

BOARD OF APPEALS

Bill Beckwith, Chairman
Brian Haren, Vice-Chairman
Anita Davis
Marsha Hopkins
John Tate

STAFF

Deborah L. Bell, Planning and Zoning Director
Deborah Sims, Zoning Administrator
Maria Binns, Zoning Coordinator
E. Allison Ivey Cox, County Attorney

AGENDA

**Fayette County Zoning Board of Appeals
Fayette County Administrative Complex
Public Meeting Room
December 16, 2024
7:00 P.M.**

***Please turn off or turn to mute all electronic devices during the
Zoning Board of Appeals Meetings**

1. Call to Order.
2. Pledge of Allegiance.
3. Approval of Agenda.
4. Consideration of the Minutes of the Meeting held on September 23, 2024.

PUBLIC HEARING

5. Consideration of Petition No. A-874-24 – Jean Samples, Owner, per Sec. 110-242 (h), request for an illegal lot to be deemed a nonconforming lot. The subject property is located in Land Lot 1118 of the 4th District and fronts on Antioch Road and Lowery Drive.
6. Consideration of Petition No. A-875-24 – Gayle M. Harp Trust, Owner, applicant is requesting a variance to reduce the front yard setback in the A-R zoning district from 100' to 83' per Sec. 110-125(d)(4)a.2. The subject property is located in Land Lot 167 of the 4th District and fronts Chappell Road.
7. Consideration of Petition No. A-876-24 – Sheila Marie Wall, Owner, applicant is requesting the following: Per Sec. 110-137(d)(6), requesting to reduce the side yard setback in the R-40 zoning district from 15' to 12.3' to allow the replacement of a damaged garage. The subject property is located in Land Lot 168 of the 5th District and fronts on Fox Hunt Court.

8. Consideration of Petition No. A-878-24 – Evans MT. Ventures, LLC, Owner, applicant is requesting an appeal to the decision of the Zoning Director regarding the legal status of Parcel 0517 119, per Sec. 110-242. – Powers and duties. (a) Appeals from the actions of the zoning administrator. The subject property is located in Land Lot 70 of the 5th District and fronts on Highway 85 South.
9. Consideration of the Fayette County Zoning Board of Appeals 2025 Calendar Schedule.

Minutes 09/23/2024

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on September 23, 2024, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Bill Beckwith, Chairman
Brian Haren, Vice-Chairman
Marsha Hopkins
John Tate
Anita Davis

STAFF PRESENT: Debbie Bell, Planning and Zoning Director
Deborah Sims, Zoning Administrator
E. Allison Ivey Cox, County Attorney
Maria Binns, Secretary

1. Call to Order
2. Pledge of Allegiance
3. Approval of Agenda. *John Tate made a motion to approve the agenda. Anita Davis seconded it. The motion passed 4-0. Brian Haren was absent.*
4. Consideration of the Minutes of the Meeting held on August 26, 2024. *Marsha Hopkins made a motion to approve the minutes of the meeting held on August 26, 2024. John Tate seconded the motion. The motion carried 4-0.*

PUBLIC HEARING

5. Consideration of Petition No. A-872-24-A-B-C-D – Wright Chancy McBride, LLC., Owner, request A) Variance to Sec. 110-125(d)(2) to reduce the lot width at building line from 250' to 120' to allow development of a legal nonconforming lot. B) Variance to Sec. 110-125(d)(4)(a)(2) to reduce the front yard setback from 100' to 75' to allow development of a legal nonconforming lot. C) Variance to Sec. 110-125(d)(5) to reduce the rear yard setback from 75' to 37.5'. D) Variance to Sec. 110-125(d)(6) to reduce the side yard setback from 50' to 25' to allow development of a legal nonconforming lot.

WITHDRAWN BY PETITIONER. *Deborah Bell reported that Item #5, Petition No. A-872-24-A-B-C-D, on the agenda, had been withdrawn pursuant to the petitioner's request. Staff received an email withdrawing the petition on September 23, 2024. The petition was withdrawn from the agenda pursuant to the Petitioner's request, in an email dated September 23, 2024, from agent Rod Wright. John Tate made a motion to ALLOW THE WITHDRAWAL of Petition A-872-24-A-B-C-D, Anita Davis seconded the motion. The motion carried 4-0.*

*Anita Davis made a motion to adjourn. Marsha Hopkins seconded the motion.
The motion passed 4-0.*

The meeting adjourned at 7:04 p.m.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

BILL BECKWITH, CHAIRMAN

**DEBORAH BELL
DIRECTOR, PLANNING & ZONING**

PETITION NO: A-874-24

Requested Action: To approve an illegal lot to be deemed a legal, nonconforming lot, per Sec. 110-242(h).

Location: 105 Antioch Rd, Fayetteville, GA 30215

Parcel(s): 0418 092

District/Land Lot(s): 4th District, Land Lot(s) 118

Zoning: A-R, Agricultural-Residential

Lot Size: 1.0 Acres

Owner(s): Jean Samples

Agent: Owen Miller

Zoning Board of Appeal Public Hearing: December 16, 2024

REQUEST

Applicant is requesting the following:

1. Per Sec. 110-242(h), requesting an illegal lot to be deemed a nonconforming lot.

STAFF ASSESSMENT

This parcel **DOES NOT** meet all the criteria outlined in Sec. 110-242(h). Please refer to criteria and justification on Page 3 for full details. It does meet criteria #1 and #3 but does not meet #2.

- (1) The subject property was made illegal by actions of a previous owner via a deed recorded 20 JAN 1995, which is more than 10 years ago.*
- (2) The petitioner is an immediate family member of the person or persons who caused the subject property to be an illegal lot.***
- (3) As defined in Sec. 110-242(h)(3), there is no property available to add to this lot to transform it into a legal lot. The reduction in area of any of the adjacent lots would cause those lots to be illegal in size, road frontage, or lot area.*

HISTORY

The property is an illegal lot because it is zoned A-R but has less than 5 acres and was created after 13 NOV 1980. There is an existing nonconforming house on the property. The property was conveyed by deed on 20 JAN 1995.

The property is improved with a house and accessory structures. Because it was built c. 1900, the existing house does not meet current building setback requirements. This structure **DOES MEET** the criteria to be considered legal nonconforming:

Sec. 110-170. – Nonconformances.

(l) *Nonconforming structures; nonconforming structures.* Any legally existing structure, which fails to comply with the provisions herein, as of November 13, 1980, or as the result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning prior to May 24, 2012, or a variance, shall be considered a legal nonconforming structure and shall be allowed to remain. The enlargement, expansion, or extension of a legal nonconforming structure which serves to increase the nonconformance, either vertical and/or horizontal, shall only be made with the authorization of the zoning board of appeals. Where the zoning board of appeals is required to determine whether a nonconforming structure may be enlarged, expanded, or extended, the provisions of a request for a variance (article IX of this chapter) shall be considered.

DEPARTMENTAL COMMENTS

- ☐ **Water System** – No comments.
- ☐ **Public Works** – No comments
- ☐ **Environmental Management** – No comments.
- ☐ **Environmental Health Department** – No comments.
- ☐ **Department of Building Safety** – No comments.
- ☐ **Fire** – No comments.

ZONING REQUIREMENTS

Article VII.-Zoning Board of Appeals

Sec. 110-242. - Powers and duties.

(h) *Request for an illegal lot to be deemed a nonconforming lot.* The zoning board of appeals may deem, upon appeal in specific cases, an illegal lot which is smaller than the minimum lot size for its zoning district, more narrow than the minimum lot width for its zoning district, or has less road frontage than is required for its zoning to be a nonconforming lot. The zoning board of appeals shall employ the following factors for an illegal lot seeking to be deemed a nonconforming lot:

(1) The transaction giving the appellant/petitioner ownership in the subject property was more than five years from the date of the appeal/petition or if the period of ownership is less than five years the subject property was made illegal more than ten years from the date of the appeal/petition;

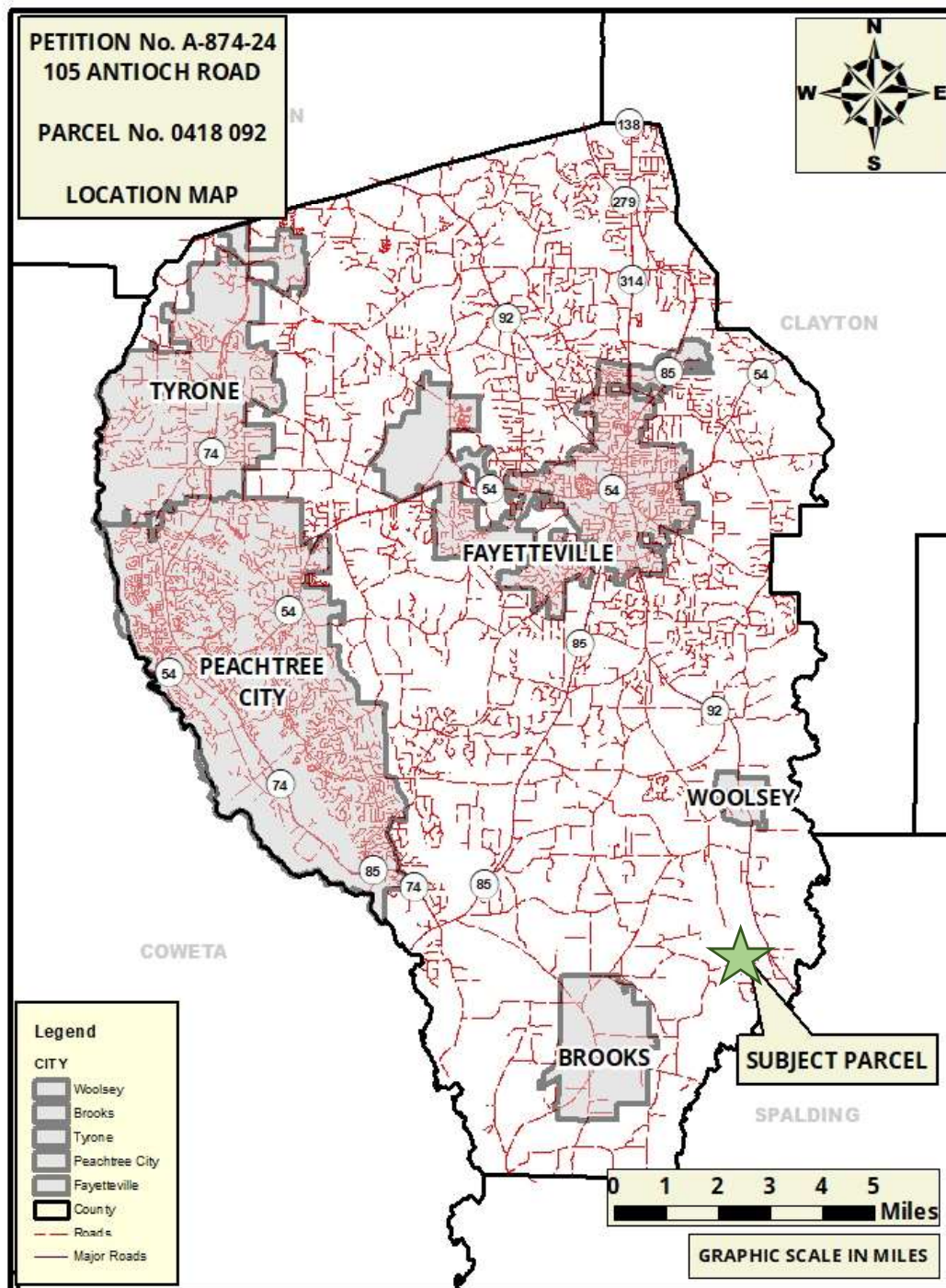
The subject property was made illegal by actions of a previous owner's estate via a deed recorded 20 JAN 1995, which is more than 10 years ago.

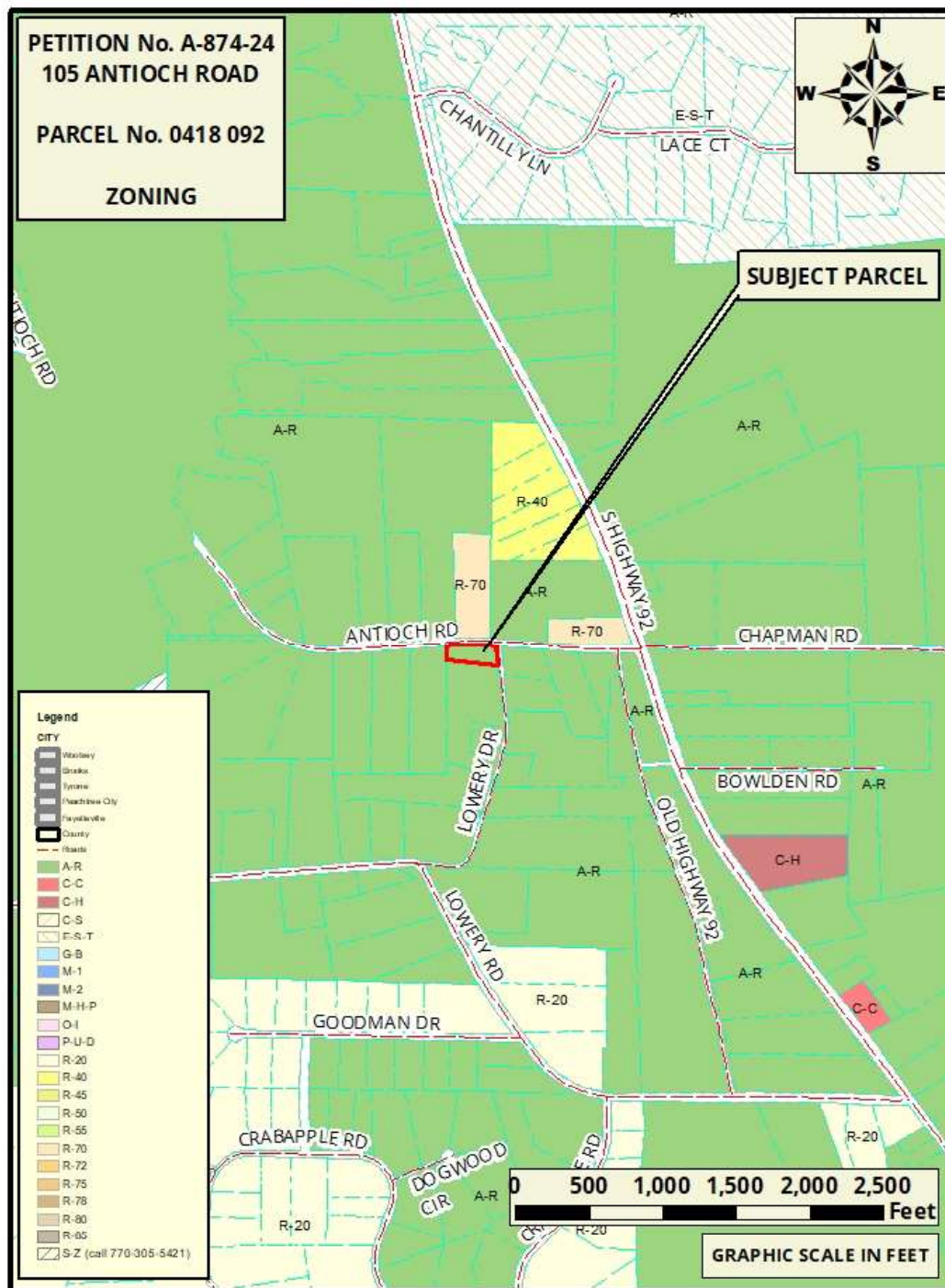
(2) The appellant/petitioner is not the person, or an immediate family member of the person, who caused the subject property to be an illegal lot. For purposes of these procedures, "immediate family" is defined as the spouse, child, sibling, parent, step-child, step-sibling, step-parent, grandparent, grandchild, aunt, uncle, niece or nephew of the person who caused the subject property to be an illegal lot; and

The petitioner is an immediate family member of the person or persons who caused the subject property to be an illegal lot.

(3) No adjacent property is available to add to the subject property to allow the subject property to meet the minimum requirements for its zoning district. In determining whether adjacent property is available, if adding any adjacent property to the subject property would no longer allow the adjacent property to meet the minimum requirements of the adjacent property's zoning district, then the adjacent property is not available. Additionally, any adjacent property which is part of an illegal lot shall not be deemed available for purposes of these variance procedures, unless the adjacent illegal lot is unimproved and the entirety of the adjacent illegal lot is combined with the subject property. If adjacent property is available, the cost of acquiring the adjacent property shall not be a factor in determining the availability of the adjacent property.

As defined above, there is no property available to add to this lot to transform it into a legal lot. The reduction in area of any of the adjacent lots would cause those lots to be illegal in size, road frontage, or lot area.







FAYETTE COUNTY, GEORGIA
VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY INFORMATION:

Parcel No. 0418 092 Acreage: 1 Land Lot: 118 Land District: 4
 Address: 105 Antioch RD Fayetteville Ga 30215
 Existing Zoning: AR Requested Zoning: AR
 Zoning of Surrounding Properties: AR + R40
 Existing Use: Home Stead
 Proposed Use: Home Stead

PROPERTY OWNER INFORMATION

Name Jean Samples
 Email _____
 Address _____
 City _____
 State Ga Zip _____
 Phone _____

AGENT/DEVELOPER INFORMATION (If not owner)

Name Owen Miller
 Email _____
 Address _____
 City _____
 State Ga Zip _____
 Phone _____

(THIS AREA TO BE COMPLETED BY STAFF):

PETITION NUMBER: _____

☐ Application Insufficient due to lack of: _____

by Staff: _____ Date: _____

☐ Application and all required supporting documentation is Sufficient and Complete

by Staff: _____ Date: _____

DATE OF ZONING BOARD OF APPEALS HEARING: NOV. 25, 2024 DEC. 16, 2024

Received payment from _____ a check in the amount of \$ _____

for application filing fee, and \$ _____ for deposit on frame for public hearing sign(s).

Date Paid _____

Receipt Number: _____

PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM

(Applications require authorization by ALL property owners of subject property)

Name(s) of All Property Owners of Record found on the latest recorded deed for the subject property:

Jean S. Samples

Please Print Owners' Names

Property Tax Identification Number(s) of Subject Property: 0418 092

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) 118 of the 4th District, and (if applicable to more than one land district) Land Lot(s) _____ of the District, and said property consists of a total of one acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to Owen S. Miller to act as (my) (our) Agent in this request. As Agent, they have the authority to agree to any and all conditions of approval which may be imposed by the Board.

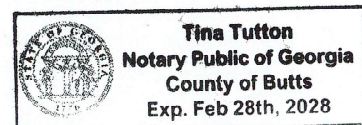
(I) (We) certify that all of the information filed with this application including written statements or showings made in any paper or plans submitted herewith are true and correct to the best of (my) (our) knowledge and belief. Further, (I) (We) understand that this application, attachments and fees become part of the official records of the Fayette County Zoning Department and may not be refundable. (I) (We) understand that any knowingly false information given herein by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. (I) (We) further acknowledge that additional information may be required by Fayette County in order to process this application.

SIGNATURES

Signature Jean Samples
Name: Jean Samples
Address: [REDACTED]
City/State/Zip: Fayetteville GA.
Date: 9/13/24

Owner/
Agent
One:

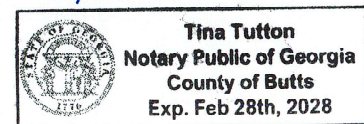
Notary: [Signature] (seal)
Commission Exp.: 02/28/2028



Signature Owen Miller
Name: Owen Miller
Address: [REDACTED]
City/State/Zip: [REDACTED]
Date: 9-13-2024

Owner/
Agent
Two:

Notary: [Signature] (seal)
Commission Exp.: 02/28/2028



Signature _____
Name: _____
Address: _____
City/State/Zip: _____
Date: _____

Owner/
Agent
Three:

Notary: _____ (seal)
Commission Exp.: _____

JUSTIFICATION OF REQUEST

The Fayette County Zoning Ordinance, Section 110-242 (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation as necessary.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

see next page

2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship.

3. Such conditions are peculiar to the particular piece of property involved.

4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein.

5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same zoning district are allowed.

Answers to the questions on the Justification of request form

1. The Samples property (apn-0418 092) is a one-acre parcel of land that is currently zoned AR calling for a five-acre minimum. The property as it sits currently was first referenced in a deed from 1995 within the legal description putting it past the 1980 cutoff date for the property to be a legal non-conforming lot. However the prior legal description based on a 1969 survey references the property being a one acre parcel with slightly different boundaries. There is no way for the property to become a 5-acre parcel by purchasing adjoining property as the two lots that abut the Samples property are both 5 acre lots.
2. The application of these regulations would create and have created significant hardship for the current owner Ms. Jean Samples. Ms. Samples is struggling financially and with her health she does not currently have the funds to care for the property and complete necessary repairs. She has tried to sell the property and this issue has prevented her from selling the property. The equity Ms. Samples has in the property is the **only** money she has to her name.
3. As stated in the answer from question one the property is an acre and has always been an acre the only thing that has changed slightly is the boundaries of the lot.
4. There are multiple properties within a half mile of the subject property in the same zoning district that are under the 5 acre minimum. Just a few examples APN- 0418 032 , 0418 039, 0418 046, 0429 031, 0429 035

5. As stated in question four there are many parcels within a half mile of the Samples property that are in the same zoning district and under and acre.

