



**Board of Zoning Appeals
Kiawah Island Municipal Center
February 24, 2025; 1:00PM**

AGENDA

- I. **Call to Order**
- II. **Roll Call**
- III. **Election of 2025 Officers**
- IV. **Briefing to the Public on Procedures of the BZA**
- V. **Administer the Oath to Those Presenting Testimony**
- VI. **New Business:**
Review of the following applications:
 - 1) **Case #BZA25-000002**
219 High Dunes Lane – Kiawah Island, SC | TMS# 265-16-00-236
Variance request for the reduction of the required 15' side by approximately 488 square feet for a new single-family home.
 - 2) **Case #BZA25-000003**
129 Blue Heron Pond Road – Kiawah Island, SC | TMS# 265-02-00-085
Variance request for the reduction of the required 20' side setback and required 20' rear OCRM critical line setback by approximately 208 square feet for a new single-family home.
- VII. **Additional Business:**
 - 1) **Review of Board of Zoning Appeals Rules of Procedure**
- VIII. **Adjournment**



Case #BZA25-000002
Kiawah Island BZA Meeting of February 24, 2025

Applicant/Property Owner: JDF INVESTMENT SERVICES LLC

Representative: Heather Wilson

Property Location: 219 High Dunes Lane

TMS#: 265-16-00-236

Lot Size: Highlands: 11,919 sqft (0.27 acres)
Marsh: 1,601 sqft (0.04 acres)
Total: 13,520 sqft (0.31 acres)

Zoning District: R-2, Residential Zoning District

Request: Variance request for the reduction of the required 15' side by approximately 488 square feet for a new single-family home.

Requirement:

Chapter 12. Land Use Planning and Zoning, Art. II. Zoning, Div. 2. Zoning Map/Districts, Sec. 12-66. - R-2, Residential District.

Required setbacks: 25' (Front); 15' (Side); 25' (Rear)

Maximum 40% Lot Coverage

The Ordinance defines Setback as "a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected."
The Ordinance defines Rear Setback as, "the setback measured from the rear lot line."

Ocean Park

Town of Kiawah Island Land Use Planning and Zoning Ordinance

Sec. 12-66. R-2, Residential District.

- (a) *Purpose and intent.* The purpose of the R-2 zoning district is to promote stable residential neighborhoods consisting of medium density residences surrounded by parks, golf courses and open spaces. The district is intended for a variety of dwelling unit types. Activities and endeavors which might serve to mitigate against this purpose shall be prohibited or strictly regulated.
- (b) *District regulations.* The following apply to the R-2 zoning district:
- (1) The maximum density for this district is six dwelling units per acre;
 - (2) All required parking shall be enclosed;
 - (3) Open storage is prohibited;
 - (4) There shall be no more than four dwelling units in any building within this district;
 - (5) Lot standards (setbacks, lot coverage, etc.) for single-family detached dwellings on existing platted lots that are included in article VII of this chapter, the Kiawah Island Property Setback Requirements Appendix, dated 7-10-2007, incorporated herein by reference and adopted hereto as said article VII shall apply in lieu of the setback requirements in table 2C following subsection (b)(8) of this section;
 - (6) Lot standards (setbacks, lot coverage, etc.) for patio homes, on existing platted lots that are included in article VII of this chapter, the Kiawah Island Property Setback Requirements Appendix, dated 7-10-2007, incorporated herein by reference and adopted hereto as said article VII shall apply in lieu of the setback requirements in table 2D following subsection (b)(8) of this section;
 - (7) Lot standards (setbacks, lot coverage, etc.) for patio homes not covered by subsection (b)(6) of this section are listed in table 2D following subsection (b)(8) of this section;
 - (8) Authorized uses are listed in table 3A in section 12-102(c).

Table 2C. Lot Standards for R-2 Single-Family Detached Dwellings								
Lot Size (square feet)	Maximum Lot Coverage	Depth (feet)	Width (Feet) ⁽¹⁾	Minimum Yard Setbacks ⁽²⁾			Maximum Height	
				Front ⁽²⁾	Side ⁽³⁾	Rear ⁽⁴⁾	(stories)	(feet)
6,000—7,999	50 percent	85	55	20	7	20	2.5	40
8,000—11,999	40 percent	100	60	25	15	25	2.5	40
12,000+	33 percent	100	75	25	20	25	2.5	40
⁽¹⁾ For lots on cul-de-sacs or similar circumstances, the minimum width shall apply at the front yard setback line. Cul-de-sac lots shall have a minimum width of 25 feet at the street line. The minimum width of any flag lot may be reduced to 20 feet, provided that the minimum width specified in the table is provided at the front building setback line.								
⁽²⁾ On corner and double-frontage lots, front setback standards will apply to each lot line that borders a street right-of-way. The rear yard setback shall apply to the opposite side of the principal structure's front main entrance. The side yard setback shall apply to the remaining sides.								
⁽³⁾ A minimum of 15 feet must be provided between structures.								
⁽⁴⁾ The minimum yard requirements shall be increased to 30 feet from any lot or parcel boundary which abuts a golf course.								

Table 2D. Lot Standards for R-2 (Patio Homes, Duplexes and Townhouses)
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Housing Type	Minimum Lot Size (sq. ft.)	Minimum Yard Setbacks (feet)			Maximum Height		Maximum Lot Coverage
		Front	Side ⁽¹⁾	Rear	(stories)	(feet)	
Patio homes, zero lot line homes	4,000	20	0/10 ⁽²⁾	20	2.5	35	50 percent
Duplex	6,500	15	7	20	2.5	40	40 percent
Townhouse	2,000	10	See note ⁽³⁾	20	2.5	40	60 percent

⁽¹⁾ On corner and double-frontage lots, front setback standards will apply to each lot line that borders a street right-of-way. The rear yard setback shall apply to the opposite side of the principal structure's front main entrance. The side yard setback shall apply to the remaining sides.

⁽²⁾ A total distance of 15 feet is required between buildings with ten feet minimum setback being required on one side of each lot.

⁽³⁾ Where the front, interior side and rear setbacks of the underlying zoning district reduces the buildable width of a lot to less than 40 feet, the Planning Director shall be authorized to reduce the required setbacks as much as necessary. However, no setback reduction granted by the Planning Department shall be for more than 15 feet.

(Code 1993, § 12A-206; Ord. No. 2005-08, § 12A-206, 10-12-2005; Ord. No. 2007-05, § 2(12A-206), 7-10-2007)

2013 Amended and Restated Development Agreement Lot Standards

**Exhibit 13.3: Table of General Lot Standards
11.15.2013**

R-1 Residential ¹⁾

Single Family Detached Dwellings

Density: 3.0 D.U./Acre

Lot Size (sq. ft.)	Maximum % Coverage	Lot Dimensions		Setback ^{3) 4)}			Height ⁵⁾	
		Width ²⁾	Depth	Front	Side	Rear	Floors	Feet
8,000-11,999	40	60	100	25	10	25	2.5	40
12,000 +	33	75	100	25	20	25	2.5	40

R-2 Residential ¹⁾

Attached and Detached Dwellings (no greater than 6 D.U./Building)

Density: 6.0 D.U./Acre and 4.0 D.U./Acre ⁷⁾

Lot Size (sq. ft.)	Maximum % Coverage	Lot Dimensions		Setback ^{3) 4)}			Height ⁵⁾	
		Width ²⁾	Depth	Front	Side ⁸⁾	Rear ⁹⁾	Floors	Feet ¹⁰⁾
6,000-7,999	50	55	85	20	7/5	20/15	2.5	40/35
8,000-11,999	40	60	100	25	10/5	25/15	2.5	40/35
12,000 +	33	75	100	25	20/5	25/15	2.5	40/35

R-3 Residential ¹⁾

Attached and Detached Dwellings (no greater than 7 D.U./Building)

Density: 12.0 D.U./Acre

Lot Size ⁶⁾ (sq. ft.)	Maximum % Coverage	Lot Dimensions		Setback ^{3) 4)}			Height ⁵⁾	
		Width ²⁾	Depth	Front	Side	Rear	Floors	Feet
2,000-3,999	60	20	65	10	3	10	2.5	40
4,000-5,999	50	30	75	15	7	15	2.5	40
6,000-7,999	50	55	85	20	7	20	2.5	40
8,000-11,999	40	60	100	25	10	25	2.5	40
12,000 +	33	75	100	25	20	25	2.5	40

CSQ-PD ¹⁾

Single Family Detached Dwellings

Density: 4.0 D.U./Acre ¹¹⁾

Lot Size ⁶⁾ (sq. ft.)	Maximum % Coverage ¹³⁾	Lot Dimensions		Setback ^{3) 4)}			Height ⁵⁾	
		Width ²⁾	Depth	Front ¹²⁾	Side ¹⁴⁾	Rear	Floors	Feet
6,000-7,999	60	60	85	10/5	5/0	10	2.5	35
8,000-11,999	50	60	100	10/5	5/0	10	2.5	35
12,000 +	40	75	100	25	5/0	25	2.5	35

C Commercial (Kiawah Island)

All Uses as Permitted in Exhibit 13.1

F.A.R.: 0.20-0.25 ⁷⁾

Lot Size (sq. ft.)	Maximum % Coverage	Lot Dimensions		Setback			Height	
		Width	Depth	Front	Side	Rear	Floors	Feet
20,000	70	150	120	25	20	25	2.5	35

Notations:

- 7) F.A.R. Standards on individual Parcels as indicated in Exhibit 13.2.

C Commercial (Freshfields Village PD)

All Uses as Permitted in Exhibit 13.1

Lot Size (sq. ft.)	Maximum % Building Coverage	Lot Dimensions		Setback			Height	
		Width	Depth	Front	Side	Rear	Floors	Feet
4,000	40	50	-	0	0	0	3.0	55

Notations:

- 1) For residential districts R-1, R-2, R-3 and CSQ-PD only (not including C-Commercial), the ARB shall prescribe and determine Lot area, Lot width, Lot depth, Lot coverage, setback and yard requirements, and may adjust the criteria set forth in the Table of General Lot Standards attached as Exhibit 13.3 provided the ARB determines that exceptional circumstances exist with respect to a particular Lot based on unusual configuration, topographic conditions or unique tree cover, or other material considerations. The ARB approved deviation from a particular standard on Exhibit 13.3 shall not:
 - A. Exceed 20% of the standards for lot dimensions and setbacks.
 - B. Exceed 10% of the standards for maximum % coverage and height in feet, excluding number of floors.
- 2) Lot width may be reduced to a minimum of 20 feet at street R.O.W. for flag lots, or 15 feet for lots on cul-de-sacs.
- 3) A minimum distance between structures, on adjoining properties, must be no less than 20 feet for lots greater than 8,000 sq. ft. and 14 feet for lots 4,000-7,999 sq. ft. Zero lot lines are permitted at the discretion of the ARB.
- 4) On corner and double frontage lots, front setback standards will apply to each lot line that borders a street right-of-way, the remaining lot lines will be subject to side setbacks standards, except when the lot adjoins open space of a minimum of 23 feet, then corner side yard may be reduced to 3 feet.
- 5) Height standards are determined by individual parcel guidelines as indicated on Exhibit 13.2. A maximum height of 45 feet from Ground Floor Level is permitted on lots meeting specific criteria in Exhibit 13.2 on Parcels 12A, 12B, 13, 41, 42 and 43.
- 6) Lot area required for each Dwelling Unit may be reduced to 2,000 square feet provided that open space is provided equivalent to the amount by which each Lot is reduced. Such equivalent open space shall be provided within 1,000 feet of each such Lot so reduced.
- 7) Density limit of 4.0 D.U./Acre pertains to Cassique Parcel 60.
- 8) Setback of 5 ft. pertains to Cassique Parcel 60.
- 9) Setback of 15 ft. pertains to Cassique Parcel 60.
- 10) Height of 35 ft. pertains to Cassique Parcel 60.
- 11) Total dwelling unit cap not to exceed 120 for parcels with CSQ-PD designation. Any parcel not to exceed 4 D.U./Acre.
- 12) Any wall up to 8 ft. above finish grade may be located within any of the required setbacks, provided vision site triangles at street intersections are maintained. Setback of 5 ft. pertains to the garage/studio units.
- 13) The garden courtyard concept coverage includes house, garage, and pool cavity.
- 14) Setback of 0 ft. pertains to the garage/studio units.

Sec. 12-64. - Setbacks.

Setback means a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected.

- (1) *Contextual setbacks.* Notwithstanding the front setback requirements of the underlying zoning district, the front building line of any structure or addition to a structure may be as close to the street as the front building line of a structure located on any lot that is immediately adjacent to the subject lot. If the subject lot is located between two developed lots, the front building line of the structure that is set back further from the street shall apply to the subject lot.
- (2) *Setbacks on corner and double frontage lots.* On corner and double-frontage lots, front setback standards will apply to each lot line that borders a street right-of-way. The rear yard setback shall apply to the opposite side of the principle structure's front main entrance. The side yard setback shall apply to the remaining side(s).
- (3) *Exception to setbacks.* Every part of a required setback must be open and unobstructed from the ground to the sky except as set out in this subsection.

Driveways and walkways may be located within any required setback.

Uncovered stairs or stair landings to building entrances may extend up to five feet into any required setback.

Uncovered, at-grade patios may extend into a required setback; however, they shall maintain a minimum ten-foot distance from the property line.

Uncovered decks may extend up to five feet into any required rear yard setback.

Sills, belt courses, cornices, buttresses, eaves and other architectural features may extend up to two feet into any required setback.

Walls and retaining walls below three feet in height may be located within required setback.

In all zoning districts heating, ventilation and air conditioning (HVAC) equipment and associated HVAC stands may extend up to five feet into required side or rear setbacks only when all of the following conditions are met:

- (1) The HVAC equipment is replacing existing HVAC equipment which was originally placed below an existing structure and/or which HVAC equipment being replaced is now required to be elevated to meet the requirements of the Federal Emergency Management Agency (FEMA) and the Town of Kiawah Island Building Code;
- (2) Such HVAC equipment cannot reasonably be accommodated within the setback required by otherwise applicable zoning requirements;
- (3) The property owner has, through regular mail postmarked no later than five days in advance of applying for a Zoning Permit, notified the affected adjacent property owner(s) that are adjacent to the property line where the proposed HVAC equipment will be located, and has submitted to the Planning Director a signed affidavit stating that such property owner has notified the affected adjacent property owner(s) and proving each name and address to which notice was sent; and
- (4) A Zoning Permit is approved by the Planning Director.

(Code 1993, § 12A-204; Ord. No. 2005-08, § 12A-204, 10-12-2005; Ord. No. 2012-03, § 2, 4-3-2012; Ord. No. [2015-04](#), § 2, 4-14-2015)

Staff Review:

The applicant and property owner JDF Investment Services LLC being represented by Heather Wilson of Heather A Wilson Architects is requesting a variance for the reduction of the required 15' side setback for approximately 488 square feet for a proposed new single-family home at 219 High Dunes Lane, Kiawah Island, SC (TMS# 265-16-00-236). The subject property is located within the R-2, Residential Zoning District within Ocean Park Neighborhood. The subject property is currently undeveloped.

The lot is approximately 13,520 square feet (0.31 acres) in size, in which approximately 11,919 square feet is highlands, and the remaining 1,601 consists of marshlands. The subject property sits adjacent to marsh to the south. The adjacent parcel to the north across High Dunes Lane of the subject property is located in the Parks and Recreation Zoning District. The adjacent properties to the east and west are located in the R-2, Residential Zoning District. The subject property is subject to review by the Kiawah Island Architectural Review Board.

The Town of Kiawah Island Land Use Planning and Zoning Ordinance requires a front set back of twenty-five (25) feet, fifteen (15) foot side setbacks, and a twenty-five (25) foot rear setback. The subject property has a maximum lot coverage of 40%. The proposed lot coverage is 39.55%. The South Carolina Department of Environmental Services Bureau of Coastal Management (BCM) certifies a Critical Area Line is present on the property, as indicated by a survey dated August 31, 2020. Furthermore, a 15-foot stormwater buffer is located from the 25-foot rear SCDES BCM Critical Line setback.

The Ordinance defines Setback as *"a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected."* The Ordinance defines Rear Setback as, *"the setback measured from the rear lot line."*

The proposed plans include a new single-family home. There is a 35" grand live oak tree located on the east side of the property within the buildable area. The proposed single-family home encroaches into the required 15' east side setback by approximately 4 feet 5 inches at its furthest point. The total encroachment into the east side setback is approximately 151 square feet. Portions of the proposed single-family home encroach into the required 15' west side setback by approximately 6 feet 5 inches at its furthest point. The total encroachments into the west side setback is approximately 337 square feet.

The adjacent property to the east of the subject property is developed with a single family home, and the adjacent property to the west of the subject property is currently undeveloped.

The subject property is located in Ocean Park Neighborhood which was previously governed by the 2013 Amended and Restated Development Agreement (ARDA) by and between Kiawah Resort Associates and the Town of Kiawah Island. Under the ARDA, the subject property was designated as part of the "Undeveloped Lands" identified in *Exhibit 1.3: Undeveloped Land Parcels*. Ocean Park (Parcel 43) was within the R-2, Residential

category subject to standards outlined in *Exhibit 13.3: Table of General Lot Standards*. The standards of *Exhibit 13.3: Table of General Lot Standards* for lot sizes between 8,000 square feet and 11,999 square feet included a 25-foot front setback, 10-foot side setbacks, and a 25-foot rear setback. Following the expiration of the ARDA on December 4, 2023, the setback requirements for the subject property 219 High Dunes as prescribed by the *Land Use Planning and Zoning Ordinance Article II. Zoning, Division 2. Zoning Map/ Districts, Section 12-66. – R-2, Residential District. Table 2C. Lot Standards for R-2 Single-Family Detached Dwellings*, include a 25-foot front setback, 15-foot side setbacks, and a 25-foot rear setback. Based on the highlands calculation of 11,919 square feet for the subject property at 219 High Dunes the setbacks for this lot are 25-foot front setback, 10-foot side setbacks, and a 25-foot rear setback.

Per Charleston County records, the home was acquired by JDF Investment Services LLC on April 28, 2023, prior to the expiration of the ARDA.

The applicant submitted to Kiawah Island Architectural Review Board (KIARB) for Interim Final Review, and have granted approval on January 17, 2025 stating, *“The design of your home is approved to continue to the Permit Submittal pending an approved Interim submittal. As you move forward, please address the following comments and conditions in keeping with the guidelines: The ARB supports and appreciates the unique site development and architectural design which allows for the preservation of the 35” Live Oak root zone and full canopy despite its substantial impact on the buildable area.”*

Please see the attachments for further information regarding this request. A site visit was conducted on February 7, 2025, at which time the following determinations were made regarding the Approval Criteria for Variances, as stated in Chapter 12 of the Town of Kiawah Island Land Use Planning and Zoning Ordinance, Article II, Division 5, Section 12-163.(4):

Staff Findings:

The BZA may grant a variance only if exceptional circumstances exist, and where practical difficulty or unnecessary hardship is so substantial, serious, and compelling that relaxation of the general restrictions ought to be granted. No variance shall be granted unless the applicant shall show and the BZA shall find that:

§ 12-163.(4)a.: *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

Staff Response: **There may be extraordinary and exceptional conditions on this property. The 35” grand live oak tree and root zone significantly encroach into the buildable area. Per the applicant’s letter of intent, “There is a grand live oak in the center of the lot. The tree impacts the buildable area with root zone protection as well as limits the height of the adjacent rooflines. This necessitates a design comprised of mostly single-story elements, which increases the foot print and need for side setback relief.**

§ 12-163.(4)b.: *These conditions do not generally apply to other property in the*

vicinity;

Staff Response: **These conditions may be unique to the subject property and may not generally apply to other properties in the vicinity. The property is located in the R-2 Residential Zoning District. Adjacent properties along High Dunes Lane are also located in the R-2 Residential Zoning District. The lot sits adjacent to the marsh to the south. There is an open space area north of the subject property located in the Parks and Recreation Zoning District. Existing structures in the vicinity may have similar encroachments based on current setback standards. Per the applicant's letter of intent, *"The neighboring homes were all built to the guidelines of the ARDA zoning, as this lot was intended to be. The original zoning of this lot allowed for 10' side yard setback and greater latitude of tree protection."***

§ 12-163.(4)c.: *Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;*

Staff Response: **The application of this Ordinance to the subject property may not prohibit or unreasonably restrict the utilization of the property. Per the applicant's letter of intent, *"The application of the current ordinance would unreasonably restrict the development of this property. The current ordinance restriction in concert with the limb and root pattern of the grand oak would limit the use of this property, especially as compared to all adjacent and surrounding properties."***

§ 12-163.(4)d.: *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;*

Staff Response: **The authorization of this variance may not be of substantial detriment to the adjacent properties or the public good. Per the applicant's letter of intent, *"The variance would allow the property to be in keeping with the design and intent of marsh walk zoning. This is one of few lots remaining and it is in the best interest of the marsh walk neighborhood to be developed to the same standards as the surrounding properties."***

§ 12-163.(4)e.: *The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map;*

Staff Response: **Granting of this variance would not allow the establishment of a use not otherwise permitted in this zoning district, extend physically a non-conforming use of land, or change the zoning district boundaries. Per the applicant's letter of intent, *"The***

property is zoned and intended for use as a single-family home and has been designed as such. Furthermore, the home designed is compliant with all other aspects of the ordinance.”

§ 12-163.(4)f: *The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;*
Staff Response: **The BZA may not consider profitability when considering this variance request. Per the applicant’s letter of intent, “*There would be no increase in value to the property as a direct result of this variance. The home is similar in size and caliber of all adjacent properties.*”**

§ 12-163.(4)g.: *The need for the variance shall not be the result of the applicant’s own actions;*
Staff Response: **The need for the variance may be the result of the applicant’s own actions. The property was acquired prior to the expiration of the 2013 ARDA in December 2023 Per the applicant’s letter of intent, “*The variance request is in advance of any physical improvement and not the result of actions taken.*”**

§ 12-163.(4)h.: *Granting the variance will not be contrary to the public or neighborhood interest nor will not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent and purpose of these regulations;*
Staff Response: **Granting of this variance may not be contrary to the public or neighborhood interest, may not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent, and purpose of these regulations. Per the applicant’s letter of intent, “*The variance would allow for a design that is entirely in keeping with the sprit and intent of the regulations under which the neighborhood was developed. Furthermore, sustaining and nourishing the grand oak is for the benefit of the greater good.*”**

§ 12-163.(4)i.: *Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.*
Staff Response: **Granting of the variance may not substantially conflict with the *Comprehensive Plan* or the purposes of the *Ordinance*. The Town of Kiawah Island’s *Comprehensive Plan*, Housing Element Goal I, Implementation Strategy a, states “*Provide mechanisms to permit flexibility and innovation in residential project design to promote land use efficiency and environmental protection.*” Per the applicant’s letter of intent, “*the variance allows for a design that is in concert with the comprehensive plan and design for this area of Kiawah, Marsh Walk.*”**

Board of Zoning Appeals’ Action:

The Board of Zoning Appeals may approve, approve with conditions or deny Case #BZA25-000002 (Variance request for the reduction of the required 15' side by approximately 488 square feet for a new single-family home at 219 High Dunes Lane, Kiawah Island, SC (265-16-00-236). Based on the BZA's "Findings of Fact", unless additional information is deemed necessary to make an informed decision.

Should the Board of Zoning Appeals consider approval of this variance request, planning staff request the following conditions of approval:

- 1) The applicant shall revise all site plans and exhibits submitted for Town issued permits to reflect the 15' side setbacks.**

Town of Kiawah Island Board of Zoning Appeals

February 24, 2025



Town of Kiawah Island Municipal Center | 4475 Betsy Kerrison Parkway | Kiawah Island, SC 29455

CASE# BZA25-000002

Applicant/Property Owner: JDF INVESTMENT SERVICES LLC

Representative: Heather Wilson

Property Location: 219 High Dunes Lane

TMS#: 265-16-00-236

Zoning District: R-2, Residential Zoning District

Lot Size: Highlands: 11,919 sqft (0.27 acres)
Marsh: 1,601 sqft (0.04 acres)
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Request: Variance request for the reduction of the required 15' side setback by approximately 488 square feet for a new single-family home.

CASE# BZA25-000002

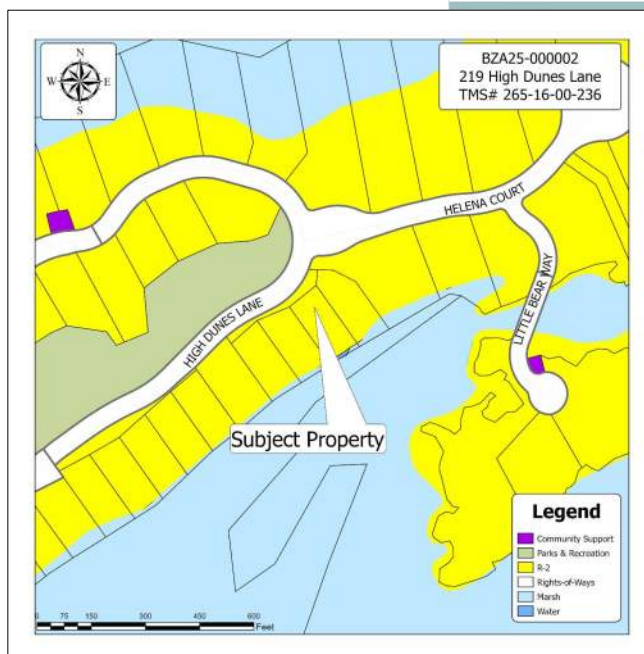
Chapter 12. Land Use Planning and Zoning, Art. II. Zoning, Div. 2. Zoning Map/Districts, Sec. 12-66. - R-2, Residential District.

Required setbacks: 25' (Front); 15' (Side); 25' (Rear)

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3



4



5

Case # BZA25-000002
BZA Meeting of February 24, 2025
Subject Property: 219 High Dunes Lane– Kiawah Island

Variance request for the reduction of the required 15' side setback by approximately 488 square feet for a new single-family home.



6

Property Front



Adjacent Properties



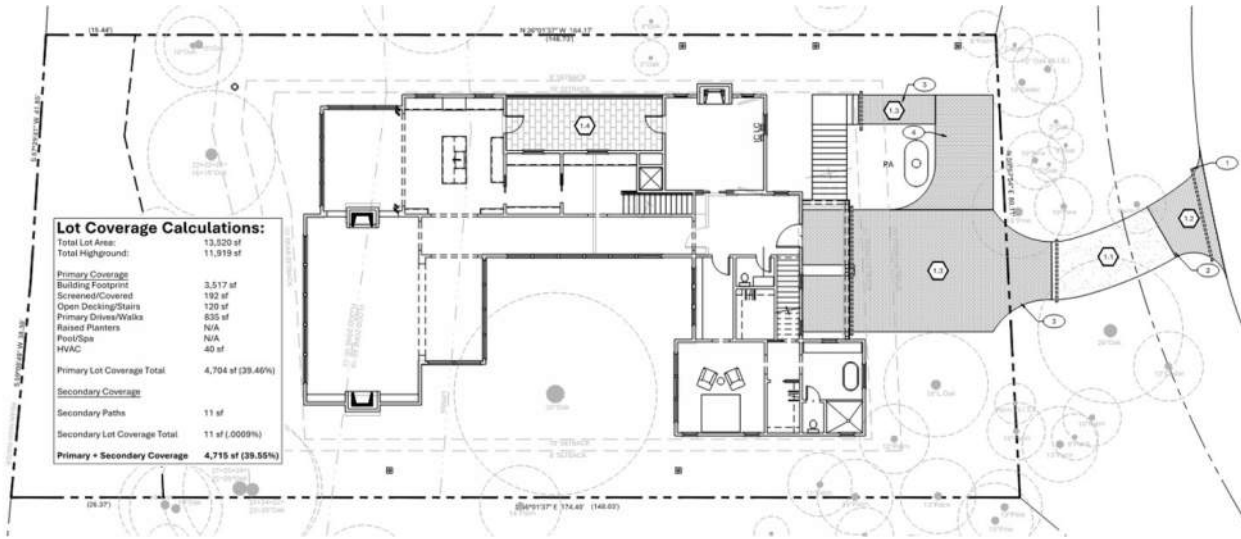
Subject Property



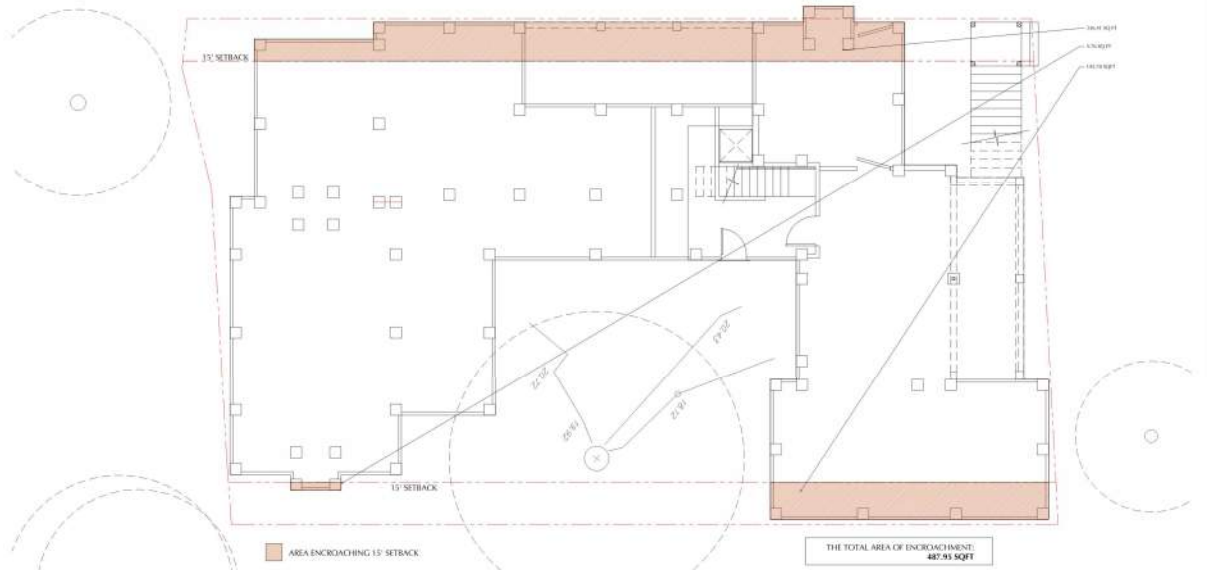
Property Rear



Proposed Site Plan



Proposed Site Plan



Variance Approval Criteria

According to Chapter 12 of the Land Use Planning and Zoning Ordinance of the Town of Kiawah Island Code of Ordinances, Section 12-163. Variances (4) Approval Criteria, the Board of Zoning Appeals may grant a variance only if exceptional circumstances exist, and where practical difficulty or unnecessary hardship is so substantial, serious, and compelling that relaxation of the general restrictions ought to be granted. No variance shall be granted unless the applicant shall show and the BZA shall find that:

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

15

Variance Approval Criteria

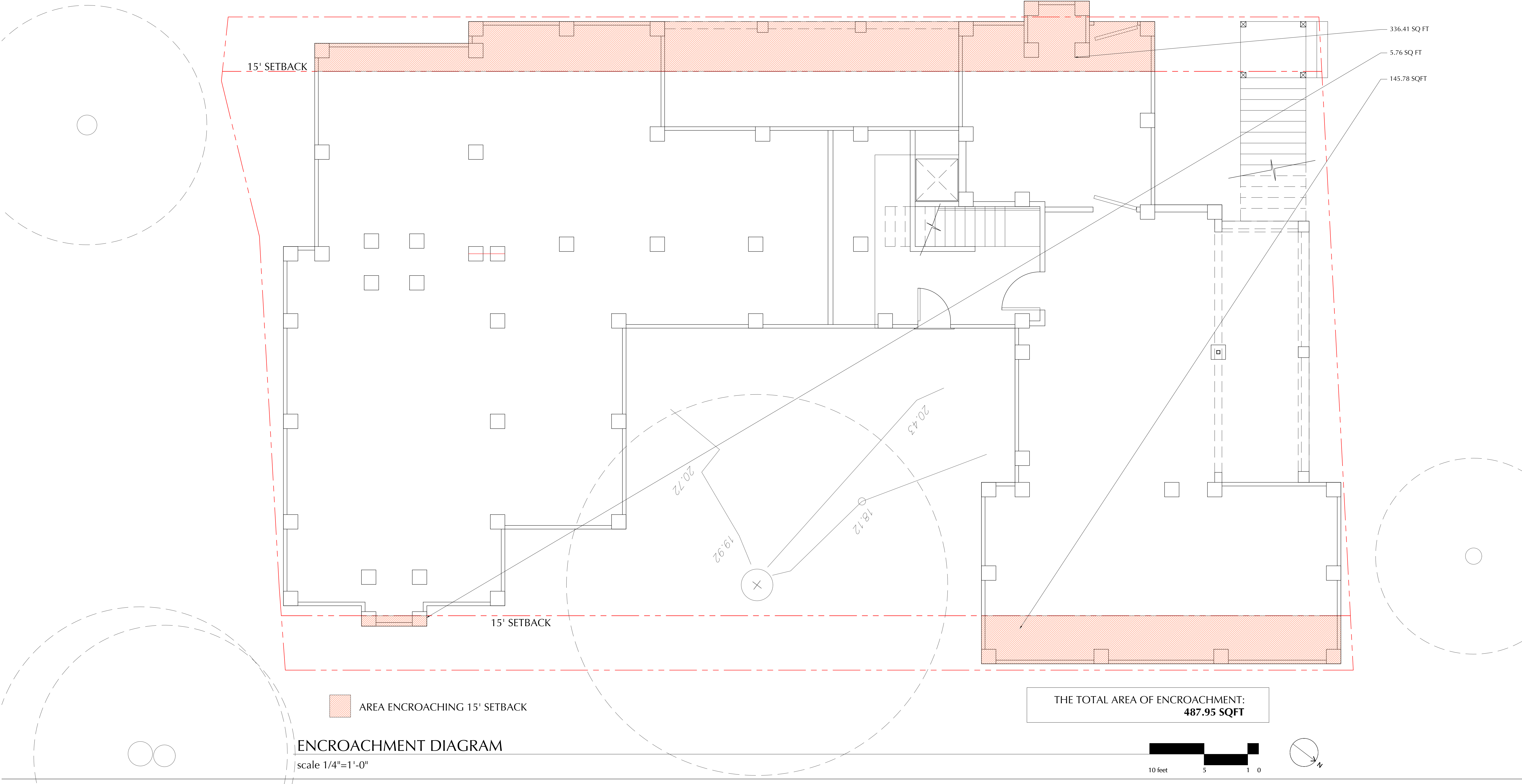
- e) The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map;
- f) The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;
- g) The need for the variance shall not be the result of the applicant's own actions;
- h) Granting the variance will not be contrary to the public or neighborhood interest nor will not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent and purpose of these regulations;
- i) Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.

16

Board of Zoning Appeals Action

The Board of Zoning Appeals may approve, approve with conditions or deny Case #BZA25-000002 (Variance request for the reduction of the required 15' side setback by approximately 488 square feet for a new single-family home located at 219 High Dunes Lane, Kiawah Island, SC.) based on the BZA's "Findings of Fact", unless additional information is deemed necessary to make an informed decision.

In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.





INDEX

A.S ZONING INFORMATION

L LANDSCAPE DRAWINGS

A1.0 FOUNDATION PLAN
A1.1 FIRST FLOOR PLAN
A1.2 SECOND FLOOR PLAN
A1.3 ROOF PLAN

A2.0 ALL ELEVATIONS W/ SHADOW
A2.1 ELEVATION A
A2.2 ELEVATION B
A2.3 ELEVATION C
A2.4 ELEVATION D

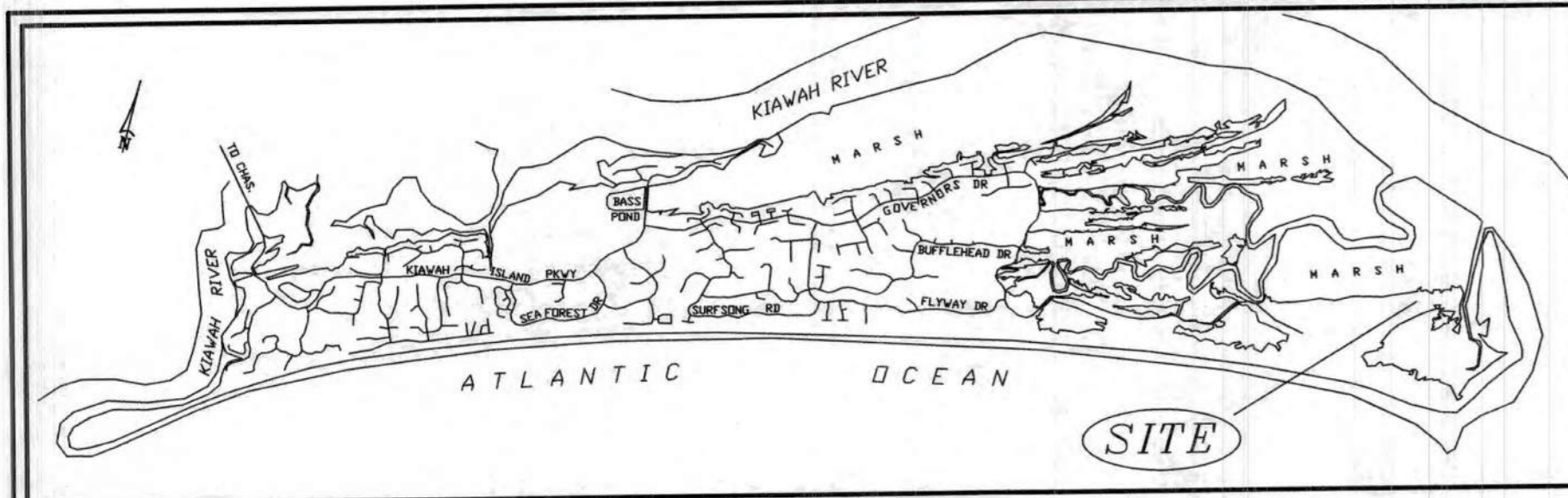
A5.2 MODEL IMAGES

FOLDS RESIDENCE

PERMIT: 12.23.24

FOLDS RESIDENCE . 219 HIGH DUNES LN . JOHNS ISLAND, SC 29455

heather a wilson, architect . 173 wentworth street charleston, south carolina 29401 843.814.2031



VICINITY MAP

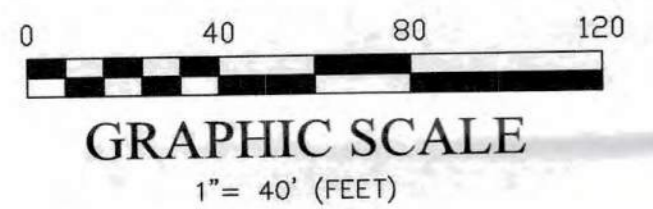
- NOTE:
1. ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
 2. AREA DETERMINED BY COORDINATE (DMO) METHOD.
 3. THE PUBLIC RECORDS REFERENCED ON THE PLAT ARE ONLY THOSE USED AND NECESSARY FOR THE ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY. THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH.
 4. BEARINGS ARE BASED ON SOUTH CAROLINA STATE PLANE GRID NAD83. PARCEL SHOWN IS ZONED R2. ZONING SHOULD BE VERIFIED PRIOR TO ANY EARTHMOVING OR CONSTRUCTION.
 5. AS PER FLOOD INSURANCE RATE MAP (FIRM) THE PROPERTY APPEARS TO BE LOCATED IN ZONE AE-14/CBRA (BASE FLOOD ELEVATIONS DETERMINED SHOWN ON MAP NUMBER 45019C0810J, PANEL 810 OF 835 DATED NOVEMBER 17, 2004.
 6. ELEVATIONS ARE BASED ON NGVD 29.
 7. ANY FRESHWATER WETLAND BOUNDARIES OR DHEC-OCRM CRITICAL LINE SHOWN ON THIS SURVEY SHOULD NOT BE CONSIDERED AS A FINAL DEFERRED LINE UNLESS THE APPROPRIATE AUTHORITY HAS CERTIFIED THEM ON THIS PLAT.
 8. PUBLIC WATER AND SEWER ARE PROVIDED BY THE KIAWAH ISLAND UTILITY COMPANY.
 9. THE STORMWATER FILTER BUFFER IS LANDWARD OF THE ESTABLISHED CRITICAL LINE. THIS BUFFER IS INTENDED TO PROVIDE A STRIP OF NATURAL VEGETATION THROUGH WHICH RUNOFF FROM YARDS, WHICH OFTEN CONTAINS FERTILIZERS, PESTICIDES, AND OR PET WASTE WILL BE FILTERED PRIOR TO ENTERING THE MARSH OR SALT WATER POND AND IMPACTING THE NATURAL RESOURCES IN THE AREA. NO CLEAR CUTTING, FILLING, EXCAVATION, OR CONSTRUCTION ACTIVITY (OTHER THAN NECESSARY FOR PERMITTED DRAINAGE OR WATER ACCESS STRUCTURES) OR OTHER PERMANENT STRUCTURES SHALL BE ALLOWED IN THE BUFFER. LIMITED CLEARING OF TREES AND GROUND COVER IS ALLOWED TO PROVIDE AND MAINTAIN VIEWS. ONLY INDIGENOUS VEGETATION SHALL BE PLANTED. VARIOUS SPECIES OF GRASS, SHRUBS AND TREES WHICH REQUIRE FERTILIZATION SHALL NOT BE ALLOWED IN THE BUFFER. ALL CLEARING, THINNING AND NEW PLANTING MUST BE APPROVED BY THE KIAWAH ISLAND ARCHITECTURAL REVIEW BOARD.

