THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2018-CP-07-00784

Bradley Circle Vacation Partners, LLC and Monti Development HH, LLC... Appellants,

v.

Town of Hilton Head Island, Town of Hilton Head Island Board of Zoning Appeals, Tamara Becker, and Rhonda Carper ..... Respondents.

RECORD ON APPEAL – VOLUME II

RECEIVED
FEB 11 2019
SC Court of Appeals

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5 Bradley Circle
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Pro Se Respondent

Rhonda Carper
32 Bradley Circle
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TOWN OF HILTON HEAD ISLAND
LMO Committee Meeting
March 7, 2016 Meeting
6:00 p.m. – Council Chambers

Committee Members Present: Chairman Jim Gant, Todd Theodore, Lavon Stevens and Barry Taylor

Committee Members Absent: None

Other Commissioners Present: Peter Kristian and Caroline McVitty

Town Council Present: None

Town Staff Present: Teri Lewis, LMO Official
Rocky Browder, Environmental Planner

1. **Call to Order**
Chairman Gant called the meeting to order at 6:00 p.m.

2. **Freedom of Information Act**
Public Notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

3. **Approval of the Agenda**
The agenda was **approved** as presented by general consent.

4. **Approval of the Minutes**
The October 28, 2015 and November 13, 2015 minutes were approved by general consent.

5. **New Business**
LMO Amendments –Review of draft amendments to be considered for the first set of 2016 LMO amendments.

Chairman Gant called the meeting to order and welcomed those in attendance. Chairman Gant stated that the committee would start with the review of the LMO amendments related to Natural Resources and then would review all other amendments. He stated that the Committee would take questions and comments at the conclusion of each chapter of amendments and then would vote on each chapter of amendments separately.

Mr. Browder went through the proposed natural resources LMO amendments. The Committee discussed invasive species, manmade lagoons, bulkheads and development on dune fields. Mr. Taylor made a motion to recommend approval of the Natural Resources amendments as drafted. Mr. Theodore seconded the motion. The motion passed with a vote of 4-0-0.

The Committee then began their review of the proposed Chapter 2 LMO amendments. After review and discussion, Mr. Theodore made a motion to recommend approval of the

Chapter 2 amendments as drafted. Mr. Stevens seconded the motion. The motion passed with a vote of 4-0-0.

Chairman Gant then asked Ms. Lewis to begin the review of the proposed Chapter 3 LMO amendments. The Committee and staff had a brief discussion about how one foot has to be added to commercial properties now as part of the building code changes. The Committee asked that staff consider re-visiting the height requirements for non-single family in the future. After review and discussion, Mr. Taylor made a motion to recommend approval of the Chapter 3 amendments as drafted. Mr. Theodore seconded the motion. The motion passed with a vote of 4-0-0.

Ms. Lewis then started the review of the draft Chapter 4 amendments. Mr. Chet Williams suggested changes related to the language in use-specific conditions in the CR (Coligny Resort) district. At the conclusion of the review and discussion, Mr. Stevens recommended approval of the amendments with the changes suggested by Mr. Williams. Mr. Taylor seconded the motion. The motion passed with a vote of 4-0-0.

Chairman Gant then asked Ms. Lewis to review the proposed Chapter 5 LMO amendments. During the review of proposed changes to 16-5-107 Mr. Taylor stated that the use of a raised curb in under building parking was problematic and stated that 'raised or curbed' should be changed to 'painted'. During the review of Table 16-5-107.I.1 Mr. Taylor asked staff to review whether or not the stacking distance for schools matches what is required by SCDOT. At the conclusion of the review and discussion, Mr. Taylor recommended that the proposed Chapter 5 amendments be approved with the change that he recommended related to parking under buildings. Mr. Theodore seconded the motion. The motion passed with a vote of 4-0-0.

Staff then began the review of proposed amendment to Chapter 10. At the conclusion of the review and discussion, Mr. Theodore recommended that the proposed Chapter 10 amendment be approved. Mr. Stevens seconded the motion. The motion passed with a vote of 4-0-0.

Staff then began the review of the proposed amendments to Appendices A and D. The Committee and the public both expressed concern with the proposed amendment related to requiring a grading plan as part of the subdivision review. Ms. Lewis stated that she would ask Bryan McIlwee, Assistant Town Engineer, to attend the public hearing for the draft amendments so that he could better explain the proposed amendment. After review and discussion, Mr. Gant recommended approval of the proposed amendments to the Appendices. Mr. Theodore seconded the motion. The motion passed with a vote of 4-0-0.

Ms. Lewis stated that the public hearing for the proposed 2016 LMO Amendments – First Set would be held on Wednesday, March 16, 2016 at 3:00 p.m.

6. **Adjournment**
The meeting was adjourned at 7:35 p.m.

Submitted By: Approved By: May 2, 2016

Teri Lewis
LMO Official

Jim Gant
Chairman

Sherman v. Reavis

273 S.C. 542 (1979)

257 S.E.2d 735

Harold I. SHERMAN and Minnie R. Sherman, Respondents, v. Paul REAVIS, Joseph P. Riley, Jr., the City Council of the City of Charleston (J. Rutledge Young, Jr., Jerome Kinloch, Daniel L. Richardson, Hilda Hutchinson Jefferson, Arthur W. Christopher, Brenda C. Scott, George A.Z. Johnson, Jr., Mary R. Ader, James B. Moore, Jr., Wacon L. Stephens, Jr., and Henry E. Grimball, constituting members of the City Council), Appellants.

21034

Supreme Court of South Carolina.

August 20, 1979.

William B. Regan and Alice F. Paylor, Charleston, for appellants.

Harvey M. Spar, Charleston, for respondents.

August 20, 1979.

RHODES, Justice:

This appeal is from a lower court order entered in an action of mandamus directing the City of Charleston to issue respondents, the Shermans, building permits for the construction of billboards upon their property. We reverse, concluding *543 that the denial of the permits by the City was proper in view of a legally pending zoning ordinance which would prohibit the Shermans' intended use.

The property upon which the Shermans sought to erect the billboards is located in the "Neck" area of Charleston County. Following a referendum and election, this area was declared annexed to the City of Charleston [City] by municipal resolution of December 28,

1976. The City subsequently commenced the appropriate procedures to complete annexation and, after experiencing some delay by reason of a federal court suit questioning the validity of the annexation, the City concluded the final step for consummating the annexation in July, 1977. In early August, 1977, the City assumed jurisdiction of the area and began providing services.

On September 8, 1977, the respondents requested the building permits now in question. The permits were denied on the ground that the City was in the process of zoning the area and the Planning and Zoning Commission had, at that time, recommended a zoning classification which, if adopted by Council, would prohibit billboards on the property.

It is conceded that the "Neck" area came into the City as unzoned property upon its annexation thereto. The parties agree, however, that prior to the annexation, the area had been zoned by Charleston County so as to forbid the erection of billboards.

The City contends that it should have the right to rerefuse building permits for a newly annexed area when the applicant's intended use is repugnant to the terms of a proposed ordinance then pending upon the date the aplication is filed and which is subsequently enacted. We agree.

Under South Carolina statutes, a municipality, in order to enact zoning ordinances, is required to refer the matter for public hearings to a zoning commission comprised of *544 appointed citizens, § 5-23-60; to provide a public hearing before the Municipal Council following receipt of a final report from the zoning commission, § 5-23-60; to furnish the public with proper notice 30 days prior to such hearing, § 5-23-40; and to provide for two readings of the ordinance before Council with at least six days between readings, § 5-7-270.

It is clear that the process of rezoning the newly annexed "Neck" area had reached an advanced stage of this statutory procedure at the time the Shermans made application. Prior to their request, the Charleston City Council had referred the zoning of the property in question to the Planning and Zoning Commission for its recommendations. On August 12, 1977, an advertisement appeared in the local Charleston newspaper stating that City Council would hold a public hearing on September 13, 1977, to consider "Neck" zoning and further announcing the meeting of the City Planning and Zoning Commission on August 17, 1977. Also contained in the advertisement was a map indicating the proposed zoning classifications for the area in question. On August 17, 1977, the City Planning and Zoning Commission met and recommended a proposed zoning plan which would in effect deny billboards on the Shermans' property.

Subsequent to the Shermans' request, the City Council on September 13, 1977 held a public hearing and gave first reading to an ordinance which zoned respondents' property in a manner prohibiting billboard uses. The ordinance was adopted and ratified on September 27, 1977. In the interim, respondents filed a petition for a writ of mandamus on September 23, 1976, which was predicated on the claim that they had a legal right to the issuance of the building permits inasmuch as the intended use of their land was not proscribed by any existing zoning regulation at the time application was made.

On appeal, respondents urge that the law in effect at the time of application or, in this case, the mere absence of zoning *545 regulations, is the sole criteria for adjudication of their right to a permit. It follows, they assert, that since they applied for a permit at a time when the proposed construction of billboards upon their property was not specifically prohibited by law, by virtue of the temporary void in zoning, they therefore acquired a vested right to use of their property in this manner. We cannot agree.

The prior holdings of this Court cited by respondents have been directed towards the protection of property rights acquired by applicants who have incurred expenses or substantially changed their position under an issued permit, Whitfield v. Seabrook, 259 S.C. 66, 190 S.E. (2d) 743 (1972), or who have relied in good faith on the right to use property as permitted under zoning ordinances in force at the time application was made. Pure Oil Division v. City of Columbia, 254 S.C. 28, 173 S.E. (2d) 140 (1970); Kerr v. City of Columbia, 232 S.C. 405, 102 S.E. (2d) 364 (1958). Neither circumstance is present here.

Respondents have presented little, if any, proof of expenditures or incurrence of obligations in good faith reliance upon their proposed use. See Pure Oil Division v. City of Columbia, supra. Nor were there ever in effect any ordinances upon which respondents might have reasonably relied for authority to construct billboards upon their property as was present in Kerr, supra. In fact, respondents candidly conceded in oral argument that their permit was sought in anticipation of and in an effort to circumvent the pending ordinance and take advantage of the interim gap between zonings.

We hold that a municipality may properly refuse a building permit for a land use in a newly annexed area when such use is repugnant to a pending and later enacted zoning ordinance. This holding, which is followed by numerous jurisdictions, is supported by sound reasoning. See, generally, Annot., 50 *546 A.L.R. (3d) 596, 623-32 (1973). As stated in Chicago Title & Trust Company v. Village of Palatine, 22 Ill. App. (2d) 274, 160 N.E. (2d) 697, 700 (1959):

It would be utterly illogical to hold that, after a zoning commission had prepared a comprehensive zoning ordinance or an amendment thereto, which was on file and open to public inspection and upon which public hearings had been held, and while the ordinance was under consideration, any person could by merely filing an application compel the municipality to issue a permit which would allow him to establish a use which he either knew or could have known would be forbidden by the proposed ordinance, and by so doing nullify the entire work of the municipality in endeavoring to carry out the purpose for which the zoning law was enacted.

While in the present case respondents' application for a permit was made five days prior to the public hearing before City Council, we think the City's previously publicized declaration of its intention to zone the "Neck" area when coupled with the Planning and Zoning Commission's final action on the matter was sufficient to bring this case within the "pending ordinance doctrine" which we herein adopt. Clearly, the matter of rezoning the area in which respondents' property is situated was a matter of public notoriety at and before the time of the filing of their application for a building permit. Respondents were well aware that the prior Charleston County zoning ordinance governing the "Neck" area had not condoned their intended use and knew, or could have known, through the newspaper advertisement or the maps which were on file, that the proposed ordinance would likewise prohibit such a use.

An ordinance is legally pending when the governing body has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning. Casey v. Zoning Hearing Board of Warwick Township, 459 Pa. 219, 328 A. (2d) 464 (1974).

*547 It is clear from the record that respondents applied for their permit several weeks after notice was published concerning the public hearing to be held on the rezoning of the "Neck", after the hearing before Planning and Zoning Commission, and five days before City Council gave favorable first reading to an ordinance adopting the recommendations of the Commission. In A.J. Aberman, Inc. v. City of New Kensington, 377 Pa. 520, 105 A. (2d) 586 (1954), an ordinance was held to be legally pending where the zoning commission after public notice held hearings and then submitted its final report to Council recommending the proposed rezoning. Aberman's application was filed on the same day the report was filed. And, in People ex rel. Gustafson v. Calumet City, 101 Ill. App. (2d) 8, 241 N.E. (2d) 512 (1968), it was held that a city could delay issuance of a building permit where the proposed ordinance had already been considered and recommended by the zoning board but had not yet reached the City Council for its action.

Under the facts of the present case, we conclude that the City's refusal to issue respondents' permit was proper, and that the lower court erred in issuing a writ of mandamus.

Reversed.

LEWIS, C.J., and LITTLEJOHN, NESS and GREGORY, JJ., concur.

Lewis Teri
28 Bradley Circle
Aug 24, 2017, 8:50:06 AM
Tamara

Tammy-
I wanted to let you know that I sent an e-mail to Radu yesterday letting him know that the building permits at 28 Bradley Circle would not be approved until the height issue was resolved. I told him that his attorney and the attorney for the Toddy's would need to work out the discrepancy between the language in the settlement agreement and what was vested by the variance. Please call or e-mail me if you need additional information regarding this.

Regards-
Teri B. Lewis, AICP
LMO Official
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4698(p)
(843) 842-8907(f)
teril@hiltonheadislandsc.gov

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Ordinance No. 2016-07

DETAILS

Adopted 5/17/16

AN ORDINANCE AMENDING CHAPTER 16 OF THE LAND MANAGEMENT CODE FOR HILTON HEAD ISLAND, SC

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, ICMA-CM, *Town Manager*
VIA: Jill Foster, AICP, *Deputy Director of Community Development*
CC: Charles Cousins, AICP, *Director of Community Development*
FROM: Teri B. Lewis, AICP, *LMO Official*
DATE: May 4, 2016
SUBJECT: Proposed 2016 LMO Amendments – First Set

Town Council made no changes to Proposed Ordinance 2016-10 as a result of the meeting on May 3, 2016.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2016-# PROPOSED ORDINANCE NO. 2016-10

AN ORDINANCE TO AMEND TITLE16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE (LMO) , CHAPTERS 2, 3, 4, 5, 6 AND 10 AND APPENDICES A AND D TO REVISE VARIOUS SECTIONS. THESE AMENDMENTS, COMMONLY REFERRED TO AS *2016 LMO AMENDMENTS – FIRST SET* AS NOTICED IN THE ISLAND PACKET ON FEBRUARY 14, 2016, INCLUDE CHANGES THAT PROVIDE FOR GENERAL AMENDMENTS TO A VARIETY OF SECTIONS IN THE LMO, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on October 7, 2014, the Town Council did adopt a new Land Management Ordinance (LMO); and

WHEREAS, from time to time it is necessary to amend the LMO; and

WHEREAS, the LMO Committee met on October 28, 2015 and November 13, 2015 to develop a list of proposed LMO Amendments; and

WHEREAS, the LMO Committee held a public meeting on March 7, 2016 at which time a presentation was made by staff and an opportunity was given for the public to comment on the proposed amendments; and

WHEREAS, the LMO Committee recommended that the proposed amendments be forwarded to Planning Commission with a recommendation of approval with the changes as discussed by staff and the Committee; and

WHEREAS, the Planning Commission held a public hearing on March 16, 2016 at which time a presentation was made by staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, the Planning Commission, after consideration of the staff presentation and public comments, voted 7-0-0 to recommend that Town Council approve the proposed amendments; and

WHEREAS, the Public Planning Committee held a public meeting on April 7, 2016 at which time a presentation was made by staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

WHEREAS, the Public Planning Committee, after consideration of the staff presentation and public comments, voted 3-0 to recommend that Town Council approve the proposed amendments; and

WHEREAS, after due consideration of said LMO amendments and the recommendation of the Planning Commission, the Town Council, upon further review, finds it is in the public interest to approve the proposed amendments.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

Section 1. Amendment. That the *2016 LMO Amendments – First Set* are adopted as indicated on the attached pages (Exhibit A). Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS ____ DAY OF _____, 2016.

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

_____
David Bennett, Mayor

ATTEST:

_____
Victoria L. Pfannenschmidt, Town Clerk

Public Hearing: March 16, 2016
First Reading:
Second Reading:

APPROVED AS TO FORM:

_____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

ATTACHMENT H

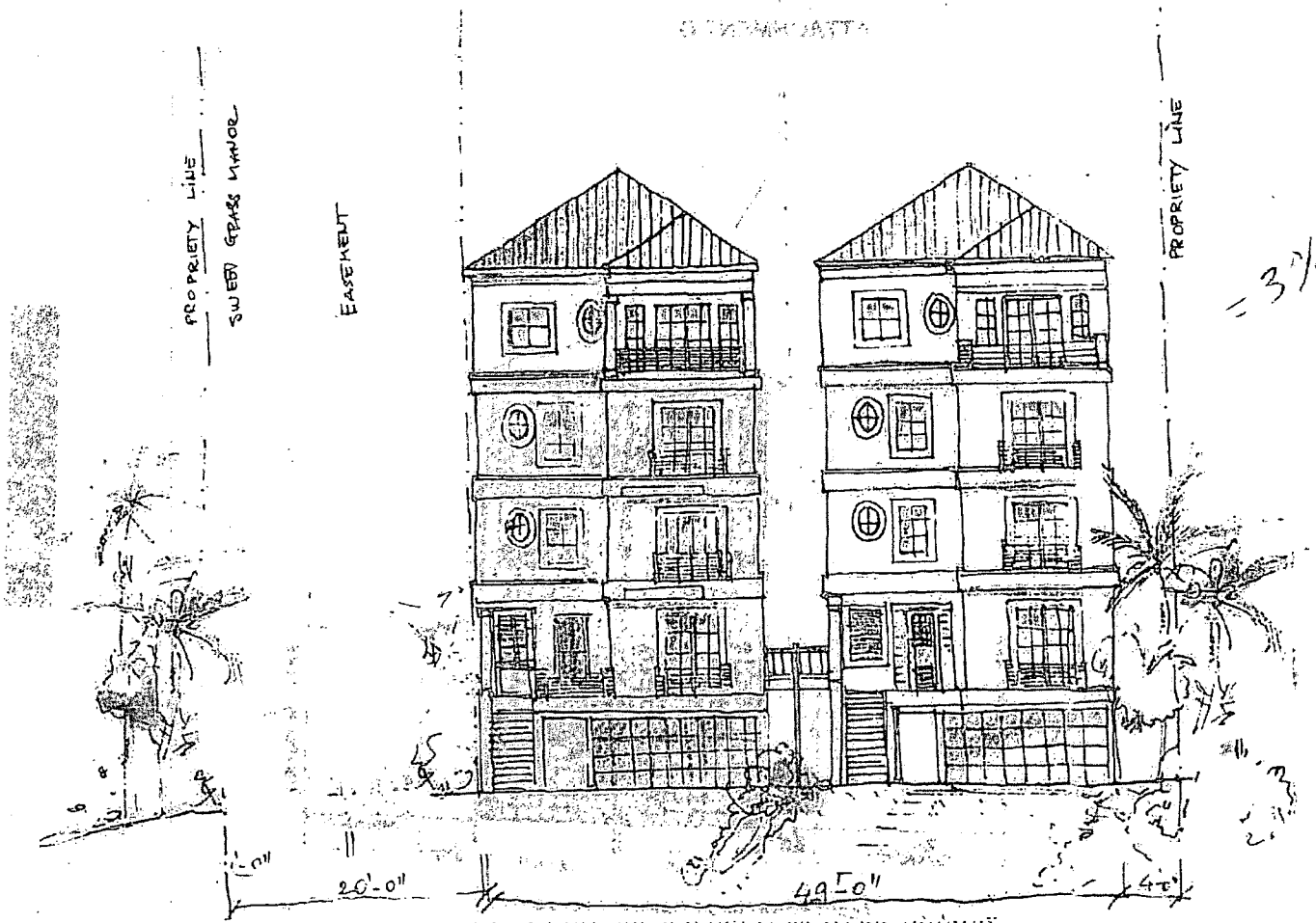
BRADLEY CIRCLE ELEVATION PROPOSED

01-19-2016

VARIANCE REQUEST 2

REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT. AND ALONG WEEK STREET FROM 8 FT. TO 4 FT.

TRANSCON INDUSTRIES



BRADLEY CIRCLE ELEVATION PROPOSED

01/19/2016

VARIANCE REQUEST 2

REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8'-0" TO 0'-0" AND ALONG WEEK STREET FROM 8'-0" TO 4'-0"

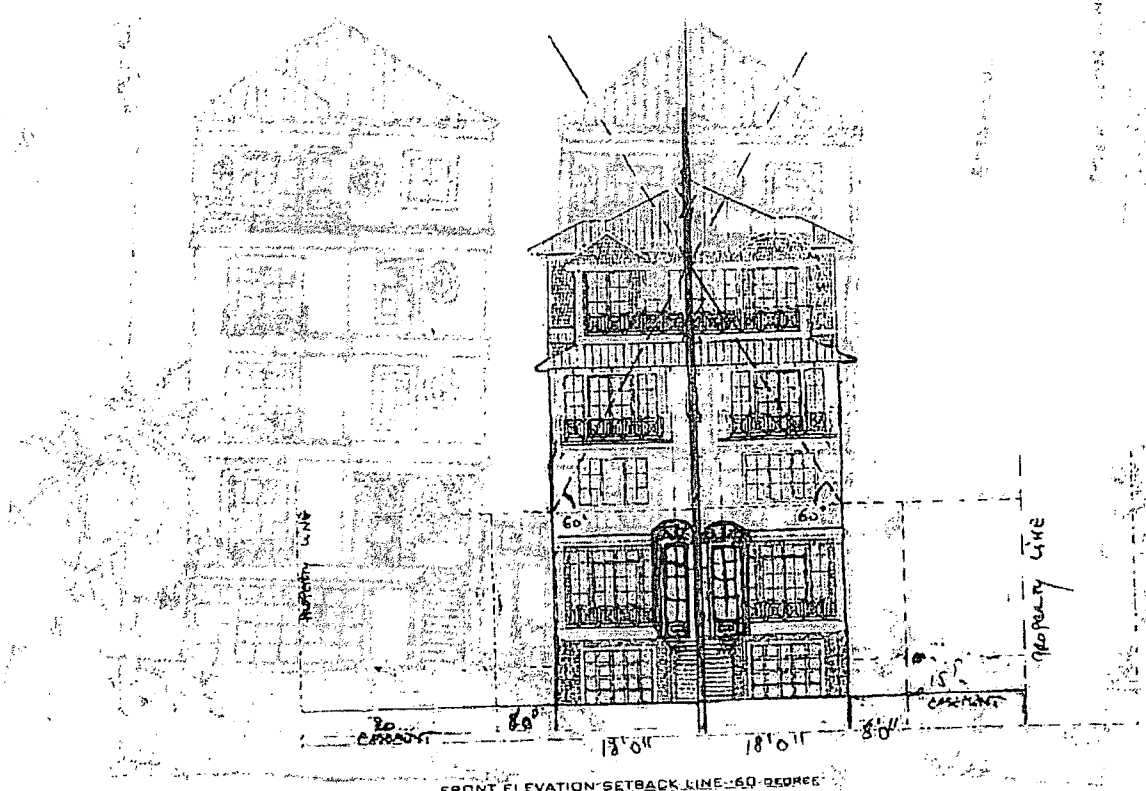
TRANSCON INDUSTRIES

1" = 3/4"

49'

Added by TBD 2/21/18

ATTACHMENT G



FRONT ELEVATION SETBACK LINE-60 DEGREE

TRANSCON IND LLC

ELEVATION
SETBACK 60
DEGREE

Attach. B

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4600 Fax (843) 842-7728
www.hiltonheadislandsc.gov

David Bennett
Mayor

Kim W. Likins
Mayor ProTem

Council Members

David Ames
Marc A. Grant
William D. Harkins
Thomas W. Lennox
John J. McCann

Stephen G. Riley
Town Manager

February 8, 2018

Mr. Drew Laughlin
Laughlin & Bowen, P.C.
P.O. Drawer 21119
Hilton Head Island, SC 29925-1119

Dear Drew:

I am in receipt of your letter dated December 14, 2017 regarding 28 Bradley Circle. As you stated in your letter, two building permit applications for 28 Bradley Circle were submitted on August 1, 2017. Due to a discrepancy in the maximum height permitted for structures on the subject parcels (R510 009 000 0896 0000 and R510 009 000 1102 0000) staff could not approve the building permits. This discrepancy was communicated via e-mail to Radu Chindris, the applicant (see Exhibit A). Shortly after this e-mail, a lawsuit against the Town was filed by the owners of 28 Bradley Circle. Prior to any action being taken, the lawsuit was dismissed by the owners of 28 Bradley Circle. The Town is still unclear about the allowable height for structures located at 28 Bradley Circle. The reason for this lack of clarity is explained below.

A variance was sought, and approved by the Town's Board of Zoning Appeals (BZA), for 28 Bradley Circle. The variance was not to vary the height; it was to vary the setback, buffer and setback angle requirements. As part of the variance application, the applicant submitted elevation drawings that indicated that the height of the two structures would be more than 45' above the base flood elevation (BFE). The applicant submitted the elevation drawings to illustrate the setback angles. Neighbors of the applicant filed a lawsuit with Circuit Court after the BZA approved the variances for 28 Bradley Circle. Subsequently those neighbors and the owners of 28 Bradley Circle entered into a Settlement Agreement which had several conditions. One of the conditions was that any structures built at 28 Bradley Circle would be in accordance with applicable LMO (Land Management Ordinance) laws and ordinances. The Town was not a party to the Settlement Agreement but was made aware of it.

At the time the variance was approved, the subject property was zoned RD (Resort Development) and the maximum allowable height was 75' above BFE. After the variance was approved but prior to the submission of the building permits, the maximum height for single-family in the RD zoning district was amended to be 45' above BFE. Additionally, earlier this year, but after the building permits for 28 Bradley Circle were submitted, the zoning of the property was changed from RD to RM-8 (Moderate Density Residential). The maximum height for the RM-8 zoning district is 45' above BFE.

The plans submitted as part of the building permit applications for the two proposed structures at 28 Bradley Circle indicated that the structures would be well over the allowable 45' over BFE that is currently permitted in the LMO for this property. South Carolina State Code section 6-29-1510 states that a vested right is established upon the approval of a site specific development plan. The BZA's approval of VAR-352-2016 vested the plans associated with the variance application. LMO Section 16-3-102.J contains similar language regarding the vesting of site specific development plans. Additionally South Carolina State Code Section 6-

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

29-1145 states that while the local planning agency must inquire in the application whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity, this section does not apply to an authorization to build or place a structure on a tract or parcel of land.

Since the site plan associated with VAR-352-2017 is vested for a maximum height of 75' above BFE and since restrictive covenants do not apply to a building permit, the Town will continue its review of the building permits for 28 Bradley Circle (BLDR-3923-2017) and 3 Whelk Street (BLDR-3922-2017) as submitted on August 8, 2017.

Should you wish to appeal this determination to the Town's Board of Zoning Appeals (BZA) please submit a complete appeal application within 14 calendar days of receipt of this letter.

If you wish to discuss this issue further, please contact me at (843) 341-4698 or teril@hiltonheadislandsc.gov.

Sincerely,

Teri B. Lewis
LMO Official

cc: Gregg Alford
Tamara Becker
Ronda Carper
Terry Gibson
Keith Sledge
Matt Toddy

Attach. 6

LAUGHLIN & BOWEN, P.C.
ATTORNEYS AT LAW

P.O. Drawer 21119
92A Main Street
HILTON HEAD ISLAND, SOUTH CAROLINA 29925-1119
(843) 689-5700
(843) 689-9300 (Fax)

DREW A. LAUGHLIN
JOHN R. C. BOWEN

Drew A. Laughlin
E-Mail: drew.laughlin@laughlinandbowen.com
Certified Circuit Court Mediator
Certified Circuit Court Arbitrator

December 14, 2017

Teri Lewis
LMO Official
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

By U.S. Mail and email to teril@hiltonheadislandsc.gove

Re: 28 Bradley Circle
R510 009 000 0896 0000
R510 009 000 1102 0000

Dear Teri:

This follows our recent telephone conversations regarding the applications for building permits for construction of homes on the above referenced properties submitted on August 1, 2017 (Permit #'s 3922-17 and 3923-2017, hereinafter the "Applications"). I represent the owners of the properties.

The Town's response to the Applications was your email to Radu Chindris on August 23, 2017:

> There is some discrepancy between the variances that you received for 28 Bradley Circle and the settlement agreement related to 28 Bradley Circle in terms of the allowable height at this address. Until such time that this discrepancy regarding the height is resolved between the attorneys for you and the parties involved in the settlement agreement, the Town will not approve any building permits for the following parcels:
>
> R510 009 000 0896 0000
> R510 009 000 1102 0000

I understand the email to refer to the Settlement Agreement and Restrictive Covenants entered into by Frederick A. Craig and Shirley Dorsey Craig, Radu Chindris and Transcon Industries, LLC and DST, LLC in July, 2016. The Town is not a party to that agreement, which, in any event, makes no mention of building height. It merely says that structures will be constructed in accordance with the applicable LMO, laws and ordinances.

Pursuant to the LMO, on March 28, 2016, the Board of Zoning Appeals approved variances to allow the construction of two single family homes to be built without a setback angle requirement and without adjacent setbacks and buffers on both sides of the properties

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

(Case #: VAR-000352-2016, hereinafter the "Variances"). Staff's Report to the BZA, which recommended approval, included a Finding of Fact that applicant was requesting variance from the requirement of a 60 degree setback angle from both Sweet Grass Manor and Welk Street to allow the homes 4 levels over parking. The Report also included proposed elevation drawings submitted by the applicant that depicted homes of substantially the same configuration and height as three other homes the BZA had recently reviewed and approved for development by my clients.

When the Variances were approved, the properties were zoned RD and the homes could be built to a maximum building height of 75 feet. Subsequently, in April 2017, Town Council passed an ordinance which, among other things, reduced the maximum building height in the RD district to 45 feet. The height of the homes my clients propose to build will be approximately 55 feet.

LMO Section 16-2-102(J)(1) clearly provides that approval of the Variances constitutes approval of the development plan to construct two homes with four levels over parking as shown and described in application for the Variances and Staff Report and gives my clients vested rights to build the homes unaffected by the subsequent amendment of the LMO reducing maximum allowable height.[a] It is wrong for the Town to willfully disregard its own Code and deprive my clients of their lawful rights by refusing to issue building permits until my clients have obtained the consent of a private third party or by imposing other requirements or conditions not found in the LMO. It is equally wrong for the Town to refuse to issue the permits based upon an erroneous interpretation of an agreement to which the Town is not a party. Please consider this a demand that the Town approve the Applications and issue the building permits without further delay.

If the Town chooses to continue to abide by its own Ordinance and continues to refuse to issue the permits, my clients request a written interpretation of the LMO pursuant to LMO Section 16-2-103(R) with respect to their vested rights to the development plan approved by the variances and their right to building permits to construct the homes depicted in the development plan. Specifically:

1. Did the BZA's approval of the Variances constitute approval of a development plan and establish a vested right to build two single family attached homes with four levels over parking on the properties as described in the application for the Variances and Staff Report to the BZA?

2. Is the Town required to issue building permits to construct two single family attached homes with four levels over parking on the properties as described in the application for the approved Variances? If not, what provisions of the Town Code allow the Town to refuse to issue the permits?

[a] The fact that the reduction in allowable height was not cited as a reason not to issue the building permits suggests acknowledgment that the reduction does not affect my clients' rights.

3. Do my clients have a right to receive the building permits they applied for on August 1, 2017? If not, what conditions must be satisfied in order for the permits to be issued?

Please let me know if there is a required form or other requirements for submission of this request for written interpretation.

Pending the final outcome of the request for determination, my clients intend to apply for permits to construct homes of 45' maximum height. In so doing, my clients expressly reserve and does not waive any rights with respect the applications they submitted on August 1, 2107. In our telephone conversation, you agreed that submitting new applications for building permits would not prejudice my clients' rights with respect to the Applications. I would be grateful if you or other authorized representative of the Town would provide written confirmation that the issuance of permits upon new applications will not operate as a waiver of my clients' rights as to the Applications.

As you can appreciate, the delays my clients' have already suffered have caused them to suffer substantial economic loss. For that reason, we respectfully request the Town act as quickly as possible.

Please let me know if there are any questions or if anything else is required.

Yours truly,

LAUGHLIN & BOWEN, P.C.

Drew A. Laughlin

cc: Radu Chindris (by email only)
Christoper Abreu (by email only)
Gregory M. Alford, Esq. (by email only)
Brian Hulbert, Esq. (by email only)
Charles Cousins (by email only)

Attach. D

Town of Hilton Head Island

Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

Meeting Date: _____

Applicant/Agent Name: John P. Qualey, Jr. Company: Qualey Law Firm, P.A.
Mailing Address: P.O. Box 10 City: HHI State: SC Zip: 29938
Telephone: 843-785-3525 Fax: 843-785-3526 E-mail: Jack.Qualey@QualeyLaw.com
Project Name: _____ Project Address: 28 Bradley Circle, HHI, SC
Parcel Number [PIN]: R5 10 0 09 0 00 0 08 96 0 00 0
Zoning District: Resort Development (RD) Overlay District(s): N/A

VARIANCE (VAR) SUBMITTAL REQUIREMENTS

Digital Submissions may be accepted via e-mail by calling 843-341-4757. The following items must be attached in order for this application to be complete:

X A narrative that lists what Sections of the LMO you are requesting a variance from and explain **WHY** the variance is requested and **HOW** the request meets **all** of the criteria of LMO Section 16-2-103.S.4.a. Variance Review Standards.

X A copy of correspondence providing notice of a public hearing to all land owners of record within three hundred and fifty (350) feet on all sides of the parcel(s) being considered for a variance. Such notice shall be mailed by first class mail fifteen days (15) prior to the Board of Zoning Appeals meeting per LMO Section 16-2-102.E.2.e.ii. Mailed Notices. A sample letter can be obtained at the time of submittal. Also provide a list of owners of record to receive notification. The Town can assist in providing this listing by calling 843-341-4757.

X Affidavit of Ownership and Hold Harmless Permission to Enter Property

X A site plan to scale of 1"=30' that clearly shows the requested variance in relation to the affected site and surrounding parcels and uses. Submit an 11"X17" (or smaller) copy of the plan.

X Filing Fee - $250.00 cash or check made payable to the Town of Hilton Head Island

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request? If yes, a copy of the private covenants and/or restrictions must be submitted with this application. ☐YES ☐NO

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: John P. Qualey, Jr. Date: February 26, 2016

Last Revised 1/6/15

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-341-2087
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: _____
App. #: _____
Form revised 10-2012

AFFIDAVIT OF OWNERSHIP AND HOLD HARMLESS PERMISSION TO ENTER PROPERTY

The undersigned being duly sworn and upon oath states as follows:

1. I am the current owner of the property which is the subject of this application.
2. I hereby authorize JOHN L. QUALEY, JR. to act as my agent for this application only.
3. All statements contained in this application have been prepared by me or my agents and are true and correct to the best of my knowledge.
4. The application is being submitted with my knowledge and consent.
5. Owner grants the Town, its employees, agents, engineers, contractors or other representatives the right to enter upon Owner's real property, located at 28 BRADLEY CIRCLE, HHI, SC 29928 (address), R510 009 000 0896 0000 (parcel ID) for the purpose of application review, for the limited time necessary to complete that purpose.
Description of Work: VARIANCE APPLICATION
6. Owner agrees to hold the Town harmless for any loss or damage to persons or property occurring on the private property during the Town's entry upon the property, unless the loss or damage is the result of the sole negligence of the Town.
7. I acknowledge that the Town of Hilton Head Island Municipal Code requires that all construction in a Special Flood Hazard Zone be constructed in accordance with the following provisions that:
   a. any enclosed area below the base flood elevation will be used solely for parking of vehicles, limited storage or access to the building. This space will never be used for human habitation without first becoming fully compliant with the Town's Flood Damage Controls Ordinance in effect at the time of conversion.
   b. all interior walls, ceilings and floors below the base flood elevation will be constructed of flood resistant materials.
   c. all mechanical, electrical and plumbing devices will be installed above base flood elevation.
   d. walls of the enclosed area below base flood elevation will be equipped with at least two openings which allow automatic entry and exit of flood water. Openings will be on two different walls with at least one square inch of free area for every square foot of enclosed space and have the bottom of openings no more than a foot above grade.
   e. the structure may be subject to increased premium rates for flood insurance from the National Flood Insurance Program.
8. I understand that failure to abide by Town permits, any conditions, and all codes adopted by the Town of Hilton Head Island deems me subject to enforcement action and/or fines.

Print Name: Frederick A. Craig, Shirley J. Darsey — Owner Signature: Frederick A. Craig
Owner Signature
Phone No.: _____ Email: _____
Date: February 25, 2016

The foregoing instrument was acknowledged before me by Frederick A. Craig who is personally known to me or has produced DRIVERS LICENSE as identification and who did not take an oath.

WITNESS my hand and official seal this 26 day of Feb. A.D. 2016.

My Commission expires: 09-24-2020

Notary Public Signature

Please affix seal or stamp.

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-341-2087
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: _____
App. #: _____
Form revised 10-2012

AFFIDAVIT OF OWNERSHIP AND HOLD HARMLESS PERMISSION TO ENTER PROPERTY

The undersigned being duly sworn and upon oath states as follows:

1. I am the current owner of the property which is the subject of this application.
2. I hereby authorize JOHN P. QUALEY, JR. to act as my agent for this application only.
3. All statements contained in this application have been prepared by me or my agents and are true and correct to the best of my knowledge.
4. The application is being submitted with my knowledge and consent.
5. Owner grants the Town, its employees, agents, engineers, contractors or other representatives the right to enter upon Owner's real property, located at 28 BRADLEY CIRCLE, HHI, SC 29928 (address), R 510 009 00 0 0896 0000 (parcel ID) for the purpose of application review, for the limited time necessary to complete that purpose.
   Description of Work: VARIANCE APPLICATION
6. Owner agrees to hold the Town harmless for any loss or damage to persons or property occurring on the private property during the Town's entry upon the property, unless the loss or damage is the result of the sole negligence of the Town.
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   a. any enclosed area below the base flood elevation will be used solely for parking of vehicles, limited storage or access to the building. This space will never be used for human habitation without first becoming fully compliant with the Town's Flood Damage Controls Ordinance in effect at the time of conversion.
   b. all interior walls, ceilings and floors below the base flood elevation will be constructed of flood resistant materials.
   c. all mechanical, electrical and plumbing devices will be installed above base flood elevation.
   d. walls of the enclosed area below base flood elevation will be equipped with at least two openings which allow automatic entry and exit of flood water. Openings will be on two different walls with at least one square inch of free area for every square foot of enclosed space and have the bottom of openings no more than a foot above grade.
   e. the structure may be subject to increased premium rates for flood insurance from the National Flood Insurance Program.
8. I understand that failure to abide by Town permits, any conditions, and all codes adopted by the Town of Hilton Head Island deems me subject to enforcement action and/or fines.

Print Name: FREDERICK A. CRAIG / SHIRLEY J. DORSEY Owner Signature: [signature]

Phone No.: _____ Email: _____

Date: FEBRUARY 25, 2016

The foregoing instrument was acknowledged before me by SHIRLEY J. DORSEY who is personally known to me or has produced DRIVERS LICENSE as identification and who did not take an oath.

WITNESS my hand and official seal this 26 day of FEB. A.D., 2016.

[signature]
Notary Public Signature

My Commission expires: 09-24-2020
Please affix seal or stamp.

QUALEY LAW FIRM, P.A.

JOHN P. "JACK" QUALEY, JR.*

*also licensed in Georgia

POST OFFICE BOX 10
HILTON HEAD ISLAND, SOUTH CAROLINA 29938
(843) 785-3525
FAX (843) 785-3526
E-Mail: Jack.Qualey@QualeyLaw.com

Street Address:
32 Office Park Road, Suite 100
The Courtyard Building
Hilton Head Island, SC 29928

March 9, 2016

Re: Notice of Public Hearing to Be Held on March 28, 2016 at 2:30 p.m.
Variance Application No.: 000352-2016

Dear Property Owner:

Pursuant to the Town of Hilton Head Island's Land Management Ordinance, Section 16-2-102(E)(2), you are hereby notified and invited to attend the Board of Zoning Appeals Public Hearing on **March 28, 2016** at **2:30pm** in the Benjamin M. Racusin Council Chambers, One Town Center Court, Hilton Head Island, to consider the following item:

VAR-000352-2016: John P. Qualey, Jr., on behalf of Frederick A. Craig and Shirley J. Dorsey, has applied for the following variances from: (a) LMO Section 16-5-102.c, Adjacent Street Setback Requirements, and (b) LMO Section 16-5-103.D Adjacent Street Buffers, to reduce the minimum side setback distance from the property located to the North of this site from 8' to 1' as to Lot 1 and from 16' to 1' as to Lot 2, to eliminate the setback angle on the North side of this site, to eliminate the minimum buffer along the North side of the project, to reduce the minimum side setback along the South property line of the project from 8' to 4' as to Lot 1 and from 16' to 4' as to Lot 2, to eliminate the side setback angle on the South side of the site, and to reduce the minimum buffer along the South side of the project from 8' to 3'. The property is identified as Beaufort County Tax Map Number R510-009-000-0896-0000 and R510-009-000-1102-0000, and the street address is 28 Bradley Circle, Hilton Head Island, SC 29928. The Property is located in the Resort Development District.

These changes may affect your rights as an owner of land.

The substance of the application, including the magnitude of the proposed development and the current zoning, is described as follows:

- Street Address: 28 Bradley Circle, Hilton Head Island, SC 29928 (see attached Location Map)
- Tax Map No. R510-009-000-0896-0000 and R-510-009-000-1102-0000
- The Property Owner intends to subdivide the Property into two (2) single family resort zero lot line lots upon which two (2) dwellings will be constructed. The Variances sought by the Applicant will: (1) reduce the minimum North side setback distance from 8' to 1' along Sweet Grass Manor (20' Access Easement") as to Lot 1 shown on the recorded plat of the property and from 16' to 1' as to Lot 2 shown on such plat; (2) eliminate the side setback angle along the North side of the project; (3) eliminate the minimum buffer along the North side of the project; (4) to reduce the minimum South

side setback distance of Lot 1 shown on the recorded plat from 8' to 4' and of Lot 2 shown on such plat from 16' to 4' along Whelk Street (15' Access Easement"); (5) eliminate the side setback angle along the South side of the project; and (6) reduce the minimum buffer along the South side of the project along Whelk Street from 8' to 3' to allow for the roof and eaves overhang. This property is located in the Resort Development District, and copies of the LMO Sections in question are attached.

- Interested parties may appear, speak, and/or submit evidence or comments at the public hearing.

Documents related to the application are available during regular business hours for public inspection between 8:00 a.m. and 4:30 p.m. Monday through Friday, at the Information Center, located at One Town Center Court, Hilton Head Island. If you have any questions regarding this application, please contact Ms. Nicole Dixon at (843) 341-4686. Interested parties may appear and speak at the Public Hearing, as stated above, and comments may be submitted before the hearing to Nicole Dixon by phone or at 1 Town Center Court, Hilton Head Island, SC 29928.

The Town of Hilton Head Island has an Assistive Listening System and Spanish Translator available upon request. Please call 843-341-4757 in advance of the meeting to arrange for these services.

La ciudad de la Isla de Hilton Head tiene un sistema que escucha de Assistive y un traductor español disponibles a petición. Llame por favor 843-341-4757 antes de la reunión para arreglar para estos servicios.

Sincerely,

Jack Qualey

Enclosures: Location Map
LMO Section 16-5-102.C
LMO Section 16-5-103.D

OWNER1	OWNER2
ABREU CHRISTOPHER	ABREU CHRISTINE C
BEAUFORT COUNTY	
BECKER DALE A	BECKER TAMARA
BRADEN PROPERTIES LLC	
CALLAN JAMES	CALLAN CANDACE
CARPER DONALD P	CARPER RONDA E
CRAIG FREDERICK A DORSEY SHIRLEY J	
CSB DEVELOPMENT COMPANY INC	
DST LLC	
FLETCHER SCOTT M	FLETCHER LENNY B
GABRIEL HOLDINGS LLC	
GRIGORIAN ARTHUR A	
HHI CORPORATION LTD	
HIGLEFORT JAMES R	NIN CLARA C
HILTON HEAD ISLAND LTD	
HILTON HEAD SANDCASTLE LLC	
JAMIESON MAUREEN A	
JUSTICE LEON	JUSTICE MELISSA
KAISER JAMES E	KAISER NANCY B
MARRIOTT OWNERSHIP RESORTS INC	
MARRIOTT OWNERSHIP RESORTS INC	
MCGRATH LEANNE BETH	MCGRATH MICHAEL JON
MTSC II INC N/K/A MARRIOTT OWNERSH	
PEF PROPERTIES LLC	
PRIVATE PROPERTIES REALTY	
RATLIFF R MITCHELL	RATLIFF BETTY SUE
RICHARD MUNGER TRUST	
SANDY BROOK PROPERTIES LLC	
SANDY BROOK PROPERTIES LLC	
SJ REAL ESTATE LLC	
SMITH ROBERT F	SMITH DEBORAH C
STEWART RUSSELL R	STEWART ANNE E
THERESA LYNN RIGGS REVOCABLE TRUST	TMR 2014 FAMILY TRUST
TOWN OF HILTON HEAD ISLAND	
WHITAKER THEODORE J JR ALAVERN LOUIS	

MAILINGADD	CITY	STATE	ZIP
70 SOMERSBY WAY	FARMINGTON	CT	6032
100 RIBAUT RD	BEAUFORT	SC	29902
43 FOLLY FIELD RD #51	HILTON HEAD ISLAND	SC	29928
16 BRADLEY CIR	HILTON HEAD ISLAND	SC	29928-5300
1520 PARK SHORE DR	CUMMING	GA	30041
32 BRADLEY CIR	Hilton Head Island	SC	29928-5300
PO BOX 5236	HILTON HEAD ISL	SC	29938
2 MILLWRIGHT DR	HILTON HEAD ISL	SC	29926
1120 SEALE DR	ALPHARETTA	GA	30022
4526 COLUMNS DR SE	MARIETTA	GA	30067
4670 CARNOUSTIE CT	MACON	GA	31210
775 RILEY PLACE	ATLANTA	GA	30327-4355
14 WHELK STREET	HILTON HEAD	SC	29928-8888
14 FISCHER LANE	FORT THOMAS	KY	41075
14 WHELK ST	HILTON HEAD ISLAND	SC	29928
3819 HONORS WAY	MARTINEZ	GA	30907
1120 BONITA DRIVE	PARK RIDGE	IL	60068-5023
1506 SHARPE RIDGE LN	LA FOLLETTE	TN	37766
4 STELLA DEL MARE MANO	HILTON HEAD ISLAND	SC	29928
1044 WILLIAM HILTON PKWY	HILTON HEAD ISLAND	SC	29928
1200 US HIGHWAY 98 SOUTH	LAKELAND	FL	33801
4225 JVL INDUSTRIES PARK #504	MARIETTA	GA	30066
1044 WILLIAM HILTON PKWY	HILTON HEAD ISLAND	SC	29928
1339 EBENEZER RD	ROCK HILL	SC	29732
348 CHURCHHILL RD	PITTSBURGH	PA	15235
1075 AURORA LN	BEDFORD	VA	24523
PO BOX 424	BELLAIRE	MI	49615
75 PINEAPPLE ST SUITE 16	BROOKLYN	NY	11201
75 PINEAPPLE ST STE 1G	BROOKLYN	NY	11201
340 MARTIN LUTHER KING JR BLVD SUITE 200	BRISTOL	TN	37620
1033 ASHLAND AVE	ASHLAND	KY	41101
1300 DEER RUN	MORGANTOWN	WV	26508
630 KENNESAW DUE WEST RD	KENNESAW	GA	30152
1 TOWN CENTER CT	HILTON HEAD ISL	SC	29928
PO BOX 21572	HILTON HEAD ISL	SC	29925

VAR-352-2016: John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, to allow the construction of two single family attached homes within the adjacent street setback and buffer on both sides of the property. The property is located at 28 Bradley Circle and is identified as Parcels # 896 and 1102 on Beaufort County Tax Map# 9.

From: Radu Chindris
To: Dixon Nicole
Cc: Lewis Teri
Subject: Fw: Support for 28 Bradley
Date: Monday, March 28, 2016 11:59:27 AM

Hi Nicole,
this is from Chris @ 22 Bradley .
Thank you,
Radu

----- Forwarded Message -----
From: cbabreu <cbabreu@aol.com>
To: raduchindris@yahoo.com
Cc: Jack Qualey <jack.qualey@qualeylaw.com>
Sent: Monday, March 28, 2016 11:56 AM
Subject: Support for 28 Bradley

Radu,

Please forward to Nicole and Teri for the BZA meeting.

I am in favor of your proposal for redevelopment of lot 28 Bradley Circle. The project will enhance the community by removing a decaying home which has the effect of depressing long term property value appreciation.

Chris

Sent from my Verizon Wireless 4G LTE smartphone

From: Ronda Carper
To: Dixon Nicole
Subject: lot 28 concerns
Date: Monday, March 28, 2016 12:48:57 PM

Concerns regarding allowing variances for lot 28 on Bradley Circle.

