessel as required to enforce the provisions of this article, or any federal or state law, and such boarding in the performance of official duties shall not constitute a trespass.
- (c) The sheriff is authorized to seize, tow, remove or relocate from the public waters, and to store or dock the vessel in a safe place that, as a result of arresting the operator, or taking any enforcement action that would render the vessel unattended, or without an operator of suitable age, discretion and competence.
- (d) The county or the sheriff may use staff, equipment, and material under its control or provided by any cooperating federal, state, or local government or agency; may authorize or contract with any private agent or contractor it deems appropriate; or may authorize or contract with any federal, state, or local government or agency for the removal, storage, or disposal of an abandoned vessel and restoration of the affected area.
- (e) The owner shall be responsible for all costs of towing, relocation, removal and storage or disposal of the vessel, including costs owed to a third party, and costs incurred by the county or the sheriff.

Section 23-518. Penalties for violation.

- (a) *Criminal penalties.*
 - (1) A violation under this article shall be deemed a class 3 misdemeanor punishable to the extent provided in North Carolina General Statute 14-4 and shall carry a fine of One Hundred Dollars (\$100.00) per offense. A violation that either reoccurs or continues without cessation twenty-four (24) hours after a person has been criminally charged, either by arrest or citation, shall constitute a separate offense.
 - (2) A conviction under this section does not bar the assessment and collection of the civil remedies provided in this article.
- (b) *Civil remedies.* In addition to, or in lieu of any criminal penalties set forth herein, any person, firm or corporation violating any provisions of this article shall be subject to civil penalties as follows:
 - (1) A violation hereunder shall be subject to a civil remedy in the amount of Five Hundred Dollars (\$500.00) per offense. A violation that either reoccurs or continues without cessation after a twenty-four (24) hour period shall constitute a separate offense.
 - (2) Civil remedies shall be used in the recovery of the costs expended in enforcing this article.
- (c) *Other remedies.* Any other remedies available pursuant to North Carolina General Statute 153A-123, Enforcement of Ordinances.

Section 23-519. Appeal.

- (a) An abandoned vessel designation, abatement removal, property disposition and civil penalty, as applicable, may be appealed to the county manager or his designee within fifteen (15) calendar days of the occurrence of the challenged determination or action.
- (b) Any decision of the county manager, or his designee, may be appealed to the District Court of New Hanover County within thirty (30) days, provided the matter in controversy has first been timely appealed to the county manager.

Section 23-520. Disposition/disposal of abandoned vessels.

- (a) An abandoned vessel, including all cargo, tackle, and equipment, seized pursuant to this article, which remains unclaimed after notice, shall be deemed forfeited, as set forth in North Carolina General Statute 14-399(g).
- (b) A vessel having a value less than Five Hundred Dollars (\$500.00) may be disposed of at any suitable solid waste facility.
- (c) A vessel having a value of Five Hundred Dollars (\$500.00) or greater shall be disposed as provided in North Carolina General Statute 44A with the proceeds paying for the towing, removal, and storage charges, accrued fines, and environmental restoration costs. The remaining proceeds, if any, shall be deposited into the general fund of the county and designated for use to abate, or remove abandoned vessels and restore environmental damage resulting from abandoned vessels.
- (d) Any vessel, cargo, tackle, or equipment remaining unsold after being offered at public sale, may be disposed at any suitable solid waste facility.
- (e) Within ten (10) days following the disposal or public sale of any vessel previously registered in any state or meeting the requirements for registration prior to operation in North Carolina, the sheriff shall provide notice to the North Carolina Wildlife Resources Commission, and the agency responsible for registration in the state of any previously registered vessel. The contents of the notice, shall include, if available:
 - (1) Vessel registration number;
 - (2) Manufacturer, model, year;
 - (3) NC title number (if applicable);
 - (4) Hull identification number;
 - (5) A description of the reason for being disposed or sold as an abandoned vessel;
 - (6) Type of disposition and location (e.g. public sale – New Hanover County Sheriff's Office, or Discarded – New Hanover County Landfill);
 - (7) Full name and address of the purchaser (if applicable);
 - (8) Date of sale and sale price (if applicable)

II. Except as specifically above amended Chapter 23, Environment, shall remain unaltered and in full force and effect.

ADOPTED this the 14th day of June 2024.



