

January 12, 2024

*Ring W. Lardner, P.E.
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA, LEED GA
Jason P. Loar, P.E.
Jamie L. Sechler, P.E.*

Town of Ocean View – Planning and Zoning
201 Central Avenue, 2nd Floor
Ocean View, DE 19970

Attn: Kenneth Cimino, Planning, Zoning & Development Director

RE: Irwin Property - Variance
Tax Parcel No: 134-16.00-26.00
DBF #4578A001.A01

Dear Mr. Cimino,

On behalf of the owners, Joseph R. & Kristof A. Irwin, we are pleased to submit a variance request for relief from Town Code (§140-28) requiring 100' lot depth. The Irwin parcel 134-16.00-26.00 will be subdivided into two single family residential lots. The existing parcel is non-conforming with a minimum 94' in depth due to a DelDOT acquisition of 21' of right-of-way along the entire frontage. Enclosed with this submission are:

- Signed Board of Adjustments Variance Application
- Application Fee of \$850.00. Check #4043
- Minor Subdivision Plan
- DelDOT Acquisition Survey

Please contact me at (302) 424-1441 or via e-mail at wzc@dbfinc.com should you have any questions or need additional information.

Sincerely,
DAVIS, BOWEN AND FRIEDEL, INC.



W. Zachary Crouch, P.E.
Principle

Enclosures

WZC/JMJ
P:\Irwin Property\Submit\2024-01-12 P&Z\Variance Cover Letter.docx

cc: Joseph R. & Kristof A. Irwin

SINCE 1889



TOWN OF OCEAN VIEW, DELAWARE
BOARD OF ADJUSTMENT
VARIANCE APPLICATION

Land Use • Permitting • Licensing • Code Enforcement • Public Works

302 539-1208 (office) • 302 537-5306 (fax)

admintov@oceanviewde.com / www.oceanviewde.com

SINCE 1889



Fee: \$ 750.00

V - _____

Variance is defined as relief from the strict application of the provisions of Chapter 140 of the Code when, owing to special conditions or exceptional situations, a literal interpretation of this Chapter will result in exceptional practical difficulties to the property owner.

Application, requesting a variance from the Code of the Town of Ocean View, is hereby made for property located
at: 32625 Windmill Drive, Ocean View, DE 19970 . The Justification for the Variance

(Explanation of Hardship) is: Due to right-of-way acquisition by DelDOT for intersection improvements at Windmill Drive & Central Avenue.

The applicant's property is left with only a 94' minimum depth on the property. Minimum lot depth required would be 100'.

I/We, the property owner(s) and/or applicant(s) do certify that all information and documents provided for this application are accurate, to the best of our knowledge, and I/We further understand that a hearing will not be scheduled until this application is complete as determined by the Administrative Official of the Town of Ocean View.

Owner(s) of Record (Print): Joseph R. & Kristof Andreas Irwin **Phone #: 512-462-1000**

Address of residence: 9714 Anita Lane, Lanham MD 20706

Signature(s): [Signature] **Date: 1-8-2024**

(Property Owner(s))

Applicant(s) (Print): Davis, Bowen and Friedel, Inc. c/o W. Zachary Crouch, P.E. **Phone #: 302-424-1441**

Address: 1 Park Avenue, Milford, DE 19963

Signature(s): W. Zachary Crouch **Date: 1-8-2024**

Applicant(s)

TOWN USE ONLY:

Administrative Official Signature: _____

Variance Request for: PIDN: _____ CTM#: _____ Zoned: _____

from: Article(s): _____, Section(s): _____

Code Requirement: _____

Variance Requested: _____

Date Received: _____ **Date Advertised:** _____ **Hearing Date:** _____

BOARD OF ADJUSTMENT USE ONLY:

Approved: _____
 Date

 Chairperson, Board of Adjustment

Denied: _____
 Date

 Chairperson, Board of Adjustment

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Ocean View, DE 19970

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NOTICE

To: ALL APPLICANTS FOR VARIANCES, SPECIAL USE EXCEPTIONS, CONDITIONAL USES, BUILDING PERMITS AND OTHER PERMITS

Re: Homeowners' Associations and Restrictive Covenants and Conditions

Applicants for variances, special use exceptions, conditional uses, building permits and other permits, such as home based businesses, are required to comply with all Town Codes and with all deed restrictions applicable to their property.