Bradley Circle community is made up of equal parts of permanent residents and rental properties. Approximately 10 homes, were redone, reconstructed or preserved as they were built years ago as small, quaint beach homes in this community. (One or one 1/2 levels over garage level) Over the years, things change and some of those homes have been torn down and replaced by rental properties (5), which have either 2 level or at most three over the garage level. There are no homes taller than 3 levels above the garage in our neighborhood. (not even off the side access roads on the beach) We feel it would ruin the look of our community to build out to the lot lines and have a building a full story over any other home in the middle of our neighborhood. We understand that different things are going to be build here and some of the smaller homes may be taken to introduce larger rental homes, but why are we not sticking to the character of what is currently in place. We already have an issue with parking when all the homes are rented, if they build closer to the road, that is another concern because as we all know no one parks in a garage on vacation :), Allowing some one to encroach on marshland, easements, and our community public beach access, gives the investor what they want, but does not take into consideration the community of residents that live here. We need to continue ensuring emergency access to homes off the side roads, protect the marshland and make access to the beach useable. We want the HHI mission to preserve the beauty of our island to be continued and the projects suggested in the area to be cohesive with the other homes currently in the neighborhood.

Your time and consideration is greatly appreciated in this matter...

Ronda & Don Carper
32 Bradley Circle
843-686-6985/ 843-505-0878(cell)

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908

STAFF REPORT
VARIANCE

Case #:	Public Hearing Date:
VAR-000352-2016	March 28, 2016

Parcel or Location Data:	Property Owner	Applicant
Parcels#: R510 009 000 0896 0000 and R510 009 000 01102 0000 Acreage: Parcel 896: 0.115 acres Parcel 1102: 0.189 acres Zoning: RD (Resort Development District)	Frederick Craig & Shirley Dorsey PO Box 5236 Hilton Head Island, SC 29938	John P. Qualey Qualey Law Firm PO Box 10 Hilton Head Island, SC 29938

Application Summary:

John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, to allow the construction of two single family attached homes to be built without a setback angle requirement and within the adjacent street setback and buffer on both sides of the property.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **approve** the application, based on the Findings of Fact and Conclusions of Law contained in the staff report.

Background:

The two lots subject to this application are part of an existing 5 lot subdivision that was approved in 2003 (See attachment C). The property is surrounded by single family residential uses and a tidal wetland in the rear. There is an existing home that straddles the common property line in between lot 1 and 2 (See attachment D).

Staff has met several times over the past few months with the developer of the property, Radu Chindris, to determine what the buildable area of the property would be after the LMO requirements

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

were applied and how the two properties could be reconfigured and redeveloped.

The properties as they are currently configured have the following LMO requirements:
See Attachment E
Lot 1

- 20 foot setback and buffer from Bradley Circle and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Sweet Grass Manor, which can be reduce to a 10 foot setback and buffer because it is a corner lot, and further reduced by 20% to 8 feet because it is in the RD Zoning District and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Whelk Street, which can be reduce to a 10 foot setback and buffer because it is a corner lot, and further reduced by 20% to 8 feet because it is in the RD Zoning District and a 60 degree setback angle
- 5 foot setback in the rear of the lot adjacent to lot 2 and a 75 degree setback angle

Lot 2

- 20 foot setback and 10 foot buffer from Sweet Grass Manor, which can be reduced by 20% to a 16 foot setback and 8 foot buffer because it is in the RD Zoning District and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Whelk Street, which can be reduced by 20% to a 16 foot setback and 8 foot buffer because it is in the RD Zoning District and a 60 degree setback angle
- 5 foot setback adjacent to lot 1 and a 75 degree setback angle
- 20 foot buffer adjacent to the tidal wetland in the rear of the property

The applicant has determined that when the LMO requirements are applied that lot 2 becomes an unbuildable lot. He wishes to reconfigure the two lots to be side by side or parallel to each other as opposed to one behind the other, both of which will have frontage on Bradley Circle, as a zero lot line attached subdivision. The applicant proposes to demolish the existing home and construct two homes that will be attached at the first level along the common property line and then detached at level two for views between the two homes.

The applicant is requesting the following variances in order to reconfigure the two lots and construct the two homes:
See Attachment F
Lot 1

- Reduce the 8 foot setback and buffer from Sweet Grass Manor to a 1 foot setback and no buffer
- Eliminate the 60 degree setback angle from Sweet Grass Manor

Lot 2

- Reduce the 8 foot setback and buffer from Whelk Street to a 4 foot setback and a 3 foot buffer
- Eliminate the 60 degree setback angle from Whelk Street

Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law:

Grounds for Variance:
According to the applicant, when the LMO requirements are applied to the existing two lots, there is only room for an approximately 700 square foot structure, essentially making lot 2 an unbuildable lot. He wishes to reconfigure the two lots so that they are side by side fronting Bradley Circle and construct two single family attached homes. The applicant states in the narrative this reconfiguration will be more in harmony with the surrounding homes in the neighborhood, will allow views and breezes between the dwellings and will be more architecturally similar to other nearby homes. The applicant states in the narrative that the strict enforcement of all the required setbacks, setback angles, buffers and wetland buffer places an unnecessary hardship on them. The applicant states that with all of the setbacks, setback angles and buffer requirements, only one dwelling approximately 3,600 square feet could be constructed, which deprives him of the two lots allocated with the original subdivision plat. He states it would result in a dwelling that will be less harmonious with the neighborhood. The applicant states in the narrative that the approval of the requested variance will not be a detriment to adjacent property because the proposed homes will already be separated from the adjacent homes by the 20 foot access easements on the north and south sides.

Summary of Fact:
- The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

Conclusion of Law:
- The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

Summary of Facts and Conclusions of Law:

Summary of Facts:
- Application was submitted on February 26, 2016 as set forth in LMO Section 16-2-102.C and Appendix D-23.
- Notice of the Application was published in the Island Packet on March 6, 2016 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on March 7, 2016 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on March 9, 2016 as set forth in LMO Section 16-2-102.E.2.
- The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

Conclusions of Law:
- The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
- The application was submitted 31 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
- Notice of application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was posted 21 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.

- Notice of application was mailed 19 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

As provided in LMO Section 16-2-103.S.4, Variance Review Standards, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.

Summary of Facts and Conclusions of Law:

Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2-103.S.4.a.i.01):

Findings of Facts:

- The two properties are bound on the north side by Sweet Grass Manor, a 20 foot access easement that runs through the property and on the south side by Whelk Street, also an access easement. Both access easements require setbacks, setback angles and buffers from it, as detailed in the background section above.
- Lot 2 is bound by a tidal wetland to the east, which requires a 20 foot buffer from it.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are extraordinary and exceptional conditions that pertain to this particular property.
- Even though there are setback and buffer requirements adjacent to other residential properties, the setback is greater from a street. It is extraordinary to have the property reduced by the 20 foot easement that runs through the property, to have a greater setback and buffer in addition to that, have a greater setback on the south side of the property from that easement and to also have the wetland buffer requirement on the east side.

Summary of Facts and Conclusions of Law:

Criteria 2: These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):

Finding of Facts:

- The majority of the properties in this vicinity do not have these extraordinary conditions.
- There is only one other property in the vicinity, the property directly adjacent to the subject property, that is bound on two sides by an access easement and also bound by a tidal wetland. There is an existing home on that lot that is built right up to the access easement.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because the extraordinary conditions do not generally apply to other properties in the vicinity.
- As these conditions only apply to one other property in the vicinity, it is clear they do not generally apply to other properties in the vicinity.

Summary of Facts and Conclusions of Law:

Criteria 3: Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property (LMO Section 16-2-103.S.4.a.i.03):

Findings of Facts:

- Because there are two lots currently, the applicant is trying to redevelop the property while retaining two lots.
- With the adjacent street setbacks, setback angles, buffers and wetland buffer requirements it appears that lot 2 as it exists in the current configuration is unbuildable, as shown on attachment E.
- With the proposed reconfiguration, each lot becomes a corner lot. Because they will be corner lots (with the frontage along the access easements being the sides that can be reduced by 50%), LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, requires an 8 foot adjacent street setback and buffer and a 60 degree setback angle on those two sides.
- Attachment G demonstrates what the applicant would be allowed to build meeting all LMO requirements. You can clearly see by this attachment they would be left with one structure, two townhouse style units, with only a one car garage each. This would not be in harmony with the adjacent redeveloped homes.
- The applicant is requesting to reduce the 8 foot setback and buffer from Sweet Grass Manor to a 1 foot setback and no buffer and reduce the 8 foot setback and buffer from Whelk Street to a 4 foot setback and a 3 foot buffer. This will allow the construction of two single family homes, attached at the ground level, to be built at the minimum width in order to be able to provide a two car garage and a stairway entrance into the second level of the home.
- The applicant is also requesting to eliminate the 60 degree setback angle requirement from both Sweet Grass Manor and Whelk Street. This will allow the homes to be constructed with 4 levels over parking, similar to the other homes in the vicinity. The 60 degree setback angle requirement would limit the homes to be very small in size with only 2 – 2 ½ narrow levels over parking, not in harmony with the other resort style homes in the vicinity.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because the extraordinary conditions do prohibit and unreasonably restricts the utilization of the property.
- Staff finds the strict enforcement of the LMO requirements do restrict the applicant from developing the two existing properties. Staff finds the setback, setback angle and buffer

reduction request the applicant is proposing is the minimal amount in order to two construct two homes.

Summary of Facts and Conclusions of Law:

Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance (LMO Section 16-2-103.S.4.a.i.04):

Findings of Facts:

- Most of the homes in this neighborhood have been redeveloped in the same architectural manner as what the applicant is proposing (tall narrow homes with no setback angles and no setbacks or buffers from adjacent access easements).
- The existing home encroaches over the Sweet Grass Manor access easement and also encroaches onto the adjacent property, into the Whelk Street access easement.
- Staff received a phone call from Tamara Becker, the property owner across the street, stating her opposition to the variance application for the following reasons; two new homes in the area will produce more traffic, parking and safety concerns for pedestrians and will block her views to the beach.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will not be of substantial detriment to adjacent property.
- The variance will allow the redevelopment of the property to be more in style and harmony with the existing redeveloped homes in the vicinity.
- The new homes when constructed will not be encroaching into the access easements, like the existing home is currently, therefore bringing it more in compliance with the LMO and providing a further setback or distance between the proposed homes and the existing adjacent homes.
- Even though there is a property owner opposed to the application, staff could not find the application to be a substantial detriment to the adjacent property or public good when the proposed homes will be in harmony with the newer adjacent homes in the neighborhood.

LMO Official Determination:

Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should be granted to the applicant.

BZA Determination and Motion:

The "powers" of the BZA over variances are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may grant a variance "in an individual case of unnecessary

hardship if the board makes and explains in writing ..." their decisions based on certain findings or "may remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review."

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 103 and the Rules of Procedure for the BZA.

A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

The BZA can either Approve the application, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the motion.

PREPARED BY:

ND — March 14, 2016

Nicole Dixon, CFM, Senior Planner — DATE

REVIEWED BY:

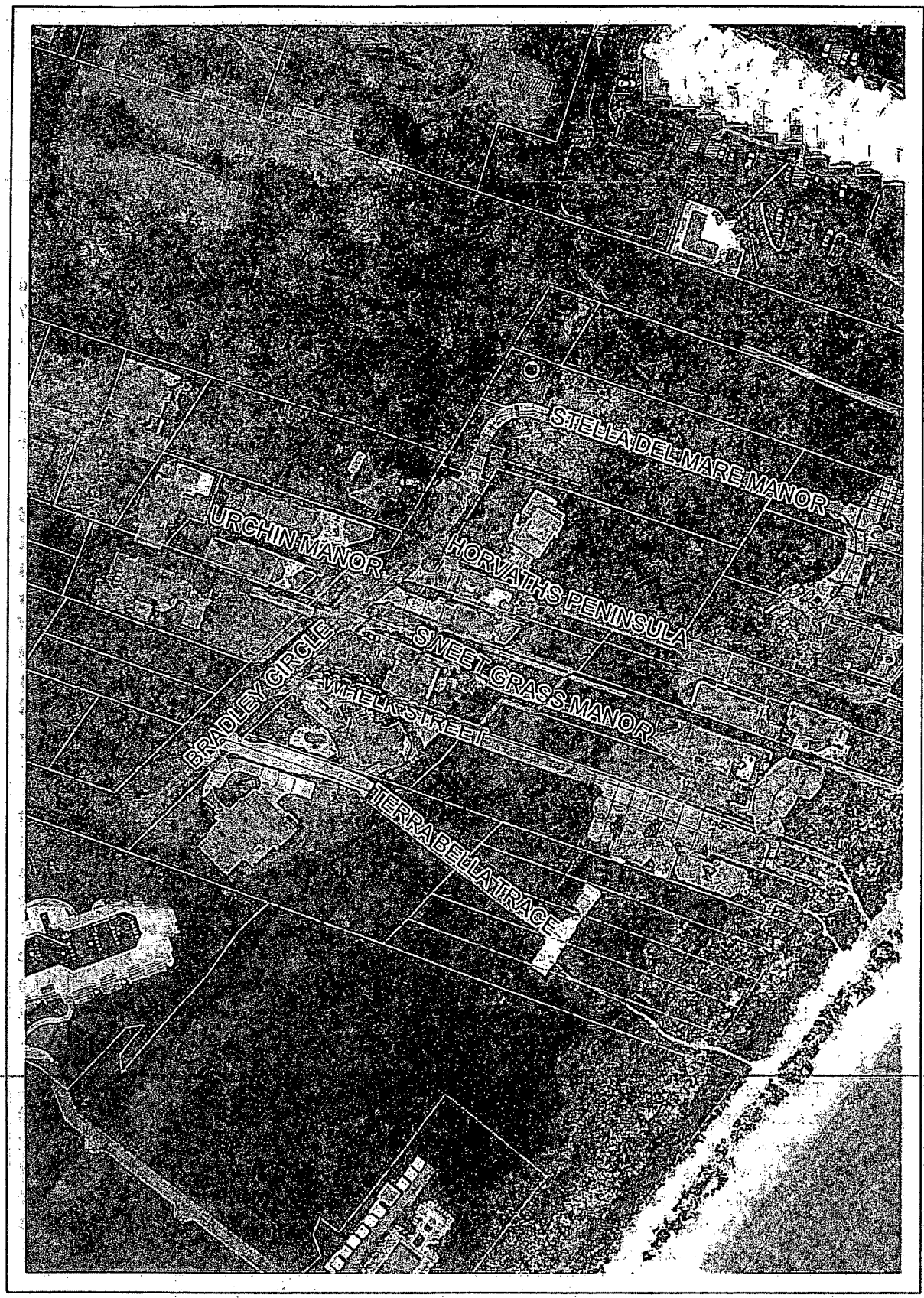
HC — March 16, 2016

Heather Colin, AICP, Development Review Administrator — DATE

ATTACHMENTS:

A) Vicinity Map
B) Applicant's Narrative
C) Original Subdivision Plat
D) As-built Survey
E) Site plan showing current lots with LMO requirements
F) Site plans showing proposed reconfiguration and lots with proposed homes
G) Elevation showing if the two lots met LMO requirements
H) Elevation showing proposed homes
I) Pictures

ATTACHMENT A



VAR-352-2016 Vicinity Map

ATTACHMENT B

NARRATIVE FOR VARIANCE APPLICATION

28 BRADLEY CIRCLE, TOWN OF HILTON HEAD ISLAND, SC

TAX MAP NOS.: R510-009-000-0896-0000 and

R510-009-000-1102-0000

February 26, 2016 (Revised March 9, 2016)

The Applicant owns 28 Bradley Circle, which is known as "Lot 1" containing 0.115 acres, and "Lot 2" containing 0.189 acres, as more fully shown on the plat of the property recorded in Plat Book 97 at Page 192, a copy of which is attached. These lots were approved by the Town as separate lots of record, as shown on such recorded plat.

The Applicant is proposing to subdivide the property into two (2) single family resort lots, upon which zero lot line single family homes will be constructed (which are designated as Lots 1 and 2 on the attached site plan). The Applicant is requesting two (2) variances, as follows:

1. As to Lot 1 shown on Plat Book 97 at Page 192, the LMO requires a setback and buffer of 8' and a setback angle of 60° along the 20' Access Easement (Sweet Grass Manor), and as to Lot 2 shown on said plat, the LMO requires a setback of 16', a 60° setback angle, and a buffer of 8'. As shown on the attached Site Plan, which now depicts Lots 1 and 2 as parallel with each other instead of one behind the other, the Applicant seeks approval of variances allowing a setback of 1', no setback angle, and no buffer on the North side of Lot 2 along the Access Easement/Sweet Grass Manor. The side setback of 1' will allow for the overhang of the roof and eaves of the dwelling to be built on Lot 2. If the Variances are authorized, the dwelling to be built on Lot 2 will be at least 20' from the adjoining property, upon which is located a 15' beach walkway easement, so there will be at least 35' separation between dwellings on the adjoining properties.

2. As to Lot 1 shown on Plat Book 97 at Page 192, the LMO requires a setback and buffer of eight feet (8') and a setback angle of 60 degrees along Whelk Street, which is located along the South property line of the project, and as to Lot 2 shown on said recorded plat, the LMO requires a setback from Whelk Street of 16', a 60° setback angle, and a buffer of 8'. As shown on the attached Site Plan, the Applicant seeks approval of variances to reduce the side setback of Lot 1 along Whelk Street to four feet (4') in width, to eliminate the side setback angle, and to reduce the buffer to 3' in width (to allow for the roof and eaves overhang). The result will be a minimum of 19' separation between dwellings on the adjoining properties, because Whelk Street is a right of way/easement measuring fifteen feet (15') in width.

The Applicant seeks the two (2) Variances allowing reduced side setbacks, side setback angles, and buffers along such North and South property lines so the Applicant will be able to construct two (2) zero lot line dwellings, which will: (a) be more in harmony with the existing homes in the neighborhood; and (b) may allow views and breezes between the dwellings, as requested by neighbors who live across the street on Bradley Circle. Photographs of other homes in the neighborhood will be provided to the BZA to demonstrate that the zero lot line homes which the Applicant will be allowed to build if the Variance is granted are architecturally similar to other nearby homes.

Without the requested variances, the building footprint of Lot 1 shown on the recorded plat will be approximately 30' by 30' and of Lot 2 would be approximately 25' by 30', because Lot 2 is subject to 16' setbacks from Sweet Grass Manor and from Whelk Street. Without the requested variances, the Applicant would only be able to build a dwelling on Lot 1 containing one story above a garage/parking area, and the Applicant would only be able to build a dwelling on Lot 2 containing approximately 700 square feet of heated/cooled space due to the extreme setbacks. Needless to say, neither of such dwellings would be in harmony with the other, newer dwellings in this resort neighborhood, and strict enforcement of the setbacks, setback angles and buffers will result in unnecessary hardship to the Applicant.

Variance Request. A Variance may be granted by the Board of Zoning Appeals if it concludes that the strict enforcement of any appropriate dimensional, development, design or performance set forth in the LMO would result in unnecessary hardship to the applicant.

The Applicant requests Variances from the following Sections of the LMO:

1. LMO Section 16-5-102.C Adjacent Street Setbacks/Setback Angles along North and South property lines of the project.

2. LMO Section 16-5-103.D Adjacent Street Buffers along North and South property lines of the project.

In this case, the Applicant requests Variances from the cited LMO Sections, because:

A. **There are extraordinary and exceptional conditions pertaining to the Applicant's property, including the following:** *(a) the properties are is bounded on the North side by a 20' wide access/utility easement (named Sweet Grass Manor), which has also reduced the amount of developable land for the Applicant's intended project because new LMO provisions require the setback to be measured from the access easement, not from the property line; and (b) the properties are bounded on the South side by Whelk Street, a 15' right of way/easement, which in itself provides an additional 15' wide setback from the adjoining residential property; and (c) Lots 1 and 2 shown on Plat Book 97 at Page 192 are existing lots of record, and it will not be feasible to build new homes on said lots without the requested variances.*

B. **These conditions do not generally apply to other properties in the vicinity.** *There are no other properties in the vicinity which have such adjoining uses and conditions that adversely affect development of the sites. Other nearby properties which have adjoining access easements were developed without the adverse effect of the revised LMO requirement that the side setbacks and buffers be measured from the access easement boundary line instead of the property line.*

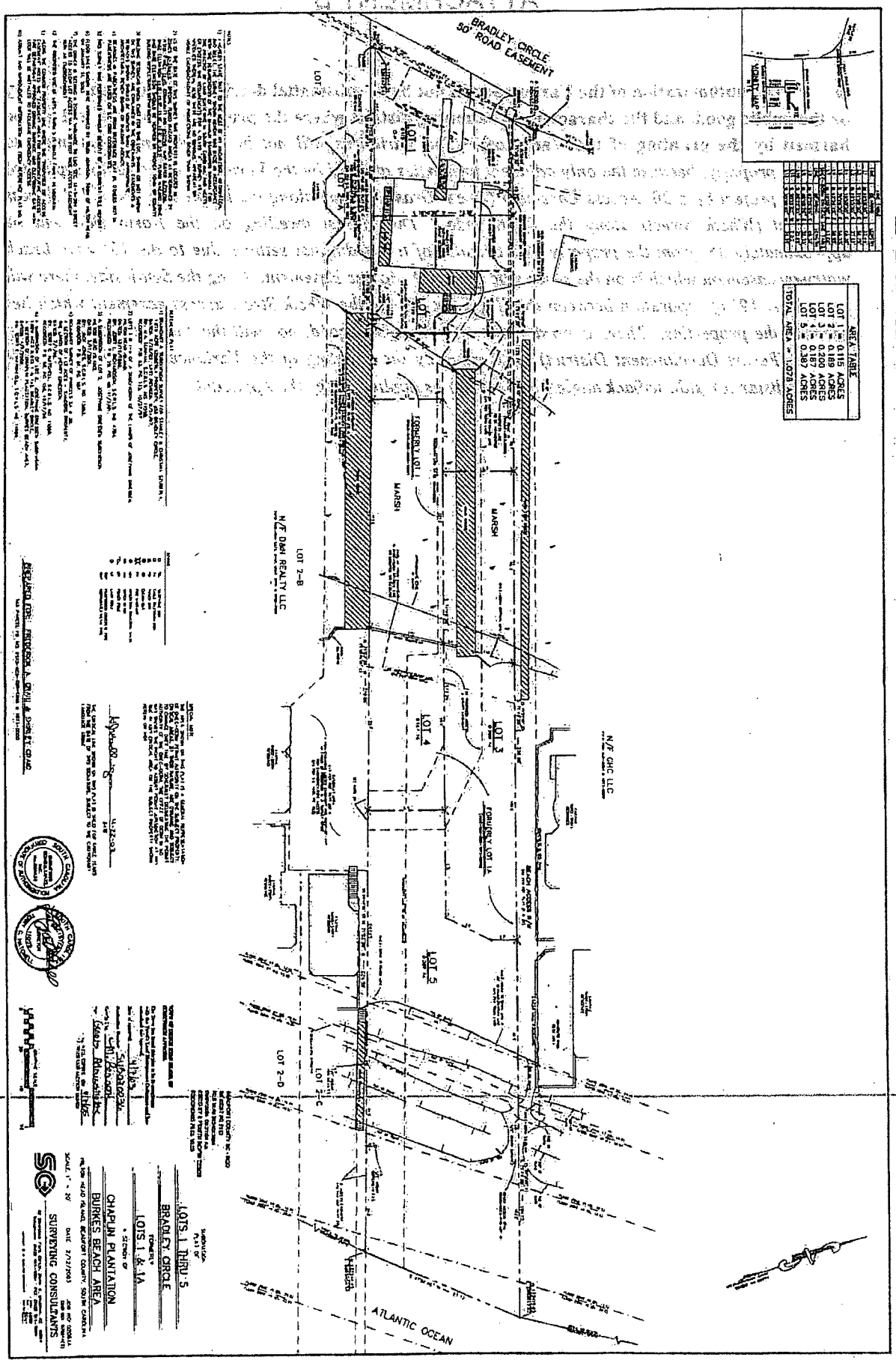
C. **Because of these conditions, the application of this Ordinance to this particular property will effectively prohibit or unreasonably restrict the utilization of the property.** *The application of the Ordinances would unreasonably restrict Applicant's utilization of the property, because the imposition of the 8' setbacks, 60° setback angles, and buffers on the North and South property lines will result in construction of only one (1) dwelling containing only approximately 3,600 square feet, which deprives the Applicant of one of the approved dwelling units allocated to Lots 1 and 2 as shown on the recorded subdivision plat. It will also result in a dwelling which will be less attractive and less harmonious with the neighborhood than Applicants' proposal to construct two (2) smaller zero lot line*

ATTACHMENT B

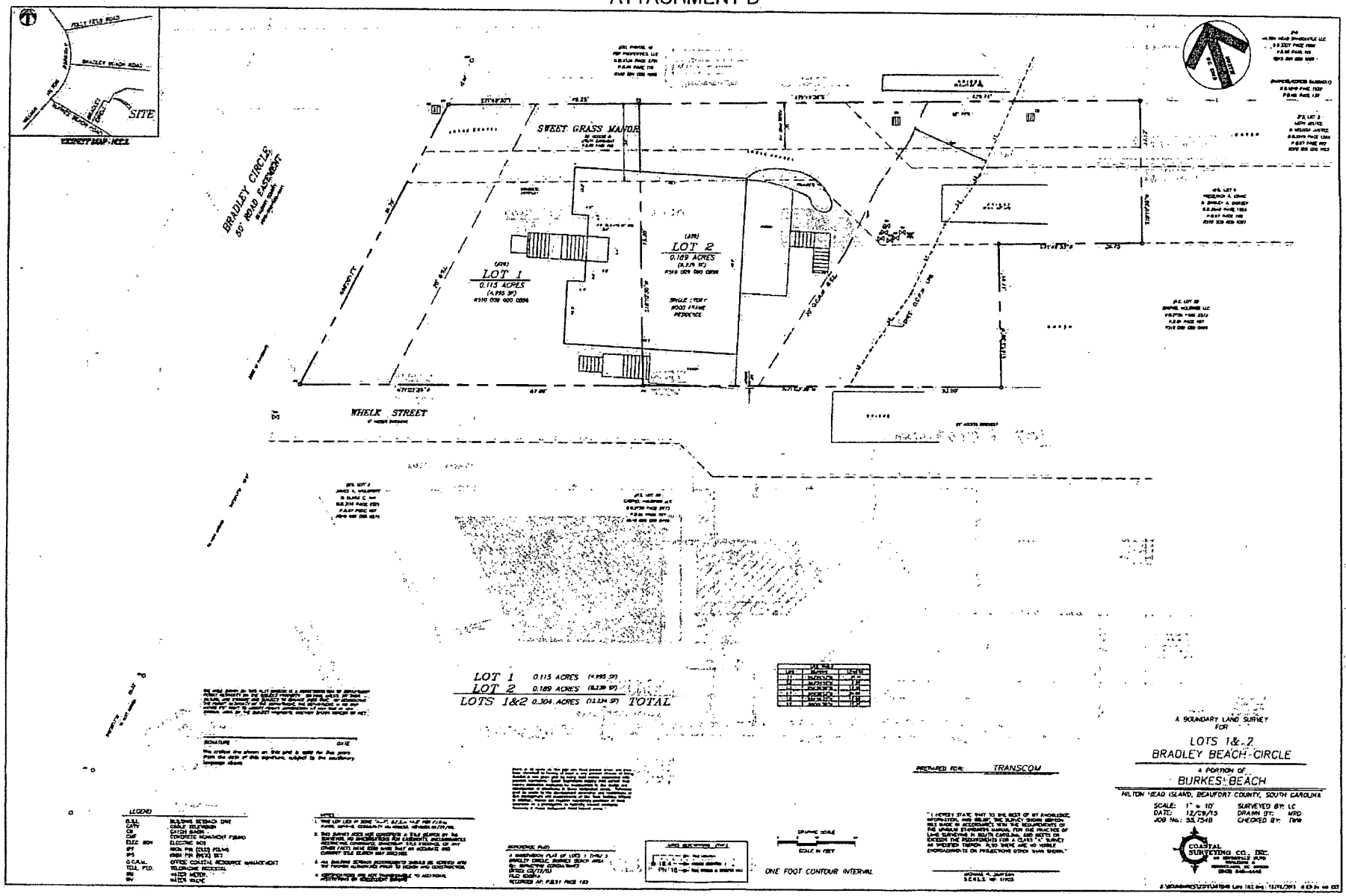
dwellings. Applicant's position is that the optimum utilization of the property is as two (2) zero lot line homes and that the Ordinance would unreasonably restrict development of the property as one (1) dwelling unless the Variances are approved.

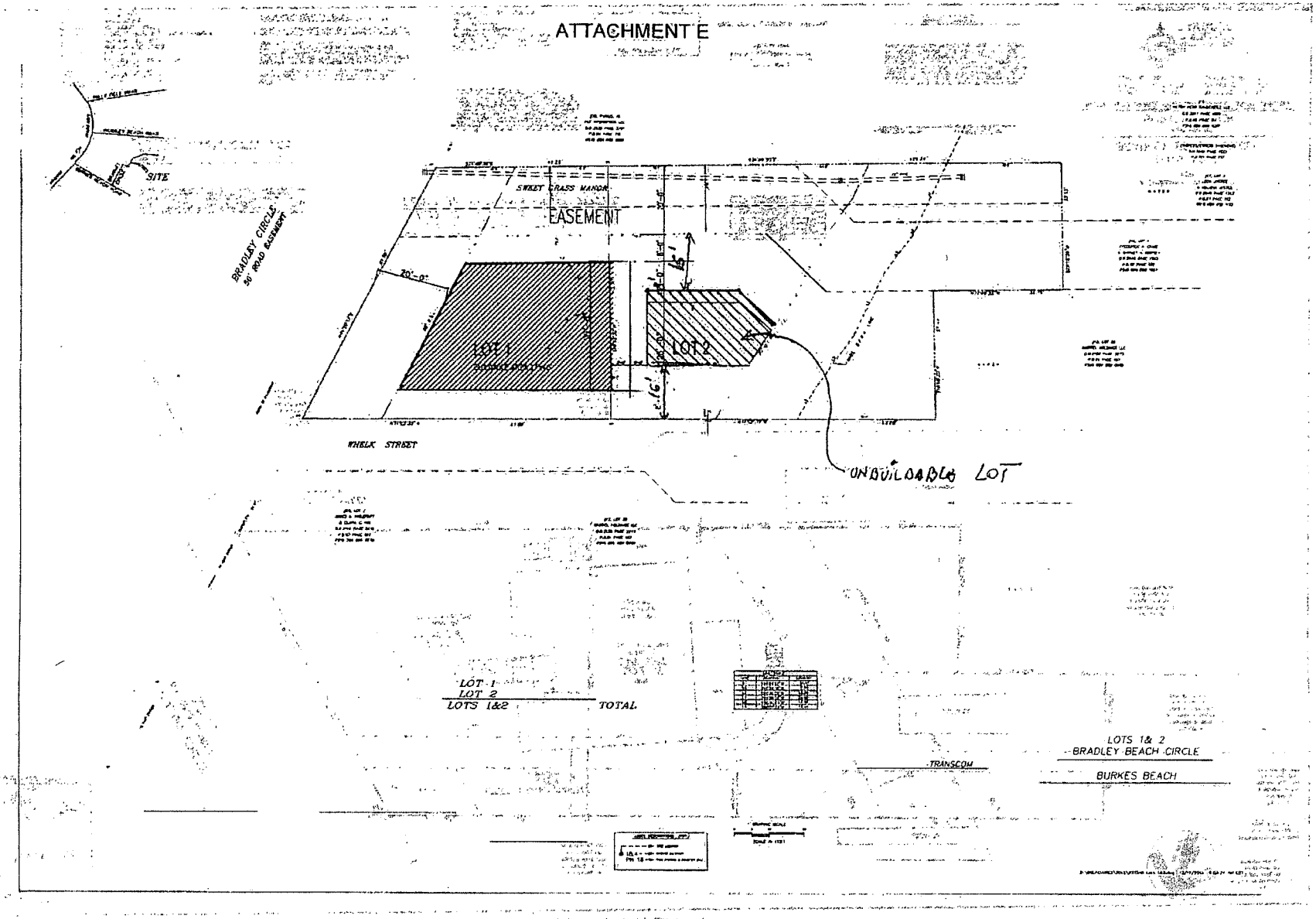
D. **The authorization of the Variances will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variances.** *The Variances will not be of substantial detriment to adjacent property, because the only adjacent properties affected by the Variances are already separated from the project by a 20' Access Easement (Sweet Grass Manor) along the North side and a 15' Access Easement (Whelk Street) along the South side. The closest dwelling on the North side will be approximately 35' from the property line because of the additional setback due to the 15' wide beach walkway easement which is on the other side of the 20' Access Easement. Along the South side, there will be at least 19' of separation between dwellings because of the Whelk Street access easement which lies between the properties. There is no detriment to the public good, nor will the character of the zoning district (Resort Development District) be harmed by the granting of the Variances to reduce the side setback distances, side setback angles, and buffers as applied for by the Applicant.*

ATTACHMENT C

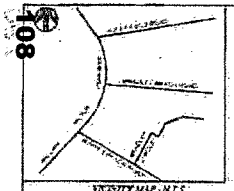


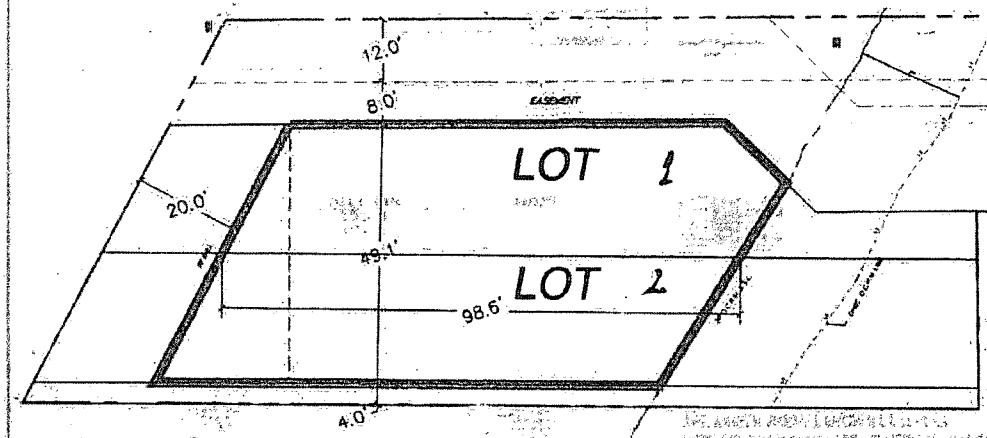
ATTACHMENT D




ATTACHMENT E
SITE
BRADLEY CIRCLE
50' ROAD EASEMENT
SWEET GRASS MANOR
EASEMENT
20'-0"
LOT 1
LOT 2
WHELK STREET
UNBUILDABLE LOT
LOT 1
LOT 2
LOTS 1&2
TOTAL
TRANSCOM
LOTS 1& 2
BRADLEY BEACH CIRCLE
BURKES BEACH

ATTACHMENT F





0.115 ACRES (5,005 SF)
0.189 ACRES (8,228 SF)
0.304 ACRES (13,234 SF)

A BOUNDARY LAND SURVEY
FOR

A PORTION OF

HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 10'
DATE: 12/09/15
JOB No.: 05.7549

SURVEYED BY: LC
DRAWN BY: MRD
CHECKED BY: TWW

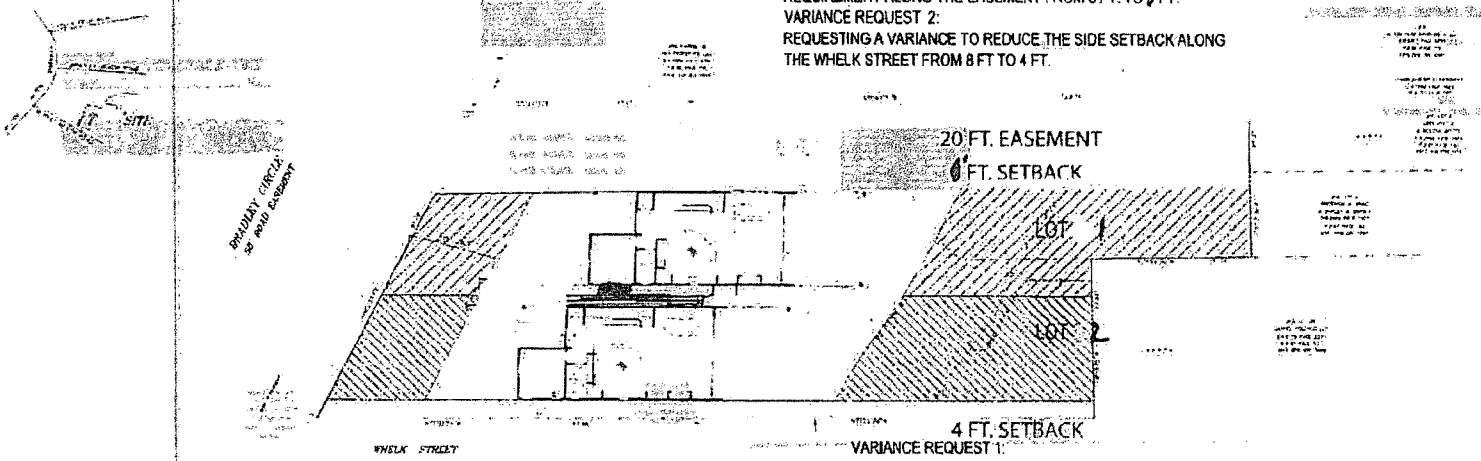
COASTAL SURVEYING CO., INC.

LEGEND

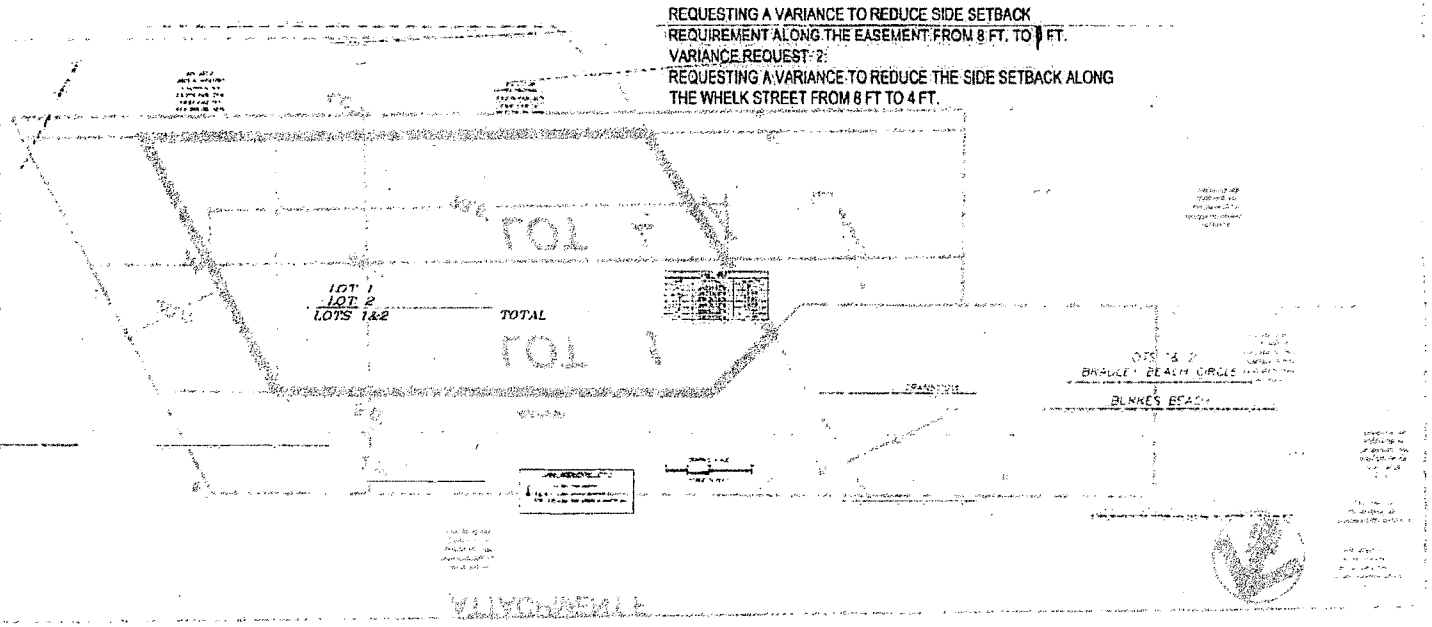
ONE FOOT CONTOUR INTERVAL

ATTACHMENT F

VARIANCE REQUEST 1:
REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT.
VARIANCE REQUEST 2:
REQUESTING A VARIANCE TO REDUCE THE SIDE SETBACK ALONG THE WHELK STREET FROM 8 FT TO 4 FT.



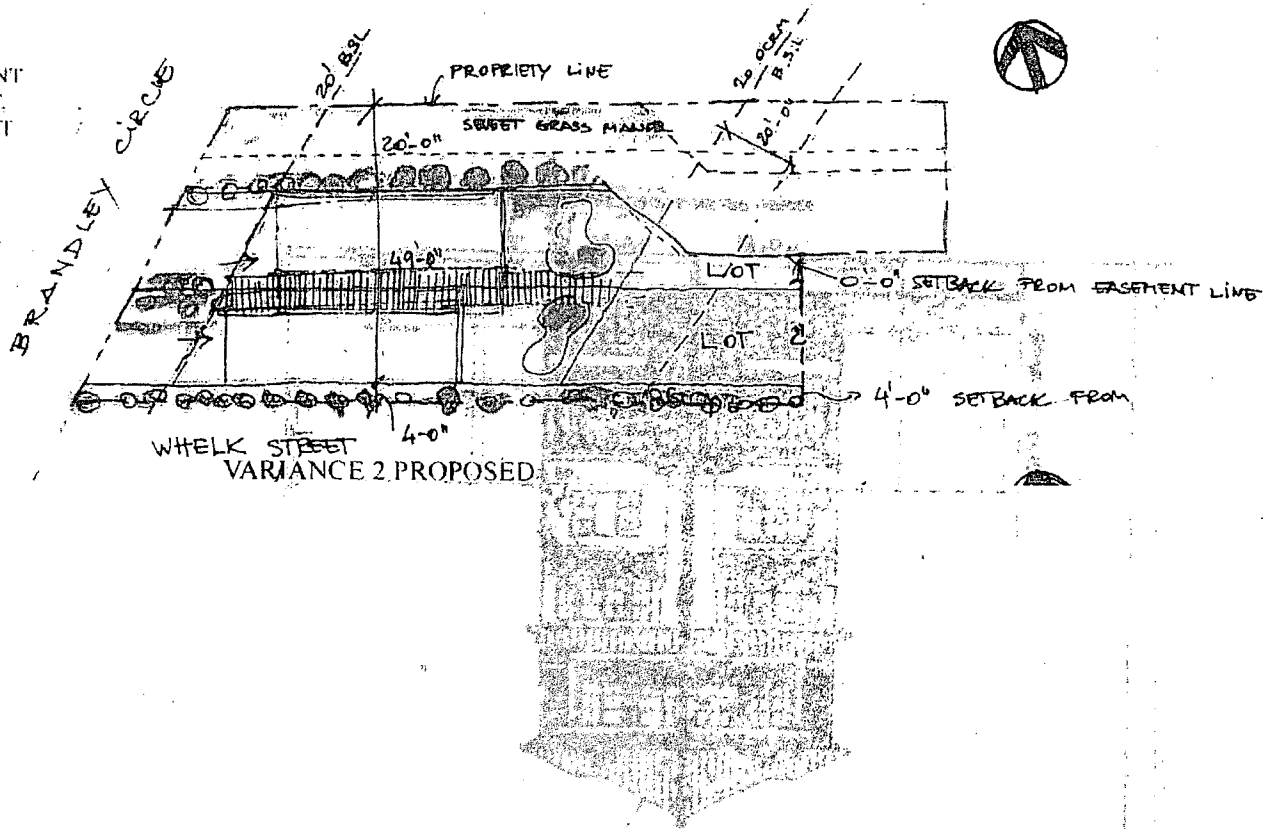
VARIANCE REQUEST 1:
REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT.
VARIANCE REQUEST 2:
REQUESTING A VARIANCE TO REDUCE THE SIDE SETBACK ALONG THE WHELK STREET FROM 8 FT TO 4 FT.



VARIANCE REQUEST 2

REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT. AND ALONG WELK STREET FROM 8FT. TO 4 FT.

