

IN THE SUPERIOR COURT OF DELAWARE

KATHY LINGO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	C.A. No. S24C-08-028 CAK
JOSEPH GORDON AND	)	
HOLLIE GORDON,	)	AN ACTION IN EJECTMENT
	)	
Defendants.	)	

Submitted: August 31, 2026
Decided: September 29, 2026

Size and Scope of Prescriptive Easement

MEMORANDUM OPINION AND ORDER

Dean A. Campbell, Esquire, 703 Chestnut Street, Milton, DE 19968, Attorney for Plaintiff/Counterclaim Defendant.

Paul G. Enterline, Esquire, 113 South Race Street, P.O. Box 826, Georgetown, DE 19947, Attorney for Defendants/Counterclaimants.

KARSNITZ, R.J.

I. PROCEDURAL BACKGROUND

Plaintiff filed a Petition for Ejectment against Defendants on August 20, 2024, with respect to certain disputed property along the property line between parcels owned by Kathy Lingo (“Plaintiff”) and a parcel owned by Joseph and Hollie Gordon (“Defendants”). This disputed property included a portion of the gravel driveway, the concrete parking area, and the area around the office, as shown in blue on the survey attached hereto as Exhibit A (the “Disputed Property”). Defendants filed their Answer and Affirmative Defenses on September 27, 2024. On February 10, 2026, Defendants filed an Amended Answer Asserting Counterclaim which asserted that Defendants are entitled to a declaratory judgment that they had acquired an easement on the Disputed Property that runs with the land “for access, egress, parking and maintenance, in the area between their property line and the ‘originally assumed property line.’”

The matter was tried before me on April 20, 2026. After both parties submitted their closing arguments in writing, I issued my Decision After Trial on June 12, 2026, in which I found that, by clear and convincing evidence, Defendants had proved that they had acquired a prescriptive easement with respect to the Disputed Property. I asked the parties to prepare documents of title, together with a form of Order, consistent with my Decision. Defendants submitted their proposal and

proposed Order on August 30, 2026, and Plaintiff submitted her proposal and proposed Order on August 31, 2026. In their closing arguments, the parties disagreed on both the size and scope (permissible uses) of the easement. This is my decision on those two issues.

II. ANALYSIS

Size of Easement

Defendants seek to increase the amount of Disputed Property covered by the easement. Defendants have produced no survey giving a metes and bounds description of the Disputed Property. However, as shown in Exhibit B, in addition to the 1,028 square feet shown in red, they assert a claim to, at a minimum, the 133 square feet shown in purple, and optimally the additional 23 square feet shown in gray. They argue that I did not intend to create a rectangular easement and believe that my decision “implies” the existence of a transitional space, or apron, over the existing gravel area from their driveway into the easement area. They contend that doing otherwise would hinder access and egress, cut off a portion of the already narrow parking area, and create an awkward, unnecessary, and unusable corner or “pinch point.” This might prevent any potential accidental damage to a fence that Plaintiff proposes to install.

Plaintiff argues that this is overreach by Defendants, and that Defendants are seeking to expand on the instructions in my Decision. Since trial, Plaintiff has had a

more formal survey prepared for Disputed Property, which is attached as Exhibit C. Plaintiff has a large scale, recordable survey and is prepared to provide it for review by me and Defendants.

I agree with Plaintiff. I did not “imply” the addition of any apron or transitional space to the Disputed Property.

Scope of Easement

Defendants argue that the use of the easement, in addition to access and egress and building maintenance, should include parking and storage. They assert that the record establishes that Defendants and their predecessors in title used the Disputed Property in these ways. Defendants further claim that none of these uses will interfere with Plaintiff’s use and enjoyment of her property.¹

Plaintiff argues that the terms “parking” and “storage” were not contemplated by my Decision and connote a more permanent use of the easement area than the terms access, egress, and building maintenance. This prescriptive easement is formed between the dominant estate, which benefits from the easement (Defendants) and the servient estate, which is the burdened estate (Plaintiff).² Defendants will have a nonpossessory interest in the easement property and title will remain with Plaintiff. As a prescriptive easement, Delaware law only passes what is “reasonably

¹ *Bogia v. Kleiner*, 2019 WL 3761647, at *9 (Del. Ch. Aug.8, 2019); *DiStefano v. Westminster Club*, 2024 WL 807428, at *5 (Del. Super. Feb. 27, 2024).

