

ORDINANCE NO. 7524-19

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, AN ENCROACHMENT AGREEMENT BETWEEN THE CITY OF NEWPORT NEWS AND QUINTON C. BRANCH AND DAFFIE E. BRANCH FOR AN ENCROACHMENT UPON THE MADISON AVENUE RIGHT-OF-WAY IN THE CITY OF NEWPORT NEWS, AS MORE PARTICULARLY SET FORTH HEREIN.

WHEREAS, the Council of the City of Newport News, Virginia is authorized pursuant to Virginia Code §15.2-2009 and Va. Code §15.2-2011 to permit encroachments upon certain public ways within the City of Newport News, Virginia; and

WHEREAS, Quinton C. Branch and Daffie E. Branch (“the Branches”), own a parcel of real estate in the City of Newport News known as 5905 Madison Avenue, Newport News, Virginia (Tax ID No. 283000335) (“the Property”); and

WHEREAS, by a plat dated July 3, 1959, recorded in the Office of the Clerk of the Circuit Court of Newport News in Plat Book 5, Page 42, 1970, the City has title to an eighty foot (80') right-of-way along Madison Avenue, which is attached as Exhibit A; and

WHEREAS, the Branches have asked to replace an existing fence with a split-rail fence within the right-of-way just to the west of the paved surface, which is attached as Exhibit B; and

WHEREAS, this encroachment can be facilitated without causing undue public danger or inconvenience, and with no adverse effects on the maintenance of the right-of-way, given the terms incorporated in the Encroachment Agreement; and

WHEREAS, the Branches have requested that City Council authorize the encroachment and the execution of the Encroachment Agreement; and

WHEREAS, the City Manager recommends that the Council authorize the encroachment requested by the Branches and authorize the execution of the Encroachment Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That it desires to, and hereby does, authorize a non-permanent, revocable encroachment upon the right-of-way.
2. That the non-permanent, revocable encroachment is authorized subject to compliance by the parties with the terms of the Encroachment Agreement between the City of Newport News, Virginia and Quinton C. Branch and Daffie E. Branch.

3. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Encroachment Agreement between the City of Newport News, Virginia and the Branches, a copy of which is attached hereto and made a part hereof.

4. That a copy of this ordinance and the Encroachment Agreement be recorded in the Clerk's Office of the Circuit Court of the City of Newport News, Virginia.

5. That this ordinance be in effect on and after the date of its adoption, January 8, 2019.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JANUARY 8, 2019

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

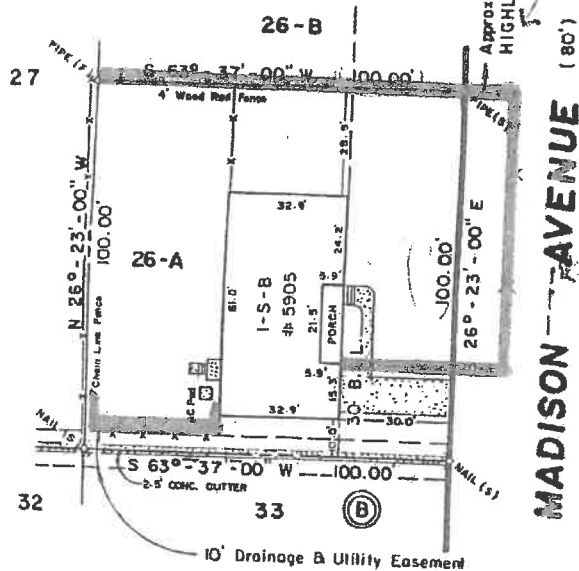
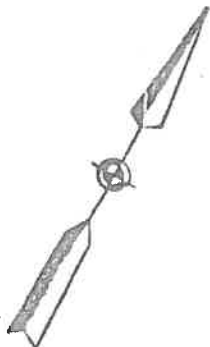
tabbies

THIS IS TO CERTIFY THAT I, ON JULY 27, 1987 SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDINGS ARE AS SHOWN ON THIS PLAT.

THE BUILDINGS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY, EXCEPT AS SHOWN.

