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CITY OF ARNOLD, BOARD OF ADJUSTMENT, January 16<sup>th</sup> 2019

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TO: BOARD OF ADJUSTMENT  
FROM: LLOYD MONTGOMERY, BUILDING COMMISSIONER  
RE: 1233 LOS OLAS, VARIANCE REQUEST  
DATE: WEDNESDAY, January 16<sup>th</sup>, 2019

Request:

Birke Hillis is applying for a variance to our zoning code, Chapter 405, section 405.280, Section (A) (4) (N). Setbacks of 8 feet on side property lines. The property is zoned R-5. They are requesting a variance to allow the attached carport built without permits to be allowed to encroach on adjoining property line. Past owners (Glenwood McFarland and Murial McFarland) had entered into an agreement (Easement Deed) with (Dennis CiBulka and David CiBulka) to allow the encroachment on the property line.

Analysis

The carport was built sometime in the past by the McFarland's without permits and the rear of the carport, is approximately two feet over the property line. According to our ordinances and codes the present owner would have to remove the carport entirely to meet setbacks. We granted an occupancy permit to the Hillis's on 4/12/2007 not knowing the carport was added on and there was not a fence installed at that time.

The granting of the variance will not be detrimental to the public safety, health, and welfare or injurious to other property/improvements in the neighborhood in which the property is located.

The granting of the variance will not be detrimental to the public safety, health, and welfare or injurious to other property/improvements in the surrounding residential area as this only affects the two adjoining properties.

Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the letter of these regulations are carried out.

A particular hardship would result, as distinguished from a mere inconvenience if the letter of these regulations are carried out because we would require the owner to remove the entire carport from the home to bring it back into compliance and they cannot rent or sell the property at this time.

The conditions upon which the request for a variance is based are unique to the property to which the variance is sought, and are not applicable generally to other property.

The conditions for the request for variance are unique to this property as it involves a carport that was installed without permits by a past owner and not discovered until the owner wanted to sell the property.

#### Recommendation

Staff recommends consideration of this request based on the following findings:

1. Granting of the variance will not be detrimental to the public safety, health, and welfare or injurious to other property/improvements since it will be a variance that runs with the property until major construction is done on the residence or a change of property lines is accomplished.
2. The conditions for this variance are unique to this property as the owners of both properties have entered into an (Easement Deed) to allow encroachment on the neighbor's property line.
3. Allowing this variance would not make any changes to the physical surroundings, shape, or topographical conditions of this specific property as the carport and fence have been in place and no changes would be made.
4. Staff recommends that the variance, if given, will terminate if carport is damaged 50% or more and the carport cannot be expanded to be enclosed.

Community Development Department  
City of Arnold  
2101 Jeffco Blvd.  
Arnold, MO 63010  
636-282-2378  
636-282-6677 Fax



Nov 7  
mtg

BOARD OF ADJUSTMENT VARIANCE APPLICATION

File Number BA-2018-08

\$400.00 Fee Paid N/C REQUESTING  
waiver for fee

APPLICANT/CONTRACT PURCHASER

OWNER:

Birkie & Edith Hillis

BIRKIE A. & EDITHA. HILLIS

Name

Name

8 Kroeck Dr. 63010

8 KROECK DR., ARNOLD, MO. 63010

Address, City, State, Zip

Address, City, State, Zip

314-520-4959

314-520-4959

Telephone Number

Telephone Number

Facsimile Number

Facsimile Number

1233 LOS OLAS BLVD.

Property Address (or nearest intersection)

R-5

Zoning of property

Adjacent Zoning/Uses: North South East West

Requested Variance/Section of Code: Set backs

10/15/2018  
Date of application

Meeting date targeting

Birkie Hillis  
Signature of applicant / owner

Edith Hillis

BIRKIE HILLIS  
Contact Person (please print)

