

Pender County Planning and Community Development

Planning Division

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425



Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

AGENDA

**Pender County Board of Adjustment Meeting
November 19, 2014 9:00 a.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina**

Call to Order: Chairman

Invocation:

Roll Call: Chairman

Pender County Board of Adjustment Members:

Ferrante: _____ Pullen: _____ Newton: _____ Thompson: _____ Walton: _____

Alternates:

Godridge: _____ Peters: _____

1. Adoption of the Agenda:

2. Adoption of the Minutes: October 15, 2014

3. Adoption of the 2015 Meeting Dates:

4. Public Comment:

Public Hearing Opened

5. Variance:

Herb Fannin, applicant, on behalf of Gerald and Dora Batts Revocable Trust, owner, is requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requested for six (6) feet from the minimum side yard setback requirement of ten (10) feet in the RP, Residential Performance Zoning District. The subject property, Tract 10, Map Book 12, Page 45, is located at the terminus of Inlet Court (SR 1639) in Topsail Township. There is one (1) tract associated with this request totaling ± 0.74 acres and the property may be further identified by Pender County PIN 4203-71-7061-0000.

6. Variance:

Gerald and Jane Kopecky, applicant and owners, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requesting a variance for ten (10) feet from the minimum side yard setback requirement of ten (10) feet in the RP, Residential Performance Zoning District. The subject property, Tract 1 of Section 14 in Mallard Bay Residential Subdivision, Map Book 18, Page 12 (Exhibit 1), is located on Drake Road (SR 1692) in the Topsail Township. There is one (1) tract associated with this request totaling ± 0.56 acres and the property may be further identified by Pender County PIN 4213-16-8199-0000.

** Public Hearing Closed**

7. Discussion Items:

a. Planning Staff:

b. BOA Members:

8. Next Meeting: No cases for December; January 21, 2015, as applicable

9. Adjournment:

Board of Adjustment 2015 Meeting Dates

Meeting Date
1/21/2015
2/18/2015
3/18/2015
4/15/2015
5/20/2015
6/17/2015
7/15/2015
8/19/2015
9/16/2015
10/21/2015
11/18/2015
12/16/2015

PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: November 19, 2014

Applicant: Herb Fannin

Property Owner: Gerald and Dora Batts Revocable Trust

Case Number: 11271

Property Location and Description: The subject property, Tract 10, Map Book 12, Page 45, (Exhibit 1) is located at the terminus of Inlet Court (SR 1639) in Topsail Township. There is one (1) tract associated with this request totaling ± 0.74 acres and the property may be identified by Pender County PIN 4203-71-7061-0000.

Zoning District of Property: The property is zoned RP, Residential Performance.

Variance Requested: Herb Fannin, applicant, on behalf of Gerald and Dora Batts Revocable Trust, owner, is requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requested for six (6) feet from the minimum side yard setback requirement of ten (10) feet in the RP, Residential Performance Zoning District.

BACKGROUND AND DESCRIPTION OF VARIANCE:

Planning Staff received notice from a neighbor which identified a structure, potentially built without permits on the subject property, Lot 10 in Section One of Hideaway Shores (Exhibit 1). In subsequent discussions with the applicant, as well as the property owner, it was determined that the structure (10' x 10' deck with wooden pergola) was built without a permit. The applicant states the structure was erected to stabilize the steep bank on the rear of the property due to runoff concerns with recent storm events.

The structure is four (4) feet from the side property line, which does not meet the required ten (10) feet setback for side yard in the RP, Residential Performance zoning district per Section 4.14 Zoning District Dimensional Requirements. Therefore, the applicant is requesting a variance for six (6) feet in total in order to keep the building where it is currently located. A submitted site plan shows where the structure is located on the property (Exhibit 2).

If a variance is granted by the Board of Adjustment; the applicant must still meet all criteria outlined in the North Carolina Building Code for the structure. At current the applicant is seeking relief from solely standards outlined in Section 4.14 Zoning District Dimensional Requirements; ten (10) feet setback for side yard in the RP, Residential Performance Zoning District.

ZONING ADMINISTRATOR'S CONCLUSION:

Herb Fannin, applicant on behalf of Gerald and Dora Batts Revocable Trust, owner, is requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14 Zoning District Dimensional Requirements; ten (10) feet setback for side yard in the RP, Residential Performance Zoning District.

3.14 VARIANCE

3.14.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.
- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.
- F. The Board of Adjustment may grant variances in the following special circumstances, as indicated in Section 3.14.7 of this Ordinance.

3.14.7 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
 - 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - 2) The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.
 - 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains (**results/does not 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. This conclusion is based on the following FINDINGS OF FACT:

2. It is the Board's CONCLUSION that, the hardship (**results/does not result**) from conditions that are peculiar to the property, such as location, size, 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. This conclusion is based on the following FINDINGS OF FACT:

3. It is the Board's CONCLUSION that the hardship (**results/did not result**) from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT:

4. It is the Board's CONCLUSION that, the requested variance is (**consistent/ not consistent**) with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on all of the FINDINGS OF FACT:

Board Action:

Motion: _____ Seconded: _____

Approved: _____ Denied: _____ Unanimous: _____

Ferrante: _____ Pullen: _____ Newton: _____ Thompson: _____ Walton: _____

Alternates:

Godridge: _____ Peters: _____

4.14 ZONING DISTRICT DIMENSIONAL REQUIREMENTS

Dimensional Requirements Table

Dimensional Standards ⁽⁹⁾	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Lot Size	1 Acre ⁽⁸⁾	15,000 ⁽⁵⁾ Sq. Ft.	(1)	(7)	15,000 Sq. Ft. ⁽⁸⁾	15,000 Sq. Ft.	1 Acre	1 Acre	(1)	1 Acre
Lot Size Duplex	60,000 Sq. Ft.	22,000 Sq. Ft.	(1)						(1)	
Min. Area Rezoning(3)	NA	5 Acres	10 Acres	5 Acres	1 Acre	1 Acre	5 Acres	5 Acres	100 acres	NA
Min. Lot Width-Ft	100 ⁽⁸⁾	80 ⁽⁶⁾	(1)	(7)	80 ⁽⁸⁾	80	100	100	(1)	100
Min. Chord Length at ROW line for "cul de sac's"	45	30	(1)	20	30	30	45	45	(1)	45
Min. Front Yd.-Ft.	30 ⁽⁸⁾	30	(1)	(7)	25 ⁽⁸⁾	25	40	50	(1)	50
Min. Side Yard-Ft	15 ⁽⁸⁾	10	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Min. Corner Yard Ft (10)	15	15	(1)	(7)	12	12	20	25	(1)	25
Min. Rear Yard-Ft	30 ⁽⁸⁾	25	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Max. Height-Ft	35 ⁽²⁾	35 ⁽²⁾	45	35	40	40	50	50	(1)	40
Min. Req. Structure Separation	40 ⁽⁸⁾	30	(1)		50 ⁽⁸⁾	50	(11)	(11)	(1)	30

- (1) Dimensional standards in the Planned Development (PD) and Residential Mixed (RM) Districts are required to be specified on a Master Development Plan.
- (2) Maximum Height requirements in the RA, RP, RM and PD Zoning Districts shall be allowed an additional 10' feet if located within any Special Flood Hazard Area (SFHA) at the calculation of five (5) additional feet in building height per every two (2) feet built above the regulatory flood prevention protection elevation, as defined in the Pender County Flood Damage Prevention Ordinance with building height at a maximum of forty-five (45) feet.
- (3) Any parcel of property meeting the guidelines set forth in Sections 3.3 or 3.4 that adjoins an established zoning district that is identical to the district that is applying for a rezoning shall not have to meet the minimum area requirements for rezoning for that district.
- (4) The minimum required separation standards are for principal or primary structures, accessory structures must follow separation and setback requirements as outlined in Sections 4.6.3 and 5.3.3.A.
- (5) Minimum lot sizes in the RP zoning district may be reduced to twelve thousand (12,000) square feet with the evidence of public utilities (water and sewer) availability and connection is demonstrated.
- (6) Minimum lot width in the RP zoning district may be reduced to sixty (60) feet with the evidence of public utilities (water and sewer) availability and connection is demonstrated.
- (7) Dimensional requirements for a Manufactured Home District may be found in Section 5.3.2.D, Manufactured Home Community.
- (8) Dimensional requirements for a Recreational Vehicle Park may be found in Section 5.3.9.B, Recreational Vehicle Park.
- (9) Variations to Dimensional Standards are allowed for projects meeting LID Project Criteria, as overviewed in Section 7.14, Low Impact Development.
- (10) See Figure 4.1
- (11) North Carolina Building Regulations Apply

Exhibit 1

NEW HANOVER COUNTY NORTH CAROLINA
 I, JOHN BENSON, certify that this map was drawn from an actual
 made by me, that the error of closure as calculated by latitudes
 and departures is 1:10,000. That this map is prepared in accor-
 dance with G.S. 47-30 as amended.

