

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
August 26, 2019
7:00 P.M.

1. Consideration of the Minutes of the Meeting held on June 24, 2019.
2. Consideration of the Minutes of the Meeting held on July 22, 2019.

PUBLIC HEARING

3. Petition No. A-705-19, David L. Whorton, owner, and Tom Hoover, agent, request the following: (1) Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (5) to reduce the side yard setback from 15 feet to 0 feet on the north and west property lines. (2) Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (6) to reduce the buffer from 50 feet to 19 feet on the north property line and 18 feet on the west property line. (3) Variances, as applicable, for all existing structures and improvements to remain in anticipation of any platting which may be done in the future. The subject property is located in Land Lot 44 of the 7th District and front(s) on Sandy Creek Road and Sams Road.
4. Petition No. A-706-19, Kelvin Pavon, Owner, and Nancy Pavon, Agent, request the following: Variance to Sec. 110-79. (e) Residential accessory structures located in front yard, to allow an existing pool on a corner lot to remain. The subject property is located in Land Lot 229 of the 5th District and fronts on Thornton Drive.

PETITION NO. A-705-19
731 Sandy Creek Road
Fayetteville, GA 30214
Public Hearing Date August 26, 2019

The subject property is zoned C-C and is located at 731 Sandy Creek Road and also fronts on Sams Drive. The applicant is requesting Variances as follows:

Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (5) to reduce the side yard setback from 15 feet to 0 feet on the north and west property lines.

Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (6) to reduce the buffer from 50 feet to 19 feet on the north property line and 18 feet on the west property line.

Variances, as applicable, for all existing structures and improvements to remain in anticipation of any platting which may be done in the future.

History:

The County first instituted zoning in August of 1960. Planning and Zoning is not in possession of a 1960 Zoning Map.

Tax assessor records indicate a commercial structure existed on this property in 1965 (Attachment 1).

Staff cannot find a rezoning petition for the subject property. No rezoning petition number is indicated on any available zoning map.

In October of 1971 a new Zoning Ordinance was adopted which contained a C-C (Community Commercial) zoning district.

The 1971 Zoning Map (Attachment 2) indicates C-C zoning at the northwest corner of Sandy Creek Road and Sams Road. The map is difficult to scale but the area zoned C-C appears larger than the 1980 zoning map.

A buffer was not required for Commercial zoning in the 1960 or 1971 zoning ordinances.

In November of 1980 a new Zoning Ordinance was adopted which contained a C-C (Community Commercial) zoning district. (Attachment 3)

The 1980 Zoning Map (Attachment 4) indicates C-C zoning at the northwest corner of Sandy Creek Road and Sams Road. The C-C area is a rhombus shape 200 feet by 200 feet following the angles of Sandy Creek Road and Sams Road.

A 30 foot commercial buffer was established with the 1980 zoning ordinance. It was increased to 50 feet with a 1998 review of the zoning ordinance.

The commercially zoned area was a portion of a larger parcel that is zoned R-70. The Tax Assessor created a parcel for taxing purposes to assess this C-C area as Commercial and remainder of lot as Residential. The parcel number for the commercial area contained a letter X which is the Tax Assessors practice to signify a portion of a parcel being taxed with a different use.

A Limited Warranty Deed from James M. Ivey to David Whorton and Maurine Whorton as Joint Tenants with Rights of Survivorship was recorder on 3/13/17 in Book 4580 Pages 297-298 (Attachment 5) fundamentally creating a two (2) acre parcel by subdividing it from a larger parcel. This deed contains a legal description for two acres and also contains a reference to an attached survey for two tracts, Per the Clerk of Court's office no survey was submitted with the deed as an attachment. A Final Plat, as required by the Subdivision Regulations, was not submitted for this two acre parcel.

A Planning and Zoning staff member erred in approving the location of this proposed building on a Department of Environmental Health form for a septic tank review (Attachment 6). At the time the GIS map (Attachment 7) incorrectly indicated a larger area zoned commercial. The error was discovered during the Building Permit review.

In consultation with the County Administrator and County Attorney the following course of action was determined:

- The County will recognize generally the 200 foot by 200 foot area zoned C-C as a lot of approximately one (1) acre for building purposes.
- The property owner is proposing to build a 6,000 square foot building to store vehicles. The C-C zoning allows as a Permitted Use a "Parking garage/lot." This building will be permitted as a "Parking garage/lot."
- The property surrounding the C-C lot is zoned residential so a 50 foot buffer plus a 15 foot setback is required along those property lines. Any applicable variances from the ZBA will be necessary for approval of a non-residential site plan to construct this building. The setback along Sandy Creek Road is 75 feet and the setback along Sams Road is 65 feet.
- A non-residential site plan is required to be submitted and approved by the applicable departments for a building permit in non-residential zoning districts.

- The surrounding property is zoned R-70 requiring a two (2) acre minimum lot size. As this area is 43,578 square feet in size it is not a legal lot.

The applicant provides the following information:

VARIANCE SUMMARY

On March 3, 2017 current owner purchased a track of land that was divided into 2- one acre lots. Survey was furnished by previous owner, done by registered surveyor. Transfer of title (closing) was done by Lawson & Beck, LLC. Deed was recorded in book 4580, page 0297. One the lots contained a commercial building, built in about 1965, and used for years as a bait store.

Current tax records show the 2- one acre lots listed as 1- two acre lot, billed as commercial property. Owner is currently paying tax on a 2 acre commercial lot.

Owner purchased the land, including the building, for the purpose of storing (parking) his collection of antique cars and other collectables with the intent to build an additional building behind the existing building to house the remainder of his collection. The owner does not operate a business out of this location. Personal use only.

Before the building permit could be issued, the permit office required an approval of the site plan from Fayette Planning and Zoning.

Applicant met with P & Z a total of 3 times. At the first meeting applicant was informed that the subject property was a 2-acre lot zoned commercial, same as tax map. The current set-backs were front 65, sides 15', and rear was 15'. With these requirements outlined, we contracted with a registered surveyor to draw a site plan.

Next, at the second meeting with P&Z, we submitted the site plan for review. It was at that meeting we were informed that the one-acre lot that contained the building was commercial, but the other was residential. Per P&Z requirements, we were still able to fit proposed building on the one lot that contained the existing building. We contracted with the surveyor to modify the site plan per P&Z.

At the 3rd meeting we submitted the revised final site plan. P&Z signed off on the location of the building on the lot, which we submitted to the building department for permitting. At that time the owner went ahead with the purchase of the new building which required a 20% non-refundable payment.

Approximately 2 weeks later we were informed by the building department that P&Z had rejected our site plan due to a 50' buffer rule. Nothing was ever mentioned about an additional 50' buffer in any of our 3 meetings with P&Z. Due to the added 50' buffer, the contracted building will not fit within the revised setbacks.

Pete Frisina, director of Fayette County Planning and Zoning, informed us we would need to apply for a variance.

Summary: Over the years more restrictive regulations have been placed on this lot, which in the early 1960s had little or no setbacks, has created a hardship. New regulations have increased minimal dimensional requirements, like front, rear, and side-yard setbacks or minimum lot size and street frontage. These amendments have severely restricted the existing property owners' use of their land. Accordingly, municipalities often protect property owners from hardships created by zoning amendments by "grandfathering" existing building lots. Most typical zoning ordinances have a non-conforming use provision that would be considered grandfathering.

