



TOWN OF OCEAN CITY

The White Marlin Capital of the World

BOARD OF ZONING APPEALS AGENDA Thursday, May 16, 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 April 25, 2024 meeting
- b. Approval of the Findings of Fact for BZA Case 2685 (Kristina L. Watkowski)
- c. Approval of the Findings of Fact for BZA Case 2686 (Kristina L. Watkowski)
- d. Approval of the Findings of Fact for BZA Case 2687 (Heritage Outdoor Solutions, LLC).

II. Public Hearings

AT 6:00 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 a special parking exception to (1) waive one (1) parking space from required parking; and, (2) to reduce the size of one (1) parking space to 9' X 16.9', rather than the 9' X 20' space required by Code. The site of the appeal is described as Lot 15 of the plat entitled "Village West, Part One." It is further described as being located on the south side of Bayshore Drive and is locally known as 601 Bayshore Drive, Unit 15, in the Town of Ocean City, Maryland.

APPLICANT: STEPHEN KANSAK (BZA 2689 #24-09400011)

AT 6:10 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 5.2 feet from the 10-foot separation distance requirement for a 6' X 12' proposed addition to be 4.8' from a neighboring unit; (2) a variance of 0.2 feet from the 5-foot side yard setback for a 6' X 12' proposed addition to be 4.8 feet from the side property site line; and (3) a variance of 4.8 feet from the 10-foot separation distance requirement for a proposed screened deck to be 5.2' from a neighboring unit. The site of the appeal is described as Lot 110 of Sundowner Mobile Home Park Plat. It is further described as being located on the south side of Denny Lane and is locally known as 111 Denny Lane, in the Town of Ocean City, Maryland.~~

APPLICANT: JOHN L. STANTON (BZA 2690 #24-09400012) THIS APPLICATION HAS BEEN POSTPONED AND WILL BE READVERTISED FOR ANOTHER DATE.

AT 6:20 PM

Pursuant to the provisions of Section 110-93(2), Powers of the Code, an appeal of Section 110-94(1) has been filed to request approval of marine construction for a pier, dock, and boatlift on a property which has no established principal use on

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CITY CLERK
DIANA L. CHAVIS, MMC

the premises. The site of the appeal is described as Lot 91 A of the plat entitled “Lots 91 – 96, Section Three, Harbourside at Heron Harbour.” It is further described as being on the north side of South Heron Gull Court and is locally known as 316 South Heron Gull Court, in the Town of Ocean City, Maryland.

APPLICANT: MCGINTY MARINE CONSTRUCTION (BZA 2691 #24-09400013)

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

**Meeting of
Thursday, April 25, 2024**

ATTENDEES:

Members

Christopher Rudolf, Chair
John Moran
Emily Nock
Dan Stevens

Staff

Chase Phillips, Zoning Analyst
George Bendler, AICP, Director
Kay Gordy, Zoning Administrator
Maureen Howarth, Board 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 and Findings of Fact

The Board reviewed the minutes from the April 11, 2024, meeting.

Motion/ Emily Nock **Second/** John Moran to approve the minutes from the April 11, 2024, meeting. The motion passed unanimously (4-0).

The Board reviewed the Findings of Fact for BZA Case 2683 (Cindy Fridley).

Motion/ Dan Stevens **Second/** Emily Nock to approve the Findings of Fact for BZA Case 2683 (Mark Drexel). The motion passed (4-0).

II. Public Hearings

At 6:00 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 a special parking exception to waive 3 parking spaces for the reconstruction of a new dwelling. The site of the appeal is described as Lot 54 of the plat entitled “Runaway Bay.” It is further described as being located on the south side of Penguin Drive and is locally known as 613 Penguin Drive, in the Town of Ocean City, Maryland.

APPLICANT: KRISTINA L. WATKOWSKI (BZA 2685 #24-09400008)

Chase Phillips, Zoning Analyst, presented this case to the Board. This presentation included a summary of the request, the staff report and staff exhibits, and code analysis. It was stated that this application complies with local and state noticing requirements.

Ms. Kristina Watkowski, Esquire, represented the property owners of Todd and Linda Moore. Mr. Scott Eberly was sworn in. Both testified. Lastly, Ms. Watkowski called for Mr. Todd Moore to testify.

No persons were present during this hearing to provide public testimony.

The Board found that the criteria for granting the special exception were met.

Motion/ Emily Nock **Second/** Dan Stevens to approve the special parking exception to waive 3 parking spaces. This motion passed (3-1).

AT 6:10 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 a special parking exception to waive 3 parking spaces for the reconstruction of a new dwelling. The site of the appeal is described as Lot 53 of the plat entitled “Runaway Bay.” It is further described as being located on the south side of Penguin Drive and is locally known as 615 Penguin Drive, in the Town of Ocean City, Maryland.

APPLICANT: KRISTINA L. WATKOWSKI (BZA 2686 #24-09400009)

Chase Phillips, Zoning Analyst, presented this case to the Board. This presentation included a summary of the request, the staff report and staff exhibits, and code analysis. It was stated that this application complies with local and state noticing requirements.

Ms. Kristina Watkowski, Esquire, represented the property owners of Timothy and Bonnie Moore. Mr. Scott Eberly was present. Lastly, Ms. Watkowski called for Mr. Todd Moore to testify on behalf of his brother, Timothy Moore.

No persons were present during this hearing to provide public testimony.

The Board found that the criteria for granting the special exception were met.

Motion/ Dan Stevens **Second/** Emily Nock to approve the special parking exception to waive 3 parking spaces. This motion passed (3-1).

AT 6:20 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 an after-the-fact variance of 12 feet 7 inches from the 41-foot setback requirement for an existing screened pergola to be 28 feet 5 inches from the front property line along Atlantic Avenue, the Boardwalk. The site of the appeal is described as Lots 1, 2, 3, 10, 11, and 12, Block 56 North, of the plat entitled “Sinepuxent Beach Plat.” It is further described as being on the southwest corner of Atlantic Avenue (the Boardwalk) and 16th Street and is locally known as 1513 Atlantic Avenue, in the Town of Ocean City, Maryland.

APPLICANT: HERITAGE OUTDOOR SOLUTIONS, LLC (BZA 2687 #24-09500003)

Mr. George Bendler, Director, presented this case to the Board. This presentation included a summary of the request, the staff report and staff exhibits, and code analysis. It was stated that this application complies with local and state noticing requirements. A detailed summary of Code sections and background as to why this case is before the Board was provided.

Mr. and Mrs. Alec and Suzanne Huber were sworn in and provided testimony regarding the subject structure of the pergola.

No persons were present during this hearing to provide public testimony.

The Board found that the criteria for granting the variance were met.

Motion/ Emily Nock **Second/** Dan Stevens to approve the variance request for the existing pergola and for this approval to be contingent upon the pergola not becoming a permanently enclosed structure.

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 7:41 p.m.

Approval of Minutes

Christopher Rudolf, Chairman

Date

TOWN OF OCEAN CITY
BOARD OF ZONING APPEALS

Findings of Fact

Meeting of April 25, 2024

APPLICATION: BZA 2685 (24-09400008)

**APPLICANT: Kristina L. Watkowski, Esquire
 On Behalf of Todd A. and Linda A. Moore
 Booth, Cropper & Marriner, P.C.
 9927 Stephen Decatur Highway, Suite F-12
 Ocean City, Maryland 21842**

**SUBJECT SITE: 613 Penguin Drive
 Ocean City, Maryland 21842**

Opinion

A hearing was held before the Town of Ocean City Board of Zoning Appeals (hereinafter “Board”) on April 25, 2024, at 6:00 p.m. for the application of Kristina L. Watkowski (hereinafter “Applicant”) (BZA 2685, File #24-09500008). Pursuant to Town Code Sections 110-94(2)(b), the Applicant made a request for a special parking exception to waive three (3) spaces for the reconstruction of a new dwelling.

The site of the appeal is described as Lot 54 of the plat entitled “Runaway Bay.” (hereinafter “the Property”). The Property is further described as being on the south side of Penguin Drive and is locally known as 613 Penguin Drive, in the Town of Ocean City, Maryland. The Property is within the Medium Residential (R-2) Residential Zoning District.

Chase Phillips, Zoning Analyst, was sworn in and presented the staff report with exhibits (Staff Exhibit #1 Pages 1, 2, and 3). 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. He stated this application will pertain to 613 Penguin Drive which is one unit of a duplex and that the other unit of the duplex will also be heard tonight as a separate application. 613 Penguin Drive is known as BZA case 2685. 615 Penguin Drive (the second unit) is known as BZA case 2686.

Mr. Phillips also provided the applicable section of the Zoning Code. He stated Section 110-932, entitled "Minimum Number of Spaces," states that any single-family or two-family duplex dwelling must have 2 parking spaces for 3 bedrooms and 1 additional space for every bedroom thereafter. Additionally, Section 110-933, entitled "Interpretation of Minimum Requirements," states that any room defined as being an accessory room is to be treated in the same manner as a bedroom and that parking is to be calculated accordingly. 613 Penguin Drive proposes 6 bedrooms or accessory rooms which requires 5 parking spaces. 2 parking spaces are proposed; and therefore, a special parking exception to waive three (3) spaces is required for this specific home to be built. Mr. Phillips confirmed that this application complied with all local and state noticing requirements.

The Applicant's Case

Ms. Kristina Watkowski, Esquire, stated she is the representative of Todd and Linda Moore who own the Property. She stated this is a two-family duplex dwelling and 2 parking spaces are required for a 3-bedroom unit and that an additional one (1) space is required for each bedroom or accessory room thereafter.

Ms. Watkowski called Mr. Scott Eberly as her first witness. He was sworn in and testified to the following:

- 1) He is an architectural designer and has been designing residential homes for 40 years.

- 2) The dwelling needs to be rebuilt because the existing home does not have the structural integrity to support a third floor unless major changes are made. This is not cost effective, so the better option, often, is to rebuild the structure completely.
- 3) He believes the original design was intended for seasonal use rather than year-round.

Ms. Watkowski utilized Applicant Exhibit #1. Mr. Eberly testified the following:

- 4) Lot 54 is 32 feet wide and 90 feet deep, so it is difficult to provide all of the 5 parking spaces. The lot is less than 3,000 square feet, and the dwelling takes up approximately two thirds of the lot.
- 5) The proposed structure has a den/office spaces and living room and kitchen on the first floor. The second floor has three bedrooms and three bathrooms. The third floor has a loft area, additional bedroom, and a family/recreation room. This was shown through Applicant Exhibit #1, Pages 1 – 6. The accessory rooms are necessary for the families to allow for several children to have their own space, but the Code requires these accessory rooms to be counted as bedrooms.
- 6) It is possible to get three parking spaces on the site; however, the landscaping would need to be removed in two places – along the street and along the shared lot line (Applicant Exhibit #2)

Ms. Watkowski asked for a video of the neighborhood to play (Applicant's Exhibit 3). This was broadcasted for those present in Council Chambers and for the live broadcast of the meeting. The video was a flyover that showed the neighborhood of Runaway Bay. Ms. Watkowski discussed the presence of available on-street parking, existing homes and lots, homes that have recently been reconstructed in a similar manner to these units, and the landscaping that is preserved.

- 7) Mr. Eberly testified that there have been other instances of these sorts of requests coming forward and that neighbors have supported them in the past. He stated that it is a unique neighborhood and since ample parking is there, there will be no adverse effect on the neighborhood.

