

The Morehead City Board of Adjustment conducted a meeting on Thursday, February 24, 2022, at City Hall, 1100 Bridges Street, Morehead City, NC, at 5:30 p.m. The following people were present:

BOARD MEMBERS PRESENT: Chuck Sewell, Bill Stompf, J. Hunt Brasfield, Bobby Schultz, Brandon Sutton, Judson Walton, and Sarah West.

BOARD MEMBERS ABSENT: Taylor Ricketts and Gina Sanderson

STAFF PRESENT: Planning Director Sandi Watkins, Zoning Enforcement Officer Jeannie Drake, Code Enforcement Officer Barb Lynch, Secretary Annie Bunnell, and City Attorney Derek Taylor.

OTHERS PRESENT: Darious Ballou, Susan Frederick, Lee Smith, Michaela Piner, Mary Frances Wright, John Wright, Rebekah Dodge, Randolph Dodge, Elizabeth Duff, Ronald Mooring, Pam Walker, Tony Walker, John Wade, Judy Howell, Roy Howell, Frankie Pendergraph Anderson, Mike Weaver, and other concerned citizens.

Chairman Chuck Sewell called the meeting to order.

The roll was called, and Taylor Ricketts and Gina Sanderson were absent. Bill Stompf made **MOTION**, seconded by Judson Walton, to excuse the called-in absences. The motion carried unanimously.

OATH OF OFFICE: City Clerk Cathy Campbell recited the Oath of Office with newly appointed In-City Alternate Member Brandon Sutton.

MINUTES: *December 9, 2021*

Chairman Chuck Sewell called for changes or amendments to the minutes. Sarah West made **MOTION**, seconded by Judson Walton, to adopt the minutes as submitted. The motion carried unanimously.

BUSINESS:

A) Request submitted by Darious A. Ballou III for a special-use permit under Article 8-7 of the Unified Development Ordinance (UDO) to allow an alteration and expansion of a nonconforming use and structure at 303 Georgia Avenue, zoned R20 (Single-Family Residential District).

There were no objections from either side to the five members seated. Voting members were: Chuck Sewell, Bill Stompf, Bobby Schultz, Judson Walton, and Sarah West.

Those wishing to give testimony were sworn in (Jeannie Drake, Darious Ballou, John Wade, Lee Smith, Randolph Dodge, Frankie Pendergraph Anderson, Mike Weaver, Elizabeth Duff, Mary Frances Wright, Roy Howell, and Judy Howell).

Bill Stompf made **MOTION**, seconded by Judson Walton, to open the public hearing. The motion carried unanimously.

Attorney Taylor defined “with standing” for the public present at the meeting. He explained that if someone had standing, then the Board’s decision would affect them in some way. A person with an opinion about Mr. Ballou would not have standing. Attorney Taylor also said that the Board could not use hearsay evidence to make their decision. A person must be present for the Board to question. Lastly, Attorney Taylor explained that the Board could not hear opinions from lay witnesses, but rather the Board could only hear opinions from experts.

Zoning Enforcement Officer Jeannie Drake introduced the case. Darius A. Ballou III has requested a special-use permit under Article 8-7 of the Unified Development Ordinance (UDO) to allow an alteration and expansion of a nonconforming use and structure at 303 Georgia Avenue. There are three (3) docks/piers constructed on the property along with eight (8) boat slips. A zoning map of the area was shown. The property is zoned R20, Single-Family Residential District. Surrounding property includes R20 to the north, east and south, and R15, Single-Family Residential District to the west.

An aerial view of the property was shown. There are single-family dwellings and vacant residential lots surrounding the property to the west, north, and east, as well as across the water to the south.

A site plan of the property which depicts the location of the existing docks/piers and boat slips was shown. There are currently three (3) narrow fixed docks with accesses totaling approximately three-hundred sixty-seven (367) square feet waterward of normal high water and floating slips that are approximately four-hundred thirty-eight (438) square feet. The existing structures extend past the quarter channel line. A site plan of the proposed dock reconfiguration was then shown. The reconfiguration expands the dock area by relocating approximately three-hundred eighty-seven (387) square feet of floating slips fifty-one (51) square feet less than the existing floating slips), adding a two-hundred fifty-six (256) square-foot fixed platform, a 266.7 square-foot floating dock and three (3) new four-foot-wide piers that encompass two-hundred twenty (220) square feet waterward of normal high water. The proposed configuration shows that the new structures will not extend past the quarter channel line (a CAMA requirement). There will be approximately three-hundred twenty-five (325) square feet of new coverage over the water. The number of boat slips is being reduced from eight (8) to six (6). Article 8-7 of the UDO states the expansion, extension, or alteration of a nonconforming use is permitted with a special-use permit from the Board of Adjustment. A slide showing the existing and proposed dock configurations side-by-side was shown.

The Carteret County Geographic Information System (GIS) historical imagery shows three (3) docks in 2004. Accessory uses or buildings are permitted under Section 14-31 of the UDO; however, Subsection 14-31(L) of the UDO allows only one dock or pier per residential lot. The use and structures are nonconforming because the three (3) docks were constructed before zoning. Recreation use, outdoor (golf course or marina) is permitted with a special-use permit in the R20 (Single-Family Residential) District. There is no special-use permit on file for this use at 303 Georgia Avenue. A commercial marina is not permitted in any residential district. “*Marina, commercial*” is defined as any dock or basin and associated structures providing permanent or temporary commercial harboring of ten (10) or more commercial and/or pleasure boats and providing services related to the facility,

including, but not limited to, fuel sales, retail and food sales, dry stack boat storage, and other related services. A commercial business renting boat slips would not be allowed as a home occupation because business conducted associated with a home occupation, must be entirely within a principal dwelling. Neither the existing nor proposed boat slips may be used for commercial purposes.

A CAMA (Coastal Area Management Act) Major Permit will be required in addition to Board of Adjustment approval prior to the commencement of the project. The applicant has applied for a CAMA Major Permit through the state CAMA office. CAMA Major Permits are distributed to ten (10) state and local agencies and four (4) federal agencies for review. The Town of Morehead City has not signed-off on the CAMA Major Permit application because the special-use permit has not been granted by the Board of Adjustment.

Regarding the special-use criteria of Subsection 4-8.3: The application was submitted indicating the correct section of the ordinance and that section does allow for the expansion, extension, or alteration of a nonconforming use with a special-use permit. The proposed development does not affect adversely the general plans for the physical development of the town as embodied in these regulations or in any plan or portion thereof adopted by the Planning Board and/or the Council. The structures and use are existing and built before zoning. An expansion, extension, or alteration of a nonconforming use is permitted with a special-use permit. The proposed use will not be contrary to the purposes stated in the regulations. The current structures and use are nonconforming. The nonconformity will continue. Items G, I, and J require the proposed use be placed on a lot of sufficient size to satisfy space requirements of the use, standards set forth for the use be met, minimum area, setback and other locational requirements of the district and parking requirements be met. In nonconforming circumstances as described in Subsection 8-1, these items do not have to be met. The proposed docks will exceed the required five-foot (5') side setback from each property line. The proposed use shall be subject to the off-street parking and service requirements of these regulations. Residential docks are not required to provide parking spaces.

