

VILLAGE OF GILBERTS

ORDINANCE NO. 19-2020

**AN ORDINANCE APPROVING
A VARIANCE FROM THE GILBERTS UNIFIED DEVELOPMENT ORDINANCE**

(182 Park Court)

WHEREAS, Curtis Wilcox ("**Owner**"), the owner of the property located at 182 Park Court, Gilberts, Illinois 60136, which property is more specifically described on **Exhibit A** ("**Property**"), desires to construct an above-ground pool in the rear yard of the Property; and

WHEREAS, the Property is currently zoned in the R-3 Residential Zoning District, and is currently served by a septic field; and

WHEREAS, Section 3-6(A) of the Gilberts Unified Development Ordinance ("**UDO**") requires a 40-foot rear yard setback for residences served by a septic field in the R-3 Residential Zoning District; and

WHEREAS, due to the unique shape of the Property and the location of the Property's septic field, the Owner is unable to locate the above-ground pool while complying with the 40-foot setback requirement; and

WHEREAS, the Owner filed an application for a variance from Section 3-6(A) to allow for the above-ground pool to be located 11 feet from the rear yard lot line instead of the required 40 feet ("**Variance**"); and

WHEREAS, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Owner's request for the Variance on December 9, 2020, and at the conclusion of the public hearing voted to recommend approval of the Variance to allow for the Owner to construct the above-ground pool within the require rear yard setback; and

WHEREAS, the Village Board makes the following findings of fact in reference to the Owner's application for approval of the Variance for the Property:

- a. The Property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that district;
- b. The extraordinary or exceptional conditions of the Property requiring the request for the Variance was not caused by the Owner;
- c. The proposed Variance will alleviate a peculiar, exceptional or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship, as the unique shape of the Property and location of the septic field prohibit the Owner from installing the above-ground pool while complying with the rear yard setback requirement;
- d. The denial of the proposed Variance will deprive the Owner of the use permitted to be made by the owners of property in the immediate area;

- e. The proposed Variance will result in structures that are appropriate to and compatible with the character and scale of structures in the area in which the Variance is being requested;
- f. There is no other means other than the requested Variance by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the Property.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois as follows:

Section 1. Recitals. The recitals are incorporated into this Section 1 as if fully set forth.

Section 2. Variance. Subject to the conditions set forth in Section 3 of this Ordinance, the Village Board of Trustees hereby approves the following variance for the Property:

A variance from Section 3-6(A) of the UDO to allow the above-ground pool to be located 11 feet from the rear yard lot line instead of the required 40 feet.

Section 3. Conditions. The approvals granted pursuant to Section 2 of this Ordinance are conditioned upon and limited by the following conditions, the violation of any of which shall, in the discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the approvals granted by this Ordinance in accordance with applicable law. In addition, any violation of this Ordinance will be deemed a violation of the UDO and subject the Owner to enforcement proceedings accordingly.

- A. **No Authorization of Work.** This Ordinance does not authorize commencement of any work on the Property. Except as otherwise specifically provided in writing in advance by the Village, no work of any kind may be commenced on the Property pursuant to the approvals granted in this Ordinance unless and until all conditions of this Ordinance precedent to that work have been fulfilled and after all permits, approvals, and other authorizations for the work have been properly applied for, paid for, and granted in accordance with applicable law.
- B. **Compliance with Laws.** The UDO, the Building Code, and all other applicable Village ordinances and regulations shall continue to apply to the Property, and the development and use of the Property must comply with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction.

Section 4. Severability. In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

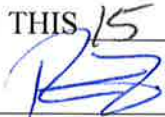
Section 5. Repeal and Saving Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

Section 6. Effective Date. Upon its passage and approval according to law, this Ordinance shall, by authority of the Board of Trustees, be published in pamphlet form; provided, however, that this Ordinance shall be of no force or effect unless and until the Owner has executed and filed with the Village its unconditional agreement and consent, in the form attached to this Ordinance as **Exhibit B**, within 30 days following the passage of this Ordinance.

