CITY OF CHARLES TOWN

BOARD OF ZONING APPEALS
AGENDA • AUGUST 15, 2023

BZA Meeting **COUNCIL CHAMBERS** **7:00 PM**
101 E Washington Street, Charles Town, WV 25414

I. CALL TO ORDER

II. DETERMINATION OF QUORUM

III. APPROVAL OF MINUTES

III.1 : Draft Minutes of April 18, 2023
04-18-23 Meeting Minutes.pdf

IV. APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

IV.1 : Draft Record BA 2023-02
BA2023-02 Draft Record.pdf

IV.2 : Draft Record BA 2023-01
BA2023-01 Draft Record.pdf

V. PUBLIC HEARINGS

V.1 : BA2023-03: 122 Revere Dr - Variance
1. Staff Report.pdf
2. Application.pdf
3. Variance Location.pdf

VI. CONTINUED CASES

VII. OTHER BUSINESS

VIII. ADJOURNMENT

IX. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at:

https://www.charlestownwv.us/government/agendas-and-minutes/

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/15/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Minutes of April 18, 2023

ATTACHMENTS:

- 04-18-23 Meeting Minutes.pdf

CITY OF CHARLES TOWN

HISTORIC LANDMARKS COMMISSION

MINUTES • April 18, 2023

BZA Meeting	**SMALL CONFERENCE ROOM**	**7:00 PM**

101 East Washington Street, Charles Town, WV 25414

1. **CALL TO ORDER**

Present: Locke Wysong, Chair
Patrick Kratovil
Jim Thomas

Absent: Christopher Cox

Attorney Mike Funk and Zoning Administrator James Newman are also present.

2. **DETERMINATION OF QUORUM**

3. **APPROVAL OF MINUTES**

- 2.1: Minutes – February 22, 2023

Motion to approve minutes.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Kratovil, Thomas, Wysong

4. **APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

5. **PUBLIC HEARINGS**

4.1: BA2023-01: Alla Willa Drive – Request for a Special Exception for a Casino

Staff gave a presentation.

- Property zoned commercial, keeps with primary commercial zoning in the area.
- Adjacent property is zoned residential.

Staff recommends two conditions for the approval of application:

- Staff proposes that the site be developed under the terms of the application.
- If site use is discontinued for two years, the use is revoked.

Mr. Kratovil asked if a bar would be a by-right use. Answer is yes.

Public Comment: One member of the public spoke, concerned about noise impact.

Motion to close the public hearing:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

Members went into private discussion.

Motion back into public hearing:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

Returned to public session at 7:33pm.

Motion to approve the subject, pursuant to the aforementioned conditions:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Thomas, Kratovil, Wysong

4.2: BA2023-02 – 110 219 N. Mildred Street – Request for a Special Exception Permit for Apartments

Staff gave a presentation.

Mr. Kratovil questioned if the basis for staff proposed condition of no more than three units. Staff responded that the applicant is only requesting 3 units.

Applicant spoke.

Public comment: One member of the public spoke, concerned about parking impact.

Motion to close the public hearing.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Thomas, Kratovil, Wysong

Members went into private discussion.

Motion back into public hearing:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

Three conditions were decided on for approval:

1. The site must be developed in accordance with the application, subject to the requirements of the City's Ordinances and to modification by the requirements of the Planning Commission.
2. In the event the use is discontinued for a period of one year, the use is revoked. Use is considered abandoned if all 3 units are uninhabited.
3. There shall be no more than 3 apartment units.

Motion to approve, subject to 3 conditions:

RESULT:	**APPROVED [UNANIMOUS]**

MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Thomas, Kratovil, Wysong

6. **CONTINUED CASES**
   None.
7. **OTHER BUSINESS**
   None.
8. **ADJOURNMENT**

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

   Meeting was adjourned at 8:14pm.

9. **NOTICE: The public may view the meeting LIVE by clicking the event link at: https://www.charlestownwv.us/government/agendas-and-minutes/**

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/15/23
Department: Board of Zoning Appeals
Category: Resolution
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Record BA 2023-02

ATTACHMENTS:

- BA2023-02 Draft Record.pdf

BEFORE THE BOARD OF ZONING APPEALS
OF THE CITY OF CHARLES TOWN, WEST VIRGINIA

In re: Docket No. BA 2023-02 – Application for Special Exception by Alexander Salgado

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 18th day of April, 2023, for public hearing upon the Application for Special Exception filed by Alexander Salgado (the "Applicant"). The subject real property is owned by Zales Construction, LLC. Board members present were Chairman C. Locke Wysong, Jr., James Thomas, Jr., and Patrick Kratovil, being a quorum. Also present were the City's Zoning/Subdivision Administrator, James Newman, and the City's legal counsel, Michael Funk.

From a review of the record and confirmation by staff upon request, the Board found that proper notice was given of this hearing by publication and posting of the subject real property in accord with the Charles Town Zoning Ordinance.

The Applicant came before the Board requesting issuance of a Special Use Permit pursuant to **Sections 1321.10(D)(3) and 1321.11(A)-(D) of the Zoning Ordinance** with respect to the proposed use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units. The subject real property consists of a lot with an existing structure located in the Old Town Residential (OT-R) District at the intersection of East North Street and North Mildred Street and with an address of 219 N. Mildred Street. The subject real property is designated as Tax Parcel 138 on Tax Map 2 in Charles Town Corporation. **Table 1322.04, Zoning District Use Table** of the Zoning Ordinance specifies that residential apartments are conditionally permitted as Special Exception Uses in the Old Town Residential

District.