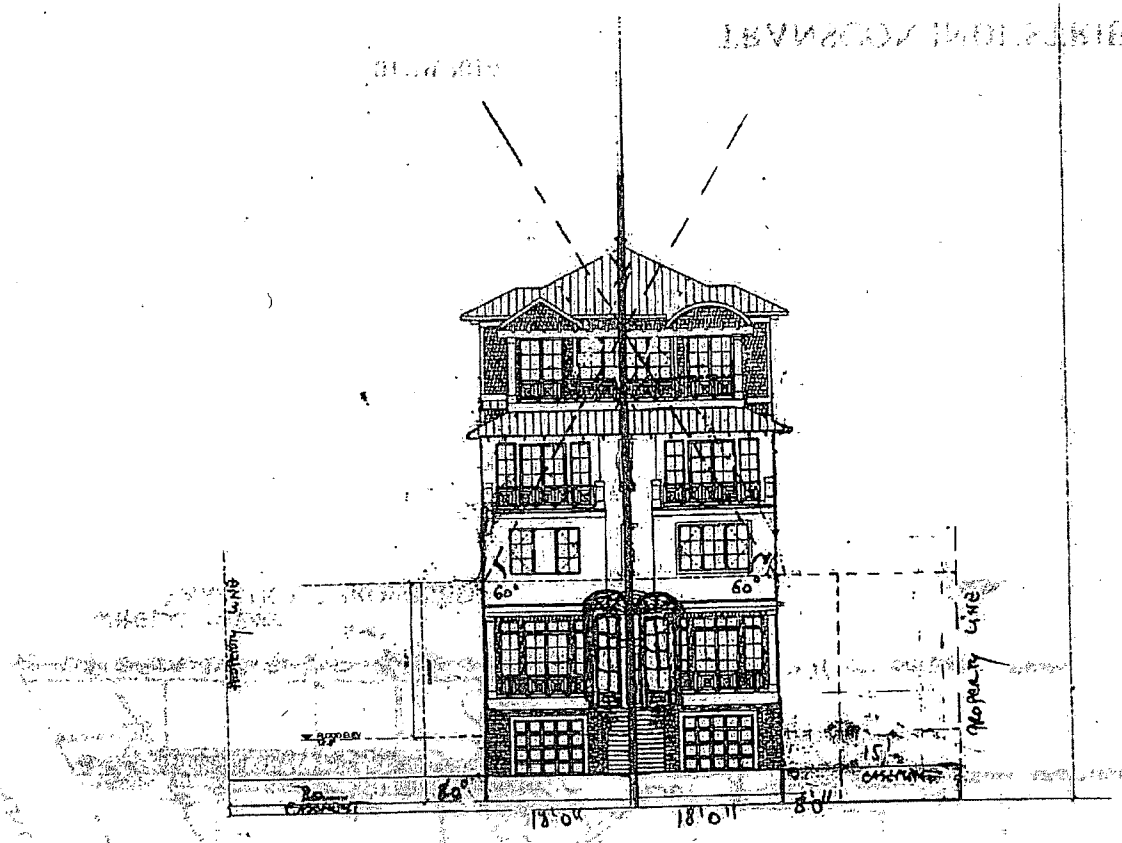
ATTACHMENT F



01/19/2016

TRANSCON INDUSTRIES

ATTACHMENT G



FRONT ELEVATION SETBACK LINE -60 DEGREE

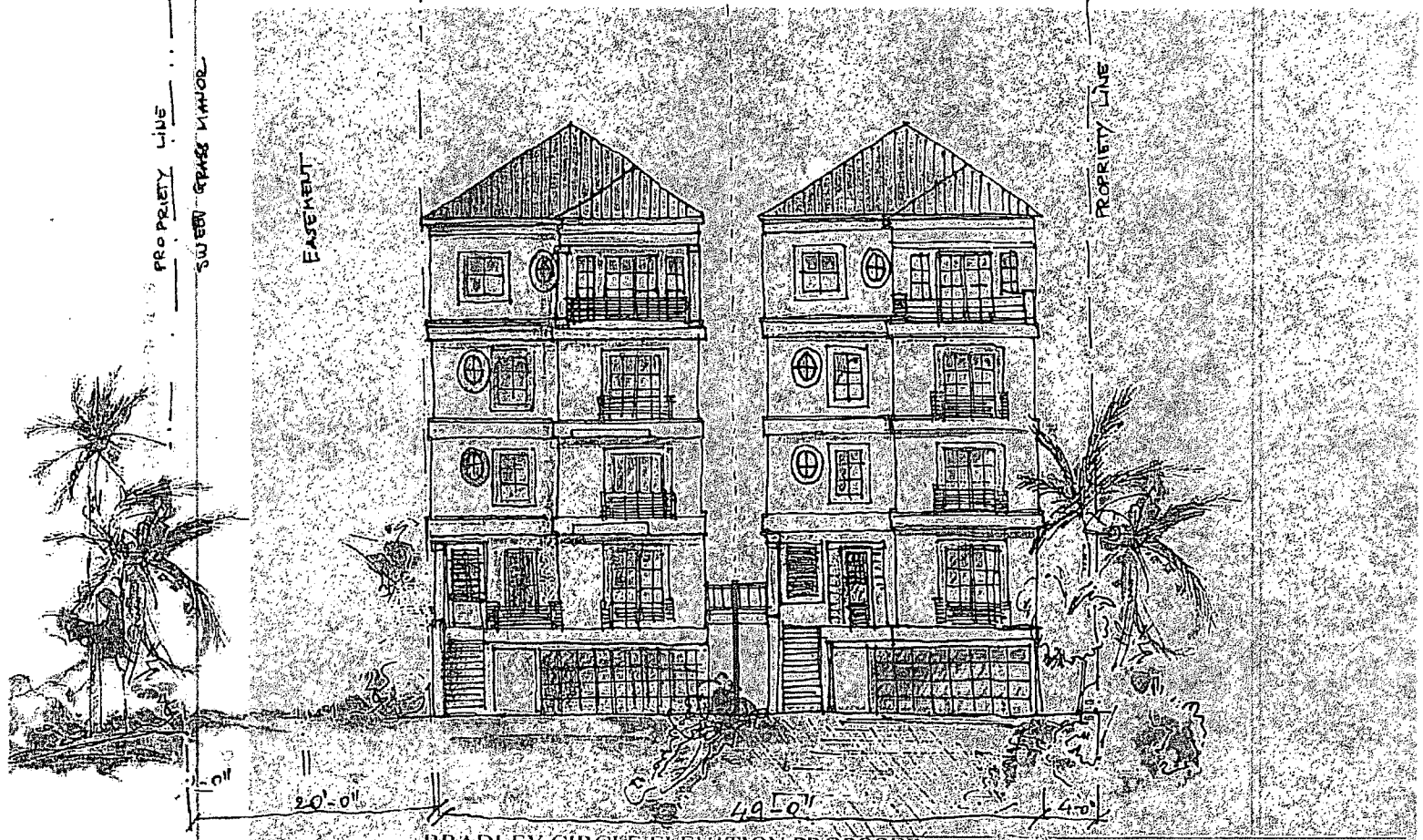
SCALE : 3/16" = 1'-0"

LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC
TRANSCON IND. LLC

22 B
07-19-15
Author
Checker

ELEVATION
SETBACK 60
DEGREE

ATTACHMENT H



BRADLEY CIRCLE ELEVATION PROPOSED

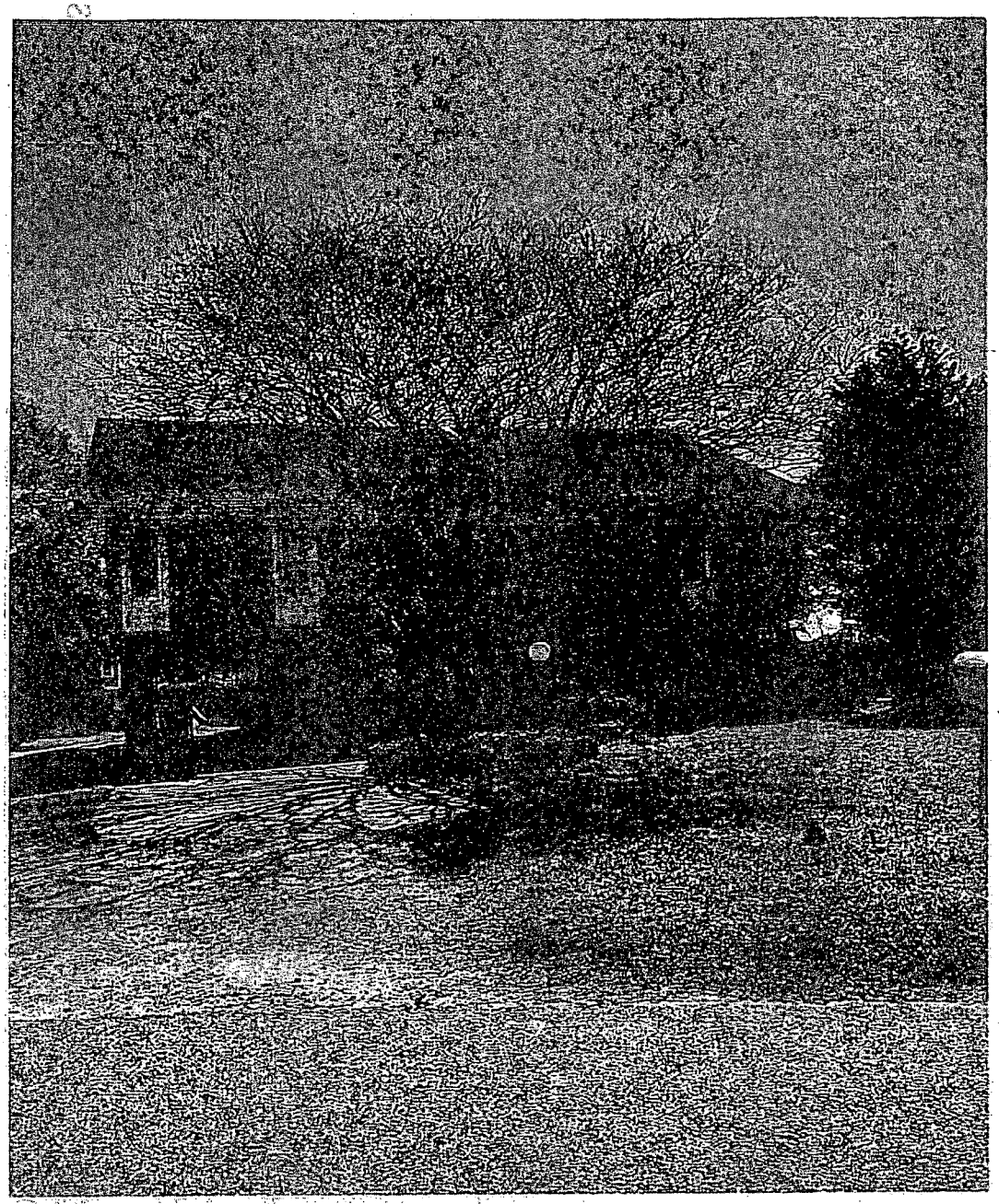
01/19/2016

TRANSCON INDUSTRIES

VARIANCE REQUEST 2

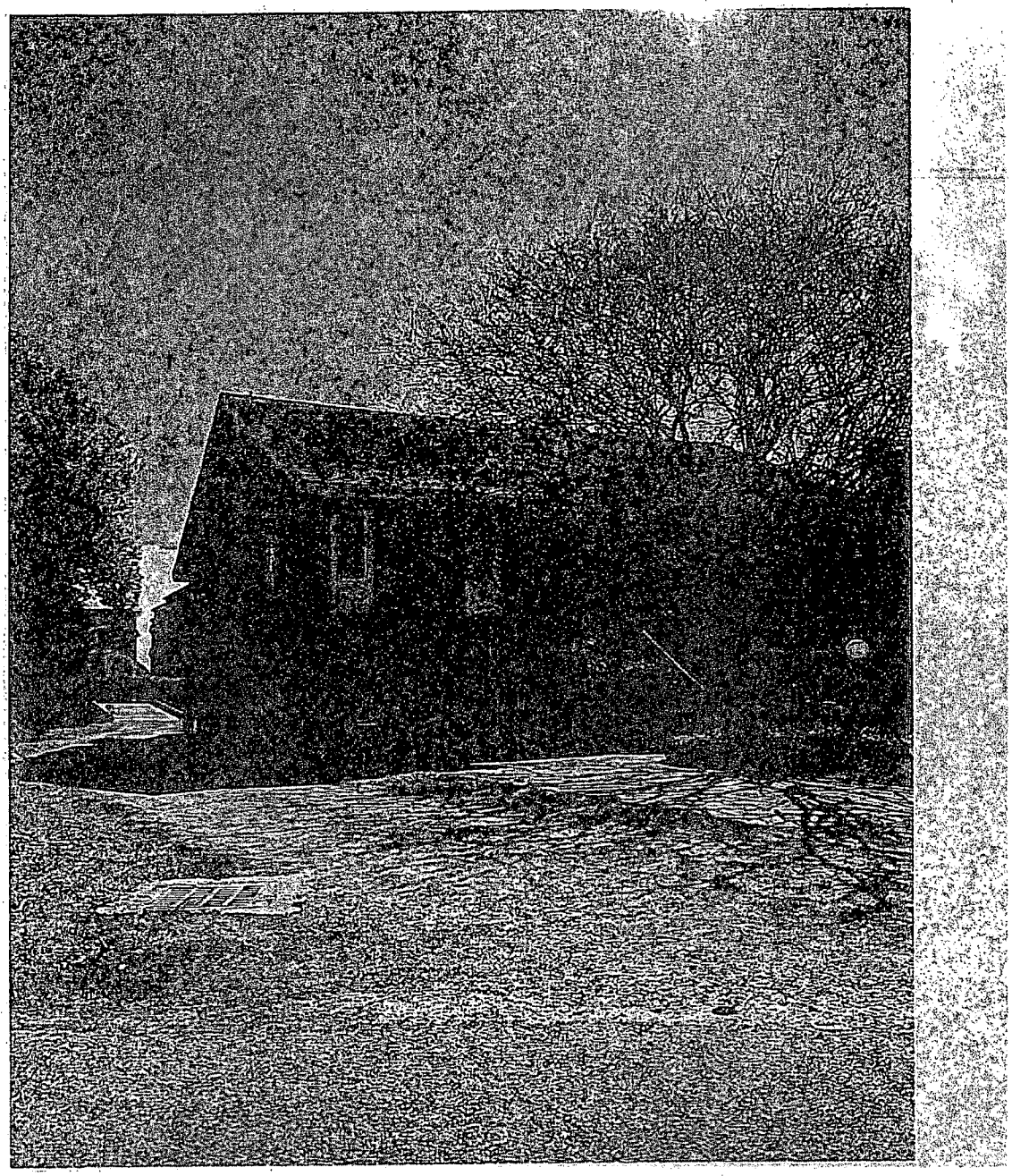
REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT. AND ALONG WELK STREET FROM 8FT TO 4 FT.

ATTACHMENT I



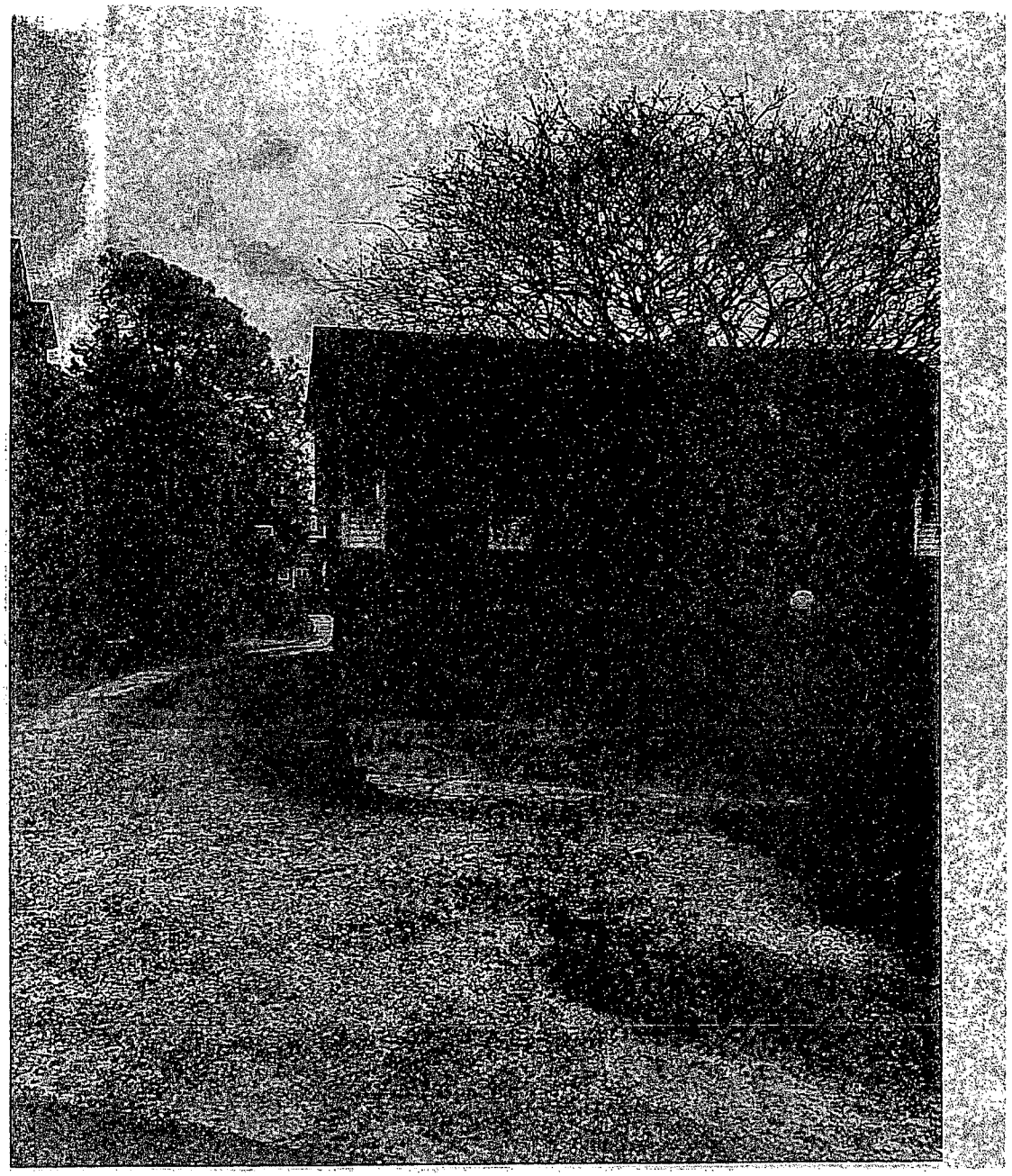
28 Bradley Circle, Subject to variance

ATTACHMENT I



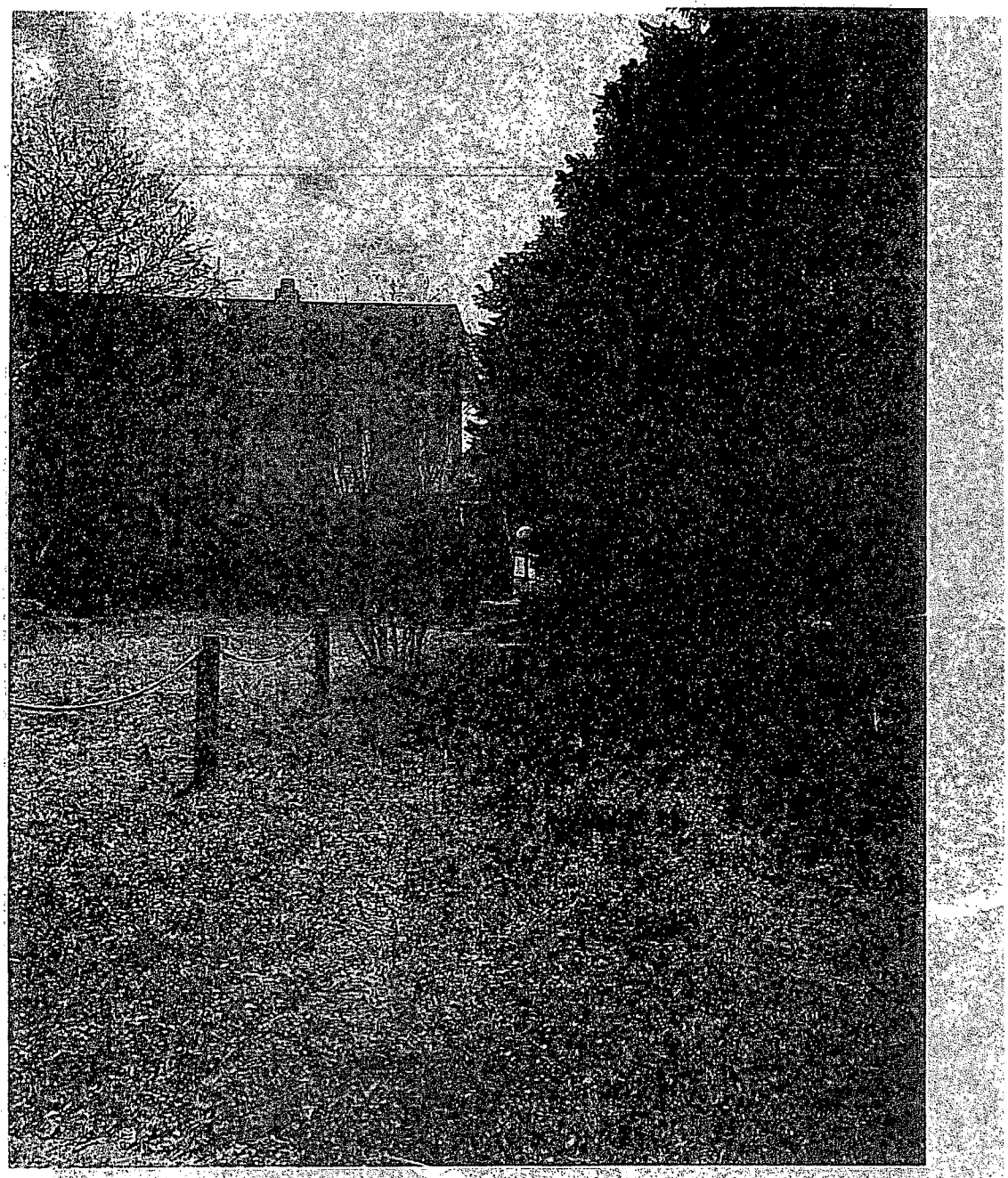
View of Sweet Grass Manor Access Easement

ATTACHMENT I



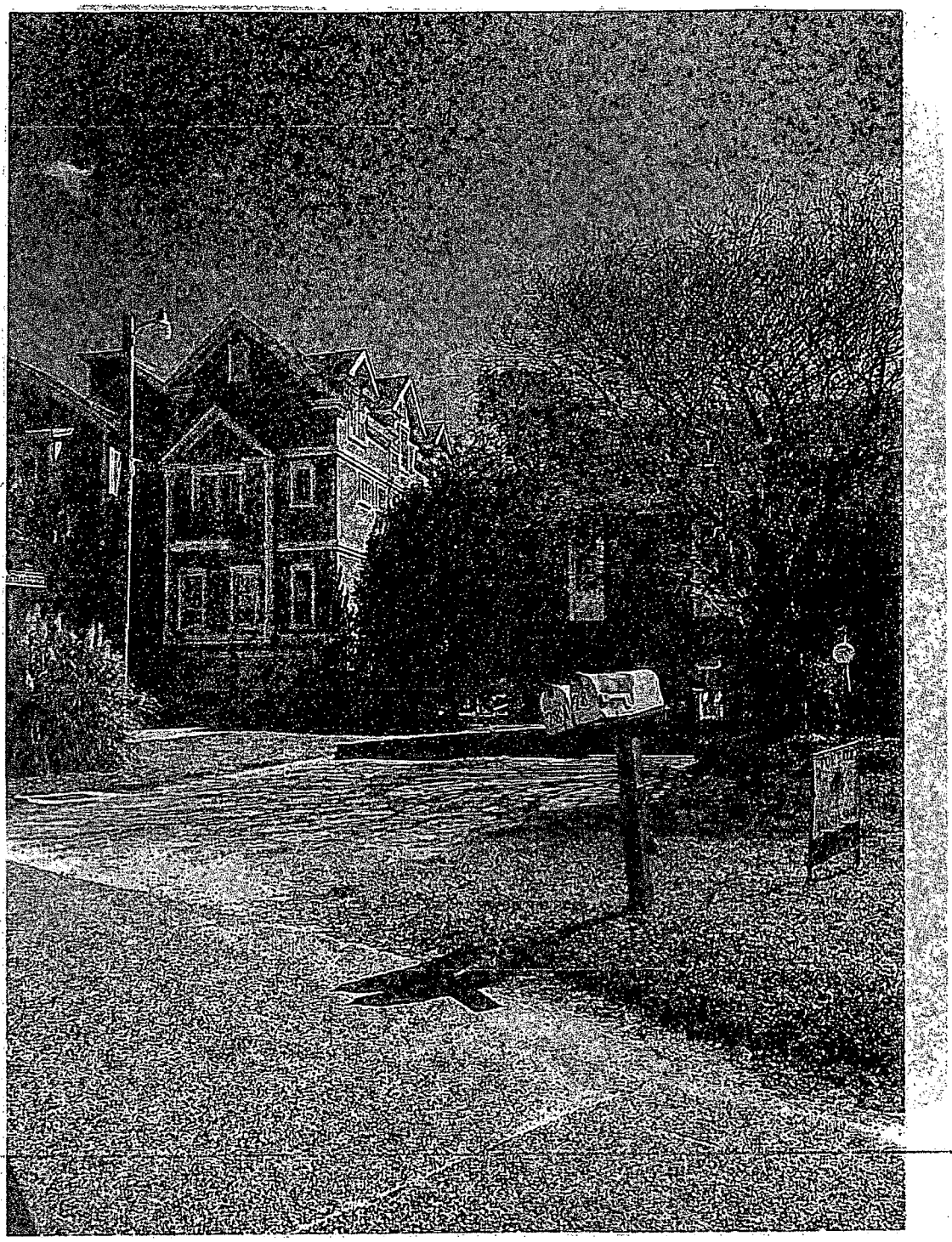
View showing existing home encroaching into access easement

ATTACHMENT I



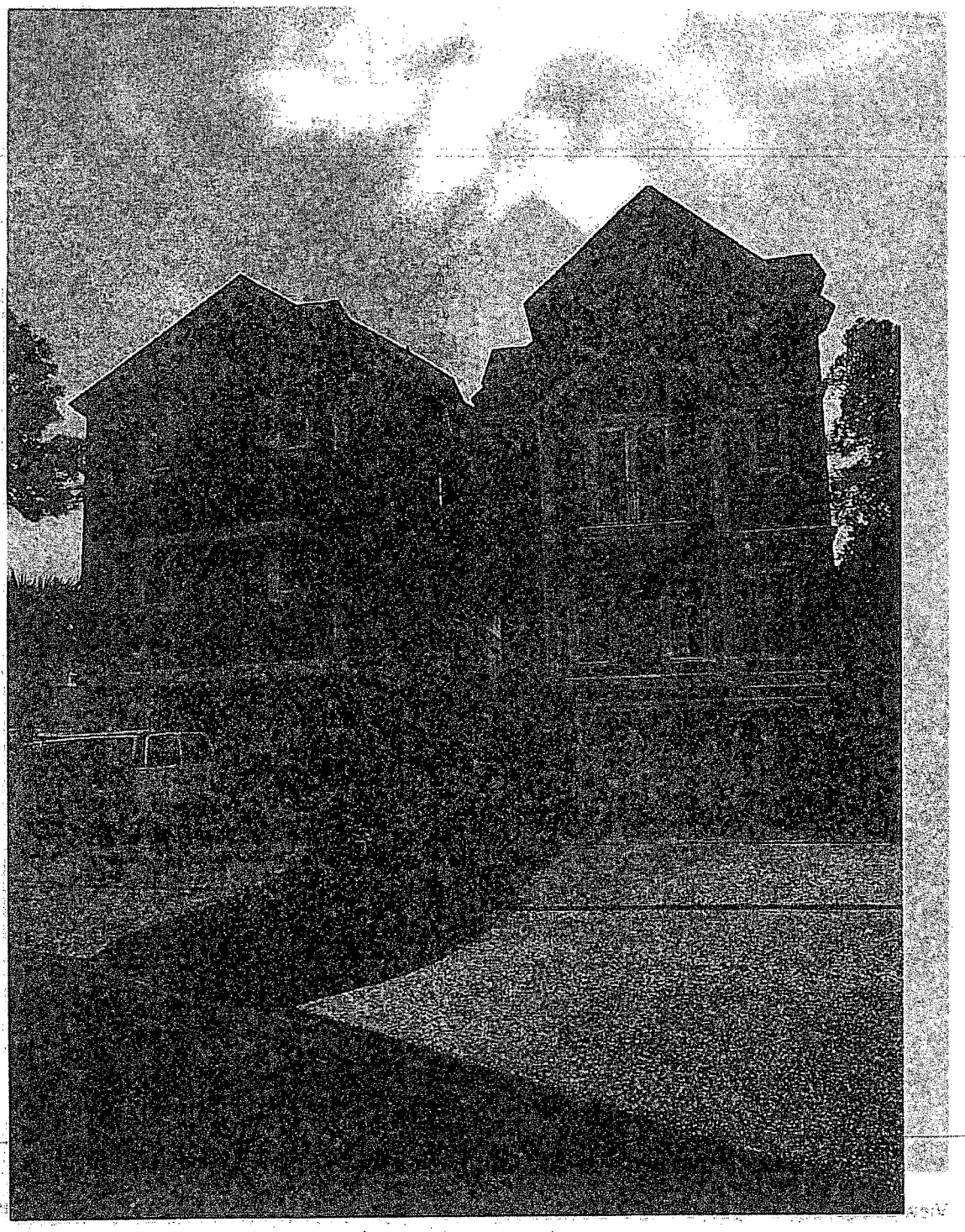
View showing side deck and stairs of existing home encroaching into adjacent property

ATTACHMENT I



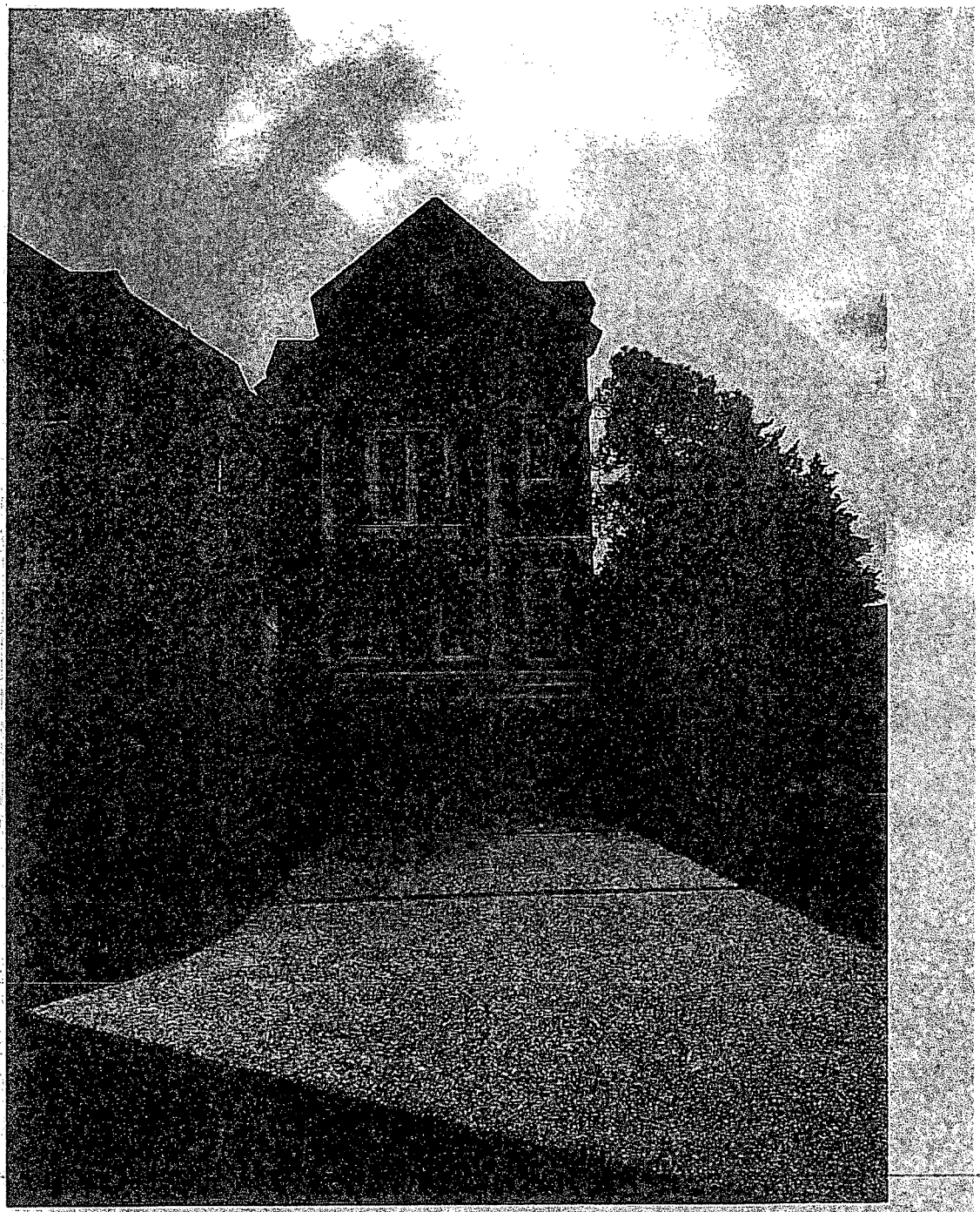
View of adjacent homes

ATTACHMENT I



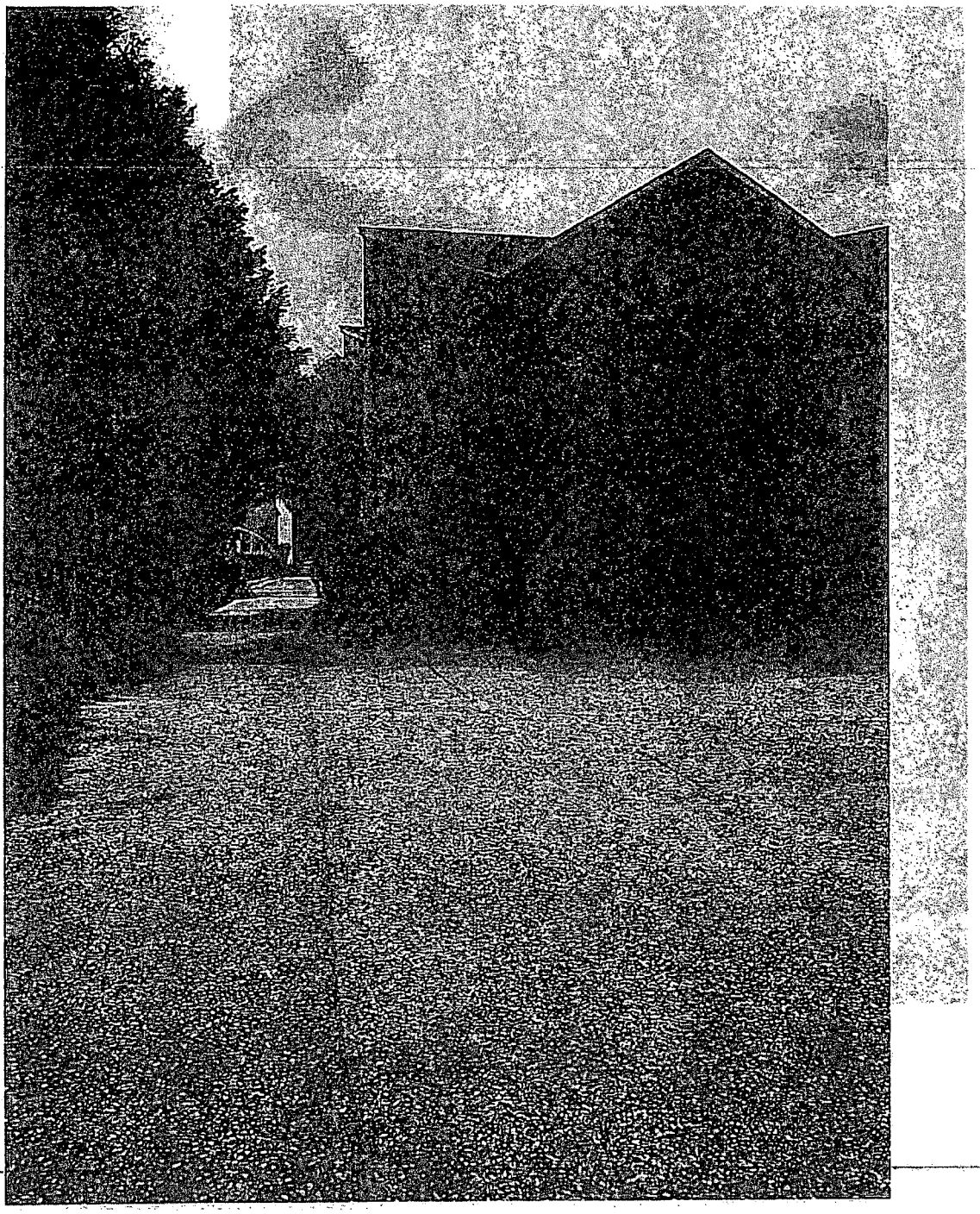
View of adjacent homes

ATTACHMENT I



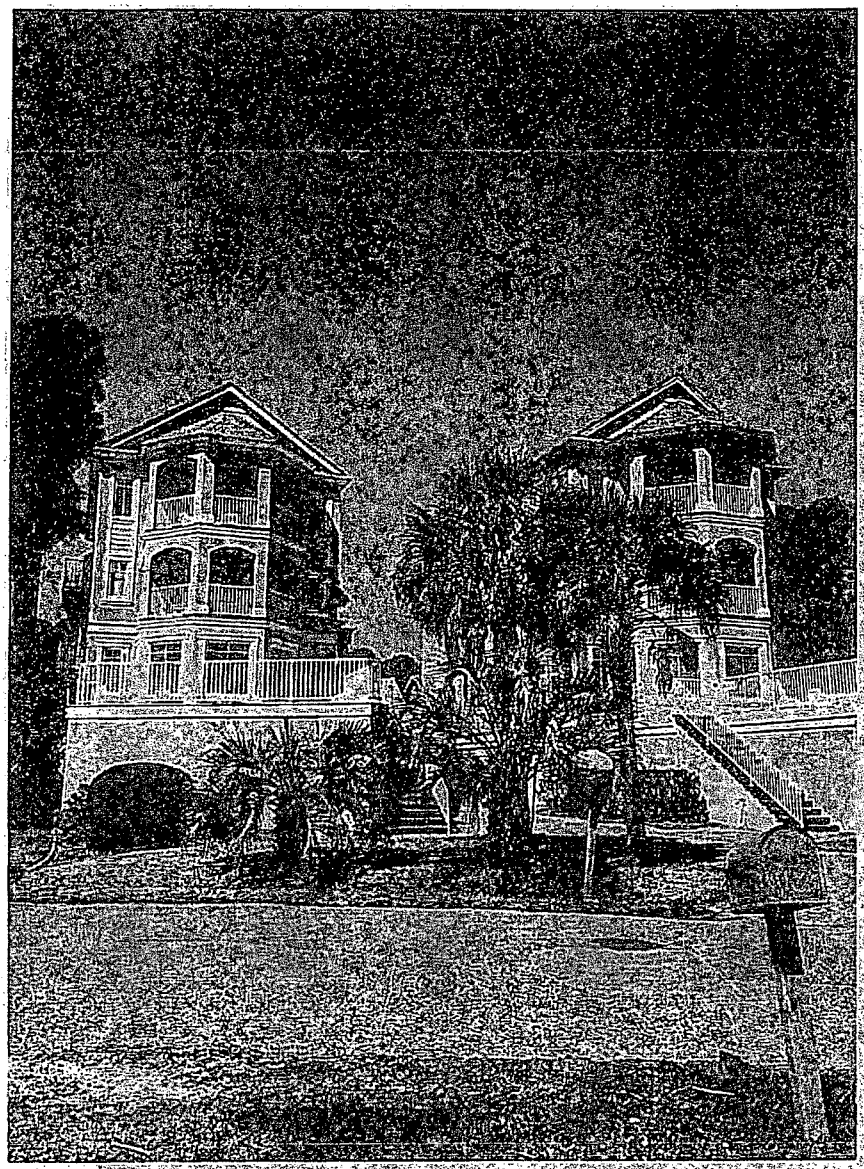
View of adjacent home, according to the applicant this is the minimum width a home can be constructed in order to provide two car garage and stair entrance

ATTACHMENT I

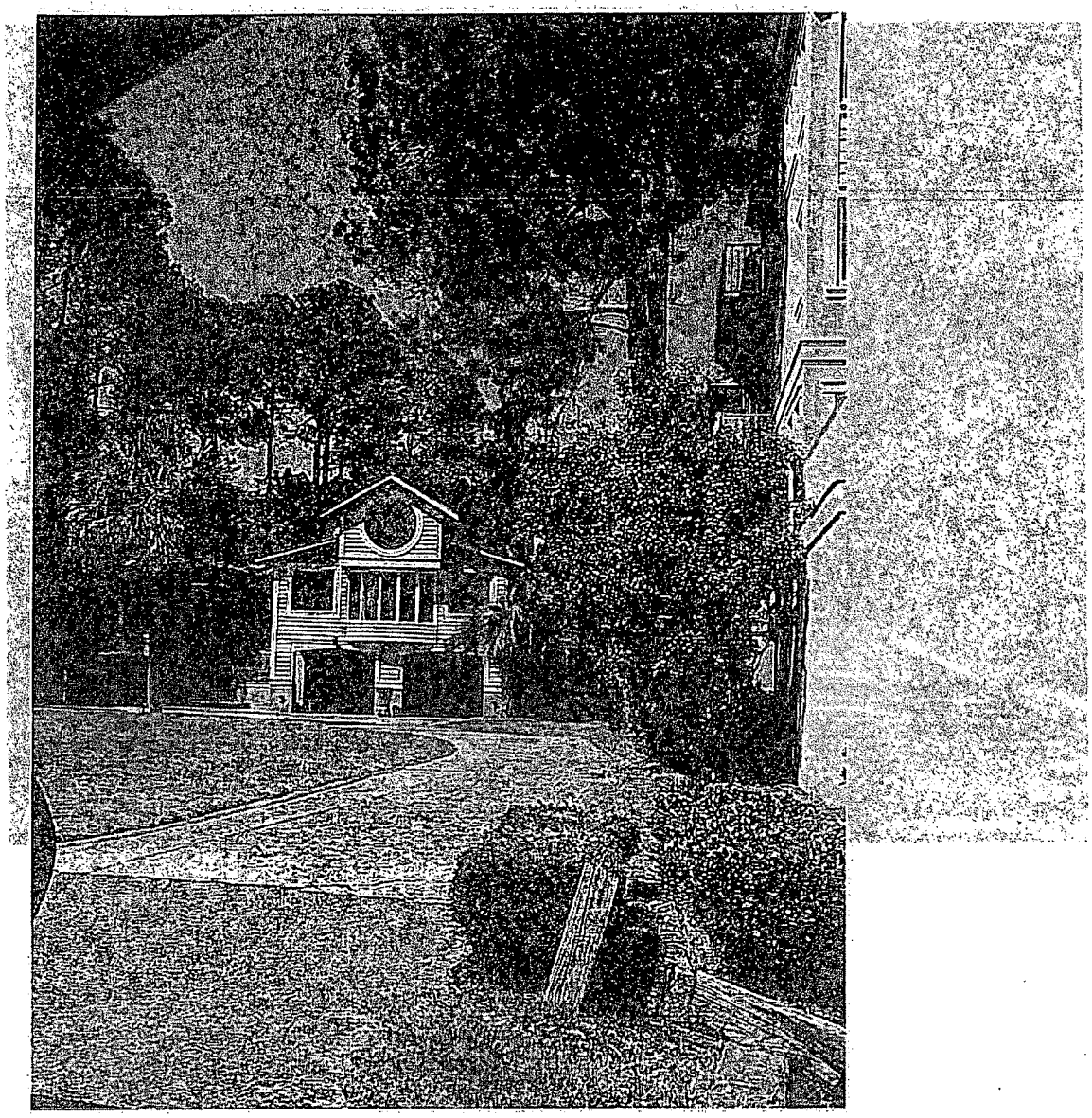


View of adjacent home

ATTACHMENT I



View of homes across the street



View of homes across the street

ATTACHMENT I



View of beach-front homes behind 28 Bradley Circle

ATTACHMENT I



View of beach-front homes behind 28 Bradley Circle

	TOWN OF HILTON HEAD ISLAND **COMMUNITY DEVELOPMENT DEPARTMENT**		
One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908

BOARD OF ZONING APPEALS
NOTICE OF ACTION

Case #:	Public Hearing Date:
VAR-000352-2016	March 28, 2016

Parcel or Location Data:	Property Owner	Applicant
Parcels#: R510 009 000 0896 0000 and R510 009 000 01102 0000 Acreage: Parcel 896: 0.115 acres Parcel 1102: 0.189 acres Zoning: RD (Resort Development District)	Frederick Craig & Shirley Dorsey PO Box 5236 Hilton Head Island, SC 29938	John P. Qualey Qualey Law Firm PO Box 10 Hilton Head Island, SC 29938

Application Summary:

John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, to allow the construction of two single family attached homes to be built without a setback angle requirement and within the adjacent street setback and buffer on both sides of the property.

BZA Determination, Findings of Fact, and Conclusions of Law:

The Board of Zoning Appeals has determined that they:

☒ **Approve** the variance, *based on those Findings of Facts and Conclusions of Law found in the LMO Official Determination.*

Appeal To Circuit Court:

If you believe the Board erred in its decision, you have the right to appeal the decision to Circuit Court. You have two options to appeal to Circuit Court:

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

1. You may file a petition with the clerk of court in and for the county, in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within 30 days after the decision of the Board is mailed (South Carolina Code of Laws 6-29-820A). The mailing date of this decision is March 28, 2016
2. You may file a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina Code of Laws Section 6-29-825. Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

If you wish to submit a Motion to Reconsider or a Motion that brings back a question to the Board of Zoning Appeals, please see the Board's Rules of Procedure located on the Town's website www.hiltonheadislandsc.gov

Chairman of BZA: **Date:** 3/28/16

Maker of Motion: **Date:** 3/28/16

Second to Motion: **Date:** 3/28/16

Note: This decision must be delivered to the parties of interest via certified mail.

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals

Regular Meeting

March 28, 2016 - 2:30 p.m.

Benjamin M. Racusin Council Chambers

Board Members Present: Chairman Glenn Stanford, Vice Chairman Jeffrey North, Steve Wilson, David Fingerhut, John White, Lisa Laudermilch, Jerry Cutrer

Board Members Absent: None

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Teri Lewis, LMO Official
Jill Foster, Deputy Director of Community Development
Teresa Haley, Secretary

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

CONTENTS

CONTENTS 1
CALL TO ORDER 2
PLEDGE OF ALLEGIANCE 2
FREEDOM OF INFORMATION ACT 2
WELCOME AND INTRODUCTION TO THE BOARD PROCEDURES 2
APPROVAL OF THE AGENDA 3
APPROVAL OF THE MINUTES 3
NEW BUSINESS 3
PUBLIC HEARING VAR-352-2016 3
STAFF REPORTS 25
WAIVER REPORT 25
ADJOURNMENT 25

CALL TO ORDER

GLENN STANFORD: Good afternoon, ladies and gentlemen. Welcome to the March 28 meeting of the town of Hilton Head Island's Board of Zoning Appeals. To begin with, I would ask each of you to reach into your pocket or purse, and find that little square thing in there and put it to mute, or off is even better. That way we won't have any interruptions. So we will appreciate your cooperation on that. We'll begin with the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE

ALL PRESENT: I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

GLENN STANFORD: Thank you.

FREEDOM OF INFORMATION ACT

GLENN STANFORD: Are we in compliance with the Freedom of Information Act?

TERESA HALEY: Yes, Sir, we are.

GLENN STANFORD: Thank you very much.

WELCOME AND INTRODUCTION TO THE BOARD PROCEDURES

GLENN STANFORD: Today we will have before us two applications for a variance. Our procedures in the case of variances call for a presentation by a member of the Town staff as to what the variance seeks and what the position of the Town staff is on that particular application. We then give the applicant or the applicant's representative the opportunity to come up and give a presentation. We ask that you not be too wordy on this, but state your case, and give us the reasons why you think the variance should be granted. We then give the opportunity to the public to make any comments that they may have. When you come up before the microphone, we ask that you identify yourself so that we know who you are and what your interest is in the matter, if any.

Once the public hearing is over, there will be discussion among the members of the board and then usually there is a motion from a member of the board, either to approve or to deny the application for the variance. Sometimes there is further discussion in conjunction with that particular motion and then we will call the roll, and the members of the board of zoning appeals will vote.

That is the -- once an application, let's say that an application is denied, once that application is denied, that essentially is the end of the road in so far as Town procedures are concerned. The next step is that an applicant can go forward to the circuit court, but the town is finished with that, with one exception. There is an opportunity for a motion for reconsideration. In my experience, none of those have been granted, but you're welcome to file a motion for reconsideration if your application is denied. But then, once that is finally ruled on, and assuming that is denied as well, then you go on to the circuit court.

APPROVAL OF THE AGENDA

GLENN STANFORD: May I have a motion please to approve the agenda?

DAVID FINGERHUT: So moved.

JOHN WHITE: Second.

GLENN STANFORD: All in favour?

ALL: Aye.

GLENN STANFORD: Thank you.

APPROVAL OF THE MINUTES

GLENN STANFORD: We have the minutes before us from the meeting of February 22. Does anyone have any additions, corrections, edits, or errors in those minutes? Hearing none, do I have a motion to approve those minutes?

LISA LAUDERMILCH: So moved.

GLENN STANFORD: Is there a second?

JOHN WHITE: Second.

GLENN STANFORD: All in favour?

ALL: Aye.

GLENN STANFORD: Opposed? Motion carries.

NEW BUSINESS

[00:43:31]

Public Hearing VAR-352-2016

GLENN STANFORD: The next will be a public hearing on variance number 352-2016. John Qualey on behalf of Frederick Craig, and Shirley Dorsey, requesting a variance from the LMO sections relating to adjacent street setbacks, and

adjacent street buffers to allow construction of two single-family attached homes within the adjacent street setback and buffer on both sides of the property. The property is located at 28 Bradley Circle, and is identified as parcel number 96, on the Beaufort County tax map. Nicole?

MR. NORTH: Mr. Chairman?

GLENN STANFORD: Please.

MR. NORTH: Before you proceed, I have a conflict from my law office, my law practice, which would require me to recuse myself.

GLENN STANFORD: Thank you.

NICOLE DIXON: Okay, so I'll be presenting the variance number 352-2016. This is a rather difficult one to try to explain. I tried to be as detailed in the report, I know it was kind of lengthy and seemed redundant, but I wanted to make it clear what restrictions did apply to the property, and then what the applicant was proposing. So I'll try to go through all of that for you. I'd been working with Radu Chindris, who is the developer of the property. We met several months ago, several different times trying to figure out what the restrictions are of the property, how they apply with the way the current configuration is, and then what he could possibly do in order to develop the property.

So I have the vicinity map up in front. The two properties in question are these two right here. The two properties are part of a five-lot subdivision that was approved back in 2003. So it's these two lots right here, lot one and two. There was an existing home that straddles those two lots. I would imagine that the intent back in '03 was that that house would be demolished and two homes would be built. This is kind of a closer up, as built of what exists out there today. So this is lot one, lot two, the existing home. There's an access easement that runs through the property, and leads back to the other three lots that were part of that original subdivision approval.

This exhibit kind of demonstrates what the restrictions currently are, the way the two lots are configured. The hatched area for lot one depicts what the buildable area is, once all of the LMO requirements are applied, and then for lot two, this smaller hatched area is the buildable area of lot two. So for lot one --

GLENN STANFORD: Dimensions of those please? Especially the smaller one.

NICOLE DIXON: The smaller one? Radu, do you know offhand what the square footage of just that smaller buildable area was?

RADU CHINDRIS: Probably under 25 x 25, so that's very, very small.

GLENN STANFORD: Thank you.

NICOLE DIXON: So for lot one, the lot in front, as is currently configured has a 20-foot setback and buffer from Bradley Circle in the front, and a 60° setback angle. There's a 20-foot setback, and a 10-foot buffer from Sweet Grass Manor, which is this access easement that runs through the property here. That can be reduced to a 10-foot setback and buffer, because it's a corner lot, and further reduced by 20% to eight feet, because it's in the resort development zoning district. So really it's an eight-foot setback and buffer on -- adjacent to the easement for lot one. And then to the south of the buildable area there is that 20-foot setback and 10-foot buffer from Whelk Street which is an access easement that runs through the property south of the subject lot, but because it's an access easement, they have a setback buffer from it as opposed to just and adjacent residential use.

Again, it can be reduced by 20%, so they have that eight-foot requirement there. And then they have a five-foot setback in the rear, in between lot one and two, right here, per the LMO. And then for lot two, because it's located behind lot one, it's not considered a corner lot. So they have a greater setback and buffer restrictions from Sweet Grass Manor access easement. So because that's their frontage, they have a 20-foot setback and buffer which, because it's in RD development, a resort development, zoning district can be reduced to 20% to a 16-foot setback and buffer. And then they have the same to the rear, a 16-foot setback and buffer from Whelk Street, and then they have the 20-foot wetland buffer to the tidal buffer, or the tidal marsh, so they have this 20-foot wetland buffer here.

So with all these LMO requirements, this is what they would be left with, and so staff worked with Radu, like I mentioned, several times, trying to figure out what exactly their LMO requirements were, and how he could redevelop this property. Because it is two lots right now, he would like to maintain and have two lots, but be able to redevelop it, and be similar in style to the other redeveloped lots out in this neighbourhood.

So what he is proposing is to reconfigure the two lots. So instead of having a home in the front, and one in the rear, situate them side-by-side, like the remaining homes that are out there. So he's proposing, you can see, the blue is what he's proposing. He's proposing to encroach, or have two homes attached at the first level, and then detach at the second level and up, so that there is views and open-air between the two homes. But just to have a minimum width home for each lot, have it attached, and encroach into the adjacent street setback and buffer on the north of the property and the south of the property, and to eliminate the setback angle requirements.

