



BENSALEM TOWNSHIP

Building and Planning Department
2400 Byberry Road • Bensalem PA 19020
215-633-3644 • FAX 215-633-3653

Zoning Hearing Board

Appeal Number: _____

Township of Bensalem, Bucks County, Pennsylvania Notice of Appeal

Appeal is hereby made by the undersigned from the action of the Zoning Officer.

Check applicable item(s):

- Certification of Non-Conforming Use
- Application for Validity Challenge
- Administrative Officer in refusing my application for a building permit dated: July 2, 2014
- Special Exception
- Variance from the terms of the Zoning Ordinance of the Township of Bensalem

Appellant Name: CYNTHIA KOWALSKI

Address: 4725 SOMERS AVE
TREVOSE, PA 19053

Phone No. [REDACTED]

Owner's Name: CYNTHIA KOWALSKI

Address: 4725 SOMERS AVE
TREVOSE, PA 19053

Phone No. [REDACTED]

Attorney Name: EDWARD HARVILLA, IO No. 49425

Address: 120 PALANCE AVE
HARLE TOWNSHIP, PA 18202

Phone No. [REDACTED]

Interest of appellant, if not owners (agent, lessee, etc.): OWNER REJECTED FOR PERMIT TO ERECT REAR YARD OPEN DECK SUBMITTED BY HER INDEPENDENT CONTRACTOR A-1 QUALITY DECKS, INC.

1. Application relates to the following:

Check items if applicable:

- | | |
|--|--|
| <input type="checkbox"/> Use | <input type="checkbox"/> Lot Area |
| <input type="checkbox"/> Height | <input checked="" type="checkbox"/> Yards |
| <input type="checkbox"/> Existing Building | <input type="checkbox"/> Proposed Building |
| <input type="checkbox"/> Occupancy | |
| <input type="checkbox"/> Other: (describe) _____ | |

2. Brief description of Real Estate affected:

Tax Parcel Number: 02-016-137-001
Location: 4725 SOMERS AVE, BENSALEM TOWNSHIP
Lot Size: 110' (SOMERS AVE x 91' 1/2' (WILLOW AVE))
Present Use: RESIDENTIAL SINGLE FAMILY HOUSE
Proposed Use: RESIDENTIAL SINGLE FAMILY HOUSE
Present Zoning Classification: R-2
Present Improvement upon Land: RESIDENTIAL SINGLE FAMILY HOUSE
Deed recorded at Doylestown in Deed Book 6635 Page 910

3. If this is an appeal to challenge, provide statement and/or basis for challenge to the validity of the zoning ordinance.

4. If this is an Appeal from action of the Zoning Administrative Officer then complete the following:

Date Determination was made: 7/2/14 (EXHIBIT "A-1")
Your statement of alleged error of Zoning Administrative Office: OWNER'S CONTRACTOR SUBMITTED APPLICATION TO ERECT REAR DECK STRUCTURE, ZONING OFFICER REJECTED APPLICATION FOR PERMIT BASED ON FRONT YARD SETBACK ORDINANCE (EXHIBIT "A-2"). SECTION 232-167(e) applies to a "building" as defined in Section 232-6. AN OPEN REAR DECK IS NOT A "BUILDING" SINCE HAS NO ENCLOSED WALLS, NO ROOF AND IS NOT FOR SHELTER OF PERSONS, ANIMALS OR PROPERTY NOR ENCLOSURE OF SAME. PERMIT WAS ERRONEOUSLY DENIED FOR OPEN REAR DECK.

5. Specific reference to section of the Zoning Ordinance upon which application for special exception or variance is based (if special or variance is desired):

ZONING ORDINANCE § 232-781(C) AND AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101, et. seq.

6. Action desired by appellant or applicant (statement of relief sought or special exception or variance desired):

PERMIT TO ERECT 12' X 17 1/2' OPEN REAR YARD DECK WITH 16' SPACE BETWEEN END OF DECK AND REAR ADJOINING PROPERTY OR VARIANCE TO ERECT SAME STRUCTURE

7. Reasons appellant believes board should approve desired action (refer to section or sections of ordinance under which it is felt that desired action may be allowed, and not whether hardship is (or is not) claimed, and the specific hardship.

