

IN THE MATTER OF  
THE APPLICATION OF  
JAMES T. AHERN

\* BEFORE THE CECIL COUNTY  
\* BOARD OF APPEALS  
\* CASE NO.: 3644

(Variance)

\*  
\*

\* \* \* \* \*

**OPINION**

The Cecil County Board of Zoning Appeals (the “Board”) is now asked to consider the application of James T. Ahern (the “Applicant”). Applicant seeks a variance from the ten foot setback requirement in order to construct a garage on property located at 108 Shady Beach Road, North East, Maryland 21901, designated as Parcel 1346 on Tax Map 31, in the Fifth Election District of Cecil County (the “Property”). The Property is in an area zoned Manufactured Home (“MH”) and is owned by the Applicant.

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1, variances, as defined in Article II, may be granted by the Board of Appeals. Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

A. The variance requested is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.

B. Special conditions and circumstances exist that are peculiar to the land, buildings, or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.

C. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.

D. The variance request does not arise from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

Applicant appeared and requested the variance in order to construct a garage on the Property. The Applicant testified that the Property is 1.15 acres in size and that during the course of planning to construct a garage on the Property he learned that an encroachment of the neighboring parcel on his Property was undisclosed prior to his taking title to the Property. Applicant had originally planned to construct the garage on his driveway only to learn after having the Property surveyed that his driveway actually extends across the boundary line onto the adjoining parcel and he is unable to construct the garage on property to which he does not in fact hold title. The only remaining place on the Property where the garage can be constructed requires a variance from the ten foot setback requirement.

No one appeared in opposition to or in favor of the application.

From the evidence presented the Board is satisfied that the criteria set forth in Section 306 has been met, and makes the following findings:

1. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance. Although the Property is of sufficient size, the Applicant is unable to construct the garage on his driveway because the fact that his driveway encroaches on the neighboring parcel was not disclosed prior to transfer of title. Other properties of the size of the Parcel are able to construct garages in the

manner proposed by the Applicant and without a variance Applicant will not be able to move forward with the proposed construction.

2. Special conditions and circumstances exist that are peculiar to the subject land, buildings or structures involved and that are not applicable to other lands, buildings, or structures in the same zone. Due to nondisclosure of the encroachment, the proposed construction cannot be undertaken without the requested variance.

3. The granting of the variance will not confer upon the applicant special privileges that are denied by this Ordinance to other properties in the same zone. Other owners of parcels of equal size to the Property are able to construct garages their property in the manner proposed by Applicant.

4. There is no evidence that the variance request arises from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

For the reasons stated, by unanimous vote, the Board is satisfied that the criteria set forth in Section 306 have been met, and the application is therefore **APPROVED**.

6/25/2013  
Date

David Willis, Jr.  
David Willis, Chairperson

**BOARD OF APPEALS APPLICATION  
CECIL COUNTY, MARYLAND**

MEET. MONTH: May 2013  
FILE NO. 3644

THIS REQUEST IS FOR:  
 SPECIAL EXCEPTION RENEWAL ( )  
 SPECIAL EXCEPTION ( )  
 VARIANCE (X)  
 APPEAL ( )

DATE FILED: 4/18/13  
 AMOUNT PD: \$200.00  
 ACCEPTED BY: [Signature]  
*Cashier CH#50440711*  
*APG*

**A. APPLICANT INFORMATION**

JAMES T. AHERN  
 APPLICANT NAME - PLEASE PRINT CLEARLY  
108 SHADY BEACH RD NORTH EAST MD 21901  
 ADDRESS CITY STATE ZIP CODE  
[Signature] 410-287-5180  
 APPLICANT SIGNATURE PHONE NUMBER

**B. PROPERTY OWNER INFORMATION**

JAMES T. AHERN  
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY  
108 SHADY BEACH RD NORTH EAST MD 21901  
 ADDRESS CITY STATE ZIP CODE  
[Signature] 410-287-5180  
 PROPERTY OWNER SIGNATURE PHONE NUMBER

**C. PROPERTY INFORMATION**

108 SHADY BEACH RD NORTH EAST MD. 05-124956  
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER  
31 22 1346 1 1.15 MH  
 TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

**D. PURPOSE OF APPLICATION** - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

REQUEST VARIANCE TO BUILD GARAGE AT EDGE OF EASEMENT IN FRONT OF PROPERTY. 10' side yard setback variance

