



TOWN OF OCEAN CITY

The White Marlin Capital of the World

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BOARD OF ZONING APPEALS AGENDA

Thursday, March 28, 2024

6:00 p.m.

Meetings are held in the Council Chambers of City Hall located at 301 Baltimore Avenue, Ocean City, Maryland.

I. Administrative Matters

- a. Approval of the minutes from the March 14, 2024 meeting
- b. Approval of the Findings of Fact for BZA Case 2678 (Jason Miller)
- c. Approval of the Findings of Fact for BZA Case 2679 (Joseph Moore, Esquire & 601 Atlantic LLC, 605 Atlantic LLC, and SAS Partnership, LLC)
- d. Approval of the Findings of Fact for BZA Case 2680 (JDACAI Ocean City, LLC)

II. Public Hearings

at 6:00 p.m.

Pursuant to the provisions of Section 110-93(3), Powers of the Code, an appeal of Section 110-95(1)(a) has been filed to request a variance of 10 feet from the 10-foot front yard setback for a proposed pavilion to be 0.0 feet from the front property line. The site of the appeal is described as Tax Map 110, Parcel 2501, and as the plat entitled "White Marlin Condominium". It is further described as being located on the south side of Somerset Street and is locally known as 205 Somerset Street, in the Town of Ocean City, Maryland.

APPLICANT: WHITE MARLIN CONDOMINIUMS C/O MANN PROPERTIES, INC. (BZA 2681 #24-0950002)

at 6:20 p.m.

Pursuant to the provisions of Sections 110-93(2) and 110-93(3), Powers of the Code, an appeal of Sections 110-94(3)(a) and 110-95(1)(a) has been filed to request (1) a special yard exception from the 5-foot rear yard setback for a proposed dwelling to be 0.39 feet from the rear lot line; and (2) a variance of 6.88 feet from the 10-foot separation distance requirement for a proposed deck to be 3.12 feet from a neighboring dwelling. The site of the appeal is described as Lot 2B, Section B, of the Warren's Park Co-op Plat. It is further described as being located on the north side of Middle Way Lane and is locally known as 22 Middle Way Lane, in the Town of Ocean City, Maryland.

APPLICANT: MARK DREXEL (BZA 2682 #24-09400005)

**BOARD OF ZONING APPEALS
MINUTES
TOWN OF OCEAN CITY, MARYLAND**

**Meeting of
Thursday, March 14, 2024**

ATTENDEES:

Members

Christopher Rudolf, Chair
John Moran
Emily Nock
Dan Stevens

Staff

Chase Phillips, Zoning Analyst
Kay Gordy, Zoning Administrator
George Bendler, AICP, Director
Maureen Howarth, Board's Attorney

The meeting was called to order at 6:00 p.m., and it occurred at City Hall located at 301 Baltimore Avenue in the Town of Ocean City, Maryland.

6:00 PM

I. Administrative Matters

Minutes

a. The Board reviewed the minutes from the February 28, 2024 special meeting.
Motion/ Emily Nock **Second/** John Moran to approve the minutes from the February 28, 2024 meeting. The motion passed unanimously (4-0).

II. Public Hearings

at 6:00 PM

Pursuant to the provisions of Section 110-93(3), Powers of the Code, an appeal of Section 110-95(1)(a) has been filed to request (1) a variance of 3.4 feet from the 5-foot rear yard setback requirement for a proposed pool; and (2) a variance of 2 feet from the 6-foot height maximum for a proposed fence to exist at 8 feet in height. The site of the appeal is described as Lot 78 of the Caine Keys II Plat. It is further described as being located on the west side of Shifting Sands Drive and is locally known as 10609 Shifting Sands Drive, in the Town of Ocean City, Maryland.

APPLICANT: JASON MILLER (BZA 2678 #24-0950001)

Chase Phillips introduced this application which included the presentation of the staff report, exhibits, relevant Code sections, and advertising requirements.

Mr. Michael Labesky was sworn in and provided a summary of the request. He stated that the proposed pool is a replacement for a pool that also existed in the 5-foot rear yard setback. Bulkhead replacement is occurring and the land is being extended out further. He stated the location of the house is one criterion for why the pool cannot comply. Chairman Rudolf asked for the justification for the fence. Mr. Labesky stated that the deck is above grade and the 8 feet of height is needed to have effective privacy. In reference to the pool,

Mr. Labesky testified that the previous pool was also approximately 1.6 feet from the rear property line and that the deck is above grade and the pool will partially be in the ground. He also stated that the proposed pool is fiberglass, and this size pool is the standard for a fiberglass pool.

Mr. Scott Heise, adjacent property owner expressed he had no objection to the pool placement, but he did hold objection to the 8-foot fence.

The Board held deliberations regarding the staff presentation, testimony from the applicant and members of the public, and the two-part criteria needed to award variances. The Board found that the property was not unique.

Motion/ John Moran Second/ Emily Nock to deny the variance request for the proposed pool. This motion passed unanimously (4-0).

Motion/ John Moran Second/ Emily Nock to deny the variance request for the proposed fence. This motion passed unanimously (4-0).

at 6:10 PM

Pursuant to the provisions of Sections 110-93(2) and 110-93(3), Powers of the Code, an appeal of Sections 110-94(3)(a), 110-95(1)(a), and 110-94(2)(b) has been filed to request (1) a special yard exception to allow for an additional two stories to exist 7.5 feet in the front yard setback; and (2) a variance to allow for a roof to exist within the 10-foot front yard setback and to be 3.83 feet from the side lot line; and (3) a special parking exception to allow for 8 parking spaces to be in a tandem stacked configuration; and (4) a special parking exception from design standards to reduce the required 9' X 20' parking spaces to accommodate two 6 inch encroachments for support columns. Pursuant to Section 110-98, the applicant has also requested that an approval be valid for three (3) years. The site of the appeal is described as Lots 7 and 8, Block 7, of the Sinepuxent Beach Plat. It is further described as being located on northwest corner of 6th Street and Atlantic Avenue, the Boardwalk, and is locally known as 605 and 607 Atlantic Avenue, in the Town of Ocean City, Maryland. APPLICANT: JOSEPH E. MOORE, ESQ. ATTY FOR 601 ATLANTIC, LLC, 605 ATLANTIC, LLC, AND SAS PARTNERSHIP, LLC (BZA 2679 #24-0940003)

Chase Phillips introduced this application which included the presentation of the staff reports, exhibits, relevant Code sections, and advertising requirements. Also, a detailed history of the property and description of the proposal at large was provided. Ms. Kay Gordy, Zoning Administrator, provided clarification regarding the nonconformities and how those nonconformities may or may not impact the project.

Mr. Joseph E. Moore, Applicant and representative of the applicant, provided a summary of the request and justifications as to why all components of the request was provided. He stated that one additional document would be added into evidence. This was certain excerpts from the Comprehensive Plan. He stated that this proposal is consistent with several elements of the Comprehensive Plan.

Mr. Moore explained how several nonconformities are present. He stated that the only major nonconformity that would be utilized would be the parking not provided for the

commercial uses on the Boardwalk. This proposal has gone to OCDC and it has received preliminary approvals. Mr. Moore called for his first witness.

Mr. Steven Cirile was sworn in and testified that that he is a consultant and designer. He asked Chase Phillips to show a video of a rendering of the proposal. This video was shown through the internet and was broadcasted both for the Council Chambers and for those watching online. It has been referenced as Applicant Exhibit #3.

Mr. Steven Cirile stated that there will be 8 tandem stacked parking spaces on the southwest corner of the property and the rest of the parking will be in a standard configuration. Additionally, he stated another component of this request is to have two 6-inch support columns be located within the 9' X 20' parking space. Mr. Cirile stated that these spaces that will house the columns will pose no adverse impact because they will still be functional. Mr. Moore emphasized that despite these requests, many other major features and design proposals for the building have resolved the multitude of nonconformities that exist. Mr. Cirile stated there are no adverse effects onto adjacent properties through the 3 types of special exceptions that are before the Board tonight. In fact, this design resolves the issue that the existing building is over the property line.

Mr. Moore stated the next element of this request is for the variance for the roof structure to be located on the south face of the building. He stated that the uniqueness is the location of the building to the west that exists over the property line. Therefore, this is a bettering of the situation. Mr. Moore stated there is practical difficulty because the use of the outdoor seating is permitted, and this roof structure is needed for the practical use of the building because of weather events.

Emily Nock asked about the number of rooms that currently exist in the building known as 4 6th Street. It was confirmed that there were 9 rooms and two apartments downstairs with two bedrooms each for a total of 13 rooms.

Dan Stevens asked about the main use of the proposed unit. Mr. Cirile stated that it would be for short term rentals. Mr. Stevens asked about whether a lot consolidation would be completed, and it was confirmed that one will be done.