I) PERMIT ERRONEOUSLY REJECTED BASED ON FRONT YARD SETBACK ORDINANCE APPLICABLE TO "BUILDING". II) IRREGULAR, SLOPED TOPOGRAPHY, REAR YARD UNIQUE HARDSHIP. III) REASONABLE MODIFICATION PER AMERICANS WITH DISABILITIES ACT.

8. Has previous appeal or application for special exception or variance been filed in connection with these premises?

YES NO

Specifications of errors must state separately the appellant's objections to the action of the zoning administrative office with respect to each question of law and fact which is sought to be reviewed.

"SEE RESPONSE TO PARAGRAPH 4 AND EXHIBIT "A-2" MENTIONED THERE IN. SEE ATTACHED BRIEF."

I, hereby depose and say that all of the above statements and the statements contained in any papers or plans submitted herewith, are true to the best of my knowledge and belief.

Cynthia Gourelski
Appellant's or Owner's Signature

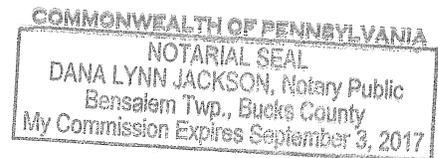
7/16/14
Date

Sworn to and subscribed before me this

16 day of 7 2014

Notary

My commission expires: 9/03/2017



Township of Bensalem, Bucks County, Pennsylvania
Zoning Hearing Board

Appeal of Cynthia Kowalski :
Tax Parcel # 02-016-137-001 :
4725 Somers Avenue :
Bensalem Township :

Documents Submitted in Support of Notice of Appeal

- Deed (5 pages)
- Brief in Support of Notice of Appeal (5 pages)
- Zoning Officer's Rejection Letter (1 page) marked Exhibit "A-1"
- Zoning Officer's Rejection Stamp on Permit Plot Plan (1 page) marked Exhibit "A-2"
- Tax Map (1 page) marked Exhibit "A-3"
- Amended Plot Plan (1 page) marked Exhibit "A-4"
- Plot Plan Addendum (1 page) marked Exhibit "A-4a"
- Photo of Appellant's Rear Yard Slope marked Exhibit "A-5"
- Photo of Rear Yard of Adjoining Neighbor marked Exhibit "A-6"
- Photo of Rear Yard of Diagonal Non-Adjoining Neighbor marked Exhibit "A-7"
- Photo of Front Yard Across Street Non-Adjoining Neighbor marked Exhibit "A-8"
- Letter of Appellant's Physician, Dr. Francis M. Metkus, M.D., F.A.C.P (1 page)
Marked Exhibit "A-9"

Township of Bensalem, Bucks County, Pennsylvania
Zoning Hearing Board

Appeal of Cynthia Kowalski :
Tax Parcel # 02-016-137-001 :
4725 Somers Avenue :
Bensalem Township :

Brief in Support of Notice of Appeal

Statement of Facts:

The facts contained in the "Notice of Appeal" are incorporated by reference as if fully set forth herein at length.

On July 2, 2014, the Zoning Administrative Officer (hereinafter "zoning officer") rejected the application of A-1 Quality Decks, Inc. for a permit to erect a rear yard open deck on appellant's single family residential house located at 4725 Somers Avenue in an R-2 Residential District. A-1 Quality Decks, Inc. (hereinafter "contractor") was retained by appellant to erect the rear yard open deck. Contractor submitted the Plot Plan (without Zoning Officer's stamp) attached hereto as Exhibit "A-2," which indicates the location of Somers Avenue and Willow Avenue. On or about July 5, 2014, appellant received the Zoning Officer's letter dated July 2, 2014 (Exhibit "A-1" and the Plot Plan (with Zoning

Officer' stamp) Exhibit "A-2," indicating that the contractor's permit application to erect a rear yard open deck was denied for the following reason: "[t]he proposed 16 foot front yard setback is less than the required 25 foot setback in the R-2 district. (Section 232-167(e)(1))" (emphasis added). Bensalem, Pennsylvania, Code of Ordinances (hereinafter "Ordinance(s)") §232-167(e) states the following:

Yards. Where a building is erected on an R-2 lot, front, side and rear yards shall be provided on each lot as follows:

(1)

Front yard.

a.

One yard, not less than 25 feet in depth.

(2)

Side yards.

a.

Two yards, not less than 20 feet in aggregate width, and neither less than nine feet, except that in the case of a corner lot, the frontage on both streets shall be considered front yards.

(3)

Rear yard.

a.

