

# SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as “Agreement”) is made and entered into by and between

Plaintiffs, **RICHARD CHERA & FLORE CHERA**, whose address is 1 Spier Avenue, Allenhurst, New Jersey (hereinafter referred to as the “Plaintiffs”), and

The **BOROUGH OF ALLENHURST**, a Public Body Corporate of the State of New Jersey having its principal place of business at 125 Corlies Avenue in the Borough of Allenhurst, County of Monmouth, and the State of New Jersey (hereinafter referred to as the “Borough”),

The **BOROUGH OF ALLENHURST PLANNING BOARD**, a duly constituted combined land use board of the Borough of Allenhurst, having its principal place of business at 125 Corlies Avenue in the Borough of Allenhurst, County of Monmouth, and the State of New Jersey (hereinafter referred to as the “Planning Board”) and

**JOSEPH McGRATH**, the duly appointed Zoning Officer and Property Maintenance Code Official of the Borough of Allenhurst whose principal place of business is 125 Corlies Avenue in the Borough of Allenhurst, County of Monmouth, and the State of New Jersey (hereinafter referred to as the “Mr. McGrath”)(the Borough, Planning Board and Mr. McGrath hereinafter collectively referred to as the “Borough Defendants”).

## PREAMBLE

**WHEREAS**, in 2007, the Plaintiffs purchased oceanfront property located at 1 Spier Avenue and identified as Block 36 Lot 5 on the tax map for the Borough Allenhurst (the “Property”); and

**WHEREAS**, at the time of Plaintiffs’ purchase, the Property consisted of a single-family home and surrounding front and side yards supported with a retaining wall along the perimeter; the perimeter wall was approximately 3 feet 9 inches, and remains, approximately 3 feet 9 inches in height relative to the adjacent sidewalk; and

**WHEREAS**, in about May of 2018, Plaintiffs added approximately 3 inches to 20 inches of additional soil to their front and side yards at various locations; and

**WHEREAS**, in or about April 15, 2019, the Borough issued a certificate of occupancy to Plaintiffs following a site inspection of the Property; and

**WHEREAS**, Plaintiffs thereafter planted a hedgerow along the newly raised front and side yard of the property, which when measured from the surrounding ground cover, varies from approximately 42 to 48 inches in height; and

**WHEREAS**, on or about June 15, 2019, the Borough issued a Notice of Violation (“NOV”) to the Plaintiffs asserting that the hedges, in combination with the retaining wall and elevated soil, violate Borough Ordinance 26-5.2; and

**WHEREAS**, on or about July 3, 2019, Plaintiffs filed a Notice of Appeal of the asserted zoning violations and an application for interpretation pursuant to N.J.S.A. 40:55D-72(a); and

**WHEREAS**, on November 12, 2020, the Planning Board memorialized a Resolution denying Plaintiffs’ appeal application, and the notice of the decision was published in the Asbury Park Press on November 19, 2020; and

**WHEREAS**, on or about December 16, 2020, the Plaintiffs filed an Action in Lieu of Prerogative Writs entitled *Richard and Flore Chera v. The Borough of Allenhurst Planning Board, the Borough of Allenhurst and Joseph McGrath, Superior Court of New Jersey, Law Division, Monmouth County, Docket Number: MON-L-4064-20* (hereinafter the “Lawsuit”) alleging, *inter alia*, that the Planning Board’s Resolution was arbitrary, capricious and unreasonable, that Borough Ordinance 26-5.2 was applied to them in an arbitrary, capricious and unreasonable manner and that Borough Ordinance 26-5.2 is unconstitutionally vague as applied to the Plaintiffs; and

**WHEREAS**, the Plaintiffs and the Borough Defendants now wish to resolve all their differences in accordance with the terms and conditions set forth herein; and

**WHEREAS**, the Borough Defendants do not admit, and specifically deny, any liability, wrongdoing, arbitrary, capricious or unreasonable actions and that any of their actions or ordinances are unconstitutional in any fashion or other violation of any law, ordinance, statute, regulation, agreement or policy and is entering into this Agreement solely for the purposes of amicably resolving any and all matters in controversy, disputes, causes of action, claims, contentions and differences of any kind whatsoever between the Plaintiffs and the Borough Defendants.

