

City of Wilmington
Board of Adjustment

Item #3



Board of Adjustment
February 20th, 2025

REQUEST FOR A VARIANCE
BADV-23-225

Grace Lamay, grace.lamay@wilmingtonnc.gov, (910) 341-0186

Request

<i>Code Section(s)</i>	Land Development Code: Legacy Code Section 18-308 Section 18-615 Board of adjustment
Subject Property	1020 Midnight Channel Road
<i>Parcel ID</i>	R05000-004-218-000
<i>Zoning</i>	MX, Mixed Use District
<i>Request</i>	Variance from Legacy Code Section 18-308 swimming pool setback standards for the construction of a swimming pool on a corner lot within the MX zoning district
<i>Owner</i>	Marvin & Sarah Neuwirth sarahonbhi@msn.com 1020 Midnight Channel Road (910) 367-3812 Wilmington, NC 28403
<i>Agent</i>	William Hickman whickman@carolinacreations.biz 4802 Bailey Street (910) 274-8854 Shallotte, NC 28470

GENERAL INFORMATION

Subject Property Area	Approximately 0.24 acres
Annexation Date	January 31st, 1999
History if Applicable	N/A

ANALYSIS & RESEARCH

1. The subject property is approximately 10,454 square feet or 0.24 acres and zoned MX (L), Mixed-use (Legacy District).
2. The property is a corner lot within the Autumn Hall subdivision and is currently developed with a single-family dwelling.
3. The applicants have proposed to construct an in-ground swimming pool located in the backyard of the property adjacent to the rear-entry driveway and garage.
4. The City's Legacy Land Development Code Section 18-308 states that on a corner lot, a swimming pool shall not extend beyond the side facade of the principal structure on the street side of the structure.

5. Section 18-308 states that swimming pool setbacks shall be measured from the property line to the apron of the pool or any permanent construction of the pool which extends closest to the property line.
6. According to the building permit approval, the side façade of the principal structure was permitted approximately 21.84 feet from the side property line along Dungannon Drive.
7. The applicant has proposed to construct a swimming pool with a surrounding deck which extends beyond this side façade of the house.
- 8. The applicant has requested a variance to Land Development Code Section 18-308 to construct the pool deck 14.36 feet from the side street property line, a variance of 7.48 feet.**
9. The applicant states that due to the property being a corner lot and the configuration of the driveway access in the rear, they face a significant challenge to locate the pool in a way that complies with the setback requirements in Section 18-308.
10. This matter is set for hearing before the Board of Adjustment on February 20th, 2025.

FINDINGS OF FACT

The Board of Adjustment, in granting a variance, shall find that the following four findings of fact required by North Carolina General Statutes §160D-705 and City Code Chapter 18, Land Development Code, Section 18-615 Board of adjustment have been met by the applicant:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance;
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

NEIGHBORHOOD CONTACT

City Notifications:	Board of Adjustment
Adjacent Letters	2/7/2025
Property Posted	2/7/2025
Advertisement Dates	2/14/2025

ATTACHMENTS

- 1.) Application (received 1/6/2025)
- 2.) Location and Zoning Map (2021)
- 3.) Approved site plan for primary structure (Building Permit #19-028717)
- 4.) Applicant attachments & site plan
- 5.) City Code Chapter 18, Land Development Code references:
 - a. Legacy Code Section 18-308
 - b. Section 18-615 Board of adjustment

ATTACHMENT

1

Application No. BADV-23-225

**CITY OF WILMINGTON
STATE OF NORTH CAROLINA**

APPLICATION FOR A VARIANCE

PURPOSE OF VARIANCE – A Variance is the official allowance of a variation from the dimensional requirements of the City Land Development Code or other development regulations. An applicant for a variance must demonstrate valid reasons which create a need for a Variance. These reasons cannot be strictly economic in nature but must generally involve some physical problem with the subject property which will not allow it to be developed in a reasonable manner if City development regulations are followed literally, such as a lot which is substandard in area or width.

BOARD OF ADJUSTMENT - The Board of Adjustment, or BOA, is the official City Board that considers requests for variances. The BOA receives sworn testimony at its quasi-judicial hearings and issues decisions on variance requests based on this testimony. It is the responsibility of each applicant for a Variance to attend the BOA meeting and present sworn testimony in support of the request.