Return
 Rosenzweig & MacNabb, P.C.
 P. O. Box 220
 Newnan, GA 30264

WARRANTY DEED

GEORGIA, FAYETTE COUNTY

FOR AND IN CONSIDERATION OF OTHER GOOD AND VALUABLE CONSIDERATION AND THE SUM OF TEN (\$10.00) DOLLARS, in hand paid, the receipt of which is hereby acknowledged, ROY M. SAMPLES, GUY SAMPLES, JR. by and through his Attorney-in-Fact, DORA SAMPLES HOOVER, J. D. SAMPLES, SR. AND DORA SAMPLES HOOVER, of the county of Fayette, State of Georgia, do hereby give, grant, sell, alien and convey unto JUDY SAMPLES of the county of Fayette, State of Georgia, her heirs and assigns, the following property, to-wit:

All that tract or parcel of land situate, lying and being in Land Lot 118 of the Fourth Land District, Fayette County, Georgia, containing 1 acre and being more particularly described as follows:

Begin at a point marking the point of intersection of the South right of way of Antioch Road with the West side of Lowery Drive and from said point run thence along the West side of Lowery Drive, South 21°38'40" East 34.07 feet to a point; thence continue along the West side of Lowery Drive South 06°44'34" East 98.83 feet to a point; thence continue along the West side of Lowery Drive South 05°51'29" East 15 feet to a point located on the West side of Lowery Drive; thence run North 84°55'19" West 350.41 feet to a point located on the East property line of Larry Prince; thence run along said property line North 01°01'02" West 103.39 feet to a point located on the South right of way of Antioch Road; thence run along said right of way; North 85°10'09" East 109.74 feet to a point located on said right of way; thence continue along said right of way a chord distance North 89°42'22" East 215.82 feet to the point of beginning. (the last described distance having an arc distance of 215.93 feet)

Said property is bound now or formerly as follows: on the North by the South right of way of Antioch Road; on the East by the West side of Lowery Drive; on the South by property of Guy Samples Estate and on the West by property of Larry Prince.

together with all privileges and appurtenances thereto in anywise belonging in fee simple.

And the said vendor will, and their heirs, executors, administrators and assigns shall, the said property to the said vendee, her heirs, executors, administrators, and assigns, forever warrant and defend against the lawful demands of all persons whatever.

IN WITNESS WHEREOF, The said ROY M. SAMPLES, GUY SAMPLES, JR. by and through his Attorney-in-Fact, DORA SAMPLES HOOVER, J. D. SAMPLES, SR. AND DORA SAMPLES HOOVER, has hereunto set their hands, affixed their seals, and delivered these presents this 18th day of January, 1995.

Signed, sealed and delivered in our presence this 18th day of January, 1995.

Witness

Notary Public, State of GA
 My commission expires: 11/4/95

FAYETTE COUNTY, GEORGIA
 REAL ESTATE TRANSFER TAX
 PAID 8.00
 DATE 1-20-95
W.A. Ballard
 CLERK OF SUPERIOR COURT

Roy M. Samples (SEAL)
 ROY M. SAMPLES

FILED & RECORDED
 FAYETTE COUNTY, GA.

'95 JAN 20 AM 10 33

W.A. BALLARD, CLERK

BOOK 963 PAGE 679
 Book: 963 Page: 679 Seq: 1

Signed, sealed and delivered in
our presence this 18th day of
January, 1995.

[Signature]
Witness

Notary Public, State of GA
My commission expires: 1/4/95

Signed, sealed and delivered in
our presence this 18th day of
January, 1995.

[Signature]
Witness

Notary Public, State of GA
My commission expires: 11/4/95

Signed, sealed and delivered in
our presence this 18th day of
January, 1995.

[Signature]
Witness

Notary Public, State of GA
My commission expires: 1/4/95

BOOK 963 PAGE 680
[Signature] (SEAL)
GUY SAMPLES, JR. by and through his
Attorney-in-Fact, DORA SAMPLES
HOOVER

[Signature] (SEAL)
J. D. SAMPLES, SR.

[Signature] (SEAL)
DORA SAMPLES HOOVER

Wednesday, November 13, 2024

Fayetteville, GA. 30214
(770) 716-4223

**PETITIONS FOR VARIANCE(S)/
ADMINISTRATIVE APPEAL(S)/
ON CERTAIN PROPERTIES IN
UNINCORPORATED AREA OF
FAYETTE COUNTY, GEORGIA**

PUBLIC HEARING to be held by
the Zoning Board of Appeals of
Fayette County on Monday, De-
cember 16, 2024, at 7:00 P.M., Fay-
ette County Administrative Com-
plex, Public Meeting Room, 140
Stonewall Avenue West, first floor.

Petition No.: A-874-24

Owner(s): Jean Samples

Agent(s): Owen S. Miller

Property Address: 105 Antioch
Road

Parcel: 0418 092

Zoning District: A-R

Area of Property: 1.0 acres

Land Lot(s): 118

District: 4th

Road Frontage: Antioch Road and
Lowery Drive

Request: Applicant is requesting
the following: Per Sec. 110-242(h),
requesting an illegal lot to be
deemed a nonconforming lot.

Legal Description

All that tract or parcel of land situ-
ate, lying and being in Land Lot 118
of the Fourth Land District, Fay-
ette County, Georgia, containing 1
acre and being more particularly
described as follows: Begin at a
point marking the point of inter-
section of the South right of way of
Antioch Road with the West side of
Lowery Drive and from said point
run thence along the West side of
Lowery Drive, South 21038'40"
East 34.07 feet to a point; thence
continue along the West side of
Lowery Drive South 06044'34"
East 98.83 feet to a point; thence
continue along the West side of
Lowery Drive South 05051'29"
East 15 feet to a point located on
the West side of Lowery Drive;
thence run North 84055'19" West
350.41 feet to a point located on the
East property line of Larry Prince;
thence run along said property
line North 01001'02" West 103.39
feet to a point located on the South
right of way of Antioch Road;
thence run along said right of way;
North 85010'09" East 109.74 feet
to a point located on said right of
way; thence continue along said
right of way a chord distance North
89042'22" East 215.82 feet to the
point of beginning. (the last de-
scribed distance having an arc dis-
tance of 215.93 feet).

Said property is bound now or for-
merly as follows: on the North by
the South right of way of Antioch
Road; on the East by the West side
of Lowery Drive; on the South by
property of Guy Samples Estate
and on the West by property of
Larry Prince.

PETITION NO: A-875-24

Requested Action: To reduce the front building setback from 100 feet to 83 feet to allow an existing home to remain, and to be able to construct additions to the front of the structure.

Location: 226 Chappell Road, Fayetteville, Georgia 30215

Parcel(s): 0434 117

District/Land Lot(s): 4th District, Land Lot(s) 167

Zoning: A-R, Agricultural Residential

Lot Size: 1 Acre

Owner(s): Gayle M. Harp Trust

Agent: Gayle Harp

Zoning Board of Appeal Public Hearing: December 16, 2024

REQUEST

Per Sec. 110-125(d)(4)a.2., the front yard setback on Chappell Road shall be 100 feet. Applicant is requesting a variance to reduce the front yard setback from 100' to 83' to allow an existing home to remain, and to be able to construct additions to the front of the structure.

STAFF ASSESSMENT

The house was built in 1948, prior to paving of Chappell Road. There was no violation at the time of construction, so the structure is legal nonconforming. The variance is minor and unlikely to have a negative effect on any neighboring properties.

Staff Note: Although the house is shown on a 1-acre parcel on the Tax Map, the 1-acre parcel was not created by deed or plat. The designation of the 1-acre area was simply drawn in by the Tax Assessor's Office when the property was placed under a Conservation Use Agreement. We have spoken with the Tax Assessor's Office, and the erroneous parcel lines will be removed. The house sits on a 19-acre parcel.

HISTORY

The house was constructed in 1948, so it is a legal, nonconforming structure. The family would like to improve the house and make some additions that are in line with the current structure, so this would constitute an encroachment. A variance is necessary to allow them to move forward. At the time of construction, Chappell Road was unpaved and had a prescriptive right-of-way, so the location of the house was not a violation.

ZONING REQUIREMENTS

Sec. 110-125. – A-R, Agricultural-Residential District.

(d) Dimensional requirements. The minimum dimensional requirements in the A-R zoning district shall be as follows:

- (1) Lot area: 217,800 square feet (five acres).
- (2) Lot width: 250 feet.
- (3) Floor area: 1,200 square feet.
- (4) Front yard setback:
 - a. Major thoroughfare:
 1. Arterial: 100 feet.
 2. Collector: 100 feet.
 - b. Minor thoroughfare: 75 feet.
- (5) Rear yard setback: 75 feet.
- (6) Side yard setback: 50 feet.

DEPARTMENTAL COMMENTS

- ☐ **Water System** – No objections.
- ☐ **Public Works** – No objections.
- ☐ **Environmental Management** – No objections.
- ☐ **Environmental Health Department** – No objections.
- ☐ **Department of Building Safety** – No objections.
- ☐ **Fire** – No objections.

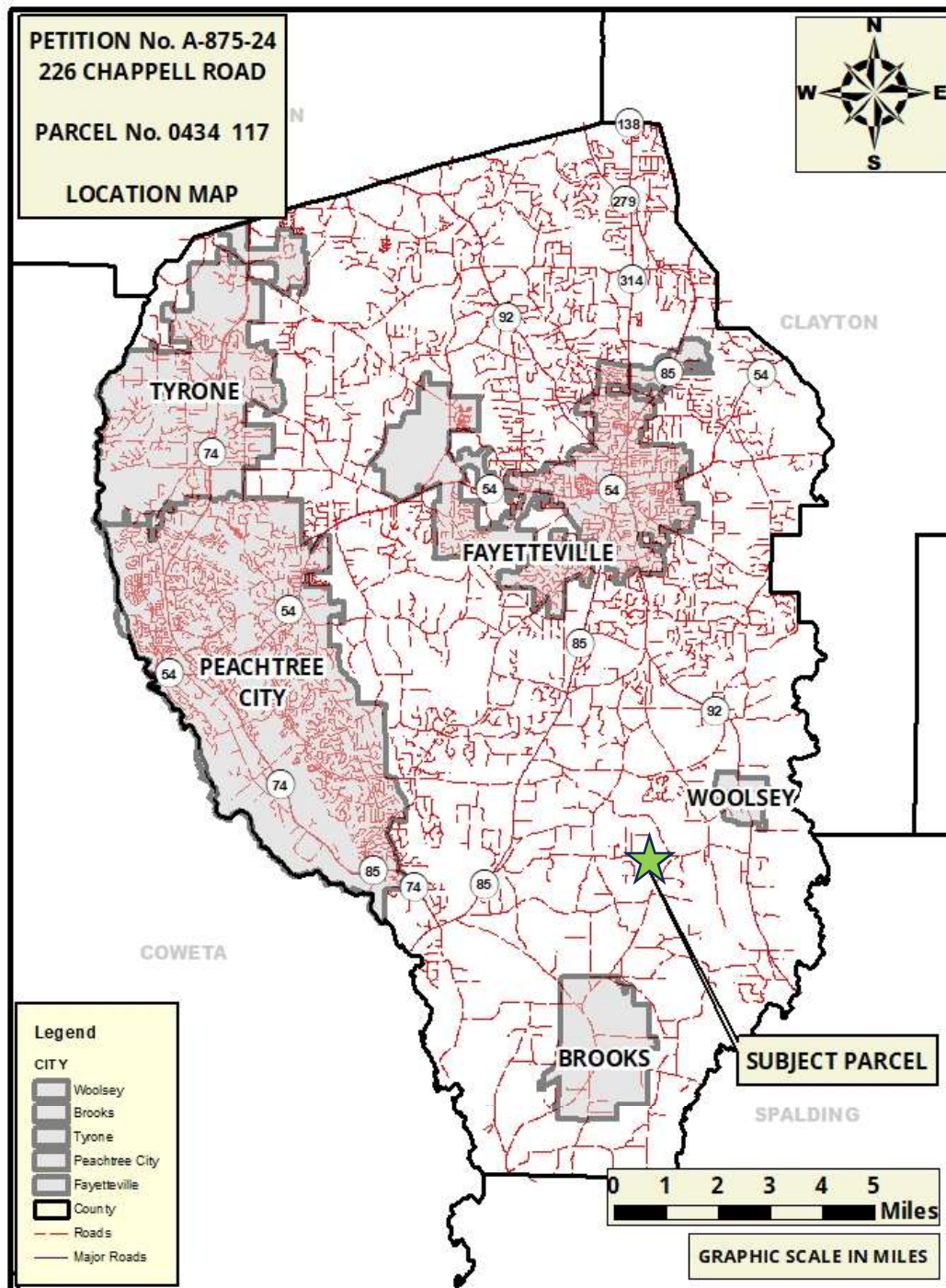
VARIANCE SUMMARY & CRITERIA FOR CONSIDERATION

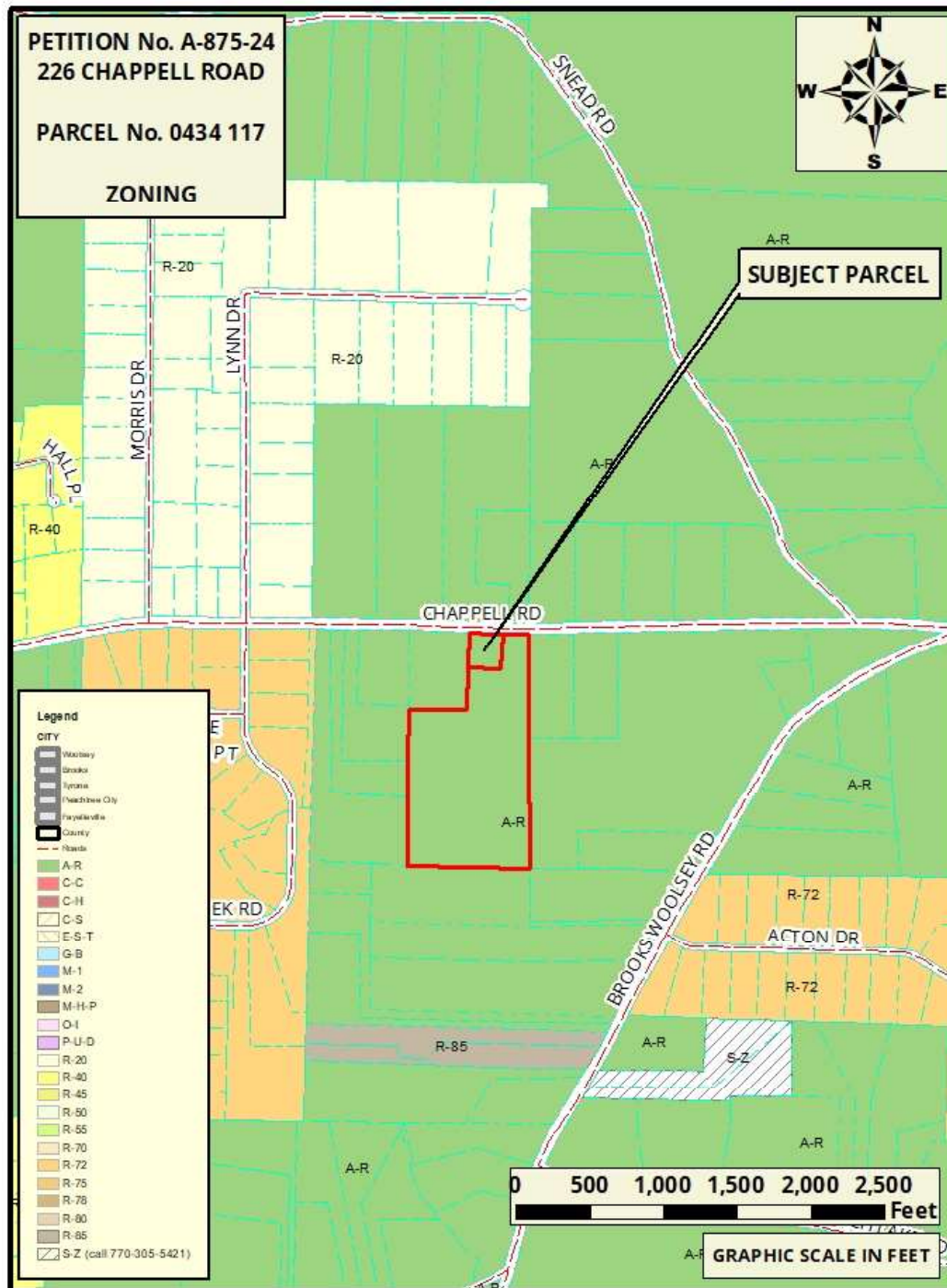
Staff Assessment

Please refer to the application form for the applicant's justification of criteria.

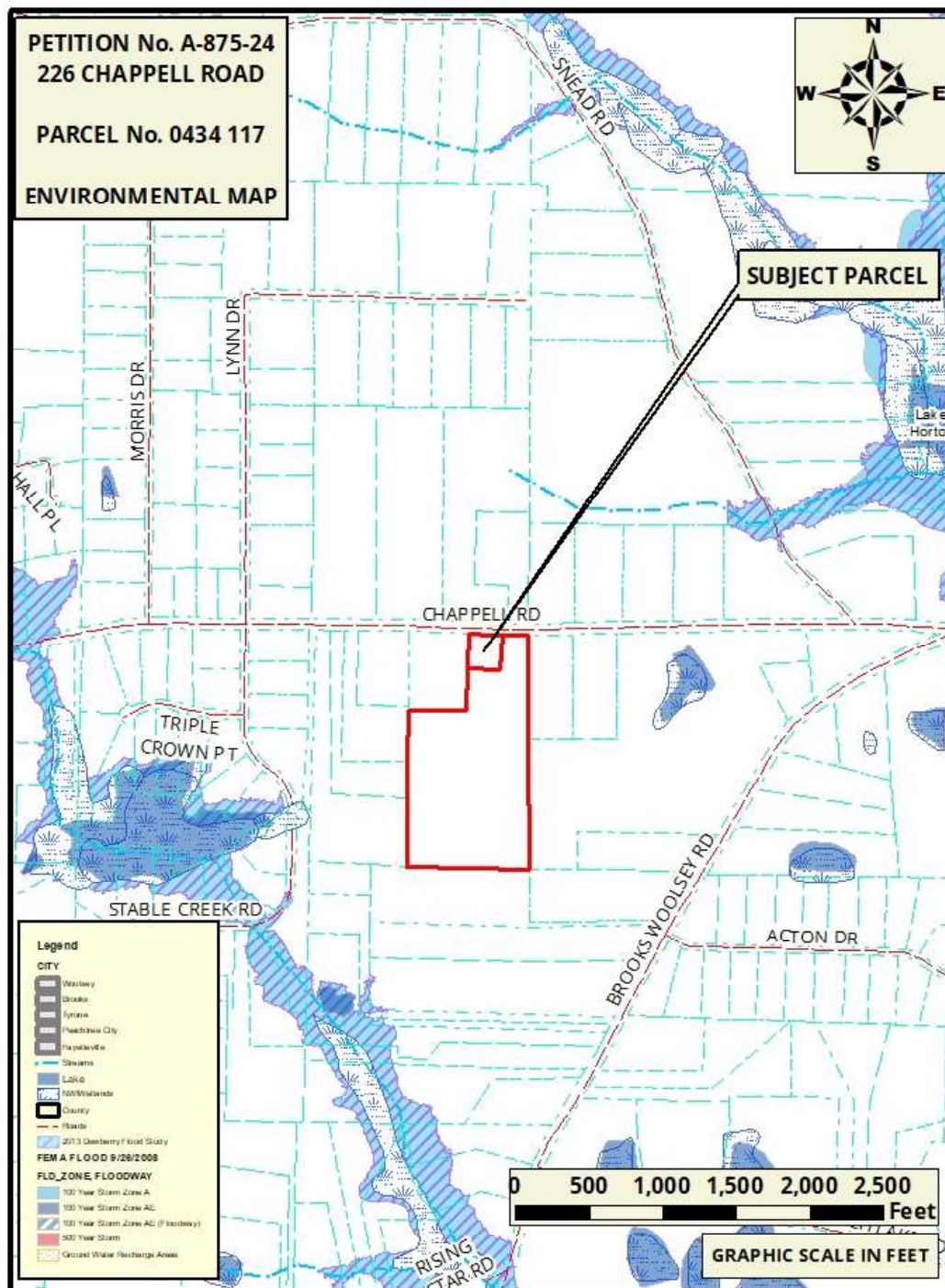
The Fayette County Zoning Ordinance, Sec. 110-242. (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist.

- 1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.**
The unique circumstances related to this request are the age of the house and the fact that it was constructed before the current right-of-way standards for county roads and before a zoning ordinance was established.
- 2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,**
The parcel is subject to the same requirements as all other properties in the County.
- 3. Such conditions are peculiar to the particular piece of property involved; and,**
The situation is specific to this property.
- 4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and**
The encroachment is not likely to have a detrimental impact on any other properties.
- 5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed; and,**
The applicant is still able to develop the parcel under the applicable zoning ordinances but could not add on to the house.











