

**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  
April 24, 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 March 27, 2023.

**PUBLIC HEARING**

5. Petition No. A-834-23, Stephanie Ceglia and Vincent Ceglia, Owner, Randy Boyd, Agent, request the following: Variance to Sec. 110-125. A-R, (d) (6) to reduce the side yard setback from 50 feet to 8 feet to allow existing accessory structures (barn and playhouse) to remain. The subject property is located in Land Lot 30 of the 4<sup>th</sup> District and fronts on Highway 85 Connector.
6. Petition No. A-835-23, Yves Fenelon and Gertha Fenelon, Owner, request the following: Variance to Sec. 110-134. R-55, (d) (6) to reduce the side yard setback from 25 feet to 10 feet to allow an accessory structure outside the buildable area to remain and complete construction. The subject property is located in Land Lot 250 of the 5<sup>th</sup> District and fronts on Highway 279.
7. Petition No. A-837-23, Butch's Auto, 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 199 of the 13<sup>th</sup> District and fronts on Highway 314.

# Meeting Minutes 3/27/23

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on March 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.

*Marsha Hopkins made a motion to accept the agenda for the March 27<sup>th</sup> meeting. Brian Haren seconded the motion. The motion passed 5-0.*

4. Consideration of the Minutes of the Meeting held on February 27, 2023, and Special Called Meeting on March 6, 2023.

*Anita Davis made a motion to approve the minutes of the meeting held on February 27, 2023. Bill Beckwith seconded the motion. The motion passed 5-0.*

*Bill Beckwith made a motion to approve the minutes of the special called meeting held on March 6<sup>th</sup>, 2023. Brian Haren seconded the motion.*

## **EXECUTIVE SESSION**

*Bill Beckwith made a motion to go into Executive Session to approve the Executive Session minutes of the Special Called Meeting on March 6<sup>th</sup>, 2023. Brian Haren seconded the motion. The motion carried 5-0. Executive Session began at 7:04pm.*

*Bill Beckwith made a motion to end Executive Session and enter the regular meeting. Marsha Hopkins seconded the motion. The motion carried 5-0. Executive Session ended at 7:07pm.*



**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.

Debbie Bell, Planning and Zoning Director stated this is a legal nonconforming lot. She stated the plat was recorded in 1954 and the lot has been in this configuration since before many iterations of the Zoning Ordinance. She stated when you measure the lot width at building line is to be measured parallel to the road. She continued the initial request was 180 feet but when she measured parallel to the road it came out to be about 214 feet so there's a difference in the recommendation. She continue the request to remove the front yard setback from 75 feet to 55 feet is due to the location of the well, and trying to fit in the house and the septic system as well as keep a safe distance from the drainage soil across the property. She stated staff recommends approval for all variance requests however staff recommends the lot width variance be increase to 200 feet from the 180 feet.

Benjamin Hendricks stated he is the property owner. He stated he and his family live on the adjoining lot. He stated they move there five (5) years ago and purchased the adjoining lot with it with plans to build a house for family. He stated they are planning to build a house for his mother and father-in-law. He concluded with being able to answer any questions the Board has.

Chairman Tate asked if there were any comments in favor or opposition of the petition there were none. The discussion was brought back to the Board.

Bill Beckwith asked about the difference between the 200 feet and the 180 feet.

Deborah Bell, state when the applicant measured they were measuring perpendicular to the two (2) property lines so they had a shorter measurement for the initial request. She stated, lot width at building line is measured parallel to the road. She continued she came up with a measurement of about 214 feet. She stated 200 feet would provide enough of a distance for this lot since it's an older lot.

Bill Beckwith asked if with the angle will it meet their 180-foot request

Deborah Bell stated it will. She stated the way the definition describes it is different from how the request was initially phrased.

Chairman Tate stated everything seems to be straightforward and asked if there was a motion.

***Brian Haren made a motion to approve Variance to Sec. 110-125. A-R, (d) (2) to reduce the lot width from 250 feet to 200 feet to allow for construction of a single-family dwelling. Marsha Hopkins seconded the motion. The motion passed 5-0.***

***Brian Haren made a motion to approve 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. Bill Beckwith seconded the motion. The motion passed 5-0.***

***Brian Haren made a motion to approve 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. Marsha Hopkins seconded the motion. The motion carried 5-0.***

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.

Deborah Bell displayed the survey of the property. She gave the history of the project: She stated the applicant has had a series of building permits that started in 2019. He received a stop work order for construction without a permit. In May 2020 he obtained a permit for the swimming pool and a brick wall to the side. He applied for a variance in June 2020, case A-730-20 requesting to encroach a side setback with additional structures. The variance was denied and the applicant proceeded with the structure under a permit issued using corrected setbacks. That permit expired due to lack of progress and inspections. He then obtained a permit to build a detached garage with a pool house. That permit and the pool permit expired for lack progress and inspections. She stated in August of 2022, he submitted a new building permit for the pool rebuild. The application showed the detached garage, the covered patio, and the pool cabana structure. All structures were shown in compliance with the setback requirements. In January of 2023, Department of Building Safety entered a complaint in the system for what was currently being built and it not matching the approved plans. She stated the applicant had submitted plans for a one story detached garage and the applicant was building a two-story building for a garage and a guest suite on the second floor. The garage and detached pool house and masonry appeared to encroach on the setbacks. She stated when an accessory structure is within two feet of the setback, they require a foundation survey to show it is properly located. The foundation survey showed there is an encroachment with the stairs, part of the garage, and part of the pool cabana. She stated the issue is not with the covered patio or brick wall but with the roof structures. She stated that permit is also expired due to lack of progress. Building Safety issued a stop work order when they found the structure was not be constructed per the approved permit. Building Safety noted there will be issues of re-permitting whether the variance is approved or not. She stated Leslie Nieber, Assistant Director of Building Safety is in attendance and can answer questions related to the building permits.

She stated because it was previously denied and was shown in the correct location, staff recommendation is denial to reduce the side yard setback since it does meet the criteria.

Chairman Tate asked if there was anyone to speak in favor.

SanDee Law stated she lives across the street from the project. She stated she moved there in September in 2021. She stated the construction and look of the property, they are for it. She stated the applicant has done a great job and is increasing the value of his property. She stated she believes the entire neighborhood is benefitting from the project. She stated the project is beautiful, she is a general contractor and knows quality work.

Chairman Tate asked if there was anyone to speak in opposition.

Mark Trettel spoke in opposition. He stated he lives on the same street. He stated this has been going on since 2019. He stated it is not enhancing the value of his property. It is frustrating to live in the neighborhood and seeing the construction going on for so long. He stated if we have 15-foot setbacks it applies to everyone. He stated the applicant works in construction and should know the rules. He stated this has been going on for five (5) years. He stated his lot is a big lot and other places to build but chose to build right next to his neighbors. He stated the applicant hasn't put grass back down, he drives trucks on his lot, and has been cited for having commercial vehicles. He stated he is not in support of this and the applicant is not helping the neighborhood, he is hurting the neighborhood.

Ann Coxwell spoke in opposition. She stated she moved to her home in 1994 and it was a nice neighborhood but it has changed. She stated the neighbors have been patient. She stated she walks every morning and they have placed their septic tank in the street. She stated they will listen if someone tells them correctly but she does not think they know.

Dean Breest spoke in opposition. He stated he spoke at the previous case for a variance three (3) years ago. Since that time three (3) structures have been built and he does not understand why he would do this. He stated for those that live there they will have to endure another four (4) or five (5) years of it sitting there even if the variance is denied tonight. The applicant won't take it down or change it, he will just move forward it. The longtime residents will have to endure the commercial vehicles, the noise, the dirt, all the activities associated with a construction project. He stated it is his hope that the project comes to completion and no commercial vehicle be allowed on the property. He stated by the time they knew anything it was too late, and people were building what they want. He stated it would be his request that whatever is done there be some type of time limit.

Martin Padilla Jr. stated he is the owner of the property and it has taken a long time because he is doing the project himself on the weekends. His plan is to be completed by May or June of next year and then move to the front yard. He stated he does not plan to have any commercial vehicles on the property other than his daily driving truck. He stated the garage is 12 feet tall but it will not be used to place a commercial vehicle, he is planning to park two (2) cars in

there, one at the top and one at the bottom. He stated when he first started the project he was remodeling his pool and did not know he needed a permit. He stated he received the stop work order. He stated he went through the process and got the permit for the pool. Later, they decided to do a pool house and the one story detached garage. He stated he did make a mistake submitting the plans for one story. He started doing the first elevation and then decided to do the second elevation. He stated he did not do this to cut corners and that he passes inspections. He stated right now the pool and patio only need final inspections. He stated he could not get the inspections because he has a hold on the detached garage. He has to have safety alarms on every window and door. He stated he has submitted new plans to Building Safety. He stated the patio is nine (9) feet away from the property line, the stair landing that goes to the second floor is with the 15 feet but the going down to the main landing is six (6) feet away from the property line. He stated if he gets his variance, the only thing he needs to do is get plumbing and electrical so that he can get his walls. He stated once he finishes with his projects, he won't have any equipment or big trucks. He stated every time he's made a mistake, he's worked to try to correct them. He continued it started when his property line was marked wrong. He stated when he had the previous permit issued, he was preparing for inspection for the framing and the permit was expiring in four (4) weeks. He stated he received a stop work order and he couldn't work anymore. He stated he went to the County and submitted the requirements, and he is only waiting on the variance. He stated he has an extension on the pool permit and once he installs the alarm on the windows and doors, he will be able to do the final inspection for the pool. He stated all that will then be left is the garage.

Ann Coxwell asked if they will be able to keep their two (2) story garage?

Chairman Tate stated he can not answer that and they are only there to discuss the variance of the side yard setback.

Ann Coxwell stated they have always built a large mailbox and brick wall that should not be allowed because it is a fire hazard.

Bill Beckwith stated if anyone else would like to comment, the Board is only discussing the side yard setback variance, the distance between the project and the property line. Anything else that may be going on is not something the Board can address. They are only discussing if they should allow the variance from 15 feet to six (6). Bill Beckwith then asked if Mr. Padilla knew there was a 15 foot setback.

Martin Padilla Jr. stated he did not know when he started building.

Bill Beckwith stated he thought he spoke with the Department of Building Safety.

Martin Padilla Jr. stated he started without a permit and then got the first stop work order and that's when he found out that he had to stay 15 feet from the property line. He stated the frame is 15 feet away, the corner of the garage is 13 feet away. He stated that his property line was marked incorrectly. He stated he received the second stop work order because the garage didn't

look like what he submitted and that's when he was asked for a survey. He said everything was moving smoothly until he decided to build a second story.

Bill Beckwith stated the second story isn't the issue tonight.

Martin Padilla Jr. he stated the middle landing and stairs are in violation.

Bill Beckwith confirmed he was doing everything himself and there was no contractor.

Martin Padilla Jr. stated it is just him and family. He stated the neighbor whose property he is getting closer to, is not concerned about the encroachment. He stated his neighbor's fence is on his property but it doesn't bother him as long as he keeps his dogs inside. He stated he could not build the detached garage in the back because of his septic system. He then stated once he does sprinkler systems, he doesn't want to be driving through his yard to a detached garage in the back. He stated the guesthouse is not for rental. He stated it is for family that may come to visit and can stay the night and go home the next day.

Bill Beckwith asked if this is denied, what would have to be done.

Deborah Bell, stated he would have to move the structures that are encroaching because they are not permitted for that location.

Anita Davis asked if the stairs could be reconfigured to be within the setback.

Martin Padilla Jr. stated no because the front will be the garage and the side is the pool but there's no space to place the stairs. He stated the only place where he could put them is in the front the garage and have the landing in the middle of the driveway.

Anita Davis asked if it's possible to move the stairs to inside the building?

Martin Padilla Jr. stated it would take most of the space of the garage. He stated if he has to take this down, the outdoor kitchen has stones, the patio has been approved and has columns and stone all the way around. He stated it has shingles and roofing. He stated it is pretty much done and is only missing final inspection. He stated it will cost him a lot of money to remove everything. He stated because the garage is so tall he couldn't have one set of stairs, he had to have a landing and a middle to meet requirements.

Anita Davis stated it looks like the stairs are on the rear.

Mr. Padilla Jr. stated the upper landing has to go into the middle landing so the whole wall used for the back of building is right at the 15-foot setback. He stated the front corner is 20 feet from the property line. The upper landing is four (4) feet wide so that's why it's away from the property line. The bottom landing is four (4) feet by eight (8) feet long, so the bottom of the landing is within the 15 feet.

Anita Davis asked if it's possible to start the staircase in the front instead of the back to meet the setback?

Mr. Padilla Jr. stated if he starts the stairs in the back it will be the same scenario. He stated the further he comes to the front the further he is from the property line. He said his only other solution is to switch the stairs all the way to the front but it won't look better.

Bill Beckwith stated that it may not look nice but it will be in the requirements which gives him an option.

Chairman Tate asked in August of 2022 he submitted a plan of a detached garage, covered pool, and pool cabana and everything was in the boundaries, what happened?

Mr. Padilla Jr. stated he thought it was in the boundaries because he had someone come and mark his property line. After he got the stop work order, Planning and Zoning requested a survey and they found out he was not within the 15 feet.

Chairman Tate asked if the survey was done in January of 2023.

Mr. Padilla Jr. stated yes.

Chairman Tate stated in 2020, Mr. Padilla Jr. applied for a variance to reduce the side setback. He asked what was that variance for?

Mr. Padilla Jr. referenced the foundation survey and stated it was for the dark line on the survey. He stated that was the original placement of the building. He stated he was still under construction and that's when he started everything without a permit. After the first stop work order, he moved everything in because the variance got denied.

Chairman Tate asked if the two story garage increased the footprint?

Mr. Padilla Jr. stated no. It was the same framing as the first floor. He stated he was not trying to hide because he knew he needed to have inspections.

Chairman Tate stated the footprint for the one story, places him at 12.9 feet and with the addition of the second story that's why he's much closer.

Mr. Padilla Jr. stated no. They measured 15 feet from the marked property line but when he did the second floor is when he got the stop work order. He stated the Building Department is okay with it because he resubmitted all the paperwork but there is a hold because Planning and Zoning requested the survey and that's when he found out he was not 15 feet. He stated it would still be 12.9 feet as a one-story building.

Brian Haren read the applicant's history. He stated the applicant submitted a new building permit application as a pool rebuild application and the site plan submitted showed a detached garage, covered patio, and pool cabana. All structures were shown in compliance. He stated the applicant is looking for a variance for something that wasn't approved, and he cannot support that. He stated if the applicant doesn't build the second story, he's okay for that part of the variance. He stated he knows he wants to but if it puts him in noncompliance then he can't.

Mr. Padilla Jr. stated it is only the bottom landing. He stated he is only taking 32 square feet.

Brian Haren stated he is still encroaching and if he hadn't built the second story and the stair case they would not be having this discussion and he's only been permitted for the one story structure.

Mr. Padilla Jr. stated he is within the rules to build the second story.

Brian Haren asked if he has the permit for it?

Mr. Padilla Jr. stated he cannot get the permit until he gets the variance. He stated they were about the issue the permit until Robert spoke with Deborah Sims and Planning and Zoning requested a survey.

Deborah Bell stated the site plan showed the structures in the setbacks. She stated they are relying on him to build what he shows in his site plan.

Mr. Padilla Jr. asked what was the point of having inspections if they are relying on him?

Bill Beckwith stated she is relying on him to do what he's been approved to do.

Mr. Padilla Jr. stated they should be relying on inspectors. He stated he's put a lot of money in this and he thought everything was okay and if he does something wrong, they should be corrected at the time of the inspection.

Chairman Tate asked to speak with the Assistant Building Director.

Leslie Nieber, Assistant Building Director, asked how she could assist?

Chairman Tate asked how the building now being two stories fits in compliance with the initial permit?

Ms. Nieber stated the building is not in compliance with the Department of Building Safety. She stated if the variance is approved, he will still need to submit a revision to their department and it will need to be approved. She stated when it was approved it was one story with no stairs and there was no issue. She stated they are there because of the stairs and the noncompliance of

the building. She stated even if the Board approves or denies, he will still need to walk through the regulations of an accessory building being a guesthouse.

Mr. Padilla Jr. stated he will submit whatever is needed.

Ms. Nieber stated, as far as the building being in compliance, they couldn't have stopped it any sooner.

Mr. Padilla Jr. stated he put the stairs in because it made it easier for him to go up and down than trying to climb a ladder with his materials.

Chairman Tate asked if the Board had any other questions or comments.

Mr. Padilla Jr. asked what will happen to the corner of the patio that is encroaching?

Chairman Tate did not understand the question.

Deborah Bell stated they only submitted this as one variance since it is all one structure. Mr. Padilla Jr. is referring to the covered patio and kitchen area. She then displayed the survey on the screen and stated it was not separated for variances, they are all one structure that's built together.

Mr. Padilla Jr. asked if he would be able to continue how it is or would he have to take everything down?

Chairman Tate stated they are only looking at if the variance from 15 feet to 6 feet should be approved or not.

Brian Haren asked if the person who marked his property line was licensed surveyor?

Mr. Padilla Jr. stated he does not know, he hired someone from the internet.

Brian Haren stated that it was not a licensed surveyor.

Mr. Padilla Jr. stated he only marked the property lines; he didn't do a survey. He stated if the County had requested a survey from the beginning he probably wouldn't be there.

Bill Beckwith stated it is up to the property to make sure the property lines are correct before starting construction. He stated he doesn't know how the property line was marked but the only correct way to do it is through a licensed surveyor.

Chairman Tate asked if there were any more questions or comments. There were none. He stated their function is to determine a variance and if the basis for the variance fits within a certain criterion. He stated they have five (5) factors to look at and while they've had



comments for and against, he cannot say all five (5) factors are met and does not support approval of this.

***Brian Haren made a motion to deny 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. Bill Beckwith seconded the motion. The motion carried 5-0.***

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Chairman Tate asked is there a motion to adjourn?

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

The meeting adjourned at 8:23 pm.

**ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY**

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**JOHN TATE, CHAIRMAN**

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**CHELSIE BOYNTON, ZBA SECRETARY**

**PETITION NO: A-834-22**

**Requested Action:** Variance to side building setback in the A-R (Agriculture-Residential) District to allow existing accessory structures to remain.

**Location:** 1477 Hwy 85 Connector, Brooks, GA 30205

**Parcel(s):** 0402 062

**District/Land Lot(s):** 4<sup>th</sup> District, Land Lot(s) 30

**Zoning:** A-R

**Lot Size:** 5.98 acres

**Owner(s):** Stephanie Ceglia & Vincent Ceglia

**Agent:** Randy Boyd

**Zoning Board of Appeal Public Hearing:** April 24, 2023

**REQUEST**

Applicant is requesting the following variance(s) for existing accessory structures:

1. Variance to Sec. 110-125.(d)(6). Side yard setback – to reduce the side yard setback from 50 feet to 8 feet to allow existing accessory structures (a storage shed and a playhouse) to remain.

**STAFF RECOMMENDATION**

It is staff's opinion that the property presents unique situation. The structures were built approximately 25 years ago and the nonconformance is not the result of the property owners' actions. All parcels were owned by related persons at the time of construction.

Regarding variance request A-834-22, requesting to reduce the side building setback for existing accessory structures to remain, staff recommends **APPROVAL**.

## HISTORY

The subject property and several adjacent lots were owned by a single family. The structures were built to store recreation equipment for local recreation t-ball teams. The parcel was subsequently split among family members for the construction of single-family homes; there were no concerns or disputes about the location of the structures and the setback encroachment only came to light when Mr. Knight and the Ceglias decided to exchange some land. If the variance is approved, the applicants will proceed with a minor revision to the minor final plat.

The parcel is zoned A-R and contains 5.98 acres, so it meets the criteria to allow an accessory structure in the (proposed) front yard.

## DEPARTMENTAL COMMENTS

- Water System** - FCWS has no objection to this proposed variance. The property is outside the water system service area.
- Public Works/Environmental Management** – EMD requests that the owners have the 25ft state buffer shown on their plat for lot 1 prior to filing plat. No other comments
  - **Transportation** – An easement for the use of the existing driveway was recorded on March 5, 2005. If the owner wants a new driveway on Bankstown Road, a driveway permit is required and a new address will be assigned. Otherwise, the owner should continue to use the existing driveway and retain the mailing address associated with the driveway on Hwy 85 Connector.
  - **Floodplain Management** - The subject property **DOES NOT** contain floodplain per FEMA FIRM panel 13113C0165E dated September 26, 2008, nor per the FC 2013 Dewberry Limited Flood Study.
  - **Wetlands** - The property **DOES** contain wetlands per the U.S. Department of the Interior, Fish and Wildlife Service 1994 National Wetland Inventory Map [*Note: this is the lake only*].
  - **Watershed Protection** - There **ARE** known state waters located on the subject property.
  - **Groundwater** – The property **IS NOT** within a groundwater recharge area.
- Environmental Health Department** – No objections.
- Fire** – No objections.

## VARIANCE SUMMARY & CRITERIA FOR CONSIDERATION

### **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.**

*Yes. The shape of the property is the result of subdivision among family members and is somewhat unconventional. The back yard slopes toward the lake with a 13% gradient. Additionally, the recombination of parcels resolves a nonconforming parcel issue fronting Bankstown Road by making it a contiguous part of the applicants' parcel.*

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

*Yes. The structures were built about 25 years ago and the current owner is not responsible for the location. Relocation or removal would create a practical hardship.*

3. **Such conditions are peculiar to the particular piece of property involved; and,**

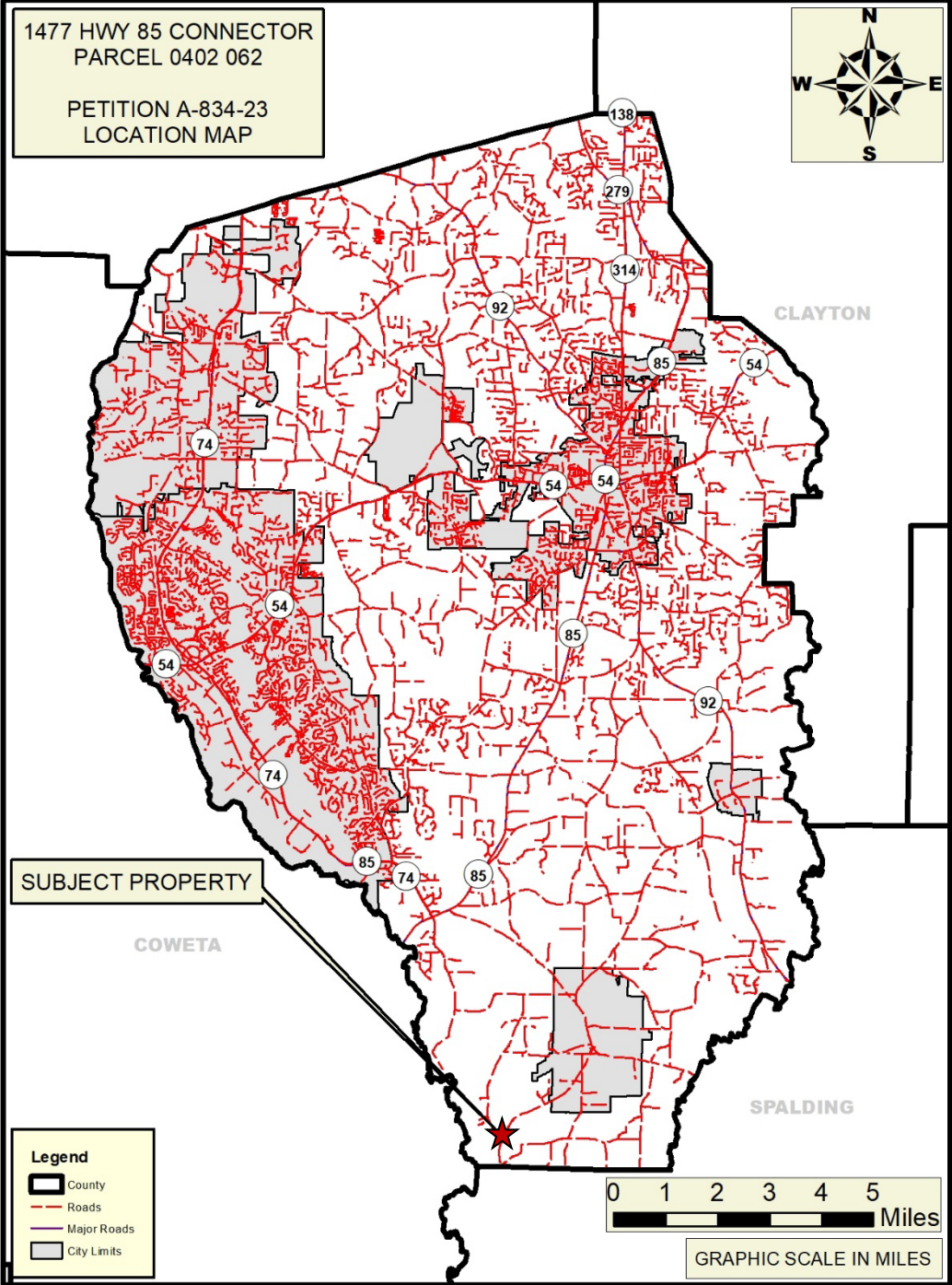
*Yes. The situation was brought to staff's attention due to a change in ownership/boundary lines and is unique to this property.*

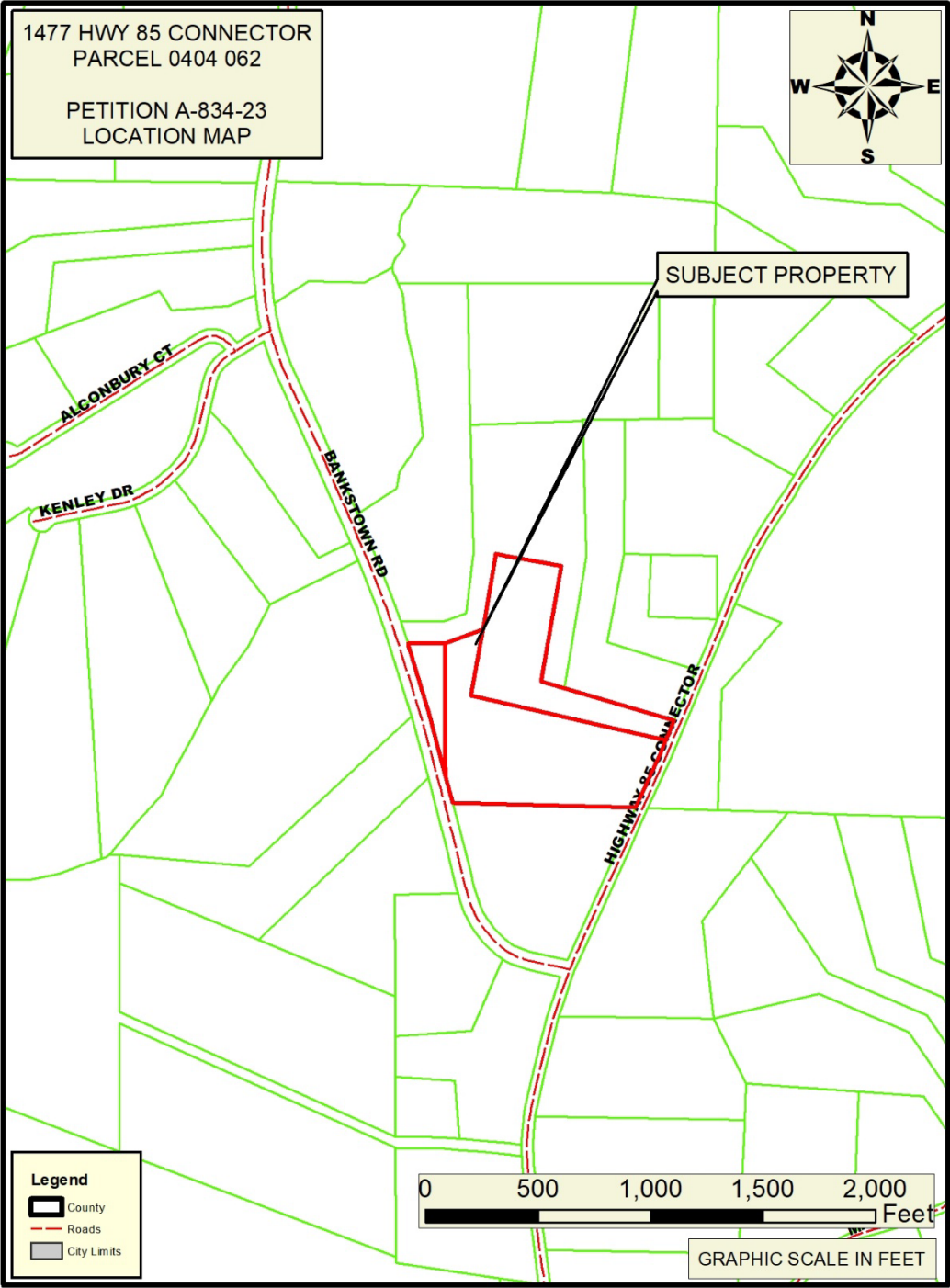
4. **Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and,**

*Because these are large, rural lots, the accessory structures are not close to any other residences, so they are not likely to be detrimental in any way.*

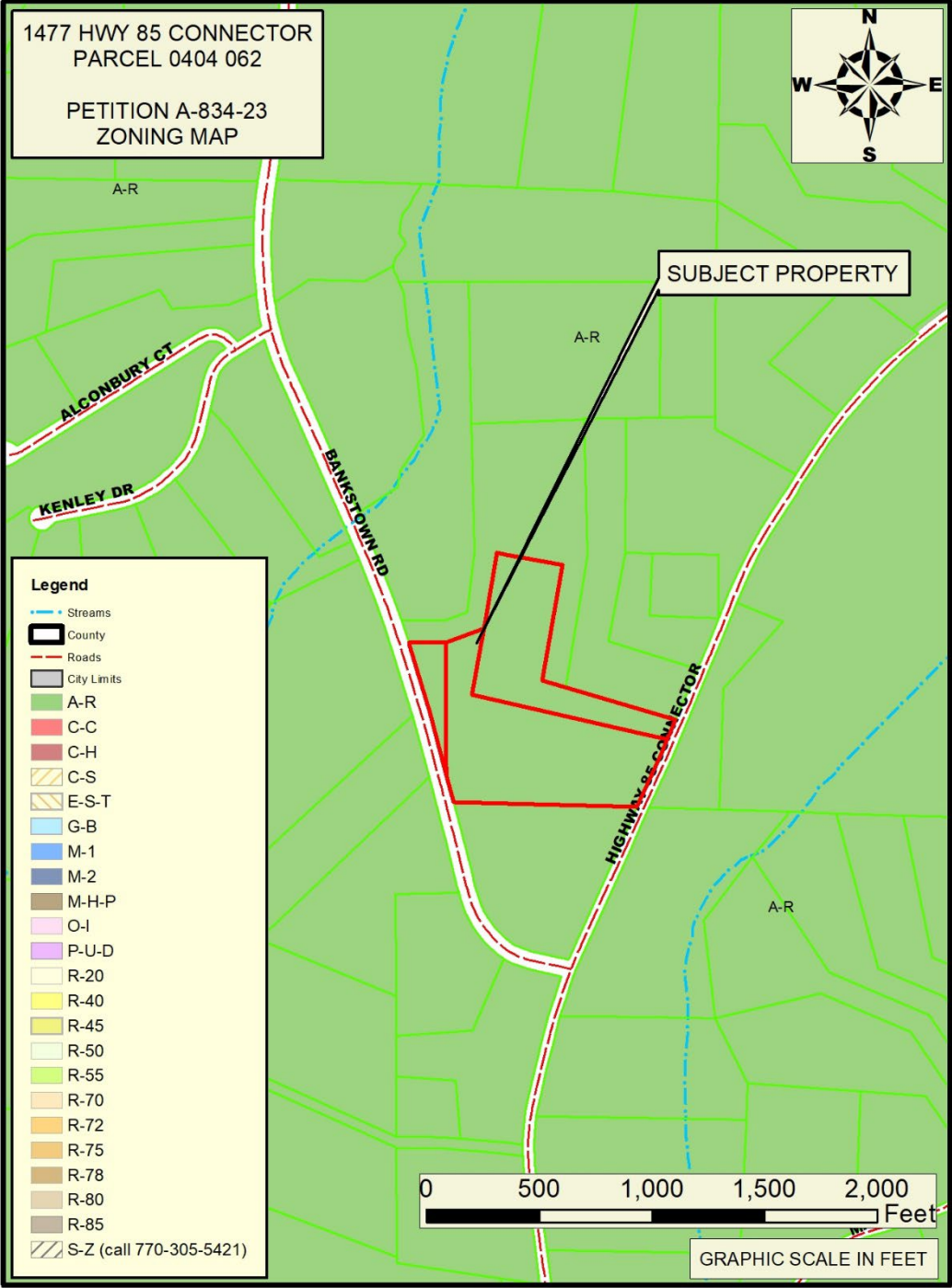
5. **A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed;**

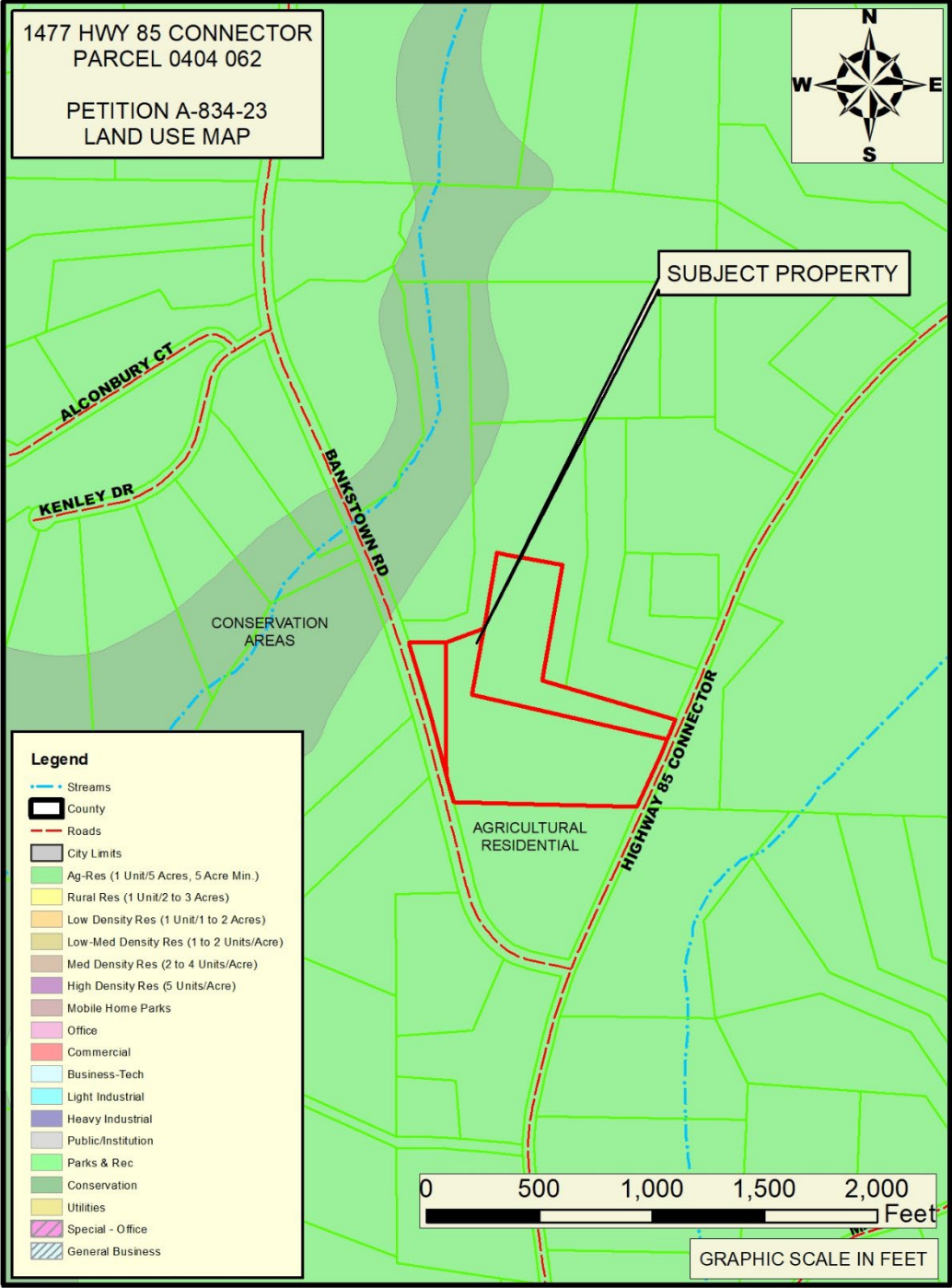
*The nonconforming location is not a result of the property owners' actions. A literal interpretation of the ordinance would deprive them of the use of the structures if removal were required.*



