



Payment Information

Board of Adjustment Application Fee: 500

USD

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAADbRoq6mTge5_Y296lPIOJGpx-wtOKG4

Applicant Signature

Glenn C. Mandalas, Esq.

Glenn C. Mandalas, Esq. (Dec 5, 2023 13:46 EST)

Date:

Dec 5, 2023

STAFF USE ONLY

Town Clerk Signature:

Kate Banaszak

Kate Banaszak (Dec 5, 2023 15:17 EST)

Date Application Received:

Dec 5, 2023

Decision of the Board:

Case Number:



BAIRD
MANDALAS
BROCKSTEDT
& FEDERICO LLC

Glenn C. Mandalas, Esq.
(302) 645-2262
glenn@bmbde.com

December 5, 2023



VIA ELECTRONIC MAIL

Board of Adjustment
Town of Dewey Beach
c/o Bill Zolper, Town Manager
105 Rodney Avenue
Dewey Beach, DE 19971

RE: 1 McKinley Ave, Unit 11 — Board of Adjustment Variance Application

Dear Mr. Zolper,

I represent Gary & Maisy Wootten (the “Woottens”) who own Unit 11 in the 11-unit Surfside Plaza townhome community located at 1 McKinley Ave, Dewey Beach, DE 19971. The Wootten’s unit is located on the most interior lot and does not abut any street. Surfside Plaza is located in the Resort Residential (RR) Zoning District, and the Wootten’s lot is identified as Sussex County Tax Map Parcel No: 334-20.18-172.00 (the “Property”). This correspondence is a supplement to a Town of Dewey Beach Board of Adjustment variance application filed on behalf of the Woottens, which if granted, would facilitate a vertical addition of a third story to the existing two-story Property. The addition will conform to the Town’s 32-foot height limitation.

The Property is accessed at the northeast end of McKinley Avenue and was built at least as early as 1965 and years before the Town of Dewey Beach was incorporated in 1981.¹ Each unit within Surfside Plaza is its own parcel, and the Woottens’ end unit was built within the present day 8-foot side setback and 22 foot front setback in the RR Zoning District, which is why variances are required to permit the addition of a third story. Consequently, as was done recently with the Sea Strand community, we respectfully request variances to permit the project to proceed.²

¹ Surfside Plaza is shown on the Plot of Surfside Plaza, dated July 13, 1965, and recorded in the Office of the Recorder of Deeds, Georgetown, Delaware in Plot Book 8, Page 165.

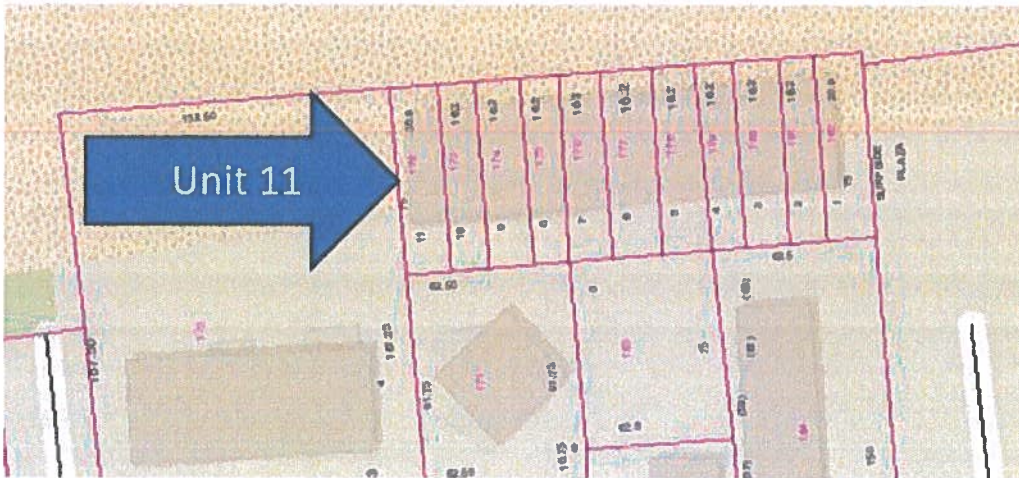
² Attached as **Exhibit A** to this correspondence is a draft preliminary building plan detailing the Wootten’s potential third-story addition.

1413 Savannah Rd., Suite 1 | Lewes, DE 19958 | (302) 645-2262 | (302) 644-0306 (fax)

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Illustration showing that Surfside Plaza extends across eleven separate parcels



Variance Requested

In the Resort Residential Zoning District, where the Property is located, the side yard setbacks are 8 feet; and the front yard setback is 22 feet. The proposed addition will encroach the northern side yard setback and the front yard setback. Consequently, ***we request variances from the side yard and front yard setback requirements provided in Table 2 of the Zoning Code and, for completeness, a variance from Section 185-60(B), addressing extensions of nonconforming buildings, to permit a vertical addition within the 8-foot side yard setback and within the 22-foot front yard setback***, as described below and illustrated in the plans attached as Exhibit A.