Compliance with Town Codes and the granting of a Town variance, special use exception, conditional use, building permit or other permit does not eliminate the need for applicants to comply with deed restrictions applicable to their property or have their homeowners' association approval.

If a conflict exists between the requirements of deed restrictions and Town Codes, the more restrictive applies.

The Town will enforce its codes, but not deed restrictions, which will include *per diem* fines and court costs.

A violation of a deed restriction may result in legal action by a person authorized to enforce the deed restrictions and the applicant may be liable for the court costs and reasonable attorney fees incurred by the person enforcing the deed restrictions.

In order for the Board of Adjustment to grant a special use exception or variance, the Board must find that the **applicant has proven** the following:

STANDARDS FOR GRANTING OF VARIANCES

1. **Uniqueness**
 - a. Unique physical circumstances or conditions (such as irregularity, narrowness or shallowness of lot size or shape, or exceptional typographical or other physical conditions, peculiar to the property).
 - b. That unnecessary hardship or exceptional practical difficulty is due to such unique conditions, and not to general circumstances or conditions and cannot be developed in strict conformity.
2. **Cannot otherwise be developed**
 - a. There is no possibility the property can be developed in strict conformity with the zoning ordinance.
 - b. That the variance is necessary to enable reasonable use of the property.
3. **Not created by the applicant**
 - a. The unnecessary hardship or exceptional practical difficulty cannot have been created by the applicant.
4. **Will not alter the essential character of the neighborhood**
 - a. The variance will not alter the essential character of the neighborhood.
 - b. The variance will not substantially or permanently impair the appropriate use or development of adjacent property.
 - c. The variance will not be detrimental to the public welfare.
5. **Minimum variance**
 - a. The variance is the minimum that will afford relief.
 - b. The variance will represent the least modification possible of the regulation in issue.

STANDARDS FOR GRANTING A SPECIAL USE EXCEPTION

1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property.
2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code (for instance, time limitations).

BOARD OF ADJUSTMENTS STANDARDS FOR RELIEF

In order for the Board of Adjustment to grant a variance or a special use exception, the Applicant **must** be prepared to answer the following questions and address the following factors:

VARIANCES

1. Uniqueness

- a. Do you have a unique circumstance or condition, such as, irregularity, narrowness or shallowness of lot size or shape or exceptional typographical or other physical condition peculiar to the property? If so, please explain:

The lot is a unique corner lot that was impacted by road improvements at the intersection of Windmill Drive & Central Avenue. DeIDOT acquired 21' of right-of-way along the entire road frontage for the expansion and addition of a turn lane on Windmill Drive. With the loss of right-of-way the subject property is left with only 94' of lot depth along the western border. With the Town's 100' lot depth, the subject property is currently non-conforming.

- b. Is there an exceptional practical difficulty due to such unique condition (and not related to general circumstances or conditions)? If yes, please explain:

The subject property is currently non-conforming due to DeIDOT's right-of-way acquisition. The unique condition was caused due to traffic and safety concern along Central Avenue. Road improvements, the addition of the turn lane, and right-of-way acquisition were the result of a DeIDOT project and not a result of the current property owners actions.

2. Possibility of Development

- a. Can the property be developed in strict conformity with the zoning ordinance without a variance? If not, please explain:

The property is currently non-conforming as it falls short of the towns 100' depth requirements, therefore it cannot be developed with the zoning ordinance without this variance.

- b. Is the variance necessary to enable reasonable use of the property?

The odd longer shape of the property (94'x327') restricts the use of the property.

3. Has the difficulty been created by the Applicant? If not, please explain:

No. The difficulty was created by traffic concerns and traffic safety at the Windmill Drive and Central Avenue intersection. The lost of lot depth was the result of DelDOT acquisition of land required to perform those traffic improvements at the intersection.

