

BOARD OF ADJUSTMENT

JOHN WILLIAMSON, CHAIRMAN
KEVIN E. CARSON
JEFF CHORMAN
JOHN T. HASTINGS
JORDAN WARFEL



Sussex County

DELAWARE
sussexcountyde.gov

(302) 855-7878

AGENDA

August 16, 2021

6:00 P.M.

PLEASE REVIEW MEETING INSTRUCTIONS AT THE BOTTOM OF THE AGENDA**

Call to Order

Pledge of Allegiance

Approval of Agenda

Approval of Minutes for June 7, 2021

Approval of Finding of Facts for June 7, 2021

Old Business

Public Hearings

Case No. 12593 – Joseph A. & Andrea G. Vai seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-42, 115-183 & 115-185 of the Sussex County Zoning Code). The property is located on the west side of Mallard Drive within the Swann Keys Subdivision. 911 Address: 37041 Mallard Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-94.00

Case No. 12594 – Jon Binnix seeks variances from the side yard setback requirement for a proposed structure (Sections 115-42, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Piney Point Road within the Piney Point Subdivision. 911 Address: 38222 Piney Point Road, Ocean View. Zoning District: GR. Tax Parcel: 134-9.00-221.00

Case No. 12595 – Charlene Wildonger seeks a special use exception to operate a day care center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Dove Road approximately 0.24 mile southeast of Old Furnace Road. 911 Address: 23679 Dove Road, Seaford. Zoning District: AR-1. Tax Parcel: 231-12.00-424.00



Case No. 12596 – Steve Oliver seeks a variance from the rear yard setback requirement for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Brinleigh’s Way within the Admiral Chase Subdivision. 911 Address: 17263 Brinleigh’s Way, Lewes. Zoning District: MR. Tax Parcel: 335-8.00-1178.00

Case No. 12597 – Walter M. & Carol A. Rykiel seeks a variance from the front yard setback requirement for a proposed structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Bay Run within the Keenwick Sound Subdivision. 911 Address: 37034 Bay Run, Selbyville. Zoning District: MR. Tax Parcel: 533-19.00-345.00

Case No. 12598 – Douglas & Kathleen Tucker seeks variances from the rear yard and side yard setback requirements for an existing structure (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Bethel Road approximately 377 ft. west of Oneals Road. 911 Address: 8185 Bethel Road, Seaford. Zoning District: AR-1. Tax Parcel: 132-11.00-56.00

Case No. 12599 – Matthew & Jacquelyn Rhinehart seek variances from the front yard, corner front yard, side yard, and rear yard setback requirements for proposed and existing structures (Sections 115-82, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Hebron Road at the intersection of Hebron Road and Harmon Street. 911 Addresses: 19875 Hebron Road, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.19-77.00

Case No. 12600 – Saul Holdings Limited Partnership seeks a special use exception for an outdoor display or promotional activities (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of West Way Drive and Coastal Highway (Rt. 1). 911 Address: 33546 Market Place, Bethany Beach. Zoning District: C-1. Tax Map: 134-17.00-52.08

Additional Business



-MEETING DETAILS-

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on August 9, 2021 at 4:30 p.m. and at least seven (7) days in advance of the meeting.

The Agenda was prepared by the Director of Planning and Zoning and is subject to change to include the additional or deletion of items, including Executive Sessions, which arise at the time of the meeting.

Agenda items may be considered out of sequence.

The meeting will be streamed live at <https://sussexcountye.gov/council-chamber-broadcast>

The County is required to provide a dial-in number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.** Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.

To join the meeting via telephone, please dial:

Conference Number: 1 302 394 5036

Conference Code: 570176

Members of the public joining the meeting on the telephone will be provided an opportunity to make comments for those items under public hearings on this agenda.

The Board of Adjustment meeting materials, including the “packet” are electronically accessible on the County’s website at: <https://sussexcountye.gov/agendas-minutes/board-of-adjustment>

If any member of the public would like to submit comments electronically, these may be sent to pandz@sussexcountye.gov. All comments are encouraged to be submitted by 4:30 P.M. on Thursday, August 12, 2021

####



**Board of Adjustment Application
Sussex County, Delaware**

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Case # 12593
Hearing Date 8/16
202109886

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)
115-42 115-183
115-185

Site Address of Variance/Special Use Exception:

37041 Mallard Drive, Selbyville, DE 19975

Variance/Special Use Exception/Appeal Requested:

3.5 feet variance request from the 5(five) feet side yard setback requirement for a proposed shed to be located 1.5 feet from the side yard pursuant to Sussex County Zoning Code Sections 115-42, 115-183, and 115-185.

Tax Map #: 533-12.16-94.00

Property Zoning: GR

Applicant Information

Applicant Name: Joseph A. and Andrea G. Vai
Applicant Address: 1402 W 8th Street
City Wilmington State DE Zip: 19806
Applicant Phone #: (302) 540-0622 Applicant e-mail: jvai@comcast.net

Owner Information

Owner Name: Joseph A. and Andrea G. Vai
Owner Address: 1402 W 8th Street
City Wilmington State DE Zip: 19806 Purchase Date: _____
Owner Phone #: (302) 540-0622 Owner e-mail: _____

Agent/Attorney Information

Agent/Attorney Name: Baird Mandalas Brockstedt, LLC c/o Mackenzie M. Peet, Esq.
Agent/Attorney Address: 1413 Savannah Road, Suite 1
City Lewes State DE Zip: 19958
Agent/Attorney Phone #: (302) 645-2262 Agent/Attorney e-mail: mackenzie@bmbde.com

Signature of Owner/Agent/Attorney

Mackenzie Peet

Date: 06/28/2021



Criteria for a Variance: (Please provide a written statement regarding each criteria).

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted.

In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.

1. Uniqueness of property:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the exceptional practical difficulty is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or Code in the neighborhood or district in which the property is located.

SEE ATTACHED.

2. Cannot otherwise be developed:

That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

SEE ATTACHED.

3. Not created by the applicant:

That such exceptional practical difficulty has not been created by the appellant.

SEE ATTACHED.

4. Will not alter the essential character of the neighborhood:

That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

SEE ATTACHED.

5. Minimum variance:

That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

SEE ATTACHED.

VAI VARIANCE CRITERA
37041 Mallard Drive, Selbyville, DE 19975
TAX MAP PARCEL NO. 533-12.16-94.00

1. UNIQUENESS OF PROPERTY

The lot shape and buildable lot area are unique in that the lot is narrow at 50' wide. The lot is also exceptionally shallow even though it extends 100' in length because the rear yard of the property is partially located in the lagoon, creating a unique and limited buildable lot area that restricts the placement of the shed.

2. CANNOT OTHERWISE BE DEVELOPED

Because of the narrowness and shallowness of the lot, there is no possibility that the shed can be placed within the setbacks and in strict conformity with the provisions of the Zoning Ordinance or Code. As you will notice from Exhibit E attached, there is limited space for the shed to be located anywhere else on the Property with existing cantilevered decking, concrete walkways, and the HVAC and propane tanks being located on the other side of the Property.

3. NOT CREATED BY THE APPLICANT

The exceptional practical difficulty is a result of narrowly shaped lot created back in the 1960s and 1970s by the developers of this community that originally was classified as a waterfront mobile home park. The house and prior shed were located on the Property when the Applicant purchased the Property.

4. WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE
NEIGHBORHOOD

The Applicants are interested in making normal improvements to update their outdated, small shed just as other property owners in the community have done. The proposed shed's location 1.5' off the property line will not alter the essential character of the neighborhood or district. In fact, sheds are common in the neighborhood, and other sheds are similarly situated in the setbacks. *See Exhibits D and G.*

5. MINIMUM VARIANCE

The variance is the minimum variance needed to place the proposed shed on the Property and will allow adequate access to the side yard for maintenance purposes.



BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT A

Property and Deed Information

Property Information

Property Location: 37041 MALLARD DR
 Unit:
 City: SELBYVILLE
 State: DE
 Zip: 19975

 Class: RES-Residential
 Use Code (LUC): RT-RESIDENTIAL MH ON OWN LAND
 Town: 00-None
 Tax District: 533 - BALTIMORE
 School District: 1 - INDIAN RIVER
 Council District: 5-Rieley
 Fire District: 90-Roxana
 Deeded Acres:
 Frontage: 50
 Depth: 110.000
 Irr Lot:
 Zoning 1: GR-GENERAL RESIDENTIAL
 Zoning 2: -
 Plot Book Page: /PB

 100% Land Value: \$10,000
 100% Improvement Value: \$14,300
 100% Total Value: \$24,300

Legal

Legal Description: SWANN KEYS LOT 52
 BLK H WITH IMP

Owners

Owner	Co-owner	Address	City	State	Zip
VAI JOSEPH A & ANDREA G		1402 W 8TH ST	WILMINGTON	DE	19806

Sales

Sale Date	Book/Page	Sale Price	Stamp Value	Parcels Sold	Grantee/Buyer
08/05/2000	2510/343	\$70,000.00	\$1,050.00	0	

Owner History

Tax Year:	Owner:	Co-owner	Address:	City:	State:	Zip:	Deed Book/Page:
2020	VAI JOSEPH A & ANDREA G		1402 W 8TH ST	WILMINGTON	DE	19806	2510/343
2019	VAI JOSEPH A & ANDREA G		1402 W 8TH ST	WILMINGTON	DE	19806	2510/343
2018	VAI JOSEPH A & ANDREA G		1402 W 8TH ST	WILMINGTON	DE	19806	2510/343
2017	VAI JOSEPH A & ANDREA G		1402 W 8TH ST	WILMINGTON	DE	19806	2510/343
2006	VAI JOSEPH A ANDREA G		1402 W 8TH ST	WILMINGTON	DE	19806	2510/343
2001	VAI JOSEPH A ANDREA G		1402 W 8TH ST	WILMINGTON	DE	19806	2510/343
1900	BETTY STONE					0	0/0

Land

Line	Class	Land Use Code	Act Front	Depth	Deeded Acres	Ag
1	RES	RT	50	110	.1263	

Land Summary

Line 1

100% Land Value 10,000

100% Values

100% Land Value	100% Improv Value	100% Total Value
\$10,000	\$14,300	\$24,300

50% Values

50% Land Value	50% Improv Value	50% Total Value
\$5,000	\$7,150	\$12,150

Permit Details

Permit Date:	Permit #:	Amount:	Note 1
15-MAR-2007	97668-5	\$1,000	FINISH BP 224197-SWANN KEYS LOT 52 BLK H
14-NOV-2005	97668-4	\$1,000	FINISH BP-SWANN KEYS LOT 52
29-NOV-2004	97668-3	\$0	RENEW BP 224197-SWANN KEYS LOT 52
20-FEB-2004	97668-1	\$11,352	STORAGE/PORCH/A-ROOF-SWANN KEYS LOT 52 BLK H
20-FEB-2004	97668-2	\$0	STORAGE/PORCH/A-ROOF-SWANN KEYS LOT 52 BLK H

24593

#02510 #343

RETURN TO:
Mr. and Mrs. Joseph A. Vai
1402 W. 8th Street
Wilmington, DE 19806

TAX MAP: 5-33-12.16-94.00
PREPARED BY: D. Stephen Parsons, P.A.
P.O. Box 480
Ocean View, DE 19970
FILE #17413/mks

This Deed, made this

5th day of August in the year of
our LORD two thousand

BETWEEN, WILMA P. PORTER of 3901 Hannon Court, Condo #2C,
Baltimore, Maryland 21236, party of the first part,

- AND -

JOSEPH A. VAI and ANDREA G. VAI, his wife, as
tenants by the entirety, of 1402 W. 8th Street, Wilmington, Delaware
19806, parties of the second part.

Witnesseth, That the said parties of the first part, for and in consideration of the
sum of ONE DOLLAR and 00/100 lawful money of the United States of America, the
receipt whereof is hereby acknowledged, hereby grant and convey unto the said
parties of the second part,

ALL that certain lot, piece or parcel of land, lying and being
situate in Baltimore Hundred, Sussex County, Delaware, being known
and designated as Lot Number 52, Block H, Section B, as shown
on the survey plot of SWANN KEYS, said plot being filed for record
in the Office of the Recorder of Deeds, at Georgetown, Delaware in
Plot Book 14, Pages 99 and 100.

BEING the same land conveyed unto Gene C. Porter and Wilma P.
Porter, his wife, by Deed of Raymond W. Stone and Betty Stone, his
wife, and Philip E. Stone dated December 11, 1981, and filed for
record in the Office of the Recorder of Deeds, in and for Sussex
County, at Georgetown, Delaware, in Deed Book 1095, Page 253. The
said Gene C. Porter departed this life on or about February 25,
1988, and by operation of law, the property passed unto Wilma P.
Porter, his wife.

SUBJECT TO the restrictions for Swann Keys as filed in the
Office of the Recorder of Deeds, at Georgetown, Delaware in Deed
Book 715, Page 531 and Deed Book 929, Page 97. Subject, further,
to a Certification by Swann Keys Civic Association, Inc., pertaining
to the adoption of Additional Rules and Regulations applicable to
Swann Keys, dated February 24, 1995, and filed for record, as
aforesaid, in Deed Book 2039, Page 9.

Consideration: 0 7000.00 Exempt Codes: A

County	State	Total
1650.00	1650.00	2100.00
counter	Date: 08/05/2000	

245

802510 2344

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal, the day and year aforesaid.

SIGNED, SEALED, DELIVERED and Witnessed in the presence of:

Martin B. Ellis Wilma P. Porter (SEAL)
Wilma P. Porter

STATE OF Maryland, COUNTY OF Baltimore, TO WIT:

BE IT REMEMBERED, that on this 1st day of August in the year of our Lord two thousand, personally came before me, a Notary Public in and for the State and County aforesaid, Wilma P. Porter, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed.

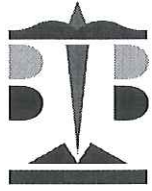
GIVEN under my hand and Seal of Office, the day and year aforesaid.

Carol A. Myers
Notary Public
Carol A. Myers
Printed Name
Commission Expires: 2/1/02

RECORDER OF DEEDS
RICHARD H. BELL, II
00 AUG -9 PM 12:30
SUSSEX COUNTY
DOC. SURCHARGE PAID

Received
AUG 2 - 2000
ASSESSMENT DIVISION
OF SUSSEX CTY

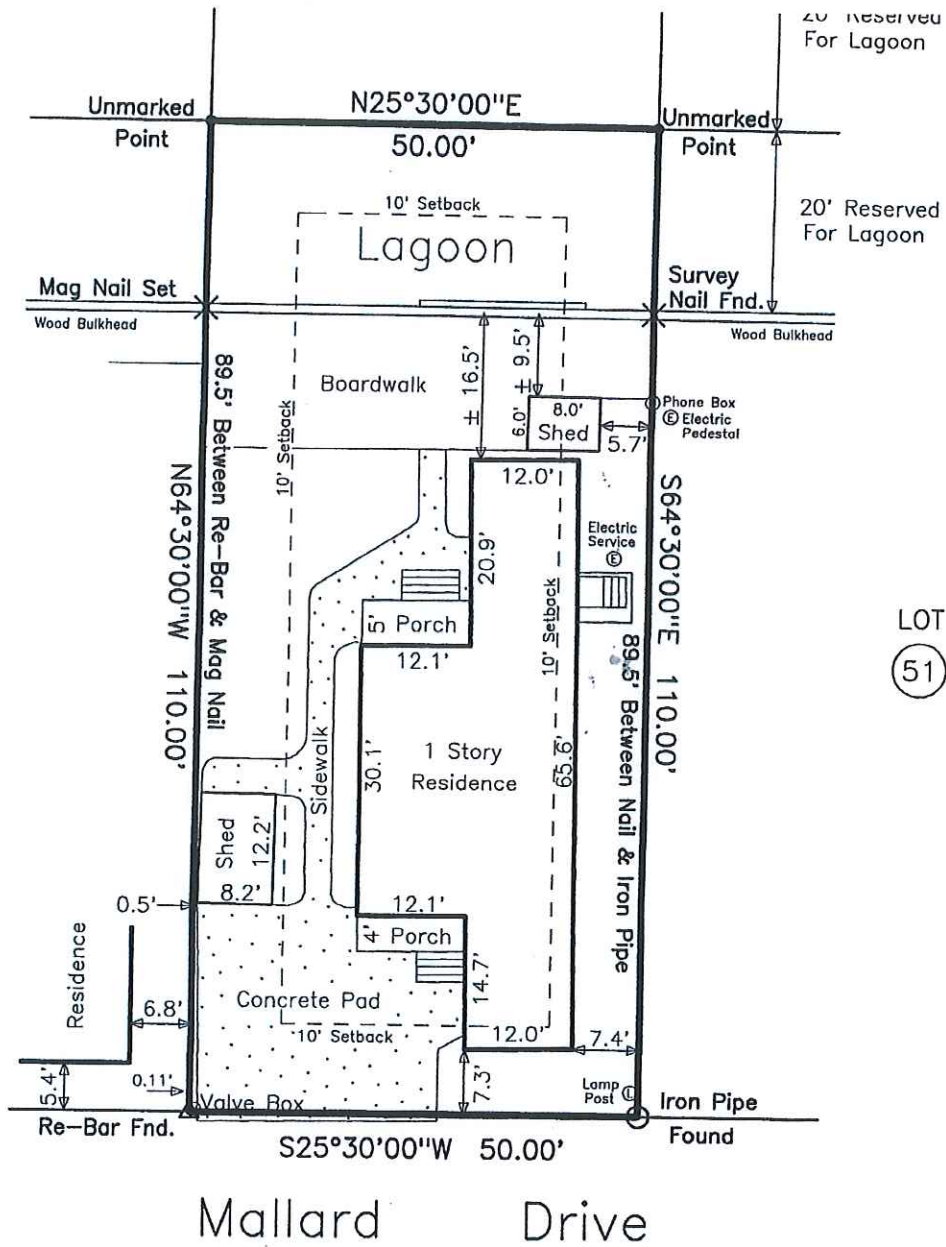
2000.02
M. Joseph
1402 W. 5th St
Wilmington DE 19804



BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT B

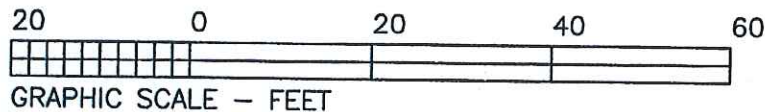
Survey



LOT
53

LOT
51

Zoning: GR County Setbacks Shown.
 Area Of Survey: ± 5,500 Sq. Feet
 Area Of Fast Land: ± 4,475 Sq. Feet
 Reference Plat: Swann Keys
 Plat Book 14 / Pages 99 & 100
 Tax Map Reference: 5-33-12.16-94
 Class B Survey Location Detail: Suburban



THIS DRAWING DOES NOT VERIFY THE
 EXISTENCE OR NON-EXISTENCE OF
 RIGHT-OF-WAYS, OR EASEMENTS IN
 REFERENCE TO THIS PROPERTY.
 NO TITLE SEARCH PROVIDED OR STIPULATED.

LAWRENCE R. LONG
 Professional Land Surveyor

36079 Bayard Road
 Frankford, DE 19945
 PHONE: 302-436-8361

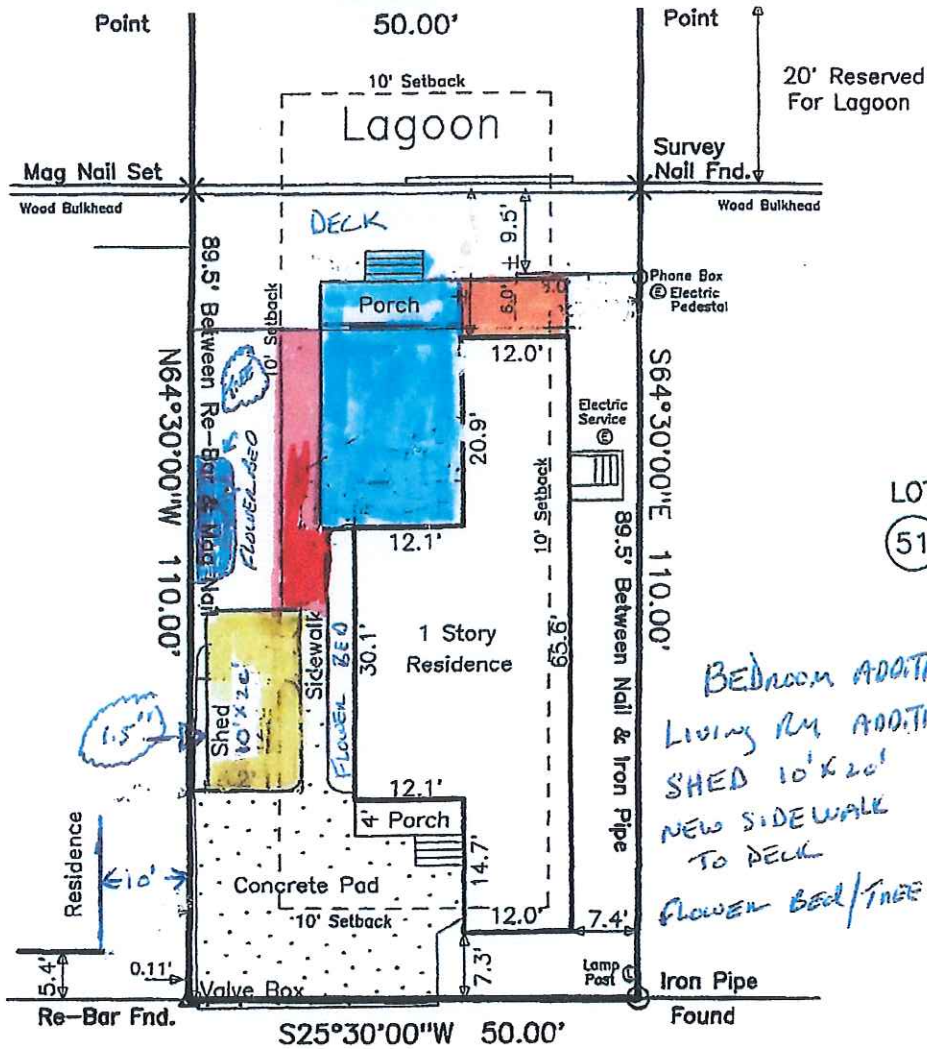
Land Surveying Services
 DELAWARE / MARYLAND

Lawrence R. Long
 LAWRENCE R. LONG (Valid In Red Ink Only)
 Professional Land Surveyor
 DELAWARE #543 MARYLAND #10961

March 14, 2007

LOT
53

LOT
51



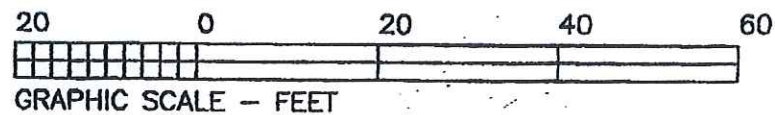
BEDROOM ADDITION
LIVING RM ADDITION
SHED 10'x20'
NEW SIDEWALK TO DECK
FLOWER BED/TREE

12'x6'
 26'9" x 12'
 10'x20'

Mallard Drive

Zoning: GR County Setbacks Shown.
 Area Of Survey: ± 5,500 Sq. Feet
 Area Of Fast Land: ± 4,475 Sq. Feet
 Reference Plat: Swann Keys

Plat Book 14 / Pages 99 & 100
 Tax Map Reference: 5-33-12.16-94
 Class B Survey Location Detail: Suburban



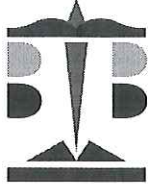
Lawrence R. Long
 LAWRENCE R. LONG

THIS DRAWING DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF RIGHT-OF-WAYS, OR EASEMENTS IN REFERENCE TO THIS PROPERTY.
 NO TITLE SEARCH PROVIDED OR STIPULATED.

LAWRENCE R. LONG
 Professional Land Surveyor

36079 Bayard Road
 Frankford, DE 19945
 PHONE: 302-436-8361

Land Surveying Services



BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT C

Zoning Code

Chapter 115. Zoning

Article VI. GR General Residential District

§ 115-42. Height, area and bulk requirements.

[Amended 11-7-1989 by Ord. No. 632; 10-31-1995 by Ord. No. 1062; 3-25-1997 by Ord. No. 1131]

A. Minimum lot sizes. Minimum lot sizes shall be as follows:

Area** (square feet)	Width* (feet)	Depth (feet)
10,000	75	100

*NOTE: A lot fronting on a numbered road shown on the General Highway Map for Sussex County of 1964, as revised, shall have a minimum lot width of 150 feet.

[Added 11-7-1989 by Ord. No. 632]

**NOTE: Any lot which is not connected to a central sewer system, as defined by § 115-194A, or which is located within a planning area as defined by a sewer planning study approved by the Sussex County Council, shall have a minimum area of 3/4 acre.

[Added 7-15-1997 by Ord. No. 1157]

B. Minimum yard requirements. Minimum yard requirements shall be as follows:

Depth of Front Yard (feet)	Width of Side Yard (feet)	Depth of Rear Yard (feet)
40 (30)**	10	10

**NOTE: See also the table of district regulations at the end of this chapter.

C. Maximum height requirements. Maximum height requirements shall be as follows: 42 feet.

Chapter 115. Zoning

Article XXV. Supplementary Regulations

§ 115-183. Side and rear yards.

- A. Where a building in a commercial district is subject to the height, area and bulk requirements applicable to residential development under § 115-178 of this article, the side yard requirements for residential development shall be applied only to the lowest floor (and all floors above it) which contains more than 25% of its area used for dwelling. All floors shall be subject to side yards required by these regulations for commercial buildings adjacent to residential districts.
- B. For the purpose of the side yard regulations, a group of business or industrial buildings separated by common or party walls shall be considered as one building occupying one lot.
- C. Open unenclosed decks, porches, platforms or steps not covered by a roof or canopy and which do not extend above the first floor of the building may be constructed in a side or rear yard no closer than five feet from a side lot line and five feet from a rear lot line. This provision does not apply to manufactured home parks or campgrounds.
[Amended 11-28-1989 by Ord. No. 639; 2-1-2005 by Ord. No. 1748; 10-12-2010 by Ord. No. 2152; 3-20-2018 by Ord. No. 2562]
- D. For any existing approved lot that is less than 10,000 square feet in size, the side yard setbacks shall be reduced to five feet and the rear yard setback shall be reduced by five feet. For any lot with side or rear setbacks reduced by operation of this § 115-183D, no structures shall extend or project closer than five feet from the lot line. The provision of this subsection shall not apply to any lot in a cluster subdivision, Coastal Area cluster subdivision or residential planned community.
[Added 3-20-2018 by Ord. No. 2557; amended 5-21-2019 by Ord. No. 2656]

§ 115-185. Accessory buildings and structures.

- A. Except as herein provided, no accessory building shall project beyond a required yard line along any street.
- B. Filling station pumps and pump islands may occupy the required yards; provided, however, that they are not less than 20 feet from street lines.

- C. Any fence or wall for residential use, not more than 3 1/2 feet in height, may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. Any fence, hedge or wall for residential use may project into or enclose other required yards, provided that such fences, hedges and walls do not exceed a height of seven feet. This height limit does not apply to fences or walls used for commercial, industrial or agricultural uses, screening or tennis courts. Every such fence must be approved by the Director.
- D. Accessory swimming pools, open and unenclosed, may occupy a required rear or side yard, provided that they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line. A walk space at least three feet wide shall be provided between pool walls and protective fences or barrier walls. Every swimming pool shall be protected by a safety fence or barrier at least four feet in height and constructed of chain-link, concrete, stockade-wood or equal.
- E. Permitted accessory storage of a boat, boat trailer or camp trailer shall not be conducted in a front yard.
- F. Accessory buildings which are not a part of the main building may be constructed in a rear yard, provided that such accessory building does not contain more than 600 square feet of area, and may be located five feet from a side lot line and five feet from a rear lot line.

ZONING

115 Attachment 1

Sussex County

TABLE I

**General Table of Height, Area and Bulk Requirements
Sussex County
(See also § 115-156A)**

Article of chapter	District or Use	Maximum Height		Lot Area (square feet)	Width of Lot (feet)	Depth of Lot (feet)	Depth of Front Yard (feet)	Width of Side Yard (2 required) (feet)	Depth of Rear Yard (feet)
		Feet	Stories						
IV (9)	AR-1 District	42 (12)	— (12)	20,000 (14)	100 (10)	100	40 (7)(8)	15	20
IV (9)	AR-2 District	42 (12)	— (12)	15,000 (14)	100 (10)	100	40 (7)(8)	15	20
V (9)(6)	MR District	42 (12)	— (12)	10,000 (14)	75 (10)	100	40 (7)(8)	10	10
VI (9)(6)	GR District	42 (12)	— (12)	10,000 (14)	75 (10)	100	40 (7)(8)	10	10
VII (6)(9)	Detached single-family dwelling in HR-1 District	52 (12)	— (12)	7,500 (14)	60 (10)	100	40 (7)(8)	10	10
VII (6)(9)	Detached single-family dwelling in HR-2 District	52 (12)	— (12)	7,500 (14)	60 (10)	100	40 (7)(8)	10	10
VIII (9)(6)	UR District	42 (12)	— (12)	10,000 (14)	75 (11)	100	(2)	10	10
IX (9)(6)	UB District	42 (12)	— (12)	Dwellings 10,000 (14)	75 (11)	100	40 (7)(8)	10	10
		42 (12)	— (12)	Other 10,000 (14)	75 (11)	100	40 (7)(8)	5 (3)	5 (3)
X (9)(6)	B-1 District	42 (12)	— (12)	Dwellings 10,000 (14)	75 (10)	100	40 (7)(8)	10	10
		42 (12)	— (12)	Other 10,000 (14)	75 (10)	100	60 (7)(8)(15)	5 (3)	5 (3)
XI (9)(6)	C-1 District	42 (12)	— (12)	Dwellings 10,000 (14)	75 (10)	100	40 (7)(8)	10	10
		42 (12)	— (12)	Other 10,000 (14)	75 (10)	100	60 (7)(8)(15)	5 (3)	5 (3)
XII	M District	42 (12)	— (12)	Dwellings 10,000 (14)	75 (10)	100	40	10	10
		45 (12)	— (12)	Other 10,000 (14)	75 (10)	100	40	10 (5)	10 (5)
XIII	LI-1 District	42 (12)	— (12)	43,560/1 acre (14)	150	200	50	20	20 (4)
XIV	LI-2 District	52 (12)	— (12)	1 acre	150	200	50	20	20 (4)
XV	HI-1 District	125 (1)	--	2 acre	200	200	50	20	20 (4)
XVI	Manufactured home parks (13)	15	1	5,000	50	50	10	10	10

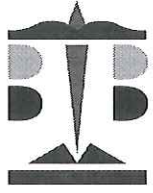
NOTES:

- (1) Grain elevators, industrial tanks or towers and other similar structures may exceed 125 feet in height, but whenever such use in the HI-1 District adjoins a residential district, such structure shall not exceed 50 feet in height unless set back one foot from all required yard lines for each foot of additional height above 50 feet).
- (2) Sec § 115-58.
- (3) None is required when there is a party wall to an adjoining building, except that there shall be a side yard not less than 20 feet in width on the side of a lot adjoining a residential district and there shall be a rear yard not less than 30 feet in depth on the rear side of a lot adjoining a residential district.
- (4) None is required, except that there shall be a rear yard not less than 40 feet in depth on the rear side of a lot adjoining a residential district.