Witness my hand and seal this 2nd day of
 October, 1973.

John Benson
 John Benson, Registered Land Surveyor
 N.C. Registration # L1217
 212 LOUEN AVE.
 WILMINGTON, N.C.

Sworn to and signed before me this 2nd day of October, 1973

John H. Bessie
 Notary Public
 My Commission Expires A. A. 1977

STATE OF NORTH CAROLINA PENDER COUNTY
 The foregoing certificate of ESTHER DORSETT, Notary Public of
 NEW HANOVER COUNTY, is certified to be correct this the
 1st day of _____ A.D. 1973.

Hugh Ovensstreet
 HUGH OVENSSTREET
 Register of Deeds

CERTIFICATE OF REGISTRATION BY REGISTER OF DEEDS
 NORTH CAROLINA PENDER COUNTY
 Filed for Registration on the 1st day of _____ 1973,
 at 3:14 AM/PM and duly recorded in Map Book 12
 at PAGE 45

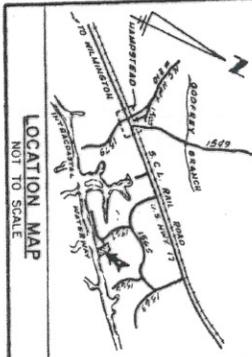
SECTION ONE
HIDEAWAY SHORES

DEVELOPED BY
B. R. DORSETT CONSTRUCTION COMPANY
 A PORTION OF OLD R.E. HUGHES TRACT
 TOPSAIL TOWNSHIP PENDER COUNTY
 NORTH CAROLINA
 AUGUST 1973

SCALE: 1" = 100'



John A. Benson, Jr.
 JOHN A. BENSON, JR.
 N.C. REGISTERED LAND SURVEYOR # L1217
 WILMINGTON, N.C.



- LEGEND**
- Ⓐ - BLOCK NUMBER
 - 7 - LOT NUMBER
 - - CONCRETE MONUMENT
 - - OLD IRON PIPE UNLESS OTHER- WIRE NOTED

- NOTES**
- 1 Lots 1 thru 10, Block A, extend Southeastwardly to the Low Water Line of Topsail Sound.
 - 2 All Street Right Of Ways are 60.00' in width unless otherwise noted.
 - 3 Rods on all Cur-De-Studs are 5000' unless otherwise noted.

CURVE DATA

CURVE #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Δ	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'	300.0'
R	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'
T	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°	141.42°
L	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'	150.0'



MA 12-45

0 25 50 100 Feet

H. 10

AVILA AV

Exhibit 2



M. J. Z...



APPLICATION FOR VARIANCE

pre. App conf. 9/9/14

THIS SECTION FOR OFFICE USE

Application No. VA 11271	Date 9/23/2014
Application Fee \$ 250	Receipt No. 142359

SECTION 1: APPLICANT INFORMATION

Applicant's Name: Herb FANNIN	Owner's Name: DORANNA BATTIS
Applicant's Address: 1714 Little CR. CH. Rd	Owner's Address: 118 INLET CT.
City, State, & Zip: CLAYTON NC 27520	City, State, & Zip: HAMPSTAD N.C. 28443
Phone Number: 919-669-8511	Phone Number: 910-270-4899
Legal relationship of applicant to land owner: Relative	

SECTION 2: PROJECT INFORMATION

Property Identification Number (PIN): 4203-71-7061	Total property acreage: .74
Zoning Classification: RP	Variance Size: 6 FT.
Variance Location & Address: 118 INLET CT	
Describe Variance and amount or type requested: 6 FT Side YARD SET BACK	

SECTION 3: SIGNATURES

Applicant's Signature: Herbert Fannin	Date: 9-23-2014
Owner's Signature: Dora A. Batts	Date: 9-23-2014

NOTICE TO APPLICANT:

1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.
2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.
3. An application for a variance shall be submitted in accordance with application requirements.
4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.
5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.
6. Applicant must also submit the information described in the Variance Checklist provided below.
7. Applicant or agent authorized in writing must attend the public hearing.
8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.

OFFICE USE ONLY

<input checked="" type="checkbox"/> VA Fees \$250	Total Fee Calculation \$
Payment Method: <input type="checkbox"/> Cash \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa
	Check: <input checked="" type="checkbox"/> Check # 5771
Application received by: Megan O'Hare	Date: 9/23/2014
Application completeness approved by: Megan O'Hare	Date: 9/23/2014
Date scheduled for public hearing: November 19, 2014	

Planning & Community Development
PENDER COUNTY, North Carolina

805 S. Walker St.
Burgaw, NC 28425

Planning and Zoning
910-259-1202



MISC. CREDIT / DEBIT - RECEIPT

142359

Job Property Address :

Owner Name & Address:

NC 00000 - 0000

Contractor Name & Address:

CO#:

00000 - 0000

Purpose: VARIANCE FOR NOV 19

Attached to Permit # :

ISSUED BY	AMOUNT	CHECK #	TRANS DATE
LK12	250.00	5771	09232014

.....
SIGNATURE: _____

Date: _____, 20____

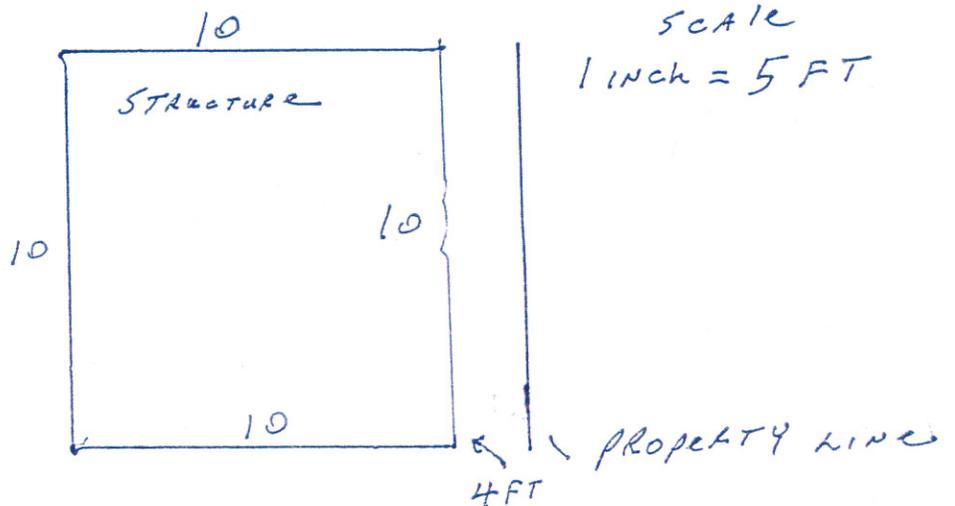
BOARD OF ADJUSTMENTS

TO PENDER COUNTY

REF- DORAANNA BATT'S
118 INLET CT.
HAMPSTAD N.C 28443

1. THE SAID PROPERTY HAS A STEEP SLOPE BANK WHICH A PORTION OF IT HAS ERODED AWAY DUE TO IMPROPER DRAINAGE
2. BECAUSE OF THE SLIP IN EMBANKMENT IT WAS NECESSARY TO BUILD A RETAINING WALL 10 FT WIDE AND 8 FT. HIGH TO PREVENT FURTHER DAMAGE
3. THE SLIP IN EMBANKMENT WAS CAUSED BY HEAVY RAIN'S
4. IT WAS NECESSARY BUILD RETAINING WALL AND STRUCTURE TO PREVENT OTHER DAMAGE TO PROPERTY AND TO MAKE IT SAFE FOR PEOPLE, KID'S

