

Joann M. McDermon, Mayor
Mike Benson, Mayor Pro Tem



Alice Derian, ICMA-CM
Town Manager

Aldermen:
Fred Fontana
Richard Grant
Tom Leonard
Connie Pletl

Nancy Avery
Interim Town Clerk

**Zoning Board of Adjustment
Special Meeting Draft Minutes**

Wednesday, March 22, 2023, at 5:30 PM

2008 Loggerhead Court, North Topsail Beach NC 28460

Present: Hanna McCloud – Chair, Paul Dorazio - Vice Chair, Scott Morse, Cameron Kuegel, Susan Meyer.

Not Participating: Lisa Lee Kozlowski.

Absent: Pat Stigall, Stu Harness.

Present Other: Planning Director Hill, Clerk to the Board of Adjustment Winzler, IT Director Schwisow, Town Manager Derian, Town Attorney Edes (via Teams), Court Reporter Kim Altman.

CALL TO ORDER Chair McCloud called the meeting to order at 5:36 p.m.

ADOPTION OF THE AGENDA Ms. Meyer made a motion to adopt the agenda. Mr. Dorazio seconded the motion. The motion passed unanimously, 5-0.

APPROVAL OF MINUTES Mr. Kuegel made a motion to approve the January 30, 2023 minutes. Ms. Meyer seconded the motion. The motion passed unanimously, 5-0.

NEW BUSINESS

CASE #AA23-000001: Appeal by Mark Boike

Attorney Edes reviewed the quasi-judicial hearing process and polled the Zoning Board of Adjustment regarding their roles as impartial decision makers.

Clerk Winzler swore in appellant Mark Boike and Planning Director Deb Hill.

Planning Director Hill reviewed the exhibits and added exhibit eleven: an update from exhibit seven the Coastal Area Management Act (CAMA) exemption 07-23 dated March 17, 2023.

The Board accepted into evidence exhibits one through eleven, noting Mr. Boike's exception to the characterization of the type of work he intends to perform as being not maintenance within Exhibit 5.

Planning Director Hill presented the staff report.

Attorney Edes and Planning Director Hill discussed the North Topsail Beach dune protection ordinance in relation to the verbiage used by the Division of Coastal Management (DCM), the NC Building Code, and the Federal Emergency Management Act (FEMA) substantial damage manual, regarding maintenance, repair, improvement, and expansion, as well as the parameters of scope of work at issue.

Mr. Boike explained that the work would include new pilings driven into the sand to support the gazebo.

Mr. Boike declined to cross examine Planning Director Hill.

Chair McCloud asked if a building permit was pulled?

Planning Director Hill replied no, a building permit may not be issued without a zoning permit.

Chair McCloud identified that the applicant’s drawing did not define the scope of work.

Planning Director Hill agreed, noting that was inconsistent with the narrative and inconsistent with the original CAMA exemption.

Mr. Boike presented his case, explaining his reasoning for replacing the pilings and resurfacing the deck.

Attorney Edes asked Mr. Boike for clarification on the scope of the project.

Mr. Boike explained there would be the addition of one new piling installed within five feet of the landward toe of the dune, and all existing pilings would remain in place.

Planning Director Hill expressed concern over Mr. Boike’s substantial improvement cost estimate dated 11/21/2022 which only included plumbing costs and excluded this proposed work.

Attorney Edes asked Planning Director Hill if she agreed that only one piling would be afoul of section 10.07.02(D)(E).

Planning Director Hill disagreed. As evidenced by the picture on page seven of twenty-eight, the entire structure is located oceanward of the landward toe of the dune.

Mr. Boike asked if the oceanside of the dune was included even though there was no dune there.

Planning Director Hill answered the entire structure is located oceanward of the landward toe of the dune.

There was discussion with the Board regarding the location of dune vegetation on the lot as illustrated on page seven of twenty-eight.

Vice Chair Dorazio suggested that the building of the gazebo may not have been permitted.

Mr. Boike suggested perhaps it met code when it was constructed.

At 6:55 p.m., Attorney Edes suggested suspending the evidentiary portion of the hearing and beginning deliberations. Attorney Edes reiterated the purpose of the hearing was to ascertain whether staff’s decision that the proposed work is in violation of 10.07.02(D)(E) which led to the denial of the zoning compliance.

The Board deliberated.