OWNER OF RECORD:
KIAWAH RESORT ASSOCIATES LP
1 KIAWAH ISLAND PKY
KIAWAH ISLAND SC 29455

PROPERTY ADDRESS:
FUTURE DEVELOPMENT, HIGH DUNES LAKE
KIAWAH ISLAND SC 29455

OWNER REFERENCES:
TMS: 265-16-00-163
PLAT BOOK L17 PAGE 0543,0544
OCEAN PARK PHASE 8A, FUTURE DEVELOPMENT

PLAT REFERENCES:
L10 0315
L11 0330
L12 0092
L12 0264
L13 0133
L13 0131
L13 0286
L13 0326
L13 0429
L16 0278
L17 0543
L17 0348



AREA BEING CONVEYED UNTO KICA PER THIS PLAT (TOTAL) 14,117 SQ.FT. 0.324 ACRES

AREA BEING CONVEYED UNTO KICA PER THIS PLAT (TOTAL) 14,117 SQ.FT. 0.324 ACRES

CURVE	RADIUS	ARC LENGTH	TANGENT	CHORD	BEARING	DELTA ANGLE
C1	175.00'	128.23'	64.81'	128.03'	S 59°08'11" W	10°58'09"
C2	325.00'	114.49'	57.84'	113.90'	S 54°32'45" W	20°11'01"
C3	325.00'	102.86'	51.86'	102.43'	S 53°31'15" W	18°08'00"
C4	175.00'	121.42'	63.22'	119.00'	S 42°42'55" W	39°45'18"
C5	175.00'	22.94'	15.56'	21.98'	N 19°14'46" E	7°12'22"
C6	20.00'	70.47'	36.20'	69.54'	S 75°13'58" W	32°17'59"
C7	75.00'	16.11'	8.08'	16.08'	N 65°14'08" E	12°18'20"
C8	275.00'	23.45'	11.73'	23.44'	S 73°49'52" E	4°53'10"
C9	275.00'	52.50'	26.33'	52.42'	S 81°44'38" W	10°56'21"
C10	15.00'	20.33'	12.08'	20.33'	S 69°23'07" E	7°40'17"
C11	120.00'	58.29'	29.73'	57.72'	S 44°27'58" E	27°49'59"
C12	80.00'	109.08'	64.92'	100.82'	N 19°19'18" W	78°07'18"

LINE	BEARING	DISTANCE
L1	N 63°40'07" E	73.30'
L2	N 62°35'15" E	49.18'
L3	S 59°04'58" E	21.64'
L4	S 65°18'50" W	37.98'
L5	S 69°44'50" W	36.04'
L6	S 64°29'39" W	41.80'
L7	N 51°52'54" W	11.72'
L8	N 19°33'25" W	7.64'
L9	N 57°17'55" W	52.34'
L10	N 61°26'06" W	27.99'

LINE	BEARING	DISTANCE
L11	S 69°32'29" E	7.31'
L12	N 88°41'04" E	35.59'
L13	N 88°41'04" E	24.31'
L14	S 63°31'38" E	11.04'

DHEC-OCRM CRITICAL LINE TABLE	DHEC-OCRM CRITICAL LINE TABLE	DHEC-OCRM CRITICAL LINE TABLE
LINE BEARING DISTANCE	LINE BEARING DISTANCE	LINE BEARING DISTANCE
CCL1 N 60°48'01" E 60.64'	CCL49 S 34°41'39" W 22.94'	CCL97 S 45°54'15" W 9.01'
CCL2 N 61°43'00" E 19.87'	CCL50 S 62°34'22" W 12.05'	CCL98 N 72°07'40" W 24.46'
CCL3 N 61°43'00" E 2.02'	CCL51 N 57°39'41" W 32.66'	CCL99 S 07°41'57" W 18.11'
CCL4 N 61°43'00" E 37.62'	CCL52 N 81°38'39" W 11.13'	CCL100 S 47°14'14" W 10.59'
CCL5 S 52°07'11" E 31.40'	CCL53 N 01°50'12" E 13.37'	CCL101 S 12°07'54" W 10.04'
CCL6 N 55°54'34" E 9.32'	CCL54 N 27°56'11" W 8.69'	CCL102 S 56°50'05" W 12.71'
CCL7 N 55°54'34" E 39.71'	CCL55 S 71°53'51" W 21.08'	CCL103 S 07°45'40" E 5.83'
CCL8 N 47°31'20" E 32.26'	CCL56 S 57°33'34" W 24.61'	CCL104 S 47°41'43" E 10.03'
CCL9 N 44°07'55" E 7.61'	CCL57 S 72°49'54" W 16.02'	CCL105 N 87°20'27" E 10.63'
CCL10 N 44°07'55" E 6.34'	CCL58 N 11°10'33" E 19.97'	CCL106 S 20°40'57" W 9.05'
CCL11 N 44°07'55" E 44.48'	CCL59 S 77°11'11" W 11.84'	CCL107 S 11°38'34" E 9.38'
CCL12 N 54°02'35" E 29.74'	CCL60 N 89°59'19" W 14.10'	CCL108 S 29°34'55" E 17.24'
CCL13 N 54°02'35" E 8.35'	CCL61 N 09°16'34" W 9.94'	CCL109 S 87°48'56" E 17.05'
CCL14 N 54°02'35" E 15.36'	CCL62 S 65°12'56" W 26.41'	CCL110 N 77°18'12" E 36.19'
CCL15 N 38°30'44" E 26.34'	CCL63 N 63°31'38" W 11.89'	CCL111 N 60°24'56" E 19.60'
CCL16 N 43°40'51" E 5.77'	CCL64 S 39°21'35" E 13.20'	CCL112 N 16°04'23" E 5.78'
CCL17 N 43°40'51" E 24.68'	CCL65 N 72°29'46" W 15.67'	CCL113 N 61°47'15" E 11.27'
CCL18 N 43°40'51" E 6.78'	CCL66 N 09°16'34" W 9.07'	CCL114 N 65°32'17" E 12.30'
CCL19 N 61°15'10" E 4.44'	CCL67 N 54°50'05" E 4.80'	CCL115 N 11°56'00" E 12.25'
CCL20 N 61°15'10" E 43.29'	CCL68 N 54°50'05" E 6.02'	CCL116 N 36°53'39" W 10.11'
CCL21 N 51°46'31" E 16.55'	CCL69 N 58°14'50" E 17.75'	CCL117 N 24°18'33" W 17.82'
CCL22 N 45°46'43" E 8.43'	CCL70 N 58°14'50" E 12.63'	CCL118 N 24°56'13" E 11.08'
CCL23 N 45°46'43" E 21.98'	CCL71 S 63°54'01" E 12.63'	CCL119 S 32°38'08" E 21.30'
CCL24 N 45°46'43" E 20.46'	CCL72 S 28°18'34" W 19.05'	CCL120 S 62°37'56" E 15.07'
CCL25 N 44°51'28" E 38.43'	CCL73 S 60°56'38" E 11.42'	CCL121 S 70°28'32" E 13.96'
CCL26 N 44°51'28" E 19.27'	CCL74 S 89°42'45" E 16.84'	CCL122 N 59°22'53" E 34.27'
CCL27 N 64°18'24" E 5.25'	CCL75 N 08°43'01" E 19.93'	CCL123 N 66°58'59" E 15.80'
CCL28 N 64°18'24" E 31.93'	CCL76 N 44°45'10" E 21.83'	CCL124 N 17°35'33" E 7.56'
CCL29 N 70°41'56" E 29.89'	CCL77 S 62°22'10" E 17.60'	CCL125 N 02°33'04" W 19.45'
CCL30 N 70°41'56" E 8.35'	CCL78 N 75°15'01" E 13.21'	CCL126 S 62°07'17" E 19.70'
CCL31 N 60°00'52" E 13.43'	CCL79 S 63°02'46" E 14.74'	CCL127 S 19°22'18" W 12.57'
CCL32 N 60°00'52" E 13.87'	CCL80 S 67°06'32" E 10.27'	CCL128 S 65°47'55" E 23.94'
CCL33 N 40°14'53" E 16.81'	CCL81 N 25°11'34" E 8.19'	CCL129 S 15°13'57" W 17.57'
CCL34 N 50°33'26" E 28.40'	CCL82 N 61°10'33" W 27.38'	CCL130 S 57°39'23" W 9.54'
CCL35 N 50°33'26" E 15.00'	CCL83 N 46°27'12" E 15.39'	CCL131 S 34°13'24" W 14.29'
CCL36 N 50°33'26" E 2.58'	CCL84 N 65°50'27" E 13.77'	CCL132 S 47°56'52" W 12.29'
CCL37 N 45°02'23" E 4.03'	CCL85 N 75°49'20" E 10.88'	CCL133 N 46°47'52" W 8.67'
CCL38 N 45°02'23" E 6.30'	CCL86 N 75°49'20" E 30.68'	CCL134 S 55°11'32" W 11.47'
CCL39 N 45°02'23" E 30.41'	CCL87 N 84°12'18" E 29.25'	CCL135 S 30°32'54" E 17.87'
CCL40 N 59°12'57" E 21.97'	CCL88 N 50°55'30" E 11.76'	CCL136 S 42°27'06" W 32.27'
CCL41 N 59°12'57" E 4.95'	CCL89 S 23°31'05" E 8.96'	CCL137 S 69°32'16" W 16.92'
CCL42 N 70°47'16" E 32.38'	CCL90 S 71°03'39" E 9.32'	CCL138 S 44°26'47" W 25.93'
CCL43 N 53°34'36" E 48.08'	CCL91 N 74°26'52" E 16.60'	CCL139 S 62°24'37" W 33.49'
CCL44 N 62°50'21" E 18.21'	CCL92 S 50°05'20" E 10.77'	
CCL45 N 62°50'21" E 14.97'	CCL93 S 08°54'31" E 18.03'	
CCL46 N 59°03'23" E 33.50'	CCL94 S 40°37'36" W 8.99'	
CCL47 N 30°16'59" E 12.14'	CCL95 S 02°43'17" E 19.18'	
CCL48 N 28°37'20" W 17.55'	CCL96 N 83°35'09" W 7.80'	

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

Matthew B. Lyle 8/31/20
SIGNATURE DATE

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

SURVEYORS CERTIFICATION:

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.



JOHN T. BYRNES III S.C.P.L.S. NO. 16115

NO.	DATE	DESCRIPTION

SOUTHEASTERN LAND SURVEYING LLC
1035-B JENKINS ROAD
CHARLESTON SC 29407
(843)795-9330

A DHEC-OCRM CRITICAL LINE SURVEY PLAT OF OCEAN PARK PHASE 8A LOTS 216 THRU 235 AND PARK AREA KIAWAH RESORT ASSOCIATES LP LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA

DATE: AUGUST 21, 2020
DRAWN: K.KUZIO
CHECK: JOHN B.
CC: JEFF B.
JOB: 10127
DWG: 10127 DHEC-OCRM
SHEET: 1 OF 1



VICINITY MAP
(NOT TO SCALE)

NOTE:

1. ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
2. AREA DETERMINED BY COORDINATE (DMD) METHOD.
3. THE PUBLIC RECORDS REFERENCED ON THE PLAT ARE ONLY THOSE USED AND NECESSARY FOR THE ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY. THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH.
4. BEARINGS ARE BASED ON SOUTH CAROLINA STATE PLANE GRID NAD83
5. PARCEL SHOWN IS ZONED PLANNED DEVELOPMENT. ZONING SHOULD BE VERIFIED PRIOR TO ANY EARTHMOVING OR CONSTRUCTION.
6. AS PER FLOOD INSURANCE RATE MAP (FIRM) THE PROPERTY APPEARS TO BE LOCATED IN ZONE AE-10/VE-12 (BASE FLOOD ELEVATIONS DETERMINED) SHOWN ON MAP NUMBER 45019C0810K, PANEL 810 OF 855 DATED JANUARY 29, 2021. PORTION OF PARCEL IS LOCATED WITHIN AN LIMWA AND CBRA.
7. ANY FRESHWATER WETLAND BOUNDARIES OR DHEC-OCRM CRITICAL LINE SHOWN ON THIS SURVEY SHOULD NOT BE CONSIDERED AS A FINAL DEFINED LINE UNLESS THE APPROPRIATE AUTHORITY HAS CERTIFIED THEM ON THIS PLAT.
8. BUILDING SETBACK INFORMATION WAS PROVIDED BY KIAWAH ISLAND ARB AND SHOULD BE VERIFIED PRIOR TO ANY DESIGN OR CONSTRUCTION ACTIVITIES.
9. ELEVATIONS BASED ON NAVD 88.

OWNER OF RECORD:
KIAWAH RESORT ASSOCIATES LP
1 KIAWAH ISLAND PKY
KIAWAH ISLAND SC 29455

PROPERTY ADDRESS:
219 HIGH DUNES LANE
KIAWAH ISLAND SC 29455

OWNER REFERENCES:
TMS: 265-16-00-236
PLAT BOOK L21 PAGE 0465
OCEAN PARK PHASE 8A, LOT 219

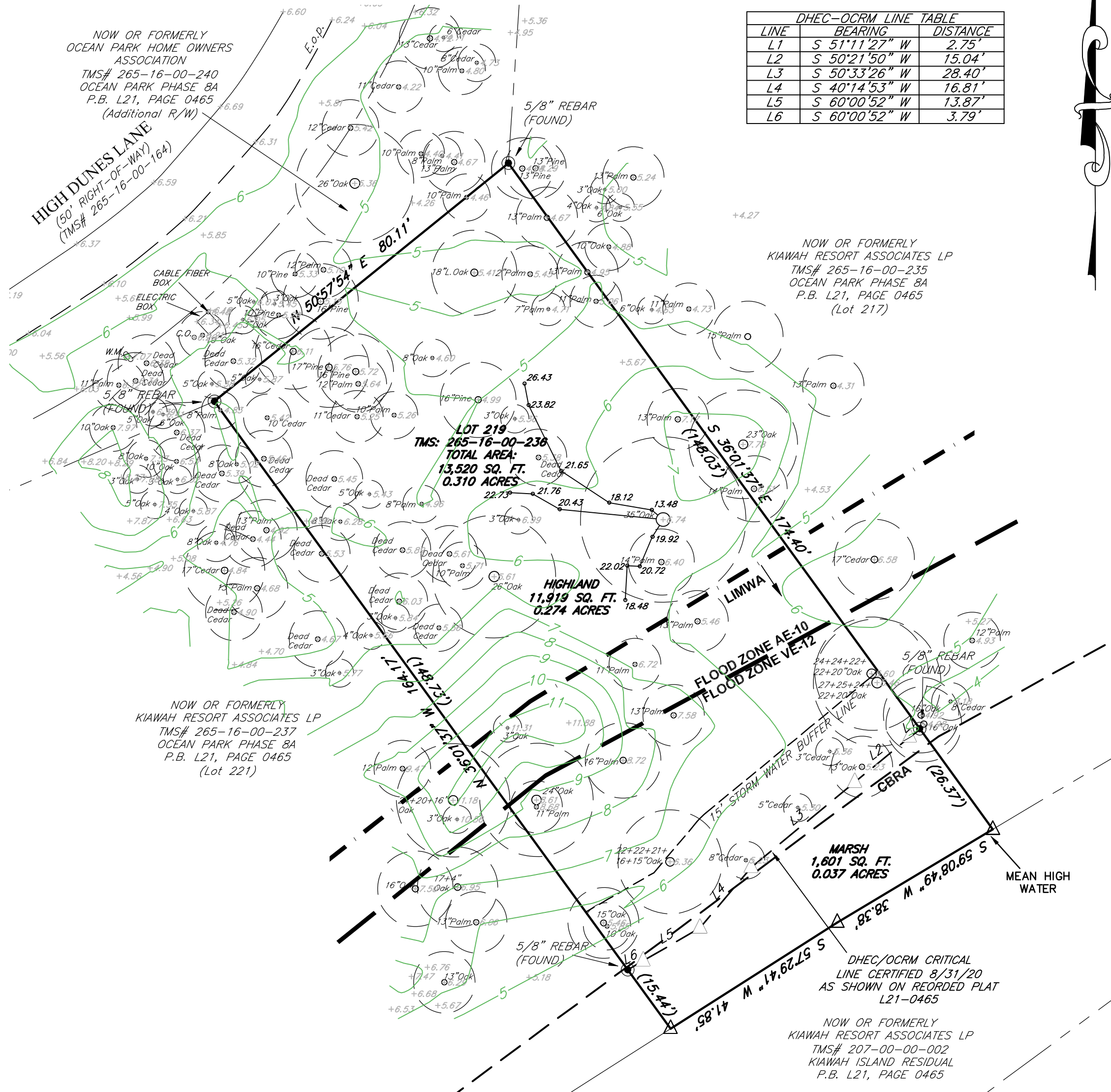
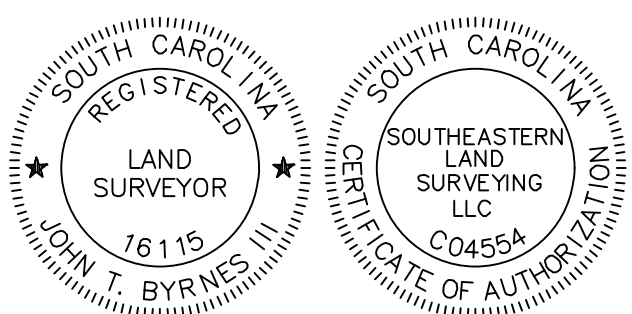
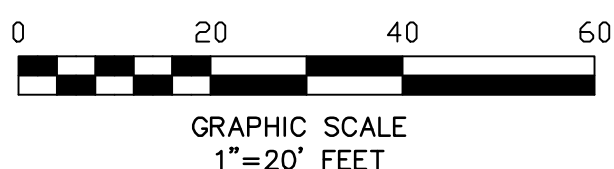
PLAT REFERENCES:
L21 0465

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

PREVIOUSLY SIGNED BY MEREDITH B. WRYE 8/31/2020

SIGNATURE _____ DATE _____

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



DHEC-OCRM LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 51°11'27" W	2.75'
L2	S 50°21'50" W	15.04'
L3	S 50°33'26" W	28.40'
L4	S 40°14'53" W	16.81'
L5	S 60°00'52" W	13.87'
L6	S 60°00'52" W	3.79'



NO.	DATE	DESCRIPTION	BY
RT	5/28/24	ADDED TREE LIMBS TO 32 OAK	KLK

SOUTHEASTERN LAND SURVEYING LLC
1035-B JENKINS ROAD
CHARLESTON, SC 29407
(843)795-9330

**A TREE AND TOPOGRAPHICAL SURVEY OF
TMS# 265-16-00-236
219 HIGH DUNES LANE
KIAWAH RESORT ASSOCIATES LP
LOCATED IN THE TOWN OF KIAWAH ISLAND
CHARLESTON COUNTY, SOUTH CAROLINA**

LEGEND	
	LOCATED CORNERS (AS DESCRIBED)
	EXISTING PROPERTY LINE
	EXISTING ADJOINER LINE
	EXISTING EDGE OF PAVE
	BUILDING SETBACK LINE
	CONTOUR LINES
	EDGE OF PAVE
	BUILDING SETBACK LINE
	NATIVE VEGETATION BUFFER LINE
	VARIOUS TREE SPECIES/TREE ROOT

DATE: DECEMBER 21, 2022
DRAWN: K.KUZIO
CHECK: JB
CC: STEVE R.
JOB: 22278
DWG: 22278-TT
SHEET: 1 OF 1

SITE GRADING REFERENCE NOTES:

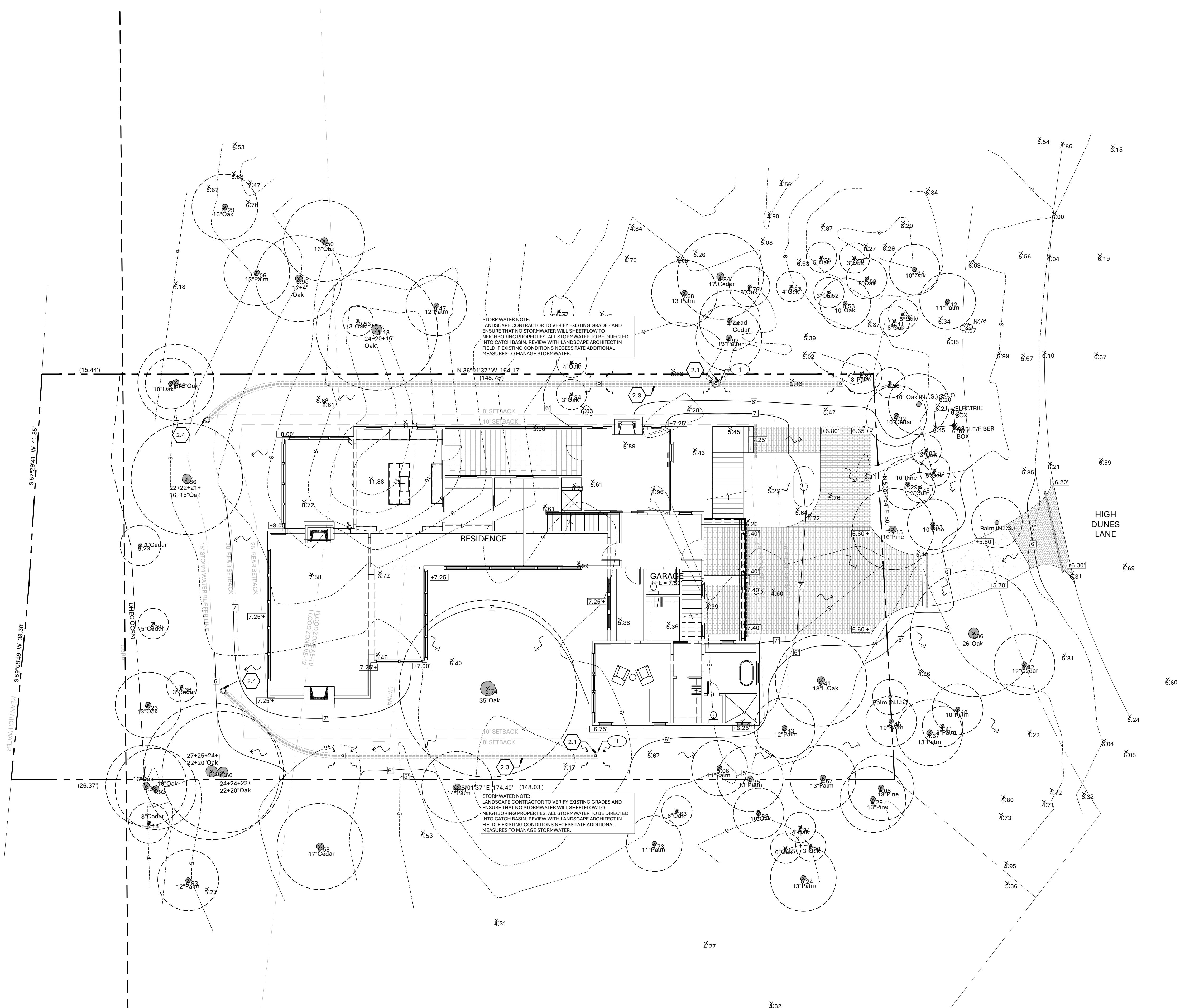
- 5 Existing Contour
- 5.67 Existing Spot Elevation
- 6 Proposed Contour
- +7.40 Proposed Spot Elevation
- 12" sq. Landscape Inlet with Atrium Grate - pitch adjacent grade toward inlet
- 4" Smooth Wall Perforated HDPE Pipe
- Pop-Up Emitter
- Pitch
- 1 Ensure that catch basins are placed with a 1% minimum slope toward the catch basins.

SITE GRADING + DRAINAGE NOTES:

1. Final grading must be completed in such a way that it does not adversely affect drainage or vegetation on adjoining property or roadside swales.
2. Maintain positive drainage away from building foundations per 2018 IRC Section 401.3
3. All grades shown on drawings are based upon datum established by the surveyor. Madison Rice Landscape Architects, LLC assumes no responsibility for the accuracy of the surveyed conditions as shown. Survey information is provided for reference only.
4. Contractor shall verify accuracy of existing grades and interpolated elevations prior to beginning work. Notify Owner's Representative of any discrepancies prior to beginning work.
5. All areas shall have positive drainage to approved drainage structures or conveyances.
6. Provide 2% max. slope, perpendicular to direction of travel on all paved sidewalks.
7. All dewatering or pumping of groundwater for swimming pools and onsite construction may not impact adjacent or downstream properties. Pumping water offsite must be authorized by the appropriate governing entities.
8. Contractor shall verify proposed grading will not result in additional storm water runoff onto adjacent properties or restrict current storm water flow from adjacent properties.
9. Retain pre-development elevations at all property lines.
10. No digging or equipment in noted tree protection zones - hand clearing only.
11. Contractor to implement all temporary measures required to prevent erosion during construction, and to protect existing storm inlet structures from construction activities.
12. Contractor must always field verify utility location prior to digging to ensure no conflicts. Call 811 for SC PUPS locate service.
13. Once constructed, some optimization may be required to maximize system performance.
14. Contractor to notify Madison Rice Landscape Architects, LLC during the final site grading phase for approval.
15. Gutter design shown for planning purposes only. Final gutter design and location of down spouts proposed by the installation company shall be reviewed and approved by Madison Rice Landscape Architects, LLC prior to installation.

SITE DETAIL KEYNOTES:

- 1.0 PAVEMENTS AND BORDERS SHEET**
 - 1.1 Gravel Paving L500
 - 1.2 Cobblestone Paving 1 L500
 - 1.3 Cobblestone Border 1 L500
 - 1.4 Stone Paving L500
- 2.0 DRAINAGE SHEET**
 - 2.1 Catch Basin L501
 - 2.2 Catch Basin @ Downspout L501
 - 2.3 French Drain L501
 - 2.4 Pop-Up Emitter L501
- 3.0 PLANTING AND LANDSCAPE SHEET**
 - 3.1 Tree Protection Fencing L502
 - 3.2 Palm Tree Planting L502
 - 3.3 Canopy Tree Planting L502
 - 3.4 Shrub Planting L502
 - 3.5 Groundcover Planting L502



FOLDS RESIDENCE
219 High Dunes Lane
Kiawah Island, SC 29455

DATE:	03.12.24
PRELIM. ARB:	09.10.24
FINAL ARB:	11.01.24
ADDENDUM:	11.18.24
REV 1:	12.16.24
PERMIT:	12.19.24
PERMIT REV 1:	01.16.25

NORTH
PRELIMINARY
SITE GRADING PLAN
SCALE: 1" = 10' - 0"

Design and all details are the exclusive property of Madison Rice Landscape Architects. All rights reserved, drawings may not be reproduced in any form without written permission.

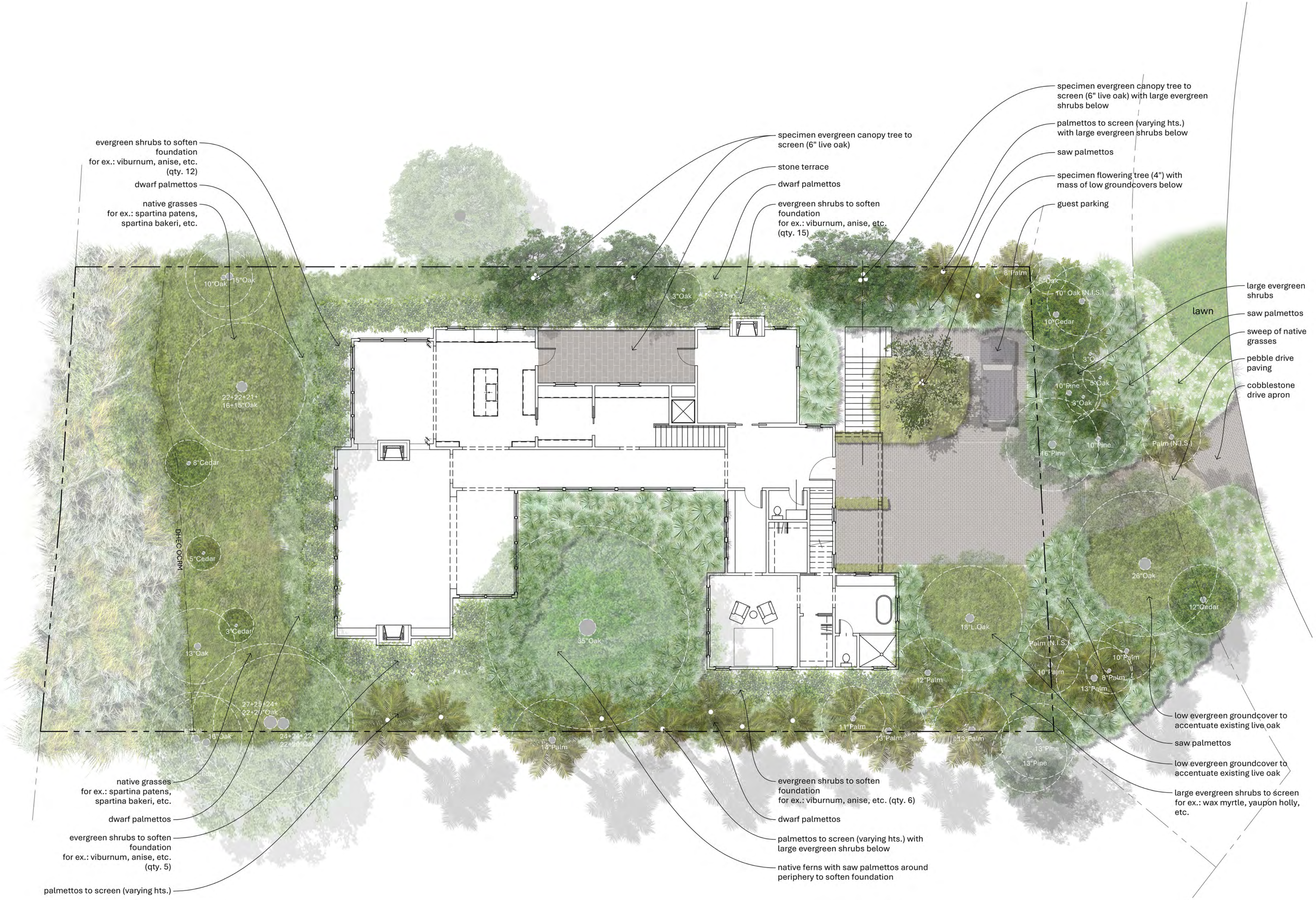


FOLDS RESIDENCE
 219 High Dunes Lane
 Kiawah Island, SC 29455

DATE:	03.12.24
PRELIM. ARB	09.10.24
FINAL ARB	11.01.24
ADDENDUM	11.18.24
REV 1	12.16.24

NORTH
 PRELIMINARY
 PLANTING PLAN
 SCALE: 1" = 10' - 0"

L600



Replacement Trees

- (3) 6" live oaks = 6 trees
- (1) 4" flowering tree
- (9) palms = 3 trees

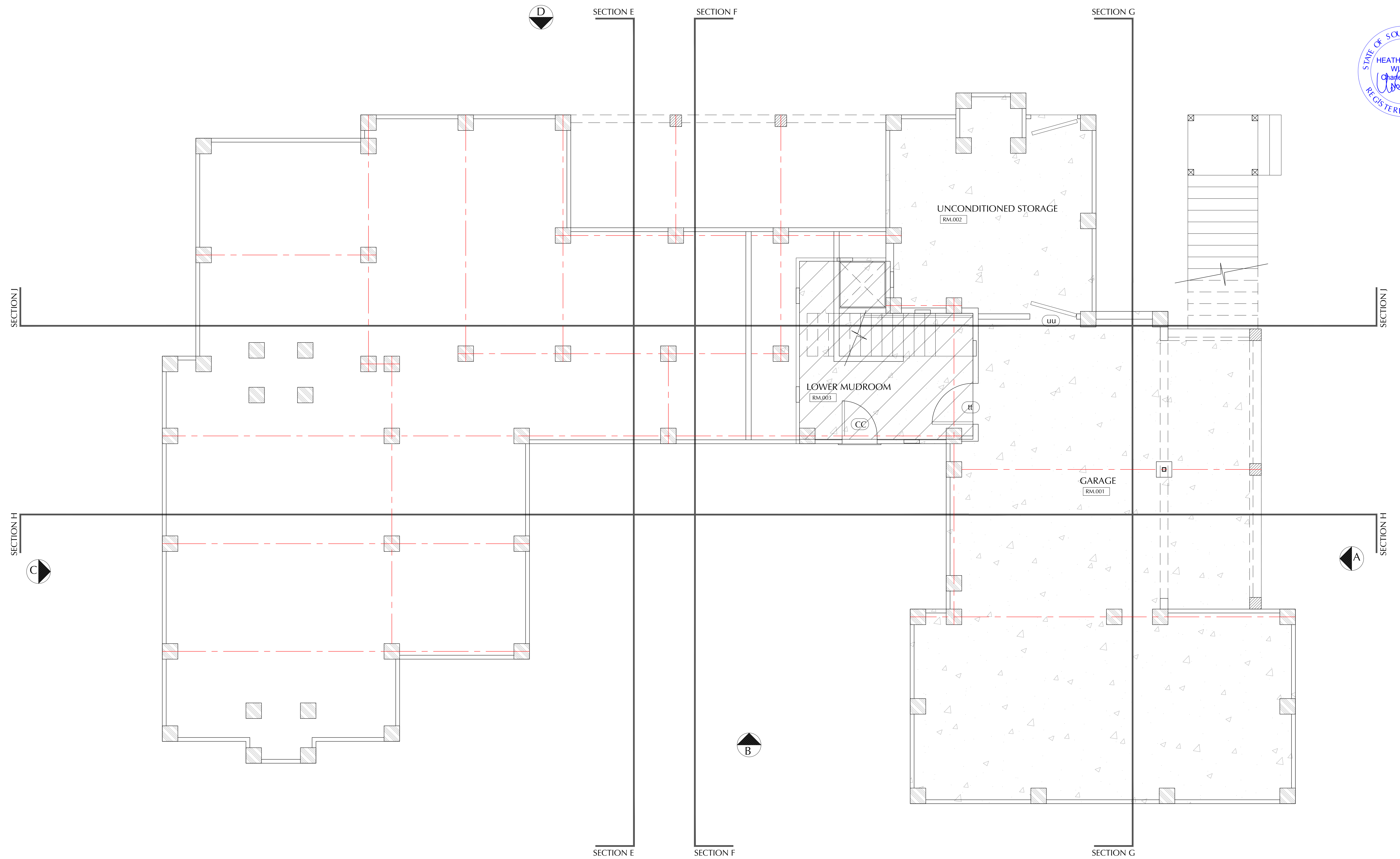
Total: 10 trees

NOTES:

2 Additional trees to be added if deemed necessary by ARB upon review at rough framing.

Planting Plan will be updated to reflect required tree mitigation upon frame up review with ARB and ARB decision regarding removal of Cedars along rear property line, as noted.

Design and all details are the exclusive property of Madison Rice Landscape Architects. All rights reserved, drawings may not be reproduced in any form without written permission.



