STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

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REPLY TO: CHRISTINE A. GOEBEL
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TO: Coastal Resources Commission

FROM: Christine A. Goebel
Assistant Attorney General

DATE: November 3, 2015 (for the November17-18, 2015 CRC Meeting)

RE: **Variance Request by the Town of Carolina Beach (15-07)**

On November 18, 2013, the Town of Carolina Beach applied for a CAMA minor development permit requesting approval of the Carolina Beach Boardwalk Improvement Project to replace and expand the Carolina Beach Boardwalk. DCM denied the permit application because the development extended oceanward of the ocean hazard setback. At its February 2014 meeting, the Town sought a variance for the entire project, and the Commission granted the variance for enlargement of the existing boardwalk and its improvements, but denied the variance for the northern extension of the Boardwalk.

On May 6, 2014, the Town applied for a new CAMA minor development permit seeking approval of the Boardwalk's redesigned northern extension. On June 2, 2014, the Division of Coastal Management again denied the permit application due to the inconsistency with the ocean hazard setback. The Town sought a variance at its October 2014 meeting, but the Town withdrew the variance petition before final action was taken by the Commission.

On October 6, 2015, the Town filed this third variance petition seeking approval of a newly reduced-size northern extension, based on the June 2, 2014 permit denial. For the reasons stated in herein, Staff believes that the Town meets all four variance criteria.

The following additional information is attached to this memorandum:

Attachment A:	Relevant Rules
Attachment B:	Stipulated Facts
Attachment C:	Petitioner's Position and Staff's Responses to Criteria
Attachment D:	Petitioners' Variance Request Materials
Attachment E:	Stipulated Exhibits 1-30
Attachment F:	Stipulated Exhibits 31, 32, 35, 36, Letters of Support
Attachment G:	Stipulated Exhibits 33 & 34, Letters of Objection
Attachment H:	Powerpoint Presentation
Attachment I:	Stipulated Exhibit 38, a copy of the October 2014 Variance Packet

cc: I Clark Wright, Jr. and Charlotte Noel Fox, Counsel for Petitioner, electronically
Mary Lucasse, CRC Counsel, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES

§ 113A-102. Legislative findings and goals of the Coastal Area Management Act of 1974 (CAMA).

(a) Findings. -- It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

(b) Goals. -- The goals of the coastal area management system to be created pursuant to this Article are as follows:

(1)To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;

(2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;

(3)To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;

(4)To establish policies, guidelines and standards for:

a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;

b. The economic development of the coastal area, including but not limited to construction, location

and design of industries, port facilities, commercial establishments and other developments;
c. Recreation and tourist facilities and parklands;
d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

§ 113A-113. Areas of environmental concern; in general.

(a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.
(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:
. . .
(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;
. . .
(6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:
a. Sand dunes along the Outer Banks;
b. Ocean and estuarine beaches and the shoreline of estuarine and public trust waters;
c. Floodways and floodplains;
d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;
e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.

§ 113A-120. Grant or denial of permits

(a) The responsible official or body shall deny an application for a permit upon finding:
(8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.

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 .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 7H .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, <u>the static vegetation line</u> or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings.

. . .

(2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. . . .

15A NCAC 7H .0309(a) USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

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

(1) campsites;
(2) driveways and parking areas with clay, packed sand or gravel;
(3) elevated decks not exceeding a footprint of 500 square feet;
(4) beach accessways consistent with Rule .0308(c) of this Subchapter;
(5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
(6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
(7) temporary amusement stands;
(8) sand fences; and
(9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

. . .

ATTACHMENT B

STIPULATED FACTS

1. Petitioner, The Town of Carolina Beach ("Town"), is a North Carolina municipal body politic organized and existing in Carolina Beach, New Hanover County, North Carolina. The Town is represented by I. Clark Wright, Jr., Esq. of Davis, Hartman, Wright, PLLC, and Town Attorney C. Noel Fox, Esq.

BACKGROUND OF THE SITE

2. As stated by the North Carolina General Assembly in its 1963 Session Laws (Stipulated Exhibit 1): "during the course of many years in the Town of Carolina Beach, in the County of New Hanover, North Carolina, much of the land abutting and fronting on the Atlantic Ocean in said town formerly belonging to various property owners has been and is now being washed away by successive storms, tides and winds."
3. Stipulated Exhibits 2A through 2H are aerial photographs which accurately depict the status of the oceanfront properties in this area in the years 1949. 1956, 1966, 1981, 1998, 2002, 2006 and 2010 (Source: USDA Orthoimagery or NHC Tax Office).
4. To protect oceanfront property owners and other citizens and residents from damaging erosion and property loss, in and about 1962 the Town of Carolina Beach began working with the U.S. Army Corps of Engineers and State officials to obtain public funding for, and thereafter carry out long term beach re-nourishment activities along the Town's shorefront, including within the area of the Boardwalk Extension that is the proposed development activity at issue in this Variance Proceeding. (Affidavit of Assistant Town Manager Ed Parvin, attached as a Stipulated Exhibit 3)
5. Stipulated Exhibit 3 (Affidavit of Assistant Town Manager) contains (as exhibits to the affidavit) minutes from two Town Council Meetings documenting the Town's beach nourishment efforts, as well as the Town's request for legislative action.
6. Publicly funded beach re-nourishment activities first took place along the Town's oceanfront shoreline in 1964-1965. As stated by the North Carolina General Assembly in 1963 Session Law 511 (Stipulated Exhibit 1), "it is the desire of the authorities of the Town of Carolina Beach, as well as the State of North Carolina, ***to fix and define the title to such new land and to fix and determine its use, and to further define the littoral rights of the property owners abutting on the***

ocean front, which will be destroyed or taken by and through the making of such new made lands." [Emphasis added by Town]

7. This law, specifically known as Chapter 511, House Bill 612, North Carolina General Assembly, 1963 Session (the "Session Law"), directly addressed issues of ownership and use of the newly raised and re-nourished portions of the ocean front in the Town of Carolina Beach. Section 2 of the Session Law provided for establishment of a "Building Line" after completion of the then pending, publicly funded beach nourishment by the Corps of Engineers. Pursuant to this governing law, the Town surveyed the required Building Line, extending along the entire oceanfront shoreline of the Town's municipal limits, and recorded said line in Map Book 8, Page 52, New Hanover County Public Registry (Stipulated Exhibit 4).
8. As further required by the Session Law, ocean front property owners affected by the Building Line then had six months in which to bring suit against the Town or otherwise file objections to the location of the Building Line as shown on the recorded map.
9. The Town of Carolina Beach has researched its records and finds no evidence of the filing by any property owner of any such notice or claim. See Stipulated Exhibit 3.
10. Section 3 of the Session Law expressly provided that "any property owner or claimant of land who does not timely file notice or suit shall be conclusively presumed to have acquiesced in, and to have accepted the terms and conditions hereof, and to have abandoned any claim, right, title or interest in and to the territory immediately affected by and through or as a result of the doing of act or acts or thing or things herein mentioned, and shall be forever bound from maintaining any action for redress upon such claim."
11. Section 1 further provided that "all made and constructed land lying East of "the building line" ***shall be at all times kept open for the purpose of street and highways for the use of the public and further for the development and uses as a public square or park, as the governing authorities of the Town of Carolina Beach by ordinance shall determine***," (emphasis added by Town) . . . and that "the owners of the property abutting on said newly made or constructed land, ***shall, in front of their said property possess and keep their rights, as if littoral owners, in the waters of the Atlantic Ocean,*** bordering on said newly acquired and constructed land." (Emphasis added by Town)

12. In 1985, the North Carolina General Assembly amended the State Lands Act, found in Chapter 146, by adding a new section addressing title to land in or immediately along the Atlantic Ocean raised above the mean high water mark. [See Act of May 30, 1985, 1985 N.C. Sess. Laws Ch. 276, sec. 2, codified at N.C.G.S. §146-6(f), Stipulated Exhibit 5]. After the effective date of this law, publicly funded projects involving hydraulic dredging or deposition of spoil materials or sand in then-submerged lands located below mean high water vest title to the lands thereby raised in the State of North Carolina.
13. From a review of aerial photographs covering the time period from 1949 through 2010 (Stipulated Exhibit 2A-H), it does not appear that the lands upon which the Town now seeks to construct the downsized Boardwalk Extension Project have been submerged lands from and after May 30, 1985. However, for purposes of this variance request, the Parties stipulate and agree that this issue is not being addressed or resolved by the Commission.
14. In its CAMA permit application, the Town provided a Statement of Ownership as required by 15A NCAC 7J .0204(b)(4): "Title to all lands east of the established 'building line' was conveyed to the Town of Carolina Beach in the 1963 NC General Assembly House Bill 612, Chapter 511."
15. DCM lacks jurisdiction to make determinations of property ownership and made no such determination by either processing the Town's various permit applications or by proceeding with the variance process.

APPLICABLE STATIC LINE RULES

16. The static line rules, codified at 15A NCAC 07H.0305(a)(6) and (9), and 07H.0306(a)(1), provide that the first line of stable natural vegetation existing prior to large-scale beach nourishment governs as the measurement line after such nourishment, even if subsequent dune vegetation growth results in lines of stable natural vegetation located oceanward of the pre-nourishment static line.
17. 15A NCAC 07J.1200 *et seq.* identifies those development activities that can be located oceanward of the static line on nourished beaches where a local government satisfies long term beach nourishment requirements, and the Commission approves a "Static Line Exception."
18. In accordance with 15A NCAC 07J .1200 *et seq.*, the Town has had a static line exception approval from the Commission since August of 2009. Recently, during its May 14, 2014 meeting, the Commission reviewed Petitioner's static line exception, based on an April 2014 Report provided by

the Town (Stipulated Exhibit 6), and allowed the Town's static line exception to continue for five more years. The Town's April 2014 Report contains a summary of beach nourishment activities over the past 50 years.

19. The proposed Boardwalk Extension Project is located within the delineated limits of the Town's static line. Based on an on-site meeting and a survey dated July 12, 2013 (Stipulated Exhibit 7), DCM Staff determined that the "actual" first line of stable and natural vegetation on that date was approximately 90'oceanward of the static vegetation line within the proposed project area.