The Board first heard the presentation of the City's Zoning/Subdivision Administrator, James Newman, who reviewed the contents of the written report of the City's staff, a copy of which is contained in the Agenda Packet for the meeting and made part of the record in this matter, and explained the basis of staff's determination that the Special Exception Use proposed by the Applicant satisfies the requirements of Section 1322.11(D)(3) of the Zoning Ordinance and is recommended. Mr. Newman noted that: (i) the Applicant seeks to alter and improve the existing structure and construct three (3) two-bedroom apartment units therein to be leased to tenants; (ii) the proposed use is best classified as apartments in Table 1322.04, Zoning District Use Table, of the Zoning Ordinance and as a multi-family dwelling elsewhere in the Zoning Ordinance; (iii) the Charles Town Historic Landmarks Commission previously approved the Applicant's request to clad the exterior of the structure with fibrous cement board subject to certain conditions and the proposed use is compatible with those conditions; (iv) the issuance of a Special Use Permit requires satisfaction of the three (3) criteria set forth in Section 1321.11(D)(3) of the Zoning Ordinance, as found by the Board; (v) the subject real property is located in a residential zoning district, which allows apartments as Special Exception Uses; (vi) adjacent uses include residences, an auto parts store, and other commercial and non-residential establishments; (vii) the impact upon property values in the area due to the proposed use and its addition of three (3) two-bedroom apartments should be minimal given the existing mix of residential and non-residential uses; (viii) the character of the proposed use is in keeping with the purpose of the Old Town Residential District, the City's Comprehensive Plan, and the existing character of the neighborhood; and (ix) the existing structure upon the subject real property does not allow for off-street parking (absent demolition of part of the structure) and the proposed use will require issuance by the Planning Commission of a waiver of off-street parking requirements.

The Board had no questions for Mr. Newman.

The Applicant, Mr. Salgado, next was sworn and testified. Mr. Salgado stated that: (i) the structure on the subject real property has been vacant for a long time; (ii) he sees the proposed use of the subject real property for apartments as a good opportunity to bring the property back to life and make it useful; and (iii) he intends to convert the property to three (3) two-bedroom apartments that will add to the stock of available housing in the City.

The Board next presented questions to Mr. Salgado. Board member Thomas asked for clarification on the arrangement of the apartments and Mr. Salgado explained that two (2) apartments would be on the first floor and one (1) apartment on the second floor. Mr. Funk asked if both the two-story and one-story portions of the structure would be used for apartments and Mr. Salgado confirmed that both portions would be used with one (1) apartment in the one-story portion, one (1) apartment on the first floor of the two-story portion, and one (1) apartment on the second floor of the two-story portion. The Board had no further questions for Mr. Salgado.

One member of the public, Gary Roger Tingley, appeared and was sworn. Mr. Tingley stated that he owns properties adjacent to the subject real property and that the existing structure upon the subject real property takes the entire parcel and leaves no room for off-street parking. Mr. Tingley stated that available parking would not be sufficient if three (3) apartment units are added to the area. No other members of the public appeared.

Mr. Salgado next gave a summation and stated that he was aware of the parking situation and was considering limiting his tenants to those with no more than one (1) vehicle.

Upon completion of the taking of testimony and argument, the Board adjourned into executive session for deliberation.

After completing its deliberation and returning to open session, by motion duly made by

Board member Kratovil and seconded by Board member Thomas, the Board determined, by a unanimous vote of three (3) in favor and zero (0) opposed, that the application for Special Exception satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued permitting use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units in compliance with the plans and information submitted by the Applicant.

FINDINGS OF FACT

The Board hereby finds as follows:

1. The proposed use as a residential apartment building/multi-family dwelling with three (3) units will not materially endanger the public health or safety or constitute a public nuisance if located where proposed and developed according to the plans and information submitted and approved. No evidence to the contrary was presented. The subject real property is located in a residential zoning district, which allows apartments as Special Exception Uses. Adjacent uses include residences, an auto parts store, and other commercial and non-residential establishments.

2. The proposed use as a residential apartment building/multi-family dwelling with three (3) units will not substantially diminish the value of adjacent properties. No evidence to the contrary was presented. The impact upon property values in the area due to the proposed use and its addition of three (3) two-bedroom apartments should be minimal given the existing mix of residential and non-residential uses.

3. The location and character of the proposed use as a residential apartment building/multi-family dwelling with three (3) units, if developed according to the plans and information approved, will be in harmony with proximate land uses, and consistent with the

purposes of the Old Town Residential District. No evidence to the contrary was presented. The subject real property and some adjacent parcels are zoned for residential use (OT-R District) and other adjacent parcels are zoned for mixed commercial use (Old Town Mixed Use Commercial District).

4. The written report of Staff methodically details precise reasons why the Special Use Permit should be issued in accord with the requirements of 1321.11(D)(3) of the Zoning Ordinance, which written report has been carefully reviewed and considered by the Board, and the Board hereby adopts such reasons in their entirety and incorporates the same herein.

CONCLUSIONS OF LAW

Based upon the foregoing findings and for the reasons stated herein and based upon staff's recommendations, testimony presented, information contained in the Agenda Packet, and the discussion on the record, the Board, by a unanimous vote of three (3) in favor and zero (0) opposed, determines that Applicant's requested Special Exception Use satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued to permit the requested Special Exception Use as a residential apartment building/multi-family dwelling with three (3) units.

WHEREFORE, the Board directs that staff ISSUE a Special Use Permit permitting, as a Special Exception Use, use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units in all manner compliant with the plans and information submitted by Applicant in connection with its Application for Special Exception, but SUBJECT TO THE EXPRESS CONDITIONS that (i) no more than three (3) apartment units be constructed, placed, used, or occupied upon the subject real property, (ii) the subject real

property be developed in compliance with the Charles Town Subdivision and Land Development Ordinance and any and all requirements of the Planning Commission related thereto, including without limitation, those related to off-street parking, and (iii) the Special Use Permit shall be revoked without further action in the event use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units is discontinued for a continuous period in excess of one (1) year (provided that such use will be considered discontinued only if all three (3) units are uninhabited for the same continuous period of one (1) year).

This Decision is entered as of the date set forth below. Any person adversely affected by this Order may appeal same by Petition to the Circuit Court of Jefferson County within thirty (30) days of the filing hereof.

