

**BEFORE THE BOARD OF ADJUSTMENT OF  
THE TOWN OF FENWICK ISLAND**

**IN RE:**

**APPEAL OF DECISION OF  
BUILDING OFFICIAL  
BY KINGDOM TRUST CO FBO  
DWIGHT HURST IRA**

**DECISION**

The Board of Adjustment of the Town of Fenwick Island (the “Board of Adjustment”) held a hearing on Wednesday, June 29, 2022, at 10:00 at the Town of Fenwick Island Town Hall, 800 Coastal Highway, Fenwick Island, DE 19944, to hear an appeal of the decision of the Building Official by Applicant Kingdom Trust CO FBO Dwight Hurst IRA (the “Applicant”). Present for the Board of Adjustment hearing were Chairman Marlene Quinn, and members Lizbeth Lear, Paul Wilson, and Edward Bishop, and Nicholas G. Kondraschow, Esq., counsel for the Board of Adjustment. Also present were Patricia Schuchman, Town Manager; Erin Ellinger, Building Official; Raelene Menominee, Town Administrator; and Luke Mette, Esq., the Town Solicitor. Dwight Hurst of the Applicant and Jonathan Staehle of Sussex Marine Construction Inc. (the “Contractor”) appeared on behalf of the Applicant at the hearing. The public hearing was attended by members of the public who were interested in the appeal.

**FINDINGS OF FACT**

The Applicant is the owner of residential property located at 501 Glenn Avenue, Fenwick Island, DE 19944, within the corporate limits of the Town of Fenwick Island, Sussex County, Delaware (the “Town”). The property is also identified as Sussex County Tax Map and Parcel No. 1-34 23.16 157.00 Lot 248 (the “Property”). The Property is located on the westerly side of Coastal Highway (State Route 1). To the east of the Property is a lagoon and/or canal 60 feet or less in width. The Property is improved by a residence and bulkhead.

On or about August 17, 2021, the Applicant and Contractor submitted a Request for Authorization Form for the State of Delaware Statewide Activity Approval (“SAA”) for Construction in Tidal Artificial Lagoon Systems to the State of Delaware Department of Natural Resources and Environmental Control (“DNREC”). In “Structure Type,” the Applicant listed “Bulkhead 40’x1’[Repair],” “Dock 22’x9’→ 0’ (Triangle) [New],” and “Davit (on Bulkhead) [New].” On or about February 24, 2022, the Applicant received an SAA from DNREC. On February 25, 2022, the Applicant filed an Application for Building Permit with the Town to “Repair and Replace 40’ Bulkhead” (the “Application”). The Application did not refer to a dock. On February 25, 2022, the Building Official issued preliminary clearance for “Repair & Replace 40’ Bulkhead.” On February 28, 2022, the Applicant received a building permit from Sussex County with Scope of Work “Repair & Replace 40’ Bulkhead” and “Bulkhead 40 X 1

Dock 22 X 9 Triangle.” On March 1, 2022, the Town issued a building permit for “Repair & Replace 40’ Bulkhead.”

On or about March 8, 2022, the Town’s Public Works Department notified the Town that the Applicant was building a dock in violation of Chapter 160-8B(1) of the Town of Fenwick Island Code (the “Town Code”). Under Chapter 160-8B(1), docks are not permitted in lagoons or canals 60 feet or less in width. At the time, the dock was partially built. On March 8, 2022, the Town Manager issued a Stop Work Order to stop all work on the dock (the “Stop Work Order”) to the Contractor on site and thereafter to the Applicant. After receiving the Stop Work Order, the Applicant continued working on the dock and completed it on or about May 27, 2022.

On March 31, 2022, Mr. Hurst sent a letter to the Town stating that “[t]his letter shall serve as my official appeal to the Stop Work Order issued on the dock being installed at 501 Glenn Ave. on March 8, 2022.” Prior to the hearing, 10 neighbors of 501 Glenn Avenue submitted a letter to the Town in opposition to the dock. No member of the public spoke in favor of the dock at the hearing.

### **APPEAL OF DECISION OF THE BUILDING OFFICIAL**

Chapter 160-8B(1) of the Code states:

- B. Regulations for structures such as but not limited to docks, piers, wharves, boat ramps, steps, boat houses, gazebos, piling and navigational aids in lagoons and canals.
  - (1) In order to provide clear, safe and unobstructed operation of watercraft in lagoons or canals 60 feet or less in width within the corporate limits of Fenwick Island, Delaware, no structure such as but not limited to docks, piers, wharves, boat ramps, steps, boat houses, gazebos, piling and navigational aids shall be constructed which project beyond the bulkhead line of such lagoon or canal. Davits shall be permitted, provided that they shall not project over the waterways more than 12 feet from the bulkhead and, when not in use, they shall be retracted to a line at least four feet parallel to the bulkhead. This installation shall require a building permit.

Chapter 160-8B(4)(a) of the Code states:

- (4) When application is made for a building permit for the construction of structures such as but not limited to bulkheads, docks, piers, wharves, boat ramps, steps, boat houses, gazebos, piling and navigational aids, the procedure shall be as follows:
  - (a) Prior to submitting an application to the State of Delaware, Department of Natural Resources and Environmental Control and the United States Army Corps of Engineers, the data required by Chapter 61, Building