POOL & CARPORT VISIBLE IN AERIAL HAVE BEEN REMOVED

FAYETTE COUNTY, GEORGIA
VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY INFORMATION:Parcel No. 0434 117 Acreage: 1.0 Land Lot: 4 Land District: 167Address: 226 Chappell RoadExisting Zoning: A-R Agriculture Residential Requested Zoning: A-R Agriculture ResidentialZoning of Surrounding Properties: A-R Agriculture ResidentialExisting Use: Single Family ResidentialProposed Use: Single Family Residential**PROPERTY OWNER INFORMATION**Name Gayle M Harp TrustEmail [REDACTED]Address [REDACTED]City FayettevilleState GA Zip 30215Phone [REDACTED]**AGENT/DEVELOPER INFORMATION (If not owner)**

Name _____

Email _____

Address _____

City _____

State _____ Zip _____

Phone _____

(THIS AREA TO BE COMPLETED BY STAFF):PETITION NUMBER: A-875-24☐ Application Insufficient due to lack of: _____

by Staff: _____ Date: _____

☐ Application and all required supporting documentation is Sufficient and Complete

by Staff: _____ Date: _____

DATE OF ZONING BOARD OF APPEALS HEARING: December 16, 2024Received payment from Gayle Harp a check in the amount of \$ 175.00for application filing fee, and \$20.00 for deposit on frame for public hearing sign(s).Date Paid 10/16/2024Receipt Number: 22205

PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM

(Applications require authorization by ALL property owners of subject property)

Name(s) of All Property Owners of Record found on the latest recorded deed for the subject property:

Gayle M Harp Trust, Gayle M Harp Trustee

Please Print Owners' Names

Property Tax Identification Number(s) of Subject Property: 0434 117

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) 167 of the 4th District, and (if applicable to more than one land district) Land Lot(s) _____ of the _____ District, and said property consists of a total of _____ acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to _____ to act as (my) (our) Agent in this request. As Agent, they have the authority to agree to any and all conditions of approval which may be imposed by the Board.

(I) (We) certify that all of the information filed with this application including written statements or showings made in any paper or plans submitted herewith are true and correct to the best of (my) (our) knowledge and belief. Further, (I) (We) understand that this application, attachments and fees become part of the official records of the Fayette County Zoning Department and may not be refundable. (I) (We) understand that any knowingly false information given herein by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. (I) (We) further acknowledge that additional information may be required by Fayette County in order to process this application.

SIGNATURES

Signature Gayle M. Harp

Name: Gayle M. Harp

Address: [REDACTED]

City/State/Zip: Fayetteville, GA 30215

Date: 10/16/2024

Owner/
Agent
One:

Notary:

Deborah M Sims

(seal)

Commission Exp.: 1/5/27

Deborah M Sims

NOTARY PUBLIC

Coweta County, GEORGIA

My Commission Expires 01/05/2027

Signature _____

Name: _____

Address: _____

City/State/Zip: _____

Date: _____

Owner/
Agent
Two:

Notary:

(seal)

Commission Exp.: _____

Signature _____

Name: _____

Address: _____

City/State/Zip: _____

Date: _____

Owner/
Agent
Three:

Notary:

(seal)

Commission Exp.: _____

VARIANCE INFORMATION

Complete the chart below with the information pertaining to each request. If additional space is needed, please provide the information on a separate sheet of paper.

Ordinance/Section	Sec. 110-125(d)(4)(a)(2)
Requirement	Front Yard Setback on a Major Thoroughfare (Collector): 100'
Proposed Change	Reduce front yard setback to 83'.
Variance Amount	17'

Ordinance/Section	
Requirement	
Proposed Change	
Variance Amount	

Ordinance/Section	
Requirement	
Proposed Change	
Variance Amount	

VARIANCE SUMMARY

Provide a detailed and specific summary of each request. If additional space is needed, please attach a separate sheet of paper.

The house constructed in 1948 was placed on a one (1) acre parcel by the Tax Assessors. The property lines between 226 and 238 Chappell Road are being redrawn to create a five (5) acre lot and a 24.5 acre lot. Just need variance to be able to allow house constructed in 1948 to remain less than 100' from the r/w of Chappell Rd.

JUSTIFICATION OF REQUEST

The Fayette County Zoning Ordinance, Section 110-242 (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation as necessary.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

The Tax Assessors made this a one (1) acre lot. It will become a 24.5 acre lot when the property lines are redrawn between 226 and 238 Chappell Rd.

2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship.

The house was constructed in 1948 and predates Fayette County Zoning.

3. Such conditions are peculiar to the particular piece of property involved.

The property owner is clearing up the other issues created by this being one acre. The house was possibly constructed prior to any right-of-way along Chappell Rd.

4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein.

This land is all owned by the Harp family. No new structures are proposed that would not meet Zoning Regulations.

5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same zoning district are allowed.

A literal interpretation would require the house to be moved or removed.

CHECKLIST OF ITEMS REQUIRED TO BE SUBMITTED FOR ZBA REQUESTS

(All applications/documentation must be complete at the time of submittal, or the application will not be accepted)

- ☐ Application form and all required attachments, completed, signed, and notarized (if applicable).
- ☐ Copy of latest recorded deed, including legal description of the boundaries of the subject property, including total acreage.
- ☐ One copy of the survey plat of the property, drawn to scale with accurate dimensions, with the following indicated:
 - a. _____ Location and size of existing structures (principal and accessory) and improvements on the parcel, including type (residential or non-residential), floor area, and accessory uses. Structures proposed to be removed must be indicated and labeled as such.
 - b. _____ Minimum setbacks and buffers from all property lines of subject property required in the zoning district.
 - c. _____ Location of exits/entrances to the subject property.
 - d. _____ Location of all existing and proposed easements and streets on or adjacent to the subject property, indicating width of existing and proposed easements, width of right-of-way, and centerline of streets.
 - e. _____ Location of all utilities, including well or water lines.
 - f. _____ Location of septic tank, drainfield, and drainfield replacement area.
 - g. _____ Location and elevation of the 100-year flood plain and watershed protection buffers and setbacks (if applicable).
 - h. _____ Location of on-site stormwater facilities to include detention or retention facilities (if applicable).
 - i. _____ Parking locations, number of parking spaces, and parking bay and aisle dimensions (if applicable).
 - j. _____ Location of landscaped areas, buffers, or tree save areas (if applicable).
- ☐ Application filing fee.

PLANNING AND ZONING STAFF INFORMATION BELOW

Staff Reviewed By	Requirements	Proposed
Name:	Lot Size:	
Lot:	Width:	
Zoning:	Front Setback:	
Flood: Yes/ No MFFE:	Side Setback:	
Stream Buffers:	Rear Setback:	
Number of Frontages	House Size:	



Doc ID: 011760280004 Type: WD
Recorded: 04/07/2023 at 10:00:00 AM
Fee Amt: \$25.00 Page 1 of 4
Transfer Tax: \$0.00
Fayette, Ga. Clerk Superior Court
Sheila Studdard Clerk of Court

BK **5603** PG **549-552**

DRAW DEED ONLY
STATE OF GEORGIA
FAYETTE COUNTY
Tax Parcel ID: 04-34-005 & 04-34-117

Return to: Bridgette M. Palmer
1044 Highway 54 W
Fayetteville, GA 30214

DEED TO TRUST

This indenture, made the **20th** day of **February, 2023**, between

DAVID HARP and GAYLE HARP

as party or parties of the First Part, hereinafter called Grantors, and

**GAYLE M. HARP as Trustee, or her successors in trust,
under the GAYLE M. HARP TRUST, dated September 20, 2017,
and any restatements or amendments thereto,**

as party or parties of the Second Part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH, that: Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency of same being hereby expressly acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, the following:


All that tract or parcel of land lying and being in **Land Lot 167** of the **4th Land District** of **Fayette** County, Georgia, and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference.

THIS DEED is executed subject to all easements and restrictions of record.

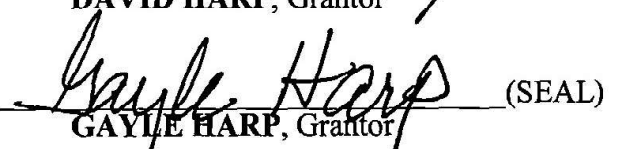
HARP Deed to Trust
FAYETTE - 226 Chappell Rd
Page Two

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE. And the said Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this Deed, the day and year above written.



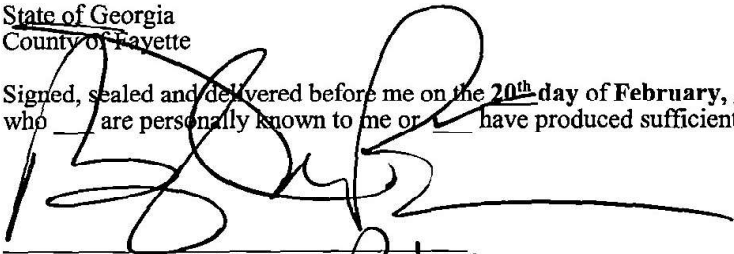
DAVID HARP, Grantor (SEAL)



GAYLE HARP, Grantor (SEAL)

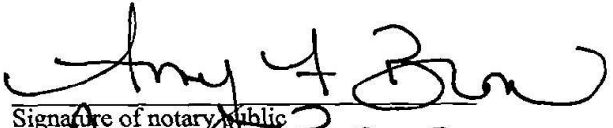
State of Georgia
County of Fayette

Signed, sealed and delivered before me on the 20th day of February, 2023 by DAVID HARP and GAYLE HARP who are personally known to me or have produced sufficient identification.



Signature of unofficial witness

Bridgette M. Palmer
Print name of unofficial witness



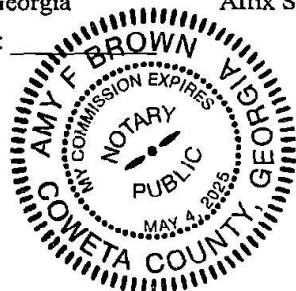
Signature of notary public

Amy F. Brown
Name of Notary, typed, stamped, or printed

Notary Public State of Georgia

Affix Stamp / Seal

My commission expires: _____



HARP Deed to Trust
FAYETTE - 226 Chappell Rd
Page Three

EXHIBIT "A"

All that certain tract or parcel of land situate in Land Lot Number 167 in said District, and containing Fifty Acres, more or less, and bounded as follows: On the north by lands of Grady Morris; on the east by lands of the Estate of Mrs. John E. McLean; on the south by lands of the W. H. Cox Estate, and on the west by lands of the R & B Club. This is the same lands described in two warranty deeds from Mrs. M. W. Cox to Winnie Cox (now Mrs. Winnie Cox Bates), appearing in Deed Book Z, at pages 342 and 343, among the records in the office of the Clerk of Superior Court, Fayette County, Georgia, and being further described in that certain warranty deed dated September 2, 1944, from Mrs. Winnie Cox Bates to Katherine Key Morris Chappell, recorded in Deed Book 29, pages 581-82.

LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACTS:

Tract 1: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 167 of the 4th Land District of Fayette County, Georgia, containing 25.03 acres, more or less, as shown by plat of Lee Engineering Co., entitled "Survey for John Bullard", dated October 18, 1985, and in accordance with said plat being more particularly described as follows:

BEGINNING at an iron pin located 813.58 feet westwardly, as measured along the southerly margin of the right-of-way 80 feet in width of an improved public road known as Chappell Road, from the east lien of Land Lot 167 aforesaid; running thence South 00 degrees 57 minutes 53 seconds East 1602.97 feet to an iron pin; thence North 89 degrees 36 minutes 54 seconds West 681 feet to an iron pin; thence North 00 degrees 58 minutes 01 seconds West 1596.74 feet to an iron pin on the southerly margin of the right-of-way of said Chappell Road 430.54 feet to an iron pin; thence South 89 degrees 08 minutes 33 seconds East, continuing along the southerly margin of said road, 250.46 feet back to the iron pin at the point of beginning; being the same property described in that certain Warranty Deed from Herman Chappell and Katherine Morris Chappell to John T. Bullard and Linda D. Bullard dated October 29, 1985, and being recorded in Deed Book 364, page 155, aforesaid records.

Tract 2: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 167, 4th District, Fayette County, Georgia, and being more particularly described as follows:

To find the true point of beginning, commence at the intersection of the southern right-of-way line of Chappell Road (an 80-foot right-of-way) and the land lot line common to Land Lots 168 and 167 and run in a westerly direction along the southern right-of-way line of Chappell Road a distance of 401.61 feet to an iron pin, said iron pin being the true point of beginning, from the true point of beginning as thus established and leaving the aforesaid right-of-way line, run South 02

HARP Deed to Trust
FAYETTE - 226 Chappell Rd
Page Four

EXHIBIT "A"
continued

degrees 21 minutes 51 seconds East a distance of 269.47 feet to an iron pin; thence North 89 degrees 12 minutes 21 seconds West a distance of 396.47 feet to an iron pin; thence North 00 degrees 57 seconds 33 minutes West a distance of 269.47 feet to a pipe found on the aforesaid southern right-of-way line of Chappell Road; thence along the aforesaid right-of-way line South 89 degrees 12 minutes 20 seconds East a distance of 412.10 feet to the true point of beginning, said tract consisting of 2.5 acres; all as shown on that certain plat of survey for Herman Chappell dated September 23, 1998, by Roland McCann, Georgia Registered Land Surveyor No. 1752.

Tract 3: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 167, 4th District, Fayette County, Georgia, and being more particularly described as follows:

To find the true point of beginning, commence at the intersection of the southern right-of-way line of Chappell Road (an 80-foot right-of-way) and the land lot line common to Land Lots 168 and 167 and run in a westerly direction along the southern right-of-way line of Chappell Road a distance of 401.61 feet to an iron pin; thence leaving the aforesaid right-of-way line, run South 02 degrees 21 minutes 51 seconds East a distance of 269.47 feet to an iron pin, said iron pin being the true point of beginning; from the true point of beginning as thus established, run South 02 degrees 21 minutes 51 seconds a distance of 274.80 feet to an iron pin; thence North 89 degrees 12 minutes 20 seconds West a distance of 397.37 feet to an iron pin; thence North 00 degrees 36 seconds 03 minutes West a distance of 144.22 feet to a pipe found; thence North 00 degrees 57 seconds 33 minutes West a distance of 130.58 feet to an iron pin; thence South 89 degrees 12 minutes 21 seconds East a distance of 396.47 feet to the true point of beginning, said tract consisting of 2.5 acres; all as shown on that certain plat of survey for Herman Chappell dated September 23, 1998, by Roland McCann, Georgia Registered Land Surveyor No. 1752.

**PETITIONS FOR VARIANCE(S)/
ADMINISTRATIVE APPEAL(S)/
ON CERTAIN PROPERTIES IN
UNINCORPORATED AREA OF
FAYETTE COUNTY, GEORGIA**

PUBLIC HEARING to be held by the Zoning Board of Appeals of Fayette County on Monday, December 16, 2024, at 7:00 P.M., Fayette County Administrative Complex, Public Meeting Room, 140 Stonewall Avenue West, first floor.

Petition No.: A-875-24

Owner(s): Gayle M. Harp Trust

Agent(s): N/A

Property Address: 226 Chappell Road

Parcel: 0434 117

Zoning District: A-R

Area of Property: 1.0 acres

Land Lot(s): 167

District: 4th

Road Frontage: Chappell Road

Request: Applicant is requesting a variance to reduce the front yard setback in the A-R zoning district from 100' to 83' per Sec. 110-125 (d)(4)a.2.

Legal Description

EXHIBIT "A"

All that certain tract or parcel of land situate in Land Lot Number 167 in said District, and containing Fifty Acres, more or less, and bounded as follows: On the north by lands of Grady Morris; on the east by lands of the Estate of Mr. John E. Mclean; on the south by lands of the W. H. Cox Estate, and on the west by lands of the R & B Club. This is the same lands described in two warranty deeds from Mrs. M. W. Cox to Winnie (now Mrs. Winnie Cox Bates), appearing in Deed Book Z, at pages 342 and 343, among the records in the office of the Clerk of Superior Court, Fayette County, Georgia, and being further described in that certain warranty deed dated September 2, 1944, from Mrs. Winnie Cox Bates to Katherine Key Morris Chappell, recorded in Deed Book 29, pages 581-82. **LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACTS:** Tract 1: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 167 of the 4th Land District County, Georgia, containing 25.03 acres, more or less, as shown by plat of Lee Engineering Co., entitled "Survey for John Bullard", dated October 18, 1985, and in accordance with said plat being more particularly described as follows:

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To find the true point of beginning, commence at the intersection of the southern right-of-way line of Chappell Road (an 80-foot right-of-way) and the Land Lot common to Land Lots 168 and 167 and run in westerly direction along the southern right-of-way line of Chappell Road a distance of 401.61 feet to an iron pin, said iron pin being the true point of beginning; from the true point of beginning as thus established and leaving the aforesaid right-of-way line, run South 02 degrees 21 minutes 51 seconds East a distance of 269.47 feet to an iron pin; thence North 89 degrees 12 minutes 21 seconds West a distance of 396.47 feet to an iron pin; thence North 00 degrees 57 seconds 33 minutes West a distance of 144.22 feet to a pipe found; thence North 00 degrees 57 seconds 33 minutes West a distance of 130.58 feet to an iron pin; thence South 89 degrees 12 minutes 21 seconds East a distance of 396.47 feet to the true point of beginning, said tract consisting of 2.5 acres; all as shown on the certain plat of survey for Herman Chappell dated September 23, 1998, by Roland McCann, Registered Land Surveyor No. 1752.

Tract 3: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 167, 4th District, Fayette County, Georgia, and more particularly described as follows:

To find the true point of beginning, commence at the intersection of the southern right-of-way line of Chappell Road (an 80-foot right-of-way) and the land lot line common to Land Lots 168 and 167 and run in a westerly direction along southern right-of-way line of Chappell Road a distance 401.61 feet to an iron pin; thence leaving the aforesaid right-of-way line, run South 02 degrees 21 minutes 51 seconds East a distance of 269.47 feet to an iron pin, said iron pin being the true point of beginning

from the true point of beginning as thus established, run South 02 degrees 21 minutes 51 seconds a distance of 274.80 feet to an iron pin; thence North 89 degrees 12 minutes 20 seconds West a distance of 397.37 feet to an iron pin; thence North 00 degrees 36 seconds 03 minutes West a distance of 144.22 feet to a pipe found; thence North 00 degrees 57 seconds 33 minutes West a distance of 130.58 feet to an iron pin; thence South 89 degrees 12 minutes 21 seconds East a distance of 396.47 feet to the true point of beginning, said tract consisting of 2.5 acres; all as shown on the certain plat of survey for Herman Chappell dated September 23, 1998, by Roland McCann, Registered Land Surveyor No. 1752.

11/13

PETITION NO: A-876-24

Requested Action: To reduce the side yard building setback from 15 feet to 12.3 feet to allow the reconstruction of a carport.

Location: 160 Fox Hunt Ct, Fayetteville, Georgia 30214

Parcel(s): 0538 03016

District/Land Lot(s): 5th District, Land Lot(s) 168

Zoning: R-40, Single-Family Residential

Lot Size: 1 Acre

Owner(s): Sheila Marie Wall

Agent: N/A

Zoning Board of Appeal Public Hearing: December 16, 2024

REQUEST

Applicant is requesting the following:

Per Sec. 110-137(d)(6), requesting to reduce the side yard setback in the R-40 zoning district from 15' to 12.3' to allow the reconstruction of an existing carport.

STAFF ASSESSMENT

The variance is minor and unlikely to have a negative effect on any neighboring properties.

HISTORY

The house was constructed in 1977, prior to a requirement for foundation surveys. Staff noted the encroachment when the contractor applied for a building permit to reconstruct a damaged carport.

ZONING REQUIREMENTS

Sec. 110-137. R-40, Single-Family Residential District.

(d) *Dimensional requirements.* The minimum dimensional requirements within the R-40 zoning district shall be as follows:

(6)Side yard setback: 15 feet.

DEPARTMENTAL COMMENTS

- ☐ **Water System** – No objections.
- ☐ **Public Works** – No objections.
- ☐ **Environmental Management** – No objections.
- ☐ **Environmental Health Department** – No objections.
- ☐ **Department of Building Safety** – No objections.
- ☐ **Fire** – No objections.

