



## Pender County

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**TO:** Zoning Board of Adjustment  
**FROM:** Justin Brantley  
**DATE:** December 14, 2022  
**SUBJECT:** BOA Meeting Minutes 11-16-2022

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**SUMMARY:**

BOA Meeting Minutes 11-16-2022

**ACTION REQUESTED:**

Review and approval of 11-16-2022 meeting minutes

**ATTACHMENTS:**

11-16-2022 BOA Minutes with Exhibits

Pender County Board of Adjustment Meeting Minutes – November 16, 2022

**Members Present:** Max Kipfer, Chairman  
Kyle Breuer, Vice Chairman  
Brett Keeler  
Andrew Olsen, Alternate

**Members Absent:** Jeffrey Snider, Alternate

**Others Present:** Justin Brantley, Interim Planning Director  
Donna Sayre, Administrative Specialist  
Trey Thurman, County Attorney  
Steve Coggins, Attorney  
Matthew Nichols, Attorney  
Lauren Walsh, Member of the Public  
Brian Walsh, Member of the Public  
Adam Winstead, Member of the Public  
Dan Ogden, Member of the Public  
Phil Holt, Member of the Public

1. **Call to Order:** 9:02 a.m.
2. **Roll Call**
3. **Pledge of Allegiance and Moment of Silence**
4. **Adoption of Agenda**

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

5. **Adoption of Minutes**

Mr. Breuer made a motion to adopt the minutes from the September 21, 2022, meeting. Mr. Olsen seconded the motion, and the motion was unanimously approved.

6. **Public Comment**

There was not public comment

7. **Public Hearing**

Attorney Trey Thurman affirmed Justin Brantley, Steve Coggins, Matthew Nichols, Lauren Walsh, Brian Walsh, Adam Winstead, Dan Ogden, and Phil Holt as to their testimony being truthful and relevant to the respective case.



Mr. Brantley, Interim Planning Director, presented the Staff Report. Adam Winstead, Brian Walsh, and Lauren Walsh, applicants and owners, are requesting an Appeal of an Administrative Decision made by the Pender County Planning and Community Development Department which found that the Special Use Permit Application for Case SUP 2022-36, requesting approval for a Community Boating Facility, was complete. The subject property is located at 120 Hugh Edens Lane, approximately one-half mile southeast of the intersection of Sloop Point Loop Road and Twin Oaks Drive in the Topsail Township. The subject property is zoned RP, Residential Performance zoning district. The subject property, initially shown as Tract A in Map Book 26 Page 104, currently includes two duplex units, Parcels 4214-91-8387-000A and 4214-91-8387-000B each consisting of a single unit respectively, with the surrounding common areas as Parcel 4214-91-8387-0000. The current owners of these parcels include Sloop point Watch HOA (Common area), 4214-91-8387-000A (Brian and Lauren Walsh) and 4214-91-8387-000B (Adam Winstead). Sloop Point Watch HOA is owned jointly by Brian and Lauren Walsh and Adam Winstead.

Mr. Brantley stated that prior to the current ownership, Richard Lehrer and James A. Spicuzza filed a Declaration of Condominium for the Sloop Point Condominium on this property (Tract A) on January 5, 2004, in Book 2295 Page 088. This recording further established the Sloop Point Condominium Owners Association, INC., which included the duplex with surrounding common area. On the same date, a Deed of Easement was recorded with the Pender County Register of Deeds in Book 2295 Page 084. Grantors (Richard A Lehrer, Anna M Lehrer, James Spicuzza, and Amy Spicuzza) granted grantees (Owners of Lots 1A & B, 2A & B, 3A & B, 4A & B, 5A & B, 6A & B, 7A & B, 8A & B, 9A & B, 10 A & B, and Lot 11, Sloop Point Duplexes) with a perpetual easement, for the use of a boat launching/landing ramp and access to the Atlantic Intracoastal Waterway through a portion of Tract A, as previously identified.

Mr. Brantley stated that the respective lots were established in Map Book 35 Page 069 on September 24, 2002, with individual duplex tax parcels being established in Map Book 36 Page 048 on July 3, 2003. Subsequently, Map Book 37 Page 028 was recorded on January 5, 2004, and shows Tract A including duplex units A and B with a water access easement granted under Book 2295 Page 084.

Mr. Brantley stated that in response to a letter sent from the Law Office of Matthew A. Nichols, dated August 13, 2021, Planning Department staff compiled a zoning verification letter that answered a number of questions asked by Mr. Nichols, including those referencing the zoning of the property, the classification of the existing use on site and history related to the site, and how such a use would be permitted under the standards outlined in the Pender County Unified Development Ordinance at that point in time. The zoning verification letter issued by the County clarified that the use was classified as a Community Boating Facility under the definitions outlined in the UDO, that establishing such a use would require the approval of a Special Use Permit by the County, and that there was no record of a Special Use Permit having ever been issued for the subject property.

Mr. Brantley stated that on May 26, 2022, the Planning Staff received an inquiry from Attorney Steve Coggins regarding a pre-submittal meeting for a Special Use Permit Application for a Community Boating Facility, which requires Special Use Permit approval by the Board of County Commissioners. Staff informed Mr. Coggins that the pre-submittal meeting was no longer required and provided him with the application documents.

Mr. Brantley stated that the current Pender County UDO defines Community Boating facility as follows: A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility. Commercial activities of any kind, including commercial letting of slips to parties that are not residents of the association or development, shall be prohibited.

Mr. Brantley stated that on June 6, 2022, Mr. Coggins emailed Planning Staff a digital application submittal and on June 22, 2022, Planning Staff members Justin Brantley, Greg Feldman, and Fire Marshall Mark Haraway met with Mr. Coggins to discuss the initial proposal to install and use a floating dock and kayak launch. After discussing concerns related to emergency access due to the limitation of the twelve foot (12') wide easement leading towards the waterway, it was determined by Mr. Haraway that any modification of the existing facilities would require a twenty-foot (20') wide fire access road and turnaround for emergency vehicles.

Mr. Brantley reported that on July 19, 2022, Mr. Coggins provided Planning Staff with a revised site plan showing no proposed modifications or improvements to the easement area. On August 10, 2022, a revised application was received by Planning Staff and the Special Use Permit Application (Case SUP 2022-36) was determined by Planning Staff to be complete and was subsequently scheduled for a Public Hearing by the Board of Commissioners on September 19, 2022. The application was signed by Steve Coggins as the applicant representing Betty Change signing as the owner on behalf of the Sloop Point Duplex owners which identifies herself and the other twenty (20) owners as easement holders as previously established.

Mr. Brantley further explained that on August 30, 2022, Attorney Matthew Nichols filed an application for the Appeal of an Administrative Decision challenging the completeness determination made by Planning Staff on August 10, 2022. This appeal application filed pursuant to Pender County UDO, Section 3.12.3.F, which provides that an appeal from a completeness determination may be made to the Board of Adjustment with twenty (20) days of the determination.

Mr. Brantley stated that on August 30, 2022, Planning Staff received an application for the Appeal of an Administrative Decision (Appeal Case 2022-9) from Attorney Matthew Nichols, on behalf of Adam Winstead, Brian Walsh, and Lauren Walsh, providing that Special Use Permit Application 2022-36 was incomplete and therefore should have been/should be rejected by the County as incomplete and insufficient to move forward to the Board of County Commissioners.

Mr. Brantley stated that N.C.G.S. 153A-345(b) specifies that 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.

Mr. Brantley provided that it is the determination of the Zoning Administrator that Planning Staff correctly determined Special Use Permit Application 2022-37 to be complete. In this determination it was established that the easement holders had the right to apply for this development approval as it was consistent with their rights as easement holders. It was further established that Steve Coggins had the right to apply as the applicant as an agent of the easement holders.

Mr. Kipfer asked the Board members if there were any questions for the Planning Department staff.

Mr. Keeler asked if Mr. Coggins was allowed to file on behalf of the applicants and Mr. Brantley affirmed that he was.

Mr. Thurman informed the Board members that this Board cannot determine property rights, as a judge or jury would need to make that determination. A Special Use Permit does not determine an individual's rights. What is being brought in front of the Board today is as to whether the application was complete.

Mr. Breuer asked what the Planning staff is looking for to determine at the time of an application submittal. He also asked who can sign an application. Mr. Brantley stated that Betty Chang signed the application as owner of one of the twenty-one duplex sites.

Mr. Breuer asked if Ms. Chang owned one of the duplex sites referred to as Sloop Point Duplexes and Mr. Brantley responded affirmatively.

Mr. Kipfer asked if the dock was damaged. Mr. Brantley stated that it was damaged but has been reconstructed since Hurricane Florence.

Attorney Matthew Nichols, representing the owners, Brian and Lauren Walsh and Mr. Winstead, of 120 Hugh Edens Lane, addressed the Board.

Mr. Nichols, presented the Board with a 3-ring binder, tabs A-M, presentation packet. The presentation packet was submitted into record as **Exhibit A**.

Mr. Nichols spoke of Tab "A" that references a letter, dated August 31, 2021, written by Carlene Shaw, who was a Planner with the Planning Department at the time. He stated that it was a written interpretation of many of his addressed questions and in particular he wanted to draw attention to the part of the letter that states "According to the adopted November 18, 2003, Pender County Ordinance, Community Boating Facilities were not permitted in the R-20C zoning district, the zoning district of the subject property prior to the adoption of the Pender County Unified Development Ordinance in 2010."

Mr. Nichols informed the Board that all the documents that were presented concerning easements and so forth were from 2004 or 2005. At the time the easement was created, the use was not allowed under the zoning ordinance. He stated that he understands that the easement was put on paper, but the use was not allowed until five or so years later and even then, a Special Use Permit is required. Mr. Nichols further stated that the Planning Department was not required to review the easement map that was recorded.

Mr. Nichols stated that Mr. Thurman is correct in that this Board is not the forum to decide or establish easement rights, but that this determination was never appealed and could have been appealed under the statute. He referenced Statute 160D-403, "Administrative development approvals and determinations", Section B which states "It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is subject of the determination, so long as the sign remains on the property for at least ten (10) days.

Mr. Nichols referenced Tab "D" which contains a picture of the sign that his clients posted in August of 2021. It has been over a year with nobody appealing the zoning decision.

Mr. Nichols stated that he feels that they have a good faith argument that the easement is not enforceable and should not have been created.

Mr. Olsen asked Mr. Nichols if he was to enter into an agreement of interest with a landowner for 100 acres of farmland could he, not as a developer, close in the future if he was able to convince Pender County to rezone it as a shopping center. Mr. Olsen inquired as to how this situation is any different. Mr. Nichols stated that his opinion is that the easement was never reviewed by the County and was not a legal arrangement under the zoning ordinance at the time it was put on paper.

Mr. Nichols stated that his clients own all the property in question. Mr. Winstead owns Unit A and Brian and Lauren Walsh own Unit B and together they own all the common area.

Mr. Nichols stated that the hearing today is not as to whether the Special Use Permit should be granted but rather if the application was complete. He contends that it is not complete due to his clients, the property owners, not signing the application. They do not consent nor were they contacted before the application was filed. Mr. Nichols stated that he found out about the application due to Mr. Thurman contacting him concerning the letter that he had previously written.

Mr. Nichols stated that Mr. Coggins' clients are easement holders and not easement owners and the application specifically states the owner must sign. He stated that when dealing with a Special Use Permit and its conditions, the owner must consent to the conditions being put on the property. His clients pay the taxes on the property and own the property and do not consent.

Mr. Nichols stated that the Planning Department does not have the authority to determine the rights of the easement holders. He stated that Mr. Brantley is not in the position to determine the scope of an easement, the rights of an easement holder, or to establish the rights of an easement holder.

Mr. Olsen stated that the Planning Department does have to determine who the owner of the property is when an application is submitted. He is questioning as to the word "holder" being used and where. Mr. Nichols referred the Board back to Tab C which provides Statute 160D-403. He is referencing the last sentence in Section A, which states "An easement holder may also apply for development approval for such development as is authorized by the easement."

Mr. Nichols then referenced Tab E, Statute 160D-102, Definitions. He read the definition of both Administrative decision (#1) and Quasi-judicial decision (#28).

Mr. Nichols stated that the Planning Department allowed the easement holders to apply for the Special Use Permit when it is clearly not an Administrative decision.

Mr. Nichols referenced both Tab F and Tab I. He spoke of the landowners not consenting to any conditions that may be placed on their land.

Mr. Breuer asked Mr. Nichols if his clients knew of the easement when they purchased the property. Mr. Breuer then went on to state that that may be a question to ask of the landowners under oath when they speak to the Board.

Mr. Nichols referenced under Tab I, Statute 160D-705, Quasi-judicial zoning decisions, Section C, "Any modifications approved apply only to those properties whose owners apply for the modification." He stated that if the Special Use Permit is granted and he hopes that it's not due to the Board ruling that the application is incomplete, then how could the permit be modified if the landowners did not apply or consent to it.

Mr. Keeler asked if the definition of easement holder and easement owner was included in the packet. He stated that Mr. Nichols continues to reference holder and owner but does not supply a written definition of the two.

Mr. Kipfer asked Mr. Thurman if there was a distinct difference between an owner and a holder. Mr. Thurman stated that he has been previously advised by the Board of Commissioners that if a person has been provided an easement, then they have an ownership in real property. There is an ownership interest that attaches to the property.

Mr. Kipfer asked if there is usually some type of compensation given for the easement and Mr. Thurman said that there could be compensation given, the easement given as a gift, or by prescription such as a person has used it for twenty years and will continue to use it.

Mr. Nichols referred the Board to look at Tab M which contains the definition of Community Boating Facility. The definition states that the facility "must be owned and/or controlled by a Homeowners Association (HOA) or any type of development association or collective owners' group where more than one family has privileges to use facility." Mr. Nichols stated that his clients' development is not part of the opposing parties' development and vice versa.

Mr. Nichols, presented the Board with a slideshow presentation. The presentation was accepted by the board and submitted into record as **Exhibit B**. Mr. Nichols provided the Board with a description of what each photo contains.

Mr. Nichols stated that the ramp has two slips and is not of adequate size and is not sufficient for many users.

Owner, Adam Winstead, addressed the Board. He is the owner of Unit A at 120 Hugh Edens Lane. He purchased the property in September of 2019. He purchased his property without a dock, and he went through the proper CAMA process to rebuild it. He shared the expense of rebuilding the dock with the previous owner of Unit B.

Mr. Kipfer asked Mr. Winstead if he was aware of the easement when he purchased the property. Mr. Winstead affirmatively responded but stated that he did not think it was enforceable. He claimed that the easement was set up illegally. Mr. Coggins stated his objection to Mr. Winstead's last statement. The Board acknowledged Mr. Coggins' objection.

Mr. Breuer asked Mr. Winstead if during construction of the new dock, did any of the easement holders acknowledge the work being performed. Mr. Winstead stated that one woman came down

onto his property with no previous permission and was under the assumption that she could apply for a Special Use Permit.

Mr. Kipfer asked Mr. Winstead to specifically tell where the easement is located on the property. Mr. Nichols stated that the easement is to the left of 120 Hugh Edens Lane when facing the home.

Mr. Nichols continued to present photos. Mr. Thurman asked Mr. Nichols to just stick to the situation at hand today due to some of the presentation having nothing to do with today's hearing.

Mr. Nichols stated that his clients are affected differently than the other people in this community since they are the property owners. Mr. Olsen stated that he feels that the Board agrees with Mr. Nichols statement. Mr. Nichols stated that he just wanted to make sure that statement was on record.

Mr. Nichols stated that he wants to make sure that the Application and his clients' deeds are entered as evidence. The items are contained within the 3-inch binder that was presented earlier as **Exhibit A**.

Mr. Nichols referred to Tab J, which contains a time frame of a Special Use Permit. He asked Mr. Brantley about the category "Zoning Permit Issuance". Mr. Brantley stated that any Special Use Permit would have to obtain approval by the Board of Commissioners and then a site plan approval by Planning staff would need to be acquired.

Mr. Nichols referred to Tab K and asked Mr. Brantley if this was the application that would be required in this particular situation. Mr. Brantley stated that the application in Tab K would not be the one that would be required in this situation due to no changes being made to the site. Mr. Brantley clarified that a Minor Site Plan Application would be appropriate in this situation.

Mr. Nichols concluded his presentation and Mr. Coggins requested that Mr. Winstead come back up to the podium so that he may ask questions of him. Mr. Coggins stated to Mr. Winstead that he did not reach out to any of the easement holders for financial assistance when rebuilding the dock. Mr. Winstead stated that this statement was untrue and in fact, he asked one of Mr. Coggins' clients for his checkbook and was cussed out and called names.

Mr. Coggins stated that there is a list of owners of the duplexes, and he was provided the list. Mr. Winstead stated that yes, he did have a list and about three years ago, he contacted the names listed and approximately eight did not want to partake in any financial compensation and that it is in writing. He did reiterate that this took place approximately three years ago and is not sure if anything has changed since then.

Mr. Kipfer asked if Brian or Lauren Walsh would like to speak at this point.

Lauren Walsh, 120B Hugh Edens Lane, addressed the Board. She stated that they were aware of the easement when they brought their property and spoke with Mr. Winstead about how the easement functioned and the legality of it. It became to be their understanding that the easement had been abandoned. Ms. Walsh stated there was no permit ever filed which led to them in believing that the easement was not valid. There has been no financial contribution to the maintenance of the dirt road, yard, or dock which also led them to believe it was abandoned.

Ms. Walsh stated that they decided to pursue a zoning determination due to the faults that they saw in the easement situation and added that the determination was never appealed. The duplex owners had time to appeal and did not do so. In her opinion, that is where this whole process should have ended but instead an application was submitted on their behalf that they never signed or consented to.

Mr. Thurman asked Mr. Nichols if he had any other witnesses wanting to speak and he stated that he thinks there are others who wish to speak but that they are not his witnesses.

Attorney Steve Coggins, representing the owners of the duplexes, spoke to the Board.

Mr. Coggins, presented the Board with a file folder presentation packet. The presentation packet was submitted into record as **Exhibit C**. Mr. Coggins then presented the Board with an email chain supporting himself and Ms. Chang signing the application. The email chain was submitted into record as **Exhibit D**. Both exhibits were submitted and accepted by the Board as evidence.

Mr. Coggins referred to first plat in his presentation which is recorded at Map Book 15 Page 80 and then the second plat which is recorded at Map Book 26 Page 104. The next item referenced was the Agreement of Ingress, Egress, and Road Maintenance recorded in Map Book 770 Page 248.

Mr. Coggins stated that the Maintenance Agreement that was recorded in Map Book 770 Page 248 has been continuously used since the recording. Mr. Kipfer asked if the easement has been continuously maintained since the Agreement was recorded. Mr. Coggins stated that from time to time, different people have had gravel brought in and the gravel has been used to level the road out without incurring significant cost.

Mr. Coggins referred to a plat recorded in Map Book 35 Page 69. He stated that this plat shows the Sloop Point Duplexes and the easement that is currently referred to as Hugh Edens Lane.

The next plat Mr. Coggins references is recorded in Map Book 35 Page 76. This plat identifies Lot 10 of Sloop Point Duplexes. Mr. Coggins stated that he is referring to this map because it references the road which is currently referred to as Hugh Edens Lane.

Mr. Coggins referred to the Enabling Declaration by Mary Edens, which is recorded in Map Book 1969 Page 179 through 185. Mr. Coggins stated that this Declaration gave some but not all the duplex lots access to the boat ramp. He stated that it appears as though Lots 1 through 6 are included in this Declaration. Mr. Coggins then clarified that he had misspoke and that the Declaration is pertaining to Lot 7.

Mr. Coggins then references the General Warranty Deed that was recorded in Map Book 1969 Page 287, which pertains to Lot 7 of the Sloop Point Duplexes. He stated this the Deed references both the easement and maintenance agreement.

Next, Mr. Coggins referenced another Enabling Declaration by Mary Edens recorded in Map Book 1969 Page 186, which pertains to Lots 1 through 6 of the Sloop Point Duplexes.

Mr. Coggins then referred to a General Warranty Deed recorded in Map Book 1969 Page 312. He stated that on the last page of this recorded Deed, it states "This tract is conveyed subject to the

right of Grantors and their immediate family to use any boat ramp or dock constructed upon said property for and during the lifetimes of such grantors.”

Mr. Coggins referenced the plat recorded at Map Book 36 Page 048, titled Lots 1-9, Sloop Point Duplexes. He stated this plat references the easement.

Mr. Coggins then referred to the Deed of Easement that was recorded by Richard Lehrer, Anna Lehrer, James Spicuzza, and Amy Spicuzza, in Map Book 2295 Page 84. The Grantors granted the Grantees, Lots 1 through 11 of the Sloop Point Duplexes, “a perpetual easement, appurtenant to the lots owned by each of the Grantees, for the use of a boat launching/landing ramp and access to the Atlantic Intracoastal Waterway, together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per Grantor, and others may construct a boat landing/landing ramp facility and pier/dock on said premises.”

Mr. Coggins made a reference to a plat recorded at Map Book 37 Page 028, titled Sloop Point Watch Condominium, that shows the easement that is now known as Hugh Edens Lane, Common Area, Water Access & parking easement, and the dock. Mr. Coggins stated that this plat put the public on notice of the existence of the easement.

Mr. Coggins referenced a General Warranty Deed recorded at Map Book 4693 Page 254-256 showing where Mr. Winstead was granted the property from the Trustees of the Laney Family Revocable Trust.

Mr. Coggins referred the Board to the General Warranty Deed recorded at Book 4716 Page 1523-1525 which shows Sally and Nick Ferrante as being the Grantors with Weihung Betty Chang and Chard Edward Curry being the Grantees. This Deed is referencing Lot 7B, Sloop Point Duplexes. Mr. Coggins stated that Ms. Chang signed the Application and benefits from the easement and boat ramp facility.

Next, Mr. Coggins referenced to the General Warranty Deed recorded in Map Book 4728, Pages 2246-2248, which shows Brian and Lauren Walsh being granted by Megaleg, LLC, Unit B of the Sloop Point Watch Condominium.

Mr. Coggins then referred the Board to the plot plan that was submitted with the Application.

Mr. Coggins stated to the Board that in this situation, the statute places the burden of proof on the Appellants and not on his clients who are the Applicants of the Special Use Permit. The burden will be on his clients once the Special Use Permit goes before the Board of County Commissioners but not in this setting.

Mr. Coggins references the Unified Development Ordinance, Section 3.1.2 as to the Application Requirements and process. Mr. Coggins stated that according to N.C.G.S. 160D 403 A, an easement holder may also apply for development approval for such development as is authorized by the easement. Also, Subsection 13 of 160D 102, Definitions, states that development approvals include Special Use Permits. Mr. Coggins also stated that a development approval also includes a Quasi-Judicial Decision.

Mr. Coggins stated that in the Unified Development Ordinance it provides who can apply for a Special Use Application of any type. It states that an Applicant can apply but nowhere in the UDO



does it provide a definition of an Applicant. It does not state whether the owner can apply or whether an easement holder can apply, rather it just states that an applicant can apply.

Mr. Coggins stated that the UDO does define an owner as including an association having sufficient proprietary interest and he further stated that the easement presented to Board clearly gives his clients the ability to construct a boating facility.

Mr. Coggins stated that the exhibits provided to the Board grant his clients the right to use the easement and boat ramps, and that the documents also state that his clients have to help maintain the easement and boat ramp, which they are prepared to do.

Mr. Coggins reiterated that all the plat maps and deeds he provided in his exhibit presentation all show and reference the easement known as Hugh Edens Lane.

Mr. Coggins stated that the UDO, Section 3.12.2, shows the responsibility of the Special Use Permit Applicant to show the means, not the right, of access to the site. His clients have shown that through the site plan and recorded plats and deeds.

Mr. Coggins stated that easements are property rights that are immutable that run with the land in perpetuity in contrast to ordinances that are ethereal that are subject to the whim and wisdom of the County Commissioners at any given time.

Mr. Coggins stated that appellate cases in the State of North Carolina to which a body imposed conditions on a Special Use Permit and the applicants of the permit did not like it and appealed. The Courts may have reversed the decision, not because consent was not given but rather whether it was allowed under the statute.

Mr. Coggins stated this his clients as easement holders have a sufficient ownership interest. He stated that nowhere in the UDO does it state that the fee title owner must sign the application. All that is required by the UDO is the signature of the applicant.

Mr. Coggins referred to Mr. Nichols stating that his clients were not sent notice of the Special Use Permit being filed. The UDO required his clients to furnish names and addresses of people owning property within five hundred (500) feet of subject property. Mr. Nichols' clients were sent the mailer by the Planning Staff. The mailer gave his clients notice and the ability to request a copy of the Special Use Permit application from Planning Staff. There is no requirement in the UDO that the actual application is sent.

Mr. Kipfer asked if the mailers were sent out. Mr. Coggins stated that mailing out the notices is the responsibility of the Administrator. Mr. Brantley stated that the Planning staff never got to the point of sending the mailers due to the Planning Department receiving the Appeal. Mr. Brantley stated that notices were sent out pertaining to the Appeal to all required landowners. Mr. Kipfer asked if the landowners had received notice of the original application. Mr. Brantley provided that Mr. Nichols had reached out in August for a Special Use Permit.

Mr. Thurman informed the Board that he contacted Mr. Nichols himself due to Mr. Nichols' prior involvement to let him know that the Special Use Permit application had been submitted. Mr. Thurman stated that the County does not give notice when an application is received, but rather notice is given when the public hearing is scheduled. Mr. Thurman further stated that effective notice was also given to Mr. Nichols by him making the phone call to Mr. Nichols.

Mr. Kipfer asked Mr. Thurman if the clients would not have received notice before the actual public hearing was scheduled, and Mr. Thurman responded affirmatively.

Mr. Coggins addressed the contention that he as the Attorney cannot sign the application as the agent of the applicant. He stated that there is no provision in the UDO that states that an Attorney cannot sign an application on behalf of his or her clients. He is not aware of any form in this context that the party must sign instead of himself. Mr. Coggins reminded the Board that not only did he sign the application but so did Ms. Chang who has been delegated by the owners of the duplexes.