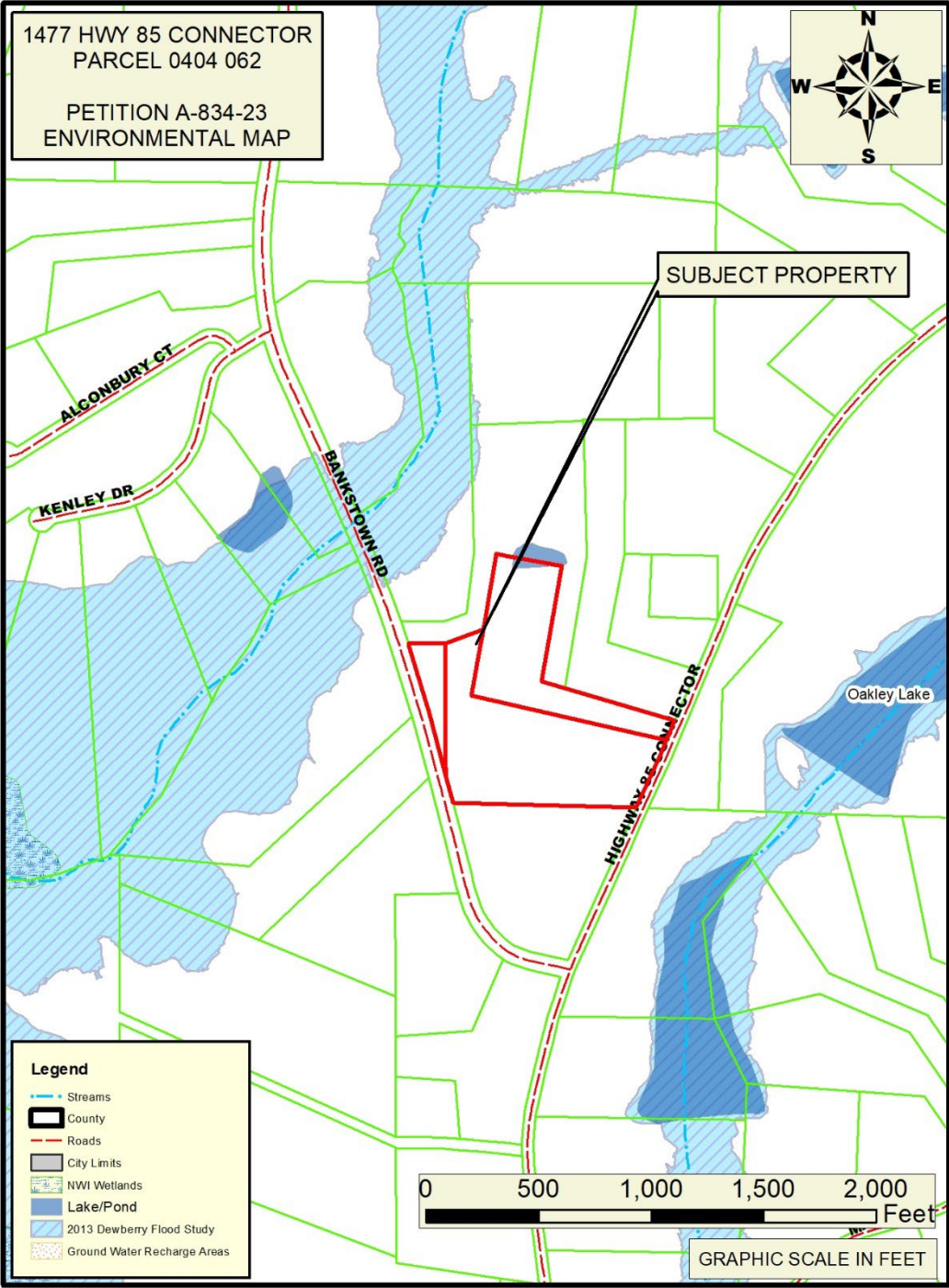


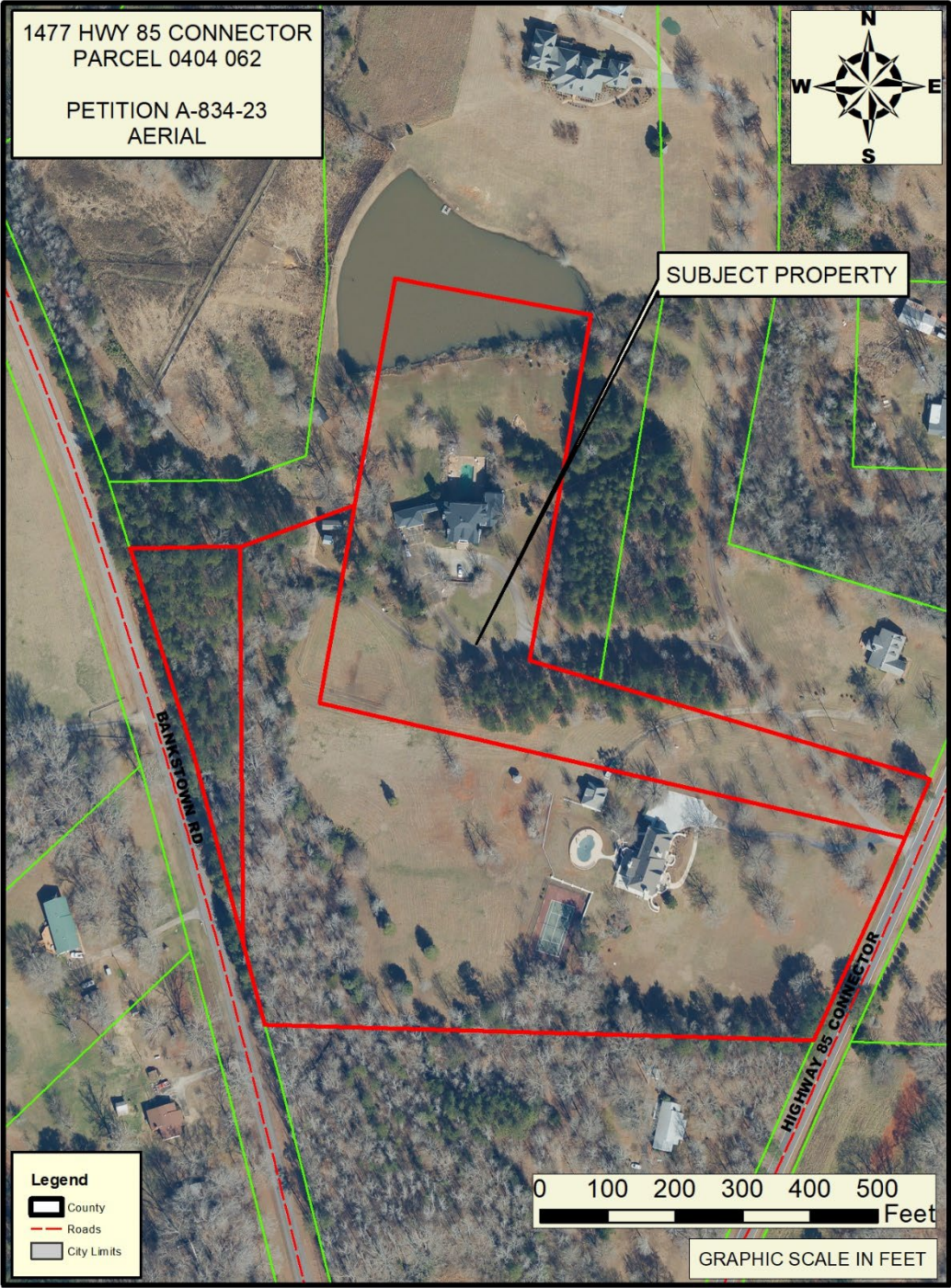




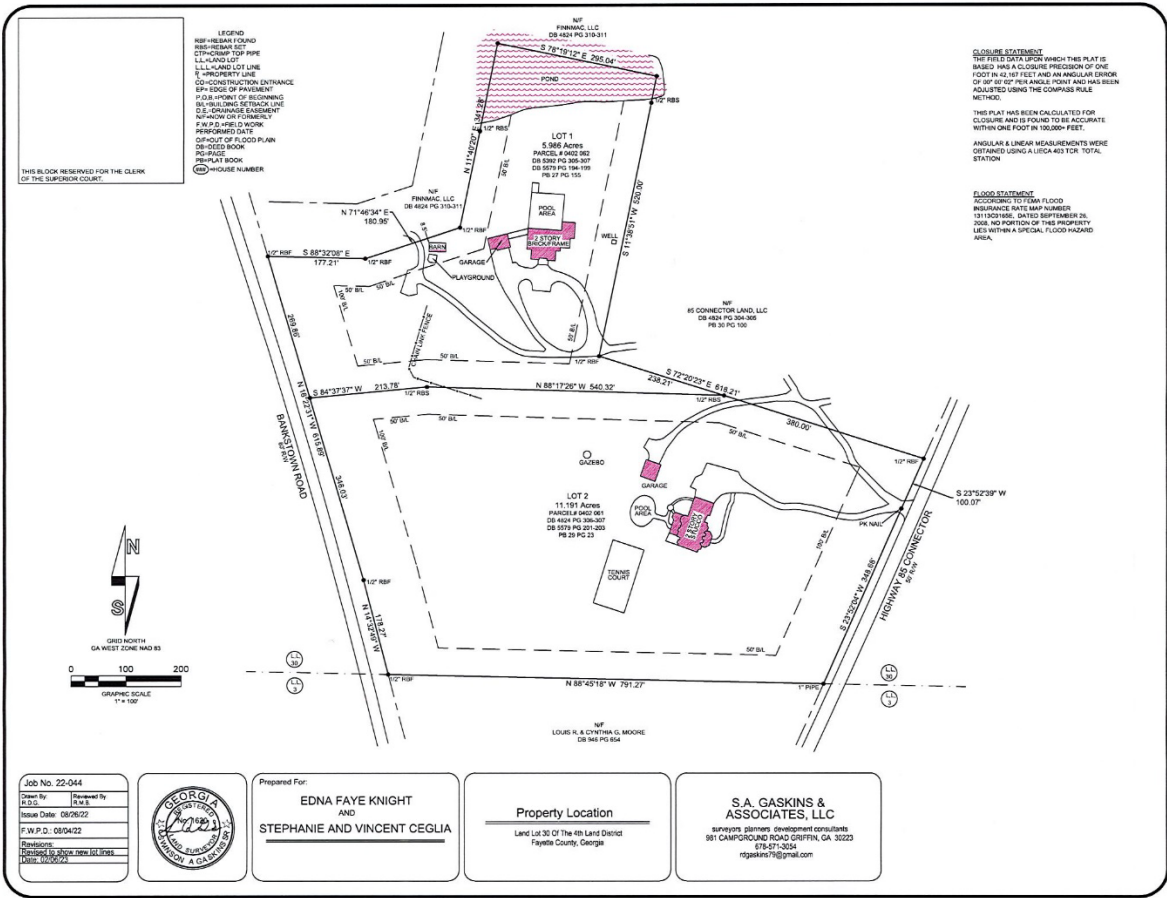














A-834-23 1477 Hwy 85 Connector



A-834-23 1477 Hwy 85 Connector





A-834-23 Bankstown Road



A-834-23 Bankstown Road

VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: Stephanie Ceglia and Vincent Ceglia

MAILING ADDRESS: 1477 Hwy 85 Connector Brook, Ga 30205

PHONE: 609-213-3212 E-MAIL: PHX2128@gmail.com

AGENT FOR OWNERS: Randy Boyd Scott@Templar-Dev.com

MAILING ADDRESS: PO Box 64 Zebulon Ga 30295

PHONE: 404-275-1677 E-MAIL: boyd2227@gmail.com

PROPERTY LOCATION: LAND LOT 30 LAND DISTRICT 4<sup>th</sup> PARCEL 0402062

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 5.986

ZONING DISTRICT: A-R

ZONING OF SURROUNDING PROPERTIES: A-R

PRESENT USE OF SUBJECT PROPERTY: Residence

PROPOSED USE OF SUBJECT PROPERTY: Residence

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-834-23

[ ] Application Insufficient due to lack of:

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

Application and all required supporting documentation is Sufficient and Complete  
by Staff: [Signature] Date: FEB 28, 2023

DATE OF ZONING BOARD OF APPEALS HEARING: APRIL 24, 2023

Received from GARY S. KNIGHT 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 28, 2023 Receipt Number: 017332

PAID \* 225.00  
INCLUDES a 50.00 SIGN DEPOSIT.  
PAID BY GARY S. KNIGHT



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:

Stephanie Caglia and Vincent Caglia
Please Print Names

Property Tax Identification Number(s) of Subject Property: 0402 062

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) 30 of the 4th District, and (if applicable to more than one land district) Land Lot(s) of the District, and said property consists of a total of 5.98 acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to Randy Boyd 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.

Stephanie Caglia
Signature of Property Owner 1

[Signature]
Signature of Notary Public



1477 Hwy 85 Conn. Brooks, GA
Address 30205

February 12, 2023
Date

Vincent Caglia
Signature of Property Owner 2

[Signature]
Signature of Notary Public

1477 Hwy 85 Connector Brooks
Address 30205

February 12, 2023
Date

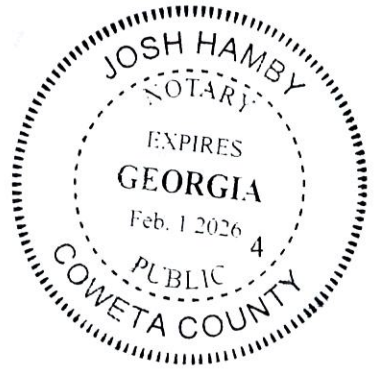
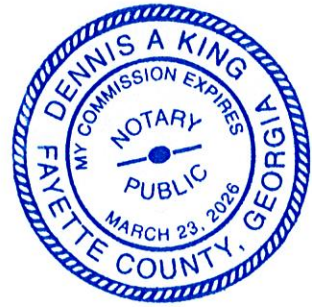
Randy M. Boyd
Signature of Authorized Agent

[Signature]
Signature of Notary Public

P.O. Box 64
Address

March 1, 2023
Date

ZEPHURUS, GA.
30295



### 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. A-R (d)(6) SIDE YARD SETBACK.	50 Ft	8 Ft.	42 Ft.

### VARIANCE SUMMARY

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

Existing storage Building + playset violates Building line setback. Building has been there for 25 years  
 Request variance.  
 Explanation attached with Pictures.



## 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 Building is located between  
~~the~~ is a driveway easement and the property  
line. A bank of approximately 3/1 slope  
is located directly behind the building.

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

With out a variance the storage building + playset  
will have to be removed. Demo and  
haul off at at great expense.

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

I was one piece owned by  
one family.

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 not cause detriment to the public good or impair regulations, no zoning property owners object to the location nor is it visible from any public street or nearby homes.

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

The storage building has been there for 25 years

February 23, 2023

Fayette County Zoning Board of Appeals

Re: Building Line Setback at 1477 Hwy 85 Connector, Brooks, Georgia

In the mid 90's, the Knight Family purchased 71.65 +/- acres from Mr. Moody on 85 Connector, Brooks, Georgia. John Knight, Sr., his son Jay, and his brother, Scott Knight divided approximately 24 acres of the total acreage into three homebuilding sites.

Scott Knight owned one plus (1 +) acres located beside Jay Knight's property.

In 1998, due to the crowded practice field at Kiwanis Park, Jay Knight constructed a t-ball field on Scott's parcel. Two practice fields were constructed on the open acreage to accommodate the needs of the community where teams regularly practiced. Some of your children may have practiced there.

Jay also built a playground and a storage building for the ball equipment, bats, bases, pitching machines. No one had an issue since the land was owned by our family nor did we question the location of the storage building.

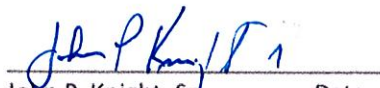
Jay Knight moved in 2007. Since then, property at 1477 Hwy 85 Connector has been purchased by Stephanie and Vincent Ceglia. Last year [2022], the Ceglias and I traded approximately 1.65 +/- acres.

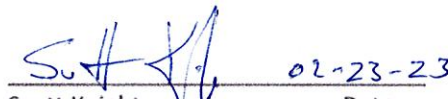
Now this family owns the field and storage building. Upon having the survey, we found out the storage building violates the Building Line ordinance. Beyond the property line is John's driveway access and he has no problem with the location of the shed as it does not impact the use of his driveway.

Beyond that, approximately 40 acres are owned by the Knight Family. The storage shed is not visible from any public street. We would like to keep the building and request this variance to allow the shed to remain as located.

  
Stephanie Ceglia                      Date      2/23/23

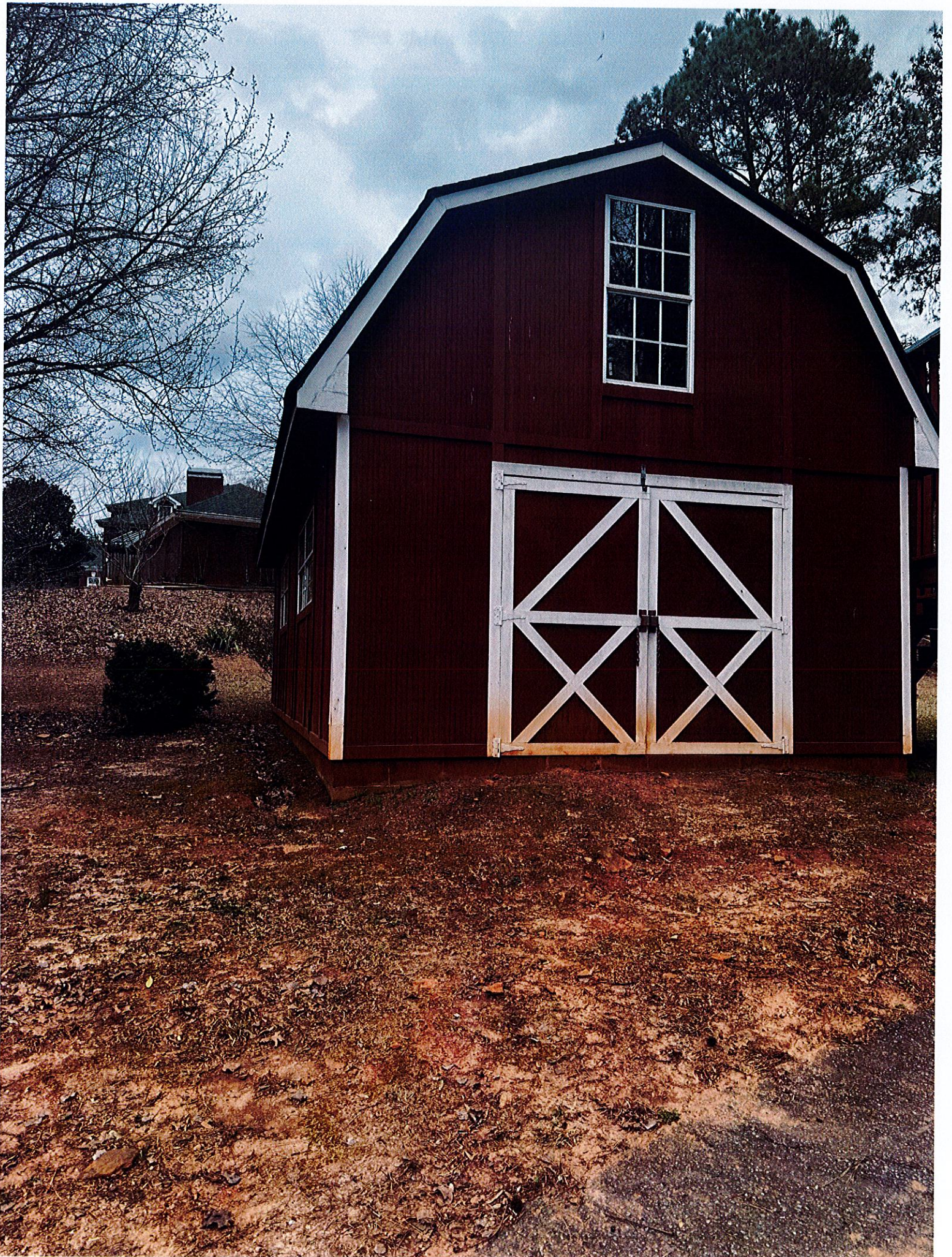
  
Vincent Ceglia                      Date      2/23/23

  
John P. Knight, Sr.                      Date

  
Scott Knight                      Date      02-23-23

  
Edna Faye Knight                      Date      2/23/23



























February 27, 2023

Fayette County Zoning Board of Appeals  
140 Stonewall Avenue  
West Suite 108  
Fayetteville, GA 30214

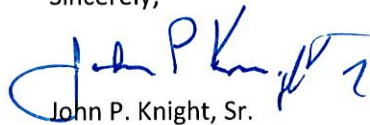
Re: Building Line Setback at 1477 Hwy 85 Connector, Brooks, Georgia

Dear Ladies and Gentlemen:

Please accept this letter as my support and approval for the request for variance for the property located at 1477 Hwy 85 Connector as referenced above.

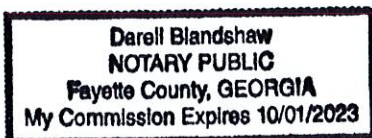
My property, consisting of 40 acres, is located at 1473 Hwy 85 Connector, Brooks, Georgia. I support this variance request for allowing the storage building to remain where it is located and appreciate your consideration of this request.

Sincerely,

  
John P. Knight, Sr.



2/27/23



Type: WD  
Recorded: 10/28/2021 3:56:00 PM  
Fee Amt: \$850.00 Page 1 of 3  
Transfer Tax: \$825.00  
Fayette, Ga. Clerk Superior Court  
Sheila Studdard Clerk of Court

**Record and Return to:**  
Weissman PC  
5909 Peachtree Dunwoody Road, Suite 100  
Atlanta, GA 30328

Participant ID: 2979894615

**File No.:** W-C-21989-21-PC

**BK 5392 PG 305 - 307**

**Parcel ID:** 0402 062

### LIMITED WARRANTY DEED

STATE OF GEORGIA  
COUNTY OF FAYETTE

THIS INDENTURE, made this 14th day of October, 2021 by and between Daniel J. Bishop and Amy P. Bishop, as party or parties of the first part, hereinafter called Grantor, and Stephanie Ceglia and Vincent Ceglia, as JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP and not as tenants in common, 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 NO/100 (\$10.00) AND OTHER 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, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, the following described property, to-wit:

**SEE ATTACHED EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE HERETO**

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

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, only to the proper use, benefit and behoof of the said Grantee, as joint tenants and not as tenants in common, for and during their joint lives, and upon the death of either of them, then to the survivor of them in FEE SIMPLE together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons claiming by, through, or under Grantor herein.

THIS CONVEYANCE is made pursuant to Official Code of Georgia Section 44-6-190, and is the intention of the parties hereto to hereby create in Grantee a joint tenancy estate with right of survivorship and not as tenants in common.

Deed (Limited Warranty)

W-C-21989-21-PC

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

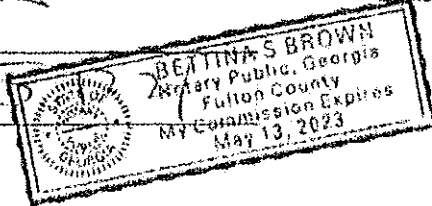
Signed, sealed and delivered  
in the presence of.

[Signature]  
Unofficial Witness

[Signature]  
Daniel J. Bishop (Seal)

Notary Public

My Commission Expires:



[Signature]  
Amy P. Bishop (Seal)

**EXHIBIT "A"**

**File No.: W-C-21989-21-PC**

All that tract or parcel of land lying and being in Land Lot 30 of the 4th District of Fayette County, Georgia, and being shown on plat of survey prepared for John Perry Knight, Jr. by R.M. Boyd and Associates, dated 11/17/95, revised 07/14/97, as recorded in Plat Book 27, Page 155, Fayette County Records, said plat being incorporated herein by reference thereto.

FOR INFORMATIONAL PURPOSES ONLY: Said property is known by address as 1477 Highway 85 Connector, according to the present system of numbering property in Fayette County, Georgia.



Dead (Limited Warranty)

W-C-21989-21-PC

**Book: 5392 Page: 305 Seq: 3**

After recording, return to:  
McMichael & Gray, P.C.  
825 Fairways Ct., Suite 100  
Stockbridge, GA 30281

PARCEL ID: a portion of 0402 06  
and a portion of 0402 038

Type: WD  
Recorded: 1/17/2023 11:41:00 AM  
Fee Amt: \$25.00 Page 1 of 3  
Transfer Tax: \$0.00  
Fayette, Ga. Clerk Superior Court  
Sheila Studdard Clerk of Court

Participant ID(s): 7339863107,  
7067927936

**BK 5579 PG 194 - 196**

(Above this line is reserved for recording)

STATE OF GEORGIA  
COUNTY OF HENRY

**LIMITED WARRANTY DEED**

**THIS INDENTURE**, made as of the 27 day December, 2022, by and between **Edna Faye Knight** (hereinafter "Grantor") and **Stephanie Ceglia and Vincent Ceglia** (hereinafter "Grantees") [the words "Grantor" and "Grantees" to include their respective heirs, successors, and assigns where the context requires or permits].

**WITNESSETH:** That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Grantees Grantor's interest in and to the following described real property:

All that tract or parcel of land lying and being in Land Lot 30 of the 4th District of Fayette County, Georgia, as depicted on survey prepared for Edna Faye Knight and Stephanie and Vincent Ceglia dated 08/26/2022 by S. A. Gaskins & Associates, LLC, and described as "Ceglia Tract" on said survey attached hereto as Exhibit "A" and incorporated herein by reference (the "**Property**"). The Property is more particularly described as follows: Commence at a 1" pipe located at the intersection of the Northwesterly right-of-way of Highway 85 Connector (50' R/W) and the Southern boundary of Land Lot 30; proceed thence N 88°45'18" W 791.27 feet to a ½" rebar found on the Northeasterly right of way of Bankstown Road (80' right of way) ; proceed thence N 14°32'49" W 178.27 feet along the Northeasterly right of way of Bankstown Road (80' right of way) to a ½" rebar found; proceed thence N 16°22'31" W 346.03 feet along the Northeasterly right of way of Bankstown Road (80' right of way) to a point which is the **Point of Beginning**; From the Point of Beginning, proceed N 16°22'31" W 269.86 feet along the Northeasterly right of way of Bankstown Road (80' right of way) to a ½" rebar found on the Northeasterly right of way of Bankstown Road (80' right of way); proceed thence S 88°32'08" E 177.21 feet to a ½" rebar found; proceed thence N 71°46'34" E 180.95 feet to a ½" rebar found; proceed thence S 11°40'20" W 297.09 feet to a ½" rebar set; proceed thence S 84°37'37" W 213.78 feet to a point on the Northeasterly right of way of Bankstown Road (80' right of way) and the Point of Beginning.

TO HAVE AND TO HOLD the Property, together 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 Grantees forever in FEE SIMPLE together with and subject only to easements and restrictions of record.

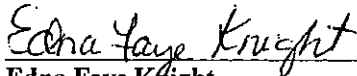
GRANTOR WILL WARRANT and forever defend the right and title to the Property unto Grantees against the claims of any persons owning, holding or claiming by, through or under Grantor.

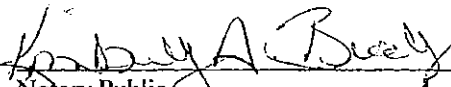
IN WITNESS WHEREOF, Grantor has signed and sealed this deed the day and year above written.

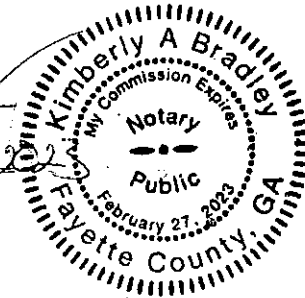
Signed, sealed and delivered  
in the presence of:

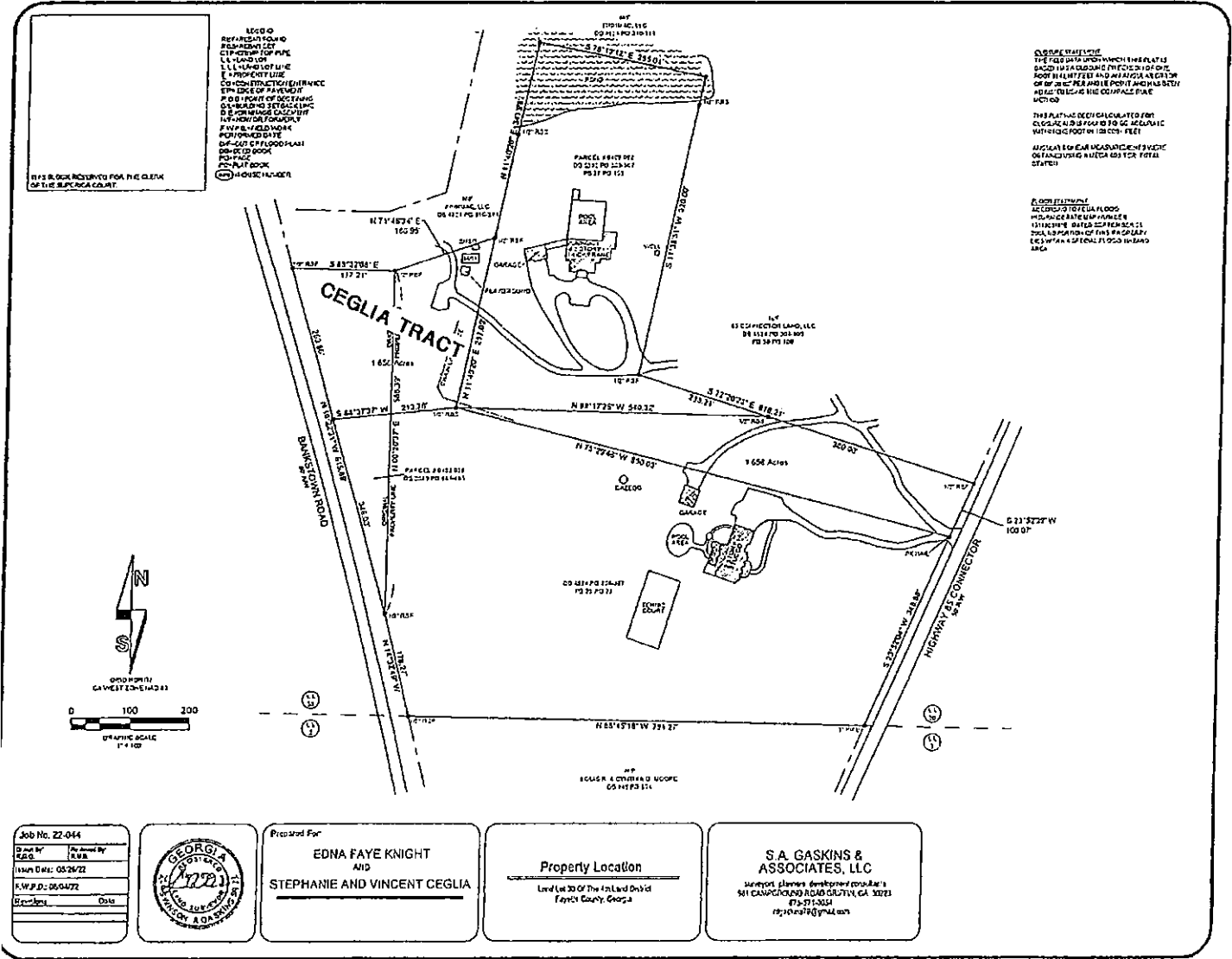
Grantor:

  
Unofficial Witness

 (SEAL)  
Edna Faye Knight

  
Notary Public  
My commission expires: 2.27.22





Job No. Z7-044	
Drawn by: EGG	Reviewed by: EBA
Issue Date: 05/26/22	
F.W.P.D.: 05/24/22	
Scale: _____	Date: _____



Prepared For  
**EDNA FAYE KNIGHT**  
 AND  
**STEPHANIE AND VINCENT CEGLIA**

**Property Location**  
 Lot 14-33 of The Inland David  
 Parcel County, Georgia

**S.A. GASKINS & ASSOCIATES, LLC**  
 Surveyors, planners, developers and consultants  
 501 CAMPCLOUD ROAD GULFVIEW, GA 30223  
 813-771-1054  
 info@gaskins.com

**EXHIBIT "A"**



Type: WD  
Recorded: 1/17/2023 11:49:00 AM  
Fee Amt: \$25.00 Page 1 of 3  
Transfer Tax: \$0.00  
Fayette, Ga. Clerk Superior Court  
Sheila Studdard Clerk of Court

After recording, return to:  
McMichael & Gray, P.C.  
825 Fairways Ct., Suite 100  
Stockbridge, GA 30281

Participant ID(s): 7339863107,  
7067927936

PARCEL ID: a portion of 0402 062

**BK 5579 PG 201 - 203**

(Above this line is reserved for recording)

Please cross-reference: (1) *Limited Warranty Deed* recorded 10/28/2021 at Deed Book 5392, Pages 305-307 Fayette County Deed Records; and (2) *Partial Satisfaction of Security Deed* dated 11/23/22 and recorded 11/23/22 in Deed Book 5563, Pages 211-212, Fayette County Deed Records

STATE OF GEORGIA  
COUNTY OF HENRY

**LIMITED WARRANTY DEED**

**THIS INDENTURE**, made as of the 28 day December, 2022, by and between **Stephanie Ceglia and Vincent Ceglia** (hereinafter "**Grantors**") and **Edna Faye Knight** (hereinafter "**Grantee**") [the words "Grantors" and "Grantee" to include their respective heirs, successors, and assigns where the context requires or permits].

**WITNESSETH:** That Grantors, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto Grantee Grantors' interest in and to the following described real property:

All that tract or parcel of land lying and being in Land Lot 30 of the 4th District of Fayette County, Georgia, as depicted on survey prepared for Edna Faye Knight and Stephanie and Vincent Ceglia dated 08/26/2022 by S. A. Gaskins & Associates, LLC, and described as "Knight Tract" on said survey which is attached hereto as Exhibit "A" and incorporated herein by reference (the "**Property**"). The Property is more particularly described as follows: Commence at a 1" pipe located at the intersection of the Northwestern right-of-way of Highway 85 Connector (50' R/W) and the Southern boundary of Land Lot 30; proceed thence along the Northwestern right-of-way of Highway 85 Connector (50' R/W) N 23°52'04" E 348.68 feet to a PK Nail and the **Point of Beginning**; proceed thence N 75°29'46" W 890.03 feet to a 1/2" rebar set; proceed thence S 88°17'26" E 540.32 feet to a 1/2" rebar set; proceed thence S 72°20'23" E 380.00 feet to a 1/2" rebar found on the Northwestern right-of-way of Highway 85 Connector (50' R/W); proceed thence S 23°52'38" W 100.07 feet along the Northwestern right-of-way of Highway 85 Connector (50' R/W) to the Point of Beginning.

TO HAVE AND TO HOLD the Property, together 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 Grantee forever in FEE SIMPLE together with and subject only to easements and restrictions of record.

GRANTORS WILL WARRANT and forever defend the right and title to the Property unto Grantee against the claims of any persons owning, holding or claiming by, through or under Grantors.

IN WITNESS WHEREOF, Grantors have signed and sealed this deed the day and year above written.

Signed, sealed and delivered  
in the presence of:

Grantors:

Theresa D'Leaveny  
Unofficial Witness

Stephanie Ceglia (SEAL)  
Stephanie Ceglia

Vincent Ceglia (SEAL)  
Vincent Ceglia

Amanda J. Wilson  
Notary Public

My commission expires: 4/20/2026





**PETITION NO: A-835-22**

**Requested Action:** Variance to side building setback in the R-55 (Single-Family Residential) District to allow a partially built accessory structure to remain.

**Location:** 313 Highway 279, Fayetteville, Georgia 30214

**Parcel(s):** 0551 173

**District/Land Lot(s):** 5<sup>th</sup> District, Land Lot(s) 250

**Zoning:** R-55

**Lot Size:** 5.0 acres

**Owner(s):** Yves Fenelon & Gertha Fenelon

**Agent:** n/a

**Zoning Board of Appeal Public Hearing:** April 24, 2023

**REQUEST**

Applicant is requesting the following variance(s) for an incomplete accessory structure:

1. Variance to Sec. 110-134.(d)(6). Side yard setback – to reduce the side yard setback from 25 feet to 10 feet to allow a partially constructed accessory structure (guest house) to remain.

**STAFF RECOMMENDATION**

It is staff's opinion that a variance to the building setback is not justified under the variance criteria. The structure was not built in the approved location. There is ample room on the parcel for the accessory structure.

Regarding variance request A-835-22, requesting to reduce the side building setback for existing accessory structures to remain, staff recommends **DENIAL**.

## **HISTORY**

The subject property is a legal lot, lot 7, in the McKown Acres Minor Subdivision. The plat was recorded on August 16, 2019. The applicant is the owner of the property. The house and accessory are under construction so the owner does not reside there at present. This is a 5-acre parcel with gently rolling topography with approximately 5% slopes.

Foundation surveys are required for all new residential construction and for accessory structures built within 2 feet of the building setbacks. The requirement for the foundation survey is clearly explained in the building permit package, and applicants sign an affidavit stating that they are aware of this requirement.

The site plan submitted for the building permit shows the guest house constructed in line with the primary residence.

January 11, 2023 – A building permit for a single-family home was issued to Danielle Rudolph (Danielle Rudolph Properties), Authorized Agent/Applicant, & Innocent Nwachukwu (IMC Construction Company), Contractor.

January 23, 2023 – A building permit for a guest house was issued to Danielle Rudolph (Danielle Rudolph Properties), Authorized Agent/Applicant, & Innocent Nwachukwu (IMC Construction Company), Contractor.

February 28, 2023 – Danielle Rudolph (Danielle Rudolph Properties) submitted a foundation survey for the house and guest house. The survey was prepared by G. L. Sawney, Registered Land Surveyor. This survey indicates that the guest house encroaches 14.5 feet into the side yard setback.