Ms. Emily Nock asked if this would be a secondary residence or a short-term rental. Ms. Watkowski allowed for the property owner Mr. Moore to testify.

Mr. Tom Moore, property owner, was sworn in and testified the following:

- 1) He has owned the property since 1999.
- 2) His identical twin brother lives at 615 Penguin Drive. He has three children, and his brother has 4 children. He has another brother that also lives in the neighborhood, and his sister in-law lives in the neighborhood as well.
- 3) This home is ideal given that there are 4 families in the neighborhood.
- 4) His full-time residence is in Pennsylvania, and he rented this property for the first 5 to 10 years but no longer does. He has no plans to rent the property.

Ms. Watkowski showed Applicant Exhibit #4.

- 5) He agrees that there is no parking issue in the neighborhood.
- 6) His family carpools to the house, so a minimal number of vehicles are used to travel from Pennsylvania to Ocean City.

Ms. Watkowski showed Applicant Exhibit #3.

- 7) Providing a third parking spaces is not ideal because it would involve the removal of the landscaping. He likes having the landscaping there. Additionally, the HOA for Runaway Bay wants to work to keep the landscaping to avoid having the neighborhood environment be lost to pavement.

Ms. Watkowski stated the following:

- 1) BZA 2554 granted a one space parking exception for the property located at 703 Penguin Drive. BZA 2634 granted a one space parking exception for 825 Penguin Drive. BZA 2630 granted a two-space parking exception for 610 32nd Street. BZA 2615 granted a one-space parking exception for 700 32nd Street.

Ms. Watkowski entered the Findings of Fact for three special parking exception applications that were heard on January 11, 2024 as Applicant's Exhibit 5. All three of those requests were also granted (819 Penguin Drive and 510 & 512 32nd Street).

Conclusion

Ms. Watkowski stated that there is no competition for parking in this neighborhood. While many other properties could experience high demand for parking, particularly during busy weekends such as White Marlin Open, the Air Show, or Fourth of July, and that demand does not overflow into Runaway Bay. There are no attractions that pull vehicles onto the streets of Penguin Drive or 32nd Street. There is a surplus of parking which makes these requests appropriate.

Public Comment

No members of the public were present to provide testimony.

No other agencies provided comment on this application.

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

Findings of Fact

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

- 1) There is ample on-street parking, and the property owners make efforts to carpool to minimize the number of vehicles that come to the site. This demonstrates that the full provision of parking is not necessary.
- 2) No other appeared in opposition.
- 3) There is evidence that shows there is no substantial impact to adjacent properties and the 3 parking spaces requested to be waived are not necessary.

Conclusion

Based on the evidence and testimony presented and the Board's findings, Emily Nock duly made a motion to approve the special parking exception request to waive 3 parking spaces as the full provision of parking is not deemed to be necessary. This was seconded by Dan Stevens. The motion passed unanimously (3-1-1), with John Moran in opposition and Mr. Brian Shane absent.

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 April 25, 2024

APPLICATION: BZA 2686 (24-09400009)

**APPLICANT: Kristina L. Watkowski, Esquire
 On Behalf of Timothy and Bonnie Moore
 Booth, Cropper & Marriner, P.C.
 9927 Stephen Decatur Highway, Suite F-12
 Ocean City, Maryland 21842**

**SUBJECT SITE: 615 Penguin Drive
 Ocean City, Maryland 21842**

Opinion

A hearing was held before the Town of Ocean City Board of Zoning Appeals (hereinafter “Board”) on April 25, 2024, at 6:10 p.m. for the application of Kristina L. Watkowski (hereinafter “Applicant”) (BZA 2686, File #24-09500009). Pursuant to Town Code Sections 110-94(2)(b), the Applicant made a request for a special parking exception to waive three (3) spaces for the reconstruction of a new dwelling.

The site of the appeal is described as Lot 53 of the plat entitled “Runaway Bay.” (hereinafter “the Property”). The Property is further described as being on the south side of Penguin Drive and is locally known as 615 Penguin Drive, in the Town of Ocean City, Maryland. The Property is within the Medium Residential (R-2) Residential Zoning District.

Chase Phillips, Zoning Analyst, was sworn in and presented the staff report with exhibits (Staff Exhibit #1 Pages 1, 2, and 3). 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. He stated this application will pertain to 615 Penguin Drive which is one unit of a duplex. 613 Penguin Drive is known as BZA case 2685. 615 Penguin Drive, this application, is known as BZA case 2686.

Mr. Phillips also provided the applicable section of the Zoning Code. He stated Section 110-932, entitled "Minimum Number of Spaces," states that any single-family or two-family duplex dwelling must have 2 parking spaces for 3 bedrooms and 1 additional space for every bedroom thereafter. Additionally, Section 110-933, entitled "Interpretation of Minimum Requirements," states that any room defined as being an accessory room is to be treated in the same manner as a bedroom and that parking is to be calculated accordingly. 615 Penguin Drive, like 613, proposes 6 bedrooms or accessory rooms which requires 5 parking spaces. 2 parking spaces are proposed; and therefore, a special parking exception to waive three (3) spaces is required for this specific home to be built. This application complies with all local and state noticing requirements.

The Applicant's Case

- 1) Ms. Kristina Watkowski, Esquire, stated she is the representative of Timothy and Bonnie Moore who own the Property. She stated this is a two-family duplex dwelling and 2 parking spaces are required for a 3-bedroom unit and that an additional one (1) space is required for each bedroom or accessory room thereafter.
- 2) Accessory rooms in single-family dwellings are exempt from parking requirements, but this is a duplex, so it does not qualify for this provision in the Zoning Code.

Mr. Scott Eberly, who was sworn in during the previous case of BZA 2685, testified to the following:

- 1) He is an architectural designer and has been designing residential homes for 40 years.
- 2) The unit is very similar to the unit of 613 Penguin Drive. The proposed layout is very similar to the unit of 613 as well.
- 3) There will be two parking spaces, and the desire to keep the landscaping for this unit is there as well.
- 4) This will be a single-family residence. The family size is relatively large as there are 7 children between the two families.
- 5) The use has never required them to expand parking past the two spaces that are already present.
- 6) Accessory rooms, such as the first-floor office and the third-floor recreation room, are not suited for sleeping purposes and will not be used as such. In fact, the first-floor office is too small to properly be used as a bedroom.

Ms. Watkowski asked for Applicant Exhibits #2 and #3 to be considered for this request, just as they were in the previous case of BZA 2685 for 613 Penguin Drive.

- 7) There is ample on-street parking and availability for parking. Some residents seem to use on-street parking first before they used the off-street parking for their unit.
- 8) The use is more similar to that of a single-family dwelling.
- 9) It would be a hardship to provide all 5 off-street parking spaces, and the reduction would have no adverse effect on adjacent properties.

Mr. Todd Moore, property owner, was previously sworn in and testified the following:

- 1) He is the brother of Timothy Moore who owns this unit.
- 2) There are 7 children between the two brothers, and their ages range from the 10's to 30's. His brother's family has 4 kids.

- 3) They have many family gatherings.
- 4) There is no intention for Mr. Timothy Moore to make this unit a rental and his brother has never rented.
- 5) My. Timothy Moore's family also carools.
- 6) The dwelling is for many years to come and will be used for their family as it has been.

Conclusion

Ms. Watkowski stated there have been similar situations in Runaway Bay. The use of the property is not changing, so it is very similar to that of a single-family home. While it is possible for the owner to sell the home tomorrow, the property owners have many plans to use the home for their families and to retain ownership of it so that it does not become a short-term rental.

Public Comment

No members of the public were present to provide testimony.

No other agencies provided comment on this application.

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

Findings of Fact

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

- 1) There is ample on-street parking, and the property owners make efforts to carpool to minimize the number of vehicles that come to the site. This demonstrates that the full provision of parking is not necessary.
- 2) No one appeared in opposition.
- 3) There is evidence that shows there is no substantial impact to adjacent properties and the 3 parking spaces requested to be waived are not necessary

Based on the evidence and testimony presented and the Board's findings, Mr. Dan Stevens duly made a motion to approve the special parking exception request to waive 3 parking spaces as the full provision of parking is not deemed to be necessary. This was seconded by Emily Nock. The motion passed unanimously (3-1-1), with John Moran in opposition and Mr. Brian Shane absent.

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 April 25, 2024

APPLICATION: BZA 2687 (24-09500003)

APPLICANT: Heritage Outdoor Solutions, LLC
909 Belfast Road
Sparks Glencoe, Maryland 21152

SUBJECT SITE: 1513 Atlantic Avenue
Ocean City, Maryland 21842

Opinion

A hearing was held before the Town of Ocean City Board of Zoning Appeals (hereinafter “Board”) on April 25, 2024, at 6:20 p.m. for the application of Heritage Outdoor Solutions, LLC (hereinafter “Applicant”) (BZA 2687, File #24-09500003). Pursuant to Town Code Section 110-95(1)(a), the Applicant requested a variance of 12 feet, 7 inches from the 41-foot front yard setback for an existing pergola to remain at 28 feet, 5 inches from the front property line.

The site of the appeal is described as Lots 1, 2, 3, 10, 11 and 12, Block 56 North, of the plat entitled “Sinepuxent Beach Plat.” It is further described as being on the southwest corner of Atlantic Avenue, the Boardwalk, and 16th Street, and is locally known as 1513 Atlantic Avenue in the Town of Ocean City, Maryland.

George Bendler, Director of Planning and Community Development, and Karen Gordy, Zoning Administrator, were sworn in. Mr. George Bendler presented the staff report with exhibits (Staff Exhibit #1, Pages 1 and 2). He stated the property is within the General Residential (R-3)

Zoning District. 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 does not allow for accessory structures to encroach upon a front yard. In this case, there is a front yard setback of 41 feet that was established when the Hyatt Property was developed between 2014 and 2016. This setback is known as a “special height by right” setback, and it is specific to select properties on the Boardwalk per Section 110-903(3)(d) of the Zoning Code. Mr. Bendler informed the Board that Franco’s Pizza applied for the construction permit in October for When it went through review, staff utilized a different setback requirement, the setback for a general R3 property. This was found to be an error despite the nearby Upper Downtown Design Overlay standard that encourages this type of structure. The original Hyatt plans did show outdoor seating in this area and a pergola on the side of the building but not on the Atlantic Avenue side of the building. Staff has determined no additional parking is needed. The setback issue was caught by staff while inspecting the pergola. Therefore, the request for the after-the-fact variance for this pergola is one to allow it to remain 28 feet, 5 feet from the front property line that runs along the Boardwalk.

Mr. Dan Stevens asked what types of buildings are included in the height by right classification. Mr. Bendler stated that it is a classification of buildings on the Boardwalk that exceed 5 stories in height, and effectively, have different setbacks to compensate for the allowance of the increase in height. Ms. Karen Gordy stated that one of the last times the height by right provision was utilized in 2014 and more recently for two projects. This special setback is in the supplemental regulations. Mr. Bendler stated that it is important to note that the permit is filed under the tenant fit-out for Franco’s; and therefore, not as much consideration was made for the entire building of the Hyatt as the staff had focused on the project being for Franco’s tenant space.