Phone: 314-520-4959

Email: bhillis01@charter.net

- OR -

GARY MONTGOMERY

314-221-8022

G.MONT  
gmontgom@charter.net

## RESPONSES TO VARIANCE APPEAL

1. GRANTING OF SAID VARIANCE  
WILL NOT BE DETRIMENTAL TO  
PUBLIC SAFETY, HEALTH, OR WELFARE  
OF ANY OTHER PROPERTY OR PERSONS
2. THE CONDITIONS OF THE VARIANCE  
ARE UNIQUE TO THE SUBJECT  
PROPERTY ONLY
3. THE ONLY HARDSHIP INVOLVED  
OF SAID VARIANCE IS OWNER  
CAN NOT SELL OR RENT THE  
PROPERTY.  
ADJACENT PROPERTY  
HAS BEEN PAID A SUM OF MONEY  
FOR THE PERMISSION OF  
CARPORT LOCATION

Burford Hill

**EASEMENT DEED**

This Deed Made and entered into this 8 day of MAY 2007, by and between

**Dennis CiBulka and David CiBulka**, both single persons, of the County of Jefferson, State of Missouri, **GRANTOR**, and the owner of the below-described real estate located in the County of St. Louis, State of Missouri, to wit:

**Lot 166 of Bayshore, according to the plat thereof recorded in Plat Book 28 page(s) 27 of the Jefferson County Records.**

And

**Glenwood T. McFarland and Muriel McFarland**, husband and wife, 1233 Los Olas, Arnold, MO 63010, of the County of Jefferson, State of Missouri, **GRANTEE**, and the owner of the below-described real estate located in the County of Jefferson, State of Missouri, to wit:

**Lot 165 of Bayshore, according to the plat thereof recorded in Plat Book 28 page(s) 27 of the Jefferson County Records.**

**WITNESSETH**, that the said Grantor, for and in consideration of the sum of One Dollar and other valuable consideration paid by the said Grantee, the receipt of which is hereby acknowledged, does by these presents grant unto the said Grantee,

**A Non Exclusive Easement** for the following purposes: Carport encroachment as shown by the survey conducted by Marler Surveying Company, Inc., dated April 9, 2007, as Job No. 0707-008, attached hereto and incorporated herein as **Exhibit "A"**.

**To have and to Hold** the said Easement, together with all rights and appurtenances to the same belonging, unto the said Grantee, and to their Heirs and assigns forever as long as the said Carport encroachment exists in its present location, subject to the conditions hereinafter set out.

Said easement shall terminate in the event that said Carport encroachment is destroyed by any natural disaster, intentional removal and/or the replacement of the Carport encroachment by said Grantee. If said Carport encroachment is to be replaced or undergo major repairs, said Grantee will locate all portions of the Carport encroachment within the boundary lines of Grantee's property. Said Grantee, and their Heirs and assigns, shall be responsible for and will pay all costs necessary to maintain the Carport encroachment in its present condition as it exists at the present location.

In Witness Whereof, the said Grantor and Grantee have executed these presents the day and year first above written.

GRANTOR(S):

Dennis M. Civalka  
Dennis Civalka  
DMC B for name

David E. Civalka  
David Civalka  
B DEC for name

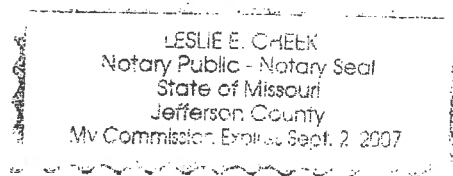
STATE OF MISSOURI )  
COUNTY OF JEFFERSON ) ss.

On this 8 day of MAY 2007, before me personally appeared Dennis Civalka and David Civalka, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

Leslie E. Cheek  
Notary Public



**GRANTEE(S):**

Glenwood T. McFarland  
Glenwood T. McFarland

Muriel McFarland  
Muriel McFarland

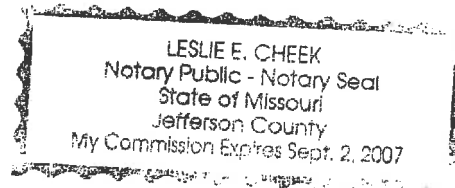
STATE OF MISSOURI )  
COUNTY OF JEFFERSON ) ss.

