

Conditional Use Permit Application

The requirements for a Conditional Use Permit are outlined in Article 6, Section 6.3 of the Jefferson County Zoning and Land Development Ordinance.

While not required, all applicants are encouraged to schedule a Pre-Proposal Conference with the Office prior to the submission of a Conditional Use Permit application.

Please submit the following documents:

Conditional Use Permit Application Form (attached) with application fee

- Application Fee: \$250 + \$50/acre

Site Sketch

- Show location of proposed building(s) / additions to existing buildings
- Show location of proposed parking area
- Show location of proposed access
- Show location of proposed sign(s)
- Show topography, natural features, etc.
- Show existing vegetation and/or location of proposed landscaping

Narrative (optional)

- Description of the proposed land use. May include information pertaining to hours of operation, number of employees, number of customers, etc.
- Traffic characteristics – type and frequency of traffic (i.e. both existing traffic and level of traffic that would be generated by proposed land use.
- Any other relevant information.

List of adjoining property owners and mailing addresses

- This includes the properties located across any road, right-of-way, or easement.
The Jefferson County Court House is the source for property owner information.

Note: Approval of a Conditional Use Permit, with or without conditions, allows the proposed land use only. Further processing may be required prior to commencement (i.e. site plan).

A Conditional Use Permit shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. A one-time extension of this time frame may be granted by the Board of Zoning Appeals after evaluation of the hardship involved with noncompliance of this regulation. The length of time extended shall be at the discretion of the Board of Zoning Appeals and shall not exceed eighteen (18) months. (Section 3.2G)



JEFFERSON COUNTY, WEST VIRGINIA
Department of Engineering, Planning and Zoning
Office of Planning and Zoning
 116 East Washington Street, 2nd Floor
 Charles Town, West Virginia 25414

File #: 23-10-CUP
 R'cvd Date: 11 / 05 / 23
 Mtg. Date: 12 / 14 / 23
 Fee Paid: \$ 400.00
 Staff Int.: AB

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Application for a Conditional Use Permit

Project Name

Property Owner Information

Name: _____

Business Name: _____

Mailing Address: _____ Mail Yes

Phone Number: _____ Email Response: _____ Response: No

Applicant Information

Name: _____

Business Name: _____

Mailing Address: _____ Mail Yes

Phone Number: _____ Email Response: _____ Response: No

Engineer(s), Surveyor(s), or Consultant(s) Information

Name: _____

Business Name: _____

Mailing Address: _____ Mail Yes

Phone Number: _____ Email Response: _____ Response: No

Physical Property Details

Physical Address: _____

Tax District: _____ Map No: _____ Parcel No: _____

Parcel Size: _____ Deed Book: _____ Page No: _____

Zoning District (please check one)

Residential Growth (RG)	Industrial Commercial (I-C)	Rural* (R)	Residential- Light Industrial- Commercial (R-LI-C)	Village (V)	Neighborhood Commercial (NC)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Commercial (GC)	Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/ Commercial Mixed-Use (OC)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* For properties in the Rural Zoning District:
 Is property located on a primary or secondary road? Yes No

Name of Road and/or Route Number: _____

State the proposed land use as listed in Appendix C and provide a description of the proposed use.

Nursing or Retirement Home, per Article 2 and Appendix C AB

Please provide any information or known history regarding this property.

Please respond in detail to the following questions to show how the proposed project complies with the criteria located in Section 6.3 of the Zoning Ordinance:

1. How is the proposed use compatible with the goals of the adopted Comprehensive Plan? Section 6.3A.1

2. How is the proposed use compatible in intensity and scale with the existing and potential land uses on surrounding properties? How will the proposed project mitigate potential threat to public health, safety, and welfare? Sec. 6.3A.2

3. Describe how the proposed site development will be designed such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings. Section 6.3A.3

4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance. Section 6.3A.4

I am aware of the landscaping buffer requirements and will adhere to them.

I am aware of the landscaping buffer requirements; however, I may be seeking a variance to modify them.

5. Commercial and Industrial Uses shall be in conformance with Section 8.9 of the Zoning Ordinance.

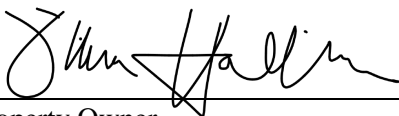
I am aware of the standards outlined in Section 8.9 of the Zoning Ordinance and will be in compliance.

6. For properties in the Rural zoning district, roadway adequacy shall be assessed by the Comprehensive Plan's Highway Road Classification Map. If a rural parcel is not shown as commercial on the Future Land Use Guide or does not front on a Principal Arterial, Minor Arterial, or Major Collector road (as identified in the Comprehensive Plan), the applicant shall submit trip generation data, including Average Daily and Peak Hour trips, for the Board of Zoning Appeals to review in conjunction with the Highway Problem Areas Map when determining roadway adequacy for the proposed use. Section 6.3A.6.

Applicable (Trip Generation Data attached)

Not Applicable

The information given is correct to the best of my knowledge. Property Owner Signature Required.



November 5, 2023

Property Owner

Date

Property Owner

Date

Trip Data; Songbird House Assisted Living Residence at 217 Deer Trail Shepherdstown WV 25443

<u>Time of Day</u>	<u># Cars</u>	<u>Purpose</u>	<u>Day of Week</u>
7am	2	Caregiver Staff	Mon-Sun
3pm	1	Caregiver Staff	Mon-Sun
8pm	1	Caregiver Staff	Mon-Sun
Noon-3pm	1	Visitors	Mon, Wed, Fri
Noon-6pm	2	Visitors	Sunday

Visitation schedules may be coordinated with families such that the residence is not overwhelmed with visitors or the quality of visiting is less than desired. Visitation for compassionate care will increase this schedule depending on residents needs and circumstances.