John Moran asked about the status of the request for the tandem parking spaces. Mr. Cirile and Joseph Moore confirmed that it can be withdrawn. Chase Phillips provided the Code section that pertains to why the Applicant requested that it be withdrawn.

Chairman Rudolf called any members of the public that wished to provide testimony. Mr. George Harrison was sworn in and asked a few questions that included the location of parking, designs/elevations of the portion of the building that would face his home, the location of the dumpsters, and the general use of the store fronts. Mr. Cirile utilized the video to answer these questions. Mr. Harrison had no further questions or concerns.

John Moran questioned whether the special yard exception for the building was satisfied. Ms. Howarth clarified the definition of a special yard exception. Ms. Gordy specified that there is a right to build the same number of stories and the yard exception is for the additional stories that do not already exist.

Motion/ John Moran **Second/** Emily Nock to approve the special yard exception for the building to exist 7.5 feet from a front property line, conforming to the legally nonconforming setback. This motion passed unanimously (4-0).

The Board determined that there was no uniqueness to grant a variance the roof structure.

Motion/ Emily Nock **Second/** Dan Stevens to deny the request for a variance for a roof structure to be 3.83 feet from the front property line. This motion passed unanimously (4-0).

Motion/ John Moran **Second/** Emily Nock to approve the special parking exception request from design standards to allow for two 6-inch encroachments for support columns. This motion passed unanimously (4-0).

Motion/ Emily Nock **Second/** Dan Stevens for all approvals to be valid for a period of three (3) years. This motion passed unanimously (4-0).

AT 6:20 PM

Pursuant to the provisions of Section 110-93(2), Powers of the Code, an appeal of Section 110-94(2)(b) has been filed to request (1) a special parking exception to waive 2 parking spaces of the required 10 parking spaces; and (2) for the 8 remaining parking spaces to be 9' X 18' rather than 9' X 20', as required by Code. The site of the appeal is described as Lot 242 of the Caine Harbor Mile, Ocean City, Worcester County, Maryland, Section 1 Plat. It is further described as being located on the northwest corner of Coastal Highway and Newport Bay Drive and is locally known as 11651 Coastal Highway, in the Town of Ocean City, Maryland.

APPLICANT: JDACAI OCEAN CITY, LLC ATTN: DAVE ENYON (BZA 2680 #24-0940004)

Chase Phillips introduced this application which included the presentation of the staff report, exhibits, relevant Code sections, and advertising requirements. Mr. Phillips also provided background and context to the request which previously was approved by the Board of Zoning Appeals on October 27, 2022.

Mr. Keith Iott of Iott Architecture and Dave Enyon were sworn in and testified that this application had previously been approved, but it expired. Playa Bowls went through the permitting process when it was identified that the special parking exceptions has expired. The proposal for this building is a change of use to establish an eatery that is approximately 900 square feet. Mr. Enyon stated that there will be about 6 seats inside and that it would be mostly takeout. He estimated that less than half of the business expected would be supported by those who drive to the establishment. The request to have smaller spaces was conveyed to be a function of the geometry of the lot. Additionally, one space is an ADA and van accessible space that was not previously there.

Mr. Scott Heise was sworn in and asked about why ten spaces are required. Mr. Phillips provided the parking tabulation. He stated that he has no objection to the change of use but he has concerns with the lack of parking being provided. It was clarified that the housing would be for employee housing, and it must remain as such by way of deed restriction.

Motion/ John Moran **Second/** Dan Stevens to approve the request to waive 2 parking spaces from the required 10 and for the 8 spaces to have dimensions of 9' X 18' instead of the 9' X 20' required by Code.

The Findings from the previous meeting were provided for signatures.

Chairman Rudolf entertained a motion to adjourn.

Motion/ Emily Nock **Second/** John Moran to adjourn. This motion passed unanimously (4-0).

The meeting adjourned at 7:56 p.m.

Approval of Minutes

Christopher Rudolf, Chairman

Date

TOWN OF OCEAN CITY
BOARD OF ZONING APPEALS

Findings of Fact
Meeting of March 14, 2024

APPLICATION: **BZA 2678 (24-09500001)**

APPLICANT: **Jason Miller**
 2923 Merryman's Mill Road
 Phoenix, Maryland 21131

SUBJECT SITE: **10609 Shifting Sands Drive**
 Ocean City, Maryland 21842

Opinion

A hearing was held before the Town of Ocean City Board of Zoning Appeals (hereinafter "Board") on March 14, 2024, at 6:00 p.m. for the application of Jason Miller (hereinafter "Applicant") (BZA 2678, File #24-09500001). Pursuant to Town Code Section 110-95(1)(a), the Applicant requested (1) a variance of 3.4 feet from the 5-foot rear yard setback requirement for a proposed pool to be 1.6 feet from the rear property line; and, (2) a variance to allow for an 8-foot fence to exist in the side and rear yards, rather than a 6-foot fence that is permitted by Code.

The site of the appeal is described as Lot 78 of the Caine Keys II Extended Plat. It is further described as being on the west side of Shifting Sands Drive and is locally known as 10609 Shifting Sands Drive, in the Town of Ocean City, Maryland.

Chase Phillips Zoning Analyst, was sworn in and presented the staff report with exhibits (Staff Exhibit #1, Pages 1 and 2). He specified that the proposed pool that is approximately 9' X 24' is a replacement of a pool that existed within the 5-foot rear yard setback as well. However, it

is no longer there. Additionally, this pool proposal is a part of a larger project for deck replacement, culvert repair, and bulkhead replacement. He informed the Board that Section 110-95(1)(a) authorizes the Board to hear and decide on requests for variances to minimum yard requirements and that Section 110-905 allows for ground level swimming pools to exist 5 feet from side and rear lot lines and for fences in side and rear yards to have a maximum height of 6 feet. He added that Maryland courts have recognized a two-part test for local authorities to grant variances and that this test relies upon an applicant proving the uniqueness of a property and how that uniqueness creates practical difficulty, as stated in the staff report. Mr. Phillips informed the Board that this application complies with the noticing requirements of local and state law.

The Applicant's Case

Mr. Michael Labesky, contractor and representative of the Applicant, was sworn in and testified the following:

- 1) He plans to replace a pool with this proposed 9' X 24' pool and that the previous pool had an odd shape.
- 2) The pool will go in the same location; however, the bulkhead will be extended out 28 more inches than the one that exists now.
- 3) The bump-out on the rear of the home presents a challenge when trying to find placement for the pool.
- 4) The entire rear of the property is dedicated to decking and that this decking is 30 inches from grade and almost 3 feet of fencing is lost because the deck is higher.
- 5) There is an existing 6-foot fence on the neighbor's property, and this fence would be added on the subject site to achieve the desired privacy.
- 6) The previous pool was within the side yard setback, and this proposed pool will be reconstructed out of that setback. He confirmed the old pool no longer exists.
- 7) The previous pool existed 1.6 feet from the rear property line.
- 8) The proposed pool will be partially within the deck and partially within the ground.
- 9) The new bulkhead will have extended height to add backfill to properly support the pool.
- 10) The proposed pool will be a standard size fiberglass pool as he believed it was compatible with the soil type.
- 11) The pool will have a 3-foot walkway around it.

Mr. John Moran asked if the new pool could be grandfathered in. Ms. Howarth stated that the request is for a variance; therefore, the two-part test is required for the Board to grant this variance.

Public Comment

Mr. Scott Heise, the neighbor to the south and owner of the property located at 10607 Shifting Sands Drive, was sworn in and asked the following:

- 1) Why the fence proposed along the side lot line needed to be 8 feet. He stated that he would be opposed to an 8-foot fence. The previous pool had been there for several years, and he had no objection to the location of the proposed pool.

Staff Exhibit #3 documented a letter of public comment from Mr. Jamie Caine of 10611 Shifting Sands Drive. This letter stated that this individual had no objection to the placement of the proposed pool.

No other agencies provided comment on this application.

No written comments were received by the Department of Planning and Community Development.

Findings of Fact

The Board, based upon the testimony and evidence presented, finds that:

- 1) Regarding the setbacks, this property is not unique when compared to other lots in this area. The lot does not have an unusual shape.
- 2) There is no practical difficulty necessitating the pool be within the setback.
- 3) Regarding the fence, the Board found the lot had no unique features causing the fence be 8 feet. Certainly, there was no difficulty in providing a 6-foot fence. The property had no special elevation issue.

Conclusion

After closing the hearing, the Board deliberated the evidence and testimony presented. Mr. John Moran made a motion to deny the request for a variance of 3.4 feet for a proposed pool to be 1.6 feet from a rear property line. This was seconded by Emily Nock. The Board voted unanimously

(4-0) to approve this motion for denial. In regard to the request for the fence, Mr. John Moran made a motion to deny the request for a proposed 8-foot fence to be located in side and rear yards rather than a 6-foot fence permitted by Code. This was seconded by Emily Nock. The Board voted unanimously (4-0).

