

Application of Mark and Betty Lou McGivney whose property is located at 20 Westwood Road, and further identified as Assessor's Plat 9 Lot 403 for a Variance from Article 3, Section 82-302, District Dimensional Regulations, Front setback of an Accessory structure pool, and Article 6, Section 82-605 through 607, Variances Authorized by this Ordinance, to construct a pool 21.7 feet from the front yard line, instead of the required 50', abutting an undeveloped overgrown paper street. Said property is located in an R20 zone and contains 30,492 square feet.



20 Westwood Zoning Application

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TOWN OF JAMESTOWN
ZONING BOARD OF REVIEW

Application for Exception or Variation under the Zoning Ordinance

Zoning Board of Review;

Jamestown, R. I.

Date 7/19/2022

Gentlemen:

The undersigned hereby applies to the Zoning Board of Review for an exception or a variation in the application of the provisions or regulations of the zoning ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Applicant Mark McGivney and Betty Lou McGivney Address 4 Powderhorn Road, Ho-Ho-Kus, NJ, 07423

Owner Same as Above Address Same as Above

Lessee _____ Address _____

1. Location of premises: No. 20 Westwood Street

2. Assessor's Plat 9 Lot 403

3. Dimensions of lot: frontage 253 ft. depth 177 ft. Area 30,492 sq. ft.

4. Zoning Districts in which premises are located: Use R20 Area 20,000 sq.ft. Height 35'

5. How long have you owned above premises? 1 yr, 7 mo

6. Is there a building on the premises at present? Yes

7. Size of existing building 2,338 Sq. Ft.

Size of proposed building or alteration 912 Sq. Ft.

8. Distance of proposed bldg. or alteration from lot lines:

front 21.7 rear _____ left side 16.7 right side _____

9. Present use of premises: Single Family

10. Proposed use of premises: Single Family

Location of septic tank & well on lot N/A

11. Give extent of proposed alterations Applicants seek to construct a pool on the southern boundary of their property.

12. Number of families for which building is to be arranged: 1

13. Have you submitted plans for above to Inspector of Buildings? Yes

Has the Inspector of Buildings refused a permit? Yes

14. Provision or regulation of Zoning Ordinance or State Enabling Act under which application for exception or variance is made:

Section 82-302 Table 3-2

Front Setback - 20' Minimum + Building Set Back (30' Minimum) [50']

Section 82-605 to 607

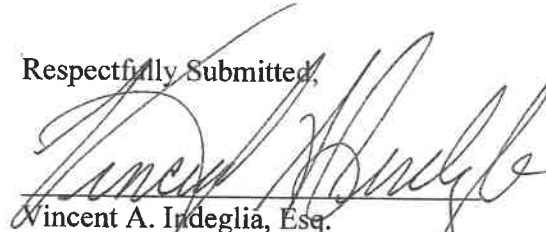
Section 82-316

R.I.G.L. 45-24-71; 45-24-46.4

15. State the grounds for exception or variation in this case:

Due to coastal setbacks, unique lot configuration, and unique characteristics of the subject property, Applicants are limited as to where to locate a permitted accessory structure (i.e. swimming pool) on their property for their use and enjoyment. The proposed dimensional variance conforms to the Town Comprehensive Plan, the application is complete: The proposed plan does not create any danger to the health, welfare, or safety of the community.

Respectfully Submitted,



Vincent A. Indeglia, Esq.
Indeglia Lutrario, Attorneys at Law
300 Centerville Road, Suite 320 East
Warwick, RI 02886
(401)886-9240

Respectfully Submitted,

Signature _____

Address _____

Telephone No. _____

For and on Behalf of and with Express
Authority of the Property Owners/Applicants,
Mark McGivney and Betty Lou McGivney

NOTE: A LOCATION PLAN AND SKETCH AND DRAWINGS NECESSARY TO GIVE FULL INFORMATION MUST BE FILED WITH THE APPLICATION.