Entered	C. Locke Wysong, Jr., Chairman

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/15/23
Department: Board of Zoning Appeals
Category: Resolution
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Record BA 2023-01

ATTACHMENTS:

- BA2023-01 Draft Record.pdf

BEFORE THE BOARD OF ZONING APPEALS
OF THE CITY OF CHARLES TOWN, WEST VIRGINIA

In re: Docket No. BA 2023-01 – Application for Special Exception by IRIS Property LLC

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 18th day of April, 2023, for public hearing upon the Application for Special Exception filed by IRIS Property LLC (the "Applicant"). The subject real property is owned by Shirley Rockwell. Board members present were Chairman C. Locke Wysong, Jr., James Thomas, Jr., and Patrick Kratovil, being a quorum. Also present were the City's Zoning/Subdivision Administrator, James Newman, and the City's legal counsel, Michael Funk.

From a review of the record and confirmation by staff upon request, the Board found that proper notice was given of this hearing by publication and posting of the subject real property in accord with the Charles Town Zoning Ordinance.

The Applicant came before the Board requesting issuance of a Special Use Permit pursuant to **Sections 1321.10(D)(3) and 1321.11(A)-(D) of the Zoning Ordinance** with respect to the proposed use of the subject real property as a casino/video lottery establishment. The subject real property consists of two (2) vacant lots located on Alla Willa Drive in the General Commercial (GC) District to which street addresses are not currently assigned, but which lie between 49 and 79 Alla Willa Drive. The subject real property is designated as the single Tax Parcel 12 on Tax Map 7 in Charles Town Corporation. **Table 1322.04, Zoning District Use Table** of the Zoning Ordinance specifies that casinos/video lottery establishments are conditionally permitted as Special Exception Uses in the General Commercial District.

The Board first heard the presentation of the City's Zoning/Subdivision Administrator, James Newman, who reviewed the contents of the written report of the City's staff, a copy of which is contained in the Agenda Packet for the meeting and made part of the record in this matter, and explained the basis of staff's determination that the Special Exception Use proposed by the Applicant satisfies the requirements of Section 1322.11(D)(3) of the Zoning Ordinance and is recommended. Mr. Newman noted that: (i) the Applicant seeks to construct and operate a casino/video lottery establishment upon the subject real property; (ii) the Applicant is in the process of seeking Planning Commission review and approval of a development plan for the subject real property, as well as merger of the two (2) lots; (iii) the issuance of a Special Use Permit requires satisfaction of the three (3) criteria set forth in Section 1321.11(D)(3) of the Zoning Ordinance, as found by the Board; (iv) the subject real property and adjacent parcels are zoned for commercial use, the adjacent E. Washington Street is a major commercial thoroughfare, and nearby commercial uses include a motel and fast-food establishments; (v) the proposed structure will be one story, parking will be between the structure and the street, exterior lighting will be limited, and a six-foot fence will be constructed on the property's perimeter; (vi) while casinos/video lottery establishments might generally negatively impact values of adjacent properties, impact should not be major in a commercial area; (vii) the character of the proposed use is in keeping with the purpose of the General Commercial District, the City's Comprehensive Plan, and the commercial character of the neighborhood; (viii) the proposed use will require issuance by the Planning Commission of a waiver of off-street parking requirements; and (ix) one external light above the building's entrance is proposed, which must be downcast and shielded.

The Board next presented questions to Mr. Newman. Board member Kratovil asked whether the use of the subject real property could be converted into a bar or honky-tonk with a

greater impact. Mr. Newman responded that the Zoning Ordinance does not separately categorize "bars" or similar terms as uses, but that restaurants, including those types that would be expected to serve alcohol, are permitted in the General Commercial District and that uses serving alcohol appear to be permitted by right in the General Commercial District. The Board had no further questions for Mr. Newman.

The Applicant's representative, Ali Hadavand, next was sworn and testified. Mr. Hadavand stated that: (i) "casino" is probably not the right term to describe the propose use, which is to be a much smaller and low-impact; (ii) the proposed establishment will have seven to ten (7-10) video lottery machines and thus few patrons at any given time; (iii) the Applicant has eight (8) other establishments engaged in the same business; (iv) the establishments are low key and generate little noise and have minimal impact on neighboring properties; (v) the establishments serve a maximum of two (2) beers per customer and the patrons are generally middle-aged or seniors; and (vi) as to the possibility of conversion of use to a bar or honky-tonk, the subject real property has room for only a small parking lot that would not be practical for such uses. Mr. Hadavand submitted to the Board a revised site plan for the project.

The Board had no questions for Mr. Hadavand.

The Board confirmed with Staff that no members of the public or aggrieved parties submitted comments. One member of the public, Jonathan Ruckman, appeared and stated that he was not opposed to the proposed use as long as noise would not be a problem.

Mr. Hadavand next gave a summation and stated that a visit to the Applicant's establishment on Wall Street would reflect the low-key nature of the business and that the subject real property is zoned General Commercial and he suspects the proposed use will have as low of an impact as any general commercial use.

Mr. Newman then stated that the proposed project was scheduled to be before the

Planning Commission for consideration of the site details in the coming week.

Upon completion of the taking of testimony and argument, the Board adjourned into executive session for deliberation.

After completing its deliberation and returning to open session, by motion duly made by Board member Kratovil and seconded by Board member Thomas, the Board determined, by a unanimous vote of three (3) in favor and zero (0) opposed, that the application for Special Exception satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued permitting use of the subject real property as a casino/video lottery establishment in compliance with the plans and information submitted by the Applicant.

FINDINGS OF FACT

The Board hereby finds as follows:

1. The proposed use as a casino/video lottery establishment will not materially endanger the public health or safety or constitute a public nuisance if located where proposed and developed according to the plans and information submitted and approved. No evidence to the contrary was presented. The subject real property and adjacent parcels are zoned for commercial use, the adjacent E. Washington Street is a major commercial thoroughfare, and nearby commercial uses include a motel and fast-food establishments. The proposed structure will be one story, parking will be between the structure and the street, exterior lighting will be limited, and a six-foot fence will be constructed on the property's perimeter. The proposed establishment will serve a maximum of two (2) beers per customer and is expected to have a low-key atmosphere, generate little noise, have a generally older clientele, and have minimal impact on neighboring properties.