BOARD MEMBER: Nicole.

NICOLE DIXON: Sure.

BOARD MEMBER: [Inaudible 00:50:14].

NICOLE DIXON: Yes, you do. So right now, with the way it's reconfigured, they would have the, let's see, the eight-foot setback and buffer from Sweet Grass Manor. So this is the 20-foot access easement. Instead of having an eight-foot setback and buffer, they're requesting to have a one-foot setback and a zero-foot-buffer. So they want to build right up to the edge of the access easement, and then on the southern property line, have a four-foot setback and three-foot buffer from Whelk Street.

GLENN STANFORD: Show us again, please, the previous drawing that shows the configuration as currently platted. Okay.

JERRY CUTRER: Does this result in an increase in the number of square feet?

NICOLE DIXON: Of the home that could be built? Is that what --?

JERRY CUTRER: Right now, in the top drawing you've got lot one and two, and [inaudible 00:51:31].

NICOLE DIXON: Well there are two separate lots right now.

JERRY CUTRER: I understand that.

NICOLE DIXON: Okay.

JERRY CUTRER: Let me rephrase my question. You say there's two hatched areas, lots one and two on the top drawing, [inaudible 00:51:51] determine the square footage on those two, does the variance include on the bottom drawing, does that have more, less, or the same amount of square feet [inaudible 00:52:05]?

GLENN STANFORD: Square feet of buildable area.

JERRY CUTRER: Buildable area.

NICOLE DIXON: Well, the exhibit below, attachment F, this isn't showing -- this is showing what he's proposing. This is showing what he's asking to encroach into. So the top is showing what's buildable per LMO requirements, the bottom is showing what he's proposing to reduce the setback and buffers to so he can build that. So I would imagine that the bottom exhibit would have a greater square footage than the top exhibit, if you were to add them together. Does that answer your question?

JERRY CUTRER: I think so.

NICOLE DIXON: Okay.

GLENN STANFORD: Nicole, did you look at, as you were working with this applicant, did you look at the possibility of a variance as to lot two alone?

NICOLE DIXON: I did make that suggestion to him, and I think he'd prefer to have them side-by-side, so that they were similar to the other homes out there. I think he was trying to be in harmony with the other lots, and I took some pictures, and included it in the report.

GLENN STANFORD: Yes, show us those again, if you would.

NICOLE DIXON: This is the existing home right now. This glare is all about -- the other thing I wanted to mention is the existing home right now encroaches maybe two feet into the access easement, and on the other side encroaches a little bit over the properly line. So by redeveloping and bringing it in more, it's actually -- even though he's requesting to vary from the LMO requirements, it actually bring it more into compliance so that that access easement will be a clear 20 feet. And on the other side obviously will not be over the property line. So creating a greater distance from the adjacent homes. You can kind of see here where the corner of the house encroaches into the access easement. And on this side their stairs into the house encroaches over the property line. But I think what the applicant was trying to do was be more in line with the taller, narrower homes, side-by-side, out in the neighbourhood, as opposed to having one in front of the other.

GLENN STANFORD: Those are all detached homes, are they not?

NICOLE DIXON: They are not attached, they detached homes. And this is across the street. That's one of the homes across the street. And then, when you look behind the house, if you go back through the access easement, this is what -- these are the beachfront homes. So they're all next to each other, and I believe that's what the applicant is requesting to do. So yes, to answer your question, I did mention, you know, keeping this configuration, and possibly getting a variance just on that side, but I think he chose this route instead. And he's here today to answer any questions you have on why he chose that.

GLENN STANFORD: We can't act on a theoretical application, but I was just curious about the negotiations that went on there.

NICOLE DIXON: And you can see from the pictures that I just showed you, they're all kind of tall and skinny, none of them, or the majority of them do not have setback angles when they were constructed. Why, I'm not sure, but the applicant is requesting to eliminate the setback angle requirement as well, so that he could be more in line with the redeveloped homes out there. So are you clear on kind of what the applicant is requesting? I'll go through the criteria --

GLENN STANFORD: I think so.

NICOLE DIXON: So criteria one, that there are extraordinary exceptional conditions pertaining to the particular piece of property. I already kind of went through that, but the two properties are bound on the north side by Sweet Grass Manor, the 20-foot access easement that runs through the property, and on the south side by Whelk Street, also an access easement. Both access easements require setbacks, setback angles and buffers from it, as detailed, and what I mentioned before. And Lot two is bound by the tidal wetland, which requires the 20-foot buffer from it. Staff finds that these are extraordinary exceptional conditions are pertaining to this property. Even though there are setback and buffer requirements for the other residential properties, the setback is greater from the street. So staff finds that this is extraordinary.

Criteria two, that these conditions do not generally apply to other properties in the vicinity. The majority of the properties in the vicinity do not have all of these extraordinary conditions, while they do have some of them. You know, some do have frontage on tidal creek, some do have access easements next to them. There's only one property in the vicinity that has an access easement to the north and to the south. So staff finds that the extraordinary conditions do not generally apply to the other properties in the vicinity, because there's only one that I found that it did apply to. So staff finds that they meet that condition.

Criteria three, because of these conditions, the application of the ordinance to view this property would effectively prohibit or unreasonably restrict the use of the property. Because there are two lots currently, the applicant is trying to redevelop the property while retaining two lots, and with the setback, the adjacent street setback, setback angles, buffers, wetland buffer requirements, it appears that lot two, as it exists in the current configuration is unbuildable, as you can see up here in attachment E. And with the proposed reconfiguration, each lot becomes a corner lot, and reduces those setback and buffers on the side, so they just have those eight-foot setback and buffers. Again, there requesting to reduce the south side to four feet, and the north side to a zero-foot setback. But staff finds that all the conditions that apply to this property, and the application of the ordinance does restrict the buildable area, and the use of the lots.

If the application, or the applicant was to meet all of the setback and buffer requirements, I think they would probably be left with one structure, like one larger structure, as opposed to retaining the two lots that they're allowed to have. So staff finds that the strict enforcement of the LMO does restrict the applicant from developing two homes, as they have the right to. And that they meet criteria three.

Criteria four, the authorization of the variance will not be of substantial detriment to the adjacent property or public good. Several of the homes in this neighbourhood have been redeveloped in the same manner, that what the applicant is proposing, the taller, narrower structures, and do not have setback angles, or setbacks or buffers from the adjacent easements. Like I mentioned, the existing home encroaches over the access easement and into the adjacent property, so by redeveloping, it actually brings the property more into conformance and creates a greater separation in between the homes.

Staff has received several, at the time I wrote the report, I received one phone call from an adjacent property owner, I believe that she lives across the street, who was in opposition of the application. I have received several other phone calls since then, in opposition of the application, and I did receive an email today, voicing her opposition, and I also received an email today in support of the variance. So, you want to take one and pass it down [inaudible 01:00:10].

GLENN STANFORD: Thank you.

NICOLE DIXON: Some of the neighbours are concerned with the proposed height in this district. The height is allowed to -- they're allowed to build up to 75 feet if they meet all LMO requirements. Obviously, with the variance they're not going to be meeting all LMO requirements, but they're not asking to encroach any higher than what they're allowed to do. And some of the adjacent owners are concerned with parking and safety concerns for pedestrians and the traffic that will be created, you know. So I tried to ease some of their concerns that there's two lots there now, that they are allowed to have two homes, they're not going to be increasing the traffic. But they still have concerns, so I know that there are several people here today that are probably pushing to speak against the case.

That being said, staff did not find that what the applicant was proposing would be a detriment to the adjacent property and the public good. It's kind of feeling right in line with the other redeveloped homes out there, and staff finds that they do meet this criteria, and because they meet all four criteria, staff is recommending an approval. I know that's kind of a lot of information to digest, do you have any questions, or --?

GLENN STANFORD: I have a question for you, Nicole.

NICOLE DIXON: Sure.

GLENN STANFORD: The two existing lots are side-by-side, and that's roughly east and west?

NICOLE DIXON: Yes.

GLENN STANFORD: We can call it that for now. And then the proposed development, development of the existing property would have one structure in front of another, whereas the proposed redevelopment would have two structures adjacent to each other?

NICOLE DIXON: Correct.

GLENN STANFORD: In effect, what we're doing by granting this variance is replatting the property, are we not?

NICOLE DIXON: They would have to come in for a reconfiguration plat, and have that stamped by staff. It's already two lots, so they don't have to subdivide or anything, they would just do a reconfiguration plat. I think we couldn't stamp that without you approving the variance. So that was the first step in the process. Should you grant the variance, then they would have to submit a reconfiguration plat in order to flip it sideways.

GLENN STANFORD: So the reconfiguration plat would still show essentially lots one and two, but instead of front and back, they would be side-by-side --

NICOLE DIXON: Correct.

GLENN STANFORD: As shown in the drawing?

NICOLE DIXON: As shown on attachment F, yes.

GLENN STANFORD: And so if the variance is granted, that does not allow the construction of those two houses unless and until a reconfiguration plat has been submitted and approved by the town, is that correct?

NICOLE DIXON: Correct, and they would also have to go through the building permit process. So staff would look at the building permit to make sure that they're matching what was approved with the variance, and you know, so there's several steps. This isn't just the sign off, this is --

GLENN STANFORD: Of course. Other questions?

JERRY CUTRER: Chairman, I'd like to pursue a parallel line of enquiry. Nicole, in this, in the zoning that applies to this area along Bradley Circle, assuming there was sufficient acreage, can two homes be built on one lot?

NICOLE DIXON: Yes.

JERRY CUTRER: Okay. If they were, if they were not two parcels here, but one, could they do what they want to do without a variance?

NICOLE DIXON: I just want to double check to make sure that -- Teri might know offhand, if it's two or more homes on a lot, it will be multifamily or --?

TERI LEWIS: Three or more.

NICOLE DIXON: Three or more? Yeah, so single-family.

GLENN STANFORD: I'm sorry, the zoning configuration is what currently?

NICOLE DIXON: If it's three or more homes on one lot, it would be considered multifamily, but for just two, it would be considered single-family. So as long as they have enough density, they can --

JERRY CUTRER: So if there's enough density, the existing zoning would permit two homes on one lot. My question is, there are, it's a fact that there are two lots in existence, two parcels. My question is, if there weren't, if there was simply one, with the combined dimensions, are we in the same place we'd be today, would we be in the same place we are today, or could they develop what they want to develop without a variance?

NICOLE DIXON: No, they're proposing to encroach into, there's still those setback and buffers from the access easement. So regardless of whether it's one or two lots, they still have those requirements of the LMO.

GLENN STANFORD: Jerry, I understand your need for clarification there, but I think we have to deal with the application as before.

JERRY CUTRER: understand, my confusion is, it seems to me what you're really trying to do is re-plat two lots, and I'm confused over why that's before the Board of Zoning Appeals, and not the Town Council as I would think.

GLENN STANFORD: Because that can't be done unless this application for variance is granted. Because otherwise, there would be encroachment. So the first step is the variance, and then they have to go through the further development requirements.

JERRY CUTRER: Even if the two existing parcels were combined, they still need the variance?

NICOLE DIXON: Yes.

JERRY CUTRER: Okay, that's really my question.

NICOLE DIXON: And to do the reconfiguration plat, that's just staff level. So he would just submit it to me, I would look to make sure that they met the LMO requirements, and I would stamp it if it did. But because they wouldn't, and with what he's proposing, that's why we suggested he comes with the variance first. Because I can't stamp a reconfiguration plat that doesn't conform with the LMO.

DAVID FINGERHUT: May I ask a question?

GLENN STANFORD: Please.

DAVID FINGERHUT: Thank you. Nicole, in criteria one, actually starting with criteria one, there are extraordinary and exceptional conditions pertaining to this particular

piece of property? When you say this piece of property, do you mean all plats, are you treating them as if they're one piece of property in your analysis here. Because I -- some of these are true for lot one, and some are true for lot two, but a lot of them don't seem to be true for both. So I'm trying to understand your analysis.

NICOLE DIXON: Well I kind of looked at them as a whole, but I addressed them in the background of it, separately, so you can see where I listed out lot one, and then lot two, and what -- all the LMO requirements that would be applicable to it. So if you look at page two of the staff report.

DAVID FINGERHUT: Yes, but --

NICOLE DIXON: So as it currently is configured, I'm considering it one property. I mean obviously, it's two lots, but I'm not going to do a separate, you know, report for each lot. So I'm looking at it as a whole, but kind of listed out what the requirements were for lot one and for lot two.

DAVID FINGERHUT: Right. Because I guess what my concern is, is that if you do look at them separately, I mean, again some of the things, for instance criteria two; these conditions do not generally apply to other properties in the vicinity. That's certainly true for lot two, because of the unique setback requirements, but in your presentation you indicated that really isn't so for lot one. So I guess my problem with this then is, does this really apply then?

NICOLE DIXON: Well, I will still think that lot one has extraordinary conditions. I mean the fact that there's the access easement that runs through it, they have the setback and buffer from that, they've got the access easement to the south of the property, so they have a setback and buffer from that. I mean, I would still consider that having some extraordinary conditions.

DAVID FINGERHUT: You would? Okay. Okay. And then just my last question was, I think I heard you say that zero-foot setbacks are common in this area. Is that true?

NICOLE DIXON: The setback angles. I showed you the picture of all the homes that are built straight up. The setback angles, the way they're measured is from the base foot elevation, and then 20-feet high, and then they have to angle in a certain degree. You can see from those pictures the most of those redeveloped homes don't have, or did not meet the setback angle requirements. So they're asking to eliminate that requirement.

DAVID FINGERHUT: Right, but the request for variance also brings it right up to the property line, I think is what you said and then you indicated --

NICOLE DIXON: It brings it up to the access easement line, and then --

DAVID FINGERHUT: Excuse me, yes.

NICOLE DIXON: And yeah, there's a lot --

DAVID FINGERHUT: That's common in that area? That's what I was asking.

NICOLE DIXON: It is common in the area, and how or why that happened, I'm not sure, but looking at the LMO as it is today, and what exists out there today, we wouldn't allow it without a variance.

DAVID FINGERHUT: Right. Okay. Thank you.

GLENN STANFORD: Other questions? We'll hear from you, Mr. Qualey, or whoever.

RADU CHINDRIS: I'm here. Mr. Chindris.

GLENN STANFORD: Excellent. Again, if you would identify yourself.

RADU CHINDRIS: My name is Radu Chindris. I'm a developer, and helping the applicant through the variance process. I've been in the front of the board a few months ago, and I'm very familiar with the area. I came to understand what's happening, what's happening with the new LMO, and therefore I feel fit to speak in front of you today, to try to answer questions and help through the process.

The first thing that I want to show is a picture of the two homes built right next to the property in question. As you can see the two homes are -- they have access from the main road, which it's our intent to do with the redevelopment of the property. They, again, tall, skinny homes. They have a two -- all of them, they have a two-car garage, and that's one of the requirements that we're trying, one of the goals that we're trying to meet is to have a two-car garage by redeveloping these properties. Those are in a resort, obviously, those properties are in a resort area, parking is very important, as well as traffic on the street.

So I want to answer to some of the potential questions with the neighbours. There will be two parkings in the front of the homes, and then there will be four more parking spots underneath the homes, on each individual home. Second, I'd like to show the current --

GLENN STANFORD: Wait, the subject property, 22 Bradley, is it to the right, as we are looking --?

RADU CHINDRIS: It is to the right. Yes, yes sir and I have a better picture here.

GLENN STANFORD: Yes, thank you.

RADU CHINDRIS: This shows the property on the right, and then it shows the access easement, and the beach access easement as well. Which the beach access easement is next to the yellow house between the access easement for the homes in the back, and the property in question.

Second, I would like to show an existing survey, and if I'm not mistaken, the current house sits approximately five feet in the front, over the platted access easement. So when we were looking to redevelop the property, I have one-foot setback from the access easement, we're looking at about six feet from where the corner of this existing house is. So obviously traffic, and the flow to the units in the back will be definitely improved, as well as the clearance between the existing house, and the house north to this house as well.

The side back on the south of the property, which encroaches over the property line. So here we'll have a three-foot buffer and one-foot setback, with a four-foot setback from the property line. So we feel that by getting a variance granted today here, will actually improve the condition of the property. At the same time, I want to show another picture of the house south of this, of 28, and as you can see, there is a 15-foot access easement. This current house is built all the way to the access easement line.

GLENN STANFORD: Again, Bradley Circle is to the left of that photograph? 22 Bradley Circle.

RADU CHINDRIS: Bradley Circle is in the front, it's basically in the front. So this is perpendicular --

GLENN STANFORD: Your property, 22 Bradley Circle?

RADU CHINDRIS: 22 Bradley Circle is south of this -- of 28, which is, which is actually right off this house in the picture.

GLENN STANFORD: Right, thank you.

RADU CHINDRIS: I also want to show a picture of the, I want to show a picture of the --

AUDIENCE MEMBER: Can you go back to that last picture? Go back to the last picture you showed where the subject property is.

RADU CHINDRIS: The subject property is right here, 28, it's --

GLENN STANFORD: Thank you.

RADU CHINDRIS: Yeah.

AUDIENCE MEMBER: That's what he was trying to --

RADU CHINDRIS: Okay, I'm sorry. I apologise.

GLENN STANFORD: Poorly worded question, thank you.

JERRY CUTRER: The question is 22 Bradley Circle, that's the property [inaudible 01:14:21]. This is 28.

RADU CHINDRIS: Yes.

GLENN STANFORD: Stuck in my mind for some reason.

RADU CHINDRIS: Yeah. This is a picture of the homes across the street. There was also a redevelopment project done in I think 2008, 2007. There's a 15-foot access easement between the two homes, that service the home in the rear, as you can very well see, they have no setback angles, and they built all the way to the access easement line, which is pretty much what we are trying to achieve here today. So we're trying to redevelop the property along the lines of the other property already developed there. That's all I have to say. I guess the staff, it's been very comprehensive in their report, and they pretty much cover, I think, all the questions and items related to this property.

GLENN STANFORD: Any questions? Thank you for your presentation.

RADU CHINDRIS: Thank you.

GLENN STANFORD: Nicole, did you have any follow-up?

NICOLE DIXON: No, I just wanted to show you an exhibit that I failed to show you earlier. I asked Radu to get me an exhibit that showed if they were to meet the LMO setback angles and requirements, like that's what they would be left with. I included that in your report, but I failed to mention it earlier. So I just thought that that was a good exhibit to show.

GLENN STANFORD: That is a good exhibit, it makes it much more clear. Anything else on behalf of the applicant? All right, we will open this up for public comment. Does anyone wish to speak? If you will come up and identify yourself, and tell us where you live, and express yourself. Our rules give you three minutes.

MATT TODDY: Hi, good afternoon. My name is Matt Toddy. I'm an owner of Bradley Circle lot number eight, across the street. The couple of points I wanted to make about this proposal, that I think, why it should not be approved is that the LMO -- I think the issue here is what is the current LMO provide for. The LMO clearly intends that there be separation between buildings; more light, more air circulation, less density, and more safety, by requiring setbacks from streets and right of ways easements, not just from property lines.

This entire proposal relies upon the street easement to create the separation. It also does not appear to take into account that there is a pedestrian walkway easement, which is not shown on this attachment F, and I'm just not sure exactly the dimensions, based upon the application, but the walkway is right adjacent to Sweet Manor, Sweet Grass Manor, the 20-foot access easement.

GLENN STANFORD: This pedestrian easement the you're referring to, is that what was referred to earlier as the beach access easement?

MATT TODDY: It's the beach access easement. Yes, sir. And it runs in favour of everybody on Bradley Circle. So there's a lot of traffic that is going across that easement. Currently, there is a buffer between that traffic and the roadway, the street access easement, a bit of a buffer. It appears to me, from exhibit F that if this is the property line of the adjacent property that this -- that access easement, the beach access easement seems to be disappearing.

NICOLE DIXON: It's not, it's just not -- this is the, this attachment here was just showing what they're proposing. It's not going away. That's a recorded right-of-way easement actually, and that is not going away. That's off of their property, and it has nothing to do with their proposal.

MATT TODDY: Okay, so the access easement would still remain there?

NICOLE DIXON: Yes.

MATT TODDY: Okay. Okay, so I think the issue, you know, under the LMO, the LMO, you know, was adopted for purposes of safety. The safety is to have setbacks from street right of ways, not adjacent property lines. This eliminates any setback from the street right-of-way, or gives a one-foot buffer. It also proposes up to, I think it's 50-foot, so the drawing of the proposed building goes four storeys over the parking. So that's substantially higher, it's another floor higher than all the other buildings around there.

So it is not the same as the other buildings. What you're going to end up with is a very large building, 50 feet high, if not more, right up to the property lines, that's going to create very little room for that street access easement. Trucks go through there, pickup trucks, delivery trucks, garbage trucks, and it is right next to the beach access walkway easement, with a lot of kids and other folks walking around. So I think, it's going to squeeze that space. Just by the nature of that building having no setback, which is required by the LMO, and I think, creates a substantial safety hazard for the community.

The existing properties, some of the existing properties that were shown, the yellow buildings to the left are close together. They apparently got easements, or variances at the time, but I think those were just between the two buildings. There's no access way in between there, so they don't have the safety issue that this proposal creates.

And then my last point would be that these existing lots were put in place by the current owner. They developed the subdivision, created the two lots, I believe it was in 2003, so I don't believe there's any unnecessary hardship to this owner. They created the current setup with the two east-

west lots, instead of north-south. I would also say that with respect to the height of the building, and just, you know, using up every foot on the property, in addition to safety, in addition to not having setback angles, it's going to reduce the amount of light that comes in, the air circulation, and I think it will have an adverse effect on the value of the other properties around.

GLENN STANFORD: Thank you, sir.

MATT TODDY: Thank you.

GLENN STANFORD: Does anyone else wish to speak?

CHARLES GIBSON: Thank you.

GLENN STANFORD: If you'll identify yourself, and also I need to ask you to sign in the roster, I forgot to mention that.

CHARLES GIBSON: Yes, sir. I'm Charles Gibson. I'm the owner of 38, the yellow house that was to the left, that you saw on the documented diagram, and I appreciate the opportunity to come forward to the committee to indicate my opposition to the variance request. And I brought along a couple of pictures to help orient a little bit further if I could?

GLENN STANFORD: Please.

CHARLES GIBSON: I only have three main points. The first one is potential for to impair public safety. There are probably no less than 100 or so pedestrian trips back and forth across the beach access easement the goes right beside my home across the wooden bridge, particularly during the high traffic time, and the tourist season. A lot of kids going on bicycles, dogs, families, etc. and there's a natural buffer that exists today, right now, and this is my poor attempt as a layman to try to demise the property to show you.

But fundamentally, that's a 12-foot easement, that's the -- tape measure right here, 12 feet where these trees are. And these are three old-growth trees that are probably 40-45 foot tall with circumferences of about 60-65 inches, and they act as natural buffer for families as they walk along here to now move down through the pedestrian beach access, all the way across the bridge, and they act as a natural buffer right now probably about 60 feet for that driveway. So I get very concerned that, in the event that these trees are removed, or that driveway encroaches even further, that you've got folks that drive across for pool maintenance. We have -- thank you, thank you. I used to be a coach, so I didn't know I had a problem with speaking loud, but --

GLENN STANFORD: We're trying to record what you're saying.

CHARLES GIBSON: Ah, so you can see garbage trucks going across, you can see all kinds of delivery people. So that is a fairly well-used access area across there. So I'm very concerned about imperilment of public safety as a consequence of anything that's going on with this.

Secondly, within the context of maintaining architectural harmony or integrity of the area, there are no four over storey homes there. There are no four over garage storey homes there. So this essentially would be 70+, up to 75 foot structure, if you reduce to the setback angles, then it would go 75 feet potentially upright beside my home, that would create almost a complete barrier, particularly if those trees are taken down and to where there's no buffer between my home and that home. And would impede the view of anyone that is coming off of Bradley Circle to make that turn onto that access road where you have, like I said, kids on bikes going up across that bridge, dogs, people, families moving across there.

So once again, I think that sheer fact that we're talking about a structure that could be that tall, with no setback angles, which I can't find in any point in time where you have agreed to zero setback angles in the last two years, that would create the kind of imperil safety hazard that this would. And I guess the -- and it's also not consistent with the architectural harmony of the area, because there are no four over ones.

And in terms of orientation on the lot, there are homes directly across that wooden bridge, where there are two homes front to back, not necessarily side to side. So it is inconsistent to make the comment, or not correct to make the comment that there are no homes that are back to back, because they simply can be done, and they are done, and they are right across that bridge. And that's the access I'm talking about, and you also can see that yellow line I was using to demise property lines, that's that same line right there, that green one. So you can see how close it is.

And then finally, when you talk about undue hardship, I think that I would echo the comments of Matt a minute ago that the property owners that are now claiming undue hardship, are the same ones that, by design, subdivided these into five separate lots to begin with. And then if you looked at the opportunity, as you indicated earlier, putting a single dwelling home on there, you could put a 3600 ft.^{2} home according to the individual that's seeking the variance right now. And if you look at the value that they're asking for that lot, coupled with what the price value of that home would be, it's consistent with everyone else.

So you're not under an undue hardship by putting a single dwelling home on there. You'd have comparable, or maybe even better value than the existing homes. So when you look at undue hardship, I don't think it meets that criteria in terms of from an economic impact standpoint. I think it does imperil the public safety, as the consequence of the 75 foot building

that then inhibits the views, and I don't think it is architecturally consistent, or in harmony with the other homes around the area. I appreciate your time.

GLENN STANFORD: Thank you.

CHARLES GIBSON: Yes, sir.

GLENN STANFORD: Does anyone else wish to speak to this application? Nicole, you had a clarification?

NICOLE DIXON: I just wanted to point out because I know a few people have brought this up now, with the fact that there is no other homes out there that have the four story over parking. The lot 22, that got approval several months back. This was what was approved for 22 Bradley, and they are four storeys over parking. So it will be consistent with what's being redeveloped out there. So I just wanted to bring that up to your attention.

GLENN STANFORD: Thank you.

CHARLES GIBSON: My point was there is none now. There's currently none.

GLENN STANFORD: Understood. And again, if you'll identify yourself, and put your name on a little roster there please.

JIM CALLAN: You got it. I'm Jim Callan, and I own the property at 31 Bradley Circle. So, while that's true for 22, but I just want to note that that's the same developer that's asking for this. So on 22, they're going four storeys up, and attached, and now they're going to 28, asking for two buildings, four storeys up and attached. So previous to this developer, there are no homes going up four storeys, or attached.

And also, for the record, while a lot of properties are being redeveloped out there, there are some people like myself that still have a big plot of land and a regular old beach house. And across the street from me there's that way, and other people around the corner, and those properties have been maintained, or rehabbed into nice homes.

So not everything out there are three and four storey homes, and I would just reiterate that my kids, my dogs, guests, friends, you know, that beach access does get a lot of traffic. And by setting the buildings up so close to the road, it would be my concern of people turning and having access, and good site visibility, when little children, you know, are running across the street, in and out all the time. In the height of season, it can be hundreds and hundreds of people a day. So it's really only recently under this development of 22 and 28 by the same people that you're seeing storeys and things going up four storeys and attached.

GLENN STANFORD: Thank you. We understand.

JIM CALLAN: Thank you.

GLENN STANFORD: Does anyone else wish to speak to this place? Please, ma'am. Ladies first.

TAMARA BECKER: Sorry, I didn't realise there was one other person that hadn't -- hi, I'm Tamara Becker --

GLENN STANFORD: And if you'll put your name on our little roster there.

TAMARA BECKER: I absolutely will.

GLENN STANFORD: Thank you.

TAMARA BECKER: That's right, okay. I'm Tamara Becker and I live on Bradley Circle as well, and a number of things. We've talked about the beach access and how much traffic it does get, and that's absolutely a fact. But in addition to that, in terms of safety, as that house moves forward onto Bradley Circle, which is a narrow road to begin with. And the gentleman was kind enough to discuss the parking considerations that they're taking into account for underneath each of those buildings, is a plus two additional on each, which is 12 cars that are going to be coming and going on that small Bradley Circle road. Pulling in and out.

So yes, we've got the pedestrian access easement that's been blocked with the view, and encumbered. We also have the concerns about those 12 cars that now will be coming and going outside, and these are renters. And in all due respect to the developer, and the current applicant, this particular piece of property is actually – there's a sale pending, and the person who's purchasing the property is the same person who came before this board and got approval for 22.

GLENN STANFORD: Yes, ma'am.

TAMARA BECKER: So that's the furtherance of the future ownership. As you look at it, he seems to want the best of all worlds. He wants the LMO to apply when the LMO is convenient for him, and he wants the LMO not to apply when it's to his detriment, to a financial hardship that he may incur. When it's to the community's detriment, if he should build this, as I still maintain number 22 was, and along with the same argument that I made at that point, you see the angle setback and how that creates a problem for him with how much of a -- the storeys he wants to build up. It also creates a problem for me. My house, again, is directly in line with this, and as that's going to stand, I will no longer have a view of the ocean, much less the breeze from the ocean, much less the sky. We're going up 75 feet, I'm two storeys above my garage. So any value, property value that I had to my property with a view, or a breeze, or knowing that you're even at the ocean, is taken away when this building is created in such a manner.

In addition, going back to the original approval of this piece of property as lot one and lot two, back in 2003 I believe it's been mentioned. If that piece of property, lot two, was the dimensions of 20 x 25 I think was stated, there was never any intention that there was going to be a sizeable home of this nature when it was planned and approved, that at least lot one, and lot two. Therefore, when you take that same analysis, well he had two lots to begin with, we're just going to replat them. It's not the same, because originally it was approved based on a home, and then maybe a cottage or a little guesthouse. You couldn't have much more with 20 x 25, right? So this is totally against what was the original intent, I believe, of the approval back in 2003, when this lot was split. So those are a number of things. I certainly don't want to use up all the time, but I'm happy to answer any questions, or clarify anything that I may have said in my little presentation.

GLENN STANFORD: Thank you for your presentation.

TAMARA BECKER: Thank you for your time.

GLENN STANFORD: Are there any questions? There are none. I believe there was another gentleman who wished to speak?

MARK DAVIDSON: Good afternoon. My name is Mark Davidson; I own one of the properties right across the street. And I'll make this brief. I know, I want to reiterate what everybody said here about safety concerns and that kind of thing. There are, just being in that area, when garbage trucks come through, and if you limit the space and, you know, that these garbage trucks go down, it's right next to that beach access easement, and there's significant pedestrian traffic, there are kids on bikes, and so that's one of my main concerns. And just to talk about the, you know, the four living areas over the parking, and again, if these are used for rentals, or you know, it gives another floor for family, you know, there's typically multiple families that come and rent these types of properties. So the amount of parking that's really needed, you can have four, five, six SUVs coming into these properties.

Now the existing homes in the neighbourhood, although one has been approved at the other location for something of this size, the amount of parking that's required for beach rentals, I'm just concerned that there's going to be parking out on the street. You know, another family comes, and typically they max out the parking on each property as they stand, but this is more typical of what's in the neighbourhood, three floors over parking. And there's parking issues there now, today, and typically the driveways are maxed out, and there's cars in the garage.

So I just wanted to make that last point. But again, I -- just to reiterate everything that was said about safety, the beach access, and you know, eliminating some of these requirements. Thank you very much.

GLENN STANFORD: Mr. Davidson, if you'd put your name on that roster, please.

MARK DAVIDSON: All right. Thank you.

GLENN STANFORD: Does anyone else wish to speak to this issue? One more.

TERRI GIBSON: Hi, my name is Terri Gibson. I live at 30A Bradley Circle, and I just wanted to make sure that we have assurance that those trees are not going to come down, regardless of however you all have voted.

GLENN STANFORD: We have nothing to do with the removal of trees in conjunction with this application.

TERRI GIBSON: Okay. All right. I did look back, and I looked at the minutes for the board of zoning for the last -- since 2013. I do not find that there's been any request for zero setback angles. Even on the property 22, that was not asked for. So I would ask that you not allow the zero setback angles on this property.

GLENN STANFORD: Any questions for Miss Gibson? Thank you. Anyone else wish to speak as part of this public hearing? Last call? The hearing is closed. Now I will give the applicant, and I will give the town an opportunity to further respond to the points that's been made. Did you wish to add anything, Nicole?

NICOLE DIXON: Not unless there are any questions for me.

GLENN STANFORD: Okay. Good. Please.

RADU CHINDRIS: Thank you for allowing me to answer a few questions, or concerns. First, the trees that were presented in the picture, they are on the access easement, on the beach access easement, so therefore, we are not allowed to touch them, or remove them. So your concern from that in fact should be covered. I also want to point out that there are currently two existing homes that are four storeys over the garage, and I wanted to show you some pictures. When those buildings were built, this will be first storey, second storey, third storey, and then this will be the fourth storey, which is hosting the stairwell, as well as a recreational area, and then they have a rooftop deck, which from the building department perspective is considered a fourth storey, a liveable fourth storey.

So I would like to address this concern. We are not going to increase the height more than it's already there, which are existing, some of existing four storeys over the garage. This is another picture of the same house from the rear. As you can see, there's a room above which will be the fourth storey over the garage.

Same thing with number 30 I think, they have a rooftop deck, with the stairway access, which from the building perspective, is considered a fourth storey over the garage. So with that, I would like to answer some of the resident's concerns about having four storeys over the garage in the neighbourhood.

The other concern is obviously parking and flow and vendors. You know, one of the previous residents, I'm sorry, I don't remember the name, she has her house under construction right now, she's almost finished. I'm sure she had vendors servicing her own construction, and I'm sure she benefited from rebuilding, or building a new house, so we will not be doing something else that some other people did not do.

And again, the last point will be, all the homes that are three storeys, plus over the garage, that were redeveloping the neighbourhood, were not subject to a setback angle, because the previous LMO did not have a site setback angle. We are still subject to the setback, the front setback angle, which is a 60° setback angle, which will basically further pushback the last floor, which will basically be on the roof, and the homes will look similar to what's existing on these pictures.

And then, their concern about the fact that when Mr. and Mrs. Craig, they redeveloped the subdivision in 2003, at that point, that LMO that was in place was not restricting the property to be redeveloped. So at that point, lot two would have been a buildable lot. So as -- what I'm trying to say I guess is that they do have a hardship that is created by the new LMO. So with that being said, I hope I answered most of the questions. I'll be happy to answer more if there's anymore, anything else.

GLENN STANFORD: Further questions? Thank you, sir.

RADU CHINDRIS: Thank you.

GLENN STANFORD: I consider this presentation to be closed now. The public hearing is closed, I apologise, and I want to point out to the board that, while there are many considerations for us in conjunction with something like this, we do need to look at the criteria for granting a variance, and whether or not those criteria have been met. And so I want to emphasise that to everyone -- does anyone have any other comments before I call for a motion? Is there a motion in conjunction with this application? I will make a motion -- go ahead.

STEVE WILSON: Move to approve the application.

GLENN STANFORD: All right, fine. Is there a second?

DAVID FINGERHUT: Second.

GLENN STANFORD: Thank you. Discussion on the motion. Steve, you are moving to approve, based upon the findings of fact and conclusions of law as presented by the town, is that correct?

STEVE WILSON: Aye.

GLENN STANFORD: Thank you. Any further discussion?

LISA LAUDERMILCH: I guess I am very concerned that [inaudible 01:41:28].

GLENN STANFORD: Thank you.

BOARD MEMBER: [Inaudible 01:42:04] for clarification. This is all [inaudible 01:42:07].

GLENN STANFORD: The present configuration?

BOARD MEMBER: The present, yet [inaudible 01:42:21].

NICOLE DIXON: This was approved back in 2003. I wasn't here then, I don't know what happened, or, you know, what took place then. I don't know.

GLENN STANFORD: Any other comments? If you'll call the roll, please, ma'am.

TERESA HALEY: Mr. Wilson?

STEVE WILSON: For the motion.

TERESA HALEY: Mr. Fingerhut?

DAVID FINGERHUT: For the motion.

TERESA HALEY: Mr. Stanford?

GLENN STANFORD: For the motion.

TERESA HALEY: Mr. White?

JOHN WHITE: Against the motion.

TERESA HALEY: Miss Laudermilch?

LISA LAUDERMILCH: Against the motion.

TERESA HALEY: Mr. Cutrer?

JERRY CUTRER: For the motion.

GLENN STANFORD: I believe then that we have the motion carrying by a vote of, what is it, four, 5-2?

NICOLE DIXON: 4-2.

DAVID FINGERHUT: 4-2.

GLENN STANFORD: 4-2.

STAFF REPORTS

Waiver Report

GLENN STANFORD: Thank you. Did you have a variance report for us, I mean a waiver report?

NICOLE DIXON: It was included in your packet, unless you have any questions, I don't need to --

GLENN STANFORD: Any questions?

NICOLE DIXON: And we will have a meeting in April, I did receive, we have, I think two applications for that meeting, and again, if whoever made the motion, and seconded it, if you could stick around, so I can create your notice of action and have you sign it, please.

ADJOURNMENT

GLENN STANFORD: Thank you very much. That being said, this hearing is closed.

[Meeting adjourned at 1:43:41]

After Recording Return to:
Qualey Law Firm
P.O. Box 10
Hilton Head, SC 29938
(843) 785-3525

BEAUFORT COUNTY SC - ROD
BK 3499 Pgs 1539-1547
FILE NUM 2016037357
07/19/2016 03:44:37 PM
REC'D BY aaryl RCPT# 817535
RECORDING FEES $15.00

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SETTLEMENT AGREEMENT AND RESTRICTIVE COVENANTS

THIS SETTLEMENT AGREEMENT AND RESTRICTIVE COVENANTS (this "Agreement") is made by and among Frederick A. Craig and Shirley Dorsey Craig (collectively, the "Owners"), Radu Chindris and Transcon Industries, LLC, a South Carolina limited liability company (collectively, the "Developer"), and DST, LLC, a South Carolina limited liability company ("DST").

WHEREAS, the Owners hold title to the real property located in Beaufort County, South Carolina at 28 Bradley Circle, Hilton Head Island, SC 29928, designated as Beaufort County Tax Map Number R510-009-000-0896-0000 and R510-009-000-1102-0000 (the "Property"), and more fully shown and described as "Lot 1", containing 0.115 acre, more or less, and as "Lot 2", containing 0.189 acre, more or less on that certain plat of survey entitled "Subdivision Plat of Lots 1 Thru 5 Bradley Circle Formerly Lots 1 & 1A" prepared by Surveying Consultants, Terry G. Hatchell, SCRLS 11059, dated 12 February 2003 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 98 at Page 192 (the "Property Plat"); and

WHEREAS, DST holds title to the real property located in Beaufort County, South Carolina at 3 Urchin Manor, 4 Urchin Manor, and 5 Urchin Manor, Hilton Head Island, SC 29928, designated as Beaufort County Tax Parcels R510-008-000-022M-0000, R510-008-000-0575-0000, and R510-008-000-0576-0000 (the "Adjacent Properties") , and more fully shown and described as "Lot 8A" containing 0.151 acre, more or less, as "Lot 8B", containing 0.170 acre, more or less, and as Lot "8C", containing 0.137 acre, more or less, on that certain plat of survey entitled "Subdivision of: LOT 8 Bradley Circle" prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, , SCRLS 7606, dated 24 December 2003 and recorded in said Register's Office in Plat Book 97 at Page 19; and

WHEREAS, the Adjacent Properties are situated directly across the street from the Property; and

WHEREAS, the Developer has contracted with the Owners to acquire title to the Property for the purposes of construction of one or more single family residences on the Property; and

WHEREAS, the Owners applied for and received approval from the Board of Zoning Appeals (the "BZA") for the Town of Hilton Head Island (the "Town")

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

for variances from the requirements of the Town's Land Management Ordinance (the "LMO") for adjacent street buffers, adjacent street setbacks, and adjacent street setback angles relating to the development of the Property for single family residential use, as set out in Variance Application VAR-352-2016 (the "Application"); and

WHEREAS, DST and Matthew J. Toddy ("Toddy") and Mark S. Davidson ("Davidson"), principals of DST, have filed an appeal of the BZA's decision to approve the Application in the Court of Common Pleas, Fourteenth Judicial Circuit, Civil Action No. 2016-CP-07-00955 (the "Appeal");

WHEREAS, the Owners, the Developer, and DST have agreed to settle and dismiss the Appeal in exchange for the imposition on the Property of certain covenants, conditions, and affirmative obligations, all of which shall run with the Property and be binding on all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of DST and the Adjacent Properties and each subsequent owner thereof;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration and exchange of One ($1.00) Dollar and the agreement of DST, Toddy, and Davidson to dismiss the Appeal and forgo any further appeal of the BZA decision on the Application, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners, the Developer, and DST hereby agree to and acknowledge the terms and conditions listed below:

1. RECITALS. The foregoing preamble and "WHEREAS" clauses are incorporated herein as if restated verbatim.

2. USE LIMITATION. The Owners and the Developer agree that the Property shall be used only for not more than two single family residences (which may be used for short term rentals in the Resort Development zoning district), and for no other use absent the prior written approval of DST or its successor owners of the Adjacent Properties.

3. BEACH ACCESS. The Property Plat shows a "Beach Access R/W" located adjacent to the generally northern boundary of the Property (the "Beach Access"). The Beach Access is also shown on that certain plat of survey entitled "1.078 Acre Szuberla Property" prepared by Sea Island Engineering, Inc. and recorded in said Register's Office in Plat Book 62 at Page 125. The Owners and the Developer acknowledge that all present and future owners of the Adjacent Properties, together with their respective tenants, licensees, guests, and invitees, have the right to utilize the Beach Access for access to and from the beaches of the Atlantic Ocean; forever relinquish any right to

change or alter the location of the Beach Access; and agree that they shall not take or allow any action that might have an adverse effect on the Beach Access.

4. WETLANDS BUFFERS AND SETBACKS. The Owners and the Developer acknowledge the LMO's provisions establishing wetlands buffers and setbacks on the Property, agree that no structures or other improvements of any nature shall be constructed on the Property that encroach into any wetlands buffer or setback as currently established by the LMO, and further agree that no variance from the LMO's wetlands buffer and setback requirements for the Property may be sought or approved by the Town in the future.

5. DEVELOPMENT RESTRICTIONS. The Owners and the Developer agree and covenant that any structure developed or constructed on the Property will be constructed in accordance with the applicable LMO, laws and ordinances.

6. DISMISSAL OF THE APPEAL. DST, Toddy, and Davidson will file a notice of dismissal with prejudice of the Appeal within five (5) business days after the execution of this Agreement by the Owners, the Developer, and DST, and the recordation of this Agreement in said Register's Office.

7. NO FURTHER VARIANCES. The Owners and Developer covenant and agree that they shall be prohibited from filing or causing to be filed any further application for any variance from any requirement of the LMO with respect to the Property.

8. INDUCEMENT. As a material inducement to DST to enter into this Agreement and dismiss the Appeal, the Owners and the Developer agree that the terms and provisions of this Agreement shall be deemed to be covenants running with the land constituting the Property that shall be binding upon the heirs, successors, successors in title to the Property, grantees, devisees, and assigns of the Owners and the Developer and any person claiming by, through, or under them, including, without limitation, subsequent owners of all or any part of the Property, and shall inure to the benefit of, and be specifically enforceable by, DST and by the successors, successors and title to the Adjacent Properties, grantees, and assigns of DST and any person claiming by, through, or under DST, including, without limitation, subsequent owners of all or any part of the Adjacent Properties. Any and all obligations contained herein and charges imposed on the Property shall be construed as covenants and not as conditions. The Owners and the Developer acknowledge and agree that this Agreement will be filed for record in the Office of the Register of Deeds for Beaufort County, South Carolina.

9. ENFORCEMENT. The Owners and the Developer acknowledge and agree that any remedy at law for any breach or violation of this Agreement by

an owner of any part of the Property would be inadequate, and that, in addition to damages, any owner of any part of the Adjacent Property at any given time shall, without notice to the Owners or the Developer, be entitled to immediate temporary injunctive and other equitable relief, with no requirement for the posting of any bond, in the event any breach or violation of provisions of this Agreement occurs or is threatened in any way. Further, upon ten (10) days notice, or sooner if requested by the Owners or the Developer, a hearing shall be held and upon a showing that an actual breach or violation of this Agreement has occurred or is likely to occur, then the owner of the Adjacent Property shall be entitled to permanent injunctive relief.

10. NOTICE. Any notices required or permitted hereunder shall be in writing and shall be deemed given upon receipt by the party to whom directed at the following addresses, or such other address as such party may designate in writing, which receipt shall be evidenced by return receipt or affidavit of U.S. mail deposit.

As to the Owners: P.O. Box 5236
Hilton Head Island, SC 29938

As to the Developer: 23 Wood Eden Lane
Bluffton SC 29910

As to DST: 1205 Seal Drive, Alpharetta, GA 30022

11. NO WAIVER OF RIGHTS. No failure on the part of DST to exercise any right hereunder or to insist upon strict compliance by the Owners or the Developer or any other party to its obligations hereunder, and no custom or practice of any person or entity in variance with the terms hereof, shall constitute a waiver of any right to demand strict compliance with the terms of this Agreement.

12. JUDICIAL INTERPRETATION. If any provisions of this Agreement require judicial interpretation, the Owners and the Developer agree that the court interpreting or construing the provisions shall not apply a presumption that the terms hereof be more strictly construed against any one party by reason of the rule of construction that a document is to be construed more strictly against the person who, himself, or through his agent, prepared the same, as the agents and counsels of the Owners, the Developer, and DST have participated in the final preparation of this Agreement.

13. PERPETUITIES SAVINGS CLAUSE. Notwithstanding any provisions of this Agreement to the contrary, if any of the covenants, conditions, restrictions, prohibitions, or other provisions of this Agreement shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the

death of the last survivor of the now living descendants of Queen Elizabeth II, Queen of the United Kingdom.

14. SEVERABILITY. Except as provided for in the immediately preceding section, if any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

15. ATTORNEY'S FEES. If a party prevails in any legal action to enforce any right or remedy under this Agreement, it shall be entitled to recover its reasonable costs and expenses in connection with such legal action, including, but not limited to, court costs and attorney's fees.

16. GENERAL PROVISIONS. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of South Carolina. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute a fully executed instrument. No provision of this Agreement may be amended or changed, in whole or in part, absent the express, written approval of the then current owner or owners of the Adjacent Property.

[Signature pages follow]

IN WITNESS WHEREOF, Frederick A. Craig and Shirley J. Dorsey have set their hands and seals this 13th day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Patti J Horn

Frederick A. Craig (L.S.)
Frederick A. Craig

Brooke A. Morrison

Shirley Dorsey Craig (L.S.)
Shirley Dorsey Craig

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGEMENT**
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that Frederick A. Craig and Shirley Dorsey*personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 13th day of July 2016.

*Craig

BROOKE A. MORRISON
Notary Public
South Carolina
My Comm. Expires May 8, 2018

Brooke A Morrison (SEAL)
Notary Public for South Carolina
My Commission Expires: May 8, 2018

IN WITNESS WHEREOF, Radu Chindris has set his hand and seal this 12th day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Radu Chindris (L.S.)

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGEMENT**
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that Radu Chindris personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 12th day of July 2016.

(SEAL)
Notary Public for South Carolina
My Commission Expires: 10/29/17

JOHN P. QUALEY JR.
Notary Public
South Carolina
My Comm. Expires October 29, 2017

IN WITNESS WHEREOF, Transcon Industries, LLC, a South Carolina limited liability company has caused this Agreement to be signed and sealed this 12th day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Transcon Industries, LLC, a South Carolina limited liability company

By: _____
Radu Chindris
Its Sole Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Radu Chindris, President of Transcon Industries, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 12th day of July 2016.

_____(SEAL)
Notary Public for South Carolina
My Commission Expires: _____

JOHN P. QUALEY JR.
Notary Public
South Carolina
My Comm. Expires October 29, 2017

IN WITNESS WHEREOF, DST, LLC, a South Carolina limited liability company has caused this Agreement to be signed and sealed this 1st day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

7/1/16
SHAMINA DESHMUKH

7/1/16
RICHARD LOUNCE

DST, LLC, a South Carolina limited liability company

By: Matthew J. Toddy (L.S.)
Matthew J. Toddy, Member

STATE OF GEORGIA)
) **ACKNOWLEDGEMENT**
COUNTY OF FULTON)

I, the undersigned Notary Public, do hereby certify that Matthew J. Toddy, Member of DST, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 1 day of July 2016.

(SEAL)
Notary Public for Georgia
My Commission Expires: Nov 16th, 2019

REED BAXTER
NOTARY PUBLIC
Hall County
State of Georgia
My Comm. Expires Nov. 16, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2016-CP-07-00955
DST, LLC, Matthew J. Toddy, and Mark Davidson,	)	
Appellants/Petitioners	)	
vs.	)	STIPULATION OF DISMISSAL WITHOUT PREJUDICE
Frederick A. Craig, Shirley J. Dorsey, The Town of Hilton Head Island, and The Town of Hilton Head Island Board of Zoning Appeals,	)	
Respondents/Defendants.	)	

The parties to this action have settled their differences, and a formal Settlement Agreement was signed and a copy is attached to this Stipulation of Dismissal Without Prejudice. Thus, with the consent of all parties, as evidenced by the signatures of their counsel below, the Appellants/Petitioners DST, LLC, Matthew J. Toddy, and Mark Davidson, voluntarily dismiss all claims asserted or that might have been asserted in the above-captioned action without prejudice, pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure. All parties hereto agree to bear their own costs and expenses associated with this action.

