



AGENDA
CITY OF FERNANDINA BEACH
SPECIAL MAGISTRATE HEARING
MARCH 26, 2024
8:30 AM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034

- 1. CALL TO ORDER**
- 2. CASES TO BE HEARD**
 - 2.1 DAVID & KRISTINA MCLAUGHLIN, 2200 S. FLETCHER AVENUE - PETITION FOR RELIEF** - *Requesting Special Magistrate facilitation of a resolution between the City and Property Owners or a determination as to the City's actions on a development order pursuant to Section 70.51, Florida Statutes.*
- 3. ADJOURNMENT**

Quasi-Judicial – Denotes that the item must be conducted as a Quasi -Judicial hearing in accordance with City Commission established procedure and Florida Statutes.

If any person decides to appeal any decision made by the Special Magistrate with respect to any matter considered at such meeting he/she will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be made.

Persons with disabilities requiring accommodations in order to participate in this program or activity should contact (904) 310-3115, TDD/TTY 711, at least 24 hours in advance to request such accommodations.

For information regarding this matter, please contact the Legal Department (904) 310-3275.



NOTICE OF PUBLIC HEARING

Please take notice that a Petition for Relief proceeding will be held pursuant to Section 70.51, Florida State Statutes, on the following property:

Case #: Petition for Relief
Property: 2200 S. Fletcher Avenue
Owner: David + Kristina McLaughlin

Summary of Request

Petition for Relief pursuant to Section 70.51 of the Florida Statutes, requesting Special Magistrate facilitation of a resolution between the City and Property Owners or a determination as to the City's actions on a development order. Specifically seeking relief from the calculation of average natural grade to address flooding conditions.

Date: Tuesday March 26, 2024
Time: 8:30 AM
Location: City Hall Chambers at
204 Ash Street, Fernandina Beach, FL

The petition and all supporting documents will be made available online approximately one week prior to the date of the public hearing; please visit <https://www.fbfl.us/867/Agendas>. Special Magistrate Hearings are considered in a quasi-judicial proceeding. Copies of the quasi-judicial procedures are available at the Office of the City Clerk and the Department of Planning & Conservation and will be available at the meeting. For information on the petition, please contact the Department of Planning & Conservation at (904) 310-3480.

Interested parties may appear at said hearing and be heard as to the advisability of any action, which may be considered. Any persons with disabilities requiring accommodations in order to participate in this program or activity should contact 310-3135, TTY 711 (TTY number for all City offices) or through the Florida Relay Service at 1-800-955-8771 at least 24 hours in advance to request such accommodation.

An applicant aggrieved by any decision may be appealed to a court of competent jurisdiction in accordance with the procedures of 70.51, Florida Statutes. If an applicant decides to appeal any decision made by the Special Magistrate with respect to any matter considered at such hearing, they will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

IN AND BEFORE A SPECIAL
MAGISTRATE, CITY OF
FERNANDINA BEACH, FLORIDA

**DAVID MCLAUGHLIN and KRISTINA
MCLAUGHLIN, husband and wife**

Petitioners,

v.

**CITY OF FERNANDINA BEACH, a
political subdivision of the State of Florida**

Respondent.

PETITION FOR RELIEF

Petitioners, **DAVID MCLAUGHLIN and KRISTINA MCLAUGHLIN**, husband and wife (together, the “Petitioners”), by and through their undersigned attorney, file this Petition with the City of Fernandina Beach for relief pursuant to Section 70.51, Florida Statutes.

Petitioner and the Subject Property

1. This is a petition for relief pursuant to Section 70.51, Florida Statutes, known as the Florida Land Use and Environmental Dispute Resolution Act (the “Act”).

2. Petitioners own the real property located at 2200 South Fletcher Avenue in the City of Fernandina Beach, Florida as evidenced by that Warranty Deed as shown at Exhibit “A” attached hereto (the “Property”).

3. The Property has designation of “Medium Density Residential” under the City of Fernandina Beach 2030 Comprehensive Plan (the “Comp. Plan”) and is zoned “R-2” which allows for single-family residential use and is the current use.

4. The current structure on the Property is an approximately 1,650 square foot single family home that was constructed in 1957.

5. The Property is subject to significant flooding due to its existing average natural grade (15.0625' ASL) from South Fletcher Avenue and structures which drain onto the road.

6. The Petitioners desire to demolish the existing structure and construct a new single-family residence at the Property, resolving the flooding issue and have prepared preliminary plans for a new residence, a copy of which are labeled Exhibit "B" and attached hereto (the "Plans").

7. The Plans reflect a proposed average natural grade (17.687' ASL) that will resolve the flooding issue and aligns with the grade of adjoining properties and South Fletcher Avenue.

8. The Comp. Plan, as it relates to the Future Land Use and Coastal Management Elements, provides, *inter alia*, for: (i) stormwater management and drainage consistent with accepted engineering principles and practices (Policy 1.02.05.a); (ii) building height, "...shall be consistent with the heights of existing development..." (Policy 1.02.05.h); (iii) flood resiliency (Objectives 5.03 and Policies 5.03.12, 5.03.15, 5.03.16, and 5.03.17); and (iv) floodplain management within the Coastal High Hazard Area (Policy 5.04.06), while acknowledging private property rights (Policy 1.02.07).

9. Section 4.02.03(C)(1) of the City of Fernandina Beach Land Development Code (the "LDC") states, in part, "Building height shall be measured from the average natural grade, to the highest point on the structure unless the property is located within a flood hazard area as provided herein."

10. The Plans provide that the new residence is 34' 10" above the proposed average natural grade.

11. The Plans comply with the LDC and the Comp. Plan if the building height is measured from the proposed average natural grade as opposed to the existing average natural grade, which existing average natural grade is not tenable due to significant flooding from the road and adjoining structures.

12. The Petitioners submitted the Plans to the City of Fernandina Beach Department of Planning and Conservation (the “City”) for review to determine that the proposed activity does not contravene local setback requirements or zoning code pursuant to 62B-33.008(1)(c), F.A.C.

The Unreasonable Development Order

13. The City issued a letter to the Petitioner’s architect on December 13, 2023 stating that the Plans did not comply with the Future Land Use and Coastal Management elements of the Comp. Plan nor Section 4.02.03(C)(1) of the LDC, which letter was not delivered or received until December 19, 2023. A copy of the letter is labeled Exhibit “C” and attached hereto (the “Denial”).

