



Pender County

Agenda

Board of Adjustment Meeting

Wednesday, June 21, 2023 @ 9:00 AM

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

	Presenter	Page
1. CALL TO ORDER		
2. ROLL CALL		
3. INVOCATION		
4. ADOPTION OF AGENDA		
5. ADOPTION OF MINUTES		
5.1. May 17, 2023 Meeting Minutes BOA Meeting Minutes 5/17/23 - Pdf		3 - 15
6. PUBLIC COMMENT		
7. APPEAL		
7.1. APPEAL 2023-11: Appeal of Administrative Decision APPEAL 2023-11 - Pdf		17 - 184
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10. ADJOURNMENT		



Pender County May 17, 2023 Meeting Minutes

TO: Board of Adjustment
FROM: Daniel Adams
DATE: June 21, 2023
SUBJECT: May 17, 2023 Meeting Minutes

SUMMARY:

Board of Adjustment meeting minutes from the May 17, 2023, meeting.

ACTION REQUESTED:

Review and approval of May 17, 2023, meeting minutes.

ATTACHMENTS:

1. May 17, 2023 Minutes

Pender County Board of Adjustment Meeting Minutes – May 17, 2023

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

Members Absent:

Others Present: Daniel Adams, Planning Director
Justin Brantley, Senior Planner
Donna Sayre, Planning Technician
Trey Thurman, County Attorney
Members of the Public

1. **Call to Order:** 9:03 a.m.

2. **Roll Call**

3. **Invocation**

4. **Adoption of Agenda**

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

5. **Adoption of Minutes**

Mr. Keeler made a motion to adopt the minutes from the February 15, 2023, meeting. Mr. Breuer seconded the motion, and the motion was unanimously approved.

6. **Public Comment**

There was no public comment.

7. **Public Hearing**

APPEAL 2023-10 – Attorney Sam Potter, Applicant, on behalf of Carl Meeks, LLC., Owner

Mr. Adams, Planning Director, presented the Staff Report. Mr. Potter, Applicant, on behalf of Carl Meeks, LLC., owner, is requesting an Appeal of an Administrative Decision made by the Pender County Planning and Community Development Department in the issuance of a Final Notice of Violation, case number ZCV-512-2022, for the operation of a commercial motocross track without a Special Use Permit in a zoning district that requires a Special Use Permit for said land use. The subject property is located on the north side of Carl Meeks Road, west of Shaw Highway in the Holly Township and is further identified by Pender County PIN

3257-59-0861-0000.

Mr. Adams stated that on July 6, 2022, Pender County Code Enforcement Officer Charlie Ring received a complaint concerning dirt bikes and four wheelers operating on the subject property. The complainant mentioned that amount of dust that was being stirred up by this activity, which was bothering the neighbors. It was also reported to staff that the subject property was being used as a commercial motocross track. County staff subsequently located a website that showed a schedule of activity times for clients who had registered to join the Copperhead MX club and costs associated with reserving time to ride at the facility. Based on information on the website it was determined that Copperhead MX is the name of the club and/or facility owned by Carl Meeks, LLC., and located on the subject property. Staff reviewed the Limited Liability Company Annual Report for Carl Meek LLC., available through the North Carolina Secretary of State, and found that the Nature of the Business, as described in the Annual Report, is an "Events Site".

Mr. Adams stated that on July 8, 2022, Mr. Ring conducted a site visit but did not witness motocross activity. Mr. Adams stated that on August 29, 2022, a first Notice of Violation was issued to the owners of the property, Carl Meeks, LLC., via mail. He stated that the contents of that Notice of Violation stated that the property owner had failed to obtain proper permits prior to operating a commercial motocross racetrack, as defined under NAICS code 711212, Motorcycle Racetracks. Mr. Adams also stated that the violation notice contained the verbiage from Article 3.2.1 of the Pender County Unified Development Ordinance.

Mr. Adams stated that subsequent conversations with County staff and the owners' legal counsel led to the removal of the website and assurances that the motocross club would cease operation. The owner was notified that if they wanted to continue operating the motocross club, they would first need to obtain a Special Use Permit for operating a motocross racetrack in the Rural Agricultural zoning district, which is required by the Pender County UDO, Article 5.2.3, Table of Permitted Uses. Mr. Adams stated that the Planning staff determined the NAICS Code for the land use was 711212, which includes Motorcycle Racetracks. He stated that at this time, the staff believed compliance had been achieved.

Mr. Adams stated that at the January 17, 2023, Board of County Commissioners' meeting, a neighbor spoke to the Commissioners during Public Comment about the motocross track operating on Carl Meeks Road. The neighbor discussed the impacts of the use and how it was negatively affecting the people who live in the vicinity of the subject property. Mr. Adams stated the neighbor played a recording from his cell phone of the noise the activity creates and stated that the recording was taken from his property.

Mr. Adams stated that on January 18 and 19, 2023, Planning staff further researched the subject property and found a website under the homepage of Driven MX describing Copperhead Ranch, located at 532 Carl Meeks Road in Rocky Point, North Carolina. Mr. Adams stated that the website described Copperhead Ranch as offering "countryside living including the ability to train with Driven MX at a private location. Three motocross tracks, barn for storage and bike work, freshwater ponds, floating docks onsite, with gyms, hardware store, several restaurants, gas stations, and a grocery store within ten minutes from the property. 3 bed and 2 bath house sleeps ten and RV camping is available." Mr. Adams stated that the website advertised

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training programs with dates and associated costs for participating in said programs. He stated the site also stated that the motocross tracks are only available to members and guests.

Mr. Adams stated that Planning staff contacted the owner's legal counsel, Mr. Potter, to inquire as to the situation. After speaking with the owner, Mr. Potter notified staff that the owner leases the property to Driven MX, which is an Ohio-based company that offers coaching and training programs for motocross riders. Mr. Daniels stated that a lease agreement was signed between the owner and Driven MX, who uses the property for their Winter Training program.

Mr. Adams stated that on January 19, 2023, a Final Notice of Violation was issued to the property owner for operating a commercial motocross track without first obtaining a Special Use Permit and subsequent development approvals as required by the UDO.

Mr. Adams stated that on February 19, 2023, an Appeal of Administrative Decision was filed with Pender County to bring the situation to where it is today.

Mr. Adams stated that it was the Zoning Administrator's determination that the property is being used as an unpermitted commercial motocross track. He stated that the UDO defines Commercial Outdoor Recreation as private, fee-supported, outdoor facilities used for athletic, training, recreational or park purposes that utilize supervised athletic or recreational activities. Mr. Adams stated that although the owner may also use the property as a short-term rental through Airbnb, it is clear that Driven MX is leasing the property and charging people to train on the motocross tracks that have been built on the property.

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

Mr. Breuer asked Mr. Thurman if appeal rights are affected due to the action taking place last year. Mr. Thurman stated that the time frame does not affect appeal rights. Mr. Thurman informed the Board members and the audience that the County does not regulate personal dirt bike riding unless it is a commercial activity. Mr. Thurman also stated that the County does not regulate short-term rentals, such as Airbnbs.

Mr. Adams stated that it was his understanding that the situation has evolved by starting with a club that the people could pay to ride that was quashed and then the property was listed as an Airbnb that had to be rented in order to ride on the property.

Mr. Thurman stated that an amenity of renting the Airbnb was the ability to ride on the tracks similar to if an Airbnb had a swimming pool.

To clarify, Mr. Daniels stated that the situation started as a club to where people could pay to ride their dirt bikes back in 2022. That activity was stopped, and the Planning staff was under the impression that the case was closed. He stated that when the complaint was made again, the Planning staff understood that the property was being leased to a company who specifically trains people to ride and race dirt bikes. Mr. Adams stated that a lease was executed between the owner of the property and Driven MX to hold training on the property not through Airbnb but outside of Airbnb.

Mr. Keeler asked what the primary land use is for the property. Mr. Adams stated that it is zoned RA, Rural Agricultural and the owner has leased the property for a commercial purpose without obtaining the proper permits first. He stated he thinks the property is also used as an Airbnb besides leasing it out for commercial purposes.

Mr. Kipfer asked the Board members if they had any additional questions, and none were presented.

Attorney Samuel Potter stated that he represents the landowner. He stated that Tom Clifford, Erin Hogston, and Chad Hogston were present and sitting in the audience.

Mr. Potter requested with Mr. Thurman the right to question Mr. Adams, which Mr. Thurman agreed to. Mr. Potter then asked Mr. Adams if he has any evidence that any commercial activity is taking place on the subject property currently. Mr. Adams stated that at present time, he does not. Mr. Potter asked Mr. Adams that since October 1, 2022, is he aware of any other commercial activity taking place on the property. Mr. Adams responded that he had received information from an adjacent property owner that there was a planned running race that never occurred or took place. Mr. Potter asked if he had any evidence that the people who rented through Driven MX were also not staying at the property. Mr. Adams responded that he does not.

Mr. Potter stated that he started communicating with the previous Planning Director, Travis Henley back in the late summer or early fall of 2022. Mr. Potter stated that once Mr. Henley informed him that the property could be used as an Airbnb but not as a separate commercial operation, the landowner immediately ceased any commercial activity and took the website down. Mr. Potter stated that they continued the Airbnb and as for the lease with Driven MX, the landowner was under the impression that the people coming to stay at the property were from Ohio, where it is too cold to ride dirt bikes in the winter. He stated that the people were coming to stay a week or two to train.

Thomas Clifford, 513 Bayfield Drive, stated that the minute that they got the letter from the County, the website was taken down. He stated that the fees that were being charged were for the upkeep of the property. Mr. Clifford stated that mainly friends were there riding but that also discontinued once the violation was received. He stated that they then began the Airbnb and families from different areas of the United States would come stay and go to the beach or use the amenities on the property. Mr. Clifford stated that the only people using the amenities were the people who were staying at the home. He stated that Driven MX stayed at the property as any other person would to use the amenities.

Mr. Kipfer asked Mr. Clifford if to his knowledge, did any other people use the tracks that were not staying at the property. Mr. Clifford stated to his knowledge it only the Driven MX people using the track.

Mr. Kipfer asked if it was the responsibility of Driven MX to make sure only people staying at the property used the tracks and Mr. Clifford responded affirmatively. Mr. Kipfer asked if people who were not staying at the property through Driven MX would then be considered trespassing and Mr. Clifford agreed.

Mr. Olsen asked if Driven MX was charging people for instruction on dirt bike riding. Mr. Clifford

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stated that he did not get into Driven MX's business. Mr. Olsen then stated that it seems that Mr. Clifford is not interested in how Driven MX is using the property and if Driven MX is using it in a commercial way, then that would be Driven MX's responsibility. Mr. Clifford stated that at the time that is how it operated, but they now know to make sure that anybody renting the Airbnb would be instructed that the property is not to be used in a commercial way.

Mr. Kipfer asked if it is currently rented only as a Airbnb and the renters can use the amenities that come with the Airbnb. Mr. Clifford responded affirmatively.

Mr. Keeler asked if there is insurance currently carried on the property. Mr. Clifford stated that yes, there is insurance on the property. Mr. Keeler asked if there were additional insurance riders. Mr. Clifford stated that they have insurance on the house and then they also have Airbnb insurance. Mr. Clifford stated that they do not have commercial insurance due to the property not being commercial oriented.

Mr. Kipfer asked if there were any general rules and regulations enforced. Mr. Clifford stated that there are rules in place, but he does not have a copy of the rules with him. Mr. Kipfer asked if there are set times as to when the track can be used, and Mr. Clifford responded by stating that they have posted signs that riding is only allowed between the hours of 10:00 am and 5:00 pm. Mr. Clifford stated if they are notified that someone is riding outside of that time frame, they immediately contact the renters and ask them to stop.

