

**BOARD OF APPEALS**

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

**STAFF**

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

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**AGENDA**

**Fayette County Zoning Board of Appeals  
Fayette County Administrative Complex  
Public Meeting Room  
March 27, 2023  
7:00 P.M.**

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1. Call to Order.
2. Pledge of Allegiance.
3. Approval of Agenda.
4. Consideration of the Minutes of the Meeting held on February 27, 2023, and Special Called Meeting on March 6, 2023.

**PUBLIC HEARING**

5. Petition No. A-832-23, Benjamin Hendricks and Barbara June Hendricks, Owner, request the following: 1) Variance to Sec. 110-125. A-R, (d) (2) to reduce the lot width from 250 feet to 180 feet to allow for construction of a single-family dwelling. 2) Variance to Sec. 110-125. A-R, (d) (6) to reduce the side yard setback from 50 feet to 30 feet to allow for construction of a single-family dwelling. 3) Variance to Sec. 110-125. A-R, (d) (4) (b), to reduce the front yard setback from 75 feet to 55 feet to allow for construction of a single-family dwelling. The subject property is located in Land Lot 255 of the 5<sup>th</sup> District and fronts on Hill Road.
6. Petition No. A-833-23, Martin Padilla Jr., Owner, request the following: Variance to Sec. 110-137. R-40, (d) (6) to reduce side yard setback from 15 feet to 6 feet to allow an existing structures to remain. The subject property is located in Land Lot 156 of the 5<sup>th</sup> District and fronts on Red Oak Drive.

# Meeting Minutes 2/27/23

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on February 27<sup>th</sup>, 2023, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

**MEMBERS PRESENT:** John Tate, Chairman  
Marsha Hopkins, Vice Chairwoman  
Anita Davis  
Bill Beckwith  
Tom Waller

**STAFF PRESENT:** Deborah Bell, Planning and Zoning Director  
Deborah Sims, Zoning Administrator  
Chelsie Boynton, Planning & Zoning Coordinator  
E. Allison Ivey Cox, County Attorney

1. Call to Order.
2. Pledge of Allegiance.
3. Oath of Office for Brian Haren.
4. Approval of Agenda.

*Bill Beckwith made a motion to approve the agenda. John Tate seconded the motion. The motion carried 5-0.*

5. Consideration of the Minutes of the Meeting held on January 23, 2023.

*Marsha Hopkins made a motion to approve the Minutes of the Meeting held on January 23, 2023. John Tate seconded the motion. The motion carried 5-0.*

6. Election of the Chairman.

*Marsha Hopkins made a motion to nominate John Tate for Chairman. Bill Beckwith seconded the motion. The motion passed 5-0.*

7. Election of the Vice-Chairman.

*Anita Davis made a motion to nominate Marsha Hopkins as Vice-Chairman. John Tate seconded the motion. The motion passed 5-0.*

8. Election of the Secretary.

*Marsha Hopkins made a motion to nominate Chelsie Boynton as Secretary. John Tate seconded the motion. The motion passed 5-0.*

## **PUBLIC HEARING**

9. Petition No. A-816-23, Apremier Properties Group, Inc, Owner, and Darrell Baker/ Principle/ Randolph Williams, LLC, Agent, request the following: 1. Variance to Sec. 110-170. Nonconformances, (1) Nonconforming structures. Request enlargement of a nonconforming structure: To allow an unpermitted addition to primary structure to remain. 2. Variance to Sec. 110-173. Transportation Corridor Overlay Zone, (2) S.R. 54 West (c) (2), to reduce the front yard setbacks from 100 feet to 30 feet for expansion to remain. The subject property is located in Land Lot 26 of the 7<sup>th</sup> District and fronts on Highway 54W and Tyrone Road.

Deborah Bell, Planning and Zoning Director stated at the time the staff report was written there were outstanding issues related to Environmental Health and Building Safety, the issues have since been addressed. She continued that though the applicant should have obtained the appropriate building permits, because the expansion is obtained under the roof of the structure it is not a significant increase in the non-conformity. She stated staff recommends approval. She stated at the time the structure was built it met setback requirements and became nonconforming with the widening of Highway 54.

Darrell Baker stated in July of 2022 they were asked to help resolve issues with regards to Old Hester's Grocery. He stated the new owner started new construction and improvements without a permit and was stopped by the County. He stated they have represented the gentlemen in real estate and zoning issues over the years and they were asked to step in. He added they met with the County and found out what needed to be done. He continued they requested variances in August of 2022 and they were granted. He stated they have been working with the County to upgrade his site and has variances to add a new canopy, diesel pump, and emissions station. He added they have intentions work with staff to come up with new elevations as well. He stated the structure of the convenience store has not enlarged. He expanded under an already existing roof that was once over a walkway.

No one spoke in favor or opposition.

Bill Beckwith asked if he needs the variance before he can move forward.

Darrell Baker stated they have asked the owner not to do any work until everything is in place.

Bill Beckwith confirmed there was no official stop work order.

Darrell Baker stated he met with Steve Tafoya and Leslie Nieber on site with the owner and made a commitment that nothing else would be done. He continued the owner has applied for building permits and further explained the extent the owner has gone through to provide the appropriate plans to the County.

Brian Haren asked Deborah Bell if the lot was currently considered a legal nonconforming lot.

Deborah Bell stated yes.

Chairman Tate asked if this variance request was a request that was originally heard last year.

Deborah Bell stated this is a new request. The previous request was related to the location of the fuel canopy and pumps. Deborah Bell further stated they are under a stop work order from Building Safety for the expansion.

Brian Haren asked if the front yard was on Highway 54 or Tyrone Road.

Deborah Bell stated both. It has two front yards, one for each road frontage with two different setbacks.

Bill Beckwith asked if Tyrone Road had been widened as well?

Deborah Bell stated Tyrone Road was realigned and a lane was added as intersection improvements.

Darrell Baker stated a turning lane was added.

Chairman Tate asked if the variance is for Highway 54 or Tyrone Road.

Deborah Bell stated it is for Highway 54. She added it doesn't increase the setback encroachment that exist on Tyrone Road side, only on the Highway 54 side.

Brian Haren asked if everything that is on the parcel now was legal before the widening of Highway 54?

Deborah Bell stated yes.

Chairman Tate state on that basis he would make a motion.

***Bill Beckwith made a motion to approve Petition No. A-816-23, 1. Variance to Sec. 110-170. . Nonconformances, (l) Nonconforming structures. Request enlargement of a nonconforming structure: To allow an unpermitted addition to primary structure to remain. John Tate seconded the motion. The motion passed 5-0.***

***John Tate made a motion to approve Petition No. A-816-23, 2. Variance to Sec. 110-173. Transportation Corridor Overlay Zone, (2) S.R. 54 West (c) (2), to reduce the front yard setbacks from 100 feet to 30 feet for expansion to remain. Brian Haren seconded the motion. The motion passed 5-0.***



**Items 10 – 18 were presented as one case by the appellant followed by the Planning and Zoning Director’s explanation of their decision. The appellant then gave their rebuttal.**

Adam Webb stated he is the attorney for Atlantic Billboards owned by Mike Fitzgerald. He stated this is a small business trying to do something good for other small businesses in the County. He stated there have not been reasonable opportunities for small businesses to have targeted advertising. He continued there are only two billboards in the County. He stated his client is looking forward to working with the County and with the Board to make this a win win project. He then provided packets for the Board and asked Mr. Fitzgerald to say a few words. He then swore in Mr. Fitzgerald.

Mike Fitzgerald stated he’s built over 100 billboards in Georgia. He stated all of his advertisers are local business owners and the average rate to advertise on one of his billboards is \$400 a month. He stated most of the people that advertise are in the community where the signs are located and direct traffic to the business in the community. He continued that he has had to try alternate approaches and has come up with a plan with LED signs that allows for changing ads every few seconds and allow for more advertisers to get their word out at a lower price. He added you can also advertise for lost children and that law officials find these boards helpful when it comes to public emergencies. He stated he has a waitlist of advertisers and have negotiated leases with nine (9) different landowners. He added he believes the boards will be received well and he just built one with a stone base in Cleveland, Ga. He continued he can make the signs look very attractive and match the Fayette Pavilion. He concluded he believes they will be an asset to the County.

Adam Webb presented the packet he provided to the Board. He stated there are issues with the County’s denial that should induce the Board to reverse the denials and allow Mr. Fitzgerald to continue with this project. He added Mr. Fitzgerald is willing to settle with conditions. He stated the first condition is that the signs will be made available immediately to local law enforcement agencies for any public emergencies such as Amber Alerts, weather announcements, disaster evacuation guidance, and fugitive alerts. Secondly, he has agreed to allow the County to use each electronic face four (4) times a year for public messaging for holiday events, voting announcement, whatever the County needs to advertise. Lastly, he has agreed to build no more than five (5) of the nine (9) signs. Mr. Webb then presented the basis for his appeal. The first basis in the appeal is that the County violated the rules on the time limit. He stated time limits are required on sign permitting because it is a constitutional dimension. Signs are a mechanism of speech and speech delay is speech denial. He stated the County ordinance states has to be sent out in a certain number of days by a certain method. He continued if it doesn’t happen within 45 days, the permit has to be issued. He stated that Mr. Fitzgerald followed the County’s mandatory rule of submission of permits and uploaded his paperwork. He stated this was an extensive application and more extensive than any other application they found in the open records request. He stated he received an nine (9) emails, one for each application, stating they were successfully submitted. There was then back and forth with the County, 45 days later there was no denial. He stated the denial came a few days after. He stated the time limit was violated and the permit should be issued. He then presented

another case from Dekalb County, where Dekalb County did not issue the permits in accordance with its time limits and the judge ruled they must issue the permit. He provided this case document to the Board. The second basis was that the County ordinance states that notification to the applicant can be made by certified mail return receipt requested, by fax to the number provided on the application, or by hand delivery by the County Marshal's office on or before the 45<sup>th</sup> day after the Planning and Zoning Department receipt of the application. He stated the method of denial was not accurate. He stated it was delivered in a UPS packet. The third basis is that the sign regulations was not adopted properly for three (3) reasons. Any of these reasons are sufficient to discard and invalidate the County's sign regulations. The first is that at the time it was passed in 2011, the County did not have its internal zoning procedures passed and adopted in accordance with Georgia law. He stated the rules were not in place at the time the sign code was adopted. He stated because those were not in place it is a nullity. The second is the Georgia zoning law says you must advertise in a legal organ when you adopt a sign ordinance that regulates based on zoning or district which the County code does. He stated they asked for the advertisements and the County clerk could not provide them. He stated if the ads were not placed 15 to 45 days before the public hearing, it is a nullity. The third reason is that there was no public hearing to adopt the sign ordinance. He stated it was adopted on the consent agenda of the County commission on January 13<sup>th</sup>, 2011 with no discussion or no public hearing, this makes it a nullity. He continued that the sign ordinance is a nullity and any basis to deny the application is a nullity. The fourth basis is about the constitutional deficiencies found in the County code. He stated Georgia courts established that billboards cannot be banned. They can be designated to a certain part of the county but not banned. He continued, the County ordinance states "prohibited signs: billboards" and that is not allowed. He stated in 2004 there was a series of litigations involving Fayette County in Coffee vs Fayette County. This established a rule that applied to all sign ordinances in Georgia. He then explained the up and down of this case from Supreme Court, Georgia Court of Appeals, and County Court. He stated the County ended up having to issue the permits and write a check for damages caused and that is why the two billboards now exist on Highway 85. He stated his client does not want that type of dispute going forward but to move forward in a win-win fashion. The fifth basis is about the failure to adopt the internal zoning procedures. He stated he has previously covered this and won't address it in addition. The sixth basis is that the County's decision making has been shown to be discretionary. He stated one cannot have discretion in the realm of signs because that would undermine the First Amendment and freedom of speech. He continued once Mr. Fitzgerald submitted everything he begin to receive a series of reactions from County officials trying to avoid the applications. He stated the County says they have gone entirely online for the permitting but once he submitted the application he received an email that said submitted successfully and then was told no he needed to do things another way. He stated the County stated in the denial letters that Mr. Fitzgerald did not submit a survey, all nine (9) were denied based on not having a survey. He stated the ordinance nor application form require a survey. He stated they requested an open records for all the sign permits in the last three years and none had a survey prepared for the application. He added this shows that the County is trying to avoid this situation. Secondly, they denied six (6) of the applications because there was another freestanding sign on the parcel. He stated Mr. Fitzgerald committed any sign that is not otherwise exempt will be

removed as part of his process. He stated they have submitted five (5) applications to see the standard operation procedure in the County. He stated the County does not turn down sign applications because there is a freestanding sign on the parcel. He added they allow it to be replaced, upgraded, modified, etc. He stated the County added a third basis of denial in February based on size and height. He continued once you file an appeal, you cannot change the basis because it creates a moving toward. He then stated the conditions to be placed on the applications will alleviate legitimate concerns that others may have. He reiterated the signs will be immediately made available in emergencies for state messaging. Secondly, Atlantic will donate in perpetuity one space in the advertising rotation on each LED display installed to Fayette County free of charge for public service messaging up to four times each year for two weeks each time. Thirdly, Atlantic agrees that if all nine (9) of the applications are approved, Atlantic will choose four (4) applications to withdraw with prejudice as a result only five (5) will be installed. He concluded, Mr. Fitzgerald wants to work with the Board and the County and they do not have any interest in fighting with the County.

Deborah Bell stated she will begin with the timeline for the cases. It is the same timeline for each of the cases. She stated the timeline as follows: On October 6<sup>th</sup>, 2022 Mr. Fitzgerald submitted an application on Sages for mounted wall signs. On October 7<sup>th</sup>, Bernadette Eaden, permit technician, rejected the intake process because the applicant had not obtained the preliminary approval from Planning and Zoning. She stated the County ordinance states that all sign permits come to Planning and Zoning because not all sign permits require building permits so they don't all necessarily go through the Sages program. She stated when someone applies in Sages, it sends an auto generated emailed that states submitted successfully and then the permit technician reviews the application to make sure all the documents that are needed are in the packet before it's sent on for review by the appropriate staff. She stated the term "Intake Rejected" was used because it needed to first come to Planning and Zoning. She stated an email was then sent to the applicant with the explanation that "written approval from Planning and Zoning must be obtained for billboard. Once obtained please see our office." She stated she was told they did submit sign applications and she was anticipating Mr. Fitzgerald bringing the signs by the Planning and Zoning office. On October 25<sup>th</sup>, they sent Mr. Fitzgerald an email, after not hearing from him, to resubmit to Planning and Zoning so he could proceed with the permit process. On October 26<sup>th</sup>, Mr. Fitzgerald came in person and brought sign application packets for each of the nine (9) applications. On November 22<sup>nd</sup>, the letters of permit disapproval were sent in a single envelope to Atlantic Billboards, LLC, Mike Fitzgerald at his address via UPS Next Air with a signature required and expected date and time of delivery as Wednesday November 23<sup>rd</sup>. On November 23<sup>rd</sup>, at 10:31am the letters were delivered and signed for by Dean at the front desk. On December 6<sup>th</sup>, Planning and Zoning received a letter from Mr. Webb, the attorney for Atlantic Billboards LLC submitting a letter to appeal the decision of County staff regarding sign applications. Ms. Bell then introduced each sign petition.

Petition No. A-823-33 is an appeal for the sign at 3020 Hwy 138, parcel number 13050 1004. Planning and Zoning did not approve the sign due to the following factors: 1. The proposed sign exceeds maximum sign face area, the maximum height and the maximum structure height

that are permitted in non-residential districts for freestanding signs. 2. There is already a freestanding sign on the parcel and only one freestanding permanent sign is allowed on a single parcel. 3. The process for a sign permit application requires the sign permit be submitted to verify planning and zoning. The application materials must include a survey or plat showing the proposed location of the structure being permitted and distances from property lines or other structures. The site plan submitted was created on a screenshot of a public parcel map which doesn't provide an accurate enough depiction of the site and property lines to confirm that a proposed structure would be appropriately sited on the parcel. She stated the explanation in the letters was "there is already a freestanding sign located on this parcel so an additional sign is not allowed. Should the existing sign be removed a new freestanding sign that meets dimensional requirements could be permitted." She stated the ordinance section that explains the sign face area and requirements and size allowed for freestanding signs in non-residential districts was included. She stated they explained the general location of the sign seems to be acceptable but they do require site plans for accessory structures and signs be submitted on a survey with dimensions. She continued that public has property lines drawn in but the aerial photography is not taken from top dead center. So when you draw something on there based on that, one does not get an accurate depiction. She stated anytime there is a structure that is two feet within the setbacks they require a foundation survey of some kind. For other freestanding signs, they require that those be drawn in on a survey. The sign location itself doesn't have to be stamped by a surveyor but they have to have something at scale that gives them accurate dimensions.

Petition No. A-824-23, 1934 Hwy 85 N, parcel 0552 035. The same three reasons were noted: 1. The sign exceeds the maximum sign face area. 2. There is already a freestanding sign on the parcel. 3. They require a site plan with more details.

Petition No. A-825-23, 165 Carnegie Place, parcel 055202 013. The same three reasons were noted: 1. The sign exceeds the maximum sign face area. 2. There is already a freestanding sign on the parcel. 3. They require a site plan with more details.

Petition No. A-826-23, 1807 Hwy 85 N, parcel 0552 003. There is not a sign already on the parcel so it noted: 1. The sign exceeds the maximum sign face area. 2. They require a site plan with more detail

Petition No. A-827-23, parcel 0540-007. 1. The sign exceeds the maximum sign face area. 2. This site contains a significant amount of flood plain and therefore has additional requirements. The sign is considered development per Fayette County's floodplain ordinance and the submitted site plan is insufficient to determine if there is floodplain encroachment there.

Petition No. A-828-23, 1202 Hwy 54 E, parcel 0532 003. 1. The sign exceeds the maximum sign face area. 2. This site contains a significant amount of flood plain and therefore has additional requirements. The sign is considered development per Fayette County's floodplain

ordinance and the submitted site plan is insufficient to determine if there is floodplain encroachment there.

Petition No. A-829-23, 1147 Hwy 54 E, parcel 0532 063. 1. The sign exceeds the maximum sign face area. 2. There is already a freestanding sign on the parcel. 3. They require a site plan with more details.

Petition No. A-830-23, 1139 Hwy 54 E, parcel 0532 042. 1. The sign exceeds the maximum sign face area. 2. There is already a freestanding sign on the parcel. 3. They require a site plan with more details.

Petition No. A-831-23, 907 Hwy 85 S, parcel 0517 123. . 1. The sign exceeds the maximum sign face area. 2. There is already a freestanding sign on the parcel. 3. They require a site plan with more details.

Ms. Bell then responded to the Mr. Webb's points about the time limit. She stated the sign ordinance does require that sign applications be submitted to Planning and Zoning. She stated Mr. Fitzgerald initially submitted the application to Building Safety as wall signs so the permit technician rejected the intake because it had not followed the correct process. Sages Gov sent the intake rejection notice via email to the email address provided in the application. She continued that notice advised the applicant to contact Planning and Zoning. She stated an incomplete application is not accepted. The time limit is triggered by the submittal of a complete application directly to Planning and Zoning. Ms. Bell then stated they have had problems with USPS since the pandemic, things come back without any signatures. She stated sometimes the cards come back and sometimes they disappear. She stated she elected to send them UPS overnight and to his email address so that they felt like they achieved substantial compliance by the methods of delivery. She continued, regarding the open records request and the ordinance adoption, based on the 2011 case, that was done as a clerical method to recodify the ordinance to relabel it. She stated the sign ordinance was adopted after a public notice was run on September 7<sup>th</sup>, 2005. She then introduced Exhibit 10, a copy of the newspaper advertisement and the publisher's affidavit from September 2005 following a public hearing before the Planning Commission on September 15<sup>th</sup>, 2005 and a hearing before the Board of Commissioners on October 13<sup>th</sup>, 2005 at which time the item was tabled. It was then adopted on November 10<sup>th</sup>, 2005. She stated Exhibit 11 is a certified copy of the Board of Commissioners minutes and accompanying exhibit items which include the sign ordinance. The text of that sign ordinance is in everything that pertains to staff's denial of these applications. She stated it is the same as the 2005 version as you would see today. She stated they did not distribute any denials based on prohibited sign language and they requested the copy of the survey for clarity because this a large structure. She then responded to the discretionary decisions. She stated they require site plans for stand alone signs. These need to be on a survey. They can hand draw and scale it in on a survey and that is what they needed for the signs and that is what is required for freestanding signs. She continued each individual case is an exhibit. A-823-23 is exhibit one (1), A-824-23 is exhibit two (2), A-825-23 is exhibit three (3), A-826-23 is exhibit four (4), A-827-23 is exhibit five (5), A-828-23 is exhibit six (6),

A-829-23 is exhibit seven (7), A-830-23 is exhibit eight (8), A-831-23 is exhibit nine (9). She stated these are all part of the agenda package.