14. By stating that the Plans contravene the Comp Plan and the LDC, Petitioners are unable to apply to the Florida Dept. of Environmental Protection for permitting of the new residence.

15. The Denial is unreasonable in the sense that it does not consider the proposed average natural grade in light of the road and adjoining properties’ grades.

16. The Denial does not take into account the significant flooding issue at the Property and is detrimental to the Petitioner’s property and their property rights.

Section 70.51, Florida Statutes

17. Section (2)(a) of the Act defines a “development order” as “...any order, or notice of proposed state or regional governmental agency action, which is or will have the effect of

granting, *denying*, or granting with conditions *an application for a development permit...*” (Emphasis added.)

18. Section (2)(b) of the Act defines a “development permit” as meaning “...*any* building permit, zoning permit, subdivision approval, certification, special exception, *variance, or any other similar action of local government*, as well as any permit authorized to be issued under state law by state, regional, or *local government which has the effect of authorizing the development of real property...*” (Emphasis added.)

19. The Denial has the effect of denying an application to a state agency to move forward by a local government, which denial has the effect of stopping the development of real property and is a development order as defined in the Act.

Demand for Relief

20. Section (3) of the Act provides, “*[a]ny owner who believes that a development order*, either separately or in conjunction with other development orders, or an enforcement action of a governmental entity, *is unreasonable or unfairly burdens the use of the owner’s real property*, may apply within 30 days after receipt of the order or notice of the governmental action for relief under this section. (Emphasis added.)

21. Petitioners believe that the Denial is unreasonable or unfairly burdens the use of their real property.

WHEREFORE, Petitioners, **DAVID MCLAUGHLIN** and **KRISTINA MCLAUGHLIN**, husband and wife, respectfully apply for the appointment of a Special Magistrate pursuant to the Act together with such further relief as is just and proper.

ROGERS TOWERS, P.A

By: /s/ Jon C. Lasserre
JON C. LASSERRE
Florida Bar No.: 88690
960185 Gateway Blvd., Suite 203
Fernandina Beach, Florida 32082
(904) 261-5618(telephone)
(904) 396-0663(facsimile)

ATTORNEYS FOR PETITIONERS

Primary and Secondary E-mail Addresses:
jlasserre@rtlaw.com
jathavale@rtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been delivered by electronic mail to cgeorge@fbfl.org the 9th day of January, 2024, with a copy served via email to tback@fbfl.org.

/s/ Jon C. Lasserre
Attorney

EXHIBIT "A"

Warranty Deed

[Follows.]

Prepared by:
Andrea F. Lennon, P.A.
3391 South Fletcher Avenue
Fernandina Beach, Florida 32034

File Number: 22-166

General Warranty Deed

Made this March 18, 2022 A.D. By **Jerrie C. Sell, individually and as Trustee of The Jerrie C. Sell Revocable Trust dated August 27, 2007**, whose post office address is: **98136 Little Piney Island, Fernandina Beach, Florida 32034**, hereinafter called the grantor, to **David McLaughlin and Kristina McLaughlin, husband and wife**, whose post office address is: **2200 S. Fletcher Avenue, Fernandina Beach, Florida 32034**, hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Nassau County, Florida, viz:

Lot 37, Section One of Hamby's Addition to Fernandina Beach, according to plat thereof recorded in Plat Book 2, Page 32, of the Public Records of Nassau County, Florida.

Said property is not the homestead of the Grantor(s) under the laws and constitution of the State of Florida in that neither Grantor(s) or any members of the household of Grantor(s) reside thereon.

Parcel ID Number: **00-00-31-1360-0037-0000**

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

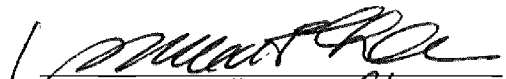
And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2021.

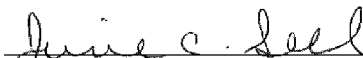
Prepared by:
Andrea F. Lennon, P.A.
3391 South Fletcher Avenue
Fernandina Beach, Florida 32034


File Number: 22-166

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

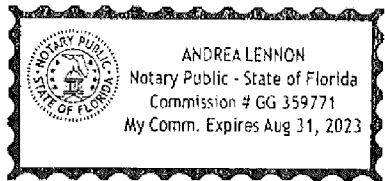

Witness
Printed Name: Andrea Lennon

 (Seal)
Jerrie C. Sell, individually and as Trustee of the
Jerrie C. Sell Revocable Trust dated August 27,
2007
Address: 98136 Little Piney Island, Fernandina Beach,
Florida 32034


Witness
Printed Name: Stacy Slater

State of Florida
County of Nassau

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 18th day of March, 2022, by Jerrie C. Sell, individually and as Trustee of The Jerrie C. Sell Revocable Trust dated August 27, 2007, who has produced a driver's license as identification.



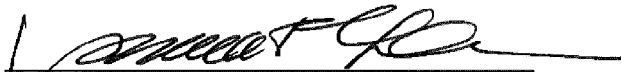

Notary Public
Print Name: Andrea Lennon
My Commission Expires:

EXHIBIT “B”

