



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM F. LANE
General Counsel

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, DEQ Assistant General Counsel

DATE: February 11, 2019 (for the February 27-28, 2019 CRC Meeting)

RE: **Variance Request by Joseph H. and Vicki S. Hatch (CRC-VR-19-01)**

Petitioners Joseph L. and Vicki S. Hatch (“Petitioners”) own property at 131 Buffell Head Road (the “Site”) in Duck, North Carolina. The property is located within the Commission’s Ocean Hazard Area of Environmental Concern (“AEC”). This area of Duck is subject to a “static line” following a large-scale beach nourishment project in 2017.

In January, Petitioners applied for a CAMA Minor Permit in order to replace all of the existing decking on their house with in the same footprint, including approximately 700 square feet of decking waterward of the 60-foot setback from the static line. On January 14, 2019, the Town of Duck’s Coastal Area Management Act (“CAMA”) Local Permitting Officer (“LPO”) denied Petitioners’ CAMA Minor Permit application as the proposed replacement deck does not meet the applicable 60’ setback from the static line and does not meet the 60’ setback exception under 15A NCAC 7H .0309. On January 15, 2019, Petitioners filed this variance petition to request the Commission vary the oceanfront setback rules so it can replace the existing structurally attached decking waterward of the setback as proposed.

The following additional information is attached to this memorandum:

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

cc(w/enc.): Joseph L. and Vicki S. Hatch, Pro-se Petitioners, electronically
 Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
 Sandy Cross, Town of Duck CAMA LPO, electronically



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

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

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

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

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

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

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

(b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

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

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long term annual erosion rate times 90; provided that, where there has been no long term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.

15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

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

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

(A) the growth of vegetation occurs; or

(B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the “dune trough.”)

(4) Frontal Dunes. The frontal dune is the first mound of sand located landward of the ocean beach that has stable and natural vegetation present.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable and natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of project construction shall be defined as the “static vegetation line.” The “onset of project construction” shall be defined as the date sediment placement begins, with the exception of projects completed prior to the effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A static vegetation line shall be established in coordination with the Division of

Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A “large-scale beach fill project” shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers.

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

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

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

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

(3) In no case shall a development line be created or established below the mean high water line.

(4) The setback distance shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. “Development size” is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

- (A) The total square footage of heated or air-conditioned living space;
- (B) The total square footage of parking elevated above ground level; and
- (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(5) 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. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

15A NCAC 07H .0309 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:

(3) elevated decks not exceeding a footprint of 500 square feet;

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.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioners Joseph L. and Vicki S. Hatch ("Petitioners") own an oceanfront home and property at 131 Buffell Head Road (the "Site") in the Town of Duck ("Town"), Dare County, North Carolina. (Lot 141, Section B of Carolina Dunes Subdivision). The Lot was platted on November 29, 1973, and is seen on a subdivision map recorded in Map Book 6, Page 59 of the Dare County Registry, a copy of which is attached as a stipulated exhibit.
2. Petitioners own the Site as trustees of the Joseph L Hatch Declaration of Trust, Dated March 16, 1999. The trust took title through a gift deed recorded on December 4, 2007 and recorded in Book 1750, Page 459 of the Dare County Registry. Petitioners originally took title to the Site from Roosevelt Hatch, Sr. through a deed recorded on May 16, 2005 in Book 1631, Page 51 of the Dare County Registry. Roosevelt Hatch, Sr. took title from the developer, Carolina Dunes, through a deed recorded in Book 270, Page 892 of the Dare County Registry. Copies of these deeds are attached as stipulated exhibits, except the deed at Book 270, Page 892.
3. In connection with a large-scale beach nourishment project, Petitioners granted a dry-sand beach access easement to the Town through an easement recorded on June 12, 2015 at Book 2026, Page 710 of the Dare County Registry, a copy of which is attached as a stipulated exhibit.
4. Aerial and ground-level photographs of the Site and surrounding area are attached as part of the powerpoint presentation, which is a stipulated exhibit.
5. The Lot is approximately 75 feet wide by 152 feet deep, as measured to the mean high water line measured before the recent nourishment project, as shown on the 2018 survey of the Site by M. Douglas Styons, Jr, P.L.S. ("2018 Survey"), a copy of which is attached and which was included as part of Petitioner's CAMA Minor Permit application.
6. A 1981 Survey of the Site ("1981 Survey") was performed by Michael D. Barr, P.L.S. for Roosevelt Hatch and shows the Site before it was developed. A copy of this 1981 Survey is attached as a stipulated exhibit.
7. The Lot is within the Ocean Erodible Area of Environmental Concern ("AEC"), a subcategory of the Ocean Hazard AEC designated by the Coastal Resources Commission ("CRC") in 15A NCAC 7H .0304.
8. N.C.G.S. § 113A-118 requires that a CAMA permit be obtained before any development takes place in an AEC.

9. According to the Dare County Tax Card for the Site, Petitioners' three-story home was built in 1981 and has approximately 2,832 square feet of heated residential space and 700 square feet of detached garage. The site also includes a 13' x 52' concrete patio along the southern property line, and a concrete driveway. The 2018 Survey indicates that there is approximately 700 square feet of total decking waterward of the setback line, split into three stories of decks on the oceanfront, as follows:

- First story deck is approximately 336 square feet
- Second story deck is approximately 322 square feet
- Third story deck is approximately 248 square feet
- South side single story deck is approximately 208 square feet
- North side single story deck is approximately 156 square feet

10. On January 11, 2019, Petitioners applied to the Town's CAMA Local Permit Officer (LPO) for a CAMA minor development permit to demolish and rebuild the existing 3-stories of decking, within the existing footprint and reattaching to the primary structure, while meeting current building code requirements. A copy of the CAMA Minor Permit Application is attached as a stipulated exhibit.

11. As required, Petitioner sent notice of the application to the two adjacent riparian property owners and to the public through onsite posting. The adjacent owner to the north is the Ellie Buck Living Trust, with J. Craig and Ellen Rice, Trustees. Craig Rice indicated that he had no objections to the proposed deck work. A copy of his January 11, 2019 email is attached. The adjacent owners to the south are Moses and Semiramis Agral-Kaloustian. Moses Kaloustian emailed a copy of a January 12, 2019 form indicating that he had no objection to the project, a copy of which is attached. Carolina Dunes Association also commented with no objections, a copy of which is attached. No other comments were received by the LPO in connection with this proposed development.

12. On January 14, 2019, the Town's CAMA LPO denied Petitioner's application as the portions of the proposed decks that would be 100% removed and replaced are waterward of the ocean erosion setback and do not comply with N.C.G.S. § 113A-120(a)(8) and 15A NCAC 7H .0306(a). While the exception to the oceanfront erosion setback at 15A NCAC 7H .0309(a) allows 500 square feet of structurally separate decking, Petitioners proposed approximately 700 square feet of decking waterward of the 60-foot setback measured from the static line, which exceeds the 500 square feet allowed, and have proposed that it be structurally connected to the house (as the current deck is). Petitioner's application was also denied pursuant to N.C.G.A. § 113A-120(a)(8), where the permit application is inconsistent with specific provisions of the Town's Land Use Plan which requires that decisions comply with CRC rules. A copy of the denial letter is attached as a stipulated exhibit.

13. The CRC has adopted an erosion setback ("Erosion Setback") requirement that applies to development along the oceanfront. 15A NCAC 7H .0306(a).

14. The Erosion Setback is generally measured from the first line of stable and natural vegetation ("FLSNV"). "This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and more stable upland areas. [It] is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment." 15A NCAC 7H .0305(a)(5).

15. As a point of reference, aerial photographs from 2006 and February of 2018, each with the surveyed static line superimposed over the aerial photos created by Town staff, are attached to show the location of the static line (FLSNV before the 2017 nourishment) and the vegetation in February of 2018. A copy of this photo comparison is attached as a stipulated exhibit.

16. In the case of sites within the bounds of a large-scale beach fill project, the location of the FLSNV is surveyed immediately before the project, and that line becomes the Static Vegetation Line, and is used for locating the oceanfront erosion setback, per 15A NCAC 7H .0305(a)(6), (a)(7) and 15A NCAC 7H .0306(a)(1). In this case, the Town and the Site were within the bounds of a 2017 large-scale beach fill project which was a joint project with the Towns of Kitty Hawk, Kill Devil Hills and Southern Shores.

17. Structures measuring less than 5,000 square feet must be set back at a distance of 30 times the long-term annual erosion rate affecting the Lot from the FLSNV. 15A NCAC 07H .0306(a)(5)(A).

18. The average annual erosion rate factor for the Lot is two feet per year. Therefore, the Erosion Setback applicable to the Lot, for the redevelopment of the approximately 700 square foot deck (added to the 2,832 square foot total floor area of the home) is 60 feet (30 years x 2 feet).

19. On Petitioners' Lot, the 60-foot setback from the static line bisects the house, where the waterward two-thirds of the house is within the 60-foot setback. This can be seen on the 2018 Survey, attached.

20. The CRC's rules governing variance procedures require that "[b]efore filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot." 15A NCAC 7J .0701(a).

21. While the Town has building setbacks, Petitioner would not need to seek relief where the existing house is not proposed to be moved, and the existing decking is proposed to be rebuilt within the same footprint. Any variance from town setbacks (i.e. the street-side setback) would not offer relief from the Commission's oceanfront erosion setback, where both structures would have to be shifted toward the street to reduce a variance from the oceanfront erosion setback.

22. However, Petitioners did need to seek a variance from the Town's ordinance 156.124(c) and 2(a) which requires a 60' structure setback from the FLSNV. In this case, the waterward edge of the proposed re-built decking is located 25.8' from the FLSNV, and so a variance of 34.2' was needed. Petitioners submitted their local variance petition to the Town on November 28, 2018. Petitioners' variance was heard by the Town's Board of Adjustment on January 9, 2019, and was

granted through a written order, dated January 11, 2019. Copies of the local variance petition materials, the staff report, and the local variance order are attached as stipulated exhibits.

23. On January 15, 2019, DCM received Petitioners' variance request, attached. Petitioners seek a variance from the Commission to remove and reconstruct, in the same footprint, the existing three-level deck which will not be structurally independent, as proposed in his CAMA minor permit application.

24. Without a variance from this Commission, Petitioners could make repairs to the existing decking, where the cost of the work is less than 50% of the market value of the structure. Petitioners could also remove the existing decking and replace it with structurally independent "elevated decks not exceeding a footprint of 500 square feet" per 15A NCAC 7H .0309(a)(3).

25. Aerial and ground-level photographs of the Lot and the surrounding properties are attached as exhibits and as part of the powerpoint exhibit.

26. In this matter, the Division of Coastal Management is represented by Christine Goebel, Assistant General Counsel for DEQ. The Petitioners are representing themselves.

27. Petitioners stipulate that the permit was correctly denied based on the reasons set forth in the CAMA permit denial letter.

Stipulated Exhibits

1. Subdivision Plat Map 6, Page 59 of the Dare Co. Registry
2. Series of deeds: 1750/459, 1631/51
3. Easement for Nourishment project 2026/710
4. 2018 Survey of the Site
5. 1981 Survey of the Site for Roosevelt Hatch
6. Tax Card for Site
7. CAMA Minor Permit Application, dated January 11, 2019
8. Notice of the CAMA permit application to two adjacent neighbors, with responses
9. January 14, 2019 CAMA Permit Denial Letter
10. 2006/2018 aerial comparison with static line shown
11. Local Variance Petition, Staff Report and Order
12. Powerpoint

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

The existing deck is aging and has been damaged by the storms over the past two years. The current regulation would prohibit the replacement of the deck, due to the existing structure lying within the CAMA setback. Replacing the 6" pilings with current building code pilings of 8" would be safer and stronger. To repair the existing structure would be far less safe, than total replacement.

Staff's Position: No.

Staff disagrees that the strict application of the oceanfront erosion setbacks and the setback exceptions at 7H.0309, which already allow a footprint of 500 square feet of elevated decking within the setback, causes Petitioners any hardships. Staff notes that the Commission's rule already allows a generous exception authorizing a footprint of 500 square feet of elevated decking within the setback, which can include stacked decks. In this case, Petitioners, who currently have approximately 700 square feet of decking within the setback, propose to replace the decking in the existing configuration and structurally attached. This decking is proposed to be added to the oceanward side of the home, closest to the ocean hazard and most susceptible to both long-term oceanfront erosion and storm-related erosion. Additionally, this Site has recently received its first large-scale nourishment project, but the Town of Duck does not have a long-term nourishment plan. On this eroding shoreline, it is certainly possible that in a short period of time, this decking, which would be located less than 30' from the static line and FLSNV, could be encroaching onto the public trust beach. The Commission's rules regarding the Ocean Hazard AEC acknowledge that shoreline erosion is part of the oceanfront system, and the intent of the rules is "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" (15A NCAC 07H .0303(b)). While Staff agree that using larger pilings for the deck as required by current code would strengthen the replacement deck, on balance, Staff see no unnecessary hardships from not being able to replace all 700 square feet of decking within the setback given the oceanfront erosion on the Site and the proximity to the vegetation line on a beach that has no long-term nourishment plan. Finally, Staff notes that Petitioners can re-work their decking in other ways to be structurally independent and a desirable configuration without a variance as long as it does not exceed a footprint of 500 square feet of decking within the oceanfront setback. It appears to Staff that removing the decking on the north side of the home (which does not interfere with existing doors) would likely reduce the total decking below 500 square feet. Such design adjustments could offer reasonable deck space within a 500 square foot footprint and without the need for a variance.

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.

The house was one of the first built in Carolina Dunes, in the early 80's and has been in our family the entire time. The house is surrounded on all sides by decking, as part of the design of the house. When the house was built in the early 80's, the dune extended much further to the east, (see attached survey from 1981).

Staff's Position: No.

Staff find no peculiarities of this property, such as size, location or topography, which cause any hardships to Petitioners. Petitioners' period of family ownership is not a condition which can be considered under this statutory factor, such and size, location or topography. Petitioners' argument that the dune had extend "much further" in the past does not support an argument that the erosion is peculiar. To the contrary, when the Site is located on an eroding shoreline and 38 years elapse, it is predictable that the house would eventually not meet a minimum 60 foot setback from the static line (which is currently in the same general location as the FLSNV).

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

Petitioners' Position: No.

The house was built in the early 80's, and the structure has maintained that footprint ever since, however, the accelerated natural erosion has moved the dune line from 269 feet from the front of the property line in the 1980's to approximately 161 feet currently. The hardship was created by erosion, and the westward movement of the dune, not by any of our actions. There have never been any walk overs, or pools or enlarged decks added since the house was built.

Staff's Position: Yes.

While Staff agree that Petitioners did not cause the erosion of the vegetation line and dune system on their lot since their family purchased the Site in the early 1980's, and did not cause the deck to be located within the 60' setback, shoreline erosion is not uncommon for an ocean shoreline, and is contemplated in the Commission's rules for the Ocean Hazard AECs. Staff contend that the replacement of approximately 700 square feet of structurally attached decking, largely on the oceanfront side of the house, in excess of the Commission's existing 500 sq. ft. footprint exception, is a hardship caused by Petitioners' choice of design. Staff contend that the complete replacement of the existing deck is not required in order to utilize the oceanfront residence, and could be scaled back to the 500 sq. ft. footprint (can be three 500 sq. ft. decks if stacked in the same footprint).

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

Petitioners' Position: Yes.

The 34.2' variance is needed in order to maintain the house, as it was built in the 1980's. The deck is an existing feature, that will be replaced. Replacing the deck in its current location will not disturb the dune vegetation or create any significant additional impact to the dune, dune system, or surrounding neighbors. The requested variance is the minimum possible to allow the deck to be replaced in its existing footprint. The intention of the deck replacement is to maintain the property in the safest way possible. The plan includes the deck to be replaced with larger pilings, bringing it up to the current building code, and keeping it exactly in the same style and footprint that is existing. We are putting back what is there. This project would have minimal impact to the dune. The project should have no impact to the neighborhood or public. Additionally we have contacted the adjacent neighbors and homeowners association representative, to inform them of what we intend to do, and they have stated no objections.

Staff's Position: No.

Staff has concerns that replacing the 700 square feet of decking on the oceanside of the existing home is not in the spirit of the oceanfront erosion setback rules. The Commission's rules have provided an oceanfront erosion setback since 1979, and while most new structures are required to meet a setback (in this case, 60-feet), the Commission has made exceptions to allow limited development within the setback area (See the nine types of development listed in 07H.0309, above) including elevated decking not to exceed a 500 square foot footprint. At this time, Petitioners have approximately 700 square feet of decking that is structurally attached to the house. While they are not proposing any increase of decking, they are proposing that it continue to be structurally attached and are replacing the existing 6" pilings with 8" pilings to meet current code. The proposed deck is only located 25.8 feet from the current location of both the static line and the FLSNV, on an eroding beach with one recent large-scale nourishment project, but no long-term nourishment plan. The likelihood of the replacement deck becoming a cost to the public as future post-storm debris removal is significant. Likewise, Staff believes the replacement decking located on the oceanfront side of the home can likely become storm debris, which would not secure public safety and welfare. Staff contend that allowing a variance for 700 square feet of structurally attached replacement decking, 200 square feet more than the Commission's existing exception, would not preserve substantial justice where other oceanfront owners are limited to 500 square foot footprint.

ATTACHMENT D:
PETITIONERS' VARIANCE REQUEST
MATERIALS

January 14, 2019

Joseph and Vicki S. Hatch
131 Buffell Head Road
Duck, NC. 27949

RECEIVED

JAN 15 2019

DCM-MHD CITY

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

Dear Director:

Re: CRC Variance Application

We are applying for a CRC Variance. Please allow this to serve as a cover sheet and index for the documents attached. If you have any questions, please call or email me. Thank you for your review of this application.

Sincerely,



Vicki S. Hatch
(757) 650-7101
vhatch1@verizon.net

Mailing address: Joseph and Vicki S. Hatch
2340 Leeward Shore Drive
Virginia Beach, VA. 23451-1719

Attached: Exhibit 1. CRC Variance Application 4 pages
Exhibit 2. Copy of Permit Decision 5 pages
Exhibit 3. Copy of the deed 2 pages
Exhibit 4. Description of proposed development site plan 2 pages
Exhibit 5. Stipulation that proposed development is inconsistent. 2 pages
Exhibit 6. Proof of notice to adjacent owners 14 pages
Exhibit 7. Proof variance was sought from local. 18 pages
Exhibit 8. Petitioner's written reason and arguments 2 pages
Exhibit 9. Stipulated facts and exhibits. 12 pages

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

RECEIVED

JAN 15 2019

DCM-MHD CITY

Exhibit 1. CRC Variance Application 4 pages

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.:

19-01
RECEIVED

PETITIONER'S NAME Joseph L. and Vicki S. Hatch

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Dare County JAN 15 2019

Pursuant to N.C.G.S. § 113A120.1 and 15A N.C.A.C. 07J .0700 *et seq.*, the above named Petitioner hereby applies to the Coastal Resources Commission (CRC) for a variance.