Chairman Tate stated because there has been a lot of information provided this evening he believes it would be appropriate to table the decision.

Adam Webb stated he could do his rebuttal tonight or his law partner could present it next Monday. He also stated he could submit it in written form.

Chairman Tate stated he could present it tonight.

Mr. Webb stated the County is definitive on the time you receive the application. It says it is 100 percent online and submitted through Sages. He stated he's done a sign application that was submitted as an email and was told to submit on Sages. He stated they received the application and Mr. Fitzgerald received the successfully submitted email and that is when the clock starts. He continued the deadline was not honored and the ordinance states that the permit shall be issued. Secondly, the County substantially complied by sending the notice UPS. He stated substantial compliance works in other states but not Georgia. There is strict compliance in Georgia. He stated as to the zoning procedure law, to see the minutes. The sign ordinance chapter as it is now was adopted January 2011 and they didn't comply with the Zoning Procedures Law. He continued, they are sending you to 2005 to look at another code adoption. He stated that code was done away in 2011 and they are grasping at straws. He stated the Courts of Georgia say to let the landowner use their land as they see fit. He added if you want to stop that you have to do things exactly right. He stated looking back at this code from years earlier, it was enthralled in litigation with Mr. Coffee which led to the County losing three major decisions in the Court of Appeals of Georgia. He stated he heard the County making excuses and not following strict compliance of Georgia law. He then referred to the application being submitted as a wall sign. He stated on the application it states "wall/monument sign more than 36 square feet." He checked that because it was a monument sign greater than 36 square feet. He stated the County isn't acknowledging what their own form says. He concluded, Mr. Fitzgerald did everything right and played by the rules and the rules were violated. He stated his client wants to work with the Board and will be in attendance next Monday. He stated they have provided conditions they are willing to accept as well as the stone cladding or brick to improve the aesthetic. He then thanked the Board for their time.

***Marsha Hopkins made a motion to table items 10-18 until Monday, March 6<sup>th</sup> at 3pm. Brian Haren seconded the motion. The motion passed 5-0.***

10. Petition No. A-823-23, Amazing Grace Evangelical International Ministries, INC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 199 of the 13<sup>th</sup> District and fronts on Highway 138, Highland Drive and Old Highway 138.

11. Petition No. A-824-23, Thomas M. Suggs, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lots 248 and 249 of the 5<sup>th</sup> District and fronts on Hwy 85 N.
12. Petition No. A-825-23, Carnegie Place Holding, LLC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 233 of the 5<sup>th</sup> District and fronts on Carnegie Place and Hwy 85 N.
13. Petition No. A-826-23, MJE Properties, LLLP, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 233 of the 5<sup>th</sup> District and fronts on Hwy 85 N and Plantation Road.
14. Petition No. A-827-23, Donald Scarbrough, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 170 and 171 of the 5<sup>th</sup> District and fronts on Hwy 54 E.
15. Petition No. A-828-23, G & I Equities, LLC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 137 of the 5<sup>th</sup> District and fronts on Hwy 54 E.
16. Petition No. A-829-23, Ronald V. Wormuth, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 137 of the 5<sup>th</sup> District and fronts on Hwy 54 E.
17. Petition No. A-830-23, 355 Group, LLC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 137 of the 5<sup>th</sup> District and fronts on Hwy 54 E.

18. Petition No. A-831-23, Michael Mehio and Crystal Mehio, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 170 of the 5<sup>th</sup> District and fronts on Hwy 85 S.

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Chairman Tate asked is there a motion to adjourn?

*Marsha Hopkins made a motion to adjourn. Anita Davis seconded the motion. The motion passed 5-0.*

The meeting adjourned at 8:00 pm.

**ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY**

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**JOHN TATE, CHAIRMAN**

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**CHELSIE BOYNTON, ZBA SECRETARY**



# Meeting Minutes 3/6/23

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on February 27<sup>th</sup>, 2023, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

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

**STAFF PRESENT:** Deborah Bell, Planning and Zoning Director  
Deborah Sims, Zoning Administrator  
Chelsie Boynton, Planning & Zoning Coordinator  
E. Allison Ivey Cox, County Attorney

1. Call to Order.
2. Pledge of Allegiance.
3. Approval of Agenda.

*Bill Beckwith made a motion to approve the agenda for March 6<sup>th</sup> meeting. Brian Haren seconded the motion. The motion passed 5-0.*

## **Old Business**

Chairman Tate asked if there were any questions or comments from the Board about items four (4) through 12.

Bill Beckwith stated they are being asked to either affirm the denial of the Zoning Administrator for the petitions or to reverse the decision. He stated their duty is to look at how it applies to the existing Zoning Ordinance and was the denial made on specific basis. He stated they are not there to make any changes but to look at how the ordinance applies in this case and if the denials were correct. He continued they have not had many appeals to denials.

Chairman Tate agree and asked if there were any other questions.

Marsha Hopkins stated she agreed with Mr. Beckwith. She stated it is well specified in the ordinance the process to review the decisions.

Brian Haren agreed the ordinance is clear.

Chairman Tate agreed with Marsha Hopkins and Brian Haren.

Anita Davis asked Allison Cox, County Attorney, about the application submission. She stated the original application was submitted October 6<sup>th</sup> and they were rejected, and a new application was submitted October 26<sup>th</sup>. She asked if the second submission is a secondary submission or a continuation of the first?

Allison Cox stated the late October submission would be the initial application because the first one was done improperly.

Brian Haren added the clock does not start ticking until the proper request has been received. He added requests get rejected all the time for various technical reasons and only when the applicant submits the correct application that's when the clock starts ticking.

Chairman Tate asked the Board if they were ready to vote or if they felt the need to enter Executive Session.

The Board members agreed to go into Executive Session to discuss nine items of threatened litigation.

**Executive Session:**

**Nine items of threatened litigation.** Bill Beckwith made a motion to go into Executive Session. Brian Haren seconded the motion. The motion passed 5-0.

The Board recessed into Executive Session at 3:10 p.m. and returned to Official Session at 3:36 p.m.

**Return to Session:** Anita Davis moved to return to Official Session. Bill Beckwith seconded the motion. The motion carried 5-0.

**Regular Session**

4. **Petition No. A-823-23, Amazing Grace Evangelical International Ministries, INC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 199 of the 13<sup>th</sup> District and fronts on Highway 138, Highland Drive and Old Highway 138.**

*Brian Haren made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit per Sec. 108-28. - Denial, revocation, and suspension regarding Petition No. A-823-23. Bill Beckwith seconded the motion. The motion carried 5-0.*

5. Petition No. A-824-23, Thomas M. Suggs, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lots 248 and 249 of the 5<sup>th</sup> District and fronts on Hwy 85 N.

***Bill Beckwith made a motion to affirm the decision of the Zoning Administrator/ Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-824-23. Brian Haren seconded the motion. The motion carried 5-0.***

6. Petition No. A-825-23, Carnegie Place Holding, LLC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 233 of the 5<sup>th</sup> District and fronts on Carnegie Place and Hwy 85 N.

***Brian Haren made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-825-23. Anita Davis seconded the motion. The motion carried 5-0.***

7. Petition No. A-826-23, MJE Properties, LLLP, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 233 of the 5<sup>th</sup> District and fronts on Hwy 85 N and Plantation Road.

***Marsha Hopkins made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-826-23. Brian Haren seconded the motion. The motion carried 5-0.***

8. Petition No. A-827-23, Donald Scarbrough, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 170 and 171 of the 5<sup>th</sup> District and fronts on Hwy 54 E.

***Brian Haren made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-827-23. Bill Beckwith seconded the motion. The motion carried 5-0.***

9. Petition No. A-828-23, G & I Equities, LLC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 137 of the 5<sup>th</sup> District and fronts on Hwy 54 E.

***Bill Beckwith made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-828-23. Anita Davis seconded the motion. The motion carried 5-0.***

10. Petition No. A-829-23, Ronald V. Wormuth, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 137 of the 5<sup>th</sup> District and fronts on Hwy 54 E.

***Anita Davis made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-829-23. Brian Haren seconded the motion. The motion carried 5-0.***

11. Petition No. A-830-23, 355 Group, LLC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 137 of the 5<sup>th</sup> District and fronts on Hwy 54 E.

***Brian Haren made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-830-23. Anita Davis seconded the motion. The motion carried 5-0.***

12. Petition No. A-831-23, Michael Mehio and Crystal Mehio, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 170 of the 5<sup>th</sup> District and fronts on Hwy 85 S.

***Anita Davis made a motion to affirm the decision of the Zoning Administrator/Planning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension regarding Petition No. A-830-23. Bill Beckwith seconded the motion. The motion carried 5-0.***

---

Chairman Tate asked is there a motion to adjourn?

*Brian Haren made a motion to adjourn. Anita Davis seconded the motion. The motion passed 5-0.*

The meeting adjourned at 3:51 pm.

**ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY**

---

**JOHN TATE, CHAIRMAN**

---

**CHELSIE BOYNTON, ZBA SECRETARY**

STATE OF GEORGIA  
COUNTY OF FAYETTE

EXECUTIVE SESSION AFFIDAVIT

Personally appeared before me, John Tate, Chairman of the Fayette County Zoning Board of Appeals, who after being duly sworn says:

1.

I was the presiding officer of a meeting of the Fayette County Zoning Board of Appeals held on the 6<sup>th</sup> day of March, 2023

2.

That it is my understanding that O.C.G.A. § 50-14-4 (b) provides as follows:

When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

3.

Com The subject matter of the closed meeting or closed portion of the meeting held on the 6<sup>th</sup> day of March, 2023, which was closed for the purpose(s) of threatened litigation as allowed by O.C.G.A., Title 50, Chapter 14, was devoted to matters within those exceptions and as provided by law.

4.

This affidavit is being executed for the purpose of complying with the mandate of O.C.G.A. § 50-14-4 (b) that such an affidavit be executed.

FURTHER AFFIANT SAITH NOT.

John Tate  
JOHN TATE, CHAIRMAN  
FAYETTE COUNTY ZONING BOARD OF  
APPEALS

Sworn to and subscribed before me this 6<sup>th</sup> day of March, 2023.

Chelsie Boynton  
Notary Public



**PETITION NO: A-832-23**

**Requested Action:** Variance to reduce front building setback, side building setback and the minimum lot width at building line in the A-R (Agriculture- Residential) District, to allow the construction of new home on a legal, nonconforming lot.

**Location:** Hill Road, Fayetteville, GA 30214

**Parcel(s):** 0548 056

**District/Land Lot(s):** 5<sup>th</sup> District, Land Lot(s) 255

**Owner(s):** Benjamin Hendricks and Barbara June Hendricks

**Agent:** n/a

**Zoning Board of Appeal Public Hearing:** March 27, 2023

**REQUEST**

Applicant is requesting the following variances for an existing principal structure:

1. Variance to Sec. 110-125.(d)(4)b.- Front yard setback on a minor thoroughfare requirement, to reduce the front yard setback from 75 feet to 55 feet.
2. Variance to Sec. 110-125.(d)(6).- Side yard setback requirement, to reduce the side yard setback from 50 feet to 30 feet.
3. Variance to Sec. 110-125(d)(2).- Lot width (at building line) requirement, to reduce the lot width at building line from 250 feet to 180 feet.

**STAFF RECOMMENDATION**

It is staff's opinion that the property presents a unique situation.

1. Staff recommends **APPROVAL** of the request to reduce the front setback from 75 feet to 55 feet.
2. Staff recommends **APPROVAL** of the request to reduce the side yard setback from 50 feet to 30 feet.
3. Staff recommends **APPROVAL** of the request to reduce the lot width at building line, however, staff recommends that it be reduced from 250 feet to 200 feet.

## HISTORY

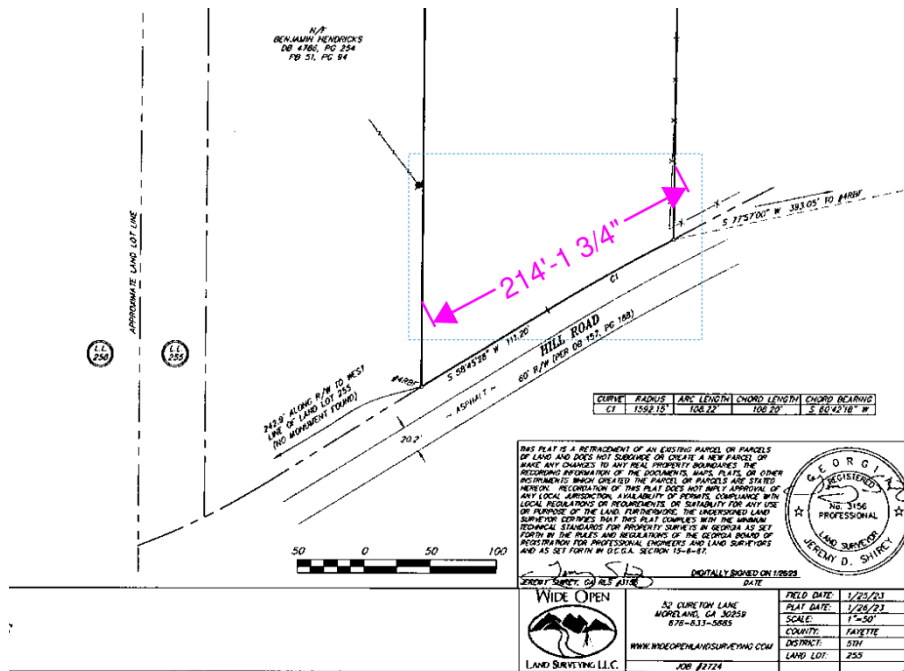
The subject property is a legal lot of record, with a plat record July 15, 1964. It is a 3.0-acre lot and is a legal, nonconforming lot, in that does not meet all the dimensional requirements required of A-R zoning district today.

### Note regarding the measurement of Lot Width:

The required lot width at building line today in the A-R zoning district is 250 feet. The lot width is prescribed as a measurement parallel to the road, so the approximate width of this lot is 214 feet (this is a scaled measurement but was not done by the surveyor). Staff suggests a reduction of the lot width requirement to 200 feet.

### **Sec. 110-77. - Lot width.**

*The lot width shall be met at the required setback and shall be maintained for a depth of 80 feet. On a lot where the lot width is not met at the required setback, the setback will then be where the lot width is met and said lot width shall be maintained for a depth of 80 feet. Lot width shall be determined as the distance between lot lines either measured in a straight line parallel to the adjoining street right-of-way or tangent and perpendicular to the mid-point of the right-of-way in the case of the turnaround portion of a cul-de-sac along the front minimum building line (see graphic). The principal structure shall be constructed within this area. Residential accessory structures and farm outbuildings, horse stables, auxiliary structures and greenhouses allowed in the A-R zoning district do not have to comply with the lot width at the building line; however, they shall comply with applicable setbacks and location requirements.*





**DEPARTMENTAL COMMENTS**

- Water System** – FCWS has no objection to the proposed variance. Water is available along this portion of Hill Rd in a 10" DIP water main along the southside of the road.
- Public Works/Environmental Management** – No objections.
- Environmental Health Department** – This office has no objection to the proposed variances.
- Fire** – No objections.

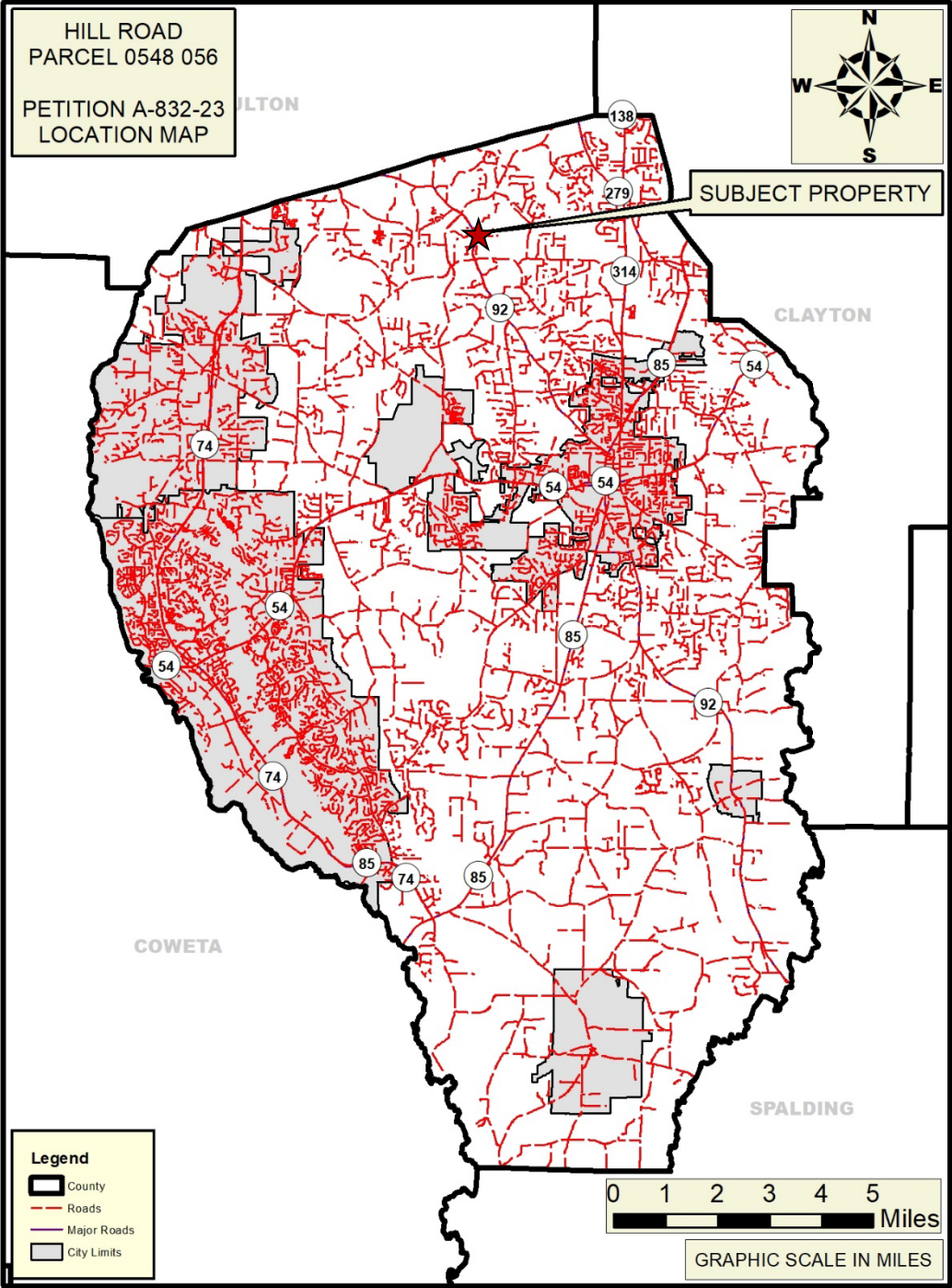
## **CRITERIA FOR CONSIDERATION OF A VARIANCE**