GRANT FUNDING FOR THE BOARDWALK

20. In August of 2013, DCM notified the Town that it was awarding the Town a Public Beach and Coastal Waterfront Access grant (Stipulated Exhibit 8B). The total grant amount was $599,367, with a Local Match of $228,321, for a total grant amount of $827,688. The grant is for the boardwalk project - both the section approved by the Commission at its February 2014 meeting and the (northern) portion proposed in this variance. The project included the replacement and extension of the existing boardwalk, nine beach access ramps, a gazebo, lighting, bike racks, trash bins and park benches. On April 10, 2015, the Town received formal Grant approval (Stipulated Exhibit 8A).
21. Petitioner Town also has received a $500,000 grant from New Hanover County to further fund and support the overall Boardwalk project.
22. In 2010 Petitioner Town received a grant from the Department of Environment and Natural Resources, Division of Water Resources ("DENR" and "DWR") for $250,000 to facilitate land acquisition for a proposed oceanfront pier. However, other needed funding for that project did not become available. As a result, in 2013 DENR approved the Town's request to transfer this additional grant funding to the overall Boardwalk project.
23. In sum, the Town has secured the total sum of $1,349,367 in public grant money funding to support the Boardwalk project, coupled with a total local match of $478,321, for a total public funding amount of $1,827,688. Currently, the DWR grant has been closed out having been spent on the (southern) developed boardwalk. The majority of the funds from the CAMA grant remain, and have been specifically designated for the (northern) Boardwalk Extension Project (approximately $415,000 in grant funds and $140,000 in local matching funds). The Town believes these funds will be adequate to complete the downsized Boardwalk Extension Project.

The Town has represented that, should the remaining CAMA grant monies not be sufficient to complete the project, funding remains available from the NHC grant, which can be used for any portion of the overall Town boardwalk project.

FIRST CAMA PERMIT AND FIRST VARIANCE

24. The Town of Carolina Beach has a Commission-approved CAMA implementation and enforcement program which authorizes the designated local official to issue CAMA minor development permits. Because the Town is the applicant in this case, pursuant to N.C.G.S. § 113A-121(b), the Town's minor development CAMA permit applications are processed by DCM.
25. On November 18, 2013, the Town applied to DCM for a CAMA minor development permit (Application Number CB13-12) requesting approval of a development project for replacement and expansion of the Carolina Beach Boardwalk. On December 20, 2013 DCM denied this Permit Application because the proposed development did not meet the ocean hazard setback as determined by the applicable static line, and did not meet any of the setback exceptions listed in 15A NCAC 07H .0309(a).
26. In response to DCM's permit denial, the Town requested from the Commission a variance from the ocean hazard setback requirement. At its February 2014 meeting, the Commission granted in part and denied in part this variance request. The Commission granted a variance from the ocean hazard setback rule for the Town's improvements to and enlargement of its existing boardwalk, but denied the requested variance for the then-proposed Northern Boardwalk Extension portion of the Project. The Commission's February 2014 Variance Order is attached as Stipulated Exhibit 9.

TOWN ACTIONS FOLLOWING FIRST VARIANCE

27. Since issuance of the Commission's variance order in February 2014, the Town has completed construction and placed into use the improved and enlarged public boardwalk replacing the existing boardwalk. Site photographs showing the completed portion of the boardwalk can be seen in the stipulated PowerPoint presentation.
28. The improved and enlarged (original) boardwalk was constructed in the spring of 2015. It was built according to the Town's submitted revised S3.0 engineer's drawing, submitted to DCM on November 26, 2013 with the Town's original variance petition, showing a total boardwalk width of slightly in excess of 17 feet. However, the Stipulated Facts previously agreed to by DCM and the Town, including Fact 10 and other drawings provided in the same variance petition, called for a

total width of 16 feet. Accordingly, the February 2014 Variance Order limited boardwalk width to 16 feet per Stipulated Fact 10, which was incorporated into the Commission's Variance Order (Stipulated Exhibit 9) at Stipulated Fact 10 and Conclusion of Law 3a. This discrepancy was not discovered until construction was nearing completion. On September 16, 2015, the Town paid, under protest, a civil penalty assessed by DCM in the amount of $375.00 to resolve this violation. A copy of DCM's August 3, 2015 Civil Penalty Assessment letter and the Town's September 15, 2015 response are attached as Stipulated Exhibits 10 and 11.

29. To address concerns expressed by Commission Members at the February 2014 variance hearing, and by members of the public regarding the proposed Boardwalk Extension Project, on May 6, 2014, the Town applied for a new CAMA minor development permit (Application Number CB 14-03, Stipulated Exhibit 12) requesting approval of a revised version of the Boardwalk Extension Project, as a separately permitted development.
30. In its May 2014 CAMA permit application, the Town proposed an 875' long by 16' wide northern extension of its existing boardwalk. The extension was proposed to include three new 10' wide public beach access ways and the rebuilding of three existing private beach access ways, paid by the Town, plus five 96 sq. ft. bump-outs for public park benches and swings.
31. On June 2, 2014, DCM denied the Town's May 6, 2014 permit application based on application of the same ocean hazard setback use standard (static line) that required denial of the Town's original CAMA permit application. A copy of the denial letter is attached as Stipulated Exhibit 13. This permit denial is the basis for both the withdrawn October 2014 (second) variance petition, and the current variance petition.

SECOND VARIANCE HEARING

32. On June 18, 2014, the Town filed a new petition for a variance from the ocean hazard setback rule, the basis for DCM's June 2, 2014 permit denial, seeking to address concerns identified by the Commission at the February 2014 variance hearing.
33. 15A NCAC 7J .0701(c)(7) requires that notice of the variance petition "be sent certified mail, return receipt requested to adjacent property owners and persons who submitted written comments to the Division of Coastal Management…. during the permit review process and copies of the documents that the certified mail notices were received or that deliveries were attempted." The Town provided such notice, as evidenced by the certified mail information, copies of which were

attached to its June 2014 variance petition. See Stipulated Exhibit 38. On October 6, 2015, the Town provided updated notice to adjacent property owners and those who objected to the May 2014 CAMA minor permit review process, showing the downsized Boardwalk Extension Project for this variance request, copies of which are attached in Petitioner's Variance materials.

34. There are five property owners immediately adjacent to the proposed Boardwalk Extension Project, as follows:
    a. Carolina Beach Hospitality, LLC (See three Deeds attached as Stipulated Exhibit 14). [Hampton Inn project]
    b. Cabana de Mar COA, Inc. (See two Deeds attached as Stipulated Exhibit 15)
    c. Sea Witch Motel, LLC (See Deed attached as Stipulated Exhibit 16)
    d. James Averette (See Deed attached as Stipulated Exhibit 17)
    e. Carolina Beach Hospitalities, LLC (See Deed attached as Stipulated Exhibit 18) [Surfside Motel]
35. Adjacent Property Owners, Carolina Beach Hospitality, LLC [Hampton Inn – 100 rooms], Sea Witch Motel, LLC [16 rooms] and Carolina Beach Hospitalities, LLC [Surfside Motel – 50 rooms] each wrote letters in support of the Town's variance request. See Stipulated Exhibits 19 A-D.
36. The Cabana de Mar project [76 Units; some one bedroom and some two bedrooms] was constructed in 1984. The property is located within the Town's commercial Central Business District; at the time of construction, the property was marketed and had signage indicating that the units would be used for motel rental purposes. See Stipulated Exhibit 3 (Affidavit of Assistant Town Manager Ed Parvin).
37. The Cabana de Mar property adjacent to the proposed Boardwalk Extension Project consists of common area lands owned by the Condominium Owners Association. See two deeds attached as Stipulated Exhibit 15.
38. The recorded Covenants and Declarations governing ownership in the Cabana de Mar provide that owners may use their units "for residential and lodging accommodation purposes, which shall include the rental of individual units on a daily basis by the owner(s) thereof for lodging accommodations using the same methods as in a motel, and other uses reasonably incidental thereto, including meetings by persons owning or occupying said units, and offices for the sale or rental of units and their furnishings." See Stipulated Exhibit 20.

39. The recorded Covenants and Declarations governing unit ownership in the Cabana de Mar property provide for operation of a restaurant and store within the project. See Stipulated Exhibit 20.
40. 15A NCAC 07H .0306(a)(2), which applies to "General Use Standards for Ocean Hazard Areas," states that no development, including any portion of a building or structure, shall extend ocean ward of the ocean hazard setback distance, with the exception of those types of development defined in 15A NCAC 07H .0309(a).
41. The proposed Boardwalk Extension Project is inconsistent with strict application of 15A NCAC 07H .0306(a)(2) in that the proposed boardwalk is located oceanward of the 60'setback as measured from the governing static line created when the Town's beaches first received publicly funded nourishment. Portions of the Boardwalk Extension Project would be located on or slightly oceanward of the static line.
42. While the static line governs as the measurement line at this location, if the "actual" vegetation line dated July 12, 2013 (Stipulated Exhibit 7) were used as the measurement line, the proposed Boardwalk Extension Project would meet the ocean hazard setback rules as this "actual" vegetation line is located approximately 90 feet oceanward of the proposed boardwalk development.
43. The proposed Boardwalk Extension Project does not meet any of the setback exceptions set forth in 15A NCAC 07H .0309(a). 15A NCAC 07H.0309(a)(4) allows ocean access crossovers as an exception to the ocean hazard setback rule; however, DCM does not interpret this exception to include a boardwalk with ocean access crossovers located within the boardwalk area and at each end.
44. The Town's second variance request was heard at the Commission's October 22, 2014 Meeting. In response to expressions of continued concern raised by some Commission Members, the Town voluntarily withdrew its variance request. A copy of the October 24, 2014 letter from the Town confirming its withdrawal is attached as Stipulated Exhibit 21.

CURRENT DOWNSIZED REQUEST

45. In response to concerns raised by several Members of the Commission and the public, the Town substantially downsized its proposed Boardwalk Extension Project, with specific emphasis on reducing perceived impacts to objecting adjacent property owner James Averette and objecting unit owners within the Cabana de Mar condominium project. Specifically, the Town has removed proposed public "bump out" areas and public benches in front of the Averette and Cabana de Mar

properties, and reduced the proposed boardwalk width by 37.5% - from 16 feet to 10 feet - for the portions of the boardwalk traversing in front of the Averette and Cabana parcels, and continuing out to the northern terminus at Pelican Lane. All of the reduced width is made on the side of the boardwalk closest to these adjacent properties.