## **DEPARTMENTAL COMMENTS**

- Water System** - FCWS has no objection to this proposed variance. There is a 8" PVC water main along the road frontage of this property.
- Public Works/Environmental Management**
  - **Transportation** – This is on State Route 279; access management is handled by GDOT.
  - **Floodplain Management** - The subject property **DOES NOT** contain floodplain per FEMA FIRM panel 13113C0039E dated September 26, 2008, nor per the FC 2013 Dewberry Limited Flood Study.
  - **Wetlands** - The property **DOES NOT** contain wetlands per the U.S. Department of the Interior, Fish and Wildlife Service 1994 National Wetland Inventory Map.
  - **Watershed Protection** - There **ARE NO** known state waters located on the subject property.
  - **Groundwater** – The property **IS NOT** within a groundwater recharge area.
- Environmental Health Department** – No objections.
- Fire** – No objections.



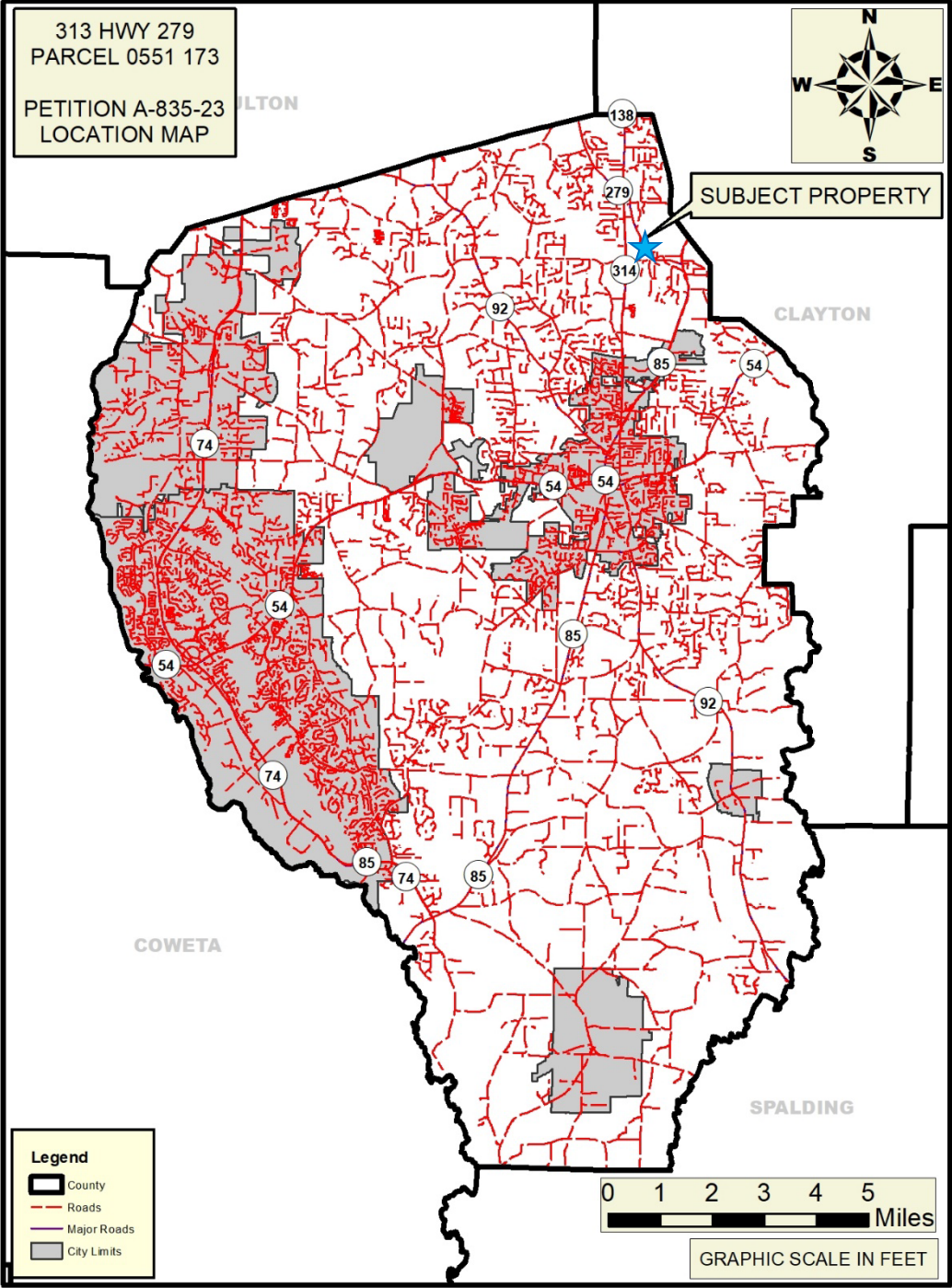
## VARIANCE SUMMARY & CRITERIA FOR CONSIDERATION

### **STAFF ASSESSMENT OF CRITERIA**

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

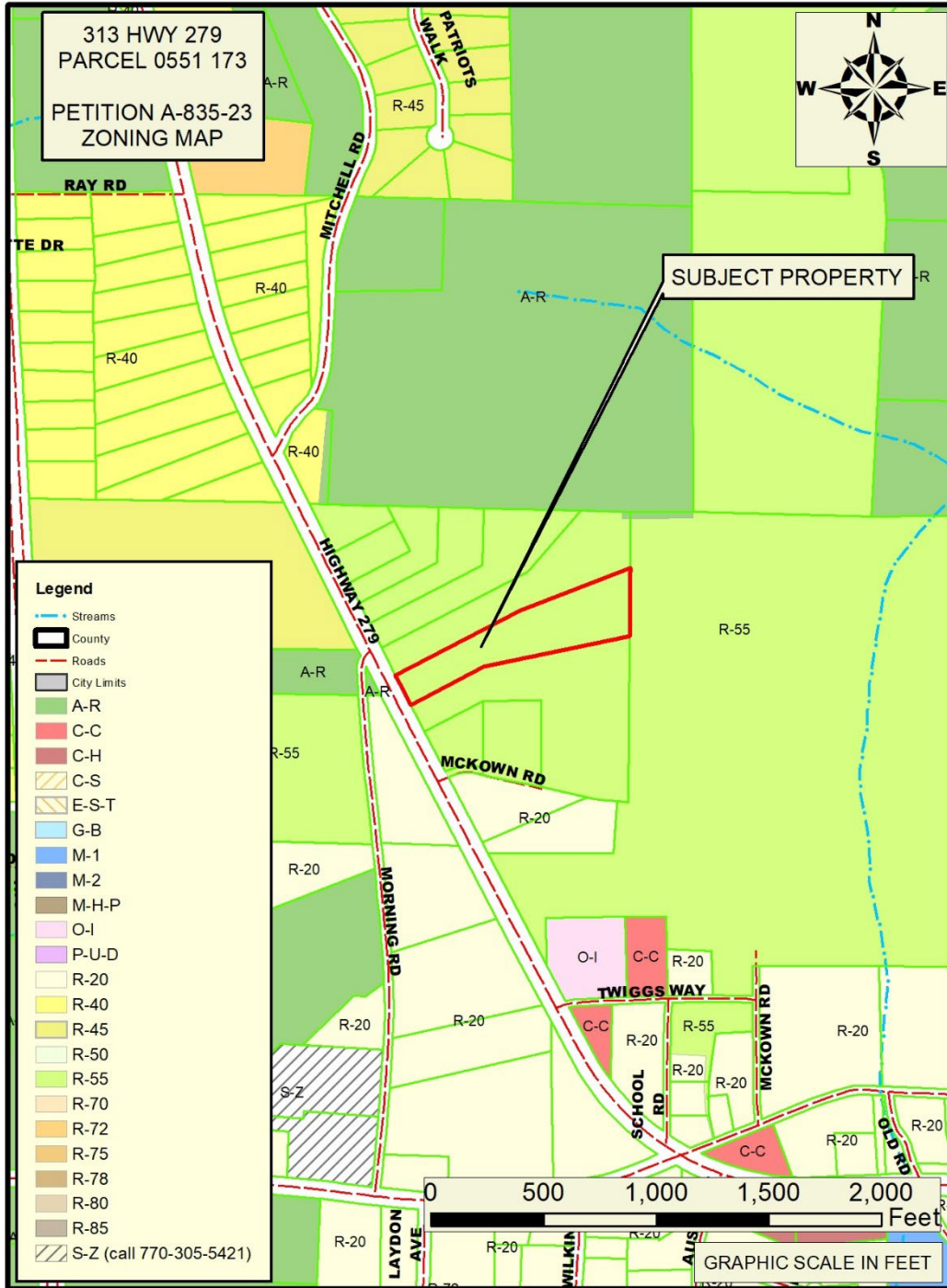
The Fayette County Zoning Ordinance, Sec. 110-242. (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation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

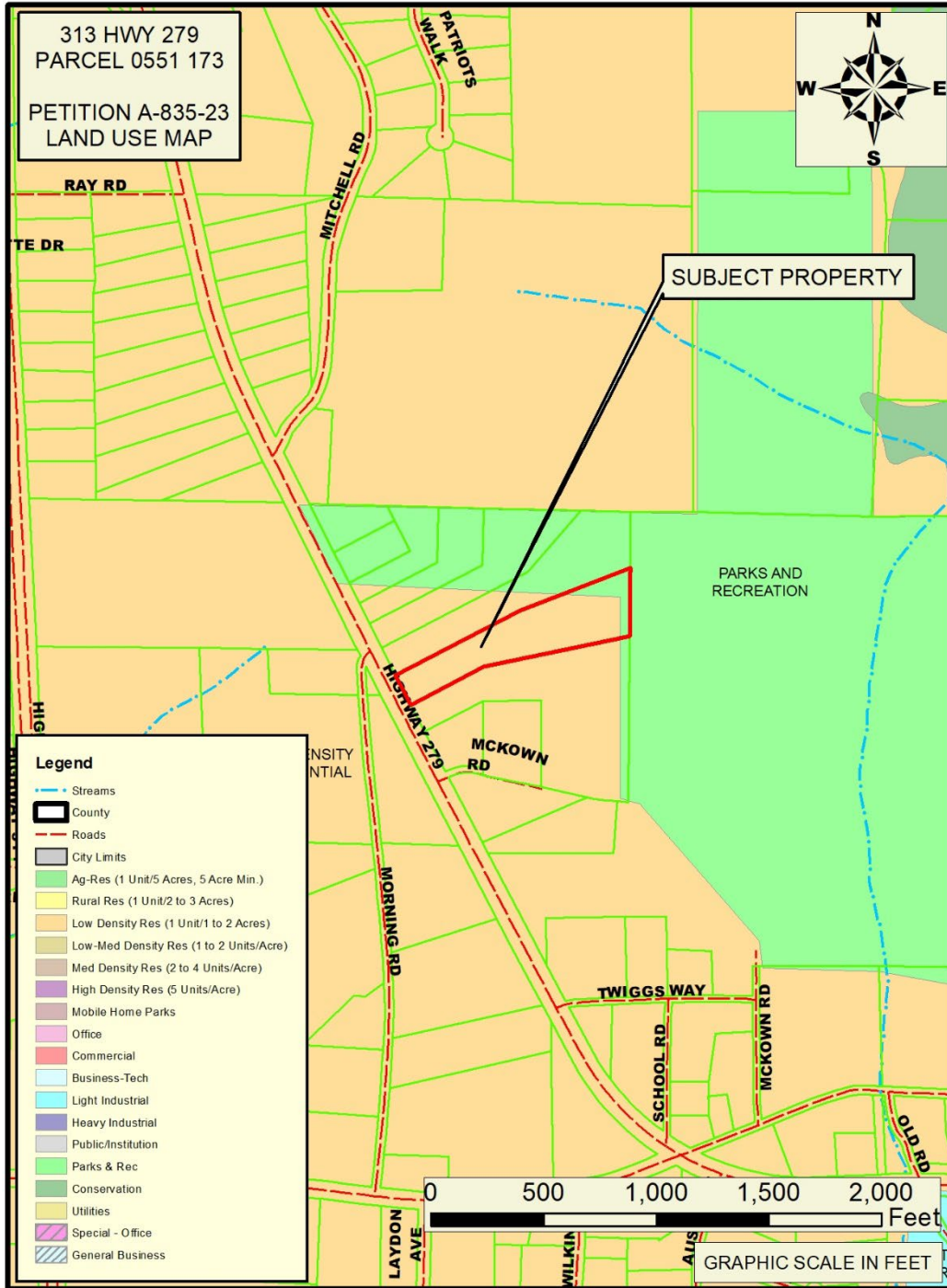
1. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.**  
*The parcel is a conventional, mostly rectangular shape with gently rolling topography. The parcel is 5 acres in size.*
2. **The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,**  
*There is ample room on the parcel to locate the building within the setbacks.*
3. **Such conditions are peculiar to the particular piece of property involved; and,**  
*There is nothing unusual about the property shape, size, topography or environmental features that preclude proper location of the structure.*
4. **Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and,**  
*The lot width meets the minimum requirement for the zoning district, but there is no extra lot width on this or the neighboring lots to provide any extra buffering space. The encroachment is greater than half the setback width.*
5. **A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed;**  
*There is ample room on the lot to construct the building within the setbacks.*



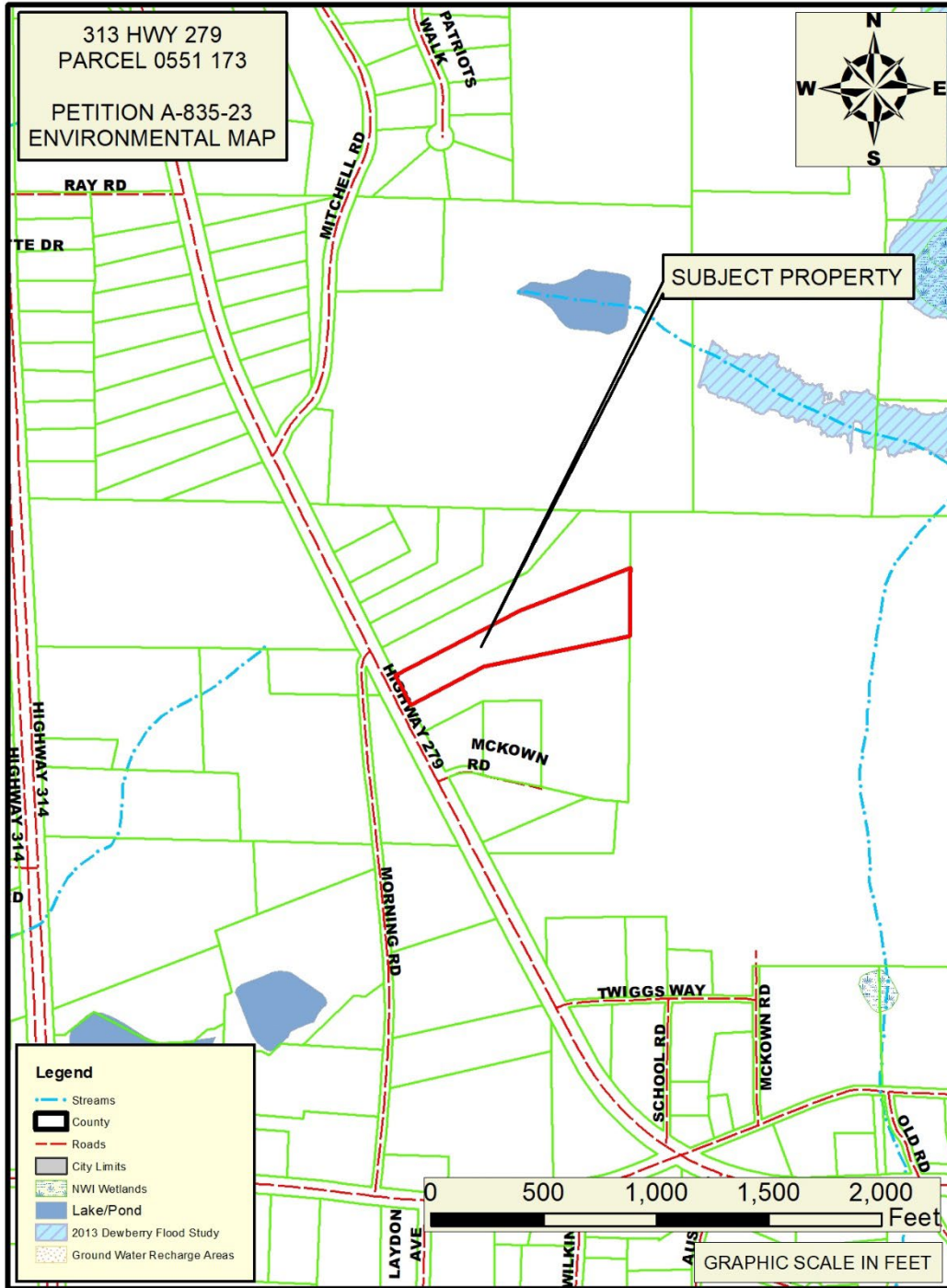


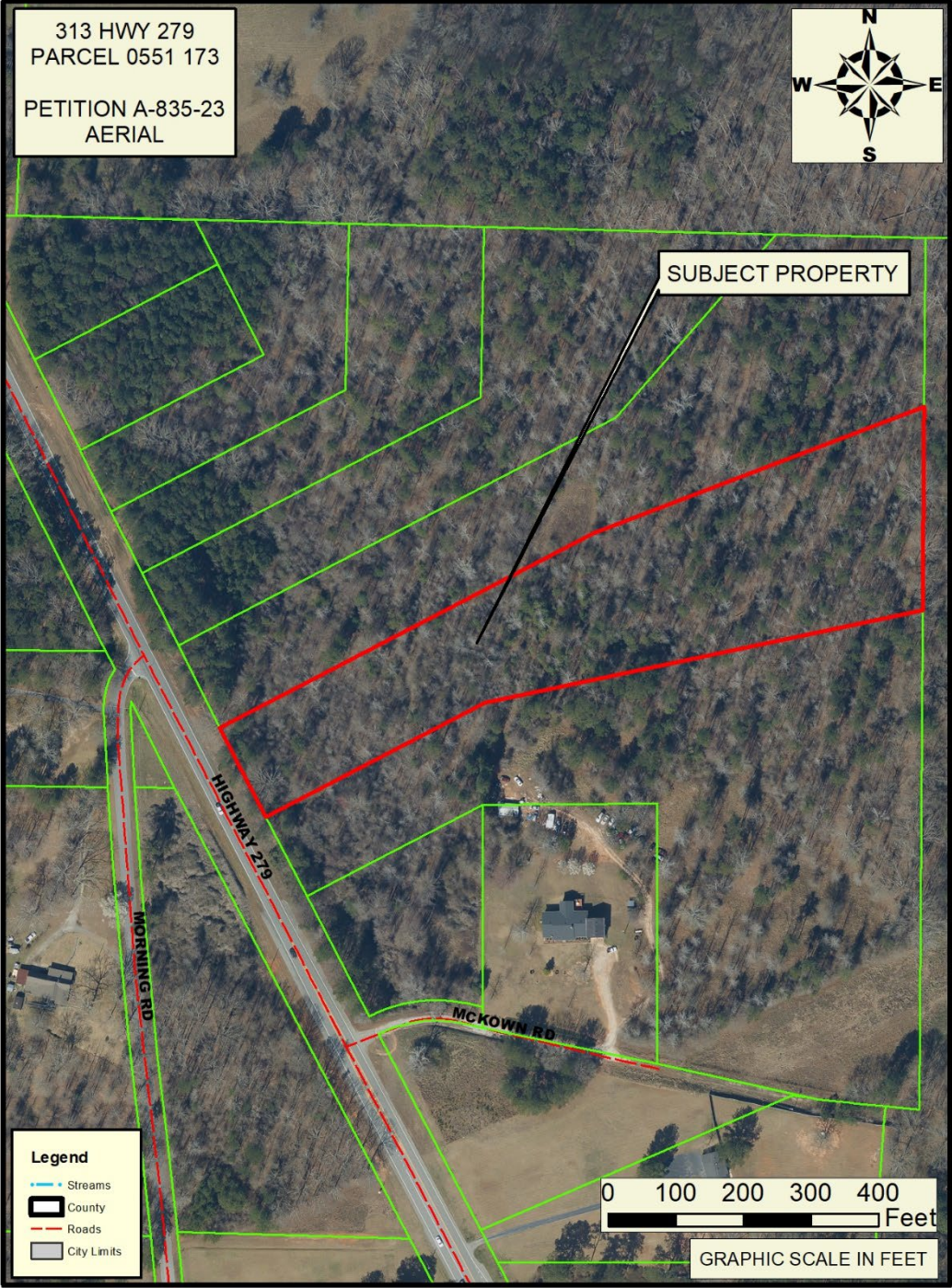














FOUNDATION LOCATION PLAT

NO NEW LOTS CREATED

**SURVEYOR'S CERTIFICATE**  
 I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ADJUDICATED SURVEY OF THE PROPERTY BY ME OR UNDER MY SUPERVISION, THAT ALL ADJACENTS AND INFRASTRUCTURE SHOWN HEREON ACTUALLY EXIST OR ARE MARKED AS TRUTHFUL AND THEIR LOCATION, SIZE, TYPE AND MATERIAL ARE CORRECTLY SHOWN.  
 S. L. SAWHNEY, GA. REG. NO. 2547  
 DATE: 2/28/23

RESERVED FOR RECORDER

REF. MATERIAL  
 PLAT BY MILE H HANCOCK  
 RLS 150 DATED 4/6/98  
 DB 813; PG 240

**SURVEYOR'S NOTES**

1. DECLARATION IS MADE TO ORIGINAL PURCHASER OF THE SURVEY - IT IS NOT TRANSFERABLE TO SUBSIDIARY INSTITUTIONS OR SUBSEQUENT OWNERS OTHER THAN THE PERSONS LISTED IN THIS SURVEY CERTIFICATE.
2. SURVEY IS VALID ONLY IF PRINT HAS ORIGINAL SIGNATURE OF SURVEYOR.
3. NO REGULATIONS WERE MADE DURING THE PROVISION OF THIS SURVEY TO LOCATE BURIED UTILITIES/STRUCTURES.
4. FIELD WORK BY THIS OFFICE WAS COMPLETED ON 04/06/22.
5. SURVEYOR AND ENVIRONMENTAL CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY. NO ATTEMPT IS MADE CONCERNING THE SURVIVAL OF UNDERGROUND OR OVERGROUND CONTAINERS OR PACKAGES THAT MAY AFFECT THE USE OR DEVELOPMENT OF THIS TRACT.
6. SURVEYOR HAS MADE NO INVESTIGATION OR UNDERGROUND SEARCH FOR EVIDENCE OF SECOND, ENCLAVEMENT, INTERESTS OR OTHER INTERESTS, UNLESS FROM SURVEYOR OR ANY OTHER PARTY THAT AN ENCUMBRANCE AND CURRENT TITLE SUBJECT MAY BE DISCOVERED.
7. WAIVER FOR JURISDICTION SHOWN HEREON TAKEN FROM SAID PARTY.
8. ANGULAR & LINEAR MEASUREMENTS WERE OBTAINED USING A LARGE TOTAL STATION.
9. NO VISIBLE EVIDENCE OF CEMETERY.

THIS IS TO CERTIFY THAT THIS SURVEY WAS PREPARED IN CONFORMANCE WITH THE TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 100-7 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN THE GEORGIA PLAT ACT O.C.G.A. 18-8-67.

PER THE STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS RULE 100-8-09, THE TERM CERTIFICATION AS USED IN BOARD RULE 100-6-08(a) AND (c) AND RELATING TO PROFESSIONAL ENGINEERING OR LAND SURVEYING SERVICES SHALL MEAN A SOLEMN STATEMENT BASED UPON FACTS AND KNOWLEDGE KNOWN TO THE REGISTRANT AND IS NOT A GUARANTEE OR WARRANTY, OTHER EXPRESS OR IMPLIED.



SET BACKS:  
 100' FRONT  
 25' SIDE  
 50' REAR



**LEGEND**  
 DPT=DOWN PIN FOUND  
 DPC=DOWN PIN SET  
 R/W=RIGHT OF WAY  
 MDC=METRIC  
 P/B=POINT OF BEGINNING  
 S/L=BOUNDARY LINE  
 D.E.=BOUNDARY EASEMENT  
 P.P.=POLLING POINT  
 E=EXTENSION  
 FIP=FIELD INSTRUMENT  
 FIP=FIELD INSTRUMENT  
 P.P.P.=PER REFERENCE PLAT  
 CLOSURE DATA  
 FIELD CLOSURE WITH 20000\"/>

GADSDEN DRIVE  
 PERMIT #  
 MAR22-0003  
 DATED 3/23/22



DECLARATION IS MADE TO ORIGINAL PURCHASER OF THIS SURVEY ANY USE BY THESE PARTIES AS AT THEIR OWN RISK.  
 SURVEYOR IS NOT RESPONSIBLE FOR ANY ENCUMBRANCES AND CURRENT TITLE SUBJECT.  
 THIS PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN ACCORDING TO REFERENCE PLAT 1311300039E 9/28/08

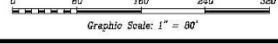
ALL MATTERS OF TITLE ARE EXCEPTED. THIS PLAT IS SUBJECT TO ALL LEGAL EASEMENTS AND RIGHTS-OF-WAY PUBLIC OR PRIVATE.

NOTE: PROPERTY LINES SHOWN ON THIS SURVEY PLAT REPRESENT PHYSICAL FIELD CONDITIONS BY EVIDENCE OF APPARENT POSSESSION (IRON PINS, FENCE, OLD ESTABLISHED FENCE LINES, OLD WALL LINES, SHIPPS & HERSE LINE, HOUSE LOCATIONS, ETC.) THEY MAY DIFFER AND BE IN CONFLICT WITH EVIDENCE FOUND AT THE APPLICABLE COUNTY COURTHOUSE. THEY MAY ALSO DIFFER FROM OTHER SURVEYOR OPINIONS AND/OR NEIGHBOR SURVEY PLATS. A FULL LAND TITLE REPORT OBTAINED ON ALL PROPERTIES, INCLUDING ADJACENT AND CONTIGUOUS PROPERTIES MAY BE NEEDED TO RESOLVE ALL POSSIBLE PROPERTY LINE DISPUTES OR DISCREPANCIES.  
 THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT. EASEMENTS AND ENCUMBRANCES MAY EXIST WHICH BENEFIT AND BURDEN THIS PROPERTY. THIS SURVEY IS SUBJECT TO REVISIONS AND UPDATE UPON RECEIPT OF SAID TITLE COMMITMENT.

THIS FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 51,800 FEET AND AN ANGULAR ERROR OF 00\"/>

THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 100,000+ FEET.  
 THIS SURVEY IS NOT LOCATED IN A FLOOD HAZARD ZONE AS SHOWN BY THE REFERENCE PLAT.  
 EQUIPMENT UTILIZED ---  
 ANGULAR --- LEICA 1202  
 LINEAR --- LEICA 1202

(1) 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 the documents, maps, plats, or other instruments which created the parcel or parcels are stated herein. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. 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 18-8-67.



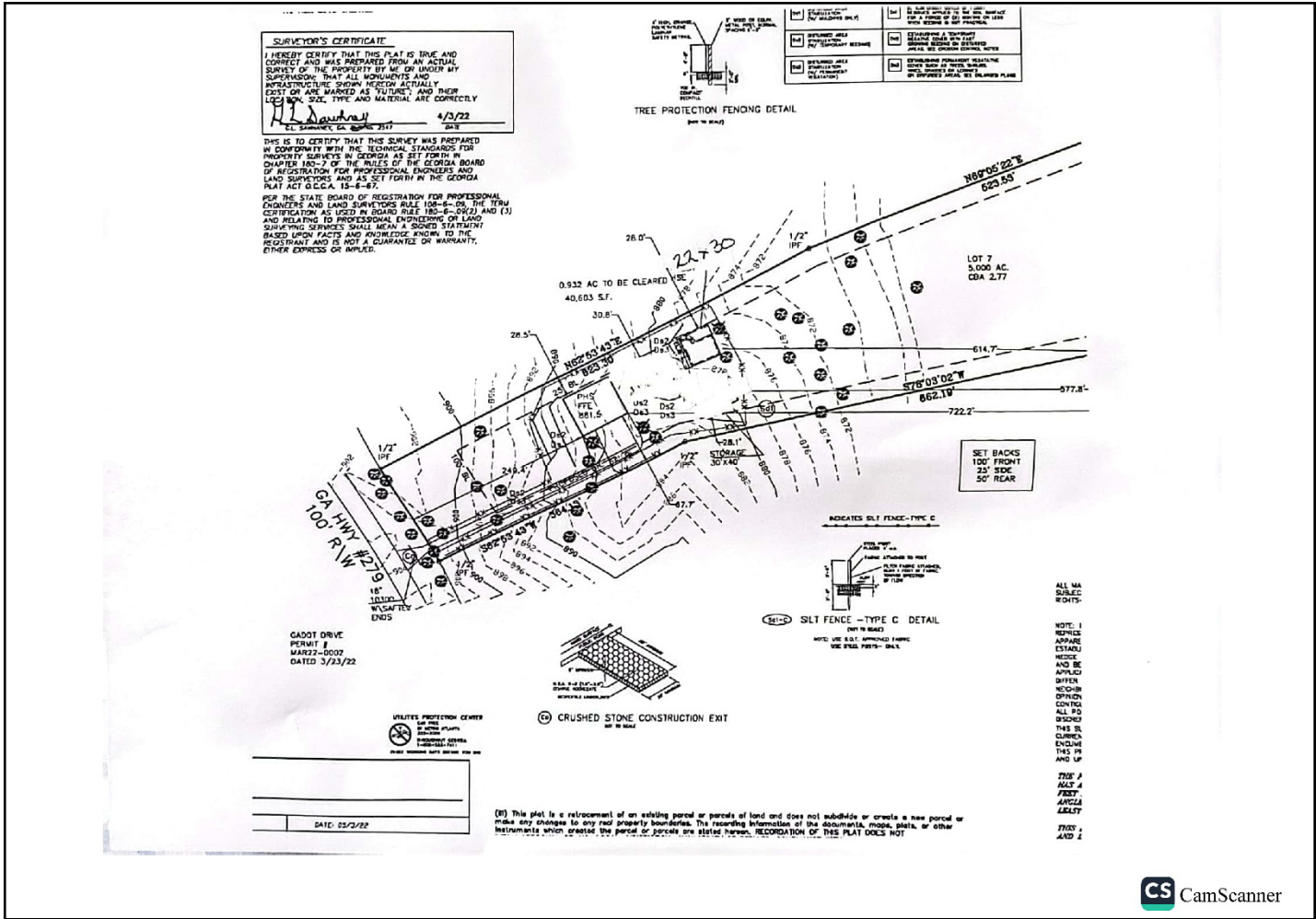
PREPARED FOR:  
**Danielle Rudolph**

M CROWN ACRES DB 4782 FG 569

LOT: 7	LAND LOT: 21	DATE: 03/31/22
BLOCK:	DISTRICT: S TH	REV: 2/28/23 FL
SCALE: 1/4"=80'	COUNTY: FAYETTE	JOB NO.: M CROWN/22/23

**SAWHNEY & ASSOCIATES**  
 523 HASTINGS WAY JONESBORO GA 30238  
 TEL: (878) 503-4836

FOUNDATION SURVEY – GUEST HOUSE ENCROACHES 14.5 FEET



SITE PLAN SUBMITTED FOR BUILDING PERMIT FOR GUEST HOUSE  
SHOWS GUEST HOUSE IN CORRECT LOCATION



Mar 7, 2023 at 11:06:28 AM  
291-299 SR-279  
Fayetteville GA 30214  
United States



CONSTRUCTION PHOTO OF HOUSE AND GUEST HOUSE





A-835-23 – 313 Hwy 279



A-835-23 – 313 Hwy 279

PETITION FOR → 313 HIGHWAY 279 FAYETTEVILLE, GA 30214

VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: YVES AND GERTHA FENELON  
MAILING ADDRESS: 120 ROCKBLEN CT FAYETTEVILLE GA 30215  
PHONE: 678 416 0424 E-MAIL: YFEN2097@GMAIL.COM

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

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

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

PROPERTY LOCATION: LAND LOT 250 LAND DISTRICT 5<sup>TH</sup> PARCEL 0551173

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 5

ZONING DISTRICT: R55

ZONING OF SURROUNDING PROPERTIES: R55

PRESENT USE OF SUBJECT PROPERTY: RESIDENTIAL

PROPOSED USE OF SUBJECT PROPERTY: RESIDENTIAL

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-835-27

[ ] Application Insufficient due to lack of:

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

[x] Application and all required supporting documentation is Sufficient and Complete

by Staff: [Signature] Date: MARCH 2, 2023

DATE OF ZONING BOARD OF APPEALS HEARING: APRIL 24, 2023

Received from DANIELLE RUDOLPH PROPERTIES, LLC 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: MARCH 2, 2023 Receipt Number: 017348



**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:

Yves Fenelon & Gertha Fenelon  
Please Print Names

Property Tax Identification Number(s) of Subject Property: 0551-173

(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) 250 of the District, and said property consists of a total of 5 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.

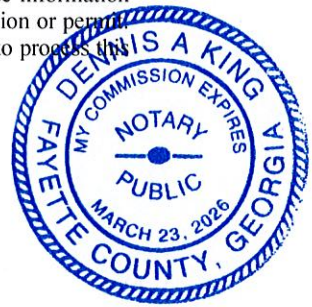
(I) (We) certify that all of the information filed with this application including written statements or showings made in any paper or plans submitted herewith are true and correct to the best of (my) (our) knowledge and belief. Further, (I) (We) understand that this application, attachments and fees 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

313 Hwy 279 F. GA 30215  
Address

[Signature]  
Signature of Notary Public

March 2, 2023  
Date

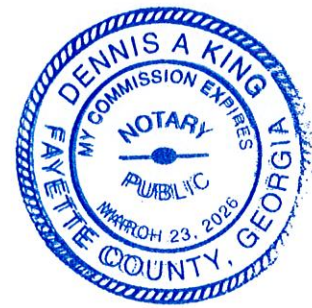


[Signature]  
Signature of Property Owner 2

313 Hwy 279 F. GA  
Address

[Signature]  
Signature of Notary Public

March 2, 2023  
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 110-134, R-55 (d)(6)	25 ft.	10 ft.	15 ft.

### VARIANCE SUMMARY

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

A property variance is needed because of land & size of the parcel. The survey wasn't 100% accurate on where the property line turned 60°

### 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 surveyor never placed the pins on the property for the parcel building lines.

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

This is our dream home. We are using our saved retirement to build our new home. We can not afford to demolish the building and rebuild.

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

The surveyor won't clear on where the boundary lines on the property were located. The survey displays a different layout versus what is determined by the revised survey.



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.

By granting us this variance would  
not cause any substantial hardship  
to our neighbors

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

We are truly sorry for the inconvenience  
this has caused to all. We are truly  
grateful to have lived in Fayette  
county for 17 years, and we  
plan to enjoy our retirement in our  
dream home, Thank you.







Type: WD  
Recorded: 2/25/2022 2:55:00 PM  
Fee Amt: \$125.00 Page 1 of 2  
Transfer Tax: \$100.00  
Fayette, Ga. Clerk Superior Court  
Sheila Studdard Clerk of Court

Participant ID(s): 8846450835,  
7067927936

**BK 5457 PG 142 - 143**

Record and Return to:  
Lueder, Larkin & Hunter, LLC  
200 Westpark Drive, Suite 230  
Peachtree City, GA 30269  
File No.: GA-PC-22-0014-CAS

**LIMITED WARRANTY DEED**

STATE OF GEORGIA  
COUNTY OF FAYETTE  
APN/Parcel ID: 0551 173

THIS INDENTURE, made this 18th day of February, 2022, between

The Scarbrough Group, Inc.

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

Yves Fenelon and Gertha Fenelon

As Joint Tenants with Rights of Survivorship and Not as Tenants in Common

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

**WITNESSETH:** That Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other good and valuable consideration 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, to wit:

All that tract or parcel of land lying and being in Land Lot 250, of the 5th District, and being in the State of Georgia, County of Fayette, designated as Lot 7, containing 5.00 acres, and being more particularly described and delineated according to said plat and survey prepared by Robert J. Debien, Georgia Registered Land Surveyor No. 2964, dated 6/26/19, entitled "Final Plat For McKown Acres", said plat being of record in the Office of the Clerk of Superior Court of Fayette County, Georgia, in Plat Book 100, Pages 96-98; which said plat and the recording thereof are by reference hereto incorporated herein for a more complete and detailed description.

Subject to all easements and restrictions of record.



TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, 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 against the claims of all persons owning, holding, or claiming by, through and under the said Grantor.

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

Signed, sealed and delivered  
in the presence of:

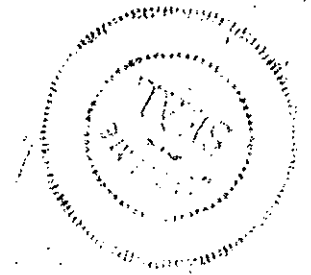
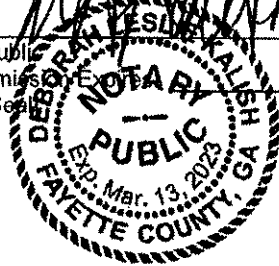
GRANTOR:

[Signature]  
Unofficial Witness

The Scarbrough Group, Inc.

By: [Signature] (SEAL)  
Dawn Scarbrough, President

Notary Public  
My Commission Expires  
[Notary Seal]



**PETITION NO: A-837-23**

**APPEAL:** An Appeal from the actions of the Zoning Director regarding the denial of a preliminary application request to place a freestanding sign on the property has been filed on March 28, 2023, by E. Adam Webb, Attorney for Mike Fitzgerald, Atlantic Billboards, LLC. (Sec. 108-28.-Denial, revocation, and suspension. (d) Appeals).