LAW OFFICE OF THOMAS C. TAYLOR, LLC.

Thomas C. Taylor, Esq.
P.O. Box 5550, Hilton Head Isl., SC 29938
843-785-5050
SC Bar No. 5499
ATTORNEY FOR THE APPELLANTS/PETITIONERS
DST, LLC, Matthew J. Toddy, and Mark Davidson

[Signature blocks continued to pages 2 and 3]

I consent to the Dismissal Without Prejudice.

GREGORY M. ALFORD, ESQ.

ATTORNEY FOR THE RESPONDENT/DEFENDANT
THE TOWN ON HILTON HEAD ISLAND

Date: _____

I consent to the Dismissal Without Prejudice.

JOHN P. QUALEY, JR.

ATTORNEY FOR THE RESPONDENTS/DEFENDANTS
FREDERICK A. CRAIG and SHIRLEY J. DORSEY

Date: _____

Attach. E

South Carolina State Code

ARTICLE 11
Vested Rights

SECTION 6-29-1510. Citation of article.

This article may be cited as the "Vested Rights Act".

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

SECTION 6-29-1520. Definitions.

As used in this article:

(1) "Approved" or "approval" means a final action by the local governing body or an exhaustion of all administrative remedies that results in the authorization of a site specific development plan or a phased development plan.

(2) "Building permit" means a written warrant or license issued by a local building official that authorizes the construction or renovation of a building or structure at a specified location.

(3) "Conditionally approved" or "conditional approval" means an interim action taken by a local governing body that provides authorization for a site specific development plan or a phased development plan but is subject to approval.

(4) "Landowner" means an owner of a legal or equitable interest in real property including the heirs, devisees, successors, assigns, and personal representatives of the owner. "Landowner" may include a person holding a valid option to purchase real property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan pursuant to this article.

(5) "Local governing body" means: (a) the governing body of a county or municipality, or (b) a county or municipal body authorized by statute or by the governing body of the county or municipality to make land-use decisions.

(6) "Person" means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by South Carolina laws.

(7) "Phased development plan" means a development plan submitted to a local governing body by a landowner that shows the types and density or intensity of uses for a specific property or properties to be developed in phases, but which do not satisfy the requirements for a site specific development plan.

(8) "Real property" or "property" means all real property that is subject to the land use and development ordinances or regulations of a local governing body, and includes the earth, water, and air, above, below, or on the surface, and includes improvements or structures customarily regarded as a part of real property.

(9) "Site specific development plan" means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used by a county or municipality.

(10) "Vested right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

SECTION 6-29-1530. Two-year vested right established on approval of site specific development plan; conforming ordinances and regulations; renewal.

(A)(1) A vested right is established for two years upon the approval of a site specific development plan.

(2) On or before July 1, 2005, in the local land development ordinances or regulations adopted pursuant to this chapter, a local governing body must provide for:

(a) the establishment of a two-year vested right in an approved site specific development plan; and

(b) a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval.

(B) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a two-year vested right in a conditionally approved site specific development plan.

(C) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a vested right in an approved or conditionally approved phased development plan not to exceed five years.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

SECTION 6-29-1540. Conditions and limitations.

A vested right established by this article and in accordance with the standards and procedures in the land development ordinances or regulations adopted pursuant to this chapter is subject to the following conditions and limitations:

(1) the form and contents of a site specific development plan must be prescribed in the land development ordinances or regulations;

(2) the factors that constitute a site specific development plan sufficient to trigger a vested right must be included in the land development ordinances or regulations;

(3) if a local governing body establishes a vested right for a phased development plan, a site specific development plan may be required for approval with respect to each phase in accordance with regulations in effect at the time of vesting;

(4) a vested right established under a conditionally approved site specific development plan or conditionally approved phased development plan may be terminated by the local governing body upon its determination, following notice and public hearing, that the landowner has failed to meet the terms of the conditional approval;

(5) the land development ordinances or regulations amended pursuant to this article must designate a vesting point earlier than the issuance of a building permit but not later than the approval by the local governing body of the site specific development plan or phased development plan that authorizes the developer or landowner to proceed with investment in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit;

(6) a site specific development plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained;

(7) a vested right for a site specific development plan expires two years after vesting. The land development ordinances or regulations must authorize a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. The land development ordinances or regulations may authorize the local governing body to:

(a) set a time of vesting for a phased development plan not to exceed five years; and

(b) extend the time for a vested site specific development plan to a total of five years upon a determination that there is just cause for extension and that the public interest is not adversely affected. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations;

(8) a vested site specific development plan or vested phased development plan may be amended if approved by the local governing body pursuant to the provisions of the land development ordinances or regulations;

(9) a validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code;

(10) a vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval;

(11) a vested site specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit;

(12) a vested site specific development plan or vested phased development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses;

(13) a change in the zoning district designation or land-use regulations made subsequent to vesting that affect real property does not operate to affect, prevent, or delay development of the real property under a vested site specific development plan or vested phased development plan without consent of the landowner;

(14) if real property having a vested site specific development plan or vested phased development plan is annexed, the governing body of the municipality to which the real property has been annexed must determine, after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after the annexation;

(15) a local governing body must not require a landowner to waive his vested rights as a condition of approval or conditional approval of a site specific development plan or a phased development plan; and

(16) the land development ordinances or regulations adopted pursuant to this article may provide additional terms or phrases, consistent with the conditions and limitations of this section, that are necessary for the implementation or determination of vested rights.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

SECTION 6-29-1550. Vested right attaches to real property; applicability of laws relating to public health, safety and welfare.

A vested right pursuant to this section is not a personal right, but attaches to and runs with the applicable real property. The landowner and all successors to the landowner who secure a vested right pursuant to this article may rely upon and exercise the vested right for its duration subject to applicable federal, state, and local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. This article does not preclude judicial determination that a vested right exists pursuant to other statutory provisions. This article does not affect the provisions of a development agreement executed pursuant to the South Carolina Local Government Development Agreement Act in Chapter 31 of Title 6.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

SECTION 6-29-1560. Establishing vested right in absence of local ordinances providing therefor; significant affirmative government acts.

(A) If a local governing body does not have land development ordinances or regulations or fails to adopt an amendment to its land development ordinances or regulations as required by this section, a landowner has a vested right to proceed in accordance with an approved site specific development plan for a period of two years from the approval. The landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. For purposes of this section, the landowner's rights are considered vested in the types of land use and density or intensity of uses defined in the development plan and the vesting is not affected by later amendment to a zoning ordinance or land-use or development regulation if the landowner:

(1) obtains, or is the beneficiary of, a significant affirmative government act that remains in effect allowing development of a specific project;

(2) relies in good faith on the significant affirmative government act; and

(3) incurs significant obligations and expenses in diligent pursuit of the specific project in reliance on the significant affirmative government act.

(B) For the purposes of this section, the following are significant affirmative governmental acts allowing development of a specific project:

(1) the local governing body has accepted exactions or issued conditions that specify a use related to a zoning amendment;

(2) the local governing body has approved an application for a rezoning for a specific use;

(3) the local governing body has approved an application for a density or intensity of use;

(4) the local governing body or board of appeals has granted a special exception or use permit with conditions;

(5) the local governing body has approved a variance;

(6) the local governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of phased development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or

(7) the local governing body or its designated agent has approved a final subdivision plat, site plan, or plan of phased development for the landowner's property.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

Attach. F

Sec. 16-2-102. - Standard Review Procedures

J. Vesting and Expiration of Development Approval or Permit

1. Vested Rights for Approvals of Site Specific Development Plans

a. General

Approval or conditional approval of an application for a Special Exception, Major or Minor Subdivision Review, Major or Minor Development Plan Review, Small Residential Development Review, and a Variance shall constitute approval of a site specific development plan that establishes a vested right in accordance with the Vested Rights Act, S.C. Code Ann. § 6-29-1510 et seq. The vested right shall expire two years after the approval unless the vested right period is extended in accordance with subparagraph b below.

b. Extensions of Vested Right Period

Within 60 days before the expiration of the original two-year vested right period or any extension thereof, a developer or landowner may submit to the Official a written request for an additional annual extension of the vested right period. The Official shall approve requests for up to five annual extensions of the vested right .

2. Expiration of Other Approvals

a. General

Except for approval of Text Amendments, Zoning Map Amendments, and Street/Vehicular Access Easement Names, and approvals subject to the vested right provisions in paragraph 1 above, development approvals granted in accordance with this Ordinance shall expire as stated in Sec. 16-2-103, Application Specific Review Procedures. If no expiration period is stated in Sec. 16-2-103, for a particular type of permit or development approval, the permit or development approval shall expire if a Building Permit authorizing the approved development is not obtained within two years after the date of the permit or development approval. A change in ownership of the land shall not affect the established expiration time period. The filing of an appeal shall extend the established expiration date of the permit or approval for a period of two years from the date of the final decision on the appeal.

b. Extension of Expiration Time Period

Except as otherwise provided in Sec. 16-2-102.J, Vesting and Expiration of Development Approval or Permit and Sec. 16-2-103, Application Specific Review Procedures, for the particular type of permit or development approval, the Official may, on a showing of good cause, grant written requests for one or more extensions of the expiration date for up to a cumulative total of one year. Any further extension requests may only be granted, on a showing of good cause, by the decision-making body or person that granted the permit or development approval.

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

Attach. G

From: Keith Sledge [redacted]
Sent: Monday, August 21, 2017 10:25 AM
To: Lewis Teri
Subject: 28 Bradley Circle Building Permit

Hi Teri,

Please let me know if there is a legitimate variance issued to the owners of 28 Bradley Circle to build up to 75' in height for this property. The following link to the recently issued building permit appears to be so.

https://service.hiltonheadislandsc.gov/CitizenAccess/Site/Permit/View/ByPermitNumber/BLDR-003923-2017

I recall that at the recent meetings information was provided that the limit in Bradley Circle was now 45' for residential single family homes. Also, I recall one of the developers stating that there is no reason for concern among those of us who oppose the RD zoning remaining in place, as he could no longer build above 45'.

Please provide the information regarding the height limit for this building permit, along with any special reason or variance granted which allows them to exceed 45' in height. If I need to ask someone else for this information, please let me know who to contact.

Thanks for your help!

Keith

Keith & Debra Sledge
[redacted]

CERTIFIED TRUE COPY
Town Clerk
Hilton Head Island, South Carolina

From: Candace Callan [redacted]
Sent: Sunday, February 25, 2018 6:54 PM
To: Lewis Teri
Subject: 28 Bradley Circle

I own a home @ 31 Bradley circle. I oppose the proposed building height of 75 feet at 28 Bradley circle. I support the appeal of 28 Bradley circle.
Candace Callan
Sent from my iPhone

From: Diane Deslauriers [redacted]
Sent: Wednesday, February 21, 2018 5:10 PM
To: Lewis Teri
Subject: 28 Bradley circle

Good afternoon

My husband and I would like to add our name on the appeal list as we are opposed to a 75 feet tall building

Thank you

Diane and claude boulay

[redacted]

Sent from my iPhone

From: Mayrand, Jean-Remi (Montreal) [redacted]
Sent: Wednesday, February 21, 2018 5:18 PM
To: Lewis Teri
Subject: Appeal

Hello Ms. Lewis,

I own the home at 4 Urchin Manor, right in front of 28 Bradley Circle, and I wish to add my name to the appeal filed by Ronda and Tammy regarding the building of two 75 feet high homes on the 28 BC lot. I fully support their appeal.

Thanks in advance for your consideration,

[redacted]

Jean-Rémi Mayrand, FCIA, FSA, MBA
Conseiller principal et chef du secteur Retraite, Montréal
Senior Consultant and Retirement Leader, Montreal

[redacted]

Adjointe Administrative/Administrative Assistant:
Nancy Mead
[redacted]

Avis relatif à la confidentialité
La présente transmission contient des renseignements qui peuvent être de nature confidentielle. Elle a été préparée strictement à l'usage
exclusif du destinataire prévu et tel que convenu avec lui. Si vous n'êtes pas le destinataire prévu du message (ou une personne autorisée à
le recevoir en son nom), vous devriez nous en informer immédiatement; vous devriez le supprimer de votre système et n'êtes pas autorisé à
en divulguer le contenu à personne d'autre.

Ce courriel vous a été transmis par Société Towers Watson Canada inc.

Notice of Confidentiality
This email contains confidential material prepared for the intended addressees only and it may contain intellectual property of Towers
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error, please return it to the original sender with the subject heading "Received in error," then delete any copies.

This e-mail has come to you from Towers Watson Canada Inc.

From: Cousins Charles
Sent: Monday, February 20, 2017 10:26 AM
To: Lewis Teri
Cc: Colin Shawn
Subject: FW: 30A Bradley Circle

We should discuss before we go out for the site visit Tuesday

From: Likins Kim
Sent: Sunday, February 19, 2017 8:28 AM
To: Cousins Charles
Subject: Fwd: 30A Bradley Circle

Charles,
This is from another neighbor in the Bradley Circle area. Same issues. Please let me know what you find out about how all this happened and what we can do to make it better.
Thanks
Kim

Sent from my iPhone

Begin forwarded message:
From: Terry Gibson [redacted]
Date: February 18, 2017 at 8:21:43 PM EST
To: <KimL@hiltonheadislandsc.gov>
Subject: 30A Bradley Circle
Mrs. Likins,

I believe that you are the council member for Bradley Circle, which is located close to Chaplin Park. I am writing to you as a concerned citizen for what has been allowed to happen on our street. I hope that you can give me some guidance on how we should proceed in order to stop the deterioration of a residential area. In the LMO that was adopted in October 2014, our quiet residential street was changed to Resort Property, which allowed single dwellings to be 75 feet tall. Then in 2016,
20 Bradley which was a beautiful home was purchased with the intent to teardown and make into a property that could have multiple, million dollar homes. After purchasing and demolishing the home, the buyer applied for the lot to be subdivided into 4 lots, which was denied. Then 20 Bradley requested to be subdivided into 3 lots. In order for there to be enough room for 3 buildings, 75 feet tall to fit on this small lot, all setback angles, setback variances were waved by the zoning board. The next property, Lot 28 followed the same path. A contract for Lot 28 was issued contingent on it being subdivided into 2 lots. We had a large group of neighbors that were in protest of this, but the board of appeals allowed lot 28 to be split into 2 lots. I'm fearful of what will be developed on this lot. Will it look like the properties on Lot 20?

How do I know as a resident of Bradley Circle that every vacant lot will not be handled in the same manner? We now have 3 structures that are single homes and are as tall as the Marriott Surf Watch property. Based on the size of the houses and the number of bedrooms, there will not be enough room to park the cars of the people that are renting the properties. The street is so narrow that there is no room for parking on the street. The only way these renters can access the beach is

to either illegally use the Marriott Surfwatch Access or to use the boardwalk beside my house. This boardwalk has serious maintenance issues. Will the city take responsibility for maintaining the boardwalk since the city benefits from the property tax of this mega property?

I'm concerned with what variances will be made on 28 Bradley Circle. I know that single residence in resort district has been change to 45 feet, but will he be allowed to have it changed from a single residence to a multi-residence so he can build higher than 45 feet. Since this was discussed before the change in height, will he be grandfathered in? Would I even be made aware if he requested a change from single residence to multi-residence? No one on our street was aware that we were changed to a resort area with 75 feet height allowances.

Many of the owners of the properties on Bradley Circle are full time residents. When we purchased our properties, we bought in an area that was not congested because not every lot was developed and not every house was a rental. We had no idea that very small lots would be split into 2 or 3 lots and the footprint of the houses would violate every variance except the marsh. This is no longer true.

I believe that anyone in my situation would wonder how can I save my street from becoming a street lined with huge houses that looks like an extension of the Marriott.

I would appreciate any assistance you can give me to keep this residential area from anymore changes. What steps do we take to have this street rezoned from Resort District?

Thank you for your time.

Terry Gibson
[redacted]

From: Cousins Charles
Sent: Wednesday, August 23, 2017 4:53 PM
To: [redacted]; Lewis Teri; Colin Shawn
Subject: FW: help!

fyi

From: Cousins Charles
Sent: Wednesday, August 23, 2017 4:53 PM
To: Bennett, David; Ames, David; Likins Kim
Cc: Riley Steve
Subject: RE: help!

All:

Teri and I discussed this issue with Gregg Alford this afternoon. Based on this discussion here's where we are:

* The applicant for the two homes on these parcels applied for variances in 2016. The variances were granted. At that time the two properties were still zoned RD with a maximum allowed height of 75 feet. Based on the site plan submitted with the variance requests and the granting of the variances, we believe the applicant is vested to build the homes at 75 feet.
* A law suit between the owner and neighbors was settled and specified that all development must meet all applicable LMO requirements.
* We do not believe this language is clear. Does the settlement mean the LMO applicable section related to vesting applies or does it mean all development is limited to 45 feet in height which was the height limitation at the time of the settlement?
* The attorney for the applicant believes they are limited to 75 feet while the neighbor's attorney believes the height limit is 45 feet.
* Due to this confusion Teri will inform the applicant that the Town will not issue a permit for the two lots until we receive clarification from the court on this matter.

Charles

From: Cousins Charles
Sent: Wednesday, August 23, 2017 1:48 PM
To: Bennett, David; Ames, David; Likins Kim
Cc: Riley Steve
Subject: RE: help!

I have a meeting with Gregg A. in a few minutes on another topic and plan to ask him about that also. I will let you know if he has any thoughts.

Charles

From: Bennett, David
Sent: Wednesday, August 23, 2017 1:07 PM
To: Cousins Charles; Ames, David; Likins Kim
Cc: Riley Steve
Subject: RE: help!

Hello Charles: Any update on the lawsuit settlement and its impact if any on building height? Thanks. DB

From: Cousins Charles
Sent: Tuesday, August 22, 2017 3:45 PM
To: Bennett, David; Ames, David; Likins Kim
Cc: Riley Steve
Subject: RE: help!
All,

We have been looking into this situation since late this morning. Here are the facts:

* We have received two single family applications for building permits, one on each of these two parcels. The permits have not been issued.
* After having received complaints earlier today, we visited the site to assess the situation.
* Site preparation work was occurring for single family development.
* If a lot is not within an overlay district, the LMO only protect trees or other vegetation on single family lots within the required buffers. Bradley Circle is not within an overlay district. Staff's site inspection did discover that a small portion of the grading had occurred in a required buffer. This issue was brought to the attention of the contractor and corrective action is being taken.
The remainder of the work on these lots single family lot is allowed prior to a building permit being issued.
* The work being done has no impact on the potential height of the structure. The height issue will be addressed when the building permit is issued.
* While the Town Council approved the RM-8 rezoning for this property and choose to use the pending ordinance doctrine, this site had moved further through the development approval process due to receiving a variance earlier this year. To be specific, this development received a variance which Mr. Afford believes may have vested this parcel of land under the 75-foot height restriction. We had communicated that to the neighbors weeks ago. We are reviewing this further with Gregg prior to issuing any building permit. We do not believe any other parcels or applications we have received are vested under the former RD zoning.
* As Mr. Carper states below there was some sort of settlement addressing LMO requirements between the builder and neighbor to settle a law suit. Staff is reviewing this settlement with Gregg to understand what impact it has on height as well as any other LMO issue. Any building permit issued will be based on advice from Gregg.

From: Riley Steve
Sent: Tuesday, August 22, 2017 2:17 PM
To: Cousins Charles
Subject: Fwd: help!

Steve Riley
Town Manager
Town of Hilton Head Island

Sent from my iPhone

Begin forwarded message:
From: "Bennett, David" <davidb@hiltonheadislandsc.gov>
Date: August 22, 2017 at 2:16:06 PM EDT
To: Hulbert Brian <brianh@hiltonheadislandsc.gov>, Riley Steve <SteveR@hiltonheadislandsc.gov>

Cc: Likins Kim <KimL@hiltonheadislandsc.gov>
Subject: FW: help!
Brian/Steve: I'm in meetings all day. Will you make contact with Mr. Carper? I don't know anything about a settlement and how or if that impacts us.

Please advise.

Thanks.

David

From: Donald Carper III [redacted]
Sent: Tuesday, August 22, 2017 1:10 PM
To: Bennett, David
Subject: help!

Hey David,

I was one of the people you met with out at Bradley Circle a few weeks back. I just left you a long message Permits were granted on 8/8 to build 2 more 75 foot homes on Bradley Circle. They are trying to do the site work now. At the meeting back In July it was unanimously voted to have the neighborhood put back to plain regular normal building heights (RM-8) etc… Also, there was a suit brought against the builder of these proposed homes by the owners of the property across the street and part of the settlement was that they would not build to that height I assume the town was not made aware of that. We really need your help here The agreement was no more construction over the 45' height … and the FIRST permit pulled after the meeting grants a construction height of 75"? Please help us David.

Thank you

Don Carper

[redacted]

From: Keith Sledge [redacted]
Sent: Thursday, February 22, 2018 4:15 PM
To: Lewis Teri
Cc: Likins Kim; Ronda Carper; Dale Becker
Subject: Opposition to issuing permits to build more 75' tall structures

Dear Ms. Lewis,

Please consider this request as 2 votes in the Bradley Circle neighborhood, as my wife and I own properties at 4 & 6 Terra Bella Trace. We are opposed to ANY building permit being issued for residential height in our area above the agreed upon 45 foot limit.

You will recall that we were required to remove the roof from my home at 4 Terra Bella Trace, as it was just a couple of feet above the limit. It is unbelievable that so many months after the decision was made to limit residential building, island wide as I understand, to 45 feet, that the town would once again consider allowing this same group of developers to build tall houses with inadequate parking.

During several meetings with town officials, they clearly and repeatedly admitted their mistake in allowing the 3 existing buildings to be built well in excess of 45 feet. Please do not make that mistake again.

It is clear now that the CO has been issued to one of these homes that the only way adequate parking might be possible is for cars to park well into Bradley Circle or on our road, Terra Bella Trace. In fact, workmen and repairmen regularly park on Terra Bella and the town is unwilling to patrol this private road.

With more inadequate parking for 2 more homes containing 10 bedrooms each, there will inevitably be workmen, repairmen and eventually renters who feel it is ok to park on Welk Street and Horvaths Peninsula. The owners of homes on those streets do not have the history we do, as the previous 3 tall 10 BR structures were built adjacent to our private street.

Please deny the developers any permits to build above 45 feet, as is the case for all other developers. There must be equal protection under the law and protection for our families by decreasing the height and subsequently the number of bedrooms in these structures. These homes will not be wide enough for 2 cars of reasonable size to enter the garages (as has been demonstrated with the existing houses) and certainly not 4 cars in the garages with the staircases and elevators.

Thanks for your kind consideration,

Keith & Debra

Keith & Debra Sledge
[redacted]

[redacted]

[redacted]

[redacted]

Virus-free. www.avg.com

From: Radu Chindris [redacted]
Sent: Wednesday, August 23, 2017 4:31 PM
To: Lewis Teri
Subject: Re: 28 Bradley Circle - Building Permit

Hi Teri,
I just got a call from Jack on this. We are on it, I do not believe there is a discrepancy .
Thank you,
Radu

From: Lewis Teri <TeriL@hiltonheadislandsc.gov>
To: Radu Chindris [redacted]
Cc: Stephens Nancy [redacted]; Dixon Nicole <nicoled@hiltonheadislandsc.gov>; Yates Chris <chrisdy@hiltonheadislandsc.gov>; Fister Joheida <JoheidaF@hiltonheadislandsc.gov>
Sent: Wednesday, August 23, 2017 3:54 PM
Subject: 28 Bradley Circle - Building Permit

Radu-
There is some discrepancy between the variances that you received for 28 Bradley Circle and the settlement agreement related to 28 Bradley Circle in terms of the allowable height at this address. Until such time that this discrepancy regarding the height is resolved between the attorneys for you and the parties involved in the settlement agreement, the Town will not approve any building permits for the following parcels:

R510 009 000 0896 0000
R510 009 000 1102 0000

Regards-
Teri B. Lewis, AICP
LMO Official
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4698(p)
(843) 842-8907(f)
teril@hiltonheadislandsc.gov

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From: Tamara [redacted]
Sent: Thursday, August 24, 2017 9:43 AM
To: Lewis Teri
Cc: Bennett, David; Likins Kim
Subject: Re: 28 Bradley Circle

Thank you for standing in the rain with me as we all look to resolve this issue in favor of the public safety and welfare of the residents and visitors to Bradley Circle.

I have a concern and was actually just on the phone trying to reach the attorney.

A number of things, but addressing the contractors activity on #28 Bradly Circle lots 1 and 2, perhaps you can clarify for us, under the LMO, sec. 16-1-105, B-d and G. [redacted]

One of the stated goals I made aware to everyone on site and by phone on Tuesday was to prevent any "construction" or expenditure of money that could be construed as development or investment and further the developers argument.

I am concerned that in-spite of my repeated request to stop the work until things were settled, and in-spite of the contractor not having a permit, not having an approved development plan with Town and the known issues regarding the property as it relates to the settlement agreement, unsubstantiated claims of vested rights, and the well established concerns of negative affects on the public safety and welfare (minimally) On the neighborhood, the contractor was allowed by Town to proceed and I was asked to stand down.

I see this as creating an inappropriate situation, and perhaps an issue that I hope doesn't become a bigger issue as we move forward, as I am on the record and I believe with a valid concern.

Looking for a resolution that best serves the purpose of protecting the public safety and welfare of the neighborhood.
Please let me know your thoughts.
Best,
Tammy

Sent from my iPhone

On Aug 24, 2017, at 8:50 AM, Lewis Teri <TeriL@hiltonheadislandsc.gov> wrote:
Tammy-
I wanted to let you know that I sent an e-mail to Radu yesterday letting him know that the building permits at 28 Bradley Circle would not be approved until the height issue was resolved. I told him that his attorney and the attorney for the Toddy's would need to work out the discrepancy between the language in the settlement agreement and what was vested by the variance. Please call or e-mail me if you need additional information regarding this.

Regards-
Teri B. Lewis, AICP
LMO Official
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4698(p)
(843) 842-8907(f)

teril@hiltonheadislandsc.gov

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From: Hulbert Brian
Sent: Tuesday, August 22, 2017 2:45 PM
To: Bennett, David; Riley Steve
Cc: Likins Kim; Cousins Charles; Lewis Teri; Yates Chris; Gregg Alford; Deloach Greg
Subject: RE: help!

Mayor Bennett,

I will attempt to contact Mr. Carper.

No building permit has been issued yet for construction yet.

It has been applied for, but is currently being reviewed by staff. All they are doing at this point is grading the lot and finishing up the demolition work from a permit previously issued. The issue of what height is being considered right now and pending a legal opinion from Gregg Alford. The complexity of whether it can be up to 45 feet or up to 75 feet stems from the fact that they received a variance under the previous lmo zoning height of 75 feet and described buildings of 75 feet in their application for a variance.

Teri, I and my code enforcement officer just spent a little over an hour at the site to address the issues between a resident and the contractor. The resident was stopping the contractor from doing the site preparation work. We squelched the conflict, but I do not believe the resident is satisfied, as she really seems to want no development on the lot, or at most 45 feet. She mistakenly believed that no work could be completed until the ordinance was passed. I explained to her what pending ordinance actually meant.

R/

Brian Hulbert
Staff Attorney and Town Prosecutor
Hilton Head Island, SC 29928
843 341-4633

-----Original Message-----
From: Bennett, David
Sent: Tuesday, August 22, 2017 2:16 PM
To: Hulbert Brian; Riley Steve
Cc: Likins Kim
Subject: FW: help!

Brian/Steve: I'm in meetings all day. Will you make contact with Mr. Carper? I don't know anything about a settlement and how or if that impacts us.

Please advise.

Thanks.

David

From: Donald Carper III [redacted]
Sent: Tuesday, August 22, 2017 1:10 PM
To: Bennett, David

Subject: help!

Hey David,

I was one of the people you met with out at Bradley Circle a few weeks back. I just left you a long message Permits were granted on 8/8 to build 2 more 75 foot homes on Bradley Circle. They are trying to do the site work now. At the meeting back In July it was unanimously voted to have the neighborhood put back to plain regular normal building heights (RM-8) etc… Also, there was a suit brought against the builder of these proposed homes by the owners of the property across the street and part of the settlement was that they would not build to that height … I assume the town was not made aware of that. We really need your help here. The agreement was no more construction over the 45" height … and the FIRST permit pulled after the meeting grants a construction height of 75"? Please help us David.

Thank you

Don Carper

[redacted]

From: Cousins Charles
Sent: Thursday, August 24, 2017 7:35 AM
To: Likins Kim; Lewis Teri
Subject: Re: help!

Teri please let Tammy know if you haven't already

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Likins Kim <KimL@hiltonheadislandsc.gov>
Date: 8/23/17 5:08 PM (GMT-05:00)
To: Cousins Charles <CharlesC@hiltonheadislandsc.gov>
Subject: Re: help!

Thanks Charles. Had Tammy been given this information?
Kim

Sent from my iPhone

On Aug 23, 2017, at 4:53 PM, Cousins Charles <CharlesC@hiltonheadislandsc.gov> wrote:
All:

Teri and I discussed this issue with Gregg Alford this afternoon. Based on this discussion here's where we are:

* The applicant for the two homes on these parcels applied for variances in 2016. The variances were granted. At that time the two properties were still zoned RD with a maximum allowed height of 75 feet. Based on the site plan submitted with the variance requests and the granting of the variances, we believe the applicant is vested to build the homes at 75 feet.
* A law suit between the owner and neighbors was settled and specified that all development must meet all applicable LMO requirements.
* We do not believe this language is clear. Does the settlement mean the LMO applicable section related to vesting applies or does it mean all development is limited to 45 feet in height which was the height limitation at the time of the settlement?
* The attorney for the applicant believes they are limited to 75 feet while the neighbor's attorney believes the height limit is 45 feet.
* Due to this confusion Teri will inform the applicant that the Town will not issue a permit for the two lots until we receive clarification from the court on this matter.

Charles

From: Cousins Charles
Sent: Wednesday, August 23, 2017 1:48 PM
To: Bennett, David; Ames, David; Likins Kim
Cc: Riley Steve
Subject: RE: help!

I have a meeting with Gregg A. in a few minutes on another topic and plan to ask him

about that also. I will let you know if he has any thoughts.

Charles

From: Bennett, David
Sent: Wednesday, August 23, 2017 1:07 PM
To: Cousins Charles; Ames, David; Likins Kim
Cc: Riley Steve
Subject: RE: help!

Hello Charles: Any update on the lawsuit settlement and its impact if any on building height? Thanks. DB

From: Cousins Charles
Sent: Tuesday, August 22, 2017 3:45 PM
To: Bennett, David; Ames, David; Likins Kim
Cc: Riley Steve
Subject: RE: help!
All,

We have been looking into this situation since late this morning. Here are the facts:

* We have received two single family applications for building permits, one on each of these two parcels. The permits have not been issued.
* After having received complaints earlier today, we visited the site to assess the situation.
* Site preparation work was occurring for single family development.
* If a lot is not within an overlay district, the LMO only protect trees or other vegetation on single family lots within the required buffers. Bradley Circle is not within an overlay district. Staff's site inspection did discover that a small portion of the grading had occurred in a required buffer. This issue was brought to the attention of the contractor and corrective action is being taken.
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* The work being done has no impact on the potential height of the structure. The height issue will be addressed when the building permit is issued.
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From: Riley Steve

Sent: Tuesday, August 22, 2017 2:17 PM
To: Cousins Charles
Subject: Fwd: help!

Steve Riley
Town Manager
Town of Hilton Head Island

Sent from my iPhone

Begin forwarded message:
From: "Bennett, David" <davidb@hiltonheadislandsc.gov>
Date: August 22, 2017 at 2:16:06 PM EDT
To: Hulbert Brian <brianh@hiltonheadislandsc.gov>, Riley Steve <SteveR@hiltonheadislandsc.gov>
Cc: Likins Kim <KimL@hiltonheadislandsc.gov>
Subject: FW: help!
Brian/Steve: I'm in meetings all day. Will you make contact with Mr. Carper? I don't know anything about a settlement and how or if that impacts us.

Please advise.

Thanks.

David

From: Donald Carper III [redacted]
Sent: Tuesday, August 22, 2017 1:10 PM
To: Bennett, David
Subject: help!

Hey David,

I was one of the people you met with out at Bradley Circle a few weeks back. I just left you a long message Permits were granted on 8/8 to build 2 more 75 foot homes on Bradley Circle. They are trying to do the site work now. At the meeting back In July it was unanimously voted to have the neighborhood put back to plain regular normal building heights (RM-8) etc… Also, there was a suit brought against the builder of these proposed homes by the owners of the property across the street and part of the settlement was that they would not build to that height … I assume the town was not made aware of that. We really need your help here. The agreement was no more construction over the 45' height … and the FIRST permit pulled after the meeting grants a construction height of 75"? Please help us David.

Thank you

Don Carper
[redacted]

[redacted]

From: Barbara Peters
Sent: Thursday, August 04, 2022 1:19 PM
To: [redacted]
Cc: Lauren Thal Greenawalt; Charlie Terreri; Rebecca Tarara Wilkins
Jason
Subject: RE: Lot 28 Bradley Circle

Happy Mr. Thomas,

I moved for the email to ask Charles Clemons and Tara if they were available to discuss the [illegible] with you.

I have conferred with Tara [illegible] original can we [illegible] no that a variance for [illegible] Bonnie at 28 Bradley Circle. As part of the variance application they submitted the [illegible] for the [illegible] be constructed and where plans showed the height of the house. Consequently, pursuant [illegible] Town Municipal Code and since they have exceeded height to build the variance according to the height listed in the application I don't [illegible] variance will run for 2 years and be eligible for up to 2 [illegible] years extensions

If you have any [illegible] questions please contact our [illegible] Unit (Mon Off Out [illegible] at 843 [illegible]

Bl

Barbara Peters
Staff Attorney and Town Prosecutor
Dalton Island Island, SC 29928
843 [illegible]

From: [redacted]
Sent: Thursday, August 04, 2022 [illegible] PM
To: Barbara Peters
Subject: Re: Lot 28 Bradley Circle

Barbara,

Please give to your neighbor & I close it and [illegible] and we will give you a call

Thank you

[illegible]

Sent from my iPhone

On Aug [illegible] at [illegible] PM, Barbara Peters [illegible] wrote:

[illegible]

[illegible]

[illegible]

From: Hulbert Brian
Sent: Tuesday, August 01, 2017 2:14 PM
To: TC Gibson
Cc: Lewis Teri; Cousins Charles; Hulbert Brian; Bennett, David; Hulbert Brian
Subject: RE: Lot 28 Bradley Circle

Sorry Mr. Gibson,

I meant for the email to ask Charles Cousins and Teri Lewis if they were available to discuss the issue with me.

I have conferred with Teri Lewis, our LMO official and she informs me that a variance has been approved for 2 homes at 28 Bradley Circle. As part of the variance application they submitted the specifics for the 2 buildings to be constructed and these plans showed the height of the houses. Consequently, pursuant to the Town Municipal Code and State Law they have vested rights to build the structures according to the height listed in the submitted plans. This variance will run for 2 years and be eligible for up to 5 one year extensions.

If you have any additional questions, please contact our LMO Official Teri Lewis at 843 341-4698.

R/

Brian Hulbert
Staff Attorney and Town Prosecutor
Hilton Head Island, SC 29928
843 341-4633

From: TC Gibson [redacted]
Sent: Tuesday, August 01, 2017 1:23 PM
To: Hulbert Brian
Subject: Re: Lot 28 Bradley Circle

Brian,

Sure. Please give us your number & a time to discuss this and we will give you a call.

Thank you.

Terry & Charlie

Sent from my iPhone

On Aug 1, 2017, at 12:19 PM, Hulbert Brian <brianh@hiltonheadislandsc.gov> wrote:

Teri and charles,

Can we discuss this question after lunch.

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: TC Gibson [redacted]
Date: 8/1/17 12:11 PM (GMT-05:00)
To: Hulbert Brian <brianh@hiltonheadislandsc.gov>
Cc: "Bennett, David" <davidb@hiltonheadislandsc.gov>, Cousins Charles <CharlesC@hiltonheadislandsc.gov>, Dale Becker [redacted]
Subject: Lot 28 Bradley Circle

Hello Brian-

My name is Charlie Gibson, homeowner at 30A Bradley Beach Circle. in advance of tonight's town council meeting, Mayor Bennett visited our community to better understand the issues surrounding the proposed zoning change of Bradley Beach Circle back to RM-8 from RD. In the course of our conversation I asked if he could clarify for us whether or not lot 28 Bradley Beach Circle would operate under the 45' limit or be granted a waiver due to vesting rights. We are obviously concerned that additional 70 foot plus homes would be constructed on our street causing an additional burden on the infrastructure and diminish our overall quality of life.

Our understanding is as of yet, no building permit has been issued for construction and vesting would not apply forcing the homes to be constructed within the 45 foot height restriction.

Mayor Bennett asked that I email you to provide clarification and a determination as to the height limit for the homes on lot 28 Bradley Circle.

Thank you
Charlie Gibson
[redacted]

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From: Hulbert Brian
Sent: Tuesday, August 01, 2017 12:19 PM
To: TC Gibson; Lewis Teri; Cousins Charles; Hulbert Brian
Cc: Bennett, David; Cousins Charles; Dale Becker
Subject: Re: Lot 28 Bradley Circle

Teri and charles,

Can we discuss this question after lunch.

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: TC Gibson
Date: 8/1/17 12:11 PM (GMT-05:00)
To: Hulbert Brian <brianh@hiltonheadislandsc.gov>
Cc: "Bennett, David" <davidb@hiltonheadislandsc.gov>, Cousins Charles <CharlesC@hiltonheadislandsc.gov>, Dale Becker
Subject: Lot 28 Bradley Circle

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Our understanding is as of yet, no building permit has been issued for construction and vesting would not apply forcing the homes to be constructed within the 45 foot height restriction.

Mayor Bennett asked that I email you to provide clarification and a determination as to the height limit for the homes on lot 28 Bradley Circle.

Thank you
Charlie Gibson

From: [redacted]
Sent: Friday, April 21, 2017 3:35 PM
To: Lewis Teri
Subject: Re: Update on Vesting of 20/22/24 and 28 Bradley Circle

Teri,
What about the public recording of the agreement between Urchin & 28?

Terry

Sent from my iPhone

On Apr 21, 2017, at 2:50 PM, Lewis Teri <TeriL@hiltonheadislandsc.gov> wrote:

Terry and Tammy-

I know that this news will be very disappointing to you but I need to let you know that I was incorrect when I told you that only the homes currently under construction could be built at 75'. The 2 homes proposed for 28 Bradley Circle are also allowed to be built at 75'. After our meeting with Tammy last week, I did some additional research on the state code and LMO as they related to the vesting of a plan. I found the following:

* LMO Section 16-2-102.J (Vesting and Expiration of Development Approval or Permit) which follows the state code states that approval of an application for a Variance constitutes approval of a site specific development plan that establishes a vested right.

What this means in plain language is that because the plans that they submitted with their variance application showed the structures as 4 stories over parking, they are allowed to still build those even though the LMO has changed and even though the variances weren't related to height.

I have attached the specific sections of the code in case that might be helpful to you. Once I completed my research, I discussed it with Charles Cousins and with the Town Attorney to ensure that I wasn't making a mistake in my interpretation.

I greatly apologize for making the statement that 28 Bradley Circle would be limited to 45'.

At this point nothing has been submitted to the Town to demolish or build at 28 Bradley Circle.

I wish that I had better news for you and again I'm sorry for making an incorrect statement that gave you hope that the homes at 20/22/24 Bradley Circle were the only ones that would be built above 45'.

Regards-
Teri B. Lewis, AICP
LMO Official
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4698(p)
(843) 842-8907(f)
teril@hiltonheadislandsc.gov

From: Maureen [redacted]
Sent: Thursday, February 22, 2018 1:29 PM
To: Lewis Teri
Subject: Ruining Bradley Circle's neighborhood

Hello Teri
I would like to be INCLUDED on the appeal to STOP THE 75 foot high building on lot 28 Bradley Circle!!
This area has always been R-8 FOREVER until the Town of HHI and Charles Cousins MISTAKENLY included it as RD !
This is what is causing ALL THE PROBLEMS FOR OUR COMMUNITY!! WHY ARE WE FIGHTING FOR SOMETHING THAT WE ALWAYS WERE R-8?????????????The Town should have straightened this out when it was first brought to their attention and yours!! So we must keep appealing and try to fix something that should have been fixed by the Town of Hilton Head!! We never we even given information on the change to RD !! But it was definitely informed to some builders and insiders looking to make more money!
At that time you didn't have much to say but you did come to our neighborhood and look at size of the buildings!! Since you have been promoted maybe you might speak up for us now!!! What ever happened to all the 20 ft buffer from the street and setbacks?There is a Right if Way next to Lot 28 that they better not ENCROACH ON AND IT GOES ALL The way to the street!!! These buildings they are proposing are just out of place!! Isn't there an appearance board or someone to oversee the impact? What about Dept Of Environmental Control since they want to sit on the Tidal Creek there!! Everything has changed and we are burdened!
We have Native Islanders here that don't want to be disturbed!!
We deserve to be able to enjoy and live in our neighborhood just as you and others that enjoy the Island!!
Hoping for a positive outcome for our community!!
Thank you
Maureen Jamieson Pinter
Sent from my iPhone

From: Michele [redacted]
Sent: Friday, February 23, 2018 1:53 PM
To: Lewis Teri
Subject: Support for Appel

Teri

I want to voice my support for the appeal for 28 Bradley Circle ! I live at 5 Stella Del Mare and my husband and I both support this appeal ! This development on this quiet street must stop ! Some one is going to get Injured or worse ! That street can not sustain this type of development and traffic !! It's an accident waiting to happen !

Sincerely
Rich and Michele Antonelli

Sent from my iPhone

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908

BOARD OF ZONING APPEALS
NOTICE OF ACTION

Case #:	Name of Development:	Public Meeting Date:
APL439-2018	28 Bradley Circle and 3 Whelk Street	March 26, 2018

Parcel or Location Data:	Applicant	Agent
R510 009 000 0896 0000 and R510 009 000 01102 0000	Tamara Becker and Ronda Carper	Same as applicant

Brief Description:

Staff has received an Appeal from Tamara Becker and Ronda Carper in their capacity as homeowners in the Bradley Circle area. The appellants are appealing staff's determination, dated February 8, 2018, which states that the properties at 28 Bradley Circle and 3 Whelk Street are vested to a maximum height of 75' above the base flood elevation (BFE).

BZA Determination, Findings of Fact and Conclusions of Law:

At their meeting on March 26, 2018, the Board voted to Modify the determination of the LMO Official to the extent that the parcels at 28 Bradley Circle and 3 Whelk Street are subject to a maximum height of 45 feet above base flood elevation. They based this decision on the following Findings of Fact and Conclusion of Law:

Finding of Fact: The previous variance application, VAR 352-2016, did not include a site specific development plan as defined in South Carolina State Code Section 6-29-1520.

Conclusion of Law: Without a site specific development plan, the granting of the variances in VAR-2016 did not create a vested right, as defined by South Carolina State Code Section 6-29-1520, to build at any particular height. Absent any such vested right,

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the height restriction is 45 feet above base flood elevation as set forth in the current RM-8 zoning of the property.

Appeal To Circuit Court:

If you believe the Board erred in its decision, you have the right to appeal the decision to Circuit Court. You have two options to appeal to Circuit Court:

1. You may file a petition with the clerk of court in and for the county, in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within 30 days after the decision of the Board is mailed (South Carolina Code of Laws 6-29-820A). The mailing date of this decision is March 30, 2018.
2. You may file a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina Code of Laws Section 6-29-825. Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

Chairman of BZA: _____ **Date:** 3/28/18

Maker of Motion: _____ **Date:** 3/24/18

Second to Motion: _____ **Date:** 3/28/18

Note: This decision must be delivered to the parties of interest via certified mail.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TOWN OF HILTON HEAD ISLAND

BOARD OF ZONING APPEALS

MARCH 28, 2016

The hearing which was held on March 28, 2016, at the Town of Hilton Head Island, was transcribed from an audio file, provided by the Town of Hilton Head Island, by Amanda Bowen, Stenographic Reporter and Notary Public, of Coastal Court Reporting & Video, Inc.

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Town Clerk
Hilton Head Island, South Carolina

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

Glenn Stanford, Chairman
Jeffrey North, Vice Chairman
Steve Wilson
David Fingerhut
John White
Lisa Laudermilch
Jerry Cutrer

BOARD MEMBERS ABSENT: None.

TOWN STAFF PRESENT:

Nicole Dixon, Development Review Administrator
Teri Lewis, LMO Official
Jill Foster, Deputy Director of Community Development
Teresa Haley, Senior Administrative

ASSISTANT OTHERS PRESENT:

VAR-352-2016:
Radu Chindris, Developer of the property
John P. Qualey, Applicant
Frederick Craig and Shirley Dorsey, Property Owner

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MR. STANFORD: Mr. Lowe, you and your friends are welcome to remain with us or you can make an exit if you like.

Well, the next will be a public hearing on Variance Number 352-2016. John Qualey on behalf of Frederick Craig and Shirley Dorsey requesting a variance from the LMO sections relating to adjacent street setbacks and adjacent street buffers to allow construction of two single-family attached homes within the adjacent street setback and buffer on both sides of the property. Property is located at 28 Bradley Circle and is identified as Parcel Number 96 on the Beaufort County tax map. Nicole?

MR. QUALEY: Mr. Chairman, before you receive I have a conflict which will require me to recuse myself.

MR. STANFORD: Thank you.

TOWN PRESENTATION

MS. DIXON: Okay. So I'll be presenting the Variance Number 352-2016. This is a rather difficult

one to try to explain. I tried to be as detailed in that report. I know it was kind of lengthy and seemed redundant, but I wanted to make it clear what restrictions did apply to the property and then what the applicant was proposing. I'll try to go through all that for you. I've been working with Radu Chindris, who is the developer of the property. We met several months ago several different times trying to figure out what the restrictions are with the property, how they apply with the way the current configuration is, and then what he could possibly do in order to develop the property.

So I have the vicinity map up in front. The two properties in question are these two right here. The two properties are part of a five-lot subdivision that was approved back in 2003, so these two lots right here, Lot 1 and 2. There is an existing home that straddles those two lots. I would

imagine that the intent back in '03 was that the house would be demolished and two homes would be built. Kind of a closer-up as-built what exists out there today. And Lot 1, Lot 2, the existing home. There's an access easement that runs through the property and leads back to the other three lots that were part of that original subdivision approval.

This exhibit kind of demonstrates what the restrictions currently are the way that the two lots are configured. The hatched area for Lot 1 depicts what the whole area is once all the LMO requirements are applied. And then for Lot 2, this smaller hatched area is the buildable area of Lot 2.

So for Lot 1 -

MR. STANFORD: Dimensions for those places, especially the smaller one.

MS. DIXON: The smaller one, Radu, do you know offhand what the square footage of that buildable area was?

MR. CHINDRIS: Probably under 2,500, so it's very, very small.

MR. STANFORD: Thank you.

MS. DIXON: So for Lot 1, the lot in front as it is currently configured, has a 20-foot setback and buffer from Bradley Circle in the front and a 60-degree setback angle. There's a 20-foot setback and a 10-foot buffer from Sweet Grass Manor, which is this access easement that runs through the property here. That can be reduced to a 10-foot setback and buffer because it's a corner lot and further reduced by 20 percent to 8 feet because it's in the resort development zoning district. So really it's an eight-foot setback and buffer on -- adjacent to the easement for Lot 1.

And then to the south of the buildable area, there is that 20-foot setback and 10-foot buffer from Whelk Street, which is an access easement that runs through the property south of the subject line. But because it's an

access easement, they have a setback, a buffer from it as opposed to just an adjacent residential use.

Again, can be reduced by 20 percent. So they have that 8-foot requirement there, and then they have a 5-foot setback in the rear in between Lot 1 and 2 right here per the LMO. And then for a Lot 2 because it's located behind Lot 1, it's not considered a corner lot, so they have a greater setback and buffer restrictions from Sweet Grass Manor access easement. So because that's their frontage, they have a 20-foot setback and buffer, which because it's in the RD development or resort development zoning district can be reduced 20 percent to a 16-foot setback and buffer.

And then they have the same to the rear, 16-foot setback and buffer from Whelk Street. And then they have the 20-foot wetland buffer to the tidal buffer or the tidal marsh, so with all

these LMO requirements this is what they would be left with. And so, you know, staff worked with Radu, like I mentioned, several times trying to figure out what exactly the LMO requirements were and how he could redevelop this property. Because it is two lots right now, he would like to maintain and have two lots, but be able to redevelop it and be similar in style to the other redeveloped lots out in this neighborhood.

So what he is proposing is to reconfigure the two lots, so instead of having a home in the front and one in the rear, situate them side by side like the -- the remaining homes that are out there. So he's proposing -- you can see the blue is what he's proposing. He's proposing to encroach or have two -- two homes attached at the first level and then detach at the second level on up, so that there's fuse and open air between the two homes. But just to have a minimum with

a home for each lot, have it attached, and encroach into the adjacent streets setback and buffer on the north of the property and the south of the property and to eliminate the setback requirements.

(Unintelligible.)

MS. DIXON: Yes, you do. So right now with the way it's reconfigured, they would have the -- let's see -- the 8-foot setback and buffer from Sweet Grass manor. So this is a 20-foot access easement. Instead of having an eight-foot setback and buffer, they're requesting to have a one-foot setback and a zero for the buffer. So they want to build right up to the edge of the access easement. And then on the southern property line have a four-foot setback and three-feet buffer from Whelk Street.