NEW HANOVER COUNTY

William E. Rivenbark
William E. Rivenbark, Chair

ATTEST:

Kymberleigh G. Crowell
Kymberleigh G. Crowell, Clerk to the Board



F. Darryl Mills
Mayor

Hank Miller
Mayor Pro Tem

Ken Dull
Alderman

Jeff DeGroote
Alderman

Zeke Partin
Alderman

Town of Wrightsville Beach

Post Office Box 626
321 Causeway Drive
Wrightsville Beach, North Carolina 28480

July 1, 2024

MEMORANDUM

To: Mayor Mills and Board Members
From: Tony Wilson, Acting Town Manager *TW*
Re: Consider approval of the 10th Amendment to Option and Lease Agreement between the Town and New Cingular Wireless relating to the equipment on the Town's Water Tank located at 338 South Lumina Avenue by adoption of Resolution (2024) 2336

Agenda Item:

New Cingular Wireless (AT &T) would like for the Town to approve an amendment to the current equipment lease for the water tank located at 338 South Lumina Avenue.

Action Items

1. Discuss the item and ask questions
2. Consider adopting Resolution (2024) 2336 and approving the 10th Amendment to option and lease agreement between the Town and New Cingular Wireless (AT &T) and execute the agreement following the review by the Town Attorney.

Attachments:

1. Request letter
2. Resolution NO. (2024) 2336



June 19, 2024

Site Name: Wrightsville South
FA#: 10017093-26904
Address: 338 S Lumina Avenue, Wrightsville Beach, NC 28480)
RE: Option and Lease Agreement Renewal

To whom this may concern,

AT&T (New Cingular Wireless PCS, LLC) has contracted with the Smartlink Group to discuss the current AT&T Lease Agreement they have with you. Smartlink, is a National Company providing site development, property management, and technical services to various telecommunication companies.

Smartlink is authorized to work directly with you, on behalf of AT&T to formalize any agreed upon lease transaction, including lease and/or accompanying easement agreements. AT&T would be responsible for executing any resulting document.

As noted above, Michael Angell, a Smartlink representative will be contacting you to discuss your current lease with AT&T at the address' listed above.

Sincerely
Gregory D. Ohmer

A handwritten signature in black ink that reads "Gregory D. Ohmer".

Director Network Planning

400 Northpoint Parkway
Alpharetta, GA 30005
770-750-3470 Office
404-713-0087 Cell

Cell Site No.: 478-020
Cell Site Name: 478-020
Fixed Asset No.: 10017093
Market: NC/SC
Address: 338 South Lumina Avenue, Wrightsville Beach, NC 28480

AMENDMENT NUMBER TEN TO OPTION AND LEASE AGREEMENT

THIS AMENDMENT NUMBER TEN TO OPTION AND LEASE AGREEMENT (“**Tenth Amendment**”) dated as of the later date below is by and between the Town of Wrightsville Beach, a North Carolina municipal corporation located in New Hanover County, North Carolina, having a mailing address at 321 Causeway Drive, Wrightsville Beach, NC (hereinafter referred to as “**Landlord**”) and New Cingular Wireless PCS, LLC, having a mailing address at 1025 Lenox Park Blvd NE 3rd Floor Atlanta, GA 30319 (hereinafter referred to as “**Tenant**”).

