

**In the Matter Of:**

Christa Holden- Town Hall Kure Beach

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**HEARING**

*September 26, 2023*

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LEGAL | MEDIA | EXPERTS

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STATE OF NORTH CAROLINA  
TOWN OF KURE BEACH  
BOARD OF ADJUSTMENT

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IN RE: Christa Holden

Town Hall  
Kure Beach, North Carolina  
Tuesday, September 26, 2023

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REPORTER: LYNN HOUCHINS  
Professional Court Reporter  
Notary Public

1     **A P P E A R A N C E S :**

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**THE BOARD:**

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4                   **KURT BARTLEY, Chairperson**  
5                   **Bryant Bass**  
6                   **John Nadeau**  
                    **Scott Selig**  
                    **John McMains**

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**James Eldridge, Esq., Town Attorney**

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**Mandy Sanders, Town Clerk**

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**Beth Chase, Deputy Town Clerk**

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1 P R O C E E D I N G S

2 THE CHAIRPERSON: Call to --  
3 Board of Adjustments meeting to order.  
4 First order of business is to adopt the  
5 previous minutes.

6 MS. CHASE: First, you have to  
7 adopt the agenda.

8 THE CHAIRPERSON: Oh, I'm  
9 sorry. Need to adopt the agenda.

10 MS. CHASE: Thank you.

11 THE CHAIRPERSON: Current  
12 agenda.

13 MR. SELIG: I move that we  
14 adopt the agenda.

15 MR. BASS: Second.

16 THE CHAIRPERSON: All in favor?

17 (MULTIPLE AYES.)

18 THE CHAIRPERSON: Okay. Number  
19 three, if we -- point one, if we can  
20 adopt the previous minutes. If you all  
21 will go through them and if there's any  
22 corrections.

23 THE BASS: Make a motion to  
24 adopt.

25 MR. SELIG: I'll second.

1 THE CHAIRPERSON: All in favor.

2 (MULTIPLE AYES.)

3 THE CHAIRPERSON: Okay. Next  
4 will be the oath of office for Donna  
5 Hatcher.

6 (THE OATH WAS ADMINISTERED.)

7 THE CHAIRPERSON: Okay. This  
8 hearing, we will start with the current  
9 order of business. And this hearing,  
10 under the Town of Kure Beach Code of  
11 Ordinances, (hereinafter "KBC")  
12 15.08.080.D on the application for  
13 variance submitted by Christina -- is  
14 that correct? Christa?

15 MS. HOLDEN: Christa.

16 THE CHAIRPERSON: Christa  
17 Holden for the residential property  
18 located at 701 Mississippi Avenue. The  
19 applicant is seeking a variance from the  
20 applicate -- application of KBC  
21 15.36.060 Corner Lots with respect to  
22 the location of the proposed porch in  
23 the side yard.

24 Number two: A, in making  
25 factual determinations, the Board

1 members may only consider competent  
2 material, substantial evidence from the  
3 parties withstanding.

4 B, Non-expert opinion  
5 testimony, including opinions relating  
6 to the --

7 MR. ELDRIDGE: Diminution.

8 THE CHAIRPERSON: -- diminution  
9 of property values, of traffic safety  
10 issues, may not be considered in making  
11 findings of fact.

12 C, the Board is not precluded  
13 from relying on evidence which would not  
14 be admissible under the North Carolina  
15 Rules of Evidence if the evidence  
16 appears to be sufficiently trustworthy  
17 and was admitted under such circumstance  
18 that it was reasonable for the Board to  
19 rely upon it. The Board shall make  
20 Findings of Fact and identify the  
21 evidence supporting each findings.

22 E, under KBC 15.08.080.D, the  
23 Applicant is entitled to a variance if  
24 she proves, by competent -- competent  
25 material and subsequent evidence in each

1 of the following:

2 1. Unnecessary hardship to the  
3 Applicant would result in strict  
4 Application of KBC 15.36.060 Corner  
5 Lots.

6 2. The hardships result from  
7 Conditions which are peculiar to the  
8 property, such as location, size,  
9 topography. Hardships resulting from  
10 personal circumstances, as well as  
11 hardships resulting from conditions that  
12 are common to the neighborhood or to the  
13 general public may not be the basis for  
14 granting a variance.

15 3. The hardships do -- did not  
16 result from actions taken by the  
17 Applicant provided that, however, the --  
18 however, the act of purchasing the  
19 property with knowledge that  
20 circumstances exist which may justify  
21 the granting of a variance is not  
22 self-created hardship.

23 4. Requesting a variance be  
24 consistent with the spirit and purpose  
25 and intent of the zoning regulation,

1 such as the public safety is secured,  
2 the -- and substantial justice is  
3 achieved.

4 The Board's decision will be  
5 set forth in writing and delivered to  
6 the Applicant in accordance with the  
7 provisions of KBC 12.06.050.J.

8 For the purposes of this  
9 hearing, the Town Attorney will be  
10 appearing in an advisory capacity to the  
11 Board and not an advocate to either  
12 party or any party.

13 3. Each member shall state  
14 whether they have a conflict of interest  
15 due to direct financial benefit, bias,  
16 or fixed opinion, undisclosed outside  
17 contracts, or a close family or  
18 commercial ties. Should such a conflict  
19 exist, the Board member shall recuse  
20 him/herself from hearing and the Board  
21 shall excuse that member from voting on  
22 the matter.

23 THE CHAIRPERSON: Anybody have  
24 a conflict on the Board?

25 MR. BASS: I have no conflict.



1 THE CHAIRPERSON: Do you?

2 MR. BASS: No, my fault.

3 THE CHAIRPERSON: Do you?

4 MR. SELIG: No.

5 MS. CHASE: You may go -- make  
6 sure either all say yes or no. I've  
7 only heard a few.

8 MR. BASS: I -- no.

9 THE CHAIRPERSON: Okay, we'll  
10 just go down the line.

11 MR. MCMAINS: No.

12 MR. NADEAU: I do not.

13 MR. BASS: Do not, no.

14 MR. SELIG: I do not.

15 THE CHAIRPERSON: Okay.

16 MS. CHASE: Thank you.

17 THE CHAIRPERSON: Okay. Any  
18 party that is going to testify before  
19 the Board needs to be sworn in at this  
20 time, so...

21 (THE OATH WAS ADMINISTERED.)

22 MS. CHASE: I'm sorry.

23 THE CHAIRPERSON: Okay. Do you  
24 have anything, Beth?

25 MS. CHASE: So tonight I'm

1 entering into the record Exhibits 1  
2 through 6. You have received exhibits 1  
3 through 4, which was the variance  
4 application, the notice of the hearing,  
5 the certification of posted notice, and  
6 the certification of mailed notice. I  
7 do want to make note that you received a  
8 new copy tonight of the certification of  
9 posted notice because the original one  
10 was the wrong property. You're also  
11 going to be receiving 5 and 6, which is  
12 notification of notice of publication in  
13 the newspaper, which is actually not  
14 required, but I went ahead and did it,  
15 and a copy of the email to the Board  
16 members and the applicant of the agenda  
17 packet tonight. I made you a copy of  
18 both just in case you didn't receive  
19 them.

20 THE CHAIRPERSON: Okay. All  
21 right, the applicant.

22 MR. BARNES: Chairman Bartley,  
23 Board members, my name is Ned Barnes. I  
24 live at 814 Carolina Beach Avenue North,  
25 Carolina Beach, and I'm here on behalf

1 of the applicants tonight. If I may,  
2 I've got a little handout that I'd like  
3 to give to each one. Mr. Eldridge.

4 MR. ELDRIDGE: Can you give  
5 that -- you got one for the Town Clerk  
6 to --

7 MR. BARNES: I've got one for  
8 everybody.

9 MR. ELDRIDGE: -- to label as  
10 an exhibit?

11 MR. BARNES: Absolutely. I  
12 only have one more, sorry.

13 MS. CHASE: Thank you.

14 MR. BARNES: Oh, excuse me.  
15 Here you go. John, would you like one?

16 MR. BATSON: Yes, please.  
17 Thank you.

18 MR. BARNES: The first thing  
19 that came to my mind was when Ms. Holden  
20 asked me to assist her in this by  
21 working on this. My idea was go to the  
22 statutes of North Carolina governing  
23 variances, and as most of you know, it's  
24 set out in NC G.S. 160A-306. Part B  
25 states that any setback line shall be

1 designed to promote the public safety by  
2 providing adequate sight distances for  
3 persons using the street and its  
4 sidewalks, lessening congestion in the  
5 street and sidewalks, facilitating the  
6 safe movement of vehicular and  
7 pedestrian traffic on the street and  
8 sidewalks and providing adequate fire  
9 lanes between buildings.

