



Town of Oak Island

BOARD OF ADJUSTMENTS

Council Chambers

Oak Island Town Hall
January 3rd, 2020

10:00am

Call to Order:

Approval of Minutes (7-31-19)

Old Business: (none)

New Business:

- (1) Variance – 2519 Marsh Hen Drive

Other Business:

- (1) Board Member Reports
- (2) Staff Reports

Adjournment:

MINUTES
TOWN OF OAK ISLAND BOARD OF ADJUSTMENT
JULY 31, 2019 – 10 A.M.
OAK ISLAND TOWN HALL – COUNCIL CHAMBERS

Present: Chairman Reece Simmons, members Paula Chambers, Ed Hardy, and Steve Yuhasz and Alternate member Kristy Sappe, Town Attorney Brian Edes, Planning and Zoning Administrator Jake Vares and Town Clerk Lisa P. Stites, MMC.

Chairman Simmons called the meeting to order at 10 a.m. He noted that there were no Minutes to approve since the last hearing was recessed and had not been reconvened yet; Ms. Stites said that was correct.

Mr. Edes said that the matter on the agenda was an appeal from a staff decision, and he explained the hearing procedure. He asked the Board members if they had any financial interest in the outcome of this appeal, or if they had any specialized knowledge of this appeal. Mr. Yuhasz asked what he meant by specialized knowledge, and Mr. Edes asked if anyone had spoken to the appellant or any staff members; none indicated they had. Mr. Edes asked if anyone had spoken to a member of the public who had an interest in this appeal; none indicated they had. Mr. Yuhasz said that he made a site visit and that he spoke with the adjoining property to the west. He said he identified himself as a member of the Board of Adjustment and said he was there to look at the property; he said that the neighbors did not express an opinion one way or the other and neither did he. He said that interaction would not influence him one way or the other. Answering a question from Mr. Edes, Mr. Yuhasz said that he noted that they previously had a stairway down from their home and asked how they accessed the beach now, and they said there was a public beach access farther down West Beach Drive. Mr. Edes asked Mr. Yuhasz if he had a legal background; Mr. Yuhasz said he did and that he understood the need to be a fair and impartial. Barbara Roberts, appellant, indicated that she did not have any objection to Mr. Yuhasz sitting on the Board. None of the other Board members had made a site visit. Mr. Edes asked Mr. Yuhasz if he understood that nothing he saw in his site visit was evidence unless something like it was presented during the hearing. Mr. Yuhasz said he understood that.

Mr. Edes reviewed the quasi-judicial hearing procedure. Mr. Edes also explained the rules regarding hearsay. Mr. Edes said that the Clerk had received a letter from a citizen regarding this appeal; Ms. Stites said that was correct. She said it was faxed on the 25th. Mr. Edes said the letter would not be received into evidence since the writers would need to be present and be subject to cross-examination. Mr. Edes asked the Board members if any of them had received a letter regarding this appeal; they all indicated they had not.

Ms. Stites administered the oath to all those who indicated they would testify during the hearing.

Jake Vares, Planning and Zoning Administrator, said that this appeal came from a request to install stairs within the side yard setback going out onto the beach. The appeal is to challenge staff's decision that the request for the stairs would not be allowed because it would create a side yard setback encroachment. Mr. Vares said that the decision was conveyed via email and was included in the agenda packet. Mr. Edes said that his agenda packet was not numbered and he asked for that page to be identified. Mr. Vares said it was what was listed as page 2 of the email thread. Mr. Edes said that it was the May 30 email to Robin Roberts sent at 12:36 p.m. Mr. Vares said that was correct. He said that there is an easement to allow for ingress and egress along five feet of the western property line, but that if the local ordinance creates a greater restriction where an easement might exist, the ordinance prevails. He read from Sec. 8.3 of the Unified Development Ordinance (UDO) regarding setbacks.

Mr. Edes asked Mr. Vares if he wanted the agenda packet moved into evidence; Mr. Vares said he did. Mr. Edes asked Ms. Roberts if she had any objection to the agenda packet being received into evidence. Ms. Roberts did not have an agenda packet. Mr. Edes provided her with one and gave her time to review

it. Mr. Vares said a copy of the agenda packet had been emailed to the Roberts. Ms. Roberts had no objection to the packet being entered as evidence.

Mr. Edes said he recommended the packet be accepted as Exhibit 1, and Chairman Simmons said it was accepted. Mr. Edes asked Ms. Roberts if she wanted to ask Mr. Vares any questions. Ms. Roberts said she did not have any at this time.

Chairman Simmons asked Mr. Vares when the UDO was adopted. Mr. Vares said that the UDO was adopted in October 2018, but that previously, the ordinance was adopted in 2001.

Mr. Yuhasz asked about a reference he had seen about 75 percent reconstruction. Mr. Vares said that was in his staff report. Mr. Edes said the staff report is in the agenda packet, a memo entitled Appeal Application. Mr. Vares said that the 75 percent reference was actually included in the applicant's justification narrative, not in his staff report. Ms. Chambers asked Mr. Vares to explain the 75 percent rule. Mr. Vares said there are allowances in our ordinances for minor repairs, maintenance and upkeep for non-conforming uses, so long as the work doesn't exceed 75 percent of the value of the structure. He said that was not the case here, since the staircase does not exist and would have to be rebuilt from scratch. He said that was discussed in meetings with the appellant.

Ms. Chambers asked if the ordinance regarding outside stairways referred to the side yard setback. Mr. Vares said that the previous ordinance did not allow for decks to be in the side yard setback; the UDO does allow uncovered decks to be within 5 feet of the side yard setback. Chairman Simmons asked if that would have to be attached to the primary structure or if it could be freestanding. Mr. Vares said that he did not believe the ordinance specified that. Chairman Simmons asked if someone could put a 3.5-foot wide staircase in the setback. Mr. Edes reminded the Board that the purpose of this hearing was to determine if staff's interpretation and application of the ordinance was correct. Chairman Simmons said that he wondered if the decision was correct, or if there was another alternative. Mr. Edes said the Board members could ask staff and the appellant those types of questions.

Chairman Simmons asked Mr. Vares is it would be permissible to install a 3.5-foot wide staircase in a side yard setback. Mr. Vares said Sec. 8.14.7 does not use the word "stairs." Mr. Vares also said that there are a handful of things that are allowed in the side yard setback, such as an a/c unit, a fence, normal roof overhang, etc. He said that the proposed staircase in this case is right alongside the property line, outside of the exceptions included in the ordinance. Mr. Edes said he was looking at 8.14.8, and that it addresses stairways. Chairman Simmons read that section and asked if "outside stairways" had to be attached. Mr. Vares said that it didn't say, but that in an 8-foot setback, from the side of the building, there is 5 feet from the side property line over before getting to the 3-foot allowances. Mr. Edes asked if it was 3 feet, or 3.5 feet; Mr. Vares clarified that it was 3.5 feet. Mr. Edes said that under normal rules of construction, if a term is not defined, the ordinary term is used. He said he did not see the word "attached" or "unattached" in Sec. 8.14.8, and that they would have to insert the word "attached" to make it exclusive to attached stairways, but that was the Board's decision. Mr. Edes said that Mr. Vares' testimony was that 8.14.8 did not specify "attached."

Ms. Chambers asked if the non-conformity was that the steps were in the setback. Mr. Vares said the steps don't exist now, so there is no non-conformity.

Mr. Edes asked Mr. Vares if this was a proposed construction; Mr. Vares said that was correct. Mr. Edes asked if it was Mr. Vares' testimony that the stairs would encroach into the side yard setback, and how much. Mr. Vares said that his understanding that his understanding would be that the stairs would abut the property line. Mr. Edes asked who made the determination that if built it would encroach more than 3.5 feet. Mr. Vares said that was Steve Edwards.

Mr. Hardy asked if the address was 6606 West Beach, and said that was not oceanfront. Ms. Roberts said, from the audience, that there was an easement. Mr. Edes asked Ms. Roberts to wait until she had a microphone.

Mr. Yuhasz asked about a reference to a walkway that was in the letter. He asked if Mr. Vares had seen a walkway. Mr. Vares said that in a conversation, it was indicated that the stairs were damaged, and did not learn until later that the stairs had been completely destroyed so the new ordinances would apply to it. Mr. Yuhasz said that if this is considered a unit, stairs and walkway, and the walkway still exists, do we know what percentage of the entire structure would need to be replaced, since it is just the stairs. Mr. Vares said that information, in the form of an appraisal, was not presented to him.

Barbara Roberts, property owner of 6606 West Beach, said that there is a long walkway that has been there and that all they need is the steps. Ms. Roberts asked who determined the 75 percent, and said that steps would not cost very much. Mr. Vares said that staff reviews the documentation provided and makes a determination based on the figures. Mr. Roberts said they didn't apply for a permit because they were told it wouldn't be approved. She said all they need is stairs, and that the rest of the structure is already there and needs no work other than where they attach. She again asked about who determines the 75 percent; Mr. Vares said that those figures are to be provided by the applicant and then staff reviews them.

Mr. Edes said that since the decision came from Steve Edwards, by statute, he was required to testify.

Steve Edwards, Development Services Director, said regarding 8.14.8, whether stairs needed to be attached, he said it calls it a projection, and to project, something has to be attached. He said that a standalone something would not project off an existing structure. Mr. Edes asked for clarification, if it would have to project to benefit from the 3.5 feet, and if he based that interpretation of the word "projections." Mr. Edwards said that was correct. Mr. Edes asked if, in the absence of something being projected, it could not benefit from the setback encroachment; Mr. Edwards said that was correct. Ms. Chambers asked if it was not a projection, would it be considered an accessory structure. Mr. Edwards said it could be considered an accessory structure since it was detached from the principal structure. Mr. Edes asked if staff had made a determination based on it being or not being a projection. Mr. Edwards said it was based on it being detached, not considered attached to the principal structure. Mr. Edes asked if it was staff's interpretation that a detached stairway could not encroach in the side yard setback, and that 3.5 feet allowance under 8.14.8 was not applicable; Mr. Edwards said that was correct. Mr. Edwards also acknowledged that the email in the agenda packet was his. Mr. Edes asked if there was a walkway leading up to where the stairs were and are proposed to be rebuilt; Mr. Edwards said there was. Mr. Edes asked if staff had made a determination as to whether that was one structure; Mr. Edwards said that it was considered as two separate structures. Mr. Edes asked if staff made an assessment as to whether the cost of constructing the stairs was less than 75 percent of the original cost of constructing the stairs. Mr. Edwards said that it was a total loss and reconstruction was 100 percent. Mr. Edes asked if, under the 75-percent rule, it would qualify if the stairs and walkway were considered one project. Mr. Edwards said he considered them two separate structures.

Mr. Hardy asked when this was ordinance was adopted. Mr. Vares said that the UDO was adopted in October 2018. Mr. Hardy asked how many times these stairs had been replaced; Mr. Edwards said that he did not know the answer to that question. Mr. Edwards said that it was illegal when it was done the first time and that it was permitted in error.

Mr. Yuhasz asked Mr. Edwards what made him determine that the walkway and the stairs were separate structures. Mr. Edwards said the easement only permitted stairs, not a boardwalk. Mr. Yuhasz asked if there was a boardwalk there. Mr. Edwards said there was. Mr. Yuhasz asked if there was any indication that the stairs were attached to the boardwalk at one time. Mr. Edwards said that there was. Mr. Yuhasz asked how he defined grade-level walkway. Mr. Edwards said it was something that was not elevated and supported above grade. Mr. Yuhasz asked what would be a grade-level stairway; Mr. Edwards explained

what would qualify. Mr. Yuhasz asked if a grade-level stairway would not be considered an accessory structure and not subject to the setback rules; Mr. Edwards said he would agree with that.

Mr. Edes asked if in his correspondence and interaction with the Roberts, if they discussed the 75-percent rule, or gave him any indication that the walkway and stairs should have been considered as one structure. Mr. Edwards said the only correspondence he had with them was in the emails in the agenda packet. Mr. Edwards said that the appeal was the first time he heard that was a consideration.