July 15, 2022

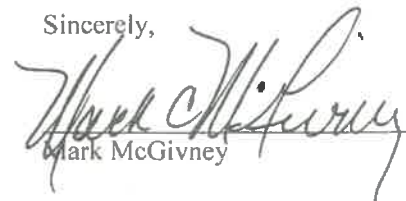
Town of Jamestown Zoning Board
93 Narragansett Avenue
2nd Floor
Jamestown, RI 02835

Re: 20 Westwood Road Zoning Application
Property Owner: Mark McGivney and Betty Lou McGivney

Dear Zoning Board:

We, Mark and Betty Lou McGivney, record owners of the property located at 20 Westwood Road, Jamestown, RI 02835, hereby authorize attorney Vincent A. Indeglia of **Indeglia Lutrario, Attorneys at Law** in Warwick, Rhode Island to represent our interests as they relate to the zoning application pertaining to the installation of a pool on our property.

Sincerely,


Mark McGivney


Betty Lou McGivney



Vincent A. Indeglia
Vincent@indegliaw.com

July 20, 2022

Via Application Packet

Attn: Chairman
Jane Bentley
Terrance Livingston
Richard Boren
James King
Dean Wagner
William Moore, Zoning Official
Zoning Board of Review
Town of Jamestown
93 Narragansett Avenue, 2nd Floor
Jamestown, RI 02835

Re: 20 Westwood Road, Jamestown, RI Assessors plat 9 lot 403 Applicants Mark McGivney and Betty Lou McGivney
Our file # 01523

Dear Board Members:

Please allow this to serve as a project summary for that particular property located at 20 Westwood Road, Jamestown, RI assessors plat 9 lot 403.

SUMMARY:

The applicants' Mrs. and Mr. Betty Lou and Mark McGivney (herein after referred to as the "McGivney's") are submitting a request to build a 19' x 43' swimming pool, which will encompass 912 square feet of property on the southerly side of their currently existing home. The project requires a dimensional variance because while the swimming pool sits to the side of the home their frontage street bends around the side yard and their side yard is also considered their "front yard", under zoning law. Therefore, this is a request for relief from a front yard setback. As will be seen throughout the rest of the application, this property sits along a coastal feature and is constrained significantly by a 50 – foot setback. As a result the selected location for the swimming pool is in the only location for the true enjoyment of this property.

SUGGESTED FINDING OF FACTS:

Based upon the site plans presented by American Engineering and Mather and Page Landscape Architects, the property currently has an existing single-family residence consisting of approximately 2,350 square feet. The existing lot coverage and to be built lot coverage comports to the requirements of the Jamestown Municipal Ordinances specifically for lot coverage as defined in Article III Section 83-302. The existing as built conditions demonstrate a lot with approximately 253 feet of lot frontage on Westwood Road with a depth of approximately 177 feet, at the widest point, the majority of which falls into the Coastal Resource Management 50-foot setback. The current structures on the property fall outside of the coastal setback requirement and meet all other zoning requirements except for a pre-existing nonconforming shed, which sits to the southerly side of the property within the front yard setback and the house which partially sits in the front yard setback. It is anticipated that the shed will remain in its current location.

The proposed improvements and validations consists of creating a pool area with hard scape. Part of the pool area will be supported by a to be built block retaining wall located against the easterly side of the property and the westerly side. The westerly side of the pool, which will be in the physical side yard, but face the front yard, will fall into the front setback where the pool will be 21.7 feet from the front yard property line. The southerly side of the pool is 16.7 feet from the property line and not within the side yard setback.

The proposed improvements associated with this project are reflected on the proposed and as built site plan as submitted by American Engineering and that plan dated as revised July 19, 2022 ("the Site Plan").

This lot is approximately 30,500 square feet in area and is located in an R-20 zoning district. The current project does not comply with all the dimensional regulations of Section 82-302. The proposed front yard setback for the pool as identified on the Site Plan is at its closest point 21.7 feet from the front property line bordering Westwood Road. Under the Jamestown Zoning Ordinances pools are considered an outbuilding. All outbuilding structures pursuant to the provisions of 82-302 require that they be a minimum of 20 feet setback from the front lot line plus the principal building setback of 30 feet. Therefore the applicants' pool, per ordinance, must be at least 50 feet from the front yard property line. The minimum setback in an R-20 zone for outbuilding side yards is 10 feet. This proposed location per the Site Plan shows the pool is 16.7 feet away from the side yard property line, and therefore no dimensional relief is sought for the side yard. With regard to the rear yard setback there is a minimum of 10 feet and the structure falls far within that requirement.

