

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
WILLIAM F. LANE
General Counsel



TO: The Coastal Resources Commission

FROM: Holly R. Ingram, DEQ Assistant General Counsel
Christine A. Goebel, DEQ Assistant General Counsel

DATE: October 27, 2021 (for the November 10, 2021 CRC Meeting)

RE: **Variance Request by the Town of Kure Beach (CRC-VR-21-04)**

Petitioner is the Town of Kure Beach (the “Town”), which owns a right-of-way area and an ocean rescue service building at 104 Atlantic Avenue in Kure Beach. The headquarters is a ten feet by sixteen feet wood frame structure near the beach. The Town has proposed a twelve feet by sixteen feet addition to the existing structure in order to store its five ATV’s, which it uses for its ocean rescue duties as well as some general town duties. The site of the proposed addition is waterward of the Town’s CAMA development line that the Commission authorized in 2017. On September 27, 2021, DCM denied the Town’s application for the minor development permit due to its inconsistency with the Commission’s development line rules, specifically 15A NCAC 7H .0306(a)(2), which states that “In no case shall new development be sited seaward of the development line. The Town now seeks a variance in order to construct the addition as proposed in their permit application.

The following additional information is attached to this memorandum:

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

cc(w/enc.): James E. Eldridge, Esq., Town’s Counsel, electronically
Shawn Maier, Assistant AG and CRC Counsel, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically



RELEVANT STATUTES OR RULES**ATTACHMENT A****15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES**

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

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

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

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

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

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

(b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the

natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

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

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long term annual erosion rate times 90; provided that, where there has been no long term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study” and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.

15A NCAC 07H .0305

(a) This Paragraph describes natural and man-made features that are found within the ocean hazard area of environmental concern.

....

(10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used at the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to provisions of Rule .0306(a)(2) of this Section.

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

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

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

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

(3) In no case shall a development line be created or established on state owned land or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.

LAWS RELATED TO ATV'S

N.C. GEN. STAT. § 20-171.16. PASSENGERS.

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

N.C. GEN. STAT. § 20-171.19. PROHIBITED ACTS BY OWNERS AND OPERATIONS.

(a) No person shall operate an all-terrain vehicle on a public street or highway or public vehicular area when such operation is otherwise permitted by law, unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(a1) No person under 18 years of age shall operate an all-terrain vehicle off a public street or highway or public vehicular area unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(a2) Notwithstanding subsection (a1) of this section, a person who is under 18 years of age and employed by a supplier of retail electric service, while engaged in power line inspection, may operate an all-terrain vehicle while wearing both of the following:

(1) Head protection equipped with a chin strap that conforms to the standards applicable to suppliers of retail electric service adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor.

(2) Eye protection that conforms to the standards applicable to suppliers of retail electric service adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor.

- (b) No owner shall authorize an all-terrain vehicle to be operated contrary to this Part.
- (c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.
- (d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.
- (e) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.
- (f) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.
- (g) No person shall operate an all-terrain vehicle during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at anytime when visibility is reduced due to insufficient light or atmospheric conditions, without displaying a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws.

N.C. GEN. STAT. § 20-171.22. EXCEPTIONS.

- (a) The provisions of this Part do not apply to any owner, operator, lessor, or renter of a farm or ranch, or that person's employees or immediate family or household members, when operating an all-terrain vehicle while engaged in farming operations.
 - (a1) Any person may operate an all-terrain vehicle or utility vehicle on a public street or highway while engaged in farming operations.
- (b) The provisions of this Part do not apply to any person using an all-terrain vehicle for hunting or trapping purposes if the person is otherwise lawfully engaged in those activities.
- (c) The provisions of G.S. 20-171.19(a1) do not apply to any person 16 years of age or older if the person is otherwise lawfully using the all-terrain vehicle on any ocean beach area where such vehicles are allowed by law. As used in this subsection, "ocean beach area" means the area adjacent to the ocean and ocean inlets that is subject to public trust rights. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line.

N.C. GEN. STAT. § 20-171.23 MOTORIZED ALL-TERRAIN VEHICLES OF LAW ENFORCEMENT OFFICERS AND FIRE, RESCUE, AND EMERGENCY MEDICAL SERVICES PERMITTED ON CERTAIN HIGHWAYS.

- (a) Law enforcement officers acting in the course and scope of their duties may operate motorized all-terrain vehicles owned or leased by the agency, or under the direct control of the incident commander, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(b) Fire, rescue, and emergency medical services personnel acting in the course and scope of their duties may operate motorized all-terrain vehicles and owned or leased by fire, rescue, or emergency medical services departments, or under the direct control of the incident commander, on: (i) public highways where the speed limit is 35 miles per hour or less; and (ii) nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less.

(c) This Part and all other State laws governing the operation of all-terrain vehicles apply to the operation of all-terrain vehicles authorized by this section.

(d) An all-terrain vehicle operated pursuant to this section shall be equipped with operable front and rear lights and a horn.

(e) A person operating an all-terrain vehicle pursuant to this section shall observe posted speed limits and shall not exceed the manufacturer's recommended speed for the vehicle.

(f) A person operating an all-terrain vehicle pursuant to this section shall carry an official identification card or badge.

(g) For purposes of this section, the term “motorized all-terrain vehicle” has the same meaning as in G.S. 14-159.3, except that the term also includes utility vehicles, as defined in this Chapter.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner Town of Kure Beach (“Town”) is a North Carolina municipal body politic organized and existing in Kure Beach, New Hanover County, North Carolina. The Town is represented by Town Attorney, James E. Eldridge.
2. In December of 2017, the Coastal Resource Commission (“Commission”) issued a Final Agency Decision approving the Town’s Development Line. The Development Line identifies the most waterward location any “development”, as that term is defined by CAMA, could be sited on oceanfront properties in the Town. Under the Commission’s rules, specifically 15A NCAC 7H.0306(a)(2), no buildings or accessory structures may be located waterward of the Development Line.
3. A critical component of its public safety program, the Town’s Ocean Rescue Service, operating under the command of the Kure Beach Fire Department and together with Fire Department personnel, provides ocean rescue, lifesaving, emergency medical, and other beach-sited public safety services.
4. In providing these services, the Town operates ten ocean rescue towers along three miles of beach strand and maintains an Ocean Rescue Headquarters (“Headquarters”) at 104 Atlantic Avenue, Kure Beach, North Carolina (“Property”). Headquarters, as it currently exists, is a ten-foot by six-foot wood frame structure. The Property is located within the unimproved portion of the waterward side of the public right-of-way and is immediately adjacent to the beach.
5. The Property is located within the Ocean Hazard Area as defined by CAMA and the Commission’s rules, such that any proposed development requires a CAMA permit under N.C.G.S. §§ 113A-118 and 113-120.
6. The Property is adjacent to the Atlantic Ocean, the waters of which at this location are classified as SB waters by the Environmental Management Commission.
7. The Town owns legal title to the Property as demonstrated by the public use and public maintenance of the right-of-way beyond the twenty-year prescription period. A copy of the Town’s CAMA minor permit application, including the description of the public property and its use, is provided to the Commission as a Stipulated Exhibit.
8. According to Kure Beach Fire Department Chief Edmund C. Kennedy’s attached affidavit, the Town employs eight full-time and five part-time employees as well as thirty seasonal personnel. Chief Kennedy’s Affidavit is attached as a Stipulated Exhibit and is referenced throughout these facts.
9. As noted in Chief Kennedy’s affidavit, the Town annually reports its ocean rescue data to the United States Lifesaving Association. That data shows that the Town has made an average of 114 ocean rescues and 41 medical contacts on the beach per year. A copy of that data from 2007 to 2020 is attached as a Stipulated Exhibit.

10. The Town currently operates five ATVs, one Honda Pioneer and four Honda Ranchers. Photographs of the Town's ATVs are attached at a Stipulated Exhibit.
11. According to Chief Kennedy, the ATVs are used extensively throughout the year, including outside of normal lifeguard hours in season, as follows:
 - a. In season, the ATVs are used in the evenings up until 8:00 p.m. to remove any equipment left on the beach for the protection of sea turtles and for public safety;
 - b. During the 4th of July, the ATVs patrol the beach to provide fire prevention and suppression services for the residential structures along the strand;
 - c. During the offseason, the ATVs are used in responding to ocean rescues and other emergencies on the beach. The Fire Department averages 6-12 ocean rescues per year during the offseason; and
 - d. During the pandemic lockdowns, the ATVs were used to ensure the beach remained closed to the public.
12. According to the affidavit of Chief Kennedy, the ATVs are currently stored at Town Hall, 117 Settlers Lane, Kure Beach, NC 28449, due to lack of storage space at Headquarters. Town Hall is 0.4 miles from the Property. Personnel operating the ATVs must travel over public streets and through a traffic-light controlled intersection to access the beach. According to Chief Kennedy, under the best of conditions it takes several minutes to travel that distance.
13. Under N.C.G.S. §§ 20-171.16, 20-171.19, and 20-171.23, personnel operating ATVs over public streets shall:
 - i) wear eye protection and a DOT approved safety helmet;
 - ii) not carry passengers; and
 - iii) carry an official identification card or badge.

However, pursuant to N.C.G.S. § 20-171.22, these requirements do not apply when operating the ATVs on the beach strand.
14. The Town contends that implementing the above requirements for operating ATVs on public streets hinders the retention and recruitment of the Town's seasonal personnel and financially impacts the Town's budget.
15. According to Chief Kennedy, it is estimated that purchasing safety equipment for the ATVs would cost \$3000.00 annually, due to the Town's desire to replace the equipment yearly as a COVID safety precaution.
16. To eliminate operating ATVs on public streets, forego the need for the safety equipment, and maximize ocean rescue, lifesaving, and emergency medical services and response times on the beach, the Town has proposed enlarging the Headquarters by an additional 12 x 16 feet (dripline) with a wood frame construction compliant with all applicable legal authorities. This will allow the Town to store and station the ATVs at the Property. A map reflecting the footprint of the Town's proposed structure is attached as a Stipulated Exhibit.

