



Town of Hilton Head Island  
**Board of Zoning Appeals**  
**Special Meeting**  
**Thursday, October 29, 2020 – 1:00 p.m.**  
**AGENDA**

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In accordance with the Town of Hilton Head Island Municipal Code Section 2-5-15, this meeting is being conducted virtually and can be viewed live on the Town's Public Meeting Facebook Page at <https://www.facebook.com/townofhiltonheadislandmeetings/>. Following the meeting, the video record will be made available on the Town's website at <https://www.hiltonheadislandsc.gov/>.

1. **Call to Order**
2. **FOIA Compliance** – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
3. **Pledge of Allegiance**
4. **Roll Call**
5. **Welcome and Introduction to Board Procedures**
6. **Approval of Agenda**
7. **Citizen Comments**
8. **Requests for Postponement Approved by the BZA Chairman** – The cases listed below have been granted a postponement by the BZA Chairman and placed on the agenda to establish an original hearing date for the request. No action will be taken by the Board at this time.
  - VAR-001894-2020 – 25 Sandcastle Court
9. **New Business**
  - a. **Public Hearing**  
**VAR-000352-2020** – Request from James Schwamman for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards to allow an existing patio to encroach in the adjacent use setback and buffer. The property is located at 13 Sandcastle Court and has a parcel number of R511 009 000 1109 0000. *Presented by Missy Luick*
  - b. **Public Hearing**  
**VAR-001870-2020** – Request from George F. Zitlaw, Jr. for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall, patio and fence to remain in the adjacent use setback and buffer. The property address is 123 Sandcastle Court with a parcel number of R511 009 000 1154 0000. *Presented by Tyler Newman*

c. **Public Hearing**

**VAR-001875-2020** – Request from Eric Schnider for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall, patio and fence to remain in the adjacent use setback and buffer. The property address is 119 Sandcastle Court with a parcel number of R511 009 000 1152 0000.  
*Presented by Tyler Newman*

d. **Public Hearing**

**VAR-001935-2020** – Request from Reza Kajbaf for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall, patio and fence to remain in the adjacent use setback and buffer. The property address is 105 Sandcastle Court with a parcel number of R511 009 000 1145 0000.  
*Presented by Missy Luick*

**10. Adjournment**

Public comments concerning agenda items can be submitted electronically via the Open Town Hall HHI portal at <https://hiltonheadislandsc.gov/opentownhall/>. The portal will close at 4:30 p.m. on Wednesday, October 28, 2020. All comments submitted through the portal will be provided to the Board for review and made part of the official record. Citizens who wish to comment on agenda items during the meeting by phone must contact the Board Secretary at 843-341-4684 not later than 12:00 p.m. on Wednesday, October 28, 2020.

**Please note that a quorum of Town Council may result if four (4) or more of their members attend this meeting.**



# 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-000352-2020	October 29, 2020

Parcel or Location Data:	Property Owner and Applicant
<p>Parcel#: R511 009 000 1109 0000  Address: 13 Sandcastle Court  Parcel size: 0.07 acres  Zoning: RD (Resort Development District)  Overlay: COR (Corridor Overlay District)</p>	<p>James Schwamman  13 Sandcastle Ct.  Hilton Head Island, SC 29928</p>

**Application Summary:**

Request from James Schwamman for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards to allow an existing patio to encroach in the adjacent use setback and buffer. The property is located at 13 Sandcastle Court and has a parcel number of R511 009 000 1109 0000.

**Staff Recommendation:**

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

**Background:**

The subject property is located in the Sandcastles by the Sea subdivision off Folly Field Road. The subdivision was approved in 2007 (SUB050002). The subdivision is surrounded by the Hilton Head Beach and Tennis Resort (multi-family residential) to the east, single family residential to the south, Town-owned property and single family residential to the north and Adventure Cove, Carrabba's restaurant and an office building to the west.

The subject property, 13 Sandcastle Ct, was constructed in 2019 and purchased by the current owner

in May of 2019 (See Attachment A, Vicinity Map). After the home was constructed and the Certificate of Occupancy was issued, the owner had an approximate 14' 5" by 24' 7" paver patio constructed in the rear of the property, extending from the pool area into the rear adjacent use setback and buffer. The patio encroachment is approximately 13' 11" in the adjacent use setback and buffer (See attachment F, Mark-up of Subdivision Plat and As-Built Drawing). LMO Section 16-5-102.E. allows for "uncovered porches, stoops, decks, patios, or terraces" to extend up to 5 feet into any setback. While a patio can encroach up to 5 feet into a setback, it cannot encroach into a buffer. The existing patio even exceeds the allowable setback encroachment.

The Sandcastles by the Sea subdivision was approved with a 20 foot adjacent use setback and buffer around the perimeter of the subdivision (a 25 foot adjacent use buffer was approved on the western subdivision perimeter), as shown on the subdivision plat (See Attachment C, Subdivision Plat).

The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff. The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments. Buffer and setback areas frequently overlap, but the standards that apply to these areas are different. For example, uncovered patios are allowed to encroach up to 5 feet in setbacks, but patios are not allowed in buffers, which are meant to be landscaped or naturally vegetated.

At the time the subdivision was approved, there was not any flexibility in buffer options. With the 2014 LMO re-write, the buffer standards were made more flexible. This type of development would now require either a Type A Option 1 (20 foot) less densely vegetated buffer or a Type A Option 2 (10 foot) more densely vegetated buffer for single family residential use adjacent to a multifamily residential use. The buffer types and options are explained in Table 16-5-103.F (See Attachment J, Buffer Table). A 20 setback is still required along the perimeter of a single family subdivision adjacent to a multifamily residential use.

In July 2019, Staff received several complaints about property owners removing vegetation in the buffers and making improvements such as patios within the buffer. Upon a site visit, staff found several violations in the area in which we received complaints about. Violation letters were sent to the property owners notifying them of the violation and providing a deadline to remove the encroachments or apply for a variance.

A representative of the property owners contacted staff after receiving the violation letters and asked if the deadline to remove the encroachments could be extended to November 2019, as the majority of the homes are vacation rentals and it was the middle of the summer season. Staff felt that was reasonable and extended the deadline.

In early fall of 2019, the representatives of the property owners met with staff to discuss their options. One of their requests was to reduce the buffer to the 10 foot buffer option. Staff informed them that to utilize the reduced buffer option, the entire subdivision plat would need to be revised and recorded. Town Staff had been working with the representatives to pursue a buffer reduction request for the

entire subdivision, but it was determined by the representative to be too costly to do and they didn't think they could get 100% owners consent.

Staff was informed in Spring of 2020 that there were several other properties in this subdivision that had encroachments in the buffer. Staff decided to do a site visit to all of the properties in the subdivision and compiled a list of the violations. In August of 2020 a second violation letter was issued to property owners with a deadline to remove the encroachments and restore the buffers back to a vegetated area by October 1, 2020. The property owners were informed that if they did not adhere to the deadline the Town would place a hold on their parcel making it so that no further building permits could be issued until the violation had been corrected. The property owners were all informed that they also had the option to apply for a variance if they wished to keep the encroachments.

The parcel shape is mostly rectangular, but at the rear of the property, the property is angled slightly to follow the edge of the lagoon. Because of the slightly irregular parcel shape, the dimensions of the setback and buffer encroachments are lesser on the north side of the lot and greater on the south side. The home was constructed approximately 7.5 feet to 6.5 feet from the rear setback/buffer line and the upper balcony/deck was constructed within approximately 18 inches to 6 inches of the rear setback and buffer according to the as-built survey (See Attachment D, As-Built). Additionally, the site plan that was reviewed and approved during the building permit process also contained a rear setback/buffer of 20' (See Attachment E, Site Plan). The allowable setback encroachments in Table 16-5-102.E. allows for "uncovered porches, stoops, decks, patios, or terraces" to extend up to 5 feet into any setback. The existing paver patio is 14' 5" by 24' 7" in size and extends approximately 7' 11" to 6' 11" into the setback and 12'11" to 13'11" into the buffer respectively (See Attachment F, Mark-Up of Subdivision Plat and As-Built).

The applicant is requesting a variance to allow the existing paver patio to remain in the rear adjacent use setback and buffer.

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

**Grounds for Variance:**

According to the applicant, he did not remove any buffer vegetation to construct a paver patio in the rear yard of their parcel. The applicant claims the buffer vegetation was removed during the construction of the home prior to his purchase. According to the applicant, the cost to re-survey and re-plat the subdivision utilizing the reduced buffer option would be \$28,000 which the applicant believes to be an extraordinary and exceptional circumstance.

**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 18, 2020 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 October 4, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on October 7, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on October 13, 2020 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 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 Fact:**

- Sandcastles by the Sea is a small lot single-family subdivision that consists of 83 lots.
- Most of the lots within the subdivision range from 0.06-0.13 acres with the majority of the lots around 0.07 acres.
- The majority of the lots within the subdivision were platted with a 20' rear setback and buffer.
- The subject property is mostly rectangular in shape as are the majority of the lots in the subdivision.
- The subject lot is 0.07 acres in size.
- The subject property does not contain any unique site features that prohibit development on the lot.

**Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are no extraordinary and exceptional conditions that pertain to this particular property.
- The subject property is average in shape and size for the subdivision and does not contain any extraordinary or exceptional conditions that prohibit development on the lot.

**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):*

**Findings of Fact:**

- There are no extraordinary or exceptional conditions that pertain to this property.
- The majority of lots in the Sandcastles by the Sea subdivision are nearly identical in size and shape.
- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.
- The conditions that apply to the subject property also apply to other properties in the vicinity.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary or exceptional conditions that apply to the subject property that do not also 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 Fact:**

- There are no extraordinary or exceptional conditions that pertain to this property.
- The Sandcastle by the Sea subdivision plat was approved with the 20 foot adjacent use setback and buffer in the rear of the subject property.
- The Sandcastle by the Sea subdivision plat has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.
- To revise the subdivision plat, the requirements in Appendix D-4. B and Appendix D-20 would need to be met (See Attachment K, Subdivision Plat and Plat Stamping). While the Town has not sought a quote to re-plat the subdivision, the \$28,000 cost estimate provided by the applicant is plausible. While this figure is costly, it is not unreasonably prohibitive.
- The subject property is currently developed with a 3-story, 2,639 square foot house with a garage and a pool.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that apply to the

subject property that would prohibit or unreasonably restrict the utilization of the property.

#### **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:**

- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff.
- The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.
- The applicant is requesting to keep the existing paver patio which encroaches into the rear setback and buffer.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produces very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.
- Staff has received 2 letters in opposition of this variance request (See Attachment G).
- Staff has been informed that private covenants exist that prohibit disturbance of the 20 foot buffer along the lagoon in between the Sandcastles by the Sea subdivision and the Hilton Head Beach and Tennis Resort development (See Attachments G and H). The private covenants prohibit the developer or property owner from seeking the 10 foot buffer option adjacent to the Hilton Head Beach and Tennis Resort development.

#### **Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will be of substantial detriment to the adjacent property because the purpose of setback and buffer requirements is to provide visual and spatial separation between developments and mitigate the negative effects between adjacent uses.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.
- While it is not within the Town's purview to enforce private covenants, the Town has been informed that private covenants exist that prohibit disturbance of the 20 foot buffer between the Sandcastles by the Sea subdivision and the Hilton Head Beach and Tennis Resort development.



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<b>LMO Official Determination:</b>
<b>Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should not be granted to the applicant because all four of the variance criteria have not been met.</b>

<b>BZA Determination and Motion:</b>
<p>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."</p> <p>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.</p> <p>A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.</p> <p><b>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.</b></p>

**PREPARED BY:**

ML  
\_\_\_\_\_  
Missy Luick, Senior Planner

October 16, 2020  
\_\_\_\_\_  
DATE

**REVIEWED BY:**

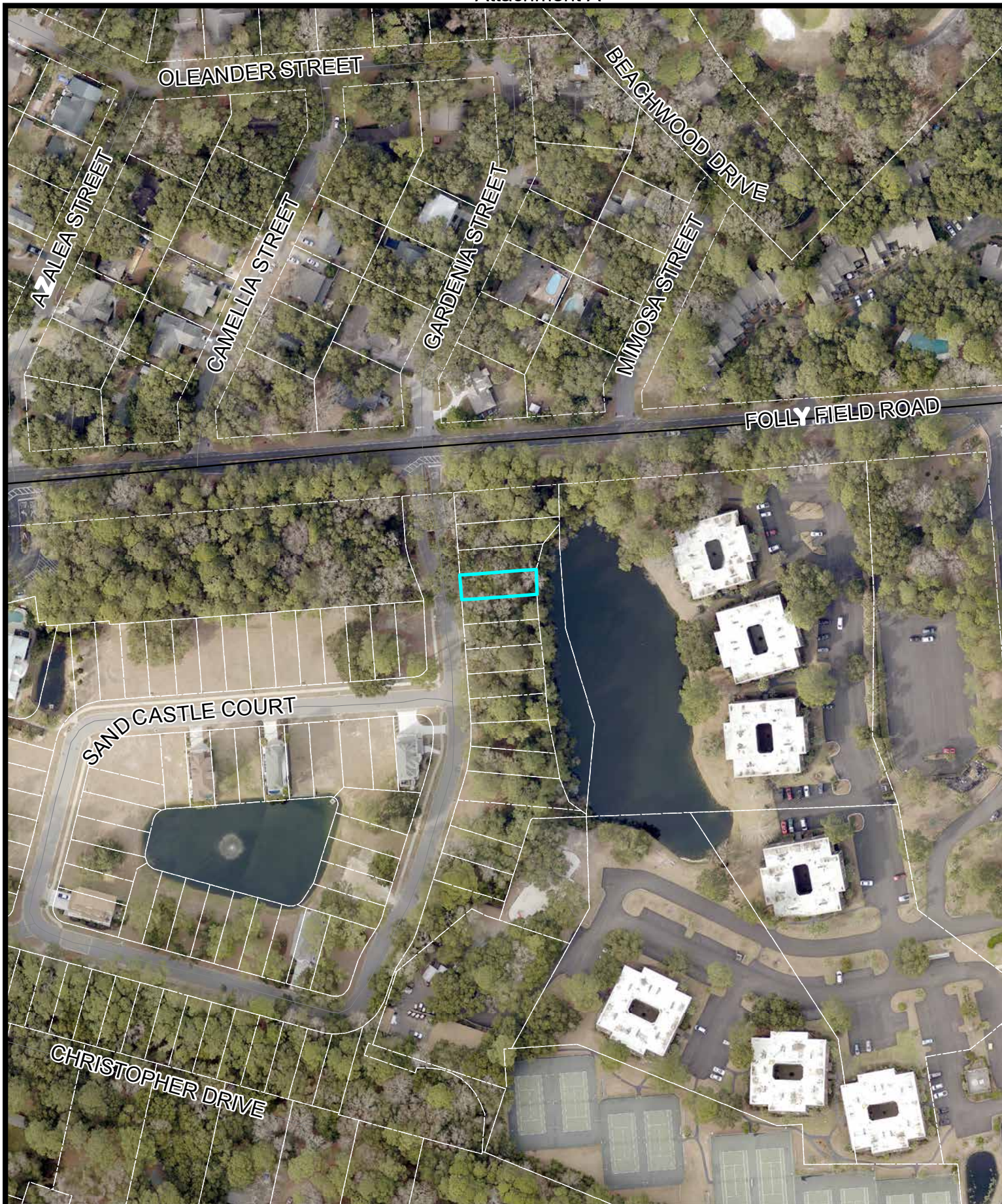
ND  
\_\_\_\_\_  
Nicole Dixon, AICP, CFM, Development  
Review Administrator

October 16, 2020  
\_\_\_\_\_  
DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Applicant's Narrative
- C) Subdivision Plat
- D) As-built for 13 Sandcastle Ct.
- E) Site Plan from Building Permit record

- F) Mark-up of Subdivision Plat and As-Built
- G) Letters of Opposition
- H) Private Covenants regarding 20' Buffer
- I) Site Pictures
- J) Buffer Table
- K) Subdivision Plat and Plat Stamping



# Town of Hilton Head Island

13 Sandcastle Ct.  
Attachment A: Vicinity Map



Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928  
(843) 341-4600

180 90 0 180 Feet

This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.

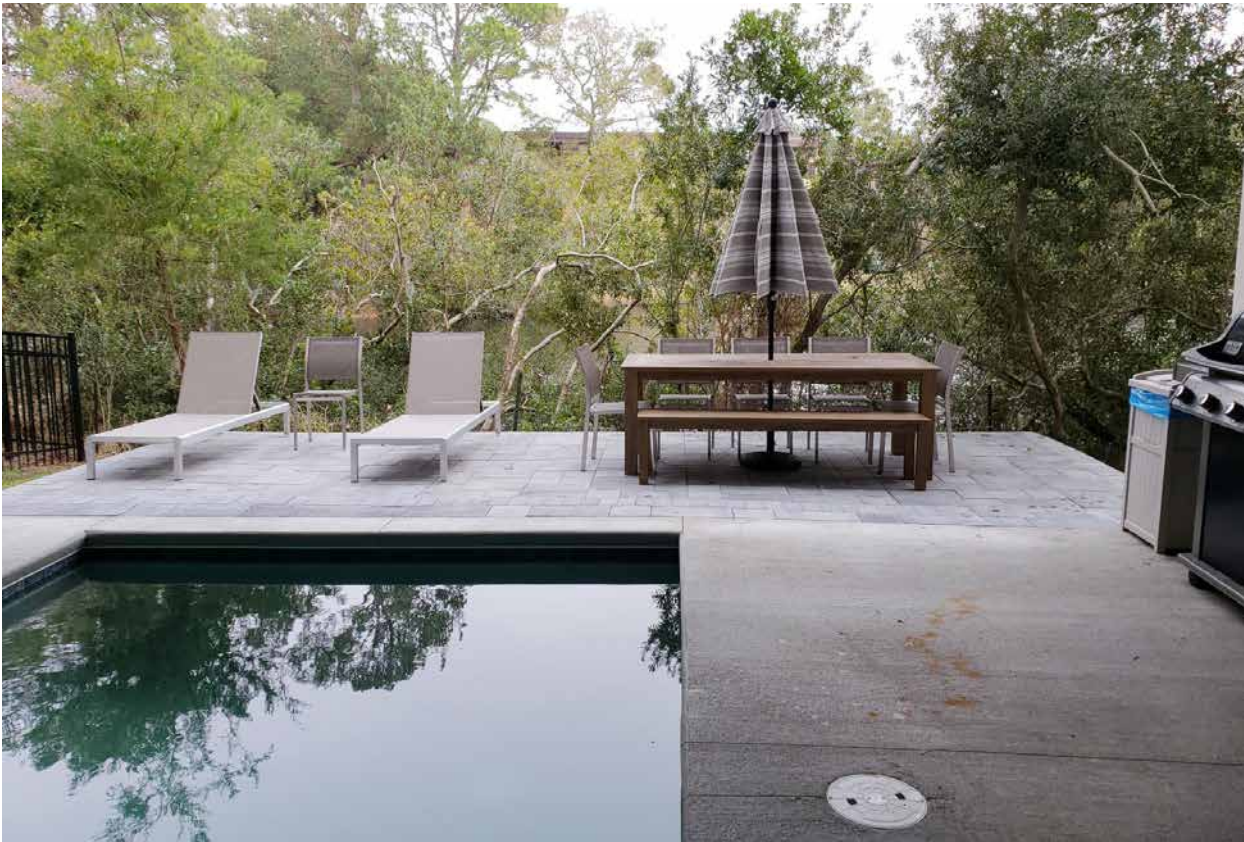
## **13 Sandcastle Court Variance Request:**

The following numbered and italicized *criteria* along with the following responses outline the reasons for our requested “buffer zone” variance:

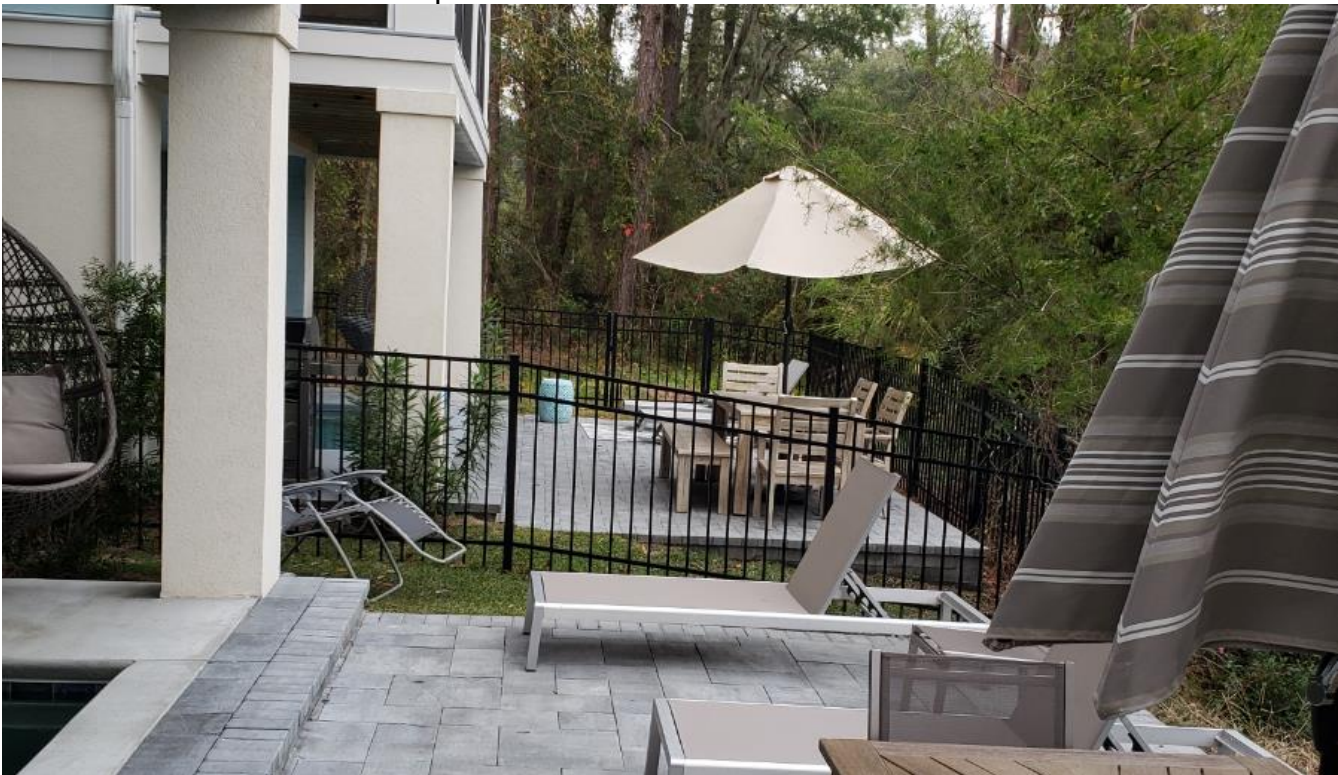
1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property:*
  - a. This home was constructed in 2019 and purchased by us on May 31, 2019. The builder was Village Park Homes, LLC who has constructed dozens of homes in the Sandcastle subdivision. **The only trees and vegetation removed from this lot were removed by the builder during construction (photo taken May 31, 2019).** Note the pool is being filled the day of closing and the area behind the pool is sodded.



The Photo below was taken January 2, 2020. The only change compared to the photo above is the paver patio, no trees or bushes have been removed since the property was purchased May 31, 2019.



Note the area behind both neighbors had the same area cleared by the builder, the owner of Sandcastle 11 also installed a patio.



The owner of 15 Sandcastle has not moved into the property at this time. The yard is sodded similar to our property before we installed the patio.



13 Sandcastle property backs to a lagoon (east side - photo 2 taken from Hilton Head Beach and Tennis Club [HHB&TR] property). Our property is the home in the middle of the photograph.



- b. the Hilton Head Beach and Tennis Resort is located on the opposite side (west side - photo 3 taken from our second story screened porch) of the lagoon.



- c. This property is our retirement home half of the year and serves as a rental property during high season. Given the fact the property was completed just before the Summer 2019 high season, our property manager suggested we complete the patio next to the pool as soon as possible. We agreed and the property manager hired a contractor to install the paver patio in the area behind the house where the builder had installed sod. It should be noted most of the properties in this subdivision have a pool under the back half of the home, with a patio behind the home to accommodate a table and chairs. On July 8, 2019 soon after our patio was completed, we received a notice from the Town of Hilton Head Island concerning an encroachment of the required "buffer zone".

The distance between the edge of the lagoon and our patio ranges between 9 feet 3 inches and 10 feet 4 inches, this area consists entirely of undisturbed native trees and bushes.











We enjoy the privacy the natural vegetation provides between our pool, the lagoon and the residents across the lagoon. After receiving the "buffer zone" encroachment citation and reviewing the city LMO I discovered the required buffer was twenty feet and under certain circumstances this could be reduced to ten feet. Ironically the distance between our rear property line and the house is only twenty feet. You will note from the photos there is no vegetation buffer zone between the HHB&TR property and the lagoon, I was told their property was "grandfathered". We later found the entire Sandcastle subdivision would have to be surveyed and re-platted to allow for the ten-foot buffer zone, but the cost to re-survey and re-plate the subdivision would be \$28,000! This is the reason we are pursuing a variance. I believe the extraordinary and exceptional circumstances related to this property are related to the fact that the builder was able to build our home exactly on the twenty-foot buffer and in accordance with this buffer zone requirement we would have been required to completely re-vegetate the back yard leaving us no access to our pool from the back yard we purchased. I also believe the photos above demonstrate the vegetation that currently exists between the pool and the lagoon provides an exceptional vegetation buffer which does not exist in the vast majority of the homes which have been constructed in the Sandcastle subdivision.

2. *These conditions do not generally apply to other properties in the vicinity:*

- a. There are a variety of conditions that exist in the Sandcastle subdivision. As I investigated the perimeter of our subdivision, I discovered that very few (if any) properties with homes meet the twenty-foot vegetation buffer criteria identified in our citation. I have been told (hearsay) that one other Sandcastle property facing the same lagoon removed all or most of the vegetation between their home and the lagoon. I cannot state if this is accurate, however there is a property with very little vegetation at the edge of the lagoon. See photograph below. **Note this is not our Property!** I have also been told (hearsay) that the reason the city inspected and cited our property was a result of complaints by HHB&TC prior to our home completion.



- b. The following photos were taken of properties on all four perimeter sides of the Sandcastle subdivision. You will note there are very few if any properties with a twenty-foot vegetation buffer. In some cases, such as the lots on the North side of the subdivision, there is a vegetation buffer beyond the fence and property line. I am not suggesting anything should be changed to increase the vegetation buffer on the Sandcastle properties, merely showing the conditions that currently exist at the perimeter of the subdivision.



I am not suggesting these properties facing Folly Field should be cited, as there is an adequate tree buffer between these homes and the Folly Field road in my opinion. It is obvious from the photo above that the entire vegetation buffer is not on the home owner's property (see fence and property line stake with pink flagging). In my opinion if the vegetation buffer exists, the intent of the requirement is met regardless of who owns the property. We have no intention of removing our existing vegetation buffer.











In summary, for some reason four of the property owners facing the lagoon on the west side of the Sandcastle subdivision have been singled out and cited with a buffer zone violation. Ironically, all four of these properties have more of a vegetation buffer than the homes on the north, south and east boundaries of the Sandcastle subdivision.

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:*
  - a. As stated earlier, if the twenty-foot vegetation barrier were strictly enforced on this property we would have no exterior access to the pool under the rear of half of our home, this would also cut-off access from the pool to the exterior shower on the north side of the home. Our lot is a premium lot given the lagoon view from the second and third story porches and privacy between the lagoon and the pool. Without a patio behind our home (in the area cleared by the builder) I feel this clearly demonstrates an unreasonable restriction to the use of our property.
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.*

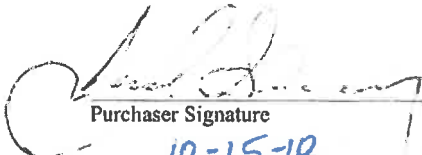

- a. I do not believe anyone will be harmed by the granting of this Variance. We enjoy the seclusion provided by our approximately ten-foot wide buffer and will commit to not removing any of this vegetation. I believe this Variance would not be a detriment to adjacent property owners or the public good. In my opinion a review of the photos supports my beliefs. Ironically, the vegetation buffer that currently exists between our home and the lagoon exceeds the vegetation buffer compared to almost all the perimeter homes in the Sandcastle subdivision. One possible compromise I would suggest, if the city would like us to add vegetation we would be willing to add planters to the back edge of our patio.

VILLAGE PARK HOMES  
SANDCASTLES BY THE SEA  
ADDENDUM B  
#2

Whereas, the undersigned parties have entered into a certain Agreement for the purchase and sale of real property located at: 13 Sandcastle Court Lot # 3 Hilton Head Island, South Carolina 29928, and

Whereas, the undersigned parties desire to amend the aforementioned Agreement, it being to the mutual benefit of all parties to do so; the parties hereto agree to modify and amend the aforementioned Agreement as follows:

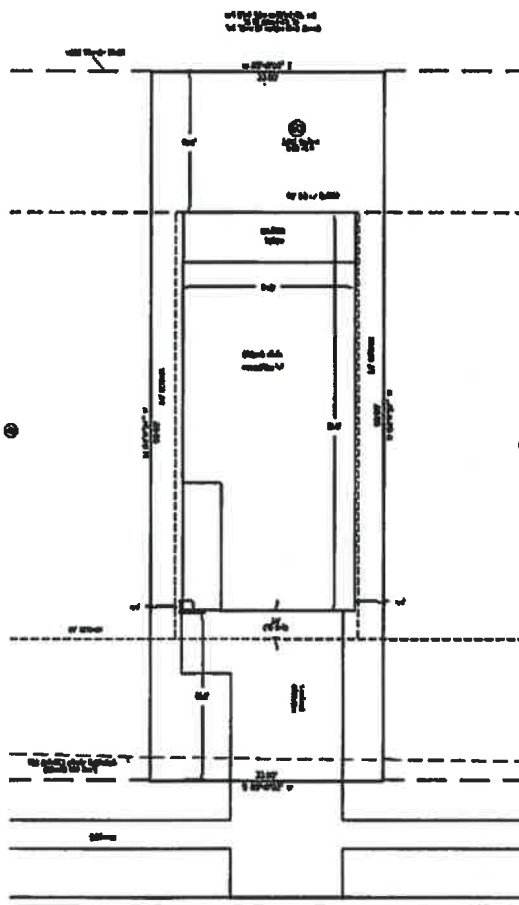
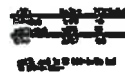
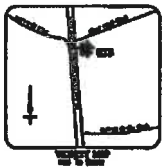
- 1. All parties hereby acknowledge receipt of \$20,700 deposit.

