

BOARD OF APPEALS

Marsha A. Hopkins, Chair
Tom Waller, Vice-Chair
Therol Brown
John Tate
Bill Beckwith

STAFF

Pete Frisina, Director of Community Services
Chanelle Blaine, Zoning Administrator
Howard Johnson, Planning and Zoning Coordinator

AGENDA
Fayette County Zoning Board of Appeals
Fayette County Administrative Complex
Public Meeting Room
December 16, 2019
7:00 P.M.

1. Consideration of the Minutes of the Meeting held on October 28, 2019.

PUBLIC HEARING

2. Petition No. A-713-19, Rebecca A. Handley and Nancy McCord, Co-Trustees of the Handley Family Trust, owners, and Rodwrightcorp, agent, request the following variance: reduce the floor area requirement from 2,500 square feet to 2,046 square feet to enable the existing house to be in compliance with proposed subdivided lots. The subject property is located in Land Lot 31 of the 5th District and fronts on Redwine Road.
3. Petition No. A-714-19, Michael and Cheryl Schwertfeger, owners, request the following variance: reduce the front yard setback from 40 feet to 30 feet to allow construction of a detached garage. The subject property is located in Land Lot 187 of the 4th District and fronts on Hall Place.

PETITION NO. A-713-19
RODWRIGHTCORP
1405 Redwine Road
Fayetteville, GA 30215
Public Hearing Date December 16, 2019

The subject property is located at 1405 Redwine Road, Fayetteville, GA 30215 and is zoned R-55. The applicant is requesting a Variance as follows:

Variance to Section 110-134(d)(3) R-55, Single Family Residential District to reduce the floor area requirement from 2,500 square feet to 2,046 square feet to enable the existing house to be in compliance with proposed subdivided lots.

History: On October 24, 2019, the Board of Commissioners approved rezoning 1288-19 from A-R to R-55 with the following condition:

1. That the four (4) lots within the area being rezoned, plus the two (2) proposed A-R lots, be limited to no more than four (4) driveway curb cuts and each driveway curb cut shall service no more than two (2) lots. Each driveway shall meet the minimum required sight distance. The locations of the driveway curb cuts shall be approved by the County Engineer.
2. That the Final Plat for the subject property will not be approved until the existing single-family residence is brought into compliance with the R-55 zoning district which can be achieved either by adding additional heated finished floor area to the existing single-family residence to meet the minimum required floor area or through a **variance, approved by the Zoning Board of Appeals, to reduce the minimum floor area requirement**, or as a third option, removing the existing single-family residence from the subject property prior to Final Plat approval.

The property was previously zoned Agricultural Residential (A-R). The A-R zoning district requires a minimum 1200 square feet of floor area, which the petitioner met when the house was built in 1969. Staff discovered the violation while reviewing the rezoning concept plan and application. The concept plan submitted with the rezoning indicates that the existing single-family residence will not meet the finished floor area of 2,500 square feet for the R-55 zoning district. This variance is required prior to Final Plat approval.

DEPARTMENTAL COMMENTS

ENGINEERING: There are no Engineering/Public Works issues associated with variance request to reduce the minimum floor area standard.

ENVIRONMENTAL HEALTH: No objections to proposed variance. Department will need a completed subdivision review application. This will require submission of a to-scale red stamped level 3 soils report with classifier's certificate of insurance.

ENVIRONMENTAL MANAGEMENT: No comments.

FIRE MARSHAL: The bureau of fire prevention will neither approve nor deny request that fall outside the scope of ISO requirements.

WATER SYSTEM: Water available to parcels.

The applicant provides the following information:

VARIANCE SUMMARY

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

In Rezoning Petition Number 1288-19 (the "Rezoning Application"), filed on September 3, 2019, the Applicant applied to rezone, and the Fayette County Board of Commissioners on August 24, 2019 did rezone the Subject Property (and other contiguous property) from the A-R, Agricultural- Residential District to the R-55, Single-Family Residential District (the "Rezoning"). In the A-R Zoning District, the minimum floor area is 1,200 square feet. (Zoning Ordinance, Section 110-125(d)(3)). The existing house on the Subject Property (the "House") was built in 1969 and consists of 2,046 square feet.

Therefore, at the time of the filing of the Rezoning Application, the House complied with the minimum floor area requirement for the A-R Zoning District. Due to the Rezoning, the House does not comply with the floor area requirement for the R-55 Zoning District. However, in the R-55 Zoning District, as discussed below, the House is a "legal nonconformance" and must "be considered a legal nonconforming structure [that] shall be allowed to remain." (Zoning Ordinance, Sections 110-3, 110-170(1)). Nonetheless, when the Fayette County Board of Commissioner rezoned the Subject Property, it imposed the following condition (the "Condition of Approval"), among others:

That the Final Plat for the [S]ubject [P]roperty will not be approved until the existing single-family residence is brought into compliance with the R-55 zoning district

which can be achieved either by adding additional heated finished floor area to the existing single-family residence to meet the minimum required floor area or through a variance, approved by the Zoning Board of Appeals, to reduce the minimum floor area requirement, or as a third option, removing the existing single-family residence from the subject property prior to Final Plat approval.

In order to comply with Condition of Approval, the Applicant respectfully requests the Fayette County Zoning Board of Appeals grant the variance requested herein, as required by the Conditional of Approval.

JUSTIFICATION OF REQUEST

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

The existing single-family residence on the Subject Property was constructed in 1969 and, upon information and belief, has remained unaltered since. To preserve the historic character of the Subject Property and the house located thereon, the Fayette County Zoning Board of Appeals (the “ZBA”) should grant the variance requested herein. In doing so, the ZBA relive the Applicant and Owner of the Condition of Approval that as detailed below, is not supported by the text of the Fayette County Zoning Ordinance.