The definition of “Dwelling, Townhouse” provides that only the end units of a series of townhomes in a single structure need to comply with the side yard setback, as follows:

DWELLING, TOWNHOUSE

Two or more dwelling units on a single lot or parcel connected by party walls between the units and side yards on the end units only. Townhouse dwellings may also be referred to as townhouses or townhouse buildings, structures or units.³

The setback issue presented in this case is predominately a technicality—because the building has 11 connected units on 11 lots, it is impossible to satisfy the side-yards setbacks that were established years after the lots were established and the building was built. The definition quoted above provides relief for the interior units but not for the end units, including the Wootten’s unit. Consequently, while the 9 interior lots do not need to satisfy the 8-foot side yard

³ Code of the Town of Dewey Beach § 1-16. (emphasis added).

setback, units 1 and 11—the Wootten’s unit—do not enjoy the same relief. The Wootten’s unit cannot satisfy the required 8-foot northern side yard setback because the structure was built within the required northern side yard setback years before the setback was established.

More specifically, the northern side of the building does not precisely run parallel with the lot line—at the northwestern corner, the structure is approximately 4.3 feet from the northern lot line, and at the Northeast corner, the structure is approximately 3.7 feet from the northern lot line.⁴ The Woottens request a variance to extend an additional 2 feet 2 inches into the side yard setback to facilitate the reconstruction of the existing staircase to the second story and proposed third story in a code compliant manner. Currently, the staircase is not code compliant in that it does not meet permitted maximum riser height and minimum tread depth.⁵ If granted, the variance will allow the new staircase to be fully compliant with the building code, thereby promoting health, safety and welfare. The Woottens also request a variance to extend an additional 4 feet into the side yard setback to facilitate the addition of modest 46 square foot second and third story decks that would be completely within the Wootten lot. Other than being in the side yard setback the decks are permitted in the RR Zoning District.

Similarly, the Property cannot satisfy the required 22-foot front yard setback because the entire building, and all of the units within, were built relatively close to the front yard property line years before the front setback was established. Here, the 2-story covered porch on the eastern side of the property is 3.4 feet from the front lot line.⁶

Given that the building existed years before setbacks were established, we have requested a variance from the side yard and front yard setback requirements provided in Table 2 of the Zoning Code and, for completeness, a variance from Section 185-60(B) to permit a vertical addition within the 8-foot side yard setback and within the 22-foot front yard setback. Section 185-60 provides:

§ 185-60 Extension of nonconforming use or building.

B. A building nonconforming only as to height, area, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect. A building which does not conform to the required setbacks in any respect shall not be expanded either vertically or horizontally in the setback area.⁷

⁴ Attached as Exhibit B is Topographic and Boundary Survey Plan.

⁵ Code of the Town of Dewey Beach § 71-1(A)(4)(c)–(d).

⁶ To be clear, part and parcel of this variance request is relief from the aggregate front and rear yard setback requirements. Otherwise, any relief granted would be rendered meaningless.

⁷ Code of the Town of Dewey Beach § 185-60(B). (emphasis added).

I. Legal Standard

The Delaware Supreme Court has indicated that an area variance, like the ones requested in the current application, does not involve a prohibited use, and “concerns only the practical difficulty in using the particular property for a permitted use.”⁸ Unlike a use variance, an area variance is subjected to the relatively less burdensome ‘exceptional practical difficulty’ test.”⁹ *In Bd. of Adjustment of New Castle Cty v. Kwik-Check Realty, Inc.*, the Court concluded, “[s]uch [exceptional] practical difficulty is present where the requested dimensional change is minimal and the harm to the applicant if the variance is denied will be greater than the probable effect on the neighboring properties if the variance is granted.”¹⁰ When addressing an application for an area variance, the *Kwik-Check* Court set forth four factors to be considered by a Board of Adjustment:

[1][T]he nature of the zone in which the property lies[;] [2] the character of the immediate vicinity and the uses contained therein[;] [3] whether, if the restriction upon the applicant’s property were removed, such removal would seriously affect such neighboring property and uses; [and] [4] whether, if the restriction is not removed, the restriction would create [hardship] for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the ordinance.¹¹

Additionally, the applicant for an area variance must not have created the exceptional practical difficulty in order for it to be granted.¹²

The current application satisfies each of the factors enumerated in *Kwik-Check*.

Exceptional Practical Difficulty

The exceptional practical difficulty associated with the Property arises from the fact that the structure exists in its present configuration. Surfside Plaza was constructed as early as 1965—years before the Town of Dewey Zoning Ordinance was originally adopted—and the Property does not conform to present-day zoning regulations. As a result, it is exceptionally difficult to make normal improvements to the Property in compliance with current zoning requirements.

