



Pender County

Agenda

Board of Adjustment Meeting

Wednesday, August 16, 2023 @ 9:00 AM

Pender County Public Assembly Room 805 S. Walker
Street, Burgaw, NC 28425

	Presenter	Page
1. CALL TO ORDER		
2. ROLL CALL		
3. INVOCATION		
4. ADOPTION OF AGENDA		
5. ADOPTION OF MINUTES		
5.1. June 21, 2023, Meeting Minutes June 21, 2023 Minutes - Pdf		3 - 23
6. PUBLIC COMMENT		
7. APPEAL		
7.1. APPEAL 2023-11: Appeal of Administrative Decision APPEAL 2023-11 - Pdf		25 - 200
8. DISCUSSION ITEMS		
8.1. Amendments to the Rules of Procedure Amendments - Pdf		201 - 208
9. NEXT MEETING DATE		
10. ADJOURNMENT		



Pender County June 21, 2023, Meeting Minutes

TO: Board of Adjustment
FROM: Daniel Adams
DATE: August 16, 2023
SUBJECT: June 21, 2023, Meeting Minutes

SUMMARY:

Board of Adjustment meeting minutes from the June 21, 2023, meeting.

ACTION REQUESTED:

Review and approval of the June 21, 2023, meeting minutes.

ATTACHMENTS:

1. June 21, 2023 Minutes

Pender County Board of Adjustment Meeting Minutes – June 21, 2023

Members Present: Max Kipfer, Chairman
Brett Keeler
Andrew Olsen, Alternate
Jeffrey Snider, Alternate

Members Absent: Kyle Breuer, Vice Chairman

Others Present: Daniel Adams, Planning Director
Justin Brantley, Senior Planner
Donna Sayre, Planning Technician
Charlie Ring, Code Enforcement Officer
Taylor Davis, Current Planner
Trey Thurman, County Attorney
Members of the Public

1. **Call to Order:** 9:01 a.m.

2. **Roll Call**

3. **Invocation**

4. **Adoption of Agenda**

Mr. Keeler made a motion to adopt the agenda. Mr. Snider seconded the motion, and the motion was unanimously approved.

5. **Adoption of Minutes**

Mr. Keeler made a motion to adopt the minutes from the February 15, 2023, meeting with the exception of changing Mr. Daniels to Mr. Adams on page four. Mr. Olsen seconded the motion, and the motion was unanimously approved.

6. **Public Comment**

There was no public comment.

7. **Public Hearing**

APPEAL 2023-11 – David Piepmeyer, Applicant, Wooten Holding Co., LLC., Owner

Mr. Kipfer swore in Planning staff members and members of the public who will be testifying at the hearing.

Mr. Adams, Planning Director, presented the Staff Report. David Piepmeyer, Applicant, is

appealing an administrative decision made by the Planning & Community Development Department to close zoning violation case ZCV-524-2023. The zoning violation was issued to the owners of Wooten Holding Co., LLC., on February 14, 2023, for failing to adhere to the conditions of approval of Special Use Permit case 03-07-21-16 issued on January 15, 2004, and revised as case 04-10-25-17 on November 15, 2004, and December 20, 2004, which permitted the expansion of Hampstead Marina. The subject property is located on the east side of Broadview Lane, adjacent to the Atlantic Intracoastal Waterway, in the Topsail Township and may be further identified by Pender County PIN 3292-63-8007-0000.

Mr. Adams stated that the Applicant's property is located south and west of the Hampstead Marina property.

Mr. Adams reminded the Board members that the case tonight is not discussing the validity of the Special Use Permit but rather the zoning violation issued on February 14, 2023, and whether that case should have been closed by staff.

Mr. Adams stated that on January 20, 2004, the Pender County Board of Commissioners held a public hearing and granted a Special Use Permit to H. Allen and Joyce H. Wooten for the expansion and operation of a marina, hereinafter referred to as Hampstead Marina. He stated that it was revised on November 15, 2004, and again on December 20, 2004.

Mr. Adams stated that there were several conditions placed on the Special Use Permit but the three in question are as follows:

Condition 3: Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.

Condition 4: All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%.

Condition 8: A type A buffer ten feet wide shall be provided along the southwest boundary from the corner of the residential site on the property to within fifty feet of the mean high water line and maintained for the duration of the property activity. The December 20, 2004, revision clarified that no plantings are required within the buffer.

Mr. Adams stated that there was a revocation hearing for the Special Use Permit that carried over from December 2019 to February of 2020. He stated that the Revocation Hearing was heard by the Board of Commissioners and the Commissioners chose to decline revoking the Special Use Permit. Mr. Adams stated that the Board of Commissioners found the Special Use Permit to be compliant.

Mr. Adams stated that the item before the Board today is zoning violation ZCV-524-2023. He stated that on February 6, 2023, Mr. Piepmeyer filed a complaint with Pender County Code Enforcement Officer, Charlie Ring. He stated that Mr. Piepmeyer's complaint alleged several violations of the approved conditions related to the issued Special Use Permit. Mr. Adams stated that on February 9, 2023, a site visit was conducted by Code Enforcement staff and a Notice of Violation was issued on February 14, 2023, to the owners of Hampstead Marina.

Mr. Adams stated that on March 1, 2023, a compliance site visit was conducted by both himself and Mr. Ring to determine if the violations listed in the Notice of Violation letter had been corrected.

Mr. Adams then stated that he was going to address each of the three violations and note how staff determined each was now compliant. The first violation was concerning parking and storage of boats and trailers within the required ten-foot buffer along the southwest fence. Mr. Adams stated that at the March 1, 2023 visit, no boats, or trailers were parked within the ten foot buffer along the southwest fence.

Mr. Olsen asked how far the rope fence from the larger fence is. Mr. Adams stated that he would have to let the property owners answer that question since he has never measured it himself. Mr. Olsen stated that he feels that it would make sense to him that a method would be used to make it impossible to park there, such as parking strips.

Mr. Kipfer stated that he feels the same as Mr. Olsen and doesn't understand why something isn't done to make it impossible to park in those spaces. He stated that just because the trailers were not parked there on a particular day does not mean they won't be the following day.

Mr. Adams stated that the second violation deals with maintaining permanent vegetative coverage of the required 98 percent. He noted during their compliance visit that sod has been installed in the mid-level parking area where the ground had previously been barren. Mr. Adams showed before and after pictures from February 9, 2023, and March 1, 2023. Due to the sod being laid, staff determined that this violation was now compliant.

Mr. Adams stated that the last violation noted was that any flood or spotlight shall be oriented away from navigational channels or adjacent properties. He stated at the March 1, 2023 compliance visit, the lights in question were determined to be downward casting onto the subject property and thus, compliant with the conditions of approval in the previously approved Special Use Permit.

Mr. Kipfer asked if staff visited at night and Mr. Adams responded affirmatively. Mr. Adams stated that staff did their March 1, 2023, visit after sunset so that the lights would be on during the visit.

Mr. Olsen asked why the lights are on at night. Mr. Adams stated that the property owners would need to answer that question.

Mr. Adams presented pictures of the three lights in question providing a location of each. He stated that the light on the residential property is not on the piece of property to which the marina is located but rather the residential lot beside it. Mr. Kipfer asked if the residential lot and the marina lot are owned by the same people. Mr. Adams responded affirmatively. Mr. Kipfer asked if the light is on the residential property, does it fall under compliance. Mr. Adams stated that the Special Use Permit is specific to the property that the marina is located. Mr. Adams stated that he does not have a survey map available, but based on the information he has available to him by the GIS system, the light is on the residential lot.

Mr. Keeler asked if residential properties can have light poles on them such as this one. Mr. Adams stated that the County's UDO does not have any standards for lighting on residential properties.

Mr. Adams stated that a letter was issued to Wooten Holding Co., LLC., stating that the property was no longer in violation and was compliant with the conditions of approval of the Special Use

Permit that were found to be in violation as stated within the February 14, 2023, Notice of Violation. The case ZCV-524-2023, was closed.

Mr. Adams stated that all the photos included in the presentation will be submitted into the record as Exhibit 1.

Mr. Keeler asked if the Board has the authority to impose conditions to the Special Use Permit. Mr. Thurman stated if there are no violations, there are no grounds for imposing conditions.

Applicant, David Piepmeyer, 122 Broadview Lane, stated that his intent today is to show and demonstrate that two of the violations, conditions three and eight of the Special Use Permit, are not in compliance.

Mr. Piepmeyer stated that the newly installed light on the alleged residential property shines on the back of his house and the mid-parking area.

Mr. Piepmeyer stated that some of the violations have been repeat violations of conditions that were imposed by the Special Use Permit and are a nuisance to him.

Mr. Kipfer asked which lights Mr. Piepmeyer was referring to with Mr. Piepmeyer responding that he is referring to all the lights. He stated that he agrees with Mr. Olsen as to why do the lights need to be on at night. Mr. Piepmeyer stated that there are never people at the marina from 11:00 p.m. until 5:00 a.m. so he is not sure why the lights need to be on at all.

Mr. Piepmeyer presented a site plan of what was originally approved. He stated that the original site plan does show a buffer on the mid-level parking area. He stated that the site plan in no way reflects what currently exists and should be updated according to the other conditions imposed. Mr. Piepmeyer stated that the differences are significant including the whole configuration of the marina and the docking system. Mr. Piepmeyer passed the site plan to the Board for their review.

Mr. Olsen asked the Planning staff if the conditions and layout of the site changed from the site plan provided by Mr. Piepmeyer. Mr. Adams stated that the Special Use Permit was issued almost twenty years ago, and nothing has been changed to his knowledge.

Mr. Piepmeyer stated that he prepared a packet of paperwork to provide the Board with information as to why he is before the Board. This information was already included within the Board's packet.

Attorney Sam Franck, 127 Racine Dr., Suite 101, representing Wooten Holding, LLC., requested from the Board a copy of all materials that Mr. Piepmeyer presented to the Board. Mr. Kipfer stated that he is entitled to a copy.

Mr. Keeler asked Mr. Adams if the map that was included in the packet is consistent with what Mr. Piepmeyer handed up. Mr. Adams stated that he believes it is though he did not have a chance to take a thorough look at what was presented to the Board. Mr. Piepmeyer stated that the site plan he submitted has the approval signatures from May of 2004, and this is the last site plan that he is aware of.

Mr. Piepmeyer stated that he is challenging the Notice of Violation closure that was issued to Hampstead Marina on March 22, 2023, specifically related to lighting, parking, and storage of trailer and vehicles parked inside the buffer area that runs parallel to the southwest property line. He stated that Hampstead Marina or Wooten Holding Co., LLC., did nothing to correct the violations nor was any action taken to prevent reoccurrence. Mr. Piepmeyer stated that two of the violations have been repeat violations many times.

Mr. Olsen asked if the rope fence shown in some of the pictures was still present. Mr. Piepmeyer stated that it is not continuous and there are posts that are knee high about ten to fifteen feet apart. He stated that the site plan indicated that there should be timbers placed there to prevent vehicles from being able to park in that area. Mr. Piepmeyer stated that the knee-high rope fence was there for a long time but at some point, the rope was taken down which allow allows entry.

Mr. Keeler stated that the map Mr. Piepmeyer submitted to the Board members is the same map that is in the packet so he does not feel that it would need to be submitted again due to it being redundant.

Mr. Piepmeyer stated that he has a video that he took that morning at 3:00 a.m. and would like to share the videos with the Board members. He stated he emailed them to Mr. Adams before the hearing, but Mr. Adams was unable to download them.

Mr. Adams asked Mr. Thurman if Mr. Piepmeyer has videos on his phone and would like to submit them as evidence and has emailed the digital files, can the Board review the videos on his phone and then they be subsequently admitted into the record after the meeting. Mr. Thurman stated that it is up to the Board, but it may be that the meeting is held open until Mr. Piepmeyer is able to produce the video to be shown to all parties at the same time.

Mr. Franck stated that he feels the evidence is irrelevant to the matter at hand today. He stated that the matter before the Board today is as to whether the property was in compliance at the March 1, 2023, visit.

Mr. Thurman asked Mr. Piepmeyer if the videos he took that morning at 3:00 a.m. show the same lighting as was displayed in February of 2023. Mr. Piepmeyer responded affirmatively. Mr. Thurman then asked if the videos that he wishes to submit accurately portrays how the light was displayed earlier this year. Mr. Piepmeyer stated that his contention is that the violation still exists.

Mr. Olsen stated that he is more concerned with where the light shines and not what property the light is located. He stated that he is making a motion to admit the video as evidence and let Mr. Franck view it first and then the Board. Mr. Snider seconded the motion, and the vote was unanimous. Mr. Kipfer stated that the video is accepted as evidence and can be identified as Exhibit 2.

Mr. Kipfer asked how long the video is. Mr. Piepmeyer stated that there is a collection of videos taken from different angles and is approximately ten minutes long, in total.

Mr. Keeler asked Mr. Adams if there was any way the videos can be played simultaneously so that all parties involved could watch them at one time. Mr. Adams stated for the record that the videos

were sent to him that morning by text at 7:30 a.m. and then emailed to him approximately at 9:10 or 9:15 a.m.

Mr. Adams stated that he can consult with IT to see if they can be played. Mr. Kipfer stated that the Board would take a break to allow a consult with IT and will continue at 9:55 a.m.

Mr. Adams stated that Mr. Piepmeyer sent him eight videos by text but only one video has come by email.

Mr. Kipfer stated that one clip is up on the screen and the Board is going to watch it together. Mr. Franck moved up to the front to watch the video with the Board members. Mr. Piepmeyer stated that this video is coming out the back door of his home and shows the light shining on the house. He stated that there were clouds, scattered thunderstorms, and no moon when the video was taken.

Mr. Kipfer asked which light was in this video. Mr. Piepmeyer stated the light is pole light that is positioned on the residential property. Mr. Kipfer asked if it was the newly installed light and Mr. Piepmeyer responded affirmatively. Mr. Piepmeyer stated the video was taken out his back door in the breezeway facing towards the marina.

Mr. Kipfer asked if there were any lights on Mr. Piepmeyer's property. Mr. Piepmeyer responded that he does have flood lights, but they were turned off and one of the videos he has shows as such.

Mr. Piepmeyer asked the Board if he can show the rest of the videos due to some of the videos giving a more accurate picture that the lighting condition is still in violation. Mr. Kipfer stated he does not feel that there is enough time to have IT load each video for them to be played so an option may be to table the matter. Mr. Keeler stated that he agrees with Mr. Kipfer's statement.

Mr. Kipfer asked the members if watching this one video is enough to continue with the hearing or do they want to see the rest of the videos. Mr. Snider asked if any of the other videos show the other two lights, excluding the pole light, and the effect they have on Mr. Piepmeyer's property. Mr. Piepmeyer responded affirmatively.

Mr. Olsen stated he feels that watching the videos is necessary due to the vast difference between what Mr. Piepmeyer is indicating and what the Planning staff saw when they went out to the site. He stated that the alleged violations have been on and off since 2004, and tabling the hearing for a month is not going to hurt.

Mr. Kipfer asked Code Enforcement Officer, Charlie Ring, to come forward. Mr. Ring stated he has been the Code Enforcement Officer in Pender County for ten years.

Mr. Kipfer asked Mr. Ring if he conducted a site visit on March 1, 2023, to inspect for violations. Mr. Ring responded affirmatively. Mr. Kipfer asked if the third light was investigated. Mr. Ring stated that he did investigate that light also but there was a question as to whether it was pertinent due to it being on private property. Mr. Kipfer asked Mr. Ring if it was his conclusion that the third light was not pertinent. Mr. Ring stated that the direction of the light that night appeared to be shining down the westerly property line.

Mr. Olsen asked Mr. Ring if he went on Mr. Piepmeyer's property with Mr. Ring responding negatively.

Mr. Keeler asked how late the visit took place. Mr. Ring stated it was after dark, around 7:00 p.m.

Mr. Ring stated the lights that are already on the property have been modified with a shield that attaches to the light but is not sure if this newer pole light has a shield on it.

Mr. Ring stated the direction of all the lights were pointed downwards toward the ground at a 45-degree angle or more. He stated that this included all the lights, including the lights on the gazebo. Mr. Ring stated he and Mr. Daniels had walked to the end of the pier and used an App that Mr. Daniels had pulled up on his phone to indicate the angle of the light and it indicated that the light pointed downwards.

Mr. Ring stated that he feels the direction of the light is more important than the actual location. He feels that the subject of the location may be more of a civil matter.

Mr. Kipfer asked the Board members if they had any additional questions for Mr. Ring. No questions were presented.

Mr. Kipfer asked the Board members if they want to see the rest of the videos. Mr. Olsen stated that due to the testimony up to this point, for him to come to an informed decision he would either need to visit the site himself or view the rest of the videos. Mr. Olsen stated he would make a motion to continue, if necessary, in order to watch the other videos. He also stated that he feels that the Planning and Code Enforcement staff need to not only visit the marina but also Mr. Piepmeyer's property. Mr. Olsen stated that staff needs to measure from the fence to the rope fence also.

Mr. Keeler stated that he feels that the videos will not be able to depict what is taking place on the property. He asked if there is an opportunity for an ex-parte field visit to view it for themselves as opposed to relying on what the Code Enforcement Officer, Planning Staff, or videos indicate. Mr. Olsen stated that it does not have to be ex-parte if the meeting takes place with all the attorneys present.

Mr. Kipfer stated that he would like to hear from Mr. Franck for responses to certain questions that may assist the Board with deciding what the right way is to handle this situation.

Mr. Piepmeyer stated that the Board is more than welcome to visit his property at any time the Board deems acceptable. He stated that he has invited Mr. Ring and Mr. Daniels to visit his property before and they are still welcomed to do so. Mr. Piepmeyer asked that he be given notice but did want to state that there is no way he can adjust his lights.

Mr. Kipfer asked Mr. Franck if he believes that the third light in question is part of the Special Use Permit. Mr. Franck responded negatively. Mr. Kipfer then asked if Mr. Franck's clients feel that the property is in the same condition as it was on March 1, 2023. Mr. Franck responded affirmatively. Mr. Franck stated that the barricade that blocks parking in the buffer area and the lights that are located on the property are the same as they were on March 1, 2023.

Mr. Kipfer asked if there were any modifications made from the date of the violation to March 1, 2023, on either the lighting or parking issue. Mr. Franck consulted with his clients and then proceeded to respond negatively.

Wesley Wooten, 8155 Malpass Corner Road, stated that his parents own the property and have for approximately twenty-five years and before his parents owned it his grandfather owned it for approximately twenty years.

Mr. Wooten stated that the lighting has been in the same exact location since the marina operated prior to zoning existing in Pender County. He stated that the marina has been in existence since late 1960's or early 1970's and very little has changed.

Mr. Wooten stated that the light that is seen in the video is a pole light that is located on Mr. Al Sidbury's property, which is north of Hampstead Marina. Mr. Kipfer asked if the pole light is used to light the marina. Mr. Wooten stated that the light is on Mr. Sidbury's property, and he uses it for safety and security purposes.

Mr. Wooten stated the Special Use Permit was applied for when new bulkheads were put in as part of building permit process and nothing was changed with the layout of the marina.

Mr. Wooten stated there were never any issues with lighting until 2019, when the first complaint was reported. He stated that from 2004 until 2019, there was never a complaint about the lighting. Mr. Wooten stated that when the first complaint was reported in 2019, shields were installed on any light that could possibly shine on adjacent properties. He stated they did not address the pole light due to it being on residential property.

Mr. Wooten stated that in 2019, he met with Mr. Ring and Planning Director, Kyle Breuer, and the lights were deemed to be in compliance. He stated that the next time a Notice of Violation was issued wasn't until February 14, 2023.

Mr. Wooten stated that when he met with Mr. Adams and Mr. Ring in 2023, he paid a commercial light expert to attend the meeting. He stated that the expert brought out a photometric meter and took multiple readings along the property line adjacent to Mr. Piepmeyer's property. Mr. Wooten stated that Mr. Ring and Mr. Adams documented the readings and no light from the marina property was shining towards Mr. Piepmeyer's property.

Mr. Kipfer asked if any modifications had been made to the lighting between the Notice of Violation was issued on February 14, 2023, and the site visit on March 1, 2023. Mr. Wooten stated that no modifications have been done since the lighting complaint back in 2019.

Mr. Wooten addressed the buffering issue by stating that in 2004, the Board of Commissioners voted to remove the buffer. He stated that the neighbors requested that the buffer condition be removed so that they did not lose their view of the water.

Mr. Keeler stated that the Commissioners removed the Type A landscaping buffer, but the ten-foot buffer was kept so that there was no parking in that area. Mr. Keeler asked if Mr. Wooten feels there are any limitations to parking vehicles within that ten-foot buffer. Mr. Wooten stated that based on his reading of the Commissioners minutes from the meeting in 2004, he does not feel

there were any conditions set for that buffer. He stated as a courtesy to the County, they installed a rope fence to stop individuals from parking there.

Mr. Wooten stated that there was a six-foot-high picket fence that was required in the Special Use Permit in 2004 but due to storm damage, that fence had to be replaced in 2018.

Mr. Franck asked Mr. Wooten when the rope fence was installed on the property. Mr. Wooten stated that he does not know the exact date but does know that the posts are still there. He then stated without checking, he doesn't know if the rope is presently up.

Mr. Kipfer asked Mr. Wooten if it was his testimony that the ten-foot buffer doesn't exist and that it was installed as a courtesy. Mr. Wooten stated that this statement is correct.

Mr. Franck stated that the first communication concerning Mr. Piepmeyer's complaint was a Notice of Violation. He stated that there was no opportunity to discuss facts or details with the Code Enforcement staff prior to receiving the Notice of Violation.

Mr. Keeler read from the December 28, 2004, Board of Commissioners' minutes, number seven to the Board members. He stated that the wording was confusing but at no time did he feel that it meant the removal of the physical buffer, only the vegetative buffer. Mr. Keeler stated that with the site plan attached to the Special Use Permit, there is landscape timber indicated that is supposed to be ten foot off the fence to eliminate parking in that area.

Mr. Olsen stated that he thinks the Board needs to decide if they are going to continue this hearing to view the videos and to have a site visit. He stated that the arguments can be heard again and most likely will be at the continued hearing.

Mr. Olsen stated that there was one fact that is relevant to this hearing and that is the fact that he thought there was testimony that the pole light was on a residential property owned by the same owners as the marina, but later there was testimony that the pole light was actually on Mr. Sidbury's property. Mr. Adams stated that he thinks that the light that Mr. Piepmeyer states shines on his property is not the light that is located on Mr. Sidbury's property. He stated Mr. Piepmeyer is claiming that the light shining on the back of his house is on the residential property owned by Wooten Holding Co., LLC.

Mr. Franck stated that the Board is welcome to visit the property at any time and that accommodations will be made to meet. He stated that there is some travel that he must take into consideration. Mr. Kipfer stated that Mr. Franck and his clients can work with the Planning staff to agree on a mutual time for the site visits to take place.

Mr. Olsen made a motion to continue the hearing for the purpose of viewing the remaining videos, visiting the site, and to allow the Planning staff to measure the distance of the existing rope buffer from the fence. Mr. Kipfer stated it would be helpful to have Mr. Breuer at the site visit due to him being part of the 2019 site visit.

Mr. Franck stated that his clients strong preference would be to resolve the matter today, but he is not comfortable objecting to the will of the Board. He stated that if the Board feels they need to continue the hearing, then it is indeed their burden to bear to allow the continuation. Mr. Franck requested that any further evidence that Mr. Piepmeyer may have, be shared prior to the hearing

so that he and his clients have a chance to review it. Mr. Kipfer stated that his request is appropriate.

Mr. Piepmeyer stated that in response to Mr. Wooten's comment that there were no complaints, he has his original letter from the January 20, 2004, Special Use Permit hearing where lighting along with several other issues were brought up. He stated that is why the conditions were put into place by the Commissioners.

Mr. Olsen stated that at this point the Board is still trying to decide whether to continue this hearing. He understands that a lot of testimony has been given but at this point, the Board needs to decide if they are going to continue the hearing. Mr. Olsen told Mr. Piepmeyer that he needs to remind the Board of his arguments when the Board reconvenes.

Mr. Kipfer stated that there will be good notes and the video from this meeting if the Board should choose to continue. He stated that Mr. Piepmeyer will have opportunity at the next hearing to continue his testimony.

Mr. Keeler stated that the Board is bound by what has been memorialized in the action items from the Board meetings and the Special Use Permit and not the discussions that happen in those meetings.

Mr. Piepmeyer stated that he feels that the Board should read what the buffer's intended purpose directly from the Unified Development Ordinance. He stated that he feels it is very important since the UDO does not permit parking in a buffer area.

Mr. Piepmeyer stated that the reason for the long duration of time in between complaints was the fact that he was a Commissioner for eight years and every time he raised a concern, the Wooten family told the whole community that he was using his power to fight for his rights. He stated that he did no such thing but that was the reason of the big gap in time for complaints.

Mr. Adams asked Mr. Olsen if he intended for the Board members to have a site visit or just the Planning and Code Enforcement staff. Mr. Olsen stated that his intention was for the members of the Board to also conduct site visits.

Mr. Franck stated that he believes that the two main issues are the buffer area, what is the distance from the property line, and if the pole light that is located off the subject property constitutes a violation of the Special Use Permit. He stated that he feels that those questions could be answered with evidence and does not require a site visit if the members did not wish to make one. Mr. Franck stated that he can provide evidence from a surveyor that indicates the location of the barrier that prevents parking within the buffer area. He also stated that he thinks that the Board can decide on advice from Mr. Thurman as to whether the pole light is located off the Special Use Permit property.

Mr. Olsen stated that his Motion still stands with Mr. Keeler stating that he would rather see the site for himself whether it is at 5:00 in the morning or 10:00 at night.

Mr. Adams asked if the Board wants to visit the site at one time or individually. Mr. Thurman stated that if the Board all meets at one time a quorum would be necessary. Mr. Adams stated that due to the fact of having site visits take place for all Board members may take time, the Board

consider tabling until the August meeting. Mr. Adams stated that the July hearing date would be the 19th and the August date is the 16th. Mr. Franck stated that the August hearing date coincides with his client's travel plans.

Mr. Olsen reiterated his motion to continue the hearing until the August 16, 2023, meeting with Mr. Keeler seconding the Motion. The vote was unanimous.

Mr. Adams informed the public that they may have received mailed notice of this meeting but will not for the August hearing due to the meeting being continued to a date and time certain. He stated that the meeting will take place on August 16, 2023, at 9:00 a.m. in the BOCC room.

8. Discussion Items

Mr. Adams introduced Current Planner, Taylor Davis, to the Board members.

Mr. Olsen asked Mr. Adams if there were any items on the agenda for the July meeting. Mr. Adams confirmed that there were no items on the agenda for the July 19, 2023, meeting.

Mr. Olsen stated that he feels there is a considerable amount of redundancy and that multiple copies of the same items do not need to be put into record. He stated that with this record having one hundred and sixty-eight pages, it makes it difficult to search for a particular item or subject. Mr. Keeler agreed with Mr. Olsen and stated that at least eighty pages were in the record more than one time making it difficult to read and search all the pages.

Mr. Daniels stated that the Planning staff does their best to provide the Board with a comprehensive review of the history of every case brought before the Board.

Mr. Kipfer stated that he thought it was very well presented but it was big in volume.

Mr. Adams stated for a procedural note, in future meetings if any evidence is accepted into record, the Clerk must receive a copy of what it being accepted.

Mr. Kipfer asked if the videos are going to be included with the testimony, to please provide the videos to the property owner and their council ahead of time so that they may be viewed.

Mr. Adams asked the Board if they would like to set a time frame for evidence being submitted. Mr. Keeler stated that he feels that is a good idea to keep late submissions from taking place. Mr. Keeler stated that he feels that the Friday before the Wednesday hearing would be a good deadline to put into place.

Mr. Thurman stated that legally there is not an issue in creating a submittal deadline. He stated that enforcing the deadline may cause some issues, but not legal ones. Mr. Olsen stated that enforcing the deadline with people who are not represented by legal counsel may present a challenge. He stated that a rule should be crafted in a way that allows for exceptions and for the Board to decide if it wants to hear and accept the evidence into record.

Mr. Keeler brought up the subject of implementing a time constraint for which the parties must present their case. The Board discussed options and Mr. Adams stated that the Chairman can state something in his opening language to the effect of whatever constraint is decided on. Mr. Kipfer

stated that there are times when he would like to impose a time limit, but there are other times where he would like to hear what the person has to say without stopping them after three minutes due to them being in the middle of a valid point.

9. Next Meeting Date

August 16, 2023 @ 9:00 a.m.
Commissioner's Meeting Room
805 S. Walker Street
Burgaw, NC 28425

10. Adjournment

Meeting adjourned at 11:18 a.m.



**IF YOU WOULD LIKE TO SPEAK ON ANY
PUBLIC HEARING ITEM(S) OR WISH TO
SPEAK DURING THE PUBLIC COMMENT
SECTION OF THE AGENDA,**

**PLEASE SIGN IN AT THE ENTRANCE TO
THIS MEETING ROOM**

**THANK YOU
PENDER COUNTY, NORTH CAROLINA**



Planning & Community Development June 21, 2023 Slide 1

1



Case APPEAL 2023-11

Appeal of an Administrative Decision

David Piepmeyer, applicant, is appealing an administrative decision made by the Planning & Community Development Department to close zoning violation case ZCV-524-2023. The zoning violation was issued to the owners of Wooten Holding Co, LLC on February 14, 2023, for failing to adhere to the conditions of approval of Special Use Permit case 03-07-21-16 issued on January 15, 2004, and revised as case 04-10-25-17 on November 15, 2004, and December 20, 2004, which permitted the expansion of Hampstead Marina. The subject property is located on the east side of Broadview Lane, adjacent to the Atlantic Intracoastal Waterway, in the Topsail Township and may be further identified by Pender County PIN 3292-63-8007-0000.