ADOPTED THIS 15 DAY OF Dec., 2020, pursuant to roll call vote as follows:

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Jeanne Allen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Dan Corbett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Nancy Farrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Lou Hacker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Kurt Kojzarek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Guy Zambetti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Rick Zirk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APPROVED THIS 15 DAY OF Dec., 2020



 Village President, Rick Zirk



 Village Clerk, Courtney Baker

Published:

12-16-20



Exhibit A

Description of the Property

Common Address: 182 Park Court, Gilberts, Il 60136

PINs: 02-23-403-020

Exhibit B

Unconditional Agreement and Consent

Pursuant to Section 6 of Ordinance No. 19-2020, and to induce the Village to grant the approvals provided for in that Ordinance, the undersigned acknowledges for itself and its successors and assigns in title to the Property that it:

1. has read and understand all of the terms and provisions of Ordinance No. 19-2020;
2. hereby unconditionally agrees to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the UDO, and all other applicable codes, ordinances, rules, and regulations;
3. acknowledges and agrees that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure the owner or lessee against damage or injury of any kind and at any time;
4. acknowledges that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, have considered the possibility of the revocation provided for in the Ordinance, and agree not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right; and
5. represents and acknowledges that the person signing this Unconditional Agreement and Consent is duly authorized to do so on behalf of the Owner.

Curtis Wilcox

Date: _____



VILLAGE OF GILBERTS
87 Galligan Road
Gilberts, IL. 60136
Telephone: 847-428-2861
Fax: 847-428-2955

APPLICATION FOR A VARIANCE

For Office Use Only

Case No. Hearing Date:
Date Published: Newspaper:

NOTICE TO APPLICANT: A variation is a zoning adjustment which permits minor changes in requirements where an individual property is both harshly and uniquely burdened by the strict application of the law. No variation may be granted which would adversely affect surrounding or the general neighborhood.

....A plat of survey of property and a drawing or plan of proposed change drawn to scale must accompany this request along with the application fee (see fee scheduled attached). Deposits for professional fees are required in an amount to be determined by the Village.

Please Print

Name and address of the owner of the property

Curtis Wilcox
182 Park Ct
Gilberts IL 60136

Applicant's Telephone Number:
Applicant's Cell Phone Number: 773 842 4717
Applicant's email address: CAWilcox927@yahoo.com
Applicant's Fax Number:

Address of variance: 182 Park Ct

Legal Description (attached to application)

Zoning District: R-3

Present Use: Residential

Request

Owner/Applicant request a change in (please circle one) Yard, Parking, Height, Lot
If other, please explain:

Requirements of Article 3 Section 6 Page _____

The following facts are pertinent to the request change:

The designated Rear Yard Setback for R3 is 40 feet on a septic lot. The location of septic occupies a large portion of the yard

Conditions and/or hardship which justify changing requirements of Zoning Code (Description in detail).

The location of my septic field (Raised Filter Bed) prohibits installation of a pool & deck on any other legal piece of the yard. The proposed location meets all aspects of the code except the rear lot setback

To the best of my knowledge, the preceding facts are accurate and complete.

(Owner must sign this application)

Signature of Owner(s) 

Date: 10/20/2020

Attest: _____

Applicant: 

