



# Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

Phone 410-641-2770 Fax 410-641-2316

www.berlinmd.gov

## NOTICE OF PUBLIC HEARING

Town of Berlin

Board of Zoning Appeals

August 18, 2021

### Mask Required for All in Attendance

Pursuant to Sections 108-165, 108-191, and 108-702 of the Code of the Town of Berlin MD, notice is hereby given that a public hearing will be conducted by the Berlin Board of Zoning Appeals in the Mayor and Council Chambers of Berlin Town Hall, 10 William Street, Berlin, Maryland on

**WEDNESDAY**

**5:30 PM**

1. Approval of Minutes – July 7, 2021
2. 2 Nelson Street – Requesting a variance to add a covered front porch addition which would represent an encroachment of 6 feet into the prescribed front yard setback.

Applicant: Erving & Christina Truitt

3. 10103 Old Ocean City Blvd. – Requesting a Variance to reduce the required number of parking spaces for a Distillery/ Tavern.

Applicant: EJF Real Estate, LLC. and Forgotten 50 Distilling

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*Any persons having questions about the above-referenced meeting or any persons needing special accommodations should contact Dave Engelhart at 410-641-4143. Written materials in alternate formats for persons with disabilities are made available upon request. TTY users dial 7-1-1 in the State of Maryland or 1-800-735-2258 outside Maryland.*

Town of Berlin  
Board of Zoning Appeals  
July 7, 2021

Chairman Joe Moore called the July 7th, 2021, Board of Zoning Appeals meeting to order at 6:30PM. Members present were Joe Moore, Doug Parks, Woody Bunting and Robert Palladino. Absent from the meeting was John Apple. Staff present was Planning Director Dave Engelhart and Permit Coordinator Carolyn Duffy.

Chairman Joe Moore called for a motion to approve the minutes from the April 14<sup>th</sup>, 2021, meeting. Mr. Woody Bunting made the motion to approve the April 14<sup>th</sup>, 2021, minutes. Mr. Doug Parks seconded the motion, and it was unanimously accepted by the commission.

Chairman Joe Moore asked Planning Director Dave Engelhart to state the case they were about to hear. Mr. Engelhart stated that Mr. Loren Hershberger was requesting a variance to be allowed to have a 6' fence in the front yard setback where a 4' high fence is the maximum permitted. He stated where it was listed in the Section of the Berlin Town Code. Chairman Moore asked Mr. Engelhart per the code is the 4' the maximum in the front yard. Mr. Engelhart replied yes, 4' is the maximum. Chairman Moore then called Mr. Hershberger to come forward. He then swore in Mr. Hershberger. Mr. Hershberger stated he lived at 7 Cape Circle, Berlin Maryland. He then apologized for putting Wicomico County on his paperwork because he works in that county. Mr. Hershberger stated he included a site plan and where he had the blue line is where he wanted the variance. Mr. Hershberger stated they have a side yard pool, but it goes in front of the house. He stated they want to have it contained. They have a four-foot picket fence that is falling apart since they have purchased the property. He has done some repairs to it himself and now wants to put in new fencing by McGee. He stated he wanted to have safety features put in and improvements. He would be removing the non-self-locking on the gates. The gate opens inward and are supposed to open outward. He stated they have three children, and they have neighbors that have four kids, some have grandchildren close to Decatur Farms and people know they have a pool. With a six-foot fence he feels that would be best for the neighborhood when no one was at their home.

He also included stats on injuries from pools and hot tubs for the commission. He thanked the commission for their time. Chairman Moore asked the board if they had any questions. Mr. Robert Palladino asked if any of the neighbors had said anything about the pool. Mr. Hershberger stated when the previous owners were there, they were making changes to the house then he comes, and he has a growing family the neighbors and the kids get together a lot. They are happy with the improvements and don't have to worry about the children or the dog going after the UPS guy. Chairman Moore stated the lot was square shaped because it is on a cul-de-sac. He asked if the code allowed this because the pool extended into the front yard. Mr. Engelhart stated how it got permitted that way he did not understand. Chairman Moore asked can you put a pool in the side yard. Mr. Engelhart replied yes from the corner of the house back. In this case he stated the pool goes beyond the side yard it is too close to the street. Mr. Engelhart stated the house had been in foreclosure for many years we have code enforcement issues contacting the banks. He stated the four-foot fence was existing and Mr. Hershberger wants a six-foot fence for more encroachment. Mr. Hershberger replied no he wanted to keep it the same