² *Edgell v. Divver*, 402 A.2d 395, 397 (Del. Ch. 1979).

necessary and convenient for the contemplated use” by Defendants.³ Plaintiff retains all rights in the easement except what is necessary to the easement’s fair enjoyment.⁴ She retains complete control over the land’s dominion and use so long as those uses do not interfere with the reasonable enjoyment of the easement.⁵ The burden of the easement should be minimized so that Defendants can only use the easement for that which is reasonably necessary.

I agree with Plaintiff that the use of the easement for parking and storage is too open-ended and suggests some broader use than access and egress, such as parking of disabled vehicles or storage of lumber, debris, or other materials. At trial, the discussion centered on access and egress for maintenance of the shed constructed within the set-back area, although there was also discussion of parking of vehicles, storage of materials, erection of playground equipment, and access to the back of Defendants’ property. Defendants’ property consists of 1.26 acres improved by a house, the shed, and a detached garage in the rear of the property. The front and rear yards are large. Thus, in my view, the easement is not necessary for storage and parking by Defendants, and such uses could unduly burden Plaintiff

III. CONCLUSION

I believe the language of the Proposed Final Order After Trial for Easement

³ *Walton v. Poplos*, 85 A.2d 75, 77 (Del. Ch. Dec. 13, 1951); *Reiver v. Voshell*, 158 A. 366, 368 (Del. Ch., Jan.15, 1932).

⁴ *Walton*, 85 A.2d at 77.

⁵ *Jackson v. Copeland*, 1995 WL 54434, at *2 (Del. Ch. Jan. 25, 1995).

prepared by Plaintiff's counsel (Exhibit C) accomplishes the purpose of my Decision without unduly burdening either Plaintiff or Defendants. Therefore, Plaintiff's counsel shall submit a final form of Order After Trial for Easement, with a legal description of the easement attached, to me and Defendants for review within thirty (30) days hereof.

IT IS SO ORDERED.

