

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
GERALD & SAMANTHA MILLER	*	CASE NO.: 4249
	*	
(Variance – LDR)	*	

* * * * *

OPINION

The Cecil County Board of Zoning Appeals (the “Board”) is now asked to consider the application of Gerald and Samantha Miller (“Applicants”), for a variance to the front building restriction line for construction purposes. The subject property located at 3 Clearview Ave, North East, Maryland 21901, being designated as Parcel 0046, Lot 21 on Tax Map 31G, in the Fifth Election District of Cecil County (“Property”), in an area presently zoned Low Density Residential (LDR) and is currently non-confirming. The Property is owned by the applicants.

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.

On January 22, 2024, Applicants appeared represented by attorney Dave Beste, who testified on their behalf in support of File No. 4249 (the "Application") seeking a twenty-three (23) foot variance to the 30-foot front building restriction line on the Clearview Avenue side of the Property to construct a staircase and landing to the second floor of the existing home. Diagrams of the proposed construction and of the parcel were submitted with the Application. Beste testified that the Applicants purchased the property in 2016 and the home and all existing decks and additions were constructed by the previous owners. Applicants testify that the need for the proposed construction arises from a lack of ingress and egress to the living quarters of the home as the current access point is on the ground level requiring entry through the garage or basement. Applicants contend that although the property is not within the Flood Plain, it is close enough that they are at risk of flooding which creates a safety concern if occupants should need to evacuate the home in an emergency or natural disaster. Applicants further testified that the proposed structure is the smallest design that would accommodate their need and that building off any existing deck would still require a variance.

No witnesses spoke in favor of or in opposition to the Application.

The subject property is in the Critical Area, however the proposed use would not present any negative impact to the Critical Area Buffer, therefore only Zoning issues need to be considered by the Board. The Property is not in the Floodplain or an Agricultural Preservation District.

From the evidence presented, the Board is NOT satisfied that the criteria set forth in Section 306 has been met and makes the following findings of facts:

1. The variance request is not based upon a special circumstance to which 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 the Ordinance. The property is currently nonconforming to the Ordinance, and granting the variance would increase the nonconformity. There exist several decks and patios which could be removed to first minimize or eliminate the nonconformity to construct a second level (living area) access point. The Board finds that no hardship exists creating justification for approval of another variance.


2. Not enough evidence was submitted to support that special conditions or 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. As previously stated, the Board finds that since the Property is already in a nonconforming state, it cannot approve any additional nonconformity even if the proposed construction is the best option for the Applicants to avoid economic impact of removing another deck or structure. Economic factors cannot be considered when determining a hardship exists.

3. The granting of the variance would confer upon the applicant special privileges that are denied by this Ordinance to other properties in the same zone. For the reasons stated in the previous two paragraphs the Board finds that the Applicants have not provided sufficient testimony to meet this burden.

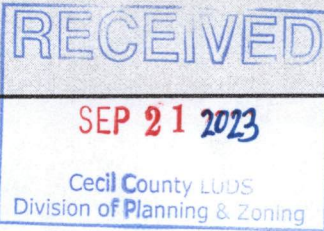
4. There is no evidence that the variance request arises from any condition to land or building use, either permitted or non-conforming, on any neighborhood property, however every standard must be met for approval of a variance.

For the reasons stated, by unanimous vote, the Board is NOT satisfied that the criteria set forth in Section 306 have been met, and the application is therefore **DENIED**.

2/26/24
Date


Mark Saunders, Chairperson

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



MEET. MONTH: Oct. 2023
FILE NO. 4249

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

DATE FILED: 9/21/23
 AMOUNT PD: \$ 200
 ACCEPTED BY: JB

A. APPLICANT INFORMATION – ALL APPLICANTS MUST SIGN

Gerald Miller and Samantha Miller
 APPLICANT NAME – PLEASE PRINT CLEARLY
3 Clearview Ave North East MD 21901
 ADDRESS CITY STATE ZIP CODE
[Signature] 302 388 7772
 APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION – ALL PROPERTY OWNERS MUST SIGN

Gerald and Samantha Miller
 PROPERTY OWNER NAME – PLEASE PRINT CLEARLY
3 Clearview Ave North East MD 21901
 ADDRESS CITY STATE ZIP CODE
[Signature] 302 388 7772
 PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

3 Clearview Ave North East MD 21901 05 016479
 PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
0316 16 0046 21 .075 LDR
 TAX MAP BLOCK PARCEL LOT# #ACRES ZONE

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

A 18 foot variance to the 23 foot front setback for construction purposes along Clearview Ave.
* A 23 foot Variance of the 30 foot front building restriction line for construction purposes along Clearview Ave as per Section 285.2.