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

By requiring alteration or demolition of the existing single-family residence on the Subject Property, the Condition of Approval arbitrarily constricts the market for the same. Stated differently, there are potential purchasers of the Subject Property that prefer the existing residence to remain in its current, unaltered state because of its historical character, square footage and /or aesthetic appeal.. Requiring that residence be altered (or demolished) in manner that, as discussed below, is contrary to the text of the Zoning Ordinance limits the market of potential buyers to those that desire the residence in an altered, expanded state. Absent approval of the variance requested herein, the Condition of Approval imposes upon the Applicant and Owner, but not upon similarly situated properties and their owners, a practical difficulty and unnecessary hardship. Market forces should dictate the square footage of the residence on the Subject Property.

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

The existing single-family residence was constructed in 1969 and, upon information and belief, has remain unaltered since. This unaltered structure is of peculiar historical

significance. The Handley Family Home is a piece of Fayette County that maintains and pays homage to the Fayette County of yesteryear. Allowing the residence to remain as it has existed for decades, will honor the County's history. Therefore, the square footage of the current single-family residence on the Subject Property is a condition peculiar to the Subject Property which justifies approval of the variance requested herein.

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,**

If granted, the requested variance will not cause substantial detriment to the public good or impair the purposes and intent of the Fayette County Zoning Ordinance. Instead, granting the variance, and thereby allowing the existing residence to remain, will further the purpose of the R-55 Zoning District of "having low density single-family character [houses]and protect[ing] against the depreciating effects of small lot development and those uses incompatible with such a residential environment." (Zoning Ordinance, Section 110-134(a)). Additionally, and as detailed below, Section 110-170 (1) of the Zoning Ordinance provides that the existing single-family residence on the Subject Property should "be allowed to remain" as it currently exists.

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

Section 110-3 of the Zoning Ordinance defines an "illegal nonconformance" as a "lot, use, building or structure established after the effective date of November 13, 1980, or subsequent amendments which fail[s] to comply with provisions" of the Fayette County Zoning Ordinance. In contrast, a "legal nonconformance" is defined as "a legally existing lot, use, building or structure which fails to comply with the provisions" of the Fayette County Zoning Ordinances, "as of the effective date of November 13, 1980, or as a result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning, or a variance." (Id. (emphasis added)).

In other words, if such a building fails to comply with Zoning Ordinance "due to... a rezoning "it is a "legal nonconformance". (Id. emphasis added)).

Furthermore, if a structure complies with Zoning Ordinance but, fails to do so "as the result of... or due to a rezoning, [it] shall be considered a legal nonconforming structure and shall be allowed to remain." (Zoning Ordinance, Section 110-170(1) (emphasis added)). However, "[t]he enlargement, expansion, or extension of a legal nonconforming structure which serves to increase the nonconformance" may only be made after

authorization by the Fayette County Zoning Board of Appeals via a request for a variance. (d.). Section 110-170(1) does not require a variance or any other approval for such a legal nonconforming structure to be allowed to remain.” (Id.).

Therefore, the Condition of Approval requiring a variance for a legal conforming structure will impose a requirement on the Applicant and Owner that is not imposed on similarly situated property owners thereby depriving them of their rights under Just Compensation Clause of the Fifth Amendment to the Constitution of the United States of American; Article I, Section I, Paragraphs I-II of the Constitution of State of Georgia of 1983; Article I Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

Property Address: 1405 Redwine Rd.
F-ville, GA 30215

VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: Rebecca A. Handley and Nancy McCord as Co-Trustees of the Handley Family Trust

(Ms. Handley): 360 Darwin Place, Duluth, Georgia 30096

MAILING ADDRESS: (Ms. McCord): 4381 Quail Ridge Way, Norcross, Georgia 30092

PHONE: _____ E-MAIL: _____

AGENT FOR OWNERS: Rodwrightcorp

MAILING ADDRESS: P.O. Box 629, Fayetteville, Georgia 30214

PHONE: 770-294-7990

E-MAIL: thesubdivider@gmail.com

PROPERTY LOCATION: LAND LOT 31 LAND DISTRICT 5 PARCEL 0501 017

1405 Redwine Rd

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 1.50

ZONING DISTRICT: R-55

ZONING OF SURROUNDING PROPERTIES: R-55, A-R

PRESENT USE OF SUBJECT PROPERTY: 1 Single-Family Residence

PROPOSED USE OF SUBJECT PROPERTY: 1 Single-Family Residence

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-713-19

[] Application Insufficient due to lack of:

by Staff: _____ Date: _____

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

by Staff: [Signature] Date: 11/1/2019

DATE OF ZONING BOARD OF APPEALS HEARING: 12/16/19

Received from Rod Wright a check in the amount of \$ 175

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

Date Paid: 11/1/2019 Receipt Number: 7014726-application
7016211-sign

A-713-17

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:

Rebecca A. Handley and Nancy McCord as Co-Trustees of the Handley Family Trust

Please Print Names

Property Tax Identification Number(s) of Subject Property: 0501 017

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the 5 District, and (if applicable to more than one land district) Land Lot(s) 31 of the District, and said property consists of a total of 1.5 acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I (We)) hereby delegate authority to RODWRIGHTCORP 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

360 Darwin Place, Duluth, GA 30096
Address

Vicki L Kashani
Signature of Notary Public

10-31-19
Date



Signature of Property Owner 2

4381 Quail Ridge Way, Norcross, GA 30092
Address

Signature of Notary Public

Date

Signature of Authorized Agent

Address

Signature of Notary Public

Date

VARIANCE INFORMATION

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

Ordinance/Section	Requirement	Proposed	Variance Amount
Zoning Ordinance Section 110-134(d)(3)	Minimum Floor Area: 2,500 square feet	2,046 square feet--allowing the single-family residence on the Subject Property to remain as it has existed since the 1969.	454 square feet

