



# Pender County

## Agenda

### Board of Adjustment Meeting

Wednesday, February 21, 2024 @ 9:00 AM

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

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	Presenter	Page
1.	CALL TO ORDER	
2.	ROLL CALL	
3.	INVOCATION	
4.	ELECTION OF OFFICERS	
4.1.	Appointment of the County Attorney to serve as moderator	
4.2.	Nomination and selection of Chairman	
4.3.	Nomination and selection of Vice-Chairman	
5.	ADOPTION OF AGENDA	
6.	ADOPTION OF MINUTES	
6.1.	October 18, 2023 Meeting Minutes <a href="#">October 18, 2023 Meeting Minutes - Pdf</a>	3 - 7
7.	PUBLIC COMMENT	
8.	APPEAL	
8.1.	APPEAL 2024-13: Appeal of Administrative Decision <a href="#">APPEAL 2024-13 - Pdf</a>	9 - 45
9.	VARIANCE	
9.1.	VAR 2023-16: Variance request seeking relief from Article 7.4.4, Cross Access Corridors, of the Unified Development Ordinance <a href="#">VAR 2023-16 - Pdf</a>	47 - 88
10.	DISCUSSION ITEMS	
10.1.	Amendments to the Rules of Procedure <a href="#">Amendments to Rules of Procedure - Pdf</a>	89 - 97
11.	NEXT MEETING DATE	
12.	ADJOURNMENT	





## Pender County October 18, 2023 Meeting Minutes

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**TO:** Board of Adjustment  
**FROM:** Daniel Adams  
**DATE:** February 21, 2024  
**SUBJECT:** October 18, 2023 Meeting Minutes

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**SUMMARY:**

Minutes from the October 18, 2023, Board of Adjustment meeting.

**ACTION REQUESTED:**

Review and approval of the minutes from the October 18, 2023, meeting.

**ATTACHMENTS:**

1. October 18, 2023 meeting minutes

Pender County Board of Adjustment Meeting Minutes – October 18, 2023

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

**Members Absent:** Andrew Olsen, Alternate

**Others Present:** Daniel Adams, Planning Director  
Justin Brantley, Deputy Planning Director  
Adam Moran, Long Range Planner  
Donna Sayre, Planning Technician  
Members of the Public

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

2. **Roll Call**

3. **Invocation**

4. **Adoption of Agenda**

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

5. **Adoption of Minutes**

Mr. Keeler asked if this case was to be appealed, could the recording be accessed. Mr. Adams stated that to the best of his knowledge, both the minutes and recording would be available.

Mr. Keeler made a motion to adopt the minutes from the August 16, 2023, meeting. Mr. Snider seconded the motion, and the motion was unanimously approved.

6. **Public Comment**

There was no public comment.

7. **Approvals and Resolutions**

2024 Calendar

Mr. Adams stated that the calendar indicates the meeting will take place on the third Wednesday of each month. He stated when he was creating the calendar, he paid careful attention to how holidays fell.

Mr. Adams stated one interference was the June 19, 2024, meeting date. He stated that the County doesn't observe Juneteenth as a holiday, but it is observed as a federal holiday. Mr. Adams stated that County offices will be open and functioning on normal business hours.

Mr. Keeler stated that he feels the December 18, 2024, meeting is too close to the holiday season and that the meeting should be held on December 11, 2024, instead.

Mr. Kipfer and Mr. Keeler both stated and agreed that the June 19, 2024, meeting should be held on June 12, 2024, and the December 18, 2024, meeting should be held on December 11, 2024.

Mr. Adams stated he would make those two changes to the calendar and the Board can make a motion to approve the 2024 Calendar with the two corrections provided.

Mr. Breuer made a Motion to adopt the 2024 Calendar with the amendments of the June meeting being held on June 12, 2024, instead of June 19, 2024, and the December meeting being held on December 11, 2024, instead of December 18, 2024. Mr. Keeler seconded the Motion, and the vote was unanimous.

#### **8. Discussion Items**

Mr. Kipfer asked for an update on the Hampstead Marina case. Mr. Adams stated that within a week or two of the hearing, the property owner completed the fence, and a light shield was installed. Mr. Adams stated that he feels that the violation file can now be closed due to those two actions taking place.

Mr. Adams presented the Board members with a copy of the Order for review due to the minutes being approved. He stated that the Board would not need to take a vote on it, but the Chairman would need to sign the Order.

Mr. Breuer asked if a three to one vote would be a split vote or a majority vote. Mr. Adams stated that the split vote can be changed to a majority vote before the Chairman signs.

Mr. Kipfer stated that with no Ordinance support, he felt the situation did not justify a decision different than how he voted.

Mr. Keeler stated he felt the property owners purposely handled the light situation in a manner that was not correct by using the two different parcels of land to their advantage.

Mr. Keeler asked if the results of the voting were part of the Order. Mr. Adams stated that the minutes would provide the voting results.

Mr. Adams discussed the newly appointed Board member. He stated that she has some experience with participating in local government and is a resident of the Maple Hill community. Mr. Adams stated that the Board of Commissioners wants representation from other parts of the County and the new member will fulfill that need.

Mr. Kipfer stated his concern about the meeting date and time being an obstacle for the new member. Mr. Adams stated that she was advised as to the meeting date and time and stated that meeting on a weekday during the day should not interfere with her work schedule.

Mr. Breuer questioned whether she would have any training time before she starts attending meetings. Mr. Adams stated that his intention is to have her come into the Planning Department to discuss processes and procedures before she starts attending meetings.

Mr. Keeler asked if there was still one more position open and if it was being advertised. Mr. Adams stated that the Clerk to the Commissioners handles the advertising, and he will contact her to verify the ad is running. Mr. Adams stated that there is one more position open and would cover the west side of the County.

Mr. Adams stated that he needs to verify the previous conversation concerning the proposed amendments to the Rules of Procedures. He stated his belief was that there were two items that the Board wanted to see added, which was a time limit on public comment and giving the Board discretion as to not accepting evidence, such as pictures and videos, if it was presented to the Board on a personal cellphone. Mr. Adams stated that Board already has the discretion to not accept evidence and if the Chairman reads his beginning statement which contains the time limit, the Rules of Procedures may not need to be amended.

Mr. Keeler stated that he felt the intent was to have the two discussed topics put in writing so that the Applicant and public know the expectations before the meeting.

Mr. Breuer stated that an alternative to amending the Rules of Procedures would be to amend the Application with the information.

Mr. Kipfer stated that he agrees to amending the Application to include a statement which states all evidence must be submitted within five days of the hearing date.

Mr. Adams stated in some cases, it is clearly known who to distribute the evidence to but in other cases it may not be as clearly known.

Mr. Keeler stated that it may be best to put the expectations on the BOA section of the website so that it can reach the general public.

Mr. Adams stated that he would put together the language that the Board is requesting and bring it back before the Board.

Mr. Adams stated that at the joint meeting between the Planning Board and the Board of Commissioners the topic of having Special Use Permits heard by the Board of Adjustment instead of the Board of Commissioners was discussed. He stated that Special Use Permits are a Quasi-Judicial proceeding, which the Board of Adjustment Board members are familiar with that process. Mr. Adams stated that the Commissioners did not show an inclination to move those hearings to the Board of Adjustment, but he does not feel that will happen soon.

Mr. Breuer stated that many counties are trying to eliminate Special Use Permit all together with Mr. Adams stating that is the feedback that was received from the meeting.

**9. Next Meeting Date**

Mr. Adams stated that there were no items on the agenda for the November meeting.

December 13, 2023 @ 9:00 a.m.  
Commissioner's Meeting Room  
805 S. Walker Street  
Burgaw, NC 28425

**10. Adjournment**

Meeting adjourned at 9:27 a.m.

DRAFT





**Pender County  
APPEAL 2024-13: Appeal of  
Administrative Decision**

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**TO:** Board of Adjustment  
**FROM:** Justin Brantley  
**DATE:** February 21, 2024  
**SUBJECT:** APPEAL 2024-13: Appeal of Administrative Decision

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**SUMMARY:**

Marcus Spencer, applicant, on behalf of Marcus and Kaylla Spencer, owners, is requesting an Appeal of an Administrative Decision. The appeal is of an administrative decision by the Pender County Planning & Community Development Department to deny the permitting of a residential accessory building. The subject property is located at 91 Scotch Bonnet Way which is located approximately 150 feet from the intersection of Scotch Bonnet Way and Inlet Court in the Topsail Township and may be further identified by Pender County PIN 4203-60-9602-0000.

**ACTION REQUESTED:**

To hold a public hearing and consider the appeal request.

**ATTACHMENTS:**

1. Staff Report
2. Attachment 1: Permit Denial Package
3. Attachment 2: Appeal Application
4. Attachment 3: Corrected Check

**STAFF REPORT FOR APPEAL 2024-13  
 APPEAL OF ADMINISTRATIVE DECISION APPLICATION**

<b>APPLICATION SUMMARY</b>	
Case Number	APPEAL 2024-13
Hearing Date	February 21, 2024 - Board of Adjustment
Applicant	Marcus Spencer
Property Owner	Marcus and Kaylla Spencer
Parcel Identification Number	4203-60-9602-0000
Acreage	+/- .47
Township	Topsail
Zoning District	RP, Residential Performance

<b>APPEAL SUMMARY</b>
Marcus Spencer, applicant, on behalf of Marcus and Kaylla Spencer, owners, is requesting an Appeal of an Administrative Decision. The appeal is of an administrative decision by the Pender County Planning & Community Development Department to deny the permitting of a residential accessory building.
<b>LOCATION</b>
The subject property is located at 91 Scotch Bonnet Way which is located approximately 150 feet from the intersection of Scotch Bonnet Way and Inlet Court in the Topsail Township and may be further identified by Pender County PIN 4203-60-9602-0000.

Below: Vicinity Map of the Area



#### DESCRIPTION OF APPEAL

On November 6, 2023, a building permit application was submitted to Pender County Planning & Community Development for an accessory structure at 91 Scotch Bonnet Way in Pender County. This property can also be identified by Pender County Parcel Identification Number (PIN) 4203-60-9602-0000 and is zoned RP, Residential Performance. On November 28, 2023, Justin Brantley, Deputy Planning Director, issued a letter of denial for the proposed accessory structure. See full Denial Letter with Attachments as **Attachment 1**. Attachments within this document include the Residential Building Permit Application (RACC-01856), Foundation Survey of existing structure, building plans, Pender County Unified Development (UDO) Excerpt of Section 5.3.3.A., and UDO Excerpt of Section 4.14.

Planning Staff found that based on the submitted plans, the Gross Floor Area of the proposed building is approximately 1,250 sq ft and was supported by a finding that the carport area counts towards the total square footage of the structure as well as the 2<sup>nd</sup> floor attic portion as shown on the building plans. The Pender County UDO defines Gross Floor Area as follows:

**FLOOR AREA, GROSS:** The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls or from the center line of a wall separating two buildings.

In addition to the Gross Floor Area, Staff considered the UDO's definition of Building which is as follows:

**BUILDING:** Any structure used or intended for supporting or sheltering any use or occupancy.

For additional context, the Pender County UDO Defines Accessory or Secondary Use and Accessory Structure as follows:

**ACCESSORY OR SECONDARY USE:** A use of land or of a building or portion thereof customarily associated with and incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use. A secondary use shall be a use not already permitted by right in a zoning district but may be permitted in conjunction with a permitted use. In no instances shall an accessory or secondary use be permitted without the presence of a primary use.

**ACCESSORY STRUCTURE (Appurtenant Structure):** a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Staff found that the total structure based on the submitted plans consisted of approximately 1,250 sq ft. Section 5.3.3.A, Accessory Structure Setbacks and Separation Requirements, identifies setback requirements for accessory structures based on square footage.

### 5.3.3 Accessory Uses and Structures

#### A. Accessory Structure Setbacks and Separation Requirements

- 1) Accessory Structures 50-599 Square Feet In Area:
  - a) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.
- 2) Accessory Structures 600-1,199 Square Feet In Area:
  - a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
- 3) Accessory Structures 1,200 Square Feet in Area or Greater:
  - a) Same setback and separation requirements as principal buildings per zoning district regulations

Staff found that the proposed building fell into the third category (Accessory Structures 1,200 Square Feet in Area or Greater) which requires the same setbacks as principal structures. The Pender County UDO Section 4.14 (Provided in **Attachment 1**) provides the following setback requirements for principal structures in the RP, Residential Performance, zoning district:

Front Yard Setback – 30'  
Rear Yard Setback – 25'  
Side Yard Setback – 10'

### Structure Separation – 30'

The submitted building application included in **Attachment 1** includes a foundation survey of the existing structure. This survey shows the current location of the proposed structure. To further illustrate, the photo below was received from the applicant on June 29, 2023:



Staff identified two issues with the application in terms of setbacks:

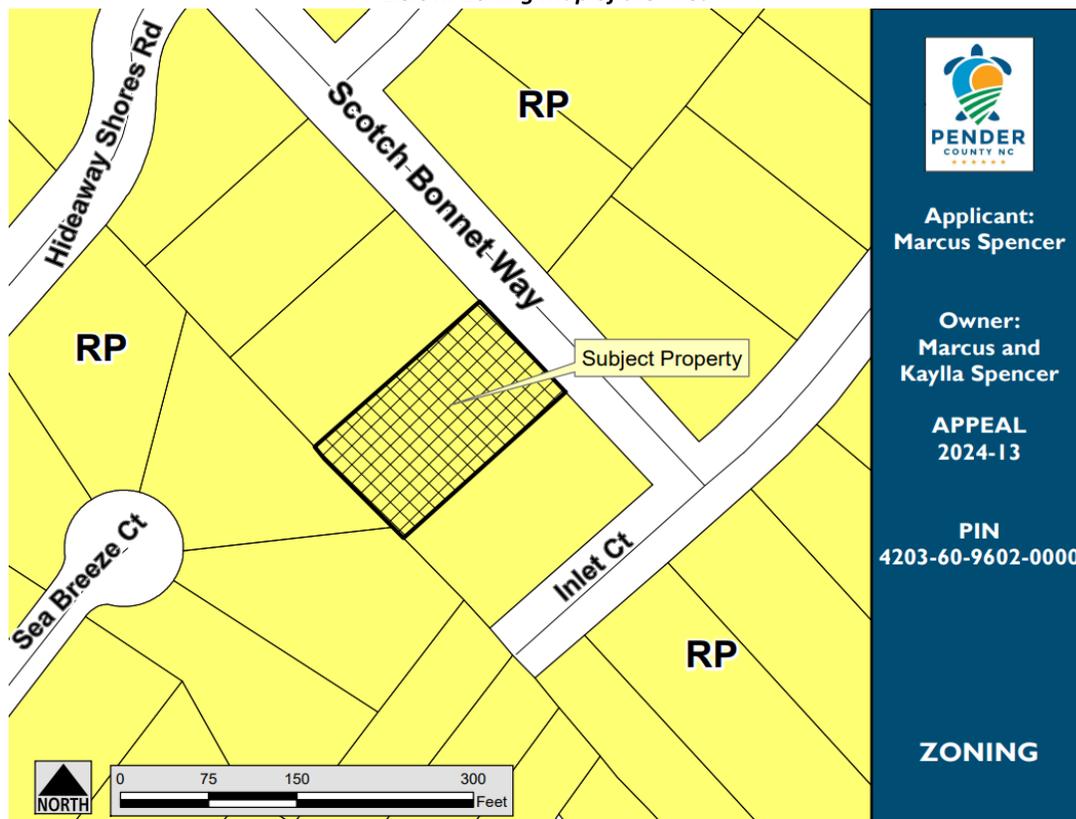
1. The existing location of the structure as shown by the foundation survey included in **Attachment 1** provides that the accessory structure is located from 8.74' to 8.72' from the side property line, whereas the side setback requirement is 10'.
2. The existing location of the structure as shown by the foundation survey included in **Attachment 1** provides that the accessory structure is located from 9.57' to 9.10' from the rear property line, whereas the rear setback requirement is 25'.

