

In the Matter Of:

Thomas and Vanessa Deering

HEARING

November 26, 2024

LEGAL | MEDIA | EXPERTS

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**TOWN OF KURE BEACH
BOARD OF ADJUSTMENT**

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**IN RE: Thomas and Vanessa
Deering**

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**Town Hall
Kure Beach, North Carolina
November 26, 2024**

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TRANSCRIPT OF HEARING

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**REPORTER: Kylie Fleming
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 John Nadeau, Chairperson
5 Donna Hatcher
6 Scott Selig
7 Randy McNeely

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9 James Eldridge, Esq., Town Attorney

10 Beth Chase, Deputy Town Clerk

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

2 MS. CHASE: This is the Town
3 Clerk of Kure Beach, and I call the
4 Board of Adjustment meeting for November
5 26th, 2024, to order. And I opened the
6 meeting. Can I please get a motion to
7 appoint a chairperson pro tem for the
8 meeting tonight?

9 MR. MCNEELY: Make a motion to
10 appoint John as pro tem chair for the
11 meeting tonight.

12 MR. SELIG: Second.

13 MS. CHASE: All in favor.

14 (MULTIPLE AYES.)

15 MS. CHASE: John, you can take
16 over from there --

17 MR. NADEAU: All right. Well,
18 thank you very much.

19 MS. CHASE: -- with your order
20 of business, please.

21 MR. NADEAU: Bear with me --

22 MS. CHASE: Actually, sorry.
23 Start at the adoption of agenda. Can
24 you make a motion to adopt the agenda
25 and then go from there.

1 MR. MCNEELY: Yes. I make a
2 motion to adopt the agenda.

3 MR. NADEAU: I'll second.

4 MS. CHASE: Who seconds?

5 MR. NADEAU: I will.

6 MS. CHASE: But you're the
7 chair, so --

8 MR. NADEAU: I know.

9 MS. CHASE: -- a second besides
10 you.

11 MR. SELIG: I'll second.

12 MS. CHASE: Thank you. All in
13 favor?

14 (MULTIPLE AYES.)

15 MR. NADEAU: Great.

16 MS. CHASE: We have no public
17 comment tonight.

18 MR. NADEAU: No public
19 comments.

20 MS. CHASE: So go to your order
21 of business. It's right there.

22 MR. NADEAU: Okay.

23 MS. HATCHER: Okay.

24 MR. NADEAU: So -- well,
25 welcome everybody. This is an

1 evidentiary hearing under Town of Kure
2 Beach Code of Ordinances 12.06.040,
3 Appeals of Administrative Decisions; and
4 12.06.050, quasi-judicial procedures on
5 the appeal of an administrative decision
6 submitted by Thomas and Vanessa Deering,
7 the appellants, concerning the property
8 located at 504 Fisher Boulevard South,
9 Kure Beach, North Carolina. That's the
10 property.

11 The appellants are seeking
12 relief from a decision by the Town's
13 former building inspector that the
14 location of the air conditioner on the
15 property is in violation of the code
16 setback requirements.

17 So I will remind the board
18 members here, our instructions are -- in
19 making our factual determinations, board
20 members may only consider competent
21 material, substantial evidence from
22 parties who have standing, not expert
23 opinion testimony, including opinions
24 related to diminution of property values
25 and traffic safety issues, may not be

1 considered in making findings of fact.
2 The Board is not precluded from relying
3 on evidence that would not be admissible
4 under the North Carolina Rules of
5 Evidence, if the evidence appears to be
6 sufficiently trustworthy and was
7 admitted under such circumstances that
8 it was reasonable for the Board to rely
9 upon it.

10 The Board shall make findings
11 of fact and identify the evidence
12 supporting each finding. And we've been
13 given a worksheet to help us out with
14 that.

15 Under Kure Beach Code
16 12.06.05.J, the Board may reverse,
17 affirm, or modify, wholly or partly, the
18 decision appealed from and shall make
19 any order, requirement, decision, or
20 determination that ought to be made. A
21 quasi-judicial decision shall be based
22 upon competent, material, and
23 substantial evidence in the record. The
24 Board's decisions shall -- will be set
25 forth in writing and delivered to the

1 appellants in accordance with provisions
2 of the Kure Beach Code 12.06.05.J. And
3 for the purposes of this hearing, the
4 Town attorney will be appearing in an
5 advisory capacity for the Board and not
6 as an advocate for any party.

7 With that, I think we need to
8 poll board members and ask each of you
9 whether -- to state whether conflict of
10 interest exists, due to direct financial
11 benefit, bias, or fixed opinion,
12 undisclosed outside contacts, or a close
13 family or commercial tie. And if a
14 conflict does exist, you, as a member,
15 will be asked to recuse yourself from
16 the hearing, and the Board will vote to
17 excuse that member from voting on this
18 matter.

19 So, I guess, starting here, do
20 we have any conflict?

21 MS. HATCHER: I do not have a
22 conflict.

23 MR. MCNEELY: I do not.

24 MR. SELIG: No conflict.

25 MR. NADEAU: Okay. I do not

1 have one either, so I think we're safe
2 to proceed.

3 So in administering the oath,
4 do you help us with that, Beth, or is
5 that something I do?

6 MS. CHASE: You -- you are
7 going to read it --

8 MR. NADEAU: I do that.

9 MS. CHASE: -- I'm actually
10 going to take the oath. So we'll stand
11 over there and you'll read it --

12 MR. NADEAU: Okay.

13 MS. CHASE: -- out, and then
14 we'll repeat after you; okay?

15 MR. NADEAU: We all stand over
16 here then?

17 MS. CHASE: Not you.

18 MR. NADEAU: Okay.

19 MS. CHASE: We're the ones
20 testifying to you.

21 MR. NADEAU: Oh, okay. I don't
22 remember this happening before. We
23 always do this? I guess I've forgotten.
24 All right.

25 MS. HATCHER: We do it often

1 enough.

2 MR. NADEAU: I'll ask you all
3 to raise your right hand, place your
4 left hand on the Bible, and repeat after
5 me.

6 (THE OATH WAS ADMINISTERED.)

7 MR. NADEAU: Thank you. So
8 with that, I think we're ready to hear
9 testimony. And you'll kick that off,
10 Beth?

11 MS. CHASE: Yeah.

12 MR. NADEAU: All right.

13 MS. CHASE: I'll start. I am
14 just entering into the record tonight
15 the following exhibits. You have all
16 received 1 through 8, but I will read
17 them out individually. So Exhibit 1 is
18 the application of the appeal.
19 Exhibit 2 is the agency appointment
20 form. Todd Piper is the appointed
21 agency, for the record. Exhibit 3 is
22 record of decision. Exhibit 4 is notice
23 of hearing. Exhibit 5 is the mailed
24 notice of certification. Exhibit 6 is
25 the posted notice of certification.

1 Exhibit 7 is the notice affidavit. And
2 Exhibit 8 is the e-mail to the applicant
3 and to the Board of the record.

4 Do you guys have any questions
5 for me?

6 MR. NADEAU: No questions?

7 MR. MCNEELY: No questions.

8 MR. NADEAU: Thank you. Okay.

9 I think next on the list would be
10 Bethany White, Director of Development
11 and Compliance for Kure Beach. Hey, how
12 are you?

13 MS. WHITE: Good evening, board
14 members. I would like to tender into
15 the -- exhibits into the record. I have
16 a memo for the board members.

17 MR. NADEAU: Thank you.

18 MS. WHITE: Uh-huh. Try not
19 trip over these cords. I think I got
20 two there.

21 MS. HATCHER: Thank you.

22 MS. WHITE: And this is Exhibit
23 9 for the record.

24 So my name is Bethany White. I
25 am the Director of Development and

1 Compliance and the building inspector
2 for the Town and the current building
3 inspector on this project. I have a
4 memo here. It's basically a timeline.
5 I'm just going to read through it, and
6 then I'll answer any questions that you
7 may have.

8 504 Fisher Boulevard South is
9 located in the RA-3 District, and it's a
10 new single-family dwelling currently
11 under construction.

12 The building permit was applied
13 for by Todd Piper of Tidal Wave
14 Construction on 12/29/2023, and was
15 approved and issued on January 12th,
16 2024, by the Town's former building
17 inspector, John Batson.

18 On August 27th, '24, I was
19 notified by Chris Smith, the
20 superintendent to Todd Piper of Tidal
21 Wave Construction, that there was a
22 possible setback issue with the
23 mechanical equipment brought onto the
24 south side of the property, which has a
25 5 foot setback. He inquired about the

1 exceptions for encroachment of
2 mechanicals in the Town code. 15.36.010
3 of Kure Beach code lists exceptions to
4 setbacks. Exception S states,
5 mechanical equipment can be within 5
6 foot -- can be within 5 foot of
7 structure served when in the required 10
8 foot yard of a corner lot. There are no
9 other exceptions for mechanical that's
10 written into our code.

11 On August 30th, 2024, I met
12 with Chris Smith on site to discuss the
13 setback issue, review the plans approved
14 by the Town, and to discuss possible
15 solutions. I advised that with the
16 mechanical equipment in the setback, the
17 project would not pass final inspection
18 and I would not be able to issue a
19 Certificate of Occupancy. I explained
20 the options for appeal, variance, and
21 text amendment.

22 Upon review of the original
23 plan submitted to the Town on January
24 4th, 2024, I noted that both the
25 architectural plans and structural plans

1 clearly showed the equipment placed on
2 the south side of the property. The
3 site plan confirmed the equipment would
4 encroach into the required 5 foot
5 setback.

6 And on October 3rd, 2024, I
7 confirmed via e-mail to Todd Piper that
8 the plan submitted to the Town on
9 January 4th, 2024, did show the
10 mechanical equipment encroaching into
11 the 5 foot side setback, and these plans
12 were reviewed and approved by the
13 previous building inspector.

14 And on October 14th, 2021, Todd
15 Piper did bring the application for
16 appeal to me that's before you today.
17 Any questions?

18 MS. HATCHER: I -- I kind of
19 have a question.

20 MS. WHITE: Sure.

21 MS. HATCHER: It took eight
22 months before anybody noticed this? I
23 mean, you -- you gave the permit on
24 12/29. But then 8/27, nobody noticed
25 this until then; is that -- I mean, is

1 that what I'm understanding?

2 MS. WHITE: Yeah. That's
3 actually -- that -- that's pretty
4 typical of it wouldn't come up until the
5 framing inspection.