2. The proposed use as a casino/video lottery establishment will not substantially diminish the value of adjacent properties. No evidence to the contrary was presented. While casinos/video lottery establishments might generally negatively impact values of adjacent properties, impact upon values should not be significant in a commercial area. Other uses that would seem to have similar impacts on property values, such as liquor stores, 24-hour convenience markets, and gasoline/service stations, are permitted by right in the General Commercial District.

3. The location and character of the proposed use as a casino/video lottery establishment, if developed according to the plans and information approved, will be in harmony with proximate land uses, and consistent with the purposes of the General Commercial District. No evidence to the contrary was presented. The subject real property and adjacent parcels are zoned for general commercial use, the adjacent E. Washington Street is a major commercial thoroughfare, and nearby commercial uses include a motel and fast-food establishments. The character of the proposed use is in keeping with the purpose of the General Commercial District, the City's Comprehensive Plan, and the commercial character of the neighborhood.

4. The written report of Staff methodically details precise reasons why the Special Use Permit should be issued in accord with the requirements of 1321.11(D)(3) of the Zoning Ordinance, which written report has been carefully reviewed and considered by the Board, and the Board hereby adopts such reasons in their entirety and incorporates the same herein.

CONCLUSIONS OF LAW

Based upon the foregoing findings and for the reasons stated herein and based upon staff's recommendations, testimony presented, information contained in the Agenda Packet, and

the discussion on the record, the Board, by a unanimous vote of three (3) in favor and zero (0) opposed, determines that Applicant's requested Special Exception Use satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued to permit the requested Special Exception Use as a casino/video lottery establishment.

WHEREFORE, the Board directs that staff ISSUE a Special Use Permit permitting, as a Special Exception Use, use of the subject real property as a casino/video lottery establishment in all manner compliant with the plans and information submitted by Applicant in connection with its Application for Special Exception, but SUBJECT TO THE EXPRESS CONDITIONS that (i) the subject real property be developed in compliance with the Charles Town Subdivision and Land Development Ordinance and any and all requirements of the Planning Commission related thereto, including without limitation, those related to off-street parking, and (ii) the Special Use Permit shall be revoked without further action in the event use of the subject real property as a casino/video lottery establishment is discontinued for a continuous period in excess of one (1) year.

This Decision is entered as of the date set forth below. Any person adversely affected by this Order may appeal same by Petition to the Circuit Court of Jefferson County within thirty (30) days of the filing hereof.

Entered

C. Locke Wysong, Jr., Chairman

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/15/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

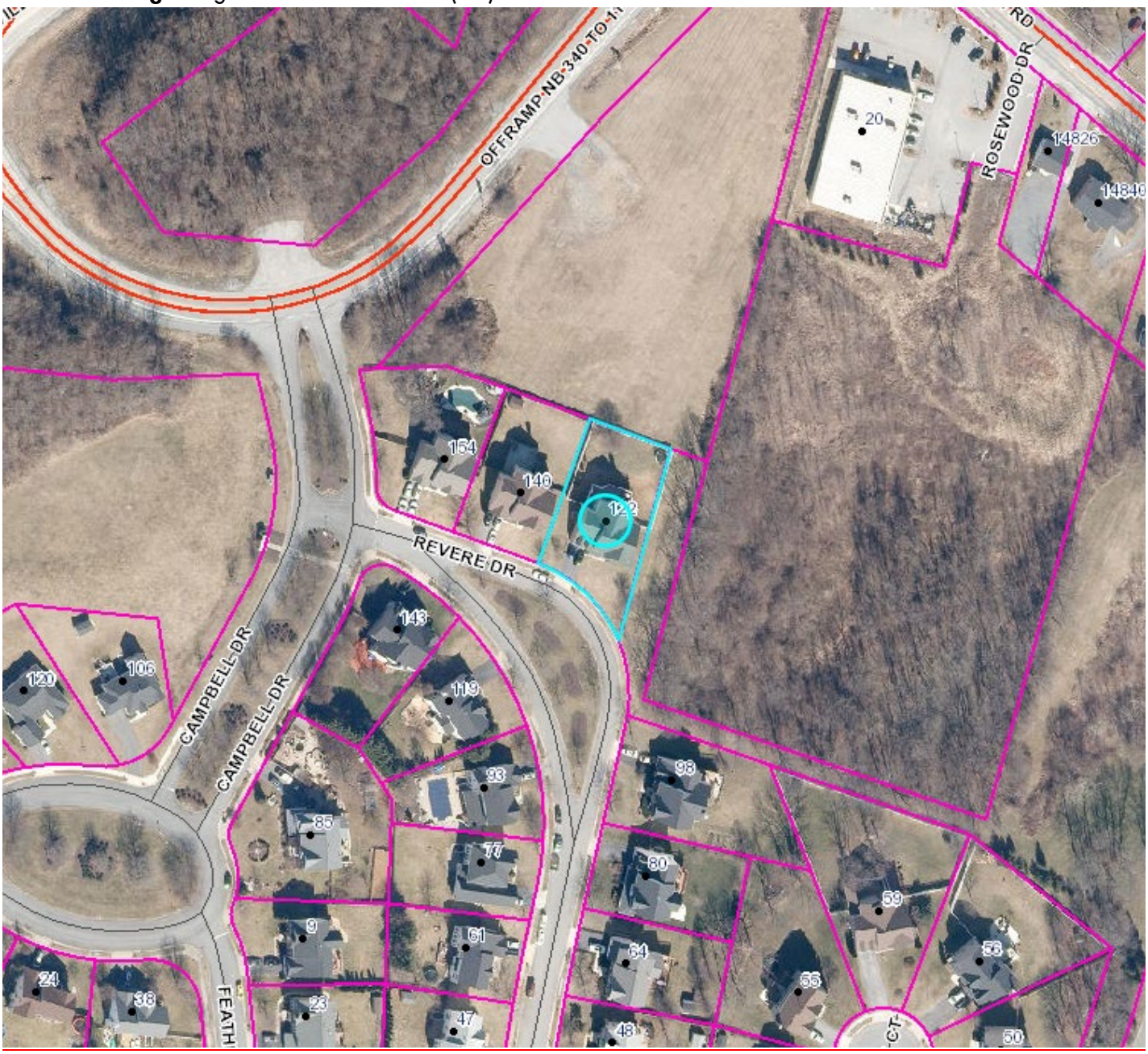
BA2023-03: 122 Revere Dr - Variance

ATTACHMENTS:

- 1. Staff Report.pdf
- 2. Application.pdf
- 3. Variance Location.pdf

Public Hearing – Variance Request
BA-2023-03

Date: For the August 15, 2023 Board of Zoning Appeals meeting
Applicant: Kevin Shipley
Property Owner: Kevin Shipley
Report by: James Newman, City Planner, Zoning/Subdivision Administrator.
Proposal: Variance from setback requirements for a pool
Property Location: 122 Revere Drive at TD 03 / Map: 12A / Pcl: 30.
Current Zoning: Neighborhood Residential (NR)



PROPOSAL

The applicant is seeking to build an inground pool in the rear yard of the property. Per Table 1322.08, within the NR zoning district the rear yard setback is 20 ft. Applicant is requesting a rear yard setback of 16 ft., for a variance of 4 ft.

Per **Article 1323.T. Swimming Pools**

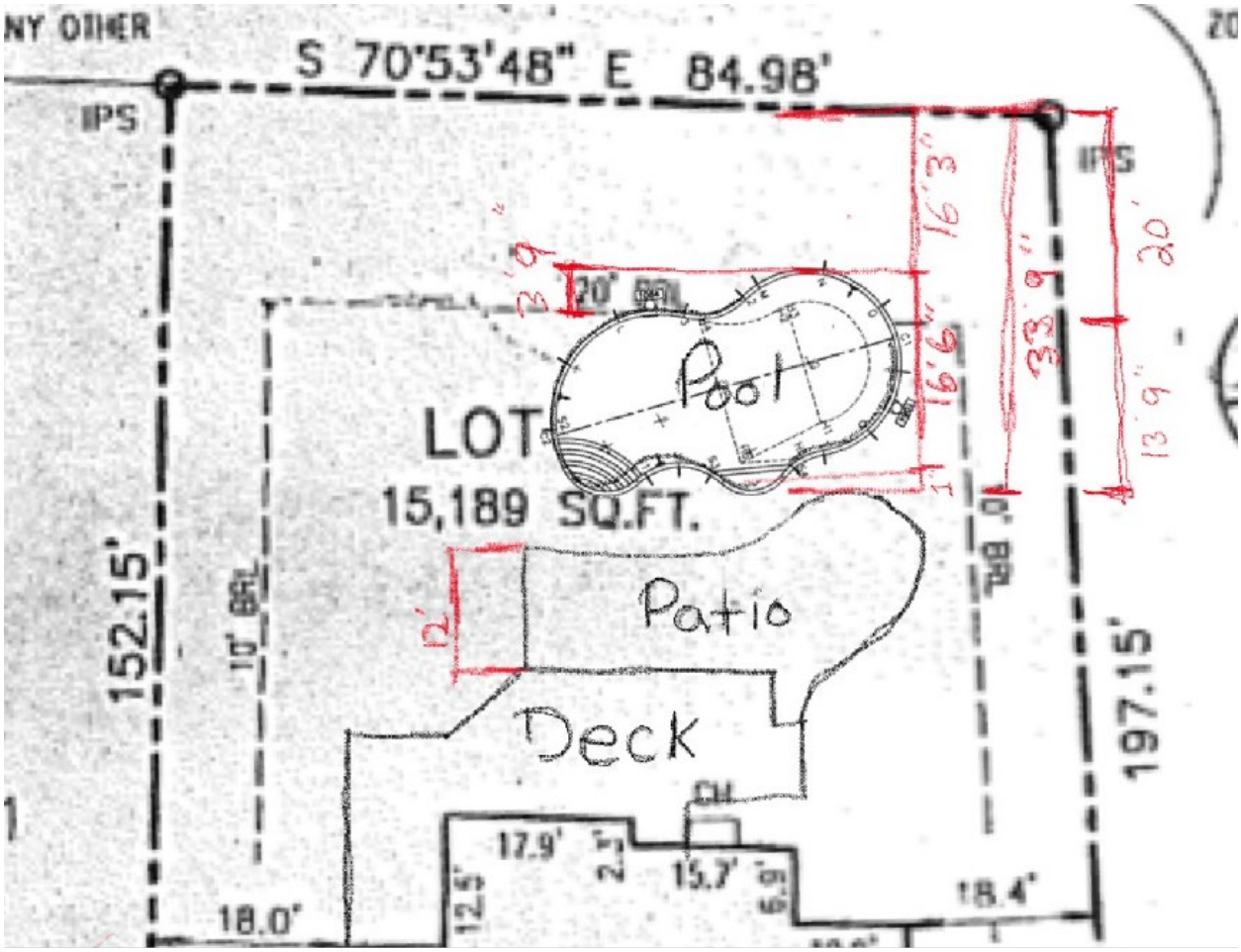
In addition to the other applicable requirements of the City of Charles Town, Swimming Pools shall also be governed by the following provisions:

1. A Swimming Pool shall not involve any Commercial Use if it is an Accessory Use to a principal residential use, and

2. The design and construction of all Swimming Pools shall be in accordance with the City of Charles Town's Building Code, which is the most current version of the International Building Code.

3. A Swimming Pool shall be within the principle setbacks. A contiguous pool patio that is concrete, pavers, bricks, or other hard impervious non-combustible material that is flush with the surrounding grade shall not be required to meet principle setbacks.

PROPOSED LAYOUT



VARIANCE OVERVIEW

A variance is a relaxation of the terms of the Zoning Ordinance where the Board of Zoning Appeals makes the findings specified in Zoning Ordinance Section 1321.11; a deviation from the minimum standards of the Zoning Ordinance and shall not involve permitting land Uses that are otherwise prohibited in the Zoning District nor shall it involve changing the Zoning District classification of a parcel of land. W.Va. Code Chapter 8A-7-11.