**PROPERTY OWNER(S):** Butch’s Auto, LLC

**LOCATION:** S.R. Highway 314 – Parcel 13050 1033

**DISTRICT/LAND LOT(S):** 13<sup>th</sup> District, Land Lot 199

**ZONING:** C-H, Highway Commercial

**EXISTING USE:** Undeveloped Land

**ZONING BOARD OF APPEALS PUBLIC HEARING:** April 24, 2023

**SUMMARY**

On February 17, 2023, Mr. Fitzgerald submitted an application to construct a freestanding sign on the subject property. Planning and Zoning did not approve the application due to the following factors:

1. The proposed sign exceeds the maximum allowable sign face area, maximum sign height and maximum structure height that are permitted in nonresidential districts (Sec. 108-161.(a)-Freestanding signs).
2. The process for sign permit applications requires that a site plan be submitted to Planning & Zoning to verify that the project meets zoning requirements. The application materials must include a survey or plat of the parcel showing the proposed location of the structure being permitted, and distances from property lines and other structures. The site plan submitted with the application was created on a screenshot of the qPublic parcel map, which does not provide an accurate enough depiction of the site and property lines to confirm that a proposed structure will be appropriately sited on a parcel.

***Sec. 108-81. - Measurement of sign face area; freestanding sign.***

*The area of a sign face shall be computed as the entire area within the continuous perimeter, enclosing the limits of all writing, representation, emblem, or any figure or similar character. This shall also include any open spaces or colors, forming an integral part of the display or used to differentiate such.*

***Sec. 108-161. - Freestanding signs.***

- (a) *Unless otherwise provided herein, lots located in a nonresidential zoning district containing a single business shall be allowed no more than one freestanding permanent sign. The sign face shall not exceed 50 square feet in area or six feet in height. Sign structures shall not exceed seven feet in height. A permit shall be required. Such sign may be internally or externally illuminated.*
- (b) *Unless otherwise provided herein, lots located in a nonresidential zoning district containing multi-businesses shall be allowed no more than one permanent freestanding sign. The sign face shall not exceed 60 square feet in area or seven feet in height. Sign structure shall not exceed eight feet in height. Individual business names are included in the total square footage. A permit shall be required. Such signs may be internally or externally illuminated.*

***Sec. 108-27. - Permits required.***

*All signage listed herein requiring a permit must meet the requirements of subsection (1) of this section when applying for a permit.*

- (1) *Applications for signage. Applications for sign permits required by this article shall be filed with the county planning and zoning office during normal business hours and shall include the following to be considered by the zoning administrator:*

- a. *The name, street address, and phone number of the owner of the property where the sign is to be installed along with a site plan showing the proposed location of the sign on the property.*



- b. If the applicant is not the owner of the property, a signed and notarized authorization by the property owner shall be included with the application.*
- c. A description of the type of sign to be erected which shall include a schematic drawing of the sign indicating overall dimensions (height, width, square footage, shape, and number of faces).*

*All applications for signage shall be on a form provided by the county planning and zoning.*

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## **HISTORY**

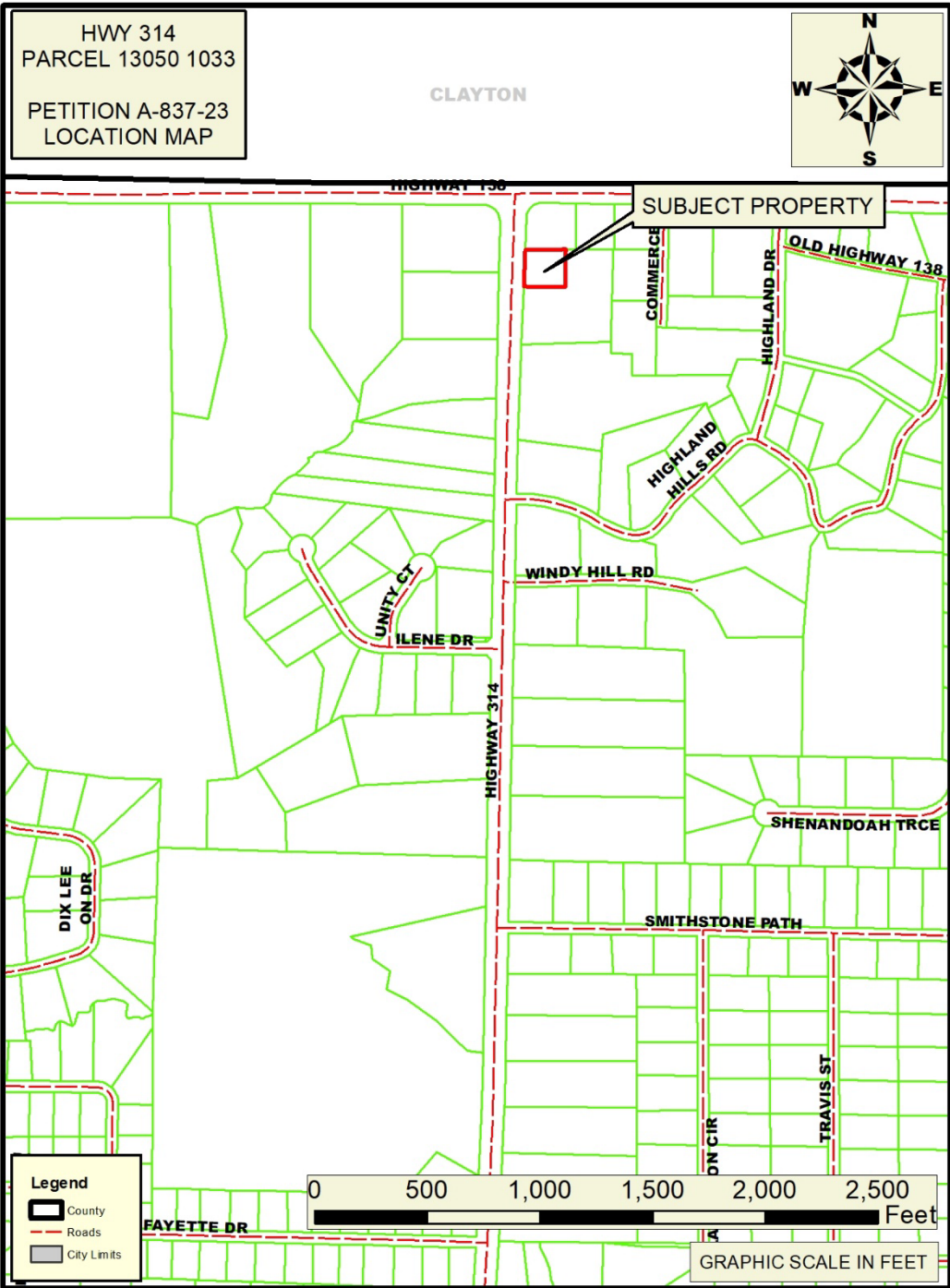
February 17, 2023 – A sign application packet was submitted to the Planning & Zoning office via UPS Ground.

March 7, 2023 – A letter of permit disapproval was sent to Atlantic Billboards, LLC, Mike Fitzgerald, 3162 Johnson Ferry Road, Ste. 260-441, Marietta, GA 30062-7604 via USPS Certified Return Receipt Mail; UPS; Fax.

March 8, 2023 – A copy of the letter of permit disapproval was sent to Mr. Fitzgerald via email.

March 28, 2023 – Mr. Franklin Lemond, Webb, Klase & Lemond, LLC, submitted an appeal of the decision of the Zoning Administrator/Director of Planning & Zoning.









Mar 7, 2023 at 10:58:09 AM  
1361 SR-314  
Fayetteville GA 30214  
United States

Hwy 314 Parcel# 130501033



Hwy 314 Parcel# 130501033

3162 JOHNSON FERRY ROAD  
SUITE 260 - 441  
MARIETTA, GA 30062  
VOICE/FAX: (678) 276-8700



SENDER'S EMAIL:  
[MIKE@ATLANTICBILLBOARDS.COM](mailto:MIKE@ATLANTICBILLBOARDS.COM)



February 15, 2023

DELIVERED VIA UPS GROUND SIGNATURE REQUIRED

Ms. Deborah L. Bell  
Director, Planning & Zoning  
140 Stonewall Ave W, #202  
Fayetteville, GA 30214

**RE: Sign Permit Application for Fayette County Tax Parcel No. 120501033**

Dear Director Bell:

Please find enclosed a sign permit application for the above referenced property. Don't hesitate to contact me if you need anything else to evaluate this application.

Sincerely,

A handwritten signature in blue ink that reads "Michael B. Fitzgerald".

Michael B. Fitzgerald  
Managing Member



**FAYETTE COUNTY SIGN PERMIT APPLICATION**  
Planning & Zoning Department, 140 Stonewall Avenue West, Suite 202  
Fayetteville, GA 30214  
770-305-5421

Pete Frisina, Director of Planning & Zoning  
Dennis Dutton, Zoning Administrator  
Chanelle Blaine, Planning & Zoning Coordinator

Fax 770-305-5258  
[dsdutton@fayettecountyga.gov](mailto:dsdutton@fayettecountyga.gov)  
[cblaine@fayettecountyga.gov](mailto:cblaine@fayettecountyga.gov)

PROPERTY OWNER: BUTCH'S AUTO, LLC PHONE: (678) 886-0946  
(SHELLEY ANTHONY)  
ADDRESS/CITY/STATE/ZIP CODE: 1050 BROOKHAVEN DR, FAIRBURN, GA 30213  
APPLICANT: ATLANTIC BILLBOARDS, LLC PHONE: (678) 571-8889 (MIKE FITZGERALD)  
FAX NO. 678-276-8700  
ADDRESS/CITY/STATE/ZIP CODE: 3162 JOHNSON FERRY RD STE 260-441, MARIETTA, GA 30062  
LAND DISTRICT: 13<sup>th</sup> LAND LOT(S): 199 ZONING DISTRICT: CH  
SIGN LOCATION/ADDRESS: HIGHWAY 314, FAYETTEVILLE, GA 30214

Sign Height from Grade or Road (if applicable): 50' Setback from Intersection: 200'

Wall/Monument (less-than 36 s.f.): \_\_\_\_\_ (more-than 36 s.f.):  Banner: \_\_\_\_\_ # Days: 14 / 28 / 42

(No sign or part thereof, except authorized traffic signs, shall be located in any state or county right-of-way. No sign may be located any closer than 20 feet from an intersection as measured from the intersection of the two (2) rights-of-way.)

Sign Face Area Proposed: 672 SF Maximum Sign Face Area Allowed: PER STATE LAW 1,200 SF

LIGHTING:  Internal Illumination Only \_\_\_\_\_ External Illumination Only \_\_\_\_\_ No Lighting

APPLICANT COMMENTS/ADDITIONAL INFORMATION: ADVERTISING SIGN, VARIOUS MESSAGES  
FIRST MESSAGE TO BE USA FLAG AND "SUPPORT OUR TROOPS."

**APPLICANT'S COVENANT**

As the applicant for a Sign Permit on the property hereon described, I do hereby covenant that the information supplied with this application is true and correct and I do hereby agree to comply with the ordinances of Fayette County pertaining to zoning, signs, and subdivisions. It is understood and agreed by me that any error, misstatement, or misrepresentation of fact, either with or without intention on my part, such as might, if known, cause a refusal of this application or any alteration or change in plans made without approval of the Zoning Administrator subsequent to the issuance of a Sign Permit, shall constitute sufficient grounds for revocation of said Sign Permit and any Electrical Permit resulting therefrom. I am aware that approval by Fayette County does not relieve me from applicable State regulations for any sign placed on a State Highway and said sign placement/location must also be permitted by Georgia DOT, Thomaston, Georgia if site fronts a State Road.





## Ground Lease Agreement

County of FAYETTE  
State of GEORGIA

THIS AGREEMENT made and entered by and between Butch's Auto, LLC hereinafter referred to as "Grantor", and ATLANTIC BILLBOARDS, LLC hereinafter referred to as "Grantee." Grantor hereby leases for an initial term of fifteen (15) years the premises known and described as follows:

Street Address: Highway 314, Fayetteville, GA

Tax Parcel No. 130501033

Jurisdiction: FAYETTE COUNTY

and more particularly described in the legal description attached as Exhibit A and made a part of this Agreement. This lease is granted for the purpose of construction, operation, maintenance, and relocation of an outdoor advertising structure. Grantee is herewith granted the sole and exclusive right to display advertising copy on the premises. Grantee is granted the right to ingress and egress over the said premises for the term or an extension hereof for the purpose of constructing, maintaining, operating, relocating, removing, or replacing said structure and all related parts and equipment.

As consideration, Grantee agrees as follows: (a) it will pay Grantor one ~~hundred dollars (\$100.00)~~ upon acceptance of this Agreement; (b) it will promptly apply for needed permits (with which Grantor shall fully cooperate); and (c) upon completion of construction of Grantee's outdoor advertising display(s), **quarterly payments shall be paid in the amount Twenty Percent (20%) of gross advertising receipts for any static face and Twelve and a Half Percent (12.5%) for any digital face.** Reports of quarterly income will be sent along with payment each quarter.

If at any time (a) Grantee's sign becomes entirely or partially obscured or destroyed; (b) the premises become unsafe for the maintenance of the Grantee's signs thereon; (c) the value of the premises for advertising purposes diminishes; (d) there is a diversion or change in directional flow of traffic from the street or streets adjacent to, or leading to or past the premises; (e) Grantee is unable to obtain necessary permits for the erection or maintenance of such signs as the Grantee may desire to construct or maintain; or (f) Grantee is prevented by governmental authority from constructing or maintaining such signs as the Grantee may so desire to construct or maintain-then, and in such event, at the option of the Grantee, this Agreement shall terminate on fifteen (15) days written notice to Grantor.

Grantor warrants he/she/it has full authority to enter into this Agreement for the premises above described and covenants that he will not permit this or any adjoining premises owned or controlled by him to be used for advertising purposes or permit Grantee's signs to be obstructed in any way. Grantor will indemnify, defend and hold Grantee harmless from any claim or demand that Grantor does not have authority enter into this Agreement. Grantor hereby grants to Grantee an easement for above or below ground utility service for the purpose of powering the display(s). Grantor agrees to obtain subordination or non-disturbance agreement(s) with any and all parties with any claim related to the property, and will also notify the Grantee (10) days prior to Grantor granting any third party any secured position in the premises. Upon request, Grantee shall execute a memorandum of lease in recordable form reciting the terms and confirming the existence of this agreement.

Grantee does hereby indemnify and agree to hold Grantor harmless against all claims or damages to person or property by reason of accidents resulting from the negligence or willful acts of Grantee's agents, employees or workmen in the construction, maintenance, repair or removal of its signs.

Unless Grantee provides notice of its intention not to renew this Agreement before the expiration of the term, this lease shall be extended for another like term.

Any taxes assessed on the advertising display(s) or any increase in the property tax on the premises shall be paid by Grantee.

Grantee shall not allow any advertisement to be posted that competes with the current use of the premises without first obtaining written consent from the Grantor. Such consent may be withheld in Grantor's reasonable discretion. Grantee shall not post any advertisements that promote nicotine or vape products, nor any advertisements that are obscene or promote illegal activity.

In the event of any change of ownership of the leased premises, Grantor agrees to notify the Grantee promptly of such change and also agrees to give the new owner formal written notice of the existence of this Agreement and to deliver a copy thereof to the new owner.

All structures, materials, and displays placed upon the property by Grantee will remain Grantee's property, and Grantee may remove same at any time during the term or any renewal or extended term of this agreement or within 90 days after termination or cancellation of this agreement. Grantee's display(s) shall not be considered abandoned at any time and shall not become the property of Grantor except by express conveyance in writing.

Grantee, Grantor, and their assigns herein grant to the Georgia Department of Transportation (the, "GDOT") the right to enter the property described above for the purpose of inspecting the outdoor advertising structure or to remove any illegal sign. Grantee and Grantor also agree to hold the GDOT harmless and indemnify the GDOT for any damages caused either directly or indirectly by the erection and maintenance of said structure.

This Agreement is freely assignable and shall be binding upon the heirs, successors and assigns of both Grantor and Grantee and may not be modified in any respect except in writing signed by all parties hereto. Counterparts shall be deemed binding as are faxed, scanned, or copied signatures. Managing member of Grantee holds a Georgia Real Estate License. All notices sent under this agreement shall be by certified mail, return receipt requested.

Notice:

If to Grantor:  
Butch's Auto, LLC  
105 McIntosh Crossing  
Fayetteville, GA 30214

If to Grantee:  
Atlantic Billboards, LLC  
3162 Johnson Ferry Rd, Ste 260-441  
Marietta, GA 30062

"Special Stipulations"

Grantor will pay \$1,000 on completion of this contract.

Grantee will pay \$1,000 on receiving permits.



[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers  
duly authorized to do so this 8<sup>th</sup> day of FEBRUARY, 2023.

Grantee: **Atlantic Billboards, LLC**

*Michael B. Fitzgerald*  
Print Name: Michael B. Fitzgerald  
Its Managing Member

Grantor: **Butch's Auto, LLC**

Signed: *Shelley Anthony W*  
Print Name: Shelley Anthony W  
Its: Owner



EXHIBIT "A"

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 199 of the 13<sup>th</sup> District of Fayette County, Georgia and being more particularly described as follows:

BEGINNING at a point on the East right of way of State Highway 314, the same having a 100 foot right of way, said point being 200 feet South of the intersection of State Highway 314 and State Highway 138, from said POINT OF BEGINNING, thence North 88 degrees 30 minutes East, 200 feet to a point; thence South 0 degrees 4 minutes West, 150 feet to a point; thence South 89 degrees 30 minutes West, 200 feet to a point on the East right of way of State Highway 314, thence North 0 degrees 04 minutes East, 150 feet to the POINT OF BEGINNING, according to a survey of said property prepared by Lee Engineering Co., dated February 12, 1971.

Less and Except any portion of the above as contained in that certain Right of Way Deed in favor of the Department of Transportation dated February 2, 1987, recorded in Deed Book 429, Page 73, Real Estate Records of Fayette County, Georgia.



**Summary**

Parcel Number 130501033  
 Location Address HIGHWAY 314  
 Legal Description HWY 314  
 Property Class C3 - Commercial Lots  
 Subdivision  
 Tax District 01  
 Zoning C CH  
 Acres 0.67  
 Homestead N

[View Map](#)

**Owner**

BUTCH'S AUTO LLC  
 105 MCINTOSH CROSSING  
 FAYETTEVILLE GA 30214

**Assessment**

	2023 Working	2022 Certified	2021 Certified	2020 Certified	2019 Certified
LUC	300	300	300	300	300
Class	C3	C3	C3	C3	C3
+ Land Value	\$87,560	\$87,560	\$87,560	\$87,560	\$87,560
+ Building Value	\$0	\$0	\$0	\$0	\$0
= Total Value	\$87,600	\$87,560	\$87,560	\$87,560	\$87,560
Assessed Value	\$35,000	\$35,024	\$35,024	\$35,024	\$35,024

**Assessment Notices**

[2022 Assessment Notice \(PDF\)](#)

**Land**

Description	Land Type	Land Code	Square Feet	Acres	Price
COMMERCIAL	S	C	29,185	0.6700	\$87,560

Total Acres:  
0.6700  
 Total Land-Value:  
\$87,560

**Sales**

Sale Date	Sale Price	Instrument	Deed Book	Deed Page	Sales Validity	Owner	Previous Owner	Instrument Number	Recording
9/5/2017	\$0		4656	0267	PART OR OTHER INTEREST	BUTCH'S AUTO LLC	NELSON LYNNE T	4656	0267
9/5/2017	\$67,000		4656	0263	FAIR MARKET VALUE	BUTCH'S AUTO LLC	NELSON LYNNE T	4656	0263
8/27/2009	\$0		3570	0303	RELATIVE SALE	MCGINNIS LUANNE T	LUANNE T. MCGINNIS, TRUSTEE UNDER THE LW	3570	0303
3/5/1998	\$130,000		1225	559	FAIR MARKET VALUE	THOMPSON C R	BOWLING THOMAS CARL	1225	559

No data available for the following modules: Residential Improvement Information, Additions, Commercial Improvement Information, Interior/Exterior Information, Accessory Information, Other Features, Photos, Sketches.

Fayette County makes every effort to produce and publish the most current and accurate information possible. However, the maps and data are produced for information purposes only, and are NOT surveys nor legal records. No warranties, expressed or implied, are provided for the data and information herein, their use, or their interpretation.

[User Privacy Policy](#)  
[GDPR Privacy Notice](#)

Last Data Upload: 2/9/2023, 11:07:01 AM



Version 2.3.245

APPLICATION FOR MULTIPLE MESSAGE SIGN PERMIT

GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center
600 West Peachtree Street N.W., 10th Floor
Atlanta, Georgia 30308

TYPE OR PRINT LEGIBLY (Please sign original in blue ink- All Sections Must Be Completed)

Date of Application

GDOT Permit Number

"Multiple Message" sign means, a sign, display, or device, which changes the message or copy of the sign electronically or mechanically by movement or rotation of panels or slats. (O.C.G.A §32-6-71)

Applicant Information

Atlantic Billboards, LLC

Corporate Name: Michael B. Fitzgerald, Managing Member
Name of Applicant (agent): 3162 Johnson Ferry Rd, Ste 260-441
Address: Marietta, GA 30062
City: Marietta, State: GA, Zip: 30062
Phone #: (678) 571-8889
Email: Mike@AtlanticBillboards.com

Property Owner Information

Butch's Auto, LLC

Corporate Name: Shelley Anthony, Manager
Name of Landowner: 1050 Brookhaven Dr
Address: Fairburn, GA 30213
City: Fairburn, State: GA, Zip: 30213
Phone #: (678) 886-0946
Email: shelley.anthony58@yahoo.com

Sign Location Information

County: Fayette City: State Route #: 138 on the N E S W side
of the roadway and 528 feet N E S W of milepost number 1
Latitude: 33.55015706519069, Longitude: -84.44852570220216 (i.e. decimal degrees)

Sign Description

Is this application to change the multi-message type for an already permitted multiple message sign? Yes No

Multiple Message Sign (MMS) Type: Mechanical Electronic Number of existing faces:

Number of faces to be Multiple Message: 2

Length: 48 Height: 14 Area: 672 Sq. Ft. Viewed from N E S W Direction MMS
Length: 48 Height: 14 Area: 672 Sq. Ft. Viewed from N E S W Direction MMS
Length: Height: Area: Sq. Ft. Viewed from N E S W Direction MMS
Length: Height: Area: Sq. Ft. Viewed from N E S W Direction MMS

Type of Construction (circle all that apply): Single Face Back-to-Back Double Face Type - V

Local Government Approval [FOR CITY OR COUNTY USE ONLY]

I hereby certify that the (City or County of) Fayette, allows the type of multiple message sign (mechanical or electronic), provided all zoning requirements are met at the time application for building permit is submitted.

Authorized Official Name (print) Title Authorized Official Signature
City of Fayette, County of Fayette, Date:



**After Hours Contact Person**

Name: Michael Fitzgerald

Phone #: (678) 571-8889

Email: Mike@AtlanticBillboards.com

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\_\_\_\_\_  
Applicant / Agent Signature

\_\_\_\_\_  
Managing Member  
Corporate Title

**Note: This is not a building permit. Nothing in this permit shall be construed to abrogate or affect any lawful ordinance, regulation or resolution which is more restrictive than State Law as it pertains to the structure permitted. (O.C.G.A §32-6-97)** In the event this multiple message application is approved, all work must be completed within twelve (12) months from the date of approval, and the underlying outdoor advertising permit must also be kept in good standing during the entire twelve (12) month period.

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**Department Approval for Multiple Message Sign [FOR GDOT USE ONLY]**

Effective Date: \_\_\_\_\_

Permit #: \_\_\_\_\_

\_\_\_\_\_  
Outdoor Advertising Control Manager

\_\_\_\_\_  
State Maintenance Engineer

---

**Required Attachments:** The following attachments (if applicable) are required for a complete application.

- a. A Copy of your W-9 Form.
- b. A detailed Shop Drawing of the sign indicating the plan, elevation, and side views of the sign.
- c. For corporate entities or Trusts who are the Applicant and/or Landowner: A signed statement from a corporate officer or executor, on company letterhead, authorizing the Agent(s) to sign this application on their behalf.
- d. A photograph of the existing sign or proposed sign site showing the location markings. A photograph showing the permit identification tag and where it is affixed to the structure.
- e. The correct permit fee. (fee amounts are available on the Outdoor Advertising webpage)

**Sign Installation Notification**

The permit holder shall provide notice of completion to the Department within ten (10) days of completion of construction of Multiple Message revision to the sign. The notice shall include an electronic photograph of the sign as viewed from the main travelled way of the roadway from which the sign is permitted.

**Submission of Application:**

Submit the application and all required attachments to the Georgia Department of Transportation, One Georgia Center, 600 West Peachtree Street N.W, 10<sup>th</sup> Floor, Atlanta, Georgia 30308, Attn: Outdoor Advertising Office

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## Multiple Message Application Instructions

Applications must be typed or filled out in ink. Only completed applications will be reviewed. Incomplete applications will be returned to the applicant.

### GDOT Permit Number

1. **Current Number:** Provide the current GDOT permit number for which you are requesting to revise to a multiple message status. Please leave this space blank if you are submitting a multi-message application concurrent with the outdoor advertising application.

### Applicant / Property Owner Information

2. **Name of Applicant or Company:** Person, corporate entity, or Trust in whose name the permit is listed. The person or corporate entity name and F.E.I.# / Social Security # you provide on the application should match the name and F.E.I.# / Social Security # on the copy of the W-9 Form you provide.
3. **Name of Landowner:** Person, corporate entity, or Trust in whose name the Landowner is listed. This will be the name used by the Department for all correspondence to the landowner.

### Sign Location Information

4. **County and Road Information:** Indicate the county and city (if applicable) in which the sign is or will be located. Indicate the state route number of the roadway the sign will be adjacent to. Some roads have two state route number designations. The Department uses the lower route number.
5. **Milepost Information:** Provide the distance in feet to the lower number milepost (not necessarily the closest milepost).
6. **Latitude / Longitude:** Provide the latitude/longitude coordinates of your proposed or existing sign location in decimal degrees. If you use *Google Earth* and it shows coordinates in degrees, minutes, seconds, you can change it to read in decimal degrees by clicking on "Tools" and choosing "Options". In the "Options" box you will see a "show Lat/long" section that allows you to select "decimal degrees".

### Sign Description Information

7. **Mechanical or Electronic:** Indicate which type, mechanical or electronic (LED), of multiple message sign for which you are applying.
8. **Face Length, Width, and Area:** These measurements are taken to the nearest whole foot. The Area is the total square feet (length times the height). The area of a face cannot exceed 1,200 square feet. Indicate which faces will be multiple message (MMS).
9. **Types of Construction:** Select the configuration that best describes your sign.

### Local Government Approval

10. **Local Government Certification:** An authorized official from the appropriate city or county signs the local government approval section certifying that their government entity allows the type of multiple message sign that the applicant is requesting to build at that designated location.

### After Hours Contact

11. **Contact Name:** Provide the name and contact information of the person the Department should contact if there is a sign issue that needs immediate attention.

### Applicant Signature

12. Provide Signature and corporate title.

## Local Government Certification for Outdoor Advertising

### To be completed by Applicant:

Name of Applicant or Company: Atlantic Billboards, LLC

Sign is:  existing  proposed

County: Fayette Municipality (if applicable): \_\_\_\_\_

State Route Name & Number: 138

Parcel Number: 130501033

Butch's Auto, LLC Parcel fronting on Hwy 314 between BP and Autozone

### To be completed by appropriate Zoning Official:

#### Part 1.

I hereby certify that the (City of) (County of) \_\_\_\_\_

(Check all that apply):

- Has a zoning plan and ordinance. Original adoption date: \_\_\_\_\_
- Date of last amendment (revision) to zoning plan: \_\_\_\_\_
- Does not have a zoning plan and ordinances.
- Has other land use controls or ordinance. Please specify \_\_\_\_\_
- Has a sign ordinance dated \_\_\_\_\_ separate from any zoning or land use plan.
- Has a sign ordinance which requires sign spacing of more than 500', size or height limits, or includes the "I-95 plan". Please specify \_\_\_\_\_
- \_\_\_\_\_
- Has no sign controls of any kind.

#### Part 2.

#### (MUST BE FILLED OUT COMPLETELY)

Current zoning of the parcel where the sign is to be located: \_\_\_\_\_

Approved uses for this zoning type: \_\_\_\_\_

Date of MOST RECENT zoning of this parcel: \_\_\_\_\_

Previous zoning of this parcel: \_\_\_\_\_

I \_\_\_\_\_, a duly qualified official of the City/County of \_\_\_\_\_, do hereby certify that I have reviewed the location and description of the outdoor advertising structure described on the attached application and find the sign is to be located in an area appropriate for such structures and is in compliance with all local laws, ordinances or regulations. I further understand that in evaluating any application for an Outdoor Advertising permit GDOT does not review for compliance with local ordinances and that any such permit issued by GDOT is not a building permit.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Printed Name and Title

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_



**Enhanced Search**

By Shape  By Value  Results

Search layer  Clear Fields

Signs

Search alias

Search by Permit #

Enter a Permit #

**\*Required** Permit Number

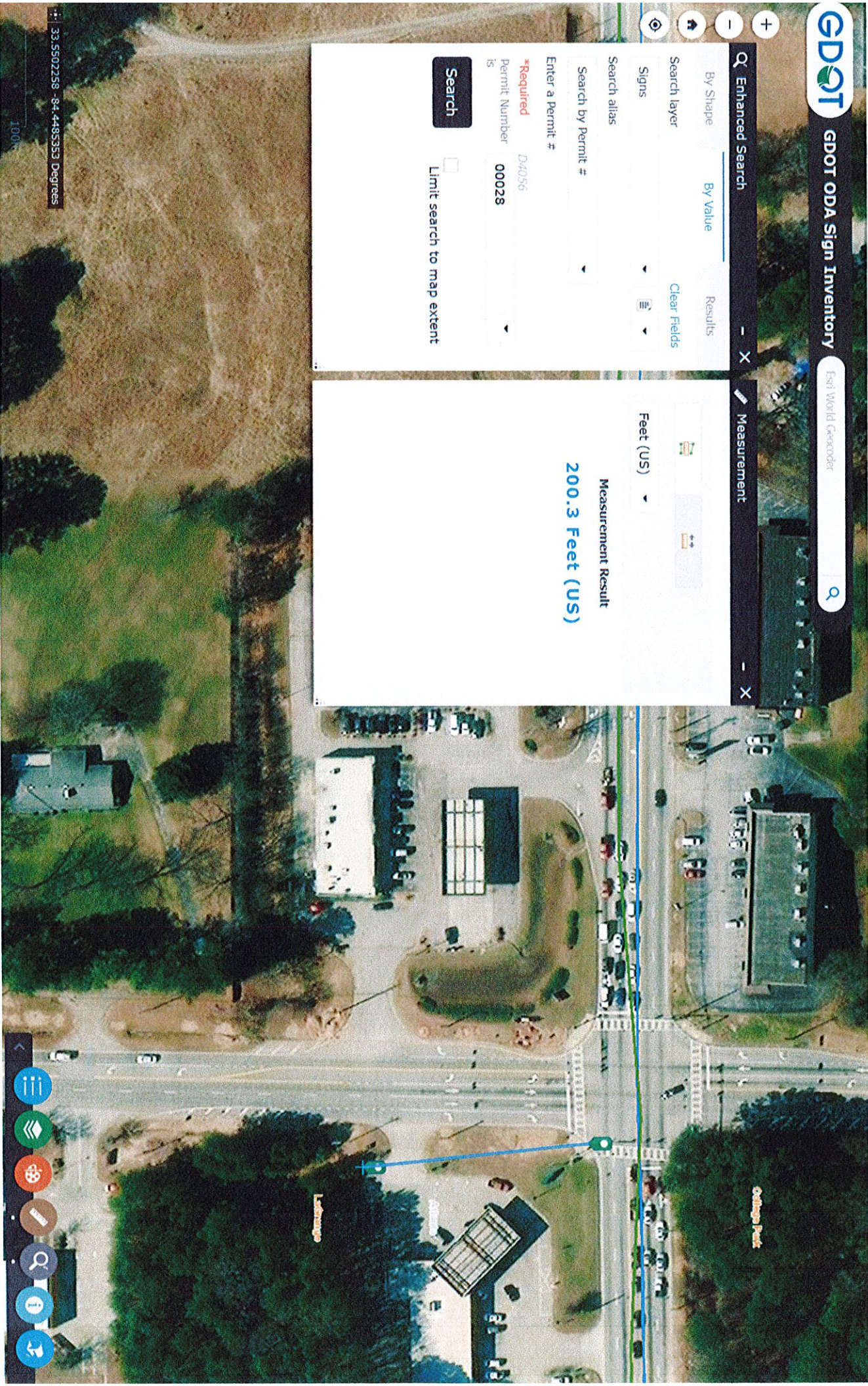
Limit search to map extent

**Measurement**

Feet (US)

Measurement Result

**200.3 Feet (US)**



33.5502258 -84.4485353 Degrees

100ft





## New Sign Site Plan

Project Address  
Highway 314  
Fayetteville, GA 30214

Project Contact  
Mike Fitzgerald  
(678) 571-8889  
Mike@AtlanticBillboards.com





# COBB COUNTY OCCUPATION TAX CERTIFICATE

P.O. BOX 649 MARIETTA, GEORGIA 30061-0649  
(770) 528-8410



**BUSINESS LOCATION**

**3162 JOHNSON FERRY RD, SUITE 260-441**

**DATE ISSUED**

**01-01-2023**

**D/B/A ATLANTIC BILLBOARDS, LLC**

**ATTN: MICHAEL FITZGERALD**

**ATLANTIC BILLBOARDS, LLC**

**3162 JOHNSON FERRY RD, 260-441**

**MARIETTA, GA 30062**

**CERTIFICATE NUMBER**

**OCC034923**

**FOR YEAR**

**2023**

**CERTIFICATE EXPIRES**

**12-31-2023**

**TYPE GENERAL**



CERTIFICATE MUST BE DISPLAYED  
THIS CERTIFICATE IS NOT VALID IF OWNERSHIP OR BUSINESS LOCATION CHANGES  
PROFESSIONALS & ATTORNEYS AT LAW ARE NOT REQUIRED TO DISPLAY

**BUSINESS DESCRIPTION**

CLASSIFICATION CODE	CLASSIFICATION NAME	AMOUNT
731200	ADVERTISING - OUTDOOR - PREPARATION, REPAIR, & MAINTAIN	112.00

						PAYMENT DATE	11-15-2022				
4332	112.00	4312	0.00	4314	0.00	4316	0.00	4318	0.00	SUB TOTAL	\$ 112.00
4545	0.00									PENALTY	\$ 0.00
										INTEREST	\$ 0.00
										TOTAL	\$ 112.00

CD - Bus License Certificate, OCC034923, 2023, ATLANTIC BILLBOARDS, LLC

*Elisavinda Wells*

\_\_\_\_\_  
BUSINESS LICENSE DIVISION MANAGER

*[Signature]*

\_\_\_\_\_  
AUTHORIZED INITIALS

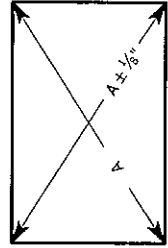
**IMPORTANT NOTICE**

1. Interest as provided by law will be imposed for failure to renew certificate prior to expiration date.
2. Please document to Cobb County Business License Office when business goes out of business.
3. Please provide written notification of any change in address or ownership change. A fee of \$10 will be charged to reprint certificate.
4. Please contact the business license office if you have not received a renewal notice two weeks prior to expiration of certificate.
5. Interest can not be waived despite failure to receive renewal notice. Contact the business license office for fee information.

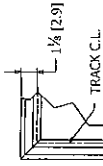
**336337**

PLACE ON DISPLAY



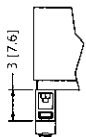


DIAGONAL TOLERANCE



TYPICAL EDGE OF CABINET TO TRACK C.L. OFFSET

- NOTES:
- ELEVATION DIMENSIONS ARE TO CENTER LINE OF TRACK.
  - DISCONNECT BOX SIZE MAY VARY DEPENDING ON AMPERAGE REQUIREMENTS.
  - 1-BEAM CLAMPS ARE TO BE PLACED ON ALL TRACK LOCATIONS.



1-BEAM CLAMP DETAIL

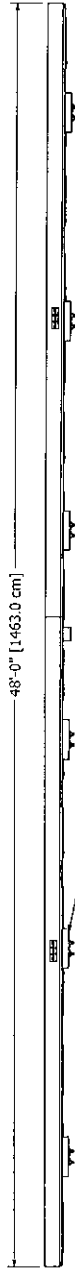
IBC2009 AND ASCE7-05  
 150 MPH 3 SECOND WIND GUST  
 IBC2012 AND ASCE7-10  
 170 MPH 3 SECOND WIND GUST  
 EXPOSURE C  
 OCCUPANCY CATEGORY I  
 SIGN HEIGHT ABOVE GRADE = FT MAX

REQUIREMENTS TO MEET THE ABOVE WIND LOAD  
 UPRIGHT QTY: 5.0 MINIMUM  
 SPACING: 115 3/16 [292.6] MAXIMUM  
 CANTILEVER: 57 5/8 [146.3] MAXIMUM

THESE CALCULATIONS ASSUME THE SUPPORTING  
 STRUCTURE (DESIGNED BY OTHERS) ALSO MEETS  
 APPLICABLE WIND LOADS AND MARKING  
 PROVIDED MOUNTING SYSTEM.