4. **Effect on Surroundings**

- a. Will the variance alter the essential character of the neighborhood?

No, the adjacent property is the Wedgefield subdivision. The proposed residential lots match the character of the surrounding properties. At 15,000 sqft. per proposed lot, they are approximately 1.5 times the size of the adjacent residential homes. This variance will not alter the existing 20' rear setback, the homes built will be the same distance from the neighboring property lines.

- b. Will the variance substantially or permanently impair the appropriate use for development of adjacent property?

Adjacent properties have already been developed. The subject property will have no impacted on adjacent properties.

- c. Will the variance be detrimental to the public welfare?

The need for the variance was a result of benefiting the public welfare. Traffic improvements were needed to help with traffic flow and public safety.

5. **Extent of variance**

- a. Will the variance represent the least modification possible of regulations at issue?

Yes, the variance will not change the existing non-conforming lot size, nor will it change the existing building setbacks.

- b. Is the variance necessary to afford relief?

Yes, the variance is needed due to the existing lot depth not meeting code.

- c. Will the variance represent the least modification possible of regulations at issue?

Yes, the variance is requesting 6' of modification from code, going from 100' lot depth to 94' lots depth. Setback remain unchanged and each lot will still provide a 54' building envelope from front setback to rear setback.

SPECIAL USE EXCEPTION

1. Will the exception substantially affect adversely the uses of adjacent and neighboring property?

2. Are there any other requirements, which are applicable to the specific exception being requested (for example, time limitations)?

SITE DATA

- TAX MAP NO. 1-34-16-26
- STATE: DELAWARE
- COUNTY: SUSSEX
- HUNDRED: BALTIMORE
- MUNICIPALITY: TOWN OF OCEAN VIEW
- AREA: 30,062 SQ. FT.
- SCALE: 1"=20'
- CLASS "A" SURVEY
- HORIZONTAL DATUM- NAD'83 (1983 NORTH AMERICAN DATUM)

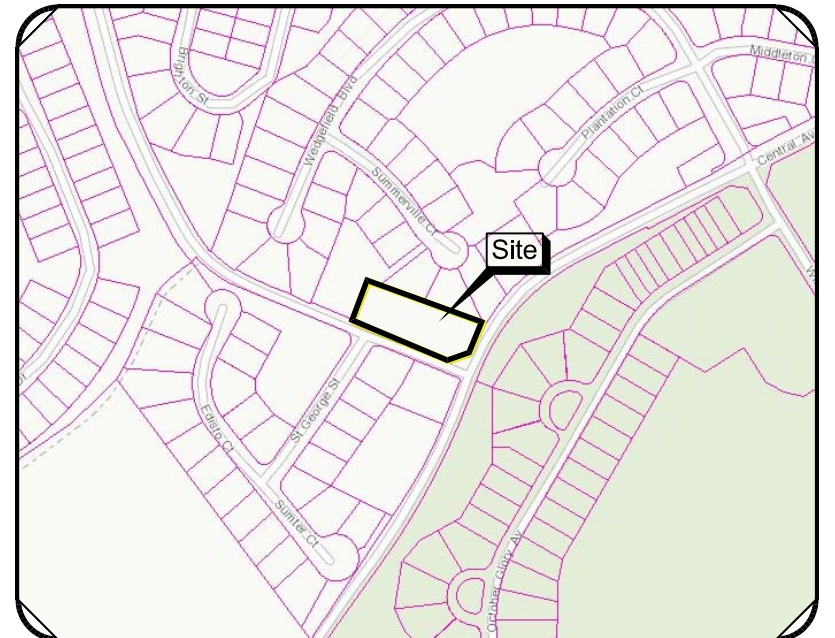
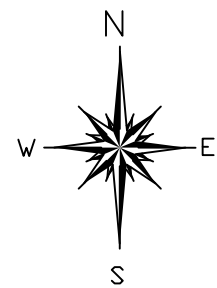
STANDARD LEGEND