6 MS. HATCHER: Okay.

7 MS. WHITE: So we would have
8 done a foundation inspection for the
9 inspection in the beginning. Other than
10 the original plan reviews, you wouldn't
11 know where the --

12 MS. HATCHER: Okay.

13 MS. WHITE: -- mechanical
14 equipment was going to going to until
15 the framing --

16 MS. HATCHER: So that it's not
17 out of the ordinary?

18 MS. WHITE: -- inspection.
19 Yeah.

20 MS. HATCHER: Okay.

21 MR. MCNEELY: But -- but you
22 didn't notice it, they brought it to you
23 that they were out of compliance?

24 MS. WHITE: No. As far as I'm
25 aware, I believe that Chris Smith was

1 brought onboard kind of in the middle of
2 the project --

3 MR. MCNEELY: Uh-huh.

4 MS. WHITE: -- but that might
5 be something more for him to answer
6 than --

7 MR. MCNEELY: So --

8 MS. WHITE: But, yes, it was
9 brought to my attention by --

10 MR. MCNEELY: So it was brought
11 to you attention by them?

12 MS. WHITE: He wanted to ask
13 what the -- what our allowances were for
14 encroaching into the setback. Because
15 he was concerned that it was going to be
16 in the setback there. It was probably
17 right around there --

18 MR. MCNEELY: It is --

19 MS. WHITE: -- right before the
20 framing was done.

21 MR. PIPER: We met on site with
22 our pool contractor.

23 THE COURT REPORTER: I'm sorry,
24 sir, what's your name?

25 MR. PIPER: So my name is Todd

1 Piper.

2 THE COURT REPORTER: Okay.

3 MR. PIPER: So we met on site
4 with our pool contractor, and he -- he
5 brought -- he said something didn't seem
6 right to him.

7 MR. MCNEELY: Uh-huh.

8 MR. PIPER: And we had the site
9 plan. And we said -- and this is where
10 this -- the pool equipment and
11 everything was designated. And so at
12 that point, we got in touch with Bethany
13 and said, we need to -- we need to find
14 out what's going on here. Because at
15 that point -- just a week later -- like
16 at that point, the house had
17 mechanically been completed. We had our
18 -- we had our framing inspection on
19 September 11th, just a week later. But
20 prior to that, all the trades had been
21 completed. The air conditioner, the
22 plumbing, everybody else was done. So
23 it was the pool contractor. And as soon
24 as we found out from the pool
25 contractor, we got ahold of Bethany.

1 And as she said, we had a meeting August
2 30th to -- to like measure everything
3 out. We needed to make sure -- we
4 needed a surveyor there, we needed to
5 make sure that we had a foundation
6 survey, when the foundation was
7 installed, and that was in compliance.
8 But we needed a surveyor out there to
9 make sure that the property pins we were
10 measuring from were exactly in a correct
11 position before we made it in -- you
12 know, we -- before we moved any further.

13 MR. ELDRIDGE: Chairperson, I
14 have one question, if I may.

15 MR. NADEAU: Sure.

16 MR. ELDRIDGE: Is the -- what
17 is in the setback? The air conditioner
18 or all the mechanicals or some of the
19 mechanical?

20 MS. WHITE: Oh, it's the
21 hookups for all the mechanical.

22 MR. ELDRIDGE: All right.

23 MS. WHITE: They're not --
24 they're not actually there yet; right,
25 Todd?

1 MR. PIPER: Yeah. No, no. We
2 were -- no. We're -- we're -- we're
3 delayed in installing them.

4 MS. WHITE: Yes.

5 MR. MCNEELY: But it will --
6 will be just a compressor, or will it be
7 the HVAC system and a compressor?

8 MR. PIPER: So all -- all it'll
9 be, it'll be the HVAC compressors, the
10 outdoor units. And it'll be the pool
11 pump unit. And -- and -- and -- but it
12 -- it's -- it's on the south side, so it
13 abuts the neighbor's units as well. So
14 it -- it -- you know, unfortunately
15 everybody has to have an ugly side of
16 your house. Like you've got to have
17 your -- you know, your -- your garbage
18 cans and your air -- air conditioners --
19 your air conditioning compressors. And
20 so it's on the south side, which is the
21 same side as the neighbor's. The south
22 side is the most hidden from public
23 view. So that's the side it's on, and
24 that's the side we showed. We showed it
25 on the site plan.

1 MS. WHITE: And this is the --
2 so the setbacks are our local zoning
3 ordinance. So it -- it wouldn't be
4 unusual, unless you build here all the
5 time -- and I'm guessing it -- the pool
6 contractor has done projects here before
7 -- that would really be the only way,
8 other than us telling you that -- that
9 -- that's -- it's a local ordinance, not
10 a state code.

11 MR. MCNEELY: But isn't it a
12 standard that there are setbacks in
13 all --

14 MS. WHITE: Yeah. It's not
15 a --

16 MR. MCNEELY: -- zoning codes?

17 MS. WHITE: -- building codes
18 -- yeah. There's -- there's --
19 different towns have different rules
20 with mechanicals being in the setback,
21 not being in the setback --

22 MR. MCNEELY: Okay.

23 MS. WHITE: -- different
24 encroachments. Just kind of depends on
25 where you are.

1 MR. PIPER: The Town of
2 Carolina Beach allows it in the setback.
3 So I've built in the Town of Carolina
4 Beach regularly, and the Town of
5 Carolina Beach allows the air
6 conditioning units in the setback. So
7 nothing struck -- struck me as out of
8 the ordinary, meaning --

9 MS. HATCHER: So have you built
10 in Kure Beach before?

11 MR. PIPER: Yes. Yeah. I've
12 built --

13 MS. HATCHER: So you knew about
14 the setbacks?

15 MR. MCNEELY: You knew?

16 MS. HATCHER: You didn't see
17 this coming?

18 MR. PIPER: No.

19 MS. HATCHER: I mean like on
20 the --

21 MR. PIPER: No, ma'am.

22 MS. HATCHER: -- plans and
23 knowing that the setback was there?

24 MR. PIPER: So the setback -- I
25 make sure that I show everything on the

1 site plan. So previously -- I'm trying
2 to think -- I'm trying to think exactly.
3 But I show everything on the site plan
4 just for this instance because every
5 municipality has small variations.

6 MS. HATCHER: Yeah.

7 MR. PIPER: And so I want to
8 make sure that I provide all the
9 information for plan review for that
10 reason.

11 MS. HATCHER: Yeah.

12 MR. PIPER: In case -- you
13 know, for this, like -- so air
14 conditioning units aren't allowed in the
15 setback. There's -- there's -- in the
16 Town of Carolina Beach, they have very
17 specific cantilever requirements. It's
18 only allowed to be a certain percentage
19 of the building itself, certain
20 impermeable. So it's very important to
21 me that I show exactly what I'm going to
22 construct on the site plan.

23 MS. HATCHER: Yeah.

24 MR. PIPER: And then I allow
25 the local officials, like, you know,

1 Bethany or the Town Zoning officials,
2 the building inspectors to review those
3 plans, because as much as I try and
4 study the codes, I can't remember every
5 single code.

6 MS. HATCHER: Uh-huh.

7 MR. PIPER: I'm not an expert
8 at every town. I just want to make sure
9 everything I provide for plan review is
10 exactly what I constructed.

11 MR. NADEAU: So we're going to
12 -- you're going to probably be up here
13 to talk to us, right, in a minute or so?

14 MR. PIPER: Yes. Yes, sir.

15 MR. NADEAU: So I -- I guess
16 I'm more focused on Bethany.

17 MS. HATCHER: Right.

18 MR. NADEAU: What -- you -- so
19 it was approved. You say that the --
20 the submission has the information you
21 need. That it's typical -- the drawings
22 that we have here are typical as what is
23 normally submitted to the Town?

24 MS. WHITE: Yeah. I mean, the
25 -- yeah. He -- he submitted the

1 required plans, structural --

2 MR. NADEAU: The drawings?

3 MS. WHITE: -- architectural

4 site plan --

5 MR. NADEAU: Yes.

6 MS. WHITE: -- are required.

7 Yes. They don't always show where the

8 mechanical equipment will be. Sometimes

9 that's an issue that comes up later.

10 Like I said, it -- it commonly comes up

11 around the framing inspection time, when

12 it is an issue. But, no, his plans --

13 yeah, his plans show more -- more than

14 some would.

15 MR. NADEAU: Okay.

16 MS. WHITE: We wouldn't

17 necessarily -- I mean, we try to make

18 sure everybody knows what the setbacks

19 are, but they aren't always -- the

20 mechanicals aren't always on the

21 original plans that are submitted. And

22 it wouldn't be a reason for denial, I

23 mean.

24 MR. NADEAU: It would not be a

25 reason if it was not shown?

1 MS. WHITE: No. But we would
2 say, you know -- well, I mean, most
3 likely we would ask where they were
4 going to be, if they weren't shown on
5 it, to avoid this issue in the future.

6 MR. MCNEELY: They -- they are
7 not shown on any of the elevations
8 though.

9 MS. HATCHER: I don't see --

10 MS. WHITE: They're shown on
11 the original site plan.

12 MR. MCNEELY: Just the site
13 plan; they're not shown on the
14 elevations --

15 MS. WHITE: Site plan and
16 architectural drawings.

17 MR. MCNEELY: I'm saying the
18 elevations of --

19 MR. ELDRIDGE: Can you point
20 them to -- can you point him to the page
21 number?

22 MS. WHITE: I -- I think it's
23 page 9.

24 MR. MCNEELY: No. I'm saying
25 if you go to page 5.

1 MS. WHITE: Okay. I think it
2 is was page 9.

3 MR. MCNEELY: Page 13 and
4 page --

5 MS. WHITE: So the --

6 MR. MCNEELY: -- 11 --

7 MS. WHITE: -- site plan is
8 actually a very small --

9 MR. MCNEELY: I -- I understand
10 it shows on the site plan.

11 MS. WHITE: Yeah.

12 MR. MCNEELY: But the
13 elevations that would show the
14 structures do not show on them.

15 MS. HATCHER: I don't see
16 anything.

17 MR. MCNEELY: The site plan.
18 If you go to -- it's real small.

19 MS. HATCHER: Yeah.

20 MR. MCNEELY: It's one of the
21 ones you see a little pad, but when you
22 go to --

23 MR. NADEAU: My question,
24 Bethany, is what's -- what's your
25 procedure? How -- how do you -- when

1 you get a set of plans, is there like --
2 what are you checking for before you
3 approve it? You know, what --

4 MS. WHITE: So we would -- we
5 would check for zoning separately, and
6 then we would go on to check the
7 building code.

8 MR. NADEAU: Okay. So it is
9 definitely part of the process, to check
10 and make sure --

11 MS. WHITE: It's part of the
12 process, yes.

13 MR. NADEAU: Okay.

14 MS. WHITE: Same as the height
15 limit. We -- we would make sure that
16 they weren't proposing to do anything
17 that was, you know, upwards of 37 feet
18 high, you know, anything like that, so
19 -- yeah. So we would catch that and
20 say, you know, you need to submit
21 appropriate plans before we would issue
22 the permit.

23 MR. NADEAU: Okay. Any
24 questions?

25 MS. HATCHER: I have a question

1 for you, Bethany. John Batson actually
2 was the one that reviewed this and
3 approved it?