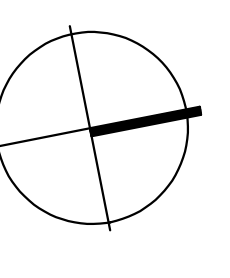
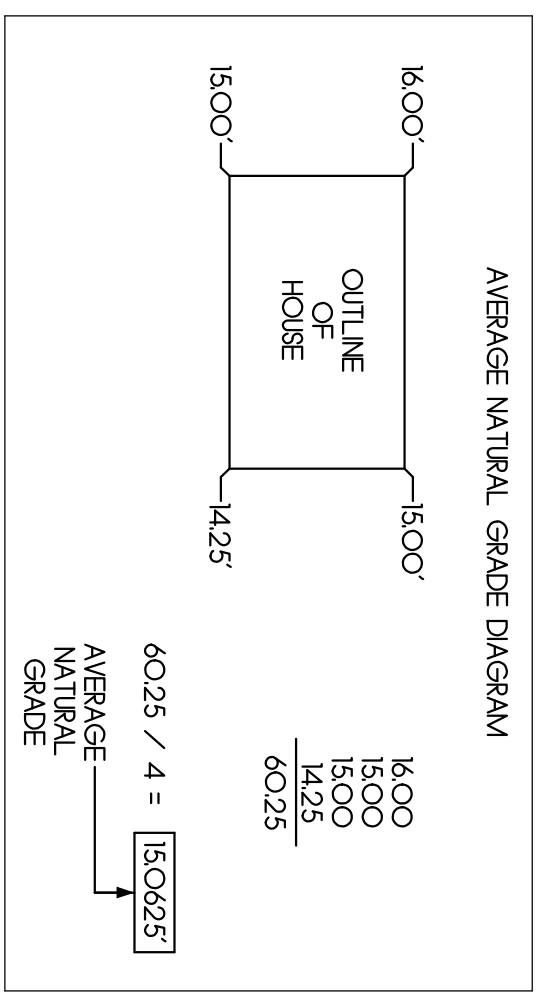
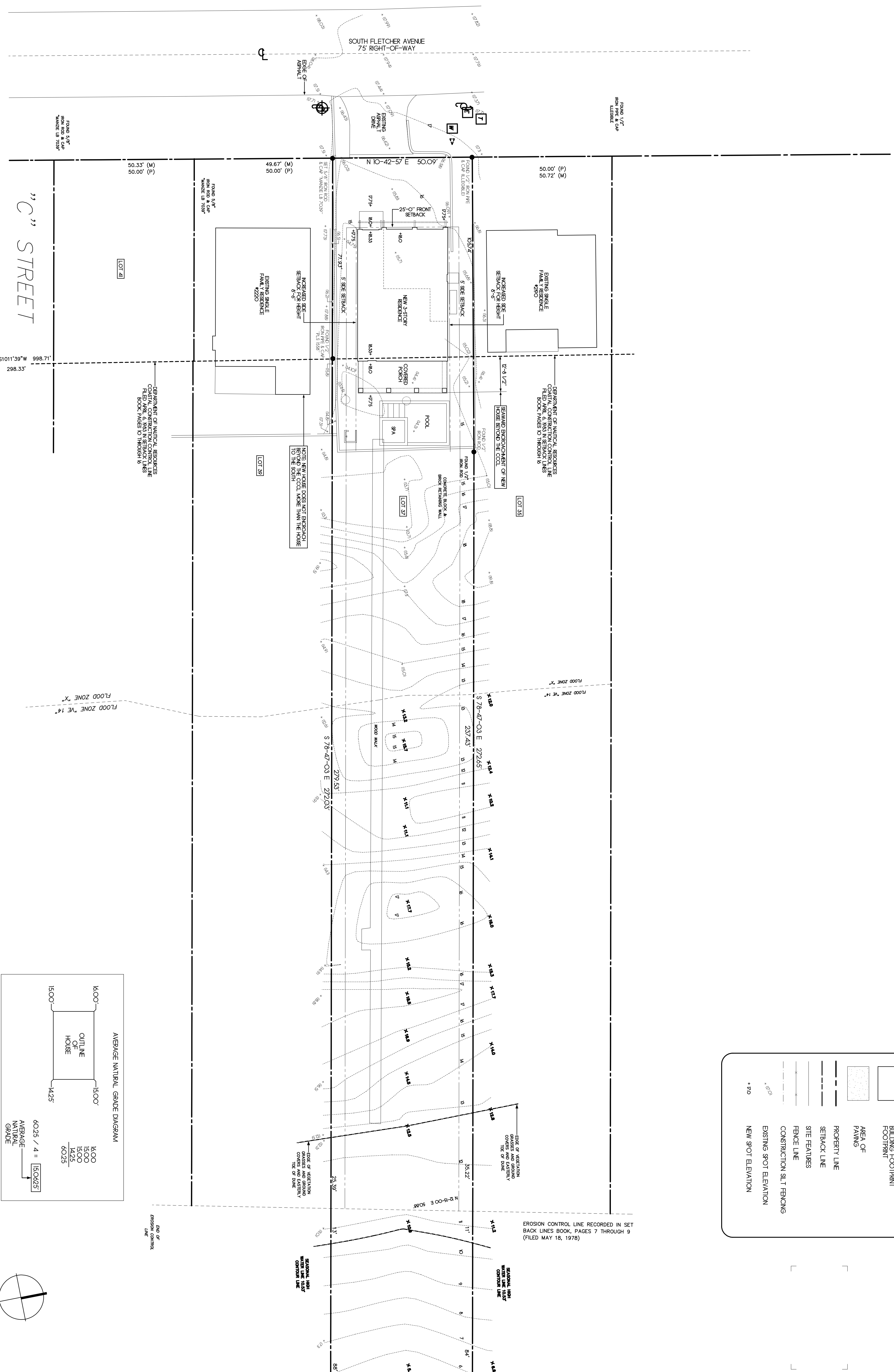
The Plans

[Follow.]

This document has been electronically signed and sealed by James Pozzetta, Architect. The seal and signature are visible in the bottom right corner of this sheet and the signature must be verified on any electronic copies.

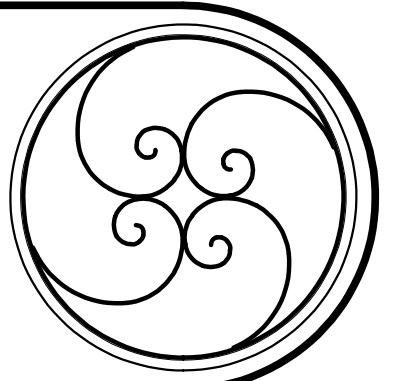
SITE PLAN LEGEND

- BUILDING FOOTPRINT
- AREA OF PAVING
- PROPERTY LINE
- SETBACK LINE
- SITE FEATURES
- FENCE LINE
- CONSTRUCTION S/L T FENCING
- EXISTING SPOT ELEVATION
- NEW SPOT ELEVATION



SITE PLAN

1/8"=1'-0"