46. The Town provided DCM with copies of plans and drawings for the downsized Boardwalk Extension Project on October 2, 2015, with minor revisions made in response to DCM staff comments provided on October 27, 2105 and November 2, 2015. According to these plans, as compared to the plans reviewed during the permit review process, the total square footage of boardwalk area in front of the adjacent Cabana de Mar and Averette properties has been reduced by 37.5%, while the overall Boardwalk Extension Project square footage has been reduced from 13,935 square feet to 9,675 square feet, a total project reduction of 31%. The downsized plans and drawings made no changes in the lengths or widths of the various beach access ramps. See Stipulated Exhibit 22.
47. The October 2, 2015 revised schematic drawing submitted by the Town as part of its downsized Boardwalk Extension Project indicates that unit owners within the Cabana de Mar project will not have their view of the public beaches or Atlantic Ocean blocked or diminished by the Town's downsized Boardwalk Extension Project. See Stipulated Exhibit 23. This revised schematic drawing was received after the permit application review, and thus was not considered by DCM staff during permit review. However, a copy of this schematic drawing was provided by the Town to the Cabana de Mar Condominium Owners Association during the October 13, 2015 meeting between Town officials and Association Members. See Stipulated Exhibit 24 [October 15, 2015 letter from the Town Manager to the COA].
48. At the prior request of Members of the Commission, Town officials met with Cabana Owners Association members in November, 2013 and again in January, 2014 to discuss concerns and issues regarding the Boardwalk. These issues are summarized in a letter from the COA dated April 21, 2014, attached as Stipulated Exhibit 25A. The Town Manager responded to these concerns in a letter dated May 7, 2014, attached as Stipulated Exhibit 25B. An additional meeting was held Thursday, June 19, 2014 to continue discussion of the issues.
49. Town officials also met with adjacent property owner James Averette, his daughters, and his attorney on March 29, 2014. Town officials presented options to Mr. Averette regarding security

and access to his existing deck, referenced the 1963 Session Law, and reiterated the Town's commitment to rebuild Mr. Averette's private beach access ramp as part of the Town's project. See Stipulated Exhibit 26 (Affidavit of Town Manager Michael Cramer).

50. On June 13, 2007, the Town of Carolina Beach issued a Conditional Use Permit to the then owners-developers of what is now the Hampton Inn Hotel project in which the Town expressly referenced its long term planning for improved pedestrian access, including improved boardwalk facilities in the Town's Central Business District. See Stipulated Exhibit 27.
51. Currently, there is no public beach access anywhere within the 875 feet length of the downsized Boardwalk Extension Project (Harper Avenue to the south and Pelican Lane to the north), with the first public beach access heading northward being located at the end of Pelican Lane. The Pelican Lane beach access is not currently ADA compliant.
52. The proposed Boardwalk Extension Project is located entirely within the Town's Central Business District zone. See Stipulated Exhibit 28- Aerial with CBD overlay; Stipulated Exhibit 29- Aerial with existing Boardwalk and CBD shown; and Stipulated Exhibit 30- Aerial of Phase II (proposed northern extension).
53. Because the boardwalk will be elevated above the existing dune system, the boardwalk should have only temporary, minimum dune impacts during the installation of the pilings and construction. During construction of the main boardwalk, an area approximately five feet wide on the landward side, and twelve feet wide on the seaward side (of the actual structure footprint) temporarily will be graded and disturbed by construction equipment and personnel. During construction of the beach access ramps, an area approximately five feet wide on either side of the actual ramp footprint temporarily will be graded and disturbed by construction equipment and personnel. Grading for the boardwalk and access ramps will not exceed three feet in depth at any point. Following construction, grade will be restored to original heights outside the boardwalk and ramp footprints, and will be fully re-vegetated with native vegetation. The full length of the boardwalk and the Pelican Lane beach access ramp will be constructed to meet ADA standards. All Construction equipment will access the site from the Pelican Lane right of way.
54. The Town contends that the proposed Boardwalk Extension Project will serve as a public street, park and walkway, accessible to handicapped citizens, providing expanded opportunities for access

to the public beaches, in and along an area of the Town's Central Business District that currently lacks such services and public beach access.

55. The Town contends that the proposed Boardwalk Extension Project will provide handicapped members of the public with improved and expanded physical and visual access to the public beach and dune ecosystem in an area of the Town's Central Business District where such access currently is not available, and is supported by multiple charitable and non-profit organizations working with disabled and handicapped residents and visitors in the area. See Stipulated Exhibit 36.
56. The Town contends that the proposed Boardwalk Extension Project is consistent with Section 1 of the governing 1963 Session Law that such areas granted to the Town "shall be at all times kept open for the purpose of street and highways for the use of the public and further for the development and uses as a public square or park, as the governing authorities of the Town of Carolina Beach by ordinance shall determine."
57. The Town Code Article 1, Section 10-14 prohibits loitering on the Boardwalk. The Town Code further contains a noise ordinance Article 1, Section 10-4 through 10-7 which prohibits any noise in violation of the ordinance on the boardwalk between the hours of 11pm and 7 am Monday-Friday.
58. The Town has committed to purchase and install boardwalk security cameras to assist in policing the existing public Town Boardwalk; the Town has made a commitment to extend such security cameras to cover the extended Boardwalk. See Stipulated Exhibit 3.
59. On October 15, 2015, the Carolina Beach Town Manager wrote a letter to the Cabana de Mar Owners Association detailing the modifications made by the Town to downsize its Boardwalk Extension Project in response to concerns voiced by some unit owners. See this letter at Stipulated Exhibit 24. This letter attached the "line of sight" diagram attached as Stipulated Exhibit 23.

SUPPORTERS AND OBJECTORS

60. The owners and developers of the Hampton Inn hotel project currently under construction adjacent to the site [Carolina Beach Hospitality, LLC] support issuance of the requested variance to allow construction and use of the Town's original and downsized Boardwalk Extension Project. They provided letters dated July 18, 2014 and May 21, 2015. See Stipulated Exhibits 19A and 19B. In the 2015 letter, the developer indicates that the new Hampton Inn hotel will open in the spring of 2016, and that a "very important component to the future of our hotel is the construction of an

outdoor venue that extends from our hotel towards the ocean . . . . Our plans have always included extending access to our facility to tie into the proposed boardwalk extension that has been planned by Carolina Beach and New Hanover County."

61. Ollin Manning, the owner of Units 106, 307 and 309 within the adjacent Cabana de Mar property, has written a letter supporting issuance of the Town's requested variance to allow permitting and construction of the downsized Boardwalk Extension Project. See Stipulated Exhibit 31.
62. Bill Kelley owns Unit 306 within the adjacent Cabana de Mar property has written a letter supporting issuance of the Town's requested variance to allow permitting and construction of the downsized Boardwalk Extension Project. See Stipulated Exhibit 32.
63. Several individuals appeared at the Commission's September 2015 Meeting and spoke during the public comment period in opposition to the Town's Boardwalk Extension Project. At this point in time, the Town had not yet filed its variance request or submitted to DCM its downsized plans and drawings. Copies of the comments handed up to the Commission by members of the public are attached as Stipulated Exhibit 33.
64. Since the September 2015 Commission meeting, several people, primarily owners or tenants of units in the Cabana property, have written letters to DCM opposing issuance of the Town's requested variance to allow permitting and construction of the Boardwalk Extension Project. Copies of those letters received by DCM by Friday, October 30, 2015 are attached as Stipulated Exhibit 34.
65. The owner of the Sea Witch Motel, an adjacent property owner, has written a letter supporting issuance of the requested variance to allow permitting and construction of the Town's downsized Boardwalk Extension Project. See Stipulated Exhibit 18C.
66. Several residents, businesses and organizations in the area, listed below, have written letters and/or emails supporting the Boardwalk Extension project, which are attached as Stipulated Exhibits 35 A-J. These include:

    -The Superintendent of Carolina Beach State Park

    -Porter Financial Group, Wilmington

    - Coastwalk Real Estate, Carolina Beach

    -Pleasure Island Chamber of Commerce

    -Lenita Griffin, Town resident

-Christina Dees, Town resident and business owner

-Miles Bielec, Town resident and business owner

- Dennis Hagestrom

-Bruce Shell, former NH County Manager

-Kim Hufham of the Wilmington and Beaches Convention & Visitors Bureau

67. A number of non-profit organizations supporting disabled citizens in the area, including North Carolina Special Olympics, Step Up For Soldiers, Ocean Cure and the Cape Fear Disability Commission, have written letters supporting issuance of the requested variance to allow permitting and construction of the Town's downsized Boardwalk Extension Project, which are attached as Stipulated Exhibits 36 A-D.
68. Many of the factual assertions and opinion statements contained in the various letters of support and objection have not been verified by DCM or the Town.
69. In its October 6, 2015 variance filing, counsel for the Town proposed to incorporate by reference all materials contained in the Town's prior variance package considered by the Commission at its October 2014 meeting, and to supplement only those items which had changed or been updated. Counsel for the Town and DCM Staff now incorporate the October 2014 variance package as Stipulated Exhibit 38 in order to have a more-complete record. Much of the information is duplicative, but may help the Commission's deliberations and so is included.
70. A powerpoint presentation consisting of various site photographs and copies of selected stipulated exhibits is attached as Stipulated Exhibit 37.

STIPULATED EXHIBITS

1. 1963 Session Law
2. A- Aerial Photograph- 1949
   B- Aerial Photograph- 1956
   C- Aerial Photograph- 1966
   D- Aerial Photograph- 1981
   E- Aerial Photograph- 1998
   F- Aerial Photograph- 2002
   G- Aerial Photograph- 2006
   H- Aerial Photograph- 2010
3. Affidavit of Assistant Town Manager Ed Parvin
4. Building Line Map recorded in Map Book 8, Page 53 New Hanover Co. Registry
5. N.C.G.S. 146-6
6. April 2014 Carolina Beach Static Line Exception Report
7. July 12, 2013 survey of the "actual" vegetation line
8. A- 2015 CAMA Grant Contract No: 6416 letter
   B-2013 CAMA Grant Letter
9. February 2014 CRC Final Variance Order, granting in part and denying in part
10. August 3, 2015 Civil Penalty Assessment Letter from DCM to Town
11. September 15, 2015 Town response to CPA letter
12. Town's CAMA Minor Permit Application 14-03, dated May 6, 2014, with site drawings
13. June 2, 2014 CAMA Permit Denial Letter
14. Deed into Carolina Beach Hospitality, LLC [Hampton Inn Project], Book 5601, Page 421 and Book 5789, Page 1337 and Book 5789, Page 1341.
15. Deed into Cabana de Mar COA, Inc., Book 1385, Page 1594 and Book 2552, Page 586.
16. Deed into Sea Witch Motel, LLC, Book 5877, Page 1978.
17. Deed into Averette Family, Book 224, Page 362.
18. Deed into Carolina Beach Hospitalities, LLC [Surfside Motel], Book 5843, Page 1839.
19. A- Carolina Beach Hospitality May 21, 2015 letter in support by Hampton Developer
    B-Hampton Inn Developer letter of support dated July 18, 2014 by Victor Mills, CEO of Blanchard & Calhoun
    C- Sea Witch Motel letter in support by Kieu Loan Tang
    D- Carolina Beach Hospitalities, LLC letter in support by Bill Troutman
20. Cabana de Mar Condominium Declaration recorded in Book 1273, Page 075 of the New Hanover County Register of Deeds (excerpted pages)
21. October 24, 2014 Letter from the Town confirming its withdraw of the variance petition
22. Revised drawings dated October 2, 2015 with revisions dated October 27, 2015 and November 2, 2015
23. Line of Sight diagram by SEPI Engineering and Construction, dated October 2, 2015
24. October 15, 2015 Letter from Town Manager to Cabana de Mar Owners Association detailing reductions to Town's proposed Boardwalk Extension Project.