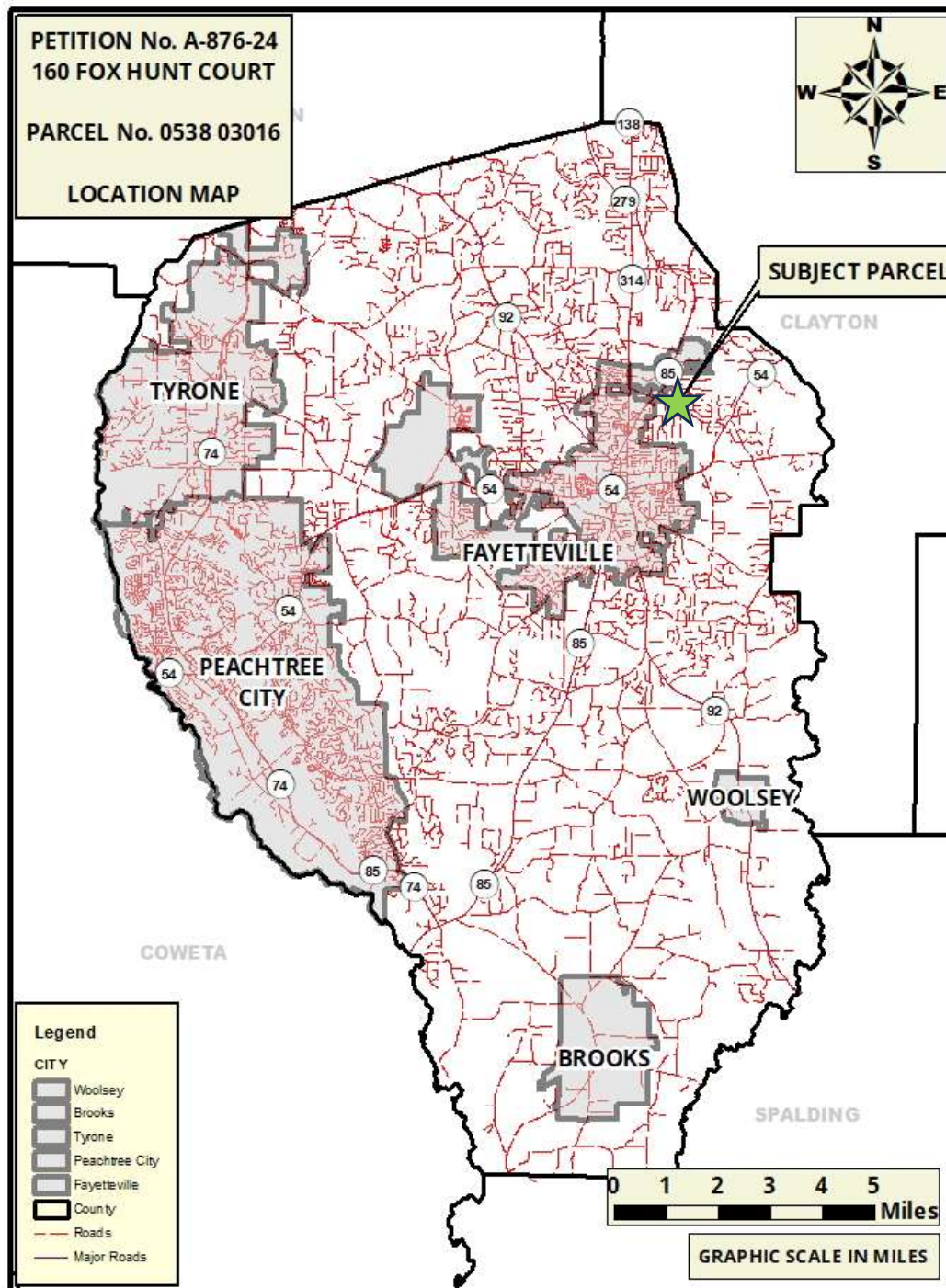
VARIANCE SUMMARY & CRITERIA FOR CONSIDERATION

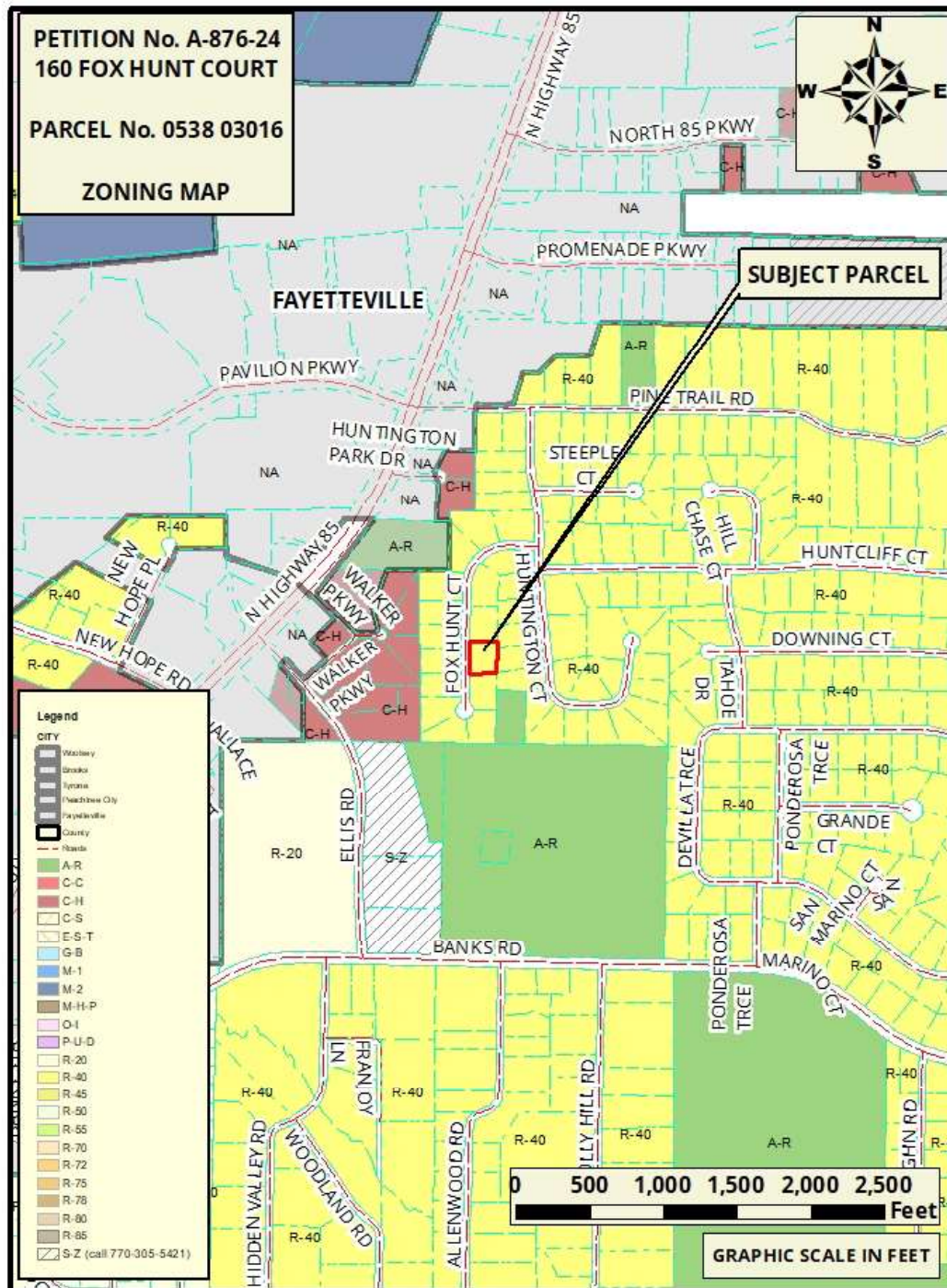
Staff Assessment

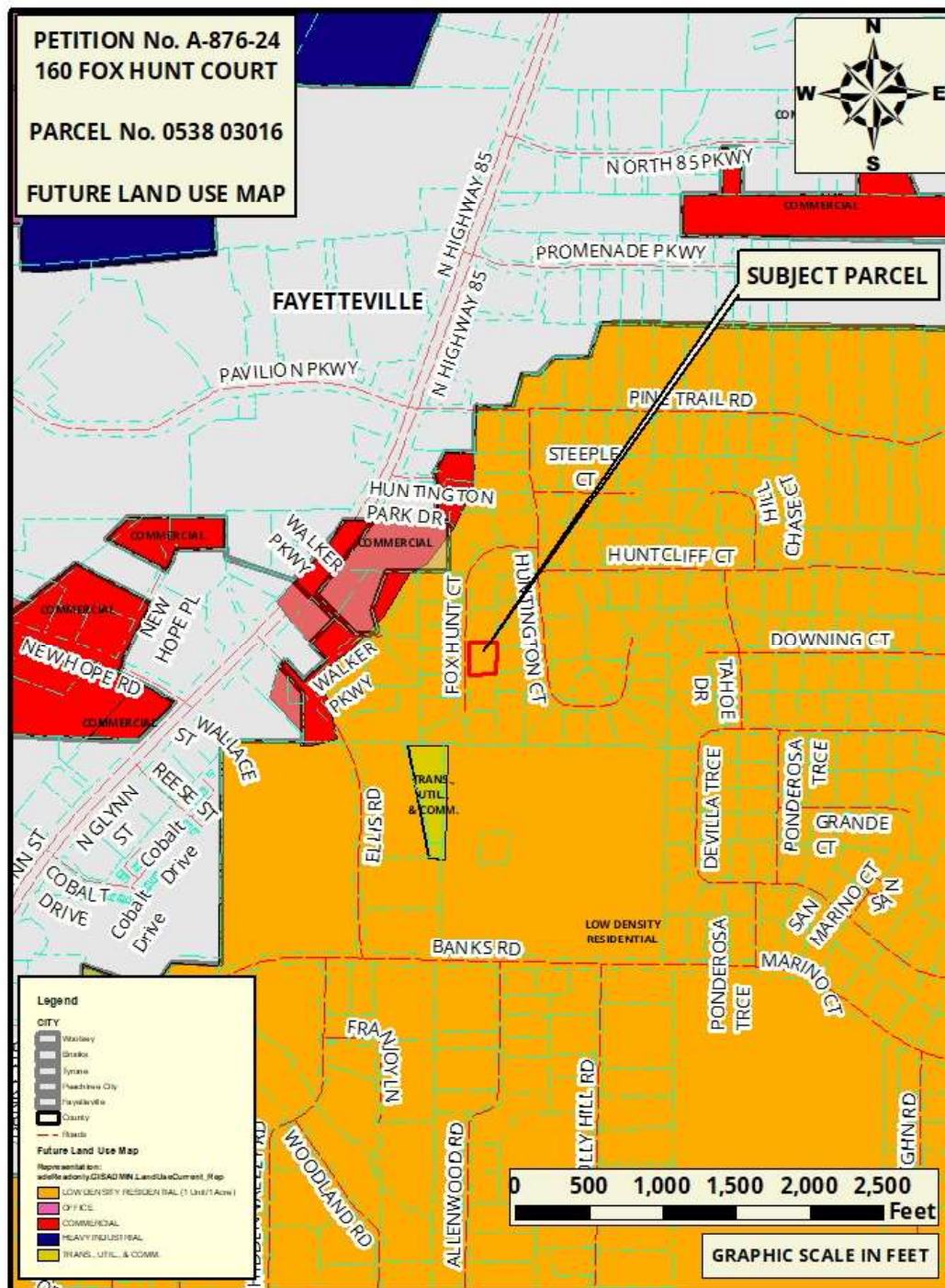
Please refer to the application form for the applicant's justification of criteria.

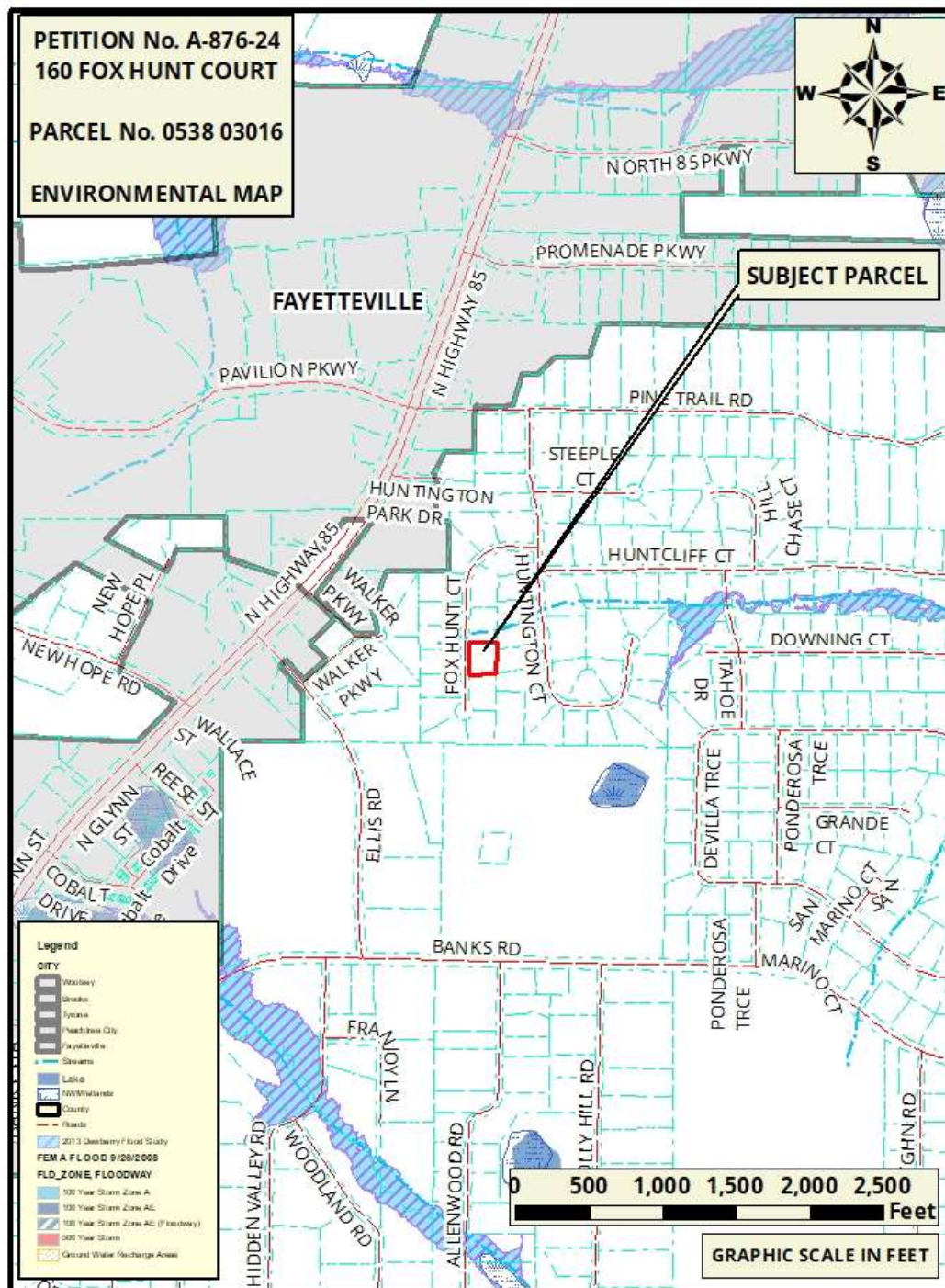
The Fayette County Zoning Ordinance, Sec. 110-242. (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist.

- 1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.**
The house was constructed in 1977; this is a minor encroachment that was not previously documented.
- 2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,**
The parcel is subject to the same requirements as all other properties in the County.
- 3. Such conditions are peculiar to the particular piece of property involved; and,**
The situation is specific to this property.
- 4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and**
The encroachment is not likely to have a detrimental impact on any other properties.
- 5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed; and,**
The applicant is still able to develop the parcel under the applicable zoning ordinances but could not subdivide the parcel.











Permit # A-876-24

FAYETTE COUNTY, GEORGIA
VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY INFORMATION:

Parcel No. 053803016 Acreage: ~ 1 ac * Land Lot: 119 168 Land District: County
Address: 160 Fox Hunt Court, Fayetteville, GA 30214
Existing Zoning: R-40 Requested Zoning: R-40
Zoning of Surrounding Properties: R-40
Existing Use: Residential Lots
Proposed Use: _____

PROPERTY OWNER INFORMATION

Name Sheila Marie Wall
Email [REDACTED]
Address 160 Fox Hunt Court
City Fayetteville
State GA Zip 30214
Phone [REDACTED]

AGENT/DEVELOPER INFORMATION (If not owner)

Name _____
Email _____
Address _____
City _____
State _____ Zip _____
Phone _____

(THIS AREA TO BE COMPLETED BY STAFF):

PETITION NUMBER: A-876-24

☐ Application Insufficient due to lack of: _____

by Staff: _____ Date: _____

☐ Application and all required supporting documentation is Sufficient and Complete

by Staff: _____ Date: _____

DATE OF ZONING BOARD OF APPEALS HEARING: December 16, 2024

Received payment from _____ a check in the amount of \$ 175.00

for application filing fee, and \$ 20.00 for deposit on frame for public hearing sign(s).

Date Paid _____ Receipt Number: Misc PZ -10- 2024- 087872

PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM

(Applications require authorization by ALL property owners of subject property)

Name(s) of All Property Owners of Record found on the latest recorded deed for the subject property:

Sheila Marie Wall

Please Print Owners' Names

Property Tax Identification Number(s) of Subject Property: 053803016

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) 168 of the 5th District, and (if applicable to more than one land district) Land Lot(s) _____ of the District, and said property consists of a total of _____ acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to _____ to act as (my) (our) Agent in this request. As Agent, they have the authority to agree to any and all conditions of approval which may be imposed by the Board.

(I) (We) certify that all of the information filed with this application including written statements or showings made in any paper or plans submitted herewith are true and correct to the best of (my) (our) knowledge and belief. Further, (I) (We) understand that this application, attachments and fees become part of the official records of the Fayette County Zoning Department and may not be refundable. (I) (We) understand that any knowingly false information given herein by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. (I) (We) further acknowledge that additional information may be required by Fayette County in order to process this application.

SIGNATURES

Owner/
Agent
One:

Signature: Sheila Marie Wall
Name: Sheila Marie Wall
Address: 160 Fox Hunt Court
City/State/Zip: Fayetteville, GA 30214
Date: 10/16/2014

Notary: _____ (seal)
Deborah M Sims
Commission Exp.: 1/5/2027
Deborah M Sims
NOTARY PUBLIC
Coweta County, GEORGIA
My Commission Expires 01/05/2027

Owner/
Agent
Two:

Signature _____
Name: _____
Address: _____
City/State/Zip: _____
Date: _____

Notary: _____ (seal)
Commission Exp.: _____

Owner/
Agent
Three:

Signature _____
Name: _____
Address: _____
City/State/Zip: _____
Date: _____

Notary: _____ (seal)
Commission Exp.: _____

VARIANCE INFORMATION

Complete the chart below with the information pertaining to each request. If additional space is needed, please provide the information on a separate sheet of paper.

Ordinance/Section	110-137(d)(6)
Requirement	5' side yard setback
Proposed Change	12.3'
Variance Amount	2.7'

Ordinance/Section	
Requirement	
Proposed Change	
Variance Amount	

Ordinance/Section	
Requirement	
Proposed Change	
Variance Amount	

VARIANCE SUMMARY

Provide a detailed and specific summary of each request. If additional space is needed, please attach a separate sheet of paper.

JUSTIFICATION OF REQUEST

The Fayette County Zoning Ordinance, Section 110-242 (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation as necessary.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

I have an existing house that was built in 1977 that is only 12ft from my neighbors house. We had a tree fall on my carport & we are trying to rebuild it. However, the standards for Fayette County is now 15 feet. We need special permission to ~~ask~~ rebuild the carport in the existing location.

2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship.

I would have to rebuild my house in order to meet today's standards of 15 feet. This would cause a hardship because with the material costs to build my home to the current standard would be unaffordable for my family.

3. Such conditions are peculiar to the particular piece of property involved.

This is an older home and we just want to rebuild the same footage over the same slab of concrete of the carport. There would be no additions to the carport.

4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein.

~~This has been~~ The carport has been in place since 1977 and this would not affect the neighbor.

5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same zoning district are allowed.

This would force me to rebuild my house in order to meet today's standards.

Return Recorded Document to:
K. G. Hughes & Associates, LLC
1691 Phoenix Blvd., Suite 390
Atlanta, GA 30349

STATE OF GEORGIA,
COUNTY OF CLAYTON

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Doyle 5.14.18
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Doc ID: 010386260001 Type: WD
Recorded: 05/14/2018 at 10:00:00 AM
Fee Amt: \$149.00 Page 1 of 1
Transfer Tax: \$139.00
Fayette, Ga. Clerk Superior Court
Shelia Studdard Clerk of Court
BK 4742 PG 421

File #: 18-1074

LIMITED WARRANTY DEED

Doyle → 30
This Indenture made this 30th day of April, 2018 between

Ramona T. Vining

of the County of FAYETTE, State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

Shelia Marie Wall

as parties of the second part, hereinafter called Grantees (the words "Grantor" and "Grantees" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee(s) in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor(s), the following described property:

All that tract or parcel of land lying and being in Land Lot 168 of the 5th District, Fayette County, Georgia, being Lot 119, of Huntington Creek Subdivision, Unit Two, as per plat thereof recorded in Plat Book 10, Page 17, Fayette County, Georgia Records, which recorded plat is incorporated herein by reference and made a part of this description.

THIS CONVEYANCE is made subject to all zoning ordinances, easements and restrictions of record affecting said bargained premises.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoove of the said Grantees in FEE SIMPLE, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

AND the said grantor will warrant and forever defend the right and title to the above described property unto the grantee, heirs and assigns, against all the claims of all persons owning, holding or claiming by, through or under the grantor.

IN WITNESS WHEREOF, the Grantor has hereunto set grantor's hand and seal this day and year first above written.