In fact, many of the buildings immediately surrounding Surfside Plaza consist of three-story units, including the Sea Watch Condominium to the north of the Property; the building to the west of the Property identified as the three story structure on Tax Map Parcel 334-20.18-

⁸ *Bd. of Adjustment of New Castle Cty v. Kwik-Check Realty, Inc.*, 389 A.2d 1289, 1291 (Del. 1978).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* (citation omitted), see also, *Wawa*, 929 A.2d at 831; *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, at *5 (Del. Super.).

¹² See 9 Del. C. §6917(3)(c); *Bd. of Adjustment of Sussex Cty v. Verleysen*, 36 A.3d 326, 330 (Del. 2012).

171.00; the McKinley Condominium to the southwest of the Property; and the Sunspot Condominium to the South of Surfside Plaza. Because three story properties are prevalent in the immediate neighborhood, the harm to the applicant if the variance is denied will be greater than the probable effect on the neighboring properties if the variance is granted.

II. Variance Requested

The Wootten's seek a variance from § 185-60(B) to permit a third-story addition within the 8-foot side yard setbacks; and within the 22-foot front yard setbacks.

Application of the *Kwik-Check* Factors

In this instance, the "harm to the applicant if the variance is denied will be greater than the probable effect on the neighboring properties if the variance is granted."¹³ Each of the *Kwik-Check* factors are addressed below.

(1) The nature of the zone in which the property lies

The Property is located in the Resort Residential (RR) Zoning District, where residential use and certain multifamily residential structures are permitted uses. The townhome structure, and those around it, has existed since the 1960's.

(2) The character of the immediate vicinity and the uses contained therein

As stated above, many of the buildings immediately surrounding Surfside Plaza consist of three-story units with decks. Consequently, the proposed addition is in character with the surrounding buildings and residential uses.

(3) Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect such neighboring property and uses

Granting of the requested variance would not seriously affect neighboring property. The expansion will be compliant with the Town's height limitations. But for the facts that each of the units are on a separate parcel and the structure was constructed near the front property line, there would be no need for a setback variance for the proposed expansion.

4) Whether, if the restriction is not removed, the restriction would create [hardship] for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the ordinance.

If the variance is not granted the owners will not be able to make normal improvements. The proposed expansion is clearly a "normal improvement," as other buildings in the RR

¹³ *Kwik-Check Realty*, 389 A.2d at 1291.

Zoning District have expanded vertically. If the variance were to be denied, the owners would have no ability to expand in the same way that their neighbors have expanded.

Given that my clients have an exceptional practical difficulty, as described above, we respectfully request that the Board grant the requested variance. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn C. Mandalas". The signature is written in a cursive, flowing style with a large initial "G".

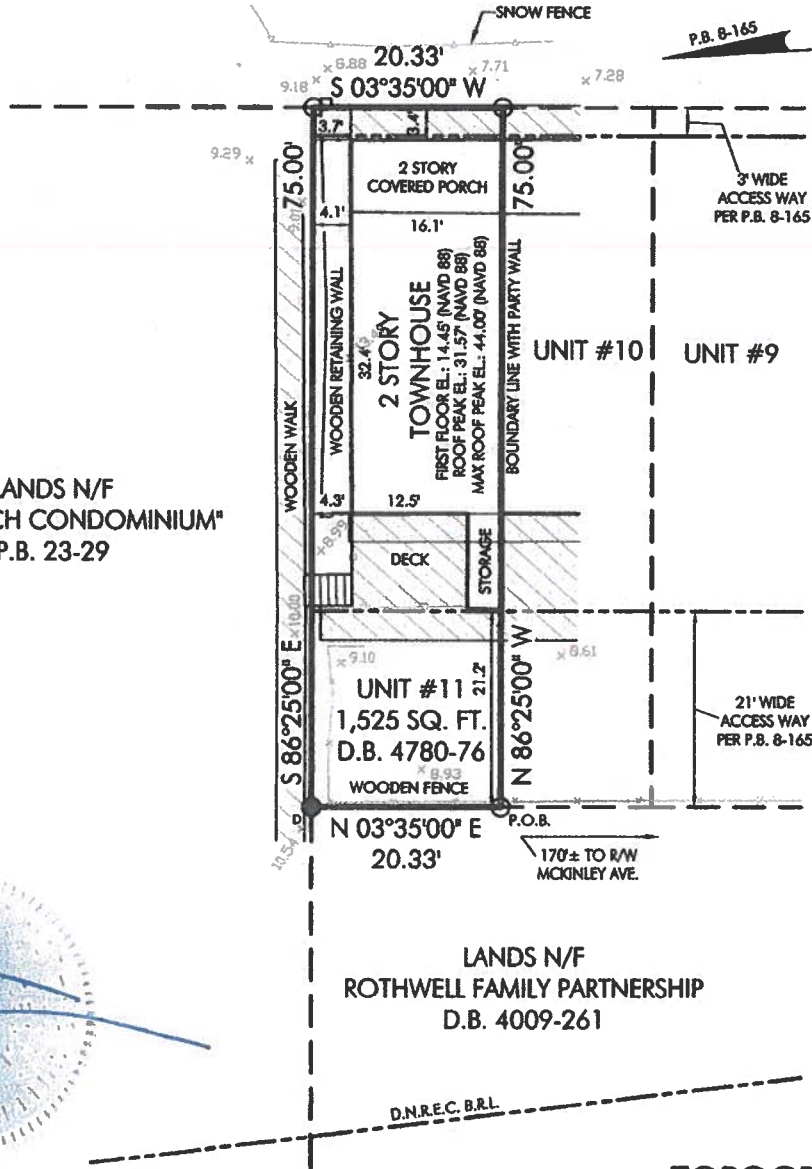
Glenn C. Mandalas, Esquire

cc:

Mr. Fred Townsend, Esq.
Mr. Bill Zolper
Mr. Gary Wootten
Mrs. Maisy Wootten

LANDS N/F
"SEA WATCH CONDOMINIUM"
P.B. 23-29

LANDS N/F
ROTHWELL FAMILY PARTNERSHIP
D.B. 4009-261



LEGEND:

- DISTURBED IRON PIPE (FOUND)
- POINT
- × 0.00 ELEVATION SPOT SHOT (NAVD 88)

NOTES:

ALL RESTRICTIONS MUST BE VERIFIED BY THE OWNER, GENERAL CONTRACTOR AND/OR THE DESIGNER. PLEASE CONTACT THE TOWN OF DEWEY BEACH.

VERTICAL DATUM: NAVD (1988)

THIS PARCEL RESIDES IN FLOOD ZONE: VE (11' B.F.E.)
F.I.R.M.: 10005C0354K, JUNE 20, 2018

DEWEY BEACH FREEBOARD ELEV.: 12.0' (NAVD 88)

MAXIMUM BUILDING HEIGHT ELEV.: 44.0' (NAVD 88)

THIS DRAWING DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF WETLANDS, UTILITIES, RIGHT-OF-WAYS OR EASEMENTS IN REFERENCE TO OR LOCATED ON THIS PROPERTY.

NO TITLE SEARCH PROVIDED OR STIPULATED.

SURVEY CLASS: SUBURBAN



TOPOGRAPHIC &
BOUNDARY SURVEY PLAN FOR
**GARY WOOTTEN &
MARGARET WOOTTEN**

UNIT #11 OF "SURFSIDE PLAZA"

TOWN OF DEWEY BEACH

DEWEES & REHOBOTH HUNDRED SUSSEX COUNTY

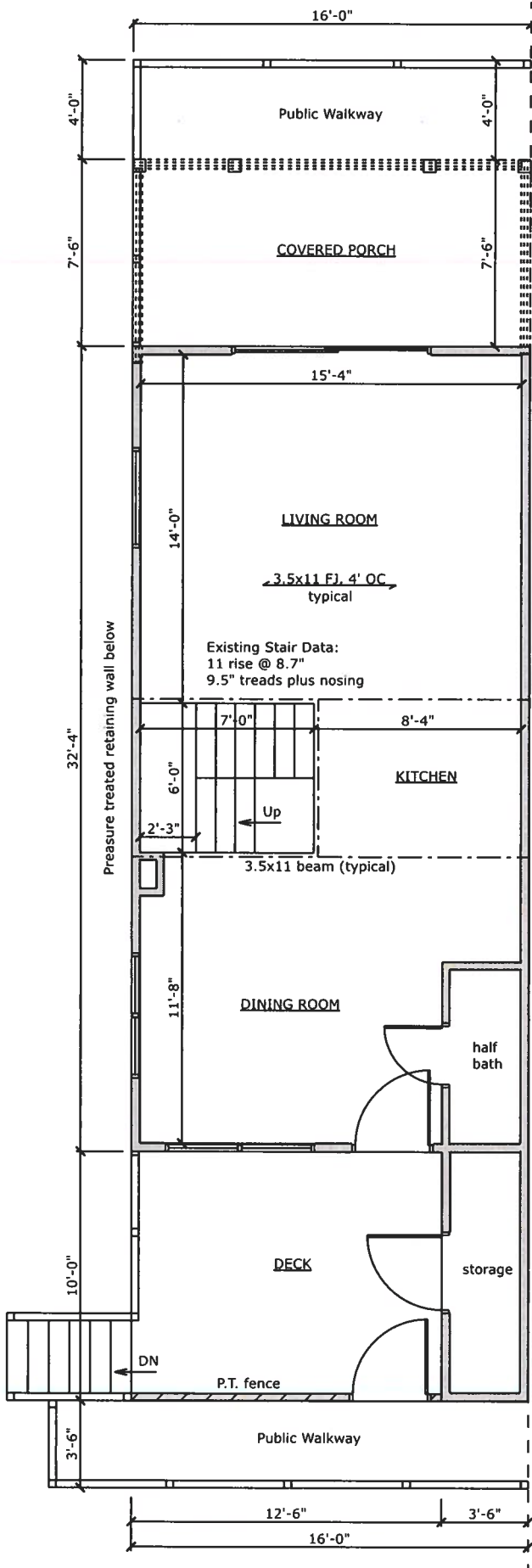
STATE OF DELAWARE

JUNE 27, 2023 SCALE: 1" = 20'