This public hearing was properly advertised, and notices were mailed to property owners adjacent to the site. The property was also posted per the statutory requirements. Staff has received eight (8) inquiries concerning the special-use application. I would like to request that the Board allow the Town to request conditions, if any, after all testimony has been given. Ms. Drake requested her written report to be accepted into evidence.

Sarah West asked for clarification on what the Town said under item J of the special-use criteria. Ms. Drake said that Section 8-1 of the Unified Development Ordinance says that parking and setback requirements do not have to be met in non-conforming situations, but Ms. Drake said that both the five (5') foot Town side setback and the fifteen (15') foot CAMA setback requirements will be met under the proposal.

Bobby Schultz said that the existing structures exceed the quarter-channel delineation line, but this proposal shows the docks behind the line. Mr. Schultz asked if that limitation was a Town or CAMA requirement. Ms. Drake replied that it is a CAMA requirement.

Chairman Sewell asked the Town what made the existing docks a nonconforming use. Ms. Drake replied that today, only one (1) dock or pier is allowed per residential lot. Property owners can have finger piers and floating docks, but just one (1) dock or pier and Mr. Ballou has three (3).

Judson Walton asked if the existing docks were put into place before zoning. Ms. Drake said that she understood the docks were there long before that, but that she was only able to pull imagery as old as 2004 from the Carteret County GIS.

Sarah West asked the Town if she understood correctly that a commercial marina was ten (10) or more boat slips. Ms. Drake replied that was correct per the definition.

Attorney Taylor said that from the prospective of the Town, the existing configuration can stay exactly as it is under the ordinance unless it is destroyed more than 75% or unless it goes away for more than one-hundred eighty (180) days. Ms. Drake said that she had asked about Hurricane Florence damage and was told the docking facility was not damaged. Attorney Taylor stated that if the proposal is not approved, the applicant will be allowed to keep the current docking facility as long as CAMA allows them to keep it. Attorney Taylor said he wanted to make clear to the Board as well as the applicant and the public present at the meeting that the request is to “go from A to B” and that if B does not get approved, A will be allowed to stay. Ms. Drake added that the existing three (3) docks can stay and be repaired as needed.

Chairman Sewell asked what the next step would be for the applicant if the Board approved the special-use permit. Ms. Drake replied that Mr. Ballou would still need his CAMA Major permit approved, and that the Town of Morehead City is one of the entities needed to provide approval for the permit. After receiving the CAMA Major, Mr. Ballou would need either a building or zoning permit from the Town.

Applicant Darius Ballou of 303 Georgia Avenue in Morehead City spoke, stating that the following week would mark two (2) years since he had purchased the subject property. Mr. Ballou said that per his conversation with engineer John Wade, Morehead City approval is the last step for approval of his CAMA Major permit for the new docking facility. The property was originally built in the 1980’s by Sammy and Mary Hughes. The slips were used by the Hughes as rental slips. The property was advertised as property with rental slip potential. Mr. Ballou said he did not wish to use the slips as rentals, but rather for himself as the owner of three (3) boats, kayaks, and personal watercraft. Mr. Ballou then began addressing each of the special-use criteria.

D) The proposed use will not affect adversely the health and safety of residents and workers in the town. Mr. Ballou said that he is proposing a reduction in the number of boat slips and will also bring the boat slips back landward of the quarter-channel delineation line.

E) The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses. Mr. Ballou said that by bringing the boat slips landward of the quarter-channel line, navigation in the waterway would be improved. The existing docks are over the quarter-channel delineation line.

F) The proposed use will not be adversely affected by existing uses. Mr. Ballou said his use would not be adversely affected by existing uses as he was reducing the boat slips from eight (8) to six (6) which will allow for better navigation in the waterway.

H) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, of the vehicular movement, or noise or fumes or of the type of physical activity. Mr. Ballou said that by reducing the number of boat slips he would therefore be reducing the number of boats. Mr. Ballou stated that his boats were used only for personal use. He said that when the property was built, it was owned by Mr. and Mrs. Hughes and Mr. Ballou understood that the slips were rented out. The person from whom Mr. Ballou purchased the property also used the slips as rentals. Mr. Ballou said it was his intention to do away with the old and install new docks and slips. He said that he had a twenty-three (23') foot boat as well as several smaller boats and wanted the new docking facility for himself as well as to provide a dock access and a boat slip to his neighbor Kevin Schaffran with whom Mr. Ballou had an agreement which was included as part of the sale of the subject property. Mr. Ballou drew the Board's attention to the aerial map of his property which depicted neighboring docking facilities in the area. One neighbor had two piers which extended twenty-five (25') feet out into the waterway. Another neighbor diagonally across the waterway had a pier which extended one-hundred sixty-five (165') feet. Mr. Ballou said that he was in possession of a dredging permit from CAMA, and if his request was approved, Carteret Marine could come the following day to begin dredging work. Mr. Ballou said the Board's approval was the last step towards receiving the CAMA Major permit for the new docks and boat slips.

Bill Stompf asked Mr. Ballou if the boat slips were being used as rentals when he purchased the property and had he since discontinued that use. Mr. Ballou replied yes, the use was only for himself and his family's use. Chairman Sewell asked about the neighbor with whom Mr. Ballou has an agreement. He asked Mr. Ballou to confirm that the docking facility on his property was not a common dock area, just for personal use and an agreement with the neighbor to dock his boat on the property. Mr. Ballou replied yes.

Chairman Sewell asked Mr. Ballou if there were any materials he wanted to enter as evidence for the Board's decision. Mr. Ballou replied that the Board had everything located within their packets.

Bobby Schultz asked Mr. Ballou if on a normal day, he would have three (3) boats, jet skis, kayaks, and the neighbor's boat all docked in front of his home. Mr. Ballou replied yes, on a normal day all of those would be docked at his home but would not all be used at the same time. The maximum will be four (4) boats under the current proposal and the maximum with the existing facility is six (6) boats.

Attorney Taylor told the Board that it would be appropriate at this time to ask those with standing to ask questions of the applicant.

Randolph Dodge of 4703 Park Drive spoke and said that his property was approximately three (3) lots down from Mr. Ballou's on the same side. Mr. Dodge asked Mr. Ballou if he could clarify his relationship to the person with whom he has an agreement to provide a boat slip. Mr. Dodge said that Kevin Shaffran was the previous owner of the property. Specifically, Mr. Dodge wanted to know if Mr. Ballou received financial help or reduced the price on the property. Mr. Ballou replied no and he explained that he made a deal with Mr. Schaffran. Mr. Schaffran would live on the neighboring property and would have a slip for his boat at 303 Georgia Avenue.

Mr. Dodge said he had a question regarding Town ordinances pertaining to marinas. As a non-conforming facility, was Mr. Ballou required to provide off-street parking for the use of his boat slips.

Ms. Drake replied no, Mr. Ballou is not required to provide off-street parking for a residential dock and commercial uses are not allowed in that district.