Ms. Chambers asked if someone else bought the property, wouldn't the easement go with the property. Mr. Edes said that the terms of an easement in a property easement would be between the private parties. The Town can, though, enforce the ordinances regardless of what an easement says.

Mr. Hardy asked about the email from Donna Coleman; Mr. Edes said that Ms. Coleman was not present for cross-examination, but that the email had been accepted into evidence without objection. Mr. Edes said the appeal was of Mr. Edwards' decision, not Ms. Coleman's. Mr. Hardy read from an email exchange between Donna Coleman and Robin Roberts, in which reference was made to the stairs being rebuilt two times prior. He said that he was struggling with that. Mr. Edes asked Mr. Edwards if he disputed that the stairs had been rebuilt twice; Mr. Edwards said he did not.

Chairman Simmons also asked about correspondence with Donna Coleman, saying that a fourth option was not provided to the applicants, to consider the walkway and stairs as one unit. He said that he was curious as to why that option was not made available. Mr. Edes said that he knows Ms. Coleman and that he wouldn't think she attempted to mislead anyone, but that the 75-percent rule is in the ordinances, and that people who want to build are subject to know the ordinances. Mr. Edes said that staff should be public servants and help all they can, but that citizens can always seek their own legal counsel.

Ms. Roberts asked if there was a definition of what qualified as a structure, because the walkway was built like a long, skinny deck, and that it has rail and is supported. Mr. Edwards said that he would define that as a structure. Mr. Edes asked if there was a definition of "structure" that could be put into evidence. Mr. Vares handed Mr. Edwards a copy of the relevant section of the UDO. Mr. Yuhasz noted that the definition of "structure" was included in the staff memo in the agenda packet. Mr. Edwards read the definition. Mr. Vares showed the Roberts where the definition was in the packet. Ms. Roberts said that the walkway was secured in the ground, and asked if that would that qualify as a structure. Mr. Edwards said that was correct.

Ms. Roberts, appellant, then presented her testimony. She said she and her husband Robin owned property at 6606 West Beach Drive. Ms. Roberts said that a large part of the decision to buy that property was having that easement. Ms. Roberts said that not having this access has taken away their enjoyment from the beach and that has made it difficult to enjoy the property. She said that part of the walkway had been removed when sandbags were installed, and that they had not been notified of that or asked permission. She said that they have also lost rentals, so their property value has been negatively affected. She said that the Lovejoys had offered them \$40,000 for the easement, but that they had never seriously considered it because they needed that easement. She said that the walkway and stairs should be grandfathered in since they had there so long, at least since the 80s. She had copies of the easement, but it was noted that a copy of the easement was already included in the agenda packet. She said that she had a letter from a neighboring property owner, and had power of attorney to represent her. Mr. Edes recommended that the Board not allow the letter, as the letter writer was not present to be subject for cross-examination. Ms. Roberts said she had other communications from others in the neighborhood. Chairman Simmons said that it was hearsay and that those communications could not be accepted. Mr. Edes also said that she could testify that there were many in the community that supported her; Ms. Roberts said that was the case. Ms. Roberts said that they were also told that the sandbags could only be temporary. Ms. Roberts said that back in the 80s, her husband had worked at the power plant and they had

dreamed of owning property at the beach, but this situation is turning that into a nightmare. She said they have this easement and a legal right to use the easement.

Ms. Roberts said she had some pictures of the walkway she wanted to provide. Mr. Edes asked her who took the photos. Ms. Roberts said they were taken by her husband. Mr. Edes asked what the photos depicted. Ms. Roberts said they showed the walkway with some people standing on the end of it and the length of it. Mr. Edes asked when the photos were taken; Ms. Roberts said approximately two years ago. Mr. Edes if she thought the photos fairly and accurately depicted what the area looked like at that time; she said it did. Mr. Edes asked if there were any objection to the photos being entered and allowed others who had an interest to review the photos.

Cathy Lovejoy, who owns the property where the easement is located, said that she did not see any dates on the photos, and said it could be 2016, but that it could be 2015. She said she does not know. She objected to the photos being entered. Mr. Edes asked if the photos depicted what the area looked like prior to Hurricane Florence; Ms. Lovejoy said they did. Mr. Edes advised the Board to accept the photos over objection. The photos were accepted as Exhibits 2 and 3. Mr. Edes noted that Exhibits 2 and 3 were published to the Board members.

Ms. Roberts said that all they needed to rebuild was the steps and she didn't see how that would violate the 75-percent rule.

Ms. Chambers asked when they had bought the home. Ms. Roberts said they bought it in 2010 or 2011. Ms. Chambers asked if they had already replaced the steps twice. Ms. Roberts said that they had to replace just a portion of it once and the entire set of stairs once. Mr. Hardy asked Ms. Roberts if she knew when the stairs were built. Ms. Roberts said that she had been told it was sometime in the 80s. Mr. Yuhasz asked if she knew when the walkway was built. Ms. Roberts said she was told it was shortly after the easement was put in place. Mr. Edes reminded the Board that what Ms. Roberts was told is hearsay and would not normally be allowed, but since this was a quasi-judicial municipal hearing, he would allow it, though he advised the Board members to give it the weight they felt it deserved.

Chairman Simmons asked Mr. Edwards if there was a timeframe for sandbags to be placed. Mr. Edwards said there was. He said there had been some extensions for these sandbags. Chairman Simmons asked if the Town was not involved in issuing CAMA permits. Mr. Edes said that the local officer, the LPO, is acting on behalf of the State, not the Town. Chairman Simons said that what he was asking was how long would the sandbags be there. Mr. Edes said that as long as there was a beach nourishment program being planned, the sandbags could stay, though he would prefer to consult the statutes. There was no cross-examination of Mr. Edwards.

Mr. Edes asked Ms. Roberts if she and her husband had been involved in the placement of sandbags; she said they were not. Mr. Edes asked if the portion of walkway that had been removed was returned to her; she said they were told the boards were laying there and that they could pick them up.

Barry Golob said that he had an objection to the date of the photos. Ms. Roberts said that was an approximate date. Mr. Edes asked if he would instruct the Board that the pictures were taken prior to Hurricane Florence but that this date may not be accurate, would he still have an objection. Mr. Golob said he objected to the date. Mr. Edes referred to Exhibit 3, and asked Ms. Roberts to show her what still exists today of the walkway. She said it was maybe two sections that were removed, without their permission. Mr. Edes asked if any of what was depicted in Exhibit 2 was there today; Ms. Roberts said it was not. Mr. Edes asked if Exhibit 3 depicted any portion of the walkway that is still out there; Ms. Roberts said it did, and that there was a large section coming from the street that still exists.

The Board took a recess from 11:19 to 11:26 a.m.

Mr. Edes identified the exhibits (2 has the stairs, 3 has the individuals on the walkway). Mr. Edes asked Ms. Roberts to identify on the picture what part of the walkway remains. Ms. Roberts said that there were additional sections of walkway that were not shown, but she did identify the walkway that still exists. The exhibit with Ms. Roberts' markings was published to the Board. Ms. Sappe asked if the stairs were always in the high water area. Ms. Roberts said they were not, not since the nourishment was done. She also said that a previous hurricane had removed some of the stairs and they were replaced.

Mr. Yuhasz asked if the walkway would have to be extended to build the stairs back. Ms. Roberts said that she did not think so, but that it may have to be raised to go over the sandbags.

Ms. Chambers asked for clarification as to the location of the property and the easement. Ms. Roberts described it.

Mr. Vares asked Ms. Roberts if the staircase was ADA compliant; Ms. Roberts said that she did not know what those requirements were, but that it would not be for the Town's use.

Ms. Chambers asked if the sandbags had been placed there to protect oceanfront homes. Ms. Roberts said that their neighbor, Mr. Golob, thought the property would be better protected if part of the walkway was removed and sandbags installed.

Mr. Golob, property owner for 6615 West Beach Drive, adjacent to the Lovejoys' property, cross-examined the witness. Mr. Edes handed Exhibits 2 and 3 to Mr. Golob. Mr. Golob asked when the last time the stairs were there. Ms. Roberts said that it had been approximately two years and that it was the storm prior to last year's storm that took the stairs. Mr. Golob asked Ms. Roberts if she would agree that in March of 2015, the beach was renourished. Ms. Roberts said that she was not sure of the dates of the renourishment. Mr. Golob asked if she would agree that when the beach was renourished, he personally paid for sand that covers the sandbags that allowed her to walk on the dune without the need for stairs. Ms. Roberts said that he had put sand out, but that she didn't think it was necessarily done for her benefit. Mr. Golob asked if she needed the stairs to walk down to the beach as a result of him putting sand there. Ms. Roberts said yes, that it was very difficult to move in the soft sand while carrying things. She said they did not use it nearly as much as they had because it was difficult to climb up and down the soft sand. Mr. Golob asked if she would agree that the stairs would be right on the property line. Ms. Roberts said that the stairs would be where the walkway was. Mr. Golob said that before, they were within inches of his property line. Ms. Roberts said that she didn't know the distance to his property line. She said that the stairs and walkway were there, and that she was only asking for what had been there. Mr. Golob asked if she had any reason to doubt that there was a nourishment done there March 9, 2015 through a couple of weeks in April; Ms. Roberts said she did not remember the dates, though she acknowledged there was a renourishment done. Mr. Golob asked if she had not had stairs there since then. Ms. Roberts said that she did not believe it had been that long. Mr. Edes asked if she had stairs since the nourishment, whenever that was. Ms. Roberts said that no, that they had to walk across the sand. Mr. Golob asked if it was just the last 18 months or so when they could not have access because of the erosion; Ms. Roberts said that she did not know how long it was. Mr. Golob asked if she was aware that the easement did not give her permission to have a walkway and asked her to point out where it said she could. Ms. Roberts said she did not agree with that. Ms. Roberts said she couldn't read that copy so she could not point it out. Mr. Golob asked if it would surprise her that she would have to construct 37 feet of walkway to the end of the dune. Ms. Roberts said she had not measured it, but that it would surprise her because she didn't know he had removed that much. Mr. Golob asked what evidence she had that he removed the walkway, because he never touched it. Ms. Roberts said he'd had it done to install sandbags. Chairman Simons said that what was before the Board was whether staff made the right decision in denying the stairs and that the history of access there was irrelevant. Mr. Edes to the extent there was an implication that the walkway had been removed by a part in interest, it was fair for Mr. Golob to ask Ms. Roberts if she had evidence that he personally removed the walkway.

Mr. Edes clarified that Mr. Golob's question was whether she had any evidence that he caused the walkway to be removed. Ms. Roberts said that Mr. Golob had told her that the sandbag people had to remove portions of the walkway to be able to place sandbags and said that they took the board pieces home.

Mr. Golob asked if she had any evidence as to how much it would cost to rebuild the walkway or the stairs. Ms. Roberts said that she did not have those figures because they wouldn't get estimates until they knew the outcome of a decision about the 75 percent value.

Mr. Golob asked if she was going to rebuild the stairs, would they be rebuilt into the dune. Ms. Roberts said that the stairs could be built down from where they are, if they receive permission to rebuild. Mr. Golob asked if she would rebuild the walkway to the dune; Ms. Roberts said if that was necessary, yes.

Mr. Hardy asked when a permit had been applied for. Ms. Roberts said that the 75 percent value of the structure would have to be determined. Mr. Hardy said the steps were torn down by the storm, Hurricane Matthew. Mr. Hardy asked how long after that they waited to apply for a permit to rebuild. Ms. Roberts said they waited until after the renourishment was done. Mr. Hardy asked if at some point the beach was accessible without the stairs. Ms. Roberts said that was correct. Mr. Hardy asked how long it had been since they had access to the beach. Ms. Roberts said that it had been more than a year. Ms. Roberts said that this spring they wanted to put the steps back before the rental season. Mr. Hardy asked why they waited; Ms. Roberts said that they thought more sand was to be placed, and that they didn't want to put something out just to lose it again. Mr. Hardy asked how many times the steps had to be replaced. Ms. Roberts said twice. Mr. Hardy asked if they had been put back in the same place. Ms. Roberts said that was correct. Mr. Hardy asked if Mr. Golob had owned that property when the stairs were replaced previously. Ms. Roberts said that she thought he had. Mr. Hardy asked if, when they had applied for a permit, it had been granted. She said that was true, though she does not remember if they got a permit for the time they just needed to replace a few boards.