but just change the height of the fence to six feet. Mr. Doug Parks reiterated the six-foot fence would be in the same footprint as the four-foot fence. Chairman Moore asked if the neighbors were in support. Mr. Hershberger replied both neighbors are in support also the neighbor to the rear of his property has an old wood fence they are going to take that out and replace with new fence to improve. Chairman Moore stated the issue would be the extension of the six-foot fence into the front yard. Mr. Hershberger stated they wanted that space so when they let the dog out. He stated reducing it they had considered but don't want too. Chairman Moore stated under the code you are requesting a variance which requires unnecessary hard ship or a practical difficulty. Chairman Moore stated trying to understand the encroachment and the board is trying to understand the code to apply. Mr. Hershberger stated he had tried to drive around town to find a pool like his but couldn't. But stated he understands the code, but the safety is his thing and no other pool in town comes out in front of the house. He stated they are fixing things all the time making it better. Mr. Woody Bunting stated you are purposing to be seven feet out from the pool, he stated his six-foot fence goes right up to the diving board of the pool. That would go straight over to your house from the concrete. Mr. Bunting stated he would be opposed to it coming further out. He suggested it come from the concrete because they have no dimensions to go by. Chairman Moore stated they were concerned about the six-foot fence encompassing more of the front yard.

Chairman Moore asked if anyone would like to speak for or against the application for those watching on Facebook, we are not taking comments during public meetings. Mr. Hershberger asked if he agreed to take off the seven feet what would he have to do. Chairman replied work with Mr. Engelhart about getting a fence permit.

Mr. Woody Bunting made the motion to approve the six-foot fence using the front edge of the concrete pad extending it to the house in either direction. The rest of the fencing make it six feet along the property line. Mr. Robert Palladino seconded the motion. All in favor.

Chairman Moore asked Mr. Engelhart to advise the board of the next request. Mr. Engelhart stated this was an appeal received from Maple Ave. LLC with contract purchaser UTR Ventures LLC. Mr. Engelhart explained it was a two-part appeal. The first is for a conditional use in the R-3 apartment district to construct 33 multi-family town house dwelling units on three parcels on Maple Ave. The second appeal is code section 108-715 B required that the multifamily units be 18 foot wide. The appellant would like to reduce that for each townhouse unit. Each unit would be 16 foot wide across the side and width. Chairman Moore stated he had made an inquiry today to Mr. Engelhart about if the Fire Marshal had been contacted about life safety. Mr. Engelhart stated he had reached out to Deputy Fire Marshal Matt Owens, and he said no issues he could think of no life safety issues nothing in the national fire code that would prohibit that. He stated as far as building code it would be up to Mr. Engelhart. He stated no prohibition was found in the International Residential Code. Chairman Moore stated he contacted David Fitzgerald at the Fire Department and he advised him to contact the Fire Marshal's Office. So, there is no life safety that we know of for the 18 feet. Chairman Moore called for the applicants and swore them in. Mr. Bobby Kitchens, Attorney Mr. Mark Cropper and Mr. Russell Hammond. Mr. Cropper stated the section of the code where you could find reasons for requesting a variance. The parcels in question were parcel 0801, 0802 and 0803. Chairman Moore asked Mr. Cropper to explain for the board the difference between a variance and a special exception. To request a



variance, you must have unique circumstances something that does not apply with the other properties one is the zoning and you can't enjoy the use of the property. Chairman Moore stated conditional use could be called if you have the special exception included. Mr. Cropper stated this would be considered a special exception. Mr. Cropper presented Exhibit #1 which was an aerial of the property. Mr. Cropper asked Mr. Kitchens in what capacity was he there for. Mr. Kitchens replied as the owner and contractor. Mr. Cropper stated for him to proceed to closing on this project was on the decision of the board tonight. He replied yes. Mr. Cropper asked Mr. Kitchens to explain the project to the board. Mr. Kitchens stated they would be townhouses trying to fill the need for Berlin. Mr. Cropper stated they would not be section 8. They would be fee simple sales whatever the market rate and set up a Homeowners Association or a management control of the project.