10 (2) To protect the public  
11 health by keeping dwellings and other  
12 structures an adequate distance from the  
13 dust, noise, and fumes created by  
14 traffic on the street and by ensuring an  
15 adequate supply of light and air.

16 So logic dictates that our  
17 legislature came to the conclusion that  
18 the main purpose of a variance -- of a  
19 setback, excuse, is for safety purposes.  
20 So as far as her application is  
21 concerned, that's what we kind of focus  
22 on tonight, is whether this creates any  
23 kind of safety issue for anyone, for any  
24 person or any government official as it  
25 relates to the property.

1                   Going to number one on our --  
2   on the -- what she's alleged to shows,  
3   it states A: If I comply with the  
4   provision of the ordinance, I can secure  
5   no reasonable return from, or make no  
6   reasonable use of my property.

7                   Obviously that's an extremely  
8   high hurdle to overcome. Most people  
9   use their property for something. She  
10  does have a structure there that -- that  
11  -- that's a second home that she lives  
12  in. This came about when after she  
13  bought the property in 2021. Spending  
14  time outside, she was eaten alive by  
15  mosquitoes and decided, well, it would  
16  be nice to have a deck where I can enjoy  
17  the outside myself like all my neighbors  
18  who surround me. If I made an  
19  application and found out that based  
20  upon the structure, her home on the lot,  
21  that there was some setback requirements  
22  that she couldn't meet -- and I would  
23  argue in this situation that there are  
24  some extenuating circumstances that  
25  cause that. If you look at our exhibits

1 attached, you'll see the map to  
2 Wilmington Beach attached there as  
3 Exhibit 8, as well as her certificate,  
4 and you'll see that most lots in that  
5 subdivision toward Wilmington Beach are  
6 50-by-100. Her lot is 50-by-89, so that  
7 automatically reduces the size of the  
8 square footage and flip -- that her  
9 property has to what she can and can't  
10 do on the property.

11 The second thing is, is, of  
12 course, when she bought the property in  
13 2021, the structure was already there.  
14 So it's not a situation where she could  
15 just readily move the structure to a  
16 different location to meet the setback  
17 requirements.

18 If she was able to build the  
19 deck she proposed, if you look at all  
20 the surrounding properties -- I don't  
21 know if we have an overview of the  
22 properties or not, but --

23 THE CHAIRPERSON: I thought I  
24 saw one.

25 MR. BARNES: You should have

1 one. If you look at every single house  
2 surrounding her, every house surround  
3 her has a deck, and she obviously  
4 assumed that she could, as well,  
5 construct a deck on her property until  
6 she -- we found out about the -- or she  
7 found out about the setback  
8 requirements.

9 So, again, we would argue that  
10 that takes the reasonableness away from  
11 her ability to use the property for --  
12 as her neighbors use their property. To  
13 the hardship, it's now getting  
14 complained results from the  
15 circumstances leading to the applicant's  
16 land. And, again, that harkens back to  
17 what I said earlier, her lot is a  
18 smaller lot than the overwhelming  
19 majority lots in that section of  
20 Wilmington Beach, I mean, 50-by-89, and  
21 again, that's opposed to 50-by-100.  
22 And, again, the structure was located on  
23 the lot prior to her taking title,  
24 which, again, building a relatively  
25 small -- or hoping to build a relatively

1 small deck that she was proposing fell  
2 within the setbacks.

3 MR. ELDRIDGE: Mr. Barnes --

4 MR. BARNES: Yes, yes.

5 MR. ELDRIDGE: -- can -- one  
6 thing I've never understood -- and just  
7 so I can get up to speed, using the  
8 diagram behind you, where is the  
9 proposed deck that's proposed to be  
10 located? On the east side or the west  
11 side?

12 MR. BATSON: It's right behind  
13 there.

14 MR. ELDRIDGE: What's that? On  
15 the east side?

16 MR. BATSON: Yeah. Uh-huh.  
17 Right.

18 MR. ELDRIDGE: Right there.

19 MR. BATSON: Yes, sir.

20 MR. ELDRIDGE: Okay. Thank  
21 you.

22 MR. BARNES: Uh-huh.

23 MR. BASS: Thank you, John.

24 MR. BARNES: So --

25 MR. BASS: I wasn't finished.



1 MR. BARNES: No, go ahead.

2 MR. BASS: That's not the --  
3 that picture there is not the  
4 existing --

5 MR. BARNES: That's not the  
6 existing. That's what she's  
7 proposing --

8 MR. BASS: Okay.

9 MR. BARNES: -- right here.

10 MR. BASS: Okay.

11 MR. BARNES: Uh-huh.

12 MR. BASS: That -- That was  
13 confusing to me, as well.

14 MR. BARNES: Right. Okay.  
15 And, again, the -- see, a lot of this is  
16 redundant, I apologize, but the hardship  
17 is not the result of the applicant's own  
18 actions. Well, again, as I say, the lot  
19 was platted out in 1913. That was, I'm  
20 assuming, before she was born, clearly  
21 was not a situation where she had -- she  
22 had any control over that. And the  
23 house, again, was located on the lot at  
24 the time that she purchased it. So,  
25 again, those things are totally and

1 completely out of her control. The  
2 variances in harmony with the general  
3 purpose and intent of the ordinance and  
4 preserves its spirits, we contend that  
5 the proposed addition is in harmony with  
6 section 15.8 of the Town land-use plan.  
7 And I direct your attention now to the  
8 exhibits that we have attached to our  
9 application, Exhibit C, 1 through 6.  
10 These are -- Before -- When she first  
11 came in to talk to me, one of the things  
12 that I mentioned to her, I said, I would  
13 advise, given my experience in handling  
14 these kind of matters, that you reach  
15 out to your neighbors and get feedback  
16 from them.

17 So she reached out to every  
18 single neighbor, and you'll see that  
19 every single neighbor gives their  
20 consent and has no objection to it, and  
21 ask that you pay particular attention to  
22 Mr. Hillegass, Mr. and Ms. Hillegass,  
23 who actually are requesting that the  
24 Town grant this variance for her,  
25 thinking that it would enhance and

1 improve her property.

2 Let's go on to number 3,  
3 granting of the variance secures the  
4 public safety and welfare and does  
5 substantial justice. Well, again, if  
6 you look at the map, if you look at the  
7 map I have attached, Exhibit A, you will  
8 see, of course, again, this map is,  
9 yeah, 1913 when this was recorded, and  
10 you will see that -- well, there's  
11 Pinfish shown as 7th and what is  
12 Mississippi shown as Florida, you will  
13 see that any -- be it fire, be it  
14 rescue, be it police, be it any service  
15 vehicle for the Town of Kure Beach, her  
16 constructing this deck will in no way  
17 whatsoever impair anyone's ability to  
18 access any property of homeowner in that  
19 area, nor would it in any way impair  
20 their ability to -- their sight as to  
21 any incident that they're heading to.

22 Again, no one -- if someone  
23 were to -- the only way anybody would be  
24 going south would be to go to her house.  
25 She's the only one on Pinfish at that

1 dead end right there, and if you head  
2 west, ultimately you're going to run  
3 into the buffer zone. So, again, the --  
4 and she can attest to this, the traffic  
5 in that area as it stands today is  
6 extremely minimal. It's not an area  
7 that tourists go to. It's just an area  
8 that folks that live there as either  
9 permanent residents, like the Hillegass'  
10 or second homeowners visit throughout  
11 the year. So, again, we contend,  
12 particularly as it relates to the  
13 applicable North Carolina statute, that  
14 this in no way creates any kind of  
15 safety issue if she were allowed this  
16 variance to build the deck as she has  
17 proposed.

18 I think, based upon the  
19 evidence presented, that she showed the  
20 practical difficulties and hardships for  
21 carrying out the strict letter of the  
22 ordinance. Again, if you were to travel  
23 in that area back there at the  
24 intersection of Pinfish and Mississippi,  
25 you would see that every single house in

1 that area has a deck.