SIGNED

Richard T. Basgier



Approx. 100' to HIGHLAND COURT
16' TO EXTENT OF GRASS
12 1/2' FROM EXISTING TO EDGE OF ROAD

Note: This property shown hereon appears to fall inside Zone S. (area of minimal flooding), as shown on the Department of M.I.D., Flood Insurance Rate Map for the City of NEWPORT NEWS, Virginia, (Community Panel 510103 B Panel No. 16)

5905 MADISON AVE.

PHYSICAL SURVEY OF LOT 26A, BLK. B, Resubdivision of LOT 26, BLK. B, HILTON PARK CORPORATION FOR (M.B. 5, p.42)

QUINTON C. BRANCH and DAFFIE E. BRANCH

NEWPORT NEWS - VIRGINIA

Scale: 1" = 40'

July 28, 1987



BASGIER and ASSOCIATES

ENGINEERS - SURVEYORS - PLANNERS VIRGINIA BEACH, VIRGINIA - NEWPORT NEWS, VIRGINIA

**PREPARED BY AND
RETURN TO:
Office of the City Attorney
2400 Washington Ave, 9th Floor
Newport News, VA 23607
(757) 926-8416 phone
(757) 926-8549 fax**

**Tax ID No. 283000335
5905 Madison Avenue
Newport News, VA 23605**

Consideration: \$0

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the "Agreement") is made and entered into as of January 8, 2019, by the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation in the Commonwealth of Virginia whose mailing address is 2400 Washington Avenue, Newport News, Virginia 23607 (hereinafter referred to as "Grantor"), in favor of **QUINTON C. BRANCH and DAFFIE E. BRANCH**, 5905 Madison Avenue, Newport News, VA 23605 (hereinafter referred to as "Grantee"). The property at issue is located at 5905 Madison Avenue, Newport News, Virginia 23605, Tax ID No. 283000335.

WITNESSETH:

WHEREAS, Grantor owns the property known as the Madison Avenue Right-of-way

WHEREAS, Grantor obtained title to an eighty foot right-of-way upon execution and recording of a subdivision plat entitled "Redivision of Lot 26, Block B, Hilton Park Corporation, City of Newport News, Virginia, prepared by R.F. Pyle, Certified Land Surveyor", dated July 3, 1959, and recorded in Plat Book 5, page 42, attached as Exhibit 1; and

WHEREAS, Grantees acquired the property by deed from Avon D. Cornelius et ex., Grantor(s) dated August 27, 1987, and recorded as Instrument number 0011561002; and

WHEREAS at the time of purchase there was a pre-existing fence on the site; and

WHEREAS, Grantees wish to install a split rail fence on the property to replace the existing fence, as shown on a contract for erection of the new fence, attached as Exhibit 2; and

WHEREAS, the Grantees have applied for a building permit to erect the fence, Exhibit 3; and

WHEREAS, a copy of the survey of the property showing the location of the proposed fence is attached as Exhibit 4 to the Agreement; and

WHEREAS, Grantor, at the request of the Grantee, is willing to enter into this Encroachment Agreement with Grantee; and

WHEREAS, the City Council of the City of Newport News approved execution by the City Manager of the Agreement on January 8, 2019.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee do hereby agree as follows:

1. **Acknowledgement and Agreement Regarding Encroachment.** Grantor does hereby consent to the Encroachment, pursuant to Va. Code §15.2-2009 and §15.2-2011, and hereby agrees to allow Grantee permission to install and maintain the fence which are located within the Existing Right of Way provided such use does not interfere with the safe and efficient construction, operation, or maintenance of Grantor's sidewalk, water mains, pipes, laterals, and appurtenances ("Grantor's Facilities"), nor contaminate the area, and further provided that such use is not inconsistent with any laws, ordinances, regulations or codes pertaining to the construction, operation or maintenance of Grantor's Facilities.

2. **Defective Condition.** If the Encroachment is determined by the Grantor to be in such a defective condition as to cause damage to or to otherwise adversely affect Grantor's Facilities and the safety and health of pedestrians using the sidewalk and the general safety and health of the public, within the existing Right-of-way, Grantee shall cause the condition to be corrected, remedied or removed at no expense to Grantor within thirty (30) days after written notification by Grantor. Grantee agrees to reimburse Grantor all costs incurred by Grantor in repairing any damage to Grantor's Facilities arising out of the use of the Encroachment within thirty (30) days of receiving an invoice from Grantor for such costs.