As previously stated, this property borders the Dutch Island Harbor. This imposes a 50-foot CRMC setback requirement. The property is serviced by town water and sewer. During the building review process, the Zoning Official determined that the location selected for the pool, which is the only location that would not infringe upon the 50-foot CRMC setback requirement required a variance for dimensional relief in order to enjoy the property to its fullest potential.

RELIEF REQUESTED:

The applicants seek relief from Article 3 Section 82-302 for a front yard setback variance, for an outbuilding to 19' x 43' swimming pool. The applicant appears before this Board pursuant to Article 6 section 82-606 and 607 entitled Variances-Additional Restrictions in particular, and Rhode Island General Law 45-25-41 et seq.

APPLICANTS ANALYSIS:

Lot 403 is a lot that exceeds the minimum requirement of a buildable lot in an R-20 zone. It is located at the most southerly point of the finished roadway for Westwood Road. The roadway dead ends where the finished blacktop ends but according to Town maps continues on as a "paper street" along the front of the applicants property. It is this portion of the property, which abuts the unfinished paper street, where the pool would be located and for which the dimensional relief is sought. As can be seen from the submission of the Site Plan provided by American Engineering revision dated 7/19/2022 the pool will be at elevation 10 feet. To the easterly side there is a proposed wall to be built to serve as a retaining wall at a proposed elevation of 12.5 feet. To the front side of the property, on the westerly portion a second retaining wall is expected to be installed of approximately the same elevation. The pool will be protected by an automatic pool cover which complies with all life safety requirements under the State and International Building Code. Pursuant to local ordinance, the applicant is required to, and intends to construct a fence, which is delineated on the plan. The fence is 4 feet in height and runs around the entire perimeter of the pool. The fence will tie into the easterly retaining wall. There will be gates on the northerly and southerly side of the fence along the retaining wall. These are reflected on the Site Plan with stairs and the gate openings. The applicant has also identified a 2 ½ x 4 ½ foot slab where the proposed pool equipment will be located outside of the protective fence enclosure to the north. This slab sits 22.5 feet from the front property line and would also be included as part of this applicants request for a dimensional variance.

Jamestown Ordinance Article 6 section 82-605-607 is the town municipal ordinance for variances authorized by the enabling statute set forth in Rhode Island General Law §45-24-30 et. sec and 45-24-41. Pursuant to this Town's ordinance, the applicant is entitled to apply to this Zoning Board of Review for relief from the front yard set back. As part of this application the McGivney's have 1) Submitted a list of abutters. That list has been provided to the zoning official who, upon information and belief, has caused such notice to be sent to the abutters; 2) The cost for this activity has been born by the applicant who has paid the required application fee and the cost of the certified mailings. A true and correct copy of the check made payable to the Town Clerk is attached hereto; 3) The applicants have provided the zoning official with the required Site Plan, identified conformity to the Comprehensive Plan, and provided evidence of entitlement to the relief sought (see Comprehensive Plan 2014 Article I B Section 5 Future Land Use, See Pages 35 and 36).

Pursuant to Article 6 Section 82-606, this Board must apply the following standard when considering the applicants request for a dimensional variance.

FACTOR 1:

This Board must determine whether or not the hardship from which the applicants seeks relief is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and is further not due to a physical or economic disability of the applicant.

RESPONSE TO FACTOR 1:

When considering this standard the McGivney's suggest that a review of the Site Plan submitted by the applicants demonstrates the very uniqueness of this property. It hugs Dutch Island Harbor facing westerly. This unique characteristic creates a significant setback pursuant to the Coastal Resource Management Commission ("CRMC") 50-foot setback requirement. This lot, which sits in an R-20 zone but is, actually 30,000 square feet essentially, loses 40% of its depth. Unlike other 30,000 square foot lots that are conforming in an R-20 zone, the unique characteristic imposes substantial restrictions on construction. It should be noted that construction of a residence and outbuilding swimming pool on an R-20 designated lot conforms with the Towns Comprehensive Zoning Plan. In addition, a further uniqueness of this lot is the fact that on the south westerly portion of the property where there is designated on the site map a granite bound identified as "bench mark top of bound elevation 12.49 feet running southerly to an iron rod found northerly at 42 degrees 06' 50 inches east 1.73 feet" is a property line that borders a paper street. Normally, this area of the property would be considered the side yard. Under a side yard setback, the requirement would only be a 10-foot minimum. However, due to the fact that this side yard actually sits with an angled boarder adjacent to a paper street, it is also considered the "Front Yard" and therefore requires a setback, which is even greater than that required for the main residence building. This setback essentially amounts to 50 feet. Unlike a typical front yard which borders an actual street there is no adjacent neighbor or active roadway. In fact, the property adjacent to this property line in question is a Municipal paper street, which is unique in and of itself and it is undeveloped and covered with brush, trees, and foliage. It is not traversed or maintained by the property owner the Town. In fact, it creates a unique and complete border and protection from the rest of the community. Hence, this evidence and the testimony anticipated will demonstrate that the hardship is due to the unique characteristic imposed by the CRMC setbacks, the Dutch Island Harbor and an oddly angled property line and an unused paper street which runs along the physical side yard of the property.

