## **BOARD OF ADJUSTMENT**

ELLEN MAGEE, CHAIR KEVIN E. CARSON JEFF CHORMAN JOHN WILLIAMSON E. BRENT WORKMAN



## Sussex County

DELAWARE sussexcountyde.gov

(302) 855-7878 T (302) 854-5079 F

## **AGENDA**

November 2, 2020

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 September 14, 2020** 

**Approval of Finding of Facts for September 14, 2020** 

**Old Business** 

## **Public Hearings**

Case No. 12487 – John & Colleen Girouard seek an appeal of a determination by the Planning Director (Sections 115-208 and 115-209 of the Sussex County Zoning Code) and seek variances from the front yard setback requirements for proposed structures. (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Hassell Ave. Ext., approximately 346 ft. south of Hassell Ave. in the Bay View Park Subdivision. 911 Address: 34978 Hassell Ave., Ext., South Bethany. Zoning District: MR. Tax Parcel: 134-20.11-25.00

Case No. 12488 – Sandhill Real Estate Investments, LLC seeks variances from the front yard setback requirements for proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). These properties are the Estates of Sandhill Valley which is located at the intersection of Huff Road and Vines Avenue. 911 Address: The Estates of Sandhill Valley (Lots 7-83, 93-177, 190-243, 254-301, 309-350, and 360-393). Zoning District: AR-1. Tax Parcels: Map - 135, District - 10.00, Parcels - 212.00-288.00, 298.00-382.00, 395.00-448.00, 459.00-506.00, 514.00-555.00, and 565.00-598.00



Board of Adjustment November 2, 2020 Page 2 of 3

Case No. 12489 – Rehoboth Inn JK, LLC seeks variances from the front yard and rear yard setback requirements for existing and proposed structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Coastal Highway (Rt. 1) approximately 153 ft. southeast of Washington Street. 911 Address: 20494 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-19.08-176.00

**Case No. 12490**– **Tynetta Mullen** 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 north side of Cubbage Pond Road approximately 446 ft. east of Cedar Creek Road. 911 Address: 21613 Cubbage Pond Road, Lincoln. Zoning District: AR-1. Tax Parcel: 230-14.00-75.05

Case No. 12491 – Michael & Kathryn Stazzone seek variances from the side yard setback and rear yard setback requirements for existing structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Kings Drive within the Swanendael Subdivision 911 Address: 2513 Kings Drive, Lewes. Zoning District: AR-1. Tax Parcel: 335-8.10-3.00

## **Additional Business**

Request for 12-month time extension for Case 12291 – Lands of John and Colleen Girouard

\*\*\*\*\*\*\*\*\*\*\*

Board of Adjustment meetings can be monitored on the internet at www.sussexcountyde.gov.

\*\*\*\*\*\*\*\*\*\*\*

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on October 26, 2020 at 4:00 p.m., and at least seven (7) days in advance of the meeting.

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting. Agenda items listed may be considered out of sequence.



## -MEETING INSTRUCTIONS-

\*\* The Sussex County Board of Adjustment is holding this meeting under the authority issued by Governor John C. Carney through Proclamation No. 17-3292.

The public is encouraged to view the meeting on-line. Any person attending in person will be required to go through a wellness and security screening, including a no-touch temperature check. The public will be required to wear a facial mask.

Chambers seating capacity is limited, and seating assignments will be enforced.

The meeting will be streamed live at <a href="https://sussexcountyde.gov/council-chamber-broadcast">https://sussexcountyde.gov/council-chamber-broadcast</a>

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 phone, 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://sussexcountyde.gov/

If any member of the public would like to submit comments electronically, these may be sent to <a href="mailto:pandz@sussexcountyde.gov">pandz@sussexcountyde.gov</a>. All comments shall be submitted by 4:30 P.M. on Thursday, October 29, 2020

####



JAMIE WHITEHOUSE, AICP, MRTPI DIRECTOR OF PLANNING & ZONING (302) 855-7878 T (302) 854-5079 F jamie.whitehouse@sussexcountyde.gov



## Sussex County

DELAWARE sussexcountyde.gov

## Memorandum

To: Sussex County Board of Adjustment Members

From: Jamie Whitehouse, Director, Department of Planning & Zoning

CC: Jamie Sharp, Assistant County Attorney, Vince Robertson, Assistant County Attorney

Date: October 26, 2020

RE: Case 12487 – Lands of John & Colleen Girouard

This memo is to provide a timeline for Case 12487 to clarify the requests before the Board.

August 12, 2020 – Email from Planning and Zoning Director (Mr. Whitehouse) to Applicant's Agent confirming the need for a new variance application. (Appendix 1)

August 20, 2020 – Request sent by Applicant's attorney (Mr. Fuqua) regarding Mr. Whitehouse's decision to require a new variance application (Appendix 2)

September 21, 2020 – Letter from Mr. Whitehouse to Mr. Fuqua regarding the need for a new variance application. (Appendix 3)

September 28, 2020 – Letter from Mr. Fuqua requesting an appeal of the Director's decision and variance application. (Appendix 4)

October 16, 2020 – Letter from Mr. Fuqua submitting an updated variance application. (Appendix 5)

October 23, 2020 – Applicant Exhibit (Appendix 6)



## Appendix 1

## Jamie Whitehouse

From:

Jamie Whitehouse

Sent:

Wednesday, August 12, 2020 3:43 PM

To:

jonathon@seagreenstudio.com

Subject:

34978 Hassell Ave Ext - 134-20.11-25.00

Attachments:

07.22.20 Girouard Residence for P&Z Review.pdf

Jonathon, Good afternoon,

Thank you for your email. I understand that you are looking for written confirmation as to whether a further Variance is needed from the Board of Adjustment.

Further to our virtual meeting of July 22, 2020, and after having reviewed the Findings of Fact for BOA Case No. 12291 (link below), I can confirm that the building shown on the attached drawings will require the approval of a further variance from the Board of Adjustment.

 $\underline{https://sussexcountyde.gov/sites/default/files/LandUse/12291\%20Lands\%20of\%20Girouard\%20Findings\%20of\%20Fact\%20-\%20dated\%20and\%20signed.pdf$ 

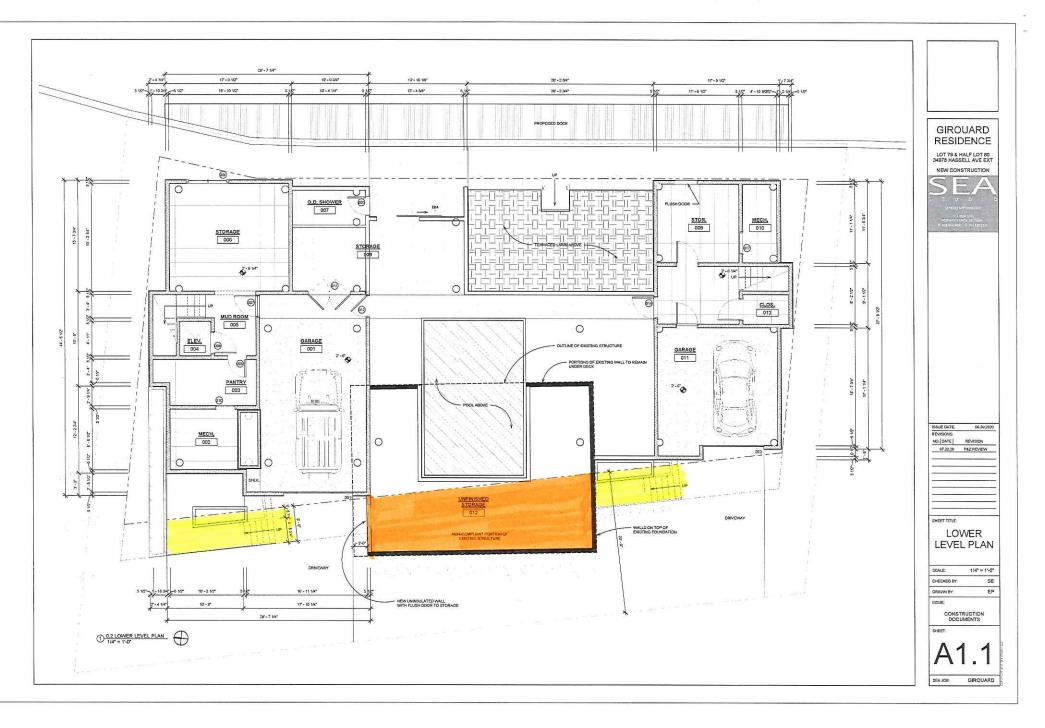
Whilst I appreciate that this is not the response that you were looking for, I hope that this email is of assistance in clarifying matters. I understand that your Variance application has been received this morning, and I will ask that a copy of this email is placed on the file. Mrs. Lepore from our office will be in contact in relation to the anticipated hearing date.

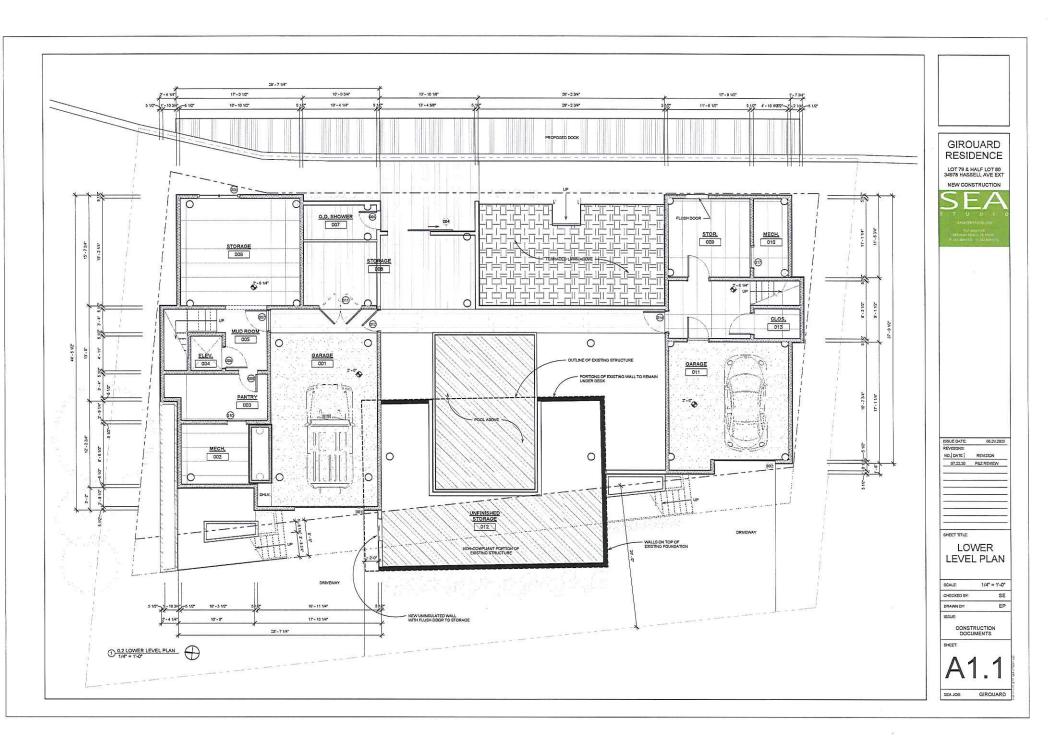
Sincerely,

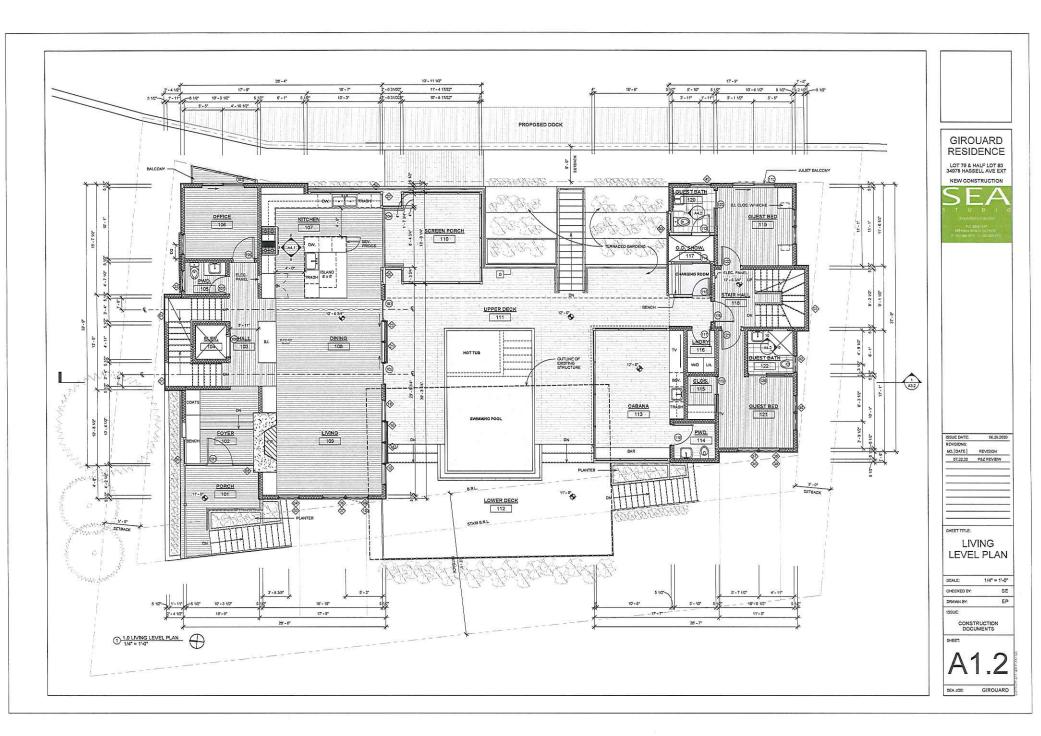
Mr. Jamie Whitehouse, AICP, MRTPI Director, Department of Planning & Zoning Sussex County 2 The Circle, P.O. Box 417, Georgetown, DE, 19947 Tel: 302-855-7878, Fax: 302-854-5079

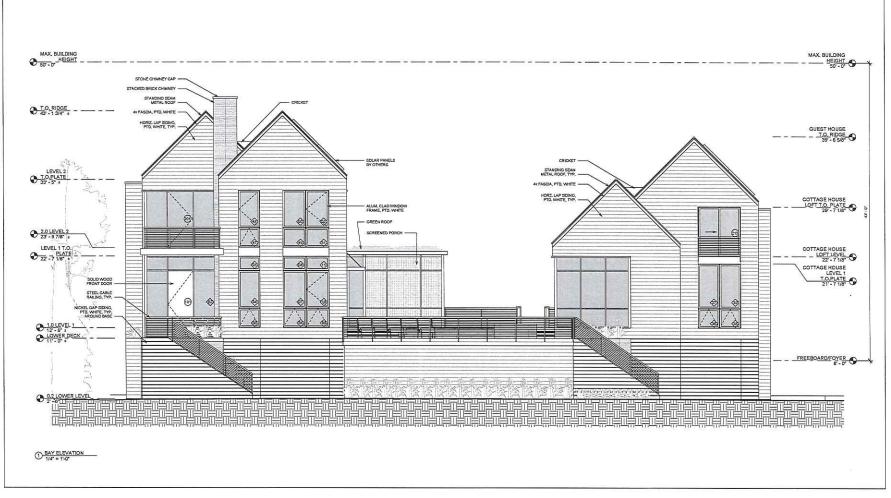
Much of the County's Planning and Zoning Information can be found online at: <a href="https://sussexcountyde.gov/sussex-county-mapping-applications">https://sussexcountyde.gov/sussex-county-mapping-applications</a>

Information on the 2018 Sussex County Comprehensive Plan can be found at: <a href="https://sussexcountyde.gov/2018-comp-plan-documents">https://sussexcountyde.gov/2018-comp-plan-documents</a>











ISSUE DATE:	06.29.2020
	06,20,2020
REVISIONS:	
NO. DATE!	REVISION
-	
THE CONTRACTOR	
SHEET TITLE:	
ELEV	ATIONS
LLEV	TIONS

SCALE: 1/4" = 1'-0"

CHECKED BY: SE

DRAWN BY: EP

ISSUE:

CONSTRUCTION DOCUMENTS

A3.3

SEA JOB: GIROUARD

# Appendix 2

## FUQUA, WILLARD, STEVENS & SCHAB, P.A.

PAYNTER HOUSE 
26 THE CIRCLE OR P.O. BOX 250
GEORGETOWN, DELAWARE 19947
PHONE 302-856-7777
FAX 302-856-2128
onthecircle@fwsslaw.com

REHOBOTH OFFICE ☐

20245 BAY VISTA ROAD, UNIT 203

REHOBOTH BEACH, DE 19971

PHONE 302-227-7727

FAX 302-227-2226

JAMES A. FUQUA, JR.
WILLIAM SCHAB
TIMOTHY G. WILLARD
TASHA MARIE STEVENS
MELISSA S. LOFLAND
NORMAN C. BARNETT
www.fwsslaw.com

August 20, 2020

HART HOUSE ☐
9 CHESTNUT STREET
GEORGETOWN, DELAWARE 19947
PHONE 302-856-9024
FAX 302-856-6360
realestate@fwsslaw.com

LEWES REAL ESTATE OFFICE 

16698 KINGS HIGHWAY, SUITE B
LEWES, DELAWARE 19958
PHONE 302-645-6626
FAX 302-645-6620
realestate@fwsslaw.com

Jamie Whitehouse, Director Department of Planning & Zoning 2 The Circle Georgetown, DE 19947

Re: 34978 Hassell Avenue Ext. Tax Map Parcel # 1-34-20.11-25.00

Dear Mr. Whitehouse:

I represent Mr. & Mrs. John Girouard, the owners of the above captioned property. As you recall, a ten (10) foot front yard setback variance was granted by the Board of Adjustment in Case No. 12291.

The owners' architectural firm submitted house plans to your office showing the majority of the new home construction in compliance with the twenty (20) foot front yard setback authorized by the variance with the exception of a deck which extends into the front setback but is specifically permitted by Section 115-203 of the Zoning Code which authorizes alteration of a nonconforming building provided the alteration or extension does not increase the degree of nonconformity in any respect. The deck is located within the area of the existing nonconforming building and does not increase the degree of nonconformity in any respect.

By your e-mail dated August 12<sup>th</sup>, you advised that the proposed new home would require approval of a further variance. Since the new home site location is in accordance with the ten (10) foot front yard setback variance approved by the Board in Case No. 12291 and the deck is authorized by Section 115-203 of the Zoning Ordinance, the new home is permitted and no additional variance is required. There is no reason for the owner to request a variance that has already been granted by the Board of Adjustment

FUQUA, WILLARD, STEVENS & SCHAB, P.A.

Page 2 August 20, 2020

Please let me know a convenient time for me to call to discuss this matter in more detail. Thanks for your consideration.

Very truly yours,

FUQUA, WILLARD, STEVENS & SCHAB, P.A.

Bv

James A. Fuqua, Jr.

JAF/jel

# Appendix 3

JAMIE WHITEHOUSE, AICP, MRTPI DIRECTOR OF PLANNING & ZONING (302) 855-7878 T (302) 854-5079 F jamie.whitehouse@sussexcountyde.gov



## Sussex County

DELAWARE sussexcountyde.gov

September 21, 2020

Mr. Jim Fuqua, Jr. Fuqua, Willard, Stevens & Schab, P.A. 26 The Circle Georgetown, DE 19947 By email to: jimf@fwsslaw.com

Subject: 34978 Hassell Avenue Ext. (Board of Adjustment Case 12291)

Tax Parcel: 134-20.11-25.00

Dear Mr. Fuqua,

Thank you for your letter of August 20, 2020. I have since reviewed Mr. & Mrs. Girouard's proposals to build a new dwelling, as shown on the set of drawings submitted to Planning & Zoning on July 22, 2020.

I have reviewed Board of Adjustment Case No. 12291, which granted a 10-ft variance from the 30-ft front yard setback requirement for a proposed dwelling. I note that, in the application, the Applicants proposed to remove the existing dwelling and replace it with a new one and the Board's decision was based on that express representation. The Board further noted that "a dwelling that is 20 feet away will reduce the existing non-conformity."

Furthermore, the drawings submitted to me on July 22, 2020, to which I referred in my email dated August 12, 2020, contain unenclosed steps within the front yard setback area. These steps are not allowed to project into the setback area as proposed. As a result, and irrespective of whether part of the existing dwelling is retained in the new design, additional Variances are required for these.

I am in receipt of a Variance application dated August 11, 2020, which includes a request to appeal the decision of the Director, along with a check for \$400.00. The application has not yet been processed, in order to allow an opportunity to respond to your letter of August 20, 2020.

If you could confirm that your client wishes to proceed with these applications, I will ask staff to process these and add the applications to a future Board of Adjustment meeting agenda. Given our previous telephone conversation, in which you mentioned that this matter was previously discussed with staff, and a view was expressed that a further variance was not required, I will return your client's check for \$400.00, and will waive the application fee.

Please feel free to contact me with any further questions at 302-855-7878 during normal business hours Monday – Friday 8:30am – 4:30pm.



Sincerely,

Jamie Whitehouse

Director, Planning & Zoning Department

Enc. Copy of Plans and Drawings Received on July 22, 2020.

Copy of Email dated August 12, 2020 Copy of Survey dated February 13, 2019

## Jamie Whitehouse

From:

Jamie Whitehouse

Sent:

Wednesday, August 12, 2020 3:43 PM

To:

jonathon@seagreenstudio.com

Subject:

34978 Hassell Ave Ext - 134-20.11-25.00

Attachments:

07.22.20 Girouard Residence for P&Z Review.pdf

Jonathon, Good afternoon,

Thank you for your email. I understand that you are looking for written confirmation as to whether a further Variance is needed from the Board of Adjustment.

Further to our virtual meeting of July 22, 2020, and after having reviewed the Findings of Fact for BOA Case No. 12291 (link below), I can confirm that the building shown on the attached drawings will require the approval of a further variance from the Board of Adjustment.

 $\underline{https://sussexcountyde.gov/sites/default/files/LandUse/12291\%20Lands\%20of\%20Girouard\%20Findings\%20of\%20Fact}\\ \%20-\%20dated\%20and\%20signed.pdf$ 

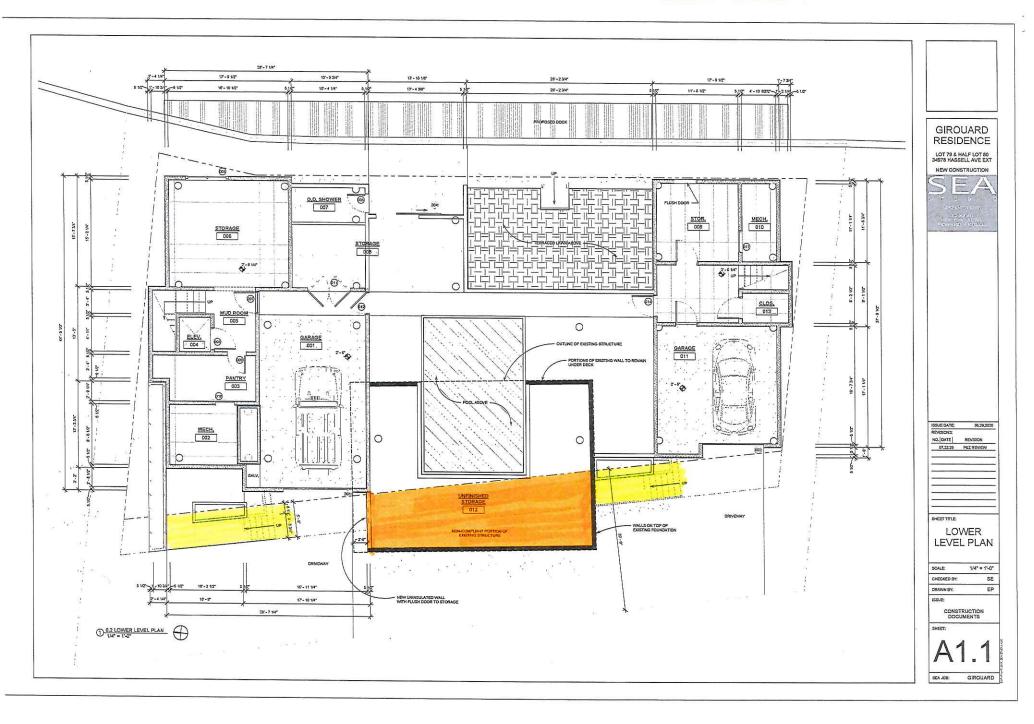
Whilst I appreciate that this is not the response that you were looking for, I hope that this email is of assistance in clarifying matters. I understand that your Variance application has been received this morning, and I will ask that a copy of this email is placed on the file. Mrs. Lepore from our office will be in contact in relation to the anticipated hearing date.

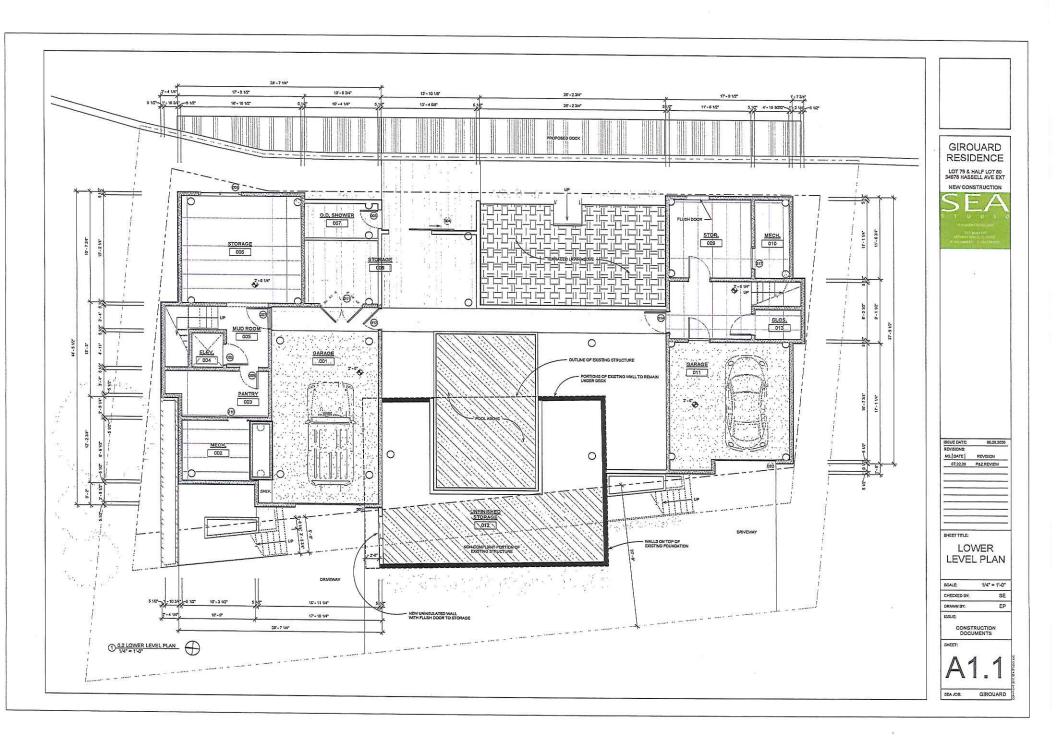
Sincerely,

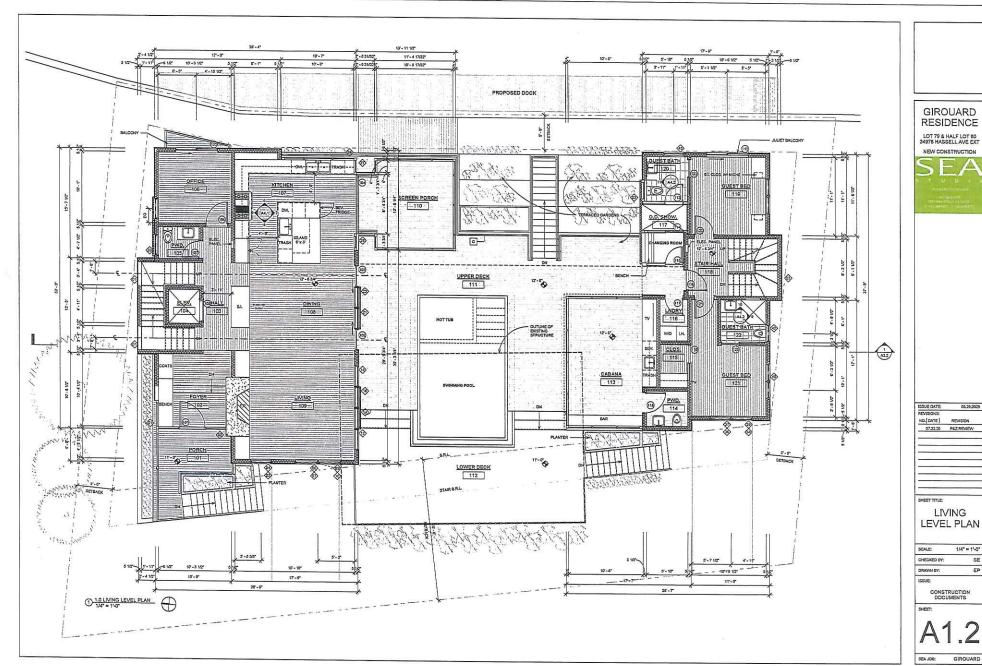
Mr. Jamie Whitehouse, AICP, MRTPI Director, Department of Planning & Zoning Sussex County 2 The Circle, P.O. Box 417, Georgetown, DE, 19947 Tel: 302-855-7878, Fax: 302-854-5079

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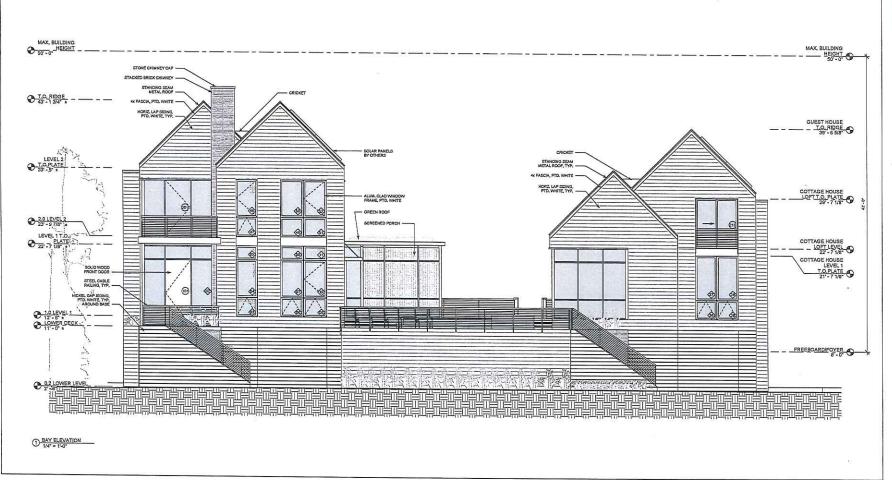




ISSUE DATE:	05,29,2020
REVISIONS	
NO. DATE!	REVISION
07,22.20	PEZREVIEW
SHEET TITLE:	
120.020	/ING

SCALE:	1/4" = 1'-0"
CHECKED BY:	SE
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ISSUE:	

GIROUARD



GIROUARD RESIDENCE LOT 79 & HALF LOT 60 34978 HASSELL AVE EXT NEW CONSTRUCTION

ISSUE DATE: 04.29.2020
RENGIONS:
NO. [OATE] REVISION

CHEET TITLE:

ELEVATIONS

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 CHECKED BY:
 SE

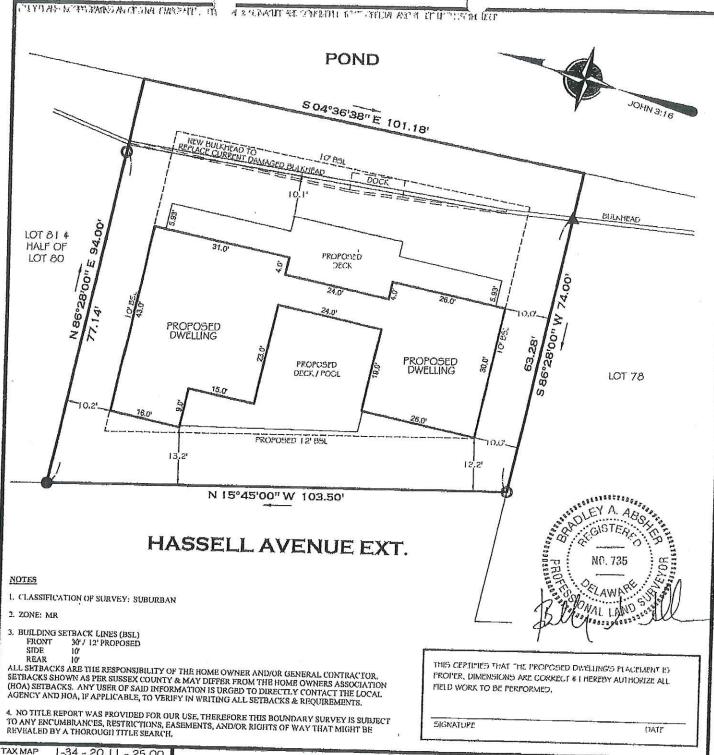
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 EP

CONSTRUCTION DOCUMENTS

SHEET:

A3.3

SEA JOB: GIROU



	THE SEALCE II
TAX MAP	1-34 - 20.11 - 25.00
STATE	DELAWARE
COUNTY	SUSSEX
HUNDRED	BALTIMORE
TOWN	
AREA	8,497 ± SQ. FT.
DEED REF.	4611/148
PLAT REF.	8/25
DRAWN BY	JJZ
DATE	02/13/19
SCALE	l" = 20'
SURVEY#	DE - 05112

## SITE

LOT 79 # HALF OF LOT 80 SECOND ADDITION TO BAY VIEW PARK

JOHN GIROUARD

34978 HASSELL AVENUE EXT., SOUTH BETHANY, DE. 19930



LAND SURVEYING

118 ATLANTIC AVENUE, SUITE 202 OCEAN VIEW, DE 19970 DE: 302-539-2488 MD: 410-430-2092

## Appendix 4

## FUQUA, WILLARD, STEVENS & SCHAB, P.A.

PAYNTER HOUSE 26 THE CIRCLE OR P.O. BOX 250 GEORGETOWN, DELAWARE 19947 PHONE 302-856-7777 FAX 302-856-2128 onthecircle@fwsslaw.com

REHOBOTH OFFICE □ 20245 BAY VISTA ROAD, UNIT 203 REHOBOTH BEACH, DE 19971 PHONE 302-227-7727 FAX 302-227-2226

JAMES A. FUQUA, JR. WILLIAM SCHAB TIMOTHY G. WILLARD TASHA MARIE STEVENS MELISSA S. LOFLAND NORMAN C. BARNETT www.fwsslaw.com

FAX 302-856-6360 realestate@fwsslaw.com LEWES REAL ESTATE OFFICE

September 28, 2020

16698 KINGS HIGHWAY, SUITE B LEWES, DELAWARE 19958 PHONE 302-645-6626 FAX 302-645-6620 realestate@fwsslaw.com

HART HOUSE □

9 CHESTNUT STREET

GEORGETOWN, DELAWARE 19947

PHONE 302-856-9024

Jamie Whitehouse, Director Planning & Zoning County Administrative Building 2 The Circle Georgetown, DE 19947

RECEIVED

SEP 28 2020

RE: 34978 Hassell Avenue Ext. (Board of Adjustment Case No. 12291)

SUSSEX COUNTY PLANNING & ZONING

Dear Mr. Whitehouse:

Thank you for your letter of September 21st. Please proceed with scheduling the Application appealing your determination that a new variance application was required or, in the alternative, requesting a 10-foot front yard variance.

Attached is a revised site plan which modifies the originally filed site plan by removing all improvements, including the stairs, from the 20 foot front yard with the exception of the deck which is authorized by Section 115-203 of the Zoning Code. Also attached is an explanation of the basis of appeal of your determination, captioned as "Exhibit A" to the Application.

It was the applicant's understanding that the Application, which was filed on August 11th, was to be scheduled for a hearing on October 5th. Accordingly, we are requesting that every effort be made to have this Application placed on the October 19th Board of Adjustment Agenda.

Thank you for your attention.

Very truly yours,

FUQUA, WILLARD, STEVENS & SCHAB, P.A.

JAF/jel

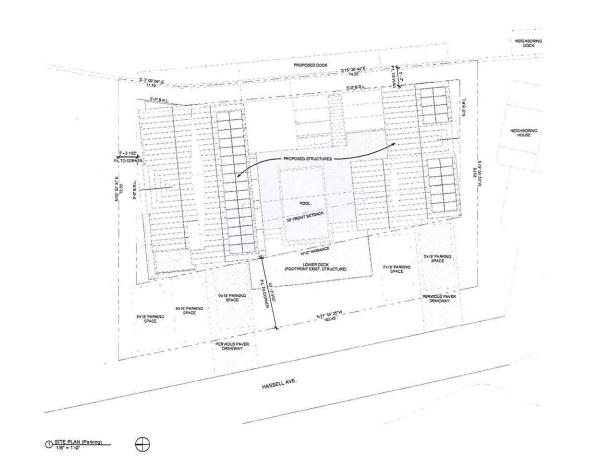
## **EXHIBIT A**

## **APPEAL**

The owners had been granted a ten (10) foot front yard setback variance for a property located at 34978 Hassell Avenue, Bayview Park (Tax Map Parcel 1-34-20.11-25.00) by virtue of Sussex Board of Adjustment case No. 12291. In its well-reasoned and detailed decision, the Board determined that the application for a front yard setback variance met the legal standards for a variance but modified the requested variance from 18 feet to 10 feet. The basis of the Boards decision is set forth in paragraphs 53(a) through (f) if it's decision, finding compliance with the standards for a variance set forth in Section 115-211(A) and (B) of the Sussex County Zoning Code. The Board's decision established the owner's right to a 10-foot yard setback variance.

In designing the proposed dwelling to be constructed, the owner utilized the provisions of Section 115-203 of the Sussex County Zoning Code which permits the alteration of a non-conforming building provided the alteration does not increase the degree of non-conformity in any respect. The home design utilized this code section to provide a deck with a front set-back less than 20 feet but in compliance with Section 115-203. The rights granted by that section existed prior to the granting of the 10-foot variance and remained applicable after the approval of the variance. These rights are independent of the variance and are permitted by the zoning code.

The Director's determination that by utilizing the rights granted by Section 115-203, the owner has somehow forfeited the approved variance and must seek a new variance is not supported by the facts and is contrary to the clear language and intent of Section 115-203. Such an interpretation denies the owner the rights granted to other owners similarly situated and would deny the owner the equal protection of the law.



GIROUARD RESIDENCE

LOT 79 & HALF LOT 80 34978 HASSELL AVE EXT NEW CONSTRUCTION

SEA

ISSUE DATE 09.24.2020
REVISIONS:
NO. DATE REVISION

SHEET TITLE

SITE PLAN

SCALE 1/8\* = 1\*-0\*

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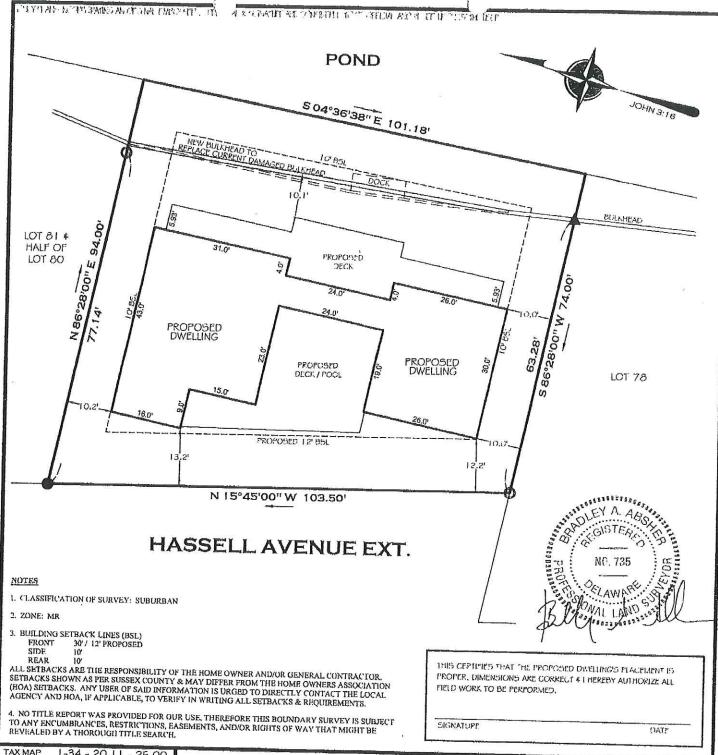
ISSUE:

CONSTRUCTION DOCUMENTS

SHEET

A1.P

SEA JOB GIRQUAR



TAX MAP	1-34 - 20.11 - 25.00
STATE	DELAWARE
COUNTY	SUSSEX
HUNDRED	BALTIMORE
TOWN	
AREA	8,497 ± SQ. FT.
DEED REF.	4611/148
PLATREF.	8/25
DRAWN BY	JJZ
DATE	02/13/19
SCALE	l" = 20'
SURVEY#	DE - 05112

## SITE

LOT 79 # HALF OF LOT 80 SECOND ADDITION TO BAY VIEW PARK

JOHN GIROUARD

34978 HASSELL AVENUE EXT., SOUTH BETHANY, DE. 19930



LAND SURVEYING

118 ATLANTIC AVENUE, SUITE 202 OCEAN VIEW, DE 19970 DE: 302-539-2488 MD: 410-430-2092

Case #
Hearing Date
202012-341

## **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 ✓ Special Use Exception  Administrative Variance  Appeal ✓	Existing Condition  Proposed  Code Reference (office use only)			
Site Address of Variance/Special Use Exception:				
34978 Hassell Ave., Ext., South Bethany 19930 (Lot 79 and half of lot 80)				
Variance/Special Use Exception/Appeal Requested:				
1. APPEAL of the Director of Planning and Zoning's decision to require a second variance hearing (Original Variance Granted: Case No. 12291). 2. A VARIANCE of 10 feet from the (30) feet front yard setback requirement for a proposed dwelling. A variance of 10 feet was granted on June 18, 2019 for this property (after a hearing on April 15, 2019 - Case No. 12291). This is a request for the same variance, if the aforementioned appeal is denied, for a proposed dwelling, with updated architectural plans.				
Tax Map #: 134-20.11-25.00	Property Zoning: MR			
Applicant Information  Applicant Name: Scott Edmonston - Architect - SEA Studio, Applicant Address: 35761 Atlantic Avenue  City Millville State DE Zip: 19	9967			
Applicant Phone #: (302) 364-3082 Applicant e-mail: scott@seagreenstudio.com				
Owner Information				
Owner Name: John and Colleen Girouard  Owner Address: 111 Second Street  City Bethany Beach State DE Zip: 19  Owner Phone #: (240) 482-4000 Owner e-mail				
Agent/Attorney Information  Agent/Attorney Name: James A. Fuqua - FUQUA, WILLARD, STEVENS & SCHAB, P.A.				
Agent/Attorney Address: 20245 Bay Vista Road, Unit 203				
City Rehoboth Beach State DE Zip: 19	971 ey e-mail: jimf@fwsslaw.com			
10 101				

Signature of Owner/Agent/Attorney

Date: 8/11/20





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

You shall demonstrate to the Board of Adjustment that the property meets <u>all</u> 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 lot is undersized, consisting of only 7,062 SF. The shape of the lot is unique because the north side of the lot is deeper than the south side of the lot. The Property has unique conditions, as the rear yard is susceptible to flooding. These conditions have created a small and unusually shaped buildable area, and have created an exceptional practical difficulty for the Owners who seek to construct a dwelling on the 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.

Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size, shape, and condition and the buildable area thereof is limited due to these conditions. The Owners seek to construct a dwelling on the lot but are unable to do so without violating the Sussex County Zoning Code.

## 3. Not created by the applicant:

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

The lot was created in the late 1950s or early 1960s and the Owners are the contract purchasers of the lot. The preexisting conditions have resulted in a limited buildable area on the Property, which has created the exceptional practical difficulty. The small building envelope was further limited by the flooding problems in the rear of the Property. The unique characteristics of the Property are clear when reviewing the survey.

## 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.

A 10 foot variance will not alter the character of the neighborhood. A 10 foot variance will allow a dwelling to be constructed that positively impacts the neighborhood. A 10 foot variance will allow the nonconformity of the existing dwelling on the property to be reduced. A 10 foot variance will allow for adequate off-street parking that will maintain adequate space for emergency vehicles to navigate the road.

## 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.

A variance of 10 feet would be the minimum variance necessary to construct a reasonably sized dwelling on the property that would not negatively impact the character of the neighborhood. Any variance less than 10 feet would require that the proposed dwelling be reconfigured in order to fit the Owner's space requirements, which would likely require that the dwelling become taller, more solid, and out of character with the rest of the neighborhood.

Sussex County, DE - BOA Application

**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 <u>all</u> 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.

N/A

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)

N/A

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

Verbal communication was provided by the Director of Planning and Zoning to the Architect stating that a second variance hearing would be required for the updated plans for a dwelling on the Property. Pending a more detailed written statement from the Director P&Z, an appeal of this second variance hearing is being filed on the basis that the updated plans are compliant with the Sussex County Building and Zoning Code, and that they should not affect the granting of the original variance.



### BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

### IN RE: JOHN GIROUARD & COLLEEN GIROUARD

(Case No. 12291)

A hearing was held after due notice on April 15, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

### Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for proposed structures.

## Findings of Fact

The Board found that the Applicants are requesting a variance of 18 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the east side of Hassell Avenue Ext., approximately 346 feet south of Hassell Avenue in the Bay View Park Subdivision (911 Address: 34978 Hassell Avenue, Ext., South Bethany); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-25.00.

- The Board was given copies of the Application, a proposed plot plan, a drawing dated February 1, 2019, a survey of the Property dated October 26, 2018, a site plan showing the proposed additions dated February 13, 2019, an aerial photograph of the Property, and a portion of the tax map of the area.
- The Board found that the Office of Planning & Zoning received no correspondence in support of the Application or in opposition to the Application.
- The Board found that John Girouard and Collen Girouard were sworn in to give testimony. James Fuqua, Esquire, presented the application on behalf of the Applicants and he submitted exhibits to the Board to review.
- 4. The Board found that Mr. Fuqua stated that the lot is made up of Lot 79 and half of lot 80 in the second addition to Bayview Park, which is an older subdivision. The Applicants have a contract to purchase the Property and they intend to remove the existing home and replace it with a new home.
- 5. The Board found that Mr. Fuqua stated that the existing home is non-conforming and is located 8.5 feet from Hassell Avenue Ext. at its closest point. The proposed home would be set approximately 3.5 feet farther back than the existing home and will meet all other setback requirements.
- The Board found that Mr. Fuqua stated that Bayview Park is an older subdivision where homes are being replaced with larger, modern homes.
- 7. The Board found that Mr. Fuqua stated that the uniqueness of this lot is the location. The Property is the next-to-the-last lot on Hassell Avenue Extended. The lot borders Cedar Pond on the east and wetlands and the bay are located to the west.
- 8. The Board found that Mr. Fuqua stated that the survey shows the Property is 94 feet deep on the north side and 74 feet deep on the south side. A bulkhead is located in the rear of the lot and a sizeable portion of the lot is unbuildable due to flooding. Furthermore, a sizeable portion of the rear yard is actually in Cedar Pond.
- The Board found that Mr. Fuqua stated that the actual building area is only 77 feet deep on the north side and 63 feet deep on the south side.
- 10. The Board found that Mr. Fuqua stated that one-third of the lot is zoned MR which requires lots to be 10,000 square feet but this lot is a non-conforming lot with only

- 8,497 square feet and the portion of the lot above water consists of only about 7,000 square feet.
- 11. The Board found that Mr. Fuqua stated that the 30 feet front yard setback was designed for lots of 10,000 square feet and applying it to a lot of only 7,000 square feet would create a hardship for reasonable use.
- The Board found that Mr. Fuqua stated that the variance would not affect the essential character of the neighborhood as the dwelling would be similar to other homes in the neighborhood.
- The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
- 14. The Board found that Mr. Fuqua stated that the lot was created as part of the original subdivision prior to the adoption of the Sussex County Zoning Code.
- 15. The Board found that Mr. Fuqua stated that the new setback will be greater than that of the original home and will reduce a non-conformity.
- 16. The Board found that Mr. Fuqua stated that the Board previously granted a variance in Case No. 10065 on February 25, 2008, for Lot 78, which is the lot adjacent to the south, and that the Applicants' lot is even more unique than Lot 78.
- 17. The Board found that Mr. Fuqua stated that the proposed front yard setback will be similar to other lots in the neighborhood.
- 18. The Board found that Mr. Fuqua stated that the variance requested is a minimum variance request to enable reasonable use of the Property.
- 19. The Board found that Mr. Fuqua stated that the Property is required to have two offstreet parking spots and the Applicants will guarantee four off-street parking spots to avoid blocking entrance to the neighboring home. The Applicants will keep parked cars off Hassell Avenue Extended.
- The Board found that Mr. Fuqua stated that the dwelling will be constructed on pilings.
- 21. The Board found that Mr. Girouard affirmed the statements by Mr. Fuqua as true and
- 22. The Board found that Mr. Fuqua stated that the land may have eroded since 1960.
- The Board found that Mr. Fuqua stated that no variances are needed for the steps or HVAC system.
- 24. The Board found that Mr. Girourd testified that the Applicants wish to build a home with 4-5 bedrooms and between 3,500 4,000 square feet. The house is still being designed and the Applicants are trying to have first-floor living.
- 25. The Board found that Mr. Girourd testified that, if the front yard setback requirement was met, the house would be built where the rear of the house is located and the house would be taller and out of character for the neighborhood.
- 26. The Board found that Mr. Girourd testified that the house will have a two-car garage with an additional two parking spots for guests.
- 27. The Board found that Mr. Girourd testified that there is flooding in the rear.
- 28. The Board found that Mr. Girourd testified that there is about 10 feet from edge of pavement of Hassell Avenue Extended to the property line.
- 29. The Board found that Michael Wigley, Susan Wigley, and John Hendrickson were sworn in to give testimony in opposition to the Application. Mr. Wigley submitted drawings for the Board to review.
- The Board found that Mr. Wigley testified that he and his wife own Lot 78 / Parcel 26
  which is the property to the south of the Applicants' property. They purchased their
  lot in 2007.
- 31. The Board found that Mr. Wigley testified that he and his wife recognize that a variance is needed for the Applicants' property but they believe the size of the variance could be reduced.

- 32. The Board found that Mr. Wigley testified that Hassell Avenue Extended dead-ends at their lot and Hassell Avenue Extended is 30 feet wide even though most modern roads are 50 feet wide with a cul-de-sac.
- 33. The Board found that Mr. Wigley testified that he and his wife obtained a variance for the original home on their property (as noted by Mr. Fuqua) but, when they rebuilt their home 2 years ago, they built within required County setbacks. Mr. and Mrs. Wigley are architects.
- 34. The Board found that Mr. Wigley testified that the Applicants' lot is shallower than their lot but the Applicants can design a nice home on their lot and that the Applicants could build a home consisting of 4,200 square feet with 5 feet side yard setbacks and a 20 foot front yard setback.
- 35. The Board found that Mr. Wigley testified that he does not oppose the pool but the pool should not be the reason for the hardship since most houses in the neighborhood do not have pools.
- 36. The Board found that Mr. Wigley testified that the building envelope for his lot is 3,171 square feet and the Applicants' building envelope would be 3,714 square feet with a 20 feet front yard setback.
- 37. The Board found that Mr. Wigley testified that the Applicants could request a variance of 10 feet instead of 18 feet and still be able to build the house they want.
- 38. The Board found that Mr. Wigley testified that he wants to make sure that emergency vehicles would have access to their house. He has noticed that cars have been parked in Hassell Avenue Extended in front of the Applicants' home. Mr. Wigley noted that this is a problem because Hassell Avenue Extended is only 14 feet wide paved and its narrowness makes it difficult to turn around. The narrowness of Hassell Avenue Extended is a problem because, as stated by Mr. Wigley, there are wetlands on the other side of the road so Hassell Avenue Extended cannot be expanded in that direction. He believes that a front yard setback of 20 feet would give cars room to turn around more safely.
- 39. The Board found that Mr. Wigley testified that he wants the Applicants to have adequate off-street parking.
- 40. The Board found that Mr. Wigley testified that, in his proposal as shown on the drawing he submitted to the Board, he made some adjustments to the Applicants' design. He prefers a 10 feet side yard setback but a 5 feet side yard setback is the better option because it provides a greater front yard setback.
- 41. The Board found that Mr. Wigley testified that the objection is based on the fact that this request is not the minimum variance request to afford relief.
- 42. The Board found that Mr. Hendrickson testified that he is the vice-president of the Board of Directors for Bay View Park.
- 43. The Board found that Mr. Hendrickson testified that most of the lots in Bayview Park were created in the late 1950s and 1960s and the lots in the neighborhood have odd angles. Most lots also have less than 10,000 square feet.
- 44. The Board found that Mr. Hendrickson testified that trash trucks have to back down the street and a 14 feet wide road is not sufficient for a turn around.
- 45. The Board found that Mr. Hendrickson testified that his main concern is life-safety as there are older residents in the neighborhood and ambulances and emergency vehicles need to be able to move around.
- 46. The Board found that Mr. Hendrickson testified that he agrees that it would difficult to fit a home in compliance with the setback requirements.
- 47. The Board found that Mr. Fuqua stated that there are narrow streets in the neighborhood.
- 48. The Board found that Mr. Fuqua stated that the opposition is imposing a design on the Applicants even though they obtained their own variance and that there is a difference between the two homes.
- 49. The Board found that Mr. Fuqua stated that the view of the bay is to the south.

- 50. The Board found that Mr. Girouard testified that he would lose views of the bay if the 20 feet front yard setback was imposed but he agrees that the minimum variance to afford relief is not about the view.
- The Board found that two (2) parties appeared in support of the Application and three(3) parties appeared in opposition to the Application.
- 52. The Board tabled its discussion and vote on the Application until May 6, 2019, at which time it discussed and voted on the Application.
- 53. 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 for a front yard variance met the standards for granting a variance but the request was modified by the Board to reflect a lesser variance than was originally sought by the Applicants. The findings below further support the Board's decision to approve the Application with modification.
  - a. The Property is unique in size, shape, and condition. The lot is an undersized lot consisting of only 8,497 square feet. The usable portion of the lot is reduced because a significant portion of the rear yard is located in the adjacent Cedar Pond. As such, the portion of the lot which is above water is approximately 7,000 square feet. The shape of the lot is also unique because the north side of the lot is deeper than the south side of the lot. The Property also has unique conditions as the rear yard is susceptible to flooding. These conditions have created a small and unusually shaped building envelope where it is more desirable to build the lot closer to the front yard than the rear yard. These unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to construct a dwelling on the lot.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size, shape, and condition and the buildable area thereof is limited due to these conditions. The Applicants seek to construct a dwelling on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that a front yard variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be constructed on the lot. Neighbors acknowledge that the Applicants would not be able to build a dwelling on the lot in strict conformity with the Code and that a front yard variance is necessary. The survey and photographs clearly demonstrate the challenges with building towards the rear of the lot.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The lot was created in the late 1950s or early 1960s and the Applicants are the contract purchasers of the lot. The preexisting conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the flooding problems in the rear of the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics.
  - d. A variance of 10 feet 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 a dwelling that is 20 feet from Hassell

Avenue Extended will have no effect on the character of the neighborhood. The current home on the lot is only 8.5 feet from Hassell Avenue Extended and a dwelling that is 20 feet away will reduce the existing non-conformity. A variance of 10 feet was also not objected to by neighbors. No evidence was presented that a variance of 10 feet would somehow alter the essential character of the neighborhood. The lack of evidence is telling since neighbors did pose concerns about the larger variance requested by the Applicants. The Board notes that it does have concerns about the impact of a greater variance, as requested by the Applicants, on the character of the neighborhood and the effect on the public welfare. The testimony is clear to the Board that Hassell Avenue Extended is a narrow street and large vehicles do not have adequate space to turn around. Neighbors have concerns that emergency vehicles will not have adequate room to navigate since there is no cul-de-sac on the road. Furthermore, a neighbor has testified that cars are sometimes parked in Hassell Avenue Extended and block roadway access. By moving the proposed location of the dwelling farther from Hassell Avenue Extended, additional room may be available for vehicles to safely turn around and would lessen the temptation or, perhaps in some cases, the necessity of persons to park vehicles in the right-of-way. While the Applicants proposed to provide additional off-street parking if the 18 foot variance was granted, it is clear to the Board that the additional space provided by a 10 foot variance would likely benefit the neighborhood and avoid a substantial impairment to appropriate use and development of neighboring and adjacent properties and the reduced variance would not be detrimental to the public welfare.

- e. The variance of 10 feet is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. While it is clear that a variance from the front yard setback is necessary to enable the Applicants to construct a reasonably sized home, the Applicants must demonstrate that the variance they requested is the minimum variance necessary to afford relief. The opposition has proved, in this case, that a lesser variance is appropriate. The Applicants admitted that they are still designing the home and it is clear from their proposal that they did not utilize the side yard setback of 5 feet to maximize their building envelope. The opposition, who are architects, presented clear evidence that a reasonably sized home with the same square footage as the Applicants' proposed home could fit within a building envelope with a 10 foot variance rather than an 18 foot variance. The 10 foot variance is, thus, the minimum variance necessary to afford relief and is the least modification of the regulation at issue. The Board also notes that the Applicant testified that placing the home closer to the front yard would improve his water views but, as correctly noted by the Applicant, the right to a view does not justify the granting of a variance and the Applicants are expected to build their home in compliance with the Code or, at least, minimize encroachments into the setback area.
- f. A variance of 10 feet from the front yard setback requirement was approved.

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

Upon motion duly made and seconded, the variance application was approved with modification. The Board Members in favor of the Motion to approve with modification were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application with modification.

BOARD OF ADJUSTMENT OF SUSSEX COUNTY

Chairman

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

Date June 18, 2019

# Appendix 5

# FUQUA, WILLARD, STEVENS & SCHAB, P.A.

PAYNTER HOUSE 26 THE CIRCLE OR P.O. BOX 250
GEORGETOWN, DELAWARE 19947
PHONE 302-856-7777
FAX 302-856-2128
onthecircle@fwsslaw.com

REHOBOTH OFFICE ☐

20245 BAY VISTA ROAD, UNIT 203

REHOBOTH BEACH, DE 19971

PHONE 302-227-7727

FAX 302-227-2226

Jamie Whitehouse, Director Planning & Zoning County Administrative Building 2 The Circle Georgetown, DE 19947 JAMES A. FUQUA, JR.
WILLIAM SCHAB
TIMOTHY G. WILLARD
TASHA MARIE STEVENS
MELISSA S. LOFLAND
NORMAN C. BARNETT
www.fwsslaw.com

October 16, 2020

HART HOUSE ☐
9 CHESTNUT STREET
GEORGETOWN, DELAWARE 19947
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FAX 302-856-6360
realestate@fwsslaw.com

LEWES REAL ESTATE OFFICE 

16698 KINGS HIGHWAY, SUITE B
LEWES, DELAWARE 19958
PHONE 302-645-6626
FAX 302-645-6620
realestate@fwsslaw.com

RE: 34978 Hassell Avenue Ext. (Board of Adjustment Case No. 12291)

Dear Mr. Whitehouse:

Enclosed is an Amended Board of Adjustment Application which I request be substituted for the original application filed on behalf of John & Colleen Girougrd on August 11, 2020.

The Amended Application modifies the variance request to a 15 foot front yard setback variance for the limited purpose of two open uncovered stairways and an open uncovered deck as explained and shown in Exhibit "A".

Thank you for your attention and please advise me of the hearing date once it is determined.

Very truly yours,

FUQUA, WILLARD, STEVENS & SCHAB, P.A.

By:

James A. Fuqua, Jr

JAF/jel Enclosure

RECEIVED

OCT 16 2020

SUSSEX COUNTY PLANNING & ZONING

# (AMENDED, 10-14-20) **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 #	12487
Hearing [	Date 11/2

RECEIVED

OCT 16 2020

Type of Application: (please check all applicable)		SUSSEX COUNTY PLANNING & ZONING
Variance  Special Use Exception  Administrative Variance  Appeal	Existing Condition Proposed Code Reference (office code)	ise only)
Site Address of Variance/Special Use Exception: 34978 Hassell Ave., Ext. South Bethany 19930 (Lot 79 and	l half of Lot 80)	
Variance/Special ਖੁਣ ਤਿਵਦਸ਼ ਹੈ ਹੈ Appeal Requested: SEE EXHIBITS "A"		
Tax Map #: 1-34-20.11-25.00	Property Zoning: MR	
Applicant Information  Applicant Name: Scott Edmonston-Architect-SEA Studient Studie	o, LLC	
Applicant Address: 35761 Atlantic Avenue		·
City Millville State DE Zip: 19 Applicant Phone #: (302) 364-3082 Applicant e-m	967 ail: scott@seagreenstudio.co	om
Owner Information		
Owner Name:     John and Colleen Girouard       Owner Address:     111 Second Street       City Bethany Beach     State DE     Zip: 19       Owner Phone #:     (240) 482-4000     Owner e-mail:	<del></del>	
Agent/Attorney Information		
Agent/Attorney Name: James A. Fuqua, JrFUQUA, W Agent/Attorney Address: 20245 Bay Vista Road, Unit 203 City Rehoboth Beach State DF Zip: 10		SCHAB, P.A.
7 10000000 20000	971 ey e-mail: jimf@fwsslaw.co	om -

Signature of Quiner Agent/Attorney

Date: 8/11/20 (Original)

10/14/20 (Amended)



James A. Fuqua,



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

You shall demonstrate to the Board of Adjustment that the property meets <u>all</u> 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 lot is undersized consisting of only 7,062 S.F. The shape of the lot is unique because the north side of the lot is deeper than the south side of the lot. The Property has unique conditions, as the rear yard is susceptible to flooding. These conditions have created a small and unusually shaped buildable area and have created an exceptional practical difficulty for the Owners who seek to construct a dwelling on the 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.

Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size, shape, and condition and the buildable area thereof is limited due to these conditions. The Owners seek to construct a dwelling on the lot but are unable to do so without violating the Sussex County Zoning Code.

### 3. Not created by the applicant:

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

The lot was created in the lat 1950s or early 1960s and the Owners are the contract purchasers of the lot. The preexisting conditions have resulted in a limited buildable area on the Property, which as created the exceptional practical difficulty. The small building envelope was further limited by the flooding problems in the rear of the Property. The unique characteristics of the Property are clear when reviewing the survey.

### 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.

A variance will not alter the character of the neighborhood. A variance will allow a dwelling to be constructed that positively impacts the neighborhood. A variance will allow the nonconformity of the existing dwelling on the property to be reduced. A variance will allow for adequate off-street parking that will maintain adequate space for emergency vehicles to navigate the road.

### 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.

A variance would be the minimum variance necessary to construct a reasonably sized dwelling on the property that would not negatively impact the character of the neighborhood. Any variance less than requested would require that the proposed dwelling be reconfigured in order to fit the Owner's space requirements, which would likely require that the dwelling become taller, more solid, and out of character with the rest of the neighborhood.

Sussex County, DE - BOA Application

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 <u>all</u> 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.
N/A
2. Any other requirements which apply to a specific type of special use exception as required the Sussex County Code. (Ex. Time limitations – 5 year maximum)
N/A
Basis for Appeal: (Please provide a written statement regarding reason for appeal)
SEE EXHIBIT "B"

# **Check List for Applications**

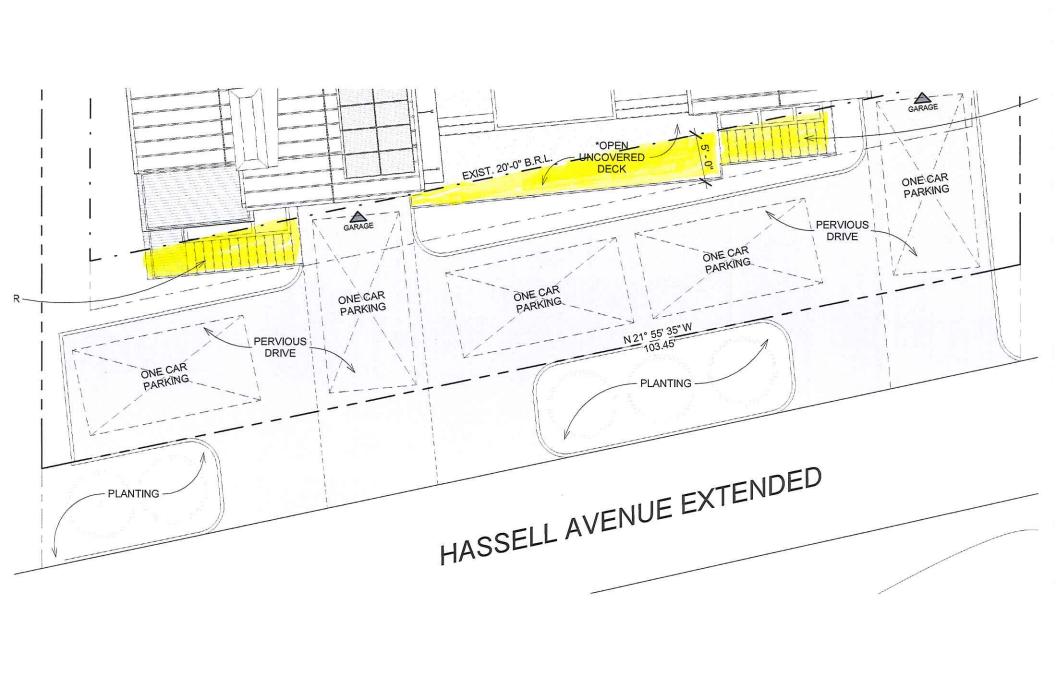
The following shall be submitted with the application

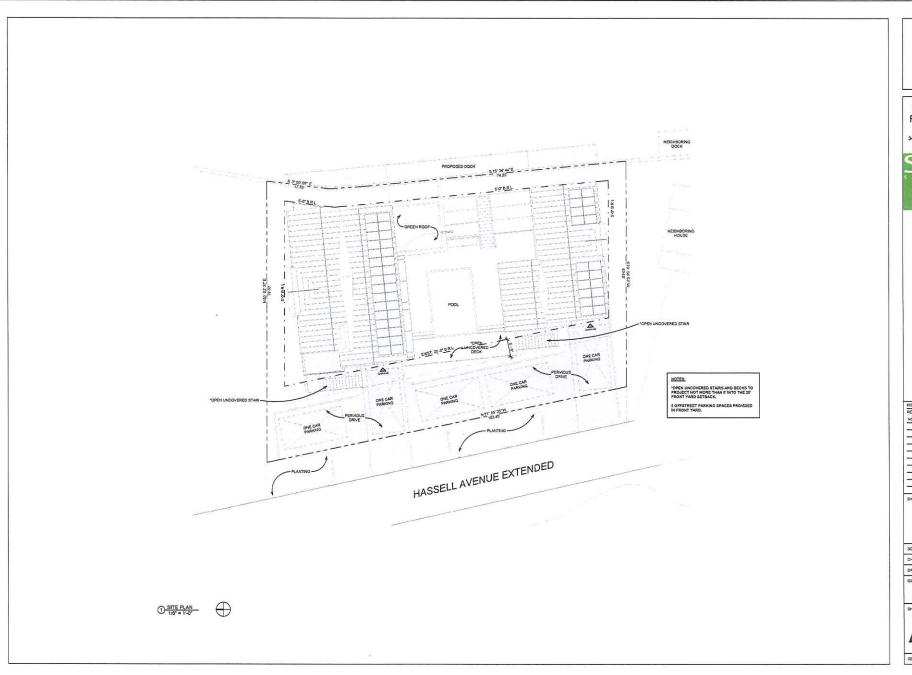
V.	• Completed Application		
•	Provide a survey of the property (Variance)  Survey shall show the location of building(s), building setbacks, stairs, deck, etc.  Survey shall show distances from property lines to buildings, stairs, deck, etc.  Survey shall be signed and sealed by a Licensed Surveyor.		
•	Provide a Site Plan or survey of the property (Special Use Exception)		
•	• Provide Fee \$400.00 (waived)		
•	Provide written response to criteria for Variance or Special Use Exception (may be on a separate document if not enough room on the form)		
•	Copy of Receipt (staff)		
□•	Optional - Additional information for the Board to consider (ex. photos, letters from neighbors, etc.)		
✓.	• Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearing for the application.		
is filed wit call the Pl	advised that the decision of the Board of Adjustment is only final when the written decision h the Board's secretary. To determine whether the written decision has been filed, you may anning & Zoning Department at 302-855-7878. The written decision is generally completed irty (30) to sixty (60) days following the Board's vote on the application or appeal. Please include the case number when calling about the decision.		
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is filed wit call the Plo within the *Please & written do The unders appellant /	th the Board's secretary. To determine whether the written decision has been filed, you may canning & Zoning Department at 302-855-7878. The written decision is generally completed irty (30) to sixty (60) days following the Board's vote on the application or appeal. Please include the case number when calling about the decision.  The advised that any action taken in reliance of the Board's decision prior to the filing of the ecision and the expiration of any applicable appeal period is taken at the Property Owner's		
*Please & written do	th the Board's secretary. To determine whether the written decision has been filed, you may canning & Zoning Department at 302-855-7878. The written decision is generally completed firty (30) to sixty (60) days following the Board's vote on the application or appeal. Please include the case number when calling about the decision.  The advised that any action taken in reliance of the Board's decision prior to the filing of the ecision and the expiration of any applicable appeal period is taken at the Property Owner's Risk.  Taking a complete that that he or she has read the application completely and that if the applicant is unable to convince the Board that the standards for granting relief have been		
*Please & written do  The unders appellant / met, the appellant of the signature of the submit Staff acception.	th the Board's secretary. To determine whether the written decision has been filed, you may anning & Zoning Department at 302-855-7878. The written decision is generally completed firty (30) to sixty (60) days following the Board's vote on the application or appeal. Please include the case number when calling about the decision.  The advised that any action taken in reliance of the Board's decision prior to the filing of the ecision and the expiration of any applicable appeal period is taken at the Property Owner's Risk.  This is a signed acknowledges that that he or she has read the application completely and that if the applicant is unable to convince the Board that the standards for granting relief have been opeal / application will be denied.  The Owner/Agent/Attorney  Date:  Date:  Date:		
*Please & written do  The unders appellant / met, the appellant of the signature of the submit Staff acception.	th the Board's secretary. To determine whether the written decision has been filed, you may canning & Zoning Department at 302-855-7878. The written decision is generally completed firty (30) to sixty (60) days following the Board's vote on the application or appeal. Please include the case number when calling about the decision.  The advised that any action taken in reliance of the Board's decision prior to the filing of the ecision and the expiration of any applicable appeal period is taken at the Property Owner's Risk.  The application are advised that the or she has read the application completely and that if the applicant is unable to convince the Board that the standards for granting relief have been opeal / application will be denied.  The owner/Agent/Attorney  Date: 10 /14/20  Fee: \$400.00 Check #:		

### **EXHIBIT "A"**

# **VARIANCE**

- A. The property was granted a ten (10) foot front yard setback variance in Board Case No. 12291. The Applicant is requesting an additional fifteen (15) foot front yard variance for the limited purpose of two open uncovered stairways and an open uncovered deck as shown on the attached site plan.
- B. The owner confirms that the existing structure with a non-conforming front yard setback of 8.5 feet to 11.9 feet will be demolished and removed from the lot and confirms and agrees that the demolition shall be a condition of approval for the variance requested herein.
- C. The owner confirms that as a condition of approval for the variance requested herein, the appeal of the Director's determination, as set forth in Exhibit "B" of this Application, shall be deemed moot and withdrawn by the owner.





GIROUARD RESIDENCE

LOT 79 & HALF LOT 80 34978 HASSELL AVE EXT NEW CONSTRUCTION

SEA

ISSUE DATE 10.14.20
REVISIONS
NO [DATE] REVISION

SHEET TITLE:

SITE PLAN

SCALE: 1/8" = 1"-0"
CHECKED BY: SE
DRAWN BY: EP

e .

DOCUMENTS

A1.0

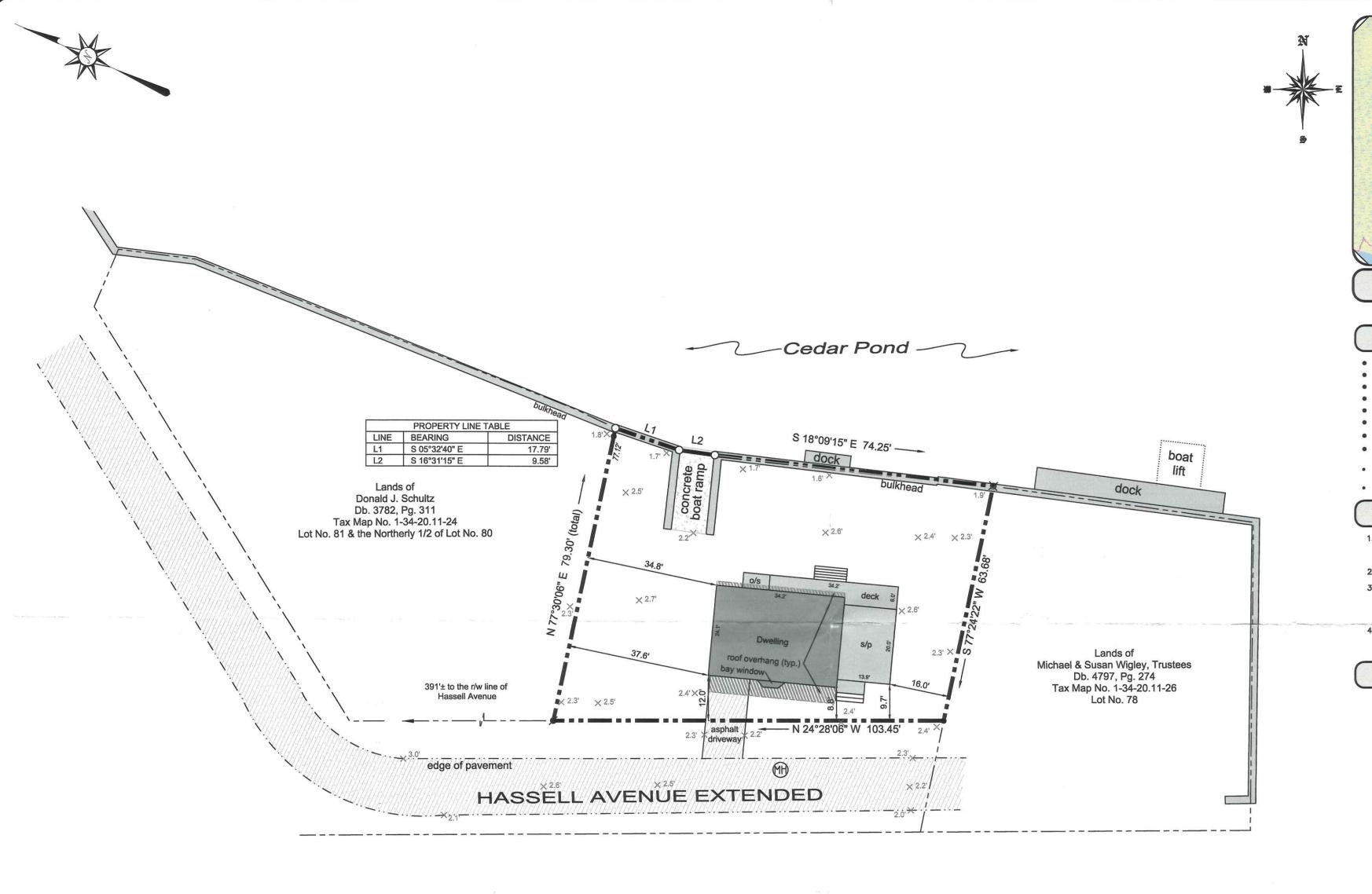
### **EXHIBIT "B"**

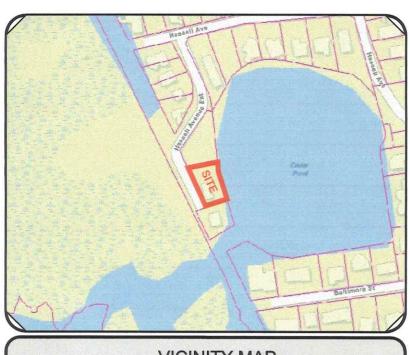
# **APPEAL**

The owners had been granted a ten (10) foot front yard setback variance for a property located at 34978 Hassell Avenue, Bayview Park (Tax Map Parcel 1-34-20.11-25.00) by virtue of Sussex Board of Adjustment Case No. 12291. In its well-reasoned and detailed decision, the Board determined that the application for a front yard setback variance met the legal standards for a variance but modified the requested variance from 18 feet to 10 feet. The basis of the Boards decision is set forth in paragraphs 53(a) through (f) if it's decision, finding compliance with the standards for a variance set forth in Section 115-211(A) and (B) of the Sussex County Zoning Code. The Board's decision established the owner's right to a 10-foot yard setback variance.

In designing the proposed dwelling to be constructed, the owner utilized the provisions of Section 115-203 of the Sussex County Zoning Code which permits the alteration of a non-conforming building provided the alteration does not increase the degree of non-conformity in any respect. The home design utilized this code section to provide a deck with a front set-back less than 20 feet but in compliance with Section 115-203. The rights granted by that section existed prior to the granting of the 10-foot variance and remained applicable after the approval of the variance. These rights are independent of the variance and are permitted by the zoning code.

The Director's determination that by utilizing the rights granted by Section 115-203, the owner has somehow forfeited the approved variance and must seek a new variance is not supported by the facts and is contrary to the clear language and intent of Section 115-203. Such an interpretation denies the owner the rights granted to other owners similarly situated and would deny the owner the equal protection of the law.





# VICINITY MAP

NOT TO SCALE

# SITE DATA

- TAX MAP NO. 1-34-20.11-25
- STATE: DELAWARE
- COUNTY: SUSSEX
- HUNDRED: BALTIMORE
- MUNICIPALITY:
   APEA: 7.062 S
- AREA: 7,062 SQ. FT.
- SCALE:1"=20'
- CLASS "A" SURVEY
- VERTICAL DATUM- NAVD'88 (1988 NORTH AMERICAN VERTICAL DATUM)
- HORIZONTAL DATUM— NAD'83 (1983 NORTH AMERICAN DATUM)

# **SURVEYOR NOTES**

- This plat and survey does not verify the existence or nonexistence of right—of—ways and/or easements pertaining to this property. Including but not limited to Tax Ditch Easements.
- 2. No title search provided or stipulated.
- 3. Deed Book Reference:

Db. 3782, Pg. 311 (Parcel 24)
Db. 5107, Pg. 180 (Subject Parcel)
Db. 4797, Pg. 274 (Parcel 26)

4. Plat Book Reference:
Pb. 008, Pg. 025
Pb. 118, Pg. 264

# STANDARD LEGEND

These standard symbols will be found in the drawing

- 1/2" PIPE (FD)
- O POINT
- ₩ PK NAIL (FD)
- MH) MANHOLE
- ×2.2' SPOT ELEVATION (NAVD '88)

FLOOD DATA This property is in Zone \_\_\_\_\_\_\*AE\*\*, B.F.E. 6.0' of the Flood Insurance Rate Map, Community Panel No.100029-10005C0518-L which has an effective date of MARCH 16, 2015 and IS in a Special Flood Hazard Area.

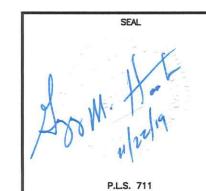
Lands of JOHN E. GIROUARD and COLLEEN M. GIROUARD. Being known as LOT NO. 79 AND THE SOUTHERLY 1/2 OF LOT NO. 80, SECOND ADDITION TO BAY VIEW PARK. Ref: Plat Book 8, Page 25

# SURVEYOR CERTIFICATION

I, GREGORY M. HOOK, 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.

GREGORY M. HOOK, PES 711 Date

DATE OF C	RIGINAL: NOVEMBER	22 , 2019	
REVISION:		DATE:	, 2019
<b>REVISION:</b>		DATE:	, 2019
<b>REVISION:</b>		DATE:	2019
<b>REVISION:</b>		DATE:	, 2019
<b>REVISION:</b>		DATE:	, 2019
			, 2019
REVISION:		DATE:	2019
REVISION:	in and resident to the second	DATE:	, 2019
Drawn by:	MICHAEL LOVELAND	Checked by: GREGO	RY M. HOOK





32486 POWELL FARM ROAD, FRANKFORD, DE 19945 www.delawaresurveyor.com PHONE: (302) 539-7873 FAX: (302) 539-4336



PIN:	134-20.11-25.00
Owner Name	GIROUARD JOHN E
Book	F107
	5107
Mailing Address	1414 34TH ST NW
City	WASHINGTON
State	DC
Description	BAY VIEW PARK
Description 2	LOT 79 P/O 80
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

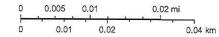
Tax Parcels

911 Address

— Streets

County Boundaries

1:564



# Appendix 6

# **BOARD OF ADJUSTMENT CASE NO. 12487**

# JOHN AND COLLEEN GIROUARD

# **EXHIBITS**

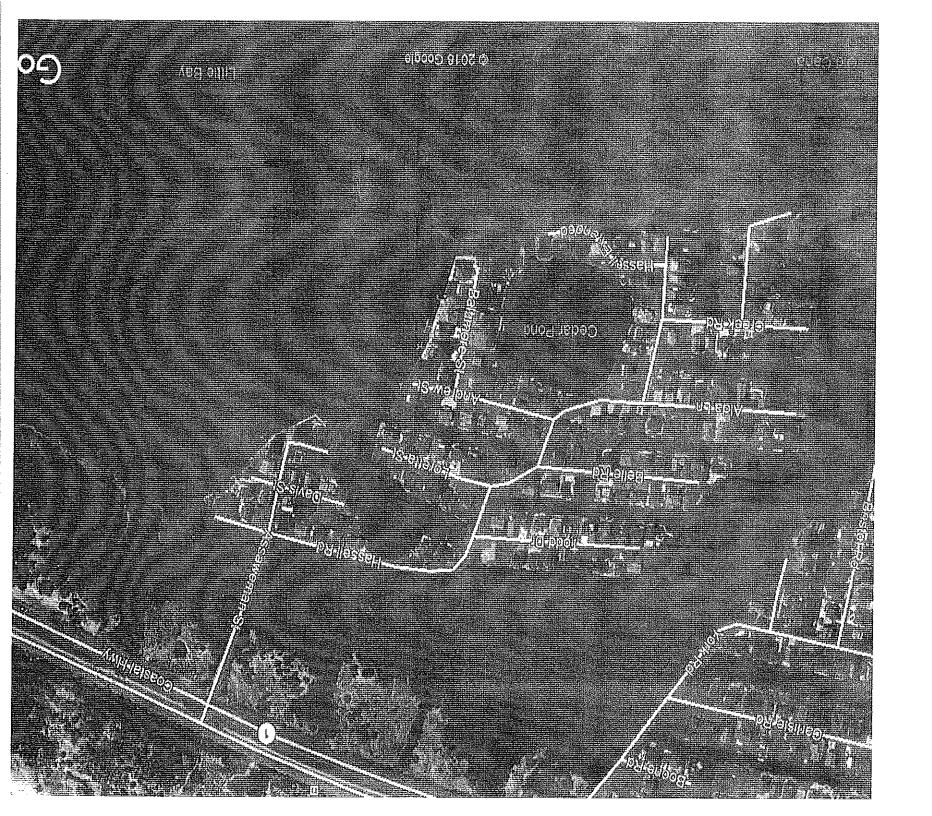
- A. Google Maps Photos
- B. Boundary survey showing existing front yard setback
- C. Boundary survey of Shultz lot recorded in Office of Recorder of Deeds on January 11, 2008 in Plat Book 117 Page 321
- D. Site plan with requested variance highlighted
- E. Board decision in Case No. 12291

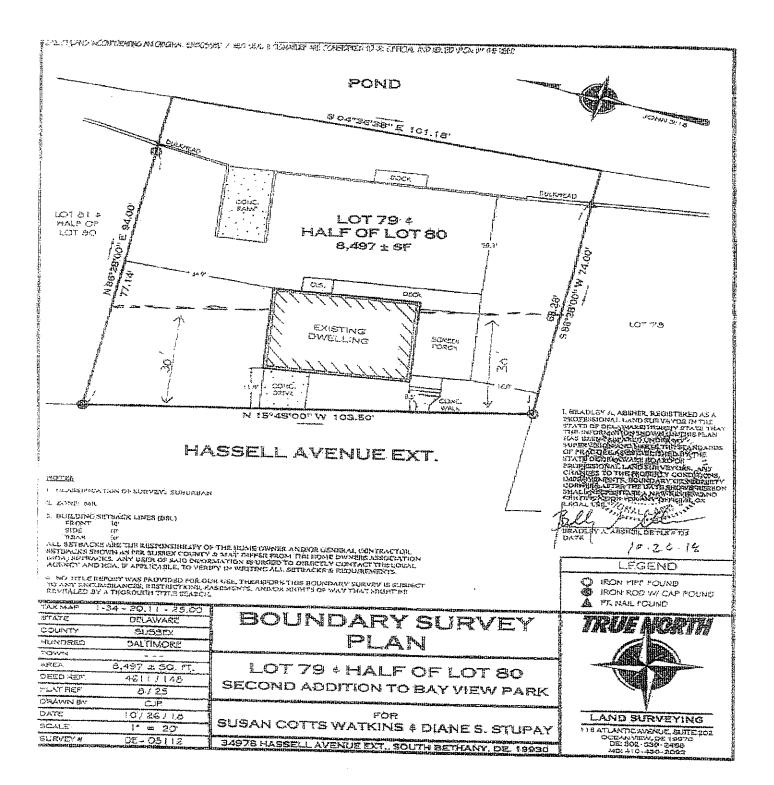
RECEIVED

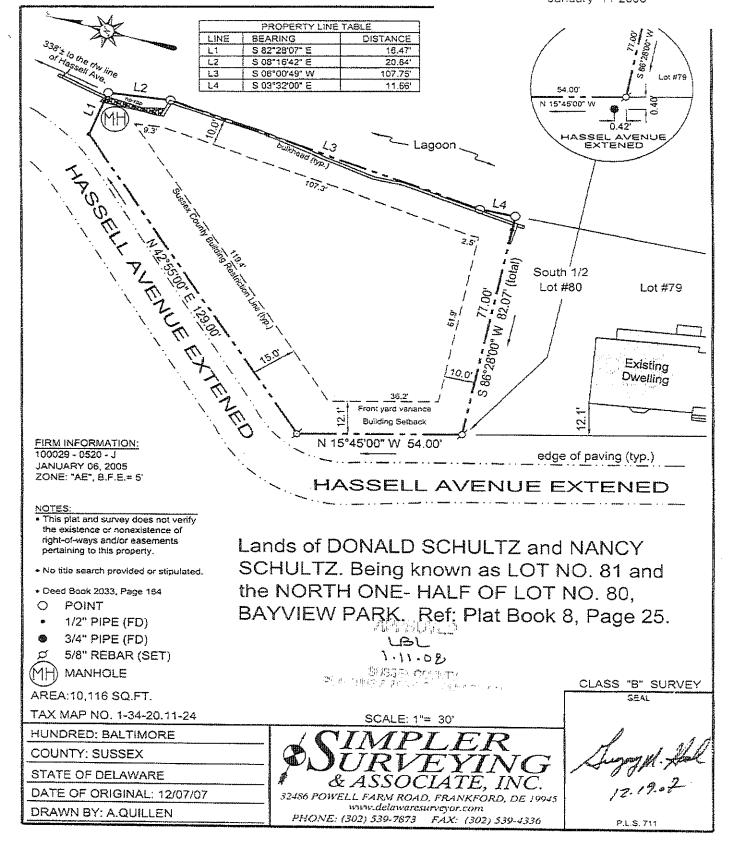
OCT 2 3 2020

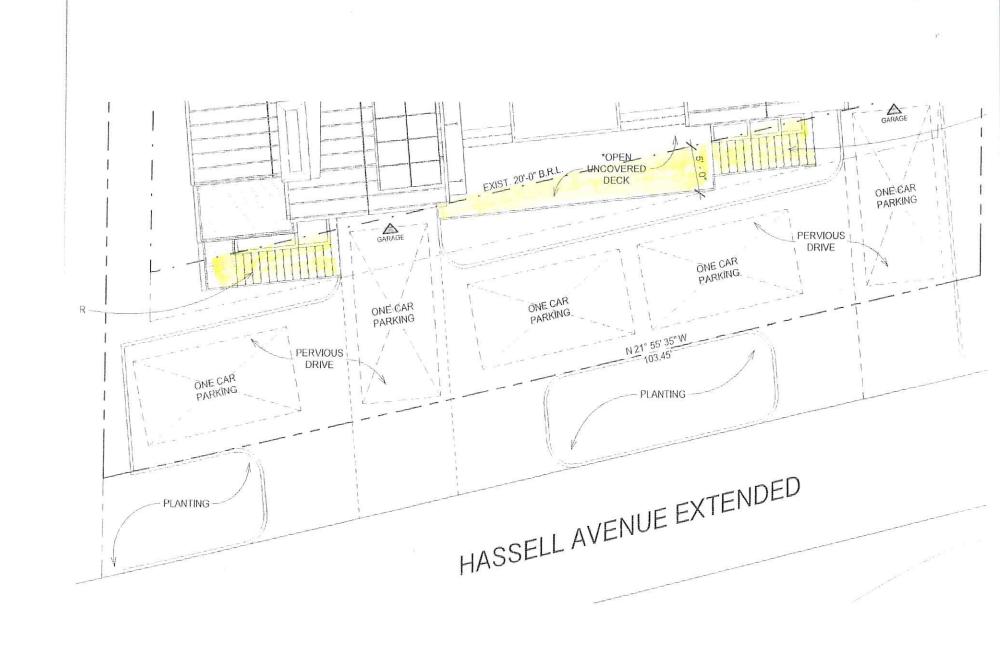
SUSSEX COUNTY PLANNING & ZONING











# BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

# IN RE: JOHN GIROUARD & COLLEEN GIROUARD

(Case No. 12291)

A hearing was held after due notice on April 15, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

## Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for proposed structures.

# Findings of Fact

The Board found that the Applicants are requesting a variance of 18 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the east side of Hassell Avenue Ext., approximately 346 feet south of Hassell Avenue in the Bay View Park Subdivision (911 Address: 34978 Hassell Avenue, Ext., South Bethany); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-25.00.

- The Board was given copies of the Application, a proposed plot plan, a drawing dated February 1, 2019, a survey of the Property dated October 26, 2018, a site plan showing the proposed additions dated February 13, 2019, an aerial photograph of the Property, and a portion of the tax map of the area.
- The Board found that the Office of Planning & Zoning received no correspondence in support of the Application or in opposition to the Application.
- The Board found that John Girouard and Collen Girouard were sworn in to give testimony. James Fuqua, Esquire, presented the application on behalf of the Applicants and he submitted exhibits to the Board to review.
- 4. The Board found that Mr. Fuqua stated that the lot is made up of Lot 79 and half of lot 80 in the second addition to Bayview Park, which is an older subdivision. The Applicants have a contract to purchase the Property and they intend to remove the existing home and replace it with a new home.
- 5. The Board found that Mr. Fuqua stated that the existing home is non-conforming and is located 8.5 feet from Hassell Avenue Ext. at its closest point. The proposed home would be set approximately 3.5 feet farther back than the existing home and will meet all other setback requirements.
- 6. The Board found that Mr. Fuqua stated that Bayview Park is an older subdivision where homes are being replaced with larger, modern homes.
- 7. The Board found that Mr. Fuqua stated that the uniqueness of this lot is the location. The Property is the next-to-the-last lot on Hassell Avenue Extended. The lot borders Cedar Pond on the east and wetlands and the bay are located to the west.
- 8. The Board found that Mr. Fuqua stated that the survey shows the Property is 94 feet deep on the north side and 74 feet deep on the south side. A bulkhead is located in the rear of the lot and a sizeable portion of the lot is unbuildable due to flooding. Furthermore, a sizeable portion of the rear yard is actually in Cedar Pond.
- 9. The Board found that Mr. Fuqua stated that the actual building area is only 77 feet deep on the north side and 63 feet deep on the south side.
- The Board found that Mr. Fuqua stated that one-third of the lot is zoned MR which requires lots to be 10,000 square feet but this lot is a non-conforming lot with only

- 8,497 square feet and the portion of the lot above water consists of only about 7,000 square feet.
- 11. The Board found that Mr. Fuqua stated that the 30 feet front yard setback was designed for lots of 10,000 square feet and applying it to a lot of only 7,000 square feet would create a hardship for reasonable use.
- 12. The Board found that Mr. Fuqua stated that the variance would not affect the essential character of the neighborhood as the dwelling would be similar to other homes in the neighborhood.
- 13. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
- 14. The Board found that Mr. Fuqua stated that the lot was created as part of the original subdivision prior to the adoption of the Sussex County Zoning Code.
- 15. The Board found that Mr. Fuqua stated that the new setback will be greater than that of the original home and will reduce a non-conformity.
- 16. The Board found that Mr. Fuqua stated that the Board previously granted a variance in Case No. 10065 on February 25, 2008, for Lot 78, which is the lot adjacent to the south, and that the Applicants' lot is even more unique than Lot 78.
- 17. The Board found that Mr. Fuqua stated that the proposed front yard setback will be similar to other lots in the neighborhood.
- 18. The Board found that Mr. Fuqua stated that the variance requested is a minimum variance request to enable reasonable use of the Property.
- 19. The Board found that Mr. Fuqua stated that the Property is required to have two offstreet parking spots and the Applicants will guarantee four off-street parking spots to avoid blocking entrance to the neighboring home. The Applicants will keep parked cars off Hassell Avenue Extended.
- 20. The Board found that Mr. Fuqua stated that the dwelling will be constructed on pilings.
- 21. The Board found that Mr. Girouard affirmed the statements by Mr. Fuqua as true and correct.
- 22. The Board found that Mr. Fuqua stated that the land may have eroded since 1960.
- 23. The Board found that Mr. Fuqua stated that no variances are needed for the steps or HVAC system.
- 24. The Board found that Mr. Girourd testified that the Applicants wish to build a home with 4-5 bedrooms and between 3,500 4,000 square feet. The house is still being designed and the Applicants are trying to have first-floor living.
- 25. The Board found that Mr. Girourd testified that, if the front yard setback requirement was met, the house would be built where the rear of the house is located and the house would be taller and out of character for the neighborhood.
- 26. The Board found that Mr. Girourd testified that the house will have a two-car garage with an additional two parking spots for guests.
- 27. The Board found that Mr. Girourd testified that there is flooding in the rear.
- 28. The Board found that Mr. Girourd testified that there is about 10 feet from edge of pavement of Hassell Avenue Extended to the property line.
- 29. The Board found that Michael Wigley, Susan Wigley, and John Hendrickson were sworn in to give testimony in opposition to the Application. Mr. Wigley submitted drawings for the Board to review.
- 30. The Board found that Mr. Wigley testified that he and his wife own Lot 78 / Parcel 26 which is the property to the south of the Applicants' property. They purchased their lot in 2007.
- 31. The Board found that Mr. Wigley testified that he and his wife recognize that a variance is needed for the Applicants' property but they believe the size of the variance could be reduced.

- 32. The Board found that Mr. Wigley testified that Hassell Avenue Extended dead-ends at their lot and Hassell Avenue Extended is 30 feet wide even though most modern roads are 50 feet wide with a cul-de-sac.
- 33. The Board found that Mr. Wigley testified that he and his wife obtained a variance for the original home on their property (as noted by Mr. Fuqua) but, when they rebuilt their home 2 years ago, they built within required County setbacks. Mr. and Mrs. Wigley are architects.
- 34. The Board found that Mr. Wigley testified that the Applicants' lot is shallower than their lot but the Applicants can design a nice home on their lot and that the Applicants could build a home consisting of 4,200 square feet with 5 feet side yard setbacks and a 20 foot front yard setback.
- 35. The Board found that Mr. Wigley testified that he does not oppose the pool but the pool should not be the reason for the hardship since most houses in the neighborhood do not have pools.
- 36. The Board found that Mr. Wigley testified that the building envelope for his lot is 3,171 square feet and the Applicants' building envelope would be 3,714 square feet with a 20 feet front yard setback.
- 37. The Board found that Mr. Wigley testified that the Applicants could request a variance of 10 feet instead of 18 feet and still be able to build the house they want.
- 38. The Board found that Mr. Wigley testified that he wants to make sure that emergency vehicles would have access to their house. He has noticed that cars have been parked in Hassell Avenue Extended in front of the Applicants' home. Mr. Wigley noted that this is a problem because Hassell Avenue Extended is only 14 feet wide paved and its narrowness makes it difficult to turn around. The narrowness of Hassell Avenue Extended is a problem because, as stated by Mr. Wigley, there are wetlands on the other side of the road so Hassell Avenue Extended cannot be expanded in that direction. He believes that a front yard setback of 20 feet would give cars room to turn around more safely.
- 39. The Board found that Mr. Wigley testified that he wants the Applicants to have adequate off-street parking.
- 40. The Board found that Mr. Wigley testified that, in his proposal as shown on the drawing he submitted to the Board, he made some adjustments to the Applicants' design. He prefers a 10 feet side yard setback but a 5 feet side yard setback is the better option because it provides a greater front yard setback.
- 41. The Board found that Mr. Wigley testified that the objection is based on the fact that this request is not the minimum variance request to afford relief.
- 42. The Board found that Mr. Hendrickson testified that he is the vice-president of the Board of Directors for Bay View Park.
- 43. The Board found that Mr. Hendrickson testified that most of the lots in Bayview Park were created in the late 1950s and 1960s and the lots in the neighborhood have odd angles. Most lots also have less than 10,000 square feet.
- 44. The Board found that Mr. Hendrickson testified that trash trucks have to back down the street and a 14 feet wide road is not sufficient for a turn around.
- 45. The Board found that Mr. Hendrickson testified that his main concern is life-safety as there are older residents in the neighborhood and ambulances and emergency vehicles need to be able to move around.
- 46. The Board found that Mr. Hendrickson testified that he agrees that it would difficult to fit a home in compliance with the setback requirements.
- 47. The Board found that Mr. Fuqua stated that there are narrow streets in the neighborhood.
- 48. The Board found that Mr. Fuqua stated that the opposition is imposing a design on the Applicants even though they obtained their own variance and that there is a difference between the two homes.
- 49. The Board found that Mr. Fuqua stated that the view of the bay is to the south.

- 50. The Board found that Mr. Girouard testified that he would lose views of the bay if the 20 feet front yard setback was imposed but he agrees that the minimum variance to afford relief is not about the view.
- 51. The Board found that two (2) parties appeared in support of the Application and three (3) parties appeared in opposition to the Application.
- 52. The Board tabled its discussion and vote on the Application until May 6, 2019, at which time it discussed and voted on the Application.
- 53. 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 for a front yard variance met the standards for granting a variance but the request was modified by the Board to reflect a lesser variance than was originally sought by the Applicants. The findings below further support the Board's decision to approve the Application with modification.
  - a. The Property is unique in size, shape, and condition. The lot is an undersized lot consisting of only 8,497 square feet. The usable portion of the lot is reduced because a significant portion of the rear yard is located in the adjacent Cedar Pond. As such, the portion of the lot which is above water is approximately 7,000 square feet. The shape of the lot is also unique because the north side of the lot is deeper than the south side of the lot. The Property also has unique conditions as the rear yard is susceptible to flooding. These conditions have created a small and unusually shaped building envelope where it is more desirable to build the lot closer to the front yard than the rear yard. These unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to construct a dwelling on the lot.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size, shape, and condition and the buildable area thereof is limited due to these conditions. The Applicants seek to construct a dwelling on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that a front yard variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be constructed on the lot. Neighbors acknowledge that the Applicants would not be able to build a dwelling on the lot in strict conformity with the Code and that a front yard variance is necessary. The survey and photographs clearly demonstrate the challenges with building towards the rear of the lot.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The lot was created in the late 1950s or early 1960s and the Applicants are the contract purchasers of the lot. The preexisting conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the flooding problems in the rear of the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics.
  - d. A variance of 10 feet 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 a dwelling that is 20 feet from Hassell

Avenue Extended will have no effect on the character of the neighborhood. The current home on the lot is only 8.5 feet from Hassell Avenue Extended and a dwelling that is 20 feet away will reduce the existing non-conformity. A variance of 10 feet was also not objected to by neighbors. No evidence was presented that a variance of 10 feet would somehow alter the essential character of the neighborhood. The lack of evidence is telling since neighbors did pose concerns about the larger variance requested by the Applicants. The Board notes that it does have concerns about the impact of a greater variance, as requested by the Applicants, on the character of the neighborhood and the effect on the public welfare. The testimony is clear to the Board that Hassell Avenue Extended is a narrow street and large vehicles do not have adequate space to turn around. Neighbors have concerns that emergency vehicles will not have adequate room to navigate since there is no cul-de-sac on the road. Furthermore, a neighbor has testified that cars are sometimes parked in Hassell Avenue Extended and block roadway access. By moving the proposed location of the dwelling farther from Hassell Avenue Extended, additional room may be available for vehicles to safely turn around and would lessen the temptation or, perhaps in some cases, the necessity of persons to park vehicles in the right-of-way. While the Applicants proposed to provide additional off-street parking if the 18 foot variance was granted, it is clear to the Board that the additional space provided by a 10 foot variance would likely benefit the neighborhood and avoid a substantial impairment to appropriate use and development of neighboring and adjacent properties and the reduced variance would not be detrimental to the public welfare.

- e. The variance of 10 feet is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. While it is clear that a variance from the front yard setback is necessary to enable the Applicants to construct a reasonably sized home, the Applicants must demonstrate that the variance they requested is the minimum variance necessary to afford relief. The opposition has proved, in this case, that a lesser variance is appropriate. The Applicants admitted that they are still designing the home and it is clear from their proposal that they did not utilize the side yard setback of 5 feet to maximize their building envelope. The opposition, who are architects, presented clear evidence that a reasonably sized home with the same square footage as the Applicants' proposed home could fit within a building envelope with a 10 foot variance rather than an 18 foot variance. The 10 foot variance is, thus, the minimum variance necessary to afford relief and is the least modification of the regulation at issue. The Board also notes that the Applicant testified that placing the home closer to the front yard would improve his water views but, as correctly noted by the Applicant, the right to a view does not justify the granting of a variance and the Applicants are expected to build their home in compliance with the Code or, at least, minimize encroachments into the setback area.
- f. A variance of 10 feet from the front yard setback requirement was approved.

The Board granted the variance application with modification 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 with modification. The Board Members in favor of the Motion to approve with modification were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application with modification.

BOARD OF ADJUSTMENT OF SUSSEX COUNTY

John Whils

Chairman

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

Date June 18, 2019

F

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

Case # 12488
Hearing Date \_11/2
2020 10790

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  Special Use Exception  Administrative Variance  Appeal	Existing Condition  Proposed Code Reference (office use only)		
Site Address of Variance/Special Use Exception:			
The Vines of Sandhill, at the intersection of Huff Road and V	ines Ave.		
Variance/Special Use Exception/Appeal Requested:	-		
A variance to reduce the front yard set back from 25' to 20 condition to increase the side setbacks from 10' to 12.5' so			
<b>Tax Map #:</b> 135-10.00-(attached)	Property Zoning: AR-1, CL		
Applicant Information  Applicant Name: NVR Inc. c/o Ted Ruberti  Applicant Address: 32445 Royal Blvd. Suite 1			
City Dagsboro State DE Zip: 19939			
Applicant Phone #: (240) 793-1892 Applicant e-mail: TRuberti@nvrinc.com			
Owner Information			
Owner Name: Sandhill Real Estate Investments, LLC.  Owner Address: 16181 Hudson Road  City Milton State DE Zip: 19  Owner Phone #: (302) 569-1901 Owner e-mail:			
Agent/Attorney Information			
Agent/Attorney Name: Davis, Bowen and Friedel, Inc. c/o V Agent/Attorney Address: 1 Park Ave.	W. Zachary Crouch, P.E.		
City Milford State DE Zip: 19	963		
	ey e-mail: wzc@dbfinc.com		
Signature of Owner/Agent/Attorney			
	Date:		





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

You shall demonstrate to the Board of Adjustment that the property meets <u>all</u> 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.

In 2008, the project was designed for a specific product when originally designed. The lots are wide but the depths are minimum. The applicant is taking over the project but their product does not fit on the wide lots so the reduction in the front yard setback will allow them to offer more products/selections. The width of these lots is unique for cluster development and inhibit outdoor living space.

# 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.

Most of the product that the applicant offers is between 65-68' depth. The current build-able depth is 65' max. Reducing the front yard setback allows them to offer different products. The lot dimensions that were originally approved do not allow flexibility for a deeper product. Specifically, these dimensions make it unreasonable to offer outdoor porches in the rear with a 25 foot setback.

### 3. Not created by the applicant:

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

The applicant was not involved in the original layout which was based on a different product. Without this variance, this will limit the product and selections that the applicant can offer.

### 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.

This will not alter any part of the subdivision since this request just deals with build-able area. All parking, lot-lines, roads, utilities, etc. will remain as the original design.

### 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 5' reduction from 25' to 20' within the front yard setback will allow Builder to offer more products and selections to eliminate the similarity of product and help provide more options for the customer and the adjustment is the minimum.

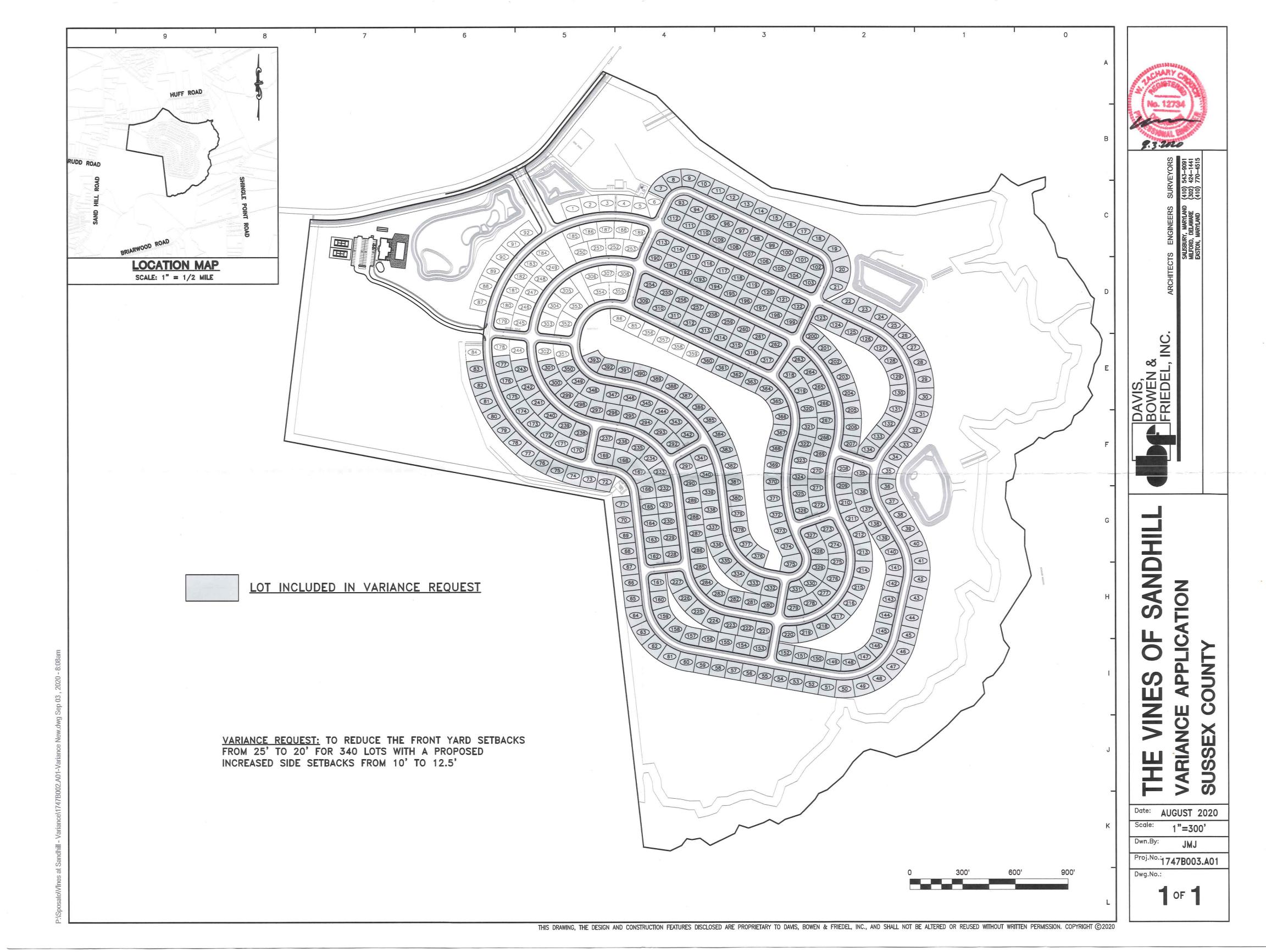
# EXHIBIT 'A'

135-10.00-212.00	135-10.00-259.00	135-10.00-314.00
135-10.00-213.00	135-10.00-260.00	135-10.00-315.00
135-10.00-214.00	135-10.00-261.00	135-10.00-316.00
135-10.00-215.00	135-10.00-262.00	135-10.00-317.00
135-10.00-216.00	135-10.00-263.00	135-10.00-318.00
	135-10.00-263.00	135-10.00-319.00
135-10.00-217.00		
135-10.00-218.00	135-10.00-265.00	135-10.00-320.00
135-10.00-219.00	135-10.00-266.00	135-10.00-321.00
135-10.00-220.00	135-10.00-267.00	135-10.00-322.00
135-10.00-221.00	135-10.00-268.00	135-10.00-323.00
135-10.00-222.00	135-10.00-269.00	135-10.00-324.00
135-10.00-223.00	135-10.00-270.00	135-10.00-325.00
135-10.00-224.00	135-10.00-271.00	135-10.00-326.00
135-10.00-225.00	135-10.00-272.00	135-10.00-327.00
135-10.00-226.00	135-10.00-273.00	135-10.00-328.00
135-10.00-227.00	135-10.00-274.00	135-10.00-329.00
135-10.00-228.00	135-10.00-275.00	135-10.00-330.00
135-10.00-229.00	135-10.00-276.00	135-10.00-331.00
135-10.00-230.00	135-10.00-277.00	135-10.00-332.00
135-10.00-231.00	135-10.00-278.00	135-10.00-333.00
135-10.00-232.00	135-10.00-279.00	135-10.00-334.00
135-10.00-233.00	135-10.00-280.00	135-10.00-335.00
135-10.00-234.00	135-10.00-281.00	135-10.00-336.00
135-10.00-235.00	135-10.00-282.00	135-10.00-337.00
135-10.00-236.00	135-10.00-283.00	135-10.00-338.00
135-10.00-237.00	135-10.00-284.00	135-10.00-339.00
135-10.00-238.00	135-10.00-285.00	135-10.00-340.00
135-10.00-239.00	135-10.00-286.00	135-10.00-341.00
135-10.00-240.00	135-10.00-287.00	135-10.00-342.00
135-10.00-241.00	135-10.00-288.00	135-10.00-343.00
135-10.00-242.00	133 10.00 200.00	135-10.00-344.00
	135 10 00 309 00	135-10.00-345.00
135-10.00-243.00	135-10.00-298.00	
135-10.00-244.00	135-10.00-299.00	135-10.00-346.00
135-10.00-245.00	135-10.00-300.00	135-10.00-347.00
135-10.00-246.00	135-10.00-301.00	135-10.00-348.00
135-10.00-247.00	135-10.00-302.00	135-10.00-349.00
135-10.00-248.00	135-10.00-303.00	135-10.00-350.00
135-10.00-249.00	135-10.00-304.00	135-10.00-351.00
135-10.00-250.00	135-10.00-305.00	135-10.00-352.00
135-10.00-251.00	135-10.00-306.00	135-10.00-353.00
135-10.00-252.00	135-10.00-307.00	135-10.00-354.00
135-10.00-253.00	135-10.00-308.00	135-10.00-355.00
135-10.00-254.00	135-10.00-309.00	135-10.00-356.00
135-10.00-255.00	135-10.00-310.00	135-10.00-357.00
135-10.00-256.00	135-10.00-310.00	135-10.00-357.00
		135-10.00-359.00
135-10.00-257.00	135-10.00-312.00	
135-10.00-258.00	135-10.00-313.00	135-10.00-360.00

l'			
	135-10.00-361.00	135-10.00-419.00	135-10.00-475.00
	135-10.00-362.00	135-10.00-420.00	135-10.00-476.00
	135-10.00-363.00	135-10.00-421.00	135-10.00-477.00
	135-10.00-364.00	135-10.00-422.00	135-10.00-478.00
	135-10.00-365.00	135-10.00-423.00	135-10.00-479.00
	135-10.00-366.00	135-10.00-424.00	135-10.00-480.00
	135-10.00-367.00	135-10.00-425.00	135-10.00-481.00
	135-10.00-368.00	135-10.00-426.00	135-10.00-482.00
	135-10.00-369.00	135-10.00-427.00	135-10.00-483.00
	135-10.00-370.00	135-10.00-428.00	135-10.00-484.00
	135-10.00-371.00	135-10.00-429.00	135-10.00-485.00
	135-10.00-372.00	135-10.00-430.00	135-10.00-486.00
	135-10.00-373.00	135-10.00-431.00	135-10.00-487.00
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	135-10.00-379.00	135-10.00-437.00	135-10.00-493.00
	135-10.00-380.00	135-10.00-438.00	135-10.00-494.00
	135-10.00-381.00	135-10.00-439.00	135-10.00-495.00
	135-10.00-382.00	135-10.00-440.00	135-10.00-496.00
		135-10.00-441.00	135-10.00-497.00
	135-10.00-395.00	135-10.00-442.00	135-10.00-498.00
	135-10.00-396.00	135-10.00-443.00	135-10.00-499.00
	135-10.00-397.00	135-10.00-444.00	135-10.00-500.00
	135-10.00-398.00	135-10.00-445.00	135-10.00-501.00
	135-10.00-399.00	135-10.00-446.00	135-10.00-502.00
	135-10.00-400.00	135-10.00-447.00	135-10.00-503.00
	135-10.00-401.00	135-10.00-448.00	135-10.00-504.00
	135-10.00-402.00		135-10.00-505.00
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	135-10.00-415.00	135-10.00-471.00	135-10.00-524.00
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135-10.00-531.00	135-10.00-586.00
135-10.00-532.00	135-10.00-587.00
135-10.00-533.00	135-10.00-588.00
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135-10.00-571.00	
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135-10.00-573.00	18
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135-10.00-576.00	
135-10.00-577.00	
135-10.00-578.00	
135-10.00-579.00	
135-10.00-580.00	
135-10.00-581.00	

135-10.00-582.00





PIN:	135-10.00-63.00
Owner Name	SANDHILL REAL ESTATE INVESTMENTS LLC
Book	3922
Mailing Address	16181 HUDSON RD
City	MILTON
State	DE
Description	THE VINES OF SANDHILL
Description 2	
Description 3	WETLDS/BUFFER/SWM/
Land Code	

polygonLayer

Override 1

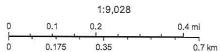
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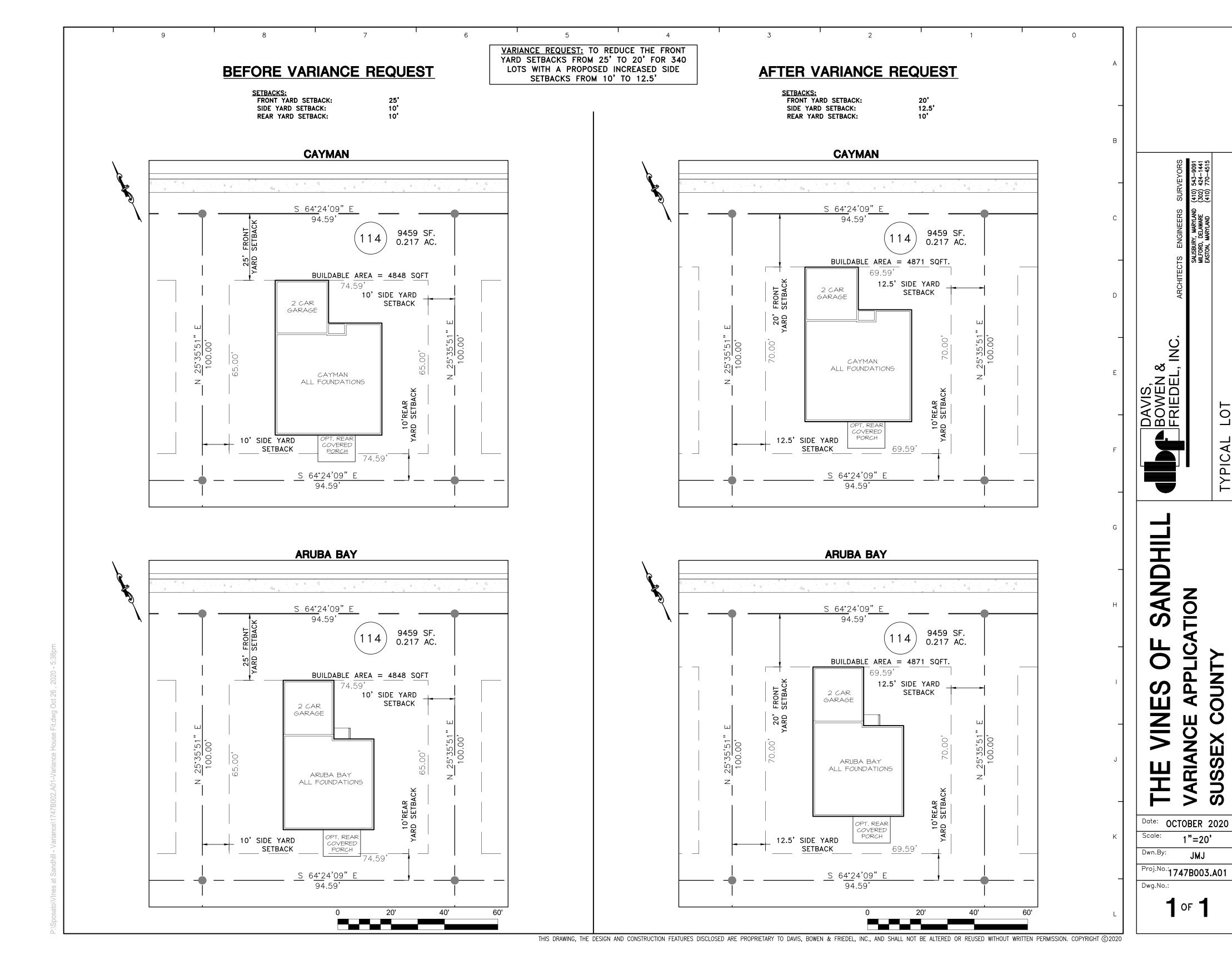
Override 1

Tax Parcels

- Street

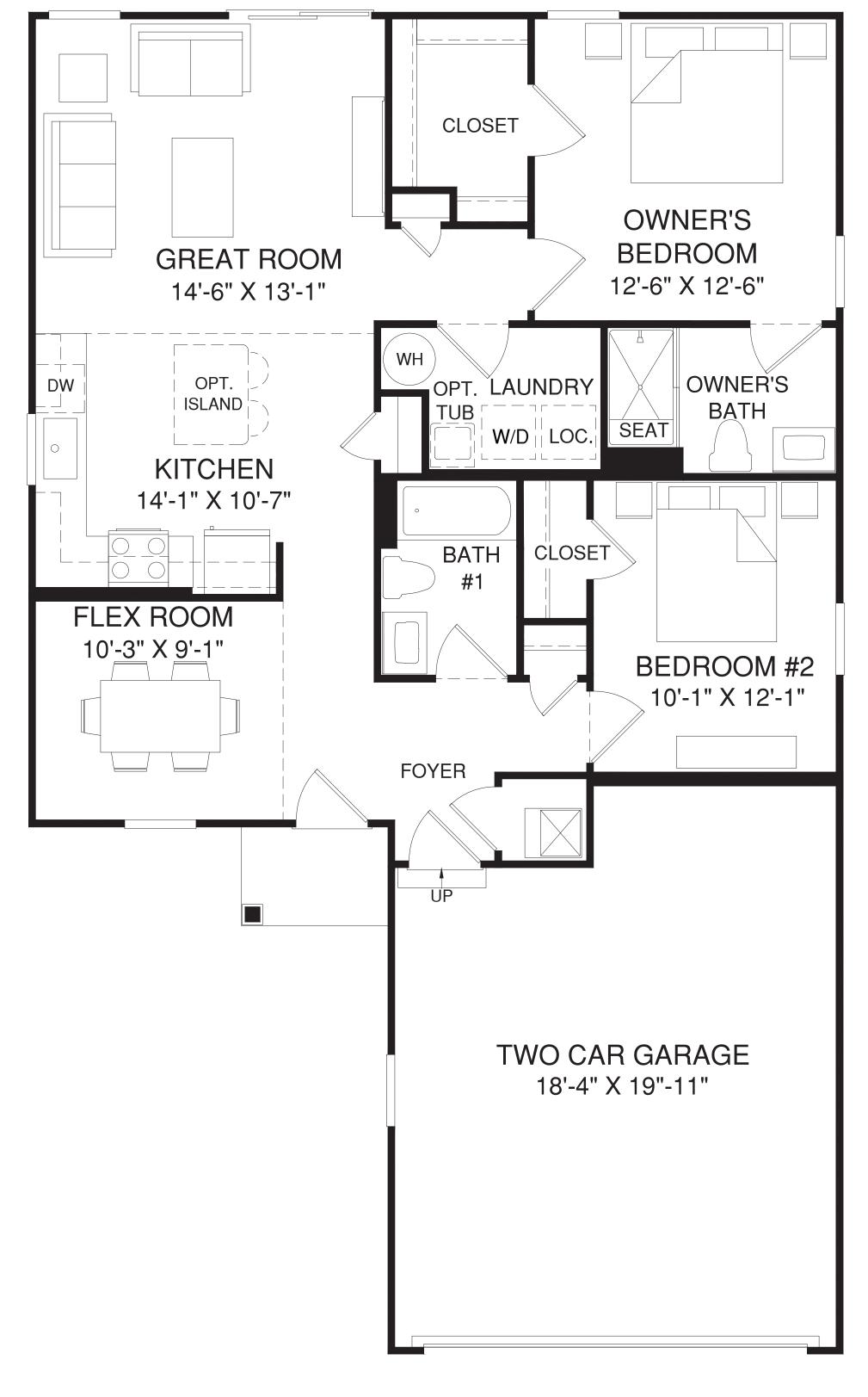
County Boundaries

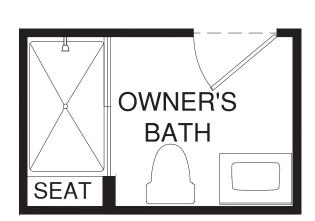












OPT. OWNER'S BATH ALTERNATE LAYOUT

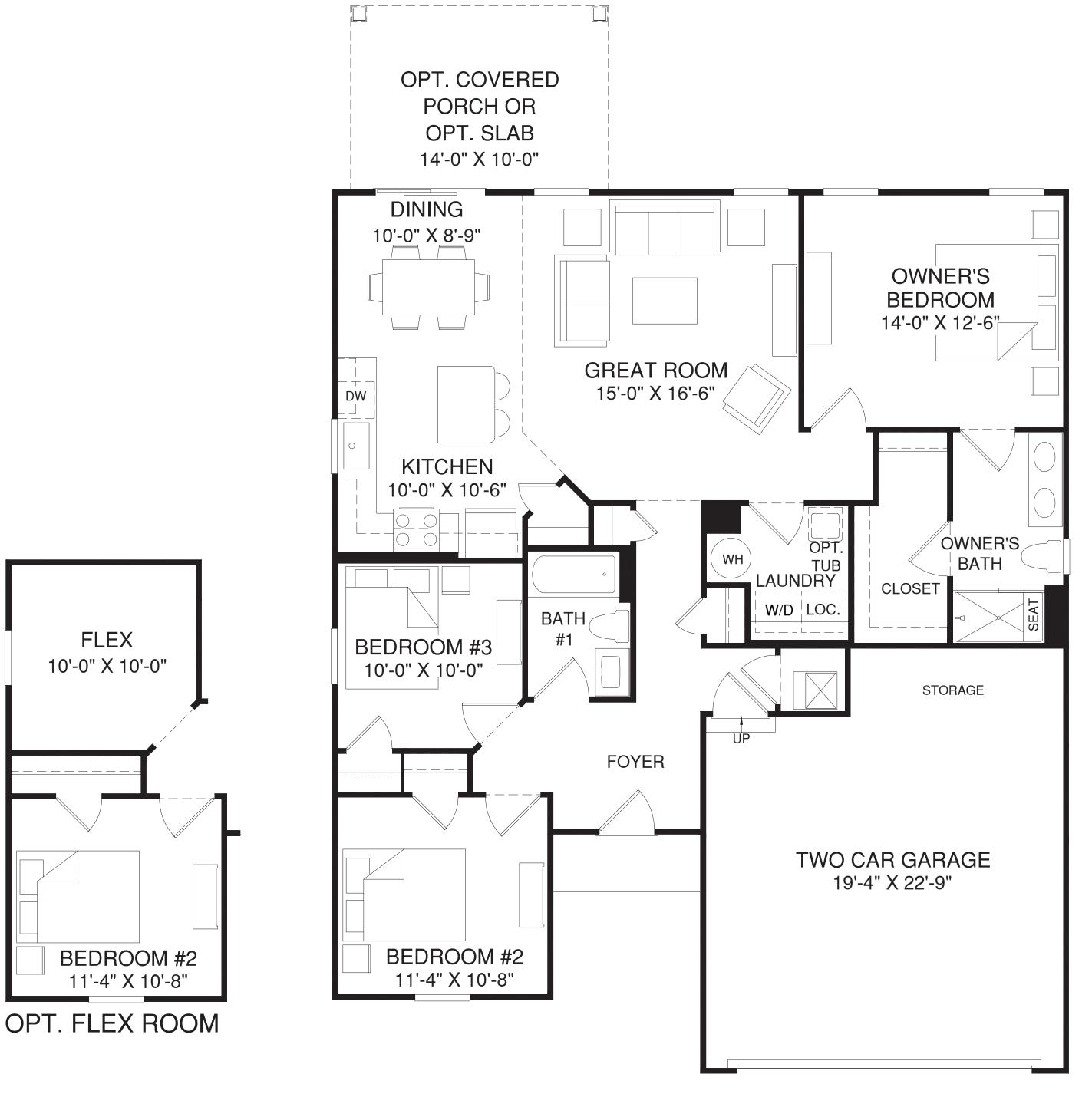
MAIN LEVEL













MAIN LEVEL

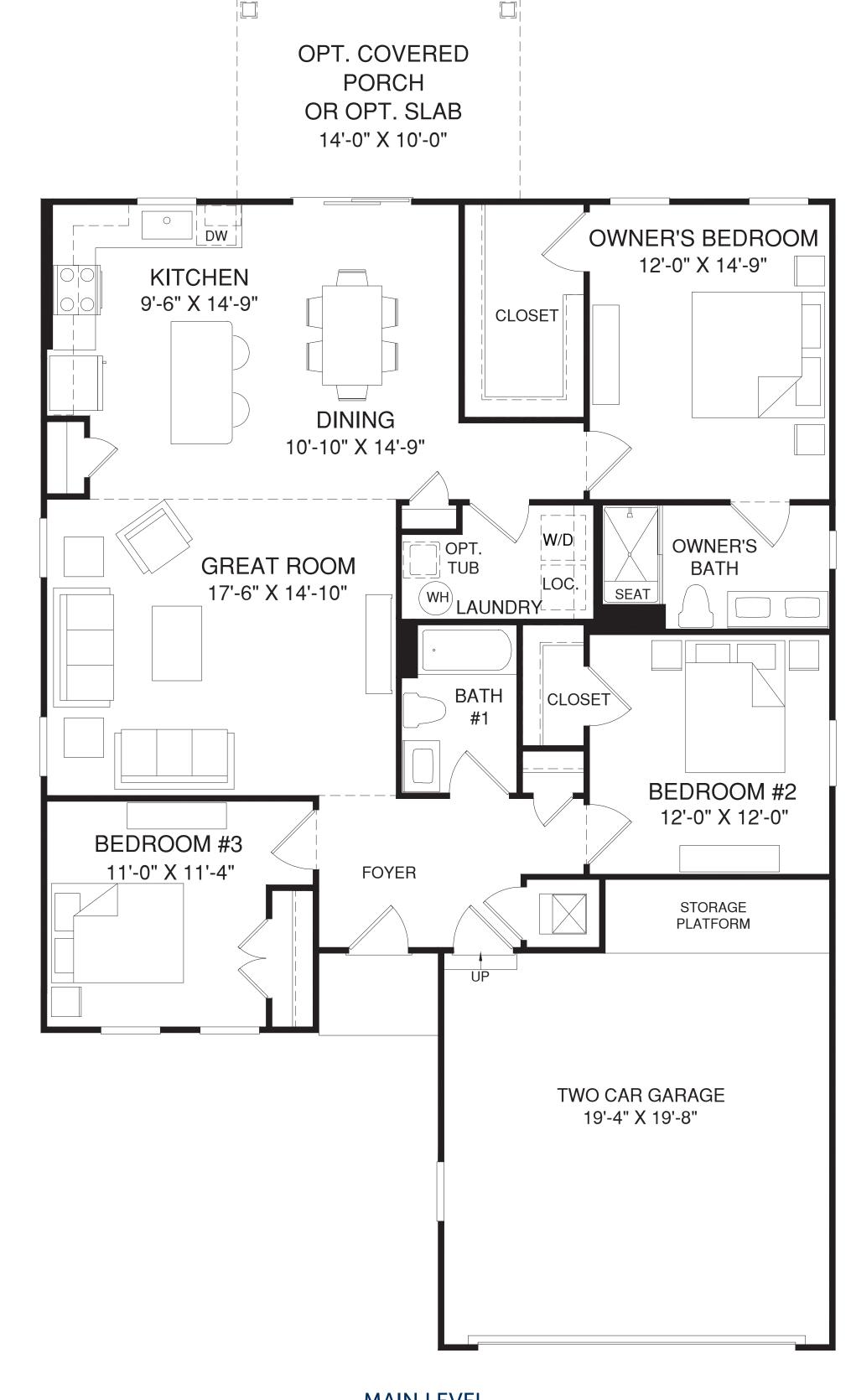


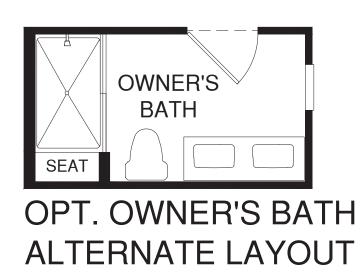














W/ SHOWER

MAIN LEVEL





**FLEX ROOM** 

13'-4" X 11'-4"

OPT. FLEX ROOM

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

Case # 12490 Hearing Date 11/2 202011521

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 Special Use Exception Administrative Variance Special	Existing Condition Proposed Code Reference (office use only)
Site Address of Variance/Special Use Exception:  16/13 Clabbage Perrol Red. Linco Variance/Special Use Exception/Appeal Requested:  5 UE for Daycase Center for	More than 6 children
Tax Map #: <u>230 -14 00 - 76.05</u>	Property Zoning: AR-1
Applicant Information	
Applicant Name: TUNETO MULEN  Applicant Address: A Color State C Zip:  Applicant Phone (20) 3851 Applicant e-m	1 KH. 19960 nail: mullentynetta 24@yahoo.com
Owner Information	
Owner Name: Theta Mullen  Owner Address: Otto B Culobage Pood  City Dincoln State D Zip: C  Owner Phone #: 600 0 10-3751 Owner e-mail	
Agent/Attorney Information	
Agent/Attorney Name:  Agent/Attorney Address:  City State Zip:  Agent/Attorney Phone #: Agent/Attorney	ey e-mail:
Signature of Owner/Agent/Attorney	
Signature of Owner/Agent/Attorney	
	Date:

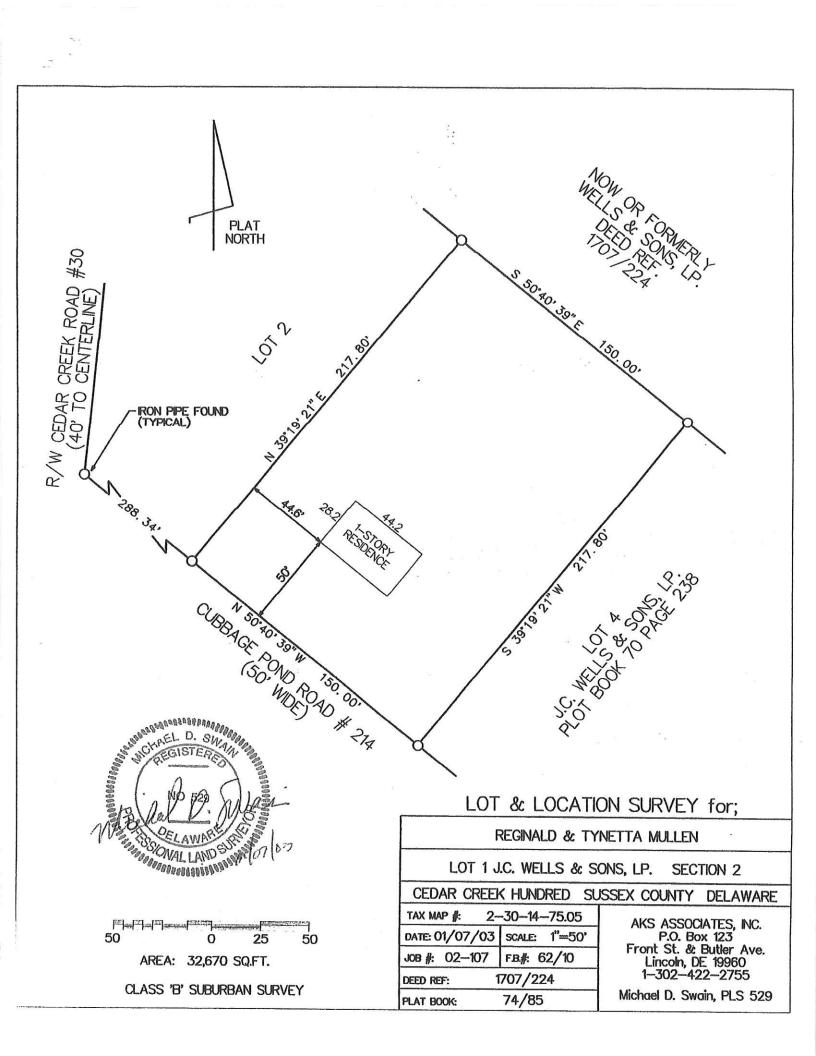




**Criteria for a Special Use Exception:** (Please provide a written statement regarding each criteria)

You shall demonstrate to the Board of Adjustment that the property meets <u>all</u> 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
it does not affect my neighbors or the use of the We have a large driveway and we have plenty of so use between our property and my neighbor's property I have had the daycare since 2013. We have wonder
it does not affect my neighbors or the use ofth
We have a large driveway and we have plenty of sp
use between our property and my neighbors property
2. Any other requirements which apply to a specific type of special use exception as required the Sussex County Code. (Ex. Time limitations – 5 year maximum)
Pagie for Amagai /Diseas provide a written statement regarding reason for annual)
Basis for Appeal: (Please provide a written statement regarding reason for appeal)
and alber and we get alma
We respect each other and actioning
De respect each other and we get along Very well. I plan to keep it that wag.
Thankyou





PIN:	230-14.00-75.05
Owner Name	MULLEN REGINALD E & TYNETTA O
Book	2823
Mailing Address	21613 CUBBAGE POND RD
City	LINCOLN
State	DE
Description	NE/RT 214
Description 2	LOT 1 SEC 2
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

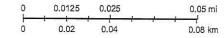
Tax Parcels

911 Address

— Streets

County Boundaries

1:1,128



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

Case # 12489 Hearing Date 11/2/20 202010789

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 ✓ Special Use Exception ☐ Administrative Variance ☐ Appeal ☐	Existing Condition  Proposed  Code Reference (office use only)  115-182  115-183		
Site Address of Variance/Special Use Exception:	•		
20494 Coastal Highway, Rehoboth Beach, DE 19971			
Variance/Special Use Exception/Appeal Requested:			
We are requesting a variance for the minimum front yard A, 31' for proposed building B and a minimum rear yard C with proposed addition.			
<b>Tax Map #:</b> 334-19.08-176.00	Property Zoning: C-1		
Applicant Information			
Applicant Name: Davis, Bowen & Friedel, Inc. c/o W. Zacha	ary Crouch		
Applicant Address: 1 Park Avenue	200		
City Milford State DE Zip: 19963 Applicant Phone #: (302) 424-1441 Applicant e-mail: wzc@dbfinc.com			
Applicant 1 none #. (302) 424-1441 Applicant e-n	wzcadornie.com		
Owner Information			
Owner Name: Rehoboth Inn JK, LLC.			
Owner Address: 20184 Phillips Street			
City Rehoboth Beach State DE Zip: 19	Purchase Date: 8/5/97		
Owner Phone #: (302) 227-3573 Owner e-mail	:		
Agent/Attorney Information			
Agent/Attorney Name: Davis, Bowen & Friedel, Inc., c/o V	V. Zachary Crouch		
Agent/Attorney Address: 1 Park Avenue			
City Milford State DE Zip: 19			
Agent/Attorney Phone #: (302) 424-1441 Agent/Attorney	ey e-mail: wzc@dbfinc.com		
Signature of Owner/Agent/Attorney			
	Date:		





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

You shall demonstrate to the Board of Adjustment that the property meets <u>all</u> 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 majority of buildings in the vicinity of this property encroach into the front yard setback to a similar extent as the subject buildings. This is an existing site which will include the renovation of building A and a new building for building B based on the conditions are not fit to renovate. The addition on building C there is greater setback then existing conditions.

#### 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.

Based on current building code and Fire Marshal requirements, Building B will need to be replaced which will NOT encroach any further into the front yard based on existing conditions. The request for a variance building A & C are based on existing conditions and renovations. There has been a motel building on the property since at least 1992.

#### 3. Not created by the applicant:

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

There has been a motel building on the property since at least 1992. The developer is reducing the number of units to comply with parking which does not exist and the variances that are being requested are based on current conditions.

#### 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 majority of buildings in the vicinity of this property encroach into the front yard setback to a similar extent as the subject buildings.

#### 5. Minimum variance:

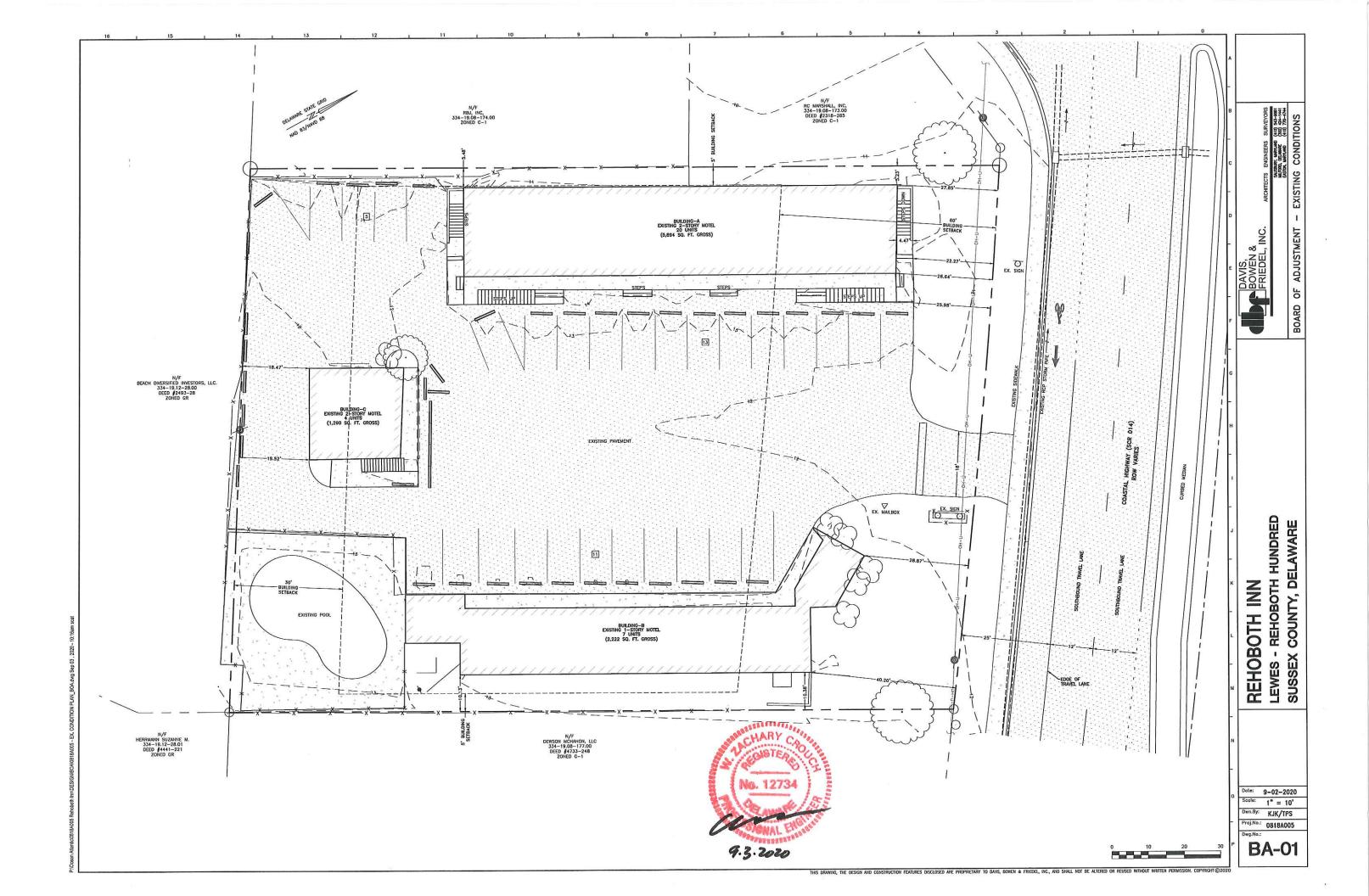
That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

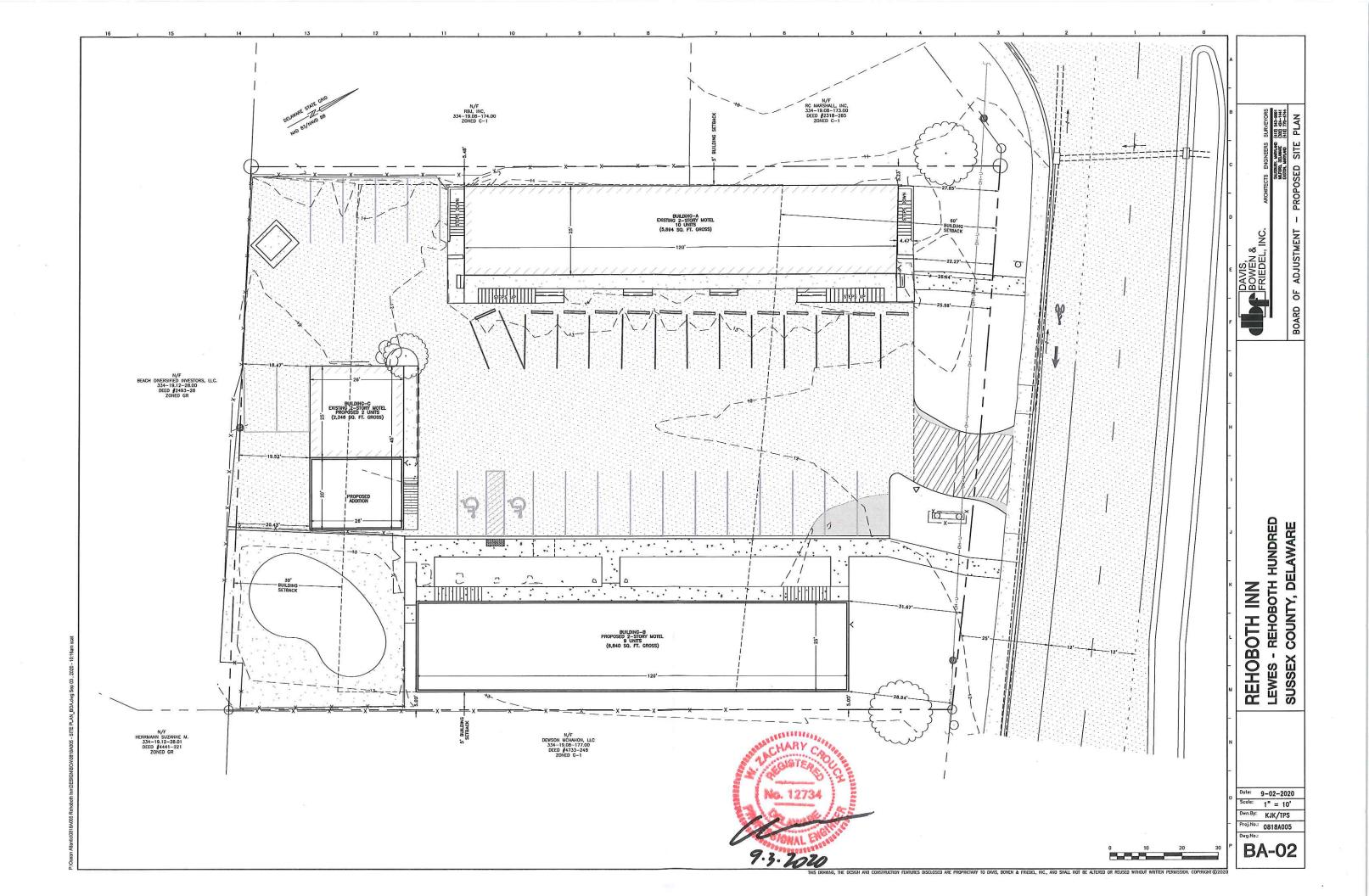
The proposed encroachments are no greater than those that already exist and have existed for a considerable period of time.

## **Check List for Applications**

The following shall be submitted with the application

✓ •	Completed Application				
✓•	Provide a survey of the property (Variance)  O Survey shall show the location of building(s), building setbacks, stairs, deck, etc. O Survey shall show distances from property lines to buildings, stairs, deck, etc. O Survey shall be signed and sealed by a Licensed Surveyor.				
✓ •	Provide a Site Plan or survey of the property (Special Use Exception)				
✓ •	Provide Fee \$400.00				
<b>√</b> •	Provide written response to criteria for Variance or Special Use Exception (may be on a separate document if not enough room on the form)				
•	Copy of Receipt (staff)				
•	Optional - Additional information for the Board to consider (ex. photos, letters from neighbors, etc.)				
<ul> <li>Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearing for the application.</li> </ul>					
is filed wit call the Pl	advised that the decision of the Board of Adjustment is only final when the written decision the the Board's secretary. To determine whether the written decision has been filed, you may lanning & Zoning Department at 302-855-7878. The written decision is generally completed hirty (30) to sixty (60) days following the Board's vote on the application or appeal. Please include the case number when calling about the decision.				
*Please be advised that any action taken in reliance of the Board's decision prior to the filing of the written decision and the expiration of any applicable appeal period is taken at the Property Owner's Risk.					
The undersigned acknowledges that that he or she has read the application completely and that if the appellant / applicant is unable to convince the Board that the standards for granting relief have been met, the appeal / application will be denied.					
Signature o	of Owner/Agent/Attorney				
IN	Date: 9.3.2020				
Subdivision:	Lot#: Block#:				
Date of Hear	No. of the control of				





Sep 03 , 2020 - 2:51pm

OVERVIEW\_BOA BA-03.dwg

DAVIS, BOWEN & FRIEDEL, INC. ARCHITECTS, ENGINEERS & SURVEYORS

LEWES-REHOBOTH HUNDRED SUSSEX COUNTY, DELAWARE

Date: 9-2-2020
Scale: 1"=60'
Dwn.By: KJK/TPS
Proj.No.: 0818A005
Dwg.No.:

**BA-03** 



PIN:	334-19.08-176.00		
Owner Name	REHOBOTH INN JK LLC		
Book	2221		
Mailing Address	20184 PHILLIPS ST		
City	REHOBOTH BEACH		
State	DE		
Description	REHOBOTH MANOR		
Description 2	LOT 16 17 18		
Description 3	N/A		
Land Code			



Override 1

#### polygonLayer

Override 1

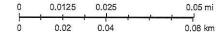
Tax Parcels

911 Address

— Streets

County Boundaries

1:1,128



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

Case # 12490 Hearing Date 11/2 202011521

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 Special Use Exception Administrative Variance Special	Existing Condition Proposed Code Reference (office use only)
Site Address of Variance/Special Use Exception:  16/13 Clabbage Perrol Red. Linco Variance/Special Use Exception/Appeal Requested:  5 UE for Daycase Center for	More than 6 children
Tax Map #: <u>230 -14 00 - 76.05</u>	Property Zoning: AR-1
Applicant Information	
Applicant Name: TUNETO MULEN  Applicant Address: A Color State C Zip:  Applicant Phone (20) 3851 Applicant e-m	1 KH. 19960 nail: mullentynetta 24@yahoo.com
Owner Information	
Owner Name: Theta Mullen  Owner Address: Otto B Culobage Pood  City Dincoln State D Zip: C  Owner Phone #: 600 0 10-3751 Owner e-mail	
Agent/Attorney Information	
Agent/Attorney Name:  Agent/Attorney Address:  City State Zip:  Agent/Attorney Phone #: Agent/Attorney	ey e-mail:
Signature of Owner/Agent/Attorney	
Signature of Owner/Agent/Attorney	
	Date:

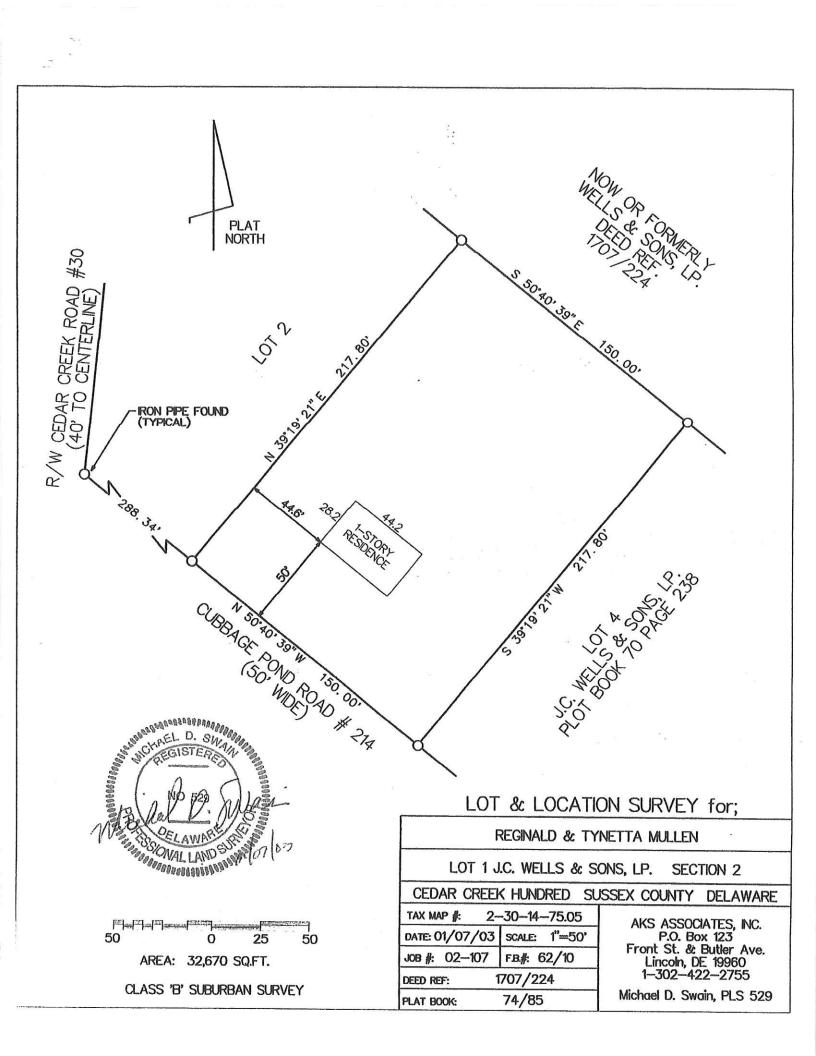




**Criteria for a Special Use Exception:** (Please provide a written statement regarding each criteria)

You shall demonstrate to the Board of Adjustment that the property meets <u>all</u> 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. By me having a daycare on my p
it does not affect my neighbors or the use ofth
use between our property and my neighbor's property
it does not affect my neighbors or the use of the we have plenty of so use botween our property and my neighbor's property I have had the day care since 2013. We have wonder
2. Any other requirements which apply to a specific type of special use exception as required
the Sussex County Code. (Ex. Time limitations – 5 year maximum)
Basis for Appeal: (Please provide a written statement regarding reason for appeal)
We respect each other and we get along Very well. I plan to keep it that way.
ous warms plan to require
Thankyou





PIN:	230-14.00-75.05
Owner Name	MULLEN REGINALD E & TYNETTA O
Book	2823
Mailing Address	21613 CUBBAGE POND RD
City	LINCOLN
State	DE
Description	NE/RT 214
Description 2	LOT 1 SEC 2
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

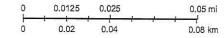
Tax Parcels

911 Address

— Streets

County Boundaries

1:1,128



Case # 12491 Hearing Date 1112/20 2020/2338

### 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

Variance  Special Use Exception  Administrative Variance  Appeal	Existing Condition Proposed Code Reference (office use only)
Site Address of Variance/Special Use Exception:	
2513 Kings Drive, Lewes, DE 19958	
Variance/Special Use Exception/Appeal Requeste	ed:
Request for variance for carport that was construct side property line. The carport comsists of 3 supp walls or closed in spaces.	· · · · · · · · · · · · · · · · · ·
Tax Map #: 335-8. 10-3.00	Property Zoning: 🕳 🕻 AR - 1
Applicant Information	
Applicant Name: Michael and Kathryn Stazzone	
Applicant Address: 2513 Kings Drive	7:
City Lewes State DE Applicant Phone #: (703) 216-3052 Applic	Zip: 19958cant e-mail: michael.stazzone@iconplc.com
//ppirearit / Noric ii. (703) 216-3032 / ppire	micrael stazzone green present
Owner Information	
Owner Name: Michael and Kathryn Stazzone	
Owner Address: 2513 Kings Drive	
City Lewes State DE	Zip: <u>19958</u> Purchase Date: <u>8/24/07</u>
Owner Phone #: (703) 216-3052 Owne	er e-mail: michael.stazzone@iconplc.com
Agent/Attorney Information	
Agent/Attorney Name:	
Agent/Attorney Name: Agent/Attorney Address:	
Agent/Attorney Address: City State	Zip: t/Attorney e-mail:



Michal J. Shr

Date: 9/30/20



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

You shall demonstrate to the Board of Adjustment that the property meets <u>all</u> 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 did not have a garage so a carport was constructed where the driveway meets the house with the understanding that the carport was an accessory structure.

#### 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 carport was constructed in 2010 under the understanding that the setback was 5 feet under the accessory structure criteria. The distance from the side property setback would not allow for a 15 foot setback from the driveway.

#### 3. Not created by the applicant:

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

The carport was constructed under the understanding that a 5 foot setback was required. The structure is approximately 6 feet from the property line. There would not be sufficient space to build a carport attached to the driveway that exceeds 15 feet.

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

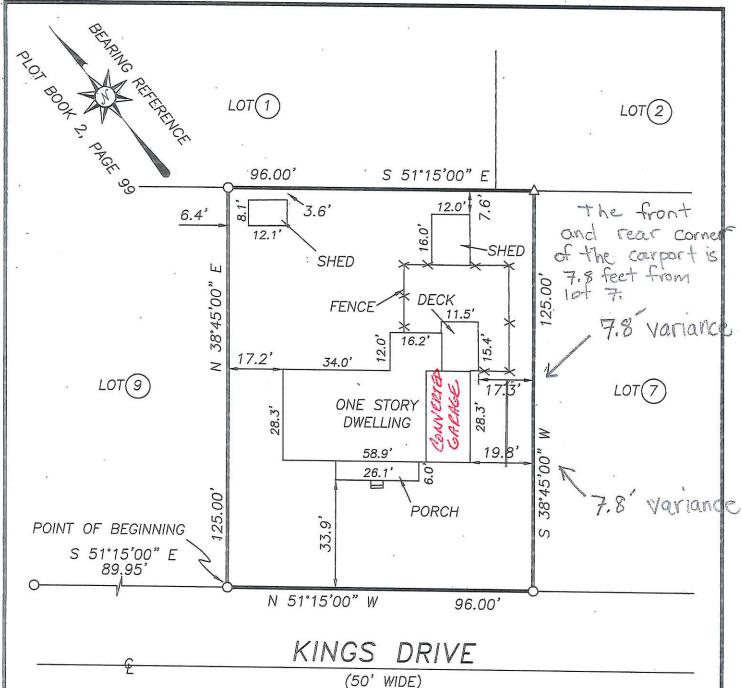
That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

The carport has existed for over 10 years and neighbors are happy with the structure and there are no compliants or concerns expressed.

#### 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.

Based upon the home owner measurements, the carport is approximately 6 feet from the side property line.



NOTE: CLASS "B", SUBURBAN SURVEY

## LEGEND:

O FOUND IRON PIPE  $\triangle$  SET IRON BAR

# LOT & LOCATION SURVEY PLAN

PREPARED FOR

# MICHAEL STAZZONE & KATHRYN STAZZONE

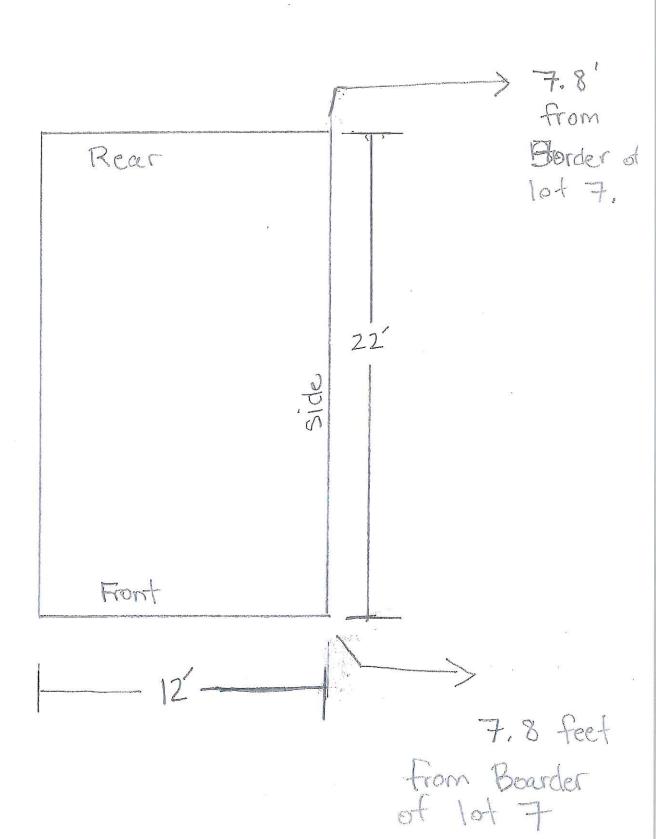
FOR PROPERTY KNOWN AS
LOT 8, SWANENDAEL
PLOT BOOK 2, PAGE 99
SITUATED IN
LEWES & REHOBOTH HUNDRED
SUSSEX COUNTY
STATE OF DELAWARE
AREA: 12,000 SQ. FT. ±
SCALE: 1" = 30'
DATE: AUGUST 6, 2007 R.B.

R.B. KEMP, III, P.L.S. 541

Prepared By
ADAMS-KEMP ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
AND PLANNERS
217 SOUTH RACE STREET
GEORGETOWN, DELAWARE 19947
PHONE: (302) 856-6699

PLAN NO. 070735-A

Carport



## U.S. DEPARTMENT OF HOMELAND SECURITY Federal Emergency Management Agency

#### **ELEVATION CERTIFICATE**

OMB No. 1660-0008 Expires February 28, 2009

National Flood Insurance Program

Important: Read the instructions on pages 1-8.

SECTION A - PROPERTY INFORMATION	For Insurance Company Use:			
A1. Building Owner's Name MICHAEL STAZZONE & KATHRYN STAZZONE Policy Number				
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.  Company NAIC Number 2513 KINGS DRIVE				
City LEWES State DE ZIP Code 19958				
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) LOT 8, SWANENDAEL TAX 3-35-8.10-3.00				
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.  A7. Building Diagram Number 8  A8. For a building with a crawl space or enclosure(s), provide a) Square footage of crawl space or enclosure(s) b) No. of permanent flood openings in the crawl space or enclosure(s) walls within 1.0 foot above adjacent grade  A9. For a building with a Square footage by No. of permanent flood openings in the crawl space or enclosure(s) walls within 1.10 foot above adjacent grade	an attached garage, provide:  e of attached garage NA sq ft ent flood openings in the attached garage  floot above adjacent grade NA sq in			
	*			
B1. NFIP Community Name & Community Number B2. County Name SUSSEX COUNTY 100029 B2. County Name SUSSEX	B3. State DE			
B4. Map/Panel Number B5. Suffix B6. FIRM Index B7. FIRM Panel B8. FI Date Effective/Revised Date Zone 1/00/50195 J 1/06/2005 AE	(S) AO, use base flood depth)			
B11. Indicate elevation datum used for BFE in Item B9: ☐ NGVD 1929 ☐ NAVD 1988 ☐ Other (DB12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (CDRS) ☐ CBRS ☐ OPA	DPA)? □Yes ⊠No			
SECTION C - BUILDING ELEVATION INFORMATION (SURVEY R	EQUIRED)			
C1. Building elevations are based on:  C2. Captured when construction Drawings* C3. Captured will be required when construction of the building is complete. C4. Captured will be required when construction of the building is complete. C5. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C6. Captured will be required when construction of the building is complete. C7. Captured will be required when construction of the building is complete. C7. Captured will be required when construction of the building is complete. C7. Captured will be required will be requir				
b) Top of the next higher floor <u>6.4</u> ⊠ feet ☐ meters	s (Puerto Rico only) s (Puerto Rico only) s (Puerto Rico only)			
d) Attached garage (top of slab) NA feet meters	s (Puerto Rico only) s (Puerto Rico only) s (Puerto Rico only)			
	s (Puerto Rico only)			
g) Highest adjacent (finished) grade (HAG) <u>6.0</u> 🖾 feet 🗆 meters	s (Puerto Rico only)			
SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFIC				
This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify information. I certify that the information on this Certificate represents my best efforts to interpret the data availar understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1.  Check here if comments are provided on back of form.	ble.			
Certifier's Name CHARLES E.ADAMS License Number PLS 506	- nord			
Title PROFESSIONAL LAND SURVEYOR Company Name ADAMS-KEMP ASSOCIATES, INC.	- CHELS			
Address 217 SOUTH RACE STREET City GEORGETOWN State DE ZIP Code 19947	PLS 50%			
Signature	11:01:07			

DATE FEE PA RECEIPT NO. AMOUNT	# 400 · 00			Case No	<u> </u>
Fee Jung Provi	# 400.00  waived by LF to Inconsistence NOTICE OF APPE	AL AND R	EQUEST FOR	OR VARIAN	ICE
CO	UNTY BOARD O	F ADJUST	MENT OF S	USSEX CO	UNTY
Applicant				Phone	
Address	· · · · · · · · · · · · · · · · · · ·	<del></del>			
Agent/Attorney		······································		Phone	
Address		Paris St.	•		
Location: (N)	S) (E) (W) Road_			بو	(feet) (miles),
(14) (1	S) (E) (W) of Road	:			<del></del>
District No.	· Man	No	· Pa	rcel No.	W 0 3
Subdivision	· · · · · · · · · · · · · · · · · · ·		Lo	t No.	Zone
Hundred	· · · · · · · · · · · · · · · · · · ·	Frontag	ле ·	Depth	Acres
Chapter	ecial use exception Article as acquired	¥*	Subsection_		ltem
Plot Plan or drav	as acquired ving attached:	Yes	N	0	
	your request and			<u> </u>	
	€		Signature	of Applica	nt/Agent/Attorney
FOR BOARD US Date of Notice Date of Decision Decision of the B		D	ate of Heari	ng	
	Accordance of the second second				•
		-	Pers	on Acceptin	g Application

September 30, 2020

Sussex County Zoning Board
Board of Adjustments

To whom it may concern,

My wife, Teresa and I live in lot #7 (address, 2507 Kings Drive, Lewes, DE )which is located next door to Kathryn and Michael Stazzone at 2513 Kings Drive, Lewes, DE. My property is directly next to the location of the carport under review. I do not have any concerns regarding the location of this carport. If you have any questions, please contact me at 302-245-5190.

Regards,

**Terry Owens** 



PIN:	335-8.10-3.00
Owner Name	STAZZONE MICHAEL J & KATHRYN
Book	3489
Mailing Address	2513 KINGS DR
City	LEWES
State	DE
Description	SWANENDAEL
Description 2	LOT 8
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

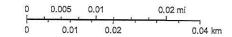
Tax Parcels

911 Address

— Streets

County Boundaries

1:564



### FUQUA, WILLARD, STEVENS & SCHAB, P.A.

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FAX 302-856-2128
onthecircle@fwsslaw.com

REHOBOTH OFFICE ☐
20245 BAY VISTA ROAD, UNIT 203
REHOBOTH BEACH, DE 19971
PHONE 302-227-7727
FAX 302-227-2226

Jamie Whitehouse, Director Planning & Zoning County Administrative Building 2 The Circle Georgetown, DE 19947 JAMES A. FUQUA, JR.
WILLIAM SCHAB
TIMOTHY G. WILLARD
TASHA MARIE STEVENS
MELISSA S. LOFLAND
NORMAN C. BARNETT
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October 20, 2020

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realestate@fwsslaw.com

LEWES REAL ESTATE OFFICE 

16698 KINGS HIGHWAY, SUITE B
LEWES, DELAWARE 19958
PHONE 302-645-6626
FAX 302-645-6620
realestate@fwsslaw.com

RE: 34978 Hassell Avenue Ext. (Board of Adjustment Case 12291)

Dear Mr. Whitehouse:

Please allow this letter to serve as a request for a one year extension on the expiration of the variance approved in Board Case No. 12291, John and Colleen Girouard.

The Board's written decision is dated June 18, 2019 and would expire on June 18, 2021. This request would extend the expiration date until June 18, 2022.

The need for the extension results from uncertainty as to the front set back requirements for the home design which is subject to an existing application to the Board for an additional variance and/or an appeal from the Director's determination. In addition, the time involved in the home design and application to the Board has been delayed by the ongoing Corona Virus Emergency.

I suggest that this request be scheduled at the same time that the variance/appeal hearing is scheduled before the Board.

Thank you for your attention.

Very truly yours,

FUQUA, WILLARD, STEVENS & SCHAB, P.A.

Bv:

lames A. Fudua

RECEIVED

OCT **2** 1 2020

SUSSEX COUNTY PLANNING & ZONING

JAF/jel