Mr. Keeler asked what the rate charged to Driven MX is per night to rent the property. Mr. Clifford stated that he thinks it was between \$2,000.00 and \$3,000.00 for the week. Mr. Breuer stated that he did look the Airbnb up and the website stated \$613.00 a night. Mr. Clifford stated that he does not think it is that much per night but rather approximately \$435.00 per night.

Mr. Olsen provided that this appeal is basically moot since the property was being rented out to a commercial entity but is no longer. Mr. Thurman stated that he will let Mr. Potter respond to Mr. Olsen's statement. Mr. Keeler agreed with Mr. Olsen about the potential confusion on the grounds of the appeal.

Mr. Thurman stated that after the Notice of Violation was issued and sent to the property owner, the property owner decided to appeal instead of speaking with the Planning Staff. He stated that it is within the rights of the property owner to appeal the decision.

Mr. Keeler asked if a monetary violation notice was given. Mr. Thurman stated that there would be a monetary fine but the Appeal stays the accrual of a fine. Mr. Thurman stated that the property owner appealed within the thirty-day time frame that is allowed.

Chad Hogston, owner, stated that he advised Driven MX that the January 2024 camp that they are advertising will not be taking place, but they have left it on their website. He stated that Driven MX was at the property for a three-week period, left for approximately three weeks, and then returned for an additional two or three weeks. Mr. Hogston stated that Driven MX runs winter camps for children. He stated that after the issues with the County, Driven MX was told they could not return, so the 2024 issue is a non-issue due to them not returning.

Mr. Keeler asked Mr. Hogston to clarify the time frame that Driven MX rented the property. Mr. Hogston responded with approximately five to six weeks.

Mr. Hogston stated that ninety-five percent of their tenants are families with children who stay for three to four days then leave. He stated that they have a low riding frequency.

Mr. Hogston stated when they originally bought the property, it was just private riding at first then it evolved with time. He stated that a club was created but found out that the club was not in compliance so they squelched it and at that point they created an Airbnb. Mr. Hogston stated that the Airbnb included amenities such as track and trail usage.

Mr. Hogston stated that they were contacted by Driven MX who wanted to run their winter camps at the property. They agreed and a lease was signed but shortly after, he received a notice of violation. He stated that he did not realize that leasing to Driven MX would be an issue, but he does now. Mr. Hogston stated that he is trying to stay away from anything that has a commercial aspect to it. At this point, Mr. Hogston wants to continue the Airbnb for families and groups that won't utilize it as a commercial unit.

Mr. Keeler asked if Driven MX was on the property from January 17 to January 19, 2023. Mr. Hogston stated that he is not sure of those dates, but he assumes they were.

Mr. Hogston stated that they want to be good neighbors and have always had their door open to speak with anyone who has concerns. He stated that he does not feel the neighbors' biggest issues were him, his son, and buddies riding on the property but rather the frequency of riding. He stated that they had decided after May of 2023, the rental of the property was going to be cut in half to reduce the frequency of riding. Mr. Hogston stated that after the current month, the rentals decrease significantly due to only renting it twice a month.

Mr. Kipfer asked if there were any questions for Mr. Hogston and no questions were presented.

Mr. Potter stated that Driven MX may be a commercial business but there is no evidence that somebody not staying at the property was using the tracks. He stated that after the public has been given the opportunity to speak, the property owner has a proposal that will be presented to the Board that will address many of the concerns.

Mr. Keeler asked what the square footage of the home is and how many bedrooms does it have. Mr. Potter stated that it is a three-bedroom, two-bathroom house with roughly 1,800 square feet.

Mr. Kipfer asked if there are no trespassing or illegal use signs posted on the property. Mr. Hogston stated that they created between ten and twenty signs stating, "No MX bikes past here" and posted these signs at every point on the property where someone could leave this property and enter onto another piece of land. He stated that it did not stop 100 percent of all people, but it did stop the majority. Mr. Hogston stated that they still receive calls from neighbors stating that someone is riding on their property. He stated that once a call is received, they call the renters and tell them they have left the property and are trespassing on someone else's property. Mr. Hogston stated he has informed the neighbors that if they see someone riding a bike on their property to contact Law Enforcement and report it as trespassing. He also stated that he put up barriers at every point of entry, so they had done everything that they possibly could to keep the riders off neighbors' properties. Mr. Hogston also stated that there are signs posted all over the property stating the hours of riding.

Bill McAbee, 5053 Shaw Highway, stated that his property is approximately 2,200 to 2,300 feet from where the jumps are located on the track and he can see riders using the track. He stated that he is a disabled veteran who experiences PTSD and enjoys peace and quiet. Mr. McAbee stated he bought his property for the peace and quiet and had that until the motocross track was created and used. He stated that trespassing is out of control and happens at least five times a week. Mr. McAbee stated that he and his neighbors have put up their own signs, barriers, and gates which the trespassers ignore.

Roy Harris, 531 Carl Meeks Road, stated that he is the closest neighbor to the operation. He stated that there are day riders who come out to the property, unload, ride, load back up and leave and it happens every day. He stated that he lives approximately seventy-five feet from the property line. Mr. Harris stated that people bring travel trailers out there and stay for three to four days with the past weekend being a perfect example. He stated that a motor home pulled into the back of the property and ran its generator all night long, which he was able to hear even with his hearing problem. Mr. McAbee stated that he and his wife are both retired and like to sit out on their front porch in the afternoon but no longer can do so due to the noise from the track. He stated that the landowner has not talked to him and the only time he has ever seen any of them is when they are arriving or leaving the property due to their driveway being right across from his property. He stated he does not know what can be done about the situation but something needs to be done because he loves his neighborhood and the peace it had to offer before the track was put in.

Gary Helm, 455 Carl Meeks Road, presented each Board member with a packet of paperwork that he had prepared. The packet was not collected as evidence for the record. He stated that there are two separate tracts of land with the Airbnb being on a separate piece of property from the track. Mr. Helm states that he strongly opposes them stating that the track is an amenity of the Airbnb house when they are located on two separate deeded pieces of property. He stated that the operation is a commercial racetrack that is not gated or fenced. Mr. Helms stated that another property was purchased up the road by the track owner who rents the property out and those tenants ride daily at the track. He stated that he has the people on video riding out of their driveway, into the driveway for the track and leaving the track to head back to the rental home. Mr. Helms stated that there are campers there at least once or twice a month and he has sent picture to Mr. Adams every time one is brought in. Mr. Helms stated when Mr. Hogston registered the LLC with the North Carolina Secretary of State, they listed it as an event site. He stated that they had advertised for an event that was offering breakfast and lunch sales and the opportunity to camp for a certain amount of money and to him, that is commercial activity.

Mr. Helm stated that the noise level at the track is so loud that neighbors cannot sit outside and have a conversation. He stated that if he was going to list his property for sale, he would have to disclose the noise issue which would limit the sale of the property and most likely impact the price. Mr. Helms stated that the Applicants do not live at the location and don't have to listen to the noise like he and his neighbors.

Mr. Thurman stated that if a Special Use Permit should be obtained or if any events have taken place at the property is not the issue in front of the Board to address today.

Scott Tinney, 370 North Holly Shelter Estate Road, stated that he has approximately fifty acres adjacent to the track property and the only separation is a creek. He stated that he has tried to communicate with them and has only met them in person a few times when

they had a piece of machinery stuck and he tried to be a good neighbor by helping them. Mr. Tinney stated that it is never ending with the applicants stating they are going to do something and then doing the opposite of what was promised. He stated that he feels part of the problem is who the applicant is and the power he has in this county along with other counties.

Mr. Potter objected to the testimony being outside of the scope of the appeal. Mr. Thurman stated that this hearing concerns the appeal that was filed. Mr. Tinney stated that it is obvious that he has had a prior relationship with every member of the Board, and he feels that this should be a conflict of interest. Every Board member stated that they either do not know who the applicant is or if they do know, they have never personally dealt with him in the past.

Mr. Thurman asked each Board member if they had any type of relationship with any of the property owners and each Board member responded negatively.

Mr. Tinney stated that he does have a recording of the noise that he has taken from his home which is approximately half a mile from the track. He stated that he is the President of the HOA for Holly Shelter Estates neighborhood and receives calls from the other property owners on a regular basis. Mr. Tinney stated he does not know how to handle this situation and if this is not the time or place, he requested someone tell him of the proper course of action.

Carl Ezzell, 220 Carl Meeks Road, stating that trespassing is a major issue even though he has put up signs on both sides of the property line. He stated that people from out of town do not pay attention to the posted signs. Mr. Ezzell stated that the loud noise is an issue since he resides across the street. He stated that the landowner has tried to keep it under control but it gets out of control quickly. Mr. Ezzell stated that he is not sure what to do about it.

Mr. Harris invited all members of the Board to visit his property to listen to the noise.

Scott Walker, 5049 Shaw Highway, passed out a document to all Board members. The document was not collected as evidence for the record. He owns property directly next to the track. Mr. Walker stated that he bought forty-seven acres in October of 2020, with the future intention of a horse farm. He stated that he and his wife bought six lots to allow space for the horses. Mr. Walker stated that when Mr. Hogston bought the property they spoke, and Mr. Hogston told him that they were building jogging trails through the woods. He stated that the dirt bike riding went from occasionally to almost every day.

Mr. Walker stated that when issues came up with the dirt bike riding on his property, he would contact Mr. Hogston and the issue would be handled. He stated that a neighbor contacted him to let him know riders were using his driveway. Mr. Walker stated that there should be no reason for anybody to be using his driveway since his main driveway is approximately 2,000 feet from Mr. Hogston's property. He stated that his interactions with Mr. Hogston were good in the beginning but deteriorated with time. Mr. Walker stated that one of the last texts he received from Mr. Hogston stated that Law Enforcement should be called if someone is trespassing on his property. Mr. Walker stated that his frustration level increased greatly at this time.

Mr. Walker stated he and his wife have had to incur an additional expense for no trespassing

signs and roped fencing that would not have been necessary had the track not been built. He stated that he never would have bought this land had to known that a motocross track was going to be built beside it.

Mr. Walker turned on a video of the noise from his property to which Mr. Thurman and Mr. Potter objected due to the video not being relevant to the hearing today. Mr. Kipfer asked Mr. Walker to turn the recording off, which was done.

Julie Walker, 5049 Shaw Highway, stated that she is married to Scott Walker, and they own property near the track. She passed out documentation to the Board members. The documentation was not collected as evidence for the record. Ms. Walker informed the Board that a dirt bike is one hundred decibels which is comparable to a rock concert. She stated that she currently has two horses on her property and the track creates safety issues for herself, her family, and others who may trail ride on her property. Ms. Walker stated that she and her husband sprayed the trees that connect with the property with yellow paint and have put up dozens of no trespassing signs.

Ms. Walker stated that the barriers that Mr. Hogston referred to consist of approximately four cones, caution tape that drapes the ground, and a few posted signs and are nowhere adequate. She stated that Mr. Hogston does not have enough property to satisfy the dirt bike riders so out of boredom they choose to trespass on neighboring properties.

Ms. Walker stated that they have worked for three years to create trails and pastures. They currently have a Forest Management Plan in place. She stated that they have worked hard to create a beautiful area for local equestrians to enjoy, not people from other areas of the United States.

Ms. Walker stated that she has personally been thrown from her horse due to the dirt bike activity and is fearful that it will happen again to not only herself but to equestrians who may be out trail riding.