Approval of Findings

Christopher Rudolf, Chairperson

John Moran

Emily Nock

Dan Stevens

TOWN OF OCEAN CITY
BOARD OF ZONING APPEALS

Findings of Fact

Meeting of March 14, 2024

APPLICATION: BZA 2679 #24-09400003

APPLICANT: Joseph E. Moore, Esq.
Atty. for 601 Atlantic LLC, 605 Atlantic LLC, and SAS Partnership,
LLC.
3509 Coastal Highway
Ocean City, Maryland 21842

SUBJECT SITE: 6401 Coastal Highway
Ocean City, Maryland 21842

Opinion

A hearing was held before the Town of Ocean City Board of Zoning Appeals (hereinafter “Board”) on March 14, 2024, at 6:10 p.m. for the application of Joseph Moore, Esquire, Attorney, for 601 Atlantic LLC, 605 Atlantic LLC, and SAS Partnership, LLC (hereinafter “Applicant”) (BZA 2679, File #24-09400003). Pursuant to Town Code Sections 110-94(3)(a), 110-95(1)(a), and 110-94(2)(B), the Applicant made requests for (1) a special yard exception to allow for two additional stories to exist 7.5 feet from a front property line; and (2) a variance to allow a roof structure to be 3.83 feet from a front property line; and (3) a special parking exception to allow for eight (8) parking spaces to be in a tandem stacked configuration; and (4) a special parking exception from design standards to allow two 6-inch encroachments into required parking spaces for support columns; and (5) for all approvals to be valid for three (3) years.

The site of the appeal is described as Lots 7 and 8, Block 7, of the Sinepuxent Beach Plat

(hereinafter “the Property”). The Property is located on the northwest corner of Atlantic Avenue, the Boardwalk, and 6th Street and is locally known as 601 and 605 Atlantic Avenue, in the Town of Ocean City, Maryland. The Property is within the Boardwalk Commercial (BC-2) Zoning District and the Upper Downtown Design Overlay Zoning District.

Chase M. Phillips, Zoning Analyst, was sworn in and presented the staff report with exhibits (Staff Exhibit #1 Pages 1 and 2). He explained the history of the Property, the proposed building and uses, and a summary of the legal nonconformities that are present (Staff Exhibit #2). He specified that 601 and 605 Atlantic Avenue are the main addresses, but one of the buildings on the site has an address of 4 6th Street. Ms. Karen Gordy, Zoning Administrator, was sworn in and explained how the existing structure is legally nonconforming to setbacks, density, and parking. She stated that nonconforming parking is being applied to the new building but that all residential units will have parking, and the nonconforming setback on the 6th Street side will be utilized as well. She stated that the Boardwalk setback would be conforming. Mr. Phillips presented the Board with the applicable sections of the Zoning Code of the Town of Ocean City. Section 110-94, entitled Special Exceptions, authorizes the Board to grant special yard exceptions if they do not substantially affect adversely the uses of adjacent or neighboring properties. Additionally, 110-95, authorizes the Board to grant variances from minimum yard requirements, and the staff report include the standards for a variance. Section 110-98 allows for the Board to grant approval periods that are greater than one (1) year, provided that good cause is shown. It was confirmed that this application complies with local and State noticing requirements.

The Applicant’s Case

Mr. Joseph Moore, Esquire, Attorney, and Applicant, introduced the application and stated the following:

- 1) The determination of nonconformity is extensive and covers many aspects of this project.
- 2) This proposal comports with several elements of the Comprehensive Plan of Ocean City that includes but is not limited to redevelopment of the downtown area. This site was constructed in 1940, and there are substantial nonconformities.
- 3) There is a credit of 51 parking spaces that will be transferred to the proposed development, and the only parking that will not be provided are those related to the commercial use.
- 4) This development is consistent with the goals of the downtown development chapter. These goals include but are not limited to planning for future development conditions, improvement of infrastructure, and encouraging the renovations and redevelopment of older structures. Specifically, Section 8.4 encourages infill and the revitalizations of existing neighborhoods.
- 5) The Ocean City Development Corporation (OCDC) has expressed approval of this project.
- 6) This proposal of mixed use is favorable and positive for the downtown.

Ms. Howarth stated that Mr. Moore's Comprehensive Plan exhibit has been included in the record as Applicant Exhibit #2.

Mr. Moore called for his first witness. Mr. Steven Cirile was sworn in and testified the following:

- 1) He is a consultant and designer and has worked on projects in Ocean City for nearly 40 years.
- 2) He agreed with Mr. Moore in that there are two (2) front yards. One is to Atlantic Avenue and one is to 6th Street.

Applicant Exhibit #3, a video of a flyover of the proposal was played for Board members and attendees of the meeting. Mr. Cirile provided commentary and highlighted key points of the design.

- 3) If OCDC provides approval, the Code allows for tandem stacked parking on this property.
- 4) There are 10 stacked parking that currently exist. The proposed eight (8) stacked parking spaces will be access from the alley that will be widened from 16 feet to 20 feet. This design provides adequate access and space for the proper maneuvering of vehicles.
- 5) The building will have support columns that must be constructed in the area used for parking. The support columns will straddle parking space striping and will be 6 inches into each space of the required parking. This is common throughout Ocean City, and these spaces will still provide adequate access and the spaces will still be functional as the columns will be placed in a way where vehicle doors can still be opened.
- 6) This proposal rectifies many elements of nonconforming including the front yard setback and the reduction of the number of nonconforming parking spaces.
- 7) The special yard exception for the building to have an additional two stories is not a variance because this structure will go no further into the front yard setback to 6th Street than the building that is already there. However, the existing building has 3 stories, and the proposed building will have 5 stories.

- 8) There is no adverse effect upon the neighboring properties by increasing the height by 2 floors and this will no impair the use and enjoyment of adjacent land.
- 9) There are currently two encroachments upon the public right-of-way. This includes the deck and a transformer. The transformer is a required utility and will remain in this location, but the deck will be removed from the right-of-way. This will improve the encroachments onto Town property and allow for the Town to widen the ramp to the Boardwalk.
- 10) The trash enclosure will be placed on the property instead of at the Boardwalk head. Trach will be picked up from the alley.
- 11) There is no adverse effect from these proposals.
- 12) In reference to the roof structure variance request, there is practical difficulty because there is seating outside and this roof will protect them from weather and will provide comfort for patrons.
- 13) There is a permitted use for outdoor dining, but this area would not be able to be utilized properly if the roof could not be provided. This is the practical difficulty.
- 14) This property is unique because of the location of the building, and the existing building to the west that encroaches onto the public right-of-way.
- 15) There is substantial funding from OCDC that is available for the demolition of the building and this will take about a year to acquire these funds and take the building down, thus the request is for 3 years for the approvals.

Emily Nock asked if the current building is used for workforce housing. Mr. Cirile stated he was not sure of the specific use of the boardinghouse. She asked how many rooms are currently in the boardinghouse. Staff confirmed there are 13 rooms at 4 6th Street.

Dan Stevens asked about the proposed use of the units, and Mr. Cirile stated the units in the main building will be short-term rentals. Mr. Stevens also asked if these parcels will be consolidated, and Mr. Cirile confirmed that they will be. He asked staff if the consolidation will change the type of setbacks required (i.e. front or side). Ms. Gordy confirmed that the consolidation will not change the assignments of yards and that there will still be two (2) front yards.

Emily Nocked asked about the topography. Mr. Cirile stated there is a 3-foot or 4-foot slope and decline from the back of the building to the alley.

Dan Stevens asked about the setback required from the Boardwalk, and Mr. Cirile stated this building will comply with the 32-foot front yard setback.

John Moran asked about whether the request for the special parking exception to allow for tandem stacked parking would be withdrawn. Mr. Cirile stated that is correct. This request was officially withdrawn through additional confirmation from Mr. Moore. Staff informed the Board that this provision is found in Chapter 110 of the Code. Mr. Phillips identified this Code Section as 110-865.27. It was determined the Board did not need to act on this request.

Public Comment

Mr. George Harrison of #6 6th Street was sworn in and presented concerns to the Board. He asked what the property would like from his property. Mr. Cirile used Applicant Exhibit 1 to show the elevations of the building that face #6 6th Street. Applicant Exhibit #3, the flyover video was utilized to further show what the building would look like, the layout of the parking, and the location of the proposed dumpster. Mr. Harrison asked about the use of the tenant fit-outs for the Boardwalk. Mr. Cirile stated that the T-Shirt Factory will remain and there will be a coffee shop on the corner. Mr. Harrison asked about whether there will be an odor, and it was confirmed no odors are expected as there will be no cooking facilities (i.e. range) in the unit.