SIGN WEIGHT FOR 10mm, 16mm, 19mm, & 25mm MODELS  
 6048.0 lbs. (6720.0 lbs. WITH MOUNTING HARDWARE)

SIGN WEIGHT FOR 12mm MODEL  
 6720.0 lbs. (7392.0 lbs. WITH MOUNTING HARDWARE)



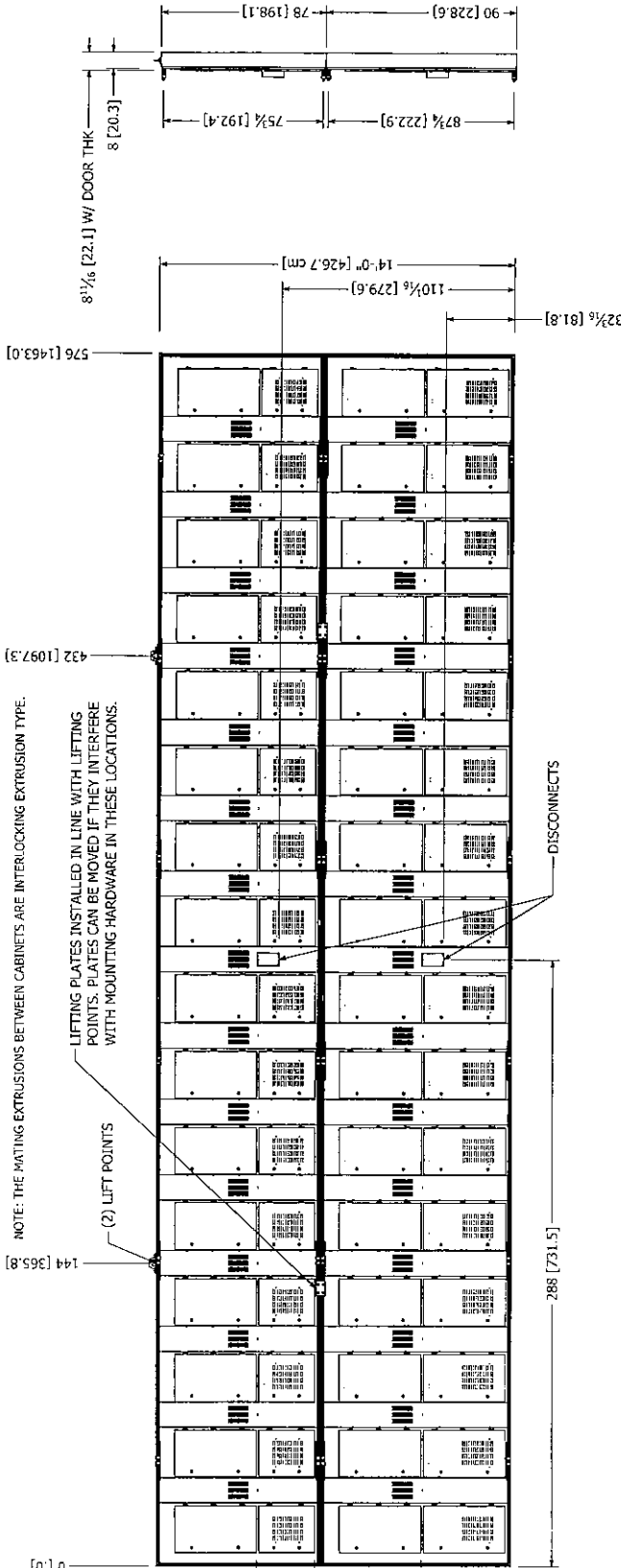
HORIZONTAL LOCATION OF CLAMPS IS ADJUSTABLE

NOTE: THE MATING EXTRUSIONS BETWEEN CABINETS ARE INTERLOCKING EXTRUSION TYPE.

LIFTING PLATES INSTALLED IN LINE WITH LIFTING POINTS. PLATES CAN BE MOVED IF THEY INTERFERE WITH MOUNTING HARDWARE IN THESE LOCATIONS.

(2) LIFT POINTS

DISCONNECTS



DIMENSION STYLE:  
 INCHES (CENTIMETERS)

VIEWABLE AREA = 13 ft. X 47 ft.



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DIMENSION STYLE  
 INCHES (CENTIMETERS)

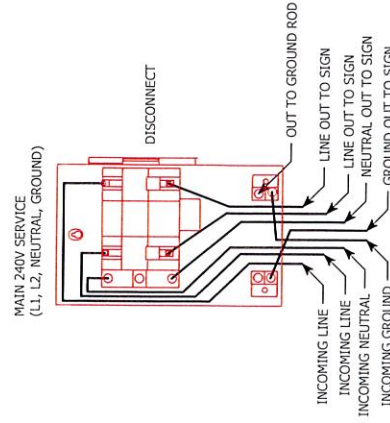
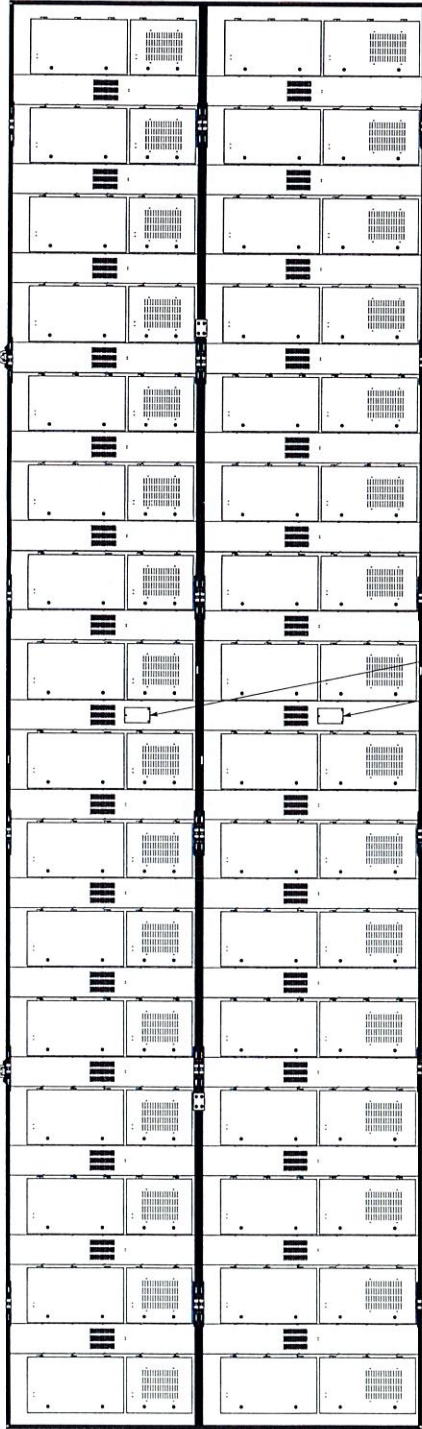
TOLERANCES

OVERALL SIGN DIMENSION ± 1/4"  
 LINEAR DIMENSION ± 1/16"  
 ANGULAR DIMENSION ± 1°  
 STRAIGHTNESS ± .020"/ft.

INDEX (REV) (DRAWING REV) (WIND ANGLE PROJECTION) (DESCRIPTION)

1 0 1 OF 2

REAR SERVICE - 13 X 47 VIEWABLE - DIMENSIONS 168" X 576"  
 MATERIAL  
 DATE CREATED 8/2/2018  
 DRAWN BY T. Prabhakar  
 PART NUMBER 14 0x48 0\_C\_M\_13047\_R  
 Vault Location: Desktop\1\Track\_Signs\Rear\_Service\14048\_C\_M\_13047\_R.dwg



**INSTALLATION NOTES:**  
 1. ELECTRICAL REQUIREMENTS: 240 VOLTS, SINGLE PHASE, 47 TOTAL AMPS FOR SIGN, 4-WIRE, CURRENT CARRYING NEUTRAL 11.76 KW TOTAL FOR SIGN.  
 2. DISCONNECTS: 30 AMP UNFUSED DISCONNECT 240 VAC

3. GROUND: DRIVE A COPPER-CLAD GROUND ROD INTO THE GROUND NEAR THE SIGN. ATTACH A #6 GROUND WIRE TO THE GROUND ROD AND ROUTE AND CONNECT IT TO THE GROUND TERMINAL INSIDE THE DISCONNECT.  
 ENSURE ALL WIRING CONNECTING THE GROUND ROD TO THE SIGN IS SECURELY ATTACHED.  
 BE SURE TO FOLLOW ALL NATIONAL ELECTRICAL CODE REQUIREMENTS.

4. UL CERTIFICATE NUMBER: E221802 (UL-48)

		DIMENSION STYLE INCHES (CENTIMETERS) <small>ALL DIMENSIONS ARE U.S. IMPERIAL UNITS UNLESS OTHERWISE SPECIFIED. STANDARD DIMENSIONS ARE 1/16" UNLESS OTHERWISE SPECIFIED. TOLERANCES DO NOT APPLY TO REFERENCE DIMS (XXX.XX).</small>		TOLERANCES OVERALL SIGN DIMENSION..... ± 1/4" LINEAR DIMENSION..... ± 1/16" ANGULAR DIMENSION..... ± 1° STRAIGHTNESS..... ± .020"/ft.		THIS DRAWING IS FOR THE PURPOSE OF PROVIDING DIMENSIONS OF THE SIGN STRUCTURE. ALL ELEMENTS OF THE SIGN STRUCTURE WILL BE PROVIDED BY OTHERS AND WATCHFIRE PANELS AND STRUCTURE FOR THE SITE. ANY INFORMATION PROVIDED RELATING TO THE SIGN STRUCTURE IS FOR ILLUSTRATION PURPOSES ONLY.		MODEL REV [DRAWING REV] THIRD ANGLE PROJECTION	REAR SERVICE - 13 X 47 VEVALE - ON L1; M - DIMENSIONS 168" X 576" MATERIAL
		1	0	2 OF 2 SHEET	DATE CREATED 8/9/2018 DRAWN BY T. Prather PART NUMBER 140x480 C. N.13047 R VAULT LOCATION: (Designs) (Task Signs) (Rear Service) (130470 C. N.13047_R) (Rev)				

Certified Mail # 70181130000199545325

March 7, 2023

Mike Fitzgerald

Atlantic Billboards, LLC  
3162 Johnson Ferry Road, Ste. 260-441  
Marietta, Georgia 30062

Subject: Sign Application for Parcel #1305 01033  
North Hwy 314  
Fayetteville, GA 30214  
Land Lot(s) 199 of the 13<sup>th</sup> District

Dear Mr. Fitzgerald:

The subject property is located in Land Lot(s) 199 of the 13<sup>th</sup> Land District and consists of approximately 0.67 acres. Based on my review of the Official Fayette County Zoning Map, the above-referenced property is zoned C-H, Highway Commercial District. The C-H, Highway Commercial District, permits uses shown in Section 110-144 of the Fayette County Zoning Ordinance. The property is also subject to the Sec. 110-173.-Transportation Corridor Overlay Zone. (5) SR 138 and North SR 314 Overlay Zone. The zoning district allows certain permitted uses and conditional uses, and it is subject to the Fayette County Codes.

The property is located within the Flint River Watershed Protection District. There are no apparent State Waters or FEMA Floodplain on the property that require special setbacks or other considerations.

There are no other freestanding signs located on this parcel, so a new sign is allowed. The new sign must meet the County's dimensional requirements:

***Sec. 108-81. - Measurement of sign face area; freestanding sign.***

*The area of a sign face shall be computed as the entire area within the continuous perimeter, enclosing the limits of all writing, representation, emblem, or any figure or similar character. This shall also include any open spaces or colors, forming an integral part of the display or used to differentiate such.*

***Sec. 108-161. - Freestanding signs.***

*(a) Unless otherwise provided herein, lots located in a nonresidential zoning district containing a single business shall be allowed no more than one freestanding permanent sign. The sign face shall not exceed 50 square feet in area or six feet in height. Sign structures shall not exceed seven feet in height. A permit shall be required. Such sign may*



*be internally or externally illuminated.*

*(b) Unless otherwise provided herein, lots located in a nonresidential zoning district containing multi-businesses shall be allowed no more than one permanent freestanding sign. The sign face shall not exceed 60 square feet in area or seven feet in height. Sign structure shall not exceed eight feet in height. Individual business names are included in the total square footage. A permit shall be required. Such signs may be internally or externally illuminated.*

The general location of the sign appears to be acceptable, but we do require that site plans for accessory structures and signs be submitted on a survey, with the dimensions noted. The original submittal for the sign exceeds the allowable sign size & height. Please resubmit a revised site plan and sign plans to Planning & Zoning. Once the preliminary review is approved, you will need to submit all documents through SAGES for the building permit.

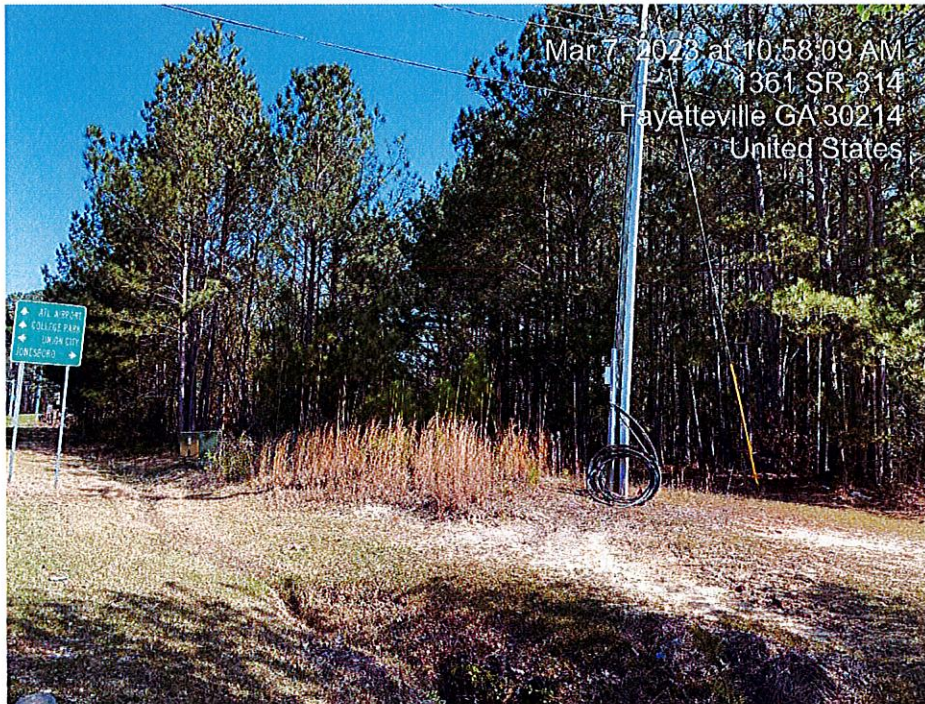
Should you have any questions, please call me at 770-305-5160.

Sincerely,

*Deborah L Bell*

Deborah L. Bell, RLA  
Director, Planning & Zoning

Attachments: Photograph of property



Existing undeveloped commercial property

# WEBB, KLASE & LEMOND, LLC

ATTORNEYS AT LAW

1900 THE EXCHANGE, SE · SUITE 480 · ATLANTA, GEORGIA 30339

(770) 444-9325 · (770) 217-9950 (facsimile)

Author's Direct Dial:

(770) 444-0773

Email Address:

Adam@WebbLLC.com

March 28, 2023

## VIA EMAIL

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

### **Re: Appeal of Denial of Sign Application**

Dear Ms. Bell:

Pursuant to Section 108-28(d) of the Fayette County Sign Ordinance, please accept this letter as the notice of appeal by my client Atlantic Billboards, LLC ("Atlantic"). On March 7, 2023, you sent a letter denying an application from Atlantic for a sign on Parcel 1305 01033. This denial was improper for at least four reasons addressed below. If County staff does not issue the requested permit promptly, then this denial should be reversed by the Zoning Board of Appeals ("Board") at their next meeting.

There are four independent reasons why the permit should now be issued: (1) the County Sign Ordinance was not adopted in accordance with the strict requirements of Georgia's Zoning Procedures Law and is therefore void; (2) to the extent the County did have internal zoning procedures, they were not followed when the Sign Ordinance was adopted; (3) the County's restrictions on signs do not pass constitutional muster under Georgia law; and (4) the County's restrictions on signs do not pass constitutional muster under Federal law.

The County failed to comply with mandatory provisions of the Georgia Zoning Procedures Law ("ZPL") when it adopted the Sign Ordinance. Georgia has strict rules for the adoption of zoning codes. For purposes of these appeals, the ZPL requires the County to do three things properly or it cannot enforce its sign restrictions. First, the County has to properly codify internal zoning procedures to govern the adoption of zoning codes and amendments. According the ZPL, the mandatory requirement is as follows:

Local governments *shall* adopt *policies and procedures which govern calling and conducting hearings required by Code Section 36-66-4*, and printed copies of such policies and procedures shall be available for distribution to the general

public. Such policies and procedures *shall specify* a minimum time period at hearings on proposed zoning decisions for presentation of data, evidence, and opinion by proponents of each zoning decision and an equal minimum time period for presentation by opponents of each proposed zoning decision, such minimum time period to be no less than ten minutes per side.

O.C.G.A. § 36-66-5(a) (emphasis added). Pursuant to this provision, the County was required to adopt valid zoning policies and procedures *before* it took action on the Sign Ordinance, or any zoning decisions. See Frank E. Jenkins, III, Proper Adoption of the Zoning Ordinance and Map, and Potential Challenges, Chap. 8, p. 2, Zoning Seminar, ICLE in Georgia (local government shall adopt at a duly advertised public hearing its own policies and procedures before calling and conducting zoning hearings or passing zoning codes) (Exhibit A hereto).

Atlantic’s legal counsel requested the following categories of documents on January 27, 2023: (1) “certified copy of the Commission meeting minutes where the County’s zoning procedures were adopted”; and (2) “certified copy of all legal ads run by the County for the public hearing on the adoption of the zoning procedures.” The County Clerk responded with Planning Commission and County Commission minutes from March of 2015. These have no relevance to the validity of the 2011 Sign Ordinance because the procedures have to be in place *before* a sign ordinance can be adopted. The zoning rules for Fayette County that were in place in 2011 can be found attached to the County Commission minutes dated December 9, 2010 (“Attachment No. 1” attached hereto as Exhibit B). These rules had not been adopted in accordance with the ZPL.

The seminal case as to county zoning procedures is Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 154 (1991). There, the Georgia Supreme Court reversed the trial court’s decision in favor of Bartow County. The court found that the ordinance in question was invalid because the County failed to comply with the mandatory language of the ZPL. Because “[t]here was no public notice in the newspaper, as required by O.C.G.A. § 36-66-5(c), informing the public that there would be a hearing prior to adopting the policies and procedures, and there was no public hearing in which policies and procedures were adopted,” the court invalidated the County’s ordinance. 261 Ga. at 154. Numerous other Georgia court decisions have followed Tilley. The County cannot overcome the lack of valid zoning procedures when the Sign Ordinance was adopted.

Second, before adopting the Sign Ordinance on January 13, 2011, Fayette County failed to advertise a public hearing. Atlantic’s January 27, 2023 open records request to the County also requested “certified copies of all legal ads run by the County from September 2010 - January 2011.” The County Clerk did not provide any advertisement for the public hearing on the adoption of the Sign Ordinance. Without a legal advertisement – and a timely and accurate one to boot – the Sign Ordinance is not valid. E.g., McClure v. Davidson, 258 Ga. 706, 710 (1988) (striking entire ordinance when legal advertisement not properly published).



Third, when adopting the Sign Ordinance on January 13, 2011, the Fayette County Commission failed to hold a public hearing. The ZPL requires that a public hearing be held. See O.C.G.A. § 36-66-4(a) (“A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action”). Failure to do so means the action taken is simply void. E.g., McClure, 258 Ga. at 709-10 (“failure to comply with notice provisions of Zoning Procedures Law prior to rezoning certain property invalidated rezoning action”). This unquestionably did not occur. The minutes show that the Commission held two public hearings that evening, one to consider a subdivision plat and the second to consider changes to impact fees and the Comprehensive Plan. See Minutes of Jan. 13, 2011, pp. 2-5 (Exhibit C hereto). Then the Commission closed the public hearings and moved to the consent agenda. Id. at 5. The consent agenda – by definition – is to be approved without discussion, and certainly without any input from the public. The first item on the consent agenda was the adoption of the Sign Ordinance. Because no public hearing was opened for public discussion, this adoption did not comply with the ZPL and was void.

When sign ordinances have been adopted without complying with the ZPL, Georgia courts order cities and counties to allow the requested signs. E.g., City of Walnut Grove v. Questco, Ltd., 275 Ga. 266, 267 (2002); Allison Outdoor Adver., LP v. City of Blairsville, Slip Op. at 5-6, Civ. No. 11-CV-487-MM (Union Super. Ct. April 23, 2012)<sup>1</sup> (finding city’s sign ordinance invalid for failure to comply with ZPL and ordering City to issue permits) (Exhibit D hereto); SMD, LLP v. City of Roswell, Slip Op., p. 3, Civ. No. E-65358 (Fulton Super. Ct. Nov. 18, 1999) (Exhibit E hereto). Without a public hearing, the Sign Ordinance was invalid from day one. E.g., Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 595-96 (1991) (holding that procedures provided by Section 36-66-4(a) “must be followed when passing or rescinding a text amendment of general application”) (emphasis added); McClure, 258 Ga. at 710 (“General Assembly intended noncompliance with the procedures to invalidate any zoning decision”). Because the code was not effective, the permits must now be issued. E.g., Tilley Properties, 261 Ga. at 165 (holding that “[w]here, as in this case, the zoning ordinance is invalid, there is no valid restriction on the property, and the appellant has the right under the law to use the property as it so desires”); Davidson Mineral Props. v. Monroe County, 257 Ga. 215, 216-17 (1987) (invalidating basis of denial and then mandating that applicant was authorized to proceed with proposed use); Cherokee County v. Martin, 253 Ga. App. 395, 396 (2002); Picadilly Place Condo. Ass’n v. Frantz, 210 Ga. App. 676, 678 (1993).

In addition to the aforementioned state ZPL deficiencies, the County also did not abide by its own rules when adopting the Sign Ordinance. For example, the County did not hold two public hearings (one before the Planning Commission and one before the Board of Commissioners) before adopting the Sign Ordinance. Even though the County had not adopted these internal rules in accordance with Georgia’s ZPL, they were still mandatory for the County to follow before a land use restriction could be adopted. The Sign Ordinance is subject to the

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<sup>1</sup> Blairsville’s Application for Discretionary Appeal to the Georgia Supreme Court was denied on June 19, 2012. See Case No. S12D1524.

same rules as other zoning codes and decisions. Walnut Grove, 275 Ga. at 267. As such, the Sign Ordinance is invalid and the County cannot rely on it to turn down Atlantic's applications.

Beyond the state and county ZPL problems, which render the County's Sign Ordinance invalid, the County's restrictions on signs cannot survive constitutional scrutiny under Georgia law. As the Georgia Supreme Court previously instructed Fayette County, the County is required to carefully calibrate its sign limits to restrict the least amount of speech possible. E.g., Coffey v. Fayette County, 279 Ga. 111, 111 (2005); also Statesboro Publ'g Co. v. City of Sylvania, 271 Ga. 92, 95-96 (1999). Under this standard, cities and counties must carry a heavy burden in order to justify their sign restrictions. Coffey v. Fayette County, 280 Ga. 656, 657-58 (2006). The County's sign restrictions – which, for example, completely ban all billboards and all content deemed “indecent” – are not the least restrictive means of achieving any legitimate purpose. E.g., State v. Cafe Erotica, Inc., 270 Ga. 97, 100 (1998) (“the absolute proscription against any form of off-site advertising . . . is an unconstitutional infringement on free speech as guaranteed by the First Amendment and the Georgia Bill of Rights”). Thus, for this independent reason as well, the permit should now be issued.

Georgia's strong protections in the realm of signs was actually developed in a long-running litigation between Fayette County and a sign company. Fayette County denied sign permits to a sign company under similar circumstances in 2004. After several years of litigation, the County lost three times in the Georgia appellate courts. E.g., Coffey v. Fayette County, 279 Ga. 111 (2005) (under Georgia Constitution's protection of expression, county was required to adopt the least restrictive means of achieving its goals); Coffey v. Fayette County, 280 Ga. 656 (2006) (holding trial court could not defer without question to decisions made at county's discretion without receiving any evidence from county in determining constitutionality of ordinance); Coffey v. Fayette County, 289 Ga. App. 153 (2008) (holding that amended sign ordinance did not moot plaintiffs' claim for damages resulting from enforcement of prior version of ordinance). Each of the County's losses was ground-breaking in its own way.

Ultimately, the County was forced to issue the requested sign permits and pay damages and legal fees to the sign company. See Tanner Settlement Agreement (attached hereto as Exhibit F). Other counties that have fought with sign companies have suffered even greater losses. For example, Fulton County was forced to issue dozens of permits, pay \$5 million in damages, and over \$1 million in legal fees. See Fulton County Verdicts and Judgments (Exhibit G hereto). Although the Tanner case was strong, it was nowhere near as strong as Atlantic's. The County should not risk such losses.

The final reason why Atlantic's application should have been granted is because the County's restrictions on signs cannot survive constitutional scrutiny under federal law because the County conveys too much discretion to officials to control speech. E.g., Forsyth County v. Nationalist Movement, 505 U.S. 123, 130 (1992) (a licensing scheme that “subjects the exercise of First Amendment freedoms to the prior restraint of a license without narrow, objective, and definite standards to guide the licensing authority is unconstitutional”); Café Erotica of Fla., Inc.

v. St. Johns County, 360 F.3d 1274, 1284-85 (11th Cir. 2004). The County has not actually offered any legitimate basis to deny the requested sign permit, but rather has listed numerous possible bases rejecting the sign. The only concrete basis for rejection in the denial letter is the statement that “we do require site plans for accessory structures and signs be submitted on a survey, with the dimensions noted.” This is a made-up requirement that is not found in the Sign Ordinance. The Sign Ordinance only requires as follows:

Sec. 108-27. Permits required.

All signage listed herein requiring a permit must meet the requirements of subsection (1) of this section when applying for a permit.

(1) Applications for signage. Applications for sign permits required by this article shall be filed with the county planning and zoning office during normal business hours and shall include the following to be considered by the zoning administrator:

a. The name, street address, and phone number of the owner of the property where the sign is to be installed along with ***a site plan showing the proposed location of the sign on the property.***

b. If the applicant is not the owner of the property, a signed and notarized authorization by the property owner shall be included with the application.

c. A description of the type of sign to be erected which shall include a schematic drawing of the sign indicating overall dimensions (height, width, square footage, shape, and number of faces).

All applications for signage shall be on a form provided by the county planning and zoning.

(emphasis added). Atlantic’s application included a detailed site plan showing precisely where the sign would be located. This more than exceeded the mandate of the Sign Ordinance. Atlantic complied with the code.

After reviewing dozens of sign application packets that were granted by the County over the past two years, NONE OF THEM INCLUDED A SURVEY FOR THE SIGN. Copies of five such applications have been attached hereto as Exhibit H. This so-called “survey requirement” is simply made up by County officials and is therefore patently unconstitutional. Courts do not allow discretion by government officials when deciding what the permit requirements are for speech activity, such as posting signs. Every court that has considered such discretion has determined that it is not allowed and that a code that allows such discretion is invalid. A good example is The Lamar Co. v. City of Marietta, 538 F. Supp. 2d 1366, 1372-73 (N.D. Ga. 2008). There the district court found that the sign code in question gave staff “total control over whether to require a permit” and failed to provide sufficient guidance on whether or not to issue a permit “much less the precise and objective standards necessary to be consistent with the First Amendment.” Id. at 1373. As a result, the city’s sign code was declared unconstitutional. The same principle applies here.



Fayette County Zoning Board of Appeals  
c/o Deborah Bell, RLA  
March 28, 2023  
Page 6 of 6

We certainly hope that, upon review of these matters, the County will reverse course and issue the requested permits. If not, please schedule this matter for the next possible Board meeting. Please let me know the time and place of such meeting as soon as possible. We may submit additional materials for the Board's consideration before or during the appeal hearing.

Please do not hesitate to contact us if a call or meeting would be beneficial. My client desires to work amicably with the County. If there are any specific issues of concern with any of the proposed signs, Atlantic is glad to consider adjustments to this project.

Respectfully Yours,

***E. Adam Webb***

E. Adam Webb

EAW/ss

cc: Atlantic Billboards, LLC (via email only)

Exhibit “A”

# **2005 ZONING SEMINAR**



**Program Materials 2005**

**SPONSOR:**

Institute of Continuing Legal Education in Georgia



**PROPER ADOPTION OF THE ZONING ORDINANCE AND MAP, AND POTENTIAL CHALLENGES**

**Frank E. Jenkins, III, Esq.  
Jenkins & Olson, P.C.  
Cartersville, Georgia**

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**PROPER ADOPTION OF THE ZONING ORDINANCE AND MAP,  
AND POTENTIAL CHALLENGES**

By:

Frank E. Jenkins, III, Esq.  
JENKINS & OLSON, P.C.  
Attorneys at Law  
15 South Public Square  
Cartersville, Georgia 30120  
(770) 387-1373

- I. Advertising Requirements.
- A. Notice of the public hearing on the zoning ordinance, the policies and procedures for conducting public hearings and the standards governing the exercise of zoning power must be published in a newspaper of general circulation within the territorial limits of the jurisdiction at least 15 days, but not more than 45 days prior to the public hearing before the governing authority. (O.C.G.A. §§ 36-66-4(a); 1-3-1(d)(3)).
- B. The notice must state the time, place and purpose of the hearing. (O.C.G.A. § 36-66-4(a)). (Purpose shall include the adoption of a zoning ordinance, the adoption of policies and procedures for calling and conducting public zoning hearings, and the adoption of standards governing the exercise of zoning power.)
1. The notices of the public hearing on each of these ordinances need appear only one time;
  2. If there is no newspaper of general circulation in the County, then the notice presumably should appear in the newspaper in which legal

advertisements appear (O.C.G.A. § 9-13-142);

II. Adoption of policies and procedures for public hearings and standards for exercising zoning power.

A. Adoption of policies and procedures which govern the calling and conducting of zoning hearings. (O.C.G.A. § 36-66-5).

1. At the time and place designated in the advertised public hearing, the local government shall call a public hearing on the proposed policies and procedures for calling and conducting zoning hearings.
2. At the hearing, copies of the proposed policies and procedures shall be made available to the attendees prior to the beginning of the public hearing;
3. Following the hearing, the governing authority should officially adopt the policies and procedures.
4. The Zoning Procedures Act does not specify what policies and procedures must be adopted with the exception that the procedures must provide equal time for proponents and opponents to make presentations, with a minimum of ten minutes per side. (O.C.G.A. § 36-66-5(a)).

B. Adoption of standards governing the exercise of the zoning power. (O.C.G.A. § 36-66-5(b)).

1. At the time and place designated in the advertised public hearing,



the local government shall call a public hearing on the standards governing the exercise of the zoning power.

2. Following the hearing, the governing authority should officially adopt the standards.
- C. Requirements applicable to both standards and policies and procedures.
1. Standards and policies and procedures may be incorporated into the zoning ordinance and adopted along with the zoning ordinance, but the public hearings on the standards and the policies and procedures should be conducted before the public hearing on the zoning ordinance.
  2. At every public hearing, copies of the standards and policies and procedures should be available for the attendees.
  3. The standards must be in writing and copies available to the public.
  4. Suggested standards are set out in Guhl v. Holcombe Bridge Road Corp., 238 Ga. 322, 232 S.E.2d 830 (1977); O.C.G.A. § 36-66-5(b). (Mandatory standards are set forth in O.C.G.A. § 36-67-1 et. seq. for counties with a population of 500,000 or more and municipalities within such counties with a population of 100,000 or more.)
- D. The proposed zoning ordinance and official zoning map or maps.
1. The official zoning map or maps to be adopted must be physically present at each hearing and the minutes of the meeting should say this. The same is true for the text of the ordinance, the standards, and the policies and procedures.
  2. The map should have a title that is incorporated into and referenced

in the text of the zoning ordinance. See O.C.G.A. § 36-1-25.

3. Zoning ordinance should specify the zoning map will be maintained in an administrator's office.

### III. Relevant and Recent Cases

- A. Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 401 S.E.2d 527 (1991).

Bartow County denied the application of a property owner to rezone his property to allow mining, and owner filed action seeking the rezoning and a writ of mandamus to compel county to issue a certificate of zoning compliance. The Supreme Court held that the county's failure to comply with the zoning procedures law in enacting the ordinance, by not holding a public hearing, rendered it void. Moreover, there was no valid restriction on the property, thus requiring issuance of a writ of mandamus.

- ✓ B. McClure v. Davidson, 258 Ga. 706, 373 S.E.2d 617 (1988).

After the Walton County Board of Commissioners decided to rezone neighboring property for a radio tower, landowners brought action seeking declaratory judgment that rezoning was void and injunction prohibiting neighboring landowners from building the tower. The Supreme Court held that the notice requirement of Zoning Procedures Law applied to rezoning

by board of commissioners. Also, the board of commissioners' failure to comply with Zoning Procedures Law's notice requirements invalidated the zoning action.

C.

Mid Georgia Environmental Management Group, L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

A developer sought to construct a landfill on property not zoned for landfills, and attempted to obtain the EPD-required certificate of land use approval from the local government by arguing that the zoning ordinance was not adopted in compliance with the ZPL. The trial court and the Supreme Court held that the evidence was sufficient to show that the ordinance complied with the ZPL. The developer's contention was based on two irregularities in the county's record keeping. First, the county clerk failed to maintain a record of superseded provisions of the zoning ordinance. The court held that there is nothing in the ZPL that conditions *validity* of the zoning ordinance on the maintenance of a record of superseded portions of the ordinance. The implication is that the local government may not be able to enforce old portions of the ordinance if they do not keep a copy, but that does not affect the validity of the ordinance itself. The second fact dealt with the official zoning map, which also must be adopted in compliance with the ZPL. The minutes of the



local government reflected that the official map was adopted after due notice and a public hearing, and thereafter was kept by the zoning administrator. Prior the time of trial, the original zoning administrator left his position, and after a gap of a few months, a new zoning administrator was hired. The new zoning administrator testified that he was unsure which of two maps in his office was the official zoning map, and which was the working zoning map. The court said that it did not matter, because there was sufficient evidence to show that whichever was the official zoning map, it was adopted in compliance with the ZPL, and regardless, both maps showed that the subject property was not zoned for landfills.

D. City of Flovilla v. McElheney, 246 Ga. 552, 272 S.E.2d 287 (1980).

The City brought an action for an injunction against a man who placed a mobile home on a lot zoned residential. The Supreme Court, held that the ordinance was invalid where it required a nonexistent city official to certify zoning map and parol evidence could not be used to establish that the uncertified map was the one referred to in the ordinance.

- E. Waldrop v. Stratton & McLendon, Inc., 230 Ga. 709, 198 S.E.2d 883 (1973).

Plaintiff sought a writ of mandamus against building inspector of city on ground that an existing zoning ordinance was void because it was not legally adopted and recorded in minutes of the city. The city by oral testimony sought to introduce the book of zoning laws of the city into evidence and to prove by such oral testimony that these were the zoning laws adopted by this ordinance. The Supreme Court held that the ordinance was void for failure to have it set out in full in minutes of the city and that parol evidence is insufficient to prove the contents of a municipal ordinance.

- F. Hulsey v. Smith, 224 Ga. 783, 164 S.E.2d 782 (1968).

In a suit to seek an injunction to stop a property owner from maintaining a junkyard, the Supreme Court held that parol evidence is not admissible to prove the existence of a zoning ordinance or to identify, without more, a purported zoning map which is an integral part of such an ordinance. Therefore, the plaintiffs could not maintain the action to enjoin the defendant from maintaining a junkyard because the purported zoning regulations were never legally adopted by the Douglas County Commissioners.

# Exhibit “B”



State of Georgia;  
County of Fayette

CERTIFICATE OF CLERK

I, Tameca P. Smith, do hereby certify that I am the duly appointed County Clerk for the Board of Commissioners of Fayette County, Georgia; and that as such Clerk I am the custodian of the official books, records and minutes of said Board.

I further certify that the accompanying documents are a true and correct copy of the *Fayette County Board of Commissioners meeting minutes and their attachments for October 14, 2010, October 28, 2010, November 3, 2010, November 18, 2010, December 1, 2010, December 9, 2010, December 29, 2010, January 5, 2011, January 13, 2011, January 27, 2011, and March 26, 2015* as said documents appear in the official business records of this Board, which is in my custody and control.

In witness whereof, I have set my hand and caused the Seal of Fayette County, Georgia, to be affixed hereto this 1<sup>st</sup> day of February 2023.



Tameca P. Smith, MBA, CMC  
County Clerk  
Board of Commissioners  
Fayette County, Georgia

(Seal)





## *Minutes*

Board of Commissioners  
December 9, 2010  
7:00 P.M.

**Notice:** A complete audio recording of this meeting can be heard by accessing Fayette County's Website at [www.fayettecountyga.gov](http://www.fayettecountyga.gov). Click on "Board of Commissioners", then "County Commission Meetings", and follow the instructions. The entire meeting or a single topic can be heard.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on Thursday, December 9, 2010, at 7:00 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

<b>Commissioners Present:</b>	Jack Smith, Chairman Herb Frady, Vice Chairman Robert Horgan Eric Maxwell
<b>Commissioner Absent:</b>	Lee Hearn
<b>Staff Present:</b>	Jack Krakeel, County Administrator Scott Bennett, County Attorney Carol Chandler, Executive Assistant Robyn Wilson, Planning Commission Secretary

---

Chairman Smith called the meeting to order and offered an invocation, followed by the Pledge of Allegiance. He stated that Commissioner Hearn would not be in attendance at the meeting because of illness.