Planning & Community Development June 21, 2023 Slide 2

2



Subject Property 2020 Aerial





Applicant:
David Piepmeyer

Owner:
Wooten Holding
Co LLC

Appeal
APPEAL 2023-11

Aerial

Planning & Community DevelopmentJune 21, 2023Slide 3

3



Hampstead Marina History

- January 20, 2004: Special Use Permit issued for the expansion of Hampstead Marina.
 - Revised on November 15, 2004, and December 20, 2004.
- Conditions of approval include:
 - Condition 3:** Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.
 - Condition 4:** All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%.
 - Condition 8:** A type A buffer 10 ft. wide shall be provided along the southwest boundary from the corner of the residential site on the property to within 50 ft. of the mean high water line and maintained for the duration of the project activity.
 - (12/20/2004 revision clarified that no plantings are required within the buffer)

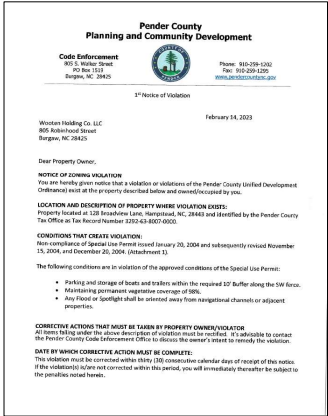
Planning & Community DevelopmentJune 21, 2023Slide 4

4



ZCV-524-2023

- February 6, 2023: Complaint filed by Mr. Piepmeyer alleging several violations of conditions of approval of Hampstead Marina SUP.
- February 9, 2023: Site visit conducted by Code Enforcement staff.
- February 14, 2023: Notice of Violation Issued
- March 1, 2023: Site visit conducted to determine compliance with SUP conditions.



Planning & Community DevelopmentJune 21, 2023Slide 5

5



ZCV-524-2023: Violation I

Violation I: Parking and storage of boats and trailers within the required 10' buffer along the SW fence.

March 1 Compliance Visit: No boats or trailers were parked within the 10' buffer along the SW fence.

Planning & Community DevelopmentJune 21, 2023Slide 6

6



ZCV-524-2023: Violation 2

Violation 2: Maintaining permanent vegetative coverage of 98%.

March 1 Compliance Visit: Sod had been installed in the mid-level parking area where the ground had previously been barren.

Planning & Community Development

June 21, 2023

Slide 7

7



ZCV-524-2023: Violation 2

February 9



March 1



Planning & Community Development

June 21, 2023

Slide 8

8



ZCV-524-2023: Violation 3

Violation 3: Any flood or spotlight shall be oriented away from navigational channels or adjacent properties.

March 1 Compliance Visit: The lights in question were determined to be downward casting onto the subject property and thus compliant with the conditions of approval in the previously approved SUP.

Planning & Community Development

June 21, 2023

Slide 9

9



ZCV-524-2023: Violation 3

March 1



Location of Light



Overhead light

Planning & Community Development

June 21, 2023

Slide 10

10

 **ZCV-524-2023: Violation 3**

March 1 **Location of Light**

Planning & Community Development June 21, 2023 Slide 11

11

 **Light on Residential Property**

Light in Complaint **Location of Light**

Planning & Community Development June 21, 2023 Slide 12

12



Zoning Administrator's Conclusion

- March 22, 2023: Staff issued letter to Wooten Holding Co, LLC stating the property was no longer in violation and code case ZCV-524-2023 was closed.
- Based on the evidence, it is the determination of the Zoning Administrator that the subject property is compliant with the conditions of approval of the Special Use Permit that were found to be in violation as stated within the February 14, 2023, Notice of Violation.
- Based on these findings, staff considers code violation case ZCV-524-2023 to be closed.

Planning & Community Development

June 21, 2023

Slide 13

13



Action by Board of Adjustment

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- B. A motion to reverse, affirm, modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- C. If a motion to reverse or modify is not made or fails to receive the affirmative vote of a majority of members present, the appeal shall be denied.
- D. Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

Planning & Community Development

June 21, 2023

Slide 14

14

**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

Pender County Zoning Board of Adjustment

Appeal Case 2023-11 (Hampstead Marina)

Meeting Date June 21, 2023

EXHIBIT 2

This Exhibit is an 11 second Video File submitted by David Piepmeyer (Appellant) at the June 21, 2023 meeting. A digital copy of this video is available upon request to the Pender County Planning & Community Development Department.

A handwritten signature in cursive script that reads "Justin Brantley".

Justin Brantley, Deputy Planning Director
Pender County Planning and Community Development
(910) 259-1529
jbrantley@pendercountync.gov



Pender County APPEAL 2023-11: Appeal of Administrative Decision

TO: Board of Adjustment
FROM: Daniel Adams
DATE: August 16, 2023
SUBJECT: APPEAL 2023-11: Appeal of Administrative Decision

SUMMARY:

David Piepmeyer, applicant, is appealing an administrative decision made by the Planning & Community Development Department to close zoning violation case ZCV-524-2023. The zoning violation was issued to the owners of Wooten Holding Co, LLC on February 14, 2023, for failing to adhere to the conditions of approval of Special Use Permit case 03-07-21-16 issued on January 15, 2004, and revised as case 04-10-25-17 on November 15, 2004, and December 20, 2004, which permitted the operation of Hampstead Marina. Staff determined the property owner was compliant with the conditions of approval of the Special Use Permit that were found to be in violation and issued a letter of compliance on March 22, 2023. The applicant filed an appeal of staff's determination on April 19, 2023.

The subject property is located on the east side of Broadview Lane, adjacent to the Atlantic Intracoastal Waterway, in the Topsail Township and can be further identified by Pender County PIN 3292-63-8007-0000.

ACTION REQUESTED:

To hold a public hearing and consider the Appeal of Administrative Decision.

ATTACHMENTS:

1. Staff Report
2. Application
3. Applicant's Narrative
4. Attachment 1 - David Piepmeyer's Complaint
5. Attachment 2 - 1st Notice of Violation
6. Attachment 3 - Compliance Letter
7. Attachment 4 - January 20, 2004, SUP Board Action Form
8. Attachment 5 - November 15, 2004, SUP Board Action Form

9. Attachment 6 - December 20, 2004, SUP Board Action Form
10. Attachment 7 - December 2, 2019, SUP Revocation Agenda Packet
11. Attachment 8 - February 18, 2020, SUP Revocation Agenda Packet

**STAFF REPORT FOR APPEAL 2023-11
APPEAL OF ADMINISTRATIVE DECISION APPLICATION**

APPLICATION SUMMARY	
Case Number	APPEAL 2023-11
Hearing Date	June 21, 2023 – Board of Adjustment (Continued) August 16, 2023 – Board of Adjustment
Applicant	David Piepmeyer
Property Owner	Wooten Holding Co, LLC
Parcel Identification Number	3292-63-8007-0000
Acreage	+/- 1.56
Township	Topsail
Zoning District	RP, Residential Performance

APPEAL SUMMARY
David Piepmeyer, applicant, is appealing an administrative decision made by the Planning & Community Development Department to close zoning violation case ZCV-524-2023. The zoning violation was issued to the owners of Wooten Holding Co, LLC on February 14, 2023, for failing to adhere to the conditions of approval of Special Use Permit case 03-07-21-16 issued on January 15, 2004, and revised as case 04-10-25-17 on November 15, 2004, and December 20, 2004, which permitted the operation of Hampstead Marina. Staff determined the property owner was compliant with the conditions of approval of the Special Use Permit that were found to be in violation and issued a letter of compliance on March 22, 2023. The applicant filed an appeal of staff's determination on April 19, 2023.
LOCATION
The subject property is located on the east side of Broadview Lane, adjacent to the Atlantic Intracoastal Waterway, in the Topsail Township and can be further identified by Pender County PIN 3292-63-8007-0000.

CASE UPDATE

At their June 21, 2023, meeting, the Board of Adjustment voted to continue this case to the August 16, 2023, meeting. The intent of the continuance was to provide time for the members of the Board to visit the site to better understand the existing conditions. The site visits were conducted on August 2 and August 3. The content of the staff report remains the same as previously presented at the June 21 meeting.

Below: Vicinity Map of the Area



DESCRIPTION OF APPEAL

On February 6, 2023, David Piepmeyer filed a complaint with Pender County Code Enforcement Officer, Charlie Ring. The complaint alleged that the Hampstead Marina, which is located adjacent to Mr. Piepmeyer's property, was in violation of several conditions of approval of the Special Use Permit (SUP) that allowed for the operation of the marina. The complaint was filed as an attachment to an email. The complaint can be found as Attachment 1. A Special Use Permit for the operation of the marina was issued by the Board of County Commissioners on January 20, 2004, and subsequently revised on November 15, 2004, and December 20, 2004.

Following the complaint, Code Enforcement staff visited the site on February 9, 2023, and documented three violations of the conditions of approval of the previously approved SUP. On February 14, 2023, a 1st Notice of Violation was issued to the property owners, Wooten Holding Co. LLC (see Attachment 2). The Notice of Violation states that the following conditions are in violation of the previously approved SUP:

- Parking and storage of boats and trailers within the required 10' buffer along the SW fence.
- Maintaining permanent vegetative coverage of 98%.
- Any Flood or Spotlight shall be oriented away from navigational channels or adjacent properties.

The violations noted in the February 14, 2023, Notice of Violation letter are related to the conditions of approval of the SUP that was issued on January 20, 2004 (see attachment 4). The specific conditions that are in violation are stated as follows:

- Condition 8: A type A buffer 10 ft. wide shall be provided along the southwest boundary from the corner of the residential site on the property to within 50 ft. of the mean high water line and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
- Condition 4: All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". A plan for the seeded areas approved in written form by the NC Agricultural Extension Service or the local SCS office of the USDA shall be submitted with the application for a zoning permit and all areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
- Condition 3: Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.

On March 1, 2023, at the request of the Hampstead Marina property owner, Pender County staff visited the Hampstead Marina site to observe the conditions and determine if the violations stated in the February 14th Notice of Violation had been rectified. Staff conducted this site visit during evening hours, after sunset, to ensure the lights in question would be activated. At the March 1 site visit, staff noted the following:

- No boats or trailers were parked within the ten-foot buffer along the southwest property line.
- Sod had been installed in the mid-level parking area where the ground had previously been barren.
- The lights in question were determined to be downward casting onto the subject property and thus compliant with the conditions of approval in the previously approved SUP.

On March 22, 2023, staff issued a letter to Wooten Holding Co. LLC stating that Hampstead Marina was no longer in violation of the conditions of approval in the previously approved SUP that were noted in the 1st Notice of Violation and that staff considered this code violation case closed. Staff also sent the compliance letter to the complainant, Mr. David Piepmeyer. That letter is included in the Board's packet as Attachment 3. On April 19, 2023, Mr. David Piepmeyer filed an appeal of administrative decision.

HAMPSTEAD MARINA/SPECIAL USE PERMIT BACKGROUND

On January 20, 2004, the Pender County Board of Commissioners held a public hearing and granted a Special Use Permit to H. Allen and Joyce H. Wooten for the expansion and operation of a marina, hereinafter referred to as Hampstead Marina. Attachment 4 is the staff report and Board Action Form from that meeting, which details a history of the property and conditions of approval for the Special Use Permit.

On November 15, 2004, the Pender County Board of Commissioners held a public hearing to review a requested revision to the Special Use Permit that was issued on January 20, 2004. The purpose of the revision was to modify two conditions of approval, specifically:

1. Revise the permit to require the planted buffer along the southwest property line end 160 feet from the high water line; and
2. Extend the time allowed for all conditions to be met to February 15, 2005.

Per documentation shown in Attachment 5, which is the staff report and Board Action Form from the November 15, 2004, meeting, the requested revision was approved with the following note, "To adhere with the original distances (buffer). The seven foot buffer begins at the curve in the fence, down to the dock. Additional time is allowed to complete work on this Special Use Permit until February 15, 2005."

On December 20, 2004, the Pender County Board of Commissioners held a public hearing to review a second revision to the Special Use Permit that was approved at the January 20, 2004, meeting. Per the staff report and Board Action Form from that meeting, included as Attachment 6, the purpose of the revision was to, "revise the permit requirements for the buffer along the southwestern property line." The revision was approved with the following amendment, as stated in Attachment 6, "Approved as submitted but with the stipulation that the solid upper buffer is not required. Discussion clarified that there be no vegetative buffer on the upper level."

On December 2, 2019, the Pender County Board of Commissioners held a public hearing to consider the revocation of Special Use Permits 03-07-21-16 (Hampstead Marina Special Use Permit case number from January 20, 2004, case) and 04-10-25-17 (Hampstead Marina Special Use Permit case number from revision applications). The agenda packet for the revocation case is included as Attachment 7. The revocation case stemmed from a November 30, 2018, Notice of Violation that was sent to the owners of Hampstead Marina. The Notice of Violation is included in the agenda packet within Attachment 7. The matter was tabled until the February 18, 2020, meeting, where the Board ultimately determined that the property was in compliance with the original conditions of approval for the Special Use Permit issued on January 20, 2004, and revised November 15, 2004, and December 20, 2004. The agenda packet for the Board of Commissioner's February 18, 2020, meeting is included as Attachment 8.

ZONING ADMINISTRATOR'S CONCLUSION

It is the determination of the Zoning Administrator that the subject property is compliant with the conditions of approval of the Special Use Permit that were found to be in violation as stated within the February 14, 2023, Notice of Violation. As stated in the March 22, 2023, compliance letter (Attachment 3), staff made the following findings regarding the three conditions that were found to be in violation when the site was first observed upon receipt of the initial complaint:

1. Staff verified that there was no boat or trailer parked or being stored within the ten-foot buffer along the southwest property line.
2. Staff verified that the new sod applied to the mid-level parking area meets the requirements of 98% vegetative coverage.
3. The lights in question on the subject property were determined to be downward casting onto the subject property. This includes the light on the gazebo and the light near the southwest property line towards the boat ramp. These lights were not oriented towards a navigational channel or adjacent properties.

Based on these findings, staff considers code violation case ZCV-524-2023 to be compliant and thus closed.

PENDER COUNTY UDO APPEAL OF ADMINISTRATIVE DECISION

3.16 APPEAL OF ADMINISTRATIVE DECISION

3.16.1 Applicability

As specified in N.C.G.S. 160D-405, an appeal by any person aggrieved by a final order, interpretation or decision of the Administrator or other administrator in regard to the provisions of this Ordinance may be taken to the Board of Adjustment.

3.16.6 Action by Board of Adjustment

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- B. A motion to reverse, affirm, modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- C. If a motion to reverse or modify is not made or fails to receive the affirmative vote of a majority of members present, the appeal shall be denied.
- D. Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

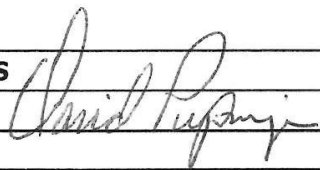
BOARD OF ADJUSTMENT ACTION FOR APPEAL OF ADMINISTRATIVE DECISION

MOTION	SECONDED

AFFIRMED	REVERSED	MODIFY

Kipfer	Breuer	Keeler	ALT: Olsen	ALT: Snider

APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION FOR OFFICE USE			
Application No.	AAD	Date	
Application Fee	\$	Receipt No.	
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	DAVID PIERMEYER	Owner's Name:	WOOTEN HOLDINGS LLC HAMPSHIRE MARINE
Applicant's Address:	122 BROADVIEW LANE	Owner's Address:	128 BROADVIEW LANE
City, State, & Zip	HAMPSTEAD NC 28443	City, State, & Zip	HAMPSTEAD NC
Phone Number:	910-270-8519	Phone Number:	
Legal relationship of applicant to land owner:			
SECTION 3: SIGNATURES			
Applicant's Signature			Date: 4/19/2023
Owner's Signature			Date:
NOTICE TO APPLICANT:			
1. Applicant must also submit the information described below in the Appeal of Administrative Decision Checklist. 2. Applicant or agent authorized in writing must attend the public hearing. 3. 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.			
APPEAL OF ADMINISTRATIVE DECISION CHECKLIST			
☐	Signed application form		
☐	Application fee		
☐	One business size envelope legibly addressed with certified postage for all participants for the appeal		
☒	Appeal Description: Written description of the Appeal taken forward including all pertinent materials (pictures, permits, etc.)		
OFFICE USE ONLY			
☐	AAD Fees \$250		Total Fee Calculation \$
Payment Method :	Cash : ☐ \$ _____	Credit Card: ☐ Master Card ☐ Visa	Check: ☐ Check # _____
Application received by:			Date:
Application completeness approved by:			Date:
Date scheduled for public hearing:			

Print Form

April 19, 2023

Subject: Board of Adjustment Appeal Description – Hampstead Marina NOV Dated Nov 14, 2023

I, David Piepmeyer, am challenging the closure of the Notice of Violation issued to Hampstead Marina on Nov 14th, 2023; specifically related to lighting as well as the parking and storage of boat trailers and vehicles inside the 10-foot buffer area that runs parallel to the SW property boundary line. The basis for this challenge is simple in that nothing was done by the Special Use Permit Holder, Hampstead Marina or Wooten Holding LLC, to correct either of these violations nor was there any actions taken to prevent reoccurrence in the future of these same violations.

It is my position that Special Use Permits (SUP's) by definition, as found in Section 15 of the UDO, **are a privilege**, which contains certain conditions and controls **to minimize adverse effects**, extended to the applicant to allow for an exception to the zoning designation given to that district or community. In this case, Hampstead Marina applied for and was granted a SUP to operate a private commercial marina in a residentially zoned community. This SUP contains conditions to which the applicant agreed to before approval was granted by the Pender County Board of Commissioners that protect the adjoining property owners as well as rest of the community in an effort to minimize the adverse effects. Two of these SUP conditions dealt with lighting and buffering.

Lighting Violation: As you can see by the below photo, the newest Hampstead Marina light added recently has been located fairly close to the property line and is meant to provide lighting to the Mid-Level Parking Area of the Hampstead Marina. This light is orientated in such a manner that it floods my entire back yard with light all night long. Likewise, it contains no shielding and the fixture design type itself does not prohibit light from shining 180 degrees. This SUP violation could and should be easily addressed so that this issue does not come up again. In the past, Hampstead Marina has had other lighting violations which were addressed through shielding, light fixture design, light orientation, or light locations changes. I contend that this should again be the case with this newest light and that one or all these light propagation factors (shielding, Fixture design, orientation and location) can be utilized to keep light out of my back yard and off my property. One other observation based on my 20 years living next to this commercial operation. Since Hampstead Marina is rarely if ever used by its' customers from 12 midnight to 5 am and the property is gated & fenced so as to prevent noncustomers' access; I am not sure why these parking area lights even need to be lit from midnight to 5 am. It would definitely be beneficial if these lights were motion activated and based on an after-activation duration timer so they didn't shine when there were no customers or basically all night long.



Parking of Vehicles & Boat Trailers INSIDE the 10 ft wide Buffer Area Violation: Again, as you can easily see by looking at the below photos, Hampstead Marina Customers are parking boat trailers and vehicles with boat trailers right up next to the fence and inside the 10-foot-wide Buffer Area. I have lots of photos of this violation. Since there is only Hampstead Marina personnel there to direct customer parking on weekends and holidays, basically 5 days a week customers can and do park wherever. Simply telling their customers not to has not proven to be effective. Likewise, the condition regarding the establishment and maintenance of prescribed vegetation in the 10-foot-wide buffer has also been removed through a past amendment applied for by the Wootens. Tie all this with the fact that there used to be 6X6 pilings with rope strung through them to designate the edge of the SW mid-level parking buffer area and also physically detour customers from parking inside this same 10-foot-wide buffer area; much of this rope and many of these 6x6 pilings have been removed now thus allowing for this violation to occur again and again. I suggest that these 6x6 pilings and rope be reinstalled for the FULL length of the mid-level parking buffer area so as to recreate the physical barrier necessary to prevent reoccurrence of this easily solved SUP violation in the future.







Furthermore, according to Section 15.4, Paragraph B, Revocation, "That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance." I content that light shining on or flooding my property all night, every night is a nuisance. Likewise, the parking of vehicles and boat trailers inside the 10 ft wide buffer area also is a nuisance as well. It is quite startling to walk out your back or front door and see someone standing there looking at you over the picket fence.

While I am **NOT** seeking revocation of the Hampstead Marina SUP nor am I trying to shut down the operation of such a much needed private marina, I do want compliance to and enforcement of all the conditions and controls of that same SUP which were put in place so that my family and I could continue to live in our home in relative peace and privacy.

I request that the Board of Adjustment find that this NOV was improperly closed before actions were identified and implemented to address the Hampstead Marina Lights from flooding into the adjoining property (which runs the full length of the SW Property line) as well as the parking of boat trailers and vehicles inside the 10 ft wide buffer next to the fence that runs along the SW Property Boundary Line. Likewise, I request that either new light fixtures, shields, light locations or light orientations (or a combination of all these light propagation factors) be put in place to prevent light from shining or flooding the adjoining property owners' property and homes. Lastly, I request that the 6X6 pilings and rope be reinstalled to create a physical barrier to prevent vehicles and boat trailers from being parked and stored inside the 10 foot wide mid level parking buffer area. Once these corrective & preventative actions are taken and in place, I request that the Pender Planning Department should seek written approval from Mr. Piepmeyer that all these actions

indeed address his concerns. That way, unless something changes, these violations should not re-occur and this NOV can be properly closed.

Thanks for your time and consideration.

David & Sally Piepmeyer

122 Broadview Lane

Hampstead, NC 28443

**Pender County
Planning and Community Development**

Code Enforcement

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



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

1st Notice of Violation

February 14, 2023

Wooten Holding Co. LLC
805 Robinhood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF ZONING VIOLATION

You are hereby given notice that a violation or violations of the Pender County Unified Development Ordinance exist at the property described below and owned/occupied by you.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXISTS:

Property located at 128 Broadview Lane, Hampstead, NC, 28443 and identified by the Pender County Tax Office as Tax Record Number 3292-63-8007-0000.

CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004. (Attachment 1).

The following conditions are in violation of the approved conditions of the Special Use Permit:

- Parking and storage of boats and trailers within the required 10' Buffer along the SW fence.
- Maintaining permanent vegetative coverage of 98%.
- Any Flood or Spotlight shall be oriented away from navigational channels or adjacent properties.

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR

All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: When corrective action is not taken as prescribed in the notice, the property owner/violator shall upon conviction be guilty of a misdemeanor punishable by fine of up to \$50.00, or imprisoned for not more than thirty (30) days, for each offense. **In addition, the property owner/violator will be subject to a civil penalty of \$100.00 each day the violation continues after the date specified that the violation was to have been corrected.**

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

The County shall through its County Manager and County Attorney initiate legal action to ensure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

DATE OF NOTIFICATION:

This determination of violation first made on February 9, 2023 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring
Code Enforcement Officer (910) 259-1519

Case # CV-524-2023653

Pender County Planning and Community Development

Code Enforcement

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



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

Compliance Letter

Wooten Holding Co., LLC
805 Robinwood St.
Burgaw, NC 28425

March 22, 2023

Mr. Wooten,

This letter serves as notice of staff's determination that the property located at 128 Broadview Lane, Hampstead, and further identified by Pender County PIN: 3292-63-8007-0000 has achieved a compliant status. This status is in relation to the Notice of Violation issued by Pender County dated February 14, 2023. Pender County considers this case closed.

A site visit was conducted on March 1, 2023, that allowed staff to review the Special Use Permit (SUP) approval conditions in question. Those conditions, as written in the Notice of Violation letter dated February 14, 2023, are listed below, for reference:

- Parking and storage of boats and trailers within the required 10' buffer along the SW fence.
- Maintaining permanent vegetative coverage of 98%.
- Any flood or spotlight shall be oriented away from navigational channels or adjacent properties.

Staff verified that there was no boat or trailer stored within the 10-foot buffer along the southwest property line. Staff later found that the buffer issue was addressed at the December 20, 2004, Board of Commissioners meeting where a public hearing was held to review a Special Use Permit for the operation of the marina. The Special Use Permit Amendment (attached) notes that no vegetative buffer shall be required on the upper level of the property so as not to impede the view of neighboring property owners; however, there is no documentation in the record indicating that the 10-foot-wide strip of land that constitutes a buffer was removed at this hearing. The clarification made at the December 20, 2004, meeting was regarding the vegetation within the buffer not being necessary, not the strip of land that constitutes the buffer.

At the site visit, staff verified that new sod applied to the parking area meets the requirements of establishing 98% coverage.

A complete visual inspection of all lighting on the property where the SUP exists was conducted on March 1, 2023. All lights on the property subject to the conditions of the SUP were downward casting onto said property. Staff did not find any lights oriented towards a navigational channel nor adjacent properties. The site visit was intentionally conducted after daylight hours to provide staff with an opportunity to see the lights in the dark. When the initial site visit was conducted by Code Enforcement staff on February 9, 2023, during daylight hours and with no lights on, it appeared there was a light

oriented towards an adjacent property. Upon conducting the second site visit on March 1, 2023, after daylight hours when the lights were on, staff determined that the light is oriented downward onto the Marina property and not onto adjacent property.

As described above, Pender County considers the violation case closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Ring", written over the printed name.

Charlie Ring
Code Enforcement Officer

Attachment 1 – David Piepmeyer’s Complaint

Feb 3, 2023

Pender County Planning – Code Enforcement

Attention: Charlie Ring

910-259-1519

cring@pendercountync.gov

David Piepmeyer

122 Broadview Lane

Hampstead, NC 28443

910-270-8519

david.piepmeyer@outlook.com

Subject: Hampstead Marina SUP Violations

Mr. Ring,

Because Pender County Code Enforcement is currently complaint driven, I am forced to again police my northern neighbor's property (Hampstead Marina) to validate if they are compliant to their Special Use Permit which is required so they can operate a commercial business in a residentially zoned community. This is very frustrating in that I have been forced to go through this exercise several times over the last 20 years and would think that by now, the county would periodically inspect the Hampstead Marina for re-occurrence of past violations or the presence of any new SUP noncompliance items.

All this being said, below are several violations that I would like permanently resolved by Easter of 2023. Likewise, I would like both an electronic and hard copy of the Notice of Violation that will be sent to the Hampstead Marina Owners, Wooten Holdings Co. LLC at 805 Robinwood St; Burgaw, NC 28425; along with all past SUP and CAMA NOV's sent to my above email and physical residence addresses.

If further clarification or explanation is needed from me; please feel free to give me a call or preferable, shoot me an email. Sorry that you have to go through this again but these reoccurring and new violations have to be identified periodically or the Wooten's will claim that the statute of limitations has run out and they don't have to address anything.

David Piepmeyer

Violation #1:

The Southern Property Line Buffer Rope, which establishes and maintains the SUP required 10-foot buffer distance between Hampstead Marina's Southern Property line, which is established by a 6 foot high wooden fence, and the mid-level parking area, is down. Since this rope is down, an employee of Hampstead Marina directs members to park right up next to the fence inside of this buffer area throughout the boating season on busy weekends and holidays.



Violation #2: Storm Water Runoff Violations

As you can see by the below photo, Normal Rain Water Runoff that flows through the Hampstead Marina's lower gravel covered parking area and out into the ICWW via the concrete boat ramp (displayed by the chocolate milk colored water) carries dirt, gravel and other contaminants into ICWW. This is a violation of the NC Division of Water Quality Permit and the SUP in that both require that all rain water runoff be contained on the Hampstead Marina Property. Obviously, the storm water runoff capture system that was designed, put in place and permitted is not functioning properly and needs to be re-evaluated and repaired to resolve this issue.



Violation #3: Boat / Trailer Storage

Storing of Boats on Trailers almost daily during Fall and Winter Months



Violation #4: Maintaining 98% Coverage of the Mid-Level Parking Area

Huge areas of bare dirt which exceed the 2% of total land surface area allowed to exist without vegetative or other approved covering to minimize wind-blown parking surface erosion. This causes me to have to pressure wash my house several times a year.





Violation #5: Lights Pointing at ICWW

The addition of lights on the gazebo and Bathroom Building that are not displayed on the Site Plan and pointing at the ICWW. SUP clearly states that light shall not be pointed towards the ICWW.

Violation #6: Addition of New Flood Light to Mid-Level Parking Area.

Yet another item that is not reflected on the current site plan and floods my backyard with light all night long. This light has been added since my last complaint in 2021 and is another example of the Wooten's blatant disregard for compliance to their SUP and to my original concerns expressed around light pollution during the BOCC Public Meeting conducted initially back in 2003 and 2004.



Violation #7: SUP Site Plan Update Violation

Although there have been several changes made to the Hampstead Marina Site (Gazebo location, docks reconfigured, new lights installed on gazebo, bathroom building, and Mid-Level Parking area), the site plan has not been updated as required. The SUP clearly states that the site plan must be updated in a timely manner to reflect changes. This stipulation allows changes to be evaluation by the Pender County Planning Department and then the SUP needs to come back in front of BOCC for approval consideration. Failure to follow this process, by itself, is ground for SUP to be revoked. That is not what I want. I simply want the Wooten's to be made to comply with the conditions that they agreed to in order to have the privilege to operate a business under a Special Use Permit within a residential zoned community.

Attachment 2 – 1st Notice of Violation

Pender County Planning and Community Development

Code Enforcement

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



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

1st Notice of Violation

February 14, 2023

Wooten Holding Co. LLC
805 Robinhood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF ZONING VIOLATION

You are hereby given notice that a violation or violations of the Pender County Unified Development Ordinance) exist at the property described below and owned/occupied by you.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXISTS:

Property located at 128 Broadview Lane, Hampstead, NC, 28443 and identified by the Pender County Tax Office as Tax Record Number 3292-63-8007-0000.

CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004. (Attachment 1).

The following conditions are in violation of the approved conditions of the Special Use Permit:

- Parking and storage of boats and trailers within the required 10' Buffer along the SW fence.
- Maintaining permanent vegetative coverage of 98%.
- Any Flood or Spotlight shall be oriented away from navigational channels or adjacent properties.

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR

All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: When corrective action is not taken as prescribed in the notice, the property owner/violator shall upon conviction be guilty of a misdemeanor punishable by fine of up to \$50.00, or imprisoned for not more than thirty (30) days, for each offense. **In addition, the property owner/violator will be subject to a civil penalty of \$100.00 each day the violation continues after the date specified that the violation was to have been corrected.**

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

The County shall through its County Manager and County Attorney initiate legal action to ensure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

DATE OF NOTIFICATION:

This determination of violation first made on February 9, 2023 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring
Code Enforcement Officer (910) 259-1519

Case # CV-524-2023653

Attachment 3 – Compliance Letter

Pender County Planning and Community Development

Code Enforcement

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



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

Compliance Letter

Wooten Holding Co., LLC
805 Robinwood St.
Burgaw, NC 28425

March 22, 2023

Mr. Wooten,

This letter serves as notice of staff's determination that the property located at 128 Broadview Lane, Hampstead, and further identified by Pender County PIN: 3292-63-8007-0000 has achieved a compliant status. This status is in relation to the Notice of Violation issued by Pender County dated February 14, 2023. Pender County considers this case closed.