Mr. Dan Stevens mentioned that the property directly to the north does not appear to comply with the 41-foot setback. Ms. Gordy stated that this site of the Quality Inn may have been developed under the provisions of the Planned Overlay District (POD). The setbacks are determined by the Commission when the property is large enough to qualify for the POD. Mr. Moran asked if Applicant Exhibit #1, Page #4 was used for the building permit. Ms. Gordy confirmed that it was. He then asked where the beach was. Mr. Bendler pointed out that it is represented on the right side of the document (to the east). Mr. Moran then asked if the setback line is represented on this document. Staff confirmed that it is. Ms. Gordy stated that Section 110-903(3)(c) special yard exceptions shall not apply to development that utilizes height by right and that Section 110-903(3)(d) states that “no porch balcony or stairwell shall encroach or project into the applicable setback.” It is very uncommon to have this provision of Code apply to a structure like this. Ms. Gordy utilized Applicant #1, Page #4, to explain the setbacks. It was reaffirmed that the structure is already built and currently exists on the site.

Mr. Moran asked about Staff Exhibit #3. Mr. Bendler explained that this is the document used for the entire tenant fit-out. Additionally, he explained that Staff Exhibit #4 is the site plan for the entire development of the Hyatt. This site plan even shows pergolas on the plan, except they are on the side. Mr. Moran wanted to know how this issue came to the attention of staff. Ms. Gordy stated that someone brought in a photo and expressed their satisfaction with the appearance of this pergola on the Boardwalk. It was then that staff realized it did not comply with the correct setback.

The Applicant’s Case

Mr. Alec Huber and Ms. Suzanne Huber were both sworn in. They testified the following:

- 1) They build motorized pergolas and approached Franco's Pizza because of the existing outdoor seating and the opportunity that existed for this structure to be useful for the business.
- 2) Many restaurants in Ocean City have outdoor seating. While it is popular, there are issues when the wind or rain come through when guests are outside. This pergola provides a solution to this issue because the motorized screens can cover this space from the elements very quickly.
- 3) The pergola was constructed under Building Permit #23-1714 that was issued on December 19, 2023 by the Department of Planning and Community Development.
- 4) The demand for outdoor seating has increased since the COVID-19 Pandemic, and Heritage Outdoor Solutions has built over 1,000 of these in the Washington D.C., Maryland, and Virginia areas.
- 5) A similar pergola was constructed at the Spain Wine Bar on St. Louis Avenue in Ocean City.
- 6) He was informed that there would be a 20-foot front yard setback and had the understanding that this pergola was compliant with setbacks.
- 7) The engineered pergola has the ability to withstand winds of up to 120 miles per hour when the vents are closed and up to 180 miles per hour when the fault switch detects stronger winds.
- 8) The pergola is made with AZEK material and is engineered for Miami-Dade hurricanes and the snow load Ocean City experiences.
- 9) With over 1,000 installations, they have never had a pergola approved and then had this approval (potentially) be rescinded.

- 10) There is always an air gap, and the gutters are located on the inside. The aluminum is the same material that is used for the manufacturing of jetliners.
- 11) Mr. Huber has been in business for over 41 years. While he has sold all of his other businesses, he kept ownership of this pergola business because of the quality of the product.
- 12) The construction is finished. It has a great appearance, and it is very safe.
- 13) There is no intention to permanently enclose this pergola.
- 14) The screens that the pergola has are made for hurricane and extreme weather-related purposes. Therefore, they add a level of safety and protection.

Ms. Suzanne Huber emailed a photo of the pergola to Mr. Phillips during the hearing. This photo, which shows the pergola's location relative to the covered patio to the north, was shown to the Board, broadcasted to the public, and printed for the file. It is annotated as Applicant Exhibit #3.

- 15) The pergola covers seating that was approved and already existing.
- 16) The property to the north has seating all the way to the sign along the Boardwalk. Franco's seating was not designed in this way.

Mr. John Moran asked about Applicant Exhibit #4. This document was confirmed to have not been submitted with the building permit. Applicant Exhibit #1 was submitted rather than #4.

- 17) This pergola is safer than the use of umbrellas which could blow away and become a danger to guests of Franco's and pedestrians on the Boardwalk.
- 18) The reason for this request is due to an error in the issuance of the construction permit.

Mr. John Moran asked about Staff Exhibit #5. Mr. Phillips stated that this is the building permit document that is issued to an applicant. He asked about the notes section. Mr. Phillips stated this is where notes and conditions regarding setbacks are established. If staff had properly reviewed the construction proposal, there would have also been a note regarding the setback from the front

property line along the Boardwalk, not just the setback from the property line that runs along 16th Street.

Public Comment

No one was present to provide public testimony.

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) There is uniqueness with this request because of the extraordinary circumstances of having the uncommon setbacks that only apply to select properties along the Boardwalk.
- 2) There is practical difficulty created from the uniqueness because the applicants would be required to deconstruct the pergola when the hardship was not created by them. Additionally, the effects of the removal of the pergola could create issues for the outdoor seating that is permitted.
- 3) The applicants are not at fault for this error. The practical difficulty of the expense to remove the pergola to become conforming would unduly burden this applicant.
- 4) The Board holds the ability to restrict this structure from ever becoming permanently enclosed. This keeps as much consistency with the requirements of Section 110-903 as possible.

Conclusion

After closing the hearing, the Board deliberated and based upon the evidence and testimony presented and their findings, Ms. Emily Nock made a motion to approve the request for a variance

for the existing pergola because there is both uniqueness and practical difficulty present; and additionally, for this approval to include the condition that the pergola never be permanently enclosed. This was seconded by Dan Stevens. The motion passed unanimously (4-0).

Approval of Findings

Christopher Rudolf, Chairperson

John Moran

Emily Nock

Dan Stevens



STAFF REPORT

DATE: April 25, 2024

TO: Board of Zoning Appeals

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

RE: A request for a special parking exception to (1) one (1) parking space and (2) to reduce one parking space to 9' X 16.9'
BZA 2689 & #24-09400011

Applicant: Stephen Kansak
11236 West Marie Drive
Bishopville, Maryland 21813

Property Owner: Laura Bankeroff
14707 Poplar Hill Road
Germantown, Maryland 20874

Subject Site: 601 Bayshore Drive, Unit 15
Ocean City, Maryland 21842

Request:

1. A special parking exception to waive one (1) space from required parking for the reconstruction of an existing townhome unit; and,
2. A special parking exception from design standards to reduce the size of one (1) parking space to 9' X 16.9', rather than the 9' X 20' required by Code. (**Applicant Exhibit #1**)

Property Description: The property is described as Lot 15 (Unit 15) of the plat entitled "Village West, Part One." It is further described as being on the south side of Bayshore Drive and is locally known as 601 Bayshore Drive, Unit 15, in the town of Ocean City, Maryland (**Staff Exhibit #1**)

Zoning: R-2 Medium Residential District

Relevant Code References

Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-93 – Powers

...

(2) The board shall have the power to hear and decide upon application for special exceptions upon which the board is specifically authorized to pass under this chapter.

In order to provide for adjustments in the relative location of uses and buildings of the same or different classifications, to promote the usefulness of these regulations as instruments for fact finding, interpretation, application and adjustment, and to supply the necessary elasticity to their efficient operation, special exceptions are permitted within the allowed district as stated in this section. Special exceptions are permitted if the board finds that, in its opinion, as a matter of fact, such exceptions will not substantially affect adversely the uses of adjacent and neighboring property under the terms of this chapter.

Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-94 – Special Exceptions

...

(2)(b) Special exceptions to parking and loading requirements, specifically the waiving or reduction of parking requirements and design standards in any district when the character or use of the building is such as to make the full provision of required parking unnecessary.

Ocean City Code – Chapter 110

Article V, Division 3, Off-Street Parking

Section 110-932 – Minimum Number of Spaces

...

(b)(2) Any multiple-family dwelling and townhouse shall have:

- 2.5 spaces per each 3-bedroom unit and 0.5 space per each additional bedroom over 3 bedrooms.

Ocean City Code – Chapter 110

Article V, Division 3, Off-Street Parking

Section 110-933 – Interpretation of Minimum Requirements

- (a) Any room, as defined by Section 110-2 as being an accessory room, is to be treated in the same manner as a bedroom, and required parking shall be computed accordingly. This shall apply to all residential buildings except detached single-family dwellings.

Proposal with Comparison of the Zoning Code

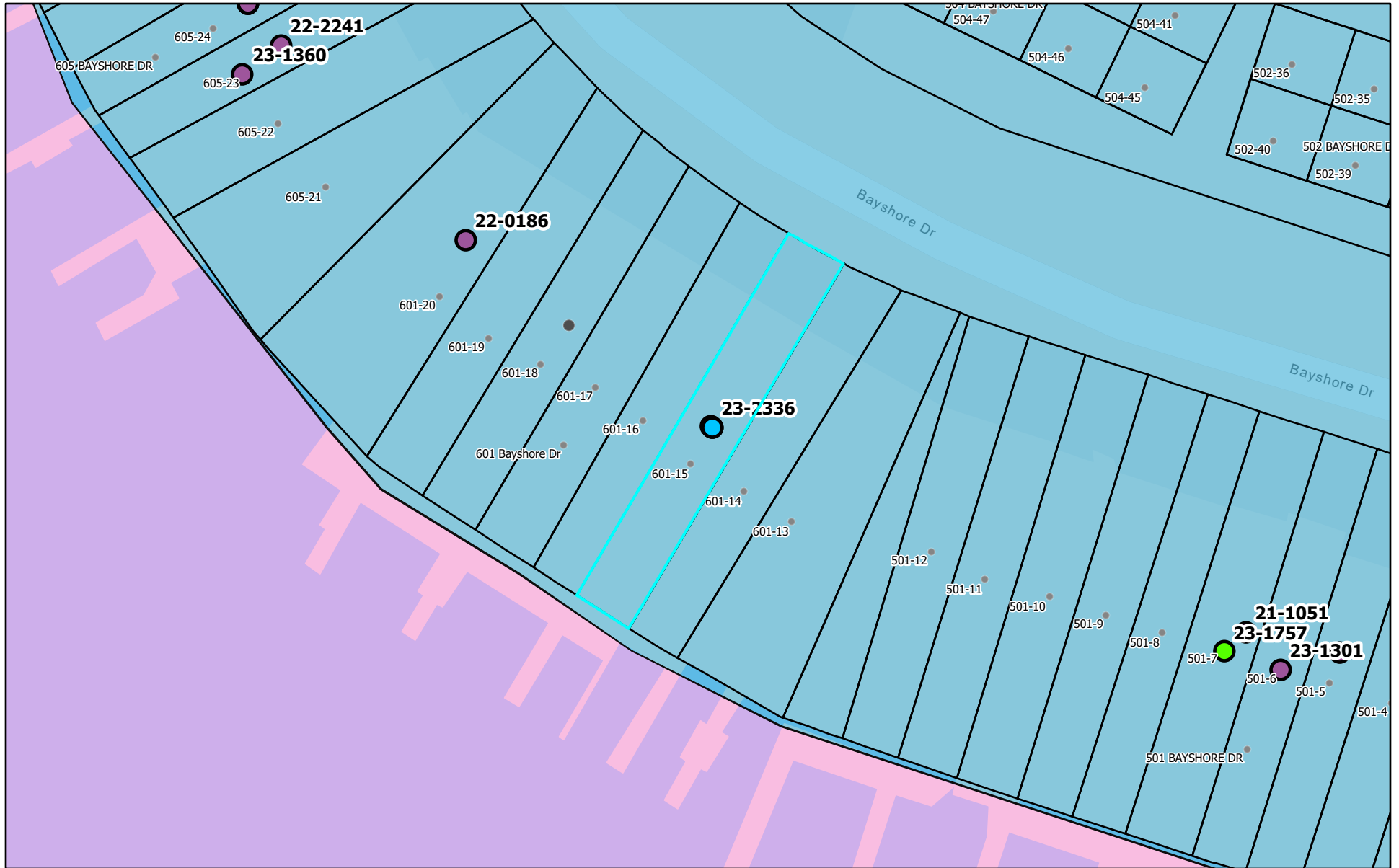
601 Bayshore Drive, Unit 15

- 4 bedrooms (*or rooms that must be counted such)
- *3 required parking spaces*
- *2 spaces provided*
- *1 parking space deficiency*

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:

1. A special parking exception to waive one (1) space from required parking for the reconstruction of an existing townhome unit; and,
2. A special parking exception from design standards to reduce the size of one (1) parking space to 9' X 16.9', rather than the 9' X 20' required by Code.