VARIANCE SUMMARY

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

In Rezoning Petition Number 1288-19 (the "Rezoning Application"), filed on September 3, 2019, the Applicant applied to rezone, and the Fayette County Board of Commissioners on August 24, 2019 did rezone, the Subject Property (and other contiguous property) from the A-R, Agricultural-Residential District to the R-55, Single-Family Residential District (the "Rezoning"). In the A-R Zoning District, the minimum floor area is 1,200 square feet. (Zoning Ordinance, Section 110-125(d)(3)). In the R-55 Zoning District, however, the minimum floor area is 2,500 square feet. (Zoning Ordinance, Section 110-134(d)(3)). The existing house on the Subject Property (the "House") was built in 1969 and consists of 2,046 square feet.

Therefore, at the time of the filing of the Rezoning Application, the House complied with the minimum floor area requirement for the A-R Zoning District. Due to the Rezoning, the House does not comply with the floor area requirement for the R-55 Zoning District. However, in the R-55 Zoning District, as discussed below, the House is a "legal nonconformance" and must "be considered a legal nonconforming structure [that] shall be allowed to remain." (Zoning Ordinance, Sections 110-3, 110-170(1)). Nonetheless, when the Fayette County Board of Commissioner rezoned the Subject Property, it imposed the following condition (the "Condition of Approval"), among others:

That the Final Plat for the [S]ubject [P]roperty will not be approved until the existing single-family residence is brought into compliance with the R-55 zoning district which can be achieved either by adding additional heated finished floor area to the existing single-family residence to meet the minimum required floor area or through a variance, approved by the Zoning Board of Appeals, to reduce the minimum floor area requirement, or as a third option, removing the existing single-family residence from the subject property prior to Final Plat approval.

In order to comply with the Condition of Approval, the Applicant respectfully requests the Fayette County Zoning Board of Appeals grant the variance requested herein, as required by the Condition of Approval.

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 existing single-family residence on the Subject Property was constructed in 1969 and, upon information and belief, has remained unaltered since. To preserve the historic character of the Subject Property and the house located thereon, the Fayette County Zoning Board of Appeals (the "ZBA") should grant the variance requested herein. In doing so, the ZBA relieve the Applicant and Owner of the Condition of Approval that, as detailed below, is not supported by the text of the Fayette County Zoning Ordinance.

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

By requiring alteration or demolition of the existing single-family residence on the Subject Property, the Condition of Approval arbitrarily constricts the market for the same. Stated differently, there are potential purchasers of the Subject Property that prefer the existing residence to remain in its current, unaltered state because of its historical character, square footage and/or aesthetic appeal. Requiring that residence be altered (or demolished) in a manner that, as discussed below, is contrary to the text of the Zoning Ordinance limits the market of potential buyers to those that desire the residence in an altered, expanded state. Absent approval of the variance requested herein, the Condition of Approval imposes upon the Applicant and Owner, but not upon similarly situated properties and their owners, a practical difficulty and unnecessary hardship. Market forces should dictate the square footage of the residence on the Subject Property.

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

The existing single-family residence was constructed in 1969 and, upon information and belief, has remained unaltered since. This unaltered structure is of peculiar historical significance. The Handley Family Home is a piece of Fayette County that maintains and pays homage to the Fayette County of yesteryear. Allowing the residence to remain as it has existed for decades, will honor the County's history. Therefore, the square footage of the current single-family residence on the Subject Property is a condition peculiar to the Subject Property which justifies approval of the variance requested herein.

- 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.

If granted, the requested variance will not cause substantial detriment to the public good or impair the purposes and intent of the Fayette County Zoning Ordinance. Instead, granting the variance, and thereby allowing the existing residence to remain, will further the purpose of the R-55 Zoning District of "having low density single-family character [houses] and protect[ing] against the depreciating effects of small lot development and those uses incompatible with such a residential environment." (Zoning Ordinance, Section 110-134(a)). Additionally, and as detailed below, Section 110-170(l) of the Zoning Ordinance provides that the existing single-family residence on the Subject Property should "be allowed to remain" as it currently exists.

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

Section 110-3 of the Zoning Ordinance defines an "illegal nonconformance" as a "lot, use, building or structure established after the effective date of November 13, 1980, or subsequent amendments which fail[s] to comply with the provisions" of the Fayette County Zoning Ordinance. In contrast, a "legal nonconformance" is defined as "a legally existing lot, use, building or structure which fails to comply with the provisions" of the Fayette County Zoning Ordinance, "as of the effective date of November 13, 1980, or as a result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning, or a variance." (Id. (emphasis added)).

In other words, if such a building fails to comply with the Zoning Ordinance "due to . . . a rezoning" it is a "legal nonconformance". (Id. (emphasis added)).

Furthermore, if a structure complies with the Zoning Ordinance but, fails to do so "as the result of. . . or due to a rezoning, [it] shall be considered a legal nonconforming structure and shall be allowed to remain." (Zoning Ordinance, Section 110-170(l) (emphasis added)). However, "[t]he enlargement, expansion, or extension of a legal nonconforming structure which serves to increase the nonconformance" may only be made after authorization by the Fayette County Zoning Board of Appeals via a request for a variance. (Id.). Section 110-170(1) does not require a variance or any other approval for such a legal nonconforming structure to "be allowed to remain." (Id.).