17. In accordance with N.C.G.S. § 113-120, on September 14, 2021, the Town applied for a CAMA Minor Development Permit for the proposed development.
18. On September 9, 2021, as part of its minor permit application, the Town, through Local Permitting Officer John Batson, provided notice to the adjacent landowners of its CAMA application. A copy of the Town's permit application, which includes copies of the provided notice, is included as a Stipulated Exhibit. Mr. Batson's Affidavit is also attached as a Stipulated Exhibit and referenced throughout these facts.
19. On September 27, 2021, the Division of Coastal Management denied the Town's application for the minor development permit. A copy of the denial letter is attached as a Stipulated Exhibit.
20. As set forth in said letter, the denial was based on a finding that the proposed development:
 - [V]iolates N.C.G.S. §113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. Specifically, the development for which [the Town] applied consisted of the construction of a new lifeguard shack that would be located seaward of the [Town's] Development Line.

Your proposal is inconsistent with 15A NCAC 7H.0306(a)(2) In no case shall new development be sited seaward of the development line.
21. 15A NCAC 07H. 0306 sets forth general use standards for Ocean Hazard Areas, including ocean erosion setbacks. 15A NCAC 7H .0306 (a)(2) provides as follows:
 - (a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:
 - ...
 - (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
22. As such, 15A NCAC 07H .0306(a)(2) prohibits development waterward of the development line.
23. The Town stipulates that the denial of the Town's minor development permit was correct under 15A NCAC 7H .0306 (a)(2).
24. The Town owns the Property such that it is inapplicable for the Town to seek a variance from itself. Even if the Town could seek a variance from itself, such an application would be denied under 15A NCAC 7H .0306(a)(2).

25. On September 29, 2021, the Town provided notice to the adjacent property owners via certified mail, return receipt requested, that it submitted a variance petition with the CRC, as required by 15A NCAC 7J .0701(c)(7). During the comment period, DCM received no written comments. Copies of the Town's certified mail information are attached as a Stipulated Exhibit.
26. The Town now seeks a variance request from the Commission to develop the addition to the Headquarters as proposed on their Minor Development Permit Application.

Stipulated Exhibits:

1. Town's Minor Permit Application.
2. Email exchange between James E. Eldridge, Town Attorney, and Christine A. Goebel, DEQ Assistant General Counsel, dated September 3, 2021, concerning the Town's ownership interest of the Property.
3. September 27, 2021 letter from Robb Mairs, DCM CAMA Minor Permit Coordinator, to John Batson, Building Inspector for the Town, denying the Town's application for a CAMA Minor Development permit for the Property located at 104 Atlantic Avenue, Kure Beach, North Carolina.
4. Description of the proposed development and photographs of the Property.
5. Site plan for the proposed development of the Property.
6. Copies of certified mail receipts showing that notice of the Town's variance petition was provide to adjacent property owners.
7. Photographs of the Town's ATVs.
8. United States Lifesaving Association Statistics for Kure Beach, North Carolina, from 2007 through 2020.
9. Affidavit of John J. Batson, Local Permitting Officer.
10. Affidavit of Edmund C. Kennedy, Kure Beach Fire Department Chief.
11. PowerPoint presentation.

PETITIONERS' & STAFF'S POSITIONS**ATTACHMENT C****I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.****Petitioners' Position: Yes.**

A critical component of Kure Beach's public safety program is the ocean rescue and lifesaving services the Town provides. Over the last ten years, employees have made on average 114 ocean rescues and 41 medical contacts per year. Employees providing these services utilize ATVs along the beach to maximize response time. However, at present time, the ATVs are stationed, by necessity, at Town Hall such that the rescue and lifesaving personnel must traverse from Town Hall over public highways to the Ocean Rescue Headquarters in the event of an emergency.

Because of the public highway travel, NC General Statutes §§ 20-171.15 and 20-171.23 requires the following of ATV operators:

- Eye protection
- DOT approved helmet
- Operable front and rear lights
- Carry official identification card or badge
- Shall not carry a passenger
- Shall successfully complete all-terrain safety training and possess certificate

In an operation that has seasonal employees, it has become increasingly difficult to maintain return employees who most often are kids in high school and college. The Town is concerned that implementing the requirements above for ATV operation will hinder employee retention and recruitment.

Considering these circumstances, the optimum solution for public health and safety would be for the enlargement of the Ocean Rescue Headquarters to allow for storage of the ATVs. The enlargement would be seaward of the Development Line, but landward of the Static Line.

The Town applied for a CAMA permit with Wilmington DCM. The Town was denied that permit based on the following language. *See Denial Letter in Stipulated Exhibits.*

15A NCAC 7H .0306 (a)(2) states that "In areas with a development line, the ocean hazard setback shall be set in accordance with subparagraphs (a)(3) through (9) of this rule. In no case shall new development be cited seaward of the development line."

Strict interpretation of this rule would prohibit the Town from highest and best use of resources and employee time management for public health, safety policies, and goals.

If Development Line rules are amended to revert to only Static Line Rules, this proposed development would be allowed.

By granting this variance, the CRC would eliminate the safety, liability, and storage needs for our lifeguards by allowing the enlargement of the existing Ocean Rescue building for ATV storage. It would also reduce response times by seconds that matter.

Staff's Position: Yes.

Staff agrees that strict application of the Commission's rule prohibiting development oceanward of the Development Line causes Petitioner unnecessary hardships.

In creating the Coastal Area Management Act (CAMA), the legislature recognized the importance of preserving and protecting the public's opportunity to enjoy the physical, aesthetic, cultural and recreational qualities of the shorelines of the State. Included among the stated goals of CAMA are (1) insuring the orderly and balanced use and preservation of coastal resources on behalf of the people of North Carolina and the nation and (2) the establishment of policies, guidelines, and standards for economic development, recreation and tourist facilities, preservation, and enhancement of the historic and cultural aspects of the coastal area. *See* N.C.G.S. §113A-102(a) and (b). The Commission's rules also recognize the need to balance protecting the coastal lands and waters of the State with common law and statutory rights of access to the public trust areas.

The proposed location of the development is on the Town-owned right-of-way, and, although the proposed location is seaward of the development line, it would be an addition to an already-existing structure that is seaward of the development line. The proposed location of the addition will further enhance the Town's public safety measures by decreasing emergency response times.

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

The location of the existing Ocean Rescue Headquarters is on Town owned Right-of-Way. The conditions peculiar to the subject property are its proximity to the ocean as opposed to the removed location of Town Hall and that proximity, if the variance is granted, will clearly be beneficial to public health and safety in the beach access areas.

The area of proposed development is on the oceanfront with limited area because it is beside a public parking and beach access area.

Staff's Position: Yes.

Staff agrees Petitioner's hardship is caused by conditions peculiar to Petitioner's property. The hardship results from the Town-owned Property's location oceanward of the Town's own development line. The area available to add an addition on to the existing Ocean Rescue Headquarters which by design and purpose, necessitates its siting in a location where public safety staff can most easily access the beach quickly.

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

Petitioners' Position: No. [no other statement provided]**Staff's Position: No.**

While Staff acknowledges that the Town is choosing to locate the proposed addition oceanward of the development line, Staff also recognizes that ocean rescue facilities, by design, necessitate siting near the beach to most efficiently provide emergency services. Proposing an addition to an existing Town-owned structure on Town-owned property already used for public safety purposes and located near the central area of town was an attempt to limit the hardships.

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

The Town of Kure Beach continually strives to be good stewards of our beautiful beach, and this is most admirably shown by the recent results of resident surveys for Land Use Plan updates currently underway. Consistently, the phrases of "family-friendly, small town, and lifeguard protection" were part of the comments in the surveys. While strict interpretation of Development Line rules would not allow the proposed development, it still resides in the spirit, purpose, and intent of the rules primarily because it is permissible under Static Line rules.

It does indeed secure the public safety and welfare by allowing the Town to provide better service to its beach visitors by way of fiscal responsibility, life protection, and ease of access. It is better to make a onetime infrastructure change than to jeopardize staffing and budgetary needs and, most importantly, public health and safety.

Staff's Position: Yes.

Staff agrees that granting the requested variance would be consistent with the spirit, purpose, and intent of the Commission's rules. The limited, 12 x 16 feet, area of the proposed dripline structure is adjacent to the Headquarters. Staff agrees there would be no significant adverse impact to the public's use of the beach or any interruption to public beach access.

Staff also agrees that granting the requested variance would secure the public safety and welfare, and preserve substantial justice. The proposed structure would allow for onsite ATV storage that would enhance public safety and welfare. The Town's commitment to providing safe access for beach visitors is exemplary, and in keeping with the goals of the CAMA and the Commission's rules.

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**ATTACHMENT D:
PETITIONERS' VARIANCE REQUEST MATERIALS**

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME: Town of Kure Beach**COUNTY WHERE THE DEVELOPMENT IS PROPOSED: New Hanover**

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

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

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

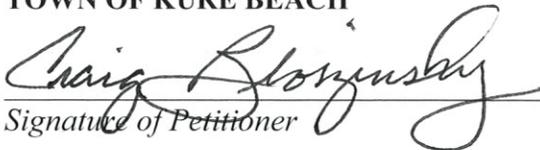
 X The name and location of the development as identified on the permit application;

- A copy of the permit decision for the development in question;
- A copy of the deed to the property on which the proposed development would be located;
- A complete description of the proposed development including a site plan;
- A stipulation that the proposed development is inconsistent with the rule at issue;
- Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);
- Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- Petitioner’s written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- This form completed, dated, and signed by the Petitioner or Petitioner’s Attorney.