4 MS. WHITE: That's correct.

5 MS. HATCHER: Is there a reason
6 he's not here as a witness?

7 MR. MCNEELY: What's it say?

8 MR. NADEAU: I can't read it.

9 MR. MCNEELY: I can't read it,
10 either.

11 MS. WHITE: Not really. But I
12 don't know that that was pertinent
13 because --

14 MS. HATCHER: Okay.

15 MS. WHITE: -- I mean, he
16 wouldn't deny that he issued the permit.

17 MS. HATCHER: All right. But
18 it's something that he may have seen
19 that he thought was --

20 MS. WHITE: Yeah. I mean, I
21 did follow up with him to --

22 MS. HATCHER: Yeah.

23 MS. WHITE: -- see if he had
24 any contact or any like phone calls or
25 discussions on it, and he did not. I

1 also have access to his e-mail --

2 MS. HATCHER: Okay.

3 MS. WHITE: -- from when he was
4 here. So I -- I looked to see if there
5 was any kind of side conversation on --

6 MS. HATCHER: Right.

7 MS. WHITE: -- on the plans or
8 anything, and I didn't find anything.

9 MS. HATCHER: Okay.

10 MR. MCNEELY: I can't -- can
11 you help me on page 16?

12 MR. ELDRIDGE: Are you --

13 MR. MCNEELY: It's 33.

14 MR. NADEAU: Oh, 33, I'm sorry.
15 It's page 16 is the building permit.

16 MR. NADEAU: Yeah. Yeah.

17 MR. MCNEELY: Page 33.

18 MR. ELDRIDGE: Are you
19 referring to the agenda page number or
20 Exhibit 3 page number?

21 MS. HATCHER: Exhibit --

22 MR. MCNEELY: 2 --

23 MS. HATCHER: -- 33 of 56.

24 MR. ELDRIDGE: Page 33 of 56.

25 MR. MCNEELY: Page 33 of 56 --

1 MS. HATCHER: Yeah.

2 MR. MCNEELY: -- of our packet?

3 MR. NADEAU: Of our packet.

4 MR. ELDRIDGE: Yes.

5 MR. MCNEELY: Which is page --

6 MR. NADEAU: Should be --

7 MR. MCNEELY: -- 16 of the

8 decision.

9 MR. NADEAU: Page 16 of the --
10 Exhibit 3. We -- we can't read what it
11 says in that little box that's
12 outside the --

13 MR. MCNEELY: Yeah.

14 MR. NADEAU: None of us can
15 read that.

16 MS. WHITE: Are you -- you're
17 on page 33 of 56?

18 MR. MCNEELY: Uh-huh. The
19 ground floor floor plan.

20 MS. WHITE: Yeah. What are
21 you --

22 MS. HATCHER: There is a box --

23 MS. WHITE: Oh, the box.

24 MR. MCNEELY: Yeah. What I'm
25 assuming is what the mechanical unit is.

1 MS. WHITE: HVAC slash -- God,
2 I can't read this on here.

3 MR. ELDRIDGE: That's a
4 question you might want to reserve for
5 Mr. Piper.

6 MS. WHITE: Yeah. I'm sure he
7 can --

8 MR. MCNEELY: Okay.

9 MS. WHITE: -- I can pull it up
10 on my computer and see. Oh, pool
11 equipment. Yeah. HVAC, pool. It's
12 just -- I think it's just listing what's
13 in that. That's -- that would be --
14 that's where the mechanical equipment
15 is, in that line. So I -- I can't read
16 it all.

17 MR. NADEAU: So that's where
18 it's located?

19 MS. WHITE: Yes, that's where
20 it's located.

21 MR. NADEAU: But the setback's
22 not shown in that drawing?

23 MS. WHITE: No. That's what
24 the site plan --

25 MR. ELDRIDGE: Can you point us

1 to the site plan, please?

2 MR. MCNEELY: Page 26.

3 MR. ELDRIDGE: Would that be
4 the agenda packet number or the
5 agenda --

6 MS. WHITE: Yes, it's page 26.

7 MS. HATCHER: It goes --

8 MS. WHITE: So the site plan is
9 -- was -- is always the plan that shows
10 the setbacks on it. So that -- that's
11 the little one all the way to the
12 right-hand side. So that shows -- the
13 dotted line is the setback line.

14 MR. MCNEELY: But I guess my
15 question is, within that drawing, if
16 we're talking page 9, that could be a
17 sidewalk, it could be a driveway, it
18 could be a pad. I mean, there's nothing
19 that describes what it is on that plan,
20 is there?

21 MS. WHITE: Well, then when you
22 -- because when you look at the
23 architectural drawings on the ground
24 floor and the drawing next to it, it
25 identifies what that box is. Which,

1 again, is small writing.

2 MS. CHASE: Are you talking
3 about the S29? I can read it, if you
4 need it.

5 MS. WHITE: Thank you.

6 MS. CHASE: It says -- it says,
7 HVAC/pool equipment platform.

8 MR. NADEAU: I think for me,
9 it's, you know, what -- what are you --
10 is this typical? In other words, you
11 would approve this? That gives you the
12 information that you need, you would
13 have known this, and you would have --
14 you would have approved this as it is,
15 or you would have said, hold on, no,
16 there's that line there, that's -- what
17 is that? And I'll go back and look or
18 -- is this -- is this typical of what
19 you would get?

20 MS. WHITE: I mean, yeah, we
21 see this all the time. The protocol
22 would be to -- I would call Todd and be
23 like, Todd, read your plans. And the
24 HVAC is in the setback and it can't be
25 in the setback, according to our code.

1 He would submit drawings or something
2 different showing --

3 MR. NADEAU: Okay.

4 MS. WHITE: Yeah. We would --
5 we would wait to get drawings that --
6 that comply to our ordinances before we
7 would issue the permit. That's the
8 protocol.

9 MR. NADEAU: Okay. And when
10 you went out there in August, what was
11 on that spot?

12 MS. WHITE: The hookups for the
13 HVAC equipment.

14 MR. NADEAU: It was already
15 installed?

16 MS. WHITE: It's -- yeah.
17 There's like holes with the wires on the
18 wall.

19 MR. NADEAU: Got it.

20 MS. HATCHER: And that's when
21 you said, I think there's an issue?

22 MS. WHITE: Well, like I said,
23 it was brought to my attention prior to
24 that. And then I went out there to --
25 to examine it so that we could make

1 sure.

2 MR. NADEAU: Any -- has it ever
3 happened to you before? Any precedent?

4 MR. MCNEELY: Yeah.

5 MR. NADEAU: I don't know if
6 that --

7 MS. WHITE: Yeah. We --

8 MR. NADEAU: -- until an
9 attorney gets concerned and asks that
10 question. I'm -- I'm just curious to
11 know if there's any precedent for this
12 before?

13 MS. WHITE: You mean in -- in
14 the equipment being in the setback?

15 MR. NADEAU: Where a -- there's
16 been an approval, and yet it appears
17 that what was depicted on the drawing
18 was not quite in compliance with the
19 Town Code.

20 MS. WHITE: I mean, I -- I
21 honestly haven't run into anything
22 specifically like this before, but I'm
23 sure there is.

24 MR. ELDRIDGE: I think in
25 quasi-judicial proceedings, the

1 precedent is not necessarily binding.

2 MR. NADEAU: It's not binding.

3 MR. MCNEELY: So there is no
4 precedent binding. Okay.

5 MR. NADEAU: Okay. Well, I
6 think we can come back to you if we have
7 more questions. Anybody has other
8 questions right now, maybe we could hear
9 from the appellant. Thank you, Bethany.

10 MR. MCNEELY: I -- I do have
11 one more question. What -- what if you
12 run across a situation where the
13 wiring's not installed properly but per
14 the drawings and it's not per code, what
15 do you do then?

16 MS. WHITE: The wiring?

17 MR. MCNEELY: Just -- I just
18 picked the wiring.

19 MS. WHITE: Oh, I'm --

20 MR. MCNEELY: If something else
21 is -- is -- is drawn properly -- is
22 drawn improperly but it still doesn't
23 meet code, how do we deal with that?

24 MS. WHITE: You mean in the
25 plan review process or --

1 MR. MCNEELY: No. Just if it's
2 not caught in the plan review?

3 MS. WHITE: Well, we would --
4 if it -- if it was not up to code, then
5 they wouldn't pass the current
6 inspection -- whatever I was doing
7 wouldn't past the inspection. So they'd
8 say, you have to bring this up to code.

9 MR. MCNEELY: Okay

10 MS. LEE: Good evening, members
11 of the Board of Adjustment. My name's
12 Corrie Lee, C-o-r-r-i-e L-e-e. I'm an
13 attorney here in Wilmington. I
14 represent the applicant. Thank you for
15 being here this evening. I'm squinting
16 at you, it's because I don't have my
17 contacts in, not because I'm curious.
18 Although I do want to certainly answer
19 your questions. Thank you for being
20 here. And if at any point you have any
21 questions that I can answer or Mr. Piper
22 can answer, please do feel free to stop
23 me.

24 As staff pointed out, the
25 matter that we're here for this evening

1 is a building permit that was issued by
2 a previous building inspector. And it
3 was issued in January of this year.
4 Which did show -- the plans did show
5 that the mechanical platform for the
6 HVAC and pool equipment was to be within
7 the 5 foot setback. That structure has
8 since been substantially completed in
9 compliance with those approved plans,
10 including all of the electrical and
11 mechanical work that goes into feeding
12 HVAC units that would be on the side of
13 the property within the entirety of the
14 structure itself.

15 As staff mentioned and as
16 Mr. Piper mentioned earlier, it was
17 discovered later by one of Mr. Piper's
18 contractors that the HVAC platform was
19 going to be within the 5 foot setback.
20 And Mr. Piper quickly called that out to
21 the Town of Kure Beach to try to rectify
22 it.

23 I will point out -- and
24 certainly your attorney can speak to
25 this -- the matter that you're here for

1 this evening is an appeal, an
2 administrative decision. The request
3 that we have is the granting of a
4 variance, as our relief. And I'm going
5 to go through with you how to satisfy
6 those four criteria, as well as the
7 facts that show that we do satisfy the
8 criteria for the granting of the
9 variance, in hopes that this Board will
10 be inclined to grant variance to our
11 client, given that they have built this
12 structure and it would be a significant
13 hardship for them to tear down a good
14 portion of what they've done when they
15 have tried to comply with faith of the
16 requirements of the Town of Kure Beach's
17 code.

18 The request that we have for
19 you this evening is relating to Section
20 15.20.03(a)(4) of the Town of Kure
21 Beach's Code, which does require 5 foot
22 side setbacks. And our request is a
23 waiver as it relates to the HVAC
24 platform. So not a waiver of the entire
25 site setback but simply a waiver as it

1 relates to that platform itself being
2 able to encroach into the setback
3 itself.

4 The variance criteria that are
5 statutorily required in order for you to
6 grant a variance, there are four: It is
7 that there is an unnecessary hardship
8 that would result from the strict
9 application of the ordinance; that there
10 are peculiar conditions that give rise
11 to the granting of the variance; that it
12 is not self-created; and that
13 substantial justice would be achieved;
14 and that the spirit, purpose, and intent
15 of the ordinance would be achieved by
16 the granting of the variance.

17 Looking to satisfying those
18 criteria in this specific case,
19 discussing these three criteria together
20 makes the most sense, simply because
21 they all do tie intimately together, as
22 you've heard staff and Mr. Piper already
23 state. There is an unnecessary hardship
24 that would result from the strict
25 application of the ordinance. Simply

1 put, our client has put significant time
2 and effort into building the structure
3 in compliance with the approved plans,
4 and they would be needlessly tearing out
5 essentially all of that mechanical work
6 in order to move the structure to the
7 other side of the house. Mr. Piper can
8 speak to where the relocation would be
9 required to be. But esthetically, it
10 would be in a significantly different
11 place, and it would look much different
12 when it comes to the Town of Kure
13 Beach's desire for the general scene of
14 development.