Hub Fanni
919-669-8511



TO - PENDER COUNTY

REF. DORANNA BATTIS
118 INLET CT
HAMPSTAD N.C. 28443

REF - STRUCTURE DETAIL

1. 10FT BY 10FT STRUCTURE
2. RETAINING WALL 10FT WIDE 8FT TALL
MADE OF 6X6'S 3FT. IN DEPTH IN CONCRETE
2X8 BOARD'S NAILED SOLID TO BACK OF WALL & SCREWED
3. STRUCTURE HAS 2X8 FLOOR JOIST ON 16 O.C.
4. $\frac{5}{8}$ DECKING BOARD'S FOR FLOOR
5. SIDE RAILS 2X4'S WITH $\frac{5}{8}$ DECKING BOARD'S
6. TOP OF RAIL 2X10
7. 4X4 POST WITH 2X6 BAND BOARD'S WITH
A $\frac{3}{4}$ FACIAL BOARD
8. 4-2X6 RAFTER'S WITH $\frac{3}{4}$ BOARD'S NAILED & SCREWED
TO TOP OF 2X6 RAFTER'S TO KEEP FROM
TWISTING

NOTE - COMPLETE STRUCTURE IS NAILED & SCREWED
TOGETHER

Ref Fanni
919-669-8511

STRUCTURE IS APPROX 10 FT BY 10 FT WITH OPEN TOP
6 FT OF STRUCTURE COVERS SLIP IN HILLSIDE THAT HAS
BEEN FILLED WITH APPROX 10 TONS OF RIF-RAFF ROCK
BACK OF STRUCTURE IS ATTACHED TO A 10 FT WIDE RE-TAINING WALL
FRONT OF STRUCTURE IS TIED INTO 3 - 6x6 POST ANCHORED IN-
CEMENT APPROX 3 FT IN DEPTH

CONST. OF STRUCTURE

1. 2x8 FLOOR JOIST ON 16 INCH CENTRE'S
2. $\frac{5}{4}$ DECKING BOARD'S
3. $\frac{5}{4}$ DECKING BOARD'S USED FOR RAILING
4. 4x4 POST WITH A 2x6 BAWD BOARD & 1x8 FACIAL BOARD ATTACHED