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

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

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

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

A copy of the permit decision for the development in question;

A copy of the deed to the property on which the proposed development would be located;

RECEIVED

A complete description of the proposed development including a site plan;

JAN 15 2019

A stipulation that the proposed development is inconsistent with the rule at issue;

DCM-MHD CITY

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

January 14, 2019

Date

Vicki S. Hatch

vhatch1@verizon.net

Printed Name of Petitioner or Attorney

Email address of Petitioner or Attorney

2340 Leeward Shore Drive,
Virginia Beach, VA 23451

(757) 650-7101

Mailing Address

Telephone Number of Petitioner or Attorney

Fax Number of Petitioner or Attorney

RECEIVED

JAN 15 2019

DCM-MHD CITY

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

RECEIVED

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

JAN 15 2019
DCM-MHD CITY

Exhibit 2. Copy of Permit Decision 5 pages

021

RECEIVED

JAN 15 2019

DCM-MHD CITY

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

Exhibit 3 Copy of the deed 2 pages

RECEIVED

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

JAN 15 2019
DCM-MHD CITY

Exhibit 4 Description of proposed dev. 2 pages

RECEIVED

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

JAN 15 2019
DCM-MHD CITY

Exhibit 5 Stipulation that development is inconsistent
2 pages

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

RECEIVED

JAN 15 2019

DCM-MHD CITY

Exhibit 6 Proof of notice. 14 pages

RECEIVED

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

JAN 15 2019

DCM-MHD CITY

Exhibit 7. Proof variance was sought from local.
18 pages

RECEIVED

JAN 15 2019

DCM-MHD CITY

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

Exhibit 8 Petitioner's written reason and arguments
2 pages

RECEIVED

CAMA Variance Request Form
Additional Page

JAN 15 2019

DCM-MHD CITY

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.**

The existing deck is aging and has been damaged by the storms over the past two years. The current regulation would prohibit the replacement of the deck, due to the existing structure lying within the CAMA setback. Replacing the 6" pilings with current building code pilings of 8" would be safer and stronger. To repair the existing structure would be far less safe, than total replacement.

- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.**

The house was one of the first built in Carolina Dunes, in the early 80's and has been in our family the entire time. The house is surrounded on all sides by decking, as part of the design of the house. When the house was built in the early 80's, the dune extended much further to the east, (see attached survey from 1981).

- (c) Do the hardships result from actions taken by the petitioner? Explain.**

The house was built in the early 80's, and the structure has maintained that footprint ever since, however, the accelerated natural erosion has moved the dune line from 269 feet from the front of the property line in the 1980's to approximately 161 feet currently. The hardship was created by erosion, and the westward movement of the dune, not by any of our actions. There have never been any walk overs, or pools or enlarged decks added since the house was built.

JAN 15 2019

(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.

The 34.2' variance is needed in order to maintain the house, as it was built in the 1980's. The deck is an existing feature, that will be replaced. Replacing the deck in its current location will not disturb the dune vegetation or create any significant additional impact to the dune, dune system, or surrounding neighbors. The requested variance is the minimum possible to allow the deck to be replaced in its existing footprint. The intention of the deck replacement is to maintain the property in the safest way possible. The plan includes the deck to be replaced with larger pilings, bringing it up to current building code, and keeping it exactly in the same style and footprint that is existing. We are putting back what is there. This project would have minimal impact to the dune. The project should have no impact to the neighborhood or public. Additionally we have contacted the adjacent neighbors and homeowners association representative, to inform them of what we intend to do, and they have stated no objections.

Joseph and Vicki Hatch
131 Buffell Head Road
Duck, NC. 27949

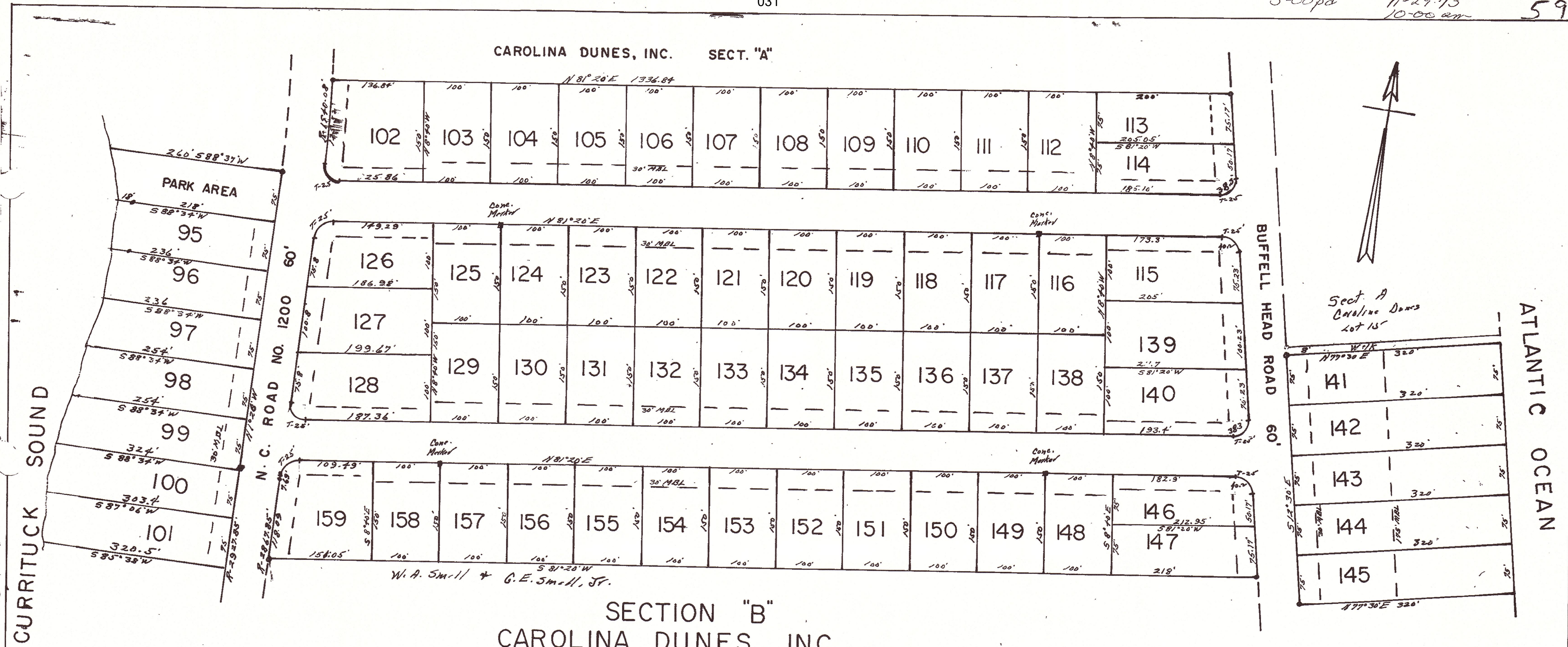
RECEIVED
JAN 15 2019
DCM-MHD CITY

Exhibit 9 Stipulated facts and exhibits 12 pages

ATTACHMENT E:

STIPULATED EXHIBITS

1. Subdivision Plat Map 6, Page 59 of the Dare Co. Registry
2. Series of deeds: 1750/459, 1631/51
3. Easement for Nourishment project 2026/710
4. 2018 Survey of the Site
5. 1981 Survey of the Site for Roosevelt Hatch
6. Tax Card for Site
7. CAMA Minor Permit Application, dated January 11, 2019
8. Notice of the CAMA permit application to two adjacent neighbors, with responses
9. January 14, 2019 CAMA Permit Denial Letter
10. 2006/2018 aerial comparison with static line shown
11. Local Variance Petition, Staff Report and Order
12. Powerpoint



SECTION "B"
CAROLINA DUNES, INC.

DARE COUNTY, NORTH CAROLINA
SCALE 1 INCH=100 FEET MARCH 30, 1973



CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH OUR FREE CONSENT, ESTABLISH MINIMUM BUILDING LINES, AND DEDICATE ALL ROADS, ALLEYS, WALKS, AND OTHER SITES TO PUBLIC OR PRIVATE USE AS NOTED. FURTHER WE CERTIFY THE LAND AS SHOWN HEREON IS WITHIN PLATTING JURISDICTION OF DARE COUNTY.

Carolina Dunes, Inc. By: *W. A. Small + G. E. Small, Jr.*

CERTIFICATE OF APPROVAL - PRIVATE WATER AND SEWER SYSTEM

I HEREBY CERTIFY THAT THE WATER SUPPLY AND SEWAGE DISPOSAL SYSTEM INSTALLED, OR PROPOSED FOR INSTALLATION IN THE SUBDIVISION ENTITLED Carolina Dunes, Inc. Section "B" MEETS THE REQUIREMENTS OF THE DARE COUNTY HEALTH DEPARTMENT AND ARE HEREBY APPROVED AS SHOWN.

CERTIFICATE OF APPROVAL FOR RECORDING PLAT AND ACCEPTANCE OF DEDICATIONS.

I, *Jay S. Austin*, THE COUNTY CLERK OF DARE COUNTY, NORTH CAROLINA, DO CERTIFY THAT ON THE 29 DAY OF NOVEMBER, 1973, THE BOARD OF COMMISSIONERS APPROVED THIS PLAT FOR RECORDING AND ACCEPTED THE DEDICATION OF THE ROADS, EASEMENTS, RIGHTS-OF-WAY AND PUBLIC PARKS AND OTHER SITES FOR PUBLIC PURPOSES AS SHOWN HEREON, BUT ASSUME NO RESPONSIBILITY TO OPEN OR MAINTAIN THE SAME UNTIL, IN THE OPINION OF GOVERNING BODY OF DARE COUNTY IT IS IN THE PUBLIC INTEREST TO DO SO.

CERTIFICATE OF APPROVAL BY PLANNING BOARD

I, *Tom McGinnis*, CHAIRMAN OF THE DARE COUNTY PLANNING BOARD, HEREBY CERTIFY THAT SAID BOARD DULY APPROVED THE FINAL PLAT OF THE SUBDIVISION ENTITLED Carolina Dunes, Inc. Section "B" ON 28 DAY OF NOVEMBER, 1973.

P. A. Filcott Chairman 11/29/73
DARE COUNTY BOARD OF COMMISSIONERS

CERTIFICATE OF SURVEYOR

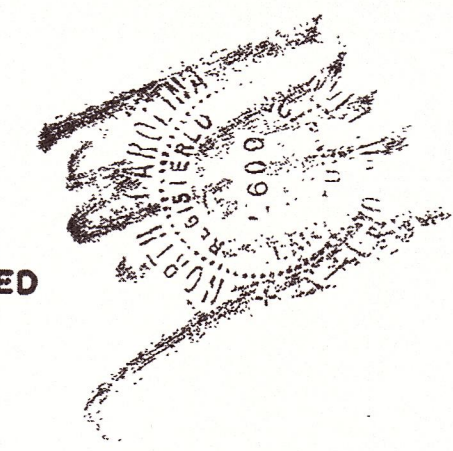
I, S. ELMO WILLIAMS CERTIFY THAT THIS MAP WAS DRAWN FROM A SURVEY MADE BY ME AND THE ERROR OF CLOSURE AS CALCULATED BY LAT. AND DEP. IS 1:11,000. THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G. S. 47-30 AS AMENDED. WITNESS MY HAND AND SEAL THIS

S. Elmo Williams
N. C. REG. LAND SURVEYOR NO L609
Edna A. Sawyer NOTARY PUBLIC OF PASQ. COUNTY DO HEREBY CERTIFY THAT S. ELMO WILLIAMS PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE ABOVE CERTIFICATE. WITNESS MY HAND THIS November 10, 1973.
Edna A. Sawyer NOTARY PUBLIC

BUILDING SETBACK LINES
FRONT PROPERTY LINE 30 FEET
SIDE PROPERTY LINE 8 FEET
SIDE LINE ABUTS STREET 15 FEET
REAR PROPERTY LINE 20% OF LOT DEPTH

I, DARE COUNTY, the foregoing certificate of *Edna A. Sawyer, D.P.* & *S. Elmo Williams* is certified to be correct. Presented for registration this the 29 day of November, 1973, at 10:00 o'clock A. M., and recorded in this office in Book 16-00, Page 59.
Esabelle J. Gray Register of Deeds

Edna A. Sawyer, NOTARY PUBLIC
South City, Pasquotank Co., N. C.
My Commission Expires 6-6-75
6/6/75



Filed Book: 1750 Page: 459
12/04/2007 08:36AM
Doc Code: DEED
BARBARA M GRAY, REGISTER OF DEEDS
DARE CO, NC
Doc Id: 6231874
Receipt #: 196891

Unofficial Document

6231874
Page: 1 of 4
12/04/2007 08:36A

Prepared by and return to
Midgett & Preti PC
477 Viking Drive, Suite 430
Virginia Beach, VA 23452
Parcel # 0095940000

NORTH CAROLINA
DARE COUNTY

EXEMPT
DARE COUNTY TAX
COLLECTOR

NO. 4754-07

THIS DEED OF GIFT, made on this 20th day of November, 2007, by and between **JOSEPH L. HATCH** and **VICKI S. HATCH**, his wife, **Grantors**, and **JOSEPH L. HATCH** and **VICKI S. HATCH**, **Trustees** under the Joseph L. Hatch Declaration of Trust, dated March 16, 1999, as amended and restated, **Grantees**, whose mailing address is 2340 Leeward Shore Road, Virginia Beach, VA 23451.

WITNESSETH:

That for no monetary consideration, and as a gift only, the said Grantors do hereby grant and convey with General Warranty and English Covenants of Title unto the said Grantees, the following described property located in Dare County, North Carolina, to-wit:

Being Lot No. 141 as shown and delineated on that certain plat entitled "Section B, Carolina Dunes, Inc." dated November 10, 1973, by S. Elmo Williams, Registered Surveyor, and recorded in Map Book 6, pages 59, in the office of the Register of Deeds of Dare County, N.C.

IT BEING the same property conveyed to the Grantors herein by deed from Roosevelt Hatch, Sr. dated April 29, 2005 and recorded in the aforesaid Register's Office, in Book 1631 at page 51.

TO HAVE AND TO HOLD the said property as Trustee of the Joseph L. Hatch Declaration of Trust dated March 16, 1999, as amended and restated, for the purposes set forth herein and under the said Declaration of Trust,

and with the rights, powers and privileges as set forth in North Carolina Statutes § 32-27 and § 36A-136, including but not limited to the following:

1. Grantee, and any successor trustee (the "Trustee") shall have all powers with respect to the Property as are granted in the Joseph L. Hatch Declaration of Trust dated March 16, 1999, as amended and restated, ("Trust Agreement") including, without limitation, all of the powers specified in North Carolina Statutes § 32-27 and § 36A-136 which include the power to sell, exchange, lease, encumber, grant options for and otherwise deal with and dispose of all or any portion of the Property subject to any limitations imposed upon Trustees under applicable law.

2. No party dealing with the Trustee in relation to the Property shall be (a) required to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the Property, (b) required to see if the terms of the Trust Agreement have been complied with, (c) required to inquire into the authority, necessity or expediency of any act of the Trustee, or (d) privileged to inquire into any of the terms of the Trust Agreement.

3. Every instrument executed by the Trustee in relation to the Property shall be conclusive evidence in favor of every person claiming any right, title or interest under such instrument or in and to the Property of the following facts: (a) that at the time of the delivery of such instrument, the Trust Agreement was in full force and effect; (b) that such instrument was executed in accordance with the terms and conditions of the Trust Agreement and is binding upon all beneficiaries under the Trust Agreement; (c) that the Trustee is duly authorized and empowered to execute and deliver every such instrument; and (d) that if an individual or entity other than the Grantee is the Trustee under the Trust Agreement, such successor or successors to Grantee have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations granted to the Trustee under the Trust Agreement with reference to the Property.



4. The Trustee shall have no individual liability or obligation whatsoever arising from ownership, as a Trustee, of the Property, or with respect to any act done or contract entered into, or indebtedness incurred by it in dealing with the Property, or otherwise acting as the Trustee, except only so far as the property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge of any such liability or obligation.

5. This Deed is governed by and is to be read and construed with reference to North Carolina Statutes § 32-27 and § 36A-136.

This conveyance is made expressly subject to the conditions, restrictions, reservations and easements, if any of record, constituting constructive notice.

This conveyance is also made subject to such easements shown on the above mentioned plat as may affect said lot.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURES APPEAR ON THE FOLLOWING PAGE**



6231874
Page: 3 of 4
12/04/2007 08:36A

WITNESS the following signatures and seals:

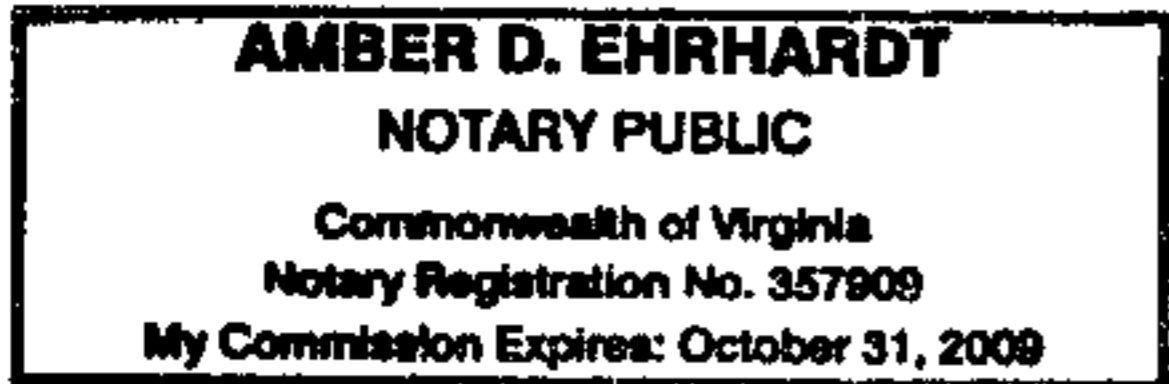
UNOFFICIAL

Joseph L. Hatch (SEAL)
Joseph L. Hatch

Vicki S. Hatch (SEAL)
Vicki S. Hatch

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, Amber D. Ehrhardt, a Notary Public of the above-referenced jurisdiction, do hereby certify that Joseph L. Hatch and Vicki S. Hatch, hereby appeared before me and acknowledged the due execution of the aforesaid instrument, this 20th day of November, 2007. The person is ___ personally known to me, or I examined the following type of identification: VADL. (Identification must be a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license or state-issued identification card or a United States military card.)



Amber D. Ehrhardt
Notary Public

My Commission Expires:
SEAL

**THIS DEED WAS PREPARED AT THE REQUEST OF THE GRANTOR HEREIN WITHOUT
BENEFIT OF A TITLE EXAMINATION.**

UNOFFICIAL Document

6231874
Page: 4 of 4
12/04/2007 08:36A

UNOFFICIAL Document



6168630
Page: 1 of 2
05/16/2005 02:29P

UNOFFICIAL

APPROVED
DARE COUNTY TAX
COLLECTOR

NO. 3920-05 \$ 5000⁰⁰

Excise Tax Recording Time, Book and Page
Tax Lot No

Prepared without benefit of a Title Exam

Parcel Identifier No #

Verified by County on the day of

by

Mail after recording to: John Wm. Hester, 1136 Cedar Road, Chesapeake, Virginia, 23322
This instrument was prepared by: John Wm. Hester, Esquire N.C. State Bar No.:17877
Brief description for the Index: Lots 141, Section B, Carolina Dunes

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 29 day of April, 2005, by and between

GRANTOR

ROOSEVELT HATCH, SR.