As discussed, the 25' rear setback is required for structures over 600 square feet in area and because the structure was identified as being approximately 1,250 square feet in size it was determined to be unable to be approved and was therefore denied. Furthermore, the inability to meet the 10' side setback was also considered in this decision.

Ultimately, Staff issued the denial letter, **Attachment 1**, for failure to meet the required setbacks for a structure of that size.

On December 27, 2023, Pender County received an Application for the Appeal of An Administrative Decision related to the denial of the proposed accessory building. This document can be identified as **Attachment 2**. Furthermore, an error in the issued check payment necessitated the issuance of a new check payment. This document can be identified as **Attachment 3**.

*Below: Zoning Map of the Area*



Below: Aerial Map of the Area



## ZONING ADMINISTRATOR'S CONCLUSION

As detailed in this report, the administrator's interpretation of the standards and regulations found within the Pender County Unified Development Ordinance was appropriate. This interpretation therefore led to the denial of the building permit application for the proposed accessory structure located at 91 Scotch Bonnet Way. It was found that the proposed structure was approximately 1,250 sq ft in size and therefore had to adhere to the required side setback of 10' and the required rear setback of 25'. The proposal did not meet these requirements and was subsequently denied.

## 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

**ATTACHMENT 1 – 91 SCOTCH BONNET WAY  
ACCESSORY STRUCTURE DENIAL LETTER  
WITH ATTACHMENTS**

**Pender County  
Planning and Community Development**

**Planning Division**

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



Phone: 910-259-1202  
Fax: 910-259-1295  
[www.pendercountync.gov](http://www.pendercountync.gov)

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**CERTIFICATE OF SERVICE:**

The attached Zoning Letter of Denial for Residential Accessory Building Application RACC-01856-2023 for 91 Scotch Bonnet Way was served via email and US Mail upon the applicant, this the 28<sup>th</sup> Day of November, 2023.

Respectfully submitted by:

*Justin Brantley*

Justin Brantley

Deputy Director

Pender County Planning & Community Development

# 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

November 28, 2023

Marcus Spencer  
91 Scotch Bonnet Way  
Hampstead, NC 28443

**Re: Zoning Permit Denial For Pender County PIN: 4203-60-9602-0000, 91 Scotch Bonnet Way**

Mr. Spencer,

Pender County PIN 4203-60-9602-0000 is currently zoned RP, Residential Performance and is located within the Pender County jurisdiction for planning and zoning purposes. The subject property is known by the address 91 Scotch Bonnet Way. A permit application was submitted on November 6, 2023, (RACC-01856-2023) for an accessory building for this property. See **Attachment 1** (Building Application), **Attachment 2** (Foundation Survey), and **Attachment 3** (Building Plans).

The building permit application for the accessory structure on the subject property is not able to move forward because the Zoning Permit request is hereby **DENIED**.

According to the Foundation Survey, prepared and sealed by Michael J. Lawrence, PLS, that was submitted as part of the building permit application, the proposed accessory building was partially constructed prior to the building application being submitted. Upon further review of the foundation survey and building application, it has been determined that the structure does not meet the required structure setbacks and can therefore not be approved as proposed.

According to the Foundation Survey, the base of the structure, or 1<sup>st</sup> floor, is 626 sq feet in size (313 sf shed and 313 sq ft covered boat storage). Furthermore, the structure also includes a 2<sup>nd</sup> floor attic that is around the same square footage (624 sq ft). This would bring the total building square footage to approximately 1,250 sq ft.

The County's Unified Development Ordinance (UDO) provides the following definition for Gross Floor Area:

**FLOOR AREA, GROSS:** The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls or from the center line of a wall separating two buildings.

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Based on the submitted building plans the Gross Floor Area of the proposed building is approximately 1,250 sq ft. It is the position of the Administrator that the car port area of the structure counts towards the square footage of the total structure as does the 2<sup>nd</sup> floor attic portion.

Section 5.3.3.A, Accessory Structure Setbacks and Separation Requirements, of the Pender UDO specifies setback requirements and separation requirements for accessory structures based on their size. See UDO section below as well as in **Attachment 4**:

### **5.3.3 Accessory Uses and Structures**

#### **A. Accessory Structure Setbacks and Separation Requirements**

- 1) Accessory Structures 50-599 Square Feet In Area:
  - a) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.
- 2) Accessory Structures 600-1,199 Square Feet In Area:
  - a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
- 3) Accessory Structures 1,200 Square Feet in Area or Greater:
  - a) Same setback and separation requirements as principal buildings per zoning district regulations

The Administrator finds that the proposed building is approximately 1,250 sq. ft. in size and would require the structure to adhere to setback requirements and structure separation requirements established in Section 4.14, Zoning District Dimensional Requirements, of the UDO, for principal structures in the RP, Residential Performance zoning district. This equates to the following setbacks and structure separation requirements. See setbacks and separation requirements for the RP district below as well as in **Attachment 5**:

Front Yard Setback – 30'  
Rear Yard Setback – 25'  
Side Yard Setback – 10'  
Structure Separation – 30'

The proposed/existing building, which is approximately 1,250 sq ft in size would be required to meet the setback and separation requirements for a principal structure as previously identified and included as **Attachment 4** and **Attachment 5**.

Furthermore, in accordance with provisions laid out in Article 3.16 of the Unified Development Ordinance, this determination can be appealed to the Pender County Board of Adjustment within 30 days of receipt of this determination.

Please do not hesitate to contact me with any further questions.

#### List of Attachments

1. Attachment 1 – Residential Building Permit Application

2. Attachment 2 – Foundation Survey
3. Attachment 3 – Building Plans
4. Attachment 4 – UDO Excerpt Section 5.3.3.A.
5. Attachment 5 – UDO Excerpt Section 4.14.

Sincerely,

*Justin Brantley*

Justin Brantley, MPA, CZO | Deputy Planning Director  
Pender County Planning & Community Development  
(910) 259-1529

[jbrantley@pendercountync.gov](mailto:jbrantley@pendercountync.gov)

805 S. Walker Street,  
Burgaw, NC 28425



PENDER COUNTY INSPECTION & PERMITTING DEPARTMENT

RESIDENTIAL BUILDING PERMIT APPLICATION

(APPLICATION WILL NOT BE ACCEPTED FOR PROCESSING UNLESS ALL REQUIRED INFORMATION IS PROVIDED)

ZONING PERMIT \_\_\_\_\_

BUILDING PERMIT PACC-018510-2003

CONSTRUCTION SITE ADDRESS: 91 Scotch Bonnet Way, Parcel # (PIN) \_\_\_\_\_

Subdivision: Hideaway Shores Lot: 4 Street Name: Scotch Bonnet Way

NC Liens Entry #: \_\_\_\_\_ (www.liensnc.com) DIRECTIONS TO CONSTRUCTION SITE: It will be located in the left rear of the back yard while facing property.

Project Contact: Marcus Spencer Phone: 910-512-8536 Email address: marcus.spencer@compass-usa.com

Property Owner: Marcus Spencer Phone: 910-512-8536 Email address: marcus.spencer@compass-usa.com

Address: 91 Scotch Bonnet Way City: Hampstead State: NC Zip: 28443

NEW CONSTRUCTION

Height \_\_\_\_\_ NO. of Stories \_\_\_\_\_ NO. of Bedrms \_\_\_\_\_ NO. of Bathrms \_\_\_\_\_

Total Heated: \_\_\_\_\_

Total Unheated area: \_\_\_\_\_

Heated Area: 1st Floor \_\_\_\_\_ sq. ft. 2nd Floor \_\_\_\_\_ sq. ft. Other \_\_\_\_\_ sq. ft.

Unheated Area: Garage \_\_\_\_\_ sq. ft. Porch \_\_\_\_\_ sq. ft. Deck \_\_\_\_\_ sq. ft.

ADDITION

Height \_\_\_\_\_ NO. of Stories \_\_\_\_\_ NO. of Bedrms \_\_\_\_\_ NO. of Bathrms \_\_\_\_\_

Total Heated: \_\_\_\_\_

Total Unheated area: \_\_\_\_\_

Heated Area: 1st Floor \_\_\_\_\_ sq. ft. 2nd Floor \_\_\_\_\_ sq. ft. Other \_\_\_\_\_ sq. ft.

Unheated Area: Garage \_\_\_\_\_ sq. ft. Porch \_\_\_\_\_ sq. ft. Deck \_\_\_\_\_ sq. ft.

ACCESSORY STRUCTURE

Detached Garage \_\_\_\_\_ sq. ft. Carport 312 sq. ft. Shed 312 sq. ft. Deck \_\_\_\_\_ sq. ft. Seawall \_\_\_\_\_ sq. ft.

Porch \_\_\_\_\_ Screened Porch \_\_\_\_\_ Pool \_\_\_\_\_ Pool Depth \_\_\_\_\_ Dock/Pier \_\_\_\_\_

RENOVATION/REPAIR/ALTERATION

Work will include:  Building  Electrical  Plumbing  Mechanical

DETAILED DESCRIPTION OF WORK: I intend to build a shed for tools with a attached boat port to store my boat.

Cost of Construction \$: 115,000



## PENDER COUNTY INSPECTION & PERMITTING DEPARTMENT

### RESIDENTIAL BUILDING PERMIT APPLICATION

(APPLICATION WILL NOT BE ACCEPTED FOR PROCESSING UNLESS ALL REQUIRED INFORMATION IS PROVIDED)

Contractor: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ License # \_\_\_\_\_

Print Name(Qualifier): \_\_\_\_\_ Signature: \_\_\_\_\_

Electrical: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ AMPS

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ License # \_\_\_\_\_

Print Name(Qualifier): \_\_\_\_\_ Signature: \_\_\_\_\_

Mechanical: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ # of units

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ License # \_\_\_\_\_

Print Name(Qualifier): \_\_\_\_\_ Signature: \_\_\_\_\_

Plumbing: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ # of Fixtures

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ License # \_\_\_\_\_

Print Name(Qualifier): \_\_\_\_\_ Signature: \_\_\_\_\_

Gas Piping: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ # of Fixtures

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ License # \_\_\_\_\_

Print Name(Qualifier): \_\_\_\_\_ Signature: \_\_\_\_\_

Insulation: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email address: \_\_\_\_\_ License # \_\_\_\_\_



PENDER COUNTY INSPECTION & PERMITTING DEPARTMENT

RESIDENTIAL BUILDING PERMIT APPLICATION

(APPLICATION WILL NOT BE ACCEPTED FOR PROCESSING UNLESS ALL REQUIRED INFORMATION IS PROVIDED)

AFFIDAVIT OF WORKERS' COMPENSATION EXEMPTION N.C.G.S. § 87 AND 97

The undersigned applicant do hereby aver under penalties of perjury that the person(s), firm(s), or corporation(s) performing the work set forth in the permit:

[X] Unlicensed Contractor [ ] Licensed Contractor License # \_\_\_\_\_

[ ] has/have not more than two (2) employees and no subcontractors, while working on the project for which this permit is sought. It is understood that the Inspections and Permitting Department issuing the permit may require certificates of coverage of workers' compensation insurance prior to issuance of the permit and at any time during the permitted work from any person, firm, or corporation carrying out the work.

Firm Name: \_\_\_\_\_
By: Marcus Spences
Title: \_\_\_\_\_
Date: 10-31-23
Applicant Signature Date

AFFIDAVIT AS TO STATUS OF LICENSURE N.C.G.S. § 87-1

Applicant: Please check the appropriate boxes; provide requested information, sign, and date below.