25. A- April 21, 2014 Letter from Cabana COA to Town
    B- May 7, 2014 response letter from Town to Cabana COA

26. Affidavit of Town Manager Michael Cramer
27. Order Granting A Conditional Use Permit Dated June 13, 2007
28. Aerial – "CBD Zoning Map"
29. Aerial – "Boardwalk and CBD"
30. Aerial – "Phase II"
31. Letter of Support from Ollin Manning, owner 106, 307 and 309 in Cabana de Mar
32. Letter of Support from Bill Kelley, owner of 306 in Cabana de Mar
33. Written objections to the project from the Commission's September 2015 meeting
34. Written objections received since the September 2015 meeting through October 30, 2015
35. Letters of Support from area residents, businesses and organizations
    A- James Helms, Park Superintendent at Carolina Beach State Park
    B- Chad Porter, Porter Financial Group
    C- Justin Donaton, Coastwalk Real Estate
    D- Pleasure Island Chamber of Commerce
    E- Lenita Griffin
    F- Christine Dees
    G- Miles Bielec
    H- Dennis Hagestorm
    I- Bruce Shell
    J- Kim Hufham of the Wilmington and Beaches Convention & Visitors Bureau
36. Letters of Support from non-profit organizations supporting disabled citizens
    A- Tiffany Lesley, Coordinator for Special Olympics North Carolina
    B- Tom Russell, Step Up For Soldiers
    C-Kevin Murphy, President of Ocean Cure
    D- David Morrison, Chair of Cape Fear Disability Commission
37. Powerpoint Presentation with aerial and ground site photographs
38. A copy of the Variance Package from the October 2014 Variance Hearing (where the variance was withdrawn by the town before a decision was made)

ATTACHMENT C

Petitioners and Staff Positions

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.

Introduction:

Petitioner Town of Carolina Beach ("Town") respectfully contends that its downsized Boardwalk Extension Project meets the four variance criteria specified in the North Carolina Coastal Area Management Act ("CAMA"). In support, the Town presents the following statements and information, and respectfully requests that the Coastal Resources Commission ("CRC") issue a variance order allowing the Town's requested variance from the ocean hazard setback rule. This rule applies due to the long-existing static line, first created when the Town's ocean beaches became the subject of a long term, publicly funded beach nourishment project, successfully carried out by the United States Army Corps of Engineers ("Corps"), beginning in the 1960s. The Town also relies on and incorporates the Attachments and Exhibits to its Variance Petition, as well as final Stipulated Facts and Exhibits presented to the Commission.[1]

The Carolina Beach Boardwalk has existed in some form since the early 1930s. The existing Boardwalk first was permitted by the Division of Coastal Management ("DCM") and built in 1989. Pursuant to a prior variance order of the Commission, the existing Boardwalk was rebuilt and expanded during the past year. Due to its proximity to the Atlantic Ocean, the Boardwalk is a popular means for the public to view, enjoy and access the public resources of the dry and wet sand beaches, and the Atlantic Ocean. The access provided by the current Boardwalk has had a significant, positive economic impact on many businesses and property owners located adjacent to the Boardwalk, as well as on the larger Central Business District of Carolina Beach, the Town of Carolina Beach and New Hanover County. The Town's downsized Boardwalk Extension Project seeks to extend and enhance these positive economic impacts, address growing pressures for additional public beach access,[2] and comply with the express provisions of the governing 1963 Session Law 511, enacted by the North Carolina General Assembly as part of a coordinated State and Federal response to the critical problem of shoreline erosion then imperiling the Town and its oceanfront property owners.

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1 The Town incorporates fully by reference its prior variance filing [now Stipulated Exhibit 38]; the Town's current renewed variance package will focus on new proposed stipulated exhibits, and a revised set of proposed stipulated facts.

2 Increased public parking areas, increased use of nearby public marina facilities, and the ongoing construction of a major oceanfront hotel in the area of the proposed Boardwalk Extension Project are just some of the factors that are generating increased public demand for additional pedestrian walkway and park facilities. The public parking areas, public marina facilities and the new Hampton Inn hotel project are all depicted on attached Stipulated Exhibits.

The downsized Boardwalk Extension Project creates a unique opportunity for the Town to use public property, created by the Corps' publicly funded beach nourishment project and deeded to the Town by the North Carolina General Assembly, to benefit numerous residents and visitors to the area, while also providing improved beach access to the adjacent property owners. With an increasingly aging population and increased demand for access to the beach and ocean from elderly and handicapped individuals, the downsized Boardwalk Extension Project will provide elderly and handicapped individuals improved ability to use and enjoy the same public beach resources that are more easily available to the rest of us. An undue hardship to the Town, its citizens and the tens of thousands of visitors to the Town will be created if strict application of the ocean hazard setback rule (based on the static line) prevents this publicly funded, publicly supported project, located on public lands uniquely granted to the Town by the General Assembly in connection with a long term, publicly funded beach nourishment project – a project that not only has resulted in the Town's ownership and stewardship of the relevant public lands, but also in protection and preservation of adjacent private properties – properties that almost certainly would not have continued to exist in useable form but for the taxpayer funded, long term beach nourishment project.

Will strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.

Yes. Strict application of the ocean hazard setback rule [15 NCAC 07H .0306(a); 15 NCAC 07H .0309(a)] prevents the Town from constructing a public street and public park amenity as expressly contemplated by the Legislature in 1963 Session Law 511. This law – one of only two of its kind – was enacted by the General Assembly in recognition of, and response to, major shoreline erosion threats then impacting the Town's ocean beaches and nearby oceanfront property owners - including those who now object to the Boardwalk Extension Project. [See Stipulated Exhibit 3- Affidavit of Assistant Town Manager Ed Parvin; see also Stipulated Exhibit 6- the Town's June 2014 Report to the Commission for static line renewal] The governing 1963 Session Law (see Stipulated Exhibit 1) provides that, in exchange for the Town receiving title to lands raised by the Corps' long term beach nourishment project, the Town will limit use of such raised lands to public street, road and park purposes. Failure of the CRC to approve the Town's pending, downsized variance request would pose a truly unique hardship on the Town in its efforts to continue to provide its residents and visitors with improved beach access, and to comply with the express provisions of the governing 1963 Session Law.

Strict application of the (static line based) ocean hazard setback rule further presents a hardship to the Town in light of the fact that the Corps' long term beach nourishment project has worked well – well enough to protect and preserve both the lands owned by adjacent ocean front property owners and the raised lands that the Legislature deeded to the Town by means of the 1963 Session Law. Due to the success of the Corps' long term beach nourishment project, and the Town's efforts to protect and enhance the resulting dune system, the actual first line of stable and natural vegetation as determined by DCM staff is located approximately 90 feet eastward of the proposed Boardwalk Extension Project. See Stipulated Fact 19.

The Town has invested many years of time, effort and taxpayer dollars towards revitalization of its Central Business District. The proposed Boardwalk Extension Project is located entirely within the Central Business District, which is of course commercial in nature. [See Stipulated Exhibits 28, 29, 30.] Immediately landward of the downsized Boardwalk Extension Project are two Town owned public parking lots, as well as public marina facilities. [See Stipulated Exhibits 28, 29, 30.] These Town amenities draw numerous residents and visitors to this area, with resulting economic benefits to many area property owners and downtown businesses. The Proposed Boardwalk Project will provide ADA compliant public walkway and park type amenities that will allow residents and visitors utilizing the public parking and marina amenities in the Central Business District reasonable access to the public beaches in this area. Currently, there are no public beach access dune crossovers within the proposed boardwalk extension area, and the current public beach access at the end of Pelican Avenue is not ADA compliant. See Stipulated Facts 51 and Stipulated Exhibits 28, 29.

Finally, a significant additional hardship (and uniqueness) factor is the ongoing construction of a major new downtown hotel, which will bring additional economic benefits to the Town's Central Business District. With these benefits will come increased numbers of visitors to the area, and the Town respectfully contends that it would create a further hardship not to allow construction and use of the Town's downsized Boardwalk Extension Project to serve this increased pedestrian based walkway and beach access demand. The hotel developer has relied on the construction of the Boardwalk Extension Project as an integral part of the hotel project. [See Stipulated Exhibit 19A] By constructing a new, ADA-compliant beach access walkway right in front of this new major hotel, and by downsizing the proposed Boardwalk Extension from 16 feet to 10 feet at the hotel's northern property line – a reduction in width of 37.5% - the Town has undertaken significant mitigation measures designed to reduce any private property owner impacts and direct this inevitable increased public pedestrian use of the proposed Boardwalk Extension Project (and the existing boardwalk) to those portions of the Boardwalk Extension Project located in front of the new hotel.

In summary, the Town's hard work and major investments in revitalizing the Central Business District have paid off, and now the Town very much needs additional public walkway and beach access amenities, which amenities will provide significant, new ADA compliant facilities to accommodate the growing number of visitors of all ages and limited mobility abilities to the Town – visitors that the Town continues to make important efforts to attract and accommodate. Failure of the Commission to approve the Town's downsized Boardwalk Extension Project would render a significant hardship to the Town's long term efforts in this regard – efforts which also are reflected in the Town's approved Land Use Plan. By providing the public walkway and park amenities of the downsized Boardwalk Extension Project, not only will the project provide the above-referenced improved public walkway, park and beach access, the project will relieve adjacent oceanfront property owners from the current actions of some residents and visitors utilizing the public parking lots and marina facilities then seeking to access the public beaches in this area by traveling through their private properties.

The Town's downsized Boardwalk Extension Project furthers the goals of the Commission as set forth in 15A NCAC 07H .0203 and 15A NCAC 07H .0207(c): "providing and protecting public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic values." The Town believes that these rules were designed, in part, to balance a private individual's rights of access to the public beaches with the equally compelling mandate from the Commission (and the General Assembly in this case) to provide the greater public with access to, and use of, public trust areas, such as the raised public lands deeded to the Town in 1963, as well as raised public lands held by the State pursuant to Chapter 146 of the General Statutes, as well as public access to the wet and dry sand public beaches utilized by millions of visitors to North Carolina's beaches every year.

Staff's Position: Yes.

Staff agrees that strict application of the Commission's rule prohibiting development oceanward of the ocean hazard setback distance 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, esthetic, 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. Not only has the existing boardwalk been in existence for many years, but the proposed northern extension is wholly within the Town's Central Business District. Additionally, Carolina Beach has been nourished through a Corps of Engineers project for the last 50 years, and this part of the beach has been granted an exception to the Static Line through the procedures outlined in 15A NCAC 7J .1200 et seq. While this area would typically be covered by the static line exception if the proposed development were a house, in this case, the shoreline parallel boardwalk is not included in those static line exception rules. Accordingly, strict application of the oceanfront erosion setback will cause the Town unnecessary hardships where the static line, which is based on a pre-nourished vegetation line from the 1960's, is significantly landward of the actual vegetation line's location on this nourished beach. Additionally, this public project will aid access to the beach by the public, and will not significantly adversely impact the dune system in doing so.