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? X YES _____ 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: Article XVII Part I Section 306; Article III Section 285

H. SPECIAL EXCEPTION RENEWAL – PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: _____

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: _____

From: Thomas Welch TWelch@cecilcountymd.gov
Subject: RE: Gerald and Samantha Miller Variance Documents for
8/28/23 Meeting
Date: Sep 6, 2023 at 10:02:38 AM
To: Jerry Gmail j.miller99999@gmail.com

Good Morning Jerry,

Charlestown Manor has nonconforming setbacks of 25 feet from the front and rear property lines and 5 feet from the side. Due to 3 Clearview Ave being a corner lot, it has two front setbacks from Clearview Ave and Shore Drive, with the remaining two property lines being side property lines. Uncovered front porches can intrude an additional 6 feet into the front setback which would bring the setback for the porch (stairs) to 19 feet, if the home meets setback requirements. If the existing home is already located within a property setback, then it is considered to have prevailing character. A dwelling with prevailing character can keep their nonconforming position but cannot further intrude (develop) into that setback unless a variance is granted. If you have any additional questions, please let me know.

Regards,

Tom I. Welch

Resource Plans Reviewer
Division of Planning & Zoning
Department of Land Use & Development Services
Cecil County Government
[410-996-5220](tel:410-996-5220)

From: Jerry Gmail <j.miller99999@gmail.com>
Sent: Tuesday, September 5, 2023 3:37 PM
To: Thomas Welch <TWelch@CecilCountyMD.Gov>
Subject: Re: Gerald and Samantha Miller Variance Documents for 8/28/23 Meeting

CAUTION: This email originated from outside of Cecil County IT Network Systems. **Reminder:** DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities to the IT Department.

What are the setback requirements from my property line and I'll try and make sure the stairs are not within them
Jerry miller
Sent from my iPhone

On Sep 5, 2023, at 3:32 PM, Thomas Welch <TWelch@cecilcountymd.gov> wrote:

Good Afternoon Jerry,

Once the new plans come in, I can review them. There will still be a setback requirement for the stairs to where if that setback is not met then it cannot be approved. Once the new plans are submitted, I can include you on any comments the Division may have. If you have any questions, please let me know.

Regards,

Tom I. Welch

Resource Plans Reviewer
Division of Planning & Zoning
Department of Land Use & Development Services
Cecil County Government
[410-996-5220](tel:410-996-5220)

From: Jerry Gmail <j.miller99999@gmail.com>

Sent: Tuesday, September 5, 2023 3:29 PM

To: Thomas Welch <TWelch@CecilCountyMD.Gov>; Miller Samantha <samamiller@paypal.com>

Subject: Re: Gerald and Samantha Miller Variance Documents for 8/28/23 Meeting

CAUTION: This email originated from outside of Cecil County IT Network Systems. **Reminder:** DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities to the IT Department.

Thank you for reaching out, my builder should be putting a new deck plan in for the permit, which hopefully does not require any variance approval.

Jerry miller
Sent from my iPhone

NOTICE TO RESIDENTS IN REPETITIVE LOSS AREAS

AND

FLOOD PREVENTION & INSURANCE INFORMATION

You have received this letter because your property is either in an area that has been flooded several times, or at least one of your neighbors suffered insured flood damage in excess of \$1,000, two or more times. Cecil County is concerned about repetitive flooding and has an active program to help you protect yourself and your property from future flooding. The following are steps you can take to help prepare and plan for a flood event.