JUSTIFICATION OF REQUEST

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

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

Over the years more restrictive regulations have been placed on this lot which have created a hardship.

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

The current 50' buffer only leaves small building area. Owner's other lot surrounds this commercial lot on 2 sides.

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

When property was zoned commercial the 50 foot buffer was not required.

- 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**

No detriment.

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

As per Planning & Zoning, the subject lot is non-conforming and owner could not build based on current regulations.

DEPARTMENTAL COMMENTS

ENGINEERING/PUBLIC WORKS: No Engineering comments with direct applicability to the two variance requests, but please advise applicant that construction of a new building and/or parking areas may require bringing the driveway onto Sandy Creek Road into compliance with Development Standards. Currently the parking lot merges into the roadway over a 125-ft section.

In addition, Fayette County is considering intersection improvements for Sams Drive, Eastin Road, Trusting Lake Drive and Sandy Creek Road. This work, if authorized, may impact (not eliminate) access to and from the property. The idea with the most support is conversion of the intersections to a roundabout, although a concept has not been presented to, or approved, by the Board of Commissioners.

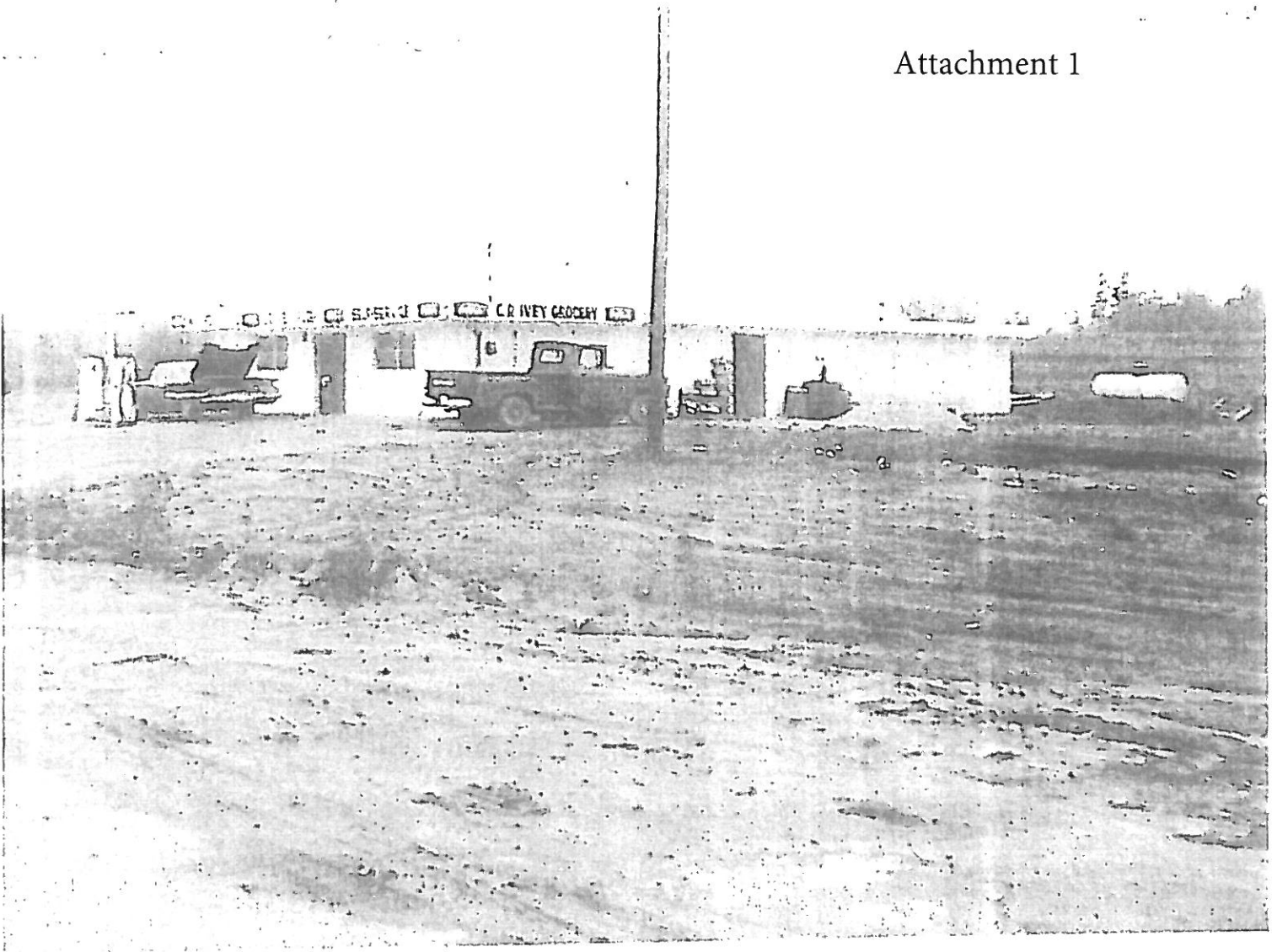
ENVIRONMENTAL HEALTH: No objections

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: No conflict.

Attachment 1



Attachment 2

A hand-drawn map on aged, yellowed paper. The map features a network of roads and landmarks. A prominent road runs diagonally from the top left towards the bottom right, labeled 'RD.' in several places. Another road, labeled 'SAMS RD.', runs vertically, intersecting the main road. A third road, labeled 'RD.', runs horizontally across the top, with 'LEE'S MILL' written above it. To the right of the main road, there is a dashed line labeled 'PIPELINE' and another dashed line labeled 'EASTI'. Below the main road, there is a label 'C-C' and another road labeled 'RD.' with 'SANDY' written next to it. A red marker, possibly a pin or a small building, is located on the main road near the intersection with 'SAMS RD.'. There are also some small, irregular shapes that might represent fields or other features.

