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## Meeting agenda May 24, 2021

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1. Call to order
2. Approval of minutes: 04/26/2021
3. Brief statement about rules and procedures
4. Variance request application #VA 21-007: Spectrum Builders - Ken Palmer -Contractor is requesting 9' variance from the required 10' setback line to permit a deck for a home at 241 Inlet Point Road, Fair Play 29643 (Tax ID# 341-01-01-017).
5. Adjourn

## Oconee County Board of Zoning Appeals

### When & Where

6PM

Monday, May 24, 2021

Council Chambers

415 South Pine Street

Walhalla, S.C.

YouTube: "YourOconee"

### Staff contact

846-638-4218

[planninginfo@oconeesc.com](mailto:planninginfo@oconeesc.com)

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

## Minutes

6:00 PM – April 26, 2021

### Members in Attendance

Jim Codner  
John Eagar  
Bill Gilster  
Bill Decker  
Tim Mays  
Gwen Fowler  
Marty McKee

### Staff

Vivian Kompier, Secretary

### Media

None

#### ITEM 1- **Call to Order -**

Mr. Codner called the meeting to order.

#### ITEM 2- **Appoint Secretary –**

Mr. Eagar made a motion to elect Vivian Kompier as secretary, seconded by Mr. Gilster. The motion passed 7/0.

#### ITEM3- **Approval of minutes January 27, 2021 -**

Mr. Eagar made a motion to approve the minutes, Mr. McKee seconded. The motion was approved 6/0 with Mr. Mays abstaining as he was not present at the January meeting.

#### **Approval of minutes March 22, 2021 –**

Mr. Eagar made a motion to accept the minutes, Mr. Gilster seconded. The motion was approved 5/0 with Mr. McKee and Ms. Fowler abstaining as they were not at the March meeting.

#### ITEM 4- **Brief statement about rules and procedures**

Mr. Codner outlined the proceedings of the meeting going forward.

- A. Applicant will provide a presentation about the needs for the variance for 5-minutes with the chairman having the unilateral ability to grant more time as needed.
- B. Staff will address any additional issues
- C. Citizen comment- 5-minutes each – People speaking in favor of the development first, then people speaking against.

- D. Applicant rebuttal and questions from Board members
- E. Voting

**ITEM 5- VA 21-005: Property owner The Neal Group SC, LLC is requesting a +/-7' Variance from the 25' setback requirement from the right-of-way/property line to permit an existing foundation for a home at 202 Cove Ct, Seneca 29672 (Tax ID# 193-08-01-021).**

***Mr. Eagar recused himself from this variance. (Recusal attached)***

1. Applicant presentation – Mr. Chad Neal
2. Board member questions – Mr. Gilster questioned if just the foundation is there. Mr. Neal confirmed that they stopped construction, but let the contractor finish the foundation to be able to do the cleanup that would be necessary. Mr. McKee questioned if the septic was approved. Mr. Neal said that the septic was approved for the new location.
3. Staff comment – Ms. Kompier mentioned that there was conversation between her and Mr. Neal in regards to where the property line is. Ms. Kompier also stated that she spoke with the home owners' representative and they are ok with whatever the BZA decides.
4. Citizen comment - None
5. Applicant rebuttal - None
6. Unsworn public comment - None

1. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property;

a) Motion – Mr. McKee made a motion, seconded by Mr. Mays. Discussion regarding the criterion continued.

b) Vote

In-favor	Opposed
6	0

Mr. Codner noted that the criterion passed.

2. These conditions **do not** generally apply to other property in the vicinity;

a) Motion - Mr. Gilster made a motion, seconded by Mr. McKee. Discussion regarding the criterion continued.

b) Vote

In-favor	Opposed
6	0

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property **would** effectively prohibit or unreasonably restrict the utilization of the property; and

a) Motion - Mr. Gilster made a motion, seconded by Mr. Decker. Discussion regarding the criterion continued

b) Vote

In-favor	Opposed
6	0

Mr. Codner noted that the criterion passed.

4. The authorization of a variance **will not** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

a) Motion - Mr. McKee made a motion, seconded by Mr. Mays. Discussion regarding the criterion continued.

b) Vote

In-favor	Opposed
6	0

Mr. Codner noted that the criterion passed.