REASON FOR VARIANCE REQUEST – Explain in your own words why you are requesting a Variance. Be sure to clearly indicate the problem(s) you will experience in complying with the City development regulations. (Attach additional sheets if needed.)

Looking to install a fiberglass pool and concrete pool deck; current design

shows the pool deck extending approx. 7' outside of the facade of the footprint

of the home. Please see attached explanation letter and site plan for details.

The BOARD OF ADJUSTMENT is required to make the following four (4) findings before granting a Variance. Write a thorough response to each of these items.

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance;
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship;
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Application No. BADV-23-225

ATTACH PLOT PLAN DESCRIBING VARIANCE REQUEST

PROPERTY LOCATION INFORMATION

Street address of subject property 1020 Midnight Channel Rd. Wilmington, NC

Tax Parcel Number of subject property 205000-004-218-000

PLEASE ATTACH TAX PARCEL & APPLICANT/OWNERSHIP INFORMATION

APPLICANT INFORMATION

Name/Address/Telephone/Email

Name: William Hickman

Address: 4802 Bailey St. Shallotte, NC

Phone #: 910-274-8854

Email: whickman@carolinacreations.biz

OWNER INFORMATION

Name/Address/Telephone/Email

Marvin & Sarah Neuwirth

1020 Midnight Channel Rd. Wilm, NC

910-367-3812

sarahonbhi@msn.com

ATTACH AGENT FORM IF THE APPLICANT IS NOT THE OWNER

DATE 1/7/2025

APPLICANT'S SIGNATURE

DocuSigned by:
William Hickman
93CB10D592D3498...

**AUTHORITY FOR APPOINTMENT OF PERSON
TO ACT ON MY BEHALF**

The undersigned owner, Marvin & Sarah Newirth
does hereby appoint William Hickman to act on my
behalf for the purpose of making application to the Wilmington Board of Adjustment for a
variance or for an appeal to the Board of Adjustment as described in the attached application.

The owner does hereby covenant and agree with the City of Wilmington that said
person has the authority to do the following acts for and on behalf of the owner:

1. To submit a proper application and the required supplemental materials.
2. To appear at quasi-judicial hearings to give testimony and make commitments on
behalf of the owner.
3. To accept conditions or recommendations of the Board of Adjustment regarding the
owner's property.
4. To act on the owner's behalf without limitation regarding any and all things directly or
indirectly connected with or arising out of any application
for a variance from the City regulations or any appeal to the Board of Adjustment.

This appointment agreement shall continue in effect until final disposition of the
application submitted in conjunction with this appointment.

12/11/2024
Date

Appointee's Name, Address & Telephone:

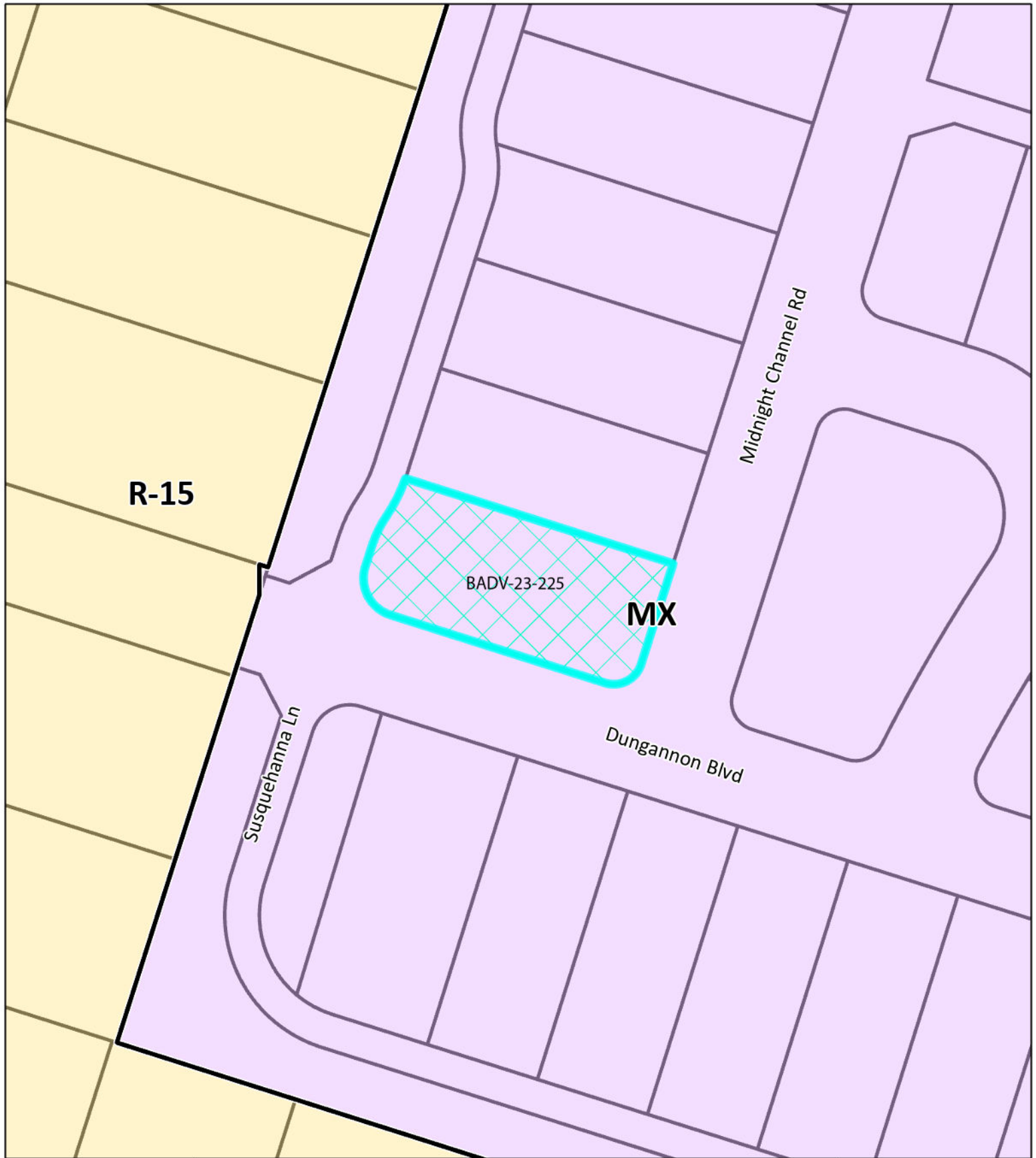
William Hickman

Signature of Owner:

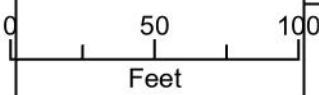
[Signature]
Sarah Newirth

ATTACHMENT

2



-  Zoning
-  Parcels
-  Board of Adjustment



Board of Adjustment

BADV-23-225 — Zoning Map



1020 Midnight Channel Road


1/10/2025





New Hanover County NC

 Site
 Zoning

 N

0 25 50
 Feet

Board of Adjustment

BADV-23-225 — Aerial Map

1020 Midnight Channel Road

1/10/2025



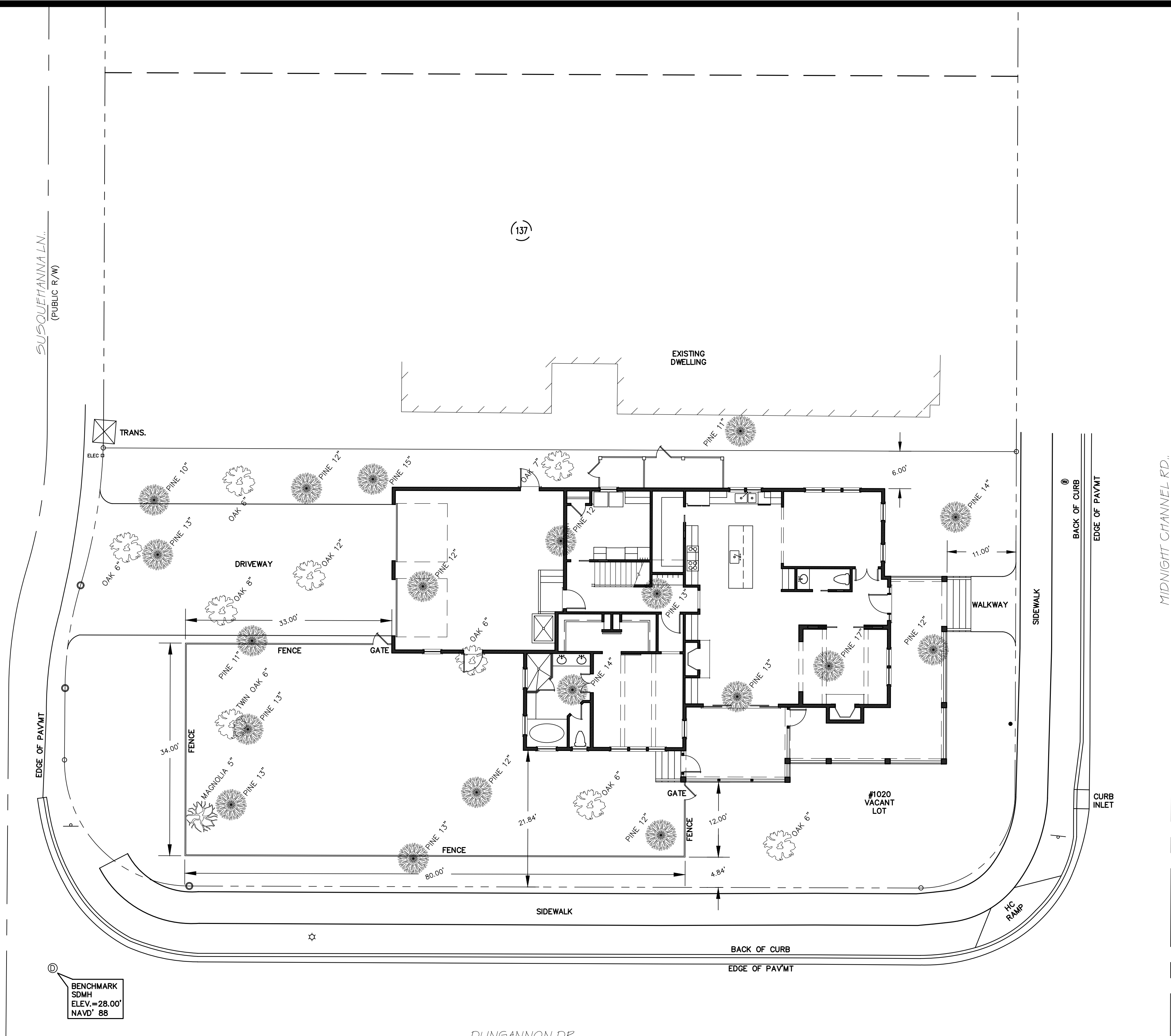
ATTACHMENT

3



NOTES:
 1. THIS TRACT IS LOCATED IN ZONE "X" ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP, COMMUNITY-PANEL NUMBER 3720314700K, DATED 8/28/2018.
 2. TOTAL SITE AREA= 0.22 AC.±

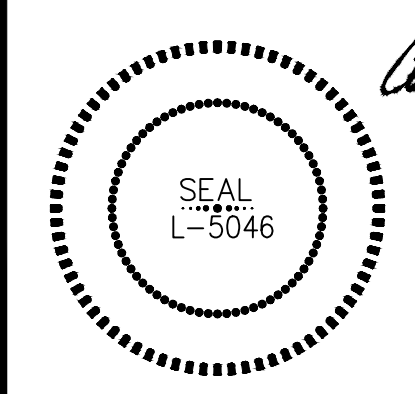
- EXISTING IRON
- SET IRON
- CONC. MONUMENT
- MAG NAIL
- SANITARY SEWER MANHOLE
- SANITARY SEWER CLEANOUT
- STORM DRAINAGE MANHOLE
- STREET SIGN
- WATER METER
- ELEC. PEDESTAL
- CABLE TV PEDESTAL
- LIGHT POLE
- CENTER LINE
- R/W LINE
- ADJACENT PROPERTY LINE
- EASEMENT LINE
- SUBJECT TRACT BOUNDARY LINE
- UNDERGROUND GAS LINE