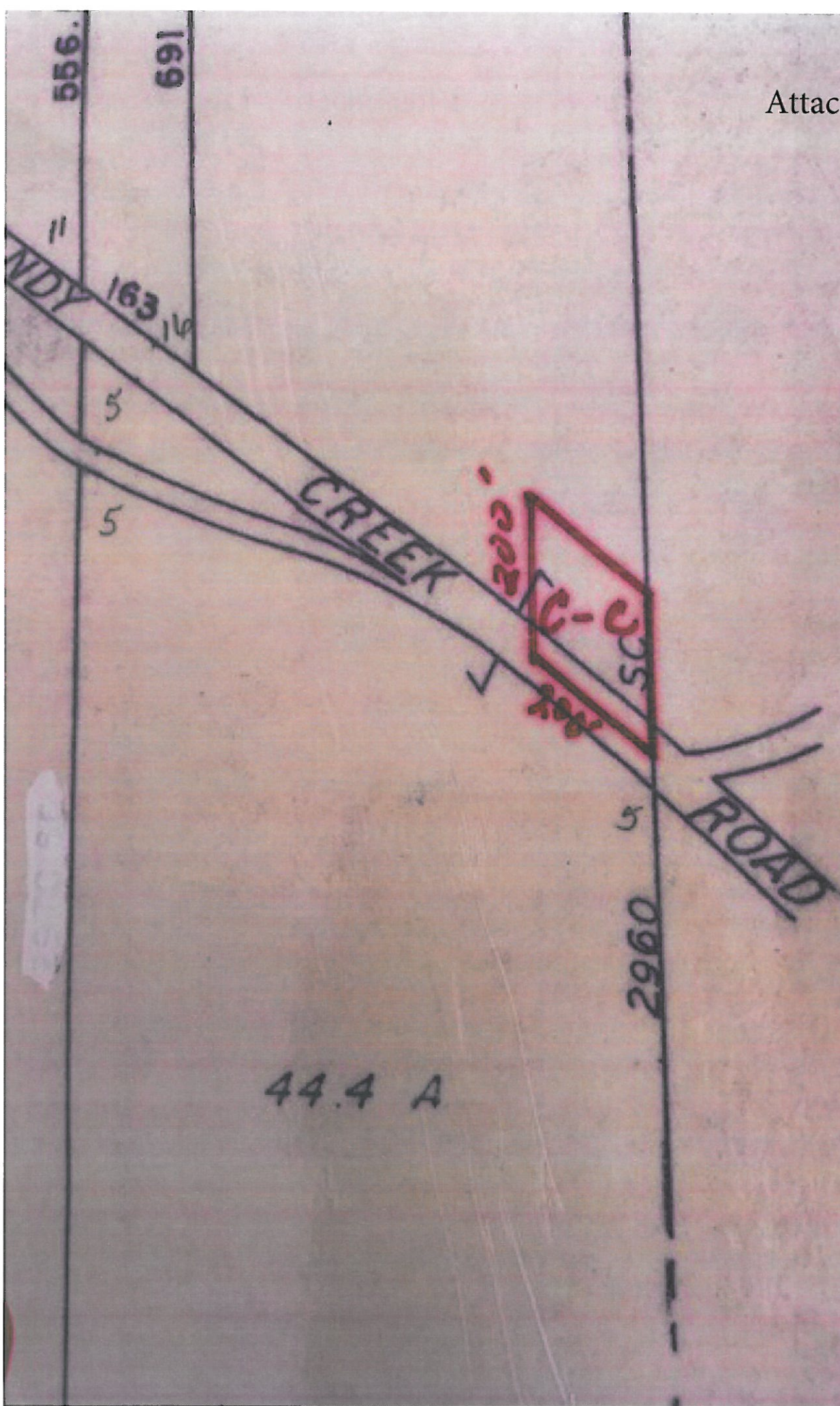
Sec. 110-143. - C-C, Community Commercial District.

- (a) *Description of district.* This district is composed of certain lands and structures providing for convenient community shopping facilities having a broad variety of sales and services.
- (b) *Permitted uses.* The following uses shall be permitted in the C-C zoning district:
 - (1) Amusement or recreational facility, indoor or outdoor (see chapter 18);
 - (2) Appliance sales and incidental repair;
 - (3) Art studio;
 - (4) Auto parts and/or tire sales and installation;
 - (5) Bakery;
 - (6) Bank and/or financial institution;
 - (7) Banquet hall/event facility;
 - (8) Catering service;
 - (9) Church and/or other place of worship, excluding outdoor recreation, parsonage, and cemetery or mausoleum;
 - (10) College and/or university, including classrooms and/or administration only;
 - (11) Copy shop;
 - (12) Cultural facility;
 - (13) Day spa;
 - (14) Department store, variety store, and/or clothing store;
 - (15) Drug store;
 - (16) Educational/instructional/tutoring facilities, including, but not limited to: academic, art, computer, dance, driving and/or DUI school, martial arts, music, professional/business/trade, and similar facilities;
 - (17) Electronic sales and incidental repair;
 - (18) Emission testing facility (inside only);
 - (19) Firearm sales and/or gunsmith;
 - (20) Florist;
 - (21) Gift shop;
 - (22) Grocery store;
 - (23) Hardware store;
 - (24) Health club and/or fitness center;
 - (25) Jewelry shop;
 - (26) Laboratory serving professional requirements, (e.g., medical, dental, etc.);
 - (27) Library;
 - (28) Medical/dental office (human treatment);
 - (29) Messenger/courier service;
 - (30) Military recruiting office;
 - (31) Movie theatre (excluding drive-in);

- (32) Museum;
 - (33) Office;
 - (34) Office equipment sales and/or service;
 - (35) Parking garage/lot;
 - (36) Personal services, including, but not limited to: alterations; barber shop; beauty salon; clothing/costume rentals; counseling services; electrolysis and/or hair removal; fitness center; laundry drop-off/pick-up; locksmith; nail salon; photography studio; shoe repair; and tanning salon.
 - (37) Plant nursery, growing crops/garden, and related sales;
 - (38) Printing, graphics, and/or reproductions;
 - (39) Private clubs and/or lodges;
 - (40) Private school, including, classrooms and/or administration only;
 - (41) Radio studio;
 - (42) Recording studio (audio and video);
 - (43) Restaurant, (including drive-in and/or drive-through);
 - (44) Retail establishment;
 - (45) Smoking lounge (subject to state and local tobacco sales and smoking laws);
 - (46) Taxidermist; and
 - (47) Television/movie studio.
- (c) *Conditional uses.* The following conditional uses shall be allowed in the C-C zoning district provided that all conditions specified in article V of this chapter are met:
- (1) Adult day care facility;
 - (2) Animal hospital, kennel (commercial or noncommercial), and/or veterinary clinic;
 - (3) Automobile service station, including, gasoline sales and/or inside or outside emission testing, in conjunction with a convenience store;
 - (4) Care home, convalescent center, and/or nursing home;
 - (5) Church and/or other place of worship;
 - (6) College and/or university, including, but not limited to: classrooms, administration, housing, athletic fields, gymnasium, and/or stadium;
 - (7) Commercial driving range and related accessories;
 - (8) Child care facility;
 - (9) Dry cleaning plant;
 - (10) Golf course (minimum 18-hole regulation) and related accessories;
 - (11) Home occupation;
 - (12) Hospital;
 - (13) Kennel (see animal hospital, kennel (commercial or noncommercial), and/or veterinary clinic);
 - (14) Laundromat, self-service or otherwise;
 - (15) Private school, including, but not limited to: classrooms, administration, playground, housing, athletic fields, gymnasium, and/or stadium;

- (16) Religious tent meeting;
 - (17) Seasonal sales, outdoor;
 - (18) Single-family residence and residential accessory structures and/or uses (see article III of this chapter); and
 - (19) Temporary tent sales.
- (d) *Dimensional requirements.* The minimum dimensional requirements in the C-C zoning district shall be as follows:
- (1) Lot area:
 - a. Where a central water distribution system is provided: 43,560 square feet (one acre).
 - b. Where central sanitary sewage and central water distribution systems are provided: 21,780 square feet (one-half acre).
 - (2) Lot width: 125 feet.
 - (3) Front yard setback:
 - a. Major thoroughfare:
 - 1. Arterial: 75 feet.
 - 2. Collector: 70 feet.
 - b. Minor thoroughfare: 65 feet.
 - (4) Rear yard setback: 15 feet.
 - (5) Side yard setback: 15 feet.
 - (6) Buffer. If the rear or side yard abuts a residential or A-R zoning district, a minimum buffer of 50 feet adjacent to the lot line shall be provided in addition to the required setback and the setback shall be measured from the buffer.
 - (7) Height limit: 35 feet.
 - (8) Screening dimensions for parking and service areas as provided in article III of this chapter and chapter 104.
 - (9) Lot coverage limit, including structure and parking area: 60 percent of total lot area.