GRANTEE

JOSEPH L. HATCH and VICKI S. HATCH, Husband and Wife.

131 Buffell Head Road
Duck North Carolina 27949


Enter an appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. Corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context. WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lots or parcels of land situated in the County of Chowan, North Carolina and more particularly described as follows:

Being Lot No. 141 as shown and delineated on that certain plat entitled "Section B, Carolina Dunes, Inc." dated November 10, 1973, by S. Elmo Williams, Registered Surveyor, and recorded in Map Book 6, page 59, in the office of the Register of Deeds of Dare County, N.C.

PIN NO(s): 0095940000

DARE COUNTY



REAL ESTATE TRANSFER TAX

3920-05 \$ 5000⁰⁰

Document



UNOFFICIAL Document

The property hereinabove described was acquired by Grantor by instrument recorded in Deed Book 270 Page 892, Dare County Public Registry.
A map showing the above described property is recorded in Plat Book 6 , Page 59.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantees in fee simple.

And the Grantor covenants with the Grantee, that the Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinafter described is subject to the following exceptions:

- (1) General utility easements and rights of way of record.
- (2) Ad valorem taxes not yet due and payable.
- (3) Restrictions and Covenants of record.
- (4) Restrictions, conditions and covenants of record in Book 224, Page 48 Office of Register of Deeds, Dare County, North Carolina.

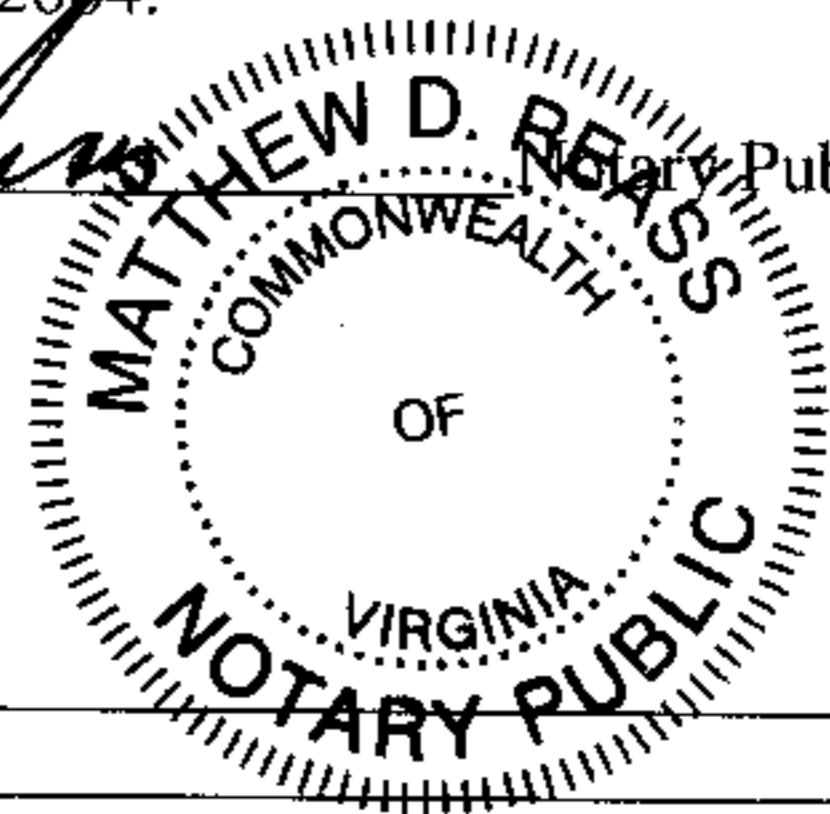
IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

BY: Roosevelt Hatch Sr.
Roosevelt Hatch, Sr.

STATE OF VIRGINIA
CITY OF Virginia Beach, to wit:

I, a Notary Public of the City and State aforesaid, certify that Roosevelt Hatch, Sr., personally came before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 29 day of April, 2004.

My commission expires: 02/28/2007



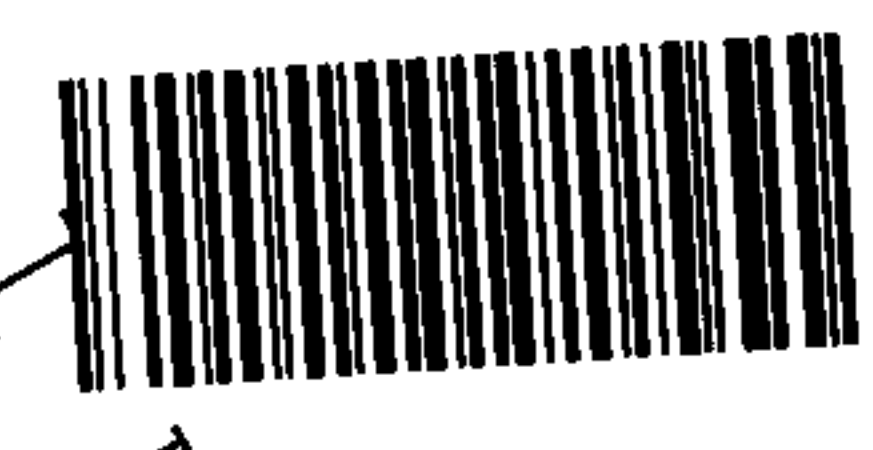
The foregoing Certificate(s) Matthew D. Reass
notary public

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

BARBARA M. GRAY REGISTER OF DEEDS FOR Dare COUNTY
By Ramona R. Muelkins Deputy/ Assistant-Register of Deeds.

UNOFFICIAL Document

UNOFFICIAL DOCUMENT
BOOK 2026 PAGE 710 (4)
700012421



Recorded: 06/12/2015 02:10:45 PM
BY: Sharee Wilder
Vanzolla McMurrin-Smith, Register of Deeds
Dare County, NC

Fee Amt: \$26.00 NC Excise Tax: \$0.00

6-11-15 MM

Space Above This Line For Recording Data

EXEMPT
DARE COUNTY TAX
COLLECTOR

EASEMENT

Prepared by Robert B. Hobbs, Jr., Esq. Return to Town of Duck, PO Box 8369, Duck, NC 27949 1814-15/0

Excise Tax: \$-0- Tax Parcel: 009594000
Transfer Tax: \$-0- LT Number

North Carolina, Dare County

THIS EASEMENT, dated June 8, 2015, by and between JOSEPH L HATCH and VICKI S HATCH, TRUSTEES UNDER THE JOSEPH L HATCH DECLARATION OF TRUST DATED MARCH 16, 1999 AS AMENDED AND RESTATED, whose mailing address is 2340 LEEWARD SHORE RD VIRGINIA BEACH VA 23451 (the "Owner"), and the TOWN OF DUCK, a North Carolina municipal corporation, PO Box 8369, Duck, NC 27949 (the "Town").

Owner is the owner in fee simple of certain real property, situated in the Town of Duck, Dare County, North Carolina and more particularly described as follows:

Property Address: 131 BUFFELL HEAD RD, DUCK, NC 27949; AND Described in that certain deed to the Owner recorded in Book/Page 1750/0459, Dare County Registry (the "Property"), and Owner desires to grant a perpetual easement to the Town for the purposes stated below, and Town has agreed to accept such easement from Owner.

NOW, THEREFORE, for a valuable consideration, including the benefits Owner may derive therefrom, the receipt of which is hereby acknowledged, Owner has dedicated, bargained and conveyed and by these presents does hereby dedicate, grant and convey to Town, its successors and assigns, a perpetual, nonexclusive, irrevocable and assignable ambulatory easement and right-of-way in, on, over, through and across the hereinafter described land for use by the Town, its representatives, agents, employees, officials, engineers, consultants, surveyors, contractors, subcontractors, permittees, assignees, and invitees. The easement area shall be that portion of the Property located between the mean high water mark of the Atlantic Ocean, and the landward toe or the Frontal Dune or Primary Dune. In the absence of a discernable Frontal Dune or Primary Dune, the easement area shall be that portion of the Property located between the mean high water mark of the Atlantic Ocean, and the waterward edge of any Permanent Structure located on the Property as of the date of this Easement. In the absence of a discernable Frontal Dune or Primary Dune or a Permanent Structure, the easement area shall be that portion of the Property located between the mean high water mark of the Atlantic Ocean, and a northern and/or southern extension of the western boundary of the easement area for the property or properties adjoining the Property on the north and/or south whose comparable easement areas have been established using either the Frontal Dune or Primary Dune or a Permanent Structure located on such adjoining property (the "Easement Area"). Owner also grants and

UNOFFICIAL DOCUMENT

conveys to Town a nonexclusive access easement across any portion of the Property for the purpose of permitting Town's inspection and, if necessary, observation, maintenance and repair of the Town's work and activities within the Easement Area (the "Access Easement").

TO HAVE AND HOLD the said easement unto the Town, its successors and assigns, forever. The Town shall have the right to temporarily or permanently assign this easement to the federal, state, or county governments, or any agencies or department thereof or any governmental authority formed to implement beach nourishment, renourishment and/or stabilization on the Ocean Beach in the Town, but only for the purposes set forth in this easement agreement. This easement shall be binding on the Owner, Owner's heirs, successors and assigns, and shall run with the title of the Property in perpetuity. The terms, uses, conditions and restrictions of the Easement are as follows:

1. Town may use the Easement Area to evaluate, survey, inspect, construct, preserve, patrol, protect, operate, maintain, repair, rehabilitate, and replace a public Ocean Beach, a dune system, and other erosion control and storm damage reduction measures, including the right to (a) deposit sand; (b) accomplish any alterations of contours on said land; construct berms and dunes; (c) nourish and renourish periodically; (d) move, store and remove equipment and supplies; (e) erect and remove temporary structures; (f) perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Project; (g) plant vegetation on said dunes and berms; (h) erect, maintain and remove silt screens, sand fences and other sand collection measures; (i) facilitate preservation of dunes and vegetation through the limitation of access to dune areas; and (j) trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the boundaries of the Easement Area. Town will not engage in any of the foregoing activities in the Easement Area without holding a permit to do so, to the extent a permit for such activity or activities is required by law.
2. THERE IS RESERVED, HOWEVER, to the Owner, Owner's heirs, successors and assigns, the right to construct an Improved Dune Walkover Access structure within the Easement Area in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, that same are consistent with Town zoning, and that prior approval of the plans and specifications for such structure is obtained from the Town. Such structure shall be subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the work authorized herein. There is further reserved to the Owner, Owner's heirs, successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired.
3. Owner becomes the owner of any sand deposited into the Easement Area by Town at the time of the deposit. Owner acknowledges and agrees that use of the Ocean Beach is subject to traditional public trust rights. Town, its officers, employees, and agents may enter the Easement Area and the Access Easement whenever reasonably necessary for the purpose of inspecting same to determine compliance herewith, to maintain as may be necessary or convenient thereto. Owner shall in all other respects remain the fee owner of the Property and Easement Area, subject to any existing traditional public trust rights, and may make all lawful uses of the Property not inconsistent with the easements described and conveyed herein. Nothing in this easement shall hinder or impair the Owner's littoral and riparian rights associated with the Owner's Property. This Easement and all of its covenants and conditions shall be binding upon Owner and its agents, personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The designations Owner and Town shall include the parties, their heirs, successors and assigns.

4. Definitions. The following capitalized terms as used in this Agreement shall have the following meanings:

Accessory Building: A subordinate Building consisting of walls and a roof, the use of which is clearly incidental to that of a Principal Building on the same lot.

Building: Any structure enclosed and isolated by exterior walls and constructed or used for a residence or business. The word Building includes the word Structure.

Frontal Dune: The first mound of sand located landward of the Ocean Beach having sufficient vegetation, height, continuity and configuration to offer protective value.

Improved Dune Walkover Access: A raised walkway constructed for the purpose of providing access to the Ocean Beach from points landward of the dune system.

Ocean Beach: The lands consisting of unconsolidated soil materials that extend for a distance of 100 yards east of the mean low water mark into the Atlantic Ocean landward to a point where either the growth of stable natural vegetation occurs or a distinct change in slope or elevation alters the configuration, whichever is farther landward.

Owner: The owner of the Property as identified on page 1 of this Easement.

Permanent Structure: A Building, including a Principal Building and any Accessory Building(s), covered decks, swimming pool, and improvements associated with a swimming pool, but not including any uncovered decks or any Improved Dune Walkover Access or any associated gazebos or other improved portions of an Improved Dune Walkover Access.

Primary Dune: The first mound of sand located landward of the Ocean Beach having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune toe).

Principal Building: A Building in which is conducted the principal use of the lot on which it is located.

Property: The real property described on page 1 of this Easement.

Project: The Town's Beach Nourishment Project.

Town: The Town of Duck, North Carolina, a North Carolina municipal corporation.

IN WITNESS WHEREOF, Owner has executed this instrument, the day and year first above written.

(signatures begin on the following page)

UNOFFICIAL Document

EXECUTION AND NOTARY CERTIFICATE FOR AN OWNER WHO IS AN INDIVIDUAL

Owner:

Joseph L Hatch (SEAL)
JOSEPH L HATCH, TRUSTEE UNDER THE JOSEPH L HATCH DECLARATION OF TRUST DATED MARCH 16, 1999 AS AMENDED AND RESTATED

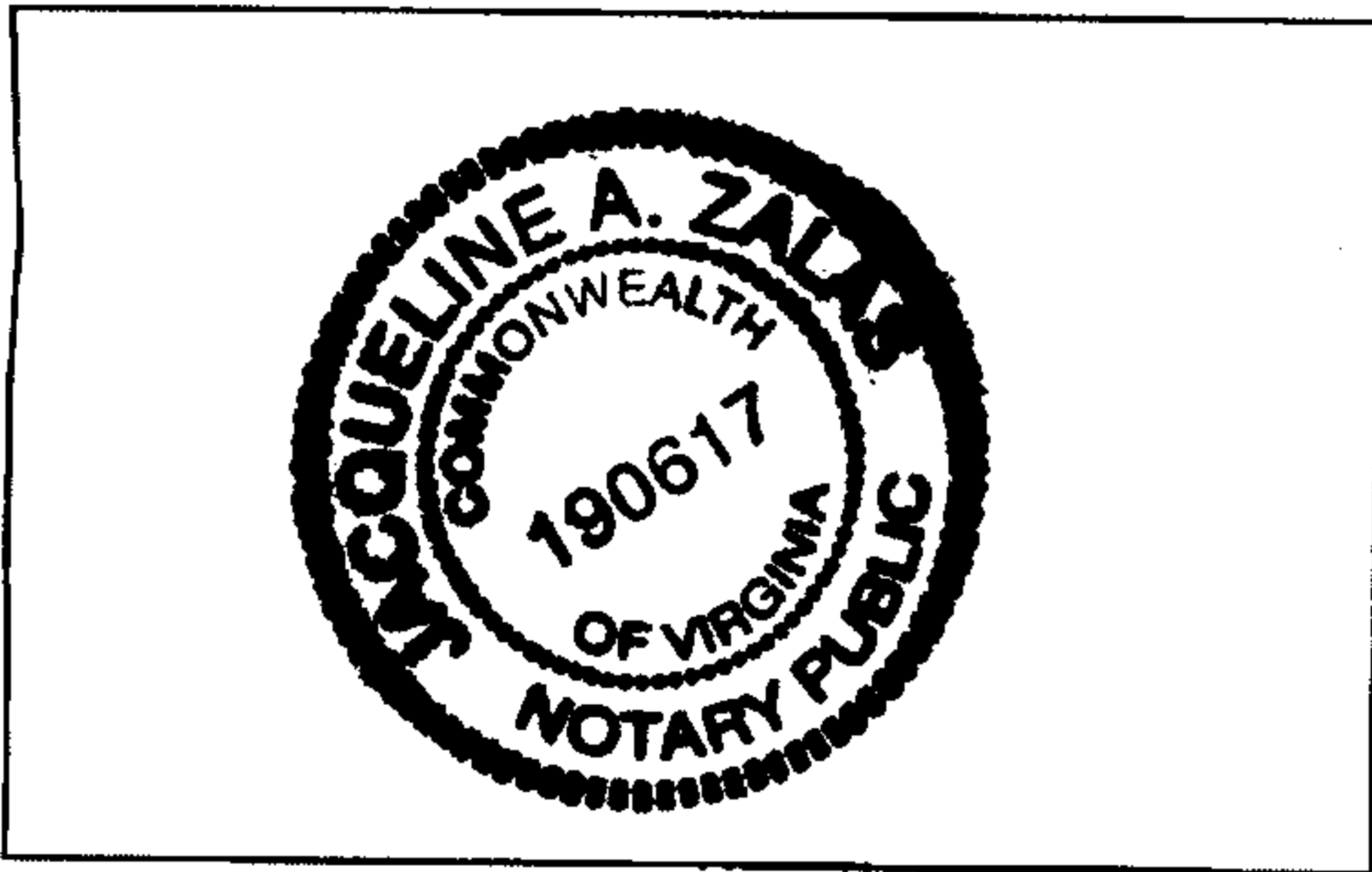
Vicki S Hatch (SEAL)
VICKI S HATCH, TRUSTEE UNDER THE JOSEPH L HATCH DECLARATION OF TRUST DATED MARCH 16, 1999 AS AMENDED AND RESTATED



State of Virginia, County or City of Va Beach

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: JOSEPH L HATCH and VICKI S HATCH, TRUSTEES UNDER THE JOSEPH L HATCH DECLARATION OF TRUST DATED MARCH 16, 1999 AS AMENDED AND RESTATED.

Date: 6-2-, 2015



Affix Notary Seal Inside This Box

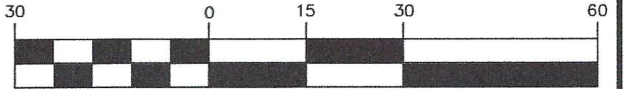
Jacqueline A. Zalas
Signature of Notary Public

Jacqueline A. ZALAS
Typed or printed name of Notary Public

My commission expires: 2-29-16

UNOFFICIAL Document

BEACH NOURISHMENT AREA
STATE OF NORTH CAROLINA
D.B. REF. UNAVAILABLE



1 inch = 30 ft.

S21°15'06"E → 75.04'

M.H.W AS PER DATA PRIOR
TO BEACH NOURISHMENT AS
PROVIDED BY THE TOWN OF DUCK

STATIC LINE AS PER DATA
PRIOR TO BEACH NOURISHMENT
AS PROVIDED BY
THE TOWN OF DUCK

NOTES:

Address: 131 Buffell Head Road

Lot Area = 22,706 Sq. Ft.

Lot Area West
of Static Line= 12,215 Sq. Ft.

Existing Lot
Coverage Info:

Structure Under Roof/
Over Concrete= 2,725 Sq. Ft.

Concrete= 3,093 Sq. Ft.

Block Walk= 56 Sq. Ft.