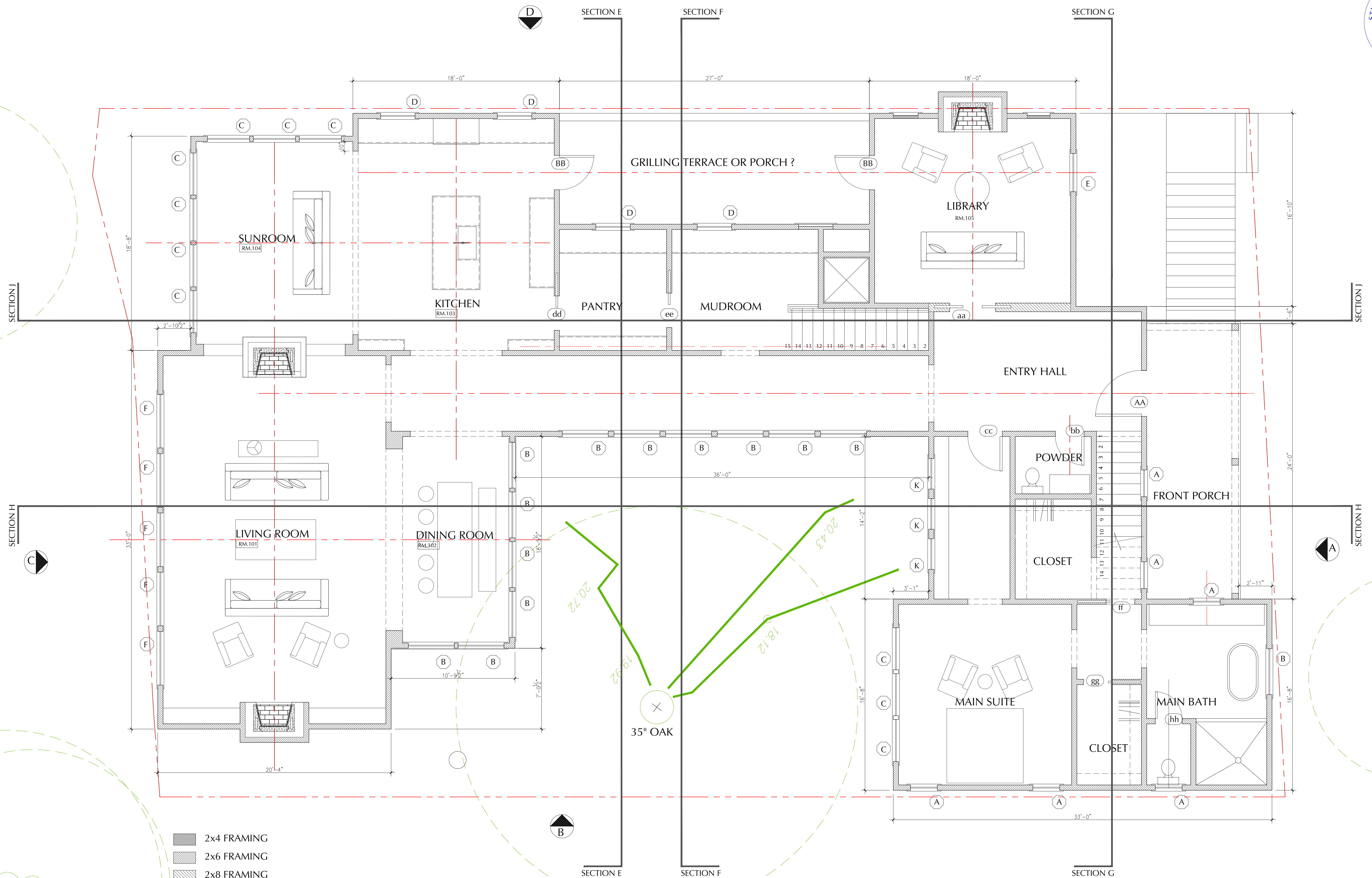
GROUND FLOOR PLAN

scale 1/4"=1'-0"



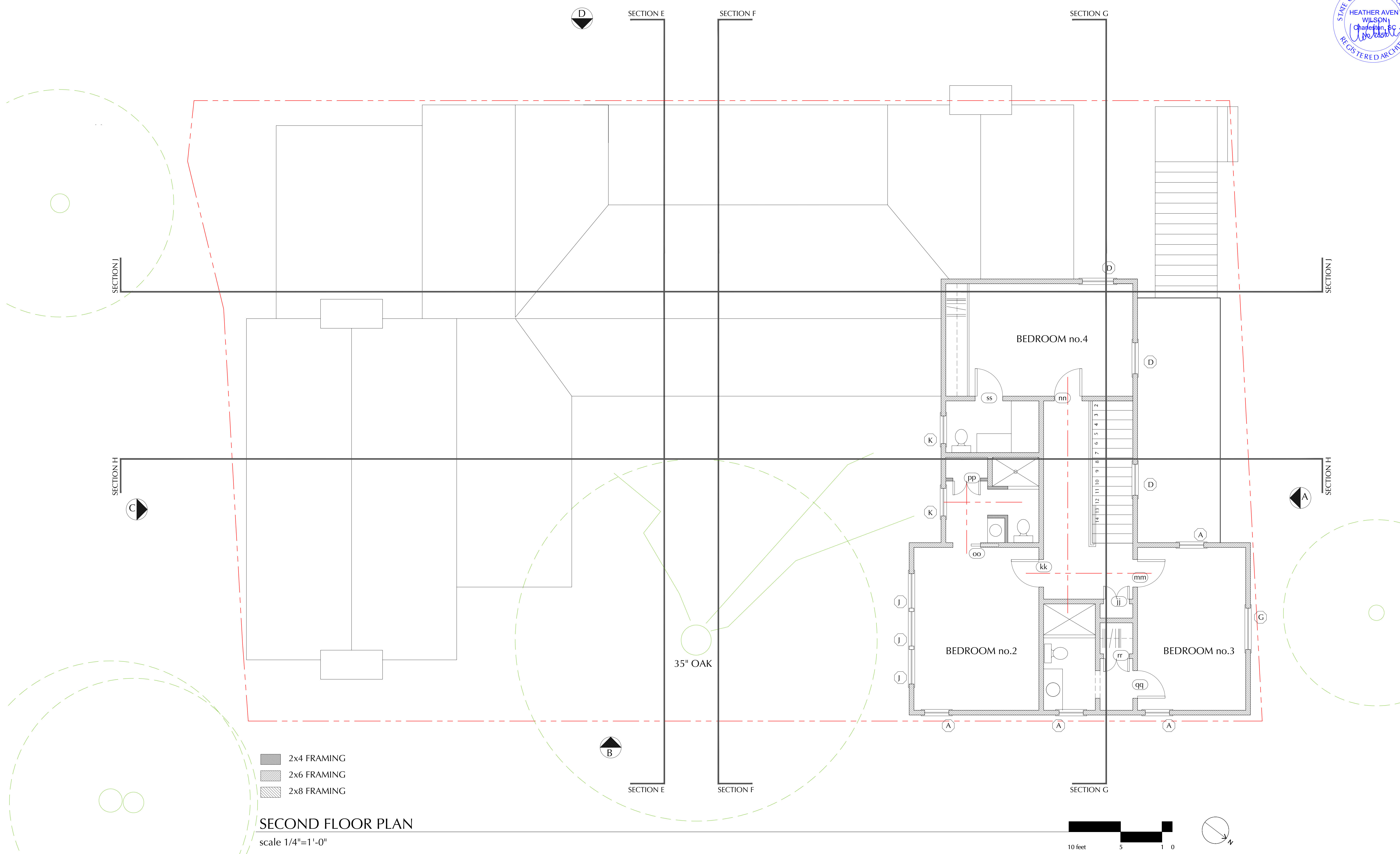
GENERAL FOUNDATION NOTES

1. THIS GROUND FLOOR PLAN IS FOR DESCRIPTIVE PURPOSES ONLY AND IS INTENDED TO BE USED IN CONJUNCTION W/ FOUNDATION PLAN PROVIDED BY THE STRUCTURAL ENGINEER. SEE STRUCTURAL FOUNDATION PLAN FOR ALL MATERIALS, CONNECTIONS, NOTES, & DETAILS.
2. ALL DIMENSIONS TO FACE/CENTER OF BLOCK UNLESS NOTED OTHERWISE.
3. CONTRACTOR TO PROVIDE ANY NECESSARY HYDROSTATIC VENTS AT ELEVATOR SHAFT AND / OR STORAGE AREAS AS REQ'D BY CODE.
4. ALL MATERIALS BELOW B.F.E TO BE CLASS 4 OR 5



FIRST FLOOR PLAN
scale 1/4"=1'-0"

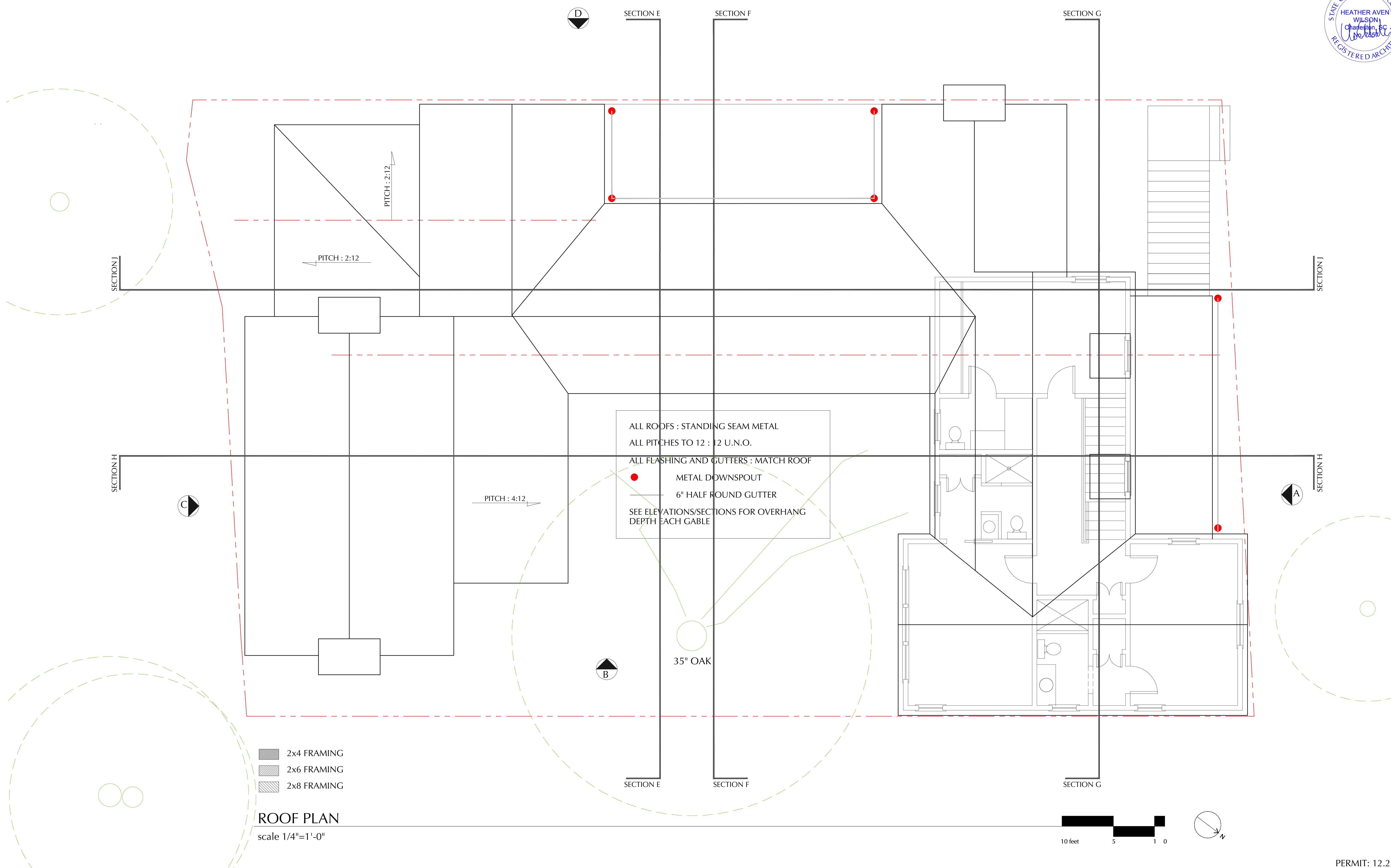




- 2x4 FRAMING
- 2x6 FRAMING
- 2x8 FRAMING

SECOND FLOOR PLAN
 scale 1/4"=1'-0"

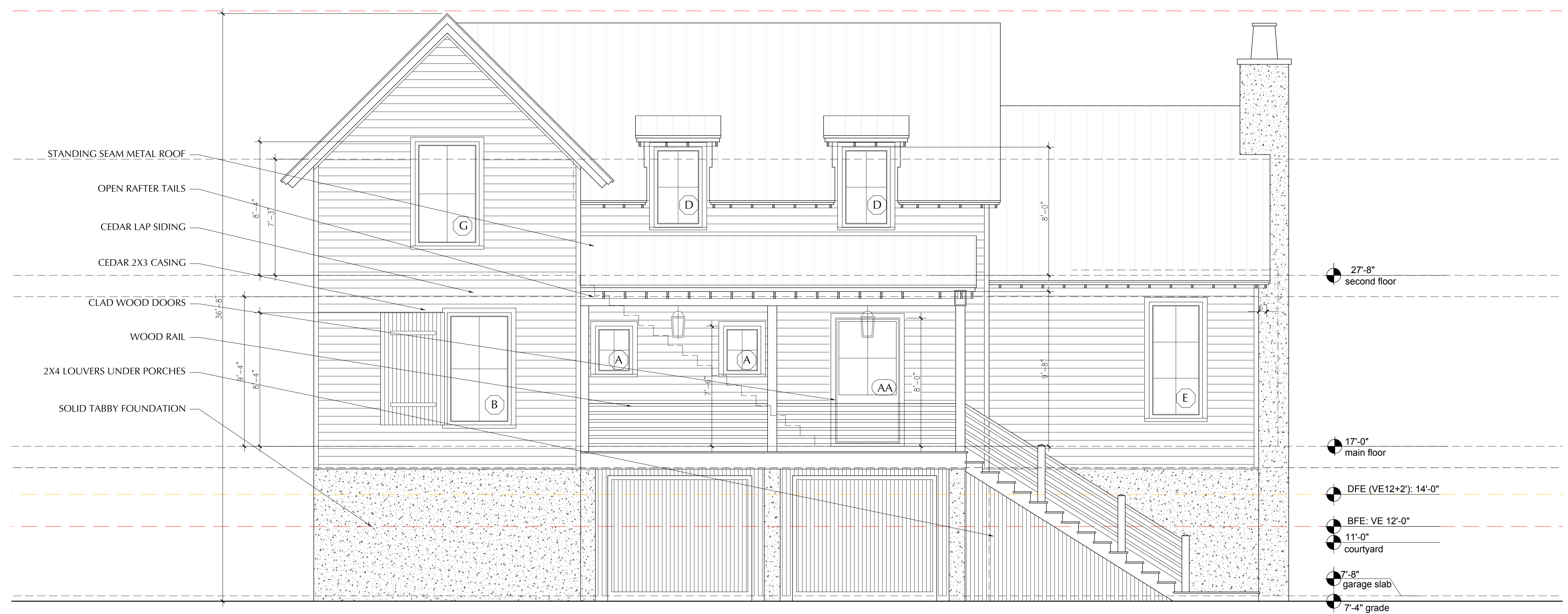




- 2x4 FRAMING
- 2x6 FRAMING
- 2x8 FRAMING

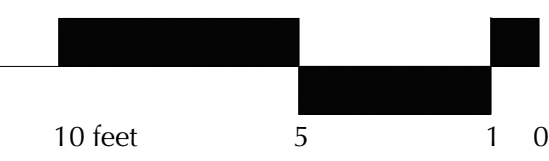
ROOF PLAN
 scale 1/4"=1'-0"

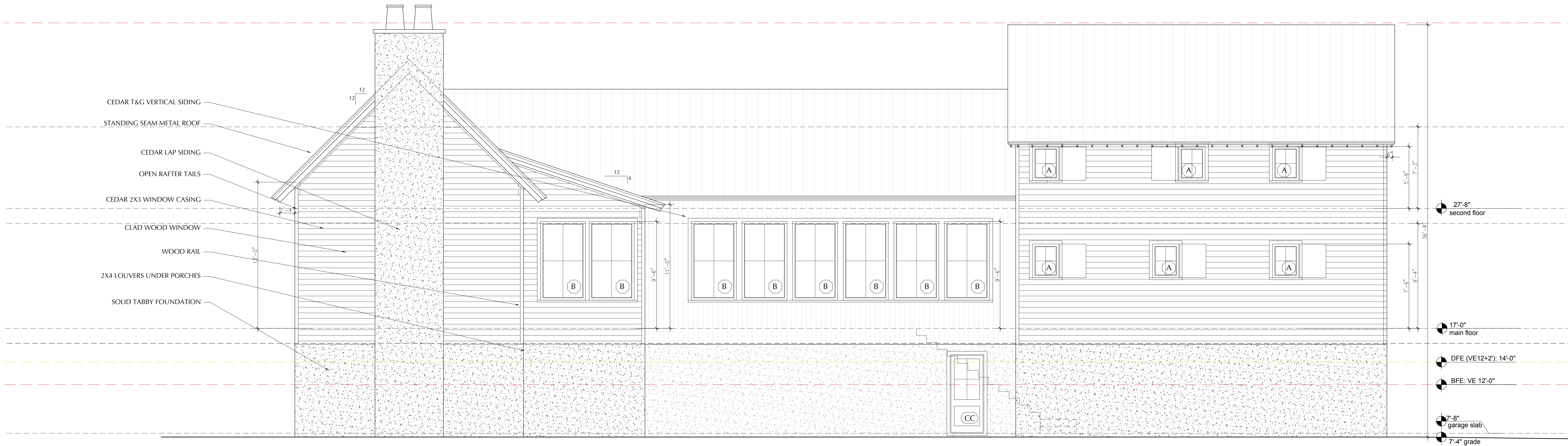




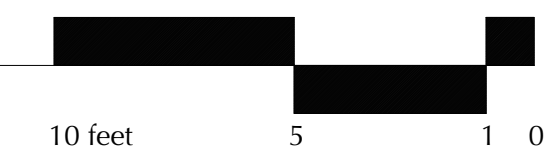
A. NORTH ELEVATION

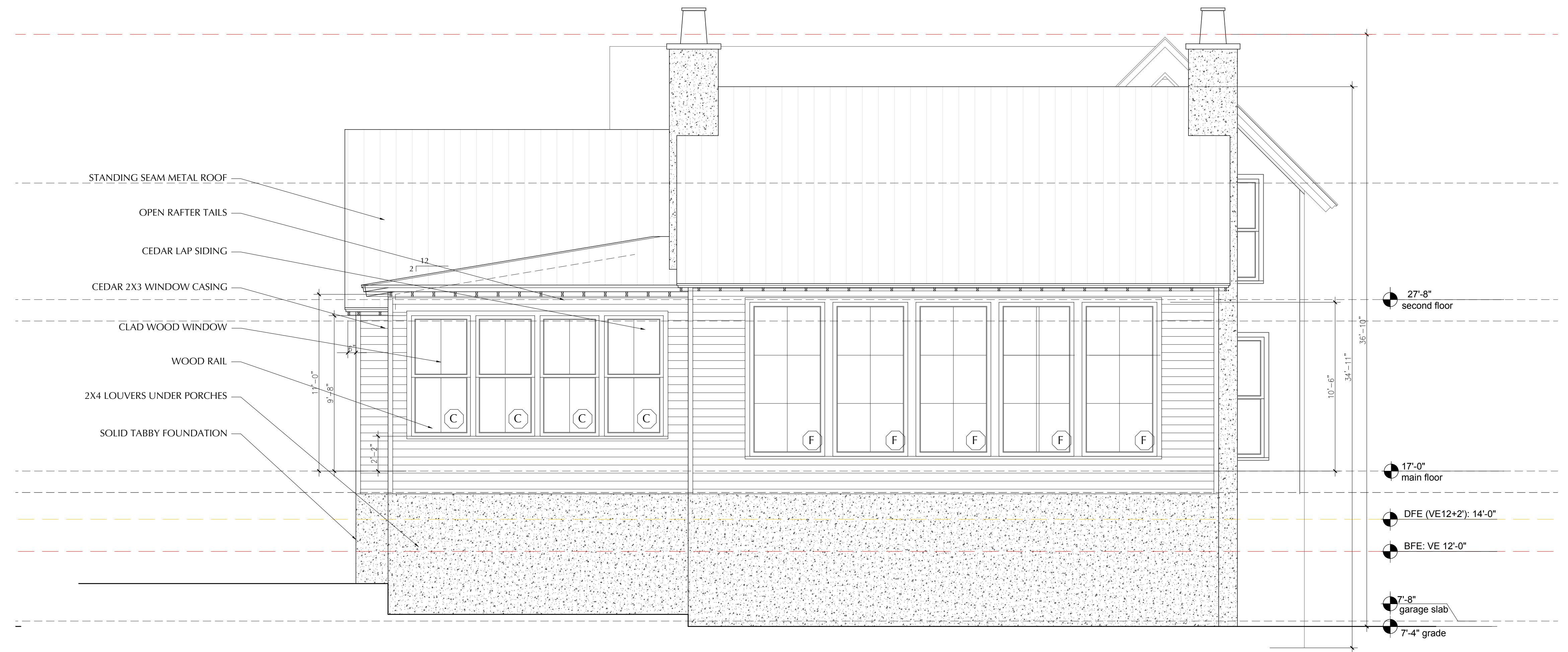
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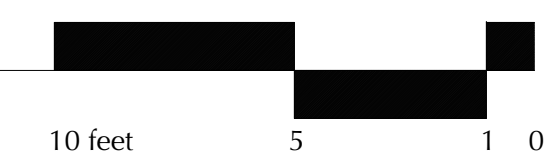
B. EAST ELEVATION
 scale 1/4"=1'-0"

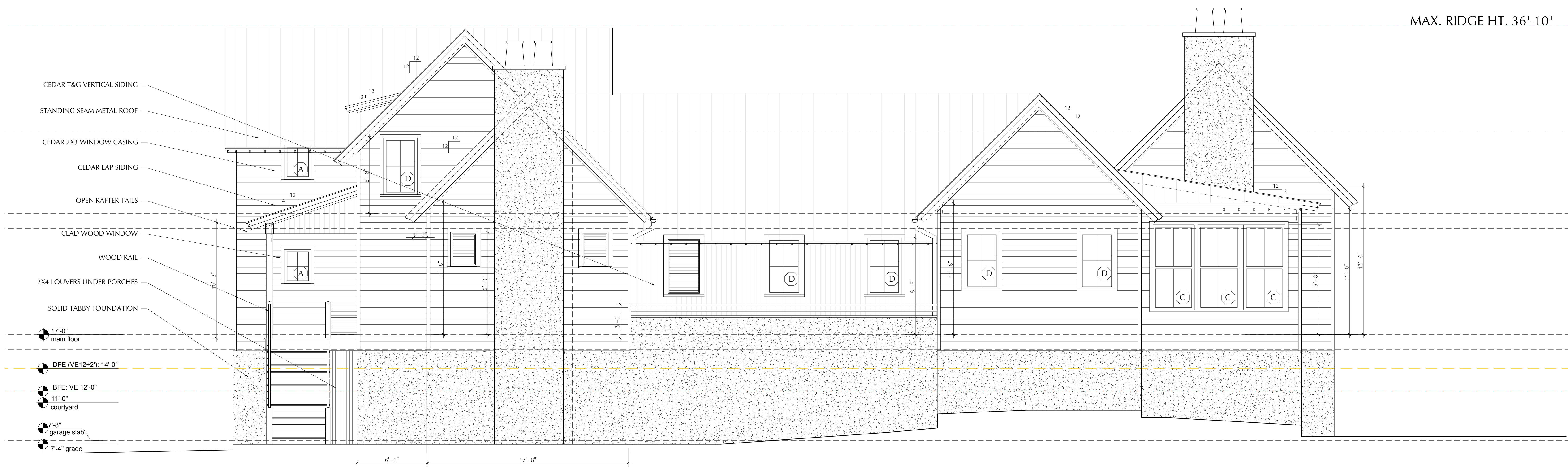




C. SOUTH ELEVATION

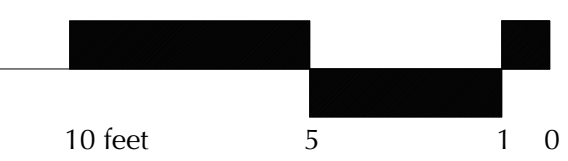
scale 1/4"=1'-0"





D. WEST ELEVATION

scale 1/4"=1'-0"





January 17, 2025

Jim and Mary Kim Folds
617 Ardrev Circle
Davidson, NC 28036

Re: **INTERIM FINAL REVIEW**
Construction Address: 219 High Dunes Lane
ARB Action: Approved

Dear Mr. and Mrs. Folds,

Thank you for your submittal to the Kiawah Island Architectural Review Board (ARB) for Interim Final Review of your home at 219 High Dunes Lane. The design of your home is approved to continue to the Permit Submittal pending an approved Interim submittal. As you move forward, please address the following comments and conditions in keeping with the guidelines:

- L1. The ARB supports and appreciates the unique site development and architectural design which allows for the preservation of the 35" Live Oak root zone and full canopy despite its substantial impact on the buildable area.
- L2. Thank you for updating the landscape plan to clearly indicate that the landscape guidelines are being met, particularly in relation to foundation plantings and minimum tree count requirements.
- A1. Thank you for the sample board submittal. The materials and colors are headed in a good direction and will be further reviewed at the on-site sample board.
- A2. Please clarify how the central portion of the West elevation fenestration was adjusted, as there appears to be a change to the floor plan but not the elevation.

Please submit one (1) digital copy of sealed drawings to this office to obtain our approval stamp. The Town of Kiawah Island requires one (1) digital set of stamped drawings for their Zoning and Building Permits. The contractor must submit a completed Construction Application Deposit and Agreement Form along with the required construction deposits and obtain the Kiawah Island Community Association Encroachment Permit. Tree Protection fencing must be installed at the time of Permit Submittal. Once the ARB approval stamp has been given, a Kiawah Island ARB Permit will be issued for the project.

Thank you again for your submittal to the Kiawah Island Architectural Review Board. Please do not hesitate to contact the ARB office if we can be of any assistance during the Permit Process for your home.

Sincerely,

Jane Maybank, Director
On behalf of the KIARB

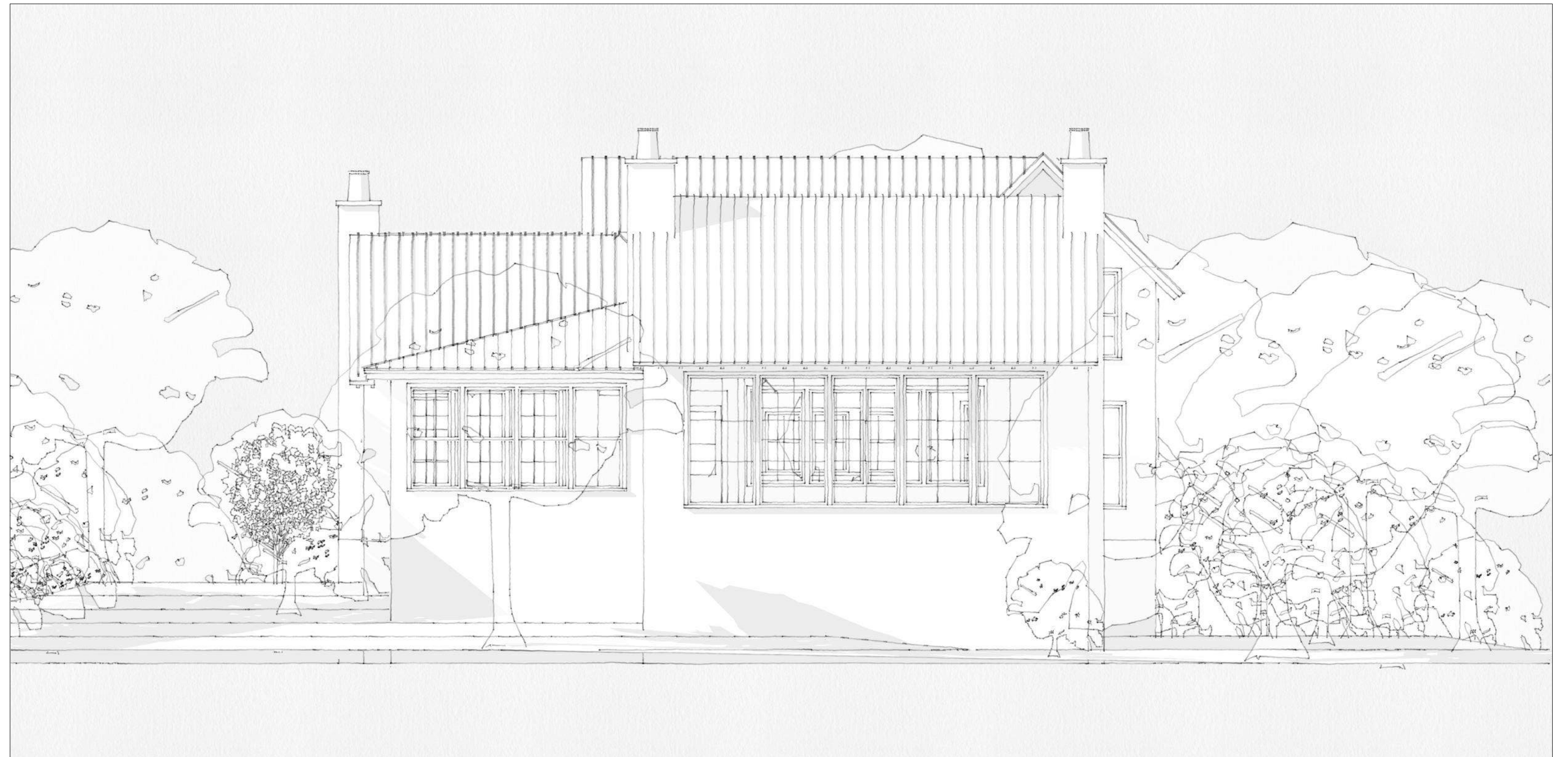
cc: Property file, ARB Members, Heather A. Wilson, Madison Rice, Carl Owens Contracting

PHYSICAL ADDRESS

253 Gardeners Circle, Suite 200
Johns Island, SC 29455

MAILING ADDRESS

130 Gardeners Circle, Suite 123
Johns Island, SC 29455



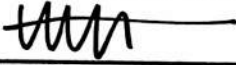
Permit Application: Restrictive Covenants Affidavit

Town of Kiawah Island

Town of Kiawah Island Municipal Center
Planning Department
4475 Betsy Kerrison Parkway
Kiawah Island, SC 29455
Phone 843-768-9166
Fax 843-768-4764



I, Heather A. Wilson, have reviewed the Restrictive Covenants
[Print]
applicable to Parcel Identification Number(s) 265-16-00-236, located
at (address) 219 High Dunes Lane, and the proposed permit application is not
contrary to, does not conflict with, and is not prohibited by any of the restrictive
covenants, as specified in South Carolina Code of Laws, Section 6-29-1145.

<u>[Signature]</u> 	<u>01/16/25</u>
<u>Heather A Wilson</u>	<u>[Date]</u>

[Print Name]

Explanation:
Effective July 1, 2007, South Carolina Code of Laws Section 6-29-1145 requires local governments to inquire in the permit application, or in written instructions provided to the applicant, if a tract or parcel of land is restricted by a recorded covenant that is contrary to, conflicts with or prohibits an activity for which a permit is being sought. [Section 6-29-1145 is copied on the back of this page].

FOR STAFF USE ONLY		
<u>[Received By]</u>	<u>[Date]</u>	<u>[Application #]</u>

Section 6-29-1145

- A. "In an application for a permit, the local planning agency must inquire in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity.
- B. If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:
1. in the application for the permit;
 2. from materials or information submitted by the person or persons requesting the permit;
or
 3. from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.
- C. As used in this section:
1. 'actual notice' is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;
 2. 'permit' does not mean an authorization to build or place a structure on a tract or parcel of land; and
 3. 'restrictive covenant' does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land."

Heather A. Wilson, AIA
704 Meeting Street
Charleston, SC 29403

January 16, 2025

219 High Dunes Lane
TMS # 265-16-00-236

Board of Zoning Appeals
February 24, 2025

Dear sirs and madams

Thank you in advance for your time and consideration of the following variance request.
The request is to allow for a reduction of side yard setbacks from 15 to 10 feet.

- a. There are extraordinary and exceptional conditions pertaining to this particular piece of property. There is a grand live oak in the center of the lot. The tree impacts the buildable area with root zone protection as well as limits the height of the adjacent rooflines. This necessitates a design comprised of mostly single-story elements, which increases the foot print and need for side setback relief.
- b. These conditions do not apply to other property in the vicinity since other undeveloped lots in marsh walk do not have current ARB approval. The neighboring homes were all built to the guidelines of the ARDA zoning, as this lot was intended to be. The original zoning of this lot allowed for 10' side yard setback and greater latitude of tree protection.
- c. The application of the current ordinance would unreasonably restrict the development of this property. The current ordinance restriction in concert with the limb and root pattern of the grand oak would limit the use of this property, especially as compared to all adjacent and surrounding properties.
- d. The authorization of this variance would not negatively impact the property nor the public good nor the character of the zoning district. The variance would allow the property to be in keeping with the design and intent of marsh walk zoning. This is one of few lots remaining and it is in the best interest of the marsh walk neighborhood to be developed to the same standards as the surrounding properties.
- e. This variance would in no way establish a new use of the property nor extend a nonconforming use nor alter the zoning district boundaries. The property is zoned and intended for use as a single-family home and has been designed as such. Furthermore, the home designed is compliant with all other aspects of the ordinance.
- f. There would be no increase in value to the property as a direct result of this variance. The home is similar in size and caliber of all adjacent properties and would not exceed the neighborhood's value in any way.
- g. The variance request is in advance of any physical improvement and not the result of actions taken.
- h. The variance would be very much in support of neighborhood and public interest. The variance would allow for a design that is entirely in keeping with the spirit and intent of the regulations under which the neighborhood was developed. Furthermore, sustaining and nourishing the grand oak is for the benefit of the greater good.
- i. The variance allows for a design that is in concert with the comprehensive plan and design for this area of Kiawah, Marsh Walk.

Thank you.

Heather A. Wilson



**Kiawah Island
Board of Zoning Appeals
Meeting of February 24, 2025**

**Public Comments Regarding
Case #BZA25-000002**

#1

From: Petra Reynolds
Sent: Friday, February 14, 2025 3:35 PM
To: Daniel Vincent
Cc: John Taylor
Subject: FW: Objection to Variance Request 219 High Dunes Lane

Here you go.....

Thanks,

Petra

From: Emma Perryman <emmahollanduk@me.com>
Sent: Friday, February 14, 2025 3:30 PM
To: Petra Reynolds <preynolds@kiawahisland.org>
Subject: Objection to Variance Request 219 High Dunes Lane

Dear Members of the Zoning Board of Appeals,

We are writing to formally object to the variance request currently under consideration for 219 High Dunes Lane, Kiawah Island, SC [Case# BZA25-000002] [TMS# 265-16-00-236]. The requested variance **significantly** encroaches upon the established setback requirements, undermining the intent and integrity of our zoning regulations. Further, granting this variance would set an unfair precedent for current and future homeowners who have complied with these regulations, often making creative design adjustments to preserve live oak trees and other natural obstacles.

The applicant has attempted to downplay the extent of the variance, but the reality is that the requested encroachment is substantial: 4 feet 5 inches to the East and 6 feet 5 inches to the West, reducing the required 15-foot setback by 30% to the east and 43% to the West. This is not a minor deviation but a significant departure from zoning standards that were put in place for a clear purpose.

Additionally, the applicant's reference to lot coverage—citing a 39.55% usage within the allowed 40%—is entirely irrelevant to this variance request, which pertains specifically to setbacks. The setback requirements were established to maintain uniformity, protect neighboring properties, and uphold the integrity of the Comprehensive Plan. Approving this variance would be in direct conflict with Section 12-16 3 (4) i, which states:

"Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance."

The setbacks were established under this ordinance for a specific reason, and allowing such an extensive encroachment directly contradicts that purpose. Furthermore,

approving this variance would create an inequitable situation for homeowners who have adhered to these requirements, setting a dangerous precedent that could open the door for numerous retrospective appeals from existing homeowners seeking similar exceptions.

We urge the Board to consider the long-term implications of granting this variance and to uphold the existing zoning laws that have ensured fair and consistent development within our community.

Thank you for your time and consideration.

Sincerely,
Jonathan & Emma Perryman
227 High Dunes Lane
Kiawah, SC

#2

From: Petra Reynolds
Sent: Friday, February 21, 2025 11:14 AM
To: John Taylor; Daniel Vincent
Subject: FW: Objection to Variance Request 219 High Dunes Lane

Here you go.....

Thanks,

Petra

From: Eric Hanson <ehanson219@gmail.com>
Sent: Thursday, February 20, 2025 6:38 PM
To: Petra Reynolds <preynolds@kiawahisland.org>
Subject: Objection to Variance Request 219 High Dunes Lane

Dear Members of the Zoning Board of Appeals,

I am writing to formally object to the variance request currently under consideration for 219 High Dunes Lane, Kiawah Island, SC [Case# BZA25-000002] [TMS# 265-16-00-236].

I am the owner of 221 High Dunes Lane, located immediately adjacent to this property on the west side. My lot is currently undeveloped as well.

As I read the variance request, it seems to be asking that they be held to the rules in place at the time they purchased the land. Those have since expired and are now requiring an additional 5 feet of setback. I certainly understand their POV as I too purchased prior to the expiration of the 2013 ARDA.

What I object to is that their plan, on the side adjacent to my lot, extends beyond the requirements of the 2013 ARDA in asking for variance of greater than what would remain in line with the expired rules in place when they purchased the land.

"The proposed single-family home encroaches into the required 15' east side setback by approximately 4 feet 5 inches at its furthest point. The total encroachment into the east side setback is approximately 151 square feet. Portions of the proposed single-family home encroach into the required 15' west side setback by approximately 6 feet 5 inches at its furthest point. The total encroachments into the west side setback is approximately 337 square feet."

While I would prefer that no variance be approved, if the board deems extenuating circumstances to do so, I respectfully request that the variance request at least conform to the rules in place prior to expiration and not allow encroachment greater than 5 feet on either side with a setback of 10 feet per the 2013 ARDA.

I appreciate your consideration.

Eric Hanson
Owner, 221 High Dunes Lane



Case #BZA25-000003
Kiawah Island BZA Meeting of February 24, 2025

Applicant/Property Owner: 129 BLUE HERRON POND LLC

Representative: Leo Lorenzo of Camens Architectural Group

Property Location: 129 Blue Heron Pond Road

TMS#: 265-02-00-085

Lot Size: Highlands: 15,025 square feet (0.34 acres)
Marsh: 3,153 sqft (0.07 acres)
Total: 18,178 sqft (0.41 acres)

Zoning District: R-1, Residential Zoning District

Request: Variance request for the reduction of the required 20' side setback and required 20' rear OCRM critical line setback by approximately 208 square feet for a new single-family home.

Requirement:

Chapter 12. Land Use Planning and Zoning, Art. II. Zoning, Div. 2. Zoning Map/Districts, Sec. 12-65. - R-1, Residential District.

Required setbacks: 30' (Front); 20' (Side off Leisure Trail); 20' (Rear)

Maximum 33% Lot Coverage

The Ordinance defines Setback as "a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected." The Ordinance defines Rear Setback as, "the setback measured from the rear lot line." The Ordinance defines Side Setback as, "any setback other than a rear or front setback."

Sec. 12-65. R-1, Residential District.

- (a) *Purpose and intent.* The purpose of the R-1 zoning district is to promote stable residential neighborhoods consisting of low density, detached, single-family dwellings and surrounding parks, golf courses, and open spaces. Activities and endeavors which might serve to mitigate against this purpose shall be prohibited or strictly regulated.
- (b) *District regulations.* The following apply to all dwelling units in the R-1 zoning district:
 - (1) The maximum density for this district is three dwelling units per acre;
 - (2) All required parking shall be enclosed;
 - (3) Open storage is prohibited;
 - (4) Lot standards (setbacks, lot coverage, etc.) for single-family detached dwellings on existing platted lots that are included in article VII of this chapter, the Kiawah Island Property Setback Requirements Appendix, dated 7-10-2007, incorporated herein by reference and adopted hereto as said article VII shall apply in lieu of the setback requirements in table 2B following subsection (b)(6) of this section;
 - (5) Lot standards (setbacks, lot coverage, etc.) for single-family detached dwellings not covered by subsection (b)(4) of this section are listed in table 2B following subsection (b)(6) of this section and table 2C following section 12-66(b)(8);
 - (6) Authorized uses are listed in table 3A in section 12-102(c).

Lot Size (square feet)	Maximum Lot Coverage	Depth (feet)	Width (feet) ⁽¹⁾	Minimum Yard Setbacks (feet)			Maximum Height	
				Front ⁽²⁾	Side ⁽³⁾⁽⁵⁾	Rear ⁽⁴⁾	(stories)	(feet)
8,000—11,999	40 percent	100	60	25	10	25	2.5	40
12,000+	33 percent	100	75	25	20	25	2.5	40

⁽¹⁾ For lots on cul-de-sacs or similar circumstances, the minimum width shall apply at the front yard setback line. Cul-de-sac lots shall have a minimum width of 25 feet at the street line. The minimum width of any flag lot may be reduced to 20 feet, provided that the minimum width specified in the table is provided at the front building setback line.

⁽²⁾ On corner and double-frontage lots, front setback standards will apply to each lot line that borders a street right-of-way. The rear yard setback shall apply to the opposite side of the principal structure's front main entrance. The side yard setback shall apply to the remaining sides.

⁽³⁾ A minimum of 15 feet must be provided between structures.

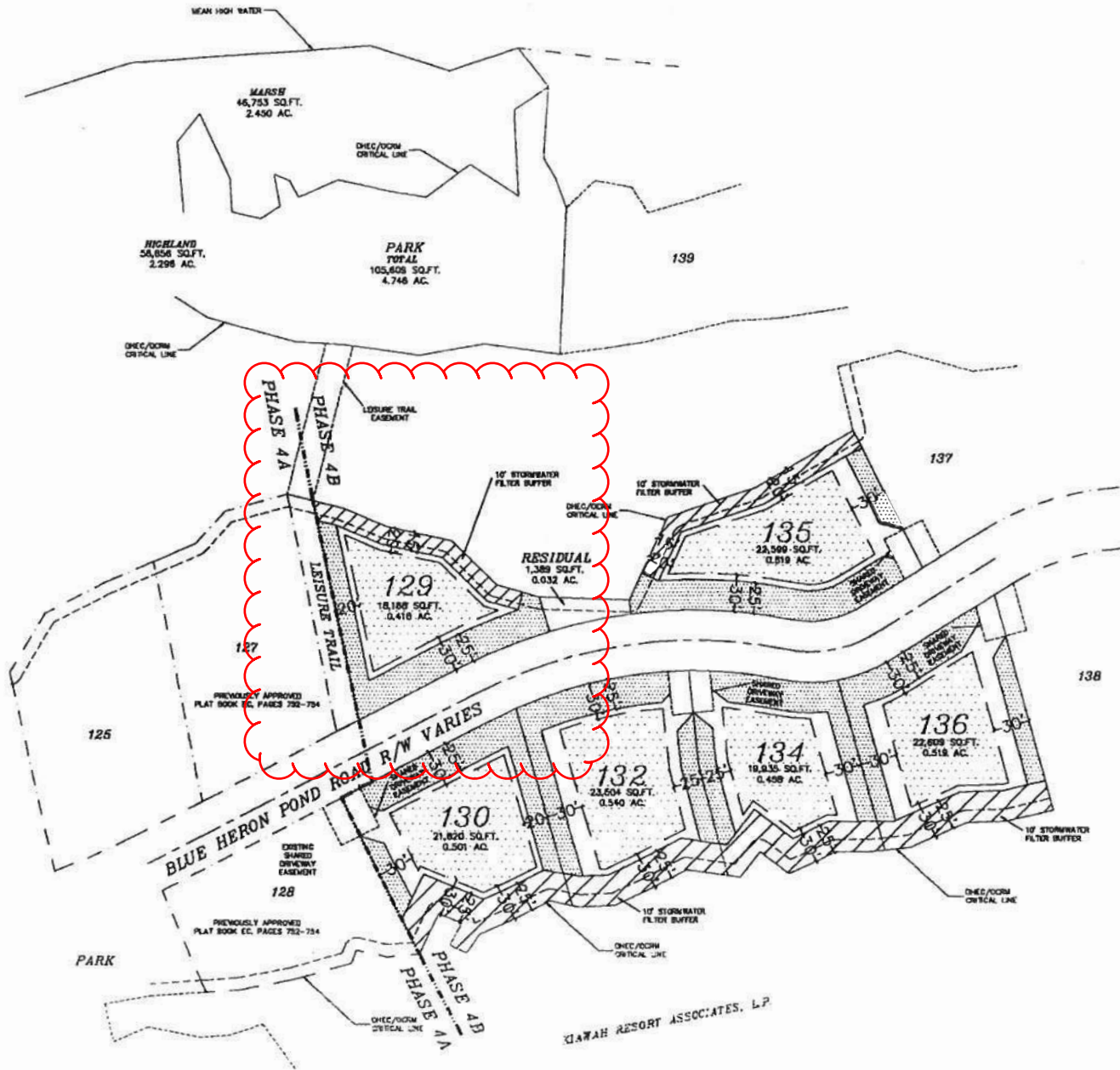
⁽⁴⁾ The minimum yard requirements shall be increased to 30 feet from any lot or parcel boundary which abuts a golf course.

