

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

November 8, 2018 – 2:30 PM

Town Hall, Council Chambers

2001 Seabrook Island Road



AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

1. Board of Zoning Appeals Meeting: October 29, 2018 [Pages 2–5]

CONSIDERATION OF APPEALS

1. Appeal # 38 [Pages 6–74]

APPLICANT: John C. Butera & Jean W. Jones
ADDRESS: 2633 Jenkins Point Road
TAX MAP NUMBER: 149-00-00-046 (LT 34, BLK 52)
ZONING DISTRICT: SR Single-Family Residential
PURPOSE: Applicant is appealing the Zoning Administrator’s determination that a pervious pergola system constitutes a “covering of any kind,” thereby requiring a 25-foot marsh setback for a “covered porch” rather than a 15-foot marsh setback for an “open deck”

ITEMS FOR INFORMATION / DISCUSSION

There are no Items for Information / Discussion

ADJOURN

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

August 29, 2018 – 2:30 PM

Town Hall, Council Chambers
2001 Seabrook Island Road



MINUTES

Present: Walter Sewell (Chairman), Robert Quagliato, Ava Kleinman, John Fox, Joe Cronin (Zoning Administrator)

Absent: Bob Leggett (Vice Chairman)

Guests: Tommy Berl (Surfside Construction)

Chairman Sewell called the meeting of the Board of Zoning Appeals to order at 2:33 PM. Zoning Administrator Cronin confirmed that the requirements of the Freedom of Information Act were fulfilled, and the meeting was properly posted.

APPROVAL OF MINUTES

1. **Board of Zoning Appeals Meeting: August 29, 2018:** Mr. Quagliato made a motion to approve the minutes from the August 29, 2018, meeting of the Board of Zoning Appeals, as submitted. Ms. Kleinman seconded the motion. The motion was **APPROVED** by a vote of 4-0.

NEW BUSINESS ITEMS

1. **Text Amendment: Administration & Appeals (Variances):** Zoning Administrator Cronin provided a brief overview of the draft ordinance, the purpose of which was to amend § 19.30.20 of the town's Development Standards Ordinance relating to variances. Zoning Administrator Cronin explained that the purpose of this ordinance is to:
 - Require the use of a standard variance application form and the payment of applications fees;
 - Allow the Zoning Administrator to require supplemental application materials which may be "reasonably necessary to assist the board with its review of the application;"
 - Require that a public hearing be held no earlier than 30 days, nor later than 60 days, after an application is received;
 - Transfer the responsibility for providing notification to neighboring property owners from the applicant to the Zoning Administrator;

- Require advertisement of the public hearing in a newspaper of general circulation at least 15 days in advance of the hearing;
- Require posting of the property at least 15 days in advance of the hearing; and
- Requiring notice to any “interested parties” who have requested notification of zoning proceedings at least 15 days in advance of the hearing.

Ms. Kleinman made a motion to recommend in favor of approval of the ordinance. Mr. Quagliato seconded the motion. The motion was **APPROVED** by a vote of 4-0.

ITEMS FOR INFORMATION / DISCUSSION

1. **Status of Previous Variances:** Zoning Administrator Cronin stated that staff had conducted a partial review of variances which were previously approved by the Board of Zoning Appeals. This review covered a period of 22 years (1996-2018) and included all variances which were entered into the town’s electronic database. This review focused on variance requests which were approved by the Board of Zoning Appeals, were for a lot which was vacant at the time at the time of the request, and despite the variance request being approved, there was no record of the application obtaining a building permit or otherwise exercising its development rights authorized by the variance.

The initial review included a total of 64 variances (Variance #93 through #157). Zoning Administrator Cronin stated that of these, only one variance was identified which appeared to meet all three criteria: Variance #131, which was approved in 2004, and allowed the owner of Cotton Island (Tax Map # 149-00-00-004) to install a septic system in lieu of connecting to the town’s utility system.

Ms. Kleinman asked what the next steps were for this variance. Zoning Administrator Cronin responded that staff would first attempt to verify whether SCDHEC had any record of a septic system being installed on Cotton Island. Staff would also continue to review the town’s DSO to see if there were any changes which would render this variance moot. Absent any changes, staff would notify the current property owner that the 2004 variance had expired.

Zoning Administrator Cronin stated that staff will continue to go through older variances (1987-1996) to determine whether there are additional properties which meet these three criteria. Because these older records have not been digitized, it will take significantly longer to review and document these cases. Staff will continue to keep board members updated as additional properties are identified.

2. **Update to Application Forms:** Zoning Administrator Cronin stated that staff is continuing to work on the new application forms. Once the amendments to § 19.30.20 are approved by Town Council, the new forms will be brought back to the Board for review and approval.

- 3. Discussion of New Website & Public Comment Portal:** Zoning Administrator Cronin notified Board members that the town is currently working on a new town website. As part of this project, the town will be able to solicit and accept online comments from the public on pending ordinances. Zoning Administrator Cronin stated that once this tool was put into place, the Board of Zoning Appeals could also choose to accept public comments on pending variance applications and appeals through the new website. Members of the Board expressed support for the idea of receiving public comments through the new website. Zoning Administrator Cronin noted that all comments would become part of the public record, and would be shared with Board members in advance of each public hearing.

SITE VISIT

- 1. 2633 Jenkins Point Road (Tax Map # 149-00-00-046 – Lot 34, Block 52):** Zoning Administrator Cronin stated that the town had received an appeal of the Zoning Administrator's decision relating to the denial of a zoning permit for construction of a pergola at 2633 Jenkins Point Road. He stated for the record that since this would be an appeal of a decision he made in his official role as Zoning Administrator, he felt that a conflict of interest would exist if he also served as board secretary during the public hearing scheduled for Thursday, November 8th. He stated that he has asked the Town Attorney if he, or someone from his office, could serve as Acting Secretary during the meeting, but was still waiting back for confirmation.

Chairman Sewell stated that the Board had requested an opportunity to visit 2633 Jenkins Point Road in advance of a public hearing on Appeal #38, which will take place at 2:30 PM on Thursday, November 8th. Chairman Sewell noted that the purpose of the visit was for observational purposes only, and that no testimony would be heard pertaining to the variance application. Zoning Administrator Cronin stated that a full agenda packet, with attachments, would be provided to the Board and posted publicly in advance of the public hearing.

Prior to departing for the site visit, Zoning Administrator Cronin noted that public notice of the site visit had been provided, pursuant to the Freedom of Information Act. He stated that the agenda for today's meeting contained the following provision: *"This site visit will take place behind the Seabrook Island Property Owners Association security gate. Any individual wishing to observe the site visit who does not have access behind the security gate should contact (843) 768-5321 for assistance prior to the meeting."* He added for the record that one individual, Mr. Tommy Berl of Surfside Construction, was present at the meeting on behalf of the property owner. No one else had requested access behind the security gate for the purpose of observing the side visit.

Chairman Sewell explained the difference between a variance and an appeal, and also noted similarities between the pending request and one which was considered by the Board in 2014.

The meeting was recessed at approximately 3:35 PM. Board members then traveled individually to 2633 Jenkins Point Road. Staff members at Town Hall were notified that the Board was traveling to the site, and anyone coming to Town Hall to observe the site visit may be directed to that location.

The Board reconvened at approximately 3:49 PM at 2633 Jenkins Point Road. Board members observed the site, as well as neighboring properties in the vicinity of the site. Board members asked general questions related to the request and the town's zoning requirements; however, no testimony was received. The site visit lasted approximately 21 minutes.

There being no further business, the meeting was adjourned at 4:10 PM.

Minutes Approved:



Joseph M. Cronin
Zoning Administrator

DRAFT



MEMORANDUM

TO: Town of Seabrook Island Board of Zoning Appeals Members
FROM: Joseph M. Cronin, Town Administrator/Zoning Administrator
SUBJECT: Appeal #38 – 2633 Jenkins Point Road (Lot 34, Block 52)
MEETING DATE: November 9, 2018

Variance Application #155	
Applicants:	John C. Butera & Jean W. Jones (Owners)
Location:	2633 Jenkins Point Road
Tax Map Number:	149-00-00-046 (Lot 34, Block 52)
Zoning District:	SR Single-Family Residential
Purpose:	Applicant is appealing the Zoning Administrator’s determination that a pervious pergola system constitutes a “covering of any kind,” thereby requiring a 25-foot marsh setback for a “covered porch” rather than a 15-foot marsh setback for an “open deck”

Overview

The Town has received an appeal of an administrative decision from John C. Butera and Jean W. Jones, the owners of Charleston County Tax Map # 149-00-00-046.

The applicants hired Surfside Construction for the purpose of permitting and installing a pervious pergola system at the rear of 2633 Jenkins Point Road (Lot 34, Block 52). Tommy Berl of Surfside Construction submitted an application for zoning approval on behalf of the applicants.

The zoning application was reviewed by the town’s Zoning Administrator, Joe Cronin. The Zoning Administrator denied the application for a zoning permit on October 9, 2018. In his letter of denial, the Zoning Administrator outlined the following reasons for denial of the request:

- The rear of the above referenced property abuts a marsh critical area which has been delineated on a survey by SCDHEC-OCRM. Pursuant to the town’s Development Standards Ordinance (DSO), all structures which abut a marsh (exclusive of “open decks”) shall be set back at least 25 feet from the OCRM critical line. “Open decks” are permitted to encroach into the 25-foot marsh setback; provided, however, no part of the deck may be closer than 15 feet from the critical line. ***[DSO Reference: Sec. 7.60.50]***

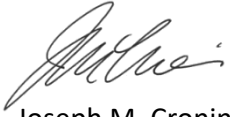
- Though the proposed pergola system is designed to allow water to pass through to the deck and ground below, the DSO defines a deck having a “**roof or other covering of any kind**” as a “porch” rather than a “deck.” ***[DSO Reference: Sec. 2.10(o) and Sec. 2.10(ccc)]***
- Therefore, in my opinion, the installation of a pergola system would require the covered portions of the existing deck to be reclassified as a “porch” rather than an “open deck,” and the 25-foot marsh setback would apply. Because the pergola system would encroach into the 25-foot marsh setback, the zoning permit application has been denied.
- ***Note: A full copy of the Letter of Denial is attached for review.***

The applicants submitted a Notice of Appeal on October 9, 2018. In their Notice of Appeal, the applicants have stated:

- We disagree that the construction of the Pergola, an open permeable system that allows water to return to the surface, turns our deck into a porch. Rather it is an architectural element that also acts as a sun shield on the deck.
- The ordinance wording is ambiguous at best, however, we believe the proposed Pergola does not go against the intent of the ordinance. The ordinance was meant to prevent a solid roof or closed horizontal structure from being constructed within the defined marsh setback.
- Our proposal clearly meets the 15 foot setback rule and we argue it also complies with the intent of the 25 foot setback in that it is an open system, that merely acts as a sun shade, but allows water to pass through and return to the surface. Our plan is to remove the current "solid roof" which butts out into the 25 foot setback and replace it with a permeable open system which is more in compliance with the intent of the ordinance.
- The proposed Pergola does not transform our deck into a porch; is not designed to create a new separate and distinct living space; there is no access on top of it for one to walk, or place furniture; it is merely a system to help shade a portion of the current deck.
- The Pergola is more like an architectural element than a "roof or a covering" as stated in the ordinance.
- ***Note: A full copy of the Notice of Appeal is attached for review.***

The request now goes before the Board of Zoning Appeals to determine whether the Zoning Administrator erred in the application or enforcement of the town’s zoning requirements. Pursuant to § 19.40.20, the Board of Zoning Appeals may in conformity with the provision of this act, reverse or affirm, wholly or in part, or may modify the order, requirements, decisions, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the circuit court having jurisdiction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Cronin". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Joseph M. Cronin

Town Administrator/Zoning Administrator

Criteria for Review

Pursuant to Section 19.30.10 of the Town's Development Standards Ordinance, the Board of Zoning Appeals shall have the power to **"hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination by the Zoning Administrator in the enforcement of this Ordinance, pursuant to § 19.40."**

Sec. 19.40. - Appeals Heard by the Board of Zoning Appeals.

Appeals of final zoning decisions made by the Zoning Administrator pursuant to this Ordinance shall be made to the Town of Seabrook Island Board of Zoning Appeals.

§ 19.40.10. *Appeals, Hearings and Notice.* Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or agency of the Town.

§ 19.40.10.10. Such appeal shall be taken within thirty (30) days from the date the appealing party has received actual notice of the action from which the appeal is taken, by filing with the officer/department from whom the appeal is taken and with the Board of Zoning Appeals a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

§ 19.40.10.20. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

§ 19.40.10.30. The Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or by attorney.

§ 19.40.20. In exercising the previously referenced powers, the Board of Zoning Appeals may in conformity with the provision of this act, reverse or affirm, wholly or in part, or may modify the order, requirements, decisions, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the circuit court having jurisdiction.

§ 19.40.30. *Appeals from Decisions of Board of Zoning Appeals.* Any person who may have a substantial interest in any decision of the Board of Zoning Appeals may appeal from any decision of the Board to the circuit court in and for Charleston County, filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty (30) days after the decision of the Board is rendered.

Attachments

The following supplemental items have been attached for review:

Application & Property Information		
1	Application for Zoning Approval a) Zoning Permit Application b) Property Survey c) Pergola Design d) Sample Photos	p. 11-22
2	Letter of Denial	p. 23-25
3	Notice of Appeal	p. 26-30
4	Property Photos	p. 31-37
5	Aerial Image	p. 38-39
6	Zoning Map	p. 40-41
7	Title to Real Estate	p. 42-47
8	Property Information Card	p. 48-49
9	Public Hearing Notice – Post and Courier Legal Ad	p. 50-51

Other Information		
10	Records from Variance Application # 149: 2923 Deer Point Drive <ul style="list-style-type: none"> <i>Note: In reviewing the Application for Zoning Approval, the Zoning Administrator reviewed and considered a decision by the Board of Zoning Appeals in 2014 regarding the application of the marsh setback to a two-story deck. We also note that this request was submitted as a variance request, and not an administrative appeal.</i> 	p. 52-74

Written Correspondence Regarding the Appeal		
	<i>Note: No written correspondence was received in advance of the meeting</i>	



ATTACHMENT #1

Application for Zoning Approval

- a) Zoning Permit Application
- b) Property Survey / Site Plan
- c) Pergola Design
- d) Sample Photos

TOWN OF SEABROOK ISLAND

2001 Seabrook Island Road
Seabrook Island, SC 29455
843-768-9121 (phone)
843-768-9830 (fax)

ZONING PERMIT APPLICATION

Fee Schedule

Permit for New Construction, Single Family	\$100	Permit Extension	\$100
Permit for Remodeling, Addition, etc.	100	Record Plats - prices vary	
Building, HVAC, Roofing, Plumbing, etc.	25		
Permit for New Construction, Multi-Family	250 + \$5 per unit		
Multiple Bldg Permit, Comm./Multi Family	100		

Date: 10/12/18 TMS #: 149-00-00-046

Applicant's Name: SURFSIDE CONSTRUCTION

Name of Business Contact: Thomas Bell

Address: 3148 Green Haven CT Phone: 843-367-3850

City: Seabrook State: SC Zip: 29455

Property Owner's Name: Jean Jones

Address: 2633 Jenkins Point Phone: _____

City: Seabrook IS State: SC Zip: 29455

Property Location Address: 2633 Jenkins Point (200)

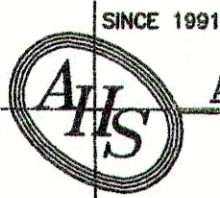
Lot: 34 Block: _____ Base Flood Elev. _____ Zone: _____

Purpose of Permit: build porch over deck +
cooking area

Value of Construction: 50,000.00 POA Approval: _____

Applicant's Signature: _____

**This is an application only. The permit will be issued upon approval by the Town of Seabrook Island.



SINCE 1991

A.H. SCHWACKE & ASSOCIATES

LAND SURVEYING & CONSTRUCTION LAYOUT

1975 FRAMPTON AVE PH: 843-762-7005 FAX 843-762-0109
P.O. BOX 13077, CHARLESTON, SOUTH CAROLINA 29422-3077

REFERENCE:

PLAT BY FORSMAN J ANDERSON
DATED MARCH 20, 1998
BOOK EC PAGE 475
RMC CHAS. CO.