Prepare for flooding by doing the following:

- Know how to shut off the electricity and gas to your house when a flood comes.
- Make a list of emergency numbers and identify a safe place to go.
- Make a household inventory, especially of basement contents.
- Put insurance policies, valuable papers, medicine, etc. in a safe place.
- Collect and put cleaning supplies, camera, waterproof boots, etc. in a handy place.
- Develop a disaster response plan. See www.ready.gov
- Clean and maintain the drains around your home, including roof gutters, down spouts, drain inlets, pipes, drainage ditches, and driveway culverts.
- Consider installing "check valves" to prevent flood water from backing up into the drains of your home.
- If feasible, construct barriers to stop floodwater from entering the building and seal walls in basements with waterproofing compounds.

Get a Flood Insurance Policy:

- Most homeowner's standard policies don't cover damage from floods.
- Because Cecil County participates in the National Flood Insurance Program (NFIP) separate flood insurance policies can be purchased.
- If you purchased flood insurance as required by the terms of a mortgage or home improvement loan it may only cover just the building's structure and not the contents, such as your furniture and appliances. Be sure to obtain contents coverage.
- Don't wait for the next flood to buy insurance protection. In most cases it takes 30-days before coverage takes effect.
- Contact your Insurance Agent for questions and information on rates and coverage.
- Flood insurance is available whether the building is in or out of an identified flood-prone area

Consider some permanent flood protection measures:

- Mark your fuse or breaker box to show the circuits to the floodable areas.
- Consider elevating your house above flood levels.
- For more information see the "Homeowner's Guide to Retrofitting" on FEMA's website, www.fema.gov.
- Check with the City's Building Division for obtaining permits prior to beginning any construction or improvements on your building.
- Consider installing "check valves" to prevent flood water from backing up into the drains of your home.

During a Flood:

- Listen to the radio or television for up-to-date information.
- Be aware of flash flooding and other areas that are known to flood suddenly.
- Never drive or walk through flooded areas. Water levels can rise unexpectedly and be deadly.
- Stay away from downed power lines and displaced wild animals in the water, such as rats and snakes.

Questions?

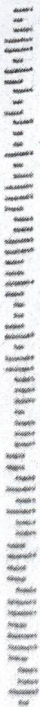
- About flood zone map determination or about flood-proofing call Cecil County Planning & Zoning at 410-996-5220.
- Know your Zone (Hurricane) website <https://mdem.maryland.gov/action/Pages/know-your-zone-md.aspx>
- MDEM "Are You in a Flood Prone Area" website <https://mdem.maryland.gov/Pages/flood-Prone-Zones.aspx>
- About areas prone to flooding and additional flood facts: <http://mdfloodmaps.com/>
- About flood mitigation assistance call Cecil County Emergency Management at 410-392-2034.



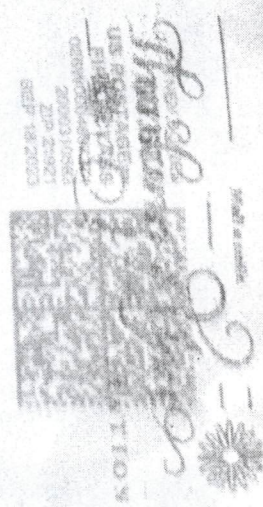
Department of Emergency Services
107 Chesapeake Blvd, Suite 108
Elkton, MD 21921

MILLER GERALD W
3 CLEARVIEW AVE
NORTH EAST, MD 21901

21901-390503



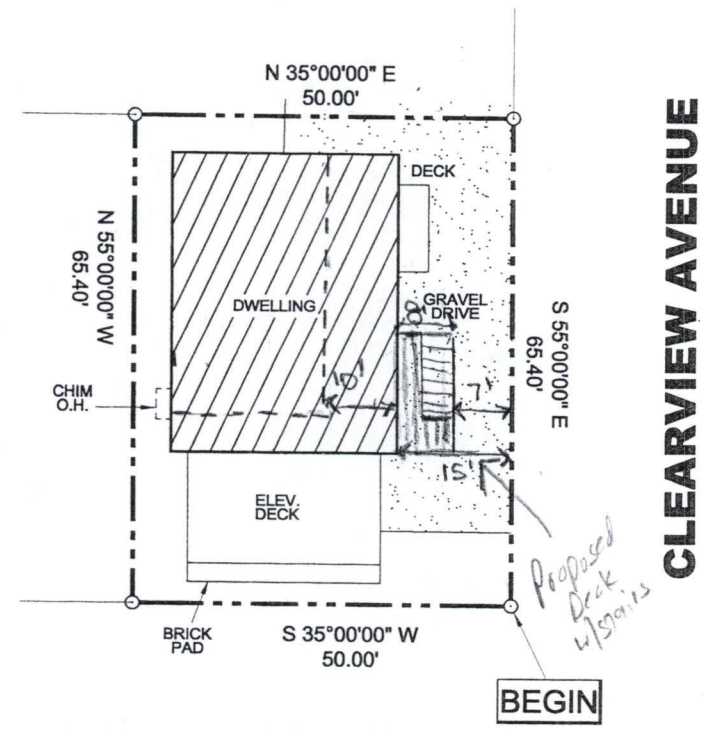
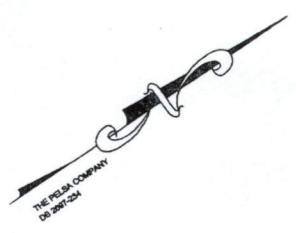
BAI TIMORE MD 212
18 SEP 2023 PM 6 L