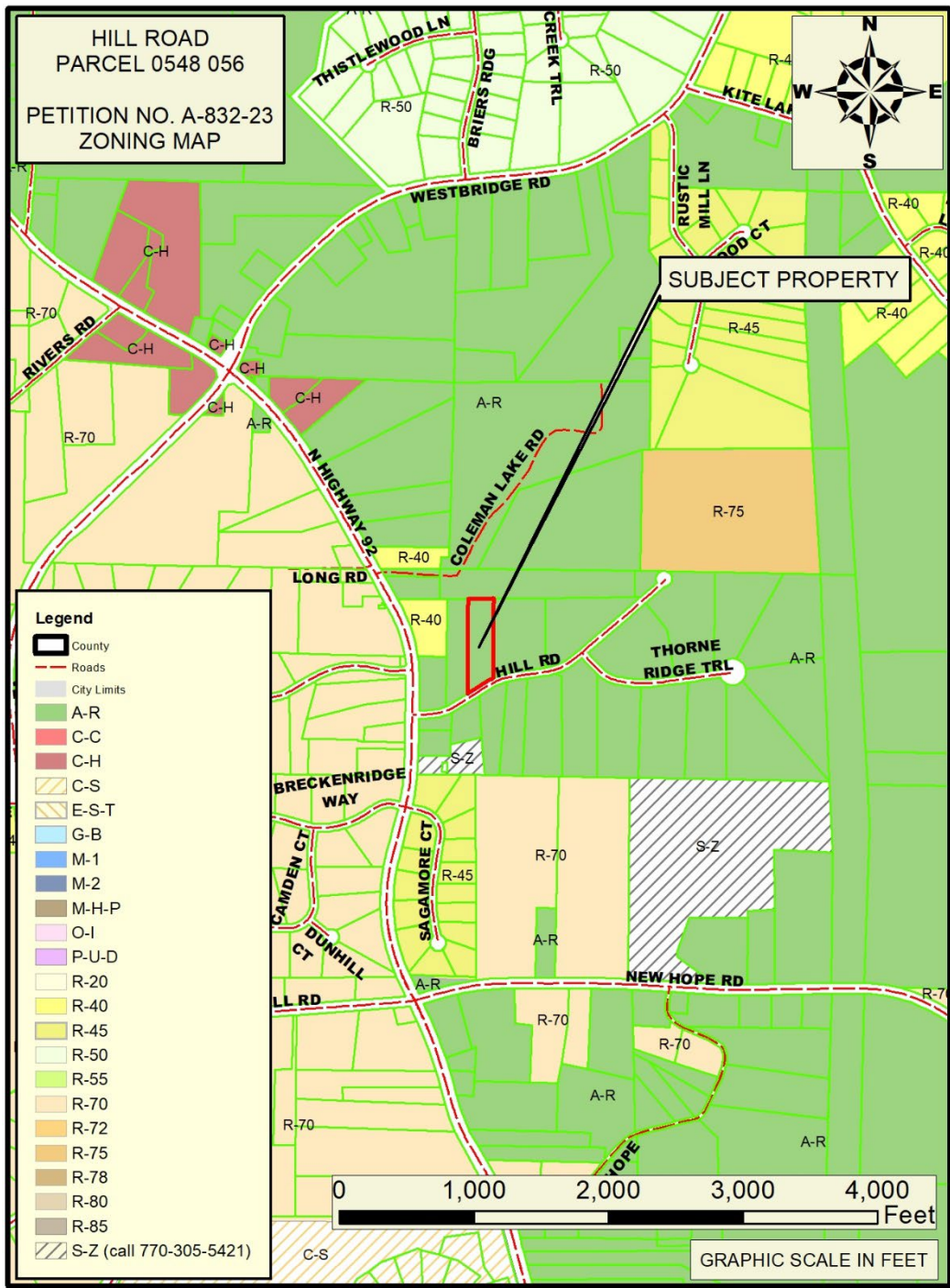
### **STAFF ASSESSMENT OF CRITERIA**

*(Please see the attached application package for the applicant's responses to the criteria.)*

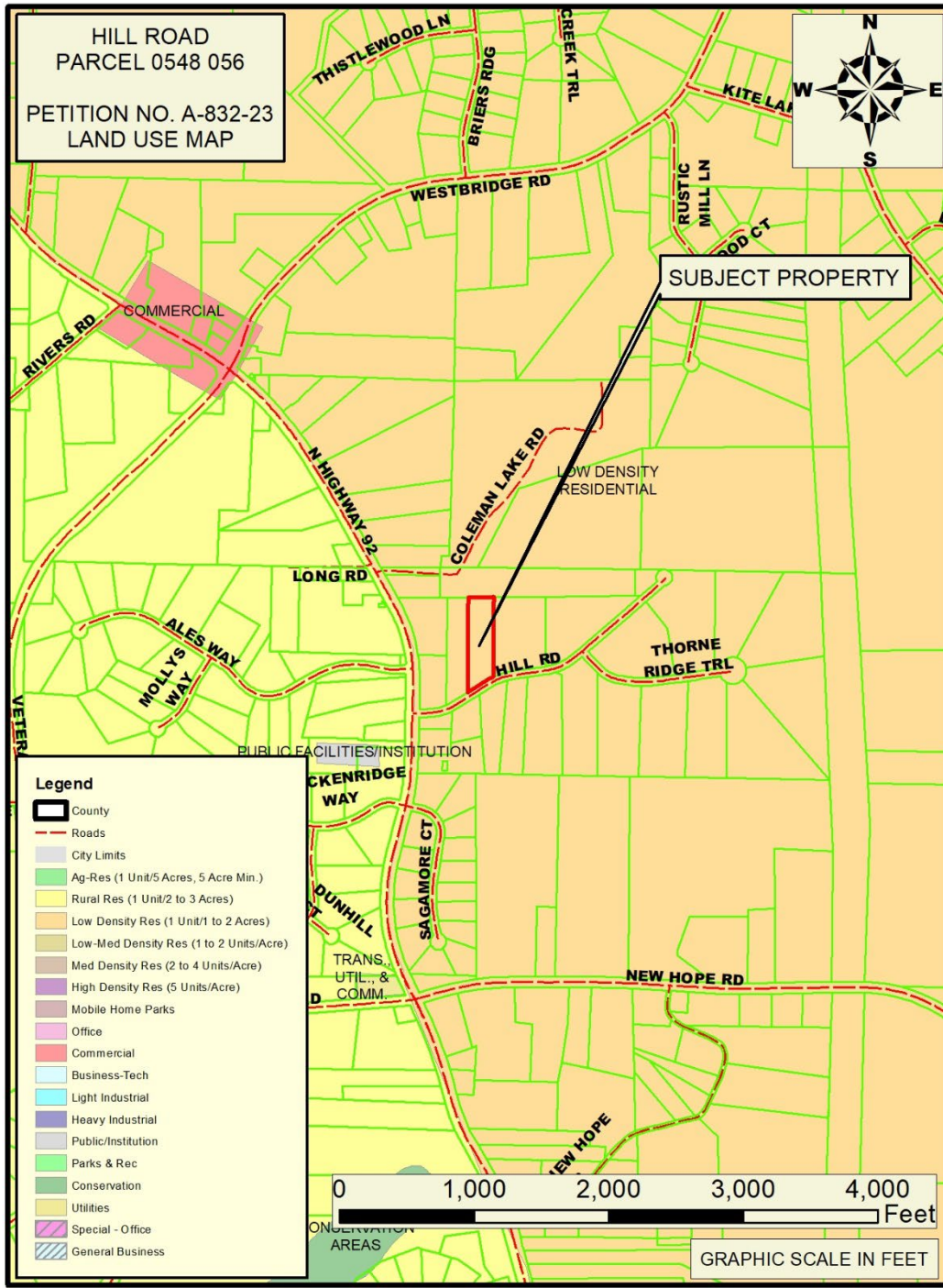
The Fayette County Zoning Ordinance, Sec. 110-242. (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation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

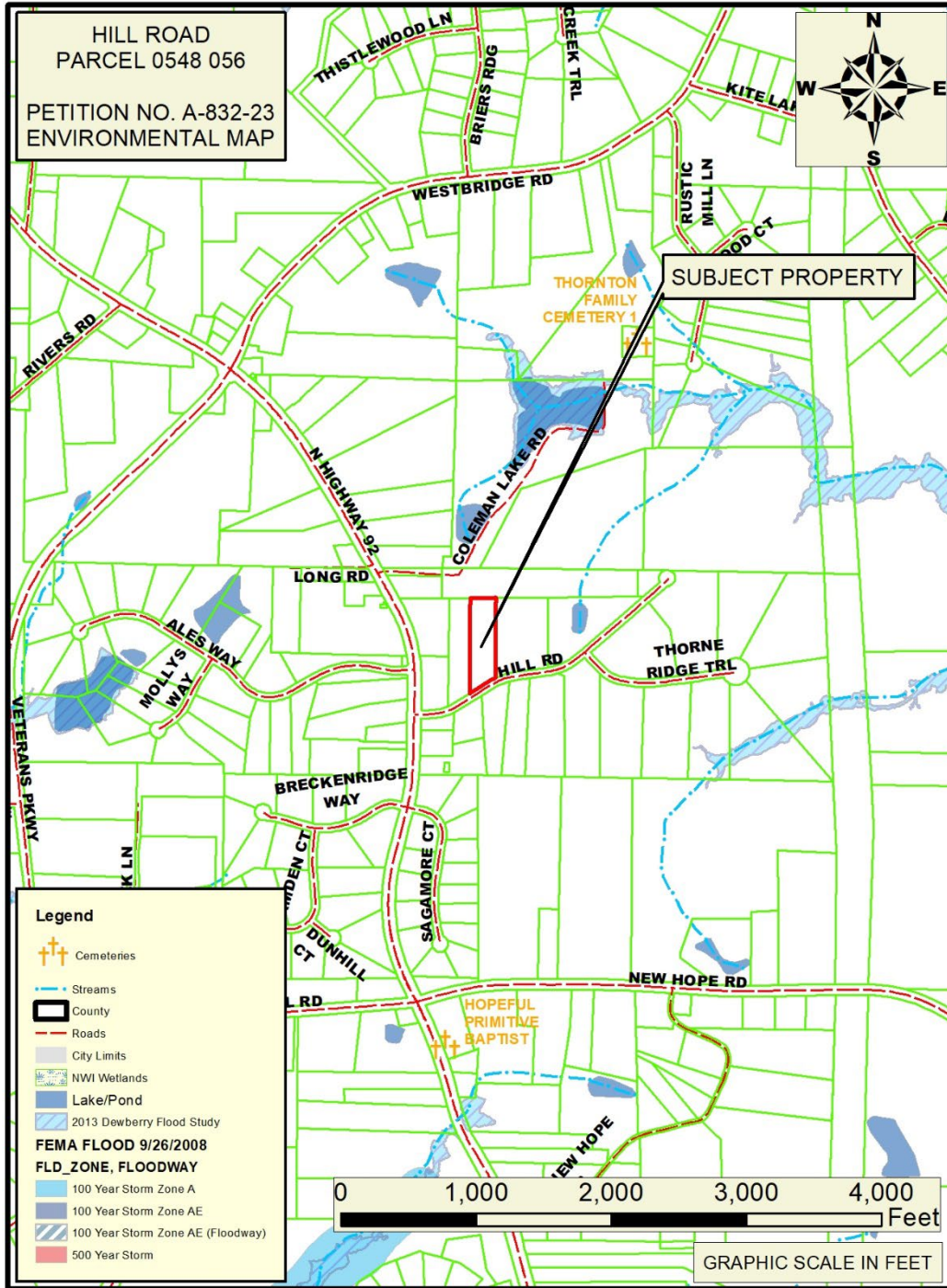
1. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.**
  - *The size and topography do present some unique conditions.*
    - *The parcel is bisected by a natural drainage swale that restrict development in the center part of the parcel. There is a well on the adjoining parcel that prevents a septic system from being constructed in most of the frontmost part of the parcel. The applicant is requesting that the front and side setbacks be reduced so the new house can be constructed closer to their house rather than much farther back on the parcel.*
    - *The required lot width at building line today in the A-R zoning district is 250 feet. The lot width is prescribed as a measurement parallel to the road, so the approximate width of this lot is 214 feet. Staff suggests a reduction of the lot width requirement to 200 feet.*
2. **The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,**
  - *Meeting all the dimensional requirements would create a practical difficulty, and in some measure is impossible because the lot is nonconforming.*
3. **Such conditions are peculiar to the particular piece of property involved; and,**
  - *There are conditions on this parcel that preclude use and development within the bounds of the current zoning regulations. This is primarily due to the fact that the parcel was platted many years before current dimensional standards were in place.*
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,**
  - *Relief, if granted, is not likely to be a detriment to the adjacent property as it is also owned by the applicant.*
5. **A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed; and,**
  - *A literal interpretation of this Ordinance would deprive the applicant of the ability to construct a house on this parcel.*





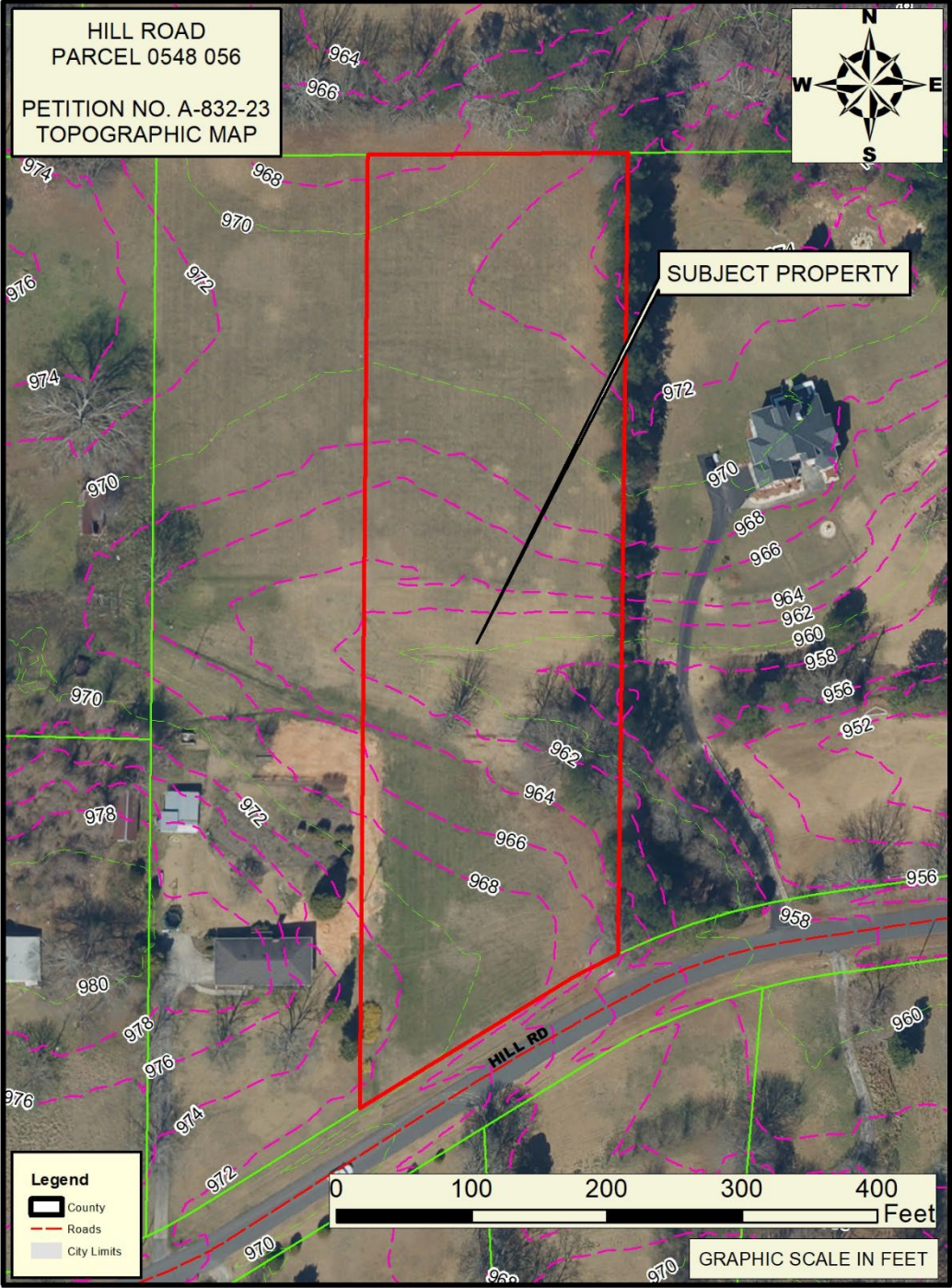




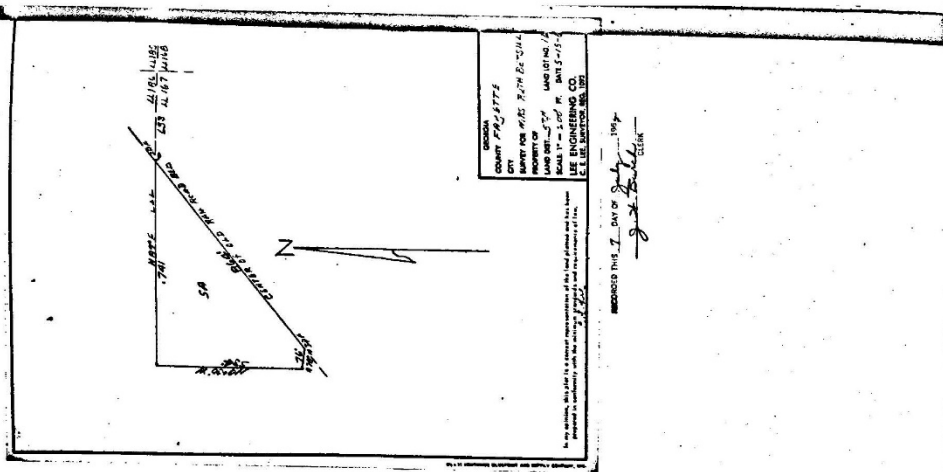




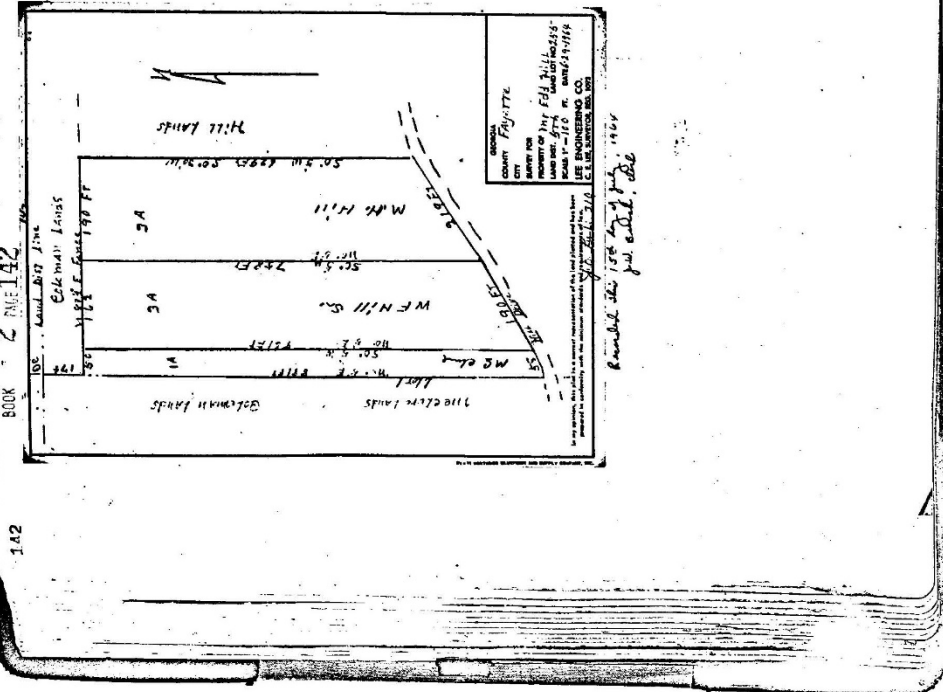








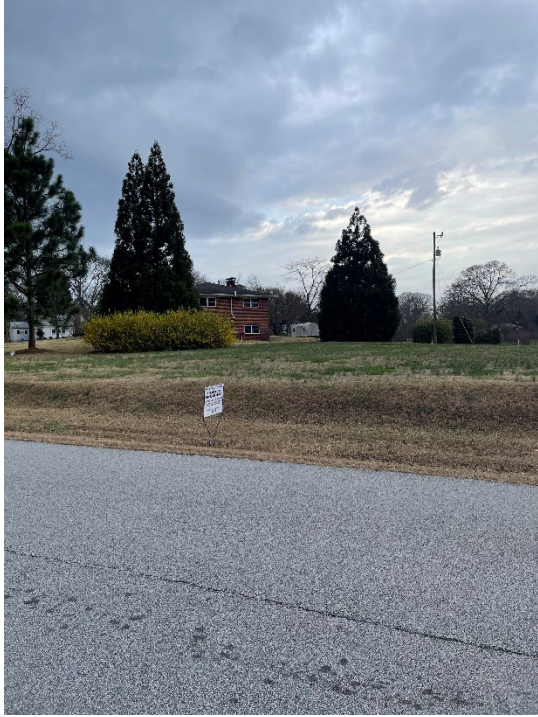
RECORDED THIS 1 DAY OF July 1964  
*[Signature]*  
 CLERK