### **AGREEMENT**

In consideration of the foregoing, and of the promises and representations described herein, the Plaintiffs and the Borough Defendants hereby agree as follows:

1. **INCORPORATION OF PREAMBLE:** The Parties hereto agree that the statements contained in the foregoing preamble be and are hereby incorporated into this Agreement as if more fully set forth herein at length.

2. **AGREEMENT OF THE PARTIES:** In order to fully and amicably resolve this dispute, the Parties agree: subject to the terms of this Agreement, to the placement and height of the perimeter hedgerow and grade of the yards at the Property as depicted in **Exhibit “A”**.

a) The portion of the perimeter hedgerow that is located to the south of the southern edge of the porch facing Spier Avenue will be limited to a maximum height of 30 inches as measured from the immediately surrounding grade. The height of that portion of the hedgerow shall be, as reasonably as is practical, maintained level. Those hedges are depicted in red on **Exhibit “A”**.

b) The portion of the perimeter hedgerow that is located to the north of the southern edge of the porch facing Spier Avenue shall be subject to the 4-foot (48 inches) limit for front yard hedges as set forth in Ordinance 26-5.2 as it fronts on Ocean Place as measured from surrounding grade. Those hedges are depicted in green on Exhibit “A”.

c) The grading and elevation of the front and side yards shall be maintained consistent with the elevations depicted in **Exhibit “A”**. Plaintiffs shall take no actions to raise said elevation above its present condition without seeking an approval from the Planning Board for same or approval from the Allenhurst Building Department, as may be applicable.

d) The location and height of the retaining wall shall be maintained consistent with the elevations depicted in **Exhibit “A”**.

e) If Plaintiffs seek to raise the height of the hedgerow as set forth in paragraph (2)(a), or the grading and elevation of the front and side yard as set forth in paragraph (2)(c), or the location and height of the retaining wall as set forth in paragraph (2)(d), then Plaintiffs shall seek approval from the Allenhurst Building Department or Planning Board, as may be applicable.

f) Nothing in this Agreement shall restrict Plaintiffs from planting other flowers or additional vegetation, or maintaining existing plantings along perimeter of the home and walkways, that are not otherwise regulated or restricted by the Borough of Allenhurst Ordinances.

**3. NOTICE OF VIOLATION AND RESOLUTION:** The Defendants hereby agree that, in light of this Agreement, the NOV dated June 15, 2019 has been rendered null and void, and this agreement is contingent upon the Planning Board, in a public meeting, adopting a Resolution authorizing this Agreement and vacating the resolution dated November 12, 2020.

**4. CONSIDERATION:** The consideration for this Agreement shall be the dismissal, with prejudice, of the Lawsuit by the Plaintiffs against the Borough Defendants and the Release of all claims presented therein, as more particularly described below. By executing this Agreement, all

Parties agree not to challenge the sufficiency of the consideration represented by avoiding the cost, time and expense of the Lawsuit. The Parties agree that they will not seek anything further, including any other relief or compensation from each other, save for that set forth herein.

5. **ENFORCEMENT:** The Borough Defendants hereby agree that, other than any potential enforcement of this Agreement on the height of the subject hedges and grade elevation as depicted on **Exhibit “A”** there shall be no other enforcement actions respecting the existing conditions of the Property as depicted on Exhibit “A”, including the subject hedges and property grade elevation. Nothing herein prohibits the Borough Defendants from enforcing any other Ordinances as might, from time to time be violated, save for Ordinance 26-5.2 respecting the height of the subject hedges and property grade elevation.

6. **RELEASE:** The Plaintiffs, for and in consideration of the Compromise on the height of the subject hedges contained herein, as well as the promises made and benefits given by the Borough Defendants as set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, hereby release and forever discharge, and by this instrument do release and forever discharge, the Borough of Allenhurst, the Borough of Allenhurst Planning Board and Joseph McGrath from all actions, causes of action, suits, charges, complaints, grievances, obligations, costs, losses, damages, injuries, attorney’s fees, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, extents, executions, claims, demands and/or other legal responsibilities of any form whatsoever including, but not limited to, any claims in law, admiralty, equity, contract, tort or those claims which were, or could have been, alleged in the Lawsuit, along with any and all claims for punitive damages and/or attorney's fees and costs and/or any and all other federal, state or local statutes, laws, rules and regulations, as well as any and all claims under state contract or tort law against the Borough Defendants, whether known or unknown, unforeseen, unanticipated, unsuspected, or latent which the Plaintiffs, their successors and assigns ever had, now have or hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of execution of this Agreement.