SITE PLAN	
REVISIONS	DATE

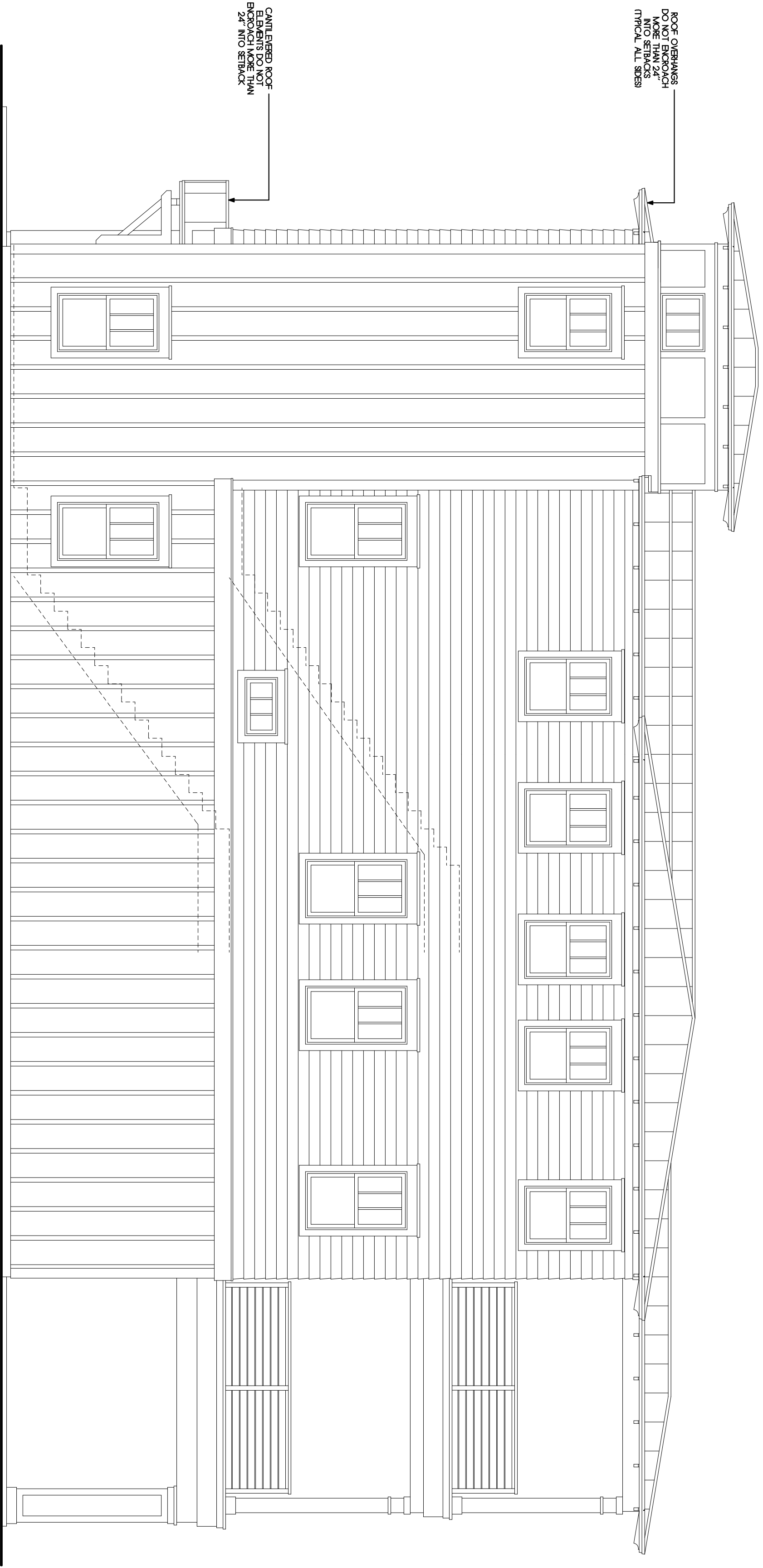
JAMES POZZETTA, ARCHITECT
 FLORIDA REGISTERED ARCHITECT
 103 SOUTH 18TH STREET
 FERNANDINA BEACH, FLORIDA 32034
 904-206-3447
 jamespozzetta@comcast.net
 FLORIDA REGISTERED ARCHITECT, LIC#AR96064

PROJECT: MCLAUGHLIN
 DRAWN BY: JMP
 CHKD BY: JMP
 DATE 12/05/2023

MCLAUGHLIN RESIDENCE
 2200 SOUTH FLETCHER AVENUE
 FERNANDINA BEACH, FLORIDA 32034

A.1.1

SOUTH ELEVATION



1/4"=1'-0"

WEST ELEVATION



1/4"=1'-0"

This document has been electronically signed and sealed by James Pozzetta, Architect and is a digital signature. Printed copies of this document are not valid and the signature will be verified on any electronic copies.

