



**TOWN OF HOLDEN BEACH
BOARD OF ADJUSTMENT
REGULAR MEETING
TOWN HALL PUBLIC ASSEMBLY
Monday, September 19, 2022
3:00 PM**

1. Call to Order
2. Roll Call
3. Tabled Case No. 05-22: To request a variance from the Holden Beach Code of Ordinance Chapter 94, Section 94.03 (C)(6). The structure is being proposed south of the landward toe of the frontal dune. This request is for 1235 Ocean Boulevard West.
4. Case No. 07-22: To request a variance from the Holden Beach Code of Ordinance Chapter 157, Section 157.080 (fences). To construct an 8-foot-tall fence measured from grade in the side and rear yard. This request is for 222 Ocean Boulevard East
5. Old Business
6. New Business
7. Adjournment



Town of Holden Beach
Zoning Board of Adjustment
Regular Meeting
Monday, July 18, 2022

The Town of Holden Beach Board of Adjustment met for a regular meeting on Monday, July 18, 2022, at 3:00 PM in the Holden Beach Town Hall Public Assembly. Present were Vice Chairperson Richard Griffin, Regular Members Phil Caldwell, and Jack Lohman. Alternate Members present were Aldo Rovito and Richard Roberts. Absent were Chairperson Anne Arnold, and Regular Member Mary Lou Lahren. Present town staff members were Tim Evans, Carey Redwine, and Rhonda Wooten.

CALL TO ORDER

Vice Chairperson Richard Griffin called the meeting to order.

ROLL CALL

Secretary called roll.

APPROVAL OF MINUTES FROM JUNE 20, 2022

Richard Griffin made a motion to approve the minutes, second by Jack Lohman; minutes were approved.

CASE NO. 05-22: To request a variance from the Holden Beach Zoning Code of Ordinance Chapter 94, Section 94.03 (C)(6). The structure is being proposed south of the landward toe of the frontal dune. This request is for 1235 Ocean Boulevard West.

Evans: I'm going to start out by saying you cannot get a variance for 1235 because it is a regulatory rule. Now you can hear the appeal for our decision. I think basically what happened was our designation of the frontal dune I guess they're not accepting the marking where we marked the frontal dune and it is our understanding that they want to appeal that decision so that they can move their house.

If I'm correct, in line with the homes on either side. I think that's the decision they're appealing.

Griffin: Okay. Do you have anything to say about why that decision was made?

Evans: Certainly. We've been designating that frontal along its perimeter now since the beginning of the ordinance which goes quite a way back. We've been consistent with the way that we've delineated that frontal dune. That frontal dune is probably the most important aspects as far as our resilience goes. It's also important to the town and the safety of other structures its location, its density, and its size. That frontal dune is in an inlet hazard area, has been and it also kept structures from being forward of it and because of that it's helped make the town more resilient. The fact that our frontal dune ordinance is more restrictive than the CAMA dune ordinance gives us points under the CRS rating and therefore everybody's insurance benefits from that. The decision not to alter those dunes are in line with our NFIP ordinance and with the FEMA guidelines for minimal obstruction of those dunes. So, we consider a lot of factors when we designate those dunes. They are probably one of the most important features that we have, and the west end has if you look at the topography down there from an aerial there it's really their primary protection. There are some dunes out there 600 700 feet away but they almost come and go with every high tide storm they break down and there's a big swash area in front of these in front of these areas as well. Now I don't know if that swash area is directly in front of this one, but I believe that it is and so those areas fill up with water, especially during the storm. Staff doesn't believe that we should be altering the dunes or moving that frontal dune and we think it would be detrimental to the west end if you start breaking into those dunes.

Griffin: Before we ask questions let's hear from the homeowner.

Gadsden: Jeff Gadson it's nice to be here and this is my wife, Corey. We're super excited to be homeowners here at Holden Beach. We love this community, and we chose it specifically because of the great job that you've all been doing and keeping it such a great place to live and work. Thanks Tim and Rhonda for all the

information back and forth over the year i guess it's been. I think there's about 12 or 15 slides. So, this is our property at 1235 that we bought in January of last year and you can see that we've outline where that is. The proposed toe of the dune is in yellow, and you can see that it's extending sort of between the middle of our house of our neighbor's homes there. Now if I overlay the survey that was done by Gary Gurganus you can see I've lined it up precisely to match the contours of the road and the property lines and so that is the toe of the dune as marked by the town. This is the apparent position of the town dune I know that there's different nomenclature for different types of dunes, there's frontal dunes, town dunes, CAMA dunes and such. I think what we're talking about here is this town dune, so this is where the town dune is per that survey, and I'll just go on to show you that is indeed the case per the survey. So, what I've outlined there in green is where the town dune is, and I want to draw your attention to the fact that three houses in our little block there do extend over the town dune as marked by that survey. We have no issue with this we think that these homes don't pose a threat to property or people. We think they're in compliance with the spirit of the regulations. They're not impacting the architecture and the strength of the dune at all; they're just nudging up against it and it seems appropriate to us. So that would be our home placement should we comply with the originally proposed toe of the dune, and I just want to point out how jarring and out of proportion that home and the footprint looks compared to all our neighbors in the 1230 block. This is what we're proposing, there is the town dune which we don't want to impede upon, destroy, or alter in any meaningful manner. We