Ms. Meyer made a motion to uphold staff’s decision. Mr. Kuegel seconded. Unanimously approved, 5-0, as follows:

<u>Roll call</u>	<u>Vote</u>
Mr. Morse	Yes
Chair McCloud	Yes
Vice Chair Dorazio	Yes
Ms. Meyer	Yes
Mr. Kuegel	Yes

The Board of Adjustment took a break at 7:06 p.m.

The Board of Adjustment resumed at 7:16 p.m.

CASE #AA23-000002: Appeal by Lloyd Moore

Attorney Edes asked the applicant for confirmation that he understood the procedure.

Mt. Lloyd Moore confirmed that he understood.

Attorney Edes reminded the Board of Adjustment that the case was an appeal from a final staff decision, with the goal to determine whether the staff's decision was commiserate with the text of the ordinance and investigate any questions as to what the text of the ordinance means. He asked the Board if anyone had any basis that would prevent them from being fair and impartial to base their votes solely on the competent evidence produced during the hearing. All Board members replied no.

Clerk Winzler swore in appellant Lloyd Moore, Surveyor Charles Riggs, and Planning Director Deb Hill.

Planning Director Hill presented the staff report and entered into evidence exhibits 1, 1a, 1b, 2, 2a, and 3. The Board accepted exhibits 1-3 into evidence without objection.

Ms. Hill confirmed that the application denial was based upon UDO 10.07.02(D) and (E).

Mr. Moore did not have any cross-examination questions for Planning Director Hill.

The Board discussed the case with Planning Director Hill. The basis of denial was due to the development being oceanward of the landward toe of the dune. The deck was original to the house, in place prior to the adoption of the ordinance on September 7, 2022, and therefore the application constituted a repair, not an addition or an improvement.

Appellant Lloyd Moore explained that the same footprint would be constructed.

Attorney Edes asked Charles Riggs, the appellant's representative, if he agreed that this proposal was consistent with the previous structure and did not contemplate an expansion, nor contemplate any development in an area where development did not already exist.

Mr. Riggs confirmed that the proposed footprint to be repaired was the exact footprint of the six by sixteen and the steps going to the ocean, no change in footprint. He suggested CAMA reinforced this in the exemption letter stating that it is a repair.

Attorney Edes asked if the application contemplated the addition of any construction placed within five feet of the landward toe of the dune.

Mr. Riggs suggested the photographs he submitted illustrate a vegetated berm, not necessarily a dune, using the Division of Coastal Management definitions.

Attorney Edes asked if this appeal was granted, looking down from a bird's eye view, would anything be placed outside of what is already there.

Mr. Riggs disagreed. He explained that the six by sixteen deck and the steps were destroyed by Hurricane Florence; this application was to replace them in the exact footprint of the previous structure. Therefore, this is not an addition or improvement, but rather a repair.

Attorney Edes asked if the footprint had existed previously to September 7, 2022.

Mr. Riggs confirmed.

Planning Director Hill pointed out that on the CAMA exemption, in the middle paragraph for maintenance and repair, it states "excluding replacement."

Mr. Riggs continued, explaining that "structures may be repaired in a similar manner, size, and location as the original structure."

Ms. Hill stated that this structure was lost in 2018, and this application was being made five years later in 2023.

Mr. Riggs explained that it was not completely lost and offered a photo showing the damaged structure.

Attorney Edes asked if any permits had been applied for between Hurricane Florence and this application.

Mr. Riggs stated Mr. Moore could not have applied for permits prior to August 9, 2022, as he purchased the property on that date.

Mr. Riggs distributed the following exhibits to the Board:

Exhibit 4: two pages from Onslow County Property Records Site dated 3/22/23, 4:09 PM

Exhibit 5: 5 pages of photographs

The Board accepted into evidence exhibits 4 and 5 without objection.

Mr. Riggs explained that exhibit 4 illustrated that the six by sixteen deck in need of repair is presently included within the county tax valuation.

Mr. Riggs explained exhibit 5, a series of photographs:

- The street-side of the dwelling on December 7, 2022, at 13:53, taken by Mr. Riggs showing the access steps and the vegetated berm.
- Side-view photograph from the west looking east showing the rear portion of the dwelling with the vegetated berm and plantings.
- Onslow County GIS photograph taken September 21, 2018, after Hurricane Florence, showing the six by sixteen deck was in place, but in disrepair.
- Picture taken February 26, 2012, six years before Florence, showing the image of the deck with two beach accesses coming off the deck.
- 2012 Onslow County GIS photograph showing the deck and two beach accesses.