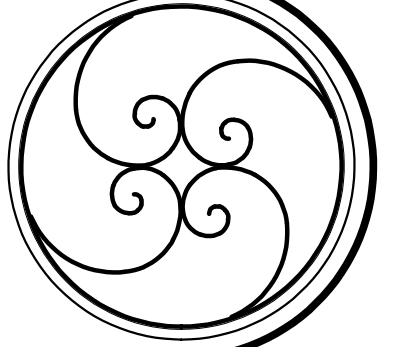
A4.1

McLAUGHLIN RESIDENCE
2200 SOUTH FLETCHER AVENUE
FERNANDINA BEACH, FLORIDA 32034

PROJECT: McLAUGHLIN
DRAWN BY: JMP
CHKD BY: JMP
DATE: 12/05/2023

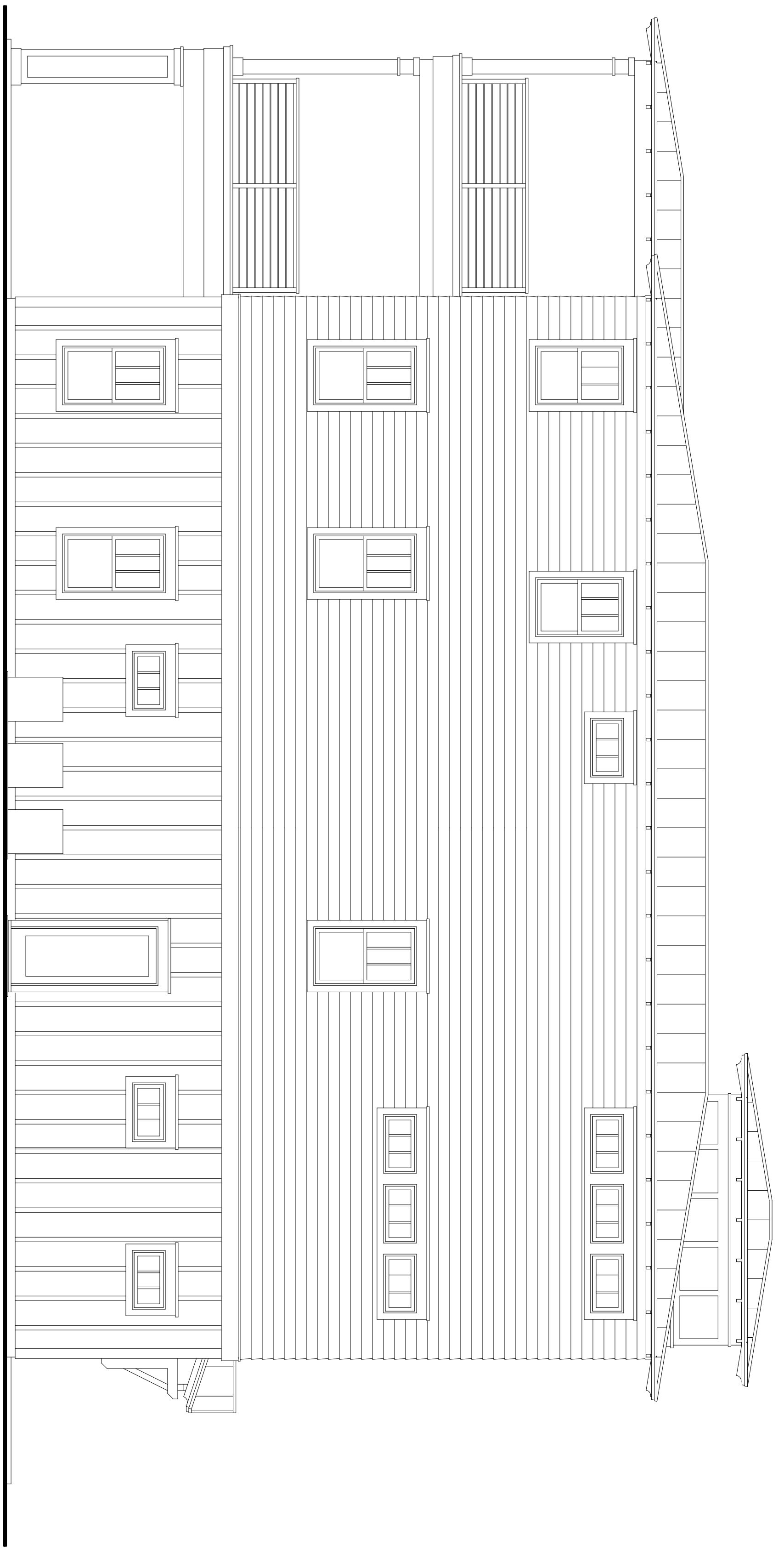
JAMES POZZETTA, ARCHITECT
FLORIDA REGISTERED ARCHITECT
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904-206-3447
jamespozzetta@comcast.net
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ELEVATIONS		
REVISIONS	DATE	



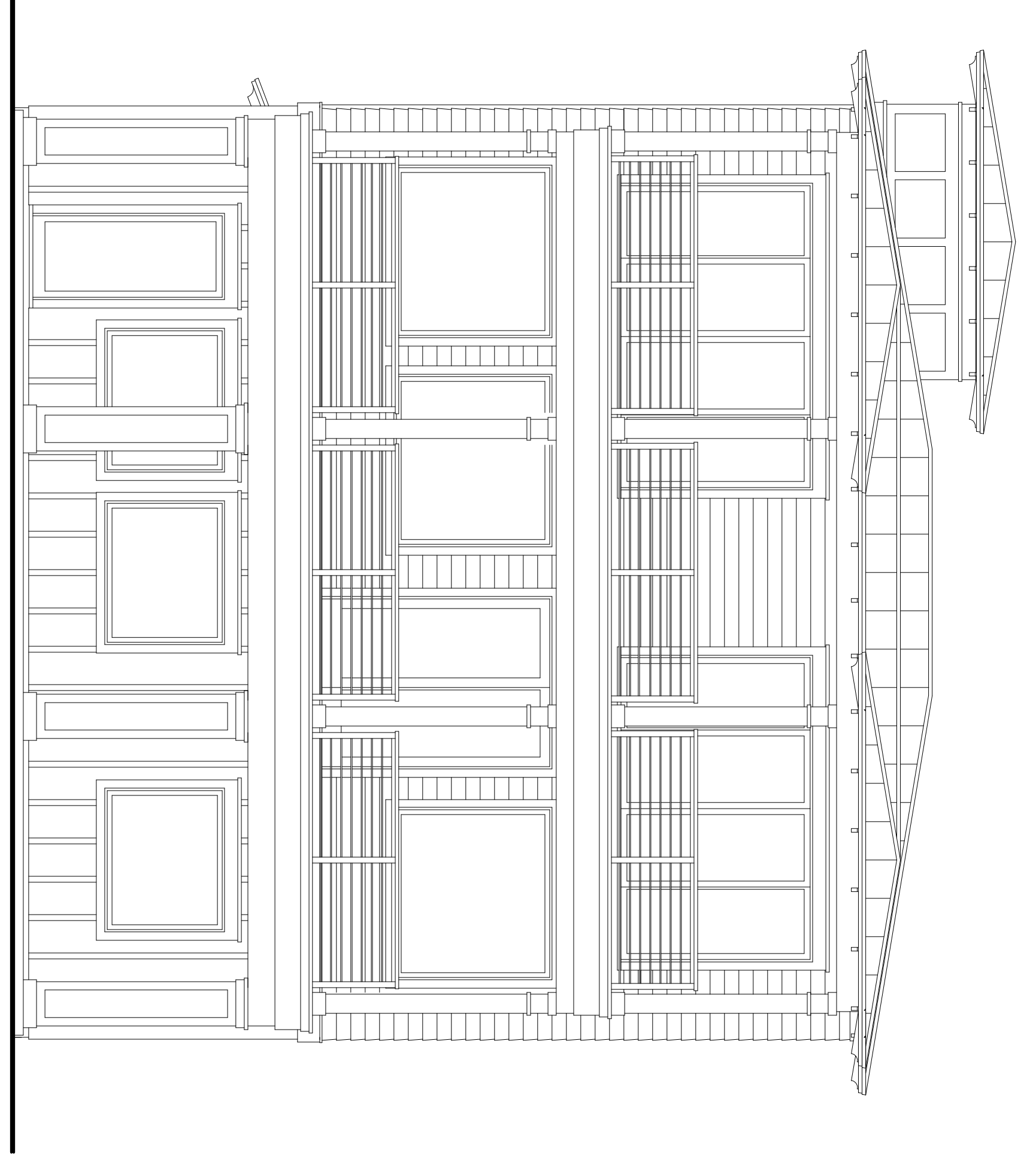
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NORTH ELEVATION