A site visit was conducted on March 1, 2023, that allowed staff to review the Special Use Permit (SUP) approval conditions in question. Those conditions, as written in the Notice of Violation letter dated February 14, 2023, are listed below, for reference:

- Parking and storage of boats and trailers within the required 10' buffer along the SW fence.
- Maintaining permanent vegetative coverage of 98%.
- Any flood or spotlight shall be oriented away from navigational channels or adjacent properties.

Staff verified that there was no boat or trailer stored within the 10-foot buffer along the southwest property line. Staff later found that the buffer issue was addressed at the December 20, 2004, Board of Commissioners meeting where a public hearing was held to review a Special Use Permit for the operation of the marina. The Special Use Permit Amendment (attached) notes that no vegetative buffer shall be required on the upper level of the property so as not to impede the view of neighboring property owners; however, there is no documentation in the record indicating that the 10-foot-wide strip of land that constitutes a buffer was removed at this hearing. The clarification made at the December 20, 2004, meeting was regarding the vegetation within the buffer not being necessary, not the strip of land that constitutes the buffer.

At the site visit, staff verified that new sod applied to the parking area meets the requirements of establishing 98% coverage.

A complete visual inspection of all lighting on the property where the SUP exists was conducted on March 1, 2023. All lights on the property subject to the conditions of the SUP were downward casting onto said property. Staff did not find any lights oriented towards a navigational channel nor adjacent properties. The site visit was intentionally conducted after daylight hours to provide staff with an opportunity to see the lights in the dark. When the initial site visit was conducted by Code Enforcement staff on February 9, 2023, during daylight hours and with no lights on, it appeared there was a light

oriented towards an adjacent property. Upon conducting the second site visit on March 1, 2023, after daylight hours when the lights were on, staff determined that the light is oriented downward onto the Marina property and not onto adjacent property.

As described above, Pender County considers the violation case closed.

Sincerely,

Charlie Ring
Code Enforcement Officer

Attachment 4 – January 20, 2004, SUP Board Action Form

INTRODUCED BY: Johnny Sutton

DATE: January 20, 2004

ITEM NO: 52

Special Use Permit: Expansion of Existing Hampstead Marina

SUBJECT: CASE NO: 03-07-21-16
PROPERTY RECORD NO: 08220 & 08221
APPLICANT: H. Allen and Joyce H. Wooten
OWNER: Joseph N. and Stella M. Honeycutt

ACTION REQUESTED: Approval Of Special Use Permit To Expand Hampstead Marina.**HISTORY/BACKGROUND:**

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, proposed 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which has already been completed without required permits. Approval of this permit will also include construction and replacement of the pier, wet slips and boat ramp that has all ready been completed without local permits.

Project History: This property had been used as a marina and boat ramp for many years. The pier and boat slips were destroyed in the Hurricane of 1996 and were not replaced. A CAMA permit was obtained in July 2002 for 9 boat slips, the pier and gazebo. The CAMA permit contained a provision that local permits must be obtained. The boat ramp was subsequently rebuilt and the pier, boat slips and gazebo constructed without local permits. These facilities require a zoning permit for construction or replacement and the pier and gazebo require a building permit for replacement or construction as a commercial structure. In April 2003, Mr. Wooten requested an electrical permit for electrical service relocation for the existing picnic shelter, restroom on the site. The permit was issued. It was later realized that permits for the construction, repair or replacement of the pier boat, boat slips, boat ramp and gazebo had not been issued on the site. The Zoning Permit for the electrical service relocation was revoked. Mr. Wooten subsequently filed an application to the Board of Adjustment for Administrative Review of the Zoning Administrator's decision. At the June 18, 2003 Board of Adjustment meeting the Board ruled as follows:

1. The facility including the boat ramp with loading pier for pedestrian access, 20'x 20' shelter with one restroom and three vending machines, parking (extending to within approx. 220' of the front property line) and 9 boat mooring facilities and associated access piers (marina) could maintain its nonconforming status as an existing marina, since not all elements of the facility had not been destroyed and had continued to operate during the 5 year period when the pier and slips did not exist.
2. The facility and owner were and are subject to all permitting requirements of the Pender County Zoning Ordinance and must obtain the required permits for the facility prior to any operation of the facility.

The owner has therefore commenced the initiation of the permit acquisition process.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail. Special Use Permit signs were posted on or near the proposed site.
- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential and marinas are allowed as a special use in the R-20 District.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinance. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The proposal is in compliance with the Flood Hazard Prevention Ordinance, since the only structure (restroom building) on the site below flood elevation existed prior to the adoption of the Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site. (See attached land use map).
- G) Site Access Conditions:** The marina site access to a state maintained road is not clear. Additional information must be submitted.
- H) Conditions To Consider In Issuing A Special Use Permit For This Project:**
 1. The following shall be submitted prior to issuance of a zoning permit for the site:
 - a) An Existing Waste System Permit from the Pender County Environmental Health Division with a specific reference to the Hampstead Marina and limitations on capacity for the waste system.
 - b) NCDOT Driveway Permit for access to the NCDOT state maintained road for the commercial facility identified herein as Hampstead Marina.
 - c) A revised site plan complying with the conditions of this permit, including the specific description and location of perimeter fencing as required herein.
 - d) Recorded documents showing that the commercial site has access to Broadview Lane or a NCDOT maintained road or other evidence satisfactory to the County Attorney that the commercial site has access to a NCDOT maintained road.
 2. A separate Zoning Permit must be obtained for any existing or proposed signs located on the property or that advertise the site or use. All such signs shall be in accordance with Section 16 of the Pender County Zoning Ordinance.
 3. Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.
 4. All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". A plan for the seeded areas approved in written form by the NC Agricultural Extension Service or the local SCS office of the USDA shall be submitted with the application for a zoning permit and all areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
 5. The site shall be maintained so that there is no visible erosion on the site and no visible transport of sediment off the site on to adjacent properties or into estuarine waters.
 6. Occupancy of the site shall be limited to the capacity established by the Existing Septic Permit, the NCDOT driveway permit, the CAMA permit or the limitations established in this permit which ever is more restrictive.
 7. A 6 ft high 6 inch by 6 inch wood fence shall be installed along the southwestern boundary from the corner of the residential site on the property to within 10 ft. the mean high water line. The fence shall be left in its

- natural state or stained a neutral color and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
8. A type A buffer 10 ft. wide shall be provided along the southwestern boundary from the corner of the residential site on the property to within 50 ft. of the mean high water line and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
 9. Landscape and buffer plantings as shown on the approved site plan shall be installed before issuance of an occupancy permit for any of the facilities. Such planting shall be installed with the minimum size requirements of Section 14 of the Pender County Ordinance and be surrounded by a physical barrier to protect plants from traffic.
 10. Parking bays shall be physically marked on the ground with a physical barrier or other material approved by the zoning administrator as shown on the approved site plan.
 11. A drive around shall be provided at the southwest end of the double parking bay in the central area of the site and shown on the revised site plan with a 20 ft. width.
 12. Parking areas or access to parking spaces shall not exceed a slope of 8%. Verification of steep slope areas shall be provided by the applicant and parking shall be redesigned, graded or eliminated to comply with this requirement.
 13. Other perimeter fencing shall be provided in the locations shown on the site plan to specifications as approved by the Zoning Administrator.
 14. All parking bays shall be physically marked on the ground with vehicle physical barriers approved by the Zoning Administrator at the following locations:
 - a) The end of each bay of parking,
 - b) The center of each double bay of parking,
 - c) The forward edge of each single bay of parking,
 - d) Surrounding each designated landscape area shown on the approved site plan.
 15. The central bay of double parking shown on the approved site plan shall provide for a drive around traffic pattern, so that traffic will not be required to back an excessive distance or turn around in a restricted area.
 16. Occupancy of the site shall be limited to individuals that have a rental contract or permit for one of the 9 approved boat slips or use of the boat ramp. An approved permit or sticker as issued by the operator shall be displayed on each vehicle including boats that are parked on the site. The following additional conditions shall apply to capacity and occupancy of the site:
 - a) No more than 9 watercraft of any type shall be docked or moored at the pier or wet slip facility at any time,
 - b) No more than 5 watercraft of any type shall be temporarily moored in the boat ramp or boat ramp finger pier at any one time,
 - c) No more than 16 water craft of any type will occupy or be located in the facility's dredged basin and within 120 ft. of the boat ramp or property shoreline,
 - d) All vehicles on the landward side of the water line shall be parked in designated and physically marked parking spaces,
 - e) The site on the landward side of the water line shall be limited to no more vehicles or vehicle combinations than there are designated parking spaces as shown on the final site plan approved by the Planning Director. This number shall not under any circumstances exceed 119 vehicles or vehicle combinations.
 - f) The site shall be supervised and controlled so that violations of the conditions of this permit do not occur.
 - g) The facilities shall not be used by any commercial boat dry stack or storage facility not physically located on the site to launch or store boats.
 17. Storage or display of any salvage materials, merchandise or equipment on the site is prohibited.
 18. The applicant shall submit a proposal for waste collection containers on the site and maintenance and servicing the containers to be approved by the zoning administrator prior to issuance of a final zoning permit.
 19. Boats or boat trailers or other vehicles cannot be parked or stored on the site for more than 48 hours, except in the 9 boat slips shown on the site plan.

Permit # 03-07-21-16

20. Applicant must obtain a building permit and certificate of occupancy as required under the NC Building Code for the pier and gazebo, prior to the site being occupied or access being provided to the facility.
21. The project shall maintain compliance with all conditions of the CAMA permit that is at any time in effect.
22. The project must be inspected and approved by the Zoning Administrator, including compliance with buffers, and other conditions of this permit and the Zoning Ordinance prior to an occupancy permit being issued or any occupancy or use of the site.
23. The project shall be maintained in accord with the applicant's final revised site plan as approved by the Zoning Administrator and the conditions of this permit.
24. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on January 20, 2004 ; the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: **

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland V Meadows Rivenbark

Dwight Strickland

Dwight Strickland,
Chairman

01-20-04
Date

Blenda Pridgen
ATTEST

01-20-04
Date

**** Remove Item 16g**

Remove Item 10, 16d and 16e

Amend Section 7: A 6 ft. high picket fence

Add: To avoid light pollution, no overhead lights should be directed toward Piepmeyer's house.

**Attachment 5 – November 15, 2004, SUP
Board Action Form**

INTRODUCED BY: Johnny Sutton

DATE: November 15, 2004

ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

SUBJECT: CASE NO: 04-10-25-17
PROPERTY RECORD NO: 08220 & 08221
APPLICANT: H. Allen and Joyce H. Wooten
OWNER: Wooten Holding

ACTION REQUESTED: Revision of an Approved Special Use Permit for Hampstead Marina for the following amendments:

1. Revise the permit to require the planted buffer along the southwest property line end 160 ft. from the high water line.
2. Extend the time allowed for all conditions to be met to February 15, 2005.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The recently approved expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which was completed without required permits. The expanded Marina also includes a pier, wet slips and boat ramp that was all completed without local permits.

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004 (see executed permit attached).
2. A site plan as required to be submitted under the Special Use Permit was approved by Planning Staff on May 19, 2004.
3. A Zoning Permit was issued in August 2004 with the requirement that all conditions be completed by December 15, 2004.
4. During this process a neighbor adjacent to the site reviewed the staff approved site plan and the original permit and noticed the following discrepancies between the Approved Permit Conditions and the Staff Approved Site Plan:
 - a. The planted buffer along the southwest property line had been approved by staff approximately 160 ft. short of the mean high water line. This in effect allowed the buffer to end 160 ft. from the mean high water line instead of 50 ft. A specific requirement of the permit was that the buffer be provided to within 50 ft. of the mean high water line.
 - b. A gate was shown on the staff approved site plan in the required fence along the southwest property line and the gate was not included in the application or in the permit conditions.
 - c. A seawall was constructed along the southwest property line that was not shown on the County or CAMA Permit.
5. The applicant has subsequently requested a revision to the approved Special Use Permit.

EVALUATION:

- A) **Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail.

- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential. Marinas are allowed as a special use in the R-20 District. The facility will be in compliance with the Zoning Ordinance when all local and state regulation requirements are completed.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinance. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan as long as all required permits are obtained and it is in compliance with local and state regulations.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The applicant must verify that all electrical component installations for the pier and gazebo are elevated above FEMA flood elevation in order for the project to comply with the Flood Hazard Prevention Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site.
- G) Site Access Conditions:** The marina site has access to a state maintained road along a recorded easement from the site.
- H) Staff Comments:** Staff will note the following conditions that currently exist.
1. This project has resulted in a long, complicated and controversial process as a result primarily of the applicant not obtaining the required, obvious permits.
 2. The property is continuing to be used as a marina without compliance with the local Zoning Ordinance and NC State Building Code and no occupancy being authorized by Pender County.
 3. There are numerous permit requirements that must still be fulfilled prior to official occupancy being approved by the County Planning and Building Inspections Department.
 4. It will shortly be beyond the normal planting season for required buffer and landscape plants.
 5. It should be noted also that the Zoning Ordinance requires required buffers and landscape plants to be installed prior to occupancy of a facility or within 90 days when an adequate security is posted to insure installation of the plantings.
 6. The reason for planning staff allowing a change in the approved site plan from the permit conditions were as follows:
 - a. It was felt that the planted buffer would be hard if not impossible to maintain in the lower part of this area because of its proximity to the boat ramp traffic. It is likely that at least 60 additional ft. of the deleted buffer could be installed without causing undue hardship for maintenance.
 - b. It was felt that a gate in a fence does not change the requirements for the fence to be installed. A condition was noted on the site plan that the gate could only be used for the purposes allowed by the easement that was recorded and not for commercial or marina use.
- I) Conditions To Consider In Issuing A Special Use Permit For This Project:**
1. All conditions of the original permit executed on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
 2. The applicant will install all buffer and landscape plants as required under the original and amended Special Use Permits by 12-15-04, in compliance with the planting specifications of Section 14 of the Zoning Ordinance.
 3. All other conditions of compliance must be completed by February 15, 2005. This shall include the following:
 - a. Completion of all requirements for local permits, including Zoning and Building Related.
 - b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved.

Permit # 03-07-21-16

4. The type A buffer 10 ft. wide as required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 100 ft. of the mean high water line and maintained for the duration of the project activity. The plantings required in the A buffer shall continue adjacent to the property line for an additional 25 ft. and to within 75 ft. of the mean high water line.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on November 15, 2004 the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

Dwight Strickland,
Chairman

11-15-04
Date

Glenda Bridger
ATTEST

11-15-04
Date

** To adhere with the original distances (buffer). The seven foot buffer begins at the curve in the fence, down to the dock. Additional time is allowed to complete work on this Special Use Permit until February 15, 2005.

Attachment 6 – December 20, 2004, SUP Board Action Form

INTRODUCED BY: Johnny Sutton

DATE: December 20, 2004

ITEM NO: 18.

Special Use Permit: Hampstead Marina Amendment

SUBJECT: CASE NO: 04-10-25-17
PROPERTY RECORD NO: 08220 & 08221
APPLICANT: H. Allen and Joyce H. Wooten
OWNER: Wooten Holding

ACTION REQUESTED: Amend the Special Use Permit for Hampstead Marina for the following:

1. Revise the permit requirements for the buffer along the southwestern property line.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: The project is an existing Marina/Boat Ramp that received Special Use Permit approval for expansion in January 2004. An amendment to the permit in November 2004 dealt with the buffer along the southwestern property boundary. The currently proposed amendment by staff would provide for a change in the conditions applying to the buffer along the southwestern property boundary:

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004.
2. A revision was approved to the permit on November 15, 2004.

EVALUATION: The permit revision was approved on November 15, 2004 after a two hour plus session of discussing the issue and issues not related to the buffer question. The facility has been judged to be an existing facility by the Pender County Board of Adjustment, a Quasi-Judicial Board. The 7 ft. wide protected buffer width that was approved on November 15, 2004, near the concrete boat ramp is likely not practical and staff feels could not be adequately maintained. The plantings in the buffer area would be the item critical for protection of neighboring properties. The proposed amendment would consist of a minor change in the original permit and would be consistent with Pender County Policies, Plans and Ordinances. Planning Staff recommends approval of this resolution subject to the conditions noted below.

A) Conditions To Consider In Issuing A Special Use Permit For This Project:

1. All conditions of the original permit issued and executed by Pender County on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
2. All plantings for the buffer along the southwestern property line shall be placed with top of the root ball at or within 12 inches of the ground level of the marina property 20 ft. from the property line in the area where the planting is to be placed.
3. The six foot picket fence cannot be used as a retaining wall to prevent the lateral movement of soil from the parking lot area (Note: a building permit is required for any structure that is used to prevent the lateral movement of soil for any required activity associated with a commercial use. The structure may require engineered drawings in these situations prior to a building permit being issued).
4. The required 6 ft. high picket fence shall be 6 ft. high from ground level, 5 ft. from the southwestern property line. The ground level can be determined from the marina/boat ramp property side or from the ground levels on the properties to the southwest, but the fence must be at least 6 ft. high measured from one of these areas.
5. The sediment fence currently nailed to the southwestern side of the picket fence shall be removed and installed on the marina/boat ramp side of the fence to prevent sediment from being deposited on adjacent properties (the erected fence is within a few inches of the property line).
6. All conditions of compliance must be completed by February 15, 2005. This shall include the following:

- a. Completion of all requirements for local permits, including Zoning and Building Related.
- b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved and are in compliance.
7. The type A buffer 10 ft. wide as described in the Pender County Zoning Ordinance and required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 15 ft. (approximately 50 ft. of the MHW line) of the landward edge of the concrete boat ramp and maintained for the duration of the project activity except as follows:
 - a. The buffer would begin 15 ft. landward from the edge of the flat pad of the concrete boat ramp.
 - b. At this point the buffer would begin and have a protected width of 4 ft. from the property line for a distance of 50 ft.
 - c. The buffer will then continue in a landward direction with a protected width of 7 ft. (beginning 65 ft. from the landward edge of the flat pad of the concrete boat ramp) for a distance of 40 ft. and to the top of upper or middle parking level of the property.
 - d. The remainder of the buffer to the residential property line shall maintain a protected width of 10 ft.
 - e. The area of the buffer described above (from 15 ft. landward of the edge of the flat pad of the concrete boat ramp for a distance of 90 ft.), plus an additional 100 ft. shall provide plantings as follows:
 1. An evergreen hedge that will provide a continuous screen at least 6' high within 4 years.
 - f. The remainder of the buffer shall provide plantings as follows:
 1. 3 canopy trees, 3 under story trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on December 20, 2004 the Pender County Board of Commissioners considered a Special Use Permit amendment for Hampstead Marina as described herein and Eugene Meadows, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: Approved as submitted but with stipulation that the solid upper buffer is not required. Discussion clarified that there be no vegetative buffer on the upper level.

MOVED Moore **SECONDED** Rivenbark

APPROVED ☒ **DENIED** ☐ **UNANIMOUS** ☐

YEA VOTES: Meadows ☐ Holland ☒ Moore ☒ Rivenbark ☒ Williams ☐

Eugene B. Meadows
Eugene Meadows,
Chairman
12-5-0420
Date

Glenda Pridgen
ATTEST

12-20-04
Date

Attachment 7 – December 2, 2019, SUP Revocation Agenda Packet



Pender County Request for Board Action

TO: Board of County Commissioners
FROM: Kyle Breuer
DATE: December 2, 2019
SUBJECT: Consideration of the Revocation of Special Use Permit 03-07-21-16.

SUMMARY:

Pender County will consider the revocation of Special Use Permit 03-07-21-16, subsequently revised on December 20, 2004 (04-10-25-17), which allowed at the time of approval for the expansion of an existing marina. In accordance with Section 3.12.4 of the Pender County Unified Development Ordinance, the Board of Commissioners may consider revocation based on findings consistent with the Ordinance criteria. The property is located at 128 Broadview Lane and may be identified as Pender County PIN: 3292-63-8007-0000.

ACTION REQUESTED:

To hold a public hearing and consider the revocation of Special Use Permit 04-10-25-17

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

Hearing Date: December 2, 2019
Property Owner: Wooten Holding Co., LLC.
Case Number: 03-07-21-16 Revocation

Action Requested: Pender County will consider the revocation of Special Use Permit 03-07-21-16, subsequently revised on December 20, 2004 (04-10-25-17), which allowed at the time of approval, for the expansion of an existing marina. In accordance with Section 3.12.4 of the Pender County Unified Development Ordinance, the Board of Commissioners may consider revocation based on findings consistent with the Unified Development Ordinance criteria.

Property Record Number and Location: The property is located at 128 Broadview Lane and may be identified as Pender County PIN: 3292-63-8007-0000.

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

Description and History:

Pender County will consider the revocation of Special Use Permit 03-07-21-16, subsequently revised on December 20, 2004 (04-10-25-17), which allowed at the time of approval, for the expansion of an existing marina. In accordance with Section 3.12.4 of the Pender County Unified Development Ordinance, the Board of Commissioners may consider revocation based on findings consistent with the Unified Development Ordinance criteria.

According to the referenced Unified Development Ordinance Section 3.12.4.B, regarding Special Use Permit Revocation:

B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this Ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified. After a public hearing has been held, the Board of Commissioners may revoke the Special Use Permit upon finding any of the following:

- 1) That the approval was obtained by fraud.*
- 2) That the use for which such approval was granted is not being executed.*
- 3) That the use for which such approval was granted has ceased to exist or has been suspended for one year.*
- 4) That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.*
- 5) That the permit granted is in violation of an Ordinance or Statute.*
- 6) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.*

Following a received complaint regarding the status of the property in relation to the Special Use Permit, Code Enforcement opened an investigation on the property to document its current status. Through site

investigation it was determined that the property's status was inconsistent with the Special Use Permit issued in 2004. On November 30, 2018, the Pender County Code Enforcement Officer issued a Notice of Violation to the referenced property owner. The Notice of Violation took into consideration the current status of the property, its prior approvals, existing use, and conditions in which approval were granted through the Special Use Permit process. Based on observations through the initial investigation, the following items were found to be out of compliance:

- Compliance with Site Plan as approved on May 19, 2004 and subsequently signed by Joyce H. Wooten.
- Conditions applied to the Special Use Permit and approved Site Plan including the following:
 - Fencing
 - Buffering
 - Parking and Surfacing
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent reviews, which includes the lighting standards found on-site.

Over the following months, Code Enforcement attempted to work with the property owner to develop a plan of action for compliance. The property remains in violation due to the lack of action to remedy specific conditions as stated above and documented through the approved Special Use Permit and subsequent revision to that permit.

Ultimately, it was agreed upon the main items that needed to be addressed included the surfacing of the site, fencing, and overhead lighting. Specific to each were that areas on the site had experienced erosion from vehicular and boat trailer traffic. The bare surface was producing sediment transfer from rain events which were being carried over to the adjacent property to the south, photos are attached. The fencing had been severely damaged and needed to be replaced in a manner consistent with the approved Special Use Permit, and overhead lighting that had been replaced by the electrical utility provider (Duke Energy Progress) had introduced additional lighting that was extending beyond the property line.

To date, items that have been addressed include the repair of the fencing, as well as modifications to the lighting. The main point of concern remains the surfacing of the site. In regards to surfacing, the property owner has supplied the County a plan showing proposed parking lot stabilization to include an approximately 5,200 sq. ft. stabilization area, as well as grass filter strips and areas to be reseeded. Staff has had the ability to review the submitted plan but still finds concerns regarding the area of stabilization necessary to maintain stabilization as well as plans to keep vehicular and trailer usage contained to prevent ongoing maintenance issues and ultimate compliance with the Special Use Permit.

EVALUATION:

- A. Public Notifications:** Advertisements for the proposal have been placed in the Pender-Topsail Post & Voice. The property owner and adjacent property owners were notified by first class mail; as well as a sign advertising the public hearing was placed on the subject property.
- B. Basis for Revoking SUP:** Based on a Section 3.12.4.B of the Pender County Unified Development Ordinance, a Special Use Permit may be revoked upon finding any of the following:
1. That the approval was obtained by fraud.
 2. That the use for which such approval was granted is not being executed.
 3. That the use for which such approval was granted has ceased to exist or has been suspended for one year.

4. That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
5. That the permit granted is in violation of an Ordinance or Statute
6. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

Attachments

1. *Notice of Violation*
2. *Final Notice of Violation*
3. *Court-Ordered Compliance*
4. *Special Use Permit (04-10-25-17)*
5. *Revised Stabilization Plan (submitted November 12, 2019)*
6. *Photos of Site*
7. *Correspondence with Property Owner's Representative*

**Pender County
Planning and Community Development**

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



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

1st NOTICE OF VIOLATION

November 30, 2018

Wooten Holding Co. LLC.
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF VIOLATION: You are hereby given notice that a violation or violations of the Special Use Permit issued exists at the property described below and owned/occupied by you. As the property owner you are required to comply with the Special Use Permit issued and violations that are not rectified may constitute a permit revocation.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 128 Broadview Lane, Hampstead, NC, 28443 and identified by the Pender County Tax Office as Parcel Identification Number 3292-63-8007-0000.

CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004 (Attachment 1).

Specific conditions to be complied with are as follows:

- Compliance with Site Plan as approved on May 19, 2004 and subsequently signed by Joyce H. Wooten (Attachment 2)
- Conditions applied to the Special Use Permit and approved Site Plan
 - Fencing (6' high picket fencing) along the southwestern property line being not located in the correct area, this should be at minimum 5' off the property line. Furthermore, the relocated fencing should be supplemented with a retention structure as to control sediment and lateral movement of soil from the parking lot area (Condition #3 – 12/20/04 SUP Approval).
 - Buffering – Lack of vegetation as identified and approved on the Site Plan, please reference Condition #7 – 12/20/04 SUP Approval.
 - Parking and Surfacing – Parking areas are not stabilized and marked as conditioned in the approved SUP (Condition #4/#5/#14 – 1/20/04).
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent review.

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR: All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: Violations are subject to civil penalty in the amount of One Hundred (\$100.00) for each offense. Each day a violation continues, shall constitute a separate and distinct offense, punishable as set forth in the Pender County Unified Development Ordinance.

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

The County shall through its County Manager and County Attorney initiate legal action to insure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

DATE OF NOTIFICATION:

This determination of violation made on the 27th day of November 2018 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring, Code Enforcement Supervisor
(910) 259-1519
cring@pendercountync.gov

Pender County Planning and Community Development

Code Enforcement

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



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

FINAL NOTICE OF VIOLATION

March 13, 2019

Wooten Holding Co. LLC.
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF VIOLATION: You are hereby given notice that a violation or violations of the Special Use Permit issued CONTINUES TO EXIST at the property described below and owned/occupied by you. As the property owner you are required to comply with the Special Use Permit issued and violations that are not rectified may constitute a permit revocation.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 128 Broadview Lane, Hampstead, NC, 28443 and identified by the Pender County Tax Office as Parcel Identification Number 3292-63-8007-0000.

CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004 (Attachment 1).

Specific conditions to be complied with are as follows:

- Compliance with Site Plan as approved on May 19, 2004 and subsequently signed by Joyce H. Wooten (Attachment 2)
- Conditions applied to the Special Use Permit and approved Site Plan
 - Parking and Surfacing – Parking areas are not stabilized and marked as conditioned in the approved SUP (Condition #4/#5/#14 – 1/20/04).
 - All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". All areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent review.

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR: All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation will need to be corrected not later than 30 days from this notice. If not corrected by the time indicated civil penalties will begin to accrue.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: Violations are subject to civil penalty in the amount of One Hundred (\$100.00) for each offense. Each day a violation continues, shall constitute a separate and distinct offense, punishable as set forth in the Pender County Unified Development Ordinance.

CURRENT CIVIL PENALTY ACCRUED:

A CIVIL PENALTY OF \$1,700.00 HAS ACCRUED AS OF, March 13, 2019 AS A RESULT OF THE VIOLATION NOT BEING CORRECTED.

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

THIS VIOLATION WILL BE FORWARDED TO THE COUNTY MANAGER AND THE COUNTY ATTORNEY TO INITIATE LEGAL ACTION TO INSURE COMPLIANCE AND COLLECT THE CIVIL PENALTIES DUE. THE VIOLATOR MAY BE SUBJECT TO PAYING THE COST OF THIS ACTION, PURSUANT TO G.S. 153A-123, IN ADDITION TO ANY PENALTIES NOTED ABOVE.

DATE OF NOTIFICATION:

The determination of violation was made on the 27th day of November 2018 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring, Code Enforcement Supervisor
(910) 259-1519
cring@pendercountync.gov

**Pender County
Planning and Community Development**

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August 30, 2019

Wooten Holding C. LLC
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

An initial site visit dated 11-27-18 was conducted to determine if any violations of conditions of a previously issued Special Use Permit exist on property owned by you and identified by the Pender County Tax Office as Parcel Identification Number 3292-63-8007-0000. This letter is being forwarded to inform you that the previous areas of concern that were addressed have not been satisfied.

Specifically, failure to correct deficiencies identified during the initial and final Notices of Violation have resulted in submitting this case for Court Ordered Compliance. Deficiencies include failure to comply w/ lighting standards and stabilization/ erosion standards outlined in the conditions tied to the Special Use Permit.

Attached you will find a copy of Court Ordered Compliance.

Regards,

Pender County Code Enforcement

**Pender County
Planning and Community Development**

Code Enforcement

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



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August 30, 2019

Mr. Trey Thurman
Pender County Attorney
3169 Wrightsville Ave.
Wilmington NC 28403

Dear Mr. Thurman,

VIOLATION: Special Use Permit

Wooten Holding Co. LLC
805 Robinwood St. Burgaw, NC 28425
PAR. REC. # 3292-63-8007-0000
VIOLATION: Non-compliance of Special Use
Permit issued 1-20-2004

Case # 298-2018

You will find attached a summary of the above noted zoning violation. A copy of the Notice of Violation is on file. Notice has been served on the property owner where this violation exists as required by the Pender County Unified Development Ordinance and procedural requirements approved by the County Attorney. The property owner was given notice that the violation must be corrected within thirty days of receipt of the notice. The violation has not been corrected as of this date.