Mr. Edes said he wanted to make it clear that a permit had not been applied for with this project, and that this appeal was not for denial of a permit. Mr. Hardy asked if the permit had not been applied for, how they would have known that the project did not meet code. Ms. Roberts said she wasn't sure and that her husband had done that communication.

The Board was in recess until 12:30 p.m.; Chairman Simmons called the meeting back to order.

Robin Roberts was sworn in and testified. Mr. Roberts identified himself as a property owner at 6606 West Beach Drive. Mr. Roberts said that there had been several times they tried to get access to the beach but there had been issues with the Lovejoys and Mr. Golob, but their easement states that they are to have access to the ocean. He said that when they bought the property, that's one of the things the closing attorney pointed out to them, that they got a good deal with the easement; Mr. Edes said that was hearsay. Mr. Roberts said that he had met with staff, and said that it was determined that if they did not exceed 75 percent of the cost of the steps, they could rebuild them. Mr. Roberts reviewed the correspondence with Ms. Coleman. He said he thought there had been some confusion about what they wanted to do. They didn't want to build a dock or anything, just rebuild what they had. He said that staff had offered him the option of putting temporary steps in, but that was expensive, and that they would have to be removed at the end of the season, before a storm, etc.

Mr. Edes said that the earliest correspondence with Town staff included in the packet was dated April 26, 2019, and in that email he had stated that he emailed Ms. Coleman several days before. Mr. Edes asked if the interactions he had with staff occurred in the March/April 2019 timeframe; Mr. Roberts said that was correct. Mr. Edes asked if the steps were there at all in 2018, and Mr. Roberts said he didn't think so. Mr. Edes asked if they were there the previous summer season, in 2017, and Mr. Roberts said no, because the renourishment put sand on the beach and they were able to use that. Mr. Edes asked Mr. Roberts about

Mr. Edward's May 30, 2019 email. Mr. Edes if the appeal was filed based on that decision. Mr. Roberts said that they had been given three options -- the appeal, a variance, and he didn't remember what else. Mr. Edes asked if it was a text amendment, and Mr. Roberts said that was correct. He said they reviewed the options and believed the appeal best suited them. Mr. Edes asked what effect the sandbags had on their decision to not replace the stairs. Mr. Roberts said that sand had been placed on the beach. Mr. Edes asked if there had been no stairs there for a year; Mr. Roberts said that was correct. Mr. Edes asked if the stairs had not been there for two years; Mr. Roberts said he was not sure. Mr. Roberts said that even if they sell the property, the easement would still be there. He said that the walkway was there when he bought the property. Mr. Edes asked him if he had made the repairs to the walkway and paid for them; Mr. Roberts said that was correct.

Mr. Yuhasz asked Mr. Roberts if he could pinpoint a time when the stairs were there and when they were not there. Mr. Roberts said that he could not. Mr. Edes asked if he could tie it to an event. Mr. Roberts said that there was a tropical event after Hurricane Matthew, and that storm took the stairs out. Mr. Yuhasz said that it would have been before Hurricane Florence and Mr. Roberts said that was correct.

Mr. Hardy asked how long it was until they found out that they couldn't put the stairs back. Mr. Roberts said it was probably 30 days.

Mr. Roberts said that he just wished they could go back to the way it was years ago, when there was no problem with neighbors using the walkway. He said Ms. Lovejoy said she didn't want them to do that, so that he had now put a lock on it.

Ms. Lovejoy said that she would like to go back to the way it was too. She said that the easement was being used essentially as a public access. She said the Roberts' house was a VRBO property and that the renters used it. She said too many people were using it and they had to cut it off for everyone. Ms. Lovejoy is one of the property owners for 6613 West Beach Drive. She said that there is a 5-foot easement on her property along the western property line. She said that her father did allow the previous owners to build a walkway in the 1980s. Ms. Lovejoy said the easement specifically states that it shall not include a deck, porch or other type of improvement. She said that the walkway begins where the hard ground ends and ends 37 feet from the end of the dune where they want to build the stairs, so she didn't know how this could be considered a single structure. She said that she had received a letter in 2014 that she was eligible to install sandbags, and that they did so. She said that she had contacted Mr. Roberts about removing portion of the walkway so the sandbags could be installed, and said that Mr. Roberts gave verbal approval. She said that Oak Island Accommodations maintenance staff removed approximately 4-6 feet of the walkway. She said that property owners then purchased sand to cover the sandbags, and access to the beach was over the sand and that has been the case from early 2015 until today. Ms. Lovejoy said that this should not be a surprise to the Roberts since her attorney sent them a letter. Mr. Edes said that the letter would be hearsay. Ms. Lovejoy said that in addition to setback issues, there were other concerns, such as the dune structure and the potential damage to sandbags, which are protecting the dunes. Ms. Lovejoy said that they have the right to approve the design of the stairs, and that at this time, they cannot approve something that will extend beyond the 5-foot easement. She said it was a constant battle building up the dunes and that they didn't want to jeopardize it.

Mr. Hardy asked about the steps being removed. Ms. Lovejoy said that the ocean washed the stairs away in 2014. Mr. Hardy said that there seemed to be a difference of opinion about when the stairs were washed away; Ms. Lovejoy said that was correct.

Mr. Edes asked about the permission to remove portion of the walkway; Ms. Lovejoy said that would have been in 2014 since the sandbags were installed in late 2014/early 2015.

Mr. Edes asked if the steps had been repaired since the Roberts bought the property; Ms. Lovejoy said they had. Mr. Edes asked if they had sought approval from her property's owners for the design. Ms.

Lovejoy said at one point, they did not and they were building a landing. She said they saw that and the landing was removed because they objected. Mr. Edes asked when the steps had last been there and Ms. Lovejoy said it was 2014. Ms. Lovejoy said that's why she did not believe the date on that picture, because it showed steps.

Mr. Roberts said that he did not recall having a conversation regarding permission to remove a portion of the walkway. Mr. Roberts did not have any questions for Ms. Lovejoy.

Mr. Golob asked Ms. Lovejoy if she had any knowledge of Mr. Golob removing any portion of the walkway; Mrs. Lovejoy said that she did not.

Mr. Golob said he owns the property adjacent to the Lovejoys. He said the decision before the Board was if staff had properly interpreted the ordinance. He said the Roberts' decision to buy and their health issues were irrelevant to the decision. He said that he had rebuilt steps three times and was not doing so now because the dune was so compromised. He said that he had pictures that showed the steps were not there on March 25, 2015. Mr. Edes said that they would be marked as Exhibits 4-9. Mr. Edes asked if he had taken the pictures; Mr. Golob said he had. Mr. Edes asked if he had written the date on them, based on what was shown on his phone; Mr. Golob said that was correct. The pictures were shown to staff; staff did not have any objection. The pictures were shown to the Roberts. Ms. Roberts said there was no difference in Mr. Golob writing the dates on them than what they had done. Mr. Edes said that it seemed she did not have any objection, but that she did not validate the dates on them; Ms. Roberts said that was correct. Chairman Simmons said that the pictures were accepted without objection. Mr. Golob said Exhibit 4 shows the sandbags in front of his property and the westward property and the beach nourishment beginning.

The Board took a brief recess from 1:11 p.m. to 1:16 pm. so copies could be made. Copies of Exhibits 4-9 were distributed to the Board members, the Roberts and to Ms. Lovejoy.

Mr. Golob resumed his explanation of the pictures entered as exhibits. He said that they had received permission to install sandbags and that they had substantial investment in the dune. Answering a question from Mr. Hardy, Mr. Golob said Exhibit 4 would not have shown the steps, though there were not stairs there when the nourishment began. Mr. Golob said Exhibit 5 showed the walkway, and the westward boundary of the easement (rope). Mr. Golob said Exhibit 6 showed that there were no steps in 2016. Exhibit 7 was dated March of 2017, and it showed that there were no steps. Mr. Golob said that Exhibit 8 showed that in March of 2018, there were no steps. Mr. Golob said that Exhibit 9 showed that in December of 2018, there were no steps. He said that he has not replaced their steps because of the condition of the beach. He said that there was no dispute that the setback is 8 feet and that these steps would violate the setback. He said that the setback was also designed for him, not just the Lovejoys. He said he has a property right that nothing can be built within 8 feet of his property line. He said that the steps and walkway would violate his property rights. Mr. Golob referenced Sec. 18-195 of the Town's ordinance; Mr. Vares said that ordinance had been replaced with the UDO. Mr. Golob said that that the grandfather clause does not apply when the permit was granted improperly by the Town. He said if the permit was given to the Roberts in error by the Town, it can be corrected now. He also said that the 8-foot setback has been around since the 1970s.

Mr. Hardy asked when he had purchased his property; Mr. Golob said it was in 2013. Mr. Hardy asked if he knew about the easement when he bought the property. He said there were steps there but he did not research the issue so he did not know there was an easement. Mr. Hardy asked if he questioned the proximity of the steps. Mr. Golob said he had questioned it, that he didn't do anything about it but that he didn't accept it. Mr. Golob said that the Roberts' structure was on the property line, and that it was still an illegal location. Mr. Golob said that the dune that was there would be severely compromised by construction. He said that his own family walks the 175 steps to the Kings Lynn access to get to the beach. Mr. Golob said that the Roberts would have to build 37 feet of walkway, and that they still

wouldn't be able to walk on the dune or to build any structures that damage the primary dune. Mr. Golob referenced State statutes and Town ordinances regarding the dunes. Mr. Golob said that they were looking at precedent. He said if the Board allows this person to build into the side yard setback, the Town could not deny that to someone else.

Mr. Golob said that last weekend, there were six carloads of renters at the Roberts' property. He said that children went on his property, slid under the pickets to get onto the walkway and then went sliding down the dune. He said the Roberts do list on their website that access is not allowed there, that people have to use the public access, but that people still use it.

Ms. Chambers asked if the sandbags would have to be removed if the steps were installed. Mr. Golob said that the sandbags were covered, and that the Roberts would have to build a walkway, put pilings in and then build outward. He said he wasn't sure that would be allowed because a landing would be needed.

Mr. Yuhasz asked if the pictures had been taken with Mr. Golob's phone and that the dates were those automatically assigned; Mr. Golob said that was the case.

Mr. Edes asked Mr. Golob if he agreed that any ordinances involving dune damage was beyond the scope of this hearing. Mr. Golob said that if this hearing was not granting them a permit, then he would agree. Mr. Edes said that this hearing would not grant a permit. Mr. Golob said he believed that the grandfather clause issue and not using that to override a setback was absolutely relevant. Mr. Edes asked Mr. Golob if the pictures he provided were taken from his phone, that it was his testimony that the dates were accurate, and that to the best of his recollection there had not been stairs there for over three years; Mr. Golob said that was correct.

Ms. Roberts asked Mr. Golob if he had any construction expertise. Mr. Golob said he did not have any specialized knowledge in construction, but that he has been dealing with dune issues since 2014. He said that he knew that there was no way to put supports in without piercing the sandbags. Ms. Roberts disagreed and said there were ways to cantilever. Ms. Roberts asked if he had a site survey showing potential damage to the dunes. Mr. Golob said he had no knowledge of the Roberts having a site survey. Ms. Roberts asked if he had done a site survey. Mr. Golob said that he had one done in 2014.

Ms. Roberts asked about the pickets; Mr. Golob again explained the renters' actions. Mr. Edes asked Ms. Roberts asked if their marketing directed renters to use another access; Ms. Roberts said that previously, they said the walkway could be used, but that now, renters were directed to use the Kings Lynn access. Mr. Roberts spoke about how the stairs could be constructed. Mr. Edes said that Mr. Golob had acknowledged he was not a construction expert. There was no additional cross-examination. Mr. Edes asked if there was anyone else who wanted to provide testimony; no one else indicated they would like to speak.