REVIEW CRITERIA

In order to issue a Variance, the Board must make the following written findings regarding the following:

A. *Will not adversely affect the public health, safety or welfare, or the rights of Adjacent Property Owners or residents;*

The variance request is for a reduced rear yard setback from 20 ft. to 16 ft. Behind is currently an empty field. Adjacent to the right/east of the house is wooded area, and to the left is a house No side yard setback variance is requested.

There is no adverse impact to the public at large nor to adjacent properties by allowing the variance request. A pool is a common accessory structure within a residential area; a property at 154 Revere Drive (two houses form this property) has a pool in a rear yard, and that pool is less than 20 ft. to the rear property line per Jefferson County Geographic Information Systems.

B. *Arises from special conditions or attributes which pertain to the property for which a Variance is sought and which were not created by the Person seeking the Variance;*

There are no special conditions that warrant a variance; the lot is similar in area to the adjacent lots of 140 and 154 Revere Drive. The applicant has not created a hardship.

C. *Would eliminate an Unnecessary Hardship and permit a reasonable Use of the land; and*

There is no hardship which the variance would eliminate. The variance would permit a reasonable use of land by allowing the applicant to have a pool in a rear yard. While it appears possible that the pool could be moved to the left/west side yard, that would bring it closer to neighboring homes and does not align with the patio and deck designs of the applicant. The request is for a modest 4 foot setback variance.

D. *Will allow the intent of the Zoning Ordinance to be observed and substantial justice done.*

The Charles Town Zoning Ordinance is intended to guide future growth and development by regulating land Uses within the jurisdiction of Charles Town for the improvement of the health, safety, comfort, morals, and general public welfare of Charles Town citizens.

The variance would not result in harm to public health or safety and would provide for comfort of the property owner and their family.

CONCLUSION

The application is for a variance from rear yard setbacks for a pool. The rear yard setback is 20 ft. and the requested rear yard setback is 16 ft. This variance will allow for a pool in a residential zoned property. There is no anticipated negative impact to adjacent property owners, and the request is modest and reasonable.

RECOMMENDATION

Approval.

BZA Variance No. _____

RECEIVED
JUN 30 2023
BY: _____

Board of Zoning Appeals

Application for Variance

To assist staff in the review of a variance application to the Board of Zoning Appeals (BZA), the applicant must supply all of the information contained in this application form. This application must be signed by **all owners** of the real estate which is the subject of the application. The owners may designate one or more professional agents to represent them in the application process using the spaces provided on this form.

Incomplete applications will be subject to scheduling delay. Applicants are encouraged to meet with staff prior to filing. A public hearing will be scheduled within 45 days of the receipt of a completed application.

Approval of a variance by the BZA does not relieve the applicant from other requirements including, but not limited to, signs, building, zoning and use permits or site plans.

As part of this application, the following must be provided:

1. $150.00 Application Fee.
2. A plat or building location survey of the subject property drawn to scale (see requirements below on Page 3).
3. As applicable, Building Permit, Zoning Permit, and Sign Permit Applications. Site plans (where applicable) may be submitted after the BZA application has been approved at the public hearing.

It is the **applicant's responsibility** to make a good-faith effort to provide the Zoning Administrator, as applicable, with a current list containing the accurate names and mailing addresses of all interested parties. For purposes of this provision, "interested parties" shall mean Landowners of Adjacent Property. The applicant shall provide the addresses in order to comply with Section 1321.10.G of the Zoning Ordinance.

Legal Notices

The following shall occur at least 15 days prior to the Public Hearing: notice of the hearing shall be advertised by the Board of Zoning Appeals as a Class I legal advertisement in the local newspaper, posting of a sign upon the property, and letters to adjacent and confronting land owners within 100 feet of the subject property.

Definition of a Variance

A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

The Charles Town Zoning Ordinance

A relaxation of the terms of the Zoning Ordinance where the Board of Zoning Appeals makes the findings specified in Section 1321.11(E)(3); a deviation from the minimum standards of the Zoning Ordinance and shall not involve permitting land Uses that are otherwise prohibited in the Zoning District nor shall it involve changing the Zoning District classification of a parcel of land. W.Va. Code Chapter 8A-7-11.

The West Virginia State Code

Section 8A-7-11 of the Code of West Virginia further provides that:

The Board of Zoning Appeals shall grant a variance to the Zoning Ordinance if it finds that **all** of the following can be met and the variance:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
2. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
3. Would eliminate an unnecessary hardship and permit a reasonable use of the land; **and**
4. Will allow the intent of the zoning ordinance to be observed and substantial justice done.

Plat Requirements

A plat or building location survey must contain the following information in order for the property to be thoroughly evaluated for conformance with all City Ordinances:

1. Plat must be drawn to scale.
2. Name of Engineer, Surveyor, or Architect who prepared plat.
3. Signature and Seal of Engineer, Surveyor, or Architect.
4. Date of plat and dates of any revisions.
5. Legend/Table on plat listing the following:
   a. Zoning of Subject Parcel
   b. Zoning of Subject Parcel
   c. Tax Map and Parcel Number
   d. Parcel Address
   e. Owner/Applicant's name and address
   f. Scale
6. North Arrow.
7. Parcel boundaries showing bearings and distances.
8. Size of parcel.
9. Location and dimensions of all existing and/or proposed buildings including accessory structures and additions.
10. Height and number of stories for all structures, if applicable.
11. Location of existing and/or proposed easements and well and septic where applicable.
12. Location of Floodplain where applicable.
13. Parking spaces/parking lots with calculations showing what is required and proposed, if applicable.
14. All setbacks in table format and drawn on the plat including what is required versus what is existing/proposed.
15. Landscaping as required in the Zoning Ordinance, if applicable.
16. Names of adjacent streets.
17. Tax Map/Parcel numbers and uses for all adjacent parcels, including those across the street/road.
18. List with any documentation of any previously approved variances, special exceptions, appeals, court decisions, conditions, proffers, or waivers granted for the subject property.
19. Any additional items deemed necessary by the Zoning Administrator.