WHEREAS, Landlord and Tenant (or its predecessor-in-interest) entered into an Option and Lease Agreement dated November 24, 1997 (the “**Original Agreement**”), as amended by that certain Amendment Number One to Option and Lease Agreement dated August 22, 2002, Amendment Number Two to Option and Lease Agreement dated August 13, 2009, Amendment Number Three to Option and Lease Agreement dated August 31, 2012, Amendment Number Four to Option and Lease Agreement, dated November 18, 2015, Amendment Number Five to Option and Lease Agreement dated July 20, 2017, Amendment Number Six to Option and Lease Agreement dated August 10, 2017, Amendment Number Seven to Option and Lease Agreement dated May 13, 2019, Amendment Number Eight to Option and Lease Agreement dated July 16, 2021, and Amendment Number Nine to Option and Lease Agreement dated March 14, 2023, (said Amendments collectively referred to herein as the “**Amendments**” and the Original Amendment and the Amendments referred to herein collectively as the “**Agreement**”); whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 338 South Lumina Avenue, Wrightsville Beach, NC 28480; and

WHEREAS, the term of the Agreement will expire on August 21, 2025, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Landlord and Tenant desire to extend the term of the Agreement; and

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

- 1. Term.** The Term of the Agreement shall be amended to provide that commencing on August 22, 2025, will be automatically renewed, upon the same terms and conditions of the Agreement, for four (4) additional sixty (60) month terms (each an “Extension Term”). Hereafter, “Term” shall include the Current Term and any applicable Extension Term. The Terms will automatically renew without further action by Tenant, unless Tenant notifies Landlord in writing of Tenant’s intention not to renew the Agreement at least sixty (60) days prior to the expiration of the Current Term or any Extension Term. Landlord agrees and acknowledges that, except as such permitted use or other rights may be amended herein, Tenant

Cell Site No.: 478-020
Cell Site Name: 478-020
Fixed Asset No.: 10017093
Market: NC/SC
Address: 338 South Lumina Avenue, Wrightsville Beach, NC 28480

may continue to use and exercise its rights under the Agreement as permitted prior to the first Extension Term.

- 2. Acknowledgement.** Landlord acknowledges that: 1) this Tenth Amendment is entered into of the Landlord's free will and volition; 2) Landlord has read and understands this Tenth Amendment and the underlying Agreement and, prior to execution of the Tenth Amendment, was free to consult with counsel of its choosing regarding Landlord's decision to enter into this Tenth Amendment and to have counsel review the terms and conditions of the Tenth Amendment; 3) Landlord has been advised and is informed that should Landlord not enter into this Tenth Amendment, the underlying Agreement between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment Number Ten to Option and Lease Agreement on the date and year below.

LANDLORD:
Town of Wrightsville Beach
a North Carolina municipal corporation

TENANT:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

RESOLUTION NO. (2024) 2336

Board of Aldermen
Town of Wrightsville Beach, North Carolina
Date: July 11, 2024



A RESOLUTION OF THE BOARD OF ALDERMEN OF
THE TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
APPROVING AMENDMENT TEN TO OPTION AND LEASE AGREEMENT BETWEEN
THE TOWN OF WRIGHTSVILLE BEACH AND NEW CINGULAR WIRELESS PCS, LLC

WHEREAS, the Town of Wrightsville Beach is authorized pursuant to G.S. 160A-272 to lease property for such terms and upon such conditions as the Board of Aldermen may determine; and

WHEREAS, the Town of Wrightsville Beach entered into an Option and Lease Agreement with BellSouth Carolinas PCS, L.P, dated November 24, 1997 as authorized by Resolution No. (1997) 1287; and

WHEREAS, The Town of Wrightsville Beach amended the original Agreement by Amendment Number One to Option and Lease Agreement dated August 22, 2002, with Cingular Wireless, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, The Town of Wrightsville Beach amended the original Agreement by Amendment Number Two to Option and Lease Agreement dated November 9, 2006 as authorized by Resolution No. (2006) 1528; which amendment document was never executed by AT&T/Cingular and therefore was not effective; and