RECORDED THIS 15th DAY OF July 1964  
*[Signature]*  
 CLERK

BOOK 2 PAGE 142

SURVEY RECORDED JULY 15, 1964, PLAT BOOK 2 PAGE 142



Parcel 0548056 – Hill Road



Parcel 0548056 – Hill Road

Paecce  
0548-056

VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: Ben & Barbara Hendricks

MAILING ADDRESS: 170 Hill Rd Fayetteville GA 30214

PHONE: 404-922-7434 (Ben), 770-713-1176 (Barbara) E-MAIL: bendricks40@gmail.com

AGENT FOR OWNERS: N/A

MAILING ADDRESS: N/A

PHONE: N/A E-MAIL: N/A

PROPERTY LOCATION: LAND LOT 255 LAND DISTRICT 5th PARCEL 0548056

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 3 acres

ZONING DISTRICT: A/R

ZONING OF SURROUNDING PROPERTIES: All surrounding lots are zoned A/R as well

PRESENT USE OF SUBJECT PROPERTY: Vacant land

PROPOSED USE OF SUBJECT PROPERTY: We hope to build a home for Barbara's parents

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-832-23

[ ] Application Insufficient due to lack of:

by Staff: \_\_\_\_\_ Date: \_\_\_\_\_

Application and all required supporting documentation is Sufficient and Complete

by Staff: [Signature] Date: Feb 6, 2023

DATE OF ZONING BOARD OF APPEALS HEARING: March 27, 2023

Received from Ben Hendricks a check in the amount of \$ 275.00

for application filing fee, and \$ 50.00 for deposit on frame for public hearing sign(s).

Date Paid: Feb 3, 2023 Receipt Number: 017147



**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:

Benjamin Jon Hendricks and Barbara June Hendricks

Please Print Names

Property Tax Identification Number(s) of Subject Property: 05-48 -056

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the 5th District, and (if applicable to more than one land district) Land Lot(s) 255 of the District, and said property consists of a total of 3 acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to N/A 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.

[Signature]

Signature of Property Owner 1

170 Hill Rd. Fayetteville GA 30214  
Address

Barbara Hendricks

Signature of Property Owner 2

170 Hill Rd Fayetteville GA 30214  
Address

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Address

[Signature]

Signature of Notary Public

01-26-2023

Date

[Signature]

Signature of Notary Public

01-26-2023.

Date



GHULAM M. GULAMALI  
NOTARY PUBLIC  
GWINNETT COUNTY  
STATE OF GEORGIA  
Commission # W-00569854  
My Comm. Expires Aug. 10, 2026



GHULAM M. GULAMALI  
NOTARY PUBLIC  
GWINNETT COUNTY  
STATE OF GEORGIA  
Commission # W-00569854  
My Comm. Expires Aug. 10, 2026

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Date



### 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	Requirement	Proposed	Variance Amount
Sec 110-125(D)(2) (Lot Width)	250ft Width	180ft Width	70ft
Sec 110-125(D)(6) (Side Yard Setback)	50 ft	30ft	20ft
Sec 110-125(D)(4)b (Front Yard Setback - Minor thoroughfare)	75 ft	55ft	20ft

### VARIANCE SUMMARY

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

**Please see attached documentation below with details of the three requests above. Thank you!**

## Variance Summary Details

**Request 1:** Allow an exemption to the 250ft minimum lot width building requirement for this parcel.

Without this variance request granted, the entire lot is un-buildable as its widest point is approximately 192 feet. In 2018, we moved to 170 Hill Road (adjacent to the property in question) and purchased this adjoining lot. Our intent was to be able to build a home for family if a need should arise. We are now at that point and would like to build a home for Barbara's parents on this lot. However, the lot is a very long, narrow piece of property that was subdivided back in the 1960's before existing zoning requirements for lot width.

**(Sec. 110-125 D 2 – Lot Width requirements)**

**Request 2:** Reduce the side yard setback on this lot from 50 ft to 30 ft. Due to the long, narrow layout of this lot, having a 50ft setback requirement makes over 50% of the lot unbuildable. The most economical and practical building site is towards the front of the lot in the southwest corner (closer to our adjoining lot of 170 Hill Rd). With the curvature of Hill Road and the front yard 75ft setback requirements, there is only a narrow channel down the center of the property that would be buildable without a variance. By allowing a slightly smaller side-yard setback of 30 feet, we could position the house further towards our adjoining 170 Hill road property and closer forward to Hill Rd, which would mean significantly less grading for the home, which will have a walk-out basement. It also reduces the distance to utility pole just west of the property line where Coweta Fayette EMC has advised we will need to run power from. More importantly, this also then gives adequate driveway and turnaround space on the east side of the lot where our driveway would be located. This is very important to be able to easily access the back portion of the property, where we hope to (one day) build a barn/workshop space, and it allows ample clearance for larger utility/boom trucks to service the Coweta Fayette EMC power lines which cross the property about half-way across the lot (existing easement). See Exhibit B for greater visual details. The homes directly across from this parcel (185 Hill Rd and 205 Hill Road--see Exhibit A) currently have smaller side yard setbacks for their homes as well, so granting this request would be in alignment with the neighboring properties.

**(Sec. 110-125 D 6 – Side Yard Setback requirements)**

**Request 3:** Reduce the front yard setback on this lot from 75 ft to 55 ft. The primary reason for this request is that it allows for proper placement of our septic tank and drainage field. Much of the front yard is unusable for a septic system as there is a well a couple feet from this parcel's property line (on 170 Hill Rd parcel), which creates a 100ft buffer zone. Without this variance, we would not have enough space behind the home to use a tradiational gravity fed septic system without significant grading and would require a septic pump for any plumbing fixtures added to the basement of the house since the lot's highest point is nearest Hill road and slopes downward until the middle of parcel. By pushing the house forward an additional 20 feet towards Hill Rd, it opens up more space behind the home before the grade evens out into a low area. An additional benefit to both the side and front yard setback reductions is that this moves the house closer to the utility pole where Fayette EMC has advised we will need to run power from, making it more affordable to supply power to the home. See Exhibit B below for visual representation.

**(Sec 110-125 D 4.b - Front Yard Setback - Minor thoroughfare)**

## 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.

**Yes—the size/shape create exceptional conditions because the lot is very long and narrow. It is a legal non-conforming size of just 3 acres vs. the typical 5 acre minimum required for A/R. It was subdivided in the 1960's prior to existing setback requirements. Both it's overall size (3 acres) and long, narrow shape present extraordinary and exceptional conditions. The topography also limits where and how a gravity-fed septic system can be placed.**

*Please see below pages for more in-depth reasoning for these requests. Thank you!*

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

**Yes, there would be both practical difficulties and unnecessary hardship caused without these variances being granted. The entire lot is unbuildable without Request #1 being granted, and a handful of unique challenges/hardships are presented if the side and front yard setback request would not be granted (Requests #2 & #3).**

*Please see below pages for more in-depth reasoning for these requests. Thank you!*

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

**Yes, these conditions are peculiar/unique to this particular piece of property due to both it's overall size, elongated layout and specific topography.**

*Please see below pages for more in-depth reasoning for these requests. Thank you!*

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.

**Relief would cause no detriment to the public good or impair the purposes and intent of these regulations. In fact, one could argue that *added* public good would occur with the additional improvements that would result from allowing these variances—additional tax revenue to the county for one, and a happy set of grandparents nearer to grandkids for another :)**

*Please see below pages for more in-depth reasoning for these requests. Thank you!*

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

**If I am understanding this wording correctly-- Yes, a literal interpretation of the existing zoning ordinance (resulting in a denial of our variance request) would deprive us, as the applicants, of the same rights that others in our zoning district are allowed--for example, directly across from us at 185 Hill Road and 205 Hill Road- are two somewhat similar A/R lots that are also legal non-conforming (less than 5 acres). Both of them have homes built closer to the side yard setback than what is currently allowed by A/R zoning. See the attached screenshot pulled from Fayette County's QPublic site - Exhibit A.**



Exhibit A:

The screenshot displays the qPublic.net web application interface for Fayette County, GA. The top navigation bar includes links for Layers, Map, Search, Comp Search, Results, Comp Results, Report, Sales Search, Sales List, Sales Results, and Home. On the left, a Layer List sidebar is visible with various map layers such as Tax Parcels, Fire Hydrants, Voting, Flood Zones, and County Outlines. The main map area shows an aerial view of a property with a red house. Two red arrows point from a text box to the 50-foot setback lines on either side of the house. The text box contains the following text:

**The two properties directly across from our parcel (185 Hill Road and 205 Hill Road) already have a home closer than the existing 50 ft setback requirement. Granting our request would allow us this same right to strategically place the proposed home where it makes most practical and economical sense.**



**Exhibit B:**

Site Plan – Created to scale but not 100% precise—to convey ideas and layout with satellite visual. Not intended to replace actual recorded plat or official surveyors site plan still being crafted. See additional exhibits below for official plat.

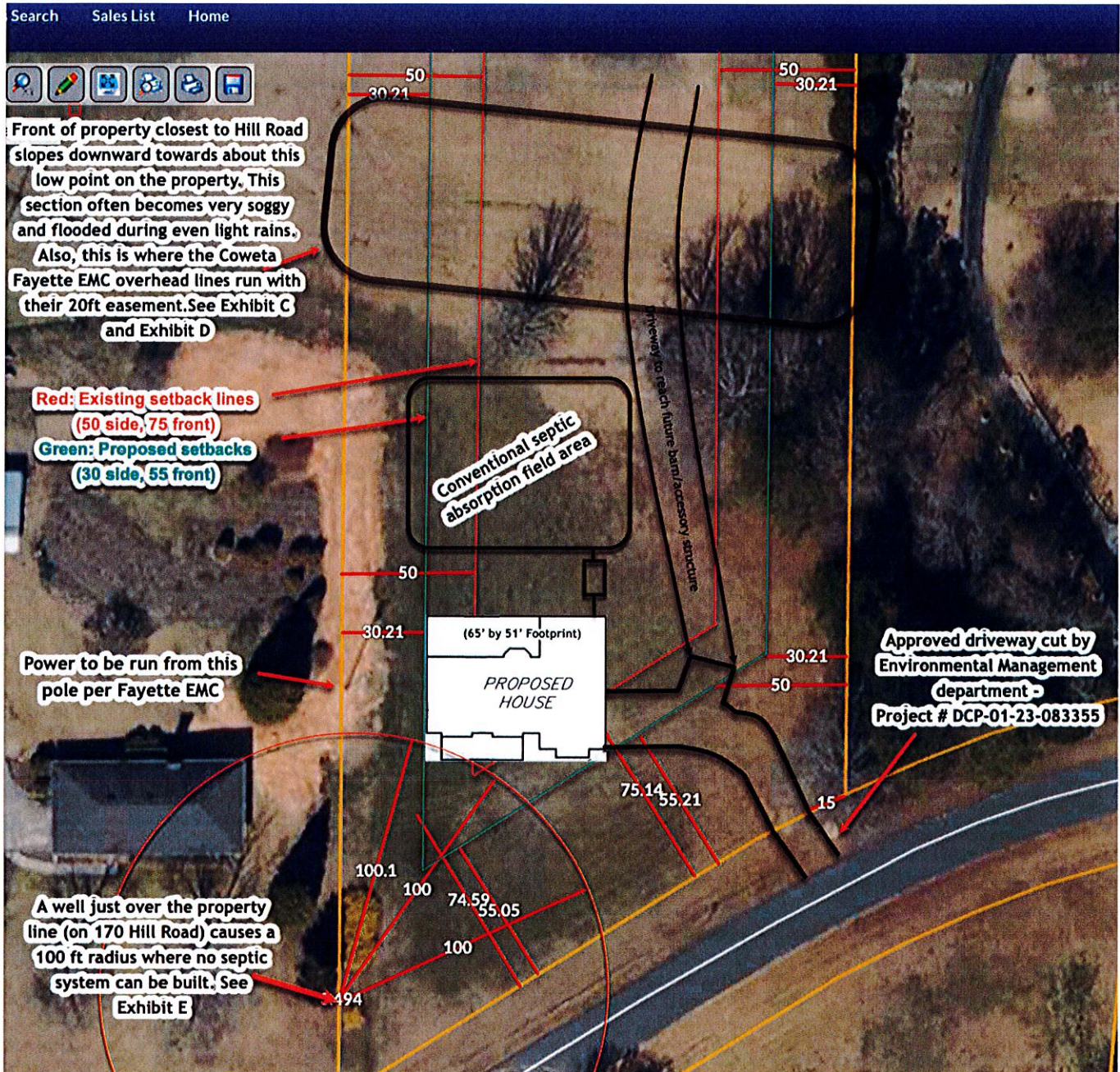




Exhibit C:



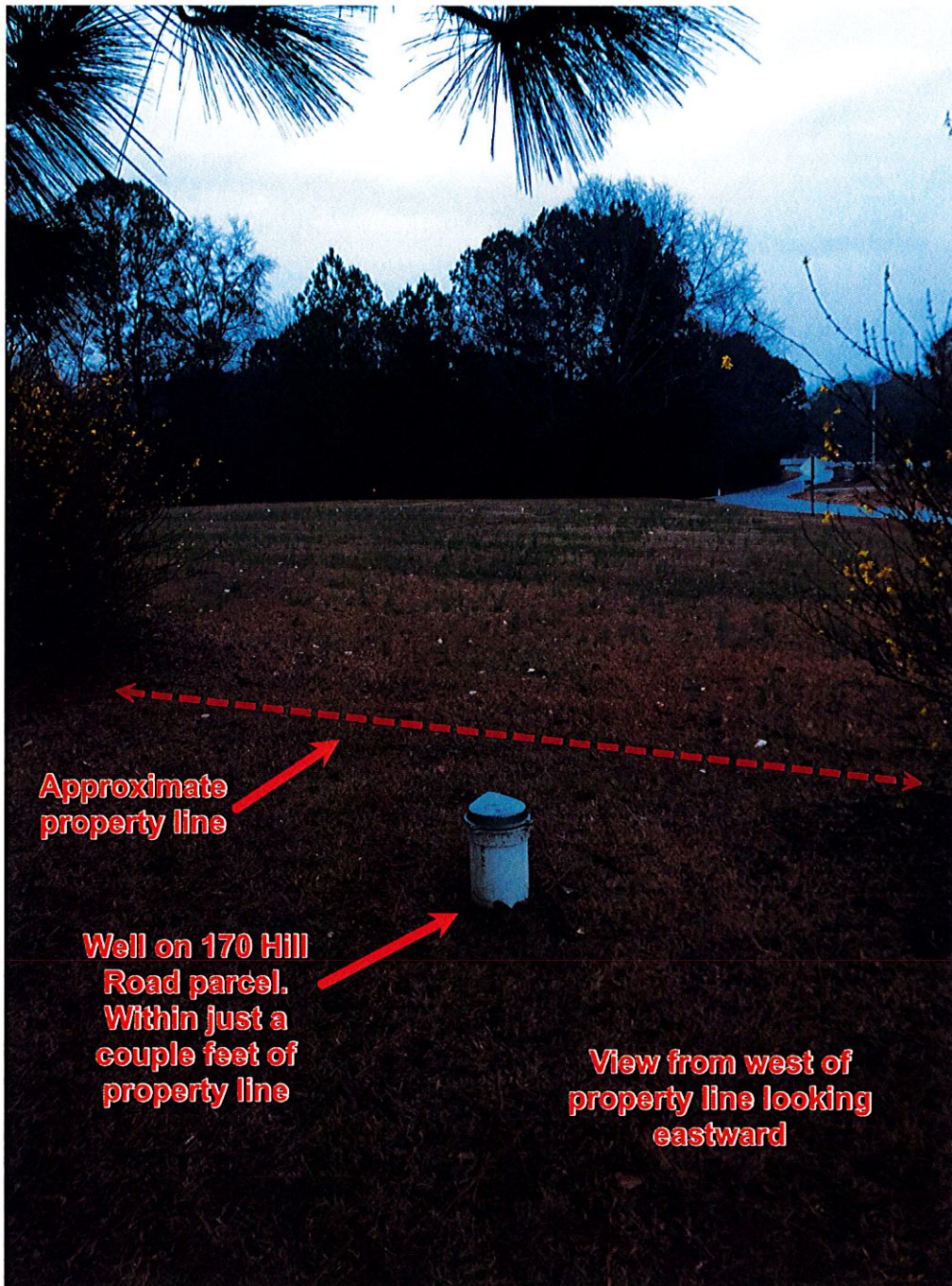


Exhibit D:





**Exhibit E:**







**CLOSURE NOTE**

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 1 FOOT IN 34,623 FEET. AN ANGULAR ERROR OF 02 SECONDS PER ANGLE POINT AND WAS ADJUSTED USING THE COLLINGS WALK METHOD. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND FOUND TO BE ACCURATE TO 1 FOOT IN 34,623 FEET. A TRIMBLE TOTAL STATION AND RECON DATA COLLECTOR WERE USED TO GATHER THE INFORMATION USED TO PREPARE THIS PLAT.