Ms. Walker stated that the Sheriff's Department has been out to the area several times to issue trespassing notices to riders but the trespassing continues to happen on a regular basis and is an ongoing issue. Ms. Walker stated that she feels they are using the Airbnb as a loophole and this should not be allowed.

Mr. Olsen asked Mr. Thurman if the Board finds the dirt bike riding a nuisance, does the Board have any authority to do something about it. Mr. Thurman stated the Board does not have that authority.

Mr. Olsen stated that the neighbors have provided much testimony, but this Board is a limited body who is here to determine if their appeal is to be granted. He stated that as soon as he has the opportunity to do so, he is going to move to deny the appeal due to his opinion that the Planning staff was correct in that there was a violation at that time. Mr. Olsen stated that if the Planning staff receive future notifications that commercial activity is taking place at the property that the same procedure should be followed.

Miles Bielec, 129 Turtle Hill Trail, stated that he and his wife lease two of Ms. Walker's horses for a once-a-week riding session. He stated that he is a novice rider and has met dirtbikes on

the trails and it can be a very scary experience. Mr. Bielec stated that the Airbnb is on a separate track of land from the racetrack.

Mr. Potter asked Mr. Adams again if he had any evidence that the people who rented through Driven MX were not staying at the property while using the trails. Mr. Adams stated that he does not.

Mr. Clifford stated that they do want to be good neighbors. He stated that they are working hard to limit the renters, respect the horse farm, and respect the neighborhood. Mr. Clifford stated that he would like cordial conversations moving forward. He stated that he has had conversations with Mr. Tinney and clarified that they have not talked to every neighbor.

Mr. Clifford stated that the rental will be limited after the month of May and no events were held at the property out of respect for the neighbors. He stated that all of July and almost all of August the Airbnb is not rented. Mr. Clifford stated that in one conversation with Mr. Tinney, he asked what he could do to make it better and Mr. Tinney responded with "I don't know".

Mr. Clifford stated that the track is not open to the public and people must ask permission to use the track. He stated that this is obviously a very controversial subject but would like all involved to be cordial so that issues can be resolved as adults.

Mr. Potter stated that he has been working towards a set of rules and enforcement mechanisms with Mr. Thurman and Mr. Adams that they would voluntarily place on the property, and they came here prepared to present them today. Mr. Potter stated that during the hearing, it became extremely apparent by the comments of the neighbors that this is not over. Mr. Potter stated that after speaking with Mr. Hogston, they made the decision not to introduce the voluntary rules and regulations. Mr. Potter stated that this does not seem to be about commercial activity but rather about noise and nuisances and those two issues will not go away with their proposal. He stated that they are not going to propose to not run dirt bikes on the track and that appears to be the main issue.

Mr. Thurman stated that the issue before the Board was if the Administrator made a correct determination that at the time of the notice of violation being given, there was a commercial operation taking place.

Mr. Kipper closed the testimony portion of the hearing to allow the Board the ability for discussion.

Mr. Keeler stated that he agrees with Mr. Olsen. He stated that Mr. Hogston testified that the commercial operation was taking place in January of 2023, and that the Code Enforcement Officer was correct in issuing the Notice of Violation, at that time.

Mr. Snider stated that what the Board is ruling on today is whether the business that was being run at the time of the Notice of Violation was commercial and if the Planning staff was correct in issuing the Notice of Violation at that time. He stated that he agrees with the issuance of the violation due to commercial activity taking place at that time.

Mr. Kipfer stated that he agrees that at the time of the violation, commercial activity was

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taking place on the property. He stated what is happening now may be very different as to what was happening then, but they are ruling on what was taking place at the time of the violation.

Mr. Kipfer stated that he feels Mr. Hogston and Mr. Clifford have problems from all the testimony that had been heard. He stated that there appears to be many issues occurring on the property that need to be addressed, such as trespassing and illegal use of the track. Mr. Kipfer stated that these issues are not going to go away and will need to be addressed and find a way to make it work. He encouraged more communication between all parties involved to find a resolution that will work for all parties involved.

Mr. Olsen made a motion to dismiss the appeal due to finding sufficient evidence in the record to support the Planning staff's decision. Mr. Snider seconded the motion, and the motion was unanimously approved.

Mr. Thurman stated to the audience that the determination made was that it was a commercial operation at the time that the Notice of Violation was sent out. He stated that the Board has no ability to control trespassing, which would be a criminal matter. Mr. Thurman stated that the neighbors may choose to consult with an Attorney.

8. Discussion Items

Mr. Keeler thanked Pender County and Mr. Adams for the Board's invitation to the Quasi-Judicial workshop that the School of Government held the week before. He stated that he and Mr. Kipfer were able to participate and were able to gain considerable knowledge on several different subjects.

Mr. Adams stated that the Board currently consists of three full members and two alternates. He stated that an application was received for another position on the Board. Mr. Adams stated that the Applicant lives in Hampstead and is wanting to serve as an alternate and when it was brought before the Board of Commissioners for their appointment consideration, the Board voiced their concerns about the Board being made up of too many people from one side of Pender County and not having representation from each of the districts. Mr. Adams stated that he informed the Commissioners that they have tried to get representation from all areas of Pender County but have been unsuccessful in their attempts. He stated that one suggestion from the Board was that people may not be able to attend due to the time that the BOA meetings are held. Mr. Adams stated that due to this suggestion being brought up, he would approach the BOA members to find out if there is a preferable time to hold the meetings instead of 9:00 a.m.

Mr. Breuer stated that with all due respect, people will come if they are interested and won't come if they are not interested regardless of the time.

Mr. Keeler stated that he has brought this subject up in the past due to the fact for working younger people it may be difficult to attend day meetings. He did agree with Mr. Breuer that if someone wants to attend then they will. Mr. Keeler stated that he has some flexibility that other people may not due to obligations to work in order to pay their bills.

Mr. Kipfer stated that he feels the challenge of afternoon meetings is that once a person's day

Page 11 of 12

starts, they have no idea of where the day may go and could change by 12:00.

Mr. Adams thanked the Board members for their feedback. Mr. Kipfer stated that he thinks that the meeting time should remain the same.

Mr. Adams stated to the Board members that if they know of someone in District four or five, which is western Pender County or the Burgaw area, who might be interested in applying, then he would be more than happy to speak to him or her.

9. Next Meeting Date

June 21, 2023 @ 9:00 a.m.
Commissioner's Meeting Room
805 S. Walker Street
Burgaw, NC 28425

Mr. Breuer stated that he would be unable to attend the June 21, 2023, meeting.

10. Adjournment

Meeting adjourned at 11:11 a.m.



Pender County APPEAL 2023-11: Appeal of Administrative Decision

TO: Board of Adjustment
FROM: Daniel Adams
DATE: June 21, 2023
SUBJECT: APPEAL 2023-11: Appeal of Administrative Decision

SUMMARY:

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

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

ACTION REQUESTED:

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

ATTACHMENTS:

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

10. Attachment 7 - December 2, 2019, SUP Revocation Agenda Packet
11. Attachment 8 - February 18, 2020, SUP Revocation Agenda Packet

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

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

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

Below: Vicinity Map of the Area



DESCRIPTION OF APPEAL

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

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

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

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

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

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

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

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

HAMPSTEAD MARINA/SPECIAL USE PERMIT BACKGROUND

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

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

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

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

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

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

ZONING ADMINISTRATOR'S CONCLUSION

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

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

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

PENDER COUNTY UDO APPEAL OF ADMINISTRATIVE DECISION

3.16 APPEAL OF ADMINISTRATIVE DECISION

3.16.1 Applicability

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

3.16.6 Action by Board of Adjustment

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

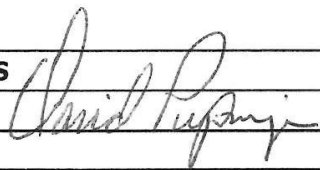
BOARD OF ADJUSTMENT ACTION FOR APPEAL OF ADMINISTRATIVE DECISION

MOTION	SECONDED

AFFIRMED	REVERSED	MODIFY

Kipfer	Breuer	Keeler	ALT: Olsen	ALT: Snider

APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

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

Print Form

April 19, 2023

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

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

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

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



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







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

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

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

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

Thanks for your time and consideration.

David & Sally Piepmeyer

122 Broadview Lane

Hampstead, NC 28443

**Pender County
Planning and Community Development**

Code Enforcement

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



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

1st Notice of Violation

February 14, 2023

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

Dear Property Owner,

NOTICE OF ZONING VIOLATION

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

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXISTS:

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

CONDITIONS THAT CREATE VIOLATION:

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

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

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

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



Charlie Ring
Code Enforcement Officer (910) 259-1519

Case # CV-524-2023653

Pender County Planning and Community Development

Code Enforcement

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



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

Compliance Letter

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

March 22, 2023

Mr. Wooten,

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

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

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

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

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

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

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

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

Sincerely,

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

Charlie Ring
Code Enforcement Officer

Feb 3, 2023

Pender County Planning – Code Enforcement

Attention: Charlie Ring

910-259-1519

cring@pendercountync.gov

David Piepmeyer

122 Broadview Lane

Hampstead, NC 28443

910-270-8519

david.piepmeyer@outlook.com

Subject: Hampstead Marina SUP Violations

Mr. Ring,

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

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

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

David Piepmeyer

Violation #1:

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



Violation #2: Storm Water Runoff Violations

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



Violation #3: Boat / Trailer Storage

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



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

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





Violation #5: Lights Pointing at ICWW

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

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

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



Violation #7: SUP Site Plan Update Violation

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

Pender County Planning and Community Development

Code Enforcement

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



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

1st Notice of Violation

February 14, 2023

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

Dear Property Owner,

NOTICE OF ZONING VIOLATION

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

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXISTS:

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

CONDITIONS THAT CREATE VIOLATION:

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

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

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

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



Charlie Ring
Code Enforcement Officer (910) 259-1519

Case # CV-524-2023653

Pender County Planning and Community Development

Code Enforcement

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



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

Compliance Letter

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

March 22, 2023

Mr. Wooten,

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

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

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

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

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

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

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

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

Sincerely,

Charlie Ring
Code Enforcement Officer

INTRODUCED BY: Johnny Sutton

DATE: January 20, 2004

ITEM NO: 52

Special Use Permit: Expansion of Existing Hampstead Marina

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

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

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

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

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

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

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

EVALUATION:

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

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

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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

Dwight Strickland

Dwight Strickland,
Chairman

01-20-04
Date

Blenda Pridgen
ATTEST

01-20-04
Date

**** Remove Item 16g**

Remove Item 10, 16d and 16e

Amend Section 7: A 6 ft. high picket fence

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

INTRODUCED BY: Johnny Sutton

DATE: November 15, 2004

ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

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

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

EVALUATION:

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

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

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

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

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

Dwight Strickland,
Chairman

11-15-04
Date

Glenda Bridger
ATTEST

11-15-04
Date

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

INTRODUCED BY: Johnny Sutton

DATE: December 20, 2004

ITEM NO: 18.

