

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

DRAFT AGENDA

October 21, 2019

6:00 P.M.

Call to Order

Pledge of Allegiance

Approval of Agenda

Old Business

Public Hearings

Case No. 12370 – Ann Sammons seeks a special use exception for a garage studio apartment (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Greenwood Rd., approximately 0.38 miles west of Sussex Hwy. (Rt. 13). 911 Address: 8619 Greenwood Rd., Greenwood. Zoning District: AR-1 Tax Parcel: 530-4.00-18.00

Case No. 12371 – Samantha Whaley seeks a special use exception to operate a day care center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Johnson Rd. approximately 500 ft. east of Cedar Creek Rd. 911 Address: 20675 Johnson Rd., Lincoln. Zoning District: AR-1. Tax Parcel: 330-15.00-63.09

Case No. 12372 – Carlos Martins & Michelle Downing seek a variance from the corner front for an existing structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the northeast corner of Todd Dr. and Hassell Ave. in the Bayview Park subdivision. 911 Address: 34956 Todd Dr., Bethany Beach. Zoning District: MR. Tax Parcel: 134-20.12-6.00

Case No. 12373 – Christian & Constance Brauer, and Andrew & Christine Malaney seek an appeal of a determination by the Planning Director (Sections 115-208 and 115-209 of the Sussex County Zoning Code). The property is a portion of the parcel located on the southeast corner of N. Old State Rd. and Fleatown Rd. 911 Address: 11671 Fleatown Rd., Lincoln. Zoning District: HI-1/GR. Tax Parcel: 230-19.00-111.00 (Portion)

Additional Business



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

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

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on July 26, 2019 at 9:00 a.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.

####



Case # 12370
Hearing Date 10/21/19
201910433

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 Kia.
Special Use Exception
Administrative Variance _____
Appeal _____

Existing Condition
Proposed _____
Code Reference (office use only)
115-23
119-210

Site Address of Variance/Special Use Exception: _____
8619 Greenwood Road Greenwood DE 19950

Variance/Special Use Exception/Appeal Requested: _____
Pool house with oven. (Garage studio apt with no sleeping quarters.) 576 sq total area.

Tax Map #: 530-4.00-18.00 Property Zoning: AR-1

Applicant Information

Applicant Name: Ann Sammons
Applicant Address: 8619 Greenwood Rd.
City, State, Zip: Greenwood DE 19950
Applicant Phone #: 302-258-4379 Applicant e-mail: annsammons@gmail.com

Owner Information

Owner Name: _____
Owner Address: same
City, State, Zip: _____ Purchase Date: _____
Owner Phone #: _____ Owner e-mail: _____

Agent/Attorney Information

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

Signature of Owner/Agent/Attorney

Ann C. Sammons Date: 9/11/2019



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

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

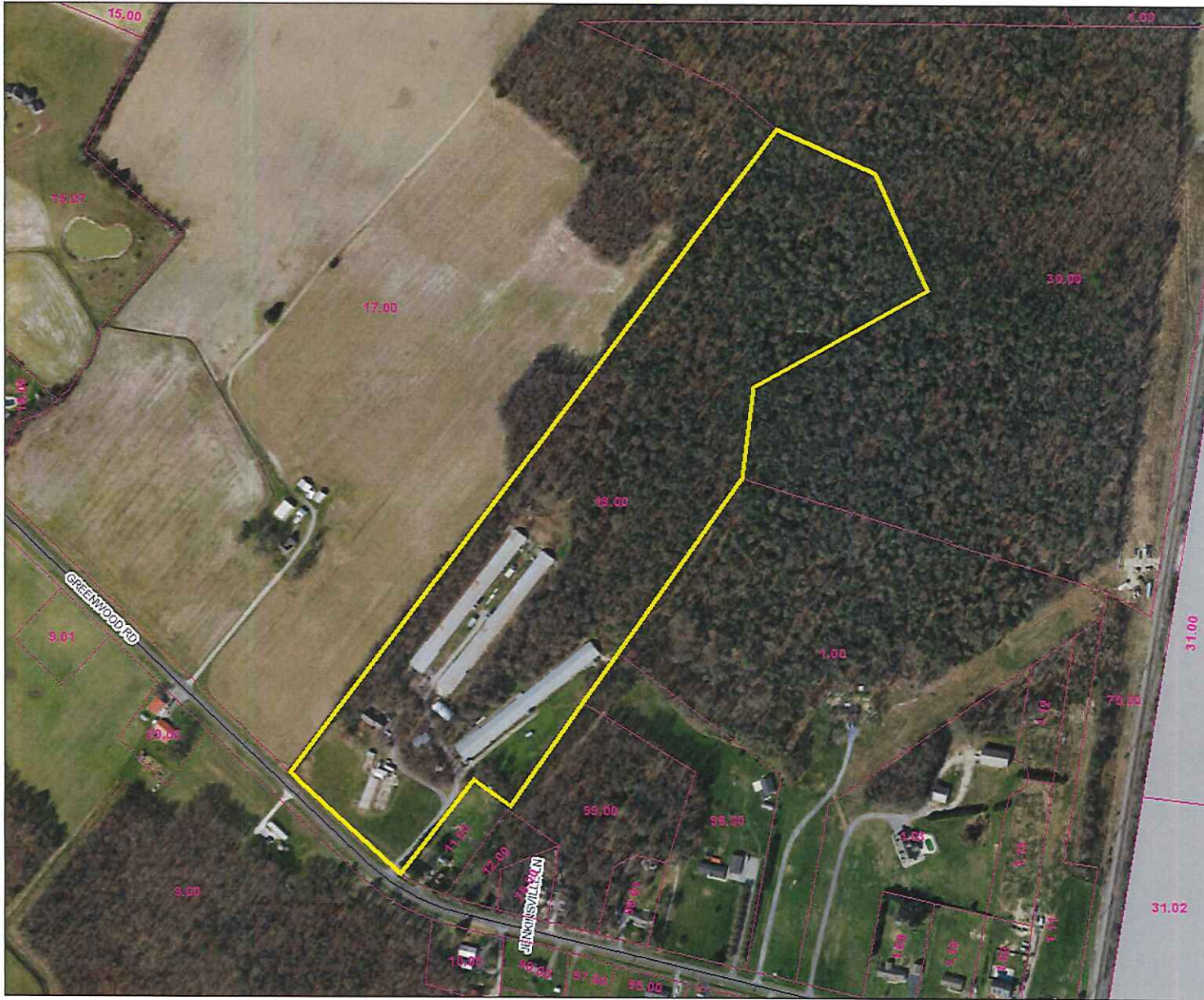
1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property.

Our property is 28 acres. Nearest neighbor is several football fields away. The structure is being built to keep foot traffic (not from pool) from going through the main dwelling.

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

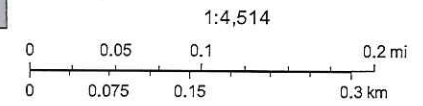
Basis for Appeal: (Please provide a written statement regarding reason for appeal)

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~



PIN:	530-4.00-18.00
Owner Name	RAG FARM LLC
Book	4279
Mailing Address	10429 GRAVELLY CREEK L
City	SEAFORD
State	DE
Description	NE/RT 589
Description 2	1500'W/RT 589
Description 3	FX
Land Code	

- polygonLayer**
 - Override 1
- polygonLayer**
 - Override 1
- Tax Parcels**
- Streets**
- Zoning**
 - Agricultural Residential - AR-1
 - Agricultural Residential - AR-2
 - Medium Residential - MR
 - General Residential - GR
 - High Density Residential - HR-1
 - High Density Residential - HR-2
 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - General Commercial - C-1
 - Commercial Residential - CR-1
 - Marine - M
 - Limited Industrial - LI-1
 - Limited Industrial - LI-2
 - Heavy Industrial - HI-1



**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 # 12371
Hearing Date 10/21/19

check application #
201910516

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

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

Site Address of Variance/Special Use Exception:

20675 Johnson Rd. LINCOLN DE 19960

Variance/Special Use Exception/Appeal Requested:

Special Use exception for a daycare facility for 13 children.

Tax Map #: 3-30-15-63,09

Property Zoning: ARR-1

Applicant Information

Applicant Name: Samantha Whaley
Applicant Address: 20675 Johnson Rd.
City Lincoln State DE Zip: 19960
Applicant Phone #: 302-228-8799 Applicant e-mail: Phase220@aol.com

Owner Information

Owner Name: William Whaley
Owner Address: 20675 Johnson Rd.
City Lincoln State DE Zip: 19960 Purchase Date: 2/2002
Owner Phone #: 302-519-4111 Owner e-mail: Phase4160@yahoo.com

Agent/Attorney Information

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

Signature of Owner/Agent/Attorney

William Whaley

Date: _____



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

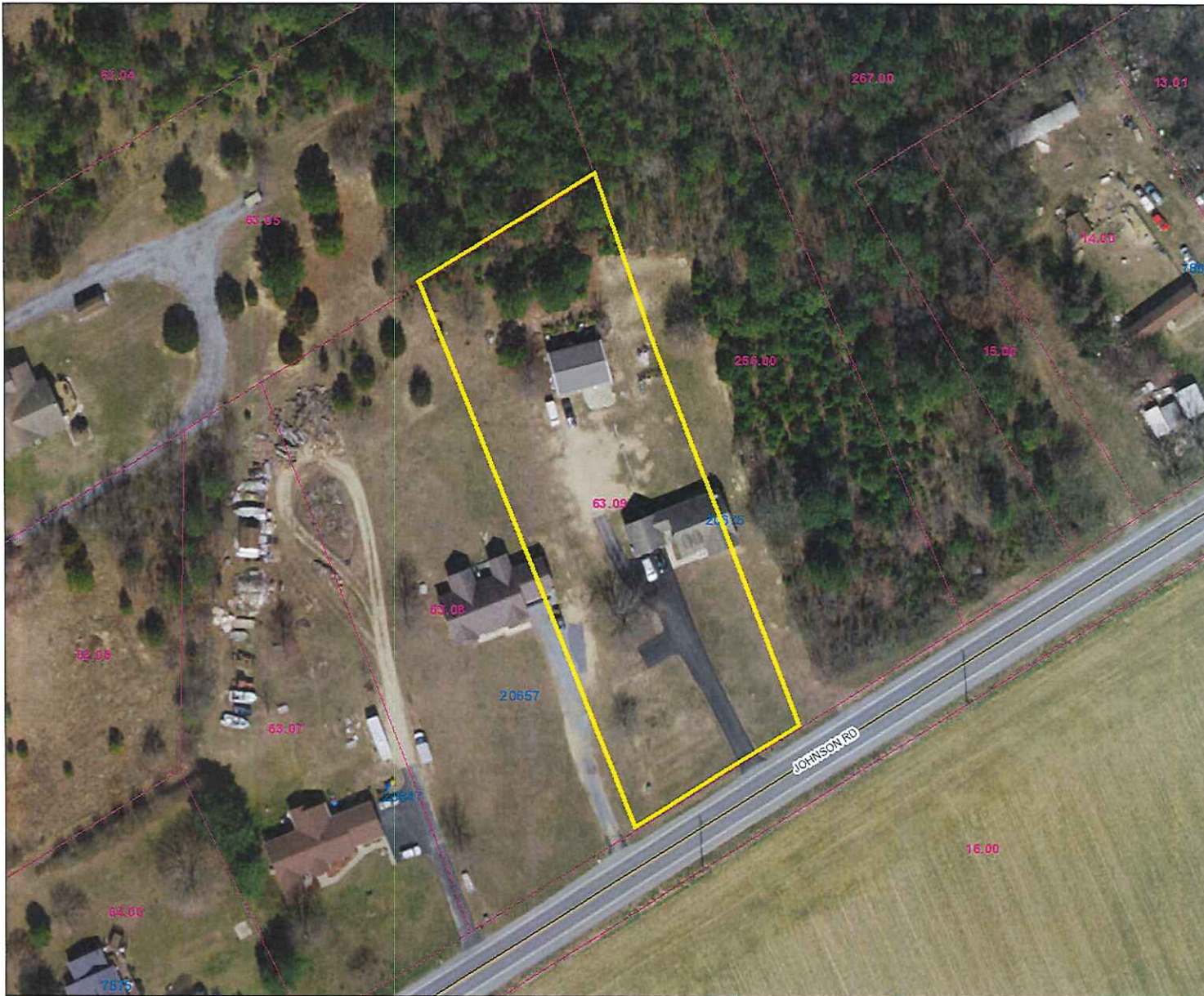
*You shall demonstrate to the Board of Adjustment that the property meets **all** of the following criteria for a Special Use Exception to be granted.*

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

This will not substantially affect adversely the use of adjacent and neighboring property. There is a daycare current at the address. We will be going from 6 to 13 children capacity.

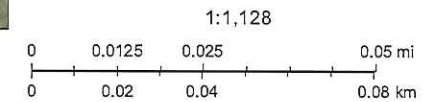
2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code. (Ex. Time limitations – 5 year maximum)

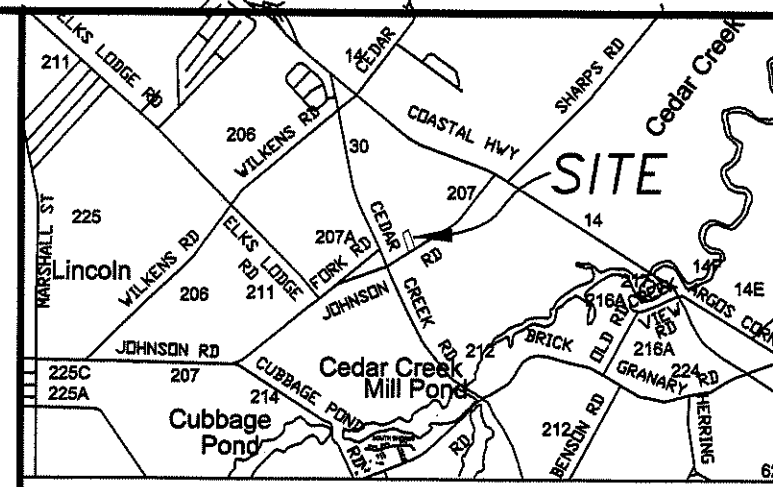
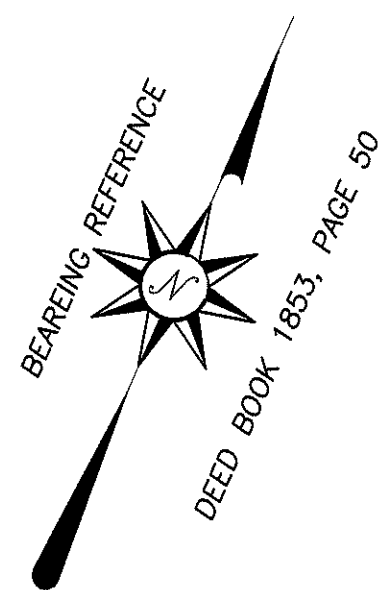
Basis for Appeal: (Please provide a written statement regarding reason for appeal)



PIN:	330-15.00-63.09
Owner Name	WHALEY WILLIAM E
Book	5063
Mailing Address	20675 JOHNSON RD
City	LINCOLN
State	DE
Description	N/R T 207
Description 2	LOT M
Description 3	N/A
Land Code	

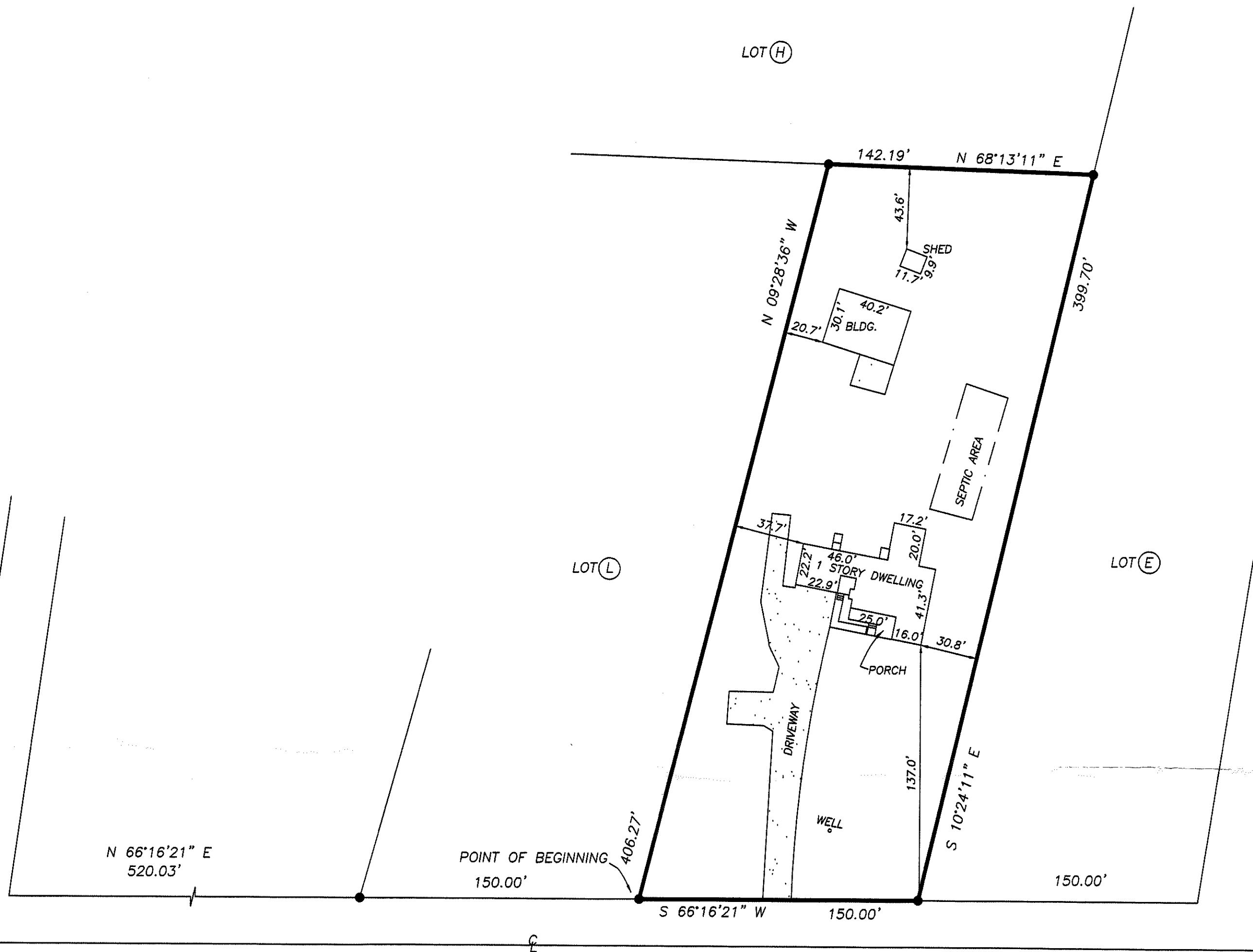
- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Municipalities





LOCATION MAP: SCALE: 1"=1MILE

STATE ROUTE 30
(CEDAR CREEK ROAD)
(60' WIDE)



COUNTY ROAD 207
(A.K.A. JOHNSON ROAD)
(50' WIDE)

NOTES:

- 1) CLASS "B", SUBURBAN SURVEY
- 2) SOURCE OF TITLE: DEED BOOK 5063, PAGE 196
- 3) THIS BOUNDARY SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A COMPLETE TITLE REPORT AND IS SUBJECT TO ANY ENCUMBRANCES, RESTRICTIONS, EASEMENTS AND/OR RIGHTS OF WAY THAT MIGHT BE REVEALED BY A THOROUGH TITLE SEARCH
- 4) ALL SETBACKS MUST BE VERIFIED BY THE HOMEOWNER AND/OR CONTRACTOR WITH THE APPROPRIATE REGULATORY AUTHORITY
- 5) OWNER: WILLIAM E. WHALEY & NAHOMI WHALEY
- 6) ADDRESS: 20675 JOHNSON RD, LINCOLN DE. 19960
- 7) SITE ADDRESS: 20675 JOHNSON RD, LINCOLN DE. 19960
- 8) TOTAL FRONTAGE: 150.00'
- 9) AREA: 1.318± ACRES
- 10) TAX MAP NO.: 3-30-15.00-63.09
- 11) ZONING: AR-1
- 12) PROPOSED USE: CHILD DAY CARE
- 13) PRESENT USE: CHILD DAY CARE
- 14) WATER: ON SITE WELL
- 15) SEPTIC: ON SITE

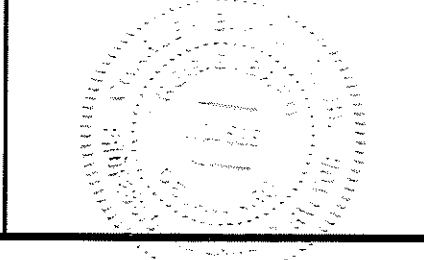
**BOUNDARY & CONDITIONAL
USE SURVEY PLAN**

PREPARED FOR
**WILLIAM E. WHALEY
& NAHOMI WHALEY**

FOR PROPERTY KNOWN AS
LOT M, LANDS OF JOHN D. WHALEY, HEIRS
PLOT BOOK 74, PAGE 31
(A.K.A. 20765 JOHNSON ROAD)
SITUATED IN
CEDAR CREEK HUNDRED
SUSSEX COUNTY
STATE OF DELAWARE
AREA: 1.318± ACRES
SCALE: 1" = 50'
DATE: AUGUST 23, 2019

LEGEND:

- FOUND IRON BAR



I, Charles E. Adams, Jr., registered as a Professional Land Surveyor in the State of Delaware, hereby state that the information shown on this plan has been prepared under my supervision and meets the standards of practice as established by the State of Delaware Board of Professional Land Surveyors. Any changes to the property conditions, improvements, boundary or property corners after the date shown hereon shall necessitate a new review and certification for any official or legal use.

Charles E. Adams, Jr.
CHARLES E. ADAMS, JR., P.L.S. 506

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

Case # 12372
Hearing Date 10/21/19
201910657

Board of Adjustment Application Sussex County, Delaware

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

Type of Application: (please check all applicable)

Variance Existing Condition
Special Use Exception _____ Proposed _____
Administrative Variance _____ Code Reference (office use only) _____
Appeal _____

Site Address of Variance/Special Use Exception: 34956 Todd Drive Bethany Beach

Variance/Special Use Exception/Appeal Requested: _____
7.0' from reg 15' corner front for existing generator Previous variance for dwelling # 12175

Tax Map #: 134-2012-600 Property Zoning: MR

Applicant Information

Applicant Name: Insight Homes
Applicant Address: 16255 Sussex Hwy. Bridgetown, DE
City, State, Zip: Bridgetown, DE
Applicant Phone #: 302-396-2506 Applicant e-mail: asmith@insightde.com

Owner Information

Owner Name: Carlos Martins + Michelle Downing
Owner Address: 9 Fieldstone Court
City, State, Zip: East Hanover N.J. 07936 Purchase Date: _____
Owner Phone #: 201-565-7334 Owner e-mail: cmartins@msn.com

Agent/Attorney Information

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

Signature of Owner/Agent/Attorney

[Signature] Date: 9/17/19



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 small & not square which makes building envelope not square. Building restriction lines not being perpendicular cause the size of the home to be reduced.

2. Cannot otherwise be developed:

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

*Due to odd shape of lot a variance is needed for reasonable use of the property to best resemble neighboring properties.
★ New var label is needed for generator platform.*

3. Not created by the applicant:

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

The owner did not create the difficulty of building on the lot.

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 variance will not alter the character of the neighborhood.

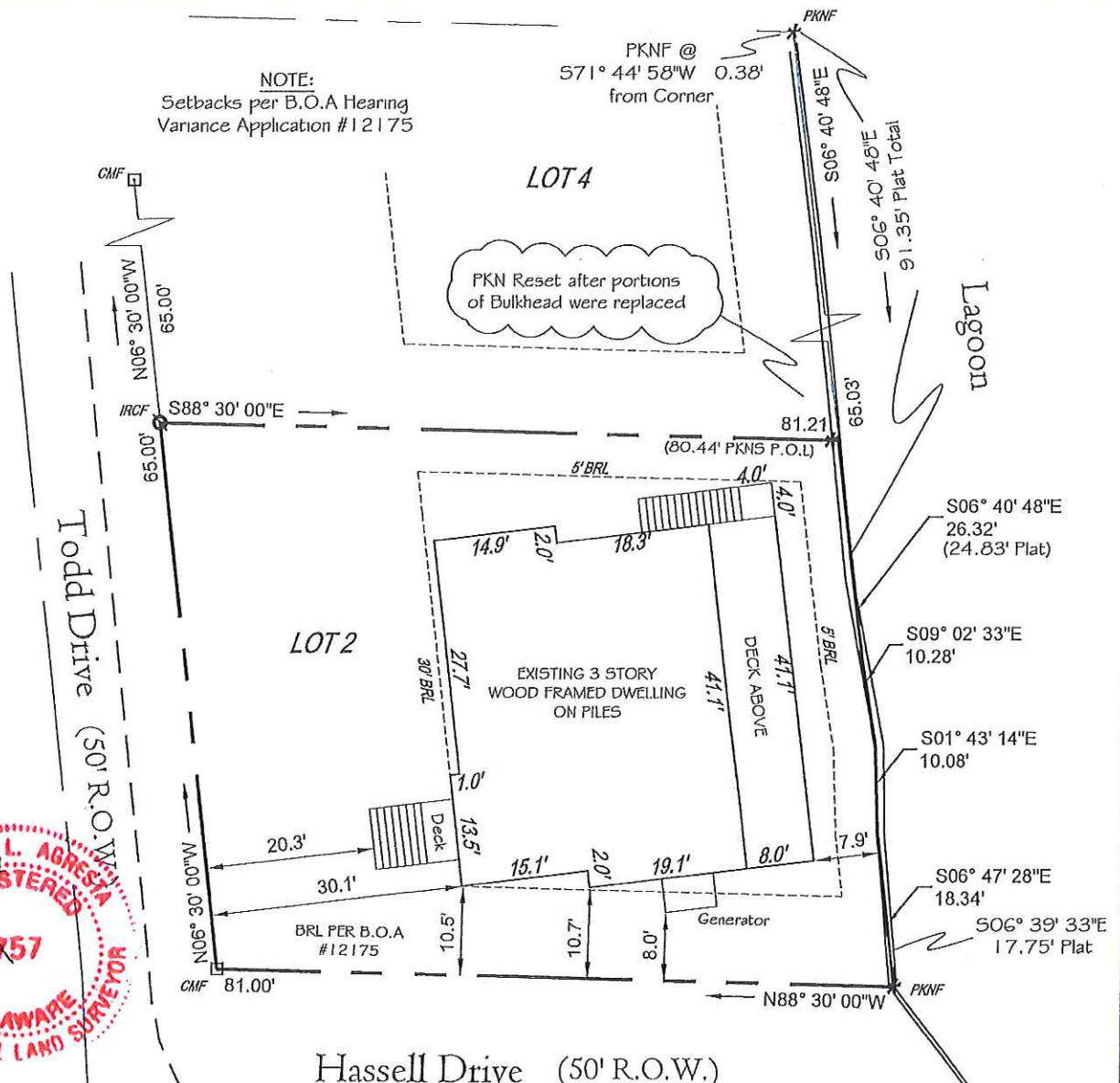
5. Minimum variance:

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 request represents the minimum variance to afford relief due to the uniqueness of the property.

PLAT DATUM PB 225 / PG 91

NOTE:
Setbacks per B.O.A Hearing
Variance Application #12175



GENERAL NOTES:

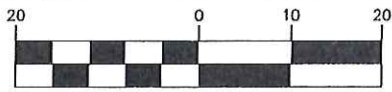
1. THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A FORMAL TITLE REPORT. EASEMENTS, RIGHTS-OF-WAY, COVENANTS AND OTHER RESTRICTIONS MAY AFFECT THIS PROPERTY AND NOT BE SHOWN.
2. THIS SURVEY IS BASED ON THE FINAL SITE PLAN OF BAYVIEW PARK DATED 02/17/16, AND IS SUBJECT TO ANY OR ALL EASEMENTS AND RIGHT-OF-WAYS AS RECORDED. BEARING SYSTEM REFERENCED TO PLAT BOOK 225 PAGES 91
3. THIS SURVEY SHOWS ONLY VISIBLE ABOVE GROUND IMPROVEMENTS AND DOES NOT ADDRESS WETLANDS, CONTAMINATED WASTE OR TOXIC SOIL CONDITIONS, NOR HAVE ANY REPORTS, STUDIES OR INFORMATION REGARDING SUCH BEEN PROVIDED. LOT LINE DIMENSIONS TAKEN TO WALLS EXCLUSIVE OF SIDING.
4. THE INFORMATION SHOWN HEREON IS BASED ON THE PLATS OF RECORD AS INDEXED IN THE PROPERTY CADASTRE OF SUSSEX COUNTY, DELAWARE AND A FIELD RUN SURVEY. (FLOOD ZONE 'AE'; ELEVATION 6' PER FEMA MAP #10005C0510L-0307/17)

LEGEND

- DENOTES CONCRETE MON
- DENOTES IRON REBAR
- DENOTES IRON PIPE
- DENOTES PKN NAIL SET
- DENOTES POINT
- DENOTES PROPERTY LINE
- DENOTES B.R.L.

LOCATION SURVEY

PREPARED FOR
LOT 2, BAYVIEW PARK
BALTIMORE HUNDRED
SUSSEX COUNTY, DELAWARE
TAX MAP 1-34-20.12 PARCEL 6.00
AREA: 5,227 ± SQ.FT. OR 0.12 ± ACRES



GRAPHIC SCALE

WISTA DESIGN INC.

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

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DESIGNED BY: VD	FIELD BOOK# PAGE#	JOB# 18-039-002
DRAWN BY: VD	DATE: 09/12/19	SHEET 1 OF 1
CHECKED BY: DLA	SCALE: AS SHOWN	

201812896

TAX MAP 1-34-20.12 PARCEL 6.00

PLAT DATUM PB 225 / PG 91

NOTE:
Setbacks per B.O.A Hearing
Variance Application # 12175

PKNF @
571° 44' 58"W 0.38'
from Corner

LOT 4

PKN Reset after portions
of Bulkhead were replaced

Lagoon

Todd Drive (50' R.O.W.)

LOT 2

EXISTING 3 STORY
WOOD FRAMED DWELLING
ON PILES








DECK ABOVE

Deck

Generator

Hassell Drive (50' R.O.W.)

LEGEND

-  DENOTES CONCRETE MON
-  DENOTES IRON REBAR
-  DENOTES IRON PIPE
-  DENOTES PKNAIL SET
-  DENOTES POINT
-  DENOTES PROPERTY LINE
-  DENOTES B.R.L.

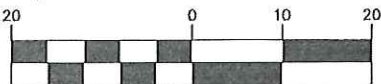
GENERAL NOTES:

- THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A FORMAL TITLE REPORT. EASEMENTS, RIGHTS-OF-WAY, COVENANTS AND OTHER RESTRICTIONS MAY AFFECT THIS PROPERTY AND NOT BE SHOWN.
- THIS SURVEY IS BASED ON THE FINAL SITE PLAN OF BAYVIEW PARK DATED 02/17/16, AND IS SUBJECT TO ANY OR ALL EASEMENTS AND RIGHT-OF-WAYS AS RECORDED. BEARING SYSTEM REFERENCED TO PLAT BOOK 225 PAGES 91
- THIS SURVEY SHOWS ONLY VISIBLE ABOVE GROUND IMPROVEMENTS AND DOES NOT ADDRESS WETLANDS, CONTAMINATED WASTE OR TOXIC SOIL CONDITIONS, NOR HAVE ANY REPORTS, STUDIES OR INFORMATION REGARDING SUCH BEEN PROVIDED. LOT LINE DIMENSIONS TAKEN TO WALLS EXCLUSIVE OF SIDING.
- THE INFORMATION SHOWN HEREON IS BASED ON THE PLATS OF RECORD AS INDEXED IN THE PROPERTY CADASTRE OF SUSSEX COUNTY, DELAWARE AND A FIELD RUN SURVEY. (FLOOD ZONE "AE", ELEVATION 6' PER FEMA MAP #10005C0518L-0307/17)

LOCATION SURVEY

PREPARED FOR

LOT 2, BAYVIEW PARK
BALTIMORE HUNDRED
SUSSEX COUNTY, DELAWARE
TAX MAP 1-34-20.12 PARCEL 6.00
AREA: 5,227 ± SQ.FT. OR 0.12 ± ACRES



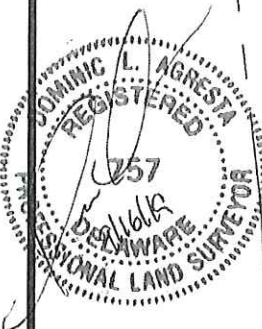
GRAPHIC SCALE

WISTA
DESIGN INC.

Landscape Architects, Land Planning Consultants and Engineers
11634 Worcester Hwy, Shovel, MD 21862
ph. 410-352-5601 fax 410-352-3875 email wista@vistadesigninc.com

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DESIGNED BY: VD	FIELD BOOK# PAGE#	JOB# 18-039-002
DRAWN BY: VD	DATE: 09/12/19	SHEET 1 OF 1
CHECKED BY: DLA	SCALE: AS SHOWN	



ELEVATION CERTIFICATE

Important: Follow the instructions on pages 1-9.

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

SECTION A – PROPERTY INFORMATION					FOR INSURANCE COMPANY USE	
A1. Building Owner's Name Carlos Martins and Michelle T. Downing					Policy Number:	
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 34956 Todd Drive					Company NAIC Number:	
City South Bethany		State Delaware		ZIP Code 19939		
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) Lot 2, Bayview Park TM# 1-34-20.12 Parcel 6.00 Job#18-039						
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) <u>Residential</u>						
A5. Latitude/Longitude: Lat. <u>N 38.507520°</u> Long. <u>W 75.057712°</u> Horizontal Datum: <input type="checkbox"/> NAD 1927 <input checked="" type="checkbox"/> NAD 1983						
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.						
A7. Building Diagram Number <u>6</u>						
A8. For a building with a crawlspace or enclosure(s):						
a) Square footage of crawlspace or enclosure(s) <u>375.00</u> sq ft						
b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade <u>2</u>						
c) Total net area of flood openings in A8.b <u>400.00</u> sq in						
d) Engineered flood openings? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
A9. For a building with an attached garage:						
a) Square footage of attached garage <u>520.00</u> sq ft						
b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade <u>3</u>						
c) Total net area of flood openings in A9.b <u>600.00</u> sq in						
d) Engineered flood openings? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
SECTION B – FLOOD INSURANCE RATE MAP (FIRM) INFORMATION						
B1. NFIP Community Name & Community Number Sussex County #100029			B2. County Name Sussex County		B3. State Delaware	
B4. Map/Panel Number 10005C0518	B5. Suffix L	B6. FIRM Index Date 03-07-2017	B7. FIRM Panel Effective/ Revised Date 03-07-2017	B8. Flood Zone(s) AE	B9. Base Flood Elevation(s) (Zone AO, use Base Flood Depth) 6.0	
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9: <input type="checkbox"/> FIS Profile <input checked="" type="checkbox"/> FIRM <input type="checkbox"/> Community Determined <input type="checkbox"/> Other/Source: _____						
B11. Indicate elevation datum used for BFE in Item B9: <input type="checkbox"/> NGVD 1929 <input checked="" type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____						
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Designation Date: _____ <input type="checkbox"/> CBRS <input type="checkbox"/> OPA						

ELEVATION CERTIFICATE

OMB No. 1660-0008
Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 34956 Todd Drive			Policy Number:
City South Bethany	State Delaware	ZIP Code 19939	Company NAIC Number

SECTION C – BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: Construction Drawings* Building Under Construction* Finished Construction
*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations – Zones A1–A30, AE, AH, A (with BFE), VE, V1–V30, V (with BFE), AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO. Complete Items C2.a–h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.

Benchmark Utilized: GPS _____ Vertical Datum: NAVD88 _____

Indicate elevation datum used for the elevations in items a) through h) below.

NGVD 1929 NAVD 1988 Other/Source: _____

Datum used for building elevations must be the same as that used for the BFE.

Check the measurement used.

- | | | | | |
|--|-------|------|--|---------------------------------|
| a) Top of bottom floor (including basement, crawlspace, or enclosure floor) | _____ | 3.60 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| b) Top of the next higher floor | _____ | 8.40 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| c) Bottom of the lowest horizontal structural member (V Zones only) | _____ | N/A | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| d) Attached garage (top of slab) | _____ | 3.20 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments) | _____ | 6.00 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| f) Lowest adjacent (finished) grade next to building (LAG) | _____ | 2.60 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| g) Highest adjacent (finished) grade next to building (HAG) | _____ | 3.00 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support | _____ | 2.40 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |

SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

Were latitude and longitude in Section A provided by a licensed land surveyor? Yes No Check here if attachments.

Certifier's Name Dominic L. Agresta PLS	License Number DE #757 / MD #21407
Title Professional Land Surveyor	
Company Name Vista Design Inc	
Address 11634 Worcester Highway	
City Showell	State Maryland
	ZIP Code 21862



Signature <i>[Handwritten Signature]</i>	Date 9/16/19	Telephone (410) 352-3874	Ext.
---	-----------------	-----------------------------	------

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments (including type of equipment and location, per C2(e), if applicable)

- C2e is an elevated Whole Home Generator
- Smart Vents are Provided and are equal to 200 square inches of venting, see manufactures notes and details.

BUILDING PHOTOGRAPHS

ELEVATION CERTIFICATE

See Instructions for Item A6.

OMB No. 1660-0008
Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 34956 Todd Drive			Policy Number:
City South Bethany	State Delaware	ZIP Code 19939	Company NAIC Number

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least 2 building photographs below according to the instructions for Item A6. Identify all photographs with date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8. If submitting more photographs than will fit on this page, use the Continuation Page.



Photo One

Photo One Caption

Front View of Home

Clear Photo One

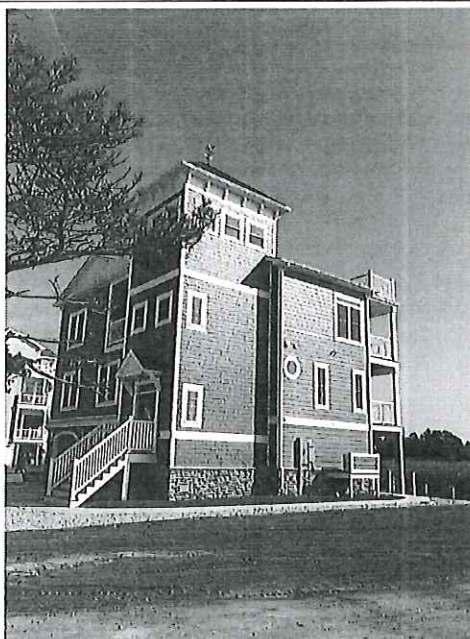


Photo Two

Photo Two Caption

Side View of Home

Clear Photo Two

ELEVATION CERTIFICATE

BUILDING PHOTOGRAPHS

Continuation Page

OMB No. 1660-0008

Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 34956 Todd Drive			Policy Number:
City South Bethany	State Delaware	ZIP Code 19939	Company NAIC Number

If submitting more photographs than will fit on the preceding page, affix the additional photographs below. Identify all photographs with: date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8.

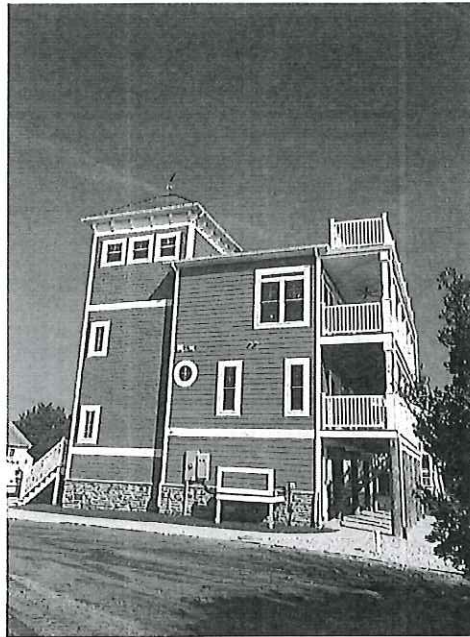


Photo Three

Photo Three Caption

Right Side View of Home

Clear Photo Three

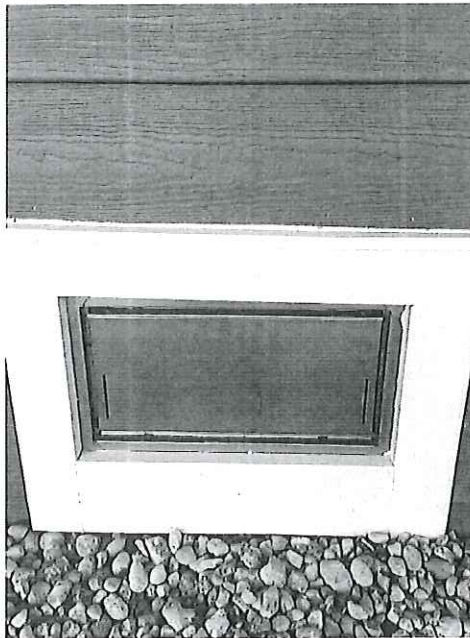


Photo Four

Photo Four Caption

Flood Vent

Clear Photo Four



Most Widely Accepted and Trusted

ICC-ES Evaluation Report

ESR-2074

ICC-ES | (800) 423-6587 | (562) 699-0543 | www.icc-es.org

Reissued 02/2017
This report is subject to renewal 02/2019.

DIVISION: 08 00 00—OPENINGS

SECTION: 08 95 43—VENTS/FOUNDATION FLOOD VENTS

REPORT HOLDER:

SMARTVENT PRODUCTS, INC.

430 ANDBRO DRIVE, UNIT 1
PITMAN, NEW JERSEY 08071

EVALUATION SUBJECT:

**SMART VENT® AUTOMATIC FOUNDATION FLOOD VENTS: MODELS #1540-520;
#1540-521; #1540-510; #1540-511; #1540-570; #1540-574; #1540-524; #1540-514**



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"2014 Recipient of Prestigious Western States Seismic Policy Council (WSSPC) Award in Excellence"



A Subsidiary of

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ICC-ES Evaluation Report

ESR-2074

Reissued February 2017

Revised November 2017

This report is subject to renewal February 2019.

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A Subsidiary of the International Code Council®

DIVISION: 08 00 00—OPENINGS
Section: 08 95 43—Vents/Foundation Flood Vents

REPORT HOLDER:

SMARTVENT PRODUCTS, INC.
430 ANDBRO DRIVE, UNIT 1
PITMAN, NEW JERSEY 08071
(877) 441-8368
www.smartvent.com
info@smartvent.com

EVALUATION SUBJECT:

SMART VENT® AUTOMATIC FOUNDATION FLOOD VENTS:
MODELS #1540-520; #1540-521; #1540-510; #1540-511;
#1540-570; #1540-574; #1540-524; #1540-514

1.0 EVALUATION SCOPE

Compliance with the following codes:

- 2015, 2012, 2009 and 2006 *International Building Code*® (IBC)
- 2015, 2012, 2009 and 2006 *International Residential Code*® (IRC)
- 2013 *Abu Dhabi International Building Code* (ADIBC)[†]

[†]The ADIBC is based on the 2009 IBC. 2009 IBC code sections referenced in this report are the same sections in the ADIBC.

Properties evaluated:

- Physical operation
- Water flow

2.0 USES

The Smart Vent® units are engineered mechanically operated flood vents (FVs) employed to equalize hydrostatic pressure on walls of enclosures subject to rising or falling flood waters. Certain models also allow natural ventilation.

3.0 DESCRIPTION

3.1 General:

When subjected to rising water, the Smart Vent® FVs internal floats are activated, then pivot open to allow flow in either direction to equalize water level and hydrostatic pressure from one side of the foundation to the other. The FV pivoting door is normally held in the closed position by a buoyant release device. When subjected to rising water,

the buoyant release device causes the unit to unlatch, allowing the door to rotate out of the way and allow flow. The water level stabilizes, equalizing the lateral forces. Each unit is fabricated from stainless steel. Smart Vent® Automatic Foundation Flood Vents are available in various models and sizes as described in Table 1. The SmartVENT® Stacking Model #1540-511 and FloodVENT® Stacking Model #1540-521 units each contain two vertically arranged openings per unit.

3.2 Engineered Opening:

The FVs comply with the design principle noted in Section 2.7.2.2 and Section 2.7.3 of ASCE/SEI 24-14 [Section 2.6.2.2 of ASCE/SEI 24-05 (2012, 2009, 2006 IBC and IRC)] for a maximum rate of rise and fall of 5.0 feet per hour (0.423 mm/s). In order to comply with the engineered opening requirement of ASCE/SEI 24, Smart Vent FVs must be installed in accordance with Section 4.0.

3.3 Ventilation:

The SmartVENT® Model #1540-510 and SmartVENT® Overhead Door Model #1540-514 both have screen covers with 1/4-inch-by-1/4-inch (6.35 by 6.35 mm) openings, yielding 51 square inches (32 903 mm²) of net free area to supply natural ventilation. The SmartVENT® Stacking Model #1540-511 consists of two Model #1540-510 units in one assembly, and provides 102 square inches (65 806 mm²) of net free area to supply natural ventilation. Other FVs recognized in this report do not offer natural ventilation.

4.0 DESIGN AND INSTALLATION

SmartVENT® and FloodVENT® are designed to be installed into walls or overhead doors of existing or new construction from the exterior side. Installation of the vents must be in accordance with the manufacturer's instructions, the applicable code and this report. Installation clips allow mounting in masonry and concrete walls of any thickness. In order to comply with the engineered opening design principle noted in Section 2.7.2.2 and 2.7.3 of ASCE/SEI 24-14 [Section 2.6.2.2 of ASCE/SEI 24-05 (2012, 2009, 2006 IBC and IRC)], the Smart Vent® FVs must be installed as follows:

- With a minimum of two openings on different sides of each enclosed area.
- With a minimum of one FV for every 200 square feet (18.6 m²) of enclosed area, except that the SmartVENT® Stacking Model #1540-511 and FloodVENT® Stacking Model #1540-521 must be

installed with a minimum of one FV for every 400 square feet (37.2 m²) of enclosed area.

- Below the base flood elevation.
- With the bottom of the FV located a maximum of 12 inches (305.4 mm) above the higher of the final grade or floor and finished exterior grade immediately under each opening.

5.0 CONDITIONS OF USE

The Smart Vent[®] FVs described in this report comply with, or are suitable alternatives to what is specified in, those codes listed in Section 1.0 of this report, subject to the following conditions:

- 5.1 The Smart Vent[®] FVs must be installed in accordance with this report, the applicable code and the manufacturer's installation instructions. In the event of a conflict, the instructions in this report govern.

- 5.2 The Smart Vent[®] FVs must not be used in the place of "breakaway walls" in coastal high hazard areas, but are permitted for use in conjunction with breakaway walls in other areas.

6.0 EVIDENCE SUBMITTED

Data in accordance with the ICC-ES Acceptance Criteria for Mechanically Operated Flood Vents (AC364), dated August 2015.

7.0 IDENTIFICATION

The Smart VENT[®] models recognized in this report must be identified by a label bearing the manufacturer's name (Smartvent Products, Inc.), the model number, and the evaluation report number (ESR-2074).

TABLE 1—MODEL SIZES

MODEL NAME	MODEL NUMBER	MODEL SIZE (in.)	COVERAGE (sq. ft.)
FloodVENT [®]	1540-520	15 ³ / ₄ " X 7 ³ / ₄ "	200
SmartVENT [®]	1540-510	15 ³ / ₄ " X 7 ³ / ₄ "	200
FloodVENT [®] Overhead Door	1540-524	15 ³ / ₄ " X 7 ³ / ₄ "	200
SmartVENT [®] Overhead Door	1540-514	15 ³ / ₄ " X 7 ³ / ₄ "	200
Wood Wall FloodVENT [®]	1540-570	14" X 8 ³ / ₄ "	200
Wood Wall FloodVENT [®] Overhead Door	1540-574	14" X 8 ³ / ₄ "	200
SmartVENT [®] Stacker	1540-511	16" X 16"	400
FloodVent [®] Stacker	1540-521	16" X 16"	400

For SI: 1 inch = 25.4 mm; 1 square foot = m²

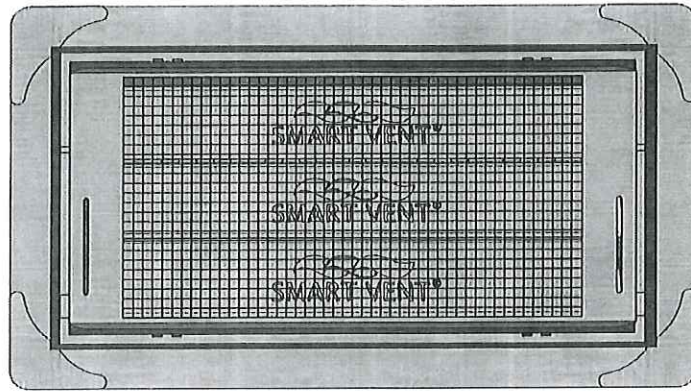


FIGURE 1—SMART VENT: MODEL 1540-510

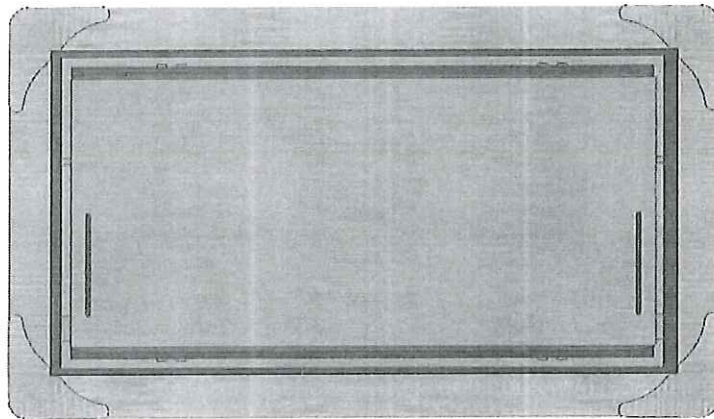


FIGURE 2—SMART VENT MODEL 1540-520

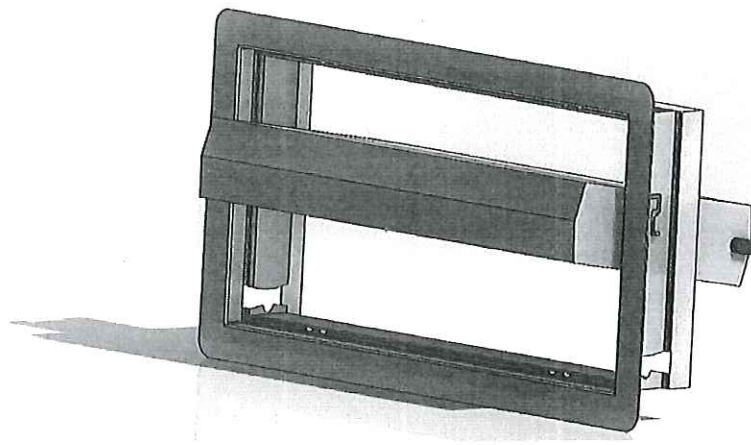


FIGURE 3—SMART VENT: SHOWN WITH FLOOD DOOR PIVOTED OPEN

ICC-ES Evaluation Report

ESR-2074 CBC and CRC Supplement

Issued February 2017

Revised November 2017

This report is subject to renewal February 2019.

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DIVISION: 08 00 00—OPENINGS
Section: 08 95 43—Vents/Foundation Flood Vents

REPORT HOLDER:

SMARTVENT PRODUCTS, INC.
430 ANDBRO DRIVE, UNIT 1
PITMAN, NEW JERSEY 08071
(877) 441-8368
www.smartvent.com
info@smartvent.com

EVALUATION SUBJECT:

SMART VENT® AUTOMATIC FOUNDATION FLOOD VENTS: MODELS #1540-520; #1540-521; #1540-510; #1540-511; #1540-570; #1540-574; #1540-524; #1540-514

1.0 REPORT PURPOSE AND SCOPE

Purpose:

The purpose of this evaluation report supplement is to indicate that Smart Vent® Automatic Foundation Flood Vents, recognized in ICC-ES master evaluation report ESR-2074, have also been evaluated for compliance with codes noted below.

Applicable code edition:

- 2016 *California Building Code* (CBC)
- 2016 *California Residential Code* (CRC)

2.0 CONCLUSIONS

2.1 CBC:

The Smart Vent® Automatic Foundation Flood Vents, described in Sections 2.0 through 7.0 of the master evaluation report ESR-2074, comply with 2016 CBC Chapter 12, provided the design and installation are in accordance with the 2015 *International Building Code*® (IBC) provisions noted in the master report and the additional requirements of CBC Chapters 12, 16 and 16A, as applicable.

The products recognized in this supplement have not been evaluated under CBC Chapter 7A for use in the exterior design and construction of new buildings located in any Fire Hazard Severity Zone within State Responsibility Areas or any Wildland-Urban Interface Fire Area.

2.2 CRC:

The Smart Vent® Automatic Foundation Flood Vents, described in Sections 2.0 through 7.0 of the master evaluation report ESR-2074, comply with the 2016 CRC, provided the design and installation are in accordance with the 2015 *International Residential Code*® (IRC) provisions noted in the master report.

The products recognized in this supplement have not been evaluated under 2016 CRC Chapter R337, for use in the exterior design and construction of new buildings located in any Fire Hazard Severity Zone within State Responsibility Areas or any Wildland-Urban Interface Fire Area.

The products recognized in this supplement have not been evaluated for compliance with the International Wildland-Urban Interface Code®.

This supplement expires concurrently with the master report, reissued February 2017 and revised November 2017.

ICC-ES Evaluation Report

ESR-2074 FBC Supplement

Reissued February 2017

Revised November 2017

This report is subject to renewal February 2019.

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DIVISION: 08 00 00—OPENINGS

Section: 08 95 43—Vents/Foundation Flood Vents

REPORT HOLDER:

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1.0 REPORT PURPOSE AND SCOPE

Purpose:

The purpose of this evaluation report supplement is to indicate that Smart Vent® Automatic Foundation Flood Vents, recognized in ICC-ES master report ESR-2074, have also been evaluated for compliance with the codes noted below.

Applicable code editions:

- 2017 Florida Building Code—Building
- 2017 Florida Building Code—Residential

2.0 CONCLUSIONS

The Smart Vent® Automatic Foundation Flood Vents, described in Sections 2.0 through 7.0 of the master evaluation report ESR-2074, comply with the *Florida Building Code—Building* and the FRC, provided the design and installation are in accordance with the 2015 *International Building Code*® provisions noted in the master report.

Use of the Smart Vent® Automatic Foundation Flood Vents has also been found to be in compliance with the High-Velocity Hurricane Zone provisions of the *Florida Building Code—Building* and the *Florida Building Code—Residential*.

For products falling under Florida Rule 9N-3, verification that the report holder's quality assurance program is audited by a quality assurance entity approved by the Florida Building Commission for the type of inspections being conducted is the responsibility of an approved validation entity (or the code official when the report holder does not possess an approval by the Commission).

This supplement expires concurrently with the master report, reissued February 2017 and revised November 2017.

PLEASE POST

A BUILDING PERMIT

ZZ71

Has Been Issued

ZZ71

To Erect Improvements

ON THESE PREMISES

2 St DW, Att Gar, CV Deck, Deck
Martins

In all cases where operation or work is being performed under a new building permit, this poster or sign shall be conspicuously displayed upon that part of the site of such operation or work which is closest to a street or public highway, so that such poster or sign shall be visible to the general public at all times.

A FINAL INSPECTION MUST BE MADE AND A CERTIFICATE OF OCCUPANCY ISSUED BY PLANNING & ZONING OFFICE PRIOR TO ANY OCCUPANCY OR INTENDED USE OF BUILDING.

2018 12894

BOARD OF ASSESSMENT

SUSSEX COUNTY, GEORGETOWN, DELAWARE

134-20.12-L.00

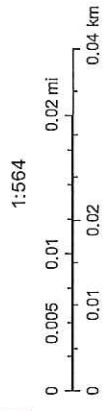
A-7

12/26/19



PIN:	134-20.12-6.00
Owner Name	MARTINS CARLOS
Book	4767
Mailing Address	9 FIELDSTONE CT
City	EAST HANOVER
State	NJ
Description	BAY VIEW PARK
Description 2	LOT 2
Description 3	N/A
Land Code	

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



BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CARLOS MARTINS

(Case No. 12175)

A hearing was held after due notice on August 6, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 0.39 feet from the five (5) feet rear yard setback requirement for the second-floor deck, a variance of 4.51 feet from the fifteen (15) feet corner front setback requirement for the dwelling, and a variance of 12 feet from the thirty (30) feet front yard setback requirement for the steps and landing. This application pertains to certain real property on the northeast corner of Todd Drive and Hassel Avenue in the Bayview Park development (911 Address: 34956 Todd Drive, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.12-6.00.

1. The Board was given copies of the Application, a site plan dated June 28, 2018, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Bryan Elliott was sworn in to testify about the Application.
4. The Board found that Mr. Elliott testified that the Property is unique because it is small and has an odd shape. The lot lines are not perpendicular and these unique angles create setback issues when designing a dwelling to comply with the setback requirements.
5. The Board found that Mr. Elliott testified that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code due to the odd shape of the lot and that the variances are needed to enable a reasonable use of the Property.
6. The Board found that Mr. Elliott testified that the proposed dwelling will be similar to other homes in the neighborhood.
7. The Board found that Mr. Elliott testified that the need for the variances was not created by the Applicant.
8. The Board found that Mr. Elliott testified that the variances will not alter the essential character of the neighborhood but will enhance it.
9. The Board found that Mr. Elliott testified that the variances being requested are the minimum variances necessary to afford relief.
10. The Board found that Mr. Elliott testified that the two-story dwelling has not been built.
11. The Board found that Mr. Elliott testified that the Property is located adjacent to a canal and is located in a flood zone. As such, the house will be on pilings with steps and a landing that will provide access to the home. The steps will go to the first floor of living space of the home, which is 9 feet above ground level.
12. The Board found that Mr. Elliott testified that the Property is a corner lot and there is a large gap between the edge of paving of Hassel Drive and the property line.
13. The Board found that no parties appeared in support of the Application and two (2) parties in opposition to the Application.

14. The Board found that Paul Reiger and Keith Steck were sworn in to testify in opposition to the Application. Mr. Reiger and Mr. Steck both questioned the Board's procedure, which was not specific to the Application.
15. The Board found that Mr. Reiger testified that he believes that the Applicant should build a smaller house within the building envelope.
16. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its size and shape and due to the fact that the Property is a corner lot within a flood zone. The Property is quite small as evidenced by the survey and the lot is not square. The Property consists of only 5,227 square feet. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a house, deck, steps, and landing on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and shape and the buildable area thereof is limited due to these conditions. The building envelope is further constrained by the fact that the Property is a corner lot subject to flood zone restrictions. The house must be elevated to meet the flood zone requirements. The Applicant seeks to construct a house, deck, steps, and landing on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow these reasonably sized structures to be constructed on the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property. The unique lot size and shape have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The limited building envelope was further restrained by the fact that the Property is a corner lot in a flood zone. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
 - d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. The structures are similar to others in the neighborhood and no concerns were raised by neighbors. The only substantive concern raised by a member of the opposition came from a party who does not live in the neighborhood. The opposition presented no evidence or testimony which demonstrated that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the rear yard variance is only 0.39 feet and is likely unnoticeable by neighbors. Furthermore, the edge of paving of Hassell Drive does not match the corner front property line and the edge of paving of Todd Drive does not appear to match the front property line either. As such, the encroachments into those

setback areas are likely not as noticeable due to the gap between the actual road and the front property line.

- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a house, deck, steps, and landing on the lot. The Board is convinced that the Applicant has worked with professionals to minimize the encroachments into the setback areas.

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

Decision of the Board

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

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

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

Date October 2, 2018.

**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 # 12373
Hearing Date 10/21

RECEIVED

AUG 22 2019

SUSSEX COUNTY
PLANNING & ZONING

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)

115-209
115-209

Site Address of Variance/Special Use Exception:

11671 Fleatown Road, Lincoln, Delaware 19960

Variance/Special Use Exception/Appeal Requested:

Appeal from decision of Director of Planning and Zoning, Janelle Cornwell's undocumented and undated decision to not require Chaney Enterprises, LLC and/or Trinity Commercial Holdings, LLC to apply for Board of Adjustment approvals/special use permits for concrete manufacturing pursuant to Sections 115-111 and 115-210A(1) of the Sussex County Code. (See Basis For Appeal, below and attached correspondence)

Tax Map #: 230 19.00 111.00 p/o

Property Zoning: H-I

Applicant Information

Applicant Name: Christian and Constance Brauer and see attachment (c/o Robert V. Witsil, Jr., Esquire)

Applicant Address: 18194 Fleatown Road

City Lincoln **State** DE **Zip:** 19960

Applicant Phone #: (302) 855-0120 **Applicant e-mail:** rob@witsillaw.com

Owner Information

Owner Name: Trinity Commercial Holdings, LLC and see attachment

Owner Address: 3415 Wrangle Hill Road

City Bear **State** DE **Zip:** 19701 **Purchase Date:** 6/10/19

Owner Phone #: _____ **Owner e-mail:** _____

Agent/Attorney Information

Agent/Attorney Name: Robert V. Witsil, Jr., Esquire

Agent/Attorney Address: 120 South Bedford Street, P. O. Box 799

City Georgetown **State** DE **Zip:** 19947

Agent/Attorney Phone #: (302) 855-0120 **Agent/Attorney e-mail:** rob@witsillaw.com

Signature of Owner/Agent/Attorney

Robert V. Witsil, Jr.

Date: 8/22/19



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

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

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

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

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

SEE ATTACHED

ATTACHMENT
(APPLICANT AND OWNER INFORMATION)

Additional Applicant:

Andrew and Christine Malaney
18211 Fleatown Road
Ellendale, DE 19951
302-855-0120 (c/o Robert V. Witsil, Jr., Esquire)
rob@witsillaw.com (c/o Robert V. Witsil, Jr., Esquire)

Additional Owner:

Chaney Enterprises, LLC
2410 Evergreen Road
Suite 110
Gambrills, MD 21054
c/o James Fuqua, Esquire
26 The Circle
P. O. Box 250
Georgetown, DE 19947
302-856-7777
jimf@fwsslaw.com

NATURE OF APPEAL

This is an appeal, pursuant to Sussex County Code Sections 115-208(B) and 115-209A and 9 *Delaware Code* Sections 6916(a) and 6917(1), from a decision of the Director of the Sussex County Planning and Zoning Department (“Director”) to not require the owner of Sussex County Tax Parcel No. 230-19.00-111.00, Trinity Commercial Holdings, LLC or the proposed concrete manufacturer, Chaney Enterprises, LLC, (“Chaney”) to submit an application to the Board of Adjustment for a public hearing for a Potentially Hazardous Use in an H-I Heavy Industrial District. Section 115-111 requires that the use or manufacture, compounding, processing or treatment of cement, lime, sand or gravel may be located in an H-I Heavy Industrial District only after the location and nature of the use shall have been approved by the Board of Adjustment. The Board is required to review the proposed plans and statements and shall not permit such buildings, structures or uses until it has been shown that the public health, safety and welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons. In reviewing the proposal, the Board is charged with consulting other agencies for the promotion of public health and safety and shall pay particular attention to the protection of the County and its waterways from the harmful effects of air or water pollution of any type. The Potentially Hazardous Use hearing is required even if the proposed use is located in a Heavy Industrial District. Whenever any doubt exists as to the nature of a proposed use or process, the proposal shall be considered as a Potentially Hazardous Use and be referred to the Board of Adjustment for decision after a public hearing. (Section 115-110(C)). (All Code Sections referenced herein are attached in Exhibit 7)

Secondly, this is an appeal of the Director’s decision not to require Chaney to submit an application for a Special Use Exception for operation of a “concrete batching plant” to the Board of Adjustment.

Thirdly, this is an appeal of the Director’s decision to permit the site plan approval process to proceed to review by the Planning and Zoning Commission on August 8, 2019 after the Director’s preliminary review of the application. Despite information submitted by the undersigned attorney that raised a reasonable doubt that the nature of the proposed facility is a “central concrete mixing and proportioning plant,” but is actually a concrete batching plant, the Director allowed the application for preliminary site plan review to proceed as submitted.

FACTS

On June 25, 2019, the undersigned attorney, on behalf of Christine and Constance Brauer, Andrew and Christine Malaney and other neighboring property owners, submitted correspondence to Janelle Cornwell, Planning and Zoning Director, regarding the anticipated filing of a preliminary site plan for review by the Planning and Zoning Commission for a proposed “concrete central mixing and proportioning plant” by Chaney Enterprises, LLC (“Chaney”) on lands recently acquired by Trinity Commercial Holdings, LLC (“Trinity”). The June 25, 2019 correspondence requested that the

Director require a Board of Adjustment hearing for a Potentially Hazardous Use in a H-I Heavy Industrial District. (All Witsil correspondence, Exhibit 1)

On June 26, 2019, the Planning and Zoning Office marked received the site plan for Chaney which identified the proposed facility as a “concrete central mixing and proportioning plant” on a 6 acre portion of Trinity’s 17.19 acre parcel. (Exhibit 2) The 6 acre area had been rezoned from AR-1 to H-I in 1986 by the prior owner.

On July 18, 2019, Samantha Bulkilvish, Planner I, of the Sussex County Planning and Zoning Department addressed correspondence to Chaney’s engineer inquiring, in part, as to the nature of the cement operations to be conducted on the site. (Exhibit 3) In response to Ms. Bulkilvish’s correspondence, Chaney’s engineer submitted a revised preliminary site plan and made reference to James Fuqua’s correspondence dated July 26, 2019 for an explanation of the nature of the operations of the proposed plant.

Although Chaney’s application for preliminary site plan approval identified the proposed use as “concrete central mixing and proportioning plant,” the description of the proposed operations, as provided in a correspondence responding to Ms. Bulkilvish’s inquiry from James Fuqua, Esquire, attorney for Chaney, dated July 26, 2019 resembles the operation of a “concrete batching plant.”

“The plant consists of pieces of equipment that load, store, weigh and discharge the concrete ingredients directly into a concrete transport truck. Water is then added to the mixture in the truck which continuously mixes the ingredients at a set revolution during transportation to a job site. The principal pieces of equipment are raw material storage bins, a ground hopper, a stacker or conveyor, a four compartment material storage bin, a cement silo, dust collectors and a plant control building with computer controls to ensure accurate measurement of concrete ingredients.”

Mr. Fuqua’s description clearly indicates that cement will be used, compounded, processed and/or treated at the facility. Such use, manufacturing, compounding, processing or treatment of cement and sand, gravel and lime, all necessary ingredients in the manufacturing of concrete, is specifically identified in Section 115-111 as a Potentially Hazardous Use which requires a public hearing before the Board of Adjustment in accordance with Article XXVII of the Code. (Exhibit 4)

Additionally, the description of operations provided by James Fuqua’s correspondence is not indicative of a central concrete mixing and proportioning plant. Mr. Fuqua’s description is identical to the definitions of a “concrete batching plant” as stated in materials submitted in correspondence from the undersigned attorney to the Planning and Zoning Director and the Planning and Zoning Commission dated August 8, 2019. (Exhibit 1) Further evidence that the proposed use is a “concrete batching plant” and not a central mixing and proportioning plant was submitted by the undersigned attorney with correspondence of James Carusone, LLC dated August 8, 2019, which stated:

“Chaney Enterprises is clearly proposing to construct a “Dry” concrete batch plant at the subject site. The described plant will discharge the concrete ingredients unmixed into the concrete mixer truck, and then water will be added.” (Exhibit 1)

In contrast, the American Concrete Institute’s “ACI Concrete Terminology” defines “central-mixed” concrete as:

“Concrete that is completely mixed from which it is transported to the delivery point.”

The ACI also describes a “central mixer” as:

“A stationary concrete mixer from which the freshly mixed concrete is transported to the work.” (Witsil correspondence, August 8, 2019, Exhibit 1)

James Fuqua’s July 26, 2019 correspondence also states that the proposed plant is similar to a Chaney Enterprises concrete plant located in Lorton, Virginia. Documentation acquired from the County of Fairfax, Virginia clearly indicates that the facility there is a “concrete batching plant.” (Exhibit 5)

Further evidence that the proposed Chaney facility is a concrete batching plant is provided in the attached copy of an application for a Special Use Exception for a “concrete batch plant” by Southstar L.P. for a concrete operations identical to operations proposed by Chaney Enterprises on Coverdale Road near Seaford. (Exhibit 6) Upon information and belief of Applicants, Southstar L.P. is a subsidiary of Chaney Enterprises. The address stated for Southstar L.P. on Application #12344 is identical to the Gambrills, Maryland address for Chaney Enterprises, LLC. Photographs attached to the application depict a concrete batching plant similar to Chaney’s above-mentioned Lorton, Virginia facility.

Concrete batching plants are not identified as either a permitted use or a Special Use Exception in the H-I Heavy Industrial District. Concrete batching plants are identified as a use permitted by Special Use Exception in the L-I 2 Light Industrial 2 District, Article XIV, Section 115-105A, provided approval is acquired by the Board of Adjustment after a public hearing. (Exhibit 7) Accordingly, Chaney’s actual proposed use of a concrete batching plant is permitted only after a public hearing on a Special Use Exception Application and approval by the Board. Director Cornwell did not require a Special Use Application to be filed and did not inform the Planning and Zoning Commission of the issues addressed by this attorney at the August 8, 2019 Commission meeting.

In addition to the above-mentioned June 25, 2019 and August 8, 2019 correspondence, the undersigned attorney submitted correspondence dated July 9, 2019, July 11, 2019 and July 24, 2019 in an effort to require the Planning and Zoning Director

to determine that Chaney needed to apply for a Special Exception for both a concrete batch plant and a Potentially Hazardous Use hearing before the Board of Adjustment. (All correspondence, Exhibit 1) The correspondence specifically requested that the Director inform the undersigned attorney of her decision to require or not require a Board of Adjustment hearing. No written or oral response was issued by the Director.

Pursuant to Section 115-110C, when any doubt exists as to the nature of a proposed use, product or process, the proposal shall be considered as a Potentially Hazardous Use and referred to the Board of Adjustment for decision after a public hearing. The Director erred in not considering the questionable and doubtful nature of the Chaney facility in light of the evidence and arguments raised by Appellants' attorney and by not referring the application to the Board.

At the Planning and Zoning Commission meeting on August 8, 2019, nothing was announced by the Planning Director about the need for Board of Adjustment proceedings. The Director did not mention the issues raised by the undersigned attorney's correspondence to the Commission. The Commission approved the preliminary site plan for the central concrete mixing and proportioning plant at the August 8, 2019 meeting. Subsequent to the August 8, 2019 meeting and having heard no response from the Director, the undersigned attorney contacted the Director by telephone on August 16, 2019 to inquire whether or not she would require Chaney to proceed with Board of Adjustment hearings. Director Cornwell responded that she was considering the Chaney application as only a site plan review and that she would discuss the issues raised by the undersigned attorney's correspondence and submissions with the Board of Adjustment's attorney. At that time, it was apparent to the undersigned attorney that the Director's oral response could only be interpreted as a decision not to require any proceedings before the Board of Adjustment for Chaney's proposed operations. As of the date of filing of this appeal, no further communication has been issued by the Director.

Accordingly, this appeal is filed within 30 days of the August 16, 2019 determination of the Director of Sussex County's Planning and Zoning Department in compliance with Sections 115-208(B) and 115-209A of the Sussex County Code. This appeal is also filed within 30 days of the August 8, 2019 meeting of the Planning and Zoning Commission and within 30 days of the undersigned attorney's request for a determination of the Director by correspondence dated July 24, 2019.

Christine and Constance Brauer and Andrew and Christine Malaney, Appellants, are aggrieved persons who are neighboring property owners on Fleatown Road. The proposed facility will detrimentally affect their health, safety and welfare and will cause diminution of their property values. They have executed a Petition describing their grievances, together with other neighboring property owners, which is attached hereto. (Exhibit 8) The decision of the Director to permit the Site Plan Application to proceed to the Commission with erroneous information concerning the true nature and type of concrete batching plant at the facility was an error in determination of the application by the Director pursuant to Section 115-209A. The decision of the Director not to require Chaney Enterprises, LLC to proceed to a public hearings on a Potentially Hazardous Use

and/or Special Use Exception before the Board of Adjustment was a decision or determination by the Director which will not properly protect the public health, safety and welfare and which deprives the Appellants of reasonable due process in accordance with the aforementioned provisions of the Sussex County Zoning Code and 9 *Del. C.* Sections 6916 and 6917.

RELIEF REQUESTED

WHEREFORE, for all of the above reasons, Appellants request that the Board of Adjustment determine that:

(1) The Director's action and/or determination not to require Chaney Enterprises, LLC to proceed to a Potentially Hazardous Use public hearing and decision by the Board of Adjustment was an error and that a public hearing and decision by the Board must be conducted in accordance with Sections 115-111 and 115-110(C);

(2) The Director's actions and/or determination not to refer Chaney Enterprises, LLC to the Board of Adjustment for a public hearing on a Special Use Exception for a concrete batching plant was an error and that a public hearing and determination must be conducted by the Board of Adjustment;

(3) The Director's action and/or determination not to require Chaney Enterprises, LLC to revise its site plan to identify the correct proposed use of a concrete batching plant was an error and that the Director must declare the preliminary site plan null and void and require the applicant to revise the preliminary site plan and re-apply for preliminary site plan approval.

Respectfully submitted,

ROBERT V. WITSIL, JR., P. A.


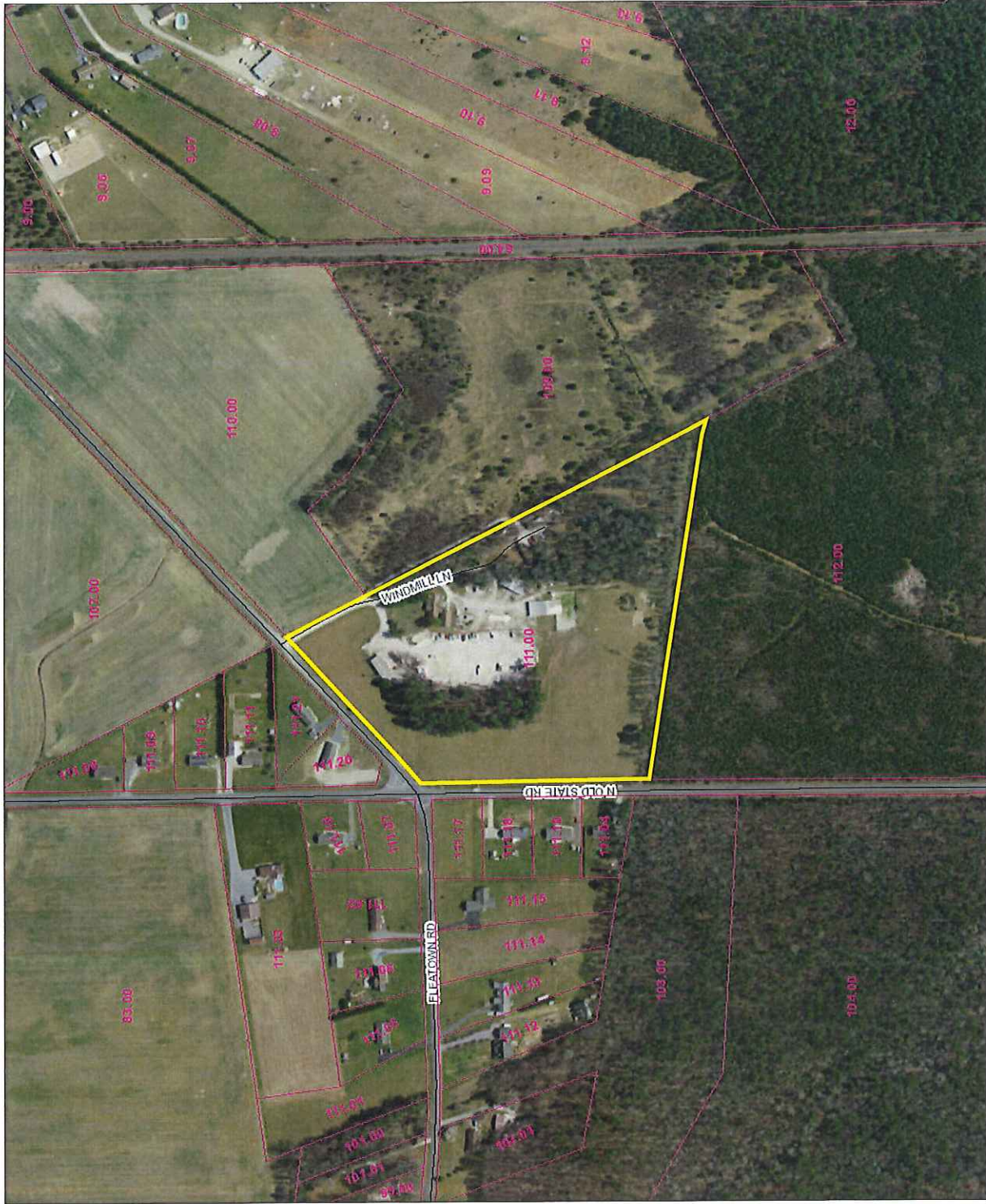
/s/ Robert V. Witsil, Jr. 
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(Supreme Court ID #2097)
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Attorney for Appellants

TABLE OF EXHIBITS

1. Correspondence of Robert V. Witsil, Jr., Esquire to Director Cornwell and Planning and Zoning Commission dated June 25, 2019, July 9, 2019; July 11, 2019; July 24, 2019; and August 8, 2019 (with enclosures)
2. Chaney Enterprises, LLC Preliminary Site Plan and Revised Preliminary Site Plan
3. Correspondence of Samantha Bulkilvish, Sussex County Planner, dated July 17, 2019
4. Correspondence of James A. Fuqua, Jr., Esquire to Planning and Zoning Commission Director dated June 21, 2019; July 10, 2019; July 12, 2019 and to Planner Bulkilvish dated July 26, 2019
5. County of Fairfax, Virginia Application for Special Exception for Concrete Batching Plant; "Chaney Enterprises Opens Lorton Concrete Plant in Virginia article
6. Southstar L.P. Board of Adjustment Application for Concrete Batching Plant, Coverdale Road, Sussex County dated August 5, 2019
7. All Sussex County Code Sections referenced in Appeal: Article XIV, Light Industrial Zoning District; Article XV H-I Heavy Industrial District; Article XXVII Board of Adjustment
8. Petitions of Appellants and other property owners



PIN:	230-19.00-111.00
Owner Name	TRINITY COMMERCIAL HOLDINGS LLC
Book	5077
Mailing Address	3415 WRANGLE HILL RD S
City	BEAR
State	DE
Description	SE INTERSECTION OF
Description 2	RD 213 224
Description 3	T#52699
Land Code	



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

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