BENCHMARK
SDMH
ELEV.=28.00'
NAVD' 88

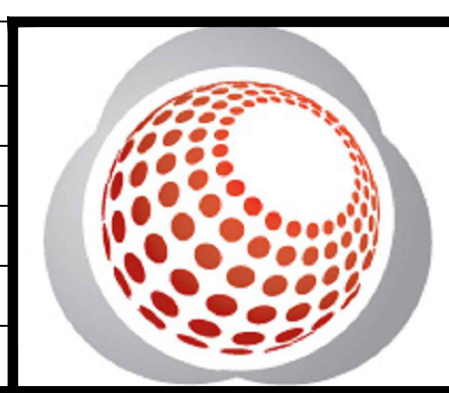
BENCHMARK
SSMH
ELEV.=27.32'
NAVD' 88

BENCHMARK
EMAG
ELEV.=26.14'
NAVD' 88



Christa F. Rogers 5/30/19

NO.	REVISION DESCRIPTION	DATE



Bateman Civil Survey Company
 Engineers • Surveyors • Planners
 406 NORTH THIRD STREET, WILMINGTON, NC 28401
 Phone: 910.772.9113 Fax: 910.772.9128
 NCBELS FIRM No. C-2378

BOUNDARY, TOPOGRAPHIC & TREE SURVEY
 EXCLUSIVELY FOR :
PBC, LLC
 OF
LOT 138 AUTUMN HALL, PHASE 4
 AS RECORDED IN MAP BOOK 64, PAGE 358
 AND DEED BOOK 6151 PAGE 2372 OF THE NEW HANOVER COUNTY REGISTRY
 CITY OF WILMINGTON, NEW HANOVER COUNTY, NORTH CAROLINA
 SCALE: 1" = 10' MAY 29, 2019

Field By: CFC
 Drawn By: SSD
 Checked By: AWC
 Scale: 1" = 10'
 Project Number: 19W083
S-1



Marvin & Sarah Neuwirth
1020 Midnight Channel Rd.
Wilmington, NC 28403
%: William Hickman, Carolina Creations

Variance Request for Swimming Pool Installation

Mr. and Mrs. Marvin Neuwirth are formally requesting a variance for the installation of a fiberglass swimming pool at their home located at 1020 Midnight Channel Rd. The swimming pool and concrete pool deck will be located the backyard of the property adjacent to their rear-entry driveway and garage (*please see attached site plan*), and adheres to all property-line setbacks (10' side setback and 15' rear setback). The body of water is also 10' away from the garage wall to be code-compliant as well. Unfortunately, in order to meet the code requirements in the space allowed, the pool and pool deck do extend approximately 7' past the side facade of the home, which we have been informed by city zoning is only permissible with an approved variance. We will note that there is an attached covered porch on that side of the home that shares a foundation and roof-line with the home that will further block the view of the pool and pool deck from the front of the home on Midnight Channel Rd. I have attached site photos for reference as well.

As part of the pool installation, the required pool equipment will also be installed within the side setback on the R' side (front-facing) of the property adjacent to the garage as noted on the site plan. The existing mechanicals and electrical box are located in this area currently.

Mr. and Mrs. Neuwirth's home is located on a corner lot, and their backyard (*where the pool installation will be located*) backs up to Susquehanna Lane, which is adjacent to the back property-line of the HOA and no homes are located behind them. In addition, they have an existing code compliant fence, and exterior landscape screening around the entire area (*photos provided*).

1. Mr. and Mrs. Neuwirth are elderly clients, and are installing a pool for health and therapeutic benefits. The pool will be used for both exercise and entertainment, but Mr. Neuwirth is unable to use the community pool on a regular basis due to back issues.
2. The nature of the home layout on the corner lot only allowed for the driveway to be installed in the back of the property, which limited the amount of space in the backyard allowable for a pool installation (*as to not extend beyond the facade of the home*).
3. All of the homes on Midnight Channel Rd. have rear-facing garages & driveways that back up to/are adjacent to Susquehanna Lane. The Neuwirth's built their home in compliance with the existing structures in the neighborhood and within the guidelines of the HOA.
4. We are fully aware that the requested accessory structure would extend past the facade of the home, but we are respectfully requesting that all external factors listed in this request be considered, such as the location of the lot (so as not to disturb any neighboring properties), the foundational screen porch built which was built as part of the home and acts as additional screening from the front of the home, and all property setbacks and building codes are observed and adhered to.