TAX MAP No. 149-00-00-046
No. 2633 JENKINS POINT ROAD
Requested by: TOM BERL (SURFSIDE CONSTRUCTION)

TOTAL LOT AREA
36372.7 SQ. FT.
0.83 ACRES

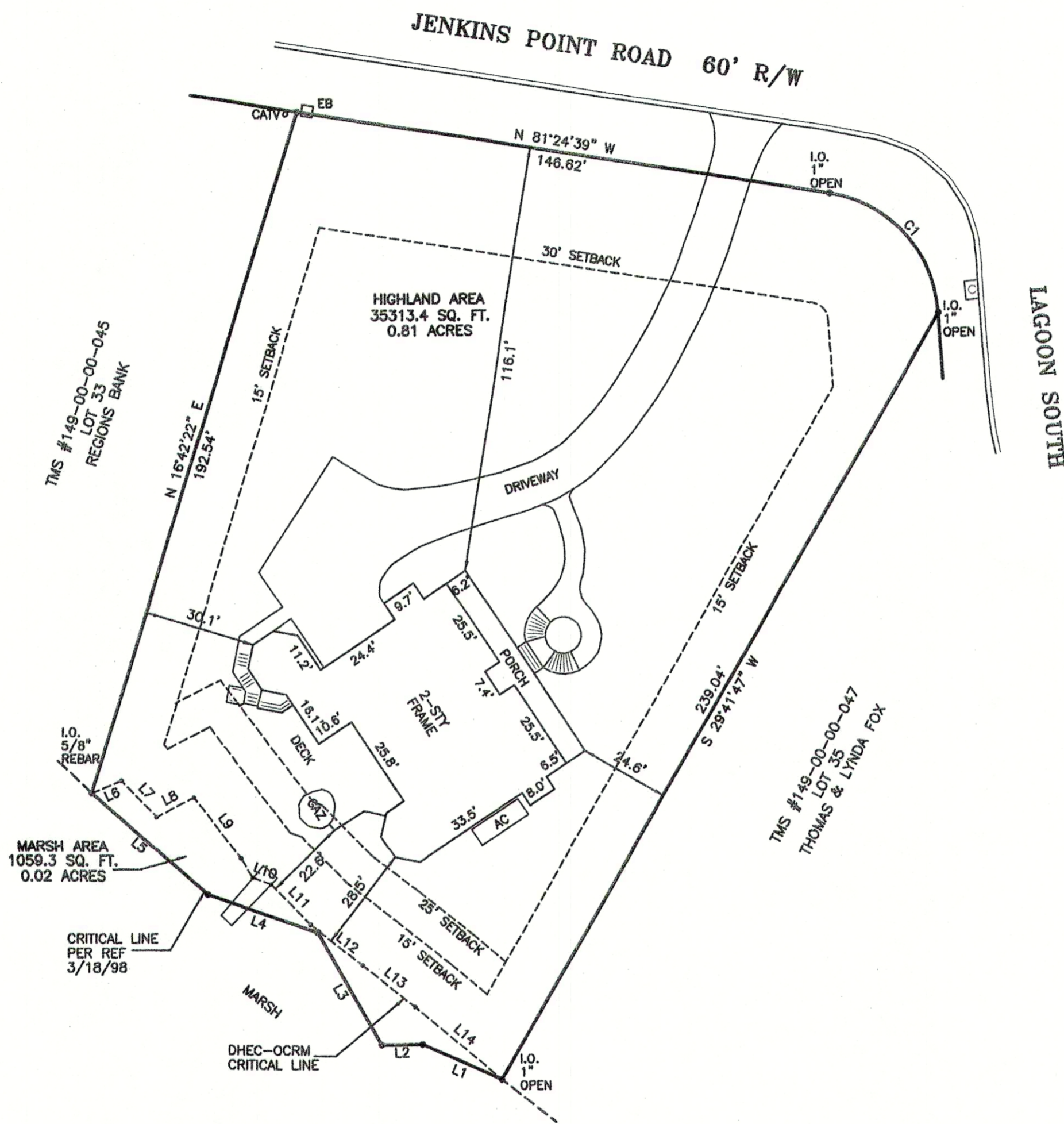
LOT COVERAGE:

BUILDING = 3063.37 SQ.FT.
PORCH = 397.07 NSQ.FT.
DECK/GAZ = 745.06 SQ.FT.
STEPS/WALK = 689.8 SQ.FT.
DRIVEWAY = 3064.97 SQ.FT.
AIR CONDITIONER = 77.01 SQ.FT.
TOTAL = 8037.28 SQ.FT.
23% COVERAGE

CURVE	RADIUS	ARC LENGTH	TANGENT	CHORD LENGTH	CHORD BEARING
C1	35.00'	47.45'	28.18'	43.90'	S 42°34'13" E

LEGEND:

- I.O. IRON OLD (FOUND)
- I.N. IRON NEW (SET)
- CMO CONCRETE MONUMENT OLD
- P PORCH
- CS CONCRETE SLAB
- PP POWER POLE
- SP SCREEN PORCH
- AC AIR CONDITIONER
- GAZ GAZEBO
- CATV CABLE TV BOX
- EB ELECTRIC BOX



LINE	BEARING	DISTANCE
L1	N 66°21'40" W	23.47'
L2	S 89°26'34" W	11.10'
L3	S 30°01'21" E	35.19'
L4	S 71°23'55" E	31.70'
L5	S 48°39'46" E	41.75'
L6	N 67°31'13" E	8.67'
L7	N 44°10'55" W	13.72'
L8	S 62°40'27" W	11.40'
L9	N 37°44'12" W	20.79'
L10	S 70°08'28" E	5.43'
L11	N 44°23'16" W	15.25'
L12	N 52°25'33" W	18.08'
L13	N 51°50'56" W	18.13'
L14	N 50°21'16" W	30.72'

NOTES:

- BEARINGS SHOWN ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION
- AREA DETERMINED BY COORDINATE METHOD
- THE PUBLIC RECORDS REFERENCED ON THIS PLAT ARE ONLY THOSE USED AND/OR NECESSARY TO THE ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY. THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
- THE REQUIRED SETBACKS MAY BE DESIGNATED AND/OR VARIED BY THE KIAWAH ISLAND ARCHITECTURAL REVIEW BOARD. THE ARCHITECTURAL REVIEW BOARD RESERVES THE RIGHT TO GRANT VARIANCES RESPECTING SETBACK GUIDELINES AND/OR TO EXPAND THE "BUILDABLE" AREA.
- THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS OF ENGINEERS JURISDICTIONAL WETLANDS IS UNDETERMINED AS OF THE DATE OF THIS SURVEY
- PROPERTY APPEARS TO BE LOCATED IN FLOOD ZONE AE (EL 14) AS PER FEMA FLOOD MAPS. PANEL No. 45019C 0785J DATED NOVEMBER 17, 2004 COMMUNITY No. 450256

SURVEYOR'S CERTIFICATION

I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon 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.

KEVIN M. SCHWACKE, SR. PLS
S.C. Registration Number 20468

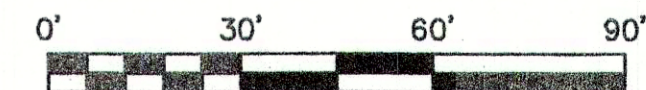


THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

SIGNED BY: WILLIAM C. EISER 11/2/14
SIGNATURE DATE

The critical line shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

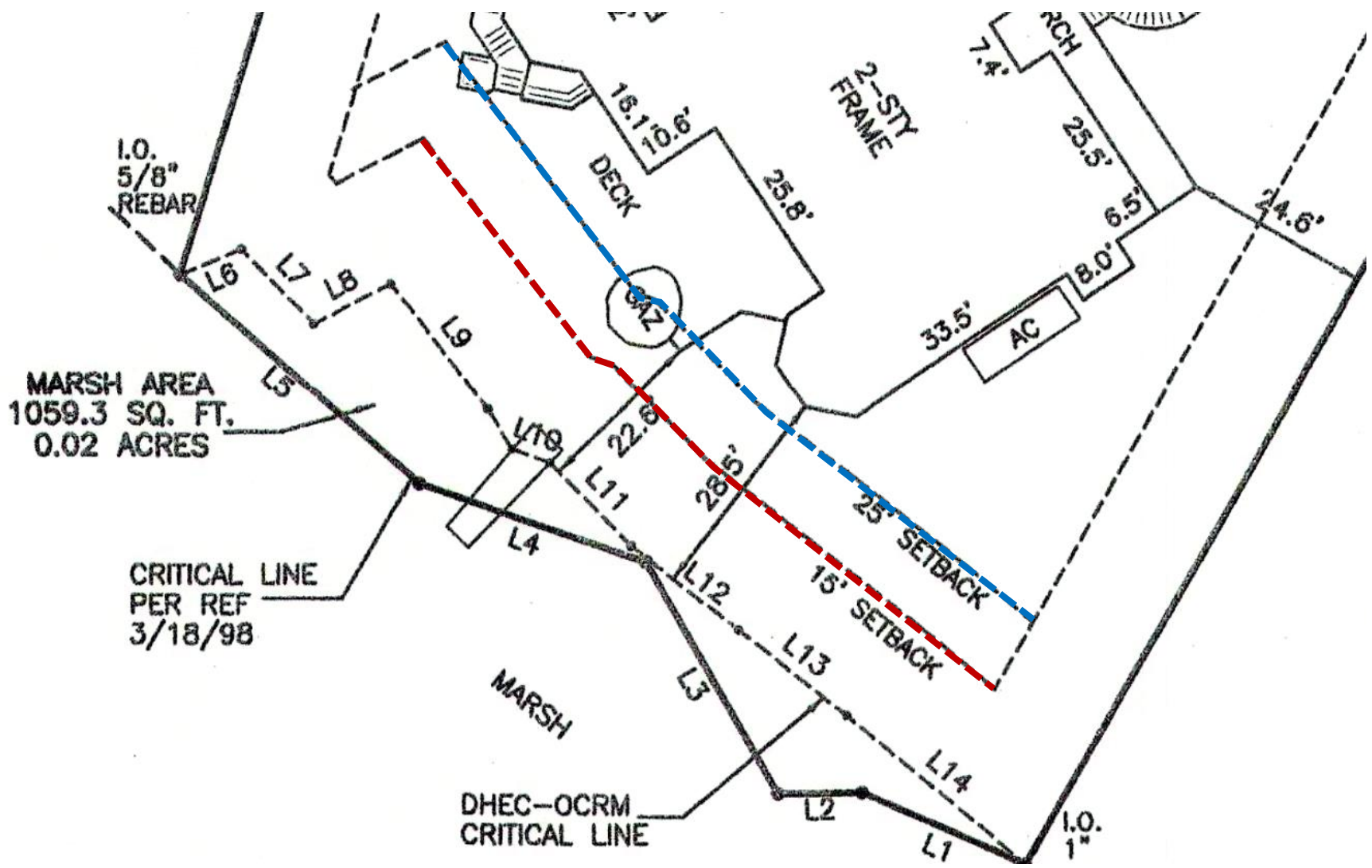
PLAT OF
LOT 34 PHASE III
JENKINS POINT PLANTATION
TOWN OF SEABROOK ISLAND
CHARLESTON COUNTY SOUTH CAROLINA



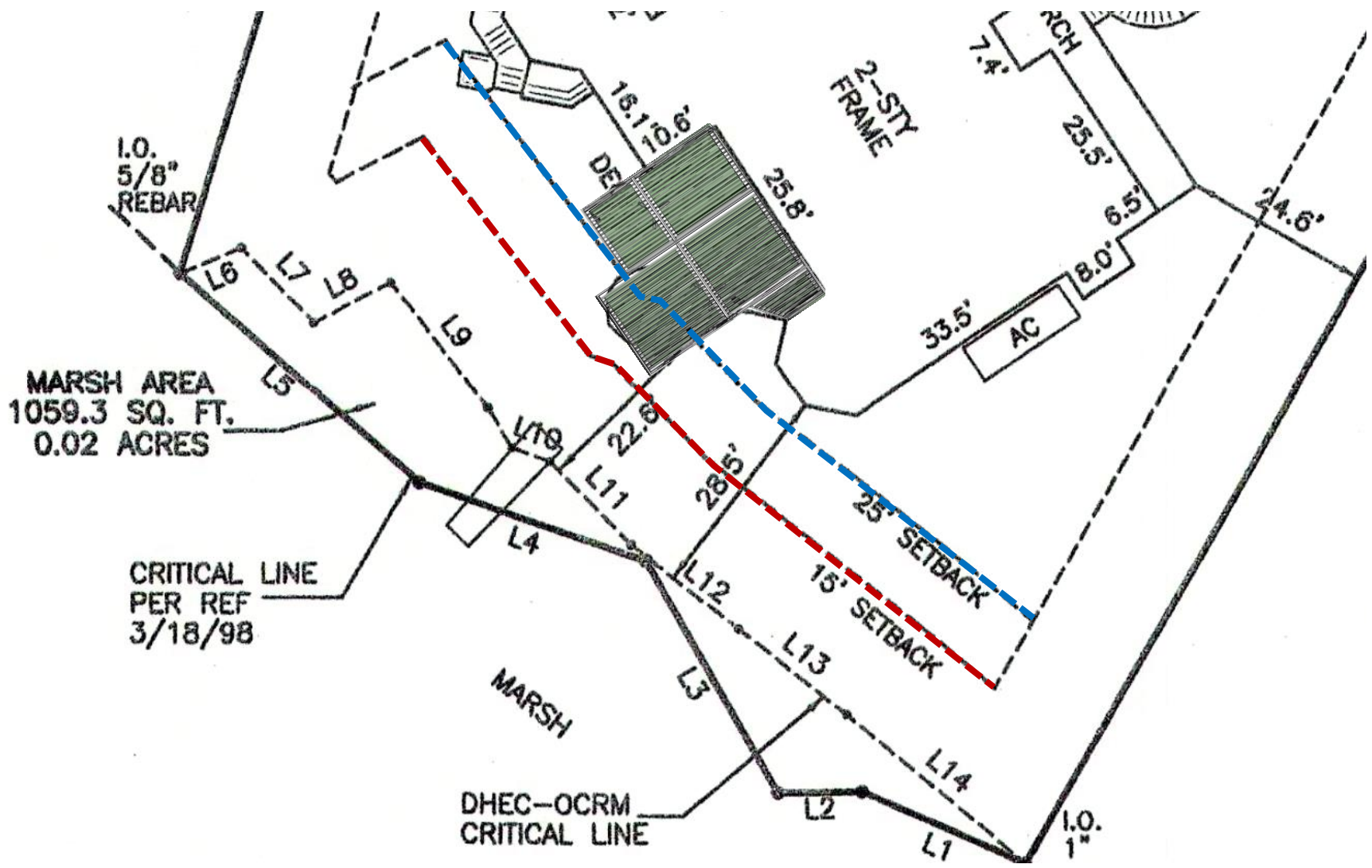
DATE: OCTOBER 27, 2014 SCALE: 1" = 30'