2 And, again, she may, like a lot  
3 of people do, made the assumption when  
4 she found the need to construct a deck  
5 just so she can enjoy the outside a bit.  
6 That's when the setback was discovered.  
7 So, again, I think she's proven a  
8 hardship situation here as it relates to  
9 the setback that's being imposed upon  
10 her.

11 We would also contend that the  
12 variance is in harmony with the general  
13 purpose and intent of the ordinance  
14 pursuant to NC G.S. 160A-306, again, say  
15 -- stating that setbacks are authorized  
16 to promote public safety, lessen traffic  
17 congestion, and we contend to grant the  
18 variance, will be compatible with  
19 section 15.18.10 of Kirby's land use  
20 plan, meaning it will remain quiet, low  
21 density, residential community.

22 And, lastly, we would content  
23 that granting a variance would in no way  
24 whatsoever affect public safety, it  
25 would in no way impair any kind of

1 emergency vehicles, be it police, be it  
2 rescue squad, it would not in any way  
3 impair any municipal vehicles of Kure  
4 Beach from accessing anyone back in that  
5 area, nor would it in any way hinder  
6 their vision if they are -- were to  
7 travel back there, were she allowed to  
8 construct a deck as she has applied for.

9 And I'll answer any questions  
10 that I could answer, and Ms. Holden's  
11 here if you would like to ask her any  
12 questions.

13 THE CHAIRPERSON: Any questions  
14 for the attorney?

15 MR. BASS: Yeah, I have one  
16 question. You stated that this does not  
17 have any hindrance towards emergency  
18 vehicles. Under -- Where -- Where did  
19 we get that information from?

20 MR. BARNES: Well, again, if  
21 you -- it -- it's -- excuse my response.  
22 To me, it's common sense. If -- If you  
23 look at the map, if you look at the map  
24 two page 30 --

25 MR. BASS: Uh-huh.

1                   MR. BARNES:  -- and if you look  
2   at her lot, the only -- the only place  
3   it could hinder anybody would be if they  
4   were going straight to her house.

5                   MR. BASS:  Uh-huh.

6                   MR. BARNES:  It's not going to  
7   hinder anybody to the east of her across  
8   the street --

9                   MR. BASS:  Uh-huh.

10                  MR. BARNES:  -- because it's  
11   still going set back across the road,  
12   and anybody heading down Pinfish who's  
13   going to be heading west to serve any  
14   homes in that area, she's completely  
15   opposite of where they'd be headed as  
16   far as the deck she's going to install.

17                  So, again, the only person at  
18   all it could potentially affect would be  
19   the applicant.  And, again, in her  
20   situation, the parking is on the side of  
21   her house, so I would argue it wouldn't  
22   even affect her whatsoever.

23                  And, again, it's -- I -- I  
24   direct your attention to the statements  
25   attached to -- to the application there

1 at the end. I advised her prior to  
2 presenting this to the Board of  
3 Adjustment to make sure, check with each  
4 and every neighbor, make sure they had  
5 no issues. I mean, if they found there  
6 was any issue with -- with the -- the --  
7 the encroachments into the setback, if  
8 they thought it would -- in any way  
9 would impair any service vehicle from  
10 getting to their home, I would have to  
11 assume they would have let her know.

12 But, again, not only if they  
13 approve of it, but, again, if you look  
14 at the Hillegass' as I stated earlier,  
15 they are requesting that the Board allow  
16 for this variance.

17 MR. BASS: Thank you.

18 MR. BARNES: Uh-huh.

19 MR. MCMAINS: I have a  
20 question. When you zoomed out a minute  
21 ago, across Pinfish from Ms. Holden --

22 MR. BARNES: Uh-huh.

23 MR. MCMAINS: -- what is over  
24 there at --

25 MR. BARNES: There's a --



1     There's a single-family house right  
2     here.

3                   MS. SANDERS:   Do you want the  
4     map back up?

5                   MR. MCMAINS:   Is there not a  
6     lot there?

7                   MS. HOLDEN:   There's an  
8     empty --

9                   MR. MCMAINS:   Looks like a  
10    building lot.  It looks like an empty  
11    lot with a lot of trees, there's a --

12                   MS. HOLDEN:   There's an empty  
13    lot directly across from me and also a  
14    dwelling.

15                   MR. MCMAINS:   Right.  Right.

16                   MS. HOLDEN:   Yes.  There is  
17    a --

18                   MR. MCMAINS:   Those -- Those --  
19    is there --

20                   MS. HOLDEN:   And this is an  
21    empty -- empty lot here.

22                   MR. MCMAINS:   Right.

23                   MS. HOLDEN:   And there's a  
24    dwelling here.

25                   MR. BARNES:   And there's a

1 house here, there's a lot right there  
2 which that's vacant. And then --

3 MR. BASS: Isn't that a  
4 buildable lot that's empty?

5 MS. HOLDEN: Yes.

6 MR. SELIG: Well, do you know  
7 the -- is the -- what is the address to  
8 that? Do you know off the top?

9 MR. BARNES: I don't.

10 MR. BATSON: Give me two  
11 seconds and I'll let you know.

12 MR. SELIG: All right.

13 MR. BASS: But that is a  
14 buildable lot up there; right?

15 MS. HOLDEN: 1741 Pinfish Lane.

16 MR. BASS: 1741.

17 MR. BARNES: Right.

18 MR. BASS: Actually, that was  
19 in one of their writeups here.

20 MR. BATSON: That is a  
21 buildable lot.

22 MR. BARNES: That's the  
23 Pitonak's who also have a -- have a  
24 statement attached to her application.

25 THE CHAIRPERSON: Right.

1 MR. BARNES: And agreed to  
2 consenting with the variance being  
3 granted.

4 MR. NADEAU: Okay. They own  
5 that -- I saw that. That was written up  
6 in your -- somebody wrote something  
7 about that they were fine with it. But  
8 that still is a separate buildable lot  
9 though; right? Okay.

10 MR. BATSON: That's correct,  
11 John, yeah.

12 MR. NADEAU: Couple of  
13 questions. So I'm a little confused.  
14 The photo shows a wood structure, a  
15 deck. I assume that's existing, so the  
16 new deck or new structure would go over  
17 this one shown to be now?

18 MS. HOLDEN: So that was there  
19 when I purchased the property. From my  
20 understanding, it is not in the setback  
21 now. It is not approved, I guess.

22 MR. NADEAU: Is that what we're  
23 talking about right now, or is there  
24 something new here?

25 MS. HOLDEN: No, I didn't -- I

1 want to get rid of that and put a new  
2 one there.

3 MR. MCMAINS: Right. In that  
4 spot.

5 MR. NADEAU: In the same spot  
6 or bigger than this one?

7 MS. HOLDEN: It would be a  
8 little bit larger than that, yes.

9 MR. ELDRIDGE: But on the same  
10 side.

11 MS. HOLDEN: Same side.

12 MR. BARNES: It's that same  
13 location.

14 MR. ELDRIDGE: Can we go back  
15 to that survey for a minute? So you  
16 want to build it on the east side; on  
17 the west side there's some existing  
18 structure, a deck and a patio, I think  
19 it's called; is that correct?

20 MR. BARNES: That's Hillegass  
21 right here. You can see it's just not  
22 plausible to build it here, given the  
23 closeness to their -- their property.

24 MR. ELDRIDGE: I just have  
25 found this survey confusing, but

1 reference to the patio and the deck, is  
2 that in the applicant side yard or the  
3 neighbor side yard?

4 MS. HOLDEN: That's in my side  
5 yard.

6 MR. ELDRIDGE: It's in your  
7 side yard.

8 MS. HOLDEN: But it's -- it's  
9 -- I wouldn't call it a --

10 MR. ELDRIDGE: I was just going  
11 by the nomenclature on there.

12 MS. HOLDEN: Yes.

13 MR. ELDRIDGE: But you want to  
14 build your deck on the east side, and  
15 did you say that there's an existing  
16 structure or deck that you need to  
17 demolish before you can build the new  
18 one?

19 MS. HOLDEN: Yes.

20 MR. ELDRIDGE: Okay. Thank  
21 you.

22 MR. NADEAU: I'm sorry. I  
23 couldn't hear you. What happens to this  
24 existing deck? You want to --

25 MS. HOLDEN: It will be

1 demolished.