just want to be in line with our neighbors. We don't want to be able to build on the dune and we certainly don't want to build in front of anybody's home and cause any problems there. We just want to enjoy the same rights and privileges as everyone else in our block. We have a drone picture looking at that part of our beach and you can see that the town dune does go in one continuous line all in front of those homes. I understand why it was done, and I take no issue with the job that Tim and Rhonda have done here. What's evident to me, and I think hopefully to all of us, is that this is accumulated sand that's just blown in there since the other homes on either side of our property have been built for 20 or 30 years. So, you know when the rain pushes the sand back and that increased width or girth of that dune is not relevant. I think the job the dune is doing to protect people. Our neighbors all have built homes in reasonable proximity to the town dune we just wish to do the same. We do think that forcing us to put our homes significantly back from our neighbors is not fair and somewhat discriminatory and deprives us of the same rights and privileges that they enjoy under the same town governance and that's why it represents a hardship. I think just to make this point a bit clearer there is a precedent for building closer to the dune than what we're being offered, and this is 1209 Ocean Boulevard West. You can see this is built in 2020 and you can see that the home there is built right up onto the dune, the pool and the concrete deck that surrounds the pool is in fact where the dune ought to be. Here's a picture at 1209 and you can see that there's a staked top of the dune, see the little yellow circle around that stake? This homeowner has built a retaining wall and obliterated the dune and destroyed it to create their veranda deck porch and pool deck. Now I'm not suggesting that we do this, I bring this up simply to point out that there clearly has been either a variance or some other concession made to these homeowners and if that's being done then we feel like we should be afforded the same rights and privileges. Here's the same 1209 OBW and you can see that stake that I've circled is the toe of the dune. So, these homeowners have the southern extent of their porch. Their third floor living space extends beyond the toe of the dune that's in fact what we want to do. We just want to nudge our balcony and deck up to where the dune starts to rise on our property. We don't want to bulldoze anything like these people and again we take no issue with 1209 and the owners. Finally, you can see a dotted line here, this represents that town dune and I want to point out that the town dune we're talking about at 1235 is the same town dune that 1209 dealt with in the way that they dealt with. So, in summary we do not want to destroy or impact any dunes we respect the principle of the dune architecture and the protection of property. We simply want to build our home not where the current mark of the toe of the dune

would suggest but in line with our neighbors and be granted the same reasonable and fair treatment by the Holden Beach Town Government that our neighbors clearly enjoyed. Thank you very much.

Evans: All right to start off with, when you're giving evidence like this you must give me an opportunity to cross-examine them when they decide to get up and talk. When the Board of Adjustment makes a ruling the ruling stays with the land. You're not giving a variance; you're only listening to the appeal and the appeal process is different than a variance process. You are setting a precedent when you honor an appeal. You must find that the ordinance is not being enforced to its regulatory terms or conditions as interpreted. I'm going to say it again, they're appealing this but I'm not sure this is the right venue because if they violated it, it's a penalty. In other words, it would be like getting a DWI, you don't get an adjustment, you must go to a regular court and get an appeal. So, they brought it here under the guise of a variance, but I think it's only an appeal. It follows the same guidelines, but the hardship they don't

have to prove any hardship. But whenever they prove a hardship if you're approving a variance then you're not setting a precedent, if you overturn our decision on the frontal dune, you are setting a precedent and are saying that this is the new rule.

Corrie: I'm not sure that is so clear to me, we received a piece of paper stating it is for a variance.

Evans: If y'all want to treat it like it's a variance you can treat it like it's a variance. I've already talked to the attorney, they applied for a variance. When we spoke to the contractors, we told them they applied, and we turned them down because they didn't meet the time limit for an appeal. We told them that they could reapply if they changed the conditions so that they could appeal, we were unaware that it came in as a variance until just a few hours ago and that's when I contacted the attorney.

Gadsden: So, despite the paperwork that you had for 30 days this was just news to you now?

Evans: I'm not an attorney, it's not my job to determine what they're supposed to be hearing or not hearing.

Gadsden: I apologize if we're in the wrong forum here everybody, the communications from Holden Beach have been, well, we got the letter on the weekend. Anyways, did you have some questions for me Mr. Evans?

Evans: What I'm saying is it's the same if they choose to give a variance then you're probably going to be back for an appeal, if you choose to do an appeal and they decide then you have your answer. The evidence doesn't change, your burden of proof is less, I mean I'm just saying you don't want to give a variance when you're hearing a changing of the city. That's the only thing, the difference is one you don't set a precedent.

Rovito: I understand what you're saying, the toe of the dune or whatever has been set.

Evans: I want to ask him a few questions, if you go back to his first slide, you'll notice that the topography of the frontal dune is set right where it's supposed to be based off the survey. The survey shows where it is right here, that if the lowest portion where it begins to extend is exactly where we set the toe of the dune on the landward side. Okay and that's determined by surveys. It is also determined based off the definition of what a frontal dune is that it can change from one house to the other and clearly it has over time. If you wait 15 years or 10 years then the dune grows and the only way you can be consistent is to move with the dune and so that's why those other houses are not in line with each other, they were not all built the same day and because of that topography changed as it went along.

Gadsden: Can I ask two questions?

Evans: That would be okay.

Gadsden: Okay, my first question is I was happy to hear you talk in your opening remarks there Tim about consistency, I understand why that's important and so one of the questions that Corey and I are struggling with is how has the regs been applied inconsistently apparently to as it relates to 1209?

Evans: What evidence do you have that 1209 didn't build that forward of the town's designated frontal dune, that's one of my questions for you.

Gadsden: I have a picture of the Town's staking it.

Evans: That is a survey stake from where they surveyed the lot, not the dune.

Gadsden: I would love to see that survey because it does not match with everything I'm seeing.

Evans: He's saying that if a house that has no standing at the other end of the beach doesn't match what he would like to have happen in his house, then it's okay to change the rules.

Gadsden: No, I'm not asking for a change in rules.

Evans: It is consistent down there, if it wasn't consistent, they'd all be in a line because we'd be using the line and not the toe of the dune.

Gadsden: Mr. Evans what I'm suggesting is that we do use the line of the dune, here it is on that page.

Evans: Who made that line?

Gadsden: Nature made that line.