⁽⁵⁾ Minimum setbacks in side yard for lots currently in existence and reflected on the current zoning map and fronting on Eugenia Avenue the side yard setback shall be ten feet.

(Code 1993, § 12A-205; Ord. No. 2005-08, § 12A-205, 10-12-2005; Ord. No. 2006-10, § 2, 2-6-2007; Ord. No. 2007-05, § 2(12A-205), 7-10-2007)

KIAWAH RESORT ASSOCIATES, L.P.

BLUE HERON POND ROAD



BUILDABLE AREA

PRESERVATION ZONE

- This area will remain natural, undisturbed and free from any development including driveways and fill unless specifically approved by the A.R.E.
- Lot 129 will have a 20' wide driveway access that can penetrate the Preservation Zone.

SELECTIVE CLEARING ZONE

- This zone is generally between the designated setback lines and either the property line of the Lot or the D.H.E.C.-C.C.R.M. Critical Line.
- All vegetation in this zone shall be preserved until the home is completely framed.
- Removal or alteration between the home (or other structure) and the critical line shall be accomplished only after an on-site A.R.E. approval.

Scale : 1" = 100'

REVISED : July 28, 1999

KIAWAH RESORT ASSOCIATES, L.P.

Sec. 12-64. - Setbacks.

Setback means a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected.

- (1) *Contextual setbacks.* Notwithstanding the front setback requirements of the underlying zoning district, the front building line of any structure or addition to a structure may be as close to the street as the front building line of a structure located on any lot that is immediately adjacent to the subject lot. If the subject lot is located between two developed lots, the front building line of the structure that is set back further from the street shall apply to the subject lot.
- (2) *Setbacks on corner and double frontage lots.* On corner and double-frontage lots, front setback standards will apply to each lot line that borders a street right-of-way. The rear yard setback shall apply to the opposite side of the principle structure's front main entrance. The side yard setback shall apply to the remaining side(s).
- (3) *Exception to setbacks.* Every part of a required setback must be open and unobstructed from the ground to the sky except as set out in this subsection.

Driveways and walkways may be located within any required setback.

Uncovered stairs or stair landings to building entrances may extend up to five feet into any required setback.

Uncovered, at-grade patios may extend into a required setback; however, they shall maintain a minimum ten-foot distance from the property line.

Uncovered decks may extend up to five feet into any required rear yard setback.

Sills, belt courses, cornices, buttresses, eaves and other architectural features may extend up to two feet into any required setback.

Walls and retaining walls below three feet in height may be located within required setback.

In all zoning districts heating, ventilation and air conditioning (HVAC) equipment and associated HVAC stands may extend up to five feet into required side or rear setbacks only when all of the following conditions are met:

- (1) The HVAC equipment is replacing existing HVAC equipment which was originally placed below an existing structure and/or which HVAC equipment being replaced is now required to be elevated to meet the requirements of the Federal Emergency Management Agency (FEMA) and the Town of Kiawah Island Building Code;
- (2) Such HVAC equipment cannot reasonably be accommodated within the setback required by otherwise applicable zoning requirements;
- (3) The property owner has, through regular mail postmarked no later than five days in advance of applying for a Zoning Permit, notified the affected adjacent property owner(s) that are adjacent to the property line where the proposed HVAC equipment will be located, and has submitted to the Planning Director a signed affidavit stating that such property owner has notified the affected adjacent property owner(s) and proving each name and address to which notice was sent; and
- (4) A Zoning Permit is approved by the Planning Director.

(Code 1993, § 12A-204; Ord. No. 2005-08, § 12A-204, 10-12-2005; Ord. No. 2012-03, § 2, 4-3-2012; Ord. No. [2015-04](#), § 2, 4-14-2015)

Staff Review:

The applicant and property owner 129 Blue Heron Pond LLC being represented by Leo Lorenzo of Camens Architectural Group is requesting a variance for the reduction of the required 20' side setback and required 20' rear Critical Area Line setback for approximately 208 square feet for a new single-family home at 129 Blue Heron Pond Road, Kiawah Island, SC (TMS# 265-02-00-085). The subject property is located within the R-1, Residential Zoning District. The subject property is currently undeveloped.

The lot is approximately 18,178 square feet (0.41 acres) in size, 15,025 square feet consist of highlands, and the remaining 3,153 consists of marshlands. The subject property sits adjacent to a saltwater pond to the north. There is a leisure trail located directly west of the subject property. The adjacent properties to the east, west, and south of Blue Heron Pond Road are also located in the R-1, Residential Zoning District. The subject property is subject to review by the Kiawah Island Architectural Review Board.

The Town of Kiawah Island Land Use Planning and Zoning Ordinance requires a front set back of thirty (30) foot, twenty (20) foot side setbacks, and a twenty (20) foot rear South Carolina Department of Environmental Services Bureau of Coastal Management (SCDES BCM) Critical Area Line setback. The subject property has a maximum lot coverage of 33%. The proposed lot coverage is approximately 33.99%. The proposed lot coverage includes approximately 4,957 square feet (32.99%) of impervious materials, and approximately 162 square feet (1%) of pervious walks. In accordance with Section 12-63 of the Land Use Planning and Zoning Ordinance of the Town of Kiawah Island, the subject property has an allowable increase as a percentage of the maximum lot coverage up to 20% for qualifying items including pervious walks and patios. A SCDES BCM Critical Area Line is present on the property, as indicated by a survey certified by SCDES BCM dated August 31, 2020. Furthermore, a 15-foot stormwater buffer is located from the 25-foot rear SCDES BCM Critical Area Line setback.

The Ordinance defines Setback as *"a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected."* The Ordinance defines Rear Setback as, *"the setback measured from the rear lot line."* The Ordinance defines Side Setback as, *"any setback other than a rear or front setback."*

The proposed plans include a new single-family home. The proposed single-family residence encroaches into the required 20' side setback by approximately 4 feet. The total encroachment into the side setback is approximately 206 square feet. A small portion of the proposed pool encroaches into the required rear SCDES BCM Critical Line 20' setback by approximately 1 foot, 1 inch. The total encroachment into the rear setback is approximately 2 square feet.

Per Charleston County records, the home was recently acquired by GSB Holdings LLC January 13, 2025.

The applicant submitted to Kiawah Island Architectural Review Board (KIARB) for variance review and for Final Review, and was granted approval respectively on January

17, 2025 and January 25, 2025.

Please see the attachments for further information regarding this request. A site visit was conducted on February 7, 2025, at which time the following determinations were made regarding the Approval Criteria for Variances, as stated in Chapter 12 of the Town of Kiawah Island Land Use Planning and Zoning Ordinance, Article II, Division 5, Section 12-163.(4):

Staff Findings:

The BZA may grant a variance only if exceptional circumstances exist, and where practical difficulty or unnecessary hardship is so substantial, serious, and compelling that relaxation of the general restrictions ought to be granted. No variance shall be granted unless the applicant shall show and the BZA shall find that:

§ 12-163.(4)a.: *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

Staff Response: **There may be extraordinary and exceptional conditions on this property. The subject property is uniquely pie shaped and sits adjacent to critical to the north and northeast Per the applicant's letter of intent, "*The rear and side critical line with the 20' setback extends substantially into the property, making the design of a home difficult.*"**

§ 12-163.(4)b.: *These conditions do not generally apply to other property in the vicinity;*

Staff Response: **These conditions may be unique to the subject property and may not generally apply to other properties in the vicinity. The property is located in the R-1, Residential Zoning District. Adjacent properties along Blue Heron Pond Road are also located in the R-1 Residential Zoning District. The lot sits adjacent to the critical area to the north. There is an open space area containing a leisure trail to the west of the subject property located in the Parks and Recreation Zoning District. Existing structures in the vicinity may have similar encroachments based on current setback standards. Per the applicant's letter of intent, "*We are not aware of a similar lot condition in the immediate area. This condition would only apply to other properties in the vicinity which the critical line and setback extends so far into the property.*"**

§ 12-163.(4)c.: *Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;*

Staff Response: **The application of this Ordinance to the subject property may not prohibit or unreasonably restrict the utilization of the property. Per the applicant's letter of intent, "*A hardship is present when the rear and side of the property has a critical and***

setback line extending into the property.”

§ 12-163.(4)d.: *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;*

Staff Response: **The authorization of this variance may not be of substantial detriment to the adjacent properties or the public good. There is a leisure trail located west of the subject property which allows for a greater buffer between neighboring properties. Per the applicant’s letter of intent, “*The portion that is encroaching the side setback is only visible from the Kiawah Island leisure trail. There is natural vegetation and will be added vegetation between the portion of the home and the side property line.*”**

§ 12-163.(4)e.: *The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map;*

Staff Response: **Granting of this variance would not allow the establishment of a use not otherwise permitted in this zoning district, extend physically a non-conforming use of land, or change the zoning district boundaries. Per the applicant’s letter of intent, “*The property is zoned and intended for use as a single-family home and has been designed as such. Furthermore, the home designed is compliant with all other aspects of the ordinance.*”**

§ 12-163.(4)f.: *The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;*

Staff Response: **The BZA may not consider profitability when considering this variance request.**

§ 12-163.(4)g.: *The need for the variance shall not be the result of the applicant’s own actions;*

Staff Response: **The need for the variance may not be the result of the applicant’s own actions. Per the applicant’s letter of intent, “*The need for the variance was due to the result in the ARB asking that the house to be into the side setback for design criteria and functionality, not a request by the owner.*”**

§ 12-163.(4)h.: *Granting the variance will not be contrary to the public or neighborhood interest nor will not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent and purpose of these regulations;*

Staff Response: **Granting this variance may not be contrary to the public or neighborhood interest, may not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent, and**

purpose of these regulations. Per the applicant's letter of intent, "This property has no neighboring homes, one side is the marsh and the other side is a trail."

§ 12-163.(4)i.: *Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.*

Staff Response: **Granting of the variance may not substantially conflict with the Comprehensive Plan or the purposes of the Ordinance. Per the applicant's letter of intent, "Granting this variance, we believe will not conflict with the comprehensive plan or the purposes of the ordinance due to the shifting of this home into the side setback to allow for a better design and functionality of a very difficult lot to put a desirable home on."**

Board of Zoning Appeals' Action:

The Board of Zoning Appeals may approve, approve with conditions or deny Case #BZA25-000003 (Variance request for the reduction of the required 20' side setback and required 20' rear OCRM critical line setback by approximately 208 square feet for a new single-family home at 129 Blue Heron Pond Road, Kiawah Island, SC (TMS# 265-02-00-085). Based on the BZA's "Findings of Fact", unless additional information is deemed necessary to make an informed decision.

Town of Kiawah Island Board of Zoning Appeals

February 24, 2025



Town of Kiawah Island Municipal Center | 4475 Betsy Kerrison Parkway | Kiawah Island, SC 29455

CASE# BZA25-000003

Applicant/Property Owner: GSB Holdings LLC

Representative: Leo Lorenzo of Camens Architectural Group

Property Location: 129 Blue Heron Pond Road

TMS#: 265-02-00-085

Zoning District: R-1, Residential Zoning District

Lot Size: Highlands: 15,025 square feet (0.34 acres)
Marsh: 3,153 sqft (0.07 acres)
Total: 18,178 sqft (0.41 acres)

Request: Variance request for the reduction of the required 20' side setback and required 20' rear OCRM critical line setback by approximately 208 square feet for a new single-family home.

CASE# BZA25-000003

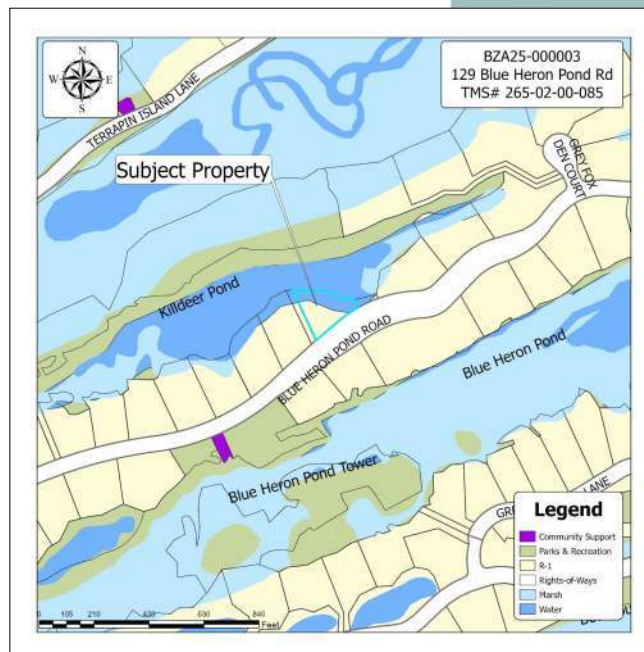
Chapter 12. Land Use Planning and Zoning, Art. II. Zoning, Div. 2. Zoning Map/Districts, Sec. 12-65. - R-1, Residential District.

Required setbacks: 30' (Front); 20' (Side off Leisure Trail); 20' (Rear)

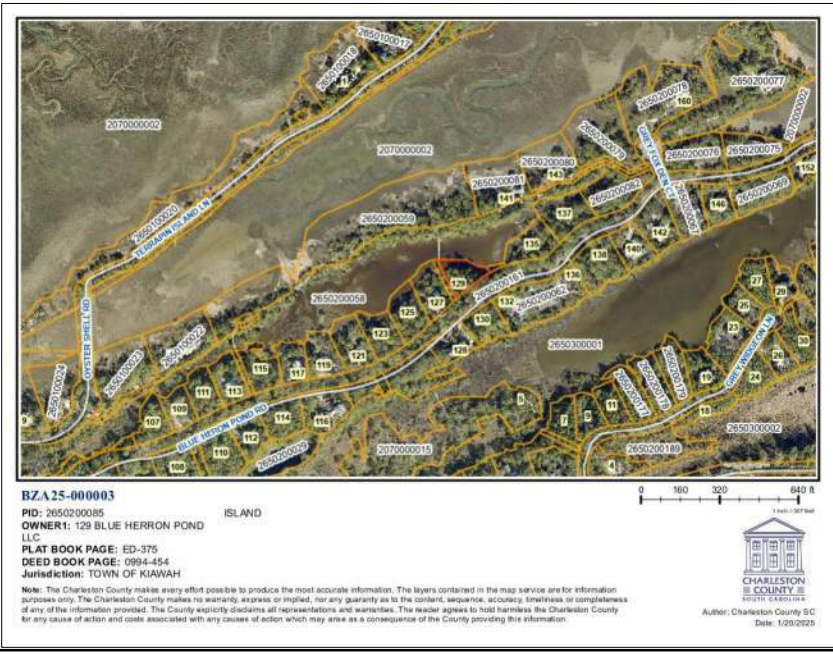
Maximum 33% Lot Coverage

The Ordinance defines Setback as "a required minimum distance from the lot line, or street right-of-way, or OCRM critical line that establishes an area within which a structure shall be erected." The Ordinance defines Rear Setback as, "the setback measured from the rear lot line." The Ordinance defines Side Setback as, "any setback other than a rear or front setback."

3



4



5

Case # BZA25-000003
BZA Meeting of February 24, 2025
Subject Property: 129 Blue Heron Pond Road– Kiawah Island

Variance request for the reduction of the required 20' side setback and required 20' rear OCRM critical line setback by approximately 208 square feet for a new single-family home.



6

Property Front



Adjacent Properties



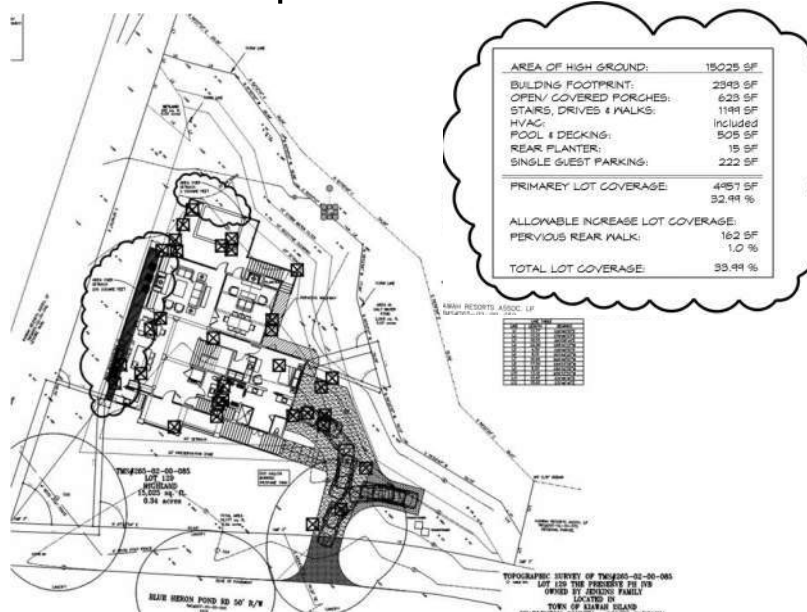
Subject Property



Property Rear



Proposed Site Plan



11

Variance Approval Criteria

According to Chapter 12 of the Land Use Planning and Zoning Ordinance of the Town of Kiawah Island Code of Ordinances, Section 12-163. Variances (4) Approval Criteria, the Board of Zoning Appeals may grant a variance only if exceptional circumstances exist, and where practical difficulty or unnecessary hardship is so substantial, serious, and compelling that relaxation of the general restrictions ought to be granted. No variance shall be granted unless the applicant shall show and the BZA shall find that:

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

12

Variance Approval Criteria

- e) The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map;
- f) The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;
- g) The need for the variance shall not be the result of the applicant's own actions;
- h) Granting the variance will not be contrary to the public or neighborhood interest nor will not adversely affect other property in the vicinity, nor interfere with the harmony, spirit, intent and purpose of these regulations;
- i) Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.

Board of Zoning Appeals Action

The Board of Zoning Appeals may approve, approve with conditions or deny Case #BZA25-000003 (Variance request for the reduction of the required 20' side setback and required 20' rear OCRM critical line setback by approximately 208 square feet for a new single-family home located at 129 Blue Heron Pond Road, Kiawah Island, SC.) based on the BZA's "Findings of Fact", unless additional information is deemed necessary to make an informed decision.

In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

LEGEND

- IRON PIPE FOUND
- CONCRETE MONUMENT
- SPOT ELEVATION
- CONTOUR
- OAK TREE
- CEDAR TREE
- PINE TREE
- PALM TREE

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

SIGNED BY MEREDITH WRYE 11/13/2020
 SIGNATURE DATE
 The critical line shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

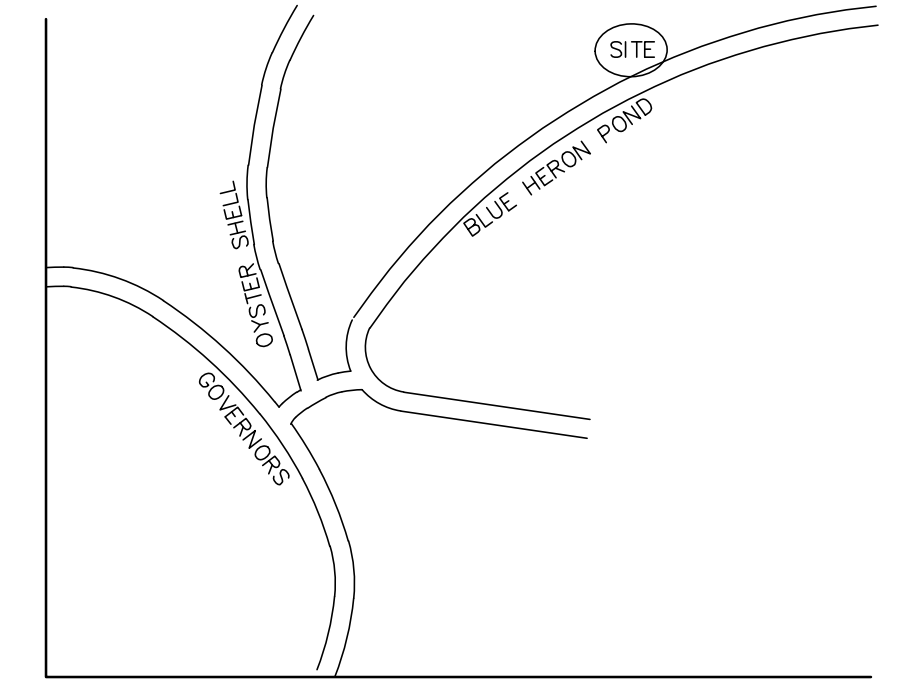
REFERENCES

- 1.) PLAT BY MARK BUSEY DATED JUNE 15, 1992 PLAT BOOK ED PAGE 375/376

NOTES

- 1.) PROPERTY CORNERS SET ARE ALL 5/8" REBAR UNLESS NOTED OTHERWISE
- 2.) AREA CALCULATED BY THE COORDINATE METHOD.
- 3.) BEARINGS SHOWN HEREON ARE STATEPLANE GRID
- 4.) THIS PLAT IS INTENDED ONLY TO SHOW THE TOPOGRAPHIC SURVEY OF LOT 129 AND IS BASED ON FOUND MONUMENTATION, LISTED REFERENCE DATA, AND LINES OF OCCUPATION. NO TITLE RESEARCH WAS DONE.
- 5.) SETBACKS ARE SUBJECT TO CHANGE AND MUST BE APPROVED TOWN OFFICIAL
- 6.) THE SURVEY SHOWS EASEMENTS WHICH ARE OBVIOUS OR APPARENT TO THE SURVEYOR
- 7.) NO SUBSURFACE INVESTIGATION DONE
- 8.) ANY REPRESENTATION OUTSIDE BOUNDARY IS FOR REFERENCE
- 9.) THERE HAS BEEN NO ENVIRONMENTAL INVESTIGATION DONE FOR PARCEL. THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS OF ENGINEERS JURISDICTIONAL WETLANDS OR DHEC-OCRM CRITICAL AREAS ARE UNDETERMINED AS OF THIS DATE.
- 10.) THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA: ZONE "AE-11" AS PER F.I.R.M. PANEL #450019C 0668K, DATED JANUARY 29, 2021 LOCATED IN LIMITED WAVE ACTION ZONE
- 11.) THIS SURVEY IS FOR CLIENT AND CURRENT LENDING INSTITUTION AND IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS OR LENDING INSTITUTIONS

8th FAIRWAY
 TMS#207-00-00-019
 OSPREY POINT GOLF COMPANY

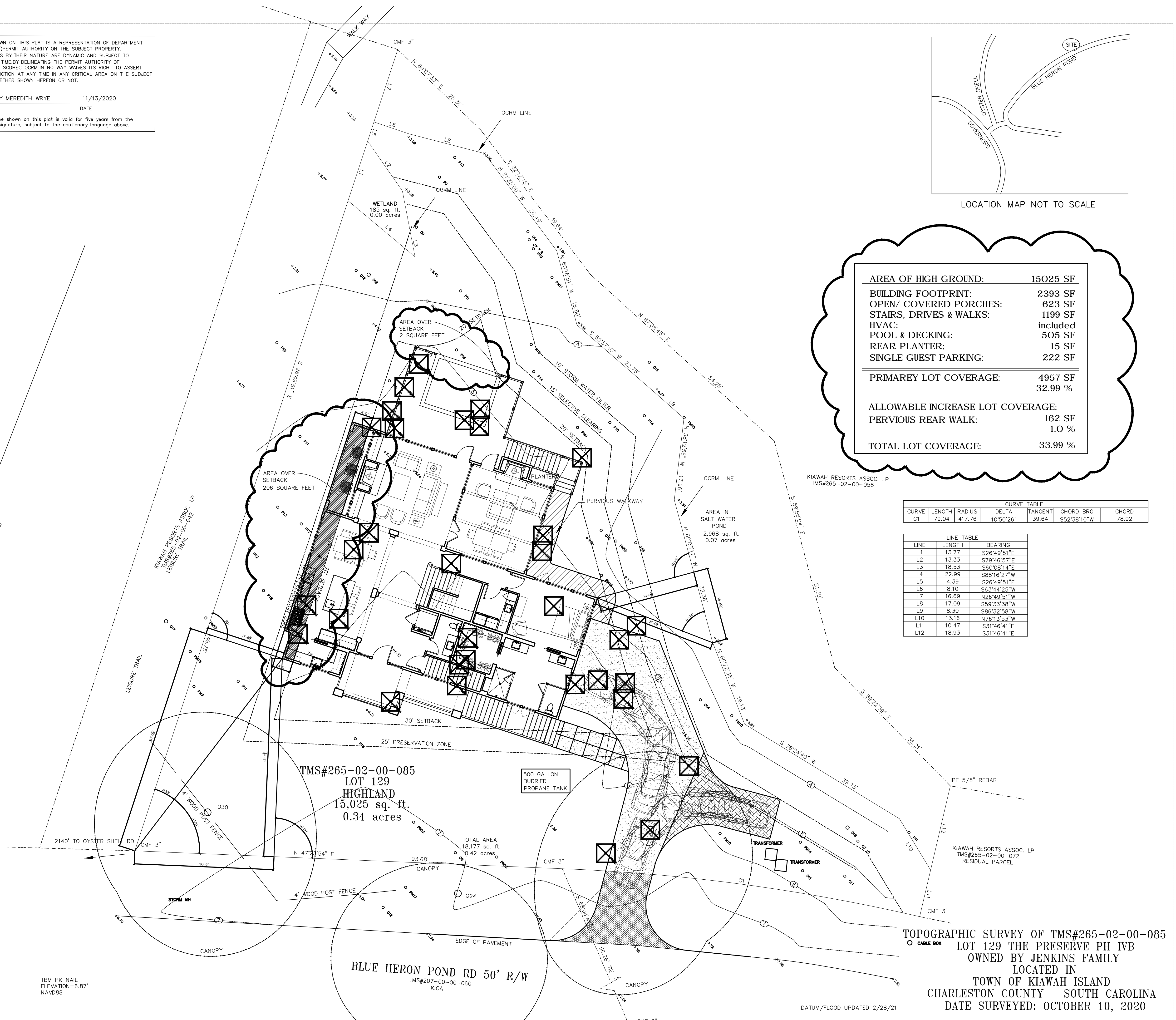


LOCATION MAP NOT TO SCALE

AREA OF HIGH GROUND:	15025 SF
BUILDING FOOTPRINT:	2393 SF
OPEN/ COVERED PORCHES:	623 SF
STAIRS, DRIVES & WALKS:	1199 SF
HVAC:	included
POOL & DECKING:	505 SF
REAR PLANTER:	15 SF
SINGLE GUEST PARKING:	222 SF
<hr/>	
PRIMARY LOT COVERAGE:	4957 SF
	32.99 %
<hr/>	
ALLOWABLE INCREASE LOT COVERAGE:	
PERVIOUS REAR WALK:	162 SF
	1.0 %
<hr/>	
TOTAL LOT COVERAGE:	33.99 %

CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD BRG	CHORD
C1	79.04	417.76	10°50'26"	39.64	S52°38'10"W	78.92

LINE	LENGTH	BEARING
L1	13.77	S26°49'51"E
L2	13.33	S79°46'57"E
L3	18.53	S60°08'14"E
L4	22.99	S88°16'27"W
L5	4.39	S26°49'51"E
L6	8.10	S63°44'26"W
L7	16.69	N26°49'51"W
L8	17.09	S59°33'38"W
L9	8.30	S86°32'58"W
L10	13.16	N76°13'53"W
L11	10.47	S31°46'41"E
L12	18.93	S31°46'41"E



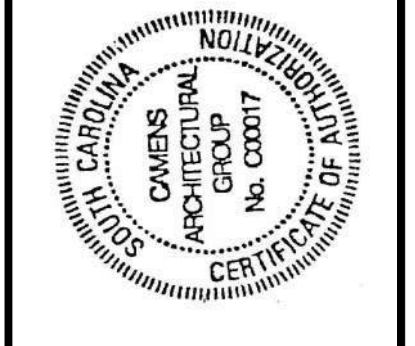
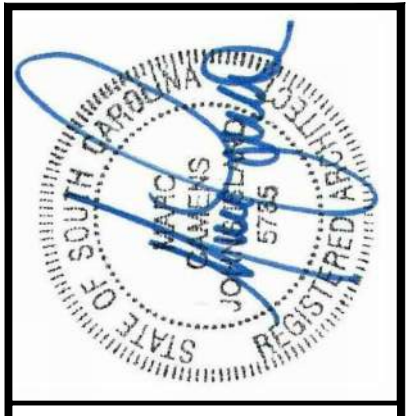
TMS#265-02-00-085
 LOT 129
 HIGHLAND
 15,025 sq. ft.
 0.34 acres

BLUE HERON POND RD 50' R/W
 TMS#207-00-00-060
 KICA

TOPOGRAPHIC SURVEY OF TMS#265-02-00-085
 LOT 129 THE PRESERVE PH IVB
 OWNED BY JENKINS FAMILY
 LOCATED IN
 TOWN OF KIAWAH ISLAND
 CHARLESTON COUNTY SOUTH CAROLINA
 DATE SURVEYED: OCTOBER 10, 2020

DATUM/FLOOD UPDATED 2/28/21

TBM PK NAIL
 ELEVATION=6.87'
 NAVD88



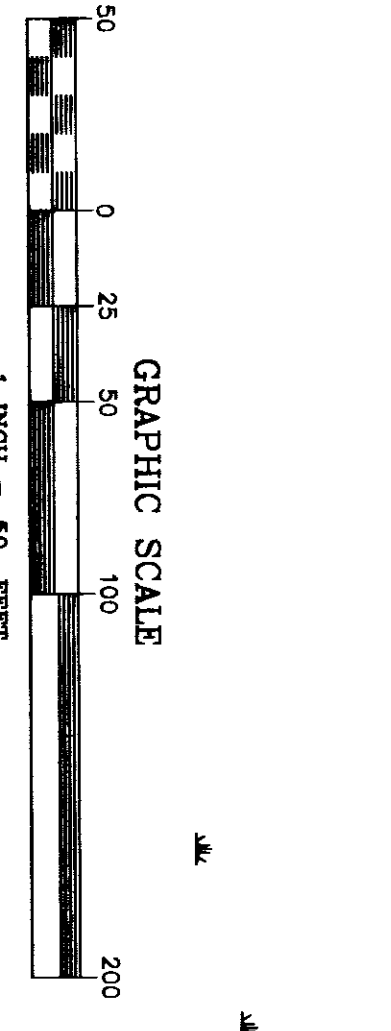
CAMENS ARCHITECTURAL GROUP, LLC
 www.camensarchitecturalgroup.com
 Phone 843.768.3800 Fax 843.557.0101
 3461 Maybank Hwy Johns Island SC 29455

A NEW RESIDENCE
 129 BLUE HERON POND
 KIAWAH ISLAND, SC

CONSTRUCTION DOCUMENTS
 08/25/2023
AS1
 SITE PLAN: 1-15-25 / 1-29-2025

LINE	DIRECTION	DISTANCE
L1	S 81°42'00" W	39.41'
L2	S 73°23'30" W	32.60'
L3	S 51°11'08" W	50.41'
L4	S 68°33'15" W	21.12'
L5	S 29°29'56" W	28.39'
L6	S 48°03'58" W	21.63'
L7	S 51°48'55" W	20.64'
L8	S 68°03'41" W	28.88'
L9	S 42°38'42" W	16.93'
L10	S 82°38'46" W	35.62'
L11	S 47°22'10" W	35.91'
L12	S 50°22'30" W	30.30'
L13	S 72°31'08" W	29.70'
L14	S 88°22'55" W	19.13'
L15	S 48°50'47" W	31.22'
L16	S 28°22'55" W	19.13'
L17	S 50°54'48" W	32.61'
L18	S 18°30'21" W	18.60'
L19	N 81°11'08" W	70.82'
L20	N 81°53'42" W	19.97'
L21	S 10°55'24" W	36.78'
L22	S 87°10'33" E	29.56'
L23	S 50°54'22" E	51.78'
L24	S 89°01'48" E	36.14'
L25	S 78°50'47" E	74.60'
L26	N 08°52'40" E	74.95'
L27	N 22°33'21" E	92.16'
L28	S 31°42'00" E	29.68'
L29	S 17°47'53" W	70.39'
L30	S 48°52'24" E	46.65'
L31	N 81°11'08" W	28.50'
L32	N 81°05'14" E	44.28'
L33	S 44°41'30" E	35.57'
L34	N 51°55'30" E	15.24'
L35	N 22°20'27" E	26.30'
L36	N 42°39'48" E	19.07'
L37	N 18°39'31" E	23.89'
L38	N 21°21'22" E	22.32'
L39	N 20°16'55" W	58.93'
L40	N 75°51'21" E	20.32'
L41	S 18°02'13" W	32.18'
L42	S 58°13'21" W	100.63'
L43	N 72°02'24" W	31.18'
L44	N 89°33'24" W	74.07'
L45	S 78°55'13" W	41.00'
L46	S 82°50'35" W	63.00'
L47	S 82°58'18" W	62.22'
L48	S 34°30'30" E	28.38'
L49	S 46°13'02" E	18.74'
L50	S 10°51'02" E	57.86'
L51	S 51°46'56" E	42.83'
L52	S 00°18'56" E	127.73'
L53	S 01°18'56" E	131.08'
L54	N 88°52'22" E	22.19'

CONDITIONAL NOTES:
 1. THE APPROVAL OF THIS PLAT DOES NOT OBLIGATE THE TOWN OF KIAWAH ISLAND IN ANY MANNER TO ACCEPT OR MAINTAINANCE OF THE SUBJECT PROPERTY.
 2. THE APPROVAL OF THIS PLAT DOES NOT AUTHORIZE OCCUPANCY OF THE SUBJECT PROPERTY FOR PRESENTING UNDER THE IRREVOCABLE LETTER OF CREDIT PROVISION OF THE SUBDIVISION APPROVAL.
 3. THIS PLAT IS SUBMITTED FOR PRESENTING UNDER THE IRREVOCABLE LETTER OF CREDIT PROVISION OF THE SUBDIVISION APPROVAL.
 4. DURATION OF APPROVAL SHALL BE FOR ONE YEAR.



ACREAGES

26 LOTS	20.820 ACRES
RESIDUAL	0.032 ACRES
PARK	1.748 ACRES
RIGHT-OF-WAY	2.432 ACRES
TOTAL	28.130 ACRES

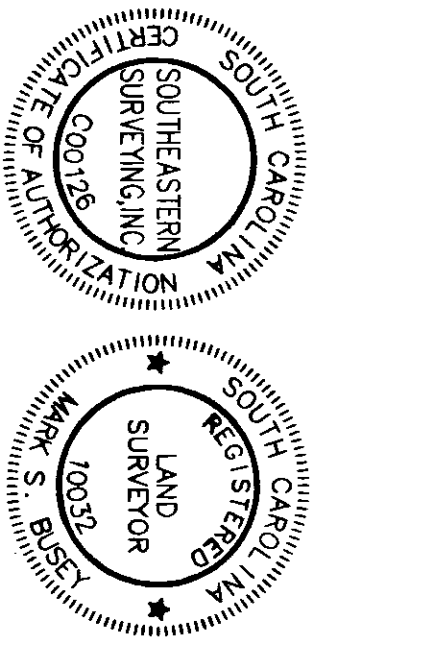
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	392.76'	265.45'	260.43'	S 66°48'28" W	36°23'27"
C2	100.00'	75.42'	39.60'	N 83°34'52" E	43°17'35"
C3	417.78'	78.02'	39.63'	S 52°52'52" W	10°50'17"
C4	417.78'	69.10'	31.92'	S 52°52'52" W	09°28'35"
C5	125.00'	98.17'	62.53'	N 63°34'42" E	43°17'35"
C6	125.00'	46.53'	23.74'	N 53°43'24" E	21°40'59"
C7	125.00'	46.53'	23.74'	N 75°07'12" E	21°41'56"
C8	367.78'	76.92'	38.60'	S 80°11'59" W	21°41'56"
C9	367.78'	144.35'	74.20'	S 80°11'59" W	21°41'56"
C10	367.78'	24.28'	12.19'	S 89°21'18" W	05°27'54"

Collected Approval
 Date: Aug. 10, 1999
 Application #

SPECIAL NOTES:
 1. THE LIST OF LOTS DEPICTED HEREON IS SINGLE FAMILY RESIDENTIAL UNLESS OTHERWISE INDICATED.
 2. THE STORMWATER FILTER BUFFER IS GENERALLY LOCATED 10 FEET LANDWARD OF THE ESTABLISHED CRITICAL LINE. THIS BUFFER IS INTENDED TO PREVENT THE ESTABLISHED CRITICAL LINE FROM BEING AFFECTED BY FERTILIZERS, PESTICIDES AND OR PEST WASTE WHICH MAY BE APPLIED TO THE MARSH OR SAWWATER POND AND IMPACTING THE NATURAL RESOURCES IN THE AREA. NO CLEAR CUTTING, FILLING, EXCAVATION, OR CONSTRUCTION ACTIVITY (OTHER THAN LIMITED CLEARING OF TREES AND GROUND COVER IS ALLOWED IN THE BUFFER AREA) SHALL BE PERMITTED IN THE BUFFER AREA.
 3. LOT 136 IS IN KEY LOCATION "A" AS DEFINED IN ORDINANCE 91-2 OF THE TOWN OF KIAWAH ISLAND AND UTILIZES SO-CALLED FEED LINES TO LOCATIONS IN NEARBY LOTS 129, 130, 132, AND 134.
 4. NEGOTIATED ESTABLISHED ON COAST AND FLOOD ENGINEERS' MONUMENT NO. 284 EL. 504 MSL.

THE AREA SHOWN ON THIS PLAT IS A GENERAL REPRESENTATION OF THE AREA PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE AREA AND HAS FOUND NO WAY WIVES THE RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY WHETHER SHOWN HEREIN OR NOT.