Mr. Codner asked - Based on the evidence presented to the Board, do I hear a motion that the proposed Variance be **approved**.

a. Motion - Mr. McKee made a motion, seconded by Mr. Mays. Discussion regarding the criterion continued.

b. Vote

In-favor	Opposed
6	0

Mr. Codner noted that the criterion passed.

**ITEM 6- SE21-03: Phoenix Development Group Partners – Daniel Marinko has requested a Special Exception for a full-service Independent Living, Assisted Living, and Memory Care facility at an unaddressed parcel at the NE corner of Sheep Farm and Bountyland Roads. (Tax ID# P/O 207-00-01-017)**

***Mr. McKee recused himself from this Special Exception (Recusal attached)***  
***Mr. Mays recused himself from this Special Exception (Recusal attached).***

1. Applicant presentation – Mr. Daniel Marinko made the presentation (presentation attached).
2. Board member questions –
 

Mr. Gilster asked what would be the age group and who are you marketing to? Mr. Marinko explained the division of the business itself, but it is mostly for anyone who would need assistance with day to day lives and activities. The exception is the memory care which is more for people with dementia and Alzheimer’s.

Mr. Gilster asked if it would be available for lower income people. Mr. Marinko explained that it would be a private pay facility so they would not accept Medicaid or Medicare. The cost would be based on market rates with it being a new product they could charge more.

Mr. Decker asked if there would be an uptick with local merchants. Mr. Marinko explained that there is the possibility with adding up to 114 residents.

Mr. Decker then asked how they will handle security of the facility. Mr. Marinko said they will have access control (door security) and RFID (card readers). No full time security on duty, but there will be staff 24/7.

Mr. Codner asked how they plan to get sewer to the facility. Mr. Marinko explained that they are working with the County in regards to sewer.
3. Staff comment - None
4. Citizen comment - None
5. Applicant rebuttal - None
6. Unsworn public comment - None

1) Traffic flow from the facility **shall not** present a danger to local residents, motorists and pedestrians.

a. Motion - Mr. Eagar made a motion, seconded by Mr. Gilster. Discussion regarding the criterion continued.

b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

(2) Noise, lighting, and activities carried out on the premises of the facility **shall not** present a nuisance to local residents.

a. Motion - Mr. Eagar made a motion, seconded by Mr. Gilster.  
Discussion regarding the criterion continued.

b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

(3) The residents of the facility **shall not** present any potential danger to local residents.

a. Motion - Mr. Eagar made a motion, seconded by Mr. Gilster.  
Discussion regarding the criterion continued.

b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

(4) The residents of the facility **shall** reside in a safe and healthy environment.

a. Motion - Mr. Eagar made a motion, seconded by Mr. Decker.  
Discussion regarding the criterion continued.

b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

(5) The proposed development **is** in compliance with the other provisions of this chapter.

a. Motion - Mr. Eagar made a motion, seconded by Mr. Gilster.  
Discussion regarding the criterion continued.

b. Vote

In-favor	Opposed
5	0

Mr. Codner noted that the criterion passed.

### **Special Exceptions Sec. 32-5**

#### **General criteria for granting a special exception.**

(1) **IS** In accordance with the comprehensive plan and is consistent with the spirit, purposes, and the intent and specific requirements of this chapter, to include the definition and intent of the district in which the special exception is being requested;

a) Motion - Mr. Eagar made a motion, seconded by Mr. Gilster.

Discussion regarding the criterion continued.

In-favor	Opposed
5	0

Mr. Codner noted that this criterion passed.

**(2) IS** In the best interests of the county, the convenience of the community and the public welfare.

- a) Motion - Mr. Eagar made a motion, seconded by Mr. Decker.  
Discussion regarding the criterion continued.

In-favor	Opposed
5	0

Mr. Codner noted that this criterion passed.

**(3) IS** Suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;

- a) Motion - Mr. Eagar made a motion, seconded by Mr. Decker.  
Discussion regarding the criterion continued.
- b) Vote -

In-favor	Opposed
5	0

Mr. Codner noted that this criterion passed.