Mr. Coggins referenced the contention that they did not provide all the information needed for the surrounding property owners. He stated that the names and addresses were provided to the Planning staff. His firm does not have the Email addresses and phone numbers of the surrounding property owners, nor are they required to provide those.

Mr. Coggins stated that he feels he has addressed all the contentions brought up by Mr. Nichols and will gladly answer any questions that the Board may have.

Mr. Kipfer asked the Board members if they had any questions for Mr. Coggins. No questions were presented at this point.

Mr. Nichols stated that if the owner's signature is not required, then why is there an owner's block on the application. If the owner's signature is not required, then the application should only have an applicant block and not an owner's block.

Mr. Nichols stated that if the Special Use Permit was granted, which they hope will not be, but if it is, what will happen if there is a violation. As an example of what happens when there is a violation of a Special Use Permit, Mr. Nichols presented a packet which was received by the Board labeled **Exhibit E**. He provides a preview of the different forms contained in the packet. Mr. Nichols referenced the two violation letters that are addressed to the property owner and the application which clearly shows the applicant and the property owner. He stated that the idea that the property owner is not relevant is totally wrong. His clients are not listed on the application, and they should be listed as co-applicants at least.

Mr. Nichols stated that if there is a violation or any type of problem, it will fall back on the property owners. He referred to insurance and liability and who would be responsible for that. Mr. Nichols stated that the property owners would be.

Mr. Nichols stated that he sent a letter well over a year ago to the Planning Department stating that he was representing his clients. Mr. Nichols stated that he was not contacted prior to the Special Use Permit being filed and only received a phone call from Mr. Thurman due to him having knowledge of Mr. Nichols being involved in this matter in the past.

Mr. Nichols stated that when he filed the Appeal, he was required to provide names and addresses of landowners within 500 feet, and he does not think that the duplexes were close enough to be included.

Mr. Nichols contends that the process was not right, and the application should have never been deemed as being complete without his clients' knowledge and consent.

Mr. Nichols stated that Mr. Brantley made the determination that the easement holders had the right to sign the application. Mr. Brantley referenced Statute 160D 403 which states that an easement holder may apply for development approval for such development as is authorized by easement. Mr. Brantley stated that the General Statute provided him with the authority to accept the application based on what was provided by the easement. Mr. Nichols questioned what section of the General Statute he was referring to. Mr. Brantley stated he was referencing Section 160D 403. Mr. Nichols asked if the decision was an administrative decision and Mr. Brantley stated that Planning staff did make an administrative decision in accepting the application.

Mr. Nichols stated that he feels he has made all his points and that the owner block is on the application for a very good reason and that the property owner's signature is required.

Mr. Kipfer asked Mr. Thurman if there are other members of the public who signed up to speak. Mr. Thurman stated that there were others signed up. Mr. Kipfer asked for anyone speaking to have new and relevant information.

Dan Ogden, 363 Twin Oaks Drive, stated that Pender County maintains the asphalt road in front of the duplexes then the road turns to gravel and is private. He lives on the private road, and he has seen only himself maintain that gravel road. Mr. Thurman and Mr. Kipfer stated that they do not feel that what is being presented is relevant to the matter at hand today. People living in the duplexes are often rentals and Mr. Ogden has had some of those people driving trucks with boats attached through his driveway and yard.

Mr. Olsen stated that the points Mr. Ogden is making would most likely be relevant if this matter should move forward and be presented to the Board of Commissioners but does not feel the points are relevant with what is before the Board today. Mr. Kipfer stated that he agrees with Mr. Olsen in that the arguments Mr. Olsen is making are probably more relevant to address to the Board of Commissioners. Mr. Ogden then spoke to the fact that he was under the impression that any easement would need to be at least 20 feet wide for first responders and that the road is not in great shape so the first responders would have difficulties getting down that road.

Phil Holt, 690 Lewis Road SW, stated that there have been no improvements done to the easement except for what he and his neighbors have done. Mr. Holt stated that there is both a Hugh Edens Road and a Hugh Edens Lane which may have caused some confusion.

Mr. Thurman called out the remaining names listed, and all sign-ups did not wish to speak. Mr. Kipfer inquired as to whether there were any people who did not sign up but wished to speak. No other members of the public requested the opportunity to speak.

Mr. Coggins referenced Mr. Nichol's Tab C in the binder that was presented. He informed the Board that the last line of 160D-403 Subsection A stated, "An easement holder may also apply for development approval for such development as is authorized by easement." He stated that development approval is a defined term and referenced Tab E, 160D Subsection 13. Mr. Coggins read a partial section of the definition. He stated that he thinks the title may cause some confusion, it is the words of the Statute and not the title.

Lauren Walsh stated that she is not disagreeing with the statement that they are able to apply but that does not make the application complete.

Mr. Olsen stated that he has a motion to make but is happy to listen to any concerns that the Board members may have. Mr. Keeler stated that he does not feel that they met the burden of proof to reject this appeal.

Mr. Kipfer stated that he feels that there is a lot more to get done before the process will get to the next level.

Mr. Brantley asked Mr. Kipfer if he closed the public hearing and Mr. Kipfer stated that he had not officially but was now closing the public hearing.

Mr. Olsen made a motion to affirm the decision that the Planning Director made in determining that the application was complete. The easement holder was sufficient owner in applying for that application. Mr. Keeler seconded the motion, and the vote was unanimous.

## **8. Discussion Items**

### **Wyndwater Appeal Case 2022-8 Board Order Discussion**

Mr. Brantley presented the Board with the Wyndwater Appeal draft Order for their review. The Planning Department is wanting to get the Order finalized. Mr. Brantley stated that there was some disagreement as to including language that would allow the removal of Phase Ten but that technically was not brought up during the Appeal hearing. He stated that the rough draft presented to the Board does not include that language.

Mr. Thurman stated that he does not need to be the person to attest to the order. Mr. Brantley asked if he as the Clerk to the Board of Adjustments would be the person to attest and Mr. Kipfer stated that normally the Clerk to the Board is the person to attest.

Mr. Keeler brought up two items for discussion with the other Board members. First, he brought up the concern of not limiting the amount of time each member of the public can speak. His second concern was the time that the Board meets. Mr. Keeler stated that many people are unable to meet during the day due to employment obligations and feels that meeting later in the day or even in the evening may be better for the public. Mr. Kipfer stated that this has been brought up in the past and a main concern is making sure that the Board members are able to attend. He stated if a meeting is scheduled for 3:00 in the afternoon, then work obligations may run behind and a Board member may not be able to free up and attend the meeting. Mr. Breuer stated that regardless of the time of the meeting, if people have an interest in attending, they will find a way.

Mr. Brantley stated that the Board of Commissioner should be adopting the 2023 schedule at their next meeting scheduled for December 5, 2022. The Board of Adjustment will meet again on December 14, 2022, and the 2023 schedule will be brought before the Board for adoption.

Mr. Kipfer asked Mr. Brantley if there are cases to be heard in the December meeting. Mr. Brantley stated that there is one definite variance and another submittal, but he needs to speak to Mr. Thurman concerning that submittal.

Mr. Olsen stated that he hopes that an Alternate will soon be appointed. Mr. Kipfer stated that the previous Planning Director, Travis Henley, said that an aggressive effort was taking place to find Alternates.

Mr. Brantley asked Trey Thurman if it was ultimately up to the Board to change the time of the meeting. Mr. Thurman responded affirmatively.

**9. Next Meeting Date**

December 14, 2022 @ 9:00 a.m.  
Commissioner's Meeting Room  
805 S. Walker Street  
Burgaw, NC 28425

**10. Adjournment**

Meeting adjourned at 11:20 a.m.

Exhibit "A"  
Tabs A-M

## Applicants - Appellants' Exhibits

Pender County Board of Adjustment File No. 2022-09

## 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](http://www.pendercountync.gov)

August 31, 2021

Law Office of Matthew A. Nichols  
3205 Randall Parkway, Suite 104  
Wilmington, North Carolina 28403

VIA EMAIL: [matt@mattnicholslaw.com](mailto:matt@mattnicholslaw.com)

**Re: 120 Hugh Edens Lane – Written Interpretation (Pender County PIN: 4214-91-8387-0000)**

Mr. Nichols,

The above-referenced property is currently zoned RP, Residential Performance zoning district and is within the jurisdiction of Pender County for zoning purposes.

Under the current Unified Development Ordinance (UDO), a Community Boating Facility is defined as a private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Based on the information provided in the determination request letter regarding the number of users of the "easement" area, the described use would be considered a Community Boating Facility. A Special Use Permit is required for Community Boating Facilities in the RP, Residential Performance zoning district.

According to our records, a Community Boating Facility (previously "Boat Access Facilities") Special Use Permit has not been issued on the subject property. In addition, there were no exceptions, exemptions, variances, or other/previous ordinance provisions that would have allowed a Community Boating Facility on the subject property before the map was recorded in 2004. According to the adopted November 18, 2003 Pender County Zoning Ordinance, Community Boating Facilities were not permitted in the R-20C zoning district, the zoning district of the subject property prior to the adoption of the Pender County Unified Development Ordinance in 2010. Based on these findings, a Special Use Permit will be required for the subject site to come into compliance with current UDO standards.

If you have any questions, please do not hesitate to contact me at (910) 259-1408 or [cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov).

Sincerely,

*Carlene Shaw*

Carlene Shaw

Current Planner

Pender County Department of Planning & Community Development



**LAW OFFICE OF  
MATTHEW A. NICHOLS**

3205 Randall Parkway, Suite 104  
Wilmington, NC 28403

Ph: (910) 508-7476  
Email: matt@mattnicholslaw.com

August 13, 2021

VIA E-MAIL: thenley@pendercountync.gov

Travis Henley, MPA, CFM  
Pender County Planning Director and Zoning Administrator  
805 S. Walker St.  
Burgaw, NC 28425

Re: Request for Zoning Interpretation/Determination  
RP (Residential Performance) Zoning District  
120 Hugh Edens Ln., Hampstead, Pender County Tax PIN: 4214-91-8387-0000

Dear Travis:

I represent Adam Winstead and Brian Walsh, who each own a unit in the two-unit Sloop Point Watch Condominium located at 120 Hugh Edens Lane, Hampstead, Pender County. A copy of the Sloop Point Watch Condominium plat recorded on January 5, 2004, in Map Book 37 at Page 28 of the Pender County Registry is attached hereto as Exhibit "A" for your reference. A copy of the Pender County GIS map for this vicinity with the subject property outlined in red is also attached hereto as Exhibit "B" for your reference. Please accept this letter as a request on behalf of my clients for an official determination regarding whether a Special Use Permit is required for a Community Boating Facility at their property under the Pender County Unified Development Ordinance ("UDO"), as more fully set forth herein.

Mr. Winstead acquired Unit A of the Sloop Point Watch Condominium as more particularly shown on the above-referenced condominium plat, along with a corresponding undivided interest in the condominium common area, by virtue of that general warranty deed recorded on September 11, 2019, in Book 4693 at Page 254 of the Pender County Registry, a copy of which deed is attached hereto as Exhibit "C". Mr. Walsh and his wife, Lauren Cardwell, acquired Unit B, along with a corresponding undivided interest in the condominium common area, by virtue of that general warranty deed recorded on October 21, 2020, in Book 4728 at Page 2246 of the Pender County Registry, a copy of which deed is attached hereto as Exhibit "D". The subject property is zoned RP-Residential Performance on the Pender County zoning map. (Copy showing subject area attached hereto as Exhibit "E").

The Sloop Point Watch Condominium map shows a "12' Water Access Easement" along the northern boundary of the condominium property and a "Water Access & Parking Easement" on the eastern portion of the property. You will also note a pier shown along the riparian area of the condominium property. It is my understanding that owners of more than five (5) non-adjacent, non-waterfront properties in the vicinity have been using the identified "easement" areas shown on my clients' condominium plat for access to the waterway.<sup>1</sup>

The Pender County UDO defines a "Community Boating Facility" as follows:

A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility. Commercial activities of any kind, including commercial letting of slips to parties that are not residents of the association or development, shall be prohibited.

(Pender County UDO, Appendix A – Definitions.) Accordingly, the current use of the above-referenced "easement" areas for water access by multiple other property owners appears to fall within the broad definition of "Community Boating Facility" under the UDO. Pender County UDO Sec. 5.2.3 Table of Permitted Uses designates Community Boating Facilities permissible only by SD - Special Use Approval Required w/ Additional Standards.

In light of the foregoing, we respectfully request a determination on the following specific questions:

**Question #1.** Is the subject property zoned RP-Residential Performance under the Pender County UDO?

**Question #2.** Would the use of the "easement" areas shown on the Sloop Point Watch Condominium map by more than five (5) other property owners for access to navigable water frontage fall within the broad definition of Community Boating Facility under the UDO?

**Question #3.** Under the UDO, is a Special Use Permit required for a Community Boating Facility in the RP Zoning District?

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<sup>1</sup> This letter does not address the issues of the creation, existence, scope, enforceability or validity of the purported easement, which are separate and distinct from whether the use of the subject property by more than five (5) other property owners for water access complies with the County ordinances, and these issues are not part of this zoning determination request to the County.

Travis Henley, MPA, CFM,  
Pender County Planning Director  
August 13, 2021  
Page 3

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**Question #4.** Has the County ever issued a Special Use Permit for a Community Boating Facility on the subject property?

**Question #5.** Are there any exceptions, exemptions, variances or other/previous ordinance provisions that allow or would have allowed a Community Boating Facility use on the subject property without the issuance of a Special Use Permit at the time that the Sloop Point Watch Condominium map was recorded in 2004?

Thank you for your time and consideration of the foregoing. If you have any questions or concerns or require any additional information at this time, please let me know.

Also, if there is an administrative or filing fee associated with this zoning determination request, please let me know and my clients will promptly pay the same to the County. We look forward to following up with you regarding this determination request at your earliest convenience.

Sincerely yours,



Matthew A. Nichols

MN/nc  
Enclosure

Cc: Adam Winstead  
Brian Walsh







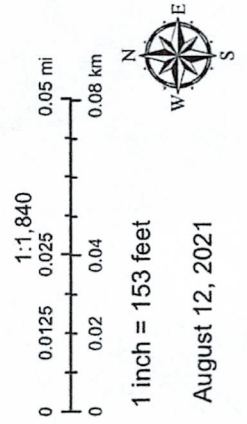
EXHIBIT  
B

## Pender County

Acres: 0.66  
Land Value: \$284,832  
Building Value: \$23,290  
Total Value: \$308,122  
Deferred Value: \$0  
Exempt Amount: 308122  
PCL Class: E  
Heated Sq Feet:

Sale Price:  
Sale Date: LAST\_SALE\_DATE  
Plat: 00370028  
Account No: 982978  
Township: TOPSAIL  
Subdivision:  
Tax Codes: G01 F22 R40

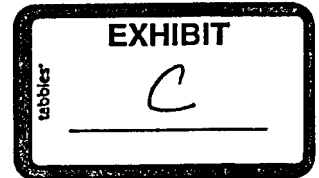
PIN: 4214-91-8387-0000  
Owner: SLOOP POINT WATCH HOA  
120 HUGH EDENS LN  
HAMPSTEAD, NC 28443  
Deed Ref: 2295/88  
Property Address: 120 HUGH EDENS RD  
Description: COMMON AREA PB 37/28





BK 4693 PG 254 - 256 (3)  
This Document eRecorded:  
Fee: \$26.00 DocType: DEED  
Pender County, North Carolina  
Sharon Lear Willoughby, Register of Deeds

DOC# 20053759  
09/11/2019 02:38:21 PM  
Tax: \$640.00



NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$640.00

Parcel Identifier No. 4214-91-8413-0000 Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

Mail/Box to: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

This instrument was prepared by: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

Brief description for the Index: Unit A, Sloop Point Watch Condominium

THIS DEED made this // day of September, 2019, by and between

GRANTOR

Stuart Dalee Laney, Jr. and Melba Thompson Laney,  
Trustees of the Laney Family Revocable Trust dated  
June 29, 2006 and any amendments thereto  
504 Captain Dexter Wynd  
Wilmington, NC 28411

GRANTEE

Adam Thomas Winstead, an unmarried man  
1228 Watauga Street  
Raleigh, NC 27604

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of Hampstead, \_\_\_\_\_ Township, Pender County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference as if fully set out.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 4604 page 2854.  
All or a portion of the property herein conveyed \_\_\_\_\_ includes or X does not include the primary residence of a Grantor.  
A map showing the above described property is recorded in Plat Book 37 page 28.

Page 1 of 2

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002, 2013  
Printed by Agreement with the NC Bar Association - 1981

This standard form has been approved by:  
North Carolina Bar Association - NC Bar Form No. 3

Submitted electronically by "Wilkerson Law"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Pender County Register of Deeds.

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

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

1. The lien of the 2019 Ad Valorem taxes, now due and payable;
2. Restrictions of record applicable to said lot;
3. Easements to public utilities of record; and
4. Zoning and/or building and subdivision ordinances.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

By: Stuart Daley Lancy, Jr. Trustee (SEAL)  
 Print/Type Name: Stuart Daley Lancy, Jr., Trustee of the Lancy Family Revocable Trust dtd 6/29/2006 and any amendments thereto

By: Melba Thompson Lancy Trustee (SEAL)  
 Print/Type Name: Melba Thompson Lancy, Trustee of the Lancy Family Revocable Trust dtd 6/29/2006 and any amendments thereto

By: \_\_\_\_\_ (SEAL)  
 Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
 Print/Type Name: \_\_\_\_\_

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Stuart Daley Lancy, Jr., Trustee of the Lancy Family Revocable Trust dtd 6/29/2006 personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 11 day of September, 2019.

My Commission Expires: 01-30-23  
 (Affix Seal)

Gywnne R. Snodden  
 Notary's Printed or Typed Name

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Melba Thompson Lancy, Trustee of the Lancy Family Revocable Trust dtd 6/29/2006 personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 11 day of September, 2019.

My Commission Expires: 01-30-23  
 (Affix Seal)

Gywnne R. Snodden  
 Notary's Printed or Typed Name

State of \_\_\_\_\_ - County or City of \_\_\_\_\_

I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that \_\_\_\_\_ of \_\_\_\_\_, a North Carolina or \_\_\_\_\_ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, \_\_\_\_\_ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
 (Affix Seal)

\_\_\_\_\_  
 Notary's Printed or Typed Name

**EXHIBIT "A"**

**BEING all of Unit A together with a one-half undivided interest in the lands designated as "common area" and together with the exclusive use of the lands shown on "Unit A" limited common area" as the same are shown or denominated on a map entitled "Sloop Point Watch Condominium" and recorded in Map Book 37 at Page 28, of the Pender County Registry, to which said plat reference is hereby made for a greater certainty of description and incorporated herein by reference.**

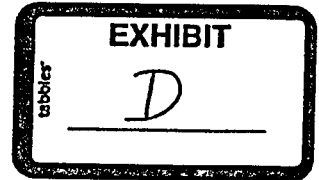
**Sometimes known as: 120 Hugh Edens Lane, Unit A  
Hampstead, NC 28443.**

**Tax Parcel #4214-91-8413-0000**



BK 4728 PG 2246 - 2248 (3)  
This Document eRecorded:  
Fee: \$26.00 DocType: DEED  
Pender County, North Carolina  
Sharon Lear Willoughby, Register of Deeds

DOC# 20071984  
10/21/2020 12:05:16 PM  
Tax: \$638.00



### NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$638.00

Parcel Identifier No. 4214-91-8387-000B Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

Mail/Box to: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

This instrument was prepared by: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

Brief description for the Index: UNIT B, Sloop Point Watch Condo

THIS DEED made this 3rd day of October, 2020, by and between

#### GRANTOR

Megaleg, LLC, a North Carolina limited  
liability company  
112 Broadview Lane  
Hampstead, NC 28443

#### GRANTEE

Brian C. Walsh and wife,  
Lauren Cardwell  
120 Hugh Edens Lane, #B  
Hampstead, NC 28443

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of Hampstead, \_\_\_\_\_ Township, Pender County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3993 page 176.  
All or a portion of the property herein conveyed \_\_\_\_\_ includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book 37 page 28.

Page 1 of 2

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002, 2013  
Printed by Agreement with the NC Bar Association - 1981

This standard form has been approved by:  
North Carolina Bar Association - NC Bar Form No. 3

Submitted electronically by "Wilkerson Law"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Pender County Register of Deeds.

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

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

1. The lien of the 2020 Ad Valorem taxes, now due and payable;
2. Restrictions of record applicable to said lot;
3. Utility easements of record;
- and 4. Zoning and/or building and subdivision ordinances.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Megaleg, LLC, a North Carolina limited liability company

(SEAL)

(Entity Name)

Print/Type Name: \_\_\_\_\_

By: Mary Diane Edens Thomas, Manager

(SEAL)

Print/Type Name & Title: Mary Diane Edens Thomas, Manager

Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_

(SEAL)

Print/Type Name & Title: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_

(SEAL)

Print/Type Name & Title: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

State of \_\_\_\_\_ - County or City of \_\_\_\_\_

I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

(Affix Seal)

Notary Public

Notary's Printed or Typed Name

State of \_\_\_\_\_ - County or City of \_\_\_\_\_

I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

(Affix Seal)

Notary Public

Notary's Printed or Typed Name

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Mary Diane Edens Thomas personally came before me this day and acknowledged that she is the Manager of Megaleg, LLC, a North Carolina or ~~corporation/limited liability company/general partnership/limited partnership~~ (strike through the inapplicable), and that by authority duly given and as the act of such entity, she signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 24 day of October, 2020.

My Commission Expires: 8/11/2024

(Affix Seal)

**JANET PATTERSON**  
NOTARY PUBLIC  
NEW HANOVER CO., NC  
My Commission Expires 8-11-2024

Janet Patterson Notary Public

Notary's Printed or Typed Name

**EXHIBIT A**

BEING ALL OF UNIT "B" TOGETHER WITH ONE-HALF UNDIVIDED INTEREST IN THE LANDS DESIGNATED AS "COMMON AREAS" AND TOGETHER WITH THE EXCLUSIVE USE OF THE LANDS SHOWN AS "SLOOP POINT WATCH CONDOMINIUM UNIT B LIMITED COMMON AREA" AS THE SAME ARE SHOWN OR DENOMINATED ON A MAP RECORDED IN MAP BOOK 37 AT PAGE 28 OF THE PENDER COUNTY REGISTRY, REFERENCE TO WHICH SAID MAP IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION.

SAID PROPERTY IS CONVEYED TOGETHER WITH AND SUBJECT TO THE TERMS OF THAT DEED OF EASEMENT RECORDED IN BOOK 2295, PAGE 84 OF THE PENDER COUNTY REGISTRY.

Property address: 120 Hugh Edens Lane, #B, Hampstead, NC 28443

Parcel ID #: 4214-91-8387-000B





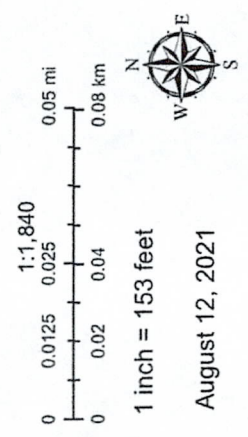
tabbies®  
**EXHIBIT**  
**E**

PIN: 4214-91-8387-0000  
Owner: SLOOP POINT WATCH HOA  
120 HUGH EDENS LN  
HAMPSTEAD, NC 28443  
Deed Ref: 2295/88  
Property Address: 120 HUGH EDENS RD  
Description: COMMON AREA PB 37/28

Sale Price:  
Sale Date: LAST\_SALE\_DATE  
Plat: 00370028  
Account No: 982978  
Township: TOPSAIL  
Subdivision:  
Tax Codes: G01 F22 R40

Acre: 0.66  
Land Value:  
Building Value:  
Total value:  
Deferred Value:  
Exempt Amount: 308122  
PCL Class: E  
Heated Sq Feet:

Pender County





**§ 160D-403. Administrative development approvals and determinations.**

(a) **Development Approvals.** – To the extent consistent with the scope of regulatory authority granted by this Chapter, no person shall commence or proceed with development without first securing any required development approval from the local government with jurisdiction over the site of the development. A development approval shall be in writing and may contain a provision requiring the development to comply with all applicable State and local laws. A local government may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

(b) **Determinations and Notice of Determinations.** – A development regulation enacted under the authority of this Chapter may designate the staff member or members charged with making determinations under the development regulation.

The officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, email, or first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, so long as the sign remains on the property for at least 10 days. A posted sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least six inches high and shall identify the means to contact a local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any sign posting is the responsibility of the landowner, applicant, or person that sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs is not required.

(c) **Duration of Development Approval.** – Unless a different period is specified by this Chapter or other specific applicable law, including for a development agreement, a development approval issued pursuant to this Chapter expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Local development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. Local development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this subsection limits any vested rights secured under G.S. 160D-108 or G.S. 160D-108.1.

(d) **Changes.** – After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. A local government may define by ordinance minor modifications to development approvals that can be exempted or administratively approved. The local government shall follow the same development review and approval process required for issuance of the development approval in the review and approval of any major modification of that approval.

(e) **Inspections.** – Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and the terms of the approval. In exercising this power, staff may enter any

premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials, so long as the appropriate consent has been given for inspection of areas not open to the public or an appropriate inspection warrant has been secured.

(f) **Revocation of Development Approvals.** – In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-405(f) regarding stays apply.

(g) **Certificate of Occupancy.** – A local government may, upon completion of work or activity undertaken pursuant to a development approval, make final inspections and issue a certificate of compliance or occupancy if staff finds that the completed work complies with all applicable State and local laws and with the terms of the approval. No building, structure, or use of land that is subject to a building permit required by Article 11 of this Chapter shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to G.S. 160D-1116 has been issued.

(h) **Optional Communication Requirements.** – A regulation adopted pursuant to this Chapter may require notice or informational meetings, or both, as part of the administrative decision-making process. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 9, 51(a), (b), (d); 2021-88, s. 1(b).)