We have sufficient documented evidence that the property was and still is in violation of the Special Use Permit. At this point, we feel that the Planning Staff has exhausted all efforts to obtain compliance at this site.

It is therefore recommended that this violation be turned over to your office for processing, and a Court Order be obtained, or other action taken to achieve compliance. It is your decision as County Attorney as to whether the court action should request payment of the civil fines involved in this violation. We will provide the documented evidence and other materials necessary for processing as requested.

Sincerely,

Charlie Ring
Code Enforcement Officer

REQUESTED ACTION: Court Ordered Compliance
FORWARDED TO: County Attorney Trey Thurman
Wooten Holding Co. LLC
BY: Charlie Ring,
Pender County Code Enforcement Officer
DATE: 08-30-2019

Case Summary and copy of
Notice of Violation are on file.

CC: To Owner
Planning Director

**Pender County
Planning and Community Development**

Code Enforcement

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



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

1st NOTICE OF VIOLATION

November 30, 2018

Wooten Holding Co. LLC.
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF VIOLATION: You are hereby given notice that a violation or violations of the Special Use Permit issued exists at the property described below and owned/occupied by you. As the property owner you are required to comply with the Special Use Permit issued and violations that are not rectified may constitute a permit revocation.

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CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004 (Attachment 1).

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- Conditions applied to the Special Use Permit and approved Site Plan
 - Fencing (6' high picket fencing) along the southwestern property line being not located in the correct area, this should be at minimum 5' off the property line. Furthermore, the relocated fencing should be supplemented with a retention structure as to control sediment and lateral movement of soil from the parking lot area (Condition #3 – 12/20/04 SUP Approval).
 - Buffering – Lack of vegetation as identified and approved on the Site Plan, please reference Condition #7 – 12/20/04 SUP Approval.
 - Parking and Surfacing – Parking areas are not stabilized and marked as conditioned in the approved SUP (Condition #4/#5/#14 – 1/20/04).
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent review.

Code Case 298-2018

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR: All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: Violations are subject to civil penalty in the amount of One Hundred (\$100.00) for each offense. Each day a violation continues, shall constitute a separate and distinct offense, punishable as set forth in the Pender County Unified Development Ordinance.

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

The County shall through its County Manager and County Attorney initiate legal action to insure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

DATE OF NOTIFICATION:

This determination of violation made on the 27th day of November 2018 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring, Code Enforcement Supervisor
(910) 259-1519
cring@pendercountync.gov

INTRODUCED BY: Johnny Sutton

DATE: January 20, 2004

ITEM NO: 32

Special Use Permit: Expansion of Existing Hampstead Marina

SUBJECT: CASE NO: 03-07-21-16

PROPERTY RECORD NO: 08220 & 08221

APPLICANT: H. Allen and Joyce H. Wooten

OWNER: Joseph N. and Stella M. Honeycutt

ACTION REQUESTED: Approval Of Special Use Permit To Expand Hampstead Marina.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, proposed 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which has already been completed without required permits. Approval of this permit will also include construction and replacement of the pier, wet slips and boat ramp that has all ready been completed without local permits.

Project History: This property had been used as a marina and boat ramp for many years. The pier and boat slips were destroyed in the Hurricane of 1996 and were not replaced. A CAMA permit was obtained in July 2002 for 9 boat slips, the pier and gazebo. The CAMA permit contained a provision that local permits must be obtained. The boat ramp was subsequently rebuilt and the pier, boat slips and gazebo constructed without local permits. These facilities require a zoning permit for construction or replacement and the pier and gazebo require a building permit for replacement or construction as a commercial structure. In April 2003, Mr. Wooten requested an electrical permit for electrical service relocation for the existing picnic shelter, restroom on the site. The permit was issued. It was later realized that permits for the construction, repair or replacement of the pier boat, boat slips, boat ramp and gazebo had not been issued on the site. The Zoning Permit for the electrical service relocation was revoked. Mr. Wooten subsequently filed an application to the Board of Adjustment for Administrative Review of the Zoning Administrator's decision. At the June 18, 2003 Board of Adjustment meeting the Board ruled as follows:

1. The facility including the boat ramp with loading pier for pedestrian access, 20'x 20' shelter with one restroom and three vending machines, parking (extending to within approx. 220' of the front property line) and 9 boat mooring facilities and associated access piers (marina) could maintain its nonconforming status as an existing marina, since not all elements of the facility had not been destroyed and had continued to operate during the 5 year period when the pier and slips did not exist.
2. The facility and owner were and are subject to all permitting requirements of the Pender County Zoning Ordinance and must obtain the required permits for the facility prior to any operation of the facility.

The owner has therefore commenced the initiation of the permit acquisition process.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail. Special Use Permit signs were posted on or near the proposed site.
- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential and marinas are allowed as a special use in the R-20 District.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinance. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The proposal is in compliance with the Flood Hazard Prevention Ordinance, since the only structure (restroom building) on the site below flood elevation existed prior to the adoption of the Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site. (See attached land use map).
- G) Site Access Conditions:** The marina site access to a state maintained road is not clear. Additional information must be submitted.
- H) Conditions To Consider In Issuing A Special Use Permit For This Project:**
 - 1. The following shall be submitted prior to issuance of a zoning permit for the site:
 - a) An Existing Waste System Permit from the Pender County Environmental Health Division with a specific reference to the Hampstead Marina and limitations on capacity for the waste system.
 - b) NCDOT Driveway Permit for access to the NCDOT state maintained road for the commercial facility identified herein as Hampstead Marina.
 - c) A revised site plan complying with the conditions of this permit, including the specific description and location of perimeter fencing as required herein.
 - d) Recorded documents showing that the commercial site has access to Broadview Lane or a NCDOT maintained road or other evidence satisfactory to the County Attorney that the commercial site has access to a NCDOT maintained road.
 - 2. A separate Zoning Permit must be obtained for any existing or proposed signs located on the property or that advertise the site or use. All such signs shall be in accordance with Section 16 of the Pender County Zoning Ordinance.
 - 3. Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.
 - 4. All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". A plan for the seeded areas approved in written form by the NC Agricultural Extension Service or the local SCS office of the USDA shall be submitted with the application for a zoning permit and all areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
 - 5. The site shall be maintained so that there is no visible erosion on the site and no visible transport of sediment off the site on to adjacent properties or into estuarine waters.
 - 6. Occupancy of the site shall be limited to the capacity established by the Existing Septic Permit, the NCDOT driveway permit, the CAMA permit or the limitations established in this permit which ever is more restrictive.
 - 7. A 6 ft high 6 inch by 6 inch wood fence shall be installed along the southwestern boundary from the corner of the residential site on the property to within 10 ft. the mean high water line. The fence shall be left in its

Permit # 03-07-21-16

- natural state or stained a neutral color and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
8. A type A buffer 10 ft. wide shall be provided along the southwestern boundary from the corner of the residential site on the property to within 50 ft. of the mean high water line and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
 9. Landscape and buffer plantings as shown on the approved site plan shall be installed before issuance of an occupancy permit for any of the facilities. Such planting shall be installed with the minimum size requirements of Section 14 of the Pender County Ordinance and be surrounded by a physical barrier to protect plants from traffic.
 10. Parking bays shall be physically marked on the ground with a physical barrier or other material approved by the zoning administrator as shown on the approved site plan.
 11. A drive around shall be provided at the southwest end of the double parking bay in the central area of the site and shown on the revised site plan with a 20 ft. width.
 12. Parking areas or access to parking spaces shall not exceed a slope of 8%. Verification of steep slope areas shall be provided by the applicant and parking shall be redesigned, graded or eliminated to comply with this requirement.
 13. Other perimeter fencing shall be provided in the locations shown on the site plan to specifications as approved by the Zoning Administrator.
 14. All parking bays shall be physically marked on the ground with vehicle physical barriers approved by the Zoning Administrator at the following locations:
 - a) The end of each bay of parking,
 - b) The center of each double bay of parking,
 - c) The forward edge of each single bay of parking,
 - d) Surrounding each designated landscape area shown on the approved site plan.
 15. The central bay of double parking shown on the approved site plan shall provide for a drive around traffic pattern, so that traffic will not be required to back an excessive distance or turn around in a restricted area.
 16. Occupancy of the site shall be limited to individuals that have a rental contract or permit for one of the 9 approved boat slips or use of the boat ramp. An approved permit or sticker as issued by the operator shall be displayed on each vehicle including boats that are parked on the site. The following additional conditions shall apply to capacity and occupancy of the site:
 - a) No more than 9 watercraft of any type shall be docked or moored at the pier or wet slip facility at any time,
 - b) No more than 5 watercraft of any type shall be temporarily moored in the boat ramp or boat ramp finger pier at any one time,
 - c) No more than 16 water craft of any type will occupy or be located in the facility's dredged basin and within 120 ft. of the boat ramp or property shoreline,
 - d) All vehicles on the landward side of the water line shall be parked in designated and physically marked parking spaces,
 - e) The site on the landward side of the water line shall be limited to no more vehicles or vehicle combinations than there are designated parking spaces as shown on the final site plan approved by the Planning Director. This number shall not under any circumstances exceed 119 vehicles or vehicle combinations.
 - f) The site shall be supervised and controlled so that violations of the conditions of this permit do not occur.
 - g) The facilities shall not be used by any commercial boat dry stack or storage facility not physically located on the site to launch or store boats.
 17. Storage or display of any salvage materials, merchandise or equipment on the site is prohibited.
 18. The applicant shall submit a proposal for waste collection containers on the site and maintenance and servicing the containers to be approved by the zoning administrator prior to issuance of a final zoning permit.
 19. Boats or boat trailers or other vehicles cannot be parked or stored on the site for more than 48 hours, except in the 9 boat slips shown on the site plan.

Permit # 03-07-21-16

20. Applicant must obtain a building permit and certificate of occupancy as required under the NC Building Code for the pier and gazebo, prior to the site being occupied or access being provided to the facility.
21. The project shall maintain compliance with all conditions of the CAMA permit that is at any time in effect.
22. The project must be inspected and approved by the Zoning Administrator, including compliance with buffers, and other conditions of this permit and the Zoning Ordinance prior to an occupancy permit being issued or any occupancy or use of the site.
23. The project shall be maintained in accord with the applicant's final revised site plan as approved by the Zoning Administrator and the conditions of this permit.
24. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on January 20, 2004, the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: **

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland V Meadows Rivenbark

Dwight Strickland

01-20-04
Date

Dwight Strickland,
Chairman

Blenda Pridgen
ATTEST

01-20-04
Date

- ** Remove Item 16g**
Remove Item 10, 16d and 16e
Amend Section 7: A 6 ft. high picket fence
Add: To avoid light pollution, no overhead lights should be directed toward Piepmeyer's house.

INTRODUCED BY: Johnny Sutton

DATE: December 20, 2004

ITEM NO: 18.

Special Use Permit: Hampstead Marina Amendment

SUBJECT: CASE NO: 04-10-25-17

PROPERTY RECORD NO: 08220 & 08221

APPLICANT: H. Allen and Joyce H. Wooten

OWNER: Wooten Holding

ACTION REQUESTED: Amend the Special Use Permit for Hampstead Marina for the following:

1. Revise the permit requirements for the buffer along the southwestern property line.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: The project is an existing Marina/Boat Ramp that received Special Use Permit approval for expansion in January 2004. An amendment to the permit in November 2004 dealt with the buffer along the southwestern property boundary. The currently proposed amendment by staff would provide for a change in the conditions applying to the buffer along the southwestern property boundary:

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004.
2. A revision was approved to the permit on November 15, 2004.

EVALUATION: The permit revision was approved on November 15, 2004 after a two hour plus session of discussing the issue and issues not related to the buffer question. The facility has been judged to be an existing facility by the Pender County Board of Adjustment, a Quasi-Judicial Board. The 7 ft. wide protected buffer width that was approved on November 15, 2004, near the concrete boat ramp is likely not practical and staff feels could not be adequately maintained. The plantings in the buffer area would be the item critical for protection of neighboring properties. The proposed amendment would consist of a minor change in the original permit and would be consistent with Pender County Policies, Plans and Ordinances. Planning Staff recommends approval of this resolution subject to the conditions noted below.

A) Conditions To Consider In Issuing A Special Use Permit For This Project:

1. All conditions of the original permit issued and executed by Pender County on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
2. All plantings for the buffer along the southwestern property line shall be placed with top of the root ball at or within 12 inches of the ground level of the marina property 20 ft. from the property line in the area where the planting is to be placed.
3. The six foot picket fence cannot be used as a retaining wall to prevent the lateral movement of soil from the parking lot area (Note: a building permit is required for any structure that is used to prevent the lateral movement of soil for any required activity associated with a commercial use. The structure may require engineered drawings in these situations prior to a building permit being issued).
4. The required 6 ft. high picket fence shall be 6 ft. high from ground level, 5 ft. from the southwestern property line. The ground level can be determined from the marina/boat ramp property side or from the ground levels on the properties to the southwest, but the fence must be at least 6 ft. high measured from one of these areas.
5. The sediment fence currently nailed to the southwestern side of the picket fence shall be removed and installed on the marina/boat ramp side of the fence to prevent sediment from being deposited on adjacent properties (the erected fence is within a few inches of the property line).
6. All conditions of compliance must be completed by February 15, 2005. This shall include the following:

Permit # 03-07-21-16

- a. Completion of all requirements for local permits, including Zoning and Building Related.
- b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved and are in compliance.
- 7. The type A buffer 10 ft. wide as described in the Pender County Zoning Ordinance and required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 15 ft. (approximately 50 ft. of the MHW line) of the landward edge of the concrete boat ramp and maintained for the duration of the project activity **except** as follows:
 - a. The buffer would begin 15 ft. landward from the edge of the flat pad of the concrete boat ramp.
 - b. At this point the buffer would begin and have a protected width of 4 ft. from the property line for a distance of 50 ft.
 - c. The buffer will then continue in a landward direction with a protected width of 7 ft. (beginning 65 ft. from the landward edge of the flat pad of the concrete boat ramp) for a distance of 40 ft. and to the top of upper or middle parking level of the property.
 - d. The remainder of the buffer to the residential property line shall maintain a protected width of 10 ft.
 - e. The area of the buffer described above (from 15 ft. landward of the edge of the flat pad of the concrete boat ramp for a distance of 90 ft.), plus an additional 100 ft. shall provide plantings as follows:
 - 1. An evergreen hedge that will provide a continuous screen at least 6' high within 4 years.
 - f. The remainder of the buffer shall provide plantings as follows:
 - 1. 3 canopy trees, 3 under story trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on December 20, 2004 the Pender County Board of Commissioners considered a Special Use Permit amendment for Hampstead Marina as described herein and Eugene Meadows, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: Approved as submitted but with stipulation that the solid upper buffer is not required. Discussion clarified that there be no vegetative buffer on the upper level.

MOVED Moore **SECONDED** Rivenbark

APPROVED X **DENIED** **UNANIMOUS**

YEA VOTES: Meadows Holland X Moore X Rivenbark X Williams

Eugene B. Meadows 12-5-0420
Eugene Meadows, Date
Chairman

Glenda Bridgen
ATTEST 12-20-04
Date

INTRODUCED BY: Johnny Sutton

DATE: November 15, 2004

ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

SUBJECT: CASE NO: 04-10-25-17
PROPERTY RECORD NO: 08220 & 08221
APPLICANT: H. Allen and Joyce H. Wooten
OWNER: Wooten Holding

ACTION REQUESTED: Revision of an Approved Special Use Permit for Hampstead Marina for the following amendments:

1. Revise the permit to require the planted buffer along the southwest property line end 160 ft. from the high water line.
2. Extend the time allowed for all conditions to be met to February 15, 2005.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The recently approved expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which was completed without required permits. The expanded Marina also includes a pier, wet slips and boat ramp that was all completed without local permits.

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004 (see executed permit attached).
2. A site plan as required to be submitted under the Special Use Permit was approved by Planning Staff on May 19, 2004.
3. A Zoning Permit was issued in August 2004 with the requirement that all conditions be completed by December 15, 2004.
4. During this process a neighbor adjacent to the site reviewed the staff approved site plan and the original permit and noticed the following discrepancies between the Approved Permit Conditions and the Staff Approved Site Plan:
 - a. The planted buffer along the southwest property line had been approved by staff approximately 160 ft. short of the mean high water line. This in effect allowed the buffer to end 160 ft. from the mean high water line instead of 50 ft. A specific requirement of the permit was that the buffer be provided to within 50 ft. of the mean high water line.
 - b. A gate was shown on the staff approved site plan in the required fence along the southwest property line and the gate was not included in the application or in the permit conditions.
 - c. A seawall was constructed along the southwest property line that was not shown on the County or CAMA Permit.
5. The applicant has subsequently requested a revision to the approved Special Use Permit.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail.

Permit # 03-07-21-16

- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential. Marinas are allowed as a special use in the R-20 District. The facility will be in compliance with the Zoning Ordinance when all local and state regulation requirements are completed.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinance. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan as long as all required permits are obtained and it is in compliance with local and state regulations.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The applicant must verify that all electrical component installations for the pier and gazebo are elevated above FEMA flood elevation in order for the project to comply with the Flood Hazard Prevention Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site.
- G) Site Access Conditions:** The marina site has access to a state maintained road along a recorded easement from the site.
- H) Staff Comments:** Staff will note the following conditions that currently exist.
1. This project has resulted in a long, complicated and controversial process as a result primarily of the applicant not obtaining the required, obvious permits.
 2. The property is continuing to be used as a marina without compliance with the local Zoning Ordinance and NC State Building Code and no occupancy being authorized by Pender County.
 3. There are numerous permit requirements that must still be fulfilled prior to official occupancy being approved by the County Planning and Building Inspections Department.
 4. It will shortly be beyond the normal planting season for required buffer and landscape plants.
 5. It should be noted also that the Zoning Ordinance requires required buffers and landscape plants to be installed prior to occupancy of a facility or within 90 days when an adequate security is posted to insure installation of the plantings.
 6. The reason for planning staff allowing a change in the approved site plan from the permit conditions were as follows:
 - a. It was felt that the planted buffer would be hard if not impossible to maintain in the lower part of this area because of its proximity to the boat ramp traffic. It is likely that at least 60 additional ft. of the deleted buffer could be installed without causing undue hardship for maintenance.
 - b. It was felt that a gate in a fence does not change the requirements for the fence to be installed. A condition was noted on the site plan that the gate could only be used for the purposes allowed by the easement that was recorded and not for commercial or marina use.
- I) Conditions To Consider In Issuing A Special Use Permit For This Project:**
1. All conditions of the original permit executed on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
 2. The applicant will install all buffer and landscape plants as required under the original and amended Special Use Permits by 12-15-04, in compliance with the planting specifications of Section 14 of the Zoning Ordinance.
 3. All other conditions of compliance must be completed by February 15, 2005. This shall include the following:
 - a. Completion of all requirements for local permits, including Zoning and Building Related.
 - b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved.

Permit # 03-07-21-16

4. The type A buffer 10 ft. wide as required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 100 ft. of the mean high water line and maintained for the duration of the project activity. The plantings required in the A buffer shall continue adjacent to the property line for an additional 25 ft. and to within 75 ft. of the mean high water line.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on November 15, 2004 the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

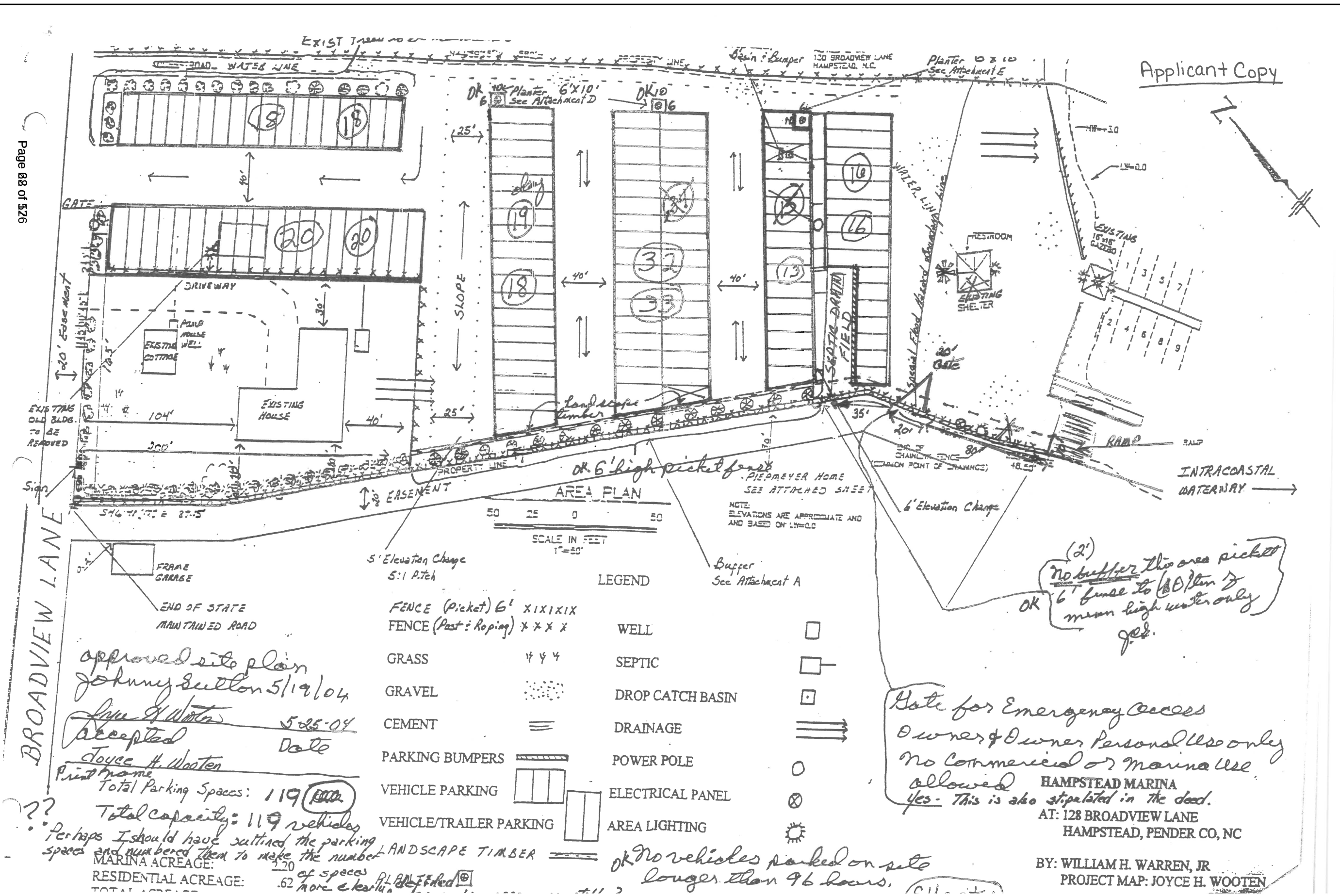
11-15-04
Date

Dwight Strickland,
Chairman

Glenda Pridgen
ATTEST

11-15-04
Date

** To adhere with the original distances (buffer). The seven foot buffer begins at the curve in the fence, down to the dock. Additional time is allowed to complete work on this Special Use Permit until February 15, 2005.



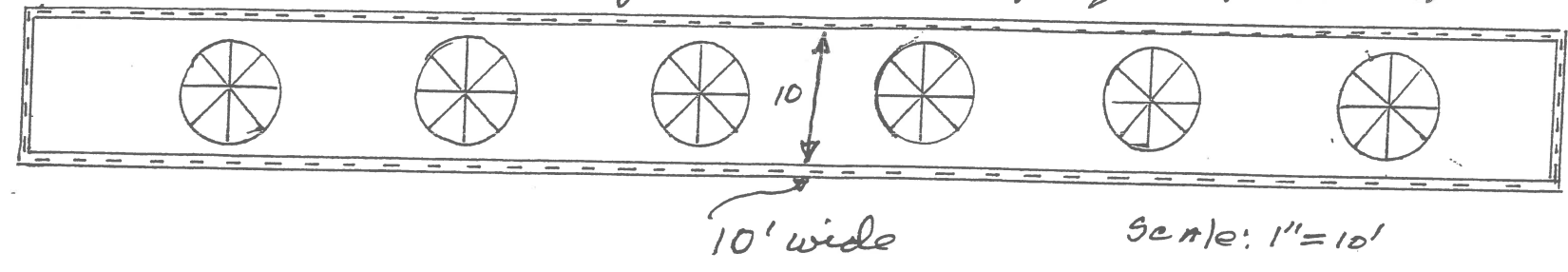
LANDSCAPE LEGEND

No littering signs posted ~~at entrance and main ramp~~ at locations shown * (last ramp + shelter)
Property must be policed daily and all trash removed.
Permit must be displayed on any vehicle parked on site.

Approved Site Plan
Johnny Sutton 5/19/04

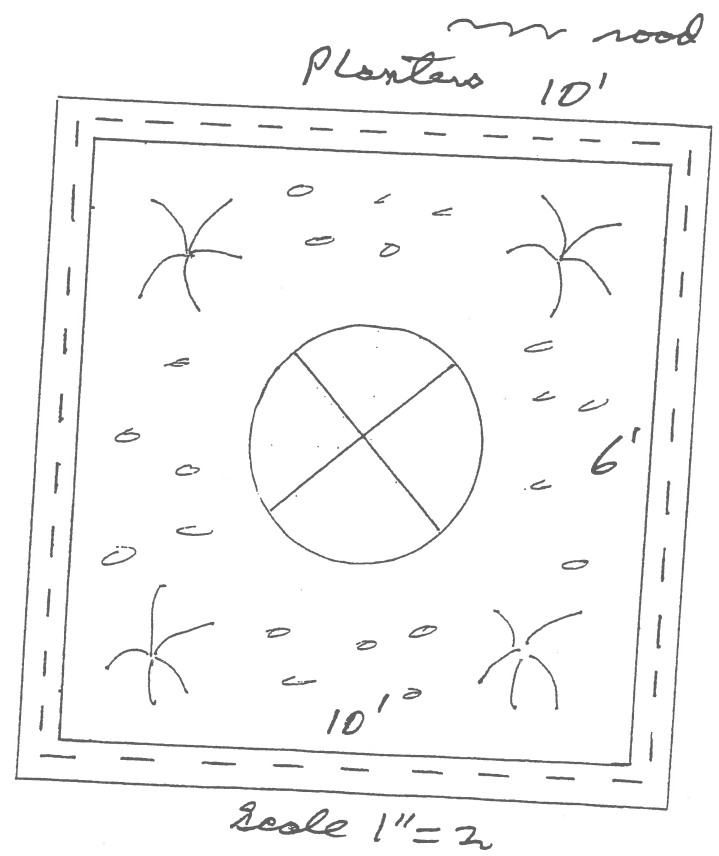
Johnny Sutton
Accepted Joyce H. Wooten 5-25-04 Date
Joyce H. Wooten Print Name

Buffer for Southwestern Boundary
from residential property to drop in elevation

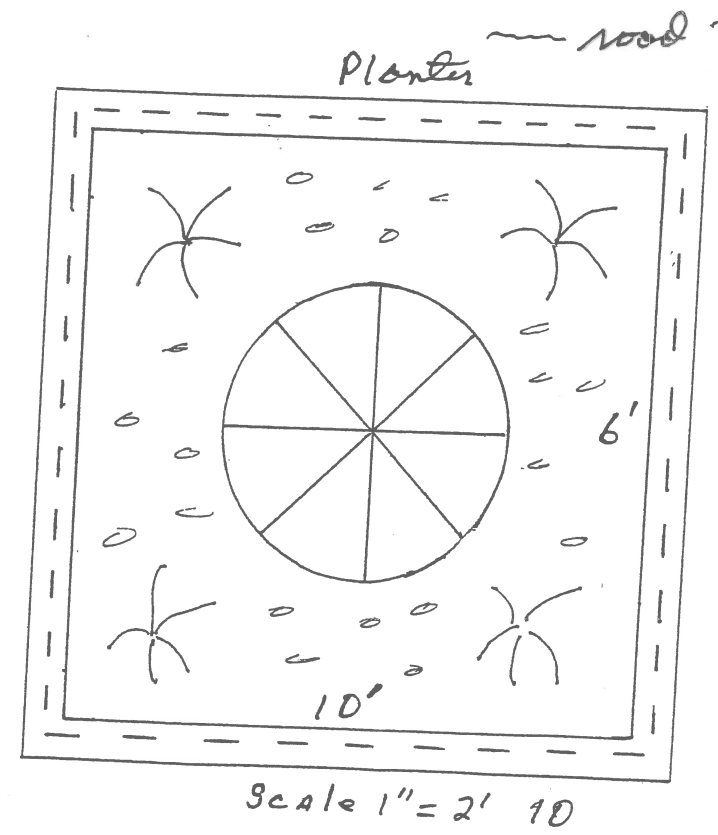


Landscape Plant Legend

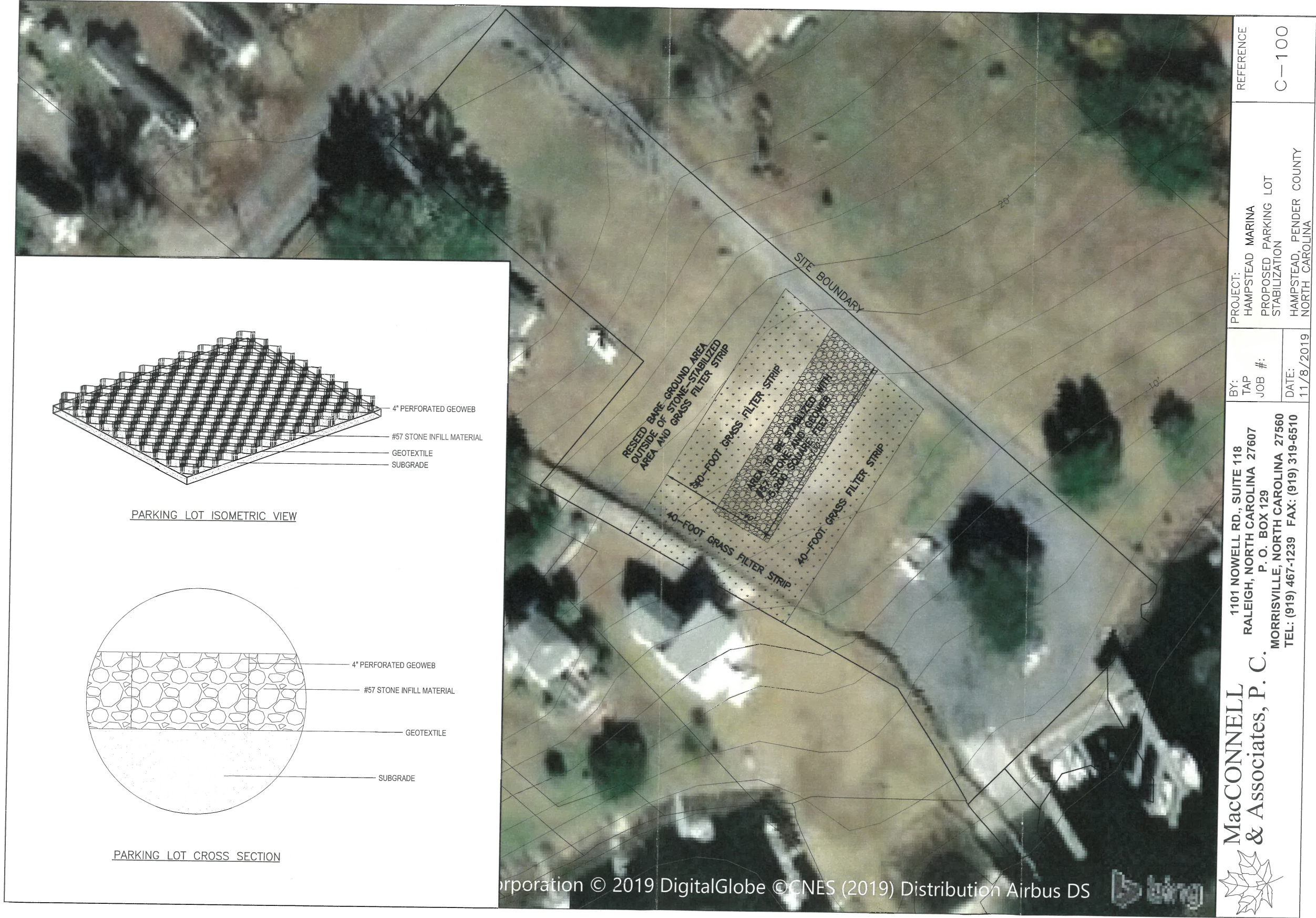
- LIVE OAK
- PECAN
- CRAPE MYRTLE
- DWARF YAUPON HOLLY
- LIGUSTRAM
- MULCH
- THUNDERB SPIREA



6' Parking



6' Parking Dr.
(Sheet)













































SAMUEL B. FRANCK, Attorney at Law

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University Corporate Center (28403)
Post Office Box 7068
Wilmington, NC 28406-7068

P: 910.794.4835
F: 910.794.4877
sbf@wardandsmith.com

March 4, 2019

Pender County Planning and Community Development
Code Enforcement
805 S. Walker Street
Post Office Box 1519
Burgaw, NC 28425

RE: Wooten Holding Company, LLC / Defense of Alleged Zoning Violation
Our File 111180-00002

Dear Sir or Madam:

We represent Wooten Holding Company, LLC ("WHC"). The purpose of this correspondence is to respond to a First Notice of Violation from you to WHC dated November 30, 2018 regarding the property located at 128 Broadview Lane. In accordance with our previous discussions with you, WHC is prepared to undertake and complete the following actions, in full and final satisfaction of the violations alleged in the First Notice of Violation:

1. WHC will seed new grass upon the subject property where the previous grass ground cover was damaged by erosion from the significant rainfall we experienced this past fall; and,
2. WHC will meet with a representative of the Pender County Planning Department at the subject property after sunset to evaluate and agree upon the scope and timing of WHC's adjustments to flood lights that are within WHC's control and, to the extent such lights are not within WHC's control, for WHC to make the appropriate request to Duke Progress or other entity in control of such lights.

ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

WILMINGTON

www.wardandsmith.com

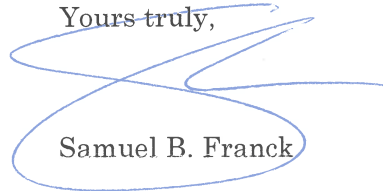
WARD AND SMITH, P.A.

March 4, 2019

Page 2

Unless otherwise instructed, we will consider this enforcement matter closed upon the completion of the aforementioned items. Please do not hesitate to contact us with questions or concerns.

Yours truly,



Samuel B. Franck

ND: 4827-4605-9913, v. 1

Pender County Planning and Community Development

Code Enforcement

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



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

March 13, 2019

Dear Mr. Franck:

Pender County Planning and Community Development ("PCD") is in receipt of your letter dated March 4, 2019. In regard to your response concerning case number 298-2018, we provide the following:

1. Wooten Holding Company, LLC ("WHC") shall provide additional protections for stabilization to include surfacing of the areas subject to vehicle and trailer use. The sediment that is being disturbed seems to be a direct result from exposed materials. A treatment of gravel, aggregate base course or an acceptable paving material should be utilized. In addition, areas documented for new grass seed should be protected for a length of time to prevent disturbance and allow for full stabilization. The proposal to simply apply grass seed is not adequate to address this issue.

2. PCD will schedule a site visit to document the orientation of lighting on-site as well as how lighting is being cast to adjacent properties. Due to the nature of schedules, we will attempt to coordinate to the best of our ability to meet with WHC, however, if notice is provided via email or phone call for said inspection and WHC is not available, the inspection will continue, and results will be provided back to WHC as soon as possible thereafter.

While PCD appreciates WHC's willingness to comply with the administrative authority to enforce the conditions of the Special Use Permit issued on the property, it has been over 106 days since the notice of violation was issued. Accordingly, this letter shall serve as the final notice as to the violation for the failure to provide stabilization. The enforcement case will remain active until notification is provided by PCD that the points discussed have been remedied to the County's satisfaction. This includes the option of pursuing additional administrative remedies for other violations, including civil penalties, denial of additional permits, and possible revocation of the special use permit.

Regards,

A handwritten signature in black ink, appearing to read "Charlie Ring", is written over the typed name.

Charlie Ring, Code Enforcement Supervisor
(910) 259-1519 cring@pendercountync.gov

Pender County Planning and Community Development

Code Enforcement

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



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

October 11, 2019

Wooten Holding C. LLC
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

This notice is to inform you that Pender County will be moving forward in the revocation process for the Special Use Permit that was issued on PIN 3292-63-8007-0000. According to Section 3.12.4.B. the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners. A public hearing will be advertised accordingly, and you will be notified of such hearing according to the Unified Development Ordinance and General Statutes of North Carolina. Following the public hearing, the Board of Commissioners may revoke the Special Use Permit upon finding any of the following:

1. That the approval was obtained by fraud.
2. That the use for which such approval was granted is not being executed.
3. That the use for which such approval was granted has ceased to exist or has been suspended for one year.
4. That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
5. That the permit granted is in violation of an Ordinance or Statute.
6. That the use for with the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

Once a public hearing has been scheduled you will be notified.

Regards,

A handwritten signature in black ink, appearing to read "Charlie Ring", is written over a faint, larger signature.

Charlie Ring
Pender County Code Enforcement



SAMUEL B. FRANCK, Attorney at Law

127 Racine Drive
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Post Office Box 7068
Wilmington, NC 28406-7068

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sbf@wardandsmith.com

November 12, 2019

Pender County Planning and Community
Development Department
Code Enforcement Office
Post Office Box 1519
805 South Walker Street
Burgaw, NC 28425

Attention: Mr. Charlie Ring

RE: PIN 3292-63-8007-0000
Our File 111180-00002

Dear Mr. Ring:

As you are aware, the undersigned and this law firm represent Wooten Holding Company, LLC in connection with Pender County's allegations that that company has violated the terms of its Special Use Permit. I am disappointed to read your letter dated October 11, 2019. Notwithstanding the selective, arbitrary and capricious nature of this enforcement action, my client has been reasonable and cooperative in an effort to satisfy your requests.

On or about November 30, 2018, without any dialogue whatsoever with the land owner, Pender County issued a Notice of Violation alleging that several conditions, most of which have existed for *over fifteen years*, were not in compliance with the applicable zoning. This Notice of Violation was delivered shortly after Hurricane Florence inflicted significant damage on the residents and land owners of Pender County. It quickly became apparent that the County issued this Notice of alleged violations in response to the complaint of one citizen, a home owner who has owned the property immediately next door to the subject property since the SUP for this site was established over fifteen years ago.

That Notice, and the enforcement suggested in it, represent egregious and arbitrary action by the County. Notwithstanding that fact, my client responded by offering to accommodate the County and the complainant. To that end, my client met with representatives of the County to discuss a plan to satisfy the personal concerns raised by the neighboring land owner.

ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

WILMINGTON

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Pender County Planning and
Community Development Department
November 12, 2019
Page 2

Page 96 of 526

Through subsequent discussions with you and other officers at the County, the County clarified that, from its perspective, two specific areas of identified concern needed to be addressed to satisfy the applicable zoning requirements: (1) the two overhead lights located on the subject property, which have been there since prior to the issuance of the original SUP, needed to be adjusted or adapted so that they are not oriented toward the neighboring and complaining land owner's property, and (2) the surface of the parking areas and thoroughfare lanes on the land need to be stabilized, following damage to the same caused by erosion in the tremendous rainfall events suffered during and after Hurricane Florence. While my client and I disagree with the allegation that those conditions violate the applicable zoning, the land owner has taken action to address the County's requests.

Overhead Lights

The overhead lights are not, and never have been, oriented toward the waterway or the neighboring land owner. Nonetheless, in the spirit of citizenship, my client has demonstrated that it is willing to adjust those lights to reduce the impact of ambient light that reaches the neighboring property.

My client met on-site with Planning Director Breuer after dark to assess the condition of the lights. Based on that meeting, the land owner agreed to take steps to redirect some of the ambient light that reached the neighboring land owner's lot. The lights are not owned by the land owner, but rather owned and maintained by Duke Energy. My client persuaded Duke to install shields to redirect ambient light to minimize the impact of the same on the neighboring land owner.

The County visited the site, and subsequently indicated that the shields were not sufficient, presumably to satisfy the neighboring home owner. In response, on August 22, 2019, my client wrote to you to ask what light reading would be acceptable, and offered to meet with you and the complaining party, after dark, with a light meter to assess and respond to the continued concern. You have not responded to that offer.

Notwithstanding that lack of response to my client's efforts to clarify what more it must do to satisfy the County and the complaining neighbor, or the fact that these lights are not and never have been oriented toward the neighboring land, the land owner has persuaded Duke Energy to take further steps to reduce the ambient glare that reaches the neighbor's land. Duke has agreed to change the light fixture from an "Area" light fixture with a shield to a "Neighborhood" light fixture with a shield. Per Duke Energy, that will reduce

WARD AND SMITH, P.A.

Pender County Planning and
Community Development Department
November 12, 2019
Page 3

Page 91 of 526

the glare rating for the fixture from a 3 to a 1 (on a scale of 0-5). As of delivery of this letter, that work is complete.

These steps to satisfy your concerns go far beyond any reasonable interpretation of the requirements the applicable zoning that prohibits orienting lights toward the neighbor's land. Please evaluate the condition on-site to verify that the light is now acceptable and provide notice of the same to us.

Site Stabilization

The land owner is continuing to take reasonable action to response to the County's incredible action to persecute my client for erosion that they suffered as a result of Hurricane Florence.

Mr. Wooten met with representatives of the County in March of 2019 to discuss the details of your request. Shortly thereafter, we submitted a plan to re-stabilize the surface of the site to restore it to its condition prior to the storm. The County indicated that plan was not sufficient.

Based on further discussions with Pender County staff, the land owner met with County representatives and the land owner's site engineer on-site to discuss a plan to address stabilization of the land that would be suitable to the County. Based on that meeting, we understand that the County would now like to see a stabilization plan that includes installation of gravel on the high traffic areas. My client has been working with design professionals since to develop such a plan.

A revised stabilization plan is enclosed here for your consideration. While we believe this is consistent with the details requested by Director Breuer at the above referenced on-site meeting, it goes well beyond the applicable zoning requirements and we ask that you please confirm that completion of this plan will be sufficient to satisfy the County. After receipt of that confirmation, my client is prepared to promptly pursue the work. Please note that it is unclear whether stormwater management or other government permits will be required to allow this work. Once those permitting questions are answered, and any necessary permits are issued, the land owner can complete the work on this plan in 20-30 days.

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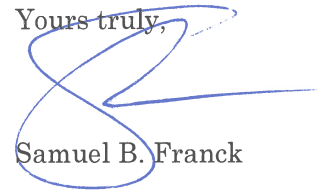
Pender County Planning and
Community Development Department
November 12, 2019
Page 4

We disagree, strongly, that your enforcement action is justified and permissible under applicable law. These steps are offered solely in the interest of cooperative citizenship, and should not be interpreted in any manner as an admission of wrong doing.

Notwithstanding what my client believed to be a productive dialogue to address the County's concerns, you issued a subsequent Notice of the Violation on August 30, 2019 with a request that the County Attorney prosecute the same. Then, on October 11, 2019, you sent notice to the land owner to notify them of your intention to seek revocation of their Special Use Permit. Any such action at this point, while the land owner is taking active steps to satisfy your requests, regardless of their validity, would be counter-productive. Please assess the revised lighting on-site and the attached stabilization plan and advise if the same are acceptable to the County.

In the meantime, while you continue to communicate intention to enforce this selective, arbitrary, time-barred allegation, at the entirely unnecessary expense of the County, we have no choice but to take action to defend the same.

Yours truly,



Samuel B. Franck

cc: Wesley Wooten

ND: 4850-9956-8554, v. 1

**Attachment 8 – February 18, 2020, SUP
Revocation Agenda Packet**



Pender County Request for Board Action

TO: Board of County Commissioners
FROM: Travis Henley
DATE: February 18, 2020
SUBJECT: Consideration of the Revocation of Special Use Permit 03-07-21-16

SUMMARY:

Pender County will consider the revocation of Special Use Permit 03-07-21-16, subsequently revised on December 20, 2004 (04-10-25-17), which allowed at the time of approval for the expansion of an existing marina. In accordance with Section 3.12.4 of the Pender County Unified Development Ordinance, the Board of Commissioners may consider revocation based on findings consistent with the Ordinance criteria. The property is located at 128 Broadview Lane and may be identified as Pender County PIN: 3292-63-8007-0000.

ACTION REQUESTED:

To hold a public hearing and consider the revocation of Special Use Permit 03-07-21-16

PLANNING STAFF REPORT ADDENDUM
Special Use Permit

Summary:

Hearing Date: December 2, 2019, tabled
February 18, 2020
Property Owner: Wooten Holding Co., LLC.
Case Number: 03-07-21-16 Revocation

Action Requested: Pender County will consider the revocation of Special Use Permit 03-07-21-16, subsequently revised on December 20, 2004 (04-10-25-17), which allowed at the time of approval for the expansion of an existing marina. In accordance with Section 3.12.4 of the Pender County Unified Development Ordinance, the Board of Commissioners may consider revocation based on findings consistent with the Unified Development Ordinance criteria.

Property Record Number and Location: The property is located at 128 Broadview Lane and may be further identified as Pender County PIN: 3292-63-8007-0000.

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

Case Update: Staff presented the case at the December 2, 2019 meeting, at which point the Board of Commissioners tabled the request until the February 18, 2020 meeting to allow the property owner to bring the site into compliance and to pursue approval of modifications to Stormwater and CAMA permits. A site visit was conducted on January 6, 2020 by Zoning Enforcement Officer Charlie Ring, which determined that there were still bare spots on site that, while seeded, had not be stabilized.

Staff also contacted representatives from the North Carolina Department of Environmental Quality, specifically the Divisions of Stormwater and Coastal Management, multiple times over January 14th-16th to inquire on the status of the property owner's permit application. Representatives from both entities communicated that the permits were in review. These individuals could not give a definitive timeline for their review and approval. As of January 29, 2020, Staff have determined that the site remains out of compliance due to the following reasons:

1. The remaining bare spots present on site are corrected in accordance with the submitted stabilization plan.
2. The applied-for stormwater minor modification permit is approved by NCDEQ and a copy of said approval is forwarded to the UDO Administrator.
3. The applied-for CAMA modification permit is approved by the Division of Coastal Management and a copy of said approval is forwarded to the UDO Administrator.

The information above was communicated to the property owner's representative on January 30, 2020 via certified mail and via email. Additional attachments are listed below, as are the original staff report and all previous attachments from the December 2, 2019 public hearing.

Attachments

1. *December 2, 2019 Staff Report and all Associated Attachments*
2. *Photos from January 6, 2020 Site Visit*
3. *Correspondence between Staff and Property Owner through January 31, 2020.*

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

Hearing Date: December 2, 2019
Property Owner: Wooten Holding Co., LLC.
Case Number: 03-07-21-16 Revocation

Action Requested: Pender County will consider the revocation of Special Use Permit 03-07-21-16, subsequently revised on December 20, 2004 (04-10-25-17), which allowed at the time of approval, for the expansion of an existing marina. In accordance with Section 3.12.4 of the Pender County Unified Development Ordinance, the Board of Commissioners may consider revocation based on findings consistent with the Unified Development Ordinance criteria.

Property Record Number and Location: The property is located at 128 Broadview Lane and may be identified as Pender County PIN: 3292-63-8007-0000.

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

Description and History:

Pender County will consider the revocation of Special Use Permit 03-07-21-16, subsequently revised on December 20, 2004 (04-10-25-17), which allowed at the time of approval, for the expansion of an existing marina. In accordance with Section 3.12.4 of the Pender County Unified Development Ordinance, the Board of Commissioners may consider revocation based on findings consistent with the Unified Development Ordinance criteria.

According to the referenced Unified Development Ordinance Section 3.12.4.B, regarding Special Use Permit Revocation:

B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this Ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified. After a public hearing has been held, the Board of Commissioners may revoke the Special Use Permit upon finding any of the following:

- 1) That the approval was obtained by fraud.*
- 2) That the use for which such approval was granted is not being executed.*
- 3) That the use for which such approval was granted has ceased to exist or has been suspended for one year.*
- 4) That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.*
- 5) That the permit granted is in violation of an Ordinance or Statute.*
- 6) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.*

Following a received complaint regarding the status of the property in relation to the Special Use Permit, Code Enforcement opened an investigation on the property to document its current status. Through site

investigation it was determined that the property's status was inconsistent with the Special Use Permit issued in 2004. On November 30, 2018, the Pender County Code Enforcement Officer issued a Notice of Violation to the referenced property owner. The Notice of Violation took into consideration the current status of the property, its prior approvals, existing use, and conditions in which approval were granted through the Special Use Permit process. Based on observations through the initial investigation, the following items were found to be out of compliance:

- Compliance with Site Plan as approved on May 19, 2004 and subsequently signed by Joyce H. Wooten.
- Conditions applied to the Special Use Permit and approved Site Plan including the following:
 - Fencing
 - Buffering
 - Parking and Surfacing
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent reviews, which includes the lighting standards found on-site.

Over the following months, Code Enforcement attempted to work with the property owner to develop a plan of action for compliance. The property remains in violation due to the lack of action to remedy specific conditions as stated above and documented through the approved Special Use Permit and subsequent revision to that permit.

Ultimately, it was agreed upon the main items that needed to be addressed included the surfacing of the site, fencing, and overhead lighting. Specific to each were that areas on the site had experienced erosion from vehicular and boat trailer traffic. The bare surface was producing sediment transfer from rain events which were being carried over to the adjacent property to the south, photos are attached. The fencing had been severely damaged and needed to be replaced in a manner consistent with the approved Special Use Permit, and overhead lighting that had been replaced by the electrical utility provider (Duke Energy Progress) had introduced additional lighting that was extending beyond the property line.

To date, items that have been addressed include the repair of the fencing, as well as modifications to the lighting. The main point of concern remains the surfacing of the site. In regards to surfacing, the property owner has supplied the County a plan showing proposed parking lot stabilization to include an approximately 5,200 sq. ft. stabilization area, as well as grass filter strips and areas to be reseeded. Staff has had the ability to review the submitted plan but still finds concerns regarding the area of stabilization necessary to maintain stabilization as well as plans to keep vehicular and trailer usage contained to prevent ongoing maintenance issues and ultimate compliance with the Special Use Permit.

EVALUATION:

- A. Public Notifications:** Advertisements for the proposal have been placed in the Pender-Topsail Post & Voice. The property owner and adjacent property owners were notified by first class mail; as well as a sign advertising the public hearing was placed on the subject property.
- B. Basis for Revoking SUP:** Based on a Section 3.12.4.B of the Pender County Unified Development Ordinance, a Special Use Permit may be revoked upon finding any of the following:
1. That the approval was obtained by fraud.
 2. That the use for which such approval was granted is not being executed.
 3. That the use for which such approval was granted has ceased to exist or has been suspended for one year.

4. That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
5. That the permit granted is in violation of an Ordinance or Statute
6. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

Attachments

1. *Notice of Violation*
2. *Final Notice of Violation*
3. *Court-Ordered Compliance*
4. *Special Use Permit (04-10-25-17)*
5. *Revised Stabilization Plan (submitted November 12, 2019)*
6. *Photos of Site*
7. *Correspondence with Property Owner's Representative*

Pender County Planning and Community Development

Code Enforcement

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



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

1st NOTICE OF VIOLATION

November 30, 2018

Wooten Holding Co. LLC.
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF VIOLATION: You are hereby given notice that a violation or violations of the Special Use Permit issued exists at the property described below and owned/occupied by you. As the property owner you are required to comply with the Special Use Permit issued and violations that are not rectified may constitute a permit revocation.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 128 Broadview Lane, Hampstead, NC, 28443 and identified by the Pender County Tax Office as Parcel Identification Number 3292-63-8007-0000.

CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004 (Attachment 1).

Specific conditions to be complied with are as follows:

- Compliance with Site Plan as approved on May 19, 2004 and subsequently signed by Joyce H. Wooten (Attachment 2)
- Conditions applied to the Special Use Permit and approved Site Plan
 - Fencing (6' high picket fencing) along the southwestern property line being not located in the correct area, this should be at minimum 5' off the property line. Furthermore, the relocated fencing should be supplemented with a retention structure as to control sediment and lateral movement of soil from the parking lot area (Condition #3 – 12/20/04 SUP Approval).
 - Buffering – Lack of vegetation as identified and approved on the Site Plan, please reference Condition #7 – 12/20/04 SUP Approval.
 - Parking and Surfacing – Parking areas are not stabilized and marked as conditioned in the approved SUP (Condition #4/#5/#14 – 1/20/04).
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent review.

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR: All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: Violations are subject to civil penalty in the amount of One Hundred (\$100.00) for each offense. Each day a violation continues, shall constitute a separate and distinct offense, punishable as set forth in the Pender County Unified Development Ordinance.

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

The County shall through its County Manager and County Attorney initiate legal action to insure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

DATE OF NOTIFICATION:

This determination of violation made on the 27th day of November 2018 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring, Code Enforcement Supervisor
(910) 259-1519
cring@pendercountync.gov

INTRODUCED BY: Johnny Satten

DATE: January 20, 2004

ITEM NO: 32

Special Use Permit: Expansion of Existing Hampstead Marina

SUBJECT: CASE NO: 03-07-21-16
PROPERTY RECORD NO: 68220 & 68221
APPLICANT: H. Allen and Joyce H. Wooten
OWNER: Joseph N. and Stella M. Honeycutt

ACTION REQUESTED: Approval Of Special Use Permit To Expand Hampstead Marina

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, proposed 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which has already been completed without required permits. Approval of this permit will also include construction and replacement of the pier, wet slips and boat ramp that has all ready been completed without local permits.

Project History: This property had been used as a marina and boat ramp for many years. The pier and boat slips were destroyed in the Hurricane of 1996 and were not replaced. A CAMA permit was obtained in July 2002 for 9 boat slips, the pier and gazebo. The CAMA permit contained a provision that local permits must be obtained. The boat ramp was subsequently rebuilt and the pier, boat slips and gazebo constructed without local permits. These facilities require a zoning permit for construction or replacement and the pier and gazebo require a building permit for replacement or construction as a commercial structure. In April 2003, Mr. Wooten requested an electrical permit for electrical service relocation for the existing picnic shelter, restroom on the site. The permit was issued. It was later realized that permits for the construction, repair or replacement of the pier boat, boat slips, boat ramp and gazebo had not been issued on the site. The Zoning Permit for the electrical service relocation was revoked. Mr. Wooten subsequently filed an application to the Board of Adjustment for Administrative Review of the Zoning Administrator's decision. At the June 18, 2003 Board of Adjustment meeting the Board ruled as follows:

1. The facility including the boat ramp with loading pier for pedestrian access, 20'x 20' shelter with one restroom and three vending machines, parking (extending to within approx. 220' of the front property line) and 9 boat mooring facilities and associated access piers (marina) could maintain its nonconforming status as an existing marina, since not all elements of the facility had not been destroyed and had continued to operate during the 5 year period when the pier and slips did not exist.
2. The facility and owner were and are subject to all permitting requirements of the Pender County Zoning Ordinance and must obtain the required permits for the facility prior to any operation of the facility.

The owner has therefore commenced the initiation of the permit acquisition process.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail. Special Use Permit signs were posted on or near the proposed site.
- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential and marinas are allowed as a special use in the R-20 District.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinances. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The proposal is in compliance with the Flood Hazard Prevention Ordinance, since the only structure (restroom building) on the site below flood elevation existed prior to the adoption of the Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site. (See attached land use map).
- G) Site Access Conditions:** The marina site access to a state maintained road is not clear. Additional information must be submitted.
- H) Conditions To Consider In Issuing A Special Use Permit For This Project:**
 - 1. The following shall be submitted prior to issuance of a zoning permit for the site:
 - a) An Existing Waste System Permit from the Pender County Environmental Health Division with a specific reference to the Hampstead Marina and limitations on capacity for the waste system.
 - b) NCDOT Driveway Permit for access to the NCDOT state maintained road for the commercial facility identified herein as Hampstead Marina.
 - c) A revised site plan complying with the conditions of this permit, including the specific description and location of perimeter fencing as required herein.
 - d) Recorded documents showing that the commercial site has access to Broadview Lane or a NCDOT maintained road or other evidence satisfactory to the County Attorney that the commercial site has access to a NCDOT maintained road.
 - 2. A separate Zoning Permit must be obtained for any existing or proposed signs located on the property or that advertise the site or use. All such signs shall be in accordance with Section 16 of the Pender County Zoning Ordinance.
 - 3. Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.
 - 4. All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". A plan for the seeded areas approved in written form by the NC Agricultural Extension Service or the local SCS office of the USDA shall be submitted with the application for a zoning permit and all areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
 - 5. The site shall be maintained so that there is no visible erosion on the site and no visible transport of sediment off the site on to adjacent properties or into estuarine waters.
 - 6. Occupancy of the site shall be limited to the capacity established by the Existing Septic Permit, the NCDOT driveway permit, the CAMA permit or the limitations established in this permit which ever is more restrictive.
 - 7. A 6 ft high 6 inch by 6 inch wood fence shall be installed along the southwestern boundary from the corner of the residential site on the property to within 10 ft. the mean high water line. The fence shall be left in its

- natural state or stained a neutral color and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
8. A type A buffer 10 ft. wide shall be provided along the southwestern boundary from the corner of the residential site on the property to within 50 ft. of the mean high water line and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
 9. Landscape and buffer plantings as shown on the approved site plan shall be installed before issuance of an occupancy permit for any of the facilities. Such planting shall be installed with the minimum size requirements of Section 14 of the Pender County Ordinance and be surrounded by a physical barrier to protect plants from traffic.
 10. Parking bays shall be physically marked on the ground with a physical barrier or other material approved by the zoning administrator as shown on the approved site plan.
 11. A drive around shall be provided at the southwest end of the double parking bay in the central area of the site and shown on the revised site plan with a 20 ft. width.
 12. Parking areas or access to parking spaces shall not exceed a slope of 8%. Verification of steep slope areas shall be provided by the applicant and parking shall be redesigned, graded or eliminated to comply with this requirement.
 13. Other perimeter fencing shall be provided in the locations shown on the site plan to specifications as approved by the Zoning Administrator.
 14. All parking bays shall be physically marked on the ground with vehicle physical barriers approved by the Zoning Administrator at the following locations:
 - a) The end of each bay of parking,
 - b) The center of each double bay of parking,
 - c) The forward edge of each single bay of parking.
 - d) Surrounding each designated landscape area shown on the approved site plan.
 15. The central bay of double parking shown on the approved site plan shall provide for a drive around traffic pattern, so that traffic will not be required to back an excessive distance or turn around in a restricted area.
 16. Occupancy of the site shall be limited to individuals that have a rental contract or permit for one of the 9 approved boat slips or use of the boat ramp. An approved permit or sticker as issued by the operator shall be displayed on each vehicle including boats that are parked on the site. The following additional conditions shall apply to capacity and occupancy of the site:
 - a) No more than 9 watercraft of any type shall be docked or moored at the pier or wet slip facility at any time,
 - b) No more than 5 watercraft of any type shall be temporarily moored in the boat ramp or boat ramp finger pier at any one time,
 - c) No more than 16 water craft of any type will occupy or be located in the facility's dredged basin and within 120 ft. of the boat ramp or property shoreline,
 - d) All vehicles on the landward side of the water line shall be parked in designated and physically marked parking spaces,
 - e) The site on the landward side of the water line shall be limited to no more vehicles or vehicle combinations than there are designated parking spaces as shown on the final site plan approved by the Planning Director. This number shall not under any circumstances exceed 119 vehicles or vehicle combinations.
 - f) The site shall be supervised and controlled so that violations of the conditions of this permit do not occur.
 - g) The facilities shall not be used by any commercial boat dry stack or storage facility not physically located on the site to launch or store boats.
 17. Storage or display of any salvage materials, merchandise or equipment on the site is prohibited.
 18. The applicant shall submit a proposal for waste collection containers on the site and maintenance and servicing the containers to be approved by the zoning administrator prior to issuance of a final zoning permit.
 19. Boats or boat trailers or other vehicles cannot be parked or stored on the site for more than 48 hours, except in the 9 boat slips shown on the site plan.