Evans: I have not located any of those lines he put on that map.

Gadsden: My second question is, if we take your assertion to its natural consequence if we leave our lot for 20 more years and that wind and rain blows some sand back towards the road is Holden Beach prepared to tell us that land may never be built on again? Because now I can't build a house if in 20 years' time that sand is now four feet away from the road. Are you saying that dune is a protective dune that is crucial to the resilience of the community and therefore we can net that land is essentially worthless now because you can't build a home?

Griffin: I don't think that has anything to do with this case.

Gadsden: I think it does.

Evans: So, what you're saying is that if the dunes start to grow, we should ignore them for development?

Gadsden: I think what you should do well, I don't know, I can't tell you how to do your job and I wouldn't want to do that. But I would suspect that the beachward toe of the dune is much more important and if the if the entire dune was moving back. That would be one thing but it's not, it's in front if you go out to 1237 and 1231, you'll see that the dune is one continuous solid structure. It hasn't suddenly just changed its course in our property lines.

Evans: If you ignore the town's frontal dune and you start ignoring the landward side of that toe of the dune, you're going to end up with structures out there next to the ocean.

Gadsden: I think that would be a reasonable premise if we were talking about the 100 block or the 200 block

Evans: Well, that's what happen at the 100 and 200 block.

Gadsden: So, should we be cautioning the Smith family to raise their house up and pull it back because they're clearly in danger of falling into the ocean by your logic?

Evans: The whole town is in a flood zone that's why they're built on stilts, and we have a two-foot free board above that. We do that to protect them from flooding and from the loss of protective dunes. That's one of the things that makes us resilient, and we get CRS points for it.

Griffin: Does anybody have any questions?

Caldwell: I do, and this has been confusing to me for some time, how is the toe of the dune determined? Rhonda, do you do that?

Wooten: Tim and I do that.

Caldwell: Okay, you and he do it together. How is that determined? When this came up and I was reading this, this morning that's the question I had because I went to some research that has been done and published that it's very arbitrary where the toe of the dune is.

Evans: No here's how we do it, we go out there and see what we feel like is the toe of those dunes and we mark them but then if someone doesn't agree with it as in the case at 1209 they can go get a surveyor who can then do topographical maps for us and show elevations that will then determine under the ordinance which dune is best suited to protect the structure and that's usually by depth and height and that's what happened at 1209.

Rovito: Are you saying that at 1209 the dune was higher?

Evans: what I'm saying is that at 1209, they felt like the next dune out was bigger and was designated to be designated as a town frontal dune and they went and got a surveyor who proved that.

Rovito: Okay.

Evans: It had an indention and if I remember correctly, they did so it wasn't arbitrary to the fact that we don't use topography and we don't use survey.

Caldwell: You do not use topography and you do not use surveys is that what you just said?

Evans: We do, we do use surveys.

Caldwell: How is that surveyed? I mean the toe of the dune obviously must be where it begins to rise, and from what everything I've read and researched that is a gray area. If it rises a half an inch per foot, well they can't break a quarter of an inch per foot once it gets more than that is that considered the rise?

Evans: They can get consistent but the way we try to originally do it before they go out and survey. It is we try to look at exactly where the rise is consistent from one end of the lot to the other.

Caldwell: Okay so in this case you would not look at the whole area?

Evans: That is what I just said, we look at the toe of the dune from one lot line to the other lot line and we try to be consistent about where it is.

Caldwell: Okay I'm saying that's maybe not enough, maybe you ought to look at a half mile before where the toe is, or you know a quarter mile.

Evans: Yeah, you can't do that. If you did an average like that sir, what you would end up with is houses way forward of the frontal dune. You could end up with houses way forward with no protection at all not necessarily you just have to agree where the toe of the dune is for a certain length of not in a line.

Caldwell: Okay this lot has been there for how long? The wind's been blowing, the toe of the dune for a lot I think it's 75 feet wide the dune has moved towards this street for this one lot, but it hasn't moved towards a street for the other lots.

Rovito: They have houses that are inside of the dune that go into where the house is now over that period because they were built let's say 20 years ago.

Caldwell: Well, the survey was done in two years ago.

Rovito: No, I'm talking about the dune designation that's what I'm talking about, not the survey itself the dune designation.

Caldwell: I think my point is from what I understand it's arbitrary line here is a lot that has been free to have the southern winds move the dune towards the street for the houses on either side, either side of this gentleman hasn't moved because the houses are there.

Gadsden: I think your point's an excellent one sir. I think to your previous point as well if you go out there and look at it the beachward side of the dune it is quite steep it goes to peak and then it runs off very gradually. So, I think your point about where you mark the toe is perfect because I go out there and I walk on our land, and it seems to be sloping from the street. So, can we call this the toe or is it closer to the dune, I think there is some arbitrary. I fully respect what Mr. Evans and Ms. Wooten do, but I think again I would implore the board that what we're asking is not to move a dune to bulldoze a dune to impact the dune it's just to get our house a little bit closer to the dune in line with our neighbors.

Griffin: Yeah, I think what we have is a procedure on how things are done and if we go with every house concern that you must draw an average of it nobody will ever be happy. So, I think you must stay with the process of how it's done.

Caldwell: I don't entirely agree with it. These people's house is not built on that line with the other people just because it's been sitting there for 20 years, that doesn't make any sense to me.

Griffin: When you build a house in Holden Beach there are regulations, zoning, there are rules, there's hundreds of them that alter that house.

Rovito: Mr. Gadsden, on the back of the house how big is that porch? How wide is it on the on the beach side?

Gadsden: I think 10 feet. The actual physical structure would not be, there would be some pilings and a bit of depth. I think that would extend a little bit up the slope.

Griffin: Are there any more questions?

Caldwell: What are we voting on? Let him build his house where he wants to or follow the toe of the dune rules that have been set up?