FACTOR 2:

The Board must also find that the hardship which the McGivney's seek relief does not result from any prior action that they created.

RESPONSE TO FACTOR 2:

The McGivney's did not subdivide this property; they did not impose the paper street or the CRMC setbacks and shoreline. The applicants seek to enjoy their property as many citizens of this state do. They seek to have a residential home on a lot of standard size in a properly zoned manner with a swimming pool they can enjoy with their family. All of these uses are permitted uses in this zone and do not arise from a desire for financial gain. They arise from a desire to enjoy

the type of lifestyle envisioned in the comprehensive plan for residential property in the Town of Jamestown.

FACTOR 3:

This Board must consider that the granting of the requested relief will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinances or the Towns Comprehensive Plan.

RESPONSE TO FACTOR 3:

Working backwards, it has already been established that the Town Comprehensive Plan anticipates that R-20 zoned property shall be for residential use. The use of this property remains the same: a single family home. The Comprehensive Plan also contemplates that residential uses include private swimming pools. This is evidence by Article 3 section 82-316 which permits swimming pools in residential zones. It is also evidence by the fact that swimming pools are a permitted use in an R-20 zone under section 302.

FACTOR 4:

This Board must consider whether the relief requested is the least relief necessary.

RESPONSE TO FACTOR 4:

It is anticipated that the testimony of both the professional architect and the professional engineer will provide substantial evidence which preponderates in favor of the applicant demonstrating that the location of this pool is the location where the least relief granted is necessary. It will be demonstrated that placing the pool in the rear of the property where there is only a 10-foot setback requirement under Town Ordinance, would nevertheless be defeated because the Coastal Resource Management Commission which is enacted under State enabling legislation and is a State Agency requires that there be no construction 50-feet from the water's edge inward on the land. It is clear when one views the elevations set forth on the site plan and the area between the rear of the existing dwelling and the CRMC setback that there is no other location to put the swimming pool, which is a permitted use. However, southerly and in the side yard there is sufficient land which is exactly where the property owner has identified as the location for the swimming pool. The placement of the pool is as far as possible from the paper street a distance which is more than what is required for a primary dwelling, and more than what is required for a side yard setback.

Finally, pursuant to Article 6 section 82-607 this Board must recognize that this is a dimensional variance and that the McGivney's must only show that the hardship they suffer if not granted amounts to a more than a mere inconvenience. The world is now cognizant of the unpleasant reality of disease pandemics. Since the arrival of the COVID-19 virus and its subsequent and ever altering mutations, mass socialization has been entirely discouraged by all Governments including this Town. Family recreational swimming pools to be enjoyed by property owners during the summer months is a social and community restructure. Not permitting this minor

dimensional variance would be contrary to this openly stated public policy. Not permitting this 10-foot variance where the property is setback 22 feet from a wooded and vegetative property line where the adjacent owner is not an individual amounts to more than a mere inconvenience. The applicant reserves the right to present additional testimony at the time of the hearing on this issue if so required by this Board.