### **ACCEPTANCE OF AGENDA:**

Commissioner Horgan made a motion to accept the agenda as published with the exception that staff had requested that Item 4 under the Consent Agenda be removed. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

### **PUBLIC HEARING:**

- A. **CONSIDERATION OF ADOPTION OF ORDINANCE NO. 2010-11, PROPOSED AMENDMENTS TO THE FAYETTE COUNTY CODE OF ORDINANCES, BY THE ADDITION OF CHAPTER 20. FAYETTE COUNTY ZONING ORDINANCE, IN ITS ENTIRETY, AND PROPOSED AMENDMENTS TO THE FAYETTE COUNTY COMPREHENSIVE PLAN TEXT AND MAP. THE PLANNING COMMISSION UNANIMOUSLY RECOMMENDED APPROVAL 4-0:**

Director of Community Development Pete Frisina read the rules for public hearings. A copy of the rules, identified as "Attachment No. 1", follows these minutes and is made an official part hereof. He explained that the document under

consideration was a comprehensive revision of the County's Zoning Ordinance and that work on it had been underway for more than a year. He told them that this issue had been discussed at several Workshops of the Board of Commissioners and the Planning Commission and that the final public hearing before the Planning Commission was recently held. He commented that some of the proposed changes/additions which included the number of animals allowed per household, solar panels and wind turbines, telecommunications/cell towers, planned small business center, modifications in the overlay zone, home occupations, and also amendments to the comp plan text. A copy of the request, identified as "Attachment No. 2", follows these minutes and is made an official part hereof.

Chairman Smith asked if anyone wished to speak in favor or in opposition to the adoption of the proposed Ordinance and Resolution and there was no public comment.

Commissioner Frady made a motion to approve Ordinance No. 2010-11, enacting a new Fayette County Zoning Ordinance; to include the Zoning Ordinance as Chapter 20 of the Fayette County Code; and to approve Resolution No. 2010-18 which adopts related amendments to the Fayette County Comprehensive Plan Text and Map; and to authorize the Chairman to execute the Ordinance and Resolution as adopted.

Commissioner Maxwell said he was opposed to the motion and would be voting in opposition. He said there were several areas of the ordinance where he had concerns and he could not vote in favor of this.

The motion carried 3-1 with Commissioner Maxwell voting in opposition. Commissioner Hearn was absent. A copy of Ordinance No. 2010-11 and Resolution No. 2010-18, identified as "Attachment No. 3", follow these minutes and are made an official part hereof.

**PUBLIC COMMENT:**

**Mr. Harold Bost** spoke about his resignation from the Board of Commissioners and his residency issues. He presented the Board with evidence purporting to show his official residence. A copy of the report, identified as "Attachment No. 4", follows these minutes and is made an official part hereof.

**Mr. Dennis Chase** advised the Board of his various efforts to discredit Fayette County with state and federal agencies responsible for permitting and managing public water projects and other projects requiring environmental monitoring because the Board would not halt the construction of the West Fayetteville Bypass.

**Ms. Eilsey Huston** commented on her displeasure with the construction of the West Fayetteville and her opinion that the funds could be better utilized on other projects.

**Mr. Steve Smithfield** presented the Board with a written statement of his remarks largely related to his opposition to the West Fayetteville Bypass. He asked that his written remarks be made a part of the official record. A copy of his statement, identified as "Attachment No. 5", follows these minutes and is made an official part hereof.

**Mr. Paul Parchert** remarked that he resided on Janice Drive and that the "developers" roadway will be within feet of his home and how disappointed he is to have to endure this situation when he had moved onto Janice Drive because it was dead-end street that he had hoped would remain quiet and traffic-free. He expressed dismay that the Bypass had been named Veterans Parkway.

**Ms. Angela Hinton Fonda** made remarks concerning Item 14 on the Consent Agenda which related to policies of the Human Resources Department which address scheduled pay increases. She expressed concern with the Pay for Performance Policy and the changes in the determination as to the amount of extra pay enhancement to be awarded



and the proportion per department. She said the current policy authorizes the Board of Commissioners to establish an amount of performance pay by department during the budget process. She said the proposed change would limit this Board's authority solely to establishing a "bucket" of money for those extra pay enhancements. She remarked that extra pay was not just more money in an employee's check but with a pension plan extra pay would be a lifetime commitment. She said these proposed changes could open the door to any manner of legal liability including nepotism, cronyism, sexism, age discrimination or other violations of employment law.

**Mr. Paul Irwin** said he was a long-time resident of Brown Road which would be affected by Phase III of the West Fayetteville Bypass and that he was disappointed that the County had not talked to the residents of Brown Road about the Bypass before now. He said the recommended speed limit of 45 for Phase III would not be an appropriate speed limit where the road goes through residential neighborhoods.

**Mr. Tom Halpin** commented on the remarks made by Ms. Hinton-Fonda concerning giving pay raises to County employees and questioned the legality of the provisions proposed in Item 14 of the Consent Agenda.

**CONSENT AGENDA:**

Commissioner Horgan made a motion to approve the Consent Agenda as published with the exception of Items 4 and 14. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

**ROAD DEPARTMENT - BID #734 AWARDED TO CURB SPECIALIST FOR MISCELLANEOUS CONCRETE WORK:**

1. Approval of staff's recommendation for a 12-month extension to FY 2010's Bid #734 as approved by the Board of Commissioners on March 11, 2010 which contracts with Curb Specialist for miscellaneous concrete work. A copy of the request and backup, identified as "Attachment No. 6", follow these minutes and are made an official part hereof.

**ROAD DEPARTMENT - BID #748 AWARDED TO HANSON AGGREGATES OF TYRONE FOR COURSE AGGREGATE:**

2. Approval of staff's recommendation for a 12-month extension to FY 2010's Bid #748 as approved by the Board of Commissioners on April 22, 2010 which contracts with Hanson Aggregates of Tyrone as the source to purchase course aggregate. A copy of the request and backup, identified as "Attachment No. 7", follow these minutes and are made an official part hereof.

**PUBLIC WORKS - INSTALLATION OF 8 FOOT ASPHALT MULTI-USE PATH:**

3. Approval of staff's recommendation to install an 8' wide asphalt multi-use path along a portion of the West Fayetteville Bypass (Lester Road section) from Cleveland Elementary to the intersection of Huiet Road and Old Heritage Road, (SPLOST Project No. R-28). A copy of the request and backup, identified as "Attachment No. 8", follow these minutes and are made an official part hereof.

**SHERIFF'S OFFICE - AMENDMENT OF 2011 OVERTIME BUDGET:**

4. Approval of Sheriff's Office request to amend the FY 2011 Overtime Budget for the Sheriff's Office Criminal Investigations Division by \$2,903.48 for reimbursement for employees assigned to work with various Federal Agencies.

Item 4 was removed upon the request of staff who advised the Board that the request had been combined with Item 5.

**SHERIFF'S OFFICE - AMENDMENT OF 2011 OVERTIME BUDGET:**

5. Approval of Sheriff's Office request to amend the FY 2011 Overtime Budget for the Sheriff's Office Criminal Investigations Division by \$5,533.49 for reimbursement for employees assigned to work with various Federal Agencies. A copy of the request, identified as "Attachment No. 9", follows these minutes and is made an official part hereof.

**FIRE AND EMERGENCY SERVICES - DISPOSAL OF FIREFIGHTER UNIFORMS:**

6. Approval of staff's request for permission to dispose of firefighter uniforms that are no longer serviceable. A copy of the request, identified as "Attachment No. 10", follows these minutes and is made an official part hereof.

**FIRE AND EMERGENCY SERVICES - DONATIONS/MISCELLANEOUS REVENUE ACCOUNT:**

7. Approval of staff's request to increase Fire Services FY 2011 Donations/Miscellaneous Revenue Account by \$1,400 and to increase the Food/Catered Meals Expense Account by \$1,400 to account for donations from various companies. A copy of the request, identified as "Attachment No. 11", follows these minutes and is made an official part hereof.

**FIRE AND EMERGENCY SERVICES - GRANT FOR WEBEOC FUSION SOFTWARE:**

8. Approval of staff's request for permission to accept a grant for WEBEOC Fusion software in the amount of \$19,720 from the Georgia Emergency Management Agency's FY 2010 Homeland Security Grant Program for sequel software and a server. A copy of the request and backup, identified as "Attachment No. 12", follow these minutes and are made an official part hereof.

**FIRE AND EMERGENCY SERVICES - EQUIPMENT GRANT FROM GEORGIA TRAUMA CARE NETWORK COMMISSION:**

9. Approval of staff's request to accept an equipment grant funded by the Georgia Trauma Care Network Commission in the amount of \$2,166. A copy of the request and backup, identified as "Attachment No. 13", follow these minutes and are made an official part hereof.

**FIRE AND EMERGENCY SERVICES - REAPPOINTMENT OF PEACHTREE CITY ASSISTANT CHIEF PEKI PRINCE:**

10. Approval of staff's recommendation to reappoint Peachtree City Assistant Chief Peki Prince as one of the three representatives from Fayette County to Region Four EMS Council, said term effective July 1, 2010 and expiring on June 30, 2012. A copy of the request, identified as "Attachment No. 14", follows these minutes and is made an official part hereof.

**INTERGOVERNMENTAL AGREEMENT WITH PEACHTREE CITY - TRANSPORTATION PROJECTS AND USE OF 2004 SPECIAL PURPOSE LOCAL OPTION SALES TAX:**

11. Approval of Intergovernmental Agreement with Peachtree City related to the transportation projects and the use of 2004 Special Purpose Local Option Sales Tax proceeds in the amount of \$25,000. A copy of the request and backup, identified as "Attachment No. 15", follow these minutes and are made an official part hereof.

**FINANCE DEPARTMENT - UPDATES TO THE COUNTY'S POLICIES AND PROCEDURES MANUAL:**

12. Approval of staff's request to proceed with updates to the County's Policies and Procedures Manual sections for Eligibility Verification of Non-Citizen Applicants for Benefits, Investments, Travel, and Budget. A copy of the request and backup, identified as "Attachment No. 16", follow these minutes and are made an official part hereof.

**FINANCE DEPARTMENT - ACCEPTANCE OF A DONATION FOR SUPERIOR COURT CLERK'S OFFICE:**

13. Approval of staff's recommendation to accept and budget a donation of \$100 from Brown's River Marotti Company. A copy of the request, identified as "Attachment No. 17", follows these minutes and is made an official part hereof.

**HUMAN RESOURCES - UPDATE AND MODIFICATIONS TO THE COUNTY'S POLICIES AND PROCEDURES MANUAL:**

14. Approval of staff's request to proceed with updates and minor modifications to various Human Resources policies contained within the County's Policies and Procedures Manual. A copy of the request and backup, identified as "Attachment No. 18", follow these minutes and are made an official part hereof.

Item 14 was removed upon the request of Commissioner Maxwell who said that since the item had been questioned by Ms. Hinton-Fonda under Public Comment, he would like to have the County Administrator discuss the item with her for clarification and that any needed action by the Board could be rescheduled for a later meeting.

**ABANDONMENTS OF A PORTION OF JOHN STREET:**

15. Approval of a request for the County to abandon a portion of John Street. A copy of the request, identified as "Attachment No. 19", follows these minutes and is made an official part hereof.

**STORMWATER MANAGEMENT - ADOPTION OF ORDINANCE NO. 2010-12:**

16. Approval of adoption of Ordinance 2010-12, proposed amendments to Fayette County Code, Chapter 8, Development Regulations, by amending Article V. A copy of the request, backup and Ordinance No. 2010-12, identified as "Attachment No. 20", follow these minutes and are made an official part hereof.

**INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FAYETTEVILLE REGARDING THE LAFAYETTE EXTENSION PROJECT:**

17. Approval of a request from the City of Fayetteville to rescind the Intergovernmental Agreement between Fayette County and the City of Fayetteville for the LaFayette Extension Project, previously adopted on August 26, 2010. A copy of the request, backup and Intergovernmental Agreement, identified as "Attachment No. 21", follow these minutes and are made an official part hereof.

**MAIN STREET FAYETTEVILLE - CONSTRUCTION OF SIDEWALK ACCESSING PARKING SPACES APPROVED:**

18. Approval of Main Street Fayetteville's request to construct a short segment of sidewalk from the Stonewall Avenue/Glynn Street corner to access parking spaces adjacent to the gazebo. A copy of the request, identified as "Attachment No. 22", follows these minutes and is made an official part hereof.

**RESOLUTION NO. 2010-19 - ABANDONMENT OF RIGHT-OF-WAY ON MELANIE LANE:**

19. Approval of Resolution No. 2010-19 to abandon right-of-way totaling 65 square feet on Melanie Lane. A copy of the request and Resolution No. 2010-19, identified as "Attachment No. 23", follow these minutes and are made an official part hereof.

**JUSTICE CENTER - PERMANENT DISPLAY APPROVED:**

20. Approval of permanent display depicting the foundations of American Law and Government for the Justice Center. A copy of the request, identified as "Attachment No. 24", follows these minutes and is made an official part hereof.



**APPOINTMENT TO VARIOUS BOARDS AND COMMITTEES APPROVED:**

21. Approval of appointments to various boards and committees. A copy of the request, identified as "Attachment No. 25", follows these minutes and is made an official part hereof.
22. Approval of minutes for Board of Commissioners' meeting held on November 18, 2010.

**OLD BUSINESS:**

**B. CONTINUED CONSIDERATION OF A REQUEST FROM THE CITY OF FAYETTEVILLE CONCERNING A PROPOSED TRANSPORTATION PROJECT RELATED TO THE INTERSECTION OF STATE HIGHWAY 92, HOOD AVENUE, AND STATE ROUTE 85:**

County Administrator Jack Krakeel reminded the Board that City officials had brought this issue before them at two Workshop meetings and that if the County and City were going to partner to build this project, an Intergovernmental Agreement would need to be executed. He noted that such an Agreement would define the role of both entities.

Commissioner Horgan made a motion to approve an Intergovernmental Agreement between the County and the City of Fayetteville allowing the two entities to undertake construction of a transportation project known as Project R-12 The Hood Avenue Connector/SR 92 Realignment and to authorize the Chairman to execute said Agreement. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent. A copy of the request and the Intergovernmental Agreement, identified as "Attachment No. 26", follow these minutes and are made an official part hereof.

**C. FURTHER DISCUSSION OF THE 2010 COMPREHENSIVE TRANSPORTATION PLAN AND ADOPTION OF RESOLUTION NO. 2010-20 SUPPORTING THE PLAN:**

Public Works Director Phil Mallon gave a brief overview of the process that had led to the completion of the proposed new Comprehensive Transportation Plan. He told the Board that he would like to have the Board take an action that would accept the Plan as the County's base document for transportation planning.

Commissioner Frady made a motion to adopt Resolution No. 2010-20 supporting the 2010 Comprehensive Transportation Plan, its policies, and its project recommendations as the County's base document for transportation planning and authorization for the Chairman to execute said Resolution. Commissioner Horgan seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent. A copy of the request and Resolution No. 2010-20, identified as "Attachment No. 27", follow these minutes and are made an official part hereof.

**D. FURTHER CONSIDERATION OF STAFF'S REQUEST FROM THE SHERIFF'S DEPARTMENT FOR FUNDING FOR REPAIRS IN THE SHOWER AREAS OF INMATE CELL BLOCKS IN THE JAIL:**

Major Charlie Cowart of the Sheriff's Department had further discussion with the Board about the need to address issues of mold in the shower areas of the County Jail. A copy of the request and backup, identified as "Attachment No. 28", follows these minutes and are made an official part hereof. He said Consulting Engineer David Jaeger of Mallett Consulting recommended overlaying the existing floor tile and wall surfaces with a special coating specifically designed for use in wet areas in lieu of removing and replacing the floor tile grout. He said this coating would be a durable mold resistant urethane or epoxy type coating. He noted that the tile and block walls would be stripped, cleaned and prepped for the new coating including killing all existing mold. He said the metal partitions would be removed during the floor and wall work and cleaned and reinstalled with some minor adjustments during the reinstallation of the metal partitions.

Commissioner Maxwell remarked that item D and item E were both related. He noted that until the old jail was renovated there was no where to move the displaced prisoners. He felt this allowed additional time to listen to Mr. Jaeger in order to get more information.

The Board suggested that Mr. Cowart gather more information about alternative methods for alleviating the problem, cost comparisons, the sequence of activities that would provide a remedy for the problem, and the time frame during which repairs would occur. The Board expressed support for resolving the issue but asked that more definitive information be provided before authorizing funds for the repairs.

**E. FURTHER CONSIDERATION OF STAFF'S REQUEST FROM THE SHERIFF'S DEPARTMENT CONCERNING THE NEED AND COST FOR BRINGING THE FORMER JAIL FACILITY INTO TEMPORARY OPERATION:**

See Item D above. A copy of the request and backup, identified as "Attachment No. 29", follow these minutes and are made an official part hereof.

**NEW BUSINESS:**

**F. CONSIDERATION OF STAFF'S RECOMMENDATION TO PURCHASE STREAM AND WETLAND MITIGATION CREDITS FOR THE WEST FAYETTEVILLE BYPASS PROJECT, PHASE 2 (SPLOST NO. R-5) FROM THE FLINT RIVER MITIGATION BANK, VIA MITIGATION MANAGEMENT, LLC FOR THE AMOUNT OF \$214,086.**

Public Works Director Phil Mallon told the Board that stream and mitigation credits were needed for the West Fayetteville Project and that quotes had been solicited from four mitigation banks that had credits available to acquire. A copy of the request and backup, identified as "Attachment No. 30", follow these minutes and are made an official part hereof. He said the recommended vendor, Flint River Mitigation Bank, offered the best price and had issued a further discount once it was determined they were the low bidder.

Commissioner Horgan made a motion to authorize staff to proceed with the purchase of stream and wetland mitigation credits for Phase II of the West Fayetteville Bypass from the Flint River Mitigation Bank, utilizing Mitigation Management, LLC, in the amount of \$214,086; and authorization for the Chairman to execute any subsequent required documents, pending review and approval by the County Attorney. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

**G. DISCUSSION OF STAFF'S RECOMMENDATION FOR THE ALIGNMENT OF PHASE 3 OF THE WEST FAYETTEVILLE BYPASS (SPLOST PROJECT NO. R-28B)**

Director of Public Works Phil Mallon presented a preliminary concept map indicating the general route of the proposed Phase III of the West Fayetteville Bypass Project, identified as Project No. R-28b in the 2003 Transportation Plan. A copy of the request and backup, identified as "Attachment No. 31", follow these minutes and are made an official part hereof. He reviewed certain details of the route but emphasized that the plan being presented was merely a concept of the general path of the road and that detailed engineering, roadway design, and traffic studies would be needed in order for staff to proceed with initiating the project.

Commissioner Horgan made a motion to accept staff's recommendation for a concept alignment for Transportation Project R-28B, known as Phase III of the West Fayetteville Bypass Project; and authorization to proceed with engaging a design engineer to develop a traffic study, a preliminary roadway design, schedule, and cost estimate for the Project. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

**H. CONSIDERATION OF STAFF'S RECOMMENDATION TO ABANDON AND THEN TRADE 5,004 SF OF WATERLACE WAY RIGHT-OF-WAY (ROW), 7,130 SF OF FORMER LESTER ROAD ROW AND 1,748 SF OF COUNTY-OWNED PROPERTY IN THE SOUTHWEST CORNER OF THE HERITAGE FARM ROAD AND LESTER ROAD INTERSECTION.**

Public Works Director Phil Mallon told the Board that he did not have all the information needed for the Board to take action on the request as presented but that he would like to have the Board vote to convey 39 square feet of unneeded right-of-way to an adjacent property owner, David Weekley Homes, who had worked with the County in acquiring right-of-way needed for Phase I of the West Fayetteville Bypass. A copy of the request, identified as "Attachment No. 33", follows these minutes and is made an official part hereof.

Commissioner Frady made a motion to approve Resolution No. 2010-23, constituting a conveyance of 39 square feet of right-of-way from Waterlace Way to David Weekley Homes, LLP, and to authorize the Chairman to execute said Resolution. Commissioner Horgan seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent. A copy of Resolution No. 2010-23, identified as "Attachment No. 34", follows these minutes and is made an official part hereof.

**I. CONSIDERATION TO ADOPT RESOLUTION NO. 2010-21 TO APPROVE CONVEYANCE OF PROPERTY ALONG PHASE I OF THE WEST FAYETTEVILLE BYPASS:**

County Attorney Scott Bennett advised the Board that as a part of the process of establishing the final alignment of Phase I of the West Fayetteville Bypass south of State Rout 54, an exchange of property was needed that would allow the County to have what it needed for the road, and which would provide the owner of the convenience store near the intersection of Lester Road and Highway 54 with a driveway off Lester Road. He said this driveway would be shared by the convenience store and the Postal facility nearby. He remarked the exchange would be of property of equal value and no exchange of funds would be needed.

Commissioner Horgan made a motion to approve Resolution No. 2010-21, constituting an exchange of property between the County and Trogger Enterprises, Inc. needed to complete a portion of the West Fayetteville Bypass, Phase I, and to authorize the Chairman to execute said Resolution. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent. A copy of the request and Resolution No. 2010-21, identified as "Attachment No. 35", follow these minutes and are made an official part hereof.

**J. CONSIDERATION OF RESOLUTION NO. 2010-22 TO REVISE THE LOCAL LEGISLATION PERTAINING TO THE ELECTIONS BOARD:**

County Attorney Scott Bennett remarked that this Legislation would request the State Legislative Representatives to introduce local legislation which would amend how the members of the Board of Elections are appointed. He said this would provide for a confirmation process by which the two political parties nominate a member to serve on the Board of Elections. He said that nominee would come to the Board of Commissioners for confirmation of that person to serve on the Board of Elections. He asked for the Board's consideration in this matter.



Commissioner Horgan made a motion to approve Resolution No. 2010-22 supporting the introduction of local legislation amending certain provisions related to the membership of the Fayette County Board of Elections, allowing for the confirmation of Board of Elections members by the Board of Commissioners; and authorization for the Chairman to execute said Resolution. Commissioner Frady seconded the motion. Discussion followed.

Commissioner Maxwell said he had no recollection of this Board discussing this item at a Wednesday Workshop meeting. He said this was an issue that this Board was asking the State Legislature to do and this Commission had not even discussed this in a workshop meeting. He said this Board would be put in a position to approve any candidate that the Republican party would want to seat as a member of the Elections Board. He said this would then result in five members of the Republican Party to look over the shoulder of the Democratic Party and deciding on their representative. He said it was his opinion that this would not pass through the Justice Department. He said as a result of that, he would not support this motion. He said he had not seen the final version of this Resolution until tonight when he arrived for this meeting. He said he thought it had always been the policy of this Board to discuss an item at a Workshop Meeting and then bring it to a Thursday night meeting for consideration after the Board had studied the issue. He said he would not support this Resolution.

Commissioners Smith, Frady and Horgan voted in favor of the motion. Commissioner Maxwell opposed the motion. The motion carried 3-1. Commissioner Hearn was absent. A copy of the request, backup and Resolution No. 2010-22, identified as "Attachment No. 36", follow these minutes and are made an official part hereof.

**K. DISCUSSION OF CONTRACT RENEWAL FOR THE COUNTY ADMINISTRATOR AND THE COUNTY ATTORNEY:**

Commissioner Horgan made a motion at 9:08 p.m. to adjourn to Executive Session to discuss personnel items. Commissioner Frady seconded the motion and the vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

The Board reconvened the public meeting at 9:24 p.m. Commissioner Horgan made a motion to authorize the Chairman to execute the required Executive Session Affidavit stating that three personnel items had been discussed in Executive Session. Commissioner Frady seconded the motion which passed unanimously (4-0). Commissioner Hearn was absent. A copy of the Executive Session Affidavit, identified as "Attachment No. 37", follows these minutes and is made an official part hereof.

Commissioner Horgan made a motion to enter into a new Employment Agreement with Scott Bennett, County Attorney and to authorize the Chairman to execute the Agreement. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

Commissioner Horgan made a motion to enter into a new Employment Agreement with Jack Krakeel, County Administrator and to authorize the Chairman to execute the Agreement. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

Commissioner Horgan made a motion that the County Clerk be placed under the County Administrator for the purpose of job performance evaluation and work flow management. Commissioner Frady seconded the motion. The vote in favor of the motion was unanimous (4-0). Commissioner Hearn was absent.

**ADMINISTRATOR'S REPORT**

None

**ATTORNEY'S REPORT**

None

**STAFF REPORTS**

None

**BOARD REPORTS**


**Commissioner Maxwell** thanked his fellow Board members, Constitutional officers, County employees and particularly Jack Krakeel for working well with him during his term. He said he had enjoyed his work as a County Commissioner.

**Chairman Smith** said it had been a pleasure to serve as County Commissioner. He thanked staff, particularly Jack Krakeel, Scott Bennett and Mary Holland for their work during his term. He thanked his fellow Board members for electing his Chairman for four years and wished everyone well.

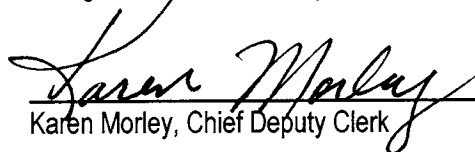
**Commissioner Frady** thanked Mr. Maxwell and Mr. Smith for their service to Fayette County and congratulated them on the accomplishments of their term.

**ADJOURNMENT:** Hearing no further business to come before the Board, Chairman Smith adjourned the meeting at 9:37 p.m.

  
\_\_\_\_\_  
Karen Morley, Chief Deputy Clerk

  
\_\_\_\_\_  
Herb Frady, Vice Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 5<sup>th</sup> day of January, 2011.

  
\_\_\_\_\_  
Karen Morley, Chief Deputy Clerk

# Exhibit “C”



State of Georgia;  
County of Fayette

CERTIFICATE OF CLERK

I, Tameca P. Smith, do hereby certify that I am the duly appointed County Clerk for the Board of Commissioners of Fayette County, Georgia; and that as such Clerk I am the custodian of the official books, records and minutes of said Board.

I further certify that the accompanying documents are a true and correct copy of the *Fayette County Board of Commissioners meeting minutes and their attachments for October 14, 2010, October 28, 2010, November 3, 2010, November 18, 2010, December 1, 2010, December 9, 2010, December 29, 2010, January 5, 2011, January 13, 2011, January 27, 2011, and March 26, 2015* as said documents appear in the official business records of this Board, which is in my custody and control.

In witness whereof, I have set my hand and caused the Seal of Fayette County, Georgia, to be affixed hereto this 1<sup>st</sup> day of February 2023.



Tameca P. Smith, MBA, CMC  
County Clerk  
Board of Commissioners  
Fayette County, Georgia

(Seal)





## *Minutes*

Board of Commissioners  
January 13, 2011  
7:00 P.M.

**Notice:** A complete audio recording of this meeting can be heard by accessing Fayette County's Website at [www.fayettecountyga.gov](http://www.fayettecountyga.gov). Click on "Board of Commissioners", then "County Commission Meetings", and follow the instructions. The entire meeting or a single topic can be heard.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on Thursday, January 13, 2011, at 7:00 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

**Commissioners Present:**

Herb Frady, Chairman  
Robert Horgan, Vice Chairman  
Steve Brown  
Lee Hearn  
Allen McCarty

**Staff Present:**

Jack Krakeel, County Administrator  
Scott Bennett, County Attorney  
Carol Chandler, Executive Assistant  
Karen Morley, Chief Deputy Clerk

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Chairman Frady called for a moment of silence to remember and pray for the victims in the Arizona shooting. Chairman Frady called the meeting to order. Commissioner Hearn offered the Invocation. David Studdard led the Pledge of Allegiance.

**ACCEPTANCE OF AGENDA:** County Administrator Jack Krakeel asked for consideration to amend the agenda tonight to include a request that he had received earlier today from Ms. DeNeese Blanton who is the District IV Health Services Nutrition Manger for the Fayette County W.I.C. Program. He remarked that the purpose of the discussion would be to address her request to the Board for extension of facility hours.

Commissioner Horgan made a motion to accept the agenda as presented including the item requested by Mr. Krakeel. Commissioner McCarty seconded the motion, discussion followed.

Commissioner Brown stated that he was in favor of twenty-four hour notice on additional items for the agenda unless it was an emergency. He said this was a legitimate emergency and noted that the W.I.C. Office had to close its doors due to an act of God and the inclement weather. He said a lot of mothers must get the vouchers and certificates in a timely fashion and it was crucial that they not be shorted on food and formula.

The motion carried 5-0.

**PUBLIC HEARING:**

1. **Consideration of Petition No. RP-049-10, Wendy K. Peterson, Owner/Agent, request a revision of the recorded plat for Woods Edge at Timber Lake, Phase I, to subdivide Lot 140 into two (2) single-family dwelling lots. This property is located in Land Lots 20 and 21 of the 6<sup>th</sup> District, fronts on Brown's Crossing Drive, and is zoned PUD-PRD:**

Director of Community Development Pete Frisina read the rules for public hearings. A copy of the Public Hearing Rules, identified as "Attachment No. 1", follows these minutes and is made an official part hereof. He remarked that this was a request for a revision of the recorded plat for Woods Edge at Timber Lake, Phase I, to subdivide Lot 140 into two (2) single-family dwelling lots. He noted that this property is located in Land Lots 20 and 21 of the 6<sup>th</sup> District, fronts on Brown's Crossing Drive, and is zoned PUD-PRD.

Chairman Frady asked if the petitioner or the agent for this request was present.

Timothy Peterson, 150 Brown's Crossing Drive said he and his wife Wendy Peterson were the petitioners for this request. He said it was their plan to subdivide their lot. He said the home was a six bedroom and five bath house, and they wanted to build a smaller home for retirement. He remarked that their youngest daughter was now a senior in high school and as she goes on to college they wanted to build a three bedroom and two and a half bath house.

Wendy Peterson said their home was located in Timberlake Subdivision and located on a very large frontage lot of more than 400 square feet. She said it was originally two lots. She said she had paid taxes on the lots for the last ten years and loved the neighborhood and would like to stay there. She said they had not met with any disapproval that she was aware of regarding their request. She said they had e-mails from the Homeowners Association President and the Architectural Board. She said there were a lot of friends from the neighborhood present tonight to show their support. She said they would like to build a home that was appropriate for the neighborhood. She said they would be glad to answer any questions that the Board might have.

Commissioner Horgan asked what Planning Commission member Jim Graw's opposition was to this request.

Mr. Frisina replied that Mr. Graw was not in favor of adding another lot to this subdivision.

Chairman Frady asked if there was anyone wishing to speak in favor of the petition.

Debby Kull said she lived in Timberlake Subdivision and was on the original Homeowners Board and currently was the Communications Director for the subdivision. She said the calls she had received from surrounding neighbors were positive and in favor of this proposal.

Fred Kull said he was Debby's husband and said he felt this was a win/win situation. He said not only did it represent a dramatic increase to Fayette County tax rolls but it would employ a lot of people to build this home. He felt this was a really important step to take.

Terri Clark said she was a neighbor and wanted to keep the Petersons in the neighborhood.

Chairman Frady asked if there were any comments against the petition. Hearing none, he asked for the Board's pleasure in this matter.



Commissioner Horgan made a motion to approve Petition No. RP-049-10 for the Petersons to subdivide their lot 140 into two (2) single-family dwelling lots in the Woods Edge at Timber Lake, Phase I. Commissioner Hearn seconded the motion, discussion followed.

Commissioner Brown felt this would set a precedent for subdividing lots in subdivisions. He said he had also taken a pledge when he took his oath to support lower density.

Chairman Frady remarked that this subdivision was approved for 150 lots and there are only 145 lots. He said this Board would not be approving something that would exceed the 150 approved lots.

The motion carried 4-1 with Commissioner Brown voting in opposition. A copy of the request, backup and letter to petitioner, identified as "Attachment No. 2", follow these minutes and are made an official part hereof.

**2. Consideration of a Resolution No. 2011-03 and transmit the "Fayette County 2010 Annual Report on Fire Services Impact Fees (FY 2010), including the Comprehensive Plan amendments for updates to the Capital Improvements Element and Short-Term Work Program (FY 2011-FY 2015):**

Director of Community Development Pete Frisina remarked that Fayette County was required to do this annually and must account to the State of Georgia for the monies that have been collected and how the impact fees have been used. He said Fayette County was collecting impact fees in conjunction with the Tyrone, Brooks and Woolsey as well. He asked for the Board's consideration for approval of the transmittal package so that staff could send it to the Development of Community Affairs and the Atlanta Regional Commission for their review. He noted that Fayette County would have to adopt its portion by June 12<sup>th</sup>. He remarked that during the past year Fayette County had collected \$42,545 in impact fees and in the nine years that this program has been in place Fayette County has collected \$2.1 million for fire services.

Chairman Frady asked if anyone in the audience wished to speak in favor or in opposition of this item. Hearing none, he asked for the Board's pleasure in this matter.

Commissioner Horgan made a motion to approve and transmit the "Fayette County 2010 Annual Report on Fire Services Impact Fees for FY2010, including the Comprehensive Plan Amendments for updates to the Capital Improvements Element and Short-Term Work Program for FY2011-FY2015" and authorization for the Chairman to execute Resolution No. 2011-03 for submission to the Atlanta Regional Commission. Commissioner Brown seconded the motion, discussion followed.

Commissioner Brown noted for the record that the Board was given Resolution No. 2011-03 prior to the meeting tonight and would be made part of the packet and attachment to these minutes.

The motion carried 5-0. A copy of the request, backup and Resolution No. 2011-03, identified as "Attachment No. 3", follow these minutes and are made an official part hereof.

**PUBLIC COMMENT:**

**Robert Ross:** Robert Ross voiced opposition to Resolution No. 2010-22 proposing amendments to local legislation relative to the Board of Elections that was adopted by the Board on December 9, 2010. He said this Resolution required that political party nominees to the County Elections Board be subject to confirmation by the Board of Commissioners. He said when he had read this in the local newspaper, he was shocked that local officials would resolve such a measure to literally trample on the electoral process. He said he had spoken with the Henry County Director of Elections Janet Shellnutt who informed him that the Henry County Board of Elections has no veto authority now, nor in her 14 years in

office. A copy of his comment sheet, identified as "Attachment No. 4", follows these minutes and is made an official part hereof.

**David Wimmer:** David Wimmer commented on the East Fayetteville Bypass project. He noted that his background was in transportation and that he would be presenting the Board with additional information at the January 27<sup>th</sup> Board meeting.

**Steve Smithfield:** Steve Smithfield said it was his New Year's resolution to follow up on questions relating to open government that he felt needed some answers. He said he would be sending e-mails to various Commissioners requesting a short concise written reply. He said the questions would relate to issues that he believes prevent open government in Fayette County. He noted that there had never been any supporting data submitted for the West Fayetteville Bypass. A copy of Mr. Smithfield's comment sheet, identified as "Attachment No. 5", follows these minutes and is made an official part hereof.

**David Studdard:** David Studdard commented on Resolution No. 2010-22 relating to amendment of local legislation relative to the Board of Elections. He remarked that he was Chairman of the Fayette County Republican Party and also a member of the Board of Elections. He remarked that this was a dramatic step taken by the Board and he did not understand why it was taken. He said this Resolution was viewed as overreaching and he asked for the Board's consideration to rescind the Resolution.

**Andrea Lyle:** Andrea Lyle said she felt the Board of Commissioners was not in touch with the citizens of Fayette County when it comes to matters such as the West Fayetteville Bypass and the East Fayetteville Bypass and the unnecessary spending of taxpayers' dollars. She also commented that less than twenty citizens stopped by to talk with consultants as the signs advertising this opportunity last year were placed in locations less traveled where few people would even notice them. She also commented that the transportation survey and stated it was not located on the home page or the Board of Commissioners page but well buried on the County website.

**Paul Parchert:** Paul Parchert said he wanted to remind the new members of the Fayette County Commission of their campaign pledges and trust that they were men of honor and would honor those pledges to the best of their ability. He remarked that the three remaining commissioners would be gone in two years if they did not start listening to the citizens of Fayette County.

**Gordon Furr:** Gordon Furr commented on the West Fayetteville Bypass and said he considered it a waste of money. He also remarked that community sewer systems would bring high density. He asked the Board to keep the rural character of Fayette County and also keep the water drinkable.

**David Barlow:** David Barlow said he would like to make a comment about County Attorney Scott Bennett. He said it was his understanding that the County Attorney issued a comment to Robert Ross that Henry County was how Fayette County was going to run a particular election. He said Robert Ross had verified that this comment was false. He said he did not want that kind of counsel representing Fayette County. He said he wanted the record to reflect that he had picked up the gauntlet and was here to accept the challenge.