Frankie Pendergraph Anderson of 4708 San Juan Circle said that she also had a question for Mr. Ballou. Ms. Anderson asked Mr. Ballou if he had modified his CAMA permit since it was originally submitted. Mr. Ballou replied no. Ms. Anderson said that the CAMA application states five (5) boat slips but Mr. Ballou had testified that he was proposing six (6) slips. Ms. Anderson asked if the engineer was present at the meeting. Mr. Ballou replied that his engineer, Mr. John Wade, was present in the audience. Mr. Wade with Arendell Engineers introduced himself and said that prior to the permit being accepted for review by CAMA, the corrections were made to change the boat slips from five (5) to six (6). Ms. Anderson then asked about the permit application which said no dredging was required, but he stated he could dredge tomorrow with the approval of the Board of Adjustment. Mr. Ballou replied that was a detail that was changed because his neighbor had hired Carteret Marine to dredge and so Mr. Ballou hired them under a separately approved CAMA dredging maintenance permit.

Ms. Anderson then asked Mr. Ballou if he had been fined within the last year for changes made to his property without the required permits from the Department of Marine Fisheries, CAMA, or any other government agency. Mr. Ballou replied that when he initially purchased the property, he had an excavator cleaning up by the shoreline and caused some damage. Mr. Ballou said that he was fined by CAMA, but that had been taken care of. Ms. Anderson asked if Mr. Ballou had obtained a permit from both CAMA and the Town for the floating docks he installed on the property. Mr. Ballou replied that he had a permit from CAMA but did not know at the time that a permit from the Town was required.

Ms. Anderson then stated that the gentleman with whom Mr. Ballou had an arrangement was more than just a friendship. Mr. Schaffran has lifetime rights to the property by deed that states he and two guests may use two (2) boat slips. Mr. Ballou replied that was correct.

Ms. Anderson then stated she did not find anything that alluded to the leasing of boat slips, rentals, or marketing on Zillow or any of the local real estate agencies that had the property listed. Mr. Ballou said that Mary Cheatham King had the property listed and one of the main discussions he had with the agency focused on the potential for rental boat slips.

Ms. Anderson asked Mr. Ballou if he had spoken with any of his neighbors about his request for the CAMA Major permit and special-use permit request. Mr. Ballou stated that he had numerous conversations with the Wrights and the Duffs as part of the requirements for the CAMA permit.

Lee Smith of 4710 San Juan Circle stated that Mr. Ballou had mentioned other properties on Pelletier Creek that were non-conforming. Mr. Smith asked if Mr. Ballou was aware of any other request for a special-use permit from the Town for any of those properties. Mr. Ballou said he was not aware of any other requests. Mr. Smith then asked where all of the boats were that Mr. Ballou testified that he owned. Mr. Ballou said that one, "the Dixie", had been worked on and repainted but would soon be back on his property.

Mr. Smith asked Mr. Ballou if he had enough dockage for his boats. Mr. Ballou replied that he did, but the current docks were an eyesore. He said that he wanted a boatlift and a landing to be able to enjoy sitting over the water and to have access for his boats and to get away from the "marina" look. Mr. Ballou said that floating docks are ugly as well as unstable and walking on them feels like being

“on a teeter-totter”. Mr. Ballou said the floating dock on his property was brought from New Bern following a hurricane. Mr. Smith asked Mr. Ballou to state for the Board how many docks were currently on Mr. Smith’s property. Mr. Ballou said he guessed two slips and one dock. Mr. Smith said that was correct and that was the amount allowed by the Town and asked Mr. Ballou what made his situation special or unique so that he needed to remain non-conforming by the Town code. Mr. Ballou replied that anything above one pier is not allowed. He stated that he needed to provide a dock and slip for Mr. Schaffran. Mr. Smith asked that, because Mr. Ballou deeded a boat slip to Mr. Schaffran, it became part of his need. Mr. Ballou replied he guessed so. Mr. Smith said that Mr. Ballou had said that there would be a reduction in slips from eight (8) to six (6), but it looked like it would be possible for more than six (6) boats to be docked on Mr. Ballou’s property under the proposed configuration. Mr. Ballou replied no, just six (6) boats. Mr. Smith asked Mr. Ballou how many boats he was able to dock when he purchased the property. Mr. Ballou replied he was able to dock a total of seven (7) boats at that time. Mr. Smith said that he had three (3) docks and added a floating boat lift without a permit from the Town, thereby increasing the non-conformity. Mr. Ballou stated again that he did not know a permit was required from the Town for the floating dock. Mr. Smith said that he felt the proposal still allowed for eight (8) boats to be docked at the property and began counting the slips with Mr. Ballou.

Attorney Taylor explained that a special-use permit sets the criteria for what Mr. Ballou can do on his property. If Mr. Ballou goes to seven (7) boat slips, he would be in violation of the permit and would come back before the Board of Adjustment to handle that situation should the special-use permit be approved by the Board. By his application, Mr. Ballou had reduced the number of slips and whether he abides by the permit or not, is an enforcement issue. Attorney Taylor encouraged the question time to be used to question the applicant and that the time for testimony from those with standing would be coming up in the hearing process.

Mr. Smith asked Mr. Ballou if he were to have boats docked on the floating docks, how he would prevent the boats from extending into the quarter channel area. Mr. Ballou said when the floating docks were installed that he also installed a piece to make a landing going onto them, the configuration is being changed so that they will be accessed from the shoreline and from the side. Mr. Smith asked if any of his boats would extend past the quarter channel line. Mr. Wade with Arendell Engineers then spoke to answer this question stating that the hardened structures are not allowed to exceed the quarter channel line, but the boats which are moveable are allowed.

Mike Weaver spoke stating that he lives on Mansfield Parkway and had a question concerning the increased covered area over water. Mr. Weaver said that Mr. Ballou currently has three (3) floating docks which are unstable, and he understands what Mr. Ballou is trying to accomplish is a more stable platform for his family. Mr. Weaver asked if Mr. Ballou is able to replace what he currently has with stationary finger piers for the added stability. Mr. Ballou replied that he could, but it is not his wish to do so. Mr. Ballou said that he spent a lot of money to own his property and wanted the proposal that he had requested. Mr. Weaver said that in the estuary areas, one of the biggest concerns had to do with covered structures impeding sunlight penetration into the water for aquatic plant and marine animal life. The area in question does support small marine life and plant life. Mr. Weaver said it appeared that Mr. Ballou would be doubling the covered space from sunlight access and asked if any studies had been conducted from an environmental standpoint concerning what the impacts would be, and if Mr. Ballou could share those results. Mr. Ballou said that a study was not a requirement under the CAMA Major permit, but that the request was reviewed by numerous organizations prior to approval. Mr. Weaver asked if Mr. Ballou’s engineer or attorney had spoken to any of the approving organizations

about the implications to the sensitive and shallow area. He stated that he was on the site today and witnessed prolific oysters which could potentially be harmed by the dredging Mr. Ballou had mentioned earlier in his testimony. Mr. Ballou replied that the oysters are located on the far west side of his property and the maintenance dredging will only take place where the docks are located, not the whole length of the creek. Mr. Weaver said that he was concerned that other organizations had not been contacted because he was concerned for the marine and plant life. Every dock and pier that is allowed to be constructed will affect that and Mr. Weaver said that even if the applicant was his sister, Ms. Anderson, he would be at her hearing to express concerns. Mr. Wade replied that under the CAMA regulations, eight (8) square feet of covered space is allowed per linear foot of shoreline and Mr. Ballou is under that amount. Mr. Weaver said that the amount of covered area was being doubled which would have repercussions on that estuary because Pelletier Creek is a special body of water. Attorney Taylor said that while he understood Mr. Weaver's point, the Board of Adjustment had no jurisdiction over such matters and could not enforce regulations not within the Unified Development Ordinance for the Town of Morehead City. Mr. Weaver said that he was asking Mr. Ballou to consider not just what he was doing to his property, but what he was doing to Carteret County because putting that much covered area in such a small area would damage the ecological environment.