- [ ] I propose to construct a new building.
[ ] I propose to set-up a properly labeled modular building.
[ ] I am a North Carolina licensed general contractor. License Number: \_\_\_\_\_
[X] I am NOT a North Carolina licensed general contractor. The cost of the project does not exceed \$30,000 per N.C.G.S. § 87-1.
[ ] I am NOT a licensed general contractor. I am providing a \$5,000 surety bond in accordance with N.C.G.S § 143-139.1. (For Modular set-up ONLY) Bond Company: \_\_\_\_\_ Bond Number: \_\_\_\_\_

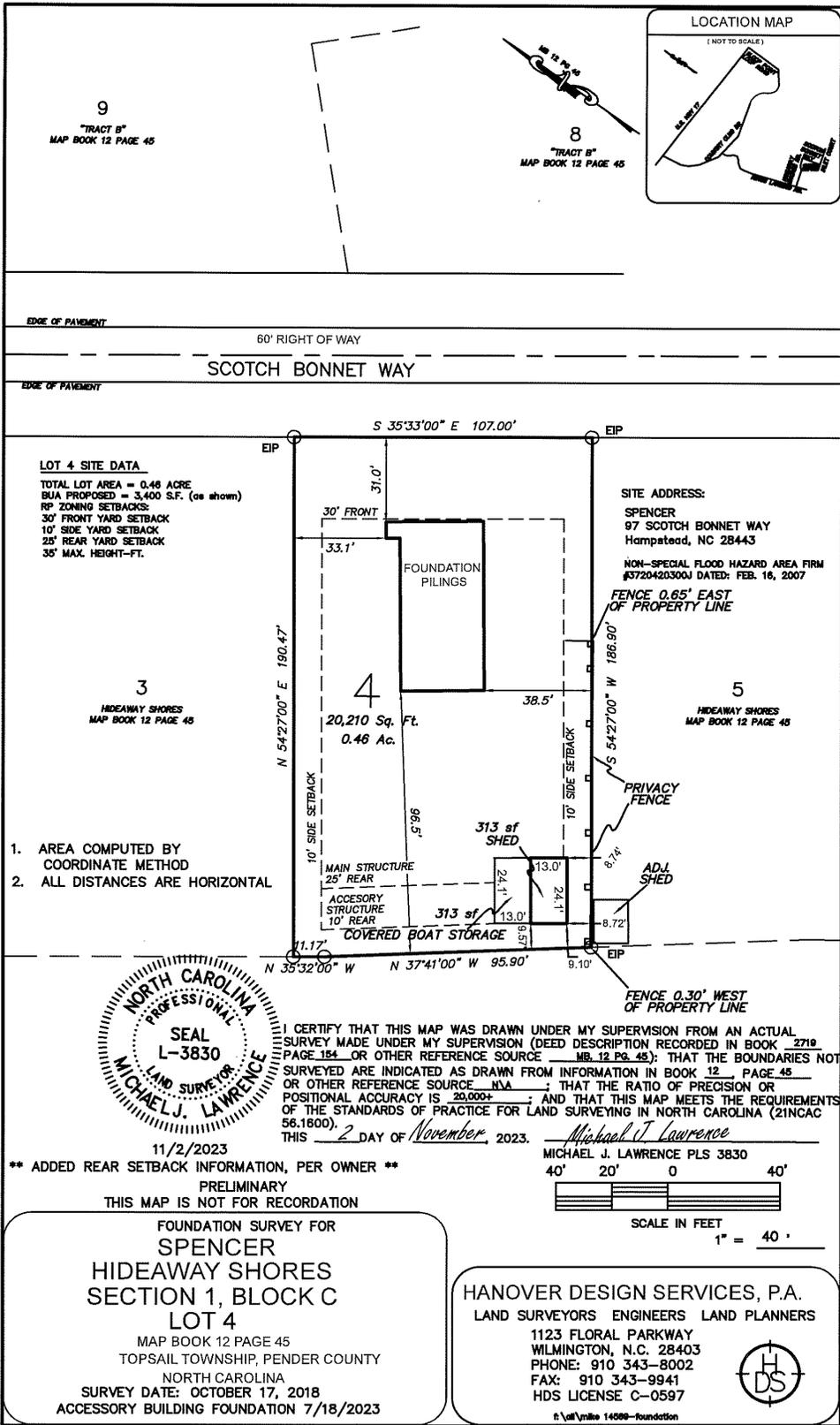
[X] I am the owner of the proposed building. It is my intention to act as my own general contractor for constructing the proposed building or for setting up the proposed modular building. I have entered into a construction project where the cost of the undertaking exceeds \$30,000. I have read N.C.G.S. § 87-1. I certify that I am not allowing an unlicensed general contractor to perform the duties of a general contractor, which I understand from reading N.C.G.S. § 87-1 includes construction superintending and managing in addition to, among other things signing written contracts. I intend to retain the finished house (or other project) exclusively for my own use and to be occupied by me or my family for a minimum of one year after completion. I am not building a "speculation" project with the intention of selling the project once it is completed. I understand that building a "spec" project without proper licensure is a violation of N.C.G.S. § 87-13; this may be a criminal offense. Also, I understand that problems which may arise due to construction of the building or set-up of the properly labeled modular building, such as inaccurate or insufficient foundation, improper or inadequate marriage line connections, improper plumbing, mechanical, or electrical connections between the units, etc., will be solely my responsibility, and I will be left with no recourse and must assume total liability for correction of the problems. I personally have a thorough knowledge of the requirements of the NC State Building Code with regard to construction and/or setting up modular buildings.

Applicant Signature Date 10-31-23

I hereby certify that all information in this application is correct and all work will comply with the NC State Building Code and all other applicable State and local laws, ordinances and regulations including approved zoning permit. The Inspections Division will be notified of any changes in the approved plans and specifications for the project permitted herein.

[ ] \*Check in lieu of signature to indicate agreement with the above statement if submitting electronically. Print name below.

Applicant Signature: \_\_\_\_\_ Date: 10-31-23



9  
"TRACT B"  
MAP BOOK 12 PAGE 45

8  
"TRACT B"  
MAP BOOK 12 PAGE 45



EDGE OF PAVEMENT  
60' RIGHT OF WAY  
SCOTCH BONNET WAY  
EDGE OF PAVEMENT

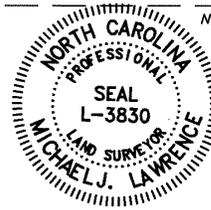
**LOT 4 SITE DATA**  
TOTAL LOT AREA = 0.46 ACRE  
BJA PROPOSED = 3,400 S.F. (as shown)  
RP ZONING SETBACKS:  
30' FRONT YARD SETBACK  
10' SIDE YARD SETBACK  
25' REAR YARD SETBACK  
35' MAX. HEIGHT-FT.

**SITE ADDRESS:**  
SPENCER  
97 SCOTCH BONNET WAY  
Hampstead, NC 28443  
NON-SPECIAL FLOOD HAZARD AREA FIRM  
#3720420300J DATED: FEB. 16, 2007

3  
HIDEAWAY SHORES  
MAP BOOK 12 PAGE 45

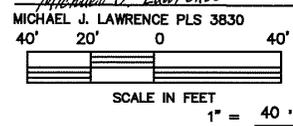
5  
HIDEAWAY SHORES  
MAP BOOK 12 PAGE 45

1. AREA COMPUTED BY COORDINATE METHOD
2. ALL DISTANCES ARE HORIZONTAL



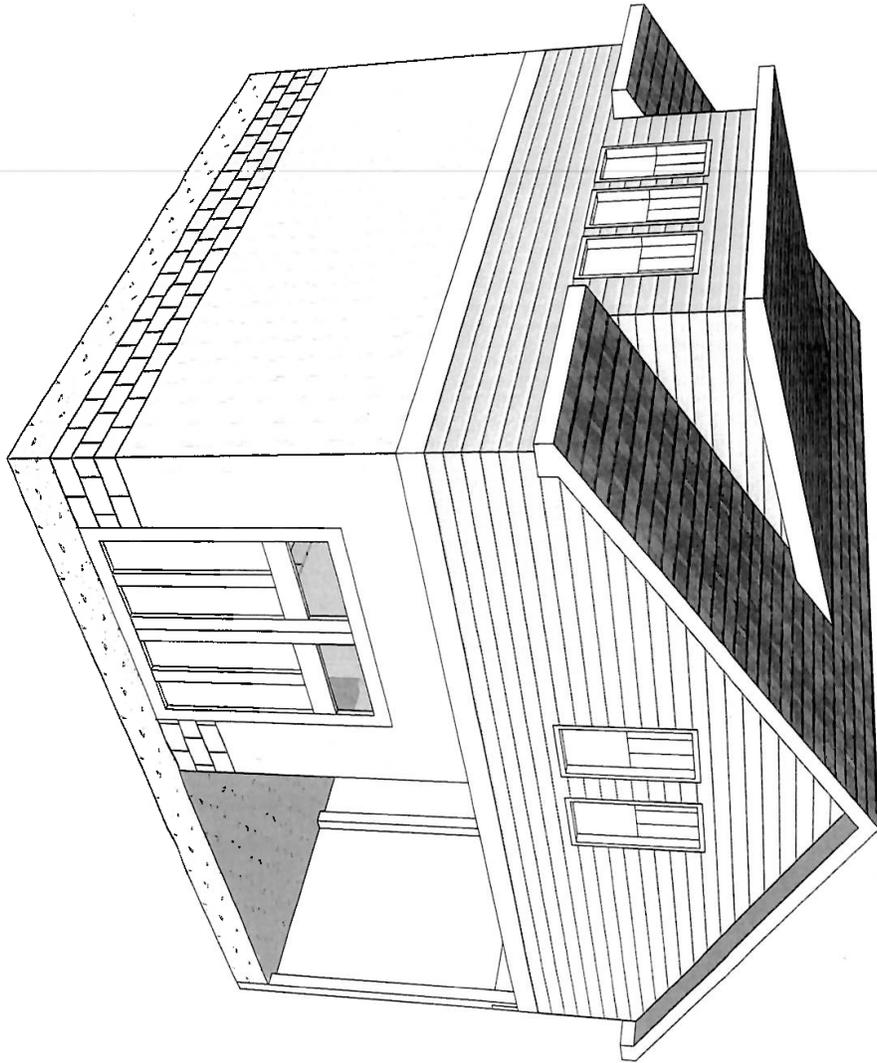
I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 2719 PAGE 184 OR OTHER REFERENCE SOURCE MB. 12 PG. 45); THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN BOOK 12 PAGE 45 OR OTHER REFERENCE SOURCE N/A; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY IS 20,000+; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21NCAC 56.1800).  
THIS 2 DAY OF November, 2023. Michael J. Lawrence

11/2/2023  
\*\* ADDED REAR SETBACK INFORMATION, PER OWNER \*\*  
PRELIMINARY  
THIS MAP IS NOT FOR RECORDATION



FOUNDATION SURVEY FOR  
SPENCER  
HIDEAWAY SHORES  
SECTION 1, BLOCK C  
LOT 4  
MAP BOOK 12 PAGE 45  
TOPSAIL TOWNSHIP, PENDER COUNTY  
NORTH CAROLINA  
SURVEY DATE: OCTOBER 17, 2018  
ACCESSORY BUILDING FOUNDATION 7/18/2023

HANOVER DESIGN SERVICES, P.A.  
LAND SURVEYORS ENGINEERS LAND PLANNERS  
1123 FLORAL PARKWAY  
WILMINGTON, N.C. 28403  
PHONE: 910 343-8002  
FAX: 910 343-9941  
HDS LICENSE C-0597  
H  
D  
S

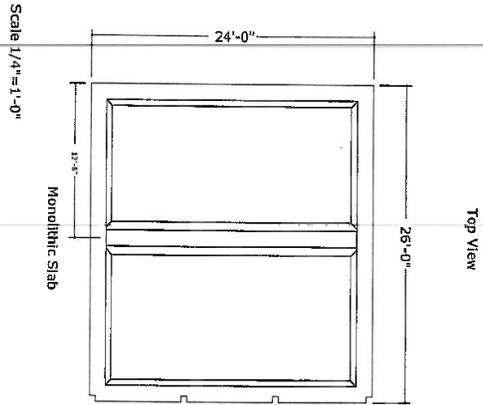


Notes:  
1. All Construction to comply with Local and N.C. Building Code

September 22, 2013

Project Location: 315 South East Hwy

A  
01

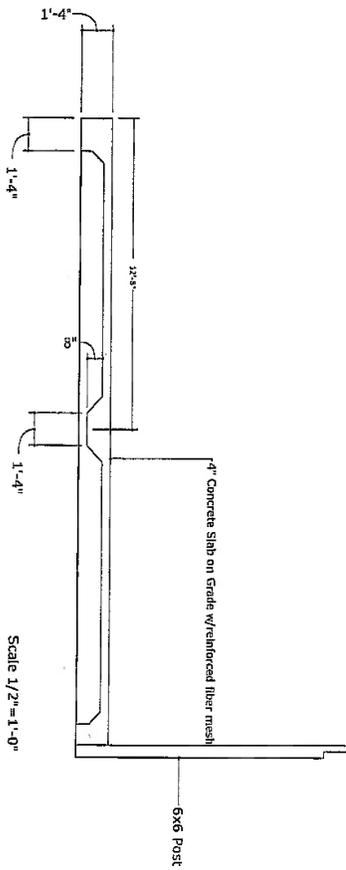


Top View

Scale 1/4" = 1'-0"

Monolithic Slab

- Notes:
1. Foundation/Partial Building constructed prior to ARCH drawings/current as-built unverified
  2. 6x6 post depth and footing as-built unverified
  3. Engineer to verify/approve current foundation
  4. Drawings provided to bring current as-built structure into compliance with Pender County Building Dept.



