

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

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



# Sussex County

DELAWARE  
sussexcountype.gov

(302) 855-7878

## AGENDA

June 6, 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 April 4, 2022

### Approval of Finding of Facts for April 4, 2022

### Public Hearings

**Case No. 12686 – Kathy Harris** seeks a variance from the front yard setback requirements for proposed structure (Sections 115-42, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the corner of Sandy Cove Road and Pine Crest Drive within the Pine Crest Terrace Subdivision. 911 Address: 30102 Pinecrest Drive, Ocean View. Zoning District: GR. Tax Parcel: 134-9.00-136.00

**Case No. 12696 – Owen Kirby** seeks a variance from the maximum fence height requirement. (Section 115-34, 115-184, and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Dune Road at the corner of Coastal Highway. 911 Address: 39532 Dune Road, #2, Bethany Beach. Zoning District: MR. Tax Parcel: 134-5.00-74.00-2

**Case No. 12697 – Ann Purcell** seeks a variance from the maximum fence height requirement. (Section 115-34, 115-184, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Cove Road at the corner of Coastal Highway. 911 Address: 39535 Cove Road, #1, Bethany Beach. Zoning District: MR. Tax Parcel: 134-5.00-75.00-1



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



**Case No. 12698 – Cathy Harris** seeks variances from the side yard setback requirement for existing structures. (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Pondview Drive within the Red Mill Manor Subdivision. 911 Address: 31274 Pondview Drive, Lewes. Zoning District: AR-1. Tax Parcel: 235-23.00-12.00

**Case No. 12699 –Bruce Sentman Jr.** seeks variances from the rear yard setback requirement for a proposed structure. (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Sheep Pen Road approximately 135 feet from Godwin School Road. 911 Address: 24230 Sheep Pen Road, Millsboro. Zoning District: AR-1. Tax Parcel: 133-16.00-73.03

**Case No. 12700 – Lara Weathersbee** seeks variances from the front yard setback requirement for proposed structures (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the north west side of Shady Ridge Drive within the Shady Ridge Subdivision. 911 Address: 125 Shady Ridge Drive, Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-580.00

**Case No. 12701– American Legion, Oak Orchard-Riverdale Post 28, Department of Delaware, Inc.** seeks a special use exception to operate a temporary sales tent. (Sections 115-83.6 and 115-210 of the Sussex County Zoning Code). The property is located on the southwest side of Legion Road approximately 0.7 miles from John J. Williams Highway. 911 Address: 31768 Legion Road, Millsboro. Zoning District: CR-1. Tax Parcel: 234-29.00-263.00

**Case No. 12702– KIR Associates - Bridgeville LLC co R&R Commercial Realty - Cindy Yencer** ~~seeks a special use exception to operate a temporary sales tent. (Section 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the southeast corner of Bridgeville Center Road and Seashore Highway. 911 Address: 9577, 9537 & 9561 Bridgeville Center, Bridgeville. Zoning District: C-1. Tax Parcel: 131-15.00-24.04~~ – **WITHDRAWN**

### **Additional Business**

**Case No. 12225 – Old Orchard Ventures, LLC – Time Extension**

**Case No. 12587 – Rollin & Lisa Bell – Time Extension**

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-MEETING DETAILS-

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on May 26, 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://sussexcountysde.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://sussexcountysde.gov/agendas-minutes/board-of-adjustment>

If any member of the public would like to submit comments electronically, these may be sent to [pandz@sussexcountysde.gov](mailto:pandz@sussexcountysde.gov). All comments are encouraged to be submitted by 4:30 P.M. on Thursday, June 2, 2022.

####





**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 # 12686  
Hearing Date 5/2  
202203178

Type of Application: (please check all applicable)

Variance ☒

Special Use Exception ☐

Administrative Variance ☐

Appeal ☐

Existing Condition ☐

Proposed ☒

Code Reference (office use only)

115-42 115-182  
115-185

Site Address of Variance/Special Use Exception:

30102 Pinecrest Drive, Ocean View, DE 19970

Variance/Special Use Exception/Appeal Requested:

9.9' variance into 40' side yard setback (Sandy Cove Road)  
(4' beyond existing block wall)

Tax Map #: 1-34 - 9.00 - 136.00

Property Zoning: GR

**Applicant Information**

Applicant Name: Kathy Harris

Applicant Address: 30102 Pinecrest Drive

City Ocean View State DE Zip: 19970

Applicant Phone #: (717) 203-9682 Applicant e-mail: \_\_\_\_\_

**Owner Information**

Owner Name: Kathy Harris

Owner Address: 30102 Pinecrest Drive

City Ocean View State DE Zip: 19970 Purchase Date: 7/18/19

Owner Phone #: (717) 203-9682 Owner e-mail: \_\_\_\_\_

**Agent/Attorney Information**

Agent/Attorney Name: Bradley A. Absher, PLS

Agent/Attorney Address: 35380 Atlantic Avenue

City Millville State DE Zip: 19967

Agent/Attorney Phone #: (302) 539-2488 Agent/Attorney e-mail: brad@truenorthls.com

**Signature of Owner/Agent/Attorney**



Date: 3/7/22





**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.

Due to the location and size of the property and it being a corner lot, a 40' side yard setback from Sandy Cove Road severely restricts the buildable area on the 107'± long property. With all setbacks taken into consideration, the buildable area is only 37% of the overall property.

---

**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 proposed placement of the 70' x 24' rectangular structure would extend into this setback by 9.9', despite minimizing the space on the opposite side of the property. To allow placement of the structure, a 9.9' variance is required.

---

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

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

There is no orientation of the purchased unit that will prevent an encroachment upon a side yard setback. The proposed placement of the unit intends to minimize the extension into the 40' setback from Sandy Cove Road by placing it as close to the opposite property line as possible.

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

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

If authorized, the proposed structure would only extend 4' beyond an existing block wall. Several houses directly to the east stand closer to the road than the proposed structure would; therefore, the proposed structure would not alter the appearance or character of the neighborhood. It would not affect adjacent properties.

---

**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.

When minimizing the opposite side yard of the property, the structure extends 10' into the side yard setback along Sandy Cove Road; therefore, no more than a 9.9' variance is being requested.



*AT Review*



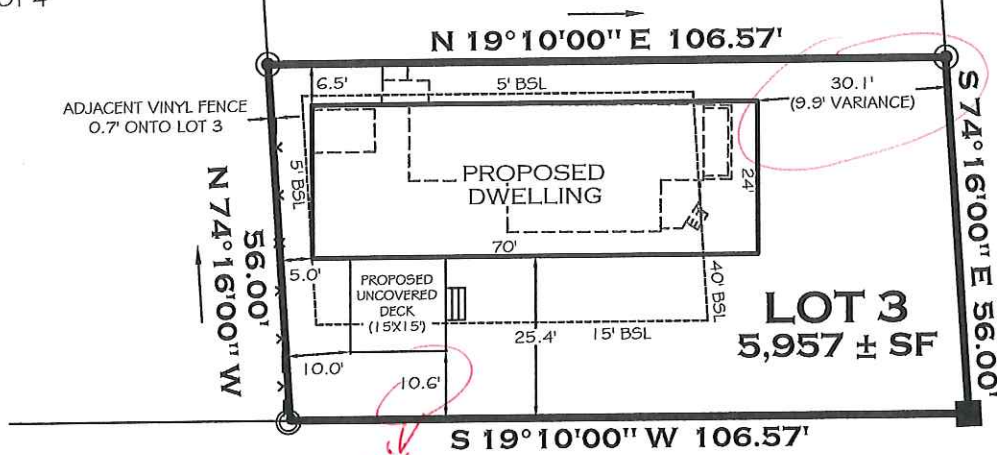
**SANDY COVE ROAD**  
40' RIGHT OF WAY

*9.9' var from 40' Front*

LOT 4

LOT 2

ADJACENT VINYL FENCE  
0.7' ONTO LOT 3



**PINECREST DRIVE**  
40' RIGHT OF WAY

**NOTES**

1. CLASSIFICATION OF SURVEY: SUBURBAN

2. ZONE: GR

3. BUILDING SETBACK LINES (BSL)  
FRONT (SANDY COVE) 40'  
SIDE 5'  
REAR 5'  
CORNER FRONT (PINECREST) 15'

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

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

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

*Bradley A. Absher*  
BRADLEY A. ABSHER, DE PLS # 735  
DATE 3.7.22

**LEGEND**

- IRON PIPE FOUND
- CONCRETE MONUMENT FOUND
- IRON ROD W/ CAP SET
- STRUCTURE TO BE REMOVED

TAX MAP	1-34 - 9.00 - 136.00
STATE	DELAWARE
COUNTY	SUSSEX
HUNDRED	BALTIMORE
TOWN	---
AREA	5,957 ± SQ. FT.
DEED REF.	2310 / 243
PLAT REF.	8 / 69
DRAWN BY	WTM
DATE	03 / 07 / 2022
SCALE	1" = 30'
SURVEY #	DE - 07991

**SITE  
PLAN**

**LOT 3, SECTION 3  
PINE CREST TERRACE**

FOR  
**JERRY L. HARRIS, II &  
KATHY A. CALDWELL HARRIS**

30102 PINECREST DRIVE, OCEAN VIEW, DE 19970

**TRUE NORTH**



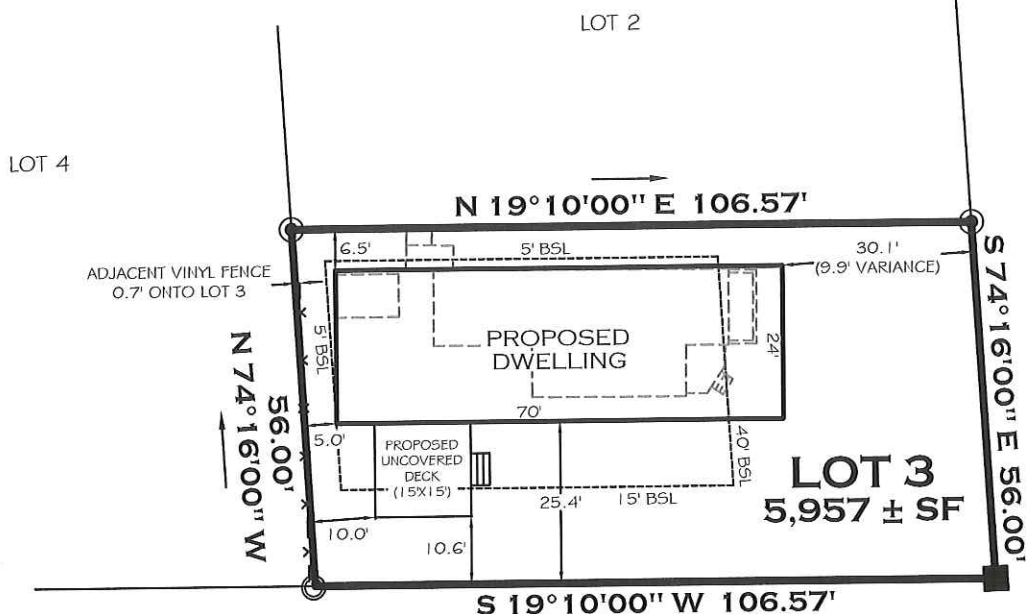
**LAND SURVEYING**

35380 ATLANTIC AVENUE  
MILLVILLE, DE 19967  
302-539-2488





**SANDY COVE ROAD**  
40' RIGHT OF WAY



**PINECREST DRIVE**  
40' RIGHT OF WAY

**NOTES**

1. CLASSIFICATION OF SURVEY: SUBURBAN

2. ZONE: GR

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BRADLEY A. ABSHER, DE PLS # 735  
DATE

3.7.22

**LEGEND**

- IRON PIPE FOUND
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TAX MAP	1-34 - 9.00 - 136.00
STATE	DELAWARE
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AREA	5,957 ± SQ. FT.
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**SITE  
PLAN**

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PINE CREST TERRACE**

FOR  
**JERRY L. HARRIS, II &  
KATHY A. CALDWELL HARRIS**

30102 PINECREST DRIVE, OCEAN VIEW, DE 19970

**TRUE NORTH**



**LAND SURVEYING**

35380 ATLANTIC AVENUE  
MILLVILLE, DE 19967  
302-539-2488



# **TRUE NORTH**



## **LAND SURVEYING**

35380 ATLANTIC AVENUE  
OCEAN VIEW, DE 19967  
302 - 539 - 2488

MARCH 7, 2022

SUSSEX COUNTY BOARD OF ADJUSTMENT  
GEORGETOWN, DE

TO WHOM IT MAY CONCERN,

PLEASE ACCEPT THIS LETTER AND THE ATTACHED VARIANCE APPLICATION REGARDING THE PROPERTY AT 30102 PINECREST DRIVE, OCEAN VIEW, DE 19970. THE UNIT PURCHASED TO BE PLACED ON THIS PROPERTY EXCEEDS THE LENGTH OF THE BUILDABLE AREA BY A MINIMUM OF 9.9' DUE TO A SIGNIFICANT SIDE YARD SETBACK OF 40' FROM SANDY COVE ROAD. ALTHOUGH AN EFFORT WAS MADE TO ADJUST PLACEMENT ON THE PROPERTY, AN ENCROACHMENT CAN'T BE AVOIDED. IN AN EFFORT TO MAINTAIN THE CURRENT AESTHETIC OF THE PROPERTY, PLACEMENT IS PROPOSED SUCH THAT THE UNIT REMAINS PARALLEL TO PINECREST DRIVE, REMAINS A SIMILAR DISTANCE FROM THE ADJACENT STRUCTURE ON LOT 2 TO THE WEST, AND WILL HAVE A SIMILAR PROPOSED ENCROACHMENT TO THAT OF EXISTING HOUSES TO THE EAST.

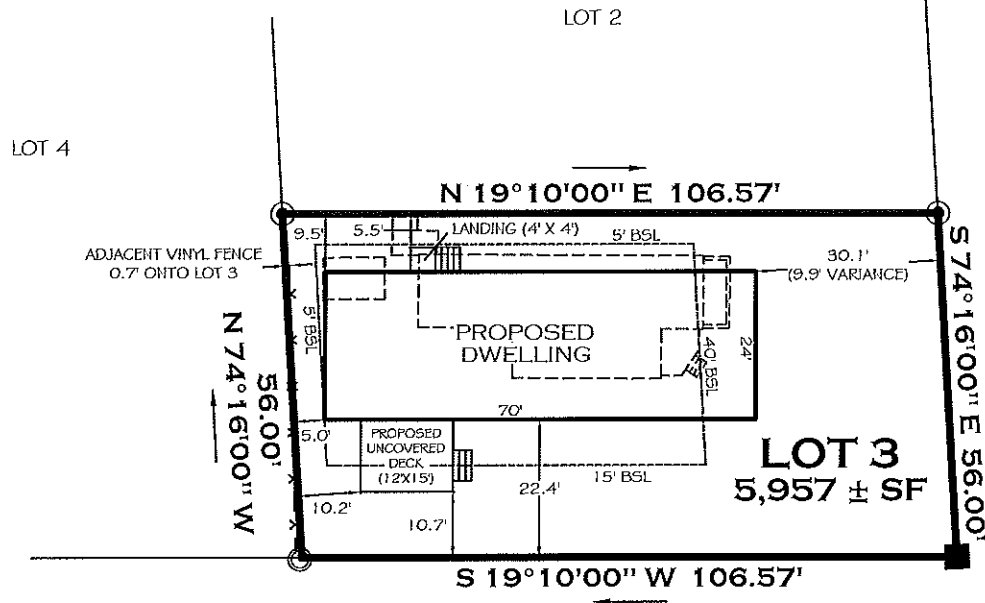
PLEASE ALLOW A VARIANCE OF NO MORE THAN 9.9' FOR THE SIDE YARD ALONG SANDY COVE ROAD.

THANK YOU FOR YOUR CONSIDERATION,

  
BRADLEY A. ABHSER, PRESIDENT  
DE PROFESSIONAL LAND SURVEYOR # 735



**SANDY COVE ROAD**  
**40' RIGHT OF WAY**






## NOTES

1. CLASSIFICATION OF SURVEY: SUBURBAN
2. ZONE: GR
3. BUILDING SETBACK LINES (BSL)
- |                          |     |
|--------------------------|-----|
| FRONT (SANDY COVE)       | 40' |
| SIDE                     | 5'  |
| REAR                     | 5'  |
| CORNER FRONT (PINECREST) | 15' |

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### LEGEND

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 --- STRUCTURE TO BE REMOVED

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TOWN	- - -
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DEED REF.	2310 / 243
PLAT REF.	8 / 69
DRAWN BY	WTM
DATE	04 / 05 / 2022
SCALE	1" = 30'
SURVEY #	DE - 07991

# SITE PLAN

**LOT 3, SECTION 3  
PINE CREST TERRACE**

FOR  
JERRY L. HARRIS, II &  
KATHY A. CALDWELL HARRIS

30102 PINECREST DRIVE, OCEAN VIEW, DE 19970

# TRUE NORTH



## LAND SURVEYING

35380 ATLANTIC AVENUE  
MILLVILLE, DE 19967  
302-539-2488





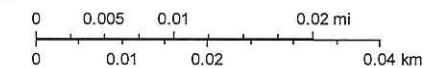
# Sussex County



PIN:	134-9.00-136.00
Owner Name	HARRIS JERRY L II & KATHY A
Book	2310
Mailing Address	211 BROAD ST
City	LANDISVILLE
State	PA
Description	PINE CREST TERRACE
Description 2	LOT 3
Description 3	SEC 3
Land Code	

- polygonLayer  
Override 1
- 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
  - Special Access ROW
  - Extent of Right-of-Way
  - 2007 Head of Tide Wetlands (not regulatory)
  - Conditional Use

1:564





RECEIVED

APR 04 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 # 12696  
Hearing Date 6-6-22

2022 04 72 9

Type of Application: (please check all applicable)

Variance ☒

Special Use Exception ☐

Administrative Variance ☐

Appeal ☐

Existing Condition ☐

Proposed ☒

Code Reference (office use only)

115-34 115-184  
115-185

Site Address of Variance/Special Use Exception:

39532 Dune Rd, #2, Bethany Beach, DE 19930

Variance/Special Use Exception/Appeal Requested:

*Requesting 3.5' Var from 3.5' max height req for a prop. Fence*

Fence construction behind unit on common property shared with 39535 Cove Rd, #1 (separate application)

Tax Map #: 134-5-74 - 2

Property Zoning: MR

Applicant Information

Applicant Name: Owen Kirby

Applicant Address: 5133 Baltan Rd

City Bethesda State MD Zip: 20816

Applicant Phone #: 301-633-8025 Applicant e-mail: ohkirby@hotmail.com

Owner Information

Owner Name: Same as above

Owner Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_ Purchase Date: \_\_\_\_\_

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

Agent/Attorney Information

Agent/Attorney Name: \_\_\_\_\_

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

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

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

Signature of Owner/Agent/Attorney

Date: 3/30/22





**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.

**Common area shared with property at 39535 Cove Rd is adjacent to Route 1 and is exposed to both dangerous traffic and the added hazard to children and pets of a drainage ditch that runs along both properties. A variance would allow us to place a fence within the currently required setback to mitigate these safety risks.**

**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.

**A fence set within the current zoning provisions would obstruct access to the common area shared with the property at 39535 Cove Rd due the proximity of both units to Route 1 and the placement of the units and property lines. The applicant is also requesting a variance to erect a fence higher than 3.5 feet for added safety for children and pets in the common area.**

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

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

**Applicant is not responsible for the current placement of the unit and the property lines for which the variance is being requested.**

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

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

**The fence, which has been approved by the Tower Shores Beach Association, will have no impact on the use or development of adjacent property, and is being proposed to enhance the safety and use of the common area shared with 39535 Cove Rd.**

**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.

**Variance permitted, the fence will be erected within the applicant's property lines and will address safety issues arising from exposure of children and pets to the hazards of traffic on Route 1 and the drainage ditch that runs along the property.**



**NOTES:**

- 1) CLASS "B" SUBURBAN SURVEY 892, PAGE 124
- 2) SOURCE OF TITLE DEED BOOK 183, PAGE 73
- 3) THIS BOUNDARY SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A COMPLETE TITLE REPORT AND IS SUBJECT TO ANY ENCUMBRANCES, RESTRICTIONS, EASEMENTS AND/OR RIGHTS OF ANY THAT MIGHT BE REVEALED BY A THOROUGH TITLE SEARCH.

**LEGEND:**

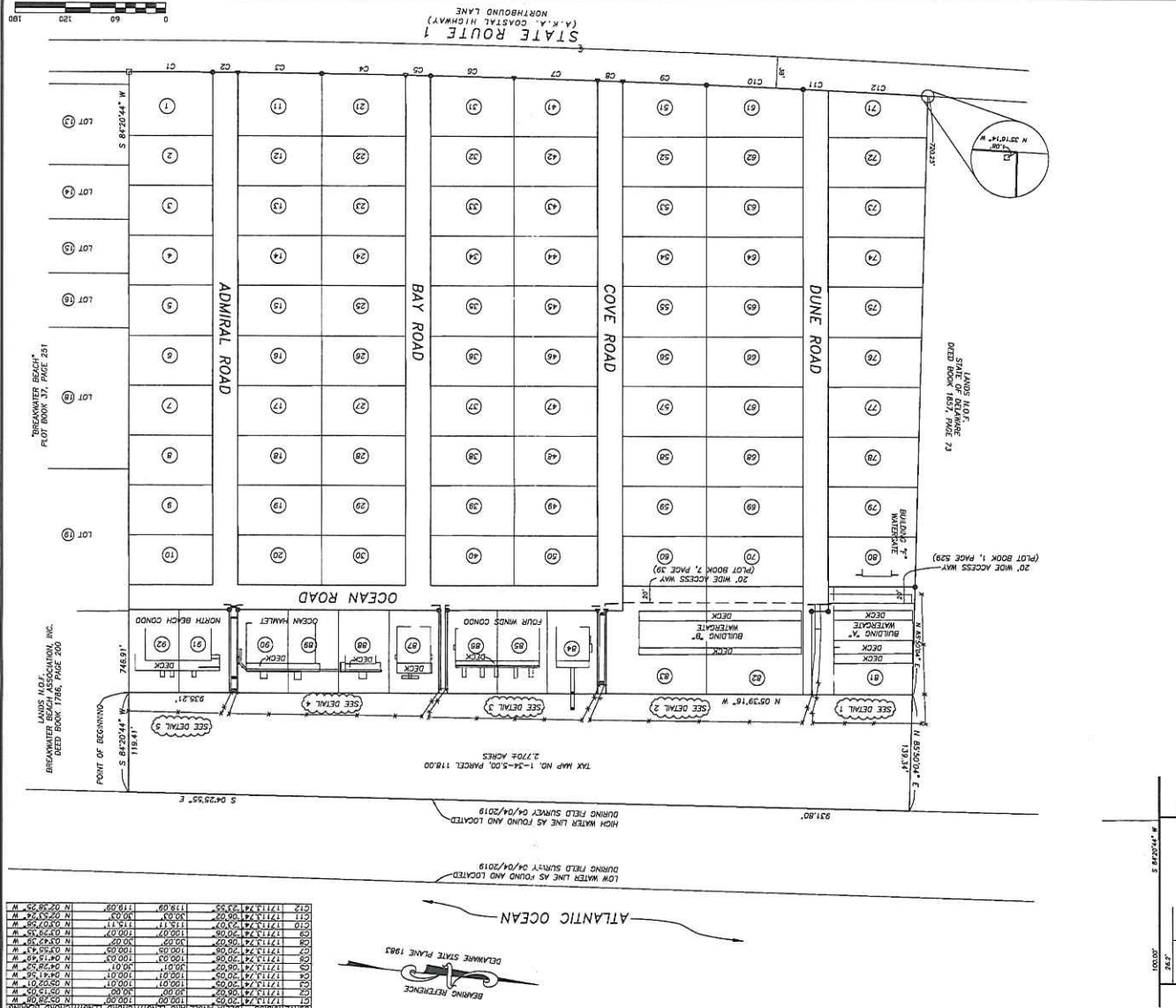
- FENCE
- SET BACK BAY
- FOUND IRON BAR
- FOUND CONCRETE MONUMENT
- FOUND IRON BAR
- FOUND CONCRETE MONUMENT

**BOUNDARY SURVEY PLAN**

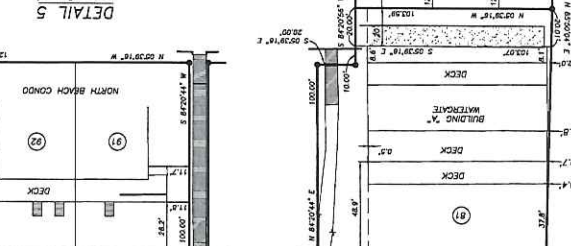
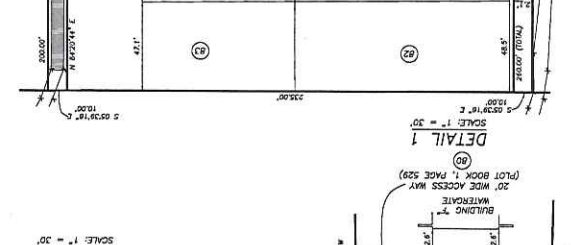
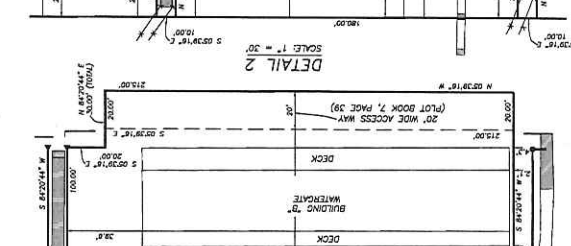
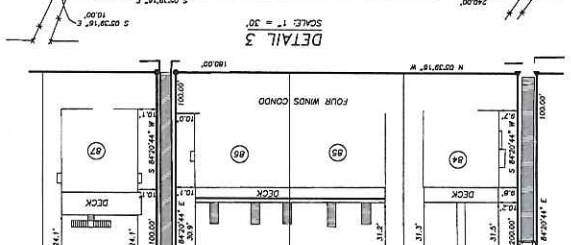
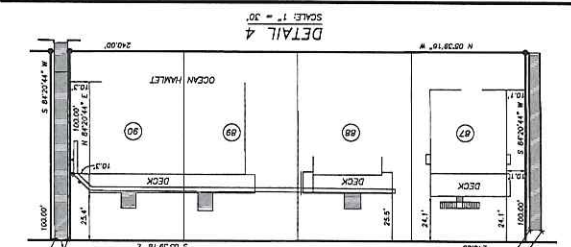
Prepared By: JAMES H. KEMP, III, P.L.S. 541  
Reviewed By: JAMES H. KEMP, III, P.L.S. 541  
DATE: MAY 20, 2019  
SCALE: 1" = 60'

SHARED IN: GEORGETOWN, DELAWARE 19347  
217 SOUTH RACE STREET  
AND ADJACENT  
PROFESSIONAL LAND SURVEYORS  
JAMES H. KEMP, III, P.L.S. 541  
WWW.JHKSURVEY.COM  
PHONE: (302) 858-8899

TOWERS SHORES BEACH ASSOCIATION



TAX MAP NO. 1-34-5.00, PARCELS 63.00 (PORTIONS) & 118.00



TAX MAP NO. 1-34-5.00, PARCELS 63.00 (PORTIONS) & 118.00



POINT OF BEGINNING

$R=17113.72'$   
 $\Delta=00^{\circ}23'07''$   
 $L=115.11'$   
 $C=115.11'$   
 $BRG=N\ 03^{\circ}06'04''\ W$

DUNE ROAD

(30' WIDE)

N  $84^{\circ}22'50''\ E$

57.69'

LOT (61)

31.0'

15.05'

10.1'

DECK

34.0'

FRAME BUILDING

ON PILINGS

44.0'

S  $05^{\circ}37'10''\ E$

LOT (62)

FLOOD ZONE AE  
 MAP 100029 0510 F  
 BASE FLOOD ELEVATION = 8'

LEGEND:

○ SET IRON BAR

NOTE:

CLASS "B", SUBURBAN SURVEY

Prepared By  
 ADAMS-KEMP ASSOCIATES, INC.  
 PROFESSIONAL LAND SURVEYORS  
 AND PLANNERS  
 217 SOUTH RACE STREET  
 GEORGETOWN, DELAWARE 19947  
 PHONE: (302) 855-5899

CHARLES E. ADAMS, JR., P.L.S. 506

ROUTE ONE

17.5'

S  $84^{\circ}22'50''\ W$

21.9'

LOT (51)

62.75'

115.00'

LOT (52)

## LOT AND LOCATION SURVEY PLAN

PREPARED FOR

NOMAD, INC.

