SMITHMOORE LEATHERWOOD
ATTORNEYS AT LAW

101 N. Third Street
Suite 400
Wilmington, NC 28401

July 20, 2017

Via E-Mail: langlin@sunsetbeachnc.gov

And First Class U.S. Mail

The Honorable Lisa Anglin
Town Clerk
Town of Sunset Beach
700 Sunset Blvd. N
Sunset Beach, NC 28468

Re: FIRST REQUEST FOR CONTINUANCE
Appeal of Order to Take Corrective Action dated June 13, 2017
1846 East Main St., Sunset Beach, North Carolina
Palm Cove, Lot 9
Parcel 256MB009

Dear Madam Clerk:

On behalf of my clients, David A. Tendler and Susan E. Spratt, the owners of the above-referenced property, we respectfully request that the appeal hearing in this matter be continued from Town Council's August 15, 2017 Meeting until Town Council's October 2, 2017 Meeting. My clients wish to resolve this matter with the Town amicably if at all possible, and granting this continuance request will allow my clients additional time to work with Town Staff in an effort to try to resolve this matter without the need for a hearing. Also, we respectfully contend that allowing the additional time requested will provide the parties a better opportunity to narrow the scope of issues or items that are actually in controversy or dispute, thereby conserving the time and resources of all parties involved if a hearing becomes necessary. This is my clients' first continuance request.

Please contact me if you need any additional information at this time. We appreciate the Town's consideration of the foregoing and this request, and thank you for your time and assistance in this matter.

Sincerely,

Smith Moore Leatherwood LLP

Matthew A. Nichols

MAN/nc

Cc: Susan Parker, Town Administrator
(via e-mail: sparker@sunsetbeachnc.gov)
Hiram J. Marziano, II, CFM, Director of Planning
(via e-mail: hmarziano@sunsetbeachnc.gov)
G. Grady Richardson, Jr., Town Attorney (via e-mail: grady@ggrlawoffice.com)

700 Sunset Boulevard North • Sunset Beach, NC 28468
Telephone: 910-579-6297 • Fax: 910-579-1840
Website: www.sunsetbeachnc.gov • Email: sunsetbeach@atmc.net

Susan Parker, Administrator

July 12, 2017

David A. Tendler & Susan E. Spratt
32 Lytham Lane
Durham, NC 27707

SUBJECT: Notice of Appeal Hearing for property located at 1846 East Main Street, Sunset Beach [Parcel 256MB009]

Dear Property Owner:

On June 22, 2017, a Notice of Appeal was filed on your behalf Matthew A. Nichols of Smith Moore Leatherwood, LLP. This notice is in reference to the Order to Take Corrective Action sent to you by the Town of Sunset Beach dated June 12, 2017. This action and appeal involve the violations cited by the Town in previous letters and at the on-site hearing held on June 9, 2017.

At their regularly scheduled meeting, the Town Council of the Town of Sunset Beach reviewed your request for appeal. They decided to schedule the appeal hearing on **August 15, 2017 at 9:00 AM** [or as soon thereafter pending other Town business]. You or your representation [or both] are encouraged to be present to make your arguments.

Please contact the Town of Sunset Beach at (910) 579-6297 if you have any questions.

Respectfully,

Lisa Anglin
Town Clerk

CC: Town of Sunset Beach Mayor and Town Council
Matthew A. Nichols, Attorney, Smith Moore Leatherwood, LLP
G. Grady Richardson, Jr., Town Attorney, Law Offices of G. Grady Richardson, Jr., P.C.

Mayor Robert Forrester • Mayor Pro-Tem: Carol Scott
Town Council: Mark Benton • Richard Cerrato • John Corbett • Peter Larkin

Part of North Carolina's Brunswick Islands

700 Sunset Boulevard North • Sunset Beach, NC 28468
Telephone: 910-579-6297 • Fax: 910-579-1840
Website: www.sunsetbeachnc.gov • Email: sunsetbeach@atmc.net

Susan Parker, Administrator

July 12, 2017

Matthew A. Nichols
Smith Moore Leatherwood, LLP
101 N. Third Street
Suite 400
Wilmington, NC 28401

SUBJECT: Notice of Appeal Hearing for property located at 1846 East Main Street, Sunset Beach [Parcel 256MB009]

Dear Mr. Nichols:

On June 22, 2017, you filed a Notice of Appeal on behalf of your clients for property they own located at 1846 East Main Street, Sunset Beach, NC. This notice is in reference to the Order to Take Corrective Action sent to your clients by the Town of Sunset Beach dated June 12, 2017. This action and appeal involve the violations cited by the Town in previous letters and at the on-site hearing held on June 9, 2017.