/s/ Craig A. Karsnitz

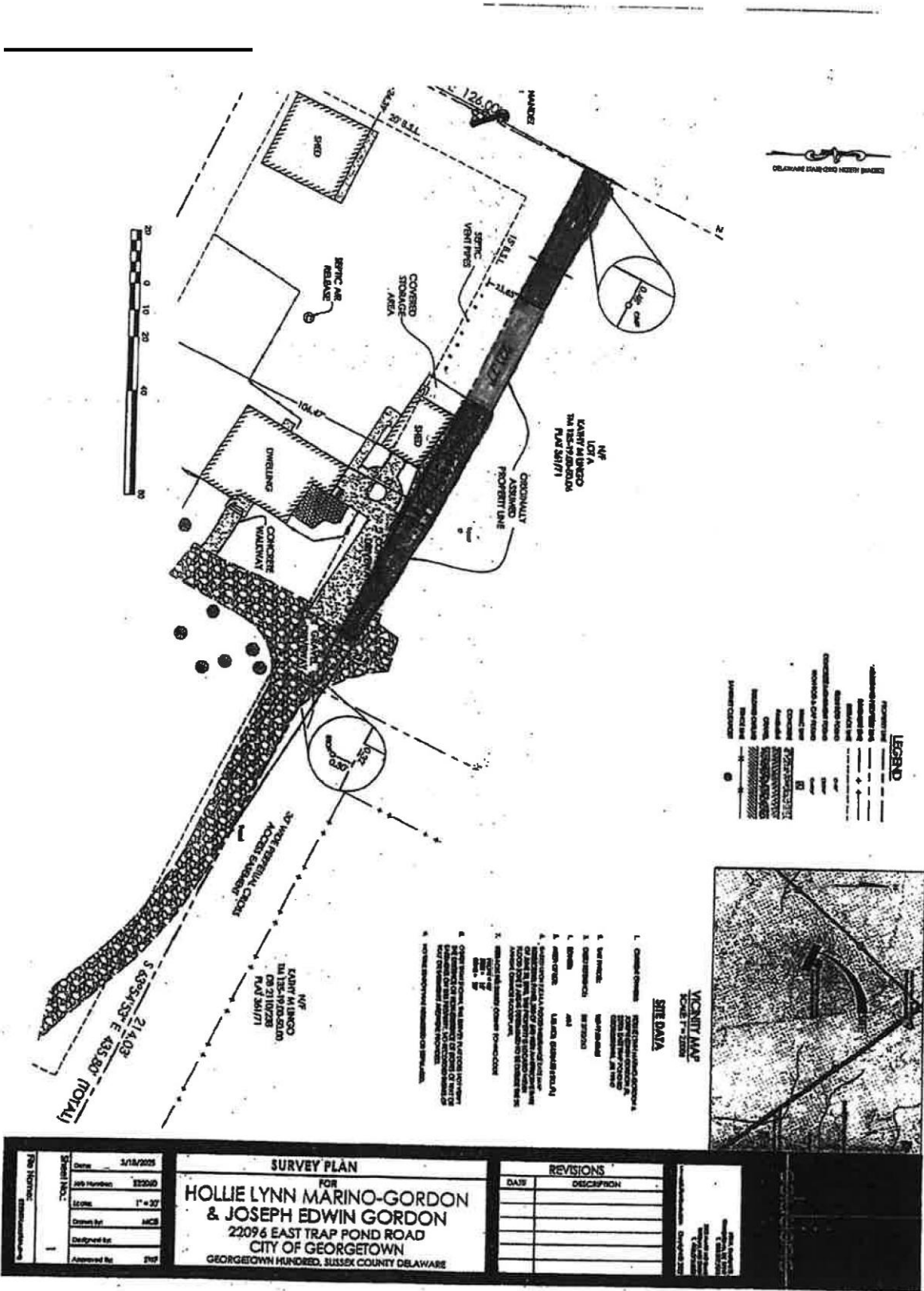
cc: Prothonotary

Exhibit A

Exhibit B

Exhibit C

EXHIBIT A



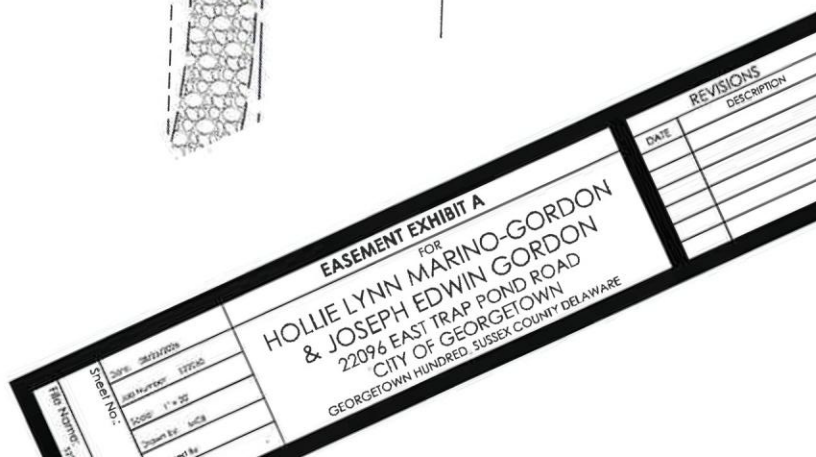


EXHIBIT C

Tax Map No. 135-19.00-
50.05 Tax Map No. 135-
19.00-50.06 Prepared
by/Return to:

Dean A. Campbell, Esq.
703 Chestnut St.
Milton, DE 19968

其後又繼以重慶地處長江上游，為川省之衝，且為川省之咽喉，故其地之重要，尤非他處所能及也。

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

KATHY LINGOC.A. No, S24c-08-028 CAK

Plaintiff

JOSEPH GORDON AND HOLLIE
GORDON

Defendants.

FINAL ORDER AFTER TRIAL FOR EASEMENT

WHEREAS, Kathy Lingo "Lingo," owns 22902 East Trap Pond Road, Georgetown, DE, 135-19.00-50.06. Joseph and Hollie Gordon, "the-Gordöhs," own the adjacent properw to the west of Lingo, at 22906 Bast Trap Pond Road, Georgetown, DE, 1-35-19.00-50.05; and,

WHEREAS a dispute arose between Lingo and the Gordons as to their respective rights to use the area of land-situated on Lingo's -property referred to herein as the "Disputed Property" as more particularly appears of record in the above captioned case; and,