7. **BINDING EFFECT:** THE Plaintiffs and the Borough Defendants are bound by this Agreement. Anyone who succeeds to any of their rights or responsibilities, such their personal and legal representatives, heirs, devisees, executors, successors, assigns, affiliates, subsidiaries, parents, predecessors, successors and assigns, and their respective past and present shareholders members, partners, directors, officers, managers, employees, agents, benefit plans, plan administrators, insurers

and attorneys or any trustee or fiduciary for the liquidation thereof or otherwise, is also bound. Plaintiffs shall disclose this Agreement to any “subsequent purchaser” of the premises, as this is intended to remain in effect permanently. However, nothing shall prevent Plaintiffs, or anyone who succeeds to any of their rights or responsibilities or subsequent purchaser from seeking an approval from the Planning Board or Allenhurst Building Department to raise the property grade elevation or hedges as depicted in **Exhibit “A”** past the 30 in maximum as set forth herein. The Release set forth herein above is made for the benefit of the Borough Defendants and all who succeed to their rights and responsibilities.

**8. DISMISSAL, WITH PREJUDICE:** The Plaintiffs shall authorize and direct their counsel to take the steps necessary to execute a Consent Order, to obtain a Dismissal, with Prejudice, of their claims in the Lawsuit, including but not limited to executing a Consent Order, in substantially the same form as the attached **Exhibit “B”**.

The Parties understand and agree that this Agreement is contingent upon ratification via duly adopted Resolutions of both the Governing Body of the Borough of Allenhurst and the Planning Board of the Borough of Allenhurst, at duly noticed public meetings of each Board. Upon approval by the respective Boards, the Action shall be dismissed, with prejudice, as to all parties, without costs to any parties.

**9. ATTORNEY’S FEES & COSTS:** The Parties understand and agree that neither are considered a prevailing party in the Lawsuit. The Plaintiffs hereby acknowledge that by this Agreement they are forever surrendering and releasing their claim(s) for Attorney’s Fees and Costs associated with the Lawsuit and any activity before the Planning Board.

**10. NO ADMISSION(S):** The Parties hereto understand and agree that this Agreement and the benefits provided under it are made in resolution and compromise of highly disputed claims and nothing in this Agreement is to be construed as an admission by any party as to the merits of any claims or constitutional arguments asserted in the Lawsuit.

**11. NO WAIVERS:** No waiver of any breach of any term or provision of this Agreement shall be construed to be a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

**12. GOVERNING LAW(S):** This Agreement is made and entered into in the State of New Jersey, Monmouth County, and will be interpreted and enforced under the laws of the State of New Jersey. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws.

13. **ENFORCEMENT**: Either party may enforce this Agreement by way of motion in aid of litigant's rights in the Superior Court.

14. **SEVERABILITY**: This Agreement will be deemed severable. If any provision of this Agreement shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remainder of the Agreement.

15. **AMBIGUITY**: The Parties agree that this Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall NOT be construed for or against any party based on attribution of drafting to any party.

16. **ENTIRE AGREEMENT**: This Agreement represents the entire Agreement and understanding between the Parties relative and limited to those claims presented in the Lawsuit and respecting any presently pending matters before the Planning Board.

17. **REPRESENTATIONS**: The Parties hereto represent and acknowledge that no representation, statement, promise, inducement, threat, or suggestion has been made by either of them to influence the other to sign this Agreement, except such statements as are expressly set forth herein.

18. **PARTIAL INVALIDITY**: If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions shall, nevertheless, remain in full force and effect.

19. **MODIFICATION**: The terms of this Agreement shall not be modified, changed or otherwise altered without the written consent of all the parties hereto.

20. **HEADINGS**: The headings of the several subdivisions and paragraphs of this Agreement are inserted solely for the convenience of reference and shall have no further meaning, force or effect.

21. **EXECUTION IN COUNTERPARTS**: This Agreement may be signed in counterparts and, if so signed, this Agreement shall have the same force and effect as if signed at the same time. The Parties hereby acknowledge that this Agreement consists entirely of eleven (11) pages, with pages sever (7) through eleven (11) hereof being the Signature Pages.

**SIGNATURE PAGE(S)**

(1 of 5)

**IN WITNESS WHEREOF**, the parties have caused these presents to be signed in their person or by their proper corporate officers and their proper corporate seals to be affixed, the day and year first above written.

