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RECORDED: 05-27-2020		NEW HANOVER COUNTY, NC
12:24:22 PM		TAMMY THEUSCH BEASLEY
BY: KELLIE GILES		REGISTER OF DEEDS
DEPUTY		NC FEE \$26.00

Prepared by: Matthew A. Nichols
 and
 Returned To: LAW OFFICE OF MATTHEW A. NICHOLS
 3205 Randall Parkway, Suite 104
 Wilmington, NC 28403
 Telephone: (910) 508-7476

Revenue Stamps: None

Brief Description for Index: Road Maintenance Agreement for a portion of Buck Drive

Tax Parcel I.D. #: R01900-001-021-000, R01900-001-010-023 and
 R01900-001-010-039

STATE OF NORTH CAROLINA
 COUNTY OF NEW HANOVER

ROAD MAINTENANCE AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of this 18 day of MAY 2020 by and among THOMAS OLIVER, MYRON SMITH, JR. and MARYBETH E. LENGYEL (all of whom are collectively referred to herein as the "Parties" and singularly referred to as "Party").

WITNESSETH:

WHEREAS, the Parties are currently owners of adjacent parcels of land located along a 60-foot wide private right-of-way known as “Buck Drive” in northern New Hanover County, North Carolina (New Hanover County Tax Parcel ID No. R01900-001-021-000), to wit:

a. Thomas Oliver and Myron Smith, Jr. (“Oliver and Smith”) are the fee simple owners of that certain tract of land containing approximately 7.32 acres, located 4245 Buck Drive, New Hanover County, North Carolina, and more particularly described in that deed recorded on February 1, 2018, in Book 6118 at Page 944 of the New Hanover County Registry (the “Oliver-Smith Tract”) (New Hanover County Tax Parcel ID No. R01900-001-010-023) (shown as Parcel 1 on Exhibit “A” attached hereto).

b. Marybeth E. Lengyel is the fee simple owner of that certain tract of land containing approximately 1.08 acres, located at 4285 Buck Drive, New Hanover County, North Carolina, and more particularly described in that deed recorded on February 1, 2018, in Book 6118 at Page 939 of the New Hanover County Registry (the “Lengyel Lot”) (New Hanover County Tax Parcel ID No. R01900-001-010-039) (shown as Parcel 2 on Exhibit “A” attached hereto).

WHEREAS, by virtue of their property ownership, the Parties each have easement rights over and across Buck Drive for purposes of vehicular and pedestrian access to and from their respective properties and Sidbury Road, a 60-foot wide public right-of-way (S.R. #1336);

WHEREAS, on November 19, 2019, the Parties applied for a variance from the New Hanover County Zoning Board of Adjustment (the “Board”) with respect to access standards in the New Hanover County Zoning Ordinance in order to allow for the construction of residential

structures on their respective properties, as more particularly set forth in New Hanover County Zoning Board of Adjustment Case No. ZBA-947;

WHEREAS, on December 10, 2019, the Board held a quasi-judicial Hearing to consider the Parties' variance request (Case No. ZBA-947);

WHEREAS, having heard all of the evidence and arguments presented at the Hearing, the Board granted the requested variance as set forth in the Board's Order to Grant Variance – Case ZBA-947 dated December 10, 2019, a copy of which Order is attached hereto as Exhibit "B";

WHEREAS, pursuant to Condition No. 1 in the Board's Order, the Parties are required to improve a portion of Buck Drive to a certain standard from Sidbury Road to the T-junction as generally shown on Exhibit "A" attached hereto (the "Improved Section of Buck Drive"), and as more particularly set forth in the Board's Order;

WHEREAS, pursuant to Condition No. 3 in the Board's Order, the Parties are also required to enter into a Maintenance Agreement in a form acceptable to the County to assure that the Improved Section of Buck Drive will be maintained to the standards required by the Board's Order; and

WHEREAS, the Parties desire to set forth and memorialize in this Agreement their road maintenance and repair obligations with regard to the Improved Section of Buck Drive as required by the Board's Order, and the Parties agree that it is in their best interests to memorialize their maintenance and repair obligations under the Board's Order.

NOW THEREFORE, pursuant to the Board's Order, and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Party does hereby agree as follows.