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

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

TOWN OF KURE BEACH


 Signature of Petitioner

September 29, 2021
 Date

Craig Bloszinsky, Mayor
 John Batson, Building Inspector
 James E. Eldridge, Town Attorney
 Printed Name of Petitioner or Attorney

j.batson@tokb.org
jec@ec.rr.com
 Email address of Petitioner or Attorney

Petitioner:
 117 Settlers Lane
 Kure Beach, NC 28449

(910) 458-6535

Town Attorney:
 Post Office Box 1380
 Wilmington, NC 28402
 Mailing Address

(910) 232-0005
 Telephone Number of Petitioner or Attorney

(910) 458-7421
 Fax Number of Petitioner

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By Fax:

(252) 247-3330

By Email:

Check DCM website for the email
address of the current DCM Director
www.nccoastalmanagement.net

Contact Information for Attorney General's Office:

By mail:

Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Fax:

(919) 716-6767

**ATTACHMENT E:
STIPULATED EXHIBITS**

1. Town's Minor Permit Application.
2. Email exchange between James E. Eldridge, Town Attorney, and Christine A. Goebel, DEQ Assistant General Counsel, dated September 3, 2021, concerning the Town's ownership interest of the Property.
3. September 27, 2021 letter from Robb Mairs, DCM CAMA Minor Permit Coordinator, to John Batson, Building Inspector for the Town, denying the Town's application for a CAMA Minor Development permit for the Property located at 104 Atlantic Avenue, Kure Beach, North Carolina.
4. Description of the proposed development and photographs of the Property.
5. Site plan for the proposed development of the Property.
6. Copies of certified mail receipts showing that notice of the Town's variance petition was provide to adjacent property owners.
7. Photographs of the Town's ATVs.
8. United States Lifesaving Association Statistics for Kure Beach, North Carolina, from 2007 through 2020.
9. Affidavit of John J. Batson, Local Permitting Officer.
10. Affidavit of Edmund C. Kennedy, Kure Beach Fire Department Chief.
11. PowerPoint presentation.

Locality TOWN OF KURE BEACH Permit Number KB 21-06
Ocean Hazard Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline _____ Other _____
(For official use only)

GENERAL INFORMATION

LAND OWNER

Name TOWN OF KURE BEACH
Address 117 SETTLERS LANE
City KURE BEACH State NC Zip 28449 Phone 910-458-6535

AUTHORIZED AGENT

Name SAME - JOHN BATSON
Address _____
City _____ State _____ Zip _____ Phone _____

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 104 Atlantic Ave

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) There is an existing lifeguard shack at this location. Proposed project is to enlarge existing structure by 10x16'. See map.

SIZE OF LOT/PARCEL: _____ square feet _____ acres

PROPOSED USE: Residential _____ (Single-family _____ Multi-family _____) Commercial/Industrial _____ Other

TOTAL ENCLOSED FLOOR AREA OF A BUILDING IN THE OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC): 160 + Now 160 SF square feet (includes all floors and roof covered decks)

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

Choose the AEC area that applies to your property:

- (1) within 75 feet of Normal High Water/Normal Water Level for the Estuarine Shoreline AEC
- (2) within 575 feet of Normal High Water/ Normal Water Level for the Estuarine Shoreline AEC, adjacent to Resource Waters
- (3) within 30 feet of Normal High Water/ Normal Water Level for the Public Trust Shoreline AEC
- (Contact local Permit Officer if you are not sure which AEC applies to your property.)

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

YES _____ NO _____

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

000019 OTHER PERMITS MAY BE REQUIRED: The activity you are planning may require permits other than the CAMA minor development permit. As a service we have compiled a listing of the kinds of permits that might be required. We suggest you check over the list with your LPO to determine if any of these apply to your project. Zoning, Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others.

STATEMENT OF OWNERSHIP:

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

NE an owner or record title, Title is vested in OWNERSHIP BY PRESCRIPTION Per Christy Goebel, see Deed Book _____ page _____ in the _____ County Registry of Deeds. See attached emails

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

(Name)	(Address)
(1) <u>KURE BEACH PIER, INC</u>	<u>100 ATLANTIC AVE KURE BEACH NC 28449</u>
(2) <u>ELEANOR B McMillan</u>	<u>109 FORT FISHER BLD SOUTH KURE BEACH 28449</u>
(3) _____	_____
(4) _____	_____

FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:

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

PERMISSION TO ENTER ON LAND:

I furthermore certify that I am authorized to grant and do in fact grant permission to the local permit officer and his agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

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

This the 8th day of SEPT, 20 21

[Signature] JOHN BATSON

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

ATFICATION: LOCALITY: DCM WILMINGTON, NC

RECEIVED
SEP 14 2021

000020



Kure Beach Inspections Department
117 Settlers Lane • Kure Beach, NC 28449
Office (910) 458-6535 • Fax (910) 458-4269
John Batson, Inspector

To: Robb Mairs, DCM

From: John Batson

Date: September 24, 2021

Re: CAMA Permit No. KB21-06 Additional Information Request

Mr. Mairs,

This letter is in response to your email of 9/23/21 requesting additional information regarding the CAMA permit I applied for on behalf of the Town of Kure Beach.

Your email requested to know whether the new addition would be entirely enclosed, and whether there would be electrical service installed. Please see my response below outlining in more detail what is proposed, along with background of why the Town of Kure Beach wishes to undertake this development.

Proposed addition is to an already existing fully enclosed structure serving as Lifeguard Headquarters. The new 10x16' (12x16' drip edge) addition would also be fully enclosed, with windows and garage door for ingress/egress of 4X4 vehicles. There would be electrical service installed for lighting and garage door installation.

New addition would be of standard coastal construction and matching existing structure. (See attached photos)

Background:

Earlier this year, a concerned citizen approached the Fire Chief about the safety of the lifeguards riding four wheelers up and down K Ave to get to the beach strand. Specifically, the citizen insisted that the lifeguards should be wearing helmets when not on the beach strand.

Based on our research, we have found that State Law does require helmets.

Fire Chief brought this to Town Council attention and provided 2 options.

Option 1: Buy DOT helmets for all guards to the tune of \$3000, and because of Covid, cannot be used interchangeably. Also, we are worried that this will affect future recruiting.

Option 2: Request permitting to enlarge Lifeguard Shack to house four wheelers on location.

Town Council asked us to explore Option 2 because this makes sense on several levels; keeps guards off the roads on four wheelers, provides additional storage to our already tight quarters, and adds to the overall image of the Town as a safety oriented family beach town.

RECEIVED

SEP 24 2021

DCM WILMINGTON, NC

000021

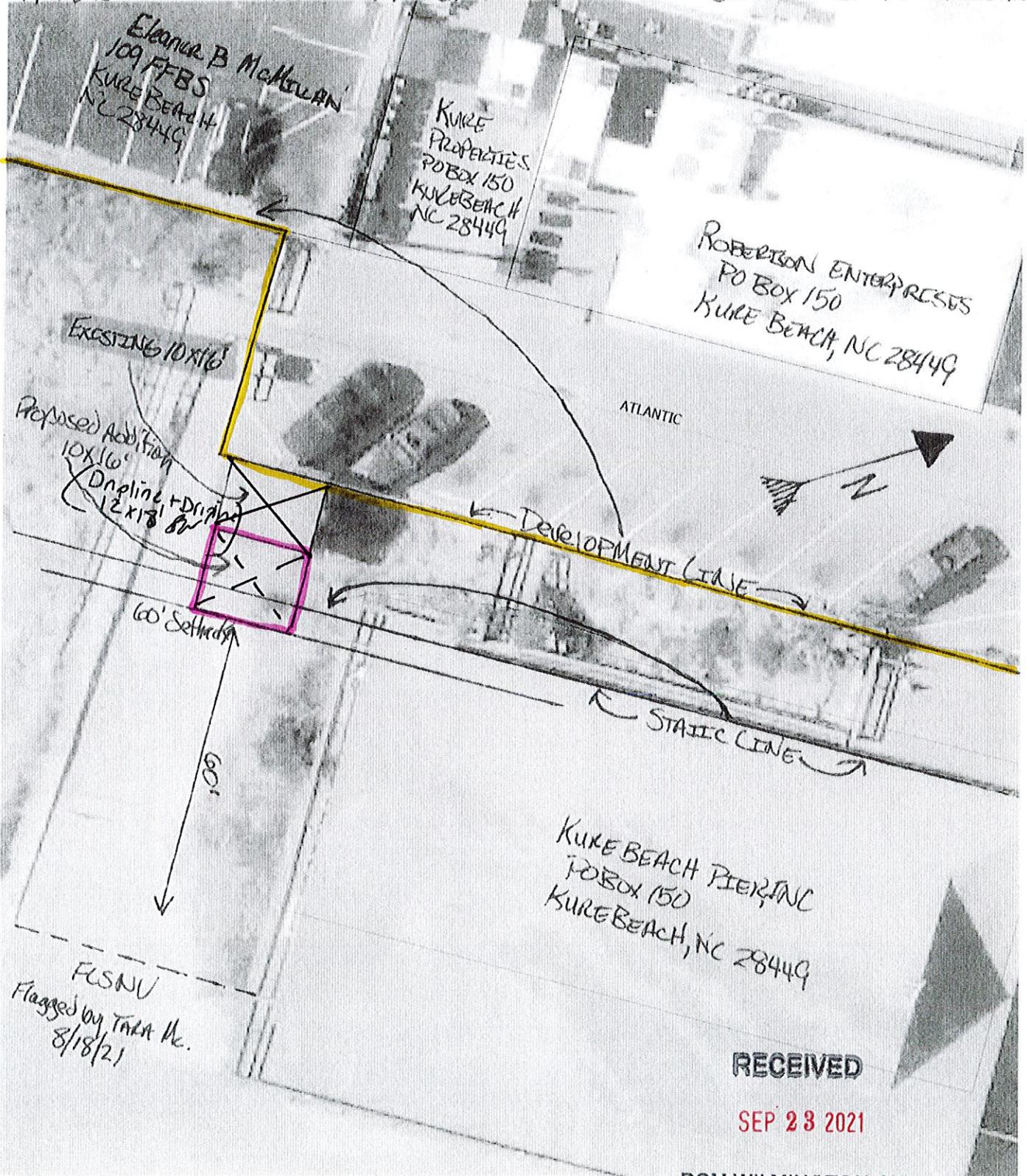


RECEIVED

SEP 24 2021

DCM WILMINGTON, NC

KURE BEACH MINOR PERMIT APPLICATION KB21-06 SITE PLAN 104 ATLANTIC AVE



NOTICE

CAMA PERMIT APPLIED FOR

PROJECT: Applicant proposed to construct a 12' x 18'
~~enclosed lifeguard shack addition adjacent to the~~
~~Atlantic Ocean at 104 Atlantic Ave in Kure Beach,~~
~~New Hanover County.~~