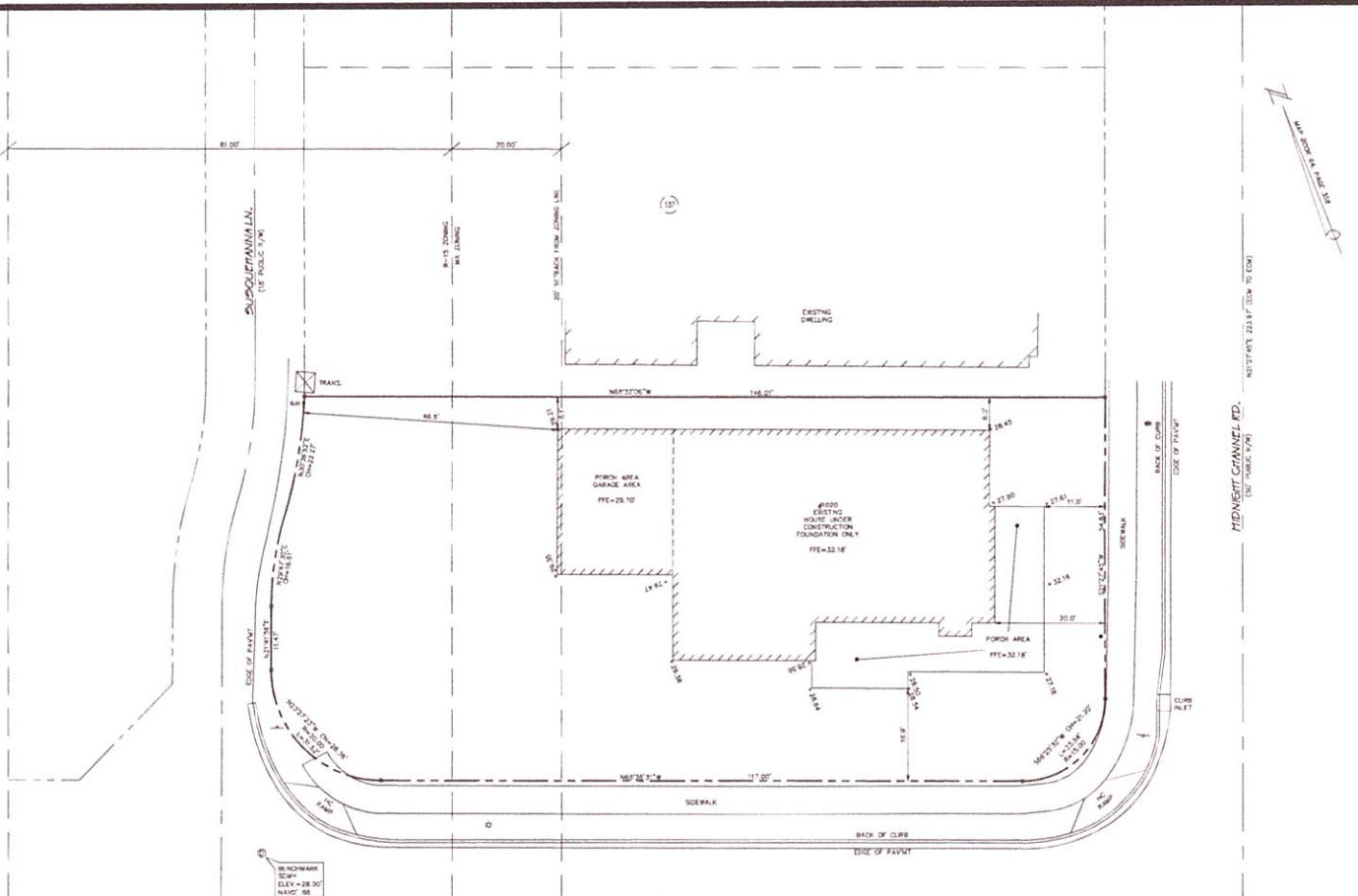
ATTACHMENT

4



NOTES:
 1. THIS TRACT IS LOCATED IN ZONE "1" ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 372034700K, DATED 8/28/2018.
 2. TOTAL SITE AREA= 0.24 AC±
 3. UTILITY EASEMENT NOTE:
 "EACH LOT HEREON IS SUBJECT TO AN EASEMENT FOR THE INSTALLATION, REPAIR, AND MAINTENANCE OF MUNICIPAL WATER FACILITIES WHICH EASEMENT SHALL BE LIMITED TO THE AREA IN WHICH THE MUNICIPAL WATER FACILITIES ARE LOCATED PLUS AN ADDITIONAL FIVE FEET (5.00) ON EITHER SIDE OF THE AREAL THESE FACILITIES SHALL BE OWNED AND MAINTAINED BY THE CAPE FEAR PUBLIC UTILITY AUTHORITY AND MAINTENANCE OF THE EASEMENT AREAS AND THE MUNICIPAL WATER FACILITIES LOCATED THEREIN SHALL BE PERFORMED IN ACCORDANCE WITH THE APPLICABLE CAPE FEAR PUBLIC UTILITY ORDINANCES AND POLICES AS AMENDED FROM THE 10 TH TIME WHICH ARE AVAILABLE UPON REQUEST FROM THE CAPE FEAR PUBLIC UTILITY AUTHORITY, AND A MATTER OF PUBLIC RECORD."
 PLEASE NOTE: OPLIA DOES NOT ALLOW STRUCTURE IN ITS EASEMENT.
 4. EASEMENT NOTES (Unless Otherwise Shown)
 Each lot herein is subject to an easement for the installation, repair, and maintenance of sanitary sewer facilities which easement shall be limited to the area in which the sanitary sewer facilities are located plus an additional five feet (5.00) on either side of the area in which these facilities are located. The easement shall be owned and maintained by the Cape Fear Public Utility Authority and the installation, repair, and