**(4) IS** Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.

- a) Motion - Mr. Eagar made a motion, seconded by Mr. Decker.  
Discussion regarding the criterion continued.
- b) Vote -

In-favor	Opposed
4	1 – Ms. Fowler

Mr. Codner noted that this criterion passed.

**5. Mr. Codner then asked - Based on the evidence presented to the Board, do I hear a motion that the proposed special exception be approved:**

- a) Motion - Mr. Eagar made a motion, seconded by Mr. Gilster.  
Discussion regarding the criterion continued.

b) Vote

In-favor	Opposed
5	0

Mr. Codner noted that this criterion passed.

**ITEM 10- Adjourn –** The meeting was adjourned by a unanimous vote at 7:12pm.



11507 KEN

9°47'07"E 203.31'

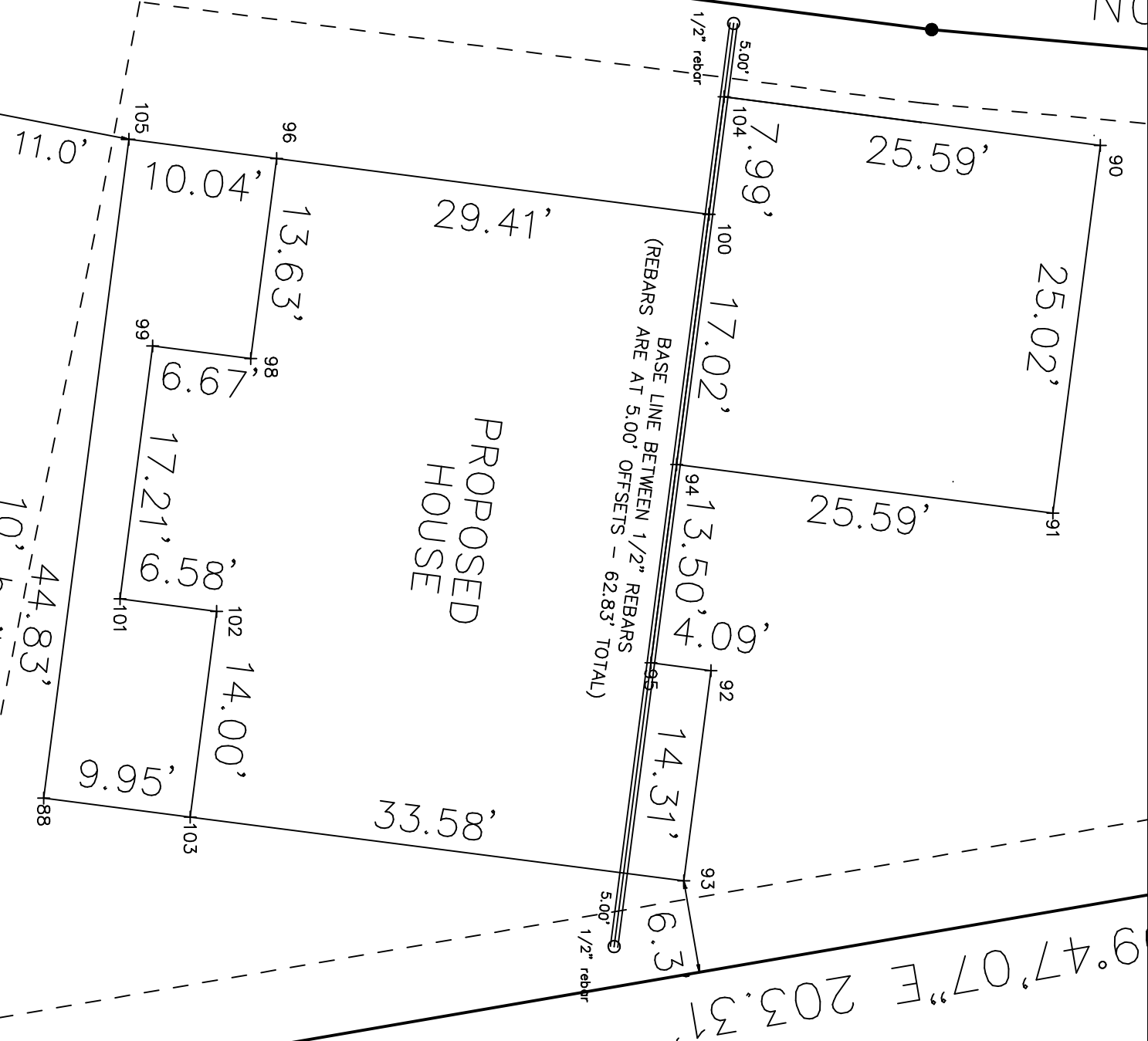
N07°22'20"E 62.92'