**Scott Bennett:** County Attorney Scott Bennett said he had made the statement regarding the Henry County Board of Elections and he stood by that comment. He remarked that Georgia Laws 1995, Volume 2 page 4198 originated in Senate Bill No. 95-402. He said this was the creation of the Henry County Board of Elections. He read this Bill into the record. He said the Henry County Board of Elections would consist of three members each of who shall be an elector and resident of Henry County and shall be appointed by the governing authority of Henry County. He said the governing

authority would be the Henry County Board of Commissioners. He said one member of the Board of Elections shall be a member of the political party which received the highest number of votes. He said one member of the Board of Elections shall be a member of a political party which received the second highest number of votes. He said each appointment pursuant to paragraphs 1 and 2 of this section shall be made from a list of candidates submitted to the governing authority. He said in Henry County the political parties submit candidates to the Board of Commissioners and the Board of Commissioners appoint them. He said this is how Henry County's local legislation is structured and how the Board of Elections was created. He said he had not given out false information. He said he had the local legislation on his computer and was looking at. He said he had done a lot of research and had done a lot of looking as to how other jurisdictions do it. He said he was asked to draw the ordinance the way it was drawn. He said he did not choose that method. He said he does not make decisions for the Board. He said he acts at the Board's direction. He said he wanted to be clear that he does not make things up and does not try to direct how things are done on this Board. He said when he said this was how Henry County does it, then that was how their law says they do it. He said whether they vary from the law or not, he did not know but he knows that is how it is drawn up. He said he had the legislation and would be glad to share it with anyone who asks.

**CONSENT AGENDA:** Commissioner Horgan made a motion to approve consent agenda items 3-10 as presented. Commissioner Hearn seconded the motion, discussion followed.

Commissioner Brown questioned item #3 if it had been discussed previously by the Board in a Workshop Meeting. County Attorney Scott Bennett replied that this was merely for re-codification purposes. Commissioner Brown asked if items #4, 5 and 6 would involve spending for the West Fayetteville Bypass. Mr. Krakeel responded that it was his understanding that these three items did reflect an annual contract in which the County would be procuring asphalt, milling services and concrete work for all projects including potential S.P.L.O.S.T. projects. Commissioner Brown said he was in favor of constructing the number one priority on the S.P.L.O.S.T. that was not constructed which was the East Fayetteville Bypass. He said he would be voting against the consent agenda because it would be a movement toward construction of the West Fayetteville Bypass which was a lower priority.

The motion carried 3-2 with Commissioner Brown and Commissioner McCarty voting in opposition.

**Ordinance no. 2011-01 - Amendment of the Fayette County Code Sign Ordinance:**

3. Approval of Ordinance No. 2011-01 which amends the Fayette County Code by adding the County's current Sign Ordinance, in its entirety, as Chapter 21 of the Code. A copy of the request, backup and Ordinance No. 2011-01, identified as "Attachment No. 6", follow these minutes and are made an official part hereof.

**Bid #768 - Asphalt Products to be used in Paving and Resurfacing Projects:**

4. Approval of staff's recommendation to award annual Bid #768 to two vendors, E.R. Snell Contracting, Inc. and C.W. Matthews, Inc. of Tyrone as primary and secondary vendors for various types of asphalt products to be used in paving and resurfacing projects in an annual amount not to exceed \$2,600,000. A copy of the request and backup, identified as "Attachment No. 7", follow these minutes and are made an official part hereof.

**Bid #769 - Atlanta Paving and Concrete Construction Awarded Contract for Asphalt Milling Services for Various Road Projects:**

5. Approval of staff's recommendation to award Bid #769 to Atlanta Paving and Concrete Construction for asphalt milling services for various road maintenance projects in an annual amount not to exceed \$75,000. A copy of the request and backup, identified as "Attachment No. 8", follow these minutes and are made an official part hereof.



**Bid #776 - Seaco, Inc. Awarded Contract for Liquid Asphalt Emulsion to be used in Resurfacing Projects:**

6. Approval of staff's recommendation to award Bid #776 to Seaco, Inc. as the primary vendor for Liquid Asphalt Emulsion to be used in resurfacing projects in an amount not to exceed \$45,000. A copy of the request and backup, identified as "Attachment No. 9", follow these minutes and are made an official part hereof.

**Water Committee Recommendation - Toilet Rebate Program Funding:**

7. Approval of Water Committee's recommendation to continue the Metropolitan North Georgia Planning District Toilet Rebate Program with an additional \$22,000 for funding. A copy of the request, backup and agreement, identified as "Attachment No. 10", follow these minutes and are made an official part hereof.

**Health Department - Reimbursement of Cost for Materials for Construction:**

8. Approval of staff's request to accept \$122 from the Health Department as reimbursement for the cost of materials for construction of a counter by the Building and Grounds Maintenance Department staff. A copy of the request, identified as "Attachment No. 11", follows these minutes and is made an official part hereof.

**Road Department - Repairs to Road Department Loader \$25,000:**

9. Approval of staff's request for \$25,000 in funding from the County's Contingency Fund as an amendment to the Road Department's FY 2011 Budget for repairs to a Road Department loader. A copy of the request and backup, identified as "Attachment No. 12", follow these minutes and are made an official part hereof.

**Water System - Transfer of Funds to Pay for Waterline**

10. Approval of staff's request to transfer funds in the amount of \$144,045 from the Special Purpose Local Option Sales Tax Fund Account as an amendment to the Water System's FY 2011 Budget to pay for a waterline relocation resulting from SPLOST Project 1-20, known as intersection improvements at State Route 92 and Hilo Road. A copy of the request and backup, identified as "Attachment No. 13", follow these minutes and are made an official part hereof.

**NEW BUSINESS:**

**Request received by County Administrator Jack Krakeel regarding the W.I.C. Office request for consideration to extend their facility hours of operation:**

County Administrator Jack Krakeel asked for consideration to approve a request that he had received earlier today from Ms. Denise Blanton who is the District IV Health Services Nutrition Manger for the Fayette County W.I.C. Program to extend the facility hours. He said with the weather closing the Health Department for three days, there was a backlog of clients that needed to be accommodated in order to fulfill the program requirements including initiation of vouchers for the procurement of formula and other items of nutrition associated with infants and children. He said the request was to extend the hours of operation for the W.I.C. Program from 5:00 p.m. to 7:00 p.m. for the balance of the month of January. He said this did not represent an expenditure of funds on behalf of Fayette County other than lighting. He was assured that Ms. Blanton would be on site from a supervisory perspective to ensure the County facility was maintained appropriately.

Commissioner Horgan made a motion to approve the request of the W.I.C. Office for extension of facility hours from 5:00 p.m. to 7:00 p.m. for the remainder of the month of January, 2011. Commissioner Hearn seconded the motion, discussion followed.

Commissioner Hearn questioned Mr. Krakeel as to when he had received this request. County Administrator Jack Krakeel replied that he had received a call this morning around 9:00 a.m. from the Business Manager for the Health

Department Merle Crowe who informed him that a request would be forthcoming. He said he then received an e-mail from Ms. DeNeese Blanton 9:00 a.m. this morning. Commissioner Hearn said this was the very type of item that the Board needed flexibility to forego the twenty-four hour notice for agenda items. He said action on this request was very important for the citizens of Fayette County.

Commissioner Brown remarked that the current policy states that an item must be put on the agenda two weeks prior to a meeting. He said it did allow for emergencies and an item could be added in the event of an emergency. He said some of the items that he had seen coming before the Commission in the past did not qualify as an emergency and could be submitted prior to twenty-four hours to the meeting date. He said the request tonight was an act of God where the facility was closed due to harsh weather conditions and involved mothers feeding their children. He said this request was a bonafide emergency and he wholeheartedly supported it.

The motion carried 5-0.

**OLD BUSINESS:**

**11. Consideration of Resolution No. 2011-02 regarding amendments to local legislation governing Fayette County's Magistrate Court:**

County Attorney Scott Bennett remarked that at the last Workshop Meeting the Board discussed making amendments to various parts of local legislation that created the Magistrate Court. He said the Chief Magistrate was present at that meeting and was also present this evening. He remarked that the judges had consulted with Superior Court Judge Chris Edwards and all agreed that the best policy at this time which was the request by the Magistrates would be to make two substantive changes to the local legislation. He said the first change would be to require that any person serving as a Magistrate would have to attain the age of 25 years, a citizen of the State of Georgia for three years, been admitted to practice law for seven years and was a member in good standing with the State Bar Association of Georgia. He said the only exception to that would be a judge who has previously served for a period of seven years as a Magistrate Judge. He said the second change would be to change the calculation of the Magistrate Judge's pay. He said currently it was a fixed amount in the local legislation and there was no opportunity for C.O.L.A. or any kind of pay adjustments. He said the request from the Magistrates was to tie their pay to Superior Court Judge base pay or 17% for the Chief Magistrate and 14% for the remaining Magistrates. He said the increase in pay for the Chief Judge would be approximately \$400 to \$500 per year and the increase in pay for the remaining Magistrates would be approximately \$1,000 per year. He said if this legislation was approved and signed by the Governor, it would not go into effect until July 1, 2011 at which time the County would be starting a new budget year. He asked for the Board's consideration to approve the Resolution for introduction into the General Assembly, staff could move forward with advertisements to have the Bill introduced in this General Assembly session.

Commissioner Brown asked Attorney Bennett to read the Resolution into the record and he did so.

Chairman Frady asked for the Board's pleasure in this matter.

Commissioner Horgan made a motion to adopt Resolution No. 2011-02 and to authorize the County Attorney to proceed with development of legislation amending the local legislation governing Fayette County's Magistrate Court to be introduced in the General Assembly and also for authorization for the Chairman to execute the Resolution. Commissioner Hearn seconded the motion. Commissioner Brown offered a friendly amendment clarifying that the documents to be forwarded include the latest version of The Bill to Be Enacted given to the Board this evening on the dais and was not the one included in the publicized meeting package. Commissioners Horgan and Hearn agreed to amend their motion and second accordingly. The motion carried 5-0. A copy of the request, the Bill to Be Enacted

received tonight, and Resolution No. 2011-02, identified as "Attachment No. 14", follow these minutes and are made an official part hereof.

**12. Consideration of staff's recommendation to award Proposal #P774 Library Expansion Construction to Trammel-Horton Contracting, LLC., in the amount of \$715,000 and authorization for the Chairman to execute the contract upon approval of the County Attorney:**

Director of Building and Grounds Maintenance Greg Ownby remarked that on October 6, 2010 the Board of Commissioners approved the construction for an addition of 1,000 square feet to the Library's meeting room and 4,200 square feet to extend the southeast side of the existing facility of the Fayette County Library. He said the Purchasing Department solicited proposals for RFP #P744 and ten proposals were received. He said staff unanimously recommended Trammel-Horton Contracting, LLC based on the evaluation criterion and the lowest proposed price of \$715,000. He said with most construction projects, the need to consider changes during construction would likely occur. He said he would also like the Board's input on how changes could be handled most efficiently and possibly that the County Administrator be authorized to approve any change orders that might arise. He asked for the Board's consideration to award Proposal #P774 Library Expansion Construction to Trammel-Horton Contracting, LLC in the amount of \$715,000 and authorization for the Chairman to execute the contract upon approval of the County Attorney.

Commissioner Horgan made a motion to approve staff's recommendation to award Proposal #P774 Library Expansion Construction to Trammel-Horton Contracting, LLC. In the amount of \$715,000; authorize the County Administrator to sign off on change orders within his legal threshold up to 5% of the amount which was \$35,750 to be set aside in the contingency fund; and authorization for the Chairman to execute the contract upon approval of the County Attorney. Commissioner Hearn seconded the motion. The motion carried 5-0. A copy of the request, backup and contract, identified as "Attachment No. 15", follow these minutes and are made an official part hereof.

Chairman Frady asked if there was any further business to come before the Board.

**COUNTY ADMINISTRATOR JACK KRAKEEL:** County Administrator Jack Krakeel requested an Executive Session to discuss real estate acquisition.

**COMMISSIONER BROWN:** Commissioner Brown remarked that because of the inclement weather that we have experienced, the Red Cross was in desperate need of all types of blood. He encourage everyone to contact neighbors and friends and have them contact the Red Cross at 1-800-RedCross to give blood.

**EXECUTIVE SESSION:**

Chairman Frady remarked that the Board would now adjourn to Executive Session to discuss real estate acquisition.

Commissioner Horgan made a motion to adjourn Executive Session and return to open session. Commissioner Hearn seconded the motion. The motion carried 5-0.

Chairman Frady reconvened the meeting and stated that staff had presented the Board with an item of land acquisition and the Board directed staff for the proper course to take.

Commissioner Hearn made a motion to authorize the Chairman to execute the Executive Session Affidavit affirming that real estate acquisition was discussed in Executive Session. Commissioner Horgan seconded the motion. The motion carried 5-0. A copy of the Executive Session Affidavit, identified as "Attachment No. 16", follows these minutes and is made an official part hereof.



**ADJOURNMENT:** Hearing no further business to come before the Board, Chairman Frady adjourned the meeting at 9:33 p.m.

  
\_\_\_\_\_  
Karen Morley, Chief Deputy Clerk

  
\_\_\_\_\_  
Herbert E. Frady, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 27<sup>th</sup> day of January, 2011.

  
\_\_\_\_\_  
Karen Morley, Chief Deputy Clerk

## INTRODUCTION TO PUBLIC HEARINGS

Thank you for your attendance at this Public Hearing Session which is conducted before the Fayette County Board of Commissioners. Fayette County ordinances require two public hearings before a vote is taken by the Board on either rezoning of property or amendments to County ordinances. The first of the two hearings is held before the Planning Commission and the second before the County Commissioners. This is the second of those public hearings. At this hearing the Board will listen to the concerns of those in favor and those opposed to a rezoning petition or ordinance amendment.

For rezoning petitions, the petitioner or his designated representative, along with anyone who wishes to voice support for the petition will be given a total of 15 minutes to present the details of the request and comments of support. The petitioner or his designated representative may reserve any portion of the allotted 15 minutes for rebuttal of any opposition comments. A total of 15 minutes will be given to those in opposition to the rezoning petition to present their position. It is important for each side to have equal time, so time restraints will be adhered to. In fairness, those with comments should keep their presentation brief, and groups should select a spokesperson so many different viewpoints will have the chance to be heard.

The Chairman will ask, in turn, for each group to come to the podium to speak. When it is your turn to speak, please tell the Board your name and address and direct your comments directly to, and only to, the Board. If you have materials such as petitions or photographs for the Board, those should be given to the Marshal who will distribute them to the Board. Since these hearings are part of a permanent record, we ask that you speak clearly into the microphone so your comments are properly recorded and can be heard by those in attendance. **After you have finished speaking**, please complete the sign-in sheet located near the Marshal so your name is spelled correctly for the record.

Again, thank you for your participation. The first item is.....

# Exhibit “D”



**IN THE SUPERIOR COURT OF UNION COUNTY  
STATE OF GEORGIA**

ALLISON OUTDOOR ADVERTISING, L.P.,

Petitioner and Plaintiff,

v.

CITY OF BLAIRSVILLE, GEORGIA, and  
RHONDA MAHAN, BOB WOOD, JANE  
THOMPSON, BUDDY MOORE, and TONY  
DYER, in their official capacities as City  
Council members,

Defendants,

and

BLAIRSVILLE CITY COUNCIL,

Respondent.

CIVIL ACTION

FILE NO. 11-CV-487-MM

**ORDER**

This matter is before the Court on Plaintiff's Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment. A hearing on the motions occurred on March 28, 2012. Having considered the parties' briefing and evidence, as well as the arguments asserted at the hearing, this Court finds as follows:

I. **Background.** The relevant facts of this case are largely undisputed. Plaintiff Allison Outdoor Advertising, LP ("Allison") is a sign company that has been in business in Union County since 1958. Allison owns a few existing signs located inside the municipal limits of Defendant City of Blairsville ("City"). However, because these signs are "sold out" and there is a demand from local advertisers for more inventory, Allison desires to erect additional signs in the City.

On February 25, 2011, after reaching lease agreements with local property owners, Allison submitted applications to post six new signs in the City. Via six letters dated March 2, 2011, the City notified Allison that its applications had been denied pursuant to the Sign Ordinance. The City did not satisfy the notice or public hearing requirements of O.C.G.A. § 36-66-4(a) (hereinafter referred to as the "Zoning Procedures Law" or "ZPL") prior to adopting the Sign Ordinance.

On March 15, 2011, Allison filed for administrative appeals of the six denials arguing that the Sign Ordinance was void both because it (i) failed to comply with the ZPL and (ii) was constitutionally deficient. On June 7, 2011, the City Council heard Allison's appeals. On July 7, 2011, the Council voted to deny Allison's appeals on the ground that the proposed signs violated the Sign Ordinance.

Thereafter, Allison timely sought a writ of certiorari from this Court to review the denial of the six sign applications. At the same time, Allison also filed a complaint for declaratory judgment, mandamus, and damages against the City.

**II. Standard for Summary Judgment.** In order to prevail on a motion for summary judgment, the moving party must make a showing that "there is no genuine issue of material fact, and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." Lau's Corp. v. Haskins, 261 Ga. 491 (1991); also O.C.G.A. § 9-11-56(c). Summary judgment is an appropriate method for evaluating whether an ordinance is void because it fails to comply with the ZPL. E.g., C&H Development Co. v. Franklin County, 294 Ga. App. 792, 792-93 (2008).

III. Analysis. O.C.G.A. § 36-66-4(a) requires that:

A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

Id. O.C.G.A. § 36-66-3(4) lists several activities which qualify as “zoning decisions” for purposes of the ZPL. One such activity is the adoption of a zoning ordinance. Id. at § 36-66-3(4)(A). The question that the Court must address in this case is whether the City’s Sign Ordinance qualifies as a “zoning ordinance,” such that it is subject to the ZPL’s notice and public hearing requirements.

A “zoning ordinance” is defined by the ZPL as:

an ordinance or resolution of a local government establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts.

See O.C.G.A. § 36-66-3(5).

The Court has carefully reviewed the language of the Sign Ordinance. This Ordinance essentially divides the City into two districts: (i) those properties located in the “Downtown Development District” (“DDD”) and (ii) those properties located outside the DDD. See generally Sign Ordinance. The Sign Ordinance then applies differing standards depending on the district in which a particular property is located. Specifically, the Ordinance regulates signage differently depending on whether the sign will be located inside or outside the DDD. Id. at §§ 6.2(B); 7.1(1); 7.1(3); 7.1(4); 7.1(5) 7.6(1); 8.7; 8.8; 11.6(1). Nearly every aspect of a sign – to include size, height, type, and illumination – is determined by whether the property is located inside or outside the DDD. The City was quite open in the Sign Ordinance about its intent to regulate signs differently in the DDD:

The Mayor and Council of Blairsville, Georgia find that development in the Downtown Development District (DDAD) is unique from other areas of the City due to its history, architecture, cultural heritage and integrity; its substantial contribution to the economic vitality of the City of Blairsville; the compactness of the buildings and businesses in the district; the geometry of public road intersections; and the special mixture of pedestrian and slower speed vehicular traffic.

Id. at § 2.1(4). The DDD encompasses a large portion of the City, including at least two of Allison's sign sites. The Ordinance also makes further distinctions between properties located inside or outside the DDD depending on whether they are residential or non-residential. E.g., id. at §§ 7.1(4); 7.7; 8.6(1)(a)-(b); 8.10; 9.5; 11.1-11.8.

The Court finds the Blairsville Sign Ordinance to be very similar to the sign ordinance that was considered in City of Walnut Grove v. Questco, Ltd., 275 Ga. 266 (2002). There, the Supreme Court noted: "Clearly, sign ordinances may be subject to the ZPL when they are drafted in such a manner as to regulate the uses and development standards of property, i.e., signs, by means of zones or districts." Id. The court then concluded that the Walnut Grove sign ordinance was indeed subject to the ZPL because it allowed property owners to install different types of signs depending on the district in which the property was located. 275 Ga. at 266-67.

The City argues that its Sign Ordinance is more akin the tree ordinance considered in Greater Atlanta Homebuilders Association v. DeKalb County, 277 Ga. 295 (2003). In Greater Atlanta Homebuilders, the court considered a 144-page tree ordinance to determine whether it was a zoning ordinance for purposes of the ZPL. 277 Ga. at 295-96. With very little analysis, the court found that the ordinance's three limited references to zones or districts were not sufficient for the tree regulations to be classified as a zoning ordinance. Id. at 296 (finding that the tree ordinance "contains only three references to zones or districts").



The Court is not persuaded by the City's position. Here, on at least 13 occasions in the 27-page Sign Ordinance (which only regulates signs on pages 8-17), different restrictions are imposed on signs depending on whether they are located in the DDD. The Sign Ordinance does not hide its intent to regulate signs differently in that district. See Sign Ordinance, § 2.1(4). Differing restrictions include sign height, size, type, technology, illumination, and total allowable area and size per property. The code was "drafted in such a manner as to regulate the uses and development standards of property, i.e., signs, by means of zones or districts" and thus the ZPL applies. Questco, 275 Ga. at 266.

It is undisputed that the City failed to comply with the ZPL's notice and public hearing requirements prior to adopting the Sign Ordinance. As a result, the Ordinance was a nullity at the time Allison's applications were submitted. E.g., Atlanta Bio-Med, Inc. v. DeKalb County, 261 Ga. 594, 595-96 (1991) (holding that procedures provided by Section 36-66-4(a) "must be followed when passing or rescinding a text amendment of general application"); Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 155 (1991) (county's failure to comply with ZPL voids the ordinance); McClure v. Davidson, 258 Ga. 706, 710 (1988); Yost v. Fulton County, 256 Ga. 324, 325 (1986). The City has subsequently passed a sign code in conformance with the ZPL, so the Court's ruling does not extend to the current sign regulations.

Because the Sign Ordinance is procedurally invalid, there were no City sign restrictions in place at the time Allison submitted its sign applications. As such, Allison is entitled by law to proceed with the proposed signs. E.g., Tilley Properties, 261 Ga. at 153; Davidson Mineral Properties v. Monroe County, 257 Ga. 215 (1987); Sikes v. Pierce, 212 Ga. 567 (1956).

WHEREFORE, IT IS HEREBY ORDERED that:

1. Defendants' Motion for Summary Judgment is DENIED;
2. Plaintiff's Motion for Partial Summary Judgment is GRANTED;
3. Defendants shall allow Plaintiff to post and operate the signs for which it has brought this action and shall complete any local paperwork necessary to obtain state permits for the signs (e.g., Banks County v. Chambers of Ga., Inc., 264 Ga. 421, 422-23 (1994)); and
4. Discovery is reopened as to all remaining claims for a period of 90 days.

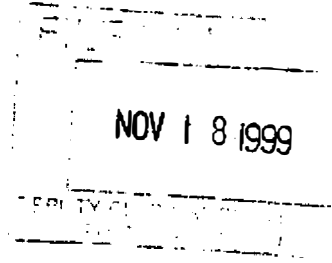
IT IS SO ORDERED, this 23rd day of April, 2012.

  
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Robert B. Struble, Senior Judge  
Sitting by Designation

# Exhibit “E”

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA



SMD, L.L.P. and LIABILITY LIMITED, INC.,

Plaintiffs,

v.

CITY OF ROSWELL, GEORGIA
M.L. MABRY as an individual and in his capacity as MAYOR OF THE CITY OF ROSWELL, EDWIN TATE, TERRY JOYNER, STEVE DORVEE, CATHERINE HIBBARD, JERRY ORLANS and SALLY WHITE as individuals and in their capacities as MEMBERS OF THE CITY COUNCIL, KRISTEN RILEY in her capacity as a MEMBER OF THE CITY COUNCIL OF THE CITY OF ROSWELL and ALAN GOINGS in his capacity as BUILDING INSPECTOR FOR CITY OF ROSWELL,

Defendants.

CIV. ACTION FILE NO. E-65358

ORDER

The above-styled case is before the Court on Plaintiffs' motion for summary judgment and Defendants' cross motion for summary judgment. After hearing oral argument and reviewing all matters of record, the Court hereby GRANTS, in part, Plaintiff's motion for summary judgment and GRANTS Defendants' cross motion as it pertains to qualified immunity.

Plaintiff SMD, L.L.P., and Plaintiff Limited Liability lease land and build billboards to display commercial and noncommercial speech. In the spring and summer of



1997, Plaintiffs contracted with a number of people within the city of Roswell to erect billboards on certain properties. Billboard usage in the City of Roswell is controlled by the city's sign ordinance.

As required by the ordinance, Plaintiffs submitted applications to the office of the administrative inspector. The applications were summarily denied and Plaintiffs appealed the denial to the City Design Review Board and the City Historic Preservation Commission, respectively. In August 1997, the two groups heard and denied the applications for the sign permits. Plaintiffs appealed those decisions to the mayor and the city council. A hearing was scheduled for November, but was rescheduled to comply with public notice requirements. In October 1997, the Roswell city council, without public notice, amended the sign ordinance. The mayor and city council denied Plaintiffs' appeals on December 1, 1997. Plaintiffs then filed their Complaint requesting this Court invalidate the sign ordinance as unconstitutional.

Georgia courts have long held that summary judgment is the appropriate method for evaluating constitutional issues. Williams v. Trust Co. of Georgia, 140 Ga. App. 49 (1976). In order to prevail on a motion for summary judgment, the moving party must make a showing that "there is no genuine issue of material fact, and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." Lau's Corp. v. Haskins, 261 Ga. 491 (1991).

Plaintiffs complain the sign ordinance as a whole and specific sections of the ordinance in particular, violate Plaintiffs' First Amendment rights to the dissemination of constitutionally protected commercial and noncommercial speech. Defendants respond that even though sections of the ordinance may be unconstitutional, the ordinance, as a whole, is not.

Furthermore, Defendants contend the sections of the ordinance which may have been unconstitutional have been amended, thereby curing any defect in the statute.

Plaintiffs argue the controlling ordinance is the pre-amendment ordinance because as an actual applicant seeking to alter the use of their land they possessed a vested right to consideration of the application under the statutory law then in existence. Recycle & Recover, Inc. v. Georgia Board of Natural Resources, 266 Ga. 253 (1996). The pre-amendment ordinance allowed for the possibility of variances related to the size of the sign and the city may have been required to grant plaintiffs a variance from the restrictions of the ordinance. See Village Centers, Inc. v. DeKalb County, et al., 248 Ga. 177, 178 (1981). Before the final review of the applications, the city changed the ordinance to prevent any size related variances. Plaintiffs have a vested right in proceeding under the pre-amendment ordinance. Recycle & Recover, Inc., 266 Ga. at 254.

Furthermore, the amendments are not relevant to Plaintiffs' applications because the city failed to comply with O.C.G.A. § 36-33-4 and provide the public notice of any hearing where the city intended to amend the ordinance. McClure, et. al, v. Davidson, et. al, 258 Ga. 706, 709 (1988). The sign ordinance clearly falls within the definition of a "zoning" ordinance because the sign ordinance regulates uses within various zones of the city. O.C.G.A. § 36-66-3 (3). The city failed to comply with the hearing requirements of the statute in passing the amendments. As such, the amendments to the sign ordinance are a nullity and the pre-amendment ordinance is applicable to Plaintiffs' applications. McClure, 258 Ga. at 710. See also Grove, et. al, v. Sugar Hill Investment Associates, et. al., 219 Ga. App. 781 (1995).

It is well established the state can regulate the dissemination of commercial and non-commercial speech. Metromedia Inc, et. al. v. City of San Diego, et. al., 453 U.S. 490 (1981). That regulation, however, must be tempered by First Amendment constitutional concerns. Id.

A restriction of commercial speech is invalid unless it seeks to implement a substantial governmental interest, directly advances that interest, and reaches no further than necessary to accomplish the given objective. Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n., 447 U.S. 557 (1980). The burden rests on Defendants to show the validity of the ordinance. Edenfield v. Fane, 507 U.S. 761 (1993).

The Central Hudson case requires state actors to make some showing of what interests the state sought to protect or implement when passing the restrictive legislation. Adams Outdoor Advertising, et. al. v. Fulton Co., 738 F. Supp. 1431, 1433 (1990). This showing can be made either through a purpose clause, findings of fact, or some extrinsic evidence to show the intent of the city council at the time of passage. Id.

Defendants argue the sign ordinance does have a purpose clause, but the clause was simply omitted when the ordinance was codified and published. The purpose clause, Defendants contend, is to be found within the preambles to the 1977 sign ordinance and the 1982 amendment to that ordinance. The 1988 version, Defendants urge, is a mere codification of prior ordinances in which the city sought to advance the substantial state interests of public safety and aesthetics. The Court finds the argument to be unsupported by the record. The 1988 version is different from the 1977 version in many respects, both in the number of restrictions,

kinds of restrictions and method of review for denial of permits. It is clear the 1988 version is substantially more restrictive than the ordinance it replaced.

As such, there is nothing before the Court to show what interests the city sought to implement when passing a more restrictive ordinance in 1988. Defendants are asking the Court to assume what the interests are, without presenting any evidence to support their argument. Adams Outdoor Advertising of Atlanta, Inc., 738 F. Supp. at 1433. The Court must conclude the ordinance fails the Central Hudson commercial speech test and is therefore an unconstitutional restriction on the dissemination of protected speech. Dills v. City of Marietta, 674 F.2d 1377 (11<sup>th</sup> Cir. 1982), cert. denied, 461 U.S. 905 (1983). Compare State of Georgia v. Café Erotica, 270 Ga. 97 (1998).

Because Defendants have failed to satisfy the Central Hudson test, the Court does not need to reach any additional conclusions. The Court finds, however, assuming arguendo the 1977 preamble applies to the 1988 ordinance, Defendants have failed to show why the governmental interests claimed were not served by the less restrictive ordinance already in place. Central Hudson, 447 U.S. at 570.

In addition to impermissibly restricting commercial speech, the ordinance also restricts noncommercial speech. Restrictions on noncommercial speech, whether content based or content neutral, are subject to a more stringent standard than regulations on commercial speech. See Chambers v. Peach County, 266 Ga. 318, 319 (1996); Perry Educ. Ass'n v. Perry Local Educ.'s Ass'n, 460 U.S. 37, 45 (1983). As discussed above, Defendants have presented no evidence of any governmental interest being served by the restrictions in the 1988 sign



ordinance. The sign ordinance is an unconstitutional restriction on noncommercial speech. See Chambers, 266 Ga. at 319. The ordinance must be stricken in its entirety.

Alternatively, assuming Defendants have shown proper purposes, Plaintiffs contend several specific sections of the ordinance which go directly to the core of the contended purposes are unconstitutional and not severable thereby rendering the entire ordinance unconstitutional.

The sign ordinance prohibits all "off premises signs" except for three exceptions and is similar to language found to be unconstitutional by the Georgia Supreme Court. Union City Board of Zoning Appeals et al. v. Justice Outdoor Displays, Inc., 266 Ga. 393 (1996).

Also, as in Justice Outdoor Displays, the Roswell ordinance effectively bans non-election ideological signs and is unconstitutional. Id. at 399, 401. These sections violate the constitutions of Georgia and of the United States, however, the Georgia Supreme Court has found similar sections to be severable and the entire ordinance need not necessarily be stricken because of these violations. Id.

However, the ordinance must be stricken in its entirety because certain sections work in conjunction to ban personal expression signs within residential zones of the city. Section 2 ½ - 35 expressly prohibits signs unless specifically permitted by the ordinance. Section 2 ½ - 36(1) lists the types of signs permitted in residential zones in the city. The list does not include signs containing noncommercial content. As such, the sections violate the constitutions of Georgia and of the United States and must be stricken because they exclude noncommercial ideological signs from residential zones while permitting similar size commercial signs. Justice Outdoor Displays, 266 Ga. at 396.

With § 36 (1) stricken, the rest of the ordinance must fall for two reasons. First, if the Court were to simply sever the section, the remaining ordinance would be more restrictive of speech than was intended by the city. See Rappa v. New Castle County, 18 F.3d 1043 (3d Cir. 1994). Second, in addition to favoring commercial speech over noncommercial speech, § 36 (1) is a time, place, manner regulation. Without the section, the ordinance does not regulate signs within the residential zones at all, a conclusion clearly not within the council's intent when passing the legislation. Compare Justice Outdoor Displays, 266 Ga. at 404.

The ordinance also must be stricken in its entirety because the "amortization schedule" in the ordinance amounts to a taking of property without compensation and is unconstitutional. Lamar Advertising v City of Albany, 260 Ga. 46 (1990). In Lamar Advertising, the Georgia Supreme Court held that the provision for the amortization of signs was "at the core of the ordinance's general purpose" and the entire ordinance had to be stricken. Id. at 47. There, the general purpose of the ordinance was found to be preventing the proliferation of signs within the city and eliminating those that, under the prior ordinances, were lawful. Id. Given the assumed purposes, as stated in the 1977 ordinance, along with the inclusion of the provision to remove the nonconforming signs, Roswell had the same general purpose in mind. The entire scheme must be stricken as unconstitutional. Id.

The ordinance must also be stricken in its entirety because city officials have an unspecified amount of time to make permit decisions. Bo Fancy Productions, Inc. v. Rabun County Bd. of Comm's., 267 Ga. 341 (1966). The ordinance provides that once a permit is denied by the administrative inspector and the denial is appealed, the subject review board has a specific time in which to hear the review and issue a ruling. There is nothing in the ordinance

which provides for a period in which the administrative inspector must make the initial decision to issue or deny the permit and is therefore an unconstitutional prior restraint. Id. For this reason, where one of the assumed purposes of the ordinance is to promote fair guidelines for the placement of signs, the ordinance must be stricken in its entirety. See Lamar Advertising, supra.

Finally, assuming the 1977 ordinance general purposes applied to Plaintiffs, the ordinance must be stricken in its entirety because several sections of the sign ordinance unconstitutionally favor noncommercial speech of select religious and community organizations. See National Advertising Co. v. Town of Babylon, 703 F. Supp. 228 (E.D.N.Y. 1989); Rappa v. New Castle County, 18 F.3d 1043 (3d Cir. 1994). The ordinance allows for church bulletins in residential zones of the city when the ordinance excludes other forms of noncommercial speech such as the personal ideological views of residents.

The preference for religious based speech over other forms of ideological speech cannot stand without the state showing a substantial governmental interest in preferring religious speech. See Desert Outdoor Advertising Co. v. City Moreno Valley, 103 F.3d 814 (9<sup>th</sup> Cir. 1996).

Even if the Court were to find the preference subject to equal protection analysis because a church is permitted to express an opinion where an individual cannot express the same opinion, the preference cannot stand. See Justice Outdoors, 266 Ga. at 400. The classification does not bear a rational relationship to any legitimate government purpose either expressed in the assumed purposes of the ordinance or which the Court can fathom. See Levitt v. Committee for Pub. Educ., 413 U.S. 472 (1973). The preference is unconstitutional and the ordinance must be stricken in its entirety. Rappa v. New Castle County, supra.

Plaintiffs allege many of the Defendants are individually liable for not granting the permits. Public officials are entitled to qualified immunity unless the plaintiffs prove that a reasonable public official could not have believed that his or her actions were lawful in light of clearly established law. Board of Commissioners of Effingham County v. Farmer, 228 Ga. App. 819 (1997).

It appears the central issue surrounding the denial of the applications was not the content of the signs, but rather the size of the signs. In that regard, it cannot be said that it is well established that the size limitations could not be severed from the rest of the ordinance. See e.g., Justice Outdoors, *supra*. Summary judgment is granted to Defendants on the issue of qualified immunity.

As a separate matter, Plaintiffs complain the "historical guidelines" used by the Roswell Historical Preservation Commission to issue certificates of appropriateness before any change in external environmental features may be made within the boundaries of the Roswell historic district is unconstitutional. Plaintiffs argue the determination of appropriateness is unconstitutional where the applicant must state the type and purpose of the sign as required by the ordinance. The Court disagrees with Plaintiffs interpretation of the statute.

The requirement of listing the type and purpose of the sign on an application does not provide city officials with unconstitutional discretion. Seav v. Cleveland, 228 Ga. App. 836 (1998). Section 765.11 of the Historic Ordinance regulates the size and style of structures within a designated "historic district." The Court finds the restrictions to be part of a reasonable landmark preservation law. See Outdoor Svstems v. Citv of Atlanta, 885 F. Supp.



1572, 1580 (N.D. Ga. 1995). Summary judgment is granted to Defendants regarding the issue of the constitutionality of the certificate of appropriateness.

IT IS HEREBY ORDERED judgment is entered in favor of Defendants on the issue of qualified immunity and the constitutionality of the Historic Preservation Commission's certificate of appropriateness and judgment is entered in favor of Plaintiffs on the issue of the constitutionality of the sign ordinance.

IT IS HEREBY ORDERED that Defendants are permanently enjoined from enforcing the existing Roswell sign ordinance as it pertains to Plaintiffs and shall permit Plaintiffs to construct and operate each and every sign outside the Roswell Historic District for which they have brought this action.

IT IS FURTHER ORDERED that Plaintiffs are entitled to attorney's fees pursuant to 42 U.S.C. § 1988 and a hearing will be conducted consistent with the procedures outlined in Hensley v. Eckerhart, 461 U.S. 424 (1983).

SO ORDERED AND ADJUDGED this 18<sup>th</sup> day of November, 1999.

  
MELVIN K. WESTMÖRELAND, JUDGE  
FULTON COUNTY SUPERIOR COURT

# Exhibit “F”

## AGREEMENT

This Agreement is made and entered into by and between Curtis "Bubba" Coffey ("Coffey"), Wayne Charles ("Charles"), and Tanner Advertising Group, L.L.C. ("Tanner") (collectively Plaintiffs) and the Fayette County, Georgia ("County") and Chris Cofty ("Cofty").

WHEREAS Coffey was a resident of the County who was cited for violating the County's former sign ordinance; and

WHEREAS Charles was a resident of the County during the time that the County was enforcing its former sign ordinance; and

WHEREAS Tanner submitted several sign applications to the County for outdoor advertising signs pursuant to the County's former sign ordinance; and

WHEREAS Plaintiffs have filed Civil Action No. 2004V-0754(E) in the Superior Court of Fayette County (the "Lawsuit") and have prosecuted it through three orders by the Superior Court and three appellate decisions by the Georgia Supreme Court and Court of Appeals; and

WHEREAS the Parties seek to resolve all disputes between them in their entirety.