601 Bayshore Dr., Unit 15 Zoning



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Active Building Permits

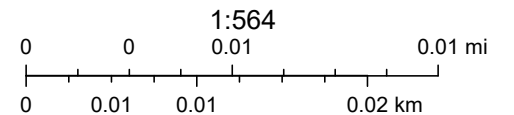
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- Issued (purple dot)

Pending (cyan circle)

TOC_Parcels_ (white box)

Zoning

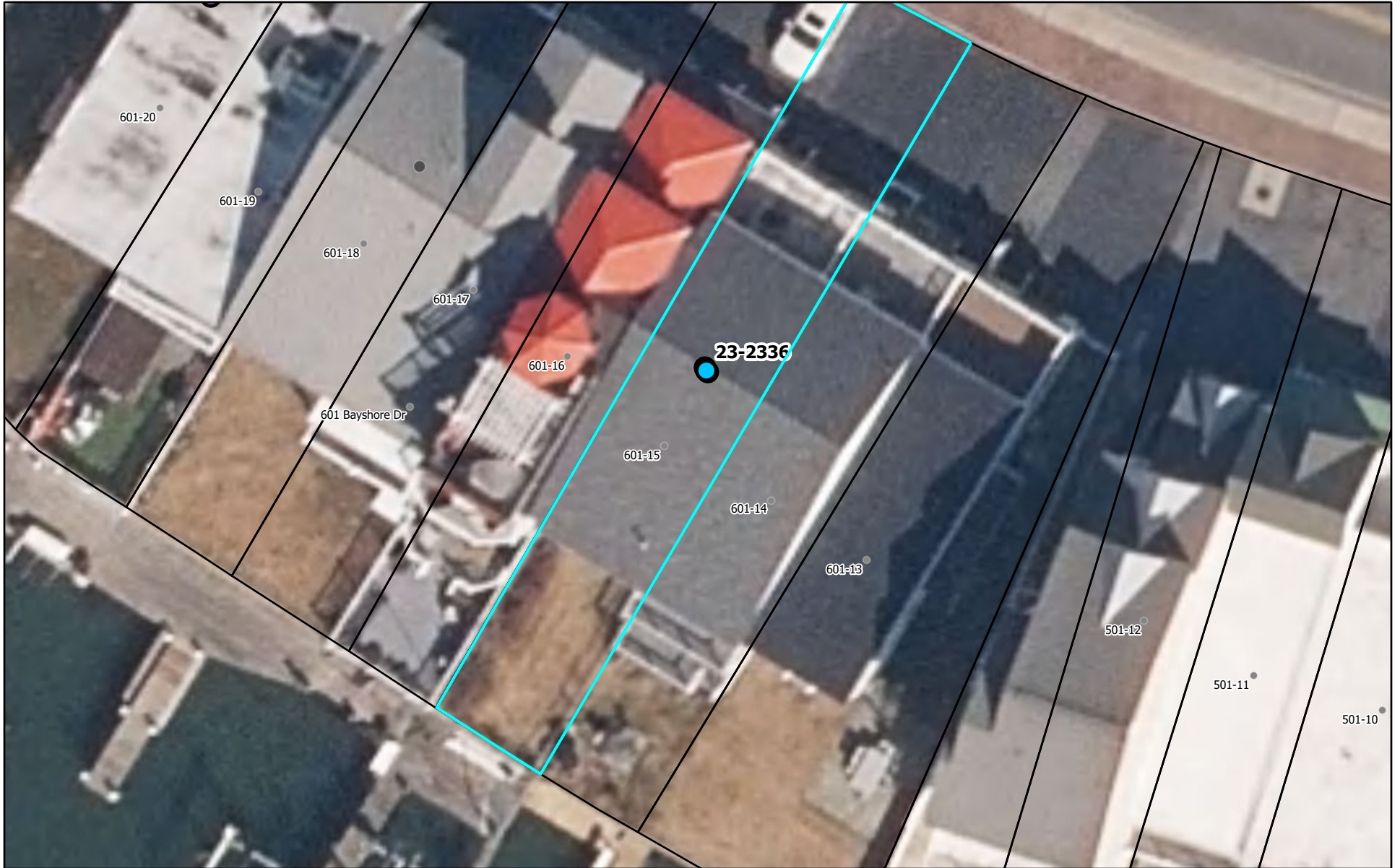
- R-2 (light blue box)
- RC-1 (pink box)



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


601 Bayshore Dr., Unit 15



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Active Building Permits

 Pending

 Issued

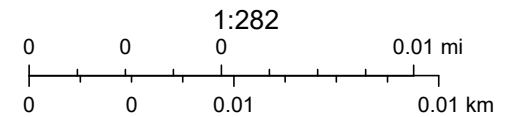
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2022 Imagery

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 Green: Band_2

 Blue: Band_3

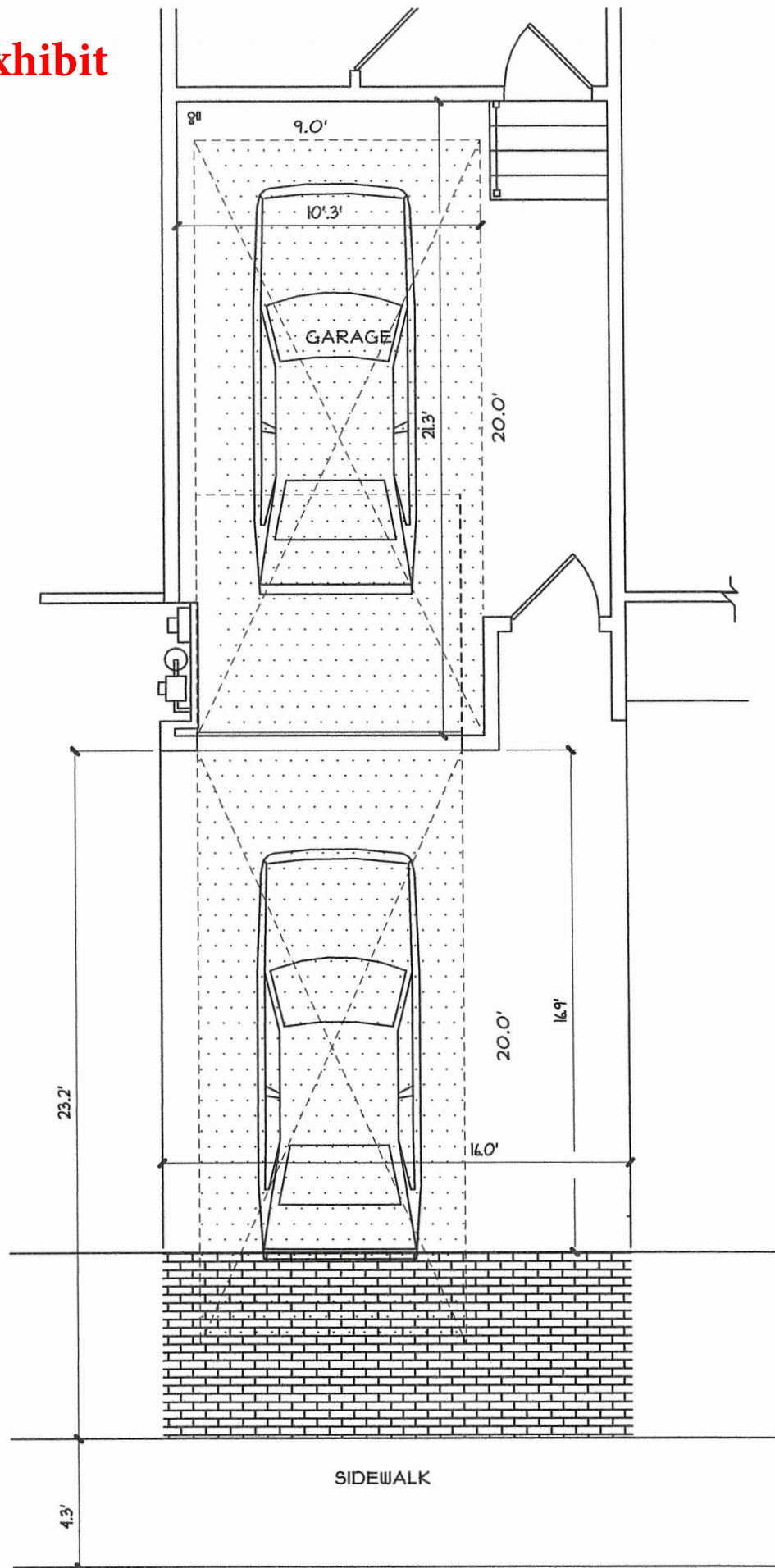


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Department of Planning & Community Development
Town of Ocean City, MD