Griffin: We're not going with the variance; we're going with we keep the appeal with that you vote in favor of the appeal.

Evans: Hold on a second, you're not doing it as an appeal you, can put conditions on it you know, or you cannot put conditions on it. It just gets treated differently, that's just the way it is.

Rovito: Would it be possible to have the town's attorney here so we can discuss with him and get a little bit more clarification on everything?

Evans: You can ask to have him attend the next meeting and we could have him here.

Lohman: I would like to get a legal opinion what the difference is between the appeal and the variance.

Evans: Staff respectfully requests that the attorney be asked if this is even the proper place for this appeal. I just wanted to ask that question because typically some regulatory rules are appealed the commissioners, some are appealed to the Board of Adjustments. I'm assuming that he would have to look at our charter to see which one it is, I know that we had some regulatory rules appeals that went to the board of commissioners.

Griffin: Well, that's why I think the legal aspect needs to be exploited in this case I think for everybody.

CASE 05-22 WAS TABLED UNTIL SEPTEMBER 19TH

CASE NO. 06-22: To request a variance from the Holden Beach Zoning Code of Ordinance Chapter 157, Section 157.060 (D)(4). To encroach into the 5-foot side yard setback. This request is for 344 Marker Fifty-Five.

Evans: It appears that we turned them down, they want to put a cargo lift in a five-foot setback. We've been here a lot for these, and it appears they wanted to put it over on the right-hand side. It does appear, well I don't know how much room is on the left-hand side, but it does look like the left-hand side would accommodate a cargo lift. Yeah there's 11 feet on the left-hand side and 5.7 on the right. Okay, I need to ask these folks a question.

Rovito: Yes, me too. Its in two different spots.

Evans: Yes, that's mine as well.

Gibble: There were two different surveys, you must have received the first one.

Griffin: So, the survey that has the elevator in that little indentation is wrong?

Evans: It's the one that is two point three nine feet.

Gibble: Timothy Gibble, we built the house in 99. Planning houses in 97/98 with lifts in elevators were not real common. They were around but our house certainly was not designed for lift or elevator. We're getting older and it's getting harder and harder to climb up two flights of steps with groceries, furniture, and things like that. So, we're asking for this variance. They're really looking at all our decks and space but there's really no alternative without major remodeling. Our neighbors have no objection to it.

Rovito: I'm sorry you said that there's no deck on the other side of the house.

Gibble: There is no deck on the left side of the house. The rectangle is the front steps, the L shaped space is a deck that wraps around, its narrow and has no consistent depth above other than over the driveway.

Caldwell: What are the dotted lines on the back?

Gibble: That is decking and there's a lower-level deck, the upper-level deck is smaller than that and it's only on that right hand side where the depths are.

Evans: The burden is on him of course, but we turned it down because it's in the setbacks. There is no other information you know; we don't go out and investigate see where it could go and that kind of stuff. His testimony was standing by itself, he's just in the setback.

Caldwell: But a lot of times when we're here you ask if there's alternatives.

Evans: They take them up through the decks but while I'm not familiar I am

familiar with those houses over there and those structures, I haven't seen it, but I got a pretty good idea about it. There's no other way to say it, it's going to be really hard for them to go up through the middle of the deck to reach that upper level. If I'm wrong tell me I'm wrong, but I got a feeling that there's a lot of structural members the way those things are built above and below. Going through the deck may not be the best course of action for this one. If it was a straight deck for the supporting members were all the way out. You'd be better off but I got a feeling that what we've got is more than one load bearing point on the bottom to support the tops of it because it's in two different levels, it's different than the cover, that's the way most of those are on the backside.

Griffin: If you move towards the front porch, it looks like it indents in like right here, like the original on the one but that doesn't extend to the upper deck is that what you're saying?

Gibble: No.

Evans: If I'm thinking about this right there's a lot of structural members in there that they would have to offer. You can't alter the egress. I mean they may have one main egress that they can use but the other egresses. If they're there, they must comply with the code, so then that's what I'm saying. If I remember correctly, it would be hard on those houses to go up through the decks and I don't know what's on the front I'm just pointing down the front. That L-shaped deck unless I'm way off, I don't think they can easily go through that deck on the back.

Caldwell: So, you are thinking that's the only thing they can do right now?

Evans: You can't put it to the left, you can't put it to the right because we only have a lower deck. I'm assuming you're wanting to go up to the top and you can't put it, I don't think you can put it in the back. I've seen this design before, this back porch design, and it's a crossing stairway. It is coming from one side to the other, I don't know unless you think that it's feasible to cut a hole in the other side of the house.

Griffin: Correct me if I'm wrong here Tim, but if we give the variance, it goes with the land. If somebody moves, like the person that says it's okay moves won't matter.

Evans: It won't matter. If they move and somebody else buys the house, the variance letter that goes in will follow that property to it until the file catches on fire.

Griffin: Is everybody ready? Any additional comments?

Vice Chairperson Richard Griffin stated that Case 06-22 was unanimously voted to approve the variance.

There was no new business.

ADJOURNMENT 4:16PM

TOWN OF HOLDEN BEACH

BOARD OF ADJUSTMENT

Application No. _____

Date June 10, 2022

Permit Fee 175.00

Receipt # _____

GENERAL APPLICATION FORM

Permit or Relief Requested: _____ Appeal ☒ Variance _____ Special Use Permit _____

Applicant Jeff Gadsden + Corie Garbath Owner Jeff Gadsden + Corie Garbath

HOME
Address 211 Glen Haven Dr.
Chapel Hill, NC, 27516

PROPERTY
Address 1235 Ocean Blvd. West
Holden Beach, NC 28462

Telephone 917-207-1955

Telephone 917-207-1951

Legal relationship of applicant to property owner _____

Purpose of permit Build

Property location 1235 Ocean Blvd West, Holden Beach, NC

Tax map Holden Beach West (Street Address) Block _____ Lot 2-2

Lot size _____ square feet 49,696 Zoning District AE + X

No. of buildings to remain N/A Gross floor area to remain N/A

No. of buildings proposed 1 Gross floor area of proposed buildings 3288 sf

Total square footage of land to be disturbed 3288 sf square feet

Estimated cost of project \$ 800,000

The following documents are attached to and a part of this application: (Plot plan, building permit application, drawings, surveys, etc.)