Prepared by:

FORESIGHT Services

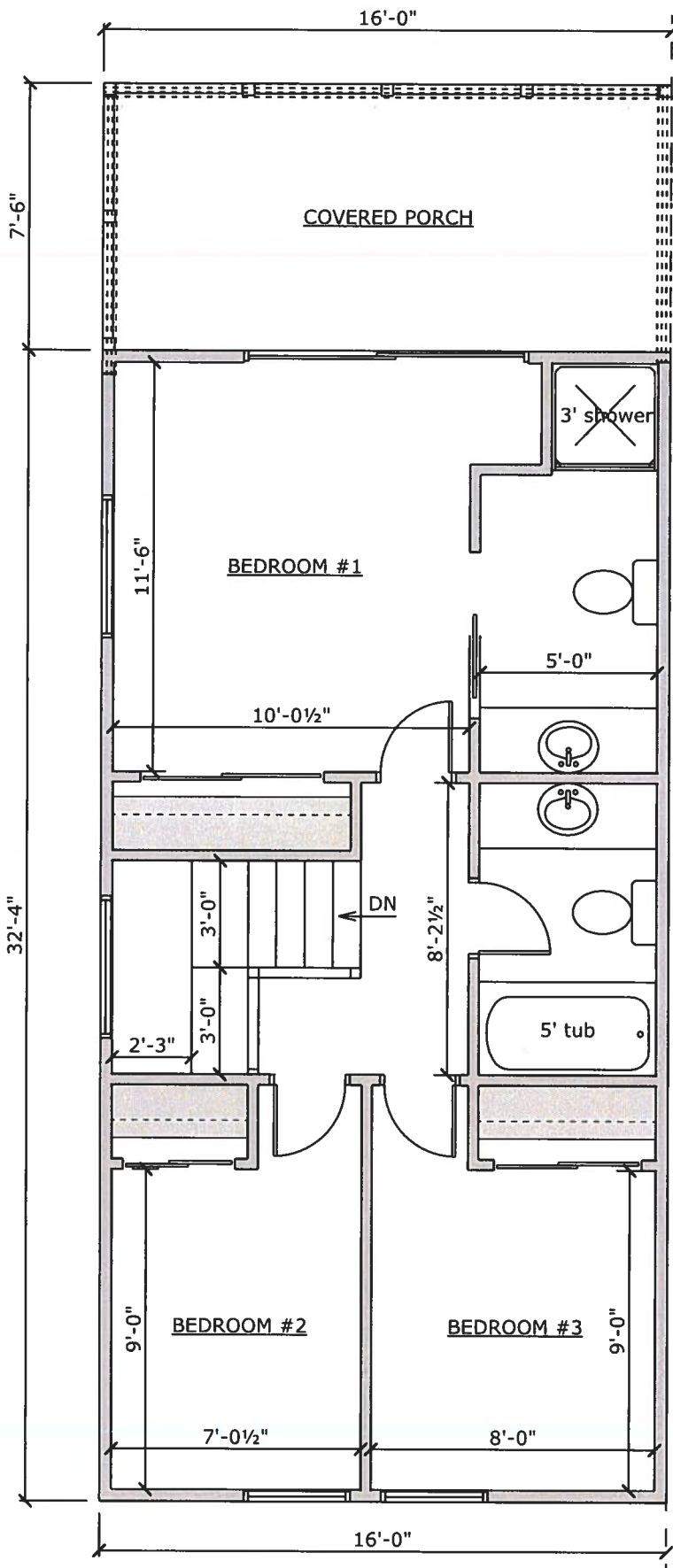
Surveying & Precision Measurement



UNIT 10
NOT SHOWN

Wootten
 1 McKinley Ave
 Unit 11
 As Built First Floor Plan
 7' ceiling height
 11/20/2023