Mr. Cropper stated on approval of this tonight you would proceed to get permits and start construction once you close on the property. Mr. Cropper stated they had read into the record that because it is zoned R-3 you must have conditional use. The code also requires 18 feet, and you want a reduction to 16 feet. Mr. Cropper stated the applicant had given many reasons why he wanted the change and in other places have proven to be marketable. He stated it would make it more affordable for people and for him to complete the project. They named Sunset in Ocean City Mr. Kitchens had visited had taken measurements. The interior he stated was 14 feet the exterior 15 feet. Mr. Kitchens also stated he had visited some in Somerset County that were 15 feet. Mr. Cropper stated from what they had just heard from Mr. Engelhart and Chairman Moore there was no life safety issues or fire code. Mr. Kitchens agreed. Mr. Cropper asked Mr. Kitchens if this project was consistent with the Comprehensive Plan. He also asked him if this was approved, he knew he would have to purchase water & sewer from the town of Berlin. Mr. Kitchens agreed. Mr. Cropper continued asking questions of Mr. Kitchens. Mr. Russell Hammond prepared the sketch plan and would be providing more surveying. Chairman Moore stated it would go to site plan approval and there would be ample area if they had to build 18 feet wide. Mr. Woody Bunting stated it was an important issue the 18 feet to 16 feet. Mr. Woody stated he didn't think there were any units in town that were 16 feet. He stated he would like to know how the Planning Commission felt about the reduction to 16 feet. Mr. Hammond stated he had to move the units due to the flood plain closer to the road. Discussion on how many acres it was calculated at 4 ½ acres.

Mr. Cropper stated he was asking for a special exception. Mr. Robert Palladino asked about the individual homes that are there. Mr. Cropper stated it would be a flag lot. Mr. Doug Parks asked about all the traffic on Maple Ave going out to Flower Street. Mr. Engelhart stated that Maple Ave was wide enough to handle the traffic it is going to be resurfaced after the back project is completed. No concerns have been expressed to the department Mr. Engelhart stated. Mr. Palladino asked what price range he would be asking. Mr. Kitchen replied due to the cost of lumber now he was afraid to speak of the cost. Chairman Moore asked Mr. Engelhart would they go to site plan approval after this meeting following the outcome. The Planning Commission could alter some of this he stated. Mr. Engelhart replied yes, they could the traffic and circulation and parking. Mr. Cropper told the board he realizes this is not site plan approval, but it gets them to the next step. Chairman Moore called for a motion.



Mr. Robert Palladino made the motion to approve the request for the 33 Multifamily Townhouse Units and the Special Exception to reduce the width of each dwelling from 18 feet to 16 feet in width.

Mr. Woody Bunting wanted to discuss the 18 feet width verses the 16 feet width. Mr. Engelhart stated in lumber 16 feet are more common and available then the 18 feet. Chairman Moore stated they all are concerned about life safety. Chairman Moore stated he was more concerned about the use of the property because the Planning Commission would have more questions that they would discuss about the 18 feet. Mr. Engelhart stated that Mr. Kitchens had come to the office and inquired about the 18 feet, and no one had an answer and it's in the code, so they had to go for a variance. Chairman Moore mentioned at one time they were moving houses into town didn't know if these 18 feet was referenced to that or not. Mr. Engelhart referenced the house moving section in the code and that a rancher had been brought into town a couple years ago.