MR. STANFORD: Show us again, please, the previous drawing that shows the configuration as currently platted? Okay.

(Unintelligible.)

MS. DIXON: Of the home that could be built?

(Unintelligible.)

MS. DIXON: Well, there are two separate lots right now. Okay.

(Unintelligible.)

MR. STANFORD: Square feet of buildable area.

MS. DIXON: Well, the exhibit below, Attachment F, this isn't showing -- this is showing what he's proposing. This is showing what he is asking to encroach into. So the top is showing what's buildable per LMO requirements. The bottom is showing what he is proposing to reduce the setback and buffers to so he can build that. So I would imagine that the bottom exhibit would have a greater square footage than the top exhibit, if you were to add them together.

Does that answer your question?

(Unintelligible.)

MR. STANFORD: Nicole, did you

look at as you were working with this applicant, did you look at the possibility of a variance as to Lot 2 alone?

MS. DIXON: I did make that suggestion to him. And I think he preferred to have them side by side so that they were similar to the other homes out there. I think he was trying to be in harmony with the other lots, and I took some pictures and included it in the report.

MR. STANFORD: Yes. Show us those again, if you would.

MS. DIXON: This is the existing home right now. The other thing I wanted to mention is the existing home right now encroaches maybe two feet into the access easement, and on the other side encroaches a little bit over the property line. So by redeveloping and bringing it in more, it's actually -- even though he is requesting to vary from the LMO requirements, and it's actually bringing it more into

compliance because that access easement would be a clear 20 feet. And on the other side, obviously, will not be over the property line. So creating a greater distance from the adjacent homes. You can kind of see here where the corner of the house encroaches into the access easement, and on this side there, the stairs encroach into the house and property line. I think the applicant was trying to do is be more in line with the taller, narrower homes side by side out in the neighborhood as opposed to having one in front of the other.

MR. STANFORD: Those are all attached homes, are they not?

MS. DIXON: They are not attached. They are detached homes. These are across the street. This is one of the homes across the street. And when you go behind the house and you go back through the access easement, these are the beach front homes. So they're all next to each other, and I believe

that's what the applicant is requesting.

So yes, to answer your question, I did mention, you know, keeping this configuration and possibly getting a variance from just on that side. I think he chose this route instead. And he's here today to answer any questions you have on why he chose that.

MR. STANFORD: We can't act on a theoretical application, but I was just curious about the negotiations that went on there.

MS. DIXON: And you can see from the pictures I just showed you, they're all kind of tall and skinny. None of them are -- -or the majority of them do not have setback angles when they were constructed. Why? I'm not sure. But the applicant is requesting to eliminate the setback angle requirement as well, so that he could be more in line with the redeveloped homes out there.

So are you clear on, kind of, what

the applicant is requesting?

MR. STANFORD: I think so.

MS. DIXON: I'll go the criteria. So Criteria 1 that there are extraordinary exceptional conditions pertaining to the particular piece of property. I already, kind of, went through that, but the two properties are bound on the north side by Sweet Grass Manor, the 20-foot access easement that runs through the property and on the south side by Whelk Street, also an access easement. Both access easements require setbacks, setback angles and buffers from it as detailed in what I mentioned before. And Lot 2 is bound by the tidal wetland, which requires a 20-foot buffer from it.

Staff finds that these are extraordinary exceptional conditions that pertain to this property. You know, even though there are setback and buffer requirements for the other residential properties, the setback is greater from a street; so staff finds

that this is extraordinary.

Criteria 2, that these conditions do not generally apply to other properties in the vicinity. The majority of the properties in the vicinity do not have all of these extraordinary conditions. While they do have some of them, you know, some do have frontage on tidal creek. Some do have access easements next to them. There's only one property in the vicinity that has an access easement to the north and to the south. So staff finds that the extraordinary conditions do not generally apply to the other properties in the vicinity because there's only one that I found that it did apply to. So staff finds that they meet that condition.

Criteria 2, because these conditions, the application of the ordinance to this property would effectively prohibit or unreasonably restrict the use of the property. Because there are two lots currently,

the applicant is trying to redevelop the property while retaining two lots. And with the setback, the adjacent street setbacks, setback angles, buffers, wetland buffers requirements, it appears that Lot 2, as it exists in the current configuration, is unbuildable, as you can see up here in Attachment E.

And with the proposed reconfiguration, each lot becomes a corner lot and reduces those setback and buffers on the sides, so they just have those eight-foot setback and buffers. Again, they're requesting to reduce the south side to four feet and the north side to a zero-foot setback.

But staff finds that all the conditions that apply to this property and the application of the ordinance does restrict the buildable area and the use of the lots. If the application or the applicant was to meet all of the setback and buffer requirements, I think they would

probably be left with one structure, like, one larger structure as opposed to retaining the two lots that they're allowed to have.

So staff find that the strict enforcement of the LMO does restrict the applicant from developing two homes as they have the right to, and that they meet Criteria 3.

Criteria 4, the authorization of the variance will not be a substantial detriment to adjacent property or public good. Several of the homes in this neighborhood have been redeveloped in the same manner that with the applicant is posing, the tall, narrower structures, do you not have setback angles or setbacks and buffers from the adjacent easements. Like I mentioned, the existing home encroaches over the access easement and into the adjacent property. So by redeveloping, it actually brings the property more into conformance and creates a greater separation in between the homes.

Staff has received several -- at the time I wrote the report, I received one phone call from an adjacent property owner. I believe that she lives across the street, who was in opposition of the application. I have received several other phone calls since then in opposition of the application, and I did receive an e-mail today voicing her opposition, and I also received an e-mail today in support of it. (Unintelligible.) Some of the neighbors are concerned with the proposed height in this district. The height is allowed to -- they're allowed to build up to 75 feet if they meet all LMO requirements. Obviously, with the variance, they're not going to be meeting all LMO requirements, but they're not asking to encroach any higher than what they're allowed to do.

And that some of the adjacent owners are concerned with parking and safety concerns for pedestrians and the traffic that will be created. Yes, I

tried to ease some of their concerns that there's two lots there now. They're allowed to have two homes. That could be increasing the traffic, but they still have concerns. So I know that there are several people here today that are probably wishing to speak against the case, but that being said, staff did not find that what the applicant was proposing would be a detriment to the adjacent property and the public good. It's kind of filling right in line with the other redeveloped homes out there, and staff finds that they do meet this criteria and because they meet all four criteria, staff is recommending approval.

I know that's, kind of, a lot of information to digest. Do you have any questions or?

MR. STANFORD: I have a question for you, Nicole.

MS. DIXON: Sure.

MR. STANFORD: The two existing

lots are side by side and that's roughly east and west?

MS. DIXON: Yes.

MR. STANFORD: But you call it that for now.

MS. DIXON: Yes.

MR. STANFORD: And then the proposed development -- development of the existing property would have one structure in front of another, whereas, the proposed redevelopment would have two structures adjacent to each other?

MS. DIXON: Correct.

MR. STANFORD: In effect, what we're doing is by granting this variance is replatting the property, are we not?

MS. DIXON: They would have to come in for a reconfiguration plan and have that stand by staff. It's already two lots, so they don't have to subdivide or anything. They would just do a reconfiguration plat. I Think -- we couldn't stamp that without you approving the variance, so this was the

first step in the process. Should you grant the variance, then they would have to submit a reconfiguration plan in order to flip it sideways.

MR. STANFORD: So the reconfiguration plat would still show, essentially, Lots 1 and 2, but instead of front and back, they would be side by side --

MS. DIXON: Correct.

MR. STANFORD: -- as shown in the drawings.

MS. DIXON: As shown on Attachment F, yes.

MR. STANFORD: And so if -- if the variance is granted, that does not allow the construction of those two houses unless and until a reconfiguration plat has been submitted and approved by the town; is that correct?

MS. DIXON: Correct. And they would also have to go through the building permit process, so staff would look at the building permit to make

sure that they're matching what was approved with the variance, and, you know, so there's several steps. This isn't just the sign off. This is --

MR. STANFORD: Of course. Other questions?

MR. CUTRER: Chairman, I'd like to pursue a parallel line of inquiry. Nicole and this -- and the zoning that applies to this area along Bradley Circle, assuming there was sufficient acreage, can two homes be built on one lot?

MS. DIXON: Yes.

MR. CUTRER: Okay. If there were -- if there were not two parcels here but one, could they do what they want to do without a variance?

MS. DIXON: I want to double check to make sure that I -- Teri, you might know offhand. If it's two or more, is it a multifamily?

MS. LEWIS: Three or more.

MS. DIXON: So single family.

MR. STANFORD: I'm sorry. So the

zoning configuration is what?

MS. DIXON: Currently, if it's three or more homes on one lot, it would be considered multifamily. But for just two, it would still be considered single family. So as long as they have enough density, they can --

MR. CUTRER: So if there's enough density, the existing zoning would permit two homes on one lot. My question is there are -- it's a fact that there are two lots in existence, two parcels. But my question is if you were simply one with the combined dimensions are we in the same place we would be today? Would we be in the same place we are today, or could they develop what they want to develop without a variance?

MS. DIXON: No. They're proposing to encroach into -- there's still those setback and buffers from the access easement. So regardless of whether it's one or two lots, they still have

those requirements of the LMO.

MR. STANFORD: I understand your need for clarification there, but I think we have to deal with the application that's before us.

MR. CUTRER: I understand. My confusion is -- seems to me is what you're really trying to do is replat two lots, and I'm confused over why this before the board of zoning appeals not the town council.

MR. STANFORD: Because that can't be done unless this application for variance is granted. Because, otherwise, there would be encroachment. So the first step is the variance, and then they have to go through the further development requirements.

MR. CUTRER: Even if they're too far -- even if the two existing parcels were combined, they still need the variance?

MS. DIXON: Yes.

MR. CUTRER: That's really my question.

MS. DIXON: And to the reconfiguration plat, that's just the staff level. So he would just submit it to me, I would look to make sure that they met the LMO requirements and I would stamp it if it did. But because they wouldn't, and with what he's proposing that's why we suggested he comes with a variance first because I can't stamp for a reconfiguration plat that doesn't conform with the LMO.

MR. FINGERHUT: May I ask a question?

MR. STANFORD: Please.

MR. FINGERHUT: Thank you. Nicole, in Criteria 1 or 2 -- or starting with Criteria 1, there are extraordinary and exceptional conditions pertaining to this particular piece of property. When you say this piece of property, do you mean both lots? Are you treating them as if they're one piece of property in your analysis here or -- because some of these are true for Lot 1 and some are

truth for Lot 2, but a lot of them don't seem to be true for both. So I'm trying to understand your analysis.

MS. DIXON: Well, I kind of looked at them as a whole, but I addressed them in the background of it separately so you can see where I listed out Lot 1 and then Lot 2 and what all of the LMO requirements that would be applicable to it. So if you look at page 2 of the staff report.

MR. FINGERHUT: Yes.

MS. DIXON: So as it as it's currently configured, it's -- I'm considering it one property. I mean, obviously, it's two lots, but I'm not going to do a separate report for each lot. So I'm looking at it as a whole, but, kind of, listed out what the requirements were for Lot 1 and for Lot 2.

MR. FINGERHUT: Right. I guess my concern is that if you do look at them separately, I mean, some of these -- again, some of these things, for

instance, Criteria 2, these conditions do not generally apply to the properties in the vicinity. That's certainly true for Lot 2 because of the unique setback requirements. But as take -- in your presentation that isn't true for Lot 1. So, I guess, my -- my problem with this then is does this really apply then?

MS. DIXON: Well, I would still think that Lot 1 has exceptional conditions. I mean, the fact that there's access easement that runs through it. They have the setback and buffer from that. They've got the access easement to the south of the property, so they have a setback and a buffer from that. I would still consider that having exceptional conditions.

MR. FINGERHUT: You would. Okay. And then just my last question was then, I think, I heard you say that zero-foot setbacks are common in this area;

is that true?

MS. DIXON: The setback angles, I showed you the picture of all the homes that are built straight up. The setback angles, the way they're measured is from the base flood elevation and then 20 feet high and then they have to angle in a certain degree. But you can see from those pictures, that most of those redeveloped homes don't have or did not meet the second requirements, so they're asking to eliminate that requirement.

MR. FINGERHUT: Right. But the requested variance also brings it right up to the property line, I think, is what you said, and --

MS. DIXON: That it brings it up to the access easement line. And yeah --

MR. FINGERHUT: And that is common in that area?

MS. DIXON: Yes, that's common in that area. How and why that happened,

I'm not sure. But looking at the LMO as it is today and what exists out there today, we wouldn't allow it without a variance.

MR. FINGERHUT: Okay. Thank you.

MR. STANFORD: Other questions? We'll hear from you, Mr. Qualey, or whoever. Excellent.

Again, if you would identify yourself.

PUBLIC COMMENT

MR. CHINDRIS: Hello? My name is Radu Chindris. I'm the developer and helping the applicant through the variance process. I've been in the front of the board a few months ago, and I'm very familiar with the area. I came to understand what's happening, what's happening with the new LMO, and, therefore, I feel fit to speak in front of you today to try to answer questions and help with through the process.

The first thing that I want to show is a picture of the two homes built right next to the property in

question. As you can see, the two homes -- they have access from the main road, which is our intent to do with the redevelopment of the property. They, again, tall, skinny homes. They have a two -- all of them, they have a two-car garage, and that's one of the requirements that we try and -- one of the goals that we trying to meet is to have a two-car garage by redeveloping these properties. Those are in a resort, obviously, those properties are in a resort area. Parking is very important as well as traffic on the street. So I want to answer to some of the potential questions with the neighbors. There will be two parking in front of the homes and then it will be four more parking spots underneath the homes on each -- on each individual home.

Second, I'd like to show the current --

MR. STANFORD: The subject property, 22 Bradley, is to the right

as we're looking at right here?

MR. CHINDRIS: Yes, sir. It is to the right here. And I have a better picture here.

MR. STANFORD: Yes. Thank you.

MR. CHINDRIS: This shows the property on the right, and then it shows the access easement and that beach access easement as well, which the beach, as this easement is next to the other house between the access easement for the homes in the back and -- and the property in question.

Second, I would like to show a existing survey and, if I'm not mistaken, the current house sits approximately five feet in the front over the plotted access easements, so when we are looking to redevelop the property and have one-foot setback from the access easement, we're looking at about six feet from the -- from where the corner of this existing house is, so obviously traffic and the flow to the units in the back will be

definitely improved as well as the clearance between the existing house and the house to do this house as well. The site back on the south of the property, which encroaches over the property line, so here will have with three foot buffer and one-foot setback with a four-foot setback from the property line.

So we feel that by getting a variance granted today here will actually improve the conditions -- the condition of the property. Same time on the show, not a picture of the house south of this -- of 28. And as you can see, there's a 15-foot access easement. This current house is built all the way to the access easement line.

MR. STANFORD: And Bradley Circle is to the left of that photograph?

MR. CHINDRIS: Bradley Circle is actually in the front. It's basically in the front.

MR. STANFORD: Your property 22 Bradley Circle.

MR. CHINDRIS: 22 Bradley Circle is south of this -- of 28, which is -- which is, actually, right off this house and picture.

MR. STANFORD: All right. Thank you.

MR. CHINDRIS: I also want to show a picture of the -- I want to show a picture of -- (unintelligible) the subject property. It's right here. 28. Thank you. Yes.

(Unintelligible.)

MR CHINDRIS: Okay. I'm sorry.

MR. STANFORD: I apologize. Poorly worded question. Thank you.

MR. CHINDRIS: Yes. (Unintelligible)

MR. STANFORD: Stuck in my mind for some reason.

MR. CHINDRIS: This is a picture of the homes across the street.. They were also at the development project done in, I think, 2008, 2007. There's a 15-foot access easement between the two homes that serviced the home in the

rear. As you flip it, you can very well see they have no setback angles and they're all right. They've built all the way to -- to the access easement line, which is pretty much what we are trying to achieve here today. So we trying to redevelop the property along the lines of the other property already developed there. That's all I have to say. I guess, the staff has been very comprehensive, their report, and they pretty much covered, I think, all the questions and items related to this property.

MR. STANFORD: Any questions? Thank you for your presentation.

MR. CHINDRIS: Thank you.

MR. STANFORD: Nicole, do you have any follow up?

MS. DIXON: Sure, You know I want to show you an exhibit I forgot to show you earlier. I had asked for you to get me the exhibit that showed if they were to meet the LMO setback angles and requirements, like, that's what they

would be left with. I included that in your report, but I forgot to show it you earlier. I though it was a good exhibit.

MR. STANFORD: It is a good exhibit. It makes it much more clear.

Anything else on behalf of the applicant? All right. We will open this up for public comment. Does anyone wish to speak?

If you come up and identify yourself and tell us where you live and express yourself. Our rules give you three minutes.

MR. TOTTY: Hi. Good afternoon. My name is Matt Totty. I'm an owner of Bradley circle, Lot Number 8, across the street. The couple of points I wanted to make about this proposal that I think why it should not be approved is that the LMO -- I think the issue here is what does the current LMO provide for. The LMO clearly intends that there be separation between buildings, more light, more -- more air.

circulation, less density and more
safety by requiring setbacks from
streets and right-of-ways, easements,
not just from property lines.

This entire proposal relies upon
the street easement to create the
separation. It also does not appear to
take into account that there is a
pedestrian walkway easement, which is
not shown on this now. I'm just not
sure exactly the dimensions based upon
the application, but the walkway is
right adjacent to Sweet Manor -- Sweet
Grass Manor, The 20-foot access
easement.

MR. STANFORD: This pedestrian
easement that you're referring to is
what was referred to earlier as the
beach access -- to the beach access
easement?

MR. TOTTY: It is the beach access
easement, and it runs in favor of
everybody on Bradley Circle, so there's
a lot of traffic that are -- that is
going across that easement. Currently,

there is a buffer between that traffic and the roadway -- the street access easement is a bit of a buffer. It appears to me from Exhibit F, that if this is the property line of the adjacent property, that this -- that access easement -- the beach access easement seems to be disappearing. It's not -- it's not shown there.

MS. DIXON: This is -- This attachment here is just showing what they are proposing. It's not going away. That's a recorded right-of-way easement actually. That is not going away. That is part of their property. It has nothing to do with the proposal.

MR. TOTTY: Okay. So that -- the -- the access easement would still remain there?

MS. DIXON: YES.

MR. TOTTY: Okay. So I think the issue, you know, under the LMO, the LMO, you know, was adopted for purposes of safety. The safety is to have setbacks from street right-of-ways, not

adjacent property lines. This eliminates any setback from the street right-of-way or gives a one-foot buffer. It also proposes a -- they upped it -- I think it's 50 foot. So the drawing of the proposed building goes four stories over parking. So that's substantially higher. It's another floor higher than all the other buildings around there, so it is not the same as the other buildings.

What you're going to end up with is a very large building, 50 feet high, if not more, right up to the property lines. That's going to create very little room for that street access easement. Trucks go through there. Pickup trucks, you know, delivery trucks, garbage trucks. And it is right next to a beach access walkway easement with a lot of kids and other folks walking around. So I think it's going to squeeze that -- that space just by the nature of the building having no -- no setback, which is

required by the LMO. And I think it creates a substantial safety hazard for the -- for the community.

The -- the existing properties -- some of the existing properties that were shown, the yellow buildings to the left, are close together. They, apparently, got easements or variances at the time, but I think those were just between the two buildings. There's no access way in between there, so they don't have the safety issue that this proposal creates.

And then my last point would be that these existing lots were put in place by the current owner. They developed this subdivision, created the two lots, I believe, it was in 2003, so I don't believe there's any, you know, unnecessary hardship to this owner. They created the current setup with the two east/west lots instead of north/south. I would also say that with respect to the height of the building and just, you know, using up

every -- every foot on the property, in addition, to safety, in addition, to not having setback angles, it's going to reduce the amount of light -- light that comes in, the air circulation, and I think it will have an adverse effect on the value of the other properties around.

MR. STANFORD: Thank you, sir.

MR. TOTTY: Thank you.

MR. STANFORD: Does anyone else wish to speak? You'll identify yourself and also I need to ask you to sign in the roster. I forgot to mention that.

MR. GIBSON: Yes, sir. I'm Charles Gibson. I'm the owner of 38, the yellow house that was to the left, which you saw on the diagram, and I appreciate the opportunity to become before the committee to indicate my opposition to the variance request. And I brought along a couple of pictures to help orient a little bit further, if I could.

MR. STANFORD: Please

MR. GIBSON: I have three main points. The first one is Potential for to public safety. There are probably no less than 100 or so pedestrian trips back and forth across that beach access easement that goes right aside my home across the wooden bridge, particularly you're in the hear of town and the tourist season. So a lot of kids on bicycles, dogs, et cetera. There's a natural buffer that is there today right now. And this is much more of this -- as a layman to try to show you, but, fundamentally, that's the 12-foot easement. That they measured 12 feet with these trees. And these are three old growth trees that are probably 40, 45 foot tall with circumferences of about 60 to 65 inches. And they act as natural buffer for families as they walk along here and now down the beach access, of. Course, that's the key to that.

So I get very concerned that in

the event that these trees are removed or that the driveway encroaches even further whatsoever that you've got folks that drive across for pool maintenance. (Unintelligible) We have -- I used to be a coach, so I didn't know I had problem speaking loud.

MR. STANFORD: But we're trying to record what you're saying.

MR. GIBSON: So you can see garbage trucks go across. You can see all kinds of delivery people, so that is a fairly well-used access area across there. So I'm very concerned about imperiling public safety as a consequence of anything's going on with this.

Secondly, with in the context of maintaining architectural harmony or integrity the area, there are no four-over-story homes, and there are no four-over, one-garage-story homes there. So this essentially would be a 70-plus up to 75-foot structure if you reduce the setback -- and setback

angles. Would go 75 feet, potentially, up right beside my home that would create almost a complete barrier, particular those trees are taken down or there's no buffer between my home and that home, and would impede the view of anyone that's coming off of Bradley Circle to make that turn onto that access road, where you have, like I said, kids on bikes going up across that bridge, dogs, people, families moving across there.

So once again, I think the shear fact that we're talking about a structure that could be that tall, but no setback angles, which I can't find a point in time when you have agreed to zero setback angles in the last two years. That would create the kind of imperil safety hazard that this would. I guess so it's also not consistent with architectural harmony of the area because there are no four-over-ones.

And in terms of orientation on a lot, there are homes directly across

that wooden bridge where there are two homes front to back, not necessarily side to side. So it is inconsistent to make the comment or not correct my comment that there are no homes that are back to back because they, simply, can be done, and they are done and they are right across that bridge. And that's the access I'm talking about. You also can see that the yellow line to demise property lines. That is the same line right there, that green line, to see how close it is.

And then, finally, when you talk about an undue hardship, I think, I would echo the comments of Matt that the property owners that are now claiming undue hardship are the same ones that, by design, subdivided these into five separate lots to begin with. And then if you look at the opportunity, as you indicated earlier, putting a single dwelling home on there, you could put a 3,600 square foot home according to the individual

that's seeking the variance right now, and if you look at the value they're asking for that lot coupled with what the price of that home would be, it's consistent with everyone else.

So you're not under an undue hardship by putting a single dwelling home on there. You'd have comparable or -- or, maybe, even better value than the existing homes. So when you look at undue hardship, I don't think it meets that criteria in terms of -- from an economic impact standpoint. I think it imperil the public safety as a consequence of the 75-foot building that then inhibits the views. And I don't think it is architecturally consistent or in harmony with the other homes around the area. Appreciate your time.

MR. STANFORD: Thank you. Does anyone else wish to speak to this application?

Nicole, I know you had a clarification.

MS. DIXON: I just wanted to say -- I know a few people have brought this up now with the fact that there is no other homes that have the four-story parking. The lot 22 that got approval several months back. This is what was approved for 22 Bradley and they are four-story over parking, so it will be consistent with what is being redeveloped out there right now.

MR. STANFORD: Thank you.

MR. GIBSON: My point is there none now. There's no current.

MR. STANFORD: Understood.

And, again, if you'll identify yourself and put your name on our little roster there, please.

MR. CALLIN: You got it. I'm Jim Callin, and I own the property of 31 Bradley Circle. So while that's true for 22. I just want to know that -- that the same developer that's asking for this, so on 22, they're going four stories up and attached, and now they're going to 28 asking for two

buildings, four stories up and attached. So previous to this developer, there are no homes going up four stories or attached. And also, for the record, while a lot of home properties have been redeveloped out, there are some people like myself that still have a big plot of land and a regular old beach house. And across the street from me, there's that way and other people around the corner, and those properties have been maintained or rehabbed into nice homes. So not everything out there are three- and four-story homes.

And I would just reiterate that my kids, my dogs, guests, friends, you know, that beach access does get a lot of traffic. And by setting the buildings up so close to the road, it would be my concern of people turning and having access and good sight visibility. When little children, you know, are running across the street and in and out all the time and at the

height of seasons, it can be hundreds of hundreds of people a day. So it's really only recently under this development of 22 and 28, but the same people that you're seeing stories of things going up four stories attached.

MR. STANFORD: Thank you. We understand. Does anyone wish to speak to this? Please, ma'am. Ladies first. (Unintelligible).

MS. BECKER: Hi, I'm Tamara Becker.

MR. STANFORD: And if you'll put your name on our roster. All right. Well, thank you.

MS. BECKER: Absolutely will. Oh, it's right here. Okay. I'm Tamara Becker, and I live on Bradley's Circle as well. And a number of things we've talked about the beach access and how much traffic it does get. And that's absolutely a fact. But, in addition, to that, in terms of safety, as that house moves forward onto Bradley Circle, which is a narrow road to begin

with, and the gentleman was kind enough to discuss the parking considerations that they're taking into account, four underneath each of those buildings is a -- plus two additional on each, which is 12 cars that are going to be coming and going on this small Bradley Circle Road, pulling in and out. So yes, we've got the pedestrian access easement that's being blocked with the view and encumbered. We also have the concerns about those 12 cars that now will be coming and going outside, and these are renters.

And in all due respect to the developer and the current applicant, this particular piece of property is actually there's a sale pending, and the person who's purchasing property is the same person who came before this board and got approval for 22.

MR. STANFORD: Yes, ma'am.

MS. BECKER: So that's the furtherance of the future ownership. As you look at it, that -- he seems to

want the best of all worlds. He wants the LMO to apply when the LMO is convenient for him, and he wants the LMO not to apply when it's to his detriment, to a financial hardship that he may incur when it's to the community's detriment if he should build this as, I still maintain, Number 22 was.

And along with the same argument that I made at that point, you see the angle setback and how that, you know, creates a problem for him with how much of a story -- the stories he wants to build up. It also creates a problem for me. My house, again, is directly in line with this. And as that is going to stand, I will no longer have a view of the ocean, much less the breeze from the ocean, much less the sky. We were going up 75 feet.

I'm not -- I'm -- I'm two stories above my garage. So any value property value that I had to my property with a view or a breeze or knowing that you're

even at the ocean is taken away when this building is created in such a manner. How -- in addition, going back to the original approval of this piece of property as Lot 1 and Lot 2 back in 2003, I believe, it's been mentioned, if that piece of property, Lot 2, was the dimensions of 20 by 25, I think, was stated, there was never an intention that there was going to be a sizable home of this nature when it was planned and approved that be Lot 1 and Lot 2.

Therefore, when you take that same analysis, well he had two lots to begin with. We're just going to replat that. It's not the same. Because, originally, it was approved based on a home and then maybe a cottage or a little guesthouse. Couldn't have much more with 20 by 25, right? So this is totally against what was the original intent, I believe -- of the approval back in 2003 when the lot was split.

So those are a number of things.

I certainly don't want to use up all the time, but I'm happy to answer any questions or clarify anything that I may have said in my little presentation.

MR. STANFORD: Thank you for your presentation. Are there any questions? During -- I believe, there's another gentleman who wished to speak.

MR. DAVIDSON: Good afternoon. My name is Mark Davidson. I own one of the properties right across the street, and I'll make this brief. I know I want to reiterate what everybody said here about safety concerns and that kind of thing. There are, just being in that area, when -- when garbage trucks come through. And if you limit the space and, you know, that these garbage trucks go down, it's right next to that access -- beach access easement, and there's significant pedestrian traffic there. Kids on bikes. And so that's one of my main concerns.

And, you know, just to talk about the, you know, the four living areas over -- over the parking. And, again, if these are used for rentals or, you know, it gives another floor for family. You know, there's, typically, multiple families that come and rent these types of properties. So the amount of parking that's really needed, you can have four or five, six SUVs coming into these properties. Now, the existing homes in the neighborhood, although, one has been approved at the other location for something of this size, the amount of parking that's required for, you know, beach rentals, I'm just concerned that there's going to be parking out in the street, you know. And another family comes and, typically, they max out the parking on these properties as they stand. But this is more typical of what's in the neighborhood three floors over parking and there's parking issues there now today.

And typically the driveways are maxed out. There's cars in the -- in the -- in the garage. So I just wanted to make that last point.

But, again, I just reiterate everything that was said about safety, the beach access, and, you know, limiting -- eliminating some of these requirements. Thank you very much.

MR. STANFORD: Mr. Davidson, if you put your name on that roster, please.

MR. DAVIDSON: Thank you.

MR. STANFORD: Does anyone else wish to speak to this issue? One more.

MS. GIBSON: Hi. My name's Terry Gibson. I live at 30A Bradley Circle, and I just wanted to make sure that we have assurance that those trees are not going to come down regardless of however you-all voted.

MR. STANFORD: We have nothing to do with the removal of trees and conjecture with this application.

MS. GIBSON: Okay. All right. I

did look back and I looked at the minutes for the board of zoning for the last -- since 2013. I do not find that there's been any request for zero setback angles. Even on the property 22, that was not asked for. So I would ask that you not allow the zero setback angles on this property.

MR. STANFORD: Any questions for Ms. Gibson? Thank you. Anyone else wish to speak in -- as part of this public hearing? Last call. Hearing is closed. Now, I will give the applicant and I'll give the town an opportunity to further respond to the points that have been made. Did you wish to add anything, Nicole?

MS. DIXON: None, unless you have questions for me.

MR. STANFORD: Okay. Good. Please.

MR. CHINDRIS: Thank you for allowing me to answer a few questions or concerns. First, the trees that were presented in the picture, they are

on the access easement -- on the beach access easement. So, therefore, we're not allowed to touch them or remove them. So your concern, from that aspect, should -- should -- should be covered.

I also want to point out that there are currently two existing homes that are four stories over the garage, and I want to show you some pictures. When those buildings were built, this will be first story, second story, third story, and then this will be the fourth story, which is hosting the stairwell as well as a recreational area, and then they have a rooftop deck, which from a building department perspective, it's considered a four -- four story -- live above four-story.

So I'd like to address this concern. That we are not going to increase the height more than it's already there, which are existing -- some existing four-story over the garage. This is another picture of the

same house from the rear. As you can see, there's a room above, which you -- will be the four story over the garage. Same thing with the Number 30. I think they have a rooftop deck, which with the stairway access, which -- which from the building perspective, it's considered a four story over the garage. So with that, I would like to answer some of the resident's concerns about having four story over the garage in the neighborhood.

The other concern is, obviously, parking and flow and vendors. You know, one of the previous residents -- I'm sorry. I don't remember the name. She has her house under construction right now. She's almost finished. I'm sure she had the vendors servicing her own construction, and I'm sure she benefited from rebuilding or building a new house, so we will not be doing something else that some other people did not do.

And, again, the last -- the last

point will be all the homes that are three-story-plus over the garage for redeveloping the neighborhood were not subject to a setback angle because the previous LMO did not have a site setback angle. We are still subject to the setback -- the front setback angle, which is a 60-degree setback angle, which will, basically, push back the last floor, which is basically it'll be on the roof, and the homes will look similar to what's existing on the -- on -- on these big chairs.

And then their concern about the fact that when (unintelligible) redeveloped the subdivision in 2003, at that point, the -- that LMO that was in place was not restricting the property to be redeveloped. So at that point, Lot 2 would have been a buildable lot. So as -- what I'm trying to say, I guess, they do have a hardship that is created by that new LMO. So with that being said, I hope I answered most of the questions. I'll be happy to answer

more if there's any more.

MR. STANFORD: Other questions? Thank you, sir.

MR. CHINDRIS: Thank you.

MR. STANFORD: I consider this presentation to be closed now -- that the public hearing is closed. I apologize. And I want to point out to the board that while there are many considerations for us in conjunction with something like this, we do need to look at the criteria for granting a variance and whether or not those criteria have been met. And so I want to emphasize that to everyone. So does anyone have any other comments before a call for a motion?

Is there a motion in conjunction with this application? I will make a motion --

MR. WILSON: I move to approve the application.

MR. STANFORD: All right. Fine. Is there a second?

MR. FINGERHUT: Second.

MR. STANFORD: Is there discussion on the motion? Steve, You are moving to approve based upon the findings of fact and conclusions of law as presented by the town; is that correct?

MR. WILSON: I am.

MR. STANFORD: Thank you. Any further discussion? (Unintelligible.) Thank you. (Unintelligible.) You're talking about te present configuration? (Unintelligible.)

MS. DIXON: And this was approved back in 2003. I wasn't here then. I don't know what happened or, you know, what took place then. I don't know.

MR. STANFORD: Any other comments?

If you'll call the roll, please, ma'am.

MS. HALEY: Mr. Wilson.

MR. WILSON: For the motion.

MS. HALEY: Mr. Fingerhut.

MR. FINGERHUT: For the motion.

MS. HALEY: Mr. Stanford.

MR. STANFORD: For the motion.

MS. HALEY: Mr. White.

MR. WHITE: Against the motion.

MS. HALEY: Ms. Laudermilch.

MS. LAUDERMILCH: Against the motion.

MS. HALEY: Mr. Cutrer.

MR. CUTRER: For the motion.

MR. STANFORD: I believe then that we have the motion carrying a vote. What is it? 4 -- 5 to.

MS. DIXON: 4 to 2.

MR. STANFORD: Thank you. Did you have a variance report for us? I mean, a waiver required --

MS. DIXON: It was included in your package. Unless you have any questions, I don't need to --

MR. STANFORD: Any questions?

MS. DIXON: And we will have a meeting in April. I did receive -- we have, I think, two applications for that meeting. And, again, if whoever made the motion and second it, if you could stick around, so I can create your notes of action and have you sign it, please.

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Amanda Bowen, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Amanda Bowen
Court Reporter
Notary Public
Beaufort, South Carolina

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908

STAFF REPORT
VARIANCE

Case #:	Public Hearing Date:
VAR-000352-2016	March 28, 2016

Parcel or Location Data:	Property Owner	Applicant
Parcels#: R510 009 000 0896 0000 and R510 009 000 01102 0000 Acreage: Parcel 896: 0.115 acres Parcel 1102: 0.189 acres Zoning: RD (Resort Development District)	Frederick Craig & Shirley Dorsey PO Box 5236 Hilton Head Island, SC 29938	John P. Qualey Qualey Law Firm PO Box 10 Hilton Head Island, SC 29938

Application Summary:

John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, to allow the construction of two single family attached homes to be built without a setback angle requirement and within the adjacent street setback and buffer on both sides of the property.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **approve** the application, based on the Findings of Fact and Conclusions of Law contained in the staff report.

Background:

The two lots subject to this application are part of an existing 5 lot subdivision that was approved in 2003 (See attachment C). The property is surrounded by single family residential uses and a tidal wetland in the rear. There is an existing home that straddles the common property line in between lot 1 and 2 (See attachment D).

Staff has met several times over the past few months with the developer of the property, Radu Chindris, to determine what the buildable area of the property would be after the LMO requirements

were applied and how the two properties could be reconfigured and redeveloped.

The properties as they are currently configured have the following LMO requirements:
See Attachment E
Lot 1

- 20 foot setback and buffer from Bradley Circle and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Sweet Grass Manor, which can be reduce to a 10 foot setback and buffer because it is a corner lot, and further reduced by 20% to 8 feet because it is in the RD Zoning District and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Whelk Street, which can be reduce to a 10 foot setback and buffer because it is a corner lot, and further reduced by 20% to 8 feet because it is in the RD Zoning District and a 60 degree setback angle
- 5 foot setback in the rear of the lot adjacent to lot 2 and a 75 degree setback angle

Lot 2

- 20 foot setback and 10 foot buffer from Sweet Grass Manor, which can be reduced by 20% to a 16 foot setback and 8 foot buffer because it is in the RD Zoning District and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Whelk Street, which can be reduced by 20% to a 16 foot setback and 8 foot buffer because it is in the RD Zoning District and a 60 degree setback angle
- 5 foot setback adjacent to lot 1 and a 75 degree setback angle
- 20 foot buffer adjacent to the tidal wetland in the rear of the property

The applicant has determined that when the LMO requirements are applied that lot 2 becomes an unbuildable lot. He wishes to reconfigure the two lots to be side by side or parallel to each other as opposed to one behind the other, both of which will have frontage on Bradley Circle, as a zero lot line attached subdivision. The applicant proposes to demolish the existing home and construct two homes that will be attached at the first level along the common property line and then detached at level two for views between the two homes.

The applicant is requesting the following variances in order to reconfigure the two lots and construct the two homes:
See Attachment F
Lot 1

- Reduce the 8 foot setback and buffer from Sweet Grass Manor to a 1 foot setback and no buffer
- Eliminate the 60 degree setback angle from Sweet Grass Manor

Lot 2

- Reduce the 8 foot setback and buffer from Whelk Street to a 4 foot setback and a 3 foot buffer
- Eliminate the 60 degree setback angle from Whelk Street

Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law:

Grounds for Variance:

According to the applicant, when the LMO requirements are applied to the existing two lots, there is only room for an approximately 700 square foot structure, essentially making lot 2 an unbuildable lot. He wishes to reconfigure the two lots so that they are side by side fronting Bradley Circle and construct two single family attached homes. The applicant states in the narrative this reconfiguration will be more in harmony with the surrounding homes in the neighborhood, will allow views and breezes between the dwellings and will be more architecturally similar to other nearby homes. The applicant states in the narrative that the strict enforcement of all the required setbacks, setback angles, buffers and wetland buffer places an unnecessary hardship on them. The applicant states that with all of the setbacks, setback angles and buffer requirements, only one dwelling approximately 3,600 square feet could be constructed, which deprives him of the two lots allocated with the original subdivision plat. He states it would result in a dwelling that will be less harmonious with the neighborhood. The applicant states in the narrative that the approval of the requested variance will not be a detriment to adjacent property because the proposed homes will already be separated from the adjacent homes by the 20 foot access easements on the north and south sides.

Summary of Fact:

- The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

Conclusion of Law:

- The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

Summary of Facts and Conclusions of Law:

Summary of Facts:

- Application was submitted on February 26, 2016 as set forth in LMO Section 16-2-102.C and Appendix D-23.
- Notice of the Application was published in the Island Packet on March 6, 2016 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on March 7, 2016 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on March 9, 2016 as set forth in LMO Section 16-2-102.E.2.
- The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

Conclusions of Law:

- The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
- The application was submitted 31 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
- Notice of application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was posted 21 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.

- Notice of application was mailed 19 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

As provided in LMO Section 16-2-103.S.4, Variance Review Standards, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.

Summary of Facts and Conclusions of Law:

Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2-103.S.4.a.i.01):

Findings of Facts:

- The two properties are bound on the north side by Sweet Grass Manor, a 20 foot access easement that runs through the property and on the south side by Whelk Street, also an access easement. Both access easements require setbacks, setback angles and buffers from it, as detailed in the background section above.
- Lot 2 is bound by a tidal wetland to the east, which requires a 20 foot buffer from it.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are extraordinary and exceptional conditions that pertain to this particular property.
- Even though there are setback and buffer requirements adjacent to other residential properties, the setback is greater from a street. It is extraordinary to have the property reduced by the 20 foot easement that runs through the property, to have a greater setback and buffer in addition to that, have a greater setback on the south side of the property from that easement and to also have the wetland buffer requirement on the east side.

Summary of Facts and Conclusions of Law:

Criteria 2: These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):

Finding of Facts:

- The majority of the properties in this vicinity do not have these extraordinary conditions.
- There is only one other property in the vicinity, the property directly adjacent to the subject property, that is bound on two sides by an access easement and also bound by a tidal wetland. There is an existing home on that lot that is built right up to the access easement.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because the extraordinary conditions do not generally apply to other properties in the vicinity.
- As these conditions only apply to one other property in the vicinity, it is clear they do not generally apply to other properties in the vicinity.

Summary of Facts and Conclusions of Law:

Criteria 3: Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property (LMO Section 16-2-103.S.4.a.i.03).

Findings of Facts:

- Because there are two lots currently, the applicant is trying to redevelop the property while retaining two lots.
- With the adjacent street setbacks, setback angles, buffers and wetland buffer requirements it appears that lot 2 as it exists in the current configuration is unbuildable, as shown on attachment E.
- With the proposed reconfiguration, each lot becomes a corner lot. Because they will be corner lots (with the frontage along the access easements being the sides that can be reduced by 50%), LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, requires an 8 foot adjacent street setback and buffer and a 60 degree setback angle on those two sides.
- Attachment G demonstrates what the applicant would be allowed to build meeting all LMO requirements. You can clearly see by this attachment they would be left with one structure, two townhouse style units, with only a one car garage each. This would not be in harmony with the adjacent redeveloped homes.
- The applicant is requesting to reduce the 8 foot setback and buffer from Sweet Grass Manor to a 1 foot setback and no buffer and reduce the 8 foot setback and buffer from Whelk Street to a 4 foot setback and a 3 foot buffer. This will allow the construction of two single family homes, attached at the ground level, to be built at the minimum width in order to be able to provide a two car garage and a stairway entrance into the second level of the home.
- The applicant is also requesting to eliminate the 60 degree setback angle requirement from both Sweet Grass Manor and Whelk Street. This will allow the homes to be constructed with 4 levels over parking, similar to the other homes in the vicinity. The 60 degree setback angle requirement would limit the homes to be very small in size with only 2 – 2 ½ narrow levels over parking, not in harmony with the other resort style homes in the vicinity.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because the extraordinary conditions do prohibit and unreasonably restricts the utilization of the property.
- Staff finds the strict enforcement of the LMO requirements do restrict the applicant from developing the two existing properties. Staff finds the setback, setback angle and buffer

reduction request the applicant is proposing is the minimal amount in order to two construct two homes.

Summary of Facts and Conclusions of Law:

Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance (LMO Section 16-2-103.S.4.a.i.04):

Findings of Facts:

- Most of the homes in this neighborhood have been redeveloped in the same architectural manner as what the applicant is proposing (tall narrow homes with no setback angles and no setbacks or buffers from adjacent access easements).
- The existing home encroaches over the Sweet Grass Manor access easement and also encroaches onto the adjacent property, into the Whelk Street access easement.
- Staff received a phone call from Tamara Becker, the property owner across the street, stating her opposition to the variance application for the following reasons: two new homes in the area will produce more traffic, parking and safety concerns for pedestrians and will block her views to the beach.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will not be of substantial detriment to adjacent property.
- The variance will allow the redevelopment of the property to be more in style and harmony with the existing redeveloped homes in the vicinity.
- The new homes when constructed will not be encroaching into the access easements, like the existing home is currently, therefore bringing it more in compliance with the LMO and providing a further setback or distance between the proposed homes and the existing adjacent homes.
- Even though there is a property owner opposed to the application, staff could not find the application to be a substantial detriment to the adjacent property or public good when the proposed homes will be in harmony with the newer adjacent homes in the neighborhood.

LMO Official Determination:

Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should be granted to the applicant.

BZA Determination and Motion:

The "powers" of the BZA over variances are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may grant a variance "in an individual case of unnecessary

hardship if the board makes and explains in writing . . ." their decisions based on certain findings or "may remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review."

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 103 and the Rules of Procedure for the BZA.

A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

The BZA can either Approve the application, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the motion.

PREPARED BY:

ND — March 14, 2016

Nicole Dixon, CFM, Senior Planner — DATE

REVIEWED BY:

HC — March 16, 2016

Heather Colin, AICP, Development Review Administrator — DATE

ATTACHMENTS:

A) Vicinity Map
B) Applicant's Narrative
C) Original Subdivision Plat
D) As-built Survey
E) Site plan showing current lots with LMO requirements
F) Site plans showing proposed reconfiguration and lots with proposed homes
G) Elevation showing if the two lots met LMO requirements
H) Elevation showing proposed homes
I) Pictures

ATTACHMENT A



VAR-352-2016 Vicinity Map

ATTACHMENT B

NARRATIVE FOR VARIANCE APPLICATION

28 BRADLEY CIRCLE, TOWN OF HILTON HEAD ISLAND, SC

TAX MAP NOS.: R510-009-000-0896-0000 and

R510-009-000-1102-0000

February 26, 2016 (Revised March 9, 2016)

The Applicant owns 28 Bradley Circle, which is known as "Lot 1" containing 0.115 acres, and "Lot 2" containing 0.189 acres, as more fully shown on the plat of the property recorded in Plat Book 97 at Page 192, a copy of which is attached. These lots were approved by the Town as separate lots of record, as shown on such recorded plat.

The Applicant is proposing to subdivide the property into two (2) single family resort lots, upon which zero lot line single family homes will be constructed (which are designated as Lots 1 and 2 on the attached site plan). The Applicant is requesting two (2) variances, as follows:

1. As to Lot 1 shown on Plat Book 97 at Page 192, the LMO requires a setback and buffer of 8', and a setback angle of 60° along the 20' Access Easement (Sweet Grass Manor), and, as to Lot 2 shown on said plat, the LMO requires a setback of 16', a 60° setback angle, and a buffer of 8'. As shown on the attached Site Plan, which now depicts Lots 1 and 2 as parallel with each other instead of one behind the other, the Applicant seeks approval of variances allowing a setback of 1', no setback angle, and no buffer on the North side of Lot 2 along the Access Easement/Sweet Grass Manor. The side setback of 1' will allow for the overhang of the roof and eaves of the dwelling to be built on Lot 2. If the Variances are authorized, the dwelling to be built on Lot 2 will be at least 20' from the adjoining property, upon which is located a 15' beach walkway easement, so there will be at least 35' separation between dwellings on the adjoining properties.

2. As to Lot 1 shown on Plat Book 97 at Page 192, the LMO requires a setback and buffer of eight feet (8') and a setback angle of 60 degrees along Whelk Street, which is located along the South property line of the project, and, as to Lot 2 shown on said recorded plat, the LMO requires a setback from Whelk Street of 16', a 60° setback angle, and a buffer of 8'. As shown on the attached Site Plan, the Applicant seeks approval of variances to reduce the side setback of Lot 1 along Whelk Street to four feet (4') in width, to eliminate the side setback angle, and to reduce the buffer to 3' in width (to allow for the roof and eaves overhang). The result will be a minimum of 19' separation between dwellings on the adjoining properties, because Whelk Street is a right of way/easement measuring fifteen feet (15') in width.

The Applicant seeks the two (2) Variances allowing reduced side setbacks, side setback angles, and buffers along such North and South property lines so the Applicant will be able to construct two (2) zero lot line dwellings, which will: (a) be more in harmony with the existing homes in the neighborhood; and (b) may allow views and breezes between the dwellings, as requested by neighbors who live across the street on Bradley Circle. Photographs of other homes in the neighborhood will be provided to the BZA to demonstrate that the zero lot line homes which the Applicant will be allowed to build if the Variance is granted are architecturally similar to other nearby homes.

ATTACHMENT B

Without the requested variances, the building footprint of Lot 1 shown on the recorded plat will be approximately 30' by 30' and of Lot 2 would be approximately 25' by 30', because Lot 2 is subject to 16' setbacks from Sweet Grass Manor and from Whelk Street. Without the requested variances, the Applicant would only be able to build a dwelling on Lot 1 containing one story above a garage/parking area, and the Applicant would only be able to build a dwelling on Lot 2 containing approximately 700 square feet of heated/cooled space due to the extreme setbacks. Needless to say, neither of such dwellings would be in harmony with the other, newer dwellings in this resort neighborhood, and strict enforcement of the setbacks, setback angles and buffers will result in unnecessary hardship to the Applicant.

Variance Request. A Variance may be granted by the Board of Zoning Appeals if it concludes that the strict enforcement of any appropriate dimensional, development, design or performance set forth in the LMO would result in unnecessary hardship to the applicant.