On this 8 day of April, 2007, before me personally appeared **Glenwood T. McFarland and Muriel McFarland**, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

Leslie E. Cheek  
Notary Public

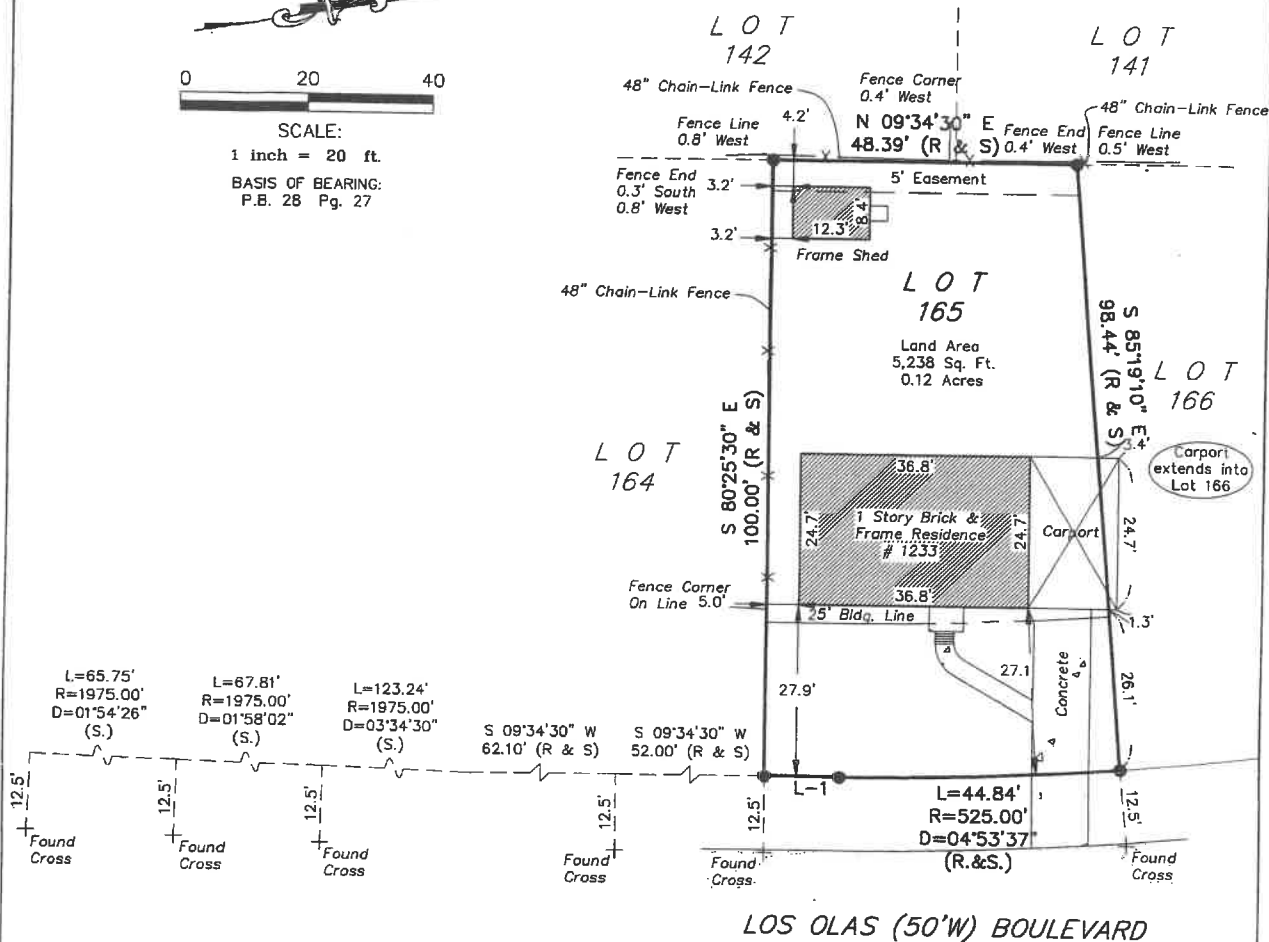
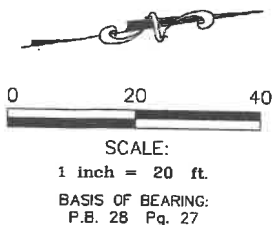




# BOUNDARY RETRACEMENT AND IMPROVEMENT LOCATION SURVEY

## BAYSHORE

JEFFERSON COUNTY, MISSOURI



LINE CHART	
L-1	N 09°34'30\"

● - DENOTES SET 1/2" x 18" REBAR WITH CAP STAMPED "MARLER L.S.-347-D"