COMMENTS ACCEPTED THROUGH *October 4, 2021*

APPLICANT:

Town of Kure Beach
c/o John Batson
117 Settler Lane
Kure Beach, NC 28449

Agent: n/a



FOR MORE DETAILS CONTACT
THE LOCAL PERMIT OFFICER BELOW:

NC Div. of Coastal Management
127 Cardinal Dr. Ext.
Wilmington, NC 28405
Tara MacPherson (910) 796-7266

000024

9/8/21
Date

KURE BEACH PIER INC
Adjacent Property Owner

PO BOX 150
Mailing Address

KURE BEACH, NC 28449
City, State, Zip Code

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT <i>Domestic Mail Only</i>	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ <u>3.75</u>	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy) \$ <u>3.05</u>	
<input type="checkbox"/> Return Receipt (electronic) \$ _____	
<input type="checkbox"/> Certified Mail Restricted Delivery \$ _____	
<input type="checkbox"/> Adult Signature Required \$ _____	
<input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ <u>1.73</u>	
Total Postage and Fees \$ <u>7.53</u>	
Sent To <u>Kure Beach Pier Inc</u> Street and Apt. No., or PO Box No. <u>PO Box 150</u> City, State, ZIP+4® <u>Kure Beach NC 28449</u>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

Dear Adjacent Property Owner,

This letter is to inform you that I, TOWN OF KURE BEACH have applied for a CAMA Minor Property Owner

Permit on my property at 104 Atlantic Ave (Life guard Shack), Kure Beach, Property Address

New Hanover County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you, or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910-458-6535, or by mail at the address listed below. If you wish to
Applicant's Telephone

file comments or objections with the CAMA Minor Permit Program, you may submit them to:

Tara MacPherson
CAMA Wilmington District Manager
127 Cardinal Drive Ext
Wilmington, NC 28405
910-796-7266

TOWN OF KURE BEACH C/O BATSON
Property Owner

117 SETTLERS LN
Mailing Address

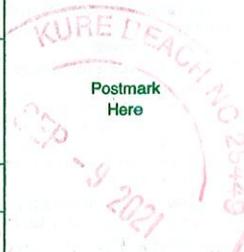
Kure Beach, NC 28449
City, State, Zip Code

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SEP 14 2021

DCM WILMINGTON, NC

000025

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ <u>3.75</u>	Postmark Here 
Extra Services & Fees (check box, add fees appropriate) <input checked="" type="checkbox"/> Return Receipt (hardcopy) \$ <u>3.05</u> <input type="checkbox"/> Return Receipt (electronic) \$ _____ <input type="checkbox"/> Certified Mail Restricted Delivery \$ _____ <input type="checkbox"/> Adult Signature Required \$ _____ <input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ <u>.73</u>	
Total Postage and Fees \$ <u>7.53</u>	
Sent To <u>Eleanor McMillan</u> Street and Apt. No., or PO Box No. <u>109 S. Fort Fisher Blvd</u> City, State, ZIP+4® <u>Kure Beach NC 28449</u>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

9/8/21
Date

Eleanor B McMillan
Adjacent Property Owner

109 FORT FISHER BLVD S.
Mailing Address

KURE BEACH, NC 28449
City, State, Zip Code

Dear Adjacent Property Owner,

This letter is to inform you that I, TOWN OF KURE BEACH have applied for a CAMA Minor
Property Owner

Permit on my property at 104 ATLANTIC AVE (lifeguard shack), Kure Beach,
Property Address

New Hanover County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you, or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910-458-6535, or by mail at the address listed below. If you wish to

Applicant's Telephone

file comments or objections with the CAMA Minor Permit Program, you may submit them to:

Tara MacPherson
 CAMA Wilmington District Manager
 127 Cardinal Drive Ext
 Wilmington, NC 28405
 910-796-7266

TOWN OF KURE BEACH c/o BATSON
Property Owner

117 SETTLERS LN
Mailing Address

KURE BEACH, NC 28449
City, State, Zip Code

RECEIVED

SEP 14 2021

DCM WILMINGTON, NC

Track Another Package +

Tracking Number: 70200640000005286602

[Remove X](#)

Your item was delivered to an individual at the address at 3:27 pm on September 11, 2021 in KURE BEACH, NC 28449.

Delivered, Left with Individual

September 11, 2021 at 3:27 pm
KURE BEACH, NC 28449

[Feedback](#)

Get Updates v

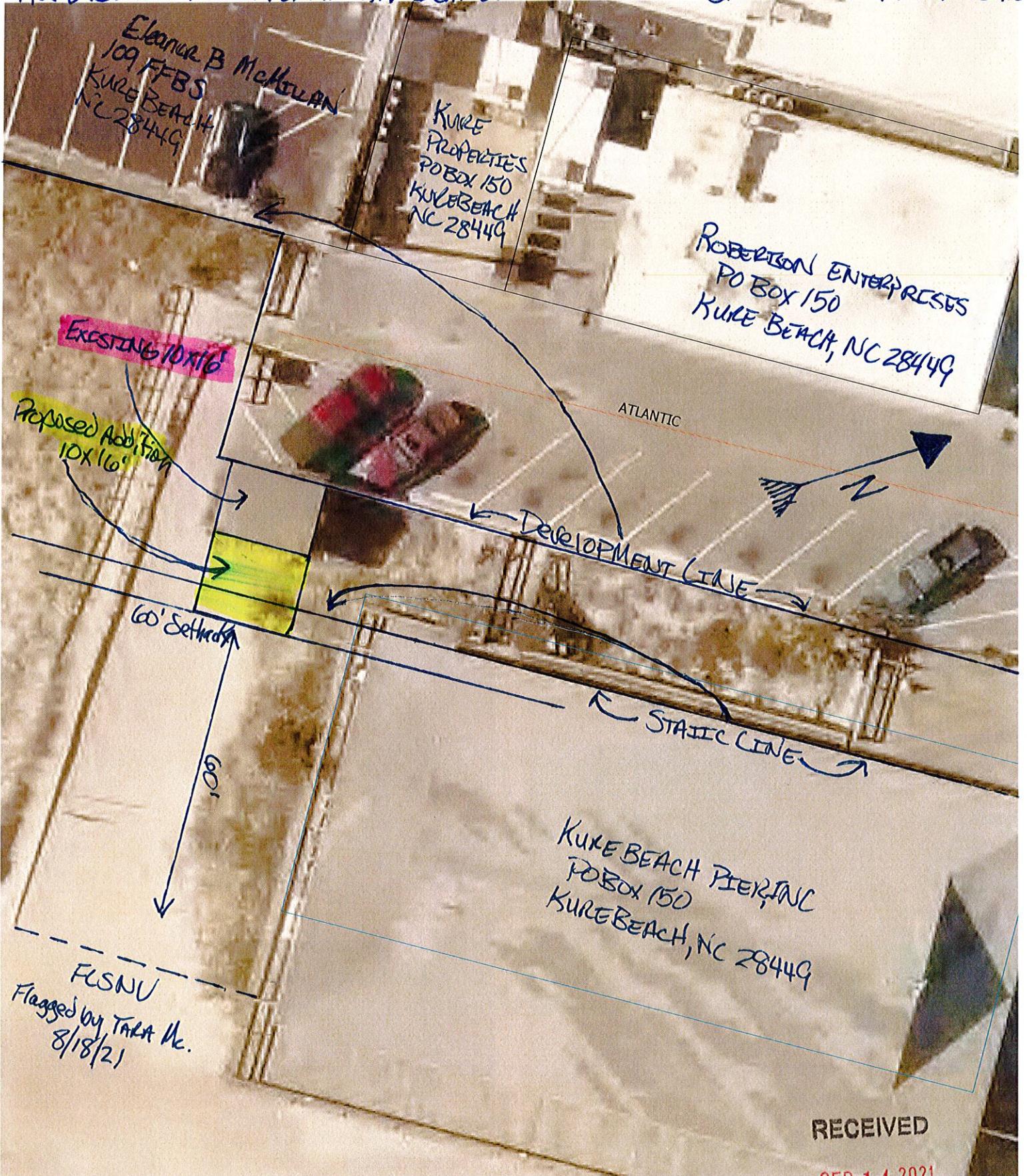
- Text & Email Updates** v
- Tracking History** v
- Product Information** v

[See Less ^](#)

Can't find what you're looking for?

Go to our [FAQs](#) section to find answers to your tracking questions.

KURE BEACH MINOR PERMIT APPLICATION KB21-06 SITE PLAN 104 ATLANTIC AVE



RECEIVED

SEP 14 2021

OCEAN HAZARD AEC NOTICE

Project is in an: Ocean Erodible Area High Hazard Flood Area Inlet Hazard Area

Property Owner: TOWN OF KURE BEACH

Property Address: 104 ATLANTIC AVE

Date Lot Was Platted: —

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

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

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

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

Studies also indicate that the shoreline could move as much as 180 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 17 feet deep in this area.