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

Petitioners' Position: Yes.

See discussion regarding factor one above. The property upon which the downsized Boardwalk Extension Project will be located is unique public property. This property was raised from the tides of the Atlantic Ocean by taxpayer funded beach nourishment efforts first undertaken by the Corps in the mid-1960's, and uniquely was deeded to the Town by the North Carolina General Assembly pursuant to the provisions of the governing 1963 Session Law. The 1963 Session Law balances public and private property rights by recognizing that the Corps' publicly funded beach nourishment project extinguished the common law littoral rights of the impacted oceanfront property owners, by deeding the raised lands to the Town, by requiring the Town to use those raised lands for public street and public park purposes, and by granting a limited, statutory right of access to the Atlantic Ocean as if a littoral property owner to the adjacent property owners. The net effect of these governing provisions is that the Town is asked to use this public land for street and park purposes, but also to make sure that the adjacent property owners retain reasonable beach access. This is precisely what the Town's downsized Boardwalk Extension Project accomplishes.

In addition, a hardship peculiar to this property is the unique fact that the Corps' long term beach nourishment project has worked very well – well enough to create a first line of stable and natural vegetation located approximately 90 feet east of the Boardwalk Extension Project. See Stipulated Fact 19. If this FLSNV were utilized in connection with the Town's proposed project, no CAMA use standards would be violated and no CAMA variance would be required.

As noted above, the relevant public lands are owned by the Town of Carolina Beach as a result of the governing 1963 Session Law, which law resulted in the recording of a public Building Line in Map Book 8, at Page 52, New Hanover Register of Deeds Office. This unique, recorded building line has been on the public property records of New Hanover County for over 50 years now. See Stipulated Facts 6, 7; Stipulated 3, 4. In summary, the combination of the recorded Building Line, the express terms of the governing 1963 Session Law, and the successful Corp's beach nourishment project resulting in a first line of stable and natural vegetation located 90 feet from the proposed project provide an extremely unique set of conditions and circumstances peculiar to the Town's pending variance request.

Staff's Position: Yes.

Petitioner's hardship is caused by conditions peculiar to Petitioner's property. The hardship of not meeting the oceanfront erosion setback for the boardwalk's northern extension is due in part by the boardwalk extension's proposed location on publically owned property, subject to a 1960's static line on a beach nourished for the last 50 years. Additionally, the Town has applied for and was granted static line exception status, updated in 2014. Finally, the actual vegetation line is significantly waterward of the static line. Accordingly, Staff agrees that Petitioner meets this variance criterion.

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

Petitioners' Position: No.

No. See responses above for discussion of the relevant hardships, the unique nature of the Town's public property, and the unique provisions of the governing 1963 Session Law requiring the Town to use such areas for public street and park uses. Perhaps most simply, there is a unique hardship in that the static line imposes an ocean hazard setback line that is significantly landward of the ocean hazard setback line that would be determined based on the first line of stable and natural vegetation. [See Stipulated Exhibits 19; Stipulated Exhibit 28, 29] Additionally, the denial of the Town's requested variance would impose a unique hardship relative to the governing terms of the 1963 Session Law, which deeds the relevant raised lands to the Town, but also requires that the Town use these public lands for public street and park purposes. The Town's downsized Boardwalk Extension Project meets these goals, enhances public beach access for adjacent private property owners, and is now downsized to minimize impact concerns raised by several adjacent property owners. Both of the new beach access walkways will be ADA compliant, as will all portions of the boardwalk extension.[3] Specific hardship exists due to the strict application of the Commission's setback regulations to a project to be constructed upon public trust lands, using public funds, for public use. Additionally, the hardship exists due to the fact that there is limited public property available for access to the beaches due to significant value in property adjacent to the Atlantic Ocean. In the area proposed for the northern extension, there are currently no ADA compliant beach accesses available for the general public's use, and none between Pelican Avenue and the Town's existing Boardwalk.

3 In response to public comments that the Town understands were made before the Commission at its October 2015 Meeting, the Town wishes to assure the Commission that all portions of its existing, rebuilt Boardwalk are ADA compliant, with the single exception of one beach access ramp, which was constructed in part at a slightly steeper angle than ADA standards allow. Thus the Town has posted a sign at this beach access walkway advising members of the public of this fact. See Stipulated Fact 3.

Finally, a significant additional hardship (and uniqueness) factor is the ongoing construction of a major new downtown hotel, which will bring additional economic benefits to the Town's Central Business District. The developer of that project has relied for years on the Town's efforts to extend the boardwalk. [See Stipulated Exhibits 19A, 19B.] With these benefits will come increased numbers of visitors to the area, and the Town respectfully contends that it would create a further hardship not to allow construction and use of the Town's downsized Boardwalk Extension Project to serve this increased pedestrian based walkway and beach access demand. By constructing a new, ADA-compliant beach access walkway right in front of this new major hotel, and by downsizing the proposed Boardwalk Extension from 16 feet to 10 feet at the hotel's northern property line, the Town has undertaken significant measures designed to direct this inevitable increased public pedestrian use of the proposed Boardwalk Extension Project (and the existing boardwalk) to those portions of the Boardwalk Extension Project located in front of the new hotel.

Staff's Position: No.

As an initial matter, Staff notes that better communication with the adjacent owners at the very start of developing this boardwalk extension project would have likely reduced opposition to this project and reduced hardships the Town has experienced in this permitting and variance process. However, since the February 2014 variance hearing, Staff notes that the Town has taken additional steps to communicate with the adjacent owners and objecting parties. Still, Staff acknowledges that this hardship is not related to the hardships resulting from strict application of the oceanfront setback.

While allowing the boardwalk extension to be expanded within the ocean hazard setback may be a rare exception, Staff agrees that making public beach access more accessible to individuals with disabilities and others is a worthy goal and is in keeping with the legislature's mandate to provide and preserve the public's opportunity to enjoy the physical, esthetic, cultural and recreational qualities of the shorelines of the State. Staff also notes that this is the extension of an existing facility and not the development of a new facility, and that the Town has again down-sized it's proposed structure in order to address concerns raised by adjacent owners.

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.

See responses to factors I, II and III above. At the outset, it is critical to recognize that the public beaches in the area of the Town's downsized Boardwalk Extension Project have not been in a natural state for over 50 years. In fact, it is the Town's contention that the adjacent property owners who now object to the Town's variance request would not even have useable oceanfront properties but for the taxpayer funded, long term beach nourishment project first undertaken by the Corps of Engineers in the 1960s – and which project was the direct reason that the North Carolina General Assembly enacted the provisions of the 1963 Session Law that now governs and balances the rights and obligations of both the Town and adjacent private property owners. Nothing in the actions of the Commission will determine or change any person's property rights. However, the Town respectfully contends that the Commission is guided and governed by the terms of the 1963 Session Law – just as the Town is, and just as the adjacent property owners are. While some may differ as to interpreting some of the language in the 1963 Session Law, at least two things are clear. First that the law deeds title to the lands raised by the Corps' beach nourishment project to the Town of Carolina Beach. And, second, the law requires that the Town use these public lands for public street and public park purposes. The Town respectfully contends that it now comes before the Commission seeking a variance from a single CAMA use standard [ocean hazard setback line based on the static line created by the Corps' beach nourishment project], and in that context not only is the Town complying with the express terms of the governing 1963 Session Law, but it also has engineered significant mitigation measures into portions of the proposed Boardwalk Extension in a good faith effort to address concerns raised by some adjacent property owners.

The Town respectfully requests that the Commission take note of the fact that the Town's downsized Boardwalk Extension Project is located entirely within the Town's commercial Central Business District. The Town respectfully requests that the Commission take note of the fact that adjacent property owner James Averette is also governed by the 1963 Session Law, and the recorded 1964 Building Line. The Town respectfully requests that the Commission take note of the fact that the adjacent property owners to the north and south of Mr. Averette are both commercial motel businesses, and both support the Town's proposed project. [See Stipulated Fact 35 and Exhibits 28-30.] The Town respectfully requests that the Commission take note of the fact that the founding documents for the Cabana Del Mar describe the property interests of the unit owners therein as including commercial rental of such units – similar to that of the motels. [See Stipulated Facts 38-39 and Exhibit 20.] The Town respectfully requests that the Commission take note of the fact that but for the taxpayer funded, long term beach nourishment project successfully implemented by the Army Corps of Engineers, neither the public (raised) lands on which the Town seeks to construct its downsized Boardwalk Extension Project, nor the adjacent oceanfront properties likely would even exist in useable form.[4]

4 See Stipulated Exhibit 4 containing the Town's 1964 recorded Building Line map [Book 8, Page 52, New Hanover Register of Deeds]. On this map, various then-existing bulkheads are depicted just landward of the recorded building

Some adverse commenters have suggested that the Town's proposed Boardwalk Extension Project will damage or weaken the existing dune system. The simple answer to this contention is that DCM's extensive staff review of the Town's Minor Development CAMA Permit application materials, including all attached plans and drawings (as updated) did not reveal any such concerns. Further, the Town has successfully constructed its repaired and upgraded Boardwalk facilities just to the south of the proposed work, and the dune system in this area is fully recovered and fully vegetated from this recent work. [See Stipulated Exhibit 37]

In addition to the foregoing, in accordance with 15A NCAC 07H .0207, the Town is attempting, through construction of its downsized Boardwalk Extension Project to "protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value." The proposed project will improve the biological value of the dune eco system and facilitate access to the public trust area in a manner that preserves the dune eco system.

The variance requested by the Town will secure the public safety and welfare as expressly defined by the terms of the governing 1963 Session Law, and as set forth in the CAMA statute. Safe and convenient access to the public trust beaches of the area for the benefit of local property owners, Town residents, and public visitors to the area - including those who are handicapped – are all key goals that the project meets. Providing boardwalk facilities in the nature of public streets and parks also provides maximum protection to the dune system, by directing large numbers of pedestrian users along the Town's well-constructed, ADA compliant amenities. With the proposed northern extension, elderly and handicapped individuals will be provided the ability to transit an ADA compliant pedestrian thoroughfare where they can view the ocean and dune ecosystems at a various points without endangering themselves or the dune system, and do so without the difficulties inherent for them in accessing the beach itself. Those desiring to access the beach itself will have two new, ADA-compliant means to do so.