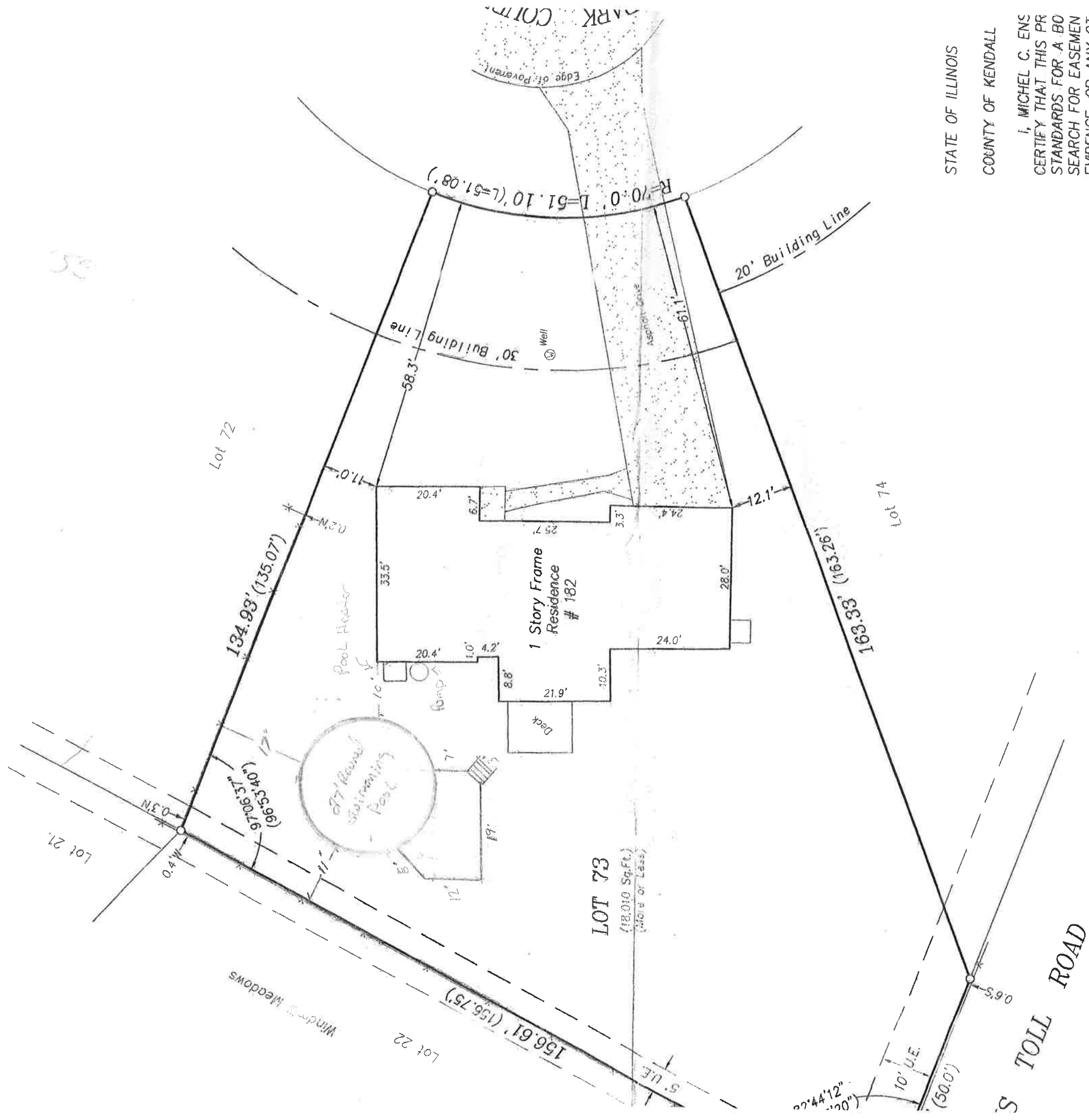
Date: 10/20/2020

Attest: _____

PLAT OF SURVEY

LOT 73 OF SUBDIVISION OF LOT 69 OF WINDMILL MEADOWS,
IN THE VILLAGE OF GILBERTS, KANE COUNTY, ILLINOIS

COMMONLY KNOWN AS 182 PARK COURT, GILBERTS, ILLINOIS



STATE OF ILLINOIS
COUNTY OF KENDALL
I, MICHEL C. ENS
CERTIFY THAT THIS PR
STANDARDS FOR A BO
SEARCH FOR EASEMEN
EVIDENCE, OR ANY OT
DATED AT YORKVILLE,