The Applicant requests Variances from the following Sections of the LMO:

1. LMO Section 16-5-102.C Adjacent Street Setbacks/Setback Angles along North and South property lines of the project.

2. LMO Section 16-5-103.D Adjacent Street Buffers along North and South property lines of the project.

In this case, the Applicant requests Variances from the cited LMO Sections, because:

A. **There are extraordinary and exceptional conditions pertaining to the Applicant's property, including the following:** *(a) the properties are is bounded on the North side by a 20' wide access/utility easement (named Sweet Grass Manor), which has also reduced the amount of developable land for the Applicant's intended project because new LMO provisions require the setback to be measured from the access easement, not from the property line; and (b) the properties are bounded on the South side by Whelk Street, a 15' right of way/easement, which in itself provides an additional 15' wide setback from the adjoining residential property; and (c) Lots 1 and 2 shown on Plat Book 97 at Page 192 are existing lots of record, and it will not be feasible to build new homes on said lots without the requested variances.*

B. **These conditions do not generally apply to other properties in the vicinity.** *There are no other properties in the vicinity which have such adjoining uses and conditions that adversely affect development of the sites. Other nearby properties which have adjoining access easements were developed without the adverse effect of the revised LMO requirement that the side setbacks and buffers be measured from the access easement boundary line instead of the property line.*

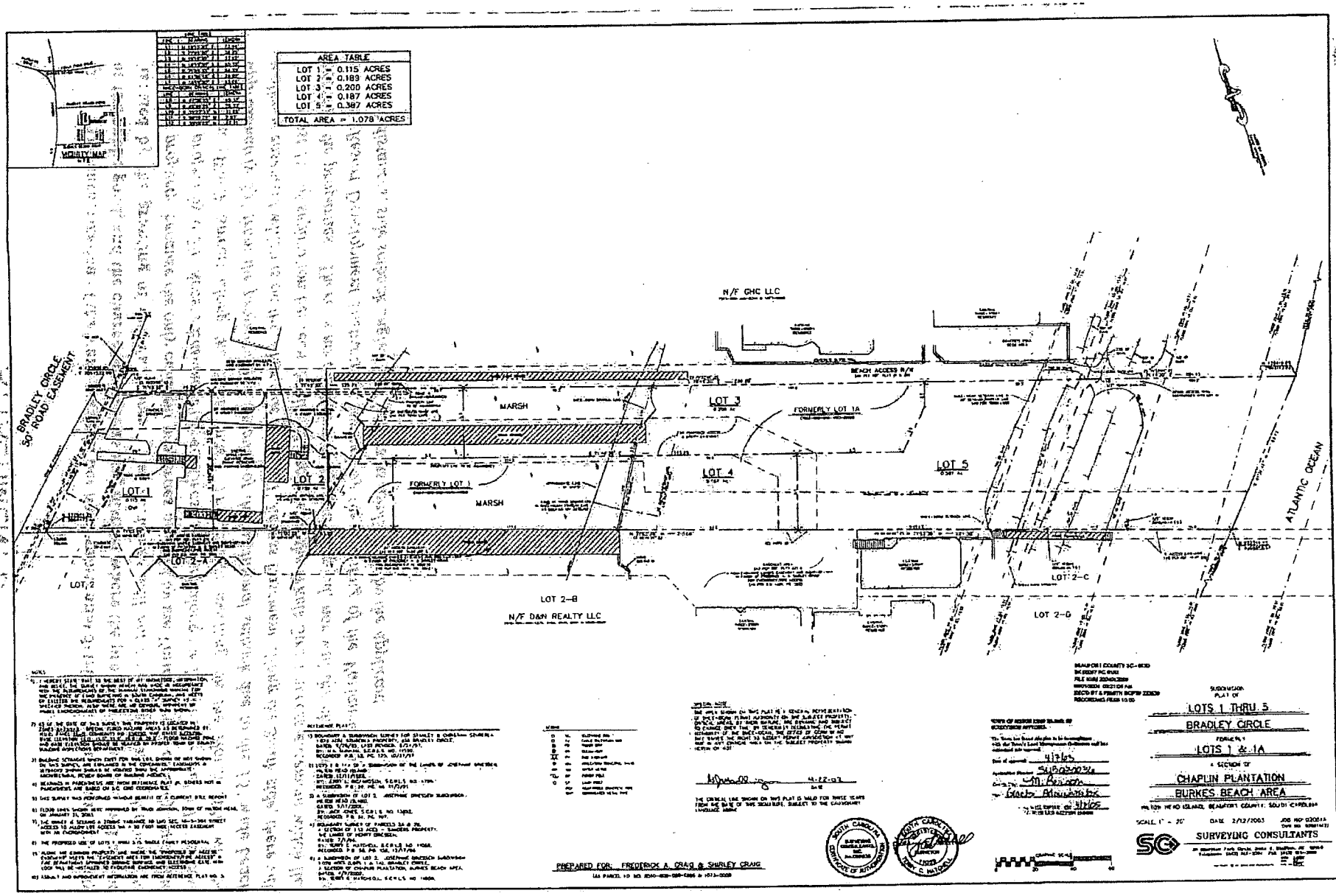
C. **Because of these conditions, the application of this Ordinance to this particular property will effectively prohibit or unreasonably restrict the utilization of the property.** *The application of the Ordinances would unreasonably restrict Applicant's utilization of the property, because the imposition of the 8' setbacks, 60° setback angles, and buffers on the North and South property lines will result in construction of only one (1) dwelling containing only approximately 3,600 square feet, which deprives the Applicant of one of the approved dwelling units allocated to Lots 1 and 2 as shown on the recorded subdivision plat. It will also result in a dwelling which will be less attractive and less harmonious with the neighborhood than Applicants' proposal to construct two (2) smaller zero lot line*

ATTACHMENT B

dwellings. Applicant's position is that the optimum utilization of the property is as two (2) zero lot line homes and that the Ordinance would unreasonably restrict development of the property as one (1) dwelling unless the Variances are approved.

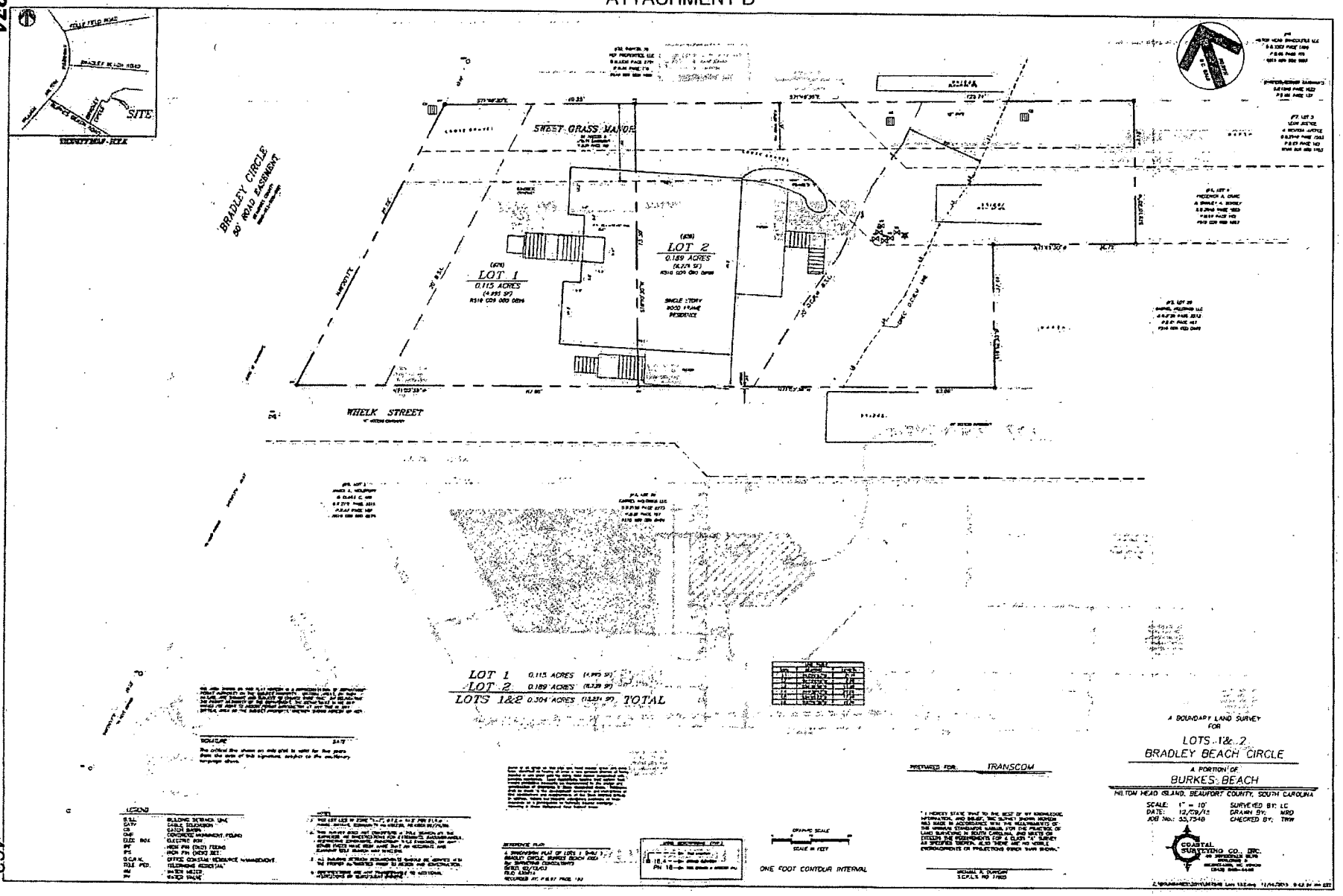
D. **The authorization of the Variances will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variances.** *The Variances will not be of substantial detriment to adjacent property, because the only adjacent properties affected by the Variances are already separated from the project by a 20' Access Easement (Sweet Grass Manor) along the North side and a 15' Access Easement (Whelk Street) along the South side. The closest dwelling on the North side will be approximately 35' from the property line because of the additional setback due to the 15' wide beach walkway easement which is on the other side of the 20' Access Easement. Along the South side, there will be at least 19' of separation between dwellings because of the Whelk Street access easement which lies between the properties. There is no detriment to the public good, nor will the character of the zoning district (Resort Development District) be harmed by the granting of the Variances to reduce the side setback distances, side setback angles, and buffers as applied for by the Applicant.*

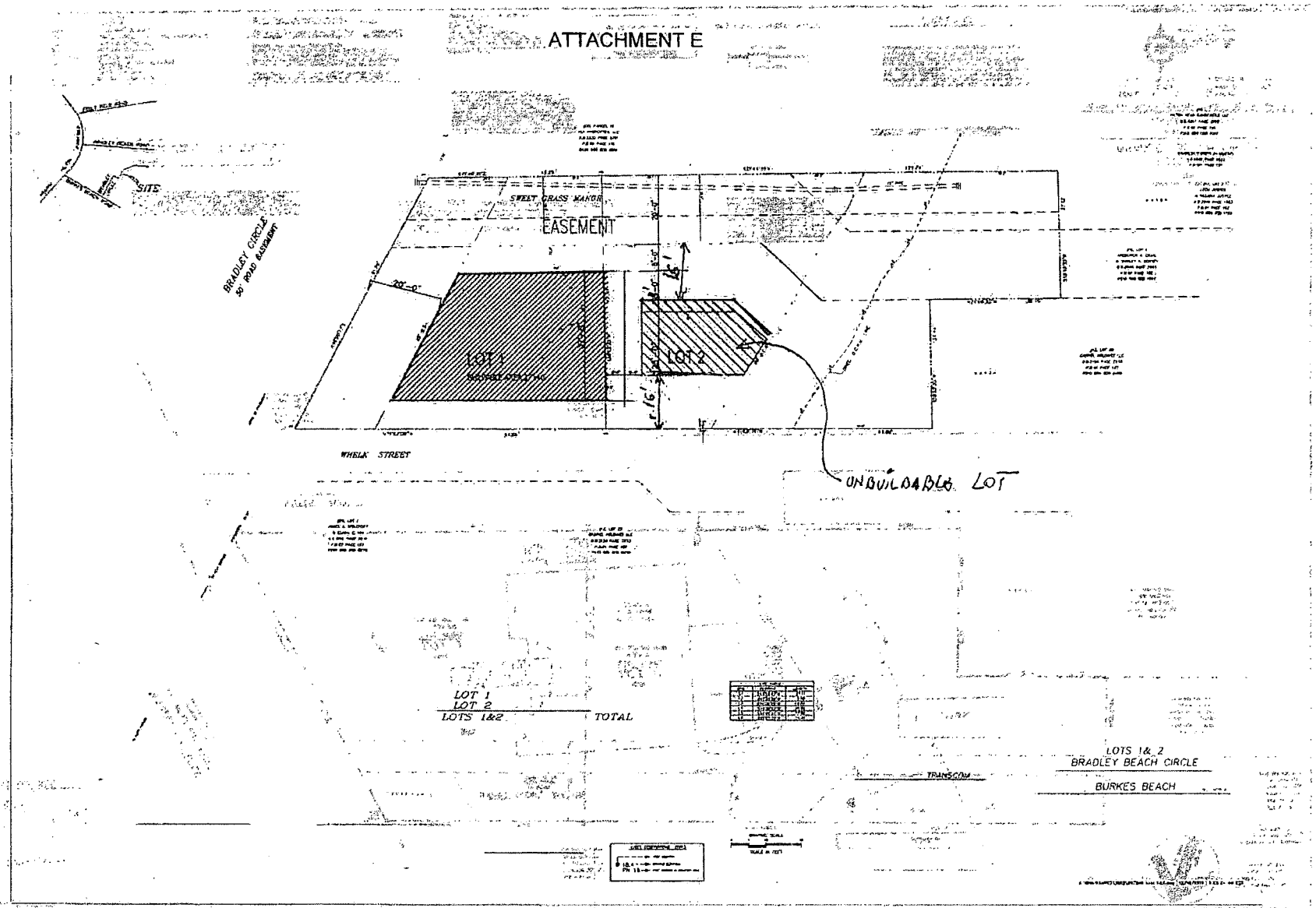
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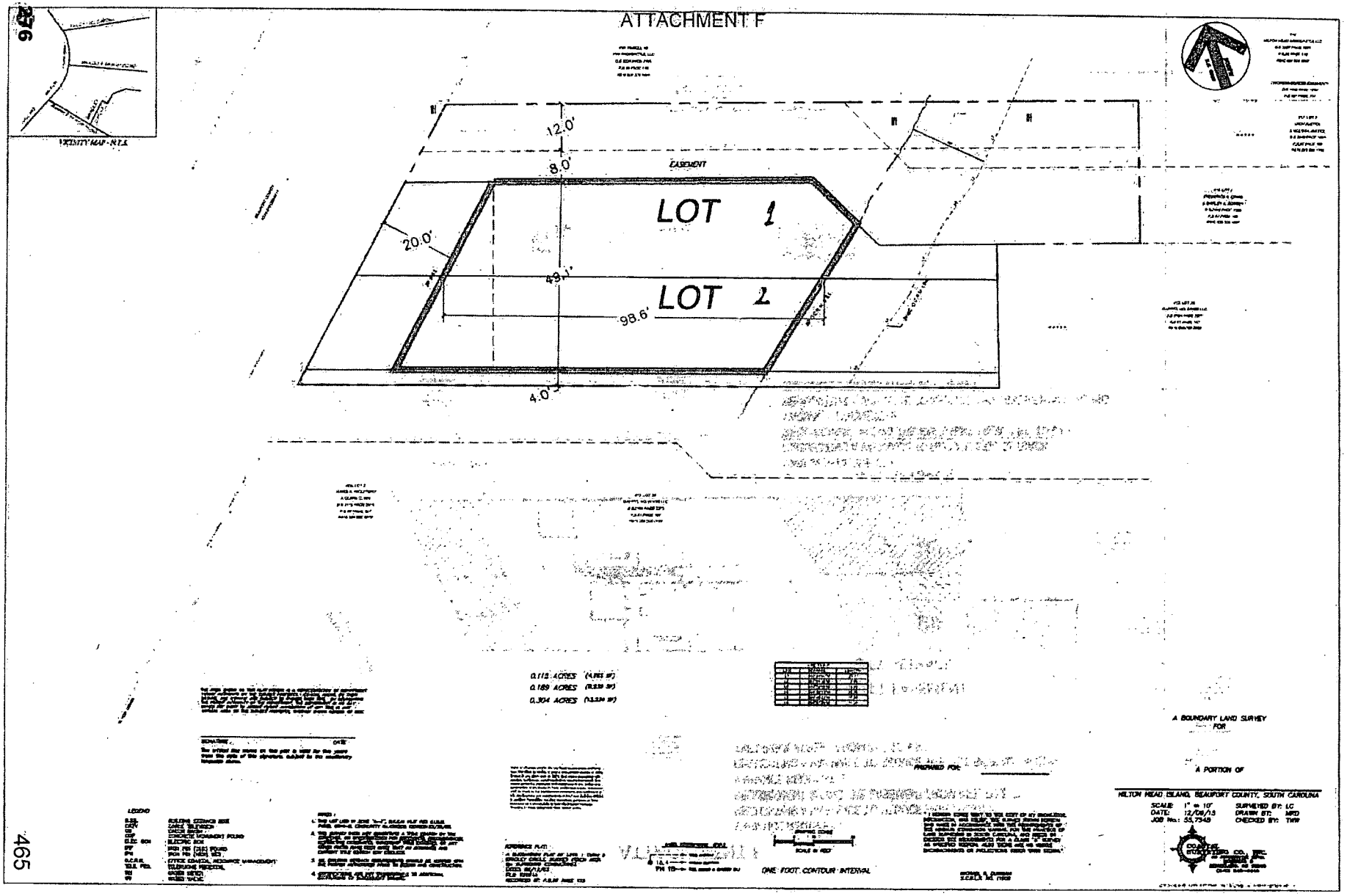
PREPARED FOR: FREDERICK A. CRAIG & SHIRLEY CRAIG

ATTACHMENT D



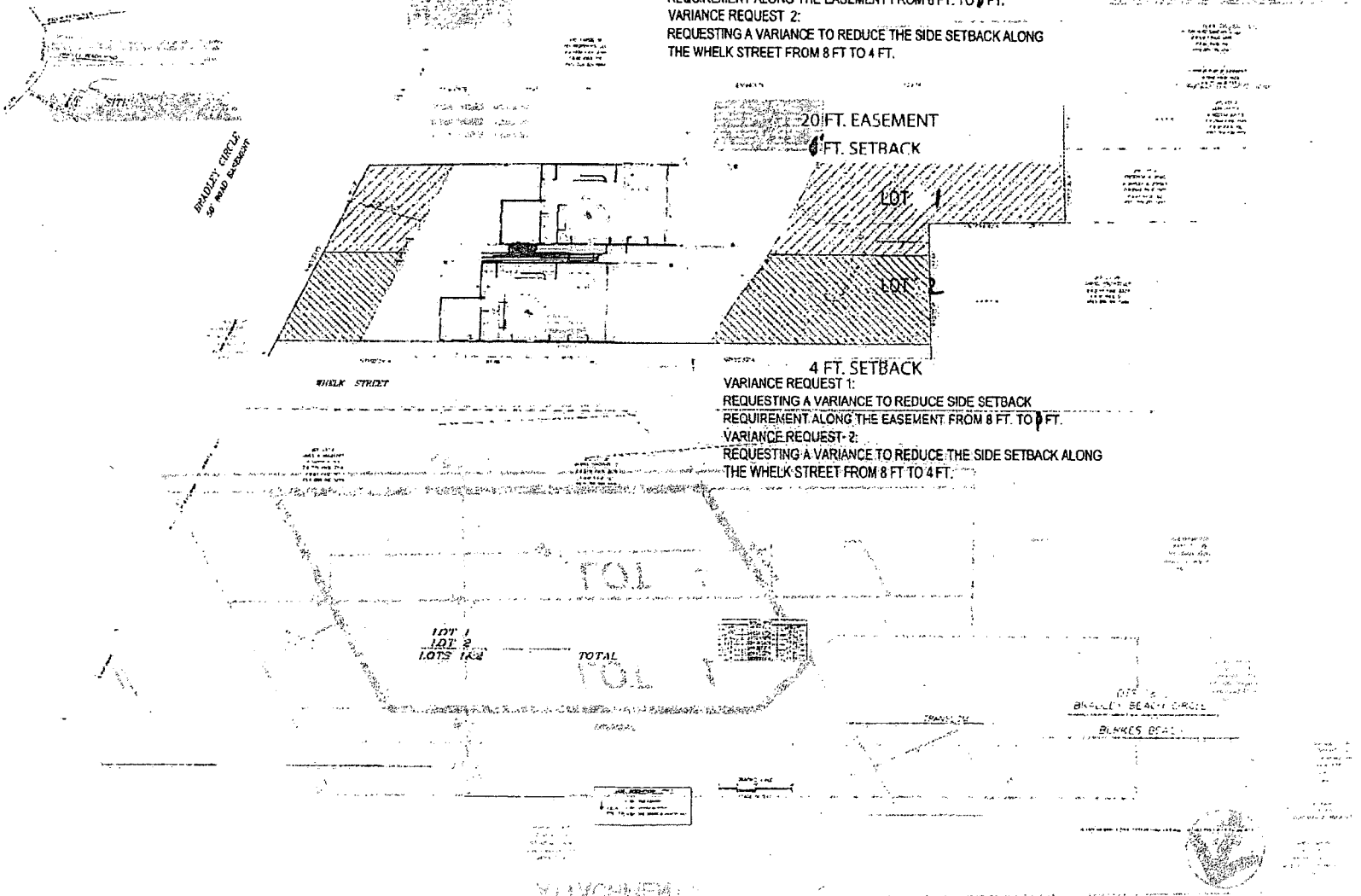

ATTACHMENT E
SITE
BRADLEY CIRCLE
30' ROAD EASEMENT
SWEET GRASS MANOR
EASEMENT
LOT 1
LOT 2
WHELK STREET
UNBUILDABLE LOT
LOT 1
LOT 2
LOTS 1&2
TOTAL
LOTS 1& 2
BRADLEY BEACH CIRCLE
BURKES BEACH

ATTACHMENT F



ATTACHMENT F

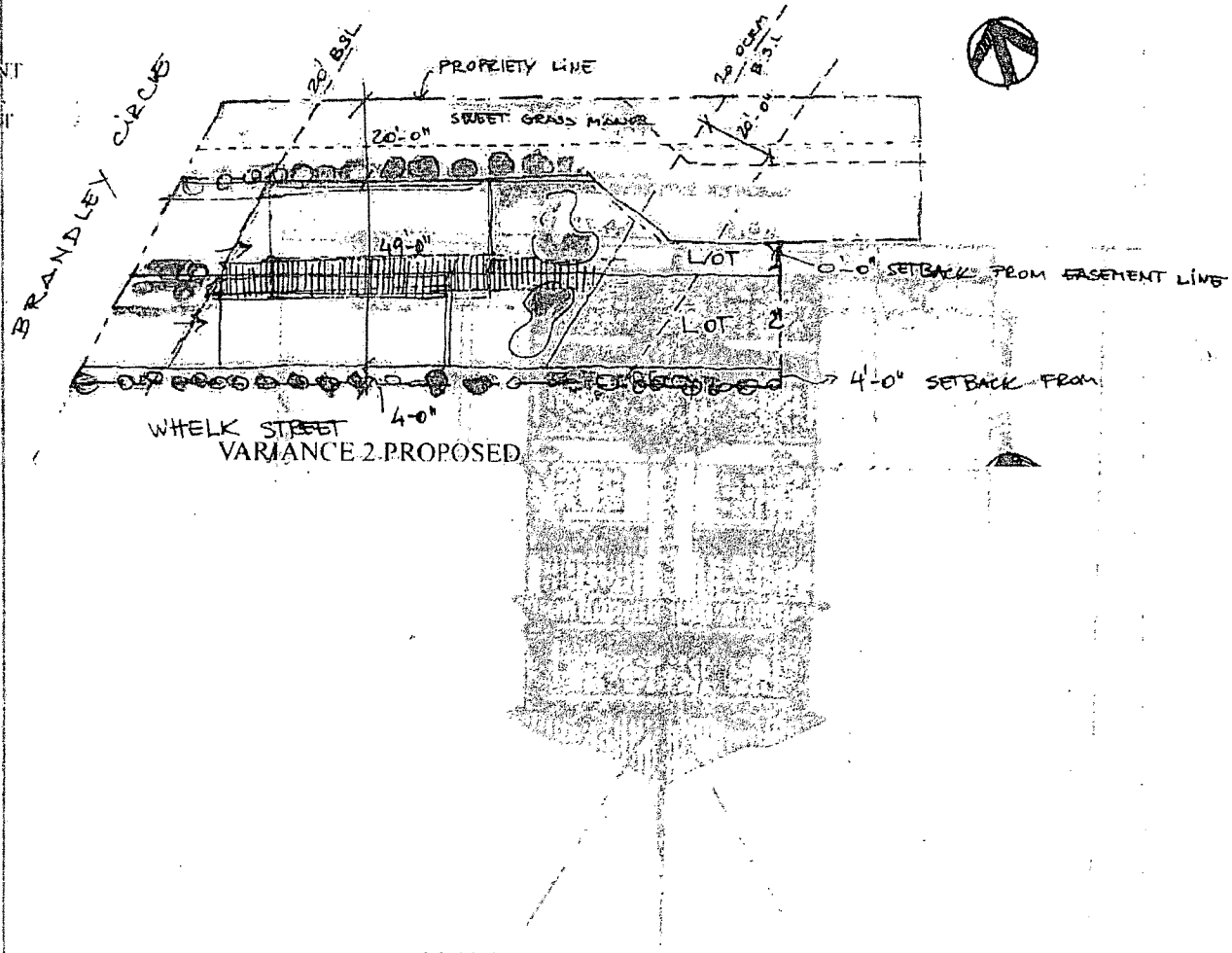
VARIANCE REQUEST 1:
REQUESTING A VARIANCE TO REDUCE SIDE SETBACK
REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 6 FT.
VARIANCE REQUEST 2:
REQUESTING A VARIANCE TO REDUCE THE SIDE SETBACK ALONG
THE WHELK STREET FROM 8 FT TO 4 FT.



278 VARIANCE REQUEST 2

REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT. AND ALONG WELK STREET FROM 8FT. TO 4 FT.

ATTACHMENT F



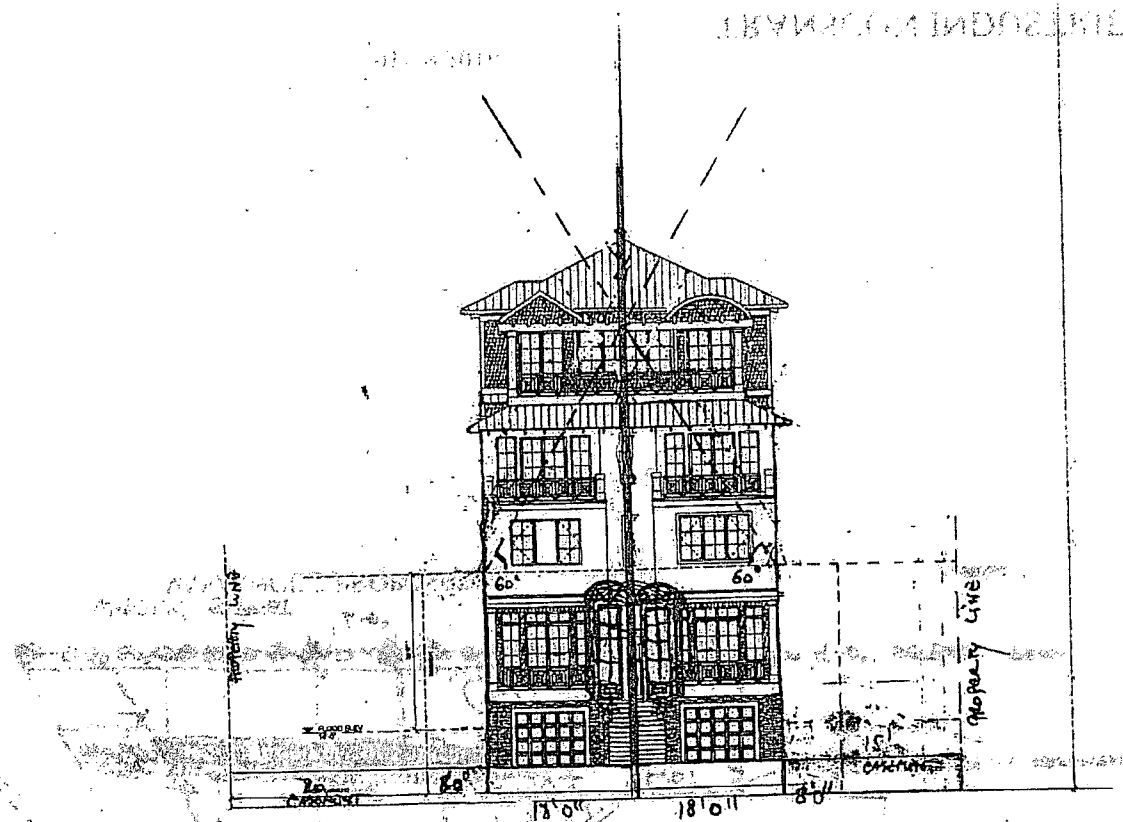
VARIANCE 2 PROPOSED

01/19/2016

TRANSCON INDUSTRIES

467

ATTACHMENT G



FRONT ELEVATION SETBACK LINE -60 DEGREE

SCALE: 1/8"=1'-0"

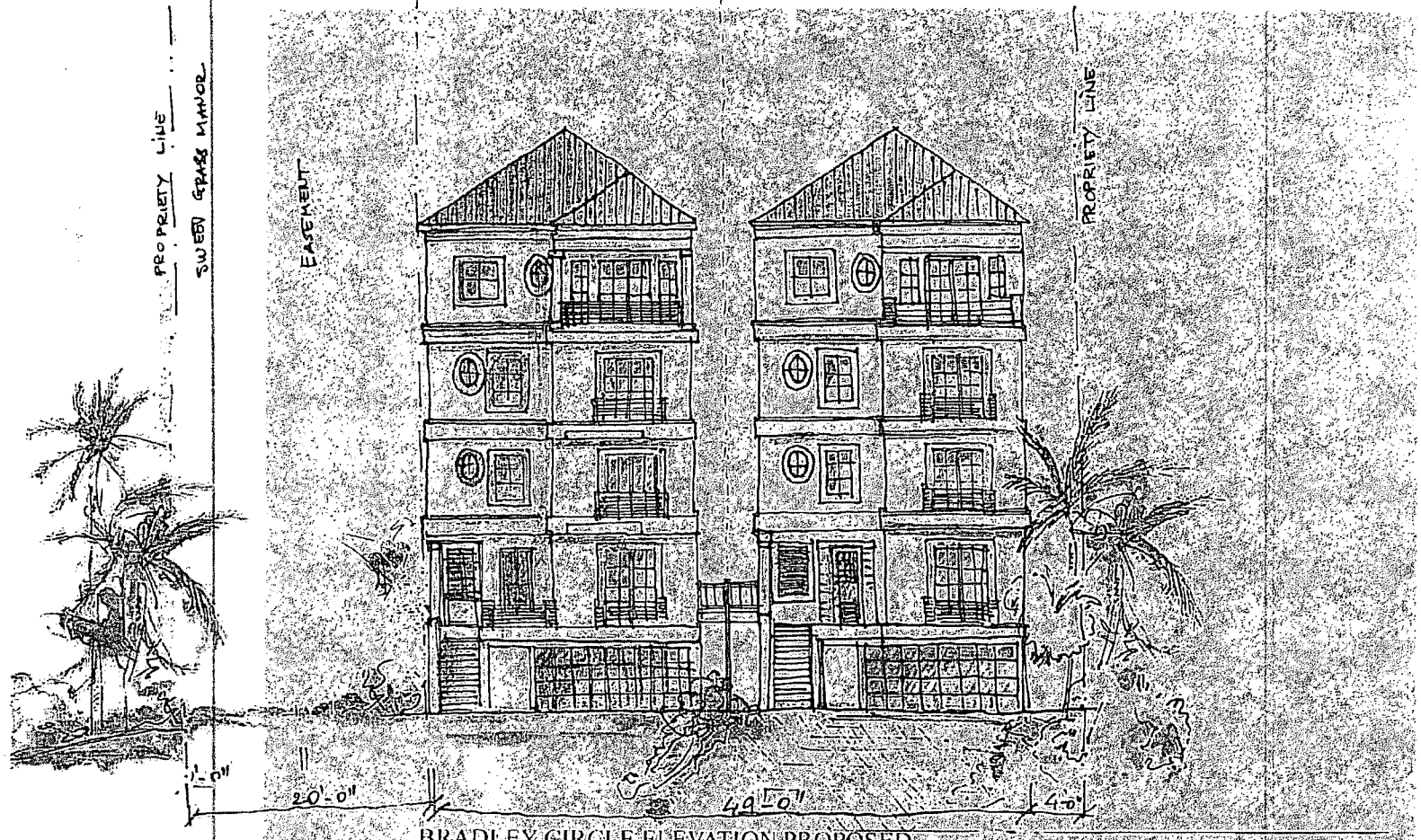
LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC
TRANSCON IND. LLC

Project Number 22 B
Date 07-16-15
Drawn By Author
Checked By Checker

Autodesk Revit
F:\ALEX PROJECTS\BRADLEY\
BRADLEY CIRCLE\02 BRADLEY
CIRCLE ARCHITECTURAL

ELEVATION
SETBACK 60
DEGREE

ATTACHMENT H



BRADLEY CIRCLE ELEVATION PROPOSED

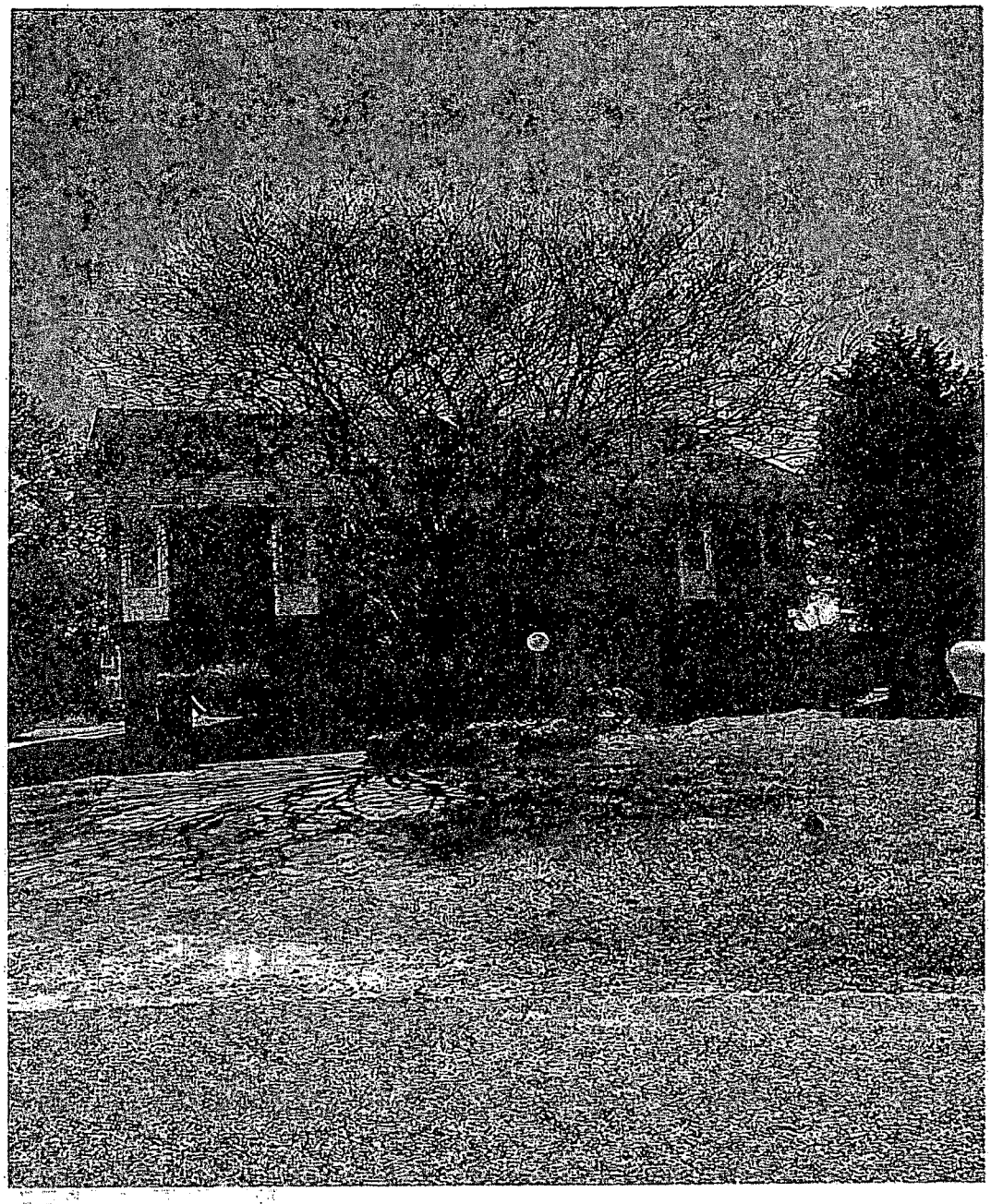
01/19/2016

TRANSCON INDUSTRIES

VARIANCE REQUEST 2

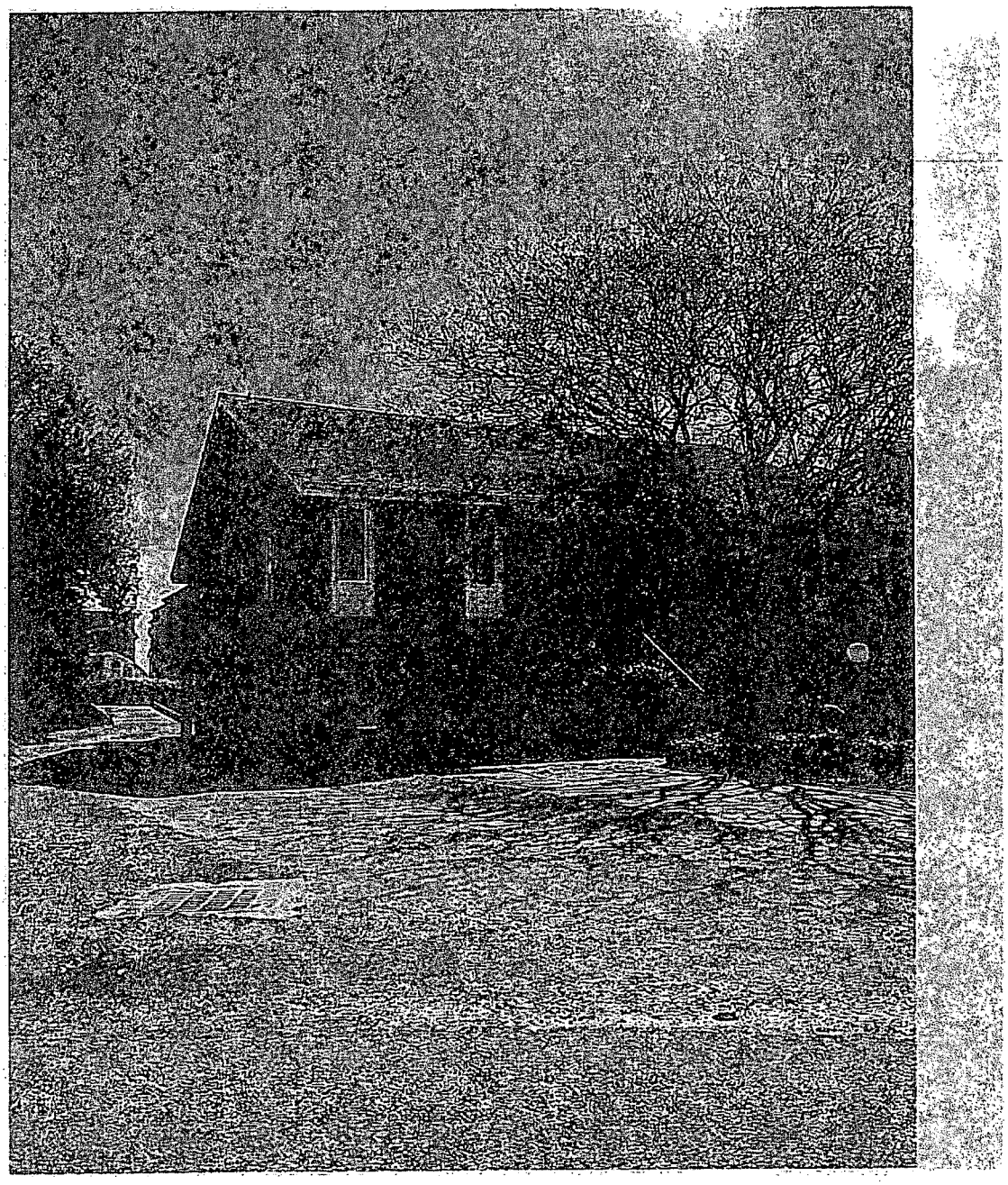
REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT. AND ALONG WELK STREET FROM 8FT. TO 4 FT.

ATTACHMENT I



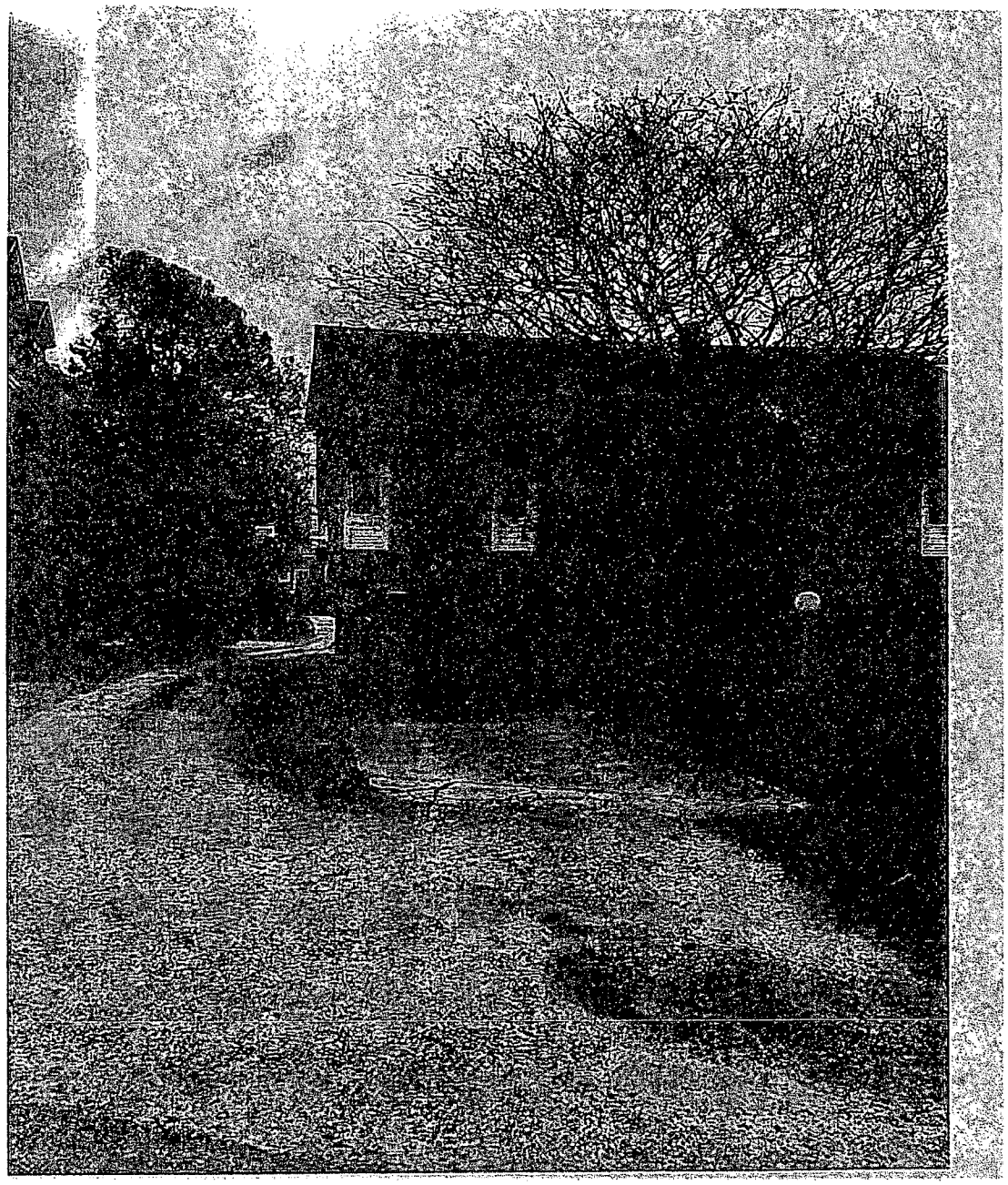
28 Bradley Circle, Subject to variance

ATTACHMENT I



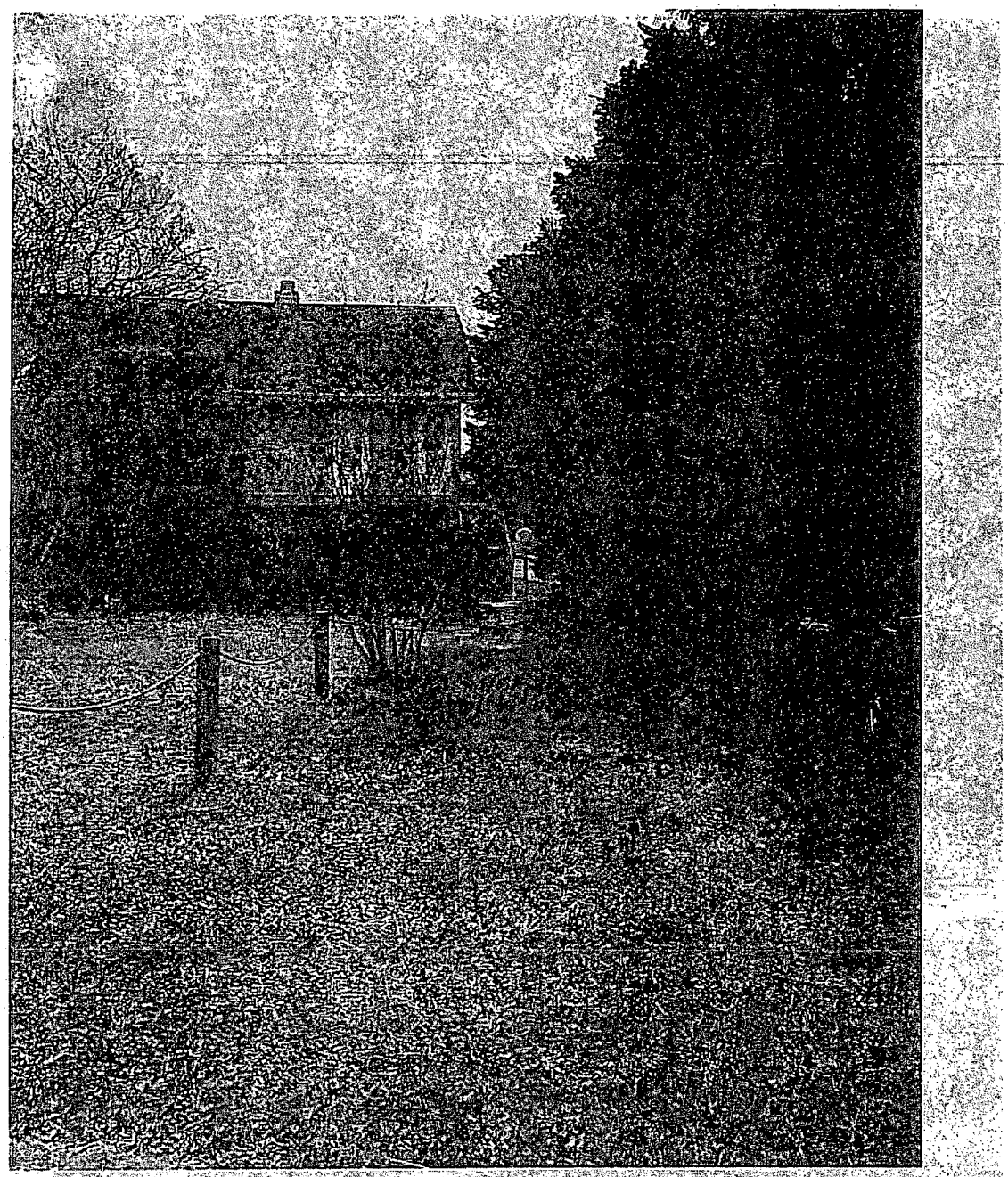
View of Sweet Grass Manor Access Easement