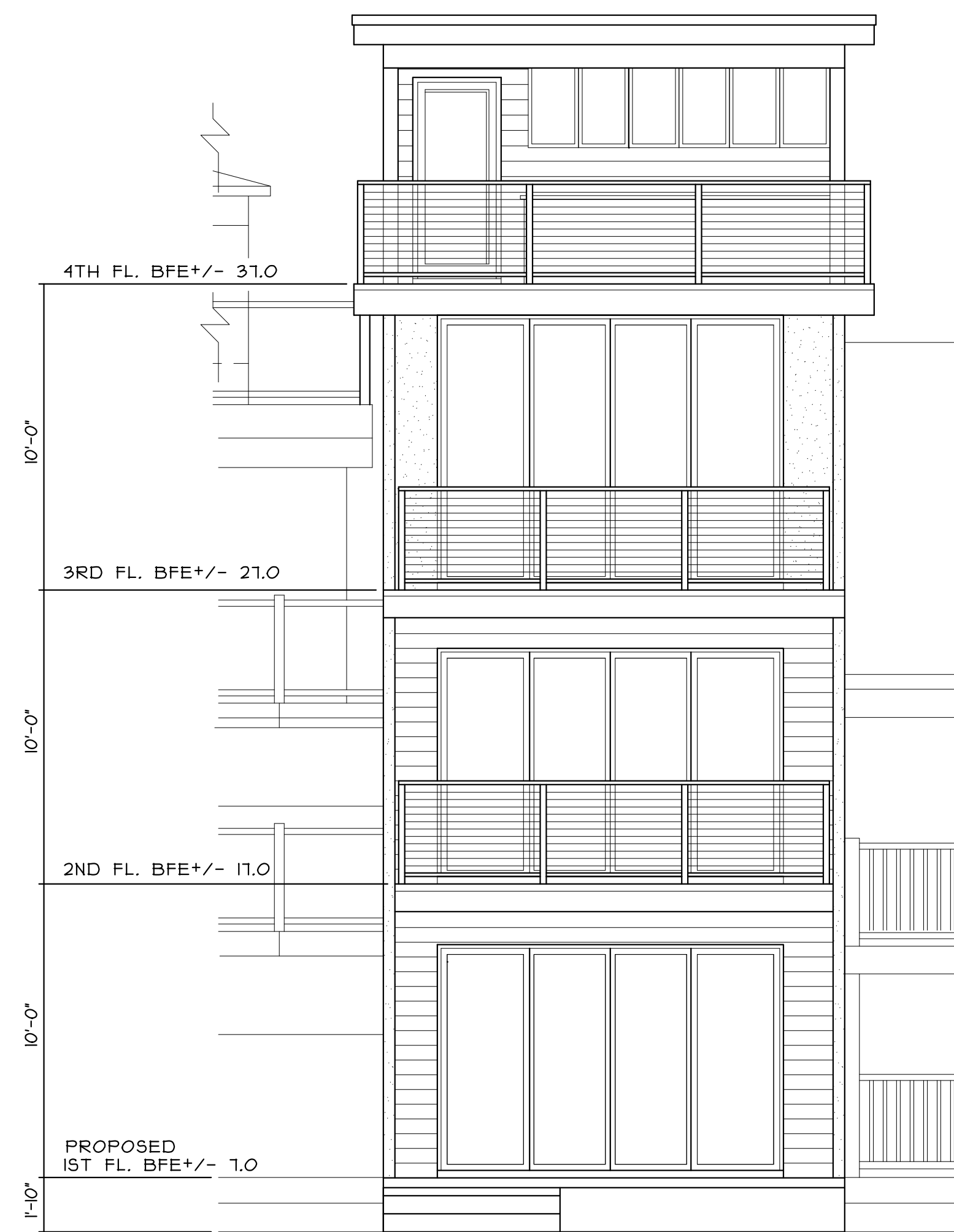


**Applicant Exhibit
#1 Page 1**





1 FRONT ELEVATION
A-1 1/4" = 1'



2 BACK ELEVATION
A-1 1/4" = 1'

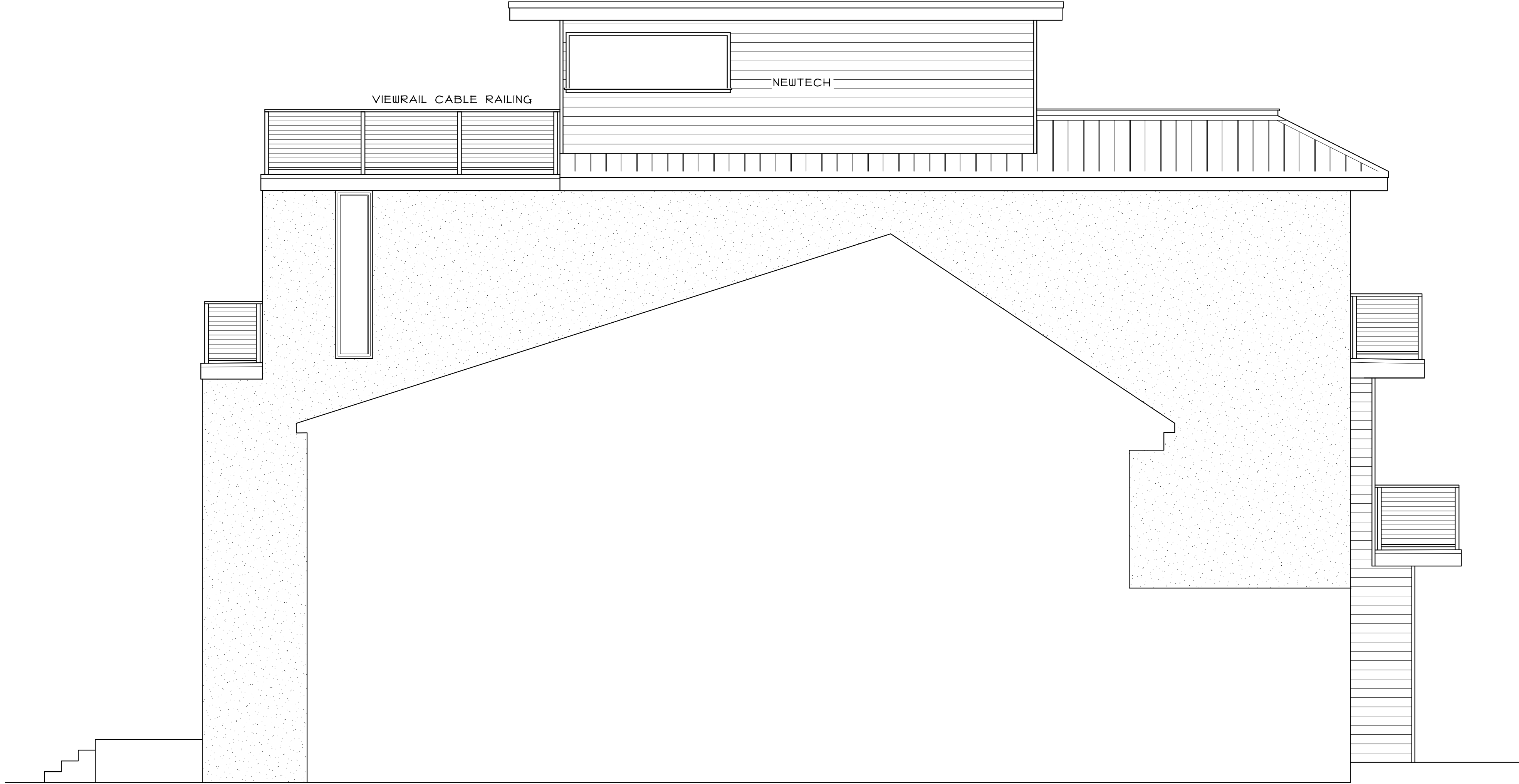
STEPHEN J. KANSAK Inc.
stephenkansak.com
P.O. BOX 620
OCEAN CITY, MD.
410.213.8314
stevesplans@aol.com

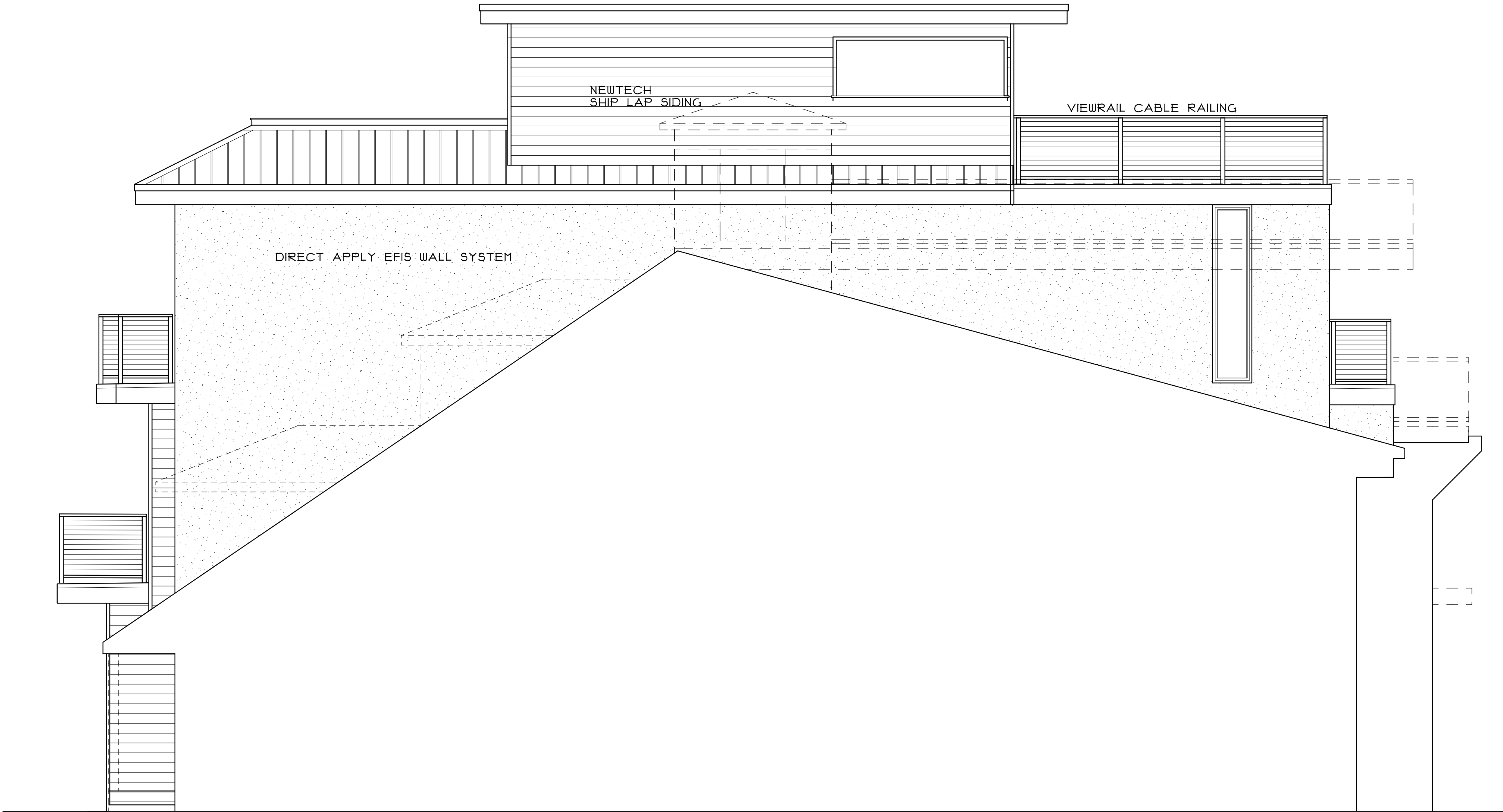
BANKEROFF BEACH HOUSE
601 BAYSHORE DRIVE
UNIT #15
OCEAN CITY, MD. 21842