Randolph Dodge asked Mr. Ballou what the cost was for all proposed changes. Mr. Ballou replied that it was not as much as the CAMA fines, but roughly \$20-25,000.00 if installed by EZ Docks and including the installation of a 10,000-pound boat lift.

Judy Howell of 4706 San Juan Circle spoke and said that Mr. Ballou had said everything was ready to go on his CAMA Major permit apart from the Town of Morehead City's approval, but she had emailed Greg Bodnar at the CAMA office with her concerns and Mr. Bodnar replied that her comments would be added to the official permit application file for the project which is still under review with no final decision having been made. Ms. Howell continued by reading the email she had received from Mr. Bodnar earlier that day.

Mary Frances Wright of 4705 Park Drive spoke and said that she and her husband shared a property line with Mr. Ballou. She said that Mr. Ballou had testified that the property was previously owned by the Hughes and used as rental slips. She said that she and her husband had been on the creek since 1980, knew the Hughes, and remember when they put in their docks and to her knowledge, they used one slip for personal use and had a man who cut their grass keep his boat on the property, but no money was exchanged and there were never more than three (3) boats on the property. Ms. Wright asked Mr. Ballou if he replaced the vegetation that was excavated from the shoreline of his property. Mr. Ballou replied yes that he had replanted everything with seed. He said that all fines had been paid and that CAMA had been to the site to inspect.

Beth Duff of 309 Mansfield Parkway spoke and stated that she shares a property line with Mr. Ballou to the east side of her property. She said that she knew Mr. Ballou wished to share slips with family and friends and had a question regarding the parking situation. She said that sometimes when people are using the boat slips, they will park at the end of Georgia Avenue. She said that she has access on the back side of her property to Georgia Avenue, but the road extends much farther than where the pavement ends. Ms. Duff said she did not feel it is right for people to monopolize a public right-of-way. Mr. Ballou said that his family and friends coming to use the boat slips would park in his driveway, which is what they do currently. Ms. Duff said that she has seen people park at the street end and go down to Mr. Ballou's dock. Ms. Duff said that Mr. Ballou had mentioned to her when he first

moved in that his vision was that people could come to the end of Georgia Avenue and unload their boats, park, and then at the end of the day pack up. Ms. Duff asked Mr. Ballou if that was still his vision. Mr. Ballou said that was not at all what he now has as a vision. Friends or family using the boat slips will park in his driveway.

Mr. Ballou said that he appreciated everyone's comments and concerns, but Mr. Smith had made a good point about what makes his situation unique from others on the creek. He said that there are boatlifts and new docks all around, he needs to have a boat lift and docks as well because he has spent a large amount of money on his property.

Roy Howell of 4706 San Juan Circle spoke and said that his wife had just spoken. When the couple moved in at this address in 2004, they were allowed two (2) boat lifts and one (1) ingress/egress. He said that they had to conform based on CAMA and the Town of Morehead City regulations. Mr. Howell said that the Board now had the opportunity to make a non-conforming situation into a conforming situation. Mr. Howell said that all the people in attendance at the meeting lived on Pelletier Creek. It is a sanctuary for fishing boats and other boats to suffer the storms when they come through. Mr. Howell said that speeding boat traffic was a big issue already and he hoped the Board would consider those points when it's time for their decision.

Attorney Taylor intervened to say it was time to ask questions of the applicant, not to give testimony. He said the time for testimony will be announced once the questions are complete.

Frankie Pendergraph Anderson said that she had questions for Mr. Ballou's engineer. She asked Mr. Wade to show on his proposal from where the one hundred-foot (100') distance across the channel was measured. Mr. Wade replied that the distance varies based on the opposing shoreline and he was unclear to which measurement Ms. Anderson was referring. Ms. Anderson replied that it was on the CAMA Major permit application, and she showed the proposal to Mr. Wade. Mr. Wade replied that the measurement varies as shown on the plan, as the channel moves in and out, those widths vary. For the quarter channel line, he used the middle line and then measured.

Mr. Weaver asked if there was a minimum distance required from bank to bank to be able to build anything in the channel. Mr. Wade said if there was, he was unfamiliar with it. He was only familiar with the quarter channel delineation line. Mr. Wade said that the plans were coordinated with CAMA and there were no issues based on their rules and regulations.

Mr. Weaver asked Mr. Ballou if he offered to purchase the property would Mr. Ballou sell. Mr. Ballou replied no. He said that he was a "Morehead City Boy" born and raised in Crab Point and it was his life's dream to own property on the water as his parent did. He said that if the Board gave him the chance, he would show them what his property could look like.

Chairman Sewell then called for testimony from those with standing.

Mary Frances Wright of 4709 Park Drive spoke, stating that she has lived on her property since 1980 and shares a property line with the subject property. She testified that her family has been in Carteret County since 1958 and she has seen a lot of changes. Ms. Wright said that was to be expected in a waterfront community. She said that she and her husband had several concerns under the special-use criteria. Specifically, under 4-8.3 (D) the use would affect adversely the health and safety of

residents due to excessive boat traffic and congestion in the creek. There are more people using that finger of the creek for paddleboarding, kayaking, and swimming because it is out of the boat traffic and is a safe area. As far as health concerns, boats leak bits of oil and gas in times of normal use and that is unavoidable. There was a large oyster rock at head of our creek which helped to filter runoff from Mansfield Parkway and other pollutants in the creek which is no longer there due to dredging. Under item (E), the number of boats on the subject property during the last boating season give the impression of a marina facility which is not congruent with an area zoned residential.