One yard, not less than 25 feet in depth.

A "building" is defined in the ordinance at §232-6 as follows:

Building. A structure having enclosed walls and roof which is permanently located on the land and is used for the shelter or enclosure of persons, animals or property.

Appellant's adjoining neighbor has a rear yard deck as depicted by photograph marked Exhibit "A-6." Appellant's diagonal, non-adjoining neighbor has a rear yard deck as depicted by photograph marked Exhibit "A-7." Appellant's across-street, non-adjoining neighbor has a front yard deck as depicted by photograph marked Exhibit "A-8."

Appellant is the owner of the property by Deed dated January 14, 2011, which is attached to the Notice of Appeal. Appellant's rear yard has an irregular, sloping topography as depicted by photograph marked Exhibit "A-5." Appellant's rear yard is completely enclosed by a high fence with padlocked gates; however, appellant's front yard is open without any fencing whatsoever.

According to appellant's personal physician, "[s]he has an illness that would benefit from the ability to sit outside several times per day in the fresh air." See Exhibit "A-9." Furthermore appellant's personal physician writes that "[i]t would be in her best medical interest to have a deck attached to her home that is safe and easily accessible." See Exhibit "A-9."

Appellant is a member of the class of citizens protected by the Americans with Disabilities Act, 42 U.S.C. §12101, et. seq.

Alternative Grounds for Appeal:

- I) Appellant's contractor applied for a permit to erect a rear yard open deck, which is not a "building," and the permit was denied by the zoning officer based on a front yard setback ordinance applicable only to a "building." See Ordinance §232-167(e)(1) and Ordinance §232-6 (definition of "building.") . See also Exhibits "A-1" and "A-2"
- II) The irregular, sloping topography of appellant's rear yard property, which was not created by appellant, creates an unnecessary hardship whereby the property cannot be reasonably used without erecting the flat surface of a deck, which does not alter the character of the neighborhood since three of appellant's very near neighbors have decks. See Plot Plan Addendum, Exhibit "A-4a" in conjunction with photographic Exhibits "A-5," "A-6," "A-7," and "A-8." A nine foot variance resulting in a sixteen foot setback versus the twenty-five foot setback for which the permit was rejected by the zoning officer is the minimum variance that will afford relief while representing the least modification of the setback Ordinance. See Ordinance §232-781.

III) A nine foot variance resulting in a sixteen foot setback versus the twenty-five foot setback for which the permit was rejected by the zoning officer is a reasonable modification necessary to avoid discrimination on the basis of disability. Bensalem Township could not meet its burden of proof that the granting of a nine foot variance to appellant would be a fundamental alteration of its zoning activity, therefore, it would be unable to sustain a defense in a Federal action under the Americans with Disabilities Act. See 28 C.F.R. 35.130 (b)(7) (titled "General Prohibitions Against Discrimination). See also "Americans with Disabilities Act, Title II Technical Assistance Manual," U.S. Department of Justice, §II-3.6100, Illustration 1 (granting a three foot variance from a twelve foot setback ordinance reasonable modification of zoning ordinance).

Respectfully submitted,



Edward Harvilla, Attorney-at-Law
Attorney for Appellant, Cynthia Kowalski
Attorney I.D. No. 49425

120 Palance Avenue
Hazle Township, PA 18202
(570) 401-5170



BENSALEM TOWNSHIP

Building and Planning Department

Office 215-633-3644 • Fax 215-633-3753

Matthew K. Takita

Director of Building and Planning

2400 Byberry Road • Bensalem, PA 19020

July 2, 2014

A-1 Quality Decks Inc.
701 Darley Circle
New Hope, PA 18938

Project:	DECK
Project Address:	4725 Somers Ave Trevose, PA 19053
Tax Parcel:	02-016-137-001
Property Owner:	Cynthia J. Kowalski
Permit Status:	Application Denied

Electronic Review Status

Dear Sir/Madam:

A review was conducted on the application for the referenced project pursuant to Chapter 232 ZONING, [Section 232-167(e)(1)]. The attached sheets show what was found during the review and this information is required to complete the permit application for the above referenced project.

The review process utilizes Adobe Acrobat allowing reviewers to make their comments directly on the plan pages. These comments are tracked throughout the review and a printed summary serves as the basis for a rejection on the project until required changes have been made. The attached sheets will show an image of the plan page including its associated comments with connector lines. Only those pages of the plans that require a revision have been generated and included.