(Code 1992, § 20-6-19; Ord. No. 2012-09, § 4, 5-24-2012; Ord. No. 2012-14, § 3, 12-13-2012; Ord. No. 2018-03, § 13, 9-22-2018; Ord. No. 2018-11, § 4, 10-25-2018)



Doc ID: 010099430002 Type: WD
Recorded: 03/13/2017 at 09:50:00 AM
Fee Amt: \$202.00 Page 1 of 2
Transfer Tax: \$190.00
Fayette, Ga. Clerk Superior Court
Sheila Studdard Clerk of Court
BK 4580 PG 297-298

Please return to:
Lawson & Beck, LLC
1125 Commerce Drive, Suite 300
Peachtree City, GA 30269
File # 17-LAW-0577

STATE OF GEORGIA
COUNTY OF FAYETTE

LIMITED WARRANTY DEED

THIS INDENTURE made this 8th day of March, 2017 between

James M. Ivey

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

David Whorton and Maurine Whorton as Joint Tenants With Right of Survivorship

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

WITNESSETH that: Grantor, for and in consideration of the sum of TEN DOLLARS and other good and valuable consideration (\$10.00) in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, the following described property:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 44 OF THE 7TH DISTRICT, FAYETTE COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT A POINT FORMED BY THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY), SAID POINT BEING THE TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING THUS ESTABLISHED, RUN THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY) ALONG THE ARC OF A CURVE TO THE LEFT AN ARC DISTANCE OF 143.74 FEET TO A POINT, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 49 DEGREES 40 MINUTES 51 SECONDS WEST A CHORD DISTANCE OF 143.68 FEET AND HAVING A RADIUS OF 1,503.41 FEET; RUN THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY) NORTH 52 DEGREES 35 MINUTES 51 SECONDS WEST A DISTANCE OF 76.10 FEET TO A POINT; RUN THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY) NORTH 52 DEGREES 35 MINUTES 51 SECONDS WEST A DISTANCE OF 184.19 FEET TO A POINT; RUN THENCE NORTH 37 DEGREES 02 MINUTES 36 SECONDS EAST A DISTANCE OF 231.35 FEET TO A POINT; RUN THENCE NORTH 89 DEGREES 08 MINUTES 35 SECONDS EAST A DISTANCE OF 182.42 FEET TO A POINT LOCATED ON THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY); RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) SOUTH 00 DEGREES 51 MINUTES 25 SECONDS EAST A DISTANCE OF 133.67 FEET TO A POINT; RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) SOUTH 00 DEGREES 51 MINUTES 21 SECONDS EAST A DISTANCE OF 3.20 FEET TO A POINT; RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) ALONG THE ARC OF A CURVE TO THE RIGHT AN ARC DISTANCE OF 254.08 FEET TO A POINT, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH 00 DEGREES 48 MINUTES 03 SECONDS EAST A CHORD DISTANCE OF 254.05 FEET AND HAVING A RADIUS OF 4,498.73 FEET; RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) ALONG THE ARC OF A CURVE TO THE RIGHT AN ARC DISTANCE OF 47.75 FEET TO A POINT, SAID POINT BEING THE TRUE POINT

Book: 4580 Page: 297 Seq: 1

OF BEGINNING, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH 04 DEGREES 44 MINUTES 34 SECONDS EAST A CHORD DISTANCE OF 47.74 FEET AND HAVING A RADIUS OF 630.95 FEET.

SAID TRACT OR PARCEL OF LAND CONTAINING 2.00 ACRES AND BEING SHOWN AS TRACT 1 AND TRACT 2 ON THAT CERTAIN PLAT OF SURVEY ENTITLED "SURVEY FOR JAMES M. IVEY" PREPARED BY FOUR CORNERS SURVEYING, RONALD T. GODWIN, GEORGIA REGISTERED LAND SURVEYOR NO. 2696, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A-1" AND INCORPORATED HEREIN BY REFERENCE FOR A MORE COMPLETE AND ACCURATE DESCRIPTION.

Subject to restrictive covenants and easements of record.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

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

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

Signed, Sealed and delivered in the presence of:

Edward H. Dognazzi

Unofficial Witness

Notary Public

James M. Ivey
James M. Ivey



Pl R 11
100.00
6/11/19

Attachment 6 - 1 of 2

FAYETTE COUNTY
ENVIRONMENTAL HEALTH

APPROVAL FOR CONSTRUCTION
(ADDITIONS AND ACCESSORY STRUCTURES)

NO inspection required.
OK per Zoning
Howard L. Horton
6/20/2019
Approved for
Construction Only

HAVE YOU CONSULTED WITH ZONING? YES ☒ NO ☐ (PLEASE CHECK WITH ZONING BEFORE COMPLETING THIS FORM)

STRUCTURE TO BE BUILT (CHECK ONE)

Barn ☐ Garage ☐ Storage Building ☒ Addition to existing home ☐
Other STORAGE BLD.

OWNER

Name: DAVID L. WHORTON
Address: 731 SANDY CREEK RD.
City & State: FAYETTEVILLE, GA.

Sign: David L. Whorton
Phone: _____
Zip Code: _____

APPLICANT/CONTACT

Name: Tommy Hoover
Phone: 404-683-0437

Sign: Tommy Hoover
Email: th

SITE INFORMATION

*Include copy of plat showing all existing structures and proposed structures/addition locations.