NOTE - COMPLETE STRUCTURE IS SCREWED TOGETHER
HERE IS ALSO STON'S OF ROCK BEHIND RE-TAINING WALL

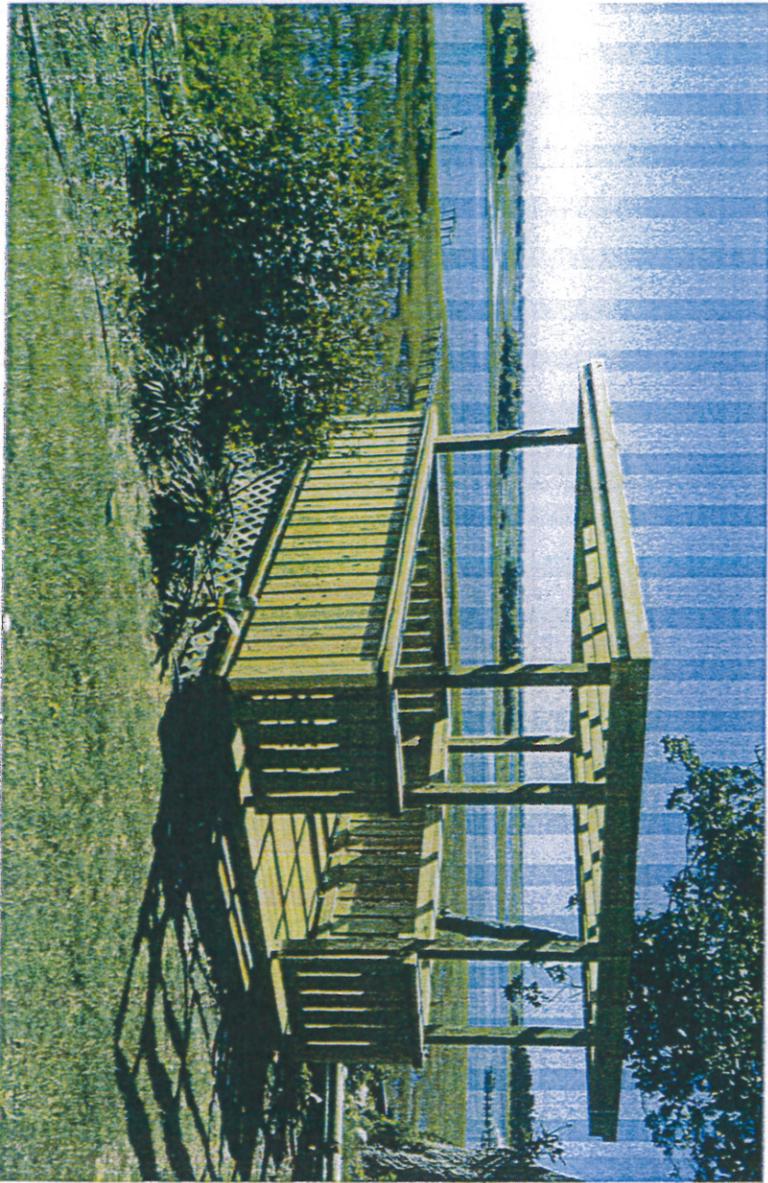


REASON FOR CONSTRUCTION

NEIGHBOR HAS A LARGE DITCH
APPROX 3 FT IN DEPTH - 20 FT IN
LENGTH

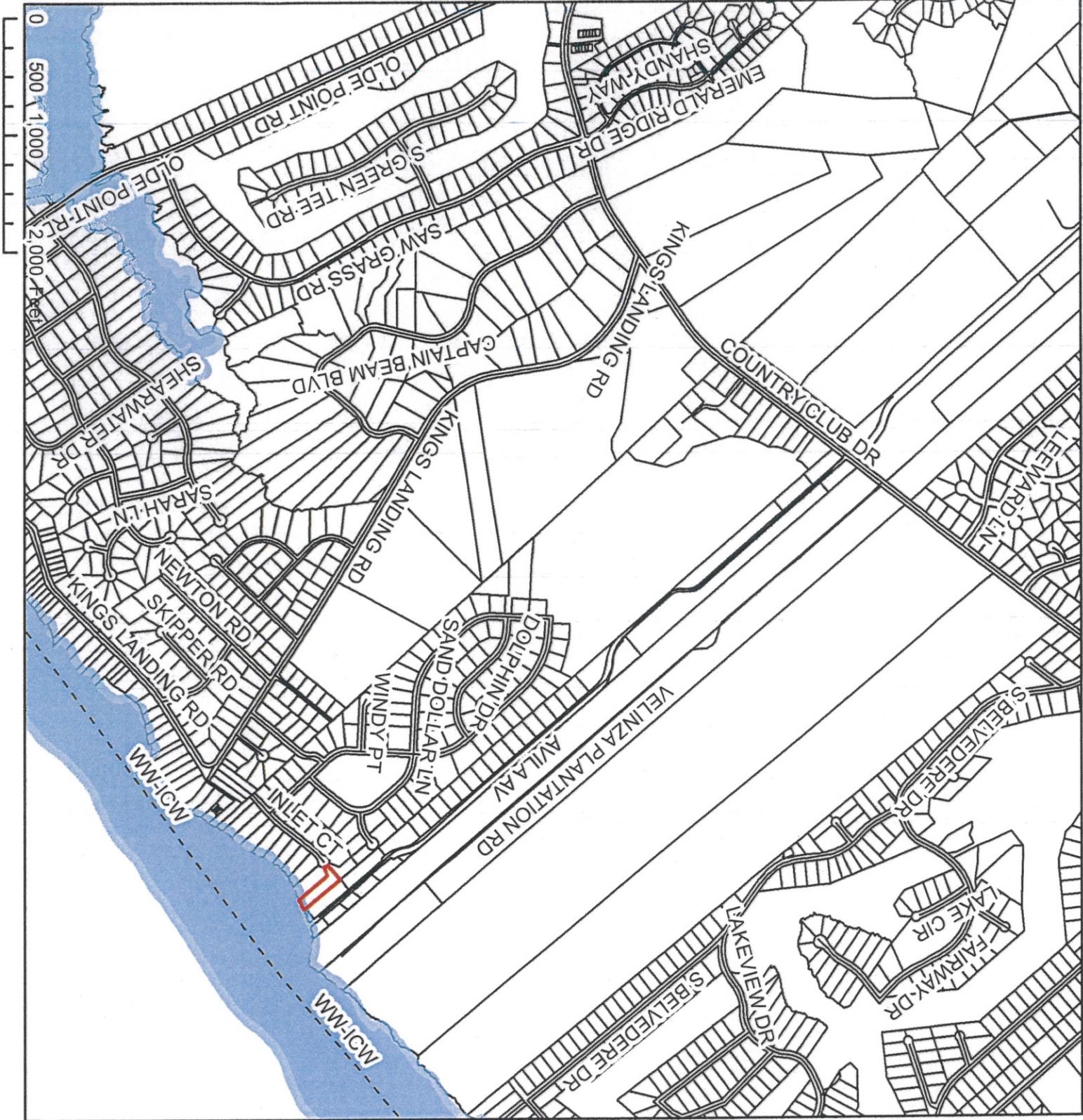
WATER WORKED IT'S WAY THRU
GRAVEL FROM DITCH AND
LOOSENED MRS. BATT'S HILL SIDE

WHEN SQUARING UP HILLSIDE
FOR RE-TAINING WALL'S LARGE
HOLE'S FROM NEIGHBOR'S SIDE
WAS FOUND WHERE WATER
CAME THRU IN WHICH CAUSED
THE PROBLEM ALSO HE HAS
A LARGE TREE LEANING WITH
ON THE



Leaving Tree with
exposed roots





Variance
#11271

Applicant:
Herb Fanin

Owner:
Gerald and Dora Batts
Revocable Trust

Legend
 Subject Property



VICINITY



Variance
#11271

Applicant:
Herb Fanin

Owner:
Gerald and Dora Batts
Revocable Trust

Legend

 Subject Property

UDO Zoning

-  GB, General Business
-  O&I, Office & Institutional
-  PD, Planned Development
-  RA, Rural Agricultural
-  RP, Residential Performance



CURRENT ZONING





Variance
#11271

Applicant:
Herb Fanin

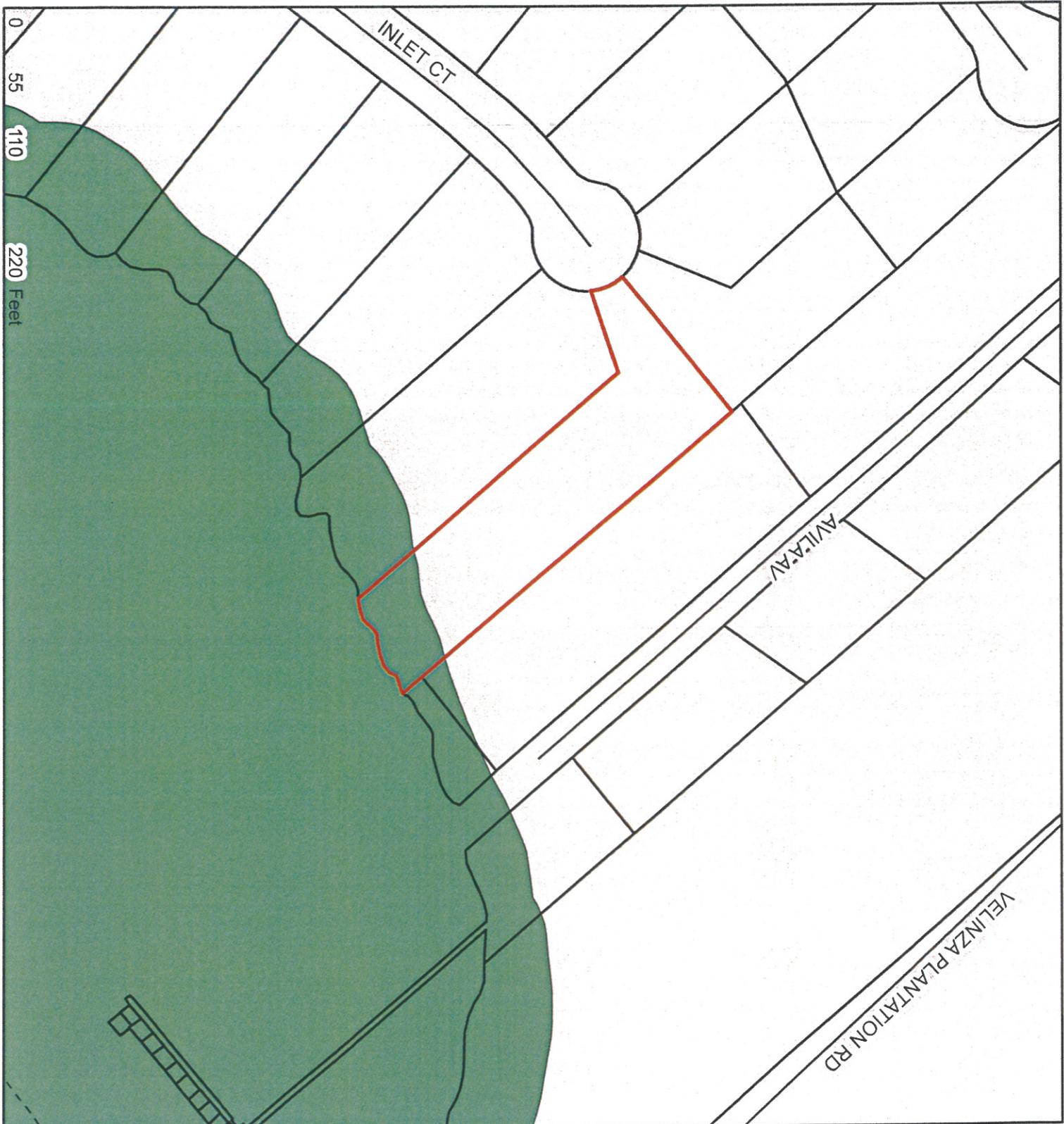
Owner:
Gerald and Dora Batts
Revocable Trust

Legend

 Subject Property



2012 AERIAL



Variance
#11271

Applicant:
Herb Fanin

Owner:
Gerald and Dora Batts
Revocable Trust

Legend

-  Subject Property
-  Conservation
-  Industrial
-  Mixed Use
-  Rural Growth
-  Suburban Growth



FUTURE LAND USE



Variance
#11271

Applicant:
Herb Fanin

Owner:
Gerald and Dora Batts
Revocable Trust

Legend

 Subject Property

 CAMA Buffers



DCM CAMA Boundary

PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: November 19, 2014
Applicant: Gerald and Jane Kopecky
Property Owner: Gerald J. Kopecky et. al.
Case Number: 11273

Property Location and Description: The subject property, Tract 1 of Section 14 in Mallard Bay Residential Subdivision, Map Book 18, Page 12 (Exhibit 1), is located on Drake Road (SR 1692) in the Topsail Township. There is one (1) tract associated with this request totaling \pm 0.56 acres and the property may be identified by Pender County PIN 4213-16-8199-0000.

Zoning District of Property: The property is zoned RP, Residential Performance Zoning District.

Variance Requested: Gerald and Jane Kopecky, applicant and owners, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requesting a variance for ten (10) feet from the minimum side yard setback requirement of ten (10) feet in the RP, Residential Performance Zoning District.

BACKGROUND AND DESCRIPTION OF VARIANCE:

On August 28, 2014 Planning Staff received a site plan submittal for a CAMA permit (PC 2014-09) for the adjacent property to the northeast (Exhibit 2).

After contacting the applicant and owners, Gerald and Jane Kopecky, it was determined this 8' x 12' garden shed was erected over the property line on the adjacent property by \pm 1.9 feet in error. The submitted site plan shows a structure over the property line by \pm 1.9 feet (Exhibit 3).

The applicant and the adjacent property owners (Paul and Carla Wolff) do have a recorded encroachment agreement for the structure (Exhibit 4). However, this agreement does not exempt the property owners from Pender County zoning regulations which necessitate structures be built at least with a ten (10) foot side yard setback in the RP, Residential Performance Zoning District.