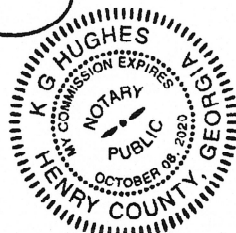
Signed, sealed and delivered in the presence of:

Kenneth H. Wall
Witness

[Signature]
Notary Public

Ramona T. Vining (Seal)
Ramona T. Vining

(Seal)



OWNER/BUILDER:

SHEILA WALL
160 FOX HUNT CT
FAYETTEVILLE, GA 30214

24 HOUR EMERGENCY CONTACT:

ELISHA GUEST - PACES RESTORATION
678-300-0458

ENGINEER/SURVEYOR:

FALCON DESIGN CONSULTANTS, LLC
235 CORPORATE CENTER DRIVE
STOCKBRIDGE, GA 30261
PH. 770-389-8666
FAX 770-389-8666

REFERENCES

1. FINAL PLAT INFORMATION FOR HUNTINGTON CREEK UNIT 2 RECORDED IN PLAT BOOK 10 PAGE 17 IN FAYETTE COUNTY RECORDS.

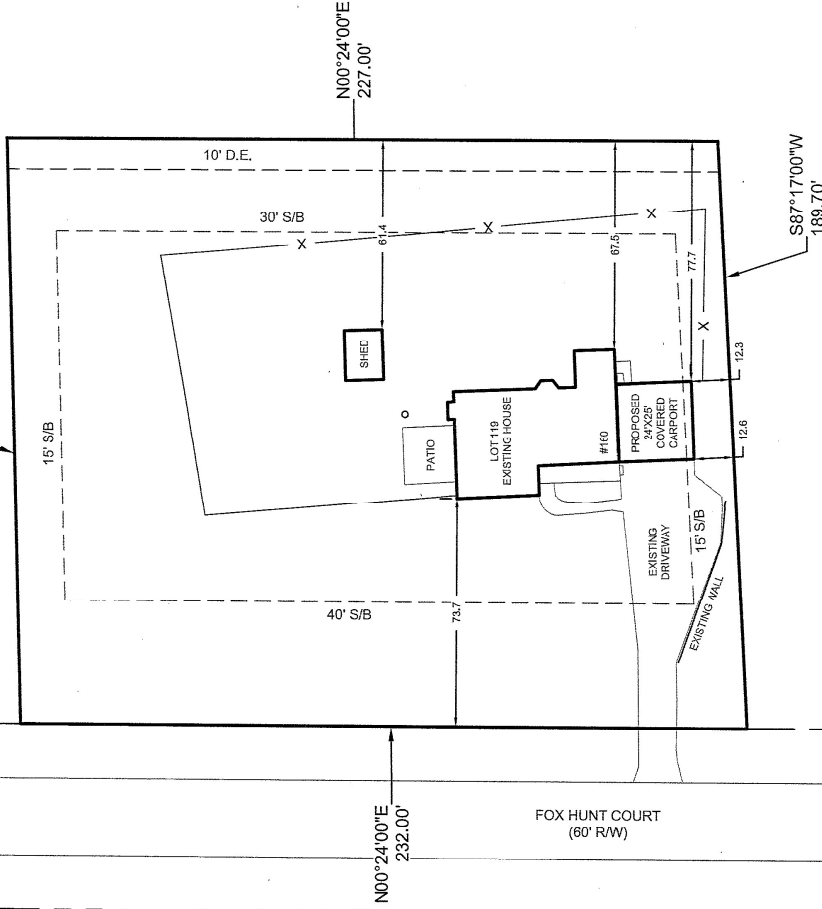
ACCORDING TO THE F.I.R.M. OF FAYETTE COUNTY, PANEL NUMBER 13113C0016E, DATED 9/26/2008, THIS LOT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA.

GRAPHIC SCALE



R-40 PER ZONING DEPT

N88°48'00"E
189.60'



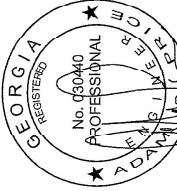
REVISIONS

DATE	BY	REVIEWED BY
07-08-2024	DE	NR
1.		
2.		
3.		
4.		
5.		

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GSW/C# 000009371

HOUSE LOCATION PLAN FOR

**LOT 119
HUNTINGTON CREEK
UNIT 2**

LOCATED IN:
LAND LOTS 168 & 185, 5th DISTRICT
FAYETTE COUNTY, GEORGIA

CIVIL
ENGINEERING
LAND
PLANNING
LAND
SURVEYING



CONSTRUCTION
MANAGEMENT
LANDSCAPE
ARCHITECT

STATIONHOUSE OFFICE
235 CORPORATE CENTER DRIVE
STOCKBRIDGE, GA 30261
PH 770-389-8666
FAX 770-389-8666
www.fdc-llc.com

PETITIONS FOR VARIANCE(S)/
ADMINISTRATIVE APPEAL(S)/
ON CERTAIN PROPERTIES IN
UNINCORPORATED AREA OF
FAYETTE COUNTY, GEORGIA
PUBLIC HEARING to be held by
the Zoning Board of Appeals of
Fayette County on Monday, De-
cember 16, 2024, at 7:00 P.M., Fay-
ette County Administrative Com-
plex, Public Meeting Room, 140
Stonewall Avenue West, first floor.
Petition No.: A-876-24
Owner(s): Sheila Marie Wall
Agent(s): N/A
Property Address: 160 Fox Hunt
Ct
Parcel: 0538 03016
Zoning District: R-40
Area of Property: 1.0 acres
Land Lot(s): 168
District: 5th
Road Frontage: Fox Hunt Ct
Request: Applicant is requesting
the following: Per Sec. 110-137(d)
(6), requesting to reduce the side
yard setback in the R-40 zoning
district from 15' to 12.3' to allow the
replacement of a damaged garage.

Legal Description

All that tract or parcel of land lying
and being in Land Lot 168 of the
5th District, Fayette County, Geor-
gia, being Lot 119, of Huntington
Creek Subdivision, Unit Two, as
per plat thereof recorded in Plat
Book 10, Page 17, Fayette County,
Georgia Records, which recorded
plat is incorporated herein by ref-
erence and made a part of this de-
scription.

11/13

PETITION NO: A-878-24

APPEAL: An Appeal from the Actions of the Zoning Director regarding the decision that parcel #0517 119 is an illegal lot.

PROPERTY OWNER(S): EvansMT Ventures, LLC - Gray McWhirter, Owner's Representative

AGENT(S): Steve Rothman, Attorney

LOCATION: Highway 85 S – Parcel 0517 119

DISTRICT/LAND LOT(S): 5th District, Land Lot 70

ZONING: C-H, Highway Commercial

EXISTING USE: Vacant

ZONING BOARD OF APPEALS PUBLIC HEARING: December 16, 2024

SUMMARY

In October 2022, Mr. McWhirter contacted Zoning Director Debbie Bell regarding development of the parcel. Ms. Bell had some initial discussions about how an auto repair shop could be developed on the site and how it would be affected by the General State Route Overlay. His engineering firm sent a concept plan, and Ms. Bell noted that the parcel did not meet the width at building line criterion.

Staff researched the history of the parcel development and found that it had been subdivided in 2011, but the plat was not presented to the County for review and approval. The parcel that was created by this plat did not meet the dimensional requirements at the time of its recordation and it does not meet the current dimensional requirements for the C-H (Highway Commercial) Zoning District. Ms. Bell advised Mr. McWhirter of these findings and has had several conversations since regarding how he might resolve the problem.

On October 10, 2024, Mr. Rothman contacted Ms. Bell and requested a written determination regarding her determination of the status of the parcel. Ms. Bell responded on October 11, 2024, explaining her assessment of the parcel.

Ms. Bell determined that the parcel is an illegal lot because it did not, and still does not, meet the zoning district criteria for the C-H (Highway Commercial) district.

Mr. Rothman submitted an appeal of the decision of Ms. Bell, which is the case presented here. Mr. Rothman maintains that because the plat was recorded according to OCGA 15-6-67, also known as the Georgia Plat Act, that this makes it a nonconforming lot.

STAFF ASSESSMENT

The Development Regulations in effect at the time this parcel was created established how and where the Lot Width would be measured. They also provide that no subdivision shall be approved which does not conform with the Zoning Ordinance (Sec. 8-502(a)).

The Zoning Ordinance in effect at the time established minimum dimensional requirements for lots in the C-H Zoning District.

The General State Route Overlay, which was part of the Zoning Ordinance, established dimensional requirements for all property and development with road frontage on State Routes. This Overlay has enhanced setback requirements. The setback required on SR 85 is 100 feet and this is the point at which the lot width is measured.

This plat is classified as a Final Plat according to the definitions in the Development Regulations because the resultant lots are less than five (5) acres in size.

Per Sec. 8-502 of the June 24, 2010, Development Regulations, although the approval of the Planning Commission was not required of a plat that did not create new streets, roads, or that required utility or septic improvements, it also provides that no subdivision shall be approved which does not conform with the Zoning Ordinance applicable to the land for which it is proposed. This plat was never submitted to staff for review and approval.

The fact that the plat was recorded does not confer status as a legal, nonconforming lot.

The lot created as a result of the plat the owner(s) recorded in 2011 did not meet the minimum requirement for lot width at the time of recording and it does not meet the minimum requirement for lot width at the present time.

The parcel is an illegal lot because it does not meet the zoning district criteria for Sec. 110-144, C-H (Highway Commercial) District or Sec. 110-173, Transportation Corridor Overlay Zone; it did not meet the zoning criteria for the C-H (Highway Commercial) District or the Transportation Corridor Overlay Zone when it was created; nor does it meet the standard of a nonconforming parcel, having been created after November 13, 1980.

HISTORY

August 4, 2008 – EvansMT Ventures purchased the tract, which consisted of 2. 045 acres.

September 2009 – The site plan for O'Reilly's Auto Parts was submitted for development, with EvansMT Ventures as the applicant.

November 6, 2009 – EvansMT Ventures filed a Notice of Intent (NOI) with Georgia EPD for coverage under the NPDES General Permit to Discharge Stormwater Associated with Construction Activities. This is a state requirement for all developments that conduct land disturbance, with some exceptions for small projects.

November 18, 2009 – Environmental Management held a preconstruction meeting with Evans MT Ventures. This meeting is a review of the site and the NPDES plans, held prior to issuance of a land disturbance permit and to review implementation of erosion control measures.

January 4, 2010 – Planning & Zoning approved the site development plan for O'Reilly's. Planning & Zoning approves a site plan once all departments have reviewed and approved the plans for compliance with development and zoning standards. A certificate of Zoning Compliance was also issued for a 2.045-acre site.

October 31, 2011 – Dennis Dutton provided a zoning verification letter for the 2.0-acre parcel, zoned C-H, and confirmed that the O'Reilly's Auto Parts Store and its business uses were permitted uses in the C-H zoning district. *[Note: At the time of this letter, tire sales and installation were permitted uses in C-H. The Zoning Ordinance was amended in 2020 to remove tire sales and installation as a use in C-H. O'Reilly's tire sales use is a nonconforming use. No new businesses will be approved for tire sales and installation in C-H.]*

November 9, 2011 – A subdivision plat was recorded by the owner or his/her representative subdividing the property into 2 parcels. This plat was not reviewed/approved by staff.

2018 – There were conversations between the former director, Pete Frisina, and Bob Rolader, regarding the plat, but there was not an assessment or discussion regarding whether the lot met zoning criteria.

October 5, 2022 – Thomas Dugan, an Engineer with Gaskins-LeCraw, submitted a concept plan. I explained to him that the final plat had not been reviewed and approved by the County.

October 2022 – present – Staff has had several phone and email conversations with Mr. McWhirter regarding the lack of zoning compliance for the current parcel 0517 119.

October 10, 2024 – Mr. Rothman requested, via email, a written determination of the status of the parcel.

October 11, 2024 – Ms. Bell responded via email with her assessment of the parcel, applicable ordinances and the fact that the parcel is an illegal lot and does not qualify as a nonconforming lot.

November 7, 2024 – Mr. Rothman filed an appeal to the decision of the zoning administrator.

ZONING ORDINANCE ASSESSMENT

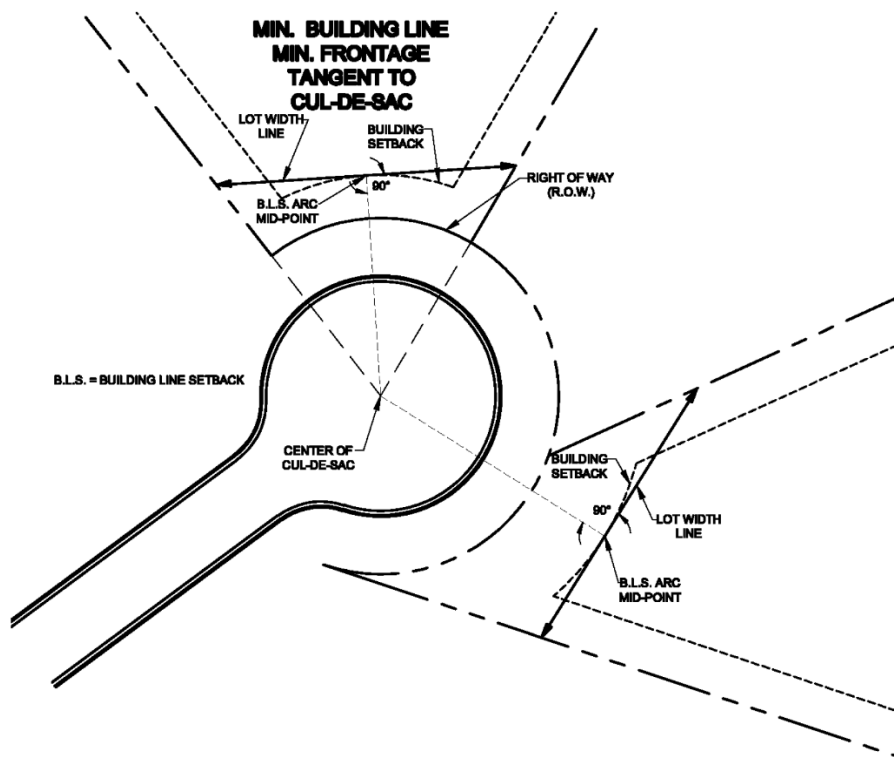
Exhibit 01

Ordinance No. 2010-05 amended the Subdivision Regulations in its entirety as Article XIV SUBDIVISION REGULATIONS, on June 24, 2010. This Ordinance is included in its entirety as **Exhibit 01**.

Excerpt: This ordinance established the definition of lot width and procedures for subdivisions of property and the process for recordation of final plats. The applicable sections of this ordinance are excerpted below.

Sec. 8-501. Definitions.

Lot Width. The minimum distance between side property lines either measured in a straight line parallel to the street right-of-way or a tangent and perpendicular to the mid-point of the arc in the case of the turn around portion of a cul-de-sac along the front minimum building line (see graphic below).



Plat, Final. All divisions of a tract of land into two (2) or more lots where the lots are less than five (5) acres in size and/or new streets are created.

Plat, Minor Subdivision. All divisions of a tract of land into two (2) or more lots where the lots are five (5) acres or greater in size and no new streets are created.

Sec. 8-502. General.

- (a) **Zoning Ordinance.** No subdivision shall be approved which does not conform with the Zoning Ordinance applicable to the land for which it is proposed.

(b) Recordation of Final or Minor Subdivision Plats. No Final Plat or Minor Subdivision Plat shall be recorded with the Clerk of Superior Court of Fayette County, Georgia, without said plat having first been submitted to and approved by the Planning Commission. The Secretary to the Planning Commission shall endorse the plat upon approval by the Planning Commission.

The Planning Commission approval is not required for a plat of subdivision where no new streets or roads are created or no new utility improvements are required or no new sanitary sewer or approval of a septic tank is required. Said plat shall contain a certification from the licensed surveyor that these provisions do not apply which shall entitle the plat to be recorded.

Exhibit 02

Ordinance No. 2010-11 was an amendment to the Fayette County Code of Ordinances that established Chapter 20, Fayette County Zoning Ordinance, which was approved by the Board of Commissioners on December 9, 2010. This Ordinance is included in its entirety as **Exhibit 02**.

Excerpt: This section provides the dimensional requirements regarding lot width in the C-H Zoning District and the additional dimensional requirements for the Transportation Corridor Overlay Zone.

Sec. 6-20. C-H Highway Commercial District.

D. Dimensional Requirements. The minimum dimensional requirements in the C-H Zoning District shall be as follows:

1. Lot area:
 - a. Where a central water distribution system is provided: 43,560 square feet (one [1] acre)
 - b. Where central sanitary sewage and central water distribution systems are provided: 21,780 square feet (one-half [.50] acre)
2. Lot width: 125 feet

Excerpt: This section establishes dimensional requirements related to front yard setbacks in the Transportation Corridor Overlay Zone.

Sec. 7-5. Transportation Corridor Overlay Zone

C. General State Route Overlay Zone. All property and/or development which have road frontage and/or access on State routes with nonresidential use or zoning shall be subject to the following regulations, in addition to the zoning district requirements and other development regulations which apply. This Overlay Zone specifically excludes SR 54 West, SR 85 North, and SR 74 North, for which other Overlay Zones have been established herein. The architectural Standards of the Overlay Zone Specifically excludes the L-C zoning district, for which other architectural standards have been established.

...

3. Dimensional Requirements.
 - a. All impervious surfaces, other than approved access drives, shall be located at least 50 feet from the State Route right-of-way.
 - b. Front yard setbacks on all other State Routes for all structures, including gasoline canopies, shall be 100 feet.
 - c. Berms for nonresidential zoning districts: Berms when required as a condition of zoning shall be a minimum of four (4) feet in height, and shall be placed to the inside of the applicable buffer.

Exhibit 03

Zoning Ordinance 2010, with amendments through present, Sec. 110-144. C-H, Highway Commercial. This section of the ordinance is included in its entirety as Exhibit 03.

This section establishes the dimensional criteria for properties in the C-H Zoning District.

Sec. 110-144. - C-H, Highway Commercial District.

(a) *Description of district.* This district is composed of certain lands and structures to provide and encourage proper grouping and development of roadside uses, which include a wide variety of sales and services that will best accommodate the needs of the county and the traveling public, reducing traffic congestion, hazards and blight along the public streets.

(b) *Permitted uses.* The following uses shall be permitted in the C-H zoning district:

- (1) Ambulance service, including non-emergency medical transport service;
- (2) Amusement or recreational facility, indoor or outdoor;
- (3) Appliance sales, installation and/or repair;
- (4) Armories, for meetings and training military organizations;
- (5) Art studio;
- (6) Auto/vehicle repair. All service, repairs and diagnostics, with the exception of emissions testing, shall be conducted within an enclosed building;
- (7) Bakery;
- (8) Bank and/or financial institution;
- (9) Banquet hall/event facility;
- (10) Bookbinding;
- (11) Building/development, contracting, and related activities (including, but not limited to: door and window sales and/or installation, electrical, flooring sales and/or installation, entertainment system sales and/or installation, general contractor, grading, gutter sales and/or installation, insulation sales and/or installation, landscaping, lighting sales and/or installation, painting, pressure washing, plumbing, remodeling, roofing sales and/or installation, siding sales and/or installation, sales and storage of building supplies and materials, security system sales, installation and service, solar and wind equipment sales and/or installation, and incidental contractor equipment maintenance);
- (12) Bus passenger station (pick-up and drop-off only);
- (13) Cabinet manufacturing, sales, repair and/or installation;
- (14) Car wash and/or detailing facility;

- (15) Catering service;
- (16) Church and/or other place of worship excluding outdoor recreation, parsonage, and cemetery or mausoleum;
- (17) Clothing store and/or variety store;
- (18) College and/or university, including classrooms and/or administration only;
- (19) Copy shop;
- (20) Cultural facility;
- (21) Day spa;
- (22) Department store;
- (23) Drug store;
- (24) Educational/instructional/tutoring facilities, including, but not limited to: academic; art; computer; dance; driving and/or DUI; music; professional/business/trade; martial arts; and similar facilities;
- (25) Electronic sales and/or repair;
- (26) Emission testing facility (inside only);
- (27) Engraving;
- (28) Firearm sales and/or gunsmith;
- (29) Flea market, indoor;
- (30) Florist shop;
- (31) Freezer locker service, ice storage;
- (32) Freight express office;
- (33) Funeral establishment (where funeral services, excluding a crematorium, may be provided);
- (34) Gift shop;
- (35) Glass sales;
- (36) Grocery store;
- (37) Hardware store;
- (38) Health club and/or fitness center;
- (39) Hotel;
- (40) Jewelry shop;

- (41) Laboratory serving professional requirements, (e.g., medical, dental, etc.);
- (42) Library;
- (43) Magazine publication and/or distribution;
- (44) Manufactured home and/or building sales;
- (45) Medical/dental office (human treatment);
- (46) Messenger/courier service;
- (47) Military recruiting office;
- (48) Movie theatre and/or drive-in;
- (49) Museum;
- (50) Music teaching studio;
- (51) Newspaper publication and/or distribution;
- (52) Office;
- (53) Office equipment sales and/or service;
- (54) Parking garage/lot;
- (55) Pawn shops;
- (56) Personal services, including, but not limited to: alterations; barber shop; beauty salon; clothing/costume rentals; counseling services; electrolysis and/or hair removal; fitness center; laundry drop-off/pick-up; locksmith; nail salon; photography studio; shoe repair; and tanning salon;
- (57) Pest control;
- (58) Plant nursery, growing crops/garden, and/or related sales;
- (59) Printing, graphics, and/or reproductions;
- (60) Private clubs and/or lodges;
- (61) Private school, including classrooms and/or administration only;
- (62) Recording studio (audio and video);
- (63) Radio studio;
- (64) Railroad station;
- (65) Rent-alls;
- (66) Restaurant, including drive-in and/or drive-through;
- (67) Retail establishment;

- (68) Smoking lounge (subject to state and local tobacco sales and smoking laws);
- (69) Tattoo parlor;
- (70) Taxidermist;
- (71) Taxi service/limousine service/shuttle service (no on-site maintenance and/or repair);
- (72) Television/movie studio;
- (73) Upholstery shop; and
- (74) Utility trailers sales and/or rental.

(c) *Conditional uses.* The following conditional uses shall be allowed in the C-H zoning district provided that all conditions specified in article V of this chapter are met:

- (1) Adult day care facility;
- (2) Amphitheater;
- (3) Animal hospital, kennel (commercial or noncommercial), and/or veterinary clinic;
- (4) Automobile service station, including gasoline sales and/or inside or outside emission testing, in conjunction with a convenience store;
- (5) Campground facilities;
- (6) Care home, convalescent center, and/or nursing home;
- (7) Cemetery;
- (8) Charter motor coach service;
- (9) Church and/or other place of worship;
- (10) College and/or university, including, but not limited to: classrooms, administration, housing, athletic fields, gymnasium, and/or stadium;
- (11) Commercial driving range and related accessories;
- (12) Child care facility;
- (13) Dry cleaning plant;
- (14) Experimental laboratory;
- (15) Golf course (minimum 18-hole regulation) and related accessories;
- (16) Home occupation;
- (17) Horse show, rodeo, carnival, and/or community fair;
- (18) Hospital;

- (19) Laundromat, self-service or otherwise;
- (20) Outdoor amusement facilities, rides, structures over 35 feet in height, including, but not limited to bungee and parachute jumping;
- (21) Private school, including, but not limited to: classrooms, administration, playground, housing, athletic fields, gymnasium, and/or stadium;
- (22) Religious tent meeting;
- (23) Seasonal sales, outdoor;
- (24) Self-storage facility (external and/or internal access);
- (25) Single-family residence and residential accessory structures and/or uses (see article III of this chapter);
- (26) Shooting range, indoor;
- (27) Stadium, athletic; and
- (28) Temporary tent sales.
- (29) Vehicle/boat sales.