Ex. Lot Coverage= 5,874 Sq. Ft. (48.1%)

Setbacks shown are as per the Subd.
Plat and as per Zoning; they do not
reflect any Restrictive Covenants
that may exist.

Area of Deck East of CAMA Line:
(Double hatched.) 687 Sq. Ft.

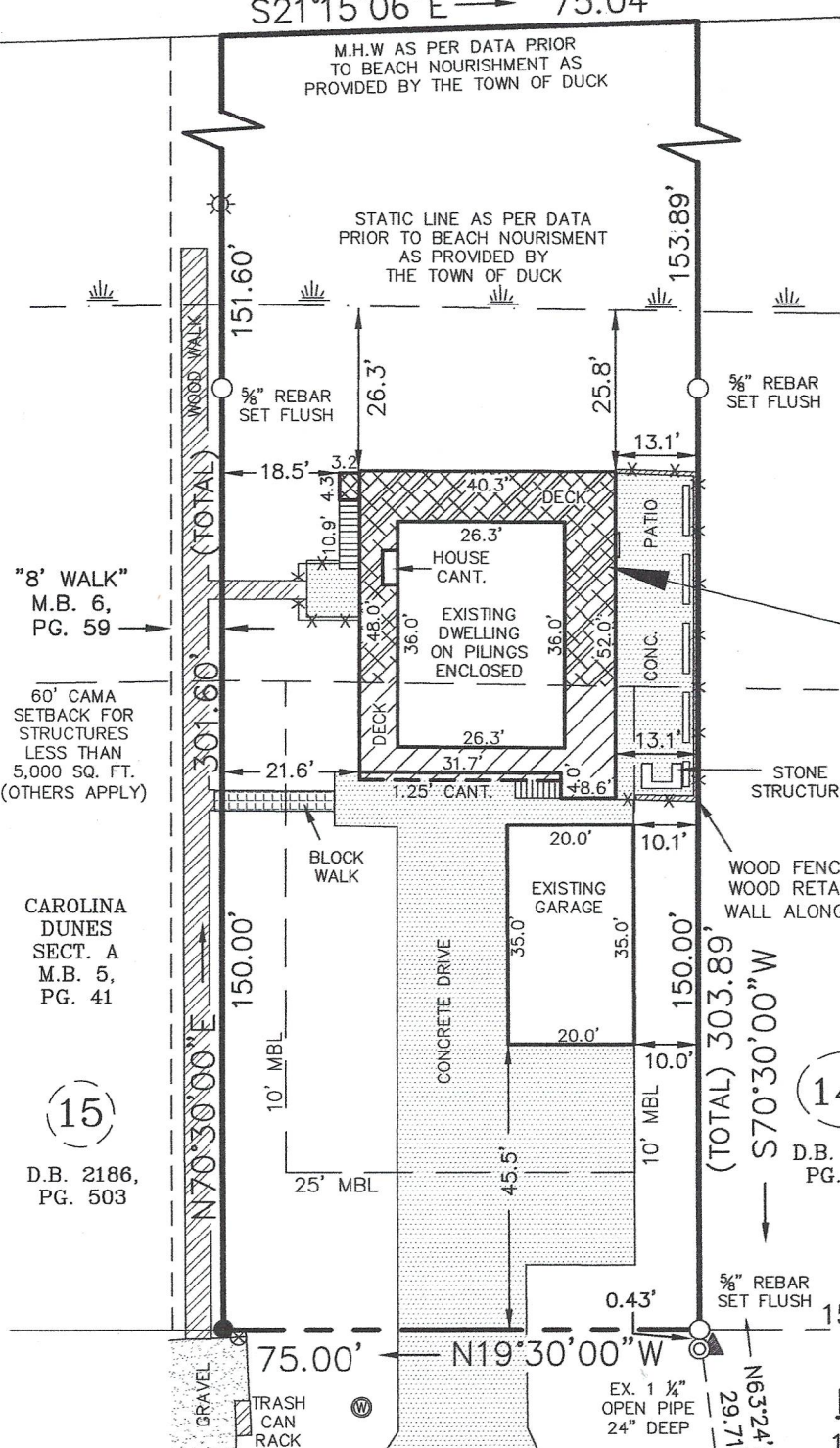
Certifier hereon is not responsible
for utilities and/or features that are
not visible at the time of the survey,
nor any additional setbacks that
are not shown.

LEGEND:

- ⊙ Ex. OP
- ⊕ Ex. Pinched Pipe
- ⊗ Ex. Rebar
- ⊘ Ex. Slick Rod
- Rebar Set
- ⊙ Water Meter
- ▲ CATV
- ⊗ Fence
- ⊙ Flag Pole
- Wood Post
- ⊗ Beach Access Sign
- ⊙ Ex. S.S.S. Nail & Washer
- ⊙ EX. 3/8" REBAR FLUSH
- ⊙ EX. 1 1/4" OPEN PIPE 6" DEEP
- ⊙ EX. 5/8" SLICK ROD FLUSH

REVISIONS:

1-15-19 Deck Area Added



CAROLINA
DUNES
SECT. A
M.B. 5,
PG. 41

(15)

D.B. 2186,
PG. 503

(142)

D.B. 2026,
PG. 714

**BUFFELL HEAD
ROAD**

S30°36'39"E → 307.50'
(TIE LINE ONLY) (60' R/W)

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plot was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

Witness my hand and seal this 15th day of January A.D. 2019



REVISED SURVEY OF

LOT 141, CAROLINA DUNES, SECTION B

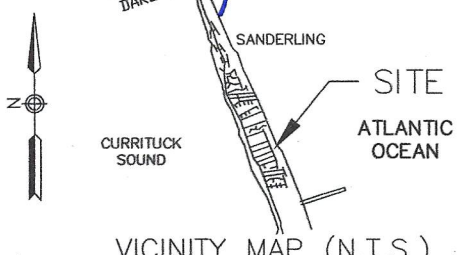
SURVEYED FOR

**JOSEPH L HATCH TRUSTEES
and VICKI S. HATCH**

ATLANTIC TOWNSHIP
DUCK

DARE COUNTY
NORTH CAROLINA

P.L.S. L-3227



VICINITY MAP (N.T.S.)

DATE SURVEYED:
10-4-18
REV.: 01-15-19
SCALE: 1" = 30'
FILE NO.: 18-291
DWG NO.: 18291P2

F.I.R.M.: 3720 9950 00 J
F.I.R.M. DATE: 9-20-06
FLOOD ZONE: VE (12.0')
REC. REF. M.B. 6, PG. 59
D.B.: 2026, PG. 710
PIN NO.:
21995011750342

Styons Surveying Services P.A.
C-1697
2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948
Phone: (252) 441-1415 Fax: (252) 480-1182
Any unauthorized use or alteration of this document is prohibited
A red seal must be present for this to be an original document

ATLANTIC OCEAN



2' ELEVATION

RECEIVED

JAN 15 2019

DCM-MHD CITY

SECTION A
CAROLINA DUNES

8' OCEAN ACCESS
EASEMENT

Row of Cut-off
Telephone Poles

GRND. ELEV. = 15.8'
X

142

BUFFELL HEAD ROAD

60' r/w

LOT 141, SECT. B

CAROLINA DUNES

RECORDED IN M.B. 6, PG. 59, DARE COUNTY REGISTRY

- IRON PIPE SET
- EXISTING IRON PIPE

SURVEY FOR

ROOSEVELT HATCH, Sr.

I, MICHAEL D. BARR hereby
 certify that this map is correct ~~and that there~~
 are no encroachments of other buildings on
 the said lot.

DUCK

DARE COUNTY

NORTH CAROLINA

scale
 1" = 50'
 date
 5-11-81
 file

triangle engineering
and surveying, inc.

raleigh, kinston, kill devil hills, greenville, nc
charleston, sc memphis, tn

Michael D. Barr
 L-1756



County of Dare, North Carolina

*Owner and Parcel information is based on current data on file and was last updated on December 07 2018

Primary (100%) Owner Information:

HATCH, JOSEPH L TRUSTEES TRE
 HATCH, VICKI S TRE
 2340 LEEWARD SHORE RD
 VIRGINIA BEACH VA 23451

Parcel Information:

Parcel: 009594000 PIN: 995011750342
 District: 21- DUCK
 Subdivision: CAROLINA DUNES SECTION B
 LotBlkSect: LOT: 141 BLK: SEC: B
 Multiple Lots: -
 PlatCabSlide: PL: 6 SL: 59 Units: 1
 Deed Date: 06/12/2015
 BkPg: [2026/0710](#)



Parcel Status: ACTIVE

Property Use: RESIDENTIAL

131 BUFFELL HEAD RD

BUILDING USE & FEATURES	Tax Year Bldg Value: \$168,100	Next Year Bldg Value: \$168,100
Building Use:	BEACH BOX	
Exterior Walls:	MODERN FRAME	Actual Year Built: 1981
Full Baths:	3 Half Baths: 0	
Bedrooms:	5	
Heat-Fuel:	3 - ELECTRIC	
Heat-Type:	2 - FORCED AIR	Finished sqft for building 1: 2832
Air Conditioning:	4 -CENTRAL W/AC	Total Finished SqFt for all bldgs: 2832

Disclaimer: In instances where a dwelling contains unfinished living area, the square footage of that area is included in the total finished sqft on this record. However, the assessed value for finish has been removed.

MISCELLANEOUS USE	Tax Year Misc Value: \$11,200	Next Year Misc Value: \$11,200
Misc Bldg a: (RG1) FRAME OR CB DETACHED GARAGE	Year Built: 1990	sqft: 700

LAND USE	Tax Year Land Value: \$727,900	Next Year Land Value: \$727,900
Land Description : 21-Ocean front		

TOTAL LAND AREA: 13000 square feet

	Tax Year Total Value: \$907,200	Next Year Total Value: \$907,200
--	--	---

*Values shown are on file as of December 07 2018

Locality Town of Duck Permit Number D-2019-416

Ocean Hazard xx Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline _____ Other _____

(For official use only)

RECEIVED
By Sandy Cross at 1:45 pm, Jan 11, 2019

check #7680

GENERAL INFORMATION

LAND OWNER - MAILING ADDRESS

Name Joseph L. and Vicki S. Hatch

Address 2340 Leeward Shore Drive

City Virginia Beach State VA Zip 23451 Phone (757) 650-7101

Email vhatch1@verizon.net

AUTHORIZED AGENT

Name same as owner

Address _____

City _____ State _____ Zip _____ Phone _____

Email _____

LOCATION OF PROJECT: (Address, street name and/or directions to site; name of the adjacent waterbody.)

131 Buffell Head Rd.

Duck, NC 27949

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Removal and

replacement of aged, exterior deck and pilings in the same location/footprint and same square footage, reattaching to primary structure as it currently exists to meet current building code requirements
SIZE OF LOT/PARCEL: 12,215 square feet _____ acres

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

COMPLETE EITHER (1) OR (2) BELOW (Contact your Local Permit Officer if you are not sure which AEC applies to your property):

(1) OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE: <5k square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: n/a square feet (includes the area of the foundation of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Energy, Mineral and Land Resources (DEMLR)?

YES _____ NO xx

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

OTHER PERMITS MAY BE REQUIRED: The activity you are planning may require permits other than the CAMA minor development permit, including, but not limited to: Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others. Check with your Local Permit Officer for more information.

STATEMENT OF OWNERSHIP:

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

an owner or record title, Title is vested in name of Hatch, Joseph L Trustees TRE HATCH, Vicki S. TRE
see Deed Book 2026 page 0710 in the Dare County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT RIPARIAN PROPERTY OWNERS:

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

- | (Name) | (Address) |
|--|--|
| (1) <u>J. Craig and Robbie Rice</u> | <u>129 Buffell Head Rd, Duck, NC 27949</u> |
| (2) <u>MOSES K. and Semiramis Ayrat-Kaloustian</u> | <u>133 Buffell Head Rd.</u> |
| (3) _____ | <u>Duck, NC 27949</u> |
| (4) _____ | _____ |

ACKNOWLEDGEMENTS:

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

I furthermore certify that I am authorized to grant, and do in fact grant, permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This the 11th day of January, 20 19

Vicki S. Hatch

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

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

OCEAN HAZARD AEC NOTICEProject is in an: xx Ocean Erodible Area xx High Hazard Flood Area _____ Inlet Hazard AreaProperty Owner: Vickie and Joseph Hatch, 2340 Leeward Shore Road, Virginia Beach, VA 23451Property Address: 131 Buffell Head Road, lot 141, Section BDate Lot Was Platted: 11/29/1973 **must be completed**

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

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

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

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

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

The flood waters in a major storm are predicted to be about 12 feet deep in this area.

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

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


Applicant Signature

1-11-19
Date

Vicki S. Hatch

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

For more information, contact:

Sandy M. Cross

Local Permit Officer

1200 Duck Road, P.O. Box 8369

Address

Town of Duck, NC 27949

Locality

252-255-1234, 252-255-1236 (f)

Phone Number

scross@townofduck.com

***** Hazard Notice Must Be Signed By Owner ***
Not by Agent**

From: [James Rice](#)
To: [Sandy Cross](#)
Subject: Re: Hatch's Project in Duck
Date: Friday, January 11, 2019 11:14:47 AM
Attachments: [image001.png](#)

Sandy,

I received Vicki Hatch's E-mail notification concerning the work they have proposed doing on their deck at 131 Buffell Head Road.

We have no objections to the proposed deck work.

Best regards,

Craig Rice

129 Buffell Head Road

804-337-0126

On Fri, Jan 11, 2019 at 10:04 AM Sandy Cross <scross@townofduck.com> wrote:

Craig and Robbie -

A simple acknowledgement that you received Vicki's email will suffice. Thanks.

Sandy Cross

Permit Coordinator/CAMA LPO/CZO/CFM

Department of Community Development

PO Box 8369

Duck, NC 27949

252-255-1234

252-255-1236 (f)

scross@townofduck.com

www.townofduck.com

From: [Vicki Hatch](#)
To: [J. Craig Rice](#)
Cc: [Sandy Cross](#)
Subject: Hatch's Project in Duck
Date: Friday, January 11, 2019 10:43:11 AM
Attachments: [CAMA Minor application doc neighbors 1.pdf](#)
[CAMA Minor application doc neighbors.pdf](#)
[Rice Neighbor CAMA 11019 copy pages](#)
[Duck Survey 3.pdf](#)

Dear Craig and Robbie:

Thank you again for providing us with a letter to assist with our approvals for the Town of Duck. We met with the Board of Adjustments on Wednesday, and I'm happy to say that we received the variance for zoning, by unanimous vote. The next step is to apply for a minor CAMA permit, which is expected to be rejected, (for the same reason we had to pursue the zoning variance.) After we have the CAMA permit rejection, we then apply for a CAMA variance. Unfortunately, the CAMA board that reviews the variances, only meets every three months, and the deadline for application is next Wednesday, the 16th. As part of the CAMA permit process, the neighbors have to be notified. Since we have such a short time line, Sandy Cross, the Local Permit Officer for the Town of Duck, suggested that we use email to notify you and provide you the form letter for response. If you are able and agree, would you please sign the letter, stating you have no objections and return it via email? I have attached the form letter for your use.

I do apologize to have to ask for your help once again. I am available to discuss any questions you have about the project. To reiterate, our intention is to replace the decking surrounding our house, exactly as it is now in size and shape. The only change is that the pilings will be brought up to the current building code of 8'. (When the house was built the code was 6').

Thank you again for considering this. We hope that this will be the last time we have to call on your good graces, but appreciate it if you are able to comply.

Best wishes,
Vicki and Joe Hatch

January 11, 2019

****Via Electronic Mail**

J. Craig and Robbie Rice
129 Buffell Head Road
Duck, NC 27949

Dear Mr. and Mrs. Rice:

This letter is to notify you, as an adjacent riparian landowner, that I have applied for a CAMA Minor Permit on my property at 131 Buffelhead Road. It is my intention to replace the existing decking on the exterior of the house. I have enclosed a copy of my permit application and a copy of the drawing(s) of my proposed project.

Should you have no objections to this construction, please check the appropriate statement below, sign and date where indicated and return this letter, in the self-addressed envelope, as soon as possible.

If you have any questions or comments on my proposed project, please contact me at (757) 650-7101 or by mail at 2340 Leeward Shore Drive, Virginia Beach, VA. 23451. If you wish to file written comments or objections with the Town of Duck, you may submit them to:

Sandy M. Cross
Local Permit Officer for the Town of Duck
P.O. Box 8369
Duck, NC 27949

Written comments must be received within 10 days of receipt of this notice. Failure to respond within 10 days will be interpreted as no objection.

Sincerely,


APPLICANT'S NAME

I have no objection to the project as shown and hereby waive that right of objection.

I have objection to the project and have enclosed comments.

Signature

Date

From: bigbuck089@gmail.com 
Subject: Fwd: neighbor letter
Date: November 19, 2018 at 12:58 PM
To: vhatch1@verizon.net

Sent from my iPhone

Begin forwarded message:

November 18, 2018


Department of Community Development
Duck Board of Adjustment
P. O. Box 8369
1200 Duck Road
Town of Duck, North Carolina. 27949

Dear Board Members:

Re: Joe and Vicki Hatch, 131 Buffellhead Road

We/I own the property adjacent to the Hatch's property. We have no objections to a variance to the existing setback line for the replacement of the decking on the house, as presented in their application.

Sincerely yours,


Neighbor
129 Buffell Head

From: [M. K. Kaloustian](#)
To: vhatch1@verizon.net
Cc: [Sandy Cross](#)
Subject: From Moses - Re: The Hatch's in Duck
Date: Saturday, January 12, 2019 4:37:33 PM
Attachments: [Hatch_1_12_19.pdf](#)

Dear Vicki,

Attached is a scan of the the signed photographed letter you requested. A copy is also being forwarded to Ms. Sandy Cross. No need to thank; it is the neighborly thing to do. If you need anything else, do not hesitate to let us know.

Good luck with the variance process and the execution of the project! Do keep us posted.

Thank you for the positive update on the state of the dune and the beauty of the surroundings!

Sincerely,
Moses

-----Original Message-----

From: Vicki Hatch <vhatch1@verizon.net>
To: Moses K. Kaloustian <chirogen@aol.com>
Sent: Sat, Jan 12, 2019 9:55 am
Subject: Re: From Moses - Re: The Hatch's in Duck

Dear Moses,

Thank you so much for helping us, yet again! I apologize that it was a cumbersome process for you. I spoke with Sandy Cross yesterday, and she said if you just acknowledge receipt, it will be fine. I will forward your email to her and hopefully that will suffice. The email that I sent you had three attachments, the survey and a two page application. I signed the application on the second page, although I think they scanned in out of order. They only required one owner signature.

We were in Duck a few days this week, and noticed how lovely the dune is. It is growing and the grasses are holding. I am always in awe of how beautiful it is there.

Thank you again for your efforts. I am hopeful that we will be able to get this crucial work done this spring. I will let you know if the variance process is successful, if you are interested. Take care, Vicki and Joe

January 11, 2019

Via Registered Mail

Armen H. Kalousian and Sereghita Aysel-Kalousian
131 Bullhead Road
Duck, NC 27949

Dear Dr. Kalousian and Dr. Aysel-Kalousian:

This letter is to notify you, as an adjacent riparian landowner, that I have applied for a CAMA Minor Permit on my property at 131 Bullhead Road. It is my intention to replace the existing decking on the exterior of the house. I have enclosed a copy of my permit application and a copy of the drawings of my proposed project.