Foundation

Scale 1/2" = 1'-0"

6x6 Post

- Notes:
1. All Construction to comply with local and N.C. Building Code

September 21, 2023

Professional Engineer

A 22



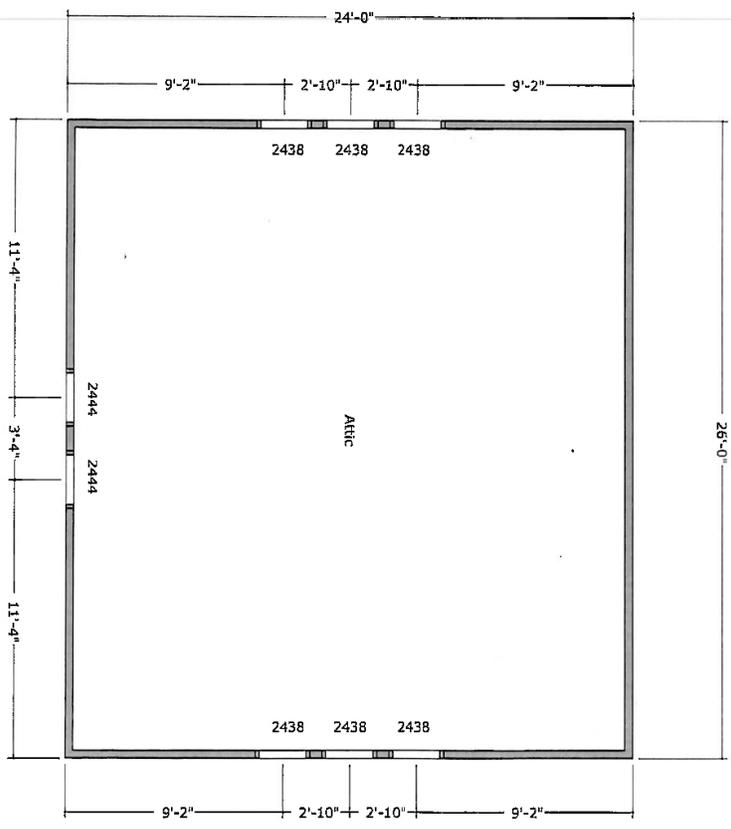
September 22, 2023

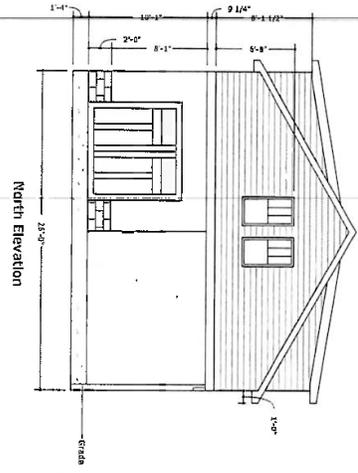
Professional Seal Area

A 01

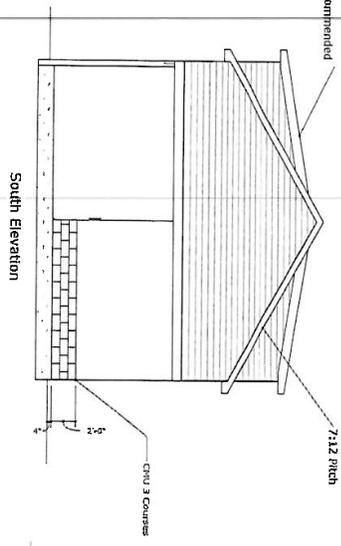
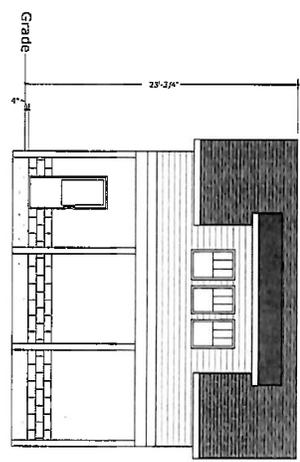
Notes:  
1. All Construction to comply with Local and N.C. Building Code

Scale 1/2" = 1'-0"

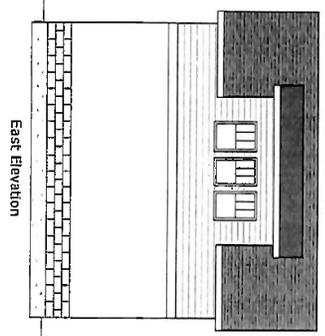




North Elevation



South Elevation



East Elevation

2:12 Pitch  
Ice and Water Shield Recommended

7:12 Pitch

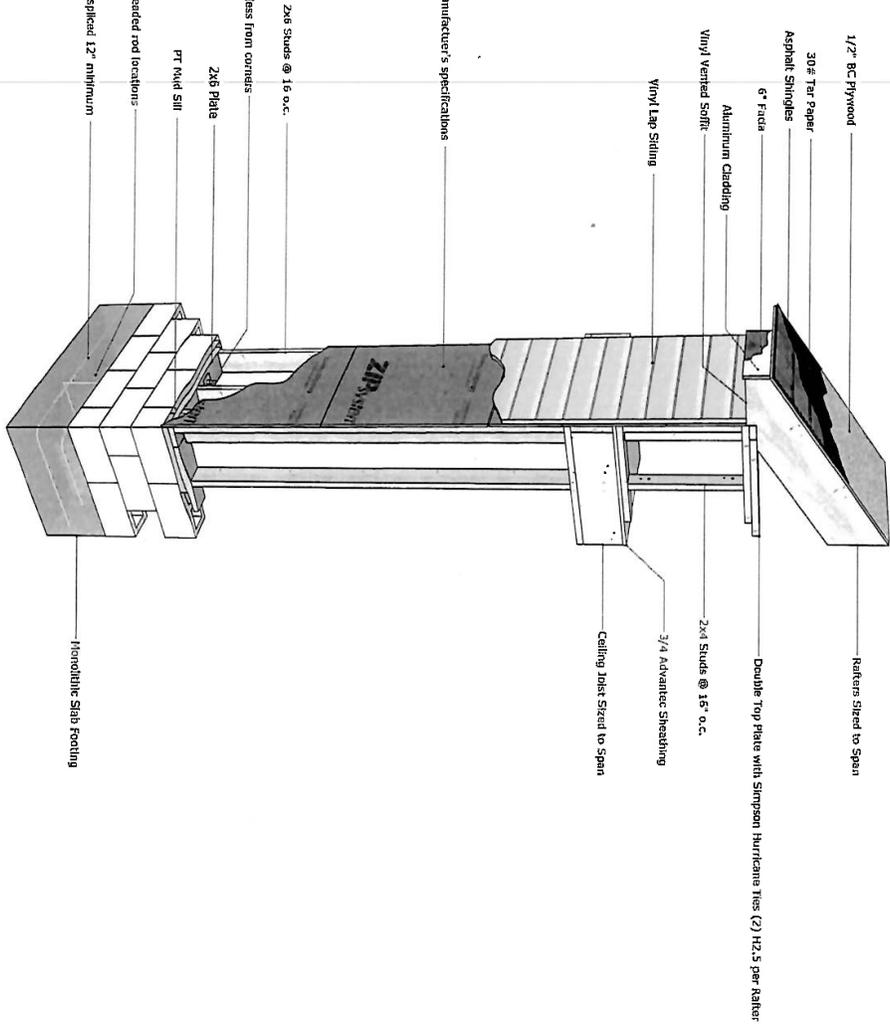
CPJ 3 Courses

Notes:  
1. All Construction to comply with Local and N.C. Building Code

September 22, 2023

Construction | Architecture | Interiors

1/4" = 1'-0"



Typical Wall Section

NOTES:  
 1. All Construction to comply with Local and N.C. Building Code

September 22, 2023

Project Location: [REDACTED]

A | 06

structure. Permit extensions may be granted by the Administrator upon submittal of documentation that shows progress is being made. This shall be demonstrated by documentation of inspections records on building and trade work associated with the repair and reconstruction. The maximum extension shall not exceed six (6) months. The Administrator may make a determination allowing the extension for multiple cases based on the severity of damage and overall recovery progress.

- a) Zoning Approval Permits issued for emergency/disaster relief housing relating to Hurricane Florence shall be eligible for additional six (6) month extensions, providing progress has been made in the repair and reconstruction of the primary structure. The final expiration date shall be no later than September 14, 2021.
- 8) Temporary Housing Units must be removed from the lot within thirty (30) days following completion of repair and reconstruction of the primary structure, or within thirty (30) days following expiration of the related Zoning Approval Permit.
- 9) Temporary Housing Units shall also be allowed in the event repair or replacement is being made pursuant to a governmental grant or program. However, any temporary structure shall be removed within thirty (30) days after the issuance of an occupancy permit for the dwelling unit or the installation of the manufactured home.

### **5.3.3 Accessory Uses and Structures**

- A. Accessory Structure Setbacks and Separation Requirements
  - 1) Accessory Structures 50-599 Square Feet In Area:
    - a) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.
  - 2) Accessory Structures 600-1,199 Square Feet In Area:
    - a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
  - 3) Accessory Structures 1,200 Square Feet in Area or Greater:
    - a) Same setback and separation requirements as principal buildings per zoning district regulations
- B. Cottage Occupation – Cottage Occupations shall be permitted with an approved Special Use Permit in zoning districts indicated in Section 5.2.3, Table of Permitted Uses, with the following limitations:
  - 1) The use must be clearly incidental and secondary to the use of the property for residential purposes.
  - 2) The use shall not change the character or area of the structure or have any exterior evidence of the occupation.
  - 3) The floor area of the cottage occupation cannot exceed the total floor area of the primary residence.
  - 4) No cottage occupation shall be permitted which creates objectionable noise, dust, smoke, odor, glare, or traffic attraction greater than that of other residential properties in the vicinity.
  - 5) Workers not living on the property shall be limited to three (3) persons per day.
  - 6) Proposed Cottage Occupation permits in the GB, General Business district, shall not expand or increase the existing non-conforming use or structure.

#### 4.14 ZONING DISTRICT DIMENSIONAL REQUIREMENTS

Dimensional Requirements Table

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

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

## **ATTACHMENT 2 – APPEAL APPLICATION**



Michael Best & Friedrich LLP  
Attorneys at Law  
Andrew R. Jones  
T 910.442.8740  
E arjones@michaelbest.com

December 27, 2023

**VIA EMAIL AND U.S. MAIL**

Daniel Adams, MPA, CFM, CZO  
Planning and Community Development Director  
UDO Administrator  
Pender County Planning Division  
P.O. Box 1519  
Burgaw, NC 28425  
dadams@pendercountync.gov

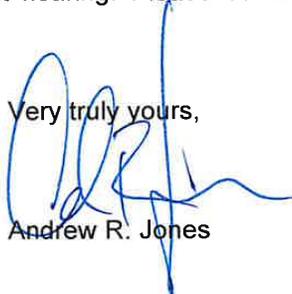
Re: Notice of Appeal  
Zoning Letter of Denial for Residential Accessory Building  
91 Scotch Bonnet Way, Hampstead, NC 28443  
Application RACC-01856-2023  
Pender County PIN: 4203-60-9602-0000

Dear Administrator:

This Firm represents Marcus Spencer and Kaylla Spencer (the “Spencers”) with respect to an appeal of Zoning Letter of Denial for Residential Accessory Building Application RACC-01856-2023. I have enclosed a copy of the Notice of Appeal pursuant to N.C. Gen. Stat. § 160D-405 and UDO Section 3.16.

We request that the Spencers’ appeal be heard either the January 21, 2024, or February 17, 2024, Board of Adjustment hearing. Please contact me to coordinate that scheduling.

Very truly yours,



Andrew R. Jones

Enclosures

cc: Pender County Board of Adjustment  
Justin Brantley, via email only with enclosures  
Patrick Buffkin, via email only with enclosures

**Pender County  
Planning and Community Development**

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



Phone: 910-259-1202  
Fax: 910-259-1295  
[www.pendercountync.gov](http://www.pendercountync.gov)

**APPEAL OF ADMINISTRATIVE DECISION**

As specified in N.C.G.S. 153A-345(b), 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.

**Application Requirements**

- A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Administrator and the Board of Adjustment within thirty days after the decision by the Administrator.
- B. An application for appeal of an administrative decision shall be submitted in accordance with Section 3.1.2, Application Requirements.
- C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the Administrator. The date and time of filing shall be entered on the notice.

**Deadline for Submission of Application**

An appeal of an administrative decision shall be filed with the Administrator and Board of Adjustment within thirty (30) days of receipt of the decision.

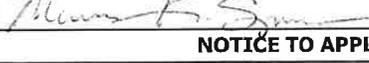
**Action by Board of Adjustment**

- 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.

**Appeals from the Board of Adjustment**

Appeals to the Superior Court may be taken by any person, firm or corporation aggrieved, or by any office, department, board, of the County affected by any decision of the Board of Adjustment, provided such appeals shall be taken within thirty (30) days after the decision of the Board of Adjustment is filed in the office of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board shall be delivered to the applicant by certified mail.

## APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION FOR OFFICE USE			
<b>Application No.</b>	AAD APPEAL 2024-13	<b>Date</b>	12/27/2023
<b>Application Fee</b>	\$ 250.00	<b>Receipt No.</b>	INVOICE 00037918
<b>SECTION 1: APPLICANT INFORMATION</b>			
<b>Applicant's Name:</b>	Marcus Spencer	<b>Owner's Name:</b>	Marcus and Kaylla Spencer
<b>Applicant's Address:</b>	91 Scotch Bonnet Way	<b>Owner's Address:</b>	91 Scotch Bonnet Way
<b>City, State, &amp; Zip</b>	Hampstead, NC 28443	<b>City, State, &amp; Zip</b>	Hampstead, NC 28443
<b>Phone Number:</b>		<b>Phone Number:</b>	
<b>Legal relationship of applicant to land owner:</b> Applicant is land owner			
<b>SECTION 3: SIGNATURES</b>			
<b>Applicant's Signature</b>		<b>Date:</b>	12-27-23
<b>Owner's Signature</b>		<b>Date:</b>	12-27-23
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. Applicant must also submit the information described below in the Appeal of Administrative Decision Checklist.</li> <li>2. Applicant or agent authorized in writing must attend the public hearing.</li> <li>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.</li> </ol>			
<b>APPEAL OF ADMINISRATIVE DECISION CHECKLIST</b>			
<input type="checkbox"/>	Signed application form		
<input type="checkbox"/>	Application fee		
<input type="checkbox"/>	One business size envelope legibly addressed with <b>certified</b> postage for all participants for the appeal		
<input type="checkbox"/>	<u>Appeal Description</u> : Written description of the Appeal taken forward including all pertinent materials (pictures, permits, etc.)		
<b>OFFICE USE ONLY</b>			
<input type="checkbox"/>	<b>AAD Fees \$250</b>	<b>Total Fee Calculation \$</b>	
<b>Payment Method :</b>	<b>Cash :</b> <input type="checkbox"/> \$ _____	<b>Credit Card:</b> <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	<b>Check:</b> <input type="checkbox"/> Check # _____
Application received by:		Date:	
Application completeness approved by:		Date:	
Date scheduled for public hearing:			

Print Form

STATE OF NORTH CAROLINA  
COUNTY OF PENDER

NOTICE OF APPEAL

IN RE: 91 SCOTCH BONNETT WAY,  
HAMPSTEAD, NC 28443

NOW COME property owners MARCUS K. SPENCER and KAYLLA D. SPENCER (collectively the "Spencers"), by and through undersigned counsel and, pursuant to N.C. Gen. Stat. § 160D-405 and UDO Section 3.16, hereby provide notice of appeal of the Zoning Letter of Denial for Residential Accessory Building Application RACC-01856-2023, with respect to the property identified as Pender County PIN: 4203-60-9602-0000, 91 Scotch Bonnet Way dated November 28, 2023 (the "Denial").

As will be further proven in a hearing of this matter, the Denial relies upon errors of law and fact, fails to reflect the equities of the subject property, and should be reversed.

RESPECTFULLY SUBMITTED, this the 27<sup>th</sup> day of December, 2023.