Randolph Dodge of 4703 Park Drive spoke and testified that his property is three (3) lots to the east of Mr. Ballou's property. Mr. Dodge said that his wife's parents purchased the home they now live in in 1956. His five (5) kids and six (6) grandkids have all swam in and enjoyed Pelletier Creek. Mr. Dodge said that lately there has been an issue with boat traffic traveling at a high speed. Swimmers have nearly been run over because the boaters can't see them with all of the docks and such. He said that he was not saying that it was the applicant or that the applicant's proposal would make the situation better or worse. Mr. Dodge continued that it was his understanding that Mr. Ballou could keep and maintain or update his current docking facility and that if he does so, he would be subject to fifty percent (50%) of the value of the existing structure because it is a non-conforming structure. Ms. Drake said that repair equal to or greater than fifty percent (50%) of the value of the structure was a CAMA regulation and that the Town of Morehead City's rule is seventy-five percent (75%) of the value of the structure if the structure were to be damaged by fire, storm, or other natural occurrence. Mr. Dodge asked if the Town's regulation would overrule the CAMA regulation or if Mr. Ballou would have to meet both. Ms. Drake replied that he would be subject to both regulations if his improvements required a permit from both CAMA and the Town. Attorney Taylor said that the question was somewhat legal in nature and that if the value reached or exceeded fifty (50%) of the value of the structure, CAMA would get involved but that the Town of Morehead City would not be involved until Mr. Ballou hit the seventy-five percent (75%) threshold. Attorney Taylor said that he was unsure of what the actual protocols were and what CAMA would require of Mr. Ballou should he reach the fifty percent (50%) threshold. Mr. Dodge then directed his question regarding the CAMA fifty percent rule to the applicant's engineer. Mr. Wade replied that with the number of CAMA rules, he recommended that Mr. Dodge contact CAMA to ask them directly. Mr. Dodge continued that he was an ocean engineer and was formerly an active-duty Coast Guardsman and served in the marine safety field which dealt with coastal issues. He was trained to see what happened to structures in the marine environment. Mr. Dodge showed the Board photograph printouts of a property that he identified as Mrs. Joan Macy's property at 4705 Park Drive. As the photos were passed around, Mr. Dodge described the images to show a break wall which was installed approximately seven (7) years ago. The break wall was installed by the guidelines in place for such a structure but the land behind the break wall has been washing out as depicted in the photographs. Mr. Dodge said that he was bringing that to the Board's attention because he believed it was directly related to the increase in boat traffic in the creek. Mr. Dodge continued that the creek was a "no wake zone" but he felt any movement within a body of water would throw a wake. Mr. Dodge said that he had inquired earlier as to how much Mr. Ballou would spend on the proposed new docking facility because under the CAMA rules, even if he were to do the work himself, he would be required to charge himself labor. The tax value of the existing docks are listed at \$7,000.00. Mr. Dodge did not believe that renovation of the existing facility would be feasible. The application before the board would make Mr. Ballou's "marina-type" structure a permitted use and would be able to repair and update the structure and keep it going which Mr. Dodge believed would mean the boat traffic in that finger of the creek would never be reduced to a

residential level. Mr. Dodge said that he would have to do repairs on his shoreline due to increased erosion if this permit were to be issued.

Ms. Drake asked Mr. Dodge if he wished to enter his photographs into evidence. Mr. Dodge replied yes.

Lee Smith of 4710 San Juan Circle spoke and showed a presentation he had put together for the Board which included photos of his property and Mr. Ballou's property. Mr. Smith said that he himself owns eight (8) boats, but due to the narrowness of the creek he tries to be a steward for the waterway and does not keep boats docked long-term. Mr. Smith said that he has a boat dock with two (2) boat slips because that was conforming. The photos also showed his neighbors dock and lift. Mr. Smith said that Mr. Ballou's floating docks that were installed without a permit from the Town had already been discussed, and that the Board has been hearing from many of Mr. Ballou's neighbors because many of them did not have any input regarding the CAMA Major permit because they were not riparian owners. Mr. Smith said that he himself has had issues and damage to his property from the use of Mr. Ballou's existing floating docks. Mr. Smith said that he did not live adjacent to Mr. Ballou, and thus did not have a voice with CAMA and hoped that the Board would hear the many neighbors who were in a similar situation as himself. Mr. Smith said that he is only twenty-five (25') feet across the waterway from Mr. Ballou. Mr. Smith showed the Board photos of the property before and after the installation of the floating docks as well as before and after Mr. Ballou excavated down by his shoreline. Mr. Smith said that in the next set of photos shown, the Board could clearly see the washed-out areas. Mr. Smith said that when boats are loaded on and off of floating docks, it is done at a high throttle, and it kicks up sediment. Sometimes the boat is off center, and it has to be done several times before the boat is situated correctly. Because the area is very shallow, Mr. Smith feels that the depth needed to use those floating docks is insufficient. Mr. Smith said that under the current proposal, the floating dock configuration will stay. All the mud, sediment, and shells are being thrown under Mr. Smith's dock and boatlift. He testified that this situation has been going on for two (2) boating seasons or approximately a year and a half. Mr. Smith said that he has contacted a dredging company to come and dredge the sediment which has been deposited under his dock and boat lift because he can no longer get his skiff off the lift at low tide. Mr. Smith then showed a video captured by his security cameras which show Mr. Ballou crashing into Mr. Smith's dock with his boat. Mr. Smith showed additional footage of Mr. Ballou loading his boat onto the floating lift and Mr. Smith said that the moving sediment could clearly be seen. Mr. Smith said that he was only made aware of the incident because of his security cameras and called the Morehead City Police Department and the Department of Marine Fisheries to file a report. This was concerning to him as his ten (10) year-old daughter spends a large amount of time fishing and cast-netting from his dock. Mr. Smith said that Mr. Ballou did pay for the damages, but that we could not allow him to continue messing things up and then paying someone for the damages.

Mr. Smith continued by saying that Mr. Ballou had testified that he needed more than two (2) boat slips and to continue to remain non-conforming because he spent half a million dollars on his property and should have more than others. Mr. Smith said that he also spent a large amount of money on his property but does not feel he deserves more than the allowable amount of dockage and boat slips. Mr. Smith said that Mr. Ballou had deeded lifetime rights to Kevin Schaffran to keep his twenty-five (25') foot boat on the property and he felt that was the true reason why Mr. Ballou needed more docks. Mr. Smith showed a PowerPoint slide of the portion of Mr. Ballou's deed which granted the lifetime rights to the boat slip to Mr. Schaffran and a guest.

Mr. Smith then showed the Board a Facebook message he had received from Susan Frederick, a permanent resident on the subject property, who was attempting to rent a boat slip. Mr. Smith asked the Board to take a moment to read through the message which had been displayed on the PowerPoint slide.

In response to Mr. Smith, Susan Frederick stated that the message was sent when the property was first purchased. They had debated renting the slips but decided against it. Mr. Ballou stated that he had crashed into Mr. Smith's dock because his throttle had gotten stuck in reverse. Mr. Ballou said that has only happened one time, and the reason that boat is on the floating dock is due to his inability to secure a permit for his new proposed docking facility. Mr. Ballou said that the floating dock was not made for a boat of that size. Mr. Ballou said in his proposed new plan, the boat lift would be used for that boat as it was too heavy for the floating dock it was currently being kept on.

Mr. Smith continued his testimony. He stated that the proposed floating docks were only to move a few feet to the west and he saw the issue as being ongoing. Mr. Smith said that the estimated cost to dredge and remove the sediment which had been deposited by Mr. Ballou's use of this floating boat dock / lift was \$5,500.00. Mr. Smith said that is what he would have to pay to remedy something that he had not caused himself. Mr. Smith said that he felt the video footage and the dredging estimate solidified the damage that has and will continue to happen to his property. Mr. Smith said he did not have issues when the Hughes lived across the waterway or even when Mr. Ballou first moved in. The damages to his property began to occur only when the floating dock was installed on Mr. Ballou's property. Mr. Smith said he built his home in 2010 and did a lot of research regarding what could and could not be done on waterfront property and within the CAMA buffer. Mr. Smith suggested that if the permit is not approved for the proposal, that Mr. Ballou be required to remove the non-conforming structure and build the conforming amount of dockage allowed by the Town. Mr. Smith said he did not realize that a "special-use permit" existed and had thought that if Mr. Ballou wished to replace his dockage that it would have to become conforming. Mr. Smith felt that none of the neighbors in attendance would have an issue with Mr. Ballou replacing his dockage with a conforming amount of dock and boat lift space.