No other agencies provided comment on this application.

No other comments were received by the Office of Planning and Community Development.

Findings of Fact

The Board, based upon the testimony and evidence presented, makes the following findings of fact:

- 1) The proposed use and building will be an improvement to the area as the current structure is not in good condition.
- 2) The special yard exception for the additional two stories will not pose adverse effects or impacts to adjacent and neighboring properties. The first three (3) floors are using a legally nonconforming setback will be abided, and the additional height of the fourth and fifth floors will not create an adverse effect.

- 3) The request for the variance for the roof structure to be 3.83 feet from the front property line does not meet the standards for a variance to be awarded. Specifically, this is because the property is not unique because the applicant is redeveloping the entire block. There is no practical difficulty because the roof is to be provided for the comfort of patrons and holds a decorative purpose. Any alleged uniqueness does not affect or create any issue regarding the overhang.
- 4) The Board found that the request for a special parking exception to allow for 8 parking spaces to be a tandem stacked configuration was withdrawn; therefore, no action was needed.
- 5) The special parking exception from design standards to allow for 2 6-inch encroachments for support columns for the building meets the standards for approval because the character of the building makes the full 9' X 20' spaces unnecessary. The parking spaces will remain functional so that vehicle doors can still be opened. Reducing the size of the spaces in this circumstance will not adversely affect neighboring properties.
- 6) It is reasonable to allow for the approval period for these requests be 3 years rather than 1 year because construction has been taking longer and because good cause was shown through the testimony of Mr. Cirile.

Conclusion

Based on the evidence and testimony presented, and the findings above, John Moran duly made a motion to approve the special yard exception for an additional two stories to be 7.5 feet from the front property line. It was seconded by Emily Nock. The motion passed unanimously (4-0).

Based on the evidence and testimony presented, and the findings above, Emily Nock duly made a motion to deny the variance for a roof structure to be 3.83 feet from the front property line. It was seconded by Dan Stevens. The motion passed unanimously (4-0).

Based on the evidence and testimony presented, and the findings above, John Moran duly made a motion to approve the special parking exceptions to allow for two 6-inch encroachments for support columns in required parking. It was seconded by Emily Nock. The motion passed unanimously (4-0).

Based on the evidence and testimony presented, and the findings above, Emily Nock duly made a motion to approve the request for all approvals included in this application to be valid for a period of three (3) years. It was seconded by Dan Stevens. The motion passed unanimously (4-0).

Approval of Findings of Fact

Christopher Rudolf, Chairperson

Emily Nock

Dan Stevens

John Moran

TOWN OF OCEAN CITY
BOARD OF ZONING APPEALS

Findings of Fact
Meeting of March 14, 2024

APPLICATION: **BZA 2680 (24-09400004)**

APPLICANT: **JDACAI Ocean City, LLC**
 Attn: Dave Eynon
 19016 Abbey Manor Drive
 Brookeville, Maryland

SUBJECT SITE: **11651 Coastal Highway**
 Ocean City, Maryland 21842

Opinion

A hearing was held before the Town of Ocean City Board of Zoning Appeals (hereinafter “Board”) on March 14, 2024, at 6:20 p.m. for the application of JDACAI Ocean City, LLC represented by Dave Eynon (hereinafter “Applicant”) (BZA 2680, File #24-09400004). Pursuant to Town Code Section 110-94(2)(b), the Applicant made requests for (1) a special parking exception to waive 2 spaces of the required 10 spaces; and (2) a special parking exception from design standards to allow for the 8 remaining spaces to be 9’ X 18’ rather than 9’ X 20’, as required by Code.

The site of the appeal is described as Lot 242, Section 1, of the Caine Harbor Mile Plat. (hereinafter “the Property”). The Property is located on the northwest corner of Coastal Highway and Newport Bay Drive and is locally known as 11651 Coastal Highway, in the Town of Ocean City, Maryland. The Property is within the Local Commercial (LC-1) Zoning District.

Chase M. Phillips, Zoning Analyst, was sworn in and presented the staff report with exhibits (Staff Exhibit #1 Pages 1 and 2). He explained the history of the Property, the proposed building and uses and a summary of the request. Specifically, he informed the Board that this application had previously been heard by the Board of Zoning Appeals, but the approval lapsed on October 27, 2023. This was BZA Case 2633 (24-09400017). Mr. Phillips presented the Board with the applicable sections of the Zoning Code of the Town of Ocean City. Section 110-94, entitled Special Exceptions, authorizes the Board to grant special yard exceptions if they do not substantially affect adversely the uses of adjacent or neighboring properties. It was confirmed that this application complies with local and State noticing requirements.

The Applicant's Case

Mr. Keith Iott and Dave Eynon were sworn in and testified that following:

- 1) This request had previously been before the Board of Zoning Appeals, and that approval expired. This is the same request, and the plans for the property have not changed.
- 2) Mr. Eynon owns Playa Bowls and recently applied for a permit when it was identified that a new approval would need to be granted.
- 3) The property is unique because the existing structure was utilized for a pool services facility.
- 4) The previous use likely had a parking burden because of the trips to and from the site.
- 5) The first floor will mostly be dedicated to a kitchen. The seating will accommodate approximately 6 persons.
- 6) Less than half of the visits to the establishment are expected to be by car and that many residents in the area would walk.
- 7) The geometry of the site creates the hardship for parking to be provided by Code.
- 8) Parking will be improved because a van-accessible ADA parking space will be provided.

Public Comment

Mr. Scott Heise was sworn in and asked why ten (10) parking spaces are required. Mr. Phillips provided a breakdown of the parking tabulation. Mr. Heise stated that he believes this is a challenged lot for parking and that it could increase demand for parking in the adjacent shopping

center where he owns units. He stated he has concerns regarding where the residents would park.

It was clarified that there will be one (1) unit, and it will be dedicated to employee housing.

Mr. Eynon stated that there will be various improvements to appearance and accessibility.

Kay Gordy, Zoning Administrator, was sworn in and testified that bike racks would be provided.

No other agencies provided comment on this application.

No other comments were received by the Office of Planning and Community Development.

Findings of Fact

The Board, based upon the testimony and evidence presented, makes the following findings of fact:

- 1) This character and use of the building do not warrant as much parking due to the number of patrons expected to walk to the facility and the small seating area. Therefore, the reduction of parking will not pose an adverse impact onto adjacent or neighboring properties.

Conclusion

Based on the evidence and testimony presented, John Moran duly made a motion to approve the special parking exceptions to waive two (2) parking spaces from the required 10 spaces and for eight (8) remaining spaces to be 9' X 18' rather than 9' X 20', as required by Code. It was seconded by Dan Stevens. The motion passed unanimously (4-0).

Approval of Findings of Fact

Christopher Rudolf, Chairperson

Emily Nock

Dan Stevens

John Moran



STAFF REPORT

DATE: March 28, 2024

TO: Board of Zoning Appeals

FROM: George Bendler, AICP, Planning & Zoning Director
Karen J. (Kay) Gordy, Zoning Administrator
Chase Phillips, Zoning Analyst

RE: Request for a variance from the front yard setback of 10 feet for a proposed pavilion.
BZA 2681 (24-09500002)

Applicant: White Marlin Condominiums
c/o Mann Properties, Inc.
220 16th Street
Ocean City, Maryland

Subject Property: 205 Somerset Street
Ocean City, Maryland 21842

Request: The applicant has requested a variance of 10 feet from the 10-foot front yard setback for a proposed pavilion to be 0.0 feet from the front property line (**Applicant Exhibit #1**).

Property Description: The property is described as Tax Map 110, Parcel 2501, and as the plat entitled "White Marlin Condominiums." It is further described as being on the south side of Somerset Street and is locally known as 205 Somerset Street (**Staff Exhibit #1**).

Zoning: Downtown Marine (DM) Zoning District
Downtown Design Overlay Zoning District

Relevant Code References:

1. Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-93 (Powers of the Board of the Zoning Appeals)

(3) To hear and decide and decide on applications for variances upon which the Board is specifically authorized to pass under this chapter.

2. Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-95 (Variances)

(1)(a) The Board shall have the power to grant variances to minimum yard requirements.

3. Ocean City Code – Chapter 110

Article V, Division 2, Height, Area, and Bulk Regulations

Section 110-905 (Yards and Open Spaces Generally)

- Accessory structures which are not a part of the main building may exist up to 5 feet from side and rear lot lines, provided that this coverage does not exceed 30% of the yard and are no closer than 5 feet from side and rear lot lines.
- Encroachments into a front yard are not permitted (unless a variance from this yard requirement is granted).