3. **Indemnity.** The Grantees hereby agrees to defend, indemnify and save harmless the Grantor and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the use of the Encroachment under the consent hereby granted, except to the extent caused by the gross negligence or willful misconduct of Grantor.

4. **Insurance.** The Grantees will maintain general liability coverage endorsed to name the Grantor as an additional insured, and shall continue to provide the Grantor with updated certificates upon each renewal of the coverage. Failure to renew within thirty (30) days notice shall result in termination of this Encroachment Agreement.

5. **Termination.** This Agreement shall in no way be construed as the granting of a perpetual easement or any type of property right by Grantor. The Agreement is revocable at will by either party upon one hundred eighty (180) days' notice.

6. **Reservation.** The Grantor expressly reserves all rights, privileges, and immunities granted to it under the laws and statutes of the United States and the Commonwealth of Virginia and under the Code of Ordinances of the City of Newport News as to any claims made against it.

7. **Governing Law.** This Agreement shall be governed and construed under the laws of the Commonwealth of Virginia, without regard to its conflicts laws or choice of law rules.

8. **Survival.** This Agreement will be binding upon Grantor and Grantee and inure to the benefit and obligation of their respective successors in title.

9. **Exhibits.** The Exhibits attached to this Agreement are incorporated herein by reference and made a part hereof.

[Signature Pages Follows]

WITNESS the following signatures and seals

GRANTOR

CITY OF NEWPORT NEWS, VIRGINIA

By: _____

Name: Cynthia D. Rohlf

Title: City Manager

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

COMMONWEALTH OF VIRGINIA

City of Newport News, to wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, do hereby certify that the CITY OF NEWPORT NEWS, VIRGINIA, by Cynthia D. Rohlf, as City Manager, and attested by Mabel Washington Jenkins, as City Clerk, whose names are signed to the foregoing writing, hereto annexed, have acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this ____ day of _____, 2019.

NOTARY PUBLIC

Registration No. _____

GRANTEES

QUINTON C. BRANCH

COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, do hereby certify that QUINTON C. BRANCH, whose name is signed to the foregoing writing, hereto annexed, has acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this _____ day of _____, 2019.

NOTARY PUBLIC

My commission expires:

Registration No. _____

DAFFIE E. BRANCH

COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, do hereby certify that DAFFIE E. BRANCH, whose name is signed to the foregoing writing, hereto annexed, has acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this _____ day of _____, 2019.

NOTARY PUBLIC

My commission expires:

Registration No. _____

sdm16675

5 - 42



SCALE 1/4" = 100'

State of Virginia
 City of Newport News: to wit:
 By the City Clerk, Office of the City Clerk,
 for the City of Newport News, Virginia, July 3, 1959, this plan was approved and
 adopted as being in accordance with the Law.

Witness my hand and seal of office
 this 3rd day of July, 1959.
 J. C. B. Williams, Mayor

**REDIVISION OF LOT 26, BLOCK 8
 HILTON PARK CORPORATION**

CITY OF NEWPORT NEWS,
 VIRGINIA

REF. FILE CERTIFIED LAND SURVEYOR
 NEWPORT NEWS, VA.
 SCALE 1/4" = 100'

July 3, 1959

To the best of my knowledge and belief,
 all the requirements as set forth in the
 Ordinance for Approving Plans of Subdivisions
 and Accretions in the City of Newport News,
 Virginia have been complied with.

REF. FILE CERTIFIED LAND SURVEYOR

This is to certify that the land embraced in
 this subdivision as in the name of Williams Corporation
 on Corporation and was acquired by that corporation
 and dated June 23, 1959, from Higdon and Caroline
 Higdon, and was recorded in the County Office of
 the Clerk and was recorded in the City of Newport
 News, Virginia on July 2, 1959.

This subdivision is with the free consent and
 accordance with the desires and wishes of the
 undersigned owners and proprietors.