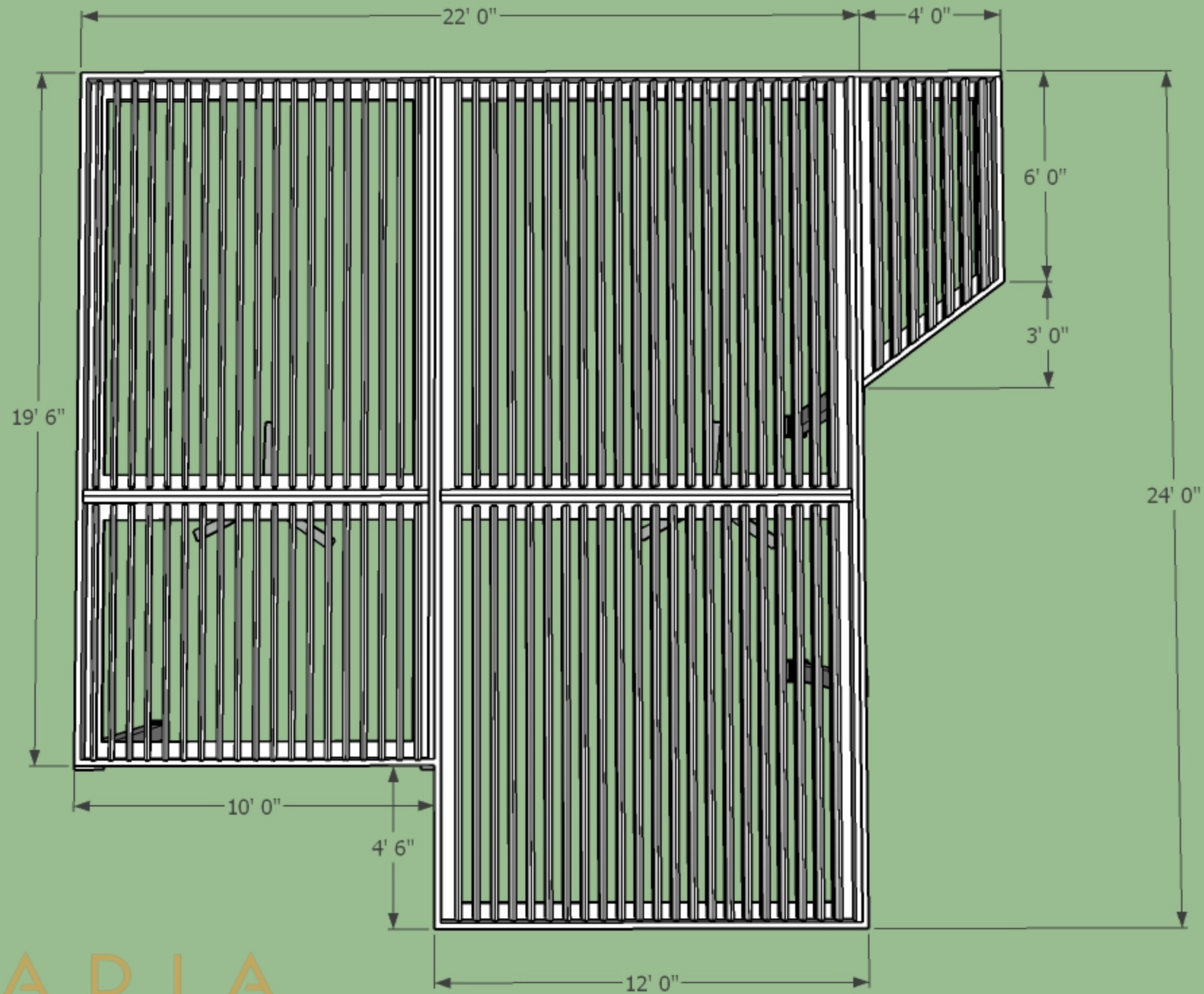
CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS. THIS PLAT IS COPYRIGHTED AND IS INTENDED ONLY FOR THE ENTITY OR PERSON(S) SHOWN HEREON. THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY AND IS NOT THE RESULT OF A TITLE SEARCH.

EXISTING

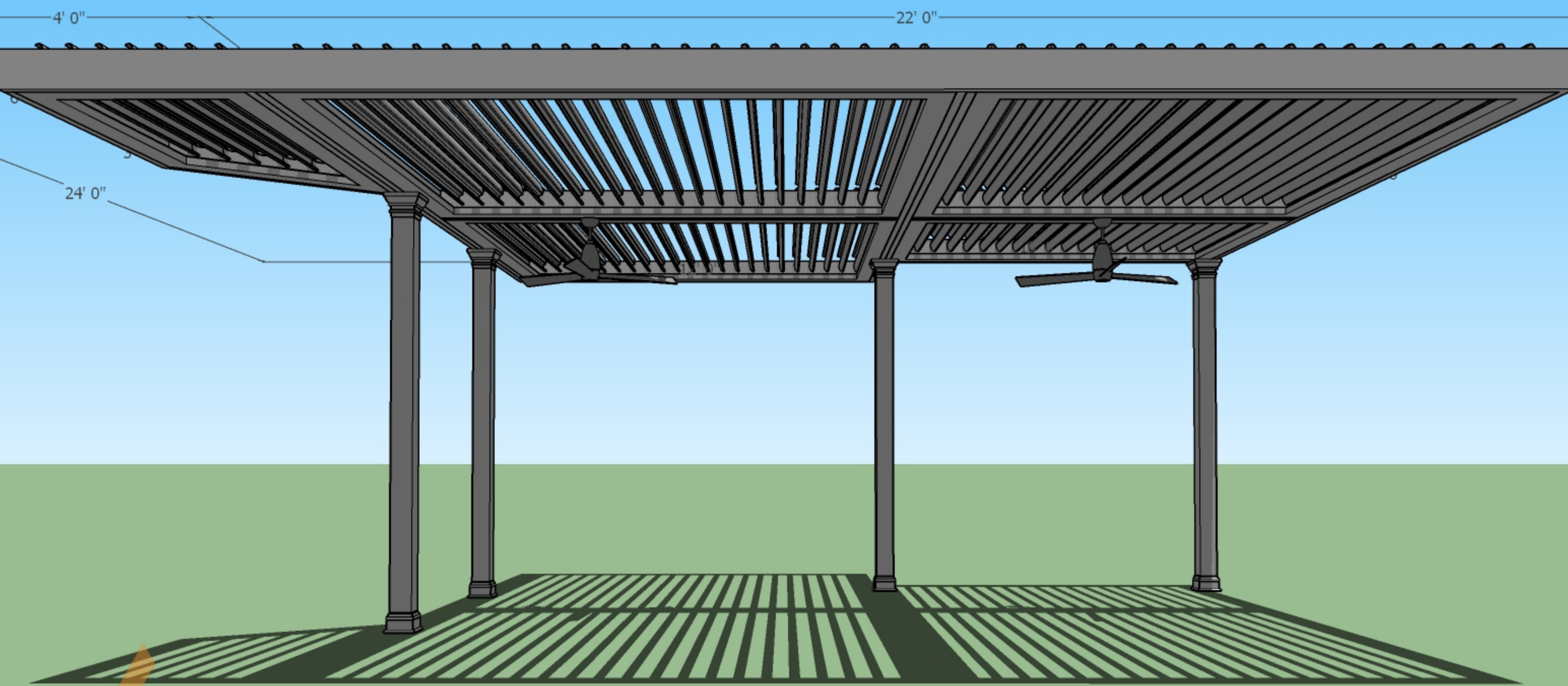


PROPOSED

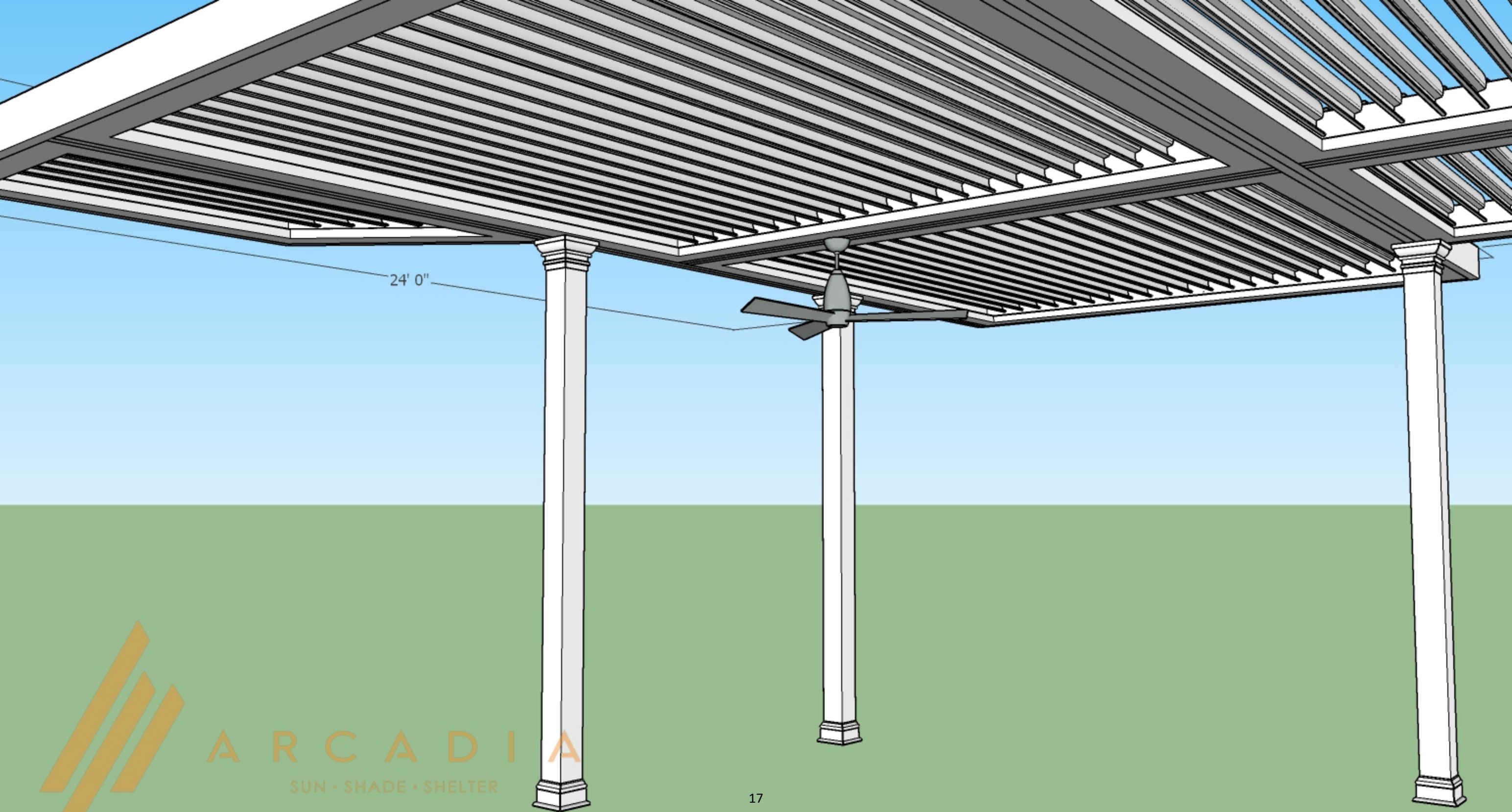




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ARCADIA
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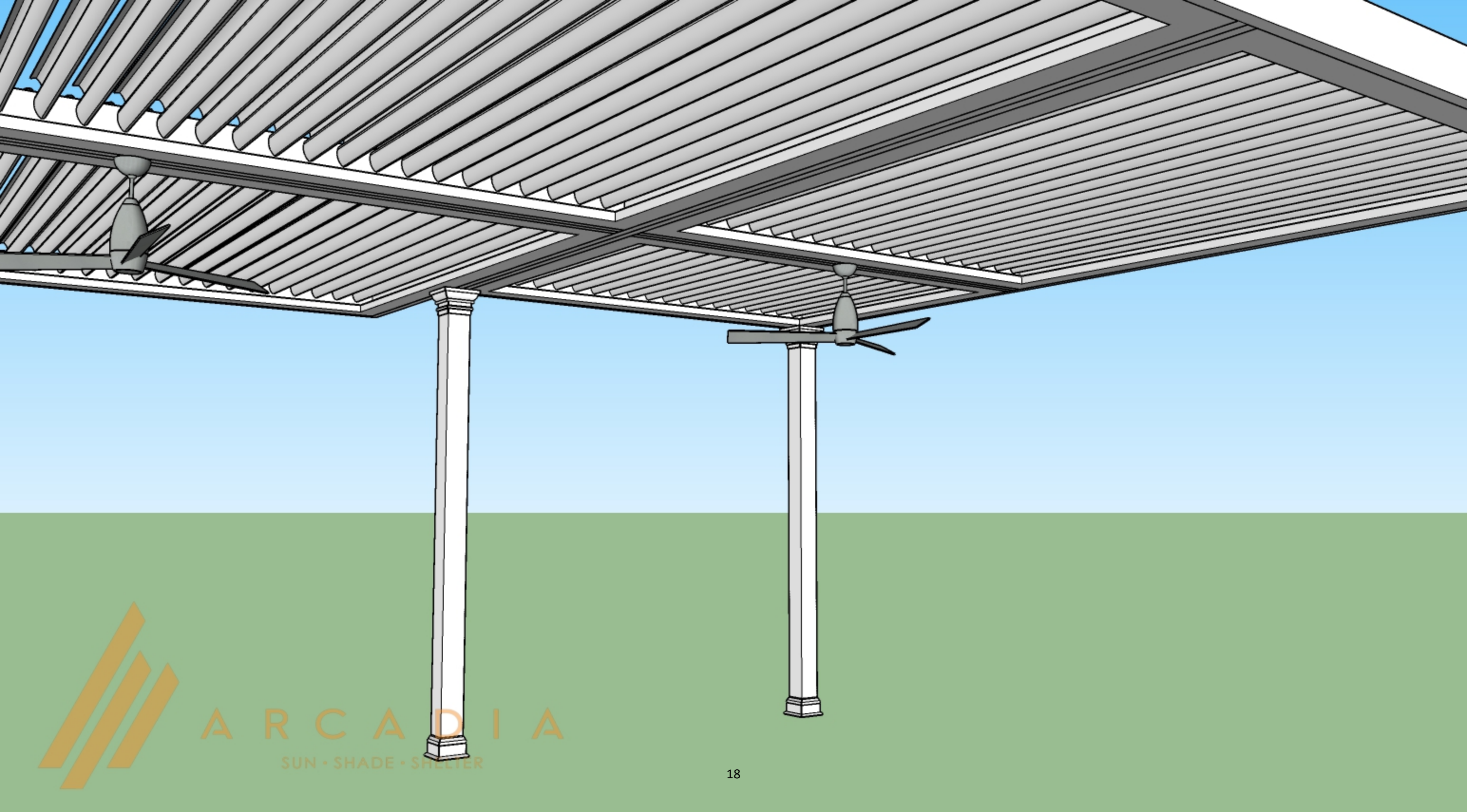