You are required to resubmit plans with revisions and will need to burn the **complete** set of plans with revisions to a new disc. Return it to the Building & Planning Department. You are to include a summary list of **all** changes that were made to the plans including those required by the Township. For each change made to the plans, note the sheet number, drawing title, and a brief description of the change made. Please label the disc with the project address, date and revision number to distinguish it from any earlier submissions.

It is our intent that you receive as few rejections as possible and provide reviewers a more efficient method for completing the review by utilizing the comments summary. The print dialog box should include the following summary options:

- Layout - Document and comments with connector lines on single pages
- Font Size - Large font size
- Include - all comments
- **Clear** - the checkbox to NOT include pages containing no comments

It is possible that upon receipt of the revised plans, additional items for compliance may be required. This letter shall serve as formal notice that your permit application has been rejected for said project until such time as the requested information has been provided.

You have the right to appeal this rejection letter. Applications for the Zoning Hearing Board can be obtained from the Building and Planning Department located in the Municipal Building at 2400 Byberry Road, Bensalem.

Respectfully,

[Redacted Signature]
Harold W. Gans, P.E., P.L.S.
Township Engineer

[Redacted Signature]
Certified and Regular Mail

HWG/lva
Enclosures

EXHIBIT "A-1"

4725 SOMERS AVE
← 111' →

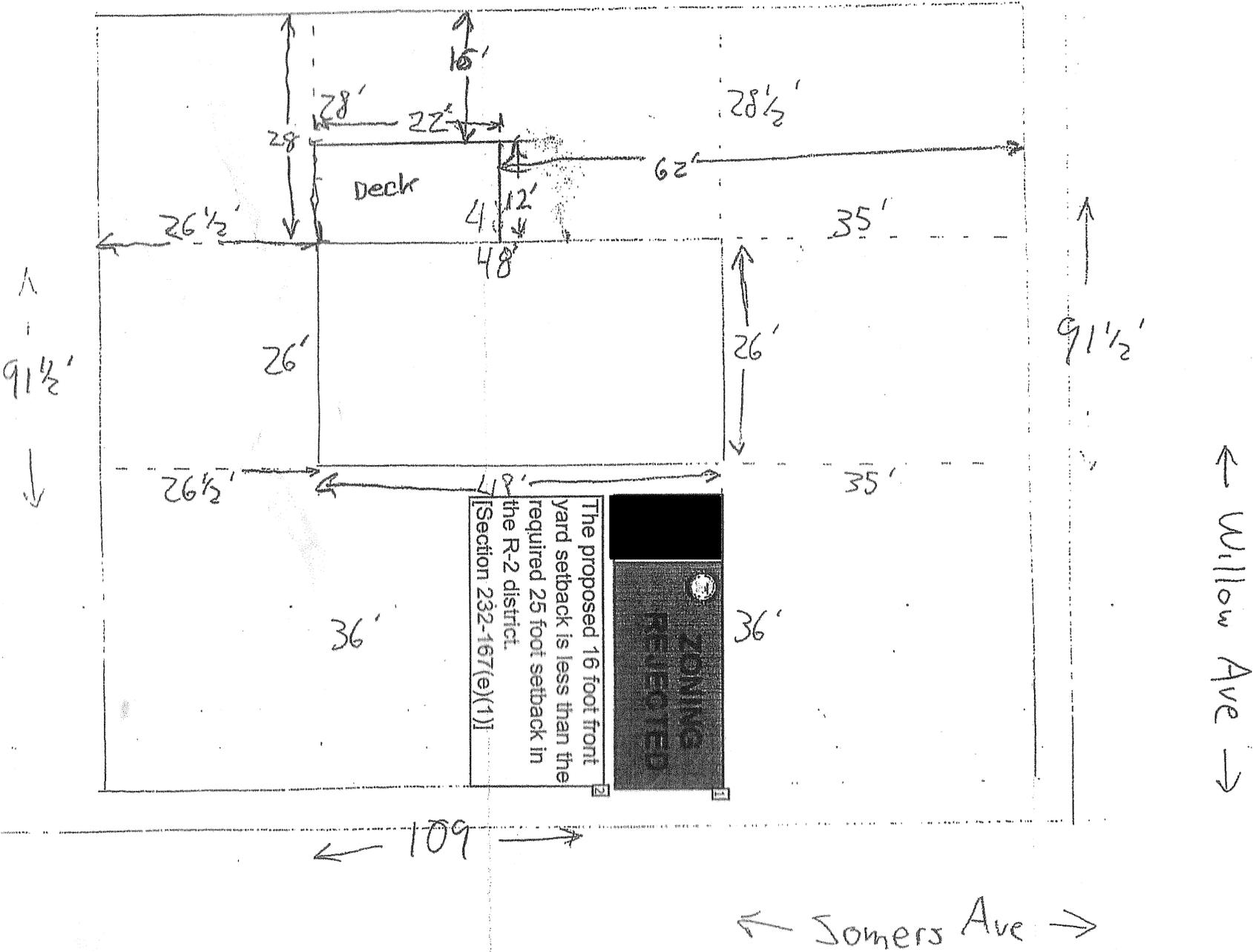


EXHIBIT "A-2"

Tax MAP of Appellant: Cynthia Kowalski, Tax Parcel 137-1

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W
E
S

CHESTER AVENUE.