2 MR. NADEAU: -- you want to put  
3 a new one where this one is and it will  
4 be slightly bigger than this one?

5 MS. HOLDEN: Yes.

6 MR. MCMAINS: Just looking at  
7 it, it just looks like it extends an  
8 additional maybe 5 feet --

9 THE CHAIRPERSON: Can I -- Can  
10 I --

11 MR. MCMAINS: -- towards the  
12 addition.

13 THE CHAIRPERSON: Stop one  
14 second. Can you tell us what you want,  
15 Ms. Holden, because you have standing to  
16 the property, even though your attorney  
17 -- you're represented by your attorney,  
18 but we need to hear from you also for  
19 the record.

20 MS. HOLDEN: Definitely. So I  
21 just -- how this started is I, after I  
22 purchased the property, had it a couple  
23 years -- really started from the  
24 mosquitos, truthfully -- would like to  
25 enjoy the outside and came to -- I

1 talked with an engineer, had them draw  
2 up plans for me, got a builder, and went  
3 to go get a permit, and they said, your  
4 lot does -- is a corner lot, the  
5 variance or the setbacks are different.  
6 My engineer didn't realize that, either,  
7 because we were thinking working off the  
8 setbacks of every other lot that it's,  
9 you know, like my neighbor's lot size,  
10 they're not cornered, in looking at  
11 that. So when it came to that,  
12 everything stopped and then I did a  
13 little more research to try to see if  
14 this was a -- something that I could  
15 still do.

16 MR. BASS: So when you  
17 purchased the land, you were unaware  
18 that the corner lots had a different  
19 setback structure than a regular lot?

20 MS. HOLDEN: Yes, I had no  
21 idea.

22 MR. BASS: Okay. Well, that --  
23 that's true in all municipalities.

24 MS. HOLDEN: Okay. Well, I --  
25 I've never lived in a municipality

1 before, so I'm not --

2 MR. BASS: Well, I mean, I'm  
3 not arguing it.

4 MS. HOLDEN: Yeah.

5 MR. BASS: You should know of  
6 this. So that was not disclosed to you  
7 when you purchased the property?

8 MS. HOLDEN: No, it was not.

9 MR. ELDRIDGE: Can we get a  
10 clear articulation of exactly what it is  
11 she wants? It sounds like encroachment  
12 into that side yard, but I don't have a  
13 clear understanding of that.

14 MR. BASS: Would you mind  
15 telling us exactly what it is you would  
16 like to build of -- for instance, just  
17 an 8-by-10 deck that's going to encroach  
18 X amount of even to the setback? That  
19 was a little confusing.

20 MS. HOLDEN: Okay.

21 MR. BASS: When we were --

22 MS. HOLDEN: I have --

23 MR. BARNES: And if you want,  
24 you can hand those up to Mr. Bryant or  
25 Mr. Bartley, whoever, and they can pass



1     them around to the Planning Committee  
2     and the engineer that's here.

3             MR. ELDRIDGE:  Are you putting  
4     those in as an exhibit?  Do we need to  
5     make some copies?  I would recommend it.

6             MR. BARNES:  Yeah.  That would  
7     be fine if we could make some copies.

8             MR. ELDRIDGE:  Can we get some  
9     copies made?

10            MR. NADEAU:  Why don't we give  
11    them to her first so she can put some  
12    exhibit stickers?

13            MR. ELDRIDGE:  Or do you --

14            MS. HOLDEN:  Those are -- These  
15    are the plans that I had drawn turnkey.

16            MR. NADEAU:  Okay.

17            MS. HOLDEN:  So that --  
18    hopefully that will clear up everything.

19            MR. BASS:  She told us about  
20    this.

21            MS. CHASE:  Yeah, that piece  
22    can go.

23            MR. MCMAINS:  So when we look  
24    at the picture you gave us in your  
25    exhibit, essentially this map here, can

1 you show us -- I'm sorry, 8.1 by 18.9  
2 feet, is that the size?

3 MS. HOLDEN: Yes.

4 MR. MCMAINS: All right.

5 MR. NADEAU: And that's --  
6 that's the one we see in this photo?

7 MS. HOLDEN: No, that's --

8 MR. NADEAU: No.

9 MS. HOLDEN: No, this is what  
10 -- what it would be after -- if it was  
11 constructed, this is what it would be.

12 MR. NADEAU: Okay. Thank you.

13 MR. MCMAINS: How much from --

14 MR. BASS: That's the addition.

15 MR. SELIG: This is the new  
16 one.

17 MS. HOLDEN: It's not going to  
18 extend any further towards Pinfish.

19 MR. MCMAINS: So it's 18 --

20 MS. HOLDEN: It would be  
21 longer.

22 MR. MCMAINS: Okay, I think --

23 MR. NADEAU: It's 8.1.

24 MR. BARNES: The key thing to  
25 point to is the -- if you want to call

1 it a deck that's existing now, the way  
2 the plans were drawn, it will extend no  
3 further towards Pinfish than this deck  
4 currently extends. So it will be no  
5 further of the encroachment than  
6 currently exists today. It will be a  
7 little bit longer heading towards  
8 Mississippi, but it shows plenty of room  
9 over --

10 MR. ELDRIDGE: Longer, but not  
11 wider.

12 MR. SELIG: So the width of the  
13 current one is 8 --

14 MR. BASS: This is 8.1.

15 MS. HOLDEN: If it was not --  
16 if it was not a corner lot, it would  
17 meet the setback requirements because  
18 that's what we based it off of.

19 MR. BASS: Or as it --

20 MR. ELDRIDGE: Again, Sharon,  
21 can I ask a question? The existing deck  
22 on the east side, which you're not  
23 responsible for, based on your  
24 testimony, encroaches into the side yard  
25 setback; is that correct?

1 MS. HOLDEN: That's correct.

2 MR. ELDRIDGE: So the new one,  
3 even though it would be longer but not  
4 wider would still encroach into the --

5 MR. BARNES: That's correct.

6 MR. ELDRIDGE: -- encroach the  
7 same amount?

8 MR. BARNES: The same amount,  
9 but -- that's correct.

10 MR. ELDRIDGE: Into the side  
11 yard?

12 MR. BARNES: That's correct.

13 MR. ELDRIDGE: Thank you.

14 MR. BASS: And -- And to  
15 clarify, too, you said it would go  
16 closer towards Mississippi?

17 MR. BARNES: Correct. It's  
18 going to be the same width, just  
19 extending a little longer towards  
20 Mississippi.

21 MR. BASS: Towards Mississippi?

22 MR. BARNES: Correct.

23 MR. NADEAU: Along the side of  
24 the house?

25 MR. BARNES: Along the side of

1 the house, correct.

2 MR. BASS: Okay.

3 MR. BARNES: Correct. Correct.

4 MR. BASS: We'll get back to  
5 that.

6 MR. MCMAINS: So it will be  
7 this way, not this way.

8 MR. BASS: So when you  
9 purchased the property, you did not get  
10 a survey done and you were unaware that  
11 the existing deck was already  
12 encroaching?

13 MS. HOLDEN: That's correct.

14 MR. BARNES: She bought it in  
15 '21. The survey was done in '22.

16 MS. HOLDEN: I did the survey  
17 because of wanting to build the --

18 MR. BASS: Thank you.

19 MR. ELDRIDGE: That would be  
20 Exhibit -- Madam Clerk, that would be  
21 Exhibit 8; is that correct?

22 MS. CHASE: That -- 8.

23 MR. ELDRIDGE: 8.

24 MR. SELIG: Can you -- Can you  
25 tell me, do you know the size of the

1 existing deck and then the size that you  
2 already have? The size you want to go  
3 to? I'm not seeing it on the drawing.

4 MR. BASS: It's on there. You  
5 just can't read it.

6 MR. SELIG: I can't read it.

7 MR. BASS: It's extremely  
8 small.

9 MR. SELIG: My glasses don't  
10 even pick it up.

11 MR. BASS: It's not 16 feet.  
12 How much?

13 MR. BARNES: I think about  
14 8-by-16.

15 MR. BASS: 8-by-16.

16 (MR. BARNES AND MS. HOLDEN HAVING  
17 AN OFF-THE-RECORD DISCUSSION.)

18 MS. HOLDEN: No, I do not know  
19 the exact size. Do you have that size?

20 MR. BATSON: It's around  
21 7-by-16.

22 MR. MCMAINS: All right.

23 MR. BASS: The current one.

24 MR. BATSON: That's correct.

25 MR. BASS: And you want to

1 bring the new deck closer to Mississippi  
2 by how many feet? Approximately.