1. Use of Buck Drive. Buck Drive may be used by each of the Parties hereto, and their family members, guests, tenants and invitees, for the limited purpose of vehicular and pedestrian access to each Party's own property identified above. No Party hereto shall erect, construct or cause to be erected or constructed any fence, wall, curb, or other barrier on Buck Drive, or in any manner interfere with or restrict the full and complete use and enjoyment by any Party of Buck Drive for the limited purposes set forth herein. None of the Parties shall be permitted to use Buck Drive in such a manner as to create a nuisance, including, without limitation, the creation of excessive amounts of noise, the parking of automobiles, other vehicles or trailers, or use at such times and in such a manner as would violate any federal, state or local laws/ordinances. Nothing herein shall be construed or is intended to grant or permit any Party hereto a right to access or otherwise enter upon or interfere with any other Party's property identified above or the use and enjoyment thereof, and no Party hereto shall in any manner interfere with any other Party's right to the full, complete and exclusive use and enjoyment of his/her/its own property. Furthermore, nothing herein shall be construed or is intended to grant or permit the public or any third party or person a right to access or otherwise enter upon or interfere with any Party's property identified above or the use and enjoyment thereof.

2. Maintenance and Repair of Improved Section of Buck Drive. The Parties shall maintain and repair the Improved Section of Buck Drive, as shown on Exhibit "A" attached hereto, as a road passable by motor vehicle and by police, fire, ambulance and other emergency vehicles to the standard set forth in the Board's Order. The Parties' maintenance and repair obligations set forth in this Agreement shall not extend beyond the Improved Section of Buck Drive and shall not include any widening, landscaping or any other upgrading or improvements to Buck Drive beyond those required by the Board's Order.

3. Shared Costs of Maintenance and Repair; Future Subdivision of Oliver-Smith Tract.

The costs of maintenance and repair of the Improved Section of Buck Drive as set forth in this Agreement shall be divided equally between and among the Parties based upon the number of single-family residences constructed upon each of the Parties' respective properties, including any future division(s) of the Oliver-Smith Tract. As presented to the Board in the variance request, and as provided for under Condition No. 2 in the Board's Order, the Oliver-Smith Tract may be subdivided into four lots, which together with the Lengyel Lot equals the maximum total of five (5) lots permitted by the Board for the subject properties. In the event that the Parties required to contribute to road maintenance and repair under this Agreement cannot agree upon the nature, necessity, extent or cost of maintaining and repairing the Improved Section of Buck Drive, each such Party shall have the right to enforce the maintenance and repair standards and obligations under this Agreement by sending written notice, by registered or certified mail, return receipt requested, of all proposed maintenance and repairs, the cost thereof, and written bids or estimates, if any, to all other Parties, and requesting a meeting to discuss and vote upon the proposed maintenance and repairs no less than thirty (30) days following the mailing of such notice to all other Parties (or their successors in title) at their last known addresses disclosed by the New Hanover County Tax Listings. The meeting shall take place in New Hanover County, North Carolina, unless otherwise agreed to by all the Parties, and the Parties may participate in the meeting remotely via teleconference.

At such road maintenance and repair meeting, each Party required to contribute to road maintenance and repair, or his/her/its agent or attorney, shall vote on whether to accept or reject the repair or maintenance proposals presented, and vote to select the contractor or other person to perform the maintenance and repair work. Multiple owners of any of the above-identified

tracts/lots benefited by this Agreement (including the planned future lots from any subdivision of the Oliver-Smith Tract) shall not have more than one total combined vote for each lot, regardless of the number of co-owners. A majority of votes cast shall determine the nature and extent of the road maintenance and repairs to be performed. Each Parties' equal share shall be due and owing to the Party who called the road maintenance and repair meeting within thirty (30) days; said costs may be reduced to a judgment and shall become a lien on the land of the defaulting Party. Said Party who called the road maintenance and repair meeting shall (i) hold all such moneys collected pursuant to this Agreement in trust or escrow for payment of the approved road maintenance and repairs as the same become due, (ii) provide all contributing Parties an accounting of the moneys collected and spent within thirty (30) days of completion of the work, along with copies of any invoices and receipts, and (iii) promptly refund all excess funds equally among the contributing Parties.

Notwithstanding any of the foregoing provisions of this section, in the event that any of the Parties hereto, or their household members, guests, tenants or invitees negligently or intentionally damage Buck Drive, or cause ruts, holes or excessive wear on Buck Drive due to the use of construction apparatus or other heavy equipment or machinery, then said Party or Parties shall be solely responsible for any repairs or replacement/reconstruction necessitated by such conduct, and such repairs or replacement/reconstruction shall be made within thirty (30) days.

4. Recordation. This Agreement or a certified copy thereof shall be recorded in the New Hanover County Register of Deeds Office and cross-indexed in the names of all of the Parties.

5. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication to or for the general public, and this Agreement shall be strictly limited to and for the purposes expressed herein.

6. Enforceability. This Agreement shall be enforceable by any Party hereto by any action in law or equity, and this Agreement shall not be enforceable by any other persons or entities and shall confer no legal or equitable rights or remedies upon any other persons or entities. This Agreement is for the sole benefit of the Parties hereto and their successors in interest and assigns and is not for the benefit of any other persons or entities.