These standard symbols will be found in the drawing

- 1/2" PIPE (FD)
- POINT
- 3/4" PIPE (FD)
- CONC. MON. (FD)
- UTILITY POLE
- 5/8" REBAR (SET)

PROPERTY LINE CURVE TABLE

| CURVE | RADIUS | ARC LENGTH | CHORD LENGTH | CHORD BEARING | DELTA ANGLE |
|-------|---------|------------|--------------|---------------|-------------|
| C1 | 621.00' | 60.76' | 60.73' | S 30°12'39" W | 5°36'20" |



VICINITY MAP

NOT TO SCALE

SURVEYOR NOTES

- This plat and survey does not verify the existence or nonexistence of right-of-ways and/or easements pertaining to this property. Including but not limited to Tax Ditch Easements.
- No title search provided or stipulated.
- Deed Book Reference: Db. 3648, Pg. 233
- Plat Book Reference: Pb. 73, Pg. 292
- Del-D.O.T. Contract Reference: Project No. 12-112-04

Lands of
Avon Park Homeowners Association
Db. 3413, Pg. 303

Lot # 34
Wedgfield RPC.

Lot # 35
Wedgfield RPC.

Diamond State Easement
Ref: Deed Book 2003, Page 115

CENTRAL AVENUE
(r/w width varies)

WINDMILL DRIVE
(r/w width varies)

SURVEYOR CERTIFICATION

I, GREGORY M. HOOK, hereby certify that I am a registered land surveyor, in the State of Delaware, that the information shown hereon has been prepared under my supervision and to the best of my knowledge and belief. I certify that the information on this plan is true and correct to the accuracy required by accepted engineering and surveying standards and practices, and complies with applicable laws and regulations as required by the State of Delaware.

GREGORY M. HOOK, PLS 711

FLOOD DATA This property is in Zone "X", (non-shaded) of the Flood Insurance Rate Map, Community Panel No. 100046-10005C0511-K which has an effective date of MARCH 16, 2015 and IS NOT in a Special Flood Hazard Area.

DATE OF ORIGINAL: OCTOBER 25, 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
REVISION: DATE: 2016
Drawn by: MICHAEL LOVELAND Checked by: GREGORY M. HOOK

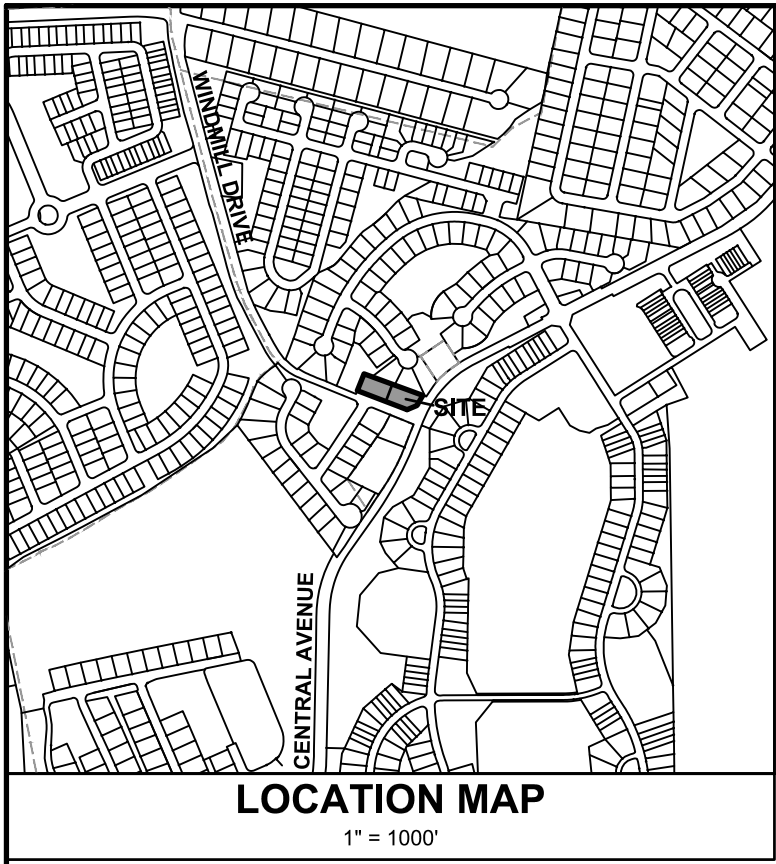
Lands of JOSEPH R. IRWIN.