3 MS. HOLDEN: I would say  
4 approximately --

5 MR. BASS: It looks  
6 approximately 18.

7 MS. HOLDEN: So it's 16 now, I  
8 would say 2 feet.

9 MR. BASS: Okay. Thank you.

10 MS. HOLDEN: Or 2 to 3 feet.

11 THE CHAIRPERSON: Any further  
12 questions for the advocate?

13 MR. BARNES: Just as a final  
14 note, we will continue to answer any  
15 questions, if you have any questions. I  
16 think logic would dictate that in the  
17 history of this property, because the  
18 current existing deck was there before  
19 she even bought the property --

20 MS. HOLDEN: Yes.

21 MR. BARNES: -- If there was an  
22 issue with any -- again, the police  
23 department, fire department, rescue, any  
24 apparatus from the Town of Kure Beach,  
25 if there was an issue at all, it would

1 have been brought up some time,  
2 historically, with this property. So I  
3 think it sets a precedent that, again,  
4 this encroachment has created no  
5 impediment to safety, which, if you look  
6 at NC G.S. 160A, that's the cornerstone  
7 of a setback, is safety.

8 MS. HOLDEN: Any questions from  
9 anyone?

10 MR. BASS: I'm fine, thank you.

11 MR. CHAIRPERSON: Everybody  
12 good?

13 Okay. Next we'll hear from  
14 John Batson, the Director of  
15 Development.

16 MR. BATSON: I have a memo,  
17 Chairman, if I may approach.

18 THE CHAIRPERSON: Yes.

19 MR. ELDRIDGE: Thank you.

20 (MR. ELDRIDGE AND MS. SAUNDERS HAVING  
21 AN OFF-THE-RECORD DISCUSSION.)

22 MR. ELDRIDGE: Madam Clerk,  
23 this will be Number 9; is that correct?

24 MS. CHASE: Yes, sir. John, do  
25 you have one for the court reporter?



1                   MR. BATSON: I do not. I only  
2 have one left. I can print out a copy  
3 on -- can I give it to you in a few  
4 minutes?

5                   MS. CHASE: Yes.

6                   MR. BATSON: Chairman and  
7 Commissioners, what you got here is a  
8 memo, basically states the facts of the  
9 matter surrounding this variance  
10 request. The location of the -- or the  
11 proposed project is a RATT, which is a  
12 one and two family dwelling -- designed  
13 for a one or two family dwellings and  
14 manufactured housing. The property does  
15 meet all the minimum dimensional  
16 requirements except for the square  
17 footage, and that is not uncommon in  
18 some areas throughout time. Some lots  
19 are smaller than the minimum square  
20 footage.

21                   The big difference about her  
22 lot compared to others, as you've  
23 already heard, is that it is a corner  
24 lot, and so we had to look at corner  
25 lots differently with regards to town

1 ordinance, and the main difference is  
2 that the normal side setback turns into  
3 10 foot -- a 10 foot side setback on the  
4 minor thoroughfare, and so her property  
5 or the deck that is currently there is  
6 legally nonconforming. I'm not sure how  
7 it was even permitted in the first  
8 place, except that the main fact the  
9 home placement was permitted around the  
10 time that we annexed that area and  
11 somehow it slipped through the cracks.  
12 I'm not sure. It's been there almost 21  
13 years to the day. I'm sure it does need  
14 some repair and maintenance.

15 The placement of the house  
16 really is why there is no room to put  
17 that deck there. Had it been moved a  
18 littler closer to that west property  
19 line, that probably had a lot more room.  
20 They have a little bit more room to do  
21 what they need to do.

22 And I must point out also that  
23 there are over 200 other corner lots in  
24 the Town of Kure Beach, and they are all  
25 judged by the same ordinances that

1 Ms. Holden is here on, also.

2 I want to make a couple other  
3 comments based on what has transpired  
4 here, and one of them being that, I  
5 correct surveyors almost on a daily  
6 basis because a lot of times they don't  
7 do their due diligence. This is a  
8 perfect example right here of a surveyor  
9 that laid out all the setbacks for that  
10 lot but the setbacks are wrong. So had  
11 Ms. Holden received a survey before she  
12 closed on her property, but she really  
13 had no way of knowing if it was entirely  
14 correct in what she told me, the current  
15 deck looks -- according to the tax  
16 records, it looks like it's about  
17 7-by-16 feet. What she is proposing is  
18 8-by-18 feet, and it's actually going to  
19 be covered, also. What is there is not  
20 covered. What she would like to do is  
21 put a permanent roof on it that would  
22 attach to the manufacturing.

23 MR. ELDRIDGE: John, the new  
24 one, dimensions again, please. 8 by  
25 what?

1 MR. BATSON: 8-by-18.

2 MR. ELDRIDGE: Thank you.

3 MR. BATSON: And that's all I  
4 have, unless you guys have comments or  
5 questions for me.

6 MR. BASS: I have a question.

7 MR. BATSON: Sure.

8 MR. BASS: What is the purpose  
9 for the additional setback on a corner  
10 lot? Why is -- Why is a corner lot  
11 subject to a different setback line than  
12 a regular line?

13 MR. BATSON: From what I was  
14 told throughout the years was to make  
15 sure that there was a good separation  
16 between structures and the  
17 thoroughfares. It also provided a  
18 better line of sight looking down the  
19 street when you came up to a corner.  
20 That's all.

21 MR. BASS: My last -- My last  
22 question that I have for you is, the  
23 existing deck that's there, seeing how  
24 it's already encroaching but it's been  
25 there 20-some years, I think you said

1 maybe probably before the annex of that  
2 area, that deck as it sits today is  
3 fine; is that correct?

4 MR. BATSON: Yes.

5 MR. BASS: If she were to want  
6 to repair that deck, rebuild that  
7 existing deck that is there in that  
8 existing footprint, is that plausible?

9 MR. BATSON: She is entitled to  
10 do normal maintenance and repair to that  
11 deck, yes, sir.

12 MR. BASS: So all structural  
13 repairs, replacement of deck boards,  
14 handrails, posts, so forth and so on?

15 MR. BATSON: Yep, as long as it  
16 is not extended horizontally or  
17 vertically into any required yards.

18 MR. BASS: So --

19 MR. BATSON: To make it more  
20 nonconforming, she can maintain that  
21 deck as it is.

22 MR. BASS: So adding a roof to  
23 the existing deck is not plausible.

24 MR. BATSON: That would make  
25 that deck more nonconforming.

1                   MR. BASS:   Okay.  And that's if  
2   the roof would extend even further  
3   towards Pinfish.

4                   MR. BATSON:  Well, it would  
5   extend up and out.  Yes, sir.

6                   MR. BASS:  I've got one other  
7   question.  The new deck, it was brought  
8   to our attention, that it would extend  
9   further towards Mississippi; is that  
10  correct?

11                  MR. BATSON:  I haven't stuck a  
12  measuring tape on it.  All I did just  
13  now was look up the tax records to see  
14  the --

15                  MR. BASS:  Oh, okay.

16                  MR. BATSON:  -- sketches.

17                  MR. BASS:  Okay.

18                  MR. BATSON:  And it appears  
19  that the existing deck is 7 feet wide,  
20  and what she wants to build is 8 feet  
21  wide.

22                  MR. BASS:  That's all the  
23  questions I have.

24                  THE CHAIRPERSON:  Any further  
25  questions?  Okay.  John?

1                   MR. BARNES: I have just a  
2 rebuttal -- one-minute rebuttal.

3                   THE CHAIRPERSON: Yes.

4                   MR. BARNES: I'm certain John  
5 is right about the 200 corner lots, but  
6 I think, again, what we're -- we're  
7 addressing here is the specific and  
8 unique location of her lot. Again, this  
9 is only -- her lot sits on a dead end.  
10 So, again, if the -- and -- and if you  
11 look at 160A, as I say, the cornerstone  
12 of that statue for a variance is safety,  
13 and historically there's been no issue  
14 whatsoever in the past 21 whatever years  
15 it is.