FOR PROPERTY KNOWN AS  
 LOT 61, REVISED PLAT OF TOWERS SHORE  
 PLOT BOOK 3, PAGE 14A  
 SITUATED IN  
 BALTIMORE HUNDRED  
 SUSSEX COUNTY  
 STATE OF DELAWARE  
 AREA: 6,933± SQ. FT.  
 SCALE: 1"=20'  
 DATE: APRIL 13, 2004

PLOT BOOK 3, PAGE 14A

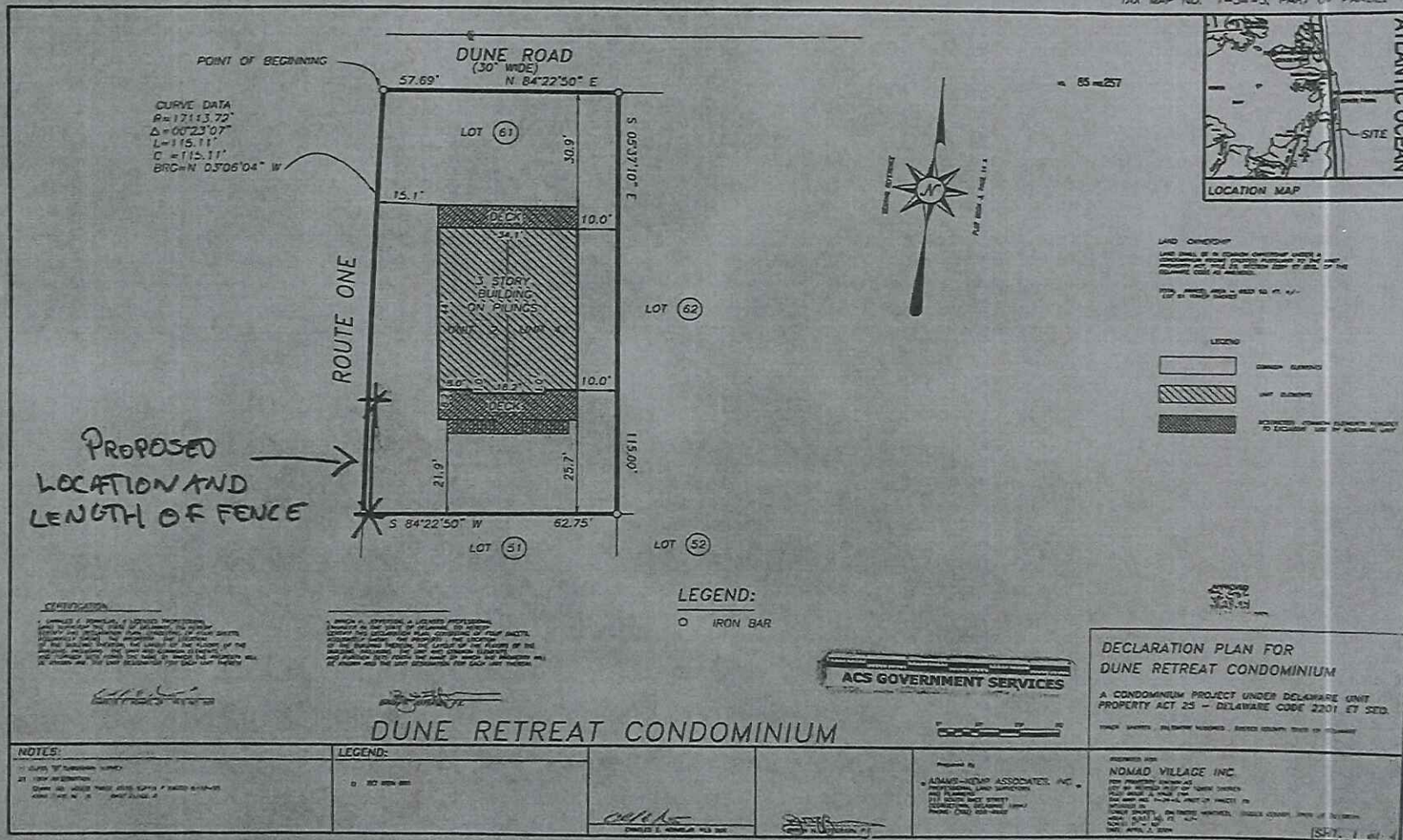






## 27479

TAX MAP NO. 1-34-5, PART OF PARCEL 74





**Amy Hollis**

---

**From:** Owen Kirby <kirbyoh@gmail.com>  
**Sent:** Thursday, April 7, 2022 2:56 PM  
**To:** Planning and Zoning  
**Subject:** Application 202204729

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

Please find attached a sketch of the proposed fence location for our property at 39532 Dune Rd, #2 for inclusion with our variance application.

Thank you,

Owen Kirby



Amy Hollis

Support  
exhibit

**From:** Troyce Gatewood <troyce@troycegatewood.com>  
**Sent:** Saturday, May 14, 2022 6:19 PM  
**To:** Planning and Zoning  
**Cc:** Troyce Gatewood  
**Subject:** Case 12696 and 12697

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

Troyce & Joe Gatewood  
39535 Cove Road Unit 3  
Bethany Beach, DE 19930

Planning & Zoning Department  
Sussex County, DE

Dear Planning & Zoning Members,

We are the adjoining neighbors at 39535 Cove Road. Our front door is less than 15 yards from the highway and with no existing fence, we are concerned for the safety of our family, guests, and pets. Please approve the variance for case numbers 12696 and 12697. We are in favor of the fence being built.

Thank you,  
Troyce & Joe Gatewood  
301-379-9441  
troyce@troycegatewood.com; jgatewood@equityunited.com



Amy Hollis

Support  
exhibit

**From:** Owen Kirby <ohkirby@hotmail.com>  
**Sent:** Monday, May 16, 2022 2:56 PM  
**To:** Planning and Zoning  
**Subject:** Variance Application #202204729

**Categories:** Amy

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

Please find below concurrence from our neighbor at 39532 Dune Rd, #4, Charles Stephens, for the variance we are seeking for the fence behind our property.

Thank you,

Owen Kirby

---

**From:** Charles Stephens <charles.stephens2@gmail.com>  
**Sent:** Monday, May 16, 2022 2:42 PM  
**To:** Owen Kirby <ohkirby@hotmail.com>  
**Subject:** Re: Fence

Yes absolutely.

Sent from my iPhone

On May 16, 2022, at 14:31, Owen Kirby <ohkirby@hotmail.com> wrote:

Charles,

I know you signed off on this late last year, but wanted to confirm that you still support our installing a fence along Route 1 behind our property. It will be shared with Ann Purcell, who is immediately behind us on Cove Rd. As we seek to install a 6-foot white picket, we have to obtain a variance both for the height and its proximity (set back) to Route 1. The County hearing is on June 6.

Thank you,

Owen





# Sussex County

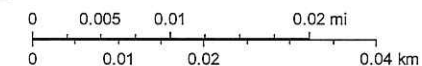
case 12696  
owen kirby

PIN:	134-5.00-74.00-10		
Owner Name	URICH	GERALD	R TTEE
Book	5209		
Mailing Address	11555 GULF BLVD UNIT 111		
City	TREASURE ISLAND		
State	FL		
Description	SAND DUNE		
Description 2	UNIT 10		
Description 3			
Land Code			



- polygonLayer  
Override 1
- polygonLayer  
Override 1
- Tax Parcels
  - 911 Address
  - Streets
  - County Boundaries
- Tax Ditch Segments
- Tax Ditch Channel
  - DelDOT Maintained
  - HOA Maintained
  - Pipe - DelDOT
  - Pipe - Tax Ditch
  - Pipe - Private
  - Pond Feature
  - Special Access ROW
  - 2007 Head of Tide Wetlands (not regulatory)
  - Municipal Boundaries

1:564





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 # 12697  
Hearing Date 6-6-22

202204740

Type of Application: (please check all applicable)

Variance ☒

Special Use Exception ☐

Administrative Variance ☐

Appeal ☐

Existing Condition ☐

Proposed ☒

Code Reference (office use only)

115-34 115-184

115-185

Site Address of Variance/Special Use Exception:

39535 Cove Rd #1 Bethany Beach, DE 19930

Variance/Special Use Exception/Appeal Requested:

Requesting 35' var from 35' max height req. for prop. Fence  
Fence construction - common area of fencing will  
be shared with Kirby residence (separate variance application)

Tax Map #: 134-05.00-75.00-1

Property Zoning: MR

Applicant Information

Applicant Name: Ann Purcell

Applicant Address: 506 Third St

City Annapolis State MD Zip: 21403

Applicant Phone #: 410-693-4515 Applicant e-mail: apurcell2244@gmail.com

Owner Information

Owner Name: Ann Purcell + Barbara Goyette

Owner Address: 506 Third St

City Annapolis State MD Zip: 21403 Purchase Date: Jan 2021

Owner Phone #: 410-693-4515 Owner e-mail: apurcell2244@gmail.com

Agent/Attorney Information

Agent/Attorney Name:

Agent/Attorney Address:

City State Zip:

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

Signature of Owner/Agent/Attorney



Date: 3/21/2022





## **Purcell Variance Application**

### **1. Uniqueness of Property**

Our lot is adjacent to Rt. 1, and shares a grassy common area with the lot behind us on Dune Rd. There is no barrier between our properties and the dangerous drainage ditch and busy highway. In order to erect a fence for safety purposes on our property lines, we need a variance to place the fence within the currently required setback. **(See Photo #1)**

There is also a berm on Route 1, which brings the pavement even closer to our side entrance and outdoor shower. This creates an additional safety and privacy deficit for people and pets using the side door, back stairs and shower.

**(See Photos #2 and #3)**

### **2. Cannot Otherwise be Developed**

Placing the fence within the current provisions of the Zoning Ordinance or code would not allow us access to the back yard common area, as our back stairs and pilings would not allow for passage between the house and the fence. (see Photo 3) We are also asking to be granted permission for the fence to be higher than the allowed 3.5 feet along the side of the house to offer safety and privacy for people and pets using the side door and shower area. I have come out of my side door, surprised by someone by our shower, who accessed the property from the road. **(See fence plan sketch)**

### **3. Not Created by the Applicant**

The current placement of the house and property lines have not been created by the applicant

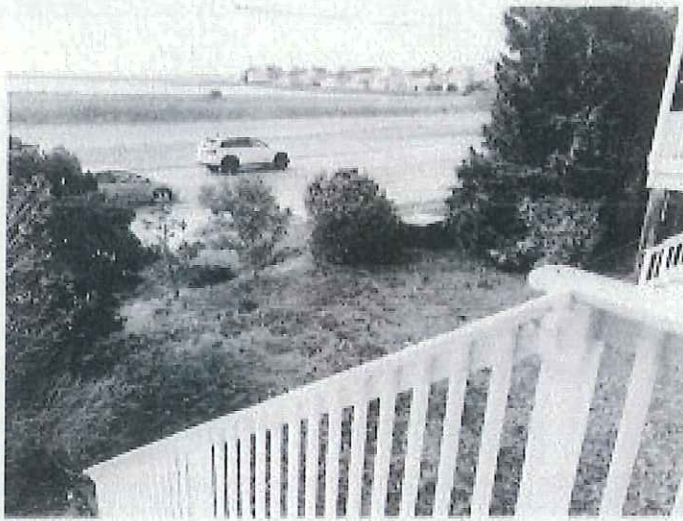
### **4. Will not alter the essential character of the neighborhood**

The fence has been approved by the Tower Shores Board of Directors. It is a much needed safety feature to keep people and pets protected from the busy highway, as well as for keeping trash and debris from being blown into the neighborhood.

### **5. Minimum Variance**

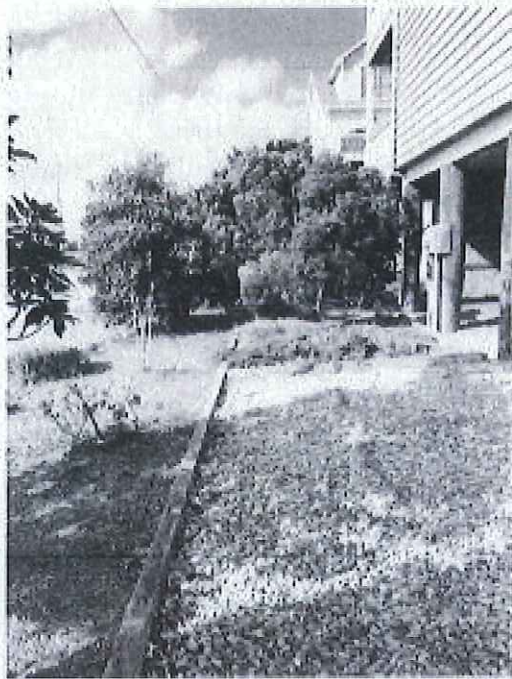
The requested variance will keep the fence within the owner's property lines, offering maximum usage of the property while providing a much needed safety feature for people and pets.





①

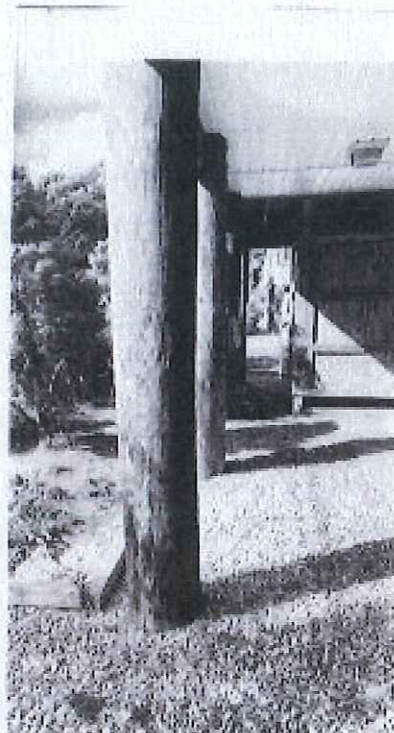
grassy area between Purcell / Kirby homes



②

← shower + side door - Purcell

Berm  
on  
Rt 1 →

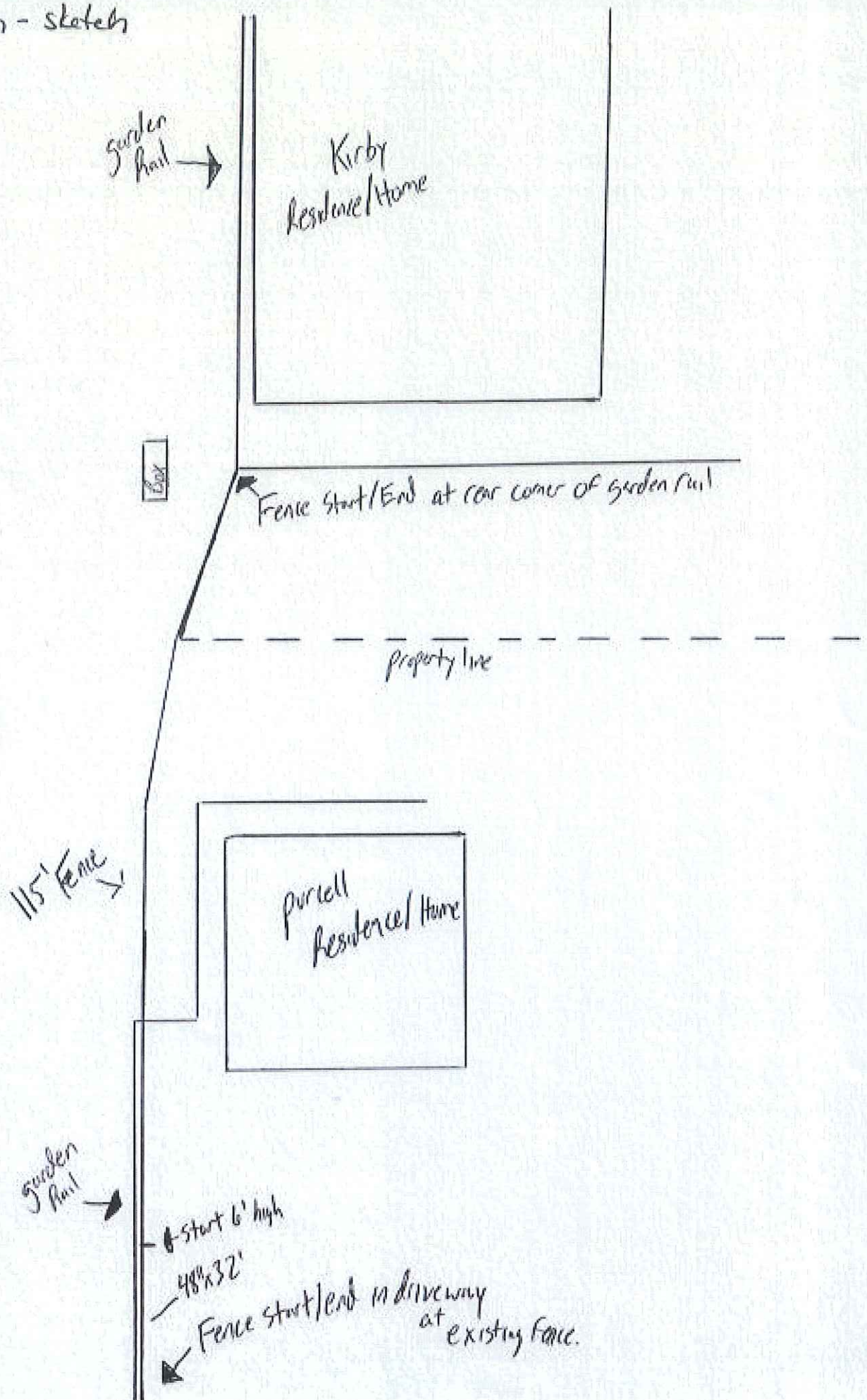


③

← narrow access to back yard due to pilings and stairs



# Fence plan - sketch





(1-4)

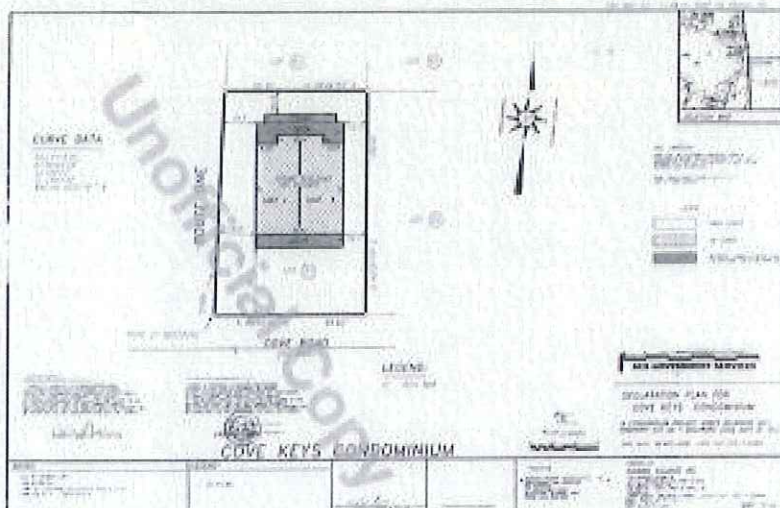
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## Document Information

Instrument # 2003000054028  
Book/Page P 81 / 252  
Record Date 09/09/2003 11:54:00 AM  
Book Type P

Doc Type PLOT-P  
Number of Pages 4  
1 | Direct NOMAD VILLAGE INC  
COVE KEYS CONDOMINIUM

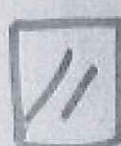
Tax Map  
Reference  
Doc. Legal's BAH DECL PLAN






# CURVE DATA

$R=17113.72'$   
 $\Delta=00^{\circ}20'06''$   
 $L=100.07'$   
 $C=100.07'$   
 $BRG=N\ 03^{\circ}27'41''\ W$

 = 3.5'  
 max

 = 7.0'  
 max

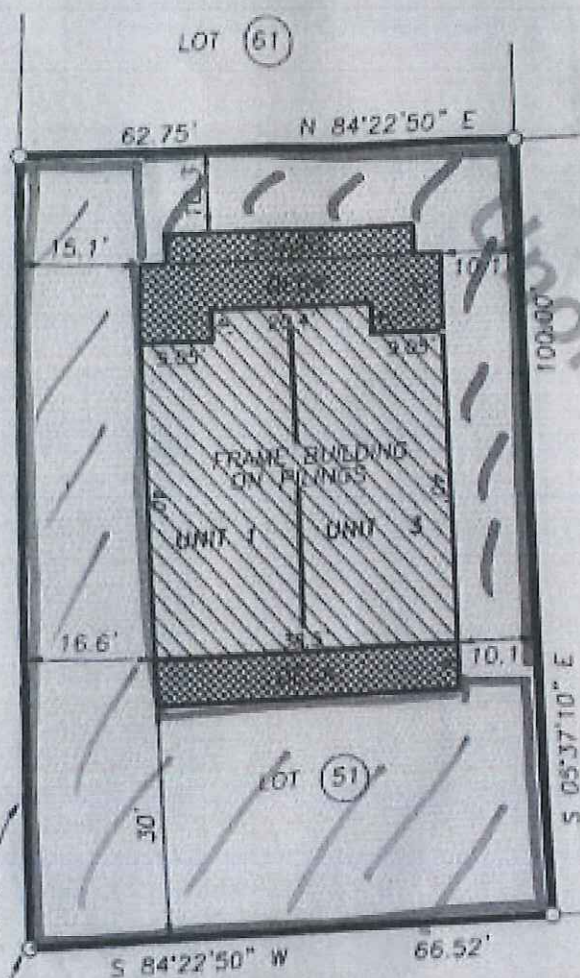
POINT OF BEGINNING

COVE ROAD  
 (30' WIDE)

LEGEND:

ROUTE ONE

CURVE



CERTIFICATION



**Fwd: New Entry:Contact Form**

Miles Weigold <towershoresbeach@gmail.com>

To: apurcell2244@gmail.com

Cc: Karen Castle <karen@thecastlefamily.org>, Owen Kirby <ohkirby@hotmail.com>, "TSBA,Miles Weigold" <TSBA.miles@mac.com>

Mon, Mar 14, 2022 at 2:30 PM

Hi Ann,

→ Attached is a copy of the Minutes of the January, 2022 TSBA Board meeting minutes. Under "President's Message" you will find reference to your request to erect a fence which was unanimously approved.