Plot Plan, Application, Survey + Exhibit

Date June 10/22 Signature of Applicant [Signature]

Application No. _____

**TOWN OF HOLDEN BEACH
APPLICATION FOR A VARIANCE**

Month June Day 10 Year 2022

TO THE HOLDEN BEACH ZONING BOARD OF ADJUSTMENT:

I, Jeff Gadsden + Corie Gumbat, hereby petition the Zoning Board of Adjustment for a **VARIANCE** from the literal provisions of the Holden Beach Code of Ordinances because, under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described in the attached form (General Application Form) in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the ordinance (cite paragraph numbers): Chapter 94

Section 94.03 (c)(6)

so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: (If a variance is requested for a limited time only, specify duration requested.)

Factors Relevant to the Issuance of a Variance

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions before it may issue a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions.

a. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(1) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

See Attached Exhibit

(2) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant, since a variance, if granted, runs with the land.)

See Attached Exhibit

(3) The hardship is not the result of the applicant's own actions.

See Attached Exhibit

b. the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

See Attached Exhibit

c. The granting of the variance secures the public safety and welfare and does substantial justice. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

See Attached Exhibit

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.



Signature

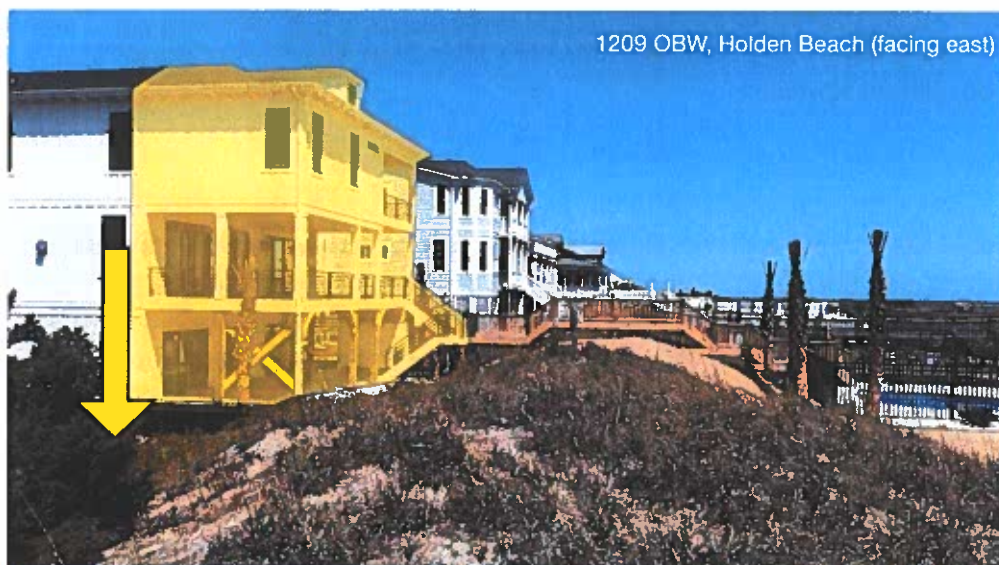
Exhibit 1. Answers to Questions relating to 1235 OBW

a.(1) We understand that the Town's position is that homes (including elements such as decks/porches) may not be built on the "town dune", and also understand that this principle exists to protect property, people and ecology of the dunes. This is certainly relevant in many parts of Holden Beach, where there is **ONLY** one dune between the dwelling and the water. We respectfully submit that because our proposed footprint is at least **500 feet** from the ocean (on a property of over one acre), and separated from that line by at least six (6) separate and substantial dunes per our survey, our proposal to build our house **in line with our neighbors** (not in front of our neighbors) is consistent with the spirit of both CAMA and Town dune regulations (i.e. our proposed footprint would not represent any conceivable threat to property, people or ecology).

More importantly, without a variance, we are being denied the same rights and privileges enjoyed by others in the same zoning district and vicinity. Specifically, there exist homes that were built recently in the 1200 block of OBW that have structural elements encroaching past the toe of the town dune, and therefore must have received a variance from the board of adjustments after denial of their respective plan submissions. We refer you to two such examples:

1. 1209 Ocean Blvd W. This home, built in 2018, has a porch/veranda and a third floor living space that extends beyond the toe of the dune. Clearly the town dune pictured below continues to decrease in elevation until approximately the yellow arrow (i.e. the toe of the dune). The portion of the dwelling shaded in yellow represents a substantial proportion of the overall home that has been built south/beachward of the toe of the dune.
2. 1221 Ocean Blvd. W. This home, built in 2020, enjoys a large outdoor living space, multi-story porch, a pool and an extensive pool deck that extend well past the toe of the dune. The town dune in this case appears to have been deliberately flattened and two retaining walls erected in order to prevent the elevated town dune exerting force on the pool fence. Note in the two pictures below the staked **top** of the dune (yellow circle) and the staked **toe** of the dune (black circle with zoomed inset).

