

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



Sussex County

DELAWARE
sussexcountyde.gov

PLEASE NOTE

This paperless packet is published on the County's website for convenience purposes, and only includes information received up to the close of business on the day before a public hearing. Documents received after this, or documents submitted during the public hearing are not uploaded to the Paperless Packet. The legal record is the paper record maintained in the Offices of the Planning & Zoning Department.



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

BOARD OF ADJUSTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

(302) 855-7878

AGENDA

November 7, 2022

6:00 P.M.

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

Call to Order

Pledge of Allegiance

Approval of Agenda

Approval of Minutes for September 12, 2022

Approval of Finding of Facts for September 12, 2022

Public Hearings

Case No. 12753– William and Kathleen Mussel seek a variance from the maximum fence height requirement for a proposed fence (Sections 115-25, 115-184, and 115-185 of the Sussex County Zoning Code). The property is a corner through lot located on the south side of John Deere Drive within the Deere Country Subdivision. 911 Address: 29476 John Deere Drive, Millsboro. Zoning District: AR-1. Tax Parcel: 133-15.00-34.00

Case No. 12754–Pot-Nets Bayside, LLC seeks a special use exception for an off-premise parking lot (Sections 115-23B of the Sussex County Zoning Code). The property is located on the southeast side of Pot Nets Road approximately 600 ft. from Long Neck Road. 911 Address: 26463 Burton Road, Millsboro. Zoning District: AR-1. Tax Parcel: 234-24.00-51.00

Case No. 12755–Megan Avalos and Rommel Avalos-Flores seek variances from the side yard and rear yard setback requirements for a proposed structure (Section 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Sand Hill Road approximately .39 miles from Huff Road. 911 Address: 18265 Sand Hill Road, Georgetown. Zoning District: AR-1. Tax Parcel: 135-7.00-13.02



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

Case No. 12756– Laura L. Turner Cox and Howard Cox seek variances from the front yard and side yard setback requirements for existing structures (Sections 115-25, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of New Castle Road within the Indian River Acres Subdivision. 911 Address: 30207 New Castle Road, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-7.00-41.00

Case No. 12757– Gary Kelbaugh seeks a variance from the front yard setback requirement for an existing structure (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the south side of Staytonville Road approximately .27 miles from Memory Road. 911 Address: 12718 Staytonville Road, Harrington. Zoning District: AR-1. Tax Parcel: 430-1.00-9.00

Case No. 12758– Elizabeth and Patrick McGuinness seek a variance from the building height restriction for a proposed protective screen (Sections 115-25 and 115-185c of the Sussex County Zoning Code). The property is located on the west side of Ellender Court within the Kings Creek Country Club Subdivision. 911 Address: 5 Ellender Court, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-1065.00

Additional Business



-MEETING DETAILS-

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on October 31, 2022, at 4:30 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

To join the meeting via telephone, please dial:

Conference Number: 1 302 394 5036

Conference Code: 570176

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

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

If any member of the public would like to submit comments electronically, these may be sent to pandz@sussexcountyde.gov. All comments are encouraged to be submitted by 4:30 P.M. on Thursday, November 3, 2022.

####



RECEIVED

AUG 03 2022

SUSSEX COUNTY
PLANNING & ZONING

**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 # _____
Hearing Date 11/7 - Tentative
2022 11 230

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)

Site Address of Variance/Special Use Exception:

29476 John Deere Dr, Millsboro, DE 19966

Variance/Special Use Exception/Appeal Requested:

Variance to fence height restriction in setback area adjacent to Lakeview Road (County Rd 412)
The variance is to allow an additional 2.5 feet from the 3.5 feet requirement for front yard
setback. (Section 115-25, 115-184 and 115-185 of the Sussex County Zoning Code.)

Tax Map #: 133-15-00-34-00

Property Zoning: AR-1

Applicant Information

Applicant Name: William and Kathleen Mussel
Applicant Address: 29476 John Deere Drive
City Millsboro State DE Zip: 19966
Applicant Phone #: (910) 599-3047 Applicant e-mail: mussel@bellsouth.net

Owner Information

Owner Name: William and Kathleen Mussel
Owner Address: 29476 John Deere Drive
City Millsboro State DE Zip: 19966 Purchase Date: 6/14/22
Owner Phone #: (910) 599-3047 Owner e-mail: mussel@bellsouth.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

Will A. Mussel P.E.

Date: 8/3/22



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

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

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

1. Uniqueness of property:

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

See Attached answers to questions.

2. Cannot otherwise be developed:

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

See attached answers to questions

3. Not created by the applicant:

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

See attached answers to questions

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

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

See attached answers to questions

5. Minimum variance:

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

See attached answers to questions

1. Uniqueness of property:

The property is unique as it is a lot with double front yard setback on a corner property (Lot 1 of Deere Country) that was developed by the builder with a Sun Room attached to the back of the house. These conditions have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to install a fence in the back yard for privacy and for the safety of their dog. This section of the property backs up to Lakeview Rd. (Hwy 412) and has a speed limit of 40 MPH. 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.

2. Cannot otherwise be developed:

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.

3. Not created by the applicant:

The exceptional practical difficulty has not been created by the applicant.

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

The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare. Fence placement within the setback would not intrude on the 15' easement toward the county road or the site triangle. The placement on the side of the house that is adjacent to John Deere Drive is not in the side setback area. See Pictures of properties in the development that also have six foot fences on the property backing up to Lakeview road.

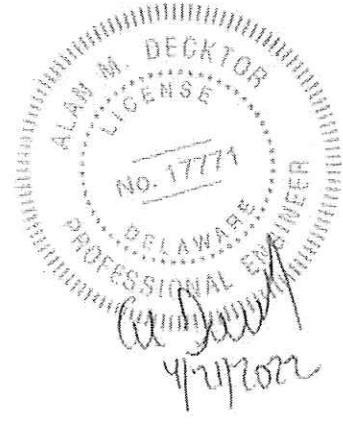
5. Minimum variance:

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

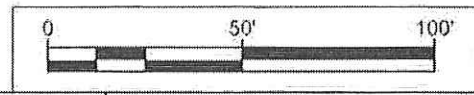


SURVEY CLASS: SUBURBAN
 LOT AREA: 0.77 ACRES±
 PLAT REF.: PLAT BOOK 261, PAGE 65.

- NOTES
1. THE BOUNDARY INFORMATION SHOWN ON THIS PLAT WAS TAKEN FROM PLAT BOOK 261, PAGE 65 AND IS THE RESULT OF AN ACTUAL FIELD SURVEY BY PENNONI ASSOCIATES INC.
 2. MAY BE SUBJECT TO HOMEOWNER'S COVENANTS AND RESTRICTIONS.
 3. IT IS THE RESPONSIBILITY OF THE OWNER TO IDENTIFY WETLANDS, FLOOD PLAINS, ENDANGERED SPECIES, OR OTHER ENVIRONMENTAL LIMITATIONS.
 4. THIS SURVEY DOES NOT CERTIFY TO THE LOCATION AND/OR EXISTENCE OF EASEMENTS AND RIGHT-OF-WAYS CROSSING THE SUBJECT PROPERTY.



SETBACKS:
 FRONT - 30'
 60' PER COVENANTS & RESTRICTIONS
 SIDE - 15'
 REAR - 20'
 40' PER COUNTY ROAD SETBACK



PENNONI ASSOCIATES INC.
 18072 Davidson Drive
 Milton, DE 19968
 T 302.684.8030 F 302.684.8054

ALL DOCUMENTS PREPARED BY PENNONI ASSOCIATES ARE INSTRUMENTS OF SERVICE IN RESPECT OF THE PROJECT. THEY ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY OWNER OR OTHERS ON THE EXTENSIONS OF THE PROJECT OR ON ANY OTHER PROJECT. ANY REUSE WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS SOLE RISK AND WITHOUT LIABILITY OR LEGAL EXPOSURE TO PENNONI ASSOCIATES; AND OWNER SHALL INDEMNIFY AND HOLD HARMLESS PENNONI ASSOCIATES FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING THEREFROM.

LOT 1, DEERE COUNTRY
 DAGSBORO HUNDRED
 SUSSEX COUNTY, DELAWARE

FINAL LOCATION
 TM: 133-15.00-34.00

CAPSTONE HOMES, LLC.
 28855 LEWES GEORGETOWN HIGHWAY
 LEWES, DE 19958

PROJECT	CPSTNDC001
DATE	2022-04-21
DRAWING SCALE	1"=50'
DRAWN BY	KMD
APPROVED BY	AMD
SHEET 1 OF 1	

PLOTTED: 4/21/2022 3:48:27 PM. BY: KEITH DAVIDSON PLOTSTYLE: PENNONI.NCS STB. PROJECT STATUS: —

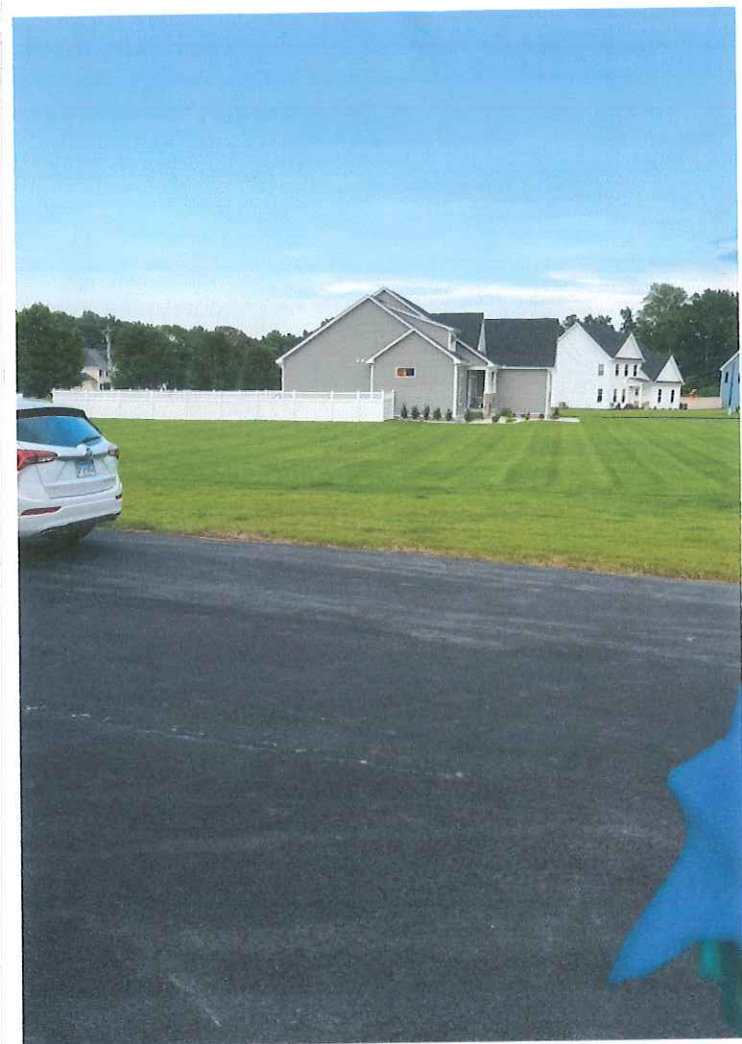
Fence location
Black Line Along Lakeview Road



Side Fence Locations



Neighbors Fence



OTHER FENCES IN Community



Other Fences in Community



OTHER FENCES In
Community





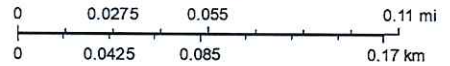
Sussex County



PIN:	133-15.00-34.00
Owner Name	MUSSEL WILLIAM
Book	5721
Mailing Address	29476 JOHN DEERE DR
City	MILLSBORO
State	DE
Description	DEERE COUNTRY
Description 2	LOT 1
Description 3	N/A
Land Code	

- polygonLayer**
 - Override 1
 - Special Access ROW
 - Extent of Right-of-Way
- polygonLayer**
 - Override 1
 - Tax Parcels
 - 911 Address
 - Streets
 - County Boundaries
- Tax Ditch Segments**
 - Tax Ditch Channel
 - DeIDOT Maintained
 - HOA Maintained
 - Pipe - DeIDOT
 - Pipe - Tax Ditch
 - Pipe - Private
 - Pond Feature

1:2,257



RECEIVED

AUG 03 2022

SUSSEX COUNTY
PLANNING & ZONING

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 # _____

Hearing Date _____

202211236

Type of Application: (please check all applicable)

Variance

Special Use Exception

Administrative Variance

Appeal

Existing Condition

Proposed

Code Reference (office use only)

Site Address of Variance/Special Use Exception:

26463 Burton Road, Millsboro, DE 19966

Variance/Special Use Exception/Appeal Requested:

This is a special use exception request for an approximately 146,519 sqft parking facility on an AR-1 zoned property. Parking facility provides 336 spaces and is to be an overflow parking facility for the Paradise Grill restaurant.

Tax Map #: 234-24.00-51.00

Property Zoning: AR-1

Applicant Information

Applicant Name: Pot-Nets Bayside, LLC

Applicant Address: 34026 Anna's Way, Suite 1

City Millsboro State DE Zip: 19966

Applicant Phone #: 302-945-9300 Applicant e-mail: rtunnell@potnets.com

Owner Information

Owner Name: Pot-Nets Bayside, LLC

Owner Address: 34026 Anna's Way, Suite 1

City _____ State DE Zip: 19966 Purchase Date: _____

Owner Phone #: 302-945-9300 Owner e-mail: rtunnell@potnets.com

Agent/Attorney Information

Agent/Attorney Name: James A. Fuqua Jr. Esq.

Agent/Attorney Address: 20245 Bay Vista Road, Unit 203

City Rehoboth Beach State DE Zip: 19971

Agent/Attorney Phone #: 302-227-7727 Agent/Attorney e-mail: jimf@fwsdelaw.com

Signature of Owner/Agent/Attorney

RT

Date: 8/1/22



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 exception will enhance the adjacent and neighboring properties. The Paradise Grill restaurant is located within the Pot-Nets Bayside Community. Patrons of the Paradise Grill restaurant would drive through the Pot-Nets Bayside community to access the restaurant, and often times would park within community roadways. The 336 space parking facility will significantly reduce the amount of traffic from patrons within the Pot-Nets Bayside community because the overflow parking is located close to the community entrance, and Paradise Grill operates a free shuttle service for the patrons between the parking and the restaurant. The parking facilities are buffered on all sides by mature woods, and are located on lands owned by Pot-Nets Bayside, LLC - the same owner as the Pot-Nets Bayside Community. The other adjoining parcels are owned by Tunnell Companies LP and would be unaffected by this exception.

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)



Sussex County Government COVID-19 Intake Form

Contact Name: Jim Eriksen, PE

Address: Solutions IPEM

Contact Phone Number: 302-297-9215

Email Address: jeriksen@solutionsipem.com

For (Person or Department): P&Z - Chase Phillips

Date: 8.2.22

Time: _____

What is being dropped off?

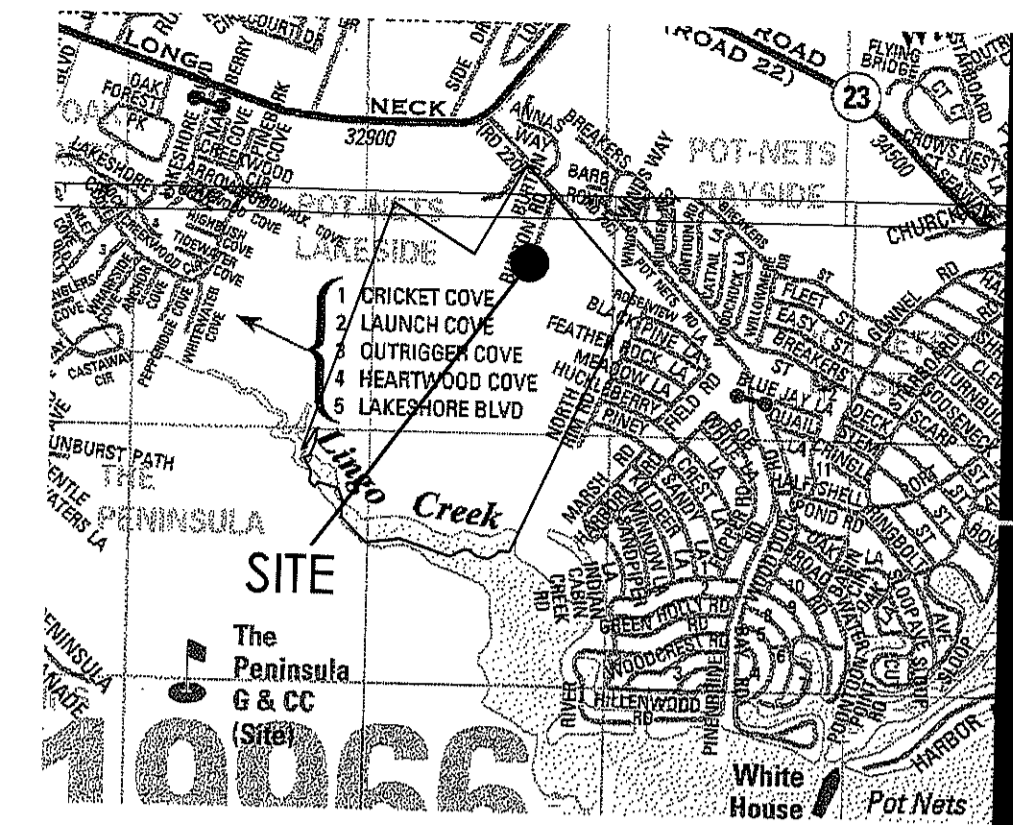
Pot Nets Bayside plans/review fee/application

Comments:

RECEIVED
AUG 03 2022
SUSSEX COUNTY
PLANNING & ZONING

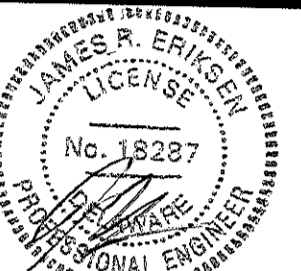
SITE PLAN FOR POT-NETS OVERFLOW PARKING

SUSSEX COUNTY, DELAWARE
FOR
POT-NETS BAYSIDE, LLC



solutions
Integrated Planning
Engineering & Management, LLC

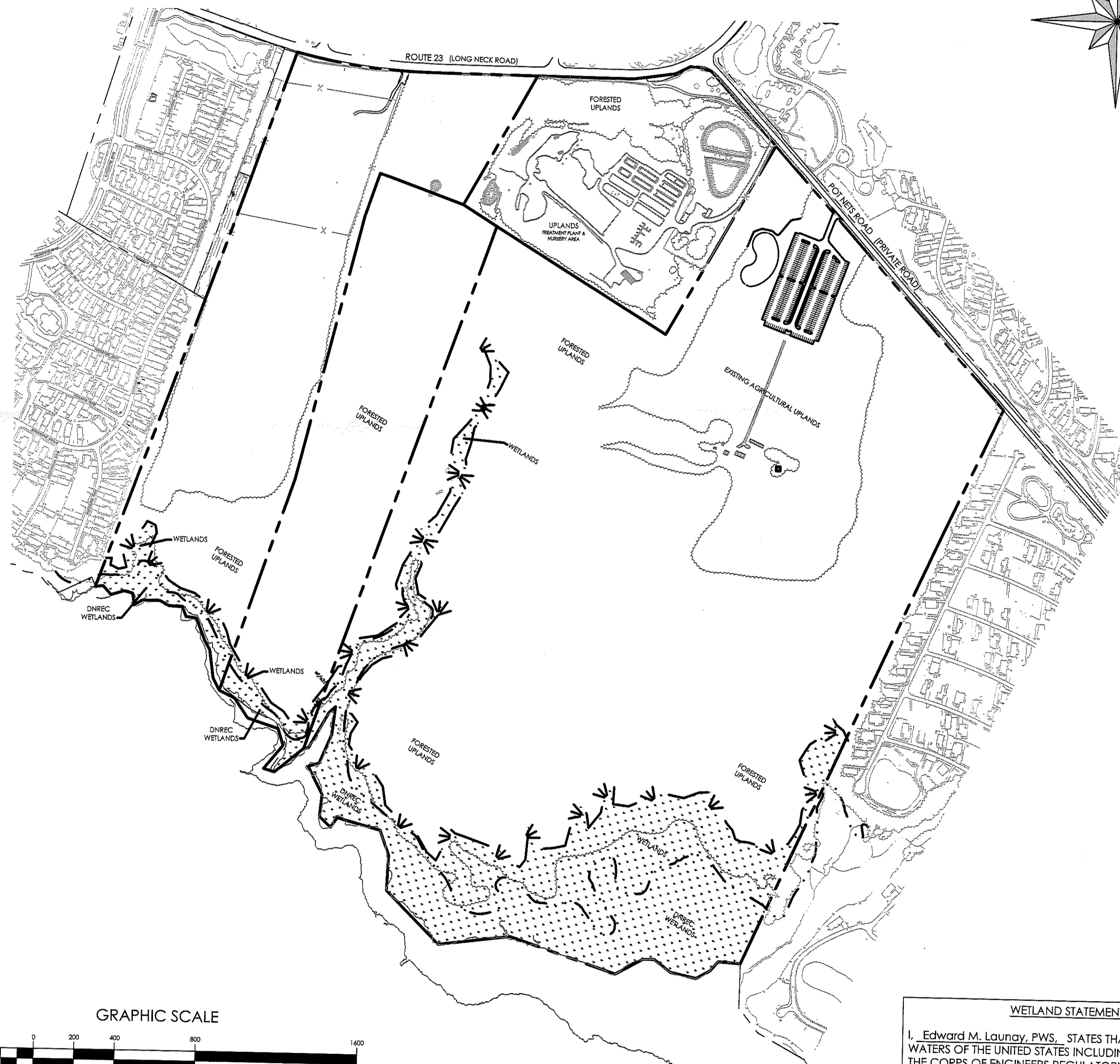
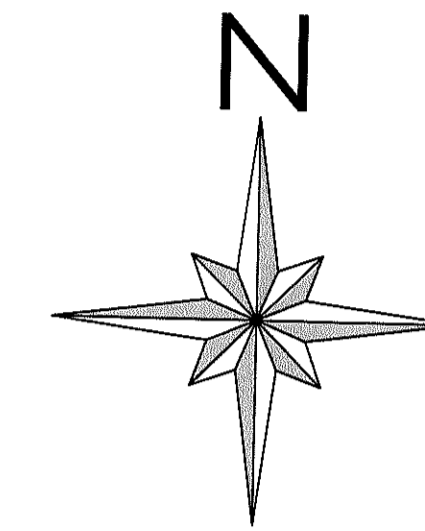
303 North Bedford Street
Georgetown, DE 19947
T. 302.297.9215
3008 Meritt Mill Road
Salisbury, MD 21804
T. 410.572.8833
www.solutionsipem.com Copyright © 2018



Seal 8/1/20
Date

LEGEND

	EXISTING	PROPOSED
PROPERTY LINE	---	---
EASEMENT LINE	---	---
SETBACK LINE	---	---
CONCRETE MONUMENT FOUND	CMF □	N/A
IRON PIPE FOUND	IPF ●	N/A
BENCH MARK	ELEV: ▲	N/A
SPOT ELEV. LABEL	X 19.25	19.25
MAJOR CONTOUR	- - - -10-	- - - -10-
MINOR CONTOUR	- - - -7-	- - - -7-
ROAD CENTERLINE	---	---
EDGE OF CONCRETE	---	---
EDGE OF PAVEMENT	---	---
EDGE OF GRAVEL	---	N/A
PAINT STRIPE	---	---
CURB	---	---
PAVEMENT HATCH	▨	▨
CONCRETE HATCH	▩	▩
BUILDING OUTLINE	---	---
SIDEWALK	---	---
SIDEWALK HATCH	▨	▨
FENCE LINE	X	N/A
SIGN	▲	▲
EDGE OF WETLAND	W	N/A
FLOODPLAIN	---	N/A
STORM MANHOLE	⊙	⊙
CURB INLET	⊙	⊙
YARD INLET	⊙	⊙
STORM PIPE	SD	SD
RIP RAP	▨	▨
SANITARY MANHOLE	⊙	⊙
SANITARY CLEANOUT	⊙	⊙
SANITARY PIPE	SS	SS
WATER VALVE	WV	WV
WATER PIPE	W	W
FIRE HYDRANT	⊙	⊙
OVERHEAD ELECTRIC	E	N/A
UNDERGROUND ELECTRIC	-E-	N/A
UNDERGROUND TELECOMMUNICATIONS	-TC-	N/A
UTILITY POLE	⊙	N/A
LIGHT POLE	⊙	N/A
DECIDUOUS TREE	●	N/A
CONIFEROUS TREE	●	N/A
TREE LINE	---	---



SITE DATA:

OWNER/DEVELOPER: POT-NETS BAYSIDE, LLC
34026 ANNA'S WAY, SUITE 1
MILLSBORO, DE 19966
CONTACT: ROBERT W. TUNNELL, III
PHONE: 302-945-9300

ENGINEER: SOLUTIONS IPEM
303 NORTH BEDFORD STREET
GEORGETOWN, DE 19947
CONTACT: JIM ERIKSEN, PE
PHONE: 302.297.9215

- TAX MAP: 234-24.00-51.00
- EXISTING # OF LOTS: 1
- PROPOSED # OF LOTS: 1
- EXISTING ZONING: AR-1
- SETBACKS:
FRONT: 40'
SIDE: 15'
REAR: 20'
- EXISTING USE: VACANT LOT
- PROPOSED USE: OVERFLOW PARKING (336 TOTAL SPACES)
- THERE ARE NO PROPOSED STRUCTURES
- SITE AREA:
GROSS SITE AREA = 198.07 AC ± (8,628,002 S.F.)
PARKING AREA = 3.36 AC ± (146,519 S.F.)
- INVESTMENT LEVEL 2 & 3
- FLOOD ZONE:
THE PROPERTY IS LOCATED WITHIN FLOOD ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN); FLOOD ZONE X-SHADED AREAS OF 0.2% ANNUAL CHANCE OF FLOOD, AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN ON FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE, AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD; FLOOD ZONE AE, BASE FLOOD ELEVATION DETERMINED, BASE FLOOD ELEVATION DETERMINED PER FIRM MAPS NUMBERED 10005C0343K AND 10005C0481K, MAP REVISED MARCH 16, 2015.
- BOUNDARY AND TOPOGRAPHY INFORMATION PROVIDED BY SOLUTIONS IPEM. ELEVATIONS ARE BASED ON NAVD 88 AND COORDINATES ARE BASED ON DELAWARE STATE PLANE, NAD83.
- EXISTING WETLANDS: 18.46 AC ± DNREC
17.55 AC ± FEDERAL
36.01 AC ± TOTAL WETLANDS

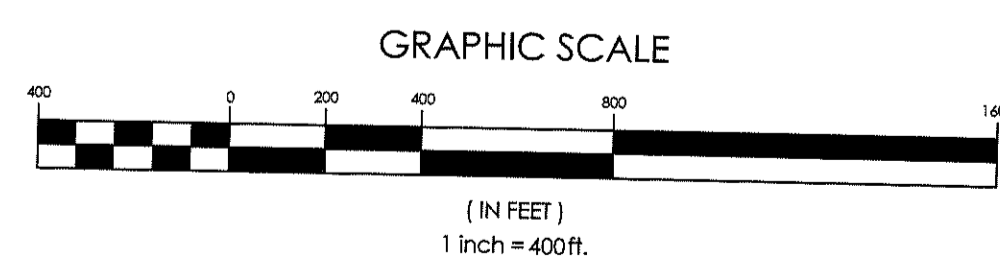
NO.	DATE	DESCRIPTION

COVER SHEET

for
POT-NETS BAYSIDE
LONGNECK, SUSSEX COUNTY, DE
Prepared for: POT-NETS BAYSIDE, LLC

SHEET INDEX

- COVER SHEET
- OVERALL SITE PLAN
- DETAILED SITE PLAN



WETLAND STATEMENT

I, Edward M. Launay, PWS, STATES THAT THE BOUNDARIES OF WATERS OF THE UNITED STATES INCLUDING WETLANDS SUBJECT TO THE CORPS OF ENGINEERS REGULATORY PROGRAM DELINEATED UPON THIS PLAN HAVE BEEN DETERMINED USING MY PROFESSIONAL JUDGMENT IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, ATLANTIC GULF COAST REGIONAL SUPPLEMENT, REGULATIONS AND SUPPLEMENTAL GUIDANCE (33 CFR 328.3(a)(8), Waters of the U.S. Definition/CECW-OR, 10-7-1991, Questions and Answers on the 1987 COE Manual/CECW-OR, 9-26-1990, RGL 90-77/CECW-OR, 3-4-1992, Clarification and Interpretation of the 1987 Manual). THIS DELINEATION HAS NOT BEEN CONDUCTED FOR USDA PROGRAM OR AGRICULTURAL PURPOSES.

EDWARD M. LAUNAY, PWS No. 875 Date
SOCIETY OF WETLANDS SCIENTISTS
CORPS OF ENGINEERS
CERTIFIED WETLAND DELINEATOR WDCP93MD05100368J

OWNER'S CERTIFICATION

IT IS HEREBY CERTIFIED THAT I AM THE OWNER AND DEVELOPER OF THE IMPROVEMENTS DESCRIBED AND SHOWN ON THIS PLAN. THE PLAN WAS MADE AT MY DIRECTION, AND I ACKNOWLEDGE THE SAME TO BE MY ACT. IT IS MY DESIRE TO HAVE THE PLAN DEVELOPED AS SHOWN AND IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

OWNER SIGNATURE _____ DATE _____
ROBERT W. TUNNELL, III - POT-NETS BAYSIDE, LLC
PRINTED NAME

ENGINEER'S CERTIFICATION

IT IS HEREBY CERTIFIED THAT I AM A REGISTERED ENGINEER IN THE STATE OF DELAWARE, THAT THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO MY BEST KNOWLEDGE AND BELIEF REPRESENTS GOOD ENGINEERING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

JIM ERIKSEN, PE _____ DATE _____

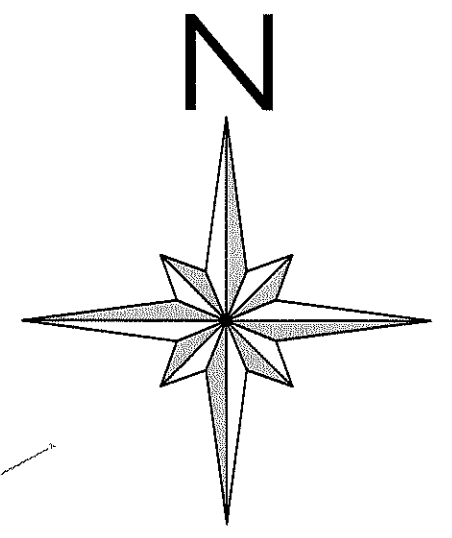
Date: 7-25-2022
Job Number: G13008
Scale: 1"=400'
Drawn By: ANW
Designed By: JP
Approved By: JRE

Sheet No.: 1

File Name: G13008-SitePlan-Cover



N/F
 POT NETS BAYSIDE, LLC
 234-30.00-2.00
 PLAT 185/26

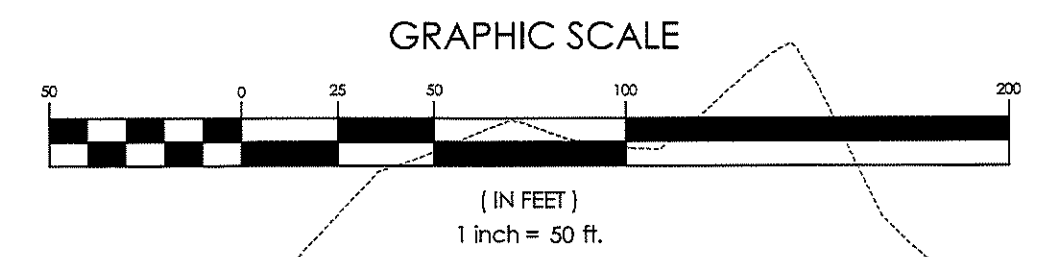


N/F
 TUNNELL COMPANIES, L.P.
 234-24.00-50.00
 PLAT 8/951

BM
 BENCHMARK
 CONCRETE MONUMENT FOUND
 ELEVATION = 14.19' (NAVD '88)

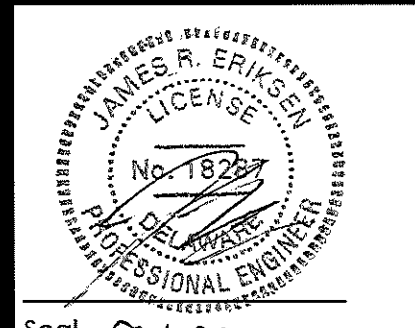
DEMOLISH EXISTING
 GRAVEL ROADWAY
 WITHIN L.O.D.

MOUNDED
 LANDSCAPE ISLAND
 WITHOUT CURB (TYP)



solutions
 Integrated Planning
 Engineering & Management, LLC

303 North Bedford Street
 Georgetown, DE 19947
 T. 302.297.9215
 3003 Merritt Mill Road
 Salisbury, MD 21804
 T. 410.572.8833
 www.solutionspem.com Copyright © 2018



Seal 8-1-22
 Date

NO.	DATE	DESCRIPTION

DETAILED SITE PLAN
 for
POT-NETS BAYSIDE
 LONGNECK, SUSSEX COUNTY, DE
 Prepared for: POT-NETS BAYSIDE, LLC

Date:	7-25-2022
Job Number:	G13008
Scale:	1"=50'
Drawn By:	AMW
Designed By:	JP
Approved By:	JRE

Sheet No.: **3**
 File Name: G13008-SitePlan-Dimension



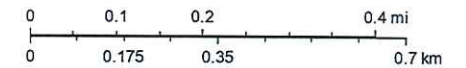
Sussex County



PIN:	234-24.00-51.00	
Owner Name	POT-NETS	BAYSIDE LLC
Book	4578	
Mailing Address	34026 ANNAS WAY STE 1	
City	MILLSBORO	
State	DE	
Description	LONG NECK	
Description 2	MILLSBORO	
Description 3	FX	
Land Code		

- polygonLayer**
 Override 1
- polygonLayer**
 Override 1
- ⋮ Tax Parcels
 - Streets
 - ⋮ County Boundaries
 - ⋮ Municipal Boundaries

1:9,028



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 # _____
Hearing Date 11-21-2022
202211349

Type of Application: (please check all applicable)

Variance

Special Use Exception

Administrative Variance

Appeal

Existing Condition

Proposed

Code Reference (office use only)

Site Address of Variance/Special Use Exception:

18265 Sand Hill Rd, Georgetown, DE 19947

Variance/Special Use Exception/Appeal Requested:

I am applying for a variance to build a detached garage 5 feet from the back and left side lines of my property.

Tax Map #: 135-7.00-13.02

Property Zoning: _____

Applicant Information

Applicant Name: Megan Avalos and Rommel Avalos-Flores

Applicant Address: 18265 Sand Hill Rd

City Georgetown State DE Zip: 19947

Applicant Phone #: (302) 448-0909 Applicant e-mail: rommel@avalosheatingandair.com

Owner Information

Owner Name: Megan Avalos and Rommel Avalos-Flores

Owner Address: 18265 Sand Hill Rd

City Georgetown State DE Zip: 19947 Purchase Date: _____

Owner Phone #: (302) 448-0909 Owner e-mail: rommel@avalosheatingandair.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

Megan

Date: 8-21-22



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.

If my detached garage was to be 20 feet of the back line and 15 feet off the left line of my property, that would be almost in the middle of my back yard. That would not give me enough space to do further improvements to my property in the future.

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.

I am unable to have the detached garage in the back right corner due to my septic being on that side of the yard.

3. Not created by the applicant:

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

In the future we are putting in a pool and a fire pit, we already have a swingset for our kids.

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

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

My back yard is fenced in already. The road to the left of my property is a drive for my parents/in-laws. The road to the back of my property is a farm road that is used only by my family to travel back and forth from my parents/in-laws house and their business located to the south of my property. My parents/ in-laws own the property on all three sides of my property.

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.

Having the detached garage 5 feet from the back line and the left line will allow me plenty of space for future home improvements. It will also allow my children enough space to play. I have plans to have an in ground pool to be placed in the back yard and also to have a fire pit to be built. Having the garage in that back left corner, 5 feet from both lines will allow me enough room to have both.

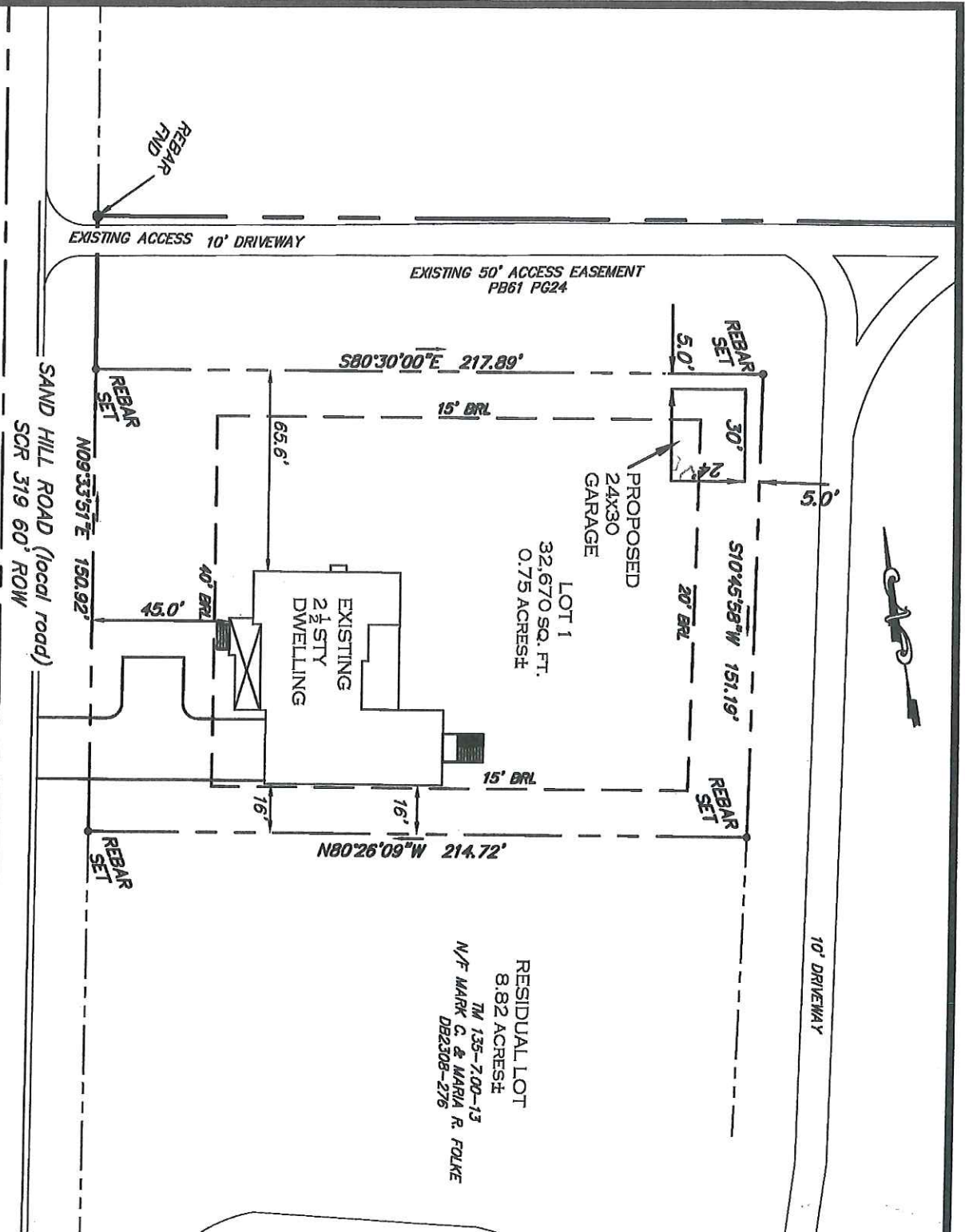


AXIOM
ENGINEERING L.L.C.

18 CHESTNUT STREET
GEORGETOWN, DE 19647
FAX: 858.0812
EMAIL: AXIOM@AXIOMENG.COM
WEB: WWW.AXIOMENG.COM

PROPOSED GARAGE LAYOUT

18303 SAND HILL ROAD
GEORGETOWN HUNDRED, SUSSEX COUNTY, DELAWARE

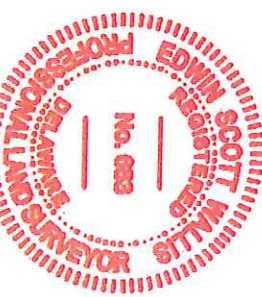


NOTE:
THIS SURVEY DOES NOT
VERIFY THE EXISTENCE
OR NON-EXISTENCE OF
ANY EASEMENTS.

SITE DATA-
CURRENT OWNER-
MEGAN C. AVALOS &
ROMMEL F. AVALOS
DB4646 PG92
PB245 PG76 LOT 1

DATE OF SURVEY-
11-16-17

LOT AREA=0.75 ACRES



E. Scott Wallis
2/11/21
CERTIFIED CORRECT
AS SHOWN

SCALE	1"=50'	EXHIBIT	0355-1501X
DESIGNED	ESW		
DRAWN	ESW		
CHECKED			
DATE	2/11/21		
T.M.	135-7-13.02		

HS

Mark Folke
Maria Folke
18303 Sand Hill Road
Georgetown, DE 19947

February 5, 2021.

RE: Avalos shed placement

Planning and Zoning
Sussex County, Delaware

To Whom It May Concern:

Megan (our daughter) and Rommel Avalos would like to place a shed on their property located at 18265 Sand Hill Road, Georgetown, Delaware. We share common property boundaries on 3 sides of this property.

The proposed placement of the shed is 5 ft from two of the common boundaries. We have no objection to the shed being placed 5ft or even less from any of our boundary lines. The road that runs along the East side of the Avalos property is a farm lane. This lane connects to our drive. A shed would not create an issue by obstructing our view as far as driving on the farm lane and drive are concerned.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,



Maria Folke
302-542-5631
mcfolke@gmail.com

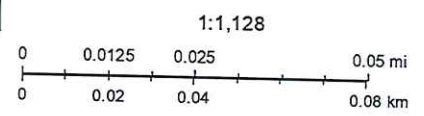


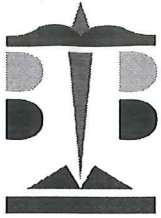
Sussex County



PIN:	135-7.00-13.02
Owner Name	AVALOS MEGAN C
Book	4646
Mailing Address	18303 SAND HILL RD
City	GEORGETOWN
State	DE
Description	EAST SIDE OF RD 319
Description 2	APPROX 1989 N OF
Description 3	RD 252 LOT 1
Land Code	

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





BAIRD
MANDALAS
BROCKSTEDT
FEDERICO & CARDEA LLC

Mackenzie M. Peet, Esquire
(302) 645-2262
mackenzie@bmbfclaw.com

August 9, 2022

RECEIVED

AUG 10 2022

SUSSEX COUNTY
PLANNING & ZONING

VIA EMAIL AND REGULAR MAIL

Planning & Zoning Department
Attn: Jamie, Whitehouse, Director
2 The Circle
PO Box 1417
Georgetown, DE 19947

RE: Board of Adjustment Application for 30207 New Castle Road, Lots 1&2, Indian River Acres, Dagsboro, Delaware
TMP: 134-7.00-41.00

Dear Director Whitehouse,

We represent Mr. and Mrs. Howard Cox, property owners of 30207 New Castle Road, Lots 1&2, Indian River Acres, Dagsboro, Delaware.

Enclosed, please find a copy of the Applicant's Board of Adjustment Application seeking three variances to re-subdivide the Property, a double lot, to its original condition as two, separate lots for the purpose of developing a single-family dwelling on Lot 2.

Please contact my office should the Department have any questions or need any additional information.

Sincerely,

/s/ Mackenzie M. Peet, Esquire

Mackenzie M. Peet, Esquire

Enclosure

**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 # _____
Hearing Date 11/7
2022/11/06

RECEIVED

AUG 10 2022

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)

Site Address of Variance/Special Use Exception:

30207 New Castle Road, Lots 1 and 2 in Indian River Acres, Dagsboro, DE 19939

Variance/Special Use Exception/Appeal Requested:

See Attached.

Tax Map #: 134-7.00-41.00

Property Zoning: AR-1

Applicant Information

Applicant Name: Laura L. Turner Cox & Howard Cox

Applicant Address: 361 Tuxward Road

City Hartly State DE Zip: 19953

Applicant Phone #: (302) 373-7693 Applicant e-mail: Ltcox361@gmail.com

Owner Information

Owner Name: Laura L. Turner Cox, Howard Cox, Allison Turner Himes, and Ellen L. Turner

Owner Address: 30207 New Castle Road, Lot 1 & 2

City Dagsboro State DE Zip: 19953 Purchase Date: 5/18/19

Owner Phone #: (302) 373-7693 Owner e-mail: Ltcox361@gmail.com

Agent/Attorney Information

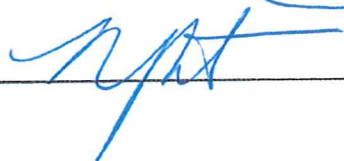
Agent/Attorney Name: Baird Mandalas Brockstedt Federico & Cardea, LLC c/o Mackenzie Peet, Esq.

Agent/Attorney Address: 1413 Savannah Road, Suite 1

City Lewes State DE Zip: 19958

Agent/Attorney Phone #: (302) 645-2262 Agent/Attorney e-mail: mackenzic@bmbdc.com

Signature of Owner/Agent/Attorney



Date: 07/12/2022



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

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

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

1. Uniqueness of property:

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

See Attached.

2. Cannot otherwise be developed:

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

See Attached.

3. Not created by the applicant:

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

See Attached.

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

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

See Attached.

5. Minimum variance:

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

See Attached.

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.

N/A

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

N/A

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

N/A

VARIANCE ATTACHMENT

Property: 30207 New Castle Road,
Lot 1 & 2 Indian River Acres
Dagsboro, DE 19939

TMP: 134-7.00-41.00

Project Summary: The Applicant is a co-owner of Lots 1 & 2 in the subdivision commonly known as Indian River Acres. The Indian River Acres subdivision predates the enactment of the Zoning Ordinance. Each lot is subject to Ordinance No. 2557, as small, legally nonconforming lots. Historically, Lot 1 and 2 were combined into one parcel. The Applicant seeks three (3) variances to re-subdivide the Property to its original condition as two separate lots for the purpose of developing a single-family dwelling on Lot 2.

The Applicant requests:

1. A variance from the 30 feet front yard setback requirement in the amount of 17 feet for an existing dwelling located 13 feet from the front property line.
2. A variance from the 30 feet front yard setback requirement in the amount of 26.5 feet for existing stairs located 3.5 feet from the front property line.
3. A variance from the 5 feet side yard setback requirement in the amount of 2.5 feet for an existing dwelling, carport, and shower located 2.5 feet from the side property line (see Sections 115-25C and 115-34A).

Variance Criteria

1. Uniqueness of Property:

The property is unique for several reasons. First, the property consists of Lot 1 and Lot 2 in the subdivision known as Indian River Acres. It is the Applicant's understanding that the lots were combined into one parcel. This subdivision was approved in 1960, predating the Zoning Ordinance. Second, as a result of the subdivision predating the Zoning Ordinance, each lot is considered to be a legally nonconforming lot constructed in the front and side yard setbacks. Third, the property is located on a cul-de-sac, further reducing the building envelope. The existing conditions create an exceptional practical difficulty for the Applicant to re-subdivide their double lot for the purpose of constructing a single-family dwelling on Lot 2.

2. Cannot otherwise be developed:

The property cannot be developed in strict conformity with the provisions of the Zoning Ordinance for reasons stated. Variances from the front yard setback, side yard setback, lot width and minimum lot area are necessary to re-subdivide the existing double lot to construct a single-family dwelling on Lot 2, enabling the reasonable use of Lot 1 and Lot 2.

3. Not created by Applicant:

The Applicant purchased the combined lot with the existing dwelling located in its present location. As stated, the property consists of Lot 1 and Lot 2 in the subdivision of Indian River Acres. Said subdivision predated the Zoning Ordinance, and as a result of the enactment of the Zoning Ordinance, the existing structure became a legally nonconforming structure. Lot 1 and Lot 2 were combined by a previous property owner. The Applicant only seeks to restore the Property to its original condition as two separate lots for the purpose of developing a single-family dwelling on Lot 2.

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

The property is located in the Agricultural Residential District in a community with existing dwellings located in the setbacks and lots that do not meet the

minimum lot width or minimum lot area requirements required by the Zoning Ordinance, as the subdivision was approved in 1960 and before the enactment of the Zoning Ordinance on January 1, 1971.

5. Minimum variance:

The variances requested are the minimum variances that will afford relief. The existing structure will remain as it has since construction in 1966.

Mailing List Application Form

For Applications requiring a Public Hearing in Sussex County

Please fill out this form and return it with your application. As a part of your application a Public Hearing is required. The property owners within 200' of the site of the application will be notified. Staff will notify the property owners.

Application Information:

Site Address: 30207 New Castle Road, Lot 1 & 2 in Indian River Acres
Dagsboro, DE 19939

Parcel #: 134-7.00-41.00

Site Address: See Above

Parcel #: _____

Applicant Name: Laura L. Turner Cox & Howard Cox

Owner Name: See below

Type of Application:

Conditional Use:
Change of Zone:
Subdivision:
Board of Adjustment:

Date Submitted: _____

For office use only:

Date of Public Hearing: _____

File #: _____

Date list created: _____ List created by: _____

Date letters mailed: _____ Letters sent by: _____

File #: _____

Planning & Zoning Project Contact List

Applicant Information

Applicant Name: Laura L. Turner Cox & Howard Cox
Applicant Address: 361 Tuxward Road
City: Hartly State: DE Zip: 19953
Phone #: (302) 373-7693 E-mail: Ltcox361@gmail.com

Owner Information

Owner Name: Laura L. Turner Cox, Howard Cox, Allison Turner Himes & Ellen L. Turner
Owner Address: 30207 New Castle Road, Lot 1 & 2
City: Dagsboro State: DE Zip: 19939
Phone #: (302) 373-7693 E-mail: Ltcox361@gmail.com

Engineer/Surveyor Information

Engineer/Surveyor Name: Delaware Surveying Services/ Maxwell J. Morris, DE PLS #625
Engineer/Surveyor Address: P. O. Box 88
City: Bethany Beach State: DE Zip: 19930
Phone #: (302) 537-7094 E-mail: maxmorris625@gmail.com

Agent/Attorney Information

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

Other

Name: N/A
Address: _____
City: _____ State: _____ Zip: _____
Phone #: _____ E-mail: _____



Exhibit A

Property and Deed Information

PARID: 134-7.00-41.00
 COX LAURA L TURNER HOWARD COX

ROLL: RP
 30207 NEW CASTLE RD

Property Information

Property Location: 30207 NEW CASTLE RD
 Unit:
 City: DAGSBORO
 Zip: 19939
 State: DE
 Class: X-X
 Use Code (LUC): 999-999
 Town: 00-None
 Tax District: 134 - BALTIMORE
 School District: 1 - INDIAN RIVER
 Council District: 4-Hudson
 Fire District: 84-Millville
 Deeded Acres: .3595
 Frontage: 135
 Depth: 116.000
 Irr Lot:
 Plot Book Page: /PB
 100% Land Value: \$10,700
 100% Improvement Value: \$29,700
 100% Total Value: \$40,400

Legal

Legal Description: INDIAN RIVER ACRES
 LOTS 1 2
 SEC D SPEC COMM LIEN

Owners

Owner	Co-owner	Address	City	State	Zip
COX LAURA L TURNER HOWARD COX	ALLISON TURNER HIMES ELLEN L TURNER	361 TUXWARD RD	HARTLY	DE	19953

Sales

Sale Date	Book/Page	Sale Price	Stamp Value	Parcels Sold	Grantee/Buyer
11/04/2019	5147/109				COX LAURA L TURNER HOWARD COX
11/19/1998	3435/304	\$100,000.00	\$1,500.00	0	

Owner History

Tax Year:	Owner:	Co-owner	Address:	City:	State:	Zip:	Deed Book/Page:
2099	COX LAURA L TURNER HOWARD COX	ALLISON TURNER HIMES ELLEN L TURNER	361 TUXWARD RD	HARTLY	DE	19953	5147/109
2021	COX LAURA L TURNER HOWARD COX	ALLISON TURNER HIMES ELLEN L TURNER	361 TUXWARD RD	HARTLY	DE	19953	5147/109
2020	COX LAURA L TURNER HOWARD COX	ALLISON TURNER HIMES ELLEN L TURNER	361 TUXWARD RD	HARTLY	DE	19953	5147/109
2019	COX LAURA L TURNER HOWARD COX	ALLISON TURNER HIMES ELLEN L TURNER	361 TUXWARD RD	HARTLY	DE	19953	5147/109
2018	TURNER LAURA L & VALERIE A	TURNER SOUDER & ELLEN L	30207 NEW CASTLE RD	DAGSBORO	DE	19939	3435/304
2017	TURNER LAURA L & VALERIE A	TURNER SOUDER & ELLEN L	30207 NEW CASTLE RD	DAGSBORO	DE	19939	3435/304
2007	TURNER LAURA L VALERIE A		TURNER SOUDER ELLEN L 30207 NEW CASTLE RD	DAGSBORO	DE	19939	3435/304
2004	TURNER LAURA L VALERIE A		TURNER SOUDER ALLISON 1 NEW CASTLE AVE	DAGSBORO	DE	19939	2855/312
2002	TURNER LAURA L VALERIE A		TURNER 327 TUXWARD RD	HARTLY	DE	19953	2341/214
1900	UNKNOWN					0	0/0

Land

Line	Class	Land Use Code	Act Front	Depth	Calculated Acres	Ag
1	RES	RS	135	116	.3595	

Land Summary

Line 1
 100% Land Value 10,700

Residential

Card 1
 Class Residential
 Style Single Family
 Year Built 1966
 Occupancy 1
 Stories 1.00
 Basement 0-None
 Total Fixtures 3
 Heating 53 - Heat - Forced Hot Air
 Air Condition DN - A/C None
 Electricity 3-Public
 Foundation 31 - Foundation - Masonry
 Exterior Wall 1-Frame or Block
 Siding 3-Aluminum/Vinyl
 Roof Type 2-Gable
 Roofing 21 - Roofing - Wood
 Elevator -
 Width
 Depth/Length
 Color
 Description
 MH Skirting
 MH Permit #
 MH Serial #

Additions

Card #	Addition #	Area
1	0	1,240
1	1	336
1	2	96
1	3	140

Addition Details

1 of 4

Card # 1
 Addition # 0
 Lower -
 First -
 Second -
 Third -
 Area 1,240
 Year Built 1966

Outbuildings

Card	Line #	Code	Width	Length	Diameter	Area
1	1	DK-DOCK	36	4	0	144
1	2	DK-DOCK	23	4	0	92
1	3	UA2-UTILITY AVG 101-200	16	12	0	192
1	4	BH-BULKHEAD	0	0	0	235

100% Values

100% Land Value	100% Improv Value	100% Total Value
\$10,700	\$29,700	\$40,400

50% Values

50% Land Value
\$5,350

50% Improv Value
\$14,850

50% Total Value
\$20,200

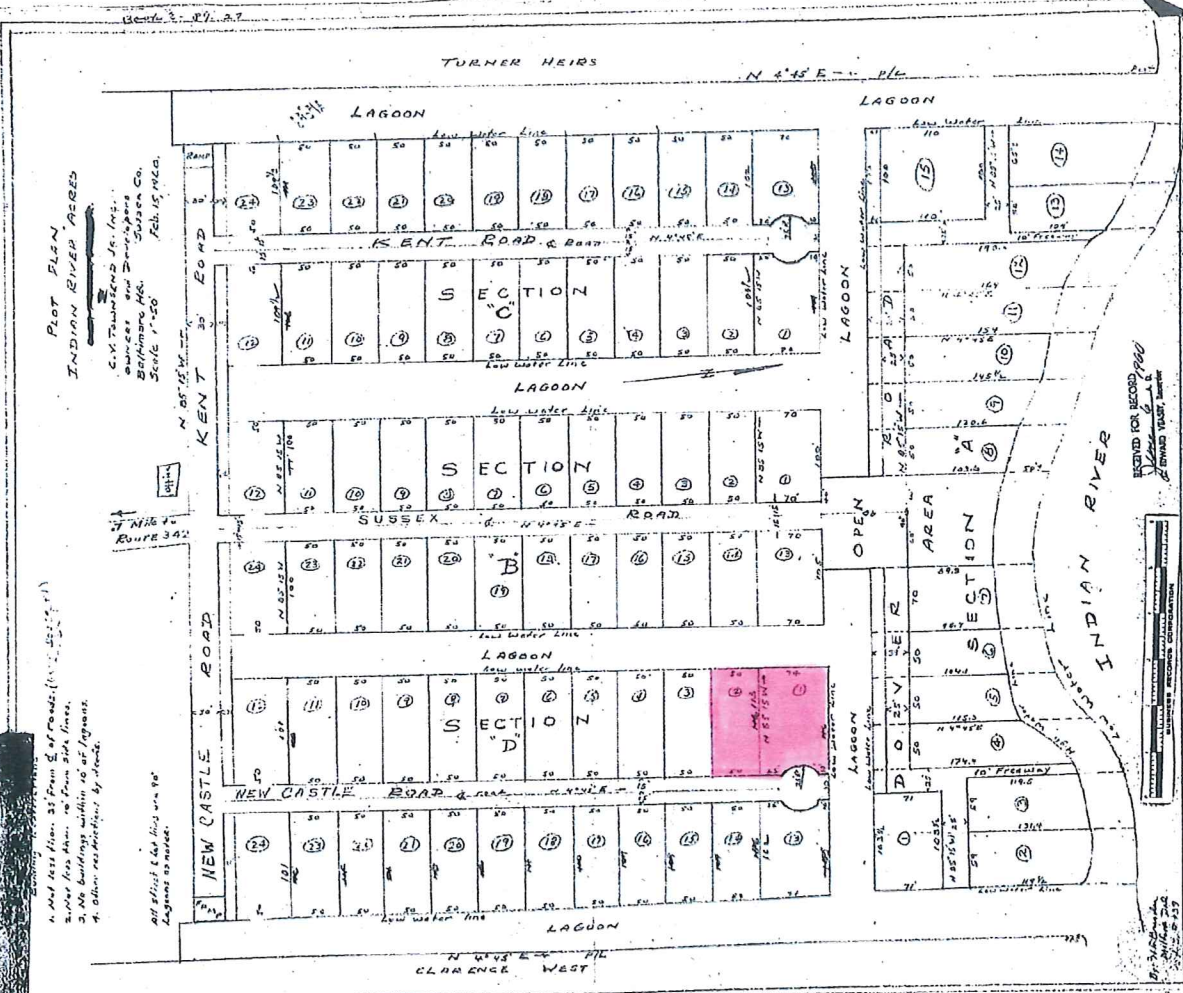
Permit Details

Permit Date:	Permit #:	Amount:	Note 1
20-OCT-1986	23928-1	\$750	SHED-IND.RIVER ACRESLOT 2 SEC.D

PLOT PLAN
 INDIAN RIVER ACRES
 C.W. Turner & Sons, Inc.
 Successors and Derivatives
 Baltimore Md.
 Scale 1"=50' Feb. 15, 1950.

1. All lots 100' from 35' from E of road.
2. All lots 100' from 35' from W of road.
3. No buildings within 40' of lagoon.
4. Other restrictions by deeds.

All streets 40' wide unless
 legends as noted.



RECORDED FOR RECORD 700
 1950 FEB 15

C.W. TURNER & SONS, INC.
 BALTIMORE, MARYLAND

1950 FEB 15

Sussex County

DELAWARE
PLANNING & ZONING DEPARTMENT

sussexcountyde.gov

302-855-7878 T

302-854-5079 F

JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR



SETBACK INFORMATION REQUEST

Date of Request 07/26/2022 Zoning District AR-1
Customer Name Mackenzie Peet, Esq.
Customer Contact _____
Tax Parcel ID 134-7.00-41.00 Lot/Unit Number 1 and 2
Parcel Address 30207 New Castle Road, Dagsboro
Front Yard Setback 30 feet
Side Yard Setback 15 feet
Rear Yard Setback 20 feet
Corner Front Yard Setback N/A
Maximum Height 42 feet

The Customer was provided general zoning setbacks, as a specific parcel was not identified. Therefore, the setbacks provided may not be for a specific parcel. The setbacks could be different based on the specific nature of the property.

Additional Notes:

Indian River Acres - Lots created in 1960 per B3, P27
Setbacks above are principal setbacks for the parcel that contains both Lots (1 and 2).
If lots are reinstated, each lot will qualify for the reduced setback provisions under the Small Lots Ordinance.

Name of Staff Member Chase Phillips *Chase Phillips*

Checked By *[Signature]*

Document# 2019000041781 BK: 5147 PG: 109
Recorder of Deeds, Scott Dailey On 11/4/2019 at 1:08:25 PM Sussex County, DE
Consideration: \$0.00 County/Town: \$0.00 State: \$0.00 Total: \$0.00
Doc Surcharge Paid Town: SUSSEX COUNTY

Tax Map No. 1-34-7.00-41.00
PREPARED BY AND RETURN TO:
LARRY W. FIFER, ESQUIRE
1201-B Savannah Road
Lewes, DE 19958

DEED

THIS DEED, made this 18th day of January, 2019,
by and between:

LAURA L. TURNER COX, VALERIE A. TURNER SOUDER
and ELLEN L. TURNER, of 30207 New Castle Road, Dagsboro, Delaware 19939,
parties of the first part, hereinafter referred to as the "Grantors",

AND

A one-third (1/3) interest to **LAURA L. TURNER COX and**
HOWARD COX, a married couple, of 361 Tuxward Road, Hartly, DE 19953, as tenants
by the entirety as to their share and tenants in common as to the other grantees, a one-
third (1/3) interest to **ALLISON TURNER HIMES**, of 30207 New Castle Road,
Dagsboro, DE 19939, as tenant in common as to the other grantees and a one-third (1/3)
interest to **ELLEN L. TURNER**, of 327 Tuxward Road, Hartly, DE 19953, as joint
tenant with right of survivorship as to the other grantees, parties of the second part,
hereinafter referred to as the "Grantees".

WITNESSETH, that the said Grantors for and in consideration of the
sum of ONE DOLLAR (\$1.00), and other good and valuable consideration, the receipt
whereof is hereby acknowledged, hereby grant and convey unto the Grantees, their heirs
and assigns, in fee simple, the following described lands, situate, lying and being in
Sussex County, State of Delaware:

LOT NO. 1: ALL that certain lot, piece and parcel of land situate, lying and being
Lot No. 1 in a development known as INDIAN RIVER ACRES in Baltimore Hundred,
Sussex County, State of Delaware, more fully described as follows, to-wit:

BEGINNING at an iron pipe situate in the Northwesterly right of
way line of New Castle Road in said development, a corner for this lot and Lot No. 2
hereinafter described; thence by and with this lot and Lot No. 2, North 85 degrees 15
minutes 00 seconds West 116 feet to a wooden bulkhead on a lagoon; thence by and with
said wooden bulkhead on a lagoon North 04 degrees 45 minutes 00 seconds East 74 feet
to a marker; thence turning and running South 85 degrees 15 minutes 00 seconds East
116 feet with a lagoon to a marker; thence turning and running South 04 degrees 45

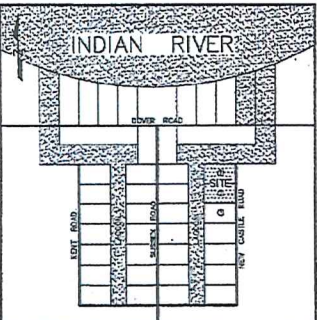
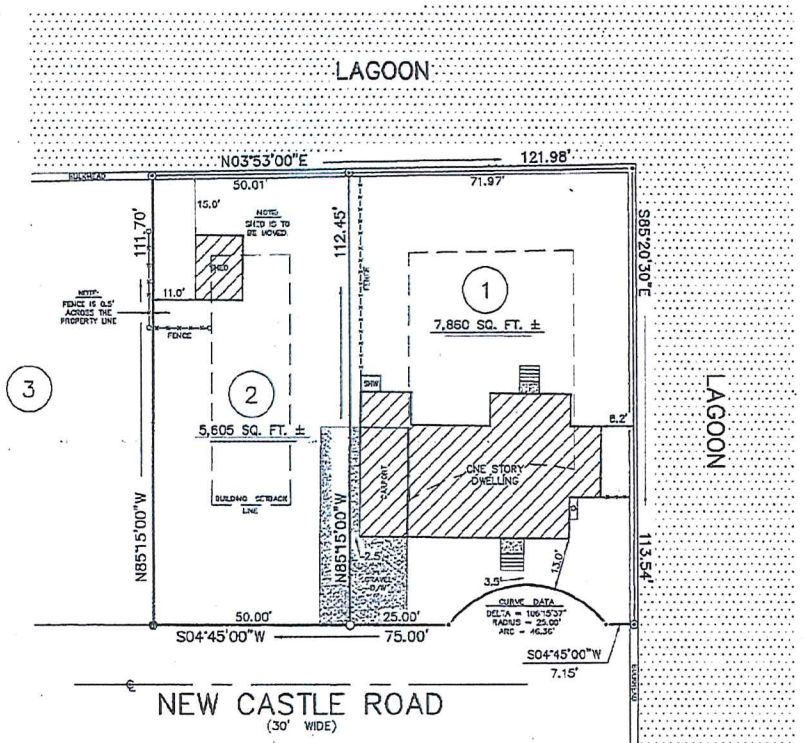
minutes 00 seconds West by and with New Castle Road 9.58 feet to a marker; thence by and with the curvature of said road having a radius of 25 feet, a length of 46.36 feet to a marker; thence South 04 degrees 45 minutes 00 seconds West 24.42 feet home to the place of beginning with all improvements thereon being known as LOT NO. 1, SECTION D, INDIAN RIVER ACRES, as surveyed by Mann-Talley, Inc., on June 12, 1979.

LOT NO. 2: ALL that certain lot, piece and parcel of land situate, lying and being Lot No. 2 in a development known as INDIAN RIVER ACRES in Baltimore Hundred, Sussex County, State of Delaware, more fully described as follows, to-wit:

BEGINNING at an iron pipe, a corner for this lot and Lot No. 1 above described, said iron pipe situate in the Northwesterly right of way of New Castle Road; thence by and with this lot and Lot No. 1 above described North 85 degrees 15 minutes 00 seconds West 116 feet to a wooden bulkhead on a lagoon; thence turning and running South 04 degrees 45 minutes 00 seconds West 50 feet by and with said wooden bulkhead; thence turning and running South 85 degrees 15 minutes 00 seconds East 116 feet to the Northwesterly right of way line of New Castle Road; thence by and with said road South 04 degrees 45 minutes 00 seconds West 50.00 feet home to the place of beginning, be the contents what they may.

BEING the same lands and premises conveyed unto Laura L. Turner Cox, Valerie A. Turner Souder and Ellen L. Turner by Deed of Laura L. Turner n/k/a Laura L. Turner Cox, Valerie A. Turner Souder, Allison Turner Himes and Ellen L. Turner dated March 30, 2007 and of record in the Office of the Recorder of Deeds in and for Sussex County at Georgetown, Delaware at Deed Book 3435, Page 304.

Exhibit B
Boundary & Location Survey



LOCATION MAP

DATA COLUMN

OWNER: LAURA L. COX TURNER & HOWARD COX, ET AL
 361 TUXFORD ROAD
 HARTLY, DE 19953
 DEED REFERENCE: D.B. 5147, P. 109
 PLOT REFERENCE: P.B. 3, P. 27
 TAX MAP PARCEL #: 1-34-7.00-41.00
 ZONING: AR-1
 TOTAL AREA: 13,455 SQ. FT. ±
 SEWER: INDIVIDUAL SEPTIC SYSTEM
 WATER: INDIVIDUAL WELL

SETBACKS:
 FRONT: 30'
 SIDE: 15'
 REAR: 20'

SYMBOLS KEY

- = SET IRON PIPE
- ⊙ = FOUND IRON PIPE
- = SET P.K. NAIL
- = POINT

NOTES:

1.) THE PURPOSE OF THIS PLAN IS TO SEPARATE TAX MAP PARCEL # 1-34-7.00-41.00 BACK INTO THE ORIGINAL LOT 1 & LOT 2 OF SECTION 'D', 'INDIAN RIVER ACRES' WITH EACH LOT HAVING ITS OWN INDIVIDUAL TAX MAP PARCEL #.

REVISIONS	DATE
REVISED SURVEY & SETBACK INFO.	7/22

REVISED & REASSEMBLED PLAN
 LOT 1 & LOT 2, SECTION 'D'
 "INDIAN RIVER ACRES."
 BALTIMORE HUNDRED * SUSSEX COUNTY * DELAWARE

Delaware Surveying Services
 Surveying * Design * Consulting
 P.O. Box 88 * Bethany Beach, DE. * 19930
 Phone: (302) 537-7084

DATE: JUNE 13, 2022	SCALE: 1" = 20'	TAX MAP #: 1-34-7.00-41.00
DRAWING #: 22-007A		

OWNERS STATEMENT

WE, THE UNDERSIGNED, HEREBY STATE THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN HEREON AND THAT THIS PLAN HAS BEEN MADE AT OUR DIRECTION AND WITH OUR FULL KNOWLEDGE AND CONSENT.

LAURA L. TURNER COX	DATE
HOWARD COX	DATE
ALLISON TURNER HIMES	DATE
ELLEN L. TURNER	DATE

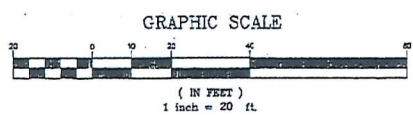






EXHIBIT C
Aerial Maps &
Property Images

30207 New Castle Road, Dagsboro, Delaware

Legend

-  35526 Dry Brook Dr
-  Feature 1
-  Homestead B&B at Rehoboth Beach
-  NATIONAL WILDLIFE REFUGE

Aydelotte Point

Noble Virtue Wealth Management

Dover Rd

30207 New Castle Rd

Sussex Rd

Woolson Marine Services

New Castle Rd

Kent Rd

Sussex





Google Earth

500 ft



30207 New Castle Road, Dagsboro, Delaware

Legend

-  35526 Dry Brook Dr
-  Feature 1
-  Homestead B&B at Rehoboth Beach
-  NATIONAL WILDLIFE REFUGE







Google Earth

100 ft



30207 New Castle Road, Dagsboro, Delaware

Legend

-  35526 Dry Brook Dr
-  Feature 1
-  Homestead B&B at Rehoboth Beach
-  NATIONAL WILDLIFE REFUGE



Google Earth

© 2022 Google

6.69 ft

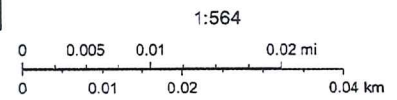


Sussex County



PIN	134 7 00-41 00
Owner Name	COX LAURA L TURNER HOWARD COX
Book	5147
Mailing Address	361 TUXWARD RD
City	HARTLY
State	DE
Description	INDIAN RIVER ACRES
Description 2	LOTS 1 2
Description 3	SEC D SPEC COMM LIEN
Land Code	

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





Sussex County



PIN	134-7 00-41 00
Owner Name	COX LAURA L TURNER HOWARD COX
Book	5147
Mailing Address	361 TUXWARD RD
City	HARTLY
State	DE
Description	INDIAN RIVER ACRES
Description 2	LOTS 1 2
Description 3	SEC D SPEC COMM LIEN
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

--- Tax Parcels

911 Address

— Streets

1:564

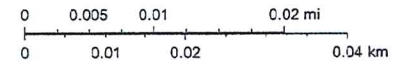


Exhibit D
Zoning Code

Chapter 115. Zoning

Article IV. AR-1 and AR-2 Agricultural Residential Districts

§ 115-19. Purpose.

The purpose of these districts is to provide for a full range of agricultural activities and to protect agricultural lands, as one of the county's most valuable natural resources, from the depreciating effect of objectional, hazardous and unsightly uses. They should also protect established agricultural operations and activities. These districts are also intended for protection of watersheds, water resources, forest areas and scenic values and, at the same time, to provide for low-density single-family residential development, together with such churches, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings. The AR regulations seek to prevent untimely scattering of more-dense urban uses, which should be confined to areas planned for efficient extension of public services.

§ 115-20. Permitted uses.

A. A building or land shall be used only for the following purposes:

- (1) Detached single-family dwellings on individual lots. A manufactured home may be used as a detached single-family dwelling on an individual lot, provided that it conforms to the following restrictions:
[Amended 7-8-1997 by Ord. No. 1153; 5-18-1999 by Ord. No. 1308; 10-12-2010 by Ord. No. 2152; 10-8-2019 by Ord. No. 2682]
 - (a) The lot is not within a major subdivision created prior to the effective date of this section.
 - (b) There is a minimum width along any exterior front, side or rear elevation of 24 linear feet, exclusive of any garage area or other attached accessory structures .
 - (c) It is permanently mounted on a solid foundation or pier foundation system and anchored and, in each case, in accordance with the manufacturer's installation instructions.
 - (d) All wheels, axles, transportation lights and removable towing apparatus, if any, shall be removed from the manufactured home when it is placed on the foundation in accordance with Subsection **A(1)(c)** above.
 - (e) All utilities shall be permanently connected in accordance with applicable Sussex County Code provisions.

- (f) The siding of all manufactured homes shall be continuous so as to enclose any joining of two or more sections.
 - (g) It complies with all pertinent provisions of the Housing Code of Sussex County and the Fire and Health Codes of the State of Delaware.
 - (h) All multisectional manufactured homes, initially placed pursuant to the provisions of this section, shall be not more than 10 years old. All replacement multisectional manufactured homes shall not be of an older model than the manufactured home being replaced and shall conform to this section. Any other manufactured home which, at the effective date of this section, does not conform to the requirements of this section, may be replaced with a manufactured home which is not of an older or smaller model than the manufactured home being replaced. A single section manufactured home may be replaced by a single section manufactured home; a single section manufactured home may be replaced by a multisectional manufactured home; a multisectional manufactured home may be replaced by a multisectional manufactured home; a multisectional manufactured home shall not be replaced by a single section manufactured home.
 - (i) In addition to the requirements herein, a manufactured home shall comply in all respects with the design and technical requirements of § 115-187.
- (2) On a property of less than five acres, any farm, truck garden, orchard or nursery uses.
 - (3) Temporary removable stands for not over six months' use per year, for seasonal sales of products raised on the premises and products raised on other lands in Sussex County owned or leased by the owner of the premises on which the stand is located, and no business office or store is to be permanently maintained on the premises, except as provided in § 115-22 regarding stores or shops for sale of farm products, farm supplies, groceries, beverages, drugs, food and similar stores and shops.
[Amended 11-30-2004 by Ord. No. 1729]
 - (4) Churches, rectories, parish houses, convents and monasteries, temples and synagogues.
 - (5) Golf courses, not lighted for night play and not including miniature golf courses, putting greens, driving ranges and similar activities operated as a business, but including a building for a golf pro shop, locker room and snack bar as an accessory use to a permitted golf course, provided that no such building is located closer than 100 feet to adjoining property lines. Practice greens and tees may accompany a standard nine-hole or eighteen-hole golf course occupying at least 75 acres.
 - (6) Public parks, public and private forests, wildlife reservations and similar conservation projects.
 - (7) Recreational uses such as tennis courts, swimming pools and other similar activities operated exclusively for the use of private membership and not for commercial purposes, provided that no such use, structure or accessory use is located closer than 50 feet to any adjoining property line, unless such property line fronts a public street or waterway with rights-of-way not less than 25 feet, in which instance the required setback need not exceed 25 feet, and provided further that all such facilities must be located on a site having a minimum of two acres.
 - (8) Stable structures or feed lots, private, or keeping and feeding of horses, ponies, cattle, sheep, goats, hogs or poultry for personal enjoyment and not as a business, provided that any building for keeping of animals shall be located at least 50 feet from any lot lines and 100 feet from any dwelling not on the premises.
 - (9) Greenhouses, commercial, provided that the lot area shall be five acres or more.

(10) Swimming pools, game courts, picnic grounds, boat basins, lakes or similar activities in a development or subdivision when such facilities are situated on a separate lot or parcel within said development or subdivision for use of the residents and their guests and not commercially operated, may be on less than two acres. Such facilities will be subject to a site plan review, and setbacks will be determined by the Commission.

(11) Transmission lines and their supporting elements.

(12) Open space as defined in § 115-4.

[Added 12-16-2008 by Ord. No. 2022^[1]]

[1] *Editor's Note: This ordinance also provided that it shall apply to applications filed after 1-1-2009.*

(13) Special events.

[Added 9-18-2018 by Ord. No. 2599]

(a) Special events held outdoors or within a temporary structure for a purpose different from the permitted use and usual occupancy of a premises or site that are administratively approved by the Director or his or her designee, when the event: will not impair the purpose and intent of the Zoning Ordinance; is not so recurring in nature as to constitute a permanent use not otherwise permitted in the district; and will not significantly affect the surrounding properties. Events that are consistent with the permitted use and usual occupancy of a site or that occur on land owned by the United States of America, the State of Delaware, Sussex County, municipalities and educational institutions are permitted. "Special events" include circuses, carnivals, midways, promotional and tent sales events, fairs, festivals, concerts, rodeos, shows, races/walks or any other event or mass gathering.

(b) No more than three special events shall be approved for the same property or premises during a calendar year. Each special event shall be counted as one calendar day, not including reasonable set up and removal time when the event is not otherwise underway.

(c) In determining whether to administratively approve a special event, the Director or his or her designee shall consider the following:

[1] The estimated number of attendees;

[2] The size of the parcel where the special event is to be located;

[3] The parking requirements of the special event;

[4] Roads and traffic patterns providing access to the special event;

[5] Prior events conducted by the applicant;

[6] Noise, light, odor, and dust generated by the special event;

[7] Proposed hours of operation and number of consecutive days; and

[8] Such other considerations that may be applicable to the requested event.

(d) The Director or his or her designee may impose conditions upon an administrative approval.

- (e) All special events, regardless of size, location, use or duration, shall be subject to the requirements of the Sussex County Special Event and Public Safety Services Policies and Procedures. Failure to abide by the Sussex County Special Event and Public Safety Services Policies and Procedures may result in the termination of the special event's administrative approval.
 - (f) Special events that do not meet these requirements or which are not administratively approved shall require a conditional use.
- (14) Use of a manufactured home as a single-family dwelling to meet an emergency or hardship situation that is administratively approved by the Director or his or her designee and subject to the following:
[Added 10-22-2019 by Ord. No. 2684]
- (a) The applicant must provide an affidavit from a doctor confirming the existence of the emergency or hardship situation.
 - (b) There shall be a fee of \$50 to request the administrative approval which shall be credited towards a Board of Adjustment application fee should consideration by the Board become necessary.
 - (c) The applicant shall submit a survey signed and sealed by a surveyor licensed in the State of Delaware to the Director showing the location of the proposed manufactured home.
 - (d) The Director shall give written notice to adjacent property owners of the requested manufactured home and accept written statements within 10 working days from the date of mailing. If any objection is received, the Director shall refer the application to the Board of Adjustment for a special use exception.
 - (e) The Director shall consider factors, including whether the manufactured home will have a substantially adverse effect on neighboring properties.
 - (f) Within 30 working days after the request is submitted, the Director or his or her designee may approve the manufactured home or advise the applicant that an application must be submitted to the Board of Adjustment for a special use exception.
 - (g) Such an approval shall not exceed two years. The Director may grant an extension for an emergency or hardship situation upon receipt of a subsequent affidavit from a doctor stating that the emergency or hardship situation still exists. Such an extension may be granted annually as long as the emergency or hardship still exists.
- (15) Garage/studio apartment with at least one parking space for the exclusive use of the tenant included on the premises that is administratively approved by the Director or his or her designee, and subject to the following:
[Added 10-22-2019 by Ord. No. 2684]
- (a) There shall be a fee of \$50 to request the administrative approval which shall be credited towards a Board of Adjustment application fee should consideration by the Board become necessary.
 - (b) The applicant shall submit a survey signed and sealed by a surveyor licensed in the State of Delaware to the Director showing the location of the garage/studio apartment.
 - (c) The Director shall give written notice to adjacent property owners of the requested garage/studio apartment and accept written statements within 10 working days from the date of mailing. If any objection is received, the Director shall refer the application to the Board of Adjustment for a special use exception.

- (d) The Director shall consider factors including whether the garage/studio apartment will have a substantially adverse effect on neighboring properties.
 - (e) Within 30 working days after the request is submitted, the Director or his or her designee may approve the garage/studio apartment or advise the applicant that an application must be submitted to the Board of Adjustment for a special use exception.
- (16) Use of a manufactured-home-type structure for any business, commercial or industrial use that is administratively approved by the Director or his or her designee, and subject to the following:
[Added 10-22-2019 by Ord. No. 2684]
- (a) There shall be a fee of \$50 to request the administrative approval which shall be credited towards a Board of Adjustment application fee should consideration by the Board become necessary.
 - (b) The applicant shall submit a survey signed and sealed by a surveyor licensed in the State of Delaware to the Director showing the location of the manufactured-home-type structure.
 - (c) The Director shall give written notice to adjacent property owners of the requested manufactured-home-type structure and accept written statements within 10 working days from the date of mailing. If any objection is received, the Director shall refer the application to the Board of Adjustment for a special use exception.
 - (d) The Director shall consider factors including whether the manufactured-home-type structure will have a substantially adverse effect on neighboring properties.
 - (e) Within 30 working days after the request is submitted, the Director or his or her designee may approve the manufactured-home-type structure or advise the applicant that an application must be submitted to the Board of Adjustment for a special use exception.

B. On a farm of five acres or more, a building or land may be used for the following additional purposes:

- (1) Agriculture, including horticultural, hydroponic, chemical or general farming, truck gardens, cultivating of field crops, orchards, groves or nurseries for growing or propagation of plants, trees and shrubs, forest use (tree farming), including use of heavy cultivating machinery, spray planes or irrigating machinery, dairy farming, keeping or raising for sale of large or small animals, reptiles, fish, birds or poultry and including structures for processing and sale of products raised on the premises, provided that:
[Amended 11-26-1991 by Ord. No. 806; 6-15-1993 by Ord. No. 894]
- (a) Any commercial grain drier shall be located at least 300 feet from any boundary of the premises on which such use is located, and any noncommercial drier shall be located at least 100 feet from any boundary.
 - (b) Any feed lot or structure used for the commercial feeding and housing of cattle, sheep and hogs or structure for storage of animal manure or animal waste composting shall be located at least 100 feet from all boundary lines of the premises on which such use is located and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises.
[Amended 2-1-1994 by Ord. No. 953]
 - (c) Structures for commercial poultry raising, structures for storage of poultry manure and structures for poultry product composting shall be located at least 50 feet from all boundary lines and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises.

[Amended 2-1-1994 by Ord. No. 953]

- (d) Commercial slaughtering and processing of large animals such as horses, cows, pigs, sheep or goats shall not be conducted on the premises.
- (e) Structures for commercial aquaculture, fish and frog farming, structures for storage of fish or frog waste and structures for fish or frog product composting shall be located at least 50 feet from all boundary lines and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises. Farm ponds utilized for aquaculture, fish or frog farming shall be located at least 50 feet from all boundary lines and shall be 200 feet from any UR, MR, HR, UB or B-1 District boundary and 200 feet from any dwelling not on the premises.
[Amended 2-2-1999 by Ord. No. 1287]

- (2) Dog kennels, commercial, provided that any open pens, runs, cages or kennels shall be located at least 200 feet from any lot lines.
- (3) Grain storage structures.
- (4) Hospitals or clinics for large or small animals, provided that all buildings, structures, pens or open kennels shall be located at least 200 feet from any lot lines.
- (5) Stables, public, provided that any building for keeping of animals shall be located at least 200 feet from any lot lines.

§ 115-21. Permitted accessory uses.

A. Permitted accessory uses on a farm of five acres or more are as follows:

- (1) Accessory structures for sale or processing of farm products raised on the premises.
- (2) Accessory open or enclosed storage of farm materials, products or equipment.
- (3) Accessory farm buildings, including but not limited to barns, cribs, stable sheds, tool rooms, shops, bins, tanks and silos.
- (4) Dwellings for persons permanently employed on the premises.
- (5) With respect to a farm of 10 acres or more, one manufactured home for residential purposes for persons employed on the premises or immediate members of the family owning or operating the farm, in addition to the main dwelling structure on the premises. One additional manufactured home may be permitted on a farm of 50 acres or more for residential purposes for persons employed on the premises or immediate members of the family owning or operating the farm. Additional manufactured homes may be permitted on a farm of 10 acres or more as a special use exception for residential purposes for persons employed on the premises or immediate members of the family owning or operating the farm, pursuant to § 115-210A(3)(n).
[Amended 3-5-1991 by Ord. No. 750; 3-25-1997 by Ord. No. 1131; 10-12-2010 by Ord. No. 2152]
- (6) All accessory farm buildings shall have the same setbacks as those which are required for a dwelling, except as stated elsewhere in this chapter.
- (7) A wind turbine which meets § 115-194.4 as a permitted use.
[Amended 9-13-2011 by Ord. No. 2213]

(8) Farm ponds, subject to § 115-219.

B. Other permitted accessory uses are as follows:
[Amended 10-8-2019 by Ord. No. 2683]

Accessory off-street parking and loading spaces

Boat docks and boathouses

Domestic storage in the main building or in an accessory building

Garages, private

Guest houses

Home barbecue grills

Home occupations in a main building or accessory building

Keeping of small animals, insects, reptiles, fish or birds, but only for personal enjoyment or household use and not as a business

Playhouses, without plumbing, limited in floor area to 150 square feet and headroom limited to five feet

Servants' quarters

Storage of a boat trailer or camp trailer or a boat, but not in a front yard, provided that it is not used for living purposes while so parked or stored

Swimming pools and game courts, lighted or unlighted, for the use of the occupants or their guests

Temporary buildings, including manufactured home-type structures, the use of which is incidental to construction operations or sale of lots during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction or upon the expiration of a period of two years of the time of erection of such temporary buildings, whichever is sooner. If construction operations or the initial sale of lots remain actively underway, the Director may grant extensions to this time period

§ 115-22. Conditional uses.

The following uses may be permitted as conditional uses when approved in accordance with the provisions of Article **XXIV** of this chapter:

Agricultural related industry, provided that such use is visually and acoustically screened from adjacent highways and property in such a manner that a reasonable passerby is not attracted to or aware of the establishment
[Added 1-27-2004 by Ord. No. 1658]

Airports and landing fields or seaplane bases, provided that they shall comply with the recommendations of the Federal Aviation Administration

Aquariums, commercial

Beaches, commercial

Biotech campus

[Added 1-27-2004 by Ord. No. 1659]

Biotech industry not located within a biotech campus provided that such use is visually and acoustically screened from adjacent highways and property in such a manner that a reasonable passerby is not attracted to or aware of the establishment.

[Added 1-27-2004 by Ord. No. 1659]

Cemeteries, including a crematorium if located at least 200 feet from the boundaries of the cemetery

Excavation or backfilling of borrow pits, extraction, processing and removal of sand, gravel or stone, stripping of topsoil (but not including stripping of sod) and other major excavations other than for construction of swimming pools and foundations for buildings and other than those approved in connection with a street, subdivision or planned residential development. (See § 115-172B.)

Exposition centers or fairgrounds

Heliports or helistops

Hospitals and sanitariums, but not animal hospitals

Institutions, educational or philanthropic, including museums, art galleries and libraries

Land application of sludge, treated sludge or any product containing these materials. For purposes of this section, "sludge" means the accumulated semiliquid suspension, settled solids or dried residue of these solids that is deposited from liquid waste in a wastewater treatment plant or surface or ground waters treated in a water treatment plant, whether or not these solids have undergone treatment. "Septage" is included herein as sludge. "Land application" means the placement of sludge, treated sludge or any other product containing these materials within two feet below the surface of land used to support vegetative growth.

[Added 5-8-1990 by Ord. No. 681]

Livestock auction markets in an AR District

Marinas or yacht clubs

Multifamily dwelling structures and/or townhouses and/or town homes, subject to the provisions of this chapter when:

[Added 7-31-2007 by Ord. No. 1920]

- A. Said multifamily dwelling structures and/or townhouses and/or town homes, the owners of which would share and own in common the surrounding grounds (which may also be referred to herein collectively as "units"), lie within a Town Center, a Developing Area, or a Coastal Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan; and
[Amended 5-21-2019 by Ord. No. 2656]
- B. The developer has proffered to Sussex County for the purpose of creating open space for preservation and/or active and/or passive recreation areas a development fee per unit, as described in Chapter 62, § 62-7, for every unit in excess of two units per gross acre that is included in the application; and
- C. The Sussex County Council prior to the signing of a contract to purchase or lease open space for preservation and/or active and/or passive recreation areas shall approve all such land or conservation easement purchases which utilize monies paid to the County under the terms of this amendment. All such approvals by the Council shall be by a four-fifths majority vote and shall include a determination that the land and/or conservation easement to be acquired is located in the same watershed area as the land where the bonus density will be located; and
- D. It is understood that Sussex County shall control all monies paid to it under this amendment and that the Sussex County Land Trust may act as a recommending body and/or partner at the discretion of the Sussex County Council; and
- E. The maximum number of multifamily dwelling structures and/or townhouses and/or town homes, as defined in Subsection A above, included in the application, shall not exceed four dwelling units per gross acre, including land set aside for common open space and/or recreational uses; and

- F. The minimum percentage of the total site which shall be set aside as common open space shall be 40% of the total land area included in the application; and
- G. There shall be a vegetated buffer of not less than 75 feet, subject to the following conditions:
- (1) The vegetated buffer shall be located adjacent to a numbered road shown on the General Highway Map for Sussex County and may include the required setback area from the road and shall be kept free of vehicle parking areas, buildings and structures; and
 - (2) The vegetated buffer shall include a mix of deciduous shade trees and evergreen trees, a majority of which shall be of common local species; and
 - (3) The deciduous shade trees shall include trees reasonably capable of attaining a minimum trunk diameter of two inches measured 3.5 feet above the ground within five years of being planted; and
 - (4) The evergreen trees shall include trees reasonably capable of attaining a minimum height of 10 feet above the ground within five years of being planted; and
 - (5) The goal of the landscape plan for the buffer area shall be include trees of the type indicated herein that will be planted in a natural manner, as they might appear in nature, as opposed to being planted in row fashion which will filter views from the road in such a manner that the dwelling units appear more green and less dense than if no landscaping had been required; and
 - (6) A further goal of the landscape plan would be to avoid placing plantings in an area adjacent to the entrance to the development in such a manner as to restrict the view of motorists entering or exiting from the development or restricting sight lines for motorists in such a manner as to create a potential safety hazard; and
 - (7) The landscape plan for the buffer area shall be designed and signed by a Delaware licensed landscape architect and approved by the Planning and Zoning Commission and County Council; and
- H. Council and/or the County Administrator may consider and authorize an expedited review of a conditional use application filed under this section; and
- I. Multifamily dwelling structures and/or townhouses and/or town homes shall not be considered as a conditional use under any other provision of this section which existed prior to the date of this amendment; and
- J. The density bonus fee for each multifamily and/or townhouse and/or town home dwelling unit in excess of two units per gross acre shall be determined by reference to and the use and application of the per-unit density bonus fees adopted as part of Ordinance 1842 and applicable to cluster developments and appearing in Chapter 62, Article III, § 62-7, as the same may hereafter be modified by Council, from time to time. Council will review the fees for a density bonus under the terms of this amendment on an annual basis and revise such fees as it deems necessary by an appropriate amendment.

Manufactured home parks

[Amended 10-12-2010 by Ord. No. 2152]

Nursing and similar care facilities

[Added 4-16-2019 by Ord. No. 2645]

Parks or campgrounds for mobile campers, tents, camp trailers, touring vans and the like

Private clubs

Public or governmental buildings and uses, including schools, parks, parkways, playgrounds and public boat landings

Public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations or substations, but not tele-

phone central offices

Racetracks, any type, including horses, stock cars or drag strip

Recreation facilities, privately or commercially operated, such as a fishing or boating lake, picnic grounds or dude ranch, and accessory facilities, including sale of food, beverages, bait, incidentals, supplies and equipment

Residential, business, commercial or industrial uses when the purposes of this chapter are more fully met by issuing a conditional use permit

[Added 4-6-2004 by Ord. No. 1677^[1]]

Special events such as circuses or carnival grounds, amusement parks or midways, festivals, concerts, race/walks or any other special event or gathering being held outdoors or within a temporary structure or at a site and for a purpose different from the designated use and usual occupancy of the premises and located on unincorporated lands within Sussex County, permanently or for a temporary time period exceeding three days. Special events not approved by the Director as a permitted use under § 115-20 shall require a conditional use permit. All special events, regardless of duration, shall be subject to the requirements of the Sussex County Special Event Policy.

[Amended 5-1-1990 by Ord. No. 680; 11-10-1992 by Ord. No. 863; 8-20-2013 by Ord. No. 2316; 9-18-2018 by Ord. No. 2599]

Sports arenas or stadiums, commercial athletic fields or baseball parks

Stores or shops for the sale of farm products, farm supplies, groceries, beverages, drugs and food and similar stores and shops

Structures for commercial poultry raising on farms of less than five acres

Swimming or tennis clubs, private, nonprofit or commercially operated

[1] *Editor's Note: This entry was previously repealed 1-27-2004 by Ord. No. 1658.*

§ 115-23. Special use exceptions.

Special use exceptions may be permitted by the Board of Adjustment in accordance with the provisions of Article **XXVII** of this chapter and may include:

A. Temporary and conditional permits for a period not to exceed five years, such period to be determined by the Board, for the following uses:

[Amended 11-10-1992 by Ord. No. 863; 10-12-1999 by Ord. No. 1346; 10-12-2010 by Ord. No. 2152; 10-22-2019 by Ord. No. 2684]

Archery ranges

Asphalt batching plants or concrete batching plants

Commercial dog kennels

Miniature golf courses or driving ranges^[1]

Outdoor display or promotional activities at shopping centers or elsewhere

Pony rings

Raising for sale of birds, bees, rabbits and other small animals, fish and other creatures

Riding academies

Rifle or pistol ranges, trap or skeet shooting

Sawmills for cutting timber grown on the premises

Temporary buildings for use as a sales or rental office for an approval real estate development or subdivision

Tents for special purposes for a period exceeding three days. The Director may, without requiring an application for a special use exception, grant approval for a tent for a special purpose (revival, reception, tent sale as an accessory to a business or commercial use, or other similar activities). If approved by the Director, a tent for special purposes may be utilized on a parcel no more than three times in a calendar year.

Use of a manufactured home as a single-family dwelling in any district to meet an emergency or hardship situation when not approved administratively by the Director or his or her designee, such permit not to exceed two years. The Director may, without requiring an application for a special use exception, grant an extension for an emergency or hardship situation previously approved by the County Board of Adjustment upon receipt of an affidavit from a doctor stating that the emergency or hardship situation still exists. Such extension may be granted annually as long as the emergency or hardship still exists.

Use of a manufactured-home-type structure for any business, commercial or industrial use when not approved administratively by the Director or his or her designee

[1] *Editor's Note: The former entry reading "Nonaccessory tents for special purposes," which immediately followed this entry, was repealed 11-10-1992 by Ord. No. 863. See now the entry beginning with "Tents."*

B. Exceptions to parking and loading requirements as follows:

- (1) Off-street parking areas, adjacent to or at a reasonable distance from the premises on which parking areas are required by the parking regulations of Article XXII, where practical difficulties, including the acquisition of property, or undue hardships are encountered in locating such parking areas on the premises and where the purpose of these regulations to relieve congestion in the streets would best be served by permitting such parking off the premises.
- (2) Waiver or reduction of the parking and loading requirements in any district whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities.
- (3) Waiver or reduction of loading space requirements where adequate community loading facilities are provided.
- (4) Waiver or reduction of loading space requirements for uses which contain less than 10,000 square feet of floor area where construction of existing buildings, problems of access or size of lot make impractical the provision of required loading space.

C. Other special use exceptions as follows:

- (1) Private garages for more than four automobiles and with floor area of more than 900 square feet in a residential district.
- (2) Cemeteries for pets.
- (3) Commercial greenhouses, wholesale or retail.
- (4) ^[2]Day nurseries or child-care centers.

[2] *Editor's Note: Former Subsection C(4), Convalescent homes, nursing homes or homes for the aged, was repealed 4-16-2019 by Ord. No. 2645. Ordinance No. 2645 also redesignated former Subsection C(5) through (14) as Subsection C(4) through (13), respectively.*

- (5) Garage/studio apartments, when not approved administratively by the Director or his or her designee, provided that at least one parking space for the exclusive use of the tenant is included on the premises.^[3]
[Added 3-18-2008 by Ord. No. 1959; amended 10-22-2019 by Ord. No. 2684]
[3] *Editor's Note: Former Subsection C(6), which listed frog or fish farms, was repealed 11-26-1991 by Ord. No. 806.*
- (6) Nurseries for growing of plants, trees and shrubs, including a building for sale of products produced on the premises.
- (7) Public telephone booths in residential areas.
- (8) Telephone central offices, provided that all storage of materials, all repair facilities and all housing of repair crews are within a completely enclosed building.
- (9) (Reserved)^[4]
[4] *Editor's Note: Former Subsection C(10), pertaining to mobile home use in AR District, was repealed 3-25-1997 by Ord. No. 1131.*
- (10) The alteration, extension or replacement of a nonconforming manufactured home, subject to the provisions of § 115-196.
[Amended 10-12-2010 by Ord. No. 2152]
- (11) More than one manufactured home may be permitted on a farm of 10 acres or more pursuant to § 115-21A(5), provided that all manufactured homes or dwellings on the property are the primary place of residence for persons employed on the premises or immediate members of the family owning or operating the farm, and provided that the granting of this exception will not adversely affect the values or uses of adjacent properties.
[Amended 3-25-1997 by Ord. No. 1131; 10-12-2010 by Ord. No. 2152]
- (12) Farm ponds on less than five acres, subject to § 115-219.^[5]
[5] *Editor's Note: Former Subsection C(13), regarding windmills and wind-powered generators, was repealed 9-13-2011 by Ord. No. 2213. This ordinance also provided for the renumbering of the remainder of this Subsection C.*
- (13) Tourist homes (also referred to as bed-and-breakfast inns").
[Added 5-16-1989 by Ord. No. 585]
- (14) ^[6]Commercial communications towers and antennas.
[Added 4-24-2001 by Ord. No. 1445]
[6] *Editor's Note: Former Subsection C(14), (15), and (17), regarding manufactured homes, as amended, were repealed 10-8-2019 by Ord. No. 2682. This ordinance also renumbered former Subsection C(16) as Subsection C(14).*

§ 115-24. Permitted signs.

[Amended 10-3-1989 by Ord. No. 619; 9-11-1990 by Ord. No. 719; 12-2-2008 by Ord. No. 2008]
See Article XXI, § 115-159.1, for signs permitted in the AR-1 and AR-2 Districts and other regulations relating to signs.

§ 115-25. Height, area and bulk requirements.

[Amended 11-7-1989 by Ord. No. 632; 10-31-1995 by Ord. No. 1062; 7-15-1997 by Ord. No. 1157; 8-3-2004 by Ord. No. 1709]

A. Minimum lot sizes for lots using a wastewater disposal system located entirely on that lot and generally defined as an on-site septic system.

(1) Standard lot option:

District (square feet)	Area (feet)	Width* (feet)	Depth
AR-1	32,670	100	100

NOTES:

A lot fronting on a numbered road shown on the latest revision of the General Highway Map for Sussex County shall have a minimum width of 150 feet.

(2) Cluster development option. The minimum lot size may be reduced to one-half acre (21,780 square feet) where soil conditions are suitable as approved by DNREC. The total number of lots allowed shall not exceed the number of lots that would be permitted under the standard lot option. The number of dwelling units permitted shall be determined by dividing the gross area by 32,670 square feet. "Gross area" shall include the lot area and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193. However, if the proposed cluster development lies within a Low-Density Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan, the total number of lots permitted shall be determined by first reducing the gross area by 25%.

[Amended 1-31-2006 by Ord. No. 1822; 12-4-2018 by Ord. No. 2618]

B. Minimum lot sizes, dimensions and open space for lots using a central sewer system as defined by § 115-194A:

(1) Standard lot option:

District	Area** (square feet)	Width* (feet)	Depth (feet)
AR-1	20,000	100	100

(2) Cluster development option (subject to § 115-25F):

[Amended 5-21-2019 by Ord. No. 2656]

Minimum Tract Size (acres)	Minimum Lot Size (square feet)	Required Open Space
10	7500	30%

NOTES:

NOTES: Fronting on a numbered road shown on the latest revision of the General Highway Map for Sussex County shall have a minimum width of 150 feet.

* A lot fronting on a numbered road shown on the latest revision of the General Highway Map for Sussex County shall have a minimum width of 150 feet.

** For lots located in the Coastal Area, the Development Districts or the Town Center Districts, the overlay ordinance for that district shall determine the minimum lot size.

- (3) The number of dwelling units permitted shall be determined by dividing the gross area by 21,780 square feet. When a cluster development lies within a Town Center, a Developing Area, or the Coastal Area as described within the Land Use Element and as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan, and the developer has proffered to Sussex County for the purpose of creating open space preservation/active and passive recreation areas a development fee per unit for every unit in excess of two units per acre, then the maximum number of dwelling units that may be permitted by the Planning and Zoning Commission shall be determined by dividing the gross area by 10,890 square feet. The development fee shall not be less than the minimum established by the Sussex County Council and shall be paid prior to recording any lot based upon the fee in effect at the time the application was filed. "Gross area" shall include the lot area and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193. The Sussex County Council prior to the signing of a contract to purchase, shall approve all such land or conservation easement purchases which utilize monies paid to the County under the terms of this act. All such approvals by the Council shall be by a four-fifths majority vote. It is understood that the County shall control all monies and the Sussex County Land Trust will act as a recommending body and partner at the discretion of the County Council.

[Amended 1-31-2006 by Ord. No. 1822; 4-2-2006 by Ord. No. 1842; 12-4-2018 by Ord. No. 2618; 7-27-2021 by Ord. No. 2791]

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

District	Depth of Front Yard (feet)	Width of Side Yard* (feet)	Depth of Rear Yard (feet)	Minimum Lot Width (feet)
AR-1 and AR-2 (Cluster with central sewer)	25	10	10	60
AR- and AR-2 (All others)	40(30)**	15	20	100

NOTES:

* A lot having an area of less than 20,000 square feet or having a width of less than 100 feet, which lot was legally recorded prior to January 1, 1971, shall be subject to the minimum side yard requirements applicable to an MR District rather than to the minimum side yard requirements of this district.

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

D. Maximum height requirements. Maximum height requirements shall be as follows:

District	Feet
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District	Feet
AR-1 and AR-2	42

E. Design requirements for cluster development.

- (1) All development shall be in accordance with the latest amendment to the community design standards.
- (2) Housing types in the low-density area, as shown on the Sussex County Comprehensive Plan, are limited to single-family detached dwellings and manufactured homes where permitted by ordinance.
- (3) A forested buffer area with a minimum width of 30 feet shall be provided for lots abutting an agricultural area
- (4) Dwellings located within 50 feet of an existing residential development shall provide adequate transition in density or shall provide a thirty-foot buffer meeting the standards below and maintained by a designated entity.
 - (a) A planting strip at least 30 feet wide near the property line which shall include two canopy trees, four understory trees and 10 shrubs per 100 linear feet of buffer; or
 - (b) A landscaped rolling berm at least four feet in height; or
 - (c) A solid fence or wall a minimum of six feet in height designed with durable materials, texture and colors compatible with adjacent residential development.
- (5) No lots shall have direct access to any state-maintained roads.
- (6) All lots shall be configured to be contained completely outside of all wetlands.
- (7) Any development using the option in Subsection **B(2)** shall have central water and wastewater systems operated and maintained by companies authorized by the State of Delaware to perform such services. Wastewater collection and treatment systems must be designed in accordance with the requirements of Sussex County ordinances and conform to the requirements for a central sewer system as defined in § **115-194A** of the Sussex County Zoning Ordinance.

F. Review procedures for cluster development.

- (1) The developer shall submit an application for a cluster development in accordance with Chapter **99**, Subdivision of Land, of the Sussex County Code and which shall include, at a minimum, a sketch plan showing the location and uses of all open spaces, the extent of existing wooded areas and wetlands and the location of any historical or cultural resources. The Director of Planning and Zoning may waive this requirement when the proposed development does not contain significant natural features or resources.
- (2) The information submitted shall include a plan for the management of all open space.
- (3) The Planning and Zoning Commission shall determine that the following requirements are met before approving any preliminary plan and such application shall be reviewed on an expedited basis.
 [Amended 1-31-2006 by Ord. No. 1822; amended 4-2-2006 by Ord. No. 1842; 12-16-2008 by Ord. No. 2024^[1]; 12-4-2018 by Ord. No. 2618; 6-11-2019 by Ord. No. 2658]

- (a) The cluster development sketch plan and the preliminary plan of the cluster subdivision provides for a total environment and design which are superior, and the reasonable judgment of the Planning Commission, to that which would be allowed under the regulations for the standard option. For the purposes of this subsection a proposed cluster subdivision which provides for a total environment and design which are superior to that allowed under the standard option subdivision is one which, in the reasonable judgment of the Planning Commission meets all of the following criteria:
- [1] Homes shall be clustered on the environmentally suitable portions of the tract, specifically those portions of the tract least encumbered by sensitive environmental features, including but not limited to wetlands, mature woodlands, waterways and other water bodies. This does not inhibit the development of wooded parcels.
 - [2] (Reserved)
 - [3] Required open space shall comply with the following criteria:
 - [a] All required open space must meet the official definition of acceptable open space contained in § 115-4.
 - [b] Required open space must be designed to be beneficial to the residents or users of the open space. It shall not be constituted of fragmented lands with little open space value. Accordingly, 30% of all required open space shall be located on one contiguous tract of land, except that such open space may be separated by water bodies and a maximum of one street.
 - [c] If one of the following physical conditions exists adjacent to the proposed cluster development tract, at least 30% of all required open space must be adjacent to:
 - [i] An existing or officially planned public park, land preserved by easement, or land preserved as open space and in municipal, County, state, or federal ownership.
 - [ii] Existing wetlands, waterways, wildlife corridors, or other ecology-sensitive land.
 - [iii] Existing farmland and/or woodlands.
 - [iv] If more than one of these physical features exist on adjacent properties, then one of these features will be identified and utilized to satisfy this requirement.
 - [v] If the open space is proposed to be dedicated to a municipality, a County, state, or federal agency or a homeowners' association, an agreement shall be provided, in advance, stipulating that such entity agrees in advance to accept that dedication and maintain that land for public recreation or as a nature preserve.
 - [vi] Open space in a cluster development shall include a pedestrian trail system accessible to residents. This trail system shall connect to an adjacent trail, adjacent neighborhood, adjacent commercial area, or adjacent public open space, if any such areas exist adjacent to the proposed cluster development. Construction materials for the proposed trail shall be identified, and a typical construction detail for the proposed trail shall be shown. Trail construction materials shall be pervious in nature.
 - [4] A minimum of 25 feet of permanent setback must be maintained around the outer boundaries of all wetlands, except for tidal waters, tidal tributary streams and tidal wetlands and from the ordinary high water line of perennial nontidal rivers and

nontidal streams as provided for in § 115-193B under Ordinance No. 774 where a fifty-foot permanent setback is required. No buildings or paving shall be placed within these setbacks.

- [5] Stormwater management shall be designed to promote groundwater recharge and protect groundwater quality. Natural drainage flows shall be maintained to the greatest extent possible. Drainage from rooftops shall be directed to vegetated areas or allow green technology. Stormwater detention and retention facilities should be designed to resemble natural ponds as referenced by DNREC in the National Resource Conservation Service's (NRCS) Pond Code 378, Visual Resource Design.
 - [6] Removal of healthy mature trees shall be limited.
 - [7] Scenic views that can be seen from within the tract should be preserved to the greatest extent possible.
 - [8] The applicant for a cluster development shall illustrate that the following sequence and process was followed in the site design of the cluster project:
 - [a] Identify lands that should be preserved. First, areas worthy of preservation should be mapped, including wetlands, wooded areas, waterways, other water bodies, and natural drainage areas. Then, other features that are important should be mapped, such as tree lines, scenic views, historic buildings, and prime farmland. The areas with the fewest important natural, scenic and historic features should be considered the "potential development area."
 - [b] Identify developable areas. Next, the most appropriate locations for development should be chosen to minimize the impact to the most important features mapped in the first step.
 - [c] Locate roads and trails. After the developable areas are determined, a road system should be designed to serve those homes. A trail system that links homes to destinations outside of the tract should be designed.
 - [d] Locate lot lines. The last step is to configure lot lines and make necessary adjustments to satisfy the various reviewing agencies' comments.
 - [9] Sidewalks shall be required at least on one side of each street, subject to Planning and Zoning Commission approval.
- (b) The cluster development plan will preserve the natural environment and any historic or archeological resources.
 - (c) All of the items in Ordinance Number 1152 (see § 99-9C) have been addressed and approval of the cluster option for the proposed development will not have an adverse effect on any of the items to be considered.^[2]
 - [2] *Editor's Note: Former Subsection F(3)(d), which immediately followed and required that the cluster development developer proffer a development fee to the County for the purpose of creating open space for preservation and/or active and/or passive recreation areas was repealed 7-27-2021 by Ord. No. 2791. For current provisions, see Subsection B(3).*
 - [1] *Editor's Note: This ordinance also provided that it shall apply to all cluster subdivision applications filed after 1-1-2009.*
- (4) The Sussex County Planning and Zoning Commission may add conditions to the approval of any cluster development to protect adjacent properties and the natural environment.

§ 115-26. Reference to additional regulations.

The regulations contained in this article are supplemented or modified by regulations contained in other articles of this chapter, especially the following:

- Article I, § 115-4, Definitions and word usage
- Article XX, Tables of Height, Area and Bulk Requirements
- Article XXI, Signs
- Article XXII, Off-Street Parking
- Article XXIII, Off-Street Loading
- Article XXIV, Conditional Uses
- Article XXV, Supplementary Regulations
- Article XXVII, Board of Adjustment

§ 115-27. AR-2 to be closed district.

As of the date of adoption, the AR-2 District shall be considered a closed district and shall not be applied to any additional lands in Sussex County. The district and its various provisions and regulations shall continue to exist as they apply to AR-2 Districts legally established under the procedures of this chapter.

Article V. MR Medium-Density Residential District

§ 115-34. Height, area and bulk requirements.

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

Use	Area** (square feet)	Width* (feet)	Depth (feet)
Single-family dwelling	10,000	75	100

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

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

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

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

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

Use	Depth of Front Yard (feet)	Width of Side Yard (feet)	Depth of Rear Yard (feet)
Single-family dwelling	40 (30)**	10	10

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

- C. Maximum height requirements. Maximum height requirements shall be as follows:
 [Amended 10-31-1995 by Ord. No. 1062]

Use	Feet
Single-family dwelling	42

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.

SUSSEX COUNTY CODE

(NOTES cont'd):

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

ORDINANCE NO. 2557

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV, §115-182 AND §115-183, AND TABLE 1 RELATING TO FRONT, SIDE AND REAR YARD SETBACKS IN SMALL, LEGALLY NONCONFORMING LOTS

WHEREAS, there are many legally nonconforming small lots that exist individually and in older developments throughout Sussex County; and

WHEREAS, the yard setback requirements as applied to these legal, nonconforming lots often make the lots difficult, if not impossible, to reasonably improve; and

WHEREAS, the Sussex County Board of Adjustment frequently considers and approves yard setback variance applications for these small, legally nonconforming lots; and

WHEREAS, the Sussex County Council desires to create reduced setbacks for pre-existing, legally nonconforming lots with less than 50 feet of frontage or that are less than 10,000 square feet in size so that they are all treated uniformly; and

WHEREAS, deletions from the existing Sussex County Code are shown in [brackets] and additions to the Code of Sussex County are shown in *italics*.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Amend Sussex County Code, Chapter 115, Article XXV, §115-182, "Front Yards" by amending subsection C thereof as follows:

§115-182 Front Yards.

...

C. On a street or road with existing buildings having a front yard setback that is less than that required in the district, any [new or relocated] building may have a front yard setback that is equal to the average setback of those existing buildings located on the same side of the street or road and being with 300 feet of the [new or relocated] building. Any vacant lot shall be calculated as having the required setback for the district. *No front yard setback reduced pursuant to this subsection shall be reduced to less than 5 feet. The provision of this subsection shall not apply to any lot in a cluster subdivision, ESDDOZ cluster subdivision or Residential Planned Community.*

Section 2. Amend Sussex County Code, Chapter 115, Article XXV, §115-183, "Side and Rear Yards" by adding a new subsection D. thereto as follows:

§115-183 Side and Year Yards.

...

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 Section 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, ESDDOZ cluster subdivision or Residential Planned Community.*

Section 3. Amend "Table I, General Table of Height, Area and Bulk Requirements, Sussex County" by adding a new footnote (16) to the columns "Depth of Front Yard (feet)", "Width of Side Yard (feet)" and "Depth of Rear Yard (feet)" as follows:

NOTES:

...

(16) *For any existing approved lot which is not located in a cluster subdivision, ESDDOZ 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 5 feet and the rear yard setback shall be reduced by 5 feet. For any lot with side or rear yard setbacks reduced by operation of Section 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 5 feet. Any vacant lot within 300 feet of the structure shall be calculated as having the required setback for the district.*

Section 4. Effective Date. This Ordinance shall become effective upon its adoption by a majority of all members elected to Council.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2557 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 20TH DAY OF MARCH 2018.

ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

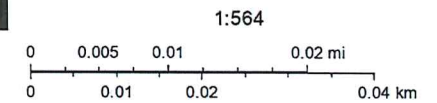


Sussex County



PIN:	134-7.00-41.00
Owner Name	COX LAURA L TURNER HOWARD COX
Book	5147
Mailing Address	361 TUXWARD RD
City	HARTLY
State	DE
Description	INDIAN RIVER ACRES
Description 2	LOTS 1 2
Description 3	SEC D SPEC COMM LIEN
Land Code	

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



RECEIVED

AUG 22 2022

SUSSEX COUNTY
PLANNING & ZONING

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 # _____
Hearing Date _____

202212161

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)

Site Address of Variance/Special Use Exception:

12718 Staytonville Rd, Harrington Delaware 19952

Variance/Special Use Exception/Appeal Requested:

The homeowner is requesting a 30' 6" setback from the county right of way instead of the 40' as directed by county code for a structure that has already been erected.

Tax Map #: 430-1.00-9.00

Property Zoning: 5603 74

Applicant Information

Applicant Name: Gary Kelbaugh

Applicant Address: 12718 Staytonville Rd

City Harrington State DE Zip: 19952

Applicant Phone #: (410) 903-1965 Applicant e-mail: frizpop@gmail.com

Owner Information

Owner Name: Gary Kelbaugh

Owner Address: 12718 Staytonville Rd

City Harrington State De Zip: 19952 Purchase Date: 11/30/21

Owner Phone #: (410) 903-1965 Owner e-mail: frizpop@gmail.com

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

Gary Kelbaugh

Date: 8/17/22



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.

There is no physical conditions or irregularity's of property that make it exceptional.

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 building is already in place because of a set back issue does not meet county code. Due to the inadequate communication between homeowner, licensed contractor and county inspection office the structure was erected 10 feet closer to the right of way than was allowed per code. See addendum 1 and 1a.

3. Not created by the applicant:

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

The structure was erected by Delmarva Pole Buildings. The county inspection office made inspections during the building process.

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 if authorized will not effect or alter character of neighborhood. It will not effect adjacent property of be detrimental to public welfare.

5. Minimum variance:

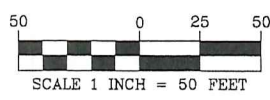
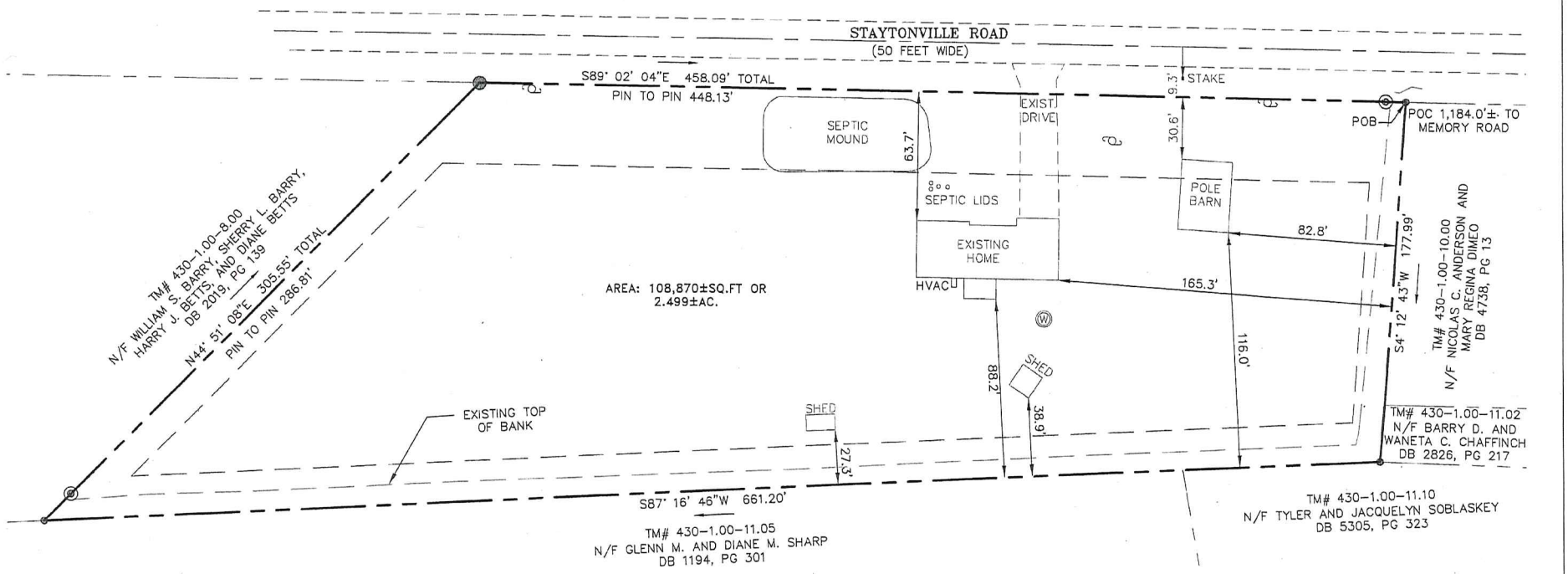
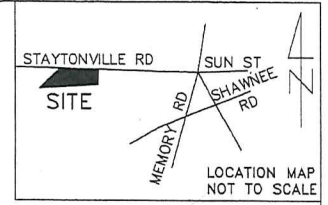
That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

The variance if authorized will allow the existing structure to remain 30' 6" from the right of way.

PLAN DATA:

- TITLE REFERENCED TO:
 TM# 430-1.00-9.00, DB 5603, PG 74
 12718 STAYTONVILLE ROAD, HARRINGTON, DELAWARE, 19952
 NANTICOKE HUNDRED, SUSSEX COUNTY, STATE OF DELAWARE
- NO TITLE REPORT PERFORMED OR FURNISHED IN PREPARATION OF THIS PLAN.
- THIS PLAN DOES NOT CERTIFY THE EXISTENCE OR NON-EXISTENCE OF EASEMENTS OR RIGHTS OF WAY AS A FULL AND COMPLETE SEARCH MAY REVEAL IN THE SUSSEX COUNTY RECORDER OF DEEDS.
- ACCORDING TO SUSSEX COUNTY PLANNING AND ZONING, ZONING IS AR AND SETBACKS ARE: F-40, S-15, AND R-20.

DSDFC NSRS 2011



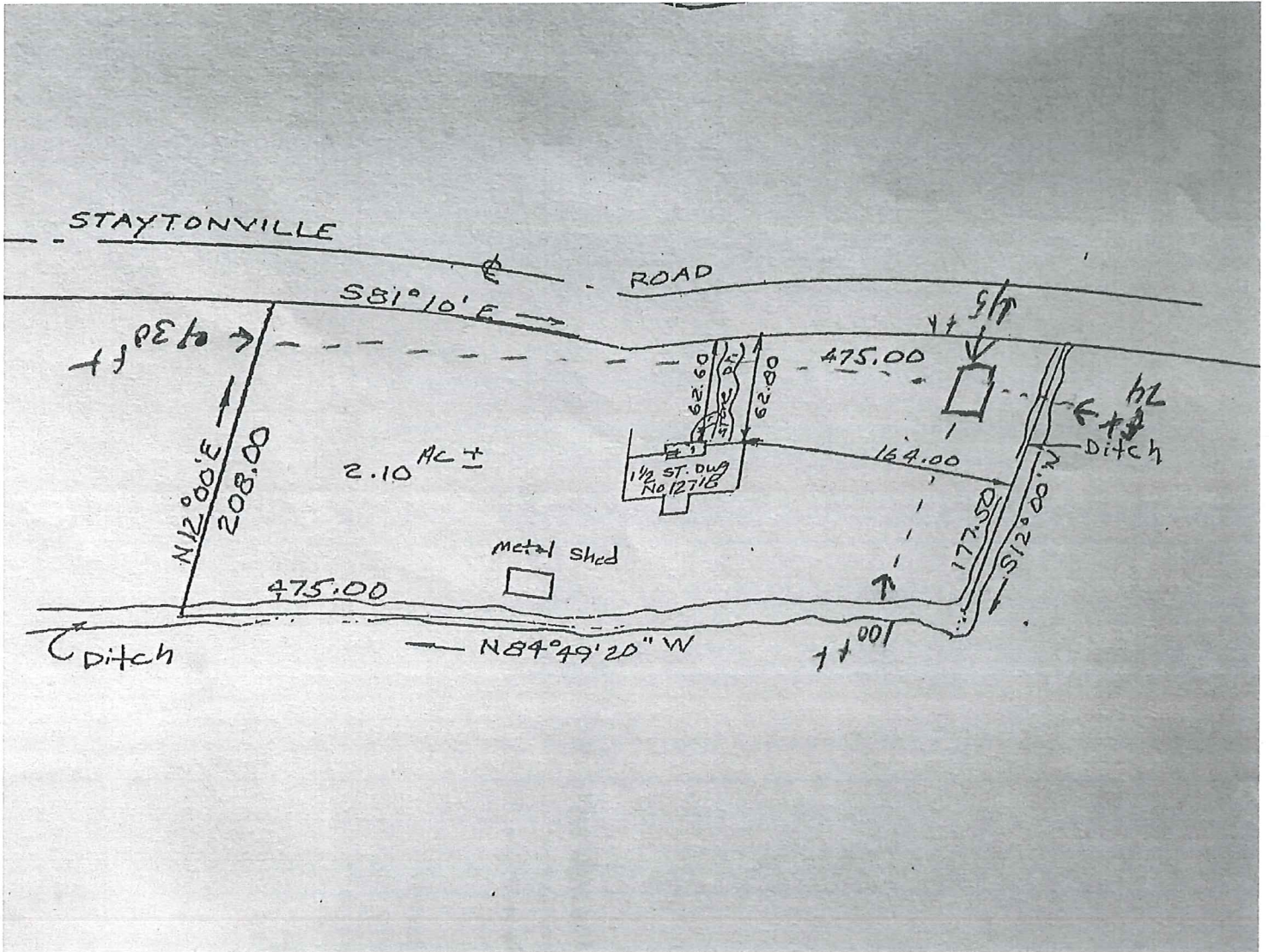
- LEGEND:**
- UTILITY POLE
 - CAPPED IRON PIN SET
 - CAPPED IRON PIN FOUND
 - CORNER NOT MARKED
 - EXISTING PROPERTY LINE
 - ADJOINING PROPERTY LINE
 - BUILDING RESTRICTION LINE
 - ROAD EDGE
 - ROAD CENTERLINE
 - TOP OF BANK

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

ALAN O'DALE KENT, P.L.S.#736, DATE

JOB # 2022126	THIS IS A SUBURBAN SURVEY
DATE OF PLAN 02 AUG 2022	BOUNDARY SURVEY PLAN OF THE LANDS NOW OR FORMERLY OF GARY ALLEN KELBAUGH AND ROXANNE MARIE KELBAUGH
DATE OF LAST FIELD WORK 01 AUG 2022	PREPARED BY ALAN O KENT LAND SURVEYING, LLC SEAFORD, DE 19973 (302) 740-1725

①





1 A



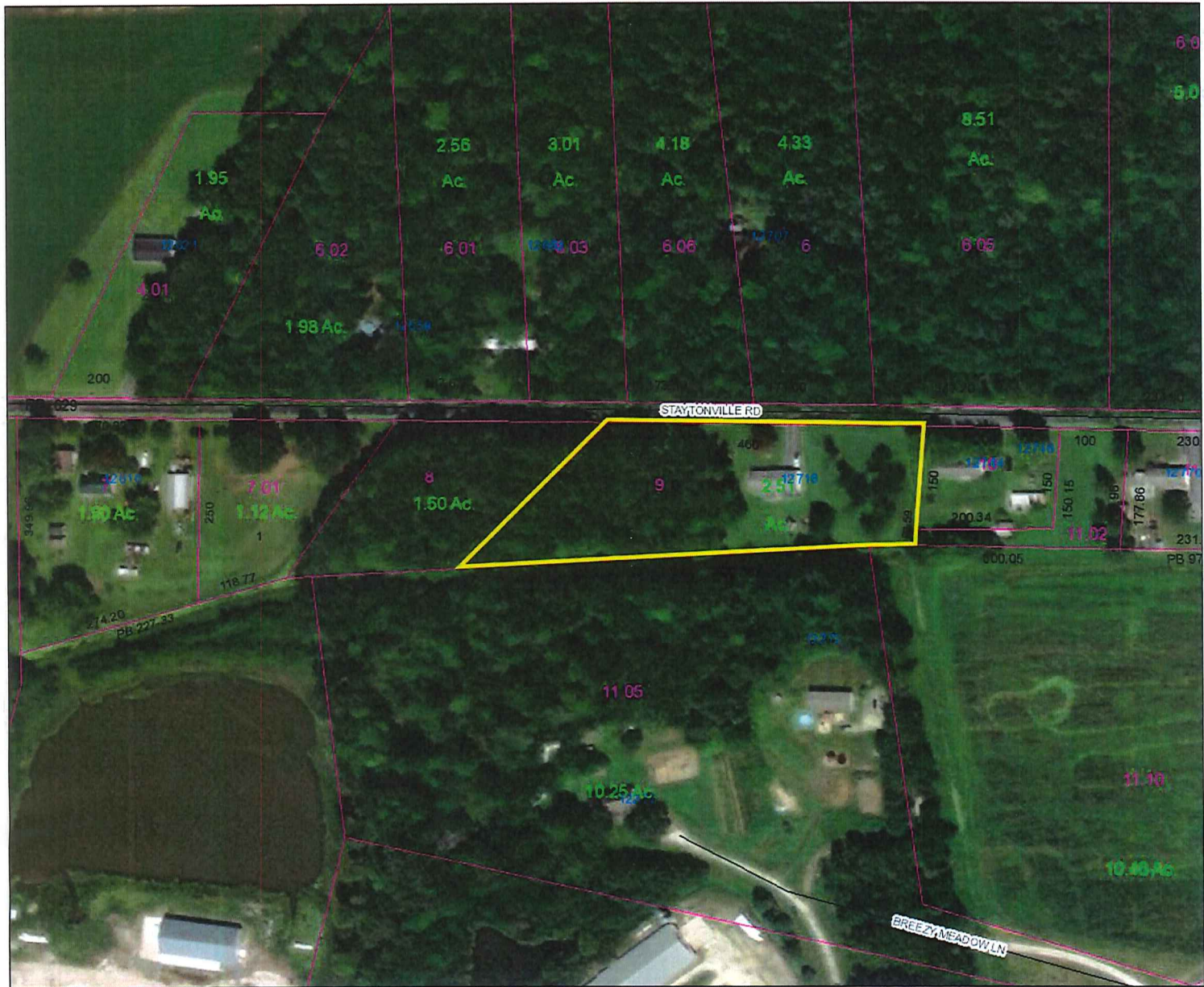






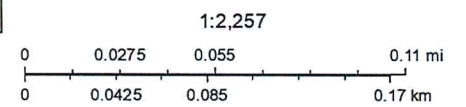


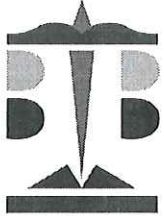
Sussex County



PIN:	430-1.00-9.00	
Owner Name	KELBAUGH ALLEN	GARY
Book	5603	
Mailing Address	12718 STAYTONVILLE RD	
City	HARRINGTON	
State	DE	
Description	RD STAYTNVLFARMNGTN	
Description 2	S/RT 629 1210'	
Description 3	W/RT 613	
Land Code		

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





BAIRD
MANDALAS
BROCKSTEDT
FEDERICO & CARDEA ^{LLP}

Mackenzie M. Peet, Esquire
(302) 645-2262
mackenzie@bmbfclaw.com

August 24, 2022

VIA EMAIL AND FEDEX

Planning & Zoning Department
Attn: Jamie Whitehouse, Director
2 The Circle
PO Box 417
Georgetown, DE 19947

RE: Variance Request for 5 Ellender Court, Rehoboth Beach, Delaware 19971

Director Whitehouse,

Enclosed please find a copy of Elizabeth and Patrick McGuiness's Board of Adjustment Application seeking a variance in the amount of 31 feet from the 42 feet height limitation of Section 115-25 and Table I of the Code to allow for a 73 feet height golf net with wood poles to extend 135 feet in length.

Should you need any additional information prior to the public hearing or have any questions, please contact me at Mackenzie@bmbde.com.

Sincerely,

Mackenzie M. Peet, Esq.

MMP/mag

Enclosures

Cc: Patrick and Elizabeth McGuiness

**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 # _____
Hearing Date 11/21
2022 12 4 28

Type of Application: (please check all applicable)

Variance
Special Use Exception
Administrative Variance
Appeal

Existing Condition
Proposed
Code Reference (office use only)

Site Address of Variance/Special Use Exception:

5 Ellender Court, Rehoboth Beach, Delaware 19971

Variance/Special Use Exception/Appeal Requested:

Variance request in the amount of 31 feet from the 42 feet height limitation of Section 115-25 and Table I of the Code to allow for a 73 feet high golf net with wood poles to extend 135 feet in length.

Tax Map #: 334-13.00-1065.00

Property Zoning: AR-1

Applicant Information

Applicant Name: Elizabeth McGuiness & Patrick McGuiness
Applicant Address: 5 Ellender Court
City Rehoboth Beach State DE Zip: 19971
Applicant Phone #: (703) 626-1952 Applicant e-mail: emcg302@gmail.com

Owner Information

Owner Name: See Applicant Information.
Owner Address: _____
City _____ State _____ Zip: _____ Purchase Date: _____
Owner Phone #: _____ Owner e-mail: _____

Agent/Attorney Information

Agent/Attorney Name: Baird Mandalas Brockstedt Federico & Cardea LLC; Stephen W. Spence, Esq.
Agent/Attorney Address: 1413 Savannah Road, Suite 1
City Lewes State DE Zip: 19958
Agent/Attorney Phone #: (302) 645-2262 Agent/Attorney e-mail: mackenzie@bmbde.com

Signature of Owner/Agent/Attorney



Date: 8/23/2022



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 unique because its rear yard is located on the 9th hole of the Kings Creek Country Club Golf Course. The Property's location on the golf course has lead to increased safety issues presented by recent alterations to that hole.

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.

Constructing a fence only 42 feet high would not prevent errant golf balls from entering the Property and creating safety issues. The Applicants only intend to improve safety on their Property by installing the net.

3. Not created by the applicant:

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

The exceptional practical difficulty has not been created by the Applicants but instead by the renovation to the Kings Creek Country Club's golf course causing golfers to hit errant golf balls into the Property. As a result of recent renovations to the golf course, golfers tend to aim to the right of the 9th hole's right-side bunker to cut off the dog leg shown in the August 2021 Google Earth Image as Exhibit E.

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 installation of a net to prevent stray golf balls from entering the Property is in character with the community that is located on the Kings Creek Country Club Golf Course. Similar netting exists at an increased height of 100 feet at the Kings Creek Country Club driving range. Neighboring property owners have submitted letters of support for the installation of the net along the rear yard of the Property.

5. Minimum variance:

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

A 73 feet high fence is the minimum height required to prevent errant golf balls from entering the Property, and is therefore the minimum variance necessary to afford relief.

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.

N/A.

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

N/A.

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

N/A.

File #: _____

Planning & Zoning Project Contact List

Applicant Information

Applicant Name: Elizabeth McGuiness & Patrick McGuiness
Applicant Address: 5 Ellender Court
City: Rehoboth Beach State: DE Zip: 19971
Phone #: (703) 626-1952 E-mail: emcg302@gmail.com

Owner Information

Owner Name: See Applicant Information.
Owner Address: _____
City: _____ State: _____ Zip: _____
Phone #: _____ E-mail: _____

Engineer/Surveyor Information

Engineer/Surveyor Name: Foresight Services Surveying & Precision Measurement
Engineer/Surveyor Address: 2130A Coastal Highway
City: Dewey Beach State: DE Zip: 19971
Phone #: (302) 226-2229 E-mail: aylssa@foresightservices.com

Agent/Attorney Information

Agent/Attorney/Name: Baird Mandalas Brockstedt Federico & Cardeo, LLC c/o Stephen W. Spence, Esq.
Agent/Attorney/Address: 1413 Savannah Road, Suite 1
City: Lewes State: DE Zip: 19958
Phone #: (302) 645-2262 E-mail: mackenzie@bmbde.com

Other

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone #: _____ E-mail: _____



Mailing List Application Form

For Applications requiring a Public Hearing in Sussex County

Please fill out this form and return it with your application. As a part of your application a Public Hearing is required. The property owners within 200' of the site of the application will be notified. Staff will notify the property owners.

Application Information:

Site Address: 5 Ellender Court
Rehoboth Beach, Delaware 19971
Parcel #: 334-13.00-1065.00

Site Address: _____

Parcel #: _____

Applicant Name: Elizabeth McGuiness & Patrick McGuiness
Owner Name: Elizabeth McGuiness & Patrick McGuiness

Type of Application:

Conditional Use:
Change of Zone:
Subdivision:
Board of Adjustment:

Date Submitted: _____

For office use only:

Date of Public Hearing: _____
File #: _____
Date list created: _____ List created by: _____
Date letters mailed: _____ Letters sent by: _____

EXHIBIT A

Property and Deed Information

Property Information

Property Location: 5 ELLENDER CT
 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
 Fire District: 86-Rehoboth
 Deeded Acres: .0001
 Frontage: 62
 Depth: 181.000
 Irr Lot: I
 Plot Book Page: 43 112/PB
 100% Land Value: \$14,500
 100% Improvement Value: \$136,800
 100% Total Value: \$151,300

Legal

Legal Description: KINGS CREEK COUNTRY CLUB
 LOT 156
 SEC 5

Owners

Owner	Co-owner	Address	City	State	Zip
MCGUINNESS PATRICK	ELIZABETH MCGUINNESS	5 ELLENDER CT	REHOBOTH BEACH	DE	19971

Sales

Sale Date	Book/Page	Sale Price	Stamp Value	Parcels Sold	Grantee/Buyer
06/19/2017	4725/143	\$450,000.00	\$6,750.00	0	
07/15/2008	/	\$515,000.00	\$7,725.00	0	
07/20/2000	/	\$230,000.00	\$3,450.00	0	
08/12/1991	/	\$1.00	\$2,100.00	0	
03/26/1990	/	\$1.00	\$1,980.00	0	

Owner History

Tax Year:	Owner:	Co-owner	Address:	City:	State:	Zip:	Deed Book/Page:
2022	MCGUINNESS PATRICK	ELIZABETH MCGUINNESS	5 ELLENDER CT	REHOBOTH BEACH	DE	19971	4725/143
2021	MCGUINNESS PATRICK	ELIZABETH MCGUINNESS	5 ELLENDER CT	REHOBOTH BEACH	DE	19971	4725/143
2020	MCGUINNESS PATRICK	ELIZABETH MCGUINNESS	5 ELLENDER CT	REHOBOTH BEACH	DE	19971	4725/143
2019	MCGUINNESS PATRICK	ELIZABETH MCGUINNESS	13510 STAR FLOWER CT	CHANTILLY	VA	20151	4725/143
2018	MCGUINNESS PATRICK	ELIZABETH MCGUINNESS	13510 STAR FLOWER CT	CHANTILLY	VA	20151	4725/143
2017	MCGUINNESS PATRICK	ELIZABETH MCGUINNESS	13510 STAR FLOWER CT	CHANTILLY	VA	20151	4725/143
2016	DELARIO LINDA C TRUSTEE		12 PYLES MOUNTAIN DR	AVONDALE	PA	19311	4509/290
2009	DELARIO LINDA		12 PYLES MOUNTAIN DR	AVONDALE	PA	19311	3596/253
2008	KC156 LAND COMPANY LLC		PO BOX 4652	WILMINGTON	DE	19963	3116/58
2005	KC156 LAND COMPANY LLC		PO BOX 4652	WILMINGTON	DE	19807	3116/58
2003	KC156 LLC		PO BOX 4652	WILMINGTON	DE	19807	2823/216
2001	WESTOVER LAND COMPANY LLC		PO BOX 4652	WILMINGTON	DE	19807	2506/307
1900	UNKNOWN					0	1415/314

Land

Line	Class	Land Use Code	Act Front	Depth	Calculated Acres	Ag
1	RES	RS	62	181	.0001	

Land Summary

Line	1
100% Land Value	14,500

Residential

Card	1
Class	Residential
Style	Single Family
Year Built	2020
Occupancy	1
Stories	2.00
Basement	4-Full
Total Fixtures	16
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	8-Composite
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	2,467
1	1	945
1	2	8
1	3	304
1	4	36
1	5	120
1	6	178

Addition Details

1 of 7

Card #	1
Addition #	0
Lower	-
First	-
Second	-
Third	-
Area	2,467
Year Built	

100% Values

100% Land Value	100% Improv Value	100% Total Value
\$14,500	\$136,800	\$151,300

50% Values

50% Land Value
\$7,250

50% Improv Value
\$68,400

50% Total Value
\$75,650

Permit Details

Permit Date:	Permit #:	Amount:	Note 1
18-JUN-2019	201906794	\$255,624	2 ST DW 69X53, ATT GAR 30X32, BSMT 78X40,

22971

BK: 4725 PG: 143

TAX MAP #: 3-34 13.00 1065.00
PREPARED BY & RETURN TO:
Tunnell & Raysor, P.A.
323 Rehoboth Avenue
Suite E
Rehoboth Beach, DE 19971
File No. AS10176/HED

Consideration: 450,000.00

County		6,750.00
State		6,750.00
Town	Total	13,500.00

Received: Maria T Jun 19, 2017

THIS DEED, made this June 16, 2017,

- BETWEEN -

LINDA C. DELARIO, TRUSTEE OF THE LINDA C. DELARIO REVOCABLE TRUST, UNDER AN AGREEMENT DATED APRIL 4, 2007, AND ANY AMENDMENTS THERETO, of 21433 Bald Eagle Road, Rehoboth Beach, DE 19971, party of the first part,

- AND -

PATRICK MCGUINESS and **ELIZABETH MCGUINESS**, his wife, of 13510 Star Flower Court, Chantilly, VA 20151, as tenants by the entireties parties 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 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, State of Delaware, being known and designated as Lot. No. One Hundred Fifty-Six (156), Section Five (5), Kings Creek Country Club Residential Community, as more particularly bounded and described on a Plot of Kings Creek Country Club & Residential Community, prepared by Land Tech, Inc., Surveyors, Planner, Consulting Engineers, of record in the Office of the Recorder of Deeds, in and for

TUNNELL
RAYSOR, P.A.
Rehoboth Beach, DE

BK: 4725 PG: 144

Sussex County, at Georgetown, Delaware, in Plot Book 42, Page 42 &c, as amended as to Sheets 4 and 8 in Plot Book 43, Pages 111 and 112, respectively.

BEING the same lands conveyed to Linda C. Delario, as Trustee of the Linda C. Delario Revocable Trust under an Agreement dated April 4, 2007, from Linda C. Delario, by Deed dated February 11, 2016, recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware, on February 26, 2016, in Deed Book 4509, Page 290.

SUBJECT to the restrictions and easements as contained in a Deed from Kings Creek Associates, a Delaware General Partnership, to Katherine D. Cannon, dated March 17, 1988, and now of record in the Office of the Recorder of Deeds, aforesaid, in Deed Book 1658, Page 1, as the same are amended from time to time; and as contained on the Plot of record in Plot Book 42, Page 42, as amended as to Sheets 4 and 8 in Plot Book 43, Pages 111 and 112, respectively.

THE STREETS, road and ways in Kings Creek Country Club Residential Community are private and shall be maintained, used and enjoyed in accordance with the Restrictions, Conditions, Covenants, Agreements, Easements, Reservations, Changes, etc. of Kings Creek Country Club Residential Community; said streets road and ways are not maintained by Sussex County or the State of Delaware

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 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:

Harold E. Dukes, Jr.
Witness

Linda C. DeLario, Trustee (SEAL)
LINDA C. DELARIO, TRUSTEE OF THE
LINDA C. DELARIO REVOCABLE
TRUST, UNDER AN AGREEMENT
DATED APRIL 4, 2007, AND ANY
AMENDMENTS THERETO

STATE OF DELAWARE, COUNTY OF SUSSEX: to-wit

BE IT REMEMBERED, that on June 16, 2017, personally came before me, the subscriber, Linda C. DeLario, Trustee of the Linda C. DeLario Revocable Trust, under an Agreement dated April 4, 2007, and any amendments thereto, party of the first part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be its act and deed.

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

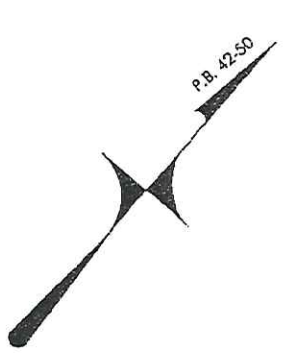
HAROLD E. DUKES, JR.
ATTORNEY AT LAW WITH
POWER TO ACT AS NOTARY PUBLIC
PER 29 DEL. C SEC 4323 (A)3

Harold E. Dukes, Jr.
Notary Public

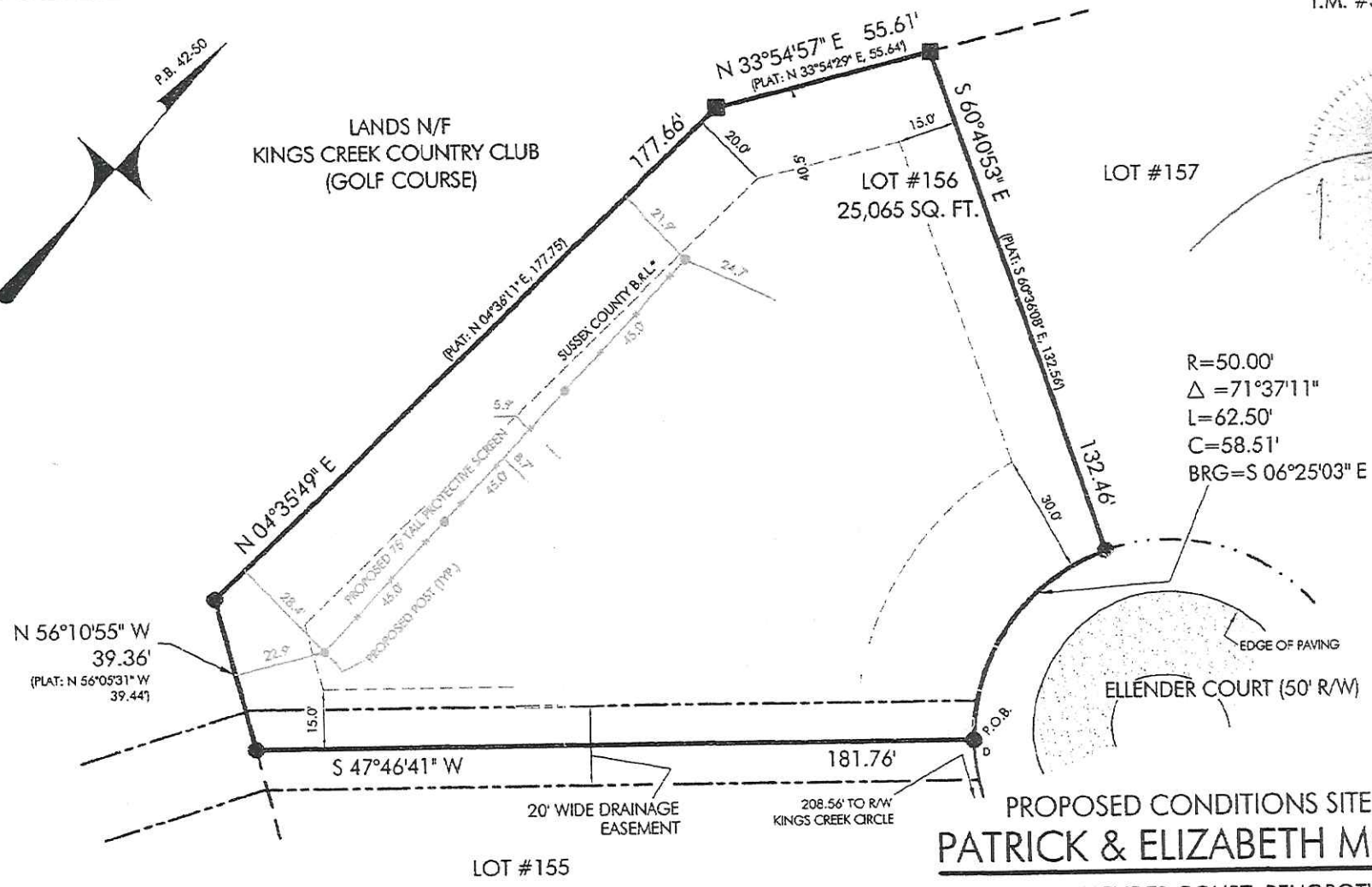
My Commission Expires: _____

RECEIVED
Jun 19, 2017
ASSESSMENT DIVISION
OF SUSSEX COUNTY

EXHIBIT B
Survey



LANDS N/F
KINGS CREEK COUNTRY CLUB
(GOLF COURSE)



R=50.00'
Δ=71°37'11"
L=62.50'
C=58.51'
BRG=S 06°25'03" E

**PROPOSED CONDITIONS SITE PLAN FOR
PATRICK & ELIZABETH MCGUINNESS**

5 ELLENDER COURT, REHOBOTH BEACH
LOT #156 SECTION 5 OF
"KINGS CREEK COUNTRY CLUB" SUBDIVISION
LEWES & REHOBOTH HUNDRED SUSSEX COUNTY
STATE OF DELAWARE

JUNE 2, 2020** SCALE: 1" = 40'

LEGEND:

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

NOTES:

*ALL SETBACKS MUST BE VERIFIED BY THE OWNER, GENERAL CONTRACTOR AND/OR DESIGNER. PLEASE CONTACT SUSSEX COUNTY (302-855-7720) AND THE H.O.A. (MORE RESTRICTIVE SUPERSEDES).

**DRAWING REVISED ON 8/3/2022 TO SHOW PROPOSED 75' PROTECTIVE SCREEN.

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

Prepared by:

FORESIGHT Services
Surveying & Precision Measurement

EXHIBIT C
Net Proposal



We design, engineer & install in all 50 states, U.S. Territories & Canada

Specializing in Golf Course, Driving Range, Drone, Baseball, Soccer, Sports Netting & Enclosures

DATE June 20, 2022

Quote Valid: 30 Days

40351 US Hwy 19 N, Ste. 303
 Tarpon Springs, FL 34689
 Phone (727) 938-4448 Fax (727) 938-4135
info@golfrangenetting.com
www.golfrangenetting.com

All of our crews are certified power linemen with over 63 years combined experience, including 25 years in the netting industry.

Bill To:
 Elizabeth McGuiness
 5 Ellender Ct.
 Rehoboth Beach, DE 19971
 703-626-1952
emcg302@gmail.com

5-year Warranty on Netting
5-year Warranty on Labor & Materials

The following is our quotation for the installation of new poles and barrier netting. All of our structures are designed and built to the highest quality specifications using powerline-grade materials and by law are designed to meet building wind code. Thank you for the opportunity to provide you with a bid for this project. **Engineered to building wind code by law.**

Quantity	Description
4	85-ft, Class H-2 Wood Poles 135'L x 73'H
2	Double Helix Anchors
6	5' Extensions
2	Triple Eyes
2	Guy Guards
8	Flat Guy Hooks
400-Ft	3/8" Galvanized Guy Steel
600-Ft	5/16" Galvanized Guy Steel
300-Ft	7/16" Galvanized Guy Steel
20	Hubbards/Suspension Clamps
8	1-Bolt Clamps
8	3/4" Unthreaded Eyes
25	3/8" Preforms
25	5/16" Preforms
25	7/16" Preforms
8-Yds	Yards of Crushed Stone
1,200	Galvanized Snaps
9,855-Sq Ft	Netting: 3' Skirt System ® Golf Netting

Scope of Work: Install new poles & hardware. We use 3/4" hardware on all dead-end poles & 5/8" hardware on all in-line poles on structures up to 75'H. On structures above 75'H we use 3/4" hardware. Install custom designed, Black twine, #18 x 1" knotless diamond mesh polyester netting panels with a 7/16" solid rope border (6,000lb. breaking strength) using galvanized snaps. **Engineered to Code - signed & sealed plans included. Engineered to building wind code by law.**

TURNKEY PRICE

\$

In review of this quote please keep in mind the volatility of the market and the extended delay in freight and shipping.



We design, engineer & install in all 50 states, U.S. Territories & Canada

Specializing in Golf Course, Driving Range, Drone, Baseball, Soccer, Sports Netting & Enclosures

Our Products vs. the Competitors

Solid 7/16" rope border with 6,000 lb. breaking strength. Custom sewn individual panels. Clove hitched at rope border every 8" and sewn every 1". Netting panels custom manufactured at our plant.

Netting

Hollow 5/16" rope border with 1,200 lb. breaking strength. Border woven through netting. Polypropylene netting which deteriorates within a year or two.

Double Helix with 50,000 lb. holding capacity (structures below 75'H)
Triple Helix with 69,000 lb. holding capacity (structures above 75'H)

Anchors

Single with 10,000 lb. holding capacity

Extra High Strength Galvanized Steel
9/16" holds 35,000 lbs. (above 100'H)
1/2" holds 26,900 lbs. (above 75'H)
7/16" holds 20,800 lbs. (above 75'H)
3/8" holds 15,400 lbs.
5/16" holds 11,200 lbs.
*GRN only uses powerline-grade materials

Guy Wire

Aircraft Cabling
5/16" holds 9,000 lbs.
*Can be purchased at local hardware stores

100% Full Warranty on Materials & Workmanship

Warranty

Pro-Rated or UV coverage only

Entire structure (both netting & poles) Engineered to Building Wind Code. Signed & sealed plans specific to state and project location.

Engineering

Not engineered to code

Why We're Different

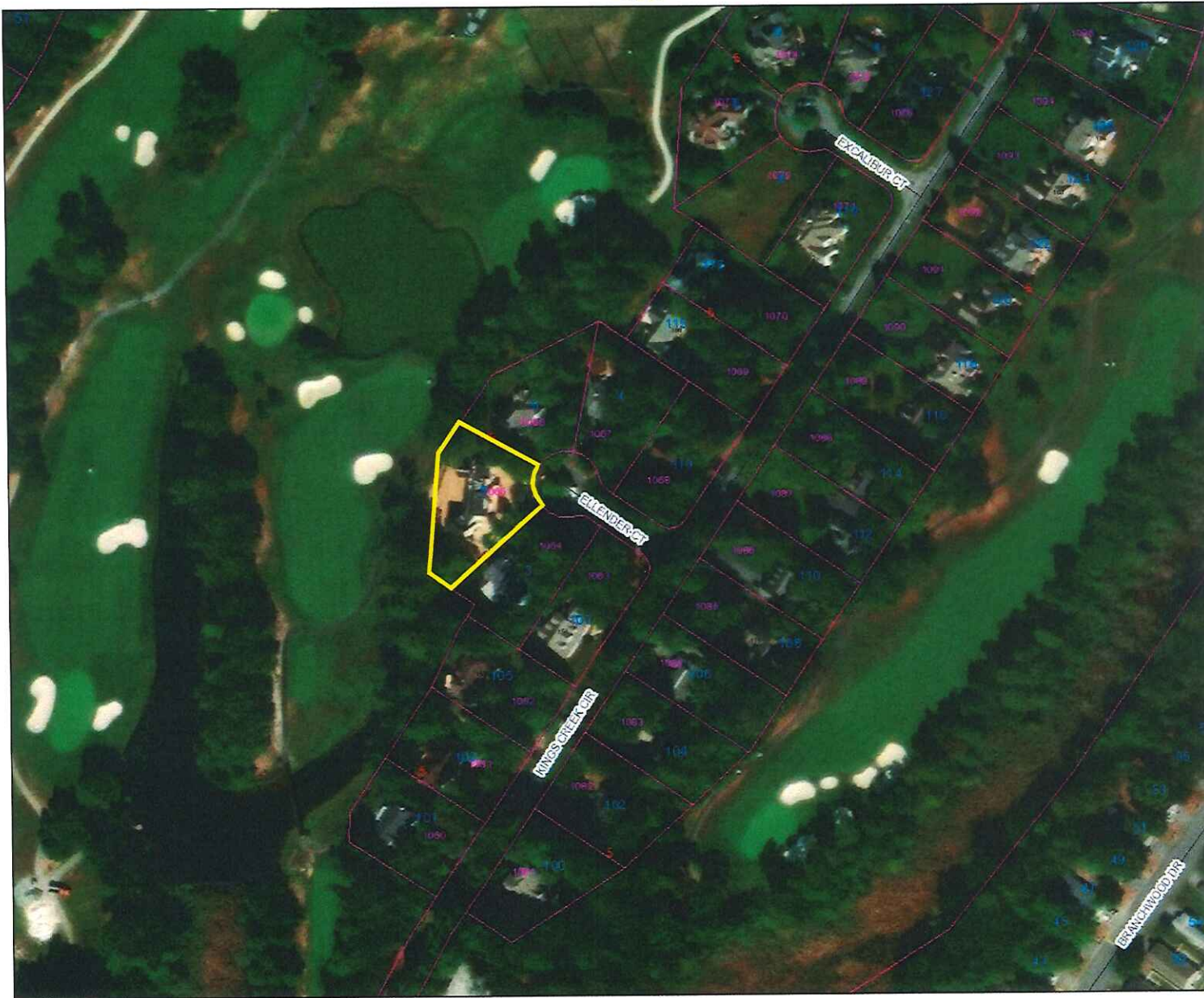
We design, engineer and install the highest quality transmission powerline-grade netting structures. Our focus is on offering the best product and Warranty in the business. Our structures are completely maintenance free. We offer full turnkey installations and only use in-house employees and never sub-contract our work. All of our crews are certified power linemen with over 140 years combined experience including 25 years in the netting industry. We may not be the cheapest option as we use superior materials, but you get what you pay for. Our ability to offer a full 100% Warranty justifies the fact that our structures are above other company's specifications and can out-last their structures. We are confident in our work and if you contact any of our previous customers, you will see that they are pleased with their results as well. All of our structures are custom and designed to meet code. No one matches the quality of GRN and that is why our past clients keep coming back to us for additional work.

EXHIBIT D

Sussex County Aerial Maps

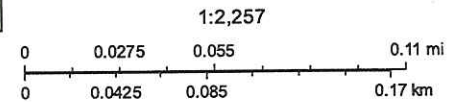


Sussex County



PIN:	334-13.00-1065.00
Owner Name	MCGUINESS PATRICK
Book	4725
Mailing Address	5 ELLENDER CT
City	REHOBOTH BEACH
State	DE
Description	KINGS CREEK COUNTRY C
Description 2	LOT 156
Description 3	SEC 5
Land Code	

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



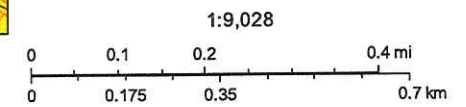


Sussex County



PIN:	334-13.00-1065.00
Owner Name	MCGUINESS PATRICK
Book	4725
Mailing Address	5 ELLENDER CT
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State	DE
Description	KINGS CREEK COUNTRY C
Description 2	LOT 156
Description 3	SEC 5
Land Code	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets





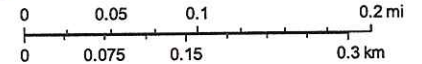
Sussex County



PIN:	334-13.00-1065.00
Owner Name	MCGUINESS PATRICK
Book	4725
Mailing Address	5 ELLENDER CT
City	REHOBOTH BEACH
State	DE
Description	KINGS CREEK COUNTRY C
Description 2	LOT 156
Description 3	SEC 5
Land Code	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries
- 2019 Future Land Use**
- Low Density
- Coastal Area
- Commercial
- Developing Area
- Existing Development Area
- Industrial
- Municipalities
- Town Center

1:4,514



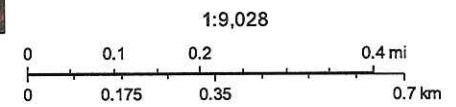


Sussex County



PIN:	334-13.00-1065.00
Owner Name	MCGUINESS PATRICK
Book	4725
Mailing Address	5 ELLENDER CT
City	REHOBOTH BEACH
State	DE
Description	KINGS CREEK COUNTRY C
Description 2	LOT 156
Description 3	SEC 5
Land Code	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries
- Conditional Use





Sussex County



PIN:	334-13.00-1065.00
Owner Name	MCGUINNESS PATRICK
Book	4725
Mailing Address	5 ELLENDER CT
City	REHOBOTH BEACH
State	DE
Description	KINGS CREEK COUNTRY C
Description 2	LOT 156
Description 3	SEC 5
Land Code	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries
- Subdivisions

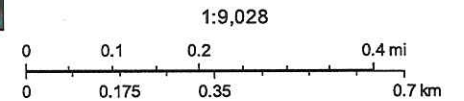


EXHIBIT E









Google Earth Aerial Maps

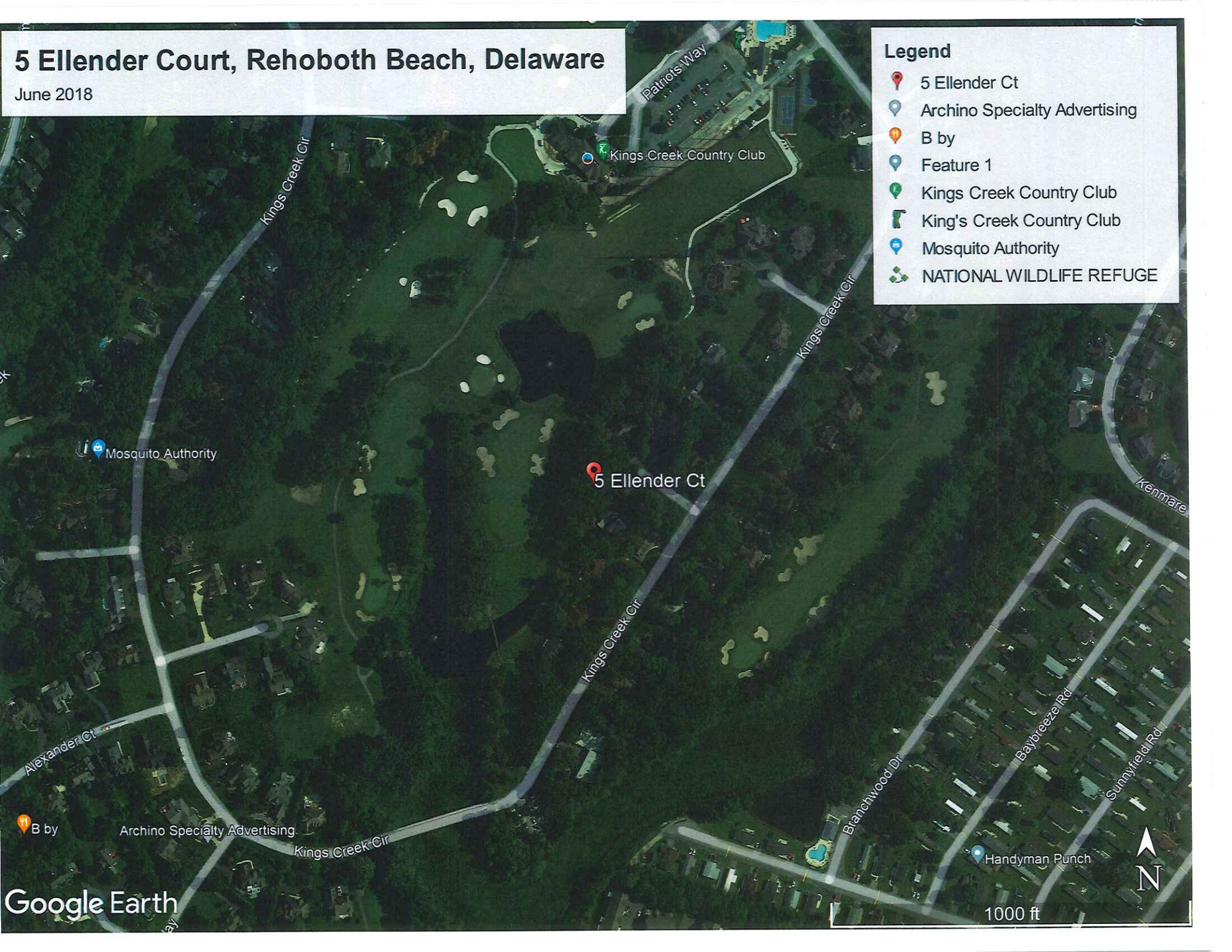
June 2018, August 2021

5 Ellender Court, Rehoboth Beach, Delaware

June 2018

Legend

-  5 Ellender Ct
-  Archino Specialty Advertising
-  B by
-  Feature 1
-  Kings Creek Country Club
-  King's Creek Country Club
-  Mosquito Authority
-  NATIONAL WILDLIFE REFUGE



5 Ellender Court, Rehoboth Beach, Delaware

August 2021

Legend

- 📍 5 Ellender Ct
- 📍 Archino Specialty Advertising
- 📍 B by
- 📍 Feature 1
- 📍 Kings Creek Country Club
- 📍 King's Creek Country Club
- 📍 Mosquito Authority
- 🌿 NATIONAL WILDLIFE REFUGE



Google Earth

Image © 2022 Maxar Technologies

1000 ft

EXHIBIT F

Kings Creek Country Club

Case No. 12097

BOARD OF ADJUSTMENT

DALE A. CALLAWAY, CHAIRMAN
ELLEN MAGEE
BRUCE MEARS
JOHN M. MILLS
E. BRENT WORKMAN



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7878 T
(302) 854-5079 F

REVISED AGENDA

February 5, 2018

7:00 P.M.

Call to Order

Pledge of Allegiance

Approval of Agenda

Approval of Minutes for December 11, 2017

Approval of Finding of Facts for December 11, 2017

Public Hearings

Case No. 12092 – Marvin Weaver seeks variances from the side and rear yard setbacks (Section 115-25 of the Sussex County Zoning Code). The property is located on the north side of Marina Dr., approximately 450 ft. west of the intersection of Woodland Cir. and Marina Dr. W. 911 Address: 23406 Marina Dr. W., Lewes. Zoning District: AR-1. Tax Map: 234-17.08-127.00

Case No. 12093 – Paul Webster & Justin Duhaime seek a variance from the side yard setback (Section 115-25 of the Sussex County Zoning Code). The property is located on the southeast corner of Bald Eagle Dr. and 7th St. 911 Address: 21169 Bald Eagle Rd., Rehoboth Beach. Zoning District: AR-1. Tax Map: 334-19.16-90.00

Case No. 12094 – Nancy Kelly seeks variances from the side and rear yard setbacks (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Pine Pl., approximately 280.19 ft. from the intersection of Birdhaven St. and Pine Pl. 911 Address: 31272 Pine Pl., Millville. Zoning District: MR. Tax Map: 134-8.00-98.00

Case No. 12095 – Donald W. & Norma M. Chapman seek variances from the front and side yard setbacks (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Laws Point Rd., approximately 2,107.54 ft. from the intersection of Swann Point and Laws Point Rd. 911 Address: 37035 Laws Point Rd., Selbyville. Zoning District: GR. Tax Map: 533-12.16-259.00



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

Case No. 12096 – Andrew Steiminger seeks variances from the side yard setback (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Canvasback Rd., approximately 1,396.25 ft. north of the intersection of Swann Dr. and Canvasback Rd. 911 Address: 37029 Canvasback Rd., Selbyville. Zoning District: GR. Tax Map: 533-12.16-346.00

Case No. 12097 – Kings Creek Country Club seeks a variance from the height requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Kings Creek Cir. at the intersection of Patriots Way and Kings Creek Cir. 911 Address: 1 Kings Creek Cir., Rehoboth Beach. Zoning District: AR-1. Tax Map: 334-13.00-1158.00 C (portion of)

Case No. 12098 – Mountaire Farms seeks a special use exception to use a manufactured home type structure as an office (Sections 115-114 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of the intersection of John J. Williams Hwy. (Rt. 24) and Maryland Camp Rd. 911 Address: 29106 John J. Williams Hwy., Millsboro. Zoning District: HI-1. Tax Map: 234-32.00-106.00

Case No. 12099 – Sussex Sports Amenities, LLC seeks a special use exception to use a manufactured home type structure as a temporary kitchen, restrooms, and golf pro-shop (Sections 115-32 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Lakeview Dr., approximately 1,373.07 ft. west of the intersection of Sound Church Rd. and Lakeview Dr. 911 Address: 31804 Lakeview Dr., Selbyville. Zoning District: MR-RPC. Tax Map: 533-19.00-36.01 Lot 2 (portion of)

Additional Business

Case No. 11878 – Toby M. and Alexandra M. Chrostowski seek variances from the front yard and side yard setbacks (Section 115-34B of the Sussex County Zoning Code). The property is located on the north side of Baltimore St. approximately 225 ft. west of Andrew St. in Bayview Park. 911 Address: 39667 Baltimore St., Bethany Beach. Zoning District: MR. Tax Map: 134-20.11-34.00

REQUEST FOR A TWELVE (12) MONTH TIME EXTENSION

Old Business

Case No. 12070 – David & Cindy Sroka seek a variance from the front, side, and rear yard setbacks (Section 115-25 of the Sussex County Zoning Code). The property is located on the northwest side of Seagrass Ct., approximately 250 ft. south west of the intersection of Seagrass Ct. and Sandpiper Way. 911 Address: 29737 Seagrass Ct., Dagsboro. Zoning District: AR-1. Tax Map: 134-7.00-108.00

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 January 19, 2018 at 8:45 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.

Revised: January 24, 2018 (to add Additional Business Case No. 11878)

####

MINUTES OF FEBRUARY 5, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 5, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Mr. Sharp stated that he received a request from the attorney for Toby Chrostowski & Alexandra Chrostowski to move Case No. 11878 to the front of the agenda.

Motion by Mr. Mears, seconded by Ms. Magee, to move Case No. 11878 to the front of the agenda and to approve the Revised Agenda as circulated and amended. Motion carried 5 – 0.

Motion by Mr. Workman, seconded by Mr. Mears, to approve the Minutes and Findings of Facts for December 11, 2017.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

ADDITIONAL BUSINESS

Case No. 11878 – Toby M. Chrostowski and Alexandra M. Chrostowski - seek variances from the front yard and side yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the north side of Baltimore Street approximately 225 feet west of Andrew Street in Bayview Park. 911 Address: 39667 Baltimore Street, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-20.11-34.00.

REQUEST FOR A TWELVE (12) MONTH TIME EXTENSION

Mrs. Walls presented the request of the Applicants to extend the approval for the variances for a period of twelve (12) months.

Mrs. Walls read the request into the record. The Applicants submitted a letter explaining that they experienced delays due to engineering and construction issues.

John Sergovic, Esquire, was present on behalf of the Applicants and stated that the Applicants obtained the variance approximately a year ago; that the dwelling is an older house and has some structural issues; and that the Applicants need additional time to address those issues.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that **the extension request be granted for a period of twelve (12) months.**

The vote by roll call; Mr. Mills – yea, Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, and Mr. Callaway – yea.

PUBLIC HEARINGS

Case No. 12092 – Marvin Weaver - seeks variances from the side yard and rear yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the north side of Marina Drive, approximately 450 feet west of the intersection of Woodland Circle and Marina Drive West. 911 Address: 23406 Marina Drive West, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-17.08-127.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 1.0 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed garage addition, a variance of 1.8 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, and a variance of 1.5 feet from the ten (10) feet rear yard setback requirement for a proposed addition.

Jay Yoder was sworn in to testify about the Application and he submitted the proposed building plans into the record for the Board to review.

Mr. Yoder testified that he was present on behalf of the Applicants; that he is the owner of Yoder & Sons Construction; that the Applicants recently purchased the Property and propose to construct an addition to the garage; that the Applicants intend to use the garage for a boat; that there is a marina in Angola by the Bay; that the additional foot for the garage will enable the Applicants to properly store their boat; that the rear of the addition will be used for bedrooms; that the Board has approved many variances in the Angola by the Bay community; that the rear of the Property is adjacent to common area; that the variances will not affect anyone to the rear of the Property; that the Property is a double lot; that the dwelling is an existing dwelling and the Applicants propose to add the garage; that the Applicants purchased the Property within the past year; that the Applicants did not create the hardship; that the Applicants are making other improvements to the home; and that there is another boat garage in the neighborhood.

Mrs. Walls advised the Board that the existing dwelling encroaches into the rear yard setback area; and that a Certificate of Compliance was issued in 1985 for a three-room addition.

Mr. Yoder testified that the Applicants propose a door next to the garage door; that the door would allow the Applicants to install a handicap ramp, if necessary, for improved access to the home; that the Property slopes significantly; that the Applicants own two (2) boats; that the Property is a smaller than average lot; that the Property cannot otherwise be developed; that the variances will not alter the essential character of the neighborhood; that the variances requested represent the minimum variances necessary to afford relief; that the Applicants would not be able to fit the boats in a smaller garage; that the homeowners association prohibits the outdoor storage

of boats; that the Applicants do not own a slip at the community's marina; and that he would like additional time to present the Application.

Mr. Mills moved to leave the record open until the end of the public hearings.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **the record be left open until the end of the public hearings.** Motion carried 5 – 0.

Mr. Sharp advised the public that individuals who wish to speak about the Application would have an opportunity to do so at the end of the public hearings.

At the end of the public hearings, the Board readdressed Mr. Yoder.

Mr. Yoder testified that the Applicants did not obtain a survey when they purchased the Property and were unaware that the existing dwelling encroached into the rear yard setback area; that he would like additional time to present the case; that there is no living space to the rear of the garage; and that the addition will square up the home.

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

Mr. Mills moved to leave the record open and to schedule a hearing on Variance Application No. 12092 for March 5, 2018.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **record be left open and the hearing rescheduled for March 5, 2018.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12093 – Paul Webster & Justin Duhaime - seek variances from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the southeast corner of Bald Eagle Drive and 7th Street. 911 Address: 21169 Bald Eagle Road, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-19.16-90.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants intend to subdivide the Property into two (2) lots (Lots 304A and 306A) and seek a variance of five (5) feet from the fifteen (15) feet side yard setback requirement on the east side of the proposed Lot 304A and variances of five (5) feet from the fifteen (15) feet side yard setback requirement on both sides of the proposed Lot 306A for proposed dwellings on those lots. No variance is sought from the corner front yard setback requirement for proposed Lot 304A along Bald Eagle Road.

Paul Webster was sworn in to testify about the Application.

Mr. Webster testified that the Applicants purchased the Property in August 2017; that the Property measures 100 feet by 100 feet and is improved by a dwelling located in the middle of the

lot; that the Applicants propose to subdivide the Property into two (2) lots measuring 50 feet wide by 100 feet deep; that both lots would be buildable per Sussex County because the lots would revert to the original lot sizes as shown on the Bay Vista subdivision plan; that, if the Property is subdivided as proposed, the side yard setback requirements would be 15 feet rather than ten (10) feet and the Applicants propose these variances to allow for side yard setbacks of ten (10) feet except for the corner front setback which borders Bald Eagle Road; that there are approximately 70 lots in Bay Vista which measure 50 feet by 100 feet; that those lots have side yard setback requirements of ten (10) feet; that there are six (6) corner lots which are also similarly situated; that similar variances were granted to Gaw Ventures Group (Case No. 11742); that the Gaw Ventures property is located on the same block as the Property; that there are some differences between the two applications; that the entrances for the proposed lots will remain off of Seventh Street; that a building envelope with 15 feet side yard setback requirements would only be 20 feet wide; that 15 feet side yard setback requirements are inconsistent with the neighborhood; that the lots were created in the 1950s; that Bay Vista was originally created with lots measuring 25 feet by 100 feet and the restrictive covenants required that 2 lots be used for each house; that the intent of the community was for lots measuring 50 feet by 100 feet; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that a dwelling which measures 20 feet wide is not feasible; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the Applicants called the Planning & Zoning Office prior to purchasing the Property and were told that the Property could be subdivided with 10 feet wide side yard setbacks; that there has been confusion as to the size of the setback requirements for the Property; that the Applicants intend to relocate and renovate the existing dwelling; that the Applicants have cleaned up the Property; that the dwelling had been abandoned for 13 years; that the variances requested are the minimum variances necessary to afford relief; that the Property is located in a flood zone; that the existing Property has topographical conditions which have created an exceptional practical difficulty; that the dwelling needs to be raised and flood vents installed; that the Property is a corner lot; that the Property cannot otherwise be developed; that the Applicants did not create the size of the Property in the original Bay Vista subdivision; that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare; that the variances represent the least modifications of the regulations at issue; that the garage located on neighboring Lot 89 is under 600 square feet and is five (5) feet from the property line; and that an existing shed on the Property is only 2.5 feet from the property line and that shed will be removed or moved into compliance with the Sussex County Zoning Code.

Mrs. Walls advised the Board that undersized lots created as of a certain date are allowed to have 10 feet side yard setbacks; and that, since the Property is being re-subdivided, AR-1 setback requirements of 15 feet apply to the lots.

Mr. Sharp advised the Board that the Office of Planning & Zoning has historically taken the position with lots in Bay Vista that those lots can be restored to the original 50 feet by 100 feet lots; that the Gaw Ventures case referenced by Mr. Webster had additional variances at issue because Gaw Ventures sought permission to subdivide and turn the lots 90 degrees; that the Applicants in this case are not proposing to turn the lots; and that undersized lots created as of a certain date are allowed to have 10 feet side yard setbacks.

Mr. Webster testified that all structures, including HVAC systems and stairs, will fit within the building envelope if the variances are approved; and that the neighbor across the street approves of the requests.

Justin Duhaime was sworn in to testify in support of the Application. Mr. Duhaime testified he worked with Mr. Webster on the project; and that he affirmed the statements made by Mr. Webster as true and correct.

Mary Beth Dockitty and Grant Dockitty were sworn in to testify in opposition to the Application. Mr. Dockitty submitted exhibits to the Board to review.

Mr. Dockitty testified that the Board previously approved the Gaw Ventures variance application two years ago; that Bay Vista has restrictive covenants which require a setback of 23 feet from the road; that there plenty of lots in Bay Vista which measure 50 feet by 100 feet; that there are not, however, corner lots which measure 50 feet by 100 feet except for the Gaw Ventures property; that the restrictive covenants were created in 1954; that the restrictive covenants have resulted in narrow dwellings; that there are some corner lots which measure 75 feet wide; that his neighbor opposes the Application; that he has a petition with 40 signatures opposing the subdivision of the Property; that he owns Lot 89; that the house built on the Gaw Ventures property looks out of character for the neighborhood; that he is a builder; and that the proposed variances are out of character for the neighborhood.

Mr. Sharp advised the Board that Mr. Dockitty has submitted an order for declaratory judgment from the Court of Chancery; that Gaw Ventures was a party to the Chancery Court action; that the Order references certain deed restrictions applicable to the Gaw Ventures property; that the Order provides that the restrictive covenants prohibit the construction of a dwelling within 23 feet of the road on corner lots; and that the Order does not indicate whether those same restrictive covenants are applicable to the Applicants' property.

Mr. Dockitty testified that he has lived in Bay Vista since 1975; that there is a right-of-way of three (3) feet behind the lots for drainage to the canal; that his property measures 75 feet by 100 feet; that there is no homeowners association; that he wants the Applicants to comply with the setback requirement of 23 feet off of Bald Eagle Road; that he would prefer two ranch-style houses over two large houses but he does not think the Applicants will build ranch-style houses; that he does not oppose setbacks of 10 feet but not on the Bald Eagle Road side; that other houses in the neighborhood have 10 feet side yard setbacks; and that he believed the side yard setback requirements were always 10 feet.

Mr. Sharp stated that lots which were created prior to 1971 were subject to side yard setback requirements of 10 feet but lots which were created after 1971 were subject to side yard setback requirements of 15 feet.

Mr. Dockitty testified that he opposes the setback of 15 feet on the Bald Eagle Road side of the Property.

Mr. Webster testified that he is aware of the restrictive covenants; and that there are six (6)

corner lots which measure 50 feet by 100 feet in the neighborhood.

The Board found that one (1) party appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Mr. Mills moved to take Variance Application No. 12093 under advisement.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the **case be taken under advisement**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

At the end of the public hearings, the Board revisited and discussed the Application.

Mr. Mills stated that he believed the Applicants addressed the standards well; that the opposition focused on deed restrictions which are not enforced by the Board; that there are other corner lots which measure 50 feet by 100 feet in the neighborhood; that the dwellings are modest homes; and that the Applicants are improving the Property.

Mr. Mills moved to approve Variance Application No. 12093 for the requested variances (but no variance along Bald Eagle Road) based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it was designed for 2 structures;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code and still be handicap compliant;
3. The exceptional practical difficult was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12094 – Nancy Kelly - seeks variances from the side yard and rear yard setback requirements (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Pine Place, approximately 280.19 feet from the intersection of Birdhaven Street and Pine Place. 911 Address: 31272 Pine Place, Millville. Zoning District: MR. Tax Map No.: 1-34-8.00-98.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no

correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 9.4 feet from the ten (10) feet rear yard setback for an existing shed with deck, a variance of 1.7 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing dwelling, and a variance of 1.3 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing dwelling.

Nancy Kelly was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted exhibits into the record for the Board to review. The exhibits included pictures and the building permits of the existing shed.

Mr. Meredith stated that there is a platform which was constructed behind the shed; that the Applicant purchased the Property in October 2017; that the Applicant discovered the encroachments when she was presented with a survey of the Property shortly before settlement; that the dwelling is an older home; that the attached garage was added to the home in 1997; that a building permit was issued for the garage; that no permits were located for the platform attached to the shed; that the attached garage encroaches into the side yard setback area; that deck to the rear of the home is a first-floor deck and is allowed to encroach into the side yard setback area and no variance is needed for that deck; that the Applicant did not construct the improvements on the Property; that the shed meets the setback requirements but the attached platform does not meet those requirements; that the need for the variances was not created by the Applicant; that the prior owner is deceased; that it is believed that the platform was used to store firewood for the home; that there is a fence on neighboring property but the fence was not constructed on the border of the Property; that the location of the fence makes the rear of the Property appear larger than it actually is; that the rear of the Property is located adjacent to undeveloped wooded lots; that an exceptional practical difficulty exists; that the platform is hardly noticeable and removal of the platform would pose no benefit to the neighborhood; that the variances are necessary to enable reasonable use of the Property; that the Applicant did not create the exceptional practical difficulty; that the variances will not alter the essential character of the neighborhood or impair the uses and development of adjacent properties; that the variances will not be detrimental to the public welfare; that the Applicant is unaware of any complaints about the structures; that the requested variances represent the least modifications of the regulations at issue; and that the variances are necessary to afford relief.

Ms. Kelly affirmed that the statements made by Mr. Meredith as true and correct.

Mr. Meredith stated that he was unsure how tall the platform was because the platform was pressed into the ground.

Ms. Kelly testified that there is a well on the Property and the Property is serviced by public sewer and that the Property may have previously been served by a septic system.

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

Mr. Mears moved to approve Variance Application No. 12094 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The Applicant would suffer hardship and costs if required to bring the structures into compliance;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a ten (10) minute recess.

Case No. 12095 – Donald W. Chapman & Norma M. Chapman - seek variances from the front and side yard setback requirements (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Laws Point Road, approximately 2,107.54 feet from the intersection of Swann Point and Laws Point Road. 911 Address: 37035 Laws Point Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-259.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 0.4 feet from the ten (10) feet side yard setback requirement on the north side for an existing deck, a variance of 0.6 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, a variance of 1.6 feet from the ten (10) feet front yard setback for an existing shed, a variance of 1.9 feet from the ten (10) feet front yard setback for an existing shed, a variance of 5.4 feet from the ten (10) feet front yard setback for an existing ramp, and a variance of 5.6 feet from the ten (10) feet front yard setback for an existing ramp.

Norma Chapman was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits into the record for the Board to review. The exhibits included photographs and a certificate of compliance for the deck and shed.

Mr. Tomasetti stated that the Property is located in Swann Keys; that the Applicants purchased the Property in 1999; that a manufactured home was located on the Property at that time; that, in 2008, the Applicants engaged a manufactured home contractor to remove the manufactured home and place a new one on the site; that a Certificate of Compliance was issued; that the Applicants later retained contractors to construct the deck on the rear of the home and to place the shed on the Property; that there is an asphalt area between the front property lines and the adjacent Laws Point Road; that this asphalt area has created confusion in the neighborhood about the location of front property lines; that no variances are needed on the south side of the Property; that the encroachments on the north side of the Property are nominal encroachments; that the encroachments were discovered when the Applicants obtained a survey as part of the process of selling the Property; that the shed is located in a similar location as other sheds along Laws Point Road; that the Property is unique because

approximately 21 feet of the rear of the Property is located in the lagoon; that the building envelope is small; that the uniqueness of the Property has created an exceptional practical difficulty; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the Applicants relied upon licensed contractors to erect these structures in compliance with the Code; that the Applicants obtained building permits and Certificates of Compliance for all structures; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; and that the ramp is a temporary structure and can be removed but the ramp has been used by the Applicants for access due to their advanced age.

Mrs. Chapman affirmed that the statements made by Mr. Tomasetti as true and correct.

Mrs. Chapman testified that the shed is detached but is pushed up against the house and that she has received no complaints from neighbors.

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

Ms. Magee moved to approve Variance Application No. 12095 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is small;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants as they relied on their contractors;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12096 – Andrew Steiminger - seeks variances from the side yard setback requirement (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Canvasback Road, approximately 1,396.25 feet north of the intersection of Swann Drive and Canvasback Road. 911 Address: 37029 Canvasback Road, Selbyville. Zoning District: GR. Tax Map: 5-33-12.16-346.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application. Mrs. Walls read the letter into the record. The Applicant seeks a variance of 0.7 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 1.7 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 7.0 feet from the ten (10) feet side yard setback requirement on the south side for a proposed

dwelling, and a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling.

Andrew Steiminger was sworn in and testified about the Application.

Mr. Steiminger testified that the Property is located in Swann Keys; that the Property was previously improved by a single-wide manufactured home but that home was in poor condition and has been removed; that the Applicant proposes to place a double-wide manufactured home on the lot; that double-wide manufactured homes are common the neighborhood; that the home will be accessed on the other side of the house from where the variance is being requested; that the home will be accessed on the north side of the Property and the rear of the Property; and that the steps will be 5 feet wide.

Mrs. Walls stated that the variance request would need to be increased to accommodate the stairs.

Mr. Steiminger testified that the HVAC system will be on the south side of the Property; that there is a 4 feet tall vinyl fence along the south property line; that the HVAC system will be close to the property line; that he already purchased the house; that the HVAC system can be moved to the north side of the Property; and that he proposes to amend the Application to include a variance of 5 feet on the north side for a proposed HVAC system.

Mr. Sharp stated that the survey provides a "buffer for installation error" and he suggested that the variances being sought would be as follows: 1) a variance of 6 feet on the south side for the proposed dwelling, 2) a variance of 0.7 feet on the north side for the proposed dwelling, 3) a variance of 5.7 feet on the north side for the proposed stairs, and 4) a variance of 5.7 feet on the north side for the proposed HVAC system.

Mr. Steiminger testified that there is 25 feet from the edge of paving of Canvasback Road to the dwelling; that parking in Swann Keys is difficult; that he purchased the home with knowledge that he would need a variance; that single-wide homes are being replaced by double-wide homes; and that he believed the size of the lot created an exceptional practical difficulty

The Board found that three (3) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12096 for the requested variances and to include variances of 5.7 feet from the ten (10) feet side yard setback requirements on the north side for the HVAC system and steps based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is under 4,000 square feet; and
2. The Application meets all the standards for granting a variance.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variances**

be granted for the reasons stated. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12097 – Kings Creek Country Club - seeks a variance from the height requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Kings Creek Circle at the intersection of Patriots Way and Kings Creek Circle. 911 Address: 1 Kings Creek Circle, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-1158.00 C (portion of).

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. Mrs. Walls read the letter from the Kings Creek Homeowners Association into the record. The Applicant seeks a variance of 58 feet from the 42 feet height requirement for a proposed driving range netting system.

Kevin Wiest, Don Beyerly, and Joel Weiman were sworn in to testify about the Application. Steve W. Spence, Esquire, presented the case on behalf of the Applicant and submitted exhibit booklets into the record for the Board to review.

Mr. Spence stated that the Applicant intends on increasing the height of the netting for its driving range from 50 feet to 100 feet; that the entire property consists of a golf course and a portion of the golf course is used as a driving range; that the increase in height of the netting will protect the 18th hole green and the clubhouse from the driving range; that the driving range is existing and the existing netting has been in place for many years; that the existing netting is as high as 50 feet tall in some areas; and that a variance is needed from the 42 feet height requirement since the fencing is considered a permanent structure.

Mr. Weiman testified that he is the senior designer for McDonald Design Group; that he has been retained by the Applicant to assist with design changes to the course; that he has been working with the club's improvement committee for two years on improving the golf course; that the Applicant intends to improve the practice area; that he was asked to look at the existing driving range and to explore ways to improve it; that the current driving range has many safety issues; that errant shots from the driving range have landed on the golf course, the clubhouse, and parking lot; that he studied a possible relocation of the driving range but relocating the driving range was determined to be infeasible due to the size of the golf course, the cost of relocating holes, and environmental impacts; that, if the golf course was relocated, it would be placed near ponds; that, even if the driving range was relocated, the nets would still be needed; that the location of the driving range is the best location possible; that he worked with a consultant to design the netting; that the consultant recommended a netting structure measuring 135 feet tall surrounding the driving range but this proposal was not well received and was deemed impractical; that the Applicant proposes to install a netting structure measuring 100 feet tall; that the Kings Creek golf membership generally consists of retirees and the Applicant determined that the additional 35 feet was not needed since the users of the driving range would be unlikely to hit balls that far; that there is an existing tree line between the clubhouse and the driving range; that practice areas for golf courses have increased in popularity; that there is tree coverage in the area; that the netting will be a mesh netting strung on steel chords; and that the netting

structure will be 100 feet tall at its highest point.

Mr. Spence stated that the existing tree canopy is approximately 68-75 feet tall but there are some trees which exceed 100 feet tall; and that the netting will exceed the height of the tree canopy.

Mr. Wiest testified that he is the PGA professional at Kings Creek Country Club; that he has been there for 11 seasons; that the golf membership at Kings Creek has increased in recent years; that the existing driving range was previously used as a warm-up range but has evolved in recent years for use as a practice range; that more lessons are being given and the increase in lessons has resulted in greater use of the driving range; that the number of golf balls hit at the range increased from 2,000 per day to 15,000 per day; that players are trying to hit the ball higher and longer; that there has been an improvement in technology in golf balls and equipment which have resulted in players being able to hit the balls higher and farther; that the average age of members at the Club is 63 years old; that a netting structure measuring 100 feet tall will capture most balls hit by members at the driving range; that another club has a netting structure measuring 90 feet tall and many golf balls clear the netting; that he has watched many members hit balls at the range and feels comfortable that the proposed structure of 100 feet will satisfy the Club's purpose; that the use of the golf course has changed to increased driving range use rather than members playing all 18 holes of the course; that the Club wants to stay competitive and make renovations; and that safety is the number one priority.

Mr. Byerly testified that he is the general manager of the Club; that the members desire to improve the safety of the clubhouse; that he handles the operations at the Club; and that the patio of the clubhouse is near the driving range and on two occasions during his recent interview process golf balls landed on the patio.

Mr. Spence stated that the clubhouse patio is approximately 160 yards from the driving range.

Mr. Byerly testified that vendors and employees use the rear of the clubhouse for loading and access and balls tend to land in that area as well; and that amenities have been an issue while balancing safety issues.

Mr. Spence stated that the Property is unique as it is a golf course community and the driving range is an integral part of the course; that the safety issues presented by the range have created a unique situation; that the driving range cannot be relocated elsewhere on the course; that the Applicant explored alternatives; that the Applicant intends to improve the safety of the course; that the changes in golf ball and equipment technology have led to an increase in the safety concerns; that immediate neighbors, including those who will be able to see the structure, support the Application; and that the structure will not alter the essential character of the neighborhood since the golf community remains.

Mr. Weiman testified that black netting will be used to blend in with the surrounding natural elements.

Mr. Wiest testified that the existing netting has not posed a problem for wildlife; and that there are geese on the golf course but they tend to stay away from the driving range.

Mr. Weiman testified that poles for the proposed netting structure will be designed to be wind-

graded and will be safer than the existing netting structure.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12097 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because the existing driving range cannot be relocated and the Applicant has experienced problems with safety and from the existing driving range;
2. The variance will not alter the essential character of the neighborhood; and
3. The requested variance is the minimum variance that will afford relief as the variance requested was less than what was recommended by its consultant.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12098 – Mountaire Farms - seeks a special use exception to use a manufactured home type structure as an office (Sections 115-114 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of the intersection of John J. Williams Highway (Route 24) and Maryland Camp Road. 911 Address: 29106 John J. Williams Highway, Millsboro. Zoning District: HI-1. Tax Map No.: 2-34-32.00-106.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant is requesting a special use exception to use a manufactured home type structure as an office for a period of five (5) years.

Greg Esham was sworn in and testified about the Application.

Mr. Esham testified that a temporary office trailer was previously on the Property but has been removed; that the proposed manufactured home will be placed in the same location as the prior structure; that the proposed manufactured home will measure 12 feet wide by 60 feet long; that the manufactured home will consist of two offices, a bathroom, and a common area; that the facility will be used for by human resources for recruiting; that the current space used by human resources is located across the street in the plant area and there are security and safety issues with the current location; that the proposed location will be easier for prospective employees to find and will avoid confusion; that there is already existing water and electric hook ups for the structure; that the old administrative building is being demolished and turned into a large parking area; that the Property is a large parcel; that the use will not be disruptive to any neighbors; that another 400 parking spaces will be added after the demolition and parking lot is completed; that the wellness center is located next door with parking available; that the proposed structure will be located across the street from the

existing plant; that prospective employees currently have to park on one side of the road and cross a walkway to enter the plant in order to interview for a job; that Mountaire has many new applicants and a high rate of employee turnover; that the use is necessary for hiring purposes; that the Applicant has yet to determine where the permanent building will be located on the Property; that the Applicant seeks approval for five (5) years; and that the use will not substantially affect adversely adjacent and neighboring properties.

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

Ms. Magee moved to approve Special Use Exception Application Number 12098 for the requested special use exception for a period of five (5) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **special use exception be granted for a period of five (5) years and for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, and Mr. Callaway – yea.

Case No. 12099 – Sussex Sports Amenities, LLC - seeks a special use exception to use a manufactured home type structure as a temporary kitchen, restrooms, and a golf pro-shop (Sections 115-32 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Lakeview Drive, approximately 1,373.07 feet west of the intersection of Sound Church Road and Lakeview Drive. 911 Address: 31804 Lakeview Drive, Selbyville. Zoning District: MR-RPC. Tax Map No.: 5-33-19.00-36.01 Lot 2 (portion of).

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant is requesting a special use exception to use a manufactured home type structure as a temporary kitchen, restrooms, and a golf pro-shop.

Steve Marsh and Rich Rishel were sworn in and testified about the Application.

Mr. Marsh testified that he is the engineer for the project; that the Property is located in Americana Bayside; that the original special use exception was granted in 2005; that it was renewed in 2013; that the Cove restaurant was built around the structure; that, in 2015, the Applicant decided to move the permanent golf club house to the location where the existing driving range is located; that a master plan was submitted in December 2015 and preliminary site plan approval was received in September 2017; that the Applicant is working on engineering and Sussex Conservation District approvals; that the Applicant anticipates opening the clubhouse by March 2020; that the facility does not adversely affect neighboring and adjacent properties; and that the facility has served as a vital part of the Americana Bayside community.

Mr. Rishel testified that the Applicant will be starting construction of the clubhouse this

summer provided final site plan approval is received this spring; that members are anxious for a permanent facility; and that the permanent facility will be larger than the existing facility.

Mr. Marsh testified that there will be no changes to the structures themselves; that the manufactured homes being used have been built around; and that the only complaints received are from members who question when the permanent clubhouse will be completed.

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

Ms. Magee moved to approve Special Use Exception Application Number 12099 for the requested special use exception for a period of three (3) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **special use exception be granted for a period of three (3) years and for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 12070 – David Sroka & Cindy Sroka - seek variances from the front yard, side yard, and rear yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the northwest side of Seagrass Court, approximately 250 feet south west of the intersection of Seagrass Court and Sandpiper Way. 911 Address: 29737 Seagrass Court, Dagsboro. Zoning District: AR-1. Tax Map No.: 1-34-7.00-108.00.

Mrs. Walls presented the case which has been tabled since January 8, 2018.

The Board discussed the case.

Mr. Mills advised the Board that he reviewed the record and transcript and was prepared to participate and vote on the Application.

Mr. Mills stated that the lot consists of only 4,000 square feet and the Applicants are unable to build a home consisting of even 1,200 square feet per floor; that houses in the area are larger than the proposed house; that the variances are necessary to enable reasonable use of the Property; that the proposed dwelling is within the character of the neighborhood; and that the only opposition was the homeowners association who owns an adjacent lot.

Mr. Workman moved to approve Variance Application No. 12070 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size and shape;

2. The variances are necessary to enable the reasonable use of the Property;
3. The variances will not alter the essential character of the neighborhood;
4. There are similar homes in the neighborhood;
5. The variances requested are the minimum variances necessary to afford relief; and
6. The variances requested represent the least modifications of the regulations at issue.

Motion by Mr. Workman, seconded by Mr. Mills, and carried that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting was adjourned at 10:58 p.m.

EXHIBIT G
Letters of Support

Sussex County Planning & Zoning
2 The Circle
Georgetown, Delaware 19947

To whom it may concern:

This letter is to support Patrick and Elizabeth McGuiness' application they have submitted to install protective netting on their property at 5 Ellender Court, Rehoboth Beach to protect their home and family members from errant golf shots. Since our home is along the KCC golf course tee boxes like the McGuiness property, we understand first-hand their situation and we are extremely supportive of the reinforcements needed to protect their home. We have lived in this area for almost six years and want to ensure the enjoyment of the golf game and continued safety of the McGuiness', their friends, and family.

We can attest to the fact that the McGuiness home is directly in the path of golf shots from both of the tee boxes. The only way to ensure protection while using their sun porch, patio or backyard is to install a protective netting system similar to the ones installed near the driving range at Kings Creek that are protecting other homes and the clubhouse. The nets need to a) go around the back of their house to protect against golfers from the I and II tees that are trying to go down the righthand side of the fairway to avoid the lake, and b) go along the side of their home to avoid ball trajectories from the III, IV or V tees.

We appreciate your consideration of both the McGuiness application and our express consent and support for the work. We are available for any questions or further discussion at the email and number below.

Best regards,



Bruce and Carol Harsh
44 Kings Creek Circle
Rehoboth Beach, Delaware 19971
Email: harshfamily5@verizon.net
C: 703-966-0183

David & Lesley Corydon

105 Kings Creek Circle
Rehoboth Beach, DE 19971
davidcorydon@comcast.net 732.861.5908

July 31, 2022

Sussex County Planning & Zoning
2 The Circle
Georgetown, DE. 19947

To whom it may concern:

We are adjacent neighbors to Patrick & Elizabeth McGuiness at 5 Alexander Court, Rehoboth Beach. We wanted to express our support for the application they have submitted to install protective netting on their property to protect their home and family members from errant golf shots.

We have lived adjacent to their property and also on the 9th hole of the Kings Creek Country Club golf course for the past six years and we are both avid golfers. We have been playing the course for almost 30 years. We can attest to the fact that the McGuiness home is directly in the path of golf shots from both of the tee boxes. The only way to ensure protection while using their sun porch, patio or backyard is to install a protective netting system similar to the ones installed near the driving range at Kings Creek that are protecting other homes and the clubhouse. The nets need to a) go around the back of their house to protect against golfers from the I and II tees that are trying to go down the righthand side of the fairway to avoid the lake, and b) go along the side of their home to avoid ball trajectories from the III, IV or V tees.

The back of our home overlooks the McGuiness property and we are extremely supportive of the reinforcements needed to protect their home.

We appreciate your consideration of both the McGuiness application and our express consent and support for the work. We are available for any questions or further discussion at the email and number above.

Best regards,

David & Lesley Corydon

Stephen & Stephanie Storrie
115 Kings Creek Circle
Rehoboth Beach, DE 19971
301.346.9069

Sussex County Planning & Zoning

2 The Circle

Georgetown, DE 19947

To Whom It May Concern:

My husband and I are writing this letter in support of Patrick and Elizabeth McGuiness's application to install netting and support poles to the height of 75 feet on their property at 5 Ellender Court in Kings Creek Country Club.

Their property faces the 9th hole of the golf course and the extra height for the netting is necessary to protect their house and provide safety for any person that may be enjoying the outside amenities from errant balls.

Not only are my husband and I golfers, but we are also neighbors of the McGuiness's and therefore, recognize the need for such a barrier firsthand. There is other netting installed at several other locations within King Creek Country Club that is consistent with the proposed work. We believe it will provide protection while having no impact on property values in the community.

Very sincerely yours,


Stephanie Storrie

August 2, 2022

Sussex County Planning & Zoning Board
2 The Circle
Georgetown, DE 19947

Commissioners:

I am writing this letter to provide some support and insight into Patrick and Elizabeth McGuiness' request for their application to install a protective netting at the rear of their property located at 5 Elender Court, Rehoboth Beach.

I am a member of the Kings Creek Country Club. The McGuiness' property is located slightly south of the 9th hole tee boxes. The tee box is situated in such a manner that the vast majority of the average golfer's tee shot lands within the McGuiness' backyard. I speak from numerous personal and observational experiences. The netting would provide both personal safety and real estate security for the family. The netting should be installed around the back as well as the side of the house to avoid errant shots and ball trajectories.

As a Country Club member I fully support the McGuiness' reasonable and necessary request for the netting.

Sincerely,

A handwritten signature in cursive script that reads "Maureen Gutenstein". The signature is written in black ink and is positioned to the right of the typed name and address.

Maureen Gutenstein
17327 Merlin Lane
Lewes, DE 19958

118 Kings Creek Circle
Rehoboth Beach, DE 19971

July 15, 2022

Sussex County Planning & Zoning
2 The Circle
Georgetown, DE 19947

To Whom It May Concern:

This letter is written in support of the application of Patrick and Elizabeth McGuiness, who live at 5 Ellender Court in our community of Kings Creek Country Club, Rehoboth Beach, to install poles and netting to a height of 75 feet on their property facing the 9th hole of the golf course.

The netting is necessary to protect their home and persons sitting, standing or playing in their backyard from the many errant golf balls that currently land on their property.

I do not believe the netting will adversely impact property values in the community. It is consistent with other netting installed by the Country Club in other locations.

Please let me know if additional information is needed.

Very truly yours,



William Roger Truitt

EXHIBIT H

Kings Creek Residential Community ARC Approval

Kings Creek Residential Community
Architectural Review Committee
Request Form - Changes to Existing Homes

Name: PATRICK + ELIZABETH MCGUINNESS Date: 3/8/2022

Address: 5 EULENDAE COURT Lot #: 156

Phone #: (302) 500-0490 E-mail address: emcga@longandbaker.com

Name and number of builder/contractor/landscaper: GOLF RANGE NETTING, FL
(SAME COMPANY UTILIZED BY KINGS CREEK COUNTRY CLUB)

Please Note:

- *Homeowner is responsible for following county building codes and permit requirements.
- *Homeowner is responsible for following all ARC Building and Landscaping Requirements (see ARC document #1) and all ARC Builders' Rules (see ARC document #2)
- *Approval of your change request signifies only that ARC requirements have been met.
- *KCHOA and ARC accept no liability related to changes made to existing properties, including but not limited to building engineering, quality, or safety; compliance with setbacks, building codes and zoning laws; or building site safety.

Type of Request

- Exterior addition (room, deck, patio, driveway, etc.) - (attach architectural drawings or design plan, survey indicating location, materials list and samples, drainage study, etc.)
- Exterior refurbishment (painting, roofing, shutters, etc.) - (attach colors and materials)
- Tree removal - (trees to be marked)
- Landscaping change - (attach landscape plan or drawing and materials list)
- Other REPLACE + INSTALL NEW NETTING

Explanation of Request: (attach additional written explanation as needed)

INSTALL PROFESSIONAL NETTING WITH WOODEN POSTS
IN REAR YARD TO PROTECT HOUSE FROM ERRANT
GOLF BALLS. (OLD NETTING WHICH IS CONNECTED TO
THE TREES WILL BE REMOVED.) SAME COMPANY USED
BY KCCC TO PROTECT THE MEMBERS + PROPERTY WILL
BE UTILIZED (GOLF RANGE NETTING, FLORIDA).

ARC Member Sign-off:

ARC Member signature:

Date signed:

Appr./Deny/Abstain:

Dub Chase via email 3/9/2022

Approved

Doug Church via email 3/9/2022

Approved

Tom Maloney via email 3/9/2022

Approved

Ron Altschuler via email 3/9/2022

Approved

Rich Sapio via email 3/9/2022

Approved

Maquet Cannon 3/9/2022

Approved

ARC Comments:

Request Approved: 3/9/2022 Request Denied: _____ Date: 3/9/2022

Your approval expires on: 09/09/2022 (6 months)

Is a foundation forms setback check required for this project? _____
Is an 'As-Built' survey required at completion of this project? _____
Is a deposit, up to \$1500, required for this project? Y N Amount n/a

Homeowner sign-off:
I have read and agree to comply with the ARC Building and Landscaping Requirements and the Builders' Rules and the above requirements:

Signature: EMAIL OR FILE Date: _____

Deposit check received? _____ Date: _____
Foundation forms check OK? _____ Date: _____
As-Built survey received and OK? _____ Date: _____
Deposit money returned to homeowner _____ Date: _____



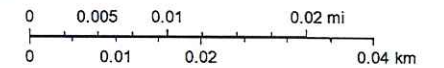
Sussex County



PIN:	334-13.00-1065.00
Owner Name	MCGUINNESS PATRICK
Book	4725
Mailing Address	5 ELLENDER CT
City	REHOBOTH BEACH
State	DE
Description	KINGS CREEK COUNTRY C
Description 2	LOT 156
Description 3	SEC 5
Land Code	

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

1:564



BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KINGS CREEK COUNTRY CLUB

(Case No. 12097)

A hearing was held after due notice on February 5, 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 a variance from the height requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 58 feet from the 42 feet height requirement for a proposed driving range netting system. This application pertains to certain real property located on the east side of Kings Creek Circle at the intersection of Patriots Way and Kings Creek Circle (911 Address: 1 Kings Creek Circle, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-1158.00 C (portion of).

1. The Board was given copies of the Application, aerial photographs of the Property, a portion of the tax map of the area, and a site plan of the Property dated November 30, 2017.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Kevin Wiest, Don Beyerly, and Joel Weiman were sworn in to testify about the Application. Steve W. Spence, Esquire, presented the case on behalf of the Applicant and submitted exhibit booklets into the record for the Board to review.
4. The Board found that Mr. Spence stated that the Applicant intends on increasing the height of the netting for its driving range from 50 feet to 100 feet. A variance is needed from the 42 feet height requirement since the netting system is considered a permanent structure. The increase in height of the netting will protect the 18th hole green and the clubhouse from the driving range.
5. The Board found that Mr. Spence stated that the entire property consists of a golf course and a portion of the golf course is used as a driving range.
6. The Board found that Mr. Spence stated that the driving range is existing and the existing netting has been in place for many years. The existing netting is as high as 50 feet tall in some areas.
7. The Board found that Mr. Weiman testified that he is the senior designer for McDonald Design Group and he has been retained by the Applicant to assist with design changes to the course. He has been working with the club's improvement committee for two years on improving the golf course and practice area.
8. The Board found that Mr. Weiman testified that the current driving range has many safety issues. Errant shots from the driving range have landed on the golf course, the clubhouse, and parking lot.
9. The Board found that Mr. Weiman testified that he studied a possible relocation of the driving range but relocating the driving range was determined to be infeasible due to the size of the golf course, the cost of relocating holes, and environmental impact.
10. The Board found that Mr. Weiman testified that, if the golf course was relocated, it would be placed near ponds and that, even if the driving range was relocated, the nets would still be needed.

11. The Board found that Mr. Weiman testified that the current location of the driving range is the best location possible.
12. The Board found that Mr. Weiman testified that he worked with a consultant to design the netting and the consultant recommended a netting structure measuring 135 feet tall surrounding the driving range. The consultant's proposal was not well received and was deemed impractical. Instead, the Applicant proposes to install a netting structure measuring 100 feet tall.
13. The Board found that Mr. Weiman testified that the Kings Creek golf membership generally consists of retirees and the Applicant determined that the additional 35 feet was not needed since the users of the driving range would be unlikely to hit balls that far.
14. The Board found that Mr. Weiman testified that there is an existing tree line between the clubhouse and the driving range.
15. The Board found that Mr. Weiman testified that practice areas for golf courses have increased in popularity.
16. The Board found that Mr. Weiman testified that the netting will be a mesh netting strung on steel chords and the netting structure will be 100 feet tall at its highest point.
17. The Board found that Mr. Spence stated that the existing tree canopy is approximately 68-75 feet tall but there are some trees which exceed 100 feet tall. The netting will exceed the height of the tree canopy.
18. The Board found that Mr. Wiest testified that he is the PGA professional at Kings Creek Country Club and that the golf membership at Kings Creek has increased in recent years.
19. The Board found that Mr. Wiest testified that the existing driving range was previously used as a warm-up range but has evolved in recent years for use as a practice range. More lessons are being given and the increase in lessons has resulted in greater use of the driving range. The number of golf balls hit at the range increased from 2,000 per day to 15,000 per day.
20. The Board found that Mr. Wiest testified that players are trying to hit the ball higher and longer and there has been an improvement in technology in golf balls and equipment which has resulted in players being able to hit the balls higher and farther.
21. The Board found that Mr. Wiest testified that the average age of members at the Club is 63 years old.
22. The Board found that Mr. Wiest testified that a netting structure measuring 100 feet tall will capture most balls hit by members at the driving range.
23. The Board found that Mr. Wiest testified that another club has a netting structure measuring 90 feet tall and many golf balls clear the netting.
24. The Board found that Mr. Wiest testified that he has watched many members hit balls at the range and feels comfortable that the proposed structure of 100 feet will satisfy the Club's purpose.
25. The Board found that Mr. Wiest testified that the use of the golf course has changed to increased driving range use rather than members playing all 18 holes of the course.
26. The Board found that Mr. Wiest testified that the Club wants to stay competitive and make renovations but safety is the number one priority.
27. The Board found that Mr. Byerly testified that he is the general manager of the Club and the members desire to improve the safety of the clubhouse.
28. The Board found that Mr. Byerly testified that the patio of the clubhouse is near the driving range and on two occasions during his recent interview process golf balls landed on the patio.
29. The Board found that Mr. Spence stated that the clubhouse patio is approximately 160 yards from the driving range.
30. The Board found that Mr. Byerly testified that vendors and employees use the rear of the clubhouse for loading and access and balls tend to land in that area as well.

31. The Board found that Mr. Spence stated that the Property is unique as it is a golf course community and the driving range is an integral part of the course. The safety issues presented by the range have also created a unique situation.
32. The Board found that Mr. Spence stated that the driving range cannot be relocated elsewhere on the course but the Applicant explored alternatives.
33. The Board found that Mr. Spence stated that the changes in golf ball and equipment technology have led to an increase in the safety concerns and the Applicant intends to improve the safety of the course.
34. The Board found that Mr. Spence stated that immediate neighbors, including those who will be able to see the structure, support the Application.
35. The Board found that Mr. Spence stated that the structure will not alter the essential character of the neighborhood since the golf community remains.
36. The Board found that Mr. Weiman testified that black netting will be used to blend in with the surrounding natural elements.
37. The Board found that Mr. Wiest testified that the existing netting has not posed a problem for wildlife. There are geese on the golf course but they tend to stay away from the driving range.
38. The Board found that Mr. Weiman testified that poles for the proposed netting structure will be designed to be wind-graded and will be safer than the existing netting structure.
39. The Board found that one (1) party appeared in support of the Application.
40. The Board found that no parties appeared in opposition to the Application.
41. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is clearly unique as it is a large but oddly shaped parcel. The Property is used as a golf course (which takes up a large portion of the Property), a driving range, a clubhouse, and other amenities. The driving range is irregularly shaped because of its proximity to the clubhouse, parking lot, tennis courts, 18th hole, and a pond. The driving range is also shorter than average sized driving ranges and is narrow; thereby creating the need for the netting system. The driving range is centrally located on the site and is currently surrounded by a 50 feet tall netting structure to keep golf balls from landing outside the driving range area. The height of the netting system, however, is too short to adequately keep golf balls within the driving range. Evidence and testimony clearly show that errant golf balls have landed in the parking lot and clubhouse. These errant shots have damaged property and pose safety concerns for persons at the Kings Creek Country Club. The Applicant, thus, needs to construct a taller netting system to improve the safety of the driving range but the Applicant is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the exceptional practical difficulty is due to the irregular and narrow shape of the Property and its environmental features (such as ponds and streams) which greatly limit the area where a driving range could be located.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was developed many years ago as a golf course with a driving range and related amenities. The driving range is improved by a netting system that is insufficient to adequately keep golf balls within the driving range. In order to have a netting system that will protect adjacent areas, the Applicant needs to install a netting system which exceeds the height limits set forth in

the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a netting system, which is tall enough to protect neighboring properties and nearby amenities from balls hit from the driving range, to be constructed on the Property. The Board is convinced that the size, shape, and location of the netting system are reasonable, which is confirmed when reviewing the survey and exhibits provided by the Applicant.

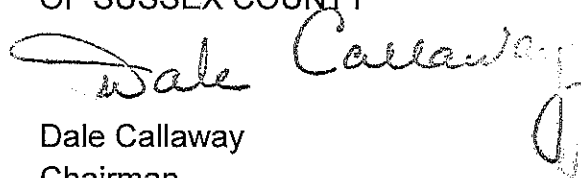
- c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed many years ago and is narrow and has environmental conditions which limit its developable area. Due to these physical conditions, the Applicant has a netting system to protect against balls hit from the driving range. Improvements in golf technology, however, have rendered the existing netting system obsolete and dangerous. The Applicant seeks install a taller netting system which will enhance the safety of the driving range. The Board is convinced that the Applicant is otherwise unable to relocate the driving range or erect other barriers which would adequately protect nearby areas without a netting system which exceeds the height requirement. The exceptional practical difficulty is the result of the Property's unique physical conditions and changes in the golf industry.
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Property has been improved for many years by an existing netting system which exceeds the height requirement and, despite its longstanding location and notice to neighbors, no evidence was presented which would indicate that the existing netting system or a taller one as proposed by the Applicant would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. This lack of evidence is telling since the Board would expect some evidence if the existing netting system had altered the essential character of the neighborhood. The Board notes that the exhibits indicate that the netting system will enhance the safety of the nearby area by protecting non-driving range areas from errant golf shots. The Board also notes that the Kings Creek Homeowners Association supports the request. The system is also designed with a dark mesh netting in order to blend into the aesthetics of the area. The system will also be wind-rated which should improve the safety of the netting system as compared to the existing system which uses older technology.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to erect a new netting system that will adequately protect nearby areas from the driving range. The Board notes that a professional consultant recommended that the Applicant install an even taller system but the Applicant chose the shorter system to reduce the degree by which the system will exceed the height requirement. The Board is also convinced that the Applicant explored other options, such as relocating the driving range elsewhere on the Property, but those options were not feasible and would require similar netting systems in those areas. The Board finds that the Applicant took reasonable measures to limit the height of the netting system while improving the safety of the driving range.

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


Dale Callaway
Chairman

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

Date March 20, 2018