SEAL

SIMPLER
SURVEYING
& ASSOCIATE, INC.

32486 POWELL FARM ROAD, FRANKFORD, DE 19945
www.delawaresurveyor.com
PHONE: (302) 539-7873 FAX: (302) 539-4336

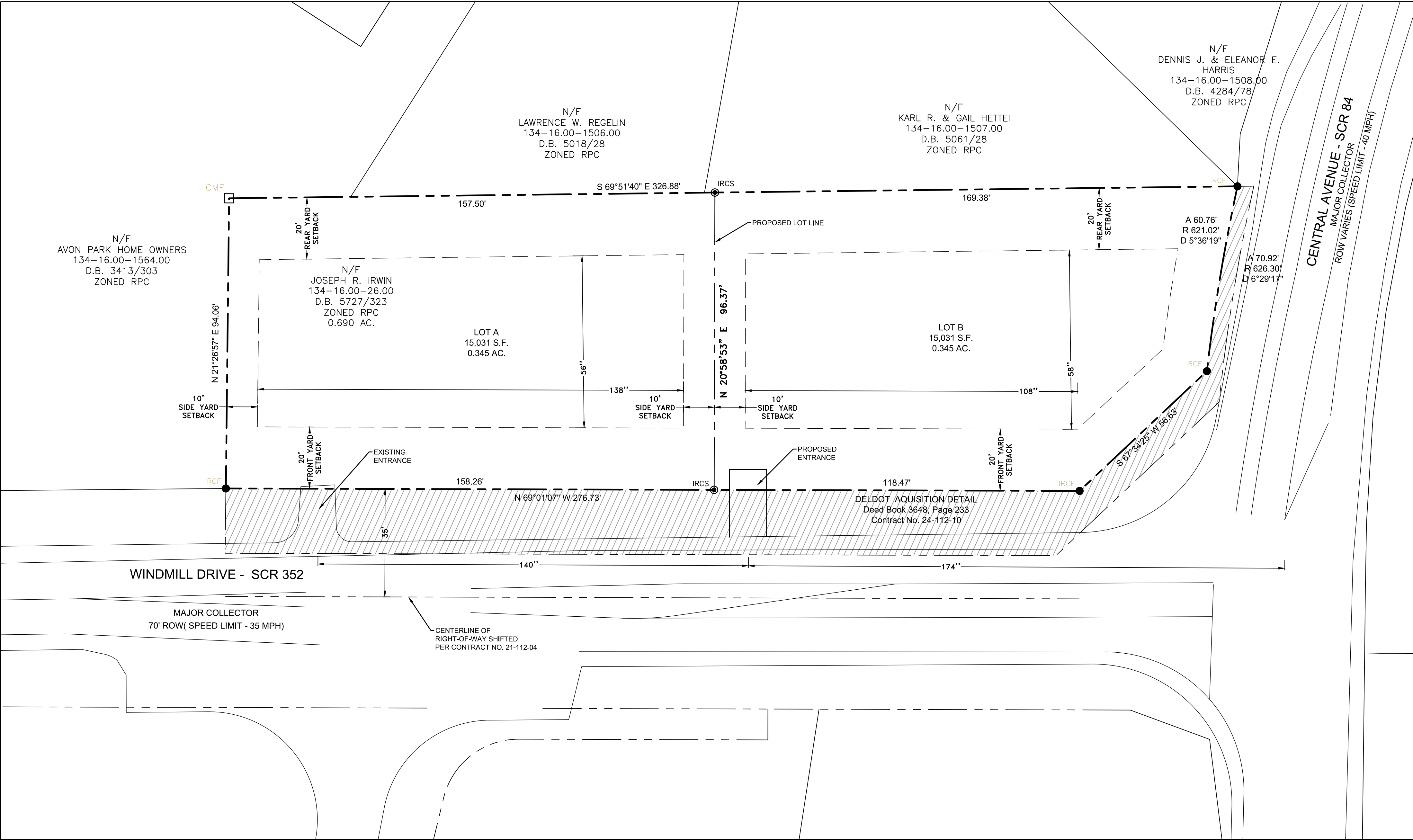
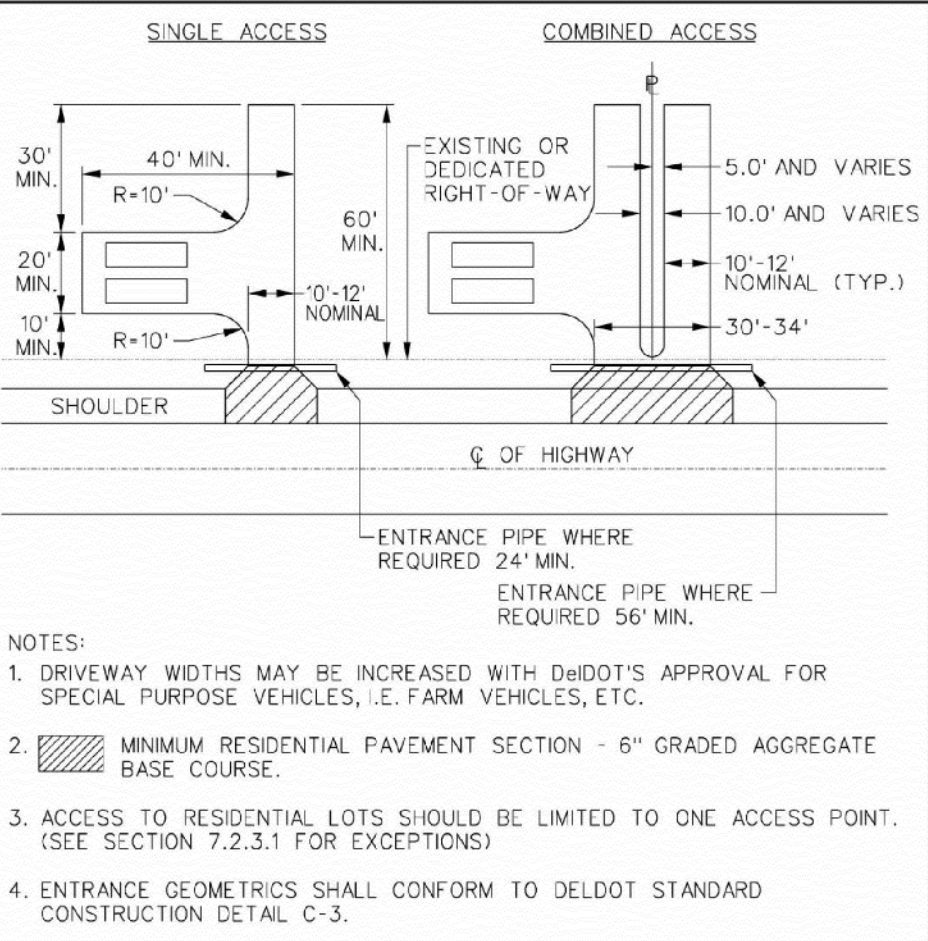
P.L.S. 711