4. Maryland Land Use Code Article 4-206 – Variances

Courts in Maryland have recognized a two-part test to determine whether a variance should be granted. The deciding authority asks, first, whether the subject property is “unique” compared to neighboring properties such that the zoning provision affects the subject property disproportionately; and, second, whether a “practical difficulty” or unnecessary hardship” results from that uniqueness.

A. Uniqueness or Peculiarity

- Whereby reason of the exceptional narrowness, shallowness, or unusual shape of a specific property, or by reason of exceptional topographic conditions or other extraordinary situations or special conditions of

- property the literal enforcement would make it exceptionally difficult to comply.
- The uniqueness, then, must have a nexus with the aspect of the zoning law from which a variance is sought.
 - a. Investigate unusual features of the property.
 - b. Investigate surrounding properties to see if they share the same unusual features.
- B. Practical Difficulty
- Whether compliance with the strict letter of restrictions governing area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
 - Whether the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
 - Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.
 - Not because of any action taken by the applicant.
 - Not contrary to public interest.

Public Comments:

As of March 25, 2024, the Department of Planning and Community Development has not received any letters of public comment.

The Department has received a letter from the Condominium Association that states they have no objection to the variance request being brought before the Board of Zoning Appeals (**Applicant Exhibit #2**).

Staff Recommendation: Staff respectfully ask that the Board carefully review the application materials and staff report, accept testimony from the applicant and any persons who come forward to testify, then weigh the evidence and craft the decision including findings of fact with advice from the Board attorney for this request:

- a. A request for a variance of 10 feet from the 10-foot front yard setback for a proposed pavilion to be 0.0 feet from a front property line.

205 Somerset Street



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Active Building Permits 2022 Imagery

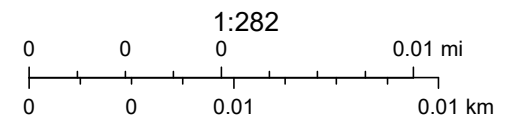
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TOC_Parcels_

Green: Band_2

Blue: Band_3

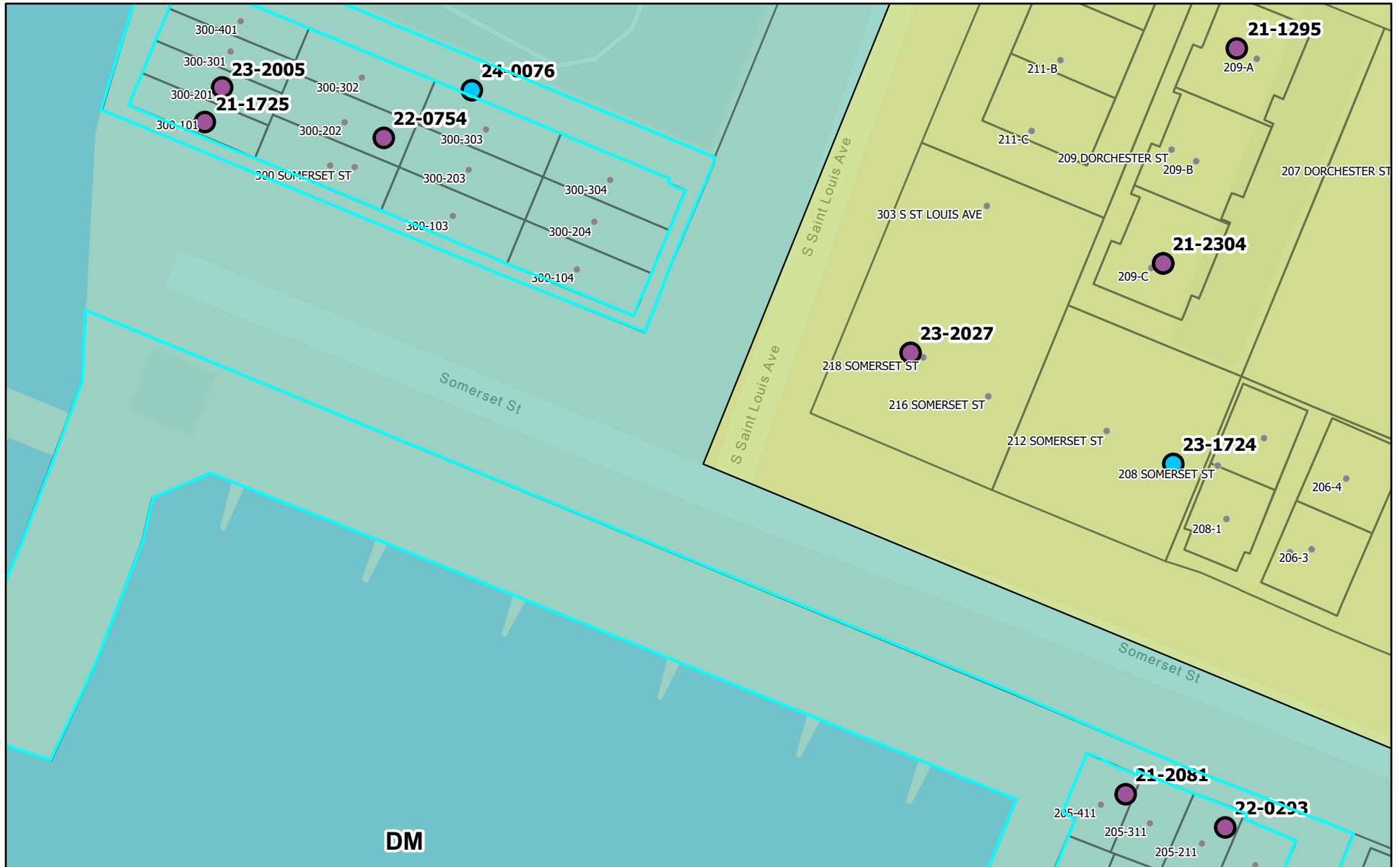


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Department of Planning & Community Development
Town of Ocean City, MD



205 Somerset Street



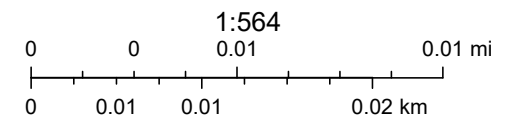
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Active Building Permits