(d) *Dimensional requirements.* The minimum dimensional requirements in the C-H zoning district shall be as follows:

- (1) Lot area:
 - a. Where a central water distribution system is provided: 43,560 square feet (one acre).
 - b. Where central sanitary sewage and central water distribution systems are provided: 21,780 square feet (one-half acre).
- (2) Lot width: 125 feet.
- (3) Front yard setback:
 - a. Major thoroughfare:
 - 1. Arterial: 75 feet.
 - 2. Collector: 70 feet.
 - b. Minor thoroughfare: 65 feet.
- (4) Rear yard setback: 15 feet.
- (5) Side yard setback: 15 feet.

(6) Buffer. If the rear or side yard abuts a residential or A-R zoning district, a minimum buffer of 50 feet adjacent to the lot line shall be provided in addition to the required setback and the setback shall be measured from the buffer.

(7) Height limit: 35 feet.

(8) Screening dimensions for parking and service areas as provided in article III of this chapter and [chapter 104](#).

(9) Lot coverage limit, including structure and parking area: 60 percent of total lot area.

(Code 1992, § 20-6-20; Ord. No. 2012-09, § 4, 5-24-2012; Ord. No. 2012-14, § 3, 12-13-2012; Ord. No. 2017-04, §§ 5, 6, 3-23-2017; Ord. No. 2018-03, § 13, 9-22-2018; Ord. No. 2018-11, §§ 5, 6, 10-25-2018; [Ord. No. 2020-02](#), §§ 10, 11, 5-28-2020; [Ord. No. 2021-05](#), § 1, 3-25-2021; [Ord. No. 2021-09](#), § 3, 5-27-2021; [Ord. No. 2021-10](#), § 1, 5-27-2021)

Exhibit 04

Zoning Ordinance, 2010 with amendments through present – Sec. 110-173. – Transportation corridor overlay zone. This section of the ordinance is included in its entirety as Exhibit 04.

Excerpt: This section establishes dimensional requirements for properties that are subject to the General State Route Overlay.

Sec. 110-173. - Transportation corridor overlay zone. For the purposes of this section, a development shall be defined as the land where the construction of improvements to support nonresidential uses is proposed, including: a petition to rezone the land, the subdivision of property through a preliminary, final, and/or minor subdivision plat, and/or the submittal of a site plan.

(1) *General state route overlay zone.* All property and/or development which have road frontage and/or access on state routes with nonresidential use or zoning shall be subject to the following regulations, in addition to the zoning district requirements and other development regulations which apply. This overlay zone specifically excludes SR 54 West Overlay Zone, SR 85 North Overlay Zone, SR 74 North Overlay Zone, SR 138 and North SR 314 Overlay Zone and the Starr's Mill Historic District Overlay Zone at the SR 74, SR 85, & Padgett Road Intersection. The architectural standards of this overlay zone specifically excludes the L-C zoning district, for which other architectural standards have been established.

a. *Purpose.* The purpose of the general state route overlay zone is to achieve the following:

1. To promote and maintain orderly development and an efficient traffic flow in highway corridors;
2. To protect existing and future residential areas near highway corridors; and
3. To protect the aesthetics for existing and future residential areas in this highway corridor.

b. *Access.* Access to each nonresidential property and/or development shall be from a state route or an adjacent street designated as an arterial or collector on the county thoroughfare plan. All access points shall be required to comply with [chapter 104](#).

c. *Dimensional requirements.*

1. All parking areas shall be located at least 50 feet from any state route right-of-way.
2. Front yard setbacks on all other state routes for all structures, including gasoline canopies, shall be 100 feet.
3. Berms for nonresidential zoning districts: Berms when required as a condition of zoning shall be a minimum of four feet in height, and shall be placed to the inside of the applicable buffer.

d. *Architectural standards.* Structures shall maintain a residential character. Elevation drawings denoting compliance with the following shall be submitted as part of the site plan.

1. A pitched peaked (gable or hip) roof with a minimum pitch of 4.5 inches in one foot including gasoline canopies and accessory structures and shall be of a type and construction complimentary to the facade. A pitched mansard roof facade with a minimum pitch of 4.5 inches in one foot and a minimum height of eight feet around the entire perimeter of the structure can be used if the structure is two stories or more or the use of a pitched peaked roof would cause the structure to not meet the applicable height limit requirements. The mansard roof facade shall be of a residential character with the appearance of shingles, slate or terra cotta.

2. *Gasoline canopy.* Gasoline canopies shall also comply with the following requirements:

(i) Gasoline canopies, in conjunction with a convenience store, may reduce the pitch to a minimum of three inches to 12 inches to permit the height of the peak of the roof to be equal to or no more than five feet above the peak of the roof of the convenience store.

(ii) The vertical clearance under the gasoline canopy shall not exceed a maximum of 18 feet in height.

(iii) The support columns for the gasoline canopies shall match the facade of the convenience store.

(iv) The gasoline canopy roof shall match the architectural character, materials, and color of the convenience store.

3. All buildings shall be constructed in a residential character of fiber-cement siding (i.e., Hardiplank), wood siding, wood textured vinyl siding, brick/brick veneer, rock, stone, cast-stone, stucco (including synthetic stucco) and/or finished baked enamel metal siding which established a horizontal pattern.

4. Framed doors and windows of a residential character. To maintain a residential character, large display windows shall give the appearance of smaller individual panes and framing consistent with the standard residential grid pattern for doors and windows. This does not apply to stained glass windows for a church or place of worship. Large display or storefront windows shall have a minimum two-foot-high knee wall consisting of fiber-cement siding (i.e., Hardiplank), wood siding, wood textured vinyl siding, brick/brick veneer, rock, stone, cast-stone, or stucco (including synthetic stucco).

5. The design of accessory/out lot buildings shall reflect and coordinate with the general architectural style inherent in the principal structure on the property.

6. When an existing structure, that is nonconforming to the aforementioned architectural standards, is enlarged, the enlargement does not have to meet the aforementioned architectural standards, but does have to match the architectural design of the existing nonconforming structure.

e. *Architectural option.* An owner/developer may exercise an architectural option for structures within the overlay zone on lots adjacent to a municipality where a nonresidential architectural character has been established in the area. The purpose of this option is to achieve compatibility with surrounding areas, consistency throughout the development and greater creativity. A photographic architectural character inventory of the buildings within the area shall be submitted. Full color architectural elevation drawings of the proposed nonresidential architectural style for all building facades shall be submitted. Multiple buildings within a development shall have comparable architectural characteristics consisting of similar architectural design and elements, building materials and colors. Elevations shall be reviewed and approved by the board of commissioners and shall follow the procedure established in article IX of this chapter. Any change to the approved architectural elevation drawings shall follow the aforementioned procedure.

f. *Landscape requirements.* In addition to the standard requirements of the landscape ordinance, the following landscape requirements shall apply to the overlay zone:

1. *Street frontage landscape area.* Fifty feet in depth along state route frontage. The first 25 feet as measured from the right-of-way are for required landscape planting only. The remaining 25 feet may be used for septic system placement; underground stormwater detention systems; and the following stormwater management facilities/structures if designed in full accordance with the specifications provided in the most current edition of the Georgia Stormwater Management Manual; vegetated channels, overland flow filtration/groundwater recharge zone, enhanced swales, filter strips, and grass channels. Septic systems and stormwater structures shall be exclusive of each other and the minimum distance of separation between wastewater and stormwater structures shall be established by the environmental health department and the county engineer. Utilities (including underground stormwater piping) and multi-use path connections may be located anywhere within the landscape area.

2. *Side yard landscape area.* Ten feet in depth along side property lines unless adjacent to a residential district where buffer requirements will apply.

g. *Use of existing structure.* When property containing legally conforming structures, under the current zoning, is rezoned to O-I the dimensional requirements shall be

reduced to the extent of, but only at the location of, any encroachment by the structures and said structures shall be considered legal nonconforming structures.

h. *Lighting and shielding standards.* Lighting shall be placed in a manner to direct light away from any adjacent roadways or nearby residential areas.

i. *Special locational and spatial requirements.*

1. No more than 50 percent of the required parking can be located in the front yard along the state route as established by the front building line of any structure located on the site.

2. Outside storage of merchandise or equipment and parts shall be allowed in the rear yards only, subject to minimum screening, setback and buffer requirements. Outside storage shall not exceed 25 percent of the gross floor area of all structures per lot.

3. All roof-top heating, ventilation, and air conditioning equipment and satellite/communications equipment shall be visually screened from adjacent roads and property zoned residential or A-R. The screen shall extend to the full height of the objects being screened.

4. For all new construction, garage doors and bays associated with any use within the district shall be located on the side or rear of the principal building, and not facing a state route.

j. *SR 74 South Corridor Sidewalk Requirements.* In order to provide for the connection of the sidewalk system installed by GDOT when SR 74 South was widened from two lanes to four lanes, sidewalks are required as an integral component of nonresidential development in this area as identified in the SR 74 South Overlay District in the Fayette County Comprehensive Plan Land Use Element. Said sidewalks shall connect to the existing sidewalks. In the cases where a required sidewalk is to be located on abutting parcels, an alignment shall be established and the sidewalk shall be developed so as to provide for connection at the property line.

Exhibit 05

Zoning Ordinance, 2010 with amendments through present – Sec. 110-170. – Nonconformances. This section of the ordinance is included in its entirety as Exhibit 05.

Excerpt: This section establishes the date that is the criterion for meeting the requirement to be considered a nonconforming lot by virtue of having existed in its current configuration prior to November 13, 1980.

Sec. 110-170. – Nonconformances

- (a) Nonconforming lots. A legally existing lot of record which fails to comply with the provisions herein, as of November 13, 1980, or as the result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning, or a variance, shall be considered a legal nonconforming lot and may be utilized for the establishment of uses or the placement of structures and improvements, as long as, all applicable regulations can be met. Where the dimensional requirements of the zoning district cannot be met in terms of the placement of structures and improvements, a variance authorized by the zoning board of appeals shall be required. Any reduction in the land area of a legal nonconforming lot other than an acquisition for a public purpose which serves to make the lot more nonconforming shall result in a loss of the legal nonconforming lot status. However, any addition of property to a legal nonconforming lot which serves to make the lot more conforming shall not result in the loss of the legal nonconforming lot status

Exhibit 06

Zoning Ordinance, 2010 with amendments through present – Sec. 110-242. – Powers and duties. This section of the ordinance is included in its entirety as Exhibit 06.

Excerpt: This section establishes the powers and duties of the Zoning Board of Appeals. Sec. 110-242.(b) states that "However, no lot is eligible for a variance for reduction in lot size, lot width, or road frontage, unless the variance request is for an improved illegal lot." For this reason, staff determined that the lot is not eligible for a variance to lot width at this time.

Sec. 110-242. - Powers and duties.

- (a) Appeals from actions of the zoning administrator. The zoning board of appeals shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning administrator in the enforcement of these regulations.
 - (1) Who may appeal. Appeals to the zoning board of appeals may be taken by any person aggrieved by any decision of the zoning administrator. Such appeals, specifying the grounds thereof shall be filed with the planning and zoning department no later than 30 calendar days after the date of notification of the zoning administrator's decision. The zoning administrator shall forthwith transmit to the zoning board of appeals all the papers constituting the record upon which the action appealed from was taken.
 - (2) Legal proceedings stayed. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the zoning board of appeals that by reason of facts stated in the certificate a stay would, in the zoning administrator's opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order from a court of competent jurisdiction.
 - (3) Extent of the zoning board of appeals 'power. The zoning board of appeals may, in conformity with the provisions of these regulations, reverse or affirm the order, requirement, decision, or determination of the zoning administrator. The zoning board of appeals may direct the issuance of a permit. It shall be the duty of the zoning administrator to carry out the decisions of the zoning board of appeals.
- (b) Request for a variance. The zoning board of appeals may authorize, upon appeal in specific cases, a variance from the terms of these regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. However, no lot is eligible for a variance for reduction in lot size, lot width, or road frontage, unless the variance request is for an improved illegal lot. A variance shall not be granted for any requirements of a conditional use with the exception of a legal nonconforming conditional use (see article V of this chapter), or a use of land, building, or structure that is prohibited in the zoning district at issue, except as otherwise provided herein. In exercising the powers described in this subsection, the zoning board of appeals shall not consider any nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in other zoning

districts as grounds for the issuance of a variance. A variance may be granted in an individual case upon a finding by the zoning board of appeals that all of the following criteria exist:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
- (2) The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and
- (3) Such conditions are peculiar to the particular piece of property involved; and
- (4) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein; and
- (5) A literal interpretation of this chapter would deprive the applicant of any rights that others in the same zoning district are allowed.

(c) Compliance with standards. Where an appeal/petition to the board is initiated due to an existing violation of this chapter and said appeal/petition is denied, the violation shall be required to be corrected within 30 calendar days of such denial, or as specified by the board, if a greater time period is necessary. The maximum extension of the time shall not exceed 60 calendar days.

(d) Forms. Appeals, requests for variances, or any other matter within the zoning board of appeals' purview shall be made on forms, as applicable, provided by the planning and zoning department; and all information requested on the forms shall be provided by the appellant/petitioner. Forms shall be filed with the planning and zoning department along with the necessary fees. No form shall be accepted by the planning and zoning department unless it contains all pertinent information and is accompanied by the required fee.

(e) Request for a change of the legal nonconforming use of a structure. The zoning board of appeals may authorize, upon appeal in specific cases, a change in the legal nonconforming use of a structure in accordance with the provisions herein.

(f) Request for an extension or enlargement of a legal nonconforming use. The zoning board of appeals may authorize upon appeal in specific cases an extension or enlargement of an existing legal nonconforming use which the board is specifically authorized to consider under the terms herein. Said extensions may be granted in an individual case upon a finding by the board that all of the following criteria are present:

- (1) The use is a legal nonconforming use as defined in these regulations; and
- (2) The legal nonconforming use is in full compliance with all requirements of these regulations applicable to nonconformances; and
- (3) The extension of said legal nonconforming use will not further injure a permitted use on adjacent property.

(g) Request for a continuance of a legal nonconforming use. The zoning board of appeals may allow, upon appeal in specific cases, a legal nonconforming use to be re-established after discontinuance

for six consecutive months where it is deemed by the zoning board of appeals that all of the following criteria are present:

- (1) The design, construction, and character of the land, building, or structure is not suitable for uses permitted in the zoning district in which the legal nonconforming use is situated; and
- (2) Undue hardship to the property owner would result in not allowing the continuance of a legal nonconforming use; and
- (3) Adjacent property would not be unduly damaged by such continuance; and
- (4) The use is to be identical to the prior legal nonconforming use.

(h) Request for an illegal lot to be deemed a nonconforming lot. The zoning board of appeals may deem, upon appeal in specific cases, an illegal lot which is smaller than the minimum lot size for its zoning district, more narrow than the minimum lot width for its zoning district, or has less road frontage than is required for its zoning to be a nonconforming lot. The zoning board of appeals shall employ the following factors for an illegal lot seeking to be deemed a nonconforming lot:

- (1) The transaction giving the appellant/petitioner ownership in the subject property was more than five years from the date of the appeal/petition or if the period of ownership is less than five years the subject property was made illegal more than ten years from the date of the appeal/petition;
- (2) The appellant/petitioner is not the person, or an immediate family member of the person, who caused the subject property to be an illegal lot. For purposes of these procedures, "immediate family" is defined as the spouse, child, sibling, parent, step-child, step-sibling, step-parent, grandparent, grandchild, aunt, uncle, niece or nephew of the person who caused the subject property to be an illegal lot; and
- (3) No adjacent property is available to add to the subject property to allow the subject property to meet the minimum requirements for its zoning district. In determining whether adjacent property is available, if adding any adjacent property to the subject property would no longer allow the adjacent property to meet the minimum requirements of the adjacent property's zoning district, then the adjacent property is not available. Additionally, any adjacent property which is part of an illegal lot shall not be deemed available for purposes of these variance procedures, unless the adjacent illegal lot is unimproved and the entirety of the adjacent illegal lot is combined with the subject property. If adjacent property is available, the cost of acquiring the adjacent property shall not be a factor in determining the availability of the adjacent property.

(i) Conditions on approval. The zoning board of appeals may impose or require conditions, as maybe necessary, to protect the health and safety of workers and residents in the community; to protect the value and use of property in the general neighborhoods: and provided that wherever the board shall find, in the case of any approval, that any of the conditions upon which such approval was granted are not being complied with, said zoning board of appeals shall rescind and revoke such approval after giving due notice to all parties concerned and granting full opportunity for a hearing.

(j) Limitation on re-applying. If the decision of the zoning board of appeals is to deny, an application which seeks the same relief in regard to the same property shall not be accepted for a period of 180 calendar days following the date of the decision from the zoning board of appeals.

(Ord. No. 2015-06, § 1, 3-26-2015; Ord. No. 2016-08, § 1, 5-12-2016; Ord. No. 2017-11, §§ 2, 3, 6-22-2017; Ord. No. 2020-02, § 22, 5-28-2020)

Exhibit 07

Request for Determination of Lot Status

WILSON BROCK & IRBY, L.L.C.

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October 10, 2024

Via electronic mail: dbell@fayettecountyga.gov

Deborah L. Bell, RLA
Director, Planning & Zoning
Fayette County, Georgia
140 Stonewall Avenue West, Suite 202
Fayetteville, Ga. 30214

RE: GA-85 Parcel ID No. 0517 119 (the "Lot").

Dear Ms. Bell:

This firm represents Evans Mt. Ventures, LLC, the owner of the Lot. This letter is to provide a written evaluation seeking a determination that the Lot is a legally existing lot of record which was platted prior to the amendment imposing the 80 foot depth requirement for the minimum lot width found in Section 110-17 of the Zoning Ordinance. That requirement was not in the 2010 Zoning Ordinance; it appears to have been adopted subsequent to the 2010 Zoning Ordinance and after the Lot was created in 2011. As such, pursuant to Section 110-170, we believe the Lot is a legal nonconforming lot that may be developed, so long as the dimensional requirements "in terms of placement of structures and improvements" (ie, setback and lot coverage requirements) are otherwise met. This letter is to support that finding and respectfully request a determination that the Lot may be developed, so long as it complies with the use and dimensional requirements in terms of placement of structures and improvements.

Section 110-170 of the current zoning ordinance provides that "a legally existing lot of record which fails to comply with the provisions herein . . . or as the result of subsequent amendments . . . shall be considered a legal nonconforming lot and may be utilized for the establishment of uses or the placement of structures and improvements . . ." This code section goes on to require that dimensional requirements in terms of placement of structures and improvements, such as setback and lot coverage requirements, must nevertheless be met. We believe we meet the requirements to be a legal nonconforming lot.

I understand that the concern in this case is the lot width requirement and not (at this time at least) the setback or lot coverage requirement.

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WILSON BROCK & IRBY, L.L.C.

October 10, 2024

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To determine if the Lot is a “legally existing lot of record” sufficient to warrant legal nonconforming status, we must turn to the Zoning and Subdivision Ordinances in effect on the date the Lot was created.

The Lot was created by a subdivision plat recorded in the Fayette County Clerk of Superior Court Property Records Division on November 9, 2011 and may be found at Plat Book 46, pages 181-182. See Attached. In addition, the plat was accompanied by a certification from the licensed surveyor providing that no new streets or roads are created, no new utility improvements are required and no new sanitary sewer or approval of a septic tank is required. See Attached, Fayette County, Ga. Superior Court Property Records Division, Book 3817, Page 702.

This filing was in accordance the Zoning and Subdivision Ordinances in effect at the time the plat was recorded, which were adopted by the County Commission on June 24, 2010. The Zoning Ordinance in effect on the date the lot was created (when the plat and affidavit were recorded) defined a “lot of record” as “[a]n area designated as a separate and distinct lot of land on a recorded subdivision plat approved in accordance with the Fayette County Subdivision Regulations . . .” See Page 6, Zoning Ordinance, Defined Terms.

Thus, the question turns to, and hinges on, whether the recorded subdivision plat complied with the requirements of the Subdivision Regulations in effect at that time.

The Subdivision Ordinance in effect on November 9, 2011 was adopted by the Fayette County Board of Commissioners on June 24, 2010, Ordinance Number 2010-05. That Ordinance sets up a scheme for Planning Commission review and approval of Preliminary, Final and Minor Subdivision Plats, **but further provided an exception from such approval:**

The Planning Commission approval is **not** required for a plat of subdivision where no new streets or roads are created or new utility improvements are required or no new sanitary sewer or approval of a septic tank is required. Said plat shall contain a certification from the licensed surveyor that these provisions do not apply which shall entitle said plat to be recorded.

Section 8-502(B), 2010 Subdivision Ordinance (emphasis supplied).

This code section tracks the language of the then-existing state statute, O.C.G.A. § 15-6-67 (which has since been amended) mirroring the Subdivision Ordinance’s exception for recordation of a Plat without Planning Commission approval. The Georgia statute provided that, so long as the new infrastructure was not created or required, the existence of the surveyor’s certificate would “entitle said plat to record.” Fayette County itself published a policy on recordation of plats quoting the language of Georgia’s then-existing statutory law which emphasize that no county planning commission or governing authority approval is required if no new streets, roads, utility improvements, sanitary sewer or septic tanks are required. See Attached.