Therefore, the Condition of Approval requiring a variance for a legal conforming structure will impose a requirement on the Applicant and Owner that is not imposed on similarly situated property owners thereby depriving them of their rights under the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States of American; Article I, Section I, Paragraphs I-II of the Constitution of the State of Georgia of 1983; Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

CHECKLIST OF ITEMS REQUIRED TO BE SUBMITTED FOR ZBA REQUESTS

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

- 1. Application form and all required attachments, completed, signed, and notarized (if applicable).
- 2. Copy of latest recorded deed, including legal description of the boundaries of the subject property, including total acreage.
- 3. Fifteen (15) copies of the survey plat of the property (if larger than 11" x 17"), drawn to scale with accurate dimensions, with the following indicated:
 - a. Location and size of existing structures (principal and accessory) and improvements on the parcel, including type (residential or non-residential), floor area, and accessory uses. Structures proposed to be removed must be indicated and labeled as such.
 - b. Minimum setbacks and buffers from all property lines of subject property required in the zoning district.
 - c. Location of exits/entrances to the subject property.
 - d. Location of all existing and proposed easements and streets on or adjacent to the subject property, indicating width of existing and proposed easements, width of right-of-way, and centerline of streets.
 - e. Location of well or water lines.
 - f. Location of septic tank, drainfield, and drainfield replacement area.
 - g. Location and elevation of the 100-year flood plain and watershed protection buffers and setbacks (if applicable).
 - h. Location of on-site stormwater facilities to include detention or retention facilities (if applicable).
 - i. Parking locations, number of parking spaces, and parking bay and aisle dimensions (if applicable).
 - j. Location of landscaped areas, buffers, or tree save areas (if applicable).
- 4. Application filing fee.

MISCELLANEOUS PAYMENT RECPT#: 7016211
FAYETTE COUNTY, GA
140 Stonewall Avenue, West
BE
FAYETTEVILLE GA 30214

DATE: 11/06/19 TIME: 11:03
CLERK: 9597cb1a DEPT:
CUSTOMER#: 0

COMMENT: A-713-19 SIGN
CHG:
ZS-Z A-713-19 SIGN 20.00

AMOUNT PAID: 20.00

PAID BY: RODWRIGHTCORP
PAYMENT METH: CHECK
 3569

REFERENCE:

AMT TENDERED: 20.00
AMT APPLIED: 20.00
CHANGE: .00

MISCELLANEOUS PAYMENT RECPT#: 7014726
FAYETTE COUNTY, GA
140 Stonewall Avenue, West
BE
FAYETTEVILLE GA 30214

DATE: 11/05/19 TIME: 10:04
CLERK: 9597cb1a DEPT:
CUSTOMER#: 0

COMMENT: A-713-19 APP
CHG:
ZA-Z A-713-19 APP 175.00

AMOUNT PAID: 175.00

PAID BY: RODWRIGHT CORP
PAYMENT METH: CHECK
3569

REFERENCE:

AMT TENDERED: 175.00
AMT APPLIED: 175.00
CHANGE: .00

Doc ID: 008383280002 Type: GLR
 Filed: 08/24/2010 at 01:20:00 PM
 Fee Amt: \$12.00 Page 1 of 2
 Transfer Tax: \$0.00
 Fayette, Ga. Clerk Superior Court
 Sheila Studdard Clerk of Court
 BK **3669** PG **24-25**

After recording, return to:
 Handley Family Trust
 c/o Marjorie S. Handley, Trustee
 P.O. Box 116
 Fayetteville, Georgia 30214

STATE OF GEORGIA
 COUNTY OF _____

**EXECUTOR'S DEED
 (Draw Deed Only)**

THIS INDENTURE is made as of this 18th day of June, 2010 between Marjorie S. Handley, as Executor under the Last Will and Testament of Marion C. Handley (hereinafter referred to as the "Deceased"), late of Fayette County, Georgia (hereinafter referred to as "Grantor") and Marjorie S. Handley, as Trustee, or her successors in trust, under the Handley Family Trust, dated March 31, 2010 (hereinafter referred to as "Grantee") ("Grantor" and "Grantee" to include their respective heirs, successors, executors, administrators, legal representatives and assigns where the context requires or permits).

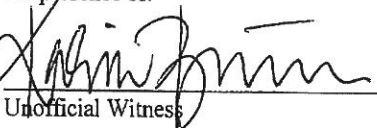
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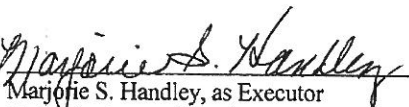
GRANTOR (acting under and by virtue of the power and authority contained in the Last Will and Testament of the Deceased, it having been duly probated and recorded in the Court of Probate of Fayette County, Georgia), for and in consideration of love and affection and other good and valuable consideration in hand paid at and before the sealing and delivery of these presents (the receipt of which is hereby acknowledged), has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Grantee all of Grantor's interest in and to all that tract or parcel of land lying and being in Land Lot 31 of the 5th District of Fayette County, Georgia (hereinafter referred to as the "Land"), as more particularly described in the attached Exhibit "A", which Exhibit is incorporated herein.


TO HAVE AND TO HOLD the Land with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of Grantee forever, in as full and ample a manner as the same was held, possessed and enjoyed, or might have been held, possessed and enjoyed, by the Deceased.

Preparer has not performed a title examination or confirmed the legal description, and as such, makes no representation with regard to the same.