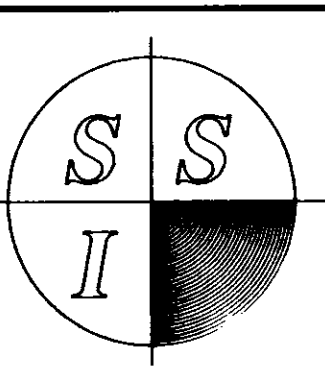
DATE: 8-5-99
 SIGNATURE: [Signature]
 SURVEYOR: MARK S. BUSETT
 S.C. REG. NO. 10032



I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE SURVEYING AND MAPPING OF LAND IN THE STATE OF SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

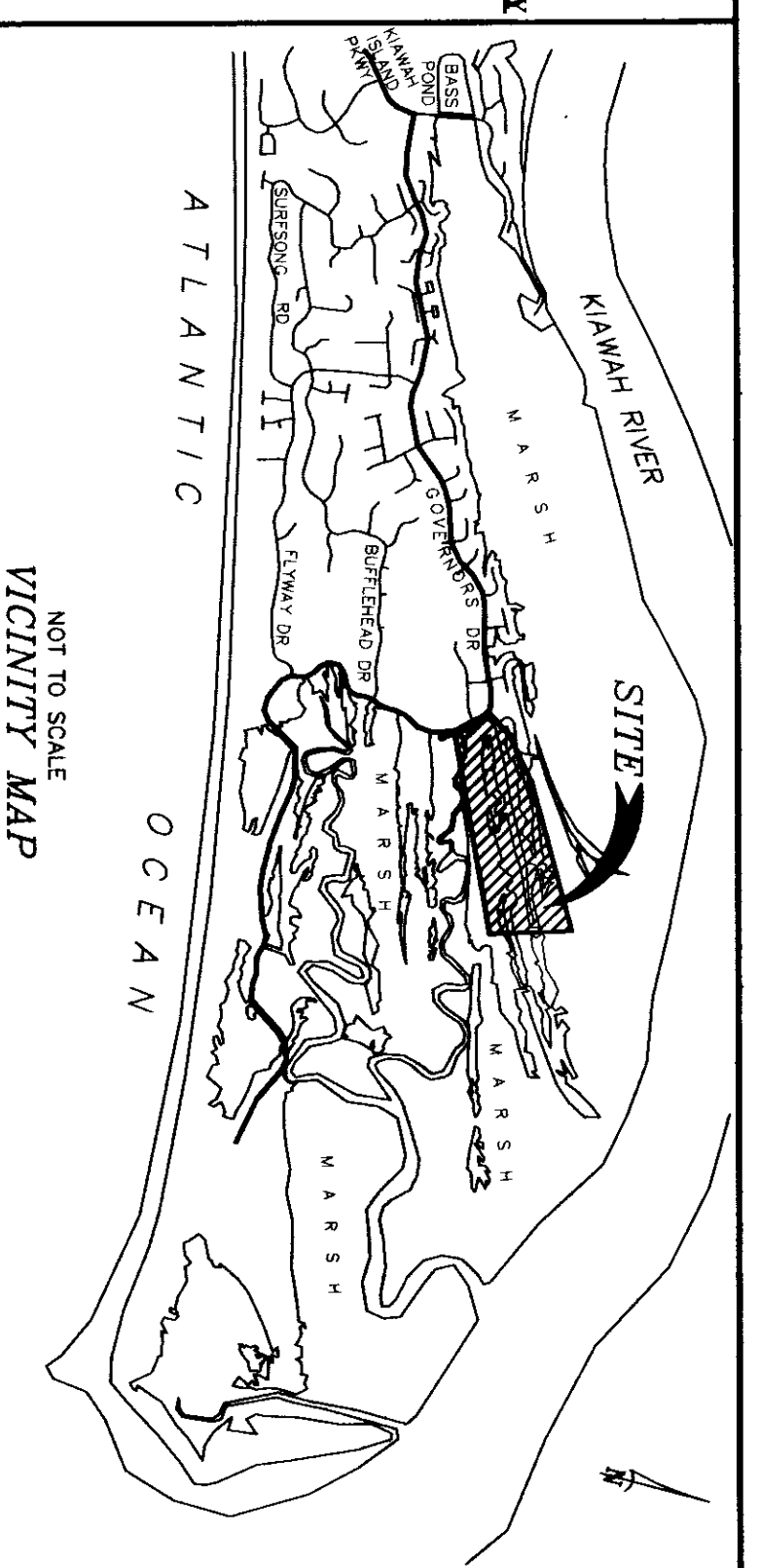
DATE: 6-15-99
 DRAWN: CAC
 CHECK: MSB
 JOB: 98036
 DWG: PH4B-C2.DWG
 SHEET: 2 OF 4

A CONDITIONAL SUBDIVISION PLAT OF
LOTS 129, 130, 132, 134 THRU 150, 152, 154, 156, 158, 160
THE PRESERVE PHASE IVB PARCEL 30 SUBDIVISION 432
 OWNED BY KIAWAH RESORT ASSOCIATES, L.P.
 LOCATED IN THE TOWN OF KIAWAH ISLAND,
 CHARLESTON COUNTY, SOUTH CAROLINA



Southeastern Surveying, Inc.
 147 Wappoo Creek Drive - Suite 102
 Charleston, South Carolina 29412
 (803) 795-9330 FAX: 795-2007

NO.	DATE	DESCRIPTION	BY
1	7/8/99	ADD LEISURE TRAIL AND DRIVEWAY EASEMENTS	



LEGEND
 ■ 4" CONCRETE MONUMENT FOUND
 □ 4" CONCRETE MONUMENT PROPOSED
 ○ CENTER POINT, NO CORNER SET
 ● CENTERLINE ROAD MENDEUR POINT, NO CORNER SET

REFERENCES
 1. PLAT BOOK 85, PAGE 39-51
 2. PLAT BOOK 85, PAGE 419-784
 3. PLAT BOOK 85, PAGE 784-787
 4. PLAT BOOK 85, PAGE 784-787
 5. T.M.S. 207-00-00-150

Charleston, South Carolina
 Date of Register Measure Conveyance
 Plat Book 85, Page 419-784
 Original plat (white print) delivered to Charleston County Planning Board
 Register Measure Conveyance
 SHEET 2 OF 4

KIAWAH RESORT ASSOCIATES, L.P.
 MEAN HIGH WATER
 MARSH 46,753 SQ.FT. 2,450 AC.
 HIGHLAND 58,856 SQ.FT. 2,296 AC.
 PARK TOTAL 105,609 SQ.FT. 4,746 AC.

SEE SHEET 1 OF 4
 MATCHLINE
 SEE SHEET 3 OF 4

GRID NAD83

SEE SHEET 3 OF 4

SEE SHEET 1 OF 4

SEE SHEET 3 OF 4



**Variance Request
Letter of Intent
129 Blue Heron Pond Road**

January 17, 2025

We are requesting a variance for the house to extend into the side yard setback by 4'.

This letter of intent is describing the project at 129 Blue Heron Pond Road which results in an application for a variance to the side setback restrictions. The proposal is to allow the 206 square feet of the heated space of the home to encroach the 20' side building setback by 4'-0" and the 2 square feet of pool into the rear 20' building setback by 12". When the project was going through the Kiawah Island ARB submittals it was recommended after numerous submittals that the house be pushed into the side setback to allow for the required off street parking and a side loading garage instead of a front loading garage. We received a variance approval from the ARB. See attached approval letter.

Criteria:

- A. The Owners have an extraordinary and exceptional condition pertaining to this piece of property.** The rear and side critical line with the 20' setback extends substantially into the property, making the design of a home difficult with the ARB's requirements.
- B. These conditions do not generally apply to other property in the vicinity.** We are not aware of a similar lot condition in the immediate area. This condition would only apply to other properties in the vicinity which the critical line and setback extends so far into the property.
- C. Due to these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonable restrict the utilization of the property.** A hardship is present when the rear and side of the property has a critical and setback line extending into the property.
- D. The authorization of the variance will not be a substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by granting the variance.** The portion that is encroaching the side setback is only visible from the Kiawah Island leisure trail. There is natural vegetation and will be added vegetation between the portion of the home and the side property line.

- E. **The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map.** The granting of this variance will not allow for a use not permitted by the ordinance.
- F. **The fact that the property may be utilized more profitable, should a variance be granted may not be considered grounds for a variance.** The sole purpose for the variance is to allow for a buildable home to satisfy the requirements of the ARB.
- G. **The need for a variance shall not be the result of the applicants own actions.** The need for the variance was due to the result in the ARB asking that the house to be into the side setback for design criteria and functionality, not a request by the owner.
- H. **Granting the variance will not be contrary to the public or neighborhood interest nor will not adversely affect other properties in the vicinity, nor interfere with the harmony, spirit, intent and purpose of these regulations.**
This property has no neighboring homes, one side is the marsh and the other side is a trail.
- I. **Granting this variance, we believe will not conflict with the comprehensive plan or the purposes of the ordinance due to the shifting of this home into the side setback to allow for a better design and functionality of a very difficult lot to put a desirable home on.**

Variance Request Form

Kiawah Island Architectural Review Board • 253 Gardeners Circle, Suite 200 • Johns Island SC 29455 • 843.768.3419 • 843.768.0517 (fax)
Mailing Address: 130 Gardeners Circle, Suite 123 • Johns Island SC 29455 • arb@kiawah.com • www.KiawahARB.com

Address of Project _____

Owner _____ **Architect** _____

Telephone _____ Telephone _____

Email _____ Email _____

Landscape Architect _____ **Contractor** _____

Telephone _____ Telephone _____

Email _____ Email _____

Does the neighborhood have Supplemental Guidelines? Yes, _____ No

Is Regime Approval Needed? Yes, Approval Attached No

Height Restriction: _____ Above Base Flood Elevation Above Grade

Lot Coverage Max: _____

Setbacks

Front _____

Sides _____

Rear _____

**Building Sq. Footage Calculations
Conditioned**

Building Footprint _____

First Floor _____

Second Floor _____

Third Floor _____

Ancillary Structure _____

Total Conditioned _____

Screened/Covered _____

Garage/Carport _____

Lot Coverage Calculations

Screened/Covered _____

Open Decking/Stairs _____

Primary Drives/Walks* _____

Raised Planters _____

Pool/Spa _____

HVAC _____

Total Lot Coverage Sq. Ft _____

Highland Area _____

Lot Coverage % _____

Secondary Sq. Ft _____

Primary + Secondary % _____

Restrictions

Min. Sq. Ft

Main House _____

Ancillary _____

Max. Sq. Ft

Main House _____

Ancillary _____

Variance Request _____

Reasoning for Request & Variance Criteria Used _____

ARB ACTION Approved Disapproved

ARB Representative Jane Maybank 1/17/2025

* PRIMARY DRIVES AND WALKS INCLUDE PERVIOUS AND IMPERVIOUS MATERIALS.

Final Review Form

Kiawah Island Architectural Review Board • 253 Gardeners Circle, Suite 200 • Johns Island SC 29455 • 843.768.3419 • 843.768.0517 (fax)
 Mailing Address: 130 Gardeners Circle, Suite 123 • Johns Island SC 29455 • arb@kiawah.com • www.KiawahARB.com

Address of Project _____

Owner _____

Address _____

_____ ZIP _____

Telephone _____

Email _____

Architect _____

Address _____

_____ ZIP _____

Telephone _____

Email _____

Landscape Architect _____

Address _____

_____ ZIP _____

Telephone _____

Email _____

Contractor _____

Address _____

_____ ZIP _____

Telephone _____

Email _____

Does the neighborhood have Supplemental Guidelines? Yes, _____ No

Are there any Variance Requests? Yes, Form Attached No Previously Approved

Height Restriction: _____ Above Base Flood Elevation Above Grade

Lot Coverage Max: _____

Setbacks

Front _____

Sides _____

Rear _____

Restrictions

Min. Sq. Ft Main House _____ Ancillary _____

Max. Sq. Ft Main House _____ Ancillary _____

Building Square Footage Calculations

Conditioned

First Floor _____

Second Floor _____

Third Floor _____

Ancillary Structure _____

Total Conditioned

Additional Screened/Covered _____

Garage/Carport _____

Rooms

Bedrooms _____

Bathrooms _____

Lot Coverage Calculations

Building Footprint _____

Screened/Covered _____

Open Decking/Stairs _____

Primary Drives/Walks* _____

Raised Planters _____

Pool/Spa _____

HVAC _____

Total Lot Coverage Sq. Ft _____

Highland Area _____

Lot Coverage Percentage _____

Secondary Elements Sq. Ft _____

Primary + Secondary Total % _____

Exterior Materials**

Foundation _____

Siding _____

Trim _____

Windows _____

Roofing _____

Garage _____

Paved Areas _____

Other _____

Material

Manufacturer/Color

--NO LIGHTER THAN VALUE 5

NO LIGHTER THAN VALUE 5

NO LIGHTER THAN VALUE 2

 (Please refer to official letter for details)

Approved

Interim Submittal Required

Disapproved

Received 1-25-2024

* PRIMARY DRIVES AND WALKS INCLUDE PERVIOUS AND IMPERVIOUS MATERIALS.

** BUILDING MATERIALS & FINISHES REQUIRE A COMPLETED ONSITE COLOR REVIEW FORM & ONSITE SAMPLE BOARD FOR FINAL APPROVAL

Permit Application: Restrictive Covenants Affidavit

Town of Kiawah Island

Town of Kiawah Island Municipal Center
Planning Department
4475 Betsy Kerrison Parkway
Kiawah Island, SC 29455
Phone 843-768-9166
Fax 843-768-4764



I, , have reviewed the Restrictive Covenants
[Print]
applicable to Parcel Identification Number(s) , located
at (address) , and the proposed permit application is not
contrary to, does not conflict with, and is not prohibited by any of the restrictive
covenants, as specified in South Carolina Code of Laws, Section 6-29-1145.

[Signature] [Date]
Brent C. Campbell [Print Name]

Explanation:
Effective July 1, 2007, South Carolina Code of Laws Section 6-29-1145 requires local governments to inquire in the permit application, or in written instructions provided to the applicant, if a tract or parcel of land is restricted by a recorded covenant that is contrary to, conflicts with or prohibits an activity for which a permit is being sought. [Section 6-29-1145 is copied on the back of this page].

<u>FOR STAFF USE ONLY</u>		
<input type="text"/>	<input type="text"/>	<input type="text"/>
[Received By]	[Date]	[Application #]

Section 6-29-1145

- A. "In an application for a permit, the local planning agency must inquire in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity.

- B. If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:
 - 1. in the application for the permit;
 - 2. from materials or information submitted by the person or persons requesting the permit;
or
 - 3. from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

- C. As used in this section:
 - 1. 'actual notice' is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;
 - 2. 'permit' does not mean an authorization to build or place a structure on a tract or parcel of land; and
 - 3. 'restrictive covenant' does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land."

Prepared By:

Bell Carrington & Price, LLC
125 A Wappoo Creek Drive
Charleston, SC 29412

UPON RECORDING:

Graves & Davis, LLC
1730 Central Park Road
Charleston, SC 29412

Space above this line reserved for Recording information

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE



BP1289329

PGS:

4

KNOW ALL MEN BY THESE PRESENTS, That, 129 Blue Herron Pond, LLC AKA 129 Blue Heron Pond LLC, herein referred to as the Grantor, for and in consideration of the sum of ONE MILLION Dollars (\$1,000,000.00) to it paid by GSB Holdings, LLC, hereinafter Grantee, in the State aforesaid, the receipt and sufficiency whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns forever:

ALL that certain piece, parcel, or lot of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, containing .418 acres, more or less, known and designated as Lot 129 in the Preserve Subdivision, Phase IV B, Parcel 30 and shown on a plat by Southeastern Surveying, Inc. entitled "A FINAL SUBDIVISION PLAT OF LOTS 129, 130, 132, 134 THRU 150, 152, 154, 156, 158 AND 160 THE PRESERVE PHASE IV B PARCEL 30 SUBDIVISION 432 OWNED BY KIAWAH RESORT ASSOCIATES, L.P., LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA" dated May 9, 2000, last revised on July 5, 2000 and recorded in Plat Book EE at Pages 292 through 295 (the "Plat") in the office of the RMC for Charleston County, SC said lot having such location, buttings and boundings, metes, courses and distances as will by reference to said plat more fully appear.

BEING the same property conveyed to 129 Blue Herron Pond, LLC by deed of Michael T. Davenport and Barbara W. Davenport dated May 12, 2021 and recorded May 25, 2021 in the Charleston County ROD Office in Book 0994 at Page 454.

TAX MAP NUMBER: 265-02-00-085

GRANTEE'S ADDRESS: PO BOX 12217
charleston, SC 29422

This conveyance is made subject to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, its successors and assigns forever.

AND THE GRANTOR does hereby bind its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against the Grantor and the Grantor's successors and assigns and against every person whomsoever lawfully claiming or to claim, the same or any part thereof.

WITNESS My Hand and Seal this 13th day of December, 2024.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Yvonne Bour
Witness

129 Blue Herron Pond, LLC AKA 129
Blue Heron Pond LLC

Rachel P. Forsberg
Witness

BY: *J. Marshall Milligan*
J. Marshall Milligan
Authorized Signator

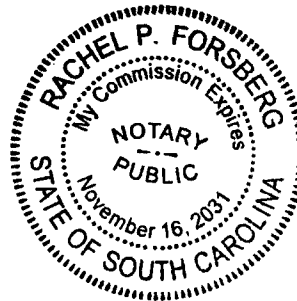
THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this **13th day of December, 2024**, by the Grantor(s), **129 Blue Herron Pond, LLC AKA 129 Blue Heron Pond LLC**, by **J. Marshall Milligan**, its **Authorized Signator**.

SWORN to before me this **13th day of December, 2024**

Rachel P. Forsberg (L.S.)
Notary Public for South Carolina
Commission Expires: *11-16-31*



STATE OF SOUTH CAROLINA

)

Date of Transfer of Title

)

AFFIDAVIT

13th day of December, 2024

COUNTY OF CHARLESTON

)

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

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by 129 Blue Heron Pond LLC to GSB Holdings, LLC on 13th day of December, 2024.
3. Check one of the following: The deed is:
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) EXEMPT from the deed recording fee because (Exemption n/a) (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item #7 of this affidavit.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$1,000,000.00
 - (b) The fee is computed on the fair market value of the realty, which is n/a
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a
5. Check YES or NO to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is n/a.
6. The DEED Recording Fee is computed as follows:
 - (a) \$1,000,000.00 the amount listed in Item #4 above
 - (b) 0.00 the amount listed on Item #5 above (no amount, please zero)
 - (c) \$1,000,000.00 subtract Line 6(b) from Line 6(a) and place the result here.
7. The deed recording fee is based on the amount listed in Line 6(c) above and the deed recording fee due is: \$3,700.00
8. As required by Code Section 1224-70, I state that I am a responsible person who was connected with the transaction as Legal Representative.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Grantor, Grantee or Legal Representative
Connected with this Transaction

Seth Maraker
Print or Type Name Here

SWORN to before me this
December 13, 2024

Rachel Amey
Notary Public for South Carolina
My Commission expires: 01-27-2031

RECORDER'S PAGE



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

Filed By:

GRAVES & DAVIS, LLC
 1730 CENTRAL PARK RD
 CHARLESTON, SC 29412 (BOX)

RECORDED		
Date:	January 13, 2025	
Time:	12:13:35 PM	
<u>Book</u>	<u>Page</u>	<u>DocType</u>
1289	329	Deed
Karen Hollings, Register of Deeds Charleston County, SC		

MAKER:

129 BLUE HERRON POND ETC

RECIPIENT:

GSB HOLDINGS LLC

Original Book:

Original Page:

Note:

of Pages:

Recording Fee	\$ 15.00
State Fee	\$ 2,600.00
County Fee	\$ 1,100.00
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 3,715.00

DRAWER
CLERK

AUDITOR STAMP HERE
 RECEIVED From ROD
 Jan 15, 2025
 Peter J. Tecklenburg
 Charleston County Auditor

PID VERIFIED BY ASSESSOR
 REP RJB
 DATE 01/15/2025



1289
Book



329
Page



01/13/2025
Recorded Date



4
Pgs



Original Book



Original Page



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12:13:35
Recorded Time

(d) "Association" shall mean and refer to The Preserve Home Owners' Association, a non-profit unincorporated association of homeowners, existing under the laws of the State of South Carolina, its successors and/or assigns. In the event the Association acquires title to certain Common Property(ies) within the Subdivision, the Association shall have the right, but is not obligated, to file Articles of Incorporation with the Secretary of State of South Carolina.

(e) "Association Member" shall mean and refer to Declarant and all those Lots Owners who are Members of the Association as provided in Article III, Section 3.01 of the By-Laws.

(f) "Association Membership" shall mean and refer to membership in The Preserve Home Owners' Association by an Owner and/or Declarant.

(g) "Board of Directors" and/or "Board" shall mean and refer to the Board of Directors of The Preserve Home Owners' Association, as more fully set forth in Article V of the By-Laws.

(h) "By-Laws" shall mean and refer to the By-Laws of the Association which, upon the activation of the Association as set forth herein, shall govern the administration and operation of the Association, as they may be amended from time to time. The initial By-Laws are attached hereto as Exhibit "B" and incorporated herein by reference.

(i) "Climate Controlled Dwelling Area" shall mean and refer to the total heated and/or cooled area of a dwelling and ancillary structures including sunrooms, porches, and any other rooms or buildings which are totally enclosed and climate controlled.

(j) "Common Property(ies)" shall mean and refer to those parcels of land within the Property, together with any improvements thereon, which are deeded, leased, or licensed to the Association and designated therein for use as "Preserve Common Property(ies)" and such other land as is designated on a plat as "Preserve Common Property(ies)," whether or not said property is deeded, leased, or licensed to the Association.

Any property that is leased or licensed to the Association and designated in such lease or license as "Preserve Common Property(ies)" shall be one of the Preserve Common Property(ies) but shall lose its designation or character as one of the Common Property(ies) upon the expiration of such lease or license, if not renewed or extended. Also, Declarant may designate property as Common Property(ies) pursuant to Article V hereof.

Nothing contained herein shall be construed so as to obligate Declarant to deed, lease, or license any parcels of land or improvements within the Property to the Association as Common Property(ies).

(k) The "Company" as referred to herein, shall mean and refer to Kiawah Resort Associates, L.P. and its successors and assigns as Master Developer of Kiawah Island, S.C.

(l) "Declaration" shall mean and refer to this Declaration as initially recorded and any supplements and/or amendments thereto recorded hereinafter in the R.M.C. Office.

(m) "Declarant" shall mean and refer to Kiawah Resort Associates, L.P. (a Delaware Limited Partnership), its successors and assigns.

(n) "Director" shall mean and refer to the individuals or any one individual serving on the Board of Directors of the Association, if and when the Association is activated.

(o) "*Functionally Complete*" shall be and is hereby defined as the time when (i) in the case of roads and/or rights of way, the Town of Kiawah Island has approved a final plat thereof and said plat has been recorded in the R.M.C. Office; and/or (ii) after Declarant has completed the initial construction or installation of any improvements, structures, utilities, drainage facilities, and landscaping, under or upon any areas intended by Declarant to be conveyed to the Association as Common Property(ies) and has declared the same in writing to the Association to be "functionally complete."

(p) "*Institutional Mortgage*" shall mean and refer to a first lien Mortgage (prior to all other Mortgage liens) held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. Such term shall also mean and refer to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns.

(q) "*KICA*" shall mean and refer to the Kiawah Island Community Association, Inc. (a South Carolina non-profit corporation), its successors and assigns.

(r) "*KICA Master Covenants*" shall mean and refer to the Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc., executed by Kiawah Island Community Association, Inc. and by Kiawah Island Company, Inc. dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 337 in the R.M.C. Office, as amended and recorded.

(s) "*Lot(s)*" or "*Homesite(s)*" shall mean and refer to any lot either shown on a recorded plat of the Property or any Additional Property subjected to this Declaration, which is designated for use as a building area site for the construction of a single family dwelling, cottage, or such other structures or dwelling types as are either herein approved or as Declarant may determine, in its discretion. Such terms also shall include, where applicable, any buildings or structures located thereon.

If and when any two or more Lots in The Preserve are combined resulting in a new, larger Lot, such new Lot shall retain the same number of votes, approval rights, and responsibilities respecting Association matters and Assessments as were imposed on the number of The Preserve Lots that were so consolidated (e.g., if Lots 1 and 2, Phase II are combined, the resulting Lot would have two (2) votes in Association matters, and would be subject to two (2) Assessments. If the new combined Lot {formerly Lots 1 and 2}, is subsequently combined with yet another Lot, the resulting larger Lot would have three (3) votes in Association matters and be subject to three (3) Assessments).

In the event any Lot in The Preserve which has been combined with one or more other Lots to create a new, larger, lot is subsequently re-subdivided and its boundary lines changed so as to create more than one lot, such newly created Lots shall have the same number of votes in Association matters and the same number of Assessments as the number of initial Lots comprising the area being re-subdivided (e.g., if Lots 1, 2, and 3 are combined into one lot, then re-subdivided into only two lots, the resulting two lots would have three votes "divided" equally between the owner(s) of the resulting two lots). The vote(s) of such re-subdivided Lot(s) shall be handled in the same manner as multiple Owners of a Lot set forth in Section 3.03(a) of the By-Laws. The Assessment(s) for such re-subdivided Lot shall be apportioned between the subject Owner(s) as calculated by the Association on a square foot basis of the re-subdivided Lot. (e.g., if Lots 1, 2, and 3 are combined into one lot which has a total of 77,215 sq. ft., then re-subdivided into two lots, one having 40,300 sq. ft., and the other having 36,915 sq. ft., the two re-subdivided lots would have three Assessments, and the lot having 40,300 sq. ft. would be responsible for the payment of .522 of the three combined Assessments, and the lot having 36,915 sq. ft. would be responsible for the payment of .478 of the three combined Assessments.)

(t) "Lot Owner" and "Owner" shall mean and refer to the record owner (whether one or more persons, firms, associations, corporations, partnerships, trusts, trustees, or other legal entities) of the fee simple title to any Lot, including the Declarant; notwithstanding any applicable theory of a mortgage, such terms shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding or instrument in lieu of foreclosure; nor shall the term "Lot Owner" mean or refer to any lessee or tenant of a Lot Owner.

(u) "Master Covenants" shall mean and refer to certain general, restrictive covenants guiding the overall development of Kiawah Island, which said covenants are set forth in (i) the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Kiawah Island executed by Kiawah Island Company, Inc. dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 338 in the R.M.C. Office, as amended and recorded in the R.M.C. Office; and (ii) the Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc., executed by Kiawah Island Community Association, Inc. and by Kiawah Island Company, Inc. dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 337 in the R.M.C. Office, as amended and recorded.

(v) "Mortgage" shall mean and refer to a mortgage, security deed, deed of trust, installment lands sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title, to a Homesite.

(w) "Mortgagee" shall mean and refer to the holder of a Mortgage or Institutional Mortgage.

(x) "Officer" shall mean and refer to officer(s) of the Association as the same are designated by the Board of Directors of the Association from time to time pursuant to the provisions of Article VI of the By-Laws.

(y) "Plat" shall mean and refer to the following plats of the Subdivision:

- (i) Plat prepared by Southeastern Surveying, Inc., entitled "A Final Subdivision Plat of Lots 1-25 The Preserve Phase II Parcel 30 Subdivision 432 Owned by Kiawah Resort Associates, L.P. Located in the Town of Kiawah Island Charleston County, South Carolina" dated July 14, 1998, and recorded in Plat Book EC at pages 638-640, in the R.M.C. Office;
- (ii) Plat prepared by Southeastern Surveying, Inc., entitled "A Final Subdivision Plat of Lots 30 Thru 33 The Preserve Phase IA Parcel 30 Subdivision 432 Owned by Kiawah Resort Associates, L.P. Located in the Town of Kiawah Island, Charleston County, South Carolina" dated May 15, 1997, and recorded in Plat Book EC at page 21, in the R.M.C. Office; and
- (iii) Plat prepared by Southeastern Surveying, Inc., entitled "A Final Subdivision Plat Lots 34 Thru 41 The Preserve Phase IB Parcel 30 Subdivision 432 Owned by Kiawah Resort Associates, L.P. Located in the Town of Kiawah Island, Charleston County, South Carolina" dated January 15, 1997, last revised on February 20, 1997, and recorded in Plat Book EB at page 619, in the R.M.C. Office.

The term "Plat" shall also refer to and include any subsequent conditional plats and/or final subdivision plats of the Subdivision when approved by the Town of Kiawah Island and recorded in the R.M.C. Office.

(z) The "*Property*" shall mean and refer to the real property described on Exhibit "A" attached hereto and incorporated herein by reference, which Property is hereby subjected to this Declaration, and any Additional Properties hereinafter subjected to the operation and effect of this Declaration.

(aa) "*Referendum*" shall mean and refer to the power of all or some specific portion of the Association Members to vote by mailed ballots on certain actions by the Board of Directors of the Association as more particularly set forth herein and/or in the By-Laws.

(bb) "*R.M.C. Office*" shall mean and refer to the Office of the Register of Mesne Conveyances for Charleston County, South Carolina.

(cc) "*Subdivision*" shall mean and refer to, collectively, the Lots and any other facilities and areas located within the Property from time to time.

ARTICLE II

THE PROPERTY

Section 2.01. The Property. The real property which is and shall be held, transferred, sold, conveyed, leased, mortgaged, donated, used, given, and occupied subject to this Declaration is known generally as "The Preserve" together with the Lots, any other facilities and areas located within the Property from time to time, and any easements or other rights or privileges enjoyed over Lots in the Subdivision as may be reserved herein and/or in the Master Covenants, on the Plat, or in original "Company" deeds to the Lots.

Section 2.02. Additions to Existing Property.

(a) Declarant, its successors and assigns, shall have the right, without further consent of any Owner, Mortgagee, the Association, or other persons or entities, to bring within the plan and operation of this Declaration in future stages or phases of development, additional properties on Kiawah Island, South Carolina owned by Declarant (*i.e.*, the "Additional Property(ies).") The additions authorized under this section shall be made by filing of record either one or more Supplemental Declarations of Covenants or an agreement impressing the covenants of this Declaration with respect to the Additional Properties, which shall extend the operation and effect of this Declaration to such Additional Properties.

(b) A Supplemental Declaration of Covenants may contain such complementary additions and/or modifications of the covenants contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect, *inter alia*, the differing character, sizes, types of ownership, and uses of land, if any, as may relate to the Additional Properties.

Section 2.03. Merger. Upon a merger or consolidation of the Association with another association as provided for in the By-Laws, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or unconsolidated association may administer the covenants and restrictions established by this Declaration within the Properties, as herein provided.

**COVENANTS, RESTRICTIONS, AND AFFIRMATIVE OBLIGATIONS
APPLICABLE TO ALL PROPERTIES IN THE PRESERVE**

The Property is and shall be conveyed subject to the Master Covenants, and nothing contained herein shall be construed to reduce or limit the effectiveness or applicability thereof. In addition thereto, the Property is and shall be held, transferred, sold, conveyed, given, mortgaged, donated, leased, occupied, and used subject to the following:

Section 3.01. Miscellaneous Covenants, Conditions, Restrictions, and General Dwelling and Design Specifications for Lots, Homes, and Structures in The Preserve

(a) Use. The Lots within The Preserve shall be used exclusively for single-family residential purposes.

(b) Architectural Strategies.

(i) Homes will be constructed along Blue Heron Pond, the Kiawah River estuaries, and Cinder Creek with delicate care, evidencing the utmost respect for their natural surroundings. Materials long associated with country homes will be given preference by the ARB when approving plans for homes in The Preserve. Emphasis should be on complementary colors, reflective of the forest's hues.

(ii) Architectural creations which nestle into and blend with surrounding ecosystems will always be preferred by the ARB. Subject to the provisions of this Declaration, homes may incorporate each homeowner's preferences, though extreme care as to size, form, color, height, and materials will be of utmost importance to the ARB in reviewing architectural plans. Large or imposing "mansions" which draw undue attention to themselves are not appropriate, and will not be permitted.

(c) Design Guidelines.

(i) Each Lot has been carefully planned and configured to take advantage of ideal buildable areas. Accordingly, no more than one (1) detached single-family dwelling (which may be segmented into two or more sections), shall be erected thereon without the prior, written consent of Declarant, its successors and/or assigns. Appropriate accessory buildings may include garages, guest quarters (including garage apartments), studios/workshops, garden pavilions, greenhouses, gazebos, and pool houses. Other accessory building(s) may be permitted by either Declarant or the ARB in their discretion and provided, however, that the construction of such dwelling and/or accessory building(s) shall not, in the discretion of the ARB, overcrowd the Lot, and provided further that the accessory building(s) may not be constructed or occupied prior to the construction of the main dwelling. Tree coverage before and after proposed additional buildings will be an important factor in any ARB review of architectural or site matters.

(ii) Guest suites may be included as part of the main dwelling or accessory building(s); provided that such suites may not be rented or leased separately from the main dwelling, and provided further that the construction or addition of such suites shall, absent a variance from the ARB for extraordinary or unusual circumstances, conform to the conditions and limitations set forth herein.

(iii) Each Homesite has been planned with setbacks to take advantage of ideal building areas depicted on individual site plans. In addition to the buildable areas, each Homesite shall have designated "Preservation Zones" and "Selective Clearing Zones."

(1) The "Preservation Zones" are areas within the Lots which shall remain natural and undisturbed, and in which no clearing of vegetation or development may take place (including driveways and fill) unless specific, written approval is first obtained from the ARB. The Preservation Zones are located generally 15' in width offset from the "side" property lines, and 25' in width offset from the "street" property line(s). Notwithstanding the above, in instances where the Preservation Zone extends along the entire length of the "street" property line of a Lot, such Lot Owner shall be allowed one 20' wide driveway access through the Preservation Zone; however, the location of such 20' driveway access must be approved in writing by the ARB.

(2) The "Selective Clearing Zones" are areas within the Lots located generally along the side or sides of each Lot having the most favorable view(s). The Selected Clearing Zones are generally between the designated setback lines and either the property line of the Lot or the DHEC-OCRM Critical Line. Such areas shall remain undisturbed and in their natural state and no clearing of vegetation or development may take place. However, once the framing of a residence on the subject Lot has been completed, such Lot Owner may schedule an on-site inspection with the ARB, and the ARB may permit clearing of some smaller trees and understory vegetation in the Selective Clearing Zones, in order to create filtered views.

(3) Attached as Exhibit "C" is an approximate depiction of each Lot and the buildable areas, Preservation Zones, and Selective Clearing Zones in the initial phases of Lots platted in The Preserve. The buildable areas, Preservation Zones and Selective Clearing Zones depicted on Exhibit "C" shall be those applied by the ARB when reviewing proposed plans for the construction of a dwelling and/or improvements in connection with each such Lot, subject to its right to vary same.

The exact dimensions of such buildable areas, Preservation Zones, and Selective Clearing Zones will remain on file at the office of the ARB on Kiawah Island, and in rare circumstances may be revised, altered, and/or varied by the ARB, in its sole discretion.

(4) By the acceptance and recordation of a deed of conveyance for a Lot in The Preserve, each Lot Owner shall be deemed to covenant and agree to adhere to and abide by such designated buildable areas, Preservation Zones, and Selective Clearing Zones, as they may be revised, altered, and/or varied by the ARB.

(iv) Extreme care shall be taken to shape the building forms around specimen trees and groves of smaller trees. Development in the non-buildable areas of each Homesite generally shall be limited by the ARB to access ways such as driveways, pathways, boardwalks, or boat dock entries.

(v) Homesite coverage guidelines are to assure, at a minimum, open space of approximately 60% or more, and limitation of ground coverage to approximately 30% or less of each Homesite.

(vi) Decks may be allowed on the side of each dwelling with the "primary" view as is determined by the ARB. Deck heights shall be as determined by the ARB.

(vii) Swimming pools that minimize extensive alterations to The Preserve's natural terrain may be allowed by the ARB, *provided* they are densely-screened from neighboring homes, roadways, and watercourses by mature landscaping.

(viii) Parking underneath primary structures may be discouraged by the ARB, except where the site and vegetation (natural and to be added) indicate the better solution is to have parking under a structure.

(ix) Heated square footage minimums and maximums are intended to sensitively match structures with discrete size, shape, topographic, and vegetative nuances. Accordingly, no residence or dwelling shall be constructed on any Lot with less than 2,500 square feet of Climate Controlled Dwelling Area (with a minimum of 2,000 square feet of Climate Controlled Dwelling Area on the main {i.e., first floor} should said residence or dwelling be more than one story in height), and a maximum of 5,000 square feet of Climate Controlled Dwelling Area for individual structures dependent on specific lot conditions. The precise maximum within such range shall be determined in the sole discretion of the ARB and communicated to Lot Owners at the initial meeting on site whenever practicable.

(x) Up to 4,500 square feet of Climate Controlled Dwelling Area for the main structure, and 1,500 square feet of Climate Control Dwelling Area for ancillary structures may be permitted by the ARB for the larger Homesites where the ARB finds the tree canopy can be well preserved and the scale of the home is compatible with existing and future development plans. Certain homes may require modifications to these standards in order to preserve unique natural features. Accordingly, minimum and maximum square footage requirements may, in rare circumstances, be varied by the ARB. Larger homes with square footages nearing the upper end of these size guidelines, shall be finished with darker hues to blend manmade additions to nature's setting.

(d) Height/Massing. The intent of The Preserve's height standards is to minimize massing on each Homesite, again reinforcing the preferred dominance of extensive natural vegetative cover. Viewed from its perimeters, The Preserve shall *always* have its green, pervasive vegetation remain prominent and memorable.

(i) An overriding goal at The Preserve is to nestle structures within the Homesite tree canopy and forested surroundings, thus fostering privacy while affording filtered views of water courses and forested areas. Accordingly, any dwelling or structure shall have no more than two habitable floors, and the overall height of the dominant roof structures shall be limited to a height of no more than forty (40') feet from the minimum finish floor elevation required by Federal flood insurance guidelines ("FFE"). Possible exceptions to this height limit may include chimneys, vent pipes, and other very minor, ancillary elements of the structure where the other roof elements are closer to thirty (30') feet from the FFE.

(ii) Roof forms shall have gables or modified gable ends with pitch ranges of 8:12 - 14:12 (12:12 is preferred). Lower roof pitches may be considered by the ARB when the dominant roof form meets the pitch range specified above.

(iii) The first floor of any dwelling shall be the dominant floor, and shall be constructed as close to grade as possible and lawful. The second floor of such dwelling shall be designed and constructed so as to fit within all or most of the roof structure (*e.g.*, with use of dormers).

(e) Site Design.

(i) Every possible effort shall be made by each Owner to develop site plans consistent with the natural grading pattern. Excessive fill is discouraged (and absent hardship or unusual site conditions, will not be approved) so as to integrate homes closely and consistently within the existing terrain. Setbacks from streets vary from lot to lot, and are depicted on the individual site plans attached hereto as Exhibit "C" and incorporated herein by reference.

(ii) Driveway locations and designs with curves will add informality and screen direct views toward garage openings. "Straight shot" driveways are not desirable aesthetically, and shall be discouraged by the ARB.

(iii) Prior to occupancy of any dwelling constructed on a Lot, on-site parking for at least four (4) cars (including those located inside garages) must be provided to assure the convenience and ambiance of the streets in The Preserve.

(iv) Preservation of existing trees and understory along the street and side lot lines is an important part of the environmental theme of The Preserve. Accordingly, any and all tree removal shall be approved in advance by the ARB. It is encouraged that all oaks, large pine, and palmetto trees be saved, including when reasonably possible, those inside the buildable areas. Plant material that is added to a Homesite should consist of predominantly native species.

(f) Materials. In order to reinforce the "countryside" nature of The Preserve Lots, the exteriors of all improvements constructed thereon shall generally be of natural materials that will blend with the environment.

(i) Exterior surfaces shall be finished in natural and blending materials such as cedar shingle, clapboard, concrete faux shingles, or vertical board and batten. All open areas below stairs, decks, and porches shall be enclosed by wood lattice, louvers, or substantial, well-sized plant materials.

(ii) Foundation walls, chimneys, and other similar architectural features shall be finished in (i) brick of subtle coloration such as Old Savannah/Charleston gray (or other brick of comparable style), (ii) genuine stucco of darker hues, (iii) authentic oyster-shell tabby, or (iv) limited height stone walls. The exact nature of the materials and colors thereof shall be approved by the ARB in advance of any construction.

(iii) Roof materials will be limited to cedar shakes, standing-seam metal (e.g., 40 lb. tin), or slate, all of dark coloration intended to blend unobtrusively with the tree canopy.

(iv) Use of either unapproved materials or materials requiring prior approval of the ARB which vary from those that have been approved or which have been installed without such prior approval, are subject to either: immediate removal and replacement with approved materials at the sole cost and expense of the Owner, *or* such other legal or equitable remedy as the ARB shall, in its sole discretion, determine.