Mr. Riggs explained this was a request to repair this deck and beach access and asked for consideration as a safety concern as a second means of access into and out of the dwelling. Mr. Riggs brought up the issue of the berm, stating the first line of vegetation ran beneath the house. He explained that the Division of Coastal Management used the two-year rule on planted vegetation, such that if planted vegetation remains stable for two years, they will move the line.

Mr. Kuegel asked if the house straddles two lots.

Mr. Riggs confirmed and explained that the lots were created in the sixties.

Attorney Edes asked if Mr. Moore owned both lots.

Mr. Riggs confirmed.

Ms. Meyer asked for clarification between “replacement” and “repair” on the CAMA exemption.

Planning Director Hill read from the CAMA exemption letter.

Mr. Riggs explained that he read it to mean that this activity is not considered development.

This is considered a repair.

Ms. Hill suggested that if it was replaced it would be considered development and would need to meet the current code.

Chair McCloud suggested since there is no structure there presently, it is a replacement of a pre-existing deck, not a repair.

Attorney Edes asked if the scope of work exceeds fifty percent of the market value of the structure, as one barometer to measure a repair versus a replacement.

There was discussion regarding the value of the structure, and if the cost of the project would exceed fifty percent of that value.

Chair McCloud asked why the deck was taxed when it was not there in 2022.

Planning Director Hill noted that the value of the structure was \$161,349, and asked what the cost of the project was.

Mr. Moore responded \$16,000.

Ms. Hill asked if Mr. Moore was aware that if the improvement cost exceeded fifty percent of the value of the structure, the entire structure would have to be brought up to code.

Mr. Moore confirmed.

Mr. Kuegel asked if the cost of the new construction shown in the December 7, 2022 picture was factored into the fifty percent consideration.

Planning Director Hill replied that it was a minimal cost, and access is necessary.

Mr. Kuegel asked what the width of the beach access is permissible and if a four-foot landing was permissible for access.

Planning Director Hill stated that she needed to discuss that with the Building Inspector.

Chair McCloud asked if the six steps towards the beach illustrated on page 9 of 12 were what the appellant intends to build.

Mr. Riggs suggested that the proposed deck and steps would rest on the berm, and not extend beyond the toe of the dune at all.

Attorney Edes suggested if the Board was inclined to modify the staff’s decision, it would be appropriate to place a condition on confirmation of what Mr. Riggs just said.

Mr. Riggs emphasized that when Mr. Moore purchased the property in August, he did due diligence, there was no five-foot buffer rule, the dune renourishment had not occurred, nor had the vegetation been placed.

Attorney Edes asked if there were any approvals or staff representations in writing related to the scope of work that is the subject of this appeal prior to Mr. Moore buying the property.

Mr. Riggs stated not in writing, other than discussions with CAMA.

Attorney Edes also pointed out that the CAMA permit also defers to other local ordinances, such as Town of North Topsail Beach. He asked if the proposed work would not expand the pre-existing structure’s footprint.

Mr. Riggs agreed.

Attorney Edes noted the tax card pulled from 2023 identified the structure as existing.

Mr. Riggs confirmed.

Chair McCloud reviewed the three options for the Board’s decision.

Mr. Dorazio made a motion to reverse staff’s decision to allow the proposed work to proceed only to the extent it does not exceed the pre-existing footprint as depicted on the 2023 tax card introduced into evidence.

Mr. Dorazio amended his motion to include a condition on the provision of a sealed survey.

Mr. Morse seconded the motion. There was no discussion. The motion passed 3-2, as follows:

<u>Role call</u>	<u>Vote</u>
Mr. Kuegel	No
Ms. Meyer	No
Mr. Dorazio	Yes
Ms. McCloud	Yes
Mr. Morse	Yes

The Board of Adjustment took a break at 8:13 p.m.

The Board of Adjustment resumed at 8:29 p.m.

CASE #AA23-000003: Appeal by Mark Wilson

Attorney Edes introduced Case #AA23-000003.

Appellant Mark Wilson stated he was well versed in the ground rules of the procedure.