N78°58'08"W 84.08'

PROPOSED HOUSE

BASE LINE BETWEEN 1/2" REBARS  
(REBARS ARE AT 5.00' OFFSETS - 62.83' TOTAL)

10' building setback



May 24, 2021

To: Oconee County Zoning Board

Re: Corp line variance for 241 Inlet Point Rd, Fair Play

John and Marcia Brabender, owners of 245 Inlet Point Rd, are opposed to granting the Corp line variance requested by Lot 15 (241 Inlet Point Rd)- Ken Palmer Builder. Reasons for opposing the variance are:

- Reduction of property value of our retirement home due to proximity of garage to our home and site line obstruction from our existing deck.
- The house plan and location on the lot is not appropriate for the lot size (reduced in 2016) and not in keeping with the neighborhood which is primarily mobile or modular homes. Three bedroom septic permit and built 5-6 bedroom house.

### Background

1. John and Marcia Brabender purchased the adjoining lot in 2016. The seller also owned the adjacent lot and granted the Brabender's first right of refusal.
2. Due to the existing sidewalk encroaching on the neighboring lot, Lot 16 (245 Inlet Point Rd) was deeded (surveyed and recorded) approximately 6 ft. of lot 15 (241 Inlet Point Rd). Attachment 1
3. When the offer was made in spring 2019 for lot 15, we spoke to the county about the ability to put a septic tank on a smaller lot and were advised that the larger lot could only support a 3 bdrm home and the smaller lot 15 would need to be reviewed based on a new application. We were provided a 2014 permit for a septic tank and house on the LARGER lot 15. Attachment 2
4. We also spoke to the county about setbacks and were told that 10' was required. Based on this information, we did not buy the lot expecting an appropriately sized house which would not materially impact the value and resale of our home.
5. We asked the new owners multiple times about the house plan and septic permit and were told in each case to speak to the contractor, Tommy Hood (TH Engineering), who we met with at the lot on two occasions and were told all setbacks would be followed but were not provided any site plan showing the septic system or house.
6. The septic tank permit took over a year to issue and we believe the new location (from the previous permit), lot size and perc test were at issue. The new builder, Ken Palmer, asked me who had installed the system as the homeowners were not told the name of the contractor.
7. We received the notice for the public variance hearing on May 5<sup>th</sup> but were told by a neighbor earlier (5/2) that the sign had been posted. Neither the builder nor homeowner gave us any prior notice or asked our opinion, just assumed if they built it would be OK.
8. On May 7<sup>th</sup>, we were at the house and saw the deck in construction and were told by the framing crew lead that he was told to build the deck and planned to do so. I called the building permit office and spoke to Vivian. I explained the issue and she called Mr. Palmer,

based on that call Mr. Palmer called me to discuss the issue and I assume instructed the framer to stop working on the deck. I let Vivian know that we would attend the meeting. The stringers for the center deck to within 1 ft. of the Corp were installed and the side decks which seem to encroach the setback (picture from May 7 Attachment 3)

9. Mr. Palmer told me that the homeowners believe they can encroach the setback because my home and the home on lot 17 are close to the Corp line. My house is over 30 years old and I cannot comment on the construction codes at the time but believe if my house were to be replaced, the 10 ft. setback would apply. In the last 12 months, another neighbor 3 lots away, replaced a cabin with a modular home and was required to follow the 10 ft. setback which caused them to have a smaller house and deck than planned. Attachment 4 showing proximity of house to our property
10. From the first floor plan provided 5/7 by the homeowner, there appears to be future setback issues with side entrances from the garage. Attachment 5

We appreciate your consideration in this unfortunate matter and believe we are being penalized due to no fault of ours but the poor advice and planning given to the homeowners.