At their regularly scheduled meeting, the Town Council of the Town of Sunset Beach reviewed your request for appeal. They decided to schedule the appeal hearing on **August 15, 2017 at 9:00 AM** [or as soon thereafter pending other Town business]. You or your clients [or both] are encouraged to be present to make your arguments.

Please contact the Town of Sunset Beach at (910) 579-6297 if you have any questions.

Respectfully,

Lisa Anglin
Town Clerk

CC: Property Owners [via personalized letters]
Town of Sunset Beach Mayor and Town Council
G. Grady Richardson, Jr., Town Attorney, Law Offices of G. Grady Richardson, Jr., P.C.

SMITHMOORE LEATHERWOOD
ATTORNEYS AT LAW

101 N. Third Street
Suite 400
Wilmington, NC 28401

Recd 6/23/17 LHA

VIA HAND DELIVERY

June 22, 2017

Mr. Hiram J. Marziano, II, CFM
Floodplain Administrator
Town Planning Director
Town of Sunset Beach
700 Sunset Blvd. N
Sunset Beach, NC 28468

The Honorable Lisa Anglin
Town Clerk
Town of Sunset Beach
700 Sunset Blvd. N
Sunset Beach, NC 28468

Re: **NOTICE OF APPEAL**
Appeal of Order to Take Corrective Action dated June 13, 2017
1846 East Main St., Sunset Beach, North Carolina
Palm Cove, Lot 9
Parcel 256MB009

Dear Mr. Marziano and Madam Clerk:

This law firm represents David A. Tendler and Susan E. Spratt, the owners of the above-referenced property. Pursuant to Town of Sunset Beach ("Town") UDO Article 12, Section 12.03(D)(4), and all other applicable law and regulations, please accept this letter as my clients' appeal to Town Council from the letter and Order to Take Corrective Action issued by Mr. Marziano dated June 13, 2017, a copy of which is attached hereto as Exhibit "A" (the "Order").

For reasons to be more fully set forth at the hearing before Town Council on this appeal, my clients disagree with the alleged violations and Findings set forth in the Order, including without limitation the Town's interpretation and application of UDO Article 12, Part I, 44 CFR 60.3(e), NCRC Section 322.1.6, NCRC Section 322.3.4 and IBC ASCE 24-05.

My clients assert the Town's approval of prior permit and building inspections and the Town's issuance of a certificate of occupancy and related construction and building permits and approvals as a complete or partial defense to the alleged violations set forth in the Order. My

clients also assert that to the extent that there may be technical violations of the UDO or other applicable regulations, which violations are denied herein, such violations result from implementing construction methods and techniques suggested and/or approved by the Town following prior consultation between my clients' building professionals and Town building and permitting officials during the construction process. Accordingly, my clients assert the defenses of laches, waiver and estoppel as a complete or partial defense to the alleged violations.

Alternatively, my clients assert as a complete or partial defense in this matter that all or some of the alleged violations are de minimus and that enforcement should not be pursued in the current actions, particularly in light of the Town's prior building inspections and approvals and numerous other examples of similar construction methods and techniques that can be found throughout the Town.

Based upon the foregoing and the evidence and arguments to be made at the hearing of this appeal, my clients respectfully contend that the alleged violations should be dismissed or reversed.

My clients reserve the right to assert additional defenses as the facts and circumstances become further known in this matter.

Additionally, my clients reserve their rights to request a variance from the applicable ordinances and regulations and/or seek any other exemptions or exceptions to the applicable ordinances and regulations that may be available under the circumstances.

If there are any required filing or appeal fees or forms associated with this appeal, please let me know, and my clients will promptly pay any required fees and submit any required forms. Also, if you need any other information at this time please let me know.

We kindly request that that hearing on this appeal be scheduled for a date certain in the fall of 2017, in order to allow the parties additional time to continue to work toward a mutually agreeable resolution in this matter. Also, my clients do appreciate the Town's allowance in the Order for a 180-day compliance timeframe for the alleged violations, and we look forward to further discussions with the Town in an effort to try to resolve this matter in the next few months without requiring a hearing, if possible.

Thank you for your time and assistance in this matter.