217 Deer Trail Shepherdstown WV 25443

Request to lift the single family restriction and permit the use for a residential assisted living/care home through a conditional use permit.

I. Background Information; WV Policy

§16-5D-1. Purpose.

(a) It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings.

(b) In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental assisted living residences, it is the policy of this state to encourage, promote and require the maintenance of assisted living residences so as to ensure protection of the rights and dignity of those using the services of assisted living residences.

II. National Issues regarding Shortages for Senior Care

It is not surprising that it is the policy of WV to promote assisted living residences in a normal home environment in noninstitutional surroundings especially considering national issues of shortages for senior care.

- Forbes Magazine, October 2022 article stated
 - “The assisted living industry is in crisis. There simply aren’t enough communities to house the rising number of senior who need them.”
 - “Researchers say the number of people age 85+ will triple by 2060. The solution for ensuring they have access to comfortable housing they can afford is not simple, but it presents an unprecedented opportunity for the business community-building more facilities to meet this demand.”
- A May 2023 survey of 425 nursing home providers by the American Health Care Association showed 48 % of nursing homes have a wait list for prospective patients/residents.
- A shortage of beds has forced hospitals to keep patients longer, cited by National Public Radio interview in October 2022 with health care professionals in Vermont.

- In April 2023, Relias Media interviewed officials at the Veterans Administration about the shortage of nursing home beds and the need for creative solutions.
 - “The nursing home crisis of too few beds....is expected to continue for the foreseeable future. Case managers....and care leaders need to find alternative solutions that will keep patients safe and avoid unnecessary hospitalizations.”
 - The American Health Care Association and National Center for Assisted Living (AHCA/NCAL), which represents more than 14,000 nursing homes and long term care facilities released a report in August 2023 stating economic reasons” are forcing nursing homes to limit admissions, down size or even close entirely, leaving tens of thousands of vulnerable residents displaced, and countless prospective residents and families in desperate search of care.”
 - The shortage of beds in Minnesota is forcing residents to stay in hospitals longer, as cited in “Skilled Nursing News” April 2023.
 - All of this has risen to national attention as the Biden Administration is taking action as outlined in the State of the Union address earlier this year to “protect seniors lives” and “enhance access to home and community based-services”, among many other initiatives.
-

With all that background clearly demonstrating the need for senior care, Songbird House researched numerous state regulations, geographic areas and settled on purchasing a property in Shepherdstown Songbird House LLC obtained a business license from WV. We engaged with the State of West Virginia, Department of Health and Human Resources, Office of the Inspector General, Office of Health Facility Licensure and Certification (OHFLAC) prior to the purchase to ensure the property would meet regulations, and within days after closing on the property, we scheduled a preliminary site survey with OHFLAC as well as the local fire marshal.

April 18, 2023 Songbird House received its site approval to establish an assisted living residence from the State of West Virginia, Department of Health and Human Resources, Office of the Inspector General, Office of Health Facility Licensure and Certification (OHFLAC).

Required therein was submission of drawings by a WV licensed architect for approval of any needed renovations. Songbird House received its OHFLAC approval to begin construction August 28, 2023.

August 17, 2023 Songbird House received its approval from the State of West Virginia, Department of Health and Human Resources, Health Care Authority, that our proposed project meets the qualifications for exemption of the Certificate of Need process IAW WV Code Title 65-29-11©(24).

Interior renovations began, including the delivery of 2 hand crafted 14x20 modular units to ultimately be attached to the house as expanded living space. Curious, and apparently distressed neighbors, notified the county permitting office and a stop work notice was issued for the property. To resolve this matter, Songbird House contacted the permitting office and was told a new piece of information, that being we needed to discuss our plans with the zoning board and seek a conditional use permit as our residential zoning code 101 does not allow an assisted living residence. We have been under the impression, as

stated above, that we are operating within the residential domain. We are now requesting the residence 101 restriction to be lifted and allow the property to be used as an assisted living residence.

Our prior understanding based on our due diligence was that we are separate and distinct from nursing homes, and the maximum 16 bed licensing we will be seeking is non-commercial for several reasons discussed herein.

First, WV Title 64 of West Virginia Legislative Rule clearly distinguished nursing homes from assisted living residences as each has its own regulations as cited below:

- Series 13 Nursing Home Licensure
- Series 14 Assisted Living Residences (this is the guidance Songbird House is following as provided by OHFLAC).

Second, in accordance with West Virginia Code at §16-5D-2. Definitions.

(1) “Assisted living residence” means any living facility, residence, or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under §16-5B-1 of this code; or state institutions, as defined under §25-1-3 or §27-1-6 of this code; or residential care homes operated by the federal government or the state; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 et seq. of this code;

(6) “Limited and intermittent nursing care” means direct hands-on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode: Provided, That such time limitations shall not apply to an individual who, after having established a residence in an assisted living residence, subsequently qualifies for and receives services coordinated by a licensed hospice and such time limitations shall not apply to home health services provided by a Medicare-certified home health agency. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the secretary for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.”

Individuals whose needs exceeding the limits of intermittent nursing care must be placed in other than assisted living residences, such as skilled nursing facilities, or nursing homes. Nursing homes are associated with zoning code 316, not residential 101. Songbird House is not a nursing home and is not intending to be one.