**E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.**

**F. LAND USE DESIGNATION**

Is property in the Critical Area? \_\_\_\_\_ YES \_\_\_\_\_ X NO  
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: \_\_\_\_\_  
 Is property in the 100 year Floodplain? \_\_\_\_\_ YES \_\_\_\_\_ X NO  
 Is property an Agricultural Preservation District? \_\_\_\_\_ YES \_\_\_\_\_ X NO

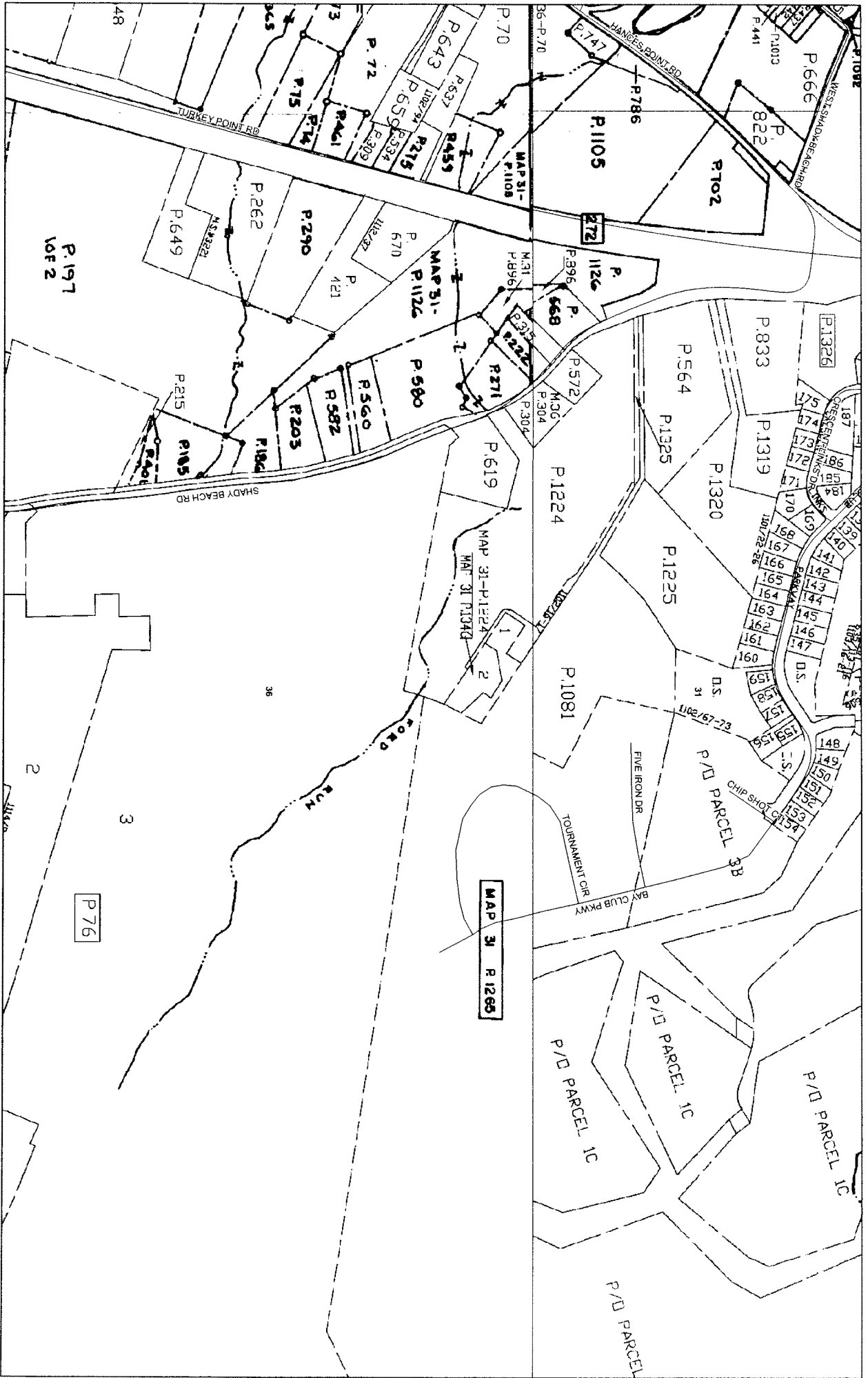
If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