15 We had a lot of conversations
16 this evening about what it looks like.
17 Here is an image for your consideration
18 that shows the current, as of today,
19 actually, status of the property. As
20 you can see, the HVAC units have been
21 stubbed out, for lack of a better term.
22 All of the mechanical and ductwork
23 equipment that's required in order to
24 actually have running systems has been
25 filtered through the entire house and is

1 currently stubbed out to the side of the
2 property. This property abuts a public
3 right-of-way on two faces, and so this
4 was the only real place that it could be
5 put and -- and be hidden. So that was
6 part of the rationale.

7 I'm glad to bring my laptop up
8 there to show you, if it would be
9 easier, and if you need that.

10 MR. NADEAU: Would that -- and
11 just to confirm, it's there on the left
12 next to the greenhouse?

13 MS. LEE: Yes, sir. For the
14 record, I'm going to be pointing to the
15 side of the house where the stub outs
16 show.

17 MR. NADEAU: It's on your right
18 there.

19 MR. MCNEELY: Yeah.

20 MR. NADEAU: Right there.

21 MS. HATCHER: Oh, hey, I'm
22 looking at the wrong one.

23 MR. MCNEELY: So I guess, when
24 the platform's built, how much room's
25 going to be between the platform and the

1 fence?

2 MS. LEE: How much room will be
3 between the platform and the fence?

4 MR. MCNEELY: Uh-huh.

5 MS. LEE: I believe it's 2-1/2
6 feet. And the entire distance between
7 the houses in total will be 12 feet,
8 which would exceed -- if you have a 5
9 foot and 5 foot setback, would be 10.
10 But even if this were to encroach into
11 the setback on my client's property, it
12 would still exceed what a minimum
13 setback of where those building were
14 built would be -- intent to be.

15 And Mr. Piper, I'm sure, is
16 glad to answer more questions to that
17 effect as well.

18 As to the peculiarity, I'm
19 going to show you -- I know we've had
20 lots of conversations about where is
21 this showing up on our site plans. And
22 I want to make sure it's clear for the
23 Board, this was on the approved plan.
24 That is certainly a peculiar situation
25 to have. I have represented multiple

1 governments and clients alike in land
2 development matters, and I can say
3 certainly it's -- it's uncommon and
4 peculiar to have approved plans that
5 allow or at least reflect an ability to
6 build within a setback. And I want to
7 go one more photo so you can see it very
8 clearly. The HVAC platform very clearly
9 on that drawing is within the setback as
10 delineated on the site plan that was
11 submitted to the Town of Kure Beach in
12 January of this year.

13 MR. ELDRIDGE: Ms. Lee.

14 MS. LEE: Yes, sir.

15 MR. ELDRIDGE: Is it possible
16 at some point that you could pinpoint
17 that document within Exhibit 3?

18 MS. LEE: Yes, sir. Certainly.
19 So to pinpoint that document within the
20 report, it's sheet A-1. It's 9 within
21 your packet. And I just simply
22 screenshotted it, put it in my
23 presentation, and highlighted it.

24 MR. ELDRIDGE: That's page 9 of
25 the exhibit?

1 MS. LEE: Yes, sir.

2 MR. ELDRIDGE: All right.

3 That's very helpful. Thank you.

4 MS. LEE: Yes, sir. As to the
5 actions of the applicant when we look at
6 the granting of a variance, our client
7 submitted these plans, as Mr. Piper
8 stated, in good faith and in an effort
9 to comply with Town of Kure Beach's Code
10 of Ordinances and in a belief that the
11 building inspector would review them in
12 full and let him know if there were any
13 modifications that needed to be made in
14 order to come into compliance.

15 I have included the e-mail that
16 was sent to Mr. Piper indicating that
17 the mechanical platform being in a
18 setback was included as part of that
19 site plan. And that is within your
20 exhibits as well. There is a series of
21 e-mails, and I'm glad to call that out
22 for you as well. That is going to be on
23 page 25 of the Record of Decision.

24 MR. ELDRIDGE: Thank you.

25 MS. LEE: Yes, sir. The last

1 criteria that we're really concerned
2 with in this context of the granting of
3 the variance is that the spirit and
4 intent of an ordinance is satisfied and
5 that public safety security and
6 substantial justice is achieved. When
7 you're looking at the spirit and intent
8 of an ordinance, the purpose of setbacks
9 is typically to ensure a common scheme
10 of development within an area, in this
11 case the RA-3, and to ensure public
12 safety. As I mentioned, if both
13 properties had been built according to
14 the minimum setbacks, there would be a
15 10 foot separation. And in this case,
16 even with the granting of the variance,
17 my understanding -- and Mr. Piper will
18 ensure that I'm -- I'm correct on this
19 -- the separation is 12 feet of those
20 buildings.

21 And when we're talking about
22 substantial justice, it would be just
23 for our client to be able to continue
24 the building that they put so much time
25 and effort into; that they have built,

1 again, in compliance with those approved
2 plans; and to allow them to continue to
3 do so so that they don't have to
4 relocate it and put the HVAC unit in an
5 area that would be certainly much uglier
6 -- and Mr. Piper can speak to that --
7 but also would cost a significant amount
8 of money and a significant amount of
9 time to accomplish.

10 MR. MCNEELY: But I guess
11 what's to keep the property that you
12 keep referring to that's -- will be 12
13 feet, keep them from building up to
14 their setback so that there's less than
15 12 feet between the two units?

16 MS. LEE: Hypothetically, there
17 would be nothing. But at this present
18 time, the separation is 12 and a half
19 feet. And to that point, we do have a
20 signed letter from the adjacent property
21 owner -- that I have included in my
22 presentation -- stating -- and it looks
23 like it blacked the signature out, but
24 it is a signed letter in -- in my
25 presentation -- I'm glad to give you

1 guys a copy of that -- stating that he
2 does not object and that his HVAC unit
3 is on this side as well, and that he is
4 fine with the variance being granted.

5 MR. ELDRIDGE: Chairman, one
6 question. Ms. Lee, are you saying that
7 if the mechanical platform goes where
8 it's now presently indicated, there will
9 be 12 feet of separation between the
10 structures?

11 MS. LEE: That's my
12 understanding. But I would ask that
13 Mr. Piper clarify and confirm that fact.

14 MR. ELDRIDGE: Thank you.

15 MS. LEE: Yes, sir. In
16 summary, looking at the factors that go
17 into play with the granting of a
18 variance, we would ascertain that we
19 have met those criteria; that we do have
20 an unnecessary hardship, certainly a
21 peculiar situation that our client did
22 not create this hardship. They had
23 rather intended to comply at every
24 juncture. And that the spirit and
25 intent and substantial justice would

1 warrant the granting of a variance. If
2 the Board has any questions, I'm glad to
3 answer them, and I also welcome
4 Mr. Piper's comments and testimony as
5 well.

6 MR. NADEAU: Any questions?

7 MR. MCNEELY: No questions,
8 sir.

9 MS. LEE: No questions. Thank
10 you. I appreciate it.

11 MR. NADEAU: Thank you.

12 MS. CHASE: Can you make sure
13 to send us a copy of that presentation?

14 MS. LEE: Yeah. I -- I will
15 send you a copy. And at this point, I
16 would also like to move that my
17 presentation be admitted into the record
18 as evidence.

19 MS. CHASE: Thank you.

20 MR. ELDRIDGE: What number
21 would that be?

22 MS. CHASE: That would be 10.

23 MR. ELDRIDGE: 10. Thank you.

24 MS. LEE: Thank you.

25 MR. NADEAU: All right. Do we

1 have any other --

2 MR. ELDRIDGE: Chairman, let me
3 follow up, please.

4 MR. NADEAU: Yes, sir.

5 MR. ELDRIDGE: C-o-r-r-i-e
6 L-e-e?

7 MS. LEE: Correct.

8 MR. ELDRIDGE: Thank you.

9 MS. LEE: Thank you.

10 MR. NADEAU: Do we have any
11 other folks here tonight that are going
12 to offer any --

13 MR. PIPER: I mean, I'd like to
14 speak a little bit.

15 MR. NADEAU: Sure. Come on up,
16 sir.

17 MR. PIPER: Okay. So my name's
18 Todd Piper. I own Tidal Wave
19 Construction. So these are the plans.
20 Unfortunately they're -- they're hard to
21 read. But I've been a general
22 contractor for close to two decades now
23 at this point. And part of my plan
24 submittals is always in this order,
25 okay. Because I want the site plan on

1 the same page as the architectural
2 plans. It's critical for me for this,
3 because it allows whoever's reviewing
4 the plans to kind of understand the
5 scheme and the scope of the building.

6 Unfortunately the site plan a
7 lot of times, you know -- a lot -- a lot
8 of times it may not have the proper
9 labeling of like stairways and egress
10 and things like that; where egress goes
11 to if it's a commercial property, where
12 egress is on a residential property. So
13 this would be typical. All the -- all
14 the setbacks, the lot lines are
15 included. It does show the HVAC
16 platform. It's labeled on this part as
17 well.

18 I went through all my e-mails
19 as well to Mr. Batson to see if he had
20 corresponded with me or anything to
21 that. I redoubled my efforts. I didn't
22 have any e-mails from Mr. Batson in
23 regards to that.

24 We talk about -- if we can go
25 back to the photo -- can we go back to

1 your presentation of the photo? So,
2 yes, so that photo right here. So
3 currently the platform would technically
4 be somewhere around 28 inches. We're
5 going to make it as small as -- as small
6 as possible. In addition, my clients
7 have chose to use smaller air
8 handlers -- compressors to limit the
9 size of it. I do need to have the
10 ability for technicians to work on the
11 units as well. So from this -- from the
12 units over, we will have 12 feet from
13 the units themselves to the structure
14 over here. In regards to this customer,
15 you know, extending his house or
16 something, moving to the setback line,
17 while hypothetically that's possible, he
18 has just invested a lot of money in
19 pavers and fences and he's updated his
20 property considerably in regards to
21 that.

22 So when I met Ms. White on site
23 on August 31st, all of this work here
24 had been completed. So as soon as we
25 discovered that there may be some issue

1 with the setback, unfortunately all the
2 mechanical work at that time had already
3 been completed. So it was all done like
4 at that point. It would be a
5 substantial effort to move the equipment
6 to any other location in the house. It
7 has to do with the engineering more than
8 anything. Because when that equipment
9 is run, it's critical we have
10 load-bearing beams. And by code, we're
11 not allowed to drill holes and put pipes
12 through those beams. So it's quite a
13 task when you decide where it goes.

14 One of the other questions I
15 think Mr. McNeely had is about, if
16 something was drawn, you know, how would
17 it be approved. So all of that's
18 controlled essentially by safety -- by
19 building code and safety. So if
20 something's drawn and it doesn't meet
21 building code, unless it's signed off by
22 an architect or a structural engineer,
23 then it defaults to building code. I've
24 seen things that are signed off by an
25 engineer that are different than

1 building code, but they had a certain
2 reason why they had done the engineering
3 the way they had done it.