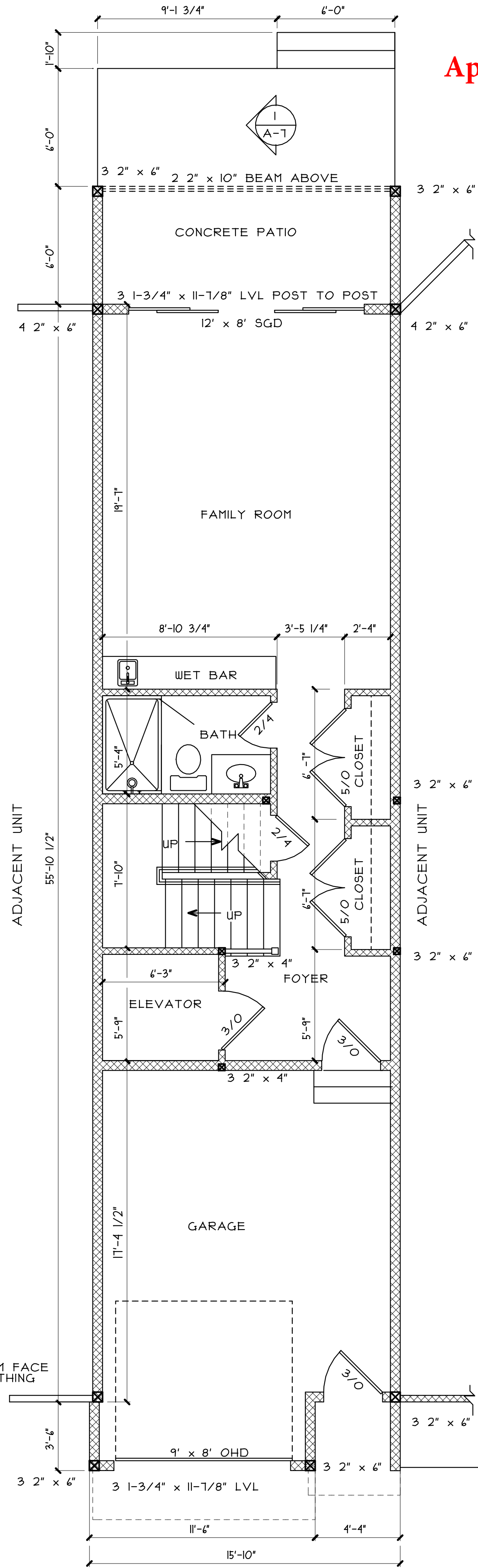
ELEVATIONS

DATE

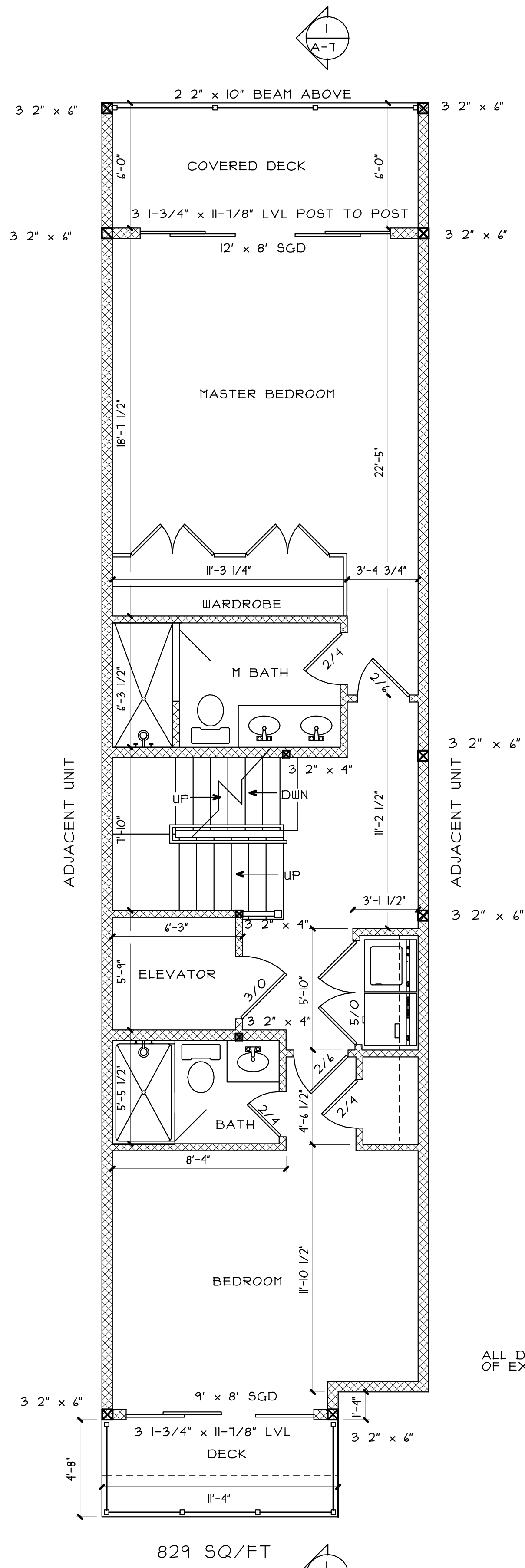
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05/26/23
07/21/23
09/25/23



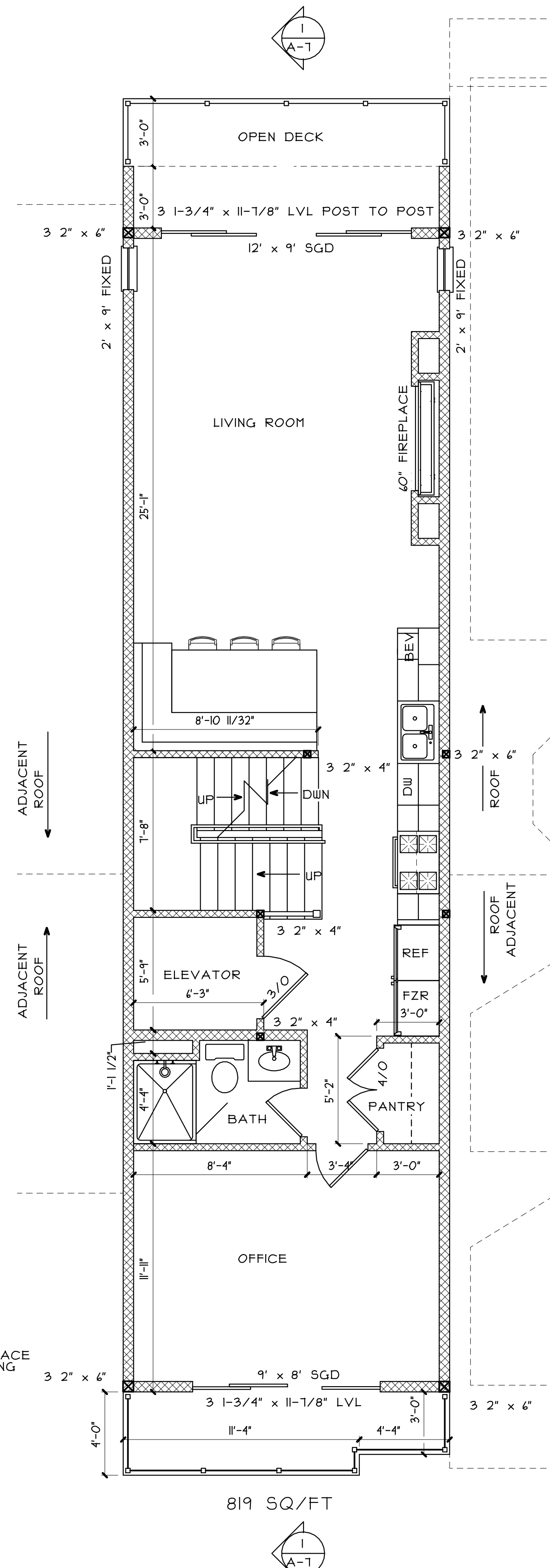




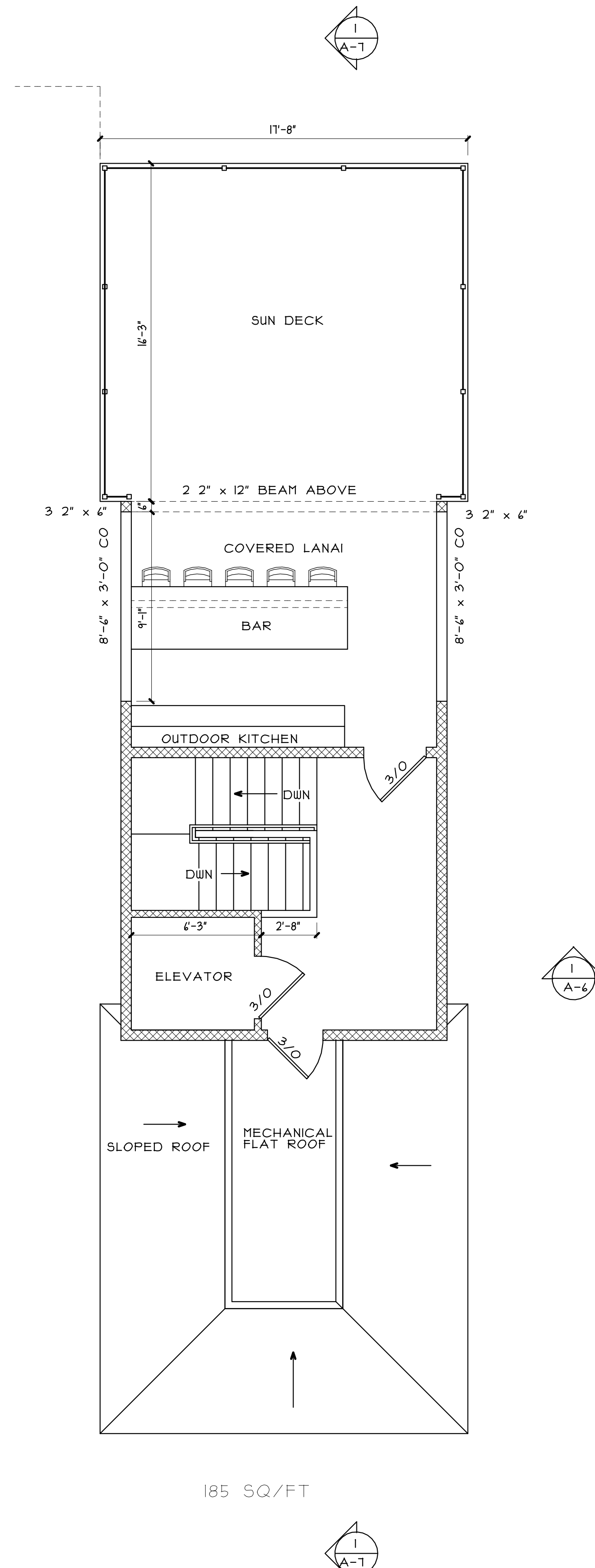
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2 A-4 2ND FLOOR 1/4" = 1'