7. Amendment. This Agreement may be amended only by written instrument signed by all of the Parties to this Agreement. Any amendments to this Agreement shall be recorded in the New Hanover County Register of Deeds Office and cross-indexed in the names of all of the Parties.

8. Duration of Agreement. This Agreement shall commence on the date it is signed by the Parties and shall be perpetual, except as provided herein. No breach of this Agreement shall entitle a Party to cancel or terminate this Agreement. However, in the event that the North Carolina Department of Transportation or other governmental authority takes over the maintenance and repair of the Improved Section of Buck Drive in the future, then this Agreement may be terminated by a notice of termination signed by all of the Parties to this Agreement, which notice shall be recorded in the New Hanover County Register of Deeds Office along with appropriate documentation regarding the government's acceptance of the road maintenance and repair responsibilities for Buck Drive.

9. Execution. This Agreement becomes valid and enforceable between and among the Parties when signed by the Parties. This Agreement may be executed in multiple counterparts which, when taken together, shall form the entire Agreement.

10. Governing Law and Interpretation. This Agreement is made and executed under and in all respects to be governed and construed by the laws of the State of North Carolina, and the Parties consent to the jurisdiction of the North Carolina Courts for the resolution of any

controversies arising as a result of this Agreement. Invalidation of any provision in this Agreement by Judgment or Court Order shall in no way effect any of the other provisions of this Agreement which shall remain in full force and effect.

11. Agreement Runs with the Land; Running Benefits and Burdens; Binding Effect. The terms, conditions and provisions of this Agreement shall run with the land and shall be binding upon the Parties, the future owners of the Parties' respective properties identified herein, and their heirs, successors in interest and assigns.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first above written. Each Party signing below affixes his/her/its seal adjacent to his/her/its signature. It is the intention of the Parties that this Agreement be executed as a sealed instrument.

[SIGNATURES AND NOTARY ACKNOWLEDGEMENTS ON
FOLLOWING PAGES.]

[SIGNATURE PAGE TO ROAD MAINTENANCE AGREEMENT]

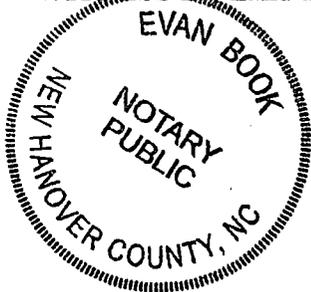
Thomas Oliver
THOMAS OLIVER

(SEAL)

STATE OF North Carolina
COUNTY OF New Hanover

I, EVAN BOOK, a Notary Public in and for said County and State, do hereby certify that THOMAS OLIVER, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 18 day of May 2020.



Evan Book

Notary Public

My Commission Expires:

11/3/21

[SIGNATURE PAGE TO ROAD MAINTENANCE AGREEMENT]

[Handwritten Signature] (SEAL)
MYRON SMITH, JR.

STATE OF CT

COUNTY OF Fairfield

I, Angela Volto, a Notary Public in and for said County and State, do hereby certify that MYRON SMITH, JR., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 27 day of April 2020.

[Handwritten Signature]
Notary Public

My Commission Expires:

11/31/2023



ANGELA K VOLTO
NOTARY PUBLIC
STATE OF CONNECTICUT
MY COMM. EXP. 01/31/2023

[SIGNATURE PAGE TO ROAD MAINTENANCE AGREEMENT]

Mary Beth E. Lengyel (SEAL)
MARYBETH E. LENGYEL

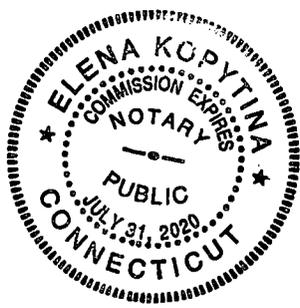
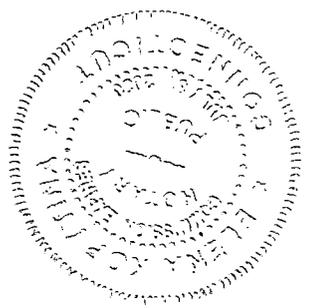
STATE OF Connecticut
COUNTY OF New Haven

I, Elena Kopytina, a Notary Public in and for said County and State, do hereby certify that MARYBETH E. LENGYEL, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 8th day of May 2020.

[Signature]
Notary Public

My Commission Expires: July 31, 2020





NEW HANOVER COUNTY

BOARD OF ADJUSTMENT

230 GOVERNMENT CENTER DRIVE, LUCIE HARRELL CONFERENCE ROOM
WILMINGTON, NORTH CAROLINA 28403

MEMBERS OF THE BOARD

Raymond Bray, Chairman Henry "Hank" Adams, Vice-Chair
Kristin Freeman Cameron Moore Mark Nabell

BOARD ALTERNATES

Pete DeVita Richard Kern Michael Keenan, Sr.