Address of property to be inspected: 731 SANDY CREEK RD
Subdivision: _____ Lot # _____ Lot Size: _____
Bedrooms: _____ Garbage Disposal: Yes ☐ No ☐
Water Supply: Well ☐ Public ☒ Community ☐
Do you have any dogs? Yes/No _____ Is there a security/gate code? Yes/No _____

BUILDING INFORMATION

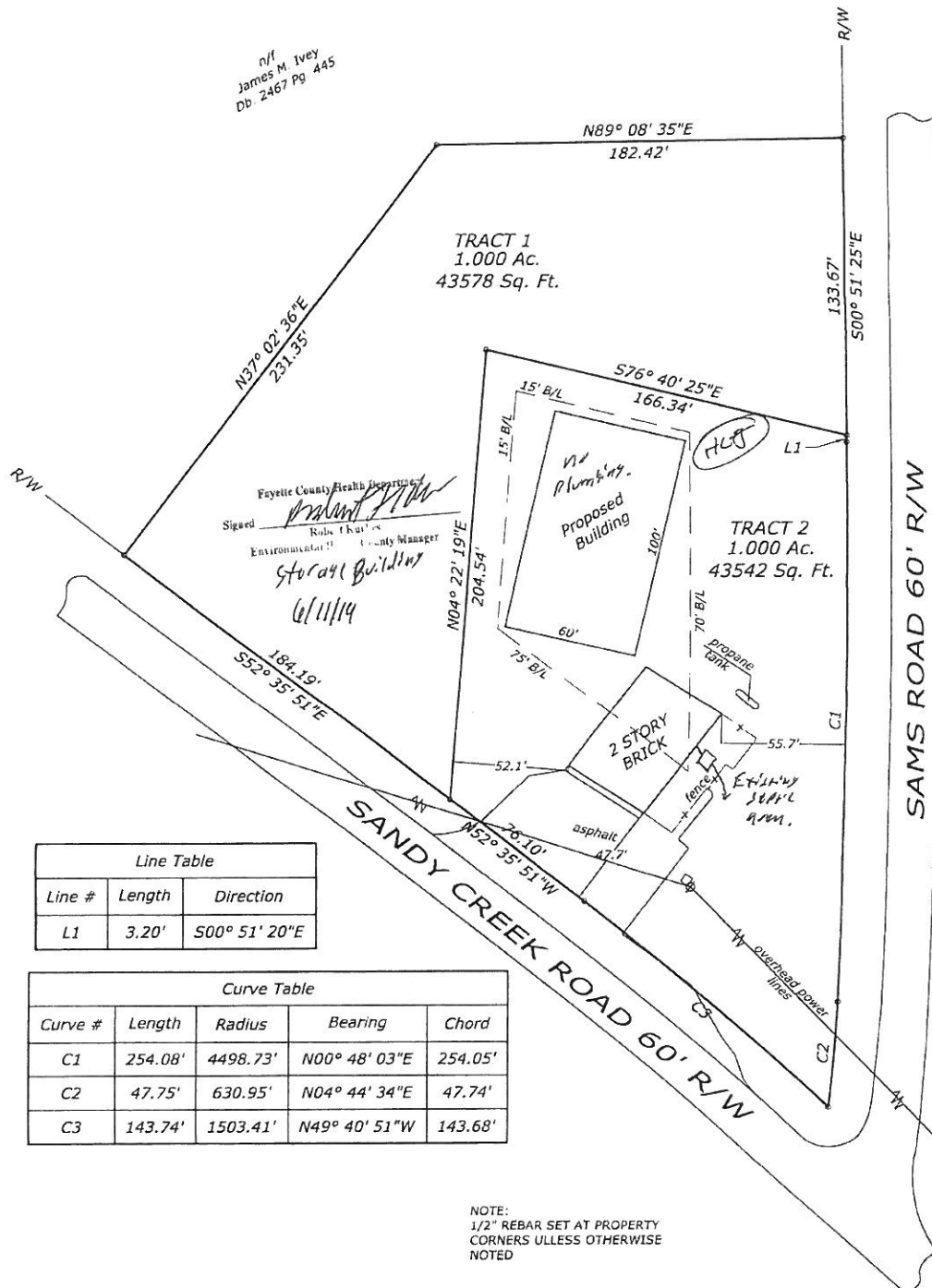
Length of Structure: 100' Width: 60' Stories: (1)
Number of Rooms: (1) Bedrooms: 0 Baths: 0

FOR OFFICE USE ONLY

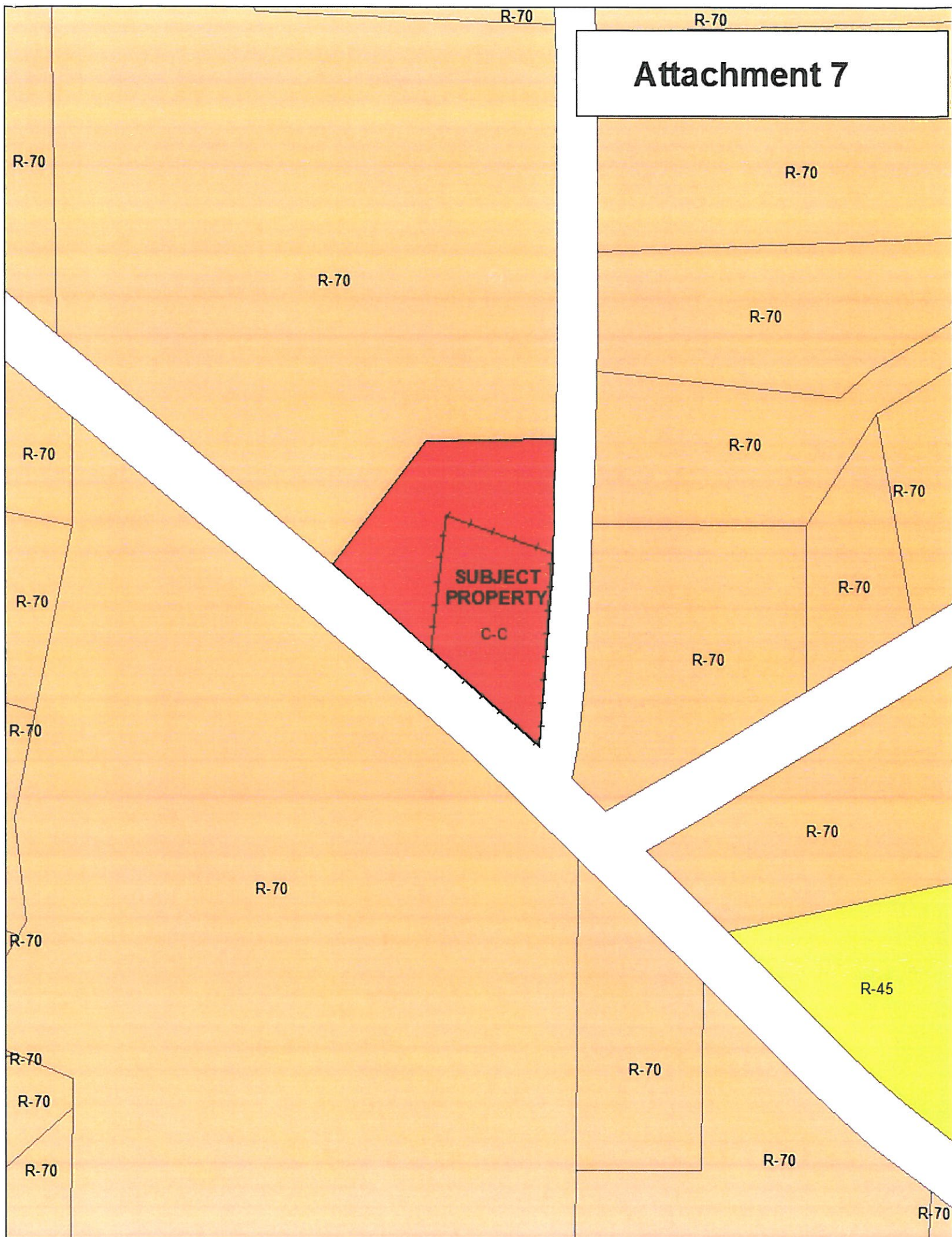
COMMENTS (If any): NO Plumbing, therefore NO SEPTIC NEEDED.