Third, WV Title 64 of West Virginia Legislative Rule makes clear distinctions in assisted living facilities as small (16 beds maximum) or large (17 beds or greater), with the only element of commerciality for a small facility is a commercial cooking vent hood when there are more than 12 residents. Large facilities have different and higher standards as they typically provide a level of care

that exceeds an assisted living residence, with some building standards becoming commercial (kitchens, sprinkler systems as examples) and thus a non-residential zoning code.

Fourth, our WV licensed sprinkler system contractor submitted and received plan approval for a residential standard sprinkler system. The Fire Marshall did recommend additional holding tanks beyond the residential standard, for which have agreed.

IV. Songbird House LLC Specifics regarding 217 Deer Trail Shepherdstown WV

At this time, Songbird House is requesting the single family restriction be lifted and allow the property to operate as an assisted living residence. The following is a brief description of the property facts and operational notions of Songbird House.

1. Property Characteristics
 - a. Residence to maintain its residential purpose for up to 16 elderly occupants who need personal home care. Fully compatible for its current use as a residence.
 - b. Leasing the rooms, and all inclusive lease includes cooking, housekeeping, and care.
 - c. Property, purchased in April 2023, was sold as a 3,460 ft² home 5 bed 4 bath with a 2 car attached garage, 2 detached garages and a driveway sufficient for 4 cars, a total of 9 parking spaces. Two tier deck with a built in pool, handicapped ramp on a 2.5 acre lot, in a tranquil location across from an expansive horse farm complete the picture of a beautiful property.
2. Why this property for an Assisted Living Residence?
 - a. Features that make this property ideal include 1,000 ft² across 4 social spaces of a living rm, dining room, sunroom, and great room with cathedral ceilings and double French doors opening to the deck already established with handicapped ramp and wooded view. An established 350 ft² garden for farm to table organic produce is a truly unique feature for the ALR purpose.
 - b. Pre-built additions to expand living space, handcrafted by the Amish in Lancaster PA, same style and color scheme of the house.
 - c. Peaceful, natural surroundings are a stress free environment.
 - d. Residents would enjoy a mature and very small immediate neighborhood of just 8 houses
3. No damage to public interests at all.
 - a. There is benefit to the public interests
 - i. There is profound need for senior care
 - ii. WV policy recognizes this as well, encouraging care delivered in a normal home environment in non-institutional surroundings
 - iii. The surplus from our garden and fruit trees will be shared with the neighborhood and community thru food bank donations, partnering with local groups such as the boy scouts to help harvest and donate.
4. No damage to any public property at all as there is no public property adjacent to or touching our property boundaries.
5. No nuisance concerns
 - a. Residents are quiet

- b. No commercial traffic
 - i. No food suppliers as we shop ourselves, grow in our garden, and the onsite Executive Chef prepares all meals fresh every day in the residence.
 - ii. No commercial trash as we compost, recycle, repurpose, and will use Apple Valley Waste in the same fashion as the neighborhood
 - iii. No moving trucks with resident belongings/furnishings as we are a fully furnished turned key residence
 - c. Caregivers are 3-4 total, and the property already contemplates 9 vehicles with its well established driveway and 3 garages
 - i. we do not intend to have 9 cars
 - ii. Visiting hours are limited, brief, not every day, and do not extend into any time of day generally considered as "quiet hours"
 - d. Nothing about elderly residents or the lifestyle within the residence will produce offensive odors, noise, dirt, debris, bright exterior lights to impact neighbors, for which there are only 2, both more than 60 meters away with wooded area in between on both sides.
 - e. No nuisance objects have been or will be added to the property, such as satellite dishes or cell towers or anything of that sort.
6. Songbird House is abiding by all WV regulations for licensing.