The variance requested by the Town preserves substantial justice in that it represents a fair balancing of public and private property rights. This is especially so when considered in light of the governing provisions of the 1963 Session Law, and in light of the simple reality that the private property rights existing in this area are the direct result of the Corps' successful, taxpayer funded, long term beach nourishment efforts. Substantial justice further is preserved for the adjacent property owners by means of enhancing their means of access to the Atlantic Ocean. Substantial justice is further preserved when it is recognized that essentially all of the dry sand beaches and protective dunes in this area are the direct result of taxpayer funded beach nourishment activities, and are all owned by the Town and/or the State of North Carolina. Both the Town and the State have a primary obligation to provide access to and reasonable means of use of these areas for all citizens. That is what the provisions of the CAMA statute, taken as a whole recognize, coupled with the provisions of Chapter 146 of the General Statutes,

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line. This provides compelling evidence that the average or mean high water line existing just prior to the Corps' first major beach nourishment was at or slightly landward of the surveyed Building Line. This fact is further corroborated by a review of aerial photographs from the 1940s and 1950s, compared with later aerial photographs.

and as most directly and relevantly set forth in the provisions of the governing 1963 Session Law that is uniquely directed to these lands and the Town's proposed project.

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 combination of the width of the beach at this location, the location of the actual vegetation line, the historical presence of a boardwalk adjacent to this extension, and the increased access for visitors with and without disabilities would meet the legislative goals of the NC Coastal Area Management Act with minimal adverse impacts to the dune system.

Staff also agrees that granting the requested variance would secure the public safety and welfare, and preserve substantial justice. The proposed extension of the boardwalk is designed to increase access to the public beach and ease congestion of movement along the boardwalk for all who pass through the Central Business District. The Town's commitment to improving access for visitors with disabilities is also in keeping with the Commission's rules. Staff remain concerned about public opposition to this project, and with concerns raised over transparency and communications between the Town and property owners. However, Staff contend that the Town is responsible for representing the interests of its constituents, while the Coastal Resources Commission's role is more limited to a review of whether an exception to the oceanfront construction setback rule is warranted due to a) unique local conditions that reduce the vulnerability of this and nearby structures, and b) the overriding public benefits of increased access to the public beach.

Finally, Staff notes that the grant issuing function of DCM and the permitting function of DCM are kept separate; therefore, the fact that DCM has approved the Town for a CAMA grant is not a guarantee of a CAMA permit and, in this case, is unrelated to this staff position and consideration of a variance by the Commission.

ATTACHMENT D

Petitioner's Petition
(without (1) proposed attachments which became stipulated exhibits or (2) Petitioner's initial proposed facts)

DAVIS HARTMAN WRIGHT PLLC
ATTORNEYS AT LAW

ASHEVILLE NEW BERN WILMINGTON

MICHAEL SCOTT DAVIS
J. MICHAEL GENEST
MARK SPENCE HARTMAN
SHANNON ("MISSY") S. SPAINHOUR
I. CLARK WRIGHT, JR.

209 POLLOCK STREET
NEW BERN, NC 28560
PHONE 252-514-2828
FAX 252-514-9878
ICW@DHWLEGAL.COM

October 6, 2015

VIA OVERNIGHT MAIL
VIA ELECTRONIC MAIL

Braxton Davis, Director
N.C. Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

RE: Renewed Variance Request – Town of Carolina Beach

Dear Mr. Davis:

Enclosed please find the renewed and revised Variance Request being filed this day by the Town of Carolina Beach, seeking issuance by the Coastal Resources Commission of a variance order allowing the Division to issue a Minor Development CAMA Permit for the Town's downsized Boardwalk Extension Project as shown on the plans and drawings recently delivered to DCM's Wilmington Regional Office. The Town has worked diligently to address legitimate concerns raised by some adjacent property owners, as well as to comply with the public grants and funding the Town has received, as well as the provisions of the unique 1963 Session Law 511 governing the public property involved in the Town's proposed project.

For efficiencies' sake, the Town is incorporating by reference all documents already in DCM's files from the Town's prior variance request, and only including in the renewed variance package newly proposed stipulated exhibits, and a newly proposed set of stipulated facts.

Thank you for your public service and consideration of the Town's newly downsized Boardwalk Extension Project.

Sincerely yours,

I. Clark Wright, Jr.
ICW:icw
Enclosures
cc: Christine Goebel, Esq, (via overnight mail and electronic mail)
Town Attorney Noel Fox, Esq. (via electronic mail)
Town of Carolina Beach (via electronic mail)

CAMA VARIANCE REQUEST FORM **DCM FORM 11**

DCM FILE No.:_____

PETITIONER'S NAME Town of Carolina 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:

✓ 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.

Signature of Petitioner or Attorney

10-1-15
Date

Clark Wright
Printed Name of Petitioner or Attorney

jcw@dhwlegal.com
Email address of Petitioner or Attorney

209 Pollock Street
Mailing Address

(252) 514-2823 (x1)
Telephone Number of Petitioner or Attorney

New Bern, NC 28560
City State Zip

(252) 514-7878
Fax Number of Petitioner or Attorney

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

Revised: July 2014

TOWN OF CAROLINA BEACH – RENEWED VARIANCE REQUEST
CHECKLIST OF VARIANCE PACKAGE ITEMS
OCTOBER 6, 2015

1. Name-Location of Development: No change - See previously filed variance package
2. Copy of Permit Decision: No change - See previously filed variance request package
3. Copy of Deed: No change - See previously filed variance request package
4. Complete Description of Proposed Development: See previously filed variance request package as modified by downsized plans and drawings of Boardwalk Extension Project submitted to DCM on October 2, 2015.
5. Stipulation: No change – see previously filed variance request package and updated proposed stipulated facts enclosed.
6. Proof of Notice: See previously filed variance request package and newly issued notice letters enclosed.
7. Proof of local government variance request: Not Applicable
8. Town's Written Statements in Support of Renewed Variance Request based on downsized plans and drawings for Boardwalk Extension Project: Enclosed.
9. Draft Set of Proposed Stipulated Facts: Enclosed.
10. Signed Variance Request Form: Enclosed.

PETITIONER'S AND STAFF'S POSITIONS

I. Will strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.

Petitioner's Position: Yes.

Strict application of 15 NCAC 07H .0306(a) and 15 NCAC 07H .0309(a) will prevent TCB from, in accordance with 15A NCAC 07H .0203 and 15A NCAC 07H .0207(c), "providing and protecting public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic values"). These rules were designed, in part, to limit a private individual's ability to infringe on the public's access to the public trust areas. Here the applicant is a municipality and the Town of Carolina Beach is committed and has always been committed to providing access to the public trust areas to the general public.

As staff has previously argued in support of variance petitions before the Commission,

> 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, esthetic, 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. *Staff's position CRC-VR-14-02*

The Carolina Beach Boardwalk has existed in some respect since the early 1930s. The existing Boardwalk was permitted by CAMA and built in 1989. Due to the proximity of the Boardwalk to the Atlantic Ocean, the Boardwalk is a popular means for the public to view or access the Atlantic Ocean. The access to the Ocean provided by the Boardwalk has a significant economic impact on businesses located adjacent to the Boardwalk, the Central Business District of Carolina Beach, the Town of Carolina Beach and New Hanover County.

The proposed northern extension of the Boardwalk creates a unique opportunity for the general public without other means of access to view and access the ocean and dune ecosystem from a variety of locations. With an increased demand for access to the beach and Ocean from elderly and handicapped individuals, the northern extension will allow elderly and handicapped individuals convenient beach access as well as the ability to view the dune ecosystem. An undue hardship to the public would be created from strict application of the development rules,

standards, or orders issued by the commission. Specifically, handicapped individuals would be denied a convenient and safe means of accessing the beach and/or viewing the ocean and dune ecosystem. Furthermore, general public's access to the ocean and view the dune ecosystem would be impaired. A lack of safe access, as provided by the proposed Boardwalk, could result in damage to the dune ecosystems by those creating their own means of access to the beach.

Staff's Position: Yes.

Staff agrees that strict application of the Commission's rule prohibiting development oceanward of the ocean hazard setback distance 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, esthetic, 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.

Carolina Beach has been nourished through a Corps of Engineers project for the last 50 years. Consequently, the relevant oceanfront setback for the beach at this location is the static line, which is based on a pre-nourished vegetation line. See 15A NCAC 7H .0306(a) and 15A NCAC 7H .0305(a). Strict application of the oceanfront erosion setback will cause the Town unnecessary hardship because here the static line is significantly landward of the actual vegetation line's location. Additionally, this public project will aid access to the beach by the public.

II. Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property. Explain.

Petitioner's Position: Yes.

TCB's property upon which the northern extension of the Boardwalk will be expanded is located within the dunes and beachfront between Charlotte Avenue and Pelican Lane, Carolina Beach, New Hanover County, NC. This dune area is public trust area, not the property of private property owners. Specifically, the hardship exists due to the strict application of the Commissions regulations to a project to be constructed upon the public trust lands for public use. As it has historically done, TCB is attempting to improve access to

the public trust lands to the general public through the northern extension of the existing Boardwalk. The Boardwalk is proposed to be expanded in a manner that improves access to the public trust lands for the general public. Additionally, in keeping with its commitment to providing ADA accessible access to the handicapped public, the majority of crossover ramps will meet the ADA requirements. TCB recently acquired beach wheelchairs for use by handicapped individuals on the beach. These wheelchairs are available by reservation for no fee.

Staff's Position: Yes.

Petitioner's hardship is caused by conditions peculiar to Petitioner's property. The hardship of not meeting the oceanfront erosion setback for the northern extension of the existing boardwalk is due to an historic static line on a beach nourished for the last 50 years, where the actual vegetation line is significantly waterward of the static line. While this situation would be covered by the static line exception if the proposed development were a house, a parallel shoreline boardwalk is not included in the exceptions to the rule. See 15A NCAC 7H .0309(a). Accordingly, Staff agrees that Petitioner meets this variance criterion.

III. Do the hardships result from action taken by the Petitioner. Explain.

Petitioner's Position: No.

Specifically, the hardship exists due to the strict application of the Commission regulations to a project to be constructed upon the public trust lands for public use. Additionally, the hardship exists due to the fact that there is limited public property available for access to the beaches due to significant value in property adjacent to the Atlantic Ocean. In the area proposed for the northern extension, there are currently no beach accesses available for the general public's use. TCB is attempting, by construction of the northern extension of the Boardwalk, to eliminate hardships to members of the general public who do not have convenient access to the public trust lands and to allow access to the public trust lands to handicapped and elderly individuals.

Staff's Position: No.

Allowing the northern extension of the boardwalk to be located within the ocean hazard setback may be a rare exception; however, Staff agrees that making the public beach more accessible to individuals with disabilities and members of the general public is in keeping with the Legislature's mandate to provide and preserve the public's opportunity to enjoy the physical, esthetic, cultural and recreational qualities of the shorelines of the State.

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 justice? Explain.

Petitioner's Position: Yes.

The Commission's regulations are intended, in part, to limit private property owners from infringing upon the general public's right to access and preservation of the public trust lands. Additionally, see below.