Mr. Edes asked Mr. Edwards about his email correspondence, and asked him if he had given any determination about grandfathering. Mr. Edwards said he had not. Mr. Edes asked if the basis for the decision was that the stairs would be in a 5-foot easement, but in an 8-foot setback, and that his interpretation of "projections" meant that the stairs would not get the benefit of the 3.5 foot encroachment allowed per the UDO. Mr. Edwards said that was correct. Mr. Edes advised the Board not to consider "grandfathering," because that was not what they were here for.

Mr. Yuhasz asked Mr. Edes if they were to review this de novo. Mr. Edes said that the Board could affirm, modify or overturn the decision. Mr. Yuhasz said that their reason for re-affirming the decision, if that's what they do, did not need to be the same reason the staff made the decision. Mr. Edes said that was correct. He said they were to interpret the ordinance and see if their interpretation of the ordinance was consistent with staff's interpretation.

Mr. Yuhasz asked if there is a non-conforming condition, was there a time limit for reconstruction of the non-conforming structure. Mr. Edwards said that was correct, and that it was in Article 9, 9.3.5. He read the ordinance. Mr. Edwards showed a copy of the ordinance to the Roberts. Mr. Edes asked the Roberts if they had any objection to the ordinance being entered into evidence. Mr. Roberts asked if that meant that no one else could rebuild stairs more than a year after. Mr. Edes said that they can't give an answer to a hypothetical situation. Ms. Roberts asked when the 365 days began; Mr. Edes said that would be determined by staff upon application. He said what is at issue now is the introduction of the ordinance as an exhibit. Mr. Golob and Ms. Lovejoy did not have any objection to the ordinance being entered. Mr. Edes said he recommended it be accepted as Exhibit 10; it was, and it was produced to the Board.

In closing, Ms. Roberts said that they were just trying to do a simple thing and that she didn't think she needed an attorney for this hearing or that it would go so long. She said that when the property was purchased, the stairs were in place. She said that a lot of this issue is based on, she thinks, that they do not want anybody walking between those two houses. She said they had received numerous emails complaining about people using that easement. She said that she wondered when the 365 days started, as they were waiting for the nourishment to be finished before they tried to put their stairs back. She said she apologized for saying Mr. Golob had removed the walkway, but that no one had contacted them about it being removed. She said that she doesn't think there is any harm done to the dunes, and that it would actually be better for the dunes if there were stairs instead of walking on the sand. Ms. Roberts said she appreciated their time and consideration.

Mr. Yuhasz asked about Exhibit 7, if Ms. Roberts knew if there had been stairs since that nourishment. She said there were not.

Mr. Edes told Ms. Roberts that this was not a waste of anyone's time. He also said that since Ms. Lovejoy had testified, Ms. Roberts could enter those emails from Ms. Lovejoy as evidence if she wanted to. He said that she could also introduce additional pictures. She had a picture of the beach in 2014. Answering questions from Mr. Edes, Ms. Roberts said that her husband took the picture in February 2014 and that it accurately depicted the beach at that time. Mr. Edes showed the picture to staff, Ms. Lovejoy, and Mr. Golob. Mr. Edes said that no parties objected to the introduction of the picture, though Ms. Lovejoy and Mr. Golob did not agree with the date when it was taken.

The Board recessed from 2:12 p.m. until 2:20 p.m.

Mr. Edes said that Exhibit 11 had been copied and distributed. Ms. Roberts said that this is what was on the property when they bought it, until a tropical storm and the two hurricanes did their damage.

Mr. Edes referenced emails that Ms. Roberts had brought, and showed them to staff, Mr. Golob and Ms. Lovejoy. Mr. Edes asked Ms. Lovejoy if she had any objection to the emails being entered. Ms. Lovejoy said she did not object but that she did not see the relevance. Mr. Golob said he was not a party to the emails, but he did not see the relevance; he objected on the grounds of relevance and hearsay. Mr. Edes said that Ms. Lovejoy had testified in favor of upholding the staff decision, which was adverse to what the appellants want, so to the extent that the emails were authored by Ms. Lovejoy or on behalf of Ms. Lovejoy, it is an exception to the hearsay rule, and as to relevancy, he recommended overruling that objection and letting the Board decide relevancy. Chairman Simmons agreed and said they were received (Exhibit 12). Mr. Edes listed the dates of the emails; there were four pages of emails.

Ms. Roberts spoke about the emails and said that she thought a large part of this was that they just didn't want people using the easement. She said that she had told her neighbors that they could use the walkway. When they received the letter from a lawyer, they had to tell those neighbors they could not use it.

Ms. Lovejoy asked Ms. Roberts if they told the Newcastles if they could use the easement. Ms. Roberts said that at first, they did, but then that they told the Newcastles that they could not use it. Ms. Lovejoy

said the Newcastles have a VRBO and they had instructions in their packet that the renters could use the walkway. Ms. Lovejoy said that it is their property, that they do not know the Newcastles and that the easement was supposed to be for the Roberts and the people in their home. Ms. Roberts said that they had not given them permission for their renters to use it and that she was sorry she tried being friendly to their neighbors. Ms. Lovejoy did not have any additional questions.

Mr. Roberts said that the easement was put in place in 1988 for the inhabitants to have a sewer system across the yard. He said all they wanted to do was enjoy their property. Mr. Roberts also said that he had not given Ms. Lovejoy or Oak Island Accommodations permission to remove part of his walkway.

Mr. Edes asked if he had received a letter from an attorney representing the Lovejoys. Ms. Roberts said he did. Mr. Edes asked if putting the stairs back in the easement was part of the contents of the letter. Mr. Roberts said he did not recall. He said the letter had been sent some time last year. There was no cross-examination.

Ms. Lovejoy said she knew the dates were confusing, but there have not been steps on that easement since late 2014 or early 2015. She said she agreed there was a Town ordinance for an 8-foot side yard setback and that the stairs would encroach on that.

Mr. Golob said that he had two pictures from November 27, 2014 that showed the stairs had been destroyed. Mr. Edes showed the pictures to the other parties. Mr. Edes recommended the Board accept the exhibits.

The Board was in recess from 2:40 to 2:44 p.m.

Mr. Edes noted that Exhibits 13 and 14, two pictures, had been accepted without objection, and had been distributed to the Board. Mr. Golob described the pictures, saying the walkway was showed as having been destroyed. Mr. Yuhasz asked if the cable, on Exhibit 13, connected the walkway to the piling on his house. Mr. Golob said that he was not sure. Mr. Edwards asked if the picture showed his retaining wall. Mr. Golob said that what was connected to his piling was part of his retaining wall, and that the planks on the right are what was left of the Roberts' walkway. Regarding Exhibit 14, Mr. Golob said that the picture shows his deck hanging, and the remainder of the walkway. Chairman Simons asked if there were not stairs there since November of 2014. Mr. Golob said he did not know about the time between November 2014 and March 2015, but that Exhibit 4 shows March 2015 and there were no stairs. Mr. Roberts said that they had put supports in for the stairs, and that the Golobs were aware of that. Mr. Golob said the second set of sandbags was put in place in December of 2014, and that they did not have stairs after that. Ms. Roberts said that she believed the original set of sandbags was white; Mr. Golob said that they were all white. Mr. Edes asked Ms. Roberts if she was aware there were two sandbags installations. Ms. Roberts said that she did not know but that she thought the second set of bags was black and that they had stairs when there were white bags. Mr. Edes asked when the second set of sandbags was installed; Mr. Golob said that was December 2014. Mr. Edes asked Mr. Golob when he alleged there had not been stairs since; Mr. Golob said that was as of March 2015. Mr. Edes said that Mr. Golob said that as of April 1, 2015, there were no stairs and asked if the Roberts disputed that. Ms. Roberts spoke about the work they did regarding putting in cross braces and that she did dispute that there were not stairs there after April 1, 2015.

Ms. Roberts showed another picture. Mr. Edes asked if she wanted Mr. Golob to acknowledge that the picture showed sandbags and steps off the Roberts' easement; he did so. Mr. Golob said they were the steps shown in the 2014 picture, and that when the nourishment was done in 2015, there were no stairs. Mr. Golob showed Exhibit 5, June of 2015, and asked Ms. Roberts to confirm there were no stairs. Ms. Roberts said yes, if that was the right date. Ms. Lovejoy did not have any questions regarding Exhibits 13 and 14.

In closing, Mr. Golob said that he thought the only question was did staff properly interpret the ordinance. He said there was a lot of testimony that was undisputed, such as the ordinance requiring the 8-foot setback and that the stairs would violate the setback. He said that there was undisputed testimony from the Roberts themselves that they have not had steps there for at least two years and he believed it has been since March of 2015. He also said that he has property rights to enjoy his property.

Ms. Roberts said that she would like to have her picture entered into evidence. She said she believed it was taken on the date that is on there, but said that the stairs were there when the sandbags were there. Mr. Golob objected to the picture being entered. He said there were two sets of sandbags, and this picture could not be from 2016 since the sandbags were installed in December 2014. Mr. Edes recommended that the Board accept it with three qualifications – there was an objection that it was not taken on the date listed on the picture, that the party offering the picture stated she was not certain when it was taken and that Mr. Golob did verify earlier that there were sandbags in the picture and that these were the Roberts's steps, though he contested when the picture was taken. The picture was accepted as Exhibit 15. Ms. Lovejoy voiced the same objections as Mr. Golob. She said that she placed sandbags out in December 2014 and there is no way this picture could have been taken in 2016 because there are no sandbags in the picture. Mr. Golob also objected again, saying that the Roberts testified that part of the walkway was removed as part of the sandbag installation. Mr. Edes noted that no one objects to the authenticity of the picture as a picture of the area, but the objections are as to the date of the picture. The picture was received.

Ms. Golob asked to speak. Mr. Edes asked Ms. Golob if she was a property owner. Ms. Golob was sworn in.

Shari Golob, 6615 W. Beach Drive, said that she thought all parties would agree that the stairs were not in place after the renourishment project and that the Town would have that date for that. There was no cross-examination of Ms. Golob.

Mr. Edes reviewed the order of the proceedings, and listed the exhibits offered. Mr. Edes also reviewed the decision before the Board. He also said that the testimony about precedent was not applicable in his legal opinion. If it had been a legislative or policy hearing, then they would possibly have to consider precedent. The question before the Board was whether Mr. Edwards properly construed the UDO to prohibit construction within the 8-foot side yard setback. Mr. Edes said Mr. Edwards contended that this particular proposed project would not get the benefit of 3.5-foot encroachment because he opined that "projecting" means attached to. Mr. Edes said as he understands the math of it, the easement is five feet on the boundary line, so it would be three foot deep into the 8-foot setback. He also said as he understands it, the 3.5-foot encroachment, doesn't come from the boundary line but the construction side, so essentially, they would have 6 inches to put stairs in. Mr. Edes said that they had heard a lot about non-conforming structures and the 75 percent rule, but that is not what was decided by staff so it cannot be the basis for this appeal. He also said there was testimony about disturbing sandbags, but that was not part of staff's decision. There was also other testimony regarding issuance of a building permit, though no permit had been applied for.

Mr. Yuhasz said that he wanted to dispute Mr. Edes' formulation of the question. He referred to the pink highlighted area of the email. Mr. Yuhasz said that it said the stairs could not meet the side yard setbacks, which are eight feet. He said that it was clear that the stairs and walkway existed and were non-conforming structures. He said the question was whether a non-conforming structure could be rebuilt. He said that Mr. Edwards' assessment was that it was destroyed 100 percent because the stairs and walkway were separate. He said that Mr. Edwards had also testified that there was evidence the stairs and walkway were connected at some point. He said the question then was what percentage of the total structure the stairs comprised. Mr. Yuhasz said that the statement that the stairs were no allowed was premature, and on that basis, the appeal should be upheld. Mr. Yuhasz also said there is a question about how long they

had to rebuild. He said there was evidence that the stairs had not been there since at least since March of 2017 nourishment, which is more than the 365 days referenced in the ordinance. The stairs would not be allowed to be rebuilt then. But he said that the ordinance is confusing regarding non-conforming uses and structures. Mr. Edes said that he agreed with Mr. Yuhasz that the question was not asked or answered, so it cannot be a basis for the appellant's appeal. He said that the Board should not get into non-conforming, 75 percent, or whether the walkway and stairs are considered as one structure, etc. He said that it was true that Mr. Vares answered those questions when asked, but that Mr. Edwards' testimony was that his decision was not premised in any way whether it was non-conforming, whether it met the 75 percent threshold. Mr. Yuhasz said that then there was no basis for Mr. Edwards' decision. Mr. Edes said that the appeal has to be based on a staff decision, and the staff said that the stairs could not be built in the 8-foot side yard setback.