Chairman Sewell said that he understood Mr. Ballou would be allowed to keep his existing dockage should the special-use permit be denied, and in that case nothing would change. The change would come if the Board granted the request for the special-use permit to construct the proposed new dockage. The Board cannot require him to conform. Mr. Smith said that he understood Mr. Ballou could keep what he had, but the floating dock was installed without the proper permit from the Town and Mr. Smith asked if he would still be allowed to keep it. Attorney Taylor said that was for the Town of Morehead City to decide and asked if anyone had filed a complaint with the Town. No one responded. Mr. Smith asked that the Board keep in mind that the floating dock is also included in the proposal and has caused and will continue to cause damage to his property. Chairman Sewell asked Mr. Smith if he would like the videos and photographs presented to the Board during his testimony to be entered into the record as evidence. Mr. Smith replied yes.

Bobby Schultz asked Mr. Smith if he had ever had to routinely clean out under his lift. Mr. Smith said that he had never had to do so before. His bulkhead was constructed in 2010 and he has had no issues. Mr. Schultz asked for Mr. Smith to clarify that it was not just normal accumulation slowly over time. Mr. Smith said no, it was over the period of one (1) year, after the arrival of the floating

dock. Mr. Ballou responded by saying that he was not certain all the sediment could be blamed on him and his floating dock.

Judy Howell of 4706 San Juan Circle spoke and said that she was located across the canal from Mr. Ballou and two (2) houses down from Mr. Smith. She stated she was in attendance to oppose the special-use permit request to allow the new dockage. Ms. Howell referenced Mr. Ballou's comment about having paid a certain amount of money for his property and so he would like to have the dockage that he wanted. Ms. Howell said while she certainly agreed with that, most neighbors on the creek also paid a sizeable amount of money for their properties. She said that she and her husband live by the rules, and that if the Board approved the special-use permit it would set a precedence for their already-narrow creek. Boat traffic would be considerably increased, and Ms. Howell said that she was very concerned about the safety of the kids and grandkids of the residents on the creek. She said that they can see a wide array of wildlife including ducks, fish, and cranes and the area is a nice quiet place. Ms. Howell said recently they have had to slow people down as they were going too fast. She said it is not an open body of water. Her granddaughter enjoys paddleboarding and Ms. Howell, who was out watching, had to wave the boat down to stop so that her granddaughter was not hurt. Ms. Howell testified that she has had to do this numerous times. She said that her granddaughter did not know what to do. Ms. Howell said that her neighbor, Rusty Anderson's daughter Lily, and Mr. Smith's children regularly kayak down the creek and that these are eight to ten (8-10) year old kids. She said that the kayaks sit low in the water and big boats cannot always see them. Ms. Howell said that on the creek, everyone knows each other and watches out for each other. Mr. Ballou was proposing a lot of dockage in a very narrow portion of the creek. In the application, Mr. Ballou referred to the dockage as a marina. Ms. Howell said that the area was designated as a single-family residential area and the Town rules allowing one dock and two boat lifts in residential areas was put in place for good reason. Ms. Howell said that increasing boat traffic impairs the safety of the creek. Ms. Howell said that she was not a certified appraiser but felt there was the possibility for devaluation of properties in the area. She said that she had concerns regarding devaluation of property and the safety of the kids who use the creek.

Mr. Ballou asked the Town to show the slide which showed both the existing and proposed configurations side-by-side, and he asked Ms. Howell which configuration she felt looked more like a marina. Ms. Howell said that the proposal looked like a marina because of all of the boat slips.

Ms. Howell said that she had a letter from her neighbor, Rusty Anderson, who was unable to attend the hearing and asked if she would be able to read it to the Board. Attorney Taylor said that it could be submitted to the secretary but not read aloud.

Frankie Pendergraph Anderson of 4708 San Juan Circle spoke and stated that she is a General Contractor holding an unlimited license in North Carolina and South Carolina. She said that she is also a real estate broker in North Carolina and South Carolina, and she owns a marina and quite a bit of real estate in Carteret County. Ms. Anderson said that one of her concerns being located directly across from the applicant, is the floating dock. Ms. Anderson said that the floating dock is a safety issue and an environmental issue due to the sediment it kicks up and the turbidity that it causes in the water. Ms. Anderson also said that the floating dock is not a good fit for that location and would be more appropriate in a lake. She said from her home she was able to see the boat trying to get on and off the floating dock which was a safety issue and a nuisance at times. Ms. Anderson also expressed concerns over the potential boat slip rental situation on Mr. Ballou's property. She said that if numerous boaters

were using the boat slips over the weekend, she knew that no representative from the Board would be around at that time to witness the situation. Ms. Anderson said that she has been witness to people parking, loading up their boats, and leaving from Mr. Ballou's property just as if his property were a marina. Ms. Anderson said that the boaters may have been a friend or family member, but for the neighborhood it appears that the slips are being used as rented slips. Ms. Anderson asked if Mr. Ballou has insurance to cover himself in the event of an accident and asked what would happen if there were to be damage or if someone were to hit a swimming child. At a commercial marina, the marina's insurance also names the slip renter in the event of loss or damage. Ms. Anderson said that the property is zoned R20, and there are things that can be done in the area within a general permit or a repair permit which would not require the floating dock. Ms. Anderson said there should be some way that Mr. Ballou could assure the neighbors that he will do what he says he will do. She said that no one in attendance had said what they were afraid of, which was that Mr. Ballou will not do what he says he will do. Ms. Anderson said it seemed easier for Mr. Ballou to ask for forgiveness than to ask for permission, and the bottom line for her was a question of how the special-use permit would be enforced. Ms. Anderson said that a fine does not seem to stop Mr. Ballou. If he does not do what he says he will do, Ms. Anderson questioned whether she would still be able to get her boat out of the creek and if her child or grandchild would still be able to swim safely.

Susan Frederick interjected and asked if she and Mr. Ballou should not allow their family to use their boats, or if Ms. Anderson would rather they rent a slip from her marina. Ms. Anderson said no. She had mentioned owning a marina because she was very aware of what is involved in owning a marina.

Mr. Ballou said that the floating dock is a necessity, not a want. He said that because all of neighbors continue to call the state CAMA office to report him, he had not been able to do anything. The state CAMA office told him to get a special-use permit from the Town and he would be able to proceed with his Major CAMA permit. Mr. Ballou asked Ms. Anderson how many docks she has on her property because he thought it was four (4). Ms. Anderson said that she currently has three (3) finger piers, although the property did have more dockage when she purchased it. Mr. Ballou said that Ms. Anderson was located diagonally from his property and there was no way that what he wanted to do with his dockage would prevent her from doing what she wanted to do with her boat.

Susan Frederick spoke again and suggested that Ms. Anderson take photos if she were to ever see numerous vehicles parked on their property using their boat slips. Ms. Frederick said that it would not happen but asked if that would be an option for special-use permit approval. Ms. Anderson said that it was not her wish to be a "watchdog" at the property on the weekends. Attorney Taylor asked Ms. Anderson if he could encapsulate everything she has said to be "it will affect the neighborhood". Mr. Anderson replied yes.