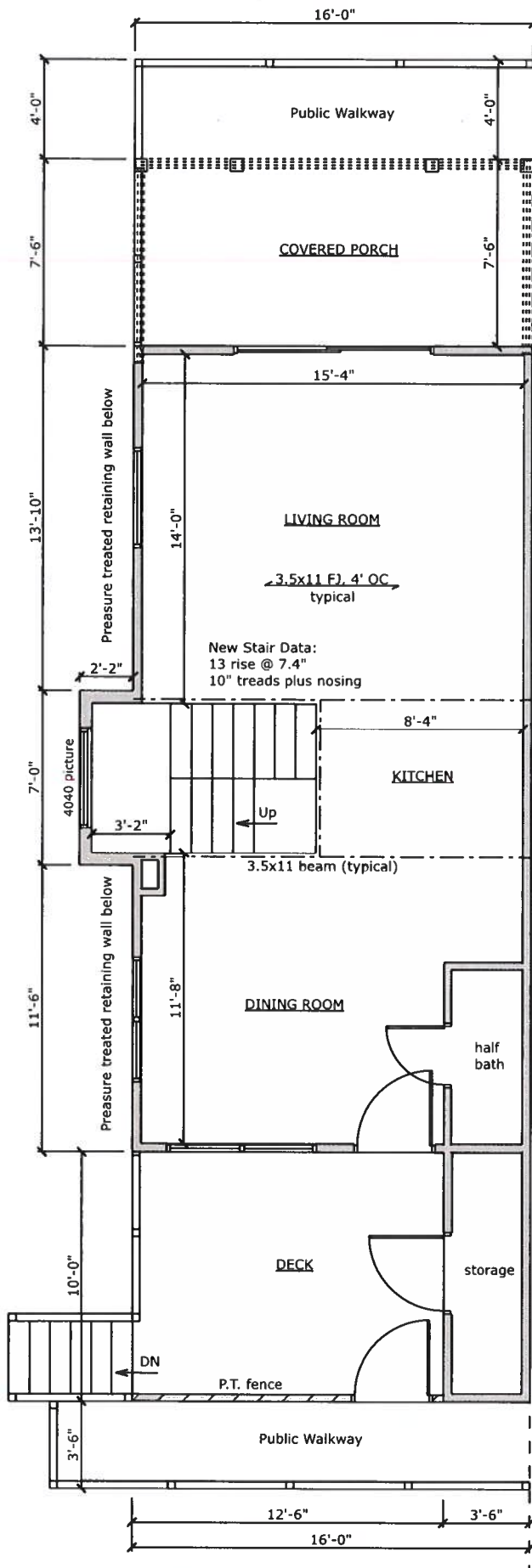




UNIT 10
NOT SHOWN

Wootten
1 McKinley Ave
Unit 11
As Built Second Floor Plan
7' ceiling height
11/20/2023