PROPOSED CONSTRUCTION RECOMMENDATIONS:

If this Board were to see fit this dimensional variance as described in the attached plan, the applicant would agree that:

1. All construction would be in substantial conformance with the proposed and as built Site Plan as submitted for this application. Once a certificate of completion was issued by the Building Inspector the project would be considered complete.
2. That the applicant would build the two (2) proposed retaining walls in strict conformity to the plan as submitted.
3. That the applicant would agree to include the additional health and life safety requirement of an electronic pool cover as identified in State Building Code as a protective cover and provide a 48 inch fence of a sufficient material so as to meet the requirements necessary for health and safety protections from trespassers and visitors on the property.
4. That any area of disturbance would be reseeded, sodden or replaced with a cover or surface as identified in the site plan submitted with the application. To the extent that any of the areas of disturbance where reseeded or sodden they would be with a low maintenance conservative grass mixture and only slow release fertilizers would be permitted to maintain intact vegetative cover.
5. That before the issuance of any building permit, the applicant would submit a Comprehensive erosion control plan to the building official for approval. That plan would include and be in accordance with the Rhode Island Soil Erosion and Sediment Handbook. The Erosion control measures must be in place before the start of any construction and would be maintained or placed throughout the construction phase as necessary. Once the vegetation cover was restored then those control measures can be removed.

CONCLUSION:

Based upon the foregoing, the Site Plan, the illustrative plan provided by the architect, the application and the supplemental material submitted for review, filed with the Clerk and made available for public viewing prior to the time of this hearing, the applicants respectfully requests that this Zoning Board review:

1. Find that the application is complete and conforms to the Towns Comprehensive plan.
2. Grant the request for a front yard dimensional variance consistent with the Site Plan.

Respectfully submitted
For and on behalf of
Mark McGivney and Betty Lou McGivney

A handwritten signature in cursive script, appearing to read "Vincent A. Indeglia".

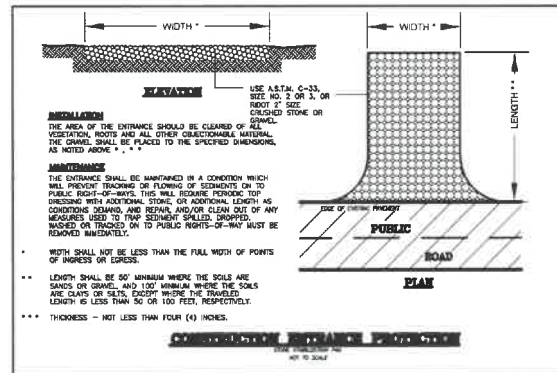
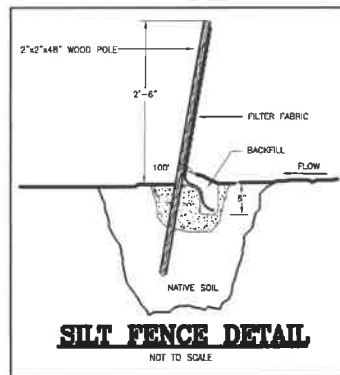
Vincent A. Indeglia, Esq.

VAI:jl
Enclosures



LOCUS MAP
NOT TO SCALE

BEING A.P. 9, LOT 403
AREA OF LOT = 31,634 SF ±



PROPOSED POOL LOCATION PLAN

PROPERTY OWNER
MARK & BETTY LOU MCGIVNEY
4 POWDERHORN ROAD
HO-HO-KUS, NJ 07432

REFERENCES:

1. REFERENCE IS HEREBY MADE TO THAT PLAN ENTITLED "EXISTING CONDITIONS PLAN WITH TOPO AND BATHYMETRY MCGIVNEY PROPERTY DATE 02/02/21, REVISION 06/09/21 SCALE 1" = 30" BY NARRAGANSETT ENGINEERING INC."
2. REFERENCE IS HEREBY MADE TO THAT PLAN ENTITLED "PROPOSED MINOR SUBDIVISION PLAT PLAN - NERI SUBDIVISION AP 9, LOT 426 MARINE AVENUE, JAMESTOWN, RHODE ISLAND SCALE: 1" = 20" DATE: JULY 2010 BY NORTHEAST ENGINEERS & CONSULTANTS, INC." SAID PLAN BEING RECORDED IN THE TOWN OF JAMESTOWN AS HANGING PLAT FILE 326B.
3. REFERENCE IS HEREBY MADE TO THAT PLAN ENTITLED "BUNGALOW PARK" JAMESTOWN, R.I. SCALE 1" = 40' SURVEYED AND PLATTED BY R.J. EASTON & SON CIV. ENGRS. NEWPORT, R.I. JULY 14, 1914." SAID PLAN BEING RECORDED IN THE TOWN OF JAMESTOWN AS HANGING PLAT FILE 288A.
4. REFERENCE IS HEREBY MADE TO THAT PLAN ENTITLED "ADMINISTRATIVE SUBDIVISION PREPARED FOR SPENCER W. POTTER ASSESSOR'S PLAT 9 LOTS 481 & 711 SITUATED IN THE TOWN OF JAMESTOWN, RHODE ISLAND DATE DEC. 5, 2008 REVISION 12/13/08 SCALE 1" = 20" BY DOWDELL ENGINEERING, INC." SAID PLAN BEING RECORDED IN THE TOWN OF JAMESTOWN AS HANGING PLAT FILE 213B.
5. REFERENCE IS HEREBY MADE TO THAT WARRANTY DEED RECORDED IN THE TOWN OF JAMESTOWN IN LAND EVIDENCE BOOK 58, PAGE 308.