Mike Weaver spoke and introduced himself as Ms. Anderson's brother. He said that he is a developer and a real estate broker and has been in the business for twenty (20) years in Carteret County. He said that if anyone was able to speak to real estate values, he could do so because it is what he does every day. Mr. Weaver said that waterfront real estate in Carteret County is extremely valuable and there is an impact on the value of a property based on what is beside or across from the property. Mr. Weaver said that if someone were to look at his sister's home to purchase, there would be a concern that there was a marina across the waterway. Mr. Weaver said that he was involved in the sale of the home to his sister and numerous people had "walked away" from the location because it looked

to be a marina. That was before Mr. Ballou owned the property. Mr. Weaver said that the proposed dockage may not be “categorized” as a marina, but it will look like one. Mr. Ballou is entitled to use his property within the laws and rules and regulations of the Town of Morehead City and CAMA. Mr. Weaver said that Mr. Smith had testified earlier that none of the neighbors across the creek were notified of the CAMA Major permitting process because it’s not required. Only those with adjoining properties received notice. The residents of this neighborhood are in attendance to speak because they did not know about the request until the special-use permit request was made public. Mr. Weaver said if CAMA changed their process to include notification of the property owners across the waterway, the CAMA permit would not have proceeded on to this point. Mr. Weaver said that he had not yet spoken with the Division of Water Quality (DWQ) about his concerns, but he plans to do so. Mr. Weaver said his concerns were more than just for the marine and plant life, but in the past three (3) months, there have been two (2) very large tides in which the tidal water nearly crossed over Mansfield Parkway on one occasion. Mr. Weaver said the water was so high in that particular tributary the water came up into Mr. Ballou’s backyard as well as his sister’s backyard and Mr. Weaver questioned what would happen to a floating dock if there were to be another Hurricane Florence. The dock could cause damage to someone else’s property. Mr. Weaver said Mr. Smith has already shown that the floating dock is causing monetary damage to Mr. Smith’s property. Mr. Ballou also accidentally damaged Mr. Smith’s property as shown in the video footage of Mr. Ballou hitting Mr. Smith’s dock with his boat. Mr. Weaver stated that the proposed new dockage will only extend twenty-five (25%) percent of the way into the waterway, or to the quarter channel delineation line. Mr. Weaver asked if anyone had been paying attention to climate change and sea level rise to see what was proposed to happen in Carteret County within the next fifteen (15) years. Mr. Weaver said that he had been doing so for nearly twenty (20) years as a developer and is typically sitting on the other side of the room in hearings such as this defending what it is he wants to develop. Mr. Weaver said that the audience was comprised of taxpayers and voters and that they had the right to voice their concerns. Mr. Weaver said that the residents across the creek from Mr. Ballou’s property could not sell their property for the same amount of money as before Mr. Ballou’s floating dock was installed. Mr. Weaver said that the applicants had mentioned that they had plans to begin dredging tomorrow. He said the reason was from all the sediment from every boat with a propeller. Further, a lot of force must be exerted to get a boat up onto the floating dock. Mr. Weaver said that if Mr. Ballou were to amend his proposal to remove the floating dock, that the majority of Mr. Smith’s damage claims would no longer be applicable. Mr. Weaver concluded his testimony by saying that the Board’s decision was important for the legacies of all of the property owners on the creek. He said that the creatures that live within the estuary cannot exist without plant life. The creek may not be classified as Outstanding Resource Waters (ORW), but Mr. Weaver is going to ask the Division of Water Quality for its classification. Mr. Weaver said that he hoped each Board member would vote to deny the request. He said that he has no issues at all with Mr. Ballou improving what he currently has, only with what he is proposing and with the floating dock.

Mr. Ballou asked the Town to display the photos of his property before and after he had used the excavator to clean down by the shoreline. He then asked Mr. Weaver if, as a realtor, he felt Mr. Ballou’s property was more sellable in the before state or the after state. Mr. Weaver said it was a matter of preference. For many, they would see the oyster shells and natural vegetation as a filter preventing runoff from going into the water. For someone who did not care about the environment, they might prefer the pretty, cleaned-up lot. Mr. Weaver said that many millennials with money are very concerned about the environment. Mr. Weaver said that he would be able to sell Mr. Ballou’s property “in a heartbeat.”

Beth Duff of 309 Mansfield Parkway spoke and said she wanted to give the Board a bit of history regarding the neighborhood. She said that the home she lives in, adjacent to Mr. Ballou, was her grandparents' home since 1959. She was born here and said that her family dates back four (4) generations in this area. Ms. Duff said she has had a wide view of the creek and everything going on and could even see Bogue Sound from her home. Growing up here, she said that she could see the stars at night, the fireflies, and a multitude of wildlife. There were numerous beautiful trees. She understood that many people felt that having a clean shoreline was great, but she preferred to see the wildlife. Ms. Duff said that she and her husband were retired so they are at home all of the time. She said there is no longer privacy like there used to be when the Hughes owned the property. Two more trees were removed earlier in the day and all through Mitchell Village people are having trees removed because they are scared of storms. Ms. Duff said that she has no children but most others on the creek do. When she first met Mr. Ballou, he told her he wanted to provide something for his boys. She asked Mr. Ballou to think about his boys and what they may like when they grow up. They may like bushes and trees and the native vegetation that encourages the pollinators and brings back the wildlife. She said she encouraged him to think about the future. She said that she and her husband are all for Mr. Ballou having his boat lift as Mr. Weaver had mentioned earlier, but she did have concerns about how it was being done.

Sarah West asked Ms. Duff if the dead-end of Georgia Avenue, after the pavement ended but before the space where her property was contiguous to Mr. Ballou's, was a public right-of-way and if the neighborhood was within the Morehead City corporate limits. Ms. Duff replied that the area is located within Morehead City corporate limits now, and the end of Georgia Avenue is a public street end. Ms. Duff said that she found a survey which seemed misleading and knew that her father had worked on getting Georgia Avenue "drawn down." She said that she recently hired Glenn Corbett with The Cullipher Group to re-survey the property and it is all cleared up. She said that she also had hired an attorney to do title work because there was supposed to be a lane that went around all of the fingers of Pelletier Creek called Coral Lane. Ms. West asked Ms. Duff who withdrew Georgia Avenue and Ms. Duff replied the Town. Ms. Duff said that her father had, accidentally, had three lots combined as one in 2009. Following her mother's passing in 2020 she debated dividing the lots back up to sell and was able to confirm that she does have legal access in the back of her property to Georgia Avenue. Ms. West said that Ms. Duff had mentioned earlier seeing people back their boats up and park at the Georgia Avenue street-end. Ms. Duff said that was correct, and the reason that she had raised concerns was that she may have needed access. Ms. Duff said that Mr. Ballou said that they could talk about it when she needed the access, and she asked about it tonight because she was not sure if it was included as part of his request.

Ms. Drake addressed the Board and said that she had received a letter by email earlier that day from a property owner in the neighborhood who had asked her to offer it to the Board. Attorney Taylor said that it could go to the secretary to be placed into the record.

Chairman Sewell had a question on the proposed changes that Mr. Ballou presented to the Board. He asked if the dock on the east of Mr. Ballou's property was proposed to remain. Ms. Drake replied that the dock Chairman Sewell was referring to was not Mr. Ballou's dock but belonged to the neighboring property. Chairman Sewell said it would not have made sense to go to the trouble to replace all of the non-conforming docks only to leave the dock to the east which protruded well out into the channel, but now that he understood it was not Mr. Ballou's dock, his question had been answered.