Permit # 03-07-21-16

20. Applicant must obtain a building permit and certificate of occupancy as required under the NC Building Code for the pier and gazebo, prior to the site being occupied or access being provided to the facility.
21. The project shall maintain compliance with all conditions of the CAMA permit that is at any time in effect.
22. The project must be inspected and approved by the Zoning Administrator, including compliance with buffers, and other conditions of this permit and the Zoning Ordinance prior to an occupancy permit being issued or any occupancy or use of the site.
23. The project shall be maintained in accord with the applicant's final revised site plan as approved by the Zoning Administrator and the conditions of this permit.
24. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on January 20, 2004, the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: **

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland V Meadows Rivenbark

Dwight Strickland

Dwight Strickland,
Chairman

01-20-04
Date

Glenda Pridgen
ATTEST

01-20-04
Date

** Remove Item 16g

Remove Item 10, 16d and 16e

Amend Section 7: A 6 ft. high picket fence

Add: To avoid light pollution, no overhead lights should be directed toward Piepmeyer's house.

INTRODUCED BY: Johnny Sutton

DATE: December 20, 2004

ITEM NO: 18.

Special Use Permit: Hampstead Marina Amendment

SUBJECT: CASE NO: 04-10-25-17

PROPERTY RECORD NO: 08220 & 08221

APPLICANT: H. Allen and Joyce H. Wooten

OWNER: Wooten Holding

ACTION REQUESTED: Amend the Special Use Permit for Hampstead Marina for the following:

1. Revise the permit requirements for the buffer along the southwestern property line.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: The project is an existing Marina/Boat Ramp that received Special Use Permit approval for expansion in January 2004. An amendment to the permit in November 2004 dealt with the buffer along the southwestern property boundary. The currently proposed amendment by staff would provide for a change in the conditions applying to the buffer along the southwestern property boundary:

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004.
2. A revision was approved to the permit on November 15, 2004.

EVALUATION: The permit revision was approved on November 15, 2004 after a two hour plus session of discussing the issue and issues not related to the buffer question. The facility has been judged to be an existing facility by the Pender County Board of Adjustment, a Quasi-Judicial Board. The 7 ft. wide protected buffer width that was approved on November 15, 2004, near the concrete boat ramp is likely not practical and staff feels could not be adequately maintained. The plantings in the buffer area would be the item critical for protection of neighboring properties. The proposed amendment would consist of a minor change in the original permit and would be consistent with Pender County Policies, Plans and Ordinances. Planning Staff recommends approval of this resolution subject to the conditions noted below.

A) Conditions To Consider In Issuing A Special Use Permit For This Project:

1. All conditions of the original permit issued and executed by Pender County on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
2. All plantings for the buffer along the southwestern property line shall be placed with top of the root ball at or within 12 inches of the ground level of the marina property 20 ft. from the property line in the area where the planting is to be placed.
3. The six foot picket fence cannot be used as a retaining wall to prevent the lateral movement of soil from the parking lot area (Note: a building permit is required for any structure that is used to prevent the lateral movement of soil for any required activity associated with a commercial use. The structure may require engineered drawings in these situations prior to a building permit being issued).
4. The required 6 ft. high picket fence shall be 6 ft. high from ground level, 5 ft. from the southwestern property line. The ground level can be determined from the marina/boat ramp property side or from the ground levels on the properties to the southwest, but the fence must be at least 6 ft. high measured from one of these areas.
5. The sediment fence currently nailed to the southwestern side of the picket fence shall be removed and installed on the marina/boat ramp side of the fence to prevent sediment from being deposited on adjacent properties (the erected fence is within a few inches of the property line).
6. All conditions of compliance must be completed by February 15, 2005. This shall include the following:

- a. Completion of all requirements for local permits, including Zoning and Building Related.
- b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved and are in compliance.
7. The type A buffer 10 ft. wide as described in the Pender County Zoning Ordinance and required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 15 ft. (approximately 50 ft. of the MHW line) of the landward edge of the concrete boat ramp and maintained for the duration of the project activity except as follows:
 - a. The buffer would begin 15 ft. landward from the edge of the flat pad of the concrete boat ramp.
 - b. At this point the buffer would begin and have a protected width of 4 ft. from the property line for a distance of 50 ft.
 - c. The buffer will then continue in a landward direction with a protected width of 7 ft. (beginning 65 ft. from the landward edge of the flat pad of the concrete boat ramp) for a distance of 40 ft. and to the top of upper or middle parking level of the property.
 - d. The remainder of the buffer to the residential property line shall maintain a protected width of 10 ft.
 - e. The area of the buffer described above (from 15 ft. landward of the edge of the flat pad of the concrete boat ramp for a distance of 90 ft.), plus an additional 100 ft. shall provide plantings as follows:
 1. An evergreen hedge that will provide a continuous screen at least 6' high within 4 years.
 - f. The remainder of the buffer shall provide plantings as follows:
 1. 3 canopy trees, 3 under story trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on December 20, 2004 the Pender County Board of Commissioners considered a Special Use Permit amendment for Hampstead Marina as described herein and Eugene Meadows, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: Approved as submitted but with stipulation that the solid upper buffer is not required. Discussion clarified that there be no vegetative buffer on the upper level.

MOVED Moore **SECONDED** Rivenbark

APPROVED X **DENIED** **UNANIMOUS**

YEA VOTES: Meadows Holland X Moore X Rivenbark X Williams

Eugene B. Meadows 12-5-0420
Eugene Meadows,
Chairman Date

Glenda Pruden
ATTEST
12-20-04
Date

INTRODUCED BY: Johnny Sutton

DATE: November 15, 2004

ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

SUBJECT: CASE NO: 04-10-25-17
PROPERTY RECORD NO: 08220 & 08221
APPLICANT: H. Allen and Joyce H. Wooten
OWNER: Wooten Holding

ACTION REQUESTED: Revision of an Approved Special Use Permit for Hampstead Marina for the following amendments:

1. Revise the permit to require the planted buffer along the southwest property line end 160 ft. from the high water line.
2. Extend the time allowed for all conditions to be met to February 15, 2005.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The recently approved expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which was completed without required permits. The expanded Marina also includes a pier, wet slips and boat ramp that was all completed without local permits.

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004 (see executed permit attached).
2. A site plan as required to be submitted under the Special Use Permit was approved by Planning Staff on May 19, 2004.
3. A Zoning Permit was issued in August 2004 with the requirement that all conditions be completed by December 15, 2004.
4. During this process a neighbor adjacent to the site reviewed the staff approved site plan and the original permit and noticed the following discrepancies between the Approved Permit Conditions and the Staff Approved Site Plan:
 - a. The planted buffer along the southwest property line had been approved by staff approximately 160 ft. short of the mean high water line. This in effect allowed the buffer to end 160 ft. from the mean high water line instead of 50 ft. A specific requirement of the permit was that the buffer be provided to within 50 ft. of the mean high water line.
 - b. A gate was shown on the staff approved site plan in the required fence along the southwest property line and the gate was not included in the application or in the permit conditions.
 - c. A seawall was constructed along the southwest property line that was not shown on the County or CAMA Permit.
5. The applicant has subsequently requested a revision to the approved Special Use Permit.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail.

- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential. Marinas are allowed as a special use in the R-20 District. The facility will be in compliance with the Zoning Ordinance when all local and state regulation requirements are completed.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinance. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan as long as all required permits are obtained and it is in compliance with local and state regulations.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The applicant must verify that all electrical component installations for the pier and gazebo are elevated above FEMA flood elevation in order for the project to comply with the Flood Hazard Prevention Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site.
- G) Site Access Conditions:** The marina site has access to a state maintained road along a recorded easement from the site.
- H) Staff Comments:** Staff will note the following conditions that currently exist.
 1. This project has resulted in a long, complicated and controversial process as a result primarily of the applicant not obtaining the required, obvious permits.
 2. The property is continuing to be used as a marina without compliance with the local Zoning Ordinance and NC State Building Code and no occupancy being authorized by Pender County.
 3. There are numerous permit requirements that must still be fulfilled prior to official occupancy being approved by the County Planning and Building Inspections Department.
 4. It will shortly be beyond the normal planting season for required buffer and landscape plants.
 5. It should be noted also that the Zoning Ordinance requires required buffers and landscape plants to be installed prior to occupancy of a facility or within 90 days when an adequate security is posted to insure installation of the plantings.
 6. The reason for planning staff allowing a change in the approved site plan from the permit conditions were as follows:
 - a. It was felt that the planted buffer would be hard if not impossible to maintain in the lower part of this area because of its proximity to the boat ramp traffic. It is likely that at least 60 additional ft. of the deleted buffer could be installed without causing undue hardship for maintenance.
 - b. It was felt that a gate in a fence does not change the requirements for the fence to be installed. A condition was noted on the site plan that the gate could only be used for the purposes allowed by the easement that was recorded and not for commercial or marina use.
- I) Conditions To Consider In Issuing A Special Use Permit For This Project:**
 1. All conditions of the original permit executed on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
 2. The applicant will install all buffer and landscape plants as required under the original and amended Special Use Permits by 12-15-04, in compliance with the planting specifications of Section 14 of the Zoning Ordinance.
 3. All other conditions of compliance must be completed by February 15, 2005. This shall include the following:
 - a. Completion of all requirements for local permits, including Zoning and Building Related.
 - b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved.

Permit # 03-07-21-16

4. The type A buffer 10 ft. wide as required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 100 ft. of the mean high water line and maintained for the duration of the project activity. The plantings required in the A buffer shall continue adjacent to the property line for an additional 25 ft. and to within 75 ft. of the mean high water line.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on November 15, 2004 the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

Dwight Strickland,
Chairman

11-15-04

Date

Glenda Pridgen
ATTEST

11-15-04

Date

** To adhere with the original distances (buffer). The seven foot buffer begins at the curve in the fence, down to the dock. Additional time is allowed to complete work on this Special Use Permit until February 15, 2005.

Pender County Planning and Community Development

Code Enforcement

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



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

FINAL NOTICE OF VIOLATION

March 13, 2019

Wooten Holding Co. LLC.
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF VIOLATION: You are hereby given notice that a violation or violations of the Special Use Permit issued CONTINUES TO EXIST at the property described below and owned/occupied by you. As the property owner you are required to comply with the Special Use Permit issued and violations that are not rectified may constitute a permit revocation.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 128 Broadview Lane, Hampstead, NC, 28443 and identified by the Pender County Tax Office as Parcel Identification Number 3292-63-8007-0000.

CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004 (Attachment 1).

Specific conditions to be complied with are as follows:

- Compliance with Site Plan as approved on May 19, 2004 and subsequently signed by Joyce H. Wooten (Attachment 2)
- Conditions applied to the Special Use Permit and approved Site Plan
 - Parking and Surfacing – Parking areas are not stabilized and marked as conditioned in the approved SUP (Condition #4/#5/#14 – 1/20/04).
 - All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". All areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent review.

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR: All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation will need to be corrected not later than 30 days from this notice. If not corrected by the time indicated civil penalties will begin to accrue.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: Violations are subject to civil penalty in the amount of One Hundred (\$100.00) for each offense. Each day a violation continues, shall constitute a separate and distinct offense, punishable as set forth in the Pender County Unified Development Ordinance.

CURRENT CIVIL PENALTY ACCRUED:

A CIVIL PENALTY OF \$1,700.00 HAS ACCRUED AS OF, March 13, 2019 AS A RESULT OF THE VIOLATION NOT BEING CORRECTED.

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

THIS VIOLATION WILL BE FORWARDED TO THE COUNTY MANAGER AND THE COUNTY ATTORNEY TO INITIATE LEGAL ACTION TO INSURE COMPLIANCE AND COLLECT THE CIVIL PENALTIES DUE. THE VIOLATOR MAY BE SUBJECT TO PAYING THE COST OF THIS ACTION, PURSUANT TO G.S. 153A-123, IN ADDITION TO ANY PENALTIES NOTED ABOVE.

DATE OF NOTIFICATION:

The determination of violation was made on the 27th day of November 2018 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring, Code Enforcement Supervisor
(910) 259-1519
cring@pendercountync.gov

**Pender County
Planning and Community Development**

Code Enforcement

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



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

August 30, 2019

Wooten Holding C. LLC
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

An initial site visit dated 11-27-18 was conducted to determine if any violations of conditions of a previously issued Special Use Permit exist on property owned by you and identified by the Pender County Tax Office as Parcel Identification Number 3292-63-8007-0000. This letter is being forwarded to inform you that the previous areas of concern that were addressed have not been satisfied.

Specifically, failure to correct deficiencies identified during the initial and final Notices of Violation have resulted in submitting this case for Court Ordered Compliance. Deficiencies include failure to comply w/ lighting standards and stabilization/ erosion standards outlined in the conditions tied to the Special Use Permit.

Attached you will find a copy of Court Ordered Compliance.

Regards,

Pender County Code Enforcement

**Pender County
Planning and Community Development**

Code Enforcement

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



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

August 30, 2019

Mr. Trey Thurman
Pender County Attorney
3169 Wrightsville Ave.
Wilmington NC 28403

Dear Mr. Thurman,

VIOLATION: Special Use Permit

Wooten Holding Co. LLC
805 Robinwood St. Burgaw, NC 28425
PAR. REC. # 3292-63-8007-0000
VIOLATION: Non-compliance of Special Use
Permit issued 1-20-2004

Case # 298-2018

You will find attached a summary of the above noted zoning violation. A copy of the Notice of Violation is on file. Notice has been served on the property owner where this violation exists as required by the Pender County Unified Development Ordinance and procedural requirements approved by the County Attorney. The property owner was given notice that the violation must be corrected within thirty days of receipt of the notice. The violation has not been corrected as of this date.

We have sufficient documented evidence that the property was and still is in violation of the Special Use Permit. At this point, we feel that the Planning Staff has exhausted all efforts to obtain compliance at this site.

It is therefore recommended that this violation be turned over to your office for processing, and a Court Order be obtained, or other action taken to achieve compliance. It is your decision as County Attorney as to whether the court action should request payment of the civil fines involved in this violation. We will provide the documented evidence and other materials necessary for processing as requested.

Sincerely,

Charlie Ring
Code Enforcement Officer

REQUESTED ACTION: Court Ordered Compliance
FORWARDED TO: County Attorney Trey Thurman
Wooten Holding Co. LLC
BY: Charlie Ring,
Pender County Code Enforcement Officer
DATE: 08-30-2019

Case Summary and copy of
Notice of Violation are on file.

CC: To Owner
Planning Director

Pender County Planning and Community Development

Code Enforcement

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



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

October 11, 2019

Wooten Holding C. LLC
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

This notice is to inform you that Pender County will be moving forward in the revocation process for the Special Use Permit that was issued on PIN 3292-63-8007-0000. According to Section 3.12.4.B. the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners. A public hearing will be advertised accordingly, and you will be notified of such hearing according to the Unified Development Ordinance and General Statutes of North Carolina. Following the public hearing, the Board of Commissioners may revoke the Special Use Permit upon finding any of the following:

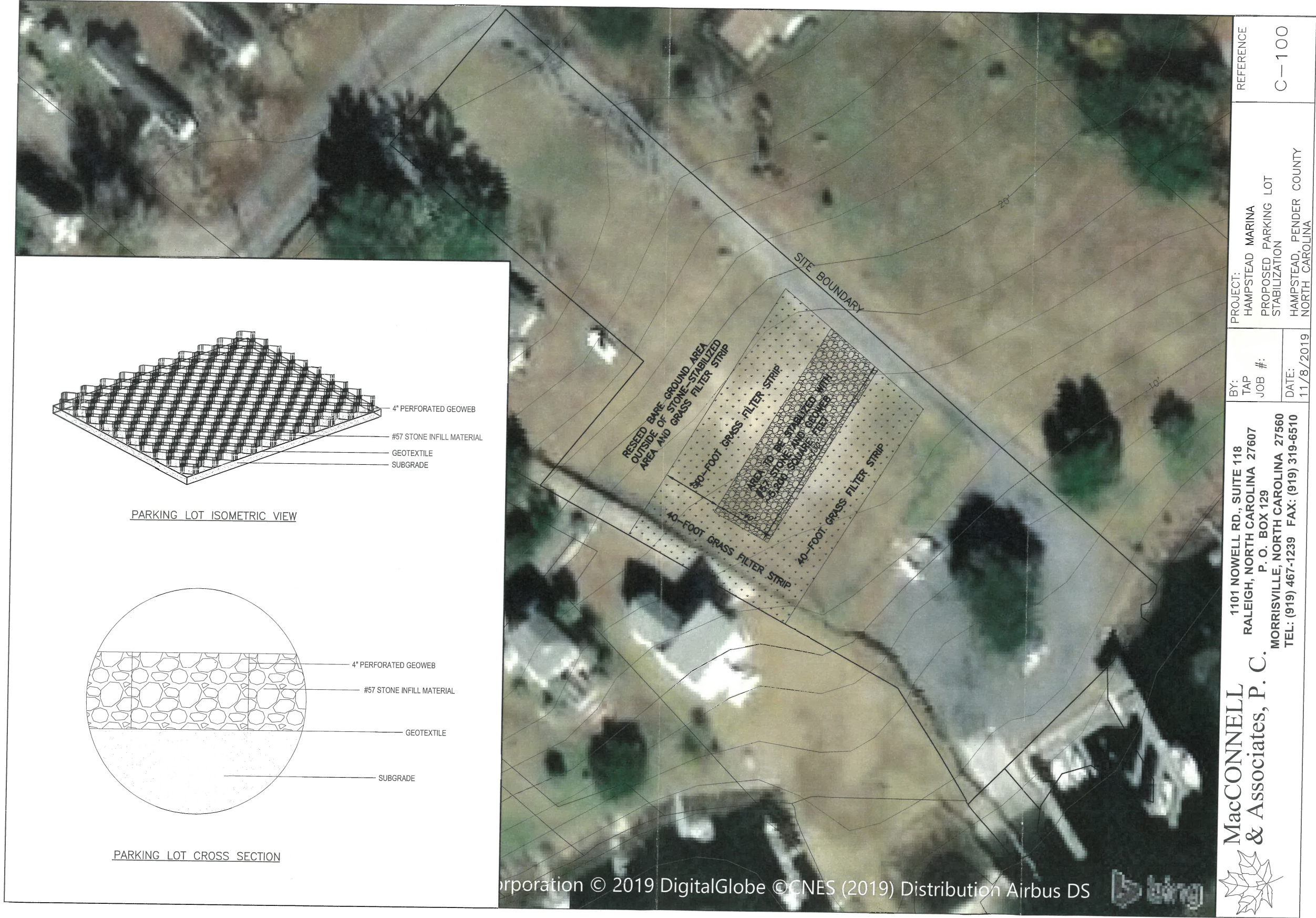
1. That the approval was obtained by fraud.
2. That the use for which such approval was granted is not being executed.
3. That the use for which such approval was granted has ceased to exist or has been suspended for one year.
4. That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
5. That the permit granted is in violation of an Ordinance or Statute.
6. That the use for with the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

Once a public hearing has been scheduled you will be notified.

Regards,

A handwritten signature in black ink, appearing to read "Charlie Ring", is written over a faint, larger signature.

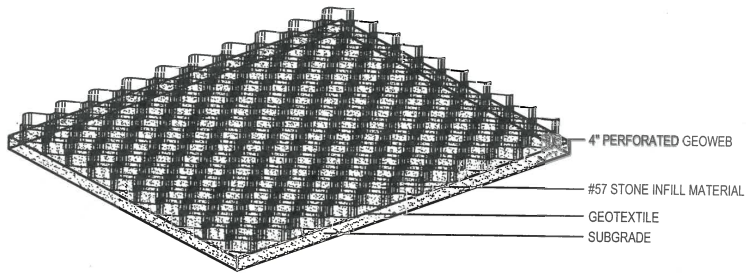
Charlie Ring
Pender County Code Enforcement



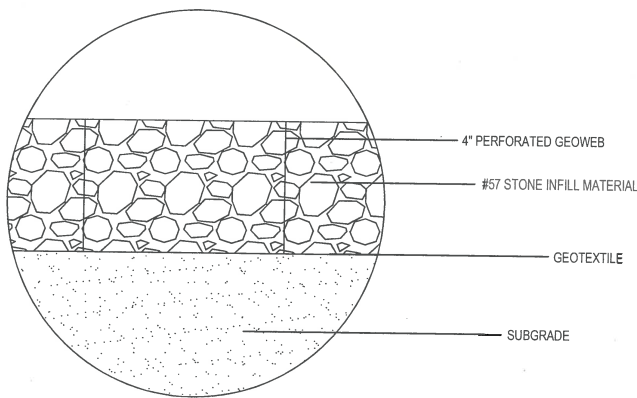
Z:\T-Drive\Library\2019\A76001.00 - Wooten, Wesley - Hampstead Marina\Drawings\Hampstead Marina - Proposed Parking Lot Stabilization Plan.dwg Nov 25, 2019 3:33pm

NOTES:

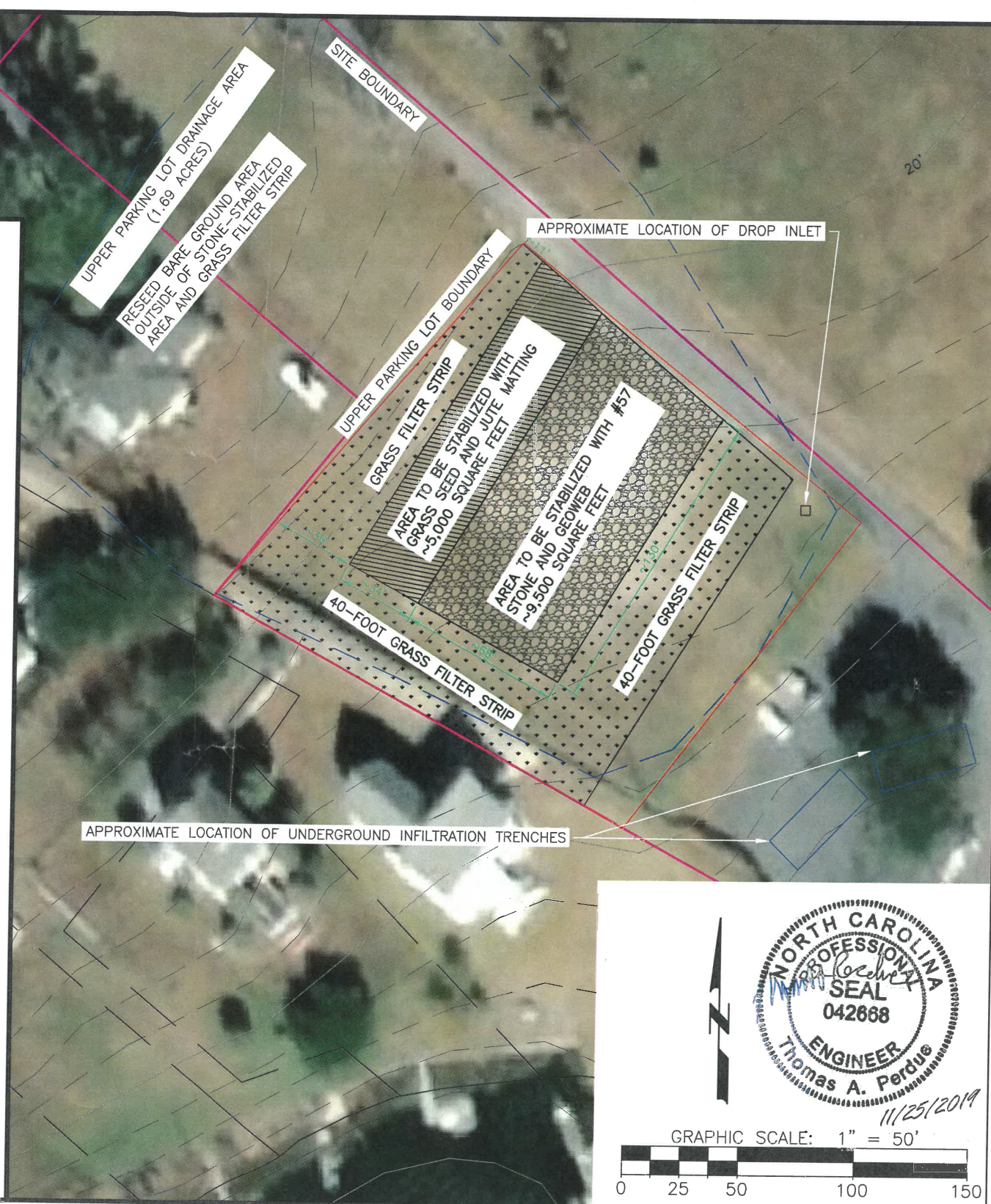
- 1) UPPER PARKING LOT IS TO BE UTILIZED FOR OVERFLOW PARKING (PER OWNER APPROX. 25 DAYS A YEAR).
- 2) DAILY TRAFFIC WITHIN UPPER PARKING LOT WILL BE CONFINED TO GRAVEL AREA AS APPROPRIATE. PARKING ATTENDANT WILL BE ON-SITE DURING HOLIDAYS/WEEKENDS DURING SUMMER AS NEEDED.
- 3) #57 STONE WILL BE INSTALLED TO STABILIZE BARE GROUND AREA AS INDICATED ON MAP AND DETAILS BELOW.
- 4) AREAS OUTSIDE OF PROPOSED GRAVEL INSTALLATION WILL BE SEEDED WITH RESEEDED WITH GRASS.



PARKING LOT ISOMETRIC VIEW



PARKING LOT CROSS SECTION



MacCONNELL & Associates, P. C.		REFERENCE	
1101 NOWELL ROAD, SUITE 118 RALEIGH, NORTH CAROLINA 27607 P. O. BOX 129 MORRISVILLE, NORTH CAROLINA 27560 TEL: (919) 467-1239 FAX: (919) 319-6510		HAMPSTEAD MARINA STORMWATER MINOR MODIFICATION PLAN PENDER COUNTY, NC	
BY: TAP	JOB #:	C-100	
	A76001.00		
	DATE:		
	11/25/2019		

**Pender County
Planning and Community Development**

Code Enforcement

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



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

1st NOTICE OF VIOLATION

November 30, 2018

Wooten Holding Co. LLC.
805 Robinwood Street
Burgaw, NC 28425

Dear Property Owner,

NOTICE OF VIOLATION: You are hereby given notice that a violation or violations of the Special Use Permit issued exists at the property described below and owned/occupied by you. As the property owner you are required to comply with the Special Use Permit issued and violations that are not rectified may constitute a permit revocation.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 128 Broadview Lane, Hampstead, NC, 28443 and identified by the Pender County Tax Office as Parcel Identification Number 3292-63-8007-0000.

CONDITIONS THAT CREATE VIOLATION:

Non-compliance of Special Use Permit issued January 20, 2004 and subsequently revised November 15, 2004, and December 20, 2004 (Attachment 1).

Specific conditions to be complied with are as follows:

- Compliance with Site Plan as approved on May 19, 2004 and subsequently signed by Joyce H. Wooten (Attachment 2)
- Conditions applied to the Special Use Permit and approved Site Plan
 - Fencing (6' high picket fencing) along the southwestern property line being not located in the correct area, this should be at minimum 5' off the property line. Furthermore, the relocated fencing should be supplemented with a retention structure as to control sediment and lateral movement of soil from the parking lot area (Condition #3 – 12/20/04 SUP Approval).
 - Buffering – Lack of vegetation as identified and approved on the Site Plan, please reference Condition #7 – 12/20/04 SUP Approval.
 - Parking and Surfacing – Parking areas are not stabilized and marked as conditioned in the approved SUP (Condition #4/#5/#14 – 1/20/04).
 - Any other Conditions not being adhered to as apparent through the initial site inspection and subsequent review.

Code Case 298-2018

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR: All items falling under the above description of violation must be rectified. It's advisable to contact the Pender County Code Enforcement Office to discuss the owner's intent to remedy the violation.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: Violations are subject to civil penalty in the amount of One Hundred (\$100.00) for each offense. Each day a violation continues, shall constitute a separate and distinct offense, punishable as set forth in the Pender County Unified Development Ordinance.

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

The County shall through its County Manager and County Attorney initiate legal action to insure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

DATE OF NOTIFICATION:

This determination of violation made on the 27th day of November 2018 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring, Code Enforcement Supervisor
(910) 259-1519
cring@pendercountync.gov

INTRODUCED BY: Johnny Sutton

DATE: January 20, 2004

ITEM NO: 32

Special Use Permit: Expansion of Existing Hampstead Marina

SUBJECT: CASE NO: 03-07-21-16

PROPERTY RECORD NO: 08220 & 08221

APPLICANT: H. Allen and Joyce H. Wooten

OWNER: Joseph N. and Stella M. Honeycutt

ACTION REQUESTED: Approval Of Special Use Permit To Expand Hampstead Marina.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, proposed 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which has already been completed without required permits. Approval of this permit will also include construction and replacement of the pier, wet slips and boat ramp that has all ready been completed without local permits.

Project History: This property had been used as a marina and boat ramp for many years. The pier and boat slips were destroyed in the Hurricane of 1996 and were not replaced. A CAMA permit was obtained in July 2002 for 9 boat slips, the pier and gazebo. The CAMA permit contained a provision that local permits must be obtained. The boat ramp was subsequently rebuilt and the pier, boat slips and gazebo constructed without local permits. These facilities require a zoning permit for construction or replacement and the pier and gazebo require a building permit for replacement or construction as a commercial structure. In April 2003, Mr. Wooten requested an electrical permit for electrical service relocation for the existing picnic shelter, restroom on the site. The permit was issued. It was later realized that permits for the construction, repair or replacement of the pier boat, boat slips, boat ramp and gazebo had not been issued on the site. The Zoning Permit for the electrical service relocation was revoked. Mr. Wooten subsequently filed an application to the Board of Adjustment for Administrative Review of the Zoning Administrator's decision. At the June 18, 2003 Board of Adjustment meeting the Board ruled as follows:

1. The facility including the boat ramp with loading pier for pedestrian access, 20'x 20' shelter with one restroom and three vending machines, parking (extending to within approx. 220' of the front property line) and 9 boat mooring facilities and associated access piers (marina) could maintain its nonconforming status as an existing marina, since not all elements of the facility had not been destroyed and had continued to operate during the 5 year period when the pier and slips did not exist.
2. The facility and owner were and are subject to all permitting requirements of the Pender County Zoning Ordinance and must obtain the required permits for the facility prior to any operation of the facility.