PARCEL ZONING: R-20

MIN LOT SIZE = 20,000 SF
MIN LOT WIDTH = 100'
MAX LOT COVERAGE = 25%

PRIMARY BUILDING:

MIN. FRONT SETBACK = 30'
MIN. SIDE SETBACK = 10'
MIN. REAR SETBACK = 30'

OUTBUILDING / IN-GROUND POOL:

MIN. FRONT SETBACK = 20' + PRIMARY BLDG SETBACK = 50'
MIN. SIDE SETBACK = 10'
MIN. REAR SETBACK = 10'

NOTES:

1. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO THE RESTRICTIONS, COVENANTS, AND/OR EASEMENTS THAT MAY BE CONTAINED THEREIN.
2. UNDERGROUND UTILITIES HAVE NOT BEEN LOCATED / VERIFIED. CONTACT DIGSAFE PRIOR TO ANY EXCAVATION.
3. WETLANDS FLAGGED BY NATURAL RESOURCE SERVICES, INC. ON 8/24/2021.
4. HORIZONTAL DATUM: NAD83 (2011)
VERTICAL DATUM: NAVD88

CERTIFICATION:

THIS SURVEY HAS BEEN CONDUCTED AND THE PLAN HAS BEEN PREPARED PURSUANT TO 435-RICR-00-00-1.9 OF THE RULES AND REGULATIONS ADOPTED BY THE RHODE ISLAND STATE BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS ON NOVEMBER 25, 2015, AS FOLLOWS