Special Use Permit: Hampstead Marina Amendment

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

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

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

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

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

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

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

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

MOVED Moore **SECONDED** Rivenbark

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

YEA VOTES: Meadows Holland X Moore X Rivenbark X Williams

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

Glenda Pridgen
ATTEST

12-20-04
Date



Pender County Request for Board Action

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

SUMMARY:

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

ACTION REQUESTED:

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

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

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

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

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

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

Description and History:

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

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

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

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

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

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

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

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

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

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

EVALUATION:

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

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

Attachments

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

**Pender County
Planning and Community Development**

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



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

1st NOTICE OF VIOLATION

November 30, 2018

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

Dear Property Owner,

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

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

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

CONDITIONS THAT CREATE VIOLATION:

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

Specific conditions to be complied with are as follows:

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

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



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

Pender County Planning and Community Development

Code Enforcement

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



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

FINAL NOTICE OF VIOLATION

March 13, 2019

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

Dear Property Owner,

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

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

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

CONDITIONS THAT CREATE VIOLATION:

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

Specific conditions to be complied with are as follows:

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

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

CURRENT CIVIL PENALTY ACCRUED:

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



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

**Pender County
Planning and Community Development**

Code Enforcement

805 S. Walker Street
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Burgaw, NC 28425



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August 30, 2019

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

Dear Property Owner,

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

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

Attached you will find a copy of Court Ordered Compliance.

Regards,

Pender County Code Enforcement

**Pender County
Planning and Community Development**

Code Enforcement

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



Phone: 910-259-1202
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August 30, 2019

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

Dear Mr. Thurman,

VIOLATION: Special Use Permit

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

Case # 298-2018

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

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

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

Sincerely,

Charlie Ring
Code Enforcement Officer

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

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

CC: To Owner
Planning Director

**Pender County
Planning and Community Development**

Code Enforcement

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



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

1st NOTICE OF VIOLATION

November 30, 2018

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

Dear Property Owner,

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LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

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CONDITIONS THAT CREATE VIOLATION:

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

Specific conditions to be complied with are as follows:

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

Code Case 298-2018

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



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

INTRODUCED BY: Johnny Sutton

DATE: January 20, 2004

ITEM NO: 32

Special Use Permit: Expansion of Existing Hampstead Marina

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

PROPERTY RECORD NO: 08220 & 08221

APPLICANT: H. Allen and Joyce H. Wooten

OWNER: Joseph N. and Stella M. Honeycutt

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

HISTORY/BACKGROUND:

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

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

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

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

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

EVALUATION:

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

Permit # 03-07-21-16

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

Permit # 03-07-21-16

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

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

AMENDMENTS: **

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland V Meadows Rivenbark

Dwight Strickland

01-20-04
Date

Dwight Strickland,
Chairman

Blenda Pridgen
ATTEST

01-20-04
Date

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

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

Special Use Permit: Hampstead Marina Amendment

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

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

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

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

Permit # 03-07-21-16

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

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

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

MOVED Moore **SECONDED** Rivenbark

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

YEA VOTES: Meadows Holland X Moore X Rivenbark X Williams

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

Glenda Bridgen
ATTEST 12-20-04
Date

INTRODUCED BY: Johnny Sutton

DATE: November 15, 2004

ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

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

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

EVALUATION:

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

Permit # 03-07-21-16

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

Permit # 03-07-21-16

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

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

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

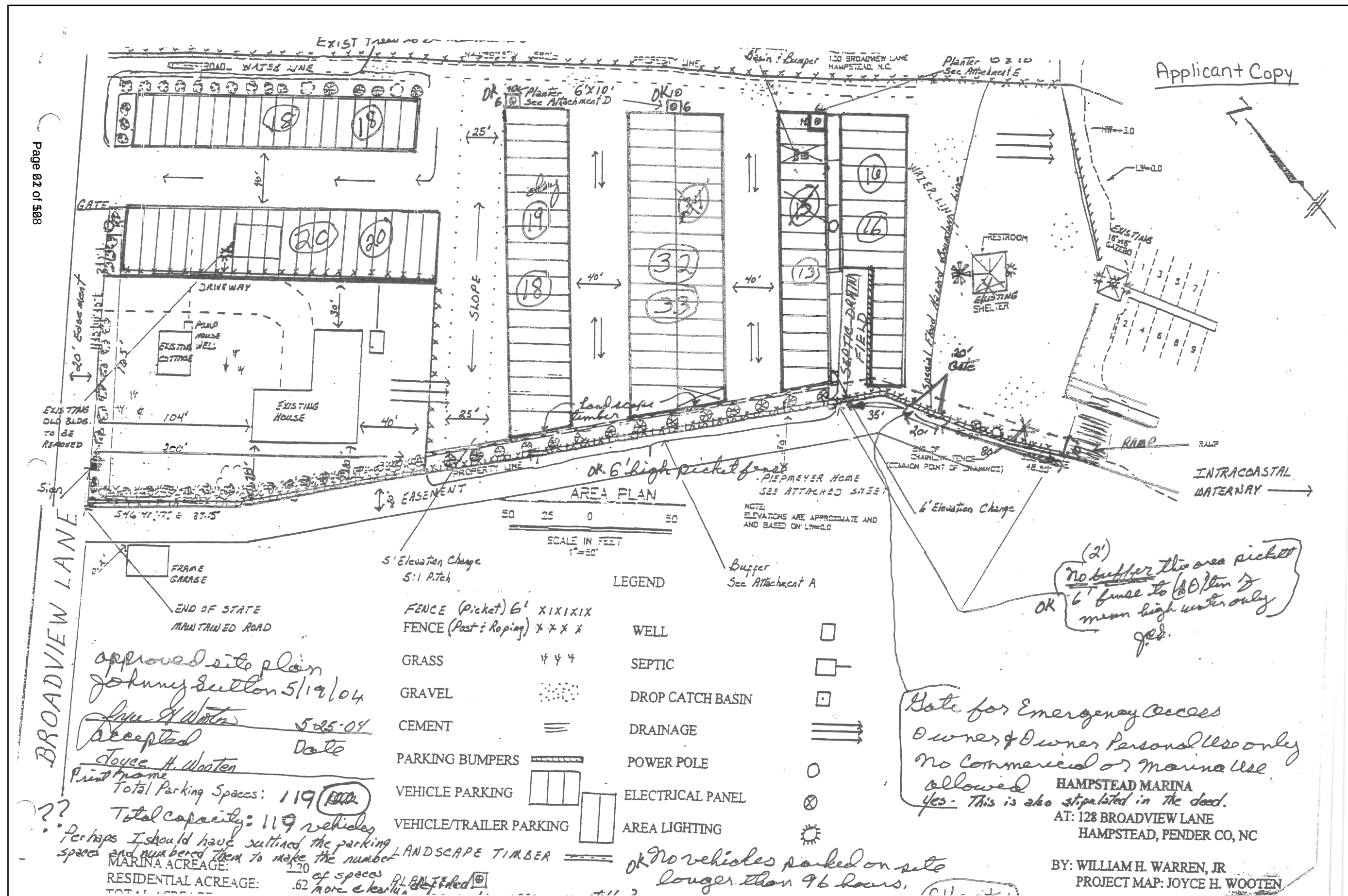
Dwight Strickland,
Chairman

11-15-04
Date

Glenda Pridgen
ATTEST

11-15-04
Date

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



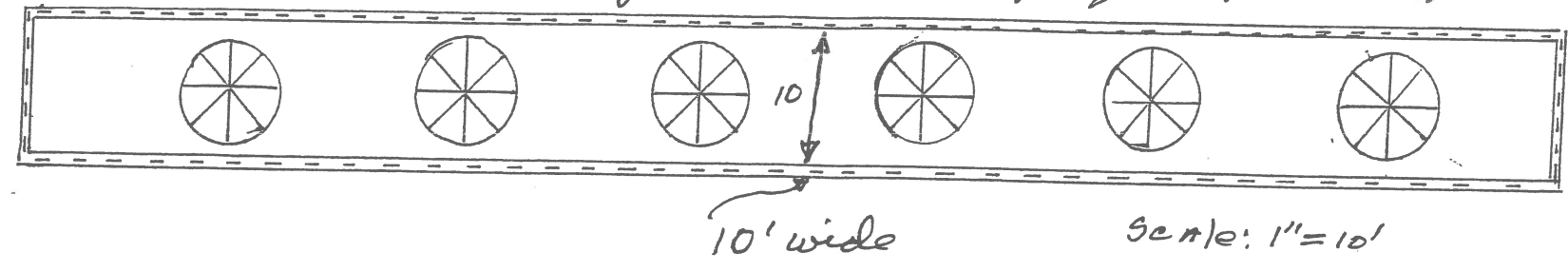
LANDSCAPE LEGEND

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

Approved Site Plan
Johnny Sutton 5/19/04

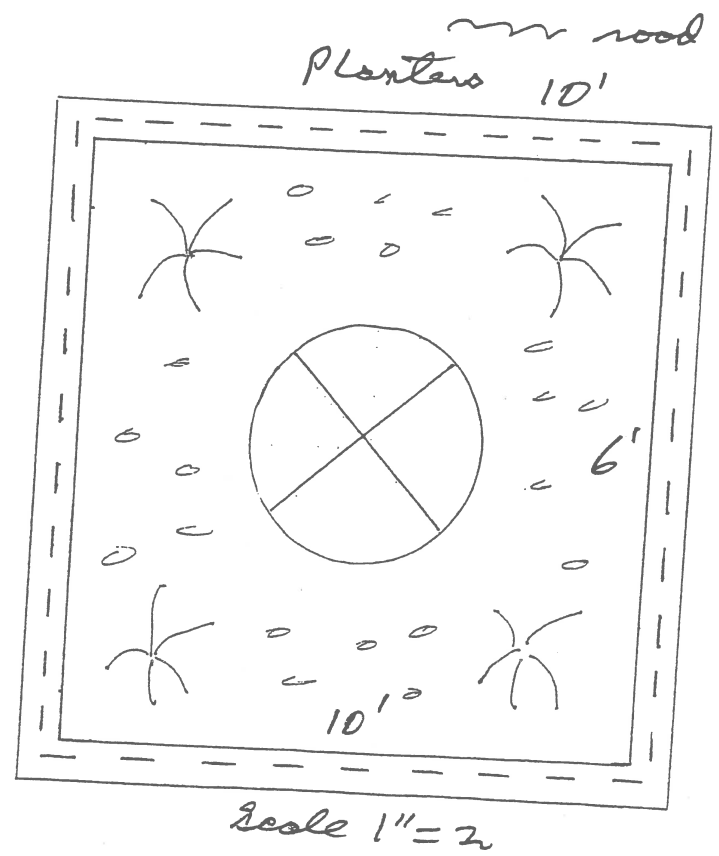
Johnny Sutton
Accepted Joyce H. Wooten 5-25-04 Date
Joyce H. Wooten Print Name