→ This should be sufficient evidence of TSBA approval for Sussex Co Planning and Zoning. If you have any issues, please let us know.

Best,  
Miles

Sent on behalf of the Tower Shores Communications Committee

Begin forwarded message:

**From:** Tower Shores Beach Association <towershoresbeach@gmail.com>

**Subject:** New Entry:Contact Form

**Date:** March 14, 2022 at 9:32:18 AM MST

**To:** towershoresbeach@gmail.com

**Reply-To:** apurcell2244@gmail.com

**Name**

Ann Purcell

**Email**

apurcell2244@gmail.com

**Comment or Message**

During the January 2022 meeting, the board gave approval for Owen Kirby and I to erect a fence along our property lines to have a barrier from the Route 1 traffic. The county is requiring a variance application, because the fence will be within a 15' setback from the highway. Could I please get an "official" approval letter from the board to attach with our application that says it was approved? The county will apparently also be contacting the homeowners within 200' of the fence for feedback as well. Thanks.

Ann Purcell



# **Tower Shores Board Meeting Minutes**

**01/11/2022 - Revised**

Meeting was called to order by Karen Castle, President at 7:30 PM EST

Board attendees: Karen Castle, Carey Horchler, Pierce Bates, Owen Kirby, Brad Newcomer, Tony Nerlinger, Tom Seamon, Mike Stang.

Community Attendees: Dan Cohen, Mike Briglia, Liz McElwee, Jewel Sang, Debbie Strobyski-Jezyk, Jim Croker, Ann Purcell, Robert Maloney, Tom Binckley, Debbie Schick, Ken Adams, Matt Krafft, Rory Schick, Andrew Fenzel, Ari Elkin, Steve Plotkin, Tim Collins, Sherry Croker, Greg Culver, Karen Newcomer, Mimi Lloyd, Miles Weigold.

## **Approval of December Minutes**

- Brad Newcomer requested an update of the December minutes to reflect vote of Board on whether to continue pursuing issue of lifeguards on the beach. The minutes will be updated and posted on the website

## **President's Message – Karen Castle**

- Looking ahead to the 2022 season
- Thanks to all volunteers in the community
- Owen Kirby & Ann Purcell requested approval of installation of a fence between their properties running parallel to Route 1. After discussion the Board approved the request unanimously.

## **Financial Update – Carey Horchler**

- Republic bill for trash & recycle paid
- Last outstanding 2021 dues payment has been received
- Need to begin 2022 budget process. Will seek assistance from Dennis O'Brien who has helped in the past.

## **Landscape Update – Brad Newcomer**

- Soliciting competitive bids to potentially replace current landscape vendor
- Trees trimmed along Admiral Rd
- General clean-up has taken place including curbs damaged by trucks, wind damage
- Everything should be in good shape by Memorial Day

## **Trash & Recycling Update – Mike Stang**

- Delayed pick up due to recent snowstorm. Note was posted on website Forum.

## **Communications Update – Miles Weigold & Dan Cohen**

- Nothing to report

## **Winter Manager Update – Pierce Bates**

- Quiet with exception of a few burst or leaking pipes in the community.
- Recommendation made to unhook hoses to prevent freezing of bibs.
- Spring beach cleanup to include entire community including along Rte. 1.

## **Restrictive Covenants Committee – Elizabeth Frazee**

- Next meeting to be held via Zoom call on Weds, 1/19. Information will be posted on the website.



Fence plan - sketched  
39535 Cove Rd #1

Application # 202204740

garden rail →

Kirby  
Residence/Home

6 foot fence

4' fence

door

Fence start/End at rear corner of garden rail

property line

115' fence  
@ 6'

Rt 1 North

Purcell  
Residence/Home

Back  
door

garden rail →

Start 6' high

48' x 32' @ 4'

Fence start/end in driveway  
at existing fence.



Amy Hollis

Support  
exhibit

**From:** Troyce Gatewood <troyce@troycegatewood.com>  
**Sent:** Saturday, May 14, 2022 6:19 PM  
**To:** Planning and Zoning  
**Cc:** Troyce Gatewood  
**Subject:** Case 12696 and 12697

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

Troyce & Joe Gatewood  
39535 Cove Road Unit 3  
Bethany Beach, DE 19930

Planning & Zoning Department  
Sussex County, DE

Dear Planning & Zoning Members,

We are the adjoining neighbors at 39535 Cove Road. Our front door is less than 15 yards from the highway and with no existing fence, we are concerned for the safety of our family, guests, and pets. Please approve the variance for case numbers 12696 and 12697. We are in favor of the fence being built.

Thank you,  
Troyce & Joe Gatewood  
301-379-9441  
troyce@troycegatewood.com; jgatewood@equityunited.com



Amy Hollis

Support  
exhibit

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**To:** Planning and Zoning  
**Subject:** Variance Application #202204729

**Categories:** Amy

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Thank you,

Owen Kirby

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**To:** Owen Kirby <ohkirby@hotmail.com>  
**Subject:** Re: Fence

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Sent from my iPhone

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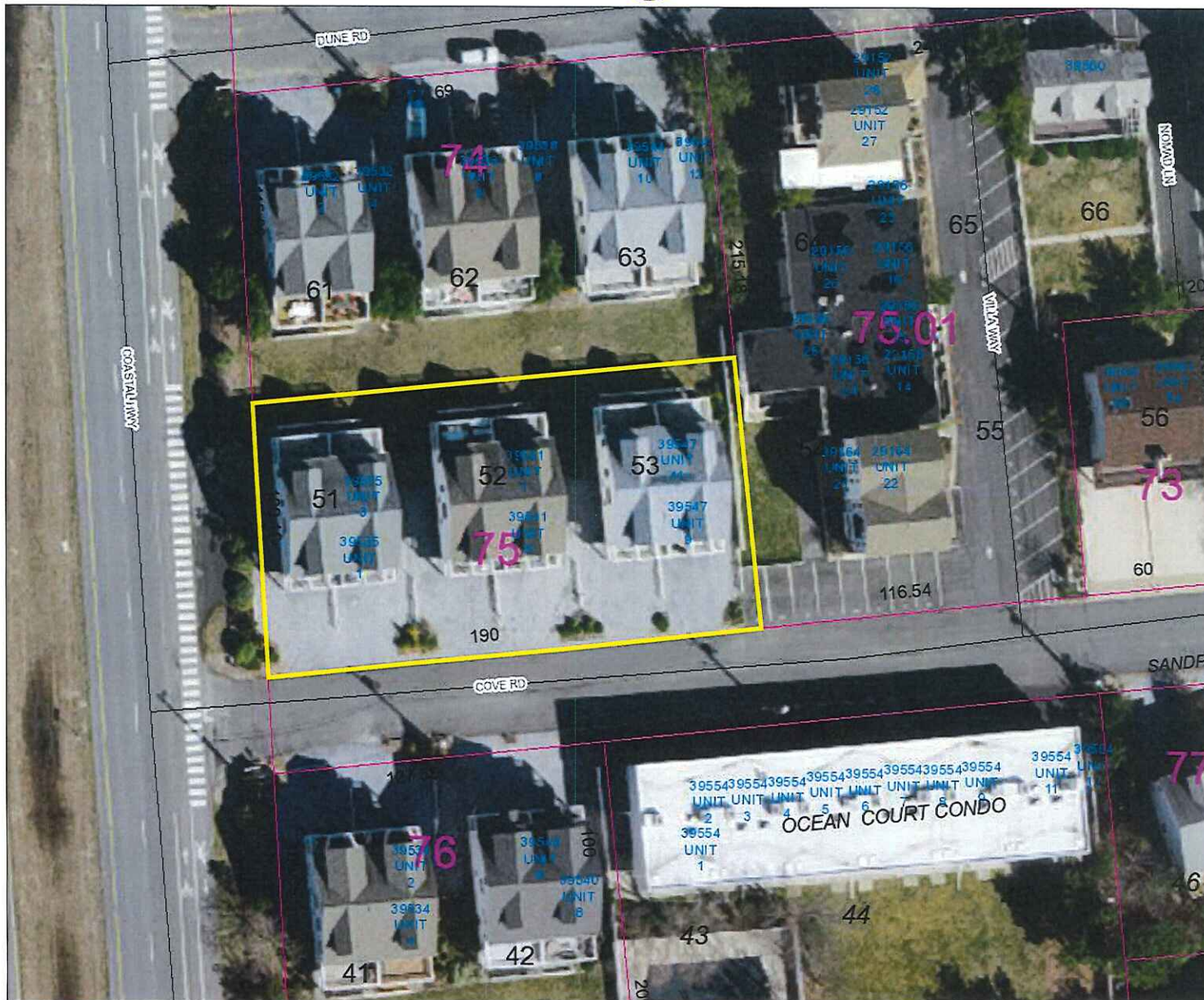
Owen





# Sussex County

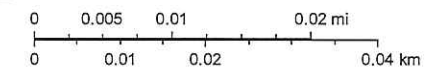
Case 12697  
Ann Purcell



PIN:	134-5.00-75.00
Owner Name	NOMAD VILLAGE INC
Book	2558
Mailing Address	2404 NE 13TH ST
City	FORT LAUDERDALE
State	FL
Description	TOWER SHORES
Description 2	COVE RD LOTS 5153
Description 3	
Land Code	

- polygonLayer  
Override 1
- 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
  - Special Access ROW
  - 2007 Head of Tide Wetlands (not regulatory)
  - Municipal Boundaries

1:564





Case # 12698

Hearing Date \_\_\_\_\_

**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

Tentative Date 6-6-22

**Type of Application: (please check all applicable)**Variance ☒Special Use Exception ☐Administrative Variance ☐Appeal ☐Existing Condition ☒Proposed ☐

Code Reference (office use only)

115-25 115-183

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

31274 Pondview Dr. Lewes DE 19958

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

House Corner is 1.8 ft from neighbor's property line. It has been that way prior to our purchase of the property 10/5/1981.

Tax Map #: 235-23.00-12.00

Property Zoning: AR-1

**Applicant Information**

Applicant Name: Cathy R. Harris

Applicant Address: 17685 Gravel Hill Rd

City Milton

State DE

Zip: 19968

Applicant Phone #: (302) 745-1011

Applicant e-mail: cschenker@comcast.net

**Owner Information**

Owner Name: Same

Owner Address: \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip: \_\_\_\_\_

Purchase Date: \_\_\_\_\_

Owner Phone #: \_\_\_\_\_

Owner e-mail: \_\_\_\_\_

**Agent/Attorney Information**

Agent/Attorney Name: N/A

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


City \_\_\_\_\_

State \_\_\_\_\_

Zip: \_\_\_\_\_

Agent/Attorney Phone #: \_\_\_\_\_

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

**Signature of Owner/Agent/Attorney**

 Cathy R Harris

Date: 4/7/2022





**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 building on this property was originally built in the 1940's and the addition creating the issue was built in 1984 by the previous owner.*

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 on the property existed before our purchase and no further development will be done.*

3. Not created by the applicant:

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

*We purchased the property in 2001, the building was already there and the addition was built in 1984.*

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.

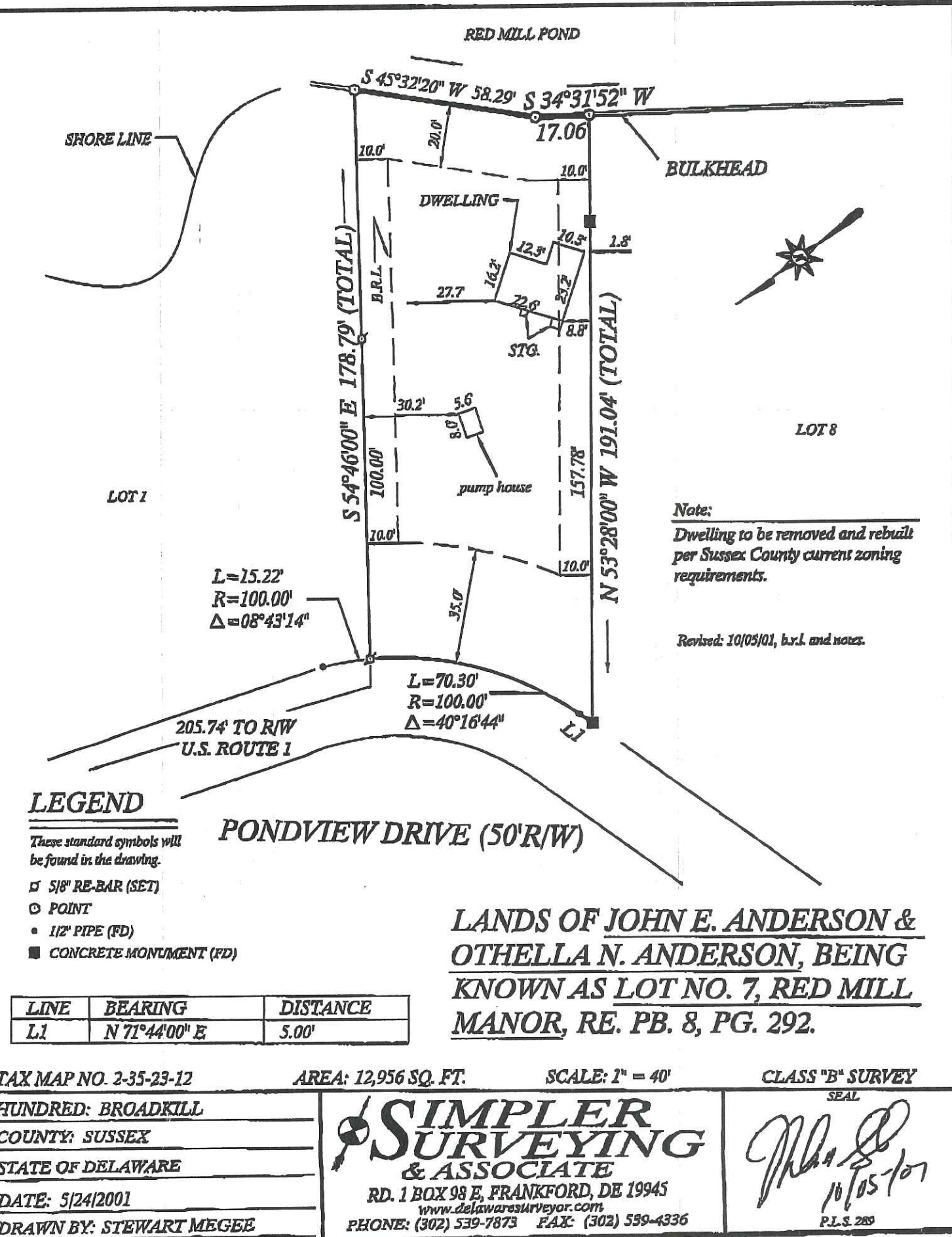
*The neighborhood is not affected by the building existing as is. The neighbor has never had any complaint of the building corner being 1.8 ft on his line.*

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.

*As the building has existed as is since 1984, there is no minimum variance.*









# Sussex County

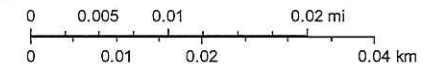


case 12698  
Cathy Harris

PIN:	235-23.00-12.00
Owner Name	PETERSON BARBARA J & CATHY R
Book	2637
Mailing Address	17685 GRAVEL HILL RD
City	MILTON
State	DE
Description	RED MILL MANOR
Description 2	LOT 7
Description 3	N/A
Land Code	

- polygonLayer
- Override 1
- polygonLayer
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Tax Ditch Segments
- Tax Ditch Channel
- DelDOT Maintained
- HOA Maintained
- Pipe - DelDOT
- Pipe - Tax Ditch
- Pipe - Private
- Pond Feature
- Special Access ROW
- 2007 Head of Tide Wetlands (not regulatory)
- Municipal Boundaries

1:564





**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 # 12699  
Hearing Date 6/6  
202205105  
RECEIVED

APR 08 2022

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

Variance ☒  
Special Use Exception ☐  
Administrative Variance ☐  
Appeal ☐

SUSSEX COUNTY  
PLANNING & ZONING  
Existing Condition ☐  
Proposed ☐  
Code Reference (office use only)  
115-25 115-185

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

24230 Sheep Pen Rd Millsboro De 19966

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

Variance for a proposed 28' X 32' addition to existing pole building to encroach 13' into the 20' rear setback.

**Tax Map #:** 1-33-16.00-73.03

**Property Zoning:** AR1

**Applicant Information**

Applicant Name: Bruce Sentman Jr  
Applicant Address: 24230 Sheep Pen Rd  
City Millsboro State De Zip: 19966  
Applicant Phone #: (302) 448-1071 Applicant e-mail: heli1085@hotmail.com

**Owner Information**

Owner Name: Bruce Sentman Jr  
Owner Address: 24230 Sheep Pen Rd  
City Millsboro State De Zip: 19966 Purchase Date: \_\_\_\_\_  
Owner Phone #: (302) 448-1071 Owner e-mail: heli1085@hotmail.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**

Bruce Sentman

Date: 4/8/22





**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.

The location of my septic system made me have to place the existing building to the rear of the property.

---

**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 lot is long and narrow and with deldot mandating where my driveway access went there was no option but to place the building so far back on property and in a manor that allowed for turn around for trailers for my mower business. That the conditional use was granted for in 2014.

---

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

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

There was no choice on how far back I had to place the existing building because of where my septic had to go and being able to have room to drive into front of building. I kept the existing building up as far as possible to still allow for turn around with vehilces with trailers.

---

**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 addition will not be seen from the front of the property. The existing building with block it. The roof will not be higher than the existing roof. The lot is narrow so side exposure is at a minimum.

---

**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.

I am going as wide as i can to be able to tie the roof together into existing building and to not be seen from the front. To keep from going deeper to minimize how far It will encroach into rear setback while keeping the building functional for me.



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

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

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

---

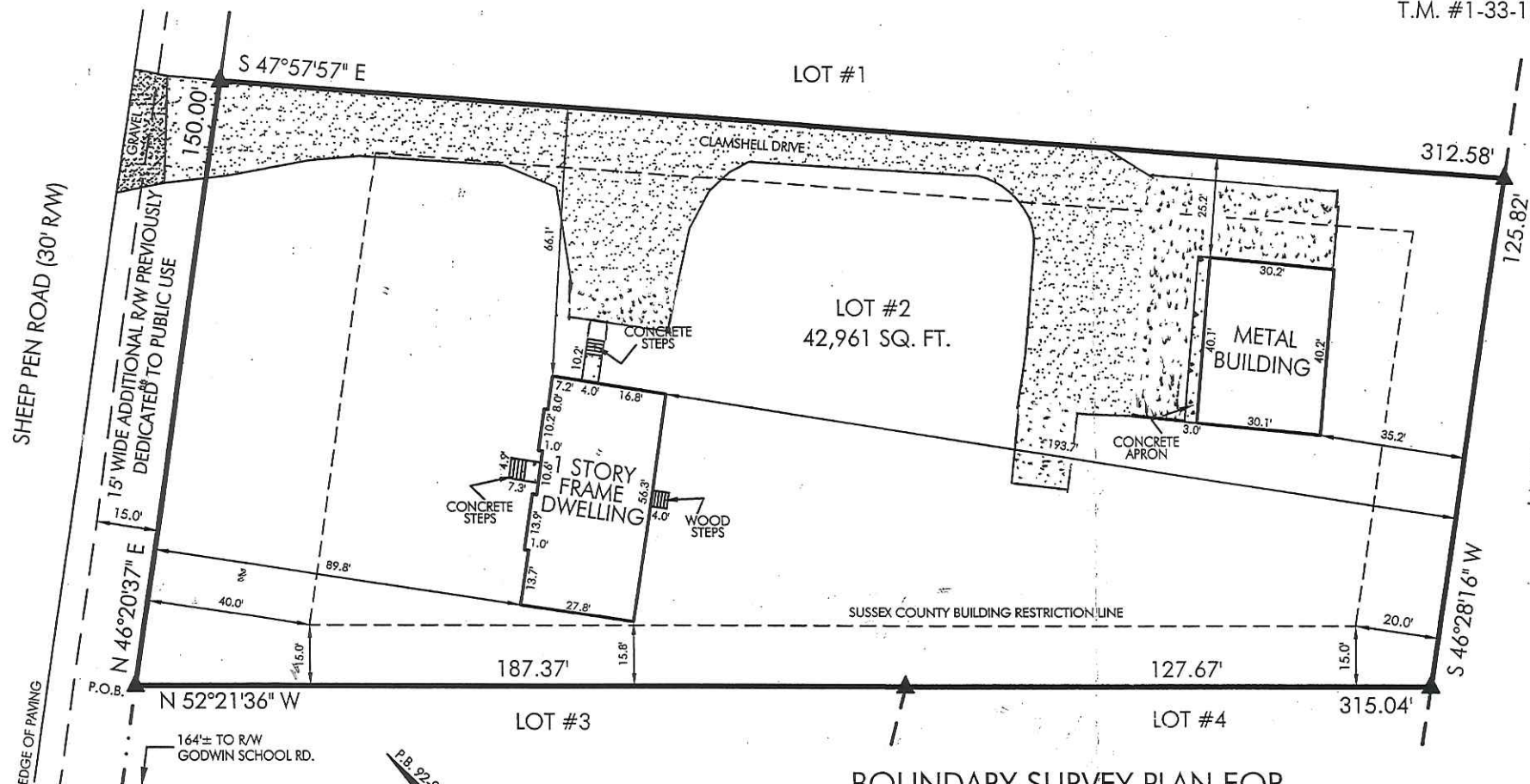
2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code. (Ex. Time limitations – 5 year maximum)

---

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

---





LANDS N/F  
KARL R. & LYNDA C. SMITH  
D.B. 1939-129

## BOUNDARY SURVEY PLAN FOR DONAWAY HOMES, INC.

LOT #2 OF "KARL R. & LINDA C. SMITH" SUBDIVISION

DAGSBORO HUNDRED SUSSEX COUNTY

STATE OF DELAWARE

JANUARY 2, 2014 SCALE: 1" = 40'

### LEGEND:

▲ IRON ROD (FOUND)

### NOTES:

ALL SETBACKS ARE THE RESPONSIBILITY OF THE HOME OWNER AND/OR GENERAL CONTRACTOR.

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

THOMAS S. MILLER  
LICENSE  
No. 775  
DELAWARE  
*Key & Rule*

Prepared by:

# FORESIGHT Services

Surveying & Precision Measurement

302 226 2229 phone

302 226 2239 fax

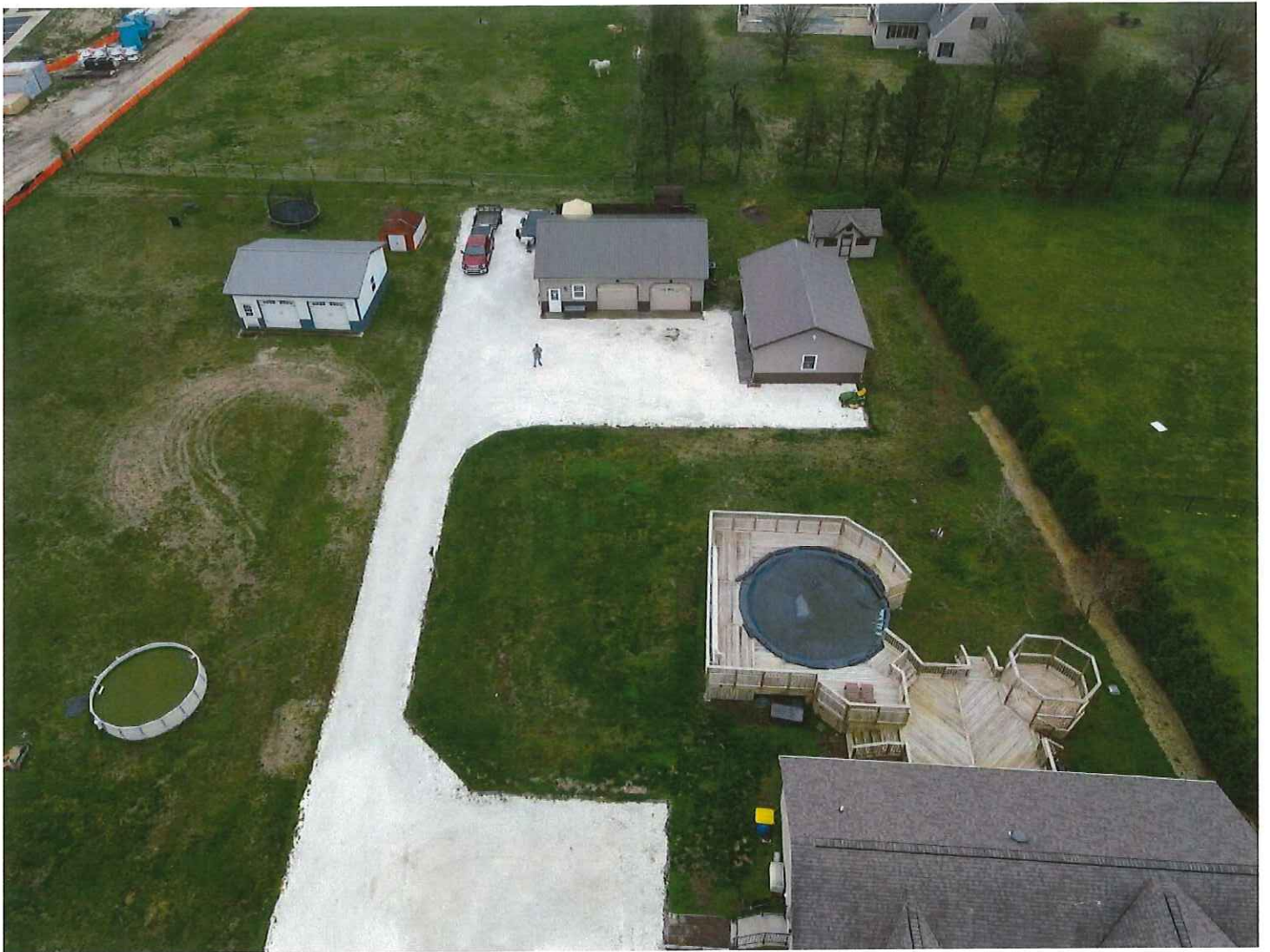
2103A Coastal Highway

Dewey Beach, DE 19971













# Sussex County



PIN:	133-16.00-73.03	
Owner Name	SENTMAN	BRUCE
	KENNETH JR	
Book	5431	
Mailing Address	24230 SHEEP PEN RD	
City	MILLSBORO	
State	DE	
Description	SE/RT 328	
Description 2	LOT 2	
Description 3	N/A	
Land Code		





RECEIVED

APR 11 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 # 12700

Hearing Date \_\_\_\_\_

2022 05119

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

Variance ☒

Special Use Exception ☐

Administrative Variance ☐

Appeal ☐

Existing Condition ☐

Proposed ☐

Code Reference (office use only)

115-42 115-182

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

125 Shady Ridge Drive, Rehoboth Beach, Delaware 19971

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

Decrease in front property setback from 30 feet to 15 feet.