# **§ 160D-102. Definitions.**

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the following meanings indicated when used in this Chapter:

- (1) **Administrative decision.** – Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.
- (2) **Administrative hearing.** – A proceeding to gather facts needed to make an administrative decision.
- (3) **Bona fide farm purposes.** – Agricultural activities as set forth in G.S. 160D-903.
- (4) **Charter.** – As defined in G.S. 160A-1(2).
- (5) **City.** – As defined in G.S. 160A-1(2).
- (6) **Comprehensive plan.** – A comprehensive plan that has been officially adopted by the governing board pursuant to G.S. 160D-501.
- (7) **Conditional zoning.** – A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.
- (8) **County.** – Any one of the counties listed in G.S. 153A-10.
- (9) **Decision-making board.** – A governing board, planning board, board of adjustment, historic district board, or other board assigned to make quasi-judicial decisions under this Chapter.
- (10) **Determination.** – A written, final, and binding order, requirement, or determination regarding an administrative decision.
- (11) **Developer.** – A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.
- (12) **Development.** – Any of the following:
  - a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
  - b. The excavation, grading, filling, clearing, or alteration of land.
  - c. The subdivision of land as defined in G.S. 160D-802.
  - d. The initiation or substantial change in the use of land or the intensity of use of land.

This definition does not alter the scope of regulatory authority granted by this Chapter.
- (13) **Development approval.** – An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.



- (14) Development regulation. – A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.
- (15) Dwelling. – Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of Article 12 of this Chapter, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.
- (16) Evidentiary hearing. – A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this Chapter.
- (17) Governing board. – The city council or board of county commissioners. The term is interchangeable with the terms "board of aldermen" and "boards of commissioners" and means any governing board without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.
- (18) Landowner or owner. – The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.
- (19) Legislative decision. – The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of this Chapter.
- (20) Legislative hearing. – A hearing to solicit public comment on a proposed legislative decision.
- (21) Local act. – As defined in G.S. 160A-1(5).
- (22) Local government. – A city or county.
- (23) Manufactured home or mobile home. – A structure as defined in G.S. 143-145(7).
- (24) Person. – An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.
- (25) Planning and development regulation jurisdiction. – The geographic area defined in Part 2 of this Chapter within which a city or county may undertake planning and apply the development regulations authorized by this Chapter.
- (26) Planning board. – Any board or commission established pursuant to G.S. 160D-301.
- (27) Property. – All real property subject to land-use regulation by a local government. The term includes any improvements or structures customarily regarded as a part of real property.

- (28) **Quasi-judicial decision.** – A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.
- (29) **Site plan.** – A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.
- (30) **Special use permit.** – A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.
- (31) **Subdivision.** – The division of land for the purpose of sale or development as specified in G.S. 160D-802.
- (32) **Subdivision regulation.** – A subdivision regulation authorized by Article 8 of this Chapter.
- (33) **Repealed by Session Laws 2020-25, s. 3, effective June 19, 2020.**
- (34) **Zoning map amendment or rezoning.** – An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes (i) the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously adopted zoning regulations and (ii) the application of an overlay zoning district or a conditional zoning district. The term does not include (i) the initial adoption of a zoning map by a local government, (ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, or (iii) updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.
- (35) **Zoning regulation.** – A zoning regulation authorized by Article 7 of this Chapter. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 3, 51(a), (b), (d).)

**§ 160D-406. Quasi-judicial procedure.**

(a) **Process Required.** – Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

(b) **Notice of Hearing.** – Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(c) **Administrative Materials.** – The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

(d) **Presentation of Evidence.** – The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(e) **Appearance of Official New Issues.** – The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(f) **Oaths.** – The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) **Subpoenas.** – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request

to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(h) Appeals in Nature of Certiorari. – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(i) Voting. – The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(j) Decisions. – The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(k) Judicial Review. – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). The governing board of the local government that is a party to the judicial review of the quasi-judicial decision shall have the authority to settle the litigation, subject to Article 33C of Chapter 143 of the General Statutes. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2021-168, s. 3(a).)



duties and responsibilities assigned by § 2-66, Code of Ordinances, Pender County, N.C. and by N.C.G.S. 160D-102; 103; 106; and 502, the Planning Board shall have the specific powers and duties provided within this Ordinance.

### **2.3.2 Powers and Duties**

- A. Review and Recommendation - The Planning Board shall review and make a recommendation on the following development review procedures:
  - 1) Ordinance Text Amendment (Section 3.18)
  - 2) Rezoning (Section 3.3)
- B. Final Action - The Planning Board shall hear and take final action on the following development review procedures within PD, RM, and MH zoning districts:
  - 1) Master Development Plan Review (Section 3.5)

## **2.4 BOARD OF ADJUSTMENT**

### **2.4.1 Establishment, Membership, and Rules of Procedure**

- A. Establishment - A Board of Adjustment (BOA) is hereby created to hear appeals from decisions of the Administrator and to consider requests for variances from the terms of the Unified Development Ordinance. This Board may also be known as the Zoning Board of Adjustment or Zoning Board.
- B. Membership
  - 1) The BOA shall consist of five (5) members who shall be residents of the County of Pender.
  - 2) The members shall be appointed by the Board of Commissioners for a regular term of office of three (3) years. Board members may be appointed for up to four terms so long as their length of service on the Board does not exceed ten (10) years. In appointing members to fill vacancies, the Board of Commissioners shall appoint persons to serve the remaining term of office rather than a full three (3) years.
  - 3) There will be two (2) alternate members of the Board of Adjustment.
  - 4) No member of the Board of Adjustment shall be permitted to sit concurrently on the Planning Board or the Board of Commissioners.
- C. Rules of Procedure
  - 1) The Board of Adjustment is a quasi-judicial body.
  - 2) Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the majority of the Board may determine.
  - 3) All meetings of the Board of Adjustment shall be open to the public.
  - 4) The Board shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be on public record.
  - 5) A quorum is not obtained unless four voting members are present. In the event there is abstention for reason declared into the record by a voting member, then a particular matter cannot proceed unless and until four other voting members are present and vote.



- 6) As required by N.C.G.S. 160D-406(i), no final action shall 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.
- 7) As early as possible in each new year of the Board, the voting members shall elect a chairman and vice-chairman. Either such party when in the chair shall have the authority to administer oaths to witnesses. The Board may elect such other officers as the Board deems best.
- 8) All decisions of the Board of Adjustment run with the land, never the person or corporation.
- 9) The minutes of the Zoning Board of Adjustment shall be kept in such detail as necessary, and do not reflect official action of the Board until adoption of same.
- 10) Minutes shall be filed in the office of the Administrator, as a public record.
- 11) The Board of Adjustment shall have the authority through the chair, or in the chair's absence anyone acting as the chair to subpoena witnesses and compel the production of evidence as specified in N.C.G.S. 160D-406(g).

#### **2.4.2 Powers and Duties**

- A. Final Action - The Board of Adjustment shall hear and take final action on the following development review procedures:
  - 1) Variance (Section 3.14)
  - 2) Determination of Vested Rights (Section 3.13)
  - 3) Appeal of Administrative Decision (Section 3.16)
  - 4) In concert with the Administrator or assignee, interpret zoning lines, and Zoning District boundary lines.

### **2.5 UNIFIED DEVELOPMENT ORDINANCE ADMINISTRATOR**

#### **2.5.1 General**

The Unified Development Ordinance Administrator (referred to as the Administrator) shall be responsible for administering the provisions of this Ordinance as set forth in this Section. The Administrator is considered a County official and its authority is delegated by the County Manager. In any absence of a formal position established for the Administrator, the County Manager may delegate this authority to whomever staff member deemed best qualified.

#### **2.5.2 Powers and Duties**

- A. Review and Recommendation: The Administrator shall review or make a recommendation on the following development review procedures:
  - 1) Rezoning (Section 3.3)
  - 2) Master Development Plan (Section 3.5) (within PD, RM, and MH zoning districts)
  - 3) Minor Site Development Plan (Section 3.6)
  - 4) Minor Subdivision (Section 3.9)
  - 5) Major Subdivision (Section 3.10)
  - 6) Special Use Permit (Section 3.12)
  - 7) Variance (Section 3.14)
  - 8) Appeal of Administrative Decision (Section 3.16)

9) Ordinance Text Amendment (Section 3.18)

B. Final Action: The Administrator shall hear and take final action on the following development review procedures:

- 1) Master Development Plan (Section 3.5) (within RP, GB, OI, GI, and IT zoning districts)
- 2) Minor Site Development Plan (Section 3.6)
- 3) Major Site Development Plan (Section 3.7)
- 4) Minor Subdivision (Section 3.9)
- 5) Major Subdivision (Section 3.10)
- 6) Sketch Development Plan (Section 3.11)
- 7) Administrative Adjustment (Section 3.15)
- 8) Written Interpretation (Section 3.17)
- 9) Zoning Approval (Section 3.2.1)
- 10) Sign Approval (Article 9)
- 11) Temporary Use Permit (Section 5.3.12.l)

**2.6 RESERVED**

**2.7 TAX ASSESSOR**

**2.7.1 General**

The Board of County Commissioners shall designate a Tax Assessor and shall be responsible for issuing parcel identifiers during the subdivision process.

**2.8 RESERVED**

**2.9 TECHNICAL REVIEW COMMITTEE**

**2.9.1 Establishment, Membership, and Procedure**

- A. Establishment: A Technical Review Committee shall be established to provide a coordinated and centralized technical review process. The members of the Technical Review Committee shall be composed of persons from various departments and agencies which have an interest in the development review process.
- B. Membership
- 1) Chair: The Administrator shall serve as Chair of the Technical Review Committee and shall be responsible for all final decisions of the Committee.
  - 2) Other Members: In addition to the Chair, the Technical Review Committee shall be comprised of the following members or their designated representatives:
    - a) County Manager's Office
    - b) Pender County Utilities
    - c) Pender County Environmental Health
    - d) Pender County Emergency Management
    - e) Pender County Fire Marshal
    - f) Pender County Parks and Recreation

**§ 160D-302. Boards of adjustment.**

(a) **Composition.** – A local government may by ordinance provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three-year terms. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the governing board may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. The governing board may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

(b) **Duties.** – The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted under this Chapter. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals. If any board other than the board of adjustment is assigned decision-making authority for any quasi-judicial matter, that board shall comply with all of the procedures and the process applicable to a board of adjustment in making quasi-judicial decisions. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)



**§ 160D-705. Quasi-judicial zoning decisions.**

(a) Provisions of Ordinance. - The zoning or unified development ordinance may provide that the board of adjustment, planning board, or governing board hear and decide quasi-judicial zoning decisions. The board shall follow quasi-judicial procedures as specified in G.S. 160D-406 when making any quasi-judicial decision.

(b) Appeals. - Except as otherwise provided by this Chapter, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. The provisions of G.S. 160D-405 and G.S. 160D-406 are applicable to these appeals.

(c) Special Use Permits. - The regulations may provide that the board of adjustment, planning board, or governing board hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the regulations. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

The regulations may provide that defined minor modifications to special use permits that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification. The regulation may require that special use permits be recorded with the register of deeds.

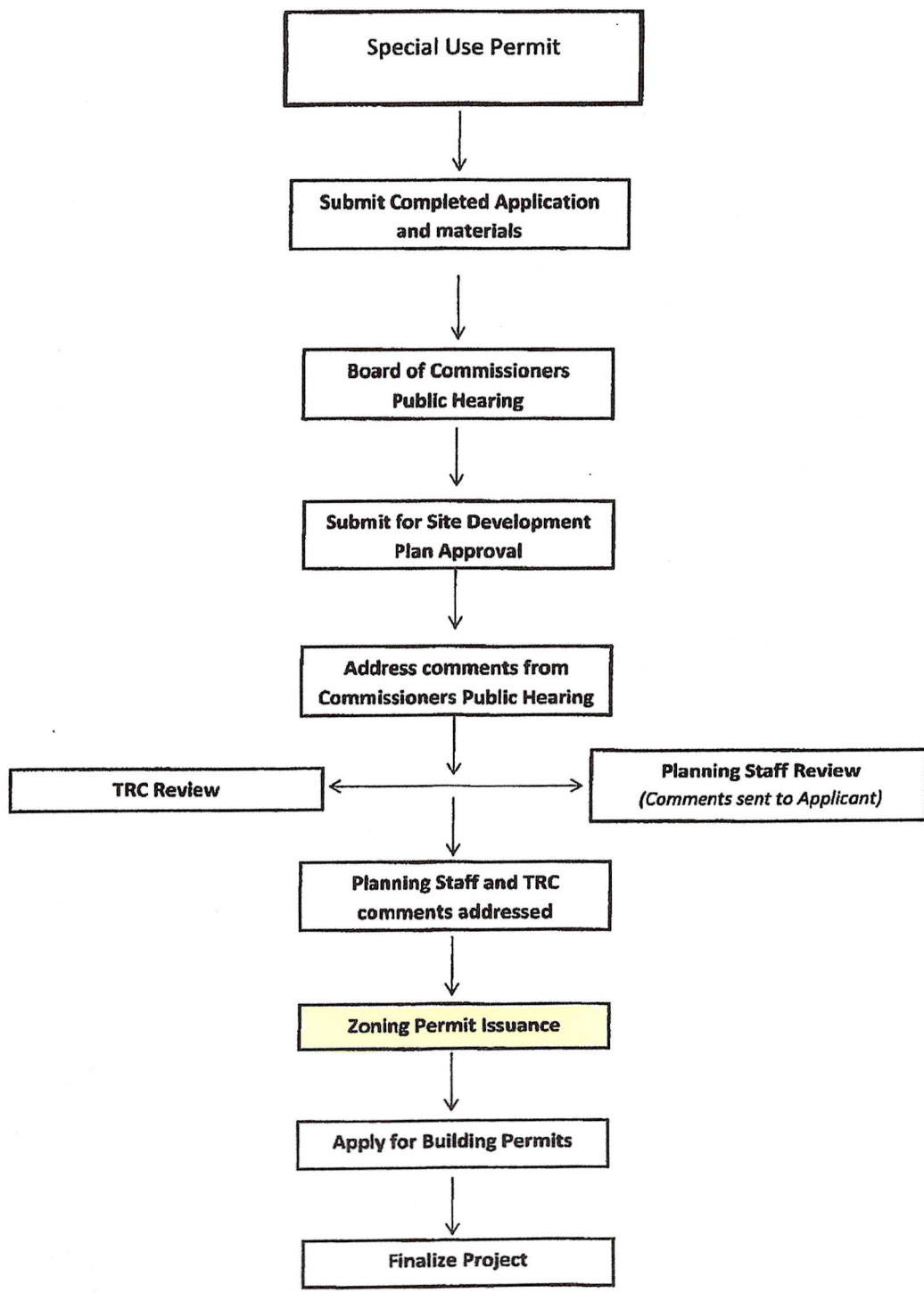
(d) Variances. - When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is

achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 17, 50(b), 51(a), (b), (d).)





Tab " K "

**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](http://www.pendercountync.gov)

**Residential Zoning Permit Application**

**Owner/Applicant Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**NOTE: IF APPLICANT IS NOT THE OWNER OF THE LAND, A LETTER FROM OWNER ACKNOWLEDGING PERMISSION OR OFFER TO PURCHASE TO MAKE APPLICATION FOR THE SUBJECT PROPERTY IS REQUIRED.**

**Owner/Applicant's Address:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_

**Project Contact Person:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Parcel Identification No.:** \_\_\_\_\_ **Deed Book/Page:** \_\_\_\_ / \_\_\_\_ **Map Book/Page:** \_\_\_\_ / \_\_\_\_

**Project Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Lot #:** \_\_\_\_\_

*\*A SITE PLAN DRAWN TO A MINIMUM SCALE OF 1" = 60' IS REQUIRED WITH APPLICATION\**

**Proposed Use:** New: ☐ Addition: ☐ Accessory: ☐ Renovation: ☐ Other: ☐

*Manufactured Home?* YES: ☐ NO: ☐

*If an accessory structure, please provide the square footage: \_\_\_\_\_ and dimensions \_\_\_\_\_' x \_\_\_\_\_'*

**ZONING DISTRICT:** RP: ☐ RA: ☐ PD: ☐ RM: ☐ MH: ☐ Other: ☐

**REQUIRED SETBACKS:** Front: \_\_\_\_\_ Side: \_\_\_\_\_ Rear: \_\_\_\_\_ Corner: \_\_\_\_\_

**PROPOSED SETBACKS:** Front: \_\_\_\_\_ Left Side: \_\_\_\_\_ Right Side: \_\_\_\_\_ Rear: \_\_\_\_\_ Corner: \_\_\_\_\_

**BUILDING SEPARATION:** \_\_\_\_\_

**PROPOSED HEIGHT:** \_\_\_\_\_ **NOTE:** If the proposed building height is within 5' of the allowed maximum, a height verification survey will be required

**LOT SIZE:** \_\_\_\_\_

Are there any platted restrictions on the site/lot? YES: ☐ NO: ☐

**PROPERTY ACCESS:** Public Roadway: ☐ Private Roadway: ☐ Recorded Easement: ☐

**Water Source:**

- ☐ County  
☐ Community System  
☐ Private Well  
☐ Other: \_\_\_\_\_

**Sewer Source:**

- ☐ County  
☐ Community System  
☐ Private Septic  
☐ Other: \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**(FOR OFFICE USE ONLY)**

**IS PROPERTY LOCATED IN FLOODPLAIN?** YES\* / NO; if 'yes' Zone \_\_\_\_\_

**PROPERTY IN AEC?** YES / NO

**HEIGHT VERIFICATION REQUIRED?** YES / NO

**CAMA PERMIT REQUIRED?** YES / NO

**FOUNDATION SURVEY REQUIRED?** YES / NO

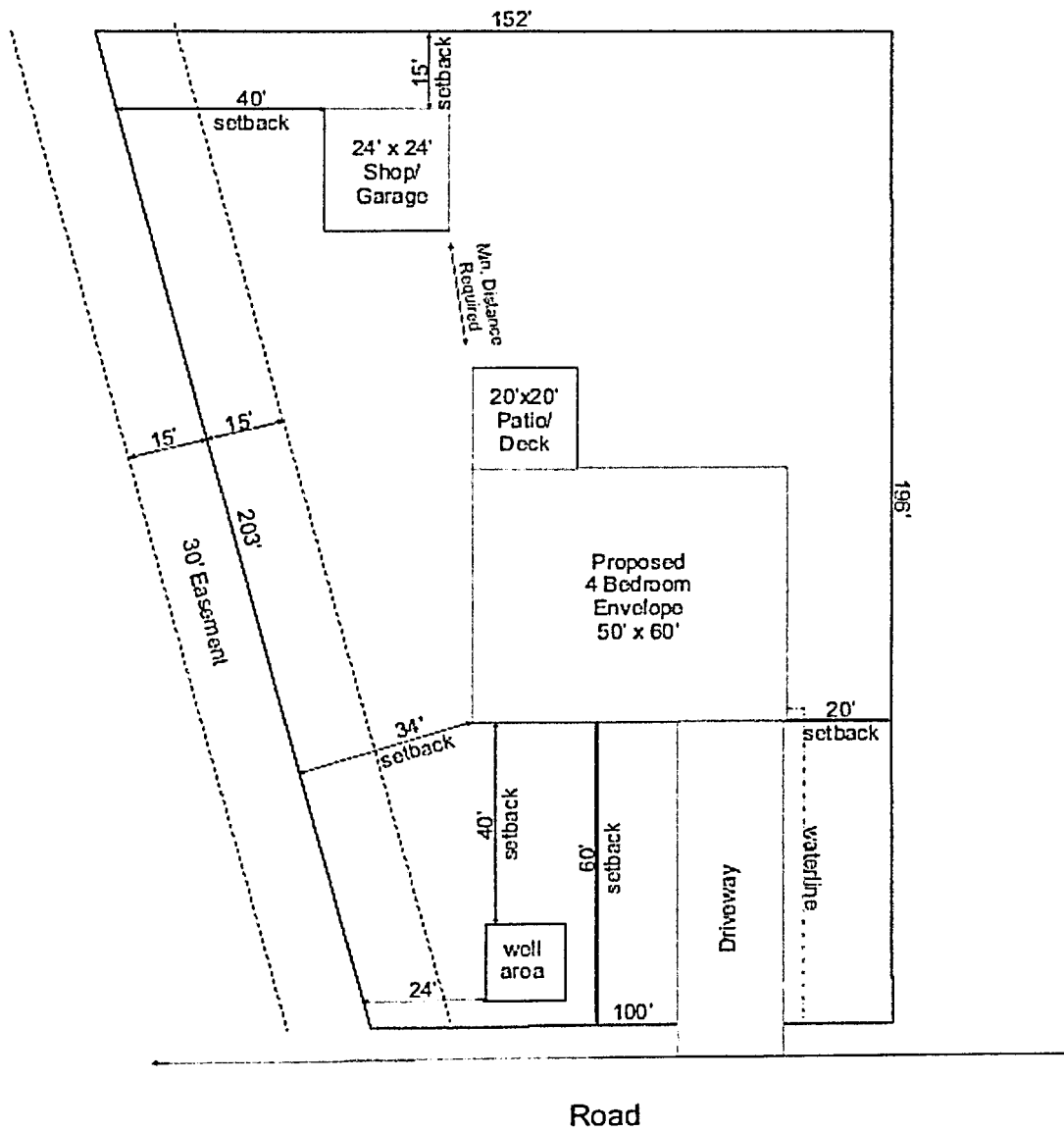
**STAFF INITIALS / DATE:** \_\_\_\_\_

**\*PROPERTIES LOCATED IN A SPECIAL FLOOD HAZARD AREA WILL REQUIRE ADDITIONAL INFORMATION.\***

**Permit #** \_\_\_\_\_

**Revised:** \_\_\_\_\_

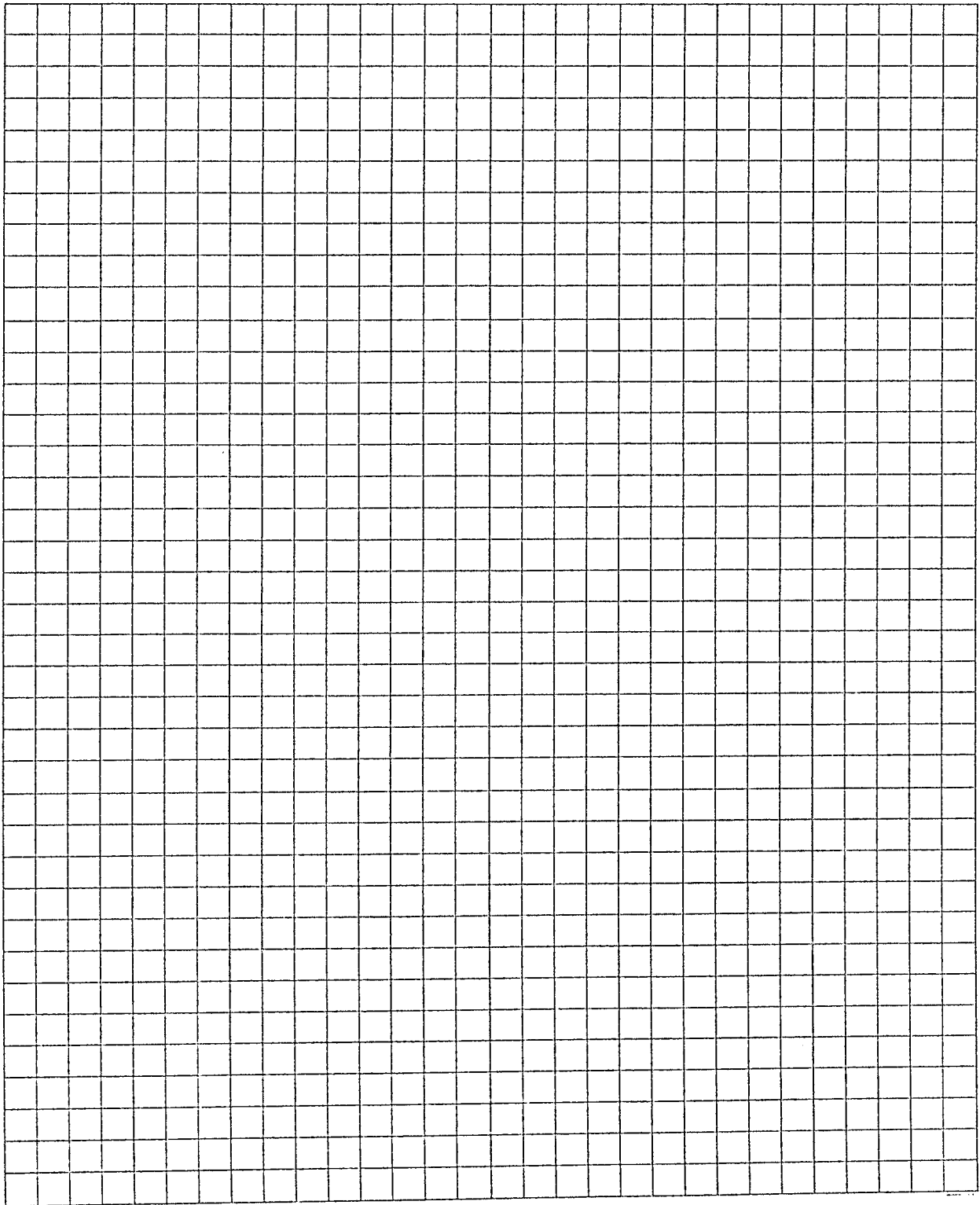
# Example Site Plan



Scale 1"=30'

Permit # \_\_\_\_\_

Revised: \_\_\_\_\_



Permit # \_\_\_\_\_

Revised: \_\_\_\_\_

Article 26.

Declaratory Judgments.

**§ 1-253. Courts of record permitted to enter declaratory judgments of rights, status and other legal relations.**

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. (1931, c. 102, s. 1.)