POSTAGE



--- setback



**RIVERSIDE DRIVE
A.K.A. SHORE DRIVE**

Location Drawing
for
Gerald W. Miller & Samantha A. Miller
3 Clearview Avenue
Fifth Election District
Cecil County, Maryland

NOTES:
PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
SOURCE OF BEARING SYSTEM: DR 2697-231

with the Settlement office of:
THE KIRSH LAW FIRM
KIRSH TITLE SERVICES
112 E. Cecil Avenue
NORTH EAST, MD 21901
410-287-1510

THE
PELSA

Index Sheet
1 of 2

A LICENSEE WAS IN RESPONSIBLE CHARGE OVER THE PREPARATION OF THIS LOCATION DRAWING AND THE SURVEYING WORK REFLECTED IN IT.

COMPANY

Engineering, Surveying, Environmental Sciences

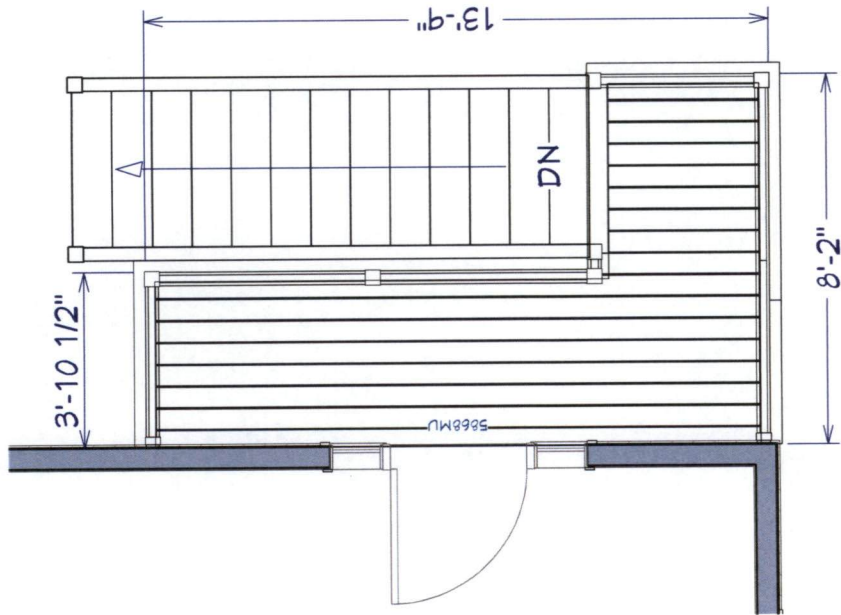
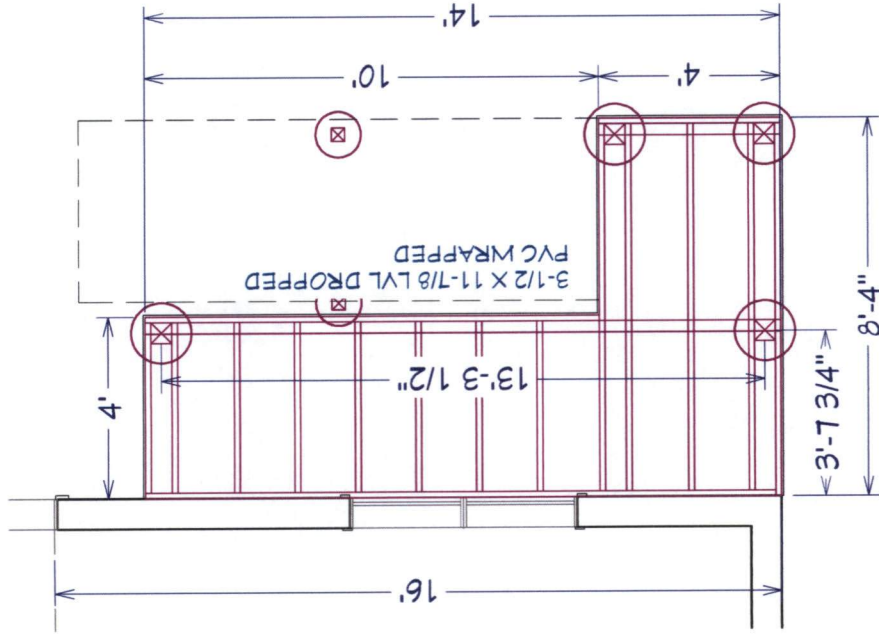
610 PEOPLES PLAZA NEWARK, DE 19702
(302) 834-3771 (410) 398-3800