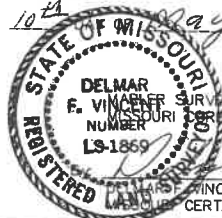
### SURVEYOR'S STATEMENT

THIS IS TO CERTIFY AT THE REQUEST OF U.S. TITLE / BIRKIE A. AND EDITH A. HILLS, WE HAVE DURING THE MONTH OF MAY 2007, PERFORMED A BOUNDARY RETRACEMENT AND IMPROVEMENT LOCATION SURVEY ON LOT 165 OF BAYSHORE, A SUBDIVISION RECORDED IN PLAT BOOK 28 PAGE 27 IN THE JEFFERSON COUNTY LAND RECORDS OFFICE IN JEFFERSON COUNTY, MISSOURI, AND THE RESULTS OF SAID SURVEY ARE CORRECTLY REPRESENTED ON THIS DRAWING; THAT THE SAID SURVEY WAS EXECUTED IN COMPLIANCE WITH THE CURRENT MISSOURI MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS AS SET FORTH BY THE MISSOURI DEPARTMENT OF NATURAL RESOURCES DIVISION OF GEOLOGY AND LAND SURVEY (10 CSR 30-2.070) AND THE MISSOURI BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS AND LAND SURVEYORS (4 CSR 30-16.070), EFFECTIVE 12/30/94, AND LAST REVISED OCTOBER OF 2003. (URBAN CLASS PROPERTY)

IN WITNESS WHEREOF, I HAVE SIGNED AND SEALED THE FOREGOING THIS 10<sup>th</sup> day of May, 2007.

R. = RECORD  
S. = SURVEYED

TITLE COMMITMENT PROVIDED BY U.S. TITLE  
COMMITMENT NO.: 7-08573



SCHEDULE B - SECTION 2  
ITEM 9: UNION ELECTRIC CO.  
-(143/4, 150/31, 236/30, 237/179,  
315/204) PREDATE RECORD PLAT  
-(343/219, 349/694) DOES NOT  
ENCUMBER SUBJECT LOT  
-(451/466) WITHIN PLATTED STREETS

JOB NO. 0704-183

DRWN BY: J.A.T.



REGISTERED LAND SURVEYORS  
11402 GRAVOIS RD. SUITE 200, ST. LOUIS, MO 63126  
(314) 729-1001 PH. (314) 729-1044 FAX  
email: mmarler@marlersurveying.net

DEPUTY R.W.

CHK'D BY: D.F.V.