  
Purchaser Signature  
10-15-18  
Print Name  
  
Purchaser Signature  
RITA SCHWAMMANN  
Print Name  
Date: 10/15/18

Authentisign  
*Richard Schwartz*  
10/16/2018 3:28:01 PM EDT  
Seller: Village Park Homes, LLC

10/16/2018

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



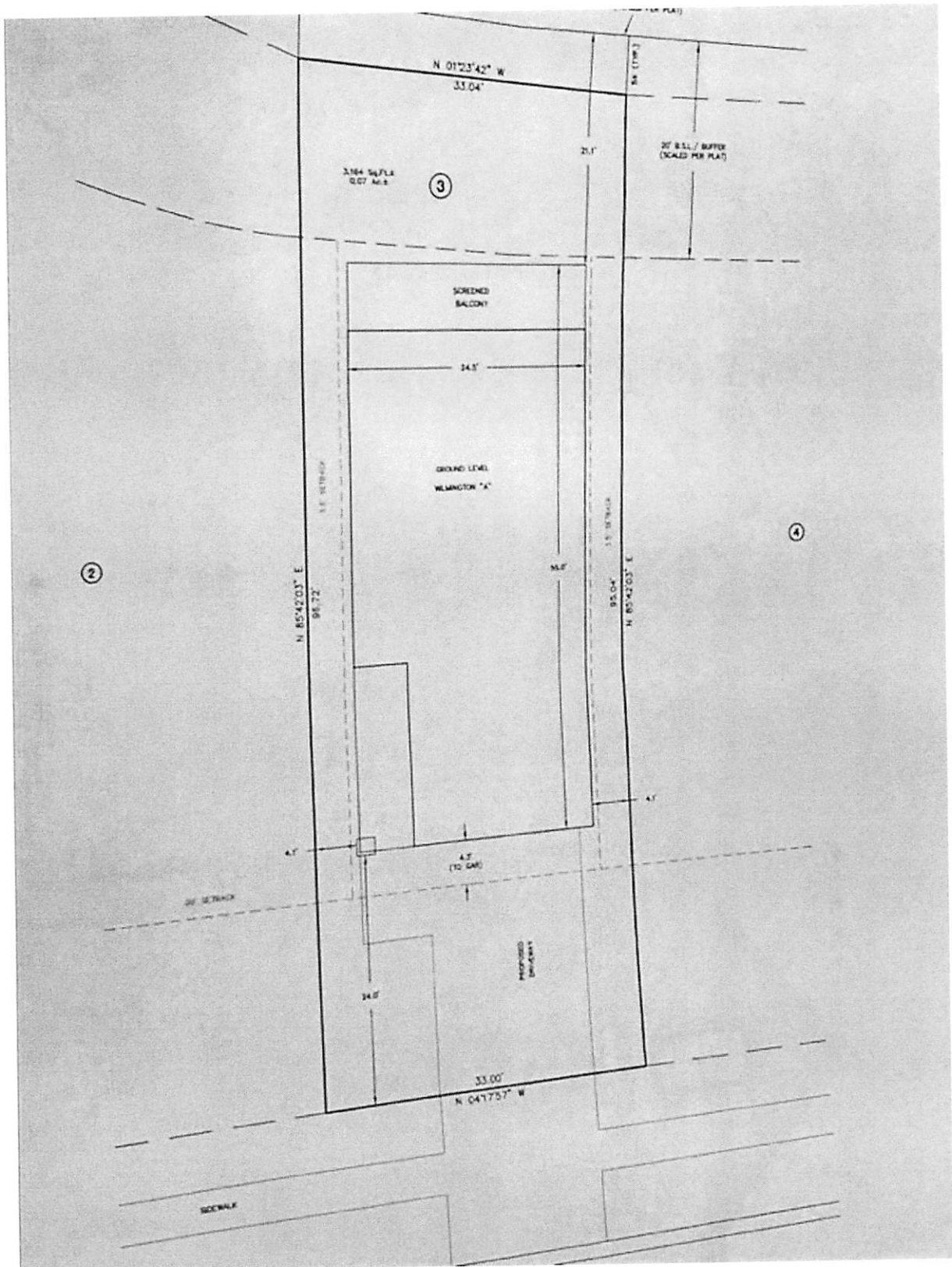
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JCS 10-15-18  
RWS 10/15/18

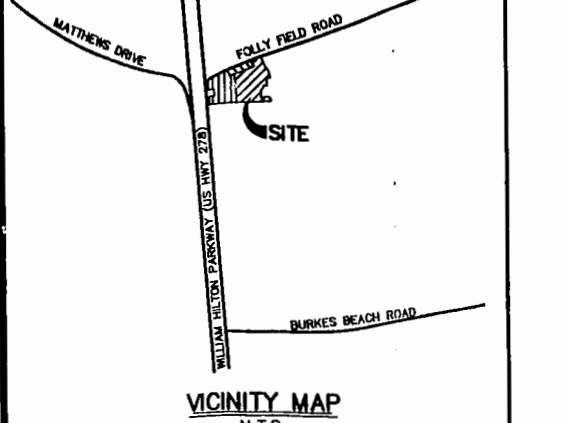
**RLA ASSOCIATES, PA**  
785 ONE BROADWAY, SUITE 200  
SPRINGFIELD, MA 01102  
PHONE: (413) 833-0000  
FAX: (413) 833-0000

**THIS PLAN HAS BEEN PREPARED BY THE ENGINEER AND ARCHITECT ON BEHALF OF THE CLIENT. IT IS THE CLIENT'S RESPONSIBILITY TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ENGINEER AND ARCHITECT ARE NOT RESPONSIBLE FOR ANY VIOLATIONS OF ANY APPLICABLE LAWS, REGULATIONS, OR ORDINANCES. THE CLIENT IS ADVISED THAT THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ENGINEER AND ARCHITECT.**

**ENGINEER SIGNATURE SHEET**  
I, the undersigned, hereby certify that I am a duly licensed Professional Engineer in the State of Massachusetts, and that I am the author of the design and construction of the above project.  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Title: \_\_\_\_\_



15035P4D



Line table with columns: LINE, LENGTH, BEARING, LINE, LENGTH, BEARING. Includes an area table at the bottom right of the table section.

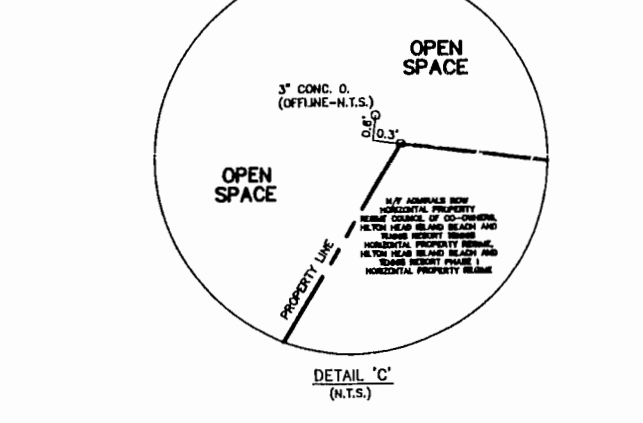
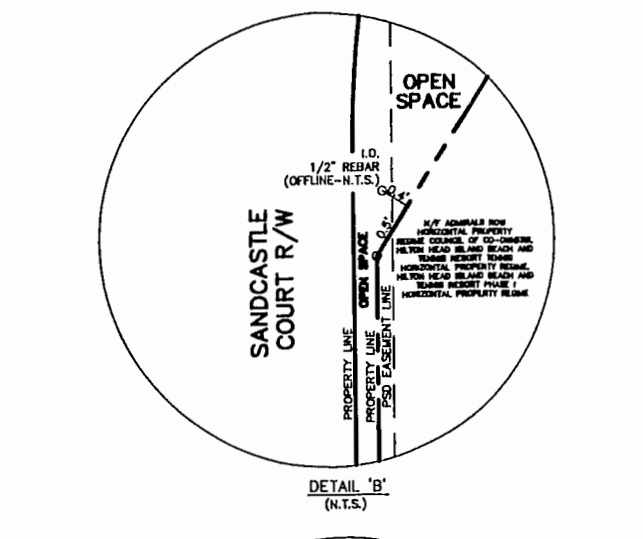
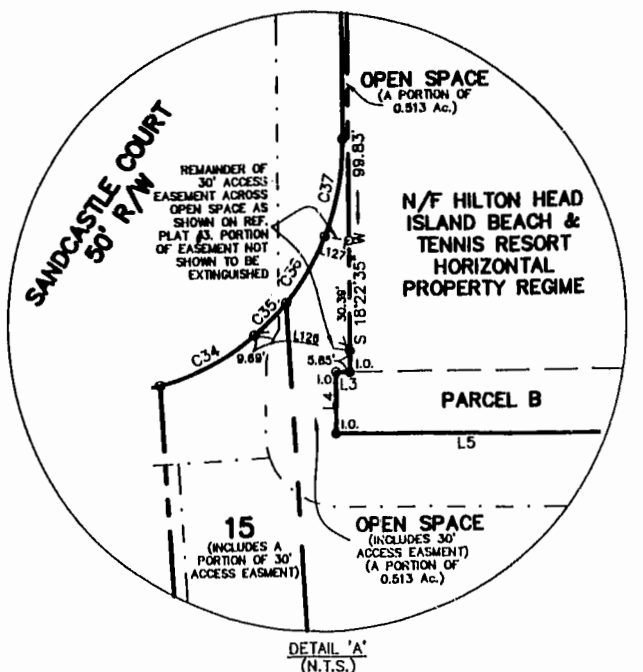
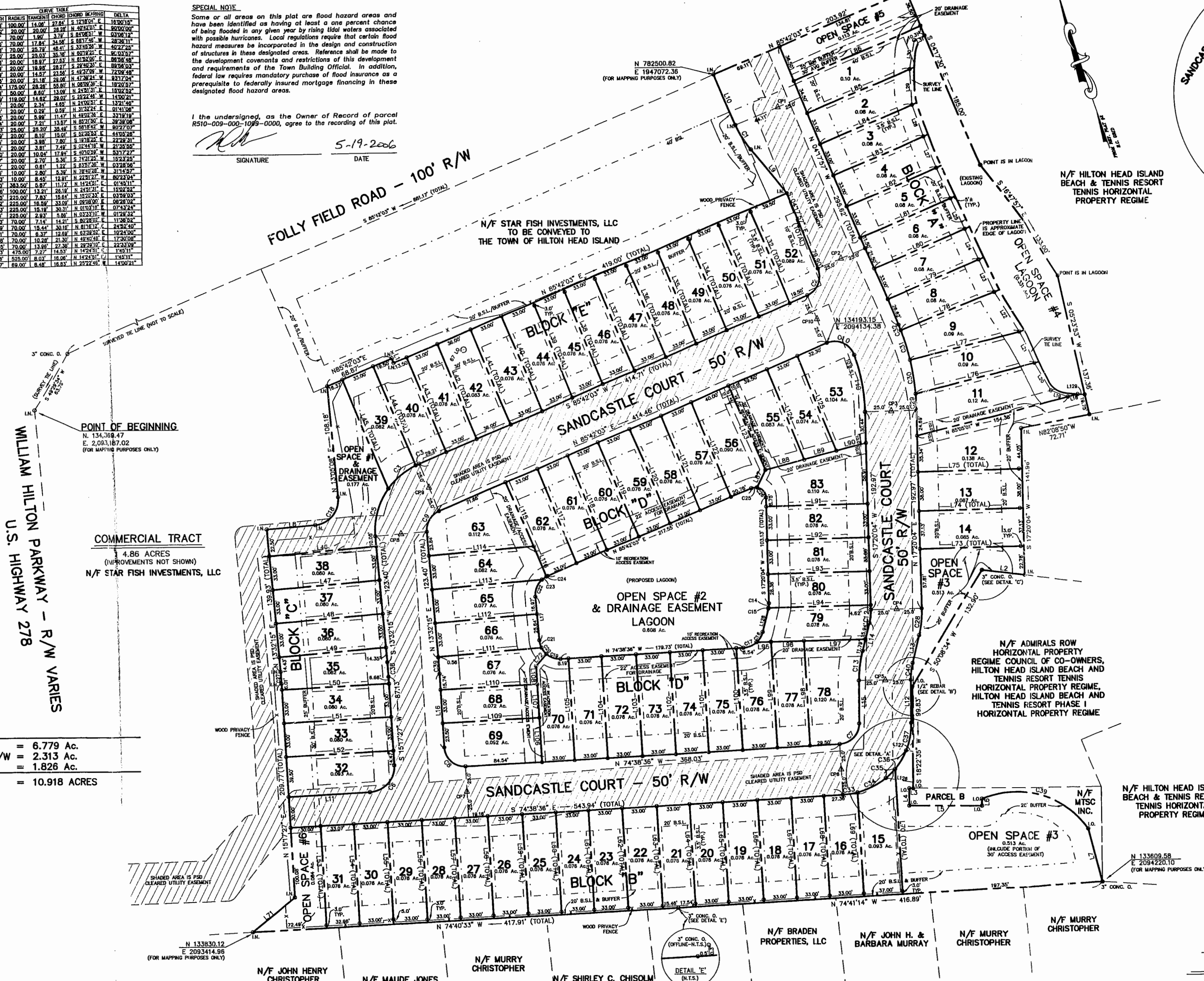
Curve table with columns: CURVE, RADIUS, TANGENT, CHORD, CHORD BEARING, DELTA.

SPECIAL NOTE: Some or all areas on this plot are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes...

I, the undersigned, as the Owner of Record of parcel R510-009-000-1099-0000, agree to the recording of this plot.

Signature and date: 5-19-2006

Attachment C



Subdivision Control Points table with columns: POINT, X, Y, POINT, X, Y.

TOWN OF HILTON HEAD ISLAND, SC SUBDIVISION APPROVAL. The Town has found this plan to be in compliance with the Town's Land Management Ordinance and has authorized this approval.

Date of approval: 7/9/06. Application Number: 81803002. Certified by: Terry G. Hatchell, Surveyor.

THIS AFFIDAVIT WILL EXPIRE ON 7/10/07. IN ACCORDANCE WITH L&O SECTION 15-3008 SUBDIVISION PLAT OF SANDCASTLES BY THE SEA FOLLY FIELD ROAD

HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA. SCALE: 1" = 50'. DATE: 6/15/2005. JOB NO: 89319L. REVISED 05/19/2006 TO SHOW OFFSET PROPERTY CORNERS.

South Carolina Surveying Consultants logo and contact information: 17 Sherington Drive, Suite C, Bluffton, SC 29910. Telephone: (843) 815-3304. FAX: (843) 815-3305.

- NOTES: 1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA... 2) THIS PROPERTY IS LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 14-D, COMMUNITY NO. 450250, MAP DATED 9/29/86, BASE ELEVATION 14'-0". FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.

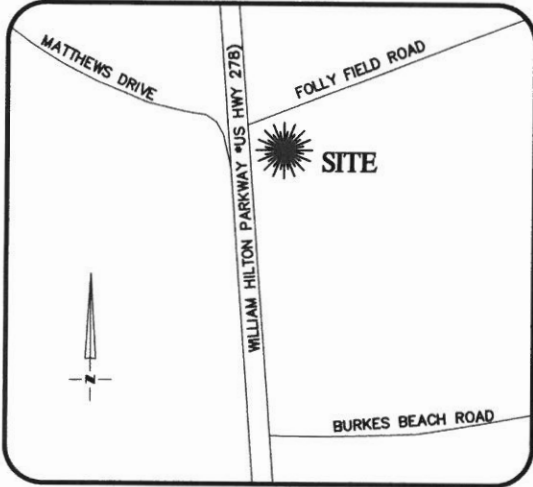
- REFERENCE PLATS: 1) ASBUILT SURVEY OF 14.249 AC. TRACT, FOLLY FIELD ROAD & U.S. HIGHWAY 278, DATED: 5/9/2000, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059. 2) ALTA/ACSM LAND TITLE SURVEY OF PARCEL A, 3.26 AC. AND PARCEL B, 0.08 AC., WILLIAM HILTON PARKWAY, THE FORMER ALTA FERGUSON TRACT, CHARLON PLANTATION, DATED: 12/10/2003, REVISED: 4/29/2004, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059.

PREPARED FOR: STAR FISH INVESTMENTS, LLC. TAX PARCEL I.D. NO. R511-009-000-1099-0000

Permit #: 4571-2018

Attachment D

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

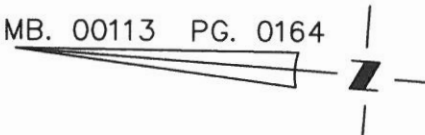


VICINITY MAP  
Not To Scale

SIGNED MATTHEW D. CLARK, SCPLS 20187



MB. 00113 PG. 0164

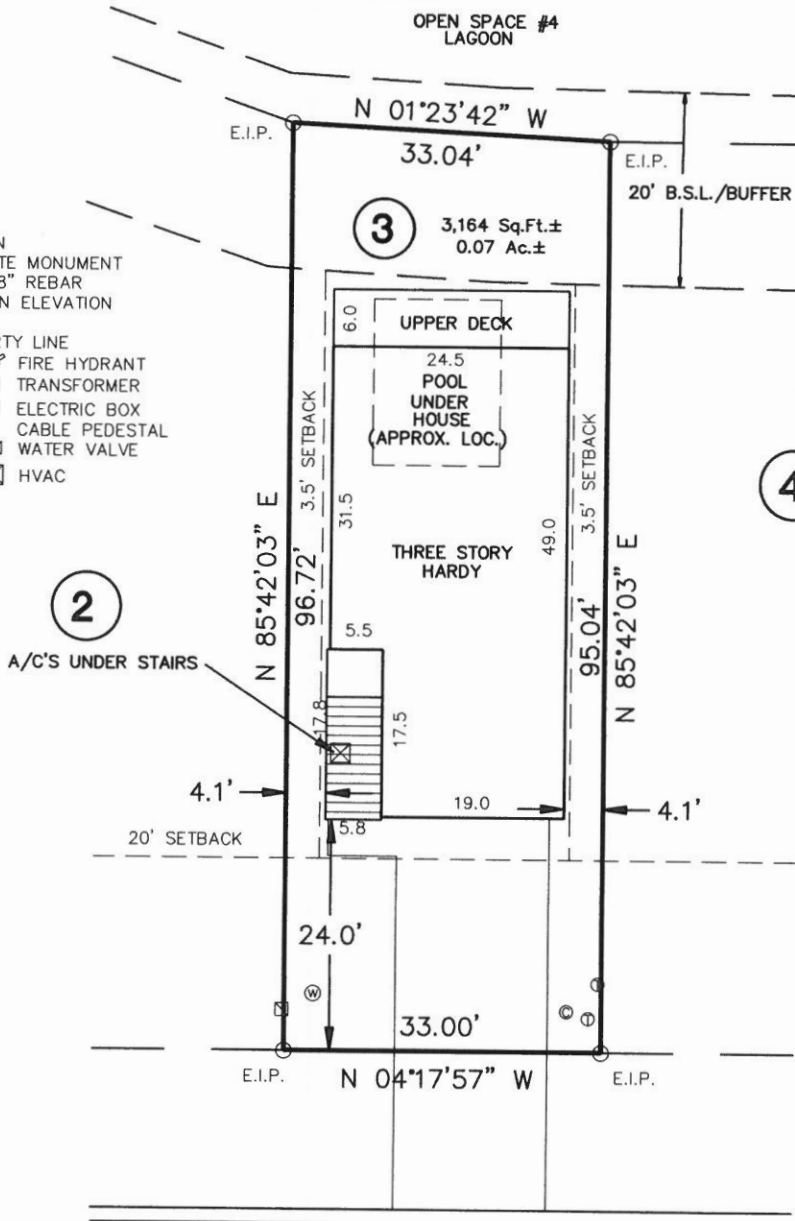


PROPERTY LINE IS APPROXIMATE EDGE OF LAGOON

OPEN SPACE #4 LAGOON

**LEGEND**

- |         |                            |   |                |
|---------|----------------------------|---|----------------|
| E.I.P.  | EXISTING IRON PIN          | ⊙ | FIRE HYDRANT   |
| E.C.M.  | EXISTING CONCRETE MONUMENT | ⊠ | TRANSFORMER    |
| S.I.P.  | SET IRON PIN 5/8" REBAR    | ⊞ | ELECTRIC BOX   |
| F.P.E.  | FLOOD PROTECTION ELEVATION | ⊞ | CABLE PEDESTAL |
| —       | PROPERTY LINE              | ⊞ | WATER VALVE    |
| - - - - | ADJOINER PROPERTY LINE     | ⊞ | HVAC           |
| X * X   | FENCE LINE                 | ⊞ |                |
| ⊙       | CLEAN OUT                  |   |                |
| ⊞       | LIGHT POST                 |   |                |
| ⊞       | MAN HOLE                   |   |                |
| ⊞       | TELEPHONE PEDESTAL         |   |                |
| ⊞       | WATER METER                |   |                |
| CB      | CATCH BASIN                |   |                |



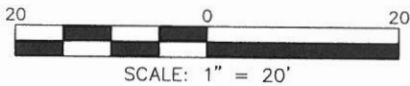
# #13 SANDCASTLE COURT

50' R/W

TMS: R511-009-000-1109-0000

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

FLOOD NOTE:  
THIS PROPERTY APPEARS TO BE LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 14-D COMMUNITY NO. 450250, MAP DATED 9/29/86. BASE ELEVATION 14.0'.



## PHYSICAL SURVEY

FOR

LOT 3, SANDCASTLES BY THE SEA

Hilton Head Island, Beaufort County, South Carolina

PROPERTY OF: VILLAGE PARK HOMES

MAP BOOK 00113 PAGE 0164 DEED REFERENCE \_\_\_\_\_

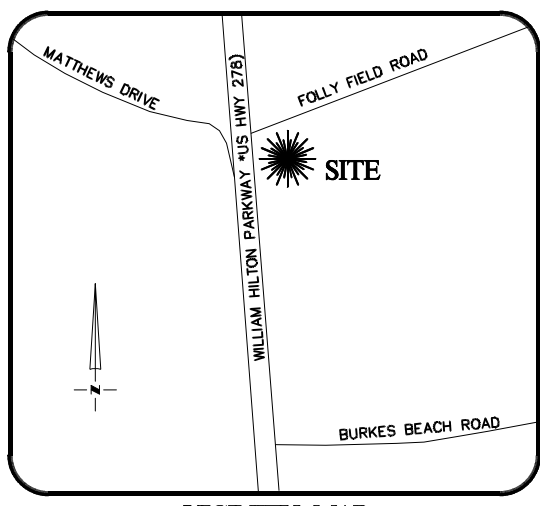
**RLA ASSOCIATES, PA**

110 TRADERS CROSS  
BLUFFTON, SC 29909  
PHONE (843) 705-8030  
FAX (843) 839-9092

DRAWN BY: MDC

DATE: MAY 23, 2019





VICINITY MAP  
Not To Scale

AREA	Sq. Ft. ±	PERCENTAGE
PERVIOUS	1,356	43
IMPERVIOUS	1,808	57
TOTAL	3,164	100

\*NOTE: UNIT TO BE FIRE-RATED DUE TO SEPARATION.\*

REVISIONS		
REV. #	DATE	COMMENT
REV. #1	12/28/18	CHANGED HOUSE PER LOT-SPECIFIC PLANS FOR LOT 2

\*NOTE: AT TIME OF REVISION, LOT SPECIFIC HOUSE PLANS FOR THIS LOT NOT AVAILABLE. DIMENSIONS TO BE VERIFIED PRIOR TO CONSTRUCTION.\*

**TOWN OF HILTON HEAD ISLAND**  
**Community Development Department Approval**

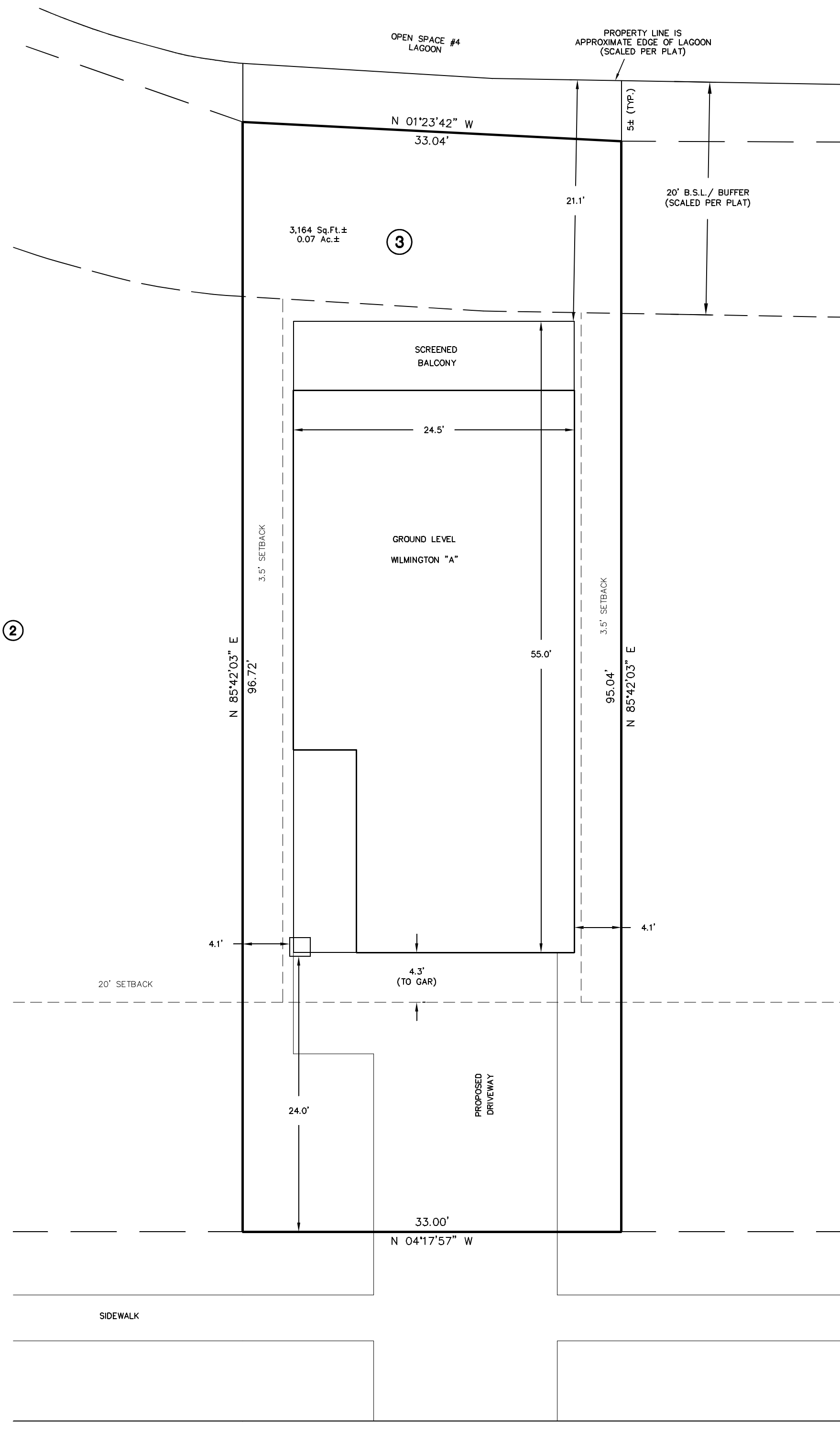
**APPROVED**

By Sherry Parent at 4:31 pm, Oct 12, 2018

**Disclaimer:**

The Town of Hilton Head Island makes an expressed declaration of policy that the public regulation of land is entirely separate from and independent of private restrictions. This approval in no way implies that the proposed development is in conformance with any restrictive covenants, private easements or deed restrictions.

MB. 00113 PG. 0164



#13 SANDCASTLE COURT  
50' R/W

FLOOD NOTE:  
THIS PROPERTY IS LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.I.D. PANEL 14-D COMMUNITY NO. 450250, MAP DATED 9/9/86. BASE ELEVATION 14.0'. FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OF COUNTY BUILDING INSPECTIONS DEPARTMENT.

THIS PLOT PLAN DOES NOT REPRESENT A LAND SURVEY, WAS NOT PREPARED FOR RECORDATION, AND IS NOT SUITABLE FOR DEEDING OF PROPERTY. NO GROUND SURVEY WAS PERFORMED.