BZA Variance No. _____

1. DATE June 30, 2023

2. APPLICANT'S NAME* Kevin Shipley

   Address: 122 Revere Drive, Charles Town, WV 25414

   Telephone Number (240) 422-7077 Fax Number ( )

   Email Address KevinAShipley@gmail.com

3. PROPERTY OWNER'S NAME Kevin Shipley

   Address: 122 Revere Drive, Charles Town, WV 25414

   Telephone Number (240)422-7077 Fax Number ( )

   Email Address KevinAShipley@gmail.com

4. LEGAL DESCRIPTION OF THE SUBJECT PROPERTY (List all parcels that apply)

   Property Address: 122 Revere Drive, Charles Town, WV 25414

   Tax Map # and Parcel(s): 12A / 0300

   Deed Book and Page #: Book: 1176 Page:497

   Property Area in Square Feet or Acres: 15,189 SQ. FT.

5. DESCRIPTION OF THE EXISTING (OR FORMER) USE(S) OF THE PROPERTY AND CURRENT ZONING:

   Private Residence

6. DESCRIPTION OF THE PROPOSED USE(S) OF THE PROPERTY: (Include the hours of operation and the activities to be conducted on the site. Be as specific about your proposed use as possible.)

   Private Residence

*Applicants include: Property owner(s), Engineer(s), Surveyor(s), or Consultant(s)

BZA Variance No. _____

7. DESCRIPTION OF ANY PROPOSED WORK TO BE DONE TO THE PROPERTY: (i.e. – building additions, ADA compliance, etc.)

Installation of an inground swimming pool in the back yard. Pool Measures 32ft x 16ft

8. DESCRIPTION OF THE VARIANCE REQUEST:

Reduce the Building Restriction/Setback Line by 10 feet from 20 feet to 10 feet.

9. LIST THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE FROM WHICH THE VARIANCE IS REQUESTED:

Zoning Ordinance of the City of Charles Town, WV Part 13, Articles 1321 – 1325, of the Charles Town Code
Section 1322.08, Neighborhood Residential (NR) District

10. IS THIS REQUEST CONSISTENT WITH THE PURPOSE AND INTENT OF THE CITY OF CHARLES TOWN ZONING ORDINANCE? Why or why not?

Yes - the varaince would allow for the installation and use of a swimming pool in the backyard that could not otherwise be installed or used without the variance.

11. IN YOUR OPINION, WOULD THE VARIANCE ADVERSELY AFFECT THE PULIC HEALTH, SAFETY OR WELFARE, OR THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS?

No – no adjacent property owner rights or safety would be impacted.

12. IN YOUR OPINION, EXPLAIN HOW THE VARIANCE REQUEST ARISES FROM SPECIAL CONDITIONS OR ATTRIBUTES WHICH PERTAIN TO THE PROPERTY FOR WHICH A VARIANCE IS SOUGHT AND WHICH WERE NOT CREATED BY THE PERSON SEEKING THE VARIANCE:

The existing Buildign Restriction Line does not allow for the use of the yard for a swimming pool.

13. IN YOUR OPINION, HOW WOULD GRANTING THE VARIANCE ELIMINATE AN UNNECESSARY HARDSHIP AND PERMIT A REASONABLE USE OF THE LAND?

Granting the variance would allow for the installation and use of a swimming pool that would otherwise not be possible.

14. IN YOUR OPINION, WOULD THE VARIANCE ALLOW THE INTENT OF THE ZONING ORDINANCE TO BE OBSERVED AND SUBSTANTIAL JUSTICE DONE?

Yes

15. HAS THE PROPERTY BEEN THE SUBJECT OF ANY COURT ACTION?

☐ Yes (Please specify nature of all proceedings and current status and attach any documents showing court decisions, etc.)

☒ No

16. PARCEL HISTORY (List all pending or previously approved applications on the subject parcels inventoried above, including previous site plan applications if this application is a site plan amendment)

Application No.	Project Name and Phase	Status	Approval Date

17. INTERESTED PARTY ADDRESSES, FOR PUBLIC NOTICE (including across street) (Interested parties are defined as adjacent properties within 100 feet).

Owner	# and Street	City, State, Zip
Jay Sobrino	140 Revere Drive	Charles Town, WV, 25414

BZA Variance No. _____

APPLICANT CERTIFICATION

I certify that, to the best of my knowledge, the submitted information and statements are true and correct. I also certify that I have received and read Article 1321 and relevant provisions of the Charles Town Zoning Ordinance outlining the City's Board of Zoning Appeals application and approval procedures.

Signature of Applicant

_____ Date 6/30/2023

Signature of Owner(s) (If different than Applicant)

_____ Date _____

Please submit an original completed petition to the following:

Zoning Administrator
City of Charles Town
101 E. Washington Street
Charles Town, WV 25414