4 In this situation, it's
5 unfortunate -- I do provide -- on the
6 building plan, I do provide every bit of
7 information I can because every -- every
8 municipality is a little bit different.
9 Whether it's cantilever area into a
10 setback, whether it's building in a
11 setback, it seems like every area has
12 their own little architectural
13 requirements to keep the spirit of the
14 community. So I had no intent of
15 creating this hardship for my customer.
16 And as soon as I found out about it, I
17 immediately contacted Bethany about it.

18 MR. MCNEELY: Okay. So help me
19 there a little bit. You make sure that
20 you check all the cantilevers and areas.
21 But when you go to our definitions, it's
22 pretty clear of what our setbacks are.
23 Did you not go to that detail to look at
24 our --

25 MR. PIPER: I --

1 MR. MCNEELY: -- setbacks?

2 MR. PIPER: I make sure they're
3 proper on the plans. Like I -- I make
4 sure that that -- that is all proper.
5 Like -- so if you were to have a
6 cantilever on -- if you were to have a
7 cantilever, like how many inches in it.
8 The Town of Kure -- Carolina Beach, it's
9 18 inches.

10 MR. MCNEELY: But here again,
11 the structure's --

12 MS. HATCHER: You're not in
13 Carolina Beach.

14 MR. MCNEELY: -- not shown on
15 your plans.

16 MR. PIPER: Right. Right.

17 MR. MCNEELY: Yeah.

18 MR. PIPER: What I'm saying is,
19 when I provide plans, I try and make
20 sure everything that's on this plan is
21 what I'm building, where the AC units
22 are going, where the cantilevers are
23 going. I do not read through -- I am
24 not --

25 MR. MCNEELY: No, no. I'm just

1 saying, why would you not show on any of
2 your elevations at all where they --
3 they're going?

4 MR. PIPER: Typically --
5 typically you never show the -- the
6 outdoor equipment on your elevations.
7 The -- the -- the elevate -- the -- your
8 outdoor equipment is always shown in
9 your overhead. And the majority of most
10 building permits don't even show the --
11 most builders don't show where the
12 outdoor equipment's going to be.

13 MS. HATCHER: I built a
14 house --

15 MR. PIPER: Uh-huh.

16 MS. HATCHER: -- in Kure Beach.

17 MR. PIPER: Uh-huh.

18 MS. HATCHER: So you're talking
19 to somebody that actually went through
20 the pain of redesigning my home because
21 of the setback, and the AC unit, and the
22 propane tank. I had to redesign my
23 entire corner of my -- of the home. So
24 my builder knew --

25 MR. PIPER: Well, I --

1 MS. HATCHER: -- because he's
2 like I can't do that because of the
3 setback --

4 MR. PIPER: I would have been
5 happy --

6 MS. HATCHER: -- we can't do
7 that.

8 MR. PIPER: I would have have
9 been happy to make any changes required.
10 I mean, I -- I'm -- I -- you know, I --
11 I -- I didn't -- you know -- I mean, I
12 showed it on the plans, and I requested
13 plan review.

14 MS. HATCHER: Yeah.

15 MR. PIPER: I -- I mean, I
16 don't --

17 MS. HATCHER: Well, if I'm a
18 builder and I see that, I can tell you
19 you -- you guys have decided to go to a
20 smaller unit. Not because it was a --
21 something that you had planned for, but
22 you're wanting to go to a smaller unit
23 to make it fit now.

24 MR. PIPER: No. We're -- we're
25 just trying to do the best we can to

1 comply with it. I mean, any -- any unit
2 would fit there and it would be
3 serviceable. The service panel's on the
4 south side of the unit, so they can
5 service it. We're just doing everything
6 we can to try and comply. We -- we've
7 explored -- I spoke to Bethany, and we
8 explored like could we cantilever, could
9 we raise them up like off the ground and
10 try and cantilever.

11 MS. HATCHER: Uh-huh.

12 MR. PIPER: It's -- except
13 we're not -- it's only allowed on the 10
14 foot side setback. So it doesn't work
15 on this side. I mean, if it had been
16 caught in plan review, we would have
17 made the modifications.

18 I -- I mean, I -- I don't know.
19 I mean, you know, if it was caught in
20 plan review, we would have been happy to
21 make any changes.

22 MS. HATCHER: Two wrongs don't
23 make a right. It was -- I would still
24 think the -- the burden should fall upon
25 you because you've done this before.

1 These people are innocent. They don't
2 -- they don't know what this is going to
3 look like. But as a builder, you go out
4 there and you walk that -- that -- that
5 plot of land, and even when it's staked
6 out, you know that's something's going
7 on outside of those pins.

8 MR. MCNEELY: Yeah. I -- I
9 mean, I -- I struggle with the fact that
10 you keep saying it's the Town of Kure
11 Beach's fault that you designed properly
12 -- you designed it improperly and
13 submitted something that doesn't meet
14 our codes. Yet you're throwing it at
15 the Town to say it's their fault because
16 they might have missed something. That
17 happens all the time in plan reviews,
18 and local building inspectors catch it.
19 And it doesn't mean that it's -- it's
20 right that it's put -- it's not caught
21 in plan review. Not everything is
22 always caught in plan review. It can't
23 be. It's impossible. I mean, if you
24 knew this was a variance, you could have
25 clouded it and made sure that they knew

1 this was a variance. But I -- I -- I
2 just -- I don't -- I don't understand
3 that it's the Town's fault that you
4 designed a property that did not meet
5 the code and zoning?

6 MS. HATCHER: I have another
7 question. What about the overhang?
8 Where's the overhang on this -- the --
9 on the top of the -- three-story house;
10 right?

11 MR. PIPER: Uh-huh.

12 MS. HATCHER: How far overhang
13 do you have?

14 THE COURT REPORTER: I'm sorry,
15 ma'am. Can I get a yes for that answer?
16 You said uh-huh. Can you say yes or no?

17 MR. PIPER: Yes. Yes. The
18 overhang?

19 MS. HATCHER: Yeah. I -- I
20 can't see the top of the diagram.

21 MR. PIPER: An 11 inch
22 overhang, ma'am.

23 MS. HATCHER: A 9 inch?

24 MR. PIPER: 11 inch, I believe.

25 MR. MCNEELY: The roof?

1 MR. PIPER: I -- I don't know.
2 I would have -- I would have have to use
3 a scale and measure it. If you're
4 asking for a specific number, I don't
5 know off the top of my head.

6 MS. HATCHER: Well, because the
7 -- we have -- those -- those are
8 actually part of the building codes
9 also, so...

10 MS. WHITE: Yeah. The overhang
11 can -- that can encroach 18 inches into
12 the setback. Any architectural features
13 can encroach 18 inches into the side
14 setback.

15 MR. PIPER: I believe it's 11
16 inches. 12 inch soffit with an 11 inch
17 -- with a 1 inch board around.

18 MS. HATCHER: Yeah.

19 MR. NADEAU: But there's no
20 noncompliance related to that though;
21 correct?

22 MS. WHITE: No. There's --

23 MR. NADEAU: No, no. Okay.

24 MS. HATCHER: Well, I was just
25 curious, just because I didn't see the

1 rest of the -- the diagram.

2 MR. MCNEELY: So if this
3 cantilever thing was not built off the
4 ground, it would still not meet zoning?

5 MS. WHITE: Yeah. We talked
6 about the cantilever. And, I mean, it
7 would -- it still would not meet that
8 setback on the side.

9 MR. PIPER: The cantilever had
10 -- it had to be on the 10 foot side.
11 Had to be on the other side; right?

12 MS. WHITE: Yeah.

13 MR. PIPER: You can --

14 MS. WHITE: You can put it --
15 you can put it on the -- it just -- it
16 still wouldn't meet the setback, so it
17 wouldn't -- I mean --

18 MR. MCNEELY: Is that because
19 it's too --

20 MS. WHITE: -- a cantilever --

21 MR. MCNEELY: -- it's still too
22 wide?

23 MS. WHITE: -- is considered an
24 architectural feature. So, again, it
25 can extend further into the setback.

1 But it still wouldn't meet that. So we
2 -- the -- the effort of doing that would
3 make no sense.

4 MR. PIPER: We tried. I
5 mean --

6 MS. WHITE: We -- we did talk
7 about it.

8 MR. PIPER: Yeah. And --

9 MR. SELIG: I just --
10 Mr. Piper, I -- I -- I had a -- a
11 building done, too, and he made it
12 clear, the contractor, when the -- now
13 this was a little different than this,
14 but made it real clear, 10 feet, not 10
15 feet 1 inch --

16 MR. PIPER: Right.

17 MR. SELIG: -- 10 feet. So I
18 -- I knew when we placed the air
19 conditioner right where it had to go,
20 because he knew.

21 MR. PIPER: I -- I -- you know,
22 the setbacks are the setbacks. I mean,
23 it's -- it's a mistake. I mean, you
24 know, in the future, yes, I would know.
25 But, again, I mean, my point is -- is,

1 it was just a mistake that was made. If
2 -- if the site plan did not show the
3 HVAC platform, if it did not show
4 that -- it's -- it's just a -- it's a --
5 it -- it -- there's just a lot of
6 mistakes that were made.

7 You know, as soon as we
8 discovered it, we -- we -- you know, we
9 contacted Bethany. You know, there --
10 there was no desire to -- to try and
11 fool anybody.

12 MR. NADEAU: So that's -- and
13 -- and so what's transpired since August
14 27th? There's been no further work in
15 that area. You've simply been waiting
16 to have this hearing?

17 MR. PIPER: Yes, sir. Yes,
18 sir. So we worked with Bethany, and we
19 tried to determine if we could
20 cantilever something. We explored other
21 options. We explored different air
22 conditioning units, everything we could
23 do. And the final determination was
24 there was -- there was nothing we could
25 do.

1 MR. MCNEELY: And -- and help
2 me, Bethany. The 10 foot rear setback,
3 if they were moved around to the rear,
4 would be for --

5 MS. WHITE: If I'm -- I believe
6 that the -- the structure sets the 10
7 foot setback. Am I right, Todd?

8 MR. PIPER: If -- if the 10 --
9 and the rear, they don't do work either.

10 MS. WHITE: Yeah. I don't
11 think there was --

12 MR. PIPER: Had we known in the
13 beginning, we would have made some
14 adjustments and put them somewhere else.
15 We would have put them in the rear.

16 MR. MCNEELY: But I thought you
17 could do a platform in the rear that's
18 not as bad; right? I'm trying to --

19 MS. HATCHER: Find a solution.

20 MR. MCNEELY: -- I'm trying to
21 look for a solution.

22 MS. HATCHER: That's on the
23 document that I believe Mr. Piper --

24 MR. NADEAU: You made
25 reference --

1 MS. HATCHER: -- the
2 application for an appeal --

3 MR. NADEAU: You made reference
4 to an exception, Bethany, exception F
5 about structure serving required a 10
6 foot yard of a corner lot. We're not
7 talking about corner lot here; correct?

8 MS. WHITE: We --

9 MR. MCNEELY: It is actually.

10 MS. WHITE: It is a corner lot.

11 MR. NADEAU: It is a corner
12 lot?

13 MR. MCNEELY: Right, yes.

14 MS. WHITE: Yeah. Yeah. That
15 -- that is the only exception to
16 equipment. So it's on that corner lot
17 side with the 10 foot setback, it's
18 allowed to have a 5 foot setback on
19 there as well.