ROBERT H. WILLIAMS
 PRESIDENT

ETHEL M. WILLIAMS
 SECRETARY

State of Virginia
 City of Newport News

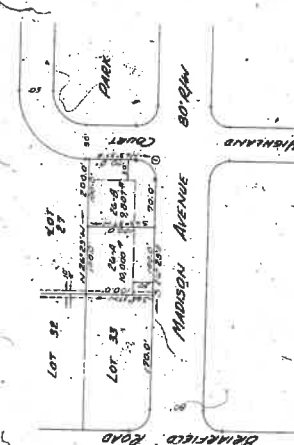
I, Mayor, Public in and for the
 City and State, do hereby certify that the
 above named persons have acknowledged this same
 plan and the same in my City and State, and have
 signed the same in my presence.

My Commission Expires

APPROVED FOR THE CITY OF
 NEWPORT NEWS

J. C. B. Williams, Mayor

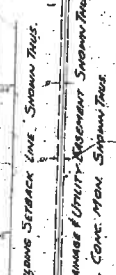
Soil Accretions Director of Public Works



Base of Main - 1/4" Cor in Street Line
 1/4" Cor in Street Line
 Newport News, Virginia
 and Benefield Road, Franklin, VA.
 U.S.C. & G. Datum as established in
 1948 by Johnson, Williams and Associates,
 Consulting Engineers.

Outlets as shown on this plan
 approved by the City of Newport News
 Board of Zoning Appeals.

CHAIRMAN

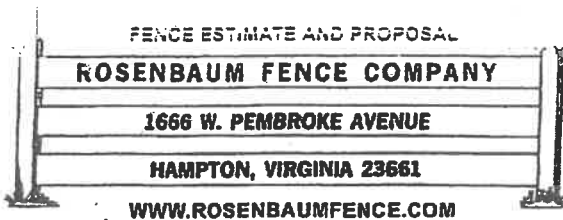


CURVE DATA

CURVE	RADIUS	DELTA	TANGENT	CHORD	ARC	CHORD BEARING
1	3000	90°00'	3900'	4243'	4243'	57°12'58"

DIAL (757) 723-3321
 FAX (757) 723-0157

SINCE 1885



7-13-18

ESTIMATE DATE

3-5 weeks
 APPROXIMATE WORK BACKLOG

EXHIBIT

ADDRESS

2

Quinton C. Daffier Branch

CUSTOMER'S NAME

5905 MAOLSON AVE.

ADDRESS

NEUPORT NEWS VA 23605

CITY STATE ZIP CODE

HOME PHONE

FAX

725-0194

HIS WORK PHONE

CELL / PHONE

JOB

HER WORK PHONE

CELL / PHONE

SITE CONTACT

DESCRIPTION

DIAGRAM

CHECK LIST

STYLE

SEE
 Below

HEIGHT

48"