**ਅੰਤਰ: ਪ੍ਰਸਤਾਵ:**

Apr 18 2007 09:44am

6364870440

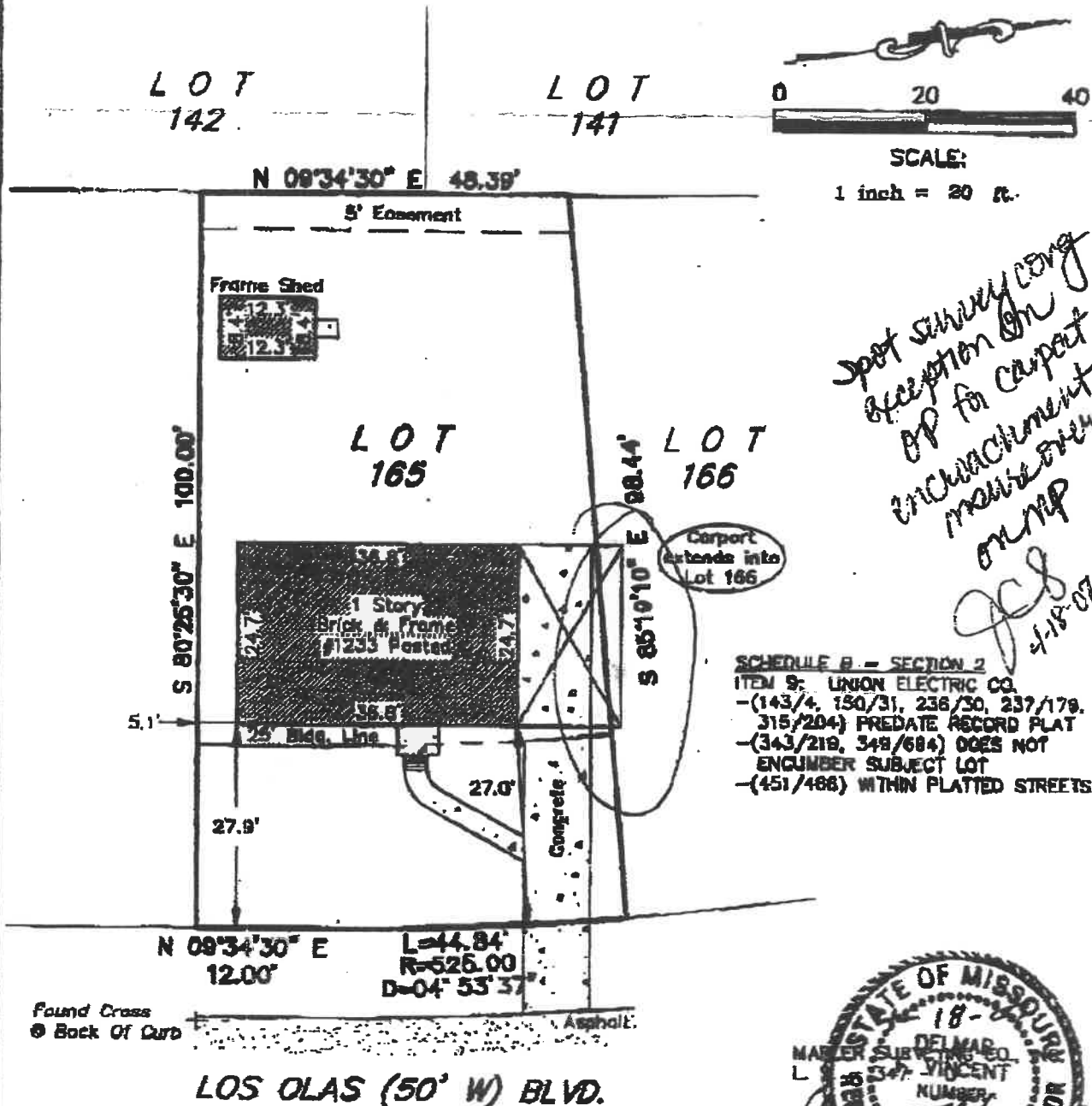
US TITLE ARNOLD

10:47:44

04-18-2007

22

**SURVEYOR'S REAL PROPERTY REPORT  
THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY**



SCHEDULE B - SECTION 2  
ITEM 9: UNION ELECTRIC CO.  
-(143/4, 150/31, 236/30, 237/179,  
315/204) PREDATE RECORD PLAT  
-(343/219, 348/684) DOES NOT  
ENCUMBER SUBJECT LOT  
-(451/488) WITHIN PLATTED STREETS

By

SUBDIVISION: BAYSHORE  
LOT(S): LOT 165  
Commonly known as: 1233 LOS OLAS BLVD.  
PLAT BOOK: 28 PAGE(S): 27  
COUNTY: JEFFERSON COUNTY, MISSOURI  
DEPUTY: RW FIELD DATE: 4/5/2007

THE DIMENSIONS LOCATING THE STRUCTURES AS SHOWN  
HAVE A LEVEL OF CERTAINTY OF ± 1.0'

☒ A BOUNDARY SURVEY IS RECOMMENDED PRIOR TO ANY OTHER IMPROVEMENTS BEING ADDED TO THIS PARCEL.

THIS IS TO CERTIFY AT THE REQUEST OF, U.S. TITLE / BIRKIE A. & EDITH A. HILLIS WE HAVE EXECUTED A SURVEYOR'S REAL PROPERTY REPORT ON THE ABOVE STATED PROPERTY, AND THAT THE RESULTS OF SAID REPORT ARE REPRESENTED HEREON: THAT THE SAID REPORT HAS BEEN PERFORMED TO COMPLY WITH THE CURRENT STANDARD FOR SURVEYOR'S REAL PROPERTY REPORT AS SET FORTH BY THE DEPARTMENT OF NATURAL RESOURCES DIVISION OF GEOLOGY AND LAND SURVEY AND THE MISSOURI BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND ENGINEERS EFFECTIVE JANUARY 1, 1984.