Attorney Edes asked if any Board member was incapable of rendering their vote solely based on the competent evidence produced at the hearing.

The Board members replied no.

Attorney Edes asked if the Board members could be fair and impartial.

The Board members replied yes.

Clerk Winzler swore in appellant Mark Wilson, Surveyor Charles Riggs, and Planning Director Deb Hill.

Attorney Edes reviewed the procedural steps.

Planning Director Hill presented the staff report and exhibits one through six. The Zoning Board of Adjustment entered the exhibits as listed in the agenda packet into evidence without objection.

Planning Director Hill explained the work performed exceeded the scope of work permitted.

Mark Wilson asked Planning Director Hill about the building, renovation, and insulation permit.

Ms. Hill stated there was no zoning permit.

Mr. Wilson read part of the Notice of Determination and asked Ms. Hill if a zoning permit was required.

Ms. Hill explained the list of repairs submitted excluded a beach access, and therefore did not require a zoning and floodplain permit application. Had the repair list included a beach crossover, the project would have required a zoning and floodplain permit application. Ms. Hill explained that zoning permits require examination of zoning districts, uses, and setbacks. Flood permits require a determination of consistency with flood regulations. The substantial damage determination was predicated by extent of damage to the property listed on the application resulting from Hurricane Florence. If a beach crossover was disclosed on the application, a zoning and floodplain permit would have been required.

Mr. Wilson stated that the 2018 and 2022 surveys dictate the existence of a crossover. Prior to purchasing the house, Mr. Wilson met with CAMA Field Representative Tina Martin who advised not to replace the crossover, but rather install a switchback to not impede dune management. He stated that Building Codes Administrator Allen met Mr. Wilson on site to review the project. Mr. Wilson noted that the word "deck" was used multiple times within communication.

Ms. Hill noted that this relates to terminology, and asked why Mr. Wilson did not submit plans, and noted that the structure was relocated.

Mr. Wilson stated the only work done was the digging of holes into an engineered berm.

Ms. Hill stated that there was poor communication. If the application description matched the discussion with Tina Martin, with the crossover or switchback, a zoning and flood permit application would have been required.

Mr. Wilson explained his misunderstanding of the purpose of a zoning and flood permit, since the footprint of the house is known, and he knew it was in a special flood area and on a flood

insurance rate map. He explained the application process was thorough and if a component was missing, it would have been provided. There was no malicious intent.

Planning Director Hill stated her belief it was a miscommunication.

Mr. Dorazio left the room.

Planning Director Hill stated that CAMA was unable to produce the approved site plan when asked.

Mr. Wilson shared that he had experienced difficulty communicating with CAMA.

Planning Director Hill apologized to Mr. Wilson for the poor communication.

Mr. Dorazio returned to the room.

Mr. Wilson asked Mr. Riggs to speak on his behalf.

Mr. Charles Riggs asked Attorney Edes if he could ask Planning Director Hill some questions.

Attorney Edes made a recommendation to allow staff and the applicant time to work through the miscommunication.

Ms. Hill and Mr. Riggs expressed their willingness to collaborate.

Mr. Riggs stated they would appreciate a recess to accommodate the Town's needs.

Mr. Wilson, speaking on behalf of Cedar Homes, LLC, agreed to cease all work covered by the stop work order and to contact staff to address the concerns he appealed upon.

Mr. Kuegel asked if the applicant was a licensed North Carolina general contractor.

Mr. Wilson confirmed.

Mr. Kuegel asked Mr. Riggs to confirm that he became involved with this subject about an hour ago.

Mr. Riggs explained that he communicated with Mr. Wilson a week prior and became aware that his was on this agenda tonight.

Mr. Kuegel explained he wanted to make sure that the recess was productive.

Mr. Wilson explained that he is not the general contractor on this project, and that the owner, Chad Bell, is utilizing the owner's exemption affidavit on this project, and that he is in Fredericksburg, Virginia.

Mr. Kuegel stated that Mr. Bell needs to be involved in the recessed discussions.

Mr. Wilson agreed.

Ms. Hill questioned Mr. Wilson's standing.

The points of discussion included:

- The matter of Mr. Wilson's standing.
- Desire to work together to clear up misunderstanding/miscommunication and resolve the issues.
- The appellants acquiesced.
- A timeline for compliance was discussed. All parties accepted a six-week time limit.