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

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



Property Owner Signature

9/8/21

Date

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

For more information, contact:

John Batson

Local Permit Officer

117 Settlers Lane
Kure Beach, NC 28449

Address

Town of Kure Beach

Locality

910-458-6535

Phone Number

RECEIVED

SEP 14 2021

Revised May 2010

DCM WILMINGTON, NC

John Batson

From: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Sent: Friday, September 3, 2021 12:08 PM
To: jee@ec.rr.com
Cc: John Batson; Ed Kennedy; Mandy Sanders; MacPherson, Tara
Subject: RE: [External] Proposed Addition to Lifeguard Shack

Hi Jim-

Hope you're doing well. Thanks for this summary- it's very helpful. I don't know what it says about me that I have the Lawrence book in my office and turn to it often as well.

Tara- this information is sufficient to satisfy the "deed or other instrument" rule for part of a complete CAMA permit application. Please let me know if you have any questions on this.

John and Jim- I believe you're planning to seek a variance from the Commission's/Town's development line for the CAMA variance. The deadline for filing for the November 9-10 CRC meeting is September 29th. Please let me know if you have any questions about that process.

Have a good holiday weekend-
Christy

From: jee@ec.rr.com [mailto:jee@ec.rr.com]
Sent: Friday, September 3, 2021 11:23 AM
To: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Cc: 'John Batson' <j.batson@townofkurebeach.org>; 'Ed Kennedy' <e.kennedy@townofkurebeach.org>; 'Mandy Sanders' <m.sanders@townofkurebeach.org>; MacPherson, Tara <tara.macpherson@ncdenr.gov>
Subject: [External] Proposed Addition to Lifeguard Shack

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

09/03/2021

Dear Ms. Goebel:

I am the Town Attorney for Kure Beach and John Batson has asked me to respond to your August 26, 2021 email requesting documentation of the "parcel at issue" with respect to the proposed improvement to an existing lifeguard structure. A sketch plan of the proposed improvement and the existing lifeguard structure is attached hereto.

The structure and the proposed improvement is and will be located in the unimproved portion of the Atlantic Avenue public ROW (hereinafter, the "ROW"). The existence of the ROW, as part of the Fort Fisher Sea Beach development, preceded the Town's incorporation in 1947 and there are not any known instruments transferring ownership of the ROW to the Town. However, the public has continuously used and the Town has continuously maintained the ROW, as a Town-system street, over the past 74 years. Thus considered, the Town's ownership interest in the ROW is by prescription. *See David M. Lawrence, Property Interests in North Carolina City Streets* 18-19 (1985):

[Ownership interest] for public streets may also be acquired by prescription – adverse use of the street by the public. This method of acquisition, frequently labeled “public user” by the courts, is chiefly used today to demonstrate public title to streets for which there is no documentary evidence of conveyance or dedication...[T]he case law has...held that prescription required that the street have been used by the public for twenty years in a manner that is adverse to the owner...If a public agency has been maintaining the street for the necessary period, that fact would constitute public user and should indicate that the use is adverse.

See also Hemphill v. Board of Aldermen, 212 N.C. 185 (1937) (public maintenance is a necessary component of public use); *State v. Fisher*, 117 N.C. 733 (1895) (public maintenance was the best evidence of a continuous and unequivocal assertion of a claim of right).

Given that the public use and the public maintenance of the ROW has extended way beyond the required 20-year period, it is my opinion that the Town has an ownership interest in the ROW by prescription. Please let me know if I can be of any further assistance.

James E. Eldridge

Eldridge Law Firm, PC
Post Office Box 1380
Wilmington, NC 28402
910.232.6005

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director



NORTH CAROLINA
Environmental Quality

September 27, 2021

Via CERTIFIED MAIL and Electronic Copy

RETURN RECEIPT REQUESTED

7018 2290 0001 8295 7959

Town of Kure Beach
c/o John Batson- Town Inspector and LPO
117 Settlers Lane
Kure Beach, NC 28449

RE: **DENIAL OF CAMA MINOR DEVELOPMENT**
PERMIT APPLICATION NUMBER KB 21-06
PROJECT ADDRESS-104 Atlantic Avenue, Kure Beach NC 28449

Dear Mr. Batson,

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and your locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed.

This decision is based on my findings that your request violates NCGS113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. Specifically, the development for which you applied consisted of the construction of a new lifeguard shack that would be located seaward of the Town of Kure Beach's Development Line.

Your proposal is inconsistent with 15A NCAC 7H .0306 (a)(2), which states "In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line."

Should you wish to appeal my decision to the Office of Administrative Hearings for a contested case or request a variance from the Coastal Resources Commission, please contact me so I can provide you with the proper forms and any other information you may require. Should you wish to appeal my decision to the N.C. Office of Administrative Hearings (within twenty days of the date of this letter), please contact me so I can provide you with the proper forms and any other information you may require. General information about permit denial appeals and variances can be found on DCM's website here: <https://deq.nc.gov/about/divisions/coastal-management/coastal-management-permits/variances-appeals>

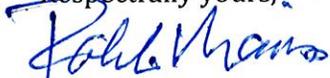
Please let us know if you have any questions or if we can assist in the submittal of your request. Your Attorney may contact our attorney, DEQ Asst. General Counsel Christy Goebel at Christine.goebel@ncdenr.gov with any questions.



North Carolina Department of Environmental Quality | Division of Coastal Management
Wilmington Office | 127 Cardinal Drive Extension | Wilmington, North Carolina 28405
910.796.7215

EXHIBIT 1

Respectfully yours,



Robb Mairs
DCM CAMA Minor Permit Coordinator

Cc: Tara MacPherson, District Manager, DCM-WiRO (EC)
Christy Goebel, Assistant General Counsel, Office of General Counsel (EC)
Braxton Davis, Director, DCM-Morehead City Office (EC)

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
BRAXTON DAVIS
Director



NORTH CAROLINA
Environmental Quality

September 27, 2021

Via CERTIFIED MAIL and Electronic Copy
RETURN RECEIPT REQUESTED
7018 2290 0001 8295 7959

Town of Kure Beach
c/o John Batson- Town Inspector and LPO
117 Settlers Lane
Kure Beach, NC 28449

RE: **DENIAL OF CAMA MINOR DEVELOPMENT**
PERMIT APPLICATION NUMBER KB 21-06
PROJECT ADDRESS-104 Atlantic Avenue, Kure Beach NC 28449

Dear Mr. Batson,

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Your proposal is inconsistent with 15A NCAC 7H .0306 (a)(2), which states "In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line."

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Please let us know if you have any questions or if we can assist in the submittal of your request. Your Attorney may contact our attorney, DEQ Asst. General Counsel Christy Goebel at Christine.goebel@ncdenr.gov with any questions.



North Carolina Department of Environmental Quality | Division of Coastal Management
Wilmington Office | 127 Cardinal Drive Extension | Wilmington, North Carolina 28405
910.796.7215

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Domestic Mail Only

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OFFICIAL USE

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage
\$

Total Postage and Fees
\$

Postmark Here
9/20/21

Sent to *Town of Kure Beach / JOHN BATSON*

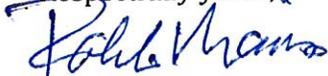
Street and Apt. No. or PO Box No.
117 Settlers Lane

City, State, ZIP+4®
Kure Beach NC 28449

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 2290 0001 8295 7959

Respectfully yours,



Robb Mairs
DCM CAMA Minor Permit Coordinator

Cc: Tara MacPherson, District Manager, DCM-WiRO (EC)
Christy Goebel, Assistant General Counsel, Office of General Counsel (EC)
Braxton Davis, Director, DCM-Morehead City Office (EC)



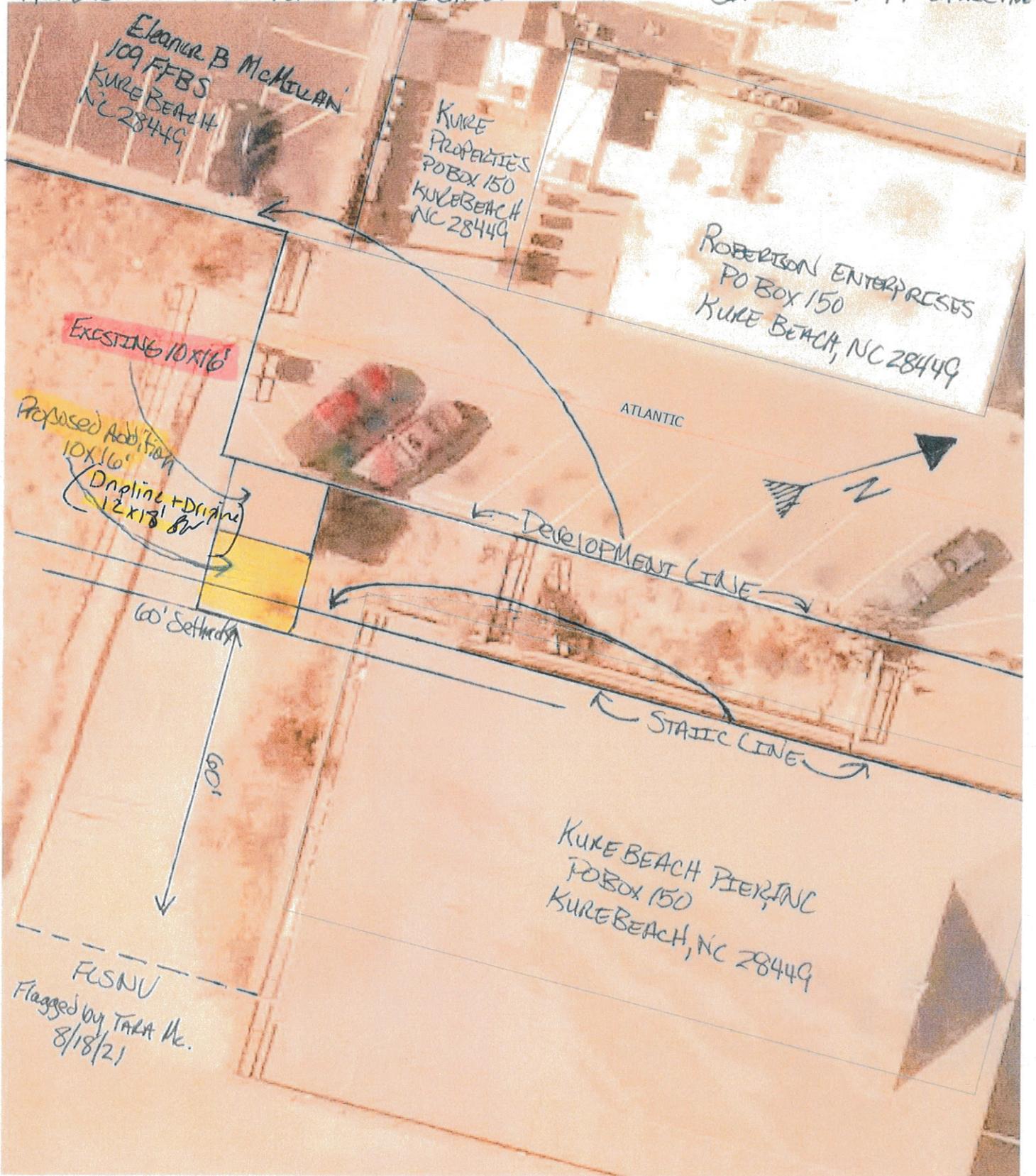
104 Atlantic Ave – Variance Request Description of Proposed Development