SUSSEX COUNTY CODE

(NOTES cont'd):

- (5) No rear yard or side yard shall be required on that rear or side of a lot which adjoins a waterway.
- (6) See § 115-50 for tables covering townhouses and multifamily dwellings in HR-1 and HR-2 multifamily residential districts. See Table II for tables covering multifamily dwellings in MR, GR, UR, UB, B-1, M and C-1 Districts.
- (7) On property fronting on highways designated by the Delaware Department of Transportation as Principal Arterials or Minor Arterials, the setback shall be measured from a point not less than 50 feet from the center line of the right-of-way. On property fronting on highways designated by the Delaware Department of Transportation as Major or Minor Collectors, the setback shall be measured from a point not less than 40 feet from the center line of the right-of-way. On property fronting on all other local roads shown on the General Highway Map for Sussex County of 1964, as last revised, the setback shall be measured from a point not less than 30 feet from the center line of the right-of-way. If the existing right-of-way on any of these roads or highways is greater than the minimum dimension listed above, the setback shall be measured from the existing right-of-way line. [Amended 8-3-2004 by Ord. No. 1711]
- (8) Any lot fronting on a subdivision street and not fronting on a numbered road shown on the General Highway Map for Sussex County of 1964, as revised January 1979, shall have a setback of not less than 30 feet.
- (9) For buildings located on lots adjacent to waterways, golf courses and similar special situations, the front of such lots may be determined by the Commission. In the event that a Commission ruling makes a rear yard adjacent to the street line, an additional depth of rear yard may be required by the Commission, and an additional setback of accessory buildings from the street line may be required.
- (10) A lot fronting on a numbered road shown on the General Highway Map for Sussex County of 1964, as revised, shall have a minimum lot width of 150 feet. [Added 11-7-1989 by Ord. No. 632]
- (11) A lot fronting on a numbered road shown on the General Highway Map for Sussex County of 1964, as revised, shall have a minimum lot width of 90 feet. [Added 11-7-1989 by Ord. No. 632]
- (12) [Amended 10-31-1995 by Ord. No. 1062]
- (13) [Amended 3-25-1997 by Ord. No. 1131; 10-12-2010 by Ord. No. 2152]
- (14) Any lot which is not connected to a central sewer system, as defined by § 115-194A, or which is located within a planning area as defined by a sewer planning study approved by the Sussex County Council, shall have a minimum area of 3/4 acre. [Added 7-15-1997 by Ord. No. 1157]
- (15) [Amended 7-20-1999 by Ord. No. 1328]
- (16) For any existing approved lot which is not located in a cluster subdivision, Coastal Area cluster subdivision or residential planned community, and consists of less than 10,000 square feet, the following setbacks shall apply: the side yard setback shall be reduced to five feet and the rear yard setback shall be reduced by five feet. For any lot with side or rear yard setbacks reduced by operation of § 115-183D, no structures shall extend or project closer than five feet from the lot line. The front yard setback may be reduced to the average front yard setback of the existing buildings located on the same side of the street or road and being within 300 feet of the structure; provided, however, the front yard setback is not less than five feet. Any vacant lot within 300 feet of the structure shall be calculated as having the required setback for the district. [Added 3-20-2018 by Ord. No. 2557; amended 5-21-2019 by Ord. No. 2656]



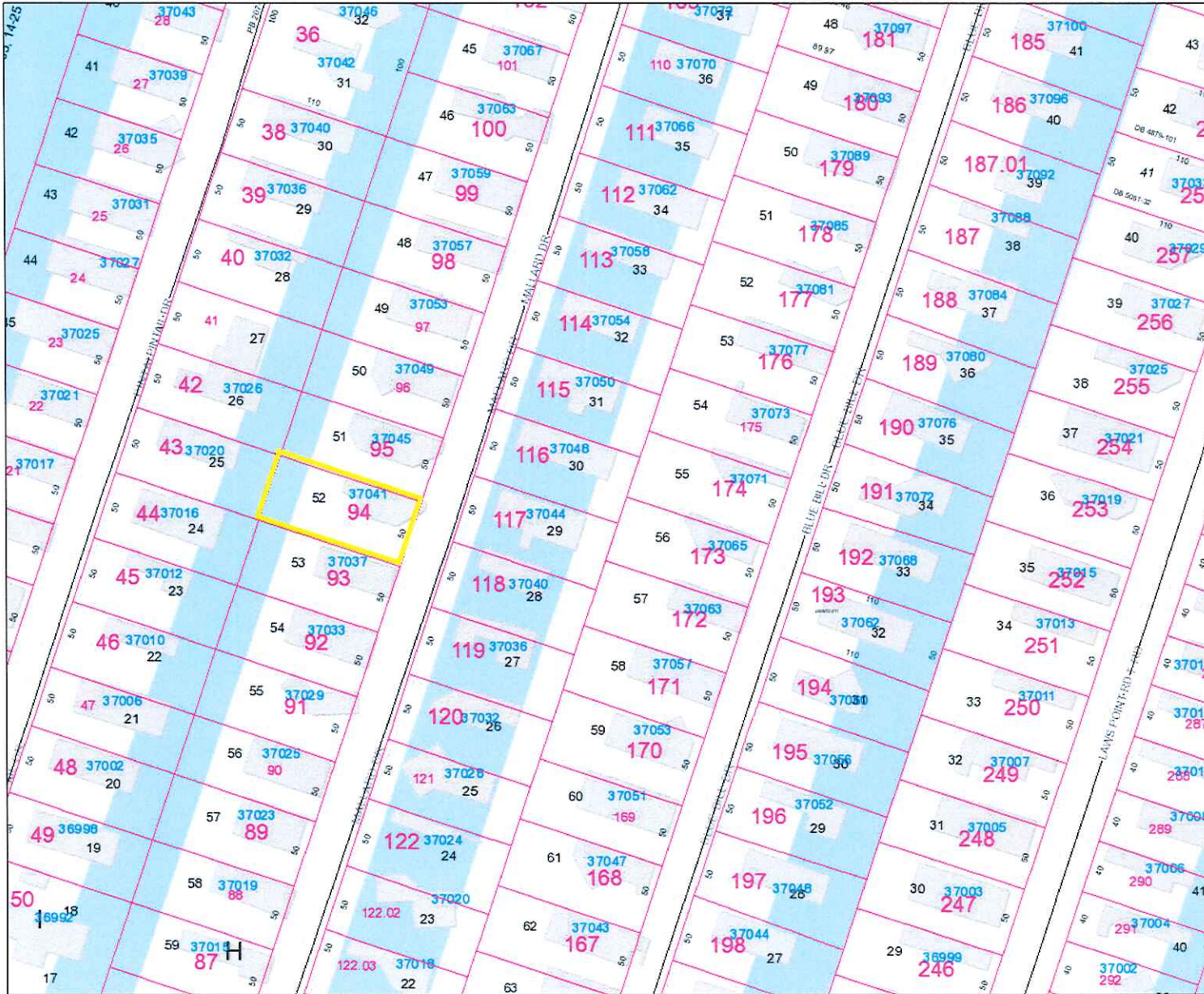
BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT D

Aerial Maps



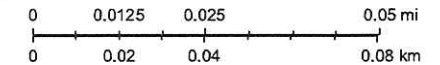
Sussex County



PIN:	533-12.16-94.00
Owner Name	VAI JOSEPH A & ANDREA G
Book	2510
Mailing Address	1402 W 8TH ST
City	WILMINGTON
State	DE
Description	SWANN KEYS LOT 52
Description 2	BLK H WITH IMP
Description 3	N/A
Land Code	

- polygonLayer**
Override 1
- polygonLayer**
Override 1
- Tax Parcels
 - 911 Address
 - Streets
 - County Boundaries

1:1,128





Sussex County



PIN:	533-12.16-94.00
Owner Name	VAI JOSEPH A & ANDREA G
Book	2510
Mailing Address	1402 W 8TH ST
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State	DE
Description	SWANN KEYS LOT 52
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Description 3	N/A
Land Code	

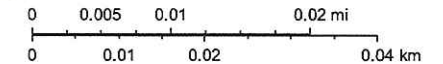
- polygonLayer**

Override 1
- polygonLayer**

Override 1

 - Tax Parcels
 - 911 Address
 - Streets
 - County Boundaries

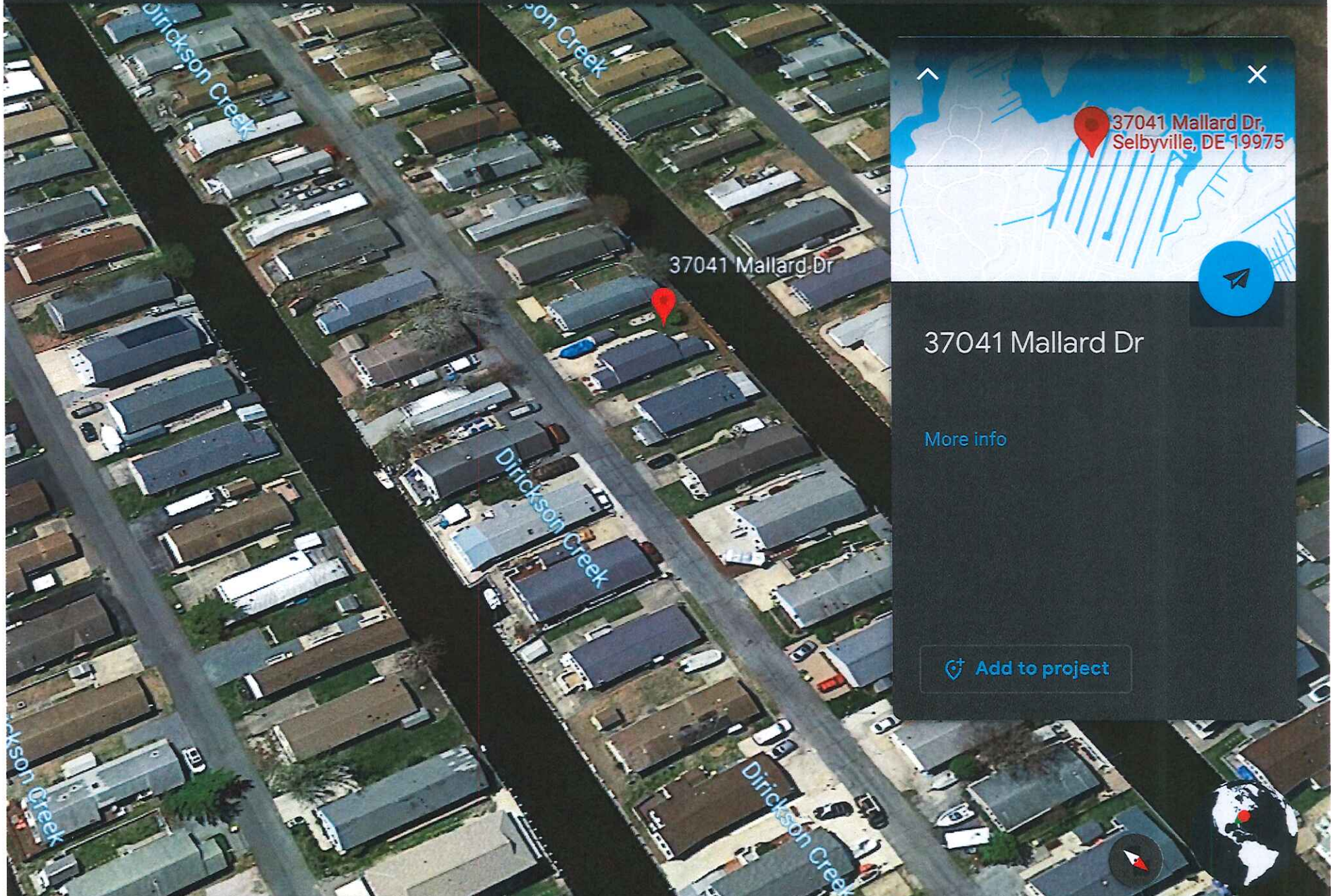
1:564



You are currently running an experimental version of Earth.

[Learn more](#)

[Send feedback](#)



37041 Mallard Dr



37041 Mallard Dr,
Selbyville, DE 19975



37041 Mallard Dr

[More info](#)

[Add to project](#)

Google Earth

30 m

Camera: 228 m 38°28'54"N 75°05'36"W

1 m



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3704
Selby

37041 Mallard Dr



Selbyville, DE 19975

38.48°N, 75.09°W

37041 Mallard Dr



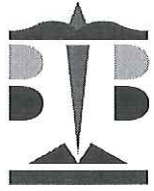
Google Earth

30 m

Camera: 243 m

38°28'52"N 75°05'38"W

1 m



BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT E

Images















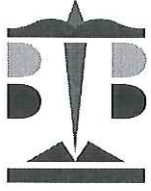












BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT F
Property's
Land Use History

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH A. VAI

(Case No. 12545)

A hearing was held after due notice on April 19, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the five (5) feet side yard setback requirement on the side adjacent to Lot 53 for a proposed shed. This application pertains to certain real property located on the west side of Mallard Drive within the Swann Keys Subdivision (911 Address: 37041 Mallard Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-94.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated March 14, 2007, a letter from the Applicant, literature on the proposed shed, photographs, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Joseph Vai was sworn in to testify about the Application.
4. The Board found that Mr. Vai testified that he has an existing 8 foot by 12 foot shed on his property and would like to replace it with a proposed 10 foot by 24 foot shed.
5. The Board found that Mr. Vai testified that the existing shed is old and is 5.5 inches from the side property line.
6. The Board found that Mr. Vai testified that this home will be the Applicant's full-time residence and there is a need for additional storage.
7. The Board found that Mr. Vai testified that the shed will be an A-Frame with the same shiplap toward the front to match the home.
8. The Board found that Mr. Vai testified that the adjacent neighbor supports the request and that homeowner association approval is not required.
9. The Board found that Mr. Vai testified that this is the only location to place the shed and allow access to the rear of the Property from the street.
10. The Board found that Mr. Vai testified that the exceptional practical difficulty was not created by the Applicant that the new shed will be in the same location as the existing shed which was on the Property when purchased.
11. The Board found that Mr. Vai testified that the proposed shed will not alter the essential character of the neighborhood as it will match the existing house.
12. The Board found that Mr. Vai testified that the request is for a 10 foot by 24 foot shed but it could be a 10 foot by 20 foot shed.
13. The Board found that Mr. Vai testified that the proposed shed would be 10 feet tall and the existing shed is 8.5 feet tall.
14. The Board found that Mr. Vai testified that the existing shed is on the grass with a sidewalk around it.
15. The Board found that Mr. Vai testified that the 24 foot shed would not impede the view from the neighbor's home.

16. The Board found that Mr. Vai testified that he does not want the shed to block his window since his living room is on that side of the house. Mr. Vai also testified that the prime view from the Property is to the rear of the house.
17. The Board found that Mr. Vai testified that the shed cannot be placed to the rear of the home as the Applicant intends to add additional living space in the future.
18. The Board found that Mr. Vai testified that there is a small existing shed in the rear which will be removed.
19. The Board found that Mr. Vai testified that there is a mature tree on the property which would prevent placing the shed further to the rear.
20. The Board found that Mr. Vai testified that the existing shed will be removed, the grass will be removed, some stone will be put down and the proposed shed will be brought through the driveway.
21. The Board found that Mr. Vai testified that there will be an overhang of 6 inches but the overhang will not extend onto the neighbor's property and the neighbor's home is 10 feet from the property line.
22. The Board found that Mr. Vai testified that the proposed shed will have vinyl siding with no windows on the neighbor's side of the shed so it will not require maintenance.
23. The Board found that Mr. Vai testified that, if necessary, the shed could be moved 1 foot to 1.5 feet off the property line.
24. The Board found that Mr. Vai testified that there are larger sheds in the neighborhood.
25. The Board found that Mr. Vai testified that there is no flooding on the Property.
26. The Board found that Mr. Vai testified that he cannot move the shed closer to the house due to the sidewalk.
27. The Board found that Mr. Vai testified that the shed would block two windows if it was put closer to the house.
28. The Board found that Mr. Vai testified that the home measures 12 feet by 60 feet and was purchased in 2000.
29. The Board found that Mr. Vai testified that an addition to the home was added along with the rear shed in 2004.
30. The Board found that Mr. Vai testified that the older shed was on the Property when he purchased the Property.
31. The Board found that Mr. Vai testified that the shed will be approximately 2 feet from the sidewalk and the sidewalk measures 3.5 feet wide.
32. The Board found that Mr. Vai testified that he plans to have expand the sidewalk to 5 feet wide.
33. The Board found that Mr. Vai testified that he intends to extend the living room and bedroom and that there is no room for storage.
34. The Board found that no one appeared in support of or in opposition to the Application.
35. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a small but rectangularly shaped lot and the lot benefits from reduced setback requirements under the small lot ordinance. The Property is already developed with a house, 2 porches, a boardwalk, a concrete pad, sidewalk, and 2 sheds. The Applicant proposes to remove the 2 sheds and construct a larger shed which measures more than double the size of the existing encroaching shed. The Applicant did not present evidence of unique topography or other conditions which would effectively limit his ability to develop the Property and which created an exceptional

practical difficulty.¹ Rather, the difficulty is clearly the result of the Applicant's intention to construct the shed within the setback areas. The Board notes that the Applicant does not want to block views from the dwelling yet he proposes to construct the shed on the shared property line of his neighbor. The Applicant also testified that he plans to construct an addition to the rear of the home. Quite simply, there appears to be room to place a shed on the lot; albeit not in the Applicant's preferred location. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property has buildable area to the side and rear of the house but the Applicant chose not to use those portions of the building envelope for the entire proposed shed. Rather, the Applicant proposes to construct a shed which is more than double the size of the existing shed on the Property line. As a result, half the shed will be located outside the building envelope even though there is room on the lot to place a shed on the lot. Rather than comply with the Code, the Applicant proposes this variance so that he can use other portions of the building envelope for an addition that he plans to construct at some point in the undefined future. This addition would take up other parts of the building envelope. It is clear that the Applicant has chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of a shed (or the size thereof), may not be the location the Applicant prefers, the Applicant failed to demonstrate that he could not otherwise comply with the Code's setback requirements. The Applicant is not entitled to have a shed, particularly one that is double the size of the existing shed and that is located on the property line. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to construct a shed which does not fit within the building envelope. The Applicant's decision to construct this addition in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a shed, albeit in a location which differs from the Applicant's preference, without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the shed as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.
- d. The Board finds that the Applicant failed to demonstrate that the variance would not alter the essential character of the neighborhood or substantially or permanently impair the uses of neighboring properties. While the Applicant has testified that his neighbor does not object to the request, the

¹ The Applicant made a vague reference to a tree but provided no specific evidence of how the tree would impact the developability of the lot. The Board notes that the Applicant also testified to other planned improvements on the Property and the Board was not convinced that the proposed location of the shed was materially impacted by the location of the tree given the Applicant's other proposed improvements.

Applicant proposes to erect his shed on the shared property line. The Board finds the Applicant's testimony that there would be no maintenance concerns with the shed in the future as stretching the bounds of credibility. The shed will be located on the property line. If the shed needed maintenance on the Lot 53 side of the shed, the Applicant would have to trespass on his neighbor's land to perform the maintenance work. Even though his current neighbor (who did not testify on the issue) may not object to the trespass, the Property may change hands in the future and a future neighbor may not have similar thoughts. The Board also has concerns because the Applicant lives in Swann Keys, which is a community with similar sized lots, and that the approval of this request could embolden others in Swann Keys to push the boundaries of their building envelopes. This concern is particularly apparent since the Property already benefits from the small lot ordinance and reduced setbacks.

- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. The Applicant testified that there are other buildable areas but he does not want to place the shed in those areas. The Applicant also testified that the shed could be smaller. Furthermore, the Board finds that no variance is needed to afford relief since there is space to replace a shed on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

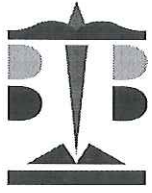
BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

If the use is not established within two (2) years from the date below the application becomes void.

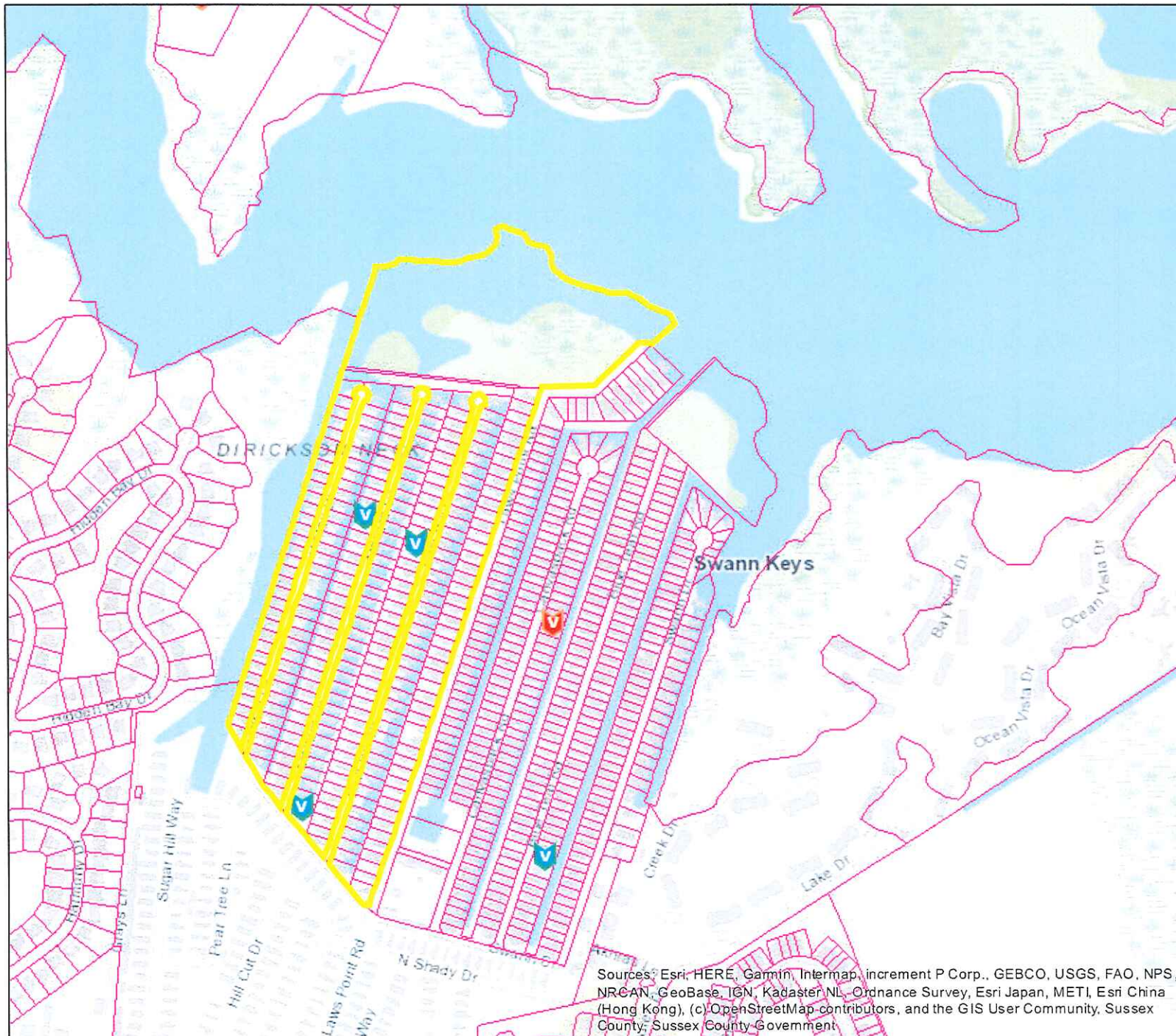
Date June 21, 2021



BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT G

Neighboring Properties



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County, Sussex County Government

Addresses / Parcels

- TaxParcels

Council Districts

- Fire Districts
- County District 01
- County District 02
- County District 03
- County District 04
- County District 05
- County Boundaries

Schools/Libraries

- School Buildings (Various)
- School Library
- Public Library
- Special Library
- DOE School Districts
- DOE VoTech School Districts

Hydrology

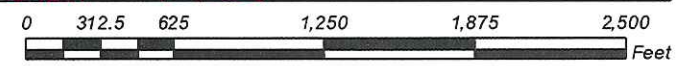
- Streams / Rivers
- Lakes, Ponds, Bays

Flood Zones

- 0.2% Annual Chance Flood Hazard
- A
- AE
- AO
- Open Water
- VE
- Public Protected Lands
- Municipalities
- Communities
- Boundaries State County



Sussex County Map



12530

Variance

[Return to Docket](#)

[View on map](#)

Applicant Name:

Jason & Jennifer Sutton

Application Status:

Approved

Parcel Information:

533-12.16-171.00

Description of Request:

seek variances from the side yard setback requirement for a proposed structure (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Blue Bill Drive within the Swann Keys Subdivision. 911 Address: 37057 Blue Bill Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-171.00

Board of Adjustment Hearing

Board of Adjustment Hearing Date:

Monday, March 1, 2021 - 6:00pm

[Hearing Archive and Audio](#)

Board of Adjustment Hearing Notice:

 [Public Hearing Notice.pdf](#)

Findings of Fact:

Monday, May 3, 2021

 [12530 Lands of Jason & Jennifer Sutton Findings of Fact - dated and signed.pdf](#)

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JASON SUTTON & JENNIFER SUTTON

(Case No. 12530)

A hearing was held after due notice on March 1, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 4 feet from the five (5) feet side yard setback requirement on the north side for a proposed shed. This property on the west side of Blue Bill Drive within the Swann Keys Subdivision (911 Address: 37057 Blue Bill Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-171.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated June 11, 2018, an edited survey to show the location of the proposed shed, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Jason Sutton was sworn in to testify about the Application.
4. The Board found that Mr. Sutton testified that there was an existing shed at this location on his property and the shed was rusty and had deteriorated over time. Accordingly, the shed was removed and the Applicants seek the variance to replace the shed with a new shed in the same location.
5. The Board found that Mr. Sutton testified that the lot is unique as it is only 50 feet wide by 100 feet deep but 10 feet of the rear yard is located in a lagoon.
6. The Board found that Mr. Sutton testified that the home is a single-story dwelling measuring approximately 28 feet wide by 56 feet deep.
7. The Board found that Mr. Sutton testified that sheds are common in the neighborhood and other sheds are similarly situated. Mr. Sutton noted that his neighbor's shed is only 8 inches from the property line.
8. The Board found that Mr. Sutton testified that the Property cannot otherwise be developed and that, due to the narrow nature of the Property and the rear portion thereof being located in the canal, there is no other location to place a shed on the Property.
9. The Board found that Mr. Sutton testified that the exceptional practical difficulty was not created by the Applicants but by the lot size which were created in the early 1980s.
10. The Board found that Mr. Sutton testified that the existing shed is a possible hazard and the new shed will be in the same location as the prior shed but will be structurally sound.
11. The Board found that Mr. Sutton testified that the variance will not alter the essential character of the neighborhood as there are many sheds within the community.
12. The Board found that Mr. Sutton testified that the variance requested is the minimum variance to afford relief and allow for the ability of persons to freely access the rear of the home from the left side of the yard.

13. The Board found that Mr. Sutton testified that the shed will be used to store gasoline and items that cannot be stored in or under the home and that the shed will be on blocks to protect the contents from water damage.
14. The Board found that Mr. Sutton testified that the tide rises in the area and the bulkhead, which had deteriorated as well, was replaced but kept in the same location.
15. The Board found that Mr. Sutton testified that the shed will be the same width as his neighbor's shed but smaller. The proposed shed measures 10 feet by 14 feet and the neighbor's shed measures 10 feet by 16 feet.
16. The Board found that Mr. Sutton testified that the shed was on the Property when they purchased the lot and there have been no complaints regarding the existing shed.
17. The Board found that Mr. Sutton testified that the adjacent neighbor does not object to the location of the shed.
18. The Board found that Mr. Sutton testified that the shed cannot be moved farther away from the property line or turned as it would block access to the rear yard.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its size and shape. The Property is a small lot measuring only 5,500 square feet and is exceptionally shallow as a large portion of the rear yard is located in a lagoon thereby creating an even smaller building envelope. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to place a shed on the lot in a similar location to a prior shed.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to place shed on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow this reasonably sized shed to be placed the lot. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the shed should provide functional storage for the Applicants and that such storage space is needed because there is no similar storage area on the site.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property is exceptionally small and shallow with a portion of the rear yard in the lagoon and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants are constrained by the location of the existing residence which also presents challenges on where the shed can be located. The house and prior shed were on the lot when purchased by the Applicants. The prior shed deteriorated and needed to be replaced.
 - e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of

adjacent property, nor be detrimental to the public welfare. The Board is convinced that the shed will have no effect on the character of the neighborhood. The shed will be similar to the shed on a neighboring lot and there is evidence of other similar sheds being placed on other lots in the neighborhood. No evidence was presented that the variance would somehow alter the essential character of the neighborhood. The neighbor closes to the proposed shed indicated support of the Application to the Applicant as well.

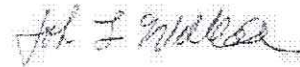
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to place a reasonably sized shed on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of a shed but were constrained by the conditions of the lot.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor of the Motion to approve the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date May 3, 2021

12547

Variance

[Return to Docket](#)

[View on map](#)

Applicant Name:

John Lepkowski

Application Status:

Approved

Parcel Information:

533-12.20-46.00

Description of Request:

seek variances from the side yard setback requirements for existing and proposed structures (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Blue Teal Road within the Swann Keys Subdivision. 911 Address: 37000 Blue Teal Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.20-46.00

Board of Adjustment Hearing

Board of Adjustment Hearing Date:

Monday, April 19, 2021 - 6:00pm

[Hearing Archive and Audio](#)

Board of Adjustment Hearing Notice:

 [Public Hearing Notice.pdf](#)

Findings of Fact:

Monday, June 21, 2021

 [12547 Lands of John Lepkowski Findings of Fact - dated and signed.pdf](#)

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN LEPKOWSKI

(Case No. 12547)

A hearing was held after due notice on April 19, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.3 feet from the five (5) foot side yard setback requirement for an existing HVAC unit on the north side and a variance of 2.2 feet from the five (5) foot side yard setback requirement for existing landing with steps on the south side. This property located on the east side of Blue Teal Road within the Swann Keys Subdivision (911 Address: 37000 Blue Teal Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-12.20-46.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated January 3, 2020, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that John Lepkowski was sworn in to testify about the Application.
4. The Board found that Mr. Lepkowski testified that, when he submitted the house plans for permitting, he was unaware that variances would be needed. This issue arose when he sought a certificate of compliance.
5. The Board found that Mr. Lepkowski testified that the lot is unique as it is only 40 feet wide and that the Property cannot be otherwise developed because of the unique conditions of the lot.
6. The Board found that Mr. Lepkowski testified that the building permit was approved for the house but a Certificate of Occupancy has not been issued. He noted that the building permit was obtained by his contractor.
7. The Board found that Mr. Lepkowski testified that the steps cannot be moved because they are the secondary egress from the dwelling.
8. The Board found that Mr. Lepkowski testified that the HVAC unit cannot be moved as the only other realistic location for the system is the driveway.
9. The Board found that Mr. Lepkowski testified that the variances will not alter the essential character of the neighborhood as the home is similar to other homes in the community.
10. The Board found that Mr. Lepkowski testified that this development was developed as a manufactured home park where homes have since been converted to stick built homes.
11. The Board found that Mr. Lepkowski testified that other homes in the vicinity have had similar variances granted.
12. The Board found that Mr. Lepkowski testified that these variances are the minimum variances necessary to afford relief as the steps and HVAC system cannot be moved.
13. The Board found that Mr. Lepkowski testified that this is a single-story dwelling built in 2020 on a block foundation.

14. The Board found that Mr. Lepkowski testified that the home is elevated due to Hurricane Sandy but he cannot put these structures under the house.
15. The Board found that Mr. Lepkowski testified that there have been no complaints from neighbors and two neighbors offered to send letters of support.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and unrebutted, the Board determined that the application for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its size, shape, and development. The Property is a small lot measuring only 4,000 square feet and is only 40 feet wide. While the lot is afforded benefits under the small lot ordinance, thereby reducing its setbacks, the Applicant's builder made a mistake in the construction of the house. The house complies with the setback requirements but the steps, landing, and HVAC do not. Due to the layout of the house and the uniqueness of the Property, there is no other place where the HVAC unit, steps, and landing can be located. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an HVAC unit and steps with a landing on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and development and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain existing structures on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow these reasonably sized structures to remain on the lot. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the steps and landing provide a means to enter and exit the home and the HVAC provides a cooling system for the home. The Board also notes that the structures are not large and the square footage of the actual encroachments is limited.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. There was no evidence that the Applicants created the size or shape of the lot. The Property is exceptionally small and narrow and these conditions have resulted in a limited building envelope on the Property. The limited building envelope was exacerbated by the error by the builder in locating the encroaching structures. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicant is constrained by the location of the existing residence which also presents challenges on where the HVAC unit, steps, and landing can be located on the lot.
 - e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the encroaching structures will have no effect on the character of the neighborhood. No complaints have been noted to the

Applicant. The Board notes that the Applicant testified that neighbors have indicated support of the Application and no evidence was presented that the variances would somehow alter the essential character of the neighborhood.

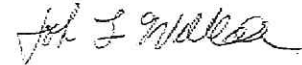
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain reasonably sized structures on the Property. No additions or modifications to the structures are proposed. The Board also notes that the steps and landing run parallel to the house so the encroachment is limited due the layout of those structures.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor of the Motion to approve the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date June 21, 2021

12512

Variance

[Return to Docket](#)

[View on map](#)

Applicant Name:

Kelly & Brian Ewing

Application Status:

Approved

Parcel Information:

533-12.16-141.00

Description of Request:

seek a variance from the side yard setback requirement for a proposed structure (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Mallard Drive within the Swann Keys Subdivision. 911 Address: 36918 Mallard Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-141.00

Board of Adjustment Hearing

Board of Adjustment Hearing Date:

Monday, January 4, 2021 - 6:00pm

[Hearing Archive and Audio](#)

Board of Adjustment Hearing Notice:

 [Public Hearing Notice.pdf](#)

Findings of Fact:

Monday, March 1, 2021

 [12512 Lands of Kelly & Brian Ewing Findings of Fact - dated and signed.pdf](#)

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KELLY EWING & BRIAN EWING

(Case No. 12512)

A hearing was held after due notice on January 4, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.5 feet from the five (5) feet side yard setback requirement on the south side for a proposed shed. This property located on the southeast side of Mallard Drive within the Swann Keys Subdivision (911 Address: 36918 Mallard Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-141.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 11, 2011, photographs, an email supporting the Application, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Kelly Ewing was sworn in to testify about the Application.
4. The Board found that Ms. Ewing testified that she recently moved the property and she previously had a 2 car garage at her prior residence. The Applicants propose to place a shed measuring 8 feet by 8 feet on the side of the house.
5. The Board found that Ms. Ewing testified that the lot is narrow with water access and a portion of the rear yard is located in a lagoon.
6. The Board found that Ms. Ewing testified that there is limited space on the side of the house where the shed is projected to be located and it is the only area that does not have existing concrete, parking, yard, and landscaping. According to Ms. Ewing, there are utility / electrical boxes, vents, and AC / heating units that cannot be moved and that moving the shed to another area would cause safety issues by blocking windows. The Applicants prefer not to disturb the areas where there is existing concrete, parking, yard, landscaping, windows, or utilities.
7. The Board found that Ms. Ewing testified that the house and lot cannot be changed.
8. The Board found that Ms. Ewing testified that the side of the house where the proposed shed will be placed has the most space and is the preferred location.
9. The Board found that Ms. Ewing testified that the placement of the shed in this location will allow the Applicants to have a shed without blocking windows and utilities or disturbing existing concrete, grass, and landscaping.
10. The Board found that Ms. Ewing testified that the shed cannot be placed in the rear of the property as there are flooding concerns.
11. The Board found that Ms. Ewing testified that street parking is not permitted on Mallard Drive so the shed needs to be placed in an area that will not prevent parking on the property.
12. The Board found that Ms. Ewing testified that the Applicants did not create the size and shape of the lot.
13. The Board found that Ms. Ewing testified that the shed is critical for storage as there is no garage on the property and that granting the variance would allow the

Applicants to keep personal belongings on the Property and not have the expense of an offsite storage unit.

14. The Board found that Ms. Ewing testified that the location of the shed will not alter the essential character of the neighborhood as there are many sheds within the community and many are close to property lines.
15. The Board found that Ms. Ewing testified that the shed will match the color and shingling of the existing dwelling and that the shed will have vinyl siding and trim to match the dwelling.
16. The Board found that Ms. Ewing testified that the neighbor who is closest to the proposed shed has no objection and submitted a letter in support of the Application. Neighbors on Lots 140, 142, and 68 have indicated to the Applicants support of the Application.
17. The Board found that Ms. Ewing testified that the request is the minimum request to allow the shed to be placed on the lot.
18. The Board found that Ms. Ewing testified that there is a stone at the base of the house which projects 5 inches and the shed will be located next to the stone.
19. The Board found that Ms. Ewing testified that the Applicants explored different options with different sized sheds but were unable to find a suitable option because of the location of the window, vent, and utilities.
20. The Board found that Ms. Ewing testified that the house is 2 stories tall but no cars can park underneath the home.
21. The Board found that no one appeared in support of or opposition to the Application.
22. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its size and shape. The Property is a small lot measuring only 5,500 square feet and is exceptionally shallow as a large portion of the rear yard is located in a lagoon thereby creating a small building envelope. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to a shed to the side of their house.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to place shed on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow this reasonably sized shed to be placed the lot. The Board is convinced that the shape and location of the shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the shed should provide functional storage for the Applicants and that such storage space is needed because there is no garage or other similar storage area on the site.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property is exceptionally small and shallow with a portion of the rear yard in the lagoon and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants are constrained by the location of the existing

residence which also presents challenges on where the shed can be located. The Applicants also must preserve space on the lot for parking since the house is not elevated and there is no off-street parking in the neighborhood.