Chairman Simmons said that the basis for the denial was that it does not meet the setback ordinance. Mr. Yuhasz said they did not ask for a non-conforming structure to be built -- it is a non-conforming structure. Mr. Edes said that they hadn't applied for a permit to build a non-conforming structure. Mr. Yuhasz said that then this hearing was premature, but that since they are here, there may be a reason they could build in an 8-foot setback. Mr. Edes said that if you engage in that analysis, then you have to look at the rest of the UDO provisions that pertain to non-conforming structures. Mr. Yuhasz agreed and said that staff should have done that prior to making the statement to the appellants. Mr. Edes said that if the question was can you build stairs in a 5-foot easement abutting the property line that falls within the 8-foot side yard setback – Mr. Yuhasz interjected that the question was not build, but could you rebuild. Mr. Edes said one of the options was for the Board to remand it back to staff for further investigation and to look into these issues. Chairman Simmons said he believed that the ordinance was applied as written.

Mr. Yuhasz made a motion to remand it to staff for further investigation, with the suggestion that further action not be appropriate prior to receiving a permit application. Chairman Simmons seconded the motion and it passed 4-1 with Chairman Simmons and Board members Hardy and Yuhasz and Alternate Member Sappe in favor and member Chambers opposed. Mr. Edes explained that staff would review the issue and that they would issue a formal opinion. He asked the Board members not to discuss the issue with the parties as it may come up again.

Chairman Simmons made a motion to adjourn at 3:32 p.m. Mr. Hardy seconded the motion and it passed unanimously.

Chairman Reece Simmons

Attested: _____
Lisa P. Stites, MMC
Town Clerk

**TOWN OF OAK ISLAND
BOARD OF ADJUSTMENT
AGENDA ITEM MEMO**

Agenda Item: New Business Item No. 1

Date: September 16, 2019



Issue: Variance Application

Department: Planning & Zoning Administrator

Presented by: Jake Vares

Estimated Time for Discussion: 35 Minutes

Subject Summary:

The variance request you will be hearing is a quasi-judicial decision so it must be conducted in a way to ensure procedural and substantive due process. Anyone wanting to provide testimony must be sworn in. As a quasi-judicial hearing the decision makers must be fair and impartial and you must base your decision only on the competent evidence you receive. If anyone has a direct or potential financial interest in this proposed project then they should recuse themselves. A 4/5th vote is required to be granted a variance. Conditions can be applied but they must be proportional and directly applicable to the applicant's variance situation. In other words they should be designed in such a way to assist the applicant come into better and closer conformance with the towns zoning regulations. All of the evidence and testimony heard is supposed to be substantive and competent in nature. Each case is decided on a site by site basis. The decision has to be based on the specific site and not the owner or other locations they may own. The Board of Adjustment is to look at the circumstances of the property, not the circumstances of the property owner.

At the end of the hearing a motion to adopt a findings of facts document has to be adopted and signed by the chair once a decision has been officially made, regardless if the variance is approved or denied. Findings of Fact are essentially an accepted record of the exhibits, evidence presented, and a formal recording of the decision made at the hearing. The motion to adopt the findings of facts can be made in conjunction with the motion to approve or deny the application or as a separate motion afterwards.

General Statute (GS) 160A-388. (d) codifies the evaluative criteria that is required for the board to determine has been met when deciding a variance request. The four standards are:

- "(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*
- (2)The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*
- (3)The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*
- (4)The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved."*

These General Statute requirements must be standards utilized when hearing and deciding on the case. If approval is granted, the case needs to comply with all of the G.S. standards. Furthermore, variances are not allowed to grant a change in permitted uses.

The property in question at 2519 Marsh Hen Drive and is in the R-7 (Residential) Zoning District. The Applicant seeks a Variance for 7 items as numbered on the site-plan survey:

1. Proposed porch front yard setback encroachment.
2. New house addition rear yard setback encroachment.
3. Proposed garage rear yard setback encroachment.
4. Proposed garage to extend beyond front corner of principal structure.
5. One single driveway width exceeds minimum driveway width permitted.
6. Combined total driveway width exceeds minimum driveway width allowance.
7. Total impervious surface exceeds ordinance cap of 45%.

The attached site-plan survey illustrates all of this. For variance item number one, the applicant also wishes it to include a set of stairs also encroaching the front yard setback. His drawing and email showing this is included in the attachments. Variance item number two is for an addition to the house that would encroach into the rear yard setback. The third variance request is for the proposed garage to encroach into the rear yard setback. Setbacks for accessory structures are different than the setbacks for principal structures (i.e. the home). Accessory structure setbacks are more flexible and stipulate that the structure must be 8 feet from the rear property line. The survey shows the detached garage just shy of meeting the rear yard setback. The fourth variance request is to have the garage be permitted to extend beyond front corner of principal structure. As one can see from the survey the accessory structure extends approximately 5 feet and the ordinance in Section 8.14.9 states that "accessory buildings shall not extend beyond the front edge of the principal building..."

The fifth item on the survey that requires a variance is in regards to the driveway width. The driveway ordinance permits lots to have more than one driveway and the permitted total width of the driveways is dependent upon the width of the property. The wider the parcel the greater the allowable driveway width and inversely the more narrow the lot width is the permissible driveway width is reduced. It should be noted that the driveway requirements are for the driveways dimensions in the right-of-way (from the property line to the edge of the road pavement) once inside the private property lines the driveway/parking area can be anything so long as the stormwater and impervious surface regulations are met. The ordinance states that a single driveway width cannot exceed 24 feet and the eastern driveway is a 31 feet; that is the fifth variance request. The sixth variance application is for the combined width of the two driveways. The front lot line is 120 feet meaning the total combined driveway width can be 40 feet and the survey shows the proposed total driveway width as 52 feet, hence the need for a variance. Without a variance the driveway flares by the edge of the road pavement would also need to be reduced.

The final seventh variance request is for a variance to Section 8.3.6 of the ordinance which dictates that developments may not exceed 45% impervious surface of total lot area. The proposed work would put the property at a 48% impervious surface which exceeds the 45% ordinance benchmark cap. The property is an interior lot, not a corner lot. The setback distances are measured from the property lines. The proposed garage is 28' by 32 feet in dimensions.

The attached documentation contains: the applicable ordinance excerpts, application paperwork, the applicant's justification narratives, site-plan survey, email, applicants drawing, and general site maps. Letters have been sent to the adjacent property owners and a sign placed on site

detailing the hearing date, time and location, per the zoning ordinance requirements (Sec. 4.3.3). It is for the Board of Adjustment to determine if the attached variance application meets all the outlined criteria in the General Statutes. The hearing should not be closed until after the vote has occurred because if a topic needing input comes up during deliberation then the applicant or opponents cannot submit information that may be relevant to the discussion/deliberation. At the end of the meeting the state criteria checklist shall be reviewed and each General Statute standard be assessed before a vote is taken. The motion when the vote occurs needs to specifically state why or why not the General Statute criteria is or is not met.

Attachments: Ordinance excerpts, Variance Application form, applicant justification narratives, site-plan survey, email, applicant drawing, general site area maps

Action Needed: approve, deny, or approve with conditions

Suggested Motion: Applicant does meet all of the general statute mandated evaluative criteria or the applicant does not meet all of the general statute mandated evaluative criteria specifically because _____ and to adopt the associated findings of fact.

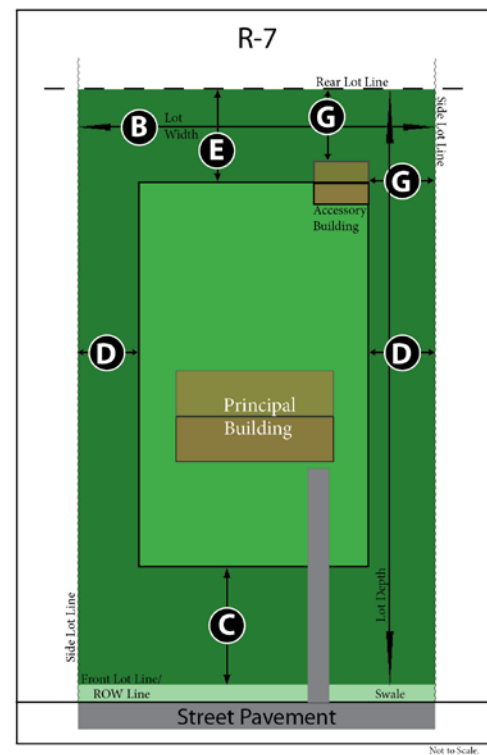
Funds Needed: \$0.00

Follow Up Action Needed: Issue official decision on variance application to the applicant.

Attachments

8.3.1. Dimensional Requirements

| | |
|---|-----------------------------|
| (A) Lot Area Per Dwelling Unit ■ One-Family ■ Two-Family | 7,500 sq ft 10,000 sq ft |
| (B) Lot Width ■ One-Family ■ Two-Family | 60 ft 75 ft |
| (C) Front Yard Setback | 25 ft |
| (D) Side Yard Setback ■ Interior Lot ■ Corner Lot | 8 ft 10 ft |
| (E) Rear Yard Setback | 20 ft |
| (F) Building Height Limits ■ Outside VE Zone ■ Inside VE Zone | 35 ft 41 ft |
| (G) Accessory buildings | 8 ft |



8.3.2. Front Yard Setback. The front yard setback for oceanfront properties in zoning districts R-9, R-7, R-6, and R-6MF shall be fifteen (15) feet from the road, but shall exclude oceanfront properties between

SE 58th Street through SE 74th Street as well as flag lots and their adjoining corner lots. On lots adjacent to the ocean shoreline, the front yard setback may be reduced up to ten (10) feet to accommodate required dune line. The 2000 USACE-MHW line or the traditional rear yard setback; whichever is more restrictive, is considered the rear yard setback.

8.3.3. Additional Requirements. Refer to Section 8.14, Notes to Zoning District Development Standards.

8.3.4. Signs. Signs shall be permitted as provided in Article 10, Part IV.

8.3.5. Parking. Off-street parking shall be provided as required in Article 10, Part III.

8.3.6 Built Upon Area. Residential developments may not exceed 45% impervious surface of total lot area. Impervious surface are to include items such as principal structures, accessory structures, driveways, and other site improvements that create additional impervious surface.

SECTION 8.14 NOTES TO THE ZONING DISTRICT DEVELOPMENT STANDARDS.

8.14.9. Accessory buildings shall not extend beyond the front edge of the principal building or beyond the minimum front building line, whichever is greater, except on flag lots, where pools may be allowed beyond the front edge of the principal building on the water side. Accessory buildings and uses shall not encroach into any utility easement. No parcel may contain more than two accessory buildings, unless the property is greater than three quarters of an acre then an additional accessory structure up to four is permitted. Only two accessory structures are permitted to be side-by-side and any third or fourth accessory structure shall be a minimum of 15 feet from any other accessory structures. No parcel may contain more than two accessory buildings. The combined square footage of the accessory buildings shall not exceed ten percent of the total lot area. The maximum building height shall be 20 feet.

SECTION A.3 DEFINITIONS.

Accessory structure

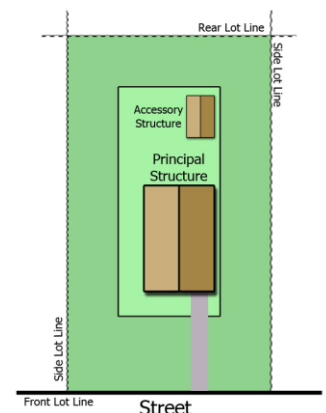
A structure detached from the principal structure on the same property and customarily incidental and subordinate to the principal structure or use. An accessory structure includes garages, carports, swimming pools, pool houses, greenhouses, gazebos, pergolas, detached solar panels and storage sheds, and other urban accessory structures. Dog houses, tree houses, grade level walkways, and sheds equal to or less than 12 x 12 x 12 feet are exempt from the accessory structure definition.