WALK GATES

2 DIGATES

RESIDENTIAL CHAIN LINK

COMMERCIAL CHAIN LINK

GALVANIZED WIRE

VINYL COATED WIRE

WOOD PICKET

WOOD PRIVACY

SPLIT RAIL

GALVANIZED WIRE

VINYL COATED WIRE

CUSTOM PICKET

CUSTOM PRIVACY

ORNAMENTAL

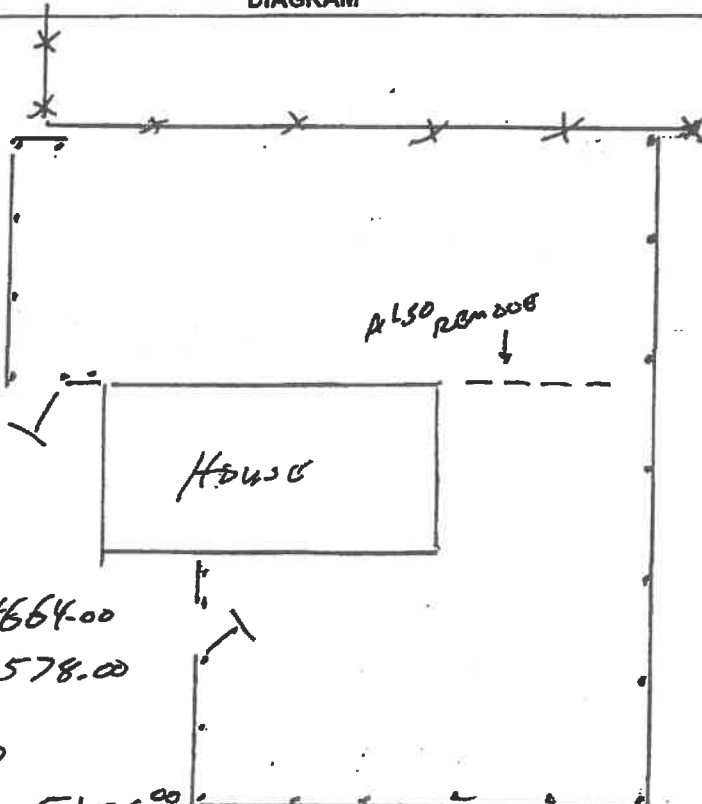
STEEL ALUM

PVC

SPLIT RAIL

CONCRETE GATE POSTS ONLY

SPLIT RAIL
 NO WIRE: 4664.00
 ADD WIRE: 1,578.00
 GR
 TREATED WOOD
 144 DOBBER SPACED PICKET 5/16"



CALL CUSTOMER DAY IN ADVANCE

CUSTOMER TO CALL WHEN READY FOR FENCE

FOLLOW CONTOUR - FENCE CLOSE TO GROUND - TOP MAY BE UNEVEN

EVEN ON TOP

BARBS UP BARBS DOWN

POSTS IN CONCRETE

TAKE DOWN EXISTING FENCE BY

CUSTOMER ROSENBAUM

TRIM TREES, BUSHES, SHRUBS BY

CUSTOMER ROSENBAUM

HAUL DEBRIS AWAY BY

CUSTOMER ROSENBAUM

UNDERGROUND: ELEC. GAS

TEL CABLE

PROPERTY PINS FOUND: YES NO

CUSTOMER REQUEST ON LOCATION

PERMIT BY ROSENBAUM

PERMIT BY CUSTOMER

OTHER SURVEY

REQUIRED BY
 CITY

WE PROPOSE TO FURNISH MATERIALS TAX LABOR FOR THE CASH PRICE OF \$ _____

CASH ON COMPLETION COMPANY FINANCING _____ DAYS

- Cash Price of Materials/Services \$ _____
- Buyer's Downpayment with Order \$ _____
- Unpaid Balance of Cash Price (1 - 2) \$ _____
- Cash Due Upon Completion of Work \$ _____
- Unpaid Balance of Cash Price (3 - 4) \$ _____
- Finance Charges \$ _____
- Deferred Payment Price (5 + 6) \$ _____
- Total Cost (1 + 6) \$ _____

THIS CONTRACT IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE AND WHICH ARE MADE A PART HEREOF BY THIS REFERENCE.

ROSENBAUM FENCE COMPANY (Seller)

By: _____

(Authorized Signature)
 Gary Chown

PERCENTAGE RATE _____ %

Payments of \$ _____ monthly for _____ months beginning _____ days after completion.

(Final payment to be the unpaid balance)

Acceptance of Proposal - The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance: _____

Application #: FENR-2018-0029
 Received
 OCT 10 2018
 Parcel ID: 283000335
 Codes Compliance Dept. 1/28

BUILDING PERMIT APPLICATION
 City of Newport News
 Department of Codes Compliance
 2400 Washington Avenue 3rd floor, Newport News, Virginia 23607
 757-933-2311/757-926-8311 (fax)
 www.nnva.gov/codes-compliance

Project Address: 5905 MADISON AVE. Unit: _____ Parcel ID: 283000335

Applicant (Check One) Owner Contractor Agent Design Professional

Property Owner Tenant
 Name: QUINTON + DAFFIE BRANCH Phone # 723-3321
 Address: 5905 MADISON AVE.
 City/State/Zip: NEWPORT NEWS VA 23605
 Phone # 757-0194 Fax # N/A
 Email Address: N/A

Applicant Name: Gary Quinn Phone # 723-3321
 Applicant Address: 666 W. Pembrooke Ave, Hampton 23661
 Contractor Business Name: ROSENBAUM FENCE CO. Phone # 723-3321
 Contractor Address: SAME
 Contractor State License # 2701010534 class A B C CID # _____
 Email/Other Contact Information: RKELAM@ROSENBAUMFENCE.COM