**Tax Map #:** 334-13.00-580.00

**Property Zoning:** GR

**Applicant Information**

Applicant Name: Lara Weathersbee

Applicant Address: 10315 Owen Brown Road

City Columbia State MD Zip: 21044

Applicant Phone #: 410-905-2260 Applicant e-mail: lcweathersbee@gmail.com

**Owner Information**

Owner Name: Lara Weathersbee

Owner Address: 10315 Owen Brown Road

City Columbia State MD Zip: 21044 Purchase Date: 12/31/21

Owner Phone #: 410-905-2260 Owner e-mail: lcweathersbee@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**

Date: \_\_\_\_\_





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

*You shall demonstrate to the Board of Adjustment that the property meets 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.

This property is unique in that the 12,711 sq. ft., 80% is federally protected tidal wetlands. Therefore, there is only a small portion of the property that is buildable uplands. This uniqueness and practical difficulty is due to these conditions and not circumstances created by the Zoning Ordinance or Code.

---

**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.

Without a variance to decrease the front setback from 30 feet to 15 feet, the building envelope is not sufficient to accommodate a small single family home or a double-wide manufactured. A setback variance is necessary to enable the reasonable use of the property for the construction of a small single family residence.

---

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

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

The exceptional practical difficulty is due to the land's natural topography and has not been created by the property owner or any other person.

---

**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 would not alter the essential character of the neighborhood or property district, nor substantially or permanently impair the appropriate use and development of adjacent property, nor be detrimental to public welfare. The variance would enhance the neighborhood by permitting the development of an overgrown property and permit build of small home consistent with neighborhood.

---

**5. Minimum variance:**

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

The variance would represent the minimum variance to afford relief and represents the least possible modification of the regulation in issue. Decreasing the setback to 15 feet would permit a building envelope of about 35'x55'. This would permit construction of small single family home with footprint less than 2000 sqft. Neighbors have expressed approval of the addition of a new home on the street.

---



**Addendum to Variance Setback Request for 125 Shady Ridge Drive, Rehoboth Beach,  
Delaware 19971**

This addendum supplements my application for a variance in the property's front setback. I am requesting that the setback requirement be decreased from 30 feet to 15 feet. This variance, if approved, would create a sufficient building envelope to construct a small single-family home on the property. The depth of the envelope would increase from approximately 23 to approximately 38 feet. That would permit me to develop a home that is 30 feet in depth and a small rear facing screened porch.

It is my belief that positioning the home a bit closer to the road would have no negative impact. Shady Ridge Drive is a quiet dead-end street. Accordingly, the only traffic there seems to be from my neighbors that live on the street or their guests. My lot is very close to the end of the street where the road ends.

Mr. Edward Launay is the environmental engineer who did the work for the Army Corps of Engineers permit. This permit enabled the prior property owner to fill a small portion of the tidal wetlands to install a protective retaining wall. Mr. Launay advised that is preferable to leave a small space between the retaining wall and the home if the retaining wall needs repair or replacement in the future. Expanding this building envelope these few feet would also allow for that additional space.

I have a neighbor who owns the lot just next to mine. She applied for and received a similar variance as her lot has almost the same characteristics as my lot. She is supportive of this variance application. In fact, we are hoping to build two small similar homes that would fit nicely with the character of this small neighborhood. Some of the other neighbors have also expressed happiness to see the lot developed and welcome a potential new neighbor. I intend to build a home that is consistent with the other newer homes on Shady Ridge Drive and that would hopefully be a wonderful addition to the community. I have vacationed in Rehoboth my entire adult life. I hope to build a small home where I will be able to retire and live next to friends.

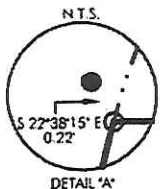
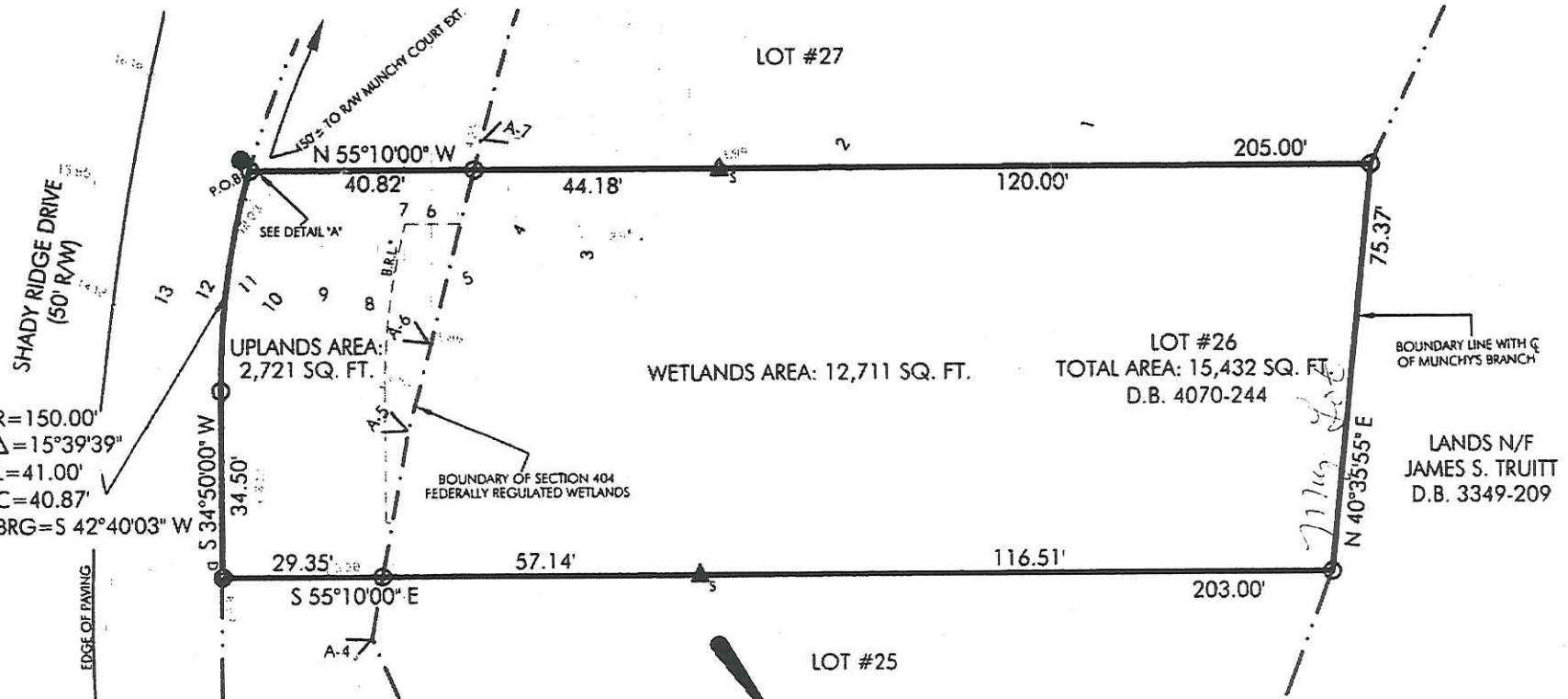
Thank you for considering my application. I would be happy to provide any other information that would be helpful to your inquiry. I am excited and looking forward to becoming a good citizen of Rehoboth Beach.

Lara Weathersbee





T.M. #3-34-13.00-580.00



WETLANDS STATEMENT

I, EDWARD M. LAURAY, PWS, STATE THAT THE BOUNDARIES OF WATERS OF THE UNITED STATES INCLUDING WETLANDS SUBJECT TO THE CORPS OF ENGINEERS REGULATION PROGRAM DELINEATED UPON THIS PLAN HAVE BEEN DETERMINED USING MY PROFESSIONAL JUDGEMENT IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLANDS Delineation MANUAL, ATLANTIC GULF COAST REGIONAL SUPPLEMENT, REGULATIONS AND SUPPLEMENTAL GUIDANCE (33 CFR 320.2(a)(2)), WATERS OF THE U.S. Delineation/CECW-OR, 10-7-1991, Questions and Answers on the 1987 COE Manual/CECW-OR, 9-26-1990, RGA 90-7/CECW-OR, 3-6-1992 Clarification and Interpretation of the 1987 Manual. THIS DELINEATION HAS NOT BEEN CONDUCTED FOR USDA PROGRAM OR AGRICULTURAL PURPOSES.

THERE ARE NO STATE REGULATED WETLANDS ON THIS PROPERTY.

EDWARD M. LAURAY, PWS No. 875  
SOCIETY OF WETLANDS SCIENTISTS  
CORPS OF ENGINEERS, CERTIFIED WETLAND  
DELINERATOR WD0934005100068

Date

NOTES:

VERTICAL DATUM: NAVD (1988)  
THESE PARCELS ARE IN: ZONE AC (B.F.E.-5)  
FLOOD INSURANCE RATE MAP: 10005C0351K, MARCH 16, 2015  
\*ALL SETBACKS MUST BE VERIFIED BY THE HOME OWNER AND/OR GENERAL CONTRACTOR. PLEASE CALL SUSSEX COUNTY (302-855-7720), DINEC (302-739-9937), AND THE HOA (MOST RESTRICTIVE SUPERSEDES)  
THIS DRAWING DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF UTILITIES, RIGHT-OF-WAYS OR EASEMENTS IN REFERENCE TO OR LOCATED ON THIS PROPERTY  
WETLAND BOUNDARIES WERE DETERMINED BY ENVIRONMENTAL RESOURCES INC.  
NO TITLE SEARCH PROVIDED OR STIPULATED  
SURVEY CLASS: SUBURBAN

# TOPOGRAPHIC & BOUNDARY SURVEY PLAN FOR WADE THOMPSON

LOT #26 OF "SHADY RIDGE" SUBDIVISION  
LEWES & REHOBOTH HUNDRED SUSSEX COUNTY  
STATE OF DELAWARE  
APRIL 7, 2017 SCALE: 1" = 30'

Prepared by

**FORESIGHT** Services

Surveying & Precision Measurement

302.726.2727 phone 302.726.2739 fax 2103A Coastal Highway Dewey Beach, DE 19971



Laura V. Bearsch  
127 Shady Ridge Drive,  
Rehoboth Beach, DE 19971  
And  
329 Webster Street  
Bel Air, MD 21014

April 7, 2022

RE: 125 Shady Ridge Drive Variance Application

Dear Board of Adjustments,

I am writing in support of the Variance Application of Lara Weathersbee for her property at 125 Shady Ridge Drive that abuts my property at 127 Shady Ridge Drive.

Lara has consulted with me on her plans to build a home on her property that is similar to the home that I will build. Lara is in need of the variance to decrease the setback from the street due to the uniqueness of the property. I was likewise in need of this variance and you were gracious enough to grant that to me.

Lara and I look forward to consulting with one another about our house building plans. As Lara's neighbor, I fully support the decrease in the building setback requirement that she seeks in her application.

If I can be of any additional assistance, please contact me.

Sincerely,

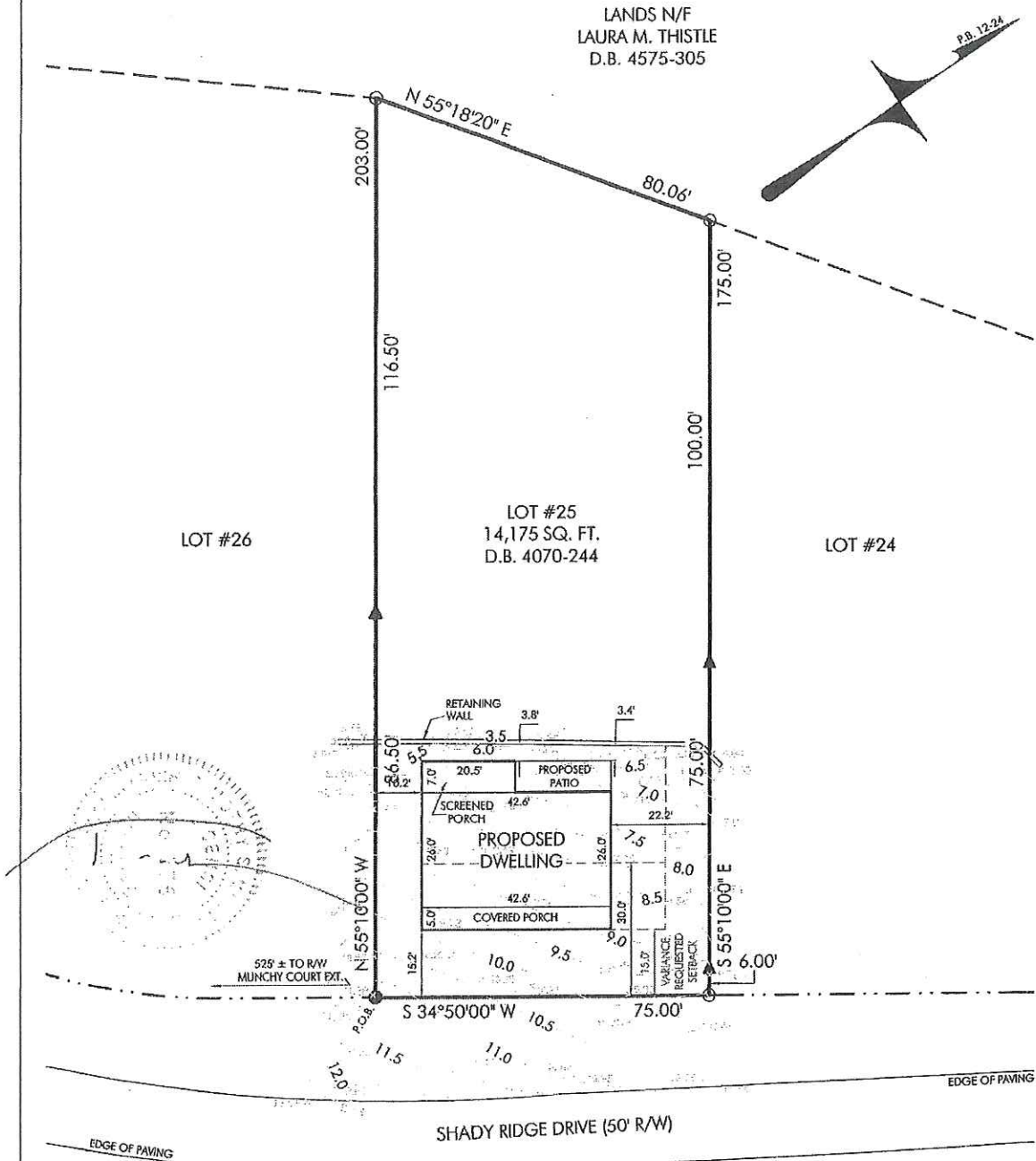
  
Laura V. Bearsch

443-794-3181 (cell)



T.M. #3-34-13.00-579.00

LANDS N/F  
LAURA M. THISTLE  
D.B. 4575-305



**NOTES:**

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.

VERTICAL DATUM: NAVD (1988)

PARCEL IS IN FLOOD ZONE: AE (ELEV. 5')  
F.I.R.M. 10005C0351K, JUNE 20, 2018

ALL SETBACKS MUST BE VERIFIED BY THE OWNER, GENERAL CONTRACTOR AND/OR THE DESIGNER. PLEASE CONTACT SUSSEX COUNTY (302-855-7878) AND THE H.O.A. (MORE RESTRICTIVE SUPERSEDES).

NO TITLE SEARCH PROVIDED OR STIPULATED.

SURVEY CLASS: SUBURBAN

**PROPOSED CONDITIONS  
TOPOGRAPHIC &  
BOUNDARY SURVEY PLAN FOR**

**12½ SHADY RIDGE DRIVE, REHOBOTH  
LOT #25 OF "SHADY RIDGE" SUBDIVISION  
LEWES & REHOBOTH HUNDRED SUSSEX COUNTY  
STATE OF DELAWARE**

SEPTEMBER 1, 2021 SCALE: 1" = 30'

**LEGEND:**

- DISTURBED IRON PIPE (FOUND)
- ▲ IRON ROD (SET)
- POINT
- ELEVATION SPOT SHOT (NAVD 88)
- EXISTING CONTOUR LINE (NAVD 88)

Prepared by:

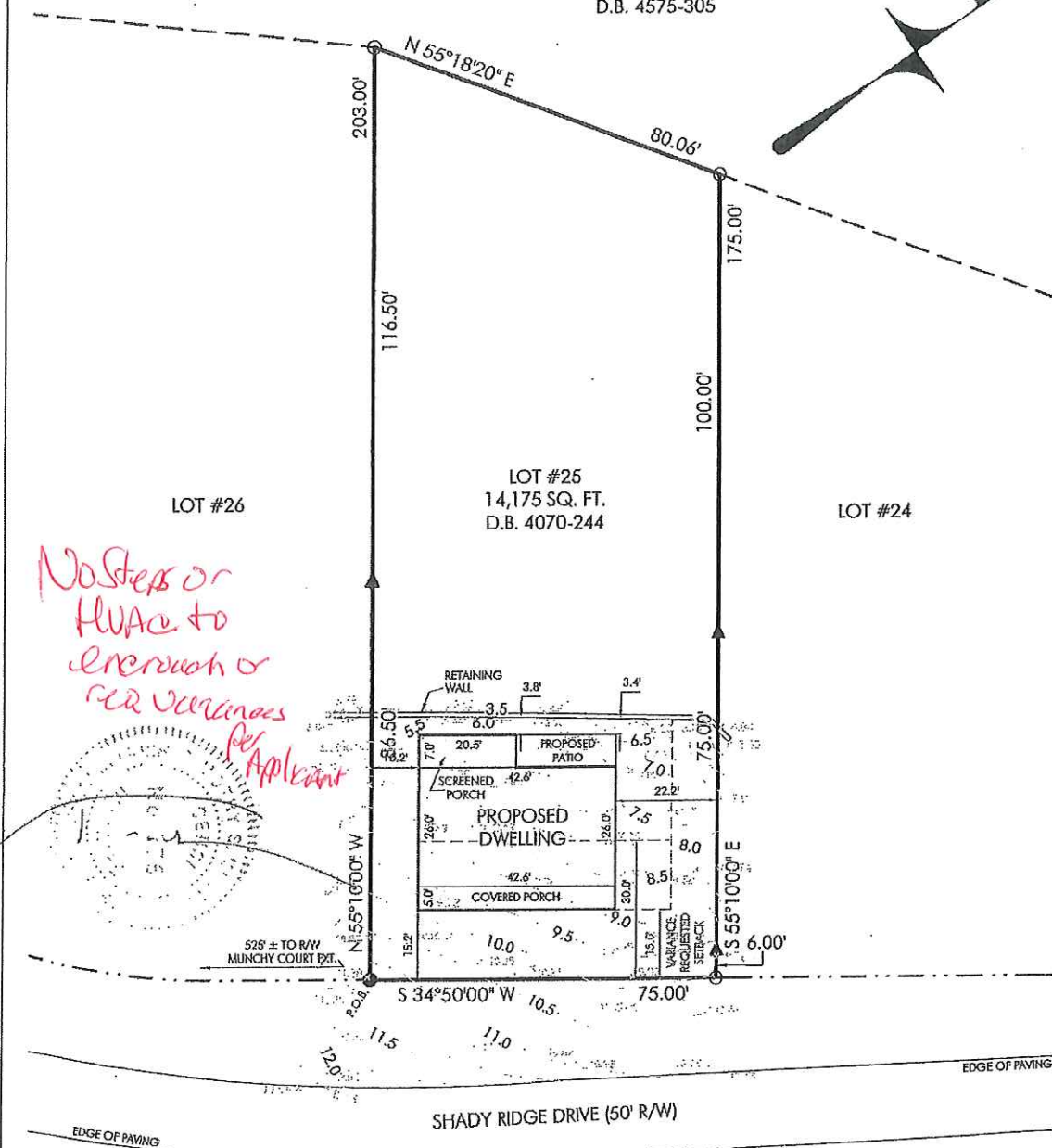
**FORESIGHT** Services

Surveying & Precision Measurement

302.226.2229 phone 302.226.2229 fax 2103A Coastal Highway, Dewey Beach, DE 19971



LANDS N/F  
LAURA M. THISTLE  
D.B. 4575-305



## NOTES:

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.

VERTICAL DATUM: NAVD (1988)

PARCEL IS IN FLOOD ZONE: AE (ELEV. 5')  
F.I.R.M. 10005C0351K, JUNE 20, 2018

ALL SETBACKS MUST BE VERIFIED BY THE OWNER, GENERAL CONTRACTOR AND/OR THE DESIGNER. PLEASE CONTACT SUSSEX COUNTY (302-855-7878) AND THE H.O.A. (MORE RESTRICTIVE SUPERSEDES).

NO TITLE SEARCH PROVIDED OR STIPULATED.

SURVEY CLASS: SUBURBAN

# PROPOSED CONDITIONS TOPOGRAPHIC & BOUNDARY SURVEY PLAN FOR

125 SHADY RIDGE DRIVE, REHOBOTH  
LOT #25 OF "SHADY RIDGE" SUBDIVISION  
LEWES & REHOBOTH HUNDRED SUSSEX COUNTY  
STATE OF DELAWARE  
SEPTEMBER 1, 2021 SCALE: 1" = 30'

## LEGEND:

- DISTURBED IRON PIPE (FOUND)
- ▲ IRON ROD (SET)
- POINT
- ELEVATION SPOT SHOT (NAVD 88)
- EXISTING CONTOUR LINE (NAVD 88)

Prepared by:

**FORESIGHT**Services

Surveying &amp; Precision Measurement

302.226.2229 phone

302.226.2229 fax

2103A Coastal Highway

Dewey Beach, DE 19971



RECEIVED

AUG 05 2021

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 # 12 610  
Hearing Date 9/20

202111704

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

Variance ☒

Special Use Exception ☐

Administrative Variance ☐

Appeal ☐

Existing Condition ☐

Proposed ☒

Code Reference (office use only)

115-42 115-182

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

127 Shady Ridge Drive, Rehoboth Beach, Delaware 19971

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

Decrease in Front Property Setback from 30 Feet to 15 Feet.

Tax Map #: 3-34-13.00-579

Property Zoning: Res. GR

#### Applicant Information

Applicant Name: Laura V. Bearsch

Applicant Address: 329 Webster Street

City Bel Air State MD Zip: 21014

Applicant Phone #: (443) 794-3181 Applicant e-mail: LBearsch@LFBALAW.com

#### Owner Information

Owner Name: Wade Thompson

Owner Address: 37606 Br. grant ne CT

City Rehoboth State DE Zip: 19971 Purchase Date: NA

Owner Phone #: 302-542-8228 Owner e-mail: Cwade@j99il.com

#### Agent/Attorney Information

Agent/Attorney Name: NA

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

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

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

#### Signature of Owner/Agent/Attorney

CWade TTEE

Date: 7/29/21





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

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

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

**1. Uniqueness of property:**

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

The property is unique in that of the approximately 11,812 square feet, 80% is federal protected tidal wetlands. Accordingly, there is only a small portion of the property comprised of buildable uplands. This uniqueness and practical difficulty is due to these conditions and not circumstances created by the Zoning Ordinance or Code.

**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.

Without a variance to decrease the front setback from 30 feet to approximately 15 feet, the building envelope is not sufficient to accommodate a small single family home or a double-wide manufactured home. A setback variance is necessary to enable the reasonable use of the property for the construction of a small single family residence.

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

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

The exceptional practical difficulty is due to the land's natural topography and has not been created by the property owner or any other person.

**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 would not alter the essential character of the neighborhood or property district, nor would it substantially or permanently impair the appropriate use and development of adjacent property or be detrimental to public welfare. The granting of the variance would actually enhance the neighborhood by permitting the development of a currently vacant, overgrown property. The variance would permit the construction of a single family residence consistent with all other homes on Shady Ridge Dr.

**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 represent the minimum variance that will afford relief and represents the least possible modification of the regulation in issue. The decrease of the setback from 30 feet to 15 feet would create a building envelope of approximately 35x55 sqft. This area would then permit the construction of a small single family residence with a footprint of less than 2000 sqft. The neighbors have expressed approval of the addition of a new home in their neighborhood.