(g) Color and Texture. Dwellings and other structures must be finished in darker, muted, and/or neutral colors (with a value of five (5) or darker on the ARB Value Chart) to reflect and blend with nature's hues. Weathering, semi-transparent, semi-solid, and solid stain finishes (with solids the least preferred) which accentuate the wood textures will be preferred. Painted surfaces shall be discouraged. Flat stain finishes should be utilized for siding, and flat or satin stain finishes should be utilized for trim. Stain colors such as warm grays, dark charcoal gray, dark forest green, dark olive greens, darker tans, deep sienna, and colors which complement the surrounding natural environment, are preferred. "Cool" shades of most colors (e.g., powder blue) shall be rarely, if ever, accepted and/or approved by the ARB.

(h) Landscaping is an essential element of The Preserve Homesites. Landscaping should be soft and informal. Use of native plants and indigenous species will be encouraged. Tree uplights, shielded path lights, and indirect lighting should be used to accent natural features. Lights may not be directed toward surrounding land masses or neighbor's Lots. Building setback areas with existing natural vegetation are to be preserved, with all changes approved by the ARB. Natural vegetation left in essentially undisturbed condition (pruning, tree care, and enhancement by adding indigenous species, being exceptions) will reinforce the informality of the distinct, evergreen ambiance intended for The Preserve.

(i) Fencing.

(i) Limited fencing may be allowed, but only when integrated with the architecture of the Lot's structure(s). Solid walls or fences, if and where permitted by the ARB, shall fall within the buildable setback areas, whereas, open fences or trellises may be located approximately 10-15 feet from the side Lot lines and within the Preservation Zone of the homesite. In all cases, mature landscaping shall be selected of size and density to substantially shield and soften the impact of a fence. No chain-link or similar fencing shall be permitted by the ARB.

(ii) Any fences and/or landscaping installed or replaced by the Declarant and/or KICA adjacent to the Lots, either within the road rights-of-way or within the easement reserved by Declarant in Section 3.02(a) hereof, shall be maintained and replaced as required by KICA, and shall not be materially altered, damaged, or destroyed by any Owner, their guests, invitees, tenants, permittees, employees, heirs, successors, and assigns.

(iii) Upon the acquisition of a Lot in The Preserve from Declarant, each Owner shall pay to Declarant, a "Capital Reserve Fee" in the amount of \$150.00, which fee shall be delivered by Declarant to KICA, to be held by KICA in an account and administered by KICA for the sole purpose of maintaining and replacing the fences and/or any special landscaping installed by Declarant and/or KICA as set forth in Section 3.01(i) above. Such fee shall be paid by the initial Lot purchaser only, and shall be used by KICA, its successors and/or assigns, solely for the uses and purposes set forth herein.

(iv) KICA also has the right under Article V, Section 5(a) of the KICA Master Covenants to impose upon the Owners, a segment assessment for the maintenance and replacement of the aforesaid fences and special landscaping. Once the funds from the "Capital Reserve Fee" established in Section 3.01 (i)(iii) above have been depleted, and the KICA board of directors, in its sole discretion, determines that the continued maintenance and/or replacement of said fences and/or landscaping to ensure the high standards of quality and distinction befitting the Lots, streets, rights-of-way, residual areas, and other properties within The Preserve, cannot be accomplished absent the imposition of a segment assessment, the KICA board of directors may, pursuant to the powers thereunto enabling as set forth in Article V, Section 5(a) of the KICA Master Covenants as aforesaid, levy upon the Owners, such a segment assessment for the purpose of maintaining, repairing, and/or replacing such fences and special landscaping.

Further, in the event the KICA Board determines that such segment assessment must be a continuing segment assessment, each Owner, by the acceptance of a deed of conveyance to a Lot or Homesite in The Preserve, shall be deemed to have unilaterally, unconditionally, and permanently waived the right under Article V, Section 5(a) the KICA Master Covenants to discontinue and abolish such segment assessment during the second or any subsequent year.

(j) Completion of Structures in One Year. The exteriors of all dwellings and other structures must be completed within one (1) year from commencement of construction thereof, except where such completion is impossible or would result in extreme or undue hardship to the Lot Owner or builder due to strikes, fires, national emergency, natural calamities, or matters beyond their control.

(k) No Occupancy Until Complete. No dwelling or structure may be occupied until the exterior thereof has been completed and a certificate of occupancy has been issued by the appropriate governmental authority having jurisdiction. During the construction process the Lot Owner shall require the contractor to maintain the Lot in a reasonably clean and uncluttered condition at all times.

(l) Parking Vehicles, etc. No utility trailer, boat, boat trailer, camper, or recreational vehicle of any nature may be parked on any Lot at any time unless the same is stored or parked within an enclosed

garage (with garage doors closed). Further, no tent, barn, treehouse, or other similar outbuilding or structure shall be placed on any Lot at any time, either temporarily or permanently.

(m) Maintenance Responsibilities. Upon the completion of construction of improvements on any Lot, each Owner, at the sole expense of such Owner, shall be responsible for maintaining such improvements in comparable or better appearance and condition as at the time of initial completion of construction thereof, normal wear and tear being excepted.

(n) Approval Needed for Subdivision of Lots.

(i) No Lot shall be subdivided nor its boundary lines changed, nor shall application for same be made to Charleston County or the Town of Kiawah Island, except with the express, prior, written consent of Declarant, its successors and/or assigns as the "Company" under the Master Covenants.

(ii) Declarant expressly reserves for itself and its successors and/or assigns, the right to resurvey, subdivide, and replat any of The Preserve Lots owned by it and shown on the Plat in order to create a modified building lot or lots; and to take such other steps as are reasonably necessary to make such replatted lot(s) suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, private roads, bridges, community areas, docks, recreational facilities, common areas, fences, landscaping, and other amenities to conform to the new boundaries of the replatted lot(s). The provisions of this sub-paragraph shall also allow for the combining of two (2) or more contiguous lots into one (1) or more larger lots, however, such resulting larger lot shall be subject to the provisions of Article I, subparagraph (s) hereof. Following the combination of two (2) or more lots into one (1) or more larger lots, only the exterior boundaries of the resulting larger lot(s) shall be considered in the interpretation of the covenants in this Declaration, and the buildable areas, Preservation Zones, and Selective Clearing Zones of the resulting larger lot(s) shall then be determined by the ARB; provided that the ARB shall adhere as closely as possible to the buildable areas, Preservation Zones, and Selective Clearing Zones depicted on Exhibit "C" hereto.

(o) Reason for Guidelines. The Declarant has established the within design, construction, and development guidelines and restrictions in order to seek to create a unique residential community which is environmentally sensitive, aesthetically appealing, tranquil, functional, and designed to complement and accentuate the natural beauty of Blue Heron Pond, the Kiawah River and its smaller estuaries, and Cinder Creek.

(p) Reservation of Variance Rights. Notwithstanding the provisions of Sections 3.01(a) through 3.01(o) above, Declarant reserves the right for itself, its successors and assigns as the Company, and the ARB, to modify and/or vary all such building and development guidelines and restrictions, either set out or incorporated herein, if and when Declarant and/or the ARB, or their respective successors and assigns, determine that such modifications and/or variances are necessary to enhance, complement, and preserve the natural beauty, enjoyment, and values of The Preserve Lots and/or The Preserve community. Should there ever be a conflict between Declarant's and the ARB's rights to modify or vary such guidelines and restrictions, then the determination of Declarant, its successors and assigns, shall control.

(q) Conflict Resolution. In the event of a discrepancy, inconsistency, or conflict, if any, between notations and building specifications shown on the Plat, the Master Covenants, this Declaration, or any other representation or writing, the provisions of this Declaration shall prevail, and each Lot Owner within the Subdivision, by acceptance of a deed or other conveyance therefor, covenants to vote, if requested to do so by Declarant, in favor of such amendments hereto as will remove such discrepancies, conflicts, or inconsistencies.

Section 3.02. Easements. Specific easements in favor of Declarant for the installation and maintenance of utilities, landscaping, pest control, and environmental control and protection are set forth in the Master Covenants. In addition to such easements which shall apply to The Preserve, there are hereby reserved for the benefit of the Declarant and KICA, their successors and assigns, and in some instances, the Association, its successors and assigns, over, under, upon, and across each Lot in the Subdivision, the following non-exclusive rights and easements:

(a) Declarant reserves for itself, its agents, employees, invitees, successors and assigns, and KICA, its successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over each Lot within the Subdivision, over, under, upon, and across strips of land fifteen (15') feet in width running adjacent to and parallel with the rights-of-way lines of streets or roads within the Subdivision, which said easement may (in Declarant's sole discretion) be used for the installation, maintenance, improvement, and replacement of fencing and/or landscaping along the rights-of-way and/or parts of Lots along and on said streets and roads. Notwithstanding the above, nothing contained herein shall be construed so as to obligate Declarant, KICA, and/or their respective agents, employees, invitees, successors and assigns, to install, maintain, improve, and replace fencing and/or landscaping within such non-exclusive easement area.

(b) Declarant reserves for itself, its agents, employees, invitees, successors and assigns, and KICA, its successors and/or assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over, under, upon, and across each Lot within the Subdivision, to enter upon such Lot in the performance of its rights hereunder, and entrance upon Lots pursuant to the provisions of this paragraph shall not be deemed a trespass.

(c) Declarant hereby reserves for itself, its agents, employees, invitees, successors and assigns, for and during the period that it owns any of the Common Property(ies) or any Lot primarily for the purpose of sale, or has the option to add Additional Property to the Subdivision, the alienable and transferable right and easement on, over, through, under, and across the Common Property(ies) for the purpose of constructing or improving the Lots, the Common Property(ies), and/or the Additional Property, and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including portions of the Common Property{ies}) as are either contemplated by this Declaration or as Declarant, in its sole discretion, deems necessary. Notwithstanding any other provision of this Declaration to the contrary, nothing contained in this paragraph shall be construed as an obligation on behalf of Declarant either to do or refrain from doing any particular act or to exercise or use any of the foregoing rights.

(d) The Declarant reserves for itself, its agents, employees, invitees, successors and assigns, and the Association, its successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over, under, upon, and across all street and road rights-of-way within the Property for the purpose of doing additional maintenance to said streets and roads and to add and/or maintain landscaping along the unpaved rights-of-way thereof at any time.

(e) **A conveyance of a Homesite hereunder shall be deemed to have granted or reserved, as the context shall require, all easements set forth in this Declaration.**

Section 3.03. Right of First Refusal.

(a) The Master Covenants (recorded in Book M114, page 406, in the R.M.C. Office, in Article II, Section 12 thereof) contain a right of first refusal in favor of Declarant, its successors and assigns, to purchase any Lot in The Preserve. Nothing herein is intended to lessen or alter such right.

THE PRESERVE HOME OWNERS' ASSOCIATION

Section 4.01. Establishment and Purpose of The Association. Notwithstanding any provision hereof or any other related instrument, (i) the Association shall remain dormant, inactive, and shall have no obligations, duties, and/or responsibilities whatsoever until and unless it receives an interest in Preserve Common Property(ies) by means of either a deed of conveyance, license, lease, or other legal instrument designating properties and/or improvements within the Subdivision as Preserve Common Property(ies); and (ii) Declarant shall be under no obligation to perform any of the responsibilities mentioned herein until and unless such interest is received by the Association.

Accordingly, Declarant has established the Association for the purpose of providing the authority to exercise the powers of owning, maintaining, repairing, reconstructing, improving, and administering such Common Property(ies); providing common services; and levying, collecting, and disbursing the Assessments and any other charges herein authorized, effective if and when the Association acquires an interest in such Preserve Common Property(ies) as set forth above.

Section 4.02. Powers and Functions of the Association. In the event the Association acquires an interest in Preserve Common Property(ies) as set forth in Section 4.01 above, the Association shall be and is hereby authorized and empowered, but not obligated, to perform any and all of the following acts and services, the costs of which shall be a Common Expense, and any easements of enjoyment of Lot Owners are subject to the following rights and powers:

- (a) Clean-up, maintenance, landscaping, improvement, enhancement, and replacement of Common Property(ies) and improvements thereon, therein, and thereunder.
- (b) Take any and all actions necessary to enforce this Declaration and to perform any of the functions or services required or delegated to the Association under this Declaration and any amendments or supplements thereto.
- (c) Provide or contract for landscaping and managerial services and other administrative services in connection with the maintenance and operation of the Preserve Common Property(ies) including, but not limited to legal, accounting, and financial services, property management and maintenance services, communication services informing Association Members of activities, notice of meetings, referendums, etc.
- (d) Provide liability, hazard, or other insurance covering improvements and activities on the Common Property(ies) and providing such liability and errors and omission or similar insurance for the Directors and Officers of the Association as the Board may deem appropriate.
- (e) Purchase and acquire personal property and equipment as necessary for the proper maintenance of the Common Property(ies).
- (f) Contract for insect and pest control in connection with the Common Property(ies) as may be in addition or supplemental to those services provided by KICA and applicable governmental authorities and as are deemed necessary or desirable in the discretion of the Board of Directors.

- (g) Construct improvements the Common Property(ies), and such other areas within the Property and/or over contiguous marsh or lowland areas as the Board of Directors deems appropriate, necessary, or useful for the Subdivision.
- (h) Maintain, repair, and replace any drainage easements, improvements, and/or facilities, and erosion and flood control improvements located within or adjacent to the Subdivision to the extent that such services are not performed by KICA.
- (i) In addition to the above, the Association is authorized and empowered to perform or provide any and all other services and to take all steps necessary or desirable in the judgement of the Board of Directors to carry out the Association's obligations and duties under the terms and intent of this Declaration and the By-Laws.

ARTICLE V

THE PRESERVE COMMON PROPERTY(IES)

Section 5.01. The Common Property(ies). Common Property(ies), if and when conveyed to the Association, shall be for the common use and enjoyment of the Association, the Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, and the Association Members, subject to any operating rules promulgated by the Association, its successors and assigns; nothing contained herein or set forth on the Subdivision Plat shall in any way or manner be construed as a dedication to the public of any of the Common Property(ies), nor other such areas, permits, rights, and/or amenities associated therewith.

Section 5.02. Association Members' Easements of Enjoyment. Subject to the provisions of this Declaration and the rules and regulations of the Association and compliance therewith by each Owner, each and every Owner shall have a non-exclusive easement of enjoyment in and to any Common Property(ies), and such easement shall benefit and be appurtenant to and shall run with the title to each and every Lot. It is the intention of Declarant that such rights of enjoyment shall be and are hereby deemed for the use and benefit of the Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, and successors-in-title.

Section 5.03. Extent of Association Members' Easements. The Owners' non-exclusive rights and easements for enjoyment of any Common Property(ies) shall be subject to the following:

- (a) The rights of Declarant to convey and/or lease the Common Property(ies) to KICA, or to any other non-profit agency or governmental authority, subject to exercise of the Owner's approval rights as required hereunder.
- (b) Non-exclusive, appurtenant, perpetual, permanent, assignable, transmissible, commercial easements in favor of Declarant, the Association, and KICA for access, ingress, egress, and for the installation, maintenance, inspection, repair, and replacement of all utilities and services, irrigation systems, landscaping, and for all other lawful purposes deemed necessary, useful, or beneficial, in the discretion of Declarant and/or the Association, for the orderly development of the Subdivision; and the right of Declarant and of the Association, their successors and assigns, to grant, reserve, and accept such easements and rights-of-way through, under, over, and across the Common Property(ies).
- (c) The right of the Association, as provided in its By-Laws, to suspend the voting rights and/or enjoyment rights of any Owner to all or some of the Common Property(ies), for any period during which any Assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(d) The right of the Declarant and the Association, as the case may be, to establish rules and regulations, to charge Common Expenses, and to prescribe fees and charges from time to time for use of any Association amenities.

(e) All applicable covenants, conditions, restrictions and easements of record, including, without limitation, the Master Covenants, and all applicable regulations and ordinances adopted or as may be adopted in the future by any governmental agency or entity having jurisdiction over the Property. This Declaration is intended as a supplement to the Master Covenants and any such governmental regulations or ordinances, and shall be interpreted to be consistent therewith wherever possible. This instrument shall, however, be construed as provided in Section 3.01(q) in the event of a conflict.

(f) The right of the Association, in accordance with its By-Laws, to borrow money from the Declarant or any lender for the purpose of improving and/or maintaining the Common Property(ies) and providing services authorized herein, and in connection therewith, to mortgage all or part of the Common Property(ies) to secure any such loan.

Section 5.04. Title to the Common Property(ies).

(a) Declarant may, in its sole discretion (but is not obligated to) designate certain properties and improvements within the Subdivision as Preserve Common Property(ies), and convey, or cause to be conveyed to the Association (and the Association agrees to accept) by deed, lease, license agreement, (and bill of sale for any improvements) for a nominal consideration, together with any and all improvements, personal property, and easements associated therewith, and all structures, improvements, appurtenances, landscaping, and infrastructure located thereon and/or thereunder now or at the time of such conveyance. Such conveyance shall be free and clear of mortgages and other monetary liens, subject to all matters of record.

(b) Declarant further reserves the right to designate as Common Property(ies), additional properties and/or improvements within the Subdivision for the beneficial and common use and enjoyment of the Owners of The Preserve Lots, and to impose on any and all of such Common Property(ies), any additional covenants and restrictions as Declarant, in its sole discretion, deems beneficial to the Subdivision.

(c) Upon the earlier to occur of (1) such conveyance to the Association, or (2) completion of any improvements by Declarant (if such be required) on a property within the Subdivision designated by Declarant as Common Property(ies), such that the Common Property(ies) or areas intended by Declarant to be conveyed to the Association as Common Property(ies) are deemed by Declarant to be Functionally Complete, the Association shall immediately become responsible for all maintenance, repair, replacement, operation thereof. It is the purpose of this provision to provide that the Association shall be responsible for the maintenance of Common Property(ies) and areas intended by Declarant to become Common Property(ies) upon which all improvements required to be made by the Declarant have been completed and Declarant has deemed such improvements to be Functionally Complete, notwithstanding the fact that the Declarant is not obligated to deed, lease, or execute a use agreement for such properties until some later date. Said properties, once conveyed to the Association, are to be held and administered in accordance with this Declaration. The legal costs and expenses of such conveyances shall be borne by Declarant, and Declarant further reserves the right to convey or transfer to the Association and/or KICA, any and all rights and obligations of Declarant set forth herein.

(d) Notwithstanding any other provision of this Declaration or the Association By-Laws to the contrary, the Association shall have the right (but is not obligated) to convey all or any portion of the Common Property(ies) to the KICA, or any other non-profit organization or governmental authority; provided, however, that such conveyance first shall be approved by a vote of the Association Members holding not less than 90% of the total amount of votes of all classes of membership in the Association

pursuant to the notice, meeting, and voting requirements set forth in the By-Laws; and provided further that so long as Declarant remains a Class B or Class A Association Member of the Association, such conveyance shall be invalid unless approved in writing by Declarant.

Section 5.05. Rules and Regulations. The Association, by and through its Board of Directors, may adopt from time to time, additional rules, regulations, and fee schedules governing the use of the Common Property(ies) within the Subdivision, which rules, regulations, and fee schedules shall be binding upon the Lot Owners.

ARTICLE VI

COVENANTS FOR ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligations of Assessments.

(a) Declarant covenants, and each Owner of any Lot whether or not it shall be so expressed in Owner's deed or other conveyance, shall be deemed to covenant and agree to all other terms and provisions of this Declaration and pay to the Association, such Annual Assessments or charges and/or Special Assessments or charges for capital improvements or for maintenance expenses and other Common Expenses, emergencies and other purposes; as may be established and collected as hereinafter provided. The Assessments, together with any penalty (to be set by the Board), interest, costs, and reasonable attorneys' fees shall be a charge upon the Lot and shall be secured by a continuing lien on the Lot against which each such Assessment is made. Each such Assessment, together with interest, any penalty, costs, and reasonable Attorney's fees, shall also be the personal obligation of the person(s) or entity who was the Owner of such Lot at the time the Assessment became due. The obligation for delinquent Assessments shall run with such Lot and shall pass to the Owner's successors in title. Upon written request, the Association shall provide or cause to be provided an accounting of an Owner's Assessments and any delinquency in the payment thereof. All reports of delinquency must be given subject to any state and federal laws regarding disclosure of a debtor's financial information.

(b) Notwithstanding anything contained in this Article VI to the contrary, so long as the Declarant owns any Homesite or any Additional Property which may be added to this Declaration, upon the activation of the Association and imposition of Assessments, the Declarant may annually elect either to pay the regular Assessment for each such Homesite or to pay the difference between the amount of any Assessments collected on all other Homesites not owned by the Declarant and the actual cost of maintenance of Common Property(ies) by the Association during the fiscal year, but not in a sum greater than its regular Assessment. Unless the Declarant otherwise notifies the Board of Directors in writing before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding year. Furthermore, so long as the Declarant owns any Homesite for sale or any Additional Property which may be added to this Declaration, the Declarant may, but shall not be obligated to, reduce the regular Assessment for any year to be paid by Owners of Homesites, which may be a contribution to the Association, an advance against future regular Assessments due from Owners, or a loan to the Association, in the Declarant's sole discretion. The amount and character (contribution, advance or loan) of such subsidy shall be conspicuously disclosed as a line item in the budget and shall be made known to the Owners. The payment of such a subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

Section 6.02. Purpose of Assessments. Annual Assessments and Special Assessments may only be levied by the Association if and when it acquires an interest in Common Property(ies) as set forth in Article V hereof; and shall be used exclusively in connection with the operation and administration of such Common Property(ies). Such use shall include, but is not limited to, the payment of all Common Expenses; for the

acquisition, construction, landscaping, repair, replacement, improvement, maintenance, and use of the Common Property(ies); labor, equipment, materials, services, management, supervision, security, garbage service, water, sewer and utility service in connection with the Common Property(ies); insurance premiums and deductibles; emergency repairs, reconstruction after casualty loss, taxes and fees levied by governmental agencies, funds to build up reserves, if necessary, and such other needs, without limitation, as may arise or as may be required in the sole discretion of the Board of Directors.

(a) Such Assessments shall be in addition to assessments levied by the Kiawah Island Community Association, Inc. Except as provided herein and until and unless otherwise approved by the Board of Directors, all Assessments shall be levied in equal, uniform amounts per Lot.

Section 6.03. Annual Assessment.

(a) Upon the acquisition by the Association of an interest in a Common Property, the Board of Directors shall determine the amount of the initial Annual Assessment based on the proposed annual budget of the Association as provided herein. At least thirty (30) days prior to the end of each ensuing fiscal year of the Association, the Board of Directors shall determine the amount of the Annual Assessment for the following year based on a proposed annual budget showing the services provided by or on behalf of the Association and the costs thereof per Lot, and shall notify every Owner subject thereto.

Section 6.04. Special Assessments.

(a) In addition to the Annual Assessments authorized above, so long as the Association holds an interest in a Common Property as set forth in Article V hereof, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any capital improvement upon or adjacent to the Common Property(ies), including, but not limited to, fixtures, personal property related thereto, and for any other purposes not prohibited by this Declaration (the "Project"); provided, however, that such Special Assessment shall have the assent of two thirds (2/3rds) of the votes of each class of Association Members responding to a mail Referendum within thirty (30) days of such mailing. The mail Referendum, shall include one statement from any Director(s) favoring the Special Assessment and one statement from any Director(s) opposing the Special Assessment containing the reason(s) for those Directors' support and opposition for the Special Assessment. Neither statement shall exceed five (5) pages in length. The amount of such Special Assessment shall be determined by the Board of Directors by taking the total cost of the Project and dividing the same by the number of Lots in the Subdivision. The Special Assessments levied against the Lots shall be in equal amounts, and may be collected by the Association on a monthly, quarterly, or annual basis as determined by the Board.

(b) In addition to the Annual and Special Assessments authorized above, so long as the Association holds an interest in a Common Property as set forth in Article V hereof, the Board of Directors may, in its discretion, levy in any fiscal year, an amount not to exceed one hundred (100%) percent of the Annual Assessment for such fiscal year (without a 2/3rds affirmative vote of the Association Membership) as a Special Assessment applicable to that year *only* for the purpose of maintenance or repairs of the Common Property(ies), including, but not limited to, fixtures, landscaping, and personal property related thereto; for the costs of the taxes for and the utilities supplied to the Common Property(ies); for any repairs, restoration, reconstruction, maintenance, or improvements made necessary by any emergencies including but not limited to damages resulting from storm, wind, earthquake, and flood as determined in the sole discretion of the Board of Directors, and for any other purpose not prohibited by this Declaration. Such Special Assessment, shall be calculated and levied against the Lots in the same manner as set forth in subparagraph (a) above.

Section 6.05. Effect of Non-Payment of Assessments.

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(a) If an Assessment (whether Annual, Special, or otherwise) is not paid on the date when due, as hereinabove provided, then such Assessment together with such late charges and interest thereon and any reasonable costs of collection thereof as hereafter provided, shall be a charge and continuing lien on the Homesite to which it relates, and shall bind such property in the hands of the Owner, his heirs, legal representatives, successors, and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation, and if his successors in title assume his personal obligation, such prior Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer. Furthermore, such prior Owner and his successor in title who assumes such liabilities shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Owner and his successor in title would be jointly and severally liable to pay such amounts.

(b) Any Assessment which is not received within ten (10) days of the due date thereof, or within any established grace period, shall incur a late charge of such amount as may be set by the Board of Directors; and shall commence to accrue simple interest at the lesser rate of (i) eighteen percent (18%) per annum, or (ii) the maximum rate provided by applicable law. In addition, in the event any Assessment is not received within thirty (30) days of the due date thereof, the Association shall have the right to declare the balance of the Assessment(s) immediately due and payable upon written notice to the defaulting Owner.

(c) The Association may bring legal action against the Owner personally obligated to pay the same or foreclose its lien against the Homesite to which it relates or pursue both such courses at the same time or successively. In any event, the Association shall be entitled also to recover reasonable attorney's fees and all other costs of collection. Each Owner, by his acceptance of a deed or other transfer of a Homesite, vests in the Association or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. All Owners, to the fullest extent permitted by law, waive the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by the Association against any Owner in the event of such foreclosure and further, waive all benefits that might accrue to any Owner by virtue of any present or future homestead exemption or law exempting any Homesite or portion thereof from sale. If the Association commences to foreclose its lien, the Owner may be required to pay a reasonable rental for the Homesite after the commencement of the action and at its option the Association shall be entitled to the appointment of a receiver to collect such rents. The Association shall have the power to bid on the Homesite at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

(d) During any period in which an Owner shall be in default in the payment of any Assessment (whether Annual, Special, or otherwise) levied by the Association, the voting rights of the Owner and the rights of the Owner and lessees of the Owner, their families, invitees and guests, to use and enjoy the recreational areas of the Common Property(ies) may be suspended by the Board of Directors until such time as the Assessment has been paid.

Section 6.06. Subordination of Lien.

(a) The lien and permanent charge for the Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to any Homesite is hereby made subordinate to the lien of any holder of an Institutional Mortgage or its assigns, and the lien of KICA, if any, recorded before the due date of the Assessment sought to be enforced. The lien and permanent charge hereby subordinated is only such lien and charge as relates to Assessments authorized hereunder having a due date subsequent to the date such Institutional Mortgage or KICA lien is filed for record and prior to the satisfaction, cancellation, or foreclosure thereof.

(b) Such subordination is merely a subordination and shall not relieve the Owner of the Homesite of his personal obligation to pay all Assessments coming due at a time when he is the Owner; shall not relieve such Homesite from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished against a Mortgagee, such Mortgagee's assignee, KICA, or transferee by foreclosure); and no sale or transfer of such Homesite to person pursuant to a foreclosure sale or conveyance in lieu thereof shall relieve any previous Owner from liability for any Assessment coming due before such sale or transfer.

(c) To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure or conveyance in lieu thereof, then the amount or amounts otherwise secured thereby which cannot otherwise be collected shall be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

Section 7.01. Insurance. Upon the acquisition of an interest in a Preserve Common Property(ies) pursuant to Article V hereof, the Board of Directors or its duly authorized agents shall have the authority to and shall obtain the following types of insurance, and shall continue the same in effect so long as the Association retains such interest in a Preserve Common Property(ies):

(a) Property Insurance. Casualty insurance at replacement value, in such form and with such coverage and deductibles as the Board deems appropriate for the benefit of the Association, insuring all insurable improvements in and to the Common Property(ies), against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief; such coverage, if available at reasonable costs, shall be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible amounts as are deemed reasonable by the Board), of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) Liability Insurance. A public liability policy in the minimum amount of \$1,000,000 covering all the Common Property(ies) owned or leased by the Association, as to all damage or injury caused by the negligence of the Association, its Association Members, Directors, and Officers, or any of their agents. Such public liability policy shall provide such coverages as are deemed necessary by the Board.

(c) Other Insurance. (i) worker's compensation insurance to the extent necessary to comply with any applicable law; and (ii) any such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) Named Insured. All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Association Members. The cost of such coverage on the Common Property(ies) shall be a Common Expense. The Association shall have exclusive authority to adjust losses under such insurance policies with respect to the Subdivision; provided, however, that no mortgagee or other security holder of the Common Property(ies) having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, relating thereto.

(e) Owner's Insurance. Each Owner shall be solely responsible for obtaining, at each such Owner's sole expense, public liability, property damage or casualty coverage, flood, title, and any other insurance coverage in connection with such Owner's individual Lot(s) and all improvements thereon, as each such Owner deems necessary or appropriate.

(a) Should any of the Common Property(ies) or other property owned by and/or covered by insurance written in the name of the Association as such trustee for the Association Members, be damaged or destroyed by fire, windstorm, flood, or any other casualty, the Board of Directors, or its agent shall be responsible for timely filing all claims and adjustments arising under such insurance. In such event, the Board shall be further responsible for obtaining detailed estimates for repairing or restoring and/or reconstructing such damaged property to substantially the same condition as existed prior to such casualty, and such estimates must be obtained by the Board from reputable, reliable, licensed individuals or companies. The Association shall restore, repair, or replace such damaged improvements, including structures, trees, shrubbery, fences, lawns, boardwalks, docks, piers, landscaping, signage, personal property, and natural vegetation, within sixty (60) days of such damage or destruction, or as soon thereafter as reasonably possible under the circumstances.

(b) In the event insurance proceeds, if any, are insufficient to repair, restore, and/or replace such damaged or destroyed property and reserve funds as may have been appropriated or established for such purpose are, in the sole discretion of the Board, insufficient or inadequate to defray the costs thereof, or would unreasonably deplete such reserve funds, the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Association Members, in an amount sufficient to provide adequate funds to pay such excess costs of repair, reconstruction, or replacement. Such a Special Assessment shall be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Assessments may be made at any time prior to, during, or following the completion of any repair, reconstruction, or replacement. Any and all sums paid to the Association under and by virtue of such Special Assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds, if any, and/or Assessments shall be disbursed by the Association in payment of such repair, reconstruction, or replacement pursuant to and in accordance with such method of distribution as is established by the Board of Directors.

(c) Any funds remaining after defraying such costs shall be retained by and for the benefit of the Association. Special Assessments levied according to this Section may include but are not limited to Special Assessments for insurance deductibles, temporary emergency repairs and uninsured losses as well as the legal or other costs of collection.

Section 7.03. Damage to or Destruction of Improvements to Lots. In the event of damage or destruction by fire or other casualty to any improvements to any of the Lots, the Owner thereof, at his sole expense, shall be responsible for clearing away the ruins and debris of any damaged improvements or vegetation within fifteen (15) days of such damage or destruction, so that the Lot is promptly restored to a clean, orderly, safe, and slightly condition. In the event such Owner shall fail or refuse to clear away the ruins and debris of any damaged improvements within said fifteen (15) day period, or such extended period as Declarant, the KICA, and/or the Board may allow, in their discretion, Declarant, the KICA, and/or the Board may enter the Lot, and its agents may undertake (but are not obligated to do so), any such clearing and charge the costs thereof to the responsible Owner, which costs shall be a lien upon such Lot until paid.

ARTICLE VIII

LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION

Section 8.01 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Owners and any person not otherwise subject to the Declaration who agrees to submit to this Article VIII (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes against the Declarant and/or the Association involving the Declaration or the Subdivision, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims,

grievances or disputes between such Bound Party and the Declarant and/or the Association involving the Declaration or the Subdivision, including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 8.02, shall be subject to the procedures set forth in Section 8.03.

Section 8.02. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 8.03:

(a) any suit by the Association against any Bound Party to enforce any Assessments or other charges hereunder; and

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 8.03, but there shall be no obligation to do so.

Section 8.03. Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against the Declarant and/or the Association, or all or any combination of such entities ("Respondent"), other than an Exempt Claim under Section 8.02 and unless waived in writing by Declarant and/or the Association, at its respective sole option and election, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

(a) Notice. Within a reasonable time after the Claim in question has arisen, and in each event prior to the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation, the Claimant shall notify the Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including date, time, location, persons involved, the Respondent's role in the Claim and the provisions of the Declaration or other authority out of which the Claim arises;

(ii) what Claimant wants the Respondent to do or not do to resolve the Claim; and

(iii) that Claimant wishes to resolve the Claim by mutual agreement with the Respondent and is willing to meet in person with the Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

(b) Negotiation.

(i) Each Claimant and the Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation, but not later than 30 days following the Notice, unless otherwise agreed by the Parties.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Association and the Subdivision.

(c) Final and Binding Arbitration.

(i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant shall have 30 days within which to submit the Claim to binding arbitration under the auspices of the American Arbitration Association, or such other independent party providing similar services upon which the Parties may mutually agree, in accordance with the rules of the South Carolina Uniform Arbitration Act, as may be amended from time to time, except as follows:

(1) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent shall jointly select one arbitrator, whose decision shall be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) day period, or on or before any later day set by which to select arbitrator(s), Claimant shall select an arbitrator, and Respondent shall select an arbitrator, and the two arbitrators shall select a third arbitrator. Any decision agreed upon by two of the three arbitrators shall be absolutely binding on all Parties.

(2) In the event the Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

This Section 8.03 is an agreement of the Bound Parties to arbitrate all Claims against the Respondent, except Exempt Claims, and is specifically enforceable under South Carolina law. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent by applicable law.

Section 8.04. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Sections 8.03(a) and 8.03(b), including the fees of its attorney or other representative.

(b) In the event the Claim proceeds to arbitration pursuant to Section 8.03(c), the "Prevailing Party," as hereinafter defined, shall receive from the non-Prevailing Party, all of its costs and expenses, including reasonable expert and attorney's fees, incurred from commencement of selection of the arbitrator(s) under Section 8.03(c) to the issuance of the Award. Furthermore, the non-Prevailing Party shall pay all costs and expenses of the arbitration. The "Prevailing Party" shall be determined as follows:

(i) Not less than five (5) days prior to the first meeting with the arbitrator(s), a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within three (3) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of settlement. An offer of settlement shall state that it is made under this section and shall specify the amount, exclusive of interest and costs, which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of the Claim.

(ii) An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is filed and served on the Party(ies) making the offer twenty-four (24) hours prior to the first meeting with the arbitrator(s).

(iii) If an offer of settlement is rejected, it may not be referred to for any purpose at arbitration, but may be considered solely for the purpose of awarding costs and expenses of arbitration under Section 8.03(c).

(iv) If the Claimant makes no written offer of settlement, the amount of the Claim offered in arbitration is deemed to be the Claimant's final offer of settlement under this Section 8.04(b).

(v) If the Respondent makes no written offer of settlement, the Respondent's offer of settlement under this Section 8.04(b) is deemed to be zero.

(vi) The Party(ies) whose offer, made or deemed made, is closer to the Award granted by the arbitrator(s) is considered the "Prevailing Party" hereunder. If the difference between the Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of costs and expenses of arbitration.

Section 8.05. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Section 8.03 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 8.03. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

Section 8.06. Litigation. No judicial or administrative proceeding with an amount in controversy exceeding \$25,000.00, shall be commenced or prosecuted by the Association unless approved by Members representing at least seventy-five (75%) percent of the total votes of the Association voting in person or by proxy, at a meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving such proceeding. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments as provided in Article VI; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the negotiation and arbitration provisions of this Article VIII, if applicable.

Section 8.07. Miscellaneous Alternative Dispute Resolution Provisions.

(a) **Conflicting Provisions.** Any conflict or discrepancy between the terms and conditions set forth in this Article VIII and any term, condition or procedure of the American Arbitration Association, or such other independent party providing similar arbitration services as the Parties may select hereunder, the terms, conditions and procedures set forth herein shall control.

(b) **TIME IS OF ESSENCE.** All periods of time set forth herein or calculated pursuant to provisions of this Article VIII shall be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Activation of Association and Control By Declarant. NOTWITHSTANDING ANY OTHER PROVISION IN THIS DECLARATION OR IN THE BY-LAWS OF THE ASSOCIATION TO THE CONTRARY, it is the intention of Declarant that the Association shall remain dormant and inactive until and unless Declarant conveys one or more Preserve Common Property(ies) to the

Association by quit-claim deed, lease, license, or otherwise; or provides to the Association a written Notice of Intent to convey which specifically designates the subject property, and/or improvements, as a Preserve Common Property(ies).

(a) Once Declarant determines, in its sole discretion, that it is in the best interests of the Subdivision and the Owners as a whole, to convey to the Association one or more Preserve Common Property(ies), (by quit-claim deed, lease, license, or otherwise), Declarant shall forward written notification of such intent to the Owner(s) of each Lot in the Preserve, of its intent to activate the Association as contemplated herein, and appoint the initial Board of Directors of the Association as hereinafter set forth. In the case of multiple Owners of one Lot, such notification shall be deemed delivered if sent to the address of such Owner set forth in the recorded deed of conveyance for such Lot.

(b) Upon the activation of the Association as aforesaid, Declarant shall appoint the initial Board of Directors in accordance with Article V of the By-Laws, and thereafter shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following dates: (i) December 31, 2040; (ii) the date on which Declarant has conveyed to Owners, other than Declarant, Homesites representing one hundred (100%) percent of the total number of Lots to be developed on all of the Property and the Additional Property, as such number is set forth in a Supplemental Declaration making specific reference to this Section; or (iii) the date the Declarant surrenders the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and filed in the R.M.C. Office for Charleston County by Declarant. Until Supplemental Declarations setting the total number of Lots to be developed on all of the Property and the Additional Property are filed, such total number shall be deemed to be 300. Every grantee of any interest in the Subdivision, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 9.01. The provisions of this Section 9.01 are supplemental to, and not in substitution of, any other rights retained by Declarant pursuant to this Declaration.

(c) Voting Agreement and Proxy. By acceptance of a deed or other conveyance of an interest, all Association Members do hereby grant, and if further required, do agree to vote in a manner to provide, to Declarant all voting rights and other corporate powers specifically reserved to and designated for Declarant under this Declaration. IN CONNECTION WITH THIS VOTING AGREEMENT, EACH ASSOCIATION MEMBER APPOINTS DECLARANT AS PROXY FOR SUCH ASSOCIATION MEMBER WITH FULL POWER OF SUBSTITUTION TO VOTE FOR THE ASSOCIATION MEMBER ON ALL SUCH MATTERS ON WHICH THE ASSOCIATION MEMBER MAY BE ENTITLED TO VOTE, AND WITH RESPECT TO WHICH THERE IS A RESERVATION OR DESIGNATION OF VOTING RIGHTS IN DECLARANT UNDER THIS DECLARATION, AND WITH ALL POWERS WHICH THE ASSOCIATION MEMBER WOULD POSSESS IF PERSONALLY PRESENT AT ANY MEETING OF ASSOCIATION MEMBERS. SUCH APPOINTMENT SHALL BE, UPON ACCEPTANCE OF A DEED OR OTHER CONVEYANCE BY THE ASSOCIATION MEMBER AND WITHOUT THE NECESSITY OF FURTHER ACTION BY THE DECLARANT OR THE ASSOCIATION MEMBER, A POWER COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE. Such appointment shall be effective as of the date on which a deed or other conveyance of an interest to the Owner-Association Member is filed in the R.M.C. Office. This irrevocable proxy shall automatically terminate on the date Declarant's voting rights as a Class B Association Member terminate. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which shall run with the Property.