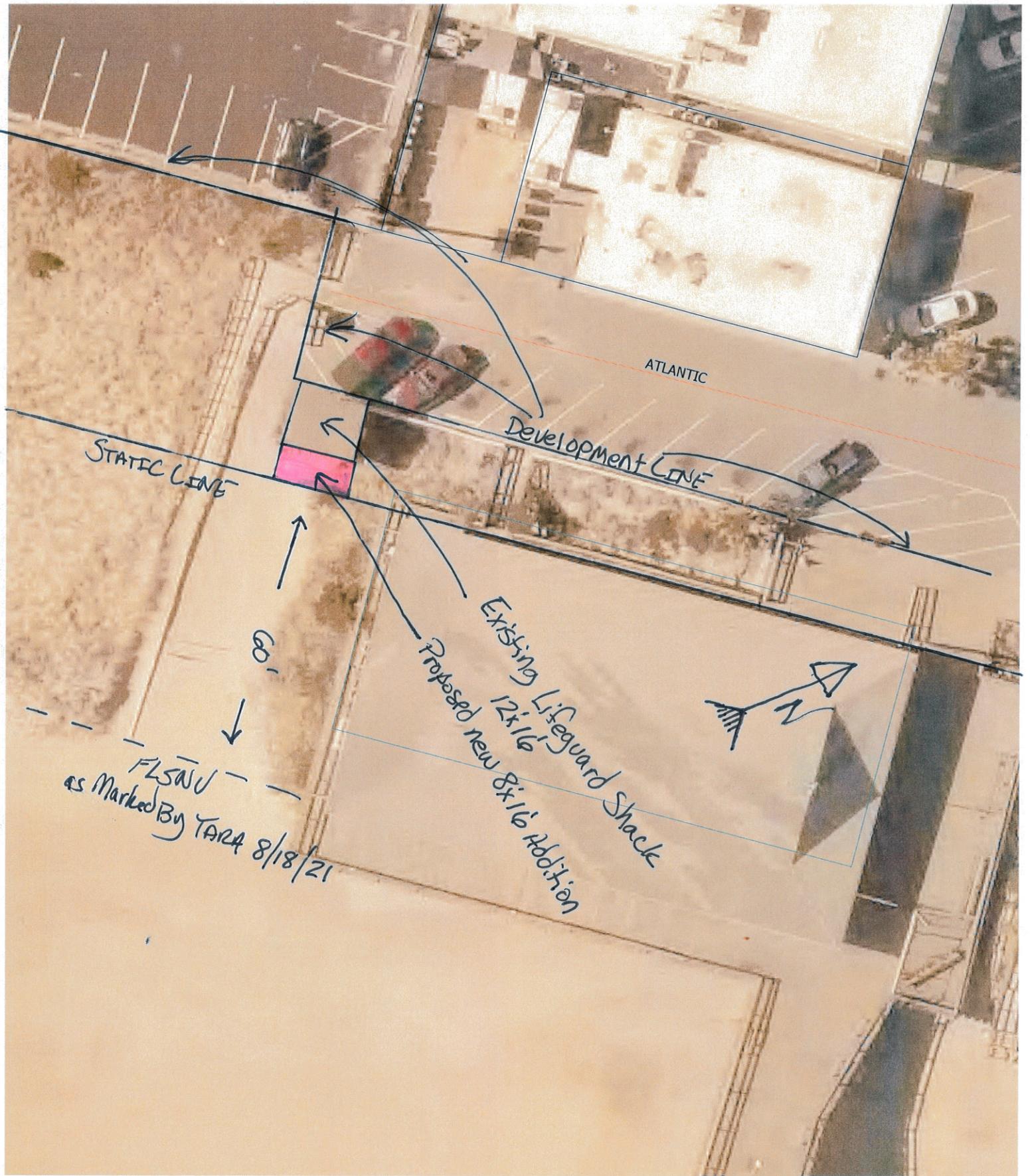
Currently there is a 10x16' wood frame structure located at this site utilized by Lifeguards. Proposed development would be to enlarge existing structure by an additional footprint of 12x16' (dripline) with wood frame construction compliant with all applicable codes and regulations.

See attached pictures showing existing structure.



KURE BEACH MINOR PERMIT APPLICATION KB21-06 SITE PLAN 104 ATLANTIC AVE





ATLANTIC

Development Line

STATIC LINE

8'

Existing Lifeguard Shack
12x16
Proposed new 8x16 Addition



FLSNJ
as Marked By TARA 8/18/21

000038

U.S. Postal Service™
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OFFICIAL USE

Certified Mail Fee	\$ 3.75
Extra Services & Fees (check box, add fees as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 3.85
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$.53
Total Postage and Fees	\$ 7.33

Postmark Here
SEP 29 2021

Sent To Eleanor B. McMillan
Street and Apt. No., or PO Box No.
109 Fort Fisher Blvd S
City, State, ZIP+4®
Kure Beach NC 28449

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7020 2450 0000 6308 7725

9/29/21
Date
Eleanor B. McMillan
Adjacent Property Owner
109 Fort Fisher Blvd S.
Mailing Address
Kure Beach, NC 28449
City, State, Zip Code

Dear Adjacent Property Owner,

This letter is to inform you that I, TOWN OF KURE BEACH have applied for a CAMA Minor Property Owner

Permit on my property at 104 Atlantic Ave - Lifeguard shack, Kure Beach, Property Address

New Hanover County which was subsequently denied on 9/27/21. The Town will be requesting a variance from the CRC to be heard at the November meeting. No action is required from you. If you have any questions or comments about my proposed project, please contact me at 910-458-6535, or by mail at the address listed below.

Applicant's Telephone

If you wish to file comments or objections with the CAMA Minor Permit Program, you may submit them to:

Wilmington DCM
127 Cardinal Drive Ext.
Wilmington, NC 28405
910-796-7266

TOWN OF KURE BEACH (b) JOHN BARSON
Property Owner

117 SETTLERS LN
Mailing Address
Kure Beach, NC 28449
City, State, Zip Code

000039

9/29/21
 Date
Kure Beach Pier Inc.
 Adjacent Property Owner
PO Box 150
 Mailing Address
Kure Beach, NC 28449
 City, State, Zip Code

7020 2450 0000 6308 7718

U.S. Postal Service™
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 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$ 3.75	
Extra Services & Fees (check box, add fee as appropriate)		
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 3.05	
<input type="checkbox"/> Return Receipt (electronic)	\$	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	
<input type="checkbox"/> Adult Signature Required	\$	Postmark Here
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	
Postage	\$ 1.53	
Total Postage and Fees	\$ 7.33	
Sent To	<u>Kure Beach Pier Inc</u>	
Street and Apt. No., or PO Box No.	<u>PO Box 150</u>	
City, State, ZIP+4®	<u>Kure Beach NC 28449</u>	

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Dear Adjacent Property Owner,

This letter is to inform you that I, TOWNS OF KURE BEACH have applied for a CAMA Minor Property Owner

Permit on my property at 104 ATLANTIC AVE - Lifeguard shack, Kure Beach, Property Address

New Hanover County which was subsequently denied on 9/27/21. The Town will be requesting a variance from the CRC to be heard at the November meeting. No action is required from you. If you have any questions or comments about my proposed project, please contact me at 910-458-0535, or by mail at the address listed below.
Applicant's Telephone

If you wish to file comments or objections with the CAMA Minor Permit Program, you may submit them to:

Wilmington DCM
 127 Cardinal Drive Ext.
 Wilmington, NC 28405
 910-796-7266

TOWNS OF KURE BEACH CP EITHAN BATSON
Property Owner

117 Settlers Ln
Mailing Address

Kure Beach, NC 28449
City, State, Zip Code

000040



000041



000042



NOTE: Certain statistical categories include sub-categories. Not all agencies report these sub-categories. For example, the Rescue category includes four different possible causes, but some agencies only report totals. Therefore, in determining the percent of rescues attributable to rip currents, for example, agencies that do not report on this category should be excluded, as should agencies covering small lakes and rivers where rip currents do not occur. Contact statistics@usla.org for further information.