WHEREAS, the Town of Wrightsville Beach further amended the Agreement by another Amendment Number Two to Option and Lease Agreement dated August 13, 2009 as authorized by Resolution No. (2009) 1636, with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach further modified the Agreement with Amendment Three to Option and Lease Agreement dated August 31, 2012 as authorized by Resolution No. (2012) 1782, with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach further modified the Agreement with Amendment Four to Option and Lease Agreement dated November 18, 2015 as authorized by Resolution No. (2015) 1954, with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach further modified the Agreement with Amendment Five (1) to Option and Lease Agreement dated October 13, 2016 as authorized by Resolution No. (2016) 1997, with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach further modified the Agreement with Amendment Six to Option and Lease Agreement dated August 10, 2017 as authorized by Resolution No. (2017) 2032, with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach further modified the Agreement with Amendment Seven to Option and Lease Agreement dated May 13, 2019 as authorized by Resolution No. (2019) 2152, with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach further modified the Agreement with Amendment Eight to Option and Lease Agreement dated May 13, 2021 as authorized by Resolution No. (2021) 2237, with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach further modified the Agreement with Amendment Nine to Option and Lease Agreement dated March 14, 2023 as authorized by Resolution No. (2023) 2282 with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP; and

WHEREAS, the Town of Wrightsville Beach has agreed to further modify the Agreement with Amendment Ten as set forth in Exhibit A attached hereto with New Cingular Wireless PCS, LLC, successor in interest to BellSouth Carolinas, PCS, LP;

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina, as follows:

1. The Board of Aldermen of the Town of Wrightsville Beach hereby authorizes the Mayor to execute Amendment Number Ten to the Lease Agreement (attached hereto as Exhibit A) for property owned by the Town of Wrightsville Beach as described in the Agreement dated November 24, 1997; Amendment Number One to Option and Lease Agreement dated August 22, 2002; Amendment Number Two to Option and Lease Agreement dated August 13, 2009; Amendment Number Three to Option and Lease Agreement dated August 31, 2012; Amendment Number Four to Option and Lease Agreement dated November 18, 2015; Amendment Number Five (1) to Option and Lease Agreement dated October 13, 2016; Amendment Number Five (2) to Option and Lease Agreement dated July 20, 2017; Amendment Six to Option and Lease Agreement dated August 10, 2017; Amendment Seven to Option and Lease Agreement dated May 13, 2019; Amendment Eight to Option and Lease Agreement dated May 13, 2021; and Amendment Nine to Option and Lease Agreement dated March 14, 2023.

This Resolution adopted this 11th day of July, 2024.

F. Darryl Mills, Mayor

ATTEST:

Lance G. Heater, Town Clerk

(SEAL)



TOWN OF WRIGHTSVILLE BEACH

PUBLIC WORKS DEPARTMENT

200 PARMELE BLVD

WRIGHTSVILLE BEACH, NC 28480

910-256-7935 FAX 910-256-7939

MEMORANDUM

To: Mayor Mills and Board Members

From: Bill Fay, Director of Public Works

Subject: NCDEQ Funding Application for Service Line Find & Replace Program

Date: July 2, 2024

ITEM:	ACTION:
Permission to submit funding application	Discussion & Approval

Background:

TOWB has contracted with McKim & Creed to assist with the Lead & Copper Compliance Program Assistance, Phase1 consisting of:

- Data Collection and Analysis
- Preparation of Service Line Inventory
- Funding Procurement Assistance

McKim and Creed has prepared a funding application as part of Phase 1 project.

Application due date is August 2nd, 2024.

The award date is September 17th, 2024.

Recommendation:

Allow McKim and Creed to submit on behalf of TOWB, the funding application package for a loan, or possibly a grant, for the full funding amount of \$2M for the Find and Replace project. If awarded, this would cover the costs of the inventory, the field verification, replacement of any service lines that required, and all associated activity, based on current assumptions and estimates.

If funding is approved, this will be brought back to the Board for acceptance. Status of CFPUA merger, at that time, may be a determining factor in this decision.

Requested Action:

Permission for Town Manager to sign and submit funding application.