- e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the shed will have no effect on the character of the neighborhood. The shed will be designed to match the dwelling and there is evidence of similar sheds being placed on other lots in the neighborhood. The Board notes that neighbors have indicated support of the Application and no evidence was presented that the variance would somehow alter the essential character of the neighborhood. The neighbors most impacted have indicated their support of the Application to the Applicants.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicants to place reasonably sized shed on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of a shed but were constrained by the conditions of the lot.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor of the Motion to approve the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this application.

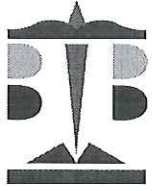
BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date March 1, 2021



BAIRD
MANDALAS
BROCKSTEDT LLC

EXHIBIT H

Letter of Support

Mackenzie Peet

From: Joseph Vai <jvai@comcast.net>
Sent: Monday, June 28, 2021 5:50 PM
To: Mackenzie Peet
Subject: Fwd: Property Renovations Joe Vai 37041 Mallard Dr, Selbyville DE Neighbor letter

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

----- Original Message -----

From: Diane Stover <dianestover@gmail.com>
To: Joe Vai <jvai@comcast.net>
Date: 06/28/2021 11:16 AM
Subject: Property Renovations

As owner of the adjoining property next to where Mr. Vai wants to place his shed, I have no problem with his construction plans.

July 5, 2021

RE: 37041 Mallard Drive Selbyville, DE 19975

To whom it may concern,

We, the owners of 37040 Mallard Drive Selbyville, DE 19975

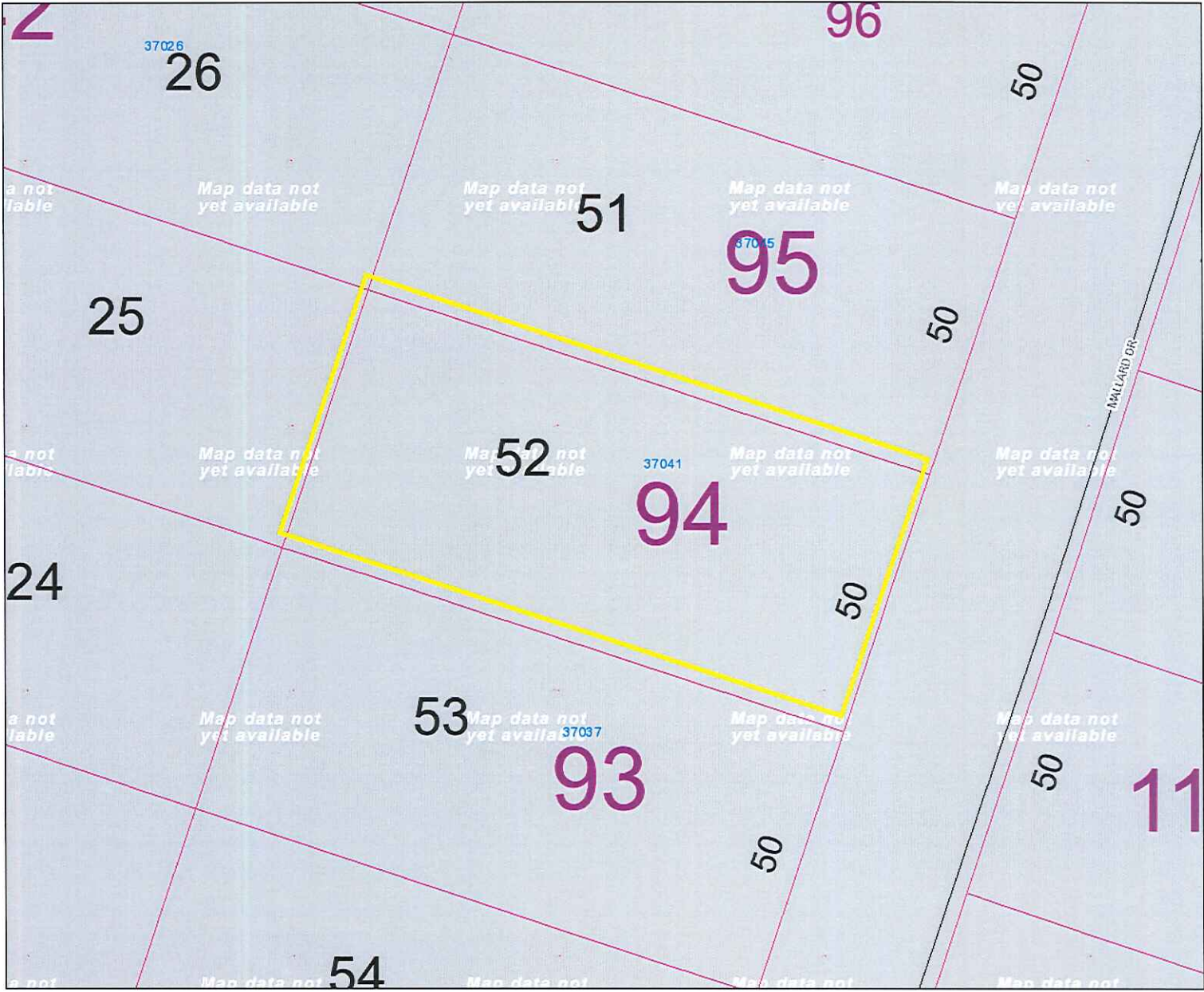
have no objections to any proposed construction/improvements to the property referenced above, which is located directly across the street from our property.

Thank You

Charles J Panichelli Charles J Panichelli Date 7-5-2021

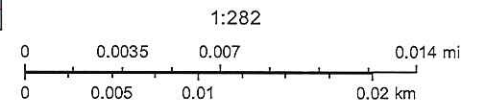
Patricia A Panichelli Patricia A. Panichelli Date 7/5/21

Scott C Panichelli Scott Panichelli Date 7/5/2021



PIN:	533-12.16-94.00
Owner Name	VAI JOSEPH A & ANDREA G
Book	2510
Mailing Address	1402 W 8TH ST
City	WILMINGTON
State	DE
Description	SWANN KEYS LOT 52
Description 2	BLK H WITH IMP
Description 3	N/A
Land Code	

- polygonLayer
 - Override 1
- polygonLayer
 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Municipal Boundaries



private schools and daycare; and that he supports the request.

The Board found that two people appeared in support of and no one appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12544 for the requested special use exception as the use will not substantially adversely affect the uses of neighboring and adjacent properties. Mr. Chorman placed the following condition that, if an outdoor playground is installed, it must be fenced.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **special use exception be granted with a condition for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

Case No. 12545 – Joseph A. Vai seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Mallard Drive within the Swann Keys Subdivision. 911 Address: 37041 Mallard Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-94.00

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 5 ft. variance from the required 5 ft. side yard setback from Lot 53 for a proposed shed.

Mr. Joseph Vai was sworn in to give testimony about the Application.

Mr. Vai testified that he has an existing 8 foot by 12 foot shed on his property and would like to replace it with a proposed 10 foot by 24 foot shed; that the existing shed is old; that this home will be the Applicant's full-time residence and there is a need for additional storage; that the existing shed is 5.5 inches from the property line; that the shed will be an A-Frame with the same shiplap toward the front to match the home; that the adjacent neighbor supports the request; that HOA approval is not required; that this is the only location to place the shed and allow access to the rear of the property from the street; that the exceptional practical difficulty was not created by the Applicant; that the new shed will be in the same location as the existing shed which was on the property when purchased; that the proposed shed will not alter the essential character of the neighborhood as it will match the existing house; that the request is for a 10 foot by 24 foot shed but it could be a 10 foot by 20 foot shed; that the proposed shed would be 10 feet tall and the existing shed is 8.5 feet tall; that the existing shed is on the grass with a sidewalk around it; that the 24 foot shed would not impede the view from the neighbor's home; that he does not want the shed to block his window; that the shed cannot be placed

to the rear of the home as the Applicant intends to add additional living space in the future; that there is a small existing shed in the rear which will be removed; and that there is a mature tree on the property which would prevent placing the shed further to the rear.

Ms. Norwood advised the Board that she was not sure if a prior variance had been granted for the existing shed.

Mr. Sharp explained to the Applicant that it is the Applicant's burden of proof to show the Board that the exceptional practical difficulty is not being created by the Applicant and that it is the minimum variance to afford relief. Mr. Sharp asked the Applicant how he proposed to construct the shed and maintain the shed while remaining on his own property if a full variance was granted.

Mr. Vai testified that the existing shed will be removed, the grass removed and some stone put down and the proposed shed will be brought through the driveway; that there will be an overhang of 6 inches but will not extend onto the neighbor's property; that the neighbor's home is 10 feet from the property line; that the proposed shed will have vinyl siding with no windows on the neighbors side of the shed so it will not require maintenance; that, if necessary, the shed could be moved 1 foot to 1.5 feet off the property line; that there are larger sheds in the neighborhood; that there is no flooding on the property; that the area under the shed will be dug out, stone will be installed and have a concrete base; that he cannot move the shed closer to the house due the sidewalk; that the shed would block two windows if it was put closer to the house; that the home measures 12 feet by 60 feet and was purchased in 2000; that an addition was added along with the rear shed in 2004; that the older shed was on the property when he purchased it; that the shed will be approximately 2 feet from the sidewalk and the sidewalk measures 3.5 feet wide; that he plans to expand the sidewalk to 5 feet wide; and that the prime view from the property is to the rear of the house and he wants to preserve that view.

Mr. Sharp asked Mr. Vai if he considered adding some storage space to the proposed future addition.

Mr. Vai testified that he intends to extend the living room and bedroom and that there is no room for storage.

The Board found that no one appeared in support of or in opposition to the Application.

Mr. Williamson closed the public hearing.

Dr. Carson moved to deny Case No. 12545 for the requested variance as the exceptional practical difficulty is being created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variance be denied for the reasons stated**. Motion carried 5 – 0.

**Board of Adjustment Application
Sussex County, Delaware**

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Case # 12594
Hearing Date 8/16
2021 01386

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)
115-42 115-182
115-183

Site Address of Variance/Special Use Exception:

38222 Piney Point Road Oceanview DE 19970

Variance/Special Use Exception/Appeal Requested:

4-foot variance from side yard setback

5 YARD SET BACK TO CONSTRUCT A NICE STAIRCASE,

Tax Map #: 1-34-9.00-221.00 Property Zoning: Residential

Applicant Information

Applicant Name: Jon Binnix
Applicant Address: 15 West Ave
City Oceanview State De Zip: 19970
Applicant Phone #: 302-220-1305 Applicant e-mail: Jonbinnix6@gmail.com

Owner Information

Owner Name: Jon Binnix
Owner Address: 15 West Ave
City Oceanview State De Zip: 19970 Purchase Date: 1997
Owner Phone #: 302-220-1305 Owner e-mail: Jonbinnix6@gmail.com

Agent/Attorney Information

Agent/Attorney Name: _____
Agent/Attorney Address: _____
City _____ State _____ Zip: _____
Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney

[Handwritten Signature]

Date: 6/7/21



Criteria for a Variance: (Please provide a written statement regarding each criteria).

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted.

In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.

1. Uniqueness of property:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the exceptional practical difficulty is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or Code in the neighborhood or district in which the property is located.

My Property is unique in that the front can face the side rd, that is used by the owner for boat ramp
Excess

2. Cannot otherwise be developed:

That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

House is now under roof and look very nice on the property front faces east, this is for a open staircase from the front door

3. Not created by the applicant:

That such exceptional practical difficulty has not been created by the appellant.

FRONT house has stayed the same since application for permit was apply and issued.

4. Will not alter the essential character of the neighborhood:

That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

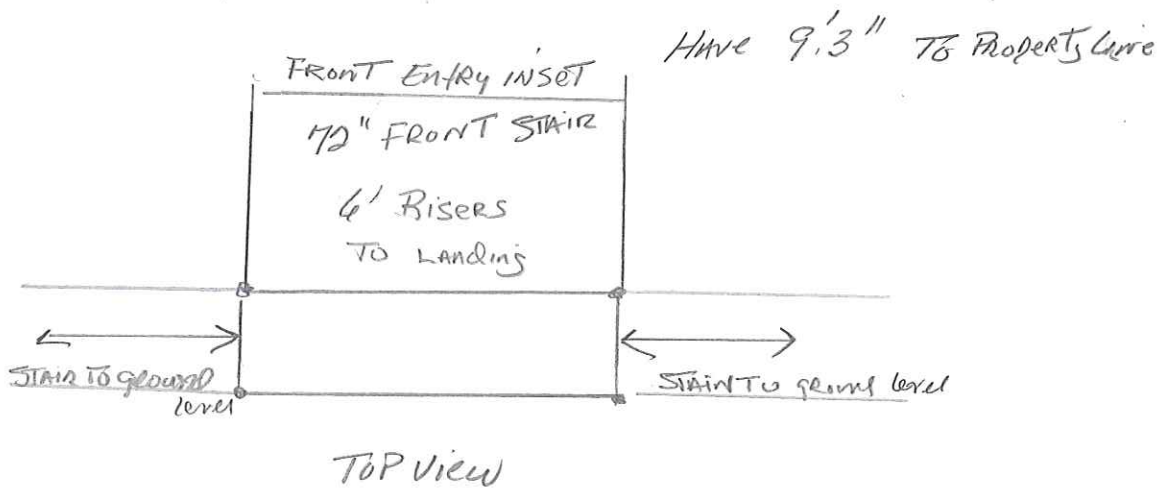
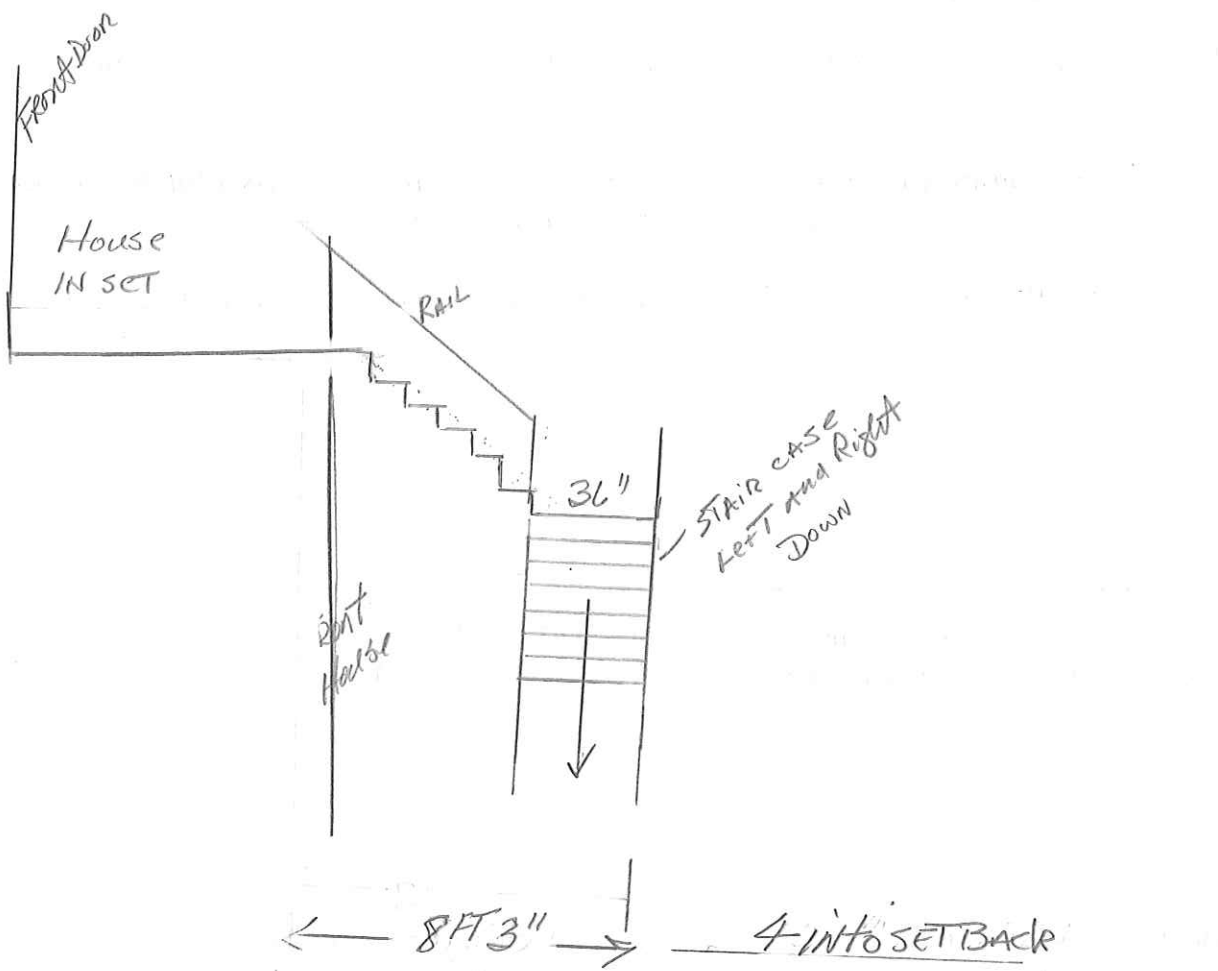
Will only entrance the character of the neighborhood.
This is a old neigbe neighborhood with no dce's or association

NO ONE SEEM TO KNOW ANYTHING ABOUT ENGLE POND HOME ASSOCIATION INC

5. Minimum variance:

That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

HFT

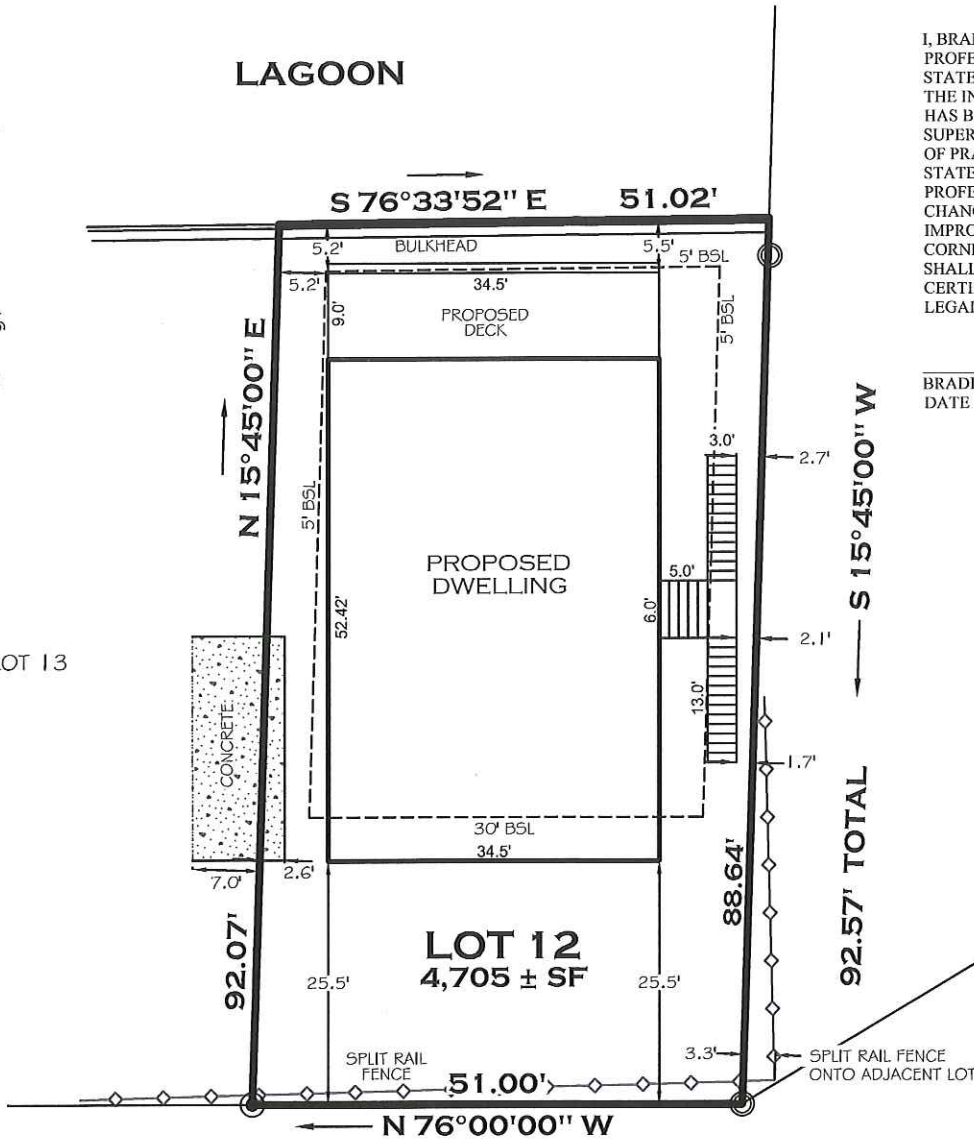


Note: CAN change 6' RISERS TO 6 wide STAIRCASE
 Then only Requiring 4FT OF THE 5' SETBACK



LOT 13

LAGOON



I, BRADLEY A. ABSHER, REGISTERED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, HEREBY STATE THAT THE INFORMATION SHOWN ON THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS ESTABLISHED BY THE STATE OF DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS. ANY CHANGES TO THE PROPERTY CONDITIONS, IMPROVEMENTS, BOUNDARY OR PROPERTY CORNERS AFTER THE DATE SHOWN HEREON SHALL NECESSITATE A NEW REVIEW AND CERTIFICATION FOR ANY OFFICIAL OR LEGAL USE.

BRADLEY A. ABSHER, DE PLS # 735
DATE

N / F
EAGLE POND HOME OWNERS ASSOCIATION INC
TAX #: 1 - 34 - 9.00 - 214.00



NOTES

1. CLASSIFICATION OF SURVEY: SUBURBAN
2. ZONE: GR
3. BUILDING SETBACK LINES (BSL)
FRONT 30'
SIDE 5'
REAR 5'

ALL SETBACKS ARE THE RESPONSIBILITY OF THE HOME OWNER AND/OR GENERAL CONTRACTOR. SETBACKS SHOWN AS PER SUSSEX COUNTY & MAY DIFFER FROM THE HOME OWNERS ASSOCIATION (HOA) SETBACKS. ANY USER OF SAID INFORMATION IS URGED TO DIRECTLY CONTACT THE LOCAL AGENCY AND HOA, IF APPLICABLE, TO VERIFY IN WRITING ALL SETBACKS & REQUIREMENTS.

4. NO TITLE REPORT WAS PROVIDED FOR OUR USE, THEREFORE THIS BOUNDARY SURVEY IS SUBJECT TO ANY ENCUMBRANCES, RESTRICTIONS, EASEMENTS, AND/OR RIGHTS OF WAY THAT MIGHT BE REVEALED BY A THOROUGH TITLE SEARCH.

**PINEY POINT ROAD
30' RIGHT OF WAY**

THIS CERTIFIES THAT THE PROPOSED DWELLING'S PLACEMENT IS PROPER, DIMENSIONS ARE CORRECT & I HEREBY AUTHORIZE ALL FIELD WORK TO BE PERFORMED.

SIGNATURE

DATE

TAX MAP	1-34 - 9.00 - 221.00
STATE	DELAWARE
COUNTY	SUSSEX
HUNDRED	BALTIMORE
TOWN	---
AREA	4,706 ± SQ. FT.
DEED REF.	3470 / 279
PLAT REF.	2 / 81
DRAWN BY	JMH / JJZ / WTM
DATE	06 / 15 / 2021
SCALE	1" = 20'
SURVEY #	DE - 07424

**SITE
PLAN**

**LOT 12
PINEY POINT**

FOR
JON D. BINNIX

PINEY POINT ROAD, OCEAN VIEW, DE 19930

LEGEND

- IRON PIPE FOUND
- ▲ PK NAIL FOUND
- ⊙ IRON ROD W/ CAP SET

TRUE NORTH



LAND SURVEYING

118 ATLANTIC AVENUE, SUITE 202
OCEAN VIEW, DE 19970
302 - 539 - 2488

P&Z Review Copy

I, BRADLEY A. ABSHER, REGISTERED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, HEREBY STATE THAT THE INFORMATION SHOWN ON THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS ESTABLISHED BY THE STATE OF DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS. ANY CHANGES TO THE PROPERTY CONDITIONS, IMPROVEMENTS, BOUNDARY OR PROPERTY CORNERS AFTER THE DATE SHOWN HEREON SHALL NECESSITATE A NEW REVIEW AND CERTIFICATION FOR ANY OFFICIAL OR LEGAL USE.

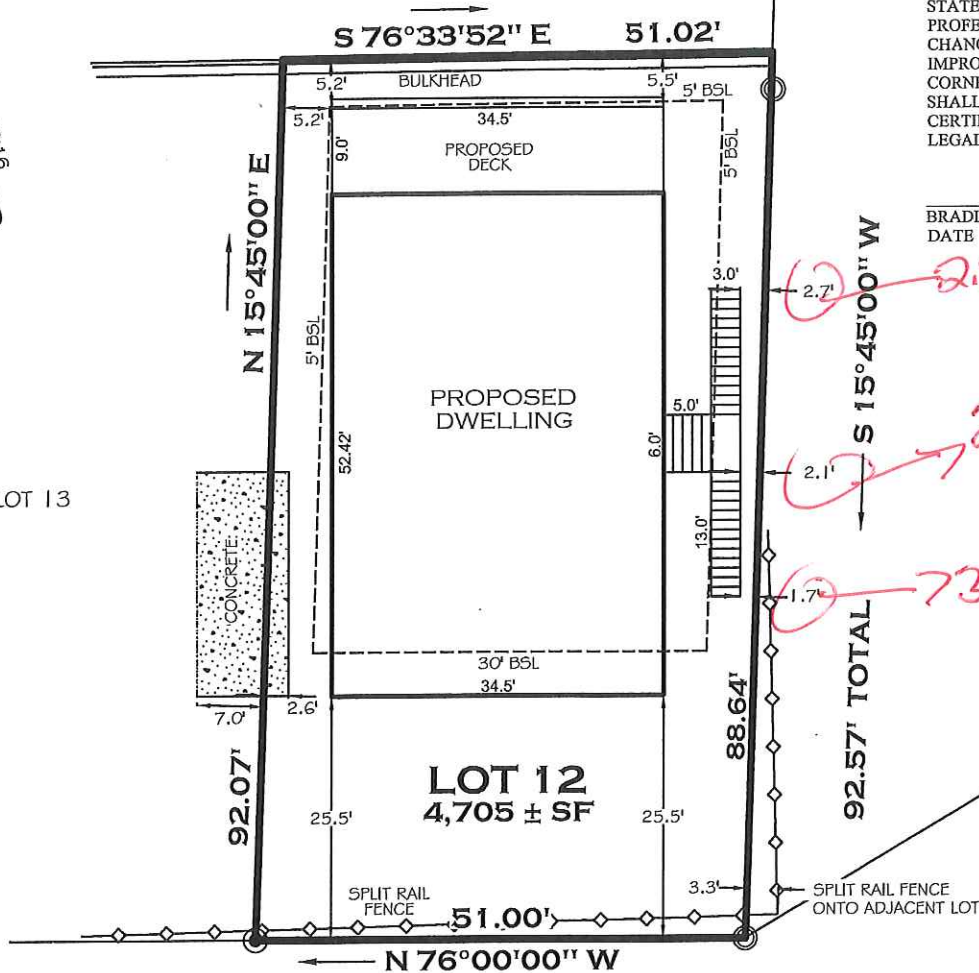
BRADLEY A. ABSHER, DE PLS # 735
DATE

N / F
EAGLE POND HOME OWNERS ASSOCIATION INC
TAX #: 1-34-9.00-214.00

2.3' var
2.9' var
73.3' var
S side setback per



LOT 13



NOTES

1. CLASSIFICATION OF SURVEY: SUBURBAN
2. ZONE: GR
3. BUILDING SETBACK LINES (BSL)
FRONT 30'
SIDE 5'
REAR 5'

Average front - 25.5' per survey included

ALL SETBACKS ARE THE RESPONSIBILITY OF THE HOME OWNER AND/OR GENERAL CONTRACTOR. SETBACKS SHOWN AS PER SUSSEX COUNTY & MAY DIFFER FROM THE HOME OWNERS ASSOCIATION (HOA) SETBACKS. ANY USER OF SAID INFORMATION IS URGED TO DIRECTLY CONTACT THE LOCAL AGENCY AND HOA, IF APPLICABLE, TO VERIFY IN WRITING ALL SETBACKS & REQUIREMENTS.

4. NO TITLE REPORT WAS PROVIDED FOR OUR USE, THEREFORE THIS BOUNDARY SURVEY IS SUBJECT TO ANY ENCUMBRANCES, RESTRICTIONS, EASEMENTS, AND/OR RIGHTS OF WAY THAT MIGHT BE REVEALED BY A THOROUGH TITLE SEARCH.

**PINEY POINT ROAD
30' RIGHT OF WAY**

THIS CERTIFIES THAT THE PROPOSED DWELLING'S PLACEMENT IS PROPER, DIMENSIONS ARE CORRECT & I HEREBY AUTHORIZE ALL FIELD WORK TO BE PERFORMED.

SIGNATURE _____ DATE _____

TAX MAP	1-34 - 9.00 - 221.00
STATE	DELAWARE
COUNTY	SUSSEX
HUNDRED	BALTIMORE
TOWN	---
AREA	4,706 ± SQ. FT.
DEED REF.	3470 / 279
PLAT REF.	2 / 81
DRAWN BY	JMH / JJZ / WTM
DATE	06 / 15 / 2021
SCALE	1" = 20'
SURVEY #	DE - 07424

SITE PLAN

**LOT 12
PINEY POINT**

FOR
JON D. BINNIX

PINEY POINT ROAD, OCEAN VIEW, DE 19930

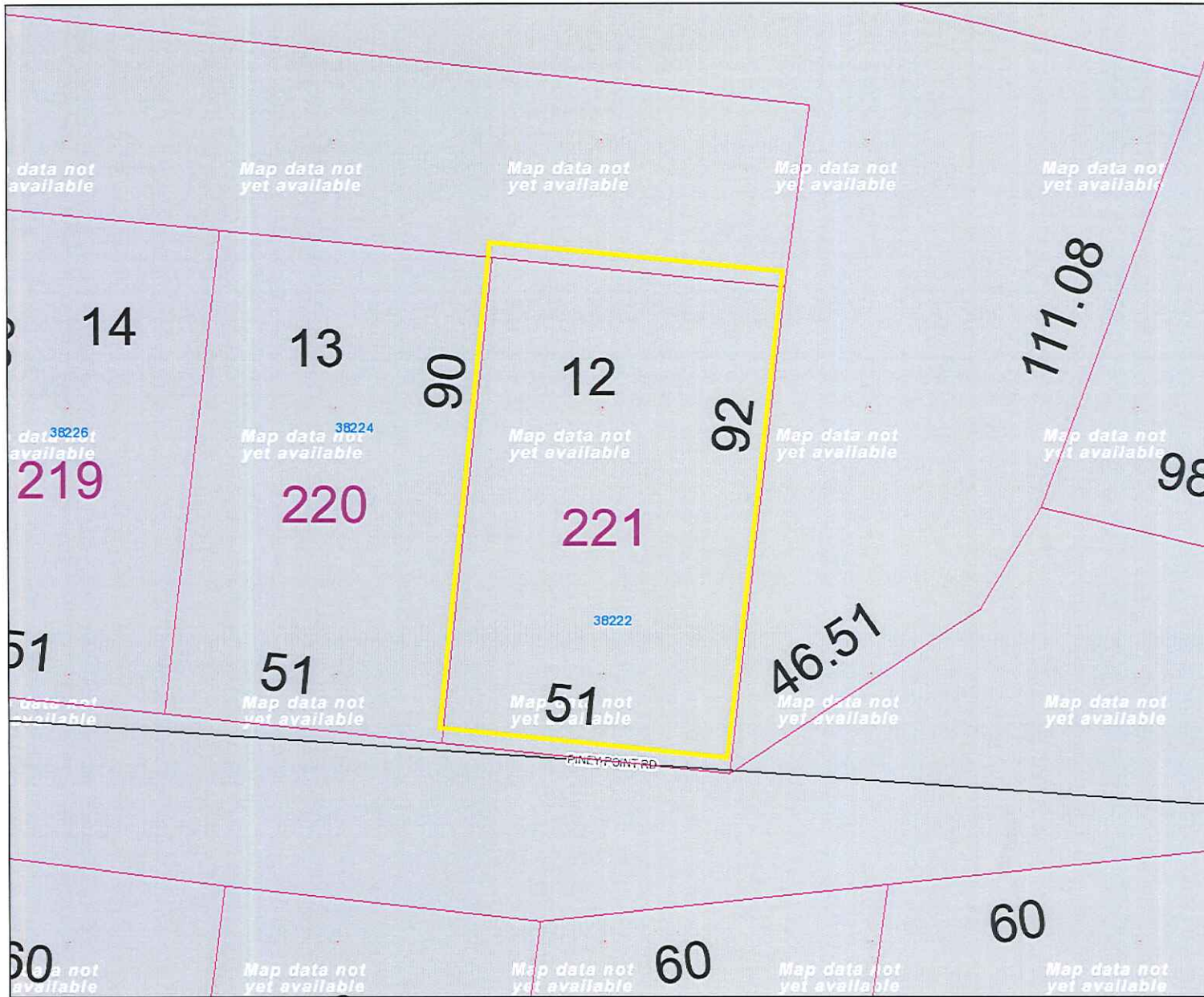
LEGEND

- IRON PIPE FOUND
- ▲ PK NAIL FOUND
- IRON ROD W/ CAP SET

TRUE NORTH



LAND SURVEYING
118 ATLANTIC AVENUE, SUITE 202
OCEAN VIEW, DE 19970
302 - 539 - 2488

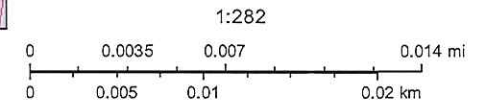


PIN:	134-9.00-221.00
Owner Name	BINNIX JON D
Book	3470
Mailing Address	34974 BELLE RD
City	BETHANY BEACH
State	DE
Description	CEDAR NECK
Description 2	PINEY POINT
Description 3	LOT 12
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

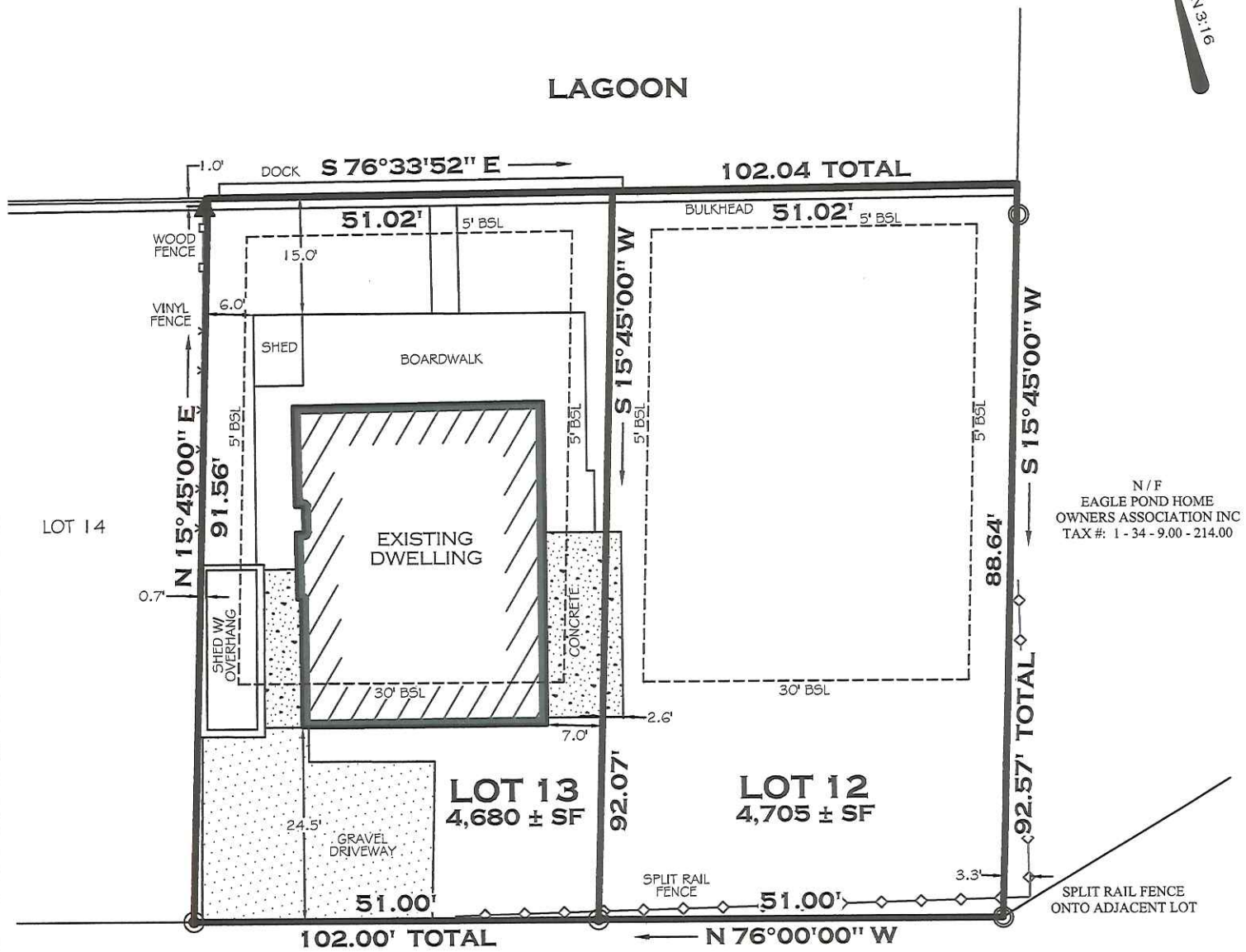
 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Municipal Boundaries





NOTE

THE PURPOSE OF THIS PLAT IS TO PARTITION PARCEL 220.00 INTO ITS ORIGINAL LOTS 12 & 13, PER PLAT 2 / 81.



N / F
EAGLE POND HOME OWNERS ASSOCIATION INC
TAX #: 1 - 34 - 9.00 - 214.00

**PINEY POINT ROAD
30' RIGHT OF WAY**

I, BRADLEY A. ABSHER, REGISTERED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, HEREBY STATE THAT THE INFORMATION SHOWN ON THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS ESTABLISHED BY THE STATE OF DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS. ANY CHANGES TO THE PROPERTY CONDITIONS, IMPROVEMENTS, BOUNDARY OR PROPERTY CORNERS AFTER THE DATE SHOWN HEREON SHALL NECESSITATE A NEW REVIEW AND CERTIFICATION FOR ANY OFFICIAL OR LEGAL USE.

Bradley A. Absher
BRADLEY A. ABSHER, DE PLS # 735
DATE 1.19.21

NOTES

1. CLASSIFICATION OF SURVEY: SUBURBAN
 2. ZONE: GR
 3. BUILDING SETBACK LINES (BSL)
FRONT 30'
SIDE 5'
REAR 5'
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4. NO TITLE REPORT WAS PROVIDED FOR OUR USE, THEREFORE THIS BOUNDARY SURVEY IS SUBJECT TO ANY ENCUMBRANCES, RESTRICTIONS, EASEMENTS, AND/OR RIGHTS OF WAY THAT MIGHT BE REVEALED BY A THOROUGH TITLE SEARCH.

LEGEND	
○	IRON PIPE FOUND
▲	PK NAIL FOUND
●	IRON ROD W/ CAP SET

TAX MAP	1-34 - 9.00 - 220.00
STATE	DELAWARE
COUNTY	SUSSEX
HUNDRED	BALTIMORE
TOWN	---
AREA	9,386 ± SQ. FT. TOTAL
DEED REF.	3470 / 281
PLAT REF.	2 / 81
DRAWN BY	JMH
DATE	01 / 19 / 2021
SCALE	1" = 20'
SURVEY #	DE - 07424


**PARTITION
PLAT**

**LOTS 12 & 13
PINEY POINT**

FOR
WENDY S. BINNIX

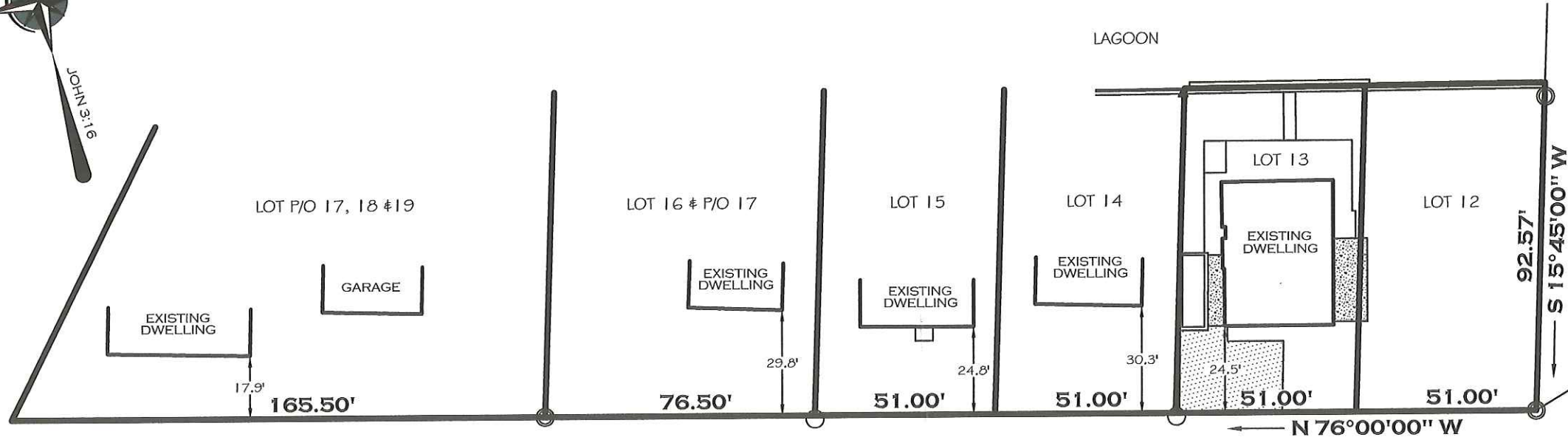
38224 PINEY POINT ROAD, OCEAN VIEW, DE 19930

TRUE NORTH



LAND SURVEYING

118 ATLANTIC AVENUE, SUITE 202
OCEAN VIEW, DE 19970
302 - 539 - 2488



N/F
EAGLE POND HOME OWNER
ASSOCIATION INC
TAX #: 1 - 34 - 9.00 - 214.00

NOTE:
AVERAGE HOUSE SETBACK = 25.5'

**PINEY POINT ROAD
30' RIGHT OF WAY**

NOTES

- CLASSIFICATION OF SURVEY: SUBURBAN
 - ZONE: GR
 - BUILDING SETBACK LINES (BSL)
FRONT 30'
SIDE 5'
REAR 5'
- ALL SETBACKS ARE THE RESPONSIBILITY OF THE HOME OWNER AND/OR GENERAL CONTRACTOR. SETBACKS SHOWN AS PER SUSSEX COUNTY & MAY DIFFER FROM THE HOME OWNERS ASSOCIATION (HOA) SETBACKS. ANY USER OF SAID INFORMATION IS URGED TO DIRECTLY CONTACT THE LOCAL AGENCY AND HOA, IF APPLICABLE, TO VERIFY IN WRITING ALL SETBACKS & REQUIREMENTS.
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Bradley A. Absher
BRADLEY A. ABSHER, DE PLS # 735
DATE 2.23.21

TAX MAP	1-34 - 9.00 - 215,217, 218,219,220 & 221
STATE	DELAWARE
COUNTY	SUSSEX
HUNDRED	BALTIMORE
AREA	9,386 ± SQ. FT. TOTAL
DEED REF.	3470 / 281
PLAT REF.	2 / 81
DRAWN BY	JMH / MCS
DATE	02 / 23 / 2021
SCALE	1" = 20'
SURVEY #	DE - 07424

**BLOCK SURVEY
PLAT**

**LOTS 12, 13, 14, 15, 16, 17, 18 & 19
PINEY POINT**

**FOR
WENDY S. BINNIX**

38224 PINEY POINT ROAD, OCEAN VIEW, DE 19930

LEGEND

- IRON PIPE FOUND
- IRON ROD FOUND
- ▲ PK NAIL FOUND

TRUE NORTH

LAND SURVEYING
118 ATLANTIC AVENUE, SUITE 202
OCEAN VIEW, DE 19970
302-539-2488

**Board of Adjustment Application
Sussex County, Delaware**

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Case # 12595
Hearing Date 8/16
202109654

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)
115-23
115-210

Site Address of Variance/Special Use Exception:

23679 Dove Rd. Seaford, DE 19973

Variance/Special Use Exception/Appeal Requested:

Daycare 12 children (Large family in home)

Tax Map #: 231-12.00-424.00

Property Zoning: residential

Applicant Information

Charlene
Applicant Name: Charlene Wildonger
Applicant Address: 23679 Dove Rd
City Seaford State DE Zip: 19973
Applicant Phone #: 302-396-3950 Applicant e-mail: smartstartdelaware@gmail.com

Owner Information

Owner Name: Keith Wildonger
Owner Address: 23679 Dove Rd.
City Seaford State DE Zip: 19973 Purchase Date: year 2000
Owner Phone #: 302-258-5133 Owner e-mail: smartstartdelaware@gmail.com

Agent/Attorney Information

Agent/Attorney Name: _____
Agent/Attorney Address: _____
City _____ State _____ Zip: _____
Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney

Keith Wildonger

Date: 6/22/21



Criteria for a Special Use Exception: (Please provide a written statement regarding each criteria)

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Special Use Exception to be granted.

1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property.

There is a separate driveway for business. The yard is fenced in. No public road use for parking. Day time hours only.

2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code. (Ex. Time limitations – 5 year maximum)

Large Family Daycare services ongoing.

Basis for Appeal: (Please provide a written statement regarding reason for appeal)



Sussex County Building Permit

P.O. Box 589
Georgetown, DE 19947
302-855-7720

Application Number

201704871

Issue Date: 05/18/2017

Expire Date: 05/18/2018

Permit Type: RES. ADDITION OUT OF TOWN

Parcel ID	Address	Zone Code
231-12.00-424.00	23679 DOVE ROAD, SEAFORD	AR-1

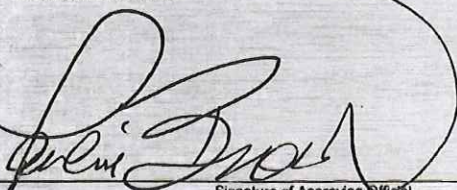
Owner Information	Applicant Information
Name: WILDONGER, KEITH ALTON Phone: <i>cheryl</i>	Name: WILDONGER, KEITH ALTON Phone:

Contractor Information	
Name: WILDONGER, KEITH ALTON CID: 562950 Phone:	License Number: License Exp. Date: Insurance Exp. Date:

Building Information
Proposed Use: A-FRAME ROOF Construction Type: Estimated Cost of Construction: \$ 18,432 Cannot Occupy More than ____ of Total Lot Area Distance from any Dwelling of other Ownership: ____ Distance from any other Mobile Home or Accessory Structure: ____

Property Information
Measurements taken from Property Lines Front Setback: <u>40.00</u> / _____ Rear Setback: <u>20.00</u> / _____ Side Setback: <u>15.00</u> / _____ Corner Setback: _____ / _____ Maximum Building Height: <u>42'</u> Location Description: _____ FLOOD ZONE Flood Zone: XP266K See Attached Flood Plan Construction Review Coastal and Flood-Prone Area Building Requirements.

Project Description: RES ADD W/ BC
Scope of Work:
 12X32 PLAYROOM ADDITION ON EXIST DECK
 CALL JAMES JACKSON WHEN DONE

Permit Details:

 Signature of Approving Official

 *302-670-3513*
 Signature of Owner/Contractor

I fully understand the Zoning Requirements of this permit.

Building Permit Application:

ZONING AND BUILDING PERMIT will expire one (1) year from the date of issue. Permit may be renewed if construction has begun and continued in a normal manner and not discontinued for reasons other than those beyond the permit-holder's control. Grading or surface-shaping of the site shall not be considered as actual construction. Permit must be renewed prior to expiration date.
 ASSESSORS AND INSPECTORS HAVE A RIGHT TO GO ON PREMISES TO ASSESS AND INSPECT PROPERTY. The owner or owners of these premises do hereby consent to the Board of Assessment, Planning and Zoning and Building Code Officials to enter upon said premises during the construction of which this PERMIT is granted, or within a reasonable time thereafter, for the purposes of assessing and inspecting said property, said consent being given on the signing of this permit.

THE SUSSEX COUNTY PLANNING AND ZONING COMMISSION APPROVAL OF THIS PERMIT APPLICATION PERTAINS ONLY TO COMPLIANCE WITH SUSSEX COUNTY ZONING ORDINANCES. IT IS NOT TO BE CONSTRUED AS AN ALL INCLUSIVE APPROVAL FOR THE REQUIREMENTS OF ANY OTHER GOVERNMENTAL AGENCIES, WHICH MAY PERTAIN TO THIS SITE.

Permit Number BP-71194

TOTAL FEES: \$ 107.58





PIN:
Owner Name
Book
Mailing Address
City
State
Description
Description
Description
Land Code

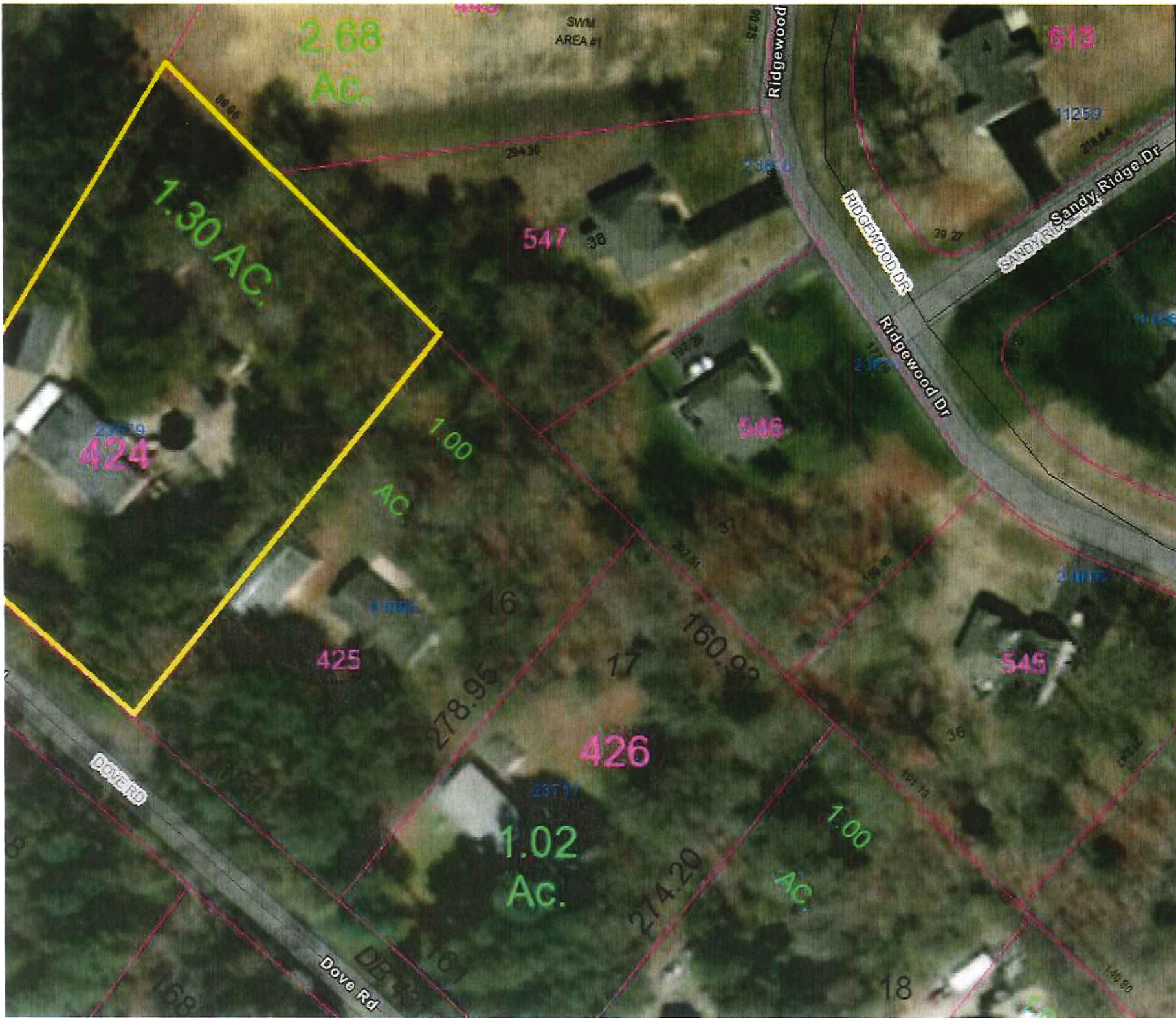
- polygonLayer**
Override
- polygonLayer**
Override
- Tax Parcel
- 911 Address
- Streets
- County Boundary

231-1200
424.00



PIN:
Owner Name
Book
Mailing Address
City
State
Description
Description
Description
Land Code

- polygonLayer**
 - Override
- polygonLayer**
 - Override
- Tax Parcel
- 911 Address
- Streets
- County Boundary



PIN:
Owner Name
Book
Mailing Address
City
State
Description
Description
Description
Land Code

- polygonLayer**
 - Override
- polygonLayer**
 - Override
- Tax Parcel
- 911 Address
- Streets
- County B

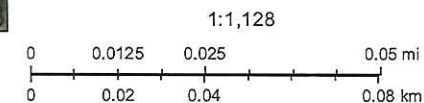


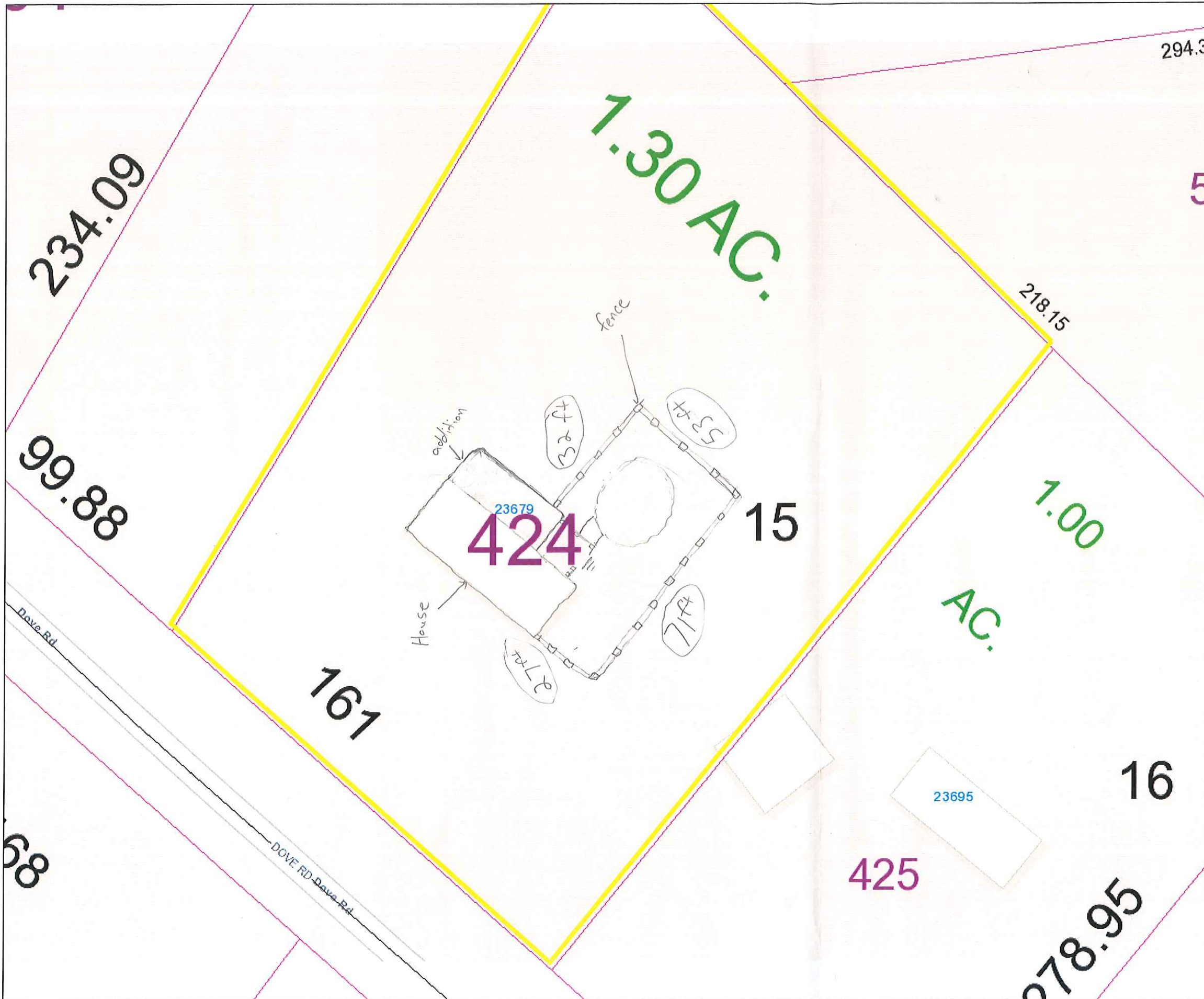
PIN:	231-12.00-424.00
Owner Name	WILDONGER KEITH ALTON
Book	2312
Mailing Address	23679 DOVE RD
City	SEAFORD
State	DE
Description	DEEP PINES
Description 2	LOT 15
Description 3	CT47455
Land Code	

- polygonLayer

 - Override 1
- polygonLayer

 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Municipal Boundaries





PIN:	231-12.00-424.00	
Owner Name	WILDONGER	KEITH ALTON
Book	2312	
Mailing Address	23679 DOVE RD	
City	SEAFORD	
State	DE	
Description	DEEP PINES	
Description 2	LOT 15	
Description 3	CT47455	
Land Code		

- polygonLayer

Override 1
- polygonLayer

Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Extent of Right-of-Way
- Approx. Watershed Boundary
- Municipal Boundaries

Board of Adjustment Application
Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Case # 12596
Hearing Date 8/16
202109783

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)
115-34 115-183

Site Address of Variance/Special Use Exception:

17263 Brinleighs Way Lewes, DE 19959

Variance/Special Use Exception/Appeal Requested:

About a 3' variance on left corner of concrete patio to extend and allow for screened in porch. So 3' B.R.L variance.

Tax Map #: 335-8.00-1178.00

Property Zoning: MR

Applicant Information

Applicant Name: Kelsy Harding
Applicant Address: 17326 Coastal Hwy.
City Lewes State DE Zip: 19959
Applicant Phone #: 302-233-4276 Applicant e-mail: bleeh@coastalintepatios.com

Owner Information

Owner Name: Steve Oliver
Owner Address: 17263 Brinleighs Way
City Lewes State DE Zip: 19959 Purchase Date: _____
Owner Phone #: 302-740-4333 Owner e-mail: soliver@caravel.org

Agent/Attorney Information

Agent/Attorney Name: _____
Agent/Attorney Address: _____
City _____ State _____ Zip: _____
Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney

Kelsy Harding

Date: 5/24/21



Criteria for a Variance: (Please provide a written statement regarding each criteria).

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted.

In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.

1. Uniqueness of property:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the exceptional practical difficulty is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or Code in the neighborhood or district in which the property is located.

B.R.L cuts concrete patio area off in left corner only whereas neighbors can screen in patio due to horrible blugs.

2. Cannot otherwise be developed:

That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

We just want to screen in existing porch, no other way client can without variance.

3. Not created by the applicant:

That such exceptional practical difficulty has not been created by the appellant.

Appellant had no idea their B.R.L would cut off at the patio, they tried to change but were locked in.

4. Will not alter the essential character of the neighborhood:

That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

Neighbors have screened in their existing concrete porches the exact same way.

5. Minimum variance:

That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Just asking for minimum variance to screen in existing concrete patio.



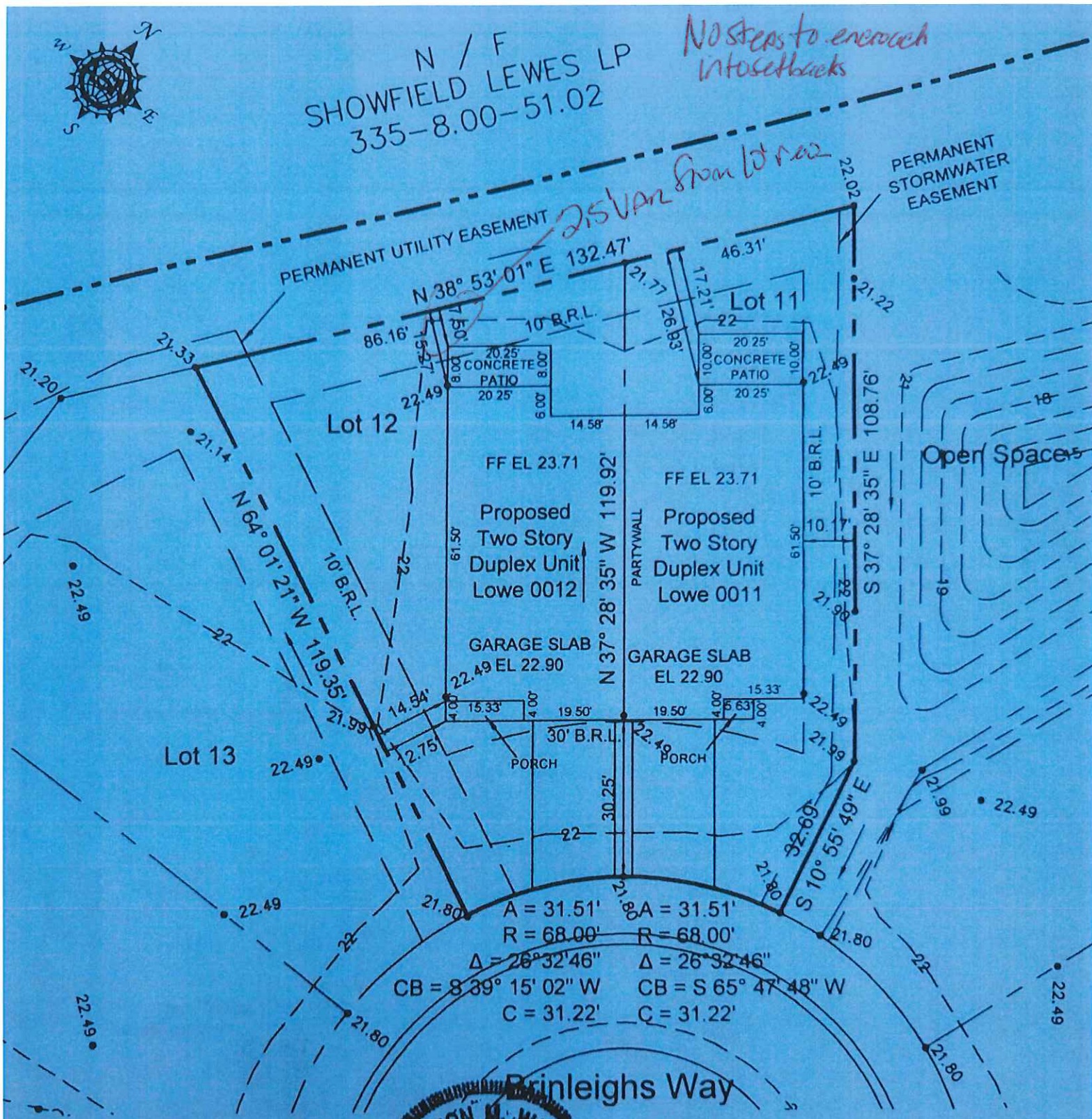
N / F
SHOWFIELD LEWES LP
335-8.00-51.02

No steps to encroach into setbacks

PERMANENT UTILITY EASEMENT

PERMANENT STORMWATER EASEMENT

25' var from lot line



A = 31.51' R = 68.00' Δ = 26° 32' 46'' CB = 8° 39' 15'' W C = 31.22'
 A = 31.51' R = 68.00' Δ = 26° 32' 46'' CB = S 65° 47' 48'' W C = 31.22'

Brinleighs Way



EXISTING GRADES HAVE BEEN RAISED 0.33' PER CLIENT
 DIMENSIONS AND CONTOURS PROVIDED BY OTHER SURVEYORS
 CONTRACTOR TO CONFIRM DIMENSIONS BEFORE CONSTRUCTION

EXISTING ROADWAY CURB AND GRADES WERE TAKEN FROM PLATS ENTITLED STREETS AND SITE GRADING AND STORM DRAINAGE PREPARED BY MRA, INC., DATED 1/05/07 AND NOT THE RESULT OF A FIELD SURVEY BY ATLANTIC SURVEYING & MAPPING. EXISTING WATER AND SEWER LINES SHOWN WERE TAKEN FROM A PLAT ENTITLED UTILITY PLANS, LIGHTHOUSE CROSSING PREPARED BY MRA, INC., DATED 1/05/07 AND NOT THE RESULT OF A FIELD SURVEY BY ATLANTIC SURVEYING & MAPPING.



Site Plan:
 Lots 11 & 12, Admirals Chase, 17263 & 17265 Brinleighs Way
 Lewes & Rehoboth Hundred, Sussex County, Delaware
 Plat Ref.: Bk. 292, Pg. 82 et seq.
 Scale: 1" = 30'

SURVEYED BY:
 DRAWN BY:
 CHECKED BY:
 PROJECT #: A19060

No recorded rights-of-way, easements











ADMIRALS CHASE
LEWES, DELAWARE

Admirals Chase Property Owners Association
Architectural Change/Addition Request

Date: 6/10/2021 Owner: Steve and Emily Oliver

Mailing Address: 21 Breckenridge Dr, Oxford, PA 19363

Property Address: 17263 Brinleighs Way, Lewes, DE 19958

Phone #: 302.740.4333

Email Address: soliver@caravel.org


Mr. and Mrs. Oliver,

Thank you for your application to the Architecture Review Committee in regards to **adding a rear screened in porch and outdoor shower enclosure.**

Your application can be approved with some conditions:

1. Must obtain all necessary jurisdictional permits to confirm encroachment into building restriction lines are acceptable.

Please let me know if you have any questions.



ACARC Agent

Caitlin Taylor

ACARC Agent

6/10/2021 | 2:21 EDT

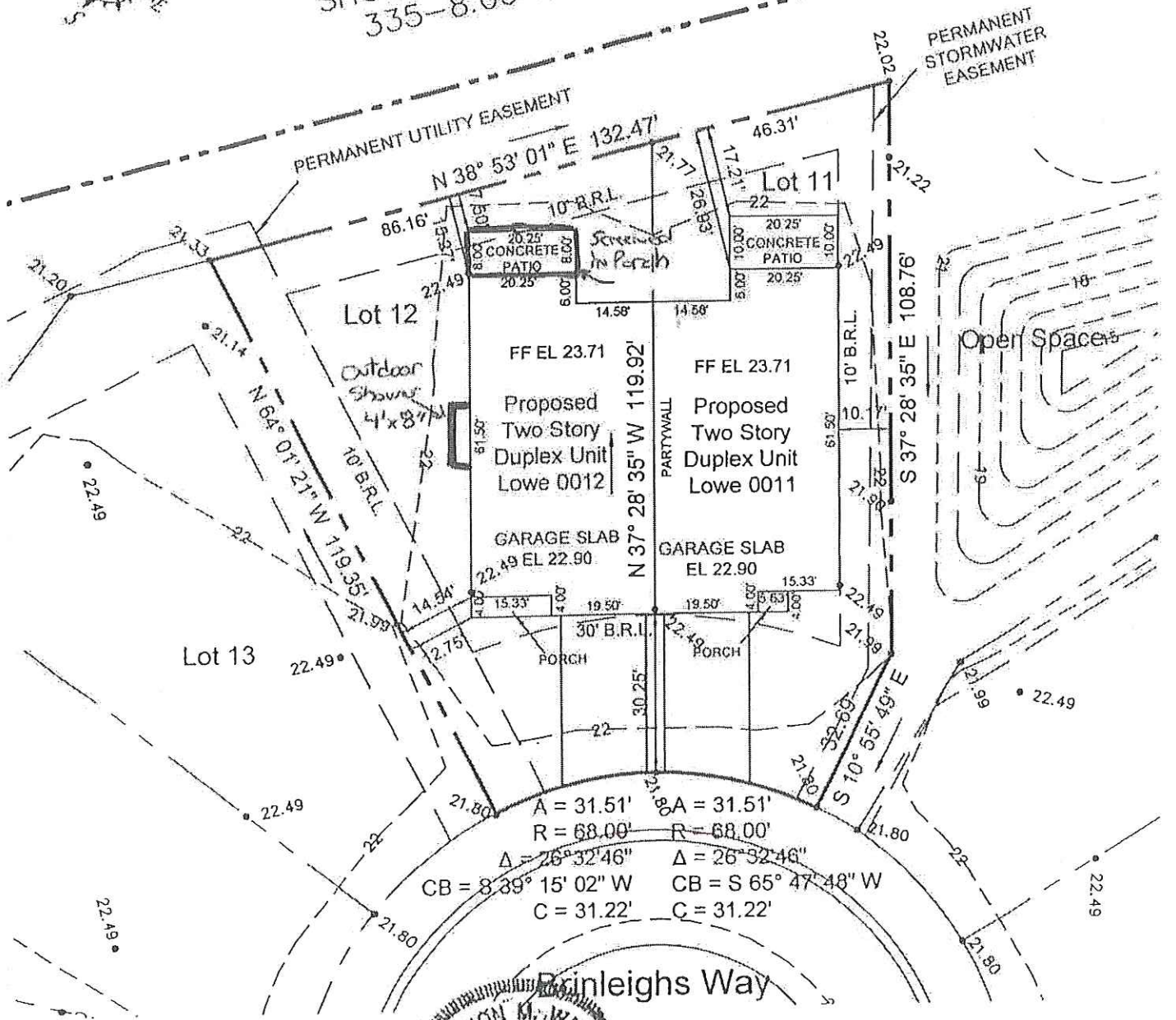
Date

6/10/2021 | 12:44 EDT

Date



N / F
SHOWFIELD LEWES LP
335-8.00-51.02



*BUILDING GRADES HAVE BEEN RAISED 0.33' PER CLIENT
 *GRADES AND CONTOURS PROVIDED BY OTHER
 *CONTRACTOR TO CONFIRM DIMENSIONS BEFORE CONSTRUCTION

EXISTING ROADWAY CURB AND GRADES WERE TAKEN FROM PLATS ENTITLED STREETS AND SITE GRADING AND STORM DRAIN PLANS, PREPARED BY MRA, INC., DATED 1/05/07 AND NOT THE RESULT OF A FIELD SURVEY BY ATLANTIC SURVEYING & MAPPING EXISTING WATER AND SEWER LINES SHOWN WERE TAKEN FROM A PLAT ENTITLED UTILITY PLANS, LIGHTHOUSE CROSSING PREPARED BY MRA, INC. DATED 1/05/07 AND NOT THE RESULT OF A FIELD SURVEY BY ATLANTIC SURVEYING & MAPPING

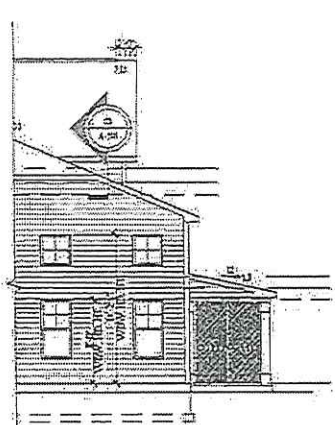


ATLANTIC SURVEYING & MAPPING, L.L.C.
 P.O. BOX 247
 HARBESON, DE 19951
 PH. 302-684-2980

Site Plan:
 Lots 11 & 12, Admirals Chase, 17263 & 17265 Brinleighs Way
 Lewes & Rehoboth Hundred, Sussex County, Delaware
 Plat Ref.: Bk. 292, Pg. 82 et seq.
 Scale: 1" = 30'
 Class "B" Survey
 Client: Evergreene Homes
 TAX MAP: 335-8.00-1177.00 & 1178.00

No recorded rights-of-way, easements or other encumbrances affecting these lands have been provided to the Surveyor by the Client. No warranty as to title to any lands depicted hereon is explicitly or implicitly provided.

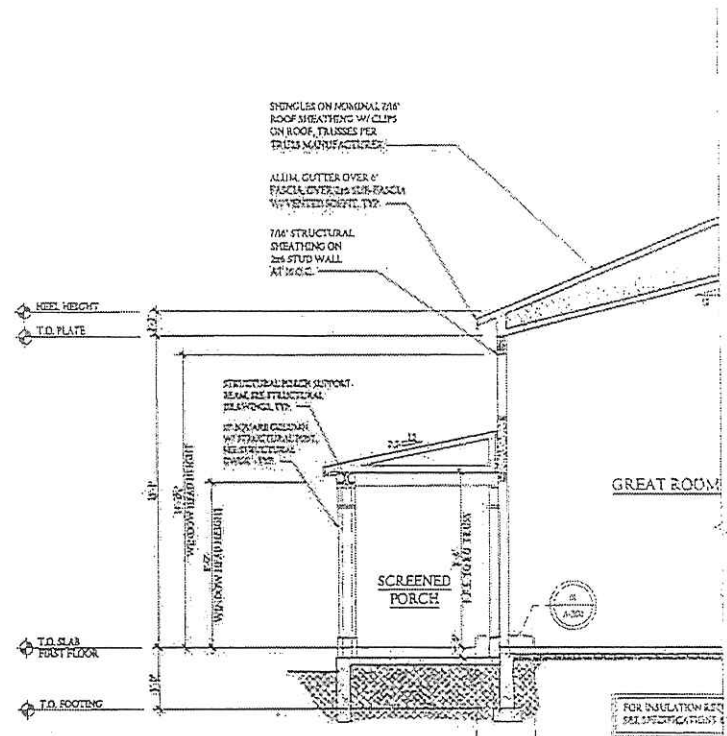
SURVEYED BY: C.H.
 DRAWN BY: HJ
 CHECKED BY: M.J.
 PROJECT #: A190603-11412
 DATE: 07/05/2020
 SHEET NO: 1



24 PARTIAL RIGHT ELEVATION
A-24 SCALE: 1/8" = 1'-0"
A-25 SCALE: 1/8" = 1'-0"



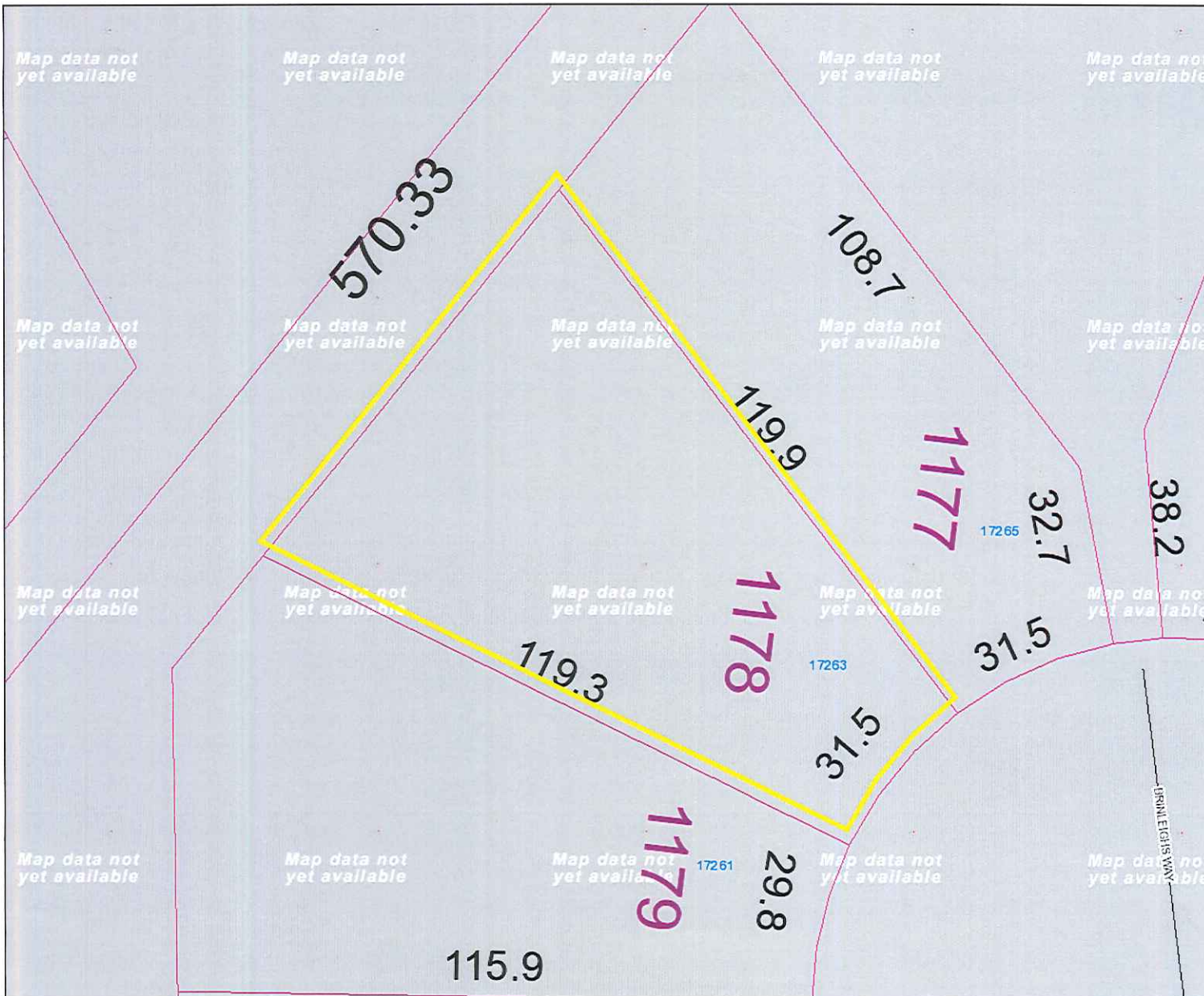
26 PARTIAL REAR ELEVATION
A-26 SCALE: 1/8" = 1'-0"
A-27 SCALE: 1/8" = 1'-0"



28 PARTIAL SECTION
A-28 SCALE: 1/8" = 1'-0"
A-29 SCALE: 1/8" = 1'-0"



Sussex County

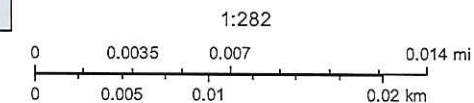


PIN:	335-8.00-1178.00
Owner Name	OLIVER STEVEN S
Book	5455
Mailing Address	21 BRECKENRIDGE DR
City	OXFORD
State	PA
Description	ADMIRALS CHASE
Description 2	LOT 12
Description 3	N/A
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Municipal Boundaries



John E. Newton, Jr.
16151 Derby Drive
Lewes, DE 19958

RECEIVED

AUG 06 2021

SUSSEX COUNTY
PLANNING & ZONING

August 6, 2021

Sussex County Board of Adjustment
Sussex County Council
Planning & Zoning Department
2 The Circle (P.O. Box 417)
Georgetown, DE 19947

Opposition
Exhibit

Attention Jamie Whitehouse, AICP
Planning and Zoning Director

Re: Case No. 12596
Application for Variance
Steve Oliver, 17263 Brinleigh's Way, Lewes

Dear Mr. Whitehouse and the Board:

I am writing to oppose the request for a variance as described in the application listed above. In short, we do not believe that the property meets all of the criteria for a variance to be granted. Thus, we request that the setbacks established by the building restriction lines ("BRLs") be respected and the request for a variance be denied. Our reasons are as follows:

May I start by simply observing that the application itself is somewhat misleading. While this is perhaps not a reason to deny a variance, it is somewhat disingenuous. For example, in response to criteria #2, the application states "we just want to screen in existing porch." Similarly, the response to criteria #4 also implies that there is an existing porch on the property ("neighbors have screened in their existing concrete porches the exact same way").

These statements create the impression that the applicants only want to add screening to an existing porch. As there is currently no structure on the patio, we believe that such an impression is misleading. We do note that other responses (see response to criteria #5) state that the applicants wish to "screen in existing concrete patio." A more complete response might have been that the applicants wish to "build a new screened-in porch on an existing concrete patio."

1. The property is not unique, as described in and required by criteria #1.

Criteria #1 requires that there be "unique physical circumstances or conditions...or exceptional topographical or other physical conditions peculiar to the particular property" that result in "exceptional practical difficulty". The applicants have not demonstrated that there are unique or exceptional conditions that affect this lot, which would allow a variance to be granted. Rather, there is already a large home on the property, which the applicants seek to make even larger by building into the setbacks. This does not meet the standard established by criteria #1.

2. The applicants knew (or should have known) that the existing BRL cut across the concrete patio and would, therefore, exclude further development and structures on that part of the patio beyond the BRL.

On the survey plan submitted by applicants, the BRL clearly cuts across one corner of the concrete patio. The applicants should have (or could have) received this site plan prior to their purchase of the property. Thus, the element of surprise expressed by applicants in response to criteria #3 ("appellant had no idea their B.R.L. would cut off at the patio...") is unfounded. The applicants have not suggested that the survey of the property was inaccurate or that it did not correctly depict the BRL. As such, the effect of the BRL on future development was or could have been known. Thus, criteria #3 has not been met.

3. The applicants have not demonstrated the kind of "hardship" contemplated by criteria #2.


Criteria #2 requires that the applicants show that "because of such physical circumstances or conditions, *there is no possibility* that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code" (italics added).

In response, the application states that there is "no other way client can ["screen in existing porch"] without variance." We believe that this is not accurate.

The property owners can indeed build a screened-in porch on the part of the patio that is on their side of the BRL. This is actually a majority of the space. But that is not the porch they wish to build. Rather, they want a bigger porch than what is otherwise allowed if they respect the existing BRL. This personal preference by the property owners does not meet the standard. Therefore, the request for a variance should be denied as criteria #2 has not been met: a porch can in fact be built in strict conformity with the provisions of the Zoning Ordinance or Code.

For all these reasons, we respectfully request that the above-listed application for a variance be denied.

Sincerely yours,



John Newton

The Showfield Home Owners Association
c/o Premier Property and Pool Management, LLC
34634 Bay Crossing Blvd #4,
Lewes, DE 19958

RECEIVED

AUG 06 2021

SUSSEX COUNTY
PLANNING & ZONING

August 6, 2021

Sussex County Board of Adjustment
Sussex County Council
Planning & Zoning Department
2 The Circle (P.O. Box 417)
Georgetown, DE 19947

Opposition
Exhibit

Attention Jamie Whitehouse, AICP
Planning and Zoning Director

Re: Case No. 12596
Application for Variance: 17263 Brinleigh's Way, Lewes

Dear Mr. Whitehouse:

I am writing on behalf of the Showfield Home Owners Association ("Showfield HOA") in regard to Case No. 12596 now pending before the Sussex County Board of Adjustment.

The Showfield HOA owns common area lands adjacent to this property on Brinleigh's Way, and therefore has a direct interest in these proceedings. Our common area lands provide a buffer between our homeowners' lots and the Admiral Chase development. We enforce our lot setbacks as described in the development plan approved by Sussex County. We would expect the same enforcement by Sussex County for the Admiral Chase development to ensure that building construction in the Admiral Chase development does not encroach on the Showfield HOA boundary and there-by negatively affect the homeowners in the Showfield HOA.

The Showfield HOA encourages the Zoning Board to respect and enforce the existing setback guidelines.

Sincerely yours,

Denis Clements

Denis Clements, President, Showfield Home Owners Association

Case # 125 97

Hearing Date 8/16

202109718

Board of Adjustment Application Sussex County, Delaware

Planning & Zoning Department
Sussex County, Box 417) Georgetown, DE 19947
2 The Circle (P. 17878 ph. 302-854-5079 fax
302-854-5079

Type of Application: (please check applicable)

- Variance
- Special Use Exception
- Administrative Variance
- Appeal

- Existing Condition
- Proposed
- Code Reference (office use only)
115-34 115-182

Site Address of Variance/Special Use Exception:

37034 Bay Run, Selbyville, DE 19975

Variance/Special Use Exception/Appeal Requested:

~~Extension of 12 feet to make our garage useable.~~
10.8' variance for garage extension

Tax Map #: 5-33-19-345

Property Zoning: AE MR

Applicant Information

Applicant Name: Walter M. and Carol A. Rykiel

Applicant Address: 37034 Bay Run, Keenwick Sound

City Selbyville State DE Zip: 19975

Applicant Phone #: (410) 409-7477 Applicant e-mail: bootsrykiel@comcast.net

Owner Information

Owner Name: Walter M. and Carol A. Rykiel

Owner Address: 37034 Bay Run

City Selbyville State DE Zip: 19975 Purchase Date: 10/15/03

Owner Phone #: (410) 409-7477 Owner e-mail: bootsrykiel@comcast.net

Agent/Attorney Information

Agent/Attorney Name: Not applicable

Agent/Attorney Address: _____

City _____ State _____ Zip: _____

Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney

Walter M. Rykiel
Carol A. Rykiel

Date: 6/22/1941



Criteria for a Variance: (Please provide a written statement regarding each criteria).

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted.

In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.

1. Uniqueness of property:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the exceptional practical difficulty is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or Code in the neighborhood or district in which the property is located.

While there is ample room on the south side of the home, the angle of the Bay Run road on the north side limits the expansion of the existing garage. Our home is one of four located in the Bay Run cul-de-sac. That leads to minimal traffic and no discernable impact to the development. Photos attached.

2. Cannot otherwise be developed:

That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

The angle of the road and the manner in which the set back is measured would make the extension of the garage impossible without a variance. The actual measure from the end of the proposed 12-foot extension to the beginning edge of the Bay Run road is 47 feet on the south side and 59.5 feet on the north side, well within the standard 30-foot set back. Survey with schematic and photos attached.

3. Not created by the applicant:

That such exceptional practical difficulty has not been created by the appellant.

The property existed as is when we first purchased it. We always believed we could extend the garage, not understanding what the dotted lines on the survey indicated. Survey attached.

4. Will not alter the essential character of the neighborhood:

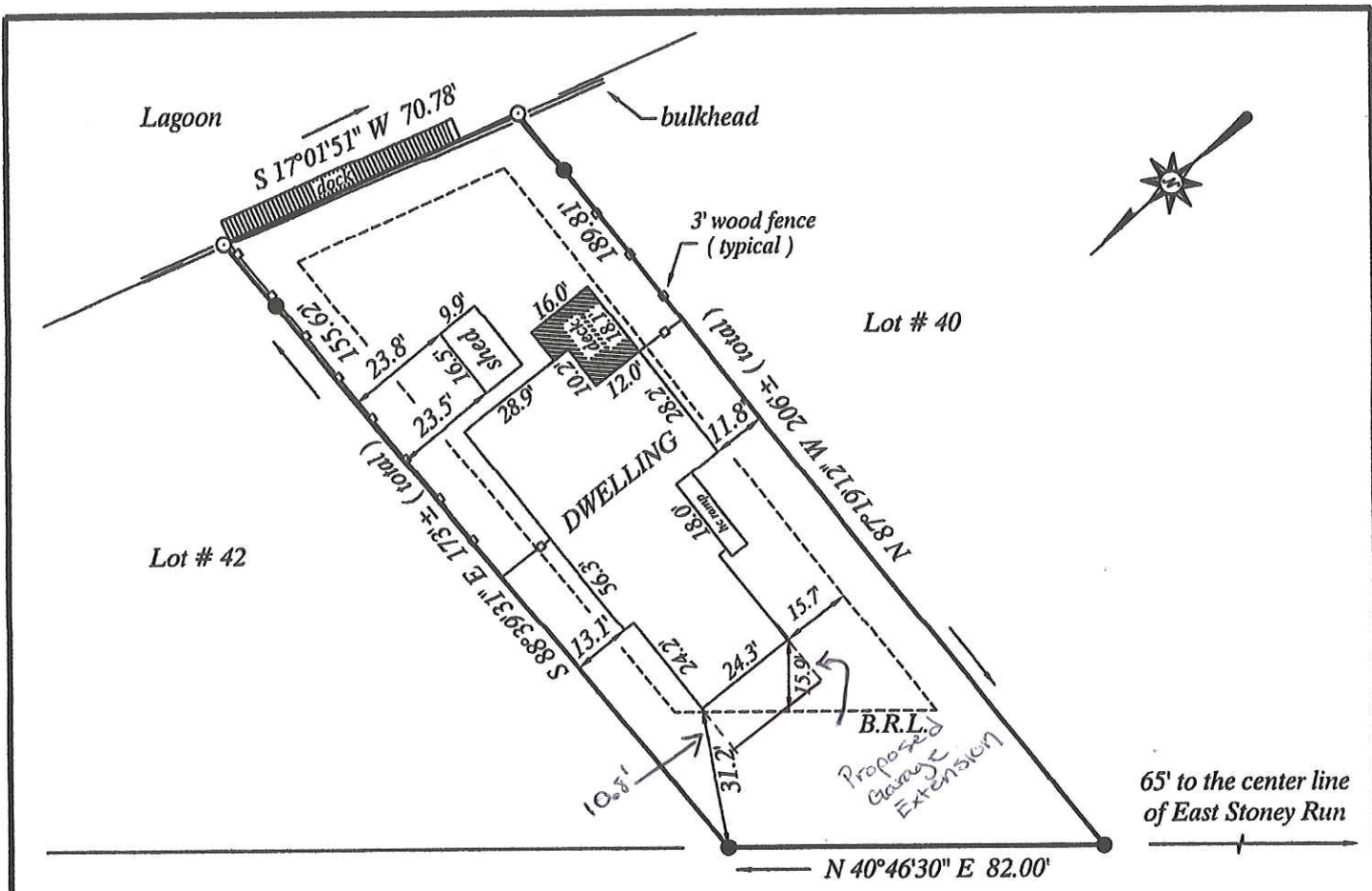
That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

The expansion would retain the current style of the existing Nanticoke home and roof line. The extension would have no adverse bearing on adjacent properties nor on the character of Keenwick Sound. I have attached supporting letters from our two adjacent neighbors.

5. Minimum variance:

That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

The garage is 143 inches from the wall to the end of the garage on the south side and 171 inches on the north, due to a bump out that houses a bathroom inside the house. My Honda CRV measures 182.1 inches in length (about 196 inches with the tailgate open). My wife's Honda Pilot measures 196.5 inches. (210.5 with open tailgate). The variance would add 144 inches and allow about 3'3/4" access to the front and back of the CRV, and about to 4'3" around the Pilot.



(b.r.l.)
**BUILDING RESTRICTION
 LINES PER COUNTY**

FRONT = 30'
 SIDES = 10'
 REAR = 10'

FIRM INFORMATION:
 100029 - 0655 - F
 JUNE 16, 1995
 ZONE: AE, B.F.E. = 6'

Lands of FREDERICK C. AVERY, JR. and JANET W. AVERY to be conveyed to WALTER M. RYKIEL and CAROL ANNE RYKIEL. Being known as LOT NO. 41, PHASE I, KEENWICK SOUND.

- POINT
- 3/4" PIPE (FD)

NOTE:
 This plat and survey does not verify the existence or nonexistence of right-of-ways and/or easements pertaining to this property.

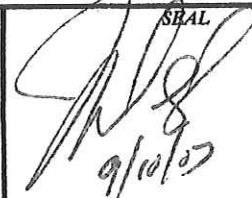
AREA: 12,542 SQ. FT.
 TAX MAP NO. 5-33-19-345

SCALE: 1"=40'

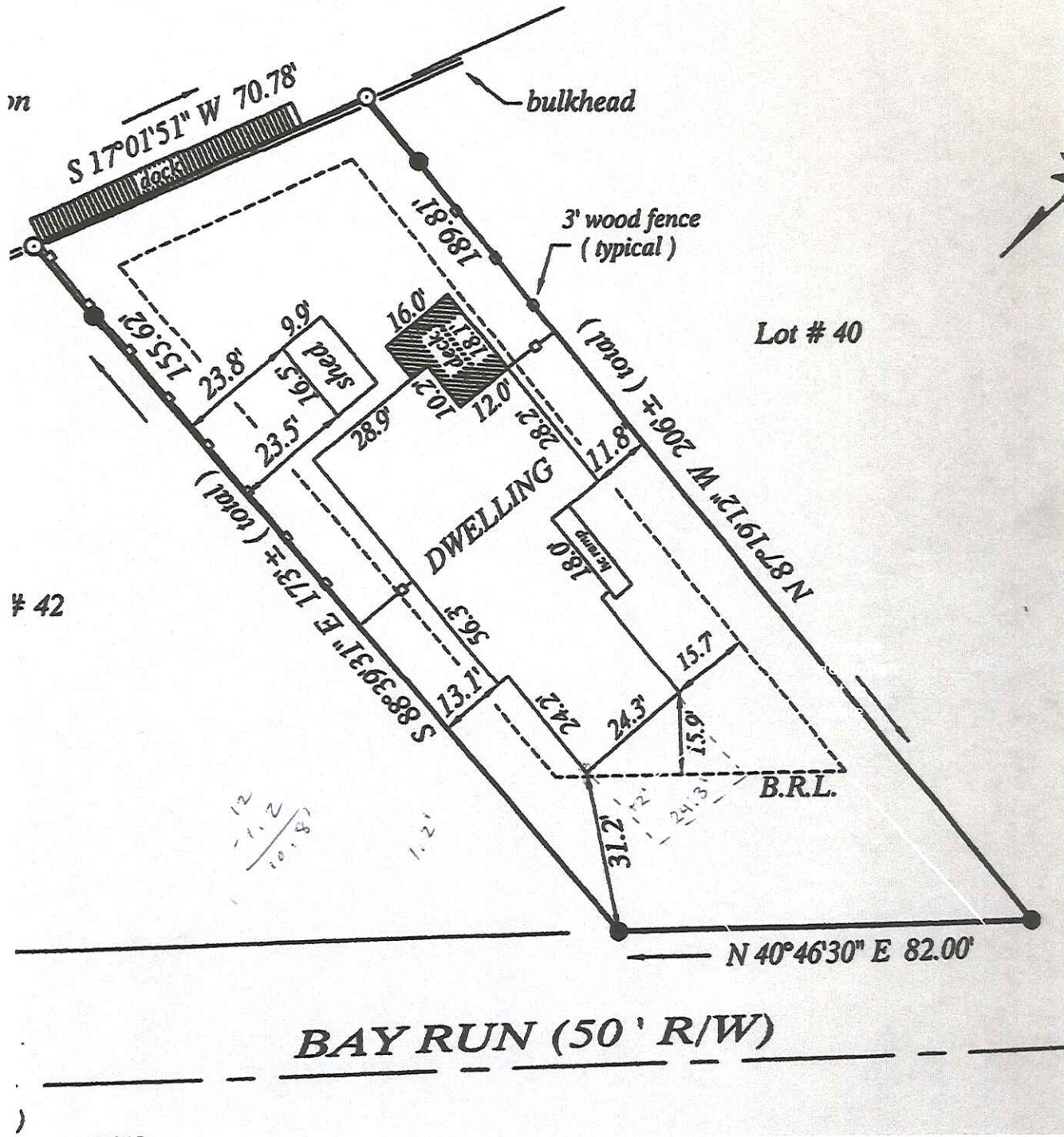
No title search provided or stipulated.
CLASS "B" SURVEY

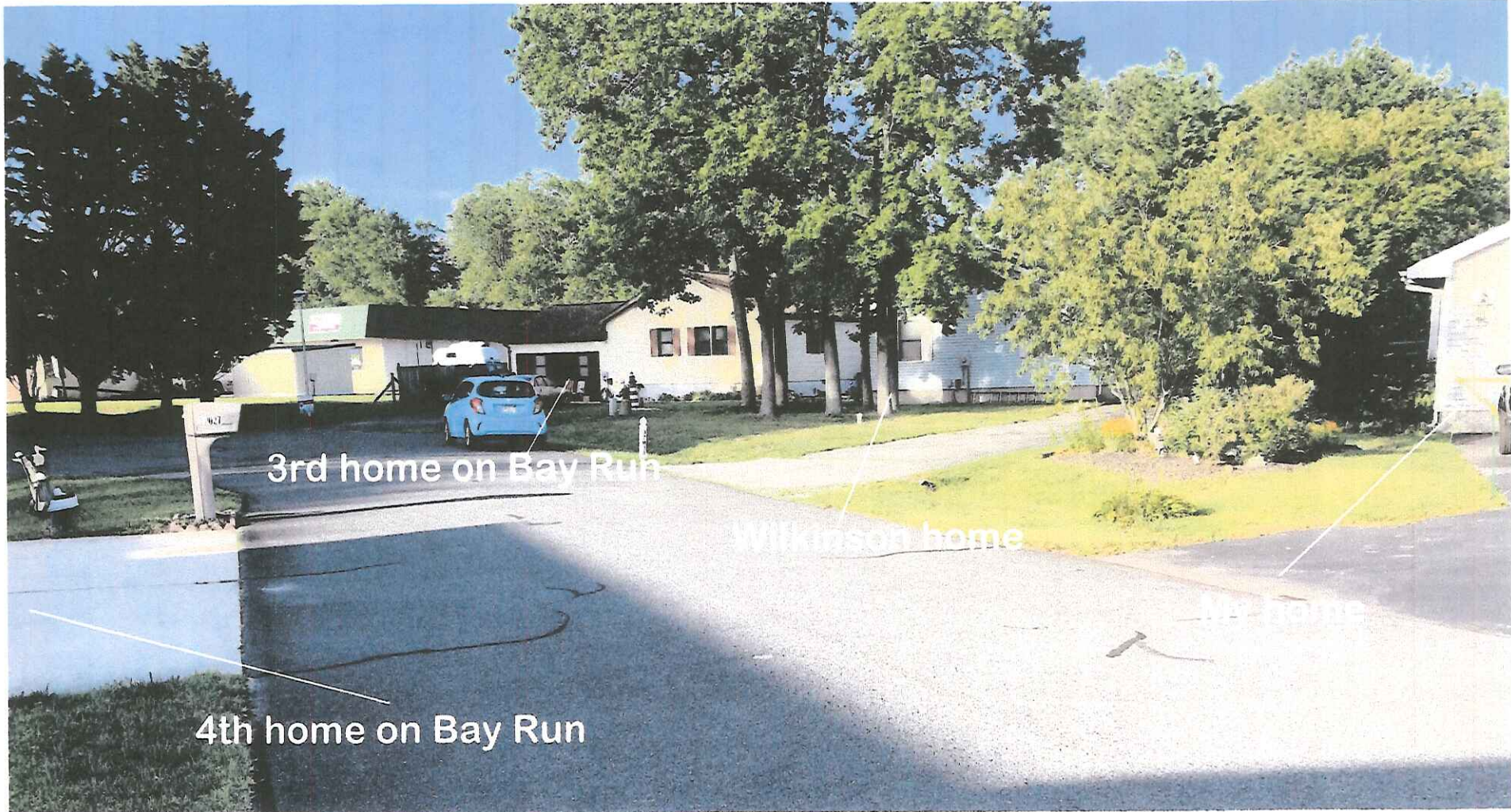
HUNDRED: BALTIMORE
 COUNTY: SUSSEX
 STATE OF DELAWARE
 DATE: 09/09/03
 DRAWN BY: P. ARNOLD

SIMPLER SURVEYING & ASSOCIATE
 RD. 1 BOX 98E, FRANKFORD, DE 19945
 www.delawaresurveyor.com
 PHONE: (302) 539-7873 FAX: (302) 539-4336

SRAL

 9/10/03

P.L.S. 289





3rd home on Bay Run

Wilkinson home

Mr. home

4th home on Bay Run



Bernsten property

View looking from north to south

ON / CUIDADO PRESCO CAUTION



View from Bay run into existing garage

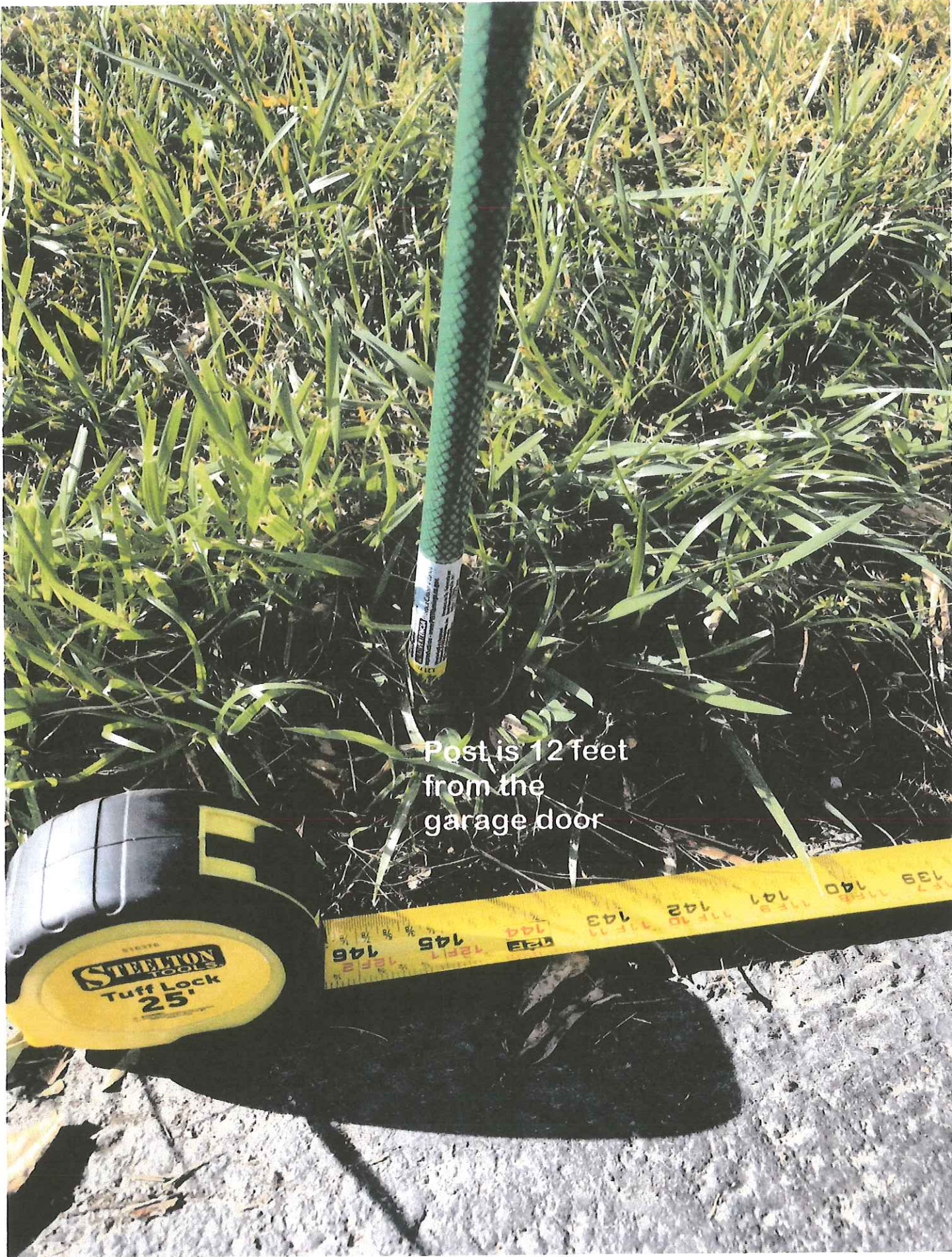


View from existing garage into driveway. Yellow tape approximates the proposed extension.

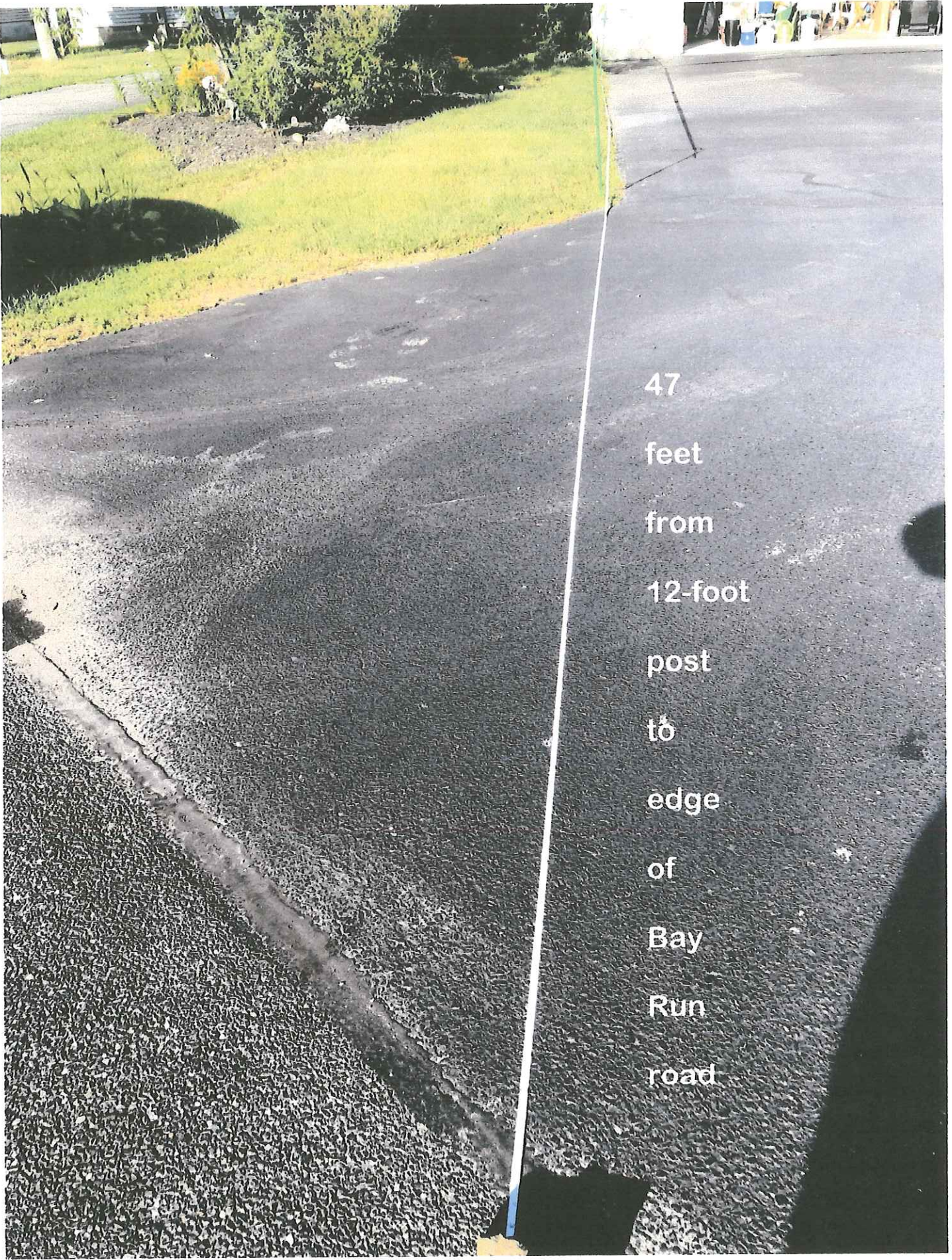


12 feet

View looking from south to north



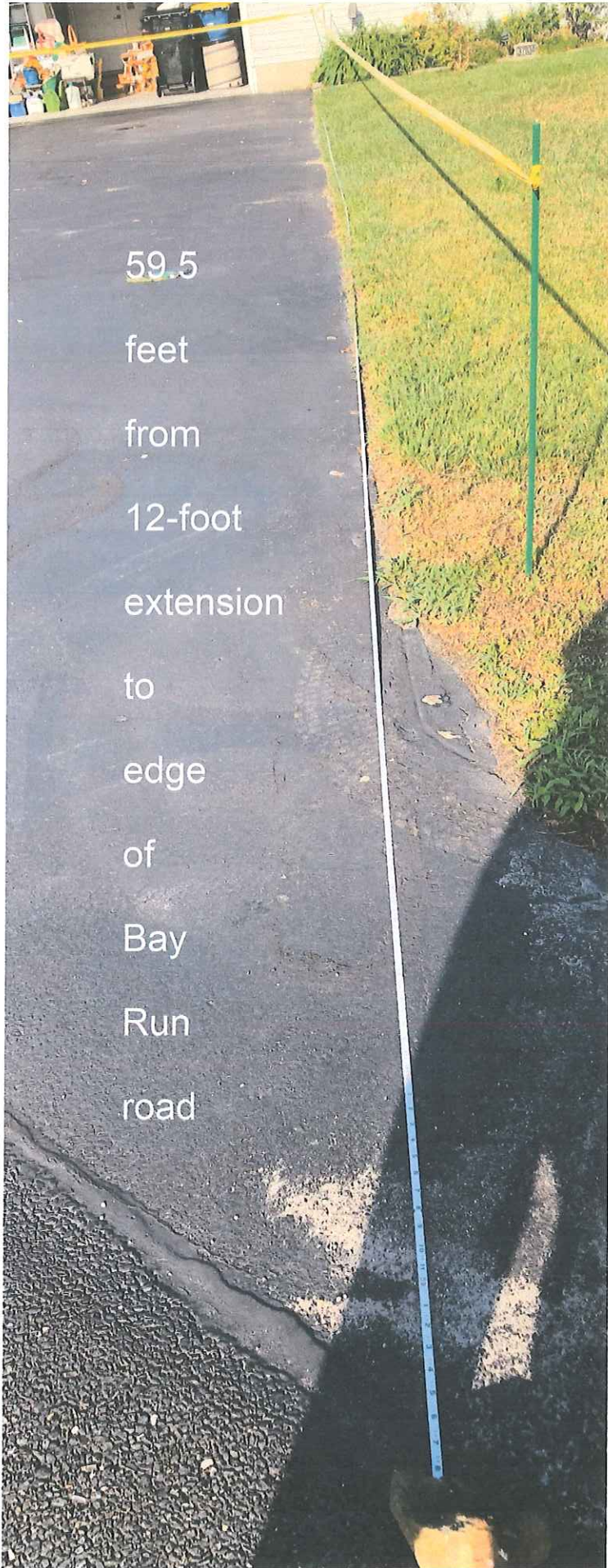
Post is 12 feet
from the
garage door



47
feet
from
12-foot
post
to
edge
of
Bay
Run
road



47 feet from 12 foot
extension to edge of Bay Run



59.5

feet

from

12-foot

extension

to

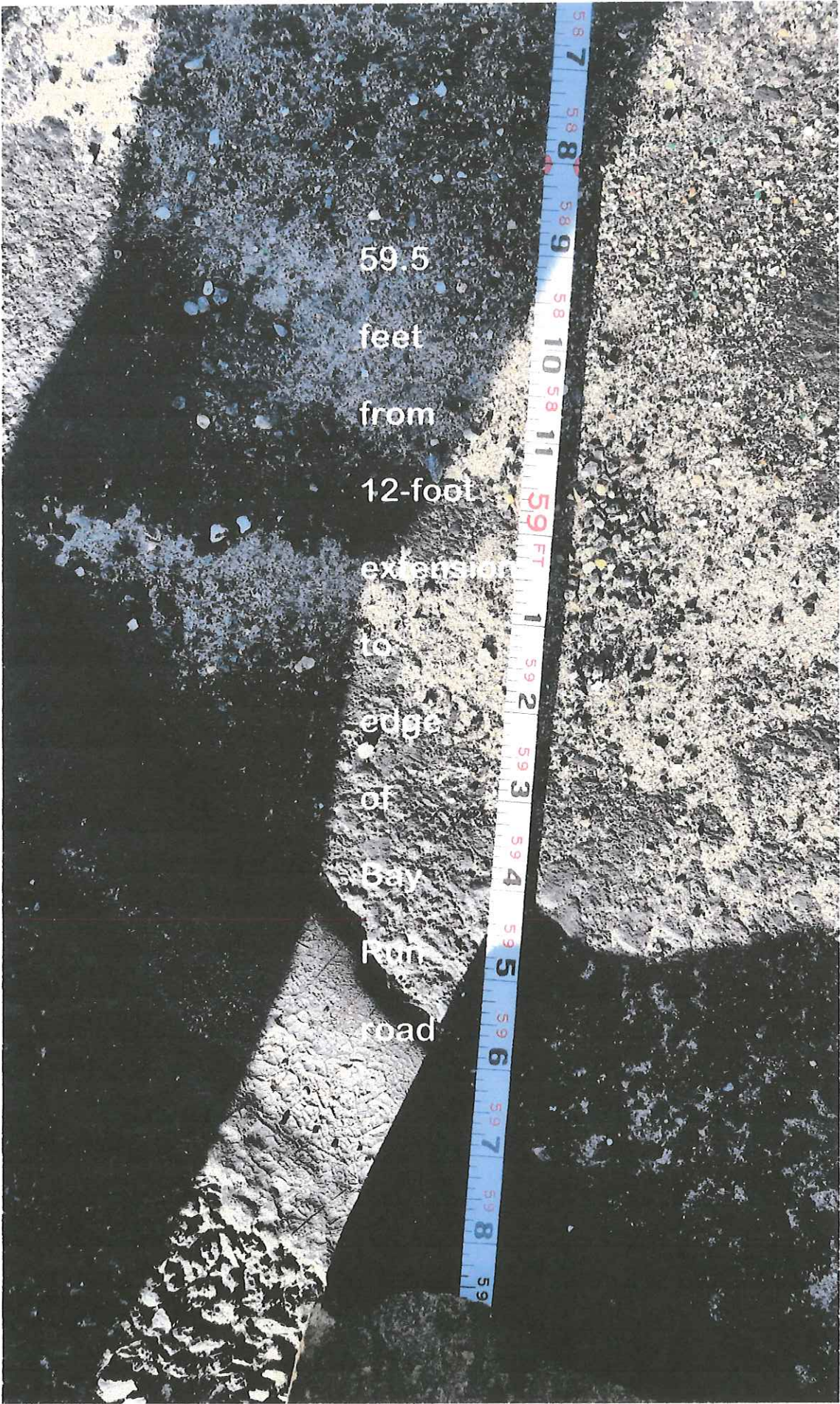
edge

of

Bay

Run

road



59.5

feet

from

12-foot

extension

to

edge

of

Bay

Road

road

59 7
58 8
58 9
58 10
58 11
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1
59 2
59 3
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59 8
59

Sussex County Planning and Zoning Department
2 The Circle (P.O. Box 417)
Georgetown, Delaware 19947
Attention: Mr. Elliot Young

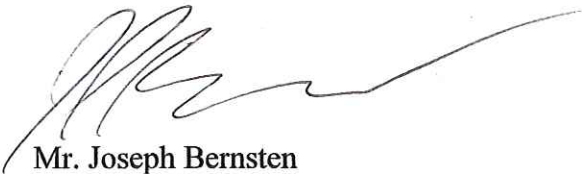
June 12, 2021

My wife and I own Lot #40, adjacent on the south side to Mr. and Mrs. Walter M. Rykiel's home. The Rykiels have made us aware of their intention to seek a variance that would allow them to extend their existing garage by 12 feet.

This will not adversely affect our property. We do not oppose their application.

We currently have a home in Keenwick Sound, but will become neighbors with the Rykiels when our new home on Lot #40 is completed.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bernsten', with a long horizontal flourish extending to the right.

Mr. Joseph Bernsten
36678 Breakwater Run
Keenwick Sound
Selbyville, Delaware 19974
Mobile: 925-360-1641

Sussex County Planning and Zoning Department
2 The Circle (P.O. Box 417)
Georgetown, Delaware, 19947
Attention: Mr. Elliot Young

June 14, 2021

Our home is adjacent to the home of Mr. and Mrs. Walter Rykiel. The Rykiel's have made us aware of their plans to seek a variance to allow them to extend their existing garage by 12 feet.

We live on Lot #42 on the south side of the Rykiel's home. Their proposal will not adversely affect the use of our home. We do not oppose their application.

Sincerely,



Mr. Reuben Wilkinson
37038 Bay Run
Keenwick Sound
Selbyville, Delaware 19975
Mobile: 410-491-0773



Sussex County

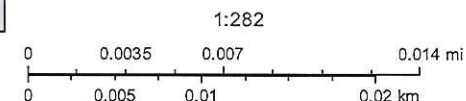


PIN:	533-19.00-345.00
Owner Name	RYKIEL WALTER M & CAROLANNE
Book	2898
Mailing Address	37034 BAY RUN
City	SELBYVILLE
State	DE
Description	KEENWICK SOUND
Description 2	PHASE I LOT 41
Description 3	BAY RUN
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
 - 911 Address
 - Streets
 - County Boundaries
 - Municipal Boundaries



Case # 12598
Hearing Date 8-16
2021-09733

Board of Adjustment Application Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Type of Application: (please check all applicable)

Variance Existing Condition
Special Use Exception Proposed
Administrative Variance Code Reference (office use only)
Appeal 115-25 115-183
115-185

Site Address of Variance/Special Use Exception:
8185 BETHAL ROAD, SEAFORD, DE. 19973

Variance/Special Use Exception/Appeal Requested:
VARIANCE OF SETBACKS *0.7' variance 20' rear yard setback req
1.3' variance 15' side yard setback req
1.7' var from 15' side yard setback req for pole shed*

Tax Map #: 132-11.00-56.00 **Property Zoning:** AR-1

Applicant Information

Applicant Name: DOUGLAS & KATHLEEN TUCKER
Applicant Address: 8185 BETHEL ROAD
City SEAFORD State DE Zip: 19973
Applicant Phone #: _____ Applicant e-mail: _____

Owner Information

Owner Name: SAME AS ABOVE
Owner Address: _____
City _____ State _____ Zip: _____ Purchase Date: _____
Owner Phone #: _____ Owner e-mail: _____

Agent/Attorney Information

Agent/Attorney Name: _____
Agent/Attorney Address: _____
City _____ State _____ Zip: _____
Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney

Kathleen A

Date: 8/28/21



Criteria for a Variance: (Please provide a written statement regarding each criteria).

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted.

In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.

1. Uniqueness of property:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the exceptional practical difficulty is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or Code in the neighborhood or district in which the property is located.

Drain field is in close proximity, so we stayed clear of that area. The lot line is not uniform, therefore was hard to measure for the building.

2. Cannot otherwise be developed:

That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

Building is in place, cement floor has been done. It is more expensive to have the building moved therefore a variance is applied for.

3. Not created by the applicant:

That such exceptional practical difficulty has not been created by the appellant.

Contractor placed the building after incorrect measurements were placed.

4. Will not alter the essential character of the neighborhood:

That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

my neighbor does not mind where our new building is located. He has written and signed a letter stating this.

5. Minimum variance:

That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

REQUEST SIDELINE SETBACK OF REAR BUILDING OF 1.3'. REQUEST SIDELINE SETBACK OF FRONT BUILDING OF 1.7' AND REQUEST REAR LINE SETBACK OF BUILDING OF 0.70'.

T.M. #132-11.00-56.00

LANDS N/F
JOYCE ONEAL FAMILY LLC
5356-298

N 56°50'20" E

300.40'

219.61'

LOT #4
1.1995 ACRES
(NOT ALL IMPROVEMENTS ARE SHOWN)



P.B. 46-220

LOT #3

N 29°14'33" W

CURVE DATA
R = 1004.29'
Δ = 8°33'28"
A = 150.00'
C = 149.86'
BRG = S 65°02'12" W

LANDS N/F
COREY D. LECATES and
DANIEL & MARY LECATES,
CO-TRUSTEES
4914-159



S.C.R. #493
BETHEL ROAD

(50' ROAD R/W)

P.O.B. DISTURBED
CMF N 22°50'51" W
0.39' FROM CORNER

- CONCRETE MONUMENT (FOUND)
- IRON PIPE (FOUND)

BOUNDARY SURVEY FOR

DOUGLAS & KATHLEEN TUCKER

8185 BETHEL ROAD, SEAFORD, DE. 19973
LOT #4 OF "JADE RUN SOD FARM OF DELAWARE" SUBDIVISION
BROAD CREEK HUNDRED SUSSEX COUNTY
STATE OF DELAWARE
SCALE 1" = 50' JUNE 22, 2021

SEE PLOT BOOK 46 PAGE 220 FOR EASEMENT RESERVATIONS. THIS SURVEY AND PLAT DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF RIGHTS-OF-WAY OR EASEMENTS CROSSING THIS PROPERTY OTHER THAN THOSE SHOWN. NO TITLE SEARCH PROVIDED OR STIPULATED.

I, STEPHEN M. SELLERS REGISTERED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, HEREBY STATE THAT THE INFORMATION SHOWN ON THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS ESTABLISHED BY THE STATE OF DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS. ANY CHANGES TO THE PROPERTY CONDITIONS, IMPROVEMENTS, BOUNDARY OR PROPERTY CORNERS AFTER THE DATE SHOWN HEREON SHALL NECESSITATE A NEW REVIEW AND CERTIFICATION FOR ANY OFFICIAL OR LEGAL USE.

Stephen M. Sellers
 REGISTERED PROFESSIONAL LAND SURVEYOR
 STATE OF DELAWARE
 5000
 6/22/2021
 DATE
 STEPHEN M. SELLERS PLS 566
 SURVEY CLASS: SUBURBAN

PREPARED BY:

PH: 302-629-9895
FAX: 302-629-2391

**MILLER
LEWIS, INC.** LAND SURVEYING

1560 MIDDLEFORD RD.

SEAFORD, DE. 19973

I am okay with the Tucker's
new pole building where it is
located.

Any questions please call me
at: 302-470-4529

302-542-5573

Magt. RB

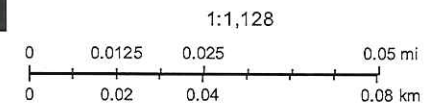


PIN:	132-11.00-56.00
Owner Name	TUCKER DOUGLAS A & KATHLEEN M
Book	1815
Mailing Address	PO BOX 294
City	BETHEL
State	DE
Description	N/W RT 493 300'
Description 2	W/RT 485
Description 3	LOT 4
Land Code	

- polygonLayer

 - Override 1
- polygonLayer

 - Override 1
- Tax Parcels
- 911 Address
- Streets



**Board of Adjustment Application
Sussex County, Delaware**

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Case # 12599
Hearing Date 8/16
202109926

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)
115-82 115-183
115-185

Site Address of Variance/Special Use Exception:

19875 Hebron Road, Rehoboth Beach, DE 19971

Variance/Special Use Exception/Appeal Requested:

We are requesting a variance to construct a second floor within the footprint of an existing residence that is entirely outside of the existing front and side setbacks.
We are also requesting a variance to construct a shower enclosure at the side of the property on top of the existing deck which is already encroaching the setbacks. The width of the shower enclosure will not exceed the width of existing deck.

Tax Map #: 334-13.19-77.00

Property Zoning: C-1

Applicant Information

Applicant Name: Moonlight Architecture, Inc.
Applicant Address: 29003 Lewes Georgetown Hwy
City Lewes State DE Zip: 19958
Applicant Phone #: (302) 645-9361 Applicant e-mail: Alex@moonlightarch.com

Owner Information

Owner Name: Matthew and Jacquelyn Rhinehart
Owner Address: 20 Oakmont Circle
City New Freedom State PA Zip: 17349 Purchase Date: _____
Owner Phone #: (717) 858-3316 Owner e-mail: Mprhinehart@gmail.com

Agent/Attorney Information

Agent/Attorney Name: _____
Agent/Attorney Address: _____
City _____ State _____ Zip: _____
Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney

Alex

Date: 6/30/20



Criteria for a Variance: (Please provide a written statement regarding each criteria).

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted.

In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.

1. Uniqueness of property:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the exceptional practical difficulty is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or Code in the neighborhood or district in which the property is located.

The property was developed number of years ago prior to current zoning regulations and as a result in the current setbacks regulations, the house now sits entirely over the setbacks. And to complicate the issue, the house resides on a corner lot.

2. Cannot otherwise be developed:

That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

For the reasons mentioned above no further work can be performed to the house since the entire house lays over the setbacks.

3. Not created by the applicant:

That such exceptional practical difficulty has not been created by the appellant.

The Owner purchased this house with the existing conditions already in place. And the changes in setback were based on the County changing the regulations.

4. Will not alter the essential character of the neighborhood:

That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

Most of the surrounding structures are residential and the proposed addition and renovation to the house will conform and stay in character with the existing neighborhood. The proposed addition will remain within the existing footprint to the current house.

5. Minimum variance:

That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

We are requesting a variance to construct a second floor over the existing footprint and we are requesting a variance to construct this second story entirely outside of the existing front and side setbacks but not outside of the existing footprint.

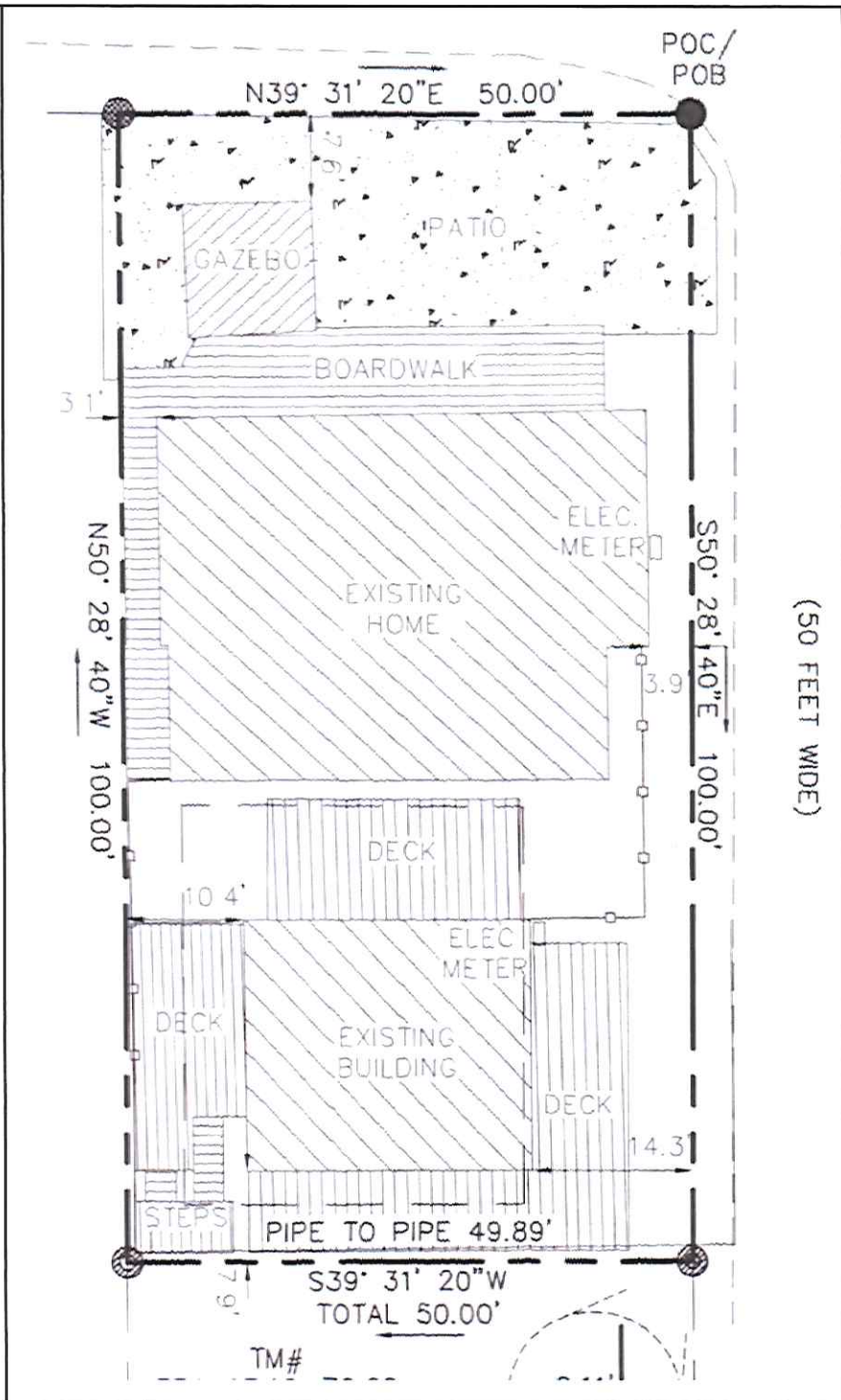
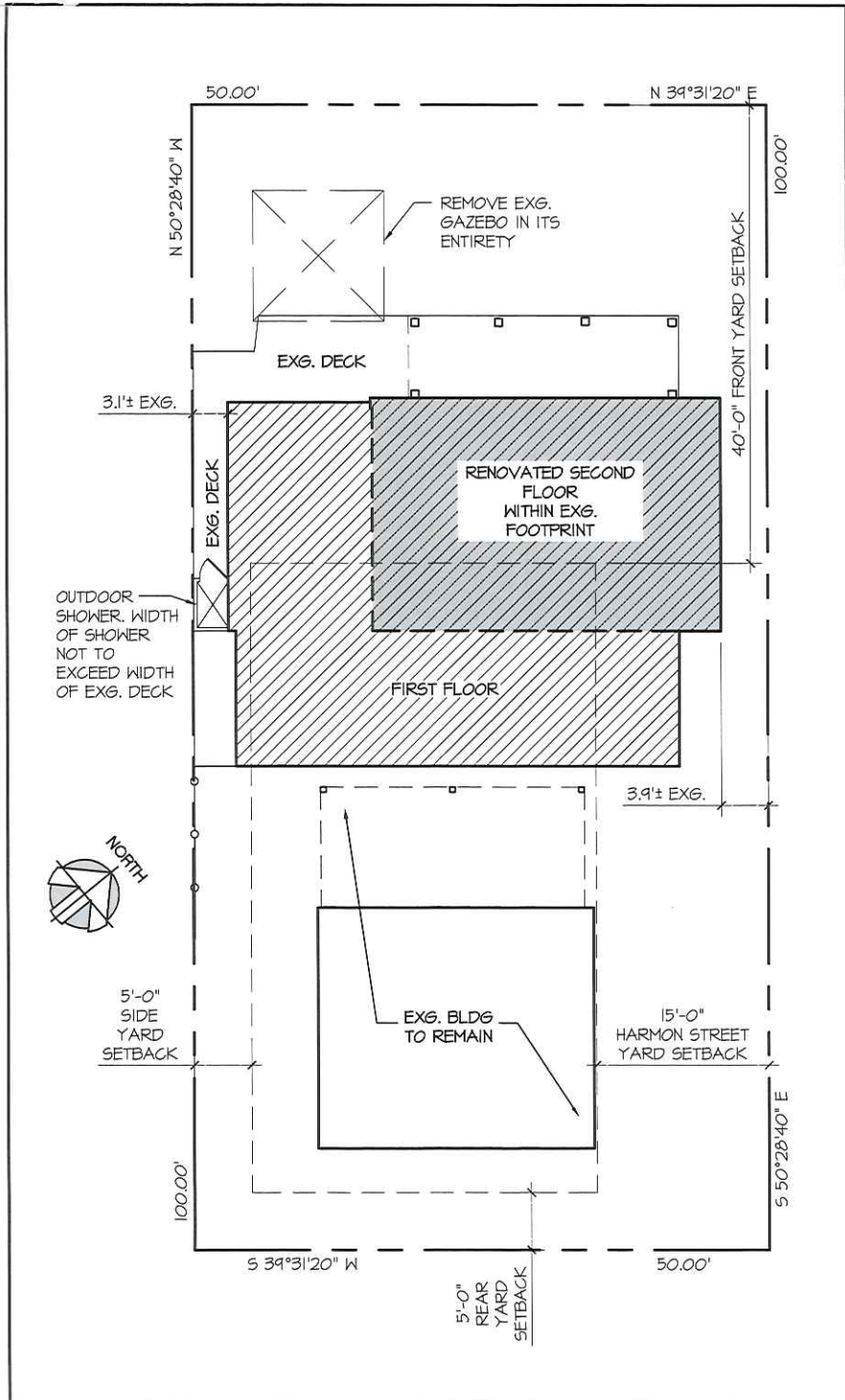
We are also requesting a variance to construct a shower enclosure at the side of the property on top of the existing deck which is already encroaching the setbacks.



Moonlight
Architecture, Inc.
Architecture • Interior Design
Site Planning

DE (302) 645-9361
MD (410) 677-4747
www.moonlightarch.com

CONSTRUCTION DOCUMENTS FOR THE:
RHINEHART RESIDENCE
RENOVATIONS,
19875 HEBRON ROAD,
REHOBOTH BEACH,
SUSSEX COUNTY,
DELAWARE



(50 FEET WIDE)

SCALE:
AS NOTED
DRAWING DATE:
00/00/2021
SHEET TITLE:
PROPOSED ADDITION SITI
PLAN AND EXISTING
CONDITIONS SITE PLAN

© COPYRIGHT 2021 MOONLIGHT ARCHITECTURE, INC.
PROJECT NUMBER:
21054

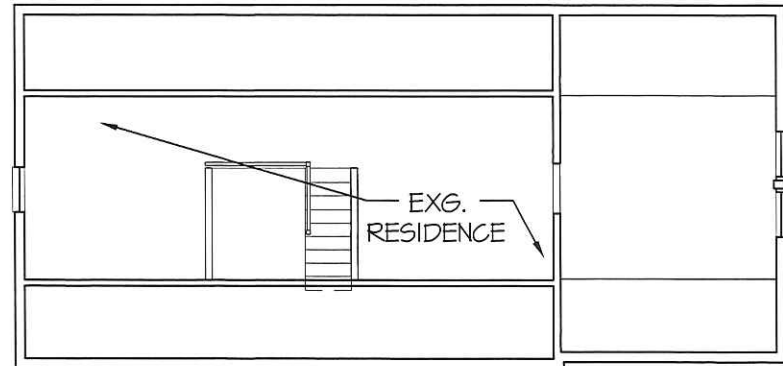
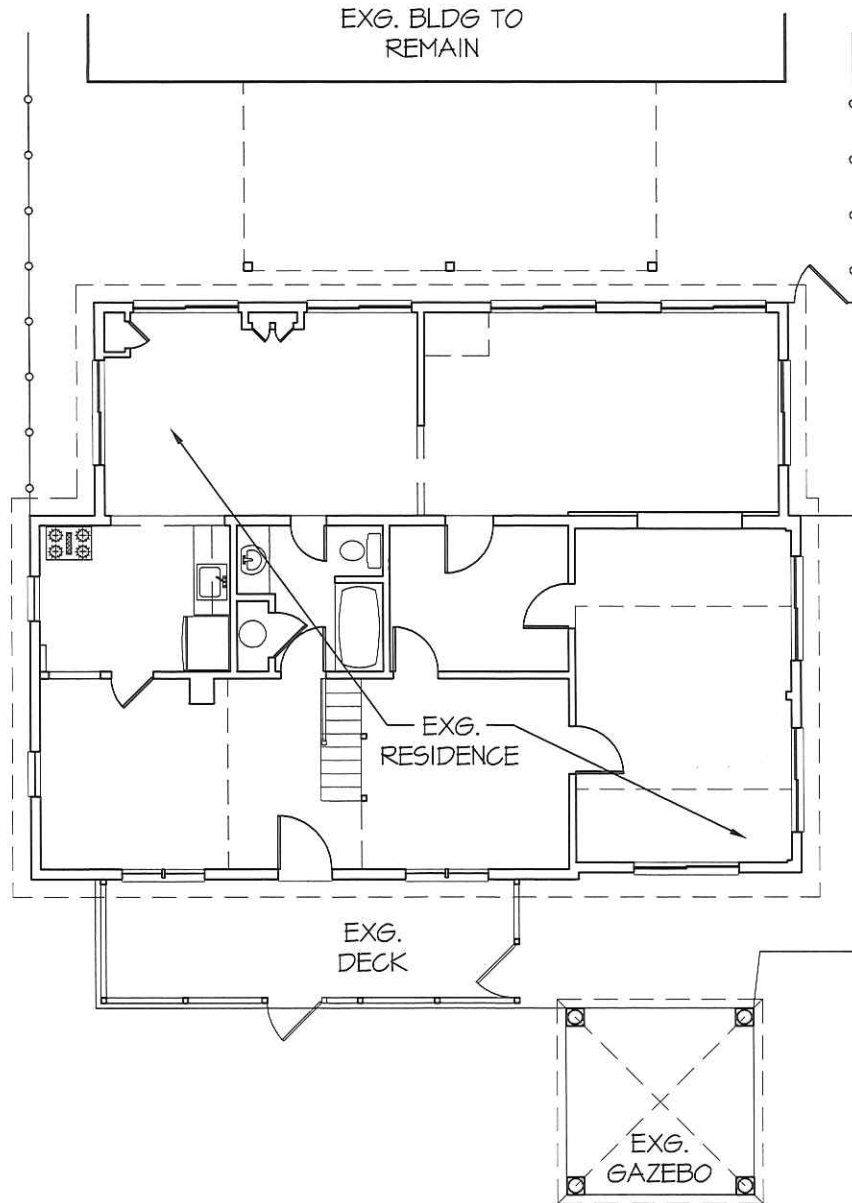
SHEET #:
ED0.01



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CONSTRUCTION DOCUMENTS FOR THE:
**RHINEHART
RESIDENCE
RENOVATIONS,
19875 HEBRON
ROAD,
REHOBOTH
BEACH, SUSSEX
COUNTY,
DELAWARE**



A1	EXISTING FIRST FLOOR PLAN
3/32" = 1'-0"	KEY

B1	EXISTING SECOND FLOOR PLAN
3/32" = 1'-0"	KEY

SCALE:
3/32" = 1'-0"
DRAWING DATE:
06/30/2021

SHEET TITLE:
**EXISTING FIRST FLOOR
PLAN AND EXISTING
SECOND FLOOR PLAN**

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PROJECT NUMBER:
21054

SHEET #:
ED1.01




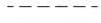

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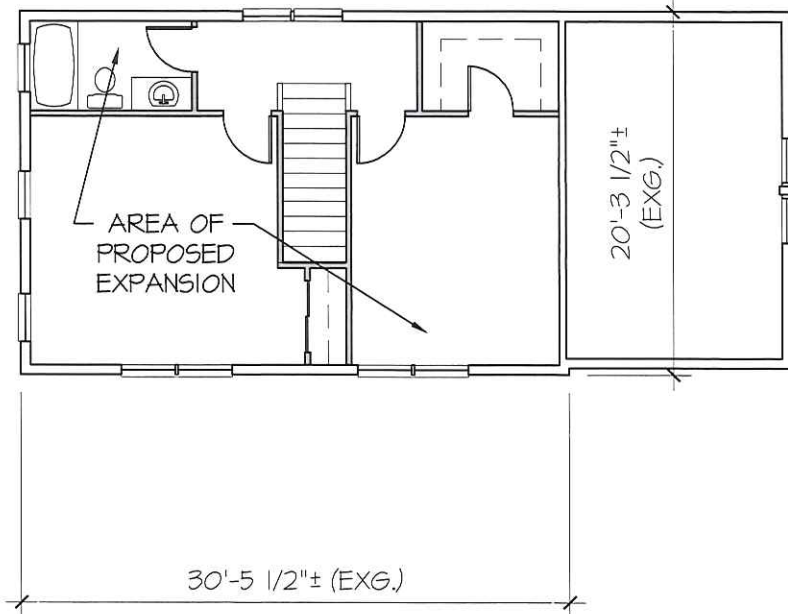
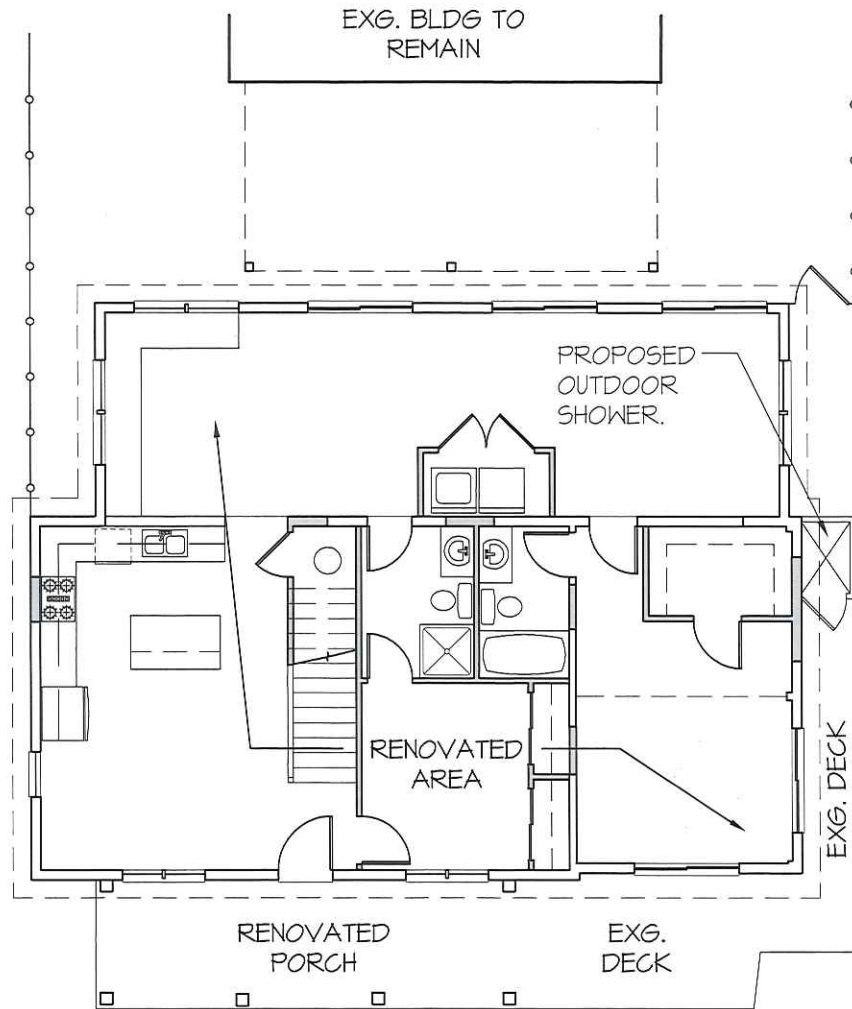
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RESIDENCE
RENOVATIONS,
19875 HEBRON
ROAD,
REHOBOTH
BEACH, SUSSEX
COUNTY,
DELAWARE

WALL LEGEND

-  EXG. WALL TO REMAIN.
-  EXG. WALL TO BE REMOVED.
-  NEW WALL



SCALE:
3/32" = 1'-0"
DRAWING DATE:
06/30/2021

SHEET TITLE:
**PROPOSED FIRST FLOOR
PLAN AND PROPOSED
SECOND FLOOR PLAN**

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PROJECT NUMBER:
21054

SHEET #:
ED1.02

A1 PROPOSED FIRST FLOOR PLAN

3/32" = 1'-0"

KEY

B1 PROPOSED SECOND FLOOR PLAN

3/32" = 1'-0"

KEY



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CONSTRUCTION DOCUMENTS FOR THE:
**RHINEHART
RESIDENCE
RENOVATIONS,
19875 HEBRON
ROAD,
REHOBOTH
BEACH, SUSSEX
COUNTY,
DELAWARE**



EXG. LEFT SIDE ELEVATION



EXG. RIGHT SIDE ELEVATION



EXG. FRONT ELEVATION

SCALE:
3/32" = 1'-0"

DRAWING DATE:
06/30/2021

SHEET TITLE:
**EXISTING EXTERIOR
ELEVATIONS**

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PROJECT NUMBER:
21054

SHEET #:
ED2.01

A1

EXISTING EXTERIOR ELEVATIONS

3/32" = 1'-0"

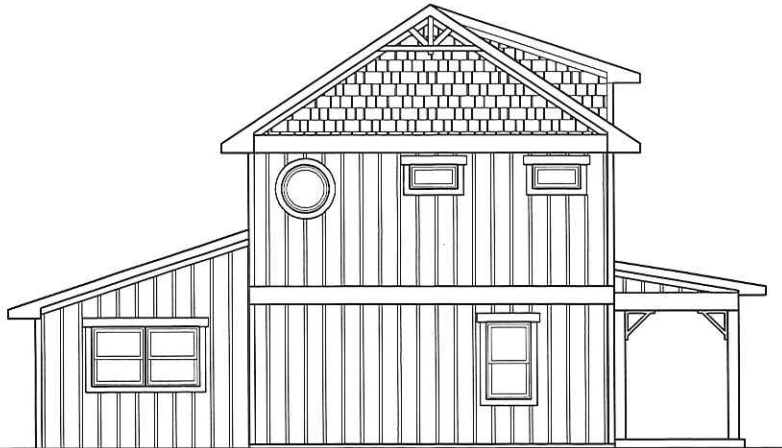
KEY



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CONSTRUCTION DOCUMENTS FOR THE:
**RHINEHART
RESIDENCE
RENOVATIONS,**
19875 HEBRON
ROAD,
REHOBOTH
BEACH, SUSSEX
COUNTY,
DELAWARE



PROPOSED LEFT SIDE ELEVATION



3D VISUALIZATION OF PROPOSED ADDITION



PROPOSED FRONT ELEVATION

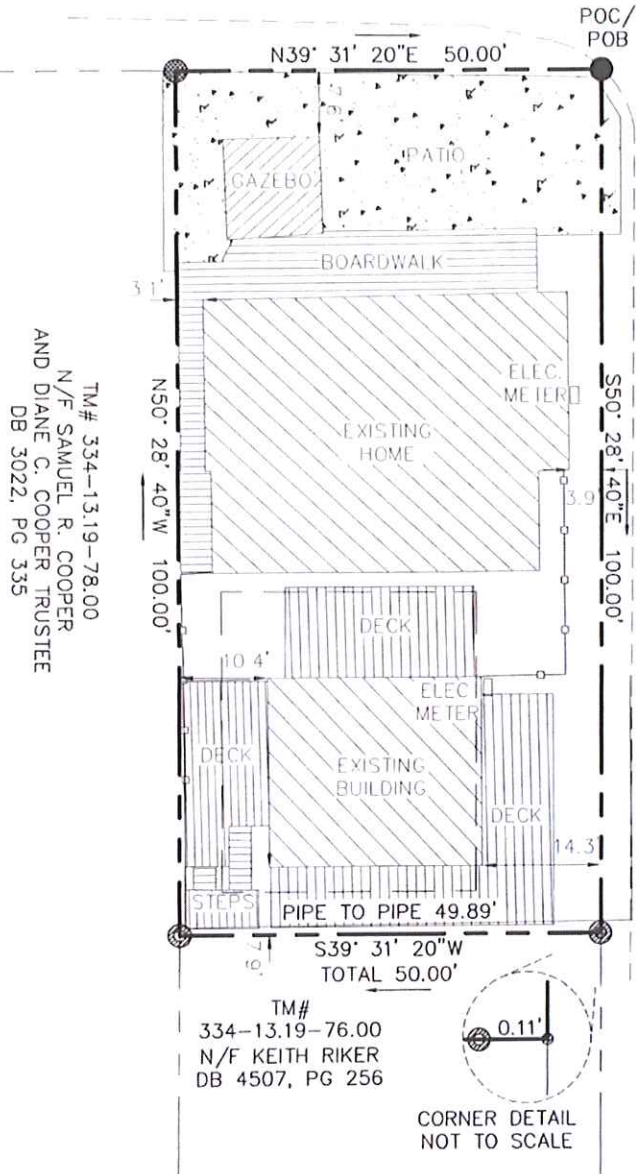
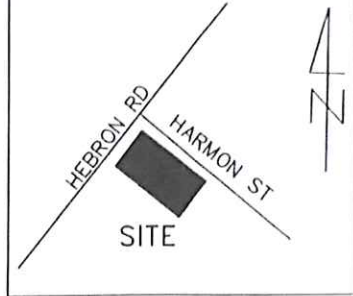
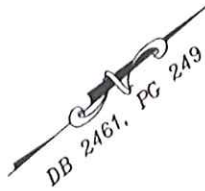
SCALE:
3/32" = 1'-0"
DRAWING DATE:
06/30/2021
SHEET TITLE:
**PROPOSED EXTERIOR
ELEVATIONS**

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PROJECT NUMBER:
21054

SHEET #:
ED2.02

A1	PROPOSED EXTERIOR ELEVATIONS
3/32" = 1'-0"	KEY

HEBRON ROAD
(50 FEET WIDE)



TM# 334-13.19-78.00
N/F SAMUEL R. COOPER
AND DIANE C. COOPER TRUSTEE
DB 3022, PG 335

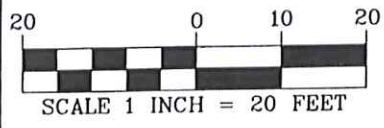
HARMON STREET
(50 FEET WIDE)

- PLAN DATA:
1. TITLE REFERENCED TO: LOCATION MAP NOT TO SCALE
TM# 334-13.19-77.00
DB 2461, PG 249
19875 HEBRON ROAD
REHOBOTH BEACH, DE 19971
LEWES AND REHOBOTH HUNDRED
SUSSEX COUNTY, STATE OF DELAWARE
2. NO TITLE REPORT PERFORMED OR FURNISHED IN PREPARATION OF THIS PLAT.
3. THIS PLAN DOES NOT CERTIFY THE EXISTENCE OR NON-EXISTENCE OF EASEMENTS OR RIGHTS OF WAY AS A FULL AND COMPLETE SEARCH MAY REVEAL IN THE SUSSEX COUNTY RECORDER OF DEEDS.
4. ACCORDING TO SUSSEX COUNTY PLANNING AND ZONING THE ZONING IS C1 AND THE SETBACKS ARE: FRONT-60', SIDE- 5', REAR- 5', AND HARMON STREET-15'.
5. AREA: 5,000±SQ.FT. OR 0.114±ACRE

I, ALAN O'DALE KENT, REGISTERED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, HEREBY STATE THAT THE INFORMATION SHOWN ON THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS ESTABLISHED BY THE STATE OF DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS. ANY CHANGES TO THE PROPERTY CONDITIONS, IMPROVEMENTS, BOUNDARY OR PROPERTY CORNERS AFTER THE DATE SHOWN HEREON SHALL NECESSITATE A NEW REVIEW AND CERTIFICATION FOR ANY OFFICIAL OR LEGAL USE.

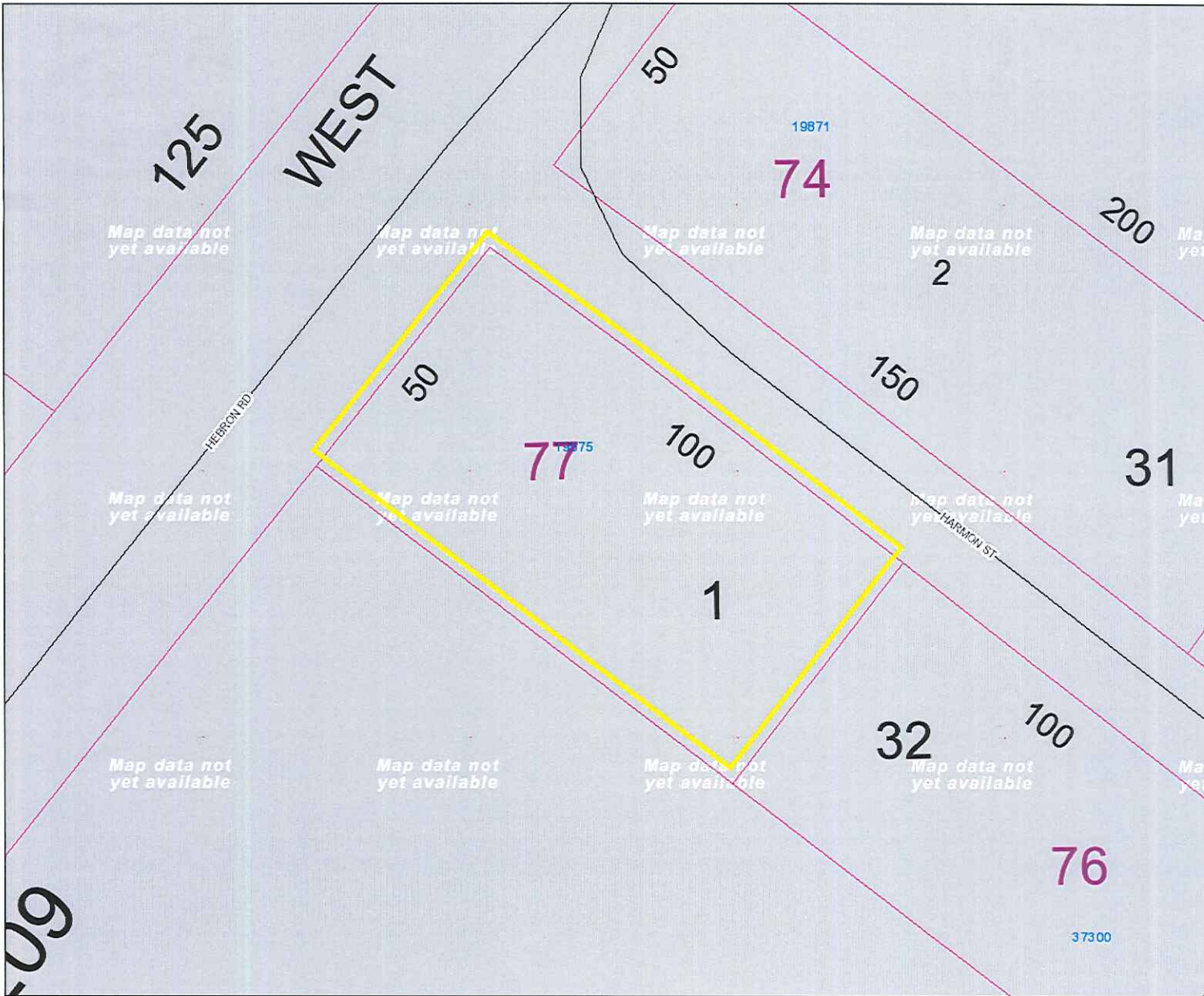
26 JAN 2021

ALAN O'DALE KENT, PLS#738, DATE



- LEGEND:**
- STAKE
 - DRILL HOLE SET
 - IRON PIPE FOUND
 - CORNER NOT MARKED
 - PROPERTY LINE
 - - - ADJOINING PROPERTY LINE
 - - - BUILDING RESTRICTION LINE
 - - - CENTERLINE OF ROAD

JOB #2021027	THIS IS A SUBURBAN SURVEY
DATE OF PLAN 26 JAN 2021	BOUNDARY SURVEY PLAN FOR MATTHEW P. RHINEHART AND JACQUELYN R. RHINEHART OF THE LANDS NOW OR FORMERLY OF KEITH D. RIKER PREPARED BY ALAN O KENT LAND SURVEYING, LLC SEAFORD, DE 19975 (302) 745-1725
DATE OF LAST FIELD WORK 25 JAN 2021	

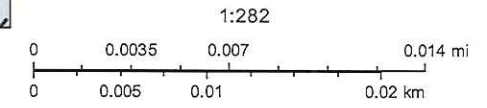


PIN:	334-13.19-77.00
Owner Name	RHINEHART MATTHEW P
Book	5414
Mailing Address	20 OAKMONT CIR
City	NEW FREEDOM
State	PA
Description	PINE RD LOT
Description 2	N/A
Description 3	N/A
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Municipal Boundaries



BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEITH D. RIKER

(Case No. 11357)

A hearing was held after due notice on April 14, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard, side yard, front yard, and corner side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 9.1 feet from the ten (10) feet rear yard setback requirement for an existing second-floor landing, a variance of 9.6 feet from the ten (10) feet side yard setback requirement for an existing second-floor deck, a variance of twenty-two (22) feet from the thirty (30) feet front yard setback requirement for an existing well and pump house, and a variance of 9.2 feet from the fifteen (15) feet corner side yard setback requirement for an existing second-floor deck. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located southeast of Hebron Road (Road 273) and southwest of Harmon Road, a subdivision street, and 75 feet southwest of Burton Avenue in West Rehoboth Subdivision and being Lot 1 in George H. Shockley Subdivision; said property being identified as Sussex County Tax Map Parcel Number 3-34-13.19-77.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning and Zoning received one (1) letter in support, fourteen (14) letters of no objection to the Application, and one (1) letter in opposition to the Application.
2. Keith Riker was sworn in to testify on behalf of the Application.
3. The Board found that Mr. Riker submitted exhibits to the Board to review.
4. The Board found that Mr. Riker testified that the Property is located in West Rehoboth.
5. The Board found that Mr. Riker testified that he retained Delmarva Pole Building to construct a detached pole building which would have two floors but that, due to expenses, he removed the second floor, decks, and stairs from the plans.
6. The Board found that Mr. Riker testified that his contract with Delmarva Pole Building states it is not responsible for encroachments.
7. The Board found that Mr. Riker testified that he later built the second floor, decks, and stairs himself.
8. The Board found that Mr. Riker testified that the second floor is not accessible without the exterior steps and decks and that there are no interior steps within the pole building.
9. The Board found that Mr. Riker testified about the history of the pump house on the Property.
10. The Board found that Martin Joseph Miller, Jr. was sworn in and testified in opposition to the Application.
11. The Board found that Mr. Miller testified that his family owns the property behind the Applicant's property and that he was born and raised in the neighborhood.
12. The Board found that Mr. Miller testified that an existing shed, fence and mailbox were removed from his aunt's property without her consent prior to the construction of the pole building on the Applicant's property.

13. The Board found that Mr. Miller testified that the shed has since been rebuilt in the same location and that his aunt's mailbox has been relocated further from her property.
14. The Board found that Mr. Miller testified that the Applicant is responsible for making sure that his contractor complies with the setback requirements.
15. The Board found that Mr. Miller testified that the Applicant's structures are inches from the property line and that the structures are so close to the Property line that they would prohibit fire equipment from gaining access in case of emergency.
16. The Board found that Mr. Miller testified that he is concerned about fire spreading from the Applicant's property to his aunt's property.
17. The Board found that Mr. Miller testified that the Applicant does not have the right to encroach so close to his aunt's property.
18. The Board found that Mr. Miller testified that he does not understand how the Applicant could be so negligent in making sure the structures were being built in compliance with the zoning code.
19. The Board found that Mr. Miller testified that the Applicant's property once belonged to his sister and that he is not aware of a well or pump house existing on that property at the location shown on the survey.
20. The Board found that Mr. Miller testified that he believes the Applicant placed the pump house on the Property.
21. The Board found that Mr. Miller testified that he used to pump water on the Property between the house and the pole building.
22. The Board found that Mr. Miller testified that he does not recall anything being in the location of the current pump house.
23. The Board found that Mr. Miller testified that his mother lives in the neighborhood and he visits regularly.
24. The Board found that Mr. Miller testified that he spoke to the Applicant during construction of the building about his concern for the Applicant storing lumber on his aunt's property.
25. The Board found that Mr. Miller testified that he believes a set of steps can be built between the building and the existing dwelling to gain access to the second floor storage area.
26. The Board found that Mr. Miller testified that there is sufficient room between the house and the pole building for stairs.
27. The Board found that Mr. Miller testified that he has no objection to the location of the pole building as long as the decks are removed but that he opposes the pump house, the decks, and the stairs.
28. The Board found that Mr. Miller testified that there was never a covered gazebo type structure on the front of the dwelling.
29. The Board found that Mr. Riker testified that the pump house on the Property is under the ground in a cinder block basement type room.
30. The Board found that Mr. Riker testified that he put beams around the pump house to make it look like a gazebo.
31. The Board found that Mr. Riker testified about concerns raised by Mr. Miller.
32. The Board found that two (2) parties appeared in support of the Application.
33. The Board found that one (1) party appeared in opposition to the Application.
34. At the conclusion of the public hearings, the Board voted to leave the record open for the limited purpose of allowing the Office of Planning & Zoning to research the existence of the pump house and to report back to the Board regarding its investigation and with pictures of the pump house.
35. At its meeting on May 19, 2014, the Board reviewed pictures of the Property taken by the Office of Planning & Zoning and the Board discussed the Application.
36. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application failed to meet the standards for granting a variance. The Applicant has created his own hardship. The pole building was constructed with a building permit and the permit references that the pole building was to have an open ceiling with no second floor. After the pole building was constructed the Applicant himself built, without a permit, stairs and decking to reach the second floor. The Applicant also testified that he created the gazebo-like structure over the existing below

ground well. The Applicant has clearly created his own hardship. Furthermore, the Property is not unique in any way. The Property was also already developed prior to the construction of the pole building and the gazebo-like structure so the Property can be developed in strict conformity with the Sussex County Zoning Code. The pole building decking and stairs impair the uses of neighboring and adjacent properties due to its close proximity thereto. It would be nearly impossible for the Applicant to maintain or repair the decking and stairs without encroaching onto neighboring property. The variances are not necessary to enable reasonable use of the Property. The Board is not convinced that a second floor of the pole building cannot be accessed either internally or through other means which would not encroach into the setback areas.

The Board approved the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was denied. The Board Members voting to deny the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Deny the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway
Chairman

Date _____



E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DELAWARE 19947
TELEPHONE (302) 856-5256

February 2, 2015

Richard E. Berl, Jr., Esquire
Berl & Feinberg, LLP
Dartmouth Business Center - Suite 3
34382 Carpenter's Way
Lewes, DE 19958

James P. Sharp, Esquire
Moore & Rutt, P.A.
122 W. Market Street
P.O. Box 554
Georgetown, DE 19947

***RE: Keith D. Riker v. Sussex County Board of Adjustment, et. al.
C.A. No.: S14A-07-005 ESB***

Dear Counsel:

This is my decision on Keith D. Riker's appeal of the Sussex County Board of Adjustment's denial of his application for an area variance. Riker owns a 50 x 100 foot corner lot in West Rehoboth Beach, Sussex County, Delaware. Riker has a legal non-conforming house on his lot. Riker retained Dover Pole Building ("DPB") to construct a detached pole building behind his house. DPB handled the preparation of the plans, the permitting process, and the construction of the pole building. The building plans, as designed by DPB and submitted to Sussex County, provided for a two-story building with no second floor. The pole building, as completed by DPB, was under 600 square feet. In order to save money, Riker decided against having DPB construct any decks, stairs, or a second floor as part of the pole building.

Instead, Riker decided he would construct those items himself.

DPB completed the construction of the pole building and then applied for, and received, a certificate of occupancy from Sussex County. Shortly after DPB completed the pole building, Riker added a deck, stairs, and second floor. He also did some work on an old pump house on his lot. Riker did not apply for or obtain a building permit for his work on the pole building and pump house.

Sussex County told Riker that, with the addition of the deck, stairs and second floor, his pole building now violated the zoning code and that the deck, stairs and second floor were built without a building permit. The addition of the deck, stairs, and second floor increased the square footage of the pole building, thereby increasing the setback requirements. Riker sought a variance of 9.1 feet from the 10 foot rear yard setback requirement for the second story landing, a variance of 9.6 feet from the 10 foot side yard setback requirement for the second story deck, and a variance of 9.2 feet from the 15 foot corner yard setback requirement for the second story deck. As part of his application, Riker also sought a variance of 22 feet from the 30 foot front yard setback requirement for his well and pump house.

The Board concluded that Riker did not meet the standards for obtaining a variance, finding that (1) he created his own hardship, (2) his lot was not unique, (3) the lot was already developed so it could be developed in strict conformity with the

zoning code, (4) the deck and stairs of the pole building impaired the uses of neighboring and adjacent properties, and (5) the variances were not necessary to enable the reasonable use of the lot. Riker now appeals the Board's decision to this Court.

STANDARD OF REVIEW

The standard of review on appeals from the Board of Adjustment is limited to the correction of errors of law and a determination of whether substantial evidence exists in the record to support the Board's findings of fact and conclusions of law.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² If the Board's decision is supported by substantial evidence, a reviewing court must sustain the Board's decision even if such court would have decided the case differently if it had come before it in the first instance.³ "The burden of persuasion is on the party seeking to overturn a decision of the Board to show that the decision was arbitrary and unreasonable."⁴ In the absence of substantial evidence, the Superior Court may not remand the Board's

¹ *Janaman v. New Castle County Board of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. 1976).

² *Miller v. Board of Adjustment of Dewey Beach*, 1994 WL 89022, *2 (Del. Super. Feb. 16, 1994).

³ *Mellow v. Board of Adjustment of New Castle County*, 565 A.2d 947, 954 (Del. Super. 1988), *aff'd*, 567 A.2d 422 (Del. 1989).

⁴ *Mellow*, 565 A.2d at 956.

decision for further proceedings, but rather, may only “reverse or affirm, wholly or partly, or may modify the decision brought up for review.”⁵

DISCUSSION

Riker argues that the Board used the wrong legal standard when it denied his application for an area variance. Riker argues that the Board subjected his application to the “unnecessary hardship” test which is used for use variances instead of the “exceptional practical difficulty” test which is used for area variances. A variance from a setback requirement is an area variance that addresses the exceptional practical difficulty in using a particular property for a permitted use.⁶ An exceptional practical difficulty is present where the requested dimensional change is minimal and the harm to the applicant if the variance is denied will be greater than the probable effect on the neighboring properties if the variance is granted.⁷ An applicant for a special use variance bears a heavy burden of showing unnecessary hardship, since it is recognized that a prohibited use, if permitted, would result in a use of the land in a manner inconsistent with the basic character of the zone.⁸ The “unnecessary

⁵ 22 Del. C. § 328(c).

⁶ *H.P. Layton Partnership v. Board of Adjustment of Sussex County*, 2010 WL 2106187, at *3 (Del. Super. May 27, 2010).

⁷ *Id.*

⁸ *Id.*

hardship” test is more burdensome to overcome than the “exceptional practical difficulty” test.⁹ Riker argues that he may have been able to meet the lesser standard of “exceptional practical difficulty” but not the higher standard of “unnecessary hardship” since he was seeking an area variance. The Board has readily acknowledged that it used the unnecessary hardship test, arguing that it is required to do so by its zoning code.

The Board gets its authority to grant variances pursuant to 9 *Del. C.* §6917. Section 6917(3) states that the Board shall have the power to hear and decide requests for variances. The Board may grant a variance only if five certain findings are made. Section 6917(3)(a) and (c) address two of the findings and refer to the unnecessary hardship and exceptional practical difficulty tests. Section 6917(3)(a) states:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the **unnecessary hardship** or **exceptional practical difficulty** is due to such conditions, and not to circumstances or conditions generally created by the provisions of the zoning ordinance or code in the neighborhood or district in which the property is located.

Section 6917(3)(c) states:

That such **unnecessary hardship** or **exceptional practical difficulty** has not been created by the appellant.

⁹ *Wawa, Inc., v. New Castle County Bd. of Adjustment*, 929 A.2d 822 (Del. Super. 2005).

The Sussex County Council enacted §115-209 and §115-211 to implement 9 *Del. C.* §6917. Section 115-209(c) authorizes the Board to grant variances generally where the enforcement of the provisions of the zoning code will result in “unwarranted hardship and injustice.” Section 115-211 authorizes the Board, subject to the provisions of §115-209, to grant area variances. The Board does not have the authority to grant use variances. Section 115-211(A)(1) states that the Board shall have the authority to grant:

A variation in the yard requirements in any district so as to relieve **practical difficulties** or **particular hardships** in cases when and where, by reason of exceptional narrowness, shallowness or other unusual characteristic of size or shape of a specific piece of property at the time of the enactment of such regulation or restriction or by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property or by reason of the use or development of property immediately adjacent thereto, the strict application of each regulation or restriction would result in peculiar and exceptional practical difficulties to or exceptional hardship upon the owner of such property. Such granting of variance shall comply, as nearly as possible, in every respect with the spirit, intent and purpose of this chapter, it being the purpose of this provision to authorize the granting of variation only for reasons of **demonstrable** and **exceptional hardship** as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice.

Section 115-211(B) provides that the Board shall grant a variance only if five certain findings are made. Section 115-211(B)(1) and (3) address two of the findings and refer only to the **unnecessary hardship** test. Section 115-211 (B)(1) states:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the **unnecessary hardship** is due to such conditions, and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or code in the neighborhood or district in which the property is located.

Section 115-211(B)(3) states:

That such **unnecessary hardship** has not been created by the applicant.

I have concluded that the Board did apply the wrong legal standard when considering Riker's application for a variance. 9 *Del. C.* §6917(3)(a) and (b) and §115-211(A)(1), which specifically addresses area variances, all refer to the exceptional practical difficulty and unnecessary hardship tests but do not state which test is applicable to area variances. The exceptional practical difficulty test has long been held to apply to area variances.¹⁰ Thus, I have concluded that the Board should have used this test when considering Riker's application for an area variance. In addition to using the wrong test, the ordinances that the Board relied on are contradictory and ambiguous. Section 115-211(A)(1) refers to both the exceptional practical difficulty and the unnecessary hardship tests. Section 115-211(B)(1) and

¹⁰ See *Board of Adjustment v. Kwik-Check Realty, Inc.*, 389 A.2d 1289, 1291 (Del. 1978).

(3) omits the exceptional practical difficulty test and refers only to the unnecessary hardship test, leaving confusion over what happened to the exceptional practical difficulty test. This ambiguity must be resolved in favor of Riker and against the Board, requiring the Board to apply the less stringent exceptional practical difficulty test to Riker's application for an area variance.¹¹

The Board argues, based upon *Verleysen*,¹² that even if it did use the wrong test it is of no consequence because Riker had to satisfy all five findings set forth in §115-211(B)(1) - (5) and that there is substantial evidence in the record to support the Board's decision on those other findings.¹³ I agree that the Board's argument has merit. For example, it appears that Riker's problems are self-inflicted in that he simply tried to put too large a building on too little a lot. However, the Board's argument has been considered in the past and rejected. In *Hellings*,¹⁴ the Supreme Court stated:

[H]aving determined that an error of law was made at the administrative level, the Superior Court was not free to review the evidence and apply a different, more lenient, legal standard because to

¹¹ *Dewey Beach Enterprises, Inc., v. Board of Adjustment of the Town of Dewey Beach*, 1 A.3d 305 (Del. 2010).

¹² *Board of Adjustment of Sussex County v. Verleysen*, 36 A.3d 326 (Del. Feb. 8, 2012).

¹³ *Id.*

¹⁴ *Hellings v. City of Lewes Board of Adjustment*, 734 A.2d 641, 1999 WL 624114 (Del. July 19, 1999).

do so would substitute its own judgment for that of the Board.¹⁵

I have concluded that the Board applied the wrong legal standard. *Hellings* prevents me from applying the correct legal standard and conducting the analysis that is properly the province of the Board. Moreover, I can not agree with the Board's argument that *Verleysen*¹⁶ is an exception to the rule in *Hellings* because the same argument was presented to and rejected by the Supreme Court in that case.

CONCLUSION

The Sussex County Board of Adjustment's decision is Reversed.

IT IS SO ORDERED.

Very truly yours,



E. Scott Bradley

ESB/sal

cc: Prothonotary

¹⁵ *Id.* at *2.

¹⁶ *Board of Adjustment of Sussex County v. Verleysen*, 36 A.3d 326 (Del. Feb. 8, 2012).

PROPERTY RECORD CARD

CARD 1 OF 1

DIST. 3-34 MAP 13.19 PARCEL 77 CONTROL NO.

ADDRESS 19875 Hebrun Road OWNERSHIP RECORD

LAND IDENTIFICATION
 3-34 13.19 77.00
 CITYSCAPE HOME
 EQUITY LOAN TRUST 1996-3 SCH-6
 1675 PALM BCH LAKES BLVD EDIT-P
 WEST PALM BEACH FL 33401 TR1- 332244
 PINE RD LOT W/IMP 10/26/99
 WEST RENOVATION
 HARMON ST-1

DATE OF TRANSFER	GRANTEE	REVENUE STAMPS	SALE PRICE
12-11-79	(deed 4-1-66) Benjamin H. Burton (No WR 94/262 17605)	By Will	
12-17-79	Rochel B. Butler A/W (date of death 10-0-73)		

LAND RECORD AND VALUATION SUMMARY


BUILDING PERMIT RECORD

PROPERTY FACTORS		LEU- AVG.		LAND COMPUTATION				BUILDING PERMIT RECORD			
IMPROVEMENTS	STREET OR ROAD	DIMENSIONS		UNIT VALUE	FACTORS		ADJ UNIT VALUE	VALUE	DATE	NUMBER	AMOUNT
CITY WATER	PAVED	FRONT	DEPTH		DEPTH	OTHER					
SEWER	SEMI-IMPROVED	50	100	30	1.0	-	30	1500	5-1-81	62204	5,158-
GAS	UNIMPROVED										
ELECTRICITY	OTHER										
ALL UTILITIES	SIDEWALK										

ASSESSMENT RECORD

1973	LAND \$ 750	BLDG \$ 1,350	TOTAL \$ 2,100
1975	LAND \$ 750	BLDG \$ 9900	TOTAL \$ 10650
1977	LAND \$	BLDG \$	TOTAL \$
1979	LAND \$	BLDG \$	TOTAL \$

SUMMARY OF VALUES	TOTAL LAND	\$ 1500
	TOTAL IMPROVEMENTS	\$ 38600
	TOTAL APPRAISED VALUE	\$ 40,100




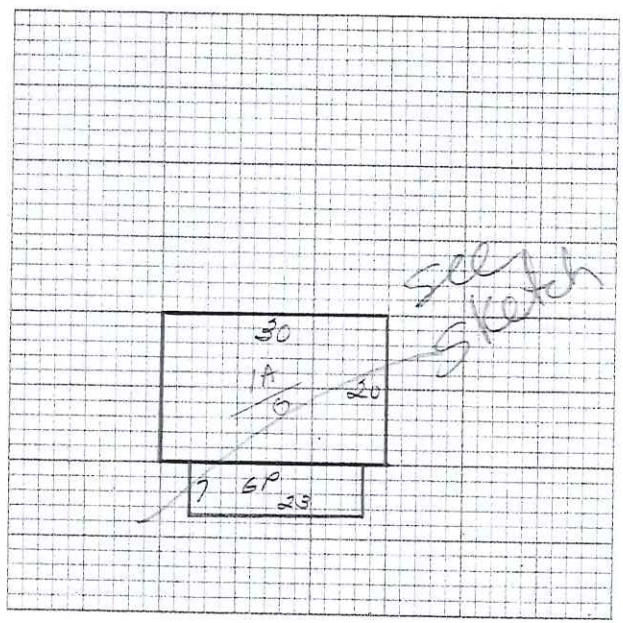
H. L. YOH COMPANY
 A DIVISION OF DAY AND ZIMMERMANN, INC.
 PHILADELPHIA, PA.

NOTES: 2-4-82 old det 4-10 closed driveway
 3/25/93 G.P.# 134327 Remodel old 4,300 new 6800 14500/9250
 9/2/15 BP# 201307642 Det Garage, addition, GP, DP, WD, CPatio o/v 6800 NV 21300 QB2
 8-29-16 BP 201602704 privacy fence N/C
 3/22/17 BP# 201604046 Det Garage into 210. ov. 21300 NV: 40,100

2015

DIST 3-34 MAP 13.19 PARCEL 77
 CONTROL NO _____

TYPE	OCC	GRADE	DIMENSIONS	AREA	WALLS	STORY HT	1/2 STY	ATTIC	UNIT COST	BASE COST	
T	T	C-	X	600	1	1A	0	UNF.	5.38	9228	
			X	672	1	1			5.38	10335	
			X								
			X								
			X								
 H. L. YOH CO. PHILA., PA.				TOTAL GROUND AREA		1872		TOTAL BASE COST \$			19563



PRINCIPAL BUILDING DESCRIPTION										M/C	± %	± PTS	
MASONRY-1		PIER-2		SLAB-3		FOUNDATION				1	-		
NONE-0		1/4-1	1/2-2	3/4-3	FULL-4		BASEMENT		0				
NONE-0		REC AREA-1		APT-2		% OF BASEMENT		SQ FT		0			
NONE-0		PIPELESS GHA-1		ELECTRIC-2		FHA-3		STM-HW-4		0	-6		
INDICATE QTY 0													
3-FIXT BATH		1		2-FIXT BATH		SG FIX		TOTAL FIXT		3			
NONE-0		1/2-1	1-2	1 1/2-3	2-4	2 1/2-5	3-6	4-7	5-8	0			
1ST FLOOR		2ND FLOOR				3RD FLOOR				INT FINISH			
NONE	(PL)	WB	WP	NONE	PL	WB	WP	NONE	PL	WB	WP	WLS-CLG	
DIRT	CONC	HW	(SW)	HW	SW	HW	SW	HW	SW	FLOORS			
NONE-0		HOME POWER UNIT-2				PUBLIC-3				ELECTRICITY		3	
NONE-0		ONE CAR-1		TWO CAR-2		BLT-IN GAR				0			
WOOD-1	SHGL-2	ALUM-3	BLK-4	BRK OR STN-5	STUCCO-6	COMP-7		EXT WALLS		2			
HIP-1	GABLE-2	FLAT-3	MANSARD-4	GAMBREL-5		ROOF TYPE				2			
WD-COMP-SHGL-1	SLATE-2	METAL-3	TILE-4	ROLL-5	T & G-6		ROOFING		1				
AREA		SQ FT		INDICATE QTY		165 #		PORCH-OPEN		1		8.2	
AREA		SQ FT		INDICATE QTY		161 #		PORCH-GLZD		1		9.6	
NONE-0		CENTRAL-1		AIR-COND		0				0			
NONE-0		1 CAR-1		2 CAR-2		SQ FT		ATT GAR/CP		0			
						SQ FT		UTILITY		0			
						246 #		OTHER WD		1		9.8	
								OTHER		0			

IDENT: 3-34 13.19 77

NOTES: _____

NOTES:

BASE COST \$	19563	= INDEX % \$	18389	± INDEX PTS \$	21149	X GRADE FACTOR	95	= REPLACEMENT COST	\$20,092				
ACTUAL AGE	25	YRS	EFF AGE	25	YRS	PHYS. COND	GOOD	FAIR	POOR	PER CENT GOOD	80%	DEPRECIATED BLDG VALUE	\$16,073
OBSOLESCENCE: FUNC	%	OV'RIMP	%	UND'RIMP	%	OTHER ECON.	%	NET COND	40%				

ACCESSORY BUILDINGS

CODE	BUILDING NAME	EXT WALL	GRADE	FLOOR	STY HT	LGTH	WIDTH	AREA	DIA	HGT	UNIT COST	REPL COST	COND	% GOOD	DEPRECIATED VALUE
	Det		A	CC											

TRAILERS

OCCUPANCY TRAILER	NAME	YEAR	SIZE	COLOR	MODEL NO	SERIAL NO	REPL VAL	PHYS DEPR	SOUND VAL.

INSPECTED BY	<u>24</u>	6/8/73	CHECKED BY	<u>Mrs. Burton</u>	APPROVED BY	<u>JM 6/8/73</u>	TOTAL ACCESSORY BLDGS VALUE	\$		TOTAL BLDGS VALUE	\$	16073
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PROPERTY RECORD CARD

RESIDENTIAL/TLR.

CARD _____ OF _____

DIST. 3-34 MAP 13.19 PARCEL 77 CONTROL NO. _____


ADDRESS	OWNERSHIP RECORD			
	DATE OF TRANSFER	GRANTEE	REVENUE STAMPS	SALE PRICE
LAND IDENTIFICATION				

LAND RECORD AND VALUATION SUMMARY

PROPERTY FACTORS		LAND COMPUTATION							BUILDING PERMIT RECORD		
IMPROVEMENTS	STREET OR ROAD	DIMENSIONS		UNIT VALUE	FACTORS		ADJ UNIT VALUE	VALUE	DATE	NUMBER	AMOUNT
CITY WATER	PAVED	FRONT	DEPTH		DEPTH	OTHER					
SEWER	SEMI-IMPROVED										
GAS	UNIMPROVED										
ELECTRICITY	OTHER										
ALL UTILITIES	SIDEWALK										

ASSESSMENT RECORD				SUMMARY OF VALUES	TOTAL LAND		H. L. YOH COMPANY A DIVISION OF DAY AND ZIMMERMANN, INC. PHILADELPHIA, PA.
20	LAND \$	20	LAND \$			\$	
	BLDG \$		BLDG \$			\$	
	TOTAL \$		TOTAL \$			\$	
NOTES							

20	LAND \$	20	LAND \$		
	BLDG \$		BLDG \$		
	TOTAL \$		TOTAL \$		
20	LAND \$	20	LAND \$		
	BLDG \$		BLDG \$		
	TOTAL \$		TOTAL \$		

DIST	MAP	PARCEL	TYPE	OCC	GRADE	DIMENSIONS	AREA	WALLS	STORY HT	1/2 STY	ATTIC	UNIT COST	BASE COST																
					C	X	550	1	2			31.24	17182																
 N. L. YOH CO. PHILA., PA.			X																										
			X																										
			X																										
			X																										
TOTAL GROUND AREA											TOTAL BASE COST \$																		
PRINCIPAL BUILDING DESCRIPTION													M/C	± %	± PTS														
MASONRY-1			PIER-2			SLAB-3			FOUNDATION																				
NONE-0			1/4-1			1/2-2			3/4-3			FULL-4																	
NONE-0			REC AREA-1			APT-2			% OF BASEMENT				SQ FT																
NONE-0			PIPELESS GHA-1			ELECTRIC-2			FNA-3			STM-HW-4																	
INDICATE QTY																													
3-FIXT BATH			2-FIXT BATH			SQ FIX			TOTAL FIXT																				
NONE-0			1/2-1			1-2			1 1/2-3			2-4			2 1/2-5			3-6			4-7			5-8					
NONE-0			PL			WB			WP			NONE			PL			WB			WP								
DIRT			CONC			HW			SW			HW			SW														
NONE-0			NONE			POWER UNIT-3			PUBLIC-3																				
NONE-0			ONE CAR-1			TWO CAR-2																							
WOOD-1		S/IGL-2		ALUM-3		BLK-4		BRK OR STM-5		STUCCO-6		COMP-7																	
MIP-1		GABLE-2		FLAT-3		MANSARD-4		GAMBREL-5																					
WD-COMP		CONGL-1		SLATE-2		METAL-3		TILE-4		ROLL-5		T & G-6																	
AREA		SQ FT		INDICATE QTY				180																					
AREA		SQ FT		INDICATE QTY				746																					
NONE-0			CENTRAL-1																										
NONE-0			1 CAR-1			2 CAR-2			SQ FT																				
											SQ FT																		
											746																		
											436																		
											OTHER WD		3		31.8														
											OTHER COP		1		6.9														
											INDEX TOTALS				47.7														
BASE COST \$ 17182 ± INDEX % \$ 18213 ± INDEX PTS \$ 22983 X GRADE FACTOR 100											REPLACEMENT COST				\$ 22983														
ACTUAL AGE YRS EFF AGE YRS PHYS COND GOOD FAIR POOR PER CENT GOOD 98 %											DEPRECIATED BLDG VALUE				\$ 22523														
OBSOLESCENCE FUNC % OV'RIMP % UND RIMP % OTHER ECON. % NET COND %																													
ACCESSORY BUILDINGS																													
CODE	BUILDING NAME	EXT WALL	GRADE	FLOOR	STY HT	LGTH	WIDTH	AREA	DIA	MGT	UNIT COST	REPL COST	COND	% GOOD	DEPRECIATED VALUE														
	Det. Garage w/ living area	M	A	C	1	22	25	550			11.83	6506	E	98	6325														
	3-Wood Decks							796			4.00	3184	E	98	3180														
	OP							180			.50	90	E	78	88														
	CPatio							436			1.60	697	E	98	683														
TRAILERS																													
OCCUPANCY TRAILER	NAME	YEAR	SIZE	COLOR	MODEL NO	SERIAL NO	REP VAL	DEPR DEPR	SOUND VAL																				
										TOTAL TRAILER VALUE \$																			
INSPECTED BY										CHECKED BY			APPROVED BY																
										TOTAL ACCESSORY BLDGS VALUE \$			TOTAL BLDGS VALUE \$ 22523																

See Sketch

BUILDING SKETCH

NOTES:

Priced above

SKETCH/AREA TABLE ADDENDUM

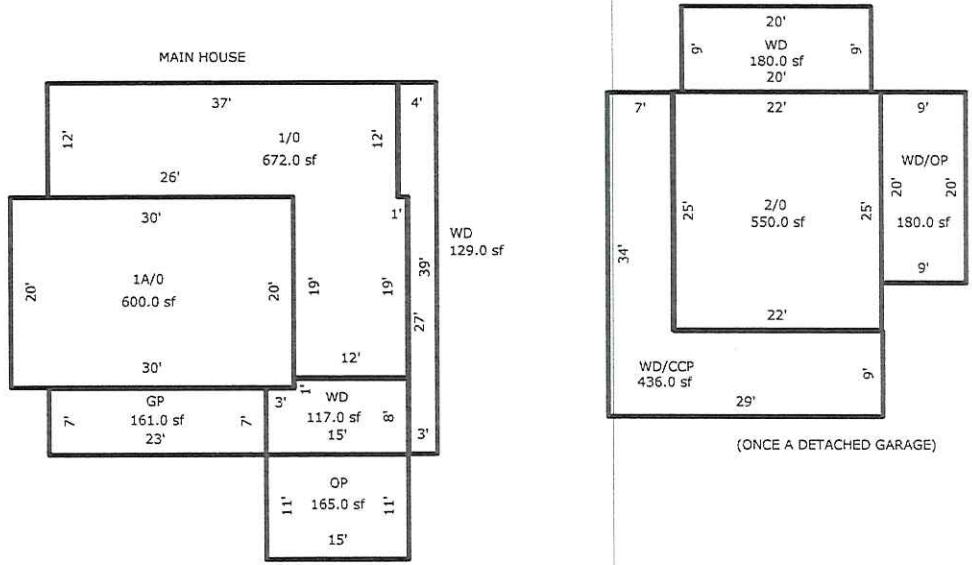
Parcel No 334-13.19-77.00

Property Address 19875 HEBRON RD

SUBJECT

City	State	Zip
Owner		
Client		
Appraiser Name		

IMPROVEMENTS SKETCH



Scale: 1" = 20'

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY						
Code	Description	Factor	Net Size	Perimeter	Net Totals	
GBA1	1A/0	1.00	600.00	100.0		
	1/0	1.00	672.00	138.0		
	GP	1.00	161.00	60.0		
	WD	1.00	117.00	46.0		
	OP	1.00	165.00	52.0		
	WD	1.00	129.00	86.0		
	2/0	1.00	550.00	94.0		
	WD/OP	1.00	180.00	58.0		
	WD	1.00	180.00	58.0		
	WD/CCP	1.00	436.00	126.0	3190.00	
	Net BUILDING Area (rounded w/ factors)					3190

Comment Table 1	
Comment Table 2	Comment Table 3

Date 12-17-79

REGISTER OF WILLS

Form 600rw

REAL ESTATE MEMO

ESTATE OF Rachel Burton

DOMICILE R. D. 1, Box 247, Reho. De.

DATE OF DEATH 10-20-73 ATTORNEY _____

DESCRIPTION

3-34-13.19-77

Pine Rd., Lot with imp. Reho. De.

Administratrix-Lidia H. Hudson, 138-Hepburn Rd., Reho. De.

S/A to
BY 12/18/79

12/79 Rachel inventory date of letters

11-8-79 Benj date of letters

3-34-13.19-77

~~1965~~
1968

I, BENJAMIN H. BURTON, of R.D. 1, Box 247, Rehoboth, Delaware, being in good health and of disposing mind and memory fully cognizant of the nature and extent of my property, do make and publish this, my Last Will and Testament.

I direct all my just debts and funeral expenses to be fully paid and satisfied as soon as conveniently may be after my decease.

FIRST. I give, devise and bequeath all of my property, real, personal and mixed and wheresoever situate (including specifically the real property described in Deed Record 351, page 213) to Rachel B. Burton, her heirs and assigns forever.

I also nominate, constitute and appoint the said Rachel B. Burton to be sole Executrix of this my Last Will and Testament, to serve without bond except as is mandatory by law.

IN WITNESS WHEREOF, I, Benjamin H. Burton, the Testator of this, my Will, written on one sheet of paper, set my hand and seal this Eighth day of June, A.D. 1965.

Signed, sealed, published and declared by the above named, Benjamin H. Burton, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names as witnesses at his request, in the presence of the said testator and of each other.

Benjamin H. Burton (SEAL)
Benjamin H. Burton

James R. Pett
Witness

W. Howard Thayer
Witness

ONLY ADD WB Ref

died

4-1-66

Rachel wife

WB 95-115

24-82

REASSESSMENT DIVISION

ACTION CODE: 2

WORKED BY: Su
Walt

DISTRICT: 3-34

MAP: 13.19

PARCEL: 77

TRL/UNIT:

NAME: Burton

ADDRESS:

PROPERTY DESCRIPTION:

ACREAGE:

TRANSFER:

LAND CLASS:

OLD VALUE: 4,200

LAND VALUE: 1,500

IMP. VALUE: 2,800

TOTAL VALUE: 4,300

2,150

ACTION REASON: Bldg DW# 62204 changed plumbing

BILLING: 82

Now ok edit
2-8-82
EC
3/3

Board of Adjustment Application
Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Case # 12600
Hearing Date 8/16
202110051

Type of Application: (please check all applicable)

Variance

Special Use Exception

Administrative Variance

Appeal

Existing Condition

Proposed

Code Reference (office use only)

115-80 115-210

Site Address of Variance/Special Use Exception:

33546 Market PL Bethany Beach, DE 19930

Variance/Special Use Exception/Appeal Requested:

Renewal of a special use exception for an outdoor farmers market. The market has been in operation for 10 years and we are requesting a 5 year renewal. We operate Wednesdays from 8-12 during June, July and August

Tax Map #: 134-1200-52.08

Property Zoning: Commercial

Applicant Information

Applicant Name: Farmers Market at Sea Colony / Henry Bennett

Applicant Address: 31442 Peach Tree Ln

City Frankford State DE Zip: 19945

Applicant Phone #: 302 245 6838 Applicant e-mail: henry@bennettorchards.com

Owner Information

Owner Name: Sea Holdings Limited Partnership

Owner Address: 7501 Wisconsin Ave Suite 1500

City Bethesda State MD Zip: 20814 Purchase Date: 1993

Owner Phone #: 301 986 6200 Owner e-mail: _____

Agent/Attorney Information

Agent/Attorney Name: _____

Agent/Attorney Address: _____

City _____ State _____ Zip: _____

Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney

Henry J. Bennett

Date: 7/2/2021



Criteria for a Special Use Exception: (Please provide a written statement regarding each criteria)

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Special Use Exception to be granted.

1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property. Our farmer market only operates wednesdays from 8-12. there are no residences within 200 feet and all businesses in the shopping center support our market and the foot traffic that it brings to their shops. we are strictly a producer-only farmer market with local farmers selling only what they grow.

2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code. (Ex. Time limitations – 5 year maximum)

we are requesting a 5 year renewal of our special use exception.

Basis for Appeal: (Please provide a written statement regarding reason for appeal)

Farmers Market at Sea Colony
31442 Peach Tree Ln.
Frankford, DE 19945

2 July 2021

Sussex County Planning & Zoning Department
2 The Circle
(P.O. Box 417)
Georgetown, DE 19947

Dear Planning & Zoning Department/ Board of Adjustments:

We are seeking a renewal of our 5 year special use exception to continue hosting an outdoor, producer-only farmers market on Wednesdays in June, July and August at the Marketplace at Sea Colony, 33546 Market PI, Bethany Beach, DE 19930. This season we have 8 growers in attendance.

The Farmers Market at Sea Colony is a non-profit, producer-only farmers' market where all vendors sell only what they grown on their Delmarva Farms. We have been in operation for 10 years and have the full support of all shops in this shopping center. They appreciate the foot traffic that our market brings to their businesses each Wednesday. The shopping center owner, Saul Holdings Limited Partnership, fully supports our market as well, inviting us back each season to host the market.

My mother started the market, and has since retired from her duties, passing on the duties of the market to myself so it may continue to thrive and provide locally grown produce to residents and visitors of the area.

For more information on our Farmers' Market please visit seacolonyfarmersmarket.com or contact me by phone or email. Thank you for your support of Delaware Agriculture.

Sincerely,

Henry Bennett
Market Master- Farmers Market at Sea Colony
31442 Peach Tree Ln.
Frankford, DE 19945
henry@bennettorchards.com
seacolonyfarmersmarket.com

EXHIBIT A

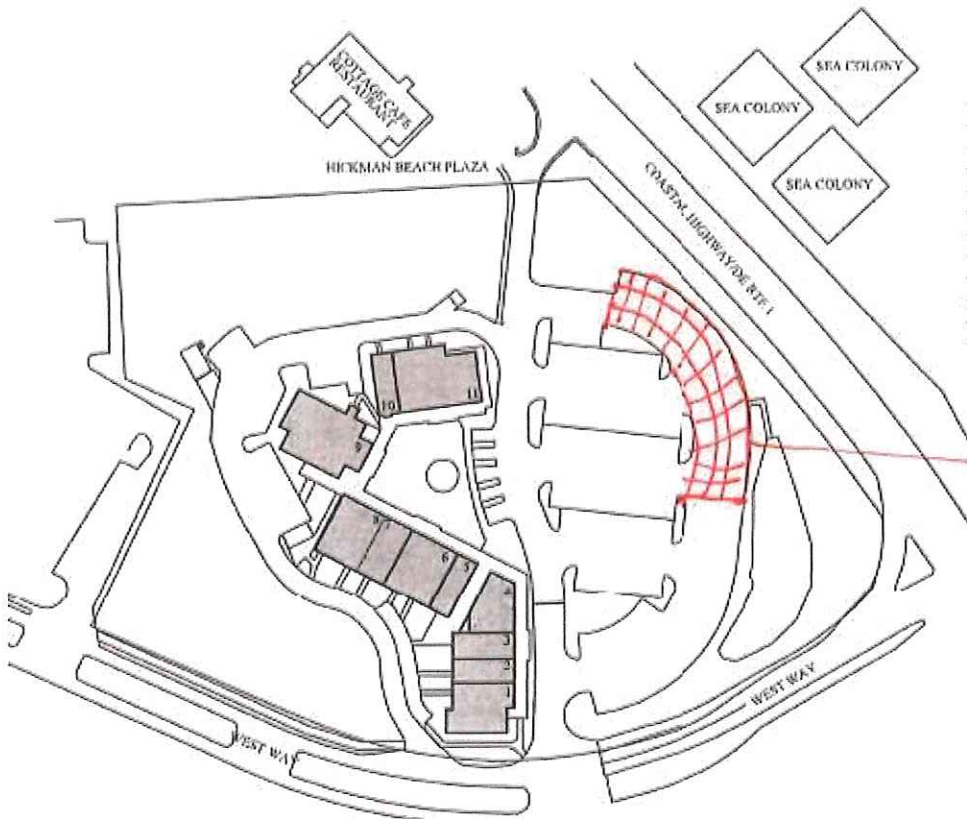
Marketplace at Sea Colony

SAUL CENTERS, INC.

21,677 SF

Bethany Beach, Delaware

7501 Wisconsin Avenue
 Suite 1500
 Bethesda, Maryland
 20814-6522
 (301) 986-6200
 www.saulcenters.com

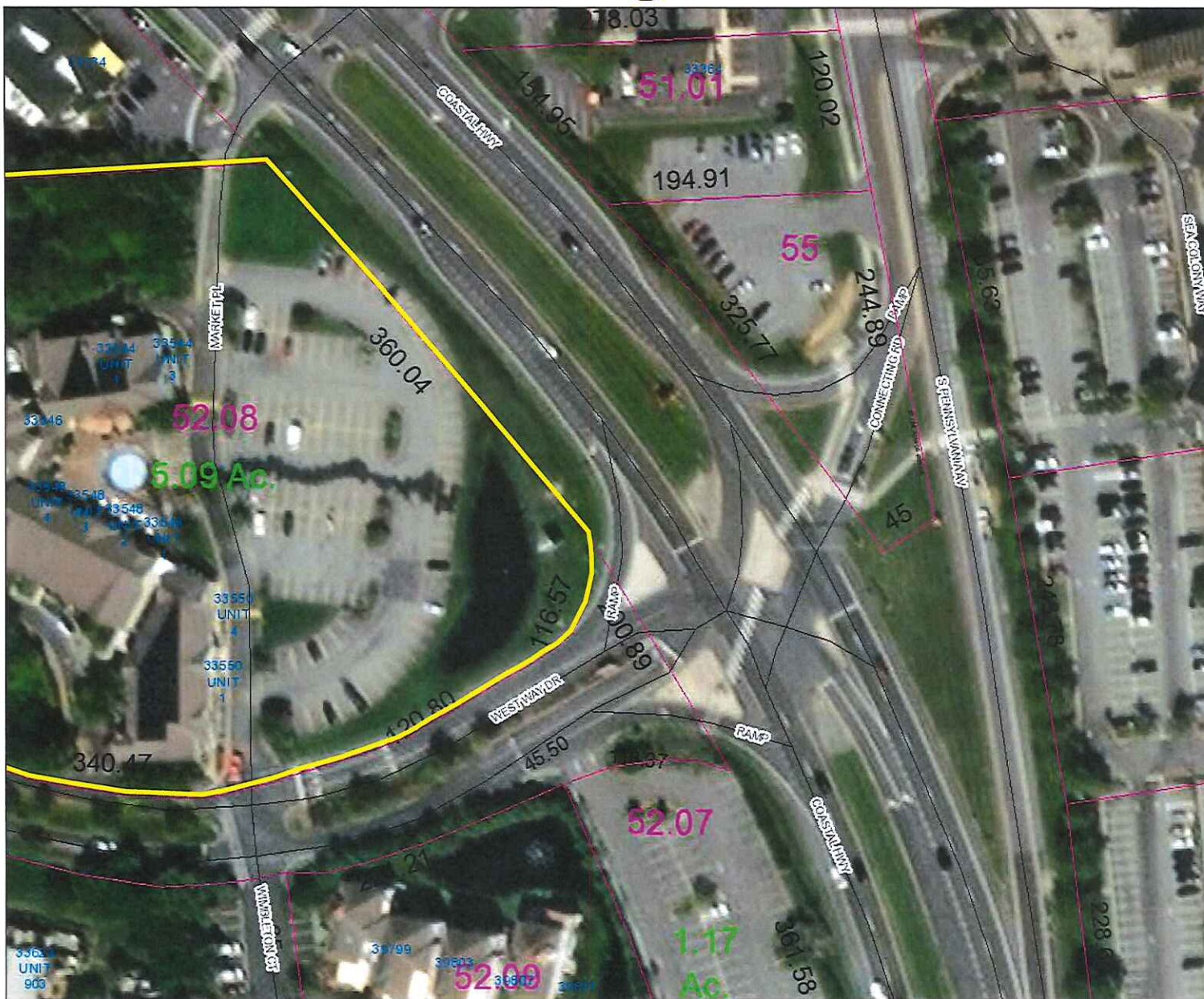


Tenant List	Area
1 Summer Salts Cafe	2,000 SF
2 Ba Ross Ice Cream	1,000 SF
3 Beach Body Barre	1,000 SF
4 Bethany Cycle	1,520 SF
5 Candy Kitchen	1,000 SF
6 Armand's Pizza	2,000 SF
7 Blooming Boutique	1,200 SF
8 Sea Colony Recreation	1,600 SF
9 Resort Quest	6,364 SF
10 Touch of Italy	980 SF
11 Bumzy's Bar & Grill	3,013 SF
TOTAL	21,677 SF

→ Lease Area
 Farmers Market

Marketplace at Sea Colony
 South Coastal Highway (U.S. Rte 1
 and West Way
 Bethany Beach, DE 19930

EXHIBIT "B"

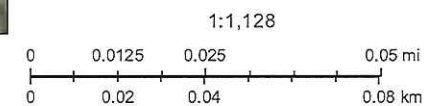


PIN:	134-17.00-52.08
Owner Name	SAUL HOLDINGS LIMITED PARTNERSHIP
Book	3564
Mailing Address	7501 WISCONSIN AVE
City	BETHESDA
State	MD
Description	NW INT WEST WAY
Description 2	RT 1 COASTAL HWY
Description 3	MARKET PLACE
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries



BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SAUL HOLDINGS LIMITED PARTNERSHIP

(Case No. 11774)

A hearing was held after due notice on May 16, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for an outdoor display or promotional activity.

Findings of Fact

The Board found that the Applicants are requesting a special use exception for an outdoor display or promotional activity. This application pertains to certain real property located on the northwest corner of West Way Drive and Coastal Highway (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.00-52.08. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing of the Marketplace at Sea Colony, an aerial photograph of the area, a portion of the tax map of the area, a letter dated March 14, 2016 from Lynn Phillips, a letter dated March 18, 2016, from Claudia Thayne, a letter dated March 16, 2016, from David Smith, and an email dated March 30, 2016, from Kirstie DuBois.
2. The Board found that the Office of Planning and Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Carrie Bennett was sworn in and testified regarding the Application.
4. The Board found that Ms. Bennett testified that she represents a group of farmers who sell produce and agricultural products at the Sea Colony Farmer's Market. The farmer's market was approved for a special use exception in 2011 for this site.
5. The Board found that Ms. Bennett testified that the market has been very successful and the farmers sell only local fruit, vegetables, flowers, and plants at the market.
6. The Board found that Ms. Bennett testified that the property owner and stores in the center are very pleased with the farmer's market.
7. The Board found that Ms. Bennett testified that the market operates every Wednesday morning during the months of June, July, and August.
8. The Board found that Ms. Bennett testified that the market will operate for twelve (12) weeks total. In previous years, the market only operated for ten (10) weeks.
9. The Board found that Ms. Bennett testified that there are twelve (12) vendors, adequate parking, and the market is accessible to pedestrians. There is no alcohol or flea market type items sold here.
10. The Board found that Ms. Bennett testified that neighbors support the Application and the market has helped neighboring businesses.
11. The Board found that Ms. Bennett testified that the use for the past five (5) years has not substantially adversely affected the uses of the neighboring and adjacent properties and that the Applicant is requesting approval for another five (5) year period.
12. The Board found that no parties appeared in support of or in opposition to the Application.

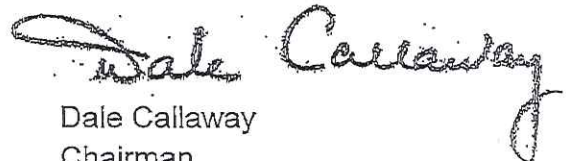
13. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive and un rebutted, the Board determined that the application met the standards for granting a special use exception because the proposed outdoor display or promotional activity will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
- a. In 2011, the Applicant received approval for a special use exception to use the Property for a farmer's market on ten (10) Wednesdays during the months of June, July, and August. This approval was for a period of five (5) years.
 - b. The Applicant proposes to renew its approval for a farmer's market which will operate on twelve (12) Wednesdays in June, July, and August. Farmers sell flowers, plants, and produce.
 - c. The Property is a large property with ample parking and other commercial businesses located thereon. There was no evidence presented which indicates that the market has caused any traffic or parking problems during the time of its operation.
 - d. The Applicant has demonstrated that the farmer's market has not substantially affected adversely the uses of neighboring and adjacent properties. The Applicant testified that she has not received any complaints about the event and no evidence was presented which would demonstrate that the farmer's market has had a substantial adverse effect on neighboring and adjacent properties. Ms. Bennett testified that neighboring businesses support the market and the market has brought customers to those businesses. The Board finds this testimony credible and persuasive. Based on this finding, the market appears to have had a positive effect on neighboring and adjacent properties.
 - e. Per the Applicant's request, the Board approved the special use exception for the farmer's market on Wednesdays for twelve (12) weeks in June, July, and August, for a period of five (5) years.

The Board granted the special use exception application for a period of five (5) years finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved for a period of five (5) years. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date July 13, 2016

Ann Lepore

From: Jamie Whitehouse
Sent: Friday, July 30, 2021 2:59 PM
To: Ann Lepore
Subject: FW: Market Place at Sea Colony - Case Number 12600
Attachments: 20210730115347214.pdf

SUPPORT EXHIBIT

From: Solhjou, Bahram <Bahram.Solhjou@saulcenters.com>
Sent: Friday, July 30, 2021 2:34 PM
To: Jamie Whitehouse <jamie.whitehouse@sussexcountyde.gov>
Cc: Henry Fassitt Bennett <henry@bennettorchards.com>
Subject: Market Place at Sea Colony - Case Number 12600

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Good afternoon,

We received the attached public hearing notice from Sussex County in reference to the Farmer's Market at Market Place at Sea Colony. On behalf of the Landlord, Saul Holdings Limited Partnership we permit the use and have no objections to this request.

Please contact me with any questions.

Regards,

Bahram Solhjou
Saul Centers, Inc.
7501 Wisconsin Ave, Suite 1500E
Bethesda, Maryland 20814
Work: 301-986-6172
Bahram.solhjou@saulcenters.com

Saul Centers