MICHAEL BEST & FRIEDRICH, LLP  
5815 Oleander Dr, Suite 300  
Wilmington, NC 28403  
Telephone and Facsimile: (910) 422-8470

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

Andrew R. Jones  
N.C. Bar No. 46161  
arjones@michaelbest.com

*Counsel for Marcus K. Spencer and Kaylla D. Spencer.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of December 2023, the forgoing NOTICE OF APPEAL was served upon the parties to this action by email and depositing a copy thereof in the United States mail, first class, postage prepaid, and email addressed as follows:

Daniel Adams, MPA, CFM, CZO  
[dadams@pendercountync.gov](mailto:dadams@pendercountync.gov)  
Planning and Community Development Director  
UDO Administrator  
Pender County Planning Division  
P.O. Box 1519  
Burgaw, NC 28425

Justin Brantley, Deputy Planning Director  
[jbrantley@pendercountync.com](mailto:jbrantley@pendercountync.com)  
Pender County Planning Division  
P.O. Box 1519  
Burgaw, NC 28425

Pender County Board of Adjustment  
P.O. Box 1519  
Burgaw, NC 28425



Andrew R. Jones  
*Counsel for Marcus K. Spencer and Kaylla D. Spencer*

MICHAEL BEST & FRIEDRICH LLP  
Attorneys at Law

US Bank - Milwaukee

DATE: 12-27-2023 PAYEE: Pender County Clerk of Court

VENDOR #: 706043.01

CHECK #: 201919

INVOICE NUMBER	INV. DATE	INVOICE DESCRIPTION	AMOUNT
890209-0001	12-27-23		250.00
		TOTAL	\$250.00



Michael Best & Friedrich LLP  
790 North Water Street, Suite 2500  
Milwaukee, WI 53202

DATE 12-27-23

US Bank  
201 West Wisconsin Avenue  
Milwaukee, WI 53259

CHECK NO. 201919

PAY

Two Hundred Fifty and 00/100 Dollar(s)

AMOUNT

250.00

VOID AFTER 6 MONTHS

TO THE  
ORDER  
OF

Pender County Clerk of Court  
P.O. Box 310  
Burgaw, NC 28425

Page 33 of 37 ⑈ 20 19 19 ⑈ ⑆ 0 7 50000 2 2 ⑆ ⑈ 18 23 2 24 20 36 1 ⑈

# chael Best

er Drive

NC 28403

Daniel Adams, MPA, CFM, CZO  
Planning and Community Development Director  
UDO Administrator  
Pender County Planning Division  
P.O. Box 1519  
Burgaw, NC 28425

# chael Best

er Drive

NC 28403

Pender County Board of Adjustment  
P.O. Box 1519  
Burgaw, NC 28425

**ATTACHMENT 3 – APPEAL APPLICATION  
CORRECTED PAYMENT**



Michael Best & Friedrich LLP  
Attorneys at Law  
Amber D. Clemens  
T 910.795.2797  
E [adcclemens@michaelbest.com](mailto:adcclemens@michaelbest.com)

January 2, 2024

**VIA MAIL AND EMAIL:** [dadams@pendercountync.gov](mailto:dadams@pendercountync.gov)

Daniel Adams, MPA, CFM, CZO  
Planning and Community Development Director  
UDO Administrator  
Pender County Planning Division  
P.O. Box 1519  
Burgaw, NC 28425

Re: Notice of Appeal Zoning Letter of Denial for Residential Accessory Building Application RACC-01856-2023, Pender County PIN: 4203-60-9602-0000.91 Scotch Bonnet Way

Dear Administrator:

As previously discussed in our email dated December 28, 2023, check number 201919 included with the Notice of Appeal was incorrectly issued to "Pender County Clerk of Court." We have reissued the check, and enclosed is the corrected check made payable to "Pender County Planning Division." Check number 201919 has been cancelled, and we request that you destroy it without depositing it.

We apologize for the confusion. Please do not hesitate to contact me if you have any questions or concerns.

Thank you,

A handwritten signature in cursive script that reads 'Amber Clemens'.

Amber Clemens

MICHAEL BEST & FRIEDRICH LLP  
Attorneys at Law

US Bank - Milwaukee

DATE: 01-02-2024 PAYEE: Pender County Planning Division

VENDOR #: 706043.02

CHECK #: 201955

INVOICE NUMBER	INV. DATE	INVOICE DESCRIPTION	AMOUNT
890209-0001	01-02-24		250.00
		TOTAL	\$250.00



Michael Best & Friedrich LLP  
790 North Water Street, Suite 2500  
Milwaukee, WI 53202

DATE 01-02-24

US Bank  
201 West Wisconsin Avenue  
Milwaukee, WI 53259

CHECK NO. 201955

PAY

Two Hundred Fifty and 00/100 Dollar(s)

AMOUNT
250.00

VOID AFTER 6 MONTHS

TO THE  
ORDER  
OF

Pender County Planning Division  
PO Box 1519  
Burgaw, NC 28425

Page 37 of 37 ⑈ 20 1955 ⑈ ⑆ 075000022⑆ ⑈ 18232242036 ⑈





**Pender County  
VAR 2023-16: Variance request seeking  
relief from Article 7.4.4, Cross Access  
Corridors, of the Unified Development  
Ordinance**

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**TO:** Board of Adjustment  
**FROM:** Daniel Adams  
**DATE:** February 21, 2024  
**SUBJECT:** VAR 2023-16: Variance request seeking relief from Article 7.4.4, Cross Access Corridors, of the Unified Development Ordinance

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**SUMMARY:**

Little Hampstead, LLC, applicant on behalf of Tanner Postal Commercial Real Estate and O'Leary Property Management, LLC, owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 7.4.4, Cross Access Corridors. Specifically, the applicant is requesting to be exempt from the cross access connection requirement.

The subject properties are zoned GB, General Business and are located on the west side of US Highway 17 across from Washington Acres Road in the Topsail Township. The properties may be further identified by Pender County PIN(s) 3282-53-8940-0000 and 3282-53-4438-0000.

**ACTION REQUESTED:**

To hold a public hearing and consider the variance request.

**ATTACHMENTS:**

1. Staff Report
2. Application
3. Narrative
4. Site Plan
5. Attachment 1: Wetland Delineation Report
6. Attachment 2: Wetland Map

**STAFF REPORT FOR VAR 2023-16  
VARIANCE APPLICATION**

<b>APPLICATION SUMMARY</b>	
Case Number	VAR 2023-16
Hearing Date	February 21, 2024 – Board of Adjustment
Applicant	Little Hampstead, LLC
Property Owners	Tanner Postal Commercial Real Estate, O’Leary Property Management LLC
Parcel Identification Number	3282-53-4438-0000 & 3282-53-8940-0000
Acreage	Approximately 7.1 acres
Township	Topsail
Zoning District	GB, General Business
Pender 2.0 Future Land Use Category	Regional Mixed Use

<b>VARIANCE PROPOSAL</b>
<p>Little Hampstead, LLC, applicant on behalf of Tanner Postal Commercial Real Estate and O’Leary Property Management, LLC, owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 7.4.4, Cross Access Corridors. Specifically, the applicant is requesting to be exempt from the cross access connection requirement.</p>
<b>LOCATION</b>
<p>The subject properties are zoned GB, General Business and are located on the west side of US Highway 17 across from Washington Acres Road in the Topsail Township. The properties may be further identified by Pender County PIN(s) 3282-53-8940-0000 and 3282-53-4438-0000.</p>

Figure 1: Aerial Map of Subject Properties



#### PROPERTY DESCRIPTION

The subject properties consist of two tracts, the larger of which is undeveloped (PIN: 3282-53-4438-0000) and the smaller of which is developed with two commercial structures that house O'Leary's Automotive Repair and Offroad Towing (PIN: 3282-53-8940-0000). Based on the applicant's site plan, the two commercial structures would be removed as part of the development of the site.

The subject parcels are located on the west side of US Highway 17 across from its intersection with Washington Acres Road. The North Carolina Department of Transportation (NCDOT) has identified Washington Acres Road as a project site for future realignment such that the roadway will be shifted south from its existing location so that it intersects US Highway 17 closer to a 90-degree angle.

The Pender County Streets Plan, updated in 2021 and commonly referred to as the Collector Street Plan, has identified a future collector street on the subject properties. A collector street is

a street that connects local roads and neighborhoods to arterial roadways. Country Club Drive and Sloop Point Loop Road are examples of collector streets in the County. The purpose of the Collector Street Plan is to guide investment in new collector streets to improve connectivity, inform land development, maintain acceptable levels-of-service on existing roadways, ensure conservation of natural areas, and provide a safe and high-quality transportation network for residents, businesses, and visitors using all modes of travel. In other words, the Plan seeks to identify vital locations for future roadway corridors.

As noted in the applicant's submittal and shown on their site plan, the site includes a future collector road, which is aligned with the future alignment of Washington Acres Road. The intent is for there to be a collector road running east-west through the site as the property west of the site develops.

**Figure 2: Probable Collector Street Locations**



### VARIANCE DESCRIPTION

The applicant is seeking a variance for relief from Article 7.4.4, Cross Access Corridors, of the Pender County Unified Development Ordinance (UDO). A cross access corridor is a driveway constructed between adjoining properties to provide an alternative passageway to access adjoining developments without entering and exiting the roadway. These cross access corridors are intended to link parking areas on adjoining developments (7.4.4.A). This Article requires that cross access corridors be established for all nonresidential adjacent properties (7.4.4.B).

In this case, the subject site is adjacent to property that is zoned GB, General Business, to the north and is thus required to create a stub to the property line where the cross access corridor will be located. As noted in Article 7.4.4.C, if a site is developed adjoining to an undeveloped parcel, it shall be designed so that its parking, access, and circulation are easily tied together to create a unified system at a later date. If the building site abuts an existing developed property, it shall tie into the abutting parking, access, and circulation to create a unified system when possible. This shall be accomplished by requiring the applicant to:

- a) Construct a cross access future connection to the property line to allow for future connection or dedicate an easement of sufficient width to accommodate a future cross access corridor.

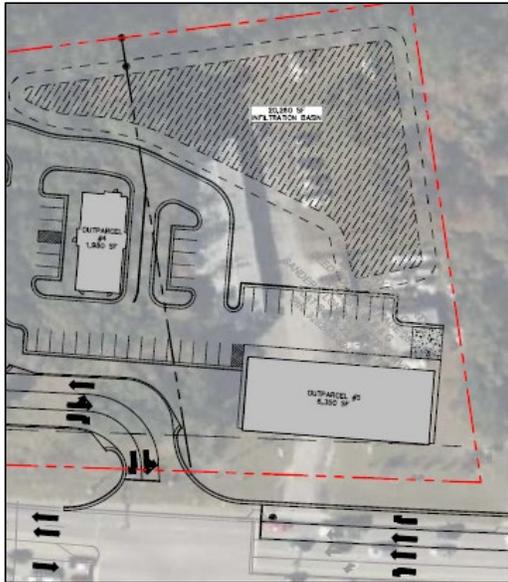
In this case, the abutting property to the north is developed and houses the True Blue Butcher and Baker (PIN: 3282-54-9096-0000). The property to the north of that parcel is also developed and houses Arbor Landing, a senior living facility (PIN: 3282-64-2389-0000). As shown on Figure 3, the Arbor Landing property was required to stub a cross access corridor to the True Blue Butcher and Baker site when it was developed. If redeveloped, the True Blue Butcher and Baker site will be required to connect their internal circulation system to that stub, which would then connect to a stub on the subject site. This system of cross access corridors across the three sites would provide for internal connection such that these parcels would be accessible without having to exit one site and travel on US Highway 17 to get to another adjacent site. This internal connectivity that is desired by the County's UDO is partially started, and as the properties continue to develop and/or redevelop, the internal connectivity created by the cross access corridor requirement will continue to be built out.

*Figure 3: Existing Cross Access Corridor Stub at Arbor Landing site*



The applicant's site plan has also changed over time. The initial site plan that was submitted to staff showed a different layout of the northern-most structure and associated parking that is proposed to be developed as part of this project. Figure 4 shows a structure that is situated such that the associated parking would create a more natural cross access connection to the adjacent northern parcel, whereas the reconfigured site plan most recently submitted (Figure 5) shows the proposed building oriented roughly 90 degrees from the initial layout. The proposed reorientation of the structure inhibits the ability to provide a cross access corridor. The initial site plan demonstrates a concept that would be much more suitable for a cross access corridor connection.

**Figure 4: First Submittal**



**Figure 5: Most Recent Submittal**



**ZONING ADMINISTRATOR'S CONCLUSION**

As stated in Article 1.4 of the UDO, it is the purpose of the UDO to promote the health, safety and general welfare of the residents of Pender County (1.4.1.A), facilitate the adequate provisions of transportation, water, sewerage, schools, parks, and other public requirements (1.4.1.I), and minimize congestion in the streets and accommodate the use of alternatives to the private automobile including public transportation and pedestrian and bicycle facilities (1.4.1.J). The requirement of cross access connections between commercial properties aligns with the purpose statements of the UDO by providing a safe point of access between commercial sites. In this case, the requirement provides an alternative to travelling on US Highway 17 to get between adjacent parcels, thus improving safety and reducing congestion on the roadway.

The applicant's narrative references development challenges associated with the installation of a collector street, changes in topography, and the presence of wetlands on the property. Those three factors, both individually and collectively, are not unique or peculiar to land in Pender County. Based on a Wetland Delineation Report completed by ECS Southeast, LLP, and included in the Board's packet as Attachment 1, neither Waters of the United States nor wetlands were found on the larger parcel. The applicant also submitted a preliminary wetlands map of the smaller parcel, which showed approximately 0.07 acres of potential jurisdictional wetlands (see Attachment 2). Additionally, the applicant has stated that the changes in topography are due to the installation of the collector road. Based on available data from the County's Geographic

Information System (GIS), existing conditions on the site do not indicate dramatic changes in topography along the site's northern boundary. The changes in topography appear to be the result of the applicant's preferred design of the site, not the collector street requirement or the natural grade of the land.

Article 7.4.4.B.3 of the UDO permits the Administrator to modify or waive the cross access corridor requirements if it can be proven that strict compliance would be impractical due to unique site conditions such as environmental concerns, safety concerns, extreme slope, or similar characteristics. An administrative waiver request was submitted by the applicant and subsequently denied by the Administrator.