maintenance of the sanitary sewer facilities located therein shall be performed in accordance with the applicable ordinances and policies as amended from time to time, which are available upon request from the Cape Fear Public Utility Authority, and a matter of public record.

- LEGEND**
- EXISTING IRON
 - SET IRON
 - CONIC MONUMENT
 - WAS NAIL
 - SANITARY SEWER MANHOLE
 - SANITARY SEWER CLEANOUT
 - STORM DRAINAGE MANHOLE
 - STREET SIGN
 - WATER METERS
 - ELECTRIC PEDESTAL
 - CABLE TV PEDESTAL
 - LIGHT POLE
 - CENTER LINE
 - V/W LINE
 - ADJACENT PROPERTY LINE
 - EASEMENT LINE
 - SUBJECT TRACT BOUNDARY LINE
 - UNDERGROUND GAS LINE



I CERTIFY THAT THIS MAP DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (FIELD DESCRIPTION RECORDED IN BOOK 815, PAGE 2372), THAT THE DIMENSIONS NOT SHOWN ARE DERIVED AS DRAWN FROM INFORMATION SHOWN HEREON, THAT THE PLOT OF ACCURACY IS 0.10, AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (N.C. 86-100), THIS 9th DAY OF MARCH, 2020.



DATE: 3/19/20
 SIGNATURE: [Signature]

NO.	REVISION DESCRIPTION	DATE



Bateman Civil Survey Company
 Engineers • Surveyors • Planners
 406 NORTH THIRD STREET, WILMINGTON, NC 28401
 Phone: 910.772.9113 Fax: 910.772.9128
 NCBSL FIRM NO. C-2378

FOUNDATION SURVEY
 EXCLUSIVELY FOR:
PBC, LLC
 LOT 138 AUTUMN HALL, PHASE 4
 AS RECORDED IN MAP BOOK 84, PAGE 358
 AND DEED BOOK 6151 PAGE 2372 OF THE NEW HANOVER COUNTY REGISTRY
 CITY OF WILMINGTON, NEW HANOVER COUNTY, MARCH 9, 2020
 SCALE: 1" = 10'