THIS PLAN IS OF BENEFIT TO A CONSUMER ONLY INsofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing, or refinancing. THIS PLAN IS NOT TO BE RELIED UPON FOR THE ESTABLISHMENT OR LOCATION OF FENCES, GARAGES, BUILDINGS, OR OTHER EXISTING OR FUTURE IMPROVEMENTS; AND THIS PLAN DOES NOT PROVIDE FOR THE ACCURATE IDENTIFICATION OF PROPERTY BOUNDARY LINES. THIS IDENTIFICATION MAY NOT BE REQUIRED FOR THE TRANSFER OF TITLE OR SECURING FINANCING OR REFINANCING.

DEGREE OF ACCURACY ± 5' MARSH _____ RURAL _____ SUBURBAN URBAN _____ Date 05/08/15 Scale 1" = 20' Project Number Mo15-0755



MILLER RESIDENCE
PROPOSED RENOVATIONS
3 CLEARVIEW AVE
NORTH EAST, MD 21101



FRAMING PLAN

DECK PLAN

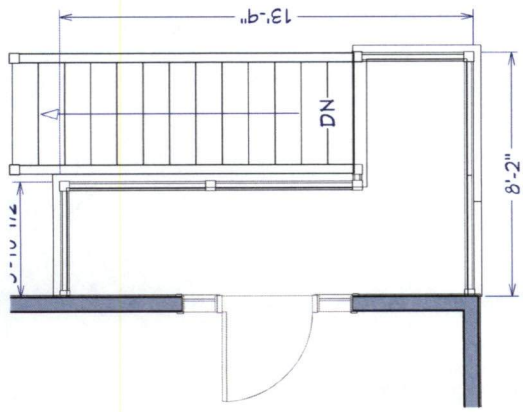
MILLER RESIDENCE
 PROPOSED RENOVATIONS
 3 CLEARVIEW AVE
 NORTH EAST, MD 21901



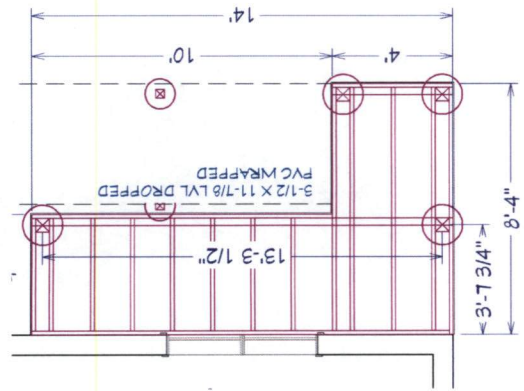


MILLER RESIDENCE
PROPOSED RENOVATIONS
3 CLEARVIEW AVE
NORTH EAST, MD 21901





DECK PLAN

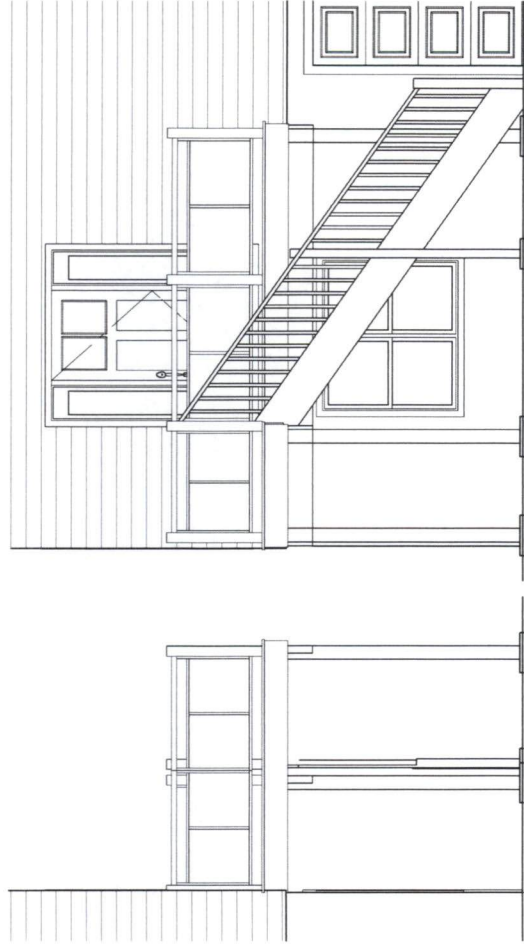


FRAMING PLAN

DECK NOTES:
 P.T. 2X8 LEDGER SECURED TO RIM JOIST W/1/2" GALVANIZED LAG BOLTS @ 16" O.C. STAGGERED.
 P.T. 6X6 POSTS ON 16"X32" DUG FOOTINGS OR DIAMOND PIERS NOTCHED TO RECEIVE DROPPED DECK BEAM & ROOF HEADERS.
 DROPPED 3-1/2 X 11-7/8 LVL BEAM.