## PENDER COUNTY UDO VARIANCE EVALUATION

### 3.14 VARIANCE

#### 3.14.1 Applicability

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

#### 3.14.6 Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.

#### 3.14.7 Findings

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

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

#### BOARD OF ADJUSTMENT: FINDING OF FACTS

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **results/does not result** from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - a. This conclusion is based on the following FINDINGS OF FACT:
2. It is the Board's CONCLUSION that, the hardship **results/does not result** from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - a. This conclusion is based on the following FINDINGS OF FACT:
3. It is the Board's CONCLUSION that the hardship **results/does not result** from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.

a. This conclusion is based on the following FINDINGS OF FACT:

4. It is the Board’s CONCLUSION that, the requested variance is **consistent/not consistent** with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

a. This conclusion is based on all of the FINDINGS OF FACT:

**BOARD OF ADJUSTMENT ACTION FOR VARIANCE**

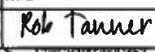
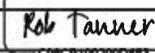
MOTION	SECONDED

APPROVED	DENIED	UNANIMOUS

Kipfer	Breuer	Keeler	ALT: Olsen	ALT: Snider

# APPLICATION

## APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
<b>Application No.</b>	VA	<b>Date</b>	
<b>Application Fee</b>	\$	<b>Invoice Number:</b>	
<b>SECTION 1: APPLICANT INFORMATION</b>			
<b>Applicant's Name:</b>	Little Hampstead, LLC	<b>Owner's Name:</b>	Tanner Postal Commercial Real Estate & O'Leary Property Management LLC
<b>Applicant's Address:</b>	13755 US Hwy 17	<b>Owner's Address:</b>	621 NW 53rd St, Ste 320 Boca Raton, FL 33487 &
<b>City, State, &amp; Zip</b>	Hampstead, NC 28443	<b>City, State, &amp; Zip</b>	PO Box 10317 Wilmington, NC 28404
<b>Phone Number:</b>		<b>Phone Number:</b>	
<b>Email Address:</b>	rob@impeccabledevelopment.com	<b>Email Address:</b>	rob@impeccabledevelopment.com
<b>Legal relationship of applicant to landowner:</b>			
<b>SECTION 2: PROJECT INFORMATION</b>			
<b>Property Identification Number (PIN):</b>	3282-53-4438-0000 & 3282-53-8940-0000	<b>Total property acreage:</b>	+/-7.1 acres
<b>Zoning Classification:</b>	GB	<b>Variance Size:</b>	+/-6.75 acres
<b>Variance Location &amp; Address</b>	13755 US Hwy 17, Hampstead, NC		
<b>Describe Variance and amount or type requested:</b>	See attached.		
<b>SECTION 3: SIGNATURES</b> <small>DocuSigned by:</small>			
<b>Applicant's Signature</b>		<b>Date:</b>	11/3/2023
<b>Applicant's Name Printed</b>	<small>C98CB199209D453...</small> Rob Tanner	<b>Date:</b>	
<b>Owner's Signature</b>		<b>Date:</b>	11/3/2023
<b>Owner's Name Printed</b>	<small>C98CB199209D453...</small> Rob Tanner	<b>Date:</b>	
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.</li> <li>3. An application for a variance shall be submitted in accordance with application requirements.</li> <li>4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.</li> <li>5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.</li> <li>6. Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>7. Applicant or agent authorized in writing must attend the public hearing.</li> <li>8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input type="checkbox"/> <b>VA Fees \$250</b>		<b>Total Fee Calculation \$</b>	
<b>Payment Method :</b>	<b>Cash :</b> <input type="checkbox"/> \$ _____	<b>Credit Card:</b> <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	<b>Check:</b> <input type="checkbox"/> Check # _____
<b>Application received by:</b>			<b>Date:</b>

## APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
Application No.	VA	Date	
Application Fee	\$	Invoice Number:	
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Little Hampstead, LLC	Owner's Name:	Tanner Postal Commercial Real Estate & O'Leary Property Management LLC
Applicant's Address:	13755 US Hwy 17	Owner's Address:	621 NW 53rd St, Ste 320 Boca Raton, FL 33487 &
City, State, & Zip	Hampstead, NC 28443	City, State, & Zip	PO Box 10317 Wilmington, NC 28404
Phone Number:		Phone Number:	
Email Address:	rob@impeccabledevelopment.com	Email Address:	rob@impeccabledevelopment.com
Legal relationship of applicant to landowner:			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	3282-53-4438-0000 & 3282-53-8940-0000	Total property acreage:	+/-7.1 acres
Zoning Classification:	GB	Variance Size:	
Variance Location & Address	13755 US Hwy 17, Hampstead, NC		
Describe Variance and amount or type requested:	See attached.		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature		Date:	
Applicant's Name Printed	Rob Tanner	Date:	
Owner's Signature	<i>Dennis O'Leary</i>	Date:	11/03/2023
Owner's Name Printed	Dennis O'Leary	Date:	
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.</li> <li>3. An application for a variance shall be submitted in accordance with application requirements.</li> <li>4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.</li> <li>5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.</li> <li>6. Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>7. Applicant or agent authorized in writing must attend the public hearing.</li> <li>8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input type="checkbox"/> VA Fees \$250	Total Fee Calculation \$		
Payment Method :	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application received by:			Date:

Application completeness approved by:		Date:
Date scheduled for public hearing:		

# **NARRATIVE**

## NARRATIVE

Little Hampstead, LLC is requesting a variance for the property located at 13755 US Hwy 17 in Hampstead, North Carolina. They are requesting to be exempt from the Cross Access Corridor described in Sec. 7.4.4 of the Pender County UDO. The preliminary plan for the project is attached for your review.

ATTACHMENT TO VARIANCE SUBMISSION  
Little Hampstead, LLC

Section 2: Project Information

Describe Variance and amount or type requested:

A variance is requested to exempt this project from Sec. 7.4.4 Cross Access Corridor.

- 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;**

An unnecessary hardship is created by strict application of the ordinance as the collector road required by the county removes viable, buildable land from the project and requires fill which negatively impacts the potential for a cross access corridor. In addition, the current alignment of Washington Acres requires the property access from HWY 17 to be located close to the eastern edge of the property which could create a conflict with the cross access corridor. Further, the future Washington Acres realignment requires specific internal site design constraints which constitute a public taking of otherwise developable property. Finally, the cross access requirement creates a hardship to the property owner through extra maintenance on private property without just compensation to the property owners.

- 2. The hardship results from conditions that are peculiar to the property, such as location, size, and topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;**

The property is of a peculiar shape and orientation as shown on the site plan. The narrow western part of the property requires an access easement for the adjacent residential properties. The property also contains existing utility easements which must be taken into consideration in designing the site. There are identified wetlands on the property which must be avoided while constructing improvements. In addition, this commercially zoned parcel directly abuts residential uses to the north and the proposed project is designed with additional buffering to protect the quiet enjoyment of the residential uses. The required collector road and future realignment of Washington Acres are particular to the property and limit the developable area.

- 3. The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship;**

None of the hardships result from actions taken by the applicant or the property owner.

- 4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

The requested variance is consistent with the spirit, purpose, and intent of the ordinance. Not only is public safety secured, but it is also enhanced by removing any potential vehicular movement conflicts between the cross access and the required access from HWY

ATTACHMENT TO VARIANCE SUBMISSION  
Little Hampstead, LLC

17 due to the current location of Washington Acres and protecting the adjacent residential properties through enhanced buffers. In addition, substantial justice is achieved by allowing additional property to be used for the project since the county is taking property for the collector road and realignment of Washington Acres.

# SITE PLAN



# **ATTACHMENT 1: Wetland Delineation Report**

# WETLAND DELINEATION REPORT



HIGHWAY 17 AND WASHINGTON ACRES ROAD SITE

HIGHWAY 17 AND WASHINGTON ACRES ROAD  
HAMPSTEAD, NORTH CAROLINA 28443

ECS PROJECT NO. 49:19299

FOR: IMPECCABLE DEVELOPMENT

JANUARY 13, 2023





ECS Southeast, LLP

Geotechnical • Construction Materials • Environmental • Facilities

"One Firm. One Mission."

January 13, 2023

Mr. Rob Tanner  
Impeccable Development  
1200 N Federal Hwy  
Suite 200  
Boca Raton, Florida, 33432

ECS Project No. 49:19299

Reference: Waters of the U.S. Delineation Report, Highway 17 and Washington Acres Road Site, Highway 17 and Washington Acres Road, Hampstead, Pender County North Carolina

Dear Mr. Tanner:

ECS Southeast, LLP (ECS) is pleased submit this report of the Waters of the U.S. (WOUS) services for the above-referenced site. ECS services were provided in general accordance with ECS Proposal No. 49:35508P authorized on January 5, 2023 and generally meets the requirements of the 1987 U.S. Army Corps of Engineers (USACE) Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0 dated November 2010. **Based on our field reconnaissance, potentially jurisdictional WOUS not present onsite.**

If there are questions regarding this report, or a need for further information, please contact the undersigned.

ECS Southeast, LLP

Jonathan Grubb  
Environmental Project Manager  
jgrubb@ecslimited.com  
910-686-9114

Brandon Fulton, LSS, PSC, PWS  
Environmental Principal  
bfulton@ecslimited.com  
704-525-5152

## 1.0 INTRODUCTION

This report presents the findings of a delineation conducted by ECS Southeast, LLP (ECS) for Impeccable Development at the Highway 17 and Washington Acres Road Site located at Highway 17 and Washington Acres Road, Hampstead, Pender County, North Carolina (34.357, -77.722). According to the Pender County Geographic Information System (GIS) website, the Parcel Identification Numbers (PINs) is: 3282-53-4438-0000 The site includes approximately 5.66 acres, as shown on the Site Location Map (Appendix I, Figure 1). The site currently consists of wooded land. Surrounding areas consists of commercial properties, single-family residences, wooded land, and agricultural fields. The purpose of this study was to identify and delineate jurisdictional Waters of the U.S. (WOUS) within the project study area (PSA).

Wetlands are defined by the United States Army Corps of Engineers (USACE) and the United States Environmental Protection Agency (EPA) as “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions.” In order for an area to be classified as wetland, hydrophytic vegetation, hydric soils, and wetland hydrology indicators must be present described in the 1987 “Corps of Engineers Wetlands Delineation Manual” and the Appropriate Regional Supplement.

## 2.0 METHODOLOGY

The findings of the WOUS delineation is based on ECS’ professional judgment and application of the technical criteria presented in the 1987 USACE Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0 dated November 2010.

ECS completed the following tasks to identify and delineate potentially jurisdictional WOUS boundaries onsite:

### 2.1 Literature Review

ECS reviewed supporting information from publicly-available databases to identify possible ecological effects the project may have on potential state- and/or federally-jurisdictional water resources. During the desktop review, ECS documented relevant, site-specific details (e.g., topographic characteristics, soil composition, recent precipitation, level of disturbance, plant community structure, etc.) and integrated the obtained information with the onsite delineation effort.

### 2.2 Methodology for Field Investigation

Wetland boundaries were delineated using the routine onsite determination method described in the USACE Manual and Regional Supplement, in conjunction with the Atlantic and Gulf Coastal Plain 2020 Regional Wetland Plant List and the USDA Soil Survey.

ECS performed onsite wetland delineations as described above. First, site hydrology was observed and the plant community within the data plot was characterized. The dominant plant species within each community were then identified, and it was determined whether or not hydrophytic (wetland) plants dominated the plant community. The USFWS has defined five wetland plant indicator categories including:

- Obligate wetland (OBL) – has >99% probability of occurring in wetlands
- Facultative wetland (FACW) – has 66% to 99% chance of occurring in wetlands
- Facultative (FAC) – has 33% to 66% chance of occurring in wetlands
- Facultative upland (FACU) – has 1 to 33% chance of occurring in wetlands
- Upland (UPL) – has <1% chance of occurring in wetlands
- No Indicator (NI) – no wetland indicator for the specified species, considered UPL

Plants identified as OBL, FACW, or FAC are considered wetland plants (or hydrophytes) by USACE.

In areas determined to have hydrophytic vegetation and potential wetland hydrology, an approximately 16-24 inch hand auger soil boring or shovel test pit was completed to determine if hydric soils were present. The soil boring was also inspected to determine if indicators of wetland hydrology (inundation, soil saturation, etc.) were present.

Once an area is determined to be a wetland, further testing was performed to locate the wetland/upland (non-wetland) boundary. A second soil data point was completed in the upland area to document non-wetland conditions. Wetland boundaries were marked with consecutively numbered surveyor's ribbon flags.

Data forms specified in the Regional Supplement were completed for each wetland and non-wetland soil data point location. The data forms recorded the vegetation, soils, and hydrology observations used in making the wetland determinations.

### 3.0 FINDINGS

No waters of the U.S. were identified within the PSA.

#### 3.1 Literature Review

ECS professionals reviewed the U.S. Geological Survey (USGS) Topographic Map, U.S. Department of Agriculture Natural Resource Conservation Service (USDA-NRCS) Soil Survey of Pender County, the Soil Data Access (SDA) Hydric Soils List, the Federal Emergency Management Agency (FEMA) Floodplain Mapping Service, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) Wetlands Mapper, and available aerial photographs to identify potentially jurisdictional Waters of the U.S. (i.e., streams, wetlands, natural ponds, lakes) and available watershed information.

##### 3.1.1 Literature Review Summary

The following is a summary of the available desktop information that was reviewed as part of this study:

- According to the Hampstead (North Carolina) USGS Topographic Map Quadrangle dated 1997 (Appendix I, Figure 2) depicts no potential waters of the US were depicted within the PSA. The PSA ranges from approximately 50 to 52 feet above mean sea level (MSL).
- According to the USDA-NRCS Pender County Soil Survey of Pender County (Appendix I, Figure 3), the PSA is comprised of the following soil map units: Alpin (AnB); fine sand, 1 to 6 percent slopes, Mandarin (Ma); fine sand, and Torhunta (To); mucky fine sand loam. All of the aforementioned soils are listed on the NRCS Hydric Soils List for Pender County, North Carolina.
- The US Fish and Wildlife NWI map (Appendix I, Figure 4) does not identify wetlands on the PSA. The site is located within the White Oak River Basin and Cape Fear River Basin watershed and is identified as Hydrologic Unit Code (HUC) 03020302 and 03030007.
- The FEMA Flood Insurance Rate Maps (FIRMs), Panel 3720328200J, dated February 16, 2007 (Appendix I, Figure 5) indicates the PSA is located in unshaded Zone X. These areas are determined to be outside the 0.2% Annual Chance Floodplain.
- ECS reviewed the NOAA LiDAR Elevation Data of the site (Appendix I, Figure 6). The on-site elevations range from approximately 29 feet above MSL to approximately 55 feet above MSL.
- ECS queried the USACE-developed Antecedent Precipitation Tool (APT) to gain an understanding of typical moisture conditions in the PSA vicinity. Pre- and post-investigation reports used to demonstrate typical versus atypical climatic conditions for the Project locale were, then, generated for a comparative analysis of current and historical moisture conditions. The analysis indicated the investigation was conducted during the Wet Season and conditions were Drier than Normal for the time of year (Appendix III).