As the structure is slightly on the adjacent property by \pm 1.9 feet, the required ten (10) feet setback in the RP, Residential Performance zoning district, per Section 4.14 Zoning District Dimensional Requirements, is not met. Therefore, the applicant is requesting a variance for ten (10) feet in total in order to keep the building where it is currently located.

If a variance is granted by the Board of Adjustment; the applicant must still meet all criteria outlined in the North Carolina Building Code for the structure. At current the applicant is seeking relief from solely standards outlined in Section 4.14 Zoning District Dimensional Requirements; ten (10) feet setback for side yard in the RP, Residential Performance Zoning District.

ZONING ADMINISTRATOR'S CONCLUSION:

Gerald and Jane Kopecky, applicant and owners, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requesting a variance for ten (10) feet from the minimum side yard setback to meet the requirement of ten (10) feet in the RP, Residential Performance Zoning District.

3.14 VARIANCE

3.14.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.
- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.
- F. The Board of Adjustment may grant variances in the following special circumstances, as indicated in Section 3.14.7 of this Ordinance.

3.14.7 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
 - 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - 2) The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.
 - 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains (**results/does not 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. This conclusion is based on the following FINDINGS OF FACT:

2. It is the Board's CONCLUSION that, the hardship (**results/does not result**) from conditions that are peculiar to the property, such as location, size, 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. This conclusion is based on the following FINDINGS OF FACT:

3. It is the Board's CONCLUSION that the hardship (**results/did not result**) from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT:

4. It is the Board's CONCLUSION that, the requested variance is (**consistent/ not consistent**) with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on all of the FINDINGS OF FACT:

Board Action:

Motion: _____ Seconded: _____

Approved: _____ Denied: _____ Unanimous: _____

Ferrante: _____ Pullen: _____ Newton: _____ Thompson: _____ Walton: _____

Alternates:

Godridge: _____ Peters: _____

4.14 ZONING DISTRICT DIMENSIONAL REQUIREMENTS

Dimensional Requirements Table

Dimensional Standards ⁽⁹⁾	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Lot Size	1 Acre ⁽⁸⁾	15,000 ⁽⁵⁾ Sq. Ft.	(1)	(7)	15,000 Sq. Ft. ⁽⁸⁾	15,000 Sq. Ft.	1 Acre	1 Acre	(1)	1 Acre
Lot Size Duplex	60,000 Sq. Ft.	22,000 Sq. Ft.	(1)						(1)	
Min. Area Rezoning(3)	NA	5 Acres	10 Acres	5 Acres	1 Acre	1 Acre	5 Acres	5 Acres	100 acres	NA
Min. Lot Width-Ft	100 ⁽⁸⁾	80 ⁽⁶⁾	(1)	(7)	80 ⁽⁸⁾	80	100	100	(1)	100
Min. Chord Length at ROW line for "cul de sac's"	45	30	(1)	20	30	30	45	45	(1)	45
Min. Front Yd.-Ft.	30 ⁽⁸⁾	30	(1)	(7)	25 ⁽⁸⁾	25	40	50	(1)	50
Min. Side Yard-Ft	15 ⁽⁸⁾	10	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Min. Corner Yard Ft (10)	15	15	(1)	(7)	12	12	20	25	(1)	25
Min. Rear Yard-Ft	30 ⁽⁸⁾	25	(1)	(7)	10 ⁽⁸⁾	10	25	25	(1)	25
Max. Height-Ft	35 ⁽²⁾	35 ⁽²⁾	45	35	40	40	50	50	(1)	40
Min. Req. Structure Separation	40 ⁽⁸⁾	30	(1)		50 ⁽⁸⁾	50	(11)	(11)	(1)	30

- (1) Dimensional standards in the Planned Development (PD) and Residential Mixed (RM) Districts are required to be specified on a Master Development Plan.
- (2) Maximum Height requirements in the RA, RP, RM and PD Zoning Districts shall be allowed an additional 10' feet if located within any Special Flood Hazard Area (SFHA) at the calculation of five (5) additional feet in building height per every two (2) feet built above the regulatory flood prevention protection elevation, as defined in the Pender County Flood Damage Prevention Ordinance with building height at a maximum of forty-five (45) feet.
- (3) Any parcel of property meeting the guidelines set forth in Sections 3.3 or 3.4 that adjoins an established zoning district that is identical to the district that is applying for a rezoning shall not have to meet the minimum area requirements for rezoning for that district.
- (4) The minimum required separation standards are for principal or primary structures, accessory structures must follow separation and setback requirements as outlined in Sections 4.6.3 and 5.3.3.A.
- (5) Minimum lot sizes in the RP zoning district may be reduced to twelve thousand (12,000) square feet with the evidence of public utilities (water and sewer) availability and connection is demonstrated.
- (6) Minimum lot width in the RP zoning district may be reduced to sixty (60) feet with the evidence of public utilities (water and sewer) availability and connection is demonstrated.
- (7) Dimensional requirements for a Manufactured Home District may be found in Section 5.3.2.D, Manufactured Home Community.
- (8) Dimensional requirements for a Recreational Vehicle Park may be found in Section 5.3.9.B, Recreational Vehicle Park.
- (9) Variations to Dimensional Standards are allowed for projects meeting LID Project Criteria, as overviewed in Section 7.14, Low Impact Development.
- (10) See Figure 4.1
- (11) North Carolina Building Regulations Apply

APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
Application No.	VA 11273	Date	10/2/2014
Application Fee	\$ 250	Receipt No.	142433
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	GERALD + JANE Kopecky	Owner's Name:	Same
Applicant's Address:	112 DRake RD.	Owner's Address:	↓
City, State, & Zip	Hampstead, NC 28443	City, State, & Zip	
Phone Number:	910-319-0188	Phone Number:	
Legal relationship of applicant to land owner:			
SECTION 2: PROJECT INFORMATION			
Property Identification Number (PIN):	4213-16-8199	Total property acreage:	.56
Zoning Classification:	RP	Variance Size:	10 feet
Variance Location & Address	112 DRake RD. Hampstead, NC 28443		
Describe Variance and amount or type requested:	Seeking a 10' Variance for garden shed, positioned on property line.		
SECTION 3: SIGNATURES			
Applicant's Signature	<i>[Signature]</i>	Date:	10/2/14
Owner's Signature	<i>[Signature]</i>	Date:	10/2/14
NOTICE TO APPLICANT:			
<ol style="list-style-type: none"> 1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements. 2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval. 3. An application for a variance shall be submitted in accordance with application requirements. 4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage. 5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues. 6. Applicant must also submit the information described in the Variance Checklist provided below. 7. Applicant or agent authorized in writing must attend the public hearing. 8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing. 			
OFFICE USE ONLY			
<input type="checkbox"/> VA Fees \$250		Total Fee Calculation \$	
Payment Method :	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # 5710
Application received by:	<i>[Signature]</i>		Date: 10/2/2014
Application completeness approved by:	<i>[Signature]</i>		Date: 10/16/2014
Date scheduled for public hearing:	Nov 19, 2014		

**Planning & Community Development
PENDER COUNTY, North Carolina**

805 S. Walker St.
Burgaw, NC 28425

Planning and Zoning
910-259-1202



MISC. CREDIT / DEBIT - RECEIPT
142433

Job Property Address :

Owner Name & Address: KOPECKY GERALD
112 DRAKE RD.
HAMPSTEAD NC 28443 - 0000

Contractor Name & Address:

CO#: 00000 - 0000

Purpose: VARIANCE APP FEE

Attached to Permit # :

ISSUED BY	AMOUNT	CHECK #	TRANS DATE
AC92	250.00	5710	10022014

SIGNATURE: _____

Date: 10/2/14

To: Pender County Planning and Community Development

Re: Variance Application

Date: 10/2/14

Gerald and Jane Kopecky who reside at 112 Drake Rd., Hampstead, NC 28443 are seeking a set back variance of 10 feet for a 8' x 12' garden shed, which was placed along the property line.

1. The structure (shed) in question is positioned in the only location on the lot that is suitable. The rear of the property is a steep embankment that ends at the canal's edge. The structure is 13 feet from the foundation of the main dwelling. Our property line is approximately 20 feet from the corner of the dwelling.

2. It's impossible to relocate the shed based on the topographical limitations of the property. The septic tank and field runs parallel with the driveway (in the front of the house) 75', making it impossible to put anything on the other side of the house. Additionally the same set back limitations apply to both sides of the property.
See attached property map.