**FLOOD NOTE**

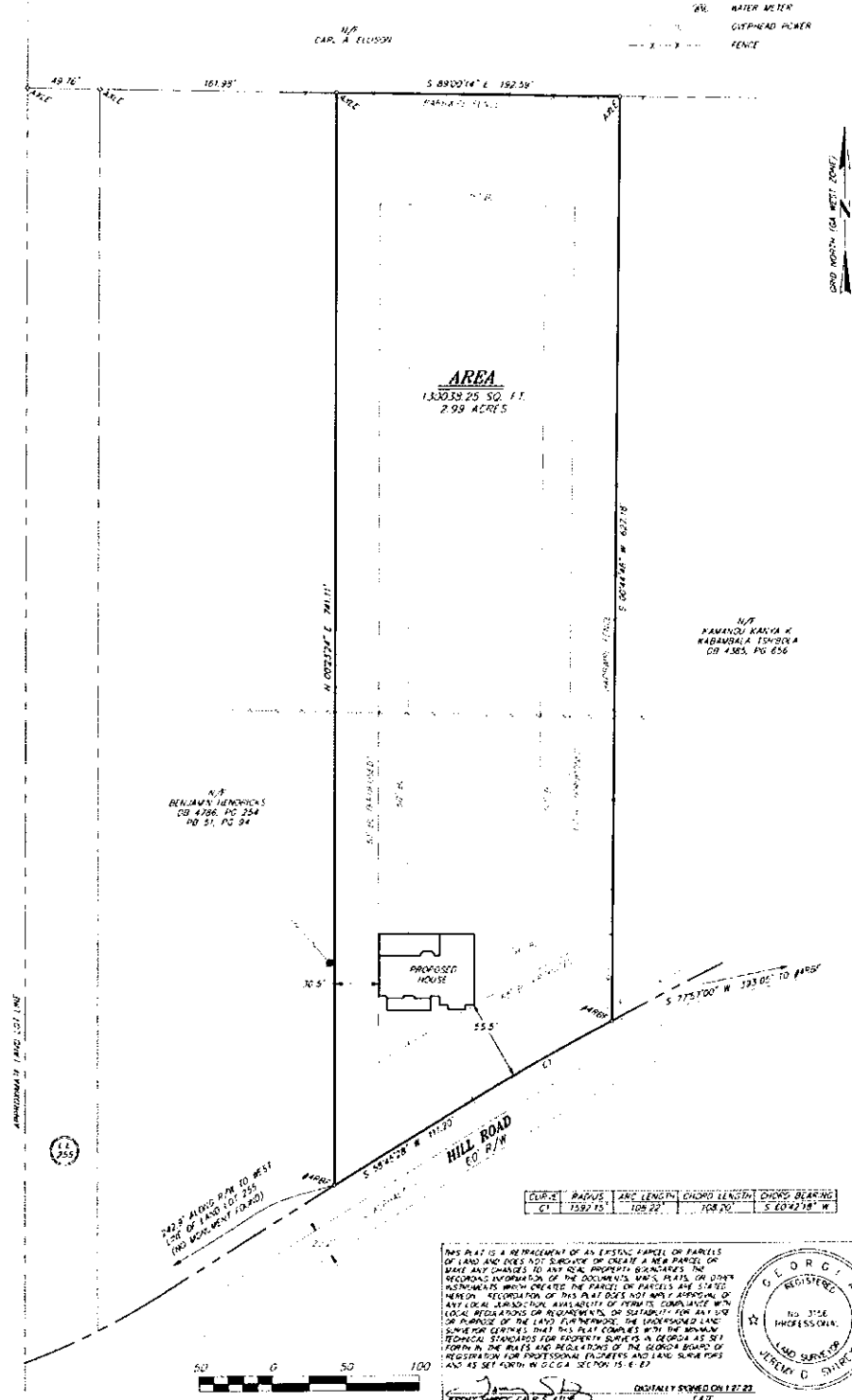
I HAVE EXAMINED THE TOWN OFFICIAL FLOOD HAZARD MAP AND FOUND IN MY OPINION THE FLOODED PARCEL IS NOT IN AN AREA BEING SPECIAL FLOOD HAZARDOUS WITHOUT AN ELEVATION CERTIFICATE SURVEY. I AM NOT RESPONSIBLE FOR ANY DAMAGE DUE TO SAND OBTAINING AND NUMBER REFERENCE. REVISION DATE 09/20/04

**NOTES**

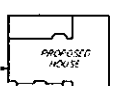
1. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CLIENT AND ASSOCIATE FILE REPORT. EASEMENTS AND OTHER ENCUMBRANCES OF RECORD MAY EXIST BUT WILL NOT BE SHOWN BY THIS SURVEY. THIS PLAT IS SUBJECT TO ANY EASEMENTS THAT A FILE REPORT MAY ENCLOSE.
2. ONE (1) MERE COPIES SHOWN.

**LEGEND**

- 1/2" REBAR FOUND
- 1/2" REBAR SET
- 3/4" OUF 3/4" CRIMP TOP PIPE FOUND
- 3/4" OUF 3/4" OPEN TOP PIPE FOUND
- 1" FRT HYDRANT
- POWER POLE
- WATER METER
- GUYHEAD POWER
- ENCE



**AREA**  
13,303.25 SQ. FT.  
2.99 ACRES



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	1592.15	108.22'	108.22'	S 69°42'18\"/>

**CONCRETE FINISH**

A. R.

- FRONT SETBACK - 75 FEET
- REAR SETBACK - 75 FEET
- SIDE SETBACK - 75 FEET

**PROPOSED FINISH**

- FRONT SETBACK - 55 FEET
- REAR SETBACK - 75 FEET
- SIDE SETBACK - 75 FEET

\*\* ALL ZONING INFORMATION TO BE VERIFIED WITH THE CITY OR COUNTY \*\*

VARIANCE SURVEY FOR:  
HILL ROAD (744 PARCEL, B0548 USE)  
**BENJAMIN HENDRICKS**  
CB 4786, PG 254  
PB 2, PG 142

THIS PLAT IS A REPRESENTATION OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT SURVEY OR CREATE A NEW PARCEL OR MAKE ANY CHANGES TO ANY EXISTING PROPERTY BOUNDARIES. THE RECORDING INFORMATION OF THE DOCUMENTS WHICH PLATS OR OTHER INSTRUMENTS WHICH CREATED THE PARCELS ON PARCELS ARE SUBJECT HEREON. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTIONAL AGENCIES OR AGENCIES OF THE STATE OR LOCAL REGULATIONS OR REQUIREMENTS OF SUSTAINABILITY FOR ANY USE OR PURPOSE OF THE LAND. FURTHERMORE, THE UNDERWRITER LANCHE SURVEY FOR CERTAINS THAT THIS PLAT COMPLES WITH THE BROWARD TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL SURVEYORS AND LAND SURVEYORS AND AS SET FORTH IN O.C.G.A. SECTION 47-8-6.12.



DATE: 12/21/23  
PLAT DATE: 12/21/23  
SCALE: 1"=50'  
ELECT: FAYETTE  
DISTRICT: SIM  
LAND LOT: 255

WIDE OPEN LAND SURVING, LLC  
52 CUSTON LANE  
MURRELLS, GA 30283  
878 633 5683  
BNA B0548 USE, B0548 USE, B0548 USE  
JOB #724

**RECORDING INFORMATION**

Type: PLAT EFILED  
 Recorded: 1/29/2023 2:08:00 PM  
 Fee Amt: \$10.00 Page 1 of 1  
 Fayette, Ga. Clerk Superior Court  
 Sheila Studdard Clerk of Court

Participant ID: 2154565389  
**BK 101 PG 387**

**LEGEND**

- 1/2" REBAR FOUND
- 1/2" REBAR SET
- AXLE FOUND
- FIRE HYDRANT
- POWER POLE
- WATER METER
- OVERHEAD POWER
- FENCE

**CLOSURE NOTE**

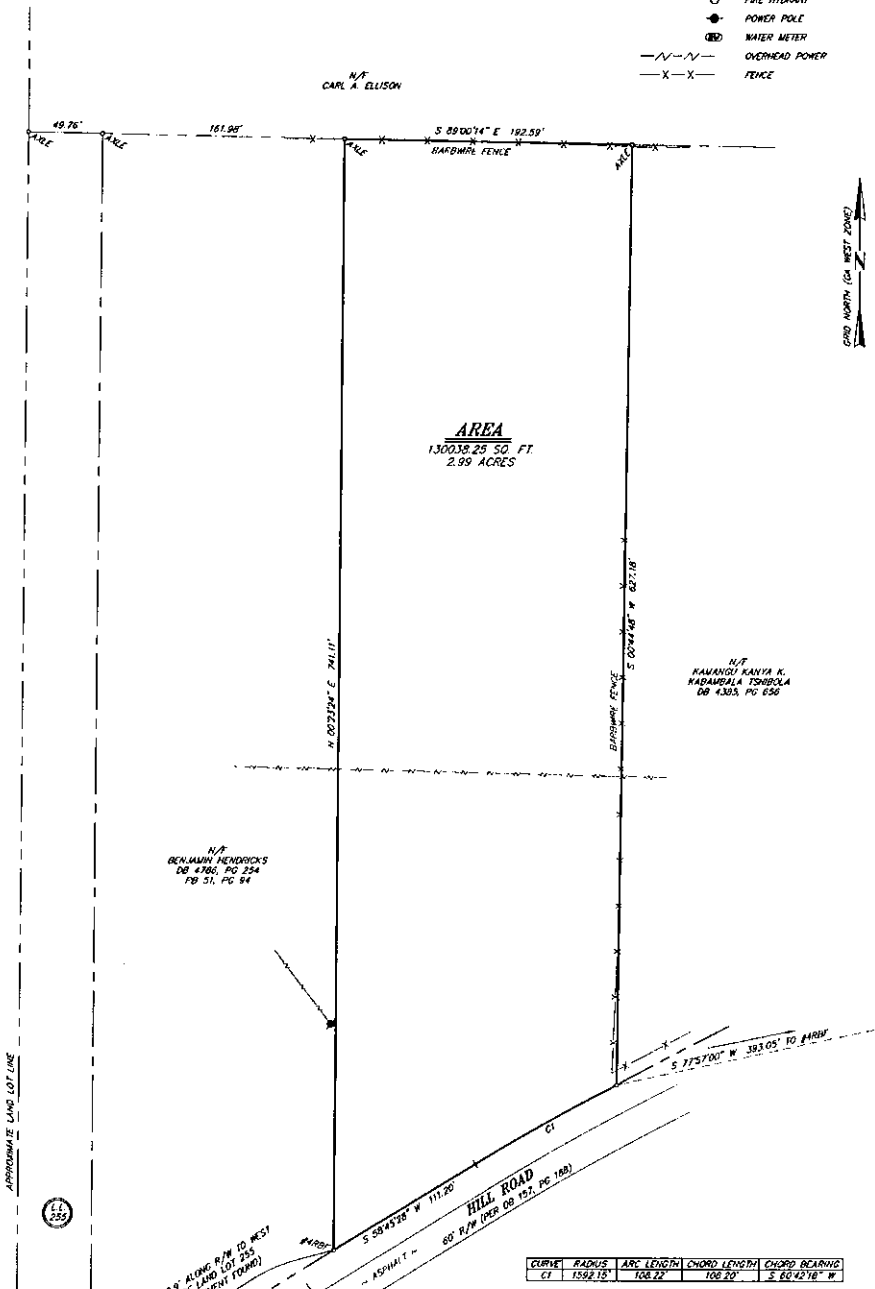
THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 1 FOOT IN 30,000 FEET. AN ANGULAR ERROR IN THE SECTIONS PER ANGLE POINT WAS ADJUSTED USING THE COMPASS RULE METHOD. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND FOUND TO BE ACCURATE TO 1 FOOT IN 448,073 FEET. A TRIMBLE TOTAL STATION AND PICOON DATA COLLECTOR WERE USED TO GATHER THE INFORMATION USED TO PREPARE THIS PLAT.

**FLOOD NOTE**

I HAVE EXAMINED THE "FIRM OFFICIAL FLOOD HAZARD MAP" AND FOUND IN MY OPINION REFERENCED PARCEL IS NOT IN AN AREA HAVING SPECIAL FLOOD HAZARDS WITHOUT AN ELEVATION CERTIFICATE. SURVEYOR IS NOT RESPONSIBLE FOR ANY DAMAGE DUE TO SUD SPILLS.  
 MAP NUMBER 1711X0055E REVISED DATE 09/21/08

**NOTES**

- THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CURRENT AND ACCURATE TITLE REPORT. EASEMENTS AND OTHER ENCUMBRANCES OF RECORD MAY EXIST BUT MAY NOT BE SHOWN BY THIS SURVEY. THIS PLAT IS SUBJECT TO ANY THINGS THAT A TITLE REPORT MAY DISCLOSE.
- ONLY VISIBLE UTILITIES SHOWN.



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
CT	1592.75'	108.22'	108.22'	S 89°07'18" W

THIS PLAT IS A RETRACEMENT OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT SUBDIVIDE OR CREATE A NEW PARCEL OR MAKE ANY CHANGES TO ANY REAL PROPERTY BOUNDARIES. THE RECORDING INFORMATION OF THIS DOCUMENT, MAPS, PLATS OR OTHER INSTRUMENTS WHICH CREATE THE PARCELS OR PARCELS ARE SITED HEREON. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF FINANCE, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS OF SUSTAINABILITY FOR ANY USE OR PURPOSE OF THE LAND. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF PROFESSION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN O.S.G.A. SECTION 12-4-41.



RETRACEMENT SURVEY FOR:  
 HILL ROAD (15% PARCEL #0548 056)  
**BENJAMIN HENDRICKS**  
 DB 4766, PG 254  
 PG 2, PG 142

WIDE OPEN LAND SURVEYING, L.L.C. JOB #2774

52 CURETON LANE  
 WYCKLAND, GA 30259  
 878-833-3063  
 WWW.WIDEOPENLANDSURVEYING.COM

DATE: 1/25/23  
 PLAT DATE: 1/29/23  
 SCALE: 1"=50'  
 COUNTY: FAYETTE  
 DISTRICT: 5TH  
 LAND LOT: 255



5



Doc ID: 010475280001 Type: WD  
Recorded: 09/04/2018 at 09:35:00 AM  
Fee Amt: \$10.00 Page 1 of 1  
Transfer Tax: \$0.00  
Fayette, Ga. Clerk Superior Court  
Sheila Studdard Clerk of Court

BK 4786 PG 254

Please return to  
Lawson & Beck, LLC  
1123 Commerce Dr., Suite 300  
Peachtree City, GA 30269  
File # 18-LAW-1716

STATE OF GEORGIA  
COUNTY OF FAYETTE

WARRANTY DEED

THIS INDENTURE made this 29th day of August, 2018 between

Benjamin Hendricks

as party or parties of the first part, hereinafter called Grantor, and

Benjamin Hendricks and Barbara June Hendricks as Joint Tenants With Right of Survivorship

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 DOLLARS and other good and valuable consideration (\$10.00) in hand paid at and before the sealing and delivery of these presents, the receipt 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, the following described property

All that tract or parcel of land lying and being in Land Lot 255 of the 5th Land District of Fayette County, Georgia, and more particularly described by plat of J O Lee dated June 29, 1964 and recorded in Plat Book 2 at Page 142, Fayette County, Georgia records, as follows:

TO ARRIVE AT the beginning point hereof, start at the Northwest corner of Land Lot 255 aforesaid; go thence South 0 degrees and 5 minutes West, as measured along the West line of said Land Lot 255 a distance of 175 feet, thence North 89 5/8 degrees East, a distance of 30 feet, from the POINT OF BEGINNING thus determined, running North 89.5 degrees East, a distance of 162 feet; thence South, 0 degrees and 5 minutes West, a distance of 758 feet to the northerly side of a private road or driveway, thence southwesterly, as measured along the northerly side of said road or driveway, a distance of 190 feet, thence North, 0 degrees and 5 minutes East, a distance of 190 feet; thence North 0 degrees and 5 minutes East, a distance of 861 feet back to the POINT OF BEGINNING; said tract containing 3 acres, more or less.

This conveyance is made subject to the conveyance to Fayette County by Marvin H. Hill et al dated September 24, 1976, and recorded in Deed Book 157 at Page 188, said records and to easements of record if any

The realty hereinabove described is the same described by deed from J E Hill to W F Hill, Sr., dated July 13, 1964, and recorded in Deed Book 53 at Page 357, records of Fayette County, Georgia

Subject to that certain Boundary Line Agreement recorded in Deed Book 277, Page 472, aforesaid records

TOGETHER WITH:

ALL THAT TRACT OR PARCEL OF LAND, lying and being in Land Lot 255 of the 5th Land District of Fayette County, Georgia, and more particularly described by Plat of J O Lee, dated June 29, 1964, recorded in Plat Book 2, Page 142, records of Fayette County, Georgia, to-wit:

TO REACH THE TRUE POINT OF BEGINNING commence at the northwest corner of Land Lot 255 aforesaid, running thence South 0 degrees 5 minutes West, as measured along the West line of said Land Lot, a distance of 175 feet, running thence North 89 1/2 degrees East, a distance of 212 feet to the TRUE POINT OF BEGINNING, which is also the Northeast corner of property currently owned by the Grantee herein, from said True Point of Beginning thus established, running thence North 89 1/2 degrees East a distance of 190 feet to a point, running thence South 0 degrees 05 minutes West, a distance of 629 feet to a point on the Northerly side of Hill Road (formerly a private driveway), running thence Southwesterly, as measured along the Northern side of said road/private driveway a distance of 219 feet to a point; running thence North 0 degrees 05 minutes East a distance of 758 feet to the TRUE POINT OF BEGINNING; said Tract containing 3 acres, more or less, and more fully described on Plat of Survey for M. H. Hill, dated 6/29/64, by C E Lee, Land Engineering Company, Registered Land Surveyors.