EXECUTED under seal as of the date above.

signed, sealed and delivered in
 the presence of:

 Unofficial Witness

GRANTOR:

 Marjorie S. Handley, as Executor
 Under the Last Will and Testament of
 Marion C. Handley, deceased


 Notary Public

Commission Expiration Date:

(NOTARIAL SEAL)

SANDRA E. THOMPSON
 NOTARY PUBLIC
 Coweta County - State of Georgia
 My Comm. Expires Nov. 5, 2010

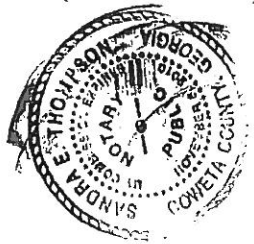


EXHIBIT A

All that tract or parcel of land lying and being in Land Lot 31 of the 5th District, Fayette County, Georgia; as per plat of survey for Marion C. Handley by W. R. Franks, Surveyor, dated 7-9-68 and being more particularly described as follows:

BEGINNING at a rock corner at the Northwest corner of Land Lot 31 of the 5th District, Fayette County, Georgia; running thence North 89-degrees 56-minutes East along the North land lot line of said land lot a distance of 2012.25 feet to an iron pin found on the Northwesterly right-of-way line of Redwine Road; running thence South 3-degrees 4-minutes West along the Northwesterly right-of-way line of Redwine Road a distance of 900.62 feet to an iron pin found on the North line of property now or formerly owned by M. D. Waldrop and B. C. Curtis; running thence South 89-degrees 42-minutes West along the North line of the Curtis and Waldrop property a distance of 1685.89 feet to an iron pin found on the West land lot line of said land lot; running thence North along the West land lot line of said land lot a distance of 898 feet to the rock corner at the Northwest corner of said land lot and the point of beginning.

PETITION NO. A-714-19
Michael & Cheryl Schwertfeger
131 Hall Place
Fayetteville, GA 30215
Public Hearing Date December 16, 2019

The subject property is located at 131 Hall Place, Fayetteville, GA 30215 and is zoned R-55. The applicant is requesting a Variance as follows:

Variance to Section 110-137. R-40 (d)(4)(b), to reduce the front yard setback from 40 feet to 30 feet to allow construction of a detached garage.

History: Rezoning petition 252-73, A-R to R-40, was approved by the Board of Commissioners on April 13, 1973. The rezoning Resolution and Board minutes do not indicate any conditions regarding front yard setbacks placed on the rezoning. In the 1973 zoning ordinance, the R-40 Zoning District required a 55 foot front yard setback. It was reduced to 40 feet in the 1980 zoning ordinance as currently required. The Final Plat was recorded on April 25, 1973. The Final Plat is approved and signed by the County Engineer with a note that states the following:

Except

1. Set Back 75'- 0 from Property Line

The Final Plat also indicates what appears to be a 50 foot strip between lots 9 and 10 labeled "Proposed Street for Entrance to Above Property."

Tax Assessor's records indicate that the house was built in 1976, and according to the deed the applicant purchased the property in 2004.

On October 17, 2019, the Planning Commission approved to reduce the 75 foot front yard setback on Lot 9 along an area platted for a future road as indicated on the Final Plat for Broom-Hall subdivision to 40 feet as currently required by the R-40 Zoning District to revise the final plat.

DEPARTMENTAL COMMENTS

ENGINEERING: There are no Engineering / Public Works issues associated with the front-yard setback variance request.

ENVIRONMENTAL HEALTH: This Dept. has no objections to the proposed variance.

ENVIRONMENTAL MANAGEMENT: No comments.

FIRE MARSHAL: Fayette County Bureau Fire Prevention Approved

WATER SYSTEM: No conflict.

The applicant provides the following information:

VARIANCE SUMMARY

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

In Rezoning Petition Number 1288-19 (the “Rezoning Application”), filed on September 3, 2019, the Applicant applied to rezone, and the Fayette County Board of Commissioners on August 24, 2019 did rezone the Subject Property (and other contiguous property) from the A-R, Agricultural- Residential District to the R-55, Single-Family Residential District (the “Rezoning”). In the A-R Zoning District, the minimum floor area is 1,200 square feet. (Zoning Ordinance, Section 110-125(d)(3)). The existing house on the Subject Property (the “House”) was built in 1969 and consists of 2,046 square feet.

Therefore, at the time of the filing of the Rezoning Application, the House complied with the minimum floor area requirement for the A-R Zoning District. Due to the Rezoning, the House does not comply with the floor area requirement for the R-55 Zoning District. However, in the R-55 Zoning District, as discussed below, the House is a “legal nonconformance” and must “be considered a legal nonconforming structure [that] shall be allowed to remain.” (Zoning Ordinance, Sections 110-3, 110-170(1)). Nonetheless, when the Fayette County Board of Commissioner rezoned the Subject Property, it imposed the following condition (the “Condition of Approval”), among others:

That the Final Plat for the [S]ubject [P]roperty will not be approved until the existing single-family residence is brought into compliance with the R-55 zoning district which can be achieved either by adding additional heated finished floor area to the existing single-family residence to meet the minimum required floor area or through a variance, approved by the Zoning Board of Appeals, to reduce the minimum floor area requirement, or as a third option, removing the existing single-family residence from the subject property prior to Final Plat approval.

In order to comply with Condition of Approval, the Applicant respectfully requests the Fayette County Zoning Board of Appeals grant the variance requested herein, as required by the Conditional of Approval.

JUSTIFICATION OF REQUEST

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

The existing single-family residence on the Subject Property was constructed in 1969 and, upon information and belief, has remained unaltered since. To preserve the historic character of the Subject Property and the house located thereon, the Fayette County Zoning Board of Appeals (the "ZBA") should grant the variance requested herein. In doing so, the ZBA relieve the Applicant and Owner of the Condition of Approval that as detailed below, is not supported by the text of the Fayette County Zoning Ordinance.