**§ 1-254. Courts given power of construction of all instruments.**

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder. A contract may be construed either before or after there has been a breach thereof. (1931, c. 102, s. 2.)

**§ 1-260. Parties.**

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard. (1931, c. 102, s. 8.)

pounds and greater and used for commercial purposes, or (2) any vehicle or trailer, regardless of weight, including vehicles used for a business use or licensed as a "for hire" vehicle, or any limousine or bus used as a common or contract carrier vehicle. For purposes of this chapter, a commercial vehicle shall not be deemed to include any of the following: police vehicle, emergency vehicle, commuter van, motor home, camping trailer, boat trailer or similar recreational equipment used as a personal property and not for hire or used as a school van or bus.

**COMMON AREA/OPEN SPACE:** Land that is used for recreational purposes, environmental resource protection, buffer areas, stormwater management areas and passive areas that are dedicated to the residents of a development for use and maintenance, and is protected to ensure that it remains in such uses, unless utilized under the provisions of this chapter.

**COMMUNITY BOATING FACILITY:** A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility. Commercial activities of any kind, including commercial letting of slips to parties that are not residents of the association or development, shall be prohibited.

**COMMUNITY WASTEWATER SYSTEM:** A sanitary wastewater facility which is publicly or privately owned and established to serve more than one single residential dwelling, commercial, and/or industrial development and is approved through a state agency or utilities commission.

**COMMUNITY WATER SYSTEM:** A public water supply system established to serve all or a portion of a residential, commercial, and/or industrial development year round and is approved through a state agency or utilities commission.

**COMPATIBLE:** Capable of existing together in harmony; congruous.

**COMPREHENSIVE LAND USE PLAN:** A general plan for the future development of Pender County, adopted by the Pender County Board of Commissioners according to the provisions of the North Carolina Code.

**CONFERENCE/EVENT CENTER:** A structure or facility designed to accommodate meetings and other events with or without food service developed to be either stand-alone or within a hotel or motel.

**CONFINED/CONCENTRATED ANIMAL FEEDING OPERATION:** A lot or facility (other than an aquatic animal production facility) where at least one of the following conditions are met: 1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; 2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; OR- Any animal feeding operation that requires a National Pollution Discharge Elimination System (NPDES) permit.

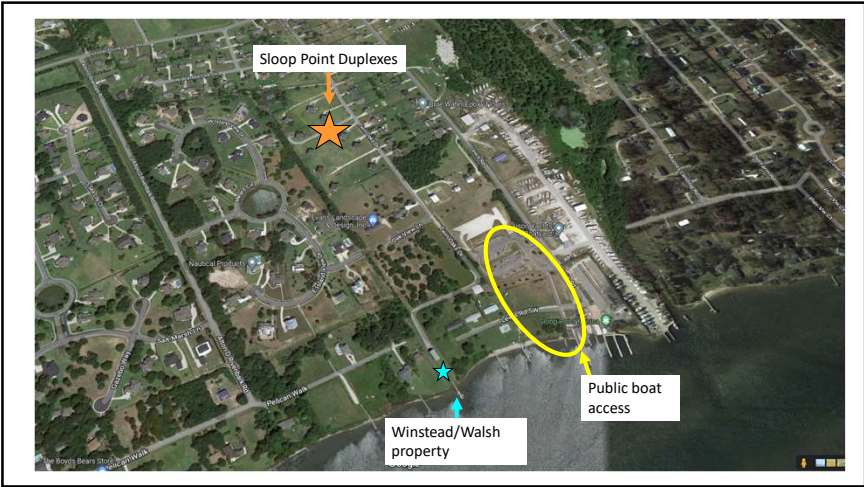




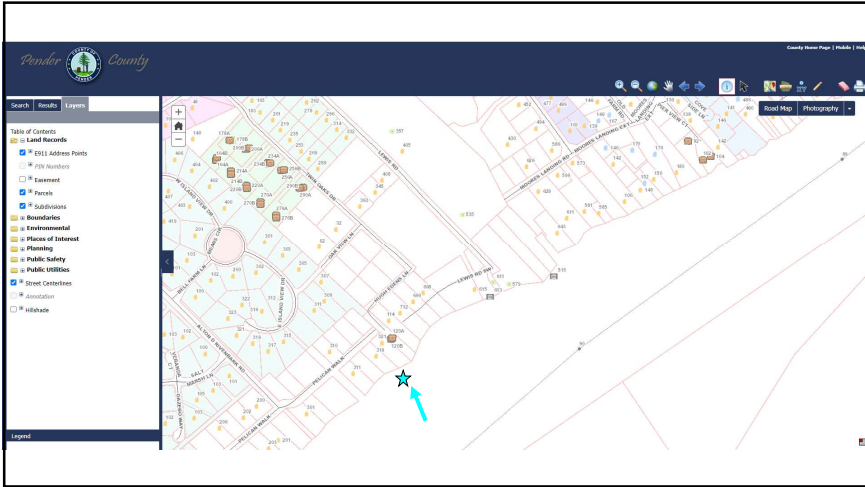
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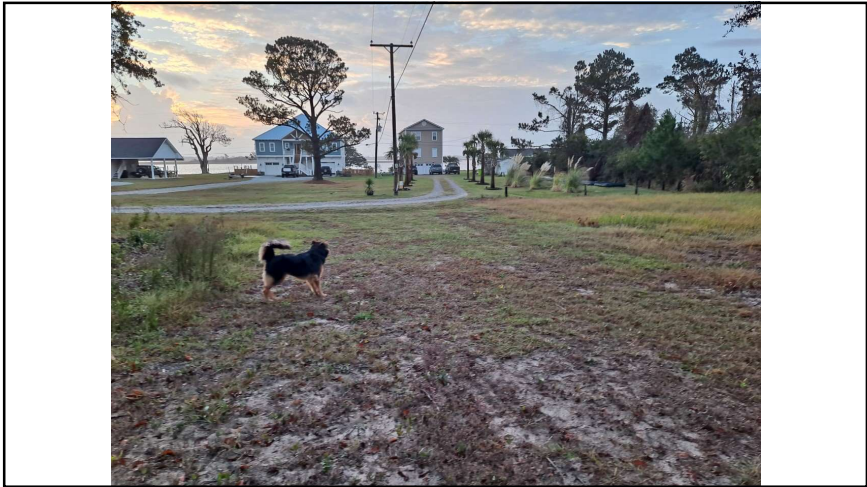


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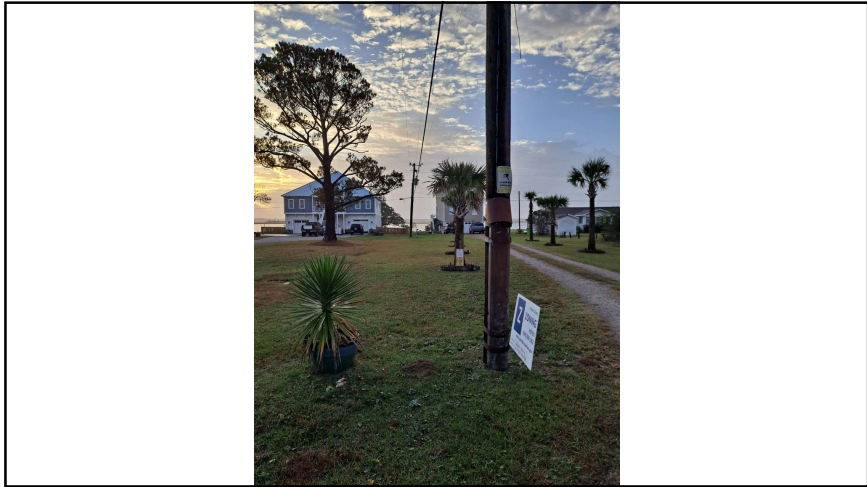




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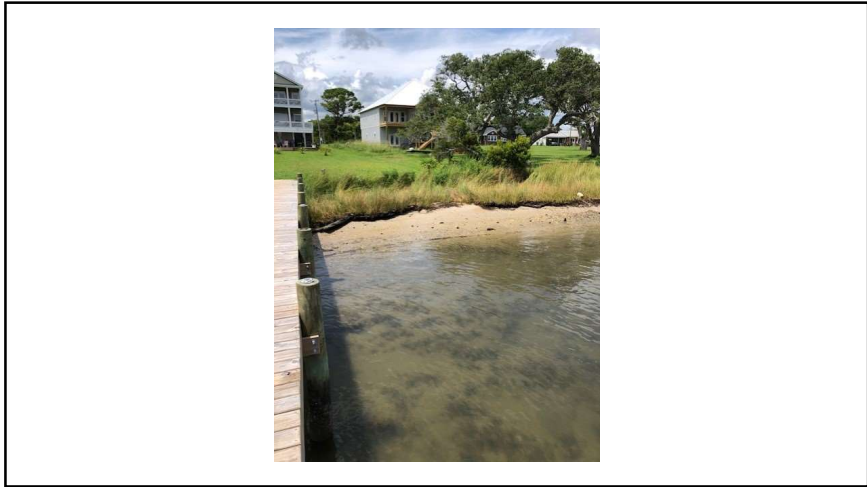




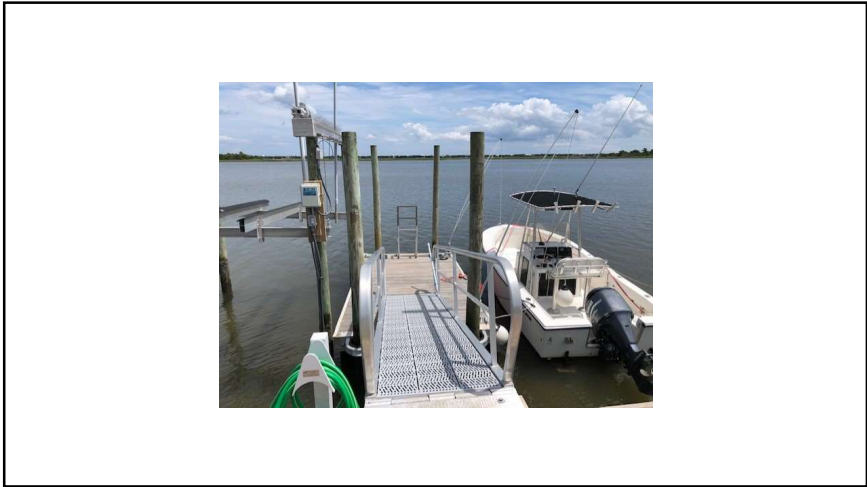
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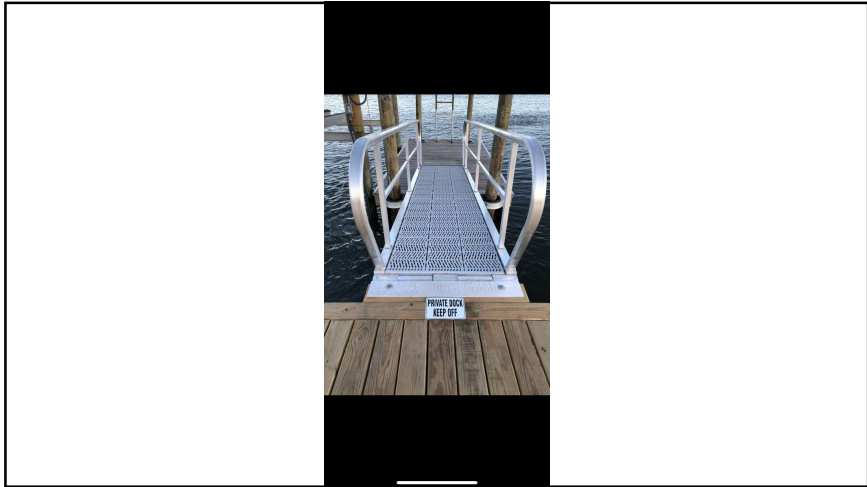
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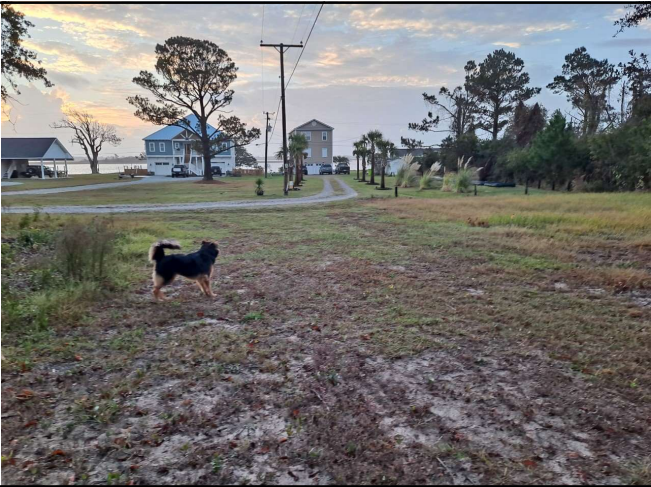




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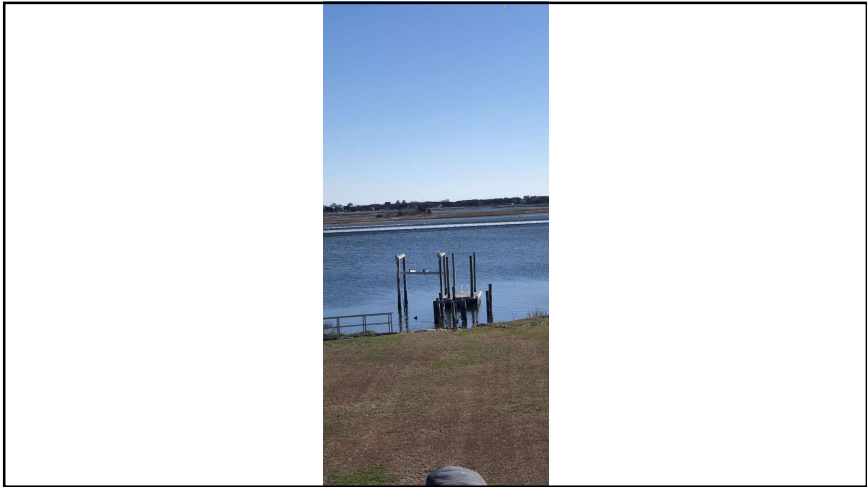
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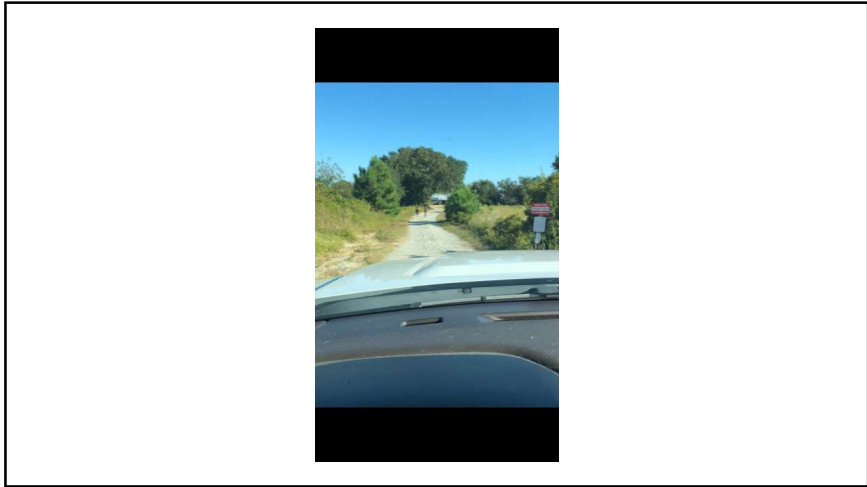
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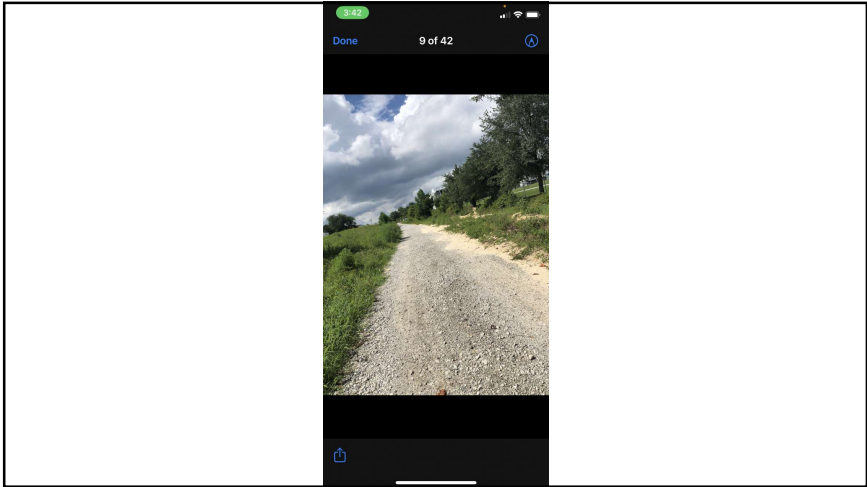


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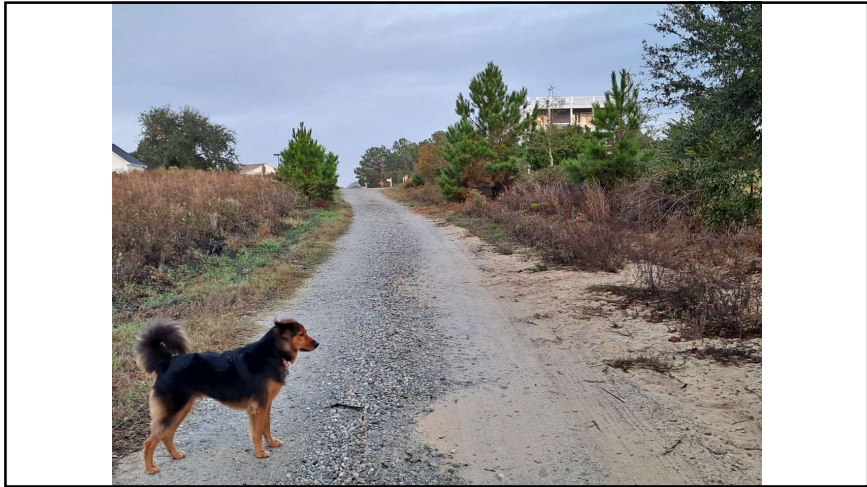




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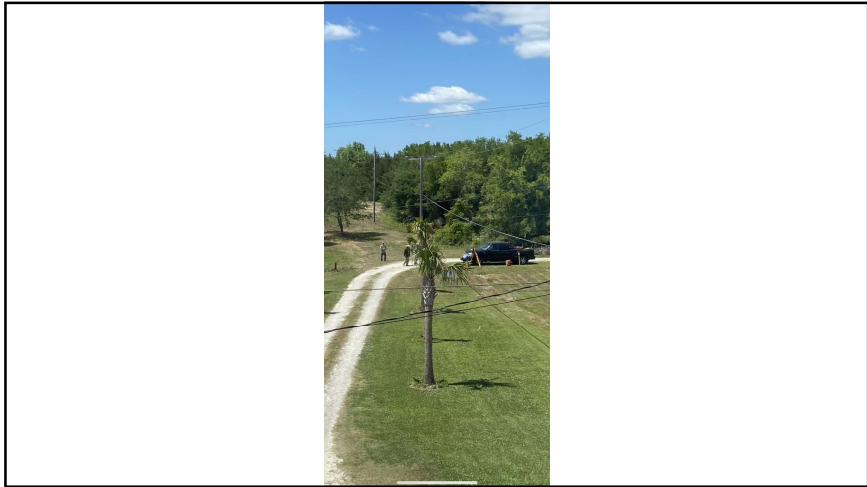
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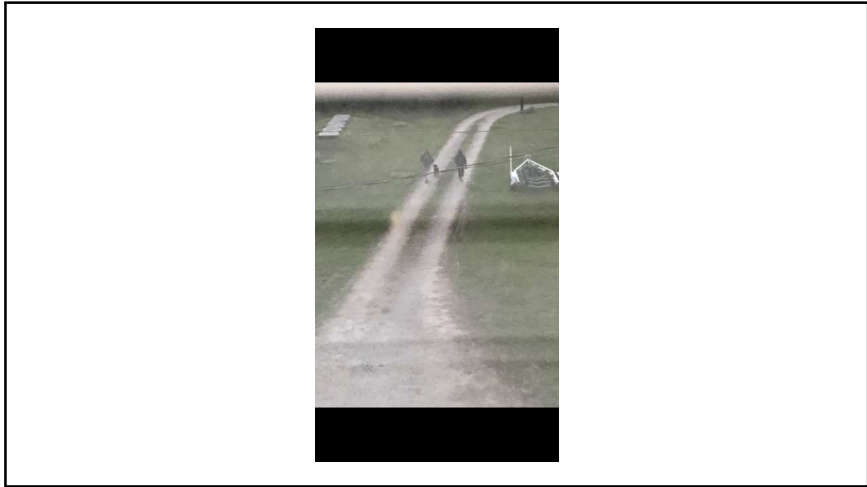
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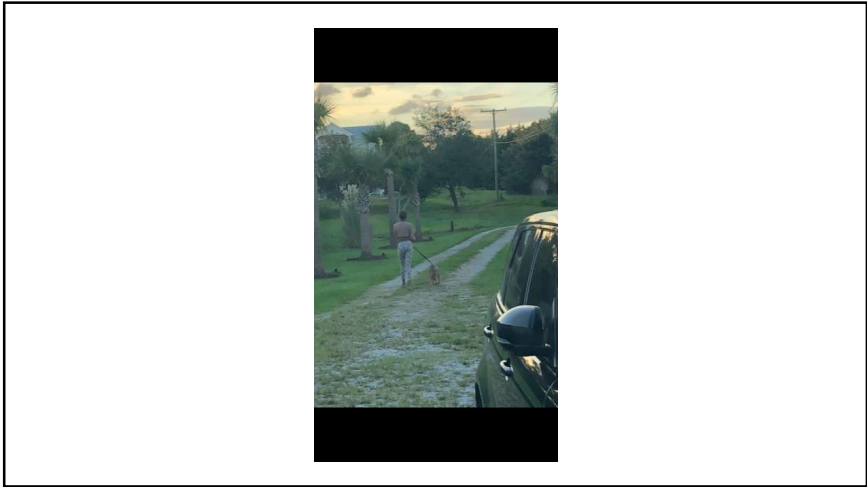
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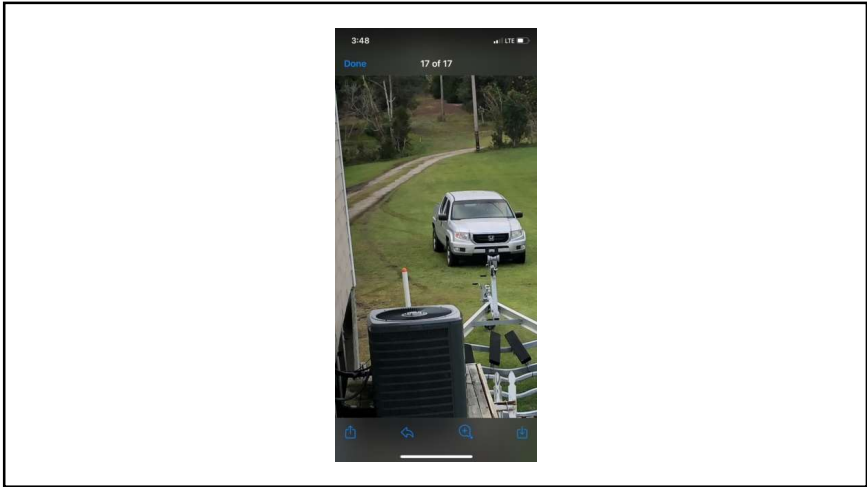
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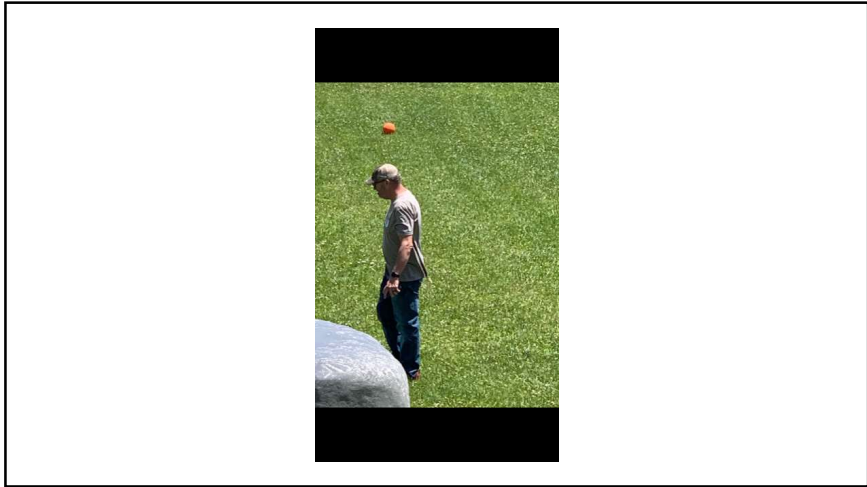
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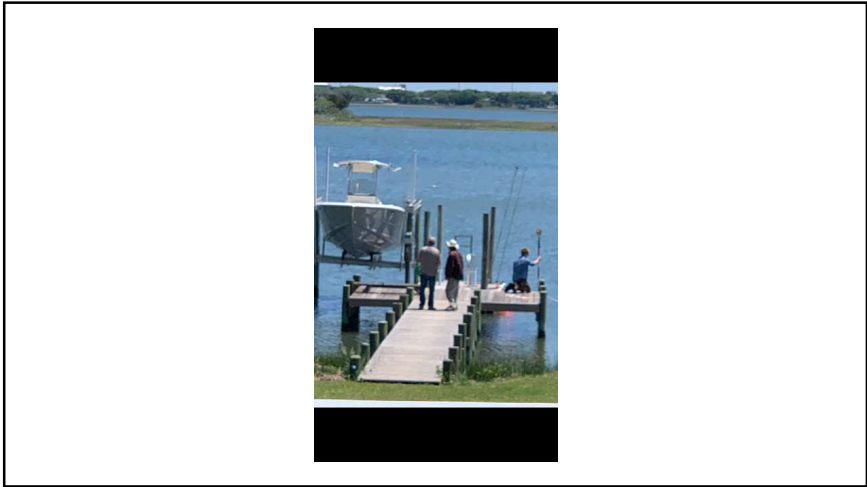
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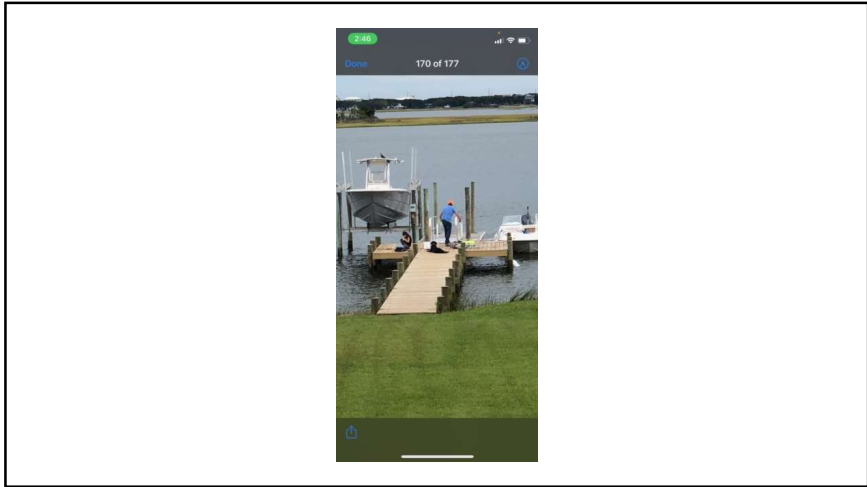
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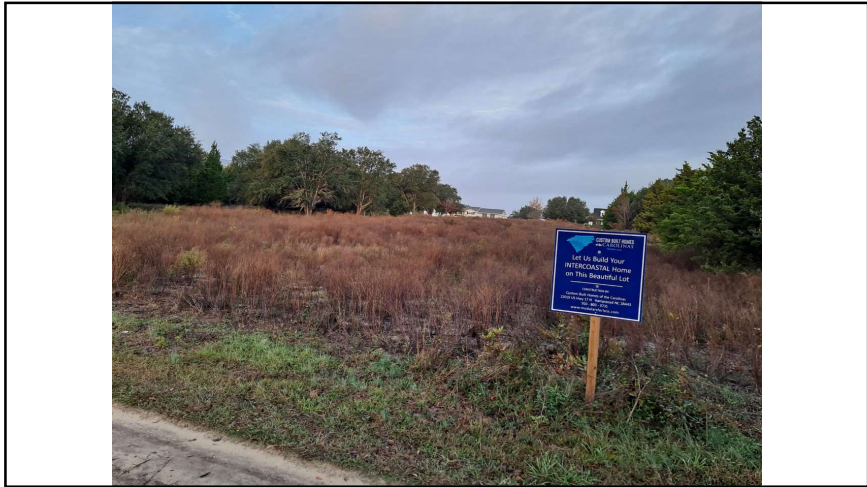