[View definitions](#) | [Back to Search](#) | [Download to Excel](#)

Year	Region	Agency	Attendance	Rescues					Boat Rescues			Boat Assists			Prevents	Medical Aids			Drowning Deaths (Unguarded)						Drowning De:										
				Total	Rip	Surf	Swift	Scuba	Cliff Rescue	Rescues	Passengers	Value	Rescues	Passengers		Value	Total	Major	Minor	Total	Rip	Surf	Scuba	Drop-Off	Alc/Drugs	Ability	Floatation	Other	Total	Rip	Surf	Scuba	Drop-Off	Al	
2007	South-Atlantic	Kure Beach, Town of, North Carolina	430,000	92	53	39	0	0	0	0	\$0	0	0	\$0	97	46	0	46	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2008	South-Atlantic	Kure Beach, Town of, North Carolina	470,000	102	75	27	0	0	0	0	\$0	0	0	\$0	89	27	1	26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2009	South-Atlantic	Kure Beach, Town of, North Carolina	500,000	167	160	7	0	0	0	0	\$0	0	0	\$0	0	73	4	69	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0		
2010	South-Atlantic	Kure Beach, Town of, North Carolina	300,000	158	150	5	3	0	0	0	\$0	0	0	\$0	0	33	3	30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2011	South-Atlantic	Kure Beach, Town of, North Carolina	350,000	187	152	25	0	0	0	0	\$0	0	0	\$0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2012	South-Atlantic	Kure Beach, Town of, North Carolina	250,000	101	87	14	0	0	0	5	16	\$0	0	\$0	0	37	4	33	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2013	South-Atlantic	Kure Beach, Town of, North Carolina	250,000	64	60	4	0	0	0	9	15	\$0	5	10	\$0	0	24	6	18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2014	South-Atlantic	Kure Beach, Town of, North Carolina	250,000	124	124	0	0	0	0	14	0	\$0	3	0	\$0	0	18	3	15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2015	South-Atlantic	Kure Beach, Town of, North Carolina	100,000	43	43	0	0	0	0	0	\$0	11	15	\$0	52	47	21	26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2016	South-Atlantic	Kure Beach, Town of,	500,000	87	87	0	0	0	0	12	18	\$0	0	0	\$0	68	50	12	38	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

**AFFIDAVIT OF
JOHN J. BATSON, LPO**

JOHN J. BATSON, LPO, being first duly sworn, deposes and testifies as follows:

1. I am an adult resident of New Hanover County, North Carolina and I am competent to provide the following sworn testimony which is based upon my own personal knowledge.

2. I am employed by the Town of Kure Beach ("Town") as the Building Inspector and have served continuously since 2004 as the Local Permit Officer administering and enforcing the CAMA Minor Development Permit Program in areas of environmental concern within the Town's planning and development jurisdiction.

3. The Town provides ocean rescue, lifesaving, emergency medical, and other beach-sited public safety services through its Ocean Rescue and Fire Department operations

4. In conjunction with these services, the Town operates 10 ocean rescue towers along 3 miles of the beach stand and maintains an Ocean Rescue Headquarters at 104 Atlantic Avenue, Kure Beach (the "Property"). A true and accurate photograph of the headquarters structure is included in the stipulated exhibits.

5. The Property is located within the unimproved portion of said right-of-way and is immediately adjacent to the beach.

6. As set forth in the Town's Charter, said right-of-way was an existing feature of the Fort Fisher Sea Beach development and was included within the corporate limits when the Town was incorporated in 1947. I am informed and believe that the Town's public use and maintenance of the right-of-way has been continuous over the ensuing 74 years.

7. Ocean Rescue and Fire Department personnel utilize all-terrain vehicles ("ATVs") in responding to emergency incidents on the beach. True and accurate photographs of the ATVs are included in the stipulated exhibits.

8. Due to the lack of space in the headquarters structure, the ATVs cannot be stationed at the Property and are therefore stored at Town Hall, 117 Settlers Lane, Kure Beach.

9. Town Hall is approximately .4 miles from the beach and the ATV operators traverse public roads, including a traffic light-controlled intersection, to access the Property.

10. I have traveled that route countless times since 2004 and know that the amount of time it takes to travel from Town Hall to the Property varies depending upon the traffic, weather, time of day, and time of year. In general, it takes a minimum of several minutes to travel the distance.

11. To avoid operating ATVs on the public roads and to maximize the efficiency and response times of the public safety services on the beach, the Town has proposed enlarging the Ocean Rescue Headquarters by an additional 12 x 16 feet (dripline) with a wood frame construction compliant with all applicable legal authorities so as to station the ATVs at the Property. True and accurate copies of a site plan and a description of the proposed development are included as stipulated exhibits.

12. The Town applied for a CAMA Minor Development Permit for the proposed development. I was primarily responsible for preparing the application and provided notice of the application to adjacent landowners. True and accurate copies of the notice and the certified mail receipts for the adjacent landowners are included in the stipulated exhibits.

13. In a letter dated September 27, 2021, the Division of Coastal Management denied the Town's application. A true and accurate copy of the September 27, 2021 letter is included in the stipulated exhibits.

14. Having read the letter, I am aware that the denial was based on a finding that the proposed development:

violates N.C.G.S. §113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. Specifically, the development for which [the Town] applied consisted of the construction of a new lifeguard shack that would be located seaward of the [Town's] Development Line.

Your proposal is inconsistent with 15A NCAC 7H.0306(a)(2) In no case shall new development be sited seaward of the development line.

15. As the LPO, I am familiar with 15A NCAC 07H.0306(a)(2) and agree that it prohibits development seaward of the development line and is currently applicable to the proposed development.

16. The application of that rule defeats the proposed development and causes the Town to continue stationing the ATVs at Town Hall and the ATV operators to continue travelling over public roads to access the beach strand.

17. Given the travel time from Town Hall to the Property, the application of 15A NCAC 07H.0306(a)(2) also results in reduced response times of personnel responding to emergency incidents on the beach.

18. Considering the immediate proximity of the Property to the beach, obtaining a variance from the application of 15A NCAC 07H.0306(a)(2) will allow for the proposed development whereby the ATVs can be stationed at the Property which will maximize the efficiency of the Town's public safety services by shortening the response times when responding to emergency incidents along the beach strand.

[notarized signature follow]

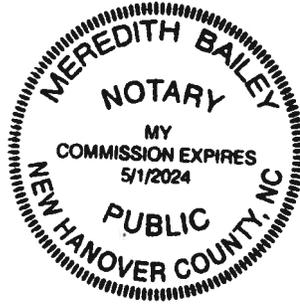
This the 18th day of October 2021.


John J. Batson, LPO

Sworn to and subscribed before me, this
18th day of October 2021.


NOTARY PUBLIC

My Commission expires: 5/1/2024



**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

**AFFIDAVIT OF
EDMUND C. KENNEDY**

EDMUND C. KENNEDY, being first duly sworn, deposes and testifies as follows:

1. I am an adult resident of New Hanover County, North Carolina and I am competent to provide the following sworn testimony which is based upon my own personal knowledge.

2. I have been continuously employed by the Town of Kure Beach ("Town") since 2005 when I was first hired as a lifeguard.

3. I later joined the Town of Kure Beach Fire Department (hereinafter "Fire Department" or "Department") and in 2011, I was appointed by Town Council as the Ocean Rescue Director for the Ocean Rescue Services division of the Fire Department.

4. I served as the Ocean Rescue Director until 2017 when I was appointed as the Fire Department Chief; the position in which I am currently serving.

5. In addition to providing fire suppression and prevention services, the Fire Department provides emergency medical services, operates a fully-equipped ocean rescue team, and supervises the Town's lifeguard staff.

6. In providing these services, the Fire Department has 8 Full-Time and 5 Part-Time employees and employs approximately 30 seasonal rescue personnel to work from Memorial Day to Labor Day.

7. As the Fire Chief, I have the ultimate responsibility for administering and managing all aspects of the Department, including the Ocean Rescue operations, and am therefor familiar with the matters set forth herein as they relate to the Department's beach-sited public safety services.

8. The Department operates 10 ocean rescue towers along 3 miles of the beach and maintains an Ocean Rescue Headquarters at 104 Atlantic Avenue, Kure Beach (the "Property").

9. Based upon statistics the Department maintains and reports to the United States Lifesaving Association, the Department has made, over the past 10 years, an average of 114 ocean rescues and 41 medical contacts per year. A true and accurate copy of the statistics for the Town from 2007 through 2020 is included in the stipulated exhibits.

10. Department personnel utilize all-terrain vehicles ("ATVs") in providing these services and in responding to emergency situations on the beach. A true and accurate copy of a photograph of the ATVs is included in the stipulated exhibits.

11. The ATVs are used extensively throughout the year, and outside of normal lifeguard hours during the season, for beach safety and emergency services as follows:

- During the season, the ATVs are used in the evenings until 8:00 p.m. to remove all equipment left on the beach for the protection of sea turtles and for public safety and general welfare;
- During the 4th of July, the ATVs are used to patrol the beach to provide fire prevention and suppression measures for the residential structures along the strand;
- During the offseason, the ATVs are used in responding to ocean rescues and other emergencies. Based on my oversight responsibilities, I know that the Department averages 6-12 ocean rescues per year during the offseason; and
- During the pandemic lockdowns, the ATVs were used to ensure that the beach remained closed to the public.

12. Due to the lack of storage space at the Property, the ATVs are stationed at Town Hall, 117 Settlers Lane, Kure Beach.

13. I have traveled from Town Hall to the Property innumerable times over the past 16 years and while the travel times vary depending on the time of day, traffic and weather conditions, and in particular, the seasonal influx of visitors and vehicles, it takes at least several minutes to travel that distance.

14. As set forth in N.C.G.S. §§ 20-171.16, 20-171.19, and 20-171.23, personnel operating ATVs over public roads shall:

- i) wear eye protection and a DOT approved safety helmet;
- ii) not carry passengers; and
- iii) carry an official identification card or badge.

Under said statutes, these requirements do not apply when operating ATVs on the beach strand.

15. My online research indicates that purchasing the safety equipment for the ATVs would cost approximately \$3000.

16. Based upon my participation as a Department Head in the Town's annual budget retreats and other budget-related public meetings, I am aware that because of COVID, Town Council intends to replace such equipment annually and that the cost of the equipment is significant enough to allocate the same as a public money expense item in the Town's budget.

17. The Town has experienced challenges in the recruitment and retention of seasonal ocean rescue personnel. A majority of the seasonal employees are high school and college students whose semesters generally commence before the Labor Day end of our season.

18. It is also a competitive job market locally in that the towns of Wrightsville Beach and Carolina Beach are also seeking to hire seasonal lifeguards etc. from the same pool of applicants.

19. Adding to these recruitment and retention issues is the fact that there have been several instances when our seasonal employees have specifically said that if they were forced to wear the safety equipment they would simply work at a different beach.

20. A simple solution to these fiscal and personnel issues is to eliminate the need of operating the ATVs on public roads by storing and stationing the vehicles at the Property since doing so eliminates the need for the safety equipment and the expenditure of taxpayer dollars to purchase the same.

21. Eliminating the need to travel on public roads also protects the health of the personnel operating the ATVs and critically, storing the vehicles at the Property shortens the response times for personnel responding to emergency situations on the beach.

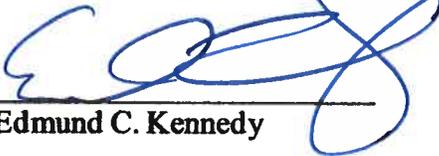
22. For all these reasons, I supported the proposed development of the Headquarters structure so that the ATVs could be stationed at the Property and not at Town Hall as is presently the case.

23. From discussions I have had with John Batson, the Town's Local Permit Officer, I understand that the Town applied for a CAMA Minor Development Permit and that the application was denied under 15A NCAC 07H.0306(a)(2) which prohibits development seaward of the Town's Development Line.

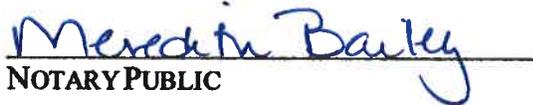
24. The strict application of that rule, however, adversely impacts the Town's financial, personnel, and beach-sited public safety operations as discussed above.

25. Obtaining a variance from that rule allows the Town to store the ATVs on the Property, keeps the vehicles off of the public roads – thereby protecting the operators from the risks of travelling those roadways and eliminating the need to purchase the safety equipment required therefor - possibly benefits the recruitment and retention of seasonal ocean rescue staff, and most importantly, maximizes, by eliminating the need to first travel from Town Hall to the beach, the Department's response times to emergency incidents on the 3-mile strand

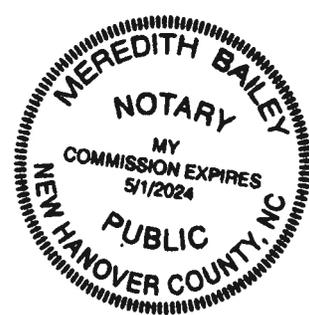
This the 18th day of October 2021.


Edmund C. Kennedy

Sworn to and subscribed before me, this 18th day of October 2021.


NOTARY PUBLIC

My Commission expires: 5/1/2024





Town of Kure Beach Variance Request

New Hanover County

November 10, 2021





River Rd SE

000051

Sea Breeze

Orton Pond

Carolina Beach State Park

Dow Rd

Carolina Beach

Wilmington Beach

Sunny Point Military Ocean Terminal

Sunny Point Army Terminal

Kure Beach

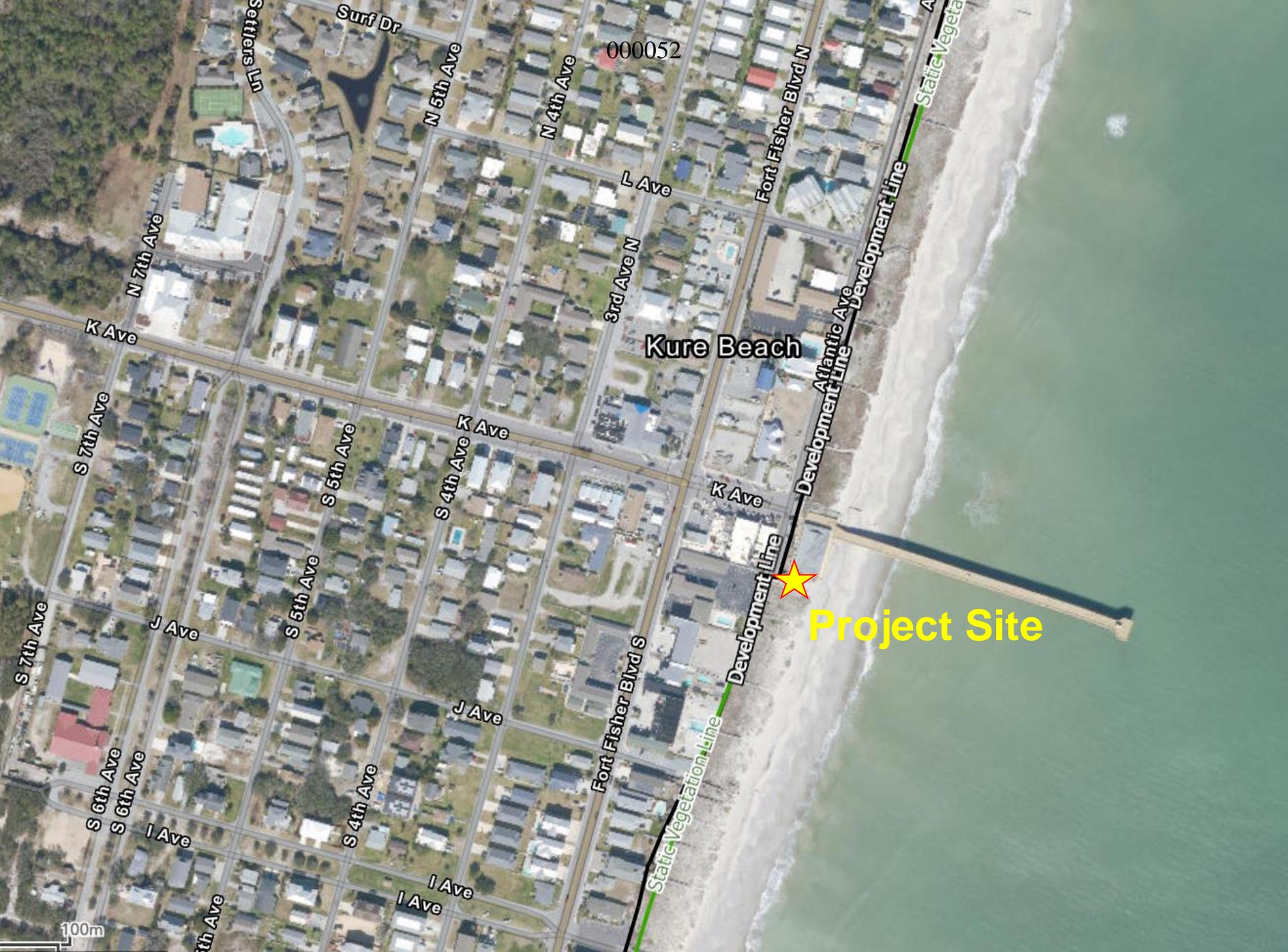
Project area

2km

34.060 Degrees

Fort Fisher

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geograph



000052

Kure Beach

Project Site

100m

000053

K Ave

K Ave

K Ave

Atlantic Ave

Development

Fort Fisher Blvd S

421

Fort Fisher Blvd S

Development Line

Atlantic Ave

Development Line

First Line of Stable Natural Vegetation



Project Site
Public Access #99
Atlantic Ave.

Atlantic Vegetation Line

30m

421

7.907 33.997 Degrees

000054



View of existing public access and lifeguard shack at 99 Atlantic Ave. facing east

Image source: DCM

000055

View of existing public access and lifeguard shack at 99 Atlantic Ave. facing west



Proposed lifeguard shack expansion footprint

PUBLIC BEACH ACCESS
TOWN OF KURE BEACH
CAMA
N.C. COASTAL MANAGEMENT PROGRAM

PUBLIC BEACH ACCESS
99
SOUTH ATLANTIC AVE.
KURE BEACH

NO DOGS ON BEACH
FROM APRIL 1ST THROUGH SEPTEMBER 30TH
DOGS MUST BE LEASHED AT ALL TIMES
CLEAN UP AFTER YOUR PET
PUNISHABLE BY FINE

RIP CURRENTS
Know your options
If Caught in a Rip Current:
1. Don't Panic
2. Don't Fight the Current
3. Don't Get Tired
4. Don't Get Swept Out
5. Don't Get Hungry
6. Don't Get Thirsty
7. Don't Get Lost
8. Don't Get Injured
9. Don't Get Drowned
10. Don't Get Killed

Image source: DCM

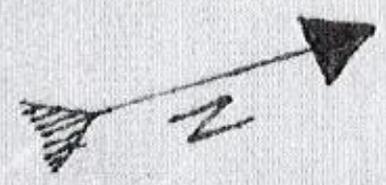
KUKE BEACH, NC 28449

000056

EXISTING 10x16

Proposed Addition
10x16'
(Drainage + Driveway)
12x18'

ATLANTIC



DEVELOPMENT LINE

60' Setback

STAKE LINE

KUKE BEACH PIER, INC
PO BOX 150
KUKE BEACH, NC 28449

FLSNU
Flagged by TARA Mc.
8/18/21

RECEIVED



VARIANCE CRITERIA

§ 113A-120.1. Variances.

(a) Any person may petition the Commission for a variance granting permission to use the person's land in a manner otherwise prohibited by rules or standards prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of the rules, standards, or orders.**
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.**
- (3) The hardships did not result from actions taken by the petitioner.**
- (4) The requested variance is consistent with the spirit, purpose, and intent of the rules, standards, or orders; will secure public safety and welfare; and will preserve substantial justice.**

(b) The Commission may impose reasonable and appropriate conditions and safeguards upon any variance it grants. (1989, c. 676, s. 8; 2002-68, s. 1.)