Wayne Clark, Director of Planning & Land Use Sharon Huffman, Deputy County Attorney

EXHIBIT

B

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ORDER TO GRANT A VARIANCE -- Case ZBA-947

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on December 10, 2019 to consider application number ZBA-947, submitted by Myron Smith, Jr., Thomas Oliver, and Marybeth Lengyel, applicants and property owners, a request for a variance to use the properties located at 4245 and 4285 Buck Drive in a manner not permissible under the literal terms of the ordinance and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specifically the structures to have access requirements in Section 61.2-1 of the New Hanover County Zoning Ordinance, that an unnecessary hardship would result. This conclusion is based on the following FINDINGS OF FACT:
 - Per County regulations, the applicants are currently unable to construct a residence on property until the appropriate improvements are made.
 - There is a prohibitive cost to the applicant of improving road to all County/NCDOT standards.
 - Buck Drive is an accessible, wide, and usable road.
 - Buck Drive already provides access to more than 3 structures.
 - The applicants are willing to make substantial improvements to Buck Drive to enhance emergency access along entirety of Buck Drive to the T-junction.

2. It is the Board's conclusion that the hardship of which the applicant complains results from unique circumstances related to the subject property, such as location, size, or topography. This conclusion is based on the following FINDINGS OF FACT:
 - There is a unique situation and hardship resulting from complicated and unique history of development along Buck Drive.
 - The subject property is situated along Buck Drive, and there have been historical issues with Buck Drive, but other parcels currently accessing Buck Drive, thus there are inconsistencies in the status of parcels and permits along Buck Drive.

3. It is the Board's conclusion that the hardship did not result from actions taken by the applicant or the property owner. This conclusion is based on the following FINDINGS OF FACT:

- The applicants did not create or have any involvement with history of Buck Drive dispute.
- Site conditions are not indicative of outstanding issues (street sign, wide, accessible road, other residences/structures have driveways).
- The applicants are willing to significantly improve Buck Drive to a much better standard than currently exists.
- The proposed improvements to Buck Drive benefit all residents along Buck Drive and improve and enhance County emergency access.

4. It is the Board's conclusion that, if granted, the variance will be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

- Buck Drive is a wide and usable drive already providing access to more than 3 structures.
- The applicants are willing to make significant improvements to Buck Drive.
- The applicants' proposal to limit density on subject property protects the character of Buck Drive.
- The applicants will provide an agreement to maintain the proposed improvements.
- Improvement of Buck Drive provides improved emergency access that benefits other property owners and enhances public safety.
- The applicants' request offers a needed solution, remedy and path forward from longstanding issues with Buck Drive.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE from New Hanover County Zoning Ordinance to allow a variance from the structures to have access requirements in Section 61.2-1 of the New Hanover County Zoning Ordinance be GRANTED; subject to the following conditions, if any:

1. *Improvement of existing Buck Drive approximately 1,500 feet in length, 26-feet in width, from Sidbury Road to and including the northerly lane at the T-junction of Buck Drive as shown on the Variance Exhibit attached hereto as Exhibit A-2, including 4" ABC Stone or other non-compacted parking surface, geosynthetic soil stabilizer fabric, and compacted subgrade as shown on the Gravel Driveway Section of Exhibit A-2, or to a standard otherwise acceptable to the New Hanover County Fire Marshal.*
2. *Limiting the density of the subject property to a maximum total of five (5) lots and single-family residences, including any permitted accessory structures allowed under the County ordinances.*

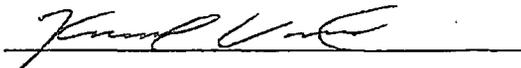
3. *Maintenance Agreement for improved section of Buck Drive.*
4. *The variance shall apply to all lots with direct access to the improved portion of Buck Drive.*
5. *This variance is applicable to all parcels having direct access and frontage on the portions of Buck Drive propose to be improved.*

ORDERED this 10th day of December, 2019.



Henry Adams, Vice-Chairman

Attest:



Kenneth Vafier, Executive Secretary to the Board

TAMMY THEUSCH
BEASLEY
Register of Deeds

New Hanover County Register of Deeds

320 CHESTNUT ST SUITE 102 • WILMINGTON, NORTH CAROLINA 28401
Telephone 910-798-4530 • Fax 910-798-7716



State of North Carolina, County of NEW HANOVER
Filed For Registration: 05/27/2020 12:24:22 PM
Book: RB 6315 Page: 1-16
16 PGS \$26.00
Real Property \$26.00
Recorder: KELLIE GILES
Document No: 2020019070

DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.