Sincerely,

Smith Moore Leatherwood LLP

Matthew A. Nichols

MAN/nc

Cc: Susan Parker, Town Administrator (via e-mail: sparker@sunsetbeachnc.gov)
G. Grady Richardson, Jr., Town Attorney (via e-mail: grady@ggrlawoffice.com)

PENGAD 800-631-6989
EXHIBIT
A

700 Sunset Boulevard North • Sunset Beach, NC 28468
Telephone: 910-579-6297 • Fax: 910-579-1840
Website: www.sunsetbeachnc.gov • Email: sunsetbeach@atmc.net

June 13, 2017

David A. Tendler & Susan E. Spratt
32 Lytham Lane
Durham, NC 27707

SUBJECT: Floodplain Violation at property located at 1846 East Main Street, Sunset Beach [Parcel 256MB009] – Findings from June 9, 2017 Hearing and Order to Correct

Dear Property Owner:

On April 6, 2017, a Notice of Violation was sent regarding the property you own located at **1846 East Main Street, Sunset Beach, NC**. This notice identified violations of the Town of Sunset Beach Unified Development Ordinance related to floodplain development. This notice of violation was followed up with a notice of hearing dated June 1, 2017 for an on-site hearing for June 9, 2017. This letter serves as the findings of that hearing and as an order to take corrective action regarding the violations contained herein.

At an on-site hearing, conducted by the Director of Planning for the Town of Sunset Beach on June 9, 2017 at the above referenced subject property, the following was found:

Finding I: Telephone/Cable box attached to breakaway wall system with wires penetrating through the wall. [See Photograph I and Photograph III]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding II: Two service disconnects mounted on and penetrating two different breakaway wall systems. One to the right of the electrical meter and one to the left of the electrical meter. [See Photograph I and Photograph III]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding III: Water spigot penetrating the breakaway wall system. [See Photograph II]

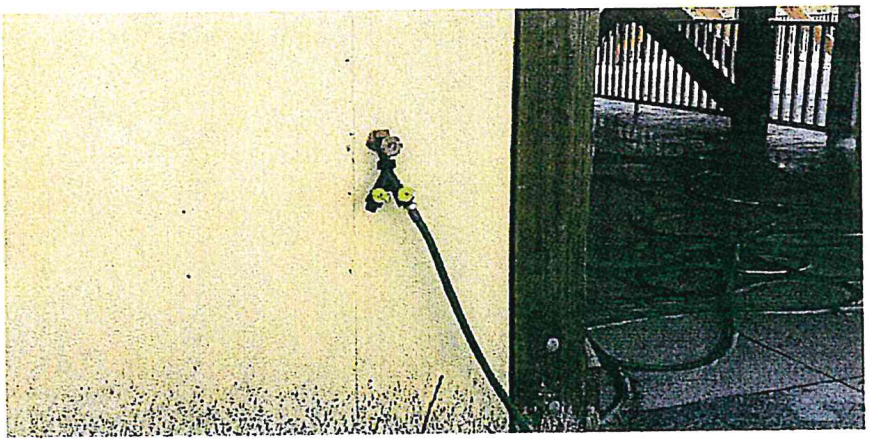
- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding IV: One pool pump disconnecting means with utility junction box. [See Photograph III]

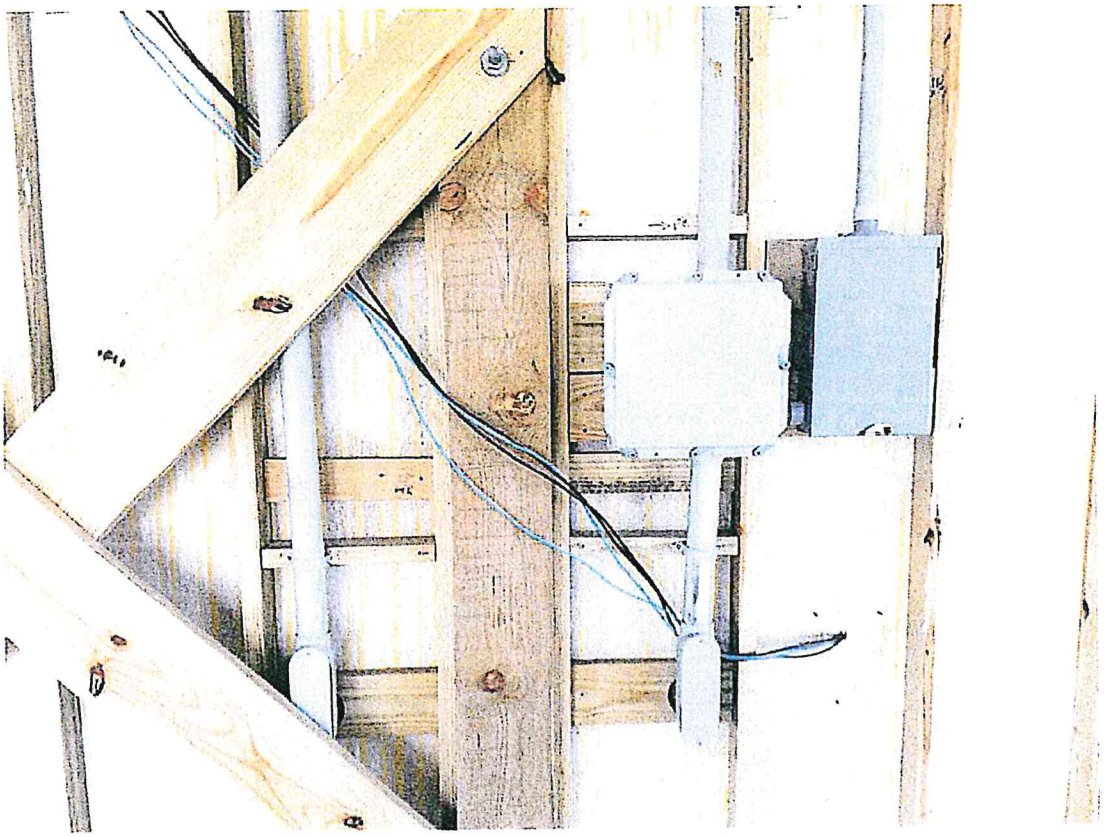
- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Photograph I:

Photograph II:



Photograph III:



As a result of these findings, the Town of Sunset Beach is issuing the following order as allowed by the Town of Sunset Beach Unified Development Ordinance: Article 12, Section 12.03(D)(3):

Order to Take Corrective Action

All violations listed in the above findings of this letter are to be corrected so as to reach full compliance with the Town of Sunset Beach Flood Damage Prevention Ordinance (UDO Article 12 Part I), NFIP regulations under 44 CFR 60.3(e) and NCRC regulations under R322.1.6 and R322.3.4. More specifically, nothing is to be attached to, run along, or penetrate a breakaway wall so as to comply with breakaway wall design and free-from-obstruction requirements of the National Flood Insurance Program.

As allowed by the Town's ordinances, you have one hundred eighty (180) calendar days from the date of this letter to complete the necessary actions to come into compliance. The deadline for full compliance is Sunday, December 10, 2017.

This order may be appealed to the Town Council of the Town of Sunset Beach as per the Town of Sunset Beach Unified Development Ordinance: Article 12, Section 12.03(D)(4). Appeals must

be made in writing to the Floodplain Administrator and the Town Clerk no later than ten (10) days after the date of this order.

Please contact the Town of Sunset Beach at (910) 579-0068 so that we may assist you in this matter.

Regards,

Hiram J. Marziano, II
Director of Planning

CC: Susan Parker, Town Administrator, Town of Sunset Beach
Grady Richardson, Town Attorney, Town of Sunset Beach
Heather Keefer, NFIP Planner, Eastern Branch, NC Department Public Safety
Roy McClure, Program Specialist, DHS/FEMA Region IV
Matthew A. Nichols, Attorney, Smith Moore Leatherwood Attorneys at Law

AUTHORITY FOR APPOINTMENT OF PERSON TO ACT ON MY BEHALF

The undersigned owners, David A. Tendler and Susan E. Spratt do hereby appoint Matthew A. Nichols of Smith Moore Leatherwood LLP to act on their behalf for the purpose of appealing the Order to Take Corrective Action issued on June 13, 2017 for an alleged Floodplain Violation on property located at 1846 East Main Street, Sunset Beach (Parcel 256MB009).

The owners do hereby covenant and agree with the Town of Sunset Beach that said person has the authority to do the following acts for and on behalf of the owners:

1. To submit a proper application for appeal and the required supplemental materials.

2. To appear at public meetings to give testimony and make commitments on behalf of the owners.

3. To accept conditions or recommendations of the governing body regarding the owners' property.

4. To act on the owners' behalf without limitation regarding any and all things directly or indirectly connected with or arising out of this appeal.

This appointment agreement shall continue in effect until final disposition of the appeal submitted in conjunction with this appointment.

Appointee's Name, Address & Telephone:

Matthew A. Nichols
Smith Moore Leatherwood LLP
101 N. Third St., Suite 400
Wilmington, NC 28401
(910) 815-7100

Signature of Owners:

David A. Tendler
Date: 6-19-17

Susan E. Spratt
Date: 6-19-17