(d)(1) The variance requested by TCB will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission. 15A NCAC 07H .0203 states that:

> It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of ABCs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values…Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

The beach in the area of the proposed location of the northern extension of the Boardwalk is not in a natural state. It has renourished for years by the Army Corps of Engineers. In addition, the static line is significantly landward of the actual vegetation line on this portion of the beach. The dune system will not be significantly impacted.

In addition to the foregoing, in accordance with 15A NCAC 07H .0207, TCB is attempting, through construction of the northern extension of the Boardwalk to "protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value. The proposed project will improve the biological value of the public trust lands by increasing the dune eco system and facilitating access in a manner that preserves the dune eco system.

(d)(2) The variance requested by TCB will secure the public safety and welfare.

Safe and convenient access to the public trust area for the public, including those who are handicapped, improves the public safety and welfare. With the proposed northern extension of the Boardwalk, elderly and handicapped individuals will be provided the ability to view the ocean and dune ecosystems at a various points without endangering themselves by accessing the beach itself. Without the access proposed to be provided by TCB with the northern extensions of the Boardwalk, public access to the beach and ocean will be more limited. Additionally, without the Boardwalk structure as proposed, the public could attempt access to the beach across the dune ecosystem which would, over time, endanger the public's safety and welfare. The proposed Boardwalk would protect rare natural habitat within the dunes.

(d)(3) The variance requested by TCB will preserve substantial justice.

The construction of the proposed Boardwalk will preserve substantial justice by affording those without private access to public trust lands with safe and convenient access. The proposed Boardwalk will preserve substantial justice by creating safe and convenient handicap accessible access to the public trust land.

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 combination of the width of the beach at this location based on the location of the actual vegetation line, the fact that the beach is not in a natural state due to the years of beach nourishment by the ACOE and the increased access for all visitors, including those with disabilities, would meet these goals with minimal adverse impacts to the dune system.

Staff also agrees that granting this variance would secure the public safety and welfare, and preserve substantial justice. The proposed boardwalk expansion to the north will also enhance the community economically, which is an important aspect of the Commission's role in balancing development with the protection and preservation of the coastal area of North Carolina.

In its current variance petition the Town has stated a desire to work with the concerns of community members regarding safety, lighting, and disruption to residential areas along the proposed northern extension of the boardwalk. Staff received and reviewed numerous public comments about this variance, and the Division has concerns about the extent of public opposition to the project. However, to the extent the public comments reflect concerns about the location of the proposed northern extension of the boardwalk within the relevant oceanfront setback and other CAMA-related laws and rules, Staff believes such concerns were considered and addressed prior to its decision to support this variance. To the extent the comments reflect other concerns of the comunity, Staff takes no position and believes that the Town is responsible for receiving and representing the differing interests of its citizens. That is, the only decision relevant to CAMA and the CRC in this variance petition is whether regulatory relief is appropriate in relation to the Commission's oceanfront erosion setback rules. The Staff position focuses solely on whether the proposed development activity itself is consistent with the spirit, purpose, and intent of the rules, standard, or orders of the Commission.

Finally, Staff again notes that the grant-issuing function of DCM and the permitting function of DCM are separate. The fact that DCM has approved the Town for a CAMA grant is not a guarantee that a CAMA permit will be granted and, in this case, is unrelated to this Staff Recommendation and consideration of a variance by the Commission.

CRAIGE & FOX PLLC
ATTORNEYS & COUNSELORS AT LAW

701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX
*Board Certified Specialist in Elder Law
*Certified Elder Law Attorney by ABA Accredited National Elder Law Foundation

ASHLEY MICHAEL
BONNIE BRAUDWAY
JENNIFER M. RODEN
HARRISON B. FREEDLAND

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

William H. Boykin
3084 Fairway Circle SW
Supply, NC 28462
Certified Mail Tracking #7014 1820 0001 7904 3605

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

The Town's variance request will be heard at the next regularly scheduled meeting of the CRC, currently scheduled to be held on November 17th and 18th at the Double Tree Hilton Hotel, 2717 West Fort Macon Road, Atlantic Beach, North Carolina.

If you have any questions or comments about the Town's proposed project, please contact the Town Attorney, Noel Fox, Esq. at (910) 815-0085, or via e-mail at **cnfox@craigeandfox.com**, or by United States mail at the address listed below. If you wish to file written comments in support of, or objecting to the Town's proposed project,

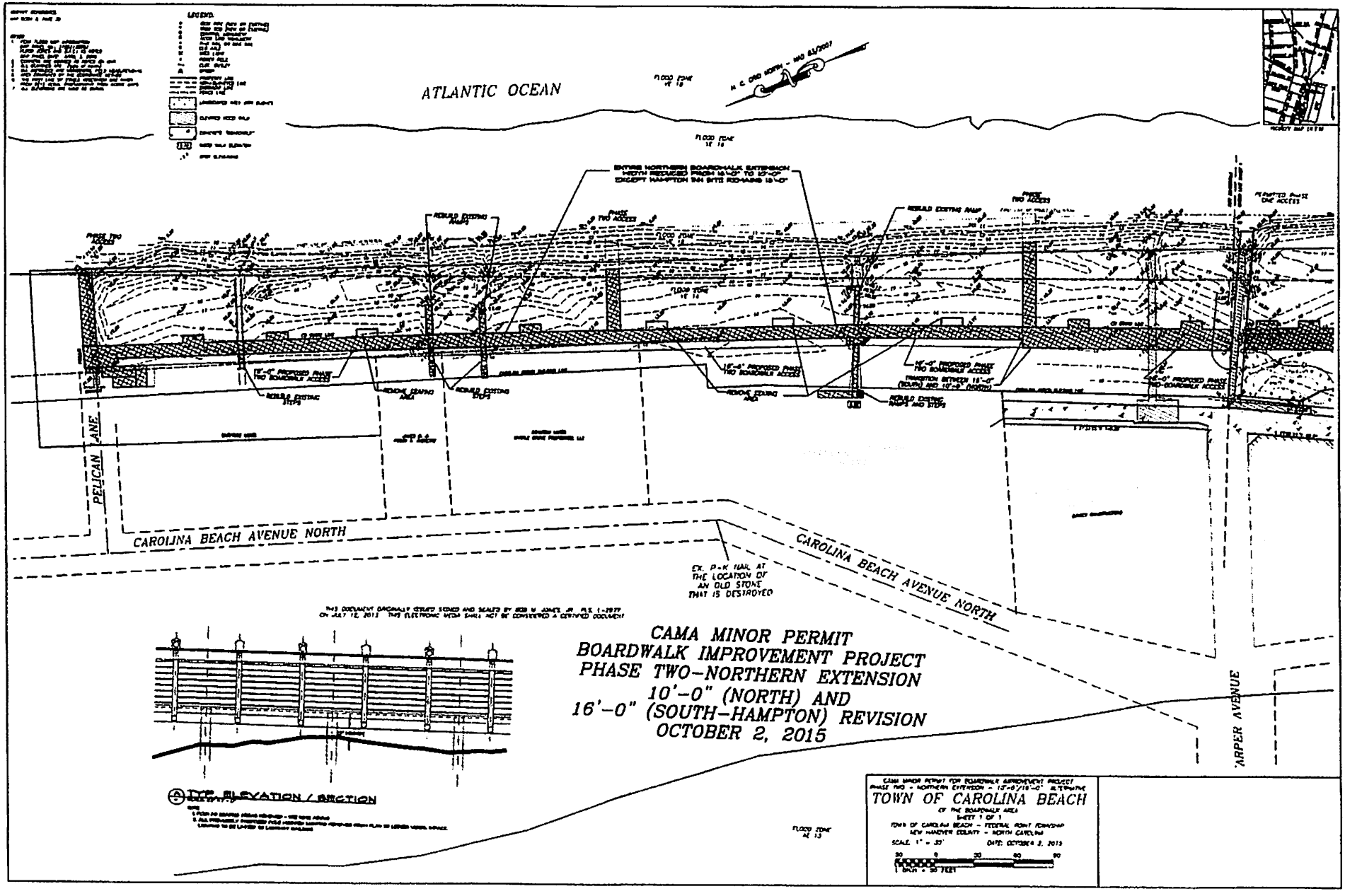
you should send your comments by e-mail, fax or regular United States Mail, addressed to the Division of Coastal Management, as follows:

Braxton Davis, Director
E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428


ATLANTIC OCEAN
PELICAN LANE
CAROLINA BEACH AVENUE NORTH
CAROLINA BEACH AVENUE NORTH
HARPER AVENUE
CAMA MINOR PERMIT
BOARDWALK IMPROVEMENT PROJECT
PHASE TWO–NORTHERN EXTENSION
10'–0" (NORTH) AND
16'–0" (SOUTH–HAMPTON) REVISION
OCTOBER 2, 2015
TOWN OF CAROLINA BEACH
OF THE BOARDWALK AREA
SHEET 1 OF 1
SCALE: 1" = 30'
DATE: OCTOBER 2, 2015

CRAIGE & FOX PLLC
ATTORNEYS & COUNSELORS AT LAW
701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX
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ASHLEY MICHAEL
BONNIE BRAUDWAY
JENNIFER M. RODEN
HARRISON B. FREEDLAND

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

Carolina Beach Hospitality, LLC
2743 Perimeter Pkwy
Augusta, GA 30909
Certified Mail Tracking #7014 1820 0001 7904 3612

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

The Town's variance request will be heard at the next regularly scheduled meeting of the CRC, currently scheduled to be held on November 17th and 18th at the Double Tree Hilton Hotel, 2717 West Fort Macon Road, Atlantic Beach, North Carolina.

If you have any questions or comments about the Town's proposed project, please contact the Town Attorney, Noel Fox, Esq. at (910) 815-0085, or via e-mail at **cnfox@craigeandfox.com**, or by United States mail at the address listed below. If you wish to file written comments in support of, or objecting to the Town's proposed project.

you should send your comments by e-mail, fax or regular United States Mail, addressed to the Division of Coastal Management, as follows:

Braxton Davis, Director
E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

CRAIGE & FOX PLLC
ATTORNEYS & COUNSELORS AT LAW
701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
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ASHLEY MICHAEL
BONNIE BRAUDWAY
JENNIFER M. RODEN
HARRISON B. FREEDLAND

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

Cabana De Mar COA, Inc.
222 Carolina Beach Avenue, N.
Carolina Beach, NC 28428
Certified Mail Tracking #7014 1820 0001 7904 3629

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

The Town's variance request will be heard at the next regularly scheduled meeting of the CRC, currently scheduled to be held on November 17th and 18th at the Double Tree Hilton Hotel, 2717 West Fort Macon Road, Atlantic Beach, North Carolina.