Mr. Dorazio made a motion to recess. Mr. Kuegel seconded the motion. The motion passed unanimously, 5-0.

Attorney Edes asked if Mr. Wilson and Mr. Riggs understood that the fine had not been lifted, that they understand that they must abide by the provisions of the existing stop work order, and that they agree to work in good faith with Town staff to attempt to resolve the decisions from which they appealed from.

Mr. Wilson agreed.

Mr. Dorazio left the meeting.

ADJOURNMENT **Ms. Meyer made a motion to adjourn. Mr. Kuegel seconded. Motion passed 4-1.**

The Zoning Board of Adjustment meeting adjourned at 9:47 p.m.

APPROVED
This 24th day of January 2024

CERTIFIED
This 24th day of January 2024

Hanna McCloud
Chair

Kate Winzler
Clerk

exhibit 4 (2pp)

CONTACT US | ?



ONslow COUNTY

N O R T H C A R O L I N A

Pride in Service, People and Place™

Home

Search Property Records

County Website ▾

Owner Address Parcel ID Advanced

Profile

Parcel ID: 009363 Map #: 803-4 Tax Year: 2023

Sales

Luc: Waterfront Ocean Class: Dwelling NBHD: WINTERHAVEN - OCEAN SIDE

1 of 1

Residential

MJL ENTERPRISES INC 274 SEA SHORE DR

Actions

- Printable Summary
- Printable Version

Commercial

Values

Reports

Property Record Card

OBY

Spec Proc Flag

Permits

Appraised Land 480,000

Land

Appraised Building 161,349

Sketch

Appraised Total 641,349

Full Legal

Cost Land Value 480,000

Agricultural

Cost Building Value 161,349

Photos

Cost Total Value 641,349

Values

Market Value

Onslow County GIS

Income Value 0

GRM Value 0

Total Residential Living Area 1,736

Total Commercial Living Area

Note 1

Note 2

Solid Waste Fee Units

Land Use Value

Land Deferred Value

Final Land Value 480,000

Final OBY Value 0

Final Building Value 161,349

Senior Exclusion 0

100% Exemption 0

Partial Exemption 0

VET Exclusion 0

=====



Taxable Total 641,349

Go

Parcel ID: 009363 Map #: 803-4 Tax Year: 2023
 Luc: Waterfront Ocean Class: Dwelling NBHD: WINTERHAVEN - OCEAN SIDE
 MJL ENTERPRISES INC 274 SEA SHORE DR

1 of 1

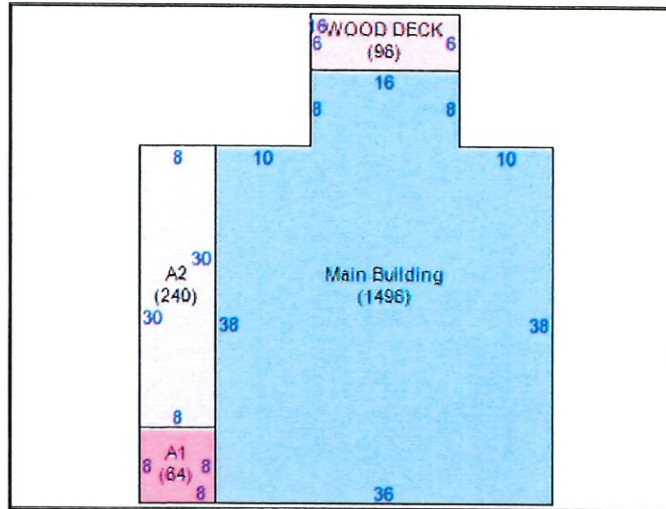
Actions

-  Printable Summary
-  Printable Version

Reports

Property Record Card

Go



Options

Type	Line #	Item	Area
Dwelling	0	Main Building	1,496
Dwelling	1	WOOD DECK - 88:WOOD DECK	64
Dwelling	2	UTILITY ROOM/BEACH HOUSE - 86/63:UTILITY ROOM/BEACH HOUSE	240
Dwelling	3	WOOD DECK - 88:WOOD DECK	96

Click on an item to display it independently.

Exhibit 5 (5pp)



274

12/07/2022 13:53



12/07/2022 13:55

09/21/2018 < 1 of 6 > Sep 2018 - Sep 2018





02/26/2012



1 of 2



Dec 2011 - Feb 2012