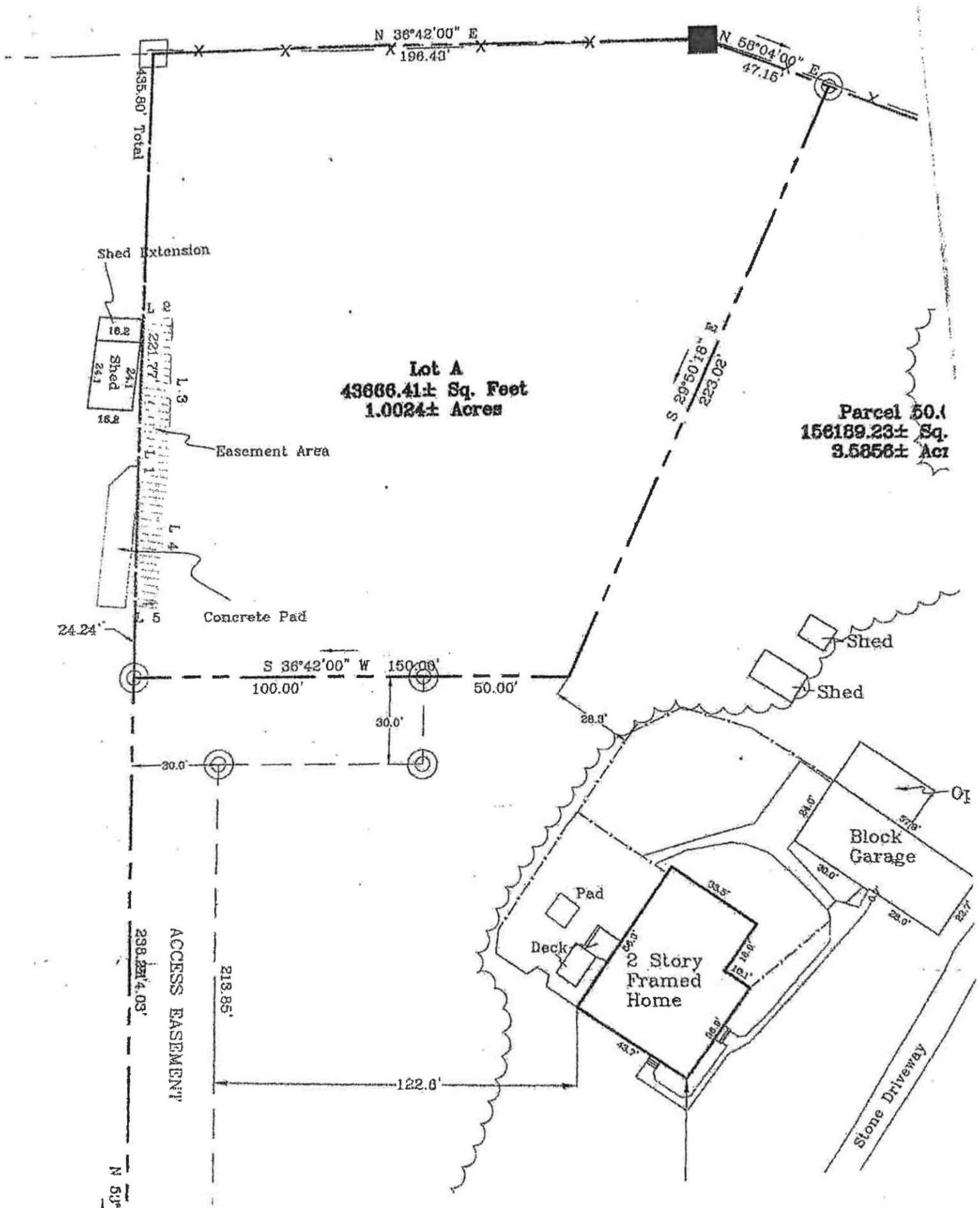
WHEREAS a trial in the above matter was held on April 20, 2026; and,