DATA COLUMN

| | | |
|----|---|--|
| 1 | TAX MAP ID | 1-34-16.00-26.00 |
| 2 | DEED REFERENCE | BOOK: 5727, PAGE: 323 |
| 3 | APPROXIMATE PROJECT CENTER | LATITUDE 38.534889 LONGITUDE -75.113650 |
| 4 | ENGINEER DAVIS, BOWEN & FRIEDEL, INC. 1 PARK AVENUE MILFORD, DE 19963 W. ZACHARY CROUCH, P.E. PHONE: (302) 424-1441 EMAIL: wzcz@dbfninc.com | OWNER/DEVELOPER KRISTOF IRWIN 1203 S. 3RD STREET AUSTIN, TX 78704 PHONE: (512) 462-1000 EMAIL: kristof@positiveenergy.pro |
| 5 | DATUM | HORIZONTAL NAVD 83 (DE STATE PLANE) VERTICAL NAVD 88 |
| 6 | ZONING | EXISTING RPC PROPOSED RPC |
| 7 | LAND USE | EXISTING RESIDENTIAL PROPOSED RESIDENTIAL |
| 8 | TOTAL PROPOSED UNITS | SINGLE FAMILY 2 UNITS |
| 9 | BUILDING CONSTRUCTION | IBC V-B NFPA V (000) |
| 10 | UTILITY PROVIDERS | SEWER SUSSEX COUNTY (OCEAN VIEW EXPANSION) WATER TIDEWATER UTILITIES, INC. |
| 11 | STATE STRATEGIES MAP | INVESTMENT LEVEL AREA: 1 & 2 |
| 12 | POSTED SPEED LIMIT | WINDMILL DRIVE (SCR 351) 35 MPH CENTRAL AVENUE (SCR 84) 40 MPH |
| 13 | FLOODPLAIN | THE PROPERTY IS NOT IMPACTED BY THE 100 YEAR FLOODPLAIN, ZONE X, AS DETERMINED BY FEMA PANEL 10005C0511K, DATED MARCH 16, 2015. |
| 14 | TRANSPORTATION IMPROVEMENT DISTRICT (TID) | THE PROPERTY IS NOT LOCATED IN A TRANSPORTATION IMPROVEMENT DISTRICT (TID), DISTANCE TO NEAREST TID: 8.66 MI. |
| 15 | GROUNDWATER RECHARGE | THE PROPERTY IS NOT LOCATED IN AN AREA OF EXCELLENT GROUNDWATER RECHARGE. |
| 16 | WELLHEAD PROTECTION AREA | THE PROPERTY IS NOT LOCATED IN A WELLHEAD PROTECTION AREA. |
| 17 | WETLANDS | THE PROPERTY IS NOT IMPACTED BY STATE AND/OR FEDERALLY REGULATED WETLANDS. |
| 18 | COMPREHENSIVE PLAN DESIGNATION | THE PROPERTY IS DESIGNATED AS RESIDENTIAL ON THE TOWN OF OCEAN VIEWS FUTURE LAND USE MAP. |
| 19 | CODE COMPLIANCE | REQUIRED |
| | FRONT SETBACK | 20 FT |
| | SIDE SETBACK | 10 FT |
| | REAR SETBACK | 20 FT |
| | MINIMUM LOT WIDTH/DEPTH | 100 FT |
| | MINIMUM LOT AREA | 10,000 SF |
| | MAXIMUM BUILDING HEIGHT | 42 FT |
| | MAXIMUM LOT COVERAGE | 45% |
| | MINIMUM LIVABLE FLOOR AREA | 1,250 SQFT |
| 20 | AREAS | |
| | PROPOSED LOT A | 15,031 SF, (0.345 AC.) |
| | PROPOSED LOT B | 15,031 SF, (0.345 AC.) |
| | TOTAL AREA | 30,062 SF, (0.690 AC.) |

Figure 7.2.3.3-a Residential Access Design Requirements



LEGEND

| | |
|--------|---|
| ● IRCS | IRON ROD WITH CAP TO BE SET |
| ● IRCS | IRON ROD WITH CAP SET |
| ○ IPF | IRON PIPE FOUND |
| ● IRCF | IRON ROD WITH CAP FOUND |
| □ CMF | CONCRETE MONUMENT FOUND |
| --- | EXISTING PROPERTY LINE |
| --- | ADJACENT PROPERTY LINE |
| --- | PROPERTY LINE TO BE ESTABLISHED |
| --- | BUILDING SETBACK |
| ▨ | PREVIOUSLY ACQUIRED DELDOT RIGHT-OF-WAY |