3 A-4 3RD FLOOR 1/4" = 1'

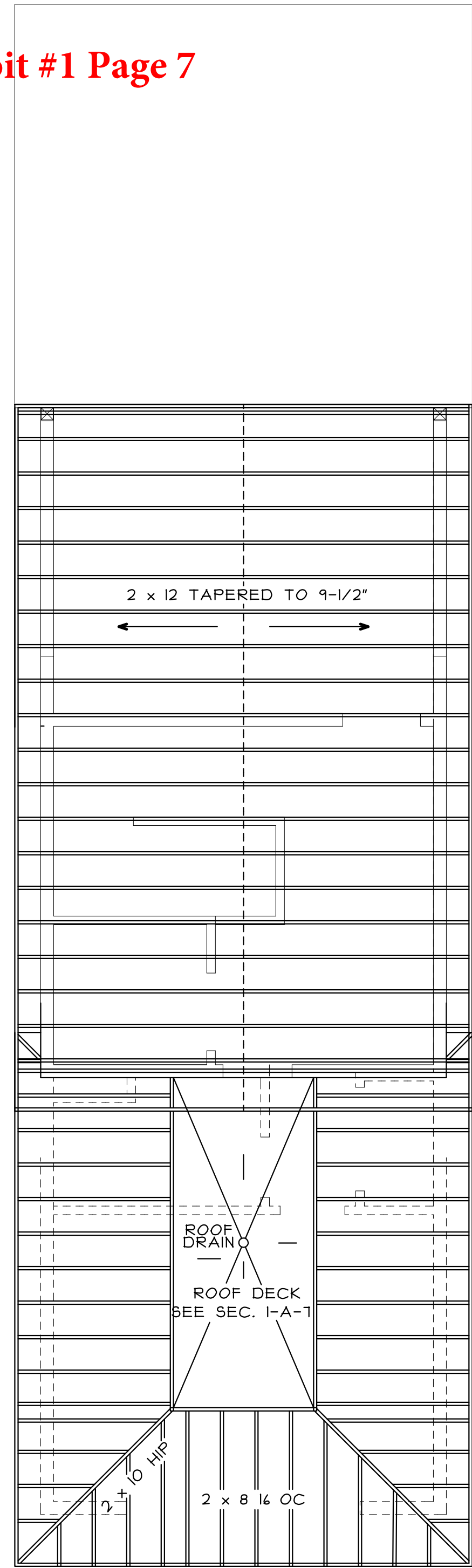


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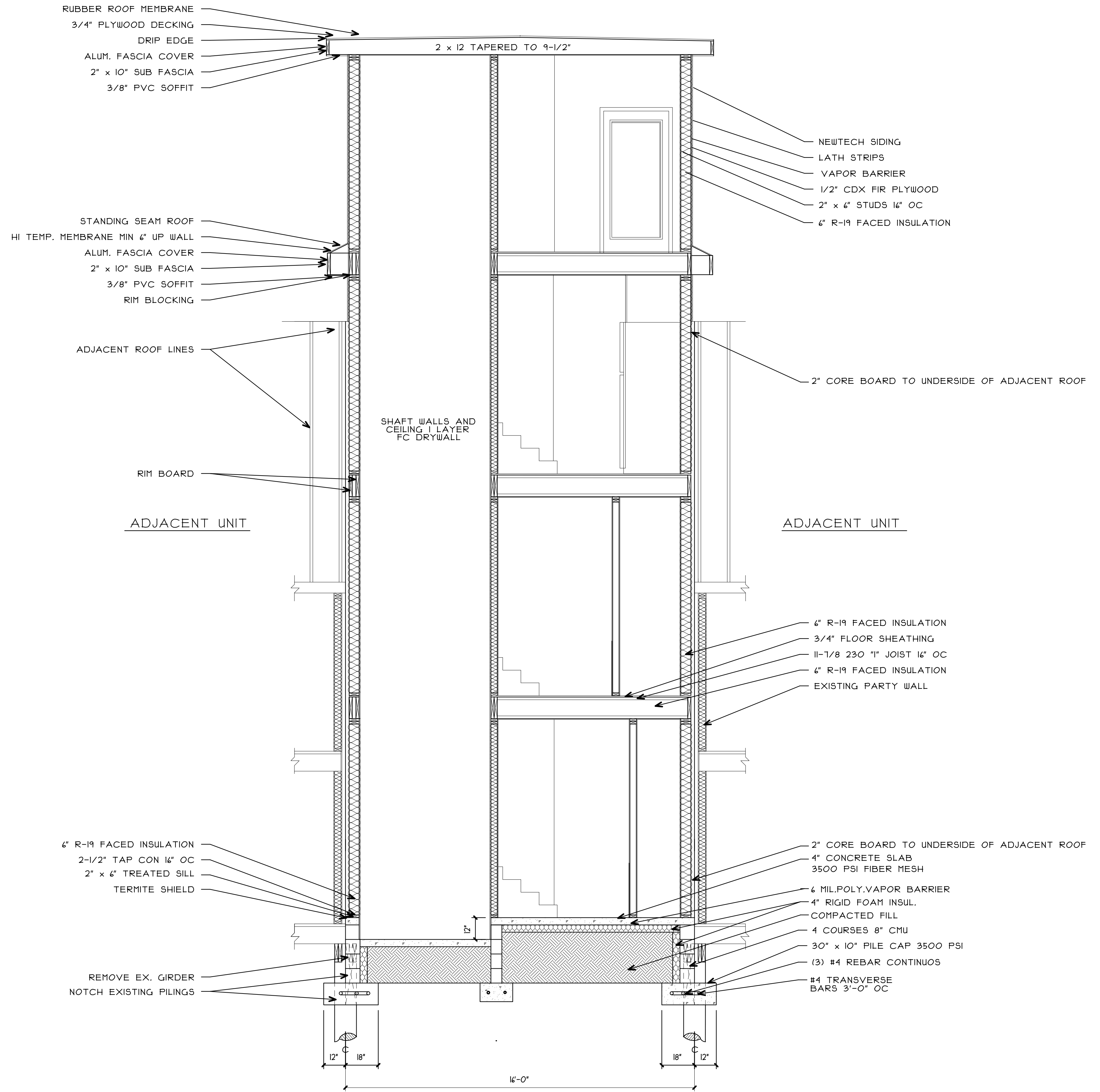
STEPHEN J. KANSAK Inc.
stephenkansak.com
P.O. BOX 620
OCEAN CITY, MD.
410.213.8314
stevesplans@aol.com

BANKEROFF BEACH HOUSE
601 BAYSHORE DRIVE
UNIT #15
OCEAN CITY, MD. 21842

FLOOR PLANS
DATE
02/10/23
05/11/23
05/26/23
08/25/23



1 RAFTER PLAN
1/4" = 1'



2 SECTION
3/8" = 1'

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stephenkansak.com
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OCEAN CITY, MD.
410.213.8314
stevespans@aol.com

BANKEROFF BEACH HOUSE
601 BAYSHORE DRIVE
UNIT #15
OCEAN CITY, MD. 21842

FRAMING SECTION

DATE
02/10/23
05/11/23
05/26/23
08/25/23



STAFF REPORT

DATE: May 23, 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 special use exception for marine construction on a property that has no established principal use
BZA 2691 (24-094000013)

Applicant: McGinty Marine Construction
12050 Industrial Park Road
Bishopville, Maryland 21842

Property Owners: Keith and Shelley Coffin
P.O. Box 4347
Ocean City, Maryland 21842

Subject Property: 314 South Heron Gull Court (Lot 91A)
Ocean City, Maryland 21842

Request: The applicant has a special use exception for the construction of a dock, pier, and boat lift on a property that has no established principal use on the premises (i.e. a vacant lot).
(**Applicant Exhibit #1**)

Property Description: The property is described as Lot 91A of the plat entitled “Lots 91 – 96, Section Three, Harbourside at Heron Harbor.” It is further described as being on the north side of South Heron Gull Court and is locally known as 314 South Heron Gull Court, in the Town of Ocean City, Maryland. (**Staff Exhibit #1**)

Zoning: Single Family Residential District (R-1)

Project History:

This project first went to the Board of Port Wardens in September of 2023. A decision was not made and was tabled due to zoning restrictions that are in place. The Department of Planning and Community Development received this application received this Board of Zoning Appeals application in April of 2024. The proper permits from the Maryland Department of the Environment were issued and received on May 1, 2024. The new Port Wardens case is tentatively scheduled for June, pending approval from BZA.

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) The board shall have the power to hear and decide upon application for special exceptions upon which the board is specifically authorized to pass under this chapter.

In order to provide for adjustments in the relative location of uses and buildings of the same or different classifications, to promote the usefulness of these regulations as instruments for fact finding, interpretation, application and adjustment, and to supply the necessary elasticity to their efficient operation, special exceptions are permitted within the allowed district as stated in this section. Special exceptions are permitted if the board finds that, in its opinion, as a matter of fact, such exceptions will not substantially affect adversely the uses of adjacent and neighboring property under the terms of this chapter.

Ocean City Code – Chapter 110

Article II, Division 4, Board of Zoning Appeals

Section 110-94 – Special Exceptions

...

(1) Special use exceptions as specified in the district regulations.

2. Ocean City Code – Chapter 110

**Article IV, Division 2, R-1 Single Family Residential District
Section 110-273 (Uses Permitted by Special Exception)**

- (2) Private boat docks, wharves, piers, and mooring piles to be located on a property which has no established principal use on the premises

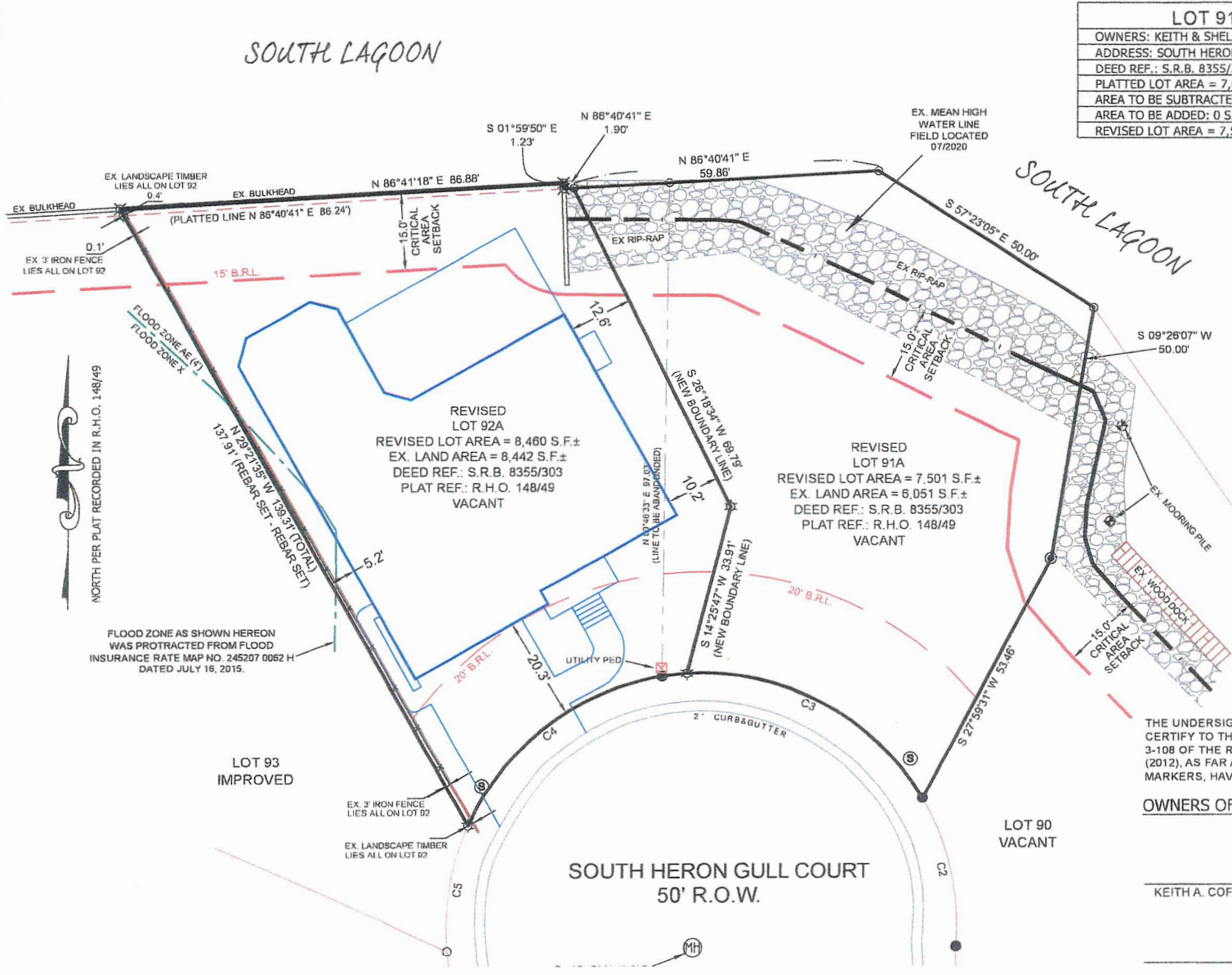
Public Comment: As of March 7, 2024, The Department of Planning and Community Development has received one letter of comment.