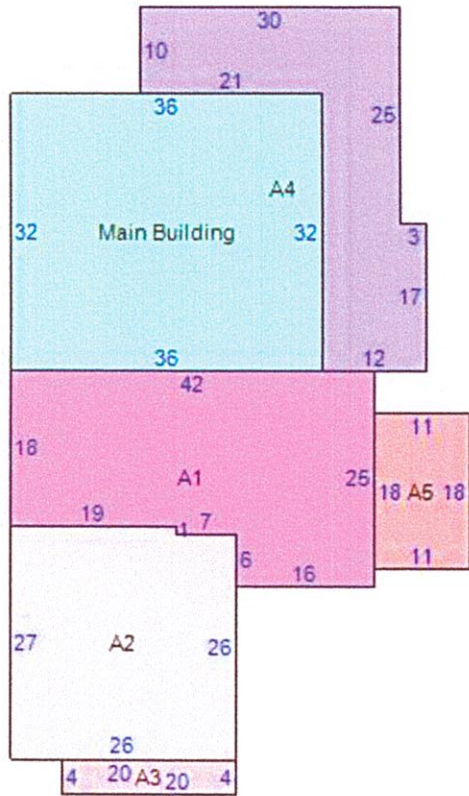
Field By: CFC
 Drawn By: BSD
 Checked By: AWC
 Scale: 1" = 10'
 Project Number: 19W003
S-1



PARID: R05000-004-218-000

NEUWIRTH MARVIN RICHARD SARAH CRAIG

1020 MIDNIGHT CHANNEL RD



Item	Area
Main Building	1152
A1 - BAS:1S FR ONE STORY FRAME	875
A2 - GAR:GARAGE	695
A3 - FOH:ONE STORY OVERHANG	80
A4 - POR:OPEN PORCH	639
A5 - CS:CONCRETE SLAB	198

Printed on Monday, January 6, 2025, at 6:42:11 AM EST

BAD V-23-225



BADV - 23 - 225



BADV-23-225



Sent from my iPhone

BADV-23-225



BADV-23-225



ATTACHMENT

5

Land Development

Code References

Sec. 18-308. - Swimming pools.

Swimming pools shall be located in the side or rear yard. Swimming pool setbacks shall be measured from the property line to the apron of the pool or any permanent construction of the pool which extends closest to the property line. Swimming pools shall not extend beyond the front facade of the principal structure. For a corner lot a swimming pool shall not extend beyond the side facade of the principal structure on the street side of the structure. Swimming pools shall meet the side and rear yard setbacks of the district in which it is located, except in these residential districts, R-20, R-15, R-10, R-7, R-5 and R-3, whereby a swimming pool must be set back ten (10) feet from the rear property line, and ten (10) feet from the side property line or the minimum side yard required of the district in which it is located, whichever is less. In-ground swimming pools shall not be included as an accessory building when determining the number of accessory buildings per lot. In-ground and above-ground swimming pools and associated decking shall be included when determining maximum lot coverage requirements.

(Ord. No. O-2008-25, 4-8-08)

ARTICLE 7. DIVISION 3.**BOARDS, COMMISSIONS, AND COMMITTEES****Section 18-615: Board of adjustment****A. Establishment**

The board of adjustment is established to fulfill the duties and powers prescribed by the city of Wilmington Code of Ordinances and by NCGS 160D-302.

B. Appointment and tenure

1. The board shall consist of five members and two alternate members, who shall be citizens and residents of the city, holding no other public office under the city government, and shall be appointed by the city council.
2. All members shall be appointed for staggered terms of three years, to serve in accordance with the city council policy on boards and commissions then in effect.
3. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.
4. All appointments to fill vacancies shall be for the unexpired period of the term.

C. Compensation

Members of the board shall serve without compensation and may be removed by the city council at any time.

D. Organization

1. The board shall hold meetings in accordance with its rules of procedure for the purpose of transacting its duties assigned in this chapter and shall maintain a public record of its actions.

2. Rules of procedure shall be adopted by the board for the conduct of its business and for the election of its officers. The city council shall approve the rules of procedure and any amendments prior to implementation.
3. All meetings held by the board shall be held in accordance with the North Carolina open meetings law.
4. The board shall keep minutes of its proceedings suitable for review in court showing:
 - a. The factual evidence presented to the board by all parties concerned;
 - b. The findings of fact and the reasons for the determinations by the board; and
 - c. The vote of each member, or if absent or failing to vote indicating such fact, all of which shall be public record and be filed with the secretary to the board.

E. Duties

1. The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation.
2. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. Vacant positions on the board and members who are disqualified from voting on the quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.