 P.T. 2X8 DECK JOISTS @ 16" O.C.
 STAIR LANDING: P.T. 4X4 POSTS ON 12"X32" DUG FOOTINGS OR DIAMOND PIERS.
 P.T. 4X4 RAIL POSTS BOLTED TO DECK W/1/2" GALV. BOLTS.
 8" X 32" DUG FOOTINGS STAIR BASES.
GUARDS
 REQUIRED GUARDS SHALL NOT HAVE OPENINGS FROM THE WALKING SURFACE TO THE REQUIRED GUARD HEIGHT WHICH ALLOW FOR THE PASSAGE OF A SPHERE 4 INCHES IN DIAMETER. REQUIRED GUARDS SHALL NOT BE CONSTRUCTED WITH HORIZONTAL RAILS OR OTHER ORNAMENTAL PATTERNS THAT RESULT IN A LADDER EFFECT.

GUARDRAILS
 GUARDRAILS SHALL BE LOCATED ABOVE ANY RAISED SURFACE LOCATED MORE THAN 30 INCHES VERTICALLY TO THE FLOOR OR GRADE BELOW AT ANY POINT WITHIN 36 INCHES HORIZONTALLY TO THE EDGE OF THE OPEN SIDE. THE HEIGHT OF THE GUARDRAIL SHALL NOT BE LESS THAN 36 INCHES HIGH MEASURED VERTICALLY ABOVE THE ADJACENT WALKING SURFACE OR THE LINE CONNECTING THE LEADING EDGE OF THE TREAD. NOTCHING OF GUARDRAIL POST IS PROHIBITED.

HANDRAILS
 HANDRAILS SHALL BE PROVIDED ON AT LEAST ONE SIDE OF EACH CONTINUOUS RUN OF TREADS OR FLIGHT WITH FOUR OR MORE RISERS. HANDRAIL HEIGHT SHALL BE MEASURED VERTICALLY FROM THE SLOPED PLANE ADJOINING THE TREADS, NOSING OR FINISH OF RAMP SLOPE AND SHALL NOT BE LESS THAN 34 INCHES AND NOT MORE THAN 38 INCHES.