217 DEER TRAIL; PARKING

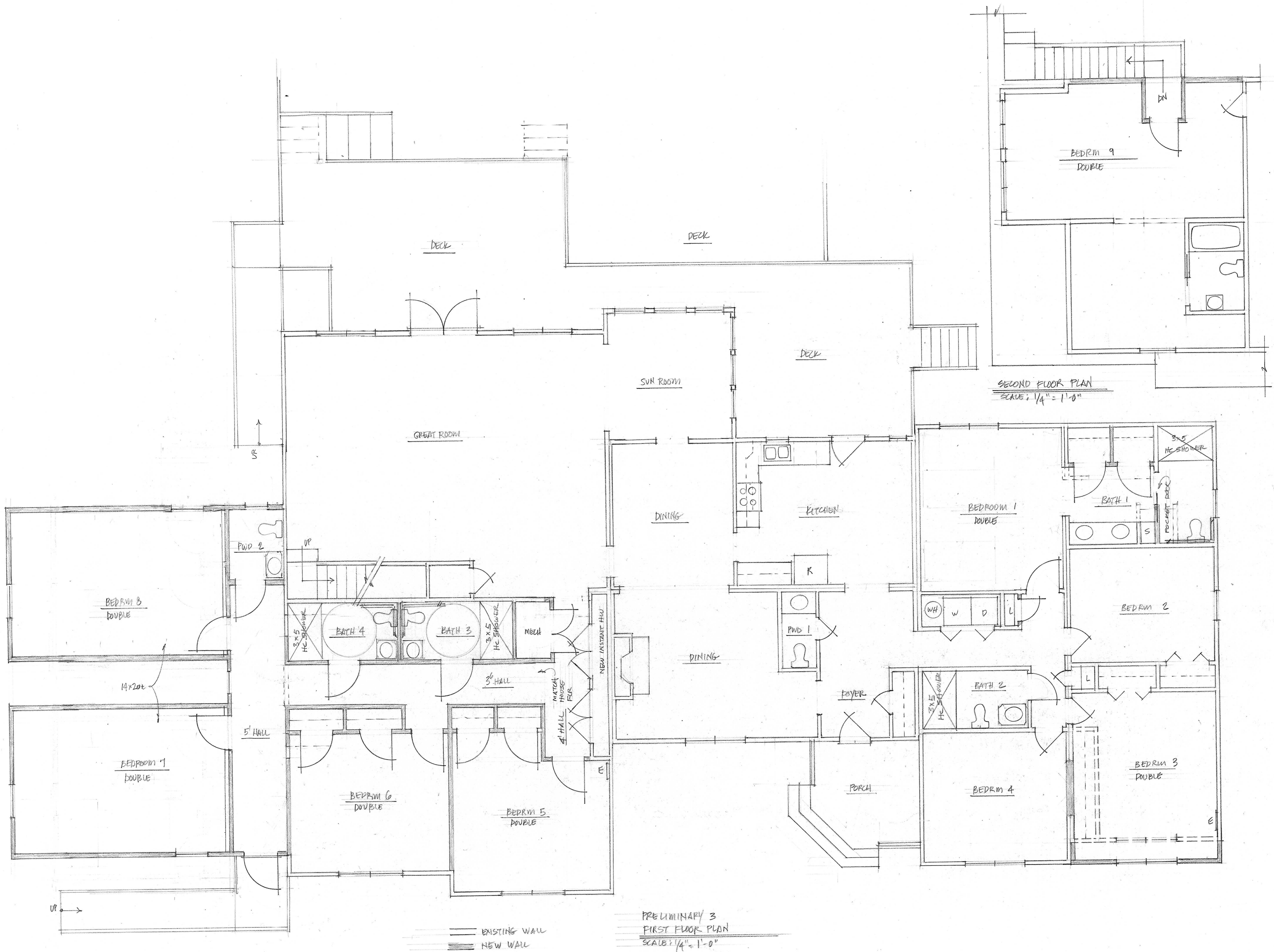


PROPERTY EXISTING
DRIVEWAY

DRIVEWAY TO
BE ADDED

VISITOR PARKING
1-2 CARS

↑
STAFF
PARKING
to
EXISTING
GARAGES
2-3
CARS



— EXISTING WALL
 — NEW WALL

PRELIMINARY 3
 FIRST FLOOR PLAN
 SCALE: 1/4" = 1'-0"

SECOND FLOOR PLAN
 SCALE: 1/4" = 1'-0"

ROSALIND E. WELSH
 ARCHITECT
 REGISTERED: WEST VIRGINIA
 MARYLAND
 VIRGINIA
 P.O. Box 147 • Summit Point • WV • 25446
 304-725-4013

SENIOR HOUSING
 217 BEER TRAIL
 SHEPHERDSTOWN, WV

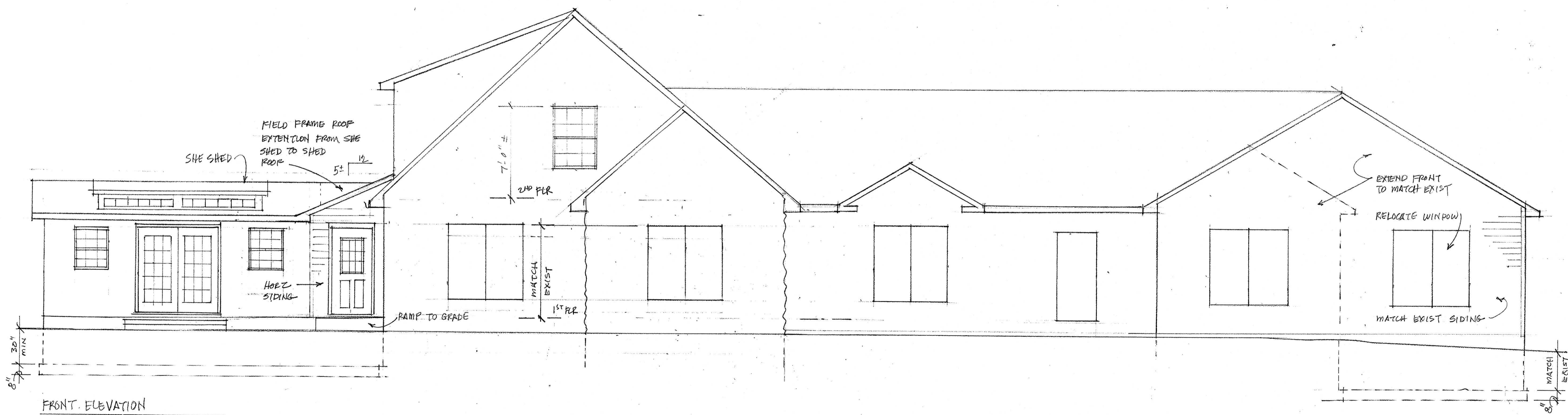
6/15/23



ROSALIND E. WELSH
ARCHITECT
REGISTERED: WEST VIRGINIA
MARTLAND
VIRGINIA
P.O. Box 147 • Summit Point • WV • 25446
304-725-4013