Chairman Moore stated we have a motion do we have a second. Mr. Doug Parks seconded the motion for both applications to be approved and it was accepted unanimously by the commission. Meeting adjourned at 7:38PM

Respectfully Submitted,



Carolyn Duffy



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berlin@townofberlinmd.com

# Mayor & Council Of Berlin

10 William Street Berlin, Maryland 21811

www.townofberlinmd.com

\$ 325.00  
7/14/2021  
Cx# 7124

## BOARD OF ZONING APPEALS APPLICATION

Property Location: 2 Nelson Street Date: 7-13-21  
Lot #: \_\_\_\_\_ Lot Size: 8,363 s.f. Zoning: R-2 Map#: 300 Parcel#: 1347

Please check (✓) one of the following option requests:

Variance ☒ Conditional Use \_\_\_\_\_ Special Exception \_\_\_\_\_

Description of Request:

We are requesting a front covered porch. The  
expecting size is 30ft x 6ft.

Has the property in question ever been the subject of a previous appeal? no  
If you answered yes, what is the appeal number and date? \_\_\_\_\_

Property Owner: Erving and Christina Truitt

Address: 2 Nelson Street

Phone: 410-251-3857 Owner's Signature: [Signature] Date: 7-13-21

### OFFICE USE ONLY. PLEASE DO NOT MARK BELOW.

CASE #: 8-11-21-6

DATE RECEIVED: 7/14/2021

HEARING DATE: 8-11-2021

LAND POSTED: 7/29/2021

DECISION: \_\_\_\_\_





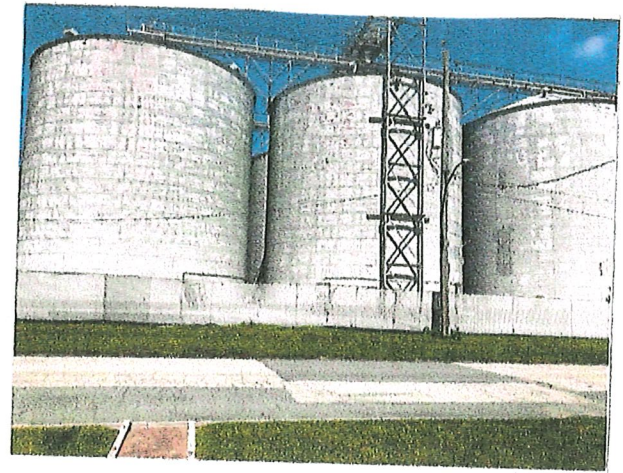


2 Nelson St. (our home)





Franklin Ave.



View from our steps



Franklin Ave



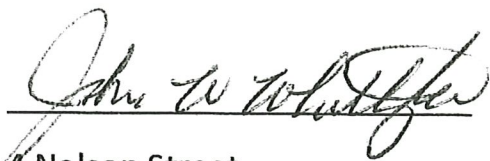
Graham Ave.



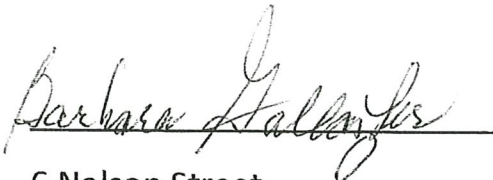
July 7, 2021

To Whom It May Concern,

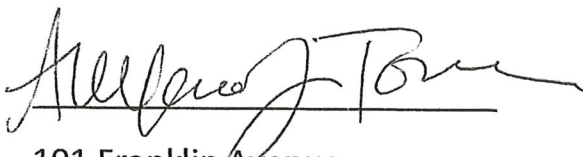
The neighbors of Erving and Christina Truitt (2 Nelson Street) agree to allow them to build a covered front porch (30x6 feet). We understand by allowing this project it will increase the aesthetic and property value of our homes and neighborhood.