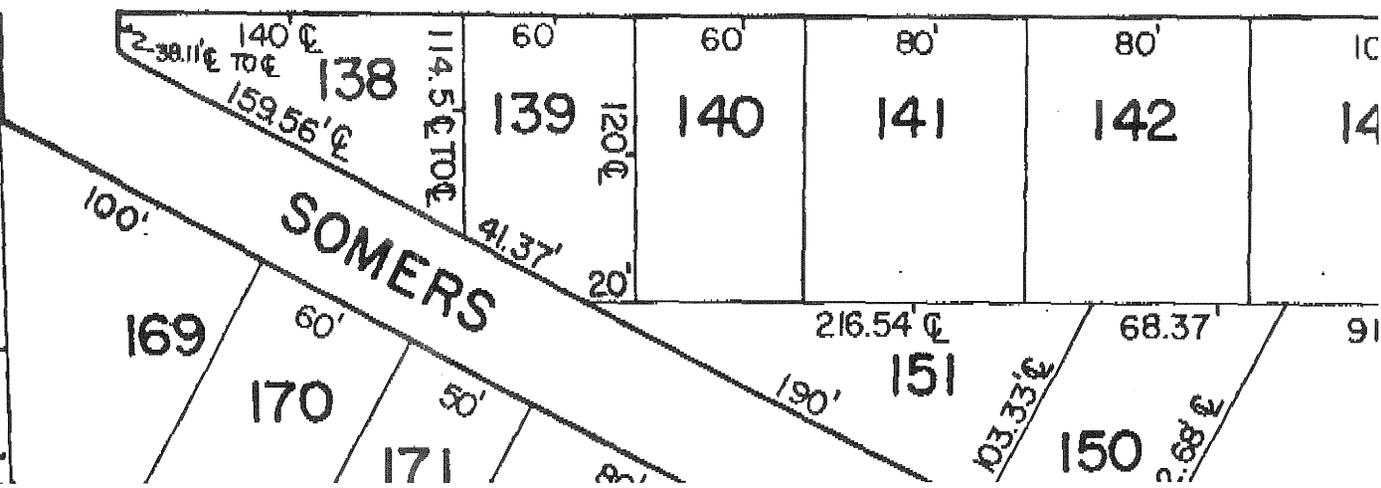
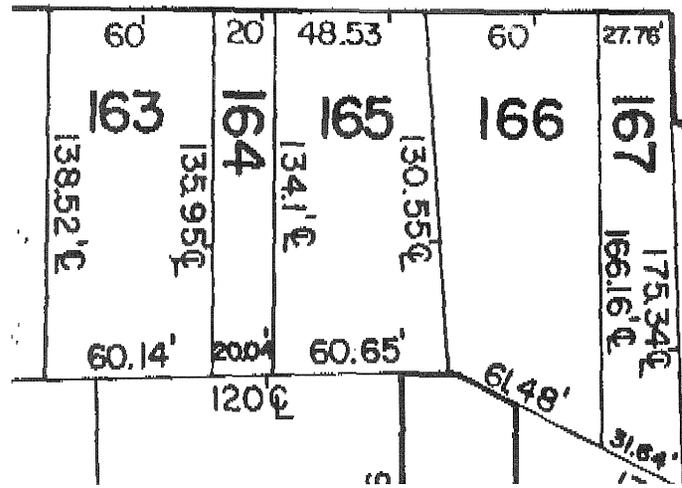
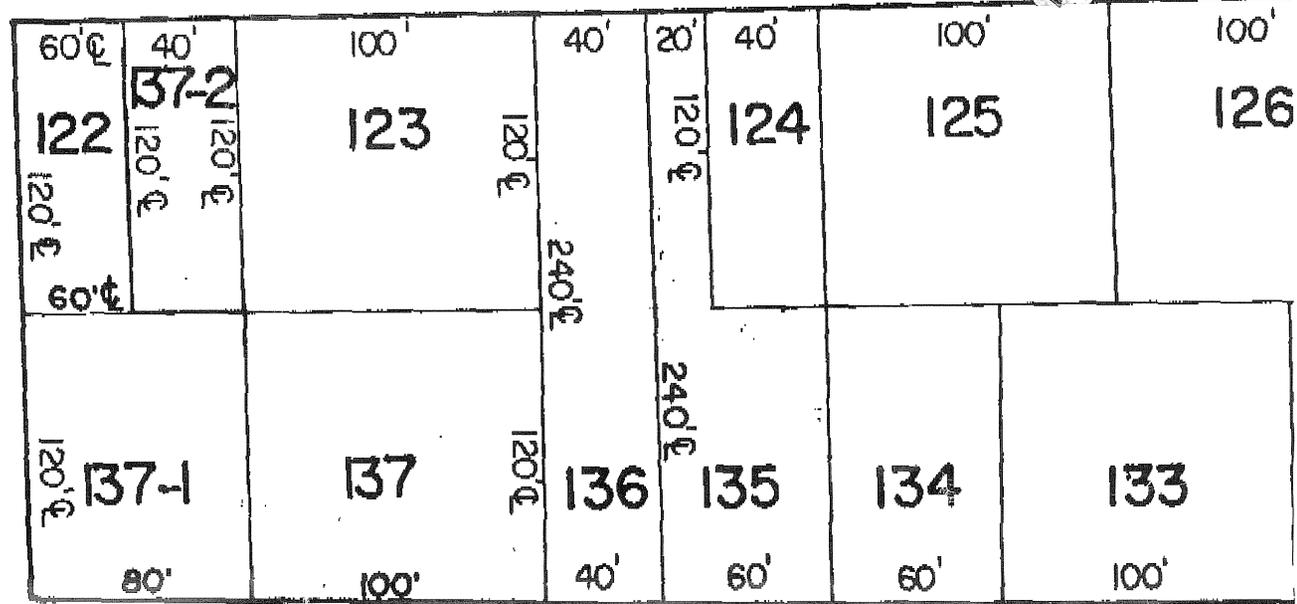