We take no issue with these homeowners and their homes. It is clear to us that in the case of 1209 OBW, the deck/porch/3rd floor that extends partially past the toe of the dune represents no danger to property, people or ecology. Rather, it seems a reasonable use of that property. We do NOT want to flatten a dune. We do NOT want to build a house that would extend south/beachward of either of our adjacent neighbors. We propose to do effectively what the owners of 1209 OBW have done (please refer to our proposed plan) and have a portion of our deck/porch extend several feet past the staked toe of the dune, effectively bringing the beach façade of our house in line with our neighbors. We believe this is reasonable. Denial of this variance would be denying us the same rights and privileges that the board has apparently granted some of our neighbors, and thus represents a hardship.



A(2) Houses to the left and right were built over 20 years ago. Wind has blown through the middle (i.e. our empty lot) for decades.

A(3) See above.

B. We have over an acre of land, which includes at least six substantial dunes. We do not wish to damage the ecosystem or risk storm damage to our home or our neighbor's homes, nor cause any disharmony in our community. We do not wish to block sightlines of neighbors. We are asking for more or less having our deck encroach the interpreted "toe of the dune" demarcation of the TENTH dune from the ocean.

Prior to purchasing this land, we reviewed the governing documents of the Holden Beach West community. Item two of the Declarations states: "The maximum balance of view, privacy and breeze will be available to each building located within the development...". We are asking to uphold the spirit of the community with maximum adherence to applicable law, ordinances and regulations.

C. See above. The granting of this variance will not negatively affect the environment, the safety of our community or our neighbors.



Town of Holden Beach

Denial

PLANNING & INSPECTIONS DEPARTMENT

L. FILL, P.E., FILL, M.E.
Timothy D. Evans, Director of
Planning & Inspections
tne@hbtownhall.com

May 11, 2022

L. CZOLUPA, CPM
Rhonda Wooten
Document Services Officer
rwooten@hbtownhall.com

Jerry Baker Builders
3080 McCall Street
Supply, NC 28462

MITT SPECIALIST
by Long
tinspections@hbtown
hall.com

RE: 1235 Ocean Boulevard West

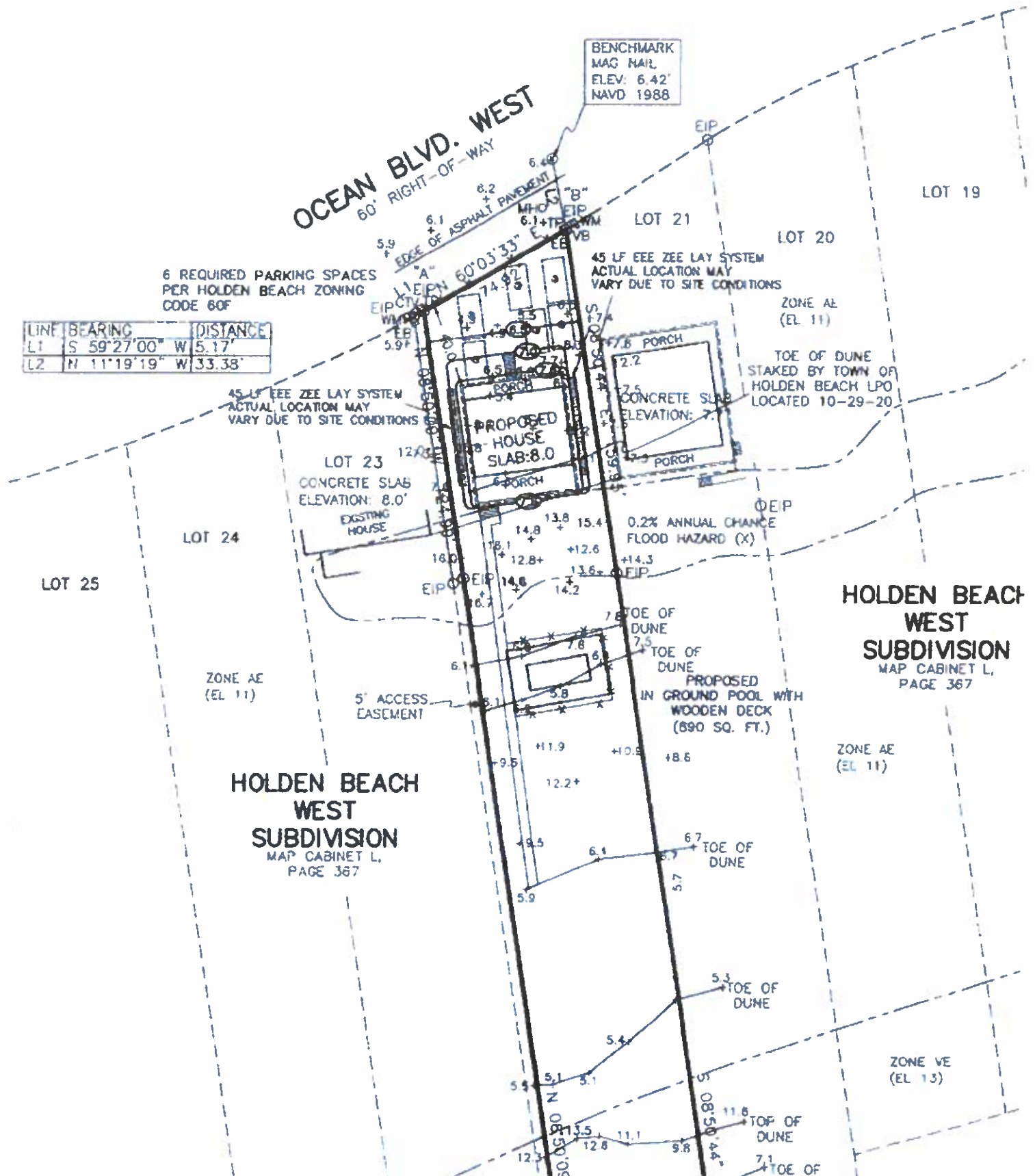
The Zoning Permit Application for the above address has been denied. Based on the submitted proposed site plan the structure (house) is being proposed south of the landward toe of the frontal dune. The landward toe the frontal dune was located on October 29, 2020, by the town's designee. Because the structure (house) is proposed on the frontal dune the proposed plan would not be in compliance with Chapter 94, Section 94.03 (C)(6) of Holden Beach Code of Ordinances and shall not be permitted.