C-2



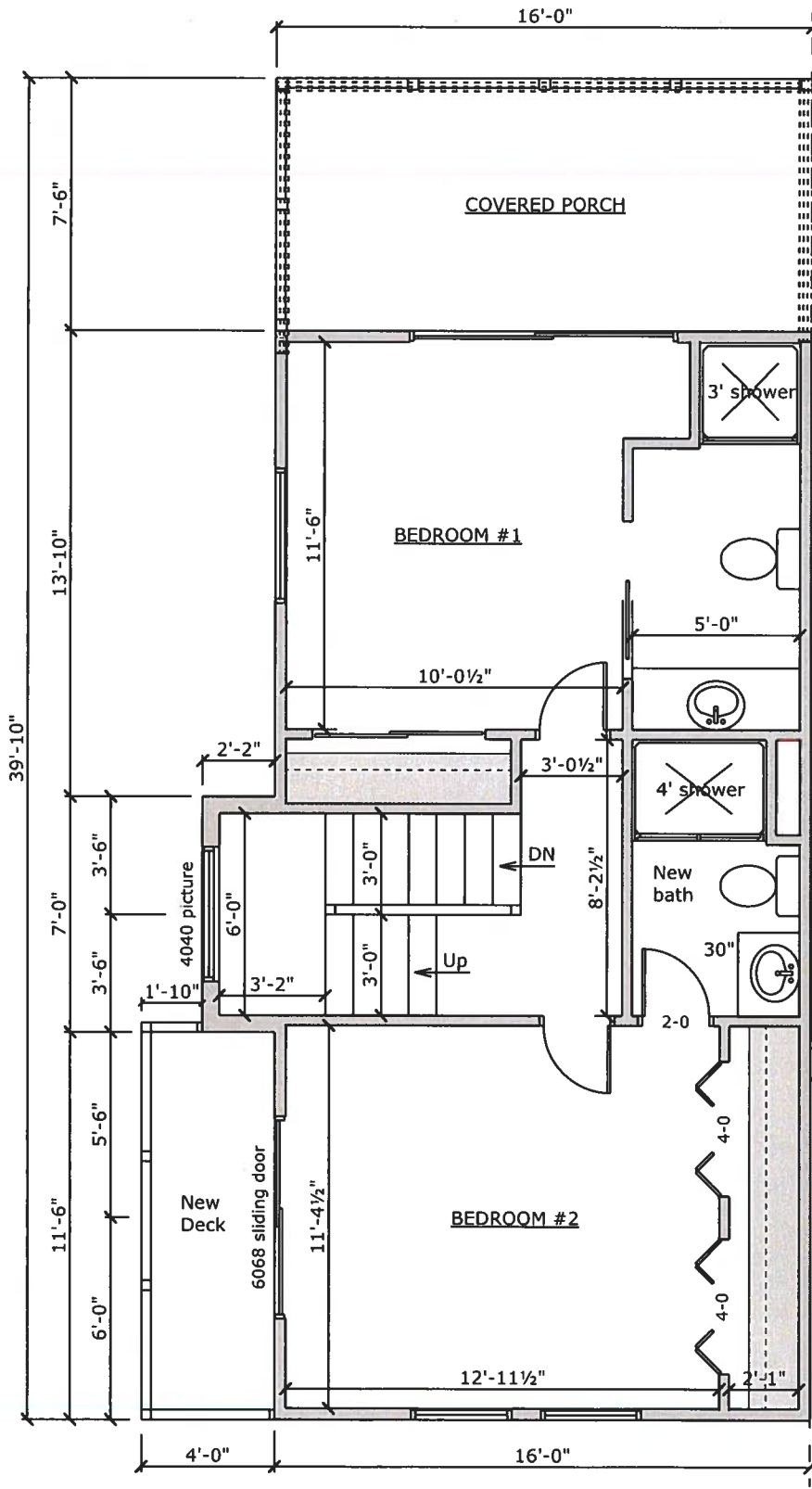
UNIT 10
NOT SHOWN



Wooten
1 McKinley Ave
Unit 11
New First Floor Plan
7' ceiling height
11/20/2023

Square Footage Calculations:
Existing Living Space - 520
New Living Space - 15
Existing Rear Porch - 120

D-1

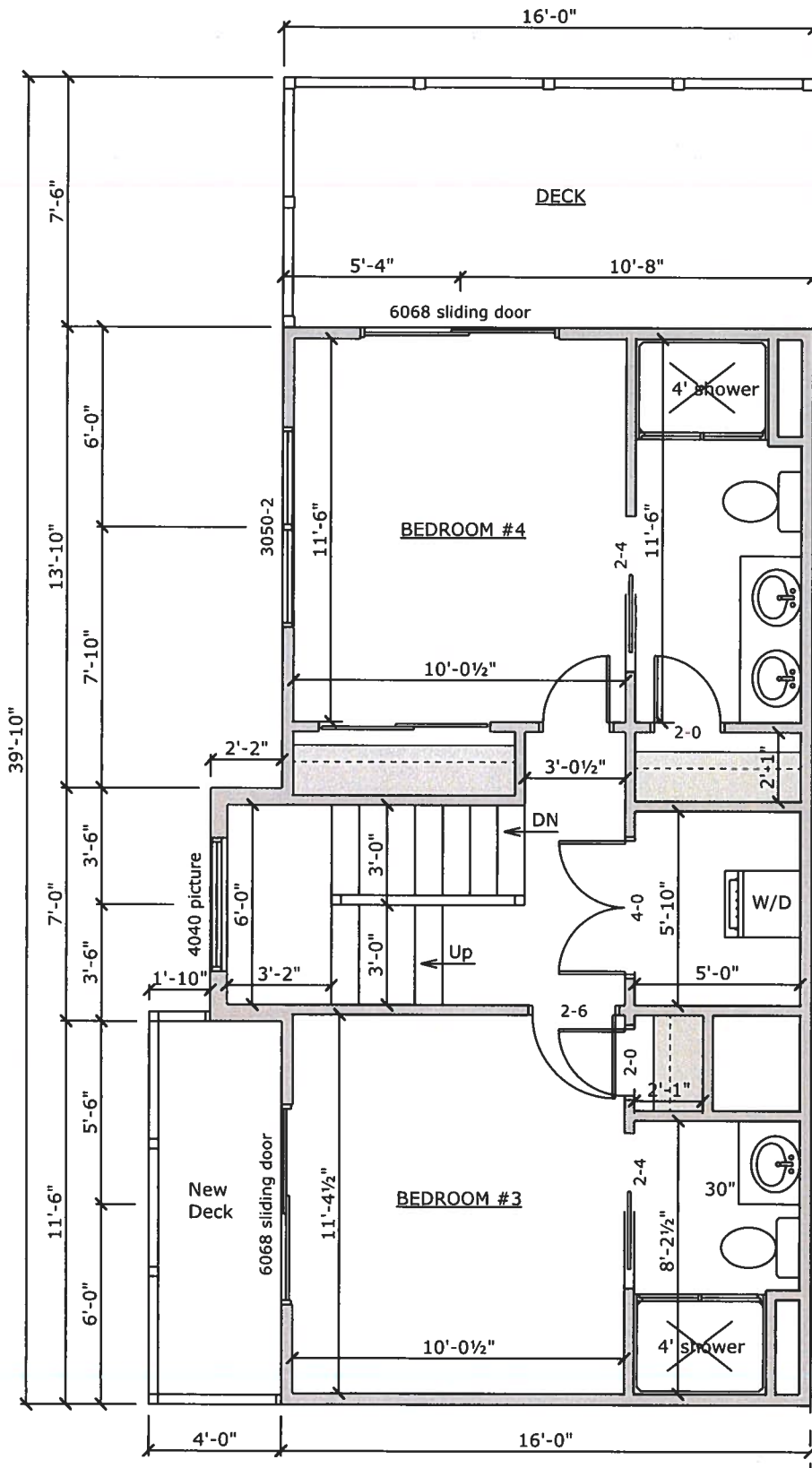


UNIT 10
NOT SHOWN

Wootten
1 McKinley Ave
Unit 11
New Second Floor Plan
7' ceiling height
11/20/2023