TYPE OF SURVEY: PERIMETER & FEATURE LOCATION MEASUREMENT SPECIFICATION: CLASS I

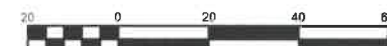
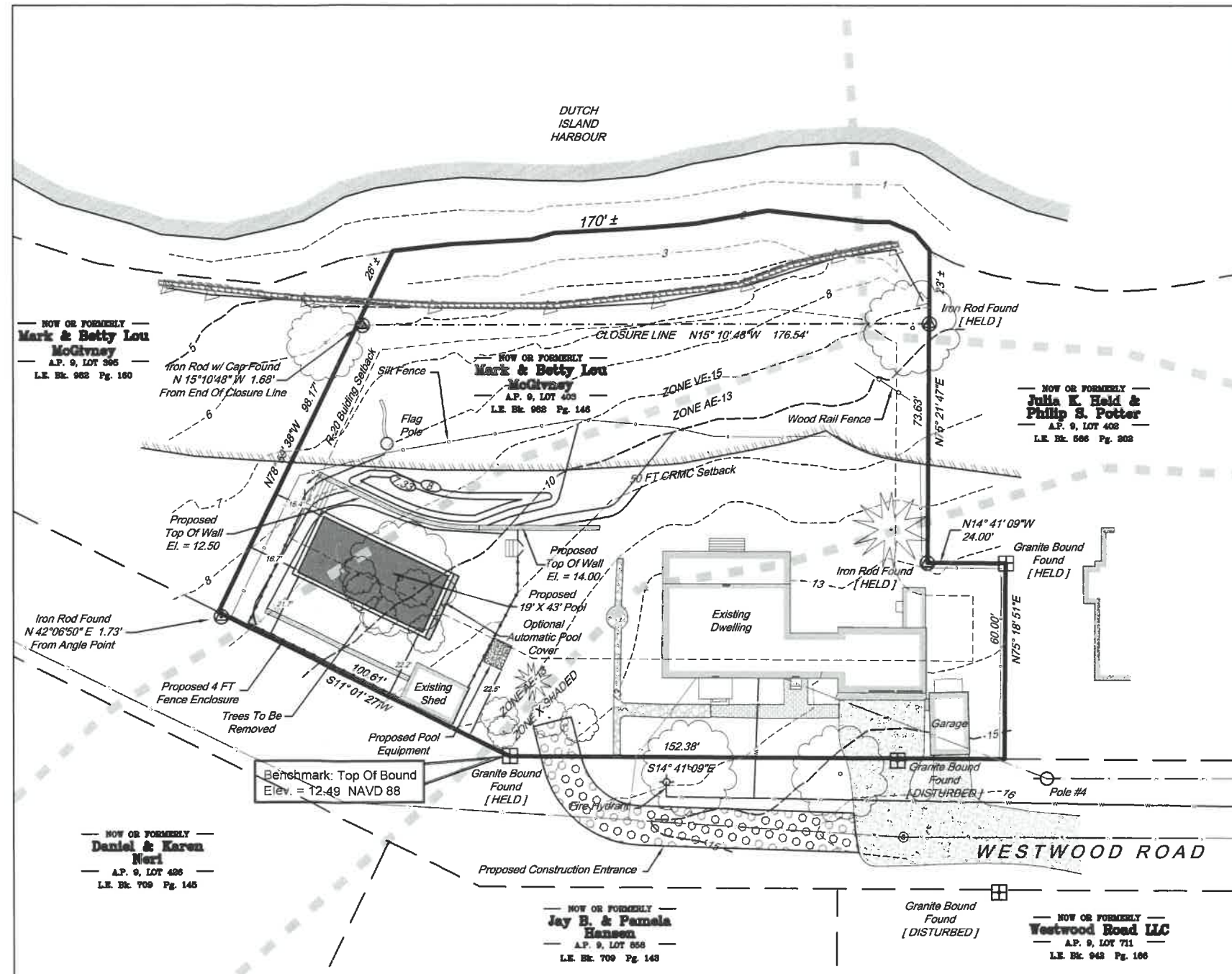
COMPREHENSIVE BOUNDARY SURVEY CLASS I

TOPOGRAPHY: TOPOGRAPHIC SURVEY CLASS T-2

- THE PURPOSE FOR THE CONDUCT OF THE SURVEY AND FOR THE PREPARATION OF THE PLAN IS TO SHOW THE EXISTING CONDITIONS OF ASSESSOR'S PLAT 9, LOT 403 ALONG WITH SIGNIFICANT SITE FEATURES, TOPOGRAPHY, AND ALL MONUMENTS FOUND OR SET. ALSO DEPICTED IS A PROPOSED IN-GROUND POOL.

FEMA DETERMINATION

PARTIALLY LOCATED WITHIN:
ZONE "X-SHADED" - AREA OF 0.2% ANNUAL CHANCE FLOOD HAZARD
ZONE "AE-13"
ZONE "VE-15"
PANEL NO. - 44005C0157J
EFFECTIVE - SEPTEMBER 4, 2013
REVISED - FEBRUARY 15, 2019



Scale 1" = 20'

THIS PLAN IS TO BE INDEXED UNDER THE FOLLOWING ROADS:
1. WESTWOOD ROAD

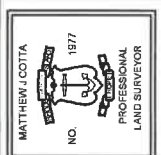
PROPOSED POOL LOCATION PLAN

FOR
MARK MCGIVNEY
LOCATED AT
ASSESSOR'S PLAT 9, LOT 403
20 WESTWOOD ROAD
JAMESTOWN, R.I.