20 MS. HATCHER: You've noted in
21 here that there's other properties in
22 Kure Beach that have similar
23 arrangements establishing a precedent.
24 Do you have anything to show us for
25 that?

1 MR. PIPER: Well --

2 MS. HATCHER: Any examples?

3 MR. PIPER: I think he said we
4 couldn't use precedents. But 435 Fort
5 Fisher Boulevard South, the units -- the
6 units are actually touching at -- at
7 that. They're within 6 inches. And I
8 believe Mr. Deering, so --

9 MR. DEERING: Yeah. I probably
10 have a picture on my phone of that.

11 MS. HATCHER: And that was
12 approved? But -- I mean, did they --

13 MR. DEERING: We don't know
14 that.

15 MR. PIPER: We don't -- we
16 don't know.

17 MS. HATCHER: I mean -- right.

18 MR. PIPER: Like I -- I don't
19 know.

20 MR. DEERING: There's lots of
21 -- I don't know if I can testify. But
22 there's lots of AC units in -- in the
23 setback on -- in this town.

24 MS. HATCHER: Okay. Something
25 prior to --

1 MR. PIPER: Yeah.

2 MS. HATCHER: -- older homes.

3 I know a lot of the older homes here
4 don't take up all the buildable space.
5 They have yards and, you know, greenery
6 and plantings and it's not from every
7 build line to build line. So the -- the
8 thing that I'm thinking about is when
9 all of these little small cottages are
10 torn down and these are put up, these
11 three-story -- excuse me -- building
12 from corner to corner from the build
13 line and, oops, we forgot to put the --
14 the pool equipment in. Oops, we forgot
15 -- we -- we weren't thinking about the
16 AC unit. I mean, what is it going to
17 look like --

18 MR. PIPER: I mean --

19 MS. HATCHER: -- 10 years down
20 the road, 20 years down the road?

21 MR. PIPER: I think this is --
22 I -- I -- I think this is -- I -- I -- I
23 don't see -- think you'll ever see this
24 again. I mean, I -- I think that
25 Bethany definitely wouldn't ever grant

1 something like this. And I don't think
2 John -- I -- I don't know if John ever
3 granted something like this. I think
4 this was just a one-time mistake. I
5 don't know of any other builder whose
6 had something shown on the site plan --
7 shown on the building plan that's came
8 before you. I -- I've heard of other
9 builders and homeowners build something
10 that wasn't on the blueprints that --
11 then they get to the final and they
12 said, oh, we just didn't realize it. We
13 bumped this out and we made this change
14 and nobody realized it until we got to
15 the end. I mean, I've seen that at
16 other Board of Adjuster meetings.

17 MR. MCNEELY: The -- the window
18 that's there --

19 MR. PIPER: Yes, sir.

20 MR. MCNEELY: -- where's that
21 at on the elevation? On -- which window
22 is that along with the --

23 MR. PIPER: So that would be --
24 can we go to the elevations?

25 MS. LEE: Uh-huh.

1 MR. MCNEELY: Yeah. Right
2 there. Just show me which window that
3 is.

4 MR. PIPER: So that would be
5 this window right here, sir, in the
6 bathroom.

7 MR. NADEAU: That's the
8 bathroom window.

9 MR. MCNEELY: So it appears
10 that the units -- and here again, it's
11 just a picture -- aren't within the pad
12 either.

13 MS. HATCHER: Huh-uh.

14 MR. MCNEELY: It appears the
15 units are all the way down the length of
16 the house or at least halfway down the
17 length of the house and not confined to
18 the mechanical pad.

19 MR. PIPER: It -- it has to do
20 with the -- the way the photo is taken.

21 MR. MCNEELY: So you're saying
22 that those are all stubbed out within
23 the -- that distance of that mechanical
24 pad that's drawn there?

25 MR. PIPER: Yes, sir. I -- I

1 -- I mean, it has to do with the way the
2 photo was taken. But --

3 MS. HATCHER: Okay.

4 MR. PIPER: -- whatever the
5 size of that platform is is the -- the
6 area that we're going to occupy with air
7 conditioning units. I think it's 12
8 feet, something like that. 7, 8 -- so
9 it's 7 from the hash to hash. So this
10 area's 7 feet, and I believe that's 4
11 feet right there.

12 MR. MCNEELY: So that
13 platform's how big? 4 feet?

14 MR. PIPER: No. The platform's
15 12 feet by 30 inches.

16 MR. MCNEELY: Okay.

17 MR. PIPER: And we had
18 discussed with Bethany if we made the
19 platform as small as possible, if --
20 with --

21 MR. MCNEELY: Go back to that
22 picture, please.

23 MR. PIPER: -- with
24 cantilevering it, if -- if it would
25 still be -- I'm looking for the right

1 words. If -- we would still be in
2 violation if the units themselves were
3 off the edge of the platform. If we
4 could make the platform in compliance,
5 if -- if the units themselves were off
6 the platform, and she said we would
7 still be out of compliance.

8 MR. ELDRIDGE: May I interrupt
9 for a minute. I want to make sure the
10 focus of this hearing is on point.
11 We've got an appeal that is seeking a
12 variance. If you use the variance
13 provisions in the general statutes and
14 in the code as -- as a guidepost for
15 this appeal -- this -- this is a unique
16 situation, it's an appeal, and the
17 relief requested from -- it's an appeal
18 of the decision that the mechanical
19 platform is located within the setback
20 area in violation of the code. That's
21 the determination. There is an appeal
22 of that determination. And in that
23 appeal, the relief requested is a
24 variance. If you use -- and for
25 purposes of this hearing, since it was

1 an appeal that was filed, we have
2 provided the code provisions for an
3 appeal. We haven't provided the
4 provisions for a variance. But they
5 were covered in Ms. Lee's presentation.
6 If you use the variance provisions as a
7 guidepost, if somebody comes in and
8 requests a variance from the Board of
9 Adjustment, there's those four things
10 that they have to prove. If they prove
11 those four things by competent materials
12 and substantial evidence, they are
13 entitled to that variance, so much so
14 that if it -- if the variance is
15 erroneously declined or denied, I should
16 say, they can take it to court. And if
17 the court agrees that they have met
18 their burden, the court will order the
19 Board of Adjustment to issue that
20 variance.

21 So it's not a question so much
22 as whether the developer did something
23 wrong or whether John Batson did
24 something wrong. The issue that you
25 have to handle is whether the four

1 conditions of the variance have been
2 met: Is there a hardship; what unique
3 circumstances contributed to that
4 hardship; did the landowner contribute
5 to that hardship; and it -- does the
6 variance requested match the spirit in
7 -- of the ordinance. That's the
8 determination that's in your hands right
9 now. Not whether somebody made a
10 mistake in the drawings, not whether
11 John made a mistake in the drawings. It
12 comes down to those four elements. And
13 if there're met, he's entitled -- the
14 applicant -- the appellants are entitled
15 to the variance. So please keep your
16 focus within the proper context.

17 MR. NADEAU: Thank you. Thank
18 you.

19 MR. PIPER: Okay. Thank you,
20 sir.

21 MR. NADEAU: Any final
22 questions? Thank you -- thank you for
23 that. In the matter of order, I guess
24 I'd ask is there any -- any --

25 MR. ELDRIDGE: Rebuttal.

1 MR. NADEAU: -- rebuttal?

2 Thank you. Any rebuttal? Bethany or --

3 MS. WHITE: I don't have
4 anything else.

5 MR. NADEAU: All right. Did
6 you have anything?

7 MS. LEE: No, thank you.

8 MR. NADEAU: Okay, no. Okay.
9 All right. With that, the Town Attorney
10 has provided us a worksheet that goes
11 through the summary of evidence and
12 findings. We're good to walk through
13 that now?

14 MR. ELDRIDGE: Yes. And during
15 this phase, you're welcome to continue
16 asking questions if you need
17 clarification. The parties are not
18 permitted during this phase -- they've
19 already given their evidence, so there
20 won't be any cross-examinations and all
21 that. But if you're ready, we'll go
22 ahead and walk through the worksheet.

23 MR. NADEAU: That's a good
24 idea.

25 MR. ELDRIDGE: Based on the

1 evidence presented, you have to make
2 findings of fact. We have to -- by
3 code, revision, statute, we have to cite
4 the evidence that supports those
5 findings of facts. And actually, they
6 go into the minutes and into the
7 transcript.

8 So first we're going to
9 identify and summarize the substantive
10 evidence that was presented. And it
11 seems to me that Exhibit 3, the Record
12 of Decision, Exhibit 1 the appellants'
13 -- the appellants' appeal document
14 application, Ms. Lee's presentation --
15 and I would suggest that the letter from
16 the neighbor as --

17 MR. NADEAU: Yeah.

18 MR. ELDRIDGE: -- Exhibit 10
19 also be entered, if you can give that
20 letter to Ms. Chase. I would suggest
21 that the appeal, the presentation, the
22 Record of Decision, and the letter from
23 the neighbor are the substantive -- is a
24 good -- summarizes the substance into
25 evidence that was presented.

1 MR. NADEAU: We don't typically
2 include the testimony?

3 MR. ELDRIDGE: Yes. You're
4 right. I'm not thinking clearly. But
5 that's correct as well. Chairman, I'm
6 going to ask you to summarize briefly
7 what that evidence shows. I don't want
8 to -- that's your function. I'm not
9 saying you got to break it down to what
10 -- which document presented what
11 evidence. Just a nutshell summary of
12 what was -- been presented to the Board
13 tonight.

14 MR. NADEAU: I think in
15 summary, the evidence shows that the
16 appellant filed all the proper -- filed
17 for all proper permits as would -- as
18 normal under -- following the normal
19 procedures. The people involved are
20 experienced. You know, we have a -- a
21 reputable builder who's built in Kure
22 Beach before. Followed normal
23 procedures. Submitted what was
24 required. That underwent review by the
25 Town and was approved with no exceptions

1 noted. They proceeded in good faith to
2 construct the property as was approved.
3 And at some point along the way, someone
4 noticed what appeared to be a possible
5 issue and -- and raised that concern
6 with the Town -- people in the Town. So
7 they got reengaged and confirmed that,
8 in fact, though the drawings and -- were
9 approved, the permit was issued, in
10 fact, there was a discrepancy and did
11 not comply with the setback and the code
12 that the Town has.

13 MR. ELDRIDGE: And you may have
14 mentioned it, but if you didn't, would
15 you add to that summary that the
16 building plan submitted with the permit
17 application did show the mechanical
18 platform within the setback area.

19 MR. NADEAU: Great point.
20 Yeah. It's clear that --

21 MS. HATCHER: Yeah.

22 MR. NADEAU: At least according
23 to the standards and the testimony we
24 heard, what was submitted would be
25 typical. And it did show what would be

1 sufficient to make a determination on
2 whether or not it was compliance with
3 setback.

4 MR. ELDRIDGE: Proceeding with
5 the worksheet. We've got the
6 appellants' name and address, so we're
7 not worried about that. I believe the
8 evidence also will show the appellants'
9 interest in the subject property is as
10 owners. So we're not concerned about
11 that.