RLA ASSOCIATES, PA  
785 KING GEORGE BLVD, SUITE 203  
SAVANNAH, GA 31419  
PHONE (843) 839-9091  
FAX (843) 839-9092

TMS: R511-009-000-1109-0000  
NOTE:  
1. BUILDER ASSUMES RESPONSIBILITY FOR GRADING LOT AND/OR DESIGNING STEPS, PORCHES, DECKS, ETC. AS NECESSARY TO PREVENT ENDOACHMENT INTO SETBACKS.  
2. HOUSE DIMENSIONS AND OPTIONS SHOULD BE VERIFIED WITH CONTRACTOR PRIOR TO CONSTRUCTION.  
3. SETBACKS/ EASEMENTS SHOULD BE VERIFIED WITH DEVELOPER AND LOCAL OFFICIALS PRIOR TO CONSTRUCTION.  
4. THIS IS A CONCEPTUAL DRAWING AND CONTENTS SHOWN HEREON ARE SUBJECT TO CHANGE UPON FINAL CONSTRUCTION.  
THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

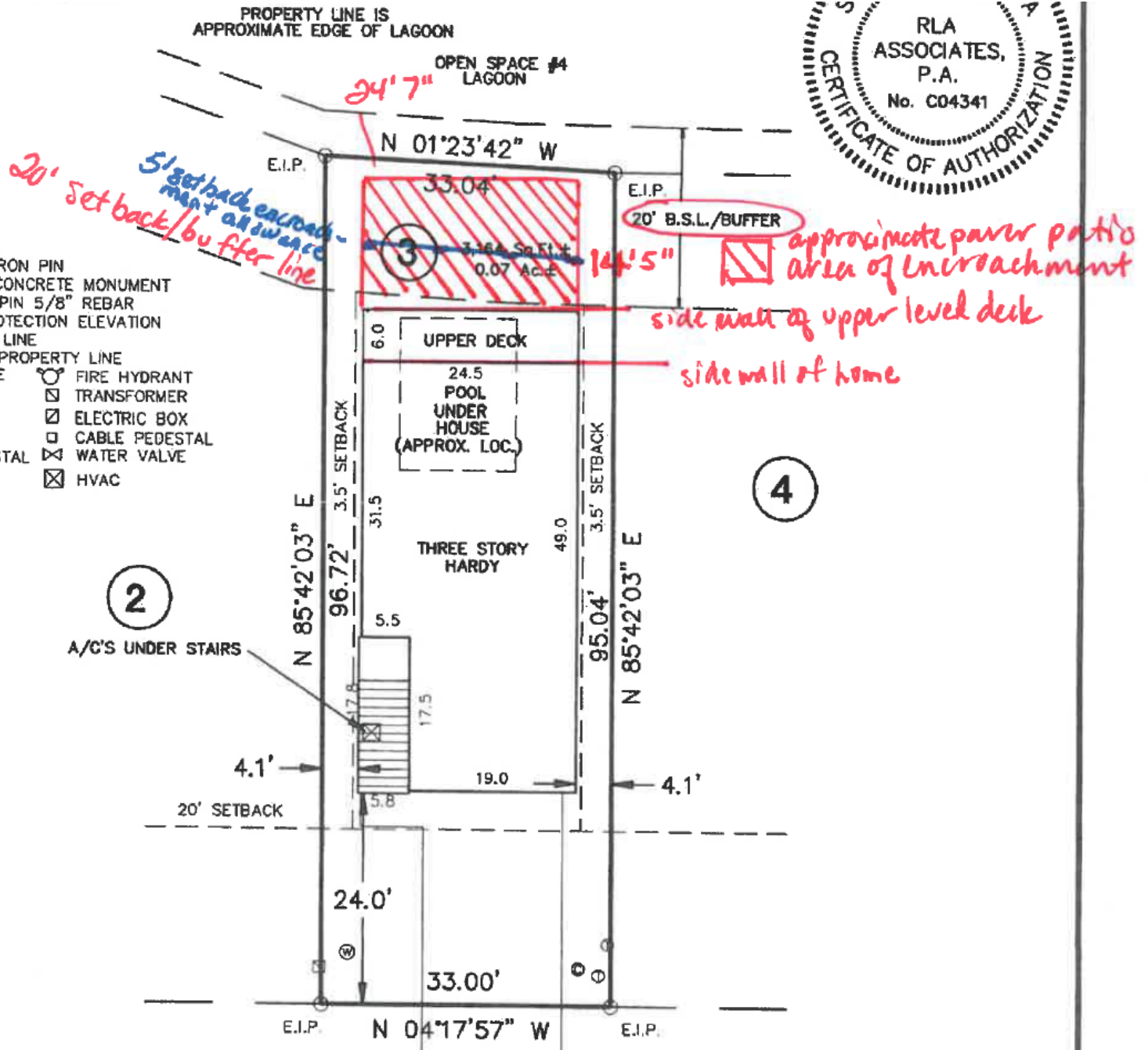
**HOUSE LOCATION PLOT PLAN**  
FOR  
**LOT 3, SANDCASTLES BY THE SEA**  
Hilton Head Island, Beaufort County, South Carolina  
PROPERTY OF: **VILLAGE PARK HOMES**  
MAP BOOK 00113 PAGE 0164 DEED REFERENCE  
DRAWN BY: MAH DATE: SEPTEMBER 25, 2018





**LEGEND**

- |        |                            |   |                |
|--------|----------------------------|---|----------------|
| E.I.P. | EXISTING IRON PIN          | ⊙ | FIRE HYDRANT   |
| E.C.M. | EXISTING CONCRETE MONUMENT | ⊠ | TRANSFORMER    |
| S.I.P. | SET IRON PIN 5/8" REBAR    | ⊡ | ELECTRIC BOX   |
| F.P.E. | FLOOD PROTECTION ELEVATION | ⊞ | CABLE PEDESTAL |
| ---    | PROPERTY LINE              | ⊞ | WATER VALVE    |
| ---    | ADJOINER PROPERTY LINE     | ⊞ | HVAC           |
| x x x  | FENCE LINE                 |   |                |
| ⊙      | CLEAN OUT                  |   |                |
| ⊠      | LIGHT POST                 |   |                |
| ⊞      | MAN HOLE                   |   |                |
| ⊞      | TELEPHONE PEDESTAL         |   |                |
| ⊞      | WATER METER                |   |                |
| CB     | CATCH BASIN                |   |                |



**Luick, Missy**

---

**From:** Rumsey, Dean T [REDACTED]  
**Sent:** Wednesday, March 4, 2020 9:47 AM  
**To:** Luick, Missy  
**Cc:** [REDACTED] Rumsey, Dean T  
**Subject:** VAR-000352-2020 James Schwamman: Hearing, March 23, 2020: Rumsey Response

Board of Zoning Hilton Head Island (Missy):

As per my conversation with Missy on 3/4/20. This E-Mail is our response to VAR-000352-2020.

My wife, Deanna Rumsey and self-Dean Rumsey are the owners of a Condo, Tennis Villas B 11, Hilton Head Island Beach & Tennis, 40 Folly Field Rd.

We reside in Pennsylvania and will be unable to attend the hearing on March 23, 2020 allowing us to voice our opinion concerning Mr. James Schwamman's request for a variance, allowing his existing patio encroaching the setback and buffer zone to remain.

We hereby wish to voice our opinion denying this requested variance. Allowing such a variance will devalue our property and increase Mr. Schwamman's.

Additionally, our patio, as does many at Hilton Head Beach & Tennis, looks directly towards the Lagoon. There are multiple homes in Sandcastle Court that have removed vegetation and built into the Lagoon and quite possibly into the existing setback and buffer zone. As we all are aware these homes are used extensively as seasonal rental properties. Allowing the vegetation within the existing setback and buffer zone to be removed, will only increase the noise that echoes off the water towards properties at Hilton Head Beach and Tennis.

Continuing, our view off the back of our patio decks has changed from natural Island beauty to a swimming pool and patios. Allowing Mr. Schwamman's variance or others in the future will only continue to devalue our properties, increase in elevation of the noise and take away from our natural environment.

It is our belief that the patio be removed and vegetation be planted restoring the area surrounding the Lagoon to its natural environment.

Any questions or concerns I can be reached @ [REDACTED]. Dean Rumsey

Cordially Dean & Deanna Rumsey

---

**The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.**

# FINGER, MELNICK & BROOKS, P.A.

ATTORNEYS AT LAW

TERRY A. FINGER •  
THOMAS L. BROOKS.  
TYLER A. MELNICK  
BENJAMIN T. SHELTON  
E. RICHARDSON LaBRUCE

Of Counsel:  
ANNE C. MARSCHER \*□  
ARTHUR F. ANDREWS†□

35 Hospital Center Common, Suite 200 (29926)  
Post Office Box 24005  
Hilton Head Island, South Carolina 29925  
(843) 681-8802 Facsimile  
(843) 681-7000 Telephone  
erlabruce@fingerlaw.com

Also admitted in:  
\* Georgia  
† New York

□ Court Certified Mediator  
▪ Court Certified Arbitrator / Mediator

March 11, 2020

**Via United States Mail,**

**With Copy by E-Mail (missyl@hiltonheadislandsc.gov):**

Ms. Missy Luick, Senior Planner  
TOWN OF HILTON ISLAND – COMMUNITY DEVELOPMENT DEPARTMENT  
HILTON HEAD BOARD OF ZONING APPEALS  
One Town Center Court  
Hilton Head Island, South Carolina 29928

**Re: Variance Application for 13 Sandcastle Court; VAR-000352-2020  
Parcel Number R511-009-000-1109-0000 (Schwamman, James)  
Our File No. 0191.124 – Hilton Head Beach & Tennis**

Dear Missy,

This firm serves has the privilege of serving as general counsel to HILTON HEAD BEACH & TENNIS RESORT (herein, “**HHB&T**”). HHB&T is a resort community located off of Folly Road in Hilton Head. It primarily consists of three residential horizontal property regimes: ADMIRALS ROW OWNERS ASSOCIATION, INC. (herein, “**Admirals Row**”), OCEAN VILLAS OWNERS ASSOCIATION, INC. OF HILTON HEAD (herein, “**Ocean Villas**”), and TENNIS VILLAS OWNERS ASSOCIATION, INC. (herein, “**Tennis Villas**” and collectively, the “**Regimes**”). HHB&T also includes a commercial component owned and operated by a separate entity identified as HHB&T CONVENTION CENTER, INC. (herein, the “**Convention Center**”). For brevity, unless context indicates otherwise, all references within this letter to HHB&T shall include the resort, the three residential Regimes, and the Convention Center.

As the development of Hilton Head Island has rapidly progressed, the Town has made concerted efforts to preserve existing vegetation by discouraging and, in certain cases, legally prohibiting the removal of trees and essential vegetation from properties, including through the establishment of mandatory buffers. While HHB&T appreciates Mr. Schwamman’s offer to protect at least ten (10’) feet of the vegetative buffer on his property, HHB&T cannot support any efforts that further degrade the natural environment around this lagoon. These natural buffers not only enhance community appearance by establishing needed visual screening between neighborhoods but also provide (i) natural habitat and movement corridors for birds, mammals and other wildlife; (ii) shade to keep water cooler and discourage harmful algae growth; (iii) stabilization for banks and further erosion prevention; and, (iv) protection from harmful pollutants by filtering storm water and irrigation runoff from residential neighborhoods. As noted in our written opposition to prior development activities within this same area, any attempt to develop within this long-established twenty (20’) buffer are not acceptable to HHB&T and should not be permitted by the Town of Hilton Head. We thus ask that the Town continue to take a proactive and measured approach to preserve the Town’s natural

## Attachment G

Ms. Missy Luick  
March 11, 2020  
2 | Page

resources by enforcing the LMO as it has done on more than one occasion with HHB&T, and denying this variance request.

Moreover, as is evident from the *Declaration of Restrictive Covenants (Landscape Buffer)* dated May 19, 1993, attached hereto as **EXHIBIT “A,”** Frank F. Russo and Madeline E. Russo, the prior owners of record of this property and the entirety of Sandcastles by the Sea subdivision, entered into an agreement with Tennis Villas to plant and maintain a twenty (20.00’) foot landscape buffer between their property and the lagoon that separates Sandcastles by the Sea and HHB&T (the “**Declaration**”). This Declaration was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on June 17, 1993, in Record Book 631 at Page 1810.

The Declaration explicitly prohibits “that portion of the Property lying within twenty feet (20’) of the lagoon separating the Property at its eastern boundary from the property of the Regime” from being used as anything other than “a landscaped buffer between the Property and the Regime property.” It is inarguable that the Applicant’s construction of a patio contradicts the language of the Declaration. Given that such development is unambiguously prohibited by the Declaration, the Town of Hilton Head may be statutorily precluded from permitting the requested development or approving the variance application. *See S.C. Code Ann. § 6-29-1145; LMO Section 16-1-106(B); see also Talbot v. Myrtle Beach Board of Adjustment, 222 S.C. 165, 72 S.E.2d 66 (1952)* (“It is worthy of notice that a zoning law cannot constitutionally relieve land within the district covered by it from lawful restrictions affecting its use, imposed by covenants.”)(internal citations omitted).

Perhaps even more important, despite a private agreement prohibiting the requested development, granting a variance is an exceptional power which should be exercised sparingly and only used where a situation falls fully within the specified conditions set forth by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “**Act**”) and the Town’s Land Management Ordinance. *Restaurant Row Associates v. Horry County, 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 528 U.S. 1020 (1999); Hodge v. Pollock, 223 S.C. 342, 75 S.E.2d 752 (1953)*. Under the Act, the Board of Zoning Appeals has the power “to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in **unnecessary hardship**.” *S.C. Code Ann. § 6-29-800(A)(2); see also LMO Section 16-2-103.S.*

Zoning ordinances are not mere suggestions; rather, they are the law. Granting certain individuals the right to avoid the law should only be done when the strict application thereof would create a real injustice, not just relieve the property owner from moderate inconvenience. To ensure that variances are rare, both the South Carolina General Assembly and the Town Council of Hilton Head Island deliberately set a high bar: “unnecessary hardship.” As established by the LMO, an applicant must meet the following four threshold elements before the Board of Zoning Appeals can legally grant a variance based on an “unnecessary hardship”:

01. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
02. These conditions do not generally apply to other properties in the vicinity;
03. 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; and
04. 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.

## Attachment G

Ms. Missy Luick  
March 11, 2020  
3 | Page

See *LMO Section 16-2-103.S.4.a.i.01 – 04*. Ultimately, the four elements set forth above revolve around one simple principle: “Citizens owning land of indiscernible differences are entitled to be treated equally, for the government cannot benefit one person and arbitrarily deprive another.” *Talbot v. Myrtle Beach Board of Adj.*, 222 S.C. 165, 165, 72 S.E.2d 66 (1952). Therefore, “before a variance can be allowed on the ground of ‘unnecessary hardship’, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation.” *Restaurant Row Associates*, 335 S.C. 209, 516 S.E.2d 442 (citing *Application of Groves*, 226 S.C. 459, 463, 85 S.E.2d 708, 710 (1955))(emphasis added).

The property is but one lot in an 83 lot subdivision. Every lot therein is subject to the exact same twenty (20’) foot buffer and setback requirements. As such, the applicant cannot remotely establish that his property, which is nearly an exact replica of every other lot in the community, is beset by such extraordinary and exceptional conditions as to effectively prohibit its full use and enjoyment. For these reasons, among others, the applicant’s variance request fails to meet the minimum legal threshold established by our Supreme Court and our legislature and, accordingly, the Board of Zoning Appeals must deny the variance application.

Further, our Supreme Court and the Hilton Head Island Board of Zoning Appeals have consistently refused to grant a variance from a zoning ordinance in existence when the applicant acquired the Property: “[A] claim of unnecessary hardship cannot be based upon conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him.” *Restaurant Row Assoc.*, 335 S.C. at 218 (citing *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965)). In the case at hand, the applicant purchased the Property on or about May 31, 2019, nearly fifteen years after the twenty (20’) foot setback and buffer requirements were imposed on the Property by the Town. The applicant fails to establish a single change in circumstances or conditions that occurred after the purchase of the property that would render the enforcement of the validly existing buffer as an “unnecessary hardship.”

Boards of Zoning Appeals charged with reviewing variance applications must follow strict legal standards for review. As a quasi-judicial arm of the Town, the BZA must follow the specific standards of the applicable zoning ordinance and South Carolina law. If a variance application meets all criteria, it must be approved or approved with conditions; if it does not, then the BZA must deny the application outright. Consistently analyzing applications pursuant to the codified review criteria is an essential duty of all board members. Permitting extraneous information and/or standards to influence these decision undermines the credibility of both the decision and the Board.

If you have any questions, please do not hesitate to contact me. On behalf of all of the owners, residents, and visitors to HHB&T, I sincerely thank you for your careful consideration of these matters.

With best regards, I am

Sincerely,

E. Richardson LaBruce  
FINGER, MELNICK & BROOKS, P.A.

Enclosures: Declaration of Restrictive Covenants  
cc: Mrs. Kate Clewell, Executive Director HHB&T (e-mail only)

F:\client\H\H B & T\Schwamman Variance\Letter to Planning Department (3.5.2020).docx





1811

the Regime property, provided that the Declarant may install utilities and drainage facilities therein and may install, maintain, and replace the Service Road shown on the Plat (designated as "Crusher-Run Road" thereon). If the Service Road is relocated by Declarant or by any subsequent owner of the Property, in compliance with the terms of the "Grant of Easements" from Declarant to the Association dated and recorded simultaneously herewith, the owner of the Property shall install landscaping in the location of the aforesaid Service Road similar to the other landscaping within the 20' Landscape Buffer.

2. **INSTALLATION OF PLANT MATERIALS.** Declarant shall install landscaping plant materials within the 20' Landscape Buffer in accordance with the landscaping plan approved by the Town of Hilton Head Island as a part of the development plan approval for the Property. If in the opinion of the Association, such landscape plan does not adequately screen the roads, lighting, or structures on the Property, or the Association determines in its sole discretion that there is a need to maintain, cut, or prune plant growth on the Property to maintain a neat appearance, a non-easement appurtenant to the Regime property is hereby granted by Declarant to the Association to enter upon the 20' Landscape Buffer to plant additional landscape materials to supplement the then existing landscaping and/or to maintain, cut, or prune plant growth. If entry on the Property is to be made by the Association pursuant to this easement, the Association shall give the owner of the Property written notice thereof at least three (3) days in advance, and the Association shall indemnify and hold the owner of

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the Property harmless from any loss, damage, costs, claims or causes of action as a result of the exercise of such right of entry. Any landscaping materials installed by the Association on the Property shall become a part of the Property and shall be owned by the owner thereof, provided that the Declarant will allow the Association to promptly remove any plants or trees previously installed by the Association in the event the landscaping is subsequently altered to require said removal, which removal shall be at no expense to the Declarant.

3. RE-DEVELOPMENT OF THE PROPERTY. After the landscaping plan described in Paragraph 2 above has been implemented, the Declarant and their successors in title to the Property may not remove or substantially alter the trees and plant materials within the 20' Landscape Buffer (except for routine maintenance and replacement thereof), unless the Property is re-developed, with the lagoon between the properties to be utilized as an amenity in connection with any structure erected on the Property. For example, if a hotel or restaurant is built on the Property, and the developer orients the building in the direction of the lagoon between the Property and the Regime property to provide a view of the lagoon, the owner of the Property may alter trees and other landscaping within the 20' Landscape Buffer to enhance the view of the lagoon. However, if the Property is re-developed for a use which does not make use of the view (for example, the loading or service area for a commercial establishment), the owner of the Property must maintain a "total landscape buffer" (as defined in the Town of Hilton Head Island's ordinances) within the 20'

1813

Landscape Buffer. The Declarant hereby grants to the Association a non-exclusive easement appurtenant to the Regime property to enter upon the 20' Landscape Buffer to plant additional landscape materials to supplement the then existing landscaping and/or to maintain, cut, or prune plant growth, if, in the opinion of the Association, such total landscape buffer does not adequately screen the improvements of the Property, or if the Association determines in its sole discretion that there is a need to maintain, cut, or prune plant growth on the Property to maintain a neat appearance. If entry on the Property is to be made by the Association pursuant to this easement, the Association shall give the owner of the Property written notice thereof at least three (3) days in advance, and the Association shall indemnify and hold the owner of the Property harmless from any loss, damage, costs, claims, or causes of action as a result of the exercise of such easement. Any landscaping installed by the Associations on the Property shall become a part of the Property and owned by the owner thereof, provided that Declarant will allow the Association to promptly remove and plants or trees previously installed by the Association in the event the landscaping is subsequently altered to require said removal, which removal shall be at no expense to Declarant.

4. FOUNDATION PLANTINGS. The owner of the Property shall be obligated to install adequate foundation plantings along the portion of buildings visible from the Regime property to screen the foundations and other areas below the first finished floor from view.

1814

IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed as of the day and year first above written.

WITNESSES:

Marie Murray  
MARIE MURRAY

Frank F. Russo  
FRANK F. RUSSO

Julianne McKeever  
JULIANNE MCKEEVER

Madelaine E. Russo  
MADELINE E. RUSSO

STATE OF PENNSYLVANIA )  
COUNTY OF PHILADELPHIA ) PROBATE

PERSONALLY appeared before me the undersigned witness who, after first being duly sworn, states on oath that (s)he saw the within named FRANK F. RUSSO and MADELINE E. RUSSO sign, seal and deliver the within Declaration of Restrictive Covenants, and that (s)he with other witness named up above witnessed the execution thereof.

Marie Murray  
(Witness) MARIE MURRAY

Sworn to and subscribed before me this 19th day of May, 1993.

Janelle M. Ansig  
Notary Public for Pennsylvania  
My Commission Expires: \_\_\_\_\_

NOTARIAL SEAL  
JANELLE M. ANSIG, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires November 13, 1995

1815

STATE OF PENNSYLVANIA )  
 )  
COUNTY OF PHILADELPHIA )

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 19<sup>th</sup> day of May, 1993, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared FRANK F. RUSSO and MADELINE E. RUSSO, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, who acknowledged the same by signing their names.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

*Janelle M. Ansko* [SEAL]  
NOTARY PUBLIC FOR PENNSYLVANIA  
My Commission Expires: \_\_\_\_\_

NOTARIAL SEAL  
JANELLE M. ANSKO, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires November 13, 1996

1816

EXHIBIT "A"  
TO DECLARATION OF RESTRICTIVE COVENANTS

ALL that certain piece, parcel or tract of land, situate lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, containing 14.28 acres, more or less, and being more fully shown on a plat of survey prepared by Coastal Surveying Co., Inc., Jerry L. Richardson, S.C.R.L.S. No. 4784, dated April 20, 1993, entitled "A Plat of 14.28 Acres Commercial & Multi-Family Tract Boundary Survey, A Section of the Folly Field Road Area," which plat is recorded in the R.M.C. Office for Beaufort County in Plat Book 46 at Page 127.

*Walz*  
FILED  
THERESA A. MORRIS  
P.M.C.  
BEAUFORT COUNTY, S.C. */MLL*  
93 JUN 17 AM 11:08  
BK *631* PG *1810*  
FOLDER #

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the Regime property, provided that the Declarant may install utilities and drainage facilities therein and may install, maintain, and replace the Service Road shown on the Plat (designated as "Crusher-Run Road" thereon). If the Service Road is relocated by Declarant or by any subsequent owner of the Property, in compliance with the terms of the "Grant of Easements" from Declarant to the Association dated and recorded simultaneously herewith, the owner of the Property shall install landscaping in the location of the aforesaid Service Road similar to the other landscaping within the 20' Landscape Buffer.

2. **INSTALLATION OF PLANT MATERIALS.** Declarant shall install landscaping plant materials within the 20' Landscape Buffer in accordance with the landscaping plan approved by the Town of Hilton Head Island as a part of the development plan approval for the Property. If in the opinion of the Association, such landscape plan does not adequately screen the roads, lighting, or structures on the Property, or the Association determines in its sole discretion that there is a need to maintain, cut, or prune plant growth on the Property to maintain a neat appearance, a non-easement appurtenant to the Regime property is hereby granted by Declarant to the Association to enter upon the 20' Landscape Buffer to plant additional landscape materials to supplement the then existing landscaping and/or to maintain, cut, or prune plant growth. If entry on the Property is to be made by the Association pursuant to this easement, the Association shall give the owner of the Property written notice thereof at least three (3) days in advance, and the Association shall indemnify and hold the owner of

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the Property harmless from any loss, damage, costs, claims or causes of action as a result of the exercise of such right of entry. Any landscaping materials installed by the Association on the Property shall become a part of the Property and shall be owned by the owner thereof, provided that the Declarant will allow the Association to promptly remove any plants or trees previously installed by the Association in the event the landscaping is subsequently altered to require said removal, which removal shall be at no expense to the Declarant.

3. RE-DEVELOPMENT OF THE PROPERTY. After the landscaping plan described in Paragraph 2 above has been implemented, the Declarant and their successors in title to the Property may not remove or substantially alter the trees and plant materials within the 20' Landscape Buffer (except for routine maintenance and replacement thereof), unless the Property is re-developed, with the lagoon between the properties to be utilized as an amenity in connection with any structure erected on the Property. For example, if a hotel or restaurant is built on the Property, and the developer orients the building in the direction of the lagoon between the Property and the Regime property to provide a view of the lagoon, the owner of the Property may alter trees and other landscaping within the 20' Landscape Buffer to enhance the view of the lagoon. However, if the Property is re-developed for a use which does not make use of the view (for example, the loading or service area for a commercial establishment), the owner of the Property must maintain a "total landscape buffer" (as defined in the Town of Hilton Head Island's ordinances) within the 20'

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STATE OF PENNSYLVANIA )  
COUNTY OF PHILADELPHIA ) PROBATE

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Notary Public for Pennsylvania  
My Commission Expires: \_\_\_\_\_

NOTARIAL SEAL  
JANELLE M. ANSIS, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires November 13, 1995

1815

STATE OF PENNSYLVANIA )  
COUNTY OF PHILADELPHIA )

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 19<sup>th</sup> day of May, 1993, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared FRANK F. RUSSO and MADELINE E. RUSSO, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, who acknowledged the same by signing their names.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

*Janelle M. Ansig* [SEAL]  
NOTARY PUBLIC FOR PENNSYLVANIA  
My Commission Expires: \_\_\_\_\_

NOTARIAL SEAL  
JANELLEN M. ANSIGS, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires November 13, 1996

1816

EXHIBIT "A"  
TO DECLARATION OF RESTRICTIVE COVENANTS

ALL that certain piece, parcel or tract of land, situate lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, containing 14.28 acres, more or less, and being more fully shown on a plat of survey prepared by Coastal Surveying Co., Inc., Jerry L. Richardson, S.C.R.L.S. No. 4784, dated April 20, 1993, entitled "A Plat of 14.28 Acres Commercial & Multi-Family Tract Boundary Survey, A Section of the Folly Field Road Area," which plat is recorded in the R.M.C. Office for Beaufort County in Plat Book 46 at Page 127.

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93 JUN 17 AM 11:08  
BK *631* PG *1810*  
FOLDER #

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13 Sandcastle Ct.  
Site Photos taken 3/6/2020





Attachment I

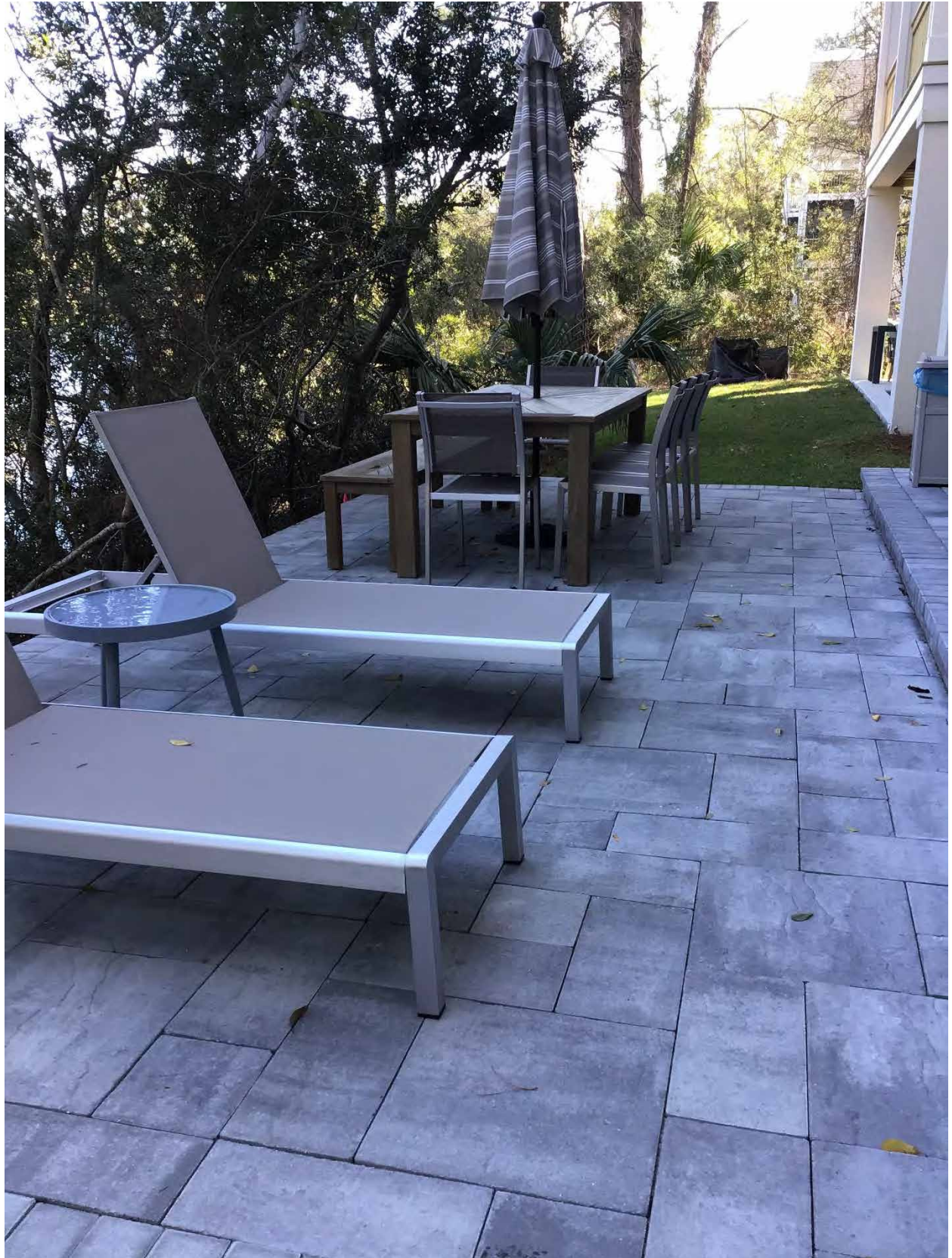
13 Sandcastle Ct.  
Site Photos taken 3/6/2020



13 Sandcastle Ct.  
Site Photos taken 3/6/2020



13 Sandcastle Ct.  
Site Photos taken 3/6/2020



Attachment J

F. Buffer Types

Table 16-5-103.F, Buffer Types, describes the five different buffer types in terms of their function, opacity, width, and planting requirements. Either of the options under a specific buffer type may be used at the option of the *developer / applicant* . If the square footage of an existing building on a site is being increased by more than 50% then the buffers must be brought into compliance with the standards in this table.

TABLE 16-5-103.F: BUFFER TYPES		
MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS <small>1,2,3,4,5,6, 7</small>		
<b>TYPE A BUFFER</b>		
This buffer includes low- <i>density</i> screening designed to partially block visual contact and create spatial separation between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent streets</i> with low traffic volumes.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 20 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 3 every 100 linear feet</li> <li>• Evergreen shrubs: 8 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 10 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 4 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
<b>TYPE B BUFFER</b>		
This buffer includes low- to medium- <i>density</i> screening designed to create the impression of spatial separation without significantly interfering with visual contact between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent</i> minor arterials.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear feet</li> <li>• Evergreen shrubs: 12 every 100 linear feet</li> </ul>
<b>TYPE C BUFFER</b>		
This buffer includes medium- <i>density</i> screening designed to eliminate visual contact at lower levels and create spatial separation between <i>adjacent uses</i> .		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>

Attachment J

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6, 7</sup>

<b>TYPE D BUFFER</b>		
<p>The buffer includes high-density screening designed to eliminate visual contact up to a height of six feet and create a strong spatial separation between <i>adjacent uses</i>. A Type D buffer is required adjacent to all loading areas per Section 16-5-107.H.8.d, Buffering of Loading Areas.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer with a 30-foot high screen of trees and shrubs. The screen consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 30 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 6 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
Option 2	<p>A diagram showing a 20-foot wide buffer with a 20-foot high screen of trees and shrubs. The screen consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width 20 feet</li> <li>• <i>Overstory trees</i> : 6 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear ft</li> <li>• A solid wall or fence at least 6 feet high or a solid evergreen hedge at least 6 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
<b>TYPE E BUFFER</b>		
<p>This buffer provides greater spacing and medium- <i>density</i> screening designed to define "green" corridors along major arterials.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer with a 50-foot high screen of trees and shrubs. The screen consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 50 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• Evergreen shrubs: 20 every 100 linear feet and at least 3 feet high at maturity</li> </ul>
Option 2	<p>A diagram showing a 100-foot wide buffer with a 35-foot high screen of trees and shrubs. The screen consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 35 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 7 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 3 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>

Attachment J

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6, 7</sup>

NOTES:

1. Required *overstory trees* shall be distributed and spaced to maximize their future health and effectiveness as buffers. Other required vegetation shall be distributed within the buffer as appropriate to the function of the buffer.
2. Where an *adjacent use* is designed for solar access, *understory trees* may be substituted for *overstory trees*.
3. Fences or walls within an adjacent street or use buffer shall comply with the standards of [Sec. 16-5-113](#), Fence and Wall Standards.
4. A berm may be provided in conjunction with the provision of a hedge, fence, or wall to achieve *height* requirements, provided its side slopes do not exceed a ratio of three horizontal feet to one vertical foot and the width of its top is at least one-half its *height*.
5. If a buffer length is greater or less than 100 linear feet, the planting requirements shall be applied on a proportional basis, rounding up for a requirement that is 0.5 or greater, and down for a requirement that is less than 0.5. (For example, if the buffer length is 150 linear feet, and there is a requirement that 5 *overstory trees* be planted every 100 linear feet, 8 *overstory trees* are required to be planted in the buffer ( $1.5 \times 5 = 7.5$ , rounded up to 8)).
6. Minimum buffer widths and minimum planting requirements for adjacent street buffers may be reduced by up to 30 percent in the S District, 20 percent in the RD and IL Districts, and 15 percent in all other districts, on demonstration to the *Official* that:
  - a. The reduction is consistent with the character of *development* on surrounding *land* ;
  - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
  - c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed *development* , or (b) results in improved site conditions for a *development* with *nonconforming site features* ;
  - d. The reduction will not pose a danger to the public health or safety;
  - e. Any adverse impacts directly attributable to the reduction are mitigated;
  - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts; and
  - g. In the S, RD, and IL districts, there are no reasonable options to the reduction that allow *development* of the site to be designed and located in a way that complies with LMO standards.
7. Minimum buffer widths and minimum planting requirements for adjacent use buffers may be reduced by up to 10 percent any district on demonstration to the *Official* that:
  - a. The reduction is consistent with the character of *development* on surrounding *land* ;
  - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
  - c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed *development* , or (b) results in improved site conditions for a *development* with *nonconforming site features* ;
  - d. The reduction will not pose a danger to the public health or safety;
  - e. Any adverse impacts directly attributable to the reduction are mitigated; and
  - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts.

## D-4. - Subdivision Review, Major

All **applications** or **subdivision** approval shall contain the following:

## A. Application Form and Fee

An **application** form as published by the **Official** and appropriate fee as required by Sec. 16 2 102.C.2, Application Fees.

## B. Subdivision Plat

One inch line print of a **subdivision** plat at a scale of 1"=50' or other scale acceptable to the **Official**, showing:

1. Date including any revision dates, name and location of the **subdivision**, name of owner, north arrow, graphic scale and reference meridian.
2. Beaufort County Tax Map and Parcel Number.
3. Location and description of all primary control points and monuments used in the survey, with ties to such control points to which all dimensions, angles, bearings, distances, locumbers and similar data shall be referred.
4. Existing and proposed **tract** boundary lines, **right-of-way** lines, proposed **street** names, **easements** and other **rights-of-way**, all **lot** lines and other **site** lines with accurate dimensions, bearing or deflecting angles or radii, arcs and central angles of all curves.
5. The proposed **use** of **lots** shall be noted and the purpose of any easement or **land** reserved or dedicated to public or utility **use** shall be designated.
6. Each loc shall be numbered, and the **lots** within each loc shall be numbered consecutively.
7. Notation of specific reference plats, if applicable.
8. Computed acreage of each **lot** created by the **subdivision**.
9. Minimum **building** setback or corner lines as required by Sec. 16 5 102 and Sec. 16 5 103.
10. The location of all lines and equipment for water, sewer, electric, telephone and cable TV as approved by the appropriate utility.
11. Certification by a South Carolina professional **land** surveyor as to the accuracy of the details of the plat, with seal and signature affixed.
12. Notation of the one hundred year storm **flood** elevation MSL and Flood Disclosure Statement in FEMA Zone A or V.
13. Surveyed delineation as appropriate of any **wetland** area within or **contiguous** to the **subdivision**.
14. Delineation of any airport hazard zone, as defined in Sec. 16 3 106.E, Airport Overlay A O District.
15. All existing **structures** or other **improvements**.
16. Location of exterior **subdivision** corner area as required by Sec. 16 5 103.
17. A statement that reads, "The only activities permitted in the exterior **subdivision** corner as labeled on this plan shall be those listed in Permitted Activity in Other Buffer Areas as per the LMO."
18. Location of **wetland buffer** area, where applicable, as required by Sec. 16 6 102.D.2.

19. For **subdivisions** where a portion is **adjacent** to a **wetland**, a statement that reads, "The only activities permitted in the **wetland buffer** shall be those listed in Wetland Buffers as per the LMO."

**C. Certification of Owner's Consent**

If the **applicant** is someone other than the owner, notarized certification, written and signed by the **development site** owner of record, that such owner formally consents to the proposed **subdivision**.

**D. Certification of Title Source**

Certification signed by the surveyor setting forth the source of title of the owners of the **land** subdivided or a copy of the deed by which the property was conveyed to the owner.

**E. Certificate of Title and Reference Plat**

A current certificate of title referencing the proposed **subdivision** plat and is recorded, a copy of the last plat in the chain of title.

**F. Open Space and Public Dedication Narrative**

A detailed narrative explaining how the **subdivision** will meet the **open space** and public dedication requirements, as applicable, Sec. 16 5 104. The narrative shall include:

1. Description of the form of organization proposed to own and maintain the **open space** in conformance with the requirements of Property Owners Associations or the equivalent, as specified in Sec. 16 5 104.E.
2. Identification of how the **open space** and facilities relate to existing and proposed **open space** areas, pathways and recreational facilities on Hilton Head Island, as shown in the Comprehensive Plan, or more detailed plans adopted by the **Planning Commission** such as **neighborhoods** plans.
3. If dedication is proposed to exceed the minimum **Town** standards, the **applicant** should state what bonus incentive, if any, is being requested as a result of such additional dedication.

**G. Street and Development Names**

Appropriate approvals for all **street** and **development** names as listed in Sec. 16 2 103.O, Street Vehicular Access Easement Name Review.

**H. Subdivision in Phases**

Whenever part of a **tract** is proposed for platting and it is intended to subdivide additional parts in the future or **abutting land** is in the same ownership, a sketch plan of the entire **tract** shall be submitted with the plat.

**I. Other Items**

Any applicable items as identified in D 6, Development Plan Review, Major.



## D-20. - Plat Stamping

A plat **application** shall be considered complete when the following items have been submitted.

## A. Application Form

An **application** form as published by the **Official**.

## B. Plat

A minimum of three plats one for the **Town** and two for Beauport **County**. These plats shall contain a signature block which shall be signed by the owner of record before these plats can be stamped or recording purposes this requirement may be waived if the applicant presents a written acknowledgement of the action in a legally recordable form, such as, but not limited to an easement, a right of entry, or a deed. The above requirement shall not apply to plats related to public projects. Upon such plat shall appear:

1. Owner of Record Signature Sign plat as it appears on the deed. Example: "I the undersigned as the Owner of Record of parcel s R , agree to the recording of this plat." This requirement may be waived if the applicant presents a written acknowledgement of the action in a legally recordable form, such as, but not limited to an easement, a right of entry, or a deed. This requirement shall not apply to plats related to public projects, such as easements obtained through condemnation or a public pathway.
2. Title Purpose of plat.
3. Vicinity Sketch Map of property location.
4. Address, State and County where property to be recorded is located.
5. Who the survey was prepared for, name s on deed.
6. Tax District, Map and Parcel Number of subject property.
7. Total acreage of parcel s .
8. All property access improvements.
9. Easements.
10. Date of survey and date of any revisions.
11. Graphic and numeric scale.
12. North arrow.
13. Certification of surveyor stating "class" of survey.
14. Existing monuments property pins.
15. Improvements.
16. Surveyor's original embossed seal, signature, surveyor ID, address and registration number.
17. "S.C. Certificate of Authorization" embossed seal when survey done by corporation, firm, association, partnership, or other such entity.
18. FEMA zone information property assigned flood zone.
19. Flood disclosure statement.
20. Notation of specific reference plats.
21. OCRM critical line and base line.

22. Space or stamp Minimum 4x4 inches.
23. If a property is located in the Airport Overlay A O District, a note shall be added to the plat per Sec. 16 3 106.E.3. .i.  
    e ised                    dinance
24. If a property is located in the Outer Hazard zone of the Airport Overlay A O District, a note shall be added to the plat per Sec. 16 3 106.E.3. .ii.  
    e ised                    dinance

**C. Other Requirements**

1. Property Deed Title Source.
2. Recorded easement documents.
3. Transfer agreement legal document showing property owner change.

( [Ord. No. 2015 23](#), 11-3-2015)



# 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

<b>Case #:</b>	<b>Public Hearing Date:</b>
VAR-001870-2020	October 29, 2020

Parcel or Location Data:	Property Owner	Applicant
Address: 123 Sandcastle Court Parcel#: R511 009 000 1154 0000 Zoning: RD (Resort Development District) Overlay: COR (Corridor Overlay District)	G&B Squared LLC 123 Sandcastle Court Hilton Head Island, SC 29928	George F. Zitlaw, Jr. 28 Arthur Avenue Greenville, SC 29605

**Application Summary:**

Request from George F. Zitlaw, Jr. for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall, patio and fence to remain in the adjacent use setback and buffer. The property address is 123 Sandcastle Court with a parcel number of R511 009 000 1154 0000.

**Staff Recommendation:**

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

**Background:**

The subject property is located in the Sandcastles by the Sea subdivision off Folly Field Road. The subdivision was approved in 2007 (SUB050002). The subdivision is surrounded by the Hilton Head Beach and Tennis Resort (multi-family residential) to the east, single family residential to the south, Town-owned property and single family residential to the north and Adventure Cove, Carrabba's restaurant and an office building to the west.

The subject property, 123 Sandcastle Court, was purchased by the applicant in 2017 and the

Certificate of Occupancy for a new single-family residence was issued in 2018. After the home was constructed and the Certificate of Occupancy was issued, the applicant had a paver patio and stone retaining wall constructed in the rear of the property, extending from the pool area into the rear adjacent use setback and buffer.

The Sandcastles by the Sea subdivision was approved with a 20 foot adjacent use setback and buffer around the perimeter of the subdivision (a 25' adjacent use buffer was approved on the western subdivision perimeter), as shown on the subdivision plat (See Attachment C, Subdivision Plat).

The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff. The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments. Buffer and setback areas frequently overlap, but the standards that apply to these areas are different. For example, uncovered patios are allowed to encroach up to 5' in setbacks, but patios are not allowed in buffers, which are meant to be landscaped or naturally vegetated.

At the time the subdivision was approved, there was not any flexibility in buffer options. With the 2014 LMO re-write, the buffer standards were made more flexible. This type of development would now require either a Type C Option 1 (25') less densely vegetated buffer or a Type C Option 2 (15') more densely vegetated buffer for single family residential use adjacent to a vacant Resort Development (RD) zoned property. The buffer types and options are explained in Table 16-5-103.F (See Attachment G, Buffer Table). A 30' setback is also required along the perimeter of a single family subdivision adjacent to a vacant RD zoned property.

In July 2019, Staff received several complaints about property owners removing vegetation and making improvements such as patios within the buffer. Upon a site visit, staff found several violations in the area in which we received complaints about. Violation letters were sent to the property owners notifying them of the violation and providing a deadline to remove the encroachments or apply for a variance.

A representative of the property owners contacted staff after receiving the violation letters and asked if the deadline to remove the encroachments could be extended to November 2019, as the majority of the homes are vacation rentals and it was the middle of the summer season. Staff felt that was reasonable and extended the deadline.

In early fall of 2019, the representatives of the property owners met with staff to discuss their options. One of their requests was to reduce the buffer to the 10' buffer option. Staff informed them that to utilize the reduced buffer option, the entire subdivision plat would need to be revised and recorded. Town Staff had been working with the representatives to pursue a buffer reduction request for the entire subdivision, but it was determined by the representative to be too costly to do and they didn't think they could get 100% owners consent.

Staff was informed in Spring of 2020 that there were several other properties in this subdivision that

had encroachments in the buffer. Staff decided to do a site visit to all of the properties in the subdivision and compiled a list of the violations. In August of 2020 a second violation letter was issued to property owners with a deadline to remove the encroachments and restore the buffers back to a vegetated area by October 1, 2020. The property owners were informed that if they did not adhere to the deadline the Town would place a hold on their parcel making it so that no further building permits could be issued until the violation had been corrected. The property owners were all informed that they also had the option to apply for a variance if they wished to keep the encroachments.

The applicant is requesting a variance to allow the existing paver patio and stone retaining wall to remain in the rear adjacent use setback and buffer.

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

**Grounds for Variance:**

According to the applicant, the relatively small size of his lot combined with the setback and buffer requirements of the LMO are extraordinary and exceptional conditions. The variance is required in order to prevent the erosion of soil into the swimming pool and other livable space in the home.

**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 September 18, 2020 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 October 4, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on October 7, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on October 11, 2020 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 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 Fact:**

- The subject property is .07 acres.
- The subject property is approximately the same size (.06 - .08 acres) as all of the other properties on the same side of Sandcastle Court as well as the adjacent properties across Sandcastle Court.
- The subject property is rectangular in shape as are the majority of the adjacent properties.
- The subject property does not contain any unique site features that prohibit development on the lot.

**Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are no extraordinary and exceptional conditions that pertain to this particular property.

**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):*

**Findings of Fact:**

- The majority of lots in the Sandcastles by the Sea neighborhood are nearly identical in size and shape.
- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary and exceptional conditions that pertain to this particular property that don't also 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 Fact:**

- The original developer of the Sandcastles by the Sea neighborhood chose to utilize nearly every square foot of buildable space on the subject property.
- The original subdivision plat for the Sandcastle by the Sea neighborhood requires a 20' adjacent use setback and buffer in the rear of the subject property.

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, “The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO”.
- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.
- A three story single-family residence with 3,314 heated square feet, 1,137 unheated square feet, 4 bedrooms, 4 bathrooms, and a swimming pool has been constructed at the subject property.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that pertain to this property that unreasonably prohibits the use of the property.

**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:**

- Staff has received no letters of opposition to this variance request.
- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers.
- The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.
- The properties directly adjacent to the subject lot both have encroachments in the setback and buffer and have applied for a variance to keep them.
- While there is a heavily vegetated Town-owned property behind the property that is currently undeveloped, the property could potentially be developed in the future.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produces very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.

**Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the purpose of setback and buffer requirements is to provide visual and spatial separation from the development to the property behind it.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.

**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 denied 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:**

TN.  
\_\_\_\_\_  
Tyler Newman  
Senior Planner

10/15/2020  
\_\_\_\_\_  
DATE

**REVIEWED BY:**

ND.  
\_\_\_\_\_  
Nicole Dixon, AICP, CFM,  
Development Review Administrator

10/15/2020  
\_\_\_\_\_  
DATE

**ATTACHMENTS:**

- A) Vicinity Map**
- B) Applicant's Narrative**
- C) Subdivision Plat**
- D) As-Built Survey**
- E) Site Plan**
- F) Site Photos**
- G) Buffer Table**



**Attachment A – Vicinity Map**

**Folly Field Road**

**Sandcastle Court**



**Town of Hilton Head Island**  
**VAR-001870-2020 - 123 Sandcastle Court**  
October, 2020



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
MILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-4600  
Date Created: 10/1/2020  
Map: map-10/1/2020



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or completeness or for any losses arising from the use of the map.

**I am writing this letter to request a variance to seek and obtain relief from the following standards:**

- **Chapter 16-5-102 Setback Standards**
- **Chapter 16-5-103 Buffer Standards**
- **Chapter 16-5-113 Fence and Wall Standards**

**I Respectfully Request:**

- **Reduction of the rear vegetative buffer on my lot from the required 20 feet to 5 feet:**

My single-family home 123 Sandcastle Ct. is located in the Sandcastles by the Sea neighborhood in Folly Field. The Town of Hilton Head Land Management Ordinance requires an adjacent use buffer along the boundary of my subdivision. In the case of my lot, the buffer is 20 feet from the rear property line. The Town of Hilton Head requires this 20 foot buffer to be a natural vegetated area, and to provide an aesthetic and spatial separation between uses and streets and uses and adjacent properties, and not to have improvements such as patios, retaining walls, and pavers.

I am requesting a variance to allow 15 feet of the vegetation buffer in my backyard to contain improvements of natural looking stone pavers with permeable joints, and a natural looking stone retaining wall of less than 3 feet in height, to prevent erosion of soil into the swimming pool and other livable space in the home.

I believe the variance I am requesting meets all the towns criteria for approval.

**Extraordinary and exceptional conditions pertain to my property and do not apply to other properties in Folly Field or on Hilton Head Island.**

The Sandcastle by the Sea neighborhood was a residential planned community first developed back in 2006 by Star Fish Investments LLC. The community was developed into 83 individual buildable lots. All the lots are nearly identical in size and shape, and measure roughly 100 feet long by 33 feet wide, and only average 0.076 acres each. My lot, which measures much less than 1/10<sup>th</sup> of an acre, is extraordinary and exceptional compared to all the surrounding lots both in Folly Field and on the entire island. In fact, my lot is less than half the size of all the surrounding residential lots in Folly Field. Other residential lots on Hilton Head Island are on the average 5 times larger than my lot. These statistics make my lot unusually small as compared to all the other residential lots on Hilton Head Island.

Because my lot is exceptionally small in comparison to other lots on Hilton Head Island, my buildable footprint is also exceptionally small. In fact, due to easements and setbacks on the lot, the home had to be built utilizing every square foot of buildable space. The home literally had to be built exactly between the required front setback from the street, and the required 20-foot vegetation buffer at the rear of the lot. The buildable footprint is so small on my lot, a one-story home could only have ONE bedroom. I am not aware of any other residential lot on HHI, outside my neighborhood, with such a small buildable footprint. The small buildable footprint that I have required me to build a three-story home to get enough square footage to accommodate my family.

**Application of the Land Management Ordinance to my piece of property would unreasonably restrict the utilization of the property.**

Because the extraordinary and exceptional conditions of my property explained above, I was forced to build the rear of my home up against the 20-foot vegetation buffer setback line. The application of the Land Management Ordinance effectively rendered my entire backyard a vegetation buffer in which no improvements could be made.

The naturally existing topography of the backyard was also unusual. The vegetation buffer area towards the rear of the lot was 3 feet higher than the vegetation buffer area against my home. The low point of the buffer rests against the back of my home, and next to the swimming pool. This significant slope of the lot toward my home, during rains, causes a mudslide that deposits eroded dirt into my homes living space and even into my swimming pool located under the house. This created a dangerous situation because our pool water was being contaminated with dirt and mud during heavy rains. It also made it difficult to walk around the back perimeter of my home due to this erosion of land. The only solution that would prevent erosion due to the backyard slope of the land, was to build a small, less than 3 foot, retaining wall. The wall was made of natural stone looking material to blend in with the surrounding vegetation. This wall eliminated both my soil erosion problem and safety issue with contaminated swimming pool water.

The natural stone looking wall we built was small, and under 3 feet in height. The wall was constructed 5 feet 10 inches from the rear of the property line and encroached 15 feet into the vegetation buffer. The 5 feet of vegetation buffer behind the wall was originally mud, so we came up with a landscaping plan to vegetate these 5 feet. Our plantings not only met but exceeded the towns vegetation buffer requirements.

The installation of our small retaining wall, corrected the topography issue, solved our erosion issue, eliminated a safety hazard in our swimming pool, and created a beautifully landscaped and thriving 5-foot vegetative buffer. Our vegetative buffer contains numerous shrubs, elephant ears, ferns, and numerous other indigenous plantings which blend into the existing environment.

After the retaining wall was built, I was then left with only 15 feet between the back of my home and my retaining wall. The Towns Land Management Ordinance requires the only remaining 15 feet of my backyard to be heavily vegetated. This effectively would render my home with no usable backyard. Because of these conditions, the application of this ordinance to my property would unreasonably restrict the utilization of my property. I would like to request a variance to reduce my rear vegetation buffer from 20 feet to 5 feet to regain a small amount of usable backyard in my home.

If a Variance is granted to reduce my vegetative buffer from 20 feet to 5 feet, I will be allowed to lay natural looking stone pavers that blend in with the environment in this 15-foot area. The joints between the stone pavers will allow for both proper drainage and kept earth from flowing into my home and swimming pool under my home. The granting of this Variance will also allow me to enjoy the natural surroundings in my backyard, enjoy viewing the natural wildlife, and create a sense of place and privacy.

**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.**

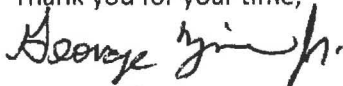
Our entire backyard is directly backed up to a heavily treed and vegetated plot of land owned and protected by the Town of Hilton Head. This plot of land is between the rear of my lot and Folly Field Road and essentially creates approximately 135 feet of heavily treed and natural vegetation. When you add my entire backyard of 20 feet as a vegetation buffer, the total amount of trees and natural vegetation between my home and Folly Field road increases to 155 feet. If my requested variance is approved, the overall vegetated area will reduce only 15 feet to approximately 140 feet. The reduction in vegetation is so small and have such a negligible impact, that it would not be noticed by the public.

As far as adjacent property impact, the only property owners that can see my property or proposed improvements, are all located on the same street in Sandcastles by the Sea. Each of these adjacent owners have all the same issues as described above and are requesting the same variance I am requesting.

I have attached pictures that show what the natural land looked like in our backyard after we made improvements. You can see after our improvements, we prevented unwanted and unsafe land erosion, and at the same time, we created a small area to be able to enjoy the natural vegetation, trees, and wildlife that surround our home. Our improvements created a viewing place for all our surrounding nature and is in harmony with the Islands Character Vision Statement. Our above improvements will truly give us the ability to lose nothing, but see more, and have our property better contribute to the overall beauty and future vision of Hilton Head Island.

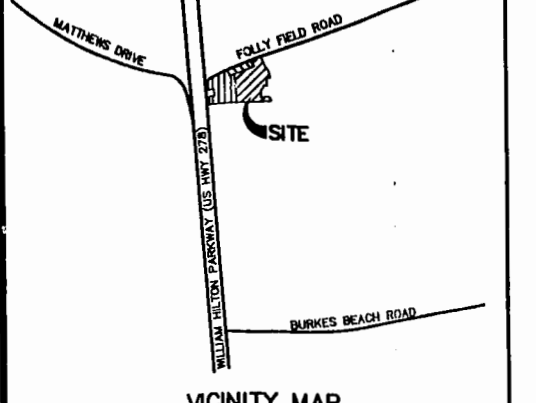
If our Variance is denied, enforcement of this strict vegetation buffer will result in a unnecessary hardship for my family, and if a variance is granted, I feel the spirit of the law will still be observed, public welfare and safety will not be diminished and substantial justice will be done.

Thank you for your time,



George Zitlaw, Jr.

15035P4D



VICINITY MAP N.T.S.

Table with 4 columns: LINE, LENGTH, BEARING, and BEARING. It lists 170 line segments for the subdivision plat.

AREA TABLE showing 83 Residential Lots (6,779 Ac.), Sandcastle Court R/W (2,313 Ac.), Open Space (1,826 Ac.), and Total Area (10,918 Acres).

- NOTES: 1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE... 2) THIS PROPERTY IS LOCATED IN ZONE A-7... 3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN... 4) L.N. DENOTES IRON NEW 1/2" REBAR SET... 5) UPON APPROVAL AND RECORDING, PROPERTY CORNERS WILL BE SET... 6) THE ONLY ACTIVITIES PERMITTED IN THE EXTERIOR SUBDIVISION BUFFER AS LABELED ON THIS PLAN SHALL BE THOSE LISTED IN PERMITTED ACTIVITY IN OTHER BUFFER AREAS AS PER THE LMO.

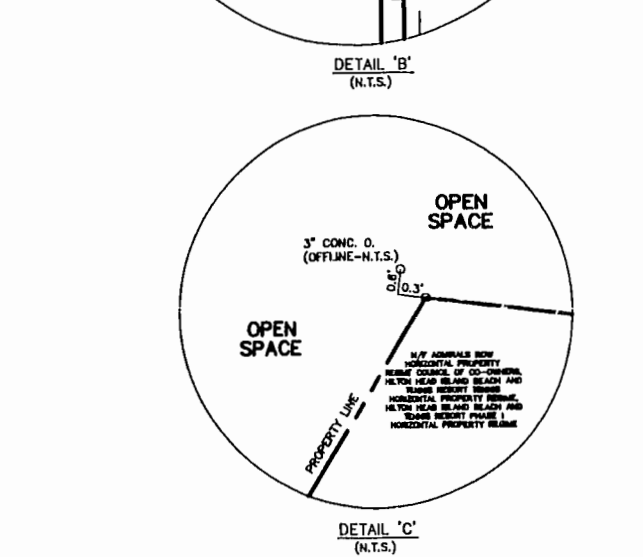
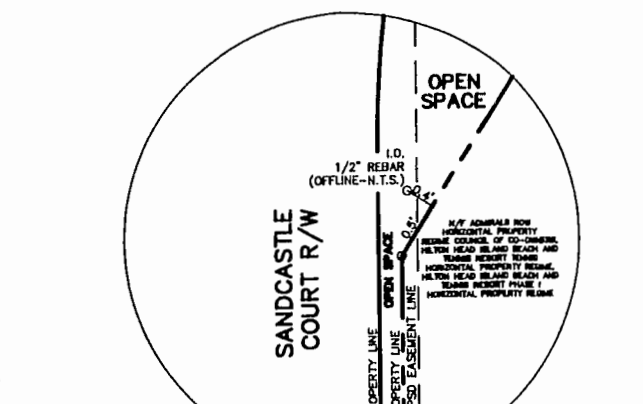
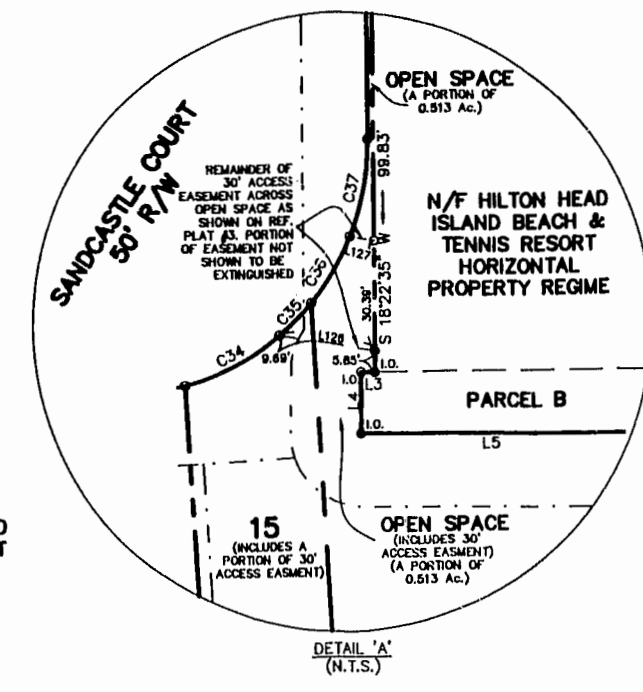
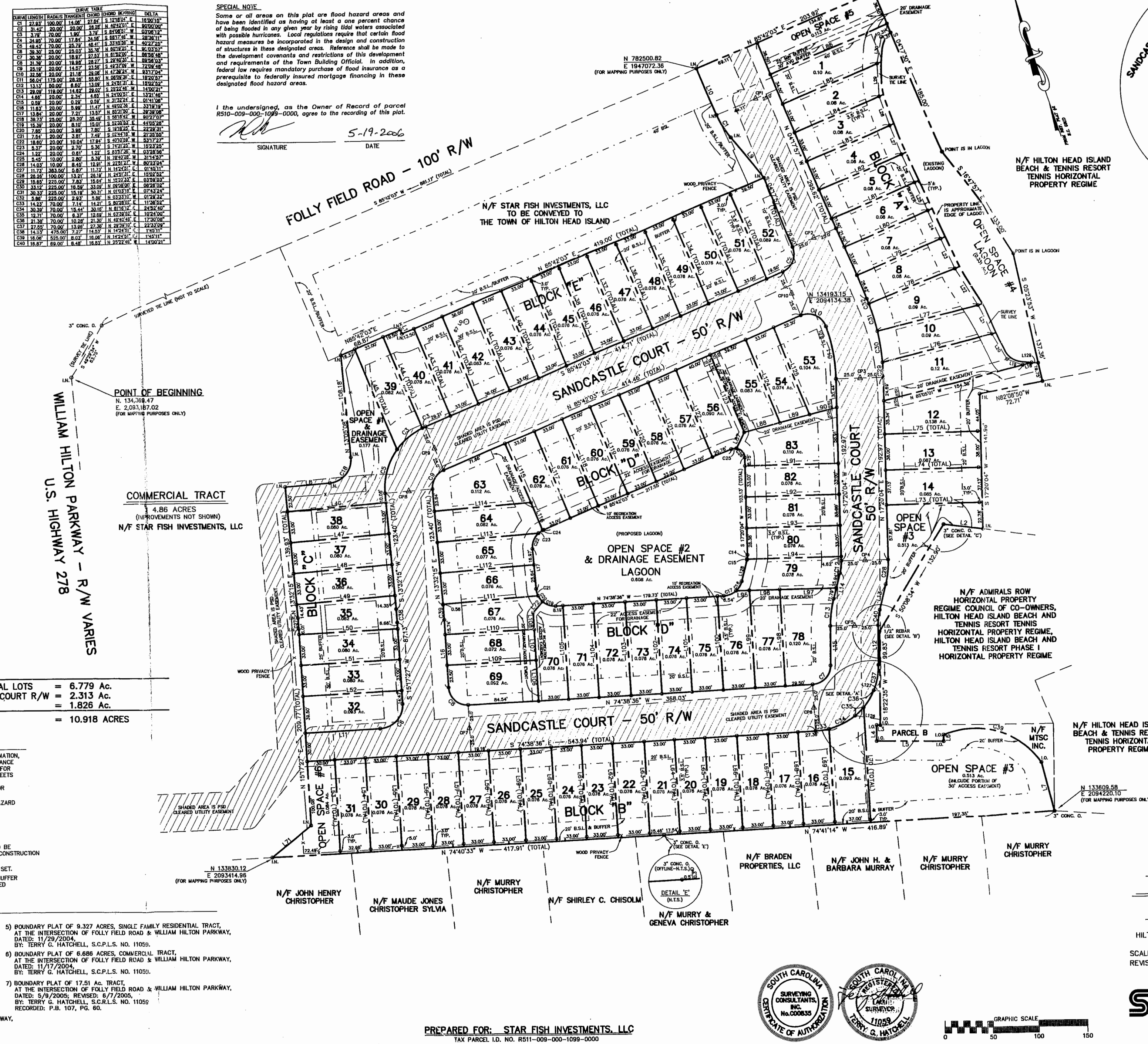
- REFERENCE PLATS: 1) ASBUILT SURVEY OF 14.249 AC. TRACT, FOLLY FIELD ROAD & U.S. HIGHWAY 278, DATED: 5/9/2000... 2) ALTA/ACSM LAND TITLE SURVEY OF PARCEL A, 3.26 AC. AND PARCEL B, 0.08 AC. WILLIAM HILTON PARKWAY... 3) 14.28 ACRES COMMERCIAL & MULTI-FAMILY TRACT, A SECTION OF FOLLY FIELD ROAD AREA, DATED: 4/20/03... 4) BOUNDARY PLAT OF 16.013 AC. TRACT, AT THE INTERSECTION OF FOLLY FIELD ROAD & WILLIAM HILTON PARKWAY, DATED: 10/13/2004... 5) BOUNDARY PLAT OF 9.327 ACRES, SINGLE FAMILY RESIDENTIAL TRACT, AT THE INTERSECTION OF FOLLY FIELD ROAD & WILLIAM HILTON PARKWAY, DATED: 11/29/2004... 6) BOUNDARY PLAT OF 6.686 ACRES, COMMERCIAL TRACT, AT THE INTERSECTION OF FOLLY FIELD ROAD & WILLIAM HILTON PARKWAY, DATED: 12/10/2003... 7) BOUNDARY PLAT OF 17.51 AC. TRACT, AT THE INTERSECTION OF FOLLY FIELD ROAD & WILLIAM HILTON PARKWAY, DATED: 5/9/2005...

Table with 4 columns: BEARING, LENGTH, BEARING, and BEARING. It lists 170 line segments for the subdivision plat.

SPECIAL NOTE: Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes...

I, the undersigned, as the Owner of Record of parcel R510-009-000-1099-0000, agree to the recording of this plat. SIGNATURE: [Signature] DATE: 5-19-2006

Attachment C - Subdivision Plat



SUBDIVISION CONTROL POINTS (THREE POINTS TO BE SET AFTER FINAL ROADWAY CONSTRUCTION) listing coordinates for points CP1 through CP19.

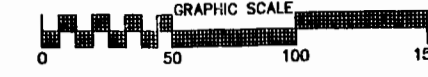
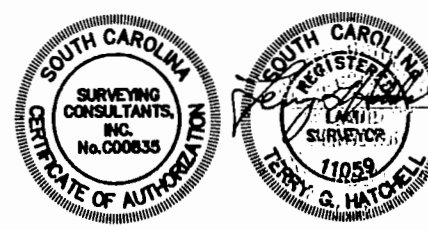
TOWN OF HILTON HEAD ISLAND, SC SUBDIVISION APPROVAL. Date of approval: 7/9/06. Application Number: 81805002. Certified by: [Signature]. Title: [Signature]. THIS AFFIDAVIT WILL EXPIRE ON 7/10/07...

SANDCASTLES BY THE SEA FOLLY FIELD ROAD

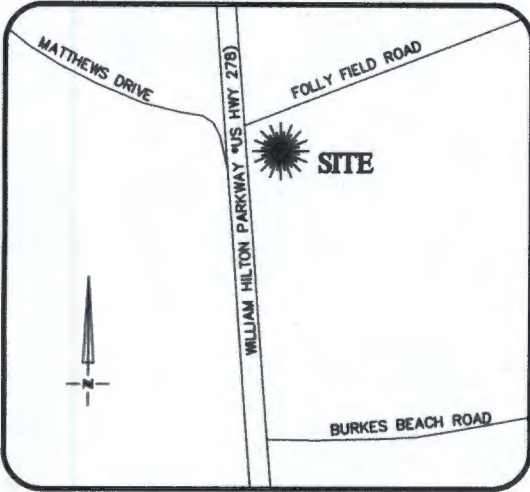
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA. SCALE: 1" = 50'. DATE: 6/15/2005. JOB NO: 89319L. REVISED 05/19/2006 TO SHOW OFFSET PROPERTY CORNERS.

SURVEYING CONSULTANTS logo and contact information: 17 Sherington Drive, Suite C, Bluffton, SC 29910. Telephone: (843) 815-3304. FAX: (843) 815-3305.

PREPARED FOR: STAR FISH INVESTMENTS, LLC. TAX PARCEL I.D. NO. R511-009-000-1099-0000



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



VICINITY MAP  
Not To Scale

SIGNED

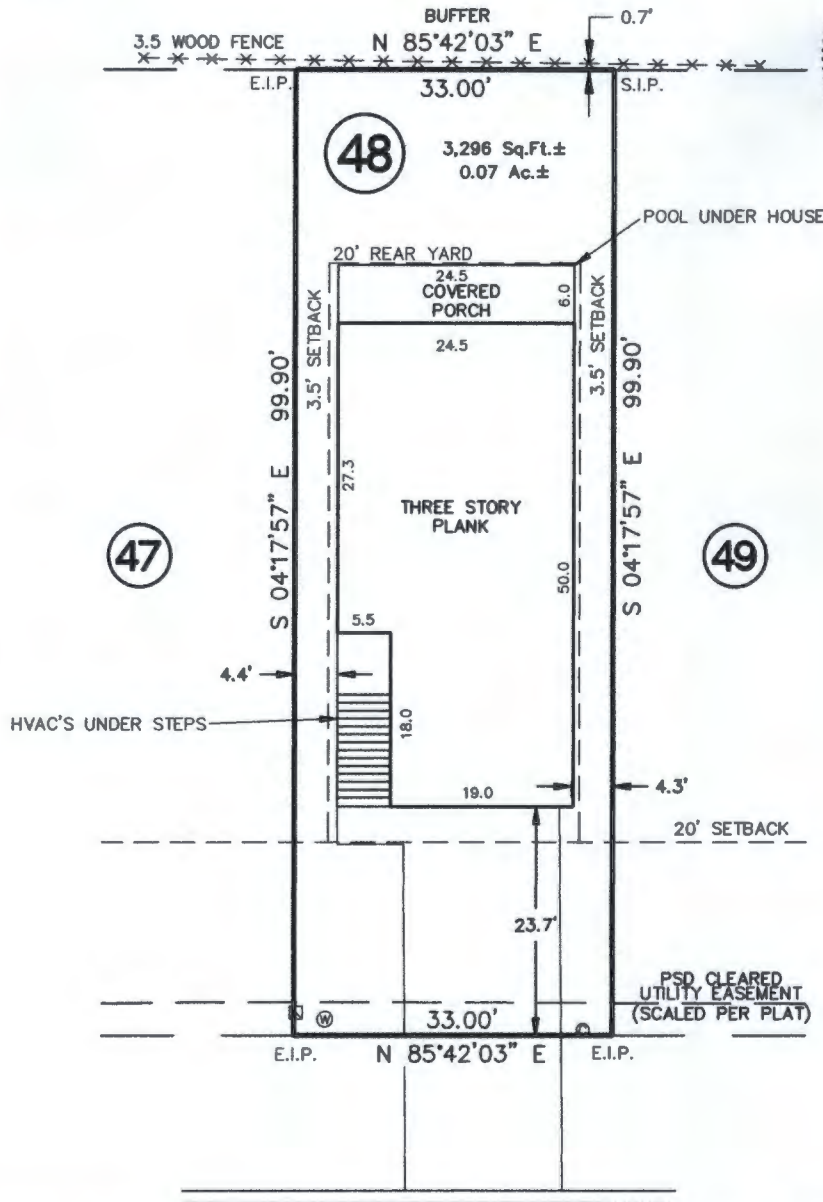
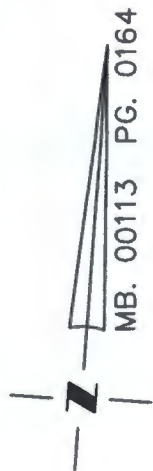
ROBERT L. ARRINGTON, S.C. PLS L-19889

LEGEND

- E.I.P. EXISTING IRON PIN
- E.C.M. EXISTING CONCRETE MONUMENT
- S.I.P. SET IRON PIN
- F.P.E. FLOOD PROTECTION ELEVATION
- CLOSURE EXCEEDS 1 INCH in 10,000'
- PROPERTY LINE
- ADJOINER PROPERTY LINE
- FENCE LINE
- CLEAN OUT
- LIGHT POST
- MAN HOLE
- TELEPHONE PEDESTAL
- WATER METER
- CATCH BASIN
- FIRE HYDRANT
- TRANSFORMER
- ELECTRIC BOX
- CABLE PEDESTAL
- WATER VALVE
- HVAC



N/F STAR FISH INVESTMENTS, LLC  
TO BE CONVEYED TO  
THE TOWN OF HILTON HEAD ISLAND



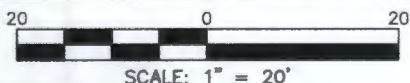
# #123 SANDCASTLE COURT

50' R/W

TMS: R511-009-000-1154-0000

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

FLOOD NOTE:  
THIS PROPERTY IS LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 14-D COMMUNITY NO. 450250, MAP DATED 7/20/86. BASE ELEVATION 14.0'. FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OF COUNTY BUILDING INSPECTIONS DEPARTMENT.



SCALE: 1" = 20'

## PHYSICAL SURVEY

FOR

LOT 48, SANDCASTLES BY THE SEA

Hilton Head Island, Beaufort County, South Carolina

PROPERTY OF: \_\_\_\_\_  
MAP BOOK 00113 PAGE 0164 DEED REFERENCE \_\_\_\_\_

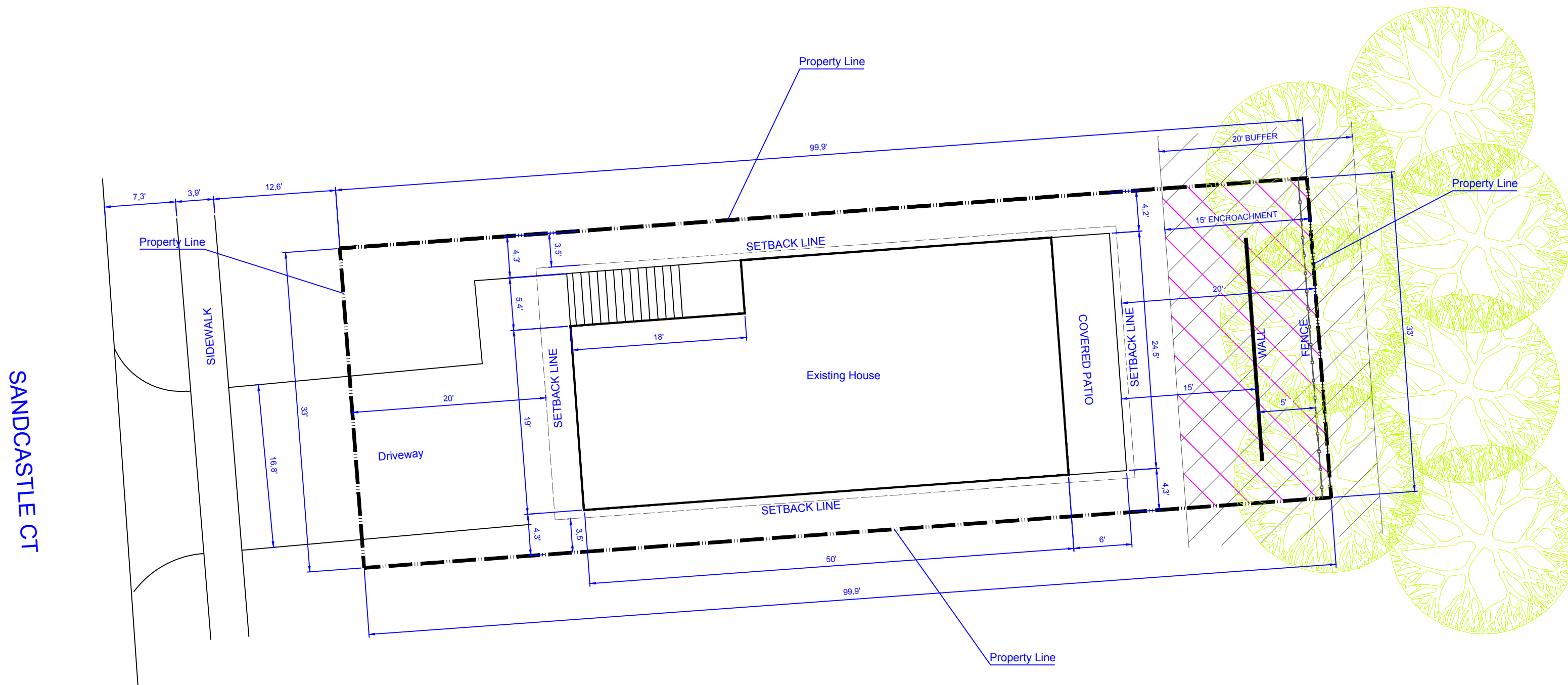
DRAWN BY: ADM

DATE: JUNE 18, 2018

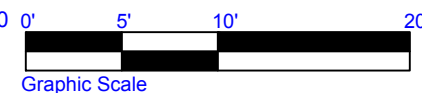
**RLA ASSOCIATES, PA**

785 KING GEORGE BLVD, SUITE 203  
SAVANNAH, GA 31419  
PHONE (843) 879-9091  
FAX (843) 839-9092

# Attachment E - Site Plan



PIN: R511 009 000 1154 0000  
AIN: 12952023  
Status: A  
TAG: 510  
Area Code: 505Acre: 0.08  
Res Sq Ft: 3,333  
Com Sq Ft: 0  
Bldgs: 1

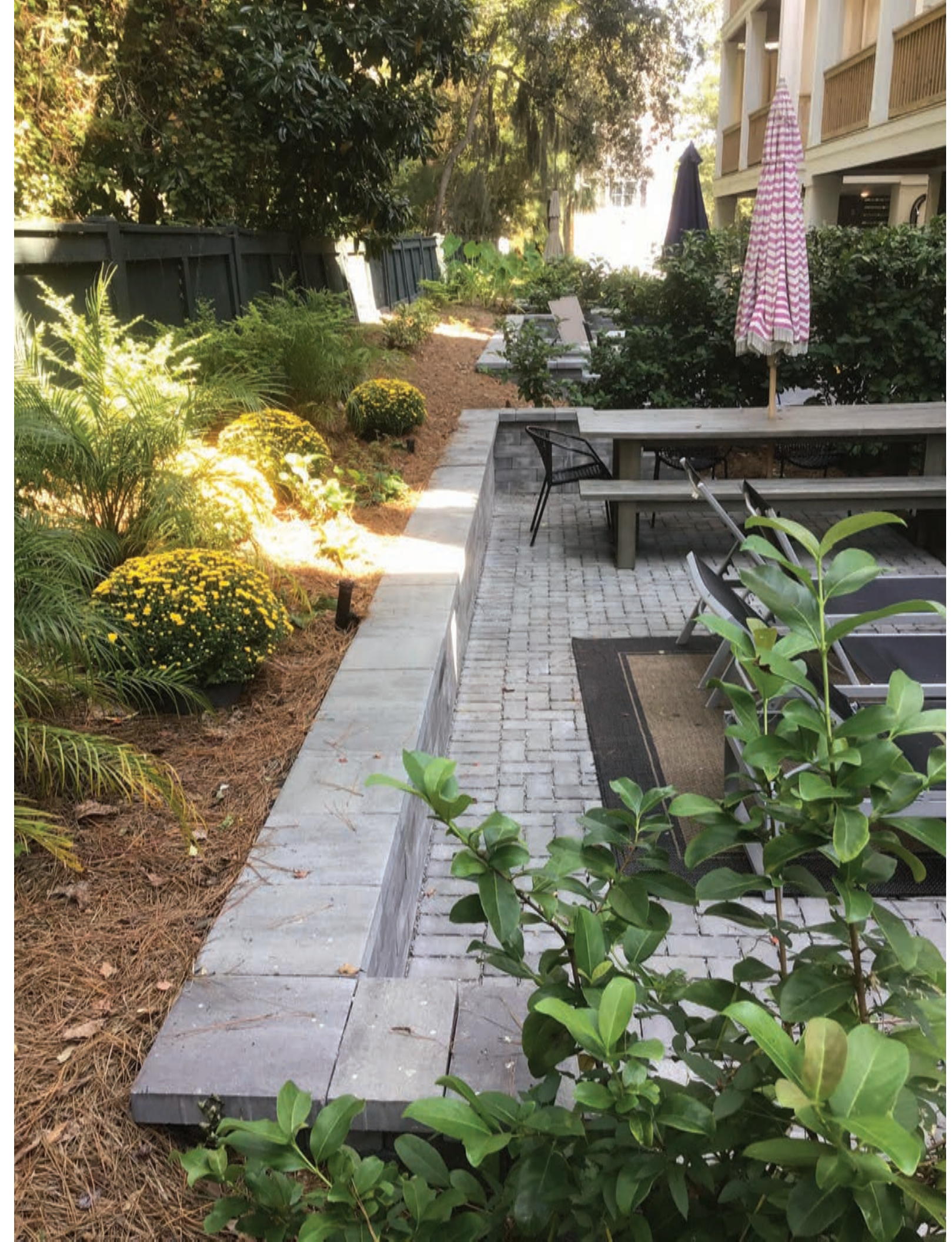


123 SANDCASTLE CT  
Hilton Head Island, SC 29928  
SCALE: 1"=30'





















Attachment G - Buffer Table

F. Buffer Types

Table 16-5-103.F, Buffer Types, describes the five different buffer types in terms of their function, opacity, width, and planting requirements. Either of the options under a specific buffer type may be used at the option of the *developer / applicant* . If the square footage of an existing building on a site is being increased by more than 50% then the buffers must be brought into compliance with the standards in this table.

TABLE 16-5-103.F: BUFFER TYPES		
MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS <small>1,2,3,4,5,6, 7</small>		
<b>TYPE A BUFFER</b>		
This buffer includes low- <i>density</i> screening designed to partially block visual contact and create spatial separation between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent streets</i> with low traffic volumes.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 20 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 3 every 100 linear feet</li> <li>• Evergreen shrubs: 8 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 10 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 4 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
<b>TYPE B BUFFER</b>		
This buffer includes low- to medium- <i>density</i> screening designed to create the impression of spatial separation without significantly interfering with visual contact between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent</i> minor arterials.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear feet</li> <li>• Evergreen shrubs: 12 every 100 linear feet</li> </ul>
<b>TYPE C BUFFER</b>		
This buffer includes medium- <i>density</i> screening designed to eliminate visual contact at lower levels and create spatial separation between <i>adjacent uses</i> .		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>



Attachment J

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6,7</sup>

<b>TYPE D BUFFER</b>		
<p>The buffer includes high-density screening designed to eliminate visual contact up to a height of six feet and create a strong spatial separation between <i>adjacent uses</i>. A Type D buffer is required adjacent to all loading areas per Section 16-5-107.H.8.d, Buffering of Loading Areas.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer with a 30-foot high screen of trees and shrubs. The screen consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 30 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 6 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
Option 2	<p>A diagram showing a 20-foot wide buffer with a 20-foot high screen of trees and shrubs. The screen consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width 20 feet</li> <li>• <i>Overstory trees</i> : 6 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear ft</li> <li>• A solid wall or fence at least 6 feet high or a solid evergreen hedge at least 6 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
<b>TYPE E BUFFER</b>		
<p>This buffer provides greater spacing and medium- <i>density</i> screening designed to define "green" corridors along major arterials.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer with a 50-foot high screen of trees and shrubs. The screen consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 50 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• Evergreen shrubs: 20 every 100 linear feet and at least 3 feet high at maturity</li> </ul>
Option 2	<p>A diagram showing a 100-foot wide buffer with a 35-foot high screen of trees and shrubs. The screen consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 35 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 7 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 3 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>

Attachment J

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6, 7</sup>

NOTES:

1. Required *overstory trees* shall be distributed and spaced to maximize their future health and effectiveness as buffers. Other required vegetation shall be distributed within the buffer as appropriate to the function of the buffer.
2. Where an *adjacent use* is designed for solar access, *understory trees* may be substituted for *overstory trees*.
3. Fences or walls within an adjacent street or use buffer shall comply with the standards of [Sec. 16-5-113](#), Fence and Wall Standards.
4. A berm may be provided in conjunction with the provision of a hedge, fence, or wall to achieve *height* requirements, provided its side slopes do not exceed a ratio of three horizontal feet to one vertical foot and the width of its top is at least one-half its *height*.
5. If a buffer length is greater or less than 100 linear feet, the planting requirements shall be applied on a proportional basis, rounding up for a requirement that is 0.5 or greater, and down for a requirement that is less than 0.5. (For example, if the buffer length is 150 linear feet, and there is a requirement that 5 *overstory trees* be planted every 100 linear feet, 8 *overstory trees* are required to be planted in the buffer ( $1.5 \times 5 = 7.5$ , rounded up to 8)).
6. Minimum buffer widths and minimum planting requirements for adjacent street buffers may be reduced by up to 30 percent in the S District, 20 percent in the RD and IL Districts, and 15 percent in all other districts, on demonstration to the *Official* that:
  - a. The reduction is consistent with the character of *development* on surrounding *land* ;
  - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
  - c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed *development* , or (b) results in improved site conditions for a *development* with *nonconforming site features* ;
  - d. The reduction will not pose a danger to the public health or safety;
  - e. Any adverse impacts directly attributable to the reduction are mitigated;
  - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts; and
  - g. In the S, RD, and IL districts, there are no reasonable options to the reduction that allow *development* of the site to be designed and located in a way that complies with LMO standards.
7. Minimum buffer widths and minimum planting requirements for adjacent use buffers may be reduced by up to 10 percent any district on demonstration to the *Official* that:
  - a. The reduction is consistent with the character of *development* on surrounding *land* ;
  - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
  - c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed *development* , or (b) results in improved site conditions for a *development* with *nonconforming site features* ;
  - d. The reduction will not pose a danger to the public health or safety;
  - e. Any adverse impacts directly attributable to the reduction are mitigated; and
  - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts.



# 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

<b>Case #:</b>	<b>Public Hearing Date:</b>
VAR-001875-2020	October 29, 2020

Parcel or Location Data:	Property Owner	Applicant
Address: 119 Sandcastle Court  Parcel#: R511 009 000 1152 0000  Zoning: RD (Resort Development District)  Overlay: COR (Corridor Overlay District)	Eric Schnider 119 Sandcastle Court Hilton Head Island, SC 29928	Eric Schnider 119 Sandcastle Court Hilton Head Island, SC 29928

**Application Summary:**

Request from Eric Schnider for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall, patio and fence to remain in the adjacent use setback and buffer. The property address is 119 Sandcastle Court with a parcel number of R511 009 000 1152 0000.

**Staff Recommendation:**

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

**Background:**

The subject property is located in the Sandcastles by the Sea subdivision off Folly Field Road. The subdivision was approved in 2007 (SUB050002). The subdivision is surrounded by the Hilton Head Beach and Tennis Resort (multi-family residential) to the east, single family residential to the south, Town-owned property and single family residential to the north and Adventure Cove, Carrabba's restaurant and an office building to the west.

The subject property, 119 Sandcastle Ct, was constructed in 2018 and purchased by the current owner

in July of 2020. After the home was constructed and the Certificate of Occupancy was issued, the previous owner had a paver patio and stone retaining wall constructed in the rear of the property, extending from the pool area into the rear adjacent use setback and buffer.

The Sandcastles by the Sea subdivision was approved with a 20 foot adjacent use setback and buffer around the perimeter of the subdivision (a 25' adjacent use buffer was approved on the western subdivision perimeter), as shown on the subdivision plat (See Attachment C, Subdivision Plat).

The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff. The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments. Buffer and setback areas frequently overlap, but the standards that apply to these areas are different. For example, uncovered patios are allowed to encroach up to 5' in setbacks, but patios are not allowed in buffers, which are meant to be landscaped or naturally vegetated.

At the time the subdivision was approved, there was not any flexibility in buffer options. With the 2014 LMO re-write, the buffer standards were made more flexible. This type of development would now require either a Type C Option 1 (25') less densely vegetated buffer or a Type C Option 2 (15') more densely vegetated buffer for single family residential use adjacent to a vacant Resort Development (RD) zoned property. The buffer types and options are explained in Table 16-5-103.F (See Attachment G, Buffer Table). A 30' setback is also required along the perimeter of a single family subdivision adjacent to a vacant RD zoned property.

In July 2019, Staff received several complaints about property owners removing vegetation and making improvements such as patios within the buffer. Upon a site visit, staff found several violations in the area in which we received complaints about. Violation letters were sent to the property owners notifying them of the violation and providing a deadline to remove the encroachments or apply for a variance.

A representative of the property owners contacted staff after receiving the violation letters and asked if the deadline to remove the encroachments could be extended to November 2019, as the majority of the homes are vacation rentals and it was the middle of the summer season. Staff felt that was reasonable and extended the deadline.

In early fall of 2019, the representatives of the property owners met with staff to discuss their options. One of their requests was to reduce the buffer to the 10' buffer option. Staff informed them that to utilize the reduced buffer option, the entire subdivision plat would need to be revised and recorded. Town Staff had been working with the representatives to pursue a buffer reduction request for the entire subdivision, but it was determined by the representative to be too costly to do and they didn't think they could get 100% owners consent.

Staff was informed in Spring of 2020 that there were several other properties in this subdivision that had encroachments in the buffer. Staff decided to do a site visit to all of the properties in the

subdivision and compiled a list of the violations. In August of 2020 a second violation letter was issued to property owners with a deadline to remove the encroachments and restore the buffers back to a vegetated area by October 1, 2020. The property owners were informed that if they did not adhere to the deadline the Town would place a hold on their parcel making it so that no further building permits could be issued until the violation had been corrected. The property owners were all informed that they also had the option to apply for a variance if they wished to keep the encroachments.

The applicant is requesting a variance to allow the existing paver patio and stone retaining wall to remain in the rear adjacent use setback and buffer.

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

**Grounds for Variance:**

According to the applicant, the relatively small size of his lot combined with the setback and buffer requirements of the LMO are extraordinary and exceptional conditions. The variance is required in order to prevent the erosion of soil into the swimming pool and other livable space in the home.

**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 September 21, 2020 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 October 4, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on October 7, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on October 14, 2020 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 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 Fact:**

- The subject property is .07 acres.
- The subject property is approximately the same size (.06 - .08 acres) as all of the other properties on the same side of Sandcastle Court as well as the adjacent properties across Sandcastle Court.
- The subject property is rectangular in shape as are the majority of the adjacent properties.
- The subject property does not contain any unique site features that prohibit development on the lot.

**Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are no extraordinary and exceptional conditions that pertain to this particular property.

**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):*

**Findings of Fact:**

- The majority of lots in the Sandcastles by the Sea neighborhood are nearly identical in size and shape.
- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary and exceptional conditions that pertain to this particular property that don't also 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 Fact:**

- The original developer of the Sandcastles by the Sea neighborhood chose to utilize nearly every square foot of buildable space on the subject property.
- The original subdivision plat for the Sandcastle by the Sea neighborhood requires a 20' adjacent use setback and buffer in the rear of the subject property.
- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads,

“The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO”.

- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.
- A three story single-family residence with 3,314 heated square feet, 1,137 unheated square feet, 5 bedrooms, 4 bathrooms, and a swimming pool has been constructed at the subject property.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that pertain to this property that unreasonably prohibits the use of the property.

**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:**

- Staff has received no letters of opposition to this variance request.
- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers.
- The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.
- The properties directly adjacent to the subject lot both have encroachments in the setback and buffer and have applied for a variance to keep them.
- While there is a heavily vegetated Town-owned property behind the property that is currently undeveloped, the property could potentially be developed in the future.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produces very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.

**Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the purpose of setback and buffer requirements is to provide visual and spatial separation from the development to the property behind it.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.

**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 denied 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:**

TN.  
\_\_\_\_\_  
Tyler Newman  
Senior Planner

10/15/2020  
\_\_\_\_\_  
DATE

**REVIEWED BY:**

ND.  
\_\_\_\_\_  
Nicole Dixon, AICP, CFM,  
Development Review Administrator

10/15/2020  
\_\_\_\_\_  
DATE

**ATTACHMENTS:**

- A) Vicinity Map**
- B) Applicant's Narrative**
- C) Subdivision Plat**
- D) As-Built Survey**
- E) Site Plans**
- F) Site Photos**
- G) Buffer Table**



# Attachment A – Vicinity Map

Folly Field Road

Sandcastle Court



## Town of Hilton Head Island VAR-001875-2020 - 119 Sandcastle Court

October, 2020



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-4600  
Data Created:  
10/11/20 10:00 AM



0 50 100 150 Feet

1 inch = 98 feet

The information on this map has been compiled from a variety of sources, and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.

**I am writing this letter to request a variance to seek and obtain relief from the following standards:**

- **Chapter 16-5-102 Setback Standards**
- **Chapter 16-5-103 Buffer Standards**
- **Chapter 16-5-113 Fence and Wall Standards**

**I Respectfully Request:**

- **Reduction of the rear vegetative buffer on my lot from the required 20 feet to 5 feet.**

In July 2020 my wife and I purchased our single-family primary home, located in the Sandcastles by the Sea neighborhood in Folly Field. After we purchased the home we were made aware the Town of Hilton Head Land Management Ordinance which requires an adjacent use buffer along the boundary of my subdivision. In the case of my lot, the buffer is 20 feet from the rear property line. The Town of Hilton Head requires this 20 foot buffer to be a natural vegetated area, and to provide an aesthetic and spatial separation between uses and streets and uses and adjacent properties, and not to have improvements such as patios, retaining walls, and pavers.

I am requesting a variance to allow 15 feet of the vegetation buffer in my backyard to retain improvements made by previous owners which include natural looking stone pavers with permeable joints, and a natural looking stone retaining wall of less than 3 feet in height, to prevent erosion of soil into the swimming pool and other livable space in the home.

I believe the variance I am requesting meets all the towns criteria for approval.

**Extraordinary and exceptional conditions pertain to my property and do not apply to other properties in Folly Field or on Hilton Head Island.**

The Sandcastle by the Sea neighborhood was a residential planned community first developed back in 2006 by Star Fish Investments LLC. The community was developed into 83 individual buildable lots. All the lots are nearly identical in size and shape, and measure roughly 100 feet long by 33 feet wide, and only average 0.076 acres each. My lot, which measures much less than 1/10<sup>th</sup> of an acre, is extraordinary and exceptional compared to all the surrounding lots both in Folly Field and on the entire island. In fact, my lot is less than half the size of all the surrounding residential lots in Folly Field. Other residential lots

on Hilton Head Island are on the average 5 times larger than my lot. These statistics make my lot unusually small as compared to all the other residential lots on Hilton Head Island.

Because my lot is exceptionally small in comparison to other lots on Hilton Head Island, my buildable footprint is also exceptionally small. In fact, due to easements and setbacks on the lot, the home had to be built utilizing every square foot of buildable space. The home literally had to be built exactly between the required front setback from the street, and the required 20-foot vegetation buffer at the rear of the lot. The buildable footprint is so small on my lot, a one-story home could only have ONE bedroom. I am not aware of any other residential lot on HHI, outside my neighborhood, with such a small buildable footprint. The small buildable footprint that I have required the original owners to build a three-story home to get enough square footage to accommodate their family.

**Application of the Land Management Ordinance to my piece of property would unreasonably restrict the utilization of the property.**

Because the extraordinary and exceptional conditions of my property explained above, the previous owners were forced to build the rear of their home up against the 20-foot vegetation buffer setback line. The application of the Land Management Ordinance effectively rendered their entire backyard a vegetation buffer in which no improvements could be made.

The naturally existing topography of the backyard was also unusual. The vegetation buffer area towards the rear of the lot was 3 feet higher than the vegetation buffer area against my home. The low point of the buffer rests against the back of my home, and next to the swimming pool. This significant slope of the lot toward my home, during rains, causes a mudslide that deposits eroded dirt into my homes living space and even into my swimming pool located under the house. This created a dangerous situation because our pool water was being contaminated with dirt and mud during heavy rains. It also made it difficult to walk around the back perimeter of my home due to this erosion of land. The only solution that would prevent erosion due to the backyard slope of the land, was to build a small, less than 3 foot, retaining wall. The wall was made of natural stone looking material to blend in with the surrounding vegetation. This wall eliminated both my soil erosion problem and safety issue with contaminated swimming pool water.

The natural stone looking wall the previous owners built was small, and under 3 feet in height. The wall was constructed 5 feet from the rear of the property line and encroached 15 feet into the vegetation buffer. The 5 feet of vegetation buffer behind the wall was originally mud, so they came up with a landscaping plan to vegetate those 5 feet. The plantings not only met but exceeded the towns vegetation buffer requirements.

The installation of our small retaining wall, corrected the topography issue, solved our erosion issue, eliminated a safety hazard in our swimming pool, and created a beautifully landscaped and thriving 5-foot vegetative buffer. Our vegetative buffer contains numerous shrubs, elephant ears, ferns, and numerous other indigenous plantings which blend into the existing environment.

After the retaining wall was built, I was then left with only 15 feet between the back of my home and my retaining wall. The Towns Land Management Ordinance requires the only remaining 15 feet of my back yard to be heavily vegetated. This effectively would render my home with no usable backyard. Because of these conditions, the application of this ordinance to my property would unreasonably restrict the

utilization of my property. I would like to request a variance to reduce my rear vegetation buffer from 20 feet to 5 feet to regain a small amount of usable backyard in my home.

If a Variance is granted to reduce my vegetative buffer from 20 feet to 5 feet, I will be allowed to leave the natural looking stone pavers that blend in with the environment in this 15-foot area. The joints between the stone pavers will allow for both proper drainage and keep earth from flowing into my home and swimming pool under my home. The granting of this Variance will also allow me to enjoy the natural surroundings in my backyard, enjoy viewing the natural wildlife, and create a sense of place and privacy.

**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.**

Our entire backyard is directly backed up to a heavily treed and vegetated plot of land owned and protected by the Town of Hilton Head. This plot of land is between the rear of my lot and Folly Field Road and essentially creates approximately 135 feet of heavily treed and natural vegetation. When you add my entire backyard of 20 feet as a vegetation buffer, the total amount of trees and natural vegetation between my home and Folly Field road increases to 155 feet. If my requested variance is approved, the overall vegetated area will reduce only 15 feet to approximately 140 feet. The reduction in vegetation is so small and have such a negligible impact, that it would not be noticed by the public.

As far as adjacent property impact, the only property owners that can see my property or proposed improvements, are all located on the same street in Sandcastles by the Sea. Each of these adjacent owners have all the same issues as described above and are requesting the same variance I am requesting.

The improvements added by previous owners of 119 Sandcastle have effectively prevented unwanted and unsafe land erosion, and at the same time, created a small area to be able to enjoy the natural vegetation, trees, and wildlife that surround our home. The improvements created a viewing place for all our surrounding nature and is in harmony with the Islands Character Vision Statement. The improvements will truly give us the ability to lose nothing, but see more, and have our property better contribute to the overall beauty and future vision of Hilton Head Island.

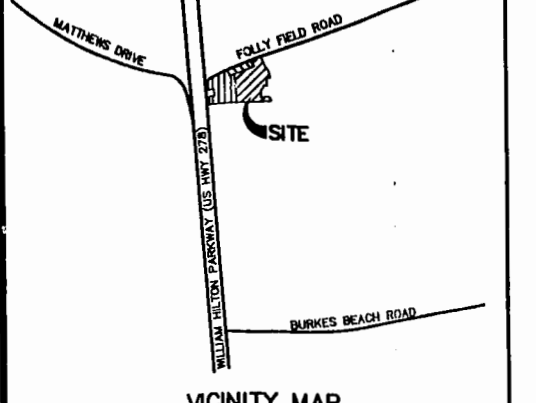
If our Variance is denied, enforcement of this strict vegetation buffer will result in a unnecessary hardship for my family, and if a variance is granted, I feel the spirit of the law will still be observed, public welfare and safety will not be diminished and substantial justice will be done.

Thank you for your time,



Eric Schnider

15035P4D



VICINITY MAP N.T.S.

Table with 4 columns: LINE, LENGTH, BEARING, and BEARING. It lists survey data for various lines and bearings.

AREA TABLE showing 83 Residential Lots (6.779 Ac), Sandcastle Court R/W (2.313 Ac), and Open Space (1.826 Ac), totaling 10.918 Acres.

- NOTES: 1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE... 2) THIS PROPERTY IS LOCATED IN ZONE A-7... 3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN... 4) L.N. DENOTES IRON NEW 1/2" REBAR SET... 5) UPON APPROVAL AND RECORDING, PROPERTY CORNERS WILL BE SET... 6) THE ONLY ACTIVITIES PERMITTED BY THE EXTERIOR SUBDIVISION BUFFER AS LABELED ON THIS PLAN SHALL BE THOSE LISTED IN PERMITTED ACTIVITY IN OTHER BUFFER AREAS AS PER THE LMO.

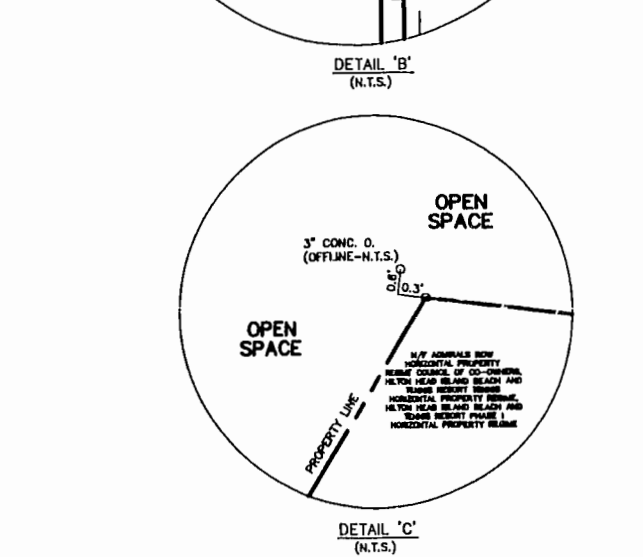
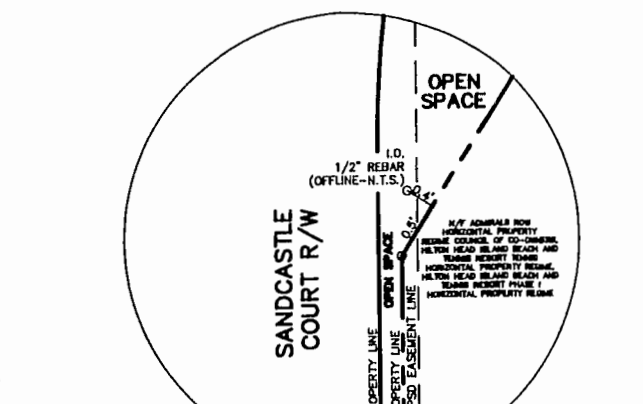
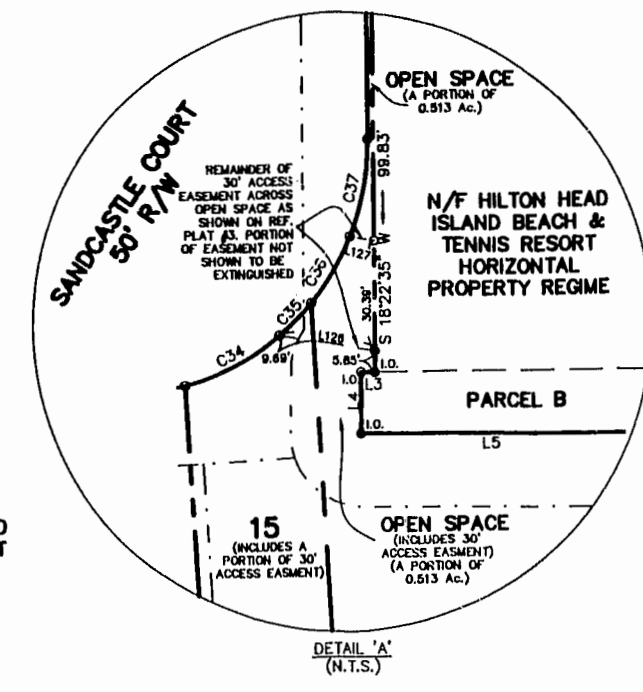
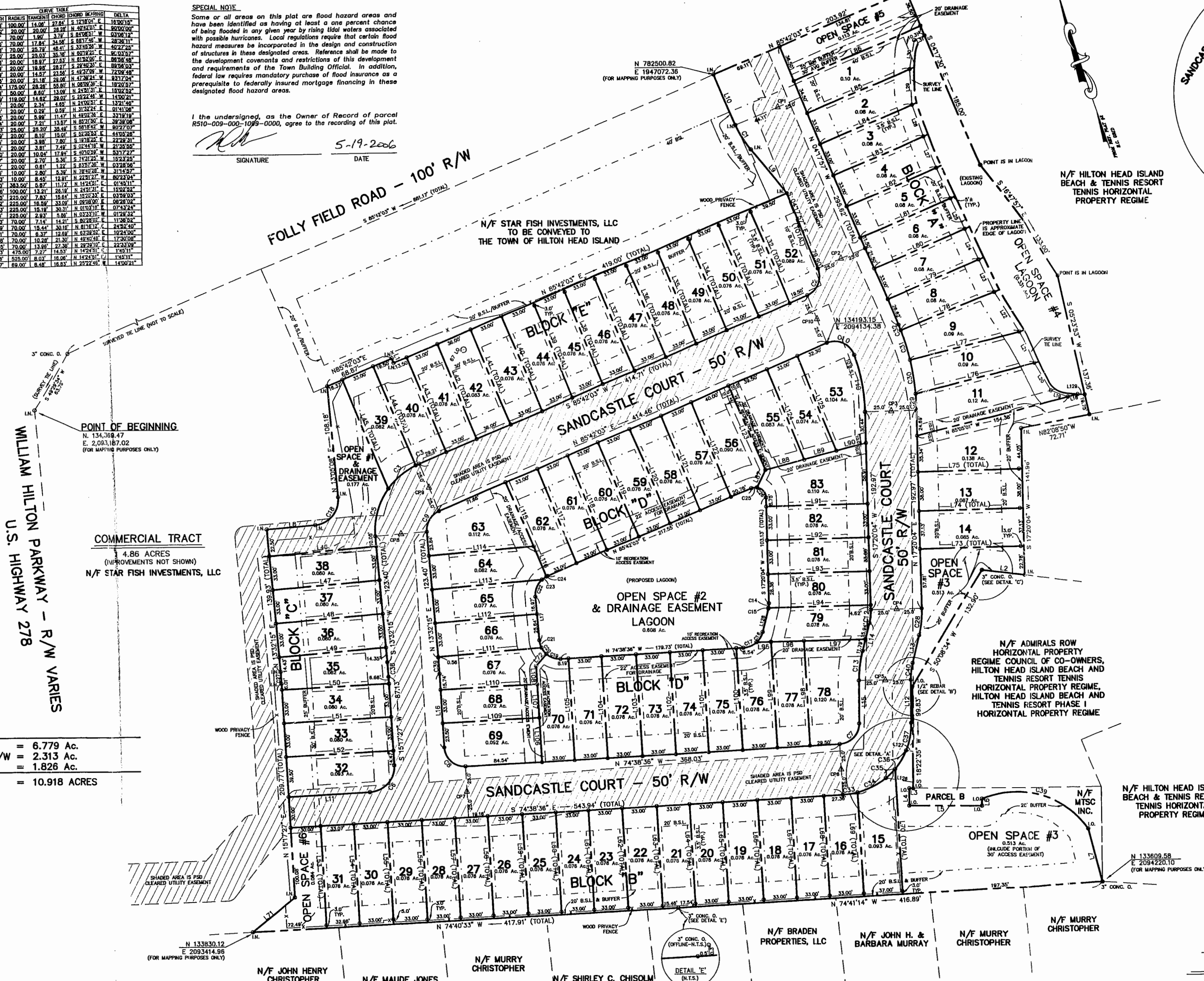
- REFERENCE PLATS: 1) ASBUILT SURVEY OF 14.249 AC. TRACT, FOLLY FIELD ROAD & U.S. HIGHWAY 278... 2) ALTA/ACSM LAND TITLE SURVEY OF PARCEL A, 3.26 AC... 3) 14.28 ACRES COMMERCIAL & MULTI-FAMILY TRACT... 4) BOUNDARY PLAT OF 16.013 AC. TRACT... 5) BOUNDARY PLAT OF 9.327 ACRES, SINGLE FAMILY RESIDENTIAL TRACT... 6) BOUNDARY PLAT OF 6.686 ACRES, COMMERCIAL TRACT... 7) BOUNDARY PLAT OF 17.51 AC. TRACT...

Table with 4 columns: BEARING, LENGTH, BEARING, and BEARING. It lists survey data for various lines and bearings.

SPECIAL NOTE: Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes...

I, the undersigned, as the Owner of Record of parcel R510-009-000-1099-0000, agree to the recording of this plat. SIGNATURE: [Signature] DATE: 5-19-2006

Attachment C - Subdivision Plat



SUBDIVISION CONTROL POINTS (THESE POINTS TO BE SET AFTER FINAL ROADWAY CONSTRUCTION) listing various control points and their coordinates.

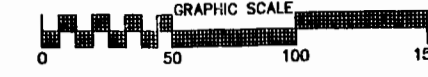
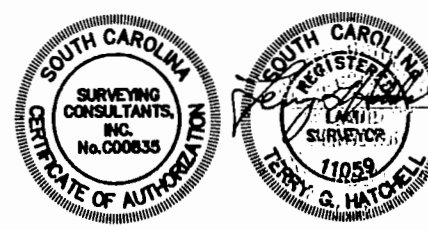
TOWN OF HILTON HEAD ISLAND, SC SUBDIVISION APPROVAL. The Town has found this plan to be in compliance with the Town's Land Management Ordinance and has authorized this approval. Date of approval: 7/9/06. Application Number: 150350002. Certified by: [Signature]. Title: Mgr. Blaz E.

SANDCASTLES BY THE SEA FOLLY FIELD ROAD

HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA. SCALE: 1" = 50'. DATE: 6/15/2005. JOB NO: 89319L. REVISED 05/19/2006 TO SHOW OFFSET PROPERTY CORNERS.

SURVEYING CONSULTANTS logo and contact information: 17 Sherington Drive, Suite C, Bluffton, SC 29910. Telephone: (843) 815-3304. FAX: (843) 815-3305.

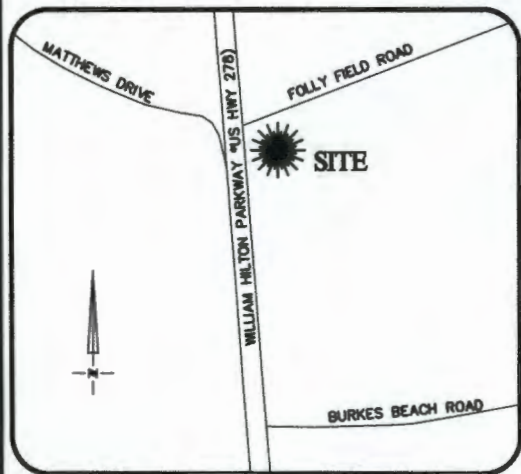
PREPARED FOR: STAR FISH INVESTMENTS, LLC. TAX PARCEL I.D. NO. R511-009-000-1099-0000



1906-18

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

SIGNED *Thomas W. Hurley*  
 THOMAS W. HURLEY, S.C. PLS L-17569



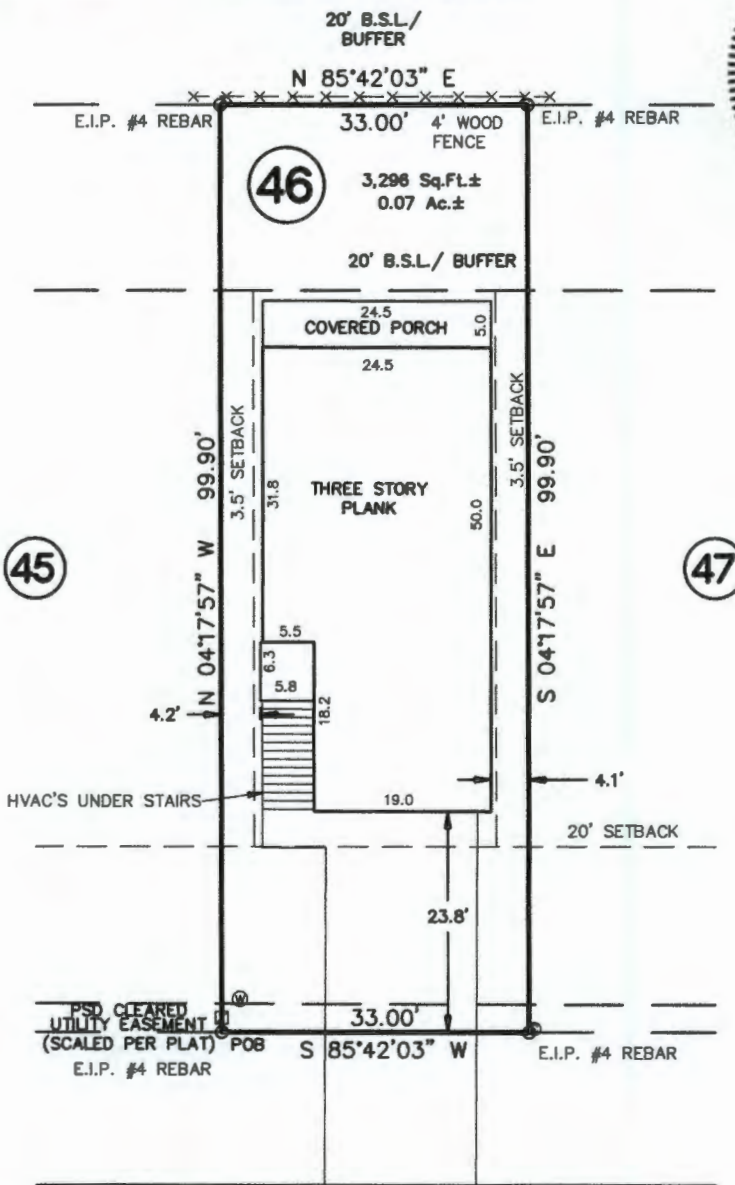
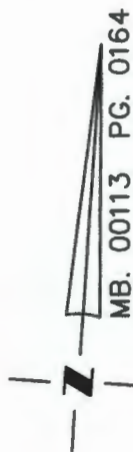
VICINITY MAP  
 Not To Scale

**LEGEND**

- E.I.P. EXISTING IRON PIN
- E.C.M. EXISTING CONCRETE MONUMENT
- S.I.P. SET IRON PIN
- F.P.E. FLOOD PROTECTION ELEVATION
- CLOSURE EXCEEDS 1 INCH in 100,000'
- — — — — PROPERTY LINE
- - - - - ADJOINER PROPERTY LINE
- X-X-X FENCE LINE
- FIRE HYDRANT
- TRANSFORMER
- CLEAN OUT
- ELECTRIC BOX
- LIGHT POST
- CABLE PEDESTAL
- MAN HOLE
- WATER VALVE
- TELEPHONE PEDESTAL
- HVAC
- WATER METER
- CB CATCH BASIN



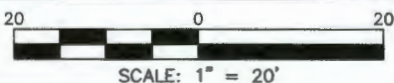
N/F STAR FISH INVESTMENTS, LLC  
 TO BE CONVEYED TO  
 THE TOWN OF HILTON HEAD ISLAND



50' R/W  
**#119 SANDCASTLE COURT**

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

FLOOD NOTE:  
 THIS PROPERTY IS LOCATED IN FLOOD ZONE A-7 WITH A BASE FLOOD ELEVATION OF 14 FEET AS SHOWN ON COMMUNITY - PANEL NO. 45025000140 DATED SEPTEMBER 29, 1986.



**PHYSICAL SURVEY**  
 FOR

LOT 46, SANDCASTLES BY THE SEA  
 Hilton Head Island, Beaufort County, South Carolina

**RLA ASSOCIATES, PA**  
 785 KING GEORGE BLVD, SUITE 203  
 SAVANNAH, GA 31419  
 PHONE (843) 839-9091  
 FAX (843) 839-9092

PROPERTY OF: \_\_\_\_\_  
 MAP BOOK 00113 PAGE 0164 DEED REFERENCE \_\_\_\_\_

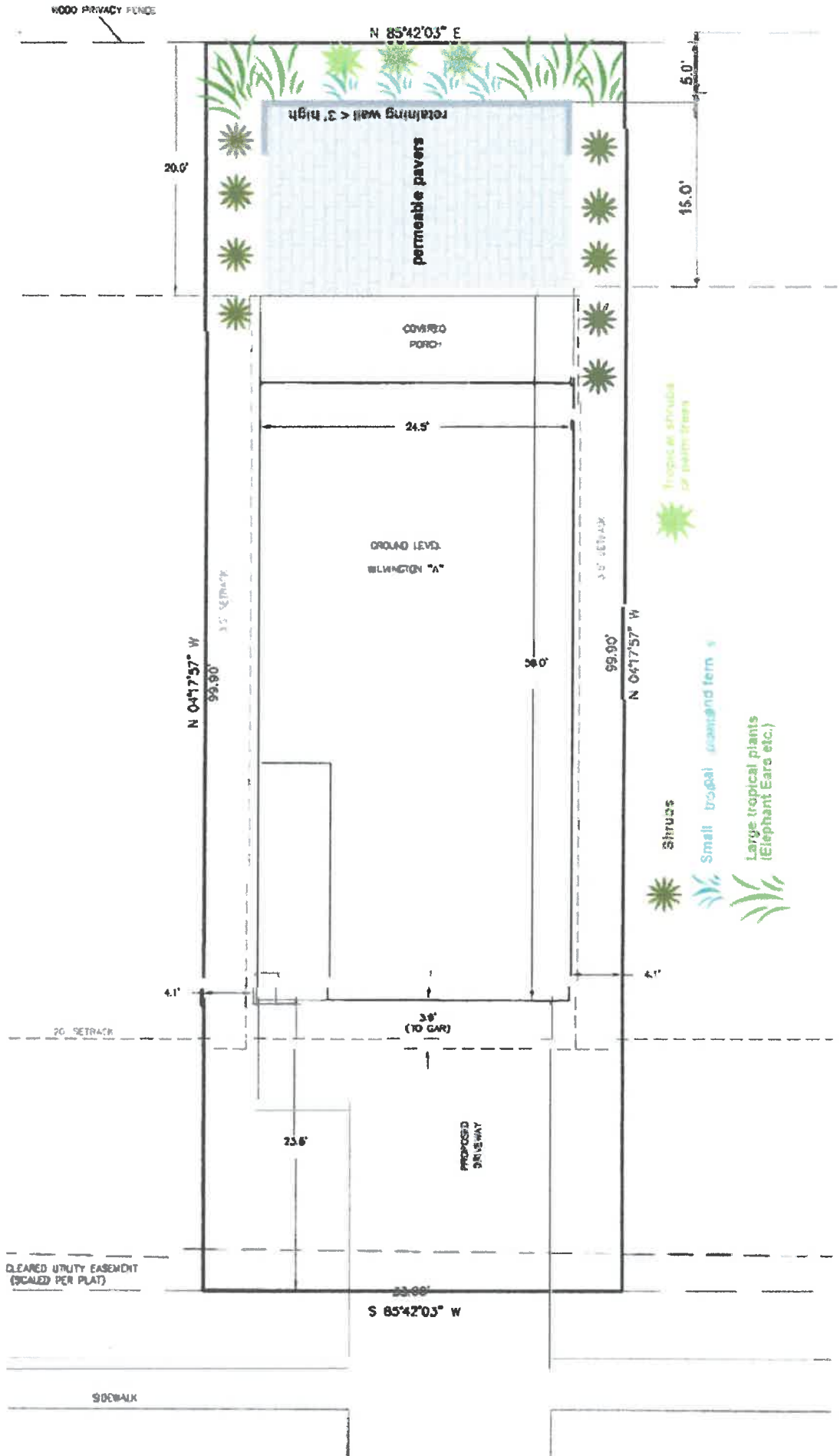
DRAWN BY: JKM

DATE: DECEMBER 11, 2018

Attachment E - Site Plans

N/F STAR FISH INVESTMENTS, LLC  
TO BE CONVEYED TO  
THE TOWN OF HILTON HEAD ISLAND

119 Sandcastle Court (lot 47)



# 119 Sandcastle Court (lot 47)



Shrubs



Small tropical plants and ferns



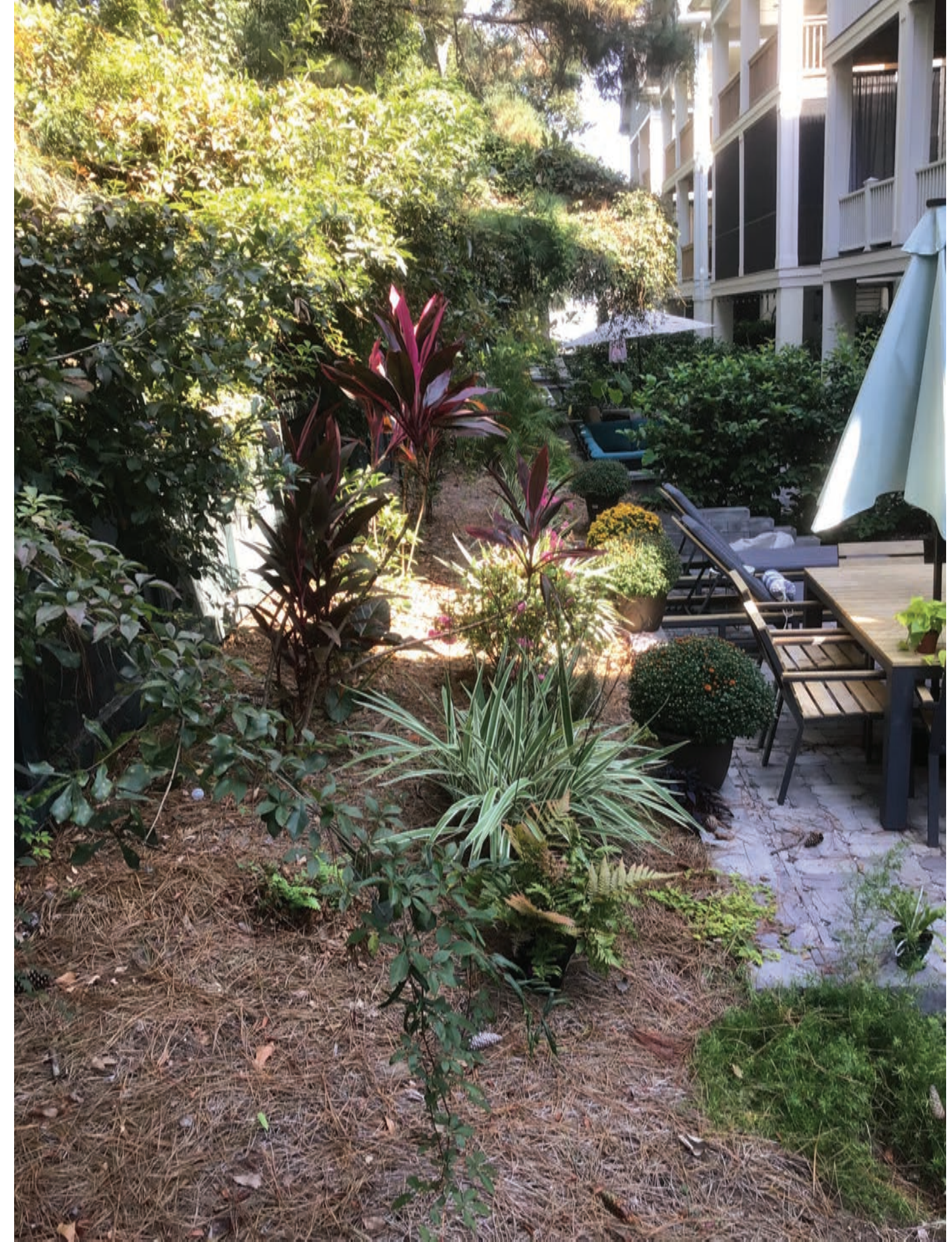
Large tropical plants  
(Elephant Ears etc.)

SCALE  
1 inch = 30'0"











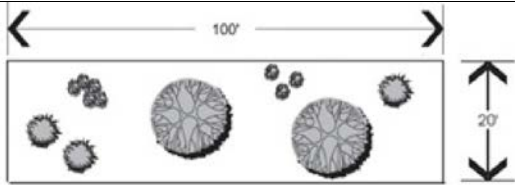

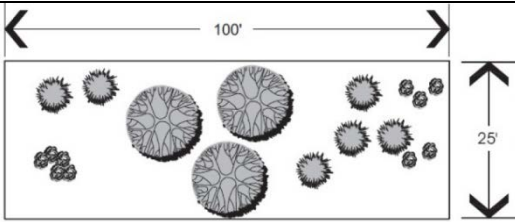
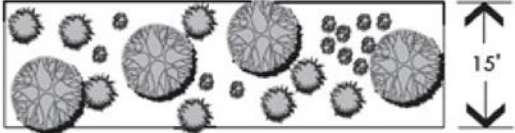
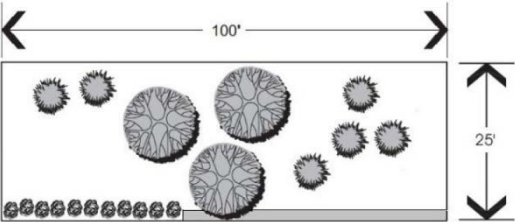
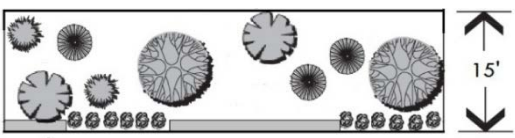




## Attachment G - Buffer Table

### F. Buffer Types

Table 16-5-103.F, Buffer Types, describes the five different buffer types in terms of their function, opacity, width, and planting requirements. Either of the options under a specific buffer type may be used at the option of the *developer / applicant*. If the square footage of an existing building on a site is being increased by more than 50% then the buffers must be brought into compliance with the standards in this table.

TABLE 16-5-103.F: BUFFER TYPES		
MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS <small>1,2,3,4,5,6,7</small>		
<b>TYPE A BUFFER</b>		
This buffer includes low- <i>density</i> screening designed to partially block visual contact and create spatial separation between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent streets</i> with low traffic volumes.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 20 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 3 every 100 linear feet</li> <li>• Evergreen shrubs: 8 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 10 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 4 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
<b>TYPE B BUFFER</b>		
This buffer includes low- to medium- <i>density</i> screening designed to create the impression of spatial separation without significantly interfering with visual contact between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent</i> minor arterials.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear feet</li> <li>• Evergreen shrubs: 12 every 100 linear feet</li> </ul>
<b>TYPE C BUFFER</b>		
This buffer includes medium- <i>density</i> screening designed to eliminate visual contact at lower levels and create spatial separation between <i>adjacent uses</i> .		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>

Attachment J

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6,7</sup>

<b>TYPE D BUFFER</b>		
<p>The buffer includes high-density screening designed to eliminate visual contact up to a height of six feet and create a strong spatial separation between <i>adjacent uses</i>. A Type D buffer is required adjacent to all loading areas per Section 16-5-107.H.8.d, Buffering of Loading Areas.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer with a 30-foot high screen of trees and shrubs. The screen consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 30 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 6 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
Option 2	<p>A diagram showing a 20-foot wide buffer with a 20-foot high screen of trees and shrubs. The screen consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width 20 feet</li> <li>• <i>Overstory trees</i> : 6 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear ft</li> <li>• A solid wall or fence at least 6 feet high or a solid evergreen hedge at least 6 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
<b>TYPE E BUFFER</b>		
<p>This buffer provides greater spacing and medium- <i>density</i> screening designed to define "green" corridors along major arterials.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer with a 50-foot high screen of trees and shrubs. The screen consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 50 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• Evergreen shrubs: 20 every 100 linear feet and at least 3 feet high at maturity</li> </ul>
Option 2	<p>A diagram showing a 100-foot wide buffer with a 35-foot high screen of trees and shrubs. The screen consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 35 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 7 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 3 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>

Attachment J

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6, 7</sup>

NOTES:	
1.	Required <i>overstory trees</i> shall be distributed and spaced to maximize their future health and effectiveness as buffers. Other required vegetation shall be distributed within the buffer as appropriate to the function of the buffer.
2.	Where an <i>adjacent use</i> is designed for solar access, <i>understory trees</i> may be substituted for <i>overstory trees</i> .
3.	Fences or walls within an adjacent street or use buffer shall comply with the standards of <a href="#">Sec. 16-5-113</a> , Fence and Wall Standards.
4.	A berm may be provided in conjunction with the provision of a hedge, fence, or wall to achieve <i>height</i> requirements, provided its side slopes do not exceed a ratio of three horizontal feet to one vertical foot and the width of its top is at least one-half its <i>height</i> .
5.	If a buffer length is greater or less than 100 linear feet, the planting requirements shall be applied on a proportional basis, rounding up for a requirement that is 0.5 or greater, and down for a requirement that is less than 0.5. (For example, if the buffer length is 150 linear feet, and there is a requirement that 5 <i>overstory trees</i> be planted every 100 linear feet, 8 <i>overstory trees</i> are required to be planted in the buffer ( $1.5 \times 5 = 7.5$ , rounded up to 8)).
6.	Minimum buffer widths and minimum planting requirements for adjacent street buffers may be reduced by up to 30 percent in the S District, 20 percent in the RD and IL Districts, and 15 percent in all other districts, on demonstration to the <i>Official</i> that: <ol style="list-style-type: none"> <li>a. The reduction is consistent with the character of <i>development</i> on surrounding <i>land</i> ;</li> <li>b. <i>Development</i> resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;</li> <li>c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed <i>development</i> , or (b) results in improved site conditions for a <i>development</i> with <i>nonconforming site features</i> ;</li> <li>d. The reduction will not pose a danger to the public health or safety;</li> <li>e. Any adverse impacts directly attributable to the reduction are mitigated;</li> <li>f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts; and</li> <li>g. In the S, RD, and IL districts, there are no reasonable options to the reduction that allow <i>development</i> of the site to be designed and located in a way that complies with LMO standards.</li> </ol>
7.	Minimum buffer widths and minimum planting requirements for adjacent use buffers may be reduced by up to 10 percent any district on demonstration to the <i>Official</i> that: <ol style="list-style-type: none"> <li>a. The reduction is consistent with the character of <i>development</i> on surrounding <i>land</i> ;</li> <li>b. <i>Development</i> resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;</li> <li>c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed <i>development</i> , or (b) results in improved site conditions for a <i>development</i> with <i>nonconforming site features</i> ;</li> <li>d. The reduction will not pose a danger to the public health or safety;</li> <li>e. Any adverse impacts directly attributable to the reduction are mitigated; and</li> <li>f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts.</li> </ol>





# 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-001935-2020	October 29, 2020

Parcel or Location Data:	Property Owner and Applicant
Parcel#: R511 009 000 1145 0000 Address: 105 Sandcastle Court Parcel size: 0.08 acres Zoning: RD (Resort Development District) Overlay: COR (Corridor Overlay District)	Reza Kajbaf 1741 Emory Ridge Drive NE Atlanta GA 30329

**Application Summary:**

Request from Reza Kajbaf for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall, patio and fence to remain in the adjacent use setback and buffer. The property address is 105 Sandcastle Court with a parcel number of R511 009 000 1145 0000.

**Staff Recommendation:**

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

**Background:**

The subject property is located in the Sandcastles by the Sea subdivision off Folly Field Road. The subdivision was approved in 2007 (SUB050002). The subdivision is surrounded by the Hilton Head Beach and Tennis Resort (multi-family residential) to the east, single family residential to the south, Town-owned property and single family residential to the north and Adventure Cove, Carrabba’s restaurant and an office building to the west.

The subject property, 105 Sandcastle Ct, was constructed in 2019 and purchased by the current owner

in April of 2019 (See Attachment A, Vicinity Map). After the home was constructed and the Certificate of Occupancy was issued, the owner had a paver patio, retaining wall and fence constructed in the rear of the property which is located in the rear adjacent use setback and buffer.

The Sandcastles by the Sea subdivision was approved with a 20 foot adjacent use setback and buffer around the perimeter of the subdivision (a 25 foot adjacent use buffer was approved on the western subdivision perimeter), as shown on the subdivision plat (See Attachment C, Subdivision Plat).

The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff. The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments. Buffer and setback areas frequently overlap, but the standards that apply to these areas are different. For example, uncovered patios are allowed to encroach up to 5 feet in setbacks, but patios are not allowed in buffers, which are meant to be landscaped or naturally vegetated.

At the time the subdivision was approved, there was not any flexibility in buffer options. With the 2014 LMO re-write, the buffer standards were made more flexible. This type of development would now require either a Type C Option 1 (25') less densely vegetated buffer or a Type C Option 2 (15') more densely vegetated buffer for single family residential use adjacent to a vacant Resort Development (RD) zoned property. The buffer types and options are explained in Table 16-5-103.F (See Attachment G, Buffer Table). A 30' setback is also required along the perimeter of a single family subdivision adjacent to a vacant RD zoned property.

In July 2019, Staff received several complaints about property owners removing vegetation in the buffers and making improvements such as patios within the buffer. Upon a site visit, staff found several violations in the area in which we received complaints about. Violation letters were sent to the property owners notifying them of the violation and providing a deadline to remove the encroachments or apply for a variance.

A representative of the property owners contacted staff after receiving the violation letters and asked if the deadline to remove the encroachments could be extended to November 2019, as the majority of the homes are vacation rentals and it was the middle of the summer season. Staff felt that was reasonable and extended the deadline.

In early fall of 2019, the representatives of the property owners met with staff to discuss their options. One of their requests was to reduce the buffer to the 10 foot buffer option. Staff informed them that to utilize the reduced buffer option, the entire subdivision plat would need to be revised and recorded. Town Staff had been working with the representatives to pursue a buffer reduction request for the entire subdivision, but it was determined by the representative to be too costly to do and they didn't think they could get 100% owners consent.

Staff was informed in Spring of 2020 that there were several other properties in this subdivision that had encroachments in the buffer. Staff decided to do a site visit to all of the properties in the

subdivision and compiled a list of the violations. In August of 2020 a second violation letter was issued to property owners with a deadline to remove the encroachments and restore the buffers back to a vegetated area by October 1, 2020. The property owners were informed that if they did not adhere to the deadline the Town would place a hold on their parcel making it so that no further building permits could be issued until the violation had been corrected. The property owners were all informed that they also had the option to apply for a variance if they wished to keep the encroachments.

The applicant is requesting a variance to allow the existing paver patio, retaining wall and fence to remain in the rear adjacent use setback and buffer.

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

##### **Grounds for Variance:**

According to the applicant, the relatively small size of the lot combined with the setback and buffer requirements of the LMO are extraordinary and exceptional conditions. The variance is required in order to prevent the erosion of soil into the swimming pool and other livable space in the home as well as to allow a safety fence as a safeguard from the adjacent lagoon.

##### **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 September 18, 2020 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 October 4, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on October 7, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on October 13, 2020 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 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 Fact:**

- Sandcastles by the Sea is a small lot single-family subdivision that consists of 83 lots.
- Most of the lots within the subdivision range from 0.06-0.13 acres with the majority of the lots around 0.07 acres.
- The majority of the lots within the subdivision were platted with a 20' rear setback and buffer.
- The subject property is mostly rectangular in shape as are the majority of the lots in the subdivision.
- The subject lot is 0.08 acres in size.
- The subject property does not contain any unique site features that prohibit development on the lot.

**Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are no extraordinary and exceptional conditions that pertain to this particular property.
- The subject property is average in shape and size for the subdivision and does not contain any extraordinary or exceptional conditions that prohibit development on the lot.

**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):*

**Findings of Fact:**

- There are no extraordinary or exceptional conditions that pertain to this property.
- The majority of lots in the Sandcastles by the Sea subdivision are nearly identical in size and shape.
- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.
- The conditions that apply to the subject property also apply to other properties in the vicinity.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary or exceptional conditions that apply to the

subject property that do not also 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 Fact:**

- There are no extraordinary or exceptional conditions that pertain to this property.
- The Sandcastle by the Sea subdivision plat was approved with the 20 foot adjacent use setback and buffer in the rear of the subject property.
- The Sandcastle by the Sea subdivision plat has a note that reads, “The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO”.
- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.
- The subject property is currently developed with a 3-story single-family residence with 3,314 heated square feet, 1,137 unheated square feet, a garage and a swimming pool.

**Conclusion of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that apply to the subject property that would prohibit or unreasonably restrict the utilization of the property.

**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:**

- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff.
- The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.
- The applicant is requesting to keep the existing paver patio, retaining wall and fence which encroaches into the rear setback and buffer.

- While there is a heavily vegetated Town-owned property behind the property that is currently undeveloped, the property could potentially be developed in the future.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produces very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.
- Staff has received no letters of opposition to this variance request.

**Conclusions of Law:**

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will be of substantial detriment to the adjacent property because the purpose of setback and buffer requirements is to provide visual and spatial separation between developments and mitigate the negative effects between adjacent uses.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.

**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 not be granted to the applicant because all four of the variance criteria have not been met.**

**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:**

ML

Missy Luick, Senior Planner

October 16, 2020

DATE

**REVIEWED BY:**

ND

Nicole Dixon, AICP, CFM, Development  
Review Administrator

October 16, 2020

DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Applicant's Submittal
- C) Subdivision Plat
- D) As-built
- E) Site Plan from Building Permit record
- F) Site Photos
- G) Buffer Table
- H) Subdivision Plat and Plat Stamping

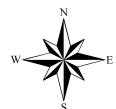
Folly Field Road

Sandcastle Court



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341- 4600

Town of Hilton Head Island  
VAR-001935-2020 - 105 Sandcastle Court  
October, 2020



1 inch = 98 feet

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion or for any losses arising from the use of the map.



**I am writing this letter to request a variance to seek and obtain relief from the following standards:**

Chapter 16-5-102 Setback Standards  
Chapter 16-5-103 Buffer Standards  
Chapter 16-5-113 Fence and Wall Standards

**I Respectfully Request:**

Reduction of the rear vegetative buffer on my lot from the required 20 feet to 5 feet.

My single-family home is located in the Sandcastles by the Sea neighborhood in Folly Field. The Town of Hilton Head Land Management Ordinance requires an adjacent use buffer along the boundary of my subdivision. In the case of my lot, the buffer is 20 feet from the rear property line. The Town of Hilton Head requires this 20 foot buffer to be a natural vegetated area, and to provide an aesthetic and spatial separation between uses and streets and uses and adjacent properties, and not to have improvements such as patios, retaining walls, and pavers.

I am requesting a variance to allow 15 feet of the vegetation buffer in my backyard to contain improvements of natural looking stone pavers with permeable joints, and a natural looking stone retaining wall of less than 2 feet in height, to prevent erosion of soil into the swimming pool and other livable space in the home, and to include a safety fence to safeguard my children from the adjacent lagoon.

I believe the variance I am requesting meets all the towns criteria for approval.

**Extraordinary and exceptional conditions pertain to my property and do not apply to other properties in Folly Field or on Hilton Head Island.**

The Sandcastle by the Sea neighborhood was a residential planned community first developed back in 2006 by Star Fish Investments LLC. The community was developed into 83 individual buildable lots. All the lots are nearly identical in size and shape, and measure roughly 100 feet long by 33 feet wide, and only average 0.076 acres each. My lot sits next to a detention pond and behind a town vegetation buffer which separates the home from the street.

Our lot measures much less than 1/10th of an acre, is extraordinary and exceptional compared to all the surrounding lots both in Folly Field and on the entire island. In fact, my lot is less than half the size of all the surrounding residential lots in Folly Field. Other residential lots on Hilton Head Island are on the average 5 times larger than my lot. These statistics make my lot unusually small as compared to all the other residential lots on Hilton Head Island.

Because my lot is exceptionally small in comparison to other lots on Hilton Head Island, my buildable footprint is also exceptionally small. In fact, due to easements and setbacks on the lot, the home had to be built utilizing almost every square foot of buildable space. The buildable footprint is so small on my lot, a one-story home could only have ONE bedroom. I am not aware of any other residential lot on

HHI, outside my neighborhood, with such a small buildable footprint. The small buildable footprint that I have required me to build a three-story home to get enough square footage to accommodate my family.

**Application of the Land Management Ordinance to my piece of property would unreasonably restrict the utilization of the property.**

Because the extraordinary and exceptional conditions of my property explained above, I was forced to build the rear of my home close to the 20-foot vegetation buffer setback line. The application of the Land Management Ordinance effectively rendered almost my entire backyard a vegetation buffer in which no improvements could be made.

The naturally existing topography of the backyard was also unusual. The vegetation buffer area towards the rear of the lot was 4 feet higher than the vegetation buffer area against my home. The low point of the buffer rests near the back of my home, and close to the swimming pool. This significant slope of the lot toward my home, during rains, causes a mudslide that deposits eroded dirt into my home's living space and into my swimming pool. This created a dangerous situation because our pool water was being contaminated with dirt and mud during heavy rains. The only solution that would prevent erosion due to the backyard slope of the land, was to build a small, less than 2 foot retaining wall. The wall was made of natural stone looking material to blend in with the surrounding vegetation. This wall eliminated both my soil erosion problem and safety issue with contaminated swimming pool water.

The natural stone looking wall we built was small, and under 2 feet in height. The wall and patio encroached 13 feet into the vegetation buffer. The 7 feet of vegetation buffer behind the wall is heavily vegetated by native plants and bushes which meets and exceeds the town's vegetation buffer requirements.

The installation of our small retaining wall corrected the topography issue, solved our erosion issue, eliminated a safety hazard in our swimming pool, and created a beautifully landscaped and thriving 7-foot vegetative buffer where butterflies like to congregate during the summer months. It's a beautiful sight to see.

I also installed a beautiful and subtle safety fence to safeguard my children from the adjacent lagoon and to ensure the safety of my neighbor's children accidentally getting into the pool and potentially drowning. In my experience, this has always been a safety requirement when owning a pool and one I believe to be prudent.

The Towns Land Management Ordinance requires the only remaining 13 feet between my necessary retaining wall and pool to be heavily vegetated. This effectively would render my home with no usable backyard, and make it extremely difficult to safeguard my 3 young children from potentially falling into the lagoon. Because of these conditions, the application of this ordinance to my property would unreasonably restrict the utilization of my property. I would like to request a variance to reduce my rear vegetation buffer from 20 feet to 5 feet to regain a small amount of usable backyard in my home and to effectively safeguard my children.

If a Variance is granted to reduce my vegetative buffer from 20 feet to 5 feet, I will be allowed to lay natural looking stone pavers that blend in with the environment in this 12-foot area and a safety fence surrounding it. The joints between the stone pavers will allow for both proper drainage and keep earth and mud from flowing into my home and swimming pool. The safety fence will allow me to safeguard my children, and the children of the neighborhood against accidental drowning. The granting of this Variance will also allow me to enjoy the natural surroundings in my backyard, enjoy viewing the natural wildlife, and create a sense of place and privacy.

**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.**

Our entire backyard is directly backed up to a heavily treed and vegetated plot of land owned and protected by the Town of Hilton Head. This plot of land is between the rear of my lot and Folly Field Road and essentially creates approximately 135 feet of heavily treed and natural vegetation. When you add my entire backyard of 20 feet as a vegetation buffer, the total amount of trees and natural vegetation between my home and Folly Field road increases to 155 feet. If my requested variance is approved, the overall vegetated area will reduce only 15 feet to approximately 140 feet. The reduction in vegetation is so small and will have such a negligible impact, that it would not be noticed by the public.

As far as adjacent property impact, the only property owners that can see my property or proposed improvements, are all located on the same street in Sandcastles by the Sea. Each of these adjacent owners have all the same issues as described above and are requesting the same variance I am requesting.

Our improvements created a viewing place for all our surrounding nature and is in harmony with the Islands Character Vision Statement. Our above improvements will truly give us the ability to lose nothing, but see more, and have our property better contribute to the overall beauty and future vision of Hilton Head Island.

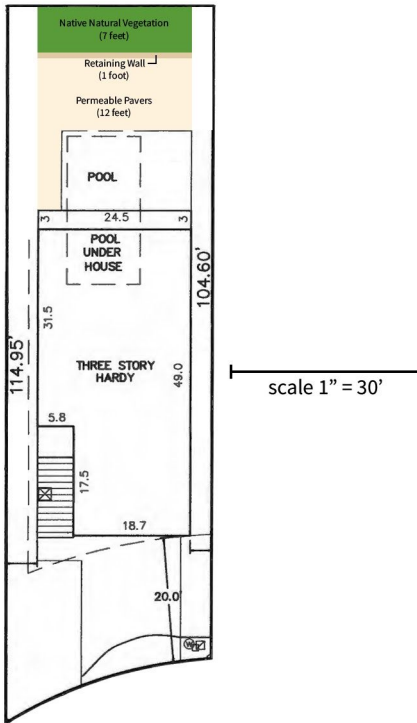
If our Variance is denied, enforcement of this strict vegetation buffer will result in an unnecessary hardship and danger for my family, and if a variance is granted, I feel the spirit of the law will still be observed, public welfare and safety will not be diminished and substantial justice will be done.

Sincerely,

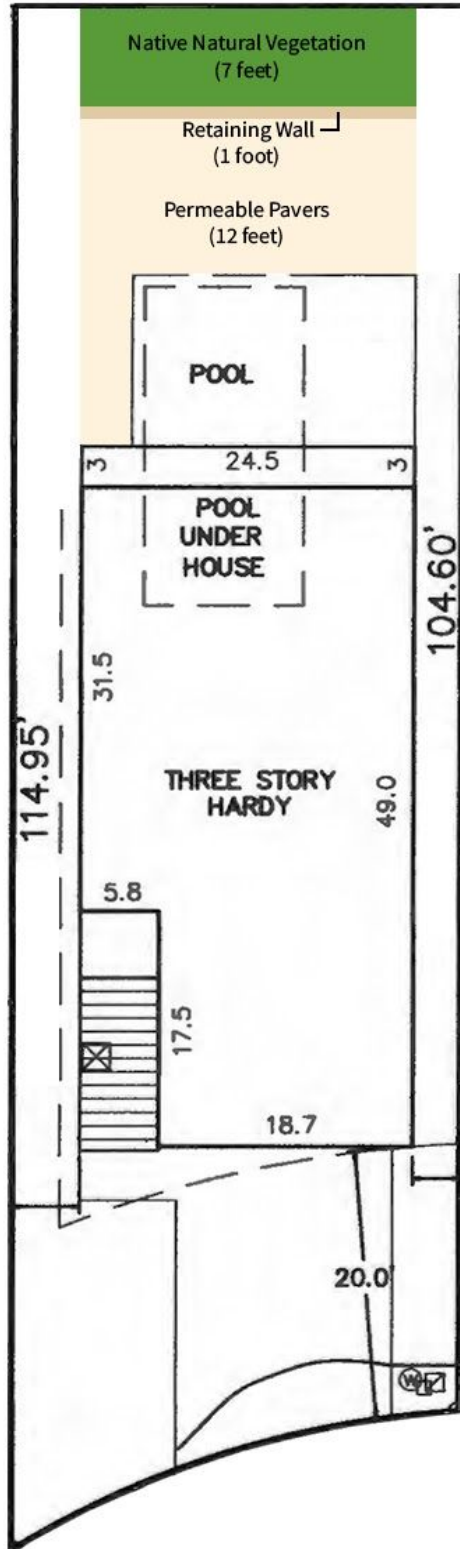
A handwritten signature in black ink, appearing to read 'Reza Kajbaf', written in a cursive style.

Reza Kajbaf

# 105 Sandcastle Court (Lot 39) To Scale



# 105 Sandcastle Court (Lot 39) Enlarged



15035P4D

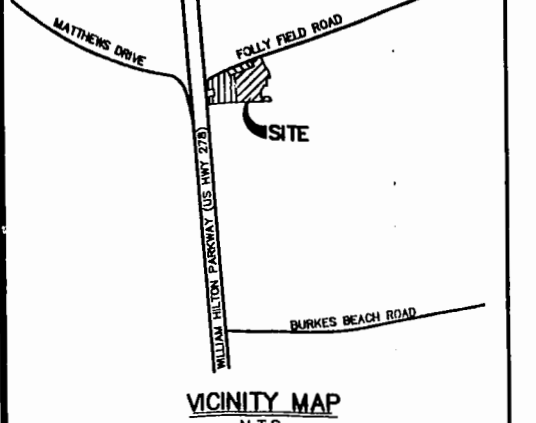


Table with columns: LINE, LENGTH, BEARING, LINE, LENGTH, BEARING. Contains detailed survey data for various lots and boundaries.

AREA TABLE
83 RESIDENTIAL LOTS = 6.779 Ac.
SANDCASTLE COURT R/W = 2.313 Ac.
OPEN SPACE = 1.826 Ac.
TOTAL AREA = 10.918 ACRES

- NOTES
1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF...
2) THIS PROPERTY IS LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA...
3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.

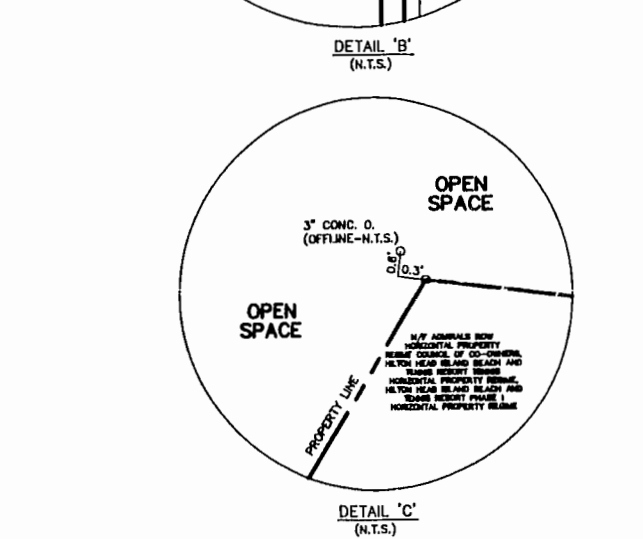
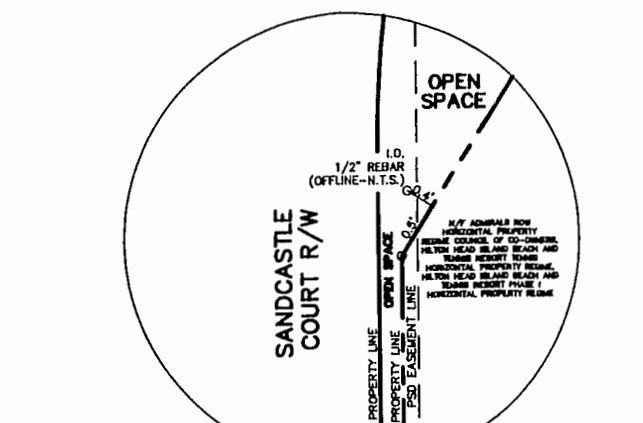
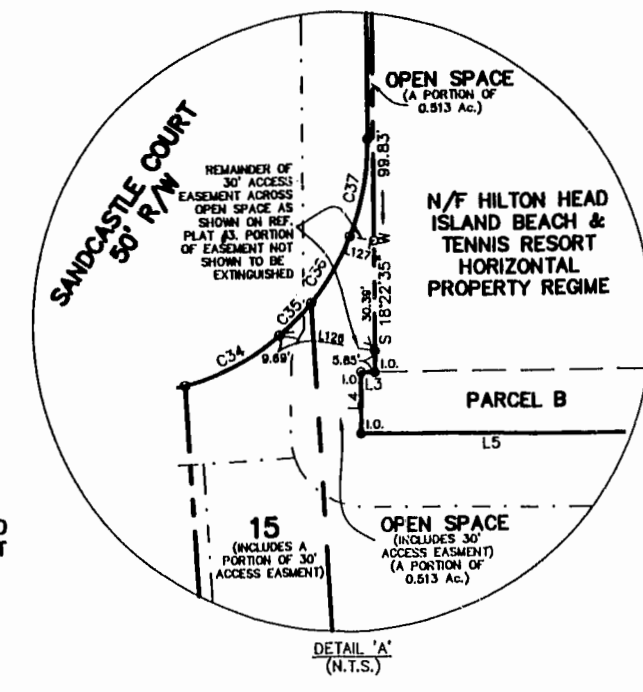
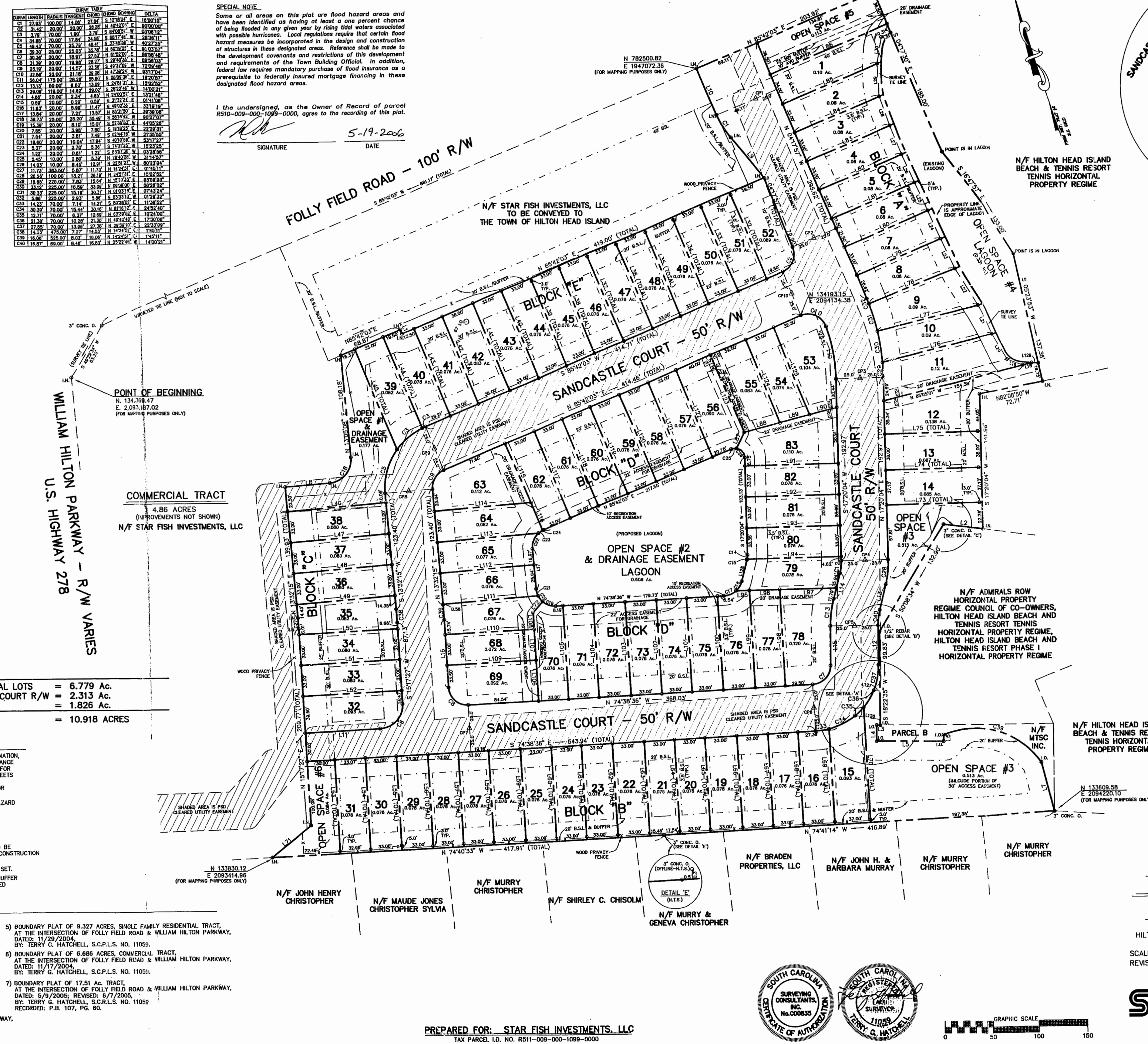
- REFERENCE PLATS
1) ASBUILT SURVEY OF 14.249 AC. TRACT, FOLLY FIELD ROAD & U.S. HIGHWAY 278, DATED: 5/9/2000.
2) ALTA/ACSM LAND TITLE SURVEY OF PARCEL A, 3.26 AC. AND PARCEL B, 0.08 AC. WILLIAM HILTON PARKWAY...

Table with columns: CURVE DATA, BEARING, DISTANCE, BEARING, DISTANCE. Contains curve data for various points in the survey.

SPECIAL NOTE
Some or all areas on this plot are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes...

I, the undersigned, as the Owner of Record of parcel R510-009-000-1099-0000, agree to the recording of this plot.
Signature: [Handwritten Signature]
Date: 5-19-2006

Attachment C



SUBDIVISION CONTROL POINTS
(CHECK POINTS TO BE SET AFTER FINAL ROADWAY CONSTRUCTION)
CPI 1 N 134426.47 E 2094162.22
CPI 2 N 134266.35 E 2094174.28

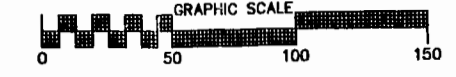
TOWN OF HILTON HEAD ISLAND, SC
SUBDIVISION APPROVAL
Date of approval: 7/9/05
Application Number: S1803002
Certified by: [Signature]
Title: Mgr. Blaz E

SANDCASTLES
BY THE SEA
FOLLY FIELD ROAD

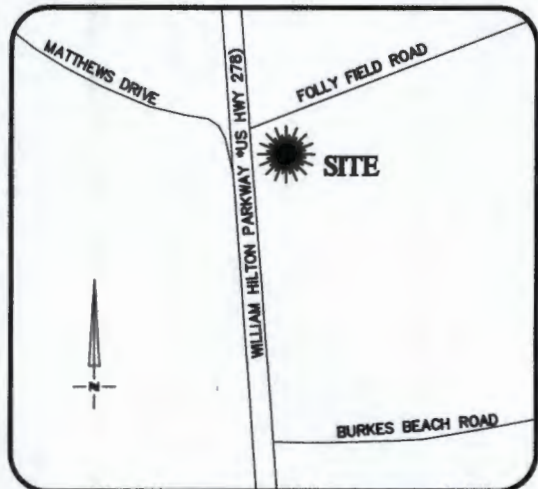
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA
SCALE: 1" = 50' DATE: 6/15/2005 JOB NO: 89319L
REVISED 05/19/2006 TO SHOW OFFSET PROPERTY CORNERS

SURVEYING CONSULTANTS
17 Sherington Drive, Suite C, Bluffton, SC 29910
Telephone: (843) 815-3304 FAX: (843) 815-3305

PREPARED FOR: STAR FISH INVESTMENTS, LLC
TAX PARCEL I.D. NO. R510-009-000-1099-0000

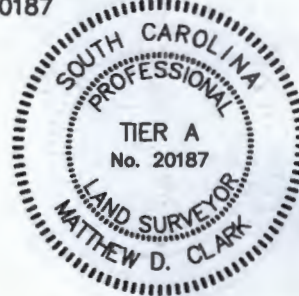


I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



VICINITY MAP  
Not To Scale

SIGNED MATTHEW D. CLARK, SCPLS 20187



N/F STAR FISH INVESTMENTS, LLC  
TO BE CONVEYED TO  
THE TOWN OF HILTON HEAD ISLAND  
20' B.S.L./BUFFER

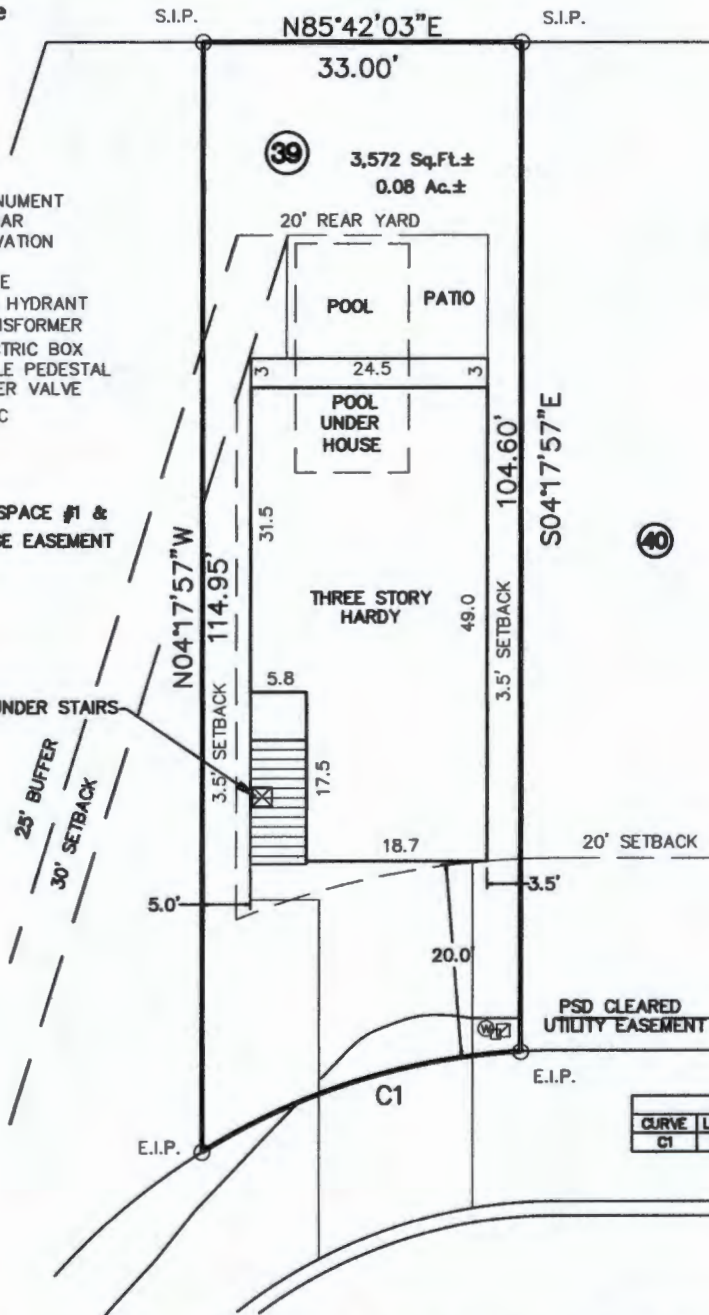
**LEGEND**

- E.I.P. EXISTING IRON PIN
- E.C.M. EXISTING CONCRETE MONUMENT
- S.I.P. SET IRON PIN 5/8" REBAR
- F.P.E. FLOOD PROTECTION ELEVATION
- — — — — PROPERTY LINE
- - - - - ADJOINER PROPERTY LINE
- X-X-X-X FENCE LINE
- CLEAN OUT
- LIGHT POST
- MAN HOLE
- TELEPHONE PEDESTAL
- WATER METER
- CATCH BASIN
- FIRE HYDRANT
- TRANSFORMER
- ELECTRIC BOX
- CABLE PEDESTAL
- WATER VALVE
- HVAC

OPEN SPACE #1 & DRAINAGE EASEMENT

A/C'S UNDER STAIRS

25' BUFFER  
30' SETBACK



CURVE TABLE				
CURVE	LENGTH	RADIUS	BEARING	CHORD
C1	34.95	70.00	S86°17'46"W	34.58

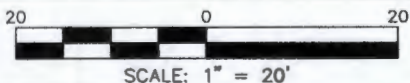
# #105 SANDCASTLE COURT

TMS: R511-009-000-1145-0000

50' R/W

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

FLOOD NOTE:  
THIS PROPERTY APPEARS TO BE LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 14-D COMMUNITY NO. 450250, MAP DATED 9/29/86. BASE ELEVATION 14.0'.



## PHYSICAL SURVEY FOR

LOT 39, SANDCASTLES BY THE SEA

Hilton Head Island, Beaufort County, South Carolina

PROPERTY OF: VILLAGE PARK HOMES

MAP BOOK 00113 PAGE 0164 DEED REFERENCE \_\_\_\_\_

**RLA ASSOCIATES, PA**  
110 TRADERS CROSS  
BLUFFTON, SC 29909  
PHONE (843) 705-8030  
FAX (843) 839-9092

DRAWN BY: MDC

DATE: APRIL 23, 2019





Attachment F

VAR-001935-2020

105 Sandcastle Ct

Site Photos taken 10/13/2020



Attachment F

VAR-001935-2020

105 Sandcastle Ct

Site Photos taken 10/13/2020



Attachment F

VAR-001935-2020

105 Sandcastle Ct

Site Photos taken 10/13/2020



Attachment F

VAR-001935-2020

105 Sandcastle Ct

Site Photos taken 10/13/2020



Attachment F

VAR-001935-2020

105 Sandcastle Ct

Site Photos taken 10/13/2020



Attachment F

VAR-001935-2020

105 Sandcastle Ct

Site Photos taken 10/13/2020



Attachment G

**F. Buffer Types**

Table 16-5-103.F, Buffer Types, describes the five different buffer types in terms of their function, opacity, width, and planting requirements. Either of the options under a specific buffer type may be used at the option of the *developer / applicant* . If the square footage of an existing building on a site is being increased by more than 50% then the buffers must be brought into compliance with the standards in this table.

TABLE 16-5-103.F: BUFFER TYPES		
MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS <small>1,2,3,4,5,6,7</small>		
<b>TYPE A BUFFER</b>		
This buffer includes low- <i>density</i> screening designed to partially block visual contact and create spatial separation between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent streets</i> with low traffic volumes.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 20 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 3 every 100 linear feet</li> <li>• Evergreen shrubs: 8 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 10 feet</li> <li>• <i>Overstory trees</i> : 2 every 100 linear feet</li> <li>• <i>Understory trees</i> : 4 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
<b>TYPE B BUFFER</b>		
This buffer includes low- to medium- <i>density</i> screening designed to create the impression of spatial separation without significantly interfering with visual contact between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent</i> minor arterials.		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 10 every 100 linear feet</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear feet</li> <li>• Evergreen shrubs: 12 every 100 linear feet</li> </ul>
<b>TYPE C BUFFER</b>		
This buffer includes medium- <i>density</i> screening designed to eliminate visual contact at lower levels and create spatial separation between <i>adjacent uses</i> .		
Option 1		<ul style="list-style-type: none"> <li>• Width: 25 feet</li> <li>• <i>Overstory trees</i> : 3 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> </ul>
Option 2		<ul style="list-style-type: none"> <li>• Width: 15 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>

Attachment G

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6,7</sup>

<b>TYPE D BUFFER</b>		
<p>The buffer includes high-density screening designed to eliminate visual contact up to a height of six feet and create a strong spatial separation between <i>adjacent uses</i>. A Type D buffer is required adjacent to all loading areas per Section 16-5-107.H.8.d, Buffering of Loading Areas.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer area. The height of the screening is indicated as 30 feet. The screening consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 30 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 6 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 6 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
Option 2	<p>A diagram showing a 20-foot wide buffer area. The height of the screening is indicated as 20 feet. The screening consists of a dense arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width 20 feet</li> <li>• <i>Overstory trees</i> : 6 every 100 linear feet</li> <li>• <i>Understory trees</i> : 8 every 100 linear ft</li> <li>• A solid wall or fence at least 6 feet high or a solid evergreen hedge at least 6 feet high and 3 feet wide</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>
<b>TYPE E BUFFER</b>		
<p>This buffer provides greater spacing and medium- <i>density</i> screening designed to define "green" corridors along major arterials.</p>		
Option 1	<p>A diagram showing a 100-foot wide buffer area. The height of the screening is indicated as 50 feet. The screening consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 50 feet</li> <li>• <i>Overstory trees</i> : 4 every 100 linear feet</li> <li>• <i>Understory trees</i> : 5 every 100 linear feet</li> <li>• Evergreen shrubs: 20 every 100 linear feet and at least 3 feet high at maturity</li> </ul>
Option 2	<p>A diagram showing a 35-foot wide buffer area. The height of the screening is indicated as 35 feet. The screening consists of a sparse arrangement of various tree and shrub symbols.</p>	<ul style="list-style-type: none"> <li>• Width: 35 feet</li> <li>• <i>Overstory trees</i> : 5 every 100 linear feet</li> <li>• <i>Understory trees</i> : 7 every 100 linear feet</li> <li>• Evergreen shrubs: 25 every 100 linear feet and at least 3 feet high at maturity</li> <li>• At least 50% of all <i>trees</i> must be evergreen</li> </ul>



Attachment G

**TABLE 16-5-103.F: BUFFER TYPES**  
**MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS** <sup>1,2,3,4,5,6, 7</sup>

NOTES:

1. Required *overstory trees* shall be distributed and spaced to maximize their future health and effectiveness as buffers. Other required vegetation shall be distributed within the buffer as appropriate to the function of the buffer.
2. Where an *adjacent use* is designed for solar access, *understory trees* may be substituted for *overstory trees*.
3. Fences or walls within an adjacent street or use buffer shall comply with the standards of [Sec. 16-5-113](#), Fence and Wall Standards.
4. A berm may be provided in conjunction with the provision of a hedge, fence, or wall to achieve *height* requirements, provided its side slopes do not exceed a ratio of three horizontal feet to one vertical foot and the width of its top is at least one-half its *height*.
5. If a buffer length is greater or less than 100 linear feet, the planting requirements shall be applied on a proportional basis, rounding up for a requirement that is 0.5 or greater, and down for a requirement that is less than 0.5. (For example, if the buffer length is 150 linear feet, and there is a requirement that 5 *overstory trees* be planted every 100 linear feet, 8 *overstory trees* are required to be planted in the buffer ( $1.5 \times 5 = 7.5$ , rounded up to 8)).
6. Minimum buffer widths and minimum planting requirements for adjacent street buffers may be reduced by up to 30 percent in the S District, 20 percent in the RD and IL Districts, and 15 percent in all other districts, on demonstration to the *Official* that:
  - a. The reduction is consistent with the character of *development* on surrounding *land* ;
  - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
  - c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed *development* , or (b) results in improved site conditions for a *development* with *nonconforming site features* ;
  - d. The reduction will not pose a danger to the public health or safety;
  - e. Any adverse impacts directly attributable to the reduction are mitigated;
  - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts; and
  - g. In the S, RD, and IL districts, there are no reasonable options to the reduction that allow *development* of the site to be designed and located in a way that complies with LMO standards.
7. Minimum buffer widths and minimum planting requirements for adjacent use buffers may be reduced by up to 10 percent any district on demonstration to the *Official* that:
  - a. The reduction is consistent with the character of *development* on surrounding *land* ;
  - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
  - c. The reduction either (a) is required to compensate for some unusual aspect of the site or the proposed *development* , or (b) results in improved site conditions for a *development* with *nonconforming site features* ;
  - d. The reduction will not pose a danger to the public health or safety;
  - e. Any adverse impacts directly attributable to the reduction are mitigated; and
  - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts.

## D-4. - Subdivision Review, Major

All **applications** or **subdivision** approval shall contain the following:

## A. Application Form and Fee

An **application** form as published by the **Official** and appropriate fee as required by Sec. 16 2 102.C.2, Application Fees.

## B. Subdivision Plat

One inch line print of a **subdivision** plat at a scale of 1"=50' or other scale acceptable to the **Official**, showing:

1. Date including any revision dates, name and location of the **subdivision**, name of owner, north arrow, graphic scale and reference meridian.
2. Beaufort County Tax Map and Parcel Number.
3. Location and description of all primary control points and monuments used in the survey, with ties to such control points to which all dimensions, angles, bearings, distances, lot numbers and similar data shall be referred.
4. Existing and proposed **tract** boundary lines, **right-of-way** lines, proposed **street** names, **easements** and other **rights-of-way**, all **lot** lines and other **site** lines with accurate dimensions, bearing or deflecting angles or radii, arcs and central angles of all curves.
5. The proposed **use** of **lots** shall be noted and the purpose of any easement or **land** reserved or dedicated to public or utility **use** shall be designated.
6. Each lot shall be numbered, and the **lots** within each block shall be numbered consecutively.
7. Notation of specific reference plats, if applicable.
8. Computed acreage of each **lot** created by the **subdivision**.
9. Minimum **building** setback or corner lines as required by Sec. 16 5 102 and Sec. 16 5 103.
10. The location of all lines and equipment for water, sewer, electric, telephone and cable TV as approved by the appropriate utility.
11. Certification by a South Carolina professional **land** surveyor as to the accuracy of the details of the plat, with seal and signature affixed.
12. Notation of the one hundred year storm **flood** elevation MSL and Flood Disclosure Statement in FEMA Zone A or V.
13. Surveyed delineation as appropriate of any **wetland** area within or **contiguous** to the **subdivision**.
14. Delineation of any airport hazard zone, as defined in Sec. 16 3 106.E, Airport Overlay A O District.
15. All existing **structures** or other **improvements**.
16. Location of exterior **subdivision** corner area as required by Sec. 16 5 103.
17. A statement that reads, "The only activities permitted in the exterior **subdivision** corner as labeled on this plan shall be those listed in Permitted Activity in Other Buffer Areas as per the LMO."
18. Location of **wetland buffer** area, where applicable, as required by Sec. 16 6 102.D.2.

19. For **subdivisions** where a portion is **adjacent** to a **wetland**, a statement that reads, "The only activities permitted in the **wetland buffer** shall be those listed in Wetland Buffers as per the LMO."

**C. Certification of Owner's Consent**

If the **applicant** is someone other than the owner, notarized certification, written and signed by the **development site** owner of record, that such owner formally consents to the proposed **subdivision**.

**D. Certification of Title Source**

Certification signed by the surveyor setting forth the source of title of the owners of the **land** subdivided or a copy of the deed by which the property was conveyed to the owner.

**E. Certificate of Title and Reference Plat**

A current certificate of title referencing the proposed **subdivision** plat and is recorded, a copy of the last plat in the chain of title.

**F. Open Space and Public Dedication Narrative**

A detailed narrative explaining how the **subdivision** will meet the **open space** and public dedication requirements, as applicable, Sec. 16 5 104. The narrative shall include:

1. Description of the form of organization proposed to own and maintain the **open space** in conformance with the requirements of Property Owners Associations or the equivalent, as specified in Sec. 16 5 104.E.
2. Identification of how the **open space** and facilities relate to existing and proposed **open space** areas, pathways and recreational facilities on Hilton Head Island, as shown in the Comprehensive Plan, or more detailed plans adopted by the **Planning Commission** such as **neighborhoods** plans.
3. If dedication is proposed to exceed the minimum **Town** standards, the **applicant** should state what bonus incentive, if any, is being requested as a result of such additional dedication.

**G. Street and Development Names**

Appropriate approvals for all **street** and **development** names as listed in Sec. 16 2 103.O, Street Vehicular Access Easement Name Review.

**H. Subdivision in Phases**

Whenever part of a **tract** is proposed for platting and it is intended to subdivide additional parts in the future or **abutting land** is in the same ownership, a sketch plan of the entire **tract** shall be submitted with the plat.

**I. Other Items**

Any applicable items as identified in D 6, Development Plan Review, Major.

## D-20. - Plat Stamping

A plat **application** shall be considered complete when the following items have been submitted.

## A. Application Form

An **application** form as published by the **Official**.

## B. Plat

A minimum of three plats one for the **Town** and two for Beauport **County**. These plats shall contain a signature block which shall be signed by the owner of record before these plats can be stamped or recording purposes this requirement may be waived if the applicant presents a written acknowledgement of the action in a legally recordable form, such as, but not limited to an easement, a right of entry, or a deed. The above requirement shall not apply to plats related to public projects. Upon such plat shall appear:

1. Owner of Record Signature Sign plat as it appears on the deed. Example: "I the undersigned as the Owner of Record of parcel s R , agree to the recording of this plat." This requirement may be waived if the applicant presents a written acknowledgement of the action in a legally recordable form, such as, but not limited to an easement, a right of entry, or a deed. This requirement shall not apply to plats related to public projects, such as easements obtained through condemnation or a public pathway.
2. Title Purpose of plat.
3. Vicinity Sketch Map of property location.
4. Address, State and County where property to be recorded is located.
5. Who the survey was prepared for, name s on deed.
6. Tax District, Map and Parcel Number of subject property.
7. Total acreage of parcel s .
8. All property access improvements.
9. Easements.
10. Date of survey and date of any revisions.
11. Graphic and numeric scale.
12. North arrow.
13. Certification of surveyor stating "class" of survey.
14. Existing monuments property pins.
15. Improvements.
16. Surveyor's original embossed seal, signature, surveyor ID, address and registration number.
17. "S.C. Certificate of Authorization" embossed seal when survey done by corporation, firm, association, partnership, or other such entity.
18. FEMA zone information property assigned flood zone.
19. Flood disclosure statement.
20. Notation of specific reference plats.
21. OCRM critical line and base line.

22. Space or stamp Minimum 4x4 inches.
23. If a property is located in the Airport Overlay A O District, a note shall be added to the plat per Sec. 16 3 106.E.3. .i.  
    e ised                    dinance
24. If a property is located in the Outer Hazard zone of the Airport Overlay A O District, a note shall be added to the plat per Sec. 16 3 106.E.3. .ii.  
    e ised                    dinance

**C. Other Requirements**

1. Property Deed Title Source.
2. Recorded easement documents.
3. Transfer agreement legal document showing property owner change.

( [Ord. No. 2015 23](#), 11-3-2015)