ATTACHMENT I



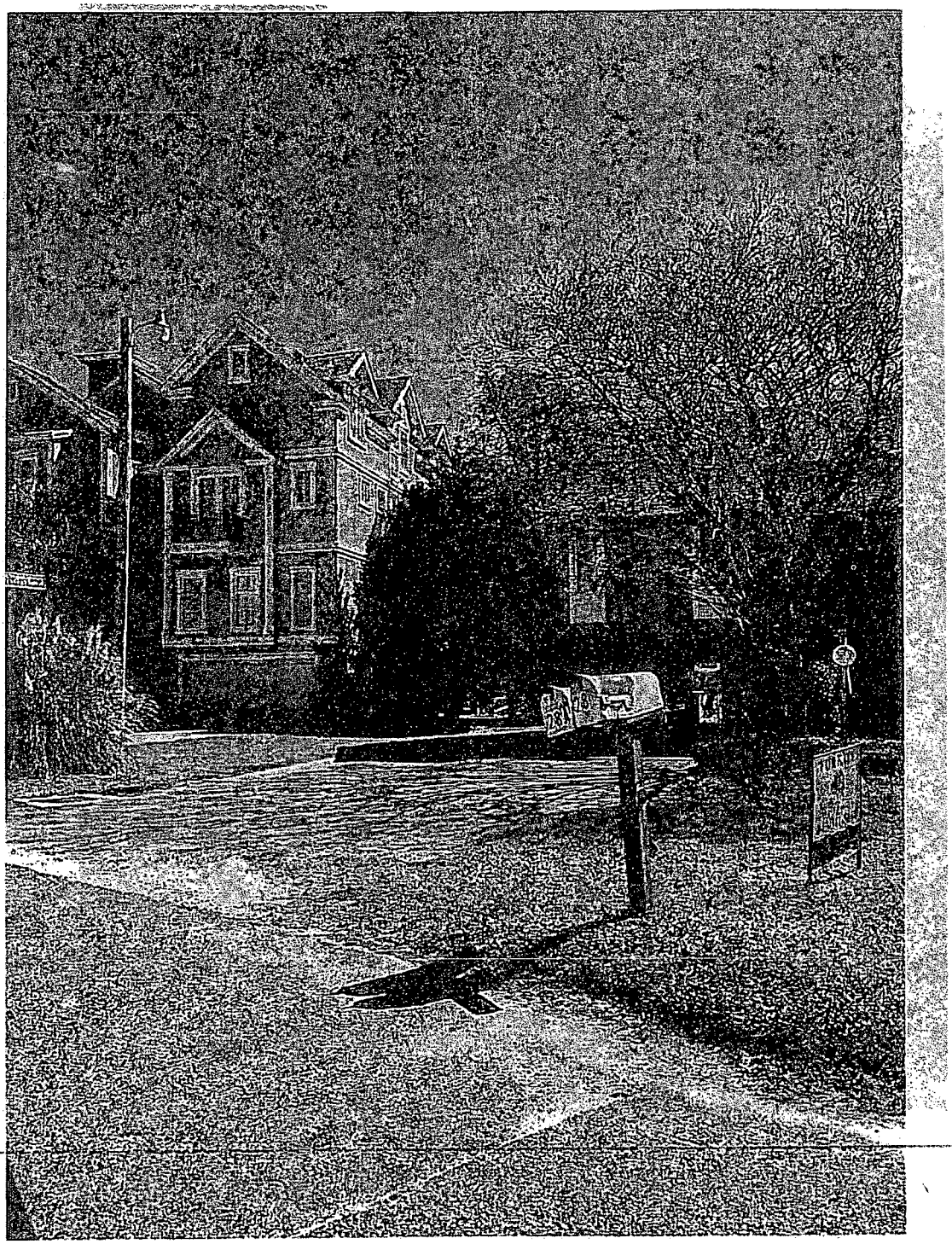
View showing existing home encroaching into access easement

ATTACHMENT I



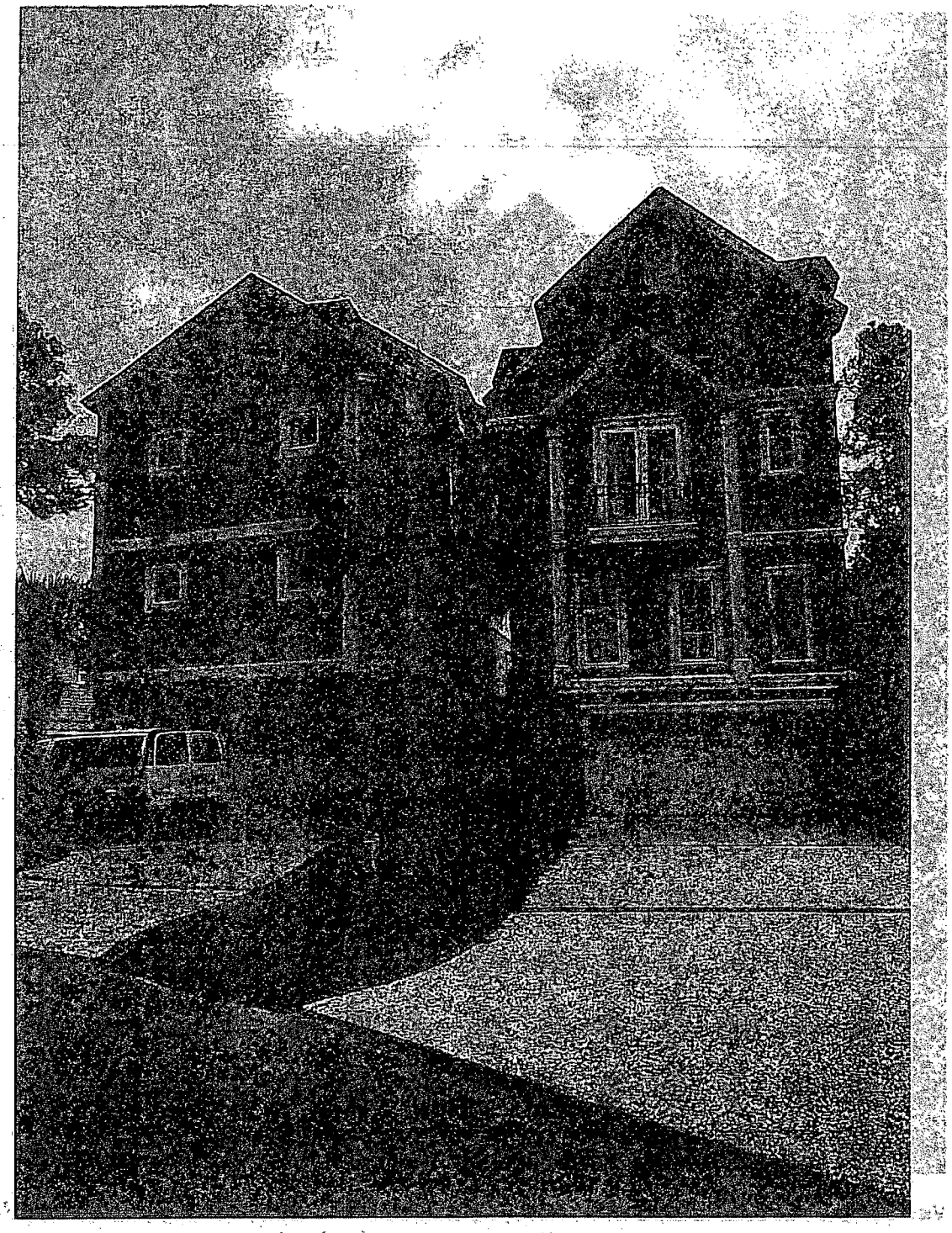
View showing side deck and stairs of existing home encroaching into adjacent property

ATTACHMENT I



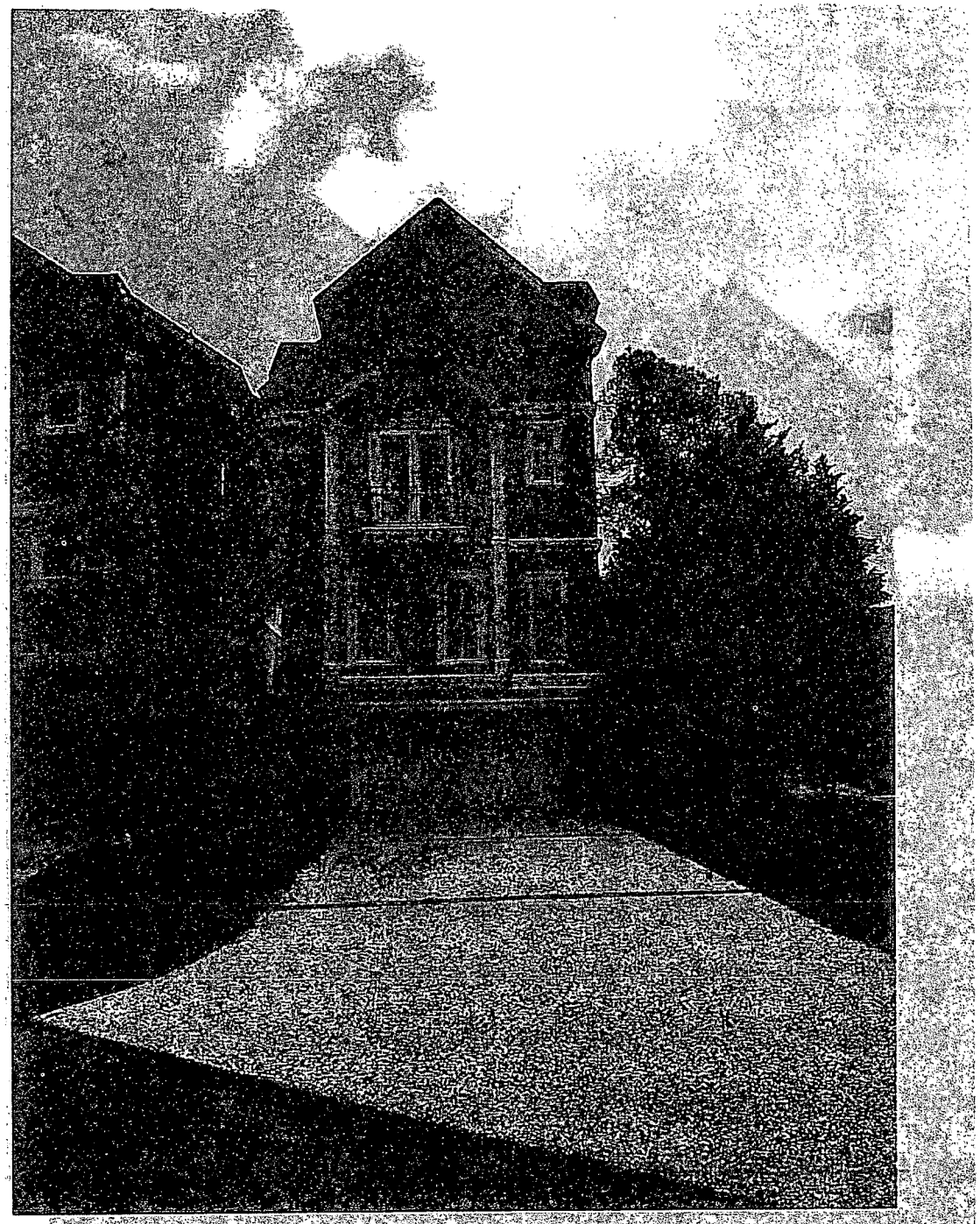
View of adjacent homes

ATTACHMENT I



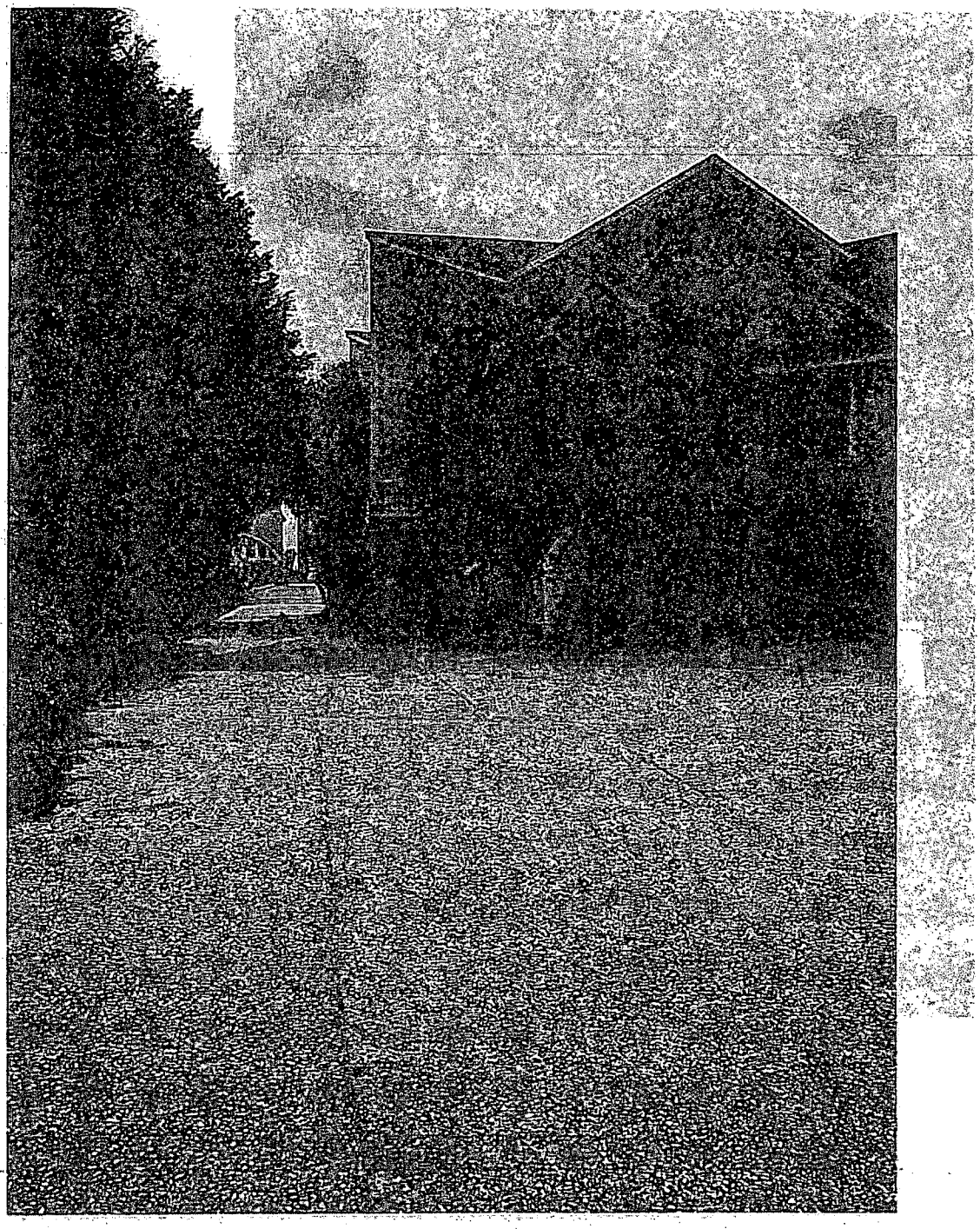
View of adjacent homes

ATTACHMENT I



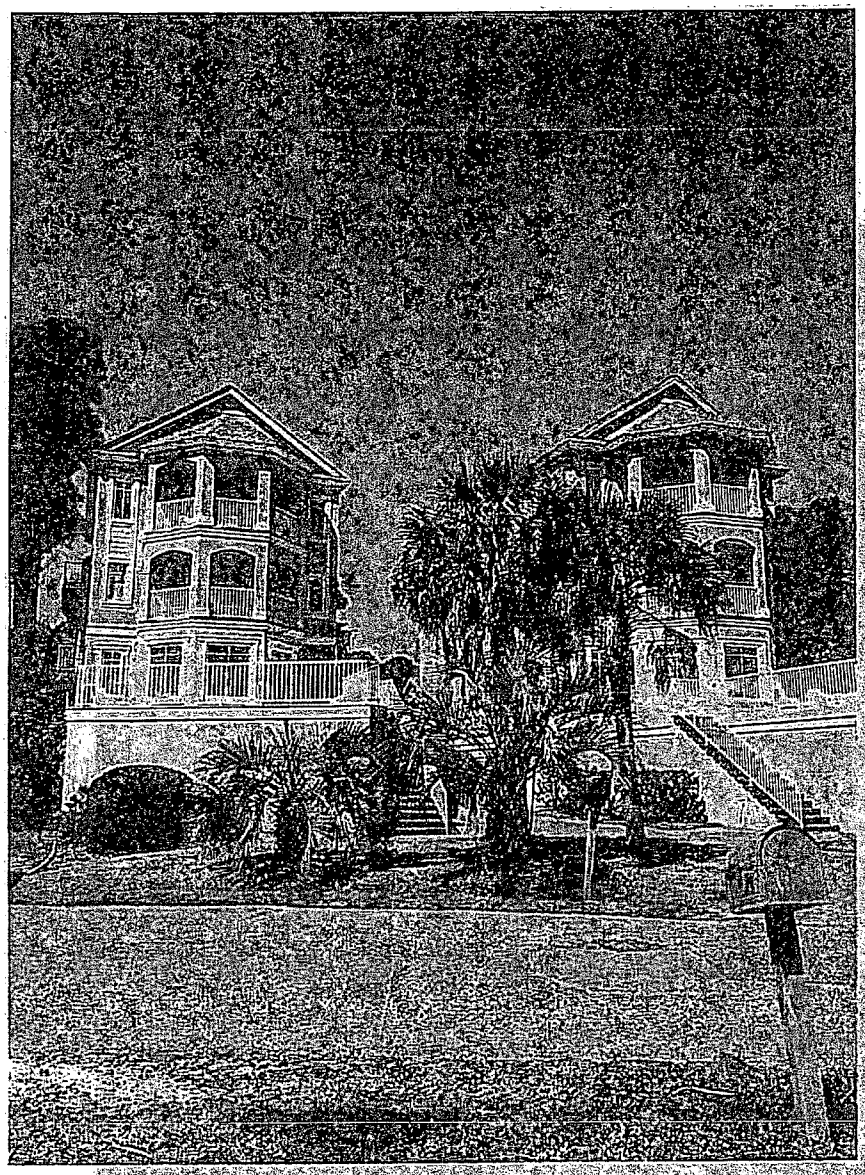
View of adjacent home, according to the applicant this is the minimum width a home can be constructed in order to provide two car garage and stair entrance

ATTACHMENT I



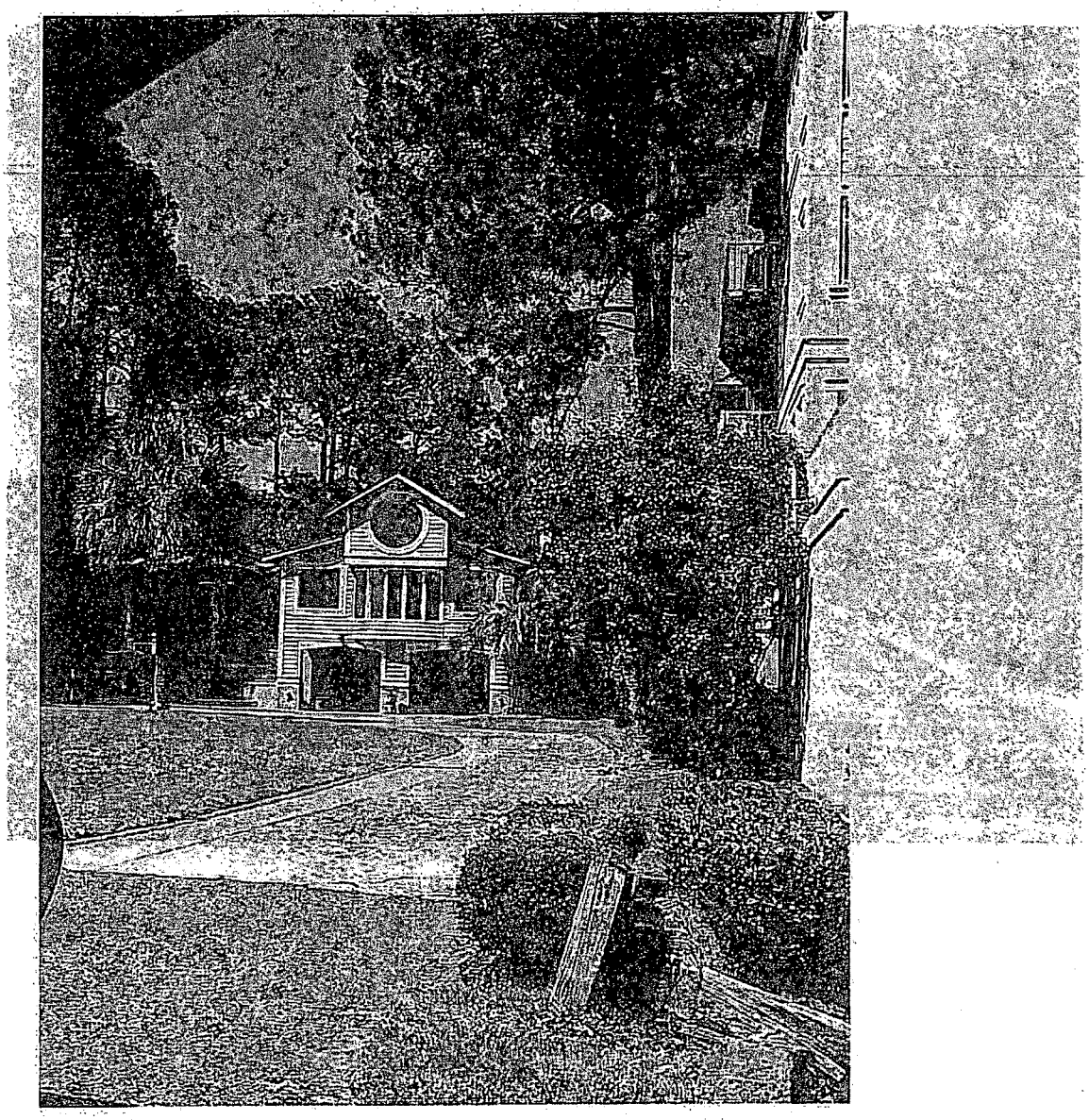
View of adjacent home

ATTACHMENT I



View of homes across the street

ATTACHMENT I



View of homes across the street

ATTACHMENT I



View of beach-front homes behind 28 Bradley Circle

ATTACHMENT I



View of beach-front homes behind 28 Bradley Circle

ATTACHMENT 1

Town of Hilton Head Island

Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: 2.26.16
Accepted by: SARAH W
App. # VAR 000352-2016
Meeting Date:

Applicant/Agent Name: John P. Qualey, Jr. Company: Qualey Law Firm, P.A.
Mailing Address: P.O. Box 10 City: HHI State: SC Zip: 29938
Telephone: 843-785-3525 Fax: 843-785-3526 E-mail: Jack.Qualey@QualeyLaw.com
Project Name: Project Address: 28 Bradley Circle, HHI, SC
Parcel Number [PIN]: R5 1 0 0 0 9 0 0 0 0 8 9 6 0 0 0 0
Zoning District: Resort Development (RD) Overlay District(s): N/A

VARIANCE (VAR) SUBMITTAL REQUIREMENTS

Digital Submissions may be accepted via e-mail by calling 843-341-4757. The following items must be attached in order for this application to be complete:

X A narrative that lists what Sections of the LMO you are requesting a variance from and explain **WHY** the variance is requested and **HOW** the request meets **all** of the criteria of LMO Section 16-2-103.S.4.a. Variance Review Standards.

X A copy of correspondence providing notice of a public hearing to all land owners of record within three hundred and fifty (350) feet on all sides of the parcel(s) being considered for a variance. Such notice shall be mailed by first class mail fifteen days (15) prior to the Board of Zoning Appeals meeting per LMO Section 16-2-102.E.2.e.ii. Mailed Notices. A sample letter can be obtained at the time of submittal. Also provide a list of owners of record to receive notification. The Town can assist in providing this listing by calling 843-341-4757.

X Affidavit of Ownership and Hold Harmless Permission to Enter Property

X A site plan to scale of 1"=30' that clearly shows the requested variance in relation to the affected site and surrounding parcels and uses. Submit an 11"X17" (or smaller) copy of the plan.

X Filing Fee - $250.00 cash or check made payable to the Town of Hilton Head Island

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request? If yes, a copy of the private covenants and/or restrictions must be submitted with this application. ☐YES ☐NO

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: John P. Qualey, Jr. Date: February 26, 2016

Last Revised 1/6/15

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-341-2087
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: _____
App. #: _____
Form revised 10-2012

AFFIDAVIT OF OWNERSHIP AND HOLD HARMLESS PERMISSION TO ENTER PROPERTY

The undersigned being duly sworn and upon oath states as follows:

1. I am the current owner of the property which is the subject of this application.
2. I hereby authorize JOHN P. RALEY, JR. to act as my agent for this application only.
3. All statements contained in this application have been prepared by me or my agents and are true and correct to the best of my knowledge.
4. The application is being submitted with my knowledge and consent.
5. Owner grants the Town, its employees, agents, engineers, contractors or other representatives the right to enter upon Owner's real property, located at 28 BRADLEY CIRCLE, HHI SC 29928 (address), R510 009 000 0896 0000 (parcel ID) for the purpose of application review, for the limited time necessary to complete that purpose.
Description of Work: VARIANCE APPLICATION
6. Owner agrees to hold the Town harmless for any loss or damage to persons or property occurring on the private property during the Town's entry upon the property, unless the loss or damage is the result of the sole negligence of the Town.
7. I acknowledge that the Town of Hilton Head Island Municipal Code requires that all construction in a Special Flood Hazard Zone be constructed in accordance with the following provisions that:
   a. any enclosed area below the base flood elevation will be used solely for parking of vehicles, limited storage or access to the building. This space will never be used for human habitation without first becoming fully compliant with the Town's Flood Damage Controls Ordinance in effect at the time of conversion.
   b. all interior walls, ceilings and floors below the base flood elevation will be constructed of flood resistant materials.
   c. all mechanical, electrical and plumbing devices will be installed above base flood elevation.
   d. walls of the enclosed area below base flood elevation will be equipped with at least two openings which allow automatic entry and exit of flood water. Openings will be on two different walls with at least one square inch of free area for every square foot of enclosed space and have the bottom of openings no more than a foot above grade.
   e. the structure may be subject to increased premium rates for flood insurance from the National Flood Insurance Program.
8. I understand that failure to abide by Town permits, any conditions, and all codes adopted by the Town of Hilton Head Island deems me subject to enforcement action and/or fines.

Print Name: Frederick A. Craig Owner Signature: Frederick A. Craig
Shirley J. Dorsey Owner Signature
Phone No.: _____ Email: _____
Date: FEBRUARY 25, 2016

The foregoing instrument was acknowledged before me by Frederick A. Craig who is personally known to me or has produced DRIVER'S LICENSE as identification and who did not take an oath.

WITNESS my hand and official seal this 26 day of FEB A.D. 2016.

My Commission expires: 09-24-2020

Notary Public Signature Please affix seal or stamp.

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-341-2087
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: _____
App.#: _____
Form revised 10-2012

AFFIDAVIT OF OWNERSHIP AND HOLD HARMLESS PERMISSION TO ENTER PROPERTY

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6. Owner agrees to hold the Town harmless for any loss or damage to persons or property occurring on the private property during the Town's entry upon the property, unless the loss or damage is the result of the sole negligence of the Town.
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   b. all interior walls, ceilings and floors below the base flood elevation will be constructed of flood resistant materials.
   c. all mechanical, electrical and plumbing devices will be installed above base flood elevation.
   d. walls of the enclosed area below base flood elevation will be equipped with at least two openings which allow automatic entry and exit of flood water. Openings will be on two different walls with at least one square inch of free area for every square foot of enclosed space and have the bottom of openings no more than a foot above grade.
   e. the structure may be subject to increased premium rates for flood insurance from the National Flood Insurance Program.
8. I understand that failure to abide by Town permits, any conditions, and all codes adopted by the Town of Hilton Head Island deems me subject to enforcement action and/or fines.

Print Name: FREDERICK A. CRAIG Owner Signature: _____
SHIRLEY J. DORSEY Owner Signature _____
Phone No.: _____ Email: _____
Date: FEBRUARY 25 2016

The foregoing instrument was acknowledged before me by Shirley J. Dorsey who is personally known to me or has produced Driver's License as identification and who did not take an oath.

WITNESS my hand and official seal this 26 day of Feb. A.D., 2016.

_____ My Commission expires: 09-24-2020
Notary Public Signature Please affix seal or stamp.

QUALEY LAW FIRM, P.A.

JOHN P. "JACK" QUALEY, JR.*

*also licensed in Georgia

POST OFFICE BOX 10
HILTON HEAD ISLAND, SOUTH CAROLINA 29938
(843) 785-3525
FAX (843) 785-3526
E-Mail: Jack.Qualey@QualeyLaw.com

Street Address:
32 Office Park Road, Suite 100
The Courtyard Building
Hilton Head Island, SC 29928

March 9, 2016

Re: Notice of Public Hearing to Be Held on March 28, 2016 at 2:30 p.m.
Variance Application No. 000352-2016

Dear Property Owner:

Pursuant to the Town of Hilton Head Island's Land Management Ordinance, Section 16-2-102(E)(2), you are hereby notified and invited to attend the Board of Zoning Appeals Public Hearing on **March 28, 2016 at 2:30pm** in the Benjamin M. Racusin Council Chambers, One Town Center Court, Hilton Head Island, to consider the following item:

VAR-000352-2016: John P. Qualey, Jr., on behalf of Frederick A. Craig and Shirley J. Dorsey, has applied for the following variances from: (a) LMO Section 16-5-102.c, Adjacent Street Setback Requirements, and (b) LMO Section 16-5-103.D Adjacent Street Buffers, to reduce the minimum side setback distance from the property located to the North of this site from 8' to 1' as to Lot 1 and from 16' to 1' as to Lot 2; to eliminate the setback angle on the North side of this site; to eliminate the minimum buffer along the North side of the project, to reduce the minimum side setback along the South property line of the project from 8' to 4' as to Lot 1 and from 16' to 4' as to Lot 2, to eliminate the side setback angle on the South side of the site, and to reduce the minimum buffer along the South side of the project from 8' to 3'. The property is identified as Beaufort County Tax Map Number R510-009-000-0896-0000 and R510-009-000-1102-0000, and the street address is 28 Bradley Circle, Hilton Head Island, SC 29928. The Property is located in the Resort Development District.

These changes may affect your rights as an owner of land.

The substance of the application, including the magnitude of the proposed development and the current zoning, is described as follows:

- Street Address: 28 Bradley Circle, Hilton Head Island, SC 29928 (see attached Location Map)
- Tax Map No. R510-009-000-0896-0000 and R-510-009-000-1102-0000
- The Property Owner intends to subdivide the Property into two (2) single family resort zero lot line lots upon which two (2) dwellings will be constructed. The Variances sought by the Applicant will: (1) reduce the minimum North side setback distance from 8' to 1' along Sweet Grass Manor (20' Access Easement") as to Lot 1 shown on the recorded plat of the property and from 16' to 1' as to Lot 2 shown on such plat; (2) eliminate the side setback angle along the North side of the project; (3) eliminate the minimum buffer along the North side of the project; (4) to reduce the minimum South

side setback distance of Lot 1 shown on the recorded plat from 8' to 4' and of Lot 2 shown on such plat from 16' to 4' along Whelk Street (15' Access Easement"); (5) eliminate the side setback angle along the South side of the project; and (6) reduce the minimum buffer along the South side of the project along Whelk Street from 8' to 3' to allow for the roof and eaves overhang. This property is located in the Resort Development District, and copies of the LMO Sections in question are attached.

- Interested parties may appear, speak, and/or submit evidence or comments at the public hearing.

Documents related to the application are available during regular business hours for public inspection between 8:00 a.m. and 4:30 p.m., Monday through Friday, at the Information Center, located at One Town Center Court, Hilton Head Island. If you have any questions regarding this application, please contact Ms. Nicole Dixon at (843) 341-4686. Interested parties may appear and speak at the Public Hearing, as stated above, and comments may be submitted before the hearing to Nicole Dixon by phone or at 1 Town Center Court, Hilton Head Island, SC 29928.

The Town of Hilton Head Island has an Assistive Listening System and Spanish Translator available upon request. Please call 843-341-4757 in advance of the meeting to arrange for these services.

La ciudad de la Isla de Hilton Head tiene un sistema que escucha de Assistive y un traductor español disponibles a petición. Llame por favor 843-341-4757 antes de la reunión para arreglar para estos servicios.

Sincerely,

Jack Qualey

Enclosures: Location Map
LMO Section 16-5-102.C
LMO Section 16-5-103.D

OWNER1		OWNER2	
ABREU CHRISTOPHER	CT	ABREU CHRISTINE C	
BEAUFORT COUNTY	SC		
BECKER DALE A	SC	BECKER TAMARA	
BRADEN PROPERTIES LLC	SC		
CALLAN JAMES	GA	CALLAN CANDACE	
CARPER DONALD P	SC	CARPER RONDA E	
CRAIG FREDERICK A DORSEY SHIRLEY J			
CSB DEVELOPMENT COMPANY INC			
DST LLC	GA		
FLETCHER SCOTT M	GA	FLETCHER LENNY B	
GABRIEL HOLDINGS LLC	GA		
GRIGORIAN ARTHUR A	GA		
HHI CORPORATION LTD	SC		
HIGLEFORT JAMES R	KY	NIN CLARA C	
HILTON HEAD ISLAND LTD	SC		
HILTON HEAD SANDCASTLE LLC	GA		
JAMIESON MAUREEN A	IL		
JUSTICE LEON	TX	JUSTICE MELISSA	
KAISER JAMES E	SC	KAISER NANCY B	
MARRIOTT OWNERSHIP RESORTS INC			
MARRIOTT OWNERSHIP RESORTS INC			
MCGRATH LEANNE BETH	GA	MCGRATH MICHAEL JON	
MTSC II INC N/K/A MARRIOTT OWNERSH			
PEF PROPERTIES LLC	SC		
PRIVATE PROPERTIES REALTY	PA		
RATLIFF R MITCHELL	VA	RATLIFF BETTY SUE	
RICHARD MUNGER TRUST			
SANDY BROOK PROPERTIES LLC	NY		
SANDY BROOK PROPERTIES LLC	NY		
SJ REAL ESTATE LLC	TX		
SMITH ROBERT F	KY	SMITH DEBORAH C	
STEWART RUSSELL R	WV	STEWART ANNE E	
THERESA LYNN RIGGS REVOCABLE TRUST		TMR 2014 FAMILY TRUST	
TOWN OF HILTON HEAD ISLAND	SC		
WHITAKER THEODORE J JR ALAVERN LOUIS			

MAILINGADD	CITY	STATE	ZIP
70 SOMERSBY WAY	FARMINGTON	CT	6032
100 RIBAUT RD	BEAUFORT	SC	29902
43 FOLLY FIELD RD #51	HILTON HEAD ISLAND	SC	29928
16 BRADLEY CIR	HILTON HEAD ISLAND	SC	29928-5300
1520 PARK SHORE DR	CUMMING	GA	30041
32 BRADLEY CIR	Hilton Head Island	SC	29928-5300
PO BOX 5236	HILTON HEAD ISL	SC	29938
2 MILLWRIGHT DR	HILTON HEAD ISL	SC	29926
1120 SEALE DR	ALPHARETTA	GA	30022
4526 COLUMNS DR SE	MARIETTA	GA	30067
4670 CARNOUSTIE CT	MACON	GA	31210
775 RILEY PLACE	ATLANTA	GA	30327-4355
14 WHELK STREET	HILTON HEAD	SC	29928-8888
14 FISCHER LANE	FORT THOMAS	KY	41075
14 WHELK ST	HILTON HEAD ISLAND	SC	29928
3819 HONORS WAY	MARTINEZ	GA	30907
1120 BONITA DRIVE	PARK RIDGE	IL	60068-5023
1506 SHARPE RIDGE LN	LA FOLLETTE	TN	37766
4 STELLA DEL MARE MANO	HILTON HEAD ISLAND	SC	29928
1044 WILLIAM HILTON PKWY	HILTON HEAD ISLAND	SC	29928
1200 US HIGHWAY 98 SOUTH	LAKELAND	FL	33801
4225 JVL INDUSTRIES PARK #504	MARIETTA	GA	30066
1044 WILLIAM HILTON PKWY	HILTON HEAD ISLAND	SC	29928
1339 EBENEZER RD	ROCK HILL	SC	29732
348 CHURCHHILL RD	PITTSBURGH	PA	15235
1075 AURORA LN	BEDFORD	VA	24523
PO BOX 424	BELLAIRE	MI	49615
75 PINEAPPLE ST SUITE 16	BROOKLYN	NY	11201
75 PINEAPPLE ST STE 1G	BROOKLYN	NY	11201
340 MARTIN LUTHER KING JR BLVD SUITE 200	BRISTOL	TN	37620
1033 ASHLAND AVE	ASHLAND	KY	41101
1300 DEER RUN	MORGANTOWN	WV	26508
630 KENNESAW DUE WEST RD	KENNESAW	GA	30152
1 TOWN CENTER CT	HILTON HEAD ISL	SC	29928
PO BOX 21572	HILTON HEAD ISL	SC	29925

VAR-352-2016: John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, to allow the construction of two single family attached homes within the adjacent street setback and buffer on both sides of the property. The property is located at 28 Bradley Circle and is identified as Parcels # 896 and 1102 on Beaufort County Tax Map# 9.

From: Radu Chindris
To: Dixon Nicole
Cc: Lewis Teri
Subject: Fw: Support for 28 Bradley
Date: Monday, March 28, 2016 11:59:27 AM

Hi Nicole,
this is from Chris @ 22 Bradley .
Thank you,
Radu

----- Forwarded Message -----
From: cbabreu <cbabreu@aol.com>
To: raduchindris@yahoo.com
Cc: Jack Qualey <jack.qualey@qualeylaw.com>
Sent: Monday, March 28, 2016 11:56 AM
Subject: Support for 28 Bradley

Radu,

Please forward to Nicole and Teri for the BZA meeting.

I am in favor of your proposal for redevelopment of lot 28 Bradley Circle. The project will enhance the community by removing a decaying home which has the effect of depressing long term property value appreciation.

Chris

Sent from my Verizon Wireless 4G LTE smartphone

From: Ronda Carper
To: Dixon Nicole
Subject: lot 28 concerns
Date: Monday, March 28, 2016 12:48:57 PM

Concerns regarding allowing variances for lot 28 on Bradley Circle.

Bradley Circle community is made up of equal parts of permanent residents and rental properties. Approximately 10 homes, were redone, reconstructed or preserved as they were built years ago as small, quaint beach homes in this community. (One or one 1/2 levels over garage level) Over the years, things change and some of those homes have been torn down and replaced by rental properties (5), which have either 2 level or at most three over the garage level. There are no homes taller than 3 levels above the garage in our neighborhood. (not even off the side access roads on the beach) We feel it would ruin the look of our community to build out to the lot lines and have a building a full story over any other home in the middle of our neighborhood. We understand that different things are going to be build here and some of the smaller homes may be taken to introduce larger rental homes, but why are we not sticking to the character of what is currently in place. We already have an issue with parking when all the homes are rented, if they build closer to the road, that is another concern because as we all know no one parks in a garage on vacation :). Allowing some one to encroach on marshland, easements, and our community public beach access, gives the investor what they want, but does not take into consideration the community of residents that live here. We need to continue ensuring emergency access to homes off the side roads, protect the marshland and make access to the beach useable. We want the HHI mission to preserve the beauty of our island to be continued and the projects suggested in the area to be cohesive with the other homes currently in the neighborhood.

Your time and consideration is greatly appreciated in this matter.

Ronda & Don Carper
32 Bradley Circle
843-686-6985/ 843-505-0878(cell)

After Recording Return to:
Qualey Law Firm
P.O. Box 10
Hilton Head, SC 29938
(843) 785-3525

BEAUFORT COUNTY SC - ROD
BK 3499 Pgs 1539-1547
FILE NUM 2016037357
07/19/2016 03:44:37 PM
REC'D BY marul RCPT# 817535
RECORDING FEES $15.00

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SETTLEMENT AGREEMENT AND RESTRICTIVE COVENANTS

THIS SETTLEMENT AGREEMENT AND RESTRICTIVE COVENANTS (this "Agreement) is made by and among Frederick A. Craig and Shirley Dorsey Craig (collectively, the "Owners"), Radu Chindris and Transcon Industries, LLC, a South Carolina limited liability company (collectively, the "Developer"), and DST, LLC, a South Carolina limited liability company ("DST").

WHEREAS, the Owners hold title to the real property located in Beaufort County, South Carolina at 28 Bradley Circle, Hilton Head Island, SC 29928, designated as Beaufort County Tax Map Number R510-009-000-0896-0000 and R510-009-000-1102-0000 (the "Property"), and more fully shown and described as "Lot 1", containing 0.115 acre, more or less, and as "Lot 2", containing 0.189 acre, more or less on that certain plat of survey entitled "Subdivision Plat of Lots 1 Thru 5 Bradley Circle Formerly Lots 1 & 1A" prepared by Surveying Consultants, Terry G. Hatchell, SCRLS 11059, dated 12 February 2003 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 98 at Page 192 (the "Property Plat"); and

WHEREAS, DST holds title to the real property located in Beaufort County, South Carolina at 3 Urchin Manor, 4 Urchin Manor, and 5 Urchin Manor, Hilton Head Island, SC 29928, designated as Beaufort County Tax Parcels R510-008-000-022M-0000, R510-008-000-0575-0000, and R510-008-000-0576-0000 (the "Adjacent Properties") , and more fully shown and described as "Lot 8A" containing 0.151 acre, more or less, as "Lot 8B", containing 0.170 acre, more or less, and as Lot "8C", containing 0.137 acre, more or less, on that certain plat of survey entitled "Subdivision of: LOT 8 Bradley Circle" prepared by Sea Island Land Survey, LLC, Ralph O. Vanadore, , SCRLS 7606, dated 24 December 2003 and recorded in said Register's Office in Plat Book 97 at Page 19; and

WHEREAS, the Adjacent Properties are situated directly across the street from the Property; and

WHEREAS, the Developer has contracted with the Owners to acquire title to the Property for the purposes of construction of one or more single family residences on the Property; and

WHEREAS, the Owners applied for and received approval from the Board of Zoning Appeals (the "BZA") for the Town of Hilton Head Island (the "Town")

for variances from the requirements of the Town's Land Management Ordinance (the "LMO") for adjacent street buffers, adjacent street setbacks, and adjacent street setback angles relating to the development of the Property for single family residential use, as set out in Variance Application VAR-352-2016 (the "Application"); and

WHEREAS, DST and Matthew J. Toddy ("Toddy") and Mark S. Davidson ("Davidson"), principals of DST, have filed an appeal of the BZA's decision to approve the Application in the Court of Common Pleas, Fourteenth Judicial Circuit, Civil Action No. 2016-CP-07-00955 (the "Appeal");

WHEREAS, the Owners, the Developer, and DST have agreed to settle and dismiss the Appeal in exchange for the imposition on the Property of certain covenants, conditions, and affirmative obligations, all of which shall run with the Property and be binding on all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of DST and the Adjacent Properties and each subsequent owner thereof;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration and exchange of One ($1.00) Dollar and the agreement of DST, Toddy, and Davidson to dismiss the Appeal and forgo any further appeal of the BZA decision on the Application, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners, the Developer, and DST hereby agree to and acknowledge the terms and conditions listed below:

1. RECITALS. The foregoing preamble and "WHEREAS" clauses are incorporated herein as if restated verbatim.

2. USE LIMITATION. The Owners and the Developer agree that the Property shall be used only for not more than two single family residences (which may be used for short term rentals in the Resort Development zoning district), and for no other use absent the prior written approval of DST or its successor owners of the Adjacent Properties.

3. BEACH ACCESS. The Property Plat shows a "Beach Access R/W" located adjacent to the generally northern boundary of the Property (the "Beach Access"). The Beach Access is also shown on that certain plat of survey entitled "1.078 Acre Szuberla Property" prepared by Sea Island Engineering, Inc. and recorded in said Register's Office in Plat Book 62 at Page 125. The Owners and the Developer acknowledge that all present and future owners of the Adjacent Properties, together with their respective tenants, licensees, guests, and invitees, have the right to utilize the Beach Access for access to and from the beaches of the Atlantic Ocean; forever relinquish any right to

change or alter the location of the Beach Access, and agree that they shall not take or allow any action that might have an adverse effect on the Beach Access.

4. WETLANDS BUFFERS AND SETBACKS. The Owners and the Developer acknowledge the LMO's provisions establishing wetlands buffers and setbacks on the Property, agree that no structures or other improvements of any nature shall be constructed on the Property that encroach into any wetlands buffer or setback as currently established by the LMO, and further agree that no variance from the LMO's wetlands buffer and setback requirements for the Property may be sought or approved by the Town in the future.

5. DEVELOPMENT RESTRICTIONS. The Owners and the Developer agree and covenant that any structure developed or constructed on the Property will be constructed in accordance with the applicable LMO, laws and ordinances.

6. DISMISSAL OF THE APPEAL. DST, Toddy, and Davidson will file a notice of dismissal with prejudice of the Appeal within five (5) business days after the execution of this Agreement by the Owners, the Developer, and DST, and the recordation of this Agreement in said Register's Office.

7. NO FURTHER VARIANCES. The Owners and Developer covenant and agree that they shall be prohibited from filing or causing to be filed any further application for any variance from any requirement of the LMO with respect to the Property.

8. INDUCEMENT. As a material inducement to DST to enter into this Agreement and dismiss the Appeal, the Owners and the Developer agree that the terms and provisions of this Agreement shall be deemed to be covenants running with the land constituting the Property that shall be binding upon the heirs, successors, successors in title to the Property, grantees, devisees, and assigns of the Owners and the Developer and any person claiming by, through, or under them, including, without limitation, subsequent owners of all or any part of the Property, and shall inure to the benefit of, and be specifically enforceable by, DST and by the successors, successors and title to the Adjacent Properties, grantees, and assigns of DST and any person claiming by, through, or under DST, including, without limitation, subsequent owners of all or any part of the Adjacent Properties. Any and all obligations contained herein and charges imposed on the Property shall be construed as covenants and not as conditions. The Owners and the Developer acknowledge and agree that this Agreement will be filed for record in the Office of the Register of Deeds for Beaufort County, South Carolina.

9. ENFORCEMENT. The Owners and the Developer acknowledge and agree that any remedy at law for any breach or violation of this Agreement by

an owner of any part of the Property would be inadequate, and that, in addition to damages, any owner of any part of the Adjacent Property at any given time shall, without notice to the Owners or the Developer, be entitled to immediate temporary injunctive and other equitable relief, with no requirement for the posting of any bond, in the event any breach or violation of provisions of this Agreement occurs or is threatened in any way. Further, upon ten (10) days notice, or sooner if requested by the Owners or the Developer, a hearing shall be held and upon a showing that an actual breach or violation of this Agreement has occurred or is likely to occur, then the owner of the Adjacent Property shall be entitled to permanent injunctive relief.

10. NOTICE. Any notices required or permitted hereunder shall be in writing and shall be deemed given upon receipt by the party to whom directed at the following addresses, or such other address as such party may designate in writing, which receipt shall be evidenced by return receipt or affidavit of U.S. mail deposit.

As to the Owners: P.O. Box 5236
Hilton Head Island, SC 29938

As to the Developer: 23 Wood Eden Lane
Bluffton SC 29910

As to DST: 1205 Seal Drive, Alpharetta, GA 30022

11. NO WAIVER OF RIGHTS. No failure on the part of DST to exercise any right hereunder or to insist upon strict compliance by the Owners or the Developer or any other party to its obligations hereunder, and no custom or practice of any person or entity in variance with the terms hereof, shall constitute a waiver of any right to demand strict compliance with the terms of this Agreement.

12. JUDICIAL INTERPRETATION. If any provisions of this Agreement require judicial interpretation, the Owners and the Developer agree that the court interpreting or construing the provisions shall not apply a presumption that the terms hereof be more strictly construed against any one party by reason of the rule of construction that a document is to be construed more strictly against the person who, himself, or through his agent, prepared the same, as the agents and counsels of the Owners, the Developer, and DST have participated in the final preparation of this Agreement.

13. PERPETUITIES SAVINGS CLAUSE. Notwithstanding any provisions of this Agreement to the contrary, if any of the covenants, conditions, restrictions, prohibitions, or other provisions of this Agreement shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the

death of the last survivor of the now living descendants of Queen Elizabeth II, Queen of the United Kingdom.

14. SEVERABILITY. Except as provided for in the immediately preceding section, if any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

15. ATTORNEY'S FEES. If a party prevails in any legal action to enforce any right or remedy under this Agreement, it shall be entitled to recover its reasonable costs and expenses in connection with such legal action, including, but not limited to, court costs and attorney's fees.

16. GENERAL PROVISIONS. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of South Carolina. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute a fully executed instrument. No provision of this Agreement may be amended or changed, in whole or in part, absent the express, written approval of the then current owner or owners of the Adjacent Property.

[Signature pages follow]

IN WITNESS WHEREOF, Frederick A. Craig and Shirley J. Dorsey have set their hands and seals this 13th day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Frederick A. Craig (L.S.)
Frederick A. Craig

Shirley Dorsey Craig (L.S.)
Shirley Dorsey Craig

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGEMENT**
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that Frederick A. Craig and Shirley Dorsey* personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 13th day of July 2016.

*Craig

BROOKE A. MORRISON
Notary Public
South Carolina
My Comm. Expires May 8, 2018

(SEAL)
Notary Public for South Carolina
My Commission Expires: May 8, 2018

IN WITNESS WHEREOF, Radu Chindris has set his hand and seal this 12th day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Radu Chindris (L.S.)

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGEMENT**
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that Radu Chindris personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 12th day of July 2016.

(SEAL)
Notary Public for South Carolina
My Commission Expires: 10/29/17

JOHN P. QUALEY JR.
Notary Public
South Carolina
My Comm. Expires October 29, 2017

IN WITNESS WHEREOF, Transcon Industries, LLC, a South Carolina limited liability company has caused this Agreement to be signed and sealed this 12th day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Transcon Industries, LLC, a South Carolina limited liability company

By: _____
Radu Chindris
Its Sole Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Radu Chindris, President of Transcon Industries, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 12th day of July 2016.

_____ (SEAL)
Notary Public for South Carolina
My Commission Expires: _____

JOHN P. QUALEY JR.
Notary Public
South Carolina
My Comm. Expires October 29, 2017

IN WITNESS WHEREOF, DST, LLC, a South Carolina limited liability company has caused this Agreement to be signed and sealed this 1st day of July 2016.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

7/1/16
SHAMINA DESHMUKH

7/1/16
RICHARD LOUNCE

DST, LLC, a South Carolina limited liability company

By: Matthew J. Toddy (L.S.)
Matthew J. Toddy, Member

STATE OF GEORGIA)
)
COUNTY OF FULTON)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Matthew J. Toddy, Member of DST, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 1 day of July 2016.

(SEAL)
Notary Public for Georgia
My Commission Expires: Nov 16th, 2019

REED BAXTER
NOTARY PUBLIC
Hall County
State of Georgia
My Comm. Expires Nov. 16, 2019