Buffer for Southwestern Boundary
from residential property to drop in elevation

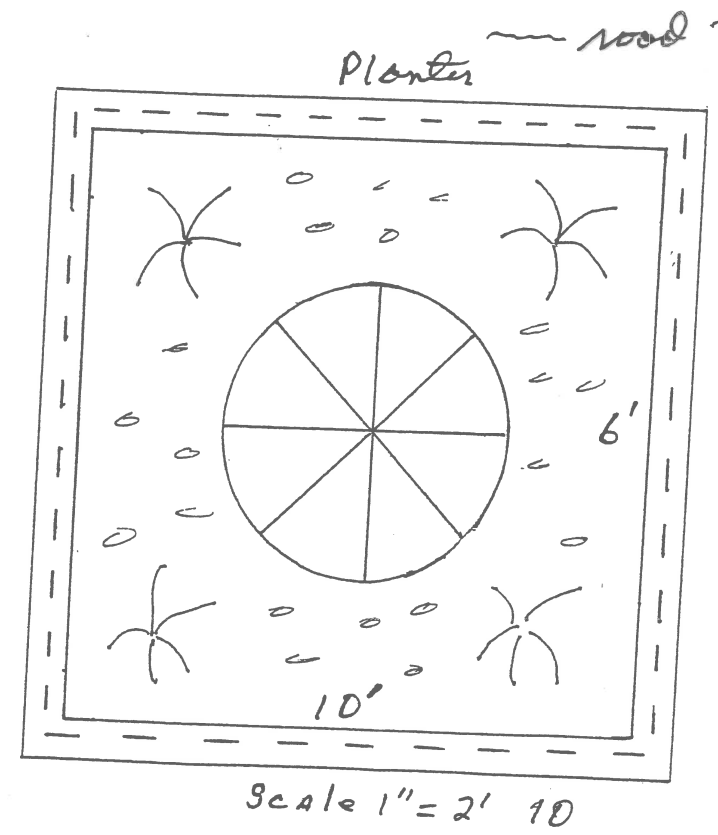


Landscape Plant Legend

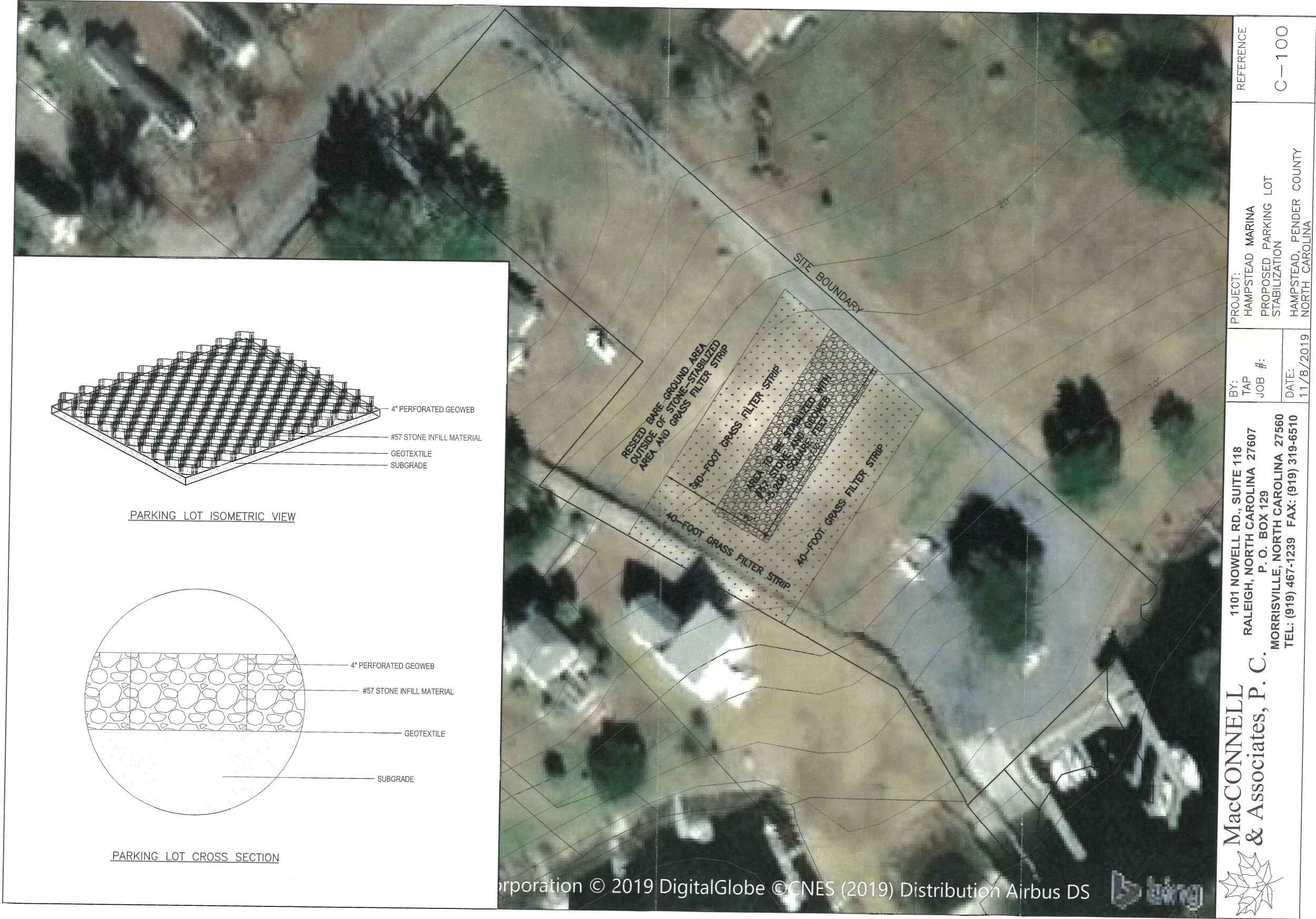
- LIVE OAK
- PECAN
- CRAPE MYRTLE
- DWARF YAUPON HOLLY
- LIGUSTRAM
- MULCH
- THUNDERB SPIREA



6' }
Parking
E



6' }
Parking Dr.
(Sheet)













































SAMUEL B. FRANCK, Attorney at Law

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

P: 910.794.4835
F: 910.794.4877
sbf@wardandsmith.com

March 4, 2019

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

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

Dear Sir or Madam:

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

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

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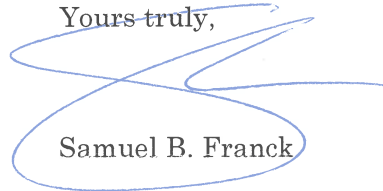
WARD AND SMITH, P.A.

March 4, 2019

Page 2

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

Yours truly,



Samuel B. Franck

ND: 4827-4605-9913, v. 1

Pender County Planning and Community Development

Code Enforcement

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



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

March 13, 2019

Dear Mr. Franck:

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

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

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

Regards,

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

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

Pender County Planning and Community Development

Code Enforcement

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



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

October 11, 2019

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

Dear Property Owner,

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

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

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

Regards,

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

Charlie Ring
Pender County Code Enforcement

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

P: 910.794.4835
F: 910.794.4877
sbf@wardandsmith.com

November 12, 2019

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

Attention: Mr. Charlie Ring

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

Dear Mr. Ring:

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

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

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

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

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

Overhead Lights

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

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

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

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

WARD AND SMITH, P.A.

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

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

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

Site Stabilization

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

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

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

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

WARD AND SMITH, P.A.

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

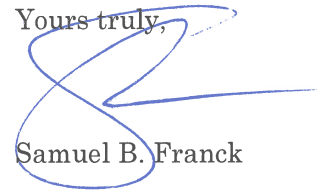
Page 92 of 188

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

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

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

Yours truly,



Samuel B. Franck

cc: Wesley Wooten

ND: 4850-9956-8554, v. 1



Pender County Request for Board Action

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

SUMMARY:

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

ACTION REQUESTED:

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

PLANNING STAFF REPORT ADDENDUM
Special Use Permit

Summary:

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

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

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

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

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

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

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

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

Attachments

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

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

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

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

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

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

Description and History:

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

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

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

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

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

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

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

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

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

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

EVALUATION:

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

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

Attachments

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

Pender County Planning and Community Development

Code Enforcement

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



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

1st NOTICE OF VIOLATION

November 30, 2018

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

Dear Property Owner,

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

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

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

CONDITIONS THAT CREATE VIOLATION:

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

Specific conditions to be complied with are as follows:

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

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



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

INTRODUCED BY: Johnny Satten

DATE: January 20, 2004

ITEM NO: 32

Special Use Permit: Expansion of Existing Hampstead Marina

SUBJECT: CASE NO: 03-07-21-16
PROPERTY RECORD NO: 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 Ordinances. The Coastal Management staff has issued a CAMA permit for a 9 slip facility. Since this proposal is a minor expansion of an existing marina facility, it is not inconsistent with the Pender County Land Use Plan.
- D) 20/20 Growth Policies Consistency:** The proposal is not inconsistent with the 20/20 Policies as long as reasonable measures are taken to install and provide long term maintenance of landscape materials appropriate to the site and area conditions.
- E) Flood Hazard Ordinance Compliance:** The proposal is in compliance with the Flood Hazard Prevention Ordinance, since the only structure (restroom building) on the site below flood elevation existed prior to the adoption of the Ordinance.
- F) Existing Land Use In Area:** Single family uses are located adjacent to the site on the northeast, northwest and southwest sides of the site. Estuarine waters are on the southeast side of the site. (See attached land use map).
- G) Site Access Conditions:** The marina site access to a state maintained road is not clear. Additional information must be submitted.
- H) Conditions To Consider In Issuing A Special Use Permit For This Project:**
 - 1. The following shall be submitted prior to issuance of a zoning permit for the site:
 - a) An Existing Waste System Permit from the Pender County Environmental Health Division with a specific reference to the Hampstead Marina and limitations on capacity for the waste system.
 - b) NCDOT Driveway Permit for access to the NCDOT state maintained road for the commercial facility identified herein as Hampstead Marina.
 - c) A revised site plan complying with the conditions of this permit, including the specific description and location of perimeter fencing as required herein.
 - d) Recorded documents showing that the commercial site has access to Broadview Lane or a NCDOT maintained road or other evidence satisfactory to the County Attorney that the commercial site has access to a NCDOT maintained road.
 - 2. A separate Zoning Permit must be obtained for any existing or proposed signs located on the property or that advertise the site or use. All such signs shall be in accordance with Section 16 of the Pender County Zoning Ordinance.
 - 3. Any flood or spotlights shall be oriented away from the street, water navigational channels or adjacent properties.
 - 4. All areas of the marina site that are not stabilized with gravel, aggregate base course or an acceptable paving material or approved facilities shall be stabilized and maintained with a permanent vegetative coverage of 98%. Areas planted in grass shall be maintained at a height of not more than 6". A plan for the seeded areas approved in written form by the NC Agricultural Extension Service or the local SCS office of the USDA shall be submitted with the application for a zoning permit and all areas of the site shall be stabilized as specified prior to the issuance of an occupancy permit for the facility.
 - 5. The site shall be maintained so that there is no visible erosion on the site and no visible transport of sediment off the site on to adjacent properties or into estuarine waters.
 - 6. Occupancy of the site shall be limited to the capacity established by the Existing Septic Permit, the NCDOT driveway permit, the CAMA permit or the limitations established in this permit which ever is more restrictive.
 - 7. A 6 ft high 6 inch by 6 inch wood fence shall be installed along the southwestern boundary from the corner of the residential site on the property to within 10 ft. the mean high water line. The fence shall be left in its

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

Permit # 03-07-21-16

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

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

AMENDMENTS: **

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland V Meadows Rivenbark

Dwight Strickland

Dwight Strickland,
Chairman

01-20-04
Date

Glenda Pridgen
ATTEST

01-20-04
Date

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

INTRODUCED BY: Johnny Sutton

DATE: December 20, 2004

ITEM NO: 18.

Special Use Permit: Hampstead Marina Amendment

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

PROPERTY RECORD NO: 08220 & 08221

APPLICANT: H. Allen and Joyce H. Wooten

OWNER: Wooten Holding

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

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

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

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

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

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

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

MOVED Moore **SECONDED** Rivenbark

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

YEA VOTES: Meadows Holland X Moore X Rivenbark X Williams

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

Glenda Pruden
ATTEST

12-20-04
Date

INTRODUCED BY: Johnny Sutton

DATE: November 15, 2004

ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

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

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

EVALUATION:

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

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

Permit # 03-07-21-16

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

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

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

Dwight Strickland,
Chairman

11-15-04

Date

Glenda Pridgen
ATTEST

11-15-04

Date

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

Pender County Planning and Community Development

Code Enforcement

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



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

FINAL NOTICE OF VIOLATION

March 13, 2019

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

Dear Property Owner,

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

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

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

CONDITIONS THAT CREATE VIOLATION:

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

Specific conditions to be complied with are as follows:

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

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

CURRENT CIVIL PENALTY ACCRUED:

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



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

**Pender County
Planning and Community Development**

Code Enforcement

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



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

August 30, 2019

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

Dear Property Owner,

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

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

Attached you will find a copy of Court Ordered Compliance.