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 this request:

- a. The applicant has a special use exception for the construction of a dock, pier, and boat lift on a property that has no established principal use on the premises (i.e. a vacant lot).

RESPONSIBLE CHARGE, AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MARYLAND LICENSE NO. 21329, EXPIRATION DATE 1/01

PROPERTY OTHER THAN THOSE AS SHOWN ON SAID RECORD PLAT, NO TITLE SEARCH OR COVENANTS PROVIDED OR STIPULATED.



(91A) (92A)

LOT 91	LOT 92
OWNERS: KEITH & SHELLEY COFFIN	OWNERS: KEITH & SHELLEY COFFIN
ADDRESS: SOUTH HERON GULL COURT	ADDRESS: SOUTH HERON GULL COURT
DEED REF.: S.R.B. 8355/303	DEED REF.: S.R.B. 8355/303
PLATTED LOT AREA = 7,603 S.F.±	PLATTED LOT AREA = 8,358 S.F.±
AREA TO BE SUBTRACTED = 102 S.F.±	AREA TO BE SUBTRACTED = 0 S.F.±
AREA TO BE ADDED: 0 S.F.±	AREA TO BE ADDED: 102 S.F.±
REVISED LOT AREA = 7,501 S.F.±	REVISED LOT AREA = 8,460 S.F.±



(IN FEET)
1" = 20'
MIN. ACCURACY = 0.1'±

- LEGEND:**
- DENOTES SAMUEL P. FRAMM REBAR & CAP FOUND
 - ⊙ DENOTES IRON PIPE FOUND
 - ☆ DENOTES IRON ROD SET
 - ⊗ DENOTES MAG NAIL SET
 - Ⓢ DENOTES EX. SEWER CLEANOUT

OWNER'S CERTIFICATION

THE UNDERSIGNED OWNERS OF THE PROPERTY SHOWN ON THIS PLAT HEREBY CERTIFY TO THE BEST OF THEIR KNOWLEDGE THAT THE REQUIREMENTS OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND (2012), AS FAR AS IT CONCERNS THE MAKING OF THE PLAT AND THE SETTING OF THE MARKERS, HAVE BEEN COMPLIED WITH.

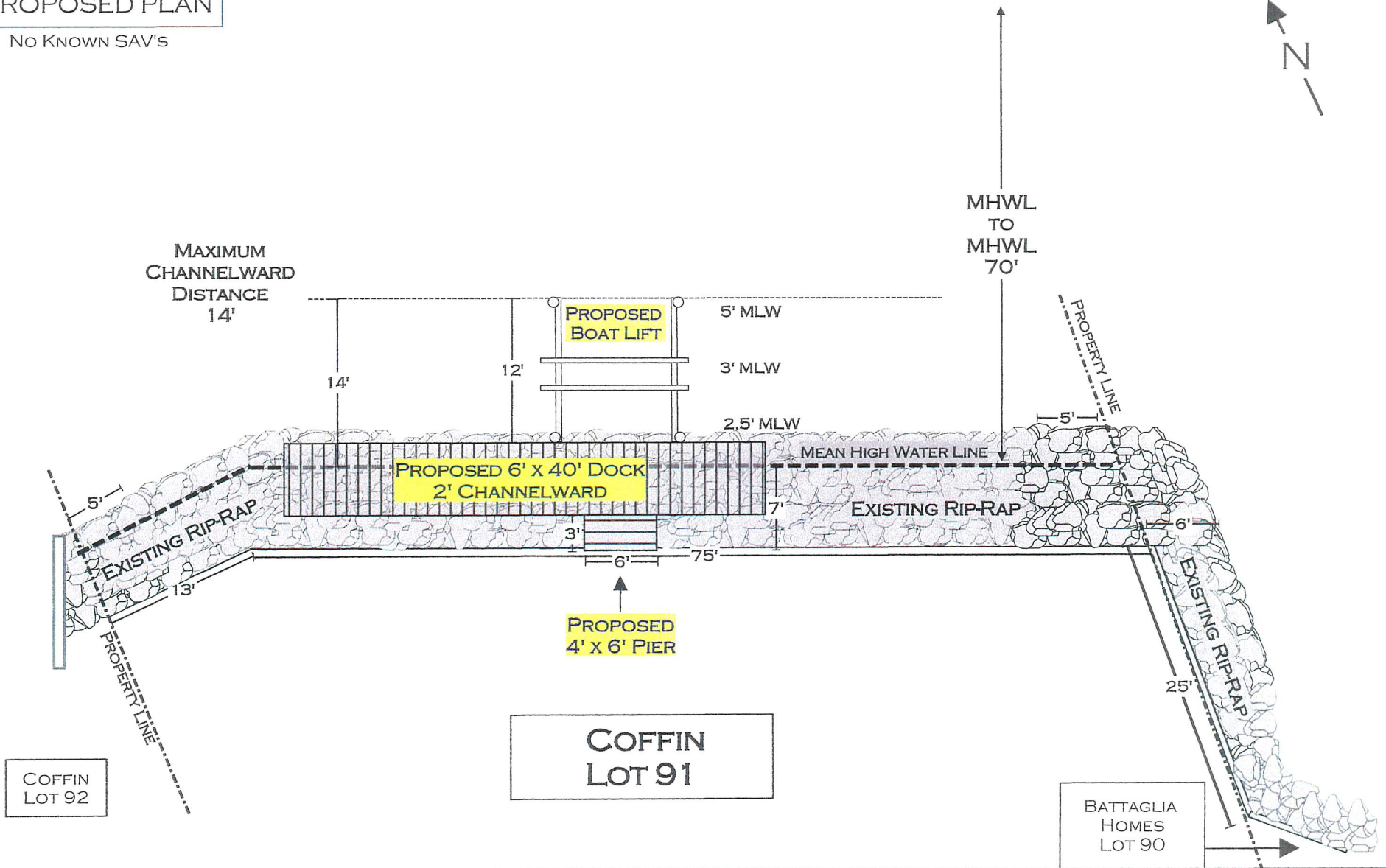
OWNERS OF LOT 91

KEITH A. COFFIN

DATE

PROPOSED PLAN

NO KNOWN SAV'S



SITE:	S. HERON GULL CT., LOT 91 OCEAN CITY, MD 21842	DRAWING:	PROPOSED	PROJECT:	COFFIN	DRAWN:	H. SCHLEUPNER	MCGINTY MARINE CONSTRUCTION 12050 INDUSTRIAL PARK ROAD BISHOPVILLE, MD 21813 410-250-5066
TITLE:	KEITH & SHELLEY COFFIN	SCALE:	1" = 12'	DATE:	2/25/23 REVISED: 2/3/24	PAGE:	2 OF 3	

Coffin - Aerial Imagery



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Active Building Permits

● Approved

● Issued

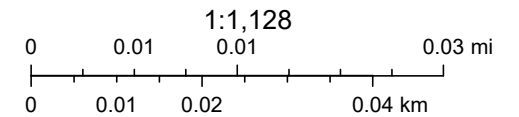
□ TOC_Parcels_

2022 Imagery

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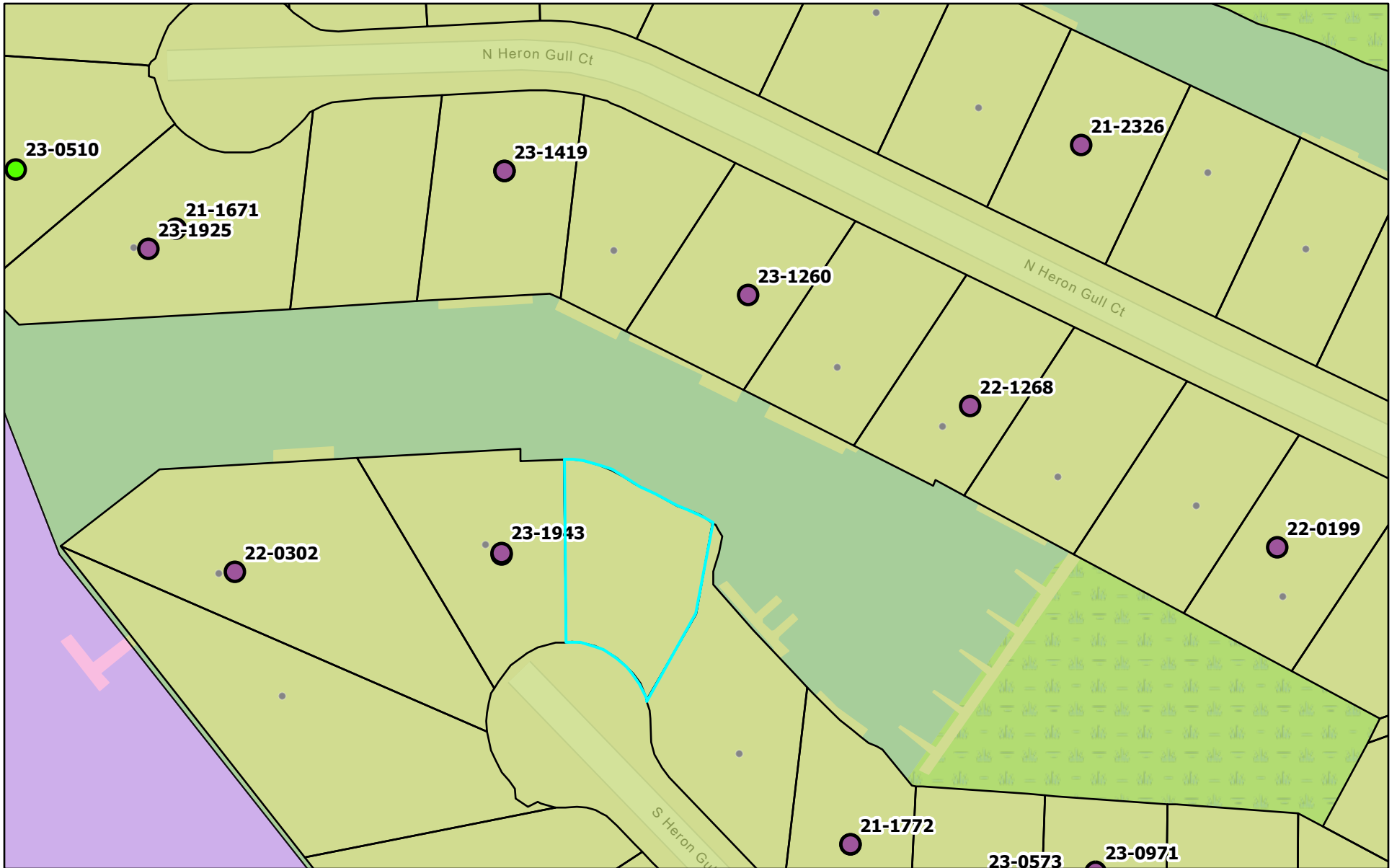
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Department of Planning & Community Development
Town of Ocean City, MD

Coffin - Zoning Map



5/14/2024, 2:38:00 PM

Active Building Permits

	Approved		TOC_Parcels_		RC-1
	Issued		Zoning		R-1