LESS AND EXCEPTING All that property embraced within the right of way of Hill Road as set out in a 60 foot Right-of-Way Road Deed from Marvin H. Hill, et al, to Fayette County, dated 9/24/76, recorded on 12/14/76 in Deed Book 157, Page 188, Fayette County records

Being the same property as heretofore conveyed on September 30, 1964, from J. E. Hill to the Grantor herein, Marvin H. Hill, and recorded in Deed Book 54, Page 123, Fayette County records, less and excepting all that property embraced within the right of way of Hill Road as set out in a 60 foot Right-of-Way Road Deed from Marvin H. Hill, et al, to Fayette County, dated 9/24/76, recorded on 12/14/76 in Deed Book 157, Page 188, Fayette County records

Subject to that certain loan deed of even date herewith, in favor of The Southern Credit Union, in the original principal amount of \$226,000.00, as recorded in Fayette County, Georgia Records

Subject to restrictive covenants and easements of record

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

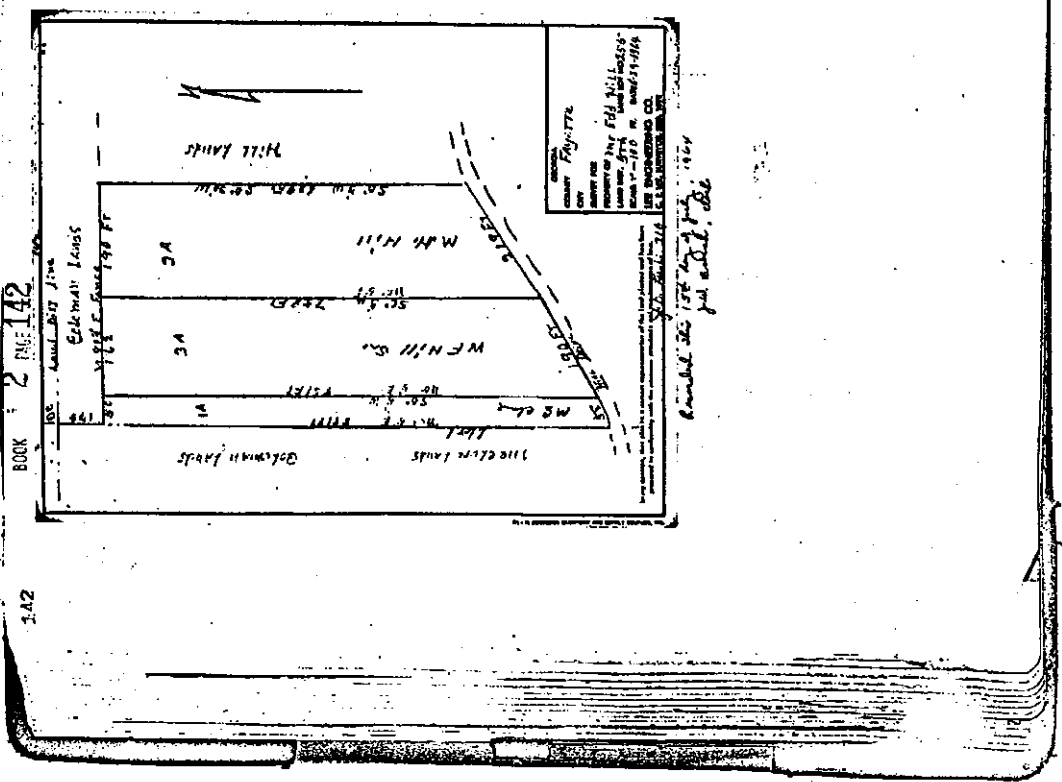
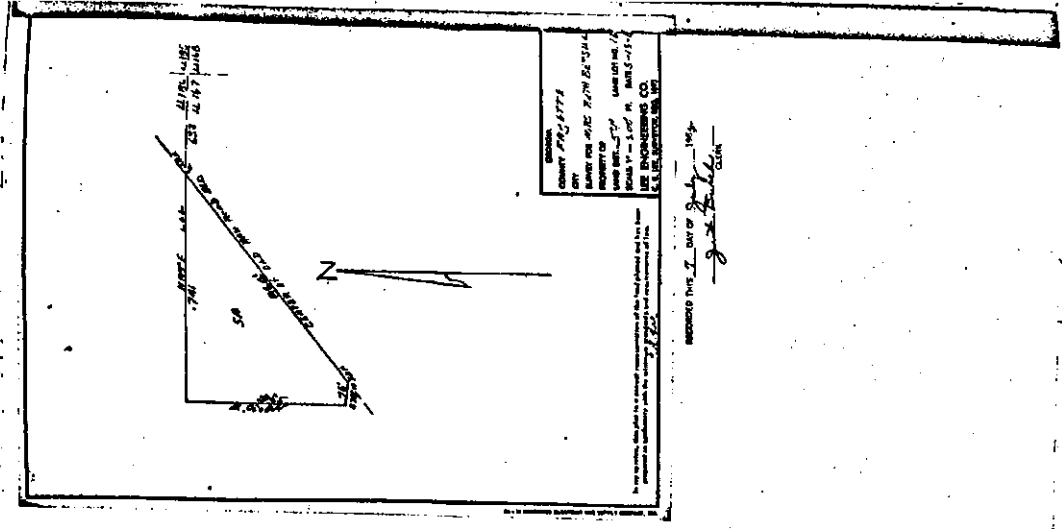
IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this first day and year first above written

Witness  
Notary Public

Benjamin Hendricks



Book: 4786 Page: 254 Seq: 1



**PETITION NO: A-833-23**

**Requested Action:** Per Sec. 110-137(d)(6), requesting a variance to reduce the side yard setback from fifteen feet (15') to six feet (6') to allow multiple residential accessory structures to remain.

**Location:** 155 Red Oak Drive, Fayetteville, GA 30214

**Parcel(s):** 0530 09051

**District/Land Lot(s):** 5<sup>th</sup> District, Land Lot(s) 156

**Zoning:** R-40

**Owner(s):** Martin Padilla, Jr.

**Agent:** N/A

**Zoning Board of Appeal Public Hearing:** March 27, 2023

**REQUEST & ORDINANCE**

Applicant is requesting the following:

1. Per Sec. 110-137(d)(6), requesting a variance to reduce the side yard setback from fifteen feet (15') to six feet (6') to allow multiple residential accessory structures to remain.

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

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

**(6) Side yard setback: 15 feet.**

**STAFF RECOMMENDATION**

It is staff's opinion that a variance to the building setback is not justified under the variance criteria.

Staff recommends **DENIAL** of the request to reduce the side building setback.

## **HISTORY**

The subject property is a legal lot in the Hamilton Square subdivision, Lot 8C in Unit Four. The plat was recorded on October 24, 1980. Tax Assessor's records indicate the house was built in 1980 and the applicant purchased the property in 2016. The applicant is the owner & resident of the property.

The applicant/owner has a series of permits for projects related to the pool and an accessory structure that have issued, then been expired due to lack of progress, revised and reissued:

May 30, 2019 – Building Safety received a complaint of unpermitted work in the back yard (COMP-05-19-069999).

May 31, 2019 – Building Safety issued a Stop Work Order (SWO-05-19-070023).

May 27, 2020 – The applicant applied for a building permit in response to the Stop Work Order (RBLD-06-19-074965). The site plan provided showed the new structures encroaching on the side setback, so the permit was not approved.

June 16, 2020 – The applicant applied for a variance to the side setback, Case A-730-20.

July 1, 2020 - A site plan was added to the permit package that showed the proposed pool deck in compliance with the setback requirement and a building permit was issued (RPOL-05-20-062074).

July 27, 2020 – Appeal A-730-20, to reduce the side setback for construction of accessory structures, was presented to the Zoning Board of Appeals. The request was denied with a 5-0 vote. The applicant proceeded with construction under the permit issued using correct setbacks.

December 28, 2020 – The permit expired for lack of progress/inspections (RBLD-12-21-079729).

December 15, 2021 – A permit was issued for a garage/pool house (RBLD-12-21-079729).

June 15, 2022 – The permit expired for lack of progress/inspections.

August 9, 2022 – The permit expired for lack of progress/inspections (RBLD-06-19-074965). A certified letter sent to advise the applicant of the expiration was returned without acceptance/signature.

August 12, 2022 – The applicant submitted a new building permit application as a pool rebuild application (RBLD-08-22-082001). The site plan submitted with this application showed a detached garage, covered patio and pool cabana; all structures were shown in compliance with the setback requirement. See 2022 08 12 New Site Plan, page 13.

August 18, 2022 – The building permit was issued (RPOL-08-22-068374).

January 18, 2023 – Building Safety entered a complaint that what was currently being built did not match the approved plans [*The plans submitted for the building permit were for a 1-story garage; applicant is constructing a 2-story building as a garage with a guest suite on the 2<sup>nd</sup> floor*]. Detached garage, pool house and masonry wall appear to encroach on setbacks. See photos pages 11 and 12.

February 15, 2023 - The permit expired for lack of progress/inspections (RBLD-12-21-079729).

January 19, 2023 – Building Safety issued a Stop Work Order.

January 27, 2023 – Building Safety required an engineer's letter to certify unpermitted work. This work included masonry walls and an additional story on the detached garage. A foundation survey indicating structure locations was requested. A copy of the current foundation survey is included in this report, page 10. The survey confirms that portions of the garage, pool house, masonry wall and pavilion encroach on the side yard setbacks.

March 9, 2023 – The building permit for the pool (RPOL-08-22-068374) is active has two remaining inspections and expires on July 26<sup>th</sup>, 2023.

**DEPARTMENTAL COMMENTS**

- Water System** – This property is outside the Fayette County Water System service area.
- Public Works/Environmental Management** – No comments.
- Environmental Health Department** – This office has no objection to the proposed variance. Septic location is not affected. Approval for garage done in 2021.
- Fire** – No comments.
- Building Safety** – Please refer to the attached Project History for a timeline of building permit issues.

## CRITERIA FOR CONSIDERATION OF A VARIANCE

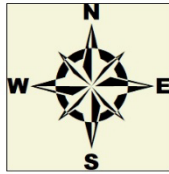
### **STAFF ASSESSMENT OF CRITERIA**

*(Please see the attached application package for the applicant's responses to the criteria.)*

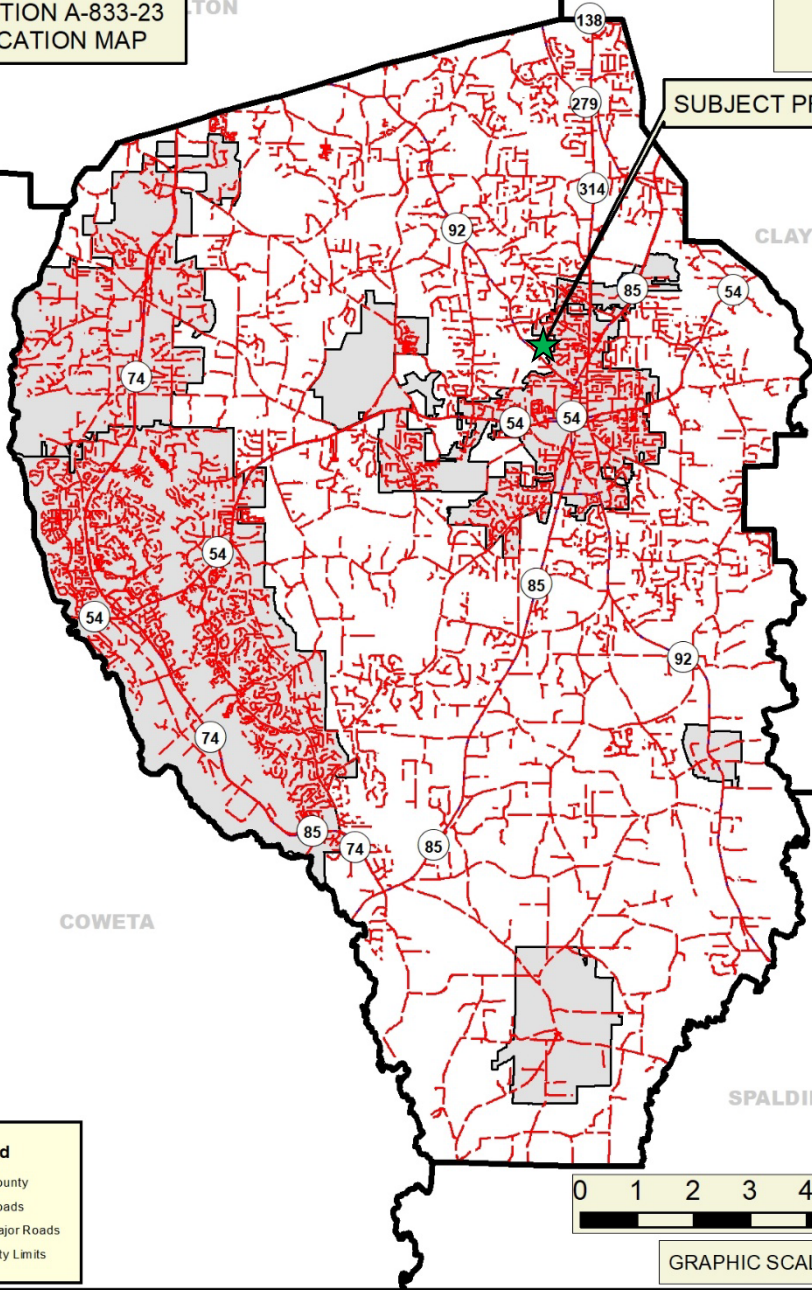
The Fayette County Zoning Ordinance, Sec. 110-242. (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation 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 size, location and topography do not present extraordinary challenges to development.*
  - *There is room on the parcel to correctly site a detached garage of this size.*
  - *There is room on the parcel to correctly site a pool house and other outdoor accessory structures.*
2. **The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,**  
*The building setbacks applied to this lot are the same as those applied to all the other lots in the neighborhood; they do not present an unnecessary hardship.*
3. **Such conditions are peculiar to the particular piece of property involved; and,**  
*There are no conditions on this parcel that preclude use and development within the bounds of the current zoning regulations.*
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,**  
*Relief, if granted, might be a detriment to the adjacent property because of the size and height of the structures.*
5. **A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed; and,**  
*A literal interpretation of this Ordinance would not deprive the applicant of any rights allowed for anyone else in the R-40 zoning district. There is room on the lot to construct accessory structures that would meet the building setback requirements.*