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

By requiring alteration or demolition of the existing single-family residence on the Subject Property, the Condition of Approval arbitrarily constricts the market for the same. Stated differently, there are potential purchasers of the Subject Property that prefer the existing residence to remain in its current, unaltered state because of its historical character, square footage and /or aesthetic appeal.. Requiring that residence be altered (or demolished) in manner that, as discussed below, is contrary to the text of the Zoning Ordinance limits the market of potential buyers to those that desire the residence in an altered, expanded state. Absent approval of the variance requested herein, the Condition of Approval imposes upon the Applicant and Owner, but not upon similarly situated properties and their owners, a practical difficulty and unnecessary hardship. Market forces should dictate the square footage of the residence on the Subject Property.

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

The existing single-family residence was constructed in 1969 and, upon information and belief, has remain unaltered since. This unaltered structure is of peculiar historical significance. The Handley Family Home is a piece of Fayette County that maintains and pays homage to the Fayette County of yesteryear. Allowing the residence to remain as it has existed for decades, will honor the County's history. Therefore, the square footage of the current single-family residence on the Subject Property is a condition peculiar to the Subject Property which justifies approval of the variance requested herein.

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,**

If granted, the requested variance will not cause substantial detriment to the public good or impair the purposes and intent of the Fayette County Zoning Ordinance. Instead, granting the variance, and thereby allowing the existing residence to remain, will further the purpose of the R-55 Zoning District of “having low density single-family character [houses] and protect[ing] against the depreciating effects of small lot development and those uses incompatible with such a residential environment.” (Zoning Ordinance, Section 110-134(a)). Additionally, and as detailed below, Section 110-170 (1) of the Zoning Ordinance provides that the existing single-family residence on the Subject Property should ‘be allowed to remain’ as it currently exists.

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

Section 110-3 of the Zoning Ordinance defines an “illegal nonconformance” as a “lot, use, building or structure established after the effective date of November 13, 1980, or subsequent amendments which fail[s] to comply with provisions” of the Fayette County Zoning Ordinance. In contrast, a “legal nonconformance” is defined as “a legally existing lot, use, building or structure which fails to comply with the provisions” of the Fayette County Zoning Ordinances, “as of the effective date of November 13, 1980, or as a result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning, or a variance.” (Id. (emphasis added)).

In other words, if such a building fails to comply with Zoning Ordinance “due to... a rezoning “it is a “legal nonconformance”. (Id. emphasis added)).

Furthermore, if a structure complies with Zoning Ordinance but, fails to do so “as the result of... or due to a rezoning, [it] shall be considered a legal nonconforming structure and shall be allowed to remain.” (Zoning Ordinance, Section 110-170(1) (emphasis added)). However, “[t]he enlargement, expansion, or extension of a legal nonconforming structure which serves to increase the nonconformance” may only be made after authorization by the Fayette County Zoning Board of Appeals via a request for a variance. (d.). Section 110-170(1) does not require a variance or any other approval for such a legal nonconforming structure to be allowed to remain.” (Id.).

Therefore, the Condition of Approval requiring a variance for a legal conforming structure will impose a requirement on the Applicant and Owner that is not imposed on similarly situated property owners thereby depriving them of their rights under Just Compensation Clause of the Fifth Amendment to the Constitution of the United States of American; Article I, Section I, Paragraphs I-II of the Constitution of State of Georgia of 1983; Article I Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: Michael and Cheryl Schwertfeger
MAILING ADDRESS: 131 Hall Place Fayetteville GA 30215
PHONE: 770 460-6594 E-MAIL: mikejs41@comcast.net

AGENT FOR OWNERS: N/A

MAILING ADDRESS: _____

PHONE: _____ E-MAIL: _____

PROPERTY LOCATION: LAND LOT 187 LAND DISTRICT 4th PARCEL 0435-047

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 1.97 acres

ZONING DISTRICT: R-4D

ZONING OF SURROUNDING PROPERTIES: R-4D + A-R

PRESENT USE OF SUBJECT PROPERTY: Single-Family District

PROPOSED USE OF SUBJECT PROPERTY: Single-Family District

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-714-19

[] Application Insufficient due to lack of:

by Staff: _____ Date: _____

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

by Staff: [Signature] Date: Nov. 15, 2019

DATE OF ZONING BOARD OF APPEALS HEARING: December 14, 2019

Received from Michael Schwertfeger a check in the amount of \$ 175⁰⁰
for application filing fee, and \$ 40⁰⁰ for deposit on frame for public hearing sign(s).

Date Paid: Nov. 15, 19 Receipt Number: 7032901-signs
7032898-app.

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:

Michael Schwertfeger Cheryl Schwertfeger

Please Print Names

Property Tax Identification Number(s) of Subject Property: 0435-047

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the 44 District, and (if applicable to more than one land district) Land Lot(s) 197 of the District, and said property consists of a total of 1.97 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.

Michael Schwertfeger
Signature of Property Owner 1

131 Hall Place Fayetteville GA 30215
Address

Cheryl Schwertfeger
Signature of Property Owner 2

131 Hall Place Fayetteville GA 30215
Address

Signature of Notary Public

Date

Signature of Notary Public

Date

Signature of Authorized Agent

Signature of Notary Public

Address

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

VARIANCE SUMMARY

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

I would like to request a variance of 10 feet to the proposed road side of my property to build a detached garage. This proposed road was intended for a phase 2 that was never expanded. I hired Josh Woods of Better Built Buildings to do the construction. During the permit process, we found that when the sub division was built in the mid seventies, the road set back was set at 75 feet instead of the present day code of 40 feet. With the help of Peter Frisina and Chanelle Blaine of the Planning and Zoning Department we were able to reduce the road set back to the now code of 40 feet with the unanimous approval at the October 17th Planning Commission Meeting.

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 extraordinary condition of this property is the proposed road running up the righthand, driveway side of my lot. It originally had a 75 feet set back line on it. We just got that changed to the present day code of 40 feet, with the approval of the Planning Commission.