Square Footage Calculations:
Existing Living Space - 520
New Living Space - 15
Existing Rear Porch - 120
New Deck - 46

D-2

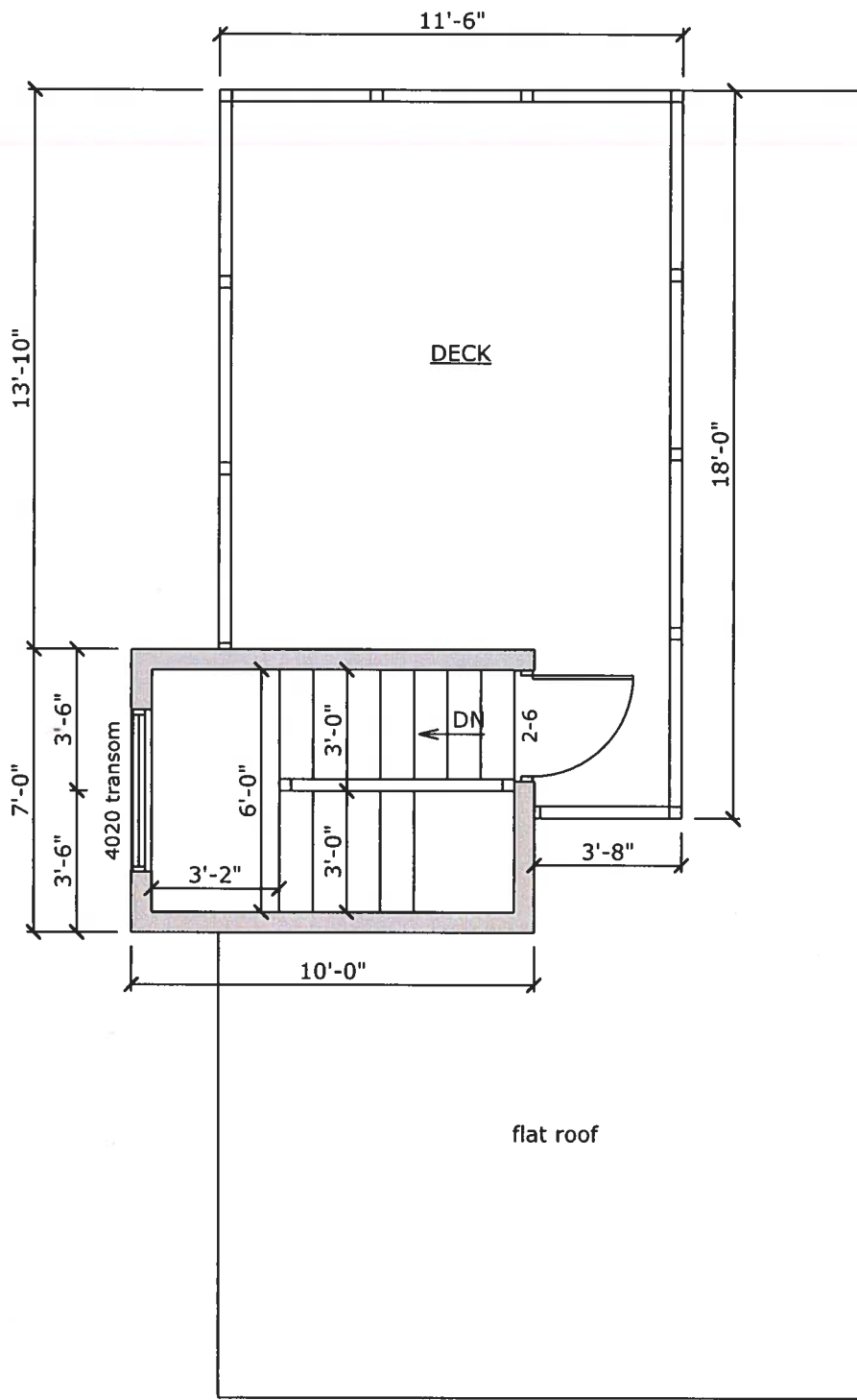


UNIT 10
NOT SHOWN

Wootten
1 McKinley Ave
Unit 11
New Third Floor Plan
7' ceiling height
11/20/2023

Square Footage Calculations:
New Living Space - 535
New Rear Deck - 120
New Side Deck - 46

D-3



UNIT 10
NOT SHOWN

Wootten
1 McKinley Ave
Unit 11
New Rooftop Deck
7' ceiling height
11/20/2023

Square Footage Calculations:
New Living Space - 70
New Rooftop Deck - 175

D-4