Regards,

Pender County Code Enforcement

**Pender County
Planning and Community Development**

Code Enforcement

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



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

August 30, 2019

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

Dear Mr. Thurman,

VIOLATION: Special Use Permit

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

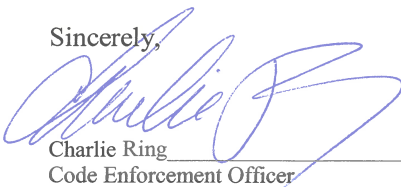
Case # 298-2018

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

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

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

Sincerely,


Charlie Ring
Code Enforcement Officer

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

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

CC: To Owner
Planning Director

**Pender County
Planning and Community Development**

Code Enforcement

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



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

October 11, 2019

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

Dear Property Owner,

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

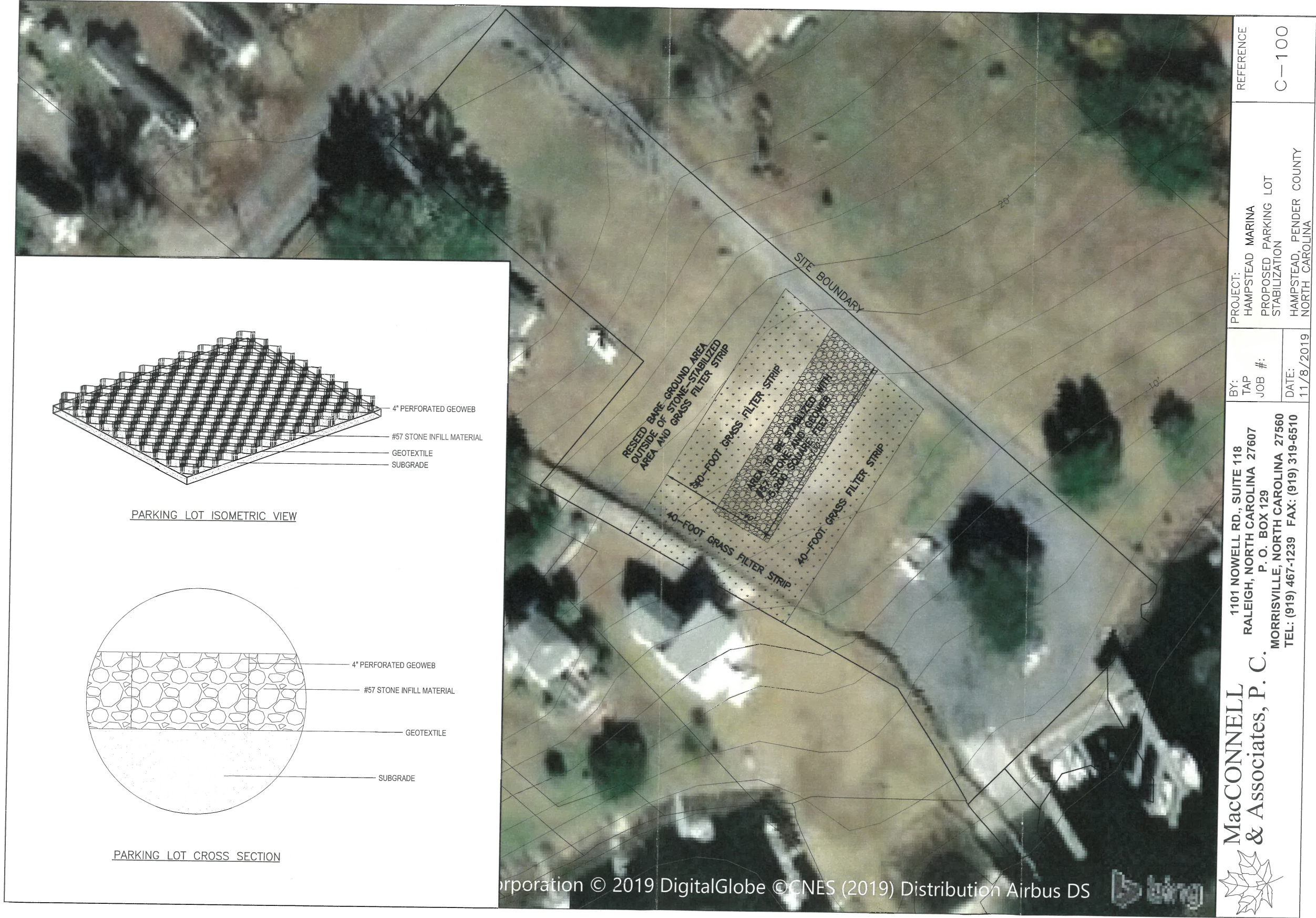
1. That the approval was obtained by fraud.
2. That the use for which such approval was granted is not being executed.
3. That the use for which such approval was granted has ceased to exist or has been suspended for one year.
4. That the permit granted is being, or recently has been exercised contrary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

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

Regards,

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

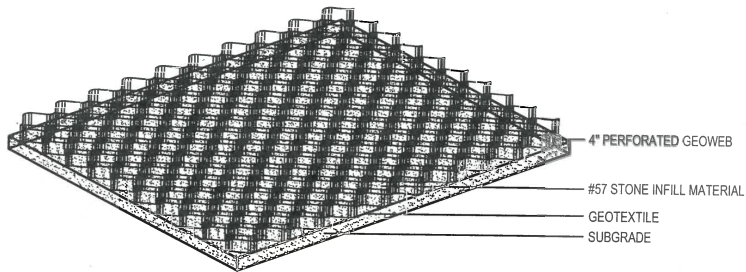
Charlie Ring
Pender County Code Enforcement



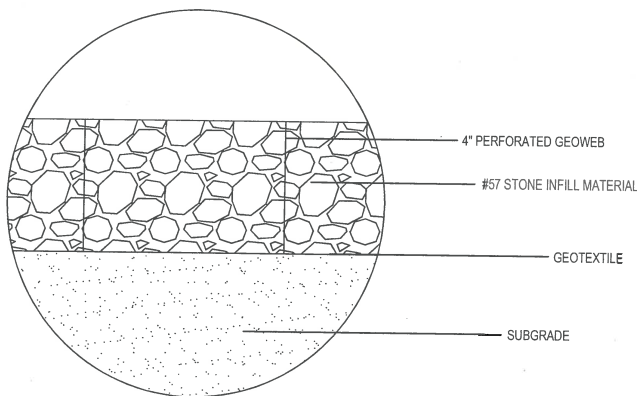
Z:\T-Drive\Library\2019\A76001.00 - Wooten, Wesley - Hampstead Marina\Drawings\Hampstead Marina - Proposed Parking Lot Stabilization Plan.dwg Nov 25, 2019 3:33pm

NOTES:

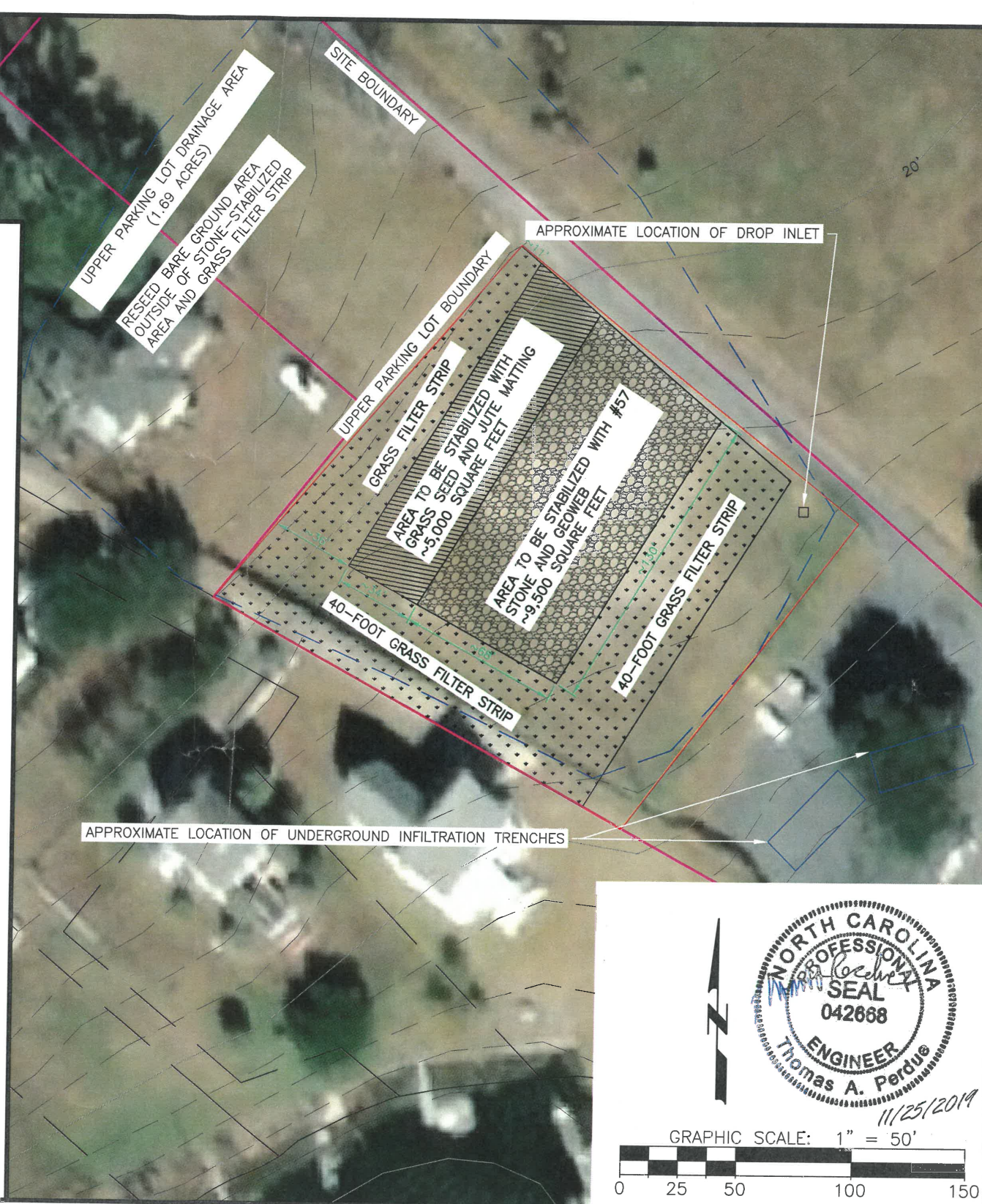
- 1) UPPER PARKING LOT IS TO BE UTILIZED FOR OVERFLOW PARKING (PER OWNER APPROX. 25 DAYS A YEAR).
- 2) DAILY TRAFFIC WITHIN UPPER PARKING LOT WILL BE CONFINED TO GRAVEL AREA AS APPROPRIATE. PARKING ATTENDANT WILL BE ON-SITE DURING HOLIDAYS/WEEKENDS DURING SUMMER AS NEEDED.
- 3) #57 STONE WILL BE INSTALLED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



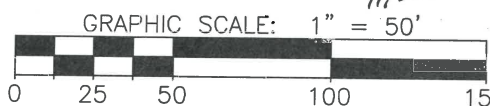
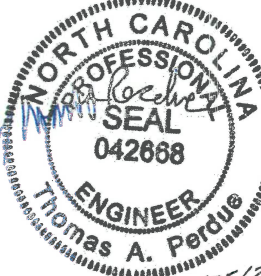
PARKING LOT ISOMETRIC VIEW