Should you have no objections to this construction, please check the appropriate statement below, sign and date where indicated and return this letter, in the self-addressed envelope, as soon as possible.

If you have any questions or comments on my proposed project, please contact me at (757) 650-7105 or by mail at 2340 Leeward Shore Drive, Virginia Beach, VA, 23451. If you wish to file written comments or objections with the Town of Duck, you may submit them to:

Sandy M. Cross
Local Permit Officer for the Town of Duck
P.O. Box 8369
Duck, NC 27949

Written comments must be received within 10 days of receipt of this notice. Failure to respond within 10 days will be interpreted as no objection.

Sincerely,

APPLICANT'S NAME

- I have no objection to the project as shown and hereby waive that right of objection.
- I have objection to the project and have enclosed comments.

Signature Armen H. Kalousian 1/12/19

Date _____

From: [Vicki Hatch](#)
To: [Moses K. Kaloustian](#)
Cc: [Sandy Cross](#)
Subject: The Hatch's in Duck
Date: Friday, January 11, 2019 10:41:20 AM
Attachments: [Duck Survey 3.pdf](#)
[CAMA Minor application doc neighbors 1.pdf](#)
[CAMA Minor application doc neighbors.pdf](#)
[Kaloustian Neighbor CAMA 11019 copy.pages](#)

Dear Moses and Semi,

Thank you again for providing us with a letter to assist with our approvals for the Town of Duck. We met with the Board of Adjustments on Wednesday, and I'm happy to say that we received the variance for zoning, by unanimous vote. The next step is to apply for a minor CAMA permit, which is expected to be rejected, (for the same reason we had to pursue the zoning variance.) After we have the CAMA permit rejection, we then apply for a CAMA variance. Unfortunately, the CAMA board that reviews the variances, only meets every three months, and the deadline for application is next Wednesday, the 16th. As part of the CAMA permit process, the neighbors have to be notified. Since we have such a short time line, Sandy Cross, the Local Permit Officer for the Town of Duck, suggested that we use email to notify you and provide you the form letter for response. If you are able and agree, would you please sign the letter, stating you have no objections and return it via email? I have attached the form letter for your use.

I do apologize to have to ask for your help once again. I am available to discuss any questions you have about the project. To reiterate, our intention is to replace the decking surrounding our house, exactly as it is now in size and shape. The only change is that the pilings will be brought up to the current building code of 8'. (When the house was built the code was 6').

Thank you again for considering this. We hope that this will be the last time we have to call on your good graces, but appreciate it if you are able to comply.

Best wishes,
Vicki and Joe Hatch

January 11, 2019

****Via Electronic Mail**

Moses K. Kaloustian and Semiramis Ayrak-Kaloustian
133 Buffell Head Road
Duck, NC 27949

Dear Dr. Kaloustian and Dr. Ayrak-Kaloustian:

This letter is to notify you, as an adjacent riparian landowner, that I have applied for a CAMA Minor Permit on my property at 131 Buffelhead Road. It is my intention to replace the existing decking on the exterior of the house. I have enclosed a copy of my permit application and a copy of the drawing(s) of my proposed project.

Should you have no objections to this construction, please check the appropriate statement below, sign and date where indicated and return this letter, in the self-addressed envelope, as soon as possible.

If you have any questions or comments on my proposed project, please contact me at (757) 650-7101 or by mail at 2340 Leeward Shore Drive, Virginia Beach, VA. 23451. If you wish to file written comments or objections with the Town of Duck, you may submit them to:

Sandy M. Cross
Local Permit Officer for the Town of Duck
P.O. Box 8369
Duck, NC 27949

Written comments must be received within 10 days of receipt of this notice. Failure to respond within 10 days will be interpreted as no objection.

Sincerely,

APPLICANT'S NAME

I have no objection to the project as shown and hereby waive that right of objection.

I have objection to the project and have enclosed comments.

Signature

Date

From: **M. K. Kaloustian** chirogen@aol.com
Subject: **From Moses K. Kaloustian and Semiramis Ayril-Kaloustian**
Date: **November 19, 2018 at 3:30 PM**
To: **vhatch1@verizon.net**



November 19, 2018

Department of Community Development
Duck Board of Adjustment
P. O. Box 8369
1200 Duck Road
Town of Duck, N.C., 27949

Re: Joe and Vicki Hatch, 131 Buffellhead Road, Duck, N.C.

Dear Board Members,

We own the property adjacent to the Hatch's property at 131 Buffellhead Road.

We have no objections to a variance to the existing setback line for the replacement of the decking on their house, as presented in their application, as long as it does not impact our property at 133 Buffellhead Road in any way.

Sincerely yours,

Moses K. Kaloustian
Semiramis Ayril-Kaloustian

From: [Ron Blunck](#)
To: [Vicki Hatch](#)
Cc: [Sandy Cross](#)
Subject: Re: The Hatch's in Duck
Date: Friday, January 11, 2019 3:28:55 PM

Hi Vicki,

I received your email.

I was aware of your project as Sandy C had sent me info on it some weeks ago. I told Sandy the Association has no problem or objection with your project. That will be true of any CAMA requirements as well.

Good luck with the project.

Happy New Year, and congratulations and being grandparents. Have grandchildren is great!

Ron

The information contained in this message is confidential and intended only for the use of the individual or entity named above, and may be privileged. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please reply to the sender immediately, stating that you have received the message in error, then please delete this e-mail. Thank you.

On Fri, Jan 11, 2019 at 3:15 PM Vicki Hatch <vhatch1@verizon.net> wrote:

Dear Ron,

Happy new year greetings to you and your family! I hope all are well! Joe and I welcomed a new grandchild just before Christmas, so the holidays were quite busy and beautiful.

Joe and I are in the process of trying to get permits to begin work on the house on Buffell Head Road. Our intention is to remove and replace the aged, exterior deck and pilings in the same location/footprint and same square footage to meet current building code requirements. Because of the erosion over time, part of our house now lies within the setback for CAMA, and requires more approvals, variances and the like. I know you are familiar with this process. We cleared the first hurdle this past Wednesday, receiving approval from the Board of Adjustments for the town. The next step is to apply for the CAMA minor permit, knowing that we will be turned down, and then applying for a variance from that board. I have sent the required documents to our adjoining neighbors, and Sandy asked me to send the information to the Homeowner's association as well. I am available to discuss any questions, but would you acknowledge receipt to either Sandy, (I've copied her in on this email), or to me? To complicate matters, the Board only meets once a quarter and the deadline for submission of applications is next Wednesday. Suffice to say, I'm scrambling to get everything in on time. Sandy and Joe Heard have been very patient and helpful through the process and we are hoping for a good result.

Thanks again for taking the time to acknowledge receipt of the information, if you are able.
I look forward to seeing you and Rosemary soon!

Sincerely,
Vicki and Joe



January 14, 2019

CERTIFIED MAIL – 7013 3020 0001 7724 2188

RETURN RECEIPT REQUESTED
and EMAIL DELIVERY

Joseph & Vicki Hatch
2340 Leeward Shore Drive
Virginia Beach, VA 23451

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- D-2019-416
PROJECT ADDRESS- 131 Buffell Head Road

Dear Mr. and Mrs. Hatch:

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

You have applied to remove and replace all of the aged, exterior decks and pilings in the same location/footprint and square footage, re-attaching the decks to the primary structure as they currently exist. This project, therefore does not qualify for a repair and maintenance exemption pursuant to Article 7, of the Coastal Management Act, Section 113-103(5)(b)(5) since this is replacement rather than repair. Discussions with your general contractor also indicated that this project will exceed 50% of the value the structure.

This decision that no permit may be granted is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. Your project details as presented in your permit application dated January 11, 2019 are inconsistent with 15 NCAC 7H.0309(a)(3) which only allows a maximum of 500 sf of elevated decks seaward of the applicable setback. The survey you have provided indicates approximately 720 sf of decks will be seaward of the applicable setback, where a maximum of 500 sf would be permissible.

Additionally, 15A NCAC 7H.0306(a)(9) states that structural additions or increases in the footprint of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H.0309(a). New development landward of the applicable setback may be cosmetically but shall not be structurally attached to an existing structure that does not conform with current setback requirements. Your request to rebuild the existing decks as they currently exist, attached to the primary structure would be inconsistent this rule.

Lastly, I have concluded that your request violates NCGS 113A-120(a)(8), which requires that all applications be denied which are inconsistent with our Local Land Use Plan. On page IX-16 of the Land Use Plan, you will find that GOAL #13 aims to conserve and maintain barrier dunes, beaches, wetlands, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

POLICY #13a states that Duck will prevent the disruption of natural hazard areas by adopting and enforcing ordinances and procedures to regulate land use, development, and redevelopment and supports applicable State and Federal laws and regulations regarding land uses and development in areas of environmental concern.

POLICY #13d states that Duck will support State and Federal policies that regulate the location and intensity of development in State designated areas of environmental concern.

POLICY #13f states that Duck will allow development and redevelopment within special flood hazard areas subject to the provisions and requirements of the National Flood Insurance Program, CAMA regulations, and the Town's zoning ordinance.

Pursuant to our discussions, it is my understanding that you wish to request a variance from the Coastal Resource Commission (CRC) related to this matter. Please be advised that variance petitions will be considered by the CRC at a regularly scheduled meeting and will be 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 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. The next schedule meeting begins on February 27, 2019. A Variance Form and associated information to assist you has been included with this denial. Please note that you must send a petition to both the DCM and the Attorney's General Office. You may mail, fax or email DCM (Braxton.Davis@NCDENR.Gov) but may only mail or fax to the Attorney General. Their mail and fax information are located on the variance application. I would encourage you to send a copy by certified or priority mail so that you have delivery confirmation.

It will be necessary for you to include your Variance request to the Town with your petition to the CRC and I encourage you to include the Order granting your Variance from the Town.

If there is anything else I can do to assist you in this matter, please let me know.

Respectfully yours,



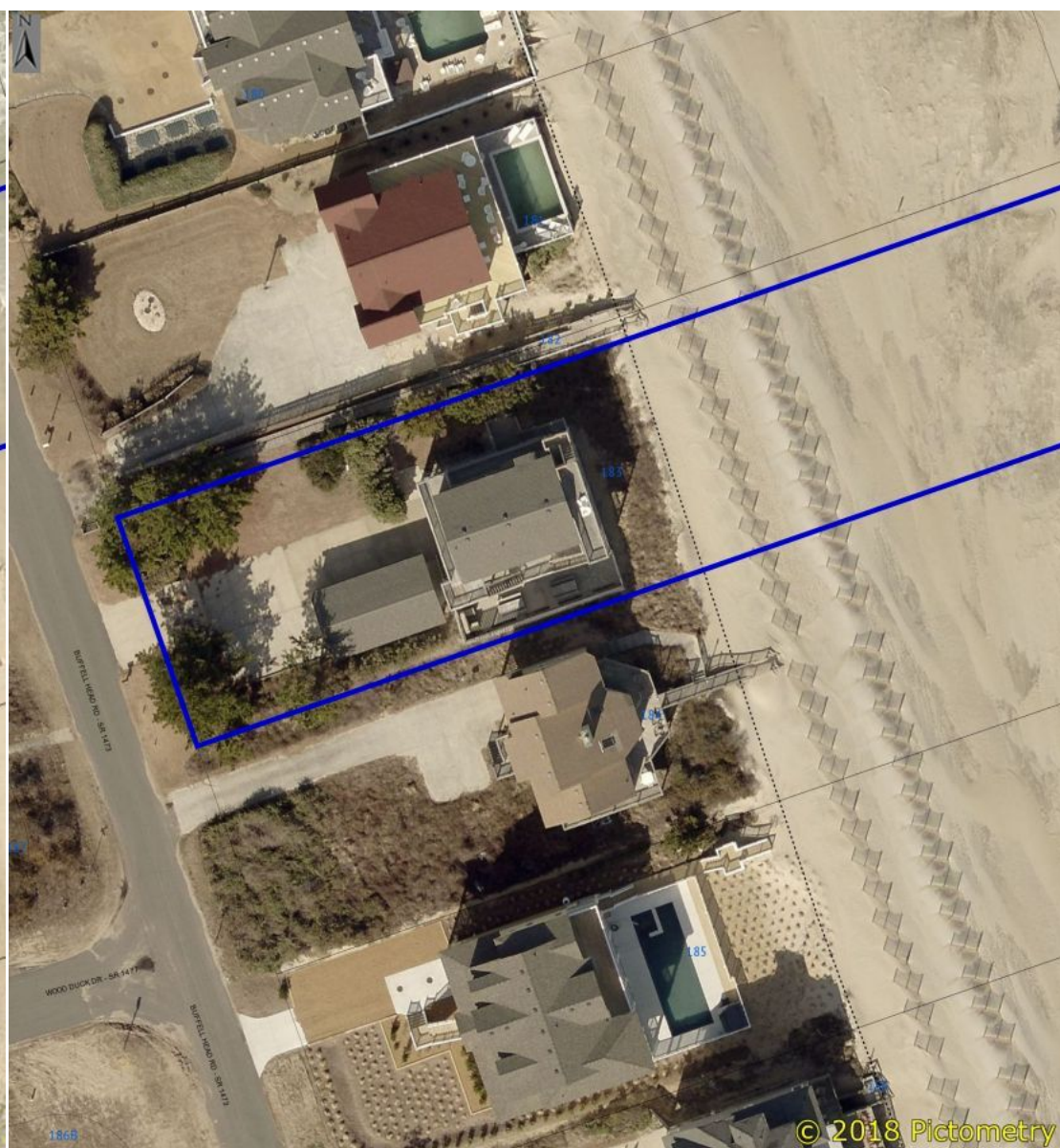
Sandy Cross, LPO

cc: Frank Jennings, District Manager DCM
Ron Renaldi, Field Representative DCM
Christine Goebel, Assistant General Counsel
Joe Heard, Director of Community Development

Aerial Photograph Comparison



07/17/2006



02/03/2018



Town of Duck, North Carolina
Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

TO: Chairman Finch and Members of the Town of Duck Board of Adjustment
FROM: Joe Heard, Director of Community Development
DATE: January 9, 2019
RE: Staff Report for BOV 18-001, 131 Buffell Head Road

Application Information

Application #: BOV 18-001
 Project Location: 131 Buffell Head Road
 Dare County PIN: 995011750342
 Existing Use: Single-Family Residence
 Zoning: Single-Family Residential (RS-1)
 Property Owner/Applicant: Joseph & Vicki Hatch

Public Meeting Advertised: December 23 & 30, 2018 (Coastland Times)
 December 26, 2018 & January 2, 2019 (OBX Sentinel)
 Public Meeting Notices Sent: December 14, 2018
 Public Meeting Sign Posted: December 17, 2018
 Public Meeting Town Website: December 14, 2018
 Public Meeting Town Hall Posted: December 14, 2018

Application Summary

Subsection 156.124(C)(2)(b) of the Town Code states that accessory structures (such as decks) cannot be located within 30 feet of the static vegetation line. In addition, Subsection 156.124(C)(2)(a) requires development to be consistent with setback standards established by the Coastal Area Management Act (CAMA). The CAMA requires a minimum setback of 60 feet for structures from the static vegetation line.

Property owners Joseph and Vicki Hatch are seeking a variance from these setback standards to permit the demolition and reconstruction of the existing decks on the rear (oceanfront) of the residence at 131 Buffell Head Road in the same, nonconforming location. The existing residence has three levels of decks that are presently located only 25.8 feet from the static vegetation line, thus encroaching 4.2 feet into the required thirty-foot (30') setback. While the existing decks can be repaired and maintained in their present location, complete replacement of the decks requires full compliance with current Town standards. A copy of a survey showing the existing/proposed location of the proposed decks is included as Attachment B.



Town of Duck, North Carolina
Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

Property Information

Located in the Carolina Dunes neighborhood, the property at 131 Buffell Head Road is zoned Single-Family Residential (RS-1). The subject property is approximately 13,000 square feet (0.30 acre) in size according to Dare County tax records. The property is approximately 75 feet in width and 162 feet in depth measured to the static vegetation line on the oceanfront primary dune. The subject property presently contains a five-bedroom, 2,832 square foot single-family residence that was constructed in 1981 under the jurisdiction and standards of Dare County. The property has been owned by the Hatch family ever since.

The adjoining property to the south at 133 Buffell Head Road is zoned RS-1 and contains a single-family residence constructed in 1988. An eight-foot (8') wide easement containing a beach access walkway for Carolina Dunes property owners is situated immediately north of the subject property. The property across the beach access to the north at 129 Buffell Head Road is also zoned RS-1 and was developed with a single-family residence in 1988. Directly across Buffell Head Road to the west are two additional residences zoned RS-1.

Background Information

In most areas of Duck, the minimum building setback is measured from the First Line of Stable Natural Vegetation (FLSNV), typically located on the primary oceanfront dune. The FLSNV is determined on a property-by-property basis and staked on-site by a CAMA representative. However, just prior to the beginning of the beach nourishment project in 2017, the Town of Duck worked with CAMA officials to survey the existing vegetation and establish a Static Vegetation Line (SVL) from which future measurements will be taken. As the subject property is in the beach nourishment area, its setback measurements are taken from the SVL.

The issue leading to this variance request was identified when the Hatch's contractor met with the Community Development Department to propose demolition and reconstruction of the existing three tiers of oceanfront decks on the rear of the subject house. After reviewing the recently prepared survey and field-checking the situation, Community Development staff confirmed that the existing decks are located within thirty feet (30') of the static vegetation line. Due to the nonconforming location, if the decks are removed, they cannot be rebuilt unless in conformance with current minimum setback standards of the Town.

Community Development staff discussed several alternatives with the owners and contractor. These options included:

- Repairing, rather than replacing, the existing decks.
- Completing a phased repair/replacement project over two years.
- Reducing the width of the decks to eliminate any encroachment.



Town of Duck, North Carolina
Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

- Reducing the size of the decks to 64 square feet, which can be permitted as an accessory dune structure.

Noting an immediate interest in addressing the poor condition of the existing decks by reconstructing the decks to meet current building codes and safety standards, the applicants chose to proceed with this variance application to construct the new decks as a single project.

A similar situation arose on the adjoining property to the north.

NOTE: Should the Board of Adjustment grant the requested variance, the property owners will have the additional step of obtaining a setback variance from the N.C. Coastal Resources Commission (CRC). The CRC requires that the owner obtain local government approval before proceeding through their process.

History

When originally constructed in 1981, the residence on the subject property was located much further to the west of the dune and FLSNV. Over the subsequent decades, the dune and FLSNV (now SVL) have migrated to the west as a result of natural processes and beach erosion. The aerial photograph from 2006 (Attachment G) shows a FLSNV approximately 60-65 feet from the residence. A more recent aerial photograph from 2018 (Attachment H) shows the extent to which the dune and vegetation has migrated westward to a distance of approximately 25 feet from the subject residence.