1/4"=1'-0"

EAST ELEVATION



1/4"=1'-0"

This document has been electronically signed and sealed. Any reproduction or use of this drawing without the written consent of the architect and the engineer shall be void and the architect and engineer shall be held liable for any damages or claims.

A4.2

McLAUGHLIN RESIDENCE
2200 SOUTH FLETCHER AVENUE
FERNANDINA BEACH, FLORIDA 32034

PROJECT: McLAUGHLIN
DRAWN BY: JMP
CHKD BY: JMP
DATE: 12/05/2023

JAMES POZZETTA, ARCHITECT
FLORIDA REGISTERED ARCHITECT
103 SOUTH 18TH STREET
FERNANDINA BEACH, FLORIDA 32034
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ELEVATIONS	
REVISIONS	DATE

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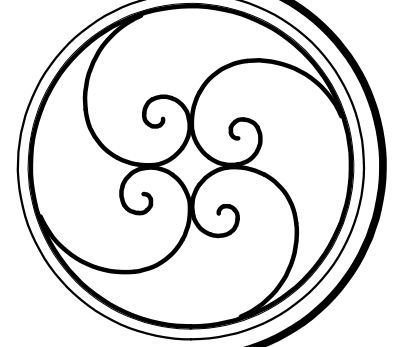


EXHIBIT “C”

The Denial

[Follows.]



December 13, 2023

James Pozzetta
103 South 18th Street
Fernandina Beach, FL 32034

Re: 2200 South Fletcher Ave. (00-00-31-1360-0037-0000)

Dear Mr. Pozzetta,

The Planning Department is in receipt of the proposed plans for the McLaughlin Residence on South Fletcher Avenue. Upon review of the plans, as received and dated December 5, 2023, the Planning Department finds the proposed project **is not consistent** with the Future Land Use and Coastal Management elements of the City's Comprehensive Plan. As presented, the proposed project **will contravene** local setback requirements or zoning codes. Approval of the proposed site plan for purposes of DEP review **cannot be issued** because of the referenced measurement for calculation of building heights. As drafted, the proposed single-family home does not comply with LDC Section 4.02.03(C)(1).

This letter has been issued in accordance with the requirements of the Florida Administrative Code Chapter 62B-33. It only addresses compliance with local building setbacks and zoning codes. The letter herein neither provides nor implies compliance with the Florida Building Code or the City's Floodplain Ordinance. The applicant is encouraged to consult with the City's Building Department prior to finalizing construction plans.

Please be advised that this review is limited to the applicable Land Development Code (LDC) requirements in effect on this date. Any changes to the LDC which occur prior to the submittal of a building permit application will be applicable to your plans. Furthermore, this review is limited to the information provided and is contingent upon obtaining all necessary and valid permits from State, Federal, and other agencies having permitting jurisdiction.

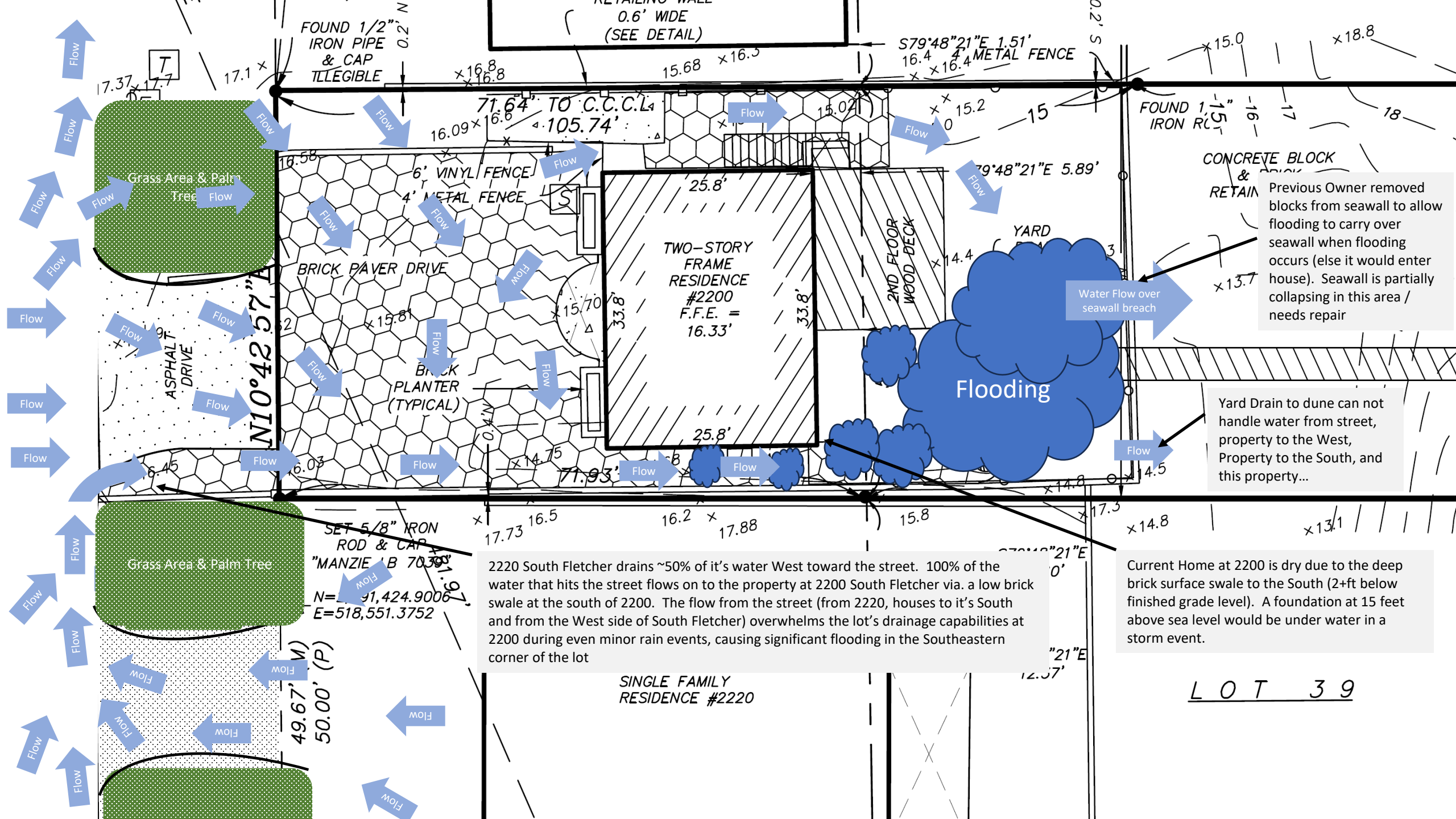
If you have any questions regarding this information, please feel free to contact me.