**ATTEST:**

**Richard Chera, Plaintiff**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Mr. Richard Chera

**STATE OF NEW JERSEY        }**  
  **} SS.**  
**COUNTY OF MONMOUTH        }**

**BE IT REMEMBERED** that on this \_\_\_ day of \_\_\_\_\_, 2021, before me the subscriber, a Notary Public of the State of New Jersey, personally appeared **Mr. Richard Chera**, who I am satisfied is the person mentioned in the within Instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

\_\_\_\_\_  
Notary Public of the State of New Jersey

**SIGNATURE PAGE(S)**  
(2 of 5)

**ATTEST:**

**Flore Chera, Plaintiff**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Mrs. Flore Chera

**STATE OF NEW JERSEY        }**  
  **} SS.**  
**COUNTY OF MONMOUTH        }**

**BE IT REMEMBERED** that on this \_\_\_ day of \_\_\_\_\_, 2021, before me the subscriber, a Notary Public of the State of New Jersey, personally appeared **Mrs. Flore Chera**, who I am satisfied is the person mentioned in the within Instrument, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

\_\_\_\_\_  
Notary Public of the State of New Jersey



**SIGNATURE PAGE(S)**  
(3 of 5)

**WITNESS:**

**BOROUGH OF ALLENHURST**

By: \_\_\_\_\_  
Donna M. Campagna, R.M.C.

By: \_\_\_\_\_  
David J. McLaughlin, Mayor

**STATE OF NEW JERSEY**        }  
  }  
  }**SS:**  
**COUNTY OF MONMOUTH**        }

**BE IT REMEMBERED** that on this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the subscriber, personally appeared **David J. McLaughlin**, who being by me duly sworn according to law on his oath, says that he is the **MAYOR** of the **BOROUGH OF ALLENHURST**, named in the within Instrument, and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said **MAYOR**, as an for his voluntary act and deed, and for the voluntary act and deed of the **BOROUGH OF ALLENHURST**, in the presence of deponent, who thereupon subscribed his name thereto as witness.

\_\_\_\_\_  
Notary Public of the State of New Jersey

**SIGNATURE PAGE(S)**  
(4 of 5)

**WITNESS:**

**BOROUGH OF ALLENHURST  
PLANNING BOARD**

By: \_\_\_\_\_  
Kelly Barrett, Planning Board Secretary

By: \_\_\_\_\_  
Joseph Tomaino, Chairman

**STATE OF NEW JERSEY      }**  
  **} SS:**  
**COUNTY OF MONMOUTH    }**

**BE IT REMEMBERED** that on this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the subscriber, personally appeared **Joseph Tomaino**, who being by me duly sworn according to law on his oath, says that he is the **CHARIMAN** of the **BOROUGH OF ALLENHURST PLANNING BOARD**, named in the within Instrument, and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said **CHARIMAN**, as an for his voluntary act and deed, and for the voluntary act and deed of the **BOROUGH OF ALLENHURST PLANNING BOARD**, in the presence of deponent, who thereupon subscribed his name thereto as witness.

\_\_\_\_\_  
Notary Public of the State of New Jersey

**SIGNATURE PAGE(S)**  
(5 of 5)

**ATTEST:**

**Joseph McGrath, Defendant**

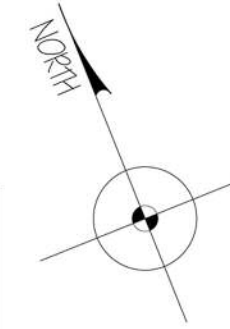
By: \_\_\_\_\_

By: \_\_\_\_\_  
Mr. Joseph McGrath

**STATE OF NEW JERSEY        }**  
  **} SS.**  
**COUNTY OF MONMOUTH        }**

**BE IT REMEMBERED** that on this \_\_\_ day of \_\_\_\_\_, 2021, before me the subscriber, a Notary Public of the State of New Jersey, personally appeared **Mr. Joseph McGrath**, who I am satisfied is the person mentioned in the within Instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

\_\_\_\_\_  
Notary Public of the State of New Jersey



YELLOW SHADED HEDGES WITHIN SIDE/REAR YARD ARE NOT REGULATED BY ORDINANCE SECTION 26-5.2. NOT SUBJECT TO ANY HEIGHT LIMITATION.