16                   Again, if anyone that needs to  
17 service that property -- again, fire,  
18 rescue, ambulance, town folks, municipal  
19 workers, et cetera -- as I say, I think  
20 the only property it's going to affect  
21 at all would be hers because I would --  
22 I would have to assume that the  
23 overwhelming majority of the corner lots  
24 are not -- don't dead end, which this  
25 lot does. So I think that makes this a

1 completely unique situation, which is  
2 totally completely not of her doing.  
3 She bought the home where it was  
4 located, again, not of her doing, and  
5 assumed, again, that since the -- the  
6 current deck that exists there would be  
7 -- she would be able to demolish that  
8 and, in this case, she just wanted to  
9 extend by 2 feet, and I think that is in  
10 -- I would argue that's within harmony,  
11 with the neighborhood where she is, and  
12 I think it falls within the land-use  
13 plan as it relates to properties in this  
14 general area of Kure Beach. I would ask  
15 that you approve the variance.

16 THE CHAIRPERSON: All right.  
17 Are there any other witnesses to come  
18 before the Board? Seeing none. Any  
19 other board members have any --

20 MR. BASS: We have a discussion  
21 now between the Board -- between us.

22 THE CHAIRPERSON: Time to have  
23 a discussion between us?

24 MR. ELDRIDGE: So you're --  
25 you're at number 8 on the order of



1 business, so that means someone, the  
2 Chairman, needs to summarize the  
3 evidence that was taken.

4 THE CHAIRPERSON: Okay, yes.

5 MR. ELDRIDGE: And you need to  
6 make findings of fact. Not the  
7 conclusions that are set forth in the  
8 worksheet. We'll get to that after the  
9 findings of fact, but you got to start  
10 at the top --

11 THE CHAIRPERSON: And work our  
12 way to the bottom.

13 MR. ELDRIDGE: Who is the  
14 applicant? Is the property the --

15 THE CHAIRPERSON: Right.

16 MR. ELDRIDGE: -- property  
17 described in the application, and what  
18 is the applicant's interest in that  
19 property? Just take it from the top and  
20 come all the way down and make your  
21 findings, which --

22 THE CHAIRPERSON: All right.

23 MR. ELDRIDGE: -- go into a  
24 written decision, and also they'll be  
25 recorded in the minutes.

1 THE CHAIRPERSON: Okay.

2 Findings of Fact. Ms. Holden presented  
3 -- with her attorney presented their  
4 case to expand the deck facing --

5 MR. NADEAU: Pinfish.

6 THE CHAIRPERSON: -- Pinfish  
7 and Mississippi Avenue, which her  
8 trailer, a corner lot, which actually  
9 dead ends -- which is on a dead end  
10 street. She has --

11 MR. ELDRIDGE: Chairman, if I  
12 could interrupt you for a minute.

13 THE CHAIRPERSON: Yes.

14 MR. ELDRIDGE: Let's go ahead  
15 and summarize the evidence that's been  
16 submitted. That's part of our  
17 responsibilities.

18 THE CHAIRPERSON: Okay.

19 MR. ELDRIDGE: You can start  
20 with the application, and it basically  
21 is the exhibits that you've had placed  
22 in front of you, plus the testimony of  
23 the witnesses. So list the exhibits and  
24 identify who testified, and then let's  
25 get to the findings.

1 THE CHAIRPERSON: All right.

2 Exhibit 1 is the application of variance  
3 to the Town of Carolina Beach issued --  
4 or by Christina Holden. And you --

5 MR. BATSON: Can I make a  
6 statement? This is the Town of Kure  
7 Beach.

8 THE CHAIRPERSON: Town of Kure  
9 Beach?

10 MR. ELDRIDGE: Not Carolina  
11 Beach.

12 THE CHAIRPERSON: I'm sorry. I  
13 apologize.

14 MR. BARNES: Big difference.

15 MR. ELDRIDGE: You can go to  
16 the -- Exhibit 7 and take it from there.  
17 Chairman, see if you agree with this  
18 summation. The exhibits tendered were,  
19 Number 1, the application from  
20 Ms. Holden stating the reasons why she  
21 felt she should be granted a variance;  
22 Exhibit 7, which is the handout prepared  
23 by her attorney that sets forth the same  
24 arguments -- not the same arguments, the  
25 substance expands upon those arguments

1 and also includes a plat that's relevant  
2 to this hearing and some other  
3 materials; Exhibit 8 -- I'll get to it  
4 in a second what Exhibit 8 is.

5 MR. BASS: Exhibit drawings.

6 MR. ELDRIDGE: The -- The  
7 drawings for the proposed -- for the  
8 construction of the proposed deck. And  
9 then Exhibit 9 is a memorandum from the  
10 Director of Development and Compliance  
11 setting forth discussing the setback  
12 requirements and the interplay of the  
13 provisions in the code regarding  
14 nonconforming structures.

15 If you all agree with that  
16 summation, then let's get on to the  
17 findings.

18 THE CHAIRPERSON: All right.  
19 Number one, applicant's name and  
20 residential address. 701 Mississippi.  
21 Number two, what is the applicant's  
22 interest in the subject of the property.  
23 I would say that she owns the property.

24 MR. ELDRIDGE: Let's make sure  
25 your fellow Board members agree with

1 that.

2 (ALL AGREED.)

3 MR. ELDRIDGE: This is the  
4 Board finding facts. This is not  
5 somebody reciting something.

6 THE CHAIRPERSON: Is the  
7 subject property a corner lot?

8 MR. BASS: Yes.

9 MR. NADEAU: Yes.

10 MR. SELIG: Yes.

11 THE CHAIRPERSON: Are there  
12 existing structures within the property  
13 side yard?

14 MR. BASS: Yes.

15 MR. NADEAU: Yes.

16 MR. SELIG: Yes.

17 THE CHAIRPERSON: Applicant is  
18 seeking a variance from application of  
19 KBC 15.36.060 for what purpose?

20 MR. BASS: To build a -- a new  
21 larger deck into the setback.

22 MR. NADEAU: With coverage.

23 MR. BASS: With cover, yes.

24 MR. ELDRIDGE: On which side of  
25 the -- east or west?

1 MR. BASS: On the -- on the --  
2 on the Pinfish side, which is  
3 encroaching the Pinfish side, the larger  
4 side setback.

5 MR. BARNES: The east side.  
6 East.

7 MR. NADEAU: With roof cover.

8 MR. BASS: With cover, yes.

9 THE CHAIRPERSON: What  
10 hardships does the applicant say the  
11 application of KBC 15.36.060 would  
12 result in?

13 MR. BASS: To my understanding  
14 that she -- by following that ordinance,  
15 15.36, that she wouldn't be allowed to  
16 build a deck which would not allow her  
17 to use the side yard to the best of its  
18 ability such as all the other neighbors  
19 in the neighborhood are allowed to use  
20 their lot. Is that -- Does that sound  
21 like what was argued in front of us  
22 today?

23 MR. NADEAU: A written -- A  
24 written application states on page 2 on  
25 1 -- paragraph 1A that the proposed

1 porch is to be located on the only  
2 plausible areas of property. I guess  
3 that means just no place else to put  
4 this porch.

5 MR. BASS: Well, if you look at  
6 the survey -- where is that at? If you  
7 look at the survey, there's a rear  
8 structure on the back.

9 MR. BARNES: A shed.

10 MR. BASS: A shed; is that  
11 right?

12 MR. SELIG: Yeah.

13 MR. BASS: There are too many  
14 pieces over here.

15 MR. NADEAU: I'm not disputing  
16 it, but that's what this applicant is  
17 saying.

18 MR. BASS: Right. I'm just  
19 discussing --

20 (MR. BARNES AND MS. HOLDEN HAVING  
21 AN OFF-THE-RECORD DISCUSSION.)

22 MR. BASS: So we're trying to  
23 find whether or not this hardship is  
24 existing, I guess is what our duties at  
25 this moment are, and the applicant is

1     stating that that is the only place to  
2     put the deck, and I'm just -- I'm just  
3     running through things here. Obviously  
4     the other side were right, there's two  
5     and a half feet-ish, three and a half  
6     feet of space to put a deck, and then  
7     the rear is taken up by the shed. So  
8     minus moving the shed around, there will  
9     be this -- she is correct in that this  
10    is the only usable space, even though  
11    that it is in the setback.

12                 MR. NADEAU: With the exception  
13    of the rear.

14                 MR. BASS: With the exception  
15    of the rear with moving the shed.  
16    That's the hardship --

17                 MR. NADEAU: The hardship  
18    though is there is a deck -- there's a  
19    deck at the property now. The  
20    difference would be 1 additional foot in  
21    depth and then a covering.