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WILSON BROCK & IRBY, L.L.C.

October 10, 2024

Page 3

The 2011 plat recordation was done in strict compliance with the state and county guidelines for recordation of the plat at that time.

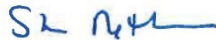
The plat creating the Lot was filed and recorded in accordance with the approved methods under then-governing Fayette County Subdivision Regulations and state law. Therefore, pursuant to the 2010 Zoning Ordinance definition of a "lot of record", then platting created a lot of record.

Accordingly, we believe the attached recorded subdivision plat creates "a lot of record" which is entitled to legal nonconforming status pursuant to Section 110-170 of the current Fayette County Zoning Ordinance. This lot was created in reliance on the laws and ordinances in place on the date the lot was created. The owner simply followed the rules in place at that time. We believe it should be afforded legal nonconforming status.

We appreciate your consideration of this request and look forward to hearing your thoughts or decision on this. Please let me know if we can provide further information or documentation in your review of the matter.

Sincerely,

WILSON BROCK & IRBY, L.L.C.



Stephen Rothman

Enclosures

1015453.1 960110-000145

Office of the Clerk
Sheila Studdard

Clerk of Superior Court
Fayette County, Georgia

EFFECTIVE IMMEDIATELY .

In accordance with O.C.G.A. §15-6-67, this office requires the **"approval of the municipal or county planning commission or governing authority"** before a plat can be recorded by the office.

"(d) Whenever the municipal planning commission, the county planning commission, the municipal-county planning commission, or, if no such planning commission exists, the appropriate municipal or county governing authority prepares and adopts subdivision regulations, and upon receiving approval thereon by the appropriate governing authority, then no plat of subdivision of land within the municipality or the county shall be filed or recorded in the office of the clerk of the superior court of a county without the approval thereon of the municipal or county planning commission or governing authority and without such approval having been entered in writing on the plat by the secretary of the municipal or county planning commission or governing authority. **The clerk of the superior court shall not file or record a plat of subdivision which does not have the approval of the municipal or county planning commission or governing authority as required by this subsection. Notwithstanding any other provision of this subsection to the contrary, no approval shall be required if no new streets or roads are created or no new utility improvements are required or no new sanitary sewer or approval of a septic tank is required.** Any plat of survey containing thereon a certification from the licensed surveyor that the provisions relative to this subsection do not require approval shall entitle said plat to record."

Should you determine that no approval is necessary, it shall be policy of this office to require an affidavit to be recorded that contains such statement and shall be cross referenced to the recorded plat and signed by the surveyor or filer at additional standard filing costs.

P. O. Box 130 Fayetteville, GA 30214
Phone: 770-716-2491
Email: Sheila.Studdard@gsccca.org

Mr. Barry E. McWhirter
4045 Orchard Rd. Bldg 400
Smyrna, Ga. 30080

STATE OF GEORGIA
COUNTY OF FAYETTE

Please Cross Reference:

Plat Book 46
Page 181-182

AFFIDAVIT REGARDING PLAT OF SUBDIVISION

PERSONALLY APPEARED before me, the undersigned deponents who, being duly sworn, depose and say on oath that DAVID BARTON (the "Deponent"), a licensed surveyor preparing, sealing and certifying a plat regarding the subdivision of land lying and being in Land Lot 70, 5TH District, Fayette County, Georgia, as shown on the attached Exhibit A attached hereto and made a part hereof ("Plat").

Deponent knows the facts contained herein of his own personal knowledge.

Deponent certifies, in accordance with O.C.G.A. §15-6-67, that no new streets or roads are created or new utility improvements are required or no new sanitary sewer or approval of a septic tank is required as a result of the Plat which is being filed in the records of the Superior Court of Fayette County, Georgia contemporaneously herewith.


Sworn to and subscribed before
me this 8th day of November 2011
Beth Barton


Deponent

My Commission Expires: 9/10/15

[Affix Notarial Seal]




Doc ID: 008895840001 Type: AFF
Recorded: 11/09/2011 at 03:30:00 PM
Fee Amt: \$12.00 Page 1 of 1
Fayette, Ga. Clerk Superior Court
Sheila Studdard Clerk of Court
BK **3817** PG **702**

[12849.1] 000506-000003



Exhibit 08

Staff Determination of Illegal Lot

From: [Deborah I. Bell](#)
To: [Steve Rothman](#)
Cc: [E. Allison Jvey Cox \(eacoxatty@gmail.com\)](#)
Subject: RE: Request For Legal Nonconforming Lot Status
Date: Friday, October 11, 2024 3:55:00 PM
Attachments: [Request - Legal Nonconforming Lot.pdf](#)
[Concept Plan w scaled measurements.pdf](#)
[McWhirter - Fayetteville 2024-02-8 PEP ROYS CONCEPT-40 SCALE AERIAL.pdf](#)

Mr. Rothman,

Thank you for taking the time to explain your position regarding Parcel #0517 119. You are correct about the requirements in 2011 regarding review of a plat prior to recording. However, this parcel did not meet the lot width requirement when the plat was recorded (November 9, 2011). The required minimum lot width for the C-H zoning district is 125', to be maintained for a depth of 80'. These requirements were in place in the 2010 ordinance, which was approved in its entirety on December 9, 2010. Attached is a copy of a concept plan on which I made some scaled measurements, as well as a concept submitted by Mr. McWhirter, which demonstrate that the parcel isn't in compliance.

1. The 2010 ordinance defines Lot Width and Sec. 5-18 contains the provision for the lot width at building line to be met for a depth of 80':

Article III, Definitions. Lot Width, Minimum. The minimum distance between side lot lines either measured in a straight line parallel to the street right-of-way or tangent and perpendicular to the midpoint of the right-of-way in the case of the turnaround portion of a cul-de-sac along the front minimum building line.

Article V. General Provisions. Sec. 5-18. Lot Width, Minimum. The lot width at the building line shall be met for a depth of 80 feet. The principal structure shall be constructed within this area provided the required setbacks are met. Accessory structures do not have to comply with the lot width at the building line; however, they shall comply with the required setbacks and location requirements.

2. The minimum front building setback for this parcel is governed by the General State Route Overlay and is 100'. Therefore, the lot should be 125' wide at the 100' building line and be maintained for the 80' depth. The General State Route Overlay Zone was also a part of the 2010 Ordinance, with the 100' front building setback from the State Route.

3. The lot does not meet the standards for a nonconforming lot because it was not a lot of record prior to November 13, 1980, and none of the dimensional requirements that we are discussing are nonconforming as the result of amendments subsequent to the creation of a previously conforming parcel.

(a) Nonconforming lots. A legally existing lot of record which fails to comply with the provisions herein, as of November 13, 1980, or as the result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning, or a variance, shall be considered a legal nonconforming lot and may be utilized for the establishment of uses or the placement of structures and improvements, as long as, all applicable regulations can be met. Where the dimensional requirements of the zoning district cannot be met in terms of the placement of structures and improvements, a variance authorized by the zoning board of appeals shall be required. Any reduction in the land area of a legal nonconforming lot other than an acquisition for a public purpose which serves to make the lot more nonconforming shall result in a loss of the legal nonconforming lot status. However, any addition of property to a legal nonconforming lot which serves to make the lot more conforming shall not result in the loss of the legal nonconforming lot status.

Therefore, it is my opinion that this is an illegal lot, and the appropriate remedy is to acquire additional area to meet the dimensional requirements.

Sincerely,

Deborah L. Bell, RLA
DIRECTOR, PLANNING & ZONING
FAYETTE COUNTY BOARD OF COMMISSIONERS
Office: 770-305-5421
Direct: 770-305-5160
140 Stonewall Avenue West, Suite 202
Fayetteville, GA 30214
www.fayettecountyga.gov

Upcoming training:
Vacation scheduled:
Holiday scheduled closing: November 11, 2024

-----Original Message-----

From: Steve Rothman <srothman@wbilegal.com>
Sent: Thursday, October 10, 2024 5:19 PM
To: Deborah L Bell <dbell@fayettecountyga.gov>
Subject: Request For Legal Nonconforming Lot Status

[You don't often get email from srothman@wbilegal.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

External Email Be cautious of sender, content, and links

Ms. Bell - Good evening. Following up on our brief call earlier this week, please find attached a written request and attachments for a determination on the legal nonconforming status of a lot on State Hwy. 85 assigned parcel ID Number 0517 119.

If you need copies or excerpts from the 2010 Zoning or Subdivision Ordinance, I can provide them but I thought you probably had those records.

Thank you very much for your consideration of this matter.

Kind Regards,

Steve Rothman

Wilson, Brock & Irby, LLC
Attorneys at Law
2849 Paces Ferry Road, Suite 700
Overlook I
Atlanta, Georgia 30339

Phone (404) 853-5050
Direct: (770) 803-3731

Notice

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Exhibit 09

Appeal of Decision Letter

WILSON BROCK & IRBY, L.L.C.

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November 7, 2024

Via electronic mail: dbell@fayettecountyga.gov

Zoning Board of Appeals
c/o Deborah L. Bell, RLA
Director, Planning & Zoning
Fayette County, Georgia
140 Stonewall Avenue West, Suite 202
Fayetteville, Ga. 30214

RE: Appeal of Decision of Zoning Administrator

Dear Zoning Board of Appeals:

This firm represents Evans Mt. Ventures, LLC, the owner of a parcel of land located on State Highway 85 (parcel identification number 0517 119) (the "Lot") who seeks to appeal the decision of the Zoning Administrator. This appeal is brought under the authority granted this Board in Section 110-242(a) of the Zoning Ordinance. We are respectfully asking that this Board reverse the decision of the Zoning Administrator.

In an October 11, 2024 decision, the Zoning Administrator determined that the Lot, which contains an acre of land zoned C-H in a commercial area along Highway 85, is an illegal lot which may not be lawfully used for any purpose. The Lot was created with the recordation of a plat on November 9, 2011 in accordance with the Ordinances and laws in effect at the time of the recordation. The plat is duly recorded and found at Plat Book 46, pages 181-182 in the Fayette County Superior Court Property Records Division and is included with this packet. As such, the Lot is a legal lot of record and entitled to rights and privileges accorded a legal lot of record under the Fayette County Zoning Ordinance, which includes using the Lot for its zoned purposes (C-H and General State Route Overlay Districts) so long as it meets the various setback, parking, and other dimensional requirements of structures and improvements thereon.

The Decision Being Appealed

The determination being appealed is dated October 11, 2024 and this appeal is brought within thirty (30) days of that decision. The determination being appealed is the statement that "the lot does not meet the standards for a nonconforming lot because it was not a lot of record prior to November 13, 1980, and none of the dimensional requirements that we are discussing are nonconforming as the result of amendments subsequent to the creation of a previously conforming parcel." The Zoning Administrator goes on to conclude, erroneously, that "it is my opinion that

1015550.1 960110-000145

WILSON BROCK & IRBY, L.L.C.

November 7, 2024

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this is an illegal lot, and the appropriate remedy is to acquire additional area to meet the dimensional requirements.” This appeal is filed to respectfully disagree with the Zoning Administrator’s decision and to ask that this Board reverse this determination. The appellant asks that the Board determine that the Lot is, and must be regulated as, a legal nonconforming lot of record that may be used for lawful purposes.

For the record, the property owner attempted to acquire additional area as directed by the Zoning Administrator and found that such an acquisition is not possible and has been effectively rejected by the adjoining owner.

Argument

The only aspect of the Lot that fails to comply with the current zoning standards for new lot creation is that it does not maintain a lot width of 125 feet for a depth of 80 feet. Although the lot’s frontage is 137 feet in width, meeting the requirements, the Lot narrows to 123 feet at the 100 foot setback line and to 114 feet at its narrowest point. This is the only nonconforming aspect of the Lot. All other area and dimensional requirements for the Lot and the structures and improvements thereon conform to the current Ordinance.

This is a classic legal, nonconforming lot because the Lot came into being as a legal lot and accordingly enjoys legal nonconforming status. BBC Land & Development, Inc. et al. v. Butts County et al., 281 Ga. 472 at 473 (2007)(“Nonconforming uses come into being initially as legal uses”).

Section 110-170 of the current zoning ordinance provides that “a legally existing lot of record which fails to comply with the provisions herein . . . shall be considered a legal nonconforming lot and may be utilized for the establishment of uses or the placement of structures and improvements . . .” This lot is a legally existing lot of record but it fails to meet the width requirement for a depth of 80 feet; the Lot is, by definition, a legal nonconforming lot.

To determine if the Lot is a “legally existing lot of record” as required by Section 110-170 above to warrant legal nonconforming status, we can turn to the Zoning Ordinance, which defines a lot of record in Section 110-3 as an “area designated as a separate and distinct lot of land on a recorded subdivision plat approved in accordance with Chapter 104, article XV subdivision regulations, or in a legally recorded deed.”

The Lot is an area designated as a separate and distinct lot of land on a subdivision plat recorded in the Fayette County Clerk of Superior Court Property Records Division on November 9, 2011 and may be found at Plat Book 46, pages 181-182. See Attached. In addition, the plat was accompanied by a certification from the licensed surveyor providing that no new streets or roads are created, no new utility improvements are required and no new sanitary sewer or approval of a septic tank is required. See Attached, Fayette County, Ga. Superior Court Property Records Division, Book 3817, Page 702. The Plat was filed in 2011 and it was filed following all requirements and regulations of the county and the State of Georgia.

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November 7, 2024

Page 3

More particularly, as required to meet the definition of a “lot of record, this filing was in accordance the Subdivision Ordinance in effect at the time the plat was recorded, regulations that were adopted by the County Commission on June 24, 2010. The Zoning Ordinance in effect on the date the lot was created (when the plat and affidavit were recorded) defined a “lot of record” as a separate and distinct lot of land shown on a recorded subdivision plat filed in accordance with the Fayette County Subdivision Regulations. See 2010 Zoning Ordinance, Defined Terms.

Thus, the question turns to, and hinges on, whether the recorded subdivision plat complied with the requirements of the Subdivision Regulations in effect on November 9, 2011.

The Subdivision Ordinance in effect on November 9, 2011 was adopted by the Fayette County Board of Commissioners on June 24, 2010, Ordinance Number 2010-05. That Ordinance sets up a scheme for Planning Commission review and approval of Preliminary, Final and Minor Subdivision Plats, **but further provided an exception from such approval:**

The Planning Commission approval is **not** required for a plat of subdivision where no new streets or roads are created or new utility improvements are required or no new sanitary sewer or approval of a septic tank is required. Said plat shall contain a certification from the licensed surveyor that these provisions do not apply which shall entitle said plat to be recorded.

Section 8-502(B), 2010 Subdivision Ordinance (emphasis supplied).

This code section tracks the language of the then-existing state statute, O.C.G.A. § 15-6-67 (which has since been amended) mirroring the Subdivision Ordinance’s exception (the “Exception”) for recordation of a Plat without Planning Commission approval. The Georgia statute provided that, so long as the new infrastructure was not created or required, the existence of the surveyor’s certificate would “entitle said plat to record.” Fayette County itself published a policy on recordation of plats under the Exception, quoting the language of Georgia’s then-existing statutory law which emphasize that no county planning commission or governing authority approval is required if no new streets, roads, utility improvements, sanitary sewer or septic tanks are required. See Attached. The 2011 plat recordation under the Exception was done in strict compliance with the state and county guidelines for recordation of the plat at that time.

Thus, the filing of the Plat in 2011 was done in compliance with the 2010 Subdivision Ordinance, thus meeting the definition of a “lot of record”. Additionally, the Lot was created legally. The 2010 Subdivision Ordinance did not require compliance with any zoning regulations unless such subdivision required approval, which by definition does not apply to those lots created by the Exception quoted above. See Section 8-502(a), 2010 Subdivision Ordinance.

Accordingly, the Lot came into being as a legal lot and accordingly enjoys legal nonconforming status. BBC Land & Development, Inc. et al. v. Butts County et al., 281 Ga. 472 at 473 (2007)(“Nonconforming uses come into being initially as legal uses”).

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WILSON BROCK & IRBY, L.L.C.

November 7, 2024


Page 4

Finally, it should be noted that if the decision being appealed is not reversed, or if the Fayette County ordinances are interpreted to render the Lot unbuildable in any manner, such a decision operates to deprive the owner of the Lot any use whatsoever, resulting in a taking of land for public purposes without just compensation. Such an action would result in the violation of the owner's guaranteed rights under Article I, Section I, Paragraph I; Article I, Section I, Paragraph II & Article I, Section III, Paragraph I of the Georgia Constitution and the 5th and 14th amendments to the United States Constitution.

However, given the plain meaning of the terms found in the relevant Zoning and Subdivision Ordinances, we believe the decision below is clearly based on a error of law and misinterpretation of the ordinances and respectfully request that it be reversed.

Sincerely,

WILSON BROCK & IRBY, L.L.C.



Stephen Rothman

Enclosures

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Exhibit 10

Application and Agent Authorization

FAYETTE COUNTY, GEORGIA		Permit # _____
VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS		
PROPERTY INFORMATION:		
Parcel No. <u>0517119</u>	Acreage: <u>1 acre</u>	Land Lot: <u>70</u> Land District: <u>5th</u>
Address: <u>Highway 85</u>		
Existing Zoning: <u>CH - State Route Overlay</u>		Requested Zoning: _____
Zoning of Surrounding Properties: <u>CH</u>		
Existing Use: <u>Vacant</u>		
Proposed Use: <u>Uses allowed in CH</u>		
PROPERTY OWNER INFORMATION		AGENT/DEVELOPER INFORMATION (if not owner)
Name <u>Evans Mt. Ventures, LLC</u>	Name <u>Steve Rothman</u>	
Email <u>c/o srothman@wbilegal.com</u>	Email <u>srothman@wbilegal.com</u>	
Address <u>709 Canton Rd NE, Suite 240</u>	Address <u>2849 Paces Ferry Road SE, Suite 700</u>	
City <u>Marietta</u>	City <u>Atlanta</u>	
State <u>Georgia</u> Zip <u>30060</u>	State <u>Georgia</u> Zip <u>30339</u>	
Phone <u>c/o 770-803-3731</u>	Phone <u>770-803-3731</u>	

(THIS AREA TO BE COMPLETED BY STAFF):

PETITION NUMBER: _____

☐ Application Insufficient due to lack of: _____

by Staff: _____ Date: _____

☐ Application and all required supporting documentation is Sufficient and Complete

by Staff: _____ Date: _____

DATE OF ZONING BOARD OF APPEALS HEARING: _____

Received payment from _____ a check in the amount of \$ _____

for application filing fee, and \$ _____ for deposit on frame for public hearing sign(s).

Date Paid _____ Receipt Number: _____

Page 3 of 7

PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM
(Applications require authorization by ALL property owners of subject property)

Name(s) of All Property Owners of Record found on the latest recorded deed for the subject property:

EvansMT Ventures, LLC

Please Print Owners' Names

Property Tax Identification Number(s) of Subject Property: 05 17 119

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) 70 of the 5th District, and (if applicable to more than one land district) Land Lot(s) _____ of the District, and said property consists of a total of 1 acre _____ acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to Stephen Rothman, Wilson, Brock & Luby, LLC to act as (my) (our) Agent in this request. As Agent, they have the authority to agree to any and all conditions of approval which may be imposed by the Board.

(I) (We) certify that all of the information filed with this application including written statements or showings made in any paper or plans submitted herewith are true and correct to the best of (my) (our) knowledge and belief. Further, (I) (We) understand that this application, attachments and fees become part of the official records of the Fayette County Zoning Department and may not be refundable. (I) (We) understand that any knowingly false information given herein by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. (I) (We) further acknowledge that additional information may be required by Fayette County in order to process this application.

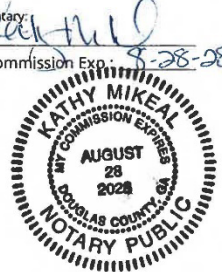
SIGNATURES

Signature _____ Notary: _____ (seal)
Name: EvansMT Ventures, LLC By Barry E. McWhirter
Address: 709 Galloway Rd SE, Atlanta, GA 30316 Commission Exp.: _____
City/State/Zip: Atlanta, GA 30316
Date: _____
Owner/Agent One:

Signature Shm N Notary: _____
Name: Stephen Rothman
Address: 2849 Paces Ferry Rd SE, St 700 Commission Exp.: _____
City/State/Zip: Atlanta, GA 30379
Date: Nov. 11 2024
Owner/Agent Two:

Signature Barry E. McWhirter Manager Notary: _____
Name: EvansMT Ventures, LLC
Address: 294 Interstate North Circle, Bldg. 2, S.150 Commission Exp.: 8-28-28
City/State/Zip: Atlanta, GA 30339
Date: November 12, 2024
Owner/Agent Three:

Variance Application



Page 4 of 7

Exhibit 11

Warranty Deed

Page 1 of 6



Doc ID: 008126040006 Type: GLR
Filed: 08/04/2009 at 09:15:00 AM
Fee Amt: \$814.00 Page 1 of 6
Transfer Tax: \$794.00
Fayette, Ga. Clerk Superior Court
Sheila Studdard Clerk of Court
BK 3557 PG 175-180

(THE ABOVE AREA IS FOR THE SOLE USE OF THE RECORDING CLERK)

UPON RECORDING, RETURN TO:

William H. Dodson, II, LLC
6000 Lake Forrest Drive, Ste. 300
Atlanta, Georgia 30328

09-50400

STATE OF GEORGIA

COUNTY OF COBB

LIMITED WARRANTY DEED

THIS INDENTURE made this 15th day of July, 2009, by and between Annette Goodman, Aubrey Stevens and Carole Stevens, party of the first part, hereinafter referred to collectively as "Grantor," and EVANSMT VENTURES, LLC, a Georgia limited liability company, party of the second part, hereinafter referred to as "Grantee." The words "Grantor" and "Grantee" to include the neuter, masculine and feminine genders, the singular and the plural, and the parties' respective heirs, legal representatives, successors and assigns;

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) in hand paid and other good and valuable consideration delivered to Grantor by Grantee at and before the execution, sealing and delivery hereof, the receipt and sufficiency of which is hereby acknowledged, the Grantor has and hereby does grant, bargain, sell and convey unto Grantee and the heirs, legal representatives, successors and assigns of Grantee all that tract or parcel of land lying and being in Land Lot 70 of the 5th District, Fayette County, Georgia, and as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference

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Book: 3557 Page: 175 Seq: 1

("Property"). The Property is conveyed subject and subordinate to all matters of record which affect the Property as described in Exhibit "B" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD said tract or parcel of land, together with any and all of the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining to the only proper use, benefit and behoof of the Grantee and the heirs, legal representatives, successors and assigns of Grantee, forever, in fee simple.