GREEN SHADED HEDGE NOT SUBJECT TO 30" MAXIMUM HEIGHT LIMITATION BUT SUBJECT TO 48" MAXIMUM HEIGHT LIMITATION AS MEASURED FROM SURROUNDING GRADE WITHIN ORDINANCE SECTION 26-5.2

RED SHADED HEDGE LIMITED TO 30" MAXIMUM HEIGHT AS MEASURED FROM SURROUNDING GRADE.

HEIGHT OF WALL IS APPROXIMATELY 3'-9" (VARIES)

**NOTE:**  
ALL INFORMATION OTHER THAN THE PROPOSED CHANGES TO HEDGE HEIGHT ARE EXISTING CONDITIONS AS TAKEN FROM SURVEY PREPARED BY "NELSON ENGINEERING ASSOCIATES, INC.", HIGHLAND PARK, NEW JERSEY AND DATED JANUARY 14, 2020. REFER TO THOSE DRAWINGS FOR ANY ADDITIONAL NOTES AND DIMENSIONS.

**ROBERT W. ADLER**  
— & ASSOCIATES, PA —  
**ARCHITECTS**

WWW.RWADLERASSOCIATES.COM  
MARCH 24, 2021

Tel: 732-571-1010

**RWA**

1049 Broadway West Long Branch, NJ 07764  
LICENSE #: 10795

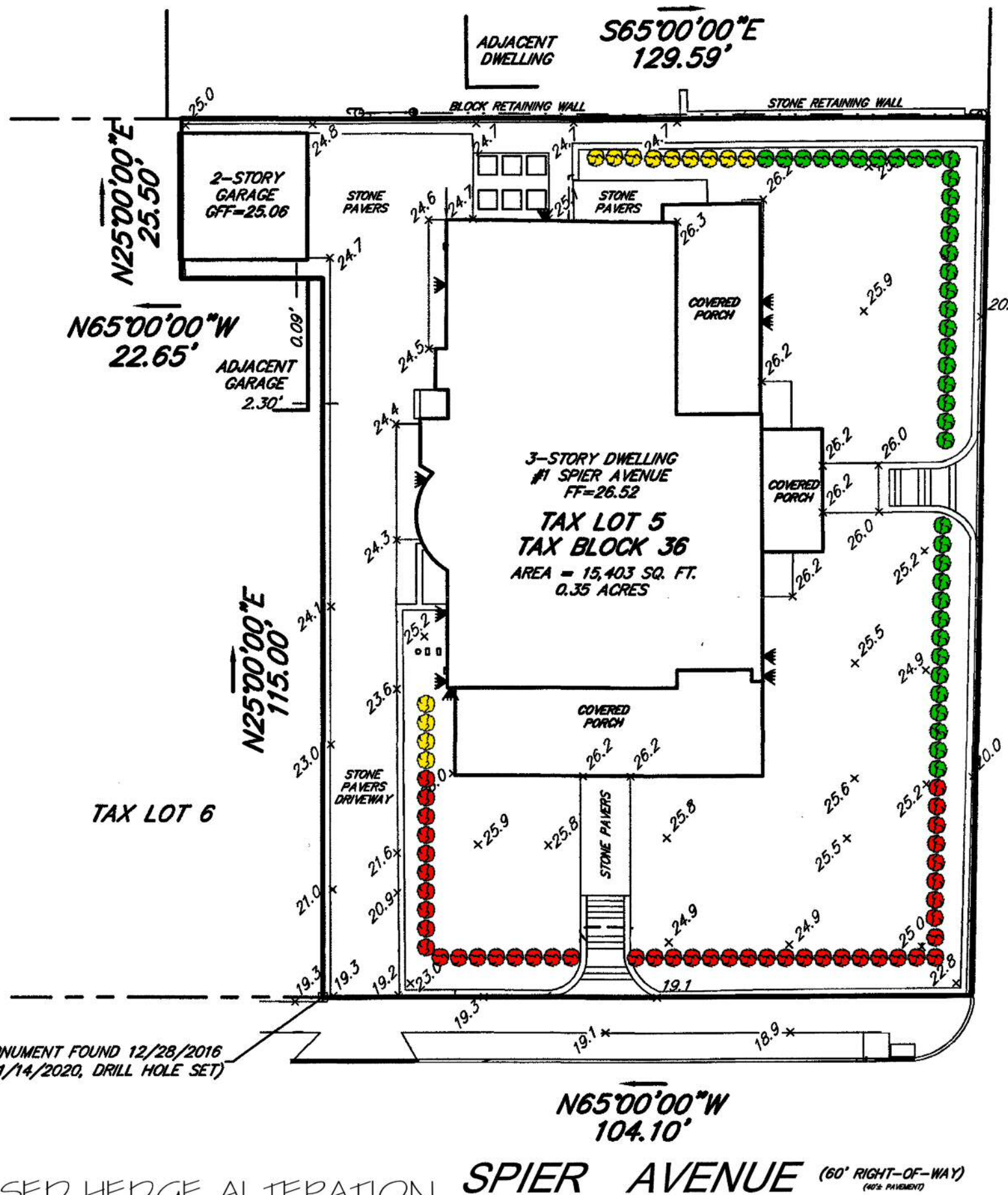
PROPOSED HEDGE ALTERATION

| OF |

MARBLE MONUMENT FOUND 12/28/2016  
(NOT FOUND 1/14/2020, DRILL HOLE SET)

**PROPOSED HEDGE ALTERATION**  
SCALE: 1" = 20'-0"

© COPYRIGHT - ALL DRAWINGS OF THIS SET ARE COPYRIGHTED AND PROTECTED UNDER FEDERAL LAWS.



**SPIER AVENUE** (60' RIGHT-OF-WAY)  
(60'S PAVEMENT)

**OCEAN PLACE**  
(39.45' RIGHT-OF-WAY PER TAXMAP)  
(PAVEMENT WIDTH)

S26°09'29"W  
140.53'

EDGE OF PAVEMENT

TAX LOT 6

N65°00'00"W  
22.65'

N25°00'00"E  
25.50'

N25°00'00"E  
115.00'

S65°00'00"E  
129.59'

N65°00'00"W  
104.10'

ADJACENT DWELLING

2-STORY GARAGE  
GFF=25.06

ADJACENT GARAGE  
2.30'