Sincerely,

A handwritten signature in black ink that reads "John Brabender". The signature is written in a cursive style and is positioned above the typed name.

John and Marcia Brabender

245 Inlet Point Rd

Fair Play SC 29643

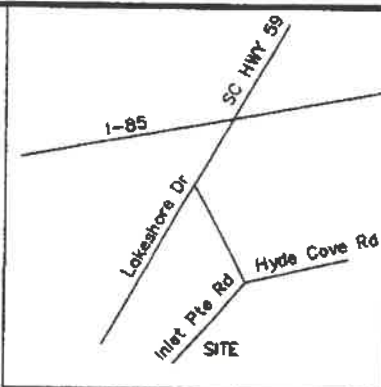
C-864-505-1001

- NOTES:
- 1) TMS# 341-01-01-016 & 017
  - 2) DB 1585 Pg 91 & DB 1947 Pg 184
  - 3) PB W Pg 130
  - 4) Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject property: flood zones; easements, other than possible easements that were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, and any other facts that an accurate and current title search may disclose.

**ATTACHMENT I**

Recorded this 23 day of Sept. 2016  
 Vol. P-63 Pg. 614  
 and Certified

Register of Deeds, Cherokee County



Vicinity Map (NTS)

FILED CHEROKEE COUNTY, SC  
 ANNA DAVISON  
 REGISTER OF DEEDS

2016 SEP 23 P 1:48

Lot 17  
 Rudy Pelle  
 DB 1692 Pg 178  
 PB W Pg 130

Revised  
 Lot 16  
 0.24 Ac.

Revised  
 Lot 15  
 0.24 Ac.

*Property decided  
 TO BRABENDER  
 MAKING LOT 15  
 SMALLER*

*Building Codes  
 864-718-1105*

Lot 14  
 Steen Morup - Olsen  
 DB 1859 Pg 300  
 PB B388 Pg 3

*9/23/16*

N78°54'00"W 306.53'  
 to COE conc. monu.  
 5/8" rebar

US Government  
 Lake Hartwell

Pat. Richardson  
 133 Straight Dr  
 Anderson, SC  
 003784



Doc ID: 004813000001 Type: PLA

BK P-63 PG 614

N78°58'08"W 84.08'  
 3/4" pipe  
 N78°54'00"W 86.12'  
 5/8" rebar  
 S72°22'20"W 62.92'  
 concrete sidewalk  
 5/8" rebar  
 S57°11'18"W 104.80'  
 stone drive  
 S9°47'07"E 203.31'  
 1" COE pipe  
 S78°36'27"E 19.79'

Applied 2-25-14 11

Attachment 2



**PERMIT TO CONSTRUCT**  
Onsite Wastewater System

File Nbr **2014010016**  
County: Oconee

Name: DON CLEVELAND

Program Code: 360

Type Facility: HOUSE

Address: 100 PLANTATION PT  
ANDERSON, SC 29625

System Code: 360

Subdivision: FAIRPLAY SHORES

Site: INLET POINTE RD  
SC

TM#: 341-01-01-017

Block: Lot: 15A

Water Supply: PUBLIC

**PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS**

Daily Flow (gpd): 360

Tank Sizes (gal): Septic Tank: 1000

Pump Chamber:

Grease Trap:

LTAR: .40

Trenches: Length (ft): 162

Width (in): 36

Max. Depth (in): 60

\* Agg. Depth (in): 42 \*

Min Pump Capacity:

gpm at

ft. of Head

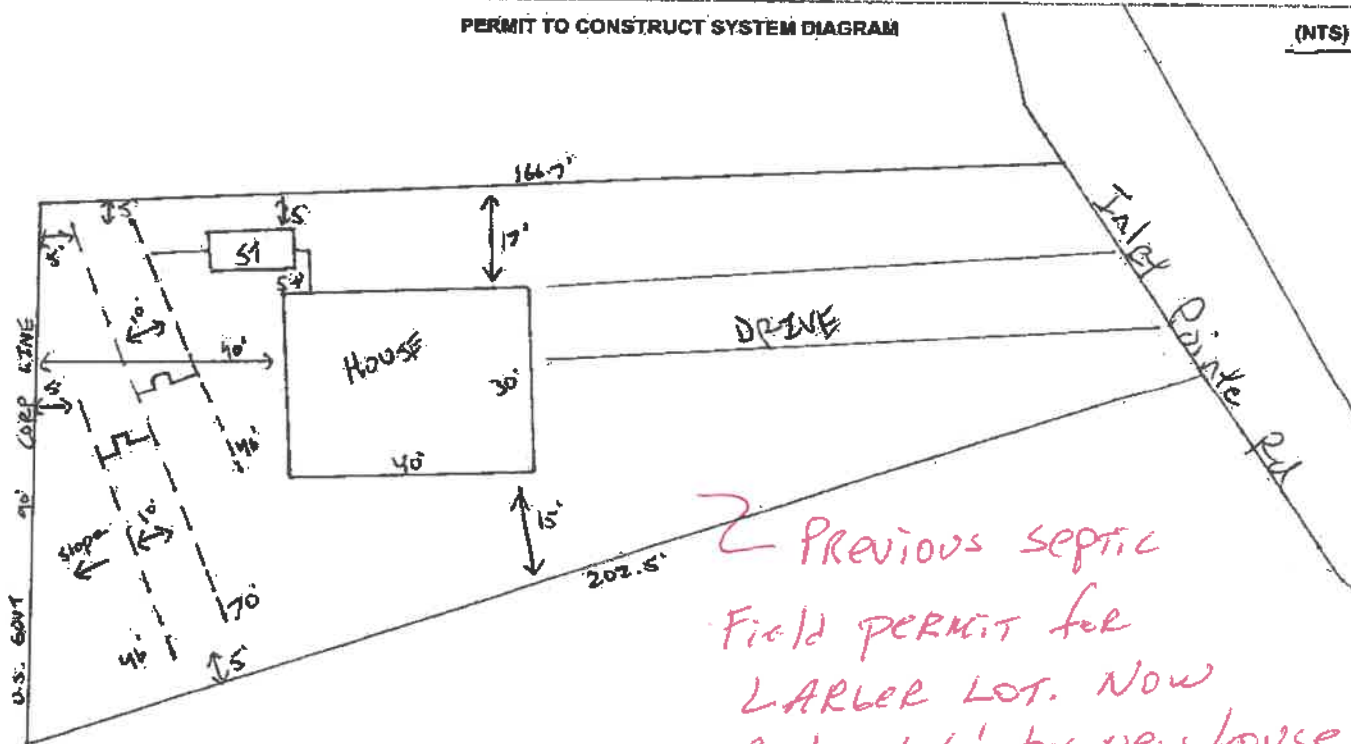
**SPECIAL INSTRUCTIONS/CONDITIONS**

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

- DRAINLINES MUST FOLLOW LEVEL SURFACE CONTOURS.
- USE STEP-DOWNS BETWEEN LINES AS NEEDED
- DRAINLINES TO BE 10'+ ON CENTER
- SYSTEM MUST BE 5'+ FROM FOUNDATION AND PROPERTY LINES
- DO NOT DRIVE OR PARK OVER SEPTIC SYSTEM
- POSSIBLE ROCK - SYSTEM MUST BE INSTALLED BEFORE BUILDING HOUSE

**PERMIT TO CONSTRUCT SYSTEM DIAGRAM**

(NTS)



2 Previous septic  
Field permit for  
LARGER LOT. Now  
Reduced 6' by new house

Revised By: Tom J. Shipe

Date: 2/19/14

DHEC 1781 (10/15/2013)

This Permit is Appealable Under the Administrative Procedures Act.  
This Permit will Expire and Become Null and Void Five (5) Years from the Issuance Date.  
There may be an Additional Fee for Changes in this Permit that Require a Site Reevaluation.