Sincerely,

Rhonda Wooten - CZO

Cc: Timothy Evans

JEFF GADSDEN & CORIE GAEBATI
1235 OCEAN BLVD. WEST



OCEAN BLVD WEST

HOLDEN BEACH WEST SUBDIVISION

LOT 195

LOT 196

LOT 197

LOT 198

LOT 199

LOT 200

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TOWN OF HOLDEN BEACH

BOARD OF ADJUSTMENT

Application No. _____

Date 6-1-22

Permit Fee 175.00

Receipt # _____

GENERAL APPLICATION FORM

Permit or Relief Requested: _____ Appeal ☒ Variance _____ Special Use Permit _____

Applicant Jerry Fairchild Owner SAME Paul Tynell

Address 222 OCEAN BLVD EAST Address P.O. Box 652 SHALHE N2
2845

Telephone 818-678-0791 Telephone 910 409 2065

Legal relationship of applicant to property owner OWNER

Purpose of permit BUILD FENCE SIDES ONLY DUE TO PARKING END SIDE

Property location 222 OCEAN BLVD EAST
(Street Address)

Tax map _____ Block _____ Lot 62

Lot size 5245 square feet _____ Zoning District _____

No. of buildings to remain 1 Gross floor area to remain _____

No. of buildings proposed _____ Gross floor area of proposed buildings _____

Total square footage of land to be disturbed _____ square feet

Estimated cost of project \$ 4000.00

The following documents are attached to and a part of this application: (Plot plan, building permit application, drawings, surveys, etc.)

Date 8-15-22 Signature of Applicant Paul Tynell

Application No. _____

TOWN OF HOLDEN BEACH
APPLICATION FOR A VARIANCE

Month June Day 1st Year 2022

TO THE HOLDEN BEACH ZONING BOARD OF ADJUSTMENT:

I, Jerry Fanchi, hereby petition the Zoning Board of Adjustment for a VARIANCE from the literal provisions of the Holden Beach Code of Ordinances because, under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described in the attached form (General Application Form) in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the ordinance (cite paragraph numbers): _____

so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: (If a variance is requested for a limited time only, specify duration requested.)

Permanently

Factors Relevant to the Issuance of a Variance

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions before it may issue a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions.

a. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(1) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

(2) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant, since a variance, if granted, runs with the land.)

Public Parking Each Side of Lot

(3) The hardship is not the result of the applicant's own actions.

Noise and Privacy of Public Parking Each Side
of Residence

b. the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

Raise Height of Fence Each Side of Rear Yard Due
to Public Parking on Each Side of Lot.

c. The granting of the variance secures the public safety and welfare and does substantial justice. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

Jerry Farkner
Signature



Town of Holden Beach

PLANNING & INSPECTIONS DEPARTMENT

BILL, ELL, PILL, FILL, MIII
Timothy D. Evans, Director of
Planning & Inspections
inspector@hbtownhall.com

CFM, CZO, LPO, CPM
Development Services Officer
Rhonda Wooten
rwooten@hbtownhall.com

PERMIT SPECIALIST
Planninginspections@hbtown
hall.com

August 12, 2022

Paul Tyndell
PO Box 652
Shallotte NC 28459

RE: 222 Ocean Boulevard East

Mr. Tyndell,

Be advised that the Zoning Permit Application proposing an 8 foot tall fence measured from grade is denied. The proposed fence does not meet the requirements of section 157.080 (fences) located in the Holden Beach Code of Ordinances.

If you have any further questions concerning this action, please contact me at 910-842-6080.

Sincerely,

Rhonda Wooten
Rhonda Wooten

Cc: Jerry Fairchild

NORTH CAROLINA
BRUNSWICK COUNTY

I, GARY L. GURGANUS, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, DESCRIPTION RECORDED IN MAP BOOK 2-1/2, PAGE 158, THAT THE ERROR OF CLOSURE AS CALCULATED BY COMPUTER IS 1/10,000+ THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES, PLOTTED FROM INFORMATION REFERENCED, THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS DAY 06 SURVEYED 2022 A.D., 2022

GARY L. GURGANUS, P.L.S.
REGISTRATION NUMBER L-3474
SEAL OR STAMP

TIE LINE:
COMMENCING AT MONUMENT "HB 6", (N.C. GRID COORDINATES: N = 60806.4669 AND E = 2224709.1320); THENCE N 87°05'51"E 1,338.64 FEET TO MONUMENT "HB 5", (N.C. GRID COORDINATES: N = 60874.25 AND E = 2226046.06); THENCE S 81°00'32" W 375.74 FEET TO ERB "A"; THENCE N 89°23'25"E 49.98 FEET TO ERB "B". ALL BEARINGS ARE ORIENTED TO N.C. GRID NORTH, N.A.D. 1983. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES.

NC GRID NORTH, NAD 1983 (NSRS 2011)
HORIZONTAL GROUND DISTANCES
COMBINED SCALE FACTOR: 1.0001474

OCEAN BLVD. EAST

60' RIGHT-OF-WAY

SIGHT TRIANGLE

EDGE OF ASPHALT PAVEMENT

SIGN
"A"
ERB
TB
CB

N 89°23'25" E
49.98'
LOT 62
(VACANT LOT)
5,245 SQ. FT.