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# **Exhibit “C”**

**1-17**

George Rountree, Jr.  
(1904-1979)

Ryan F. Tennant  
(1973-2016)

George Rountree, III  
Special Counsel

Geoffrey A. Losee  
Stephen D. Coggins

Pardis Camarda Moreland  
Michael A. Becker  
Brian S. Akers

Joseph E. Horowitz  
Of Counsel



North Carolina Address  
2419 Market Street  
Wilmington, NC 28403

Tennessee Address  
6000 Poplar Ave., Ste 400  
Memphis, TN 38119

Phone  
910-763-3404

Fax  
910-763-0320  
910-763-0080

November 15, 2022

To: Pender County Board of Adjustment and its Clerk; Matthew Nichols; Justin Brantley; Pender County Planning Department  
From: Stephen D. Coggins, counsel for SUP Applicants Sloop Point Duplex Owners Contesting Administrative Appeal 2022-09 by Adam Winstead and by Brian and Laura Walsh Contending that SUP Application # SUP 2022-36 is Incomplete; our file 2022-00154 *SC*  
Date: November 16, 2022

**SLOOP POINT DUPLEX OWNERS (SUP APPLICANTS) REBUTTAL  
OPPOSING ADMINISTRATIVE APPEAL**

**A. Introduction**

The Appellants appeal the determination of the Planning Staff that the Application ("Application") for a Special Use Permit ("SUP") 2022-36 for a Community Boating Facility is complete. The "SUP Applicants" are the owners of duplexes in the Sloop Point Duplexes development. Each duplex in the development individually has rights of access to, and use of, a boat dock facility at the property owned in fee by the Appellants. The SUP Applicants oppose this Appeal and submit this memorandum in rebuttal.

Once this Appeal was lodged, the Zoning Administrator determined that Planning Staff correctly determined the Application was complete, that it was established that the easement holders had the right to apply for this development approval as it was consistent with their rights as easement holders; and that it was further established that Mr. Stephen D. Coggins had the right to apply as the applicant as an agent of the easement holders. [Appeal Packet (hereinafter "AP"), p. 4]

**B. Burden Is On the Appellants**

Under Section 3.1.2 of the UDO, upon proof that all the information required in the Planning Department application forms is presented, there is a presumption that the application is deemed complete:

---

www.rountreelosee.com



### UDO 3.1.2 Application Requirements

\*\*\*

C. Complete Applications: All applications must be sufficient for processing prior to review. ***The presumption shall be that all of the information required in the ...application forms is necessary to satisfy the requirements of this Section;***

The rule is well established in this State that the burden of proof and persuasion on this Appeal is on the Appellants. See, Owens, *Land Use Law in North Carolina*, p. 146 & n. 30 (2d Edition 2011)

#### C. Rebuttal to Appellants 11 Contentions Contesting the Application as Complete

A review of the Appeal reveals basically 11 separate arguments on why Appellants contend the Application is incomplete. This Rebuttal provides (a) each of the 11 Contentions, (b) a citation to each location in the Appeal Packet (hereinafter "AP") where each Contention is made, and (c) the Rebuttal to the particular Contention. Each Rebuttal to a particular Contention is in **bold font**.

##### 1. Appellants 1<sup>st</sup> Contention:

SUP Applicants Own Only An Easement Interest, Are Not "Owners" Within Meaning of Chapter 160D and Do Not Have a Sufficient Property Interest to Seek an SUP on Appellants' Property [See Appellants Statements In Support of 1<sup>st</sup> Contention found at AP pp. 10-15, Paras. 1, 8, 22-26, 31-35]

#### SUP Applicants/Sloop Point Duplex Owners Rebuttal to 1st Contention:

**(a) Chapter 160D Expressly Authorizes the SUP Applicants as Easement Holders to Apply for a Special Use Permit**

Appellants contend that the SUP Applicants own only an easement interest in gaining access over the Appellants' property and that interest is not sufficient under Chapter 160D of the General Statutes to seek a SUP granted under the quasi-judicial process. The briefest examination of the applicable statutes shows this contention is patently erroneous. Those statutes expressly provide that an "easement holder" may apply for a "development approval", which is defined as including "special use permits" granted through the quasi-judicial process.

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**First**, N.C.G.S. § 160D-403(a) expressly provides that the SUP Applicants as easement holders may apply for a “development approval:

“...An easement holder may also apply for development approval for such development as is authorized by the easement.

**Secondly**, subsection (13) of the definitions applicable to Chapter 160D found at N.C.G.S. § 160D-102 define “Development approvals” as including “special use permits:

(13) Development approval. – An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. *Development approvals include, but are not limited to...special use permits.... (italics added for emphasis)*

**Third**, N.C.G.S. § 160D-102(13) quoted above expressly states that a “Development approval” can be a “quasi-judicial approval”

(b)The UDO Is Consistent With Chapter 160D And Does Not Prohibit Easement Holders From Applying for a Special Use Permit

The UDO at Sec. 3.12.2(A) provides for who may apply for a SUP – the “applicant”:

Applications for Special Use Permits, signed by the applicant, shall be approved or denied by the Board of Commissioners and shall follow the general requirements of Section 3.1.1 and 3.1.2. (underline added)

The UDO simply provides that an “applicant” may apply for a SUP. The term “applicant” is not defined in the UDO. In consequence, the UDO does not restrict “applicant” solely to one who owns a fee title to property. As “applicant” is not defined, the UDO nowhere prohibits easement holder applicants who are not owners in fee of the subject property from applying for a SUP.

And even if Sec. 3.12.2(A) was deemed to restrict “applicant” to being an “owner” as defined in the UDO, it still would not restrict the SUP Applicants from applying for a SUP. The UDO Definitions found at page 19 of “Appendix A” define an “Owner” as “[a]n individual, firm, association,

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**syndication, partnership or corporation having sufficient proprietary interest to seek development of land."**

Here, the SUP Applicants have a "sufficient proprietary interest to seek development of land" because they are "dominant estate" easement holders that have a right to seek development of the Appellants land to the extent provided in their easement ("Easement"). The Easement was granted on January 4, 2004 by Appellants' predecessor in title and recorded at Deed Book 2295, Page 85 of the Pender Registry. Key provisions in the Easement include the following:

*Grantor has agreed to grant to each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees, for the use of a boat launching/ ramp and access to the [AICW], together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per the Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.*

*.... Grantor ...conveys... the rights and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on Tract A....together with the right and privileged to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the [AICW] (italics added)*

The same day the Easement was recorded, the Grantor's predecessor in title at Map Book 37, Page 28 recorded the plat expressly referencing the Easement encumbering Appellants' property.

Thus, the Easement's express wording in both the deed and the plat conveys to the SUP Applicants as easement holders with an express proprietary interest that empowers them to construct a boat launching facility and pier/dock. Thus, the SUP Applicants are "Owners" as that term is defined in the UDO.

(c) SUP Applicants Own a Sufficient Interest in Appellants Property to Seek the "Community Boating Facility"

The Appellants erroneously argue that the SUP Applicants do not own an interest in their land or their boat dock facility. The express wording of the Easement in the deed and plat as discussed above belies this contention.

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Further, the Appellants' own deeds refer to the easement shown on the plat at Map Book 37, Page 28 recorded January 4, 2004. (See deed to Appellant Winstead recorded September 11, 2019 at Deed Book 4693, Page 254 to Tract A, Unit A and deed to Appellant Walsh to Tract A, Unit B recorded October 21, 2020 at Deed Book 4728, Page 2245). Consequently, they have been put fully on notice about the "dominant estate" Easement interest encumbering their land in favor of the SUP Applicants.<sup>1</sup>

Finally, the extent the Appellants argue that the Easement language is not sufficient to allow the SUP Applicants to use the Property, such is beyond the purview of the Board of Adjustment and is better resolved by the Courts.

2. Appellants 2<sup>nd</sup> Contention: SUP Applicants Have Not Demonstrated They Have a Right to Use Private Roads to Get To the Pier and There Is a Question Whether They Are Privy to Easement Rights to Use the Road. [See Appellants Statements In Support of 2<sup>nd</sup> Contention at AP pp. 15-16, paras. 35-38]

SUP Applicants/Sloop Point Duplex Owners Rebuttal to 2<sup>nd</sup> Contention:

This contention is meritless for several reasons. *First*, the rights of the SUP Applicants as the dominant estate holders of the easement to use Hugh Edens Lane is shown by a number of instruments:

- (a) the plat at Map Book 37, Page 28 as illustrating Hugh Edens Lane as the road access via Twin Oaks Drive to gain access to the easement;
- (b) the same plat's reference to a plat of the predecessor owner's land at Map Book 26, Page 104 that shows both Twin Oaks Drive and "Oak View Lane (now Hugh Edens Drive) as roads serving both Tract A (Appellants' property) and Tract C (which tract has been subdivided into the SUP Applicants property by the predecessor owner of Tract C);
- (c) that plat recorded September 24, 2002, at Map Book 35 at Page 69 showing access from the SUP Applicants properties along Twin Oaks Drive to "Oak View Drive" (now Hugh Edens Lane);

<sup>1</sup> Interestingly, the SUP Applicants are not the only persons who have rights to use the boat ramp and dock. The predecessor grantors of the land to the Appellants reserved a right to use any boat ramp or dock constructed on the property. See Deed Book 1969, Page 316 recorded October 21, 2002.



(d) the Easement at Deed Book 2295, Page 85 referencing the above Map Book 35, Page 69 and stating that the Easement is appurtenant to and running with the lands described in Map Book 36 at Page 69;

(e) the Easement Plat at Map Book 37, Page 28 coming on the heels of Map Book 35, Page 69 showing the right of access along Hugh Edens Lane;

(f) Deeds to the SUP Applicant Owners of Sloop Point Duplexes establishing they have the following easement rights and obligations:

Said lot is conveyed subject to a maintenance obligation for such amenities as may be located upon said Tract "A." Each person or entity acquiring a lot hereunder shall bear a proportionate cost of maintaining such amenities and the common areas. The amenities to be constructed upon said Tract "A" shall include a boat ramp and dock.

Said lot is conveyed together with and subject to an easement for ingress, egress and regress over and across those roads labeled Twin Oaks Drive and Oak View Lane as said roads are shown on a map recorded in Map Book 26 at Page 104 of the Pender County Registry, reference to which said map is hereby made for a more particular reference.

Said lot is conveyed together with the following maintenance obligation. Each person or entity acquiring a lot hereunder shall bear a proportionate cost of maintaining Twin Oaks Drive and Oak View Lane as said roads are shown on a map recorded in Map Book 26 at Page 104 of the Pender County Registry. This maintenance obligation is further set forth in an instrument recorded in Book 710 at page 248 of the Pender County Registry.

(See, e.g, Chang Deed recorded at DB 4716, Page 1523; Flynn deed recorded at DB 4713, Page 1050);

(g) Maintenance Agreement for Hugh Edens Drive recorded on April 9, 2001 at Deed Book 770, Page 248, which grants rights and responsibilities to the SUP Applicants.

Accordingly, the SUP Applicants' rights to exercise the Easement and to traverse Hugh Edens Lane to gain access to the Easement is well established.

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WILMINGTON, NORTH CAROLINA

**Second**, to the extent Appellants disagree with that conclusion, determining the full extent of the rights and liabilities of the parties is beyond the scope of the powers of this Board of Adjustment and is more properly resolved in the Courts.

**Third**, nowhere does the UDO require SUP Applicants to demonstrate that they have a *right* of access along adjacent roads to get to the property on which the easement is located. Rather, all the UDO requires is for the Application to *show the means - not the right -- of access to the site*. See, UDO 3.12.2 B. 4) requiring the application to show "means of access to the site (road or recorded access easement)". The means of access is shown on the SUP Applicants' Site Plan as being Hugh Edens Lane, as well as through the above instruments that are either attached in the SUP Application or referenced therein.

**3. Appellants 3<sup>rd</sup> Contention:**

There Was No Right to Use the Pier as a Community Boating Facility When the Easement Was Created [See Appellants Statements In Support of 3<sup>rd</sup> Contention at AP p. 15-16, paras. 39-41]

**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 3<sup>rd</sup> Contention:**

Whether or not uses permitted under the Easement "for the use of a boat launching/ ramp and access to the [AICW], together with the use of any pier or dock placed on said property by Grantor" were allowed by the County at the time the Easement was granted is irrelevant. Land use ordinances are inherently subject to change according to the whims of the County Commissioners or their delegated actors. In contrast, the Easement is perpetual and cannot be extinguished except by mutual consent or adverse possession. The Easement by its express terms is "in perpetuity", is conveyed to the Grantees and "their heirs, successors, and assigns" and "runs with the title to the lots...". See Deed Book 2295 at Page 85. The County zoning ordinances do nothing that affect the validity of this property rights.

Finally, the current UDO without question today allows Easement use of the pier and dock and boat launching area in the form of a Community Boating Facility operating under a Special Use Permit granted by the County. If such was ever prohibited in the past, the right has "sprung back to life" by adoption of the current UDO's Community Boating Facility provisions.

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4. Appellants 4<sup>th</sup> Contention:

Appellants did not sign SUP Application and Appellant Property Owners do not consent [See Appellants Statements In Support of 4<sup>th</sup> Contention at AP p. 11, paras. 5, 6, 9, 14]

**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 4th Contention:**

A signature on the SUP Application by the Appellants as owners in fee of the property encumbered by the Easement is not necessary. Nowhere does the UDO require the SUP Application be signed by the fee title owner. Instead, the UDO at Sec. 3.12.2(A) provides merely this:

Applications for Special Use Permits, signed by the applicant, shall be approved or denied by the Board of Commissioners and shall follow the general requirements of Section 3.1.1 and 3.1.2. (underline added)

The term "applicant" is not defined in the UDO. Moreover, no other UDO provision requires the fee title owner to sign the Application. All the UDO requires is for there to be "Owner" is "[an] individual, firm, association, syndication, partnership or corporation *having sufficient proprietary interest to seek development of land.*" Here, the SUP Applicants are "dominant estate" Easement holders that have a right to seek development of the Appellants land to the extent allowed by the Easement granted by Appellants' predecessor in title and recorded at Deed Book 2295, Page 85. The Appellants' fee title interest is a "servient" estate subject to the SUP Applicants' "dominant estate" Easement interest. Thus, signature by the Appellant fee title servient interest owners is not required.

Further, the SUP Application is signed by both the authorized attorney at law acting as agent of the SUP Applicants, and by one of the Sloop Point Duplex owners (Ms. Betty Chang-Curry) acting as the agent of all the other Duplex Owners.

Finally, each of the SUP Applicant owners of Sloop Point Duplexes and have submitted in writing designating Ms. Chang-Curry as their agent for the purposes of seeking the SUP.

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5. Appellants 5th Contention:

SUP Conditions Cannot Be Imposed Without Consent of Appellants [See Appellants Statements In Support of 5<sup>th</sup> Contention at AP pp. 13-14, paras. 27 - 30]

SUP Applicants/Sloop Point Duplex Owners Rebuttal to 5th Contention:

**This novel contention is without merit. Nothing in applicable statutes or ordinances provide that SUP conditions can only be imposed with the consent of the owner.**

**When considering whether to issue a SUP, the County Commissioners are authorized by statute to impose "reasonable and appropriate conditions":**

**N.C.G.S. § 160D-705. Quasi-judicial zoning decisions.**

\*\*\*

(c) **Special Use Permits.** - The regulations may provide that the board of adjustment, planning board, or governing board hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the regulations. *Reasonable and appropriate conditions and safeguards may be imposed upon these permits.* (italics and underlined emphases added)

Nothing in this statute --- nor anywhere else in Chapter 160D --- provides that the fee title owner of property must give consent. Indeed, just the opposite applies. The County Commissioners under G.S. § 160D-705(c) may impose reasonable conditions on the SUP that are binding on the property, with or without the property owners consent. The power to "impose" SUP conditions establishes crystal clearly that consent by the property owner is not required. Indeed, such conditions oftentimes have been imposed in other instances in which the owner of the property contests the legality or appropriateness of those conditions. (See e.g., cases cited in discussion and footnotes in *Land Use Law in North Carolina, supra*, pp. 156-157)

The UDO is consistent with G.S. § 160D-705(c) regarding consent as not being a prerequisite to the validity of SUP conditions. Sec. 3.12.1 governing SUPs provides:

**The development and execution of this Ordinance is based on the division of the county into districts within which the use of land and**

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**buildings and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are some land uses which are basically in keeping with the intent and purposes of the district where permitted, but which may have an impact on the area around them which can only be determined by review of the specific proposal. *These uses may be established, under certain conditions and with proper controls, in such a manner as to minimize any adverse effects. In order to insure that these uses, in their proposed locations, would be compatible with surrounding development and in keeping with the purposes of the district in which they are located, their establishment shall not be as a matter of right, but only after review and approval of a Special Use Permit as hereinafter provided.***

**This provision ensures the County Commissioners have the power to impose conditions on the SUP regardless of the particular desires of the SUP Applicant.**

**The Appellants citation to statutory provisions regarding a modification of an SUP as being with the consent of the owner are inapposite. Indeed, most modifications are driven by an owner request and are inherently with the consent of the owner. Any requirement that the owner consents to a modification of the SUP has no bearing on the power of the Commissioners to impose an original condition in the original SUP regardless of whether the owner consents.**

**Finally, even if consent were required, the status of the SUP Applicants as an "easement holder" giving their consent is a sufficient ownership interest under Chapter 160D and the UDO for the reasons discussed above in the rebuttal to the 1<sup>st</sup> Contention.**

**6. Appellants 6<sup>th</sup> Contention:**

**SUP Applicants Did Not Seek Consent of Appellants or Reach Out to Appellants Before Filing SUP Application [See Appellants Statements in Support of 6<sup>th</sup> Contention [AP pp. 11-12, paras. 10 & 11]**

**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 6th Contention:**

**The short answer to the 6<sup>th</sup> Contention is that obtaining the fee title holders' consent is not a prerequisite to a valid or complete Application. The UDO imposes no such requirement. Nor does any provision in Chapter 160D**

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**required consent by the fee title owner. All that is required is a SUP Application submitted on behalf the Easement holder, per N.C.G.S. § 160D-403(a).**

**7. Appellants 7<sup>th</sup> Contention:**

SUP Application was not sent to Appellants [See Appellants Statements in Support of 7<sup>th</sup> Contention at AP p. 12, para. 12]

**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 7th Contention:**

**Nowhere in the UDO or Chapter 160D is there a requirement that an Easement holder send to the fee title holder a copy of the SUP Application.**

**What is required instead is for the SUP Applicant to submit with the Application a "a list of names and addresses of the owners of all properties located within 500 feet of the perimeter of the project bounds along with one (1) set of #10 envelopes stamped and with typed addresses to each person on the list." At that point, the Zoning Administrator mails a copy of the legal notice to each of those owners at least thirty days before the SUP hearing. The relevant UDO provision states:**

**UDO 3.12.2 Application and Fees**

\*\*\*

**B. Each application shall contain the following as stipulated by the County Commissioners and Administrator:**

\*\*\*

**3) The applicant shall provide to the Administrator a list of names and addresses of the owners of all properties located within 500 feet of the perimeter of the project bounds along with one (1) set of #10 envelopes stamped and with typed addresses to each person on the list. These addressed envelopes and the list shall be submitted at least thirty (30) days prior to the public hearing. The Administrator shall then mail a copy of the legal notice to each adjacent property owner;**

**That was done in this case, which is how the Appellants were put on full and fair notice of the SUP proceedings.**

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8. Appellants 8<sup>th</sup> Contention:

Attorney Cannot Be Applicant [See Appellants' Statements Supporting 8<sup>th</sup> Contention at AP p. 12, para. 13]

**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 8th Contention:**

Nowhere does the UDO or Chapter 160D preclude an attorney representing a party from applying for a SUP on behalf of the attorney's client. Nowhere does the UDO or Chapter 160D require an agent form for submitting an SUP Application.

Regardless, any concerns of whether the attorney is authorized to submit the SUP Application is resolved because one of the Sloop Point Duplex Easement holders (Ms. Chang-Curry) while acting on behalf of all the other Duplex owners signed the SUP Application on the same page as their attorney applicant.

9. Appellants 9<sup>th</sup> Contention:

All Sloop Point Duplex Owners (i.e., the SUP Applicants) Did Not Sign the Application and No Agency Form Was Signed [See Appellants' Statements Supporting 9<sup>th</sup> Contention at AP p. 12, para. 15-18]

**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 9th Contention:**

Nowhere does the UDO or Chapter 160D preclude a co-owner of an Easement from submitting a SUP Application on behalf of the other co-owners. Nowhere does the UDO or Chapter 160D require an agent form for submitting an SUP Application. Moreover, each duplex owner has in writing designated Ms. Chang-Curry as their agent.

10. Appellants 10<sup>th</sup> Contention:

There Is No Entity called "Sloop Point Duplex Owners" registered with NC Secretary of State [See Appellants Statements in Support of 10<sup>th</sup> Contention at AP p. 12, para. 18; AP p. 14, paras. 31]

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**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 10th Contention:**

Nowhere does Chapter 160D or the UDO require the Sloop Point Duplex Owners to be an incorporated organization registered with the N.C. Secretary of State.<sup>2</sup>

Moreover, Chapter 160D's requirements applicable to a "person" include a partnership, association or joint venture. See N.C.G.S. § 160D-102(24). Hornbook law in this State is that an association need not be incorporated. That makes sense in this case, as the Sloop Point Duplex Owners are an association of individuals who own duplexes in the development, all of whom each own individually rights in the Easement. The Easement did not convey rights to an incorporated entity. Rather, it conveyed rights to whoever or whatever owns a particular duplex.

Furthermore, this informal association of individuals that own duplexes are a type of a "development association or collective owners group" that is required to exist and have "ownership/control" in order for a SUP for a Community Boating Facility to be issued. The Definitions in Appendix A to the UDO defines "Community Boating Facility" as follows:

*A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility.... (italics added)*

Note that the Community Boating Facility Ordinance nowhere requires the Facility to be "owned/controlled" by an incorporated HOA. Rather, it is sufficient for the "owner/controller" to be any type of development association or a collective owners group.

<sup>2</sup> In addition, the Condominium Act at Chapter 47C of the General Statutes nowhere requires incorporation. Moreover, the Planned Community Act at Chapter 47F is inapplicable, for N.C.G.S. § 47F-1-101 applies only to a development consisting of 21 or more lots. Here, the Duplexes are created under two separate declarations. One is for Lots 1 through 6, on each lot being a duplex. The other is for Lots 5 through 11, on six of which are duplexes and on one is a single-family residence. Neither development consists of at least 21 lots. (See DB 1969, Pages 180 and 186). Since neither development is a "planned community" as defined in Chapter 47F, the incorporation provision in N.C.G.S. § 47F-3-101 is inapplicable.