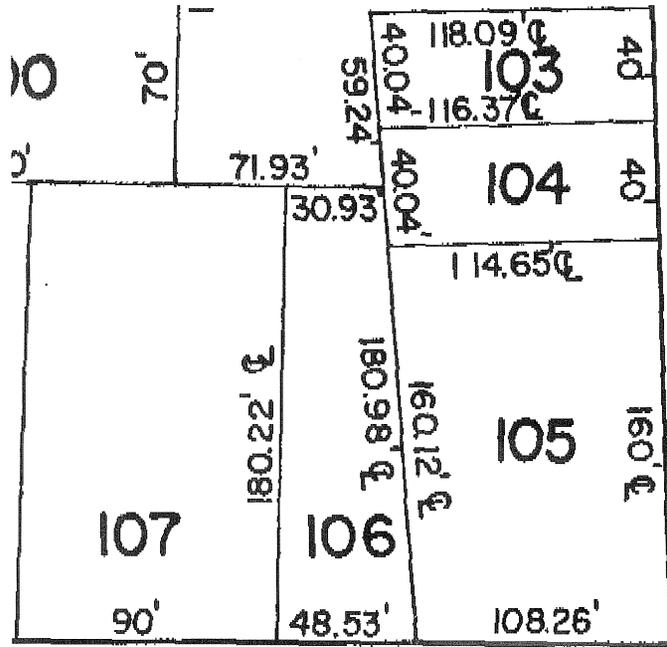
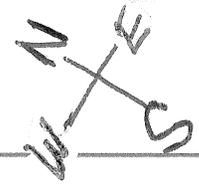