(d) Creation of New Board of Directors. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section 9.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more properties subject to this Declaration, and a special meeting of the Association shall be called within a reasonable time

thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

Section 9.02. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Association (upon activation pursuant to Article IX, Section 9.01 hereof), or any Lot Owner, their respective, heirs, personal representatives, successors, successors-in-title and assigns, for a period of twenty-five (25) years from the date of recordation of this Declaration in the R.M.C. Office. Upon the expiration of said twenty-five (25) year period, this Declaration shall be automatically renewed and extended for additional successive ten (10) year periods, unless otherwise agreed to in writing by the then Owners of at least two-thirds (2/3) of the Lots covered by this Declaration, or any amendment thereto.

Section 9.03. Amendments.

(a) So long as the Association remains dormant and inactive, or after the Association is activated, during any period in which Declarant retains the right to appoint and remove any directors and officers of the Association as set forth in Section 9.01(b), Declarant may amend this Declaration by a recorded instrument, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot (or, after the Association has been activated, the Common Property {ies}) as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; in the event that such amendment, in Declarant's sole discretion, would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected; and in the event that such amendment also is an amendment to the By-Laws, the amendment will be adopted pursuant to the applicable procedures of the By-Laws. Notwithstanding anything contained herein to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration. Any amendment made pursuant to this Section 9.03(a) shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon it being filed in the R.M.C. Office or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.03 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Subdivision if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration, if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Declaration, or if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Declaration.

(b) Declarant specifically reserves for itself and its successors and assigns, the exclusive right and privilege to amend this Declaration at any time to correct typographical, clerical, or scrivener's errors, by written instrument duly recorded in the R.M.C. Office, with or without the prior consent or approval of either any Owner or Mortgagee holding a lien on any Lot.

(c) In addition, so long as Declarant retains its Class B Association Membership, Declarant shall further have the right and privilege to amend this Declaration in other respects with the written consent or approval of the Owners of no less than twenty-five percent (25%) of the Lots, but without the written consent of the respective Mortgagees holding a lien on any Lot. Any amendment made pursuant to this Section shall be effective only upon the date of recordation of such instrument in the R.M.C. Office or such other later date as may be specified in such amendment; and each Owner, by the acceptance and recordation of a deed of conveyance to a Lot, agrees for himself, and his successors in title to such Lot, to be bound by such amendments hereto as are permitted under this Section.

(d) In addition to the Declarant's rights to amend set forth above, this Declaration may be amended at any time by an instrument signed by the Owners of not less than two-thirds (2/3rds) of the Lots; provided, however, that so long as Declarant remains a Class B or Class A Association Member of the Association, no amendment shall be valid unless approved in writing in advance by Declarant. Such amendment prior to its execution shall first be subject to the notice, voting, and meeting requirements set forth in the By-Laws, and must be approved by at least two-thirds (2/3rds) of the total votes held by the Lot Owners.

(i) The agreement of the required percentage of Owners and, when required, the Declarant, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Owners, stating that the agreement of the required parties was lawfully obtained in accordance with this Declaration and the By-Laws of the Association. For purposes of execution of any such amendment, all Owners of a Lot, if more than one, must sign such amendment for such Lot to be included in the determination of the aforesaid two-thirds (2/3rds) of the total Lots, except in such instance as set forth in the By-Laws.

Section 9.04. Enforcement and Waiver. Declarant, any Owner, and upon its activation, the Association, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, easements, and reservations, now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, any Owner and/or the Association to enforce in whole or in part any covenant or restriction herein contained, regardless of the number or kind of violations or breaches which may have occurred, shall in no event be deemed a waiver of the right to do so thereafter. This Declaration shall be governed by, construed, and is enforceable under the laws of the State of South Carolina.

Section 9.05. No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provisions of this Declaration.

Section 9.06. Interpretation. Declarant shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding upon the Owners. In all cases, the provisions of this Declaration shall be given the interpretation or construction, in the opinion of Declarant, that will best preserve, protect, maintain, and benefit the properties within The Preserve.

Section 9.07. Severability. Should any covenant or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase, or term of this Declaration be declared or rendered void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 9.08. Assignment. Declarant reserves the right to assign to KICA, or any one or more persons, firms, corporations, partnerships, or associations, any and all rights, powers, duties, easements and estates reserved or given to the Declarant in this Declaration.

Section 9.09. Notice. Any notice, demand, or other instrument or written communication required or permitted to be given, served, made or delivered to Declarant hereunder shall be given, served, made or delivered first by facsimile at the telephone numbers set forth below, and by mailing the original thereof by certified mail, return receipt requested, postage prepaid, or by overnight courier (e.g., Federal Express), addressed as follows:

Kiawah Resort Associates, L.P.
 Attn: Townsend P. Clarkson
 Chief Operating Officer
 Post Office Box 12001
 Charleston, SC 29422
 Facsimile # (843) 768-1750

With Copies to:

Leonard L. Long, Jr., Esq.
 211 King Street, Suite 330
 Charleston, SC 29401
 Facsimile # (843) 723-2058

or to such other addresses as Declarant may request by written notice to the Owners. Any such notice, demand or other instrument or written communication given by facsimile as above provided shall be deemed to have been given, served, made or delivered when such facsimile transmittal can be confirmed by the sending party by means of a facsimile confirmation notice evidencing that all pages were transmitted. Any such notice, demand, or other instrument of written communication mailed as above provided shall be deemed to have been given, served, made, or delivered at the time that it was personally served or with sufficient postage placed in the mail, certified return receipt requested, or delivered to an overnight courier (e.g., Federal Express). Delivery of any notice, demand or communication to a Lot Owner shall be made in accordance with Article IV of the By-Laws.

Section 9.10. Limited Liability.

(a) Neither Declarant nor KICA, nor upon its activation, the Association, shall be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person; (ii) caused in whole or in part from rain or other surface water or any tidal waters which may leak or flow from and/or on or along any portion of the roads and rights-of-way within the Subdivision, common or residual areas, and/or easement areas; or (iii) caused by the malfunction or failure of any pipe, plumbing, drain, conduit, pump, road, fence, appliance, structure, dock, pier, equipment, security system or apparatus, utility line, or facility which KICA is responsible for maintaining.

(b) The Declarant, KICA, and, upon its activation, the Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Subdivision, nor any alleged trespass or damage resulting from entering upon any Lot under any authority provided expressly or implicitly herein and taking actions thereon as are allowable hereunder.

Section 9.11. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural wherever the context requires or permits.

Section 9.12. Construction. The language in all of the parts of this Declaration shall be construed as a whole according to its fair meaning, and not strictly for or against either Declarant, KICA, the Association, or the Lot Owners. By the acceptance and the recordation of a deed of conveyance to any Lot Owner in the R.M.C. Office, such Owner acknowledges that such Owner and/or his legal counsel have reviewed this Declaration, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Declaration or any amendments thereto.

Section 9.13. Termination of the Association.

(a) In the event this Declaration is declared void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association, once activated, is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording of this Declaration, all the Common Property(ies) and other properties belonging to the Association at the time of such adjudication shall revert to the Declarant, its successors and assigns, and the Declarant, its successors and assigns, shall own and operate said the Common Property(ies) and other properties as trustee for the use and benefit of the Owners as set forth herein. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Owners should vote not to renew and extend this Declaration as provided for in Article IX, Section 9.02 hereof, all the Common Property(ies) and other properties owned by the Association at such time shall be transferred by the Association to a trustee appointed by the Court of Common Pleas of Charleston County, South Carolina, which trustee shall own and operate said the Common Property(ies) and other properties for the use and benefit of Owners within the Subdivision as set forth herein.

(b) In any of the foregoing events, each Lot shall continue to be subject to the Assessments which shall be paid by the Owner to the Declarant or trustee, whichever becomes successor in title to the Association. The amount of the Assessments which may be charged by the Declarant or trustee shall be established in accordance with the provisions therefor set forth in Article VI hereof.

(c) Any past due Assessments due the Declarant or Trustee, together with any delinquent payment fees thereon, and all costs of collection, interest and reasonable attorneys' fees, shall continue to be the personal obligation of the Owner and a continuing lien on the Lot and all improvements thereon against which the Assessment was made.

(d) The Declarant or trustee, as the case may be, shall be required to use the funds collected as Assessments for the operation, maintenance, repair, and preservation of the Subdivision in accordance with this Declaration, and the Declarant or trustee may charge as a part of the costs of such services and functions a reasonable fee for its services in carrying out the duties herein provided. Neither the Declarant nor the trustee shall have the obligation to provide for the operation, maintenance, repair, and upkeep of the Common Property(ies) once the funds provided by the Assessments may have become exhausted.

(e) The Declarant or trustee shall have the right and power to convey title to the Common Property(ies) and to assign the rights of Declarant and the Association hereunder, provided that such conveyance is first approved in writing by the Owners of not less than fifty-one percent (51%) of the Lots, with each Lot, if more than one Owner, having one collective vote; and provided further, that the transferee accepts title to the Common Property(ies) subject to the limitations and uses imposed hereby, and affirmatively acknowledges in writing its acceptance of the duties imposed hereby. The agreement of the required percentage of Owners to such a conveyance and/or assignment of rights shall be evidenced by the sworn statement executed by the proper authorized officer(s) of Declarant, or the trustee, attached to or incorporated in such instrument executed by the Declarant or trustee, stating that the agreement of the required parties was lawfully obtained in accordance with this Declaration.

Exhibit "A"

All those certain pieces, parcels, and tracts of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, within the subdivision known generally as "**The Preserve**", and shown and designated as **Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25**, all within **The Preserve, Phase II**, Subdivision 432, Parcel 30, and shown on a plat by Southeastern Surveying, Inc. entitled "A Final Subdivision Plat of Lots 1-25 The Preserve Phase II Parcel 30 Subdivision 432 Owned by Kiawah Resort Associates, L.P. Located in the Town of Kiawah Island Charleston County, South Carolina" dated July 14, 1998, and recorded in Plat Book EC, at pages 638 - 640, in the R.M.C. Office, said parcels having such location, butts and bounds, metes, courses, and distances as will by reference to said plat more fully appear.

ALSO

All those certain pieces, parcels, and tracts of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, within the subdivision known generally as "**The Preserve**" and shown and designated as **Lots 30, 31, 32, and 33**, all within **The Preserve, Phase IA**, Subdivision 432, Parcel 30, and shown on a plat by Southeastern Surveying, Inc. entitled "A Final Subdivision Plat of Lots 30 Thru 33 The Preserve Phase IA Parcel 30 Subdivision 432 Owned by Kiawah Resort Associates, L.P. Located in the Town of Kiawah Island Charleston County, South Carolina" dated May 15, 1997, and recorded in Plat Book EC at page 21, in the R.M.C. Office, said parcels having such location, butts and bounds, metes, courses, and distances as will by reference to said plat more fully appear.

ALSO

All those certain pieces, parcels, and tracts of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, within the subdivision known generally as "**The Preserve**" and shown and designated as **Lots 34, 35, 36, 37, 38, 39, 40, and 41**, all within **The Preserve, Phase IB**, Subdivision 432, Parcel 30, and shown on a plat by Southeastern Surveying, Inc. entitled "A Final Subdivision Plat of Lots 34 Thru 41 The Preserve Phase IB Parcel 30 Subdivision 432 Owned by Kiawah Resort Associates, L.P. Located in the Town of Kiawah Island Charleston County, South Carolina" dated January 15, 1997, last revised on February 20, 1997, and recorded in Plat Book EB at page 619, in the R.M.C. Office, said parcels having such location, butts and bounds, metes, courses, and distances as will by reference to said plat more fully appear.

**BY-LAWS
OF
THE PRESERVE HOME OWNERS' ASSOCIATION**

ARTICLE I

NAME AND LOCATION

The name of the Association is the "The Preserve Home Owners' Association." The principal office of the Association shall be located at One Kiawah Island Parkway, Kiawah Island, S.C., 29455, but meetings of Members and Directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

The words and terms used in the within By-Laws or any supplemental or amended set of By-Laws, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Declaration of Covenants and Restrictions for The Preserve about to be recorded in the R.M.C. Office (the "Declaration"), which said Declaration is incorporated herein by reference. Other definitions may appear throughout this instrument, and shall have the meanings more particularly set forth herein.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.01. Association Membership. Declarant and every person or entity who is a record Owner of a fee simple or undivided fee simple interest in any Lot which is subjected by the Declaration to Assessment by the Association shall be a Member of the Association; provided that any such person or entity holding record title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to Assessments.

Notwithstanding any provision hereof or any other related instrument, (i) the Association shall remain dormant, inactive, and shall have no obligations, duties, and/or responsibilities whatsoever until and unless it receives an interest in Preserve Common Property(ies) by means of either a deed of conveyance, license, lease, or other legal instrument designating properties and/or improvements within the Subdivision as Preserve Common Property(ies); and (ii) Declarant shall be under no obligation to itself perform any of the responsibilities mentioned herein until and unless such interest is received by the Association.

Section 3.02. Membership Rights. The rights of Membership are subject to the payment of Assessments levied by the Association, from time to time, the obligation of which Assessments is imposed against each Owner of and becomes a lien upon the Lot against which such Assessments are made, as provided by Article VI of the Declaration. Upon the activation of the Association pursuant to Article IV of the Declaration, a Member may be suspended upon not less than fifteen (15) days prior, written notice sent

by first class or certified mail of the proposed suspension of a Member and the reason therefor has been delivered to such Member in accordance with the procedures set forth in Section 4.06 hereof. Such notice shall set forth the date, place, and time such Member shall be given the opportunity to be heard orally by the Board of Directors, which shall be not less than five (5) days before the effective date of the suspension. Such written notice shall also set forth the address of the Board of Directors to which and by which such Member may be heard. Upon the affirmative vote of two-thirds of the Board of Directors of the Association, acting fairly and reasonably taking into consideration all of the relevant facts and circumstances, the Board of Directors may suspend a Member; however, if the Member is suspended for failure to pay Assessments, upon the Member's payment in full of such Assessments, such rights and privileges shall be automatically restored. A Member who has been expelled or suspended shall remain liable to the Association for dues, assessments, or fees as a result of obligations incurred or commitments made before such suspension.

Section 3.03. Voting Rights. Upon activation of the Association pursuant to Article IV of the Declaration, the Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be every Owner, including Declarant, and shall be entitled to one vote for each Lot owned. Declarant's Class A Membership shall continue for so long as it owns at least one Lot. When more than one person, other than Declarant, holds title to a Lot, all such persons shall be Members, but shall have collectively only one vote, and in no event shall more than one vote be cast with respect to any one Lot.

In the event joint Owners of a Lot fail to determine the manner in which their vote is to be cast, such vote shall nevertheless be counted and considered as an affirmative vote for the measure. In addition, when such a vote is considered as affirmative for the measure and (i) is or could be the "deciding" vote necessary to carry the measure, and (ii) all joint Owners of each Lot casting an affirmative vote are required to execute an instrument in connection with the passage of the measure (such as in the case of an Amendment in accordance with Section 9.03 of the Covenants), and (iii) one or more of the joint Owners of such Lot fail to determine the manner in which their vote is to be cast refuses to execute such required instrument, the President of the Association may attach a sworn affidavit to such instrument reciting the circumstances of the vote (including a statement that the joint Owners of such Lot received proper notice in accordance with these By-Laws, failed to determine the manner in which their vote should be cast and as a consequence their vote was considered as affirmative in the voting on the measure in accordance with these By-Laws) and thereupon the validity and enforceability of such instrument shall not be affected or be subject to question by reason of the lack of the execution thereof by any one or more of the joint Owners of such Lot.

When one joint Owner signs a proxy or purports to vote for his or her co-Owners, such vote shall be counted and bind all, unless the other joint owners object in writing.

(b) **Class B.** Declarant, its successors and assigns, shall be the only Class B Member. The Class B Member shall be entitled to four (4) votes for each of the Lots in which it holds an interest. The Class B Membership of Declarant shall cease when the Declarant executes and records in the R.M.C. Office an instrument forfeiting its Class B Membership.

Section 3.04. Proxies. Each Member entitled to vote may vote in person or by proxy at all meetings of the Association. All proxies shall be executed in writing by the Member or his duly authorized attorney-in-fact, and filed with the Secretary of the Association or such other officer or agent of the Association authorized to tabulate votes before or at the time of the meeting; provided, however, that proxies shall not

be required for any action which is subject to a referendum. Unless a proxy states otherwise, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless it states otherwise. An appointment of a proxy is revoked by the person appointing the proxy (i) attending any meeting and voting in person, or (ii) signing and delivering to the Secretary or other officer or agent of the Association authorized to tabulate votes for the Association either a written statement that the appointment of the proxy is revoked or a subsequent appointment form. If at least ten (10) days (thirty {30} days if notice is mailed by other than first class or registered mail) prior to a duly called meeting, a Member is informed pursuant to the provisions of Section 4.05 and 4.06 herein of (a) the time and place of the meeting, (b) the agenda for the meeting, and (c) such data as is then available relative to the issues on which there will be a vote, and a proxy form is included in such mailing, and the Member neither attends the meeting nor returns an executed proxy, then such Member shall be deemed present for purposes of determining a quorum, and shall be deemed to have given his proxy to and for the majority present and voting. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date; and no proxy shall be valid for more than three (3) years from the date of execution. Any proxy shall automatically cease upon sale by the Member of his Lot.

ARTICLE IV

MEETINGS

Section 4.01. Initial Meeting. Upon the activation of the Association, the initial meeting of the Association shall be held upon notice by the Declarant pursuant to provisions of Article IX, Section 9.01(a) of the Declaration, as soon as the Declarant deems practicable and convenient. The following matters, and such other business as Declarant deems appropriate, shall be the subject of the initial meeting:

- (a) adoption of a fiscal year;
- (b) approval of a budget for a fiscal year;
- (c) determination of the date for commencement of the Annual Assessment, the billing cycle therefor, and the date upon which such installments shall be due and payable;
- (d) determination of the date of the first and subsequent annual meetings; and
- (e) election of the initial three person Board of Directors in accordance with Article V, Section 5.02 of these By-Laws.

Section 4.02. Annual Meetings. The annual meetings of the Association shall be held on a date determined by the Board. Any business which is appropriate for action of the Members may be transacted at an annual meeting.

Section 4.03. Special Meetings. Special meetings of the Association's Members may be demanded and called for any one or more lawful purposes by the Association's President, two (2) Directors, or the holders of record of five (5%) percent of the Association's voting power entitled to vote at such meeting, provided such holders comply with such demand provisions set forth in these By-Laws. Upon the written, signed, and dated demand, which states the purpose of the meeting, being delivered in accordance with the foregoing to an officer of the Association personally or by registered or certified mail, the President or Secretary on or before the thirtieth (30th) day after the date of such demand shall fix the date and time of the meeting and provide notice thereof to the Members in accordance with Section 4.05 hereof. If the notice of the meeting is not given within thirty (30) days after the demand is made to the officer of the Association, a person signing the demand may set the time and place of the meeting and give notice thereof in accordance with Section 4.05 hereof. Special meetings of the Members shall be held at a time and

location designated by the person calling the meeting in the notice of the meeting; provided, however, that if the notice does not designate a time and location, such meetings shall be held at the Association's principal office at the hour of ten o'clock in the morning on the date designated in the notice of the meeting. In the event that the President and Directors timely designate different times or locations, then the designations of the Directors shall control; provided, however, any notice changing the time or place of the meeting shall be effective only if timely received by the Members in accordance with Section 4.05 hereof.

Section 4.04. Place of Meetings. All meetings of the Association shall be held at such convenient place as the Board of Directors may determine.

Section 4.05. Notice of Meetings, Waiver of Notice. Oral or written notice of all meetings of Members shall be given no fewer than ten (10) days, or if notice is mailed by other than first class or registered mail, thirty (30) days, nor more than sixty (60) days before the meeting date by any method permitted hereunder, to all Members of record entitled to vote at such meeting; provided, however, the date upon which such notice shall be deemed effective shall be determined in accordance with Section 4.06 hereof. Such notice shall state the date, time, and place of the meeting, and if required by these By-Laws, the purpose or purposes for which such meeting was called. Notice of a meeting of Members need not be given to any Member who, in person or by proxy, signs a waiver of notice either before or after the meeting, and such waiver is delivered to the Association for inclusion in the Association's records. To be effective such waiver shall contain statements or recitals sufficient to identify beyond reasonable doubt the meeting to which it applies. Such statements or recitals in such waiver of notice may, but need not necessarily, include the reference to the date and purpose of the meeting and the business transacted thereat. Statement or recital of the proper date of a meeting shall be conclusive identification of the meeting to which a waiver of notice applies unless the waiver contains additional statements or recitals creating a patent ambiguity as to its proper application. A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

Section 4.06. Effective Date of Member Notices. An oral notice is permissible if reasonable under the circumstances, and is effective when communicated in a comprehensible manner. Written notice, if in comprehensible form, is effective at the earliest of the following:

- (a) When received;
- (b) Five (5) days after its deposit in the United States mail, if mailed correctly addressed with first class postage affixed;
- (c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or
- (d) Fifteen (15) days after its deposit in the United States mail, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

Written notice is correctly addressed to a Member if addressed to the Member's address shown on the Association's current list of Members (the "List"). A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to Members constitutes a written notice or report if addressed or delivered to the Member's address shown on the List, or in the case of Members who are

residents of the same household and who have the same address on the List, if addressed or delivered to one of such Members, at the address appearing on the List.

Section 4.07. Quorum Requirements. The presence at any meeting of Members entitled to cast, or of proxies entitled to cast, fifty-one (51%) percent of the total votes of the Association shall constitute a quorum for any action governed by these By-Laws. Any Owner who does not execute and return the proxy form sent to such Owner in the required mailing shall be deemed to be present for the purposes of determining the presence of a quorum. Any action governed by the Declaration applicable to the Property shall require a quorum as therein provided.

Section 4.08. Action Without Meeting. To the fullest extent permitted by applicable law, Members may take action without a meeting by written consent as to such matters and in accordance with such requirements and procedures authorized hereunder. Such written consent must be signed by at least eighty (80%) percent of the Members and delivered to the Association for inclusion in the corporate records. Written notice of Member approval pursuant to this Section must be given to all Members who have not signed such written consent. If written notice is required, Member approval pursuant to this Section shall be effective ten (10) days after written notice is given and effective in accordance with Sections 4.05 and 4.06 hereof.

Section 4.09. Power of Referendum. The Members of the Association shall have the power, by referendum, to approve or reject certain actions proposed to be taken by the Association. In the event fifty-one (51%) percent or more, of the total votes actually returned to the Association within the specified time shall be in favor of such action, the referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" is specifically expressed herein or in any amendments or supplements hereto or in the Declaration, that higher percentage shall control in that instance.

Section 4.10. List of Owners and Members of Record. For the purpose of determining Members entitled to vote at any meeting of Members, or in connection with any other proper purpose requiring a determination of Members, the Board of Directors shall by resolution fix a record date for such determination. Unless otherwise provided for in advance by resolution of the Board of Directors, the record date set by the Board of Directors shall be no more than seventy (70) days, and not less than the last day for timely giving notice, before the meeting or action requiring a determination of Members is to occur. If the Board of Directors fails to set a record date, the Members at the close of business on the business day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting and to vote thereat.

The Members of record appearing in the books of the Association at the close of business on the record date so fixed shall constitute the Members in respect of the activity in question.

A determination of Members of record entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the record date for determining Members entitled to notice of the original meeting.

After fixing a record date for notice of a meeting, the Association shall prepare an alphabetical list of names of all Members who are entitled to notice of the meeting and shall list the Members by classification of membership, if any. The list shall show the address and number of votes each Member

is entitled to vote at the meeting. The Association shall prepare on a current basis through the time of the membership meeting a list of Members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the List of Members. Such list of Members shall be available for inspection by any Members for purposes of communication with other Members concerning the meeting, beginning the date after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the Association's principal office.

Subject to the provisions of applicable laws, a Member, Member's agent, or Member's attorney shall be entitled on written demand, at the Member's expense, to inspect and copy the List at a reasonable time during the period it is available for inspection. The Association shall make the List of Members available at the meeting, and any Member, a Member's agent, or Member's attorney shall be entitled to inspect the List at any time during the meeting or any adjournment. Notwithstanding the foregoing, a Member may inspect and copy the membership list only if (i) his demand is made in good faith and for a proper purpose; (ii) he describes with reasonable particularity his purpose; and (iii) the List is directly connected with his purpose.

Section 4.11. Minutes of Meetings. The Secretary of the Association shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Association. The minutes shall be made available for examination by any Member at the office of the Association during normal business hours.

ARTICLE V

BOARD OF DIRECTORS

Section 5.01. Powers and Duties. Upon activation pursuant to the provisions of Article IV of the Declaration, the Association shall be governed and its business affairs managed by and through a Board of Directors. The powers herein granted to the Association may be exercised by such Board of Directors acting through the Officers of the Association as provided for in Article VI hereof, without any further consent of the Owner and Members, except as may be limited or otherwise required by the Declaration or the within By-Laws, and, in the event the Association files the same with the Secretary of State of South Carolina pursuant to Article I of the Declaration, the Articles of Incorporation of the Association.

The Board of Directors shall have the authority to carry out the powers and functions of the Association set forth in the Declaration and in addition thereto, the following powers and duties:

(a) to adopt and publish rules and regulations governing the use of the Common Properties, rights, amenities, personal property, and facilities, and the personal conduct of the Members and their guests and invitees thereon, and to establish penalties for the infraction thereof;

(b) to suspend the voting rights and right to use the Common Properties, together with any other amenities and facilities, if any, of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association, subject to the requirements set forth in Section 3.02 hereof;

(c) to exercise for and on behalf of the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these By-Laws or the Declaration;

(d) to employ a Property manager, independent contractors, or such other employees as the Board may deem necessary, to prescribe their duties and enter into contracts in connection therewith;

(e) to grant utility, ingress/egress, and other easements on, over, and across the Common Properties, as provided in the Declaration and/or deed or other instrument of conveyance from Declarant;

(f) to sell, lease, license, transfer, or convey portions and/or all of the Common Property(ies) without a vote of the Members of the Association in order to (i) divest the Association of properties which are not necessary for the functions and services which the Association is authorized to carry out and deliver; or (ii) correct errors or mistakes in deeds, easements, leases, or other legal instruments to or from the Association;

(g) to exercise for the Association all powers and authority necessary to carry out the intent of the Declaration and the By-Laws;

(h) to cause to be kept a complete record of all acts and affairs of the Association and to present a statement thereof to the Members at any annual or special meetings of the Association when such statement is requested in writing by a one-third (1/3rd) vote of the Association Members;

(i) to supervise all Officers, agents, and employees of the Association and to see that their respective duties are properly performed;

(j) to perform or cause to be performed such action(s) and services as are set forth in the Declaration and/or prescribed by the Association including, but not limited to:

(i) determining the amount of the annual budgets and fixing and levying the amounts of all Assessments;

(ii) sending written notice of all Assessments to every Owner subject thereto; and

(iii) in the discretion of the Board, foreclosing the lien against any Lot for which Assessments are not paid within thirty (30) days after the due date or to bring an action at law against any Owner personally obligated to pay the same;

(k) to enforce by legal means the provisions of the Articles of Incorporation, if any, the Declaration, these By-Laws, and the rules and regulations promulgated by the Board;

(l) to pay all costs associated with the Common Properties, including taxes, assessments, power, water, sewer, and other utility services and all other charges in connection with the operation and maintenance of the Common Properties, and/or the operation and affairs of the Association, rendered to the Association and not billed to the Owners of Lots;

(m) to the extent provided by law, the Board shall have the power and authority to pledge or mortgage the properties of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions. Notwithstanding anything in the Declaration to the contrary, the Association shall not be allowed to reduce the limits of the minimum regular assessments at any time there are outstanding any amounts in repayment of any such loans.

(n) to implement erosion control steps and/or devices and to levy Assessments therefor, should the Board of Directors determine that such steps and/or devices are necessary; and

(o) to exercise for the Association all powers, duties and authority vested in or delegated to the Association by the Declaration and not reserved to the Members by other provisions of these By-Laws, the Declaration, or the Articles of Incorporation, if any.

Section 5.02. Number, Tenure, Qualifications, and Compensation. Upon the activation of the Association, the initial Board of Directors shall consist of three (3) members initially appointed by Declarant. Such initial Board of Directors shall serve and Declarant shall have the right to appoint or remove any member or members of the Board of Directors until Declarant relinquishes control of the Association as set forth in Section 9.01 of the Declaration. Thereafter, the Board of Directors shall consist of three (3) members elected by the Association Members, and shall serve for a term of three (3) consecutive years. No cumulative voting is allowed, and Directors need not be Owners or Association Members. Directors shall not receive any salaries for their services, but by resolution of the Board, any Director may be reimbursed for his actual expenses incurred in the performance of his duties as a Director. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 5.03. Removal and Vacancies. Subject to the provisions of the Declaration, any Director may be removed from the Board by the Declarant so long as Declarant retains control of the Association pursuant to Section 9.01 of the Declaration, or by written consent of the Declarant and a majority vote of the Association Members after providing written notice of the removal to the Director and the Association's President. In the event Declarant has relinquished control of the Association, then any Director may be removed by majority vote of the Association Members. A Director elected by the Association Members may be removed by the Association Members only at a meeting called for the purpose of removing the Director, and the meeting notice states that the purpose, or one of the purposes, is the removal of the Director.

Vacancies in the Board of Directors shall be filled by Declarant so long as Declarant retains control of the Association, and thereafter by a majority of the remaining Directors. The term of such newly appointed Director shall expire simultaneously with the term of the remaining Directors.

Section 5.04. Quorum and Manner of Acting. A majority of the Board of Directors actually holding office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If a quorum is not present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum is present. The act of a majority of Directors present at a meeting at which a quorum is present shall be the act of and binding upon the Board of Directors.

Section 5.05. Meetings.

(a) Initial Meeting. Upon activation of the Association, the initial meeting of the Association shall be held upon notice by the Declarant as soon as the Declarant deems practicable and convenient.

(b) Annual Meetings. An annual meeting of the Board of Directors shall be called and held for the purpose of annual organization, changes in the established number of Directors, if any, appointment of Officers and committees, and the transaction of any other business. If such meeting is held promptly

after and at the place specified for the annual meeting of Members, no notice of the Annual meeting of the Board of Directors need be given. Otherwise, such annual meeting of the Board of Directors shall be held at such time (at any time prior to and not more than thirty (30) days after the annual meeting of the Members), and place as may be specified in the notice of the meeting. The Board of Directors may by resolution provide for the holding of additional regular meetings without notice other than such resolution; provided, however, the resolution shall fix the dates, times and places (which may be anywhere within or without the State of the Association's principal office) for these regular meetings. Except as otherwise provided by law, any business may be transacted at any annual or regular meeting of the Board of Directors.

(c) Special Meetings. Special meetings of the Board of Directors may be called for any lawful purpose or purposes by the President or any two (2) Directors by giving notice thereof to the Board members as provided herein. The person calling a special meeting shall give, or cause to be given, to each Director at his business address, notice of the date, time and place of the meeting by any means of communication acceptable hereunder not less than two (2) days prior thereto. An oral notice is permissible if reasonable under the circumstances and is effective when communicated in a comprehensible manner.

Written notice is correctly addressed to a Director if addressed to the Director's business address shown on the Corporation's current records. If notice is given by telegram, the notice shall be deemed delivered when the telegram is delivered to the telegraph company and the transmission fee therefor is paid. If notice is given by telecopier facsimile transmission, the notice shall be deemed delivered when the facsimile of the notice is transmitted to a telecopier facsimile receipt number designated by the receiving Director, if any, so long as Director transmits to the sender an acknowledgment of receipt. The notice of a special meeting shall describe the purpose of such special meeting. Any time or place fixed for a special meeting must permit participation in the meeting by means of telecommunications as authorized below.

(d) Notice of Meetings and Waiver of Notice. When notice of any meeting of the Board is required, such notice shall be given one day (or at least two days' notice to each Director of the date, time, and place, of the meeting in the case of a special meeting of the Board) prior to such meeting by notice either personally to a Director or by sending a copy of the notice by first class U.S. Mail, postage thereon fully prepaid, or by overnight courier to such address as shown on the records of the Association for its Director. Any Director may waive notice of any meeting at or before the time of the meeting stated herein, and attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, or the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice at such meeting, unless specifically provided by law, the Articles of Incorporation, if any, these By-Laws or the Declaration.

(e) Place of Meetings. All meetings of the Directors shall be held at such convenient place as the Board may determine.

(f) Minutes of Meetings. The Secretary of the Association shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Board of Directors. A copy of the minutes shall be made available for examination by any Member at the office of the Association during normal business hours.

Section 5.06. Voting. Each Director shall have one vote on all matters acted upon by the Board of Directors. The affirmative vote of two Directors shall be sufficient for any action unless otherwise specified in these By-Laws.

Section 5.07. Informal Action by Directors. Any action required or permitted by law to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent or consents, in writing, setting forth the action so taken shall be signed by all of the Directors, which consent(s) shall be filed with the Secretary of the Association as part of the Association's records. Telephone conference meetings where the action of the Board is subsequently reduced to a written memorandum and signed by all the Directors within seven (7) days after the telephone conference shall be effective as if occurring at a duly called meeting. Actions under this Section are effective when the last Director executes a consent.

ARTICLE VI

OFFICERS OF THE ASSOCIATION

Section 6.01. Designation of Officers. The Officers of the Association shall be a President, Vice President, Secretary, and Treasurer, or as otherwise determined by the Board of Directors, in their sole discretion. The Board of Directors may further elect such other Officers as they deem necessary or desirable and such Officers shall have the authority to perform the duties prescribed by the Board of Directors, from time to time. Any two or more offices may be held by the same person. The President shall be a Director of the Association, and other Officers may be, but need not be, Directors of the Association.

Section 6.02. Election, Term of Office, Vacancies and Removal. The Officers of the Association shall be appointed and removed by the Declarant until Declarant relinquishes control of the Association as set forth in Section 9.01 of the Declaration. Thereafter, the Officers shall be elected annually by the Board of Directors following each annual meeting of the Association Members. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by Declarant so long as Declarant retains control of the Association as aforesaid, and thereafter, by the Board of Directors, for the unexpired portion of the term. Any Officer may be removed by the Declarant or the Board of Directors whenever, in their sole discretion, such removal is in the best interest of the Association.

Section 6.03. Powers and Duties. The Officers of the Association shall have such powers and duties as generally pertain to their respective offices, and such other powers and duties as may be prescribed or imposed by the Board of Directors, from time to time.

Section 6.04. President. The President shall be the chief executive officer of the Association, and shall be a member of the Board of Directors. The President shall execute on behalf of the Association all instruments requiring such execution except to the extent the signing and execution thereof shall be expressly delegated by the Board to another Officer or agent. The President shall preside at all meetings of the Association and the Board of Directors and shall have all general powers and duties which are customarily vested in the office of President of a property owners' association, including the power to appoint committees.

Section 6.05. Vice-President. The Vice President shall act under the direction of the President and shall perform such duties as may be imposed by the Board. In the absence or disability of the President, the Vice President shall perform the duties and exercise the powers of the President.

Section 6.06. Secretary. The Secretary shall act under the direction of the President and subject to the direction of the President shall attend all meetings of the Board and the Association, and record the proceedings thereof. The Secretary shall give or cause to be given, notice of all meetings of the Association and the Board as required hereunder, and shall perform such other duties as may be prescribed by the President and the Board of Directors.

Section 6.07. Treasurer. The Treasurer shall act under the direction of the President and shall keep or be responsible for keeping the accounts of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the President or the Board of Directors and shall render upon request or at the regular meetings of the Board of Directors an account of all transactions of the Association and its financial condition. The Treasurer shall be further responsible for mailing or having mailed all Assessment, meeting, and proxy notices and shall keep current the List of all Owners and Members required under Section 4.10 hereof.

ARTICLE VII

COMMITTEES

Section 7.01. Committees of Directors. The Board may designate one or more committees, each of which shall consist of two or more Directors and such other Members as the Board shall determine, which committees to the extent authorized by the Board, shall have and exercise the authority of the Board in the management of the affairs of the Association; provided, however, that no such committee shall have the authority of the Board as to the following matters: (a) the dissolution, merger, or consolidation of the Association; the amendment of the Articles of Incorporation of the Association, if any, or the sale, lease or exchange of all or substantially all of the property of the Association; (b) the designation of any such committee or the filling of vacancies in the Board of Directors or in any such committee; (c) the amendment or repeal of these By-Laws or the Declaration, or the adoption of new By-Laws; (d) the amendment or repeal of any resolution of the Board or (e) any other matter expressly prohibited by the South Carolina Code of Laws.

Section 7.02. Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the affairs of the Association may be designated by a resolution adopted by a majority of Directors present at a duly called meeting. Such committees shall perform such duties and have such powers as may be provided in the resolution.

Section 7.03. Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board.

ARTICLE VIII

CONTROL

Section 8.01. Control by Declarant. NOTWITHSTANDING ANY OTHER PROVISION IN THE DECLARATION, THE ARTICLES OF INCORPORATION, IF ANY, OR BY-LAWS OF THE ASSOCIATION TO THE CONTRARY, Declarant hereby specifically retains the right, from time to time, to appoint and/or remove any member or members of the Board of Directors so long as Declarant retains control of the Association pursuant to Section 9.01 of the Declaration. Every grantee of an interest in the Subdivision, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have

the authority to appoint and/or remove Directors and Officers of the Association in accordance with the foregoing provisions. Upon the expiration or earlier termination of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to Section 9.01 of the Declaration, such right shall pass to the Owners, including Declarant if Declarant is then a Class A Association Member.

Section 8.02. Termination or Assignment of Declarant's Control of the Association. As soon as reasonably possible (but in no event more than sixty {60} days) after (i) the termination of Declarant's Class B Association Membership; and (ii) Declarant relinquishes control of the Association pursuant to the provisions of Section 9.01 of the Declaration, the Board of Directors shall call a special meeting of the Association wherein the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the previous Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has had the same in its possession.

ARTICLE IX

FINANCES AND MANAGEMENT

Section 9.01. Fiscal Year. The fiscal year of the Association shall be determined by the Board of Directors.

Section 9.02. Corporate Records. The Association shall keep as permanent written records a copy of the minutes of all meetings of its Members and Board of Directors, a record of all actions taken by the Members or Directors without a meeting, and a record of all actions taken by committees of the Board of Directors. The Association shall maintain appropriate accounting records. The Association or its agent shall maintain a record of the name and address, in alphabetical order, of each Member. The Association shall keep a copy of the following records at its principal office:

- (a) if the Association is incorporated pursuant to Article I of the Declaration, its articles or restated articles of incorporation and all amendments thereto currently in effect;
- (b) its by-laws or restated by-laws and all amendments thereto currently in effect;
- (c) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of the Members or any class or category of Members;
- (d) the minutes of all meetings of Members and records of all actions approved by the Members for the past three (3) years;
- (e) all written communications to Members generally within the past three (3) years, including financial statements furnished for the past three (3) years;
- (f) a list of the names and business or home address of its current Directors and Officers; and
- (g) The Association's most recent report of each type required to be filed by the Association with the South Carolina Secretary of State, if any.

Section 9.03. Budget. The Board of Directors shall prepare and submit, or cause to be prepared and submitted to the Members at each annual meeting, a proposed budget for the Association for the fiscal year. The proposed budget shall set forth with particularity the anticipated Common Expenses for the fiscal year and the amount of money needed to establish reasonable reserves for the payment of Common Expenses and contingencies.

Section 9.04. Approval of Budget. The proposed budget, as it may be amended from time to time, shall be submitted to a vote of the Members, and when approved shall become the budget of the Association for the fiscal year. The terms of the budget shall be binding upon the Board of Directors unless and until such budget is amended by action of the Members.

Section 9.05. Financial Statements. The Association, upon written demand from a Member, shall furnish to the demanding party the Association's latest annual financial statements which may be consolidated or combined statements of the Association and one or more of its subsidiaries or affiliates, if applicable. Such statements shall include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the Association on the basis of generally accepted accounting principles, the annual financial statements also must be prepared on that basis. If the annual financial statements are reported upon by a public accountant, the accountant's statement must accompany them. If not, the statements must be accompanied by the statement of the President or person responsible for the Association's financial accounting records (1) stating whether or not to the President's or such person's reasonable belief the financial statements were prepared on the basis of generally accepted accounting principles, and if not, describing the basis of preparation, and (2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

Section 9.06. Management of the Association.