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**Here, the Sloop Point Duplex Owners are just that. They have ownership and control by way of the terms of the Easement, which provides:**

**Grantor has agreed to grant to each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees, for the use of a boat launching/ ramp and access to the [AICW], together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per the Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.**

**.... Grantor ...conveys... the rights and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on Tract A as shown on the map entitled Map of Survey for Mary B. Edens recorded in Map Book 26 at Page 104 of the Pender County Registry together with the right and privileged to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the [AICW]**

**Said easement is conveyed subject to a maintenance obligation for said facilities. Each person or entity acquiring an easement of right of way hereunder shall bear a proportionate cost of maintaining such amenities, including the pier/dock and the boat launching/landing facilities.**

**This easement language gives the Easement holders the express power to construct the boat dock facility and to obligates it to maintain it.**

**Accordingly, the status of the owners of Sloop Point Duplexes owners as not being an incorporated association is irrelevant.**

**11. Appellants 11<sup>th</sup> Contention:**

**SUP Applicants Did Not Furnish All Contact Information of the Appellant Owners [See Appellants' Statements Supporting 11<sup>th</sup> Contention at AP p. 12, paras. 19, 20, 21]**

**SUP Applicants/Sloop Point Duplex Owners Rebuttal to 11th Contention:**

**Nowhere does Chapter 160D or the UDO require the SUP Applicant to provide all the contact information of the Appellant fee title holders. Rather, all that is required is the SUP Applicants furnish the names and addresses of each of the Appellants, which was done.**

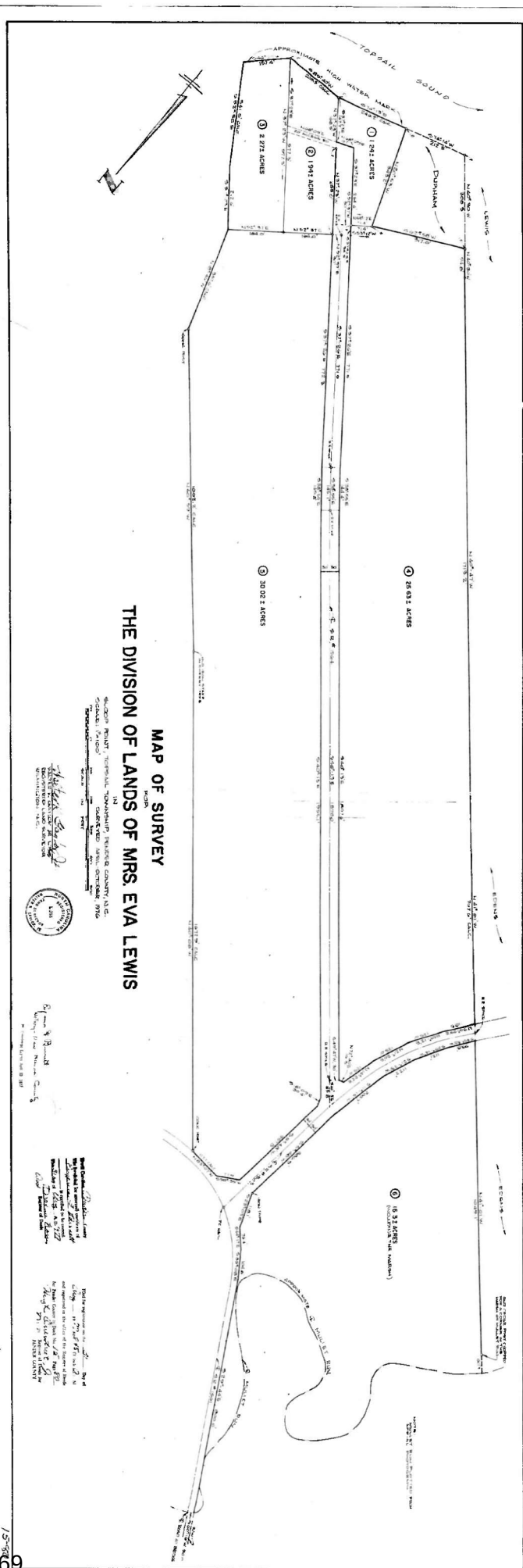
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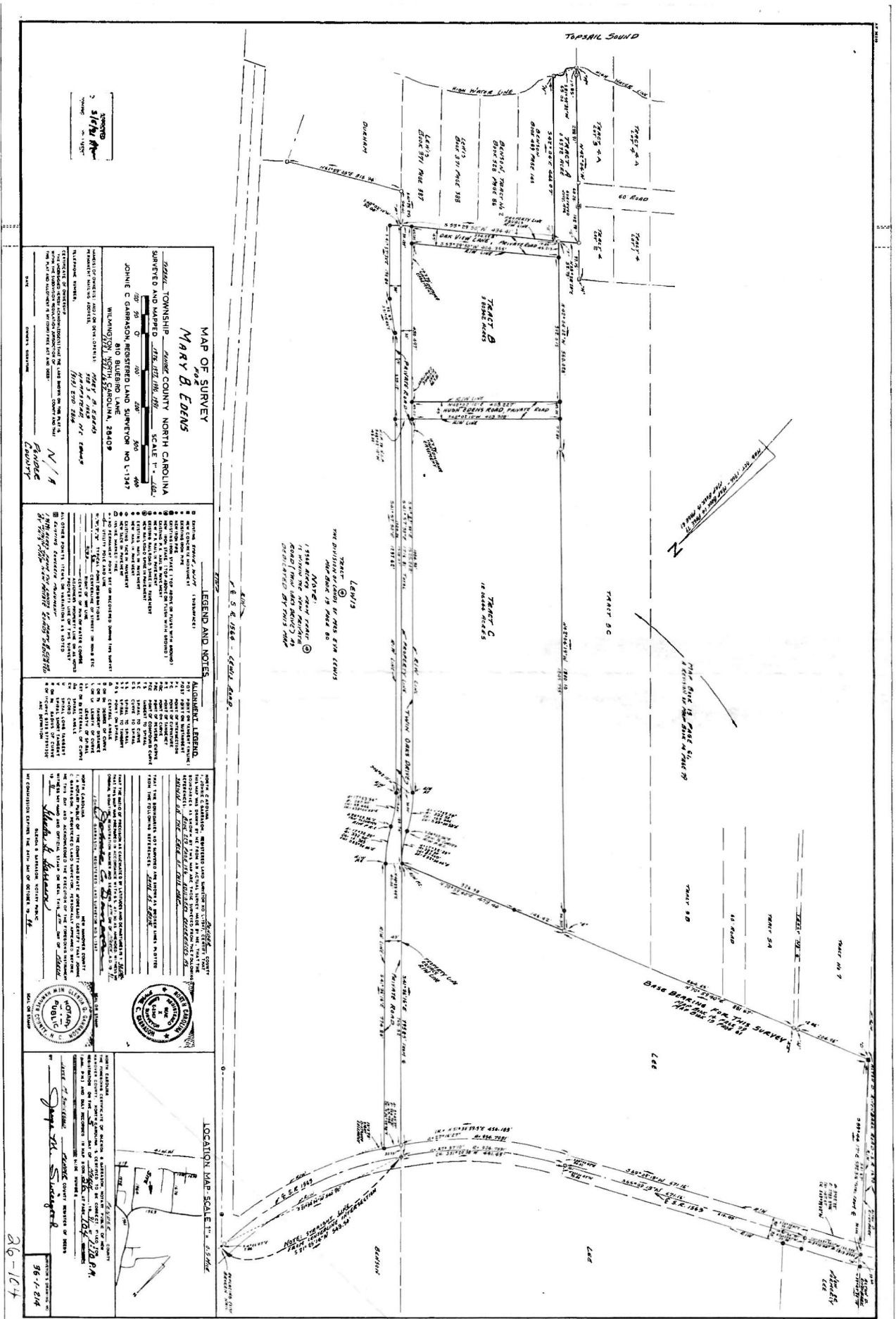
**CONCLUSION**

The Appellants' contentions are devoid of merit. The SUP Application is complete in all respects. Thus, the Sloop Point Duplex Owners/SUP Applicants respectfully request that the Board of Adjustment affirm in whole the decision of the Zoning Administrator.

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STATE OF NORTH CAROLINA  
COUNTY OF PENDER

AGREEMENT OF INGRESS, EGRESS  
AND ROAD MAINTENANCE.

THIS AGREEMENT made this 30th day of March, 1991,  
by and between Mary B. Edens, Widow, party of the first part;  
Vernon K. Lewis and wife, Teresa Coleman Lewis, parties of the  
second part; and Ivey W. Lewis and wife, Verona Lewis, parties  
of the third part.

JOYCE M. SWICELOOD  
REGISTER OF DEEDS  
PENDER COUNTY, N.C.

W I T N E S S E T H :

WHEREAS, party of the first part is the owner of certain  
lands located in Topsail Township, Pender County, and more  
particularly described in a deed recorded in Book 229, Page  
156 of the Pender County Register of Deeds; and,

WHEREAS, the parties of the second part are the owners  
of lands adjoining party of the first part, said lands which  
are designated as Tract 4 of the division of lands of Mrs. Eva  
Lewis recorded in Map Book 15 at Page 80 of the Pender County  
Register of Deeds. Parties of the second part are also owners  
of adjoining lands in Topsail Township, Pender County, North  
Carolina, described in a deed recorded in Book 371, Page 388  
of the Pender County Register of Deeds; and,

WHEREAS, the parties of the third part are the owners of  
certain adjoining lands located in Topsail Township, Pender  
County, North Carolina, as further described in a deed  
recorded in Book 371, Page 387 of the Pender County Register  
of Deeds; and,

WHEREAS, the party of the first part has caused to be  
constructed a private roadway called "Twin Oaks Drive", said  
private road being on both the lands of the party of the first  
part and the lands of the parties of the second part, with  
said road being shown on a map entitled "Map of Survey for  
Mary B. Edens" recorded in Map Book 26, Page 104 of the Pender  
County Register of Deeds. In addition, this map also shows  
two additional private roads, "Hugh Edens Road" and "Oak View  
Lane".

NOW, THEREFORE, the parties for valuable consideration  
each party as acknowledged by the execution of this agreement.

1

Recorded and Verified  
Joyce M. Swicelood  
Register of Deeds  
Pender County, N.C.

2

4



Party of the first part does hereby give, grant and convey unto parties of the second part the parties of the third part, their heirs, successors and assigns a perpetual right-of-way and easement for the purposes of ingress, egress and road maintenance subject to the conditions as stated further herein. Parties of the second part do hereby give, grant and convey unto parties of the first part, her heirs, successors and assigns a perpetual right-of-way and easement for the purposes of ingress, egress and road maintenance across the lands of the parties of the second and parties of the third part. Further conditions are as follows:

1. All of the parties agree that the recording of the aforementioned map hereby dedicates to private use that certain private road known as Twin Oaks Drive as shown on said map.

2. Party of the first part and parties of the second part hereby grant to parties of the third part, their heirs, successors and assigns, an easement for ingress and egress over Twin Oaks Drive and that portion of Oak View Lane that is Northeast of the projection of the Southwestern line of the Lewis Tract described in a Deed recorded in Book 371, Page 387 of the Pender County Register of Deeds and as shown on the aforementioned map.

3. Party of the first party hereby gives, grants and conveys to parties of the second part their heirs, successors and assigns an easement for ingress and egress over that portion of Twin Oaks Drive within the lands of the party of the first part and over that portion of Oak View Lane that is Northeast of the projection of the Southwestern line of the Lewis Tract described in a Deed recorded in Book 371 at Page 388 as shown on the aforementioned map.

4. Parties of the second part hereby give, grant and convey to party of the first part, her heirs, successors and assigns an easement for ingress and egress over that portion of Twin Oaks Drive within the lands of the parties of the second part as shown on the aforementioned map.

5. All parties of this agreement shall proportionately share in the costs and obligation of maintenance of all private road as shown on the aforementioned map. The manner of this proportionate sharing shall be consistent with the usage of said road by the parties. It is anticipated that if party of the first part, parties of the second part and parties of the third part use the road then party of the first part shall be responsible for 33% of the maintenance expense, parties of the second part shall be responsible for 33% of the maintenance and parties of the third part shall be responsible for 33% of the maintenance. Should any of the parties not use the road then it is contemplated that they should not be responsible for road maintenance. As successors in title use the roads, the respective percentages for responsibility shall change in accordance with the number of such successors in title that are actually using said road. The purpose of this scheme of road maintenance cost sharing is to provide a fair mechanism in that the burden of the expense shall fall upon the parties who are actually using the road. It may be necessary at some future time to adopt a different mechanism for road maintenance cost sharing.

6. Party of the first part and parties of the second part hereby agree, each with the other, that either party or their heirs, successors and assigns to the remaining undeveloped lands adjacent to said roads may grant easements to the other parties purchasing or acquiring lands now belonging to the party of the first part or parties of the second part said lands as indicated on the above-referenced map. Any documents required to accomplish the granting of an easement to owners of these undeveloped lands shall be executed subsequent to this agreement by either party of the first part or parties of the second part or their heirs, successors or assigns.

7. Party of the first part and parties of the second part hereby agree, each to the other, that either party may, independently or jointly with the other party, improve the

roads of North Carolina Department of Transportation Subdivision Road Specifications and may convey said roads to the North Carolina Department of Transportation for public use and maintenance. Any independent action by either party of first part or parties of the second part to improve said roads shall be adequate consideration to the other party for the right to convey said roads to the North Carolina Department of Transportation.

TO HAVE AND TO HOLD this right-of-way and easement to party of the first part, parties of the second part and parties of the third part, their successors and their successors in title it being agreed that the right-of-way and easement hereby granted is appurtenant to and run with the lands now owned by party of the first part and parties of the second part and hereinabove referred to.

IN TESTIMONY WHEREOF, the party of the first part, parties of the second part, and parties of the third part, their hands and seals the day and year first above written.

Mary B. Edens  
Mary B. Edens  
Vernon K. Lewis  
Vernon K. Lewis  
Teresa Coleman Lewis  
Teresa Coleman Lewis  
Ivey W. Lewis  
Ivey W. Lewis  
Verona Lewis  
Verona Lewis

STATE OF NORTH CAROLINA

COUNTY OF Pender

I, Pamela O. Padgett, a Notary Public in said County and State do hereby certify that Mary B. Edens personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 30th day of March, 1991.



Pamela O. Padgett  
Notary Public

My Commission Expires:

June 28, 1994

STATE OF NORTH CAROLINA

COUNTY OF Pender

I, Pamela O. Padgett, a Notary Public in said County  
and State do hereby certify that Vernon K. Lewis and wife,  
Teresa Coleman Lewis personally appeared before me this day  
and acknowledged the due execution of the foregoing  
instrument.

Witness my hand and notarial seal, this the 30th day  
March, 1991.

Pamela O. Padgett  
Notary Public

My Commission Expires:

June 28, 1994

STATE OF NORTH CAROLINA

COUNTY OF Pender

I, Pamela O. Padgett, a Notary Public in said County  
and State do hereby certify that Ivey W. Lewis and wife  
Verona Lewis personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 30th day  
March, 1991.

Pamela O. Padgett  
Notary Public

My Commission Expires:

June 28, 1994North Carolina Pender County

The foregoing (or annexed) certificate of

Pamela O. Padgett

is certified to be correct.

This 9th day of April, A.D. 1991Joyce M. Swicegood

Register of Deeds

By Gaphne D. Smith Deputy

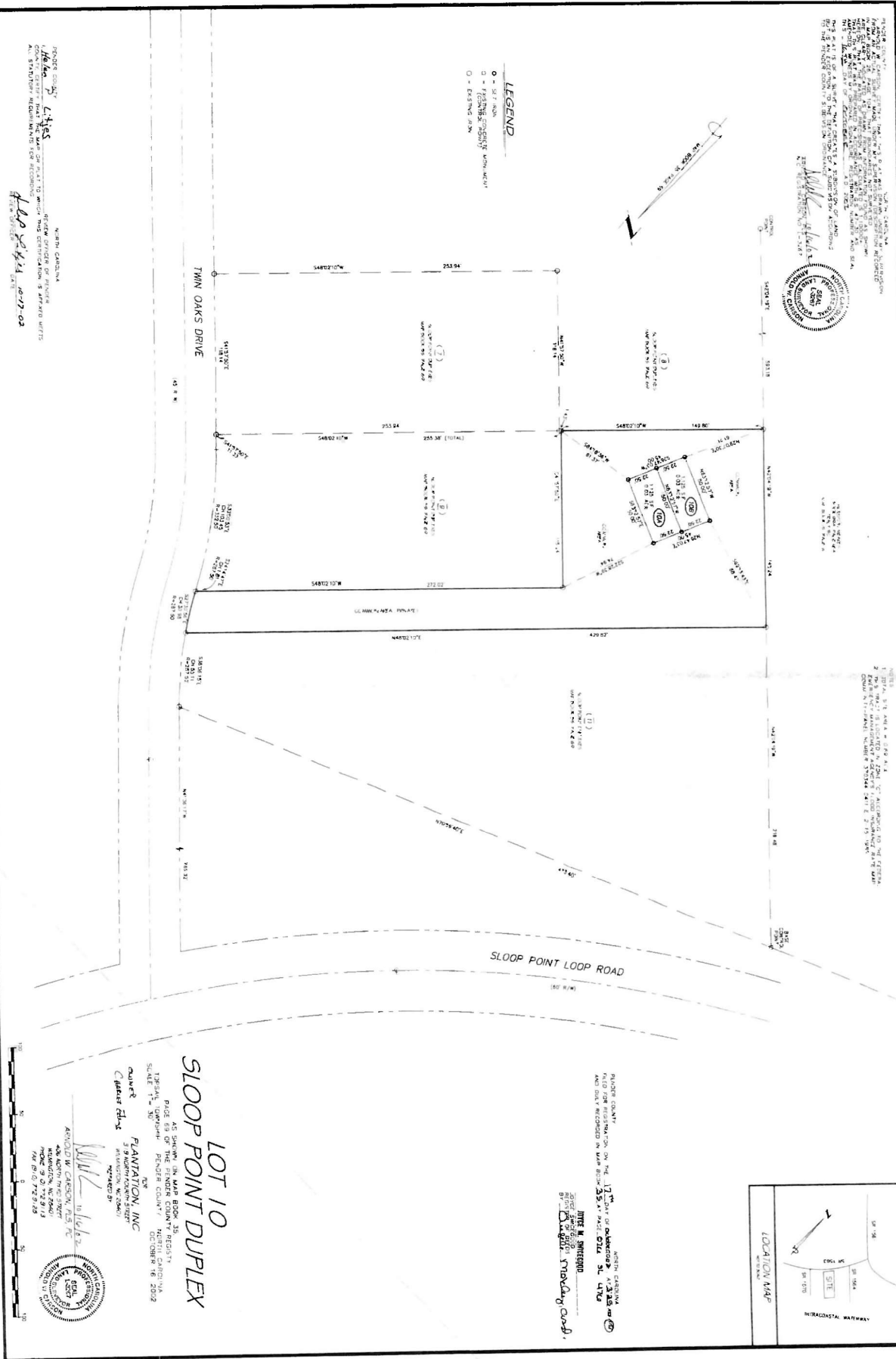




1. TOTAL 1978 AND 1979 AIRCRAFT TRAFFIC IS LOCATED IN 2ND "C" ACCOUNTING TO THE FEDERAL BUREAU OF INVESTIGATION. AGENTS HAD GOOD INSURANCE RATE WITH CROWN NATIONAL NUMBER 170348 CALL E 2-15 1945.

**LEGEND**

- = SET IRON
- = FERTILIZING CONCENTRATE (CONCENTRATED IRON)
- = EXTRACT IRON



Sr 476 mb 35 pg 076



FILED in Pender County, NC  
on Oct 21, 2002 at 02:17:18 PM  
by Joyce M. Swinegood  
Register of Deeds  
BOOK 1969 PAGE 179 - 185

## COVER SHEET

(Type of Document: ENABLING DECLARATION)

Grantor: MARY EDENS

Trustee (If applicable): N/A

Grantee: SLOOP POINT DUPLEXES

(Brief Description of property, if applicable): Being a portion of

Tract C is shown on a map recorded in Map Book 26 Page 104  
of the Pender County Registry

Return to: Ray C Blackburn 270-2022

Recorded and Verified  
Joyce M. Swinegood  
Register of Deeds  
Pender County, NC

**ENABLING DECLARATION ESTABLISHING A PLAN FOR COMMON OWNERSHIP AND MAINTENANCE**

MARY EDENS                                his/her successors and assigns, hereinafter referred  
to as grantor, his/her successor(s) and assign(s), and all future owners of the lands described  
herein, hereby covenant as follows:

SECTION ONE  
OWNERSHIP OF PROPERTY

Grantor owns certain real property described in this instrument, which said property, is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION TWO  
DESCRIPTION OF PROJECT

The above-described property is improved by the construction of a duplex residence on the tract. The above described real property and duplex residence upon said property will be divided into two separate units (hereinafter a "Unit" or the "Units").

Attached hereto and made a part hereof as Exhibit "B" is a survey by a licensed professional surveyor, illustrating the improvements, the division and the common area of the property.

### SECTION THREE ALLOCATION OF AREAS

Grantor is dividing the real property into the following separate feehold estates:

- a. One separately designated tract with a duplex residence upon each tract which results in two subpartially designated and legally described freehold estates, consisting of the spaces and areas contained within the perimeter walls of each half of the duplex residence together with each Unit's exterior walls. The joint or party walls constructed between the Units shall be considered common area jointly owned by the owners of the Units.
- b. One half undivided interest in the common area of tract to be held in common with the owner of the other one half interest in the common area for said tract, as shown on Exhibit B.
- c. The undivided interest, established and to be conveyed with each of the two respective Units, cannot be changed, and grantor, its successors and assigns, and grantees, covenant that the undivided interests in the common area and the fee titles to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each undivided interest shall be deemed to be conveyed or

encumbered with its respective Unit even though the description in the instruments of conveyance or encumbrance may refer only to the fee title to the Unit itself.

#### SECTION FOUR DESCRIPTION OF UNITS AND COMMON AREAS TO BE CONVEYED

Each Unit to be individually conveyed together with its accompanying undivided interest in its common area shall be known as Unit A and Unit, and each Unit's interest in the common areas shall be fifty percent (50%).

Each Unit shall be conveyed together with a non-exclusive easement for use of all such common areas as shown on Exhibit B, together with sufficient ingress and egress and an access easement to and from said common area.

#### SECTION FIVE COVENANT OF GRANTOR

Grantor, the fee owner(s) of real property described above, specifies that this declaration shall constitute covenants to run with the land and shall be binding on Grantor, its successors and assigns, and all subsequent owners of all or any part of the described real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees, or assigns.

#### SECTION SIX RESTRICTIVE COVENANTS

Each individual Unit may be occupied and used by the respective owner as a private dwelling for the owner, and family, tenants, and social guests, or for long or short-term rental and for no other purposes.

Other than the foregoing obligations, the owner of a respective family Unit shall have the absolute right to lease the Unit provided the lease is no less than thirty (30) days and is made subject to the covenants and restrictions contained in the Declaration. The respective family shall be personally liable for the actions and any damages caused by any tenants.

No Unit owner may add to, delete from, modify, alter, or otherwise make changes to the outside of any Unit without joinder of the adjoining Unit owner. This prohibition shall extend to structural and non-structural changes and shall extend to painting or otherwise modifying the color of each Unit.

#### SECTION SEVEN COMPLIANCE WITH DECLARATION

Each owner, tenant, or occupant of a Unit shall comply with the provisions of this Declaration as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for action to recover damages or to seek injunctive relief.

SECTION EIGHT  
CONTRIBUTION TO COMMON EXPENSES

(1) Common area driveway and common area as a whole  
No owner of a Unit may exempt such owner from liability for contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of any Unit.

By acceptance of a deed conveying title to a Unit, that Unit owner shall be responsible for and agrees to pay a pro-rata share of the cost of maintaining the common area.

The pro-rata share of assessments shall be apportioned equally among each individual Unit and not per capita among Unit owners.

The assessments described above shall be used for maintenance of the common area. The Unit owners shall be responsible for the maintenance of such common area and such area may include roads, walkways, yard, fence and such other improvements as are made to the property described herein.

(2) Individual tracts conveyed hereby  
By acceptance of a deed conveying title to a Unit, each Unit owner shall be responsible for and agrees to pay for one half of the common maintenance costs of each duplex. Such common maintenance costs may include but are not limited to upkeep of the exterior of each duplex, shared wells, or septic systems.

The owner of each Unit is hereby granted the authority to bring an action at law or in equity to enforce the obligation against the adjoining Unit. In the event that the owner of one Unit fails to make payment for his/her pro-rata share of common maintenance expenses, the owner of the adjoining Unit may cause any necessary repairs to common areas to be made and seek compensation from the Unit owner who fails to pay his share of such expenses.

SECTION NINE  
ASSESSMENT OF LIENS

All sums assessed by the association but unpaid for the common expenses chargeable to any Unit shall constitute a lien on such Unit prior to all other liens excepting only: (1) tax liens on the Units, and (2) all sums unpaid on any prior mortgages of record. Such lien may be foreclosed by suit the owner of the other Unit.

Suit to recover a money judgment for unpaid expenses shall be maintainable without foreclosing or waiving the lien securing the expenses. The successful party to any suit shall be entitled to reasonable attorney fees and costs.

SECTION TEN  
ASSESSMENTS

In a voluntary conveyance of a Unit, grantee of the Unit shall be jointly and severally liable with grantor of all unpaid taxes, liens, and assessments against the grantor for the grantor's



share of the common expenses up to the time of the grant or conveyance, without prejudice to grantee's right to recover from grantor the amounts paid by grantee for such assessments.

SECTION ELEVEN  
BLANKET PROPERTY INSURANCE ON DUPLEX

Each duplex shall maintain a common hazard and liability insurance policy upon the duplex structure with the costs of such policy being allocated equally between said Unit owners. The policy amount of said common insurance policy shall not be less than the replacement value of the duplex structure. Each Unit owner may maintain such policies as said Unit owner desires so as to cover losses to personal property of said owner.