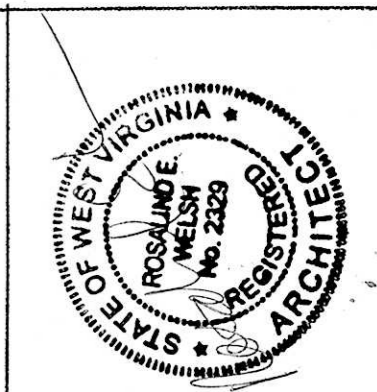
LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



FRONT ELEVATION
SCALE: 1/4" = 1'-0"

SONG BIRD HOUSE RENOVATIONS
217 DEER TRAIL
SHEPHERDS TOWN, WV

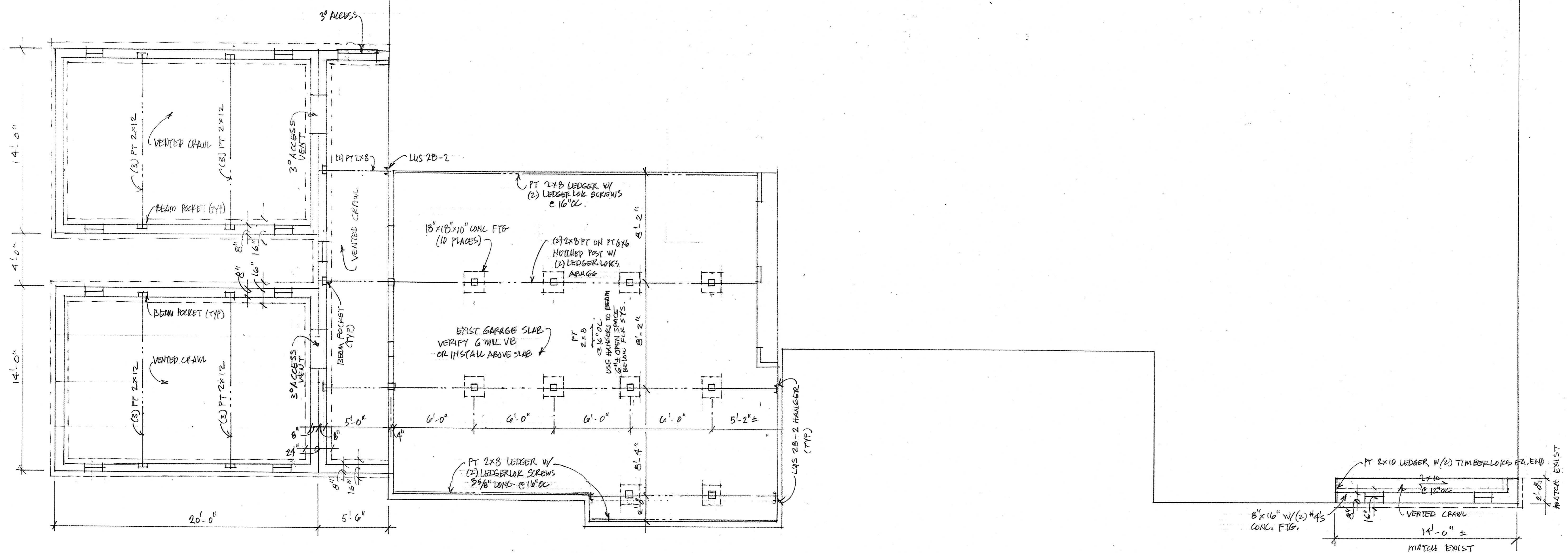
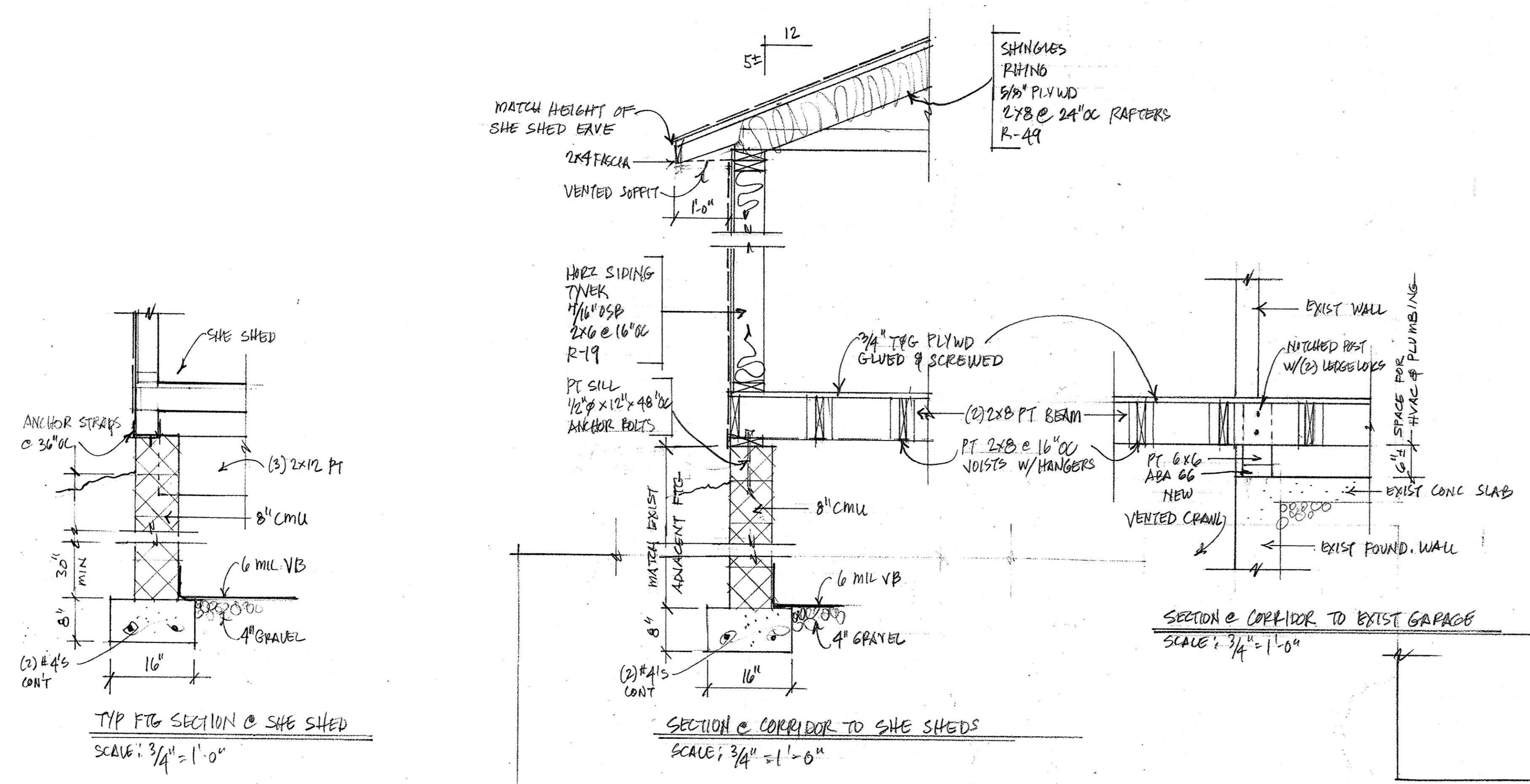
A3
7/17/23