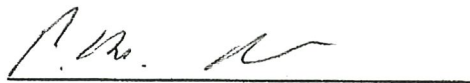
4 Nelson Street



6 Nelson Street

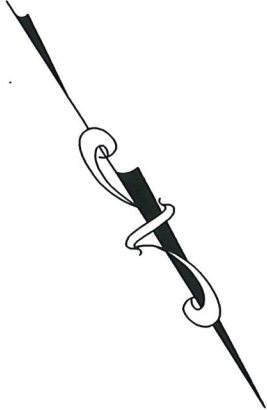


101 Franklin Avenue

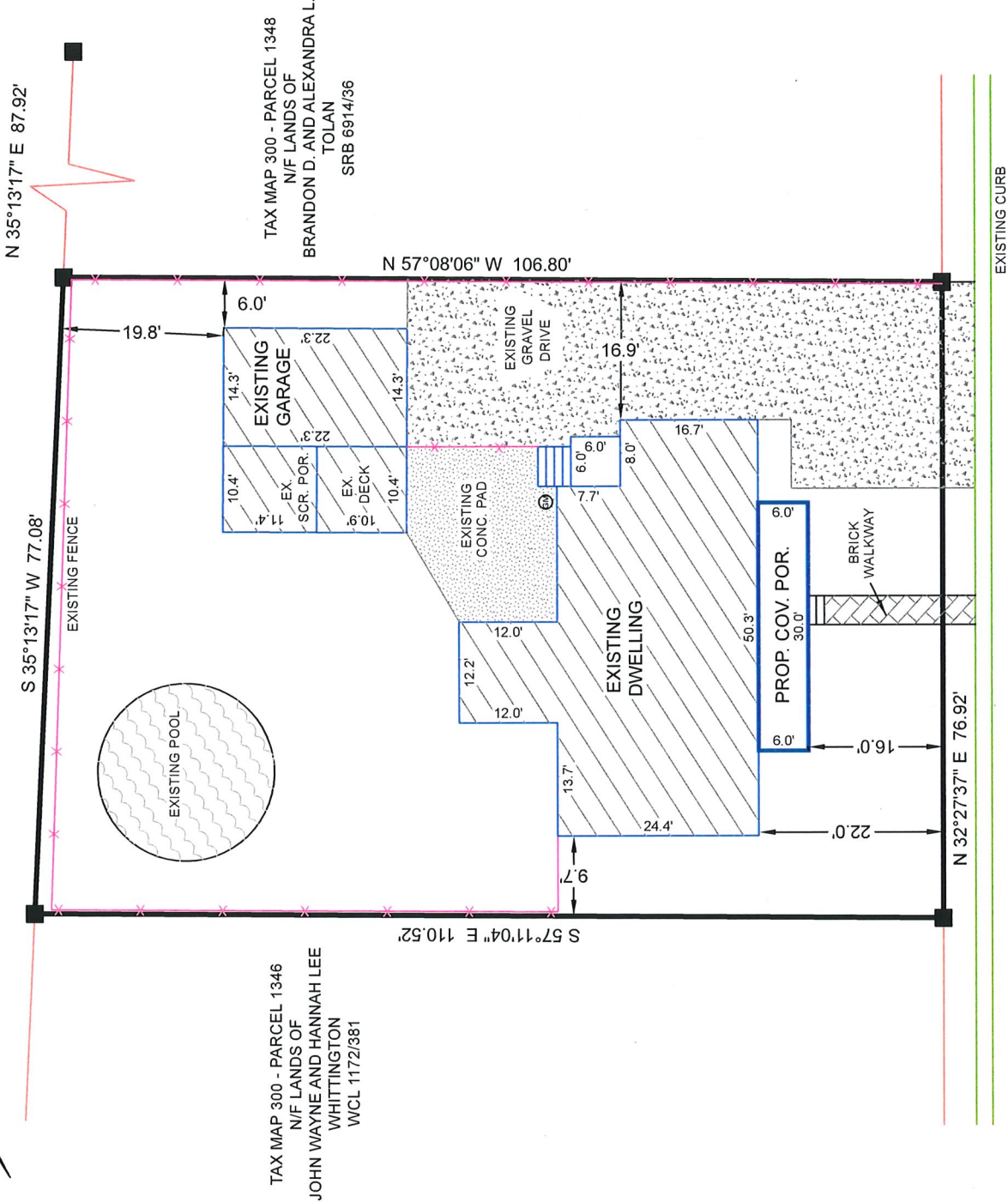


103 Franklin Avenue

NOTE: THIS PLAT REFLECTS THE DESCRIPTION OF THE LOT/PARCEL AS NOTED IN THE TITLE OF THIS PLAT, AS SHOWN ON THE RECORD PLAT AND DOES NOT VERIFY THE EXISTENCE OR NON-EXISTENCE OF RIGHTS OF WAY, WETLANDS, UTILITIES OR EASEMENTS PERTAINING TO THIS PROPERTY OTHER THAN THOSE AS SHOWN ON SAID RECORD PLAT. NO TITLE SEARCH OR COVENANTS PROVIDED OR STIPULATED.