Sarah West asked Mr. Ballou if his agreement with Kevin Schaffran is that Mr. Schaffran gets a dock. Mr. Ballou replied yes, wherever he is, he gets a dock. Ms. West asked Mr. Ballou if the dock shown on the aerial imagery to the east end was the Wright's dock. Mr. Ballou replied yes that dock belongs to the Wrights and will remain. Mr. Ballou said that the proposed configuration would be similar to what it is now with Mr. Schaffran's dock to one side.

Ms. Drake asked the Board that if they grant the special-use permit request, the Town would like to request a condition on approval that the property owner will be required to sign a notarized affidavit prepared by the Town stating that the boat slips will not be rented/leased to the public. The boat slips will only be used for private, residential use. Chairman Sewell asked Mr. Ballou if he would be willing to agree to the condition that the Town had requested. Mr. Ballou replied yes.

Bill Stompf made **MOTION**, seconded by Bobby Schultz, to close the public hearing. The motion carried unanimously.

Attorney Taylor told the Board that the Town provided evidence that items A, B, C, G, I, J, and K have been met and no contrary evidence was submitted.

The Board entered into deliberations on each of the special-use criteria addressed by the applicant. For item (D), Bill Stompf said that Mr. Ballou indicated that the request would not affect adversely the health and safety of residents and workers in the Town because it is already a non-conforming use and the applicant will be reducing the number of dock spaces and not adding anything further to the condition. Sarah West said that she found that the request will affect adversely the health and safety of residents because there will be more boats causing a higher volume of boat traffic and the safety of the residents will be affected. Chairman Sewell said that he did not see that anything would be changing as the non-conforming dock was being used presently and if the proposed new docks were to be approved they would be an improvement over what is existing. He said the request would not affect adversely the residents and workers in the Town. Judson Walton said that based on the evidence provided, the request will not affect adversely the residents and workers in the Town. Bobby Schultz said that the Board was unable to force Mr. Ballou to create a conforming use here. He said that the Board needs to consider what is on site currently and compare that to the proposal. He said that what is existing on the site is a nonconforming use which existed prior to the adoption of the ordinance. There are eight (8) boat slips in total, and from the testimony, it was learned that two (2) of those were added after the adoption of this ordinance. When comparing the existing to the proposed site plan, the Board should be comparing six (6) to six (6) boat slips. Mr. Schultz said that he understands the concerns about boat traffic and health and safety of kayakers and paddle boarders; however, with six (6) boat slips existing and six (6) boat slips proposed, he said there was no health and safety risk between the existing and proposed uses.

For item (E), the proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses, Bill Stompf said that the Board had heard statements from residents that it would be detrimental from an environmental standpoint and potentially cause a devaluation of their property. Looking at it logically, Mr. Stompf said that the docks are already existing on the property. There was testimony about increased boat traffic, and Mr. Stompf said his personal feeling was an increase in any boat traffic would affect the use or development of adjacent properties so the applicant had not proved that the request will not affect the adjacent properties. Sarah West agreed with Mr. Stompf and stated that her opinion was that the request would be detrimental to

the adjacent properties. She also said that she reads the newspaper for the public notices and had seen the notice published by CAMA regarding the major permit request at the subject property. Chairman Sewell said that he viewed the situation as presently having docks in use which have problems due to age and not being user-friendly. He said that if the request is approved and the dock usage continued, nothing would change for the adjacent properties. Chairman Sewell said that the plan presented by Mr. Ballou would be an improvement over the existing site conditions. He said that many of the speakers gave reasonable opinions about traffic in the boat channel, but that was not what the Board is being asked to decide on. Chairman Sewell said that he did not find the request to be detrimental to the use or development of adjacent properties. Judson Walton agreed with Chairman Sewell, stating the request would not be detrimental to the adjacent properties because the new docks would be inside the quarter channel line and would open the waterway based on the numbers presented. The property owners have a certain number of boats, and that number will not change so Mr. Walton said he did not see any detrimental effect to neighboring properties. Bobby Schultz said that he understood that the applicant had made an effort to improve the visual appearance of his property and had plans to improve it. Mr. Schultz said he also thought that Mr. Smith made a convincing case that at least a portion of the proposal, specifically the floating dock / slips, which were not currently permitted were detrimental to adjacent properties. He said that the Board members are not experts on the movement of sediment, but that the photos that were presented showed that at least a portion of the proposal will cause issues for at least one of the adjacent property owners. Mr. Schultz said for that reason, he found the request to be detrimental to the use of adjacent properties.

For item (F), the proposed use will not be adversely affected by existing uses, Bill Stompf said the use would not be affected by existing uses. Mr. Stompf said that most of the concern expressed appeared to be based on floating docks which would remain with the proposal. Sarah West said that she agreed. The applicant is not proposing a marina on the property and the uses are not being changed. Chairman Sewell said that he also agreed, nothing would change between the uses. Judson Walton said that the floating docks were not proposed to change regardless of approval or denial of the request and said it would not be adversely affected by existing uses. Bobby Schultz said he agreed it would not be affected by existing uses for the same reasons as previously expressed by the Board.

For item (H), the proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, of the vehicular movement, or noise or fumes or of the type of physical activity. Bill Stompf said that the request would not constitute a nuisance or hazard because the applicant would not be increasing the number of boats on the property. Mr. Ballou is not able to control traffic in the waterway. Sarah West said that the request would not be a nuisance or hazard because the new design would open-up the space between the docks across the waterway. Chairman Sewell agreed, stating it would not be a nuisance or hazard, but would actually be an improvement due to the improvements shown on the proposal. Mr. Sewell said that nothing would really change in how the property was used. Judson Walton said he heard all of the speakers talking about the floating dock and the sediment on the bottom of the waterway, but the Board must vote on what the use is, and the use does not change. Mr. Walton said that he personally does not like floating docks, but that does not change the fact that the use would not constitute a nuisance or hazard. Bobby Schultz said the request would not be a nuisance or hazard because the choice before the Board was a determination between the existing and proposed uses. Mr. Schultz said the Board cannot require every structure in Town to be conforming. The Board cannot force Mr. Ballou to remove the nonconformity. Mr. Schultz asked if the Board would be able to read the letters which had been submitted from

property owners unable to attend the meeting. Attorney Taylor said the Board could not do so as part of the decision.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

Regarding the special-use criteria contained under section 4-8.3, the Majority of Board Members agreed on the following:

- D) The proposed use will not affect adversely the health and safety of residents and workers in the town;
- E) The proposed use **WILL** be detrimental to the use or development of adjacent properties or other neighborhood uses;
- F) The proposed use will not be affected adversely by the existing uses; and
- H) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, of the vehicular movement, or noise or fumes or of the type of physical activity.

Sarah West made **MOTION**, seconded Bobby Schultz, to deny the Special-Use Permit due to the applicant not having satisfied item (E) of the special-use criteria. The motion carried unanimously.

UNFINISHED BUSINESS:

The Order from the December 9, 2021, meeting agenda item was presented by Staff. Chairman Chuck Sewell called for changes or amendments to the ORDER.

Bill Stompf made **MOTION**, seconded by Judson Walton, to approve Bailey Storage Special-Use Permit ORDER as submitted. The motion carried unanimously.

NEW BUSINESS:

There was no new business discussed.

ADJOURNMENT:

There being no further requests or comments, the meeting was adjourned at 8:51p.m.

Annie Bunnell, Secretary