12 The decision being appealed
13 from is Ms. White's determination that
14 there is a setback -- noncompliance with
15 the setback requirements.

16 Now we're going to get into the
17 findings where we need a consensus from
18 the board. And we're not talking about
19 voting on each of these findings. We're
20 talking about a consensus. So let's
21 start off.

22 On or about January 9th, 2024,
23 appellants did or did not submit to the
24 Town an application for a building
25 permit?

1 MR. MCNEELY: It did.

2 MS. HATCHER: It did.

3 MR. NADEAU: It did.

4 MR. ELDRIDGE: The application
5 did or did not include architectural
6 plans and engineering plans and the
7 survey or sealed site plan?

8 MS. HATCHER: It did.

9 MR. MCNEELY: It did.

10 MR. NADEAU: It did.

11 MR. ELDRIDGE: The building
12 plans did or did not show the location
13 of the mechanical platform within the
14 setback area?

15 The building plans did or did
16 not show the location of the mechanical
17 platform within the setback area?

18 MR. NADEAU: I say they did,
19 but I --

20 MS. HATCHER: You said HVAC?

21 MR. ELDRIDGE: Well, just think
22 of the testimony --

23 MR. NADEAU: The location of it
24 was shown in the drawing. According to
25 -- when I looked at that drawing, I

1 think again, based on what Bethany has
2 said, that -- that's typical of what
3 would be shown.

4 MR. ELDRIDGE: Well, I think
5 all of the witnesses that testified all
6 indicated that the building plans,
7 included with the permit application,
8 did show the --

9 MR. NADEAU: Yes.

10 MR. ELDRIDGE: -- mechanical
11 platform being located within the
12 setback area. Do you agree?

13 MS. HATCHER: Yes.

14 MR. MCNEELY: Yes.

15 MR. NADEAU: Yes.

16 MR. ELDRIDGE: The building
17 plans were or were not reviewed and
18 approved by the town's former building
19 inspector?

20 MS. HATCHER: They were.

21 MR. NADEAU: Uh-huh.

22 MR. ELDRIDGE: Said building
23 inspector did or did not issue a
24 building permit to the appellants?

25 MS. NADEAU: It did.

1 MR. MCNEELY: It did.

2 MS. HATCHER: It did.

3 MR. ELDRIDGE: Turn the page.

4 Tidal Wave Homes, LLC, Mr. Piper's
5 company, did or did not complete the
6 construction of the residential
7 structure?

8 MS. HATCHER: It did.

9 MR. NADEAU: It did.

10 MR. MCNEELY: It did.

11 MR. ELDRIDGE: The construction
12 of the residential structure was in
13 accordance with the approved building
14 plans; was or was not?

15 MR. NADEAU: It was.

16 MS. HATCHER: It was.

17 MR. MCNEELY: It was.

18 MR. ELDRIDGE: The building
19 inspector's issuance of the building
20 permit was or was not erroneous, since
21 it allowed the placement of the
22 mechanical platform within the setback
23 area which was shown on the building
24 plans?

25 MR. MCNEELY: It was.

1 MR. NADEAU: Yes.

2 MR. ELDRIDGE: The building
3 inspector's issuance of the building
4 permit was or was not erroneous?

5 MS. HATCHER: It was.

6 MR. MCNEELY: It was.

7 MR. ELDRIDGE: You got a
8 consensus on that?

9 MR. NADEAU: I think it was.

10 MR. ELDRIDGE: In essence, did
11 Mr. Batson approve the plans even though
12 it showed a mechanical platform within
13 the setback area?

14 MR. MCNEELY: Yes.

15 MR. NADEAU: It did.

16 MS. HATCHER: It did.

17 MR. NADEAU: I'm a little hung
18 up on since it allowed placement. I
19 mean, it was approved. It's not in
20 compliance, but yet it was approved.

21 MR. ELDRIDGE: Yeah. These
22 findings will be reworded correctly when
23 I do the decision. But they're enough
24 to get us through this.

25 The relief requested by

1 the appellants -- let me -- I'm going to
2 rephrase some of these based on the
3 presentation of the variance to the
4 Board. So number 12 will be, the
5 appellants are seeking a variance as
6 relief in their appeal; correct?

7 MS. HATCHER: Yes.

8 MR. NADEAU: Yes.

9 MR. MCNEELY: Yes.

10 MR. ELDRIDGE: All right.

11 Again, I'm going to reword 13, 14, 15,
12 and 16. So you need to listen to me
13 instead of being able to read it on the
14 document.

15 MS. HATCHER: Okay.

16 MR. ELDRIDGE: Applying the
17 setback requirement to appellants'
18 property will or will not create a
19 unique hardship for the appellants?

20 Applying the setback
21 requirements will or will not create a
22 unique hardship for the appellants?

23 There was testimony about
24 tearing everything out, reengineering it
25 and relocating it, time and money and

1 expenses.

2 MR. MCNEELY: Who is the
3 appellant?

4 MR. ELDRIDGE: The owners of
5 the property.

6 MR. NADEAU: Yeah, the owners.

7 MR. ELDRIDGE: The people who
8 bought the building. Not Mr. Piper, Mr.
9 and Mrs. Derring, who own the property
10 and contracted with Piper -- Tidal Wave
11 to build the structure.

12 MR. MCNEELY: I don't know if
13 we know the answer to that.

14 MR. ELDRIDGE: Based on the
15 testimony that you heard, did you --

16 MR. MCNEELY: But is the
17 builder paying for it or are they paying
18 for it?

19 MS. HATCHER: Right.

20 MR. MCNEELY: I don't know that
21 we know the answer to that.

22 MR. ELDRIDGE: Well, you can --
23 you're -- you're welcome to try to
24 clarify that question to Ms. Lee.

25 MS. LEE: Would you like for me

1 to clarify?

2 MR. MCNEELY: Sure. Yeah.

3 Ms. LEE: The cost would be the
4 Deerings.

5 MS. HATCHER: Would be what?

6 MS. LEE: The Deerings, the
7 owners of the property would be paying
8 the cost. And they would be suffering
9 the additional time and expense
10 associated with the relocation of the
11 units.

12 MR. ELDRIDGE: And the time lag
13 for, you know -- you're talking months
14 to finish the house and relocate the
15 mechanical platform.

16 MR. NADEAU: No doubt. I guess
17 -- I mean, I -- I -- I see it as a
18 hardship. It's the words -- you used
19 the word unique. I think Ms. Lee used
20 the word unnecessary.

21 MR. ELDRIDGE: Well, Ms. Lee's
22 -- I -- she's right, I'm wrong.
23 Unnecessary hardship.

24 MR. NADEAU: Because then
25 what's necessary --

1 MR. ELDRIDGE: It comes into
2 the next element, so. Will the
3 appellants suffer an unnecessary
4 hardship if the setback requirements are
5 enforced?

6 MS. HATCHER: Yes.

7 MR. MCNEELY: Yes.

8 MR. NADEAU: Yes.

9 MR. ELDRIDGE: All right.
10 Good. We got that.

11 Are there or are there not
12 unique circumstances that resulted in
13 the hardship?

14 MR. MCNEELY: I would say yes.

15 MR. NADEAU: Yes.

16 MR. MCNEELY: Yes.

17 MR. ELDRIDGE: And what would
18 that be?

19 MR. NADEAU: I think in this
20 case, we have an error made in the
21 approval, something we don't know why or
22 how but --

23 MR. ELDRIDGE: Mr. Batson's
24 approval of the --

25 MR. NADEAU: Approved the plan

1 despite the fact that it showed it was
2 not in compliance.

3 MR. ELDRIDGE: The unnecessary
4 hardship is or is not the result of the
5 land owner's action or the appellants'
6 actions?

7 MS. HATCHER: I don't think
8 it's --

9 MR. NEELY: It's not.

10 MS. HATCHER: -- it has
11 anything to do with them.

12 MR. ELDRIDGE: It does not.

13 MS. HATCHER: They didn't know
14 this.

15 MR. ELDRIDGE: And is the
16 variance requested by the appellants
17 consistent with the spirit and the
18 intent of the zoning regulations?

19 MS. HATCHER: No.

20 MR. ELDRIDGE: And you --
21 again, you may want to ask Mr. Piper or
22 Ms. Lee to refresh your memories on
23 that.

24 MR. NADEAU: Can you repeat
25 that -- the question, again?

1 MR. MCNEELY: Yeah. What was
2 that question?

3 MR. ELDRIDGE: Are the -- is
4 the variance that's requested by the
5 appellants consistent with the spirit
6 and the Town zoning regulations?

7 MR. NADEAU: And I'd ask for
8 Ms. Lee to refresh my memory on that.

9 MS. LEE: Certainly. When it
10 comes to the applicable zoning district,
11 RA-3, the minimum side setbacks for
12 properties are 5 feet. And when it
13 comes to this property in particular, if
14 they were allowed to have the HVAC
15 platform within the setback, there would
16 still be 12 feet, which is greater than
17 the total minimum setback between two
18 properties.

19 I will also note the additional
20 30 inches would be free on the majority
21 of the property. So it would just be
22 that distance, that 12 feet of the
23 property where that platform is
24 required. They would not be allowed to
25 encroach in other areas of -- of that

1 property.

2 MR. NADEAU: Thank you.

3 MR. ELDRIDGE: I would also
4 turn your attention to the appeal
5 application itself. On page 3, the
6 appellant states as follows, "Will
7 granting the variance maintain the
8 community's aesthetic and functional
9 integrity?" And that's really one of
10 the functions of the Zoning Board, is to
11 maintain aesthetic and functional
12 integrity.

13 The appellants state as
14 follows, "granting the variance is the
15 most appropriate and aesthetically
16 pleasing solution for the community.
17 The only alternative would be to
18 relocate the mechanical units along G
19 Avenue, a prominent public thoroughfare.
20 This would necessitate stacking multiple
21 AC units above each other, creating an
22 unattractive appearance inconsistent
23 with the neighborhood's character. Such
24 an arrangement would detract from the
25 visual harmony of the area and diminish

1 the curb appeal of the property. By
2 maintaining the current configuration,
3 the variance observes the high-quality
4 aesthetic of the home and aligns with
5 the overall standards of the community."

6 Based on that application or
7 that statement by the appellants and
8 based on Ms. Lee's follow-up testimony
9 or -- yeah, testimony -- do you have a
10 consensus that the requested variance is
11 consistent with the spirit and intent of
12 the Town zoning ordinances?

13 MR. NADEAU: I -- I do, based
14 on what they have provided. In
15 addition, I believe that the ordinances
16 are based on -- and there for a reason,
17 of course, but when you have a homeowner
18 or a builder or someone that wants to
19 build a home follow the correct
20 procedures, using competent folks that
21 -- and they submit and they get
22 something back that's approved and they
23 proceed in good faith, to me, if there's
24 no safety issue with what has been
25 approved, then the bar's pretty high in

1 my mind to go and now compel them to do
2 something differently in that -- again,
3 in good faith. They're very
4 transparent, made every effort to engage
5 the Town, didn't try and --

6 MR. ELDRIDGE: And is what
7 they're asking for consistent with our
8 regulations? Regulations of zoning are
9 to provide public safety and promote
10 general welfare and public safety and --
11 and -- something else that I forget.