$90 \times 167 \times 3/4 = 11,272.5$





Side view 5/7/21 from Brabender deck of new deck construction with stringer installed to 1 ft. of corp line

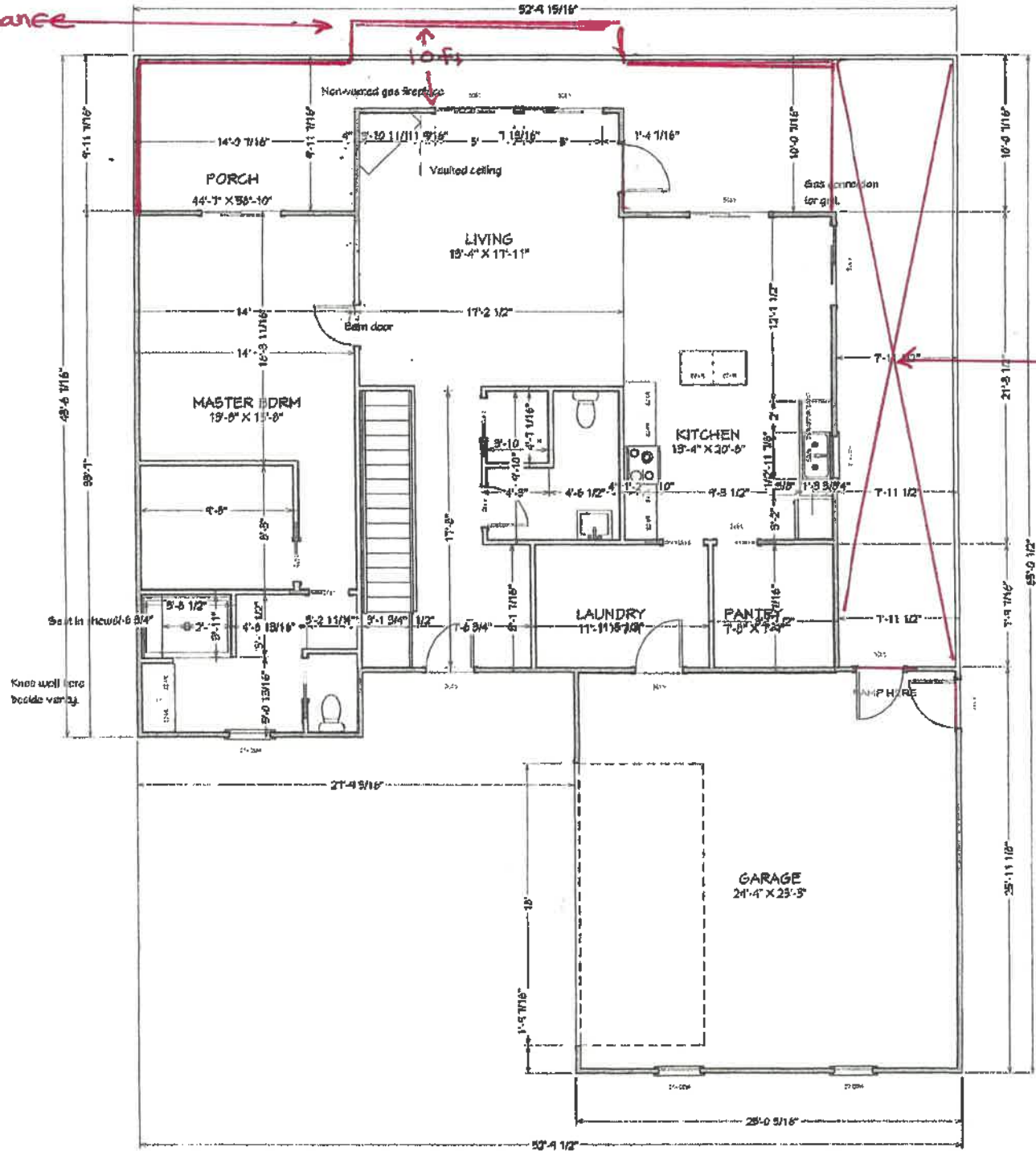


Garage and house  
proximity to Brabender  
sidewalk



Variance

Mail



Deleted Deck Area

Future issue with stairs from garage. Wall is 6 ft from property line/sidewalk

LIVING AREA  
1413 SQ FT