NOTES

- ALL ENTRANCES SHALL CONFORM TO DELDOT'S DEVELOPMENT COORDINATION MANUAL (DCM) AND SHALL BE SUBJECT TO ITS APPROVAL.
- LOT B SHALL HAVE A SINGLE ACCESS FROM SCR 352, IN WHICH THE ENTRANCE SHALL BE ALONG THE SOUTHERN PROPERTY LINE. SHOULD ADDITIONAL LOTS EVER BE DEVELOPED FROM THE RESIDUAL LANDS, THEN THE SINGLE ACCESS SHALL BE CONVERTED TO A COMBINED ACCESS.
- SHRUBBERY, PLANTINGS, SIGNS AND/OR OTHER VISUAL BARRIERS THAT COULD OBSTRUCT THE SIGHT DISTANCE OF A DRIVER PREPARING TO ENTER THE ROADWAY ARE PROHIBITED WITHIN THE DEFINED DEPARTURE SIGHT TRIANGLE AREA ESTABLISHED ON THIS PLAN. IF THE ESTABLISHED DEPARTURE SIGHT TRIANGLE AREA IS OUTSIDE THE RIGHT-OF-WAY OR PROJECTS ONTO AN ADJACENT PROPERTY OWNER'S LAND, SIGHT EASEMENT SHALL BE ESTABLISHED AND RECORDED WITH ALL AFFECTED PROPERTY OWNERS TO MAINTAIN THE REQUIRED SIGHT DISTANCE.
- THIS PROPERTY IS LOCATED IN THE VICINITY OF LAND USED NORMAL AGRICULTURAL USES AND ACTIVITIES HAVE BEEN AFFORDED THE HIGHEST PRIORITY USE STATUS. IT CAN BE PRIMARILY FOR AGRICULTURAL PURPOSES ON WHICH ACTIVITIES MAY NOW OR IN THE FUTURE INVOLVE NOISE, ANTICIPATED THAT SUCH AGRICULTURAL USES AND OPERATIONS, THE USE AND ENJOYMENT OF THIS PROPERTY ANNOYANCE OR INCONVENIENCE WHICH MAY RESULT FROM IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF ANY AGRICULTURAL CHEMICALS AND NIGHTTIME FARM DUST, MANURE, AND OTHER ODORS, THE USE OF SUCH NORMAL AGRICULTURAL USES AND ACTIVITIES.
- NO WETLANDS WERE LOCATED AT TIME OF FIELDWORK.
- THE PROPOSED MINOR SUBDIVISION IS NOT LOCATED WITHIN A TRANSPORTATION IMPROVEMENT DISTRICT (TID).

OWNER'S STATEMENT

I, THE UNDERSIGNED, CERTIFY THAT I AM THE OWNER OF THE PROPERTY DESCRIBED AND SHOWN ON THIS PLAN, THAT THE PLAN WAS MADE AT MY DIRECTION, AND THAT I ACKNOWLEDGE THE SAME TO BE ACT AND DESIRE THE PLAN TO BE DEVELOPED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

KRISTOF IRWIN
1203 S. 3RD STREET
AUSTIN, TX 78704

DATE

ENGINEER'S STATEMENT

I, THE UNDERSIGNED, HEREBY STATE THAT I AM A REGISTERED ENGINEER IN THE STATE OF DELAWARE, THAT THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO MY BELIEF REPRESENTS GOOD ENGINEERING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

W. ZACHARY CROUCH, P.E.
DAVIS, BOWEN & FRIEDEL, INC.
1 PARK AVENUE
MILFORD, DELAWARE, 19963

DATE

IRWIN PROPERTY
INDIAN RIVER HUNDRED
SUSSEX COUNTY, DELAWARE

DAVIS
BOWEN &
FRIEDEL, INC.
ARCHITECTS • ENGINEERS • SURVEYORS
BATCH, MARYLAND
410.770.4744

MINOR
SUBDIVISION

1