Respectfully,

Taylor Hartmann

Exhibit 1 – Screenshot of West Elevation of submitted plans.

CC: Ronard Ivey, FDEP



FOUND 1/2" IRON PIPE & CAP ILLEGIBLE

RETAINING WALL 0.6' WIDE (SEE DETAIL)

S79°48'21"E 1.51' 16.4' METAL FENCE

FOUND 1.15" IRON ROD

CONCRETE BLOCK & RETAIN

Previous Owner removed blocks from seawall to allow flooding to carry over seawall when flooding occurs (else it would enter house). Seawall is partially collapsing in this area / needs repair

Yard Drain to dune can not handle water from street, property to the West, Property to the South, and this property...

2220 South Fletcher drains ~50% of it's water West toward the street. 100% of the water that hits the street flows on to the property at 2200 South Fletcher via a low brick swale at the south of 2200. The flow from the street (from 2220, houses to it's South and from the West side of South Fletcher) overwhelms the lot's drainage capabilities at 2200 during even minor rain events, causing significant flooding in the Southeastern corner of the lot

Current Home at 2200 is dry due to the deep brick surface swale to the South (2+ft below finished grade level). A foundation at 15 feet above sea level would be under water in a storm event.

SINGLE FAMILY RESIDENCE #2220

LOT 39

TWO-STORY FRAME RESIDENCE #2200 F.F.E. = 16.33'

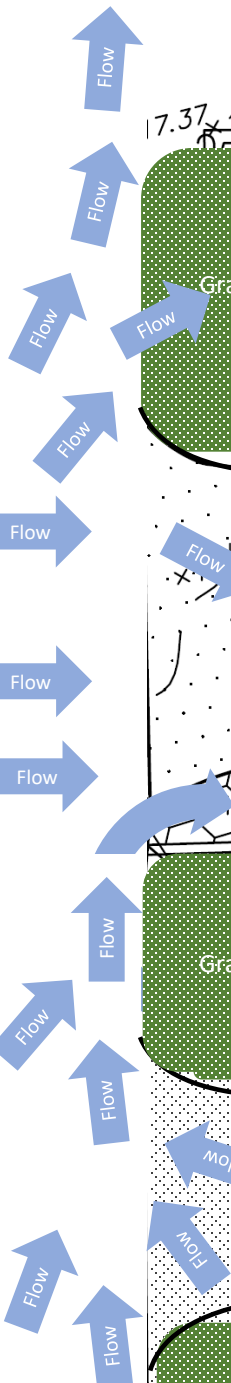
Flooding

Water Flow over seawall breach

Grass Area & Palm Tree

Grass Area & Palm Tree

SET 5/8" IRON ROD & CAP "MANZIE" B 7039 N=118,424.9006 E=518,551.3752



N10°42'57"E

49.67' (M) 50.00' (P)

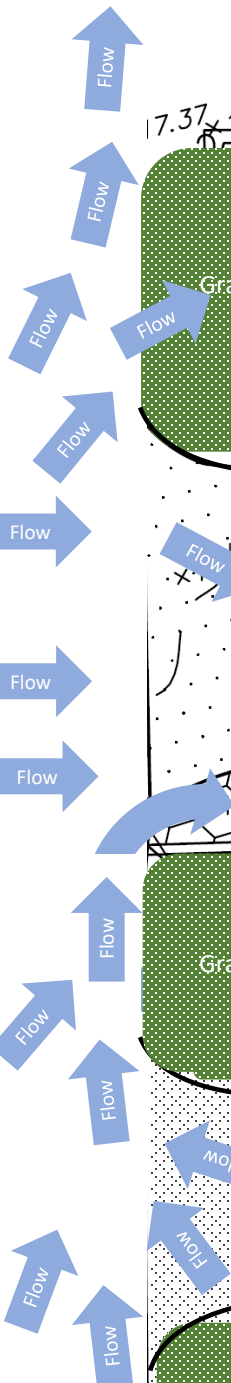
ASPHALT DRIVE

BRICK PAVER DRIVE

BRICK PLANTER (TYPICAL)

2ND FLOOR WOOD DECK

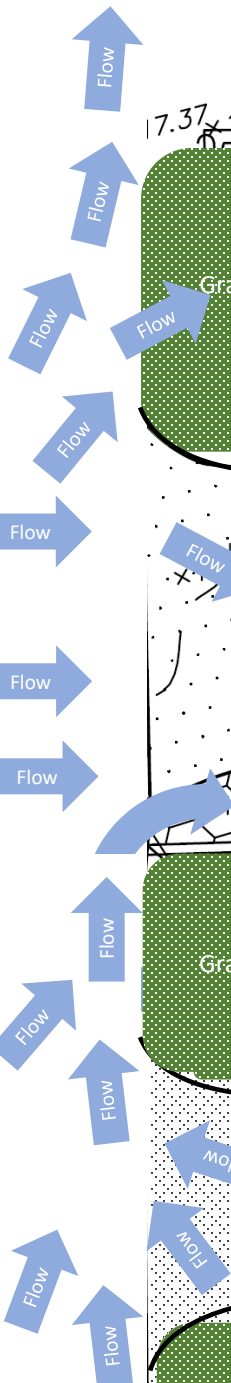
YARD



Grass Area & Palm Tree

Grass Area & Palm Tree

SET 5/8" IRON ROD & CAP "MANZIE" B 7039 N=118,424.9006 E=518,551.3752



N10°42'57"E

49.67' (M) 50.00' (P)

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BRICK PAVER DRIVE

BRICK PLANTER (TYPICAL)

2ND FLOOR WOOD DECK

YARD

TWO-STORY FRAME RESIDENCE #2200 F.F.E. = 16.33'

Flooding

Water Flow over seawall breach

Yard Drain to dune can not handle water from street, property to the West, Property to the South, and this property...