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

The practical difficulty would be there is no better place on the property than right at the end of my existing driveway. The topography of the rest of the lot would make building anywhere else very impractical.

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

This question will refer back to the proposed road on the right hand side of my lot.

BURTON & ASSOCIATES
 1740 Hudson Bridge Rd
 Box 1226
 Stockbridge, GA. 30281
 TEL (404)867-8332
 bdainc@bellsouth.net



RETRACEMENT SURVEY
 131 HALL PLACE
 PARCEL ID # 0435 047
 PROPERTY OF
 MICHAEL & CHERYL SCHWERTFEGER

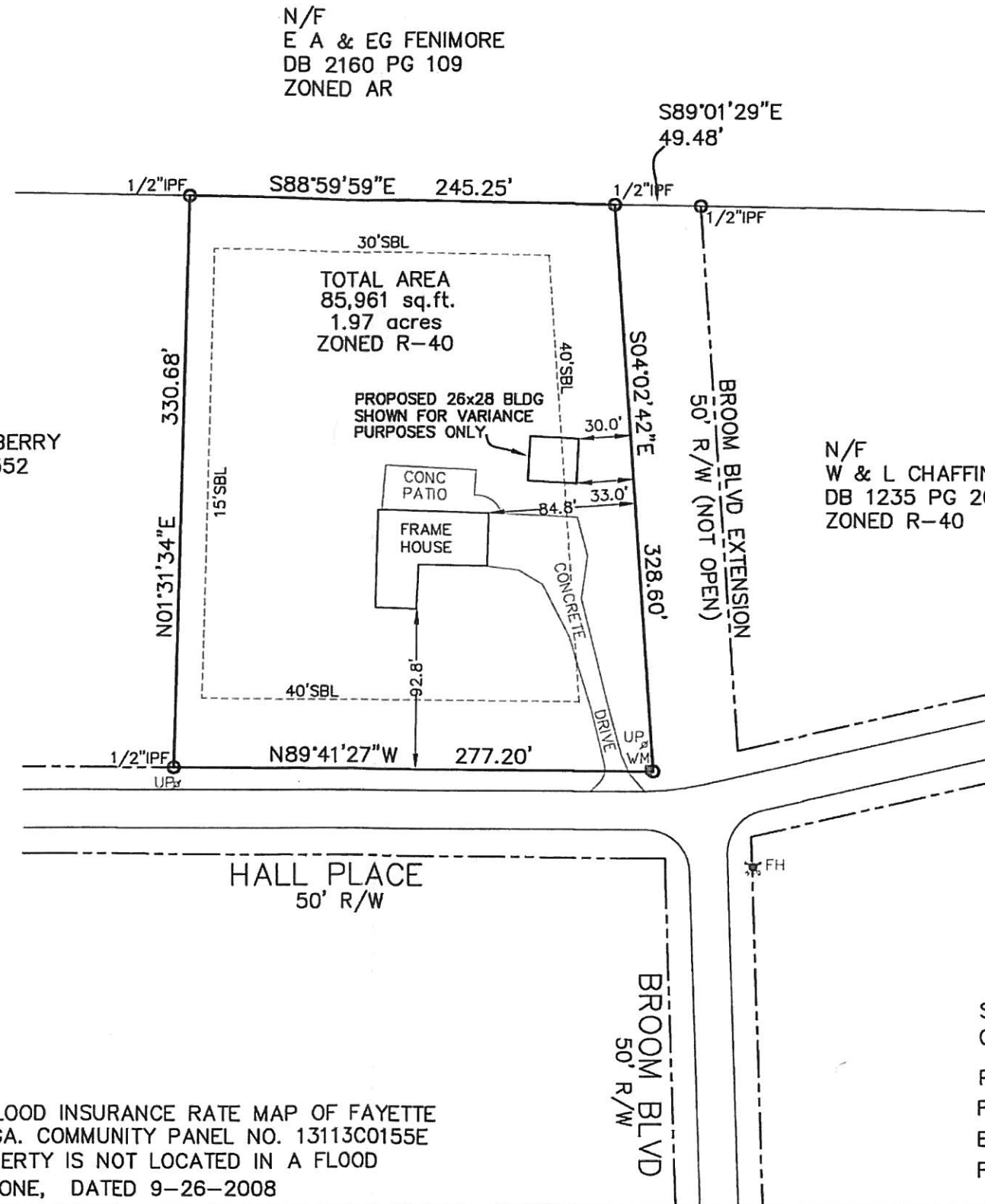
LAND LOT	COUNTY	DATE
187	FAYETTE	8-19-19
DISTRICT	SCALE	JOB NO.
4	1"=100'	81319SC

THIS BLOCK RESERVED FOR THE CLERK
 OF THE SUPERIOR COURT

AS REQUIRED BY SUBSECTION (d) OF O.C.G.A. SECTION 15-6-67, THIS PLAT HAS BEEN PREPARED BY A LAND SURVEYOR AND APPROVED BY ALL APPLICABLE LOCAL JURISDICTIONS FOR RECORDING AS EVIDENCED BY APPROVAL CERTIFICATES, SIGNATURES, STAMPS, OR STATEMENTS HEREON. SUCH APPROVALS OR AFFIRMATIONS SHOULD BE CONFIRMED WITH THE APPROPRIATE GOVERNMENTAL BODIES BY ANY PURCHASER OR USER OF THIS PLAT AS TO INTENDED USE OF ANY PARCEL. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN O.C.G.A. SECTION 15-6-67