24' 0"

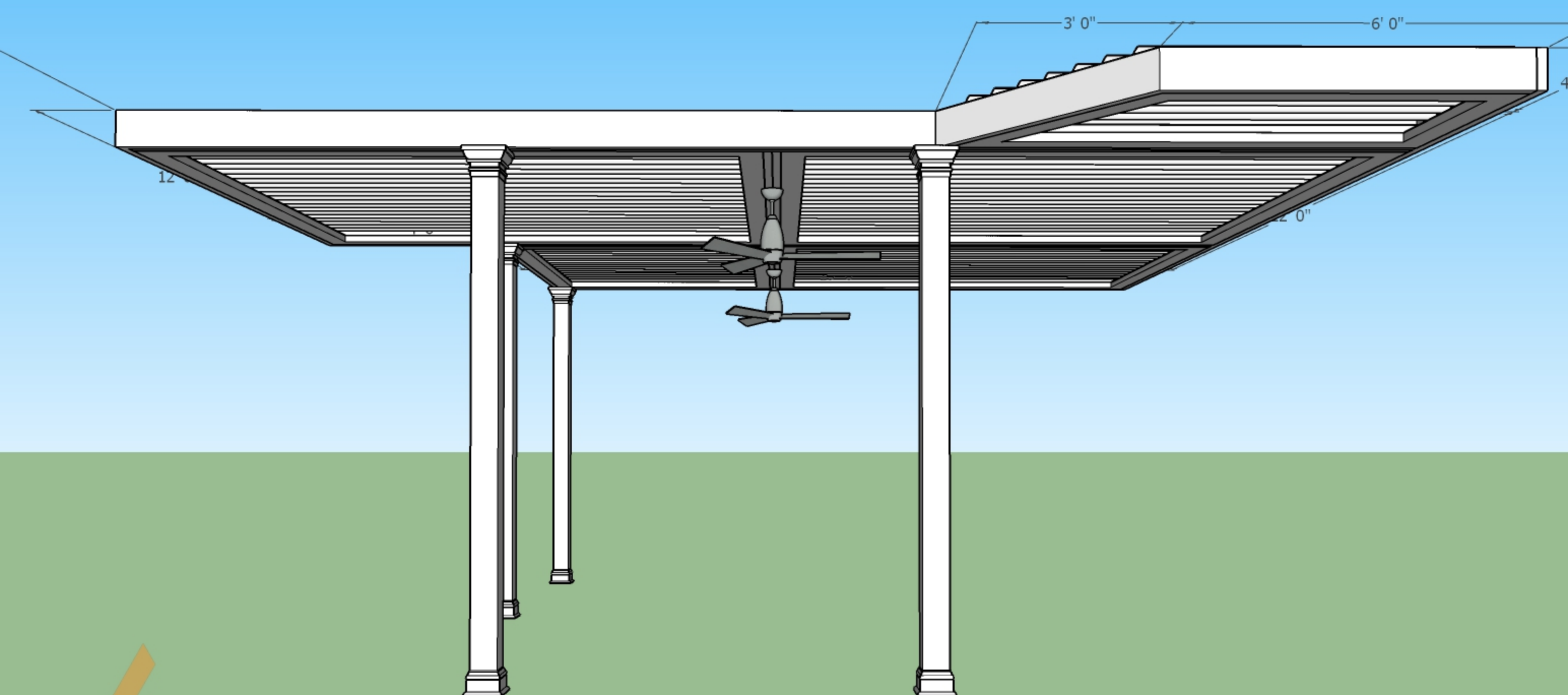


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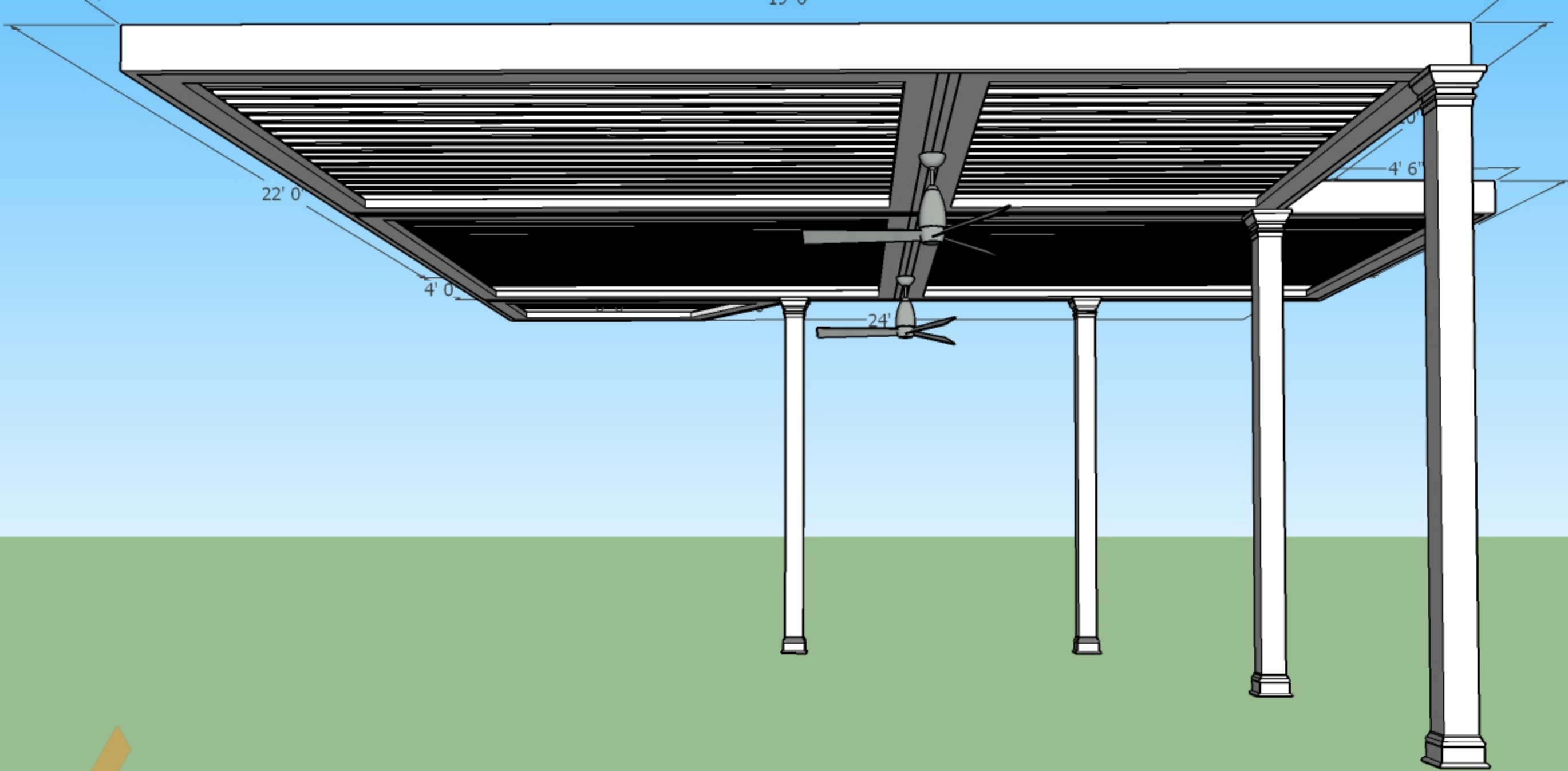
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ATTACHMENT #2

Letter of Denial



MEMORANDUM

TO: Tom Berl, Surfside Construction, 3418 Green Heron Ct, Seabrook Island, SC 29455
FROM: Joseph M. Cronin, Town Administrator/Zoning Administrator
SUBJECT: Zoning Permit Request for 2633 Jenkins Permit Road
DATE: October 9, 2018

Dear Mr. Berl:

We have reviewed your zoning permit application, submitted on behalf of John C. Butler and Jean W. Jones (owners), to allow for the installation of a new pergola system over a portion of an existing deck at the rear of **2633 Jenkins Point Road (Charleston County Tax Map Number 149-00-00-046)**.

Your request for a zoning permit for the above referenced property has been **DENIED** for the following reasons:

- The rear of the above referenced property abuts a marsh critical area which has been delineated on a survey by SCDHEC-OCRM. Pursuant to the town's Development Standards Ordinance (DSO), all structures which abut a marsh (exclusive of "open decks") shall be set back at least 25 feet from the OCRM critical line. "Open decks" are permitted to encroach into the 25-foot marsh setback; provided, however, no part of the deck may be closer than 15 feet from the critical line.
- Though the proposed pergola system is designed to allow water to pass through to the deck and ground below, the DSO defines a deck having a "**roof or other covering of any kind**" as a "porch" rather than a "deck."
- Therefore, in my opinion, the installation of a pergola system would require the covered portions of the existing deck to be reclassified as a "porch" rather than an "open deck," and the 25-foot marsh setback would apply. Because the pergola system would encroach into the 25-foot marsh setback, the zoning permit application has been denied.
- DSO Code References:
 - § 7.60.50. Marsh Setbacks. The minimum setback for a structure, **exclusive of open decks**, on a lot abutting the marsh shall be twenty-five (25) feet from the South Carolina Ocean and Coastal Resource Management critical area or the lot line, whichever is landward. No part of an open deck shall be closer than fifteen (15) feet from the critical area.
 - § 2.10. Definitions:
 - (o) Deck. An open and uncovered horizontal surface, attached and accessible to and being a part of the primary structure, which is constructed so that rain can

pass directly through it to the ground beneath. **A deck having a roof or other covering of any kind is defined to be a porch.**

- **(ccc) Porch.** A horizontal surface, attached and accessible to and being a part of the primary structure, which is constructed with or without walls and **with a roof or covering of any kind.** The term "porch" shall include any veranda, terrace, portico **or similar projection** from a main wall of a building and covered by a roof.

Right to Appeal

Any applicant who believes there has been an error in any order, requirement, decision, or determination by the Zoning Administrator in the enforcement of the DSO may submit a Notice of Appeal to the Board of Zoning Appeals, pursuant to § 19.40 of the DSO. Any such appeal must be initiated within 30 days from the date of this letter.

Variance Applications


Any applicant may submit a request for a variance from the requirements of the DSO by filing an Application for Variance to the Board of Zoning Appeals. In instances of unnecessary hardship, the Board of Zoning Appeals may authorize the granting of a variance from the requirements of the DSO upon finding that the request meets each of the following criteria:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography; and
- (b) Such conditions are peculiar to the particular piece of property involved and do not generally apply to other property in the vicinity; and
- (c) Because of these conditions, application of DSO on this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) Relief, if granted, would not cause substantial detriment to adjacent property, the public good or impair the purpose and intent of the DSO or the comprehensive plan

If you or the property owner would like to initiate an appeal or variance request, please contact our office as soon as possible.

If you have any questions about the contents of this letter, please feel free to contact me by phone at (843) 768-5321 or by email at jcronin@townofseabrookisland.org.

Respectfully submitted,



Joseph M. Cronin
Town Administrator/Zoning Administrator



ATTACHMENT #3

Notice of Appeal

NOTICE OF APPEAL - Form 1
Board of Zoning Appeals
TOWN OF SEABROOK ISLAND-COUNTY OF CHARLESTON

Date Filed: _____ (To be Completed by Office Administration)

Application Fee: \$ ^{150.00} 350.00 Permit Application#: _____ Appeal# _____

This form must be completed for a hearing on an Appeal (1) from the action of a zoning official, (2) application for a Variance or (3) application for Special Exception. Applications should be printed or typewritten. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) all must sign the Designation of Agent.

THE APPLICANT HEREBY APPEALS [indicate one with an X].
_____ From action of a zoning official as stated on attached Form 2.
_____ For a variance as stated on attached Form 3.
_____ For a Special Exception as stated on attached Form 4.

Applicant (s) [Please print]: John C. Butera & Jean Jones
Address: 2633 Jenkins Point Rd

Telephone: 610 710-1102

Owners(s) [if other than Applicant]
Address: _____

Telephone: _____

Property Address: 2633 Jenkins Point Road

Lot _____ Block _____ Tax Map # _____

Designation of Agent [Complete only if owner is not applicant]
I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date: _____
Tom Berl
Jean White Jones
Owner Signature(s)

Applicant's Certification
I (we) certify that the information in this application and attached Form 2, 3 or 4 is correct.
Date: _____
Jean White Jones
Applicant Signature(s)

Appeal from Action of Zoning Official - Form 2
Board of Zoning Appeals

Date Filed: _____ Permit Application No. _____ Appeal No. _____

1. Applicant hereby appeals to the board of zoning appeals from the action of the zoning official affecting the property described in the Notice of Appeal [Form 1] on the grounds that:

granting denial of an application for a permit to construct a Pergola was erroneous and contrary to provisions of the zoning ordinance in Section _____; or other action or decision of the zoning official was erroneous as follows:

See ATTACHED STATEMENT

2. Applicant is aggrieved by the action or decision in that:

See ATTACHED STATEMENT

3. Applicant contends that the correct interpretation of the zoning ordinance as applied to the property is:

See ATTACHED STATEMENT

4. Applicant requests the following relief:

See ATTACHED STATEMENT

Date: 10/9/18

Juan White Jones
Applicant signature

Appeal form Action of Zoning Official

1. My husband, John Butera, and I hereby appeal the denial of our recent application for a building permit to construct a Pergola on the back side of our home, over a portion of our open deck and covered outdoor kitchen.