PARKING LOT CROSS SECTION



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



**Pender County
Planning and Community Development**

Code Enforcement

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



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

1st NOTICE OF VIOLATION

November 30, 2018

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

Dear Property Owner,

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

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

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

CONDITIONS THAT CREATE VIOLATION:

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

Specific conditions to be complied with are as follows:

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

Code Case 298-2018

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

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

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

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

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

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

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

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

DATE OF NOTIFICATION:

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



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

INTRODUCED BY: Johnny Sutton

DATE: January 20, 2004

ITEM NO: 32

Special Use Permit: Expansion of Existing Hampstead Marina

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

PROPERTY RECORD NO: 08220 & 08221

APPLICANT: H. Allen and Joyce H. Wooten

OWNER: Joseph N. and Stella M. Honeycutt

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

HISTORY/BACKGROUND:

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

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

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

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

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

EVALUATION:

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

Permit # 03-07-21-16

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

Permit # 03-07-21-16

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

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

AMENDMENTS: **

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland V Meadows Rivenbark

Dwight Strickland

01-20-04
Date

Dwight Strickland,
Chairman

Blenda Pridgen
ATTEST

01-20-04
Date

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

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

Special Use Permit: Hampstead Marina Amendment

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

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

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

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

Permit # 03-07-21-16

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

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

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

MOVED Moore **SECONDED** Rivenbark

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

YEA VOTES: Meadows Holland X Moore X Rivenbark X Williams

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

Glenda Bridgen
ATTEST 12-20-04
Date

INTRODUCED BY: Johnny Sutton

DATE: November 15, 2004

ITEM NO: 18.

Special Use Permit: Existing Hampstead Marina Special Use Permit Revision

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

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

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

HISTORY/BACKGROUND:

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

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

Project History:

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

EVALUATION:

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

Permit # 03-07-21-16

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

Permit # 03-07-21-16

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

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

AMENDMENTS: ** See Revisions Below.

MOVED Williams **SECONDED** Rivenbark

APPROVED X **DENIED** UNANIMOUS

YEA VOTES: Strickland Williams Holland Meadows Rivenbark

Dwight Strickland

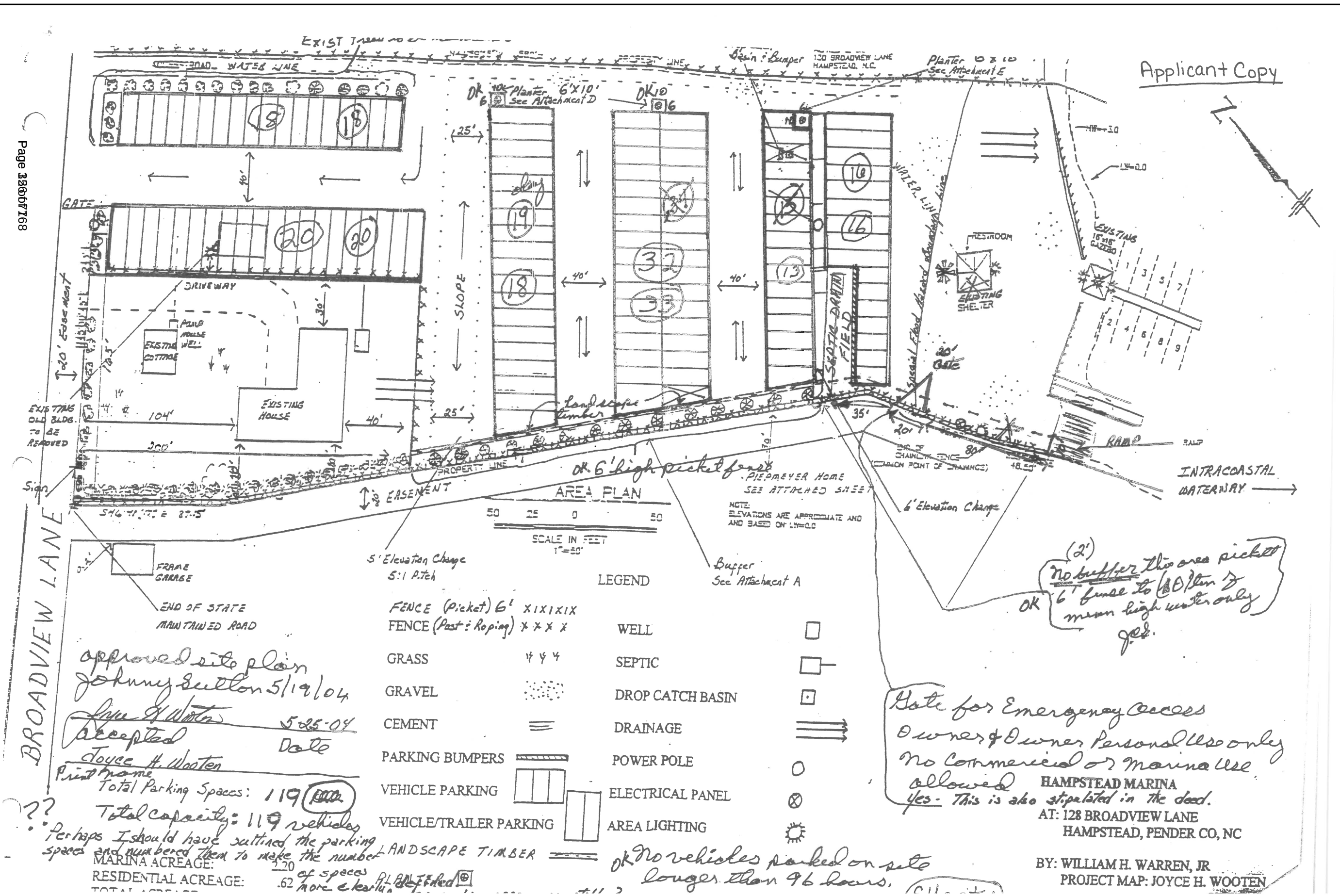
Dwight Strickland,
Chairman

11-15-04
Date

Glenda Pridgen
ATTEST

11-15-04
Date

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



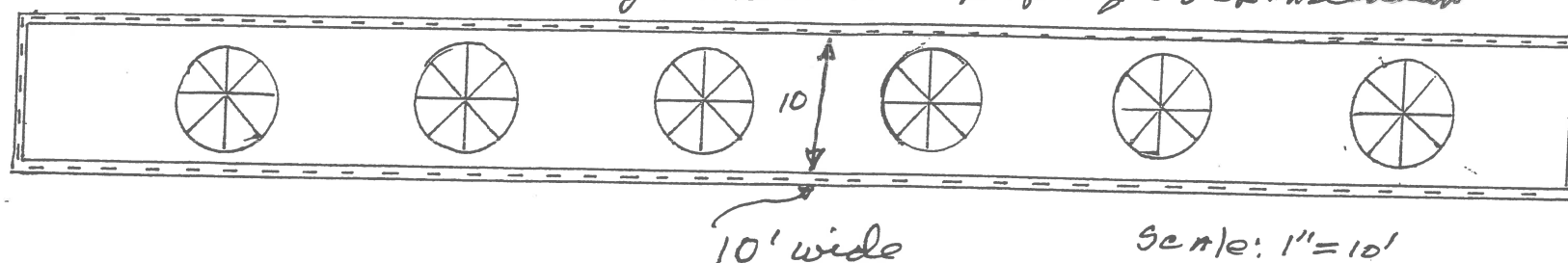
LANDSCAPE LEGEND

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

Approved Site Plan
Johnny Sutton 5/19/04

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

Buffer for Southwestern Boundary
from residential property to drop in elevation



Landscape Plant Legend

LIVE OAK



PECAN



GRAPE MYRTLE



DWARF YAUPON HOLLY



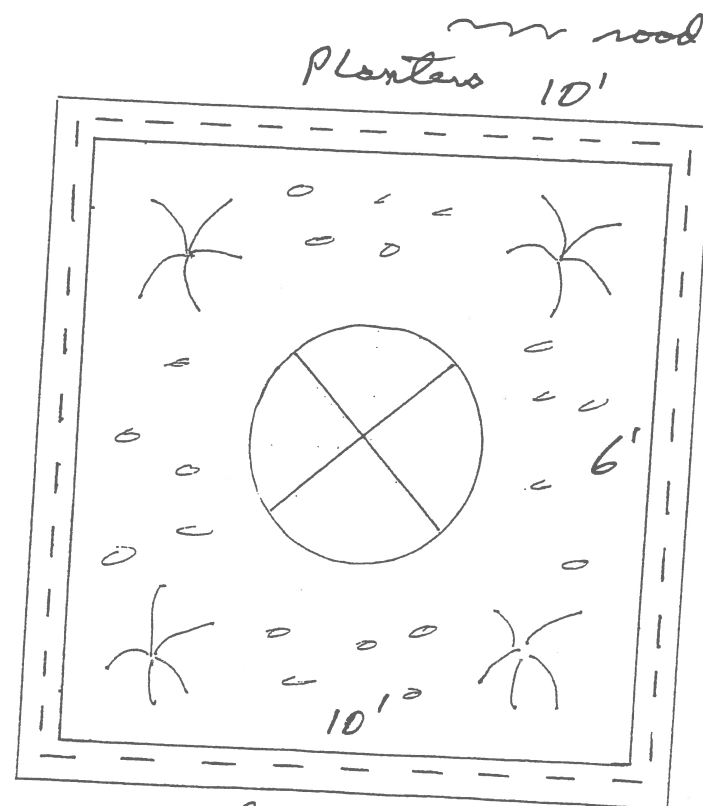
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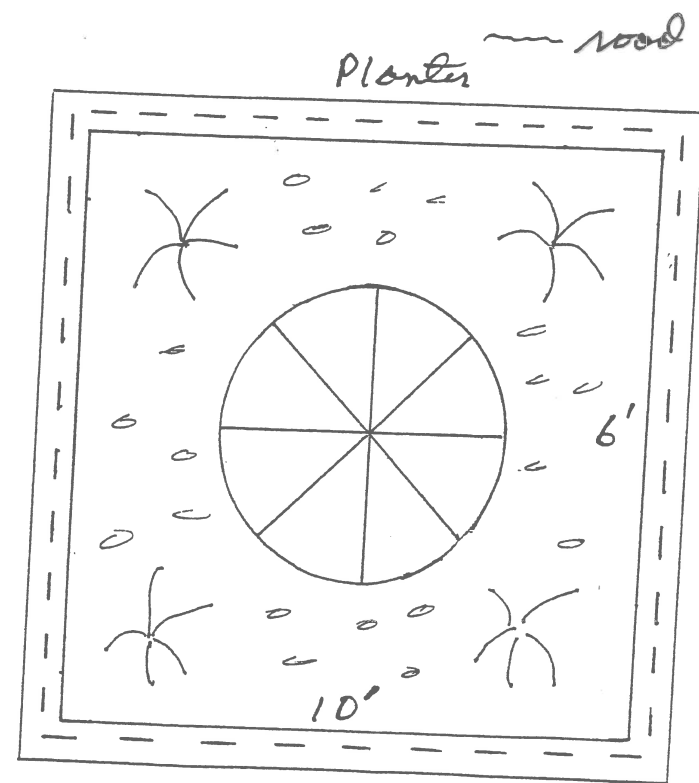


THUNDERB SPIREA



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Parking
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Parking Dr.
}

(Sheet
7)









































SAMUEL B. FRANCK, Attorney at Law

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

P: 910.794.4835
F: 910.794.4877
sbf@wardandsmith.com

March 4, 2019

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

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

Dear Sir or Madam:

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

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

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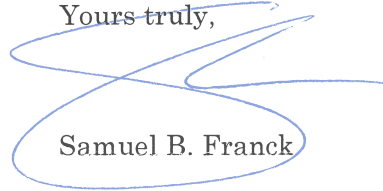
WARD AND SMITH, P.A.