ROSALIND E. WELSH
ARCHITECT
REGISTERED: WEST VIRGINIA
MARYLAND
VIRGINIA
P.O. Box 147 • Summit Point • WV • 25446
304-725-4013

SONG BIRD HOUSE RENOVATIONS
217 DEER TRAIL
SHEPHERDS TOWN, WV

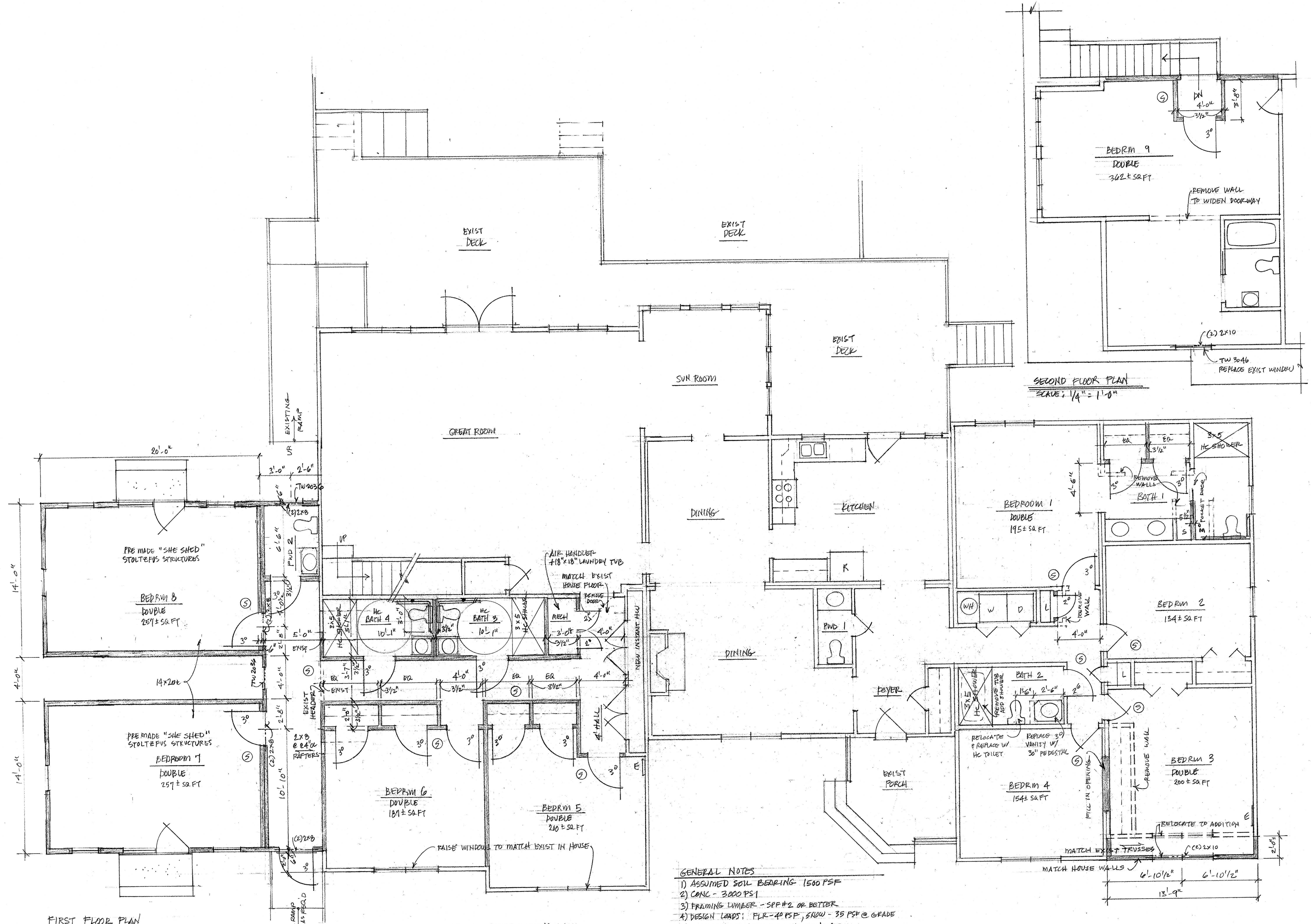
A2
7/17/23



FOUNDATION/FIRST FLOOR FRAMING
SCALE: 1/4" = 1'-0"