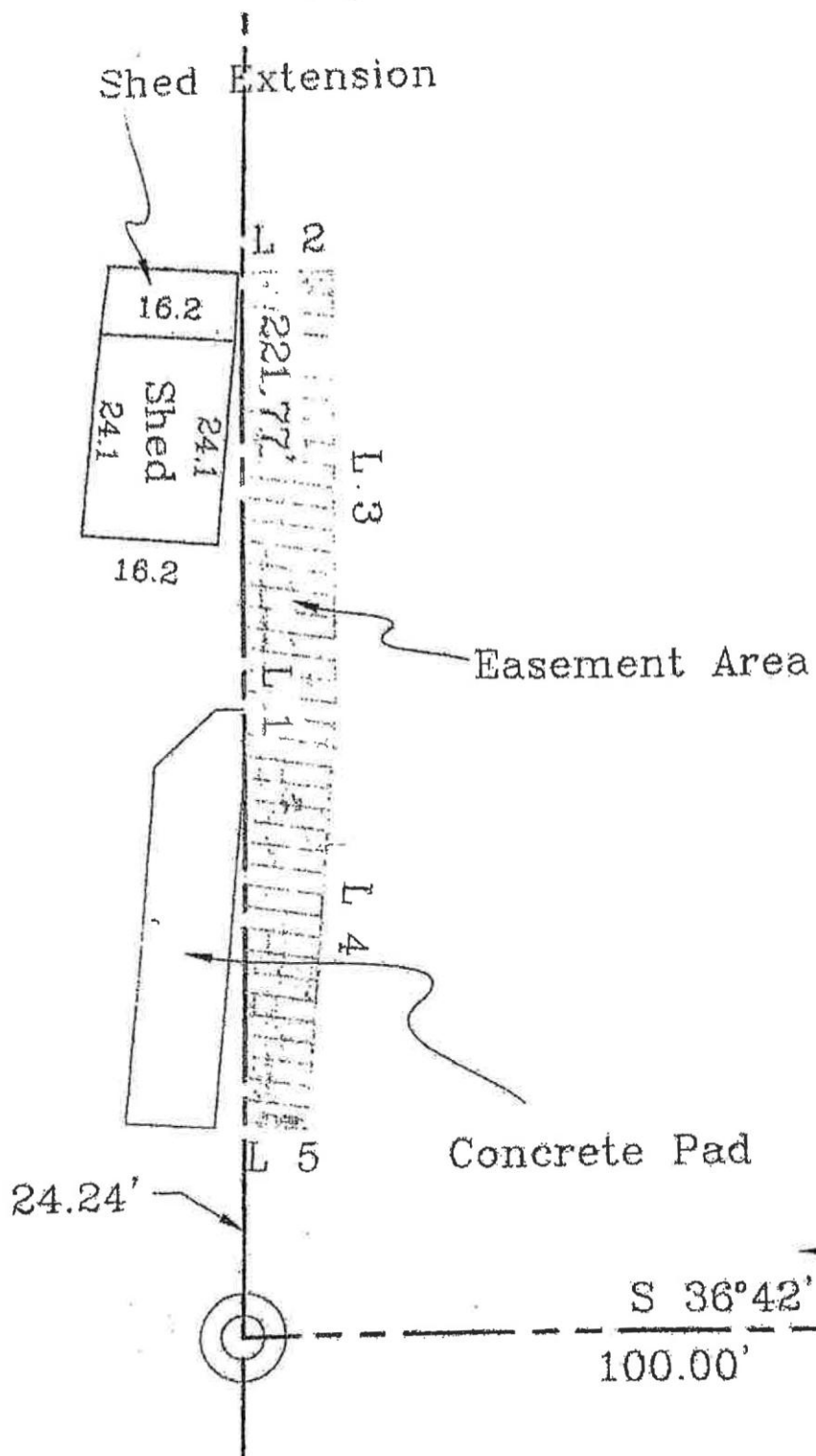
WHEREAS for reaSon•s set forth ih the court's decision after trial dated June 12, 2026, the court orders as follows.

1. The Disputed Property is described on the drawing attached and incorporated herein as Exhibit A.
2. The Gordons, their heirs, successors, and assigns, in the ownership and use of 22906 East Trap Pond Road, Georgetown, DE, T}vQ 1-35-19.00-50.05, have and shall henceforth continue to have, the benefit of an easement in the area of the Disputed Property, as described in exhibit A, a part of 22902 East Trap Pond Road, Georgetown, DE, TMP 135-19,00-50.06, for access, egress, and building maintenance.

4. The rights and responsibilities of this easement shall run with the land.

JUDGE





SCALE 1"=20'

Easement Area
Dimensions

Line		
LINE	BEARING	DISTANCE
L 1	N 53°42'00" W	100.67'
L 2	N 36°18'00" E	10.79'
L 3	S 53°42'00" E	51.62'
L 4	S 49°35'32" E	49.54'
L 5	S 39°12'08" W	7.25'