March 4, 2019

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

Yours truly,



Samuel B. Franck

ND: 4827-4605-9913, v. 1

Pender County Planning and Community Development

Code Enforcement

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



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

March 13, 2019

Dear Mr. Franck:

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

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

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

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

Regards,

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

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



SAMUEL B. FRANCK, Attorney at Law

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November 12, 2019

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

Attention: Mr. Charlie Ring

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

Dear Mr. Ring:

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

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

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

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Pender County Planning and
Community Development Department
November 12, 2019
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Through subsequent discussions with you and other officers at the County, the County clarified that, from its perspective, two specific areas of identified concern needed to be addressed to satisfy the applicable zoning requirements: (1) the two overhead lights located on the subject property, which have been there since prior to the issuance of the original SUP, needed to be adjusted or adapted so that they are not oriented toward the neighboring and complaining land owner's property, and (2) the surface of the parking areas and thoroughfare lanes on the land need to be stabilized, following damage to the same caused by erosion in the tremendous rainfall events suffered during and after Hurricane Florence. While my client and I disagree with the allegation that those conditions violate the applicable zoning, the land owner has taken action to address the County's requests.

Overhead Lights

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

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

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

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

WARD AND SMITH, P.A.

Pender County Planning and
Community Development Department
November 12, 2019
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the glare rating for the fixture from a 3 to a 1 (on a scale of 0-5). As of delivery of this letter, that work is complete.

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

Site Stabilization

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

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

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

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

WARD AND SMITH, P.A.

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

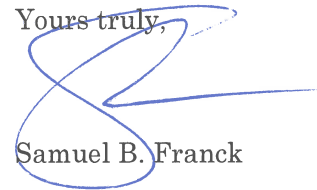
Page 63306768

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

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

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

Yours truly,



Samuel B. Franck

cc: Wesley Wooten

ND: 4850-9956-8554, v. 1

Moved by David Williams, seconded by Jacqueline A. Newton

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

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

CARRIED.

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

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

the public hearing at 8:30 p.m.

Moved by Jacqueline A. Newton, seconded by David Williams

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

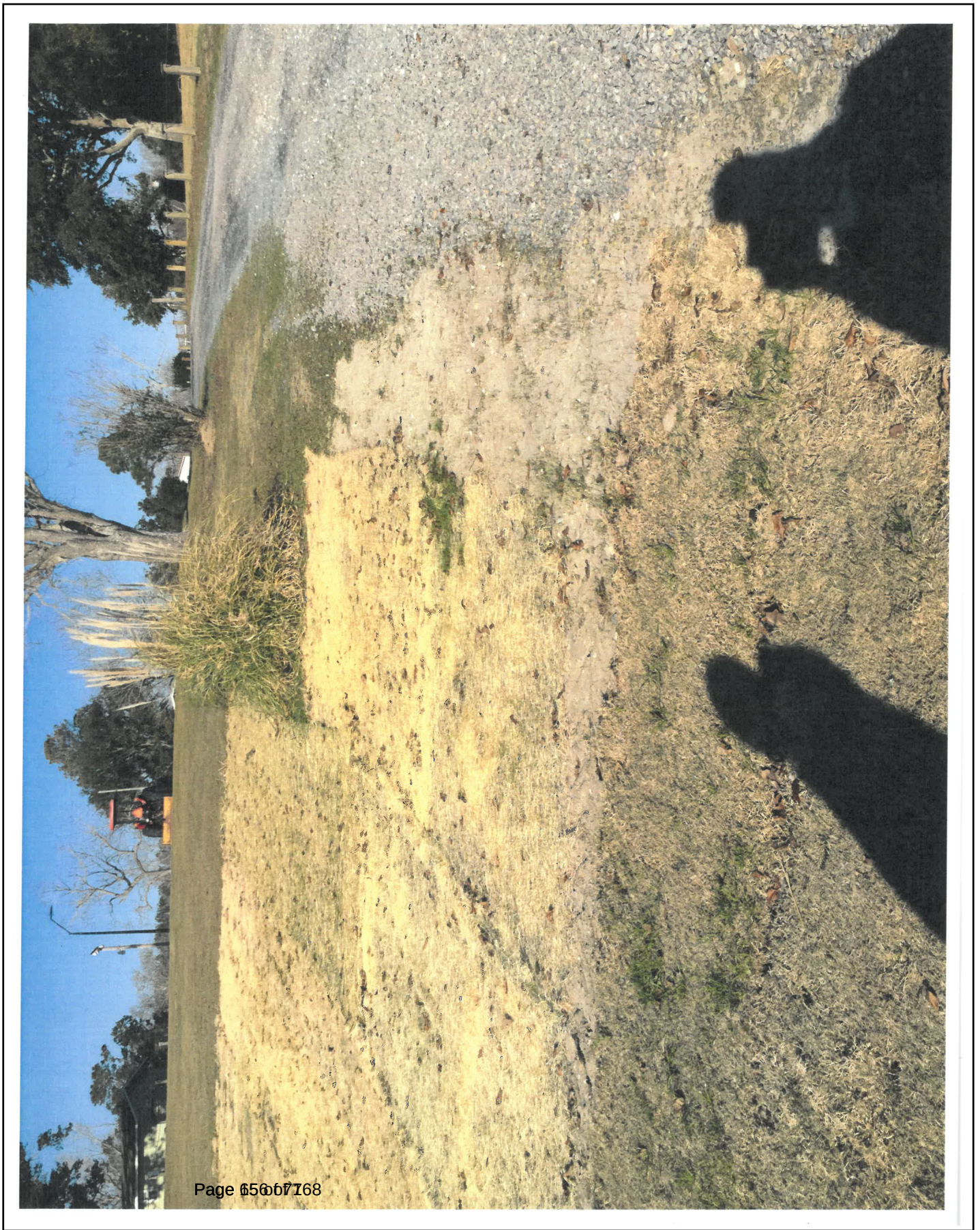
	For	Against	Abstained	Absent
George Brown	x			
Fred McCoy	x			
Jacqueline A. Newton	x			
David Piepmeyer				x
David Williams	x			
	4	0	0	1

CARRIED.

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

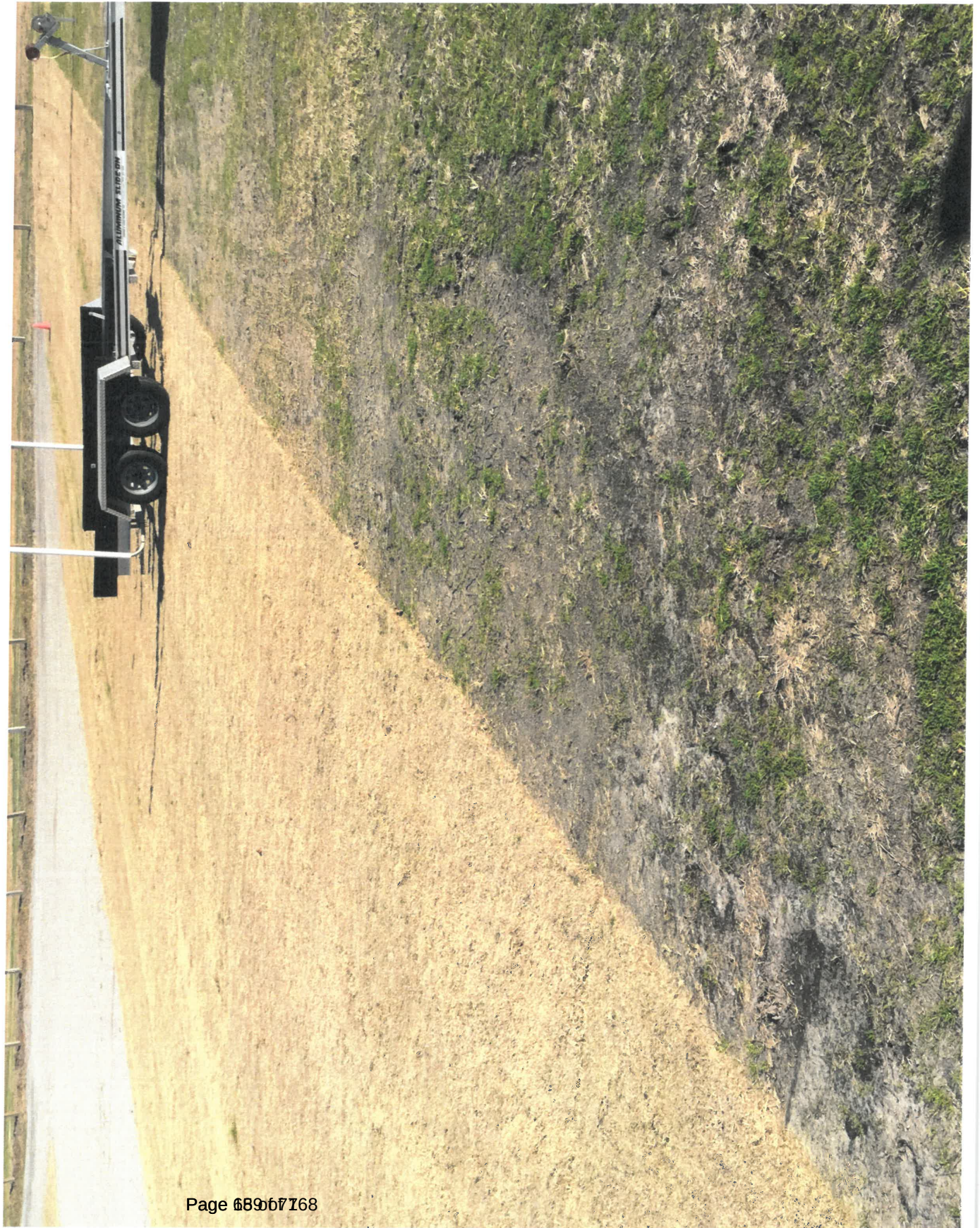
Chairman Brown opened the public Hearing at 8:30 p.m.

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











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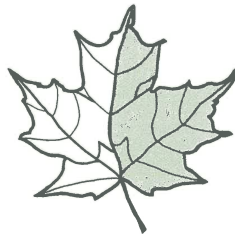
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P. O. Box 129
Morrisville, NC 27560

919-467-1239



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

501 Cascade Pointe Lane
Suite 103
Cary, NC 27513

Fax 919-319-6510

January 3, 2020

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

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

To Whom It May Concern,

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

Sincerely,



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

Travis Henley

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

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

Gentlemen –

I am just following up on the correspondence below.

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

Best regards,

Sam

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

Dear Charlie, Travis, Doug, and Trey –

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

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

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

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

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

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

Best regards,
Sam

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

Wesley,

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

Thanks, Charlie



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

Ward and Smith, P.A.
127 Racine Drive | University Corporate Center (28403)
Post Office Box 7068 | Wilmington, NC 28406-7068
P: 910.794.4835 | F: 910.794.4877 | M: 910.228.3092
V-card | www.wardandsmith.com



Pender County Planning and Community Development

Planning Division

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



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

January 30, 2020

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

Dear Mr. Franck,

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

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

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

Thank you,

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