The owner has therefore commenced the initiation of the permit acquisition process.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail. Special Use Permit signs were posted on or near the proposed site.
- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential and marinas are allowed as a special use in the R-20 District.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinance. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The proposal is in compliance with the Flood Hazard Prevention Ordinance, since the only structure (restroom building) on the site below flood elevation existed prior to the adoption of the Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site. (See attached land use map).
- G) Site Access Conditions:** The marina site access to a state maintained road is not clear. Additional information must be submitted.
- H) Conditions To Consider In Issuing A Special Use Permit For This Project:**
 1. The following shall be submitted prior to issuance of a zoning permit for the site:
 - a) An Existing Waste System Permit from the Pender County Environmental Health Division with a specific reference to the Hampstead Marina and limitations on capacity for the waste system.
 - b) NCDOT Driveway Permit for access to the NCDOT state maintained road for the commercial facility identified herein as Hampstead Marina.
 - c) A revised site plan complying with the conditions of this permit, including the specific description and location of perimeter fencing as required herein.
 - d) Recorded documents showing that the commercial site has access to Broadview Lane or a NCDOT maintained road or other evidence satisfactory to the County Attorney that the commercial site has access to a NCDOT maintained road.
 2. A separate Zoning Permit must be obtained for any existing or proposed signs located on the property or that advertise the site or use. All such signs shall be in accordance with Section 16 of the Pender County Zoning Ordinance.
 3. Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.
 4. All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". A plan for the seeded areas approved in written form by the NC Agricultural Extension Service or the local SCS office of the USDA shall be submitted with the application for a zoning permit and all areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
 5. The site shall be maintained so that there is no visible erosion on the site and no visible transport of sediment off the site on to adjacent properties or into estuarine waters.
 6. Occupancy of the site shall be limited to the capacity established by the Existing Septic Permit, the NCDOT driveway permit, the CAMA permit or the limitations established in this permit which ever is more restrictive.
 7. A 6 ft high 6 inch by 6 inch wood fence shall be installed along the southwestern boundary from the corner of the residential site on the property to within 10 ft. the mean high water line. The fence shall be left in its

Permit # 03-07-21-16

- natural state or stained a neutral color and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
8. A type A buffer 10 ft. wide shall be provided along the southwestern boundary from the corner of the residential site on the property to within 50 ft. of the mean high water line and maintained for the duration of the project activity. This item shall be installed prior to issuance of an occupancy permit.
 9. Landscape and buffer plantings as shown on the approved site plan shall be installed before issuance of an occupancy permit for any of the facilities. Such planting shall be installed with the minimum size requirements of Section 14 of the Pender County Ordinance and be surrounded by a physical barrier to protect plants from traffic.
 10. Parking bays shall be physically marked on the ground with a physical barrier or other material approved by the zoning administrator as shown on the approved site plan.
 11. A drive around shall be provided at the southwest end of the double parking bay in the central area of the site and shown on the revised site plan with a 20 ft. width.
 12. Parking areas or access to parking spaces shall not exceed a slope of 8%. Verification of steep slope areas shall be provided by the applicant and parking shall be redesigned, graded or eliminated to comply with this requirement.
 13. Other perimeter fencing shall be provided in the locations shown on the site plan to specifications as approved by the Zoning Administrator.
 14. All parking bays shall be physically marked on the ground with vehicle physical barriers approved by the Zoning Administrator at the following locations:
 - a) The end of each bay of parking,
 - b) The center of each double bay of parking,
 - c) The forward edge of each single bay of parking,
 - d) Surrounding each designated landscape area shown on the approved site plan.
 15. The central bay of double parking shown on the approved site plan shall provide for a drive around traffic pattern, so that traffic will not be required to back an excessive distance or turn around in a restricted area.
 16. Occupancy of the site shall be limited to individuals that have a rental contract or permit for one of the 9 approved boat slips or use of the boat ramp. An approved permit or sticker as issued by the operator shall be displayed on each vehicle including boats that are parked on the site. The following additional conditions shall apply to capacity and occupancy of the site:
 - a) No more than 9 watercraft of any type shall be docked or moored at the pier or wet slip facility at any time,
 - b) No more than 5 watercraft of any type shall be temporarily moored in the boat ramp or boat ramp finger pier at any one time,
 - c) No more than 16 water craft of any type will occupy or be located in the facility's dredged basin and within 120 ft. of the boat ramp or property shoreline,
 - d) All vehicles on the landward side of the water line shall be parked in designated and physically marked parking spaces,
 - e) The site on the landward side of the water line shall be limited to no more vehicles or vehicle combinations than there are designated parking spaces as shown on the final site plan approved by the Planning Director. This number shall not under any circumstances exceed 119 vehicles or vehicle combinations.
 - f) The site shall be supervised and controlled so that violations of the conditions of this permit do not occur.
 - g) The facilities shall not be used by any commercial boat dry stack or storage facility not physically located on the site to launch or store boats.
 17. Storage or display of any salvage materials, merchandise or equipment on the site is prohibited.
 18. The applicant shall submit a proposal for waste collection containers on the site and maintenance and servicing the containers to be approved by the zoning administrator prior to issuance of a final zoning permit.
 19. Boats or boat trailers or other vehicles cannot be parked or stored on the site for more than 48 hours, except in the 9 boat slips shown on the site plan.

Permit # 03-07-21-16

20. Applicant must obtain a building permit and certificate of occupancy as required under the NC Building Code for the pier and gazebo, prior to the site being occupied or access being provided to the facility.
21. The project shall maintain compliance with all conditions of the CAMA permit that is at any time in effect.
22. The project must be inspected and approved by the Zoning Administrator, including compliance with buffers, and other conditions of this permit and the Zoning Ordinance prior to an occupancy permit being issued or any occupancy or use of the site.
23. The project shall be maintained in accord with the applicant's final revised site plan as approved by the Zoning Administrator and the conditions of this permit.
24. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on January 20, 2004, the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: **

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland V Meadows Rivenbark

Dwight Strickland

01-20-04
Date

Dwight Strickland,
Chairman

Blenda Pridgen
ATTEST

01-20-04
Date

**** Remove Item 16g**

Remove Item 10, 16d and 16e

Amend Section 7: A 6 ft. high picket fence

Add: To avoid light pollution, no overhead lights should be directed toward Piepmeyer's house.

INTRODUCED BY: Johnny Sutton DATE: December 20, 2004 ITEM NO: 18.

Special Use Permit: Hampstead Marina Amendment

SUBJECT: CASE NO: 04-10-25-17
 PROPERTY RECORD NO: 08220 & 08221
 APPLICANT: H. Allen and Joyce H. Wooten
 OWNER: Wooten Holding

ACTION REQUESTED: Amend the Special Use Permit for Hampstead Marina for the following:
1. Revise the permit requirements for the buffer along the southwestern property line.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: The project is an existing Marina/Boat Ramp that received Special Use Permit approval for expansion in January 2004. An amendment to the permit in November 2004 dealt with the buffer along the southwestern property boundary. The currently proposed amendment by staff would provide for a change in the conditions applying to the buffer along the southwestern property boundary:

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004.
2. A revision was approved to the permit on November 15, 2004.

EVALUATION: The permit revision was approved on November 15, 2004 after a two hour plus session of discussing the issue and issues not related to the buffer question. The facility has been judged to be an existing facility by the Pender County Board of Adjustment, a Quasi-Judicial Board. The 7 ft. wide protected buffer width that was approved on November 15, 2004, near the concrete boat ramp is likely not practical and staff feels could not be adequately maintained. The plantings in the buffer area would be the item critical for protection of neighboring properties. The proposed amendment would consist of a minor change in the original permit and would be consistent with Pender County Policies, Plans and Ordinances. Planning Staff recommends approval of this resolution subject to the conditions noted below.

A) Conditions To Consider In Issuing A Special Use Permit For This Project:

1. All conditions of the original permit issued and executed by Pender County on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
2. All plantings for the buffer along the southwestern property line shall be placed with top of the root ball at or within 12 inches of the ground level of the marina property 20 ft. from the property line in the area where the planting is to be placed.
3. The six foot picket fence cannot be used as a retaining wall to prevent the lateral movement of soil from the parking lot area (Note: a building permit is required for any structure that is used to prevent the lateral movement of soil for any required activity associated with a commercial use. The structure may require engineered drawings in these situations prior to a building permit being issued).
4. The required 6 ft. high picket fence shall be 6 ft. high from ground level, 5 ft. from the southwestern property line. The ground level can be determined from the marina/boat ramp property side or from the ground levels on the properties to the southwest, but the fence must be at least 6 ft. high measured from one of these areas.
5. The sediment fence currently nailed to the southwestern side of the picket fence shall be removed and installed on the marina/boat ramp side of the fence to prevent sediment from being deposited on adjacent properties (the erected fence is within a few inches of the property line).
6. All conditions of compliance must be completed by February 15, 2005. This shall include the following:

Permit # 03-07-21-16

- a. Completion of all requirements for local permits, including Zoning and Building Related.
- b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved and are in compliance.
- 7. The type A buffer 10 ft. wide as described in the Pender County Zoning Ordinance and required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 15 ft. (approximately 50 ft. of the MHW line) of the landward edge of the concrete boat ramp and maintained for the duration of the project activity **except** as follows:
 - a. The buffer would begin 15 ft. landward from the edge of the flat pad of the concrete boat ramp.
 - b. At this point the buffer would begin and have a protected width of 4 ft. from the property line for a distance of 50 ft.
 - c. The buffer will then continue in a landward direction with a protected width of 7 ft. (beginning 65 ft. from the landward edge of the flat pad of the concrete boat ramp) for a distance of 40 ft. and to the top of upper or middle parking level of the property.
 - d. The remainder of the buffer to the residential property line shall maintain a protected width of 10 ft.
 - e. The area of the buffer described above (from 15 ft. landward of the edge of the flat pad of the concrete boat ramp for a distance of 90 ft.), plus an additional 100 ft. shall provide plantings as follows:
 - 1. An evergreen hedge that will provide a continuous screen at least 6' high within 4 years.
 - f. The remainder of the buffer shall provide plantings as follows:
 - 1. 3 canopy trees, 3 under story trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on December 20, 2004 the Pender County Board of Commissioners considered a Special Use Permit amendment for Hampstead Marina as described herein and Eugene Meadows, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: Approved as submitted but with stipulation that the solid upper buffer is not required. Discussion clarified that there be no vegetative buffer on the upper level.

MOVED Moore **SECONDED** Rivenbark

APPROVED X **DENIED** **UNANIMOUS**

YEA VOTES: Meadows Holland X Moore X Rivenbark X Williams

Eugene B. Meadows 12-5-0420
Eugene Meadows, Date
Chairman

Glenda Bridgen
ATTEST 12-20-04
Date

INTRODUCED BY: Johnny Sutton DATE: November 15, 2004 ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

SUBJECT: **CASE NO:** 04-10-25-17
PROPERTY RECORD NO: 08220 & 08221
APPLICANT: H. Allen and Joyce H. Wooten
OWNER: Wooten Holding

ACTION REQUESTED: Revision of an Approved Special Use Permit for Hampstead Marina for the following amendments:

1. Revise the permit to require the planted buffer along the southwest property line end 160 ft. from the high water line.
2. Extend the time allowed for all conditions to be met to February 15, 2005.

HISTORY/BACKGROUND:

Project Location: The property is adjacent to the Intracoastal Waterway at the end of Broadview Lane and Howards Channel Drive, approx. 0.15 of a mile north of the end of Factory Road in Hampstead, N.C. (See attached location map)

Project Description: Hampstead Marina consists of a boat ramp, bulkhead, pier with gazebo, 9 wet slips, 119 parking spaces, picnic shelter and a single restroom. A single family dwelling is also located on the property and will be maintained as a separate use in a space meeting the Zoning Ordinance set back and area requirements. The recently approved expansion will include demolition of an existing accessory structure for parking expansion and addition of a 16 ft. by 16 ft. gazebo and new electrical for the site and pier, part of which was completed without required permits. The expanded Marina also includes a pier, wet slips and boat ramp that was all completed without local permits.

Project History:

1. A Special Use Permit was approved for this facility on January 15, 2004 (see executed permit attached).
2. A site plan as required to be submitted under the Special Use Permit was approved by Planning Staff on May 19, 2004.
3. A Zoning Permit was issued in August 2004 with the requirement that all conditions be completed by December 15, 2004.
4. During this process a neighbor adjacent to the site reviewed the staff approved site plan and the original permit and noticed the following discrepancies between the Approved Permit Conditions and the Staff Approved Site Plan:
 - a. The planted buffer along the southwest property line had been approved by staff approximately 160 ft. short of the mean high water line. This in effect allowed the buffer to end 160 ft. from the mean high water line instead of 50 ft. A specific requirement of the permit was that the buffer be provided to within 50 ft. of the mean high water line.
 - b. A gate was shown on the staff approved site plan in the required fence along the southwest property line and the gate was not included in the application or in the permit conditions.
 - c. A seawall was constructed along the southwest property line that was not shown on the County or CAMA Permit.
5. The applicant has subsequently requested a revision to the approved Special Use Permit.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail.

Permit # 03-07-21-16

- B) Zoning Ordinance Compliance:** This property is currently zoned R-20, Residential. Marinas are allowed as a special use in the R-20 District. The facility will be in compliance with the Zoning Ordinance when all local and state regulation requirements are completed.
- C) Land Use Plan Compliance:** This property is classified as Limited Transition and is located adjacent to Outstanding Resource waters. The Pender County Land Use Plan prohibits the construction of new marina facilities in Outstanding Resource Water areas. The Pender County Board of Adjustment has ruled that this facility is an existing Marina under the provisions of the Pender County Zoning Ordinance. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan as long as all required permits are obtained and it is in compliance with local and state regulations.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The applicant must verify that all electrical component installations for the pier and gazebo are elevated above FEMA flood elevation in order for the project to comply with the Flood Hazard Prevention Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site.
- G) Site Access Conditions:** The marina site has access to a state maintained road along a recorded easement from the site.
- H) Staff Comments:** Staff will note the following conditions that currently exist.
1. This project has resulted in a long, complicated and controversial process as a result primarily of the applicant not obtaining the required, obvious permits.
 2. The property is continuing to be used as a marina without compliance with the local Zoning Ordinance and NC State Building Code and no occupancy being authorized by Pender County.
 3. There are numerous permit requirements that must still be fulfilled prior to official occupancy being approved by the County Planning and Building Inspections Department.
 4. It will shortly be beyond the normal planting season for required buffer and landscape plants.
 5. It should be noted also that the Zoning Ordinance requires required buffers and landscape plants to be installed prior to occupancy of a facility or within 90 days when an adequate security is posted to insure installation of the plantings.
 6. The reason for planning staff allowing a change in the approved site plan from the permit conditions were as follows:
 - a. It was felt that the planted buffer would be hard if not impossible to maintain in the lower part of this area because of its proximity to the boat ramp traffic. It is likely that at least 60 additional ft. of the deleted buffer could be installed without causing undue hardship for maintenance.
 - b. It was felt that a gate in a fence does not change the requirements for the fence to be installed. A condition was noted on the site plan that the gate could only be used for the purposes allowed by the easement that was recorded and not for commercial or marina use.
- I) Conditions To Consider In Issuing A Special Use Permit For This Project:**
1. All conditions of the original permit executed on 2-17-04 shall remain in effect, except those that are amended by action of the Board of Commissioners.
 2. The applicant will install all buffer and landscape plants as required under the original and amended Special Use Permits by 12-15-04, in compliance with the planting specifications of Section 14 of the Zoning Ordinance.
 3. All other conditions of compliance must be completed by February 15, 2005. This shall include the following:
 - a. Completion of all requirements for local permits, including Zoning and Building Related.
 - b. Completion of all requirements for required state permits, including CAMA Permits and verification that all components of the facility have been approved.

Permit # 03-07-21-16

4. The type A buffer 10 ft. wide as required in condition # 8 of the original permit shall be provided along the southwestern boundary from the corner of the residential site on the property to within 100 ft. of the mean high water line and maintained for the duration of the project activity. The plantings required in the A buffer shall continue adjacent to the property line for an additional 25 ft. and to within 75 ft. of the mean high water line.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on November 15, 2004 the Pender County Board of Commissioners considered a Special Use Permit for Hampstead Marina as described herein and Dwight Strickland, Chairman is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

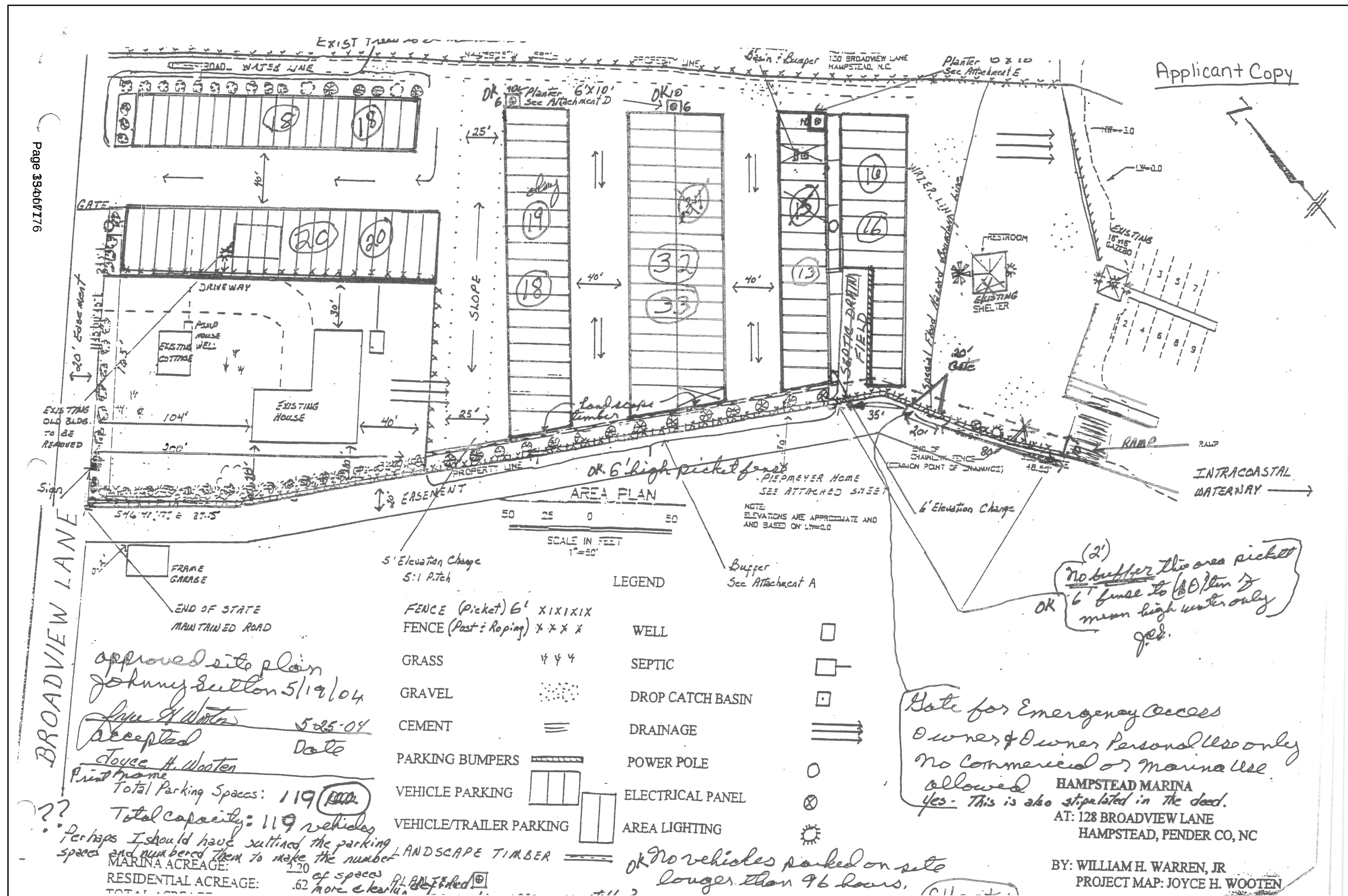
Dwight Strickland,
Chairman

11-15-04
Date

Glenda Pridgen
ATTEST

11-15-04
Date

** To adhere with the original distances (buffer). The seven foot buffer begins at the curve in the fence, down to the dock. Additional time is allowed to complete work on this Special Use Permit until February 15, 2005.



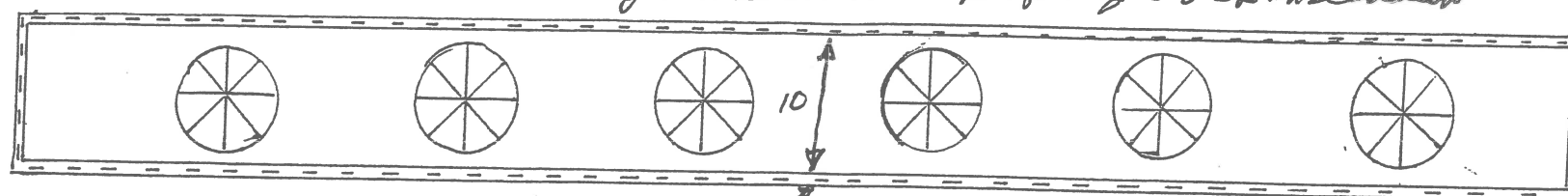
LANDSCAPE LEGEND

No littering signs posted ^{at} ~~at entrance and main ramp~~ at locations shown * (last ramp + shelter)

Property must be policed daily
and all trash removed.

Permit must be displayed
on any vehicle parked on site.

Buffer for Southwestern Boundary
from residential property to drop in elevation



10' wide

Scale: 1" = 10'

A

Landscape Plant Legend

LIVE OAK



PECAN



CRAPE MYRTLE



DWARF YAUPON HOLLY



LIGUSTRAM



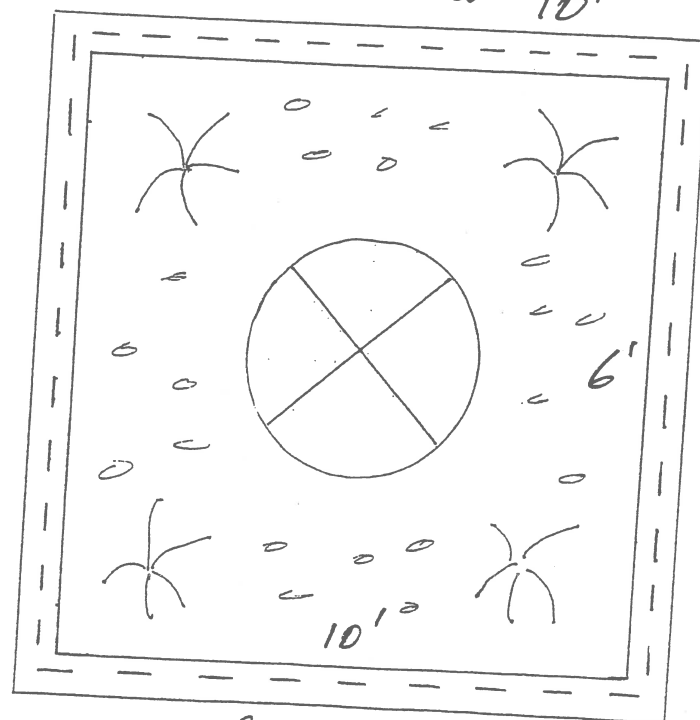
MULCH



THUNDERB SPIREA



Planters 10'

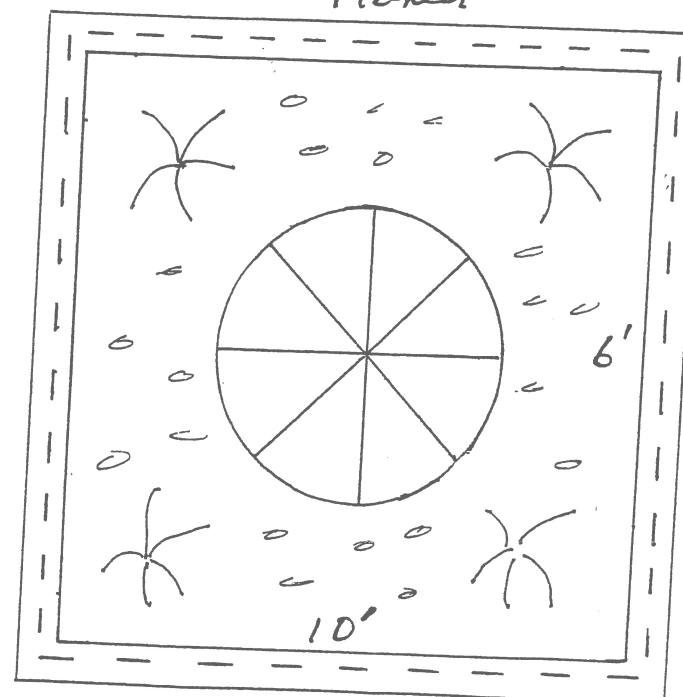


Scale 1" = 2'

6' }
Parking

E

Planter 10'



Scale 1" = 2' 10"

6' }
Parking Dr.

(Sheet)

Approved Site Plan
Johnny Sutton 5/19/04

Johnny Sutton

Accepted Joyce H. Wooten 5-25-04
Date

Joyce H. Wooten
Print Name









































SAMUEL B. FRANCK, Attorney at Law

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Post Office Box 7068
Wilmington, NC 28406-7068

P: 910.794.4835
F: 910.794.4877
sbf@wardandsmith.com

March 4, 2019

Pender County Planning and Community Development
Code Enforcement
805 S. Walker Street
Post Office Box 1519
Burgaw, NC 28425

RE: Wooten Holding Company, LLC / Defense of Alleged Zoning Violation
Our File 111180-00002

Dear Sir or Madam:

We represent Wooten Holding Company, LLC ("WHC"). The purpose of this correspondence is to respond to a First Notice of Violation from you to WHC dated November 30, 2018 regarding the property located at 128 Broadview Lane. In accordance with our previous discussions with you, WHC is prepared to undertake and complete the following actions, in full and final satisfaction of the violations alleged in the First Notice of Violation:

1. WHC will seed new grass upon the subject property where the previous grass ground cover was damaged by erosion from the significant rainfall we experienced this past fall; and,
2. WHC will meet with a representative of the Pender County Planning Department at the subject property after sunset to evaluate and agree upon the scope and timing of WHC's adjustments to flood lights that are within WHC's control and, to the extent such lights are not within WHC's control, for WHC to make the appropriate request to Duke Progress or other entity in control of such lights.

ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

WILMINGTON

www.wardandsmith.com

Page 55567176

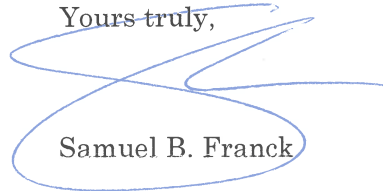
WARD AND SMITH, P.A.

March 4, 2019

Page 2

Unless otherwise instructed, we will consider this enforcement matter closed upon the completion of the aforementioned items. Please do not hesitate to contact us with questions or concerns.

Yours truly,



Samuel B. Franck

ND: 4827-4605-9913, v. 1

Pender County Planning and Community Development

Code Enforcement

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



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

March 13, 2019

Dear Mr. Franck:

Pender County Planning and Community Development ("PCD") is in receipt of your letter dated March 4, 2019. In regard to your response concerning case number 298-2018, we provide the following:

1. Wooten Holding Company, LLC ("WHC") shall provide additional protections for stabilization to include surfacing of the areas subject to vehicle and trailer use. The sediment that is being disturbed seems to be a direct result from exposed materials. A treatment of gravel, aggregate base course or an acceptable paving material should be utilized. In addition, areas documented for new grass seed should be protected for a length of time to prevent disturbance and allow for full stabilization. The proposal to simply apply grass seed is not adequate to address this issue.
2. PCD will schedule a site visit to document the orientation of lighting on-site as well as how lighting is being cast to adjacent properties. Due to the nature of schedules, we will attempt to coordinate to the best of our ability to meet with WHC, however, if notice is provided via email or phone call for said inspection and WHC is not available, the inspection will continue, and results will be provided back to WHC as soon as possible thereafter.

While PCD appreciates WHC's willingness to comply with the administrative authority to enforce the conditions of the Special Use Permit issued on the property, it has been over 106 days since the notice of violation was issued. Accordingly, this letter shall serve as the final notice as to the violation for the failure to provide stabilization. The enforcement case will remain active until notification is provided by PCD that the points discussed have been remedied to the County's satisfaction. This includes the option of pursuing additional administrative remedies for other violations, including civil penalties, denial of additional permits, and possible revocation of the special use permit.

Regards,

A handwritten signature in black ink, appearing to read "Charlie Ring", is written over the typed name.

Charlie Ring, Code Enforcement Supervisor
(910) 259-1519 cring@pendercountync.gov



SAMUEL B. FRANCK, Attorney at Law

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November 12, 2019

Pender County Planning and Community
Development Department
Code Enforcement Office
Post Office Box 1519
805 South Walker Street
Burgaw, NC 28425

Attention: Mr. Charlie Ring

RE: PIN 3292-63-8007-0000
Our File 111180-00002

Dear Mr. Ring:

As you are aware, the undersigned and this law firm represent Wooten Holding Company, LLC in connection with Pender County's allegations that that company has violated the terms of its Special Use Permit. I am disappointed to read your letter dated October 11, 2019. Notwithstanding the selective, arbitrary and capricious nature of this enforcement action, my client has been reasonable and cooperative in an effort to satisfy your requests.