THEREFORE, in light of the foregoing and based upon the exchange of valuable consideration by and between the parties to this Agreement – including the County's agreement to allow two new advertising signs, the payment of certain monies, and the waiver of certain legal claims as set forth below – the Parties to this Agreement hereby agree as follows:

Each of the respective Parties to this Agreement hereby mutually releases and forever discharges each of the other Parties to this Agreement and all of such Parties' successors, assigns, agents, affiliates, officers, directors, employees, representatives, insurers, and attorneys and each of them of and from any and all claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys' fees, actions and causes of action, of every nature, character and description, known or unknown, which any of the respective Parties to this Agreement, now own or hold or may have at any time heretofore owned or held, or may at any time own or hold against any other Party to this Agreement with respect to the Lawsuit, excepting enforcing this Agreement. This Agreement does not restrict either Party, or any of their successors or assigns, from enforcing this Agreement.



Plaintiffs further agree to the following:

- They will dismiss with prejudice the Lawsuit within three business days after Defendants sign this Agreement; and
- Tanner agrees that no sign built pursuant to this Agreement will be utilized to post messages advertising adult entertainment establishments, strip clubs, lingerie modeling, or other adult subject-matter.

The County further agrees to the following:

- It will, within 30 days, issue a check made payable to Curtis Coffey in the amount of \$5,000; and
- It will, within 30 days, issue a check made payable to Webb, Klase & Lemond, L.L.C. in the amount of \$50,000; and
- It will allow Tanner to post two double-sided advertising signs. Each sign will have advertising display areas measuring 672 square feet (14' x 48') or smaller. Total height of the signs will not exceed 50 feet above road grade. Setbacks from highway right-of-way will be no less than five feet. One sign will be erected along Hwy. 85 at 145 Walker Parkway (Autofixx, Inc.). The second sign will be erected on a commercial or industrial parcel adjacent to the west side of Hwy. 85 within 2000 feet of the intersection of Hwy. 85 with Ga. 279. This sign must be oriented to be read by motorists on Hwy. 85. No portion of the sign shall be oriented toward Hwy. 279. Tanner shall be allowed to submit for permits for each sign within one year of the date of this Agreement. If either of these permits is not applied for within one year, Tanner's ability to erect a sign at that location is waived and no further sign may be erected under this Agreement. Each sign shall be allowed to utilize tri-vision displays on both of its sides. No LED display is permitted on either sign; and
- The County agrees that any and all necessary permits or inspections – such as sign permits, building permits, or electrical permits – for the signs will be issued or completed promptly but in no case longer than ten business days after Tanner's request for same; provided Tanner's application is complete and provides necessary information to ensure compliance with building and electrical codes. The County hereby agrees to complete the necessary portions of any applicable State Department of Transportation forms to allow the signs pursuant to this Agreement. Such certification must be made and the forms returned, if not at the time of submission, within ten business days.

This Agreement sets forth all, and is intended to be an integration of all, of the covenants, promises, agreements, warranties, and representations among the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreement, warranties, representations, or other understandings, oral or written, express or implied, among them relating to any and all disputes that exist or might exist between the parties. This Agreement constitutes the entire agreement between the Parties.



This Agreement represents the compromise of doubtful claims and is not an admission of liability by any Party.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the parties.

No presumption against or in favor of any person or party shall apply due to the drafting of this document.

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: April \_\_, 2008.

By: \_\_\_\_\_  
Debra Angelé Wright  
On Behalf of Curtis "Bubba" Coffey  
(see attached power of attorney)

DATED: April 15, 2008.

By: Wayne Charles  
Wayne Charles

DATED: April \_\_, 2008.

By: \_\_\_\_\_  
Michael Chordegian  
On Behalf of Tanner

Its: Owner

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: April \_\_, 2008.

By: \_\_\_\_\_  
On Behalf of the County

Its: County Administrator

DATED: April \_\_, 2008.

By: \_\_\_\_\_  
Chris Cofty

This Agreement represents the compromise of doubtful claims and is not an admission of liability by any Party.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the parties.

No presumption against or in favor of any person or party shall apply due to the drafting of this document.

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: April \_\_, 2008.

By: \_\_\_\_\_  
Debra Angelé Wright  
On Behalf of Curtis "Bubba" Coffey  
(see attached power of attorney)

DATED: April \_\_, 2008.

By: \_\_\_\_\_  
Wayne Charles

DATED: April \_\_, 2008.

By: Michael Chordegian  
Michael Chordegian  
On Behalf of Tanner

Its: Owner

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: April 24, 2008.

By: David R. Smith  
On Behalf of the County  
Chairman  
Its: County Administrator Commission

DATED: April 24, 2008.

By: Chris Cofty by Leg  
Chris Cofty



This Agreement represents the compromise of doubtful claims and is not an admission of liability by any Party.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the parties.

No presumption against or in favor of any person or party shall apply due to the drafting of this document.

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: April 16, 2008. By: Debra Angelé Wright  
Debra Angelé Wright  
On Behalf of Curtis "Bubba" Coffey  
(see attached power of attorney)

DATED: April \_\_, 2008. By: \_\_\_\_\_  
Wayne Charles

DATED: April \_\_, 2008. By: \_\_\_\_\_  
Michael Chordegian  
On Behalf of Tanner  
Its: Owner

REVIEWED, APPROVED, AND ACCEPTED BY:

DATED: April \_\_, 2008. By: \_\_\_\_\_  
On Behalf of the County

Its: County Administrator

DATED: April \_\_, 2008. By: \_\_\_\_\_  
Chris Cofty



POWER OF ATTORNEY

CURTIS WAYNE COFFEY, JR.

to

DEBRA ANGELE WRIGHT

BECK, OWEN & MURRAY  
ATTORNEYS AT LAW  
GRIFFIN, GEORGIA



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, **CURTIS WAYNE COFFEY, JR.**, of SPALDING County, Georgia, do hereby appoint and constitute **DEBRA ANGELÉ WRIGHT**, my friend, my true and lawful attorney-in-fact (or agent), for me, and in my name, place and stead and for my own proper use and benefit:

To take charge and possession of all of my property, being any and all real property of every kind and description and wherever located that I may now own or may hereafter acquire, expressly including all of my right, title and interest, present and future, (and including condominium and leasehold interests), in such real property and all improvements thereon and appurtenances thereto, and in addition thereto all of my personal property, of every kind and description and wherever located, including all money and property now or hereafter deposited in, or being held for me by, any bank, savings and loan association, or other depository and now or hereafter kept or stored in any safe deposit box or boxes at any such bank, association or other depository rented or held by me individually or jointly with another person or persons (including the right to enter any such box or depository and to remove therefrom, or place therein, money, documents or other property), and any and all stocks and stockholdings of any corporation that I now have, or may hereafter acquire, and all bonds, securities, commodities and contracts that I now have, or may acquire, and expressly not excluding any of my property, real or personal, or any right, title or interest in such property that I now have or may hereafter acquire, and to enter upon and take possession of any lands, tenements and hereditaments that may belong to me, or to the possession of which I may now or hereafter be entitled; and

To hold, improve, manage, repair, insure, cultivate, rent, lease, subdivide, mortgage, pledge, encumber, transfer, invest or reinvest, sell, convey, impose restrictions and covenants upon, control and dispose of any part or all of my real property and to hold, improve, manage, repair, insure, rent, lease, assign, invest or reinvest, mortgage, encumber, pledge, sell, transfer, deliver, control and dispose of all, or any part, of my personal property, and to purchase, receive, and otherwise acquire property, real or personal, for me, all within my said agent's sole discretion and judgment and in the manner and at the time or times desired by my agent;

To demand, collect and receive any rents, profits, interests, dividends, rights (stock rights), issues or income for any and all of such property, or any part or parts thereof;

To pay any and all taxes, charges and assessments that may be levied, assessed or imposed upon any of my aforesaid property, real or personal, and to file any and all kinds of tax returns with such documents, affidavits or instruments incidental thereto as my agent may deem necessary and to make claims for any and all refunds for taxes with such supporting documents, affidavits or instruments thereto as my said agent may deem necessary;

To vote in person or by proxy any corporate stock or other security held by me or registered in my name and agree to or take any other action in regard to any reorganization, merger, consolidation, liquidation, bankruptcy or other procedure or proceeding affecting any of my stocks, stock rights, dividends, bonds, notes or other properties;

To register any stock, bond, option, right or other security in my said agent's name, or the name of another person or corporation as a nominee, without the addition of words indicating that such stock, bond or security is held in a fiduciary capacity, and to buy, sell (including short sales) and trade my stocks, bonds, options, rights or other securities, on margin or otherwise according to my agent's sole discretion and on such other terms and conditions for my account and risk as my agent may deem appropriate in the sole discretion of my said agent;

To renew any indebtedness, as well as to borrow money in my name and to secure the same by mortgaging, pledging or conveying any part of my property now owned or hereafter acquired by me;

To take charge and possession of any money that I may now have or may hereafter acquire, wherever deposited, invested or located, and to expend, withdraw or disburse any such money as my agent may deem necessary or convenient and to make, execute, endorse, accept, collect and deliver any and all bills of exchange, checks, drafts, notes and trade acceptances;

To obtain insurance of any kind, nature or description, whatsoever, expressly including any and all types of insurance on me, my life, my health and well-being, or on any person in whom I may have an insurable interest or on any property in which I may own or have an insurable interest, and to make, execute and file proof or proofs of any and all losses sustained or claimable thereunder as well as any other instrument in and about the same, and to make, execute and deliver receipts, releases, or other discharges therefor; and with respect to any



insurance of whatsoever nature, or any combination, of the foregoing, of which I am now or may hereafter be the insured, the owner or beneficiary, to elect to take and to receive all or part of the loan values of any such policies or the cash surrender values thereof, to elect any other nonforfeiture provision thereof, including paid-up and continued insurance, to receive dividends thereunder in cash or as paid-up additions, to elect any other disposition thereof, and to demand and receive the endowment value of any endowment policy maturing according to its terms or any other sums which may become due under said policies or any agreements supplementary thereto (other than sums payable by reason of my death);

To demand, sue for, collect, recover and receive all goods, claims, debts, monies, interest, dividends, stock rights, demands, proceeds and benefits whatsoever now due or that may hereafter be due or belong to me, including claims for benefits or payments due to me by any State of the United States of America or any governmental agency, whether a Federal, State or local agency, and expressly including any payments or benefits due me or my family under any Social Security, Veterans Administration, Medicare, Medicaid, old age, welfare, assistance, disability, retirement, pension, profit sharing, disaster relief or other program or plan, and including the right to institute any action, suit or legal proceeding for the recovery of any such claim or for the recovery of any property, land, structure or tenement or any part or parts thereof, or to the possession thereof that I may be entitled, and to make, execute and deliver receipts, releases or other discharges therefor;

To defend, settle, adjust, compound, submit to arbitration and compromise all actions, suits, accounts, reckonings, claims and demands whatsoever that now are or hereafter shall be pending between me and any person, firm, association or corporation, in such manner and all respects as my said attorney-in-fact shall deem meet and proper;

To hire accountants, agents, attorneys at law, real estate agents or brokers, clerks, workmen and others, and to remove them, and to appoint others in their place, and to pay and allow to the persons so employed such salaries, wages or other remunerations as my said agent shall deem meet and proper;

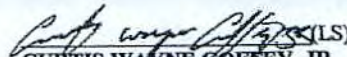
And for all of the acts and purposes aforesaid, or any of them, to execute any and all instruments necessary or convenient to make and do said things and to make and effect such acts, including the signing, endorsing, or executing of checks, drafts, bills, notes, bonds, certificates,

restrictions, rights-of-way and releases, cancellations or satisfactions, but expressly not excluding the execution of any instrument whatsoever, as my agent may deem proper, necessary or convenient to execute and effect the foregoing purposes and authorizations; and

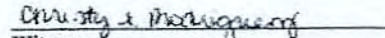
I do hereby give and grant unto my said agent, and her assigns or substitutes, full and complete power and authority as said attorney, in and about the premises, as she may designate or as she may deem proper or convenient, and I do further grant and give unto my said attorney-in-fact full power and authorization to do and perform all and every act and thing whatsoever necessary or required in and about the premises as fully and to all intents and purposes as I might and could do if I were personally present and not then incapacitated, with full power of substitution or revocation, hereby ratifying and confirming all that my said agent, or her substitutes shall lawfully do or cause to be done by virtue of these presents.


IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this

8<sup>th</sup> day of January, 2008.

  
CURTIS WAYNE COFFEY, JR.

Signed, sealed and delivered  
in the presence of:

  
Witness

  
Notary Public, Lamar County, Ga.  
This 8<sup>th</sup> day of January, 2008.  
My Commission expires: \_\_\_\_\_  
(NP Seal affixed hereto)

STEPHANIE W. WINDHAM  
Notary Public, Lamar County, Georgia  
My Commission Expires Aug. 15, 2008



# Exhibit “G”

**COPY**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**FILED IN OFFICE**  
MAY 24 2012  
DEPUTY CLERK SUPERIOR COURT  
FULTON COUNTY, GA

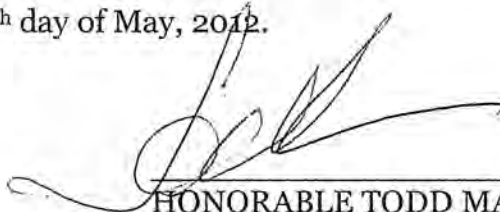
KH OUTDOOR, L.L.C., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FULTON COUNTY, GEORGIA. )  
 )  
Defendant. )

CONSOLIDATED CASE NUMBER:  
2005-CV-109777

**JUDGMENT**

This case having come on for a trial by a jury of twelve on May 18, 2012, and the jury having awarded Plaintiff KH Outdoor, L.L.C. compensatory damages, the Court hereby grants Plaintiff KH Outdoor, L.L.C. JUDGMENT against Defendant Fulton County in the amount of **\$1,250,000.00.**

SO ORDERED, this 24<sup>th</sup> day of May, 2012.



\_\_\_\_\_  
HONORABLE TODD MARKLE  
SUPERIOR COURT OF FULTON COUNTY

**COPY**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**FILED IN OFFICE**  
MAY 24 2012  
DEPUTY CLERK SUPERIOR COURT  
FULTON COUNTY, GA

KH OUTDOOR, L.L.C., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FULTON COUNTY, GEORGIA. )  
 )  
Defendant. )

CIVIL ACTION FILE NO. :  
2005-CV-109777

**VERDICT FORM**

X We, the jury, award the Plaintiff compensatory damages in the  
amount of \$ 1,250,000.00.

**OR**

\_\_\_\_\_ We, the jury, award the Plaintiff nominal damages the amount of  
\$ \_\_\_\_\_.

[Signature] FOREPERSON

May 23, 2012 DATE

AUG 10 2012

*James N. Hatten, Clerk*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

*J. Reed, Deputy Clerk*

KH OUTDOOR, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION FILE
	)	
FULTON COUNTY, GEORGIA,	)	NO. 1:03-CV-1855-HTW
	)	
Defendant.	)	

**VERDICT FORM**

1. **Actual Damages.** What sum of money will fairly and adequately compensate Plaintiff KH Outdoor, L.L.C. for the actual damages suffered as a result of Fulton County's failure to approve the 2003 sign applications:

\$ \_\_\_\_\_

Please divide any amount you entered above into four portions:

(a). Damages resulting from the delay in approving the 11 sign sites in Sandy Springs from June 2003 through March 2006:

\$ \_\_\_\_\_

(b). Damages resulting from the delay in approving the 11 sign sites in Sandy Springs from April 2006 through June 2011:



\$ \_\_\_\_\_

(c). Damages resulting from the delay in approving the 21 sign sites outside of Sandy Springs from June 2003 through March 2006:

\$ \_\_\_\_\_

(d). Damages resulting from the delay in approving the 21 sign sites outside of Sandy Springs from April 2006 through June 2011:

\$ \_\_\_\_\_

2. **General Damages.** If all or any portion of Plaintiff KH Outdoor, L.L.C.'s damages are difficult or impossible to measure, you may still make an award of money to compensate Plaintiff for such damages. If you deem any such general damages to be appropriate, please fill in the amount:

\$ 3,972,037.50

Please divide any amount you entered above into four portions:

(a). General damages resulting from the delay in approving the 11 sign sites in the Sandy Springs area from June 2003 through March 2006:

\$ 993,009.00

(b). General damages resulting from the delay in approving the 11 sign sites in the Sandy Springs area from April 2006 through June 2011:

\$ 993,009.00

(c). General damages resulting from the delay in approving the 21 sign sites outside of Sandy Springs from June 2003 through March 2006:

\$ 993,009.00

(d). General damages resulting from the delay in approving the 21 sign sites outside of Sandy Springs from April 2006 through June 2011:

\$ 993,009<sup>50</sup>

3. **Nominal Damages.** If you awarded any amounts above, please skip this question. If you did not award any damages above, then Plaintiff KH Outdoor, L.L.C. is entitled to an award of nominal damages. Please enter an amount of your choosing from \$1 to \$100: \$ \_\_\_\_\_.

DATED: 8/10/12

Maana Stewart  
Foreperson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

KH OUTDOOR, L.L.C.,

Plaintiff,

v.

FULTON COUNTY, GEORGIA,

Defendant.

CIVIL ACTION FILE

NO. 1:03-cv-1855-HTW

**JUDGMENT ON JURY VERDICT**

This action came on for trial before a jury and the Court, the Honorable Horace T. Ward, Senior U.S. District Judge presiding. The issue of damages having been presented, and the jury having rendered its verdict, it is

**Ordered and Adjudged** that the Plaintiff KH Outdoor, LLC recover of the Defendant Fulton County, Georgia the **total** amount of **\$3,972,037.50** for damages divided into four portions: 11 sign sites in the Sandy Springs area from June 2003 through March 2006 - \$993,009.00; 11 sign sites in the Sandy Springs area from April 2006 through June 2011 - \$993,009.00; 21 sign sites outside of Sandy Springs from June 2003 through March 2006 - \$993,009.00 and 21 sign sites outside of Sandy Springs from April 2006 through June 2011 - \$993,009.50, and costs of this action.

Dated at Atlanta, Georgia, this 13<sup>th</sup> day of August, 2012.

JAMES N. HATTEN  
DISTRICT COURT EXECUTIVE and  
CLERK OF COURT

By: s/Barbara D. Boyle  
Deputy Clerk

Prepared, filed, and entered  
in the Clerk's Office  
August 13, 2012  
James N. Hatten  
Clerk of Court  
By: B.D. Boyle  
Deputy Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
DEC 03 2012  
DEPUTY CLERK SUPERIOR COURT  
FULTON COUNTY, GA

KH OUTDOOR, L.L.C.,

Plaintiff,

v.

FULTON COUNTY, GEORGIA,

Defendant.

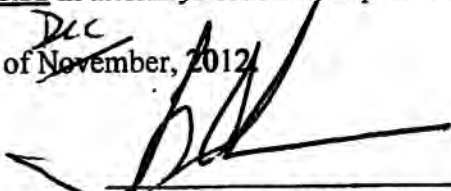
CONSOLIDATED CIVIL ACTION

FILE NO. 2005-CV-109777

JUDGMENT

This case having come before the Court for consideration of Plaintiff KH Outdoor, L.L.C.'s Motion for Attorneys Fees and Expenses, and the Court having granted said Motion, it is ORDERED AND ADJUDGED that Plaintiff KH Outdoor, L.L.C. recover from Defendant Fulton County, Georgia the sum of \$469,168.32 in attorneys fees and expenses.

IT IS SO ORDERED, this 3 day of <sup>Dec</sup> November, 2012

  
D. TODD MARKLE, Judge  
Superior Court of Fulton County



Order Prepared and Presented by:

E. Adam Webb  
Georgia State Bar No. 743910  
Matthew C. Klase  
Georgia State Bar No. 141903

Webb, Klase & Lemond, LLC  
1900 The Exchange, S.E.  
Suite 480  
Atlanta, Georgia 30339  
(770) 444-0773  
(770) 217-9950 (fax)

Attorneys for Plaintiff KH Outdoor, L.L.C.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

KH OUTDOOR, L.L.C.,

Plaintiff,

vs.

FULTON COUNTY, GEORGIA,

Defendant.

CIVIL ACTION FILE

NO. 1:03-cv-1855-HTW

**J U D G M E N T**

This action having come before the court, Honorable Horace T. Ward, Senior United States District Judge, for consideration of motion for attorneys' fees and expenses, and the court having granted said motion, it is

**Ordered and adjudged** that plaintiff recover from defendant \$477,156.78 as reasonable attorney's fees.

Dated at Atlanta, Georgia this 30th day of August, 2012.

JAMES N. HATTEN  
CLERK OF COURT

By: s/Barbara D. Boyle  
Deputy Clerk

Prepared, filed, and entered  
in the Clerk's Office  
August 30, 2012  
James N. Hatten  
District Executive and Clerk of Court

By: B. D. Boyle  
Deputy Clerk

---

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

---

March 29, 2023

Atlantic Billboards, LLC  
Attn: Michael Fitzgerald  
3162 Johnson Ferry Road, Ste 260-441  
Marietta, Georgia 30062

RE: Petition No. A-837-23

Dear Atlantic Billboards, LLC (Attn: Michael Fitzgerald),

This is to notify you of the hearing to be held before the Fayette County Zoning Board of Appeals on **MONDAY, April 24th, 2023, at 7:00 p.m.** at the Fayette County Administrative Complex, First Floor. The purpose of this hearing is to consider the above-referenced request for an 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. It is necessary that the applicant or the agent be present at this hearing.

Sincerely,



Chelsie Boynton  
ZBA Secretary



March 29, 2023

Webb, Klase & Lemond, LLC  
Attn: Mr. E. Adam Webb  
1900 The Exchange, SE, Suite 480  
Atlanta, Georgia 30339

RE: Petition No. A-837-23

Dear Mr. E Adam Webb,

This is to notify you of the hearing to be held before the Fayette County Zoning Board of Appeals on **MONDAY, April 24th, 2023, at 7:00 p.m.** at the Fayette County Administrative Complex, First Floor. The purpose of this hearing is to consider the above-referenced request for an 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. It is necessary that the applicant or the agent be present at this hearing.

Sincerely,



Chelsie Boynton  
ZBA Secretary



**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

March 29, 2023

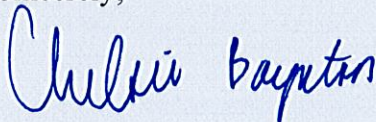
Butch's Auto, LLC  
Attn: Shelley Anthony  
1050 Brookhaven Drive  
Fairburn, Georgia 30213

RE: Petition No. A-837-23

Dear Butch's Auto, LLC (Attn: Shelley Anthony),

This is to notify you of the hearing to be held before the Fayette County Zoning Board of Appeals on **MONDAY, April 24th, 2023, at 7:00 p.m.** at the Fayette County Administrative Complex, First Floor. The purpose of this hearing is to consider the above-referenced request for an 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. It is necessary that the applicant or the agent be present at this hearing.

Sincerely,



Chelsie Boynton  
ZBA Secretary



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 \$ **9950-9402-7493-2055-9983-59**

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ \_\_\_\_\_

Return Receipt (electronic) \$ \_\_\_\_\_

Certified Mail Restricted Delivery \$ \_\_\_\_\_

Adult Signature Required \$ \_\_\_\_\_

Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage  
 \$ \_\_\_\_\_

Total Postage and Fees \$ \_\_\_\_\_

Sent To  
 Street and Apt. No.,  
 City, State, ZIP+4®

**Webb, Klase & Lemond, LLC**  
**Attn: Mr. E. Adam Webb**  
**1900 The Exchange, SE, Suite 480**  
**Atlanta, Georgia 30339**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 1130 0001 9954 5424

*A-837  
 MAILED  
 29 MAR 23*

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Return Receipt (hardcopy) \$ \_\_\_\_\_

Return Receipt (electronic) \$ \_\_\_\_\_

Certified Mail Restricted Delivery \$ \_\_\_\_\_

Adult Signature Required \$ \_\_\_\_\_

Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage  
 \$ \_\_\_\_\_

Total Postage and Fees \$ \_\_\_\_\_

Sent To  
 Street and Apt. No.,  
 City, State, ZIP+4®

**Butch's Auto, LLC**  
**Attn: Shelley Anthony**  
**1050 Brookhaven Drive**  
**Fairburn, Georgia 30213**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 1130 0001 9954 5417

*A-837  
 MAILED  
 29 MAR 23*

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Return Receipt (hardcopy) \$ \_\_\_\_\_

Return Receipt (electronic) \$ \_\_\_\_\_

Certified Mail Restricted Delivery \$ \_\_\_\_\_

Adult Signature Required \$ \_\_\_\_\_

Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage  
 \$ \_\_\_\_\_

Total Postage and Fees \$ \_\_\_\_\_

Sent To  
 Street and Apt. No.,  
 City, State, ZIP+4®

**Atlantic Billboards, LLC**  
**Attn: Mike Fitzgerald**  
**3162 Johnson Ferry Road, Ste. 260-441**  
**Marietta, Georgia 30062**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 1130 0001 9954 5431

*A-837  
 MAILED  
 29 MAR 23*



Service Alert due to Situation in Ukraine [...More \(/us/en/service-alerts.page?id=alert1\)](#)



Your shipment  
1Z538V5V4241405047

Delivered On  
Monday, April 03 at 11:03 A.M. at Office

Delivered To  
ATLANTA, GA US

Received By:  
F LEMOND  
[Proof of Delivery](#)

Get Updates >

File a Claim

[View Details](#)

Track Another Package

Track

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Service Alert due to Situation in Ukraine [...More \(/us/en/service-alerts.page?id=alert1\)](#)



Your shipment  
1Z538V5V4208071014

Delivered On  
Friday, March 31 at 2:16 P.M. at Front Desk

Delivered To  
MARIETTA, GA US

Received By:  
MGNT  
[Proof of Delivery](#)

Get Updates >

File a Claim

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Tracking Number:

Remove X

## 70181130000199545431

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

### Latest Update

Your item was delivered to an individual at the address at 1:42 pm on March 31, 2023 in MARIETTA, GA 30062.

Get More Out of USPS Tracking:

**USPS Tracking Plus<sup>®</sup>**

### Delivered

**Delivered, Left with Individual**

MARIETTA, GA 30062

March 31, 2023, 1:42 pm

[See All Tracking History](#)

Feedback

**Text & Email Updates**



**USPS Tracking Plus<sup>®</sup>**



**Product Information**



**See Less** ^

Track Another Package

Enter tracking or barcode numbers

Tracking Number:

Remove X

## 70181130000199545424

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

### Latest Update

Your item was delivered to the front desk, reception area, or mail room at 11:03 am on March 31, 2023 in ATLANTA, GA 30339.

Get More Out of USPS Tracking:

**USPS Tracking Plus<sup>®</sup>**

### Delivered

**Delivered, Front Desk/Reception/Mail Room**

ATLANTA, GA 30339

March 31, 2023, 11:03 am

[See All Tracking History](#)

Feedback

Text & Email Updates



USPS Tracking Plus<sup>®</sup>



Product Information



See Less ^

Track Another Package

Enter tracking or barcode numbers

A-837-23  
RJJ Date  
APRIL 5, 2023

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

**PUBLIC HEARING** to be held by the Zoning Board of Appeals of Fayette County on Monday, April 24, 2023, at 7:00 P.M., Fayette County Administrative Complex, Public Meeting Room, 140 Stone-wall Avenue West, first floor.  
Petition No.: A-837-23  
Owner: Butch's Auto, LLC  
Agent: Atlantic Billboards, LLC (Mike Fitzgerald)  
Attorney: Webb, Klase & Lemond, LLC (Attn: E. Adam Webb)  
Property Address: Highway 314 Fayetteville, Georgia 30214  
Zoning District: C-H  
Area of Property: 0.67 acres  
Parcel # 130501033  
Land Lot(s): 199  
District: 13th  
Road Frontage: Highway 314  
Request: 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.  
Legal Description:

All that tract or parcel of land lying and being in Land Lot 199 of the 13th District of Fayette County, Georgia and being more particularly described as follows:  
BEGINNING at a point on the East right of way of State Highway 314, the same having a 100 foot right of way, said point being 200 feet South of the intersection of State Highway 314 and State Highway 138, from said POINT OF BEGINNING, thence North 88 degrees 30 minutes East, 200 feet to a point; thence South 0 degrees 4 minutes West, 150 feet to a point; thence South 89 degrees 30 minutes West, 200 feet to a point on the East right of way of State Highway 314, thence North 0 degrees 04 minutes East, 150 feet to the POINT OF BEGINNING, according to a survey of said property prepared by Lee Engineering Co., dated February 12, 1971.  
Less and Except any portion of the above as contained in that certain Right of Way Deed in favor of the Department of Transportation dated February 2, 1987, recorded in Deed Book 429, Page 73, Real Estate Records of Fayette County, Georgia.  
04/05



POSTING OF PROPERTY

**PETITION NO:** A-837-23

**OWNER:** Butch's Auto, LLC  
Attn: Shelley Anthony  
1050 Brookhaven Drive  
Fairburn, Georgia 30213

**LOCATION:** Land Lot 199 of the 13th District  
Fronts on Highway 314.

**REQUEST:** 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.

I hereby certify that a sign was posted for the above-referenced application in conformance with Article VII of the Fayette County Zoning Ordinance.

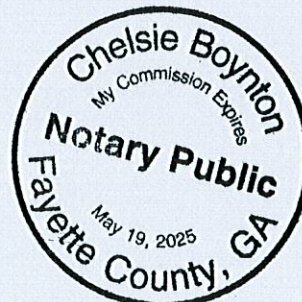
  
\_\_\_\_\_  
OFFICIAL

April 3, 2023  
\_\_\_\_\_  
DATE

Sworn to and subscribed before me this

3<sup>rd</sup> day of April, 2023.

  
\_\_\_\_\_  
NOTARY



Number of signs posted 1

Date sign posted 3 April 2023





Hwy 314 Parcel# 130501033



Hwy 314 Parcel# 130501033

Doc ID: 010231550004 Type: WD  
 Recorded: 09/18/2017 at 03:00:00 PM  
 Fee Amt: \$83.00 Page 1 of 4  
 Transfer Tax: \$67.00  
 Fayette, Ga. Clerk Superior Court  
 Sheila Studdard Clerk of Court  
 BK **4656** PG **263-266**

After recording, return to:  
 Michele L. Battle, Esq.  
 Battle Law, P.C.  
 One West Court Square, Suite 750  
 Decatur, GA 30030

**LIMITED WARRANTY DEED**

**THIS INDENTURE**, made and entered into this 5<sup>th</sup> day of September, 2017 by and between **LYNNE T. NELSON**, a resident of the State of Georgia and **LUANNE T. MCGINNIS**, a resident of the State of Tennessee (herein, collectively referred to as "Grantor"), and **BUTCH'S AUTO LLC**, a Georgia limited liability company (herein referred to as "Grantee").

**WITNESSETH THAT**, the said Grantor, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars, and other good and valuable consideration, in hand paid at or before the delivery of this deed, the receipt and sufficiency of which are hereby acknowledged, and pursuant to proper authority, has granted, bargained, sold and conveyed and by these presents does hereby grant, bargain, sell and convey to the said Grantee, and its successors and assigns, the following described property:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING in Land Lot 199 of the 13th District of Fayette County, Georgia being more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

**TOGETHER WITH** all fixtures, structures and improvements located on such property and the easements, rights, members and appurtenances thereunto appertaining.

**TO HAVE AND TO HOLD** the said bargained premises, together with all and singular the rights, privileges, easements, members and appurtenances belonging or thereunto appertaining, to the only proper use and benefit of the Grantee and its successors and assigns forever in FEE SIMPLE.

**AND EXCEPT** for those matters set forth on Exhibit "B" attached hereto and incorporated herein by reference, Grantor will warrant and defend the title to said premises against the claims of all persons claiming by, through or under Grantor, but not otherwise.

[Remainder of this page intentionally left blank.]





IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed, sealed and delivered on the date above written.

**GRANTOR:**

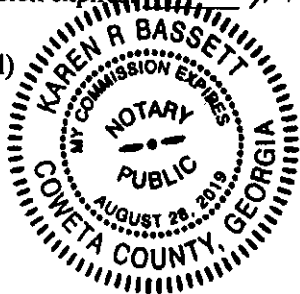
Signed, sealed and delivered  
in the presence of:

Patsy A. Oyster  
Unofficial Witness

 (SEAL)  
LYNNE T. NELSON

  
Notary Public  
My commission expires: 8/28/19

(Notary Seal)



[SIGNATURES CONTINUE ON IMMEDIATELY FOLLOWING PAGE]

**GRANTOR:**

Signed, sealed and delivered  
in the presence of:

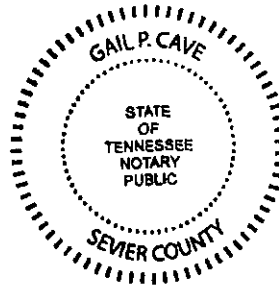
Megan Shultz  
Unofficial Witness

Gail P. Cave  
Notary Public

My commission expires: 02-21

(Notary Seal)

Luanne T. McGinnis (SEAL)  
LUANNE T. MCGINNIS



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that tract or parcel of land lying and being in Land Lot 199 of the 13<sup>th</sup> District of Fayette County, Georgia and being more particularly described as follows:

BEGINNING at a point on the East right of way of State Highway 314, the same having a 100 foot right of way, said point being 200 feet South of the intersection of State Highway 314 and State Highway 138, from said POINT OF BEGINNING, thence North 88 degrees 30 minutes East, 200 feet to a point; thence South 0 degrees 4 minutes West, 150 feet to a point; thence South 89 degrees 30 minutes West, 200 feet to a point on the East right of way of State Highway 314, thence North 0 degrees 04 minutes East, 150 feet to the POINT OF BEGINNING, according to a survey of said property prepared by Lee Engineering Co., dated February 12, 1971.

Less and Except any portion of the above as contained in that certain Right of Way Deed in favor of the Department of Transportation dated February 2, 1987, recorded in Deed Book 429, Page 73, Real Estate Records of Fayette County, Georgia.





Doc ID: 010231560004 Type: GCD  
Recorded: 09/18/2017 at 03:00:00 PM  
Fee Amt: \$16.00 Page 1 of 4  
Transfer Tax: \$0.00  
Fayette, Ga. Clerk Superior Court  
Sheila Studdard Clerk of Court

BK **4656** PG **267-270**

After recording, return to:

Battle Law, P.C.  
One West Court Square, Suite 750  
Decatur, Georgia 30030

QUITCLAIM DEED

**THIS INDENTURE** is made as of this 5<sup>th</sup> day of September, 2017, by and between **LYNNE T. NELSON**, a resident of the State of Georgia and **LUANNE T. MCGINNIS**, a resident of the State of Tennessee (hereinafter collectively referred to as "Grantor") and **BUTCH'S AUTO LLC**, a Georgia corporation (hereinafter referred to as "Grantee").

WITNESSETH: That Grantor for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, cash in hand paid, the receipt of which is hereby acknowledged, has bargained, sold, and does by these presents bargain, sell, remise, release, and forever quit-claim to Grantee any and all right, title, interest, claim or demand which the Grantor has or may have had in and to the following described real property (the "Property"), to wit:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING in Land Lot 199 of the 13th District of Fayette County, Georgia being more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

With all the rights, members, and appurtenances to the said described premises in anywise appertaining or belonging.

[SIGNATURE PAGE CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed by its duly authorized and incumbent officers as of the 5<sup>th</sup> September, 2017.

Signed, sealed and delivered  
and attested to in the presence of:

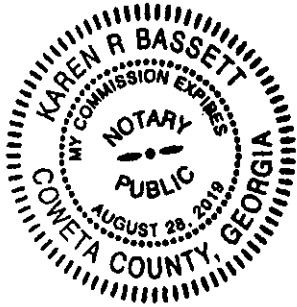
Patsy A. Sexton  
Unofficial Witness

Lynne T. Nelson (SEAL)  
LYNNE T. NELSON

Karen R. Bassett  
Notary Public

My commission expires:  
8/28/19

(Notary Seal)



[SIGNATURES CONTINUED FROM IMMEDIATELY PRECEEDING PAGE]

Signed, sealed and delivered  
and attested to in the presence of:

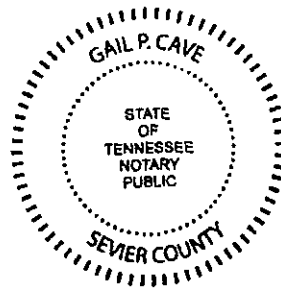
Megan Shultz  
Unofficial Witness

Bair P. Cam  
Notary Public

My commission expires:  
02-21

(Notary Seal)

Luanne T. McGinnis (SEAL)  
LUANNE T. MCGINNIS





**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**(Survey)**

All that tract or parcel of land lying and being in Land Lot 199 of the 13th District of Fayette County, Georgia and being more particularly described as follows:

Commencing at the Concrete Right of Way Monument found at the Southeast Mitered intersection of State Route 314 and State Route 138; thence running South 01 degrees 07 minutes 27 seconds West, a distance of 168.39 feet to a rebar found and the TRUE POINT OF BEGINNING; thence running North 89 degrees 22 minutes 00 seconds East, a distance of 179.68 feet to an iron pin set found; thence running South 00 degrees 25 minutes 44 seconds East, for a distance of 150.00 feet to an iron pin set found; thence running West for a distance of 4.88 feet to a rebar found; thence running South 89 degrees 26 minutes 25 seconds East, for a distance of 184.89 feet to a rebar found; thence running North 01 degrees 33 minutes 52 seconds East, for a distance of 149.87 feet to a rebar found and being the TRUE POINT OF BEGINNING.