22                 MR. BASS: And an additional  
23    foot closer to Mississippi, which by the  
24    spirit of the --

25                 MR. SELIG: Longer.



1                   MR. BASS:  -- of the setback on  
2   a corner is for sight line.  So, I mean,  
3   that was my -- that was my reason for  
4   that question.  So I guess the hard and  
5   -- so the hardship is just not being  
6   able to use the property to its fullest  
7   extent, I guess.

8                   THE CHAIRPERSON:  Well, the  
9   hardship would be a smaller deck with a  
10  cover.

11                  MR. BASS:  Not being able to  
12  expand upon what's already existing.

13                  THE CHAIRPERSON:  Well, the --  
14  let's back up.  What hardship does the  
15  applicant say in the application?

16                  MR. MCMAINS:  She spelled it  
17  out.  It says, but for the lot being  
18  designated as a corner lot, all setback  
19  requirements would be met.

20                  It should be noted that Pinfish  
21  Lane dead ends into Lot 90, Phase 1B  
22  Kure Beach.  Again, the applicant's lot  
23  is 50-by-89, not 50-by-100 feet.

24                  MR. ELDRIDGE:  I would point  
25  out that during the findings phase --

1 and since we haven't closed the hearing,  
2 if you need to ask the party or the  
3 witnesses additional questions to  
4 further your understanding, that's  
5 permitted at this point.

6 MR. MCMAINS: Well, I would ask  
7 then is -- isn't -- could a lot -- a  
8 covered porch be put on the back of the  
9 house?

10 MS. HOLDEN: No access --

11 MR. BARNES: There is no  
12 access.

13 THE CHAIRPERSON: What's that  
14 saying?

15 MS. HOLDEN: There's no access  
16 to it.

17 MR. BASS: When you say access,  
18 you need to define that.

19 MS. HOLDEN: From the -- here  
20 to the interior.

21 MR. BASS: From the interior.

22 MS. HOLDEN: From the interior.

23 MR. BASS: Okay.

24 MR. BASS: I'm still trying  
25 to -- I'm struggling with -- with --

1 with the hardship a little bit, forgive  
2 me, but we're saying that the reason for  
3 the hardship is that you can't build a  
4 larger deck because of the side setback  
5 and that is causing a hardship in -- in  
6 what regard?

7 MS. HOLDEN: The -- The  
8 hardship is that I have two -- I have  
9 two side yards and not able to use it to  
10 its full -- you know, full ability  
11 because it's a different setback because  
12 it's a corner lot.

13 MR. ELDRIDGE: And I think you  
14 mentioned -- I think you mentioned your  
15 neighbors are able to do that.

16 MS. HOLDEN: Yes, they are  
17 then.

18 MR. ELDRIDGE: All right. I --  
19 I -- Chairman, I would humbly suggest  
20 that you probably have covered this  
21 particular finding.

22 THE CHAIRPERSON: Okay.

23 MR. ELDRIDGE: And I think that  
24 brings us to number 7 on your --

25 MR. BASS: 7.

1                   THE CHAIRPERSON: Yeah. Does  
2 the -- Does the claimed hardship result  
3 in unique conditions on such property?

4                   MR. ELDRIDGE: On the subject  
5 property.

6                   MR. BASS: Yes.

7                   MR. ELDRIDGE: Do you all agree  
8 with that?

9                   MR. NADEAU: Just so we're  
10 clear, so we'd say it's a corner lot and  
11 the difference is this corner lot is on  
12 a dead end or a stub portion of a street  
13 which makes it unique from the other 199  
14 or so corner lots within Kure Beach?

15                  MR. BASS: So do we all agree  
16 that it's a yeah?

17                  MR. ELDRIDGE: I recall some  
18 discussion about the lot size, as well.

19                  MR. BASS: Okay, the lots -- so  
20 nonconforming when it's under 5,000.

21                  MR. NADEAU: It is, but I don't  
22 see how it relates to the particular  
23 structure we're talking about.

24                  MR. BASS: If I may, it was --  
25 if it was a 5,000 square foot lot and

1 this is 85 feet in length, it would be  
2 -- what? I'm sorry? What was the width  
3 of the lot, again?

4 MR. SELIG: 50 may have been --

5 MR. BASS: Oh, it's 89 --

6 MR. BARNES: Lot, 50-by-89. So  
7 we're not -- when -- we did --  
8 nonconforming did not have anything to  
9 do with the width of the lot; is that  
10 correct?

11 MR. SELIG: No, I don't think  
12 so.

13 MR. NADEAU: That's correct.

14 MR. BASS: 49 to -- I mean 49  
15 -- so it's pretty much 50 feet wide and  
16 it will make it longer and then also the  
17 way the rear of the lot has an angle  
18 towards it.

19 MR. MCMAINS: Yeah.

20 MR. BASS: Also this --

21 MR. NADEAU: I personally don't  
22 think the claim hardship results from  
23 unique conditions of the property. It  
24 is a dead end, but it's a corner lot.

25 MR. ELDRIDGE: You're going to

1 your conclusions after your findings.

2 MR. BASS: But I think what  
3 we're to figure out is if unique  
4 hardship comes from the lot itself, and  
5 I think that's what the Board is trying  
6 to determine at this moment.

7 MR. SELIG: Right. I wouldn't  
8 say that it does.

9 THE CHAIRPERSON: I wouldn't  
10 say that it does because if -- if -- if  
11 that road would have gone on through  
12 into Kure Beach Village, she would still  
13 be facing the same situation.

14 MR. BASS: And I think there  
15 would be no argument.

16 THE CHAIRPERSON: You know, if  
17 that road had not stopped. Okay, number  
18 eight. Did the applicant take any  
19 actions which contributed to the -- to  
20 the claim hardship?

21 MR. ELDRIDGE: Chairman, I'm  
22 sorry. I missed what your conclusion --  
23 not your conclusion, your finding that  
24 we just discussed.

25 THE CHAIRPERSON: Number seven?

1 I feel like we said that it was no --  
2 the property didn't create a hardship.

3 MR. NADEAU: Well, it's a --  
4 it's being treated as a corner lot, and  
5 I think -- I don't want to ask you  
6 again. The whole idea is that she's  
7 saying it's really a corner lot because  
8 there is no thoroughfare on that side of  
9 the house. Unlike other corner lots,  
10 you have 200 and so corner lots on Kure  
11 Beach, but there are streets that go  
12 through and you have traffic on both  
13 sides. There's no traffic on that side  
14 of the lot, so I think that does make it  
15 a little unique.

16 MR. BASS: Well, I argue --

17 MR. NADEAU: That's what's  
18 causing the hardship, because she has a  
19 setback that's 10 feet instead of 5.

20 MR. BASS: I argue that at some  
21 point there will be traffic there.  
22 There's a buildable lot at the end of  
23 the road.

24 MR. NADEAU: Right.

25 MR. BASS: And the -- And the

1 reason for the -- the reason for the  
2 extra 5 feet of setback is for visual  
3 sideline, and, I mean, where I -- where  
4 my concern would be is if you're not  
5 giving that, even though there's -- even  
6 though it's an everyday thoroughfare  
7 with a stoplight and all that other  
8 business, you still have two houses over  
9 there that could be pulling out and/or  
10 you still could have cars that could be  
11 driving to the end of that road, stop,  
12 pull out, turn around, because it is a  
13 dead end road. I think it -- So I don't  
14 -- I think it's a corner lot because it  
15 sits on two pieces of pavement.

16 MR. NADEAU: Thanks. That's a  
17 little different opinion. If we say it  
18 is a corner lot and it should be a  
19 corner lot, that is a thoroughfare that  
20 there's traffic there, that's different.

21 MR. BASS: I mean, one car, two  
22 car, 100 cars, it's traffic.

23 MR. NADEAU: Okay.

24 MR. BASS: It only takes one.

25 (MR. BASS AND MR. SELIG HAVING



1 AN OFF-THE-RECORD DISCUSSION.)

2 THE CHAIRPERSON: So number  
3 seven. Does the claimed hardship should  
4 result in unique condition of the  
5 property? I believe we decided it was  
6 no?

7 MR. BASS: Yes, I agree.

8 MR. NADEAU: The consensus is  
9 no. I will go with that.

10 THE CHAIRPERSON: Okay. Did  
11 the applicant take any actions towards  
12 contributing to the claimed hardship?

13 MR. NADEAU: I don't believe  
14 so, no.

15 MR. MCMAINS: I don't see --  
16 it's not.

17 MR. NADEAU: No.

18 MR. BASS: No.

19 THE CHAIRPERSON: No? How  
20 would the request of the variance be  
21 consistent with the Town zoning  
22 regulations?