SECTION TWELVE  
REVOCATION OR AMENDMENT

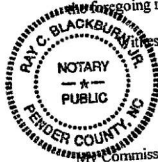
IN WITNESS WHEREOF, GRANTOR has hereunder set his hand and seal, the day and year first above written.

Mary Edens (SEAL)  
Mary Edens

\_\_\_\_ (SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, R. C. Blackburn, Jr., a Notary Public of the County and State aforesaid, certify that Mary Edens personally appeared before me this day and acknowledged the execution of the foregoing instrument.



I set my hand and official stamp or seal, this the 10th day of October, 2002.

R. C. Blackburn, Jr.  
Notary Public

My Commission Expires: 8-27-06

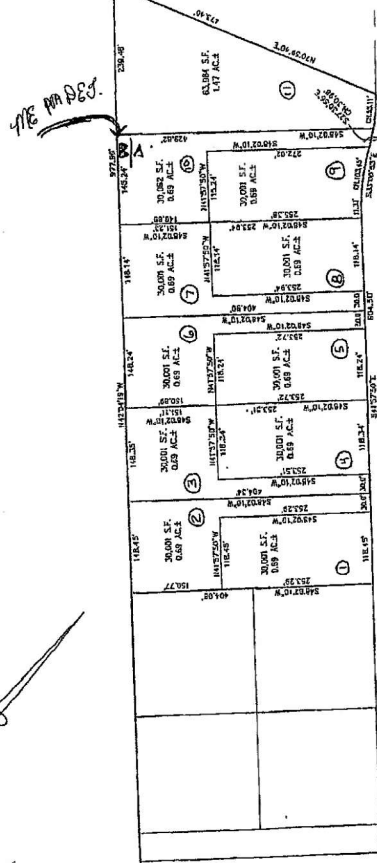
The Foregoing Certificate(s) of R. C. Blackburn, Jr., Notary(s) Public, is/are hereby certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Joyce M. Swicegood, Register of Deeds for Pender County

By: Sarah Long  
Deputy/Assistant Register of Deeds

Exhibit "A" to Enabling Declaration

Being a portion of tract "C" as said Tract C is shown on a map recorded in Map Book 26 at page 104 of the Pender County Registry, reference to which said map is hereby made for a more particular reference.



3. This map is not a certified survey  
has not been reviewed by a  
government agency for  
compliance with any applicable  
land development regulations.



3 Issued Oct 21 2002  
\$80.00  
State of Pender  
North Carolina County  
Real Estate Excise Tax

Excise Tax \$ 80.00

Parcel No.: Portion of -05042

This instrument was prepared by Ray C. Blackburn, Jr., Attorney at Law, PO Box 895, Hampstead, NC 28443.

Mail after recording to: Ray C. Blackburn, Jr., Attorney at Law

STATE OF NORTH CAROLINA

COUNTY OF PENDER

GENERAL WARRANTY DEED

THIS DEED, made this 10th day of October, 2002, by and between, MARY EDENS (Widow) Hereinafter called "Grantor", and Bockhart Exchange Properties, LLC (Hereinafter called "Grantee"). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

That GRANTOR, for valuable consideration paid by the GRANTEE, receipt of which is hereby acknowledged, has bargained and sold, and by these presents does hereby bargain, grant, sell and convey unto GRANTEE in fee simple, the below described tract or parcel of land located in Topsail Township, Pender County, North Carolina and being more particularly described as follows:

See exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the above described lands and premises, together with all and singular, the rights, privileges, easements, tenements, duties, obligations and appurtenances thereunto belonging, or in anywise appertaining unto said GRANTEE, in fee simple, FOREVER.

And the GRANTOR covenants with the GRANTEE, that the GRANTOR is seized of the

Recorded and Verified  
Joyce M. Swicegood  
Register of Deeds  
Pender County, NC



premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that GRANTOR will WARRANT and DEFEND the title against the lawful claims and demands of any and all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

1. Ad Valorem Taxes for 2002 and subsequent years.
2. General utility service easements and rights of way of record.
3. Easements and restrictions of record.
4. Pender County Zoning and/or Subdivision Ordinances and Regulations.

IN WITNESS WHEREOF, GRANTOR has hereunder set his hand and seal, the day and year first above written.

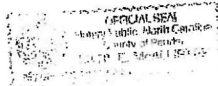
Mary Edens (SEAL)  
Mary Edens

\_\_\_\_ (SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Mary E. McAllister, a Notary Public of the County and State aforesaid, certify that Mary Edens personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 10th day of October, 2002.



Mary E. McAllister  
Notary Public

My Commission Expires: 11-12-2005

The foregoing Certificate(s) of Mary E. McAllister, Notary(s) Public, is/are hereby certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Joyce M. Swicegood, Register of Deeds for Pender County

By: Joyce M. Swicegood  
Deputy Register of Deeds

## Exhibit "A" to Deed

Being all of Lot 7 of Sloop Point Duplexes as the same are shown on a map of said property recorded in Map Book 35 at Page 69 of the Pender County Registry, reference to which said map is hereby made for a more particular description.

Said lot is taken subject to that Enabling Declaration establishing a plan for Common Ownership and Maintenance which said declaration is recorded in Book 1969 at Page 177 of the Pender County Registry.

Said lot is conveyed together with such rights as may be created by a declaration establishing such amenities upon Tract "A" as said tract is shown on a map recorded in Map Book 26 at Page 104 of the Pender County Registry reference to which said map is hereby made for a more particular description.

Said lot is conveyed subject to a maintenance obligation for such amenities as may be located upon said Tract "A." Each person or entity acquiring a lot hereunder shall bear a proportionate cost of maintaining such amenities and the common areas. The amenities to be constructed upon said Tract "A" shall include a boat ramp and dock.

Said lot is conveyed together with and subject to an easement for ingress, egress and regress over and across those roads labeled Twin Oaks Drive and Oak View Lane as said roads are shown on a map recorded in Map Book 26 at Page 104 of the Pender County Registry, reference to which said map is hereby made for a more particular reference.

Said lot is conveyed together with the following maintenance obligation. Each person or entity acquiring a lot hereunder shall bear a proportionate cost of maintaining Twin Oaks Drive and Oak View Lane as said roads are shown on a map recorded in Map Book 26 at Page 104 of the Pender County Registry. This maintenance obligation is further set forth in an instrument recorded in Book 770 at page 248 of the Pender County Registry.



★ BLACKBURN

FILED in Pender County, NC  
on Oct 21 2002 at 02:18:35 PM  
by Joyce M. Suicgood  
Register of Deeds  
BOOK 1969 PAGE 186

# COVER SHEET

(Type of Document: ENABLING DECLARATION

Grantor: GARMON W EDENS, et al

Trustee (If applicable): \_\_\_\_\_

Grantee: SLOOP POINT DUPLEXES

(Brief Description of property, if applicable): Being a portion of Tract C  
as said Tract C is shown on a map recoded in Map Book 26 at page  
104 of the Pender County Registry

Return to: Ray C Blackburn, Jr 270-2022

Recorded and Verified  
Joyce M. Suicgood  
Register of Deeds  
Pender County, NC

Exhibit "A" to Enabling Declaration

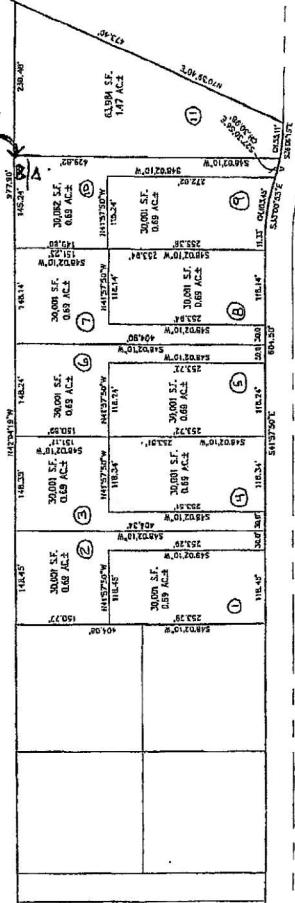
Being a portion of tract "C" as said Tract C is shown on a map recorded in Map Book 26 at page 104 of the Pender County Registry, reference to which said map is hereby made for a more particular reference.

Exhibit "C" to Enabling Declaration

Grantors herein are Garmon W. Edens and wife Hazel M. Edens, Charles Hugh Edens, Jr. Single, Mary E. Thomas and husband Johnnie G. Thomas, Jr., and Sandra Siska and husband Gabor Siska.



7/18 M.D.C.



This map is not a certified survey  
and has not been reviewed by a  
local government agency for  
compliance with any applicable  
land development regulations.

13

Issued Oct 21 2002  
\$136.00  
State of Pender  
North Carolina County  
Real Estate Excise Tax

Excise Tax: \$ 136.00

Parcel No.: Portion of -41205

This instrument was prepared by Ray C. Blackburn, Jr., Attorney at Law, PO Box 895, Hampstead, NC 28443.

Mail after recording to: Ray C. Blackburn, Jr.

STATE OF NORTH CAROLINA

COUNTY OF PENDER

Recorded and Indexed  
Joyce M. Sedgewood  
Register of Deeds  
Pender County, NC

GENERAL WARRANTY DEED

THIS DEED, made this 10th day of October, 2002, by and between, GARMON W. EDENS and wife HAZEL M. EDENS, CHARLES HUGH EDENS, JR. (Single), MARY E. THOMAS also known as DIANE E. THOMAS and husband JOHNIE G. THOMAS, SANDRA E. SISK and husband GABOR SISK Hereinafter called "Grantor"), and JAMES A. SPICUZZA and RICHARD A. LEHRER, as tenants in common (Hereinafter called "Grantee"). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

That GRANTOR, for valuable consideration paid by the GRANTEE, receipt of which is hereby acknowledged, has bargained and sold, and by these presents does hereby bargain, grant, sell and convey unto GRANTEE in fee simple, the below described tract or parcel of land located in Topsail Township, Pender County, North Carolina and being more particularly described as follows:

See exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the above described lands and premises, together with all and singular, the rights, privileges, easements, tenements, duties, obligations and appurtenances thereunto

belonging, or in anywise appertaining unto said GRANTEE, in fee simple, FOREVER.

And the GRANTOR covenants with the GRANTEE, that the GRANTOR is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that GRANTOR will WARRANT and DEFEND the title against the lawful claims and demands of any and all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

1. Ad Valorem Taxes for 2002 and subsequent years.
2. General utility service easements and rights of way of record.
3. Easements and restrictions of record.
4. Pender County Zoning and/or Subdivision Ordinances and Regulations.

IN WITNESS WHEREOF, GRANTOR has hereunder set his hand and seal, the day and year first above written.

Garmon W. Edens (SEAL) ✓  
Garmon W. Edens

Hazel M. Edens (SEAL) ✓  
Hazel M. Edens

Charles Hugh Edens, Jr. (SEAL) ✓  
Charles Hugh Edens, Jr.

Mary E. Thomas aka Diane E. Thomas (SEAL) ✓  
Mary E. Thomas aka Diane E. Thomas

Johnnie G. Thomas, Jr. (SEAL) ✓  
Johnnie G. Thomas, Jr.

Sandra E. Siska (SEAL) ✓  
Sandra E. Siska

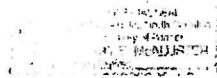
Gabor Siska (SEAL) ✓  
Gabor Siska

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Mary E. McAllister, a Notary Public of the County and State aforesaid, certify that Charles Hugh Edens, Jr., Garmon W. Edens, Hazel M. Edens, Mary E. Thomas aka Diane E. Thomas, Johnnie G. Thomas, Sandra E. Siska and Gabor Siska personally

appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 10th day of October, 2002.



*Joyce M. Swicegood*  
Notary Public

My Commission Expires: 11-12-2005

The Foregoing Certificate(s) of *Marion E. McAllister*, Notary(s) Public, is/are hereby certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Joyce M. Swicegood, Register of Deeds for Pender County

By: *Joyce M. Swicegood*  
~~Deputy~~ Assistant Register of Deeds

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Mary E. McAllister, a NOTARY PUBLIC for said County and State, do hereby certify that **DENISE T. JONES**, Attorney-in-Fact for **JOHNIE G. THOMAS, JR. and MARY EDENS THOMAS**, personally appeared before me this day, and being by me duly sworn, says that she executed the foregoing and annexed instrument for and in behalf of the said **JOHNIE G. THOMAS, JR. and MARY EDENS THOMAS** and that her authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Pender, State of North Carolina, on the 21<sup>st</sup> day of October, 2002, in Book 1969, Page 315, and that this instrument was executed under and by virtue of the authority given by said instrument granting her Power of Attorney.

I do further certify that the said **DENISE T. JONES** acknowledged the due execution of the foregoing instrument for the purposes therein expressed for and in behalf of the said **JOHNIE G. THOMAS, JR. and MARY EDENS THOMAS**.

Witness my hand and official seal, this 10<sup>th</sup> day of October, 2002.

(SEAL)  *Mary E. McAllister*  
NOTARY PUBLIC

My Commission Expires: 11-12-2005

Exhibit "A"

Being all of Tract "A" as shown on a map entitled "Map of Survey for Mary B. Edens" which said map is recorded in Map Book 26 at Page 104 of the Pender County Registry, reference to which said map is hereby made for a more particular description.

This tract is conveyed subject to the right of Grantors and their immediate family to use any boat ramp or dock constructed upon said property for and during the lifetimes of such grantors







FILED

04 JAN -5 PM 3:42

JAMES M. VICKS  
REGISTER OF DEEDS  
FENDER COUNTY, NCRecorded and Verified  
Joyce M. Swinegood  
Register of Deeds  
Fender

## COVER SHEET

(Type of Document: Deed of Easement)Grantor: Richard A. Lehrer and wife, Anna M. Lehrer and  
James A. Spicuzza and wife, Amy L. Spicuzza

Trustee (If applicable): \_\_\_\_\_

Grantee: Owners of Lots 1A & B, 2A & B, 3A & B, 4A & B, 5A & B, 6A & B  
7A & B, 8A & B, 9A & B, 10A & B, and Lot 11, Sloop Point Duplexes

(Brief Description of property, if applicable): \_\_\_\_\_

Sloop Point DuplexesReturn to: Ray C. Blackburn, Jr.  
PO Box 895, Hampstead, NC 28443

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PENDER COUNTY

## DEED OF EASEMENT

THIS DEED OF EASEMENT, made as of 30 December 2003, by and between Richard A. Lehrer and wife, Anna M. Lehrer, and James A. Spicuzza and wife Amy L. Spicuzza, herein called Grantor, and the owners of lots 1A and B, 2A and B, 3A and B, 4A and B, 5A and B, 6A and B, 7A and B, 8A and B, 9A and B, 10A and B, and 11 Sloop Point duplexes, herein called Grantee. (The designation Grantor and Grantee, as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

## WITNESSETH:

## RECITALS:

- R1. Grantor is the owner of a 2 undivided interest in Tract A as shown on a map entitled Map of Survey for Mary B. Edens recorded in map Book 26 at page 104 of the Pender County Registry, by virtue of a deed recorded in Book 1969 at page 312 of the Pender County Registry.
- R2. The owners of lots described in a deed recorded in Book 36 at page 48 and/or Book 35 at Page 69 of the Pender County Registry.
- R3. The owners of lots described in Book 35 at page 76, and/or Book 35 at page 69 of the Pender County Registry.
- R4. Grantor has agreed to grant to each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees, for the use of a boat launching/landing ramp and access to the Atlantic Intracoastal Waterway, together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.

NOW, THEREFORE, in consideration of the premises and other good valuable considerations, the receipt, sufficiency and adequacy of which are hereby acknowledged, Grantor gives, grants, bargains and conveys to each of the Grantees and his hei and assigns the right and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on Tract A as shown on the map entitled Map of Survey for Mary B. Edens recorded in Map Book 26 at Page 104 of the Pender County Registry together with the right and privilege to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the Atlantic Intracoastal Waterway. This grant shall be appurtenant to and run with the title to the lots described in Book 36 at page 48, Book 35 at page 76 and book 35 at page 69 of the Pender County Registry.

Said easement is conveyed subject to a maintenance obligation for said facilities. Each person or entity acquiring an easement of right of way hereunder shall bear a proportionate cost of maintaining such amenities, including the pier/dock and the boat launching/landing facilities.

TO HAVE AND TO HOLD said easement of right of way to the Grantee in perpetuity.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this, the

day and year first above written



Richard A. Lehrer

Anna M. Lehrer

STATE OF COLORADO  
COUNTY OF EL PASO

I, James A. Bonicelli, a Notary Public in and for the  
aforesaid County and State, do hereby certify that Richard A. Lehrer and his wife, Anna M. Lehrer,  
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.  
Witness my hand and notarial seal this the 30 day of December, 2003.

Notary Public

My Commission Expires: 2/13/05

(SEAL)

James A. Spicuzza

(SEAL)

Amy L. Spicuzza

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

I, Mary E. McAllister, a Notary Public in and for the  
aforesaid County and State, do hereby certify that James A. Spicuzza and his wife, Amy L. Spicuzza,  
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.  
Witness my hand and notarial seal this the 29 day of January, 2004.

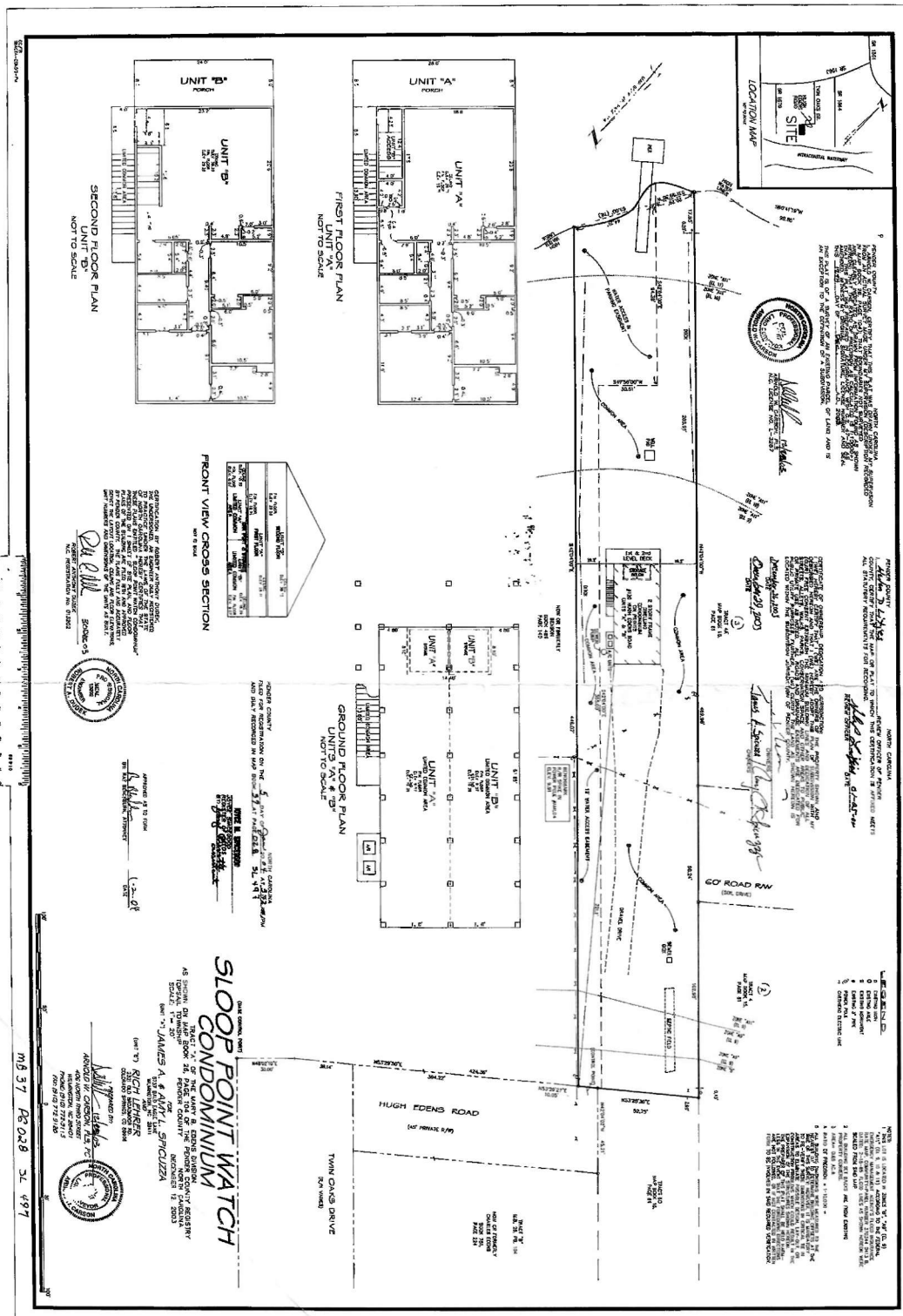
Notary Public

My Commission Expires: 11-12-2005

NORTH CAROLINA - PENDER COUNTY: The foregoing  
(or annexed) certificate of James A. Bonicelli is  
certified to be correct. This 5 day of Jan, A.D. 2004  
JOYCE M. SWICEGOOD - Pender County Register of Deeds  
By: Jah P. Swen Deputy/Assistant  
Register of Deeds  
\* Mary E. McAllister







150-080-004

MS 37 PG 028 SL 497

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$640.00

Parcel Identifier No. 4214-91-8413-0000 Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

Mail/Box to: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

This instrument was prepared by: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

Brief description for the Index: Unit A, Sloop Point Watch Condominium

THIS DEED made this 11 day of September, 2019, by and between

GRANTOR

Stuart Dalee Laney, Jr. and Melba Thompson Laney,  
Trustees of the Laney Family Revocable Trust dated  
June 29, 2006 and any amendments thereto  
504 Captain Dexter Wynd  
Wilmington, NC 28411

GRANTEE

Adam Thomas Winstead, an unmarried man  
1228 Watauga Street  
Raleigh, NC 27604

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of Hampstead Township, Pender County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference as if fully set out.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 4604 page 2854.  
All or a portion of the property herein conveyed includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book 37 page 28.

Page 1 of 2

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002, 2013  
Printed by Agreement with the NC Bar Association - 1981

This standard form has been approved by:  
North Carolina Bar Association - NC Bar Form No. 3

Submitted electronically by "Wilkerson Law"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Pender County Register of Deeds.

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

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

1. The lien of the 2019 Ad Valorem taxes, now due and payable;
2. Restrictions of record applicable to said lot;
3. Easements to public utilities of record; and
4. Zoning and/or building and subdivision ordinances.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

By: \_\_\_\_\_ (Entity Name) Stuart Dale Laney, Jr. Trustee (SEAL)  
 Print/Type Name: Stuart Dale Laney, Jr., Trustee of the Laney Family  
Revocable Trust dtd 6/29/2006 and any amendments thereto  
 By: \_\_\_\_\_ Melba Thompson Laney Trustee (SEAL)  
 Print/Type Name: Melba Thompson Laney, Trustee of the Laney Family  
Revocable Trust dtd 6/29/2006 and any amendments thereto  
 By: \_\_\_\_\_  
 Print/Type Name & Title: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Print/Type Name & Title: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Print/Type Name & Title: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Print/Type Name & Title: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Print/Type Name & Title: \_\_\_\_\_

State of North Carolina - County or City of New Hanover  
 I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that  
Stuart Dale Laney, Jr., Trustee of the Laney Family Revocable Trust dtd 6/29/2006 personally appeared before me this day and acknowledged the due  
 execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 17 day of  
September, 20 19  
 My Commission Expires: 10-30-23  
 (Affix Seal)  
Gracie R. Davidson  
 Notary's Printed or Typed Name

State of North Carolina - County or City of New Hanover  
 I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that  
Melba Thompson Laney, Trustee of the Laney Family Revocable Trust dtd 6/29/2006 personally appeared before me this day and acknowledged the due  
 execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 17 day of  
September, 20 19  
 My Commission Expires: 10-30-23  
 (Affix Seal)  
Gracie R. Davidson  
 Notary's Printed or Typed Name

State of \_\_\_\_\_ - County or City of \_\_\_\_\_  
 I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that  
 \_\_\_\_\_ personally came before me this day and acknowledged that  
 \_\_\_\_\_ of \_\_\_\_\_, a North Carolina or  
 \_\_\_\_\_ corporation/limited liability company/general partnership/limited partnership (strike through the  
 inapplicable), and that by authority duly given and as the act of such entity, \_\_\_\_\_ he signed the foregoing instrument in its name on its  
 behalf as its act and deed. Witness my hand and Notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
 My Commission Expires: \_\_\_\_\_  
 (Affix Seal) \_\_\_\_\_ Notary Public  
 Notary's Printed or Typed Name

## EXHIBIT "A"

BEING all of Unit A together with a one-half undivided interest in the lands designated as "common area" and together with the exclusive use of the lands shown on "Unit "A" limited common area" as the same are shown or denominated on a map entitled "Sloop Point Watch Condominium" and recorded in Map Book 37 at Page 28, of the Pender County Registry, to which said plat reference is hereby made for a greater certainty of description and incorporated herein by reference.