ROSALIND E. WELSH
ARCHITECT
REGISTERED: WEST VIRGINIA
MARYLAND
VIRGINIA
P.O. Box 147 • Summit Point • WV • 25446
304-725-4013



FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"

SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0"

— EXISTING WALL
= NEW WALL
⊙ SMOKE DETECTOR

- GENERAL NOTES
- 1) ASSUMED SOIL BEARING - 1500 PSF
 - 2) CONC - 3000 PSI
 - 3) FRAMING LUMBER - SPF #2 OR BETTER
 - 4) DESIGN LOADS: FLR - 40 PSF, SNOW - 35 PSF @ GRADE
 - 5) WINDOW NUMBERS FROM ANDERSEN 400
 - 6) MEP BY GEN. CONTRACTOR
 - 7) SECURITY / FIRE ALARMS BY OTHERS
 - 8) CONSTRUCTION TO COMPLY W/ IRS 2018 & ALL LOCAL CODES
 - 9) 1/6 BEDX = RESIDENTIAL, NOT COMMERCIAL - IBC - 2018

SONG BIRD HOUSE RENOVATIONS
217 DEER TRAIL
SHEPHERDSTOWN, WV

AI
7/17/23



RECEIVED
NOVEMBER 15, 2023
Jefferson County, WV
Office of Planning & Zoning

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Office of Health Facility Licensure and Certification

Jeffrey H. Coben, MD
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

April 18, 2023

Sharon Hallinan
Songbird House
20383 Middlebury Street
Ashburn, VA 20147

RE: Site Inspection
OHFLAC #2023-032

Dear Ms. Hallinan:

A site inspection was conducted on April 12, 2023 for a proposed Assisted Living facility to be located at 217 Deer Trail, Shepherdstown, WV. This site is approved.

Please submit a full set of drawings by a WV licensed architect which includes architectural, mechanical, electrical, and plumbing, to scale for review by our office of the proposed construction.

Please address the following items in your plans:

1. Addition of an ADA bedroom and bathroom/shower room on the 1st floor area and ADA entrance/exit in your plans.
2. This site is not sprinkler protected.
3. Laundry area will need separation of soiled and clean laundry and mechanical ventilation on the soiled side.

Approval of your plans is necessary prior to beginning construction at this site.

If you have any questions, please contact me at 304-352-0822.

Sincerely,



Forest "PJ" Cooper
Life Safety Program Manager

cc: Assisted Living Program - OHFLAC



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Health Care Authority

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Stacy L. Pridemore
Executive Director

August 17, 2023

Sharon Hallinan/Property Manager
Songbird house, LLC
20383 Middlebury St
Ashburn, VA 20147

Subject: **Songbird House, LLC**
CON File #23-9-12751-X

Dear Ms. Hallinan:

On August 4, 2023, the West Virginia Health Care Authority (Authority) received the exemption application submitted by Songbird House, LLC for the development of a 16-bed Assisted Living Facility located at 217 Deer Trail, Shepherdstown, Jefferson County, West Virginia. In providing notification, the Applicant also submitted the required exemption application pursuant to W. Va. Code § 16-2D-11.

In support of the exemption, the following information was provided regarding compliance with W. Va. Code St. R. § 65-29-11(c)(24), which states "Assisted living facilities and services".

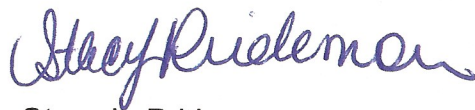
The Authority has reviewed the exemption application and determines that the Applicant has adequately addressed and is consistent with the criteria contained in W. Va. Code St. R. § 65-29-1, *et seq.* The Authority further determines that the project, as described in the exemption application, meets the qualifications for the exemption for which the applicant has applied.

Exemption approval issued by the West Virginia Health Care Authority (WVHCA)

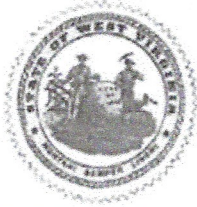
for a proposed health service that is exempt from the Certificate of Need process does not guarantee licensure. The provider must meet the standards and applicable laws, rules, and regulations when submitting an application for licensure to OHFLAC.

The WVHCA verifies with OHFLAC the current licensed bed count of the county specific to the proposed project at the time the exemption application is received/approved by the WVHCA. This exemption approval does not guarantee the availability of beds in the county.

Sincerely,



Stacy L. Pridemore
Executive Director



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Office of Health Facility Licensure and Certification

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Christopher G. Nelson
Interim Inspector General

August 28, 2023

Sharon Hallinan
20383 Middlebury St.
Ashburn, VA 20147

RE: OHFLAC #2023-032

Dear Ms. Hallinan:

The plans that were submitted on June 18, 2023 for the renovation of the house and garage space into a 16 bed Assisted Living facility called Songbird House located at 217 Deer Trail, Shepherdstown, WV, have been reviewed and appear to be acceptable and construction may begin.