Howard L. Horton
Environmental Health Approval

6/11/19
Date



Attachment 7



A-705-19

**SUBJECT
PROPERTY**

Sandy Creek Road

Sams Drive

**Trustin
Lake
Drive**

Eastin Road

David Whorton
731 Sandy Creek Rd
Fayetteville, GA

8-5-2019

Fayette County Planning and Zoning

Ref: 731 Sandy Creek Rd. Variance

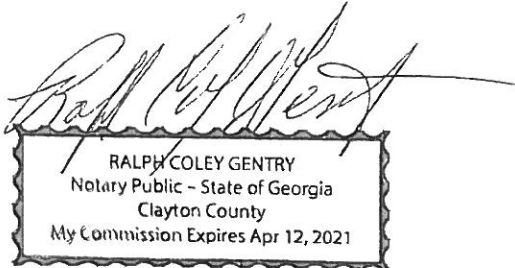
I am the only adjacent property owner to subject commercial lot and have no problem with the 50 ft. buffer being removed.

Thank you

David Whorton



Notary:



From: [Edward Lanham](#)
To: [Pete Frisina](#)
Subject: 731 Sandy Creek Rd Fayette
Date: Wednesday, July 3, 2019 3:01:23 PM

External Email Be cautious of sender, content, and links

Pete,

See attached. Seems Mr. Ivey paid the commercial tax free on address 731 Sandy Creek Road and it was listed as a one acre track. See attached.

Thanks, Eddie

Lester Buildings

Jordan Building Construction

Authorized Lester Buildings Dealer

Engineered Post-Frame Construction

E. J. Lanham

200 Carrington Ln., Brooks, GA. 30205

770-265-8736

www.jordanconstructionco.com

Please consider the environment before printing this e-mail. Please note that the information and attachments in this email are intended for the exclusive use of the addressee and may contain confidential or privileged information. If you are not the intended recipient, please do not forward, copy, or print the message or its attachments. Notify me at the above address and delete this message and any attachments.

From: [Edward Lanham](#)
To: [Pete Frisina](#)
Subject: Re: 731 Sandy Creek Rd Fayette
Date: Friday, July 5, 2019 10:55:28 AM

External Email Be cautious of sender, content, and links

Thanks Pete.

The closing attorney conveyed to me since the previous owner had paid tax for years on a one acre commercial lot, it was indeed considered a one acre lot.

Seems the county tax office has considered this a commercial lot since the mid-60s and the tax records I pulled were for a one acre lot.

If the county does not approve this building permit application, the owner will have to go back against the previous owner for selling him a one acre commercial lot that never existed as zoned commercial.

Thank you for attempting to make this work.

Does Mr Whorton's real estate attorney need to come to the Tuesday meeting?

Eddie

Lester Buildings

Jordan Building Construction

Authorized Lester Buildings Dealer

Engineered Post-Frame Construction

E. J. Lanham

200 Carrington Ln., Brooks, GA. 30205

770-265-8736

www.jordanconstructionco.com

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From: [Edward Lanham](#)
To: [Pete Frisina](#)
Subject: Re: 731 Sandy Creek Rd Fayette
Date: Friday, July 5, 2019 3:09:31 PM

External Email Be cautious of sender, content, and links

Pete,

The tax office informed me that since 1998 subject lot, 731 Sandy Creek Rd, has been taxed as a **one acre commercial** lot. That was as far back as she could go.

Eddie

Lester Buildings

Jordan Building Construction

Authorized Lester Buildings Dealer

Engineered Post-Frame Construction

E. J. Lanham

200 Carrington Ln., Brooks, GA. 30205

770-265-8736

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On Friday, July 5, 2019, 01:01:44 PM EDT, Pete Frisina <pfrisina@fayettecountyga.gov> wrote:

Eddie,

At this time, the County Administrator just wants to discuss this with the County Attorney. I just wanted to update you so you would know that we are working on it. Please forward any other information you come across.

Thanks,

Pete Frisina

From: [Edward Lanham](#)
To: [Pete Frisina](#)
Subject: Re: Sandy Creek Property
Date: Wednesday, July 10, 2019 4:20:19 PM

External Email Be cautious of sender, content, and links

Please call me.

Do we have to go by the 200 x 200 or as you stated approximately one acre?

Also, where did this 50' buffer come from, as I presented to P&Z what was outlined to me by your office. Nothing was mentioned about an additional buffer plus 15 feet. That would make the setback on the west and north sides 65 feet???

Eddie

Lester Buildings

Jordan Building Construction

Authorized Lester Buildings Dealer

Engineered Post-Frame Construction

E. J. Lanham

200 Carrington Ln., Brooks, GA. 30205

770-265-8736

www.jordanconstructionco.com

[Please consider the environment before printing this e-mail. Please note that the information and attachments in this email are intended for the exclusive use of the addressee and may contain confidential or privileged information. If you are not the intended recipient, please do not forward, copy, or print the message or its attachments. Notify me at the above address and delete this message and any attachments.](#)

On Wednesday, July 10, 2019, 09:47:34 AM MDT, Pete Frisina <pfrisina@fayettecountyga.gov> wrote:

Eddie,

From: [Edward Lanham](#)
To: [Pete Frisina](#)
Subject: Fayette
Date: Saturday, July 20, 2019 3:45:06 PM

External Email Be cautious of sender, content, and links

Pete,

One thing I did not mention is that I wanted to make the zoning board aware that Mr. Whorton owns the lot that will be affected by the buffer and it is non-buildable.

Thanks, Eddie

Lester Buildings

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On Friday, July 5, 2019, 10:16:03 AM EDT, Pete Frisina <pfrisina@fayettecountyga.gov> wrote:

Eddie,

I got your phone message on Wednesday and the info in your e-mail, thanks. I spoke to the County Administrator this morning and he wants to discuss this with the county attorney. That meeting will take place on Tuesday. We are still researching for any historical information on the property.