### 3.2 Field Investigation Findings

ECS personnel conducted the field investigation on January 6, 2023. The last precipitation event prior to the site reconnaissance was on January 4, 2023 and approximately 0.171 inches was recorded.

No wetlands were depicted within the PSA.

#### 3.2.1 Wetland Summary

ECS did not identify potential wetland areas within the boundaries of the PSA during the site reconnaissance.

#### 3.2.2 Stream Summary

ECS did not identify potential streams within the boundaries of the PSA during the site reconnaissance.

#### 4.0 REGULATORY DISCUSSION

After review of the findings in the report and at the client's request, ECS can coordinate with the USACE and the NCDWR to conduct a jurisdictional determination and field visit, if necessary. The timeline of this process is dependent on the availability of the regulatory agency. ECS recommends receipt of the formal jurisdictional determination letter from the necessary agencies prior to conducting any land-disturbance activities.

The WOUS are regulated by Sections 401 and 404 of the Clean Water Act. State and Federal law dictates that any disturbance to WOUS must be permitted through the appropriate agencies. If any potential impacts are proposed, we can assist you with permitting options and support to complete the process. As part of the permitting process, we will conduct a preliminary review of state and federal agency records pertaining to Section 7 (Federal Endangered Species Act) and Section 106 (National Historic Preservation Act). If deemed necessary, we can assist you with targeted species surveys or cultural investigations to satisfy the requirements of the Nationwide Permit (NWP), Individual Permit (IP), or General Permit conditions.

Section 404 of the Clean Water Act regulates the discharge of dredge and fill materials into waters of the United States (lakes, rivers, ponds, streams, etc.), including wetlands. Waters of the United States include territorial seas, navigable coastal and inland lakes, rivers, perennial streams, intermittent streams, and wetlands. The EPA and the U.S. Army Corps of Engineers jointly administer the Section 404 program. Section 401 of the Clean Water Act grants each state the authority to approve, condition, or deny any Federal permits that could result in a discharge to State waters. Mitigation and stormwater management plans will be a condition of permits issued for the Site. Buffers may be required adjacent to streams and water bodies. In general, the mitigation requirements and thresholds for North Carolina are 0.1 (1/10) acre of wetlands and 0.02 acres of stream bed. The mitigation credits may be estimated by linear feet (LF) and acreage, state specific calculation worksheets, or other methods utilized in that state or USACE district.

For impacts to 0.5-acre or more of WOUS or to 0.05-acre or more of jurisdictional stream channel, an IP may be required. An IP may also be required to authorize impacts if wetlands and/or streams are located in a floodplain. An IP requires a habitat analysis, alternative site analysis, project justification, plans to avoid and minimize impacts, and a proposed mitigation plan. Depending on the habitat analysis and the extent of impacts, and Environmental Impact Statement may be required by the USACE. An IP allows for a public comment period and the timeline ranges from 4 to 18 months to obtain depending on the conditions that may arise during the USACE review and public comment period.

#### 5.0 WATERSHED CLASSIFICATION/BUFFER REQUIREMENTS

##### 5.1 State Riparian Buffer Requirements

According to the NCDWR website, the site occurs in the White Oak River Basin and Cape Fear River Basin, which is designated as Primary Contact Recreation, Tidal Salt Water (SB) or Aquatic Life, Secondary Contact Recreation, Tidal Salt Water (SC).



SB: Tidal salt waters protected for all SC uses in addition to primary contact recreation. Primary contact recreational activities include swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized manner or on a frequent basis.

SC: All tidal salt waters protected for aquatic life propagation, survival, and maintenance of biological integrity (including fishing, fish (not to include shellfish for market purposes), and Primary Nursey Areas); wildlife; and secondary contact recreation. Secondary contact recreation means wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis.

Surface waters within the White Oak River basin and the Cape Fear River are not subject to state riparian buffers.

## 5.2 Local Buffer Requirements

According to the Pender County Planning Department, there are no additional riparian buffer requirements in addition to the state mandated rule.

ECS recommends consultation with a civil engineer to determine if mandatory vegetative buffers and/or regulated development (impervious surfaces) setbacks are required for the site in addition to those mentioned above.

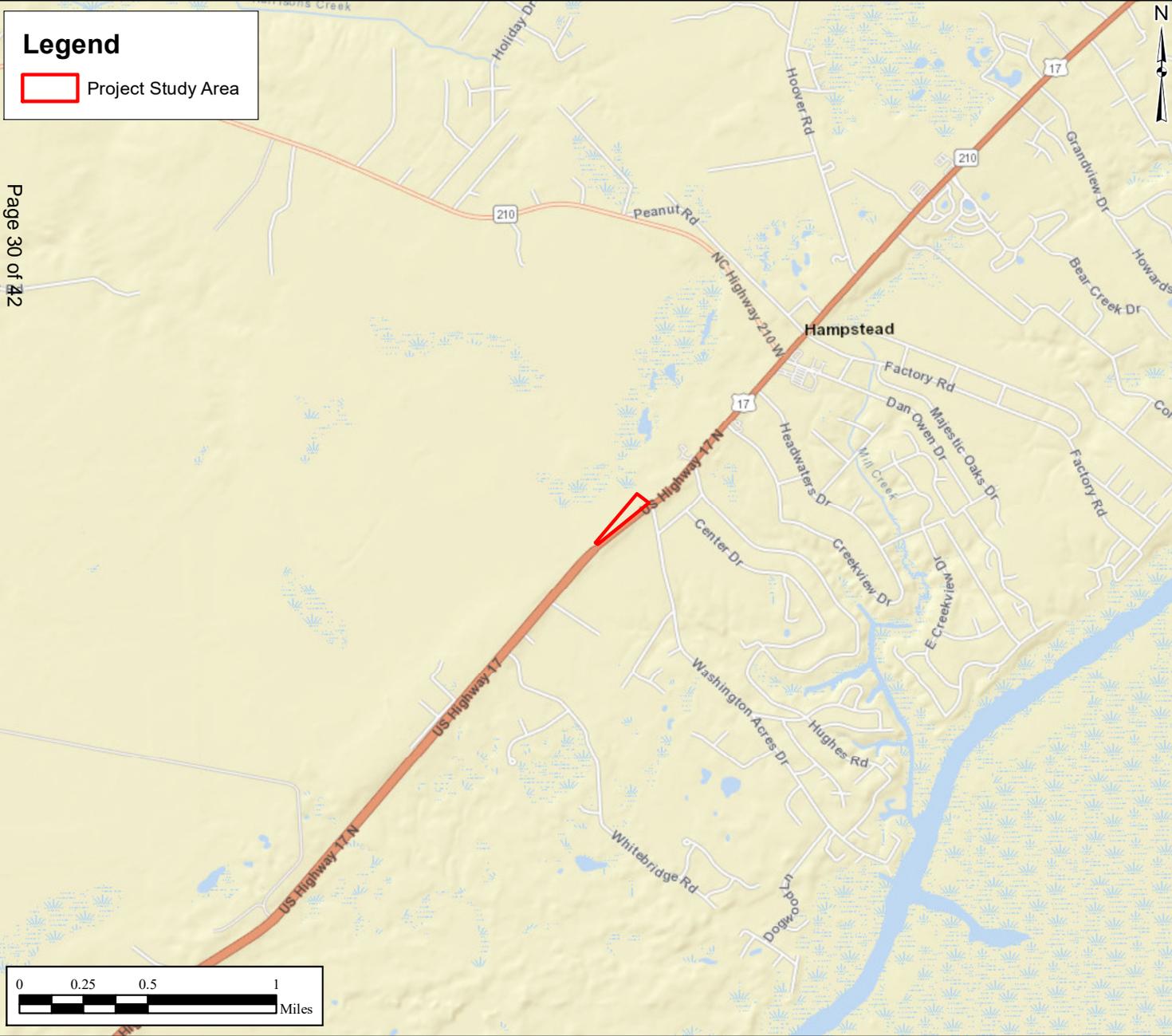
## 6.0 CONCLUSIONS

No potentially jurisdictional wetland areas or potentially jurisdictional streams were identified within the study area. Our findings are illustrated on the attached Waters of the U.S. Delineation Map (Appendix I, Figure 7).

The findings summarized in this report represent our best professional judgment concerning the presence or absence of potential jurisdictional aquatic resources in the PSA at the time of the study. These findings are only to be considered preliminary and are for planning purposes only, as they have not yet been verified by the regulatory agencies and are, therefore, subject to change pending their review. ECS cannot guarantee that field conditions and/or WoUS boundaries will not change over time.

Prior to conducting construction-related activities onsite, ECS recommends requesting an approved Jurisdictional Determination from the USACE for verification of these results to satisfy the requirements of Section 404 of The Clean Water Act (33 U.S.C. 1344). No earth-disturbing activities should be conducted within the PSA until a USACE Determination has been issued.

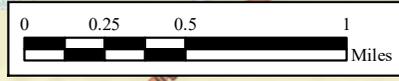
# Appendix I: Figures



**Legend**

 Project Study Area

Page 30 of 42



Client:



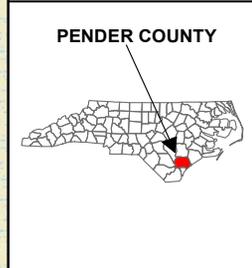
Project:

**WASHINGTON ACRES SITE**

HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

**SITE LOCATION  
MAP**



Drawn By: KMC	Scale: 1= 0.5 mi
Approved By: WBF	Date: 01/05/2023
ECS Project No. <b>49:19299</b>	

**FIGURE 1**



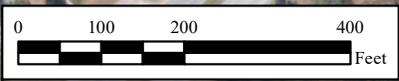
**Legend**

 Project Study Area

**Soil Type**

-  AnB *Alpin fine sand, 1 to 6 percent slopes*
-  Ma *Mandarin fine sand*
-  To *Torhunta mucky fine sandy loam*

Page 32 of 42



Project:

**WASHINGTON ACRES SITE**

**HWY 17 & WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA**

Title:

**USDA-NRCS  
WEB SOILS SURVEY  
MAP**

**DATED: 09/12/2022**



Drawn By:	Scale:
KMC	1 in = 200 ft
Approved By:	Date:
WBF	01/06/2023
ECS Project No.	
<b>49: 19299</b>	

**FIGURE 3**



Client:



Project:

WASHINGTON ACRES SITE  
HWY 17 & WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

NATIONAL WETLANDS  
INVENTORY MAP



Drawn By:

KMC

Scale:

1 in = 500 ft

Approved By:

WBF

Date:

01/06/2023

ECS Project No.

49: 19299

FIGURE 4

### Legend

Project Study Area

#### Wetland Type

Freshwater Emergent Wetland

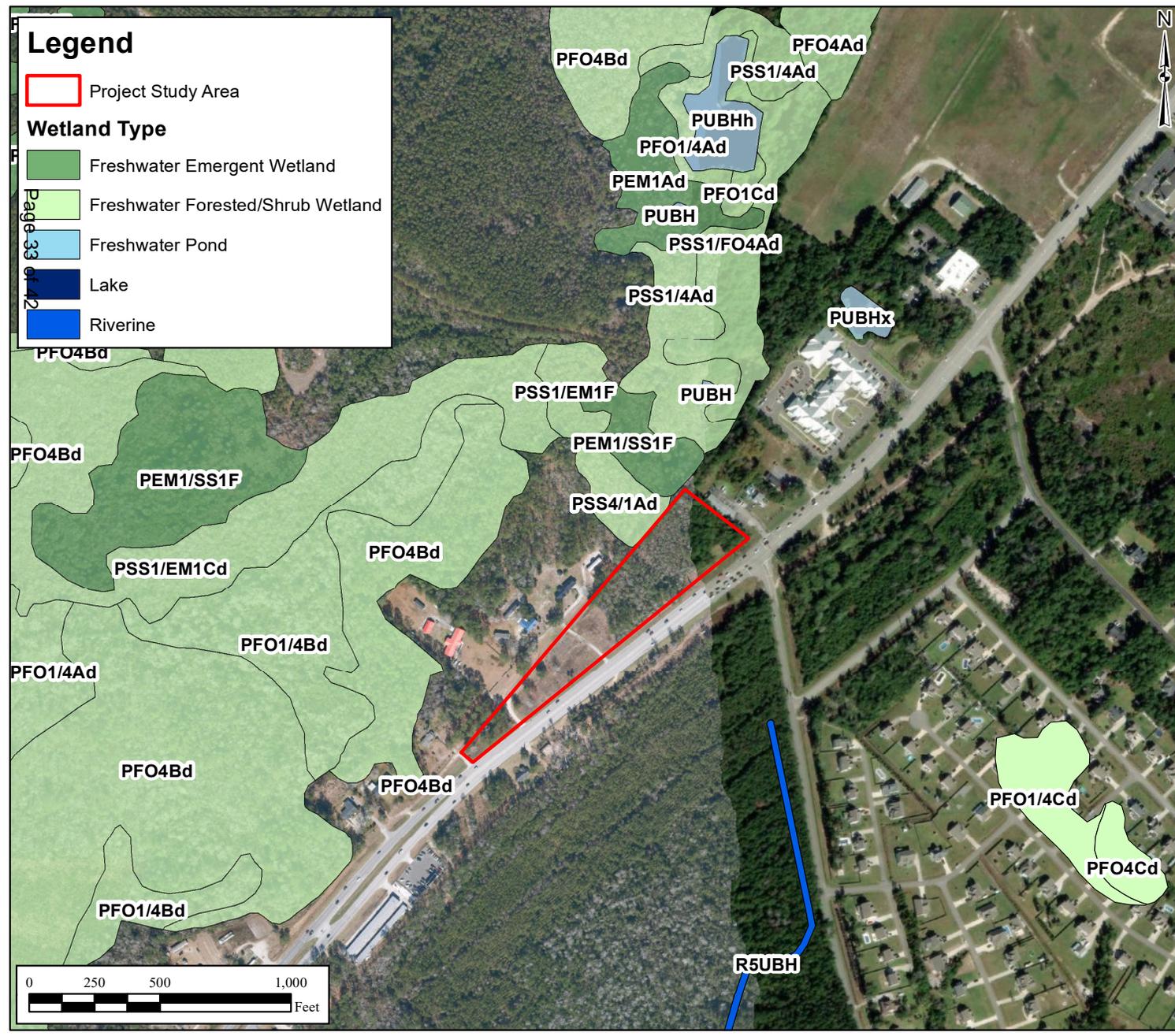
Freshwater Forested/Shrub Wetland

Freshwater Pond

Lake

Riverine

Page 33 of 42





Client:



Project:

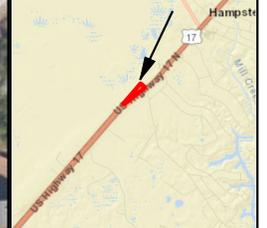
WASHINGTON ACRES SITE  
HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

NATIONAL  
FLOOD HAZARD  
ZONE MAP

PANEL: 3720328200J  
DATE: 02/16/2007

Project Study Area



Drawn By:

KMC

Scale:

1 in = 200 ft

Approved By:

WBF

Date:

01/06/2023

ECS Project No.