Checked By: MJC
Date: 07/19/2022

Drawn By: BpC
Scale: 1" = 20'

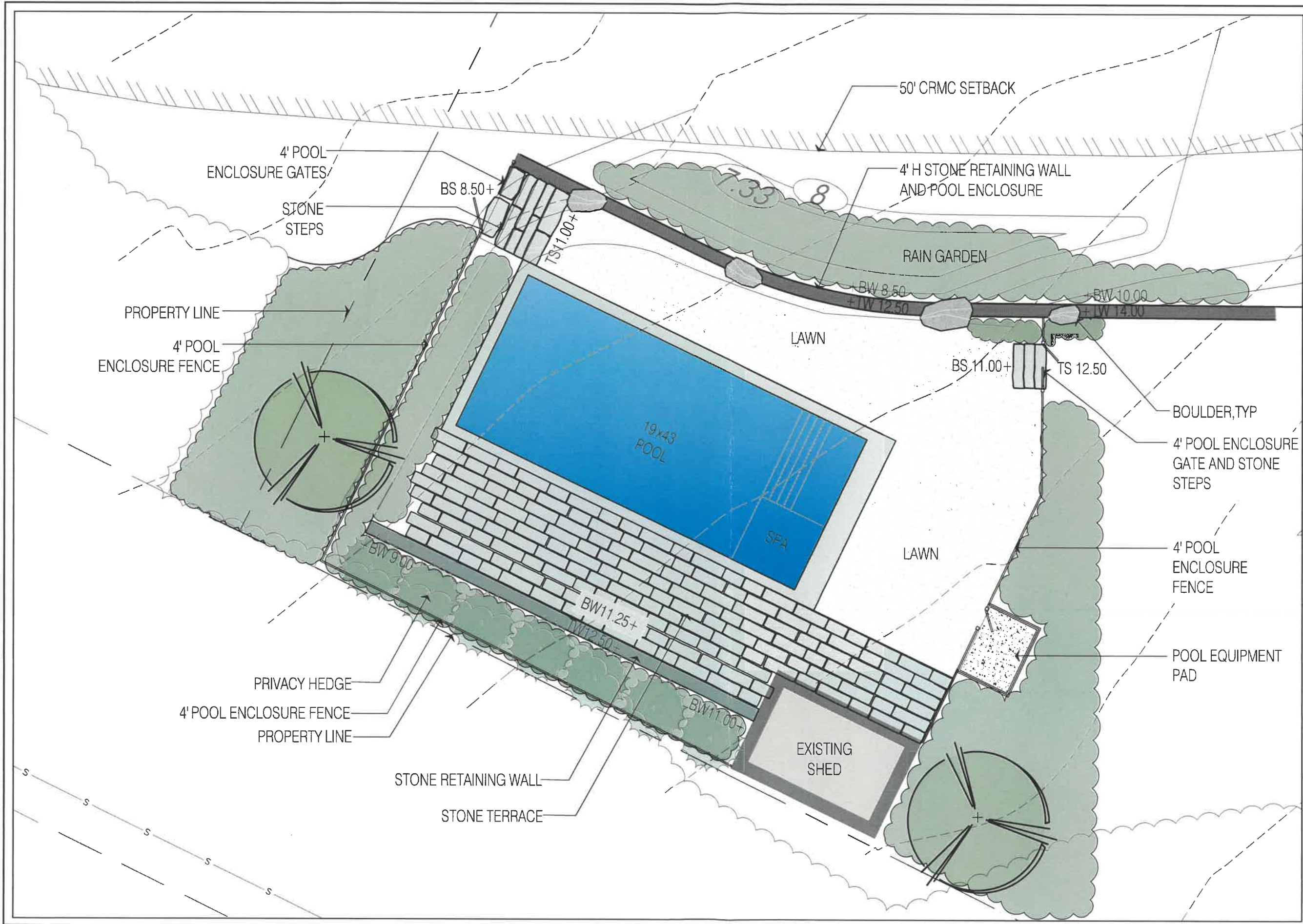
NO.	REVISION	BY	DATE



AMERICAN ENGINEERING, INC.
Professional Engineering & Land Surveying
400 South County Trail - Suite A 201
Exeter, Rhode Island 02822
DCotta@AmericanEngineeringRI.com
Phone (401) 294-4090 / Fax (401) 294-3625

Sheet
1
of 1 sheets
Drawing No. 120171

BY: MATTHEW J. COTTA PLS-1977
LS.0004453 COA



P1

McGIVNEY RESIDENCE
 ASSESSOR'S PLAT 9, LOT 403 - 20 WESTWOOD ROAD - JAMESTOWN, RI

POOL ENLARGEMENT PLAN

SCALE: 3/32" = 1'-0" DATE: 07/19/22

MATHER & PAGE
landscape architects

135 WEST ALLENTON ROAD
 NORTH KINGSTOWN, RHODE ISLAND, 02882
 401.337.9220