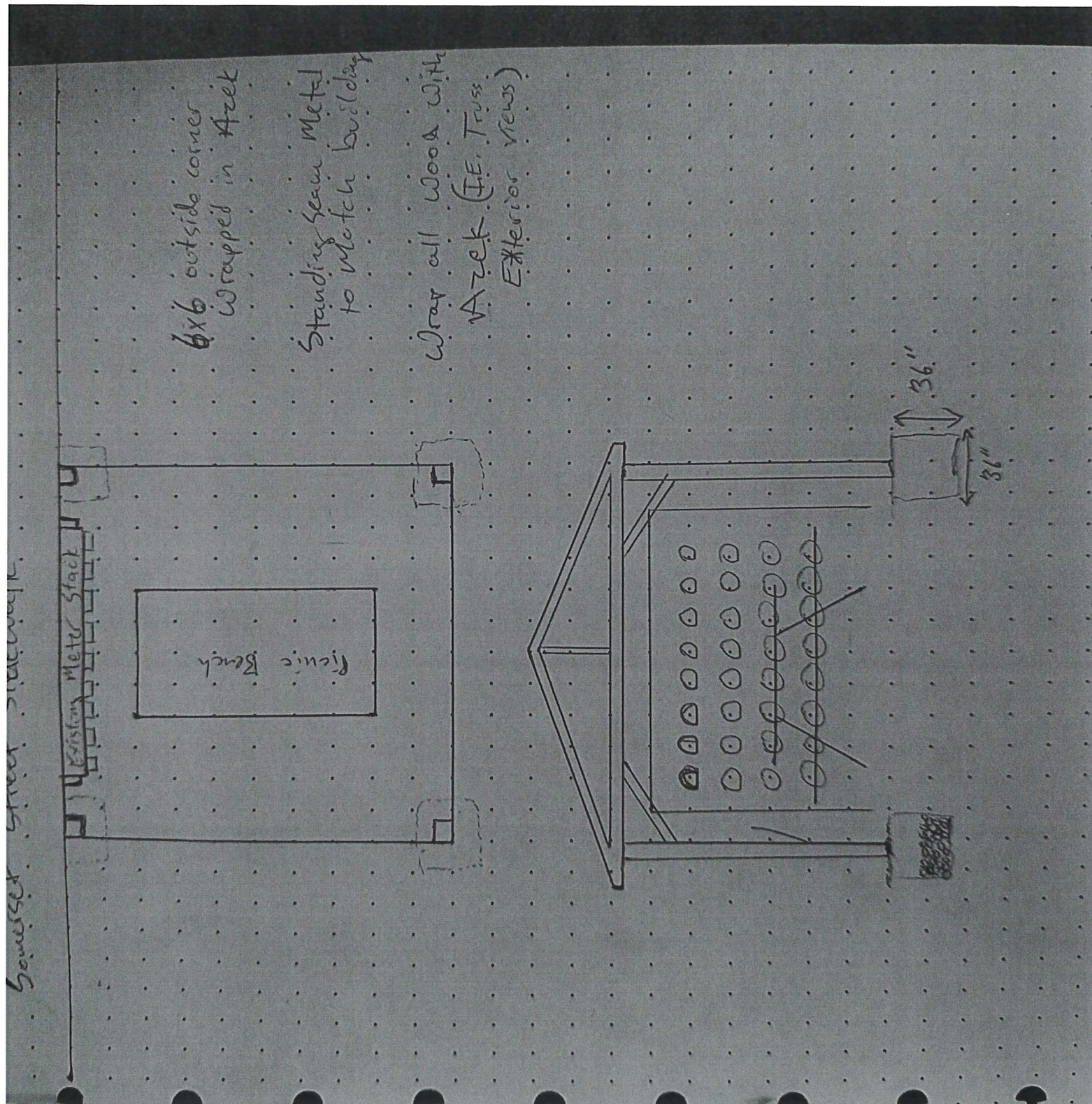
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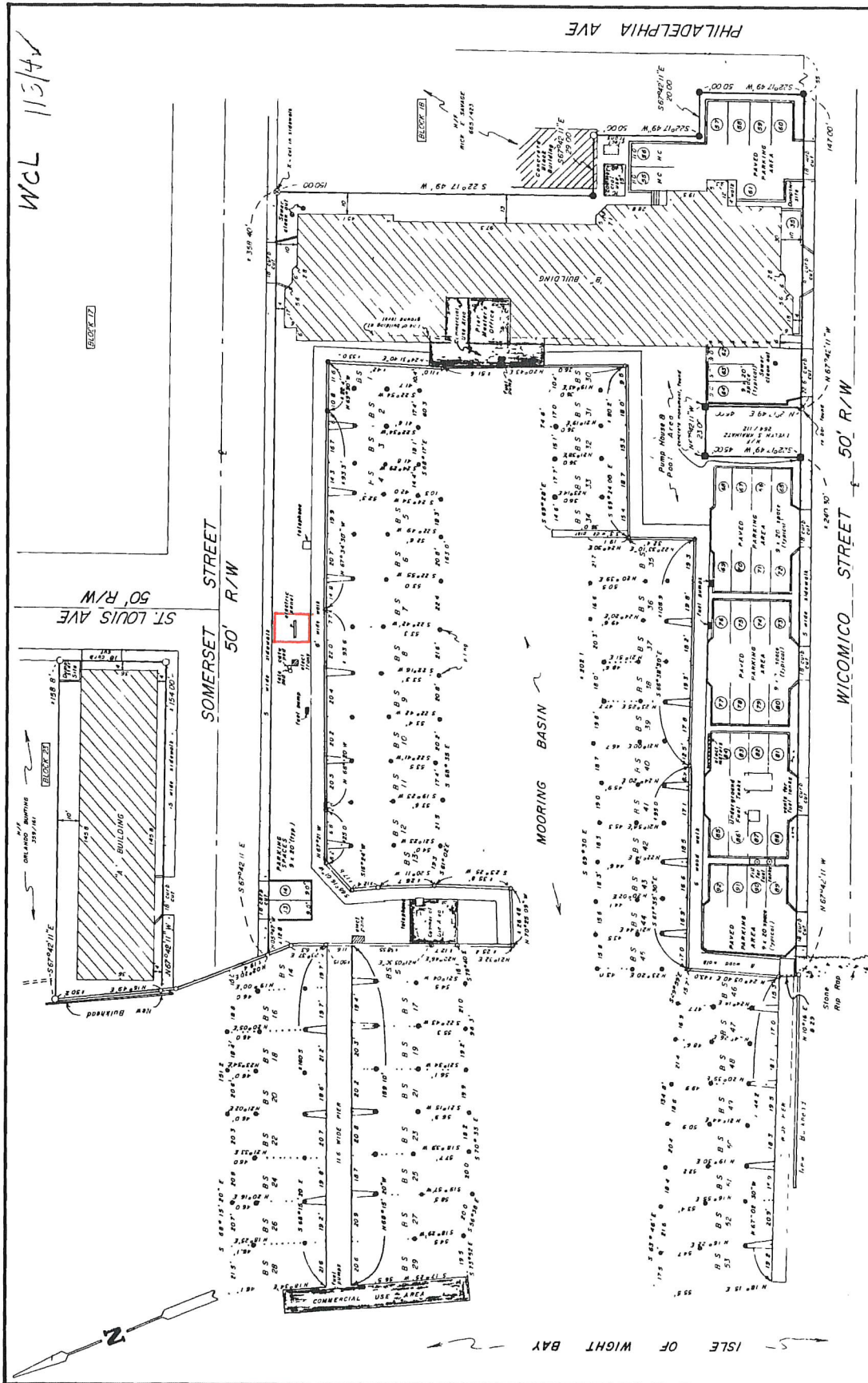
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Zoning



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BUILDINGS "A" & "B"

WHITE MARLIN
CONDOMINIUM
WICOMICO ST B SOMERSET ST
OCEAN CITY
TENTH ELECTION DISTRICT
WORCESTER COUNTY, MARYLAND
JOB NO 2915/86 DATE 7/21/87
SCALE 1" = 30' SHEET 2 OF 13

SITE PLAN SCALE 1" = 30'

TOTAL AREA OF BUILDING "A" PARCEL = 1.2800 AC.
TOTAL AREA OF BUILDING "B" PARCEL = 1.4500 AC.
TOTAL AREA = 57,328 sq. ft. or 1.316 acres

FILED
JUL 30 11 15 AM '87
PLANNING
WCL
31

- LEGEND
- QUOTES COMMERCIAL LIMITED COMMON AREA
 - B.S. DENOTES BAY SLIP NUMBER
 - 60 DENOTES PARKING SPACE NUMBER
 - DENOTES IRON PIPE, 1" DIA.
 - DENOTES P.W. HALL, SET IN BULKHEAD

L. E. Bunting Surveys, Inc.
MARYLAND & VIRGINIA
LAND SURVEYING
6 MARLIN COURT
BERLIN, MARYLAND 20811
301-641-7700

White Marlin Condominiums
C/O MANN PROPERTIES, INC., AAMC
220 16TH STREET, OCEAN CITY, MD 21842

PHONE (410) 289-6156 – FAX (410) 289-5443
Info@OCMannProperties.Com – Www.OCMannProperties.Com



December 8, 2023

Town of Ocean City
Office of Planning & Community Development

Variance Hearing

Dear Mr. Phillips:

The White Marlin Condominium Association Board of Directors grants permission to K & T Construction represented by Thomas Bowden to act on behalf of the Association in the matters of the variance hearing for the electric project at the Marina.

Sincerely,

A handwritten signature in black ink that reads "Robert Roby". The signature is written in a cursive style with a large, stylized "R" and "R".

Robert Roby

White Marlin Board of Directors



STAFF REPORT

DATE: March 28, 2024

TO: Board of Zoning Appeals

FROM: George Bendler, AICP, Planning & Zoning Director
Karen J. (Kay) Gordy, Zoning Administrator
Chase Phillips, Zoning Analyst

RE: Requests for a special yard exception for a proposed dwelling and a variance for a proposed deck.
BZA 2682 (24-09500005)

Applicant: Mark Drexel
5250 Wasena Avenue
Baltimore, Maryland 21225

Subject Property: 22 Middle Way Lane
Ocean City, Maryland 21842

Request: The applicant has made two (2) requests:

- A special yard exception from the rear yard setback for a proposed dwelling to be 0.39 feet from the rear line; and,
- A variance of 6.88 feet from the 10-foot separation distance requirement for a proposed deck to be 3.12 feet from a neighboring unit.

Property Description: The property is described as Lot 2B, Section B, of the Warren's Park Co-op Plat. It is further described as being on the north side of Middle Way Lane and is locally known as 22 Middle Way Lane, in the Town of Ocean City, Maryland.

Zoning: Mobile Home (MH) Residential Zoning District

Relevant Code References:

1. Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-93 (Powers of the Board of the Zoning Appeals)

(2) To hear and decide on applications for special exceptions upon which the Board is specifically authorized to pass under this chapter.

Special exceptions are permitted if the Board finds that, in its opinion and as a matter of fact, such exceptions will not substantially or adversely affect the uses of adjacent and neighboring property.

(3) To hear and decide on applications for variances upon which the Board is specifically authorized to pass under this chapter.

2. Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-95 (Variances)

(1)(a) The Board shall have the power to grant variances to minimum yard requirements.

3. Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-94 (Special Exceptions)

(3)(b) A special yard exception to the depth of a rear yard is permitted on a lot in block where there are nonconforming rear yards.

4. Ocean City Code – Chapter 110

Article IV, Division 7, MH Mobile Home Residential Zoning District

Section 110-422 (Permitted Uses)

(1)(i) There shall not be a distance of less than 10 feet between the sides of any two mobile homes or extensions thereof, nor shall any part of the mobile home extend closer than 5 feet to the boundaries of the individual mobile home site or exceed 15 feet in height.

5. Maryland Land Use Code Article 4-206 – Variances

Courts in Maryland have recognized a two-part test to determine whether a variance should be granted. The deciding authority asks, first, whether the subject property is “unique” compared to neighboring properties such that the zoning provision affects the subject property disproportionately; and, second, whether a “practical difficulty” or unnecessary hardship” results from that uniqueness.

A. Uniqueness or Peculiarity

- Whereby reason of the exceptional narrowness, shallowness, or unusual shape of a specific property, or by reason of exceptional topographic conditions or other extraordinary situations or special conditions of property the literal enforcement would make it exceptionally difficult to comply.
- The uniqueness, then, must have a nexus with the aspect of the zoning law from which a variance is sought.
 - a. Investigate unusual features of the property.
 - b. Investigate surrounding properties to see if they share the same unusual features.

B. Practical Difficulty

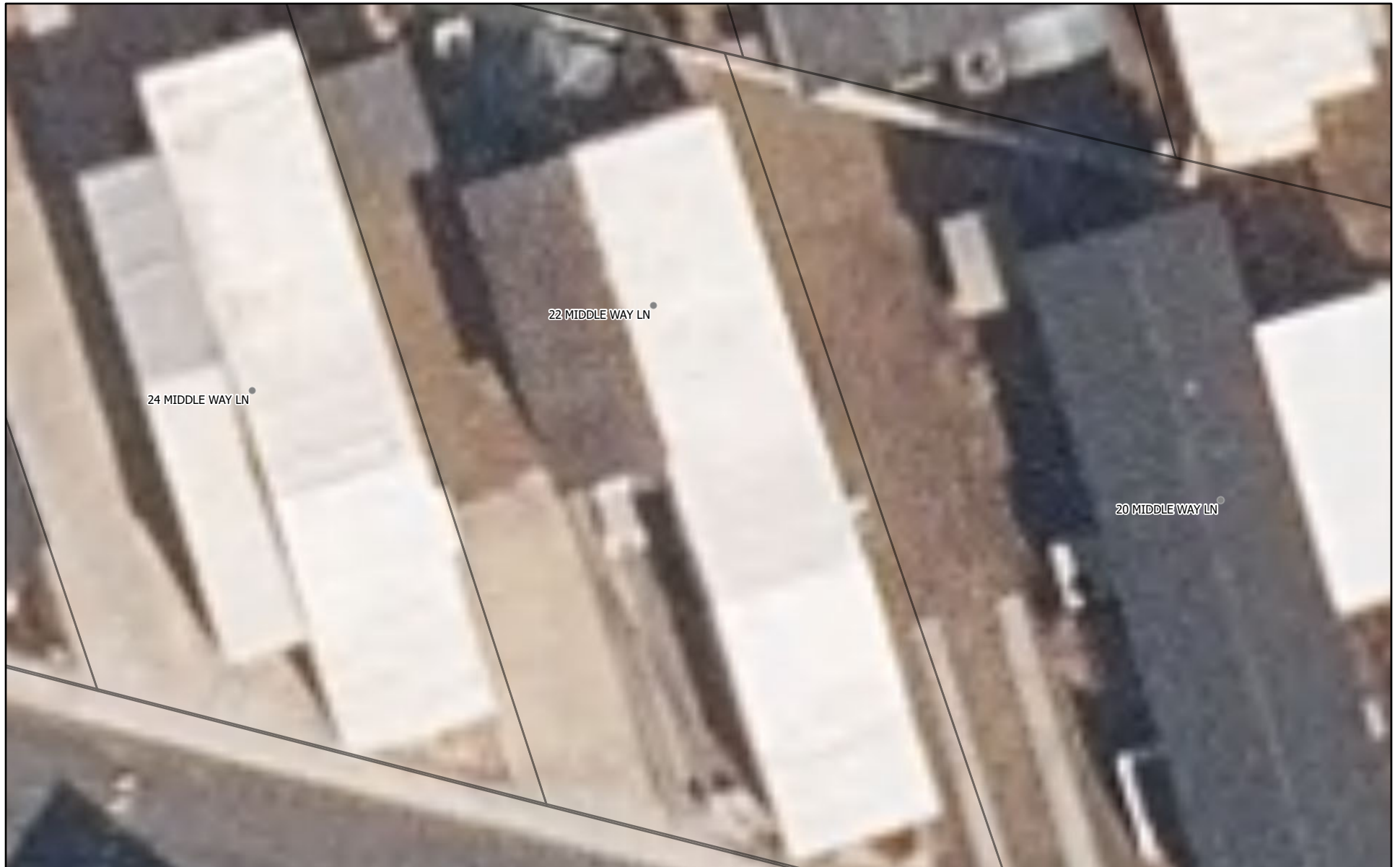
- Whether compliance with the strict letter of restrictions governing area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- Whether the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.
- Not because of any action taken by the applicant.
- Not contrary to public interest.

Public Comment: As of March 25, 2024, The Department of Planning and Community Development has not received any letters of public comment

Staff Recommendation: Staff respectfully ask that the Board carefully review the application materials and staff report, accept testimony from the applicant and any persons who come forward to testify, then weigh the evidence and craft the decision including findings of fact with advice from the Board attorney for these requests:

- a. A special yard exception from the rear yard setback for a proposed dwelling to be 0.39 feet from the rear line; and,
- b. A variance of 6.88 feet from the 10-foot separation distance requirement for a proposed deck to be 3.12 feet from a neighboring unit.

22 Middle Way Lane



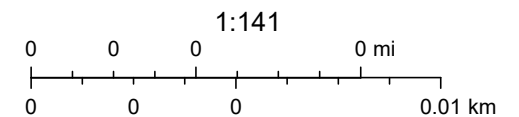
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TOC_Parcels_ 2022 Imagery

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Red: Band_1

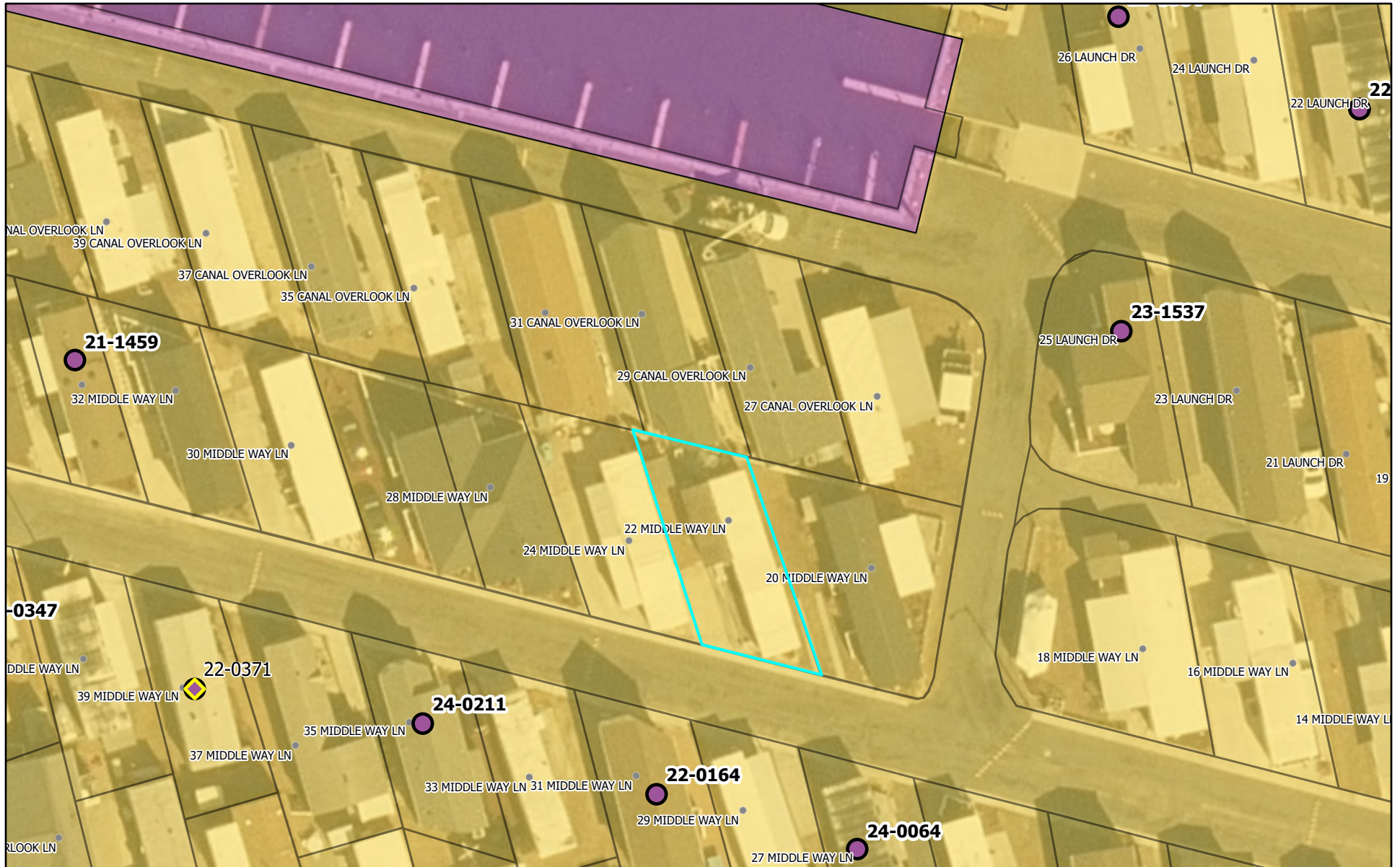
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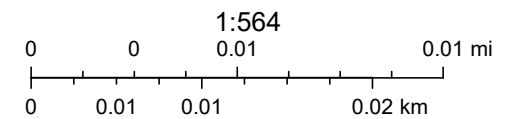
Department of Planning & Community Development
Town of Ocean City, MD