TAX MAP 300 - PARCEL 1349  
N/F LANDS OF  
ROBERT MARION BAKER  
SVH 4867/444



TAX MAP 300 - PARCEL 1346  
N/F LANDS OF  
JOHN WAYNE AND HANNAH LEE  
WHITTINGTON  
WCL 1172/381

TAX MAP 300 - PARCEL 1348  
N/F LANDS OF  
BRANDON D. AND ALEXANDRA L.  
TOLAN  
SRB 6914/36

NELSON STREET

(40' R.O.W.)

**SITE PLAN FOR**  
**BOARD OF ZONING APPEALS**  
**LANDS OF**  
**ERVING LADDEL TRUITT, III AND CHRISTINA MARIE TRUITT**  
**TOWN OF BERLIN**  
**THIRD TAX DISTRICT, WORCESTER COUNTY, MARYLAND**

GENERAL NOTES:

TAX MAP 300, PARCEL 1347  
ADDRESS: 2 NELSON STREET  
DEED REF.: SVH 4555/195  
LOT AREA: 8,353 S.F. ±

EX. ZONING: R-2

ZONING SETBACKS:

FRONT: 25', SIDES: 8' MIN. , TOTAL = 20'  
REAR = 35'

FLOOD ZONE: X

PER FIRM NO. 240141 0154 H  
DATED JULY 16, 2015.



(IN FEET)

1" = 20'

MIN. ACCURACY = 0.1'±

■ DENOTES CONC. MON. FOUND

**RUSSELL T. HAMMOND**  
*Surveying, L.L.C.*

SURVEYING - LAND PLANNING  
10310 Hotel Road Bishopville, MD 21813  
(410) 352-5674 - (410) 726-8076

DRAWN BY R.T. HAMMOND  
FILE NO. 2021-3054  
DATE 07/10/2021





# Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

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## BOARD OF ZONING APPEALS APPLICATION

ADDRESS OF PROPERTY: 10103 Old Ocean City Blvd DATE: \_\_\_\_\_

APPLICATION FOR: ☒ VARIANCE ☐ CONDITIONAL USE ☐ APPEAL

LOT # N/A LOT SIZE: 0.67 Ac ZONING DESIGNATION: B-2 TAX MAP 25 PARCEL 183

APPELLANT NAME: Eric Fiori ADDRESS: 8808 Hunting Hound Rd


APPELLANT PHONE#: (443) 497-3909 APPELLANT EMAIL: eric@baysidejetdrive.com

PLEASE PROVIDE A BRIEF DESCRIPTION OF THE GROUNDS FOR THE APPEAL. IF THE REQUEST IS FOR A VARIANCE, PROVIDE A DESCRIPTION OF THE LAND USE HARDSHIP. IF THIS IS A CONDITIONAL USE REQUEST, PROVIDE A BRIEF DESCRIPTION OF THE PROPOSED USE:

Variance request to reduce the amount of required parking from 34 Spaces to 25 Spaces (Difference of 9 Spaces or a reduction of 26%). This request is followed by a conversation with The State Highway Administration (SHA) requiring the owner to provide a single channelized entrance with a strong recommendation to eliminate the existing "pull-in" parking along Old Worcester Hwy. Doing so eliminates 10 existing spaces in front of the building.

PROPERTY OWNER: Eric Fiori ADDRESS: 8808 Hunting Hound Rd

PHONE #: (443) 497-3909 EMAIL: eric@baysidejetdrive.com

OWNER SIGNATURE:  DATE: 07/01/2021

### FOR OFFICE USE ONLY

CASE # 8/18/21-7 DATE APPLICATION RECEIVED 8/10/2021

HEARING DATE 8/18/2021 PROPERTY POSTED DATE 8/5/2021

FEES DUE \$325.00 FEES PAID 8/10/2021

DECISION: \_\_\_\_\_