Thanks,

Pete Frisina

From: Edward Lanham [mailto:ejlanham@jordanconstructionco.com]
Sent: Wednesday, July 3, 2019 3:01 PM
To: Pete Frisina <pfrisina@fayettecountyga.gov>
Subject: 731 Sandy Creek Rd Fayette

External Email Be cautious of sender, content, and links

Pete,

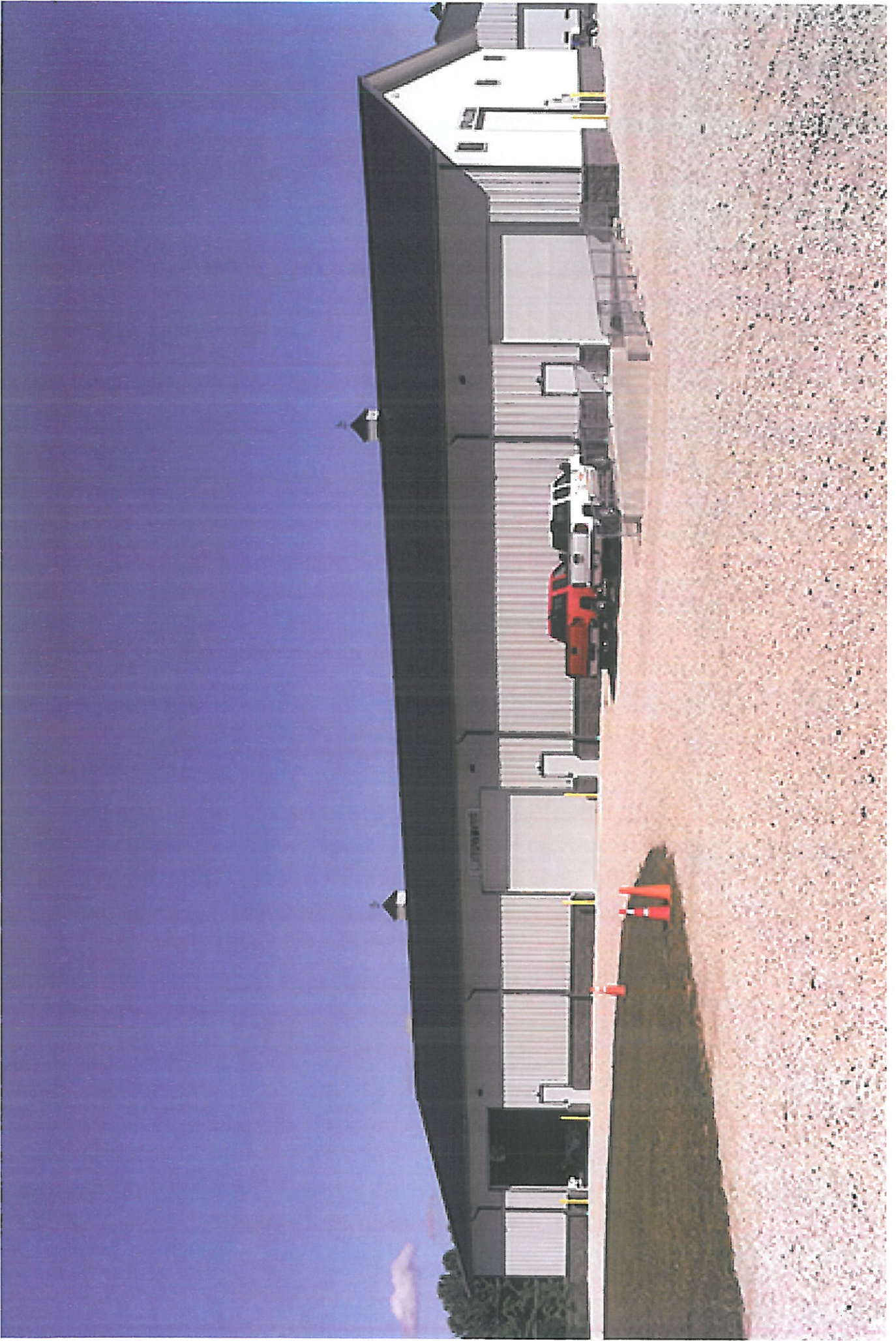
See attached. Seems Mr. Ivey paid the commercial tax free on address 731 Sandy Creek Road and it was listed as a one acre track. See attached.

Thanks, Eddie

Lester Buildings
Jordan Building Construction

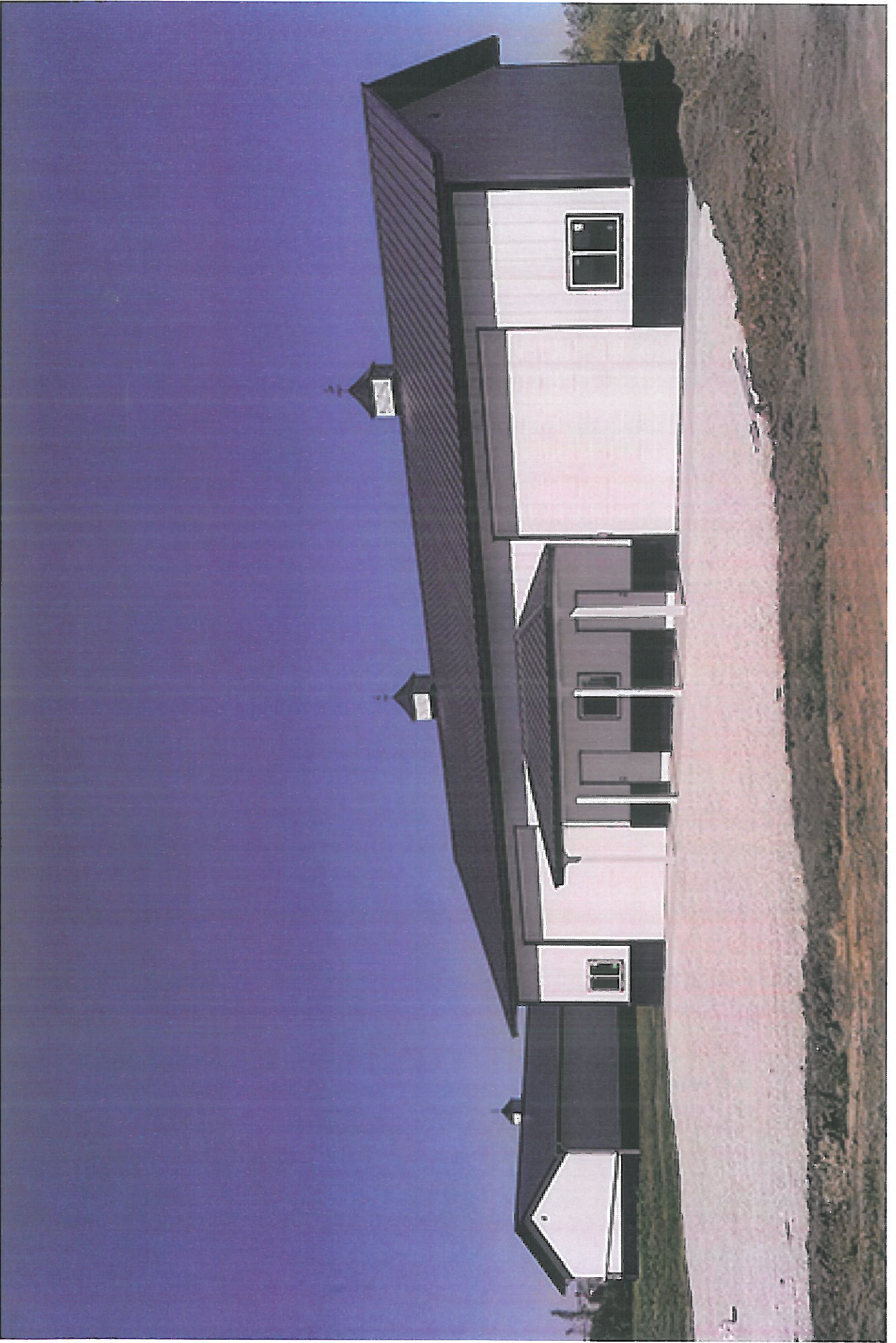












VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: DAVID L. WHORTON

MAILING ADDRESS: 250 ASHLEY FOREST DR. 30214

PHONE: 770-629-7189 E-MAIL: _____

AGENT FOR OWNERS: TOMMY HOOVER

MAILING ADDRESS: 1342 TSALIE TRAIL, LAKE CITY, GA. 30260

PHONE: 404-683-0437 E-MAIL: ⓪

PROPERTY LOCATION: LAND LOT 44 LAND DISTRICT 7th PARCEL _____

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: (2)