FOR CITY USE ONLY

Application Number:_____ Date Application Received:_____

Zoning District: _____

Fee: $_____ Check No._____ Receipt No._____

BZA Hearing Date:_____ Decision:_____

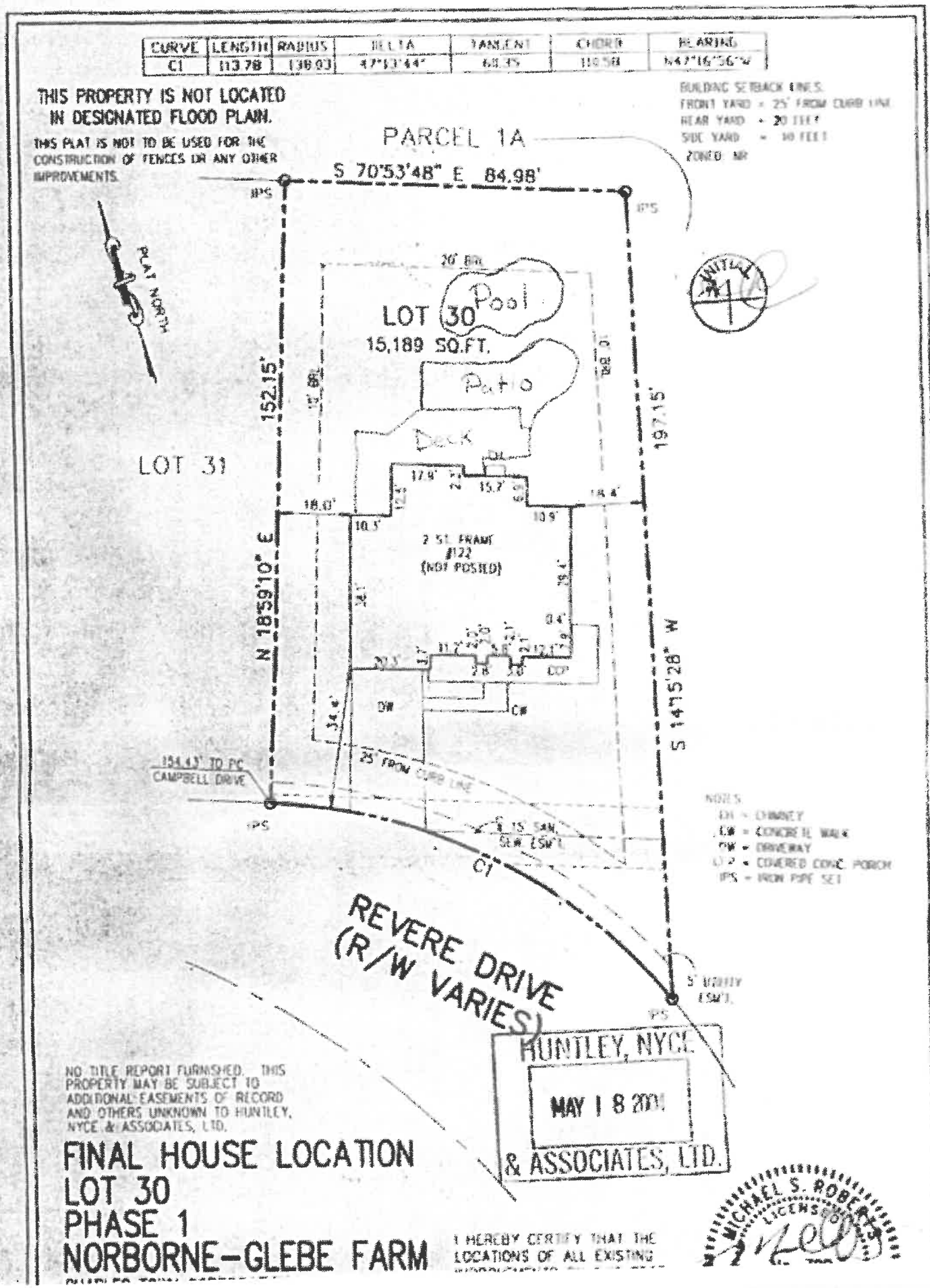
Comments:_____

_____

_____

_____

_____


CURVE | LENGTH | RADIUS | DELTA | TANGENT | CHORD | BEARING
C1 | 113.78 | 1380.03 | 4°43'44" | 56.91 | 113.74 | N47°16'36"W
THIS PROPERTY IS NOT LOCATED IN DESIGNATED FLOOD PLAIN.
THIS PLAT IS NOT TO BE USED FOR THE CONSTRUCTION OF FENCES OR ANY OTHER IMPROVEMENTS.
BUILDING SETBACK LINES
FRONT YARD = 25' FROM CURB LINE
REAR YARD = 20 FEET
SIDE YARD = 10 FEET
ZONED RR
PARCEL 1A
S 70°53'48" E 84.98'
IPS
PLAT NORTH
20' BRL
LOT 30
15,189 SQ.FT.
Pool
Patio
Deck
LOT 31
152.15'
197.15'
N 18°59'10" E
S 14°15'28" W
2 ST. FRAME #22 (NOT POSTED)
DW
C#
154.43' TO PC CAMPBELL DRIVE
25' FROM CURB LINE
C1
REVERE DRIVE (R/W VARIES)
HUNTLEY, NYCE & ASSOCIATES, LTD.
MAY 18 2004
NOTES
CH = CHIMNEY
CW = CONCRETE WALK
DW = DRIVEWAY
CP = COVERED CONC. PORCH
IPS = IRON PIPE SET
NO TITLE REPORT FURNISHED. THIS PROPERTY MAY BE SUBJECT TO ADDITIONAL EASEMENTS OF RECORD AND OTHERS UNKNOWN TO HUNTLEY, NYCE & ASSOCIATES, LTD.
FINAL HOUSE LOCATION
LOT 30
PHASE 1
NORBORNE-GLEBE FARM
I HEREBY CERTIFY THAT THE LOCATIONS OF ALL EXISTING
MICHAEL S. ROBERTS
LICENSED

CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD	BEARING
C1	113.78	138.03	47°13'44"	60.35	110.58	N47°16'56"W

THIS PROPERTY IS NOT LOCATED IN DESIGNATED FLOOD PLAIN.

THIS PLAT IS NOT TO BE USED FOR THE CONSTRUCTION OF FENCES OR ANY OTHER IMPROVEMENTS.

BUILDING SETBACK LINES:
FRONT YARD = 25' FROM CURB LINE
REAR YARD = 20 FEET
SIDE YARD = 10 FEET
ZONED: NR

PARCEL 1A

S 70°53'48" E 84.98'

IPS

IPS

PLAT NORTH

LOT 31

LOT 30
15,189 SQ.FT.

Pool

Patio

Deck

CH

2 ST. FRAME
#122
(NOT POSTED)

DW

CW

COP

152.15'

197.15'

N 18°59'10" E

S 14°15'28" W

10' BRL

20' BRL

25' FROM CURB LINE

154.43' TO PC
CAMPBELL DRIVE

IPS

℄ 15' SAN. SEW. ESM'T.

C1

REVERE DRIVE
(R/W VARIES)

5' UTILITY ESM'T.

IPS

NOTES:
CH = CHIMNEY
CW = CONCRETE WALK
DW = DRIVEWAY
COP = COVERED CONC. PORCH
IPS = IRON PIPE SET

HUNTLEY, NYCE
MAY 18 2004
& ASSOCIATES, LTD.

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