Work to be performed on:
 Residential
 Commercial
 Multi-Family

Flood Zone: _____ First Floor Elevation: _____
 Variance/Special Exception/
 Conditional Use Permit # _____
 Proposed Value of Work: \$242.00

I agree to perform the proposed work in conformance with the Virginia Uniform Statewide Building Code and the ordinances and regulations of the City of Newport News.
 Print Name: Gary Quinn Date: 10-10-12
 Signature: [Signature]
 Remarks: _____

The Following Fees and Permits Must be Paid or a Waiver Approved Prior to Issuance of a Building Permit

URSP Receipt # _____
 City Sewer Receipt # _____
 Right of Way Permit # _____
 Land Disturbance # _____

Type of Work
 New Construction
 Accessory Structure
 Alterations/Repairs
 Addition
 Demolition
 Swimming Pool
 Fence/Barrier
 Temporary Structure

Description of Work
INSTALL 279 LF
SPLIT RAIL FENCE
W/ WELDED WIRE ATTACHED
4' HIGH

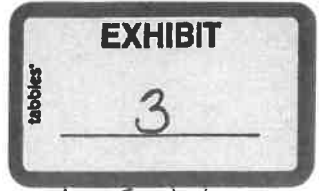
Name _____ Address _____ Phone # _____
 Mechanic's Lien Agent None Designated

Remarks: _____

Approved By: _____ Date: _____

Cash: _____ Check: _____ Escrow: _____
 Customer ID #: _____ Cashier: _____

Office Use Only
ASBESTOS CERTIFICATE
 YES NO
 Year Built: _____

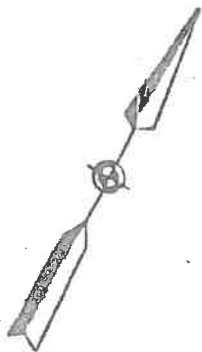


THIS IS TO CERTIFY THAT I, ON JULY 27, 1987 SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDINGS ARE AS SHOWN ON THIS PLAT.

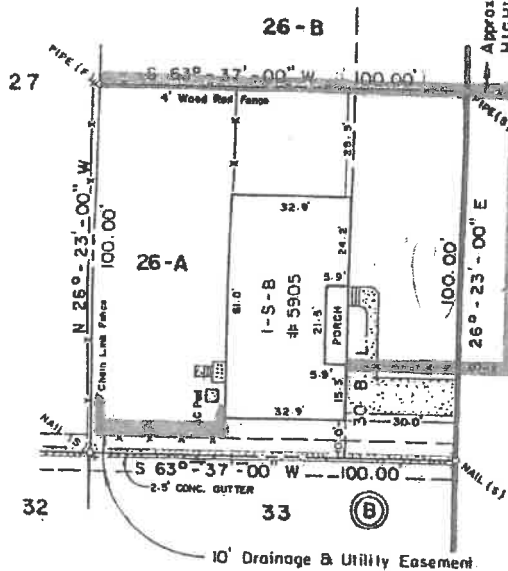
THE BUILDINGS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY, EXCEPT AS SHOWN.

SIGNED

Richard F. Basgier



Note: This property shown herein appears to fall inside Zone C. (area of minimal flooding), as shown on the Department of M.U.D., Flood Insurance Rate Map for the City of NEWPORT NEWS, Virginia, (Community Panel 510103 B Panel No. 16)



Approx. 100' to HIGHLAND COURT
16' TO EXT. SIDE FENCE
12 1/2' FROM EXISTING TO EDGE OF ROAD

MADISON AVENUE (80')

5905 MADISON AVE.

PHYSICAL SURVEY OF LOT 26A, BLK. B, Resubdivision of LOT 26, BLK. B, HILTON PARK CORPORATION FOR (M.B. 5, p.42)

QUINTON C. BRANCH and DAFFIE E. BRANCH NEWPORT NEWS - VIRGINIA

Scale: 1" = 40' July 28, 1987

BASGIER and ASSOCIATES

ENGINEERS · SURVEYORS · PLANNERS VIRGINIA BEACH, VIRGINIA · NEWPORT NEWS, VIRGINIA