22 Middle Way Lane

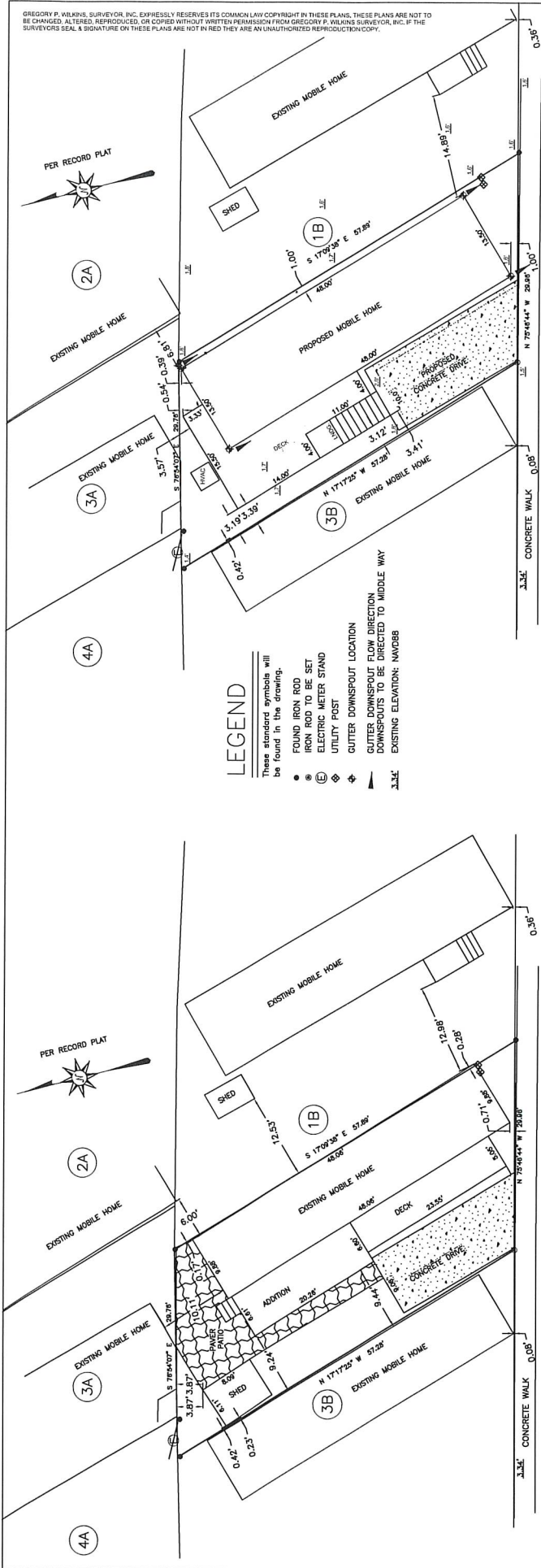


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| Issued | Zoning | 2022 Imagery | Blue: Band_3 |
| Active Building Permits | MH | Red: Band_1 | |
| Issued | | | |



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 Department of Planning & Community Development
 Town of Ocean City, MD



MIDDLE WAY
(WIDTH VARIES)

EXISTING CONDITIONS SURVEY

HOUSE NO. 22
LOT 2-B - SECTION B - WARREN'S PARK

EXISTING CONDITIONS SURVEY
&
PROPOSED SITE PLAN

HOUSE NO. 22
LOT 2-B - SECTION B - WARREN'S PARK

TOWN OF WARREN'S PARK
WORCESTER COUNTY, MARYLAND
LOT AREA 11.1 ACRES, 671.4 AS COMPUTED
DISTURBED AREA = 1,476 SQ. FT.
CURRENTLY ZONED: MH
ZONING RESOLUTION: 15'
SIDES = 5' MINIMUM - 15'
FLOOD ZONE AS BASE FLOOD ELEV. = 4.0' NAVD 88
MINIMUM FLOOD ELEVATION = 7.0' NAVD
MINIMUM FLOOD MECHANICALS ELEVATION = 5.0' NAVD
PLAT REFERENCE: WARREN TRAILER COURT
BY DELMARIA SURVEYS, INC. DATED 07/30/1982
& WARREN'S PARK EXISTING CONDITIONS
DATED 10/19/1988 (PREPARED UNKNOWN & UNRECORDED)

NOTE: THIS LOT LIES IN THE ATLANTIC COASTAL BAYS CRITICAL AREA.

EXISTING IMPERVIOUS AREA
ADDITIONS STEPS = 148.7 Sq. Feet
DECKSTEP = 147.2 Sq. Feet
CONC. DRIVE = 189.6 Sq. Feet
PAVER PATIO = 199.6 Sq. Feet
TOTAL = 1,282.7 SQ. FT.

(LA) AREA OF LOT 2-B = 1,476 SQ. FT.
(DA) DEVELOPED IMPERVIOUS AREA = 1,111.9 SQ. FT.
(DIA) TOTAL = 75.3

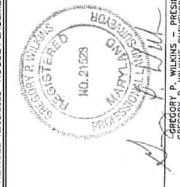
THIS SITE PLAN REPRESENTS A 90.8 SQ. FT. DECREASE IN CRITICAL AREA COVERAGE.

EXISTING & PROPOSED IMPERVIOUS AREA
ADDITIONS STEPS = 148.7 Sq. Feet
DECKSTEP = 147.2 Sq. Feet
CONC. DRIVE = 189.6 Sq. Feet
PAVER PATIO = 199.6 Sq. Feet
TOTAL = 1,282.7 SQ. FT.

THIS PROPOSED SITE PLAN REFLECTS THE
DESCRIPTION OF LOT 2-B AS SHOWN ON
WARREN'S PARK. THE SURVEYOR HAS
AND DOES NOT VERIFY THE EXISTENCE OR
NON-EXISTENCE OF RIGHT OF WAYS OR EASE-
MENTS. THE SURVEYOR HAS NOT BEEN
THAN THOSE AS SHOWN ON SAID PLAT. NO TITLE
SEARCH PROVIDED OR STIPULATED.

PROFESSIONAL CERTIFICATION
HEREBY CERTIFY THAT THESE DOCUMENTS WERE
PREPARED BY ME OR UNDER MY CLOSE PERSONAL
SUPERVISION AND THAT I AM A DULY LICENSED
SURVEYOR AND SURVEYOR UNDER THE LAWS
OF THE STATE OF MARYLAND. MY LICENSE NO. 18,062.
EXPIRATION DATE 07-13-2025.

REVISED 02/02/2024 - DRIVE
REVISED 01/22/2024 - DOWNSPOUTS
REVISED 10/23/2023 - DECK
REVISED 10/23/2023 - HOUSE PLACEMENT/DECK SIZE



GREGORY P. WILKINS
SURVEYOR, INC.
12626 OLD BRIDGE ROAD
OCEAN CITY, MD 21842
(410)213-0222



SCALE: 1" = 10'	DATE: 11/10/2023
DRAWN BY: GPWB	JOB NO.: 9071