On or about November 30, 2018, without any dialogue whatsoever with the land owner, Pender County issued a Notice of Violation alleging that several conditions, most of which have existed for *over fifteen years*, were not in compliance with the applicable zoning. This Notice of Violation was delivered shortly after Hurricane Florence inflicted significant damage on the residents and land owners of Pender County. It quickly became apparent that the County issued this Notice of alleged violations in response to the complaint of one citizen, a home owner who has owned the property immediately next door to the subject property since the SUP for this site was established over fifteen years ago.

That Notice, and the enforcement suggested in it, represent egregious and arbitrary action by the County. Notwithstanding that fact, my client responded by offering to accommodate the County and the complainant. To that end, my client met with representatives of the County to discuss a plan to satisfy the personal concerns raised by the neighboring land owner.

ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

WILMINGTON

www.wardandsmith.com

WARD AND SMITH, P.A.

Pender County Planning and
Community Development Department
November 12, 2019
Page 2

Page 68906776

Through subsequent discussions with you and other officers at the County, the County clarified that, from its perspective, two specific areas of identified concern needed to be addressed to satisfy the applicable zoning requirements: (1) the two overhead lights located on the subject property, which have been there since prior to the issuance of the original SUP, needed to be adjusted or adapted so that they are not oriented toward the neighboring and complaining land owner's property, and (2) the surface of the parking areas and thoroughfare lanes on the land need to be stabilized, following damage to the same caused by erosion in the tremendous rainfall events suffered during and after Hurricane Florence. While my client and I disagree with the allegation that those conditions violate the applicable zoning, the land owner has taken action to address the County's requests.

Overhead Lights

The overhead lights are not, and never have been, oriented toward the waterway or the neighboring land owner. Nonetheless, in the spirit of citizenship, my client has demonstrated that it is willing to adjust those lights to reduce the impact of ambient light that reaches the neighboring property.

My client met on-site with Planning Director Breuer after dark to assess the condition of the lights. Based on that meeting, the land owner agreed to take steps to redirect some of the ambient light that reached the neighboring land owner's lot. The lights are not owned by the land owner, but rather owned and maintained by Duke Energy. My client persuaded Duke to install shields to redirect ambient light to minimize the impact of the same on the neighboring land owner.

The County visited the site, and subsequently indicated that the shields were not sufficient, presumably to satisfy the neighboring home owner. In response, on August 22, 2019, my client wrote to you to ask what light reading would be acceptable, and offered to meet with you and the complaining party, after dark, with a light meter to assess and respond to the continued concern. You have not responded to that offer.

Notwithstanding that lack of response to my client's efforts to clarify what more it must do to satisfy the County and the complaining neighbor, or the fact that these lights are not and never have been oriented toward the neighboring land, the land owner has persuaded Duke Energy to take further steps to reduce the ambient glare that reaches the neighbor's land. Duke has agreed to change the light fixture from an "Area" light fixture with a shield to a "Neighborhood" light fixture with a shield. Per Duke Energy, that will reduce

WARD AND SMITH, P.A.

Pender County Planning and
Community Development Department
November 12, 2019
Page 3

the glare rating for the fixture from a 3 to a 1 (on a scale of 0-5). As of delivery of this letter, that work is complete.

These steps to satisfy your concerns go far beyond any reasonable interpretation of the requirements the applicable zoning that prohibits orienting lights toward the neighbor's land. Please evaluate the condition on-site to verify that the light is now acceptable and provide notice of the same to us.

Site Stabilization

The land owner is continuing to take reasonable action to response to the County's incredible action to persecute my client for erosion that they suffered as a result of Hurricane Florence.

Mr. Wooten met with representatives of the County in March of 2019 to discuss the details of your request. Shortly thereafter, we submitted a plan to re-stabilize the surface of the site to restore it to its condition prior to the storm. The County indicated that plan was not sufficient.

Based on further discussions with Pender County staff, the land owner met with County representatives and the land owner's site engineer on-site to discuss a plan to address stabilization of the land that would be suitable to the County. Based on that meeting, we understand that the County would now like to see a stabilization plan that includes installation of gravel on the high traffic areas. My client has been working with design professionals since to develop such a plan.

A revised stabilization plan is enclosed here for your consideration. While we believe this is consistent with the details requested by Director Breuer at the above referenced on-site meeting, it goes well beyond the applicable zoning requirements and we ask that you please confirm that completion of this plan will be sufficient to satisfy the County. After receipt of that confirmation, my client is prepared to promptly pursue the work. Please note that it is unclear whether stormwater management or other government permits will be required to allow this work. Once those permitting questions are answered, and any necessary permits are issued, the land owner can complete the work on this plan in 20-30 days.

WARD AND SMITH, P.A.

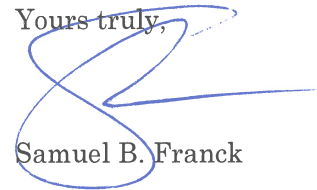
Pender County Planning and
Community Development Department
November 12, 2019
Page 4

We disagree, strongly, that your enforcement action is justified and permissible under applicable law. These steps are offered solely in the interest of cooperative citizenship, and should not be interpreted in any manner as an admission of wrong doing.

Notwithstanding what my client believed to be a productive dialogue to address the County's concerns, you issued a subsequent Notice of the Violation on August 30, 2019 with a request that the County Attorney prosecute the same. Then, on October 11, 2019, you sent notice to the land owner to notify them of your intention to seek revocation of their Special Use Permit. Any such action at this point, while the land owner is taking active steps to satisfy your requests, regardless of their validity, would be counter-productive. Please assess the revised lighting on-site and the attached stabilization plan and advise if the same are acceptable to the County.

In the meantime, while you continue to communicate intention to enforce this selective, arbitrary, time-barred allegation, at the entirely unnecessary expense of the County, we have no choice but to take action to defend the same.

Yours truly,



Samuel B. Franck

cc: Wesley Wooten

ND: 4850-9956-8554, v. 1

Moved by David Williams, seconded by Jacqueline A. Newton

Motion to deny the Zoning Map Amendment from PD, Planned Development zoning district to OI, Office and Institutional zoning district as requested.

	For	Against	Abstained	Absent
George Brown	x			
Fred McCoy	x			
Jacqueline A. Newton	x			
David Piepmeyer				x
David Williams	x			
	4	0	0	1

CARRIED.

15.3 Consideration of the Revocation of Special Use Permit 03-07-21-16.

Chairman Brown opened the public hearing at 8:04 p.m. Mr. Thurman swore in witnesses. Planning Director Kyle Breuer explained that the first notice of violation was sent on November 30, 2018 with a final notice of violation being sent on March 13, 2019. Mr. Breuer expanded on the timeline of this violation. Ms. Newton asked if the applicant was allowed a little extra time if this case would come into compliance. Mr. Breuer stated that the lighting has been corrected as of this meeting. Mr. Breuer also explained the steps that the applicant is taking to come into compliance. Mr. Breuer stated that the landowner should be in compliance within 60 days. Ms. Newton asked a series of questions regarding the Special Use Permit and subsequent complaint. Mr. Williams explained that code enforcement used to be only complaint driven but Pender County is changing its mode of thinking and is now required to enforce Special Use Permit violations. Discussion ensued regarding the code enforcement process. Mr. Brown added that when there is a complaint, the Board must address the complaint. Mr. McCoy asked if there was a way that this item could be tabled to allow the landowner to come into compliance and allow staff to monitor the progress. Sam Frank, attorney for the landowner explained that he is prepared to agree with staff to request that this item be continued until February and allow staff to sign off once the property is back in compliance. Mr. Breuer stated that it is standard practice that when a property is back in compliance that a letter is issued to the landowner stating as such. Mr. Frank stated that they pursued permitting on November 22 and will update staff as the project moves forward. The Board asked for an update in thirty days noting that the goal is compliance. There being no further discussion, Chairman Brown closed

the public hearing at 8:30 p.m.

Moved by Jacqueline A. Newton, seconded by David Williams

Motion to table the item until the February 18 meeting with staff to provide an update to the Board on February 3.

	For	Against	Abstained	Absent
George Brown	x			
Fred McCoy	x			
Jacqueline A. Newton	x			
David Piepmeyer				x
David Williams	x			
	4	0	0	1

CARRIED.

- 15.4 Resolution Requesting Adoption of 47 Flood Insurance Rate Map (FIRM) panels in Western Pender County and an Amendment to the Pender County Flood Damage Prevention Ordinance to Reference said Panels.

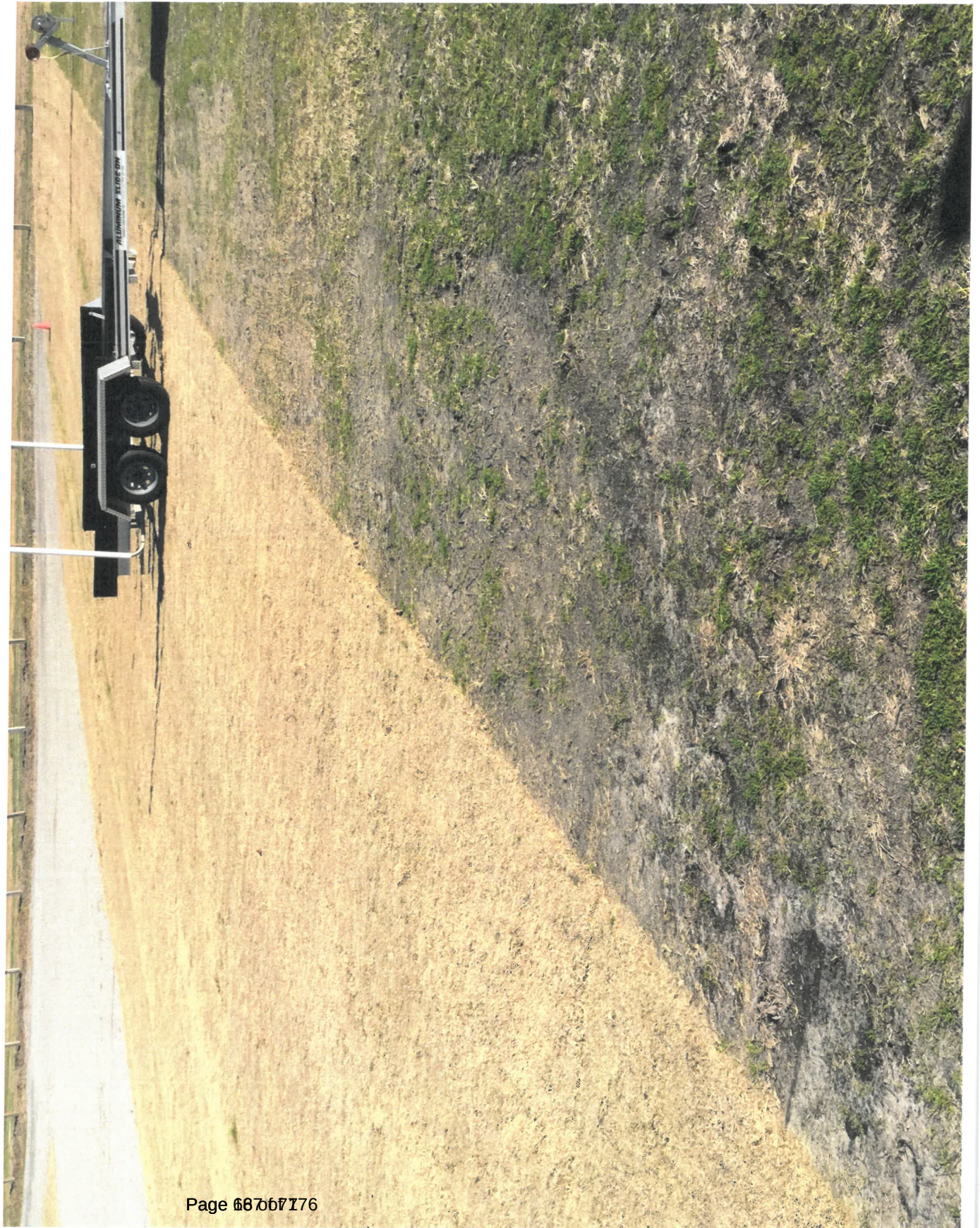
Chairman Brown opened the public Hearing at 8:30 p.m.

Planning Director Kyle Breuer explained that the preliminary FEMA floodplain maps became available on August 29th, 2014. From 2014 – 2018, the maps underwent a public outreach and appeals process. The length of this process can be attributed to the fact that Pender County had 26 appeals, the largest number of appeals in a coastal county. On June 6, 2019, a Letter of Final Determination was issued for 47 panels in western Pender County. The panels all fall within the Black River basin. Pender County's deadline to adopt the updated flood panels and remain in compliance with National Flood Insurance Program guidelines is December 6th, 2019. Appeals are still ongoing for flood panels in eastern Pender County. Once those appeals are resolved and a Letter of Final Determination is issued, those panels will come forward for adoption. Based on Pender County GIS records, roughly 173 addresses with structures that were not previously in a flood zone will be in a flood zone with the adoption of the new flood maps. Staff have worked to ensure that citizens in western Pender County have had an opportunity to learn about the changing flood maps by hosting public outreach sessions. In addition to the public outreach meetings held from 2014-2018, staff conducted an educational outreach session at Moore's Creek Missionary Baptist Church on September 11, 2019 to allow citizens to ask questions about how the changes will affect their property and the potential need to purchase flood insurance. The Flood Damage















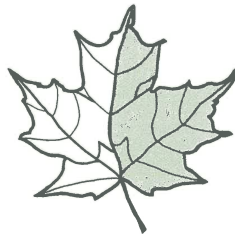
Page 11067176



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P. O. Box 129
Morrisville, NC 27560

919-467-1239



**MACCONNELL
& ASSOCIATES, P.C.**

501 Cascade Pointe Lane
Suite 103
Cary, NC 27513

Fax 919-319-6510

January 3, 2020

Wooten Holding Company, LLC
8155 Malpass Corner Road
Currie, NC 28435

Re: Hampstead Marina
128 Broadview Lane
Hampstead, NC
Engineer Certification

To Whom It May Concern,

MacConnell and Associates, PC (M&A) has performed periodic inspections of the installation of the 4-inch geoweb with #57 stone and non-woven geotextile fabric at the Hampstead Marina site in Hampstead, NC and hereby certify that the material was installed in accordance with Sheet C-100 of "Stormwater Minor Modification Plan" prepared by MacConnell & Associates dated November 25, 2019 . If additional information is needed, please contact Gary MacConnell or myself at (919) 467-1239.

Sincerely,



Thomas A. Perdue, P.E.
Project Manager
MacConnell & Associates, PC

Travis Henley

From: Samuel B. Franck <SBF@wardandsmith.com>
Sent: Monday, January 20, 2020 2:18 PM
To: Charlie Ring; Travis Henley; TreyThurmanExt
Cc: Wesley Wooten; Chad McEwen; Doug Shipley
Subject: [External]RE: Response to

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Gentlemen –

I am just following up on the correspondence below.

Trey, perhaps you could give me a call to talk about logistics for documenting completion of Plan and the final resolution of these alleged violations?

Best regards,

Sam

From: Samuel B. Franck <SBF@wardandsmith.com>
Sent: Thursday, January 9, 2020 10:10 AM
To: Charlie Ring <cring@pendercountync.gov>; Travis Henley <thenley@pendercountync.gov>; Doug Shipley <dshipley@pendercountync.gov>; Trey Thurman <cwtiit@aol.com>
Cc: Wesley Wooten <wesley@lewisfarmsandliquidwaste.com>; Kyle Breuer <kbreuer@pendercountync.gov>; Chad McEwen <cmcewen@pendercountync.gov>; Samuel B. Franck <SBF@wardandsmith.com>
Subject: RE: Response to

Dear Charlie, Travis, Doug, and Trey –

I write respond to the additional questions and requests included in Charlie's email below.

Wooten Holding Co., LLC has completed the work described in the plan that was approved by the County in December to stabilize the site (the "Plan"). Just in case you have not already received it, I attach a letter from my client's engineer certifying the completion of the installation of the subterranean improvements. None of the additional work contemplated in Charlie's email below is contemplated in that Plan. We will be glad to extend the courtesy to discuss additional thoughts regarding maintenance of the land with you, but it is important that we separate that conversation from the fundamental fulfillment of the agreement between my client and the County and final resolution of the allegations of zoning violations. Consistent with the agreement between the parties, the only matter that the County alleged to be outstanding as out of compliance was the stabilization of the site, and the County agreed that, upon completion of the actions contemplated in the approved Plan, it would issue a certification of compliance and ask the County Commissioners to set aside the alleged zoning violation action. Unless there is some aspect of the agreed upon Plan that you believe is not complete, we ask that you prepare a proposed certification of compliance for our review.

Please note that the Wooten's performed significant work above and beyond that required by the Plan. Namely, significant sod was installed, above and beyond the work contemplate in the approved Plan. As you can see from the photographs, and perhaps from your first hand site visits, the marina looks fantastic.

With regard to your additional notes and interest in the future maintenance of the land, and separate and apart from our agreement regarding the alleged zoning violation, please note the following:

- The Wootens applied winter grass seed in the areas of the site that were not improved with sod. Of course, it is far too early to expect to see grass growth in those areas. My clients are confident that it will fill in this spring.
- None of our prior discussions contemplated irrigation, nor does my client believe that the same is necessary. We have no reason to believe that rainfall over the next 4 months will be insufficient to get the grass seeded areas established prior to the boating season. If it is not, the Wootens are prepared to water the site as needed to get that lawn established.
- If there any additional concerns that you would like to discuss, we will be glad to meet on site with all concerned to discuss the same.

No further stormwater permit is required. Based on verbal discussions with the NCDEMLR office, our engineer obtained consent to pursue the minor modifications included in this work. The engineer has requested a review by NCDEMLR of the work, now that the same is complete, so that a Minor Modification Permit can be issued if NCDEMLR deems necessary. The timing of NCDEMLR's review is beyond our control, but I provide the attached letter from my client's engineer confirming the same. If you have any questions regarding this information, please feel free to contact Thomas Perdue directly.

Best regards,
Sam

From: Charlie Ring <cring@pendercountync.gov>
Sent: Tuesday, January 7, 2020 3:42 PM
To: Wesley Wooten <wesley@lewisfarmsandliquidwaste.com>
Cc: Samuel B. Franck <SBF@wardandsmith.com>; Kyle Breuer <kbreuer@pendercountync.gov>; Travis Henley <thenley@pendercountync.gov>; Doug Shipley <dshipley@pendercountync.gov>
Subject: Response to

Wesley,

Thanks for accompanying me during the site visit yesterday. When I returned to the office we reviewed documentation and photographs of the site and had noticed a couple of areas that could use some treatment in regards to their exposure, for example bare spots. I've attached those photos for your review. We kindly request that you please respond back as to what course of action you can take to get these areas stabilized. Also, there's general concern about how the grassed areas will be established through proper watering or irrigation so the sod takes and thrives into the growing season, these areas will see a good amount of wear on them and having them firmly rooted will be of utmost importance. Finally, please respond back as to the current status of stormwater review, as a part of the compliance recommendation we'll need to see the State's sign off of the plan and please provide any and all files pertaining to the stormwater permitting to us for the file. If you have any questions, please give me a call and I will discuss them with you.

Thanks, Charlie



Samuel B. Franck
Board Certified Specialist in Commercial Real Property Law

Ward and Smith, P.A.
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Post Office Box 7068 | Wilmington, NC 28406-7068
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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

January 30, 2020

Mr. Sam Franck
Ward and Smith, P.A.
127 Racine Drive
Wilmington, NC 28403

Dear Mr. Franck,

Thank you for your letter dated January 9, 2020. Following a review of observed conditions on site at Hampstead Marina and the review of the status of applicable permit applications, it is the determination of the Unified Development Ordinance Administrator that the Hampstead Marina site remains out of compliance. Specifically, the site will remain out of compliance until the following items are addressed:

1. The remaining bare spots present on site are corrected in accordance with the submitted stabilization plan.
2. The applied-for stormwater minor modification permit is approved by NCDEQ and a copy of said approval is forwarded to the UDO Administrator.
3. The applied-for CAMA modification permit is approved by the Division of Coastal Management and a copy of said approval is forwarded to the UDO Administrator.

Please forward all permit approvals to thenley@pendercountync.gov as soon as they are received, and please advise the status of bare spots currently on-site and all efforts to stabilize those areas in accordance with the stabilization plan.

Thank you,

Travis Henley, MPA, CFM
Senior Planner & Interim Director
Pender County Planning and Community Development
805 S. Walker Street
Burgaw, NC 28425
(910) 259-2110 (p)
thenley@pendercountync.gov



Pender County Amendments to the Rules of Procedure

TO: Board of Adjustment
FROM: Daniel Adams
DATE: August 16, 2023
SUBJECT: Amendments to the Rules of Procedure

SUMMARY:

At their June 21, 2023, meeting, the Board of Adjustment discussed potential amendments to the Board's Rules of Procedure. Attached are proposed amendments for discussion. The amendments discuss the introduction of evidence and establishing time limits for parties without standing to address the Board. Staff is also proposing to update the applicable references to the North Carolina General Statutes found within the Rules of Procedure.

ACTION REQUESTED:

Discussion regarding the proposed amendments.

ATTACHMENTS:

1. Current Rules of Procedure
2. Draft Amendments

RULES OF PROCEDURE

I. General Rules

Pursuant to the provisions of North Carolina General Statutes (N.C.G.S) 153A-345 and the provisions of the Pender County Unified Development Ordinance (UDO), incorporated herein by reference, these rules of procedure shall govern all matters before the Board until further amended.

II. Members – Officers—Duties

- A. The Board of Adjustment shall have the membership and serve the terms specified in Section 2.4.1, Board of Adjustment, of the Pender County UDO.
- B. Chairman. The Chairman shall be elected by the full membership of the Board, including alternate members, from among the regular members of the Board. The term of office shall be one (1) year and until his successor is elected, beginning on January 1, and he shall be eligible for re-election. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The chairman shall appoint any committees found necessary to investigate any matters before the Board.
- C. Vice-Chairman. A vice-chairman shall be elected by the Board from among its regular members and alternate members in the same manner and for the same term as the chairman. He shall serve as acting chairman in the chairman's absence, and at such times he shall have the same powers and duties as the chairman.
- D. Alternate Members of the Board shall attend all meetings of the Board, regular, and special, to replace any absent member or members unable to participate due to a conflict. At any meeting, in which they are called to sit on the Board, they shall have the same powers and duties as regular members.
- E. All members, regular and alternate, sit at the pleasure of the Board of Commissioners and subject to removal at any time.
- F. Secretary. The Administrator, or their designee from the Planning Staff, shall serve as Secretary to the Board of Adjustment. The Secretary, subject to the direction of the chairman and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given shall notify members of pending meetings and their agenda, shall notify parties to cases before

the Board of its decision in such cases, and shall generally supervise the clerical work of the Board. The Secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board on any resolution or on the final determination of any question or matter before the Board, indicating the names of members who voted, and who are absent and fail to vote.

III. Rules of Conduct for Members

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Upon the failure of a member, regular or alternate, to attend three (3) consecutive meetings, this shall require the Board upon a majority vote to declare the position vacant and request the Board of Commissioners to fill the vacancy. It may be the option of the Board to not remove a member due to extraordinary conditions such as sickness.
- C. No Board member shall take part in the hearing, consideration or determination of any case in which he has a conflict of interest. Board members shall reveal any potential conflict and if it might influence their judgment, or would give the appearance of impropriety, and may ask to be excused from voting on the issue. The Board of Adjustment may allow them to abstain by majority vote.
- D. Board Members shall make every effort not to discuss any case pending before the Board with any parties before the case is heard. The Administrator may prepare and submit materials to the Board regarding the actions of the Planning Department. In the event a case involves an appeal of the actions of or interpretation of the Administrator, the Board shall refrain from discussing the merits of the case with the Administrator prior to the hearing, provided that the Board may consider materials prepared by the Planning Department in the ordinary course of business.
- E. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule may be cause for dismissal from the Board.

IV. Meetings

- A. Regular Meeting. The Regular Meeting of the Board shall be held on the third Wednesday of each month at that place as may be designated by the Chairman from time to time for convenience of members and parties.
- B. Special Meeting. The Chairman may call a Special Meeting of the Board at any time. At least forty-eight (48) hours written notice of this Special Meeting shall be given by the Chairman, Secretary, or Clerk to each member of the Board.
- C. All notices of all meetings shall be made to the public and media as required by provisions of N.C.G.S. 153A-345.
- D. Cancellation of Meetings. If there is no business before the Board upon appeals and applications for variances, the Chairman or his designee may cancel the meeting by giving verbal and written notice to each member and alternate, by the Friday preceding the regularly scheduled meeting, or forty-eight (48) hours notice canceling a Special Meeting.
- E. Quorum. A quorum shall consist of four (4) members of the Board.
- F. Final Action. Final action on matters before the Board shall be as required in N.C.G.S. 153A-345(e) and Section 2.4.1 of the Pender County UDO. No final action can be taken on a variance without the concurring vote of four-fifths (4/5's) of the members of the Board. All other quasi-judicial matters require a simple majority vote by members of the Board.
- G. Any member present eligible to vote and failing to vote such vote shall be in the affirmative of a motion and as properly seconded.
- H. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) call to order; (b) roll call; (c) approval of minutes of the previous meeting; (d) hearing of cases; (e) reports of committees; (f) unfinished business; (g) new business; (h) adjournment.

V. Appeals

- A. Procedure for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Administrator. The applicant must file his application for a hearing with the Administrator, who shall act as Clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose and as approved by the Board, and all information required thereon shall be complete before an appeal may be considered as having been filed.

Upon receipt of an Appeal, and as soon as possible, the Administrator shall serve on the appellant/applicant and or his representative, the written factual basis and legal reasons for the determination of the Administrator with a copy of these rules of procedure and notice of hearing.

B. Hearing.

- (1) Such matter shall be scheduled for the next regular meeting of the Board or as soon thereafter as the schedule of the Board permits. Where special or exigent circumstances exist, and upon application to the Chairman, a Special Meeting may be called to determine the matter.
- (2) Notice. The Board shall give public notice of the hearing in a newspaper generally circulated in Pender County by advertisement published at least ten (10) days before the date of the hearing.

Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.

Notice shall also be sent to adjacent/abutting landowners as disclosed by public record and posted on the site in accordance with 153A-345.

- (3) Conduct of the Hearing. Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows: (a) the chairman or such person as he shall direct, shall give a preliminary statement of the cases; (b) the applicant shall present the evidence and arguments in support of his application; (c) persons opposed to granting the application shall present the evidence and arguments against the application; (d) both sides shall be permitted to present rebuttals to opposing evidence and arguments. Witnesses may be called and actual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Members of the Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the public hearing and made a part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.

The chair of the board or any member acting as chair and clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board as outlined in N.C.G.S. 153A-345.1 (f).

- (4) Rehearings. An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or

conditions in the case. The Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.

VI. Variance

Applications for a variance must be filed with the Administrator or their agent and must meet all submission requirements as outlined in Section 3.14.7 of the Pender County UDO. As required by N.C.G.S. 153A-345(e), no final action shall be taken a variance without the concurring vote of four-fifths (4/5's) of the members of the Board.

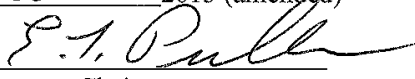
VII. Decisions

- A. Time. Decisions by the Board shall be made not later than sixty (60) days from the close of the hearing, unless extraordinary conditions exist as determined by the board, in which the board shall render their decision not later than ninety (90) days from the close of the hearing.
- B. Form. The Board's final decision shall be shown in the record of the case as entered in the Board's minutes and signed by the secretary and the chairman on approval of the minutes by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the Findings-of-Fact made by the Board. When a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal application was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. When a variance is granted, the record shall state in detail any facts that support findings required to be made before such variance is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance. A separate record of the decision in each case shall be prepared, filed in the Pender County Planning & Community Development Department, and furnished to the parties as specified in the Section 3.14.7 Pender County UDO.
- C. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting an appeal or a variance shall expire if the applicant does not obtain a building permit for such use within two (2) years from the date of the decision.
- D. Notice and Public Record of Decision. The Secretary shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the secretary or the chairman of the Board when the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail, return receipt requested. A copy of the decision shall also be filed in the Pender County Planning Department, as specified in the Pender County UDO. The decision shall be a public record, available for inspection all reasonable times.

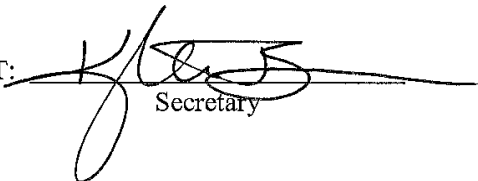
VIII. Amendments

These rules may be amended from time to time. Amendments in writing may be proposed by any member or any other person at a Regular Meeting of the Board. No action shall be taken upon such amendment until the next Regular Meeting of the Board. No amendment may be adopted unless adopted by an affirmative vote of no less than four (4) members.

Dated this 16 day of October 2013 (amended)


Chairman

ATTEST:


Secretary

Pender County Planning and Community Development

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To: Pender County Board of Adjustment

From: Daniel Adams, Planning & Community Development Director

Date: August 9, 2023

Re: Proposed amendment to the Pender County Board of Adjustment's Rules of Procedure

At the June 21, 2023, meeting of the County's Board of Adjustment, there was discussion among the Board regarding the establishment of standard procedures for submitting evidence into the record. The impetus for this discussion resulted from parties to the hearing producing video or photographic evidence at the hearing in a manner that does not allow all parties to adequately view the evidence. Therefore, staff is proposing the following language to be added to the Board of Adjustment's Rules of Procedure:

Article IV. Meetings

- I. All evidence, including photos, videos, and other documentation, shall be provided to the Secretary no later than five business days prior to the hearing upon which the evidence is related. The evidence shall then be distributed to the parties involved in the hearing in advance of the hearing so that the parties may have adequate time to review the evidence prior to the hearing.
- J. The Board, at the discretion of the Chairman, may limit the time that parties without standing may address the Board. A general guideline is that parties without standing have a three-minute limit if they are speaking as an individual and a five-minute limit if they are speaking on behalf of an organized group, such as a homeowner's association.

Staff is also proposing to update the applicable references to the North Carolina General Statutes found within the Rules of Procedure.