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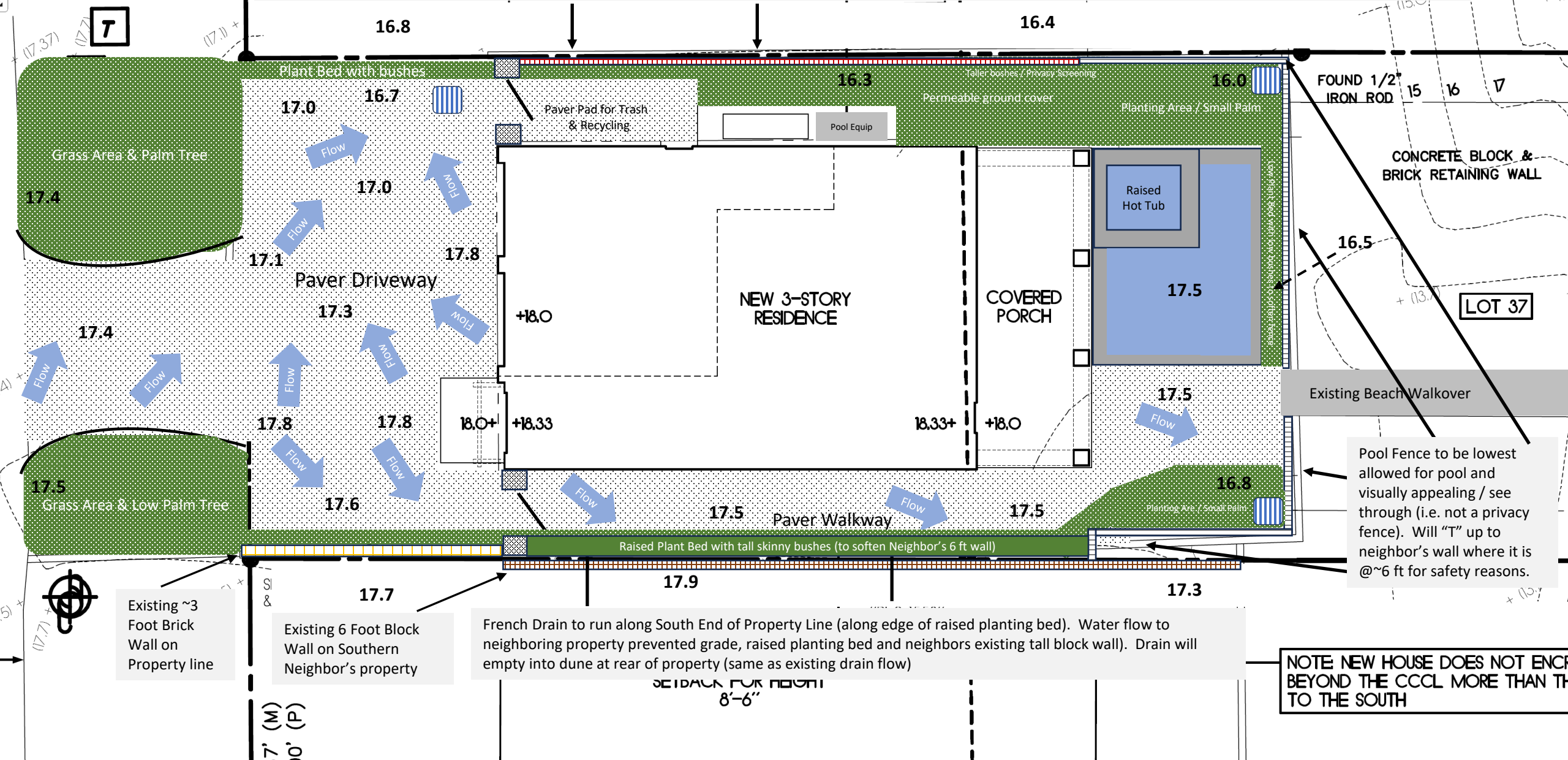
Current Home at 2200 is dry due to the deep brick surface swale to the South (2+ft below finished grade level). A foundation at 15 feet above sea level would be under water in a storm event.

SINGLE FAMILY RESIDENCE #2220

LOT 39

French Drain to run along North End of Property Line (water flow to neighboring property prevented by grade + new 2+ foot above grade block wall running along inside of existing seawall – beginning behind brick post at western edge of home and continuing to eastern seawall). Drain will empty into dune at rear of property (same as existing drain flow)

Northern property line with either be a block wall of similar design and height to Southern neighbor or a short block wall (~2 foot), topped by a 4 foot pool / pricy fence. The pool privacy fence or raised wall will not run further east than the Southern Neighbors block wall. Illustrated by red line. From there, it will become a see through pool fence.



FOUND 1/2" IRON ROD 15 16 17

CONCRETE BLOCK & BRICK RETAINING WALL

LOT 37

Existing Beach Walkover

Pool Fence to be lowest allowed for pool and visually appealing / see through (i.e. not a privacy fence). Will "T" up to neighbor's wall where it is @~6 ft for safety reasons.

NOTE: NEW HOUSE DOES NOT ENCF BEYOND THE CCCL MORE THAN TH TO THE SOUTH

Existing ~3 Foot Brick Wall on Property line

Existing 6 Foot Block Wall on Southern Neighbor's property

French Drain to run along South End of Property Line (along edge of raised planting bed and neighbors existing tall block wall). Drain will empty into dune at rear of property (same as existing drain flow)

7' (M)
10' (P)

SEIDACK FOR NORTH 8'-6"