49:19299

FIGURE 5

**Legend**

-  Project Study Area
-  FIRM Panels
-  1% Annual Chance Flood Hazard
-  Regulatory Floodway
-  Special Floodway
-  Area of Undetermined Flood Hazard
-  0.2% Annual Chance Flood Hazard
-  Future Conditions 1% Annual Chance Flood Hazard
-  Area with Reduced Risk Due to Levee
-  Water Areas

Page 34 of 42

PANEL  
3720328200J  
eff. 2/16/2007

PANEL  
3720328200J  
eff. 2/16/2007



**Legend**

 Project Study Area

**NOAA Elevation Data**

**Value**

 High : 54.7217

 Low : 29.3852

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Client:



Project:

**WASHINGTON ACRES SITE**

HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

**NOAA LIDAR  
ELEVATION DATA**

**Project Study Area**



Drawn By:  
**KMC**

Scale:  
1 in = 200 ft

Approved By:  
**WBF**

Date:  
01/05/2023

ECS Project No.  
**49:19299**

**FIGURE 6**



**Legend**

 PSAWashingtonAcres2

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Client:



Project:

**WASHINGTON ACRES SITE**

**HWY 17 & WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA**

Title:

**POTENTIAL WATERS  
OF THE US MAP**

NOTES:

1. NO WATERS OF THE US WERE OBSERVED BY ECS ON JANUARY 6, 2023.
2. OUR FINDINGS HAVE NOT BEEN VERIFIED BY THE USACE AND NCDWR. THE DELINEATION FINDINGS ARE SUBJECT TO CHANGE BASED ON AGENCY VERIFICATION.
3. THIS MAP SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES.

Drawn By:	Scale:
KMC	1 in = 200 ft
Approved By:	Date:
WBF	01/09/2023

ECS Project No.  
**49: 19299**

**FIGURE 7**



# **Appendix II: Photographic Log**



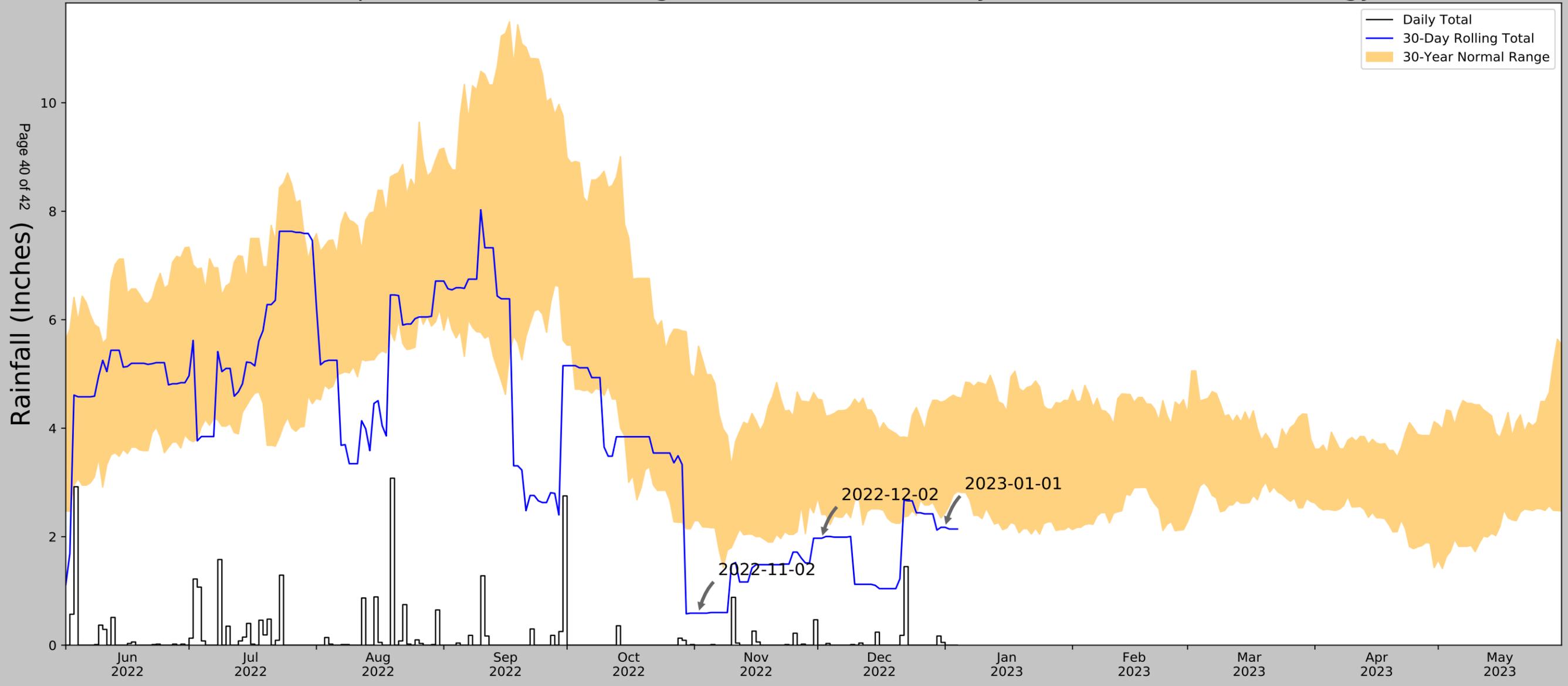
1 - Typical view of the woods on site.



2 - Additional view of the upland woods on site.

# **Appendix III: Precipitation Data**

# Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	34.357, -77.722
Observation Date	2023-01-01
Elevation (ft)	52.61
Drought Index (PDSI)	Not available
WebWIMP H <sub>2</sub> O Balance	Wet Season

30 Days Ending	30 <sup>th</sup> %ile (in)	70 <sup>th</sup> %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2023-01-01	2.438583	4.504331	2.173228	Dry	1	3	3
2022-12-02	2.408268	4.522441	1.972441	Dry	1	2	2
2022-11-02	2.294488	5.512599	0.590551	Dry	1	1	1
Result							Drier than Normal - 6



Figure and tables made by the  
**Antecedent Precipitation Tool**  
 Version 1.0  
 Written by Jason Deters  
 U.S. Army Corps of Engineers

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
WILMINGTON INTL AP	34.2675, -77.8997	33.136	11.878	19.474	5.576	11353	90

# **ATTACHMENT 2: Wetland Map**

-  Wetland\_clipped2
-  19299 PSA Hampstead

Page 42 of 42



Client:



Project:

**Hampstead Site**  
  
**13821 US-17**  
**HAMPSTEAD,**  
**PENDER COUNTY,**  
**NORTH CAROLINA**

Title:

**POTENTIAL WATERS**  
**OF THE US MAP**

NOTES:

1. WATERS OF THE US WERE OBSERVED BY ECS ON NOVEMBER 15, 2022.
2. FEATURES DEPICTED ON THIS MAP HAVE NOT BEEN VERIFIED BY THE USACE OR NODWR. THE DELINEATION FINDINGS ARE SUBJECT TO CHANGE BASED ON AGENCY VERIFICATION.
3. THIS MAP SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES.

Drawn By:

KMH

Scale:

1 in = 48 ft

Approved By:

Date:

10/04/2023

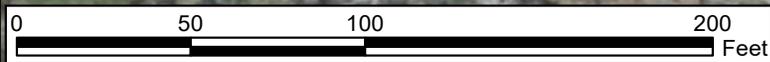
ECS Project No.

**49: 19299-B**

**FIGURE 7**

Potential Jurisdictional Wetland  
 Approx. 0.07 acres

US-17





## Pender County Amendments to the Rules of Procedure

---

**TO:** Board of Adjustment  
**FROM:** Daniel Adams  
**DATE:** February 21, 2024  
**SUBJECT:** Amendments to the Rules of Procedure

---

**SUMMARY:**

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

Staff proposed language that was discussed at the August 16, 2023, meeting and have since updated the proposed language based on that discussion and further discussion at the October 18, 2023, meeting. Staff is proposing the following language to be added to the Board of Adjustment's Rules of Procedure:

Article IV. Meetings

I. It is recommended that participants of the hearing submit evidence, including photos, videos, and other documentation, to the Secretary five days prior to the hearing upon which the evidence is related. This will allow time for staff to distribute the evidence to known participants and to prepare reasonable accommodation for the presentation of the evidence (e.g., display of video). The Board shall have the discretion to accept or deny evidence into the record that is presented at the hearing.

J. The Board, at the discretion of the Chairman, may limit the time that members of the public may speak during public comment. A general guideline is that speakers have a three-minute limit if they are only representing themselves and a five-minute limit if they are speaking on behalf of an organized group, such as a homeowner's association.

Staff is also proposing to update the applicable references to the North Carolina General Statutes found within the Rules of Procedure. All proposed changes are marked in red on the attached document.

**ACTION REQUESTED:**

Discussion regarding the proposed amendments.

**ATTACHMENTS:**

1. Rules of Procedure

**RULES OF PROCEDURE**

**I. General Rules**

Pursuant to the provisions of North Carolina General Statutes (N.C.G.S) 160D-302, 403(b), 405, 406, 702, 705, and 1405 and the provisions of the Pender County Unified Development Ordinance (UDO), incorporated herein by reference, these rules of procedure shall govern all matters before the Board until further amended.

**II. Members – Officers – Duties**

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

- F. Secretary. The Administrator, or their designee from the Planning Staff, shall serve as Secretary to the Board of Adjustment. The Secretary, subject to the direction of the Chairman and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision in such cases, and shall generally supervise the clerical work of the Board. The Secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution or on the final determination of any question or matter before the Board, indicating the names of members who voted, and who are absent and fail to vote.

**III. Rules of Conduct for Members**

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

- E. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule may be cause for dismissal from the Board.

#### IV. Meetings

- A. Regular Meeting. The Regular Meeting of the Board shall be held on the third Wednesday of each month at the place as may be designated by the Chairman from time to time for convenience of members and parties.
- B. Special Meeting. The Chairman may call a Special Meeting of the Board at any time. At least forty-eight (48) hours written notice of this Special Meeting shall be given by the Chairman, Secretary, or Clerk to each member of the Board.
- C. All notices of all meetings shall be made to the public and media as required by provisions of N.C.G.S. 160D-406(b).
- D. Cancellation of Meetings. If there is no business before the Board upon appeals and applications for variances, the Chairman or his designee may cancel the meeting by giving verbal and written notice to each member and alternate, by the Friday proceeding the regularly scheduled meeting, or forty-eight (48) hours notice canceling a Special Meeting.
- E. Quorum. A quorum shall consist of four (4) members of the Board.
- F. Final Action. Final action on matters before the Board shall be as required in N.C.G.S. 160D-406(i-j) and Section 2.4.1 of the Pender County UDO. No final action can be taken on a variance without the concurring vote of four-fifths (4/5's) of the members of the Board. All other quasi-judicial matters require a simple majority vote by members of the Board.
- G. Any member present eligible to vote and failing to vote such vote shall be in the affirmative of a motion and as properly seconded.
- H. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) call to order; (b) roll call; (c) approval of minutes of the previous meeting; (d) hearing of cases; (e) reports of committees; (f) unfinished business; (g) new business; (h) adjournment.

- I. It is recommended that participants of the hearing submit evidence, including photos, videos, and other documentation, to the Secretary five days prior to the hearing upon which the evidence is related. This will allow time for staff to distribute the evidence to known participants and to prepare reasonable accommodation for the presentation of the evidence (e.g., display of video). The Board shall have the discretion to accept or deny evidence into the record that is presented at the hearing.
- J. The Board, at the discretion of the Chairman, may limit the time that members of the public may speak during public comment. A general guideline is that speakers have a three-minute limit if they are only representing themselves and a five-minute limit if they are speaking on behalf of an organized group, such as a homeowner's association.

V. **Appeals**

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

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

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

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

Notice shall also be sent to adjacent/abutting landowners as disclosed by public record and posted on the site in accordance with N.C.G.S. 160D-406(b).

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

The Chair of the Board or any Member acting as Chair and Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board as outlined in N.C.G.S. 160D-406(f).

- (4) Rehearings. An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.

## **VI. Variance**

Applications for a variance must be filed with the Administrator or their agent and must meet all submission requirements as outlined in Section 3.14.7 of the Pender County UDO. As required by N.C.G.S. 160D-406(i), no final action shall be taken a variance without the concurring vote of four-fifths (4/5's) of the members of the Board.

**VII. Decisions**

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

**VIII. Amendments**

These rules may be amended from time to time. Amendments in writing may be proposed by any member or any other person at a Regular Meeting of the Board. No

action shall be taken upon such amendment until the next Regular Meeting of the Board. No amendment may be adopted unless adopted by an affirmative vote of no less than four (4) members.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2024 (amended)

\_\_\_\_\_

Chairman

ATTEST: \_\_\_\_\_

Secretary