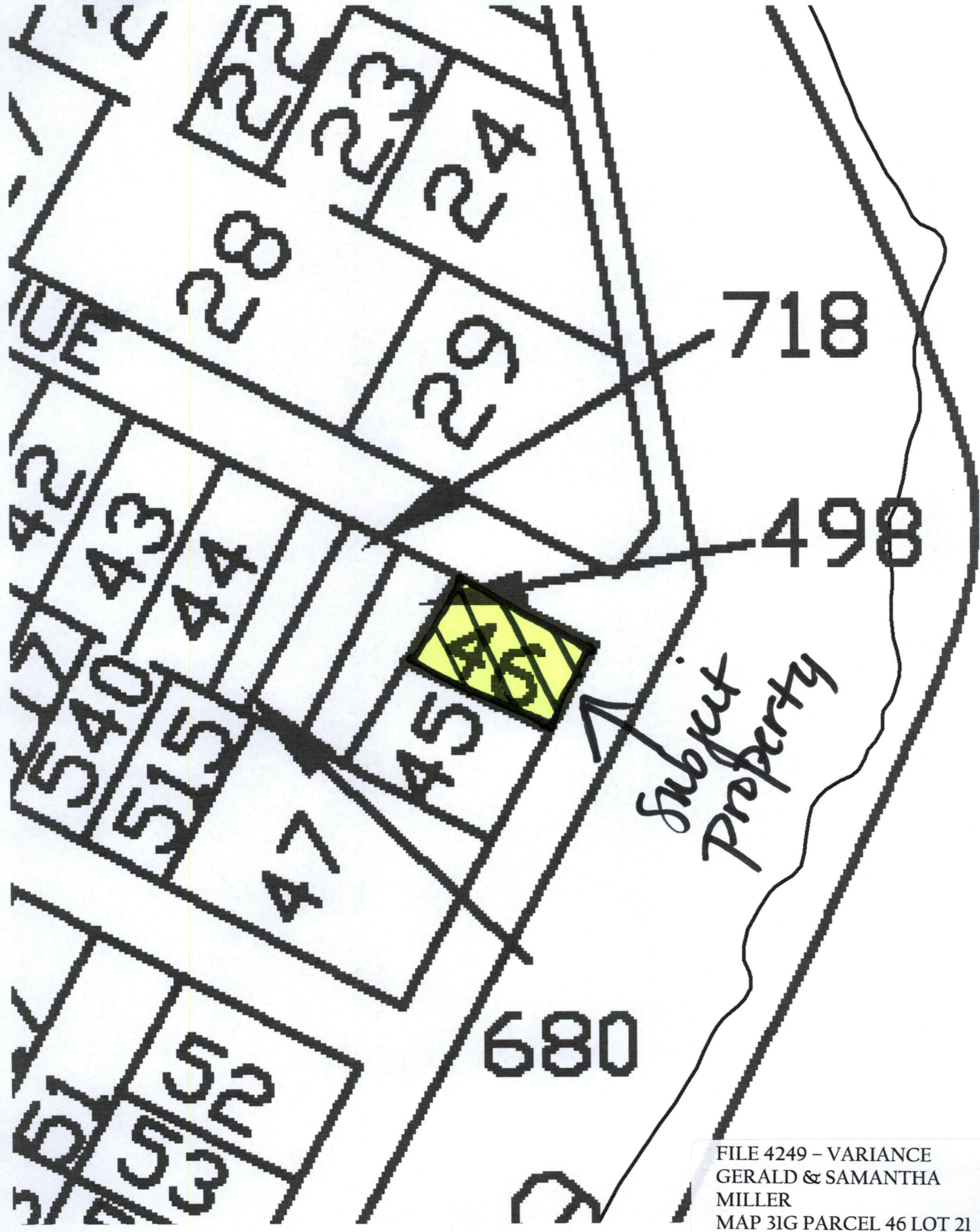


REVISION	DATE	DESCRIPTION

MILLER RESIDENCE
PROPOSED RENOVATIONS
 3 CLEARVIEW AVE
 NORTH EAST, MD 21051



DATE: 9/17/2023
 SCALE:
 SHEET:



718

498

*Subject
Property*

680

FILE 4249 - VARIANCE
GERALD & SAMANTHA
MILLER
MAP 31G PARCEL 46 LOT 21