The adjoining property to the north at 129 Buffell Head Road faced a similar problem when seeking to reconstruct an oceanfront swimming pool following damage by Hurricane Sandy in 2013. If you look closely at the comparison aerial photographs (Attachment I), you will notice that the size of the swimming pool and pool decks were significantly decreased in order to comply with the changed location of the FLSNV at that time.

Applicable Ordinance Standards

Duck Zoning Ordinance:

Section 156.124 Structures Within the Primary and Frontal Dunes

(C) Regulatory Standards

(2) Setbacks Established for Dune Protection



Town of Duck, North Carolina
Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

- (a) Development shall be regulated in accordance with the setback criteria established by the Coastal Area Management Act (CAMA) as defined in 15A NCAC 07H .0306.
- (b) Accessory structures that are exempt from the CAMA setback criteria shall not be located within 30 feet of the first line of stable natural vegetation or static vegetation line. This shall include decks, gazebos, pools and any other structure which meets the exception criteria establish by the Coastal Area Management Act (CAMA) in 15A NCAC 07H.0309. This setback shall not apply to dune walkover structures as defined in this section. Additionally, one dune deck per lot may be allowed no closer than 15 feet to the first line of stable natural vegetation or static vegetation line provided that the dune deck does not exceed 8 feet measured in any dimension, including the area that is combined with or adjacent to any dune walkover structure that may be present, and also provided that the dune deck is no higher than 30 inches above grade. In cases where the first line of stable natural vegetation is not evident on the subject property, this line shall be determined by interpolating a straight line between nearest identifiable first line of stable natural vegetation on the adjacent properties directly to the north and south of the subject property (this clause does not apply to properties subject to the static vegetation line).

Coastal Area Management Act:

7H. State Guidelines for Areas of Environmental Concern

.0306 General Use Standards for Ocean Hazard Areas

- (1) The ocean hazard setback for is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (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. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;



Town of Duck, North Carolina
 Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

Variance Criteria/Staff Analysis

Section 156.167 of the Duck Town Code states that when unnecessary hardships will result from carrying out the strict standards of the zoning ordinance, the Board of Adjustment may grant a variance from provisions of the zoning ordinance consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

During its evaluation of the variance application, the Board of Adjustment is required to consider and make findings concerning the following six criteria. If the Board finds that all six of the criteria have been met, then the Board should vote to grant the requested variance. If the Board finds that one or more of the criteria have not been met, then the Board should deny the requested variance.

As part of its decision, the Board of Adjustment members may impose conditions on the approval of a variance, as long as the conditions are reasonably related to the variance. Such conditions are often intended to mitigate any potential impacts resulting from the variance.

1. Sec. 156.167(A)(1) - Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

- The applicant's proposed project is a reasonable request to replace the house's oceanfront decks in their current location. The applicant is not seeking to expand the footprint or size of the decks.
- The existing decks do not comply with current setback requirements from the static vegetation line on the dune. Section 156.124(C)(2)(b) of the Town Code prevents reconstruction of new decks in the same, nonconforming footprint as the existing decks.
- The current decking is decades old, not in good condition, and does not meet current construction standards. The applicant is seeking to upgrade the safety and sturdiness by demolishing the existing decks and rebuilding them entirely.
- To comply with the 30-foot minimum setback standard, the currently eight-foot wide deck would have to be reduced to less than four feet in width, which is not very functional for a deck.
- It is staff's opinion that strict application of the ordinance would restrict construction of decks with a reasonable width, resulting in hardship to the applicant.

2. Sec. 156.167(A)(2) - The hardship results from conditions that are peculiar to the subject property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.



Town of Duck, North Carolina
Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

- The adjoining property to the north faced similar challenges when replacing a swimming pool in 2013. However, these issues related to a swimming pool, not decks attached to the residence like the current situation.
 - Although there are other properties in the surrounding area that contain similar physical characteristics (oceanfront location, existing nonconforming structures, beach erosion, etc.), there are few properties with the exact set of circumstances as the subject property.
 - It is staff's opinion that the subject property has unique conditions peculiar to the property and that such conditions are not common to the neighboring properties.
- 3. Sec. 156.167(A)(3) - The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.**
- When constructed under Dare County's purview in 1981, the residence at 131 Buffell Head Road was located significantly further to the west of Atlantic Ocean and oceanfront dune. It's location in relationship to the first line of stable natural vegetation at that time would have complied with the Town's current setback standards.
 - The applicants have not subsequently enlarged the decks or conducted any activities that exacerbated the situation.
 - It appears that the hardship has resulted from erosion and westward movement of the beach and dune, which has moved the static vegetation line closer to the residence.
 - It is staff's opinion that the hardship has not resulted from actions of the applicant.
- 4. Sec. 156.167(D) - The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.**
- The Board of Adjustment must decide if a width of eight feet (8') for the proposed decks is the minimum possible to allow reasonable use of the decks.
 - To comply with the 30-foot minimum setback standard, the currently eight-foot wide deck would have to be reconstructed at less than four feet in width, which is not very functional for a deck.
 - Staff notes that the requested variance is the minimum necessary to reconstruct the deck in its current configuration and location. However, there are other options available for construction of some decking that would require either a lesser variance or no variance at all. For example, one alternative that could be permitted is a reduction of the deck size to an 8' by 8' (64 square feet) structure, consistent with Town and CAMA allowances for dune deck structures.
 - The Board of Adjustment may wish to explore if other alternatives are available to provide reasonable use of the residence and decks.



Town of Duck, North Carolina
 Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

5. Sec. 156.167(E) - Granting the variance will be in harmony with the general purpose and intent of the Zoning Ordinance.

- Section 156.124(A) of the Zoning Ordinance contains a purpose statement outlining the intent of the Town Council when adopting these standards for structures within the primary and frontal dunes. The ordinance reads, “It is the purpose of this section to develop regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity. Further, construction standards are established for dune walkover structures to minimize their impact on the dune, recognizing that these structures provide a safe and responsible mechanism to access the ocean beach.”
- Constructing a new deck structure into the western side of the dune within the 30/60 foot minimum setback has the potential to weaken or compromise the stability of the dune.
- However, it can be accurately debated that replacement of the decks within the same footprint will not cause further damage to the adjoining dune or weaken the dune’s structural integrity.
- As the proposed decking is in the same location as decks that have existed within the dune for decades, it is staff’s opinion that the proposed project will not substantially damage the dune system and the proposed variance is consistent with the stated intent of the ordinance.

6. Sec. 156.167(E) - Granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- The proposed project would replace the decks in their existing configuration. So, while there will be temporary noise and activity impacts during construction, there will be no additional visual impact to the surrounding properties and neighborhood. The decking and house will look much like it has in the past.
- The location of the proposed decks is on the rear of the residence and minimally visible from Buffell Head Road. The proposed decks will only be visible from adjoining properties to the north and south.
- The applicant contacted both abutting property owners and has submitted emails from the adjoining properties to the north and south of the subject property (**Attachment E**). James Rice, owner of 129 Buffell Head Road, expressed no objection to the proposed variance application. Moses & Semiramis Kaloustian offered more measured comments on the application, supporting the variance “...as long as it does not impact our property at 133 Buffell Head Road in any way.”
- Based on the information available, it is staff’s opinion that granting the variance will not negatively impact the neighboring properties or be detrimental to the public welfare.



Town of Duck, North Carolina
Department of Community Development
 BOV 18-001, 131 Buffell Head Road

Agenda Item 3a

Staff Recommendation

In summary, it is staff's opinion that the applicant has provided sufficient evidence to show that the subject property contains a legitimate hardship due to the movement of the dune system westward over the past few decades. The applicant has proposed a reasonable project to replace the existing, deteriorating decks with new, safer, sturdier decks in the same footprint. It does not appear that granting the variance will negatively impact the adjoining dune system or any of the surrounding properties.

- As outlined in detail above, it is staff's opinion that the applicant has satisfied the conditions of Findings 1, 2, 3, 5, and 6.
- Finding 4 may also be satisfied if the Board of Adjustment accepts that the dimensions of the proposed deck replacement are the minimum necessary to allow reasonable use of the decks.

Provided that the Board of Adjustment finds that the variance is the minimum necessary, all findings will have been met and staff recommends **APPROVAL** of this variance application.

ATTACHMENTS

Applicant Exhibits:

- A. Variance Application
- B. Current As-Built Survey Dated 10/4/18
- C. Plat Dated 5/11/81
- D. Aerial Photograph Dated 9/3/10
- E. Email Comments from Adjoining Property Owners

Staff Exhibits:

- F. Location Map and Property Information
- G. Aerial Photograph Dated 7/17/06
- H. Aerial Photograph Date 2/3/18
- I. Aerial Photograph Comparison
- J. Draft Order Approving the Variance



Department of Community Development

PO Box 8369
1200 Duck Road
Town of Duck, North Carolina 27949
(252) 255-1234

NOV 28 REC'D

ZONING VARIANCE APPLICATION

Applicant: Joseph L. and Vicki S. Hatch Date: 11/19/18
Mailing Address: 2340 Leeward Shore Dr., Virginia Beach, VA 23451
Telephone #: (757) 650-7101 Email: vhatch1@verizon.net
Representative (if different from applicant):
Mailing Address:
Representative Telephone #: Email:

Property Information:
Property Address/Location: 131 Buffell Head Rd.
Dare County PIN #: 995011-75-0342
Zoning District: RS-1 Use of Property: Residential

Variance Request:
Applicable Ordinance Section: 156.124(C) 2(a)
Ordinance Requirement: 60' structure setback to the first line of stable natural vegetation.

Variance Requested: 34.2' amount of variance requested resulting in 25.8' from first line of stable natural vegetation.

The Duck Board of Adjustment, with a vote of four-fifths of the membership, may grant a variance from specific provisions of the Zoning Ordinance. Consistent with the N.C. General Statutes, Section 156-167 of the Zoning Ordinance states that the Board of Adjustment is required to make certain findings as a prerequisite to granting a variance. The following questions are intended to offer the applicant an opportunity to address these criteria for the Board members. Please answer each question as thoroughly as possible.

1. Describe the hardship created by strict application of the Duck Zoning Ordinance?

(see attached)

2. Describe any special conditions or circumstances (such as property dimensions, location, or topography) contributing to the hardship that are peculiar to the subject land or structure and not applicable to other properties in the same area.

3. Explain why the hardship is not the result of the applicant's or property owner's own actions.

4. Explain how the requested variance is the minimum possible to make reasonable use of the land or structure.

5. How is the requested variance in harmony with the general purpose and intent of the zoning ordinance? Please cite specific examples.

6. Would granting the variance be injurious to the surrounding neighborhood or detrimental to the public welfare? Please explain your answer.

Vicki S. Hatch
Applicant Signature

Property Owner Signature (if different from applicant)

A complete application can be submitted in person to the Town of Duck Community Development Department at Duck Town Hall, 1200 Duck Road or mailed to Town of Duck, P.O. Box 8369, Duck, NC 27949. Checks should be made payable to the *Town of Duck*. A complete application consists of:

- Complete, signed zoning variance application form
- Zoning variance application fee (\$500)
- Plat, site plan, or building plans drawn to scale showing the existing and proposed improvements
- Other exhibits or information in support of the variance request

NOV 28 RECD		FOR OFFICE USE ONLY	
Application Received _____		Received By <u>JST 1015</u>	
Fee Paid <u>\$500</u>		Receipt # <u>CK # 7672</u>	

Zoning Variance Application for 131 Buffell Head Road, Joe and Vicki Hatch

1. Describe the hardship created by strict application of the Duck Zoning Ordinance?

The existing deck is aging and has been damaged by the storms over the past two years. The current regulation would prohibit the replacement of the deck, due to the existing structure lying within the CAMA setback. Replacing the 6" pilings with current building code pilings of 8" would be safer and stronger. To repair the existing structure would be far less safe, than total replacement.

2. Describe any special conditions or circumstances (such as property dimensions, location, or topography) contributing to the hardship that are peculiar to the subject land or structure and not applicable to other properties in the same area.

The house was one of the first built in Carolina Dunes, in the early 80's and has been in our family the entire time. The house is surrounded on all sides by decking, as part of the design of the house. When the house was built in the early 80's, the dune extended much further to the east, (see attached survey from 1981).

3. Explain why the hardship is not the result of the applicant's or property owner's own actions.

The house was built in the early 80's, and the structure has maintained that footprint ever since, however, the accelerated natural erosion has moved the dune line from 269 feet from the front of the property line in the 1980's to approximately 161 feet currently. The hardship was created by erosion, and the westward movement of the dune, not by any of our actions. There have never been any walk overs, or pools or enlarged decks added since the house was built.

4. Explain how the requested variance is the minimum possible to make reasonable use of the land or structure.

The requested variance is the minimum possible to allow the deck to be replaced in its existing footprint.

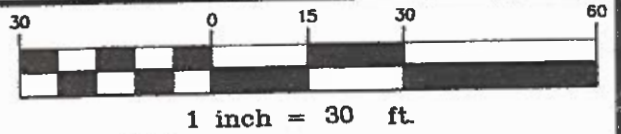
5. How is the requested variance in harmony with the general purpose and intent of the zoning ordinance.

The 34.2' variance is needed in order to maintain the house, as it was built in the 1980's. The deck is an existing feature, that will be replaced. Replacing the deck in its current location will not disturb the dune vegetation or create any significant additional impact to the dune or dune system.

6. Would granting the variance be injurious to the surrounding neighborhood or detrimental to the public welfare?

The intention of the deck replacement is to maintain the property in the safest way possible. The plan includes the deck to be replaced with larger pilings, bringing it up to current building code, and keeping it exactly in the same style and footprint that is existing. We are putting back what is there. This project would have minimal impact to the dune. The project should have no impact to the neighborhood or public. Additionally we have contacted the adjacent neighbors to inform them of what we intend to do, and they have stated no objections.

BEACH NOURISHMENT AREA
STATE OF NORTH CAROLINA
D.B. REF. UNAVAILABLE



S21°15'06"E → 75.04'

M.H.W AS PER DATA PRIOR TO BEACH NOURISHMENT AS PROVIDED BY THE TOWN OF DUCK

STATIC LINE AS PER DATA PRIOR TO BEACH NOURISHMENT AS PROVIDED BY THE TOWN OF DUCK

NOTES:

Address: 131 Buffell Head Road
 Lot Area = 22,706 Sq. Ft.
 Lot Area West of Static Line = 12,215 Sq. Ft.
 Existing Lot Coverage Info:
 Structure Under Roof/Over Concrete = 2,725 Sq. Ft.
 Concrete = 3,093 Sq. Ft.
 Block Walk = 56 Sq. Ft.
 Ex. Lot Coverage = 5,874 Sq. Ft. (48.1%)

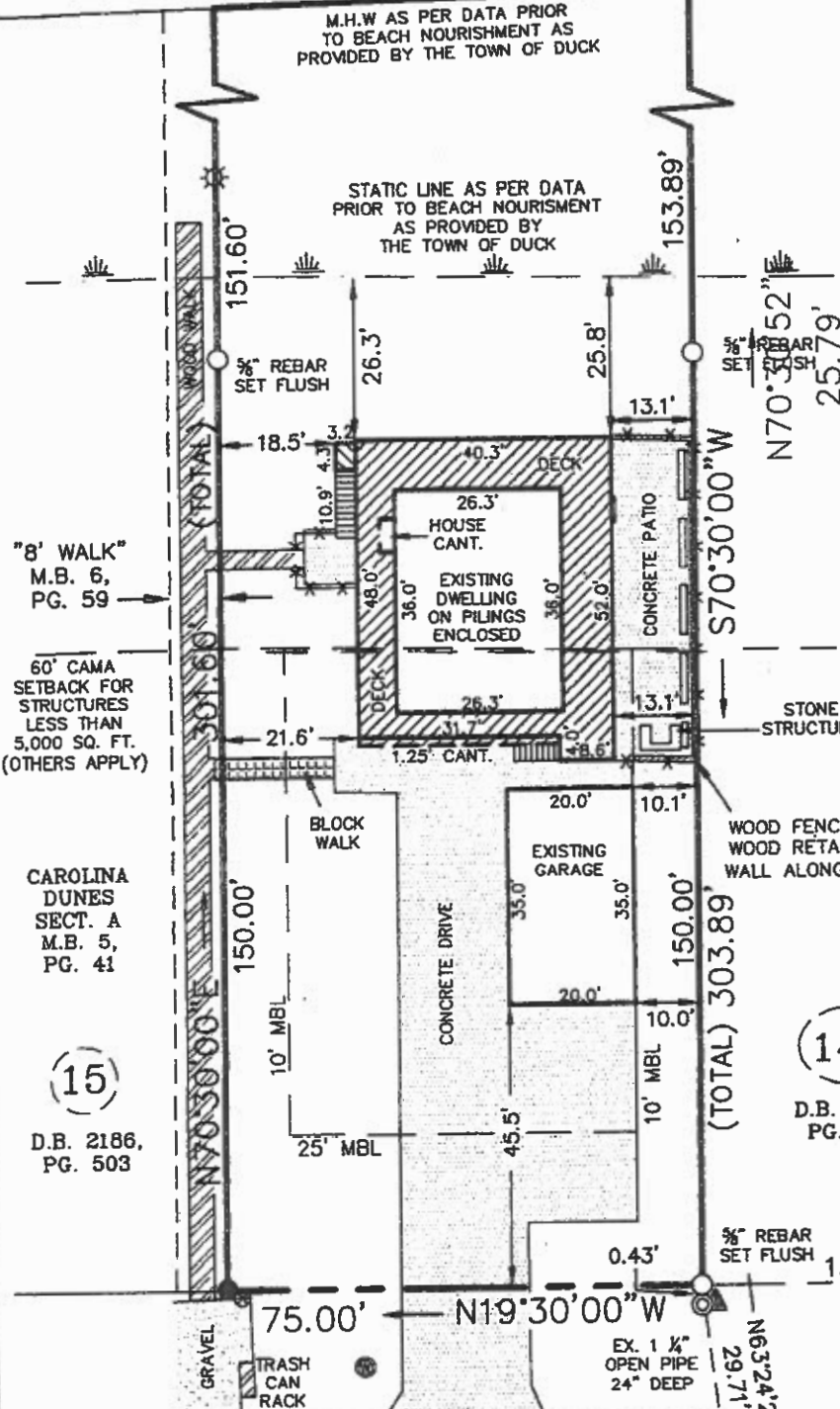
Flood Zones are subject to change
 Setbacks shown are as per the Subd. Plat and as per Zoning; they do not reflect any Restrictive Covenants that may exist.

This survey was based on the existing property corners found in conjunction with the recorded reference given.

Certifier hereon is not responsible for utilities and/or features that are not visible at the time of the survey, nor any additional setbacks that are not shown.