**Addendum to Variance Setback Request for 127 Shady Ridge Drive, Rehoboth Beach, Delaware 19971**

This information supplements my application for a variance in the property's front setback. I am requesting that the setback be reduced from 30 feet to 15 feet. This variance would create a sufficient building envelope to construct a single-family home on the property. If the variance is approved, the depth of the envelope would increase from 23 feet to 38 feet. That would enable me to develop a home 30 feet in depth and a small rear-facing screened porch.

I don't think positioning the home a bit closer to the road would have any negative impact. Shady Ridge Drive is a dead-end street. Accordingly, the only traffic appears to be people who live on the street or visiting someone who lives there. The lot I am hoping to purchase is toward the end of Shady Ridge Drive and very close to the turn-around.

Additionally, Mr. Edward Launay is the environmental engineer who did the work for the Army Corps of Engineers permit. This permit enabled the property owner to fill a small portion of the tidal wetlands and install a protective retaining wall. Mr. Launay advised that it is preferable to leave a small space between the retaining wall and the home in the event the wall needs repair or replacement in the future. Expanding this building envelope just a few feet would allow for that additional space.

I have spoken with some people who live in Shady Ridge, and they are happy to see the lot developed and welcome me as a potential new neighbor. I intend to build a home that is consistent with the other newer homes on Shady Ridge Drive and would hopefully be a wonderful addition to the community. I owned a townhome in Rehoboth for 10 years and just sold it this month. My dream has always been to own a single-family residence in Rehoboth with enough room for family and friends and retire there full-time.

Thank you for considering my application. If you need any additional information, please let me know.

Laura Bearsch



LANDS N/F  
LAURA M. THISTLE  
D.B. 4575-305

P.B. 12-24

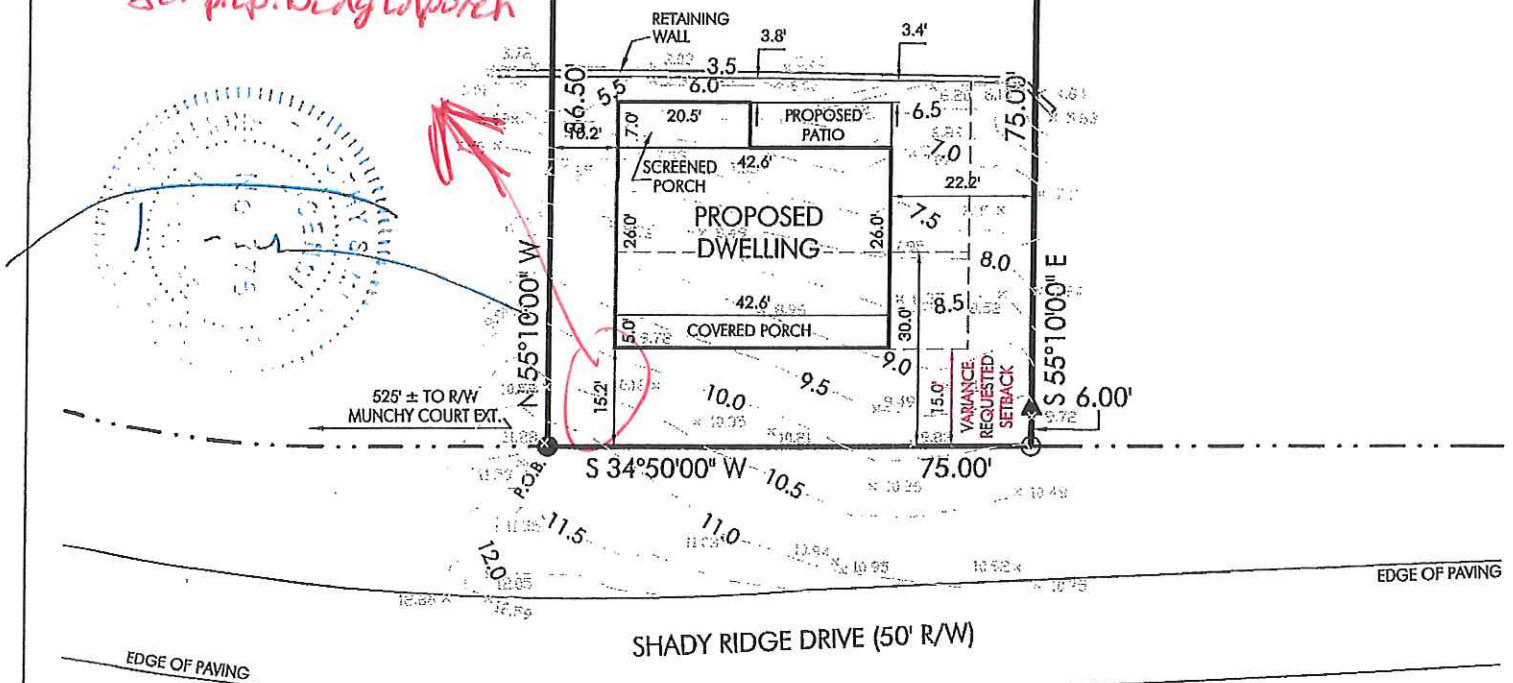
Setbacks  
30' Front  
10' sides  
10' rear

No steps per sketches  
Submitted by Applicant  
HVAE can comply with  
Setbacks per prop. Duly  
Location  
LOT #26

LOT #25  
14,175 SQ. FT.  
D.B. 4070-244

LOT #24

Req. 14.8' var. from  
30' Front Yards  
for prop. Duly W/porch



NOTES:

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.

VERTICAL DATUM: NAVD (1988)

PARCEL IS IN FLOOD ZONE AF (ELEV. 51)

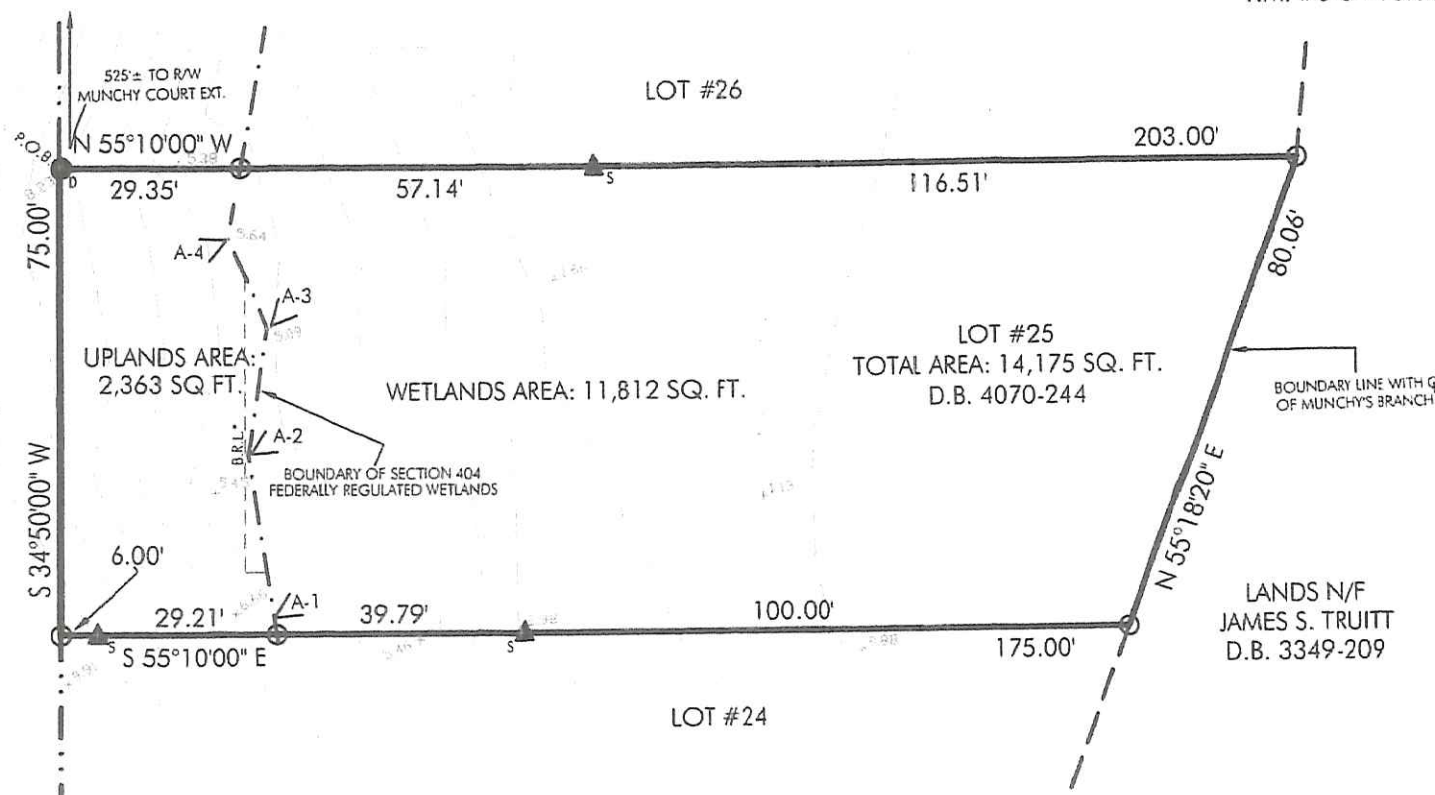
PROPOSED CONDITIONS  
TOPOGRAPHIC &  
BOUNDARY SURVEY PLAN FOR

LAURA M. THISTLE



SHADY RIDGE DRIVE  
(50' R/W)

EDGE OF PAVING

**LEGEND:**

- ▲ IRON ROD (SET)
- ▲ IRON ROD (FOUND)
- DISTURBED IRON PIPE (FOUND)
- POINT
- A-1 > FEDERALLY REGULATED WETLANDS FLAG 4/6/2017
- + 8.00' ELEVATION SPOT SHOT (NAVD 88)
- 0 EXISTING CONTOUR

**WETLANDS STATEMENT**

I, EDWARD M. LAUNAY, PWS, STATE 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 JUDGEMENT 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 CDE Manual/CECW-OR, 9-26-1990, RGL 90-7/CECW-OR, 3-6-1992 Clarification and Interpretation of the 1987 Manual. THIS DELINEATION HAS NOT BEEN CONDUCTED FOR USDA PROGRAM OR AGRICULTURAL PURPOSES.

THERE ARE NO STATE REGULATED WETLANDS ON THIS PROPERTY

EDWARD M. LAUNAY, PWS No. 875  
SOCIETY OF WETLANDS SCIENTISTS  
CORPS OF ENGINEERS, CERTIFIED WETLAND  
DELINEATOR WD093MD05100368

Date

**NOTES:**

VERTICAL DATUM: NAVD (1988)  
THESE PARCELS ARE IN ZONE AE (B.F.E.:5)  
FLOOD INSURANCE RATE MAP: 10005C0351K, MARCH 16, 2015  
\*ALL SETBACKS MUST BE VERIFIED BY THE HOME OWNER AND/OR GENERAL CONTRACTOR. PLEASE CALL SUSSEX COUNTY (302-855-7720), DNREC (302-739-9939), AND THE HOA (MOST RESTRICTIVE SUPERSEDES).  
THIS DRAWING DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF UTILITIES, RIGHT-OF-WAYS OR EASEMENTS IN REFERENCE TO OR LOCATED ON THIS PROPERTY.  
WETLAND BOUNDARIES WERE DETERMINED BY ENVIRONMENTAL RESOURCES INC.  
NO TITLE SEARCH PROVIDED OR STIPULATED.  
SURVEY CLASS: SUBURBAN

# TOPOGRAPHIC & BOUNDARY SURVEY PLAN FOR WADE THOMPSON

LOT #25 OF "SHADY RIDGE" SUBDIVISION  
LEWES & REHOBOTH HUNDRED SUSSEX COUNTY  
STATE OF DELAWARE  
APRIL 7, 2017 SCALE: 1" = 30'

Prepared by

**FORESIGHT**Services

Surveying &amp; Precision Measurement

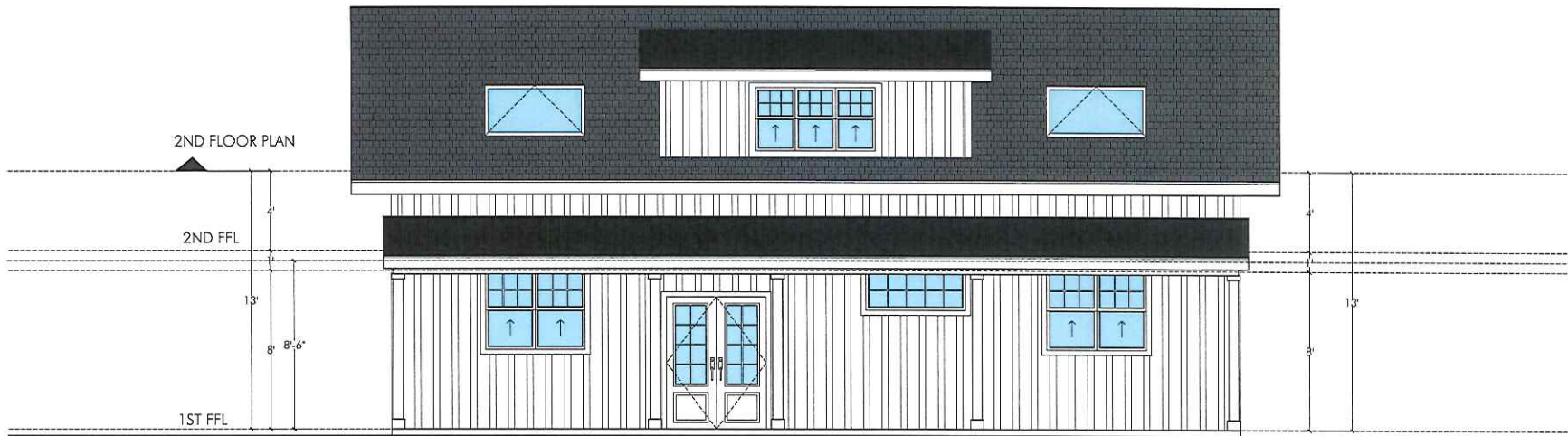
302-226-2729 phone

302-226-2239 fax

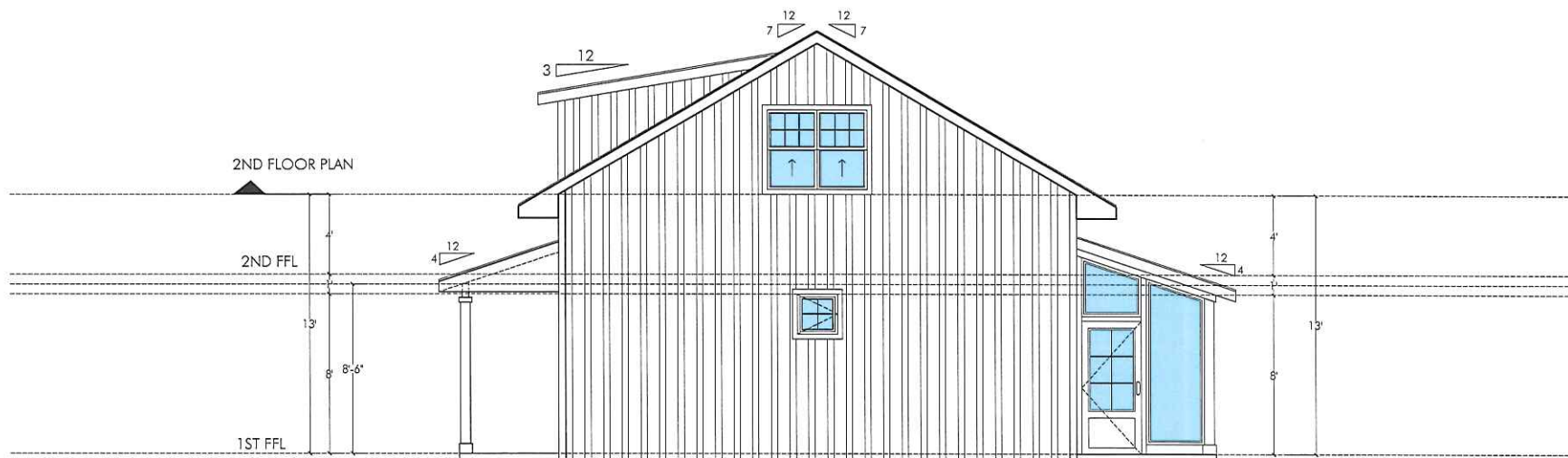
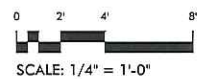
2103A Coastal Highway

Dewey Beach, DE 19971

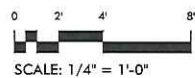




ELEVATION 1



ELEVATION 2



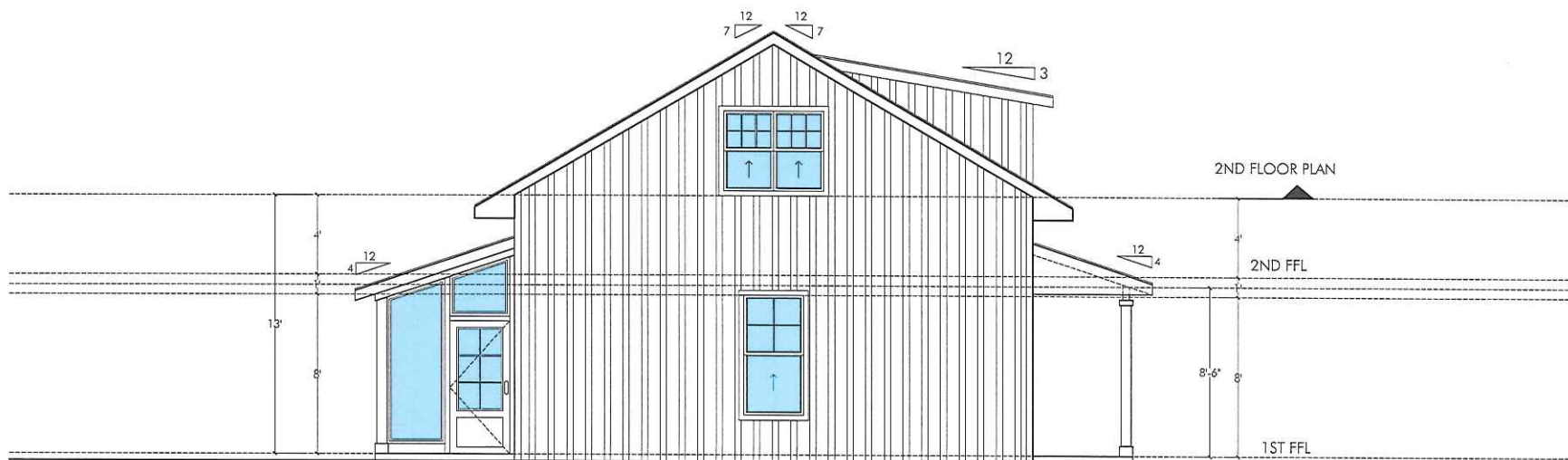




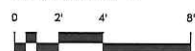
ELEVATION 3



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

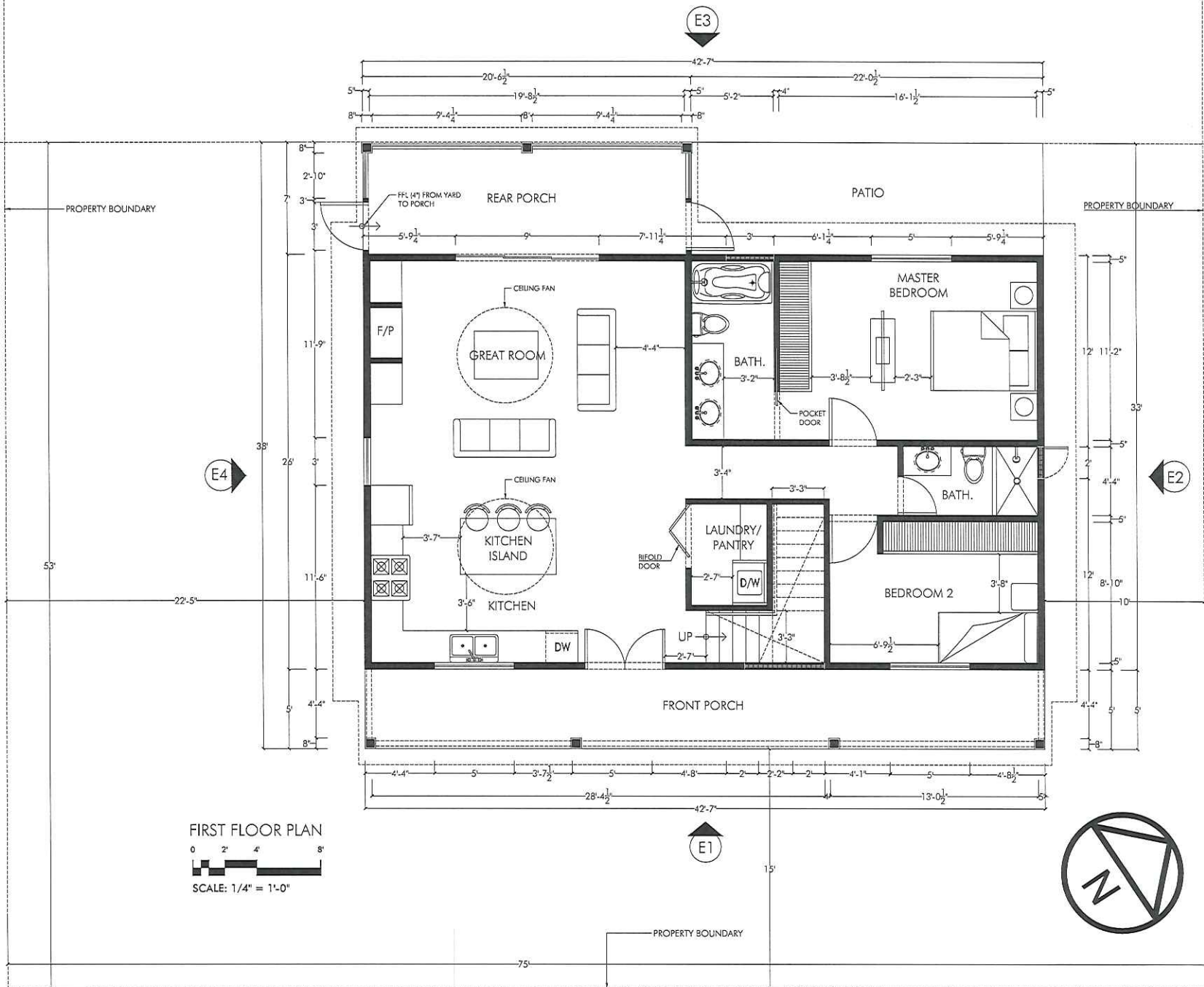


ELEVATION 4



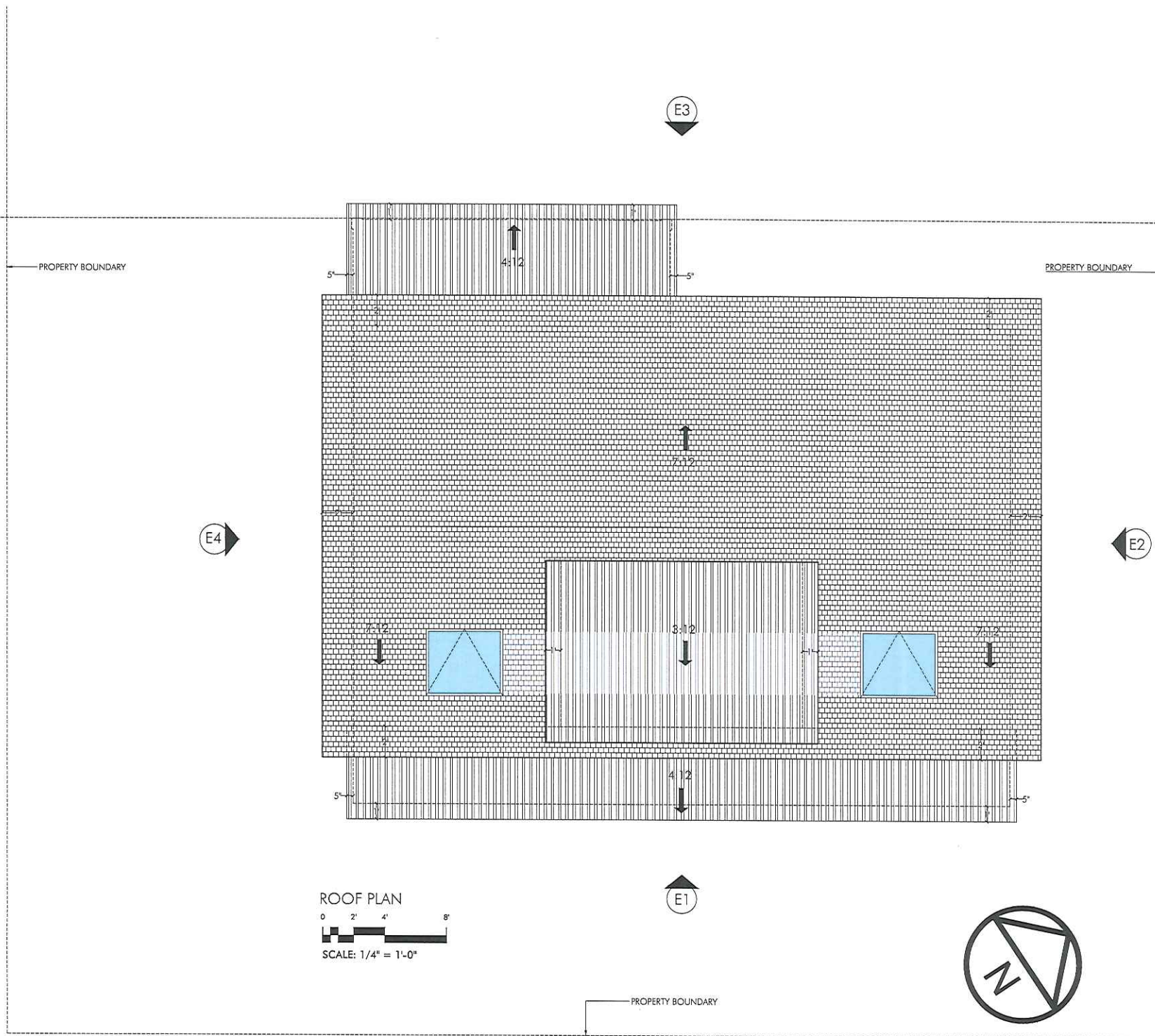
SCALE: 1/4" = 1'-0"