Garage, parking

Any building or premises, other than a private or commercial garage, used exclusively for the parking or storage of motor vehicles.

Garage, private

A building or space used as an accessory to or a part of the main building permitted in any residential district, and providing for the storage of motor vehicles and in which no business, occupation, or service for profit is in any way conducted.



SECTION 10.21 DRIVEWAY CONSTRUCTION.

10.21.2. Design Requirements.

10.21.2.1. Residential Uses.

10.21.2.1.1. For a single drive, on an interior lot the maximum width shall be 24 feet at right-of-way. Tire runner driveways are permitted and encouraged.

10.21.2.1.2. For two drives, the maximum driveway width of any single drive is 24 feet in a dedicated right-of-way, with a combined maximum total for two drives of 32 feet where lot frontage is 60 feet or less and 40 feet where lot frontage is greater than 60 feet but less than 200 feet. Drives must have a minimum distance of five feet between each point of access as measured at the edge of pavement to the property line, plan is approved by the town stormwater director or designee, and is in compliance with all other sections of this Ordinance.

10.21.2.1.3. For a single drive on a corner lot, the maximum driveway width on a front lot line is 24 feet in a dedicated right-of-way.

10.21.2.1.4. For a single drive on a corner lot without water frontage, the maximum driveway width on a side lot line is 32 feet in a dedicated right-of-way where side lot frontage is greater than 60 feet but less than 200 feet. A second driveway is not permitted on the front lot line, the plan must be approved by the town stormwater administrator or designee, and it must be compliance with all other sections of this chapter.

VARIANCE APPLICATION

TOWN OF OAK ISLAND
Planning Department
4601 E. Oak Island Drive
Oak Island, NC 28465



Fee \$ 350. paid - JV

Submittal Information and Procedures:

The applicant will submit to the Development Services staff the application form and all necessary documentation prior to the Board of Adjustment hearing date.

Supplementary information is considered a required part of the application. Applications will not be considered accepted for review unless all required information is provided.

A fee in accordance with the town's adopted fee schedule must accompany the application.

The applicant is expected to attend the hearing to present evidence and answer questions of the Board. The applicant must be prepared to be cross examined concerning evidence or testimony provided. The absence of the applicant is grounds to warrant deferral of action by the Board of Adjustment.

Section A: Applicant Information

Name: Sara + Frank Fraboni

Mailing Address: 36 W Hawasee Rd.
Fletcher, NC 28732

Phone Number: 828-808-2855

Email: ffrab@aol.com

Property Owner Information (if different from the applicant):

Name(s): _____

Address: _____

Phone Number: _____

Email: _____

received 12-9-18
Jim [Signature]

Section B: Property Information

Address of site: 2519 Marsh Hen Drive
Oak Island, NC 28465

Property Identification Number: 23501076

Lot/Block/Section: L-15 B-33A S-EXT N4 Plat J/200

Zoning District: R7

Required setbacks: Front: 25' Side: 8' Rear: 20'

Total Site Area: 0.20 acres 88943 sq feet

Flood Zone: AE

Section C: Hearing Type (Please Circle One)

- ☒ Variance
- ☐ Appeal
- ☐ Interpretation

Section D: Required Justifications/Attachments

If you checked item A. above, please attach an explanation of how you intend to prove that the Board can reasonably find all of the following five (5) items to be true:

1. There is unnecessary hardship resulting from strict application of the ordinance.
2. The hardship of which the applicant suffers is unique to the subject property in question and is not suffered by neighboring properties.
3. The hardship results from conditions peculiar to the property.
4. The hardship suffered is not self-imposed.
5. The variance request is consistent with the spirit and intent of the ordinance.

If you check items B or C above, please attach a justification narrative of the details of your appeal or request for interpretation.

Any attachments must be clear and legible and contain only factual information pertinent to the hearing.

Section E: Supplemental Information

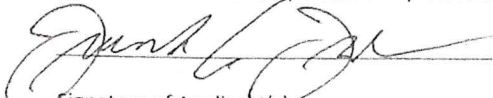
- ☒ Copies of the site plan (preferably 11"x17"). The site plan must be clear and legible. See Section F. below for the minimum required information to be contained on the site plan.
- ☒ List of names of owners, their addresses and tax parcel numbers of the properties within one hundred (100) feet of the subject property including those separated by a street right of way.

Section F: Required Site Plan Data

- Title Box including the project name, applicant name, and address of property
- The present zoning classification
- Property lines and dimensions
- The names of the owners of record of the adjacent properties
- The location and names of all adjacent street rights of way
- The total area of the property
- The location of all existing buildings on the property
- All existing easements, reservations, or rights of way

Section G: Certification

In filling this application to the Board of Adjustment, I hereby certify that all of the information presented in the application is accurate to the best of my knowledge, information, and belief.


Signature of Applicant(s)
Sara Traboni

9/12/19
Date

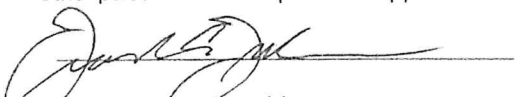
Signature of Applicant (if jointly applying)

Section H: Addendum to Application

I have received, read, and fully understand Chapter 18, Article 2, Division 13, Section 18-334, Zoning Board of Adjustment as it pertains to my application. I have also read and understand the application to the Board of Adjustment. The items I did not understand, if any, have been explained to my satisfaction by an employee of the Town of Oak Island Development Services Department.

I understand the Board of Adjustment, being quasi-judicial in nature, will receive only competent evidence concerning my application. I understand that I have the right to cross examine witnesses presented and that I may be cross examined on matters pertaining to the evidence and testimony that I present.

I further understand that the decision of the Board of Adjustment are subject to review in superior court by proceedings in the nature of certiorari and that I have only thirty (30) days from the date of the filing of the Board's decision in the office of the clerk to the Board of Adjustment or the date that the decision is served upon be or any other person who has requested a copy of such decision, whichever is later to file for such review.


Signature of Applicant(s)
Sara Traboni

9/12/19
Date

Signature of Applicant (if jointly applying)

This application is for 7 variances for our proposed home improvement. Here's a summary of each variance and why it's needed.

1. (Proposed Porch) The proposed porch would be 10' x 25' and requires a variance because it would extend into the front 25' setback. This porch is requested to provide a front entryway and primary focal point at the front of the house. The lot's odd size does not allow for a porch on the rear or side of the home because of existing restrictions. The present rear porch is pie shaped, extremely narrow and small and detracts from the home's value.
2. (New Addition) The new addition requires a variance because it would extend into the rear 20' setback. This addition is necessary to allow for a kitchen remodeling and enlarging the main family room space which was restricted in the original construction because of past restrictions. It also allows for room to add a half bathroom on the main floor and laundry room which currently don't exist. These are needed to add value and bring the home up to current standards desired by today's homebuyers.
3. (Proposed Garage Rear Corner) The proposed garage rear corner requires a variance because it extends into the accessory setback by approximately 4 inches. This is the result of trying to maintain a standard 3 car garage size which is desirable in today's new home market. As homeowners of this property we are owners of multiple vehicles and desire to protect them from the outdoor elements while maintaining a pleasing and clean appearance to our property. This also allows us room for off street parking for guests and avoid ticketing for parking in the street. This variance would also allow us to gain usage of a significant portion of our property that is now limited.
4. (Proposed Garage Front Wall Extends Beyond Existing Structure) The proposed garage front wall requires a variance because it extends beyond the front plain of the existing home structure and up to the front setback line. This is necessary to allow for a standard 3 car garage size and the other reasons mentioned above to protect vehicles and maintain a well kept appearance of the property, which in turn will benefit the value of the neighborhood.
5. (Proposed Drive Width) The proposed driveway width requires a variance because it exceeds current restrictions. This design utilizes a 30' proposed drive to match the garage size and provide maximum ease for garage entry and exit. This is needed to offer the safest possible entry and exit for multiple vehicles and guests. It also offers added value to the property owners who wish to maximize the usage of their limited space.
6. (Total Proposed Drive Footage) The total proposed drive footage requires a variance because the homeowner wishes to construct a circular drive to give added value to the property and provide a safe and effective entry for people with handicaps to make entry into the home.
7. (Impervious Area 48%BUA) The impervious area requires a variance because the proposed total exceeds the allowable amount by a very small percentage. Our plans include remedies by installing EZFlow bundles and drains to capture runoff. See proposed Storm Water Plan.

1. There is unnecessary hardship resulting from strict application of the ordinance:

The shape and size of our lot is unlike most lots on the island. It is a wide but shallow lot that under the current application of the ordinance renders nearly half of our property useless. Since the subject lot is shallow and wide, the 25 foot front and rear setbacks have a larger impact on the ability to built on the lot. The current home on the subject property built in the 90's lacks many of the basic amenities provided by current builders. As a result, the value of our property is diminished. The ordinance is causing us a significant loss of value from the inability to expand our home to provide the upgrades consumers now demand.

2. The hardship of which the applicant suffers is unique to the subject property in question and is not suffered by neighboring properties:

Neighbors on Marsh Hen and on Pelican behind us all have lots that are longer than the subject property. Almost all lots on the island are 120 feet deep or deeper with frontage in the 50 to 60 foot range. We consider those to be conforming lots under the ordinance since front and rear setbacks have less impact on building restrictions. All of the homes that back up to our property along Pelican are 120 feet deep or deeper. The subject property is 88 feet deep with 125 feet of frontage. Its unusual shape was established on the block unlike any other to accommodate other conforming lots that are narrow and deeper. Neighbors' properties are not impacted by setbacks in the same way since their lots are laid out as narrow and deeper lots to accommodate for larger front and rear setbacks. The lower side setbacks have little impact since their homes are built on a deeper lot. See attached map of neighboring lots.

3. The hardship results from conditions peculiar to the property:

The subject lot's wide frontage and shallow depth cause this lot to suffer more severely than others from the lengthy front and rear setbacks. The boundaries for this property do not conform to the normal established boundaries for most neighboring properties. Its shape was apparently predicated upon what was left in the block after all other properties were given more conforming shapes that are not impacted as severely by the setbacks.

4. The hardship suffered is not self imposed:

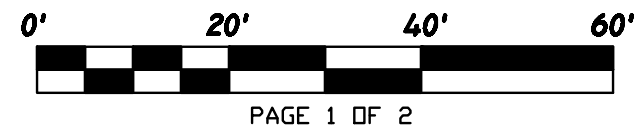
We have every desire to increase the value of our home and provide appearance and appeal that will attract today's demanding consumers. We are restricted by the setbacks from making additions and upgrades which would allow us to make 2519 Marsh Hen Drive a permanent home instead of a second or vacation home. The only limitations at this point for our contractor is the setback.

5. The variance request is consistent with the spirit and intent of the ordinance:

The goal of the ordinance is to provide consistency so as to protect the value of all home and property owners. We seek to adhere to the restrictions to the best of our ability without damaging our ability to build on or use a significant portion of our land. Our request is in hopes of building a more appealing and desirable home that's consistent with the setting and surroundings to increase the property and tax values for not only our home but for all of our neighbors.

PLAT OF SURVEY FOR
SARA & FRANK FRABONI

**2519 MARSH HEN DRIVE
LOT 15, BLOCK 33A, SECTION N4X
SMITHVILLE TOWNSHIP, BRUNSWICK COUNTY
OAK ISLAND , NORTH CAROLINA**



PAGE 1 OF 2

**BLOCK 33A
SECTION N4X
OAK ISLAND, N.C.
MB "J" PG 200 B.C.R.**

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

I, ROBERT B. McHENRY, JR. CERTIFY
THAT THIS MAP WAS DRAWN UNDER MY
SUPERVISION FROM AN ACTUAL FIELD
SURVEY MADE UNDER MY SUPERVISION;
THAT THE RATIO OF PRECISION AS
CALCULATED BY COMPUTER IS 10,000 +;
THAT THE BOUNDARIES NOT SURVEYED
ARE SHOWN AS BROKEN LINES PLOTTED
FROM INFORMATION FOUND IN BOOKS
REFERENCED.