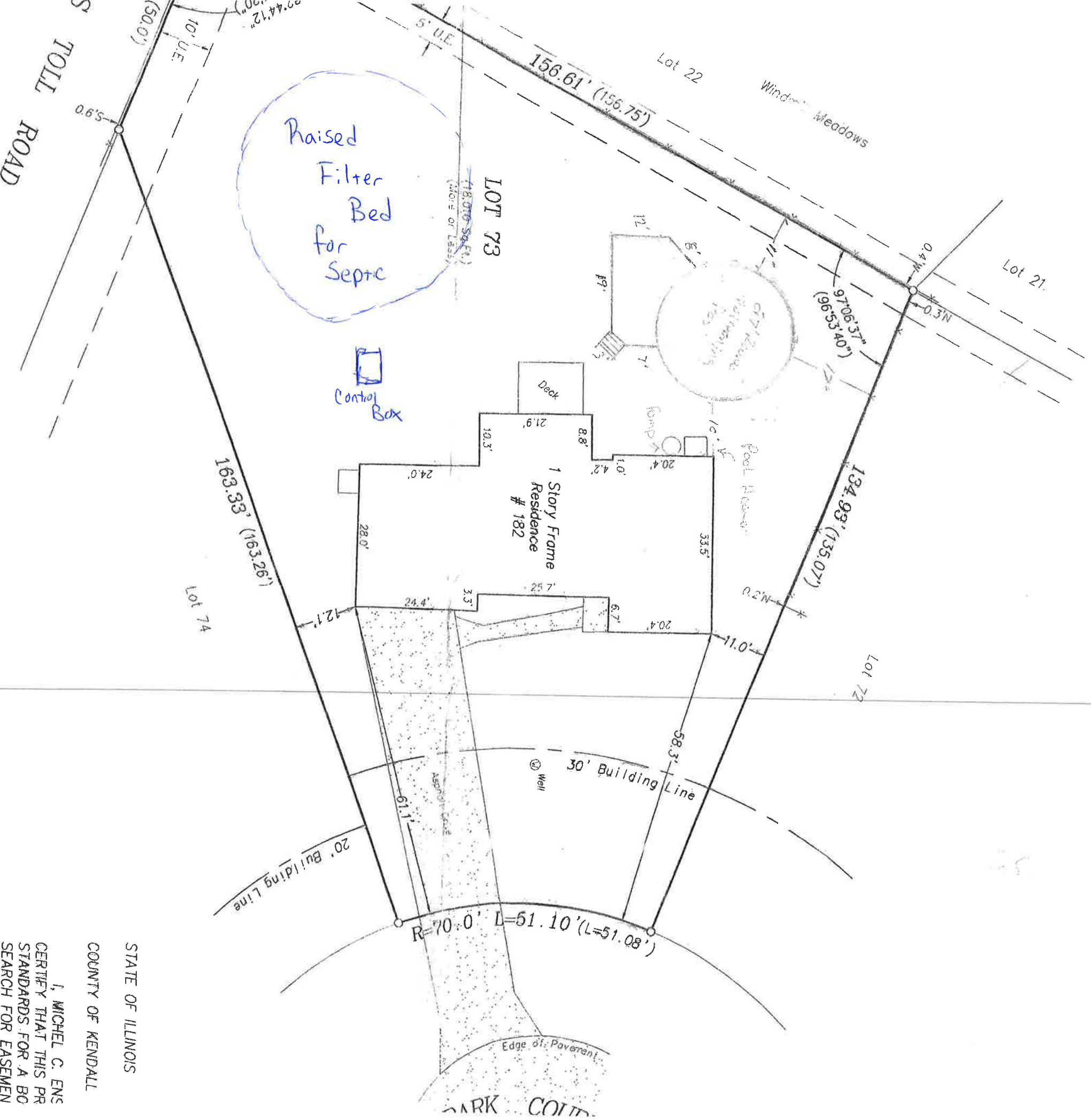
MICHEL C. ENSALADO P.L.S. 2768 EXP. 11/30/2012
ERIC G. POKORNY P.L.S. 3818 EXP. 11/30/2012

TODD SURVEYING

PROFESSIONAL LAND SURVEYING SERVICES
SITE SURVEYING, INC.