Please provide this office with the following during the construction phase:

After you **conduct the Punch List Inspection** and issue **Substantial Completion**, submit a request (form available OHFLAC.wvdhhr.org) to this office for a **Pre-Opening Inspection***. Now and where appropriate the following documents and certified test results will be required for:

- A. **AIA Substantial Completion Signed by All Parties**
- B. **Certification for Electrical Work**
- C. **Sprinkler System Certification**
- D. **Fire Alarm System Certification**
- E. **HVAC Test and Air Balance Report**
- F. **State Fire Marshal Final Inspection Report**
- G. **Certification of Interior Finishes (Flame Spread Rating)**

Songbird House
August 25, 2023
Page 2

It should be noted that approval of these documents for construction in no way "approves" or "certifies" the design for full conformance with relevant state and federal regulations. It is the responsibility of the designer and owner to verify all applicable requirements.

Renovated areas must be isolated from occupied areas during construction using airtight barriers, and exhaust airflow shall be sufficient to maintain negative air pressure in the construction zone. Air quality requirements at areas not being renovated should be maintained at existing levels. Precautions must be taken always to maintain patient safety and health standards.

If you have any questions, please contact me at 304-352-0822.

Sincerely,

Forest P. Cooper

Forest "PJ" Cooper
Life Safety Program Manager

FPC/scb

Cc: Assisted Living Program
Office of Health Facility Licensure and Certification

TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY

SERIES 29
EXEMPTION FROM CERTIFICATE OF NEED

§65-29-1. General.

1.1. Scope. -- This legislative rule establishes the general criteria and procedures for applying for an exemption from Certificate of Need.

1.2. Authority. -- W. Va. Code §16-2D-4(a)(2), §16-2D-11 and §16-29B-8(a)(1).

1.3. Filing Date. -- April 29, 2021.

1.4. Effective Date. -- April 30, 2021.

1.5 Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2026.

§65-29-2. Definitions.

As used in this legislative rule, all terms that are defined in W. Va. Code §16-2D-2 have those same meanings which are in some cases further clarified in this rule. All terms not defined in W. Va. Code §16-2D-2 have the following meanings unless the context expressly requires otherwise.

2.1.a. "Authority" means the West Virginia Health Care Authority which is designated to administer the Certificate of Need program by W. Va. Code §16-2D-3(a)(1).

2.1.b. "Medically underserved population" is defined on a county-by-county basis. Applicants seeking an exemption for a proposed new end-stage renal disease treatment facility under this rule shall identify the service area as the county where the new facility is proposed to be located. For purposes of this rule only, a county service area with fewer than 50,000 residents is deemed to be a medically underserved population if there is no kidney disease treatment center located less than six driving miles from the location provided in the exemption application.

2.1.c. "Statute" means the West Virginia Health Care Authority Certificate of Need statute, W. Va. Code §16-2D-1 *et seq.*

2.1.d. "Verification" means a statement made under oath before a notary public that the information is knowingly provided and is true and correct.

§65-29-3. General Requirements.

3.1. A health service exempt from certificate of need review by W.Va. Code § 16-2D-11 may not be acquired, offered, or developed within this state unless notification of the performance of the exemption is provided to the Authority.

3.2. A person or health care facility may not knowingly charge or bill for a health service exempted from certificate of need review by W. Va. Code §16-2D-11 without first submitting a notification of

performance of the exemption to the Authority.

§65-29-4. Application.

An application for an exemption shall, at a minimum, include the following:

- 4.1.a. Name, address, and contact information for the applicant;
- 4.1.b. Name, address, and contact information for the person making the application;
- 4.1.c. Verifications from the person making the application and the CEO of the applicant entity;
- 4.1.d. A copy of the governing body's written authorization empowering the CEO or his or her designee to authorize specified individuals to sign the application and to act on its behalf; and
- 4.1.e. A detailed description of the project, including but not limited to:
 - 4.1.e.1. The location of the proposal;
 - 4.1.e.2. A detailed statement of the services to be provided;
 - 4.1.e.3. The exemption for which the applicant is applying with the appropriate Code citation;
 - 4.1.e.4. A statement of the circumstances justifying approval of the exemption; and
 - 4.1.e.5. A timetable for implementation of the project. In the case of a kidney disease treatment center, the facility must be operational within one year of the approval or the exemption will expire after one year.
- 4.1.f. In the case of an exemption of a kidney disease treatment center, the application shall also contain:
 - 4.1.f.1. The address of the proposed facility and a copy of the executed lease or option to lease or option to purchase agreement for the facility; and
 - 4.1.f.2. Evidence that there is adequate water and other utilities at the site to support the facility.

16-2D-11, 24

§65-29-5. Expiration of Exemption.

If a kidney disease treatment facility is not operational within one year from the date of the decision on exemption, the exemption will expire unless good cause can be demonstrated.

§65-29-6. Appeals.

6.1. An appeal of the Authority's decision may be filed with the Office of Judges in accordance with W.Va. Code §16-2D-16.

6.2. In lieu of an appeal, the applicant may refile an application with the Authority.

§65-29-7. Notification of Completion of Project.

The applicant shall notify the Authority in writing upon the completion of the project. The notification shall contain a brief description of the project, the assigned case file number, the date of the completion of the project and the date that the project became or will become operational.