CTV
"B"
ERB
CB

BENCHMARK
NE CORNER
OF GRATE
ELEV: 6.48'
NAVD 1988

LOT 63
L.S. HOLDEN
SUBDIVISION
MB 2.5, PG 158

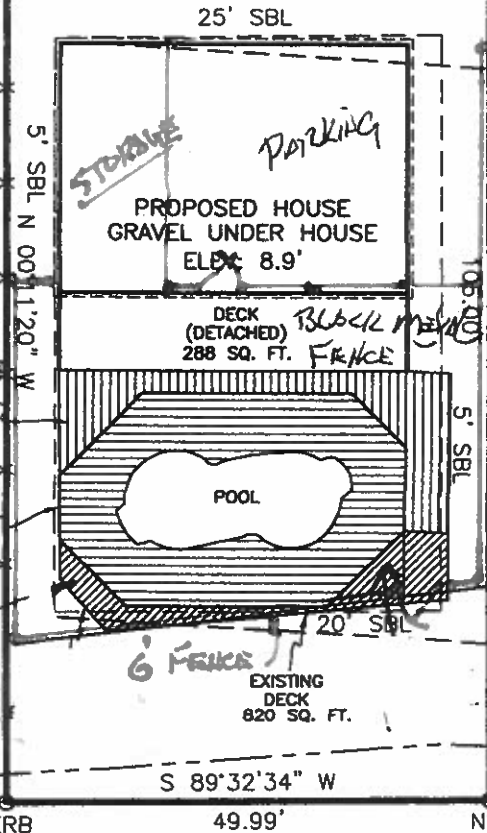
Public
Parking

GROUND LEVEL
DECK SEPERATED
FROM 6" POOL DECK
210 SQ. FT.

DECK CUT LINE
TO CREATE DECK
NO MORE THAN
8" IN ALL
DIRECTIONS
487 SQ. FT.

ZONE AE
(EL 11)

ZONE VE
(EL 13)

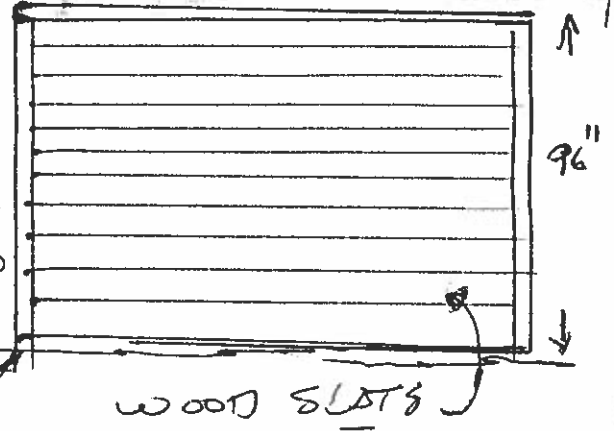


Public
Parking

LOT 61
L.S. HOLDEN
SUBDIVISION
MB 2.5, PG 158

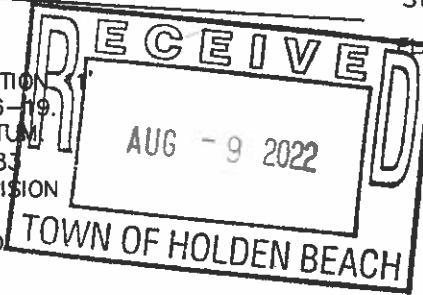
HILLSIDE DRIVE
50' RIGHT-OF-WAY

NOTE: 8' FENCES ON SIGNS ONLY
DUE TO PUBLIC PARKING



NOTES:

- *LOT 62 IS IN FLOOD HAZARD ZONE "AE" BASE ELEVATION BASED ON F.I.R.M. 3720202600 K. INDEX DATE 12-06-19.
- *ELEVATIONS ARE BASED ON NAVD 1988 VERTICAL DATUM.
- *HORIZONTAL LOCATIONS ARE REFERENCED TO NAD 1983 (NSRS 2011) USING NCGS VRS WITH A SPECTRA PRECISION SP80 ON 05-10-21.
- *THIS SURVEY IS SUBJECT TO ANY INFORMATION FOUND WITH THE BENEFIT OF A TITLE SEARCH.

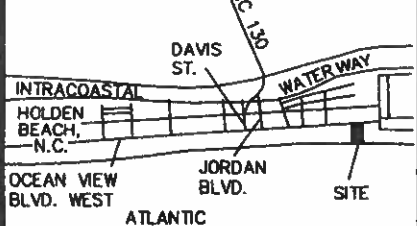


© 2021, GARY GURGANUS LAND SURVEYING



SCALE 1" = 20'

VICINITY MAP
NOT TO SCALE



LEGEND:

- EIP ○ EXISTING IRON PIPE (FOUND)
- NIP ○ NEW IRON PIPE (SET)
- ERB ○ EXISTING RE-BAR (FOUND)
- CB □ CATCH BASIN
- TB □ TELEPHONE BOX
- EB □ ELECTRIC BOX
- CTV □ CABLE TELEVISION
- ×-× FENCE
- SBL + BUILDING SETBACK LINE
- + EXISTING GROUND ELEVATION

GARY GURGANUS
LAND SURVEYING

GARY L. GURGANUS, P.L.S.
2011 ELK ROAD SUITE 5
Supply, North Carolina 28462 (910) 233-7605

SURVEY FOR
JERRY FAIRCHILD

MADE FROM LOT 62, (222 OCEAN BLVD. EAST),
L.S. HOLDEN SUBDIVISION, (MAP BOOK 2-1/2,
PAGE 158), HOLDEN BEACH, NORTH
CAROLINA AND EXISTING PHYSICAL EVIDENCE

LOCKWOOD FOLLY TOWNSHIP	BRUNSWICK COUNTY	NC	05/10/21
FIELD BOOK:	FILE NO. 21071	JOB NO. 21071	