EXHIBIT "A-3"

PLOT PLAN ADDENDUM: TAX PARCEL 02-016-137-001

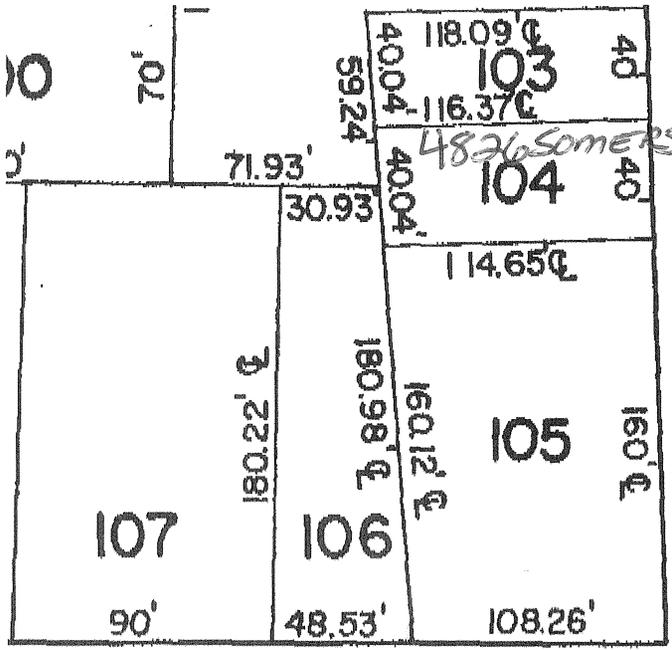
OWNER: CYNTHIA KOWALSKI

PROJECT REAR DECK 4725 SOMERS AVE, TREVINO, TX 78053

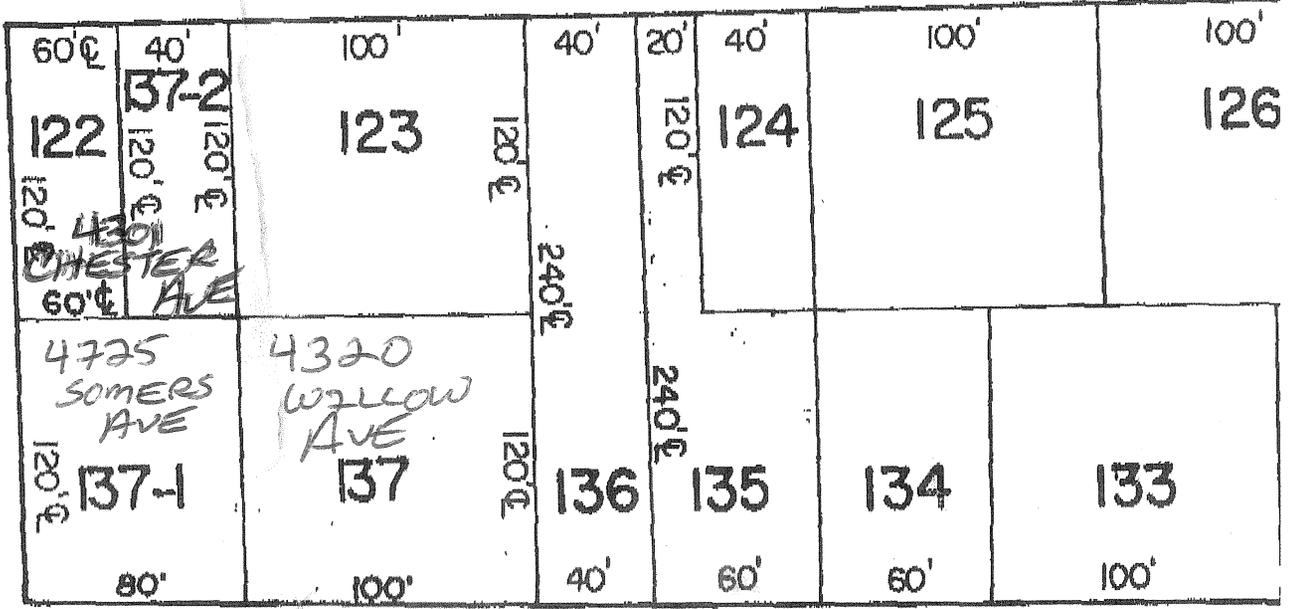


ZONED R-2

CHESTER AVENUE.