**FIRST FLOOR PLAN**  
 0 2' 4' 8'  
 SCALE: 1/4" = 1'-0"







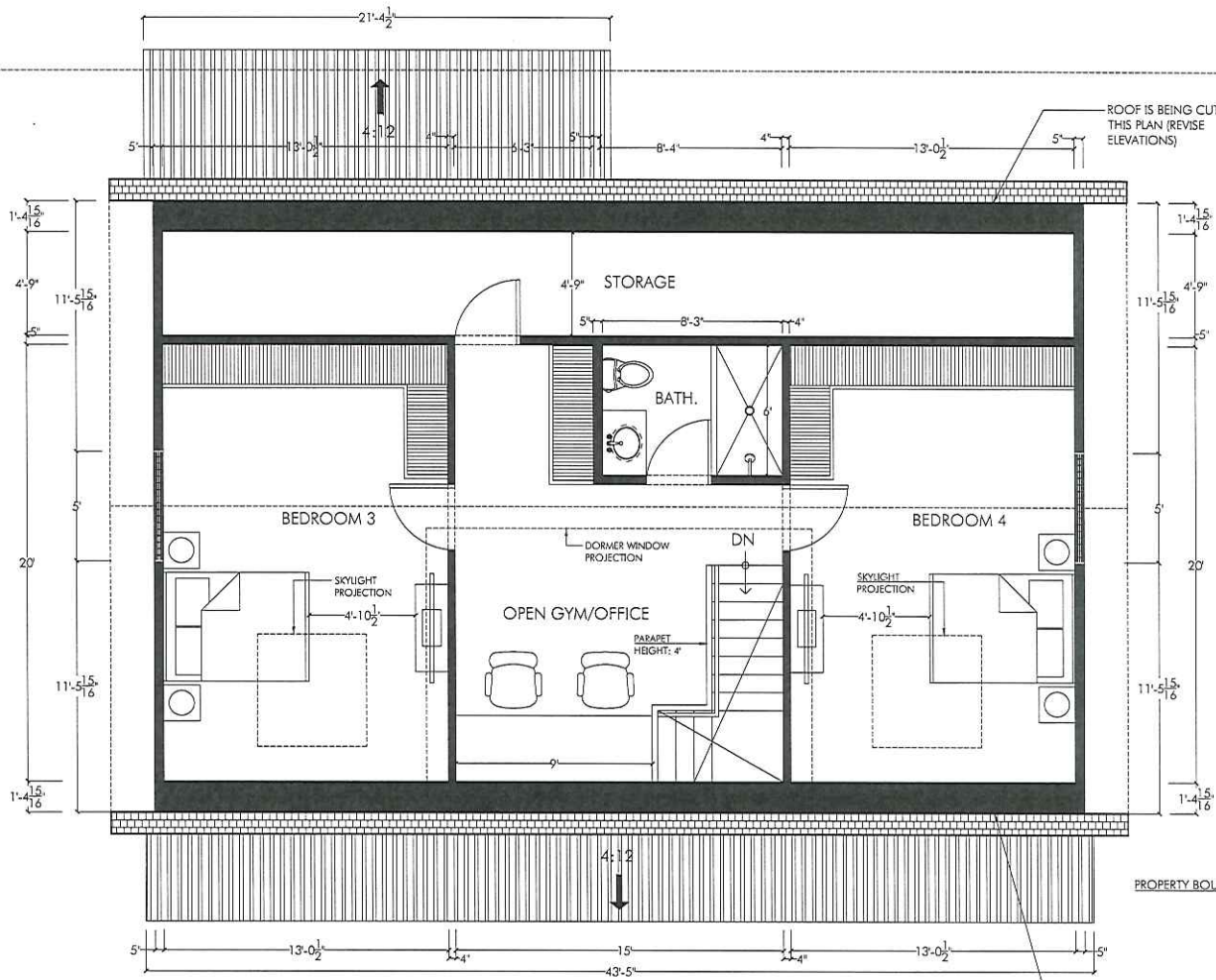
E3

E4

E2

E1

SECOND FLOOR PLAN  
0 2' 4' 8'  
SCALE: 1/4" = 1'-0"











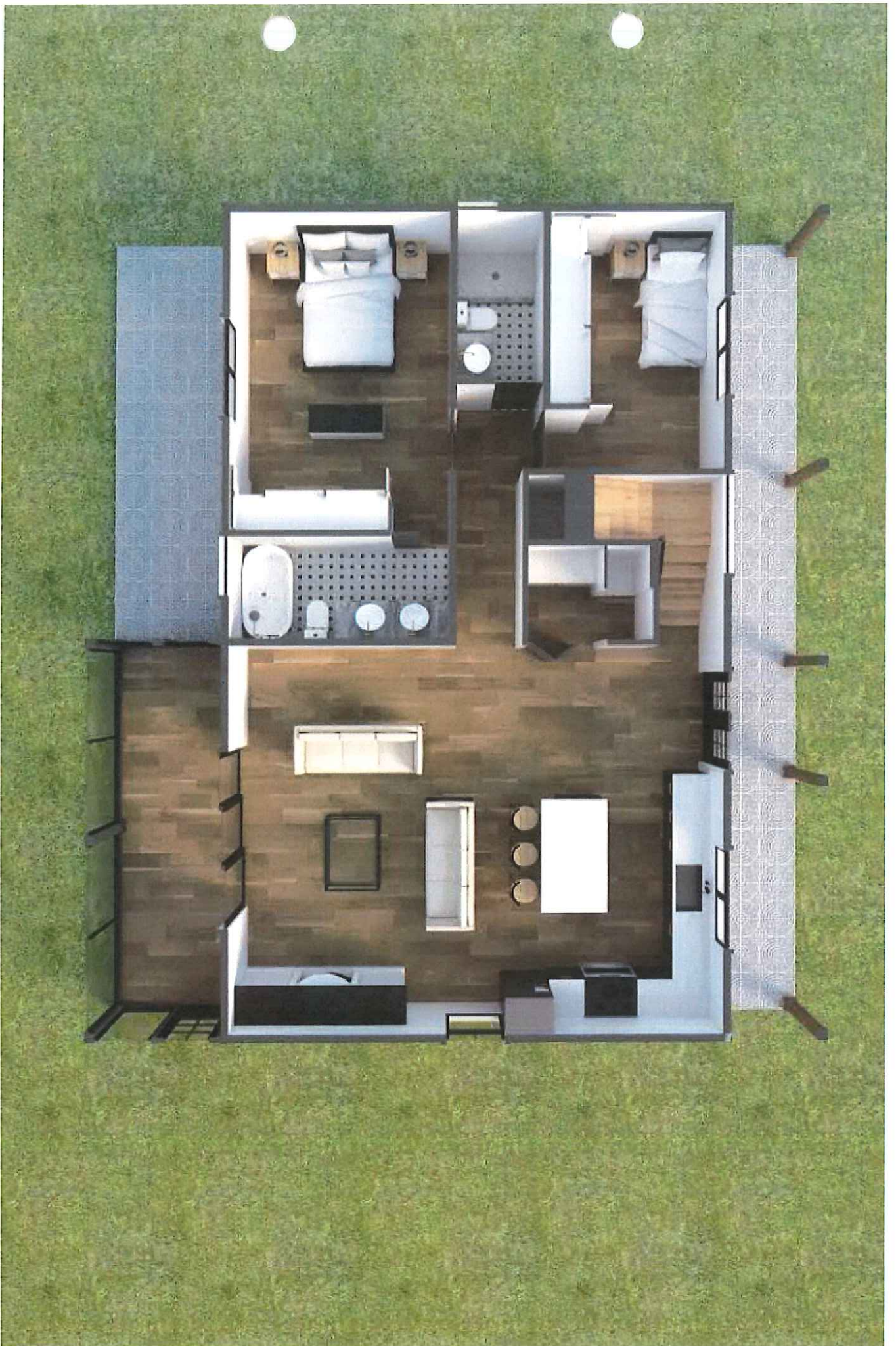


















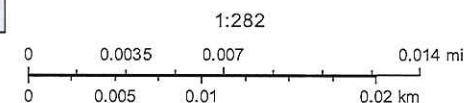


# Sussex County



PIN:	334-13.00-579.00
Owner Name	THOMPSON CHRISTOPHER WADE TRUSTEE
Book	4070
Mailing Address	PO BOX 52
City	NASSAU
State	DE
Description	RT 270A SHADY RIDGE
Description 2	LOT 25
Description 3	N/A
Land Code	

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





**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: WADE THOMPSON**

**(Case No. 12610)**

A public hearing was held after due notice on September 20, 2021. The Board members present were: Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting variances of 14.8 feet and 15.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling with porch. This application pertains to certain real located on the west side of Shady Ridge Drive within the Shady Ridge Subdivision (911 Address: 127 Shady Ridge Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-579.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated April 7, 2017, a site plan of the Property dated September 1, 2021, schematics and drawings of the proposed dwelling, correspondence in support of and in opposition to the Application, Findings of Fact for Case No. 12610, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of the Application and two (2) letters in opposition the Application.
3. The Board found that Laura Bearsch was sworn in to give testimony about the Application.
4. The Board found that Ms. Bearsch testified that she learned of a previous application which was approved for a 20 foot variance but the approval expired.
5. The Board found that Ms. Bearsch testified that the Property is unique as it consists of only 1/3 acre and approximately 80% of the lot is considered federally protected tidal wetlands upon which no structures can be placed.
6. The Board found that Ms. Bearsch testified that she is the contract purchaser for the lot.
7. The Board found that Ms. Bearsch testified that she cannot use the rear yard as a rear yard due to the wetlands.
8. The Board found that Ms. Bearsch testified that, without a variance to decrease the setback, there is no possibility of building on this lot.
9. The Board found that Ms. Bearsch testified that the house cannot be located immediately adjacent to the retaining wall because there needs to be some separation in case the retaining wall needs repairs or replacement.
10. The Board found that Ms. Bearsch testified that the exceptional practical difficulty is due to the lands's natural topography and was not created by the Applicant.
11. The Board found that Ms. Bearsch testified that the house will be only 26 feet deep and will consist of less than 2,000 square feet.
12. The Board found that Ms. Bearsch testified that the proposal is for a single-family home that will be consistent with all other homes on the Shady Ridge Drive.
13. The Board found that Ms. Bearsch testified that the house will be positioned on one side of the lot to provide some usable outdoor space.



14. The Board found that Ms. Bearsch testified that the variance will not alter the essential character of the neighborhood.
15. The Board found that Ms. Bearsch testified that there are only 3-4 undeveloped lots in the neighborhood and only 3 lots in the neighborhood have retaining walls.
16. The Board found that Ms. Bearsch testified that the variances requested are the minimum variances to afford relief.
17. The Board found that Ms. Bearsch testified that she tried to fit the home within the building envelope.
18. The Board found that Ms. Bearsch testified that the steps will fit within the building envelope.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
  - a. The Property is unique due to its size, shape, and topography. The lot consists of 14,175 square feet but 11,812 square feet of the lot is considered undevelopable wetlands. The wetlands are to the rear of the lot so the only buildable area is to the front of the lot and is exceptionally limited. The Property is only 75 feet wide in the front yard as well thereby further limiting the developable area. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to build a reasonable home and porch on the site.
  - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to place a home and porch on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow this reasonably sized home and porch to be placed the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the home is quite small and the Applicant appears to have taken steps to minimize the need for the variances.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
  - e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. While the opposition submitted letters opposing the Application, there was no substantial evidence that the structures would somehow alter the essential character of the neighborhood. The home is a modest-sized home and appears, based on the testimony, consistent with the neighborhood.



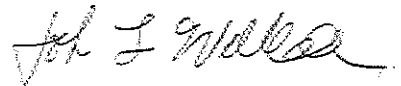
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to place the reasonably sized home and porch on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the structures but was constrained by the conditions of the lot. The proposed placement will also allow the Applicant to have some usable outdoor space since the rear of the Property consists of wetlands. The Board also notes that the structures cannot be placed closer to the retaining wall since there needs to be separation from the retaining wall to allow for maintenance and repairs of that wall.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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

#### Decision of the Board

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

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

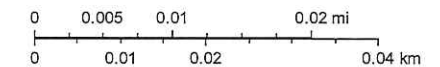


John Williamson  
Chair

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

Date November 15, 2021.







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

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

Case # 12701

Hearing Date \_\_\_\_\_

20220514

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

Variance ☐

Special Use Exception ☒

Administrative Variance ☐

Appeal ☐

Existing Condition ☐

Proposed ☐

Code Reference (office use only)

115-83 115-210

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

American Legion - 31768 Legion Road Millsboro, DE 19966

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

Special use exception to conduct temporary tent sale during 4th of July Season. Exact dates to be determined with goal of 6/22/2022 - 7/4/2022. Tent install to be completed 3 days before beginning sales date and removal 3 days after end sales date.

Tax Map #: 234-29.00-263.13 263.00

Property Zoning: Com CR-1

**Applicant Information**

Applicant Name: Elizabeth Saragosa-Ayer - Keystone Novelties Distributors LLC

Applicant Address: 531 N 4th Street

City Denver State PA Zip: 17517

Applicant Phone #: (717) 740-5616 Applicant e-mail: esayer@keystonenovelties.com

**Owner Information**

Owner Name: American Legion, Oak Orchard-Riverdale, Post 28, Department of Delaware, Inc

Owner Address: 31768 Legion Road

City Millsboro State DE Zip: 19966 Purchase Date: \_\_\_\_\_

Owner Phone #: (302) 947-0581 Owner e-mail: Post28EventsCoordinator@gmail.com

**Agent/Attorney Information**

Agent/Attorney Name: \_\_\_\_\_

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

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

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

**Signature of Owner/Agent/Attorney**

Date: \_\_\_\_\_





**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 6/6  
20220514

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

Variance ☐  
Special Use Exception ☒  
Administrative Variance ☐  
Appeal ☐

Existing Condition ☐  
Proposed ☐  
Code Reference (office use only)  
115-80 115-210

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

American Legion - 31768 Legion Road Millsboro, DE 19966

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

Special use exception to conduct temporary tent sale during 4th of July Season. Exact dates to be determined with goal of 6/22/2021 - 7/4/2021. Tent install to be completed 3 days before beginning sales date and removal 3 days after end sales date.

Tax Map #: 234-29.00-263.13

Property Zoning: Com

**Applicant Information**

Applicant Name: Elizabeth Saragosa-Ayer - Keystone Novelties Distributors LLC  
Applicant Address: 531 N 4th Street  
City Denver State PA Zip: 17517  
Applicant Phone #: 7177405616 Applicant e-mail: esayer@keystonenovelties.com

**Owner Information**

Owner Name: American Legion, Oak Orchard-Riverdale, Post 28, Department of Delaware, Inc  
Owner Address: 31768 Legion Road  
City Millsboro State DE Zip: 19966 Purchase Date: \_\_\_\_\_  
Owner Phone #: 302-947-0581 Owner e-mail: Post28EventsCoordinator@gmail.com

**Agent/Attorney Information**

Agent/Attorney Name: Rick Seery  
Agent/Attorney Address: 531 N. 4th Street  
City Denver State PA Zip: 17517  
Agent/Attorney Phone #: 717-394-1078 Agent/Attorney e-mail: rseery@keystonenovelties.com

**Signature of Owner/Agent/Attorney**



Date: 04/08/2022





**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.

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**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.

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

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

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

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

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**5. Minimum variance:**

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



**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.

No - Request is consistent with current Zoning.

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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)

Temporary Tent for retail sales - up to 14 days for each year leading up to the 4th of July Season.

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

Requesting special approval behind the 3 day currently available.

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## Keystone Novelties Distributors, LLC

531 N. 4<sup>th</sup> Street Denver PA 17517  
Ph. 717-390-0844 Fax: 717-290-7774  
Info@keystonenovelties.com

THIS AGREEMENT IS MADE BETWEEN American Legion, Oak Orchard-Riverdale, Post 28, Department of Delaware, Inc (Lessor) and Keystone Novelties Distributors, LLC (Lessee) for the purpose of allowing the retail sale of approved fireworks from the premises (Location)

Location Address:  
31768 Legion Rd,  
Millsboro, DE, 19966

Location Name:  
MILLSBORO DE AMERICAN LEGION  
Municipality: Sussex County (DE)

### Lessor Agrees to the following terms and conditions:

1. Lessor represents that the parking lot or commonly occupied Location listed above and identified in attachment "A" is owned and/or controlled by the Lessor and that the Lessor grants Lessee the exclusive right to operate a retail fireworks tent or outlet including the placement of a 20-foot storage container and a portable toilet on the premises during the term of this Agreement.
2. The term of this Agreement shall include the 2022 July 4<sup>th</sup> holiday period(s). The tent and related equipment shall be placed no sooner than June 17<sup>th</sup> and removed no later than July 11<sup>th</sup> 2022. The actual dates for the sale will not exceed: June 21<sup>st</sup> through July 6<sup>th</sup> of the current year.
3. Following the initial term, the Lessor hereby grants the Lessee First Rights of Refusal to match any bona fide offer to lease the location for fireworks sales during the forthcoming renewal year.
4. Lessor will have the right to void this lease if the above Location is sold or developed for any purpose other than the sale of fireworks by providing 45 days written notice prior to cancellation.
5. Please answer questions below by marking and initialing either YES or NO, Lessor agrees to the following:
  - a. Allow 28 ft return trailer (Backhaul trailer) to be set at the property ☒ YES ☐ NO \_\_\_\_\_ (initials)
  - b. Allow access to electricity for the tent if it available on the property ☒ YES ☐ NO \_\_\_\_\_ (initials)

### In return, Lessee agrees to the following terms and conditions:

1. Lessee shall pay to Lessor rent in the amount of \$2,500.00 by check on or before June 20 each year or at time the site is occupied by any equipment or personnel related to preparation for or execution of sale.
2. Lessee shall provide liability insurance coverage and post with Lessor, prior to occupancy, a certificate of insurance evidencing liability insurance in force covering the operation on the retail outlet. All entities/individuals listed on the certificate of insurance will be deemed as additional insureds per this contract. Insurance coverage will be in an amount not less than \$1,000,000.00.
3. Lessee guarantees that the premises will be returned to its original condition including the patching of any stake holes and removal of trash and supplies.
4. This Lease Agreement shall be assignable by Lessee and is contingent upon Lessee securing any local and state permits or licenses that may be required by law. If the sale of fireworks is prohibited by public authority or if required permits or licenses cannot be obtained prior to the commencement of the selling season, then this lease agreement automatically becomes null and void. If the local municipality having proper jurisdiction over this outlet limits the sale of fireworks or implements policies inconsistent with state statutes, then this Lease Agreement is subject to revision.
5. Lessee shall have the right to void this agreement up to 45 days prior to the commencement of the selling period each year.

#### LESSOR (Payee) INFORMATION (Update if Needed)

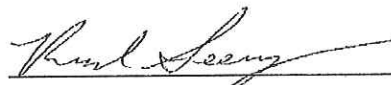
Oak Orchard-Riverdale, Post 28,  
American Legion, Department of Delaware, Inc  
31768 Legion Rd, Millsboro, DE, 19966  
Contact: Lisa Schumann: Ph: 302-947-0581  
Email: Post28EventsCoordinator@gmail.com

#### ADDITIONAL INSURED INFORMATION

Oak Orchard-Riverdale, Post 28,  
American Legion, Department of Delaware, Inc  
31768 Legion Rd, Millaboro, DE, 19966

  
\_\_\_\_\_  
Lessor

4-6-22  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Keystone Novelties Distributors, LLC Date 4/4/2022

☐ \$125 LL Cert ☐ \$75 LL Cert ☐ \$50 LL Cert ☐ \$150 + \$125 each year Cert ☐ None



PARID: 234-29.00-263.13  
OAK ORCHARD RIVERDALE POST

ROLL: RP

### Property Information

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Property Location:

Unit:

City:

Zip:

State:

Class:	EXM-Exempt
Use Code (LUC):	NP-NON-PROFIT
Town	00-None
Tax District:	234 - INDIAN RIVER
School District:	1 - INDIAN RIVER
Council District:	4-Hudson
Fire District:	80-Indian River
Deeded Acres:	.0001
Frontage:	120
Depth:	421.000
Irr Lot:	I
Plot Book Page:	/PB

100% Land Value:	\$5,000
100% Improvement Value	\$0
100% Total Value	\$5,000

### Legal

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Legal Description	S/RD 298 365' E OF RT 5 24
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### Owners

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Owner	Co-owner	Address	City	State	Zip
OAK ORCHARD RIVERDALE POST	28 THE AMERICAN LEGION	PO BOX 494A	MILLSBORO	DE	19966



TENT LOCATION PLOT PLAN LAST SAVED FEBRUARY 7, 2022

- LOCATION NAME: **MILLSBORO DE AMERICAN LEGION**
- LOCATION ADDRESS: **31768 LEGION RD, MILLSBORO, DE 19966**
- NOTES: PROPOSED 30X45

LEGEND:



PORT-A-JON



GENERATOR

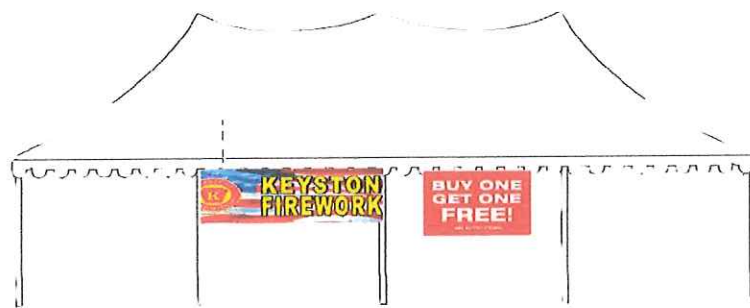
TENT



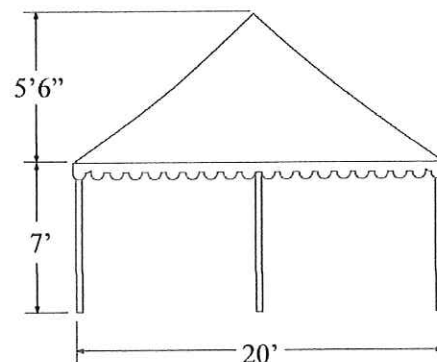
STORAGE UNIT







40' long , supports 10 feet on center



example of what a tent might look like in a parking lot





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/6/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Britton Gallagher One Cleveland Center, Floor 30 1375 East 9th Street Cleveland OH 44114	<b>CONTACT NAME:</b> <b>PHONE</b> (A/C, No, Ext): 216-658-7100 <b>FAX</b> (A/C, No): 216-658-7101 <b>E-MAIL ADDRESS:</b>
<b>INSURED</b> Keystone Novelties Distributors LLC 531 N. 4th Street Denver PA 17517	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Everest Indemnity Insurance Co. <b>INSURER B:</b> Axis Surplus Ins Company <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES**

CERTIFICATE NUMBER: 645065566

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC	Y	Y	SI8ML00041-211	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DED</b> <input type="checkbox"/> <b>RETENTION \$</b> <input type="checkbox"/>	Y	Y	P-001-000241749-03	12/31/2021	12/31/2022	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional Insured extension of coverage is provided by above referenced General Liability policy where required by written agreement.

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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## Keystone Novelties Distributors, LLC

531 N 4<sup>th</sup> Street Denver PA 17517  
Ph. 717-390-0844 Fax: 717-290-7774  
permits@keystonenovelties.com

---

April 8, 2022

Sussex County DE  
2 The Circle P.O. Box 589,  
Georgetown, DE, 19947

Attn: Chase Phillips,

We are again in the process of planning for our annual Fourth of July tent sale. I have included in this package everything that I believe is necessary for the purposes of applying for our permit and below is an outline of our intended event & supporting documents provided with this submittal.

Location/Hours & Documents:

- **Location of Sale:** 31768 Legion Rd, Millsboro, DE 19966
- **Sale Dates:** 6/22 through 07/04/2022
  - Tent is set a few days before & site is clear by July, 10th
  - Hours of Operation: 9am to 9pm Daily, 9am to 10:30pm on the 3<sup>rd</sup> & 4<sup>th</sup>.
- **Application(s) included:** Request for Special Exception
- **Letter of Permission:** Copy of lease
- **Plot Map Diagram:** Showing proposed tent location on the property
- **Insurance Certificates:** Liability &/or Workers Comp Ins. Certs. attached
- **Fees:** Check for \$400 to pay for the permit, if no check is included please provide amount & instructions for prompt payment.