N/F
 J & K BLACKBERRY
 DB 4701 PG 552
 ZONED R-40

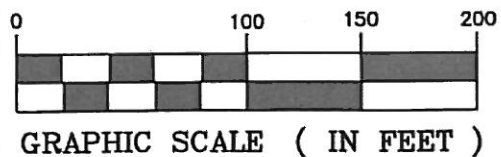
N/F
 W & L CHAFFIN
 DB 1235 PG 208
 ZONED R-40



N/F
 E A & EG FENIMORE
 DB 2160 PG 109
 ZONED AR

LEGEND

- IPF IRON PIN FOUND
- IPS IRON PIN SET
- N/F NOW OR FORMERLY
- DB DEED BOOK
- PB PLAT BOOK
- PG PAGE
- R/W RIGHT OF WAY
- OTP OPEN TOP PIPE
- SBL SET BACK LINE
- UP UTILITY POLE
- WM WATER METER
- FH FIRE HYDRANT



AS PER FLOOD INSURANCE RATE MAP OF FAYETTE COUNTY, GA. COMMUNITY PANEL NO. 13113C0155E THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD ZONE, DATED 9-26-2008

SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD BOTH WRITTEN AND UNWRITTEN.
 PLAT ERROR OF CLOSURE = 1' IN 222,967'
 FIELD ERROR OF CLOSURE = N/A - OPEN END
 EQUIPMENT USED TOPCON-GTS
 FIELD WORK COMPLETED 8-13-19

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.

No, it will not be a public detriment.

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

*Yes it would. My property is the only one effected by
this setback of this propose road.*

CHECKLIST OF ITEMS REQUIRED TO BE SUBMITTED FOR ZBA REQUESTS

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

1. Application form and all required attachments, completed, signed, and notarized (if applicable).
 2. Copy of latest recorded deed, including legal description of the boundaries of the subject property, including total acreage.
 3. Fifteen (15) copies of the survey plat of the property (if larger than 11" x 17"), drawn to scale with accurate dimensions, with the following indicated:
 - a. Location and size of existing structures (principal and accessory) and improvements on the parcel, including type (residential or non-residential), floor area, and accessory uses. Structures proposed to be removed must be indicated and labeled as such.
 - b. Minimum setbacks and buffers from all property lines of subject property required in the zoning district.
 - c. Location of exits/entrances to the subject property.
 - d. Location of all existing and proposed easements and streets on or adjacent to the subject property, indicating width of existing and proposed easements, width of right-of-way, and centerline of streets.
 - e. Location of well or water lines.
 - f. Location of septic tank, drainfield, and drainfield replacement area. *
 - g. Location and elevation of the 100-year flood plain and watershed protection buffers and setbacks (if applicable).
 - h. Location of on-site stormwater facilities to include detention or retention facilities (if applicable).
 - i. Parking locations, number of parking spaces, and parking bay and aisle dimensions (if applicable).
 - j. Location of landscaped areas, buffers, or tree save areas (if applicable).
 4. Application filing fee.
-

MISCELLANEOUS PAYMENT RECPT#: 7032901
FAYETTE COUNTY, GA
140 Stonewall Avenue, West
BE
FAYETTEVILLE GA 30214

DATE: 11/19/19 TIME: 16:23
CLERK: 9597cbla DEPT:
CUSTOMER#: 0

COMMENT: A-714-19 SIGN(S)
CHG:
ZS-Z A-714-19 SIGN(S) 40.00

AMOUNT PAID: 40.00

PAID BY: MICHEAL J. SCHWERTFE
PAYMENT METH: CHECK
 4252

REFERENCE:

AMT TENDERED: 40.00
AMT APPLIED: 40.00
CHANGE: .00

MISCELLANEOUS PAYMENT RECPT#: 7032898
FAYETTE COUNTY, GA
140 Stonewall Avenue, West
BE
FAYETTEVILLE GA 30214

DATE: 11/19/19 TIME: 16:21
CLERK: 9597cb1a DEPT:
CUSTOMER#: 0

COMMENT: A-714-19 APP
CHG:
ZA-Z A-714-19 APP 175.00

AMOUNT PAID: 175.00

PAID BY: MICHAEL J. SCHWERTFE
PAYMENT METH: CHECK
 4252

REFERENCE:

AMT TENDERED: 175.00
AMT APPLIED: 175.00
CHANGE: .00

RETURN TO:

SLEPIAN & SCHWARTZ, LLC
42 EASTBROOK BEND
PEACHTREE CITY, GA 30269



Doc ID: 006121840001 Type: GLR
Filed: 01/02/2004 at 12:52:03 PM
Fee Amt: \$187.00 Page 1 of 1
Transfer Tax: \$187.00
Fayette, Ga. Clerk Superior Court
Shella Studdard Clerk of Court

BK 2421 PG 169

WARRANTY DEED

STATE OF GEORGIA

COUNTY OF OF FAYETTE

THIS INDENTURE, made this 30th day of December, 2003, between REITA PARSON, of the County of Fayette, State of Georgia, as party or parties of the first part, hereinafter called Grantor, and MICHAEL J. SCHWERTFEGER AND CHERYL E. SCHWERTFEGER, AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP and not as tenants in comon as parties of the second part, hereinafter called Grantees (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

W I T N E S S E T H that: Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantees, as joint tenants with right of survivorship 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, the following described property:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 187 OF THE 4TH DISTRICT, FAYETTE COUNTY GEORGIA, BEING LOT 9 OF BROOM-HALL SUBDIVISION, AS PER PLAT RECORDED AT PLAT BOOK 7, PAGE 161, FAYETTE COUNTY, GEORGIA RECORDS. SAID PLAT BEING INCORPORATED HEREIN AND MADE A PART HEREOF BY REFERENCE.

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

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantees, as joint tenants with right of survivorship 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.

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

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

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

Signed, sealed and delivered in the presence of:



Witness



REITA PARSON