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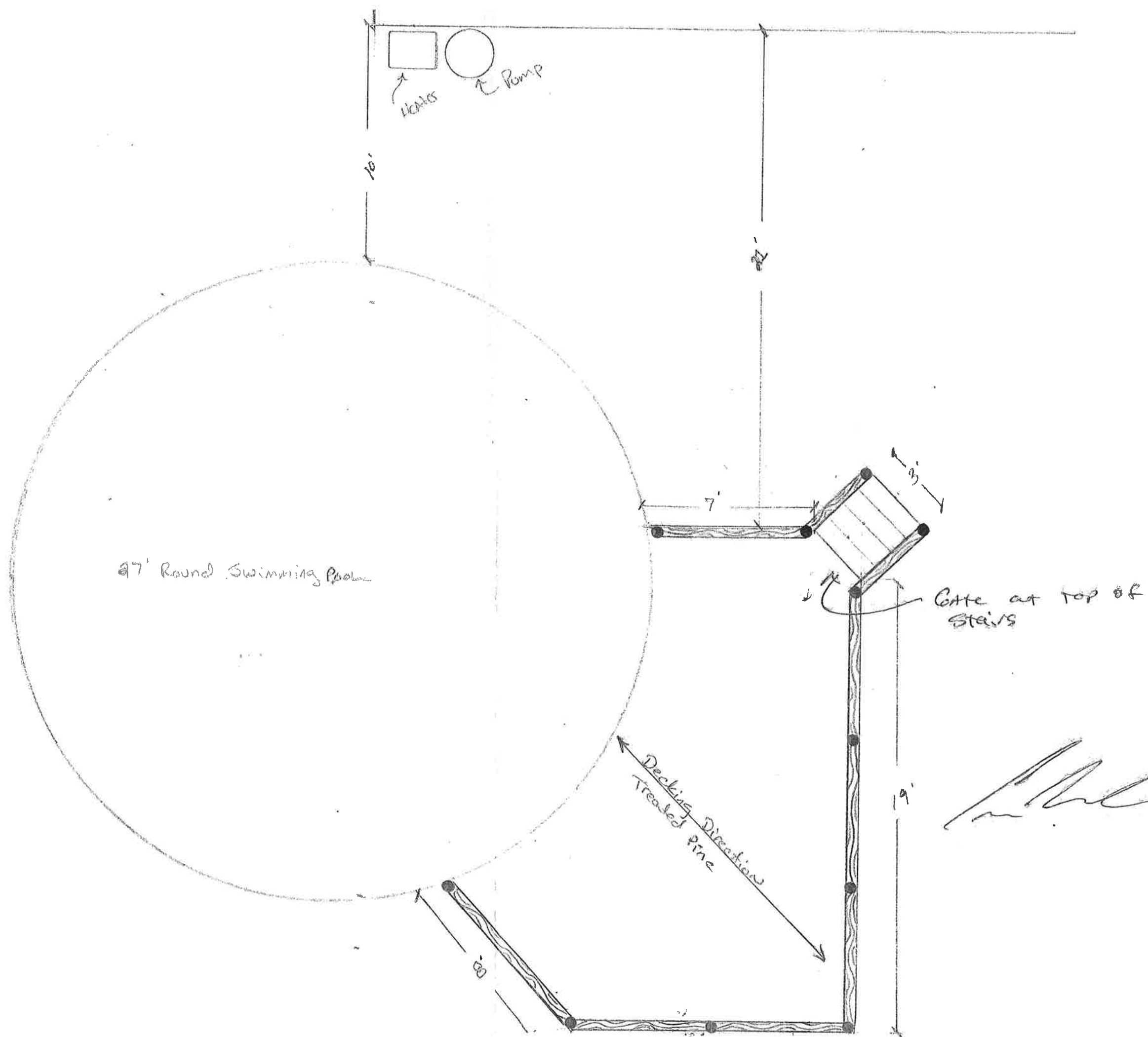
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TODD S SURVEYING

PROFESSIONAL LAND SURVEYING SERVICES
 SITE SURVEYING, INC



Brian Bourdeau

From: Curtis <curtiswilcox@sbcglobal.net>
Sent: Monday, November 30, 2020 1:48 PM
To: Brian Bourdeau
Subject: Variance

Brian, this is what I came up with.

The variance is being requested for the purpose of locating a swimming pool and deck in the location requested due to the fixed location of the septic field and the raised filter bed. There is no other location on the property that would allow for the pool and deck to be installed. The layout of the property does not provide adequate space between the back lot line and the back of the house to construct, and install a pool and deck. Granting the variance will allow me to improve my property value along with provide an aesthetic and pleasing addition to my property that is consistent with other properties in the subdivision.

Curtis Wilcoz
Sent from my iPhone