WITNESS MY HAND AND SEAL THIS THE
22ND DAY OF NOVEMBER A.D. 2018.

Robert B. McHenry Jr.

LAND SURVEYOR REGIS. NO. 1-3521



DATE SURVEYED: AUGUST 5, 2014

SURVEY BY: SM/CN

DRAWN BY: C.KENNEDY

SCALE: 1 INCH = 20 FEET

JOB NUMBER: 14-0271/19-0274/19-0299

FIELD BOOK: RBM-2014-5

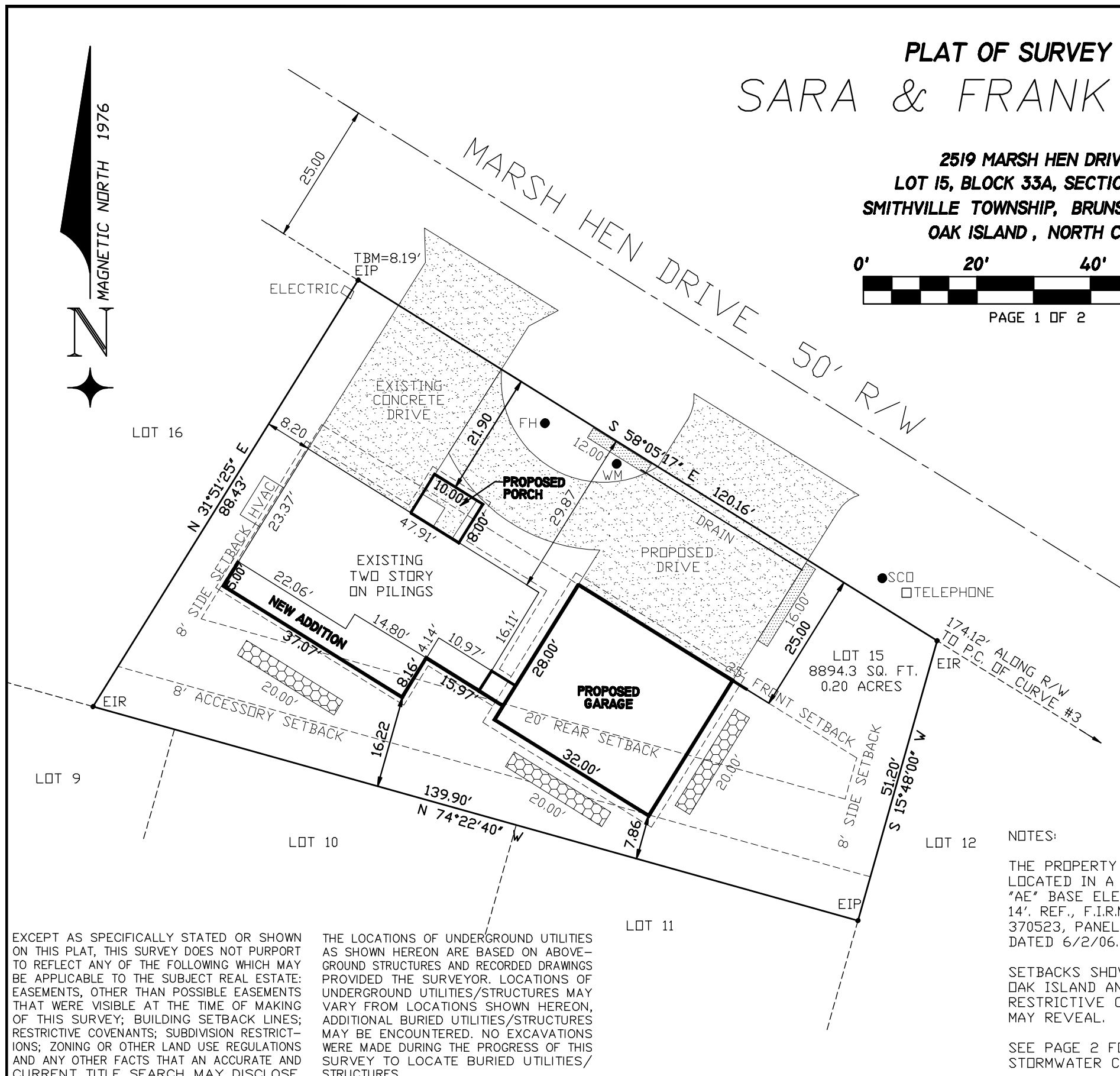
LEGEND:
ERB = EXISTING REBAR FOUND
NRB = NEW REBAR SET
SCO = SEWER CLEANOUT
SV = SEWER VALVE
TP = TELEPHONE PEDESTAL
FH = FIRE HYDRANT
WM = WATER METER

McHENRY SURVEYING
PROFESSIONAL LAND SURVEYOR

P.O. BOX 433 - 8509 E. OAK ISLAND DR.
OAK ISLAND, N.C. 28465

TEL: 910-278-9874
FAX: 910-278-3799
F - 0471

27



NOTES:

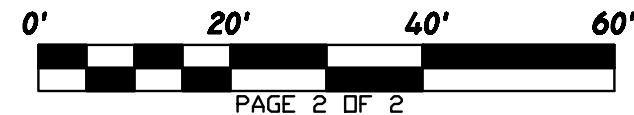
THE PROPERTY SHOWN HEREON IS
LOCATED IN A FLOOD HAZARD ZONE
"AE" BASE ELEVATION DETERMINED
14' REF., F.I.R.M. COMMUNITY NUMBER
370523, PANEL 2066, SUFFIX "J"
DATED 6/2/06.

SETBACKS SHOWN ARE PER TOWN OF
OAK ISLAND AND DO NOT REFLECT ANY
RESTRICTIVE COVENANTS A TITLE SEARCH
MAY REVEAL.

SEE PAGE 2 FOR IMPERVIOUS AND PROPOSED
STORMWATER CALCULATIONS.

PROPOSED STORMWATER PLAN FOR: SARA & FRANK FRABONI

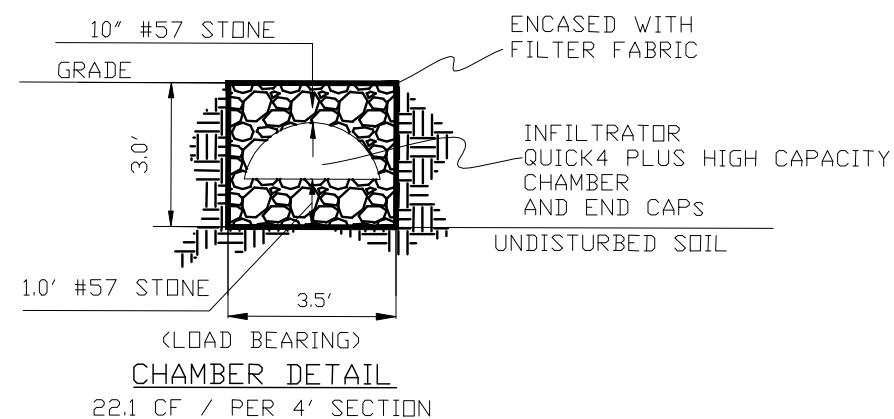
2519 MARSH HEN DRIVE
LOT 15, BLOCK 33A, SECTION N4X
SMITHVILLE TOWNSHIP, BRUNSWICK COUNTY
OAK ISLAND, NORTH CAROLINA



IMPERVIOUS AREA CALCULATIONS:
EXISTING HOUSE = 1143.83 SQ.FT.
EXISTING DRIVE = 662.17 SQ.FT.
TOTAL EXISTING = 1806.00 SQ.FT.

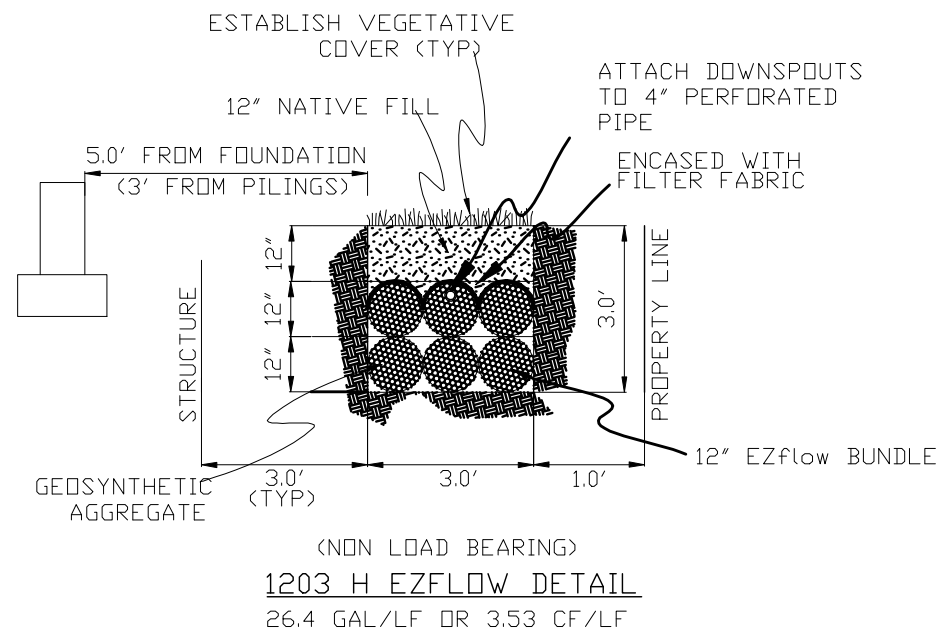
PROPOSED ADDITIONS:
PROPOSED HOUSE ADDITIONS = 397.35 SQ.FT.
PROPOSED GARAGE = 1085.00 SQ.FT.
PROPOSED DRIVE = 1170.79 SQ.FT.
ADDITION OVER EXISTING IMPERVIOUS = -55.00 SQ.FT.
TOTAL PROPOSED = 2598.14 SQ.FT.

2598.14 X .125 = 324.77 GALLONS RUNOFF



PROPOSED DRIVE = 1115.79 SQ.FT.
1115.79 X .125 = 139.47 CF RUNOFF

PROPOSED QUICK 4 INFILTRATOR CHAMBERS:
139.47 CF RUNOFF/22.1 = 6.31/4' CHAMBERS REQUIRED
7-4' CHAMBERS PROPOSED = 154.70 CF RUNOFF



PROPOSED HOUSE ADDITION == 397.35 SQ.FT.
397.35 X .125 = 46.91 CF RUNOFF

PROPOSED 1230H EZFLOW BUNDLES:
46.91/3.53 = 13.29 LF BUNDLES REQUIRED
2-10' BUNDLES PROPOSED = 70.60 CF RUNOFF

PROPOSED GARAGE = 1085.00 SQ.FT.
1085.00 X .125 = 135.63 CF RUNOFF

PROPOSED 1230H EZFLOW BUNDLES:
135.63/3.53 = 38.42 LF BUNDLES REQUIRED
4-10' BUNDLES PROPOSED = 141.20 CF RUNOFF RETAINED

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY
I, ROBERT B. McHENRY, JR. CERTIFY
THAT THIS MAP WAS DRAWN UNDER MY
SUPERVISION FROM AN ACTUAL FIELD
SURVEY MADE UNDER MY SUPERVISION;
THAT THE RATIO OF PRECISION AS
CALCULATED BY COMPUTER IS 10,000 +;
THAT THE BOUNDARIES NOT SURVEYED
ARE SHOWN AS BROKEN LINES PLOTTED
FROM INFORMATION FOUND IN BOOKS
REFERENCED.
WITNESS MY HAND AND SEAL THIS THE
9TH DAY OF SEPTEMBER A.D. 2014.
Robert B. McHenry, Jr.
LAND SURVEYOR REGIS. NO. L-3521



DATE SURVEYED: AUGUST 5, 2014

SURVEY BY: SM/CN

DRAWN BY: C.KENNEDY

SCALE: 1 INCH = 20 FEET

JOB NUMBER: 14-0271/19-0274/19-0299

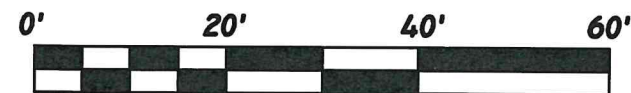
FIELD BOOK: RBM-2014-5

LEGEND:
ERB = EXISTING REBAR FOUND
NRB = NEW REBAR SET
SCO = SEWER CLEANOUT
SV = SEWER VALVE
TP = TELEPHONE PEDESTAL
FH = FIRE HYDRANT
WM = WATER METER

McHENRY SURVEYING
PROFESSIONAL LAND SURVEYOR
P.O. BOX 433 - 8508 E. OAK ISLAND DR.
OAK ISLAND, N.C. 28465
TEL: 910-278-8874
FAX: 910-278-3788
F-0471

PLAT OF SURVEY FOR
SARA & FRANK FRABONI

**2519 MARSH HEN DRIVE
LOT 15, BLOCK 33A, SECTION N4X
SMITHVILLE TOWNSHIP, BRUNSWICK COUNTY
OAK ISLAND , NORTH CAROLINA**



PAGE 1 OF 2

**BLOCK 33A
SECTION N4X
OAK ISLAND, N.C.
MB "J" PG 200 B.C.R.**

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

I, ROBERT B. McHENRY, JR. CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION; THAT THE RATIO OF PRECISION AS CALCULATED BY COMPUTER IS 10,000 +; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED.