LEGEND:

- ⊙ Ex. OP
- ⊖ Ex. Pinched Pipe
- ⊙ Ex. Rebar
- △ Ex. Slick Rod
- Rebar Set
- ⊙ Water Meter
- ▲ CATV
- *-*- Fence
- ☼ Flag Pole
- Wood Post
- ⊗ Beach Access Sign
- ⊙ Ex. S.S.S. Nail & Washer



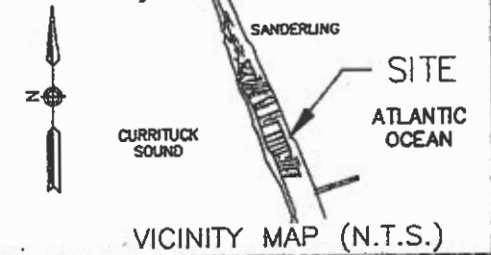
BUFFELL HEAD ROAD

(60' R/W)

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

Witness my hand and seal this 15th day of October A.D. 2018

P.L.S. *[Signature]* L-3227



LOT 141, CAROLINA DUNES, SECTION B

SURVEYED FOR

JOSEPH L HATCH TRUSTEES and VICKI S. HATCH

ATLANTIC TOWNSHIP DUCK DARE COUNTY NORTH CAROLINA

DATE SURVEYED: 10-4-18
 REV.:
 SCALE: 1" = 30'
 FILE NO.: 18-291
 DWG NO.: 18291P

F.I.R.M.: 3720 9950 00 J
 F.I.R.M. DATE: 9-20-06
 FLOOD ZONE: VE (12.0')
 REC. REF. M.B. 6, PG. 59
 D.B. 2026, PG. 710
 PIN NO.: 21995011750342

Styons Surveying Services P.A.
 C-1697
 2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948
 Phone: (252) 441-1415 Fax: (252) 480-1182
 Any unauthorized use or alteration of this document is prohibited
 A red seal must be present for this to be an original document.





From: M. K. Kaloustian chirogen@aol.com
Subject: From Moses K. Kaloustian and Semiramis Ayril-Kaloustian
Date: November 19, 2018 at 3:30 PM
To: vhatch1@verizon.net

November 19, 2018

Department of Community Development
Duck Board of Adjustment
P. O. Box 8369
1200 Duck Road
Town of Duck, N.C., 27949

Re: Joe and Vicki Hatch, 131 Buffellhead Road, Duck, N.C.

Dear Board Members,

We own the property adjacent to the Hatch's property at 131 Buffellhead Road.

We have no objections to a variance to the existing setback line for the replacement of the decking on their house, as presented in their application, as long as it does not impact our property at 133 Buffellhead Road in any way.

Sincerely yours,

Moses K. Kaloustian
Semiramis Ayril-Kaloustian

From: bigbuck089@gmail.com 
Subject: Fwd: neighbor letter
Date: November 19, 2018 at 12:58 PM
To: vhatch1@verizon.net



Sent from my iPhone

Begin forwarded message:



November 18, 2018


Department of Community Development
Duck Board of Adjustment
P. O. Box 8369
1200 Duck Road
Town of Duck, North Carolina. 27949

Dear Board Members:

Re: Joe and Vicki Hatch, 131 Buffellhead Road

We/I own the property adjacent to the Hatch's property. We have no objections to a variance to the existing setback line for the replacement of the decking on the house, as presented in their application.

Sincerely yours,


Neighbor
129 Buffellhead

County of Dare, North Carolina

*Owner and Parcel information is based on current data on file and was last updated on December 07 2018

Primary (100%) Owner Information:

HATCH, JOSEPH L TRUSTEES TRE
 HATCH, VICKI S TRE
 2340 LEEWARD SHORE RD
 VIRGINIA BEACH VA 23451

Parcel Information:

Parcel: 009594000 PIN: 995011750342
 District: 21- DUCK
 Subdivision: CAROLINA DUNES SECTION B
 LotBlkSect: LOT: 141 BLK: SEC: B
 Multiple Lots: -
 PlatCabSlide: PL: 6 SL: 59 Units: 1
 Deed Date: 06/12/2015
 BkPg: [2026/0710](#)

Parcel Status: ACTIVE



Property Use: RESIDENTIAL

131 BUFFELL HEAD RD

BUILDING USE & FEATURES	<u>Tax Year Bldg Value: \$168,100</u>	<u>Next Year Bldg Value: \$168,100</u>
Building Use:	BEACH BOX	
Exterior Walls:	MODERN FRAME	Actual Year Built: 1981
Full Baths:	3 Half Baths: 0	
Bedrooms:	5	
Heat-Fuel:	3 - ELECTRIC	
Heat-Type:	2 - FORCED AIR	Finished sqft for building 1: 2832
Air Conditioning:	4 -CENTRAL W/AC	Total Finished SqFt for all bldgs: 2832

Disclaimer: In instances where a dwelling contains unfinished living area, the square footage of that area is included in the total finished sqft on this record. However, the assessed value for finish has been removed.

MISCELLANEOUS USE	<u>Tax Year Misc Value: \$11,200</u>	<u>Next Year Misc Value: \$11,200</u>
Misc Bldg a: (RG1) FRAME OR CB DETACHED GARAGE Year Built: 1990 sqft: 700		

LAND USE	<u>Tax Year Land Value: \$727,900</u>	<u>Next Year Land Value: \$727,900</u>
Land Description : 21-Ocean front		

TOTAL LAND AREA: 13000 square feet

	<u>Tax Year Total Value: \$907,200</u>	<u>Next Year Total Value: \$907,200</u>

*Values shown are on file as of December 07 2018

081

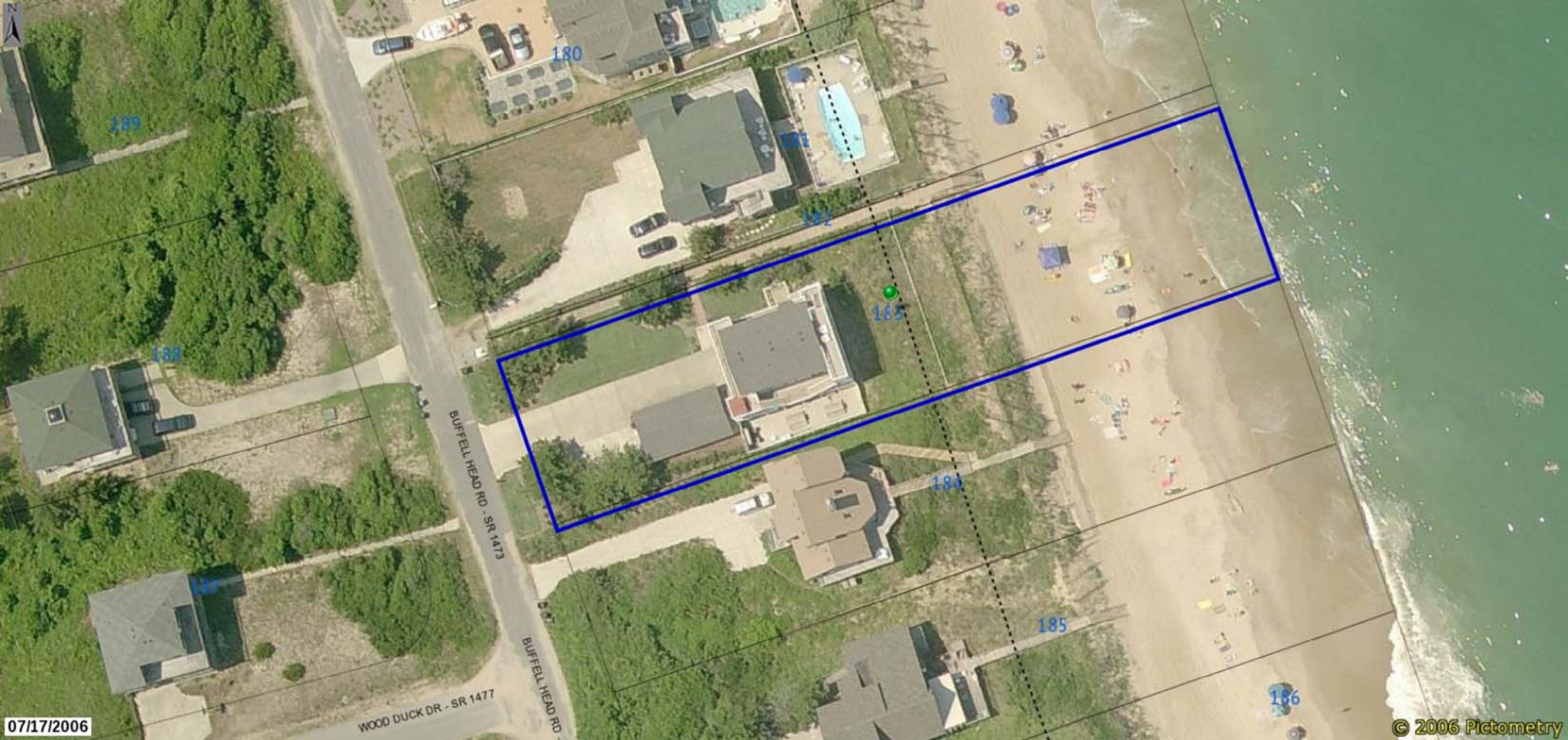


BUFFELL HEAD

**Town of Duck
North Carolina**

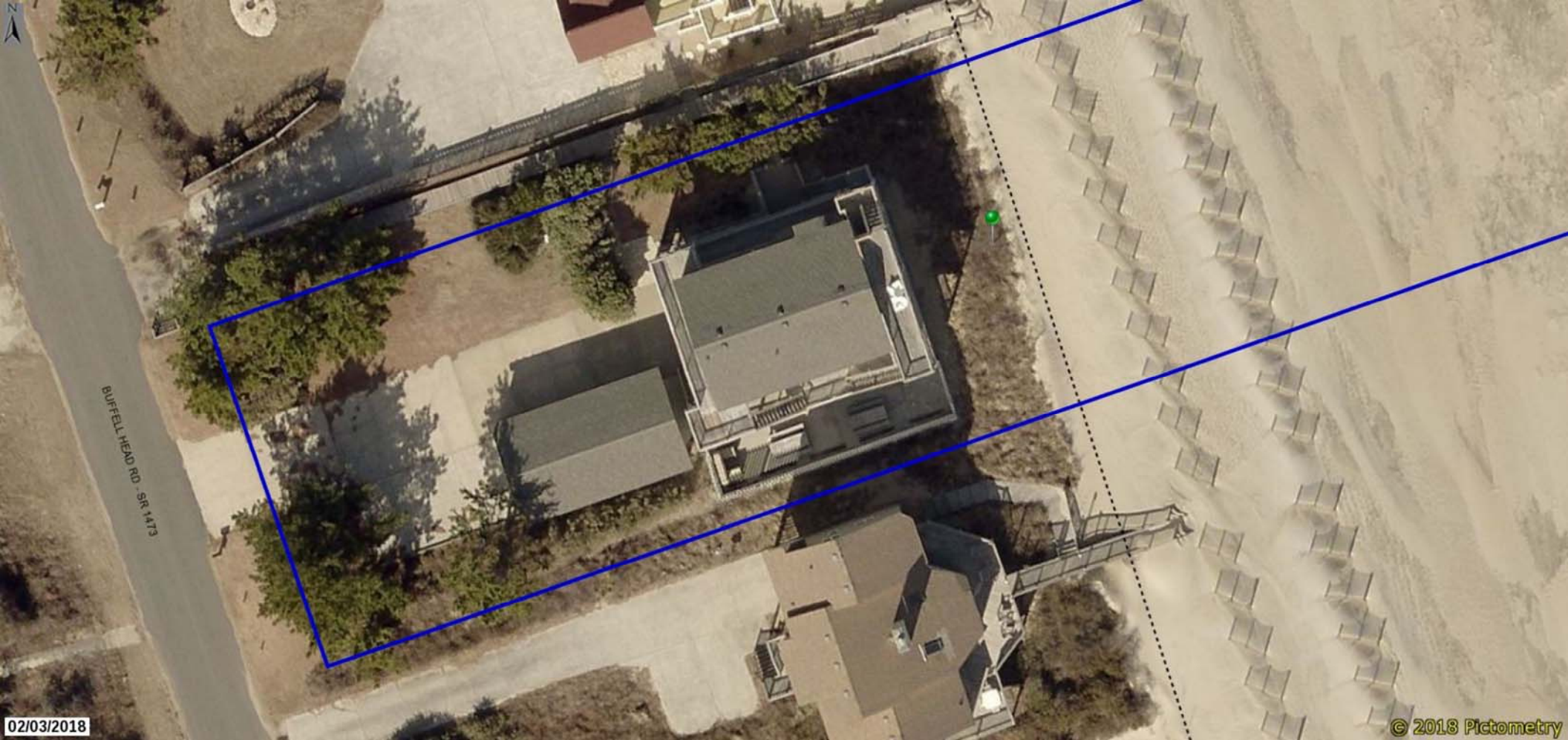
**131 Buffell Head Road
prepared January 4, 2019**





07/17/2006

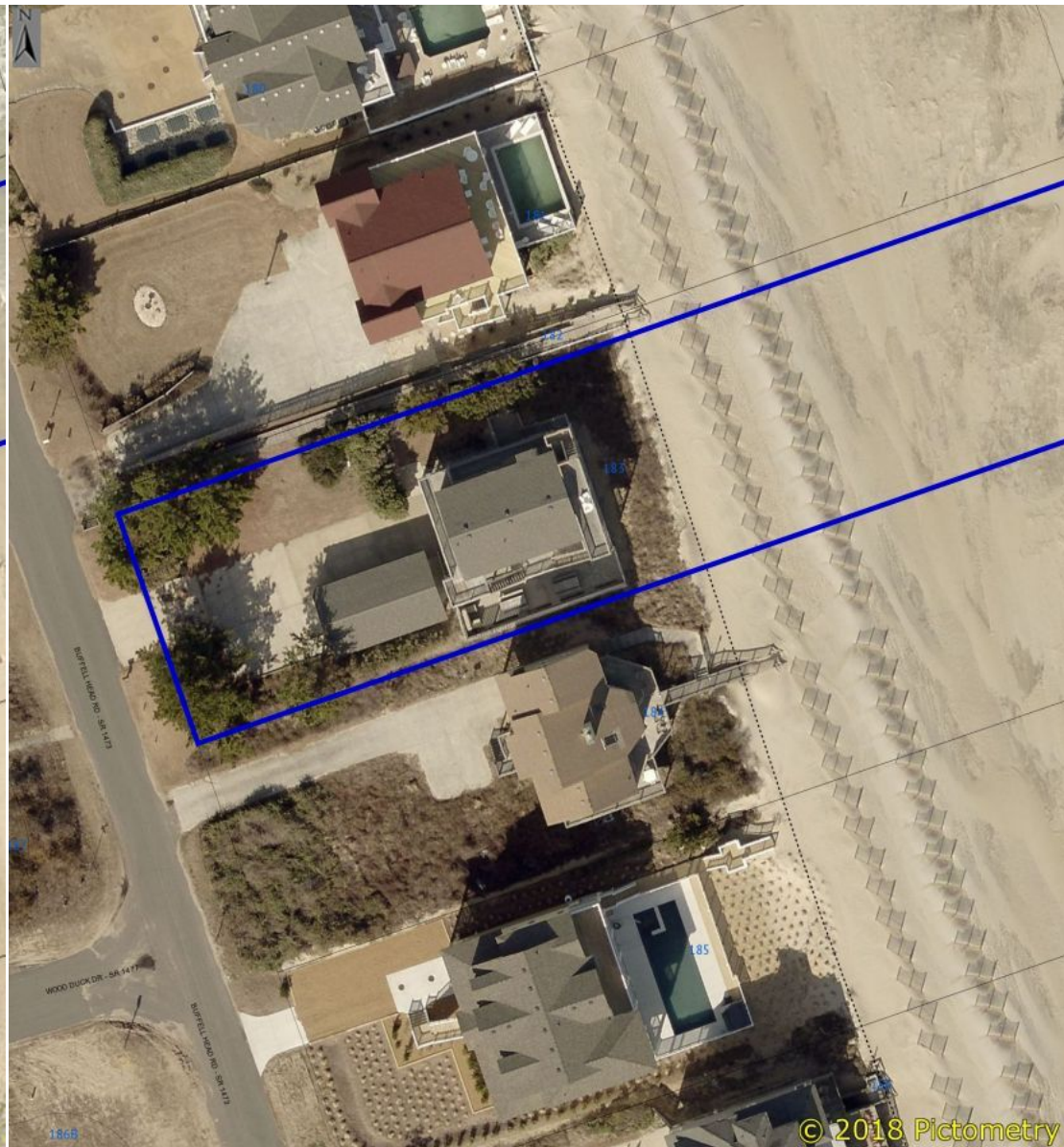
© 2006 Pictometry



Aerial Photograph Comparison



07/17/2006



02/03/2018



**TOWN OF DUCK BOARD OF ADJUSTMENT
ORDER GRANTING A VARIANCE**

131 Buffell Head Road

The Board of Adjustment for the Town of Duck, having held a public hearing on January 9, 2019 to consider application number BOV-2018-001 submitted by Joseph & Vicki Hatch, a request for a variance to use the property located at 131 Buffell Head Road in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that an unnecessary hardship would result from the strict application of the ordinance. This conclusion is based on the following FINDINGS OF FACT:

- The applicants have submitted a reasonable proposal to replace the existing oceanfront decks in their current location. The applicant is not seeking to expand the footprint or size of the existing decks.
- The existing decks do not comply with current setback requirements from the static vegetation line on the dune. Section 156.124(C)(2)(b) of the Town Code prevents reconstruction of new decks in the same, nonconforming footprint as the existing decks.
- The current decking is decades old, not in good condition, and does not meet current construction standards. The applicant is seeking to upgrade the safety and sturdiness by demolishing the existing decks and rebuilding them entirely.
- To comply with the 30-foot minimum setback standard, the currently eight-foot wide deck would have to be reduced to less than four feet in width. This width would not be functional for a deck.

2. It is the Board's CONCLUSION that the hardship results from conditions that are peculiar to the subject property. This conclusion is based on the following FINDINGS OF FACT:

- The hardship has resulted from erosion and westward movement of the beach and dune, which has moved the static vegetation line closer to the residence.

- Although there are other properties in the surrounding area that contain similar physical characteristics (oceanfront location, existing nonconforming structures, beach erosion, etc.), these properties do not have the exact set of circumstances as the subject property.

3. It is the Board's CONCLUSION that the hardship did not result from actions taken by the property owner. This conclusion is based on the following FINDINGS OF FACT:

- When constructed under Dare County's purview in 1981, the residence at 131 Buffell Head Road was located significantly further to the west of Atlantic Ocean and oceanfront dune. The location of the decks in relationship to the first line of stable natural vegetation at that time would have complied with the Town's current setback standards.
- The applicants have not subsequently enlarged the decks or conducted any activities that exacerbated the situation.
- The hardship has resulted from erosion and westward movement of the beach and dune, which has moved the static vegetation line closer to the residence.

4. It is the Board's CONCLUSION that the requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. This conclusion is based on the following FINDINGS OF FACT:

- A width of eight feet (8') for the proposed decks is a minimal dimension allowing reasonable use of the decks.
- To comply with the 30-foot minimum setback standard, the currently eight-foot wide deck would have to be reconstructed at less than four feet in width, which is not functional for a deck.