Sometimes known as: 120 Hugh Edens Lane, Unit A  
Hampstead, NC 28443

Tax Parcel # 4214-91-8413-0000



This Instrument was prepared by Daniel D. Mahn, Attorney at Law,  
without title certification

Parcel ID: 4214-82-7797-000  
Excise Tax: \$348.00

STATE OF NORTH CAROLINA

GENERAL WARRANTY DEED

COUNTY OF PENDER

Brief Description for the Index: Unit 7B, Sloop Point Duplexes

THIS DEED, made and entered into this \_\_\_ day of June, 2020,  
by and between **SALLY FERRANTE (formerly Sally C. Austin, Deed Book  
3062, Page 248, Pender County Registry)** and husband, **NICK  
FERRANTE**, 200 Twin Oaks Drive, Hampstead, NC 28443, hereinafter  
referred to as the "Grantor") and **WEIHUNG BETTY CHANG and husband,  
CHAD EDWARD CURRY**, (hereinafter referred to as the "Grantee")  
having a mailing address 1100 DALGARVEN DR, APEX, NC 27502

WITNESSETH:

THAT Grantor, for a valuable consideration paid by the  
Grantee, the receipt of which is hereby acknowledged, have and by  
these presents do grant, bargain, sell and convey unto the Grantee  
in fee simple all of that certain lot or parcel of land situated  
in Pender County, North Carolina, and more particularly described  
as follows:

BEING ALL OF THAT PROPERTY DESCRIBED IN EXHIBIT A  
ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

The property herein described was acquired by Grantor by  
instrument recorded in Book 3062, at Page 248, Pender County  
Registry.

submitted electronically by "Watson Legal, PLLC"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Pender County Register of Deeds.

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A map showing the above described property is recorded in Map Book 36, Page 48, Pender County Registry.

All or a portion of the property herein conveyed \_\_\_\_\_ includes \_\_\_\_\_ does not include the primary residence of the Grantor.

**TO HAVE AND TO HOLD** the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee and his heirs, successors and assigns in fee simple forever.

And the Grantor covenants with the Grantee that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and the Grantor will warrant and defend the title against the lawful claims of all persons whomsoever other than the following exceptions: Restrictions, zoning and land use ordinances, easements and rights of way of record.

**IN WITNESS WHEREOF**, the Grantor has duly executed the foregoing instrument as of the day and year first above written.



Sally Ferrante (SEAL)  
Sally Ferrante

Nick Ferrante (SEAL)  
Nick Ferrante

STATE OF NORTH CAROLINA  
COUNTY OF Pender

I, Sandra C. McNeil, a Notary Public of the County and State aforesaid, certify that Sally Ferrante and Nick Ferrante personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and official stamp or seal, this 25<sup>th</sup> day of June, 2020.

My Commission Expires:  
Feb. 26, 2022

Sandra C. McNeil  
Notary Public

**EXHIBIT A**

Being all of Lot 7B as shown on a map entitled "Lots 1-9 Sloop Point Duplexes" as recorded in Map Book 36, at Page 48, Pender County Registry, reference to which is hereby made for a more particular description.

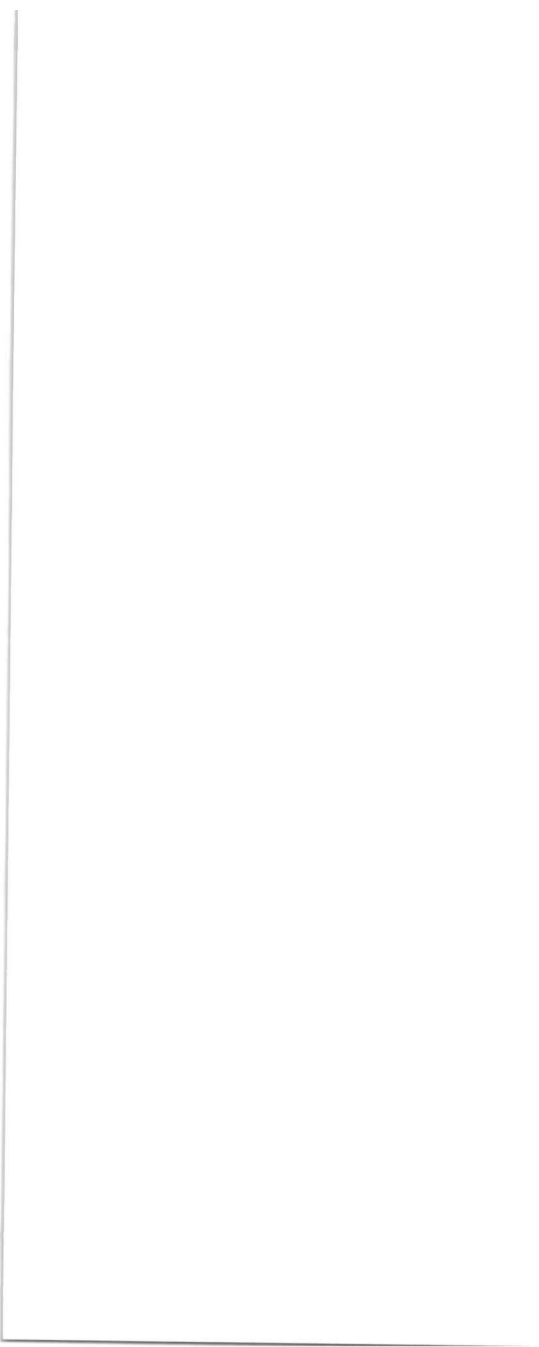
Said lot is taken subject to that Enabling Declaration establishing a plan for Common Ownership and Maintenance which said declaration is recorded in Book 1969, at Page 179 of the Pender County Registry.

Said lot is conveyed together with such rights as may be created by a declaration establishing such amenities upon Tract "A" as said tract is shown on a map recorded in Map Book 26, at Page 104 of the Pender County Registry, reference to which said map is hereby made for a more particular description.

Said lot is conveyed subject to a maintenance obligation for such amenities as may be located upon said Tract "A". Each person or entity acquiring a lot hereunder shall bear a proportionate cost of maintaining such amenities and the common areas. The amenities to be constructed upon said Tract "A" shall include a boat ramp and dock.

Said lot is conveyed together with and subject to an easement for ingress, egress and regress over and across those roads labeled Twin Oaks Drive and Oak View Lane as said roads are shown on a map recorded in Map Book 26, at Page 104 of the Pender County Registry, reference to which map is hereby made for a more particular description.

Said lot is conveyed together with the following maintenance obligation. Each Person or entity acquiring a lot hereunder shall bear a proportionate cost of maintaining Twin Oaks Drive and Oak View Lane as said roads are shown on a map recorded in Map Book 26, at Page 104 of the Pender County Registry. This maintenance obligation is further set forth in an instrument recorded in Book 770, at Page 248 of the Pender County Registry.



NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$638.00

Parcel Identifier No. 4214-91-8387-000B Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

Mail/Box to: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

This instrument was prepared by: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

Brief description for the Index: UNIT B, Sloop Point Watch Condo

THIS DEED made this 3rd day of October, 2020, by and between

GRANTOR

GRANTEE

Megaleg, LLC, a North Carolina limited  
liability company  
112 Broadview Lane  
Hampstead, NC 28443

Brian C. Walsh and wife,  
Lauren Cardwell  
120 Hugh Edens Lane, #B  
Hampstead, NC 28443

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g.  
corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular,  
plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by  
these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit  
situated in the City of Hampstead Township, Pender County,  
North Carolina and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3993 page 176.  
All or a portion of the property herein conveyed includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book 37 page 28.

Page 1 of 2

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002, 2013  
Printed by Agreement with the NC Bar Association - 1981

This standard form has been approved by:  
North Carolina Bar Association - NC Bar Form No. 3

Submitted electronically by "Wilkerson Law"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Pender County Register of Deeds.

16

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

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

1. The lien of the 2020 Ad Valorem taxes, now due and payable;
2. Restrictions of record applicable to said lot;
3. Utility easements of record;
- and 4. Zoning and/or building and subdivision ordinances.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Megaleg LLC, a North Carolina limited liability company

(Entity Name)

By: Mary Diane Edens Thomas

Print/Type Name: \_\_\_\_\_ (SEAL)

Print/Type Name & Title: Mary Diane Edens Thomas, Manager

Print/Type Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

Print/Type Name & Title: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

Print/Type Name & Title: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_ (SEAL)

State of \_\_\_\_\_ - County or City of \_\_\_\_\_

I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
(Affix Seal)

\_\_\_\_\_  
Notary's Printed or Typed Name

State of \_\_\_\_\_ - County or City of \_\_\_\_\_

I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
(Affix Seal)

\_\_\_\_\_  
Notary's Printed or Typed Name

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Mary Diane Edens Thomas personally came before me this day and acknowledged that she is the Manager of Megaleg LLC, a North Carolina or ~~corporation/limited liability company/generally owned partnership/limited liability partnership~~ (strike through the inapplicable), and that by authority duly given and as the act of such entity, she signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 18 day of October, 2020.

My Commission Expires: 8/11/2024  
(Affix Seal)

**JANET PATTERSON**  
NOTARY PUBLIC  
NEW HANOVER CO., NC  
My Commission Expires 8-11-2024

\_\_\_\_\_  
Notary's Printed or Typed Name

## EXHIBIT A

BEING ALL OF UNIT "B" TOGETHER WITH ONE-HALF UNDIVIDED INTEREST IN THE LANDS DESIGNATED AS "COMMON AREAS" AND TOGETHER WITH THE EXCLUSIVE USE OF THE LANDS SHOWN AS "SLOOP POINT WATCH CONDOMINIUM UNIT B LIMITED COMMON AREA" AS THE SAME ARE SHOWN OR DENOMINATED ON A MAP RECORDED IN MAP BOOK 37 AT PAGE 28 OF THE PENDER COUNTY REGISTRY, REFERENCE TO WHICH SAID MAP IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION.

SAID PROPERTY IS CONVEYED TOGETHER WITH AND SUBJECT TO THE TERMS OF THAT DEED OF EASEMENT RECORDED IN BOOK 2295, PAGE 84 OF THE PENDER COUNTY REGISTRY.

Property address: 120 Hugh Edens Lane, #B, Hampstead, NC 28443

Parcel ID #: 4214-91-8387-000B







**Steve Coggins**

---

**From:** Betty Chang <changwb@yahoo.com>  
**Sent:** Tuesday, November 15, 2022 11:57 AM  
**To:** Steve Coggins  
**Subject:** Caleb Smith: Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

----- Forwarded Message -----

**From:** Caleb Smith <calebsmith63@hotmail.com>  
**To:** Betty Chang <changwb@yahoo.com>  
**Sent:** Tuesday, November 15, 2022 at 11:46:25 AM EST  
**Subject:** Re: Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

Hi Betty,

I'm sending this e-mail to confirm my support for the Special Use Permit application filed to Pender County, as well as giving you my permission to submit/sign on my behalf.

---

**From:** Betty Chang <changwb@yahoo.com>  
**Sent:** Tuesday, November 15, 2022 10:19 AM  
**To:** calebsmith63@hotmail.com <calebsmith63@hotmail.com>  
**Cc:** Chad Curry <curry\_chade@yahoo.com>  
**Subject:** Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

Hi Caleb,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

Betty  
201-294-2119

## Steve Coggins

---

**From:** Betty Chang <changwb@yahoo.com>  
**Sent:** Tuesday, November 15, 2022 8:48 AM  
**To:** Steve Coggins  
**Subject:** Robert Russell: Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

----- Forwarded Message -----

**From:** Betty Chang <changwb@yahoo.com>  
**To:** Robert Russell <drussell6357@gmail.com>  
**Cc:** Chad Curry <curry\_chade@yahoo.com>  
**Sent:** Tuesday, November 15, 2022 at 08:47:29 AM EST  
**Subject:** Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

Hi Dale,  
Thank you for your confirmation that you received the email we sent regarding your permission for me to act as the agent in our Special Use Permit application submittal.

I have not received your email response back, but per your text you have confirmed your support of the SUP application. I am following up in writing, so that we have record that you have no objections with us taking the necessary steps on behalf of duplex owners (including you), to enforce the easement rights, defend the administrative appeal and pursue the use of our easement.

--Betty

Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: melissa danger (mel.danger@hotmail.com)

To: changwb@yahoo.com

Date: Saturday, November 12, 2022 at 10:02 AM EST

You have permission from Kerry and Melissa Danger, owners of 276-B, to sign on our behalf for the SUP for Sloop Point Duplexes

[Get Outlook for iOS](#)

---

**From:** Betty Chang <changwb@yahoo.com>

**Sent:** Saturday, November 12, 2022 9:54:31 AM

**To:** chrrian5@aol.com <chrrian5@aol.com>; tmflynn50@gmail.com <tmflynn50@gmail.com>; kerry.danger1@gmail.com <kerry.danger1@gmail.com>; drussell6357@gmail.com <drussell6357@gmail.com>; Melissa Danger <mel.danger@hotmail.com>; Robin Flynn <robinlorettaflynn@gmail.com>; Lee Stikeleather <leestikeleather64@gmail.com>; Danny Nobles <dnobles777@gmail.com>; Amy Boardwine <abbwine96@gmail.com>; Chris Frazee <frazeeecj@bellsouth.net>

**Subject:** For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved."

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119

Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: Lee Stikeleather (leestikeleather64@gmail.com)

To: changwb@yahoo.com

Cc: chrian5@aol.com; tmflynn50@gmail.com; kerry.danger1@gmail.com; drussell6357@gmail.com;  
mel.danger@hotmail.com; robinlorettaflynn@gmail.com; dnobles777@gmail.com; abbwine96@gmail.com;  
frazeeecj@bellsouth.net

Date: Saturday, November 12, 2022 at 10:06 AM EST

Yes, I acknowledge Betty Chang is our duplex owners agent and representative.

Thank you, Lee and Vickie Stikeleather

On Sat, Nov 12, 2022, 9:54 AM Betty Chang <changwb@yahoo.com> wrote:

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119

Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: chrian5@aol.com (chrian5@aol.com)

To: tmflynn50@gmail.com; kerry.danger1@gmail.com; drussell6357@gmail.com; mel.danger@hotmail.com;  
robinlorettaflynn@gmail.com; leestikeleather64@gmail.com; dnobles777@gmail.com; abbwine96@gmail.com;  
frazeeecj@bellsouth.net; changwb@yahoo.com

Date: Saturday, November 12, 2022 at 10:16 AM EST

On Saturday, November 12, 2022, 10:14:21 AM EST, chrian5@aol.com <chrian5@aol.com> wrote:

I Acknowledge and confirm W Betty Chang  
As our agent regarding the SUP application for  
Use of existing pier and dockage facility.  
Authorization is given to W Betty Chang to sign the application on our behalf.

Christopher Ianno and Laura Ianno  
256 A and B Twin Oaks Drive  
Hampstead NC 28443

On Saturday, November 12, 2022, 09:54:49 AM EST, Betty Chang <changwb@yahoo.com> wrote:

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119



Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: Chris Frazee (frazeeecj@bellsouth.net)

To: leestikeleather64@gmail.com

Cc: changwb@yahoo.com; chrian5@aol.com; tmflynn50@gmail.com; kerry.danger1@gmail.com; drussell6357@gmail.com; mel.danger@hotmail.com; robinlorettaflynn@gmail.com; dnoles777@gmail.com; abbwine96@gmail.com

Date: Saturday, November 12, 2022 at 10:17 AM EST

I acknowledge Betty Chang as my agent for Sloop Point Duplex Owners (234 Twin Oaks Dr A/B).

Thanks  
Chris Frazee  
G Squared Consultants LLC.  
Sent from my iPhone

On Nov 12, 2022, at 9:58 AM, Lee Stikeleather <leestikeleather64@gmail.com> wrote:

Yes, I acknowledge Betty Chang is our duplex owners agent and representative.

Thank you, Lee and Vickie Stikeleather

On Sat, Nov 12, 2022, 9:54 AM Betty Chang <[changwb@yahoo.com](mailto:changwb@yahoo.com)> wrote:

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119

## Re: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: Joseph Polansky (jpolansky59@gmail.com)  
To: changwb@yahoo.com  
Cc: curry\_chade@yahoo.com  
Date: Saturday, November 12, 2022 at 11:03 AM EST

Hi Betty,

Yes, I approve for you to sign the SUP on my behalf.

Thank you,

Joseph B. polansky  
Owner: 270 B twin oaks drive  
Hampstead NC 28443

Sent from my iPhone

On Nov 12, 2022, at 10:17 AM, Betty Chang <changwb@yahoo.com> wrote:

Joe,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119



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122.9kB



Appeal of Administrative Decision 120 Hugh Edens Ln. 8.30.22.pdf  
5.4MB



Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: Robin L Flynn (robinlorettaflynn@gmail.com)

To: changwb@yahoo.com

Date: Saturday, November 12, 2022 at 12:19 PM EST

I acknowledge Betty Chang as my/our agent and representative for the Sloop Point Duplex owners (200A Twin Oaks Drive).

On Sat, Nov 12, 2022, 9:54 AM Betty Chang <[changwb@yahoo.com](mailto:changwb@yahoo.com)> wrote:

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119

Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: Tom Flynn (tmflynn50@gmail.com)

To: changwb@yahoo.com

Date: Saturday, November 12, 2022 at 12:23 PM EST

I acknowledge Betty Chang as my/our agent and representative for the Sloop Point Duplex owners (200A Twin Oaks Drive).

Tom and Robin Flynn

On Sat, Nov 12, 2022, 9:54 AM Betty Chang <[changwb@yahoo.com](mailto:changwb@yahoo.com)> wrote:

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved."

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty

201-294-2119

Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: Danny Nobles (dnobles777@gmail.com)

To: changwb@yahoo.com

Cc: chrian5@aol.com; tmflynn50@gmail.com; kerry.danger1@gmail.com; drussell6357@gmail.com; mel.danger@hotmail.com; robinlorettaflynn@gmail.com; leestikeleather64@gmail.com; abbwine96@gmail.com; frazeecj@bellsouth.net

Date: Saturday, November 12, 2022 at 01:46 PM EST

I support the Special Use Permit application filed to Pender County and confirm Betty Chang has permission to submit/sign on my behalf for Twin Oaks duplex.  
Danny Nobles.

Sent from my iPhone

On Nov 12, 2022, at 9:54 AM, Betty Chang <changwb@yahoo.com> wrote:

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119



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Appeal of Administrative Decision 120 Hugh Edens Ln. 8.30.22.pdf  
5.4MB



Screen Shot 2022-11-12 at 9.39.04 AM.png  
318.7kB

Re: For your action: Acknowledge and confirm W Betty Chang as agent for duplex owner

From: Amy Everhart (abbwine96@gmail.com)

To: changwb@yahoo.com

Date: Saturday, November 12, 2022 at 02:29 PM EST

I acknowledge and confirm W Betty Chang  
As my agent regarding the SUP application for  
use of existing pier and dockage facility.  
Authorization is given to W Betty Chang to sign the application on my behalf.

Amy Everhart  
276A Twin Oaks Drive  
Hampstead, NC. 28443

Amy Everhart  
Sent from my iPhone

On Nov 12, 2022, at 9:54 AM, Betty Chang <changwb@yahoo.com> wrote:

Neighbors,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty  
201-294-2119



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5.4MB



Screen Shot 2022-11-12 at 9.39.04 AM.png

Re: Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for SUP

From: FatalX3rror (ztzoid@gmail.com)

To: changwb@yahoo.com

Date: Sunday, November 13, 2022 at 11:45 AM EST

I Alex Robinson acknowledge and confirm.

On Sat, Nov 12, 2022 at 10:56 AM Betty Chang <[changwb@yahoo.com](mailto:changwb@yahoo.com)> wrote:

Alex,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved."

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

Betty  
201-294-2119



**Re: Acknowledge and confirm W Betty Chang as agent for duplex owner**

From: melissa vernon (melissav84@me.com)

To: changwb@yahoo.com

Date: Sunday, November 13, 2022 at 08:05 PM EST

I Melissa Vernon of 270 Twin Oaks Drive unit A support the special use permit application filed to pender county. I also give Betty Chang permission to submit/ sign on my behalf.

Sent from my iPhone

On Nov 12, 2022, at 10:40 AM, Betty Chang <changwb@yahoo.com> wrote:

Bob/Melissa,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved." :

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.

--Betty and Chad  
201-294-2119  
601-416-4341



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122.9kB



Appeal of Administrative Decision 120 Hugh Edens Ln. 8.30.22.pdf  
5.4MB



Screen Shot 2022-11-12 at 9.39.04 AM.png  
318.7kB

Re: Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

From: Colleen Humphrey (humphrey.colleen72@gmail.com)

To: changwb@yahoo.com

Date: Sunday, November 13, 2022 at 11:48 AM EST

Betty, i am fine with this.

Colleen

On Sun, Nov 13, 2022, 8:53 AM Betty Chang-Curry <[changwb@yahoo.com](mailto:changwb@yahoo.com)> wrote:

**From:** Betty Chang <[changwb@yahoo.com](mailto:changwb@yahoo.com)>

**Date:** November 12, 2022 at 11:05:20 AM EST

**Cc:** Chad Curry <[curry\\_chade@yahoo.com](mailto:curry_chade@yahoo.com)>

**Subject:** Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

Ms Colleen,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved."

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf. It can be as simple as "I acknowledge Betty Chang as agent for Sloop Point Duplex Owners (164 Twin Oaks Dr Unit B), regarding the Special Use Permit application. "

Betty  
201-294-2119

# RE: [External] Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

From: Adam Slack (adam.slack@rate.com)

To: changwb@yahoo.com

Cc: curry\_chade@yahoo.com

Date: Monday, November 14, 2022 at 01:23 PM EST

Hello,

I am replying to confirm that I, Justin Adam Slack am the owner of record for 178 Twin Oaks and that I support the Special Use Permit Application filed to Pender County and I am certifying that you have permission to submit and sign on my behalf.

Best Regards,

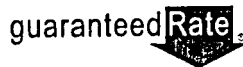
**BEWARE OF CYBER-FRAUD** Before wiring any funds, call the intended recipient at a number you know is valid to confirm the instructions - and be very wary of any request to change wire instructions you already received, a Guaranteed Rate employee will never provide nor confirm wire instructions.



**Adam Slack**

NMLS# 203603

SVP of Mortgage Lending



## Meet My Team:

**Kristin Spivey** | Production Manager | (910) 623-0282 | [kristin.spivey@rate.com](mailto:kristin.spivey@rate.com)  
**Rachael Jacobson** | Mortgage Consultant | (336) 283-3308 | [rachael.jacobson@rate.com](mailto:rachael.jacobson@rate.com)  
**Audra Martz** | Loan Coordinator | (910) 473-5404 | [audra.martz@rate.com](mailto:audra.martz@rate.com)  
**Kim Thornlow** | Sales Assistant | (910) 599-9143 | [kim.thornlow@rate.com](mailto:kim.thornlow@rate.com)  
**Joel Shackelford** | Licensed Sales Assistant | (910) 238-3427 | [joel.shackelford@rate.com](mailto:joel.shackelford@rate.com)

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FW: Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

From: rvillari@earthlink.net  
To: changwb@yahoo.com  
Date: Monday, November 14, 2022 at 09:26 PM EST

Betty

I am Co-owner of 164 A and I support the special use permit application and I give you my permission to submit and sig on my behalf

Rocco Villari  
910-290-2900

**From:** Betty Chang-Curry <changwb@yahoo.com>  
**Date:** November 13, 2022 at 12:49:49 PM EST  
**To:** rvillari@earthlink.net  
**Cc:** Chad Curry <curry\_chade@yahoo.com>  
**Subject:** Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

Rocco,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attach narrative. No construction or alterations involved."

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining th. SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have p to submit/sign on your behalf.

Betty  
201-294-2119

Re: Acknowledge and confirm W Betty Chang as agent for duplex owner(s) for Special Use Permit

From: Travis Sexton (southernpride445@yahoo.com)

To: changwb@yahoo.com

Date: Monday, November 14, 2022 at 11:14 PM EST

I, Travis Sexton do completely support the Special Use Permit application and give my permission to Betty Curry to sign/submit as the agent on my behalf.

Sent from my iPhone

On Nov 14, 2022, at 5:54 PM, Betty Chang-Curry <changwb@yahoo.com> wrote:

Great!

Can you respond that you support the Special Use Permit application and that I have your permission to sign/submit as the agent on your behalf.

Betty  
201-294-2119

On Nov 14, 2022, at 5:05 PM, Travis Sexton <southernpride445@yahoo.com> wrote:

I did receive you message and looked through the information

Sent from my iPhone

On Nov 13, 2022, at 7:20 PM, Betty Chang-Curry <changwb@yahoo.com> wrote:

Travis,

In response to the appeal that Adam and Brian/Lauren filed, to our SUP application for "Use of existing pier and dockage as a Community Boating Facility per attached narrative. No construction or alterations involved."

Specifically, to items 15-18. We need to establish that I had permission to sign the application as the agent for the "Sloop Point Duplex Owners", as they are maintaining that the SUP application is incomplete/insufficient and should have been rejected by the County.

Please respond with your confirmation as the owner of the unit(s) attached, that you support the Special Use Permit application filed to Pender County. In addition, I have permission to submit/sign on your behalf.



## Pender County Request for Board Action

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**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**

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**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.

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**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](http://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 27<sup>th</sup> 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](mailto: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](http://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 27<sup>th</sup> 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](mailto: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](http://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](http://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](http://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 EXISTS:**

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 27<sup>th</sup> 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  
[crime@pendercountync.gov](mailto:crime@pendercountync.gov)

Code Case 258-2018



INTRODUCED BY: Johnny Sutton DATE: January 20, 2004 ITEM NO: 203

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 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) 2020 Growth Policies Consistency:** The proposal is not inconsistent with the 2020 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 Areas:** 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 sealed 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

bbe:mk 12-4-03 jce review 12-5-03 fm,jce rev. 12/15/03  
pd bcc: mark44

8. 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.  
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 boys shall be physically marked on the ground with a physical barrier or other material approved by the zoning administrator as shown of 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 of 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.

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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 01-20-04  
Dwight Strickland Date  
Chairman

Blenda Bridgen  
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.
    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.
  - f. The remainder of the buffer shall provide plantings as follows:

**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**                     

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

**YEA VOTES:** Meadows                      Holland                      Moore                      X Rivenbark                      X Williams                     

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

Chairman

12-20-04

Date

Glenda Frisdom  
ATTEST

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) **2020 Growth Policies Consistency:** The proposal is not inconsistent with the 2020 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.

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.

Permit # 03-07-21-16

**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 ☒ DENIED ☐ UNANIMOUS  
YEA VOTES: Strickland Williams Holland Meadows Rivenbark  
Dwight Strickland, Chairman  
11-15-04 Date

Blenda Priddy  
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.