3. The shed was installed approx. 1 1/2 years ago, just prior to moving into the home full time. We placed the shed using the existing property stakes the previous owner had on the property while it was listed for sale. After the lot sold a few months ago, the new survey revealed the property line that we used was not accurate by several feet and the shed is over the property line 1.9'.
We immediately sought out our new neighbor to discuss what should be done and they adamantly stated that the shed was not a problem for them and had their attorney draw up an agreement stating the shed could remain and filed it with their deed.
See attached agreement.

4. Our shed was professionally built to code and installed by Roger Manufacturing, anchored with hurricane straps. Additionally, in cooperation with our new neighbors, The Wolff's, we have just completed extensive landscaping to establish an attractive border on our shared property line, which includes the shed. This shed does not pose any safety issue or (eye sore) to our community.
See attached letter from Paul and Carla Wolff.

Paul & Carla Wolff
Lot 1, Section G Mallard Bay Subdivision
Hampstead, NC 28443
September 29, 2014

To Whom It May Concern,

This letter is to provide support for a variance request on behalf of our neighbors, Gerry & Jane Kopecky.

We purchased our lot next to their property in early 2014. Subsequently, a survey revealed that a shed and driveway unintentionally built on their property was beyond the required setback and had encroached on our property (a prior survey was not correct). We agreed at that time that this encroachment would in no way impact our building plans or our use and enjoyment of our property. On the advice of our attorney, at the time of closing on our purchase of this lot, we obtained a written acknowledgement of this encroachment from the Kopecky's in order to assure that the encroached area would always remain our property. This agreement was filed with our deed.

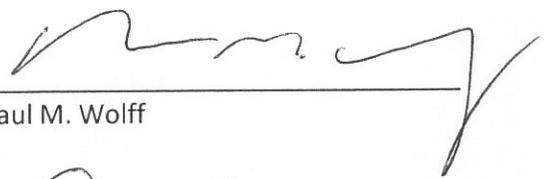
Since purchasing our lot, we have worked together with the Kopecky's on planning and installation of fencing and landscaping within the area along the correct property lines. They have already spent a considerable amount to insure the result is both aesthetically pleasing and acceptable to us, and we could not be more pleased with the result.

We are extremely fortunate to have such good neighbors who are so willing to cooperate and correct an issue that was no fault of their own. We feel very strongly that no further remediation is desired or necessary, and request this variance is approved on their behalf.

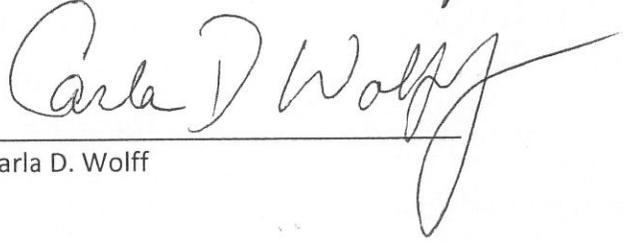
Please feel free to contact us directly at 910.554.0775 if you have any additional questions or concerns.

Thank you kindly for your attention to this matter.

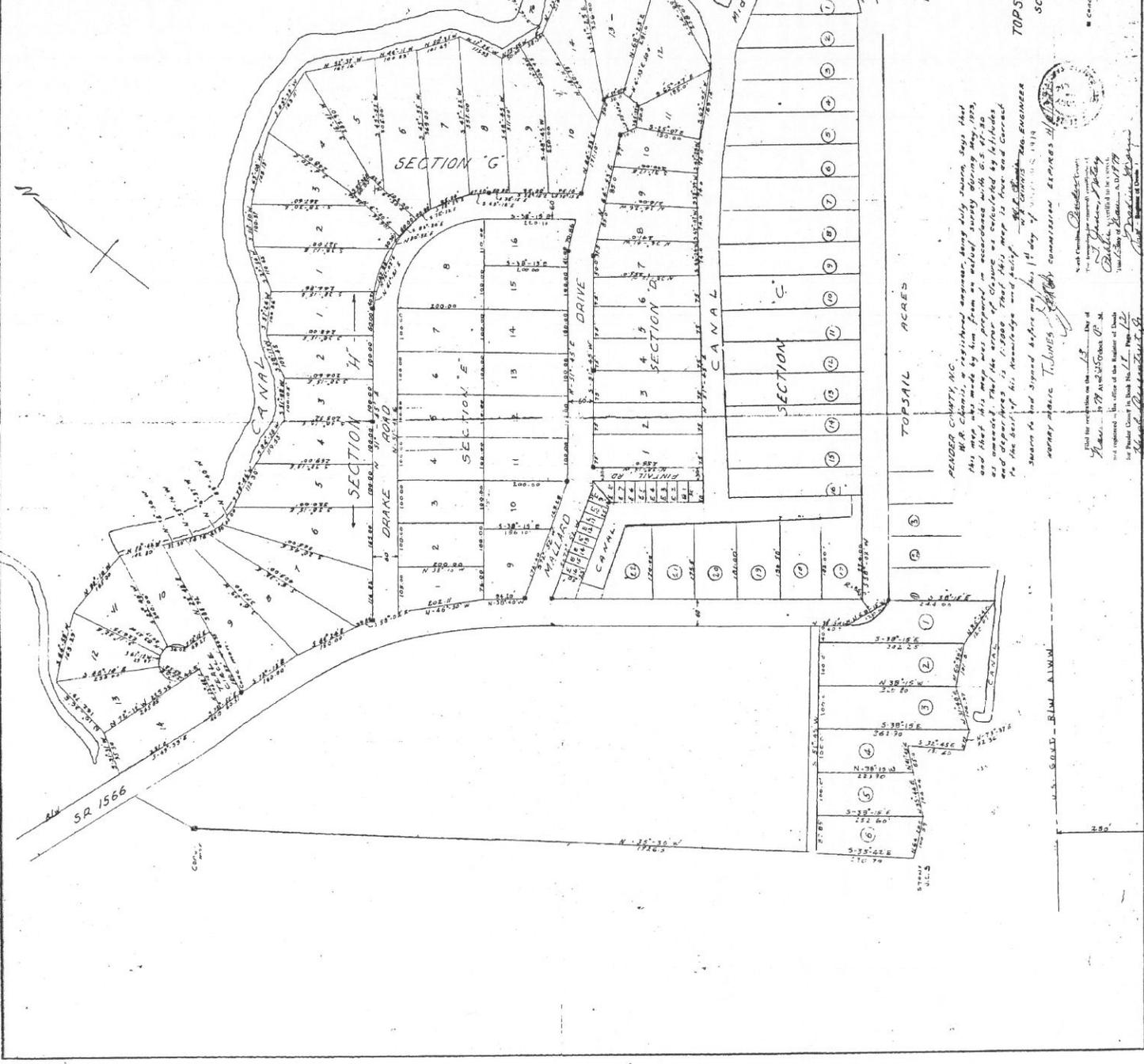
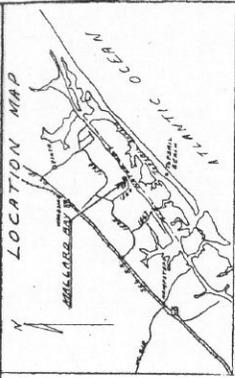
Best regards,