(a) Property Manager (the "Manager"). The Board of Directors shall have the right and authority to employ a property manager to assist in the management of the Subdivision and administration of the Association in accordance with the terms and provisions of the Declaration, the By-Laws and the Articles of Incorporation, if any. The Manager shall provide such services and perform such duties as the Board of Directors shall determine, and the Manager shall confer fully and freely with the Board of Directors and shall attend meetings of the Board and the Association when so requested by the Board.

(b) Collection of Assessments. Members shall be personally liable for all Assessments, and shall pay same promptly when due. The Board of Directors shall take prompt action to collect by suit, foreclosure, or other lawful method any past due Assessment. If any overdue Assessment is collected by an attorney or by action at law, the Member owing the same shall be required to pay all reasonable costs of collection, including attorney's fees.

(c) Delinquent Payment Fee. In addition to the interest set forth in Article VI, Section 6.05 of the Declaration, an Assessment not paid within thirty (30) days following the date when due shall be subject to a "Delinquent Payment Fee" of one and one-half (1.5%) percent of the unpaid balance per month from the due date and each month or part thereof thereafter so long as the Assessment or any part thereof remains delinquent. The Delinquent Payment Fee shall be added to and collected in the same manner as the Assessment. The said Board of Directors may, in its sole discretion, waive all or any portion of a Delinquent Payment Fee imposed pursuant to this Section if it affirmatively appears that the failure to pay the Assessment when due was caused by circumstances beyond the control of the Member.

(d) Payments. The Board of Directors shall provide for payment of all debts of the Association from the funds collected by the Association. Expenditures for Common Expenses or other expenditures specifically approved in the budget may be paid without further approval unless the Board of Directors shall otherwise determine. All other expenditures in excess of One Thousand and No/100 (\$1,000.00) Dollars shall be reviewed and approved by the President or a minimum of two (2) members of the Board of Directors before cost is incurred or payment is made unless other provision for the payment thereof has been set forth herein or in the Declaration. All checks and requests for withdrawals drawn upon any account of the Association shall be signed by the President and the Treasurer or by any two Officers of the Association designated by the Board of Directors. The Board may authorize the Manager to draw checks from any account of the Association and the Board may also authorize the Manager to make disbursements from the petty cash fund, if any.

(e) Bonding. The Board of Directors shall procure a fidelity bond in an amount to be determined by the Board covering each and every individual authorized to withdraw funds from any account maintained by the Association. The cost of such bond shall be a Common Expense.

Section 9.07. Inspection Rights. The Members shall have only such rights to inspect records of the Association to the extent, and according to the procedures and limitations prescribed by applicable law.

ARTICLE X

LIABILITY AND INDEMNIFICATION

Section 10.01. Liability of Directors. No Director or Officer of the Association shall be liable to any Owner for any decision, action, or omission made or performed by such Director or Officer in the course of his duties unless such Director or Officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these By-Laws.

Section 10.02. Indemnification of Director. The Association shall indemnify and hold harmless each Officer and Director to the extent and in the manner permitted by law, from any liability claimed or imposed upon him by reason of his position or decision, action or omission as an Officer of Director if all of the following conditions are satisfied:

(a) Such Officer or Director has not acted in bad faith or reckless disregard of the rights of any person or of the terms of the Declaration or these By-Laws;

(b) Such Officer or Director reasonably believed:

- (i) In the case of conduct in his official capacity with the Association, that his conduct was in the best interest of the Association;
- (ii) In other cases, that his conduct at least was not contrary to the best interests of the Association;
- (iii) In the case of criminal proceedings, that he had no reasonable cause to believe his conduct was unlawful.

(c) Such Director or Officer gives the Association adequate notice of the claim, assertion or imposition of liability to permit the Association and/or its insurer reasonable opportunity to defend against the same.

(d) Such Director or Officer cooperates with the Association in its defense against such liability.

The expense of indemnifying or defending such Director or Officer as provided herein shall be a Common Expense of the Association, and shall be borne by all Members, including such Director or Officer.

ARTICLE XI

AMENDMENTS

Section 11.01. These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the Board of Directors, at a regular or special meeting of the Board by a vote of a majority of all Directors, provided notice of such pending action with a copy or summary of the proposal is given in the notice for said meeting, and provided, further, that Declarant consents to such amendment so long as Declarant retains its Class B Association Membership.

These By-Laws may further be altered, amended or repealed and new By-Laws may be adopted by the Declarant, in its sole discretion, so long as Declarant retains its Class B Association Membership.

These By-Laws may also be amended by a two-thirds (2/3rds) vote of the Members at a duly called meeting of the Association provided notice of such proposed amendment is given in the notice for such meeting, and provided further that Declarant consents in writing to such amendment so long as Declarant retains its Class B Membership.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01. Merger. To the extent and in the manner provided by law, the Association may participate in mergers and consolidation with other non-profit associations organized for the same or similar purposes, provided, however, that any such merger or consolidation shall require approval by a vote of two-thirds (2/3rds) of the total votes cast at a meeting duly called for such purpose.

Upon merger or consolidation of the Association with another association or associations, its property rights and obligations may, by operation of law, be transferred to the surviving or consolidated association. However, the properties, rights, and obligations of another association which may, by operation of law, be added to the obligations of this Association as a surviving corporation pursuant to such merger, shall be maintained separately from the property rights and obligations hereunder. The surviving or consolidated association may administer the Common Properties, however, no merger or consolidation shall affect any revocation, change or addition to the Declaration.

Section 12.02. Dissolution. If the Association Members determine that it is in the best interest of the Association and/or the Association Members to completely dissolve the Association, such action may be taken by an affirmative vote of not less than three-fourths (3/4ths) of the Association Members in person or by proxy, at a meeting duly called and held for such purpose; provided that Declarant consents in writing so long as Declarant retains its Class B Association Membership.

Section 12.03. Seal. The seal of the Association shall be circular in form and shall have inscribed thereon the name of the Association and the year of its organization.

Section 12.04. Conflicts. Any conflict between the terms of these By-Laws and the Declaration shall be resolved in the following order (i) the Declaration; and (ii) the By-Laws. In the case of any conflict between these By-Laws and any regulation promulgated by the Board of Directors, these By-Laws shall control.

Section 12.05. Waiver. No provision of these By-Laws or any regulation promulgated by the Board pursuant thereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 12.06. Severability. The provisions of these By-Laws are severable, and the invalidity of one or more provision hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remaining provisions.

Section 12.07. Captions. Captions are inserted herein only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision.

Section 12.08. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine, and non-personal entities, as well as the singular and plural wherever the context requires or permits.

Section 12.09. Roberts Rules. All meetings of the Members and of the Board of Directors shall be conducted in accordance with Roberts Rules of Order Revised.

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BLUE HERON POND ROAD

EXHIBIT "C"

 BUILDABLE AREA

 PRESERVATION ZONE

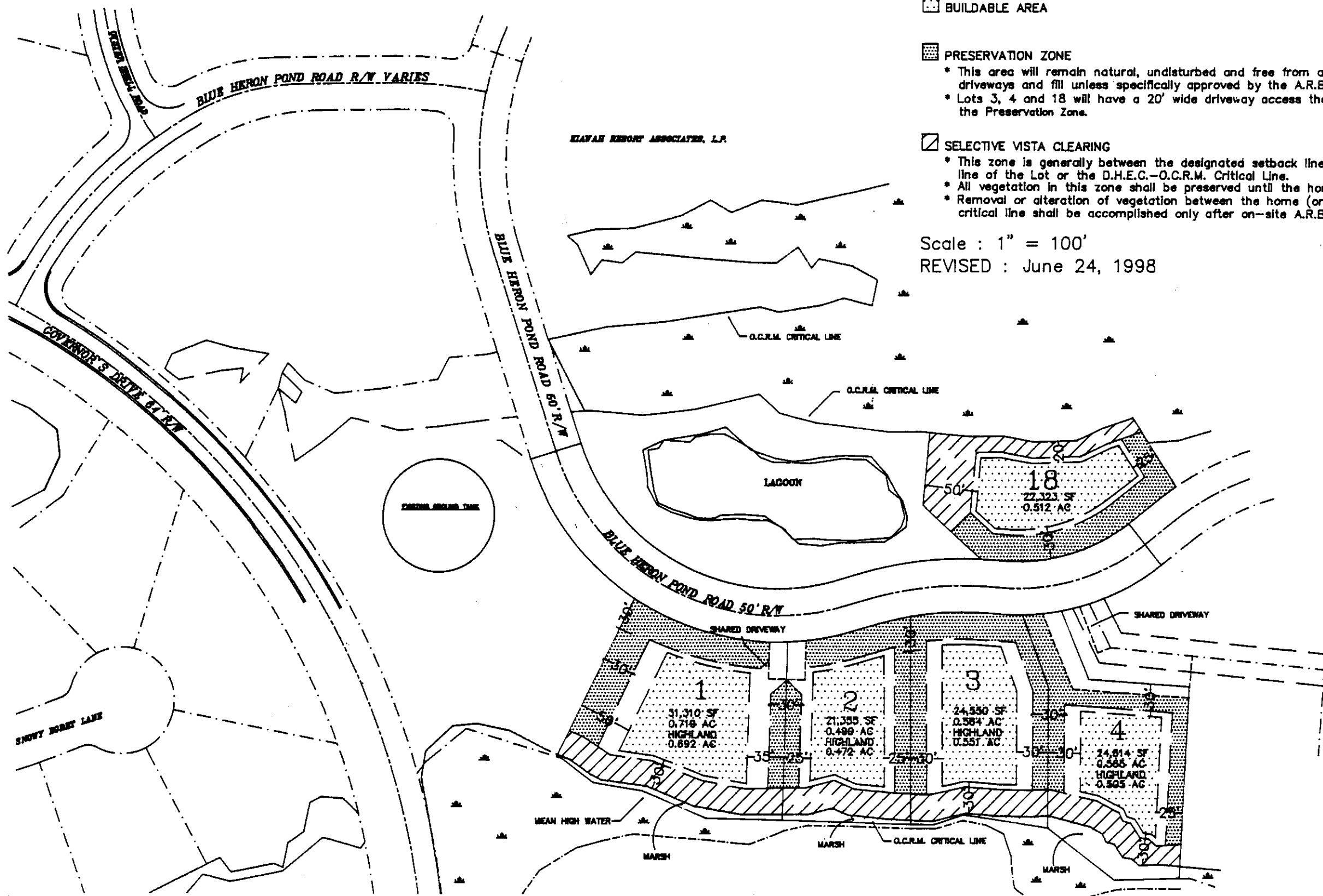
- * This area will remain natural, undisturbed and free from any development including driveways and fill unless specifically approved by the A.R.B.
- * Lots 3, 4 and 18 will have a 20' wide driveway access that can penetrate the Preservation Zone.

 SELECTIVE VISTA CLEARING

- * This zone is generally between the designated setback lines and either the property line of the Lot or the D.H.E.C.-O.C.R.M. Critical Line.
- * All vegetation in this zone shall be preserved until the home is completely framed.
- * Removal or alteration of vegetation between the home (or other structure) and the critical line shall be accomplished only after on-site A.R.B. approval.

Scale : 1" = 100'


REVISED : June 24, 1998




BLUE HERON POND ROAD

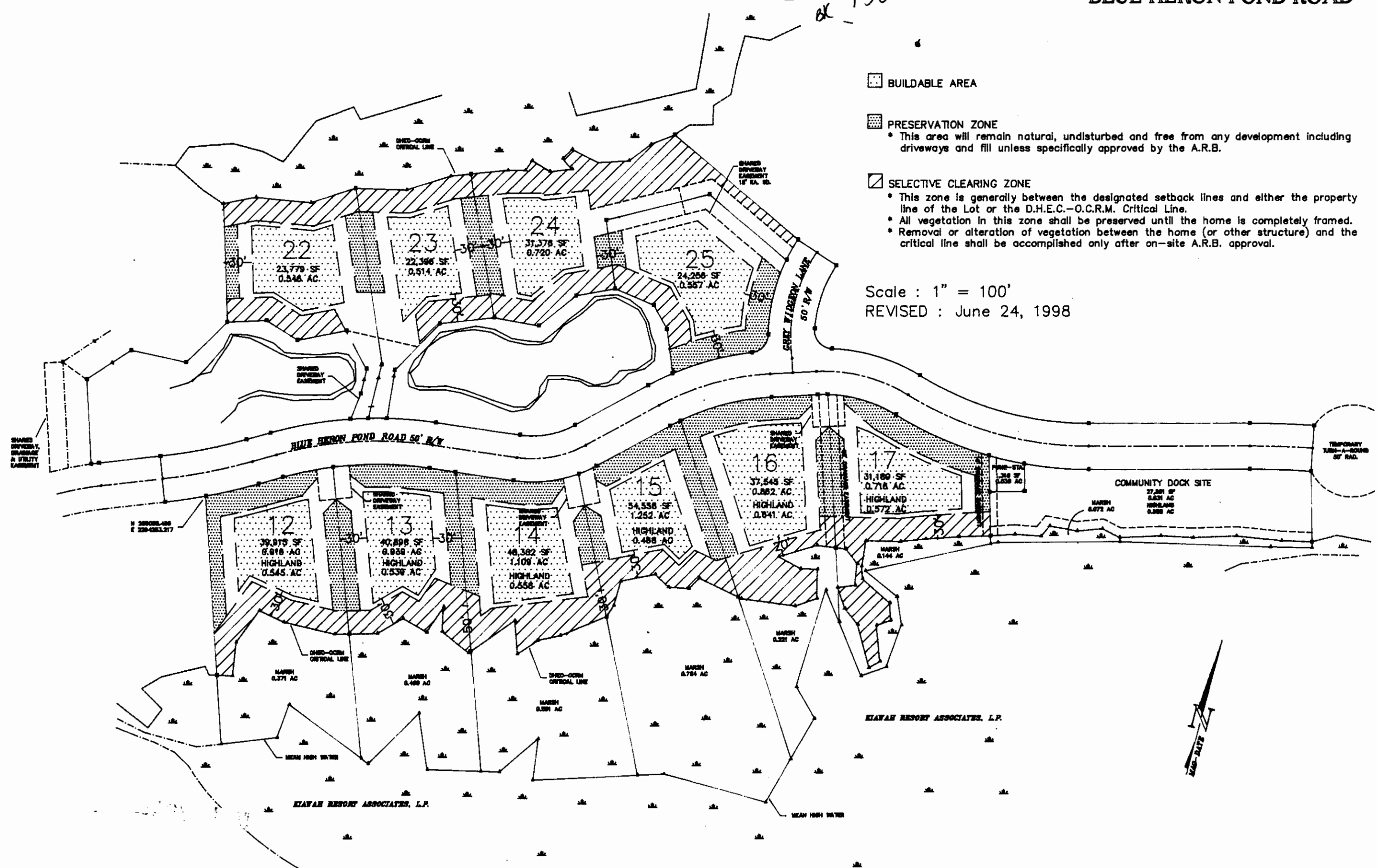
OK P307 pc 801

 BUILDABLE AREA

 PRESERVATION ZONE
 * This area will remain natural, undisturbed and free from any development including driveways and fill unless specifically approved by the A.R.B.

 SELECTIVE CLEARING ZONE
 * This zone is generally between the designated setback lines and either the property line of the Lot or the D.H.E.C.-O.C.R.M. Critical Line.
 * All vegetation in this zone shall be preserved until the home is completely framed.
 * Removal or alteration of vegetation between the home (or other structure) and the critical line shall be accomplished only after on-site A.R.B. approval.

Scale : 1" = 100'
 REVISED : June 24, 1998




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CEDAR WAX WING COURT

 BUILDABLE AREA

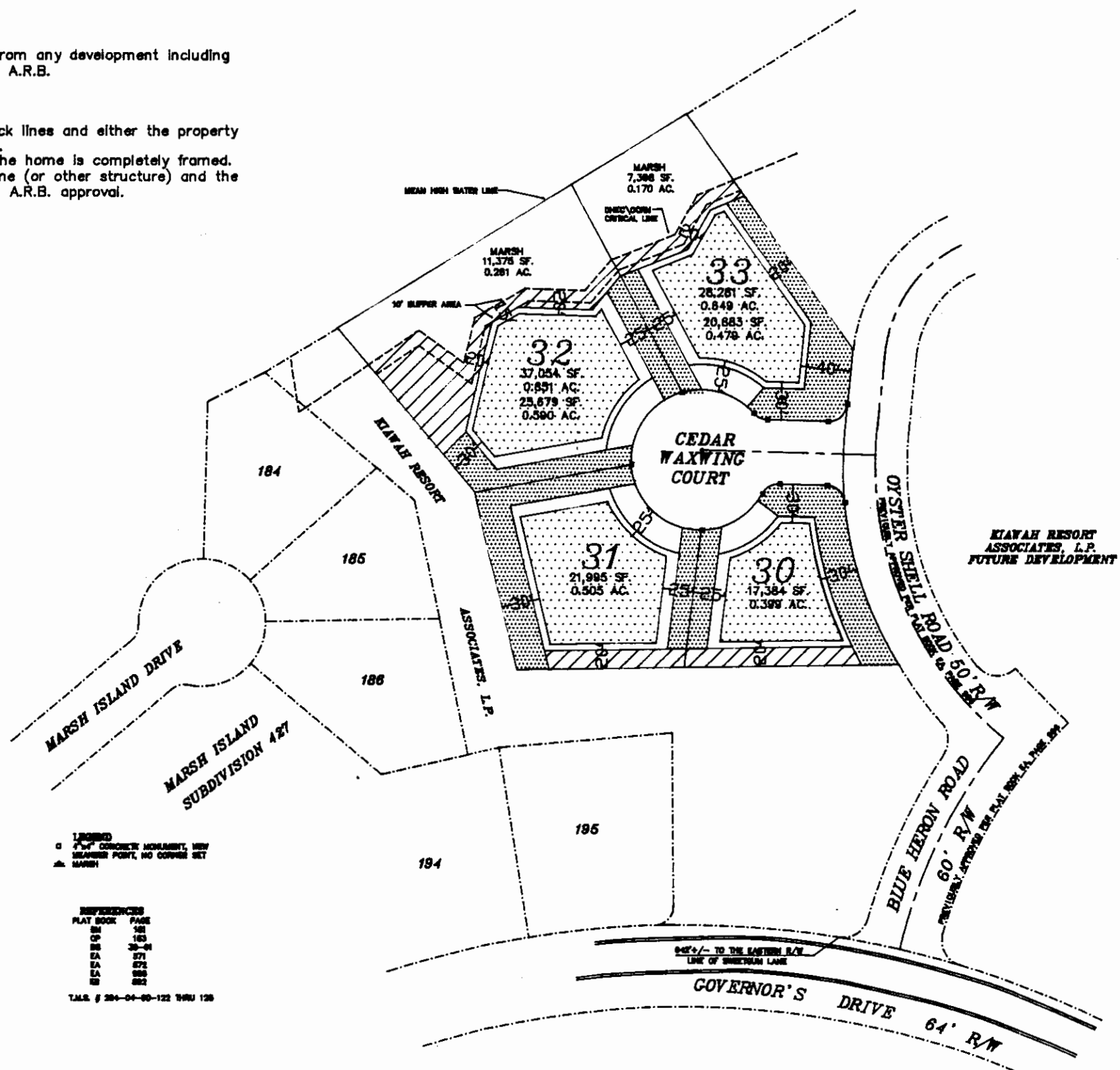
 PRESERVATION ZONE

* This area will remain natural, undisturbed and free from any development including driveways and fill unless specifically approved by the A.R.B.

 SELECTIVE VISTA CLEARING

* This zone is generally between the designated setback lines and either the property line of the Lot or the D.H.E.C.-O.C.R.M. Critical Line.
 * All vegetation in this zone shall be preserved until the home is completely framed.
 * Removal or alteration of vegetation between the home (or other structure) and the critical line shall be accomplished only after on-site A.R.B. approval.

Scale : 1" = 100'
 REVISED : June 24, 1998



LEGEND
 ○ 4" CONCRETE MONUMENT, NEW
 ○ BEARING POINT, NO CORNER SET
 ■ MARK

REFERENCES

PLAT BOOK	PAGE
81	181
82	183
83	39-41
84	371
85	372
86	388
87	382

T.A.S. # 204-04-00-122 THRU 128

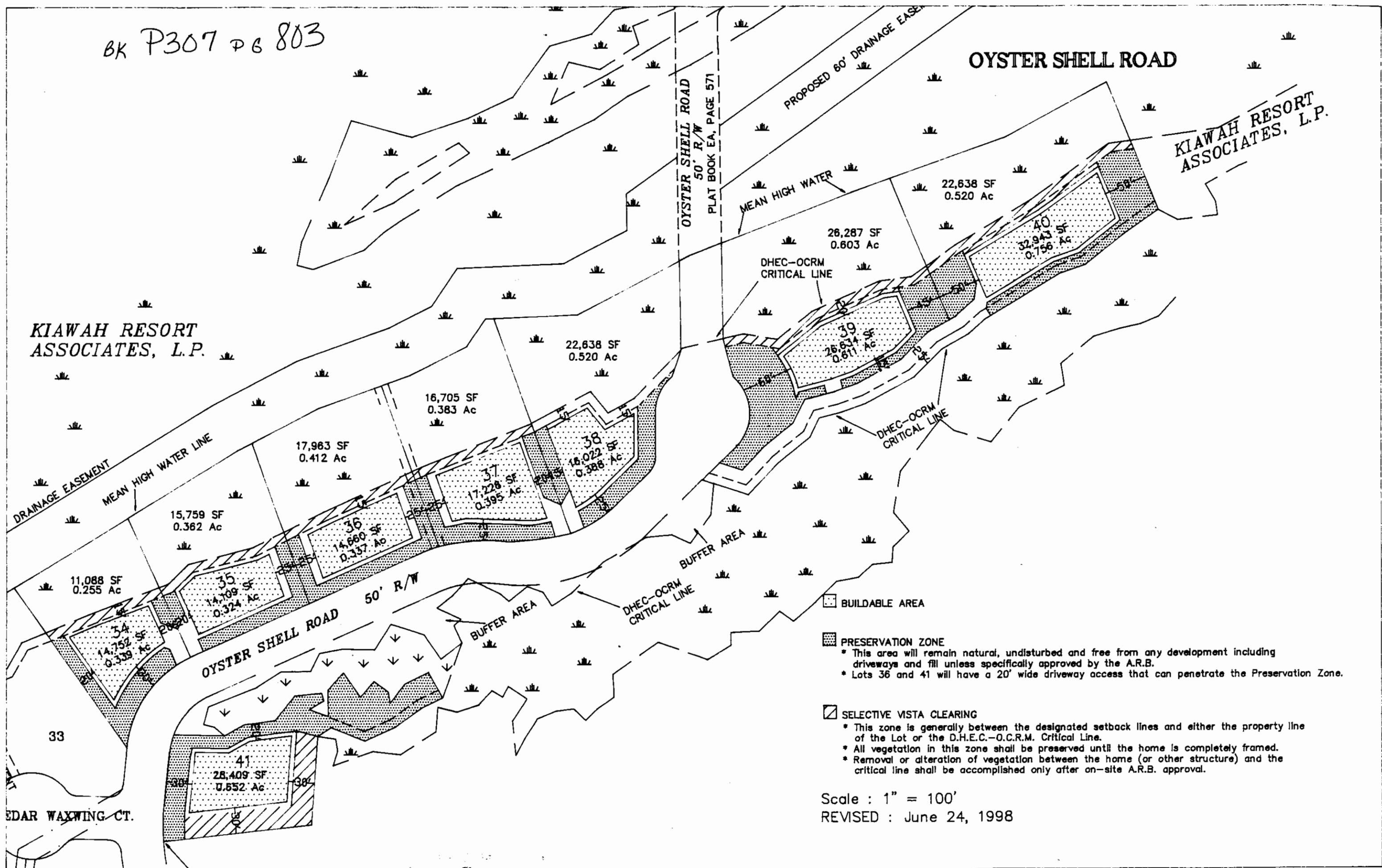
17

BK P307 pg 803

OYSTER SHELL ROAD

KIAWAH RESORT ASSOCIATES, L.P.

KIAWAH RESORT ASSOCIATES, L.P.



- BUILDABLE AREA
- PRESERVATION ZONE
 - * This area will remain natural, undisturbed and free from any development including driveways and fill unless specifically approved by the A.R.B.
 - * Lots 36 and 41 will have a 20' wide driveway access that can penetrate the Preservation Zone.
- SELECTIVE VISTA CLEARING
 - * This zone is generally between the designated setback lines and either the property line of the Lot or the D.H.E.C.-O.C.R.M. Critical Line.
 - * All vegetation in this zone shall be preserved until the home is completely framed.
 - * Removal or alteration of vegetation between the home (or other structure) and the critical line shall be accomplished only after on-site A.R.B. approval.

Scale : 1" = 100'
REVISED : June 24, 1998

EDAR WAXWING CT.

Return to:

Elisabeth F. Nimmons
Legal Planning Assistant
Kiawah Resort Associates, L.P.
Post Office Box 419
Charleston, SC 29402

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P307-753

98 JUL 27 PM 2:30

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

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**Kiawah Island
Board of Zoning Appeals
Meeting of February 24, 2025**

**Public Comments Regarding
Case #BZA25-000003**

#1

Sent 2/10/2025 11:30am

I live at 146 Blue Heron Pond Road. I will be out of town when this matter comes before the BZA for hearing and, therefore, I write to object to the issuance of a variance for 129 Blue Heron Pond Road, Parcel #265-02-00-085, Case #BZA25-000003. Specifically, I do not believe the variance request demonstrates the hardship or difficulty required under Sec. 12-163 of the Town of Kiawah Island Ordinances.

Background

129 Blue Heron Pond Road was sold on January 13, 2025 (i.e. less than 30 days ago) and put on the market the next day, advertised for sale with a 4 bed, 4.5 bath unbuilt home of 3,990 sq. ft. seemingly based on the architectural drawing submitted with this variance request. Obviously, the current condition of the lot, including its inverted triangular configuration, was clearly known to the owner at the time of the purchase. Indeed, in one listing for the sale which closed last month, the following aerial depiction of the lot appeared on redfin.com:



A basic search of the Charleston County records (GIS Parcel viewer) reveals similar information, although it also depicts how much of the lot is, or may be, under water. The County view also reflects the land owned by KICA which runs along Blue Heron Pond Road and “fronts” the entirety of 129 BHP (Parcel# 265-02-00-161), as well as the KICA nature trail adjacent to 129 BHP (Parcel #2650200042).



The Request for Variance

Here, the owners seek a variance to build a 4 bed, 4 ½ bath home with outdoor pool. The request for a variance includes a number of representations, among them:

- (1) the rear and side setbacks extend “substantially” into the property;
- (2) designing a home is “difficult” with the “ARB’s requirements;”

- (3) “the rear and side of the property has a critical and setback line extending into the property;”
- (4) as designed, the portion of the home “encroaching the side setback is only visible from the Kiawah Island leisure trail;” and
- (5) “the sole purpose for the variance is to allow for a buildable home to satisfy the requirements of the ARB.”

According to the request, a variance is warranted because the lot conditions are “extraordinary and exceptional.”

First, the architect is a very experienced craftsman who had been retained over the course of his decades-long career to build homes on KI, including a number in the Preserve. The setbacks are (1) well established, (2) extend their required distances-no more, no less and (3) apply throughout the Preserve. In other words, facially the setbacks are not more “substantial” or a greater “hardship” on the owners of 129 than on any other neighborhood property owner. As such, the setbacks, having first appeared on the plat filed for this property on October 27, 1999, do not appear to be either extraordinary or exceptional. Those of us who have built in the Preserve have been expected to honor them, even those of us who built on lots smaller than 129. Unless I am missing something, why would an exception be made for a routine, established setback?

Second, while the ARB seems to be cast as the reason this project needs a variance, *see, e.g.* “the sole purpose for the variance is to allow for a buildable home to satisfy the requirements of the ARB,” it seems unlikely that the only home “buildable” on 129 is a home that encroaches into the required setbacks in two different places. For the uninitiated like me, it appears the “sole purpose” for the variance is to permit a home just too large for the .42 acre lot. Stated differently, is designing a home really “difficult?” Or is designing the home the owners want “difficult” given the lot and the well-established setbacks? Notably, as drawn, the ARB is seemingly already granting at least one variance for this property which respect to the Selective Clearing Zone. Specifically, the Preserve Covenants provide that the Selective Clearing Zones

“shall remain undisturbed and in their natural state and no clearing of vegetation or development may take place....once the framing of a residence on the subject Lot had been completed, such Lot Owner may schedule an on-site inspection with the ARB, and the ARB may permit clearing of some smaller trees and understory vegetation in the Selective Clearing Zone, in order to create filtered views.” Declaration of Covenants and Restrictions for the Preserve and Provisions for and by-laws of the Preserve Home Owners’ Association, Article III, Section 3.01(c)(iii)(2) (emphasis added).

In the depiction submitted with the instant variance request, the Selective Clearing Zone appears to run right through the driveway and guest turn around spot. Accordingly, assuming I am understanding the drawing correctly, more than 30 feet of the “selective” clearing zone will be clearcut for the proposed home.

Third, while the applicants seem to suggest that the requested encroachment is inconsequential because it will “only” be visible from the leisure trail owned by KICA, that argument fails to credit the high, daily use of that trail and the detrimental effects building four feet into the trail right-of-way may have.

For all of these reasons, I object to the requested variance for 129 Blue Heron Pond Road.

Maura McIlvain
146 Blue Heron Pond Road

#2

From: Maura McIlvain <mauramcivain@comcast.net>
Sent: Saturday, February 15, 2025 4:13 PM
To: John Taylor; Daniel Vincent
Subject: Supplemental objection to variance request for 129 Blue Heron Pond Road

Now that the agenda and packet of materials have been published for the BZA Hearing pertaining to, inter alia, 129 Blue Heron Pond Road, I would like to supplement my prior objection as follows:

Staff's case summary at page 42 of the hearing packet recites that the Maximum Lot Coverage for this property is 33%. In fact, the Preserve Covenants provide, among other things:

"Homesite coverage guidelines are to assure, at a minimum, open space of approximately 60% or more, and limitation of ground coverage to approximately 30% or less of each homesite." Preserve Covenants, Article III, Section 3.01 (c)(iii)(4)(v).

Notably, I do not find anything in the Preserve Covenants which permits the ARB to revise, alter or vary this coverage requirement.

I also note that the staff summary (page 46 of the packet) includes a statement about the current owner and when the property was last acquired. In fact, County of Charleston records reflect that 129 Blue Herron Pond LLC sold this property on January 13, 2025.

Maura McIlvain
146 Blue Heron Pond Road

Sent from my iPhone

**Town of Kiawah Island
Board of Zoning Appeals**

Rules of Procedure

The Board of Zoning Appeals (BZA) of the Town of Kiawah Island is a quasi-judicial body established to interpret and grant relief from the Town of Kiawah Island Land Use Planning/Zoning Ordinance. The administrative office of the BZA shall be located in the Town Hall office. The actions of the BZA are governed by the Town of Kiawah Island Land Use Planning/Zoning Ordinance contained in Article 12 of the Town of Kiawah Island Municipal Code and the South Carolina Code of Laws, Chapter 29, Article 5, Sections 6-29-780 through 6-29-860 et seq. All actions of the BZA and its members shall be taken in compliance with Robert's Rules of Order unless such rules are in conflict with the adopted BZA Rules of Procedure. The BZA Rules of Procedure shall always be available to the public upon request.

The BZA has decision making authority over three (3) types of applications:

1. Appeal of an Administrative Decision may be filed when there is an alleged error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Land Use Planning/Zoning Ordinance.
2. Variances may be filed when strict application of the zoning ordinance would cause an unnecessary hardship. The BZA's actions on such variance requests must be based on the specific standards contained in the Land Use Planning/Zoning Ordinance.
3. Special Exceptions allow the BZA to permit uses if certain terms and conditions in the Land Use Planning/Zoning Ordinance are satisfied.

In each case, the BZA is authorized to approve, to approve with conditions or to deny a request. The BZA is authorized to refer the application to staff or to defer action if additional information is deemed necessary.

MEMBERSHIP

1. The BZA shall consist of seven (7) members, a majority of which constitutes a quorum, to be appointed by the Mayor with the consent of the Town Council. At least (5) of the members shall be residents of the Town of Kiawah Island. A resident member shall mean a property owner who resides permanently in the Town of Kiawah Island for not less than 6 (six) months of each calendar year and is registered to vote on Kiawah Island. Of the seven (7) members, the BZA may consist of as many as two (2) members who own property in the Town of Kiawah Island but are not "residents." The term of office shall be for three years. No member shall serve more than three consecutive terms of office; provided, however, that such member shall be eligible to hold such office after a break in service of twenty-four months. Any vacancy shall be filled for the unexpired term by an individual appointed by the Mayor with the consent of the Council. All members shall serve without compensation but may be reimbursed for actual expenses incurred in connection with their official duties, provided Council has approved such expenditures.

2. The Mayor and Town Council of Kiawah Island determines members of the BZA and their tenure for their specific expertise, community knowledge, and concern for the future welfare of the total community and its citizens. They shall represent a broad cross section of community interest, concerns and professions.
3. Should a vacancy occur in the membership of the BZA, the Chairperson of the BZA, for the purpose of appointing a replacement member, will give immediate notice to the Clerk of Town Council. In November of each year the Town Clerk shall provide the BZA a written document setting forth the terms of the existing members.
4. No member shall hold an elected public office in the Town of Kiawah Island or Charleston County.
5. Members who resign by absenteeism or due to holding dual offices must vacate their seat immediately upon resignation. Members who are no longer qualified to serve per the Town's volunteer policy, state law requirements, and members who are not reappointed shall serve until their successors are appointed and qualified.

OFFICERS

1. **CHAIRPERSON** - At the first scheduled meeting of the BZA in any calendar year, the BZA shall elect one (1) of its members to serve as Chairperson. The duration of the term shall be one (1) year. The Chairperson may be reelected. The Chairperson shall be a voting member of the BZA.
2. **VICE-CHAIRPERSON** - At the first scheduled meeting of the BZA in any calendar year, the BZA shall elect one (1) of its members to serve as vice-chairperson. The duration of this term shall be one (1) year. The Vice-Chairperson may be re-elected.
3. In the event that both the Chair and the Vice-Chair are absent from a meeting, the legal staff shall conduct an election from among those members present to determine who shall conduct that meeting.
4. **SECRETARY**- The Planning Director shall serve as Secretary to the Board.

Should a vacancy occur among the officers of the BZA, an election shall be held at the next regularly scheduled meeting to fill the unexpired term of that officer.

BOARD MEMBER ATTENDANCE

1. All members are expected to attend at least eighty (80%) percent of the scheduled and held meetings each calendar year.
2. It is most important that members of the Board be present at meetings. When a member is to be tardy or not able to attend a meeting of the Board, said member should so notify the Town Clerk in advance. Staff will inform the Chair of the anticipated tardiness or absence.

3. If votes are to be taken on an application, Board members must be physically present in order to participate. A board member who is unable to be physically present may attend virtually via video conference where exceptional circumstances exist.

MEETINGS

1. Each December, the BZA shall establish its schedule of meetings for the next calendar year. The time and place of the meetings shall be specified in the schedule.
2. A quorum is necessary in order for the BZA to conduct business. A quorum shall consist of a simple majority of the total membership of the BZA.
3. Should an emergency situation arise that cannot be addressed by Planning Staff, Staff may ask the Chairperson to call a special meeting to address that specific situation when waiting until the next regularly scheduled meeting of the BZA will dangerously and seriously affect an applicant or the general welfare of the community. A special meeting may be called at the discretion of the Chairperson. Alternatively, such a special meeting may be called upon the request of two (2) members of the BZA to the Chairperson. Three (3) working days' notice shall be given to the BZA members and the public.
4. When a regularly scheduled meeting is canceled as a result of an emergency situation, a substitute meeting may be held after three (3) working days' notice to the BZA and the public.
5. Members of the BZA shall not discuss any pending application outside of the public hearing. If a proponent or opponent approaches a member regarding an application, he/she shall disclose that information to the BZA meeting when the matter is called.
6. A member may disqualify her/himself from discussion and voting when any proponent or opponent of an application has sought to influence the vote in any forum outside of the application process.
7. A member of the BZA shall recuse her/himself from participating in any matter in which she/he has a financial or personal interest in the property or action concerned or will be directly affected by the decision.
8. Swearing of witnesses by the Secretary of the Board, or their designee, may be done individually or as a group. All persons addressing the BZA to give testimony or evidence must be sworn. All persons addressing the BZA to give testimony or evidence shall state their full name and current address.
9. Public hearings of the BZA shall be conducted in accordance with these Rules of Procedure and all applicable laws. Applications for consideration shall be presented to the BZA in the following manner:

- a. Presentation of Application by Staff;
 - b. Questions to Staff by BZA;
 - c. Presentation of Application by Applicant;
 - d. Questions to the Applicant by BZA;
 - e. Presentation of information either in support of or in opposition to the Application;
 - f. Applicant's Reply to Opposition;
 - g. BZA Motions Concerning Application, stating specific findings of fact and conclusions of law; and
 - h. BZA action concerning the Application.
10. Time limits on presentations may be proposed by the Chairperson and approved by the BZA.
 11. All applications for Appeals, Variances and Special Exceptions that are to be considered by the BZA must be completed and filed at the administrative office no less than thirty (30) days prior to the meeting at which they will be considered. The BZA shall receive the applications and staff reports at least five (5) working days prior to the public hearing.
 12. All written material submitted either in support of or in opposition to an application that is not supported by witness testimony must be received by the administrative office of the Planning Department at least five (5) working days prior to the public hearing during which the application is to be considered and shall be delivered to the members of the BZA at least two (2) working days before the meeting. The BZA may at their discretion accept and consider written material submitted either in support of or in opposition to an application less than five (5) working days prior to the public hearing.
 13. At the public hearing, the case file prepared by the staff shall be entered into the official records of the BZA. In accordance with items 11 and 12, the BZA may accept affidavits, testimony or other evidence that may be presented by the proponents or opponents. All new evidence – shall be entered into the records by the BZA.
 14. The BZA, by its own motion, may certify contempt to the Circuit Court if false, misleading, or incomplete statements are made by any person presenting information to the BZA.
 15. The BZA, by its own motion, may call additional witnesses. The BZA has authority to subpoena witnesses.
 16. After each case has been voted on, the Chairperson shall announce into the record how each member voted.
 17. Cases to be heard by the BZA may be deferred for a period of time not to exceed ninety (90) days. For the record, the reason given for postponement must be clearly stated in the motion for deferral.

18. The BZA may reconsider a case under the following circumstances:
 - a. A case may be reconsidered upon the receipt of new evidence that has not been entered into the record of the decided case, or that it has been acknowledged submitted evidence of a decided case has erred in its application or matter, as determined by the BZA Secretary and or legal staff, only within seventy-two (72) hours from the date of the decided vote. The BZA Secretary and or legal staff shall make a determination of the new evidence submitted within ten (10) calendar days. If it is determined that new evidence has been found, the BZA must have a majority vote to have the case be reconsidered. The case may be scheduled and heard by the BZA at the next available BZA public hearing provided all required notifications have been met. A case may still be reconsidered only once.
19. The Chairperson or her/his designee shall sign all orders.
20. Board members may participate virtually in meetings where no applications are to be considered.
21. Executive Sessions – It is a violation of the Town’s Code of Ordinances for a member of the Board of Zoning Appeals or person in attendance to disclose to another person or make public any matter discussed in executive session. If the Board enters executive session during a meeting, a member attending virtually shall adhere to executive session privileges, ensure that no other person can hear the executive session, and shall acknowledge upon request that there are no other persons present or able to hear the executive session. Failure to protect the privileged discussions of an executive session can result in the member’s removal from the Board.

ADDITIONS, DELETIONS OR MODIFICATIONS

Additions, deletions or modifications to these procedures may be adopted by the BZA at a regular meeting when such changes have been previously presented and discussed at a prior BZA meeting.

SEVERABILITY

If a court of competent jurisdiction determines that any provision of these Rules of Procedure is invalid, that ruling shall apply only to the provision in question and will not invalidate any other provision of these Rules of Procedure. If any court of competent jurisdiction rules invalid a specific application of any provision of these Rules of Procedure, that ruling will not affect the application of these Rules of Procedure in other instances.

Date adopted: _____

Signature of BZA Chairperson

Signature of the Secretary of the BZA

Signature of the Attorney for the BZA