3-STORY DWELLING  
#1 SPIER AVENUE  
FF=26.52  
**TAX LOT 5  
TAX BLOCK 36**  
AREA = 15,403 SQ. FT.  
0.35 ACRES

STONE PAVERS

STONE PAVERS

STONE PAVERS DRIVEWAY

STONE PAVERS

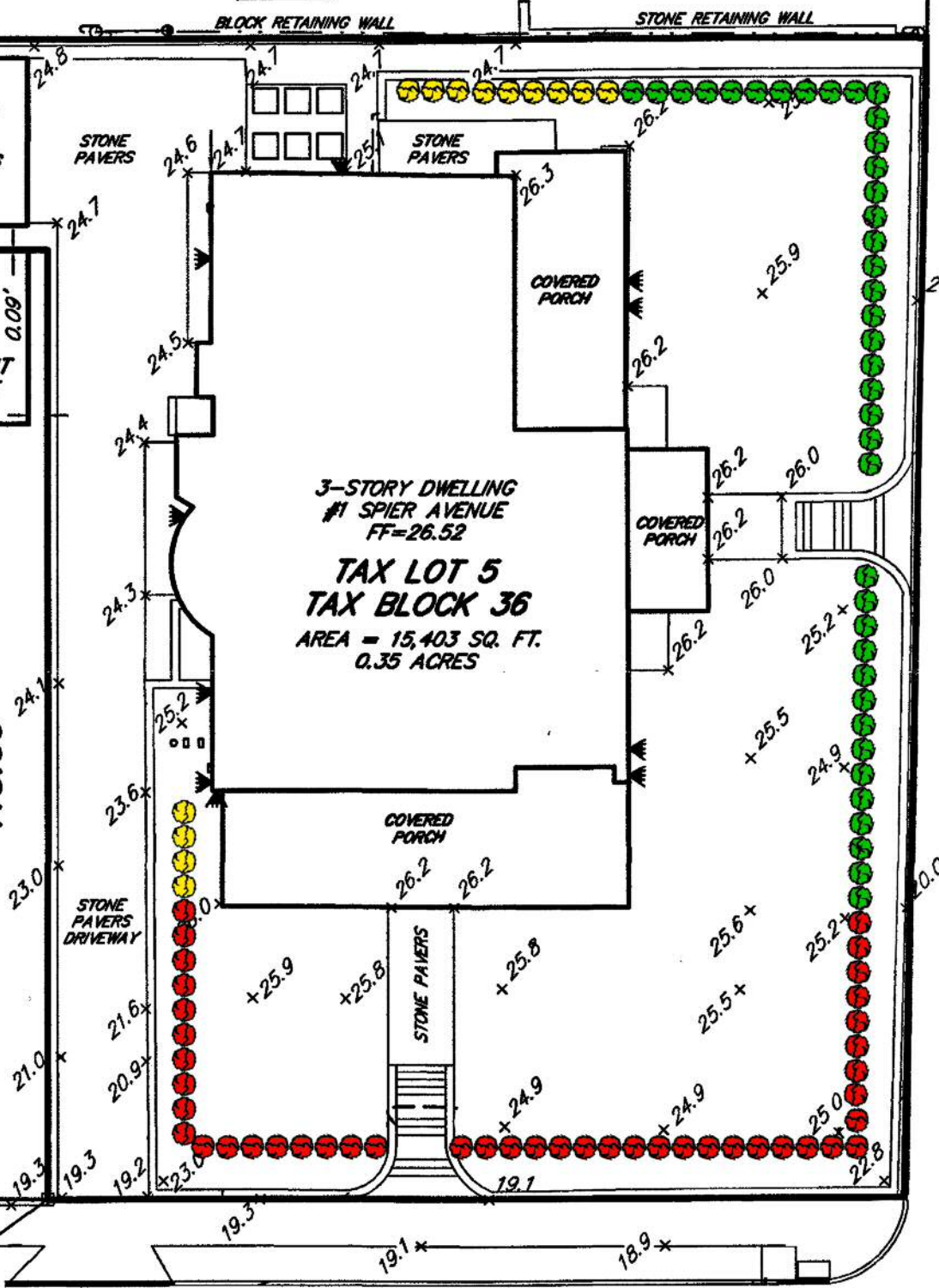
BLOCK RETAINING WALL

STONE RETAINING WALL

COVERED PORCH

COVERED PORCH

COVERED PORCH



**BIRDSALL & LAUGHLIN, LLC**  
David A. Laughlin, Esq.  
Attorney ID# 016421986  
1720 Highway 34 North  
P.O. Box 1380  
Wall, New Jersey 07719  
Tel.: (732) 749-3900  
Attorneys for the Borough of Allenhurst

<b>RICHARD CHERA &amp; FLORE CHERA,</b>  <p style="text-align: center;"><b>Plaintiffs,</b></p> <p style="text-align: center;">v.</p> <p><b>THE BOROUGH OF ALLENHURST PLANNING BOARD, THE BOROUGH OF ALLENHURST and JOSEPH McGRATH,</b>  <p style="text-align: center;"><b>Defendants.</b></p></p>	} }	<b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MONMOUTH COUNTY</b>  <b>DOCKET NO.:       MON-L-4064-20</b>  <b>CIVIL ACTION</b>   <b>STIPULATION OF DISMISSAL, WITH PREJUDICE</b>