The tent will be put up a few days in advance and removed as soon as possible after July 5<sup>th</sup> but no later than July 10<sup>th</sup>. We post "No Smoking" & "Exit" signs at all egress points and have (2) fire extinguishers on hand at all times.

Should you have any questions or if anything has changed for this year, please call or email me at 717-390-0844 ext103 or [permits@keystonenovelties.com](mailto:permits@keystonenovelties.com).

Respectfully,

Field Operations Manager  
Keystone Novelties Distributors, LLC





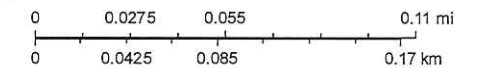
# Sussex County



PIN:	234-29.00-263.00
Owner Name	OAK ORCHARD- RIVERDALE POST #28 THE
Book	3957
Mailing Address	31768 LEGION RD
City	MILLSBORO
State	DE
Description	SE/RT 24 RD 298
Description 2	N/A
Description 3	N/A
Land Code	

polygonLayer  
Override 1  
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  
Special Access ROW  
Extent of Right-of-Way  
2007 Head of Tide Wetlands (not regulatory)

1:2,257







23318 Cedar Lane · Georgetown, DE 19947 · 302.864.8825  
info@beaconengineeringllc.com

Transmitted via: USPS

May 13, 2022  
(Revised May 18, 2022)

Sussex County Planning & Zoning  
2 The Circle  
P.O. Box 417  
Georgetown, Delaware 19947

Attn: Mr. Jamie Whitehouse, Planning & Zoning Director

Re: Request for Extension - Special Use Exception (Case No. 12225)  
Tranquility at Breakwater (S-18-94)  
Tax Map 335-8.00-25.01  
Lewes & Rehoboth Hundred  
Sussex County, Delaware  
Project No. OOV01-03

Dear Mr. Whitehouse:

The purpose of this letter is to formally request an extension to Special Use Exception, Case No. 12225, on behalf of our Client, Old Orchard Ventures, LLC, for the Tranquility at Breakwater project which is located at tax map 335-8.00-25.01. The special use exception was granted by the Board of Adjustment on February 5, 2019. As a result of the court proceedings associated with seeking reconsideration of the special use exception, completing significant and costly design could not reasonably occur until the Supreme Court denied the plaintiff's motion on September 10, 2020. It is our opinion that this request be granted for the following reasons:

- Through the design development coordination process with DelDOT Planning, we were required to revise access to Tranquility at Breakwater. The original plan called for access to be provided through the Oyster Cove multi-family community; however, access was directed through the Orchard Plaza project(S18-96), tax map 335-8.00-29.00. This effort required several redesigns and lengthy coordination with DelDOT Planning which delayed the initiation and commencement of the engineering phase.
- DelDOT also required a massive traffic impact study be conducted to assess potential traffic impacts associated with development of Tranquility at Breakwater and Orchard Plaza. The design team began the study in July 2018. Negotiations and final agreement regarding offsite improvements, developer contributions, and required site entrance improvements was not finally resolved until July 2021. As a result of this lengthy process, design of the primary entrance for this project, as referenced above, could not begin until after the TIS was completed and approved.

RECEIVED

MAY 23 2022

SUSSEX COUNTY  
PLANNING & ZONING

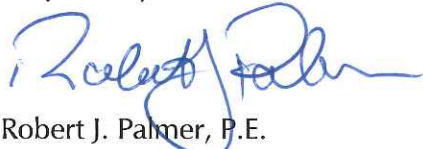


Mr. Jamie Whitehouse, Planning & Zoning Director  
Project No. OOV01-03  
May 13, 2022  
(Revised May 18, 2022)  
Page 2 of 2

- This project is subject to further coordination with DelDOT in conjunction with the Old Orchard Road Realignment (OORR) Project. Though coordination with DelDOT began during the final stages of the finalization of the TIS letter, this coordination has not fully concluded because DelDOT has not released their semi-final plans for the OORR Project. Beacon Engineering continues to coordinate with the DelDOT design team to ensure that the proposed Orchard Plaza entrance harmoniously transitions with the new road geometry that is proposed by DelDOT.

Please know that the design and construction team is working diligently to demonstrate "substantial construction" has commenced (§115-213) before the September 10, 2022 sunset date; however, inclement weather and other unforeseen circumstances suggest that granting a 1-year extension would ensure the original decision by the Board of Adjustment is preserved. As a result, we respectfully request that Special Use Exception, Case No. 12225, for Tranquility at Breakwater be extended by 1 year, expiring on September 10, 2023. Following your review, please let me know if you need any additional information to process this request. Also, please let me know when the request is placed on the Board's agenda so that we may be present to respond to any questions the Board members may have.

Respectfully submitted,



Robert J. Palmer, P.E.  
President | Senior Engineer

RJP/skm

cc: Mr. Barry Baker  
Mr. Walt Bryan  
Mr. Jim Fuqua



**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: OLD ORCHARD VENTURES, LLC**

**(Case No. 12225)**

A hearing was held after due notice on November 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 special use exception to operate a convalescent home, nursing home, and / or home for the aged.

Findings of Fact

The Board found that the Applicant is seeking a special use exception operate a convalescent home, nursing home, and / or home for the aged. This application pertains to certain real property located approximately 1,000 feet east of Old Orchard Road and approximately 1,000 feet south of New Road with access off Old Orchard Road (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 3-35-8.00-25.01.

1. The Board was given copies of the Application, a site plan of the Property dated September 7, 2018, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Robert Palmer was sworn in to give testimony about the Application. Mr. Palmer is the engineer for the project. Larry Fifer, Esquire, appeared on behalf of the Applicant to present the Application. The Applicant submitted an exhibit booklet to the Board to review.
4. The Board found that Mr. Fifer stated that the skilled nursing facility will be known as "Traquility at Breakwater".
5. The Board found that Mr. Fifer stated that the Property is 1,000 feet from Old Orchard Road and is accessed by Oyster Cove Road.
6. The Board found that Mr. Fifer stated that the area surrounding this property largely consists of residential and medical office uses.
7. The Board found that Mr. Fifer stated that the facility will be used for active seniors. The facility will have a theatre, walking trails, and other amenities. The facility will also have interconnectivity to adjacent parcels.
8. The Board found that Mr. Fifer stated that the Property is ideally suited for this type of facility due to its proximity to doctor's offices, pharmacies, and shopping. There are 4 pharmacies nearby and the Villages at Five Points, which is also located nearby, has shopping. The Property is approximately a half-mile from those facilities. There are shops located along Savannah Road as well.
9. The Board found that Mr. Palmer testified that the facility will consist of 104 rooms and will be a three-story structure. The facility will be modeled after similar structures in the area and will have a mixture of independent and 24 hour care sections. The facility will be considered an "end-of-life" facility with an infirmary and cafeteria.
10. The Board found that Mr. Palmer testified that the Property is landlocked and is accessed from Oyster Cove Drive. There will be inner connectivity with walking paths throughout the Property. The facility will not be seen from Old Orchard Road.
11. The Board found that Mr. Palmer testified that there will be minimal tree removal to retain the original character of the Property.



12. The Board found that Mr. Palmer testified that a portion of the Property was used as a borrow pit and has overgrown, steep slopes. The Applicant intends to improve those slopes with retaining walls.
13. The Board found that Mr. Palmer testified that the Applicant intends to retain the seclusion of the Property and the Applicant intends to minimize clearing of the Property but tree removal is inevitable. When possible, the Applicant intends to replant.
14. The Board found that Mr. Palmer testified that an existing structure previously used as a net house for the menhaden industry will be converted to a community center.
15. The Board found that Mr. Palmer testified that there are only 3 other similar facilities within 5 miles of Beebe Hospital.
16. The Board found that Mr. Palmer testified that the elderly population is projected to greatly increase and the facility is needed due to the large influx of retirees in eastern Sussex County.
17. The Board found that Mr. Palmer testified that the Property is within the Level 2 State Strategies area and the area around the pond is within the Level 3 State Strategies area.
18. The Board found that Mr. Palmer testified that the Applicant intends to construct a grand entrance to give an attractive appearance to the entrance of the facility. The entrance would accommodate a fire truck.
19. The Board found that Mr. Palmer testified that there is a 50 feet wide cross access easement providing access to the Property. A conditional use was granted in July 2016 for a 24 unit duplex on adjacent property and access to the facility will be over that lot.
20. The Board found that Mr. Palmer testified that the facility will comply with storm water regulations. Two ponds are proposed. One pond will be used for a scenic vista and the other pond will have an infiltration basin. Existing wetlands will also be protected.
21. The Board found that Mr. Palmer testified that water and sewer will be public. Tidewater Utilities will provide water and the City of Lewes will provide wastewater services. There are 3 septic tanks on the Property but those tanks will be abandoned. The Applicant has been in contact with Sussex County about interconnection to the Lewes wastewater facility and there is ample capacity for this facility.
22. The Board found that Mr. Palmer testified that the Applicant has met with DelDOT officials about the project. DelDOT directed the Applicant to obtain a traffic impact study of 14 intersections. DelDOT is proposing to realign Old Orchard Road and to make improvements to New Road.
23. The Board found that Mr. Palmer testified that the Applicant proposes a nearby bus stop and will likely have shuttle service.
24. The Board found that Mr. Palmer testified that traffic counts were submitted to DelDOT today and that the total trip warrants needed to trigger a traffic impact study is 1,000 vehicular trips and this project only results in 315 vehicular trips per day.
25. The Board found that Mr. Palmer testified that medical, grocery, and shopping services are located nearby.
26. The Board found that Mr. Palmer testified that there are no known endangered species on the site.
27. The Board found that Mr. Palmer testified that approximately 38% of the site will be retained as open space.
28. The Board found that Mr. Palmer testified that the facility will meet the objectives of the comprehensive plan.
29. The Board found that Mr. Palmer testified that the facility will not substantially affect adversely the uses of neighboring and adjacent properties.
30. The Board found that Mr. Palmer testified that the facility will be no taller than 42 feet tall and that the area where the building will be located 10 feet lower than neighboring properties due to historical borrowing on the site.



31. The Board found that Mr. Palmer testified that all lighting will be downward screened and shielded and the light impact will be minimal.
32. The Board found that Mr. Palmer testified that the noise generated by the facility will be minimal. There is no expectation of noise other than vehicular traffic.
33. The Board found that Mr. Palmer testified that there are natural buffers from the neighboring development and the trees will provide a visual and noise buffer.
34. The Board found that Mr. Palmer testified that the Applicant anticipates that the facility projects to have more than 75 employees.
35. The Board found that Mr. Palmer testified that he expects some residents to have vehicles but most residents will not.
36. The Board found that four people appeared in support of and five people appeared in opposition to the Application. The following people were sworn in to give testimony in opposition to the Application: Janice Almaris, Robert Viscount, Paul Reiger, and Walter Bahr.
37. The Board found that Ms. Almaris testified that west of the site are 24 proposed townhouses and another nearby site is proposed to have 6 medical and professional buildings.
38. The Board found that Ms. Almaris testified that Old Orchard Road splits the Villages of Five Points, where she lives, and she has concerns about the traffic impact. She wants to have safe access across Old Orchard Road to access her community's amenities. She believes that the development will exacerbate traffic issues along Old Orchard Road and impact the Villages of Five Points. She also noted that there is a proposal to have 2 hotels in the area behind Walgreens and PNC Bank.
39. The Board found that Mr. Viscount testified that the facility is close to neighboring homes and is only 150 yards from the Villages of Five Points. He testified that the Property is not in the middle of nowhere.
40. The Board found that Mr. Viscount testified that the design of the facility looks nice.
41. The Board found that Mr. Viscount testified that Old Orchard Road is being reconfigured and that the speed and traffic along Old Orchard Road is problematic. Old Orchard Road connects New Road and Savannah Road. Neighbors have discussed with DelDOT the traffic along Old Orchard Road. He believes that other projects in the area will change neighborhood traffic patterns and this facility will be in the heart of where there is already an existing traffic problem. DelDOT is doing traffic studies for other projects as well to determine the cumulative effect of traffic.
42. The Board found that Mr. Reiger testified that he is opposed to the Application because he feels it was incorrectly advertised and that he believes the Application should have been posted along Old Orchard Road.
43. The Board found that Ms. Almaris testified that there was a 55,000 square foot fitness center proposed on the other side of the Villages at Five Points and that facility was deemed to be out of character for the neighborhood.
44. The Board found that Ms. Almaris testified that there are single-family homes in the area and that there is commercial property along Old Orchard Road as well.
45. The Board found that Mr. Bahr testified that he is opposed to this Application due to the size of the building and all the development in the area. He argued that there are no three-story buildings in the area and that the facility will be larger than the Shell We Bounce facility. He also noted that there are 6 developable properties in the area – two of which are commercial.
46. The Board found that Mr. Bahr testified that the Property sits behind commercial property and that other properties are zoned for development.
47. The Board found that Mr. Fifer stated that the facility will not substantially affect adversely the uses of neighboring and adjacent properties.
48. The Board found that Mr. Fifer stated that the facility will be buffered by trees and elevation changes.
49. The Board found that Mr. Fifer stated that the City of Lewes supports the Application



and that the facility will benefit the neighboring community.

50. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a special use exception because the facility will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
- a. The Applicant proposes to operate a skilled care nursing residential facility known as Tranquility at Breakwater on property consisting of 6.95 acres more or less.
  - b. The site is zoned AR-1 (Agricultural Residential) under the Sussex County Zoning Code and convalescent homes, nursing homes, or homes for the aged are authorized as a special use exception in the AR-1 Zoning District.
  - c. The proposed facility will contain 104 rooms for residents.
  - d. The Property is located on a landlocked parcel near Old Orchard Road. The facility will be accessed from an existing easement on Oyster Cove Drive.
  - e. The site where the facility will be located is in an investment level 2 area under the Delaware Strategies for State Policies and Spending, which is an area where the state supports the development of a broad mix of housing options. The portion of the site where the pond will remain is in an investment level 3 zone.
  - f. The facility will be served by central water for domestic use and fire protection by Tidewater Utilities, a regulated public utility company. The facility will be provided sewer from the City of Lewes and adequate capacity is available. As part of the development, three existing septic tanks will be abandoned.
  - g. The site is located in an area containing a mixture of uses including medical and professional offices, retail and commercial centers, and multi-family and single family residential developments.
  - h. The community will contribute to serving the needs of older county residents for this type of residential alternative.
  - i. Aesthetics:
    - i. Opposition expressed concern about the aesthetics of the facility; specifically the height of the facility. The facility, however, will only be three stories tall and will be limited in height by the Sussex County Zoning Code. Furthermore, the site elevation of the facility is several feet lower than the elevation of neighboring properties. As a result, the facility will likely not appear to be as tall as it actually is. The difference in elevation is clear from the site plan submitted by the Applicant.
    - ii. The perimeter of the development will also be landscaped to provide screening of the site.
    - iii. The rear of the Property includes an existing pond formerly used as a borrow pit. The Applicant intends to retain the pond and will make improvements to the pond. The rear of the site will be largely undisturbed and should retain much of its current scenic character.
    - iv. To the extent the facility will have an aesthetic impact on neighboring properties, the Board finds that the impact is minimal at best.
    - v. As such, there should be no substantial adverse effect on the adjacent and neighboring properties from the aesthetics or physical impact of the facility.
  - j. Traffic:
    - i. Old Orchard Road is located west of the site and Savannah Road is located nearby as well. The facility will be accessed from Oyster Cove Drive to Old Orchard Road.
    - ii. Entrance and roadway improvements required by DelDOT for the facility, if any, will be the responsibility of the Applicant and will address any traffic impact.
    - iii. DelDOT has jurisdiction over the traffic impact of the facility and the Applicant will have to comply with DelDOT regulations as part of the



- site plan approval process. To the extent that the additional traffic along Old Orchard Road has an impact on the neighborhood, compliance with DelDOT regulations should minimize that impact. The Board also notes that DelDOT is considering traffic improvements in the area which should alleviate congestion.
- iv. The facility will also provide shuttle services for its residents and this service should help to reduce the amount of traffic from the facility.
  - v. Due to the nature of the facility, it is anticipated that most residents will not have vehicles.
  - vi. Ultimately, it is not convincing that the facility will have a substantial adverse effect on traffic in the area.
- k. Parking:
- i. The Applicant is proposing to have 91 parking spaces available for the facility. This proposal should provide ample parking for the facility. No evidence was presented by the opposition that the parking associated with the facility would create a substantial adverse impact on neighboring and adjacent properties.
- l. Lighting:
- i. All lighting associated with the facility will be directed at a downward angle to minimize the light pollution on adjacent properties. The perimeter of the development will also be landscaped which should lessen the impact of any lighting from the facility.
- m. Noise:
- i. There was no evidence that noise from the facility would rise to the level of a substantial adverse effect on neighboring and adjacent properties. The Applicant's proposed use will not involve loud machinery or extensive outdoor activity. Rather, the Applicant seeks permission to build a facility for residents to live in and interact. To the extent noise is generated by the facility, the landscape buffer surrounding the community should help to insulate noise generated by the facility from those neighbors outside the development.
- n. Emissions:
- i. There was no evidence that there would be additional pollutants or negative environmental emissions from the proposed facility.
- o. Stormwater Runoff:
- i. No evidence was presented that stormwater runoff from the facility will substantially affect adversely the uses of neighboring and adjacent properties.
  - ii. As part of the development process, the Applicant will be required to meet storm water management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices (BMP) and Best Available Technologies (BAT). The project may consist of some infiltration practices as well as traditional wet detention ponds. This storm water management system should limit the impact of the facility on neighboring properties and waterways.
  - iii. The Board is convinced that compliance with the storm water regulations should minimize the impact of the facility on nearby streams and waterways.
- p. The Neighborhood:
- i. The site is located in an area with several residential developments nearby with most of the residential development being located to the north, south, and west of the site. Only one of those developments is on lands contiguous to the site.
  - ii. The area also includes professional and medical offices and retail and commercial centers. The Villages at Five Points, which includes residences and businesses is located near the site. There are numerous businesses located along Old Orchard Road and Savannah Road nearby; all of which are a short distance from the facility.



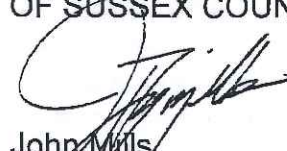
- iii. As noted by the opposition, a large hotel is proposed to be located near a bank and pharmacy in the area.
  - iv. It is clear from reviewing the record that the area is a mixed use area. The Board was not convinced that the use of the Property for such a facility somehow substantially adversely affects the uses of neighboring and adjacent properties.
- q. Property Values:
- i. There was no evidence, particularly expert testimony, reports, or studies, presented by the opposition that the facility would have a substantial adverse effect on property values in the neighborhood.
  - r. Based on the record, the Applicant has demonstrated that the proposed use set forth in the application will not substantially affect adversely the uses of neighboring and adjacent properties.
  - s. The Board also addresses the issue of advertising raised by the opposition. The opposition argued that the Board should have advertised the notice of the hearing by posting notice of the hearing along Old Orchard Road rather than posting the location of the actual site, which is a landlocked parcel. In Sea Pines Village Condominium Ass'n of Owners v. Sussex County Board of Adjustment, (Del. Super. Oct. 28, 2010), the Delaware Superior Court examined a similar issue where notice of a hearing was incorrectly posted on a neighboring property. In its decision, the Court held that if the Board elects to post notice of the hearing, it must do so properly and post the property which is the subject of the hearing. Posting on lands adjacent to Old Orchard Road, as proposed by the opposition, would run contrary to the Sea Pines Village decision and would lead to defective notice. The Board was not convinced that notice was inadequate. Rather, the presence of opposition evidences that notice of the hearing was effective.

The Board granted the special use exception application finding that it met the standards for granting a special use exception.

#### Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved. 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 special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

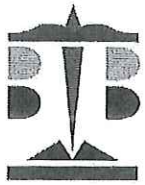


John Mills  
Chairman

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

Date February 5, 2019.





**BAIRD  
MANDALAS  
BROCKSTEDT**

Mackenzie M. Peet, Esq.  
302.645.2262  
mackenzie@bmbde.com

May 23, 2022

**VIA FIRST CLASS MAIL**

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

**RE: Rollin & Lisa Bell  
Case No. 12587 - Extension of Variance Request  
2 Beach Avenue, Rehoboth Beach, DE 19971; TMP: 3-34-23.06-93.00**

Dear Director Whitehouse:

We represent Rollin Bell and Lisa Bell, property owners of 2 Beach Avenue, Rehoboth Beach, Delaware in the North Indian Beach Community (the "Property"). On August 2, 2021, the Board of Adjustment granted Mr. and Mrs. Bell two (2) variances from the front corner setback for a proposed dwelling, as detailed in the Board's Notice of Decision (the "NOD") dated October 18, 2021, attached as *Exhibit A*. We write to request a one-year extension of variance pursuant to Section 115-213 of the Zoning Ordinance for Sussex County, Delaware (the "Code"), attached as *Exhibit B*.

The NOD and Code require the Bells to establish their proposed use within two (2) years from October 18, 2021, or October 18, 2023. Section 115-213 permits the Board of Adjustment's extension of a variance for a period not to exceed one year upon showing of good cause.

Mr. and Mrs. Bell respectfully request a one year extension of variance to October 18, 2024. Mr. and Mrs. Bell require an extension because, despite retaining a contractor on January 15, 2022—just three months after the variance was granted—the contractor has informed the Bells that he will be unable to complete demolition of their existing home and begin construction of their new home by October 18, 2023. The contractor explained that supply chain-related construction delays created by COVID and North Indian Beach's restrictive covenants prohibiting construction activities "from Friday before Memorial Day through Labor Day of any year," make it almost certain that the work cannot be completed by October 18, 2023. See Restrictive Covenant No. 7 of the North Indian Beach Second Restated and Amended Restrictive Covenants attached as *Exhibit C*. Although the Bell's have every intention to complete the construction timely, the reasons for the delay are completely due to causes the Bells cannot control. For these reasons, Mr. and Mrs. Bell respectfully request a one year extension of variance to October 18, 2024.



In closing, I ask that this letter and Exhibits A through C be included as part of the record for the Board's consideration of this request for extension of variance at the next available Board of Adjustment meeting.

We thank the Board in advance for their consideration of this request, and respectfully request that the Board grant it for the reasons provided in this letter and as further supported by Exhibits A through C. Should you need any additional information, please contact me by phone or email.

Sincerely,

A handwritten signature in dark ink, appearing to read 'MMP', followed by a long horizontal line extending to the right.

Mackenzie M. Peet, Esquire

MMP/mag

Cc: Rollin & Lisa Bell  
Jamie Sharp, Esquire



# Exhibit A



BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROLLIN BELL & LISA BELL

(Case No. 12587)

A hearing was held after due notice on August 2, 2021. The Board members present were; Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for variances from the corner front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 10 feet from the fifteen (15) feet corner front yard setback requirement for a proposed cantilevered 2<sup>nd</sup> floor balcony and variance of 5 feet from the from the fifteen (15) feet corner front yard setback requirement for proposed balconies on the 3<sup>rd</sup> and 4<sup>th</sup> floor. These structures would be located on the north side of the Property. This application pertains to certain real property located on the corner of Beach Ave. and Pierce Avenue approximately 818 feet east of Coastal Highway (Route 1) (911 Address: 2 Beach Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-23.06-93.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, property record and deed information, a survey of the Property dated April 19, 2021, DNREC approval documentation, Findings of Fact for Case No. 12425, letters of support of the Application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Rollin Bell was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, appeared on behalf of the Applicants.
4. The Board found that Ms. Peet stated that the Applicants are requesting variances for balconies to be located on the north side of the dwelling at 2 Beach Avenue.
5. The Board found that Ms. Peet stated that the front of the Property is considered to be the Atlantic Ocean and that there is a corner front setback of 15 feet which is creating this request for a variance.
6. The Board found that Ms. Peet stated that the Bells were previously before this Board for a variance from Pierce Avenue for an elevator to accommodate elderly grandparents and a variance to bring the existing dwelling into compliance with County Code. Those variances were granted in March 2020.
7. The Board found that Ms. Peet stated that, in addition to getting Board approval, the Applicants also had to go through the DNREC 4-step process of approval which involved the Regulations Governing Beach Protection and the Use of Beaches and was approved. She noted that the DNREC approval is valid for one year and that approval lapsed during the Covid-19 pandemic.
8. The Board found that Ms. Peet stated that the Applicants decided that it would be more economical for them to build a new home than to renovate the existing home and they had to go through the DNREC 4-step process again.