ZONING DISTRICT: C-C

ZONING OF SURROUNDING PROPERTIES: _____

PRESENT USE OF SUBJECT PROPERTY: STORAGE

PROPOSED USE OF SUBJECT PROPERTY: STORAGE

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-705-19

[] Application Insufficient due to lack of:

by Staff: _____ Date: _____

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

by Staff: CB Date: 7/19/19

DATE OF ZONING BOARD OF APPEALS HEARING: August 26, 2019

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

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

Date Paid: _____ Receipt Number: _____

PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM

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

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

DAVID L. WHORTON

Please Print Names

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

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the 7th District, and (if applicable to more than one land district) Land Lot(s) 44 of the District, and said property consists of a total of (2) acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to Tommy Hoover 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.

David Whorton

Signature of Property Owner 1

250 ASHLEY FOREST DR.
Address FAYEVILLE GA, 30214

Ralph Coley Gentry

Signature of Notary Public

7-19-2019
Date

Signature of Property Owner 2

Signature of Notary Public

Address

Date

Tommy Hoover

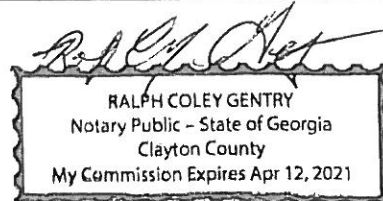
Signature of Authorized Agent

1342 TSALI TRAIL
Address LAKE CITY, GA. 30260

Ralph Coley Gentry

Signature of Notary Public

7-19-2019
Date



¹¹⁰
Variance to Sec ~~100~~-143. C-C (d) (5) to reduce the side yard setbacks from 15 feet to 0 feet on the north and west property lines.

¹¹⁰
Variance to Sec ~~100~~-143. C-C (d) (6) to reduce the buffer from 50 feet to 19 feet on the north property line and 18 feet on the west property line.

Variances, as applicable, for all existing structures and improvements to remain in anticipation of any platting which may be done in the future.

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.

SEE ATTACHED

Fayette County

Summary of events leading up to why we are required to apply for a variance.

731 Sandy Creek Road, Fayetteville, GA

David Whorton, owner

7-18-2019

History

On March 3, 2017 current owner purchased a track of land that was divided into 2- one acre lots. Survey was furnished by previous owner, done by registered surveyor. Transfer of title (closing) was done by Lawson & Beck, LLC. Deed was recorded in book 4580, page 0297. One the lots contained a commercial building, built in about 1965, and used for years as a bait store.

Current tax records show the 2- one acre lots listed as 1- two acre lot, billed as commercial property. Owner is currently paying tax on a 2 acre commercial lot.

Owner purchased the land, including the building, for the purpose of storing (parking) his collection of antique cars and other collectables with the intent to build an additional building behind the existing building to house the remainder of his collection.

The owner does not operate a business out of this location. Personal use only.

Before the building permit could be issued, the permit office required an approval of the site plan from Fayette Planning and Zoning.

Applicant met with P & Z a total of 3 times.

At the first meeting applicant was informed that the subject property was a 2-acre lot zoned commercial, same as tax map. The current set-backs were front 65, sides 15', and rear was 15'. With these requirements outlined, we contracted with a registered surveyor to draw a site plan.

Next, at the second meeting with P&Z, we submitted the site plan for review. It was at that meeting we were informed that the one-acre lot that contained the building was commercial, but the other was residential. Per P&Z requirements, we were still able to fit proposed building on the one lot that contained the existing building. We contracted with the surveyor to modify the site plan per P&Z.

At the 3rd meeting we submitted the revised final site plan. P&Z signed off on the

location of the building on the lot, which we submitted to the building department for permitting.

At that time the owner went ahead with the purchase of the new building which required a 20% non-refundable payment.

Approximately 2 weeks later we were informed by the building department that P&Z had rejected our site plan due to a 50' buffer rule. Nothing was ever mentioned about an additional 50' buffer in any of our 3 meetings with P&Z. Due to the added 50' buffer, the contracted building will not fit within the revised setbacks.

Pete Frisina, director of Fayette County Planning and Zoning, informed us we would need to apply for a variance.

Summary: Over the years more restrictive regulations have been placed on this lot, which in the early 1960s had little or no setbacks, has created a hardship. New regulations have increased minimal dimensional requirements, like front, rear, and side-yard setbacks or minimum lot size and street frontage. These amendments have severely restricted the existing property owners' use of their land. Accordingly, municipalities often protect property owners from hardships created by zoning amendments by "grandfathering" existing building lots. Most typical zoning ordinances have a non-conforming use provision that would be considered grandfathering.

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.

OVER THE YEARS MORE RESTRICTIVE REGULATIONS
HAVE BEEN PLACED ON THIS LOT WHICH HAVE
CREATED A HARDSHIP

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

THE CURRENT 50' BUFFER ONLY LEAVES
SMALL BUILDING AREA.
OWNER OTHER LOT SURROUNDS THIS
COMMERCIAL LOT ON 2 SIDES.

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

WHEN PROPERTY WAS ZONED COMMERCIAL THE
50' BUFFER WAS NOT REQUIRED

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 DETRIMENT

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

AS PER PLANNING + ZONING, THE SUBJECT LOT
IS NON-CONFORMING AND OWNER COULD NOT
BUILD BASED ON CURRENT REGULATIONS.

Legend

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

This Box reserved for the Clerk of the Superior Court



Vicinity Map
(Not to Scale)

GENERAL NOTES:

1. OWNER/DEVELOPER:

David Whorton
250 Ashley Forest
Fayetteville, GA 30214

2. SURVEYOR:

Four Corners Surveying, L.L.C.
P.O. Box 15
Tyrone, GA 30290
770-560-3910
770-823-9377
four_corners@bellsouth.net

3. SITE DEVELOPMENT DATA:

Location: Land Lot 44 of the 7th District, Fayette County, Georgia
Site Data = 1 Lot
Total area of project = 0.9995 Acres 43,542 Sq. Ft.
Proposed Impervious Area 15,716 Sq. Ft. or 36.09 %

4. Tax Parcel ID: 0711005X

5. MINIMUM DIMENSIONAL ZONING REQUIREMENTS:

For C-C Zoning district
Front yard = 65' (Local) - 75' (Collector)
Side yard = 15'
Rear yard = 15'
50' buffer between residential zoning

6. All deed book references shown hereon are recorded in the Clerk of Superior Court's office of Fayette County, Georgia.

7. Capped 1/2" re-bar to be set at all lot corners unless otherwise noted.

8. