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**ATTORNEY GENERAL**

**STATE OF NORTH CAROLINA**  
DEPARTMENT OF JUSTICE

REPLY TO:  
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December 4, 2024

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**Re: Variance Request CRC-VR-24-08**  
**Harrison F and Amanda B. Eggleston**

Dear Mr. Dunn, Mr. and Mrs. Black, and Ms. Williamson:

At its November 2024 meeting, the Coastal Resources Commission granted Petitioner Harrison and Amanda Eggleston's request for a variance to construct a docking facility at the property located at 106 Salisbury Street in Holden Beach, North Carolina. Attached is a copy of the final agency decision signed by the Chair of the Coastal Resources Commission. Prior to undertaking the development for which a variance was sought, Petitioners must first obtain a CAMA permit from the local permitting authority or the Division of Coastal Management.

By copy of this letter to the adjacent riparian neighbors, Mr. and Mrs. Black and Ms. Williamson, I am informing them that if for some reason they do not agree to the variance as issued, they may appeal the Coastal Resources Commission's decision by filing a petition for judicial review in the superior court as provided in N.C.G.S. § 150B-45 within thirty days after receiving the final agency decision (which by my calculation would be January 3, 2025). A copy of the judicial review petition must be served on the Coastal Resources Commission's agent for service of process at the following address:


William F. Lane, General Counsel  
Dept. of Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1601

If you choose to file a petition for judicial review, I request that you also send me a copy

**Glenn Dunn, Esq.**  
**Julius and Phyllis Black**  
**Elizabeth Grace Williamson**  
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at the email address listed in the letterhead. If you have any questions, please feel free to contact me.

Sincerely,



Mary L. Lucasse  
Special Deputy Attorney General and  
Counsel for the Coastal Resources Commission

cc: M. Renee Cahoon, Chair, electronically  
Christine A. Goebel, Esq., electronically  
Tancred Miller, electronically  
Mike Lopazanski, electronically  
Robb Mairs, electronically  
Angela Willis, electronically  
Tara MacPherson, electronically  
Patrick Amico, electronically  
Tim Evans, electronically

STATE OF NORTH CAROLINA	)	BEFORE THE NORTH CAROLINA
	)	COASTAL RESOURCES
COUNTY OF BRUNSWICK	)	COMMISSION
	)	<b>CRC-VR-24-08</b>
	)	
	)	
IN THE MATTER OF:	)	
PETITION FOR VARIANCE	)	<b>FINAL AGENCY DECISION</b>
BY <b>HARRISON F. &amp; AMANDA B.</b>	)	
<b>EGGLESTON</b>	)	

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On August 5, 2024, Petitioners Harrison and Amanda Eggleston submitted a request for a variance from the North Carolina Coastal Resources Commission’s (“Commission”) rule set forth at 15A N.C. Admin. Code 07H .0208(b)(6)(I) to construct a docking facility at their corner lot along a manmade canal at 106 Salisbury Street in Holden Beach North Carolina. This matter was heard pursuant to N.C. Gen. Stat. § 113A-120.1 and 15A N.C. Admin. Code 07J .0700, *et seq.*, at the regularly scheduled meeting of the Commission held on November 14, 2024 at the Ocean Isle Beach Town Hall in Ocean Isle Beach, North Carolina. Assistant General Counsel Christine A. Goebel, Esq. appeared for Respondent Department of Environmental Quality, Division of Coastal Management (“DCM”). Glenn Dunn, Esq. appeared on behalf of Petitioners Harrison and Amanda Eggleston.

When reviewing a petition for a variance, the Commission acts in a quasi-judicial capacity. *Riggings Homeowners, Inc. v. Coastal Resources Com’n*, 228 N.C. App. 630, 652, 747 S.E.2d 301, 314 (2013) (Commission has “judicial authority to rule on variance requests . . . ‘reasonably necessary’ to accomplish the Commission’s statutory purpose.”); *see also Application of Rea Const. Co.*, 272 N.C. 715, 718, 158 S.E.2d 887, 890 (1968) (discussing the Board of Adjustment’s quasi-judicial role in allowing variances for permits not otherwise allowed by ordinance). In its role as judge, the Commission “balance[es] competing policy concerns under CAMA’s statutory

framework.” *Riggings*, 228 N.C. App. at 649 n.6, 747 S.E.2d at 312.

Petitioners and Respondent DCM are the parties appearing before the Commission. The parties stipulated to facts and presented stipulated documents to the Commission for its consideration. *See*, N.C. Admin. Code 15A 07J .0702(a). If the parties had been unable to reach agreement on the facts considered necessary to address the variance request, the matter would have been forwarded to the North Carolina Office of Administrative Hearings (“OAH”) for a full evidentiary hearing to determine the relevant facts before coming to the Commission. *Id.* 07J .0702(d). As in any court, the parties before the decision-maker are responsible for developing and presenting evidence on which a decision is made. If DCM and Petitioners had entered into other stipulated facts, it is possible that the Commission would have reached a different decision. In this case, the record on which the Commission’s final agency decision was made includes the parties’ stipulations of facts, the stipulated documents provided to the Commission, and the arguments of the parties.

#### **FACTS STIPULATED TO BY PETITIONERS AND DCM**

1. Petitioners are Amanda and Harrison Eggleston. They own property at 106 Salisbury Street in Holden Beach, Brunswick County (the "Site").
2. Petitioners purchased the Site through a deed recorded on May 20, 2019 and recorded at Book 4192, Page 1310 of the Brunswick County Registry. A copy of the deed is a stipulated exhibit. The property is also known as Lot 109 of the Canal Layout of Holden Beach East, as shown on a 1962 plat recorded in Map Book 6, Page 132 of the Brunswick County Registry, a copy of which is a stipulated exhibit.
3. The Site is adjacent to the dead-end corner of man-made Canal E. The Property can

be seen on the PowerPoint presentation of photographs of the Property and surrounding area which is a stipulated exhibit.

4. The Site is bordered by Canal E on the east, 108 Salisbury Street to the north (owned by the Blacks), and Salisbury Street to the west. To the south the Site is adjacent to three lots, including 422 Ocean Boulevard East (owned by the Terrys), 420 Ocean Boulevard East (owned by the Gardners) and 418 Ocean Boulevard East (a riparian lot owned by Ms. Williamson). The Blacks and Ms. Williamson are the two adjacent riparian owners.

5. The Site has approximately 46 feet of shoreline along the canal. The Site measures approximately 0.12 Acres in area.

6. The Site is currently a vacant lot with a bulkhead.

7. The waters of the man-made canal are classified as SA waters and are closed to the harvest of shellfish. The proposed pier would be located within the Public Trust Area and Estuarine Waters Areas of Environmental Concern (AECs). Any “development” within those AECs would require authorization through a CAMA permit per G.S. 113A-118. While there is some Coastal Wetlands AEC along the bulkhead, the proposed docking facility would be elevated over the vegetation.

8. Both adjacent riparian owners have developed existing private piers in the canal, which based on Google Earth historic aerial photography, were both built sometime before 1993.

9. In August of 2023, Petitioners, through their authorized agent Ben Brink of Coastal Permit Guy, LLC sought a CAMA General Permit for a proposed docking facility. DCM Staff explained that as the 15-foot riparian setbacks were not met (and had not been waived by the

adjacent riparian property owners) the application would be denied and the request should be processed through a CAMA Major Permit Application.

10. On December 7, 2023, Petitioners, through their authorized agent Ben Brink of Coastal Permit Guy, LLC, applied for a CAMA major permit to construct a one-slip docking facility. The application was deemed complete on April 29, 2024. A copy of the CAMA major permit application report is a stipulated exhibit.

11. Petitioners proposed to develop a one-slip docking facility comprised of a nine-foot by six-foot fixed platform at the existing bulkhead, a sixteen-foot by three-foot gangway, and a seven-foot by twelve-foot floating dock secured to two pilings. A cross section and top view drawing are stipulated exhibits and were part of the permit application. The water depth at the floating dock is approximately -1.5 feet Normal Low Water.

12. Based on the site plans, the proposed docking facility would encroach 1.5 feet into the Blacks' fifteen-foot riparian setback on the north side of the property and fifteen feet into Ms. Williamson's fifteen foot riparian setback. Ms. Williamson's dock does not appear to meet a fifteen-foot riparian setback from both Petitioners' common riparian line or her other neighbor's riparian line, but it is unknown whether setback waivers were obtained at the time her pier was permitted.

13. As part of the CAMA major permit review process, DCM Field Representative Patrick Amico wrote a Field Investigation Report dated April 30, 2024, a copy of which is a stipulated exhibit.

14. During the major permit review process, no state or federal agencies objected to the proposed project. The Division of Water Resources authorized the proposed project through

General Certification No. 4497. The U.S. Army Corps of Engineers authorized the proposed project through Regional General Permit 56 on June 13, 2024.

15. As part of the CAMA major permit review process, notice was given to the public through on-site posting and by notice published in the local Wilmington Star News newspaper on May 7, 2024. No comments from the public were received in connection with the permit application.

16. Notice was also sent to the adjacent riparian property owners, Julius and Phyllis Black and Elizabeth Grace Williamson, through certified mail on January 26, 2024, and again to Mr. and Mrs. Blacks at a corrected address on February 1, 2024. Mr. Black signed the notice form on February 1, 2024 indicating that he objected to the proposed project and did not wish to waive the fifteen-foot riparian setback. Ms. Williamson signed the notice form on January 31, 2024 indicating that she had objections to the proposed project, and did not waive the fifteen-foot riparian setback. Copies of the completed notice forms and delivery information are stipulated exhibits. The notice forms completed by the Blacks and Ms. Williamson in August of 2023 when Petitioners initially sought to have the project approved through a CAMA General Permit are stipulated exhibits as well.

17. On February 13, 2024, Mr. Amico emailed the Blacks and Ms. Williamson asking if they wished to provide any further comment on the proposed pier. Neither the Blacks nor Ms. Williamson responded.

18. On July 17, 2024, DCM denied Petitioners' CAMA Major Permit application as the proposed pier, gangway and floating dock were inconsistent with the Commission's rule at 15A NCAC 7H .0208(b)(6)(I) which states in pertinent part:

Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access...The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier.

A copy of the denial letter is a stipulated exhibit.

19. Petitioners did not appeal their permit denial by bringing a contested case petition in the Office of Administrative Hearings.

20. The Coastal Area Management Act of 1974 ("CAMA") provides that "[a]ny 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." N.C. Gen Stat. § 120.1(a). Petitioners stipulate that their proposed docking facility does not conform with 07H.0208(b)(6)(I) because neither fifteen-foot riparian setback is met as described in the denial letter.

21. The Petitioners ask the Commission for a variance from 15A N.C. Admin. Code 07H.0208(b)(6)(I) providing fifteen-foot riparian setbacks to the adjacent riparian owners (unless the adjacent owners waives some or all of the setbacks). With a variance, Petitioners will be able to develop the proposed docking facility even if Mr. and Mrs. Black and Ms. Williamson do not waive the riparian setback.

22. Without a variance, and without either adjacent riparian owners' waiver of the setback, Petitioners would be able to develop a small pier within the triangular area shown on



drawings outside the fifteen-foot riparian setbacks. This small pier would have to be elevated over the existing coastal wetlands vegetation per 15A N.C. Admin. Code 07H.0208(b)(6)(C). Most of that triangular area contains coastal wetlands as shown in site photos provided as stipulated exhibits.

23. Notice of Petitioners' variance request was sent to both the Blacks and Ms. Williamson. The Blacks received delivery on August 18, 2024, then refused a Fed Ex delivery on August 20, 2024 as shown on the Fed Ex documentation. Petitioners' counsel sent another delivery on August 29, 2024 and USPS tracking shows it was delivered on September 1, 2024. Ms. Williamson signed for the notice sent by Fed Ex on August 17, 2024 and received a letter on August 24, 2024. DCM has not received any comments from either the Blacks or Ms. Williamson. Copies of documents showing notice are stipulated exhibits.

#### **EXHIBITS PROVIDED TO THE COMMISSION BY PETITIONERS AND DCM**

1. Petitioners' deed 4192/1310
2. Plat Map 2/132
3. Map of ownership
4. CAMA Major Permit Materials
5. DCM Field Investigation Report, April 30, 2024
6. Notice to the Blacks and Ms. Williamson
7. July 14, 2024 CAMA Major Permit Denial Letter
8. Notice of variance request forwarded to the Blacks and Ms. Williamson
9. PowerPoint with ground and aerial photographs of the Site and surrounding area

#### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter.
2. All notices for the proceeding were adequate and proper.
3. As set forth in detail below, Petitioners have met the requirements in N.C. Gen. Stat. § 113A-120.1(a) and 15 N.C. Admin. Code 07J .0703(f) which must be found before a variance can be granted.

**a. Strict application of the rule will cause unnecessary hardships.**

The Commission affirmatively finds that strict application of the Commission's rule at 15A N.C. Admin. Code 07H .0208(b)(6)(I) would cause unnecessary hardships. Riparian property ownership by law is subject to "reasonable regulation." In North Carolina, the Commission has the authority to regulate through rulemaking the development of docks and piers while ensuring riparian access. The Commission's rule from which Petitioners seek a variance is the fifteen-foot riparian setback, which requires docks and piers be set back that distance on each side of a shared riparian line in order provide a minimum area for navigation by the riparian owners and by the public around docks and piers in these public trust waters. Under the Commission's rules, adjacent riparian owners may agree to waive some or all of the setback. In this case, neither adjacent riparian property owner has waived the setback and Petitioners have requested that the Commission grant a variance from that requirement and the setback so the proposed dock may be constructed less than fifteen feet from the shared riparian line even through the setback has not been waived.

Petitioners' lot is located at a dead-end corner of a canal which results in a small, pie-shaped riparian area that narrows as it extends from the shoreline. The configuration of the riparian area, combined with the Commission's minimum fifteen-foot riparian setbacks causes Petitioners' hardship. Although Petitioners have reasonable use of the property through the construction of a home, Petitioners do not have the ability to construct the proposed pier absent setback waivers from one or both adjacent owners or a variance.

The Commission holds that because the two fifteen-foot setback lines converge to leave only a small triangle consisting of mainly marsh grasses adjacent to the shore, a docking facility would not reach deep enough water for access by small shallow draft boats such as kayaks and jet

skis, or even reach the water much of the time. Thus, the strict application of the rule deprives the Petitioners of reasonable access to deep water and constitutes an unnecessary hardship. For these reasons, the Commission affirmatively finds that Petitioners have met the first factor without which a variance cannot be granted.

**b. The hardship results from conditions peculiar to Petitioners' property.**

The Commission affirmatively finds that Petitioners have demonstrated that the hardship results from conditions peculiar to the property. Specifically, the hardship is caused by the property's location at the corner of a manmade finger canal with a limited shoreline. Although the riparian line rule and setback works well for most lots on the coast, in this particular location for the reasons stated above, it does not allow the lot in question a floating dock that would allow safe water access. The hardship of not being able to construct a pier on this lot (other than outside the setback area) is caused in part by the triangle shape of the riparian corridor. At dead ends, as in a cove or embayment, a radial method may be used which results in triangle-shaped riparian corridors which narrow like pie slices in the deep water. Any alleged hardship results from that condition peculiar to the property – the location at the dead-end corner of a canal and the limited shoreline footage.

The Commission agrees with the parties and affirmatively finds that Petitioners have demonstrated that this hardship results from conditions peculiar to the property and has met the second factor required for the grant of its request for a variance.

**c. Petitioners have demonstrated that the hardship does not result from their actions.**

The Commission affirmatively holds that Petitioners have demonstrated that the hardship does not result from their actions. Specifically, the hardships in question result from the location

and dimensions of the lot which have not been changed by the Petitioners since they purchased it.

For these reasons, the Commission affirmatively finds that Petitioners have demonstrated that it has met the third factor required for a variance.

**d. Petitioners have demonstrated that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, will secure public safety and welfare, and will preserve substantial justice.**

The Petitioners has demonstrated (a) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, (b) that it will secure public safety and welfare, and (c) that it will preserve substantial justice. The principal purpose of the Commission's rule from which a variance is sought is to ensure that a development does "not interfere with the access to any riparian property." This purpose includes ensuring that the Petitioners' property as well as the adjacent properties has reasonable access to the water. It is the purpose of a variance to allow a just and fair relaxation of the strict application of a rule in circumstances such as these where the rule does not allow access and where the variance will not create a public safety or wetlands threat and produces a just result.

Petitioners have limited the proposed docking facility to a location and dimensions that allow them minimal access to the water while minimizing any interference to the neighbors' property and allowing them safe riparian access. The proposed docking facility will be approximately 36.5 feet from Mr. and Mrs. Black's dock, so it should not impact their water access, and is 13 feet from the Williamson docket and aligned so that it should not interfere with docking a boat at the waterward side of the existing floating dock, thus leaving access to the water. For these reasons, the Commission affirmatively holds that Petitioners' proposed development is consistent with the spirit, purpose, and intent of the Commission's rule.

The second assessment is whether the variance proposed by the Petitioners will impact public safety and welfare. Petitioners submits, and the Commission agrees, that the proposed alignment creates no safety or welfare threat and will protect the coastal vegetation by allowing a pier for access instead of simply accessing kayaks or other water uses directly from the bulkheaded shoreline.

Finally, the Commission agrees that granting the requested variance will preserve substantial justice in that the proposed alignment allows the Petitioners riparian access by allowing a minimal docking facility that will accommodate very small boats and which does not significantly interfere with the adjacent property owners' riparian rights.

\* \* \* \* \*

For these reasons, the Commission affirmatively finds that Petitioners have met the fourth factor required by N.C.G.S. § 113A-120.1(a) as conditioned by the variance.

**ORDER**

THEREFORE, the requested variance from 15A N.C. Admin. Code 07H .0208(b)(6)(I) to construct a docking facility at their corner lot along a manmade canal at 106 Salisbury Street in Holden Beach North Carolina is GRANTED.

The granting of this variance does not relieve Petitioners of the responsibility for obtaining any other required permits from the proper permitting authority. This variance is based upon the Stipulated Facts set forth above. The Commission reserves the right to reconsider the granting of this variance and to take any appropriate action should it be shown that any of the above Stipulated Facts are not accurate or correct.

This the 4th day of December 2024.

A handwritten signature in blue ink that reads "M. Renee Cahoon". The signature is fluid and cursive, with a long horizontal stroke at the end.

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M. Renee Cahoon Chair  
Coastal Resources Commission

**CERTIFICATE OF SERVICE**

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

**Method of Service**

Glenn Dunn, Esq.  
Attorney for Petitioners  
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This the 4th day of December, 2024.



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Mary L. Lucasse  
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