9. The Board found that Ms. Peet stated that the Applicants have received DNREC approval for the plans for a new home but the house cannot be placed closer to the east due to DNREC requirements.
10. The Board found that Ms. Peet stated that the lot is unique because it is a corner lot restricting the buildable lot area.
11. The Board found that Ms. Peet stated that the DNREC building restriction line restricts the placement of the proposed cantilevered balconies on this property. She noted that the angle of the DNREC restriction line from the southeast to northwest further restricts the Property in comparison to the immediate neighbor to the south, which is the Property that sets the parameters for DNREC's 4-step process.
12. The Board found that Ms. Peet stated that, because the DNREC building restriction line goes from southeast to northwest, it creates a restricted and reduced buildable lot area compared to the adjacent property to which the Bells must conform.
13. The Board found that Ms. Peet stated that, given the DNREC building restriction limitations and regulations governing Beach Protection and Use in effect since August 11, 2016, all structures, including the cantilevered balconies, must be constructed seaward of the DNREC building restriction line and be above Base Flood Elevation.
14. The Board found that Ms. Peet stated that, given these regulations, there is no possibility that the Property can be developed in strict conformity with the provisions of the Sussex County Zoning Code.
15. The Board found that Ms. Peet stated that the exceptional practical difficulty was not created by the Applicants but by the location of the existing home in the setback and the requirement that the cantilevered balconies be constructed seaward of the DNREC building restriction line.
16. The Board found that Ms. Peet stated that the proposed cantilevered balconies will not alter the essential character of the neighborhood as the Applicants' existing dwelling and proposed improvements are in character with the neighborhood. She noted that there is a neighbor to the north with similar balconies to the proposed balconies and that the Applicants have included letters of support from neighbors with their Application.
17. The Board found that Ms. Peet stated that visibility will not be an issue as cantilevered balconies are designed for maximum visibility.
18. The Board found that Ms. Peet stated that Beach Avenue is mainly used for pedestrian traffic as access to the beach and is not used in the regular sense of a corner lot which is usually on the corner of two busy roads.
19. The Board found that Ms. Peet stated that the variances are the minimum variances needed to construct the proposed balconies on the north side of the Property.
20. The Board found that Ms. Peet stated that the footprint of the proposed dwelling is smaller than the existing dwelling.
21. The Board found that Ms. Peet stated that the proposed dwelling will meet all setbacks except for the elevator which has approval from Board Case No. 12425.
22. The Board found that Mr. Bell affirmed the statements made by Ms. Peet as true and correct.
23. The Board found that Mr. Bell testified Beach Avenue is an actual road but turns into sandy beach access approximately 20 feet from his dwelling.
24. The Board found that no one appeared in support of or in opposition to the Application.
25. 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 unique as it is a long, narrow lot subject to significant DNREC building restrictions. The Property is adjacent to beaches of the Atlantic Ocean and much of the easterly side of the lot is undevelopable due to the DNREC building restrictions. As such, the proposed dwelling is pushed towards the western side of the Property adjacent to Pierce Avenue. The Applicants seek to construct balconies but are unable to do so within the building envelope. The Property's unique conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct balconies off the proposed house.
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct balconies but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct the balconies on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the Applicants need the variances in order to reasonably develop the Property as proposed. The Board notes that the proposed dwelling is smaller than the prior home on the lot and, except for the elevator, will otherwise comply with the setback requirements.
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to construct reasonably sized balconies off the house. The balconies will be adjacent to a sandy walkway that is considered a road. There were no complaints about the location of the structure. Likewise, there was no objection to the proposed addition and no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received letters of support from neighbors about the Application.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to build reasonably sized balconies.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

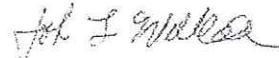


The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

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

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

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

Date October 18, 2021



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# Exhibit B



## Chapter 115. Zoning

### Article XXVII. Board of Adjustment

#### § 115-213. Lapse of special exception or variance.

[Amended 3-20-2018 by Ord. No. 2563]

After the Board of Adjustment has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of two years if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted. The Board of Adjustment may extend the expiration date of the special use exception or variance for a period not to exceed one year upon a showing of good cause; provided, however, that the extension request is submitted prior to the expiration of the existing approval. If a decision of the Board is appealed, the two years shall not begin until the decision on appeal becomes final.



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# Exhibit C



Tax Map & Parcel Nos.  
3-34 23.06 61.00 through 94.00 (inclusive)  
Prepared By & Return To:  
Steen, Waehler & Schrider-Fox, LLC  
P.O. Box 1398  
92 Atlantic Avenue, Unit 2  
Ocean View, DE 19970  
(MRSF)

**NORTH INDIAN BEACH  
SECOND RESTATED AND AMENDED  
RESTRICTIVE COVENANTS**

**WHEREAS**, the North Indian Beach Community Association (hereinafter the "Association"), and the members thereof, being owners of lots in the North Indian Beach community (formerly known as "Indian Beach Surf Club Lots"), located in Lewes and Rehoboth Hundred, Sussex County, Delaware, are bound by the North Indian Beach Restated and Amended Restrictive Covenants of record at the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Deed Book 2426, Page 60, et seq., as subsequently amended by a First Amendment of record at the Office of the Recorder of Deeds, aforesaid, in Deed Book 2731, Page 191, et seq., and a Second Amendment of record at the Office of the Recorder of Deeds, aforesaid, in Deed Book 3060, Page 127, et seq. (for purposes of this introduction, hereinafter collectively referred to as the "Restrictive Covenants"); and

**WHEREAS**, pursuant to the authority established in the Restrictive Covenants, which was originally established in the Original Deeds for all Lots in North Indian Beach, the Restrictive Covenants may be amended by and with the vote or written consent of a majority of the owners of all lots located within North Indian Beach; and

**WHEREAS**, due to the number of changes being made to the Restrictive Covenants, the Association has deemed it prudent to record a second restated and amended set of restrictive covenants to substitute and replace, in its entirety, the Restrictive Covenants previously recorded.

**NOW THEREFORE**, pursuant to the authority recited above, at least a majority of the owners of all lots located within North Indian Beach hereby revise, amend, substitute and replace the Restrictive Covenants as follows:

[THIS SPACE INTENTIONALLY LEFT BLANK]



NORTH INDIAN BEACH  
SECOND RESTATED AND AMENDED  
RESTRICTIVE COVENANTS

1. All buildings erected upon any lot located within North Indian Beach shall be restricted and limited to residential uses and purposes only.
2. Not more than one dwelling house shall be erected upon any single lot or double lot located in North Indian Beach. A double lot for purposes of these restrictions is defined as one lot combined with another contiguous lot and/or partial lot, all of which are used together and form one tax parcel, as recorded with the Office of the Recorder of Deeds, in and for Sussex County, Delaware, and/or as determined by the Assessment Office for Sussex County.
3. Nothing herein contained shall deny any owner the right to erect upon any lot or double lot a private garage or other small outbuilding after there has been erected thereon a principal dwelling house in compliance with these restrictions, and such garage or other small outbuilding shall be solely used in connection with the principal dwelling house erected upon such lot or double lot.
4. The building setback requirements for North Indian Beach shall be as follows: the front yard setback, regardless of the lot size, shall be as provided by Section 115-182 of the Sussex County Zoning Regulations, as such may be amended from time to time; the side yard setbacks, for any lot that is less than 10,000 square feet in size, shall be as provided by Section 115-183(D) of the Sussex County Zoning Regulations, as such may be amended from time to time; the rear yard setback, for any property less than 10,000 square feet in size, shall be fifteen feet which, after being reduced by five feet pursuant to Section 115-183(D) of the Sussex County Zoning Regulations, as such may be amended from time to time, yields a ten foot rear yard setback; the side yard and rear yard setbacks, for any lot or double lot that is greater than 10,000 square feet in size, shall be as provided in Section 115-34 and Section 115-Attachment 1:1 of the Sussex County Zoning Regulations, as such may be amended from time to time. Any variances from the setback requirements shall be obtained from Sussex County in accordance with its variance procedures.
5. Lot Coverage and FAR: The building area for the dwelling on any single lot or double lot located in North Indian Beach shall not exceed a Floor Area Ratio (total living space/total lot space) of FAR .7/5 for a single lot and FAR .65/1 for a double lot. For example, on a single lot of 12,500 square feet, the total floor area of the dwelling allowed would be  $12,500 \times .7 = 8,750$  square feet. Total living space for purposes of the FAR calculation is the sum of the square footage of all heated, weatherized living space on all floors of the dwelling. Total living space does not include any unheated, unweatherized spaces, such as porches, decks, balconies and/or accessory structures.
6. No single lot located within North Indian Beach as of the effective date of this amendment shall hereafter be re-subdivided, sold or otherwise aliened into lesser or smaller parcels.



7. Construction Activities:

(a) No major construction activities requiring a Sussex County permit, including, but not limited to, the construction of a dwelling, installation of pilings, construction of decks, application of roofs, replacement and/or installation of windows and drywall, shall be performed from Friday before Memorial Day through Labor Day of any year (hereinafter referred to as "the Moratorium Period"). Construction during the year other than during the Moratorium Period shall only be done between the hours of 8:00 a.m. and 5:30 p.m. Construction repairs due to an emergency or to remedy any safety hazard may be performed during any time of the year and at any time of day. Any such construction repairs due to an emergency or to remedy a safety hazard must be approved in advance by the Board, which shall have sole and absolute discretion in determining whether the requested repair is either due to an emergency or to remedy a safety hazard that cannot reasonably and safely wait until after Labor Day to be made. In the event of a true emergency that cannot wait to be addressed in order to prevent immediate, further damage to one's property and/or to prevent immediate personal injury, the repair may commence without advance approval from the Board; however, the Board must be notified of the repair as quickly as possible and approval therefrom obtained as to the scope of repair work permitted.

(b) The Association shall require a bond to be posted or a cash deposit to be paid (which shall be held by the Association in a specially designated escrow) by the lot owner/permittee in question to ensure compliance with these restrictive covenants. Such bond or cash deposit shall be in an amount equal to 10% of the total cost of the construction of alterations, modifications or substantial repairs contemplated. The lot owner/permittee shall supply a copy of the construction contract to the Association upon posting the bond or cash deposit. The bond may be posted by a letter of credit or by insurance. Provided no violations of the restrictive covenants occurred, upon completion of the construction, alterations, modifications or substantial repairs contemplated, the Association shall release the bond or return the cash deposit to the lot owner, as applicable. In the event a lot owner/permittee commences construction as outlined above without complying with this subparagraph (b), the Association may place a lien on the property in an amount up to 10% of the appraised value of the property prior to construction, as determined by an independent appraiser.

(c) At the request of the lot owner, the cash deposit paid may be held in an interest bearing account, with interest accruing for the benefit of the lot owner. All costs associated with opening and closing of such interest-bearing escrow account shall be borne by said lot owner.

(d) In the event any lot owner fails to strictly adhere to the terms and conditions of this restriction, the Association shall have the absolute right to retain the aforesaid bond or cash deposit and said lot owner shall be deemed to have forfeited such bond or cash deposit toward liquidated damages in the amount of \$3000.00 per day, or such other amount as deemed appropriate by the Board of Directors due to the nature and extent of the violation, for said lot owner's failure to strictly adhere to the terms and conditions of this restriction.



(e) In the event any lot owner fails to seek and obtain the approval of the Association before any construction, alterations, modifications or substantial repairs are made during the Moratorium Period, the Association shall be entitled to the recovery of liquidated damages in the amount of \$3000.00 per day.

(f) Where liquidated damages are called for in this restriction, the lot owner hereby expressly agrees that the portion of the bond or cash deposit retained by the Association in accordance with this restriction shall be deemed to be liquidated damages because of the normally difficult nature of predicting or in determining an accurate amount of damages resulting from a lot owner's failure to strictly adhere to the terms and conditions of this restriction.

(g) In the event the Association shall be required to take any action to enforce compliance with this restriction against any lot owner, the Association shall be entitled to recovery of all of its costs, including, but not limited to, any court costs and reasonable attorney's fees that the Association may incur therein. This action includes, but is not limited to, the placement of a lien on the lot owner's property for violating the terms and conditions of this restriction.

(h) Notwithstanding the provisions set forth in subparagraphs (a) through (g) above, the Board of Directors of the Association may alter or waive the provisions of this restriction for good cause and if in the best interests of the Association.

8. No recreational vehicle, boat, trailer, mobile home, double wide or similar type structure which moves to a building site on wheels attached to its own undercarriage, tent, shack, garage, barn or other type of outbuilding, shall at any time be used as a residence, temporarily or permanently. No recreational vehicle, boat, trailer, mobile home, double wide, tent, shack, garage, or barn shall be utilized as a main or single dwelling unit on any lot in North Indian Beach.

9. Lots must be used for single family residential use only. Single family residential use means that a dwelling shall be designed or occupied by not more than one of the following as a single housekeeping unit:

(a) One person or two or more persons related by blood, civil union, marriage, or as life partners, with any number of biological children, other blood relatives, in-laws, foster children, stepchildren or adopted children, all functioning as a single housekeeping unit.

(b) Two single parents or guardians with any number of their biological children, other blood relatives, in-laws, foster children, stepchildren or adopted children, functioning as a single housekeeping unit.

(c) In a rental context only, a group of not more than fifteen persons not necessarily related by blood or marriage functioning as a single housekeeping unit.



Nothing herein contained shall be construed in a non-rental context as prohibiting any individuals occupying a residence in North Indian Beach from having non-related guests or visitors. Domestic servants employed and residing on the premises shall be considered as part of the family.

10. No lot shall be used at any time to conduct business, nor shall a lot be used for any purpose whatsoever except for the purpose of private dwelling or residence; provided, however, that nothing contained herein shall be construed so as to prohibit no impact home offices, so long as no stock in trade is kept or commodities sold; there are no employees, patrons, customers or clients visiting the lot; and there are no signs and/or other advertising of any kind. No one shall reside on any lot, casually, temporarily or permanently, except in a dwelling house completed according to the approved plans and specifications and for which a use and occupancy permit has been issued by Sussex County. It is permissible for a lot owner to lease a dwelling on a lot or double lot to a third party for compensation, provided the following provisions are met, as every lease agreement for every dwelling on a lot or double lot within North Indian Beach is subject to the following rules and regulations, even if the lease agreement shall fail to expressly include such provisions:

(a) The lease agreement, a blank copy of which shall be provided the Association upon request, must be for the entire dwelling and the entire lot or double lot. A dwelling cannot be used like a time share or as a rooming house, motel or hotel;

(b) The lot owner shall incorporate into the lease agreement a set of governing documents as promulgated by the Association, and as limited to those pertaining to leases and tenants and shall provide a copy of those documents to the tenant, and the tenant's use of the property shall be subject to the provisions thereof (whether or not such documents actually have been provided to the tenant.)

(c) Each lease agreement must be in writing and must advise tenants of their obligation to avoid loud, excessive noise, as well as any other behavior or property condition that disturbs the occupants of other lots or common areas in North Indian Beach (hereinafter collectively referred to as "disturbing behavior"), throughout the duration of the lease. Owners who lease their property and their realtors, as applicable, have an obligation to evict tenants who engage in persistent, disturbing behavior. The lease agreement shall advise tenants of said obligation and shall further advise tenants that, in the event an owner or his/her realtor fails to evict in response to persistent, disturbing behavior, the Association, by and through the Board, its security company or its management agent, shall have the right to evict the tenants, subject to forfeiture of all monies paid under the lease agreement, for cause due to the persistent, disturbing behavior.

11. All owners of improved lots in North Indian Beach shall be obligated to pay dues and assessments to the Association. The owners of a single lot and the owners of a single lot plus a partial lot shall pay the same assessment amount (hereinafter "single assessment amount"). The owners of two or more full lots shall pay the single assessment amount multiplied by the number of full lots owned. If any dues or assessments are not paid by the due date set by the Board of Directors, then such dues and assessments shall be deemed delinquent and shall, together with any interest thereon, late fees and cost of collection, including reasonable attorney's fees,



continue as a lien on the lot and structure built thereon, which shall bind such lot in the hands of the then owner(s), his or their heirs, devisees, personal representatives, successors and assigns. In addition to such lien rights, the personal obligation of the then owner(s) to pay such dues and assessments, however, shall remain his or their personal obligation and shall not pass to his or their successors in title (other than as a lien on the land) unless expressly assumed by them. If the dues or assessments are not paid within 60 days after the due date, then the dues and assessments shall incur late fees in such amounts as established by the Board of Directors from time to time, bear interest from the date of delinquency at the legal rate of interest allowed under Delaware law, and the Association may bring a legal action against the owner(s) personally obligated to pay the same or may enforce or foreclose the lien against the lot. While said owner(s) is delinquent as provided herein, all beach privileges are suspended. Notwithstanding such loss of beach privileges, the owner(s) of any lot directly facing the ocean shall not forfeit beach privileges of that portion of the beach owned by such owner(s). No owner(s) of any lot may waive or otherwise escape liability for the payment of dues and assessments as provided herein, by non-use of the beach privileges. All dues and assessments shall be determined by a vote of at least 60% of the owners at a regular meeting scheduled with due notice by the Board of Directors of the Association.

12. Each owner of any developed lot or developed double lot within North Indian Beach shall automatically become a member of the North Indian Beach Community Association. Membership shall be appurtenant to and may not be separated from the ownership of any developed lot or developed double lot which is subject to assessment. Membership shall begin at the time of receipt of title by the developed lot owner or developed double lot owner and shall continue until such time the owner transfers or conveys his interest in said lot or until such time his interest is transferred or conveyed by operation of law. No person or entity who holds an interest of any type or nature whatsoever in a developed lot or developed double lot only as security for performance of any obligation shall be considered a member, unless and until such person or entity has succeeded to such owner's interest by enforcement of such security interest. No owner of an undeveloped lot shall be a member, unless and until such lot is developed as permitted by and in accordance with these restrictive covenants.

13. The owner of a developed lot shall be entitled to one vote on any and all issues requiring a vote of the Association membership. The owner of a developed double lot (as defined herein) shall be entitled to one vote on any and all issues requiring a vote of the Association membership. The owner of an undeveloped lot is not a member of the Association and, accordingly, does not have any voting rights.

14. The vote for the membership which is held by more than one (1) person may be exercised by any of the co-holders present at any meeting unless any objection or protest by any other holder of such membership is noted at such meeting. In the event all of the co-holders of any membership who are present at any meeting are unable to agree on the manner in which the votes for such membership shall be cast on any particular question, then such vote shall not be counted for the purposes of deciding that question. In the event any membership is owned by a corporation, then the vote for any such membership shall be cast by a person designated in a certificate signed by the president or any vice president of such corporation and attested by the secretary or an assistant secretary of such corporation and filed with the Secretary of the



Association, prior to or during the meeting. The vote for any membership which is held by a limited liability company, trust or partnership may be exercised by any member, trustee or partner thereof, as the case may be, and, unless any objection or protest by any other such member, trustee or partner is noted at such meeting, the chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes.

15. Every member in good standing, defined as a member of a developed lot or developed double lot whose dues and assessments are paid within 60 days after the due date, shall be entitled to all rights and privileges of the members of North Indian Beach Community Association including, without limitation, access to and use of the beach which extends between the south borderline of Collins Avenue and the south borderline of Pepper Avenue. The owner of an undeveloped lot does not have any beach access rights or other membership rights.

16. The North Indian Beach Community Association, under the direction of the elected Board of Directors representing the membership, shall manage and maintain the streets, entrance ways, dunes, dune crossovers, beach and other open, common and/or community areas for the general good of the North Indian Beach community, and do and perform any action necessary or desirable in the judgment of the Association to maintain the North Indian Beach community in good repair and condition. Whether or not to construct or improve any street or road located within North Indian Beach, beyond that what exists as of the date of these Second Restated And Amended Restrictive Covenants, shall be determined by the Board of Directors in its sole discretion, without obligation.

17. Nuisance: It shall be the responsibility of each owner to prevent the development of any unclean, unsightly, or unkempt conditions of buildings or grounds upon any lot (except in the course of construction thereon) which shall tend to substantially decrease the beauty of North Indian Beach as a whole, or the beauty of the specific area. No noxious or offensive activity, so as to offend a person of common and ordinary sensibilities, shall be permitted upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the North Indian Beach community. There shall not be maintained upon any lot any plant, animal, device or thing of any sort, the normal activities of which is in any way noxious, dangerous, unsightly, unpleasant or of such a nature as may diminish or destroy the enjoyment of North Indian Beach. Specifically included under this section is the prohibition against any poultry, swine (including pot-bellied pigs), horses or livestock of any kind being kept on any lot. The keeping of any non-domestic animals shall be deemed a nuisance per se under this section; but the keeping of domestic cats and dogs, or other traditional household pets, unless the activity of such pets is in any way noxious, dangerous, unsightly or unpleasant, shall not be prohibited under this section. No disabled vehicle will be allowed to remain in view as a nuisance, nor shall any unlicensed vehicle be allowed to remain, more than a reasonable period of time not to exceed fifteen (15) days.

18. Weeds and Trash: No noxious weeds or accumulated trash of any kind shall be permitted to grow or be maintained upon any lot by the owner or occupier thereof, except construction materials and debris of a builder during construction. The Association or its successors and assigns may first notify the owner or occupier to cut and/or remove any such offending growth or trash within thirty (30) days from the giving of such notice. Any such



notice must be in writing. If the owner or occupier shall fail or neglect to comply with any such notice, then and in such an event, the Association or its successors shall be empowered to enter upon any such lot, together with such assistance and equipment as may be required, and thereupon to cut and/or remove the same, all without being deemed a trespass and all at the expense of the owner of the lot. Said expenses may be collected in the same manner as assessments, and shall constitute a lien against the lot in question. This covenant shall not be construed as an obligation on the part of the Association or its successors to provide garbage or trash removal services.

19. The launching or landing of any type motorized water craft from or to any beach front lot within North Indian Beach shall be prohibited.

20. The fencing off of a lot shall be restricted to the legal boundaries of such lot. In the event such fencing encroaches upon North Indian Beach Community Property (defined as all real property, developed or undeveloped, in North Indian Beach other than the real property owned by the owners of individual lots, as set forth and identified in the land records of the Office of the Recorder of Deeds, in and for Sussex County, Delaware), the Board of Directors is empowered to remove the encroaching fence at the cost of the offending lot owner. Such costs may be collected in the same manner as assessments, and shall constitute a lien against the lot in question.

21. The North Indian Beach Community Association Board of Directors, for itself, its successors and assigns, reserves the right, in the interest of the health, comfort, rest and welfare of the owners and occupants of lots within the North Indian Beach community, to establish, maintain and enforce regulations for the disposal and removal of garbage, sewage and rubbish, which may include, but not be limited to, entering into a garbage removal contract for the entire community and including the cost thereof in the assessment amount paid by each lot owner in accordance with these restrictions. The Board of Directors further reserves the right at any and all times to exclude, expel and remove all nuisances, obstructions, vehicles or persons upon whom no privilege for the use of the ways is conferred by membership.

22. Nothing shall impose upon the North Indian Beach Community Association, or its Board of Directors, its successors or assigns, any liability for the property damage and/or personal injury and/or both occurring to any person whomsoever by reason of the use of the ways, beach, and/or easements, and all persons using such ways, beach and/or easements shall do so at their own risk.

23. Self-Help: The Association, by and through its Board of Directors, shall have the right to exercise self-help in order to abate violations of these restrictions and/or any duly adopted rules and regulations. The costs of the implementation of such self-help shall be assessed against the violating lot owner and shall be collected in the same manner as assessments. In addition to the foregoing, the Association shall have the right, whenever any improvement is built in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the lot owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the lot owner. The costs of such correction shall also be assessed against the lot owner and shall be collected in the same manner as assessments,



and shall constitute a lien against the lot in question. The Association is hereby granted a perpetual easement across each lot for the purpose of enforcing its right under this section, and no such entry and abatement or removal shall be deemed a trespass.

24. Vehicle Towing Authority: The Association, by and through its Board of Directors, shall have the right to tow vehicles, boats, boat trailers, campers, recreational vehicles and/or utility trailers parked, stored or maintained in violation of these restrictions or other governing document, including any duly adopted rules and regulations. The costs associated with any towing implemented by the Association shall be assessed against the violating lot owner, if applicable, shall be collected in the same manner as assessments, and shall constitute a lien against the lot in question.

25. Monetary Fines: The Association, by and through its Board of Directors, shall have the right to levy a reasonable monetary fine for a violation of these restrictions or other governing document, including any duly adopted rules and regulations, in an amount to be determined by the Board after written notice and an opportunity to be heard before the Board has been given to the violating owner in question, all in accordance with § 81-302 of DUCIOA. Any monetary fine imposed by the Board shall be collected in the same manner as assessments, and shall constitute a lien against the lot in question.

26. The Association, by and through its Board of Directors, shall have the right to adopt rules and regulations in accordance with § 81-320 of DUCIOA governing the use by the lot owners of North Indian Beach Common Property or of the individual lots. Any rules and regulations adopted by the Association shall be a governing document of the Association.

27. Notices:

(a) The following methods of giving notice suffice when notice is required: (i) hand delivered to each lot owner or, if to the Association, at such address as the Association may from time to time designate by notice to all lot owners; (ii) sent prepaid by United States mail to the mailing address of each lot, unless the lot owner has designated in writing a different mailing address in which case it shall be sent to the designated address, or, if to the Association, to the mailing address of the Association as designated by the Association from time to time by notice to all lot owners; or (iii) sent by electronic means in the manner described in subsection (b).

(b) The Association provides effective notice by electronic means if the lot owner gives the Association prior written authorization to provide that notice, together with an electronic address.

(c) The ineffectiveness of a good faith effort to deliver notice by any authorized means does not invalidate action taken at a meeting or in lieu of a meeting.

28. Duration and Amendment: These restrictions run with and bind all real property in the North Indian Beach subdivision and shall inure to the benefit of and be enforceable by the Association or the owner of any lot subject to these restrictions, their respective legal representatives, heirs, successors and assigns, as the case may be in perpetuity; subject, however,



to the provision that the Association or its successors, by and with the vote or written consent of a majority of the lot owners, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these restrictions at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, elimination, or addition shall take effect when a copy thereof, executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgment of deeds, together with written consents of the requisite number of lot owners or a certification of the vote executed by the Association, has been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

[SIGNATURE PAGE AND CERTIFICATION OF VOTE  
TO FOLLOW ONCE APPROVED BY MEMBERSHIP]