

## 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) 845-5079 F

## AGENDA

December 21, 2020

6:00 P.M.

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

### Call to Order

### Pledge of Allegiance

### Introduction of Staff Members

### Approval of Agenda

### Approval of Minutes for October 19, 2020

### Approval of Finding of Facts for October 19, 2020

### Old Business

### Public Hearings

**Case No. 12505 – Michael & Theresa Baril** seeks variances from the corner front setback for proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the northeast corner of the Woodland Circle and Holly Court intersection within the Angola by the Bay Subdivision. 911 Address: 23026 Holly Court, Lewes. Zoning District: AR-1. Tax Parcel: 234-11.20-365.00

**Case No. 12506 – Jessica F. Peake** seeks variances from the front yard and rear yard setback requirements for proposed structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Coastal Hwy. (Rt. 1) approximately 300 ft. south of Jefferson Bridge Rd. 911 Address: 32967 Coastal Highway, Bethany Beach. Zoning District: C-1. Tax Parcel: 134-17.11-40.00

**Case No. 12507 – Scott E. & Elisabeth H. Kammerer** seeks a variance from the maximum fence height requirement for an existing fence (Sections 115-34, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Fisher Street within the Silver Lake Manor Subdivision 911 Address: 20591 Fisher Street, Rehoboth



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE 19947

Beach. Zoning District: MR. Tax Parcel: 334-20.09-41.00

**Case No. 12508 – Louis J. Cuck & Ludovic Bertaut** seek variances from the side yard, front yard and maximum fence height setback requirements for proposed structures. (Sections 115-42, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the northeast side of Dunbar Street and the southwest side of Hebron Road approximately 212 ft. northwest of Norwood Street. 911 Address: N/A Zoning District: GR. Tax Parcel: 334-13.15-1.01

**Case No. 12509 – Kevin & Patricia O’Reilly** seek variances from the front yard and rear yard setback requirements for proposed and existing structures. (Sections 115-34, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Hassell Avenue Extension within the Bay View Park Subdivision. 911 Address: 34967 Hassell Avenue EXT., Bethany Beach. Zoning District: MR. Tax Parcel: 134-20.11-22.00

**Additional Business**

\*\*\*\*\*

**Board of Adjustment meetings can be monitored on the internet at  
[www.sussexcountyde.gov](http://www.sussexcountyde.gov).**

\*\*\*\*\*

**In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on December 14, 2020 at 8:15 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 <https://sussexcountype.gov/council-chamber-broadcast>

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

To join the meeting via 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://sussexcountype.gov/>

If any member of the public would like to submit comments electronically, these may be sent to [pandz@sussexcountype.gov](mailto:pandz@sussexcountype.gov). All comments shall be submitted by 4:30 P.M. on Thursday, December 17, 2020

#####



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 # 12505  
Hearing Date 12/14

202013556

Type of Application: (please check all applicable)

Variance   
Special Use Exception   
Administrative Variance   
Appeal

Existing Condition   
Proposed   
Code Reference (office use only)  
115-25 115-182

Site Address of Variance/Special Use Exception:

23026 Holly Court Lewes, De. 19958

Variance/Special Use Exception/Appeal Requested:

Requesting a Variance to build a 10ft x 15ft screen porch on the Woodland Circle side of house attached to a 6ft x 34 Ft. wraparound deck front the front door on Holly Court.

Tax Map #: 2-34-11.20 Parcel 365.10

Property Zoning: AR-1

Applicant Information

Applicant Name: Michael and Theresa Bari  
Applicant Address: 23026 Holly Court  
City Lewes State De Zip: 19958  
Applicant Phone #: 443-624-6152 Applicant e-mail: mtjhak@comcast.net

Owner Information

Owner Name: Michael and Theresa Bari  
Owner Address: 23026 Holly Court  
City Lewes State De Zip: 19958 Purchase Date: 3/2019  
Owner Phone #: 443-624-6152 Owner e-mail: mtjhak@comcast.net

Agent/Attorney Information

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

Signature of Owner/Agent/Attorney

Michael Bari Theresa Bari

Date: 10-10-20



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

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

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

**1. Uniqueness of property:**

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

lot is very irregular and narrow. We are requesting to build a 6x34 deck from front door on Holly Ct. to a screen porch on Woodland Circle side. The porch will encroach 7ft. into the 15 ft. setback because of the sharp angle of the lot. see the attached.

**2. Cannot otherwise be developed:**

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

The sharp angle of our setbacks, cannot place porch within setbacks.

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

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

The exceptional difficulty has not been created by the appellant, we were unaware that the setback was that extreme of an angle. We thought a porch could be built.

**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 screen porch will not extend pass the sidewalk which is already next to our house. see the attached.

**5. Minimum variance:**

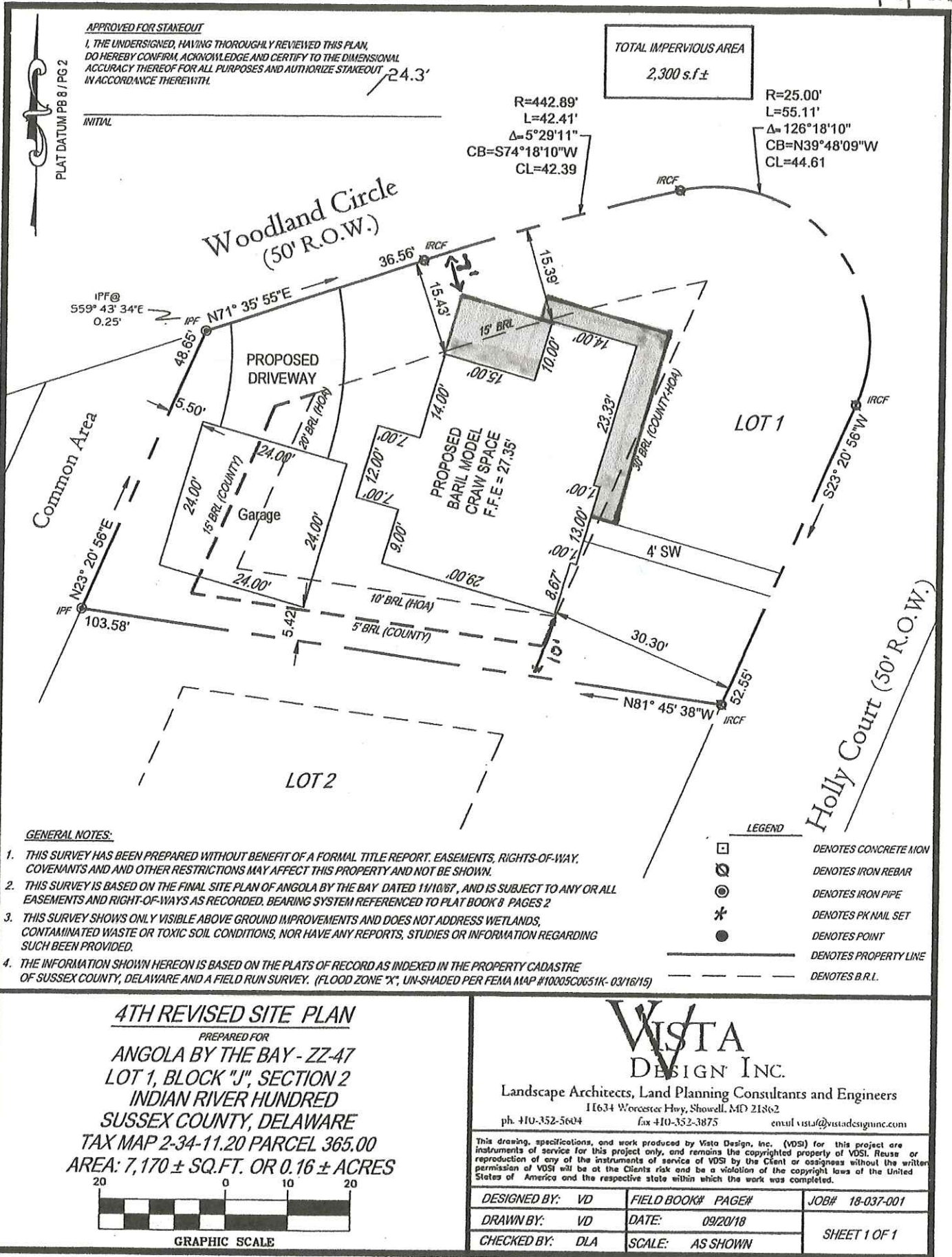
That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

The porch, if approved, will not encroach on the entire setback, only half of the porch. see the attached.

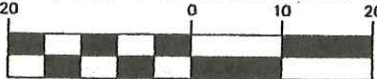
Baril-23026 Holly Ct. Lewes DE. 19958

10'x15' porch

6' wraparound deck to connect to proposed porch



**4TH REVISED SITE PLAN**  
 PREPARED FOR  
 ANGOLA BY THE BAY - ZZ-47  
 LOT 1, BLOCK "J", SECTION 2  
 INDIAN RIVER HUNDRED  
 SUSSEX COUNTY, DELAWARE  
 TAX MAP 2-34-11.20 PARCEL 365.00  
 AREA: 7,170 ± SQ.FT. OR 0.16 ± ACRES



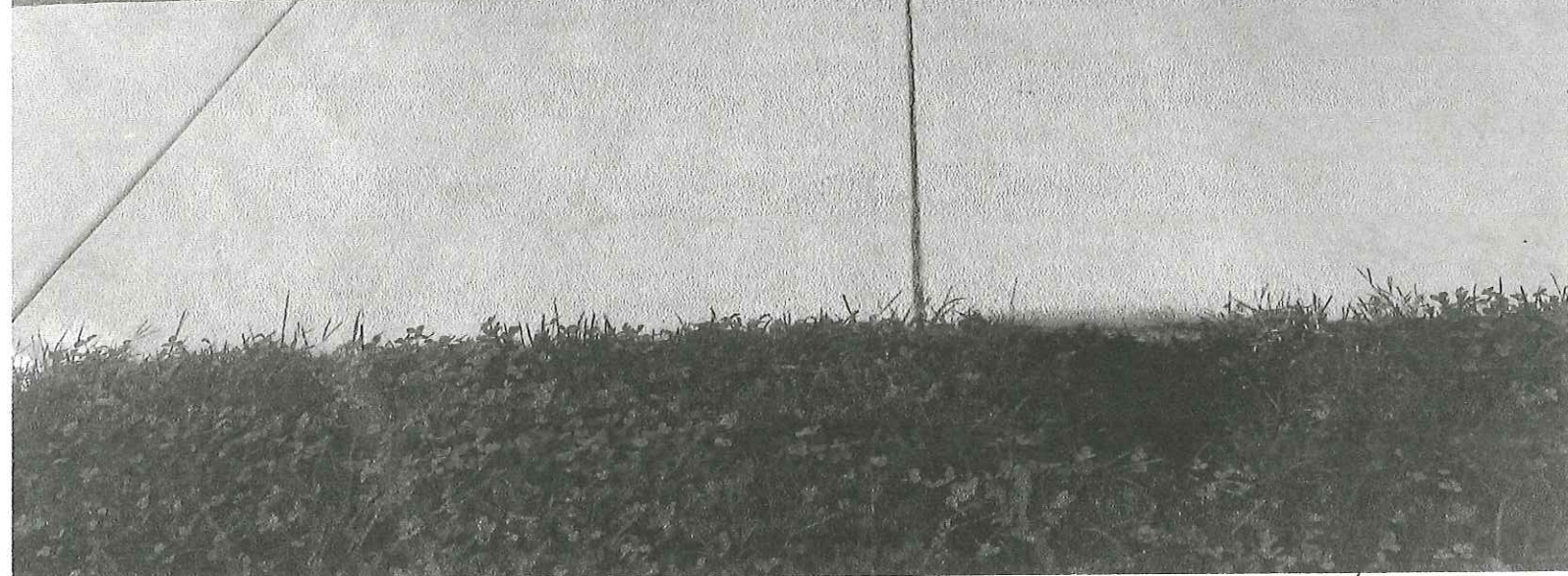
**WISTA DESIGN INC.**

Landscape Architects, Land Planning Consultants and Engineers  
 11634 Worcester Hwy, Showell, MD 21862  
 ph: +1-410-352-5604 fax: +1-410-352-3875 email: wista@vistadesigninc.com

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DESIGNED BY: VD	FIELD BOOK# PAGE#	JOB# 18-037-001
DRAWN BY: VD	DATE: 09/20/18	
CHECKED BY: DLA	SCALE: AS SHOWN	SHEET 1 OF 1

\*ASKING for a 7' Variance on covered porch that is over the set back, due to our unusable shape of our corner lot. We're asking to allow the variance on the far left corner of the screen porch. TY



BASIC 23026 Holly Ct. Lewes DE. 19958 - propose 10'x15' screen covered porch  
All construction will be performed inside of existing sidewalk (house side)



BAriC 23026 Holly Ct. Lewes De. 19958 - side House View of SET backs  
(SET back's were done by Vista Design on 9-29-2020)

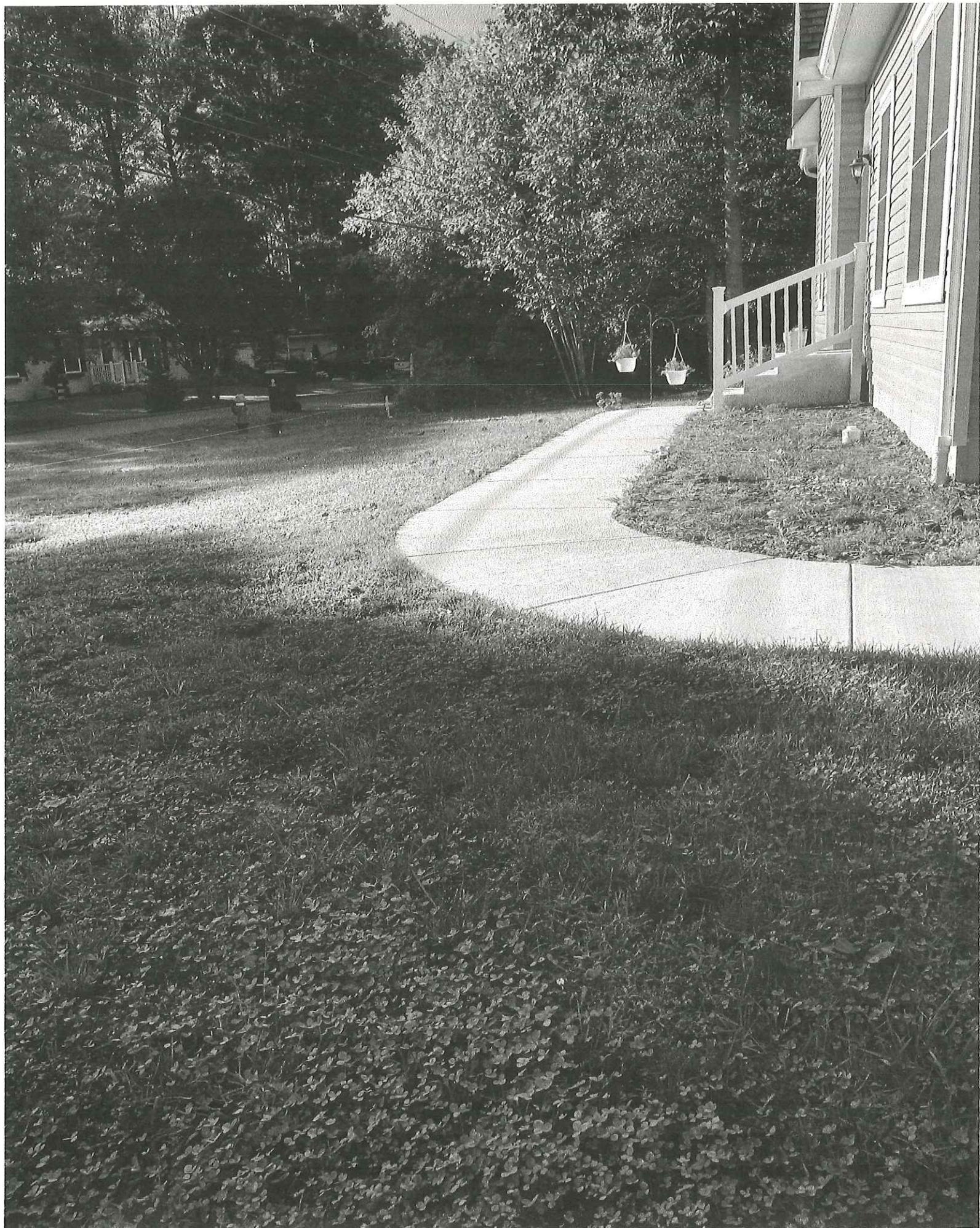




Baril 23026 Holly Ct. Lewes DE. 19958 - Propose side yard 6'x14' uncovered deck  
All construction will be preformed inside of existing sidewalk (house side)



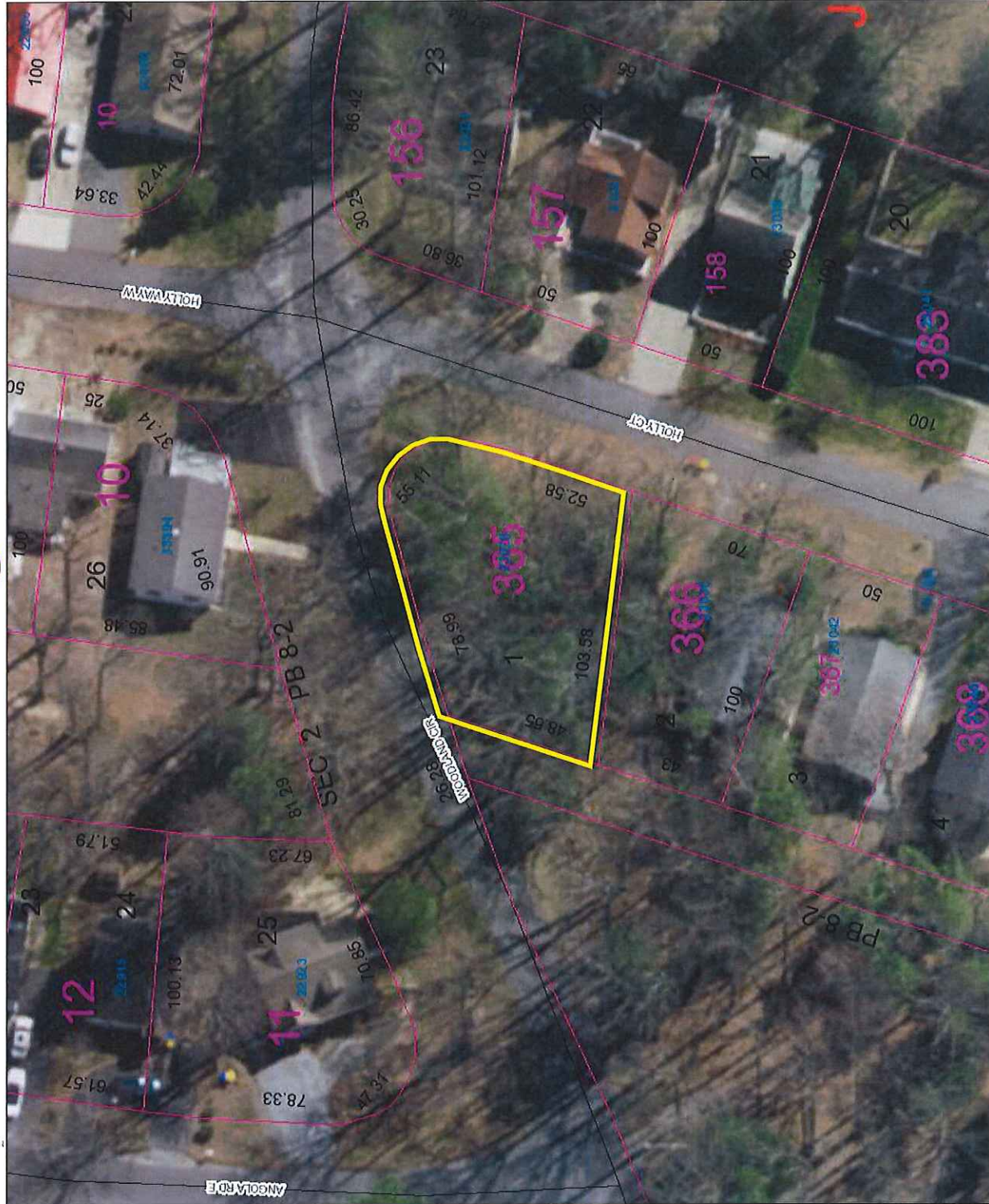
23026 Holly Ct Lewes DE 19958 side + front set back's  
Barik  
set back done by Vista Design 9-29-2020



Baril 23026 Holly Ct. Lewes DE. 19958 - propose front 6'x20' uncovered deck  
All construction will be performed Inside of Existing sidewalk (house side)

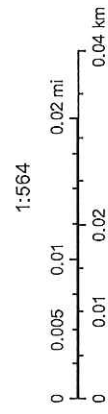


# Sussex County



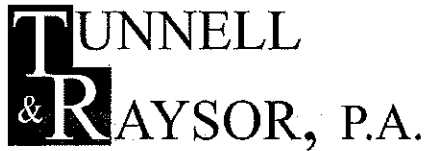
<b>PIN:</b>	234-11.20-365.00
<b>Owner Name</b>	BARIL MICHAEL P
<b>Book</b>	4600
<b>Mailing Address</b>	23026 HOLLY CT
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	ANGOLA BY THE BAY
<b>Description 2</b>	HOLLY COURT
<b>Description 3</b>	LOT 1 BLK J SEC 2
<b>Land Code</b>	

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



LAW OFFICES

HAROLD E. DUKES, JR.  
KELLY DUNN GELOF  
CHRISTOPHE CLARK EMMERT  
JAMIE C. KING  
A. DEAN BETTS, JR.  
ETTA R. MAYERS  
BRANDON K. RICKWOOD  
ASIM E. GULAB  
MACKENZIE MARIE PEET



OF COUNSEL

MINDI MOORE TUNNELL  
LANEYSCHA ECHEVARRÍA MÉNDEZ\*

\*Admitted in Federal Tax Matters and PR only

REHOBOTH BEACH OFFICE:

PLAZA FIVE  
323E REHOBOTH AVENUE  
REHOBOTH BEACH, DE 19971

PHONE (302) 227-1314  
(800) 533-2897  
FAX (302) 227-5829

\*\*\*\*\*  
visit our website at:  
[www.tunnellraysor.com](http://www.tunnellraysor.com)

BETHANY BEACH:  
32892 COASTAL HIGHWAY, UNIT 1  
STARBOARD CENTER  
P.O. BOX 156  
BETHANY BEACH, DE 19930  
(302) 539-8222  
FAX (302) 539-1089

GEORGETOWN:  
30 EAST PINE STREET  
GEORGETOWN, DE 19947  
(302) 856-7313  
FAX (302) 856-7329

LEWES OFFICE:  
770 KINGS HIGHWAY  
LEWES, DE 19958  
(302) 644-4442  
FAX (302) 644-4405

MILFORD:  
820 SEABURY AVE.  
MILFORD, DE 19963  
(302) 491-6758

October 27, 2020

Planning & Zoning Department  
Board of Adjustment  
2 The Circle (PO Box 417)  
Georgetown, DE 19947

Re: 32967 Coastal Highway, Bethany Beach, DE 19930  
Variance Application

Dear Director Whitehouse:

We represent Nick's Golf Bethany Beach, LLC (the "Applicant") in the submission of a Variance Application requesting a 40 feet front yard variance from the 60 feet front yard setback and a 5 feet rear yard variance from the 5 foot rear yard setback required in the General Commercial District to locate an 18-hole miniature golf course on the site. The golf course is proposed on the Property identified as 32967 Coastal Highway, Bethany Beach, DE 19930 (TMP 134-17.11-40.00).

The Applicant previously submitted a variance application heard before the Board on February 17, 2020 and March 2, 2020 requesting a variance of 45 feet from the 60 feet front yard setback requirement, a variance of 5 feet from the 20 feet landscape buffer requirement of the Combined Highway Corridor Overlay Zone, and a variance from of 119 parking spaces the required 125 on-site parking spaces. The Board denied this Application, and a request for rehearing was subsequently submitted. Said request for rehearing was also denied by the Board.

The Applicant comes before the Board with two new requests as part of filing a new variance application for relief. First, the Board must determine whether or not there is substantial change in the circumstances or conditions of the Property or in the proposed use or plan for use. Second, if the Board determines that there is a substantial change, the Applicant respectfully requests the Board's consideration the two variances detailed in the attached Variance Application with Exhibits.

Please contact me if you require any additional information.

Sincerely,

  
Mackenzie M. Peet, Esq.

/mmp

**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 # 12506  
Hearing Date 11/25/21  
202013712

**Type of Application: (please check all applicable)**

Variance   
Special Use Exception   
Administrative Variance   
Appeal

Existing Condition   
Proposed   
Code Reference (office use only)  
115-82 115-182  
115-183

**Site Address of Variance/Special Use Exception:**

32967 Coastal Highway, Bethany Beach, DE 19930

**Variance/Special Use Exception/Appeal Requested:**

Applicant seeks a 40 feet front yard variance from the 60 feet front yard setback required in C-1 (Section 115-81) and a 5 feet rear yard variance from the 5 feet rear yard setback required in C-1 (Section 115-81) to locate an 18-hole miniature golf course on the Property.

Tax Map #: 134-17.11-40.00

Property Zoning: C-1

**Applicant Information**

Applicant Name: Nick's Golf Bethany Beach, LLC  
Applicant Address: 13001 Riggin Ridge  
City Ocean City State MD Zip: 21842  
Applicant Phone #: \_\_\_\_\_ Applicant e-mail: geracimos17@gmail.com

**Owner Information**

Owner Name: Jessica F. Peake  
Owner Address: 21 Ocean Drive, Apt. 707  
City Rehoboth Beach State DE Zip: 19971 Purchase Date: \_\_\_\_\_  
Owner Phone #: \_\_\_\_\_ Owner e-mail: \_\_\_\_\_

**Agent/Attorney Information**

Agent/Attorney Name: Tunnell & Raysor, PA; Mackenzie M. Peet, Esq.  
Agent/Attorney Address: 323E Rehoboth Avenue  
City Rehoboth Beach State DE Zip: 19971  
Agent/Attorney Phone #: (302) 227-1314 Agent/Attorney e-mail: mackenzie@tunnellraysor.com

**Signature of Owner/Agent/Attorney**

Mackenzie M. Peet

Date: 10/12/20



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

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

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

1. Uniqueness of property:

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

The Property is located along the Route 1 Corridor within a tear drop shaped commercial area bordered on the East by Route 1, bordered on the West by South Pennsylvania Avenue, and bordered to the North by Jefferson Brdige Road.

---

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 unique, irregular shaped lot being narrow and shallow to the South and wider to the North precludes the development of an 18-hole miniature golf course to be constructed within the front yard setback of 60 feet.

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3. Not created by the applicant:

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

The lot's uniqueness and irregularity existed prior to the Applicant's lease of the Property.

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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 Property is zoned C-1 and surrounded by C-1 parcels with the exception of one adjacent lot zoned MR. The use will provide recreation for residents and tourists of Bethany Beach. Vegetative areas will remain where feasible during and post construction and a landscape plan will be prepared.

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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 requested variances represent the minimum variance that will afford relief and represent the least modification possible.

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EXHIBIT A

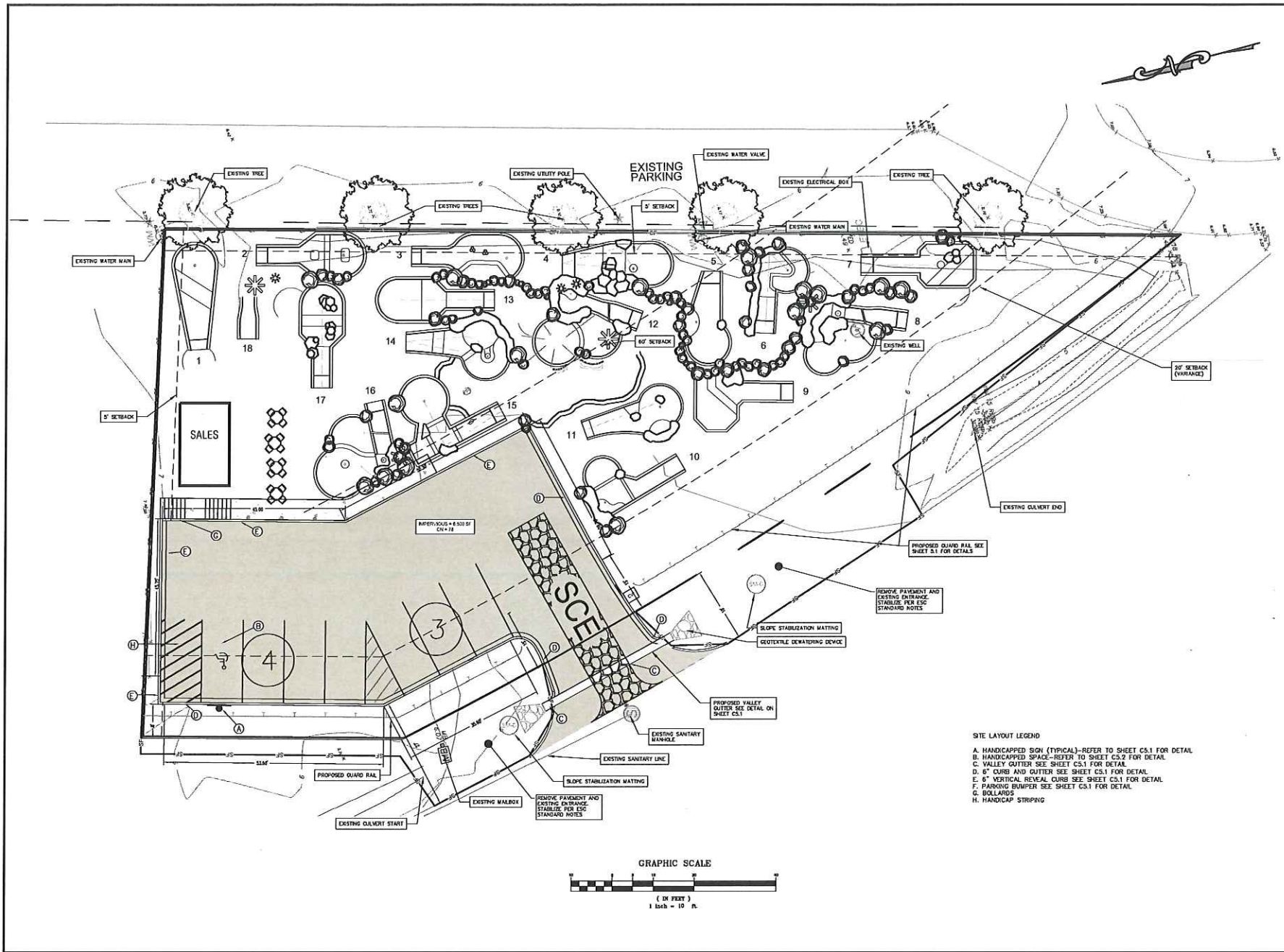
Site Plan (8 copies)

LAW OFFICES

---

**T**TUNNELL  
&**R**AYSOR, P.A.





I HEREBY & HAVE HEREBY CERTIFY THAT THESE LOCATIONS HAVE BEEN FIELD CHECKED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF DELAWARE, LICENSE NO. 13334 EXP. 4/30/2020

REV #	DATE	DESCRIPTION

**McCRONE**  
 ENGINEERS • SURVEYORS • PLANNERS  
 ANNAPOLIS • CONNEWTVILLE • ELKTON • SALISBURY • DELAWARE  
 115 HANCOCK HILL LANE, SUITE 400  
 ANNAPOLIS, MD 21403  
 410.261.8400  
 www.mccrone.com

DATE	3/20/2020
JOB NUMBER	22020011
SCALE	1"=10'
DRAWN BY	AB
DESIGNED BY	SK
APPROVED BY	
PROJECT	

**SITE PLAN**  
 FOR  
**NICKS MINI GOLF**  
 BETHANY BEACH, DELAWARE, 19930  
 Prepared for: MIKE ONELL

SHEET NO.: **C3**

- SITE LAYOUT LEGEND**
- A. HANDICAPPED SIGN (TYPICAL)-REFER TO SHEET CS.1 FOR DETAIL
  - B. HANDICAPPED SPACE-REFER TO SHEET CS.2 FOR DETAIL
  - C. VALLEY CUTTER SEE SHEET CS.1 FOR DETAIL
  - D. 6" CURB AND GUTTER SEE SHEET CS.1 FOR DETAIL
  - E. 6" VERTICAL REVEAL CURB SEE SHEET CS.1 FOR DETAIL
  - F. PARKING BUMPER SEE SHEET CS.1 FOR DETAIL
  - G. BOLLARDS
  - H. HANDICAP STRIPING

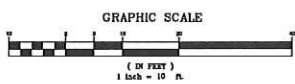


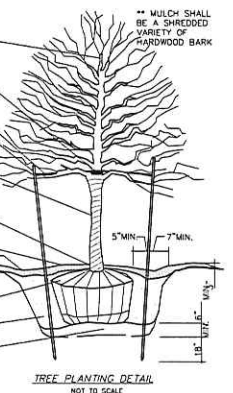
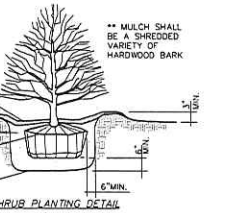
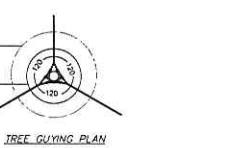
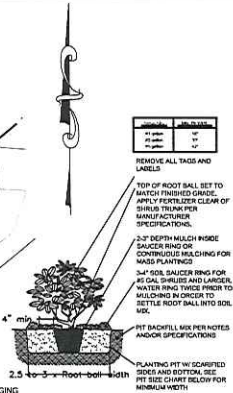
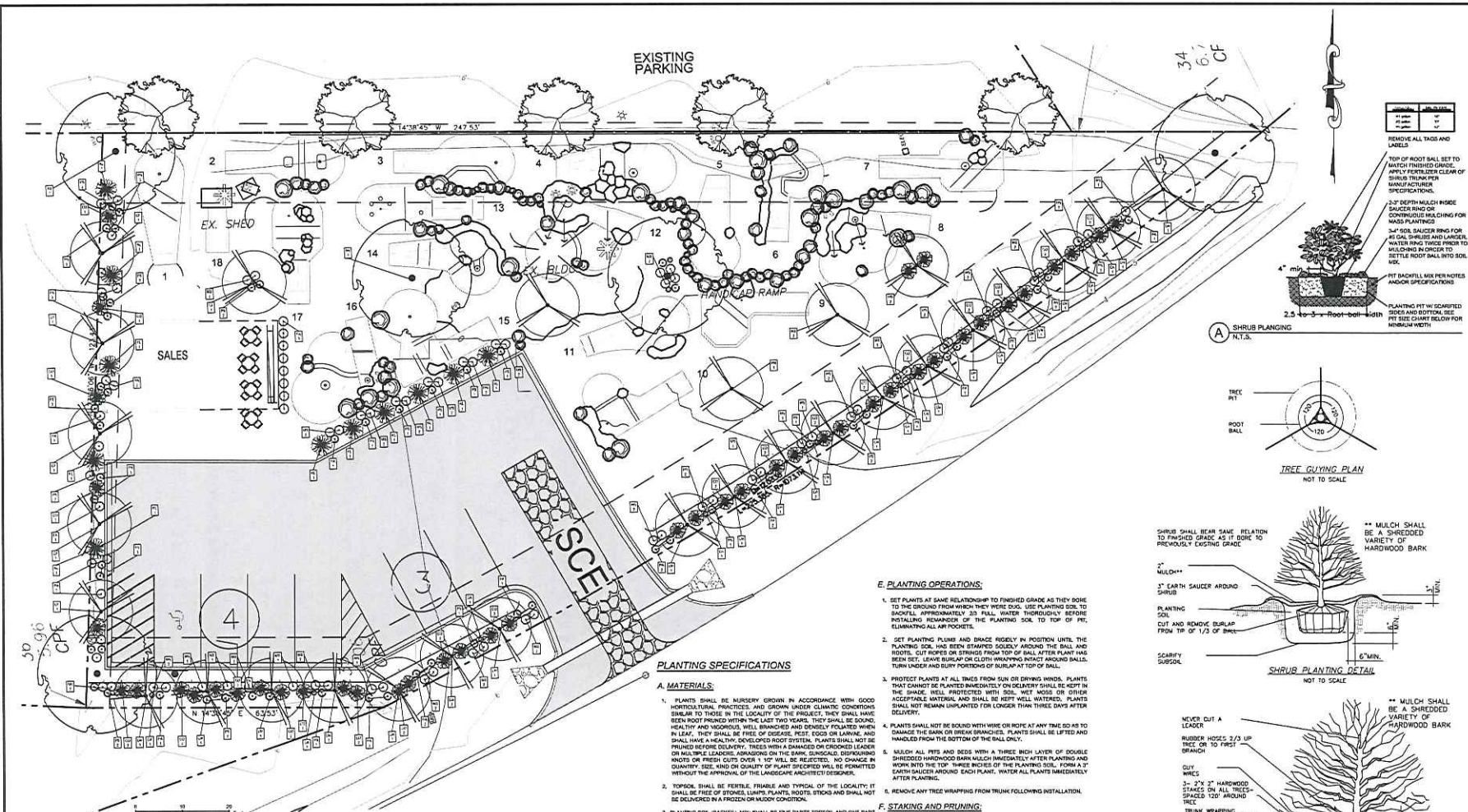
EXHIBIT B

Landscape Plan

LAW OFFICES

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**T**UNNELL  
& **R**AYSOR, P.A.



**PLANTING SPECIFICATIONS**

- A. MATERIALS:**
1. PLANTS SHALL BE NURSERY GROWN IN ACCORDANCE WITH GOOD HORTICULTURAL PRACTICES AND GROWN UNDER CLIMATIC CONDITIONS SIMILAR TO THOSE IN THE LOCALITY OF THE PROJECT. THEY SHALL HAVE BEEN ROOT PRUNED WITHIN THE LAST TWO YEARS. THEY SHALL BE SOUND, HEALTHY AND VIGOROUS, WELL BRANCHED AND GENERALLY FOLIATED WHEN IN LEAF. THEY SHALL BE FREE OF DISEASE, PEST, EGGS OR LARVAE, AND SHALL HAVE A HEALTHY DEVELOPED ROOT SYSTEM. PLANTS SHALL NOT BE PRUNED BEFORE DELIVERY. TREES WITH A DAMAGED OR CROOKED LEADER OR WITH A LEADER BRANCHED AT THE BASE, CRACKED, DISKING, KNOTS OR FRESH CUTS OVER 1/2\"/>
  - 2. TOPSOIL SHALL BE FERTILE, FRABLE AND TYPICAL OF THE LOCALITY IT SHALL BE FREE OF STONES, LIMBS, PLANTS, ROOTS, EGGS AND SHALL NOT BE DELIVERED IN A FROZEN OR MUDDY CONDITION.
  - 3. PLANTING SOIL (SACKFILL MIX) SHALL BE FIVE PARTS TOPSOIL AND ONE PART WET LOOSE FINE SAND.
  - 4. STAKING MATERIALS COT WIRE SHALL BE PLAIN 1/8 GAUGE GALVANIZED TWISTED TWO STRAND WIRE. HOSE SHALL BE A SUITABLE LENGTH OF THIRTY REINFORCED BLACK RUBBER HOSE 3/4\"/>
  - 5. WRAPPING MATERIAL SHALL BE A STANDARD MANUFACTURED TREE WRAPPING PAPER, BROWN IN COLOR WITH GRINKED SURFACE AND FASTENED BY AN APPROVED METHOD.
- B. APPLICABLE SPECIFICATIONS AND STANDARDS:**
1. "STANDARDIZED PLANT NAMES", LATEST EDITION AMERICAN JOINT GARDENING SOCIETY, HORTICULTURAL NOMENCLATURE.
  2. "AMERICAN STANDARDS FOR NURSERY STOCK", LATEST EDITION AMERICAN ASSOCIATION OF NURSERYMEN.
- C. DIGGING AND HANDLING OF PLANT MATERIALS:**
1. IMMEDIATELY BEFORE DIGGING, SPRAY ALL EVERGREEN OR DECIDUOUS PLANT MATERIAL IN FULL LEAF WITH ANTI-DESICCANT, APPLYING AN ADEQUATE FILM OVER TRUNKS, BRANCHES, TWIGS AND ORIFICE.
  2. DO NOT BALL AND BURLAP (BBS) PLANTS WITH FIRM NATURAL BALLS OF EARTH, OF QUANTITY NOT LESS THAN THAT RECOMMENDED BY AMERICAN STANDARDS FOR NURSERY STOCK, AND IF SUFFICIENT DEPTH TO INCLUDE THE FIBRIOUS AND FEEDING ROOTS. PLANTS MOVED WITH A BALL WILL NOT BE ACCEPTED IF THE BALL IS CRACKED OR BROKEN BEFORE OR DURING PLANTING OPERATIONS.
- D. EXCAVATION OF PLANTING AREAS:**
1. STAKE OUT ON THE GROUND LOCATIONS FOR PLANTS AND OUTLINES OF AREAS TO BE PLANTED AND OBTAIN APPROVAL OF THE LANDSCAPE ARCHITECT DESIGNER BEFORE EXCAVATION IS BEGUN.

**E. PLANTING OPERATIONS:**

1. SET PLANTS AT SAME RELATIONSHIP TO FINISHED GRADE AS THEY BORE TO THE ORIGINAL FROM WHICH THEY WERE DUG. USE PLANTING SOIL TO BACKFILL APPROXIMATELY 3/4\"/>
- 2. SET PLANTING PLUMB AND BRACE INDICELY IN POSITION UNTIL THE PLANTING SOIL HAS BEEN STRAPPED SMOOTHLY AROUND THE BALL AND ROOTS. CUT ROPES OR STRINGS FROM TOP OF BALL AFTER PLANT HAS BEEN SET. LEAVE BURLAP OR CLOTH WRAPPING WRIST AROUND BALLS, TURN UNDER AND BURY PORTIONS OF BURLAP AT TOP OF BALL.
- 3. PROTECT PLANTS AT ALL TIMES FROM SUN OR DRIVING WINDS. PLANTS THAT CANNOT BE PLANTED IMMEDIATELY ON DELIVERY SHALL BE KEPT IN THE SHADE, WELL PROTECTED WITH SOIL, WET MOSS OR OTHER ACCEPTABLE MATERIAL, AND SHALL BE KEPT WELL WATERED. PLANTS SHALL NOT REMAIN UNPLANTED FOR LONGER THAN THREE DAYS AFTER DELIVERY.
- 4. PLANTS SHALL NOT BE BOUND WITH WIRE OR ROPE AT ANY TIME AND AS TO DAMAGE THE BARK OR BROWN BRANCHES, PLANTS SHALL BE LIFTED AND HANDLED FROM THE BOTTOM OF THE BALL ONLY.
- 5. MULCH ALL PITS AND BEDS WITH A THREE INCH LAYER OF DOUBLE SHREDED HARDWOOD BARK MULCH IMMEDIATELY AFTER PLANTING AND WORK INTO THE TOP THREE INCHES OF THE PLANTING SOIL. FORM A 3\"/>
- 6. REMOVE ANY TREE WRAPPING FROM TRUNK FOLLOWING INSTALLATION.

**F. STAKING AND PRUNING:**

1. STAKING SHALL BE COMPLETED IMMEDIATELY AFTER PLANTING. PLANTS SHALL STAND PLUMB AT ALL TIMES. STAKES AND CUT WIRES SHALL BE REMOVED AT THE END OF THE GUARANTEE PERIOD AND DEPOSITED OFF SITE BY THE CONTRACTOR.
2. PRUNE PLANTS AT THE TIME OF PLANTING ONLY TO REMOVE DEAD WOOD, SUCKERS, OR BROKEN BRANCHES.

**G. GUARANTEE:**

ALL PLANT MATERIALS SHALL BE GUARANTEED FOR ONE (1) YEAR FROM THE DATE THAT THE LANDSCAPE INSTALLATION IS ACCEPTED AS COMPLETE. PLANT MATERIAL NOT FOUND TO BE IN A HEALTHY, VIGOROUS CONDITION AT THE BEGINNING OF THE SECOND GROWING SEASON IS TO BE REPLACED.

**H. SEEDING:**

1. ALL AREAS REMAINING UNDISTURBED AFTER CONSTRUCTION, PAVING AND INSTALLATION OF THE LANDSCAPE ARE TO BE SEEDED.
  - A. SEED BED PREPARATION: APPLY 25 LBS. OF 10-10-10 FERTILIZER PER 1000 SQ. FT. HARDWOOD OR SOFTWOOD SOIL TO A DEPTH OF 3-4 INCHES. APPLY FLUORIDATED GROUND LIMESTONE, 50 LBS. PER 1000 SQ. FT.
  - B. SEEDING: APPLY 4.5 LBS. PER 1000 SQ. FT. OF KENTUCKY 31 TALL FESCUE OR A SUITABLE COMPARABLE MIX ON A HOIST SEED BED WITH SUITABLE EQUIPMENT.
  - C. MULCHING: IMMEDIATELY AFTER SEEDING, UNIFORMLY MULCH EXPOSED AREA WITH UNWEIGHTED SMALL GRASS STRAW AT A RATE OF 1 1/2-2\"/>
2. FOR BEST RESULTS, SEEDING SHOULD BE PERFORMED BETWEEN MARCH 31ST AND APRIL 30TH OR AUG. 15TH TO OCT. 31ST.

GENERAL PLANTING SCHEDULE				
SYMBOL	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE & ROOT TYPE
<b>LARGE TREES</b>				
AR	1	ACER RUBRUM 'AUTUMN BLAZE'	AUTUMN BLAZE RED MAPLE	2-3\"/>
AS	1	ACER SACCHARUM 'SILVER QUEEN'	SILVER QUEEN SUGAR MAPLE	2-3\"/>
QC	1	QUERCUS COCCINEA	SCRAMBLE OAK	2-3\"/>
<b>MEDIUM TREES</b>				
LA	9	LAGERSTROMIA INDICA 'MARIPOSA'	PARROTIA COMMON CREPE MYRTLE	2-3\"/>
LH	9	LAGERSTROMIA INDICA 'NATCHEZ'	NATCHEZ CREPE MYRTLE	2-3\"/>
BN	1	BETULA NIDDA 'HERITAGE'	HERITAGE PAPER BIRCH	2-3\"/>
CE	3	CORNUS CANADENSIS 'FLAME'	FLAME EASTERN DOGWOOD	1-2\"/>
CF	9	CORNUS FLORIDA 'BARTON'	BARTON FLOWERING DOGWOOD	1-2\"/>
PM	1	PRUNUS MAHDA 'JEFFSPUR'	JEFFSPUR AMAL CHOCOLATE CHERRY	1-2\"/>
<b>SHRUBS</b>				
KL	5	KALMIA LATIFOLIA	MOHAWK LAUREL	18-24\"/>
GD	44	CHAMAENEFISS OSTREA 'CRISPUS'	CRISPUS WINDSOR CYPRESS	18-24\"/>
<b>GRASSES</b>				
MS	43	MISCANTHUS SWENSONI 'YACONVILLE'	YACONVILLE GRASS	16-34\"/>
PA	27	PENNISETUM ALDOBRUCIENSE 'HAMEL'	HAMEL FOUNTAIN GRASS	18-24\"/>
PS	25	PENNISETUM BETACILLUM 'TRENKHOFF'	TRENKHOFF FOUNTAIN GRASS	18-24\"/>
CA	19	CAREX ALICIANA	WHITETRADE SEDGE	18-24\"/>

ROBERT S. HANE HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF DELAWARE, LICENSE NO. 28661, EXPIRATION DATE 03/29/2019

REVISIONS	DESCRIPTION

**McCRONE**  
ENGINEERS & SURVEYORS & PLANNERS  
ANNAPOLIS • CENTREVILLE • ELICFIELD • DELMAR  
1000 W. MARKET STREET, SUITE 200  
ANNAPOLIS, MD 21401  
TEL: 410-291-1000  
FAX: 410-291-1001  
WWW.MCCRONE.COM

DATE	BY	CHK
01/16/2020	ASB/AMK	
	SCALE	AS SHOWN
	DRAWN BY	ECK
	DESIGNED BY	ECK
	APPROVED BY	

LANDSCAPE PLAN  
FOR  
**NICK'S MINI GOLF**  
BETHANY BEACH, DELAWARE, 19930  
Prepared For: MICHAEL O'NEILL

SHEET NO.: **C.11**

EXHIBIT C

Deed and Property Information

LAW OFFICES

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**T**TUNNELL  
&**R**AYSOR, P.A.

1/27/2020

Property Search

PARID: 134-17.11-40.00  
PEAKE JESSICA F TRUSTEE

ROLL: RP  
32967 COASTAL HWY

Property Information

Property Location: 32967 COASTAL HWY  
 Unit:  
 City: BETHANY BEACH  
 State: DE  
 Zip: 19930

Class: COM-Commercial  
 Use Code (LUC): CO-COMMERCIAL  
 Town: 00-None  
 Tax District: 134 - BALTIMORE  
 School District: 1 - INDIAN RIVER  
 Council District: 4-Hudson  
 Fire District: 70-Bethany Beach  
 Deeded Acres: .0001  
 Frontage: 225  
 Depth: 247.000  
 Irr Lot: 1  
 Zoning 1: C-1-GENERAL BUSINESS  
 Zoning 2: -  
 Plot Book Page: 245 34/PB

100% Land Value: \$20,000  
 100% Improvement Value: \$74,700  
 100% Total Value: \$94,700

Legal

Legal Description: DELAWARE AVE LOT

Owners

Owner	Co-owner	Address	City	State	Zip
PEAKE JESSICA F TRUSTEE		35229 OVERFALLS DR NORTH	LEWES	DE	19958

Owner History

Tax Year	Owner	Co-owner	Address	City	State	Zip	Deed Book/Page
2019	PEAKE JESSICA F TRUSTEE		35229 OVERFALLS DR NORTH	LEWES	DE	19958	4710/176
2018	PEAKE JESSICA F TRUSTEE		35229 OVERFALLS DR NORTH	LEWES	DE	19958	4710/176
2017	PEAKE JESSICA F TRUSTEE		35229 OVERFALLS DR NORTH	LEWES	DE	19958	4710/176
2017	PEAKE JESSICA F TRUSTEE		21 OCEAN DR APT 707	REHOBOTH BEACH	DE	19971	4710/176
2017	PEAKE JESSICA F		21 OCEAN DR APT 707	REHOBOTH BEACH	DE	19971	1982/242
2006	PEAKE JESSICA F		21 OCEAN DR APT 707	REHOBOTH BEACH	DE	19971	1982/242
1900	PEAKE JESSICA F					0	0/0
1900	PEAKE C REX JR/JESSICA F					0	851/318
1900	RESORT HOMES INC					0	657/428
1900	PEAKE C REX JR/JESSICA F					0	1982/242
1900	BEACH PACKAGE STORE L L C					0	1937/201

Land

Line	Class	Land Use Code	Act Front	Depth	Deeded Acres	Ag
1	COM	CO	225	247	.0001	

Land Summary

Line	1
100% Land Value	20,000

1/27/2020

Property Search

100% Values

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100% Land Value	100% Improv Value	100% Total Value
\$20,000	\$74,700	\$94,700

50% Values

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50% Land Value	50% Improv Value	50% Total Value
\$10,000	\$37,350	\$47,350

Permit Details

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Permit Date:	Permit #:	Amount:	Note 1
13-JUN-2016	201604698	\$20,000	BEER COOLER EXTENSION 12X15 - BEACH LIQUORS
16-NOV-2012	201200308	\$0	
16-MAR-2010	19461-7	\$0	DIGITAL SIGN-DELAWARE AVE LOT
28-FEB-2005	19461-6	\$0	WALL SIGN-DELAWARE AVE
02-DEC-2004	19461-5	\$200,000	TENANT FIT UP-DELAWARE AVE
17-NOV-1989	19461-4	\$0	GROUND SIGN-E/RT1 125' S/RD361A
06-JUN-1995	19461-3	\$3,200	DECKSTORAGE AREA-DELAWARE AVE.
30-SEP-1994	19461-2	\$22,000	EXT. REMODELING-DELAWARE AVE
07-MAY-1985	19461-1	\$6,000	STORAGE ADD.TO STORE-E/1 200' S/361A

18877

BK= 4710 PG= 176

Tax Number: 1-34 17.11 40.00  
PREPARED BY & RETURN TO:  
Tunnell & Raysor, P.A.  
30 E. Pine Street  
Georgetown, DE 19947  
File No. DO2820/CCE

NO TITLE SEARCH REQUESTED  
NO TITLE SEARCH PERFORMED  
NO TITLE GUARANTEE  
DEED PREPARATION ONLY

THIS DEED, made this 12<sup>th</sup> day of May, 2017,

- BETWEEN -

JESSICA F. PEAKE, of 21 Ocean Drive, Apt. #707, Rehoboth Beach, Delaware 19971, party of the first part,

- AND -

JESSICA F. PEAKE, TRUSTEE, OF THE JESSICA F. PEAKE REVOCABLE TRUST, DATED MAY 12<sup>TH</sup>, 2017, AND ANY AMENDMENTS THERETO, of 21 Ocean Drive, Apt. #707, Rehoboth Beach, DE 19971, as sole owner, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the party of the second part, and its heirs and assigns, the following described lands, situate, lying and being in Sussex County, State of Delaware:

ALL THAT certain lot, piece or parcel of land situate, lying and being in Baltimore Hundred, Sussex County and State of Delaware, and being more particularly described as follows, to wit:

TUNNELL  
RAYSOR, P.A.  
Georgetown, Delaware

*CMS*

*CMS*

BK: 4710 PG: 177

BEGINNING at an iron pipe set in the Eastern right-of-way line of Delaware Route #14, said iron pipe marking a corner for these lands and lands now or formerly of George Knox; thence along and with the division line between these lands and lands now or formerly of George Knox North 14 degrees 38 minutes 45 seconds East for a distance of 247.53 feet to an iron pipe, said iron pipe marking a corner for these lands, lands now or formerly of George Knox and lands now or formerly of J.M. Loftus; thence along and with the division line between these lands and lands now or formerly of J.M. Loftus North 73 degrees 35 minutes 15 seconds West for a distance of 123.44 feet to an iron pipe, said iron pipe marking a corner for these lands, lands now or formerly of J.M. Loftus and lands now or formerly of the State of Delaware; thence along and with the division line between these lands and the lands now or formerly of the State of Delaware South 14 degrees 38 minutes 45 seconds West for a distance of 63.53 feet to an iron pipe set in the Eastern right-of-way line of Delaware Route #14; thence along and with the Eastern right-of-way line of Delaware Route #14 in a Southeasterly direction along the arc of a curve having a radius of 1070.63 feet for an arc distance of 225.11 feet to the first iron pipe, the point and place of beginning, said to contain 0.46 acres of land, more or less, together with all improvements thereon.

BEING the same lands conveyed to C. Rex Peake, Jr., and Jessica F. Peake, his wife from Beach Package Store, L.L.C., a Delaware limited liability company, by Deed dated March 10, 1994, recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware, on June 1, 1994, in Deed Book 1982, Page 242.

THE SAID, C. Rex Peake, Jr. also known as Cornelius Rex Peake, Jr., departed this life on or about June 18<sup>th</sup>, 1996. His interest in the above property passed to his surviving spouse, Jessica F. Peake, by rights of survivorship.

SUBJECT to any and all restrictions, reservations, conditions, easements and agreements of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware.



BK: 4710 PG: 178

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

Signed, Sealed and Delivered in the presence of:

[Signature]  
Witness

[Signature] (SEAL)  
Jessica F. Peake

STATE OF DELAWARE, COUNTY OF SUSSEX: to-wit

BE IT REMEMBERED, that on May 12<sup>th</sup>, 2017, personally came before me, the subscriber, Jessica F. Peake, party of the first part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed.

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

CHRISTOPHE CLARK EMMERT  
ATTORNEY AT LAW WITH  
POWER TO ACT AS NOTARY PUBLIC  
PER 29 DEL. C SEC 4323 (A) 3

[Signature]  
Notary Public  
My Commission Expires: N/A

Consideration: .00

County	.00
State	.00
Town	.00
Total	.00

Received: Margaret P May 19, 2017  
Recorder of Deeds  
Scott Dailey  
May 19, 2017 10:39A  
Sussex County  
Doc. Surcharge Paid

RECEIVED  
May 19, 2017  
ASSESSMENT DIVISION  
OF SUSSEX COUNTY

EXHIBIT D

Variance and Conditional Use History

LAW OFFICES

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**T**UNNELL  
& **R**AYSOR, P.A.

## Sussex County

DELAWARE  
sussexcountyde.gov



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

June 10, 2020

Ms. Mackenzie M. Peet, Esq.  
323 E. Rehoboth Avenue  
Rehoboth Beach, DE 19971

e-mail to: mackenzie@tunnellraysor.com

RE: Notice of Decision Letter for Conditional Use (CU 2222) Jessica F. Peake to allow for a miniature golf course to be located at 32967 Coastal Highway, Bethany Beach.  
Tax Parcel: 134-17.11-40.00

Dear Ms. Peet,

At their meeting of June 09, 2020, the Sussex County Council approved the Conditional Use application to allow for a miniature golf course to be located at 32967 Coastal Highway, Bethany Beach, DE 19930. This approval has twelve (12) conditions. The Conditional Use shall be substantially underway within three (3) years of the County Council approval otherwise the Conditional Use shall expire. A Site Plan showing the conditions of approval shall be reviewed and approved by the Planning Commission prior to commencement of the use of the special needs school. The following are the conditions:

- A. The use shall be limited to a mini golf course and uses associated with that activity.
- B. The signage shall comply with the sign requirements for the underlying C-1 zone.
- C. There shall be fencing along the Route One boundary of the property to prevent golfers and golf balls from inadvertently leaving the property and getting near the Route One right-of-way. The location and type of fencing shall be shown on the Final Site Plan.
- D. The applicant shall comply with all of DelDOT's requirements.
- E. At least 18 parking spaces shall be provided. These spaces must either be on-site or on an adjacent property pursuant to a Shared Parking Agreement.
- F. All lighting shall be downward screened and shielded so that it does not shine on neighboring properties or roadways.
- G. Any dumpsters shall be screened from view from neighboring properties or roadways.
- H. The entrance to the site shall be oriented to the north and east side so that families and golfers enter from that side and are discouraged from walking along Route One to enter the property.
- I. The applicant shall comply with all requirements of the Sussex Conservation District (SCD) regarding stormwater management on the site. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- J. The Site Plans shall include a landscape plan that identifies the landscaping within the buffer area required by the Combined Highway Corridor Overlay Zone (CHCOZ).



- K. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The Final Site Plan shall be prepared by a licensed Delaware Surveyor or Engineer and shall contain the conditions of approval on the plan. The Final Site Plan shall be approved prior to the commencement of the use on the property. The Site Plan shall be reviewed and approved by the Planning Commission. Agency approvals include, but are not limited to: DelDOT, Sussex Conservation District, the Office of the State Fire Marshal.

Please submit a minimum of two (2) full size paper copies and an electronic copy (PDF) of the Preliminary Site Plan to the Planning and Zoning Office a minimum of twenty (20) days prior to a Planning Commission meeting.

An approved copy of the Ordinance granting approval of the Conditional Use will be sent to you from the Clerk of Council. Please feel free to contact the Planning and Zoning Department with any questions during business hours 8:30 am to 4:30 pm, Monday through Friday, at (302)-855-7878.

Sincerely,



Chase Phillips  
Planner I

CC: Lester Shaffer, Chief Constable  
Mike Brady, Public Works  
Andy Wright, Building Code  
John Ashman, Engineering

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



Sussex County  
DELAWARE  
sussexcountycle.gov

## Memorandum

To: Sussex County Planning Commission Members  
From: Lauren DeVore, Planner III  
CC: Vince Robertson, Assistant County Attorney and Applicant  
Date: March 5, 2020  
RE: Staff Analysis for CU 2222 Jessica F. Peake

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2222 Jessica F. Peake to be reviewed during the March 12, 2020 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for tax parcel 134-17.11-40.00 to allow for an outdoor mini golf course to be located on the east side of Coastal Highway (Route 1), south of Jefferson Bridge Road (S.C.R. 361-A) at 32967 Coastal Highway in Bethany Beach, Delaware. The size of the property is 0.46 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the property has the land use designation of "Coastal Areas."

The areas to the north, south, east and west are also designated "Coastal Areas." "Coastal Areas" are areas that can accommodate development provided special environmental concerns are addressed. "Coastal Areas" also support a range of housing types including single-family homes, townhomes, and multi-family units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Mixed-use development should also be allowed.

The property is zoned General Commercial (C-1). The properties located to the north and east of the application site are also zoned General Commercial (C-1). There is one parcel zoned High Density Residential (HR-1) to the north on the northern side of Jefferson Bridge Road as well as a single parcel zoned Medium Density Residential (MR) to the northwest of the subject parcel. The properties on the western side of Coastal Highway (Route 1) are zoned General Commercial (C-1) and Medium Density Residential (MR).

Since 2011, there have been no Conditional Use approvals within a 1-mile radius of the application site.



Memo regarding CU 2222 Jessica F. Peake  
For the March 12, 2020 Planning Commission Meeting  
March 5, 2020  
Page | 2

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use proposed for the abovementioned location subject to considerations of scale and impact, could be considered as being consistent, in principle, with the land use, area zoning and surrounding uses. Additionally, the site lies within the Combined Highway Corridor Overlay Zone (CHCOZ) and as such, all applicable landscape buffer requirements shall apply.

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JESSICA F. PEAKE

(Case No. 12416)

Hearings were held after due notice on February 17, 2020 and March 2, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

### Nature of the Proceedings

This is an application for variances from the front yard setback requirement for proposed structures, the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ), and from the number of required parking spaces.

### Findings of Fact

The Board found that the Applicant is requesting a variance of 45 feet from the sixty (60) feet front yard setback requirement for a proposed golf course, a variance of 5 feet from the twenty (20) feet landscape buffer requirement of the Combined Highway Corridor Overlay Zone, and a variance of 119 parking spaces from the required 125 on-site parking spaces (leaving six total onsite and 12 shared spaces with the adjoining site). These requests were modified from the initial application. This application pertains to certain real property located on the east side of Coastal Highway (Route 1) approximately 300 feet south of Jefferson Bridge Road (911 Address: 32967 Coastal Highway, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.11-40.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan dated January 3, 2020, a survey of the Property dated March 16, 2015, a deed to the Property, portions of the Sussex County Zoning Code, literature on the golf course, a memorandum from Jamie Whitehouse to the Board, a landscape plan dated January 16, 2020, letters of support, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received five (5) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Nick Geracimos and Michael O'Neill were sworn in to give testimony about the Application. Mackenzie Peet, Esq., presented the Application on behalf of the Applicant.
4. The Board found that Ms. Peet stated that the Property consists of 0.46 acres and is located on the east side of Route 1 just south of Bethany Beach in the general commercial (C-1) district. The Property is located near residential and commercial uses including hotels and restaurants. The Applicant seeks these variances as part of a redevelopment plan to redevelop the Property from a liquor store to a miniature golf course. The Property was previously used for Beach Liquors.

9. The Board found that Ms. Peet stated that the variances are necessary to enable reasonable use of the Property and the exceptional practical difficulty has not been created by the Applicant but by the lot's uniqueness.
10. The Board found that Ms. Peet stated that the lot's shape was created prior to the Applicant's lease agreement.
11. The Board found that Ms. Peet stated that granting the variances will not alter the essential character of the neighborhood as it is zoned C-1 and is surrounded by C-1 lots with one adjacent lot zoned MR.
12. The Board found that Ms. Peet stated that the proposed uses will provide recreation to the Bethany Beach area and that the use will be seasonal in nature.
13. The Board found that Ms. Peet stated that there are multiple access points for the site. One access will be from Route 1 and the other access will be from Jefferson Bridge Road through the Holiday Inn Express parcel where the shared parking will be located.
14. The Board found that Ms. Peet stated that additional landscaping will be planted.
15. The Board found that Mr. Peet stated that the site does not have sufficient parking for this use so the Applicant will share parking with its neighbor.
16. The Board found that Ms. Peet stated that these variances represent the minimum variances to afford relief.
17. The Board found that Ms. Peet stated that the Zoning Code does not provide for a parking requirement for an outdoor commercial use and that an indoor commercial use is the most closely related use. An indoor commercial use would be required to have 125 parking spaces.
18. The Board found that Ms. Peet stated that there is a distinction between indoor and outdoor commercial uses and that 125 parking spaces are not required for the use of a miniature golf course.
19. The Board found that Ms. Peet stated that the expected patrons of the golf course will be mostly pedestrian coming from the Sea Colony development or local hotels where they have parked their cars.
20. The Board found that Ms. Peet stated that that the most parking required would be 36 spaces (2 per golf hole). The Applicant proposes there will be six onsite parking spaces and 12 off-site shared parking spaces which will be shared with the Holiday Inn Express. There will be a lease with the owner of the Holiday Inn Express to allow for the shared parking.
21. The Board found that Ms. Peet stated that DelDOT provided a letter stating that the use of a miniature golf course will cause fewer than 500 trips per day and the Applicant anticipates that most of the traffic will come from the same side of Route 1 but they have no data to support that statement.
22. The Board found that Ms. Peet stated that the billboard will remain on the site.
23. The Board found that Mr. O'Neill testified that there will be pilings measuring 8 inches in diameter with rope going through them and 42-inch netting around the golf course.
24. The Board found that Mr. O'Neill testified that the design was based around the existing entrance and the design uses the same driveway as Beach Liquors. He believes that it would be difficult to park closer to Route 1.
25. The Board found that Mr. O'Neill testified that there is no curbing on the front of the



him in a disadvantage with his competitors in the area. He also noted that his other sites have a maximum of 18 parking spaces.

29. The Board found that Mr. Geracimos affirmed the statements made by Ms. Peet as true and correct.
30. The Board found that Ms. Peet stated that she was unsure if the Holiday Inn Express site was underparked or overparked but they believe 1-2 parking spaces per hole is the maximum needed.
31. The Board found that Ms. Peet stated that there is no gap to the edge of paving of Coastal Highway from the front property line.
32. The Board found that Paul Reiger and Keith Steck were sworn in to give testimony in opposition to the Application. Mr. Steck submitted exhibits to the Board to review. Both men had concerns about the parking and felt that the Application should have gone through the conditional use process before coming to the Board.
33. The Board found that Mr. Steck testified that the requested variances are too extreme. He noted that the front yard variance request is a 92% reduction and the landscape variance request is a 75% reduction.
34. The Board found that Mr. Steck testified that he has safety concerns for both drivers, pedestrians, and patrons and that the golf course presents a visibility concern.
35. The Board found that Ms. Peet stated that the kiosk measures 12 feet by 17 feet and not 10 feet by 10 feet as shown on the first plan.
36. The Board voted to leave the record open and the Board held a second hearing on March 2, 2020. At that hearing, Mr. Geracimos, Mr. O'Neill, and Jack Burbage were sworn in to testify about the Application. Additional letters of support, a new site plan, and other exhibits were submitted prior to the meeting.
37. The Board found that Ms. Peet stated that the Applicant has a similar parking arrangement in Ocean City with a hotel and restaurant.
38. The Board found that Ms. Peet stated that the request has been reduced as it pertains to the front yard variance and the CHCOZ variance. The original front yard variance request has been changed from a 55 feet variance from the 60 feet front yard setback requirement to a variance of 45 feet. The 15 feet variance from the 20 feet landscaped buffer requirement has been reduced to 5 feet. These reductions are the result of a reduction in the size of the golf course.
39. The Board found that Ms. Peet stated that the Applicant has provided for a shared use sidewalk should it be required by DeIDOT. The Applicant will address the entrance from Route 1 with DeIDOT as DeIDOT will require a commercial entrance.
40. The Board found that Ms. Peet stated that the entrance exists but there is no curbing.
41. The Board found that Ms. Peet stated that crepe myrtles will be planted in the buffer as they are multi-stemmed and will act as a stronger barrier and a greater visual screen around the Property.
42. The Board found that Ms. Peet stated that a ten-year lease has been executed with the owner of the Holiday Inn Express to allow for twelve parking spaces for the mini-golf course.
43. The Board found that Ms. Peet stated that the hotel has 100 rooms and 143 parking spaces.

47. The Board found that Ms. Peet stated that there is an informal agreement for shared parking with Mickey's Crab House for six spaces if needed and that Mickey's Crab House has 14 spaces.
48. The Board found that Ms. Peet stated that the Applicant is working on a stormwater management plan and will be improving the stormwater conditions on the site as there will be more permeable surface.
49. The Board found that Ms. Peet stated that the Applicant also has to go to the Planning & Zoning Commission for approval.
50. The Board found that Mr. Geracimos testified that there are 2 employees at the golf course and that parking has not been an issue at other locations
51. The Board found that Mr. Burbage testified that this amenity will be a positive thing for Bethany.
52. The Board found that Mr. Burbage testified that there is ample parking on the Holiday Inn site which is owned by him and that he rarely sees the Holiday Inn parking lot full.
53. The Board found that Mr. Burbage testified that he expects most of the traffic to the miniature golf course will be either by bicycle or on foot from the local hotels and the Sea Colony development.
54. The Board found that Brenton Archut was sworn in to give testimony in opposition the Application.
55. The Board found that Mr. Archut testified that he and his mother own property on both sides of Coastal Highway which includes the Hickman Plaza south of the subject property. His property includes the location of the Cottage Café and is within walking distance of the Applicant's site.
56. The Board found that Mr. Archut testified that he is concerned about the parking variances because available parking is a premium in this area.
57. The Board found that Mr. Archut testified that they have had to hire parking monitors to make sure that the people using their services have available parking.
58. The Board found that Mr. Archut testified that the on-street parking in this area is almost non-existent and there is no public transportation in this area.
59. The Board found that Mr. Archut testified that he has concerns that the Holiday Inn with 100 rooms should have 150 parking spaces per Sussex County Code. He has seen the hotel's lot full of cars.
60. The Board found that Mr. Archut testified that he has concerns that patrons of the golf course will use their parking spaces.
61. The Board found that Mr. Archut testified that, while many people walk or bike in the area, there is still a lot of vehicle traffic and the number of parking spaces allotted will not be enough.
62. The Board found that Ms. Peet stated that Sea Shell Shop has a miniature golf course 7 feet from Route 1 and the Applicant has other golf courses which are closer to the road.
63. The Board found that Mr. Geracimos testified that he has 18 spaces at 4 other locations – 3 of which are in Ocean City and the parking lot is rarely full.
64. The Board found that Mr. Geracimos testified that there are lots of bikers to his site in Fenwick and he had to double the size of his bike racks to accommodate the bikers.

- a. The Applicant failed to prove that the Property could not be reasonably developed in strict conformity with the Sussex County Zoning Code. The Applicant proposes to construct a miniature golf course on this lot and the golf course will encroach significantly into the front yard setback area. The golf course will also encroach into the landscape buffer area and will require a parking variance. While the Applicant argued that it was constrained by the size and shape of the lot, the Applicant's designer also admitted that the Applicant has a blank slate upon which to work. The Applicant modified its request after the first hearing but the design still greatly encroaches into the front yard setback area and places the golf course close to Coastal Highway, where there is no existing sidewalk, curbing, or grass buffer. Notably, much of the rear corner of the lot which is farthest away from Route 1 is used for parking. This design has taken up part of the building envelope and pushed the golf course closer to Route 1. The Board also notes that the Applicant failed to demonstrate why a smaller golf course would not work on the site. Rather, the Applicant has chosen to use a significant portion of the lot - including large swaths of area outside the building envelope - for the golf course. The Board was simply not convinced that the Applicant could not otherwise develop the Property in compliance with the Code. Likewise, the Board was not convinced that the variances are necessary to enable reasonable use of the Property.
- b. The Board finds that the Applicant is creating its own exceptional practical difficulty by proposing to develop the Property with a miniature golf course which does not fit within the building envelope. The Applicant's decision to construct this golf course on this site is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the golf course as proposed for purposes of convenience, profit, and / or caprice. The Board notes that the proposed design of the Property is busy that there is little area of the Property which is not somehow used for the golf course. The need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created its own exceptional practical difficulty.
- c. The Board finds that the proposed golf course will be detrimental to the public welfare. The Property is located in an area that suffers from traffic and parking problems during the summer months - which is the same time when the golf course will be in operation. Testimony from neighbors clearly demonstrates that parking is a problem and needs regular enforcement. While the Applicant proposes to use parking on a nearby property, the site itself will only have 6 spaces. The Board questions whether the neighboring property which will offer the shared spaces has sufficient parking as there was testimony that it is full at times. The reduction of the available spaces

demonstrate that the Property could not otherwise be developed in compliance with the Sussex County Zoning Code.

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

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny were Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. Dr. Kevin Carson and Mr. Brent Workman voted against the motion to deny Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

EXHIBIT E

Service Level Evaluation

LAW OFFICES

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**T**UNNELL  
& **R**AYSOR, P.A.



STATE OF DELAWARE  
DEPARTMENT OF TRANSPORTATION  
800 BAY ROAD  
P.O. BOX 778  
DOVER, DELAWARE 19903

JENNIFER COHAN  
SECRETARY

January 31, 2020

Mr. Jamie Whitehouse, Acting Director  
Sussex County Planning & Zoning  
P.O. Box 417  
Georgetown, DE 19947

Dear Mr. Whitehouse:

The Department has completed its review of a Service Level Evaluation Request for the **Nicholas Geracimos** conditional use application, which we received on January 2, 2020. This application is for an approximately 0.46-acre parcel (Tax Parcel: 134-17.11-40.00). The subject land is located on the east side of Delaware Route 1, approximately 300 feet southeast of the intersection of Delaware Route 1 and Jefferson Bridge Road (Sussex Road 361A), just south of Bethany Beach. The subject land is currently zoned as C-1 (General Commercial) and the applicant is seeking a conditional use approval to develop an 18-hole miniaturized golf course.

Per the 2018 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along the segment of Delaware Route 1 where the subject land is located, which is from the north South Bethany Beach limits to Ashwood Street, are 28,202 and 36,296 vehicles per day, respectively.

Based on our review, we estimate that the above land use will generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day. These numbers of trips are DelDOT's minimum warrants for determining that a Traffic Impact Study (TIS) should be required for a particular development. Because the proposed land use would not meet these warrants, we consider the development's traffic impact to be negligible in the context of our agreement with the County regarding land development coordination and we do not recommend that the applicant be required to perform a TIS for the subject application. DelDOT's description of this application as negligible with regard to warranting a TIS does not mean that it is negligible in other respects. We recommend that the applicant not be required to perform a TIS for the subject application.

If the County approves this application, the applicant should be reminded that DelDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.



Mr. Jamie Whitehouse  
Page 2 of 2  
January 31, 2020

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.  
County Coordinator  
Development Coordination

TWB:cjm

cc: Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues  
Nicholas Geracimos, Applicant  
J. Marc Coté, Assistant Director, Development Coordination  
Gemez Norwood, South District Public Works Manager, Maintenance and Operations  
Susanne Laws, Sussex County Subdivision Coordinator, Development Coordination  
Derek Sapp, Subdivision Manager, Development Coordination  
Kevin Hickman, Subdivision Manager, Development Coordination  
Brian Yates, Subdivision Manager, Development Coordination  
John Andrescavage, Subdivision Manager, Development Coordination  
James Argo, South District Project Reviewer, Maintenance & Operations  
Troy Brestel, Project Engineer, Development Coordination  
Claudy Joinville, Project Engineer, Development Coordination

EXHIBIT F

Photos – Signage and Property

LAW OFFICES

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**T**UNNELL  
& **R**AYSOR, P.A.





Bottom Sign is from our 45th street location in Ocean City where we use a shared parking system with a hotel and a restaurant. Total dedicated spots to only mini golf is 9.

**Nicholas Geracimos**

Nick's Mini Golf, Ocean City Maryland

[geracimos17@gmail.com](mailto:geracimos17@gmail.com)

443-907-8665





EXHIBIT G

Aerial Maps

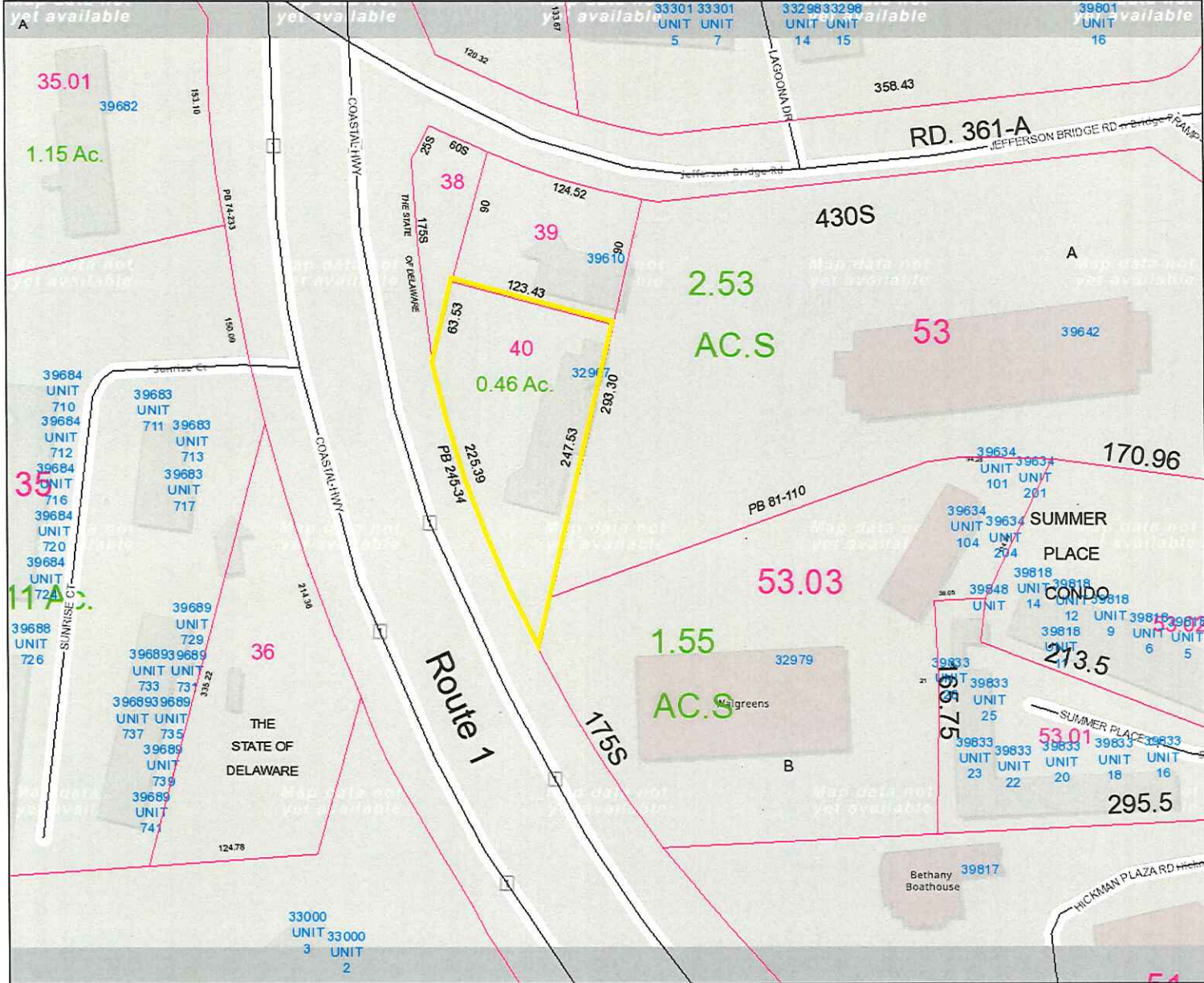
LAW OFFICES

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**T**UNNELL  
& **R**AYSOR, P.A.



# Sussex County



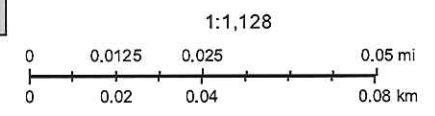
<b>PIN:</b>	134-17.11-40.00
<b>Owner Name</b>	PEAKE JESSICA F TRUSTEE
<b>Book</b>	4710
<b>Mailing Address</b>	35229 OVERFALLS DR NOF
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	DELAWARE AVE LOT
<b>Description 2</b>	N/A
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer

Override 1
- polygonLayer

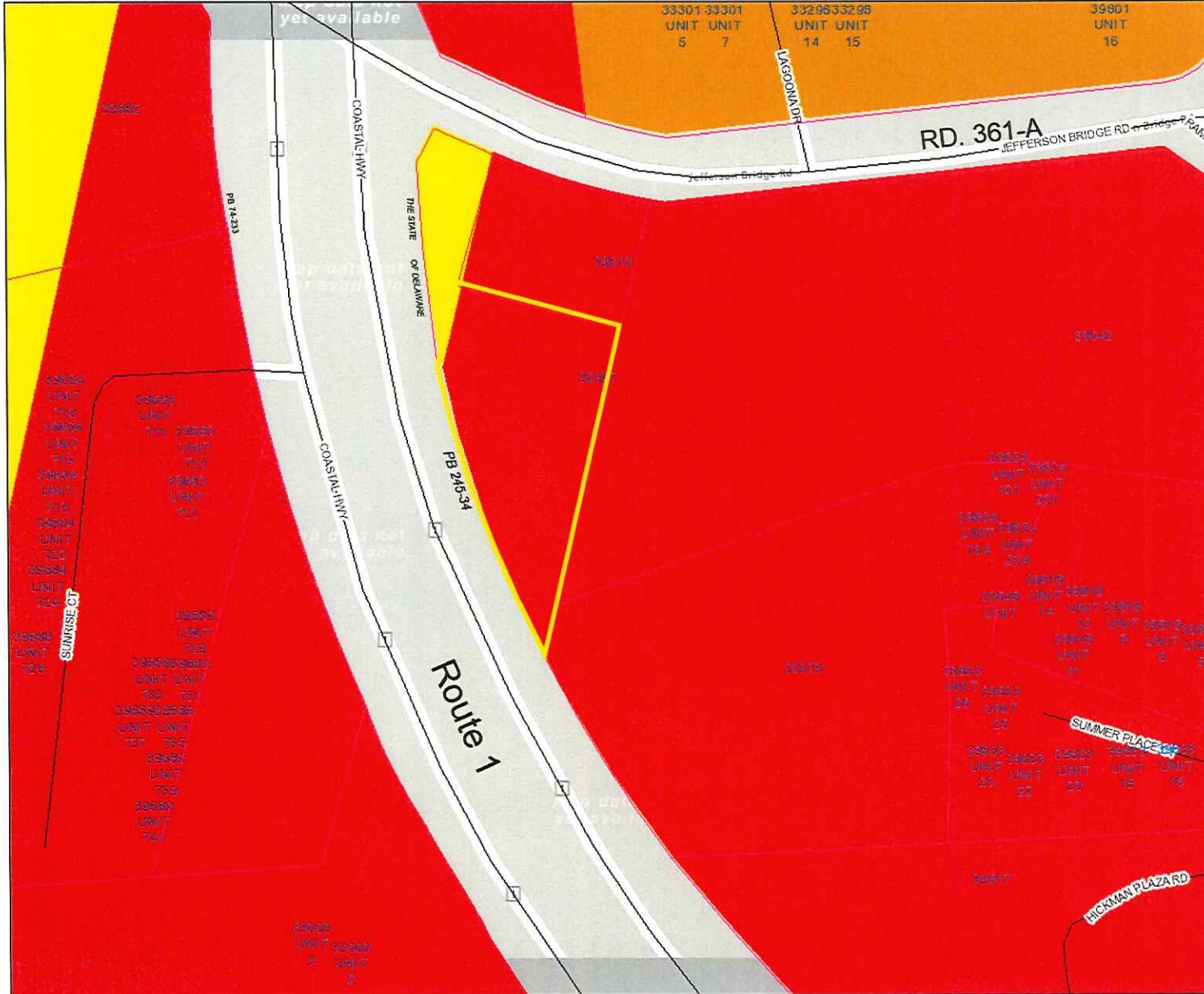
Override 1

  - Tax Parcels
  - 911 Address
  - Streets
  - County Boundaries





# Sussex County

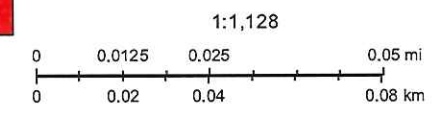


<b>PIN:</b>	134-17.11-40.00
<b>Owner Name</b>	PEAKE JESSICA F TRUSTEE
<b>Book</b>	4710
<b>Mailing Address</b>	35229 OVERFALLS DR NOR
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	DELAWARE AVE LOT
<b>Description 2</b>	N/A
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

  - Override 1
- Tax Parcels
- 911 Address
- Streets



Mailing List Exhibit Map  
Planning Commission  
CU 2222 Lands of Jessica F. Peake  
134-17.11-40.00  
Jessica F. Peake  
21 Ocean Drive  
Apartment 707  
Rehoboth Beach, DE 19971

Located on the east side of Coastal Highway (Route 1), south of Jefferson Bridge Road (S.C.R. 361-A) at 32967 Coastal Highway, Bethany Beach, DE 19930.

134-17.08-114.00



JEFFERSON BRIDGE ROAD 00S1A

134-

134-17.11-40.00

134-17.00-53.00

134-17.11-35.00

134-17.11-36.00

134-17.00-53.03

0 0.005 0.01 0.015 0.02 Miles

EXHIBIT H

Lease with Extension

LAW OFFICES

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**T**UNNELL  
& **R**AYSOR, P.A.



**COMMERCIAL LEASE**

THIS COMMERCIAL LEASE, entered into this \_\_\_\_\_, day of \_\_\_\_\_, 2020, between: **JESSICA F. PEAKE, Trustee of the Jessica F. Peake Revocable Trust dated May 12, 2017 and any amendments thereto**, of 21 Ocean Drive, Apt. 707, Rehoboth Beach, DE 19971, hereinafter referred to as **LANDLORD**,

-AND-

**John H. Burbage, Jr. and/or an entity in which Mr. Burbage owns a controlling interest**, of 9919 Stephen Decatur Highway, Ocean City, MD 21842, hereinafter referred to as **TENANT**.

**WITNESSETH**, that the Landlord hereby leases to Tenant and Tenant leases from Landlord, the premises further identified as 32967 Coastal Highway, Bethany Beach, DE 19930 (further identified as Tax Map No. 134-71.11-40.00), and known as **PROPERTY**. A diagram of the premises is attached to this Lease as Exhibit A and designated as lands of **JESSICA F. PEAKE**.

The premises shall include all the land and improvements except the Billboard. It is specifically recognized that the building on the premises will undergo extensive renovations or demolition at Tenants sole expense. Landlord must approve the new buildings and use before construction. Said approval will not be unreasonably withheld.

The Billboard located upon the premises shall not be included with this lease. The Landlord shall maintain exclusive control over the Billboard with a right to rent and maintain it. However, Landlord agrees to give the Tenant a right of first refusal to meet any lease rental agreement after the current Billboard lease term expires. It is recognized that the present Billboard Tenant and the Landlord have a long-standing relationship that includes future extensions which may or may not be continued.

It is recognized that during construction the Billboard shall be protected by the Tenant and its contractor. The contractor shall not hinder or weaken the billboard and shall not interrupt the electrical supply or lighting. If the billboard needs or can be relocated, such relocation will be at Tenant's expense.

1. **TERM**

The initial term of this Lease is for ten (10) years. The initial term shall begin on January 1, 2020 and terminate on December 31, 2029. The annual rent shall be [REDACTED] and during the first year of the Lease, paid in monthly installments of [REDACTED] with the first payment due on January 1, 2020, subject to Tenant's rights in paragraph 3. Thereafter, the annual rent shall increase by [REDACTED] per year of the initial term and shall be payable in three (3) equal installments due on June 1, July 1, and August 1, for each year thereafter. Tenant shall have the right to extend this Lease for four (4), five (5) year terms (hereinafter "Renewal Term(s)"), by giving written notice to Landlord at least thirty (30) days prior to the expiration of the initial term, or any Renewal Term, as may be applicable. The rent for any Renewal Term, as may be applicable, shall be due on June 1, July 1, and August 1, of each year, and rent shall continue to increase each year of the Renewal Term by [REDACTED]. All other terms and conditions of this Lease shall remain in full force and effect during any Renewal Term(s).

2. **RENT**

The Tenant shall pay all taxes, utilities, insurance any other costs associated with the annual fees related to this property. This is a triple net lease with the Tenant paying all costs except items separately agreed to in Exhibit G of this agreement. The rent shall be paid on the first day of June, July and August each year except that the rent shall be paid in monthly installments in the first (1<sup>st</sup>) year beginning on January 1, 2020 through December 31, 2020, as specified in paragraph 1. If the rent payment is not received by the fifth (5<sup>th</sup>) day of the month due, there will be a Fifty dollar (\$50.00) late fee. The schedule of rentals is attached hereto as Exhibit B.

3. **TENANT OPTION.**

In the event that Tenant is unable to obtain all necessary permits to construct a miniature golf course on the premises by **May 30, 2020**, Tenant shall have

the option, in his discretion, by written notice to Landlord before **June 15, 2020**, to either:

(1) terminate this Lease, whereupon it shall be declared null and void, and neither of the parties shall have any further liability; or (2) pay Landlord a retainer of **\_\_\_\_\_ thousand Dollars** **\_\_\_\_\_** to extend/suspend the Lease Term until **December 31<sup>st</sup> 2020**, during which time Tenant shall not pay the monthly rent set forth in paragraph 1 hereof. **In the event that Tenant does not pay the \_\_\_\_\_ and Tenant is unable to obtain all necessary permits to construct a mini golf course on the premises by May 30, 2020, Landlord shall have the option, in her discretion, by written notice to Tenant before June 15, 2020, to terminate this Lease.** In the event that Tenant exercises option (2) above, **starting on January 1, 2021**, annual rent shall commence, and all terms and conditions of this Lease shall be in full force and effect.

#### **4. RIGHT OF FIRST REFUSAL**

During the term of this Lease, or any Renewal Term(s), Landlord does hereby grant and convey to Tenant, a right of first refusal to purchase the subject property. Should Landlord receive an offer from a third-party to purchase the subject property, Landlord shall notify Tenant, by certified mail, return receipt requested, or by hand delivery, of the proposed sale and its principal terms, with a copy of the Contract of Sale. Tenant shall have a period of fifteen (15) days to accept or to reject the proposed offer. Tenant may exercise the right of first refusal by giving notice to Landlord within said fifteen (15) day period. If Tenant accepts the offer, Tenant shall settle according to the terms of the offer; provided, that Tenant shall have a minimum of forty-five (45) days to close on the property. In the event that Tenant rejects one or more offers of purchase, this right of first refusal shall be continuing for the term of this Lease, and any Renewal Term(s), and Landlord shall be obligated to present future offers.

#### **5. PERMITTED USE**

Sale of Alcoholic liquors and general rentals. Mini-golf or other recreational activities or a restaurant, and all other accessory, ancillary, or related uses.

#### **6. LOCAL LAWS**

Tenant shall, at its own cost and expense: (a) comply with all governmental

laws, ordinances, orders and regulations affecting the demised premises now in force or which hereafter may be in force; (b) comply with and execute all rules, requirements and regulations of the Board of Fire Underwriters, Landlord's insurance companies and other organizations establishing insurance rates; (c) not suffer, permit or commit any waste or nuisance; and (d) not conduct any auction, distress, fire or bankruptcy sale without approval of the Landlord.

**7. ASSIGNMENT AND SUBLETTING**

Tenant shall not assign, mortgage or encumber this Lease, in whole or in part, or sublet all or any part of the demised premises without the prior written consent of Landlord; provided, that Tenant shall have the right to assign or sub-let his interest to a Corporation, LLC, or other entity where Tenant owns at least a controlling interest, or fifty one percent (51%) of the stock or membership interests. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment. If Tenant is a corporation and if any transfer, sale, pledge or other disposition of the majority of the outstanding capital stock shall occur, or if the power to vote the majority of the outstanding capital stock be changed, then Tenant shall so notify Landlord and Landlord shall have the right, at its option, to treat any such transfer, etc., as an assignment under this paragraph and subject to all the restrictions herein contained.

**8. REPAIRS**

Landlord shall not be required to make any repairs or improvements of any kind on the demised premises. Tenant shall, at its own cost and expense take good care and make any improvements and repairs, structural and otherwise.

Should any mechanic's lien or any other lien be filed against the demised premises or any part thereof for any reason by Tenant's acts or because of a claim against Tenant, Tenant shall cause the same to be cancelled and discharged of record by bond or otherwise within thirty (30) days after the date of such filing.

**9. UTILITIES**

Tenant shall pay for all utilities used in the leased premises. Landlord shall incur no liability to Tenant in the event of any interruption in the supply of any utilities to the demised premises of the Tenant.

**10. INDEMNITY TO LANDLORD**

(a) Tenant shall indemnify Landlord and save Landlord harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon or at or from the demised premises or the occupancy or use by Tenant of said premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires, including the sidewalks and common areas and facilities, if any, within the premises; (b) Tenant shall store its property in and shall occupy the demised premises and all other portions at its own risk, and releases Landlord, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage; (c) Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise or equipment, fixtures or other personal property of Tenant or to Tenant's business; (d) Landlord shall not be responsible or liable to Tenant or to those claiming by, through or under Tenant for any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining premises; (e) Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building on this property or any of the equipment, machinery, utilities, appliances or apparatus therein nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused by or resulting from bursting, breakage or by or from leakage, steam, running or the overflow of water or sewerage in any part of said premises or for any injury or damage caused by or resulting from acts of God or the elements; (f) Tenant shall give prompt notice to Landlord in case of fire or accidents in the demised premises or in the building of which the demised premises are a part or of defects therein or in any fixtures

or equipment; and (g) in case Landlord shall without fault on its part be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees.

**11. ATTORNEY FEES**

Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in enforcing the terms of this Lease either by the filing of legal action or in the event Landlord is required to incur legal expense to enforce the terms of this Lease by hiring an attorney where a lawsuit has not been filed.

**12. HEIRS AND ASSIGNS BOUND**

This contract shall bind the parties, successors and assigns, legal representatives, executors or any other person who now or may in the future have an interest in the terms and conditions pursuant to this Agreement. In the event that Landlord accepts a contract to sell the subject property, and Tenant does not exercise his right of first refusal as set forth in paragraph 4, then Landlord agrees to notify the prospective purchaser of this Lease, and Landlord agrees that this Lease shall run with the land, binding future purchasers. It is agreed that Tenant shall have the right to record this Lease among the Land Records, and Landlord expressly agrees to execute such other and further documents, such as a short Memorandum of Lease, in a form which can be recorded among the Land Records. In the event of recordation, Tenant shall pay all recording costs.

**13. TIME IS OF THE ESSENCE**

It is understood and agreed between the parties hereto that time is of the essence of this contract and this applies to all terms and conditions contained herein.

**14. LANDLORD RIGHTS**

The rights of the Landlord under the foregoing shall be cumulative and failure on the part of the Landlord to exercise promptly any rights given hereunder shall

not operate to forfeit any of the said rights. It is further understood and agreed between the parties that any charges against the Tenant by the Landlord for services or for work done on the premises by order of the Tenant under this contract shall be considered as rent due and shall be included in any lien for rent due and unpaid and required to be paid immediately.

**15. BREACH**

If the Tenant shall breach any statute or ordinance or any provision of this Lease, the Landlord shall have the right to give Tenant written notice to remedy or correct such breach, and if Tenant shall not remedy or correct such breach within thirty (30) days after such notice, or thirty (30) days if the breach is a failure to pay rent, the Landlord may terminate this Lease and bring a proceeding for possession; provided nevertheless that when any such breach by Tenant causes or threatens to cause irreparable harm to any person or property, the Landlord may, without notice, remedy the breach and bill the Tenant or immediately terminate the Lease upon notice to the Tenant and bring summary proceedings for possession. In the event of a non-monetary breach, in the event that said breach cannot be reasonably cured within the thirty (30) day period, the right to cure shall be extended (and Tenant shall not be in default) so long as Tenant diligently performs to cure the breach.

**16. DEFAULT**

In addition to all other rights provided for in this Lease and under the Delaware Landlord and Tenant Code, upon default, to the extent applicable, Landlord shall also be entitled to institute a distraint action in accordance with Chapter 63 Title 25 of the Delaware Code.

**17. END OF TERM**

At the expiration of this Lease, Tenant shall surrender the demised premises and deliver possession, and all structures (except trade fixtures) constructed by Tenant in a good condition, reasonable wear and tear excepted. Before surrendering said premises,

Tenant shall remove all its personal property, trade fixtures, alterations, additions and decorations, and shall repair any damage caused, thereby Tenant's obligations to perform this provision shall survive the end of the term of this Lease. If Tenant fails to remove its property upon the expiration of this Lease, the said property shall be deemed abandoned and shall become the property of Landlord.

**18. NO WAIVER**

Failure of Landlord to insist upon the strict performance of any provision or to exercise any option or any rules and regulations shall not be construed as a waiver for the future of any such provision, rule or option. The receipt by Landlord of rent with knowledge of the breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent shall be deemed to be other than on account of the earliest rent then unpaid nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease.

**19. NOTICES**

Any notice, demand, request or other instrument which may be or are required to be given under this Lease shall be delivered in person or sent by United States Certified or Registered Mail, postage prepaid, and shall be addressed (a) if to Landlord, at 35229 Overfalls Drive North, Lewes, DE 19958; and (b) if to Tenant, at 9919 Stephen Decatur Highway, Ocean City, MD 21842. Either party may designate such other address as shall be given by written notice.

**20. TENANT'S INSURANCE**

Tenant shall maintain a full force and effect during the term of the Lease or



any renewal or extension thereof, public liability insurance in amounts of not less than **ONE MILLION (\$1,000,000.00) Dollars and FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS** covering the risks generally included in such a policy. Such a policy shall name Landlord and Tenant as insureds, as their interests shall appear, and shall be affected by valid and enforceable policies issued by insurers of recognized responsibility satisfactory to Landlord. The Tenant shall maintain and keep in force all employees' compensation insurance required under the laws of the State of Delaware and any such other insurance as may be necessary to protect the Landlord against any liability arising hereunder by operation of law, whether such law be now in force or adopted subsequent to the execution hereof. Appropriate certificates shall be furnished to Landlord by Tenant to prove issuance of such policies and their coverage.

**21. ENTIRE UNDERSTANDING**

This Lease represents the entire understanding between the parties with regard to the leasing of the herein described premises by Tenant and may not be changed except by amendment hereto in writing signed hereafter by both parties.

**22. BINDING EFFECT**

This Lease shall bind and benefit the parties hereto and their respective executors, administrators, heirs, successors and assigns.

**23. LANDLORD-TENANT CODE**

Tenant acknowledges that there has been attached hereto for its benefit, in accordance with 25 Del.C. Section 6504, a summary of the Landlord-Tenant Code as prepared by this State, and hereby waives the privilege that it might have had, but for the furnishing of such summary, to plead ignorance of the law in any legal or equitable proceeding.

**IN WITNESS WHEREOF**, the parties signed and sealed this Lease effective as of the date first above written.

**LANDLORD**

Harold E. Dukes, Jr.  
Witness

J. Peake (SEAL)  
**JESSICA F. PEAKE, TRUSTEE**

STATE OF Delaware, COUNTY OF Sussex, TO WIT:

I HEREBY CERTIFY, that on this 25<sup>th</sup> day of February, 2020, before me, a Notary Public in and for the State and County aforesaid, personally appeared **JESSICA F. PEAKE, TRUSTEE**, known to me (or satisfactorily proven to be) the person named in the foregoing Commercial Lease, and executed said document for the purposes therein contained, as her own free act and deed.

HAROLD E. DUKES, JR.  
ATTORNEY AT LAW WITH  
POWER TO ACT AS NOTARY PUBLIC  
PER 29 DEL. C SEC 4323 (A)3

Harold E. Dukes, Jr.  
Notary Public  
My Commission Expires:

**TENANT**

Samantha L. Pelster  
Witness

John H. Burbage, Jr. (SEAL)  
**JOHN H. BURBAGE, JR.**

STATE OF Maryland, COUNTY OF Worchester, TO WIT:

I HEREBY CERTIFY, that on this 2 day of March, 2020, before me, a Notary Public in and for the State and County aforesaid, personally appeared **JOHN H. BURBAGE, JR.**, known to me (or satisfactorily proven to be) the person named in the foregoing Commercial Lease, and executed said document for the purposes therein contained, as her own free act and deed.

Samantha L. Pielstick  
Notary Public  
My Commission Expires:



## AMENDMENT TO COMMERCIAL LEASE

or **THIS AMENDMENT TO COMMERCIAL LEASE** (the "Amendment"), entered into this 15<sup>th</sup> day of June 2020, is between Jessica Peake, Trustee of the Jessica F. Peake Revocable Trust dated May 12, 2017 and any amendments thereto, of 21 Ocean Drive, Apt. 707, Rehoboth Beach, DE 19971, hereinafter referred to as LANDLORD,

AND

John H. Burbage, Jr. and/or an entity in which Mr. Burbage owns a controlling interest, of 9919 Stephen Decatur Highway, Ocean City, MD 21842, hereinafter referred to as TENANT.

**WHEREAS**, the Commercial Lease (the "Lease") executed on March 2, 2020 included a Tenant Option whereby Tenant, in his discretion, by written notice to the Landlord before June 15, 2020, had an option, to either: (1) Terminate the Commercial Lease (the "Lease"); or (2) pay Landlord a retainer of ~~FOURTY THOUSAND DOLLARS~~ ~~FOURTY THOUSAND DOLLARS~~ to extend/suspend the Lease Term until December 31, 2020, during which time Tenant shall not pay the monthly rent set forth in Paragraph 1 of the Commercial Lease.

**WHEREAS**, the necessary permits to construct a miniature golf course on the premises have not been obtained and Tenant wishes to operate Option 2 subject to an amendment herein described; and

**WHEREAS**, the Landlord and Tenant wish to amend Paragraph 3 title TENANT OPTION; and

**WHEREAS**, this Amendment may be executed in counterparts; and

**NOW THEREFORE**, Paragraph 3 of the Commercial Lease is hereby amended, as follows:

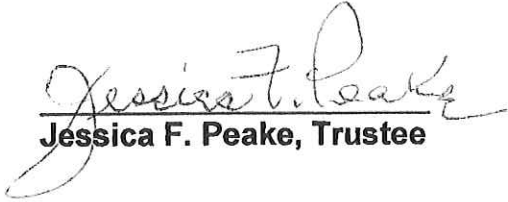
### **3. TENANT OPTION**

In the event that Tenant is unable to obtain all necessary permits to construct a miniature golf course on the premises by December 31, 2020, Tenant or Landlord shall have the option to terminate the Lease, whereupon it shall be declared null and void, and neither of the parties shall have any further liability. Tenant shall pay the Landlord monthly installments of ~~EIGHT THOUSAND THREE HUNDRED THIRTY THREE DOLLARS~~ and ~~THIRTY THREE CENTS (\$0.33)~~; with the first payment due on July 1, 2020 and the final payment due on December 1, 2020. In the event that Tenant obtains all necessary permits to construct a miniature golf course on the premises by December 31, 2020, the lease shall go into effect, as written and executed, on January 1, 2021 with monthly installments to begin thereafter in accordance with Paragraph 1 of the Lease.

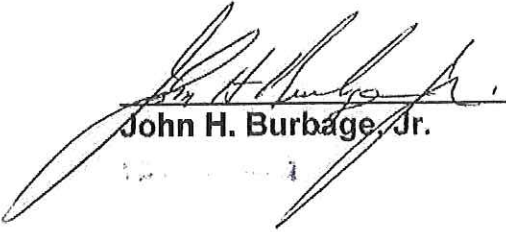
**AMENDMENT TO COMMERCIAL LEASE**

To evidence the parties' agreement to this Amendment, they have executed and delivered it on the date stated in the preamble.

**Landlord**

  
**Jessica F. Peake, Trustee**

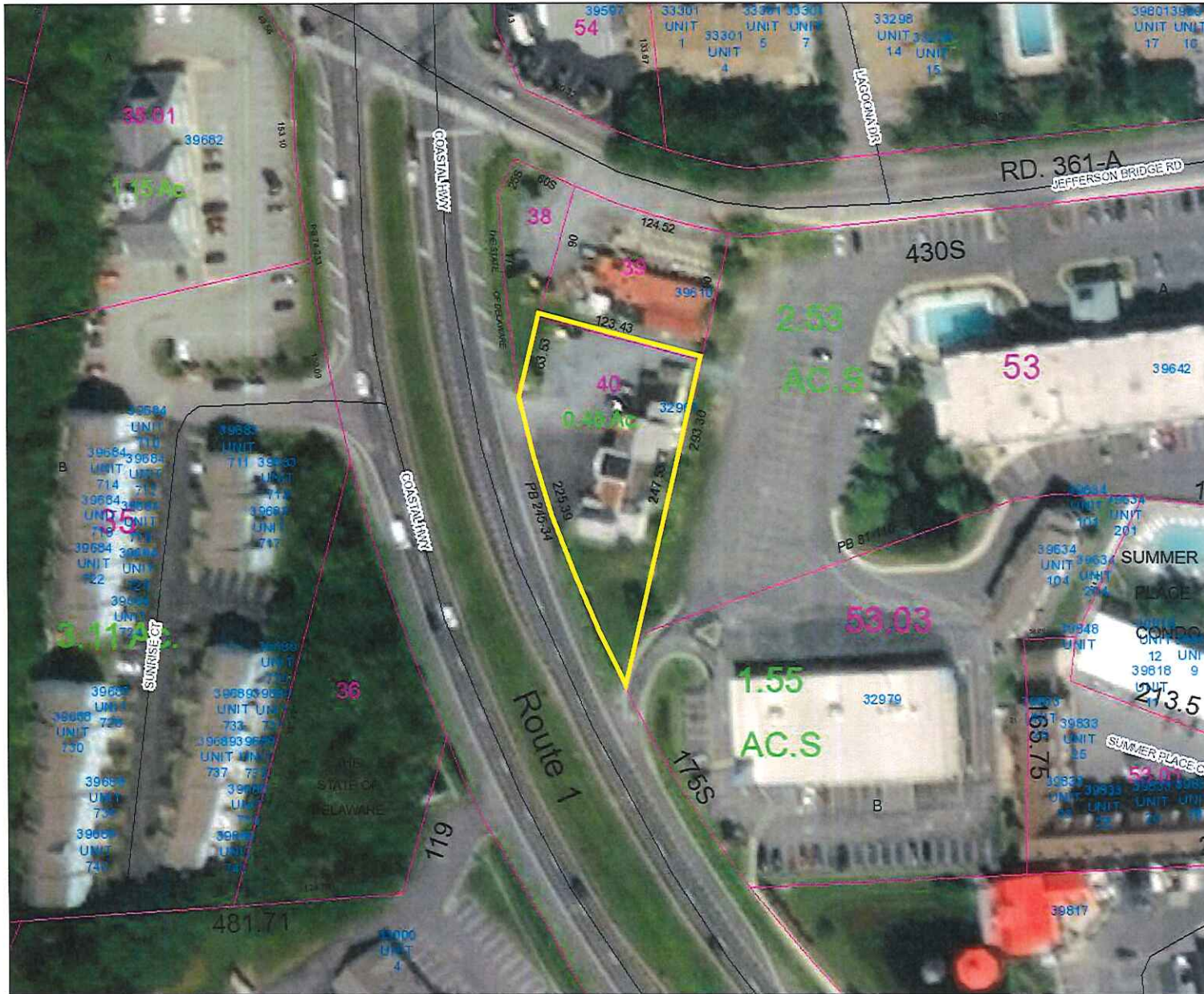
**Tenant**

  
**John H. Burbage, Jr.**





# Sussex County



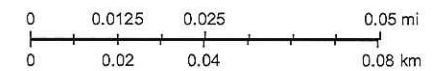
<b>PIN:</b>	134-17.11-40.00
<b>Owner Name</b>	PEAKE JESSICA F TRUSTEE
<b>Book</b>	4710
<b>Mailing Address</b>	9919 STEPHEN DECATUR
<b>City</b>	OCEAN CITY
<b>State</b>	MD
<b>Description</b>	DELAWARE AVE LOT
<b>Description 2</b>	N/A
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

Override 1
- polygonLayer**

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

1:1,128



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 # 12508  
Hearing Date 12-21-20  
202014134

Type of Application: (please check all applicable)

Variance   
Special Use Exception   
Administrative Variance   
Appeal

Existing Condition   
Proposed   
Code Reference (office use only)  
115-42      115-182  
115-183      115-185

Site Address of Variance/Special Use Exception:

334-13.15-1.01

Variance/Special Use Exception/Appeal Requested: 3.3 ft from 10 ft sides for dwelling

Variance Requests:

- Front reduction variance on through lot.  
- Front fence variance on through lot.

5 ft from 10 ft side for HVAC  
10 ft from 40 ft front for Pool  
10 ft from 40 ft front for shed  
3 1/2 feet from 5 ft fence height

Tax Map #: 334-13.15-1.01

Property Zoning: GR

Applicant Information

Applicant Name: Louis J. Cuck and Ludovic Bertaut

Applicant Address: 921 S. Victoria Avenue

City Los Angeles State CA Zip: 90019

Applicant Phone #: 323-646-6066 Applicant e-mail: louisjcuck@pacbell.net

Owner Information

Owner Name: Louis J. Cuck and Ludovic Bertaut

Owner Address: 921 S. Victoria Avenue

City Los Angeles State CA Zip: 90019 Purchase Date: 7/31/2018

Owner Phone #: 323-646-6066 Owner e-mail: louisjcuck@pacbell.net

Agent/Attorney Information



Agent/Attorney Name: N/A

Agent/Attorney Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_

Agent/Attorney Phone #: \_\_\_\_\_ Agent/Attorney e-mail: \_\_\_\_\_

Signature of Owner/Agent/Attorney

Date: 12/10/20



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

*You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted. In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.*

**1. Uniqueness of property:**

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

- Our lot (#1.01 - Tax Map #: 3-34-13.15-1.10) is a "through" lot with two (2) front setbacks:
  - Our "through" lot is located between Dunbar Street and Hebron Road
    - front setback off Dunbar Street is 30'
    - front setback off Hebron Road is 40'
  - 93 out of 98 lots in the West Rehoboth Community have only one (1) front setback at 30' or 40'.
  - 5 out of the 98 lots in the West Rehoboth Community are deemed "through" lots:
    - Lots #1, #1.01, #2, #3 and #4 on the Sussex County Delaware Property Records Page - please see attached document.
  - The maximum setback combined for front and rear setbacks on all other lots in the community range from 40' to 50' total:
    - only the five (5) through lots have a combined total of 70' in setbacks - which is 20' to 30' more in setbacks than all the lots in the community.
    - These setbacks disproportionately place severe limitations on the ability of these properties for equitable and comparable development.
  - The standard setback for non through lots would be 30' front, 5' to 10' side and 10' rear.
    - The current 40' front setback off Hebron instead of the standard 10' setback, creates limitations and a hardship to place any detached structures in the rear portion of our backyard without the structures being placed very close to the back of the home we want to build.
- Our lot has two (2) different lengths on each side which complicates placing detached structures within the current setbacks. Please refer to the attached Lot Survey:
  - The NE (left) side is 170.99'
  - The SW (right) side is 148.70'
- The size of our lot is smaller than what zoning would require now if a new lot was created.
- A non-conforming through lot has less than the required lot width and less than the required lot size.

**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.*

- With the 70' in setbacks (Hebron Road 40' and Dunbar Street 30'), it is difficult to create a backyard with detached structures (pool and shed) when 70' of the lot is unusable for structures and the differing lengths of the lot increase that limitation.
- With the 70' in setbacks, there is no other location on the lot to place such structures that don't infringe on the back part of the proposed home.



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

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

- This is a non-conforming lot and we didn't create this lot.
- The shape of our lot is not a perfect rectangle - please refer to the attached lot survey.
- The NW (left) and SW (right) side of our property are different lengths which makes the current setbacks even more challenging to build on:
  - The NE (left) side is 170.99'
  - The SW (right) side is 148.70' – this side is 22' shorter than the NW (left) side.

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

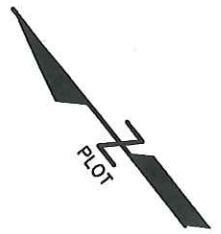
*That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.*

- 85% of the lots (83 out of 98) in the West Rehoboth Beach community are under 10,000 sq. ft. and automatically receive 10' rear setbacks -please see attached document ZONING 115 Attachment 1
- Our home will not change or negatively affect the character of the neighborhood since we are not asking for anything greater than what already exists in the community.
- Building a new home will increase the character of the neighborhood and not take away from it.
- Building new homes in general will only increase the value of the property that people already own in this community.
- Having empty grass lots creates a haven for people outside the community to dump garbage and household items on empty lots which takes away the character of the neighborhood. Previous to our acquisition to the property, the lot was overgrown, trash thrown throughout and otherwise not maintained. *Please See attached photo-*
- Our intent is to build a home for retirement years and become a positive presence in the community.

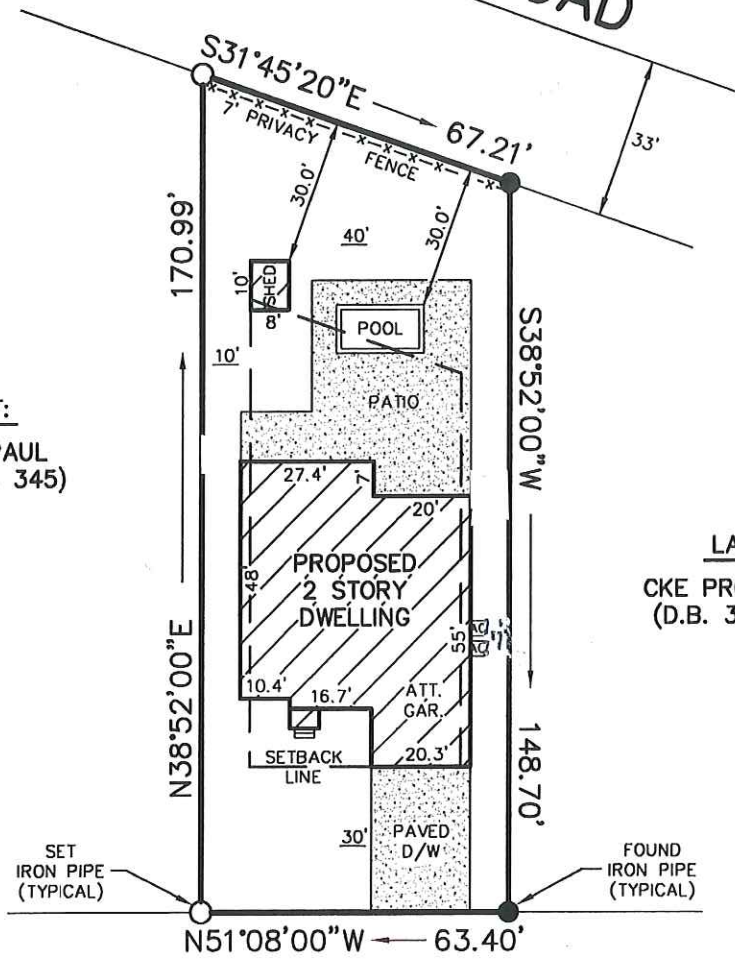
### 5. **Minimum variance:**

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

- We are asking for a 10' reduction of the 'front' setback off of Hebron Road to accommodate a pool and shed.
  - We do not dispute we are a "double frontage" lot: Dunbar Street and Hebron Road. We are 1 of 5 such lots in West Rehoboth. Hebron Road is designated a 'limited access road' by DelDot; therefore, we are unable to obtain a curb cut on Hebron. We have single access to our property off Dunbar Street. While Hebron Road remains a "front" yard per Sussex County Code, our plan demonstrates we intend to use Hebron Road as our "backyard" for a pool and shed.
  - A 10' setback rear yard is standard for 93 out of 98 lots in the community since they aren't deemed through lots. We are asking for an extra 10' out of the 40' setback for what is our rear yard since we have no access to Hebron Road.
- We are asking for a 7' fence variance (which is standard on sides and rear of standard lots) instead of a 3'6" fence variance along Hebron Road for the following reasons:
  - Since we are a through lot, fronts of lots can only have 3' 6" fences. Since the front along Hebron Road will be used as our backyard, we are asking for the standard allowance of a 7' fence to be placed along Hebron Road.
  - There is a heavily trafficked road especially in the summer months and cars are always speeding.
  - The Junction and Breakwater Trail Rehoboth Extension bike path has been approved which will now run along our backyard (front yard Hebron). This bike path will be removing the 4' sidewalk and be replaced with a 10' bike path - please see attached documents. This will create more people on bicycles riding along our backyard.
  - general privacy reasons.
  - general safety of our property due to the heavy traffic, new bike bath and pool.
  - placement of the pool in a yard requires a 4' fence.



HEBRON ROAD



LANDS OF:  
ROBERT H. PAUL  
(D.B. 3373, P. 345)

LANDS OF:  
CKE PROPERTIES, LLC  
(D.B. 3940, P. 228)

DUNBAR STREET  
(30' WIDE / UNIMPROVED)

AREA = 10,134 SQ. FT. ±

**DELAWARE SURVEYING SERVICES**  
MAXWELL J. MORRIS, DE. PLS #625  
P.O. BOX 88  
BETHANY BEACH, DE. 19930  
(302) 537-7094

DATE: DEC. 3, 2020  
SCALE: 1" = 40'

PLOT REF: P.B. 2, P. 3  
DEED REF: D.B. 3373, P. 350  
TAX MAP #: 3-34-13.15-1.01

**SITE PLAN**  
CLASS "B" SURVEY

DESCRIPTION: PART OF LOT 90, " WEST REHOBOTH " LEWES AND REHOBOTH HUNDRED \* SUSSEX COUNTY \* DELAWARE

DRAWING #: 18-023A





# SUSSEX COUNTY

D E L A W A R E

CONTACT US | ?

Home Property Records Search

PARID: 334-13.15-1.01  
CUCKLOUIS J



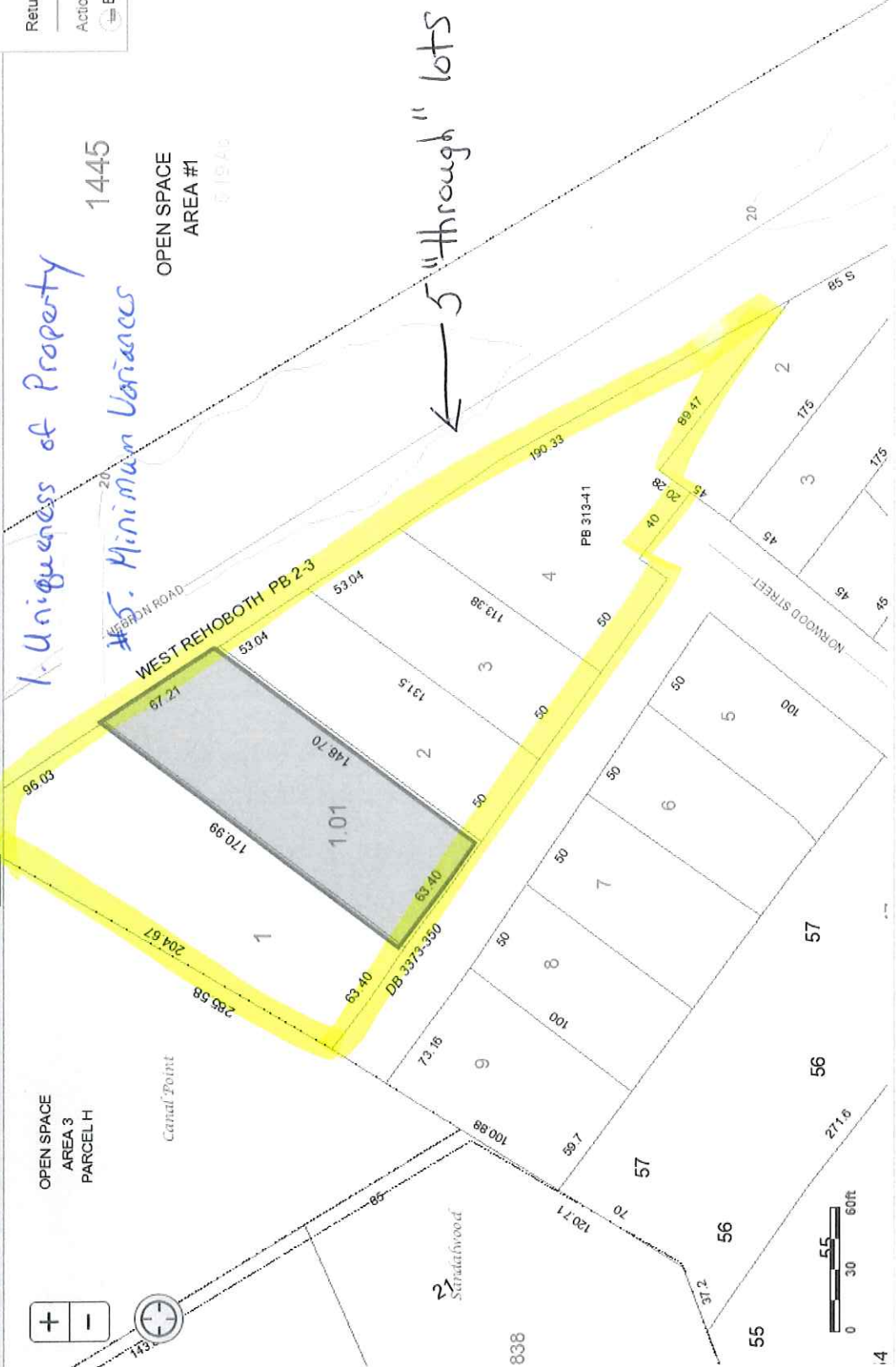
Record Navigator

1 of 1

Return to Search Results

Actions

Buffer Search



#5. Minimum Variance

ZONING

115 Attachment 1

Sussex County

TABLE I

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

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

NOTES:

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

#5. Minimum Variance

SUSSEX COUNTY CODE

(NOTES cont'd):

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

#3. Not created by the applicant

§ 115-182 Front yards.

§ 115-183 Side and rear yards.

#4. Will not alter the essential character of neighborhood

A. Where a building in a commercial district is subject to the height, area and bulk requirements applicable to residential development under § 115-178 of this article, the side yard requirements for residential development shall be applied only to the lowest floor (and all floors above it) which contains more than 25% of its area used for dwelling. All floors shall be subject to side yards required by these regulations for commercial buildings adjacent to residential districts.

#5. Minimum Variance

B. For the purpose of the side yard regulations, a group of business or industrial buildings separated by common or party walls shall be considered as one building occupying one lot.

C. Open unenclosed decks, porches, platforms or steps not covered by a roof or canopy and which do not extend above the first floor of the building may be constructed in a side or rear yard no closer than five feet from a side lot line and five feet from a rear lot line. This provision does not apply to manufactured home parks or campgrounds.  
[Amended 11-28-1989 by Ord. No. 639; 2-1-2005 by Ord. No. 1748; 10-12-2010 by Ord. No. 2152; 3-20-2018 by Ord. No. 2562]

D. For any existing approved lot that is less than 10,000 square feet in size, the side yard setbacks shall be reduced to five feet and the rear yard setback shall be reduced by five feet. For any lot with side or rear setbacks reduced by operation of this § 115-183D, no structures shall extend or project closer than five feet from the lot line. The provision of this subsection shall not apply to any lot in a cluster subdivision, Coastal Area cluster subdivision or residential planned community.  
[Added 3-20-2018 by Ord. No. 2557; amended 5-21-2019 by Ord. No. 2656]

§ 115-184 Corner visibility.

No sign, fence or wall extending to a height in excess of three feet above the established street grade shall be erected or maintained with the area of a corner lot that is included between the lines of the intersecting streets and a straight line connecting them at points 25 feet distant from the intersection of the street lines.

§ 115-185 Accessory buildings and structures.

A. Except as herein provided, no accessory building shall project beyond a required yard line along any street.

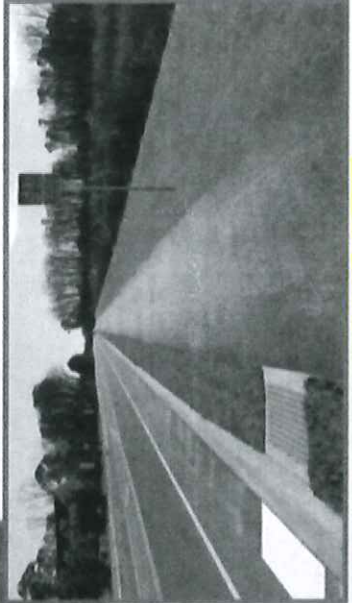
B. Filling station pumps and pump islands may occupy the required yards; provided, however, that they are not less than 20 feet from street lines.

C. Any fence or wall for residential use, not more than 3 1/2 feet in height, may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. Any fence, hedge or wall for residential use may project into or enclose other required yards, provided that such fences, hedges and walls do not exceed a height of seven

#5. Minimum Variance



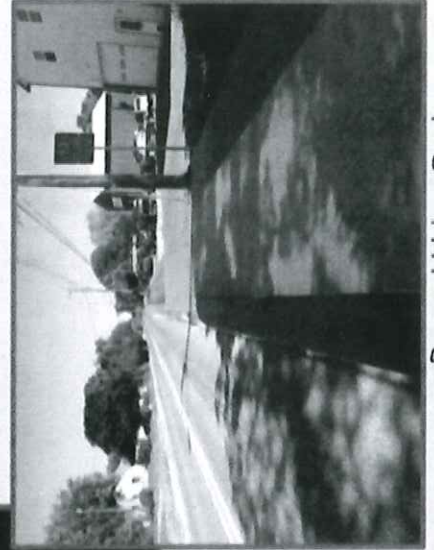
Existing Hebron Road  
(Looking East from Lemick Drive)



Proposed Hebron Road  
(Looking East from Lemick Drive)



Existing Hebron Road  
(Looking North from Hanson Street)



Proposed Hebron Road  
(Looking North from Hanson Street)

# JUNCTION AND BREAKWATER TRAIL REHOBOTH EXTENSION

Contract No. T201330012

*#5 Minimum Variance*



CONCEPT DESIGN REPORT

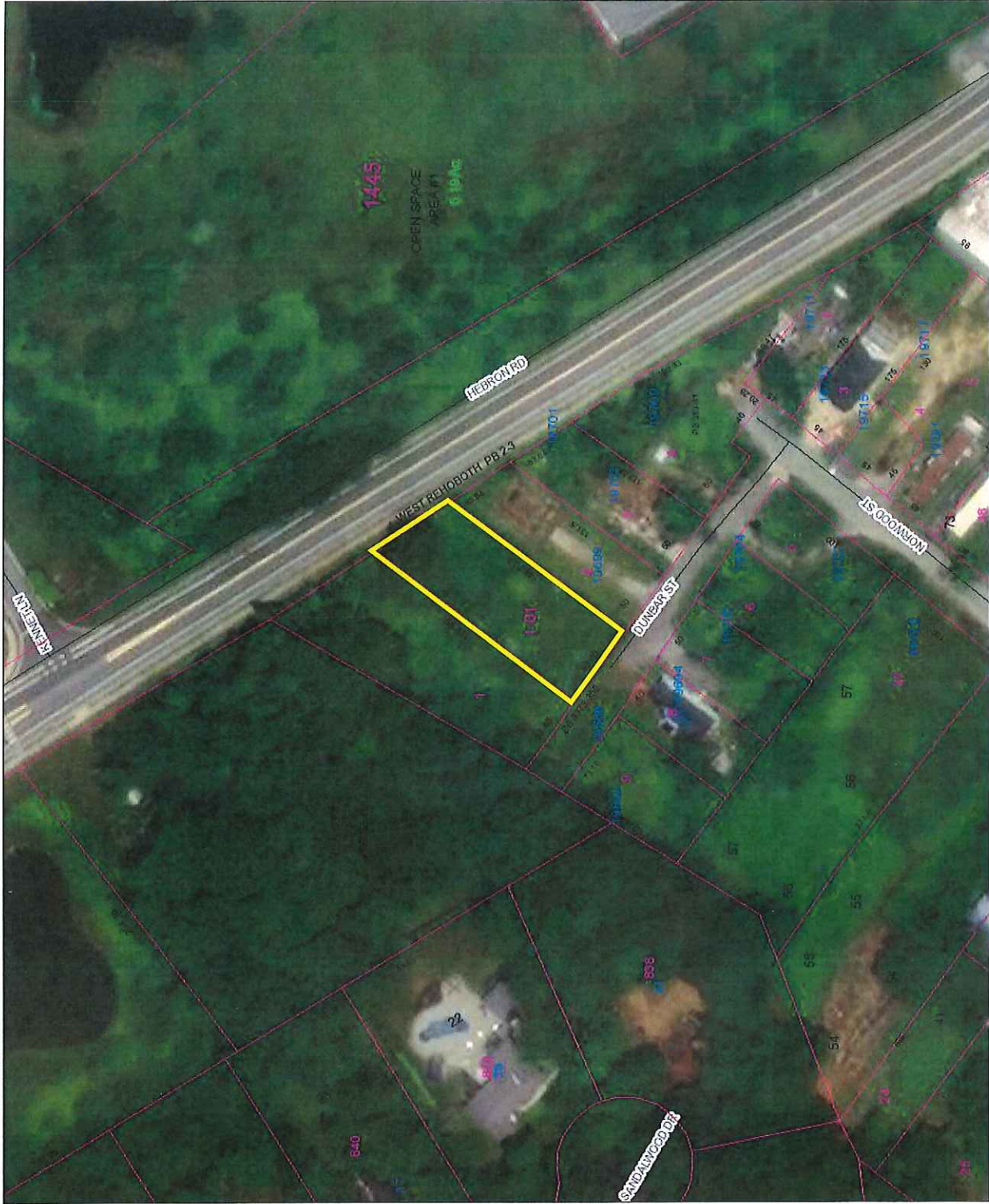




#4. Will not alter character of community.

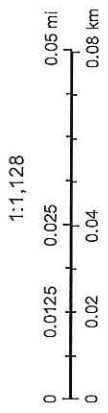


# Sussex County



<b>PIN:</b>	334-13.15-1.01
<b>Owner Name</b>	CUCK LOUIS J
<b>Book</b>	4929
<b>Mailing Address</b>	921 S VICTORIA AVE
<b>City</b>	LOS ANGELES
<b>State</b>	CA
<b>Description</b>	NE/DUNBAR ST
<b>Description 2</b>	SW/PENN RR
<b>Description 3</b>	N/A
<b>Land Code</b>	

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



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

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

Case # 12507  
Hearing Date 12/21  
202013268

**Type of Application: (please check all applicable)**

Variance

Special Use Exception

Administrative Variance

Appeal

Existing Condition

Proposed

Code Reference (office use only)

115-34      115-183  
115-185

**Site Address of Variance/Special Use Exception:**

20591 Fisher Street, Rehoboth Beach, DE 19971

**Variance/Special Use Exception/Appeal Requested:**

Variance from Sussex County Zoning Code Section 115-85 in the amount of one (1) foot for a roughly five panel length portion of existing fence installed around the pool on the Property.

**Tax Map #:** 334-20.09-41.00

**Property Zoning:** MR

**Applicant Information**

Applicant Name: Scott E. Kammerer and Elisabeth H. Kammerer

Applicant Address: 38246 Anna B. Street

City Rehoboth Beach State DE Zip: 19971

Applicant Phone #: \_\_\_\_\_ Applicant e-mail: \_\_\_\_\_

**Owner Information**

Owner Name: Scott E. Kammerer and Elisabeth H. Kammerer

Owner Address: 38246 Anna B. Street

City Rehoboth Beach State DE Zip: 19971 Purchase Date: 7/1/19

Owner Phone #: \_\_\_\_\_ Owner e-mail: \_\_\_\_\_

**Agent/Attorney Information**

Agent/Attorney Name: Mackenzie M. Peet, Esq.

Agent/Attorney Address: 323E Rehoboth Avenue

City Rehoboth Beach State DE Zip: 19971

Agent/Attorney Phone #: (302) 227-1314 Agent/Attorney e-mail: mackenzie@tunnellraysor.com

**Signature of Owner/Agent/Attorney**

Mackenzie M. Peet, Esq.

Date: 9/29/20



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

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

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

**1. Uniqueness of property:**

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

The Property is narrow and appears to have been subdivided from a larger parcel historically. A small portion of the Property where the pool is located is raised creating a unique physical condition on site.

---

**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 portion of the fence that is a roughly five panels length section of fence is over the seven (7) feet fence height restriction by one (1) foot and cannot be reduced as that portion of the fence is located on a raised portion of the Property.

---

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

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

The fence contractor installed thirty seven (37) of existing fence surrounding the of the pool and a five (5) panel section of that fence was installed on top of the raised portion of the Property, causing that length of the fence, and only that portion, to exceed the County's seven (7) feet fence height limitation.

---

**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 fence is permitted as is by the Building & Licensing Department by Permit No. 202008636 for thirty-seven (37) feet of fence including this roughly five panel section of fence that exceeds the seven (7) feet height limitation by one (1) foot. The fence is otherwise Code Compliant and the entire length of fence is approved by the Building & Licensing Department.

---

**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 portion of the fence that is in violation of the Code is only five panels in length. The rest of the fence is Code compliant.

PARID: 334-20.09-41.00  
 KAMMERER SCOTT E

ROLL: RP  
 20591 FISHER ST

**Property Information**

Property Location: 20591 FISHER ST  
 Unit:  
 City: REHOBOTH BEACH  
 State: DE  
 Zip: 19971  
 Class: RES-Residential  
 Use Code (LUC): RS-RESIDENTIAL SINGLE FAMILY  
 Town: 00-None  
 Tax District: 334 - LEWES REHOBOTH  
 School District: 6 - CAPE HENLOPEN  
 Council District: 4-Hudson  
 Fire District: 86-Rehoboth  
 Deeded Acres: .1148  
 Frontage: 50  
 Depth: 100.000  
 Irr Lot:  
 Zoning 1: MR-MEDIUM RESIDENTIAL  
 Zoning 2: -  
 Plot Book Page: /PB  
 100% Land Value: \$11,000  
 100% Improvement Value: \$64,400  
 100% Total Value: \$75,400

**Legal**

Legal Description: DODD'S ADD'N  
 BLK F LOT 28 FISHER  
 ST

**Owners**

Owner	Co-owner	Address	City	State	Zip
KAMMERER SCOTT E	ELISABETH H KAMMERER	38246 ANNA B ST	REHOBOTH BEACH	DE	19971

**Sales**

Sale Date	Book/Page	Sale Price	Stamp Value	Parcels Sold	Grantee/Buyer
07/01/2019	5083/250	\$1,350,000.00			KAMMERER SCOTT E
08/13/2018	4932/45	\$540,000.00			SUR LA PLAGES LLC

**Owner History**

Tax Year:	Owner:	Co-owner	Address:	City:	State:	Zip:	Deed Book/Page:
2020	KAMMERER SCOTT E	ELISABETH H KAMMERER	38246 ANNA B ST	REHOBOTH BEACH	DE	19971	5083/250
2019	KAMMERER SCOTT E	ELISABETH H KAMMERER	38246 ANNA B ST	REHOBOTH BEACH	DE	19971	5083/250
2018	KAMMERER SCOTT E	ELISABETH H KAMMERER	38246 ANNA B ST	REHOBOTH BEACH	DE	19971	5083/250
2017	DUNMON CHRISTOPHER EARL	ALEXANDER ERNEST DUNMON	207 FREDERICK LN	WILMINGTON	DE	19805	1872/126
2006	DUNMON SYDNEY L		16 ROBINSON DR	REHOBOTH BEACH	DE	19971	1872/126
2002	DUNMON SYDNEY L		16 ROBINSON DR	REHOBOTH BEACH	DE	19971	1872/126
2001	DUNMON SYDNEY L		16 ROBINSON DR	REHOBOTH BEACH	DE	19971	1872/126
1900	POWELL LILLIAN					0	224/214

**Land**

Line	Class	Land Use Code	Act Front	Depth	Deeded Acres	Ag
1	RES	RS	50	100	.1148	

**Land Summary**

Line 1  
 100% Land Value 11,000

**Residential**

Card 1  
 Class Residential  
 Style Single Family  
 Year Built 2019  
 Occupancy 1  
 Stories 2.00  
 Basement 4-Full  
 Total Fixtures 14  
 Heating 53 - Heat - Forced Hot Air  
 Air Condition DT - A/C Central  
 Electricity 3-Public  
 Foundation 31 - Foundation - Masonry  
 Exterior Wall 1-Frame or Block  
 Siding 3-Aluminum/Vinyl  
 Roof Type 2-Gable  
 Roofing 22 - Roofing - Shingle  
 Elevator -  
 Width  
 Depth/Length  
 Color  
 Description  
 MH Skirting  
 MH Permit #  
 MH Serial #

**Additions**

Card #	Addition #	Area
1	0	612
1	1	468
1	2	288
1	3	264

**Addition Details**

1 of 4

Card # 1  
 Addition # 0  
 Lower -  
 First -  
 Second -  
 Third -  
 Area 612  
 Year Built

**Outbuildings**

Card	Line #	Code	Width	Length	Diameter	Area
1	1	SPA-POOL AVG	26	12		312

**100% Values**

100% Land Value	100% Improv Value	100% Total Value
\$11,000	\$64,400	\$75,400

**50% Values**

50% Land Value	50% Improv Value	50% Total Value
\$5,500	\$32,200	\$37,700

## Permit Details

---

Permit Date:	Permit #:	Amount:	Note 1
27-JUL-2020	202008636	\$4,300	37FT OF VINYL FENCING
30-AUG-2019	201910037	\$58,790	26x12 INGROUND POOL
18-APR-2019	201904245	\$0	DB WATER 4715
12-APR-2019	201904059	\$0	DBS 4714
24-OCT-2018	201810770	\$141,922	DW 68x18 BSMNT 18X34 POR 8X30

Document# 2019000023333 BK: 5083 PG: 250  
Recorder of Deeds, Scott Dailey On 7/1/2019 at 3:07:23 PM Sussex County, DE  
Consideration: \$1,350,000.00 County/Town: \$20,250.00 State: \$33,750.00 Total: \$54,000.00  
Doc Surcharge Paid Town: SUSSEX COUNTY

TAX PARCEL #: 3-34-20.09-41.00

PREPARED BY & RETURN TO:  
Parkowski, Guerke & Swayze, P.A.  
19354C Miller Road  
Rehoboth Beach, DE 19971  
File No. 091-19/vgr

THIS DEED, made this 28<sup>th</sup> day of June, 2019,

- BETWEEN -

**SUR LA PLAGES LLC**, a Delaware limited liability company, of 20894 Spring Lake Drive, Unit 310, Rehoboth Beach, DE 19971, party of the first part,

- AND -

**SCOTT E. KAMMERER** and **ELISABETH H. KAMMERER**, husband and wife, of 38246 Anna B Street, Rehoboth Beach, DE 19971, parties of the second part.

**WITNESSETH:** That the said party of the first part, for and in consideration of the sum of Ten Dollars and 00/100 (\$10.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the parties of the second part, and their heirs and assigns, in fee simple, the following described lands, situate, lying and being in Sussex County, State of Delaware:

**ALL** that certain lot, piece or parcel of land situate, lying and being in Lewes and Rehoboth Hundred, Sussex County, Delaware, adjoining Lot Nos. 27, 29, 30 and 31, and fronting on Fisher Street, being Lot No. 28 in Block "F", in Dodd's Addition to Rehoboth, as surveyed and plotted by Thomas B. Pepper, surveyor, and said plot being recorded in the Office of the Recorder of Deeds, in Plot Book 1, Pages 36 and 37.

**BEING** the same lands and premises which were conveyed unto Sur La Plage, LLC, by deed of Christopher Earl Dunmon and Alexander Ernest Dunmon dated August 10, 2018, and recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware, on August 13, 2018, in Deed Book 4932, Page 45.



Document# 2019000023333 BK: 5083 PG: 251

Recorder of Deeds, Scott Dailey On 7/1/2019 at 3:07:23 PM Sussex County, DE

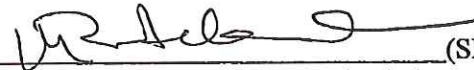
Doc Surcharge Paid

**SUBJECT** to any and all restrictions, reservations, conditions, easements and agreements of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware.

**IN WITNESS WHEREOF**, the said Sur La Plage LLC, a Delaware limited liability company, has caused its name to be hereunto set under seal by Mark James Betchka, Authorized Signor of Sur La Plage LLC, the day and year first above written.

**SUR LA PLAGES LLC**

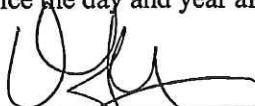
  
\_\_\_\_\_  
Witness

By:  (SEAL)  
Mark James Betchka, Authorized Signor

STATE OF DELAWARE, COUNTY OF SUSSEX: to-wit

**BE IT REMEMBERED**, that on this 28<sup>th</sup> day of June, 2019, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, Mark James Betchka, Authorized Signor of Sur La Plage LLC, a Delaware limited liability company, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said limited liability company.

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

  
\_\_\_\_\_  
Notary Public

My Commission Expires: N/A

ADMITTED TO DELAWARE BAR 12/15/94  
ATTORNEY  
VINCENT G. ROBERTSON  
NOTARY  
UNIFORM LAW ON NOTARIAL ACTS  
PURSUANT TO 29 DEL C. SEC 4323 (3)



## Permits and Inspections

### Application Information

[Return to permits and inspections](#)

#### General

<b>Application reference</b>	202008636
<b>Status</b>	COMPLETE / COMPLETED
<b>Application Received Date</b>	7/27/2020
<b>Applicant Name</b>	KAMMERER SCOTT E
<b>Owner Name</b>	KAMMERER SCOTT E
<b>Owner ID</b>	273229
<b>Location</b>	20591 FISHER STREET REHOBOTH BEACH
<b>Parcel ID</b>	334-20.09-41.00

#### Project Details

<b>Project/Activity</b>	MISC
<b>Project Description</b>	37FT OF VINYL FENCING
<b>Contractor Name</b>	KAMMERER SCOTT E
<b>Contractor ID</b>	273229
<b>Zoning</b>	MEDIUM-DENSITY RESIDENTIAL
<b>Existing Use</b>	RESIDENTIAL SINGLE FAMILY
<b>Proposed Use</b>	RESIDENTIAL SINGLE FAMILY
<b>Estimated Cost</b>	\$4,300.00

#### Attachments

**Document** No attachments were found for this application



**Addresses / Parcels**

□ TaxParcels

**Council Districts**

□ Fire Districts

□ County District 01

□ County District 02

□ County District 03

□ County District 04

□ County District 05

□ County Boundaries

**Schools/Libraries**

🏫 School Buildings (Various)

📖 School Library

📖 Public Library

📖 Special Library

📖 DOE School Districts

📖 DOE VoTech School Districts

**Hydrology**

~ Streams / Rivers

🟦 Lakes, Ponds, Bays

**Flood Zones**

🟡 0.2% Annual Chance Flood Hazard

🟠 A

🟠 AE

🟡 AO

🟦 Open Water

🟠 VE

🟢 Public Protected Lands

🏘 Municipalities

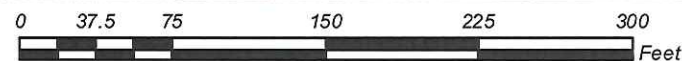
🏘 Communities

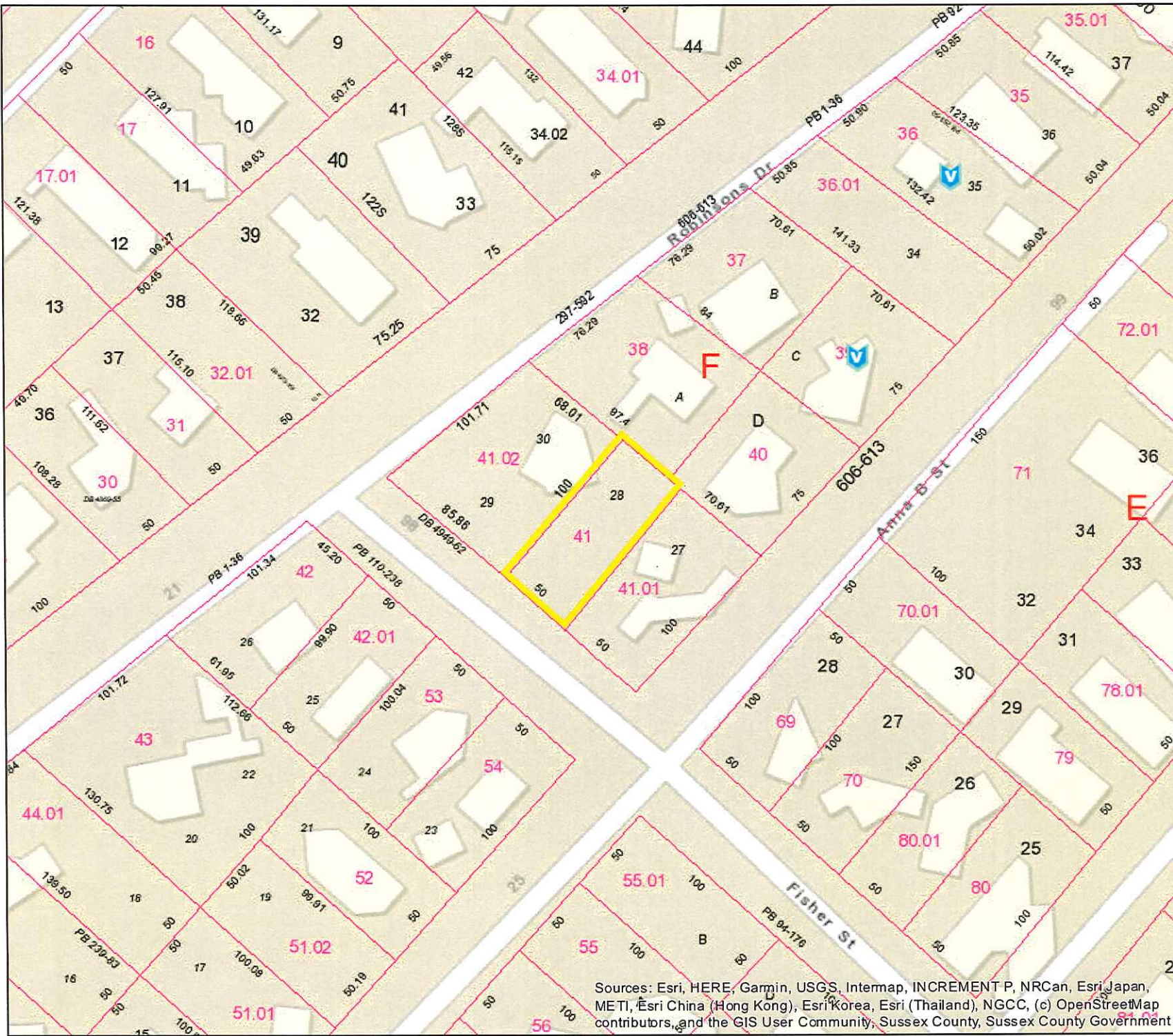
🏘 Boundaries State County

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Sussex County, Sussex County Government.



**Sussex County Map**





- Addresses / Parcels**
- TaxParcels
- Council Districts**
- Fire Districts
  - County District 01
  - County District 02
  - County District 03
  - County District 04
  - County District 05
  - County Boundaries
- Schools/Libraries**
- School Buildings (Various)
  - School Library
  - Public Library
  - Special Library
  - DOE School Districts
  - DOE VoTech School Districts
- Hydrology**
- Streams / Rivers
  - Lakes, Ponds, Bays
- Flood Zones**
- 0.2% Annual Chance Flood Hazard
  - A
  - AE
  - AO
  - Open Water
  - VE
  - Public Protected Lands
  - Municipalities
  - Communities
  - Boundaries State County

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community, Sussex County, Sussex County Government



**Sussex County Map**



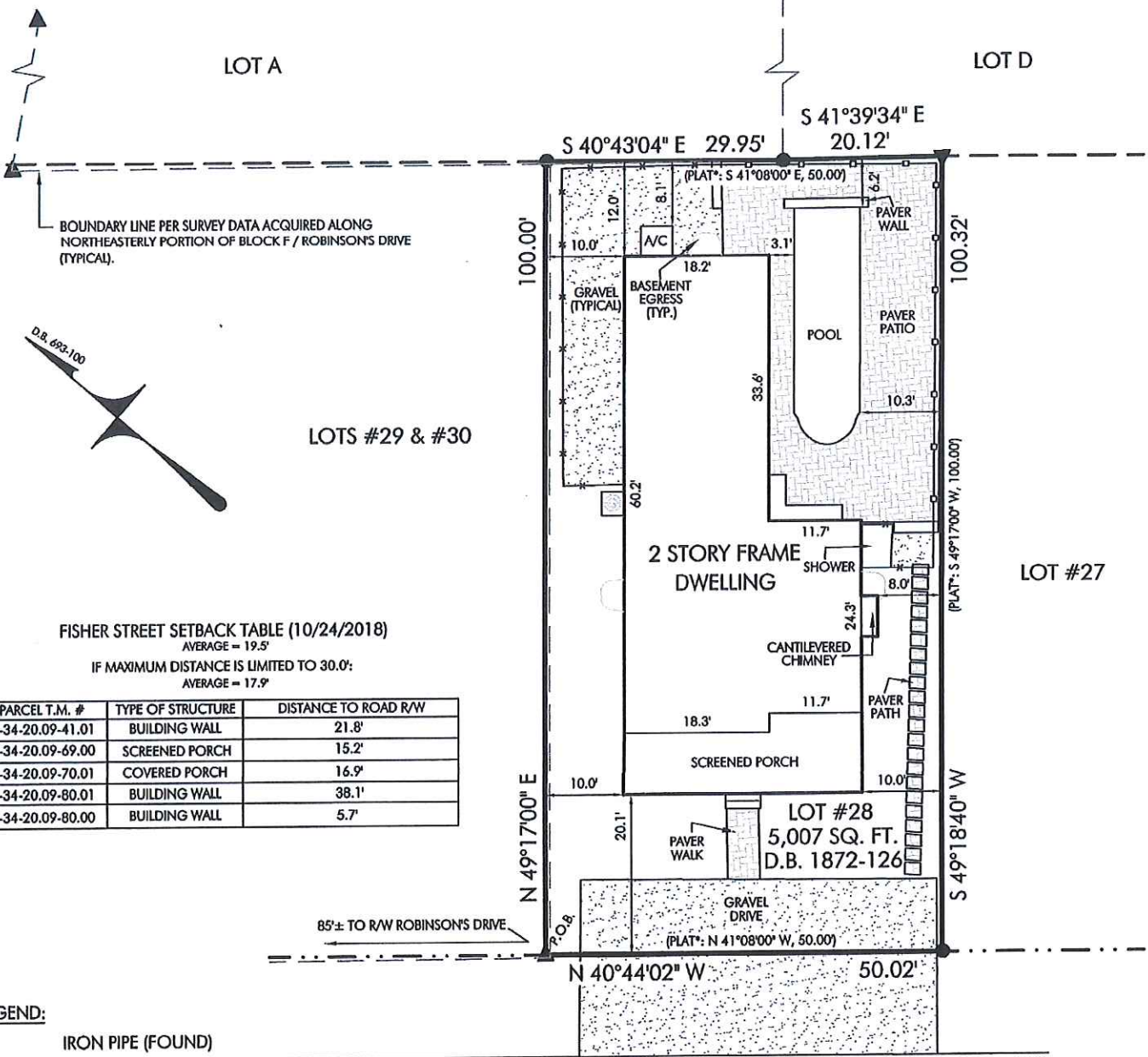
*Sussex County, DE  
Tuesday, September 29, 2020*

## Chapter 115. Zoning

### Article XXV. Supplementary Regulations

#### § 115-185. Accessory buildings and structures.

- A. Except as herein provided, no accessory building shall project beyond a required yard line along any street.
- B. Filling station pumps and pump islands may occupy the required yards; provided, however, that they are not less than 20 feet from street lines.
- C. Any fence or wall for residential use, not more than 3 1/2 feet in height, may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. Any fence, hedge or wall for residential use may project into or enclose other required yards, provided that such fences, hedges and walls do not exceed a height of seven feet. This height limit does not apply to fences or walls used for commercial, industrial or agricultural uses, screening or tennis courts. Every such fence must be approved by the Director.
- D. Accessory swimming pools, open and unenclosed, may occupy a required rear or side yard, provided that they are not located closer than 10 feet to an interior side lot line or six feet to a rear lot line. A walk space at least three feet wide shall be provided between pool walls and protective fences or barrier walls. Every swimming pool shall be protected by a safety fence or barrier at least four feet in height and constructed of chain-link, concrete, stockade-wood or equal.
- E. Permitted accessory storage of a boat, boat trailer or camp trailer shall not be conducted in a front yard.
- F. Accessory buildings which are not a part of the main building may be constructed in a rear yard, provided that such accessory building does not contain more than 600 square feet of area, and may be located five feet from a side lot line and five feet from a rear lot line.



**FISHER STREET SETBACK TABLE (10/24/2018)**  
 AVERAGE = 19.5'  
 IF MAXIMUM DISTANCE IS LIMITED TO 30.0':  
 AVERAGE = 17.9'

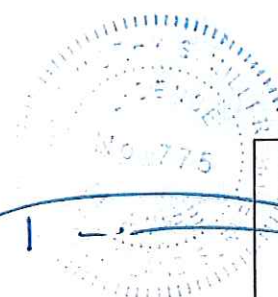
PARCEL T.M. #	TYPE OF STRUCTURE	DISTANCE TO ROAD R/W
3-34-20.09-41.01	BUILDING WALL	21.8'
3-34-20.09-69.00	SCREENED PORCH	15.2'
3-34-20.09-70.01	COVERED PORCH	16.9'
3-34-20.09-80.01	BUILDING WALL	38.1'
3-34-20.09-80.00	BUILDING WALL	5.7'

**LEGEND:**

- IRON PIPE (FOUND)
- ▲ IRON ROD (FOUND)
- ▼ IRON STOB (FOUND)
- ⊙ PROPANE TANK
- VINYL PRIVACY FENCE HEIGHT WITHIN 7' OF GRADE
- VINYL PRIVACY FENCE HEIGHT OVER 7' FROM GRADE / WITHIN 7' OF PATIO

**NOTES:**

\*PLAT REFERENCE: WINGATE AND ESCHENBACH SURVEY PROVIDED BY OWNER (NOT ON RECORD).  
 ALL RESTRICTIONS MUST BE VERIFIED BY THE HOME OWNER, GENERAL CONTRACTOR AND/OR THE DESIGNER.  
 THIS DRAWING DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF WETLANDS, UTILITIES, RIGHT-OF-WAYS OR EASEMENTS IN REFERENCE TO OR LOCATED ON THIS PROPERTY.  
 NO TITLE SEARCH PROVIDED OR STIPULATED.  
 SURVEY CLASS: SUBURBAN



**BOUNDARY SURVEY PLAN FOR SUR LA PLAGÉ, LLC**

20591 FISHER STREET, REHOBOTH BEACH  
 LOT #28 BLOCK F OF  
 "DODD'S ADDITION TO REHOBOTH" SUBDIVISION  
 LEWES & REHOBOTH HUNDRED SUSSEX COUNTY  
 STATE OF DELAWARE

OCTOBER 20, 2020 SCALE: 1" = 20'

Prepared by:

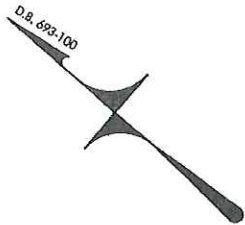


LOT A

LOT D



BOUNDARY LINE PER SURVEY DATA ACQUIRED ALONG NORTHEASTERLY PORTION OF BLOCK F / ROBINSON'S DRIVE (TYPICAL).



LOTS #29 & #30

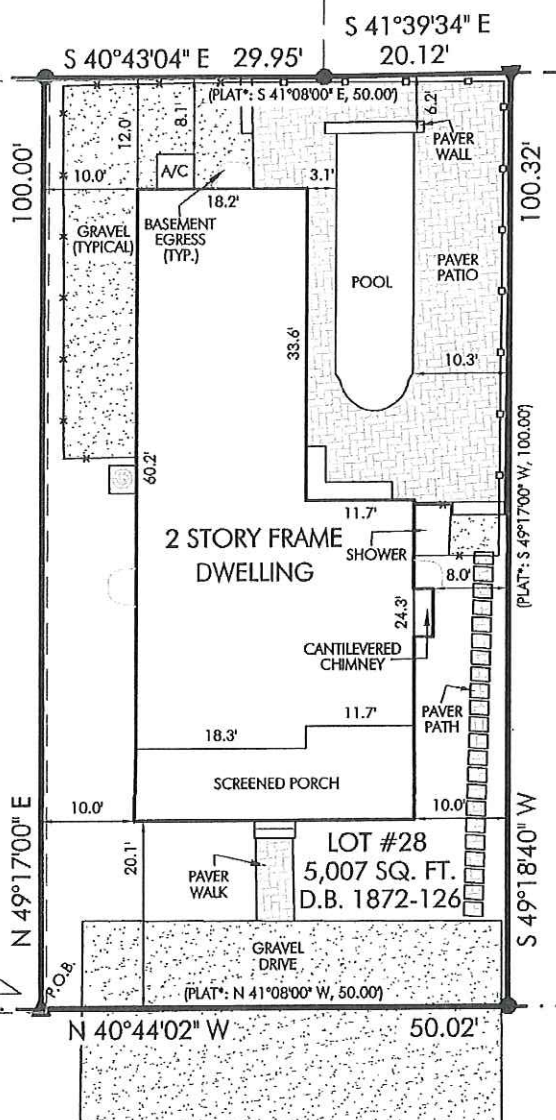
**FISHER STREET SETBACK TABLE (10/24/2018)**

AVERAGE = 19.5'

IF MAXIMUM DISTANCE IS LIMITED TO 30.0':

AVERAGE = 17.9'

PARCEL T.M. #	TYPE OF STRUCTURE	DISTANCE TO ROAD R/W
3-34-20.09-41.01	BUILDING WALL	21.8'
3-34-20.09-69.00	SCREENED PORCH	15.2'
3-34-20.09-70.01	COVERED PORCH	16.9'
3-34-20.09-80.01	BUILDING WALL	38.1'
3-34-20.09-80.00	BUILDING WALL	5.7'



**LEGEND:**

- IRON PIPE (FOUND)
- ▲ IRON ROD (FOUND)
- ▼ IRON STOB (FOUND)
- PROpane TANK
- VINYL PRIVACY FENCE HEIGHT WITHIN 7' OF GRADE
- VINYL PRIVACY FENCE HEIGHT OVER 7' FROM GRADE / WITHIN 7' OF PATIO

**NOTES:**

\*PLAT REFERENCE: WINGATE AND ESCHENBACH SURVEY PROVIDED BY OWNER (NOT ON RECORD).  
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 THIS DRAWING DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF WETLANDS, UTILITIES, RIGHT-OF-WAYS OR EASEMENTS IN REFERENCE TO OR LOCATED ON THIS PROPERTY.  
 NO TITLE SEARCH PROVIDED OR STIPULATED.  
 SURVEY CLASS: SUBURBAN



FISHER STREET (50' R/W)

**BOUNDARY SURVEY PLAN FOR SUR LA PLAGÉ, LLC**

20591 FISHER STREET, REHOBOTH BEACH  
 LOT #28 BLOCK F OF

"DODD'S ADDITION TO REHOBOTH" SUBDIVISION  
 LEWES & REHOBOTH HUNDRED SUSSEX COUNTY  
 STATE OF DELAWARE

OCTOBER 20, 2020 SCALE: 1" = 20'

Prepared by:

**FORESIGHT** Services

Surveying & Precision Measurement

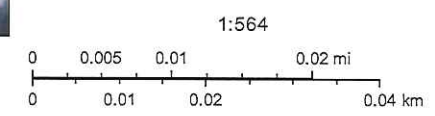


# Sussex County



<b>PIN:</b>	334-20.09-41.00
<b>Owner Name</b>	KAMMERER SCOTT E
<b>Book</b>	5083
<b>Mailing Address</b>	38246 ANNA B ST
<b>City</b>	REHOBOTH BEACH
<b>State</b>	DE
<b>Description</b>	DODD'S ADD'N
<b>Description 2</b>	BLK F LOT 28 FISHER
<b>Description 3</b>	ST
<b>Land Code</b>	

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





Case # 12509  
Hearing Date 1/2/21  
202013317

**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)  
115-34 115-182

Site Address of Variance/Special Use Exception:  
34967 Hassell Avenue EXT Bethany Beach, DE 19930

Variance/Special Use Exception/Appeal Requested:  
9 ft variance from 30ft front yard setback for addition  
12 ft variance from 30ft front yard setback for steps

Tax Map #: 1-34-20.11-22 Property Zoning: MR

**Applicant Information**

Applicant Name: Kevin and Patricia O'Reilly  
Applicant Address: 34967 Hassell Ave. EXT  
City Bethany Beach State DE Zip: 19930  
Applicant Phone #: (240) 476-1832 Applicant e-mail: kporeilly2@gmail.com

**Owner Information**

Owner Name: Kevin and Patricia O'Reilly  
Owner Address: 3908 Dresden St  
City Kensington State Md Zip: 20895 Purchase Date: 3/27/15  
Owner Phone #: \_\_\_\_\_ Owner e-mail: \_\_\_\_\_

**Agent/Attorney Information**

Agent/Attorney Name: N/A  
Agent/Attorney Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_  
Agent/Attorney Phone #: \_\_\_\_\_ Agent/Attorney e-mail: \_\_\_\_\_

**Signature of Owner/Agent/Attorney**

Kevin O'Reilly

Date: 10/23/2020



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

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

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

**1. Uniqueness of property:**

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

Property is 50' x 100'. The property is narrow and the only area for an addition is the front yard.

---

**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.

Three bedrooms currently share one bathroom and limited closet space. An addition allows for a master bathroom and more closet space.

---

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

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

The house was built in 1984 as a small summer vacation home. One of us just retired and we are both spending more time throughout the year and need the additional space.

---

**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 essential character of the neighborhood will not change. The proposed addition does not impact the development of the adjacent properties. The new porch and addition gives the house additional curb appeal. The roof line of the addition will match the roof line of the existing house.

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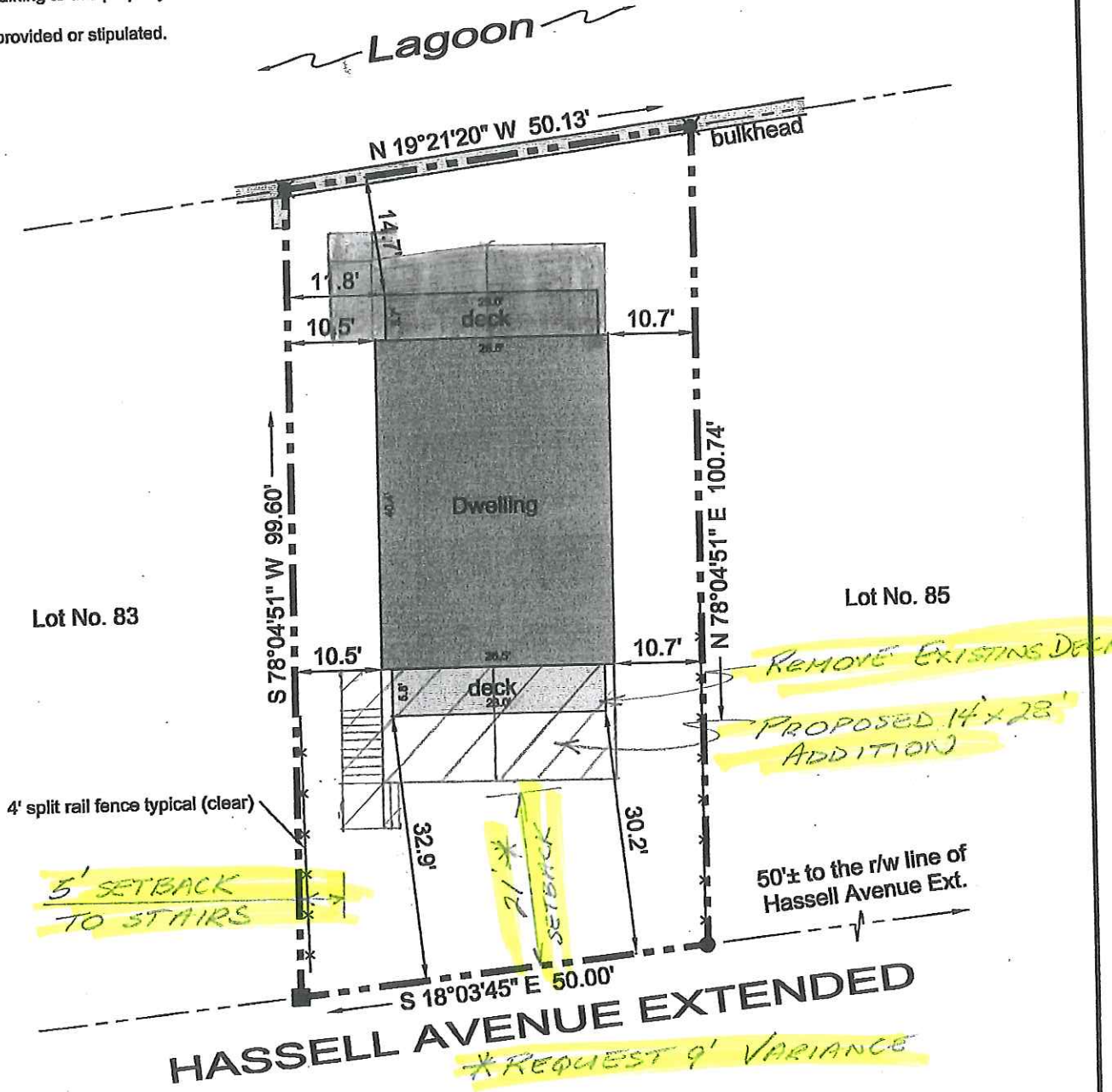
**5. Minimum variance:**

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 variance of 9' from the 30' front yard setback is the minimum that provides additional space for the master bath and closet space.

**NOTES:**

- Other than shown, this plat and survey does not verify the existence or nonexistence of right-of-ways and/or easements pertaining to this property.
- No title search provided or stipulated.



- 3/4" PIPE (FD)
- CONC. MON. (FD)
- ✕ PK NAIL (FD)

SCALE: 1"=20'  
 AREA: 4,979 SQ. FT.  
 TAX MAP NO. 1-34-20.11-22

Lands of KEVIN O'REILLY. Being known as  
 LOT NO. 84, SECOND ADDITION TO BAY  
 VIEW PARK. Ref: Plat Book 8, Page 25.

**FIRM INFORMATION:**  
 100029 - 0518 - L  
 MARCH 07, 2017  
 ZONE: "AE", B.F.E.= 6'  
 CLASS "B" SURVEY

HUNDRED: BALTIMORE
COUNTY: SUSSEX
STATE OF DELAWARE
DATE OF ORIGINAL: 04/12/2017
DRAWN BY: MICHAEL LOVELAND

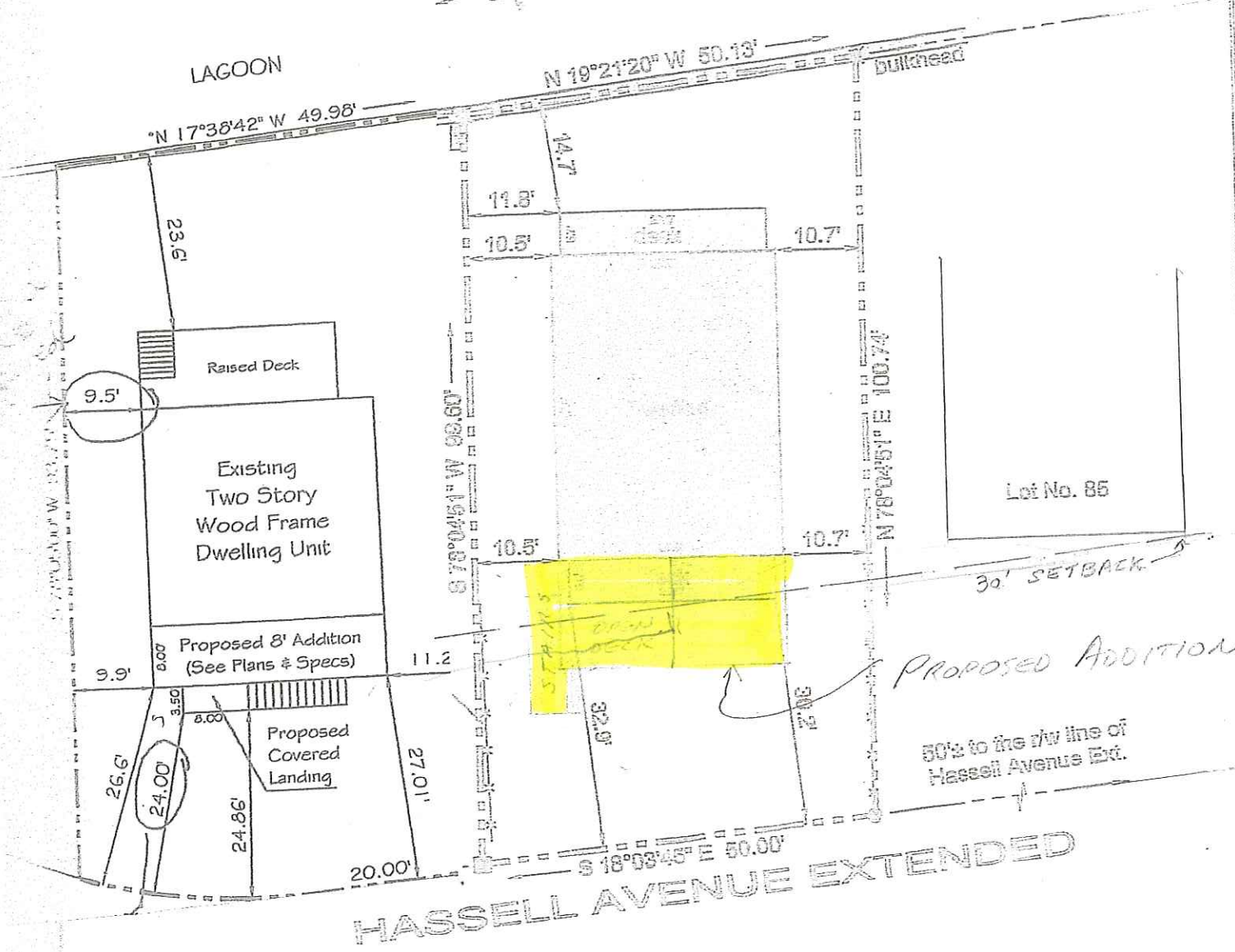
**SIMPLER SURVEYING & ASSOCIATE, INC.**  
 32486 POWELL FARM ROAD, FRANKFORD, DE 19945  
 www.delawaresurveyor.com  
 PHONE: (302) 539-7873 FAX: (302) 539-4336

SEAL  
  
 P.L.S. 711

PROPERTY SURVEY PLAIN WITH IMPROVEMENTS  
 Lands n/f Paul Szugaj and Carol  
 Lot 83, Second Addition to Bay  
 View Park, in Baltimore Hundred  
 County, Delaware



Lagoon



- 3/4" PIPE (FD)
- CONC. MON. (FD)
- ⊗ PK NAIL (FD)

SCALE: 1"=20'  
 AREA: 4,979 SQ. FT.  
 TAX MAP NO. 1-34-20.11-22

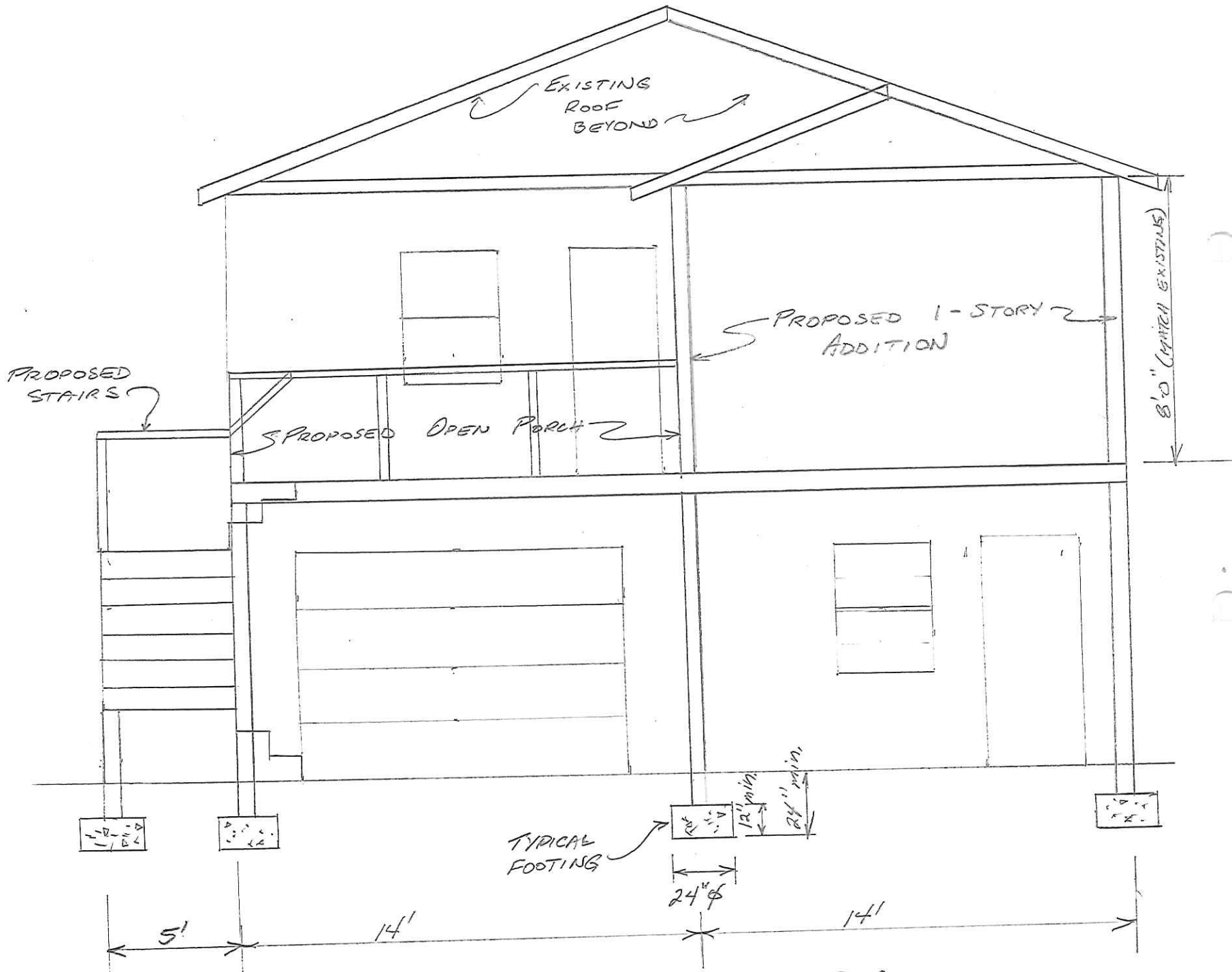
Lands of KEVIN O'REILLY. Being known as  
 LOT NO. 84, SECOND ADDITION TO BAY  
 VIEW PARK. Ref: Plat Book 8, Page 25.

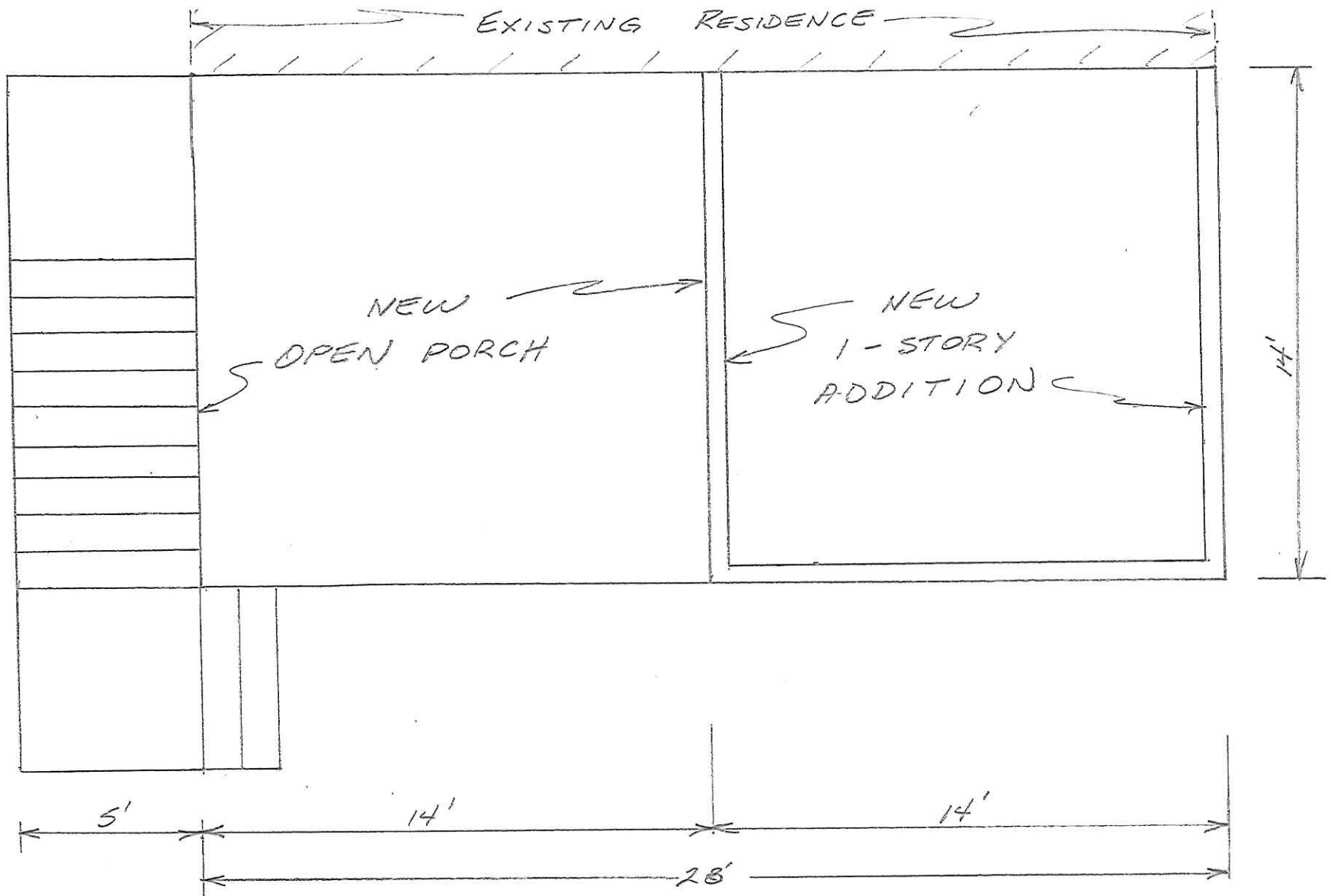
**FIRM INFORMATION:**  
 100029 - 0310 - L  
 MARCH 07, 2017  
 ZONE: "AB", B.F.E. = 6'  
 CLASS "B" SURVEY

HUNDRED: BALTIMORE  
 COUNTY: SUSSEX  
 STATE OF DELAWARE  
 DATE OF ORIGINAL: 04/12/2017  
 DRAWN BY: MICHAEL LOVELAND

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SEAL  
  
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PROPOSED ADDITION LAYOUT



# Sussex County



<b>PIN:</b>	134-20.11-22.00
<b>Owner Name</b>	O'REILLY KEVIN
<b>Book</b>	4379
<b>Mailing Address</b>	3908 DRESDEN STREET
<b>City</b>	KENSINGTON
<b>State</b>	MD
<b>Description</b>	BAY VIEW PARK
<b>Description 2</b>	LOT 84 HASSELL AVE
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer

  - Override 1
- polygonLayer

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