Paul M. Wolff



Carla D. Wolff



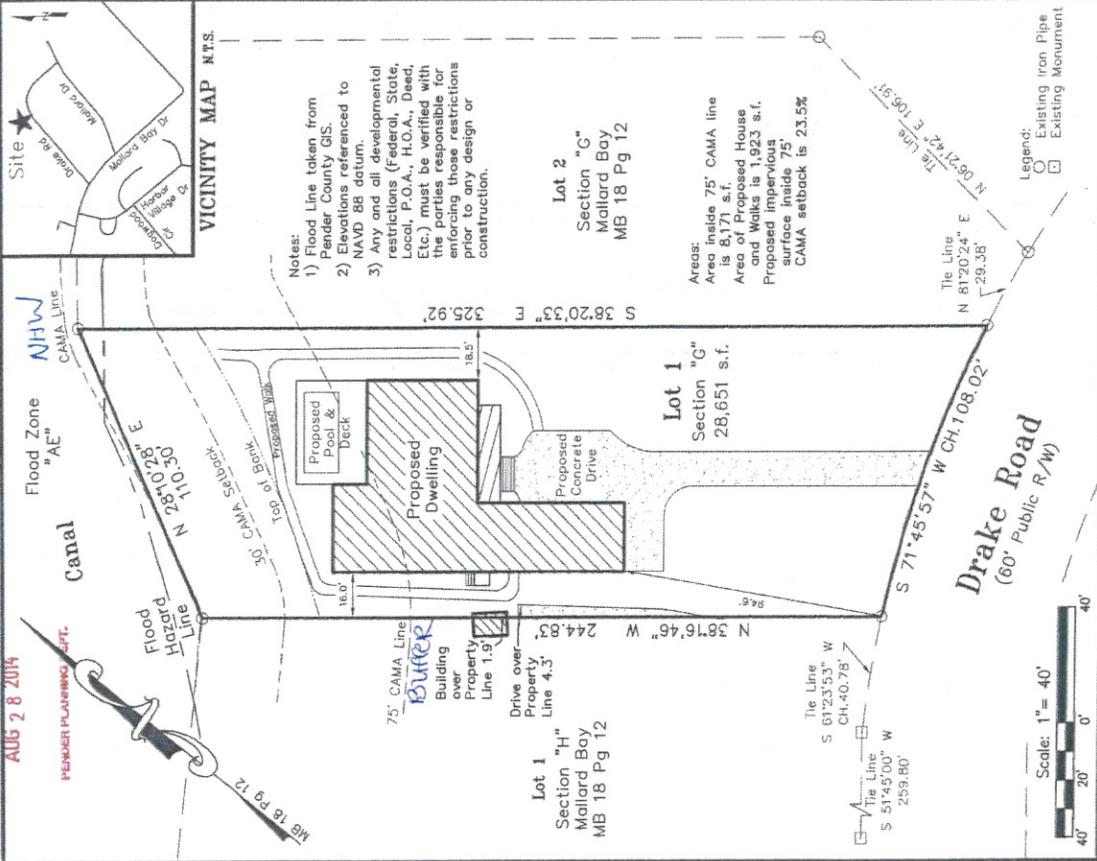
MALLARD BAY
SECTIONS G & H
TOPSAIL DEVELOPMENT COMPANY
SCALE - 1" = 100'
MAY 14, 1973
WM. R. CHINNIS, P.E.

PLANNED COUNTY, NC.
W.R. CHINNIS, Registered Engineer, being duly sworn, says that this map was made by him from an actual survey during May, 1973, and that this map was prepared in accordance with G.S. 17-30 as amended. That the error of closure as calculated by latitude and departure is 1.2000 feet, which is less than one-tenth of one percent of the bearing and distance.
Sworn to and signed before me this 14th day of May, 1973, at the County Office in the County of Wayne, North Carolina.
WALTER J. JONES, Notary Public, State of North Carolina



Notary Public
WALTER J. JONES
Notary Public, State of North Carolina
My Commission Expires 11/11/77
1000 Liberty Street, Raleigh, N.C. 27601

SITE PLAN



Notes:

- 1) Flood Line taken from Pender County GIS.
- 2) Elevations referenced to NAVD 88 datum.
- 3) Any and all developmental restrictions (Federal, State, Local, P.O.A., H.O.A., Deed, Etc.) must be verified with the parties responsible for enforcing those restrictions prior to any design or construction.

Areas:
 Area inside 75' CAMA line is 6,171 s.f.
 Area of Proposed House and Walk is 1,923 s.f.
 Proposed Impervious Surface inside 75' CAMA setback is 23.5%

Legend:
 Existing Iron Pipe
 Existing Monument

Scale: 1" = 40'

Scale: 40' 20' 0'

VICINITY MAP N.T.S.

Site

Mallard Bay Dr
 Harbor Village Dr
 40' Road R/W

RECEIVED
AUG 28 2014
PENDER PLANNING DEPT.

PROFESSIONAL SEAL
 NORTH CAROLINA
 LAND SURVEYOR
 PAUL D. TALBOT
 L-4099

I, Paul D. Talbot, do certify that this actual survey and map was performed and drawn under my supervision in accordance with "The Standards of Practice for Land Surveying in North Carolina" witness my original signature, license number and seal.

Paul D. Talbot, P.L.S. L-4099

Talbot Land Surveying, P.C.
 16747 U.S. Hwy 17, Suite 106
 Hampstead, North Carolina 28443
 Firm License C-2722
 Phone: (910) 270-9824 Fax: (910) 270-9826

SURVEY FOR:
 Paul & Carla Wolff
 Drake Road
 Lot 1, Section "G"
 Mallard Bay Subdivision
 Topsail Township, Pender County, NC

Date: August 27, 2014

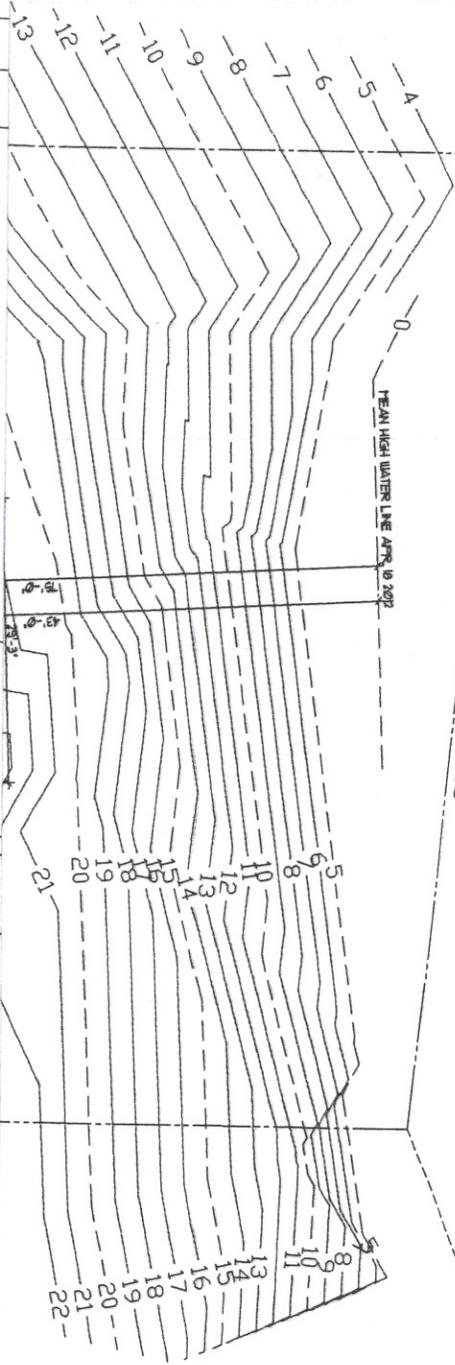
Survey Reference:
 Deed Book 686 Page 259
 Map Book 18 Page 12

A portion of this property is located within a Special Flood Hazard Area.

Project #: 1429 Map Name: 1429_pp.dwg Drafter: AVA

N 56°55'42" E 101.23'

MEAN HIGH WATER LINE APR. 9, 2002



Control
 S 51°45' W
 60.0'
 S 51°45'00" W 59.88'
 (Reference Line)

S 61°21' W
 40.5'

112 Drake Road
 60' R/W (Public)



Site

REI
 AP
 BY: C
 BT

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 16

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STATE OF NORTH CAROLINA
COUNTY OF PENDER

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT entered into this 7th day of May, 2014, by and between PAUL M. WOLFF and wife, CARLA D. WOLFF, parties of the first part, hereinafter referred to as WOLFF, and GERALD J. KOPECKY and wife, JANE M. KOPECKY, party of the second part, hereinafter referred to as KOPECKY.