23 MR. BASS: It would not.

24 MR. NADEAU: It would not.

25 THE CHAIRPERSON: It would not

1 be consistent.

2 MR. NADEAU: In my opinion.

3 MR. BASS: In my -- I agree.

4 THE CHAIRPERSON: How would the  
5 request for the variance achieve --  
6 excuse me. How would the requested  
7 variance achieve substantial justice?

8 MR. BASS: I think it would  
9 just benefit the -- the property owner.

10 MR. MCMAINS: It would not  
11 benefit anybody else but the property  
12 owner.

13 MR. NADEAU: Where exactly is  
14 that question coming from? Is that  
15 somewhere in the --

16 MR. BASS: 16.

17 MR. NADEAU: I understand, but  
18 is it in the ordinances? Why are we --  
19 Why are we establishing a fact around  
20 substantial justice?

21 MR. ELDRIDGE: It's one of the  
22 requirements in the code for obtaining a  
23 variance.

24 MR. BARNES: It's one of the  
25 requirements in the code for --

1                   MR. ELDRIDGE: If you look at  
2 your order of business, section E4 of  
3 page 2 of your -- right at the very top  
4 of page 2 of the order of business, it's  
5 one of the -- discussing the four  
6 elements of the variance.

7                   MR. NADEAU: Is there anything  
8 offered that defines or explains what  
9 the intent or what establishes  
10 substantial justice for our purposes in  
11 this?

12                   MR. ELDRIDGE: Not that I can  
13 point you to. I think that's your --  
14 that's your chore in this particular  
15 hearing.

16                   MR. NADEAU: I -- I can't come  
17 up with any good answers to that. Other  
18 than review of the property owner or  
19 what they want --

20                   MR. BASS: That's all I can  
21 see.

22                   MR. SELIG: I mean, that would  
23 be the only --

24                   MR. BASS: That's all I can  
25 see, too.

1 THE CHAIRPERSON: Any --

2 Anything other than --

3 MR. NADEAU: He just summarized  
4 with the letter.

5 THE CHAIRPERSON: Okay, we'll  
6 just -- it will benefit the applicant.

7 MR. ELDRIDGE: Can you all  
8 speak up a little bit, please?

9 THE CHAIRPERSON: That the --  
10 under number 10, how would -- how would  
11 the request variance achieve substantial  
12 justice? It would just benefit the --

13 MR. BASS: Applicant only.

14 THE CHAIRPERSON: What does --  
15 the Department of Development Compliance  
16 position on this application?

17 MR. BASS: John stated no.

18 MR. NADEAU: Yeah.

19 THE CHAIRPERSON: Right.

20 MR. BASS: So keep as is, but  
21 no more.

22 THE CHAIRPERSON: Per his memo  
23 to the Exhibit 9?

24 MR. BASS: That's exactly  
25 right.

1 THE CHAIRPERSON: Per Exhibit

2 9. Okay. Conclusions.

3 MR. ELDRIDGE: Take a motion to  
4 close the hearing.

5 THE CHAIRPERSON: Oh, I'm  
6 sorry. I make a motion to close the  
7 hearing.

8 MR. BASS: So moved.

9 MR. SELIG: Second.

10 MR. NADEAU: I second.

11 THE CHAIRPERSON: All in favor.

12 (ALL AGREED.)

13 THE CHAIRPERSON: Okay. Number  
14 one, has the applicant -- applicant has  
15 or does not have standing in the -- to  
16 apply for a variance request?

17 MR. NADEAU: She has.

18 MR. BASS: Yes.

19 MR. MCMAINS: Yes.

20 THE CHAIRPERSON: Number two,  
21 an unnecessary hardship of the applicant  
22 would or would not result from the  
23 strict application of KBC 15.36.060 to  
24 subject the property identified the  
25 hardship?

1                   MR. NADEAU: I believe it would  
2 not.

3                   MR. BASS: I mean, I think when  
4 going through findings of fact, we've  
5 come to that conclusion.

6                   THE CHAIRPERSON: It would not  
7 result in one. If the unnecessary  
8 hardship resulted in strict application  
9 of KBC 15.36.060 to the property of the  
10 hardship does or does not result from  
11 conditions which are particular -- I  
12 mean, peculiar to the property, such as,  
13 for example, the location, size,  
14 topography, hardships resulting from  
15 personal circumstances may not be the  
16 basis for granting a variance. It does  
17 or does not?

18                  MR. BASS: I think that --

19                  MR. NADEAU: Hang on, number  
20 two, we said, an unnecessary hardship  
21 the applicant would not result?

22                  MR. BASS: It would not, yes.

23                  THE CHAIRPERSON: Right.

24                  MR. NADEAU: Okay, and we get  
25 to number three, if an unnecessary

1 hardship results, we said it does not.

2 THE CHAIRPERSON: Okay. It  
3 does not. If any unnecessary results  
4 from strict application of KBC 15.36.060  
5 to the property that the hardship did or  
6 did not result from actions taken by the  
7 applicant?

8 MR. BASS: It did not.

9 THE CHAIRPERSON: It -- It did  
10 not result. Everybody agree with that?

11 MR. BASS: Agree.

12 MR. NADEAU: I agree, but I  
13 think when I read questions three and  
14 four, it's based on that the unnecessary  
15 hardship would result from application  
16 that we said it would not. So for three  
17 and four, look at --

18 THE CHAIRPERSON: All right.  
19 Number five, the request for variance is  
20 or is not consistent with the spirit,  
21 purpose, or intent of the Town zoning  
22 regulation?

23 MR. BASS: Is not. Is not.

24 MR. SELIG: Is not.

25 THE CHAIRPERSON: I got two is

1     nots.

2                             (ALL REPLIED IS NOT.)

3                     THE CHAIRPERSON:   The Board  
4     shall grant variances upon showing the  
5     applicant an unnecessary hardship will  
6     result in strict application of KBC  
7     15.36.060 to the property.   The hardship  
8     results from the conditions particular  
9     to the property.   The hardships did not  
10    result from the actions of the  
11    applicant, and the request for the  
12    variance is consistent with the  
13    applicant has or has not shown each of  
14    the four requirements set forth in  
15    number two above have been met.

16                     MR. BASS:   It has not.

17                     MR. NADEAU:   It has not.

18                     THE CHAIRPERSON:   All right.

19    Do I have motion on the floor whether to  
20    grant the variance or not grant the  
21    variance?

22                     MR. NADEAU:   I move that we  
23    deny the requested variance.

24                     MR. BASS:   Second.

25                     MR. SELIG:   Second.



1 THE CHAIRPERSON: All right, I  
2 have a motion. Anyone second? All in  
3 favor?

4 (ALL WERE IN FAVOR.)

5 THE CHAIRPERSON: All opposed?  
6 None. Okay. The Board has denied the  
7 request for the variance of 701  
8 Mississippi. Do we need to hear from  
9 anybody else?

10 MR. BARNES: Thank you for your  
11 time.

12 MS. CHASE: We need a motion to  
13 close the hearing.

14 THE CHAIRPERSON: All right.  
15 Do I have a motion to close the Board of  
16 Adjustment hearing?

17 MR. BASS: I make a motion to  
18 adjourn.

19 MR. NALEAU: I second that.

20 THE CHAIRPERSON: All in favor.

21 (MULTIPLE AYES.)

22 (THE HEARING ADJOURNED AT 7:10 P.M.)

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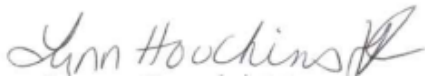
**CERTIFICATE**

State of North Carolina  
County of Brunswick

I, Lynn Houchins, a court reporter in  
and for the State of North Carolina, do  
hereby certify that I was the court  
reporter at the aforementioned  
proceedings and that the foregoing is a  
true, correct, and full transcript of  
the proceedings herein.

I further certify that I am not counsel  
for, nor in the employment of any of the  
parties to this action; that I am not  
related by blood or marriage to any of  
the parties, nor am I interested, either  
directly or indirectly, in the results  
of this action.

In witness whereon, I have hereto set my  
hand, this the 24th day of January,  
2024.



Lynn Houchins  
Court Reporter

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