Grantor shall warrant and forever defend the right and title to said tract or parcel of land unto the Grantee and the heirs, legal representatives, successors and assigns of Grantee against the claims of all persons and entities claiming by, through and under Grantor.

[SIGNATURES ON FOLLOWING PAGE]

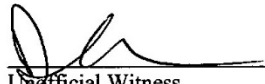
IN WITNESS WHEREOF, Grantor has caused this deed to be executed under seal as of the date first above written.

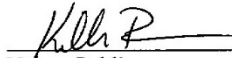
GRANTOR:

AS TO ANNETTE GOODMAN:

Signed, sealed and delivered in the presence of:

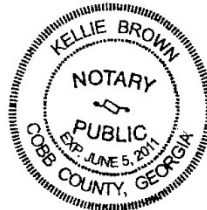
 (SEAL)
Annette Goodman


Unofficial Witness


Notary Public

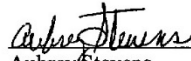
My Commission Expires: June 5, 2011

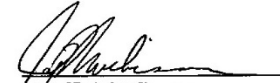
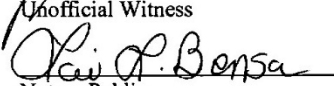
(Affix Notarial Seal)



AS TO AUBREY STEVENS

Signed, sealed and delivered in the presence of:

 (SEAL)
Aubrey Stevens


Unofficial Witness

Notary Public

My Commission Expires: 7-6-2013

(Affix Notarial Seal)



[SIGNATURES CONTINUED ON NEXT PAGE]


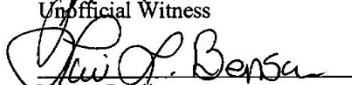
80569.2 960110-000052

Book: 3557 Page: 175 Seq: 3

AS TO CAROLE STEVENS

Signed, sealed and delivered in
the presence of:

 (SEAL)
Carole Stevens


Unofficial Witness

Notary Public



My Commission Expires: 7-6-2013

(Affix Notarial Seal)

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 70 of the 5th Land District of Fayette County Georgia and being those lands described in a plat of survey dated 4-18-77 prepared by Lee Engineering Company and being more particularly described as follows:

BEGINNING at a point on the Eastern right-of-way of State Highway 85, 425 feet as measure Southwesterly along the Eastern right-of-way of State Highway 85 from a point located at the intersection of the Eastern right-of-way of State Highway 85 with the North line of Land Lot 70, running thence North 89 degrees 31 minutes East 291 feet to a point; running thence South 3 degrees 37 minutes West 286 feet to an iron pin; running thence North 89 degrees 56 minutes West 338.1 feet to a point located on the Eastern right-of-way of State Highway 85; running thence Northeasterly along the Eastern right-of-way of State Highway 85, 290 feet to the point of beginning; the said tract of land containing 2 acres, more or less.

Book: 3557 Page: 175 Seq: 5

EXHIBIT B

1. Taxes for the year 2009 and thereafter not yet due and payable.
2. Easement from J.B. Simpson to P.S. Arkwright, dated June 11, 1926, recorded at Deed Book V, Page 95, Fayette County, Georgia Records; as assigned to Georgia Utilities Company aka Georgia Power Company.
3. Right of Way Deed from J.B Simpson to State Highway Board of Georgia dated October 31, 1941, recorded at Deed Book 29, Page 145, Fayette County, Georgia Records.

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Book: 3557 Page: 175 Seq: 6

Exhibit 12

Quit Claim Deed

Page 1 of 5

Doc ID: 008126050005 Type: GLR
Filed: 08/04/2009 at 09:15:00 AM
Fee Amt: \$16.00 Page 1 of 5
Transfer Tax: \$0.00
Fayette, Ga. Clerk Superior Court
Sheila Studdard Clerk of Court
BK **3557** PC **181-185**

(THE ABOVE AREA IS FOR THE SOLE USE OF THE RECORDING CLERK)

UPON RECORDING, RETURN TO:

William H. Dodson, II, LLC
6000 Lake Forrest Drive, Ste. 300
Atlanta, Georgia 30328 09 50400

STATE OF GEORGIA

COUNTY OF COBB

QUITCLAIM DEED

THIS INDENTURE made as of the 15th day of July 2009, by and between ANNETTE GOODMAN, AUBREY STEVENS AND CAROLE STEVENS, as party of the first part, hereinafter referred to collectively as "Grantor," and EVANSMT VENTURES, LLC, a Georgia limited liability company, as party of the second part, hereinafter referred to as "Grantee," the words "Grantor" and "Grantee" to include the neuter, masculine and feminine genders, the singular and the plural, and successors and assigns;

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of Ten and 00/100 Dollars (\$10.00) in hand paid and other good and valuable consideration delivered to Grantor by Grantee at and before the execution, sealing and delivery hereof, the receipt and sufficiency of which is hereby

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acknowledged, the Grantor has and hereby does remise, release, convey and forever quitclaim unto Grantee and the heirs, legal representatives, successors and assigns of Grantee, all that tract or parcel of land being in Land Lot 70 of the 5th District, Fayette County, Georgia, as more particularly described in Exhibit A attached hereto and incorporated herein by reference ("Property").

TO HAVE AND TO HOLD the Property to Grantee, so that neither Grantor nor any person or persons claiming under Grantor shall at any time, by any means or ways, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof.


[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has signed and sealed this Quitclaim Deed as of the date first above written.

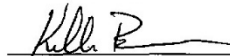
AS TO ANNETTE GOODMAN:

Signed, sealed and delivered in the presence of:

GRANTOR:

 (SEAL)
Annette Goodman


Unofficial Witness


Notary Public

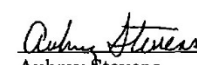
My Commission Expires: June 5, 2011

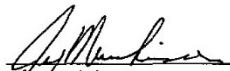
(Affix Notarial Seal)



AS TO AUBREY STEVENS

Signed, sealed and delivered in the presence of:

 (SEAL)
Aubrey Stevens


Unofficial Witness


Notary Public

My Commission Expires: 7.6.2013

(Affix Notarial Seal)



[SIGNATURES CONTINUED ON NEXT PAGE]

80570.2 960110-000052

Book: 3557 Page: 181 Seq: 3

AS TO CAROLE STEVENS

Signed, sealed and delivered in
the presence of:

Carole Stevens (SEAL)
Carole Stevens

[Signature]
Unofficial Witness
Lori L. Benson
Notary Public



My Commission Expires: 7-6-2013

(Affix Notarial Seal)

80570.2 960110-000052

4

Book: 3557 Page: 181 Seq: 4

Exhibit "A"

All that tract or parcel of land lying and being in Land Lot 70, 5th District, Fayette County, Georgia, as shown on that certain Boundary & Topographic Survey prepared for EvansMT Ventures, LLC, Georgia Commerce Bank & Chicago Title Insurance Company by Barton Surveying, Inc., certified by Travis Durham, Georgia Registered Land Surveyor No. 2950, dated November 21, 2008, re-inspected on July 13, 2009, and being more particularly described as follows:

BEGINNING at a one-half inch rebar found on the southeastern right-of-way of Georgia Hwy. 85 (130 foot right of way), said point being 327.48 feet southwestly as measured along said right-of-way from the intersection of southeastern right-of-way of Georgia Hwy. 85 and the southern right-of-way of Georgia Hwy. 92 (100 foot right of way), leaving said right-of-way of Georgia Hwy. 85, thence South 88 degrees 39 minutes 32 seconds East along property now or formerly owned by Eck-Fay, LLC a distance of 290.91 feet to a one-half inch open top found (disturbed); thence South 05 degrees 27 minutes 45 seconds West along property now or formerly owned by Brian Carlton, Jessie C. Carlton and Jamar Carlton a distance of 286.00 feet to a one-half inch rebar set; thence North 88 degrees 05 minutes 12 seconds West along property now or formerly owned by Candler & Mask Properties a distance of 336.89 feet to a one-half inch rebar found on the southeastern right-of-way of aforesaid Georgia Hwy. 85; thence along said right-of-way North 14 degrees 37 minutes 11seconds East a distance of 289.64 feet to a one-half inch rebar found, said point being the **POINT OF BEGINNING**; said tract contains 89,086 square feet or 2.045 acres, more or less.

whd, ii

7/14/09

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2008 11 21 – Boundary and Topo Survey showing a 2-acre parcel with a 100-foot building setback on Hwy 85 S.



2009 08 25 O'Reilly's Site Development Plan, Page 3

[illegible]

As-Built Survey for O'Reilly's

This survey shows the newly constructed building and infrastructure on a single parcel.



Exhibit 16

Zoning Verification Letter, October 31, 2011

Letter written by Dennis Dutton, Zoning Administrator. This letter references the entire 2-acre parcel which was approved for the O'Reilly's site development plan. This letter is included as Exhibit 16 in its entirety. Page 1 is shown here. The subsequent pages are a copy of the section for C-H (Highway Commercial).



Where Quality Is A Lifestyle

October 31, 2011

Gray McWhirter
EVANSMT Ventures, LLC
4045 Orchard Road
Building 400
Smyrna, GA 30080

Subject: Property at 908 Highway 85 South, Fayetteville, Georgia 30214
Land Lot 70 of the 5th District
Tax ID # 0517 072

Dear Mr. McWhirter:

Please be advised that the above-referenced property is zoned C-H: Highway Commercial based on my review of the Official Fayette County Zoning Map. The subject property located in Land Lot 70 of the 5th Land District, and consists of 2.0 acre.

The C-H: Highway Commercial Zoning District permits uses shown in Section 6-20. of the Fayette County Zoning Ordinance. The O'Reilly's Auto Parts Store is listed in Section 6-20. B.6. of the C-H Zoning District, which list the use of *Auto parts, tire store/installation, brake installation, muffler repair, oil change, tune-up, and emission testing facilities. All service, repairs, and diagnostics shall be conducted within an enclosed building.* (See attached sheets.)

Should you have any questions, please give me a call at 770-305-5161.

Sincerely,

Dennis S. Dutton,
Zoning Administrator

Subdivision Plat for Evans Mt Ventures, recorded by the Clerk of Superior Court, Fayette County, Georgia, in Plat Book 46 Pages 181-182.



Exhibit 18

Pep Boys Concept Plan of Parcel 0517 119 with measurements of lot width

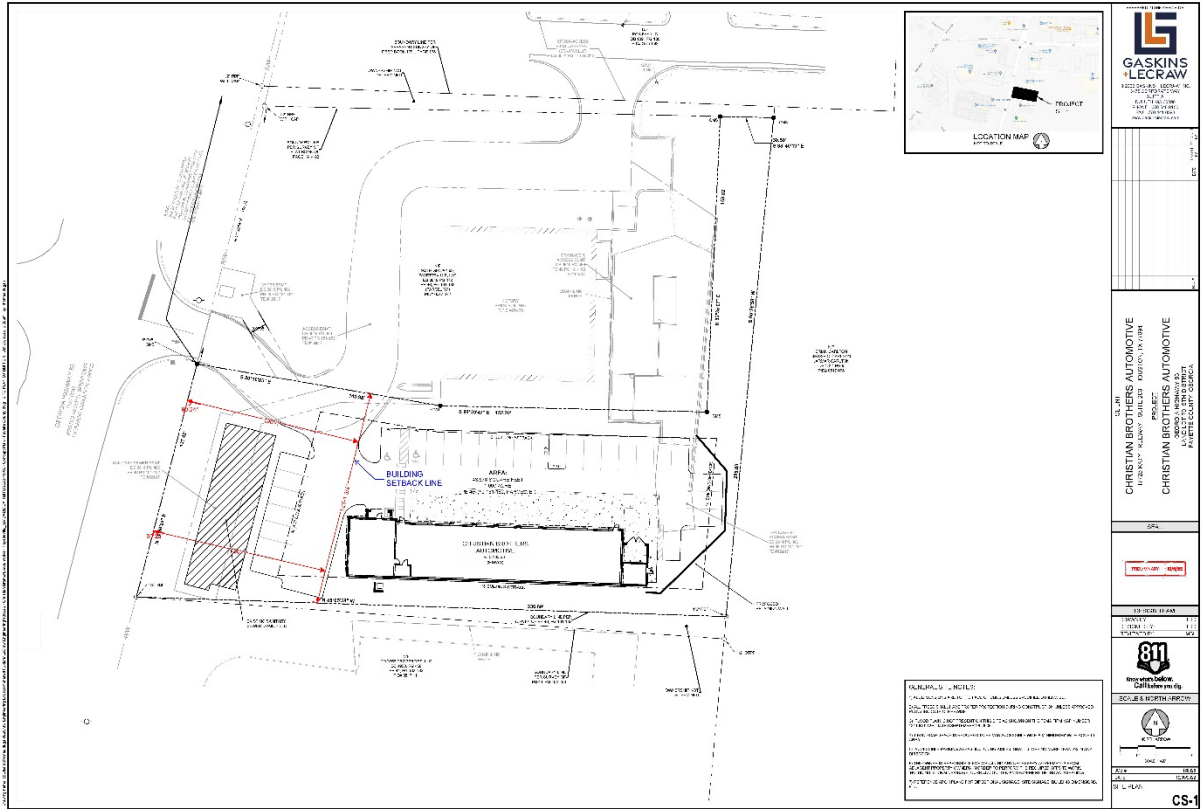
This plan was provided by Mr. McWhirter after staff asked him to have his surveyor verify the lot width measurement. Our initial measurements indicated that the lot width was less than 125 feet but this plan, prepared by Mr. McWhirter's design professional, provides an accurate measurement and demonstrates that the parcel does not meet the lot width requirement, which is that it should be 125' wide, as measured parallel with State Rout e85, at the building setback line.

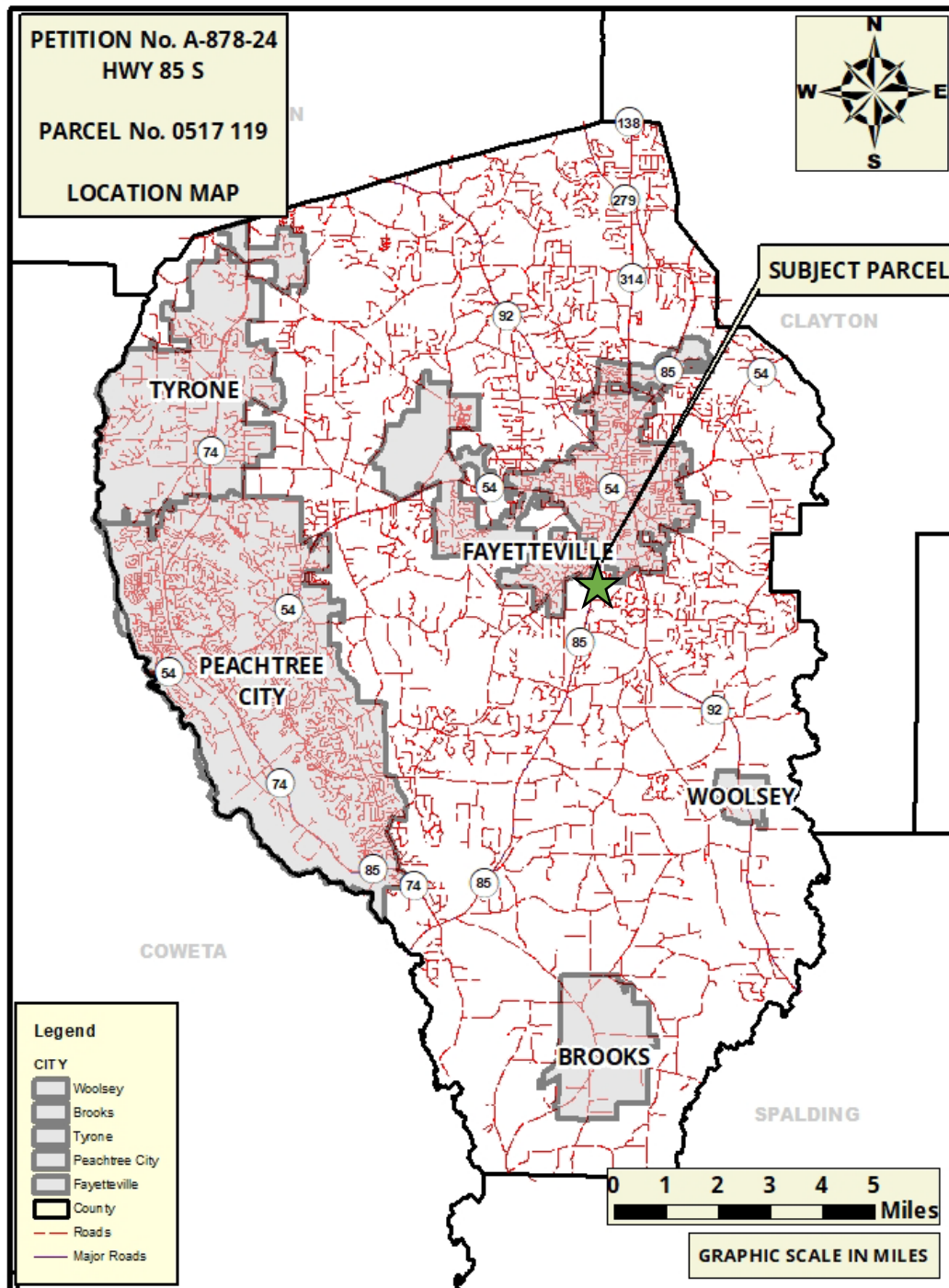


Exhibit 19

Concept Plan with scaled measurements

This is the estimated measurement prepared by staff to express the concern that the lot does not meet minimum dimensional requirements.







PETITIONS FOR VARIANCE(S)/
ADMINISTRATIVE APPEAL(S)/
ON CERTAIN PROPERTIES IN
UNINCORPORATED AREA OF
FAYETTE COUNTY, GEORGIA
PUBLIC HEARING to be held by
the Zoning Board of Appeals of
Fayette County on Monday, De-
cember 16, 2024, at 7:00 P.M., Fay-
ette County Administrative Com-
plex, Public Meeting Room, 140
Stonewall Avenue West, first floor.
Petition No.: A-878-24
Owner(s): Evans Mt. Ventures, LLC
Agent(s): Stephen Rothman, At-
torney
Property Address: Hwy 85 S
Zoning District: C-H, Highway

Commercial
Area of Property: 1.000 acres
Parcel #0517 119
Land Lot(s): 70
District: 5th
Road Frontage: Hwy 85 S, south of
908 Hwy 85 S
Request: Appeal the decision of
the Zoning Director regarding the
legal status of Parcel 0517 119, per
Sec. 110-242. - Powers and duties.
(a) Appeals from the actions of the
zoning administrator.
Property Description
Parcel "B" as depicted on a survey
for Evans Mt. Ventures, LLC, re-
corded in Plat Book 46 Pages 181-
182 on November 9, 2011.
11/13



2025 HEARING SCHEDULE

For Zoning Board of Appeals

Fayette County, Georgia

140 Stonewall Avenue West, Suite 202, Fayetteville, GA 30214

Deadline for application is the first Friday of the month by noon. If the first Friday of the month is on a holiday, the application filing deadline is extended to the next business day. Variance applications require a public hearing held on the fourth Monday of the month before the Zoning Board of Appeals. The Meeting Schedule reflects adjustments for holidays. The public hearing is held at the Fayette County Administrative Complex at Stonewall (located at the southwest corner of SR 54 and SR 85 in downtown Fayetteville) on the first floor in the Public Meeting Room (near the fountain) and hearings begin at 7:00 p.m.

APPLICATION DEADLINES

December 6, 2024

January 2, 2025

February 3, 2025

March 3, 2025

April 1, 2025

May 1, 2025

June 2, 2025

July 1, 2025

August 1, 2025

September 2, 2025

October 1, 2025

October 15, 2025*

December 1, 2025

ZBA MEETING DATES

January 27, 2025

February 24, 2025

March 24, 2025

April 28, 2025

May 27, 2025*

June 23, 2025

July 28, 2025

August 25, 2025

September 22, 2025

October 27, 2025

November 24, 2025

December 15, 2025*

January 26, 2026

*Dates are adjusted for Holiday meeting schedules and newspaper advertising deadlines.

ZONING BOARD OF APPEALS
FAYETTE COUNTY, GEORGIA
PUBLIC HEARING to be held by
the Zoning Board of Appeals of
Fayette County on Monday, De-
cember 16, 2024, at 7:00 P.M., Fay-
ette County Administrative Com-
plex, Public Meeting Room, 140
Stonewall Avenue West, first floor.
Topic.: Zoning Board of Appeals
2025 Calendar
Request: Approval of
Zoning Board of Appeals 2025 Cal-
endar.
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