155 RED OAK DRIVE  
PARCEL 0530 09051  
PETITION A-833-23  
LOCATION MAP

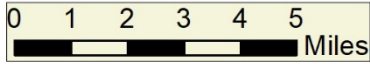


SUBJECT PROPERTY



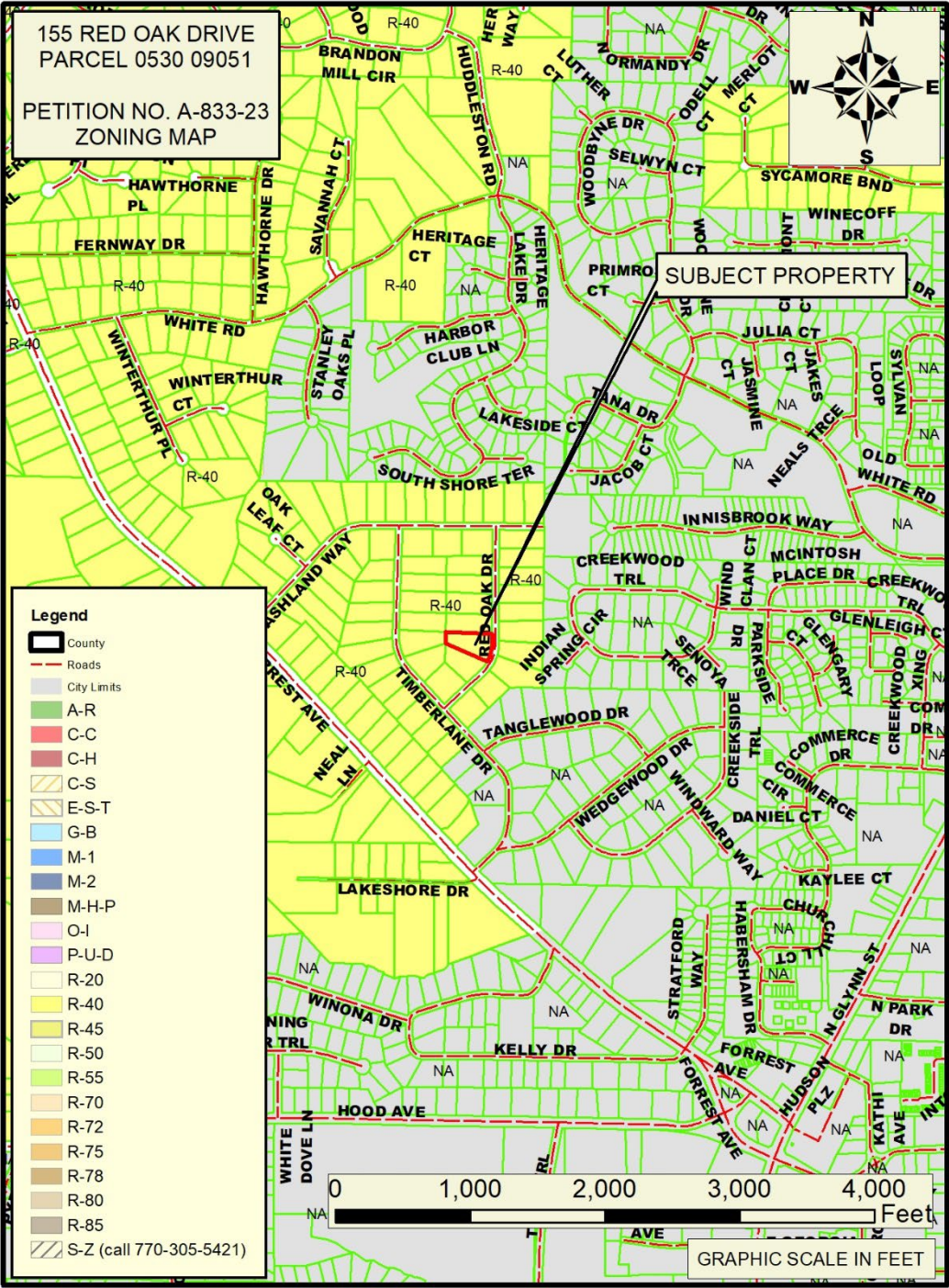
**Legend**

- County
- Roads
- Major Roads
- City Limits

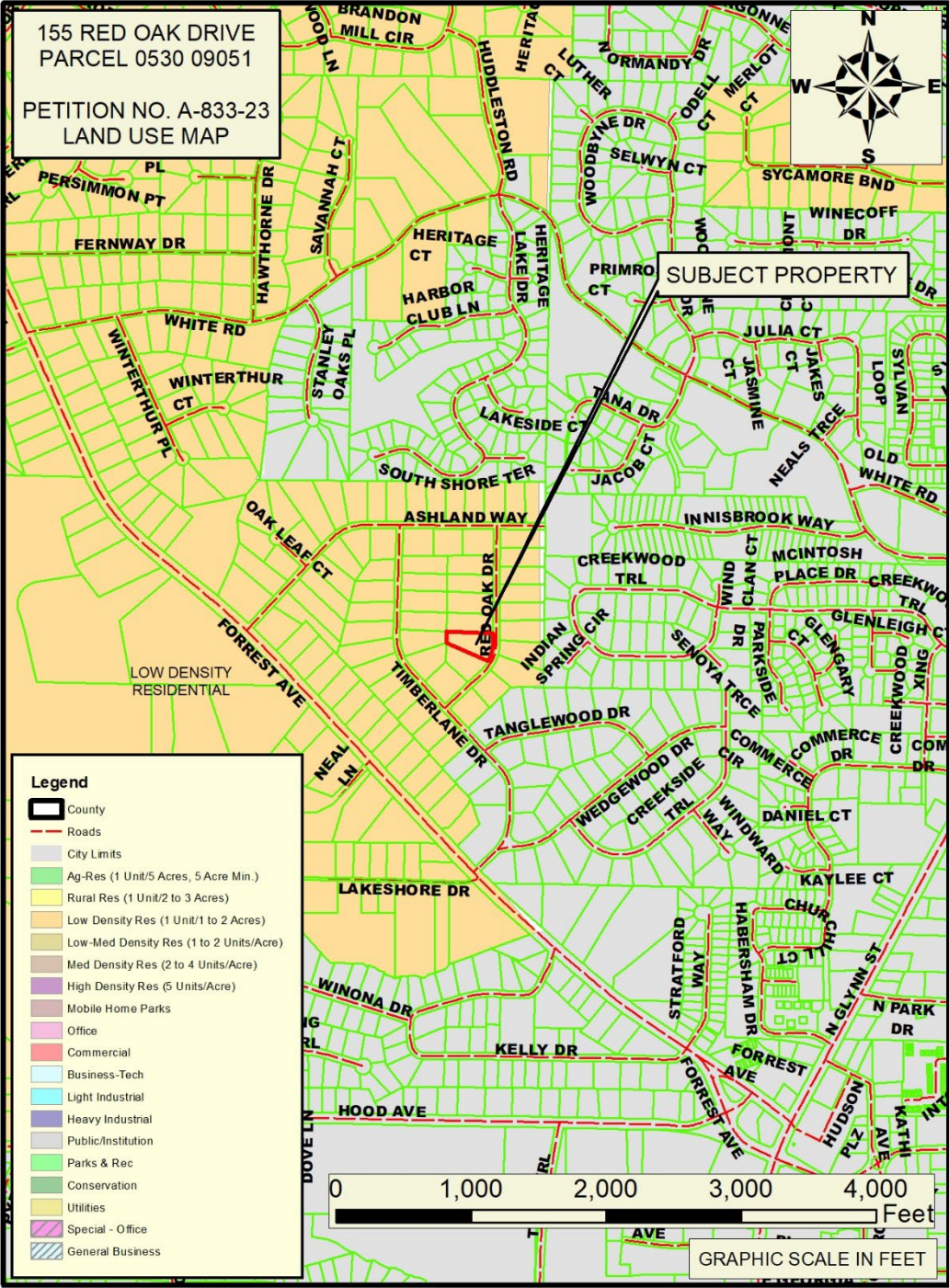


GRAPHIC SCALE IN MILES

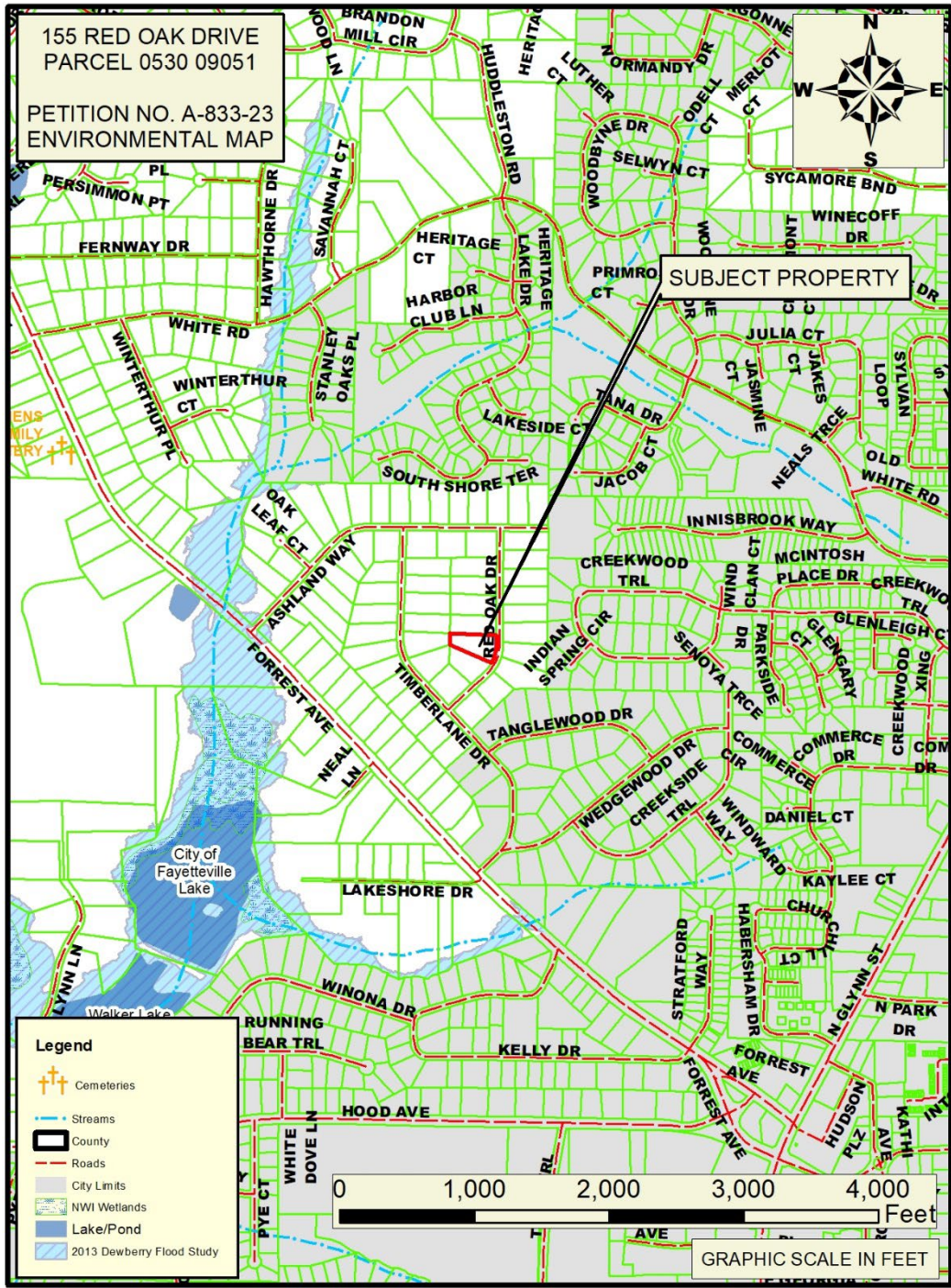




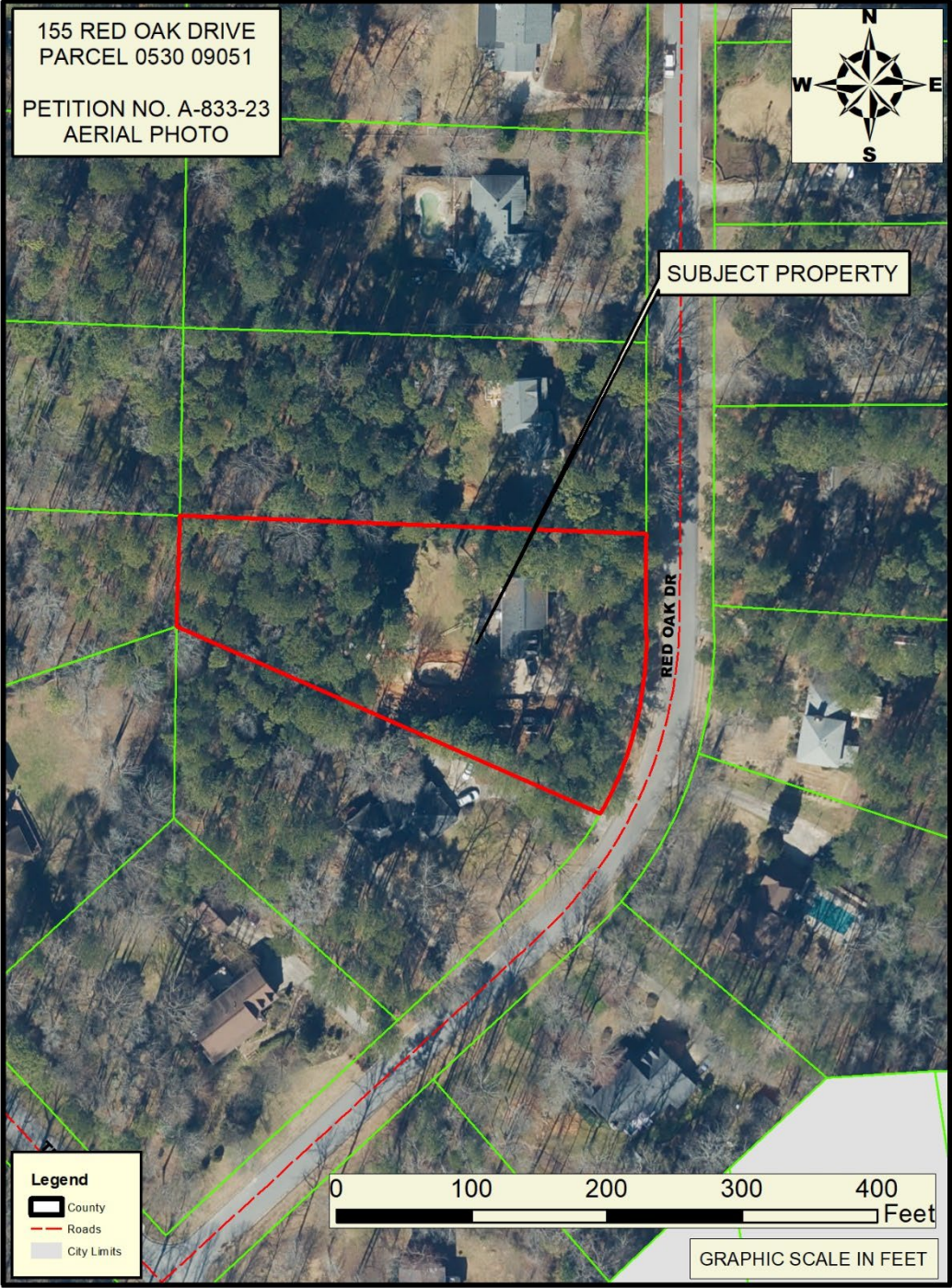




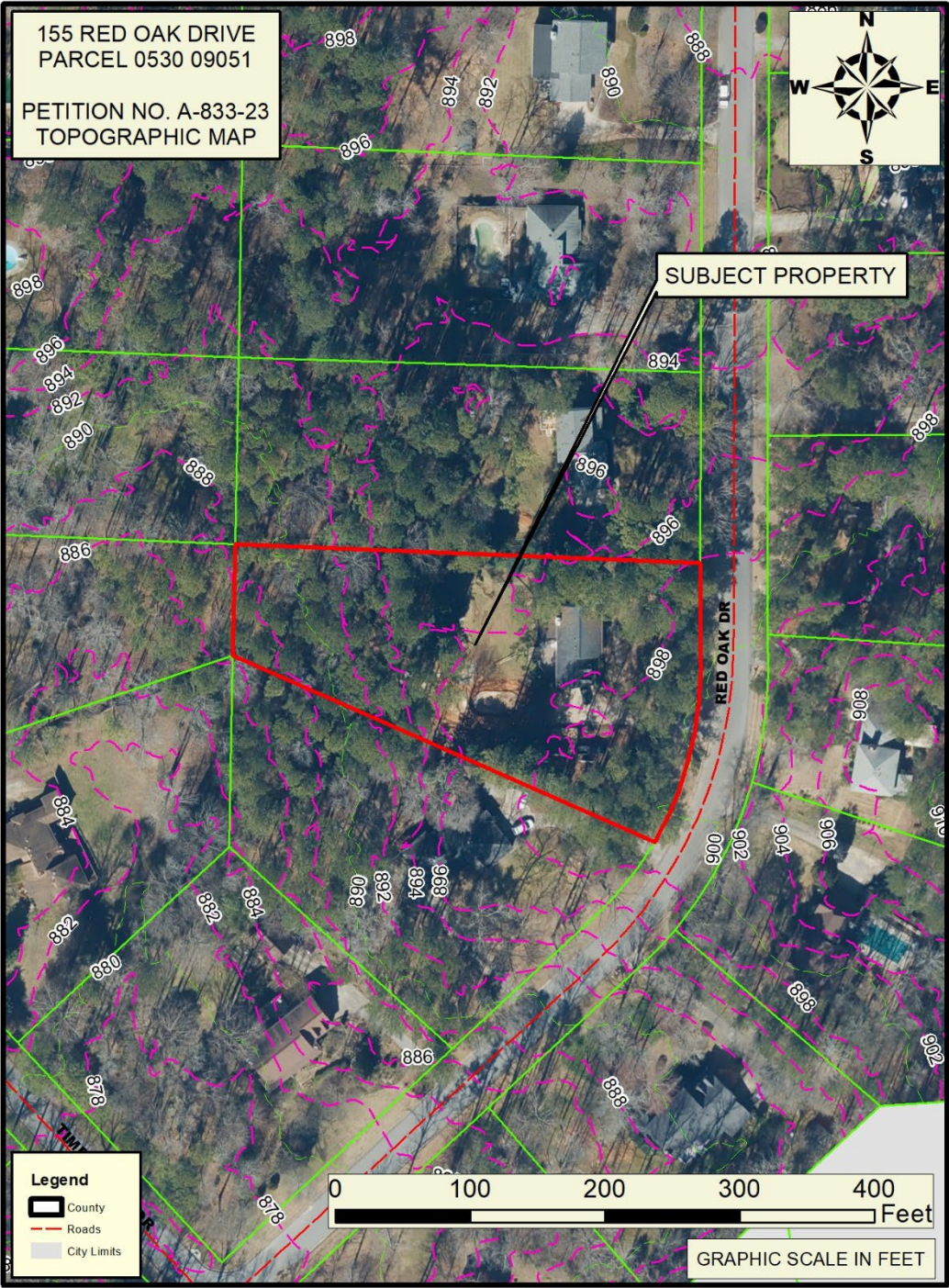






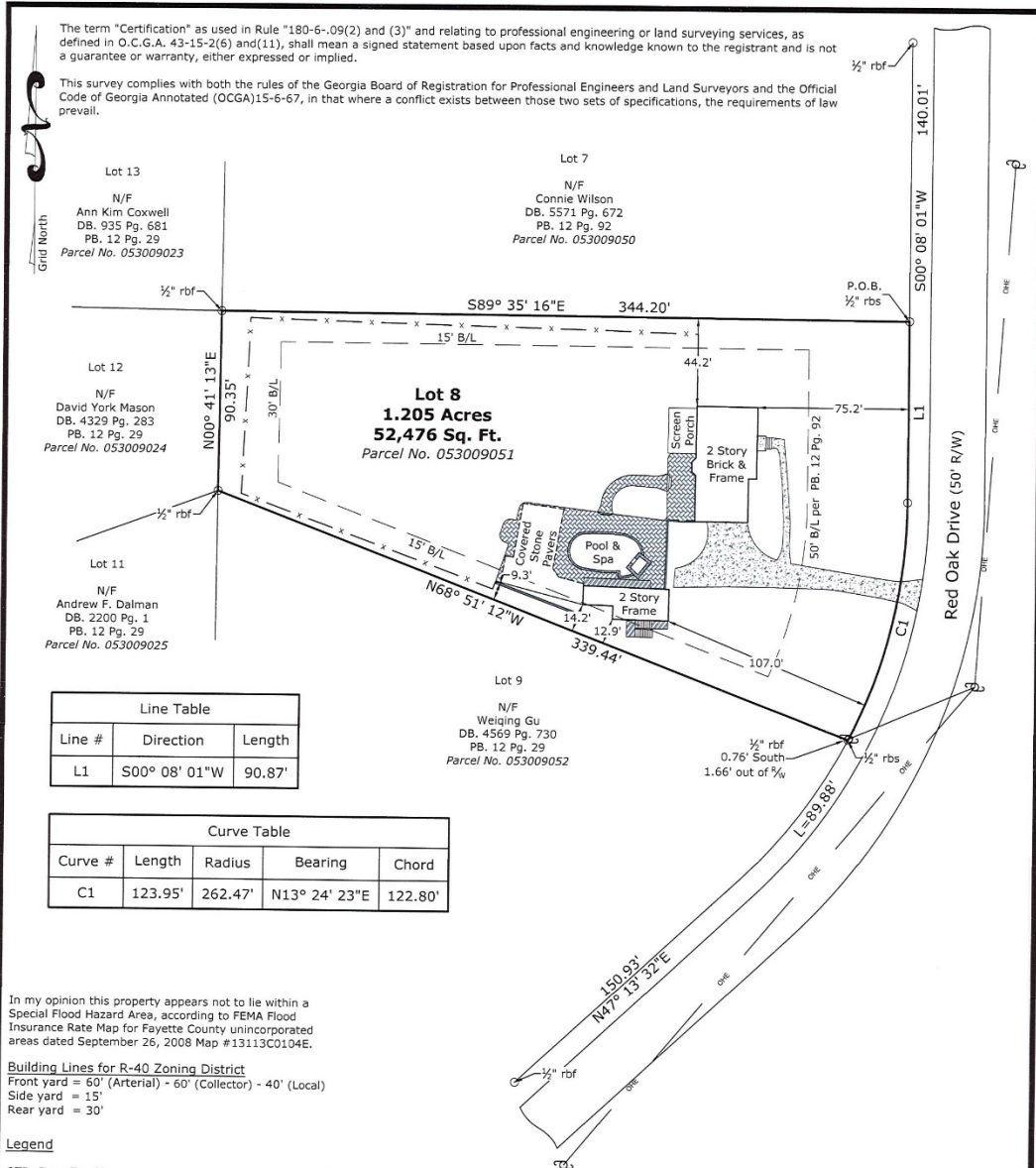






The term "Certification" as used in Rule "180-6-.09(2) and (3)" and relating to professional engineering or land surveying services, as defined in O.C.G.A. 43-15-2(6) and (11), shall mean a signed statement based upon facts and knowledge known to the registrant and is not a guarantee or warranty, either expressed or implied.

This survey complies with both the rules of the Georgia Board of Registration for Professional Engineers and Land Surveyors and the Official Code of Georgia Annotated (OCGA)15-6-67, in that where a conflict exists between those two sets of specifications, the requirements of law prevail.



Line Table		
Line #	Direction	Length
L1	S00° 08' 01"W	90,87'

Curve Table				
Curve #	Length	Radius	Bearing	Chord
C1	123.95'	262.47'	N13° 24' 23"E	122.80'

In my opinion this property appears not to lie within a Special Flood Hazard Area, according to FEMA Flood Insurance Rate Map for Fayette County unincorporated areas dated September 26, 2008 Map #13113C0104E.

**Building Lines for R-40 Zoning District**  
 Front yard = 60' (Arterial) - 60' (Collector) - 40' (Local)  
 Side yard = 15'  
 Rear yard = 30'

- Legend**
- OTP=Open Top Pipe
  - RBF=Rebar Found
  - RBS=Rebar Set
  - R/W=Right of Way
  - IPF= Iron Pin Found
  - P.O.B.=Point of Beginning
  - B/L=Building Line
  - D.E.=Drainage Easement
  - N/F=Now or Formerly
  - F.W.P.D.=Field Work Performed Date
  - ⊕=Gas Valve
  - ⊕=Water Meter
  - ⊕=Utility Pole
  - ⊕=Drop Inlet
  - ⊕=Fire Hydrant
  - ⊕=Light Pole
  - ⊕=Fence
  - ⊕=Drainage Manhole
  - OHE—=Over Head Electric Line

**Closure Data**  
 Field closure=1"IN 10,000+  
 Angle point error=< 20"  
 Equipment used=Topcon 3005W,  
 Sokkia SX, & Topcon hyper GA GPS System  
 adjustment method=Compass rule  
 Plat closure=1"IN 100,000+

This survey does not constitute a title search by surveyor. The property is subject to all information regarding easements, restrictions, covenants, zoning ordinances, environmental restrictions, buffers, right-of-ways, adjoiners, and other documents that might affect the tract shown or not shown, recorded or not recorded.

Four Corners Surveying, LLC has made no investigation as to the existence or non-existence of underground utilities and/or structures. Before any land disturbance activity begins, underground utilities should be identified and located. Four Corners Surveying, LLC assumes no liability for loss or damages caused by the discovery of or disturbance of underground utilities and/or structures.

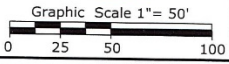
There was nothing on adjoiners property located because permission was not given or obtained. Georgia DOES NOT have a Right of Entry Law for Surveyors.

Declaration is made to original purchaser of the survey. Any use by third parties is at their own risk. Survey is valid only if print has original seal and original signature of surveyor.