If you have any questions or comments about the Town's proposed project, please contact the Town Attorney, Noel Fox, Esq. at (910) 815-0085, or via e-mail at **cnfox@craigeandfox.com**, or by United States mail at the address listed below. If you wish to file written comments in support of, or objecting to the Town's proposed project,

you should send your comments by e-mail, fax or regular United States Mail, addressed to the Division of Coastal Management, as follows:

Braxton Davis, Director
E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

CRAIGE & FOX PLLC
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701 Market Street / Wilmington, North Carolina 28401
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LAWRENCE S. CRAIGE*
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ASHLEY MICHAEL
BONNIE BRAUDWAY
JENNIFER M. RODEN
HARRISON B. FREEDLAND

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

Sea Witch Motel, LLC
224 N. Lake Park Boulevard
Carolina Beach, NC 28428
Certified Mail Tracking #7014 1820 0001 7904 3636

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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If you have any questions or comments about the Town's proposed project, please contact the Town Attorney, Noel Fox, Esq. at (910) 815-0085, or via e-mail at **cnfox@craigeandfox.com**, or by United States mail at the address listed below. If you wish to file written comments in support of, or objecting to the Town's proposed project,

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Braxton Davis, Director
E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

CRAIGE & FOX PLLC
ATTORNEYS & COUNSELORS AT LAW

701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX
*Board Certified Specialist in Elder Law
*Certified Elder Law Attorney by ABA Accredited National Elder Law Foundation

ASHLEY MICHAEL
BONNIE BRAUDWAY
JENNIFER M. RODEN
HARRISON B. FREEDLAND

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

James Averette
503 Faucette Street
Fuquay Varina, NC 27526
Certified Mail Tracking #7014 1820 0001 7904 3643

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Sincerely,

Charlotte Noel Fox

Charlotte Noel Fox, Town Attorney

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October 5, 2015

Carolina Beach Hospitalities, LLC
231 Post Office Drive, Suite B8
Indian Trail, NC 28079
Certified Mail Tracking #7014 1820 0001 7904 3650

Re: 234 Carolina Beach Avenue, North

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

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VIA CERTIFIED MAIL
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October 5, 2015

Carolina Beach Hospitalities, LLC
231 Post Office Drive, Suite B8
Indian Trail, NC 28079
Certified Mail Tracking #7014 1820 0001 7904 3667

Re: 236 Carolina Beach Avenue, North

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

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October 5, 2015

Carolina Beach Hospitalities, LLC
231 Post Office Drive, Suite B8
Indian Trail, NC 28079
Certified Mail Tracking #7014 1820 0001 7904 3674

Re: 302 Carolina Beach Avenue, North

Dear Adjacent Property Owner:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Sincerely,

Charlotte Noel Fox, Town Attorney

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1121 N Lake Park Blvd.
Carolina Beach NC 28428

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HARRISON B. FREEDLAND

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October 5, 2015

Paul and Carolyn Glaser
8816 Shipwatch Drive
Wilmington, NC 28412
Certified Mail Tracking #7014 1820 0001 7904 3582

Dear Mr. and Ms. Glaser:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

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October 5, 2015

Boardwalk Unit Owners Association
PO Box 179
Wilmington, NC 28402
Certified Mail Tracking #7014 1820 0001 7904 3599

Dear Boardwalk Unit Owners Association:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Sincerely,

Charlotte Noel Fox

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

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RETURN RECEIPT REQUESTED

October 5, 2015

Ralph McElderry
34 Villarge Greens Circle
Southern Pines, NC 28387
Certified Mail Tracking #7014 1820 0001 7904 3575

Dear Mr. McElderry:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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October 5, 2015

James S. Immordion
4720 Marshwood Drive
Wilmington, NC 28409
Certified Mail Tracking #7014 1820 0001 7904 3568

Dear Mr. Immordion:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
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HARRISON B. FREEDLAND

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October 5, 2015

Dico and Selica Drakulevski
PO Box 202
Carolina Beach, NC 28428
Certified Mail Tracking #7014 1820 0001 7904 3544

Dear Mr. and Ms. Drakulevski:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Sincerely,

Charlotte Noel Fox

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

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JENNIFER M. RODEN
HARRISON B. FREEDLAND

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October 5, 2015

Robert and Catherine Lane
105 Clarkville Court East
Cary, NC 27513
Certified Mail Tracking #7014 1820 0001 7904 3551

Dear Mr. and Ms. Lane:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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Charlotte Noel Fox, Town Attorney

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HARRISON B. FREEDLAND

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RETURN RECEIPT REQUESTED

October 5, 2015

Robert and Mary Firth
6221 Lewisand Court
Raleigh, NC 27615
Certified Mail Tracking #7014 1820 0001 7904 3537

Dear Mr. and Ms. Firth:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

The Town's variance request will be heard at the next regularly scheduled meeting of the CRC, currently scheduled to be held on November 17th and 18th at the Double Tree Hilton Hotel, 2717 West Fort Macon Road, Atlantic Beach, North Carolina.

If you have any questions or comments about the Town's proposed project, please contact the Town Attorney, Noel Fox, Esq. at (910) 815-0085, or via e-mail at **cnfox@craigeandfox.com,** or by United States mail at the address listed below. If you wish to file written comments in support of, or objecting to the Town's proposed project,

you should send your comments by e-mail, fax or regular United States Mail, addressed to the Division of Coastal Management, as follows:

Braxton Davis, Director
E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

CRAIGE & FOX PLLC
ATTORNEYS & COUNSELORS AT LAW

701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX
*Board Certified Specialist in Elder Law
*Certified Elder Law Attorney by ABA Accredited National Elder Law Foundation

ASHLEY MICHAEL
BONNIE BRAUDWAY
JENNIFER M. RODEN
HARRISON B. FREEDLAND

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

Sean R. Desnover and Elizabeth T. Desnover
6100 Sharon Acres Road
Charlotte, NC 28210
Certified Mail Tracking #7014 1820 0001 7904 2684

Dear Mr. and Ms. Desnover:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

CRAIGE & FOX PLLC
ATTORNEYS & COUNSELORS AT LAW
701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX
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*Certified Elder Law Attorney by ABA Accredited National Elder Law Foundation

ASHLEY MICHAEL
BONNIE BRAUDWAY
JENNIFER M. RODEN
HARRISON B. FREEDLAND

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

Daniel and Janet Abernathy
8235 Buena Vista Drive
Denver, NC 28037
Certified Mail Tracking #7014 1820 0001 7904 2547

Dear Mr. and Ms. Abernathy:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

CRAIGE & FOX PLLC

ATTORNEYS & COUNSELORS AT LAW

701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX

*Board Certified Specialist in Elder Law
*Certified Elder Law Attorney by ABA Accredited National Elder Law Foundation

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BONNIE BRAUDWAY
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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 5, 2015

Emily Dressel
8844 Orchard Grove Way
Raleigh, NC 27612
Certified Mail Tracking #7014 1820 0001 7904 3520

Dear Ms. Dressel:

This letter is to inform you that The Town of Carolina Beach is applying for a variance to the North Carolina Coastal Resources Commission (CRC) from the ocean hazards setback rules in order to construct an extension of the Carolina Beach Boardwalk. The extension has been reduced in size in several respects in response to landowner and public comments. If the CRC grants the requested variance, the boardwalk will be built on land that the North Carolina Legislature gave to the Town pursuant to the provisions of 1963 Session Law 510, and as later publicly recorded on May 8, 1964 in Map Book 8, Page 52, New Hanover Register of Deeds Office. The 1963 Session Law mandates that the Town use this land for public streets, public thoroughfare, public park and public square purposes, which is of course the goal of the proposed Boardwalk Extension Project. The Boardwalk Extension project, if approved, will be constructed on the public land located adjacent to your property, between Charlotte Avenue and Pelican Lane.

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you should send your comments by e-mail, fax or regular United States Mail, addressed to the Division of Coastal Management, as follows:

Braxton Davis, Director
E-mail: Braxton.Davis@ncdenr.gov
Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28557
252-808-2808 / 1-888-4RCOAST (1-888-472-6278)
Fax: 252-247-3330

Sincerely,

Charlotte Noel Fox, Town Attorney

Cc: Town of Carolina Beach
1121 N Lake Park Blvd.
Carolina Beach NC 28428

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William H. Boykin
3084 Fairway Circle SW
Supply, NC 28462

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Carolina Beach Hospitality, LLC
2743 Perimeter Pkwy
Augusta, GA 30909

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Cabana De Mar COA, Inc.
222 Carolina Beach Avenue N.
Carolina Beach, NC 28428

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Sea Witch Motel, LLC
224 N. Lake Park Boulevard
Carolina Beach, NC 28428

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James Averette
503 Faucette Street
Fuquay Varina, NC 27526

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Carolina Beach Hospitalities, LLC
231 Post Office Drive, Suite B8
Indian Trail, NC 28079

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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Indian Trail, NC 28079

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Boardwalk Unit Owners Association
PO Box 179
Wilmington, NC 28402

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34 Village Greens Circle
Southern Pines, NC 28387

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Dico and Selica Drakulevski
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Robert K. and Mary Firth
6221 Lewisand Court
Raleigh, NC 27615

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Emily Dressel
8844 Orchard Grove Way
Raleigh NC 27612

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Sean R. and Elizabeth T. Desnover
6100 Sharon Acres R
Charlotte, NC 28210

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Daniel A. and Janet Abernathy
8235 Buena Vista Drive
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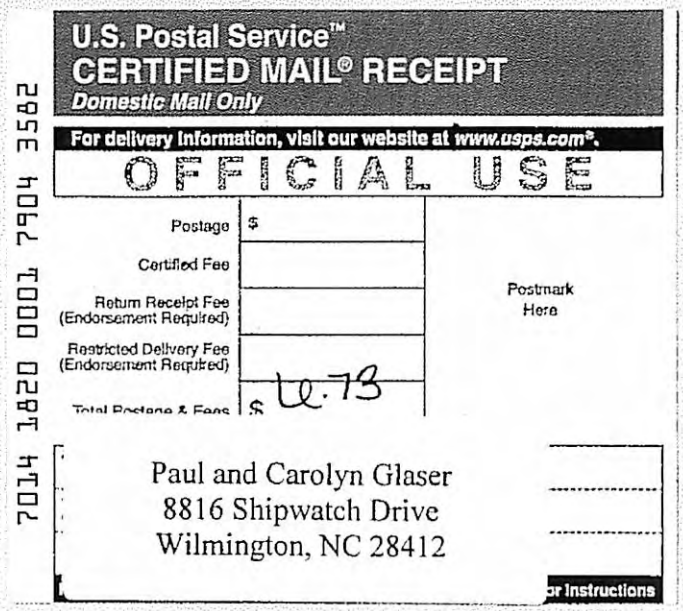

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Paul and Carolyn Glaser
8816 Shipwatch Drive
Wilmington, NC 28412

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