**G. PROVISION OF ZONING ORDINANCE:** Section 306

**H. SPECIAL EXCEPTION RENEWAL** - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

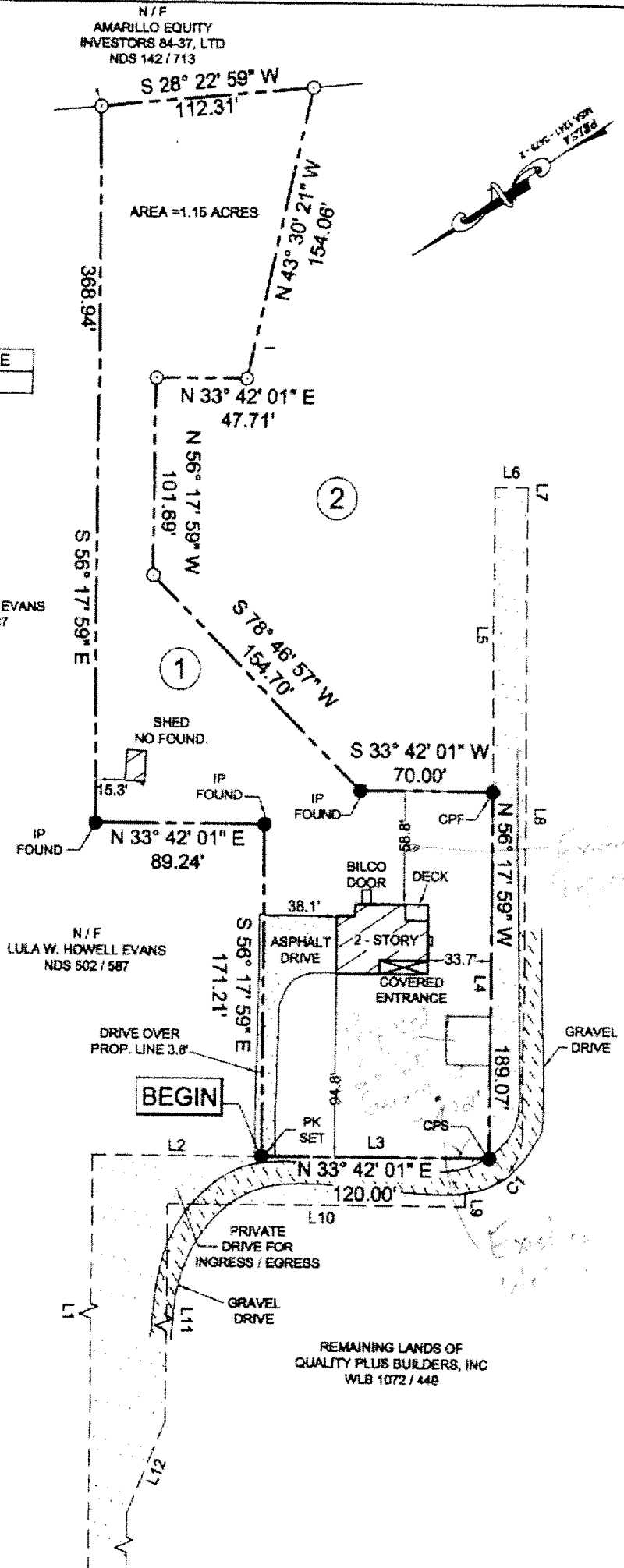
**I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME** - Please fill out the following information:

Will unit be visible from the road? \_\_\_\_\_ If yes, distance: \_\_\_\_\_  
 Will unit be visible from adjoining properties? \_\_\_\_\_ If yes, distance: \_\_\_\_\_  
 Distance to nearest manufactured home: \_\_\_\_\_ Size/Model/Year of Unit: \_\_\_\_\_  
 Number of units on property at present time: \_\_\_\_\_



LINE	BEARING	DISTANCE
L1	S 56° 17' 59" E	496.88'
L2	S 33° 42' 01" W	89.24'
L3	S 33° 42' 01" W	120.00'
L4	S 56° 17' 59" E	189.07'
L5	S 56° 17' 59" E	156.43'
L6	S 33° 42' 01" W	17.50'
L7	N 56° 17' 59" W	5.00'
L8	N 56° 17' 59" W	328.00'
L9	N 56° 17' 58" W	7.50'
L10	N 33° 42' 01" E	156.74'
L11	N 56° 17' 59" W	284.52'
L12	N 33° 54' 28" W	52.51'

CURVE	RADIUS	ARC LENGTH	DELTA ANGLE
C1	30.00'	47.12'	89°58'33"



**Boundary Plan**  
for  
**James Ahern**  
108 Shady Beach Road  
Lot 1, Minor Subdivision Plan Of  
Quality Plus Builders, Inc  
Fifth Election District  
Cecil County, Maryland