WITNESS MY HAND AND SEAL THIS THE

22ND DAY OF NOVEMBER A.D. 2019.

RECEIVED BY: PTB 11/11/11

Kyle D. McHenry

LAND SURVEYOR REGIS. NO. 1-3521



DATE SURVEYED: AUGUST 5, 2014

SURVEY BY: SM/CN

DRAWN BY: C.KENNEDY

SCALE: 1 INCH = 20 FEET

JOB NUMBER: 14-0271/19-0274/19-0299

FIELD BOOK: RBM-2014-5

LEGEND:

ERB = EXISTING REBAR FOUND

NRB = NEW REBAR SET

SCO = SEWER CLEANOUT

SV = SEWER VALVE

TP = TELEPHONE PED

FH = FIRE HYDRANT

WM = WATER METER

McHENRY SURVEYING
PROFESSIONAL LAND SURVEYOR

**P.O. BOX 433 - 8509 E. OAK ISLAND DR.
OAK ISLAND, N.C. 28465**

TEL: 910-278-9874

FAX: 910-278-3799

F-0471

NOTES:

THE PROPERTY SHOWN HEREON IS
LOCATED IN A FLOOD HAZARD ZONE
'AE' BASE ELEVATION DETERMINED
14' REF., F.I.R.M. COMMUNITY NUMBER
370523, PANEL 2066, SUFFIX 'J'
DATED 6/2/06.

SETBACKS SHOWN ARE PER TOWN OF
OAK ISLAND AND DO NOT REFLECT ANY
RESTRICTIVE COVENENTS A TITLE SEARCH
MAY REVEAL.

SEE PAGE 2 FOR IMPERVIOUS AND PROPOSED
STORMWATER CALCULATIONS.

EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS THAT WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND USE REGULATIONS AND ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

THE LOCATIONS OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVE-GROUND STRUCTURES AND RECORDED DRAWINGS PROVIDED THE SURVEYOR. LOCATIONS OF UNDERGROUND UTILITIES/STRUCTURES MAY VARY FROM LOCATIONS SHOWN HEREON, ADDITIONAL BURIED UTILITIES/STRUCTURES MAY BE ENCOUNTERED. NO EXCAVATIONS WERE MADE DURING THE PROGRESS OF THIS SURVEY TO LOCATE BURIED UTILITIES/STRUCTURES.

LOT 11

PROPOSED STORMWATER PLAN FOR: SARA & FRANK FRABONI

2519 MARSH HEN DRIVE
LOT 15, BLOCK 33A, SECTION N4X
SMITHVILLE TOWNSHIP, BRUNSWICK COUNTY
OAK ISLAND, NORTH CAROLINA



IMPERVIOUS AREA CALCULATIONS:
EXISTING HOUSE = 1143.83 SQ.FT.
EXISTING DRIVE = 662.17 SQ.FT.
TOTAL EXISTING = 1806.00 SQ.FT.

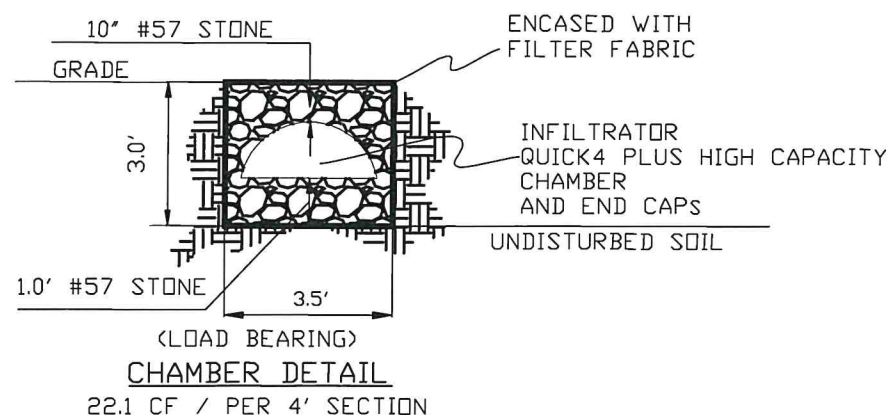
PROPOSED ADDITIONS:
PROPOSED HOUSE ADDITIONS = 397.35 SQ.FT.
PROPOSED GARAGE = 1085.00 SQ.FT.
PROPOSED DRIVE = 1170.79 SQ.FT.
ADDITION OVER EXISTING IMPERVIOUS = -55.00 SQ.FT.
TOTAL PROPOSED = 2598.14 SQ.FT.

2598.14 X .125 = 324.77 GALLONS RUNOFF

2598.14
+ 1806.00
4,404.14 total impervious surface

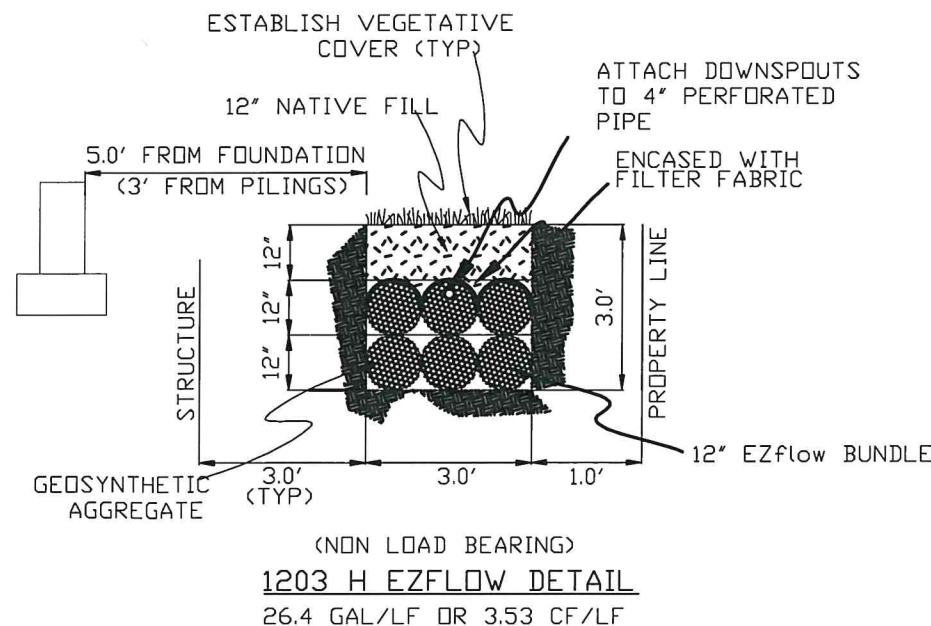
lot s.f. = 9,147.6
therefore impervious surface is 48%
of total lot size.

variance #2 because exceeds 45% cap in ordinance.



PROPOSED DRIVE = 1115.79 SQ.FT.
1115.79 X .125 = 139.47 CF RUNOFF

PROPOSED QUICK 4 INFILTRATOR CHAMBERS:
139.47 CF RUNOFF/22.1 = 6.31/4' CHAMBERS REQUIRED
7-4' CHAMBERS PROPOSED = 154.70 CF RUNOFF



PROPOSED HOUSE ADDITION == 397.35 SQ.FT.
397.35 X .125 = 46.91 CF RUNOFF

PROPOSED 1230H EZFLOW BUNDLES:
46.91/3.53 = 13.29 LF BUNDLES REQUIRED
2-10' BUNDLES PROPOSED = 70.60 CF RUNOFF

PROPOSED GARAGE = 1085.00 SQ.FT.
1085.00 X .125 = 135.63 CF RUNOFF

PROPOSED 1230H EZFLOW BUNDLES:
135.63/3.53 = 38.42 LF BUNDLES REQUIRED
4-10' BUNDLES PROPOSED = 141.20 CF RUNOFF RETAINED

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

I, ROBERT B. McHENRY, JR. CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION; THAT THE RATIO OF PRECISION AS CALCULATED BY COMPUTER IS 10,000 +; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED.

WITNESS MY HAND AND SEAL THIS THE 9TH DAY OF SEPTEMBER A.D. 2014.

Robert B. McHenry, Jr.
LAND SURVEYOR REG. NO. 1-3521



DATE SURVEYED: AUGUST 5, 2014

SURVEY BY: SM/CN

DRAWN BY: C.KENNEDY

SCALE: 1 INCH = 20 FEET

JOB NUMBER: 14-0271/19-0274/19-0299

FIELD BOOK: RBM-2014-5

LEGEND:
ERB = EXISTING REBAR FOUND
NRB = NEW REBAR SET
SCO = SEWER CLEANOUT
SV = SEWER VALVE
TP = TELEPHONE PEDESTAL
FH = FIRE HYDRANT
WM = WATER METER

McHENRY SURVEYING
PROFESSIONAL LAND SURVEYOR

P.O. BOX 433 - 8508 E. OAK ISLAND DR.
OAK ISLAND, N.C. 28465
TEL: 910-278-0874
FAX: 910-278-3700
F-0471

planner

From: frank fraboni <ffrab@aol.com>
Sent: Monday, November 25, 2019 10:29 AM
To: planner
Subject: enlarged front porch with steps
Attachments: variance.pages

Hi Jake,

I've attached the updated summary of the requested variances with explanations for each. I've also included a photo of the drawing with a penciled in change to the front porch. After our meeting we realized the porch drawing did not include any steps. So I've redrawn a larger porch (10' x 25') that would extend to the corner closest to the proposed garage. I've also tried to draw some steps that would come down to a platform and then turn to step down to the circle drive. Will my drawing suffice for this change and is there anything else we need or can do to help you?

Thank you for your willingness to meet with us on such short notice and for making this an easy process.

Best,
Frank

MARSH HEN DRIVE

50'

5'-but capped at

TBM=8.19'
EIP

ELECTRIC

EXISTING
CONCRETE
DRIVE

FH

WM

PROPOSED
PORCH

*Applicant drawing of stairs

PROPOSED
DRIVE

EXISTING
TWO STORY
ON PILINGS

NEW ADDITION

31°51'25" E
88.43'

23.37'

22.06'

8.20'

21.90'

12.00'

120.16'

S 58°05'17" E

47.91'

10.00'

18.00'

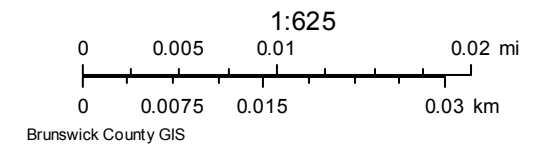
29.87'

16.00'

Brunswick County GIS Data Viewer



9/13/2019 12:30:33 PM



Brunswick County GIS Data Viewer



2019, 12:09:12 PM

- Addresses
- US Hwy
- Minor
- Parcel
- Interstate
- NC Hwy
- State Road
- Condo

1:1,337