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**IT IS HEREBY STIPULATED AND AGREED** by and between the Plaintiffs, Richard Chera & Flore Chera, WILENTZ, GOLDMAN & SPITZER, P.A., Steven J. Tripp, Esq. and/or Amanda M. Curley, Esq. appearing, and Defendant, the Borough of Allenhurst Planning Board, REARDON ANDERSON, LLC, Erik Anderson, Esq. appearing, and Defendants, the Borough of Allenhurst and Joseph McGrath, BIRDSALL & LAUGHLIN, LLC, David A. Laughlin, Esq. appearing, that, said parties having amicably resolved all of their differences, the within matter be and is hereby dismissed, **with prejudice**, and without costs or attorney’s fees to any party.

**WILENTZ, GOLDMAN & SPITZER, P.A.**  
  
By: \_\_\_\_\_  
Steven J. Tripp, Esq., and/or  
Amanda M. Curley, Esq., *Attorneys for  
Plaintiffs, Richard Chera & Flore Chera*

**REARDON ANDERSON, LLC**  
  
By: \_\_\_\_\_  
Erik Anderson, Esq., Attorneys for Defendant,  
the Borough of Allenhurst Planning Board

Dated: May \_\_\_\_, 2021

Dated: May \_\_\_\_, 2021

**BIRDSALL & LAUGHLIN, LLC**

By: \_\_\_\_\_  
David A. Laughlin, Esq., Attorneys for  
Defendants, the Borough of Allenhurst and  
Joseph McGrath

Dated: May \_\_\_\_, 2021