5. It is the Board's CONCLUSION that granting the variance will be in harmony with the general purpose and intent of the Town of Duck Zoning Ordinance. This conclusion is based on the following FINDINGS OF FACT:

- Section 156.124(A) of the Zoning Ordinance contains a purpose statement outlining the intent of the Town Council when adopting these standards for structures within the primary and frontal dunes. The ordinance reads, "It is the purpose of this section to develop regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity. Further, construction standards are established for dune walkover structures to minimize their impact on the dune, recognizing that these structures provide a safe and responsible mechanism to access the ocean beach."
- Replacement of the decks within the same footprint will not cause further damage to the adjoining dune or weaken the dune's structural integrity.

6. It is the Board's CONCLUSION that granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This conclusion is based on the following FINDINGS OF FACT:

- The proposed project would replace the decks in their existing configuration. The decking and house would look much like it has in the past and there would be no additional visual impact to the surrounding properties and neighborhood.
- The location of the proposed decks is on the rear of the residence and minimally visible from Buffell Head Road.
- Abutting property owners have submitted emails from owners of the adjoining properties to the north and south (Attachment E). James Rice, owner of 129 Buffell Head Road, expressed no objection to the proposed variance application. Moses & Semiramis Kaloustian offered more measured comments on the application, supporting the variance "...as long as it does not impact our property at 133 Buffell Head Road in any way."

THEREFORE, as all of the variance criteria have be met, IT IS ORDERED that the application for a VARIANCE be **APPROVED**.

ORDERED this _____ day of _____, 20_____.

Chairman

NOTE: Each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. If an aggrieved party is dissatisfied with the decision of this Board, a petition may be filed with the clerk of superior court within thirty days after the date this order is filed in the Planning and Zoning Office or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to said aggrieved party by personal service or by registered or certified mail return receipt requested.

Return to: Town of Duck
P.O. Box 8369
Duck, NC 27949

Document Prepared by: Town of Duck
P.O. Box 8369
Duck, NC 27949

**TOWN OF DUCK BOARD OF ADJUSTMENT
ORDER GRANTING A VARIANCE**

131 Buffell Head Road, Duck, NC

The Board of Adjustment for the Town of Duck, having held a public hearing on January 9, 2019 to consider application number BOV-2018-001 submitted by Joseph & Vicki Hatch, a request for a variance to use the property located at 131 Buffell Head Road in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that an unnecessary hardship would result from the strict application of the ordinance. This conclusion is based on the following FINDINGS OF FACT:

- The applicants have submitted a reasonable proposal to replace the existing oceanfront decks in their current location. The applicant is not seeking to expand the footprint or size of the existing decks.
- The existing decks do not comply with current setback requirements from the static vegetation line on the dune. Section 156.124(C)(2)(b) of the Town Code prevents reconstruction of new decks in the same, nonconforming footprint as the existing decks.
- The current decking is decades old, not in good condition, and does not meet current construction standards. The applicant is seeking to upgrade the safety and sturdiness by demolishing the existing decks and rebuilding them entirely.
- To comply with the 30-foot minimum setback standard, the currently eight-foot wide deck would have to be reduced to less than four feet in width. This width would not be functional for a deck.

2. It is the Board's **CONCLUSION** that the hardship results from conditions that are peculiar to the subject property. This conclusion is based on the following **FINDINGS OF FACT**:

- The hardship has resulted from erosion and westward movement of the beach and dune, which has moved the static vegetation line closer to the residence.
- Although there are other properties in the surrounding area that contain similar physical characteristics (oceanfront location, existing nonconforming structures, beach erosion, etc.), these properties do not have the exact set of circumstances as the subject property.

3. It is the Board's **CONCLUSION** that the hardship did not result from actions taken by the property owner. This conclusion is based on the following **FINDINGS OF FACT**:

- When constructed under Dare County's purview in 1981, the residence at 131 Buffell Head Road was located significantly further to the west of Atlantic Ocean and oceanfront dune. The location of the decks in relationship to the first line of stable natural vegetation at that time would have complied with the Town's current setback standards.
- The applicants have not subsequently enlarged the decks or conducted any activities that exacerbated the situation.
- The hardship has resulted from erosion and westward movement of the beach and dune, which has moved the static vegetation line closer to the residence.

4. It is the Board's **CONCLUSION** that the requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. This conclusion is based on the following **FINDINGS OF FACT**:

- A width of eight feet (8') for the proposed decks is a minimal dimension allowing reasonable use of the decks.
- To comply with the 30-foot minimum setback standard, the currently eight-foot wide deck would have to be reconstructed at less than four feet in width, which is not functional for a deck.

5. It is the Board's **CONCLUSION** that granting the variance will be in harmony with the general purpose and intent of the Town of Duck Zoning Ordinance. This conclusion is based on the following **FINDINGS OF FACT**:

- Section 156.124(A) of the Zoning Ordinance contains a purpose statement outlining the intent of the Town Council when adopting these standards for structures within the primary and frontal dunes. The ordinance reads, "It is the purpose of this section to develop regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity. Further, construction standards are established for dune walkover structures to minimize their impact on the dune, recognizing that these structures provide a safe and responsible mechanism to access the ocean beach."

- Replacement of the decks within the same footprint will not cause further damage to the adjoining dune or weaken the dune's structural integrity.

6. It is the Board's CONCLUSION that granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This conclusion is based on the following FINDINGS OF FACT:

- The proposed project would replace the decks in their existing configuration. The decking and house would look much like it has in the past and there would be no additional visual impact to the surrounding properties and neighborhood.
- The location of the proposed decks is on the rear of the residence and minimally visible from Buffell Head Road.
- Abutting property owners have submitted emails from owners of the adjoining properties to the north and south (Attachment E). James Rice, owner of 129 Buffell Head Road, expressed no objection to the proposed variance application. Moses & Semiramis Kaloustian offered more measured comments on the application, supporting the variance "...as long as it does not impact our property at 133 Buffell Head Road in any way."

THEREFORE, as all of the variance criteria have been met, IT IS ORDERED that the application for a setback variance of 4.2 feet be **APPROVED** allowing three levels of decks to be reconstructed 25.8 feet from the static vegetation line at the rear of the property.

(continued on the following page)

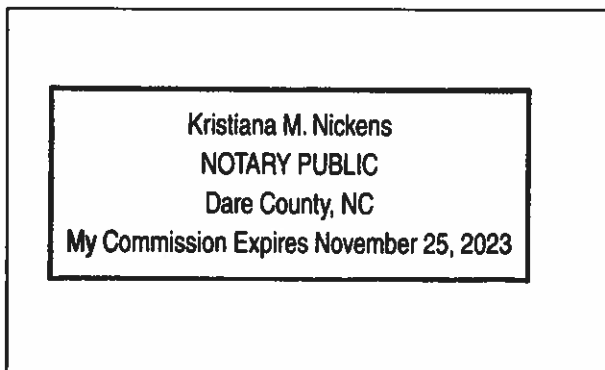
ORDERED this 11 day of Jan, 2019.

Olin Finch
Olin Finch, Chair of the Board of Adjustment for the Town of Duck

North Carolina, Dare County

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Olin Finch, Chair of the Board of Adjustment for the Town of Duck.

Witness my hand and seal this 11th day of January, 2019.



Kristiana M. Nickens
Signature of Notary Public

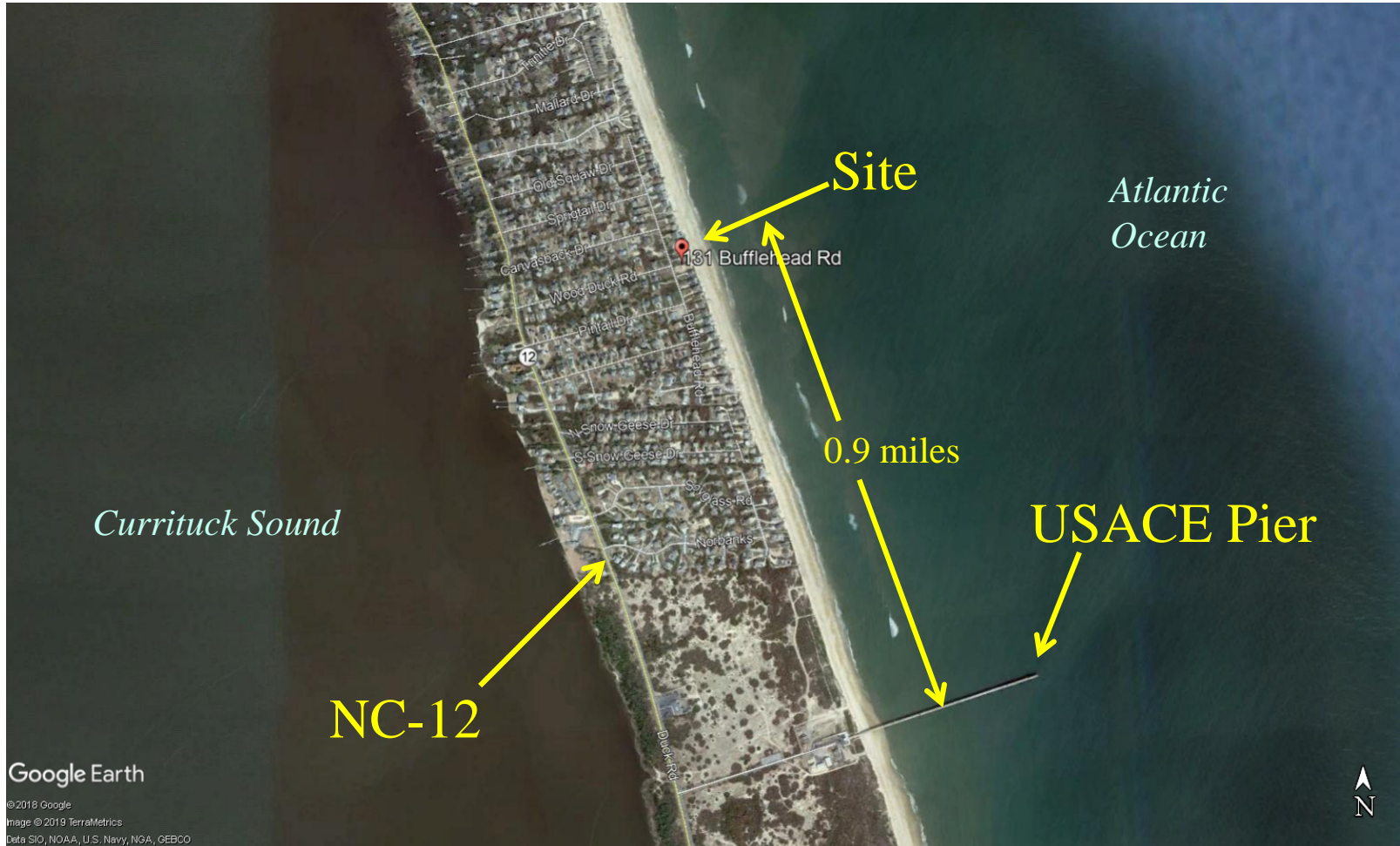
Kristiana M. Nickens
Typed or printed name of Notary Public

My commission expires: 11-25-2023

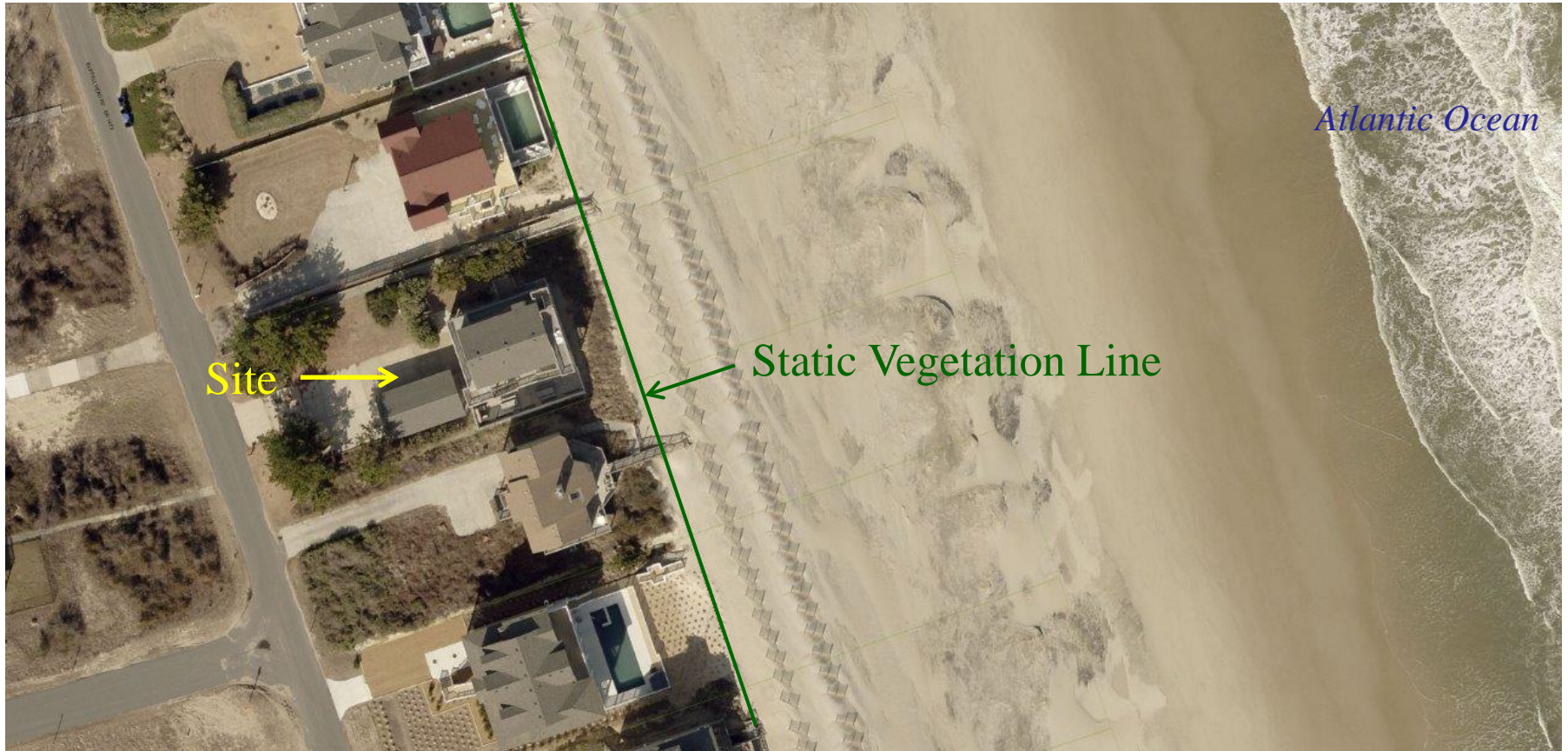
Affix Notary Seal Inside This Box

NOTE: Each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. If an aggrieved party is dissatisfied with the decision of this Board, a petition may be filed with the clerk of superior court within thirty days after the date this order is filed in the Planning and Zoning Office or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to said aggrieved party by personal service or by registered or certified mail return receipt requested.

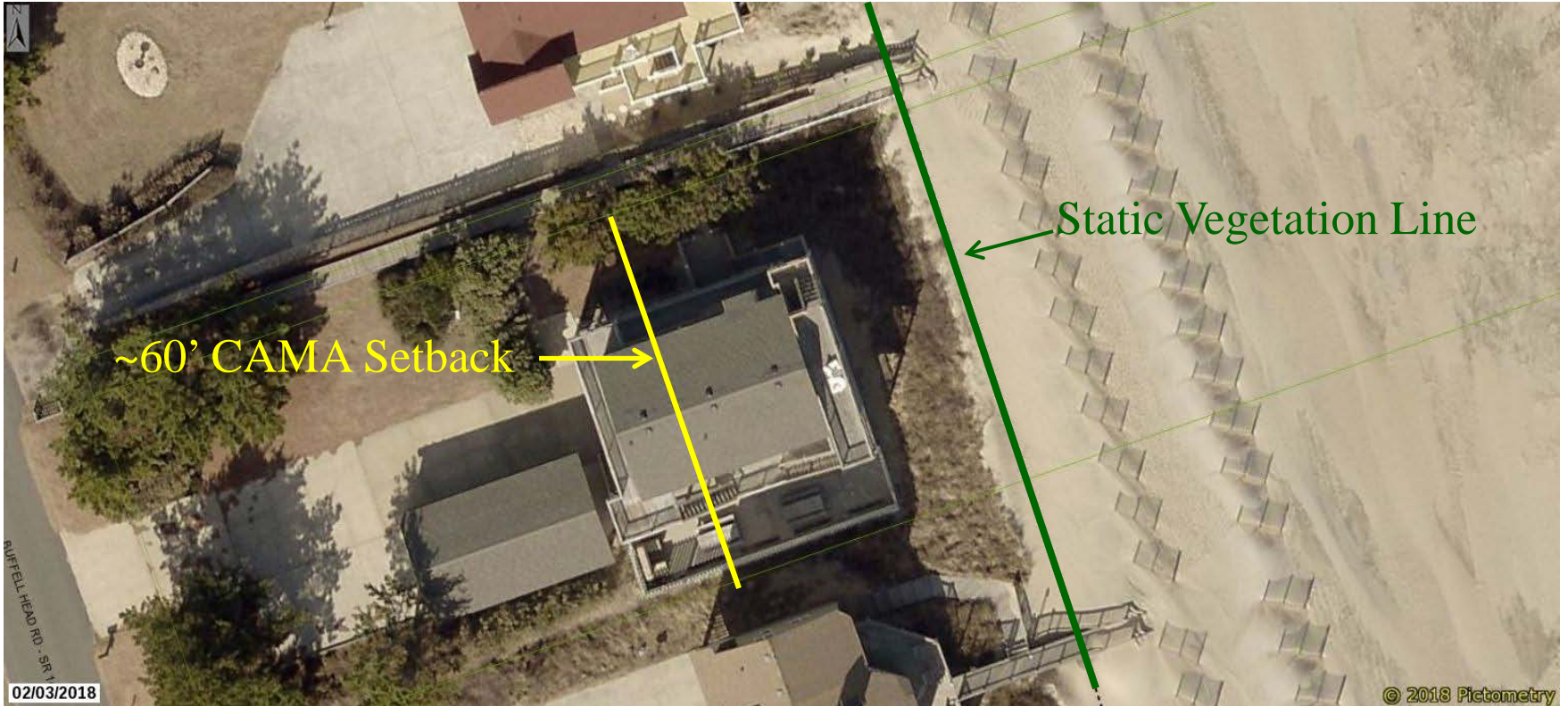
Joseph & Vicki⁰⁹²Hatch Variance Duck, NC



131 Buffell Head Rd.⁰⁹³
(2/3/2018 Imagery)



131 Buffell Head Rd.⁰⁹⁴
(2/3/2018 Imagery)



095

131 Buffell Head Rd. Birdseye View From East (2/5/2018 Imagery)



096

131 Buffell Head Rd. Birdseye View From South (2/3/2018 Imagery)



131 Buffell Head Rd. Birdseye View From North (2/3/2018 Imagery)



098
131 Buffell Head Rd.
(Photo Date: 01/15/2019)



131 Buffell⁰⁰⁰ Head Rd.
(Photo Date: 01/15/2019)



131 Buffell¹⁰⁰ Head Rd.
(Photo Date: 01/15/2019)



131 Buffell¹⁰¹ Head Rd.
(Photo Date: 01/15/2019)