W I T N E S S E T H :

Whereas, WOLFF intends to purchase that property described as Lot 1, Section G, Mallard Bay Subdivision, as shown on that map recorded in Map Book 18, at Page 12, of the Pender County Registry; and

Whereas, KOPECKY is the owner of that property described as Lot 1, Section H, Mallard Bay Subdivision, as shown on that map recorded in Map Book 18 at Page 12 of the Pender County Registry; and

Whereas, as shown on the survey map attached hereto as Exhibit A, a building owned by KOPECKY primarily located on Lot 1, Section H, encroaches onto Lot 1, Section G, by a distance of as much as 1.9 feet; and

Whereas, as shown on the survey map attached hereto as Exhibit A, the driveway owned by KOPECKY primarily located on Lot 1, Section H, encroaches onto Lot 1, Section G, by a distance of as much as 4.3 feet; and

Whereas, WOLFF has agreed to allow the said building encroachment to continue to exist until such time as the encroaching building is demolished or falls down, or until the

✓ Returned to & Received
by Donald D. Bluestein

sale of either of the herein-described lots by their respective undersigned owners; and

Witness, SAFF has agreed to allow the said driveway encroachment to continue to exist until such time as the encroaching driveway is demolished or falls into disrepair, or until the sale of either of the herein-described lots by their respective undersigned owners.

NOT WITHSTANDING, in consideration of the agreements hereinbefore contained and other considerations, the value and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The building encroachment onto Lot 1, Section G, Mallard Bay Subdivision, as said lot is shown on that map recorded in Map Book 18, at Page 12, of the Pender County Registry, and as said encroachment is shown on the attached survey, may continue to exist until such time as the encroaching building is demolished or falls down, or until the sale of either of the herein-described lots by their respective undersigned owners. In the event that the building is destroyed, the parties agree that the building shall be rebuilt without encroaching onto Lot 1, Section G.

2. The driveway encroachment onto Lot 1, Section G, Mallard Bay Subdivision, as said lot is shown on that map recorded in Map Book 18, at Page 12, of the Pender County Registry, and as said encroachment is shown on the attached survey, may continue to exist until such time as the encroaching driveway is demolished or falls into disrepair, or until the sale of either of the herein-described lots by their respective undersigned owners. In the event that the driveway is destroyed, the parties agree that the driveway shall be rebuilt without encroaching onto Lot 1, Section G.

IN WITNESS WHEREOF, Paul M. Wolff, Carla D. Wolff, Gerald J. Kopecky and Jane M. Kopecky have hereunto set their hands and seals, this 7th day of May, 2014.

Paul M. Wolff (SEAL)
Paul M. Wolff

Carla D. Wolff (SEAL)
Carla D. Wolff

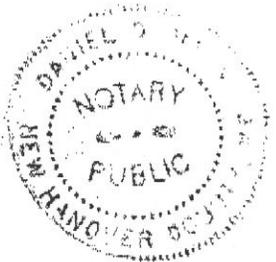
Gerald J. Kopecky (SEAL)
Gerald J. Kopecky

Jane M. Kopecky (SEAL)
Jane M. Kopecky

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid, certify that Paul M. Wolff and Carla D. Wolff personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 8th day of May, 2014.

My October 16, 2015 Commission Expires:
D. D. Mah Notary Public



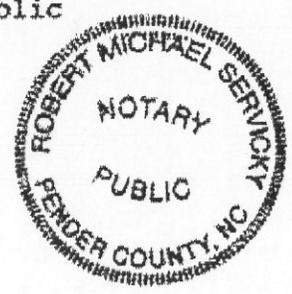
STATE OF NORTH CAROLINA
COUNTY OF PENDER

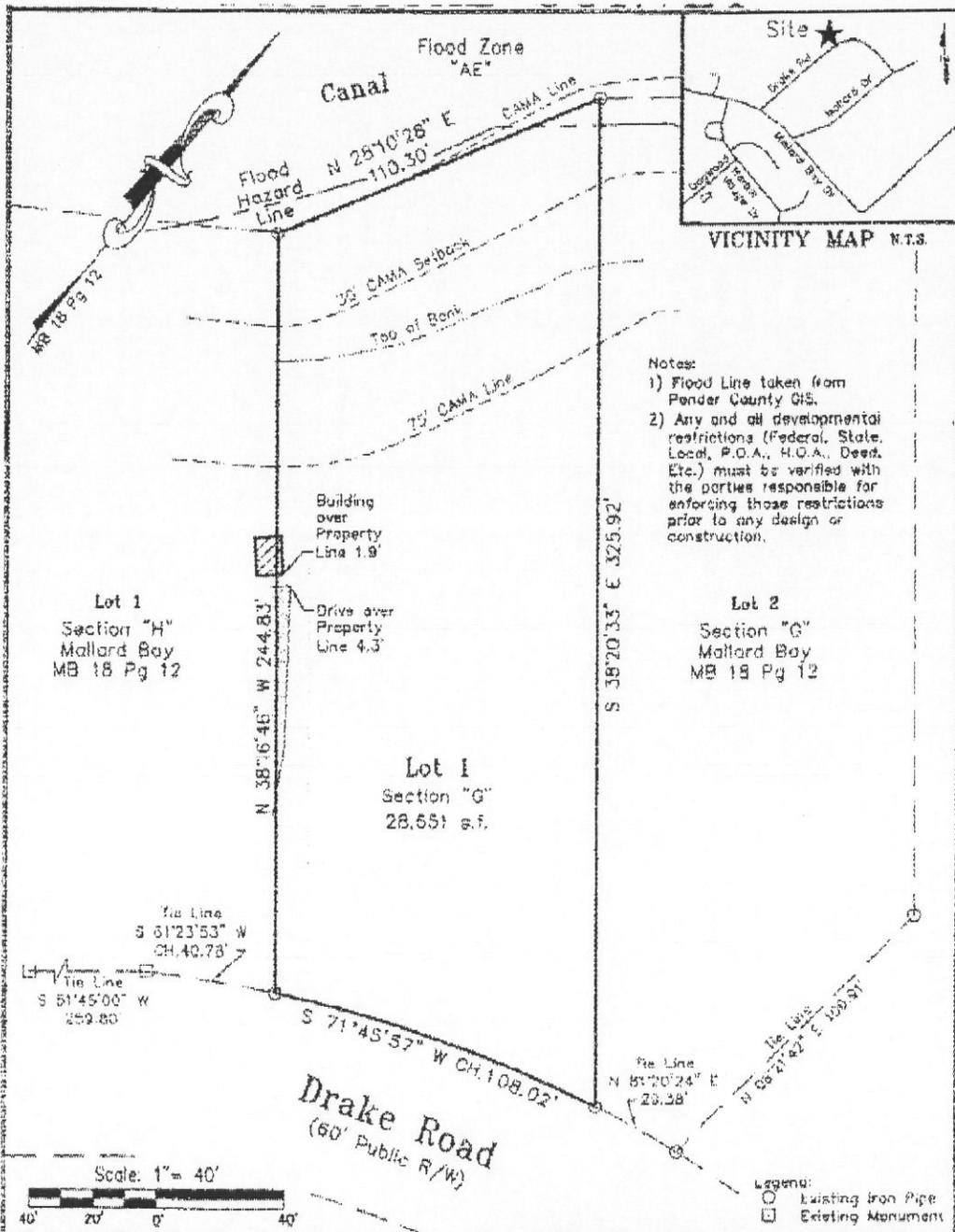
I, a Notary Public of the County and State aforesaid, certify

that Gerald J. Kopecky and Jane M. Kopecky personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 7th day of May, 2014. ✓

My Robert Michael Servick Commission
ROBERT MICHAEL SERVICKEY Notary Public

Expires: JUNE 27, 2015





Notes:
 1) Flood Line taken from Pender County GIS.
 2) Any and all developmental restrictions (Federal, State, Local, P.O.A., H.O.A., Deed, Etc.) must be verified with the parties responsible for enforcing those restrictions prior to any design or construction.

SURVEY FOR:
 Paul & Carla Wolff
 Drake Road
 Lot 1, Section "G"
 Mallard Bay Subdivision
 Topsail Township, Pender County, NC

Date: April 18, 2014

Survey Reference:
 Deed Book 585 Page 259
 Map Book 18 Page 12

A portion of this property is located within a Special Flood Hazard Area.

Project #: 1429 Map Name: 1429_BANDY.dwg Drafter: PDI

I, Paul D. Talbot, do certify that this actual survey and map was performed and drawn under my supervision in accordance with "The Standards of Practice for Land Surveying in North Carolina" witness my original signature, license number and seal.

Paul D. Talbot
 Paul D. Talbot, P.L.S. L-4099



Talbot Land Surveying, P.C.
 16747 U.S. Hwy 17, Suite 108
 Hampstead, North Carolina 28443
 Firm License C-2722
 Phone: (910) 270-9834 Fax: (910) 270-9826