**Surveyor's Certificate:**

As required by subsection (d) of O.C.G.A. Section 15-6-67, this plat has been prepared by a land surveyor and approved by all applicable local jurisdictions for recording as evidenced by approval certificates, signatures, stamps, or statements hereon. Such approvals or affirmations should be confirmed with the appropriate governmental bodies by any purchaser or user of this plat as to intended use of any parcel. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

BY: 2696 License No. 02/03/2023 Date



Prepared For: **Martin Padilla, Jr.** Address: 155 Red Oak Drive

Subdivision: Hamilton Square Unit Four	Plat/Deed Book: DB 4508	Page: 1
Lot: 8	Block: C	PB: 12
Land Lot: 156	District: 5th	County: Fayette County, Georgia
Scale: 1" = 50'	F.W.P.D.: 02/03/2023	Date: 02/03/2023
Drawn By: JCB	Job No: 23-008	



**FOUR CORNERS SURVEYING**  
 P.O. BOX 15 Tyrone, GA 30290 770-560-3910 & 770-823-9377  
 FOUR\_CORNERS@BELLSOUTH.NET 4CORNERSURVEYING@GMAIL.COM





2-STORY DETACHED GARAGE

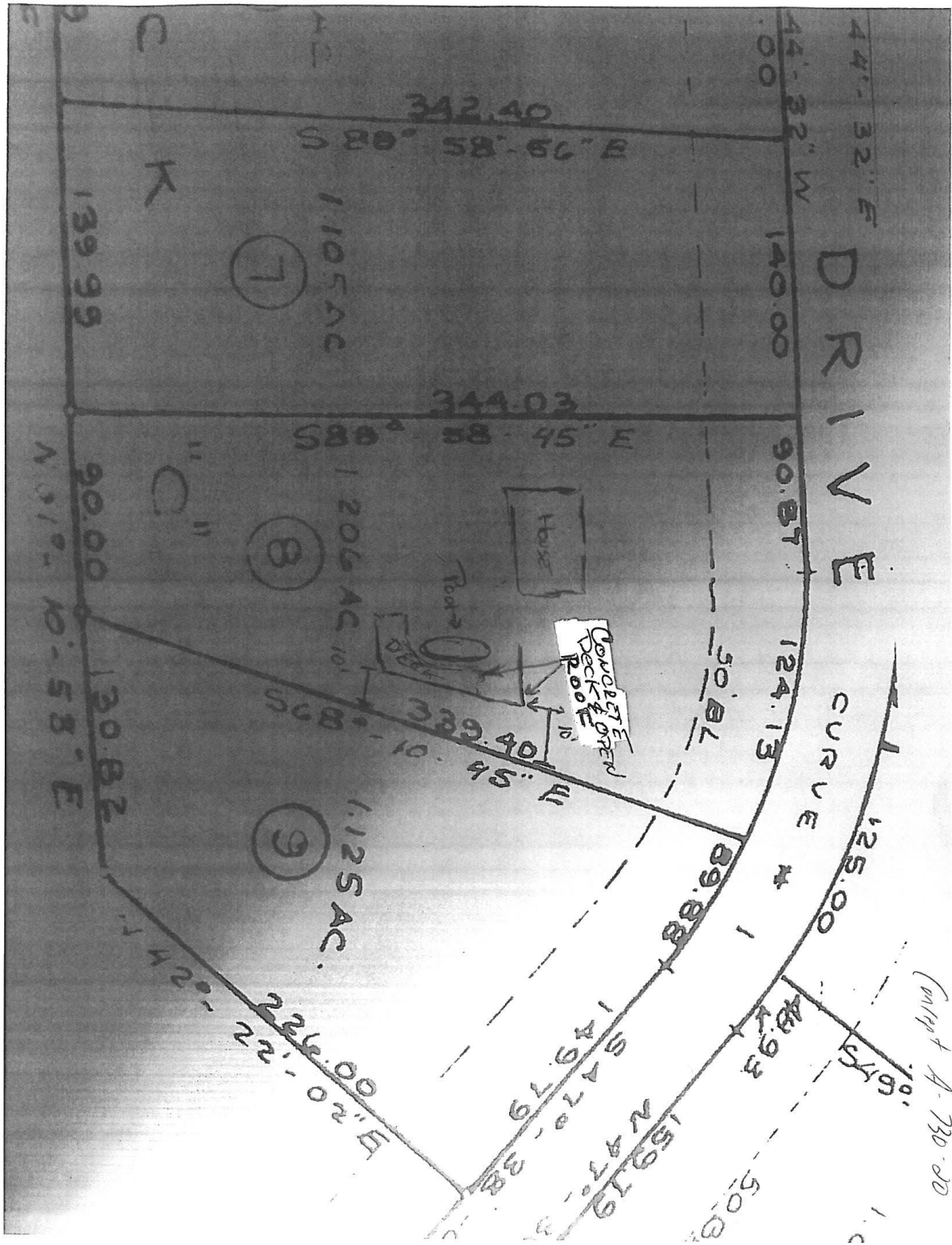




PAVILION W/FIREPLACE AND OUTDOOR KITCHEN







SITE PLAN FOR VARIANCE REQUEST FROM JULY 27, 2020;  
CASE No. A-730-20, REQUEST WAS DENIED.





155 Red Oak Drive



155 Red Oak Drive

VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: Martin Padilla

MAILING ADDRESS: 155 Red Oak Dr. Fayetteville GA 30214

PHONE: 610-802-1388 E-MAIL: Martin@MarelysepticTankService.com

AGENT FOR OWNERS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

PROPERTY LOCATION: LAND LOT 156 LAND DISTRICT 5 PARCEL 053009051

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 1.205

ZONING DISTRICT: R40

ZONING OF SURROUNDING PROPERTIES: R40

PRESENT USE OF SUBJECT PROPERTY: Residential

PROPOSED USE OF SUBJECT PROPERTY: Residential

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-833-23

[ ] Application Insufficient due to lack of:

by Staff: \_\_\_\_\_ Date: \_\_\_\_\_

Application and all required supporting documentation is Sufficient and Complete

by Staff: [Signature] Date: FEB 6, 2023

DATE OF ZONING BOARD OF APPEALS HEARING: \_\_\_\_\_ MARCH 27, 2023

Received from MARELY'S SEPTIC TANK SERVICES a check in the amount of \$ 225.00

for application filing fee, and \$ 50.00 for deposit on frame for public hearing sign(s).

Date Paid: FEB 6, 2023 Receipt Number: 017159

CHECK # 2088



**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:

MARTIN PADILCA JR.

Please Print Names

Property Tax Identification Number(s) of Subject Property: 053009051

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the 5<sup>th</sup> District, and (if applicable to more than one land district) Land Lot(s) 156 of the District, and said property consists of a total of 1.205 acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to NCA 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.

[Handwritten Signature]

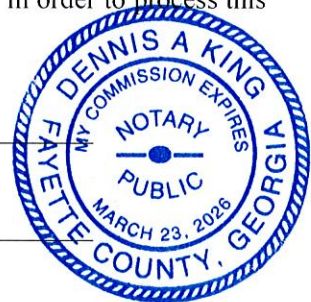
Signature of Property Owner 1

155 Red Oak Dr Fayetteville GA 31214  
Address

[Handwritten Signature]

Signature of Notary Public

Feb 6, 2023  
Date



Signature of Property Owner 2

Address

Signature of Notary Public

Date

Signature of Authorized Agent

Address

Signature of Notary Public

Date

### 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	Requirement	Proposed	Variance Amount
Sec 110-137(d)(6) Side Yard Setback	15'	6'	<del>15'</del> 9'

### VARIANCE SUMMARY

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

The pool decking will be a total of 6 ft from the Property line as well and the open roof the reason for this is being is that was an existing pool + Deck at this same location and the septic drain field lines also are located right next to the pool.



## 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 remodeling of pool deck and Pavilion will not harm anyone or anything in a way.~~  
I CAN NOT relocate the pool deck due to the septic line being on the right side of patio.

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

The remodeling of pool deck and Pavilion will not harm anyone or anything. ~~or~~

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

- it CAN NOT shifted due to the septic system being on the way.

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.

- The landing will not be resized nor have new add on.

- The wall is only for privacy reason on the PAVILION

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

The pool deck and guest house will be for my personal use only.

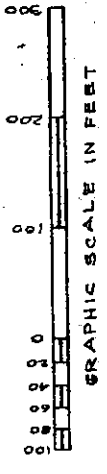
Restrictions Book 206-738

**APPROVALS**  
 DATE 7-3-80 *Kenneth N. Hall*  
 COUNTY ENGINEER  
 DATE 7-3-80 *Carol Chandler*  
 SEC-PLANNING COMM.  
 DATE 6-24-80 *Kenneth N. Hall*  
 PUBLIC HEALTH

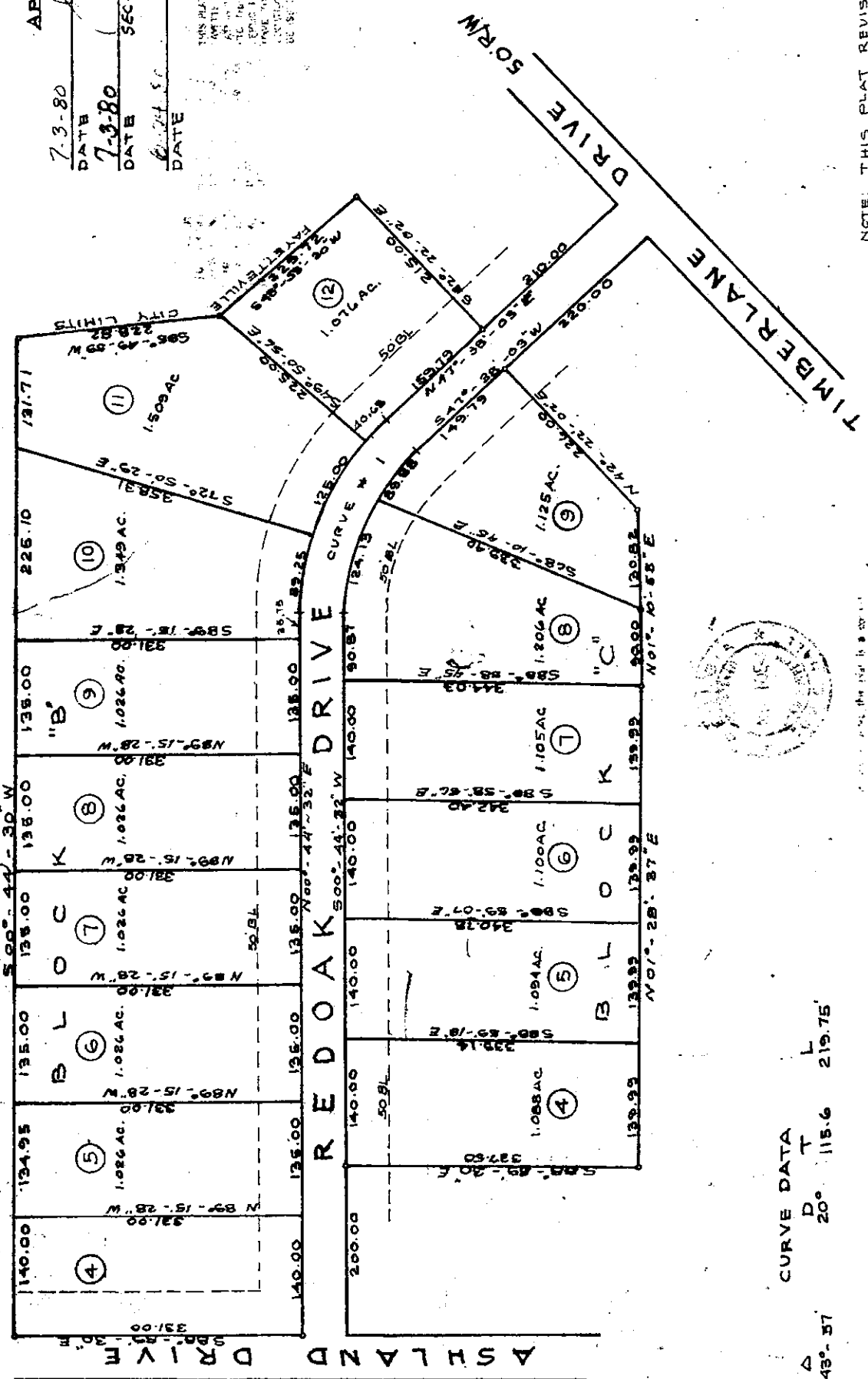
THIS PLAT HAS BEEN RECORDED IN THE PUBLIC RECORDS OF THE CLERK'S OFFICE OF THE SUPERIOR COURT OF FAYETTE COUNTY, GEORGIA, THIS 24th DAY OF JULY 1980. THE CLERK'S OFFICE HAS REVIEWED THE PLAT AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE PLAT ACT OF 1978. THE CLERK'S OFFICE HAS NOT REVIEWED THE TECHNICAL ASPECTS OF THE PLAT, NOR HAS IT BEEN REVIEWED BY THE PUBLIC HEALTH DEPARTMENT OF FAYETTE COUNTY.

GEORGIA, Fayette County  
 Clerk's Office Superior Court  
 Filed for record *July 24 1980*  
 Recorded in Book *12* Page *136*  
 This 24th day of *July* 19*80*  
*Kenneth N. Hall* Clerk

NOTE: THIS PLAT REVISED OCT. 23, 1980 TO CORRECT LOT DIMENSION ON LOT 12B CORRECTED FROM 48.93 TO 40.68



HAMILTON SQUARE  
 UNIT FOUR  
 LL 156 5TH DIST.  
 SCALE 1" = 100'  
 SURVEY BY  
 LUM HALL ASSOC. INC.  
 FAYETTEVILLE  
 GEORGIA



CURVE DATA  
 Δ 45° 37' D 20° T 115.6 L 219.75'

NOTE 1/2" REINFORCING BARS SET AT ALL LOT CORNERS

BENCH MARK SET ON TOP OF FIRE HYDRANT SW CORNER OF ASHLAND WAY AND TIMBERLANE DR. ELEVATION 882.55

WE THE UNDERSIGNED OWNERS AND OR MORTGAGEES OF THIS LAND PLATTED HEREBY OFFERS TO DEDICATE OR PRESERVE FOR PUBLIC USE THE RIGHT OF WAYS, EASEMENTS AND OTHER GROUNDS SHOWN ON THIS PLAT.

*Kenneth N. Hall* OWNER OR MORTGAGEE  
 DATE JUNE 19 1980

RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS THIS 24th DAY OF JULY 1980 RECORDED IN PLAT BOOK 12 PAGE 32

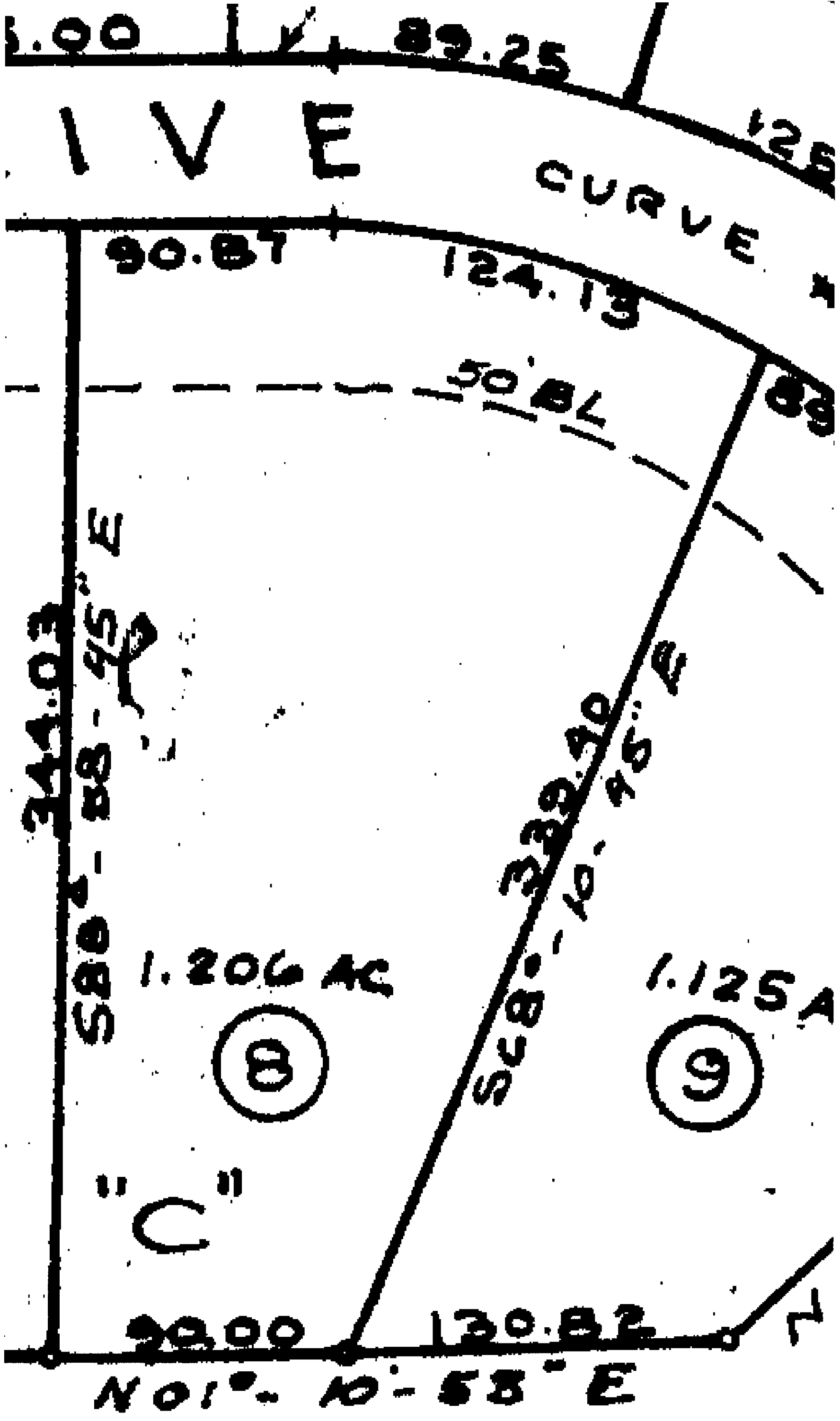
THIS SURVEY WAS CLOSED BY LATITUDE AND DEPARTURE AN THE ERROR OF CLOSURE FOUND TO EXCEED 1 FT IN 6000 FT. THE ANGULAR ERROR WAS LESS THAN 8 SEC. PER ANGLE POINT AND WAS ADJUSTED BY LEAST SQUARE RULE. EQUIPMENT USED 10 SEC. THEODOLITE & 100 CHAIN.

I CERTIFY THAT ALL MEASUREMENTS ARE CORRECT AND WERE MADE FROM AN ACTUAL SURVEY OF THIS PROPERTY MADE UNDER MY SUPERVISION. THAT MONUMENTS LOCATED WILL DRAIN AS SHOWN. DATED THIS 18th DAY OF JUNE 1980 SIGNED *Kenneth N. Hall* RLS GA 1050



*Kenneth N. Hall*  
 Surveyor State of Georgia





3 A-730-20

Doc ID: 009881550001 Type: VD  
 Recorded: 09/09/2016 at 09:50:00 AM  
 Fee Amt: \$235.00 Page 1 of 1  
 Transfer Tax: \$225.00  
 Fayette, Ga Clerk Superior Court  
 Sheila Studdard Clerk of Court  
 BK 4508 Pg 1

RETURN TO:  
 WESSELS & DIXON, P.C.  
 175 CORPORATE CENTER DR.  
 STOCKBRIDGE, GA 30281  
 16-0849

LIMITED WARRANTY DEED

STATE OF GEORGIA  
COUNTY OF HENRY

THIS INDENTURE, made this 31st day of August in the year of our Lord Two Thousand Sixteen between Jeffrey Miller and Lauren Miller, of the first part and Martin Padilla Jr. of the State of Georgia and County of Fayette of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of TEN (\$10.00) DOLLARS, and other goods and valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, sell and convey unto the said party of the second part his heirs and assigns:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 156 of the 5th District of Fayette County, Georgia and being Lot 8, Block C, HAMILTON SQUARE SUBDIVISION, UNIT FOUR, as per plat recorded in Plat Book 12, Page 92, Fayette County, Georgia records, to which reference is hereby made for the purpose of incorporating the same herein.

THIS DEED IS GIVEN subject to all easements, restrictions and right of way of record.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being belonging or in any wise appertaining, to the only proper use, benefit and behoof of the said party of the second part heirs, successors and assigns, forever, IN FEE SIMPLE,

And the said party of the first part, for his heirs, successors, executors and administrators will warrant and forever defend the right and title to the above described property subject to permitted exceptions, unto the said party of the second part, his heirs, successors and assigns, against the lawful claims of all persons owning, holding or claiming by, through or under the party of the first part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and affixed his seal, the said date and year above written.

Signed this 31st day of August, 2016  
in the presence of:

*Judith Jones*  
Unofficial Witness

*Jeffrey Miller by Lauren Miller*  
*his attorney in fact* (SEAL)  
Jeffrey Miller by Lauren Miller, his Attorney  
in Fact

*Jeremy Wesells*  
Notary Public (My commission  
Expires 9/2/2019)

*Lauren Miller* (SEAL)  
Lauren Miller