12 MR. NADEAU: In -- in that
13 sense to --

14 MS. HATCHER: Harmonious.

15 MR. NADEAU: To me, in that
16 sense, I think it is.

17 MR. ELDRIDGE: All right.

18 MR. NADEAU: But I don't want
19 to speak for the others here.

20 MR. MCNEELY: In that sense, I
21 agree.

22 MR. ELDRIDGE: Does everyone
23 agree in that viewpoint? Do you all
24 share in that viewpoint?

25 MR. MCNEELY: I agree.

1 MS. NADEAU: Uh-huh.

2 MS. HATCHER: Yeah.

3 MR. ELDRIDGE: That brings us
4 to conclusions. The appellant does or
5 does not have standing to appeal the
6 administrative decision? They own the
7 property. I think they -- and the code
8 provides for the appeal, so I think they
9 do have standing.

10 Under KBC 12.06.040, the Board
11 is or is not authorized to hear and
12 decide appeals of administrative
13 decisions? You are --

14 MR. MCNEELY: It is.

15 MR. ELDRIDGE: -- and we're
16 here under that authority.

17 Pursuant to KBC 12.06.050.J,
18 the Board is or is not authorized to
19 reverse, affirm, or modify, wholly or
20 partly, the decision appealed by -- it
21 says appealed from --

22 MS. CHASE: Hey, Jim, I hate to
23 interrupt. But have they closed the
24 hearing for this part?

25 MR. ELDRIDGE: They're going to

1 close it after the findings.

2 MS. CHASE: Okay. You have it
3 on the order of business to close it
4 first.

5 MR. NADEAU: That was in the
6 Order of Hearing.

7 MS. CHASE: It says, close the
8 hearing, then conclude with the decision
9 vote.

10 MR. MCNEELY: Yes.

11 MR. ELDRIDGE: Oh, we're at the
12 conclusion. Yeah. Chairman, if you
13 could close the hearing.

14 MR. NADEAU: Okay. I hereby
15 say the hearing's been closed.

16 (HEARING CLOSED.)

17 MR. ELDRIDGE: And let's get
18 back to our conclusions.

19 THE COURT REPORTER: Am I going
20 off the record?

21 MS. CHASE: No.

22 THE COURT REPORTER: Okay.

23 MR. ELDRIDGE: Taking up where
24 I left off. The Board shall make any
25 order, requirement, decision, or

1 determination that ought to be made?

2 You do have that authority under
3 that code provision.

4 MR. NADEAU: Yes.

5 MR. ELDRIDGE: The final
6 conclusion that I've got is, appellants'
7 building permit was erroneously issued;
8 was or was not?

9 MS. HATCHER: It was.

10 MR. NADEAU: It -- well, it's
11 not -- the issue is not with how it was
12 issued. The issue is that what was
13 submitted -- it was approved despite the
14 fact that it showed noncompliance.

15 MS. HATCHER: Right.

16 MR. NADEAU: So I guess maybe
17 semantics there, but --

18 MR. ELDRIDGE: To rephrase the
19 question: Did Batson make a mistake in
20 approving that -- those building plans
21 when it showed the mechanical platform
22 within the required setback area?

23 MR. NADEAU: That's correct.

24 MR. MCNEELY: Yes.

25 MS. HATCHER: Yes.

1 MR. MCNEELY: Yes.

2 MR. ELDRIDGE: You are now at
3 the point where you can deliberate in
4 open session amongst yourselves and make
5 a decision on this appeal that seeks a
6 variance. I ask you to keep in mind my
7 previous comments about the
8 authorization to grant a variance if
9 those elements are met.

10 MR. NADEAU: All right.
11 Thoughts?

12 MS. HATCHER: So --

13 (OFF-THE-RECORD DISCUSSION.)

14 MS. CHASE: Guys, if you're
15 going to speak, you need to speak for
16 everyone to hear. Right, Jim?

17 MR. NADEAU: I'm sorry, what?

18 MS. CHASE: You have to speak
19 up.

20 MR. NADEAU: Speak up. Yeah.
21 This is a public --

22 MS. CHASE: Public --

23 MS. HATCHER: Oh, I thought he
24 said --

25 MR. NADEAU: -- supposed to be

1 public, but, no, we're --

2 MS. HATCHER: I though he said
3 amongst ourselves.

4 MR. NADEAU: We can talk
5 amongst ourselves, but --

6 MS. LEE: Yeah. It just has to
7 be loud enough --

8 MR. NADEAU: So everyone can
9 hear what we're saying.

10 MR. ELDRIDGE: I mean, in open
11 session, not in closed session.

12 MS. CHASE: Yeah. I'm sorry --

13 MR. NADEAU: It's open,
14 correct.

15 MS. HATCHER: I'm sorry.

16 MR. MCNEELY: So my only
17 question is why they couldn't have been
18 relocated to this side and it would have
19 been within all the variances --

20 MR. NADEAU: Well --

21 MR. MCNEELY: -- it wouldn't
22 have been a hardship. It -- it -- it
23 would have been a hardship because, I
24 mean, aesthetically with their pool, but
25 it could have just been flipped to the

1 other side and had all the ordinances,
2 but --

3 MR. ELDRIDGE: Can I get you to
4 speak up a little bit so everybody can
5 hear you?

6 MS. CHASE: Speak into your
7 microphone.

8 MR. MCNEELY: I just -- my --
9 my -- my question still was --

10 MR. ELDRIDGE: That -- I -- I
11 caught it. I just want to make sure
12 that we speak clearly enough --

13 MR. MCNEELY: Yes.

14 MR. ELDRIDGE: -- for everybody
15 to hear.

16 MR. MCNEELY: But they couldn't
17 have just been flipped to the other side
18 instead of on the backside. They said
19 that they could only be along G Street.
20 Why they couldn't have just gone to the
21 other side directly south from where
22 they're shown on the plan.

23 MR. NADEAU: Well --

24 MR. MCNEELY: And it wouldn't
25 have been that much of a hardship.

1 Because the lines have to run from
2 probably the center of the house to the
3 wall anyway. So they would have been
4 run to -- still to an outside wall.

5 MS. WHITE: It would not have
6 been in compliance in the backyard
7 either. There wasn't room.

8 MR. MCNEELY: It's not in the
9 backyard. It's in the side yard. If
10 you put it --

11 MS. WHITE: You mean --

12 MR. MCNEELY: -- in the
13 little -- in that little alcove there?

14 MS. WHITE: Right. I mean, it
15 could have been modified in the
16 beginning. Surely could have put it
17 there.

18 MR. MCNEELY: Yeah.

19 MS. WHITE: But at that point,
20 there was --

21 MR. MCNEELY: What, the pool
22 was already there?

23 MS. WHITE: Talking about the
24 pool.

25 MR. MCNEELY: Yeah. It could

1 have gone into the pool area.

2 MR. NADEAU: I think the point
3 was what we heard was that --

4 MR. MCNEELY: I mean, they
5 didn't have to be --

6 THE COURT REPORTER: Can we
7 have one person talking at a time,
8 please?

9 MR. MCNEELY: I'm just saying,
10 they didn't have to go into G Street.

11 MS. CHASE: Yeah. There should
12 be no --

13 MR. ELDRIDGE: Back-and-forth.

14 MS. CHASE: -- rebuttal. No
15 back-and-forth.

16 MR. ELDRIDGE: It's -- it's
17 your discussion. And you've already
18 gone past the point --

19 MR. MCNEELY: I think --

20 MR. ELDRIDGE: -- where you can
21 ask follow-up questions for the
22 witnesses.

23 MR. MCNEELY: I think that it's
24 not fair to the homeowner. I think it's
25 a bad situation. I think it could have

1 been rectified. But I don't think it's
2 fair that the homeowner to make a
3 movement at this point, is my --

4 MR. ELDRIDGE: Now, I'll remind
5 you that you've already made a finding
6 of fact that there is an unnecessary
7 hardship.

8 MR. MCNEELY: Yeah. That's
9 what I said.

10 MR. ELDRIDGE: Okay.

11 MR. NADEAU: Right. So where
12 we are now, we've gone through -- we, I
13 think, convinced ourselves that, you
14 know, a variance is justified. We've
15 met the requirements. A matter of --
16 now of deciding what -- what are the --
17 what action. Now, Ms. Lee has asked for
18 a waiver.

19 MR. ELDRIDGE: I'm not sure
20 that's the correct terminology.

21 MR. NADEAU: Yeah, it's --

22 MR. ELDRIDGE: But what I think
23 -- and Ms. Lee, tell me if you disagree
24 with me -- if you were granting a
25 variance, you would grant a variance

1 from the setback requirements with
2 respect to the location of the
3 mechanical platform on that property; do
4 you agree?

5 MS. LEE: I agree.

6 MR. MCNEELY: We agree.

7 MR. NADEAU: Okay. So we want
8 to grant the variance.

9 MR. ELDRIDGE: Well, you might
10 want to entertain a motion to grant the
11 variance requested by the appellants.
12 Let me think how I would word it if I
13 were you. Entertain a motion to grant a
14 variance from the setback requirements
15 with respect to the location of the
16 mechanical platform, something along
17 those lines.

18 MR. NADEAU: Do I -- do I have
19 a motion to grant the variance?

20 MR. SELIG: I would just like
21 to say one thing. I think it's very
22 unfortunate, and this shouldn't happen,
23 and it shouldn't happen again. That's
24 all I want to say.

25 MR. ELDRIDGE: You're not

1 talking about me, are you?

2 MR. SELIG: No. Absolutely
3 not. Okay. I'm sorry. I just wanted
4 to get that out there.

5 MS. CHASE: When it comes to
6 the motion, you need to actually say --
7 you can't just say do you have a motion.
8 You need to say --

9 MS. HATCHER: Yeah. To grant a
10 variance to --

11 MR. MCNEELY: I make a motion
12 that we grant a variance to allow the
13 mechanical units to be in the 5 foot
14 setback on the side -- 5 foot side yard
15 setback at 500 South Fort Fisher Street.

16 MS. CHASE: Perfect. Motion
17 second?

18 MR. NADEAU: I'll second it.

19 MS. CHASE: All right. All in
20 favor?

21 MR. NADEAU: Those in favor --
22 all in favor say aye?

23 MS. HATCHER: Aye.

24 MR. MCNEELY: Aye.

25 MR. NADEAU: Aye.

1 MR. ELDRIDGE: One final
2 comment, I'll draft the -- the decision.
3 And it will take me a little bit -- a
4 while to get that done. And now we --

5 MR. NADEAU: All right. We
6 need a -- a motion to close it out? Do
7 I have a -- a -- a motion to adjourn?

8 MR. MCNEELY: I make a motion
9 that we adjourn.

10 MR. NADEAU: I'll second it.
11 Thank you. We're adjourned.

12 (THE HEARING CONCLUDED AT 7:26 P.M.)

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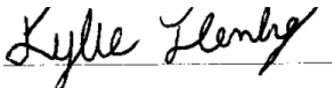
CERTIFICATE

State of North Carolina
County of Wake

I, Kylie Fleming, a notary public 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 30th day of December, 2024.



Kylie Fleming
Court Reporter

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