SOMERS AVE.



WILLOW AVE

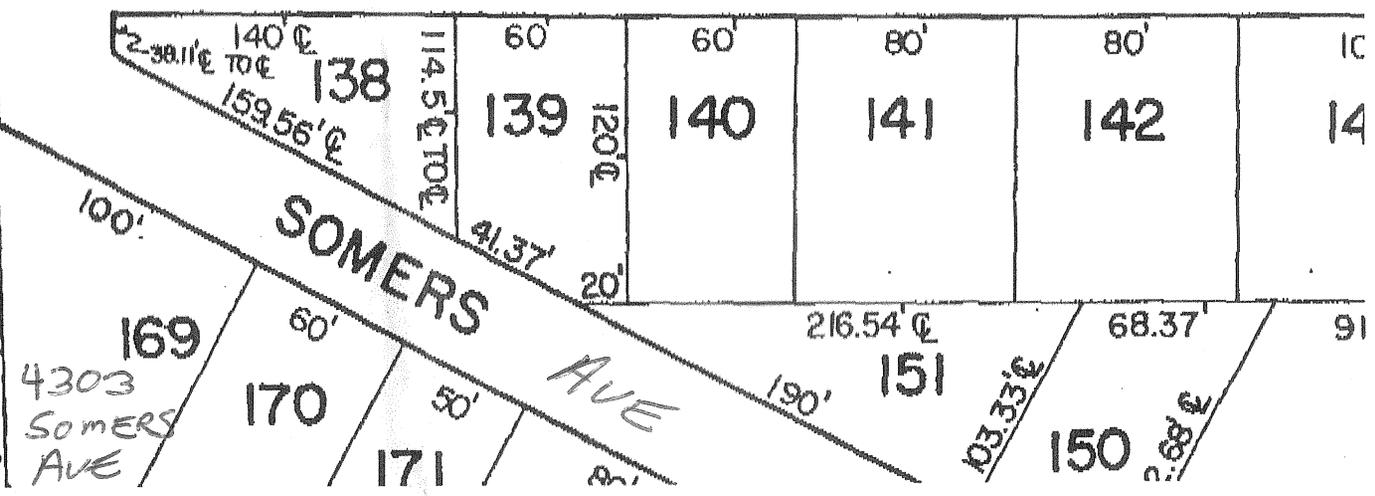
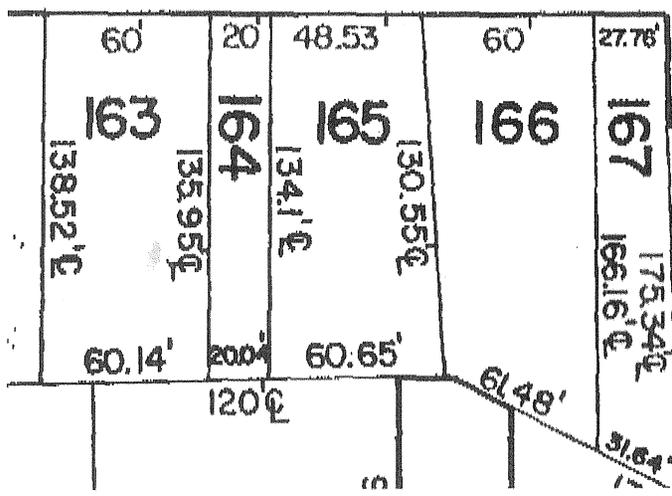


EXHIBIT "A-4a"

Appellant: Cynthia Kowalski



APPELLANT REAR YARD SLOPED IRREGULARLY
TAX MAP PARCEL 137-1
4725 SOMERS AVE

EXHIBIT "A5"

Appellant: Cynthia Kowalski



DECK OF
REAR YARD ADJOINING NEIGHBOR
TAX MAP PARCELS 122 + 137-2
4301 CHESTER AVE

EXHIBIT "A6"

Appellant, Cynthia Kowalski



DECK OF
REAR YARD DIAGONAL NON-ADJOINING NEIGHBOR
TAX MAP PARCEL 104
4826 SOMERS AVE

EXHIBIT "A-7"

Appellant: Cynthia Kowalski



DECK OF
FRONT YARD ACROSS STREET NON-ADJOINING NEIGHBOR
TAX MAP PARCEL 169
4303 SOMERS AVE

EXHIBIT 'A8'