We understand the denial was based on the fact that the proposed Pergola may be considered a roof and would therefore turn our open deck into a "porch" and the marsh set back guidelines for a "porch" are different than for an "open deck."

Currently we have an open deck and on the corner of the deck sits an outdoor kitchen area which is currently covered by a solid tin roof structure. (Pictures of current deck/outdoor kitchen and plans for Pergola have been submitted to Joe Cronin, Town Administrator and are available for review.)

Our proposal is to take down the solid roof covering the kitchen area and instead have the Pergola extend from the back of the house over to and on top of the outside kitchen.

We disagree that the construction of the Pergola, an open permeable system that allows water to return to the surface, turns our deck into a porch. Rather it is an architectural element that also acts as a sun shield on the deck.

2. We are currently unable to use and enjoy our deck due to the extreme heat/sun conditions. Mr. Butera suffers from multiple medical conditions, including cancer and diabetes, and his medical regime limits his sun exposure and tolerance. If we are not granted permission to erect the proposed Pergola over the deck, which will definitely shield that portion of the deck from direct sunlight and blasting heat, we will not be able to use and enjoy the outside of our new home at all.
3. The ordinance wording is ambiguous at best, however, we believe the proposed Pergola does not go against the intent of the ordinance. The ordinance was meant to prevent a solid roof or closed horizontal structure from being constructed within the defined marsh setback.

Our proposal clearly meets the 15 foot setback rule and we argue it also complies with the intent of the 25 foot setback in that it is an open system, that merely acts as a sun shade, but allows water to pass through and return to the surface. Our plan is to remove the current "solid roof" which butts out into the 25 foot setback and replace it with a permeable open system which is more in compliance with the intent of the ordinance.

The proposed Pergola does not transform our deck into a porch; is not designed to create a new separate and distinct living space; there is no access on top of it for one to walk, or place furniture; it is merely a system to help shade a portion of the current deck.

The Pergola is more like an architectural element than a “roof or a covering” as stated in the ordinance.

4. We respectfully request the Zoning Board grant our request and issue a permit allowing us to construct a Pergola over that portion of the deck described in our initial application.

Thank you for your time and consideration.



ATTACHMENT #4

Property Photos









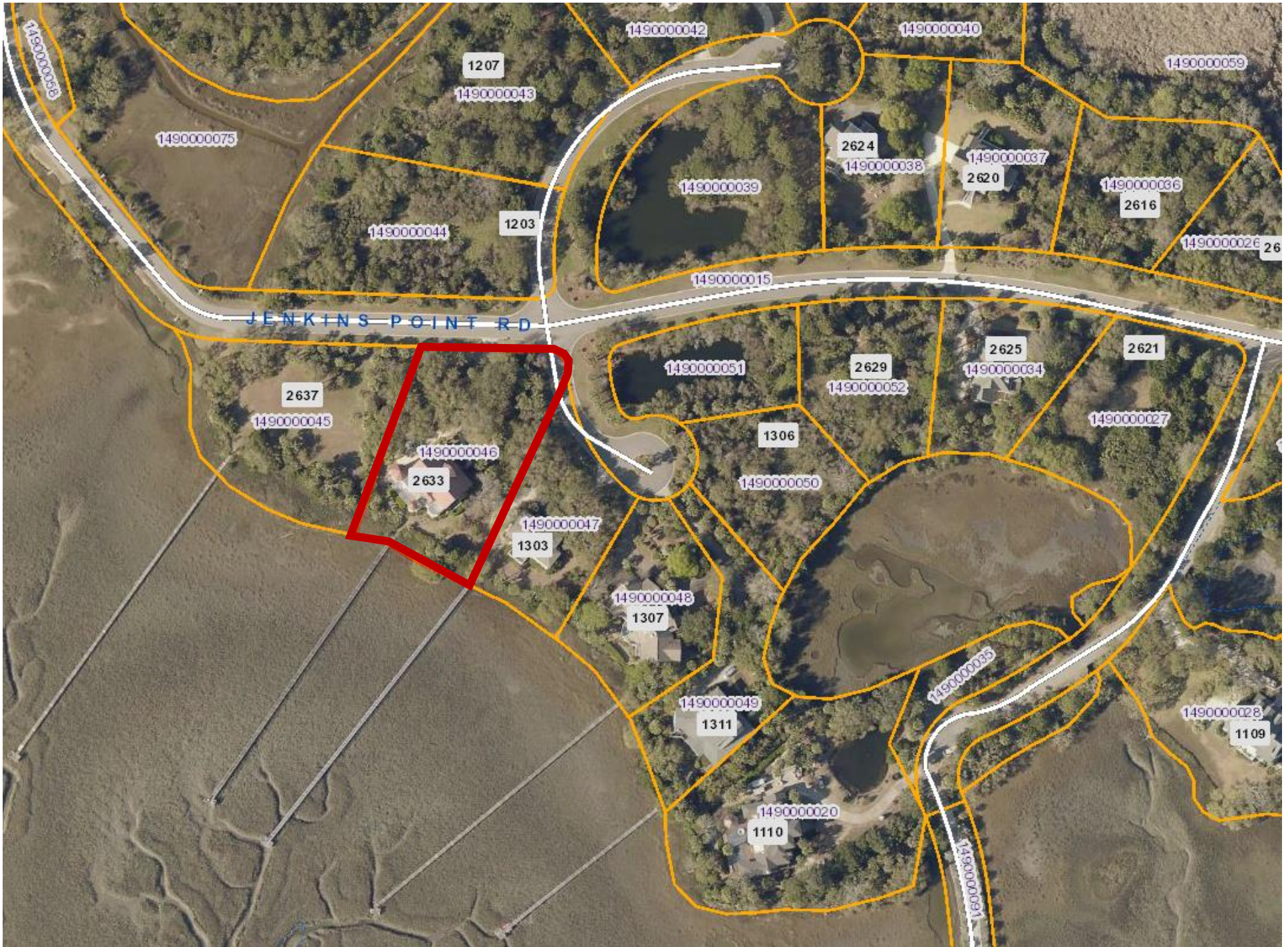






ATTACHMENT #5

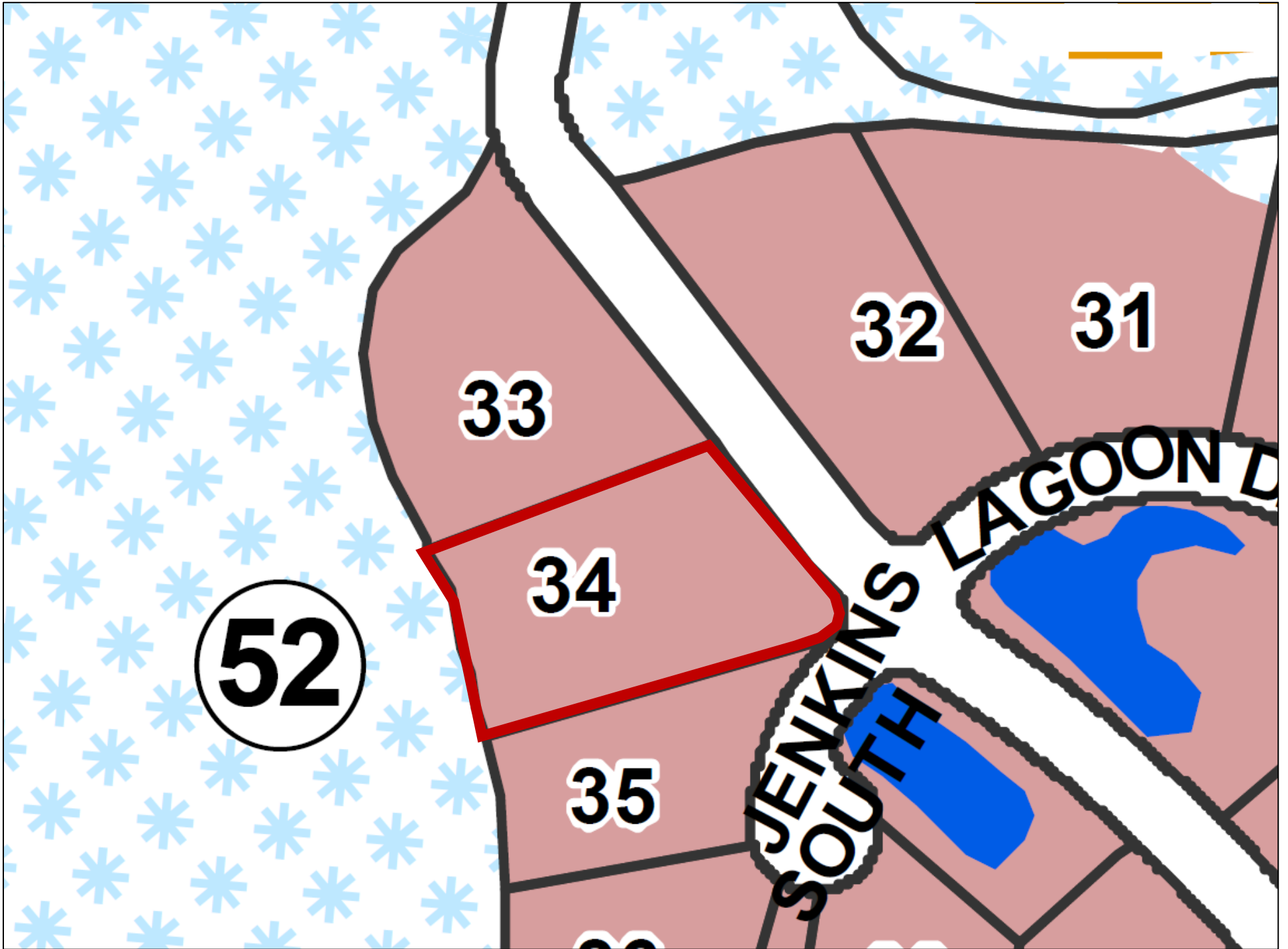
Aerial Image





ATTACHMENT #6

Zoning Map



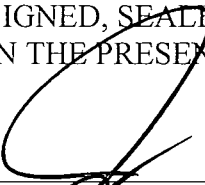


ATTACHMENT #7

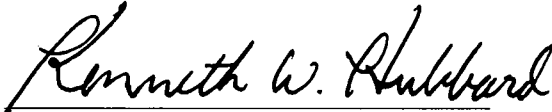
Title to Real Estate

WITNESS our hand and seal this 16th day of August, in the year of our Lord Two Thousand Eighteen and in the Two Hundred and forty-third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



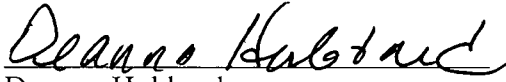
Witness #1



Kenneth W. Hubbard



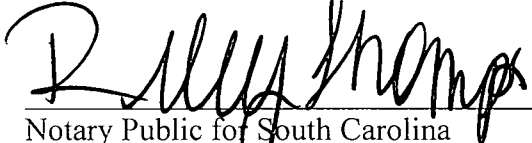
Witness #2



Deanna Hubbard

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

The foregoing instrument was acknowledged before me by Kenneth W. Hubbard and Deanna Hubbard, this 16 day of August, 2018.

 (SEAL)

Notary Public for South Carolina
My commission expires: _____

Riley Thompson
Notary Public for South Carolina
Commission Expires: September 19, 2027

EXHIBIT A

ALL that certain lot, piece, or parcel of land, together with the improvements thereon, situate, lying and being in the Town of Seabrook Island, Charleston County, South Carolina, and being shown and designated as Lot 34, Jenkins Point Plantation, on a plat entitled "FINAL PLAT OF JENKINS POINT PLANTATION, PHASE III, TOWN OF SEABROOK ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Anderson & Associates, dated March 20, 1998, and recorded in Charleston County RMC Office in Plat Book EC at Page 475.

Reference to said plat is hereby craved for a more complete description as to distances, courses, metes, and bounds.

ALSO

Together with a Non-Exclusive Easement for Ingress and Egress appurtenant to the above described property, on foot or by vehicle, over, upon and across the private roads as shown on the above description plat; said easement to be transferable and is necessary for access to the above described property and shall remain in existence until such time as said private roads are dedicated or are conveyed to Seabrook Island Property Owners Association, at which time this easement shall come to an end.

THIS CONVEYANCE IS SUBJECT TO THE FOLLOWING:

- (a) All covenants, obligations, restrictions and limitations contained in the Restate and Fifth modification of Protective Covenants for Seabrook Island Development, recorded in the RMC Office for Charleston County, SC in Book K-215, Page 23, and the Fourth Restated and Amended By-Laws of the Seabrook Island Property Owners Association recorded in the RMC Office for Charleston County in Book K-215, Page 1, which covenants are made applicable to the property hereby conveyed by Declaration dated March 30, 1995, and recorded in Book B-254, Page 588, said RMC Office.
- (b) Said property is conveyed subject to all easements as shown or mentioned on the aforesaid plat.
- (c) Taxes, user fees, and assessments not yet due and payable.
- (d) Interests created by, or limitation on use imposed by the Federal Coastal Zone Management Act or other Federal Law or by S.C. Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said state or federal laws.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record affecting subject property.

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 2633 Jenkins Point Road, Seabrook Island, SC 29455 bearing Charleston County Tax Map Number 149-00-00-046, was transferred by **Kenneth W. Hubbard and Deanna Hubbard** to **John C. Butera and Jean White E. Jones** on August 27, 2018.
3. Check one of the following: The deed is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____ (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit.):
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$1,684,000.00
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.

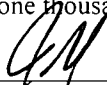
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: 1,684,000.00
 - (b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
 - (c) Subtract line 6(b) from Line 6(a) and place result here: 1,684,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$6,230.80

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as : Legal Representative


9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



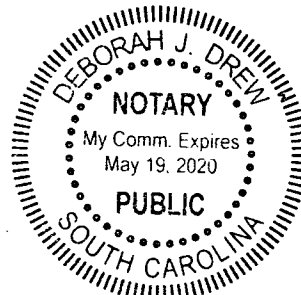
 Legal Representative
Randall J. Drew

 Print Name

Sworn to before me this 27th day of August, 2018.



 Notary Public for South Carolina
 My Commission Expires: _____



RECORDER'S PAGE



NOTE: This page **MUST** remain with the original document

Filed By:

RANDALL J DREW, LLC
 1156 BOWMAN RD.
 SUITE 200
 MT PLEASANT, SC 29464 (BOX)

RECORDED		
Date:	August 29, 2018	
Time:	10:23:54 AM	
<u>Book</u>	<u>Page</u>	<u>DocType</u>
0743	729	Deed
Elaine H. Bozman, Register Charleston County, SC		

MAKER:

HUBBARD KENNETH W AL

RECIPIENT:

BUTERA JOHN C AL

Note:

of Pages:

Original Book:

Original Page:

Recording Fee	\$ 10.00
State Fee	\$ 4,378.40
County Fee	\$ 1,852.40
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 6,240.80

DRAWER
CLERK

AUDITOR STAMP HERE
 RECEIVED From ROD
 Sep 05, 2018
 Peter J. Tecklenburg
 Charleston County Auditor

PID VERIFIED BY ASSESSOR
 REP MKD
 DATE 09/05/2018
 4



0743
Book



729
Page



08/29/2018
Recorded Date



5
Pgs



Original Book



Original Page



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Doc Type



10:23:54
Recorded Time



ATTACHMENT #8

Property Information Card

Charleston County, South Carolina

generated on 10/16/2018 11:52:13 AM EDT

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
1490000046		2633 JENKINS POINT RD, SEABROOK ISLAND	10/6/2018	2018	2017

Current Parcel Information

Owner	BUTLER JOHN C E JONES JEAN WHITE	Property Class Code	101 - RESID-SFR
Owner Address	2633 JENKINS POINT JOHNS ISLAND SC 29455	Acreage	.8300
Legal Description	Subdivision Name -JENKINS POINT PLANTATION Description -LOT 34 PHASE III PlatSuffix EC-182 PolTwp 009		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2018	\$604,300	\$882,500	\$1,486,800	\$5,623.73	\$0.00
2017	\$604,300	\$882,500	\$1,486,800	\$5,489.92	\$5,489.92
2016	\$604,300	\$882,500	\$1,486,800	\$5,162.84	\$5,162.84
2015	\$604,300	\$882,500	\$1,486,800	\$5,442.34	\$5,442.34
2014	\$511,000	\$1,054,000	\$1,565,000	\$18,216.37	\$18,216.37

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
HUBBARD KENNETH W	0743 729	8/27/2018	Ge		\$1,684,000
COLATSKY THOMAS J	E443 031	4/2/2003	Ge		\$380,000
HORSESHOE CREEK DEVELOPMENT	V289 387	9/3/1997	Ge		\$280,000
NOT SUPPLIED	E267 652	3/28/1996	Ge		\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	2008	1.75	03	4,591	
R01	WALKWAY	Dock Walkway	1998	0	0		1,592
R01	WALKWAY	Dock Walkway	1998	0	0		54



ATTACHMENT #9

Public Hearing Notice (Post & Courier)

TOWN OF SEABROOK ISLAND
2001 SEABROOK ISLAND RD
JOHNS ISLAND SC 29455
Attn: Faye Allbritton

AFFIDAVIT OF PUBLICATION

The Post and Courier

State of South Carolina

County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

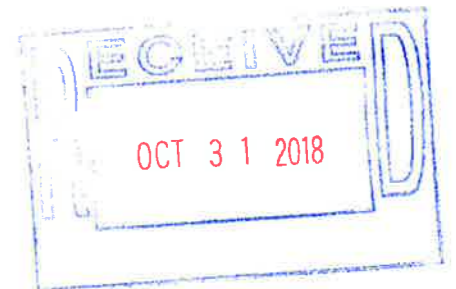
10/26/18 Fri PC
10/26/18 Fri CNW

at a cost of **\$90.12**
Account# **108294**
Order# **1739351**
P.O. Number:

Subscribed and sworn to before
me this 29th day
of October
A.D. 2018

[Signature]
advertising clerk

[Signature]
NOTARY PUBLIC, SC
My commission expires



**TOWN OF SEABROOK ISLAND, SC
NOTICE OF PUBLIC HEARING**
The Town of Seabrook Island Board of Zoning Appeals will conduct a Public Hearing at 2:30 pm on Thursday, November 8, 2018, at Seabrook Island Town Hall (2001 Seabrook Island Road). During the meeting, the board will hear public comments and consider the following appeal:
APPEAL #38
APPLICANT:
John C. Butera & Jean W. Jones
ADDRESS:
2633 Jenkins Point Road
TAX MAP #: 149-00-00-046 (LT 34, BLK 32)
ZONING DISTRICT: SR Single-Family Residential
PURPOSE: Applicant is appealing the Zoning Administrator's determination that a pervious pergola system constitutes a "covering of any kind," thereby requiring a 25-foot marsh setback for a "covered porch" rather than a 15-foot marsh setback for an "open deck."
The meeting will be open to the public. Documents relating to the appeal may be viewed at Town Hall during regular business hours. For more information, please call (843) 768-9121.
AD# 1739251



ATTACHMENT #10

Records from Variance Application # 149
2923 Deer Point Drive (2014)

**THE STATE OF SOUTH CAROLINA
TOWN OF SEABROOK ISLAND**

IN RE: REQUEST FOR VARIANCE BY MARK AND VALERY DOANE

**BOARD OF ZONING APPEALS
93-1644**

The Town of Seabrook Island Board of Zoning Appeals held a public hearing on April 16, 2014 to consider Applicants' request for a variance from the application of Section 2 – Definitions and Section 7 – Minimum Setbacks of the Development Standards Ordinance as it pertains to the particular piece of property cited in variance application # 149.

The criteria for a variance as required by SC Code §6-29-800(A)(2)(a)-(d) are as follows:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property.
- (b) These conditions do not generally apply to other property in the vicinity.
- (c) Because of these conditions, the application of the DSO to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) The authorization of the requested variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of this variance.

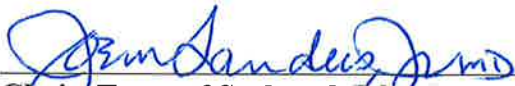
Based upon the documentation submitted as part of this application and testimony presented at the public hearing, the Board of Zoning Appeals finds that the application does not meet the criteria and therefore orders that the request for a variance be denied. Specifically, this Board finds:

1. The language contained in the DSO (specifically Sections 2 and 7) were in place and were precise when the application was submitted to the Town requesting a building permit. The Town was diligent in its review and legally correct in denying the permit.
2. The builder and property owners submitted a modified plan, which was subsequently approved by the Town, and proceeded with construction. Clearly, they were aware that their original plan was not in compliance with the DSO as well as the provisions of the DSO when they submitted the modified plan. After completion of the construction and occupation of the property, the request for a variance was submitted. No request for the variance was made prior to construction. The variance was essentially an attempt to obtain approval for the original plans.

3. South Carolina law is quite specific as to criteria which must be met in order to have a variance approved. The hearing failed to identify any "extraordinary and exceptional" conditions upon which to grant a variance. We are also not convinced that the application of the DSO to the particular piece of property would effectively prohibit or unnecessarily restrict the utilization of the property. Rather, property owner merely cannot build that which is clearly prohibited.



For these reasons, Applicants' request for a variance is denied by a vote of 3-2 of this Board.

THE BOARD OF ZONING APPEALS

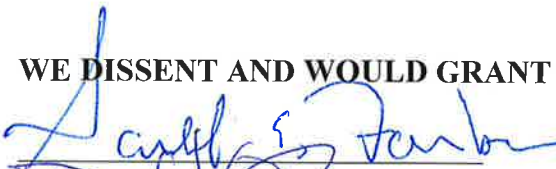
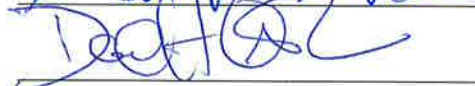

Chair, Town of Seabrook Island
Board of Zoning Appeals

Date: May 2, 2014, 2014

WE CONCUR IN DENYING THE VARIANCE:

WE DISSENT AND WOULD GRANT THE VARIANCE:

Search Mail Search Web

robert

Spam More Collapse

3. South Carolina law is quite spe variance approved. The hearin conditions upon which to grant a the DSO to the particular piece restrict the utilization of the prop is clearly prohibited.

For these reasons, Applicants' request fi

ownload

Date: 5/11, 2014

WE CONCUR IN DENYING THE V

Robert Augliato

WE DISSENT AND WOULD GRAN



NOTICE OF APPEAL - Form 1
Board of Zoning Appeals
TOWN OF SEABROOK ISLAND-COUNTY OF CHARLESTON

Date Filed: 3/3/2014 (To be Completed by Office Administration)

Application Fee: \$ 350.00 Permit Application#: _____ Appeal# 149

This form must be completed for a hearing on an Appeal (1) from the action of a zoning official, (2) application for a Variance or (3) application for Special Exception. Applications should be printed or typewritten. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) all must sign the Designation of Agent.

THE APPLICANT HEREBY APPEALS [indicate one with an X]:

- From action of a zoning official as stated on attached Form 2.
 For a variance as stated on attached Form 3.
 For a Special Exception as stated on attached Form 4.

Applicant(s) [Please print]: John Dugger
Address: 3670 Coastal Crab Rd. Sweetgrass Custom Bldgs
Mt. Pleasant, SC 29446
Telephone: 843-478-6668

Owners(s) [if other than Applicant] Mark & Valerie Doane
Address: 2923 Deer Point DR
Seabrook Island, SC 29455-6232
Telephone: 843-768-3532

Property Address: 2923 Deer Point DR
Seabrook Island, SC 29455-6232
Lot 18 Block 49 Tax Map # 149-14-00-026

Designation of Agent [Complete only if owner is not applicant]
I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date: 3/3/14

Mark R Doane
Valerie C Doane
Owner Signature(s)

Applicant's Certification

I (we) certify that the information in this application and attached Form 2,3 or 4 is correct.

Date: 3/3/14

[Signature]

Applicant Signature(s)

VARIANCE APPLICATION - Form 3
Board of Zoning Appeals
TOWN OF SEABROOK ISLAND-COUNTY OF CHARLESTON

Date Filed: 3/3/14 (To be Completed by Office Administration)
Permit Application#: _____ Appeal# 149
Variance

1. Applicant hereby appeals to the Board of Zoning Appeals for a variance from the strict application to the property described in the Notice of Appeal [Form 1] of the following provision of the Zoning Ordinance: Sec. 7.60.50 Marsh Setbacks

so that a zoning permit may be issued to allow use of the property in a manner shown on attached plot plan, described as follows: Attachment 2, lower deck completion

for which a permit has been denied by a zoning official on the grounds that the proposal would be in violation of the cited section (s) of the Zoning Ordinance.

2. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by State law and the ordinance are met by the following facts:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property as follows:

b. These conditions do not generally apply to other property in the vicinity as shown by:

c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows:

d. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:

please see attachment 4 for description

3. The following documents are submitted in support of this application:

Deed; Attachment 1 - ARC Approved Drawing; Attachment 2 - As Built Drawing showing proposed modifications; Attachment 3 - Photos; Attachment 4 - Description of Modifications.

**[An accurate, legible plot plan showing property dimensions and location of all structures and improvements must be attached to a variance application]

[Signature]
Signature of Applicant

3/3/14
Date

ATTACHMENT 4 - Description of Variance Request

Requesting Variance to Sec. 7.60.50 Marsh Setbacks.

Requesting Variance to complete decking on approximately 7' of decking on one area and 8' of decking on second area. (See attachment)

Areas are open deck areas that were determined at permitting to not be considered as for the 15' setback for open decks because they were covered by another open deck on the upper structure. They were approved and constructed based on the 25' OCRM setback, with the intention of later variance request.

Request for variance is for the purpose of completing open deck area as originally designed by Architect and approved by Seabrook Island ARC

June 8, 2011

Mark & Valerie Doane
11 Bear Brook Court
Clifton Park, NY 12065-2738

Re: Block 49 Lot 18 – 2923 Deer Point Dr.

Dear Mr. & Mrs. Doane,

On June 7, 2011 the Architectural Review Committee approved the following motion regarding the Conditional Plans for Block 49 Lot 18:

“...to approve the Conditional plans for Block 49 Lot 18 with the stipulations that the Jasmine in the landscape plan be a non-invasive variety, the generator stand be restudied and details on the fuel source be provided, and that final color, siding, lighting and landscaping details be submitted to the ARC for review. Final color approval will not be granted until a 6’ square sample (with trim colors(s) if applicable) is painted on the house and approved by the ARC. Approval of the landscape plan is not final until the plantings are reviewed by the ARC on-site.”

The approved plans (per stipulations above) are:
“Doane Residence” prepared by Architrave, Inc.
- Sheets A-2.01 - 2.04 dated 5/27/11

Landscape, Grading and Tree Protection plans prepared by Landplan Associates dated 4/19/11.

The approved materials/colors are:
Siding: Cementitious shake/t.b.d.
Trim: Composite boards/Charleston Green
Roof: Fiberglass Shingles/Certainteed “Moire Black”
Foundation: Brick
Railings: Powdercoated aluminum/Charleston Green
Columns: Permacast/Charleston Green

No exterior lighting is approved at this time.

The property owner is responsible for informing the ARC if, at any step of the process, his/her plan deviates in any way from the approved plans. If it is found that deviations have been made for which

the ARC has not issued written approval, the property owner shall be subject to the sanctions set forth in ARC Policies & Procedures Appendix B.

Enclosed is a Construction Commitment Form that you and your contractor must complete and sign. This should be returned to the ARC Office with 3 complete sets of the approved plans, a PDF disk with the house plans, lighting, landscaping and colors, and a \$12,000.00 construction deposit (\$6,000.00 each from the owner and the contractor). Upon receipt of these items the plans will be stamped as approved and returned to you. Also enclosed are the ARC Policies & Procedures for Residential Development and a copy of ARC Policies & Procedures §11 – “Construction Site Guidelines.”

Per ARC Policies & Procedures, this Conditional Approval is valid for one year from the approval date. Additionally all construction must be completed within fifteen months of the date the Building Permit is issued by Charleston County. A copy of the Building Permit must be delivered to the ARC Office prior to beginning construction. Additional documents that must be provided to the ARC office during the construction phase are: an as-built foundation survey, an as-built final survey and a copy of the Certificate of Occupancy.

Please contact me if you need any additional information.

Very truly yours,

Heather Paton
Assistant Executive Director

cc: Bill Marshall

March 13, 2014

Dear Neighbors:

On May 1st, 2013, Valerie and I received our Certificate of Occupancy for our new home at 2923 Deer Point Drive.

We are sending you this letter because we have applied to the Town of Seabrook to grant us a variance from Zoning Ordinance § 7.60.50 -Marsh Setbacks, and a public hearing regarding our application will be convened on Wednesday, April 16th, 2014 at 10:00am at the Town Hall.

As we will explain in the next few paragraphs, we first want to reassure you that our variance request has nothing to do with changing the outer dimensions of either our deck or our house. We are not extending anything toward the marsh. Essentially, our variance request is merely to complete the floor on the middle level of our existing deck structure.

The circumstances regarding our request for a variance follow:

In late summer 2011, we received final ARC approval for our plans to build a reverse floor-plan type of home. As with most reverse floor plan homes, our primary living space is on the upper level, and the Seabrook Island ARC approval included plans for an open deck, including floors, on both the upper and middle levels. See Attachment 1 for a drawing of the middle level floor plan, as approved by the ARC.

The Town of Seabrook Zoning Ordinance § 7.60.50 - Marsh Setbacks, states, "*The minimum setback for a structure, exclusive of open decks, on a lot abutting the marsh shall be twenty-five (25) feet*" from the critical line. So why are we requesting a variance to Ordinance § 7.60.50? It has to do with the definition of an open deck. At some point, the Town modified the definition of a deck to include a clarification that, "*A deck having a roof or other covering of any kind is defined to be a porch.*" In our case, this well intentioned clarification meant that our upper deck floor, even though it is pervious to water, was considered a covering for the middle deck, hence portions of the middle deck were deemed by definition to be a "porch". As a result of the "deck" vs. "porch" clarification, we were not able to put a floor on those sections of our middle level deck that fell with the 25 foot set-back requirement.

Perhaps it was unfortunate that no one on the Seabrook ARC seemed to be aware of the Town's clarification of "deck" vs. "porch", however, it left us in a very awkward spot. In order to obtain ARC approval, final structural engineering, along with detailed drawings had to be submitted for review, prior to approval. We were both very relieved when final approval was granted by the ARC, and thus we began the process of selecting, and then signing a builder. Later we learned of the Town zoning issue.

At that point, we really had no other viable alternative other than leaving "holes" in the affected areas of our middle level deck floor. Attachment 2 shows a revised drawing of the middle level deck which is the way the deck was finally constructed. The only change versus the approved ARC design was that deck flooring was removed from portions of the middle level deck.

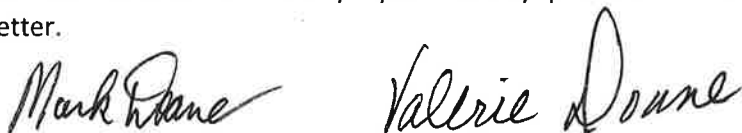
As built, our deck structure was the design approved by the ARC. It was designed and built to support full floors on both the upper and middle levels. **We are not requesting approval to change the outer dimensions of our deck structure in any way.** Period. As such, there would be no further encroachment of the deck to the marsh. We are asking for a variance to allow the open "holes" on the middle level to be filled-in, as shown in attachment 2, with a pervious IPE deck, similar to that used on the other portions of both decks.

We believe that the Town's clarification of the definition of a deck which added the sentence, "A deck having a roof or other covering of any kind is defined to be a porch." was well intentioned. However, we believe that it created a situation, which we stumbled into, that falls into the category of "unintended consequence". We do not believe that there will be any detrimental impact to the marsh by filling in the "holes" in our middle level deck with pervious flooring. In addition, there will be no visual impact. On the other hand, it will allow the deck to become functional.

While it could easily be argued that the Town's modified definition of a deck should be revised to be better defined, we suspect the more pragmatic approach may be to leave the definition as it stands, and for variances to be granted on an individual basis, such as this, where it makes sense.

Finally, before submitting our variance request to the Town of Seabrook, we went back to the Seabrook Island ARC to confirm that our previous approval by the ARC was still valid. The ARC reaffirmed its approval, as shown in Attachment 1, is still valid, subject of course to the outcome of this hearing.

Thank you for your kind understanding, and we apologize for all the detail and data. Actually it is a requirement of the variance process that all this information be sent to you by Certified Mail. Please feel free to contact us directly if you have any questions or need clarification of the content of this letter.

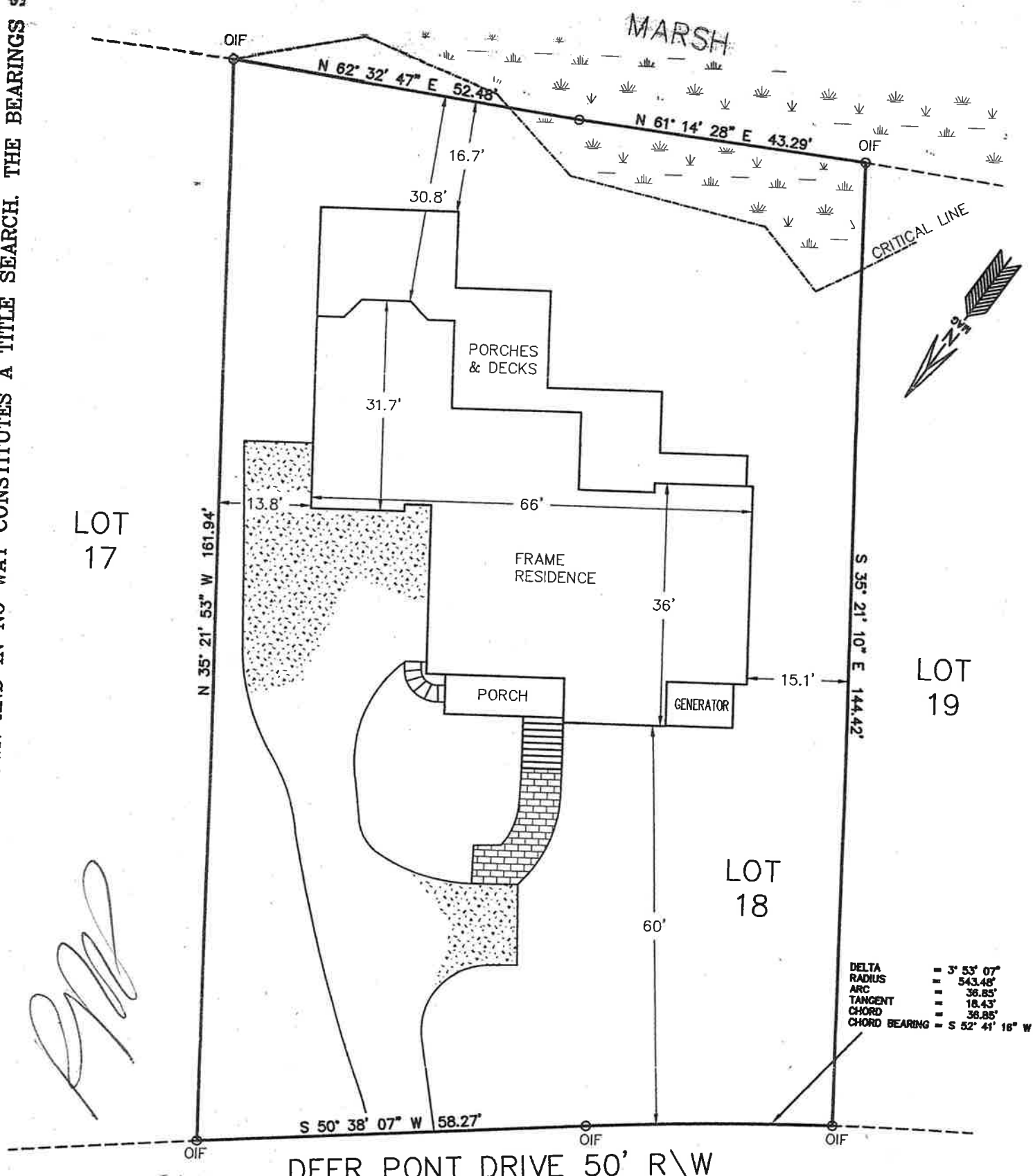


Mark and Valerie Doane
2923 Deer Point Dr
Seabrook Island, SC 29455-6232
Home Phone: 843-768-3532
e-mail: mark@doanes.net valerie@doanes.net

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THIS SURVEY IS BASED ON THE REFERENCES SHOWN AND IN NO WAY CONSTITUTES A TITLE SEARCH. THE BEARINGS SHOWN

ANYTHING OUTSIDE THE PRESCRIBED BOUNDARIES IS SHOWN FOR DESCRIPTIVE PURPOSES ONLY

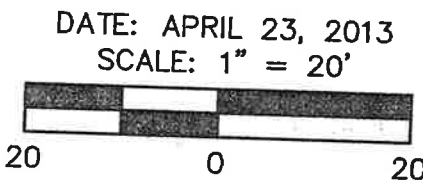


Handwritten signature/initials

DELTA	3° 53' 07"
RADIUS	543.48'
ARC	36.85'
TANGENT	18.43'
CHORD	36.85'
CHORD BEARING	S 52° 41' 16" W

DEER POINT DRIVE 50' R\W
 2923 DEER POINT DRIVE
 AKA LOT 18 BLOCK 49
 TOWN OF SEABROOK ISLAND
 CHARLESTON COUNTY, SOUTH CAROLINA

- NOTES**
- 1) REFERENCE PLAT BOOK BD PAGE 025
 - 2) TMS # 149-14-00-026
 - 3) REQUESTED BY: DOANE



- LEGEND**
- OIF 1" OPEN IRON FOUND
 - CIF 1" CRIMPED IRON FOUND
 - RF #5 REBAR FOUND
 - RS #5 REBAR SET
 - CP COMPUTED POINT

SUBJECT PROPERTY LOCATED IN
 FLOOD ZONE AE ELEV 14
 FIRM PANEL 45019C-0785-J
 DATED NOV. 17, 2004

JOHN E. WADE JR., RLS
 POST OFFICE BOX 686
 ISLE OF PALMS
 SOUTH CAROLINA, 29451
 (843) 886-6262

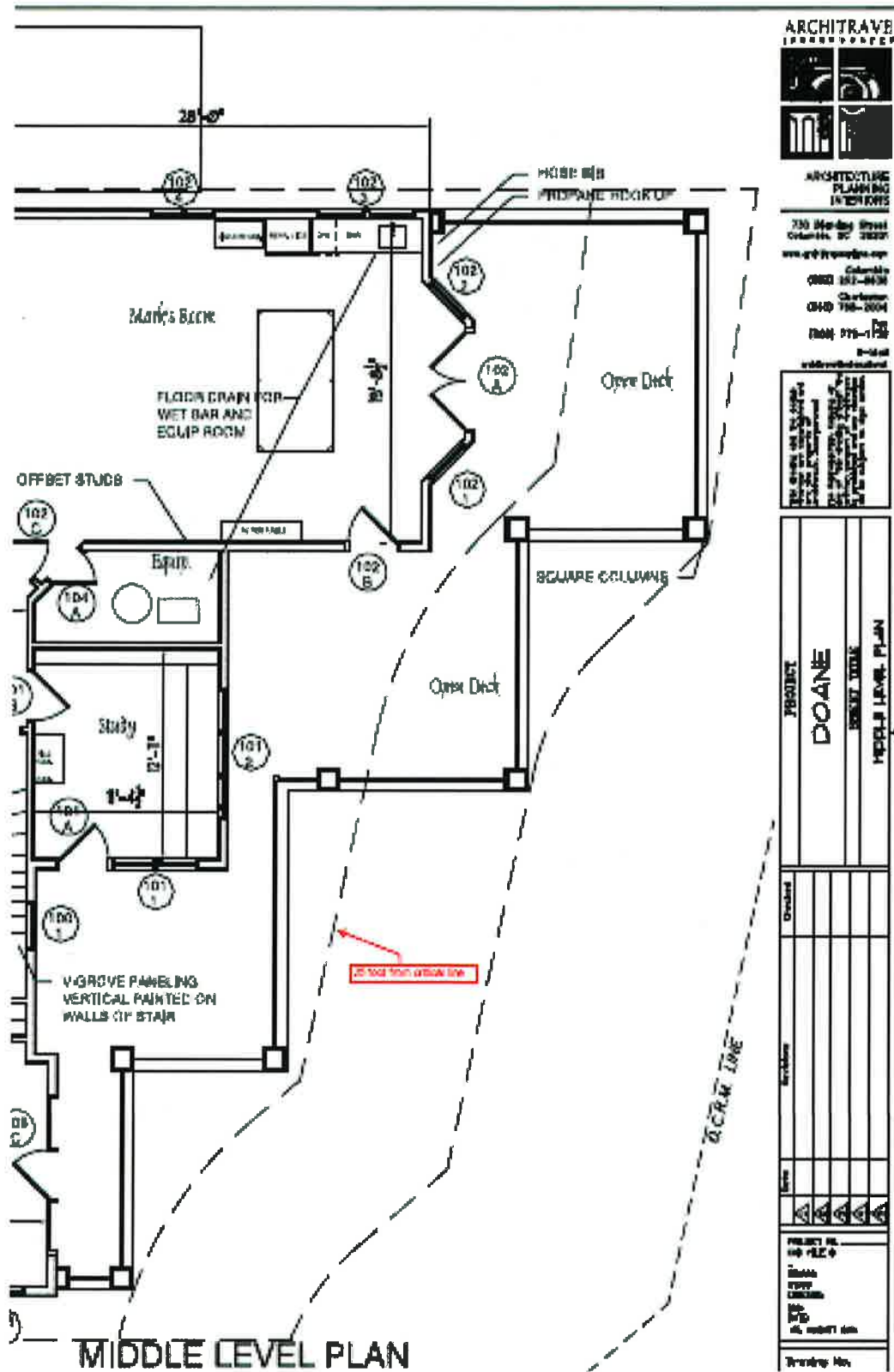
FILE #190-11



"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, 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."

Handwritten signature of John E. Wade Jr.
 JOHN E. WADE JR., R.L.S.
 SOUTH CAROLINA REG. NO. 13171

ATTACHMENT 1 - MIDDLE LEVEL DECK PLAN AS APPROVED BY SEABROOK ARC



ARCHITECTURE
PLANNING
INTERIORS

730 Harding Street
Columbia, SC 29201
www.architrave.com
Columbia 803-733-8434
Charleston 843-798-2004
Duke 776-1122

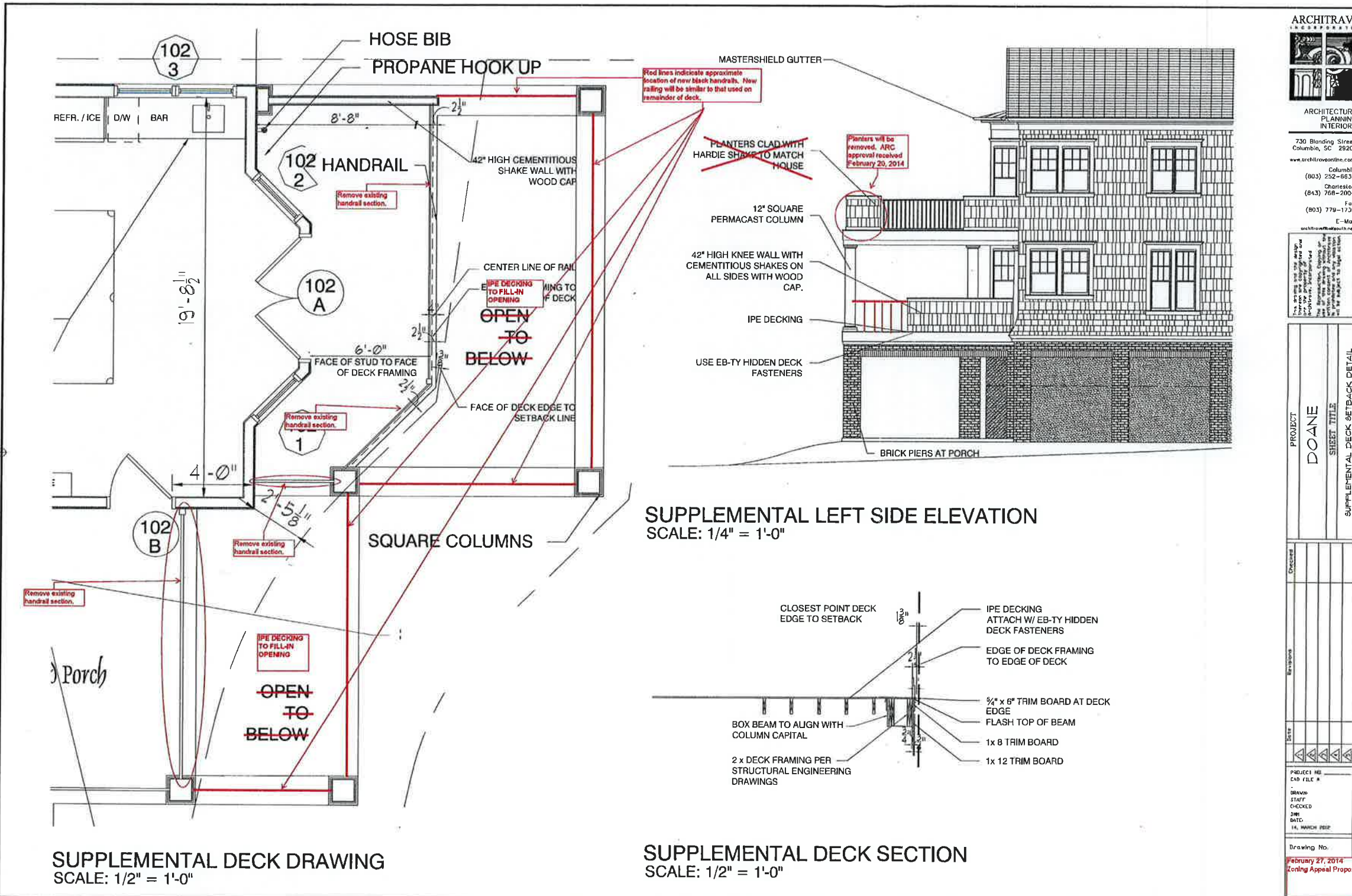
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PROJECT	DOANE
DESIGN TEAM	MIDDLE LEVEL PLAN

Checked	
Architect	
Scale	

PROJECT NO.	14-024
DATE	3/13/14
BY	J. DOANE
IN CHARGE	

Working No.	
-------------	--



ARCHITRAVE
ARCHITECTURE
PLANNING
INTERIORS

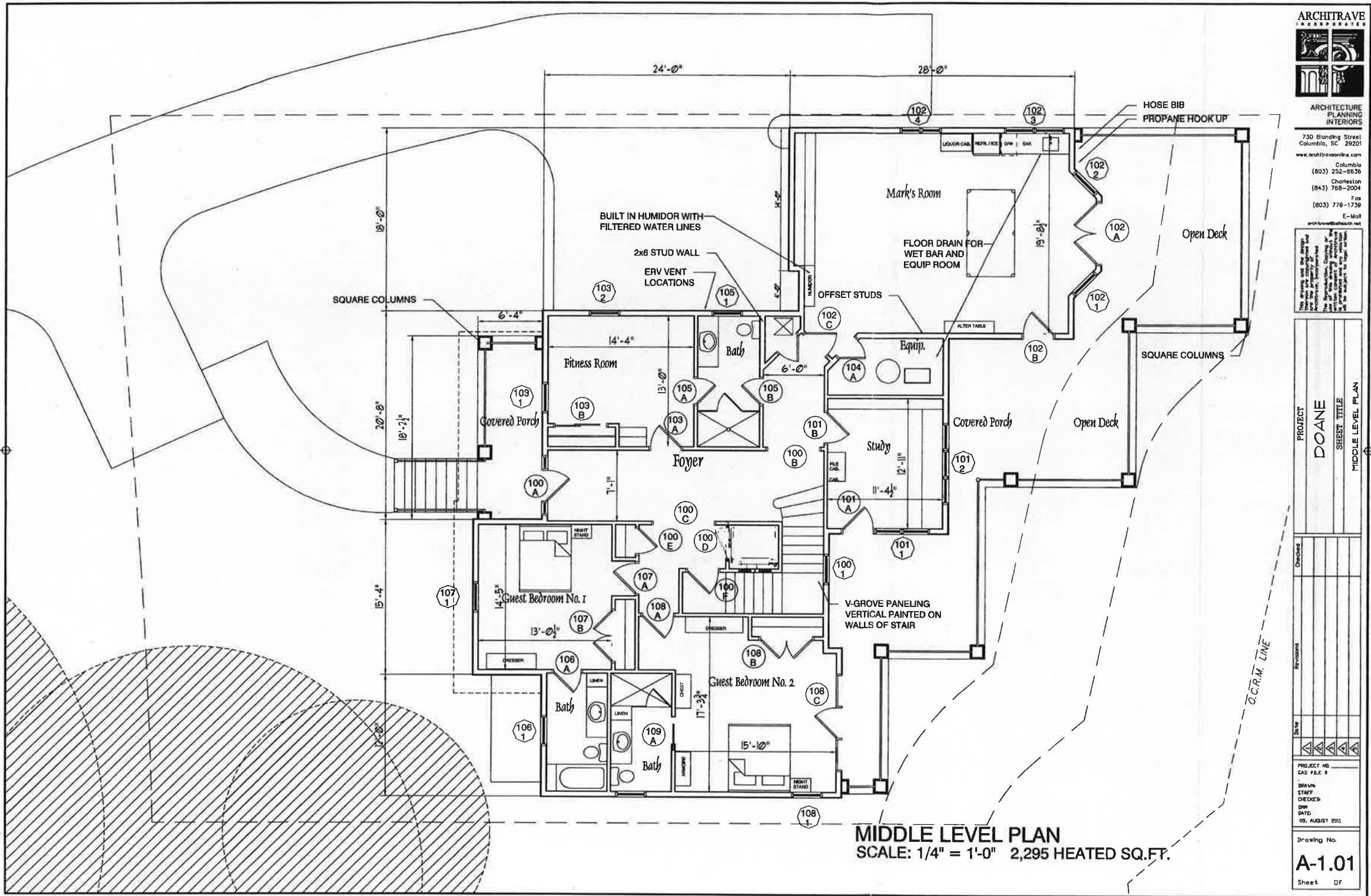
730 Blending Street
Columbia, SC 29201
www.architrave.com
Columbia (803) 252-6636
Charleston (843) 768-2004
Fax (803) 779-1739
E-Mail architrave@architrave.com

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PROJECT	DOANE
SHEET TITLE	SUPPLEMENTAL DECK SETBACK DETAIL

Checked	
Revisions	
Date	
PROJECT NO.	
CAD FILE #	
DRAWN	
STAFF	
CHECKED	
DATE	14, MARCH 2012
Drawing No.	
	February 27, 2014 Zoning Appeal Proposal

ATTACHMENT 2, AS SHOWN ON BUSINESS DEVELOPMENT AND ARCHITECTURAL DRAWINGS



MIDDLE LEVEL PLAN
 SCALE: 1/4" = 1'-0" 2,295 HEATED SQ.FT.



ARCHITRAVE
 ARCHITECTURE
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PROJECT	DOANE
SHEET TITLE	MIDDLE LEVEL PLAN

Checked	
Reviewed	
Drawn	
Project No.	
CAD File #	
Drawn	
Staff	
Checked	
DWG	
Date	05 AUGUST 2011

Drawing No.
A-1.01
 Sheet DF

ATTACHMENT 1 - Drawing as approved by Seabrook ARC





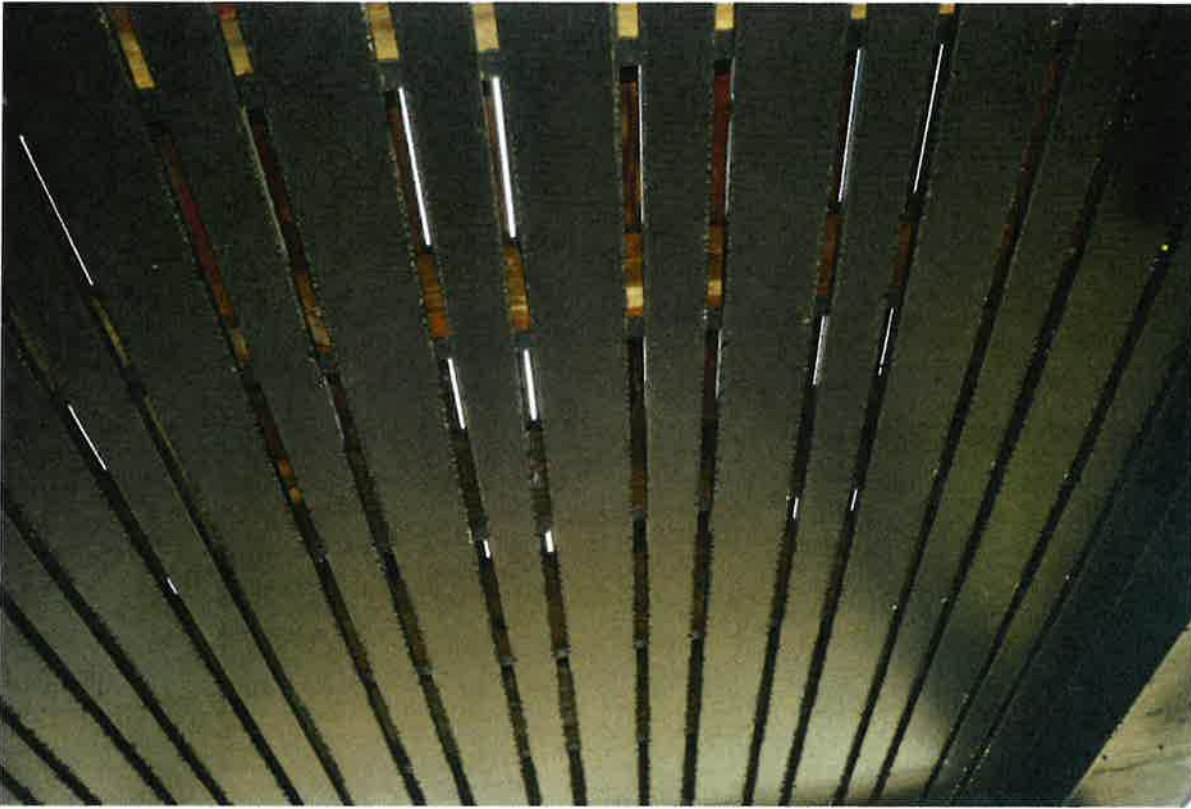


ATTACHMENT 3 - PHOTOS

Pictures of existing deck structure showing middle level "holes" which are to be filled-in with Ipe flooring.



View of pervious overhead deck structure above "hole" which is to be filled-in.



Looking through "hole" in middle level deck which is to be filled-in. Note pervious ground covering below hole.



Lynda M. Whitworth

From: Warren McCulloch [mccwa@hotmail.com]
Sent: Monday, April 14, 2014 10:09 PM
To: gramndoc@yahoo.com; quag31@yahoo.com; daveh1914@gmail.com; jerryfarber@bellsouth.net; wsecondwind@yahoo.com
Cc: rpierce@townofseabrookisland.org; lmanning@townofseabrookisland.org
Subject: 2923 Deer Point - Zoning Appeal

April 15, 2014

Dear Zoning Board Appeals Committee:

I am sending you this letter because I believe the Town of Seabrook should grant the Doane's a variance from Zoning Ordinance § 7.60.50 -Marsh Setbacks for their Deer Point Property.

First, the Seabrook Island ARC has already approved the open deck design. The Doane's request to complete their deck design does nothing but "fill in the blanks". There is no "encroachment into any marsh setbacks.

Secondly, this is a deck, not a porch. Homes on Seabrook with their main living area above the lower levels tend to have walk-out decks on their main living area-as well as lower decks. There are multiple examples of this design already on Seabrook - including here on Marsh Gate.

Third, we just completed our new branding initiative "make it uniquely yours". The owners of new homes here on Seabrook put a lot into building their new home and we should encourage that "uniqueness". While I do believe we should have new building guidelines, we should also encourage new homeowners to build their dream home- as long as it meets ARC guidelines- which this property does.

Thank you for your time,
Sincerely,

Warren McCulloch
3075 Marsh Gate Drive

TO: Randy Pierce and The Board of Zoning Appeals: Joe Sanders,
Chairman; Robert Quagliato, Vice Chairman; Gerald Farber; Dave Osborn;
Walter Sewell

FROM: Concerned Deer Point Property Owners

SUBJECT: Petition to deny a variance to the regulations on setbacks at 2923
Deer Point Drive

All but one of the property owners who have signed this petition have developable building lots on one or both sides of their existing houses. They do not want their marsh views compromised in the same manner as the houses on each side of 2923 Deer Point Drive have been. To allow this variance request to be approved would further compromise views and would certainly further erode property values, besides setting a dangerous precedent for the future with any marsh building projects.

TO: MEMBERS OF THE BOARD OF ZONING APPEALS, SEABROOK ISLAND

FROM: CONCERNED PROPERTY OWNERS ON DEER POINT DRIVE, S.I.

Objections to variance being sought by Mark and Valerie Doane, 2923 Deer Point Drive, S.I.

1. ARC final approval of the Doane plans to build did NOT permit the completion of two decks that would go out to the 15 foot setback line. Further, the ARC's consulting architect opined that permitting what was built was NOT the intention of the regulation in place at the time, and that regulation according to current ARC Chairman has been restated in a more specific and restrictive way: that houses may only have a structure on the LOWER floor that is 15 feet from the marsh setback line with any other parts of the upper house that cover the lower deck to be 25 feet from said setback line. To permit a variance would contradict what the ARC purports to control with regulations.

2. Any variance allowed to these pursuants will without a doubt set a precedent for any future building plans and permits despite the best intentions of the controlling agencies. With several undeveloped lots on both Deer Point Drive and Marsh Gate Lane potentially impacted homeowners object to any laxity in approach to current building restrictions and oppose any variance in order to protect their own, albeit selfish, interests in protecting their views and thusly their property values.

3. Although the ARC has absented itself from this proceeding their absence would seem to be contrary to their stated purposes of regulating and controlling building and development practices on Seabrook Island, and of making sure all property owners abide by the same set of regulations.

Signed:	Address:
<u>Eric Berg</u>	<u>2913 Deer Point Drive</u>
<u>ERIC BERG</u>	<u>2957 Deer Point Dr</u>
<u>Richard W Heiss</u>	<u>2927 Deer Point Dr.</u>
<u>Virginia Emms</u>	<u>2942 Deer Pt</u>
<u>Susan & David Whitehouse</u>	<u>2919 Deer Point</u>
<u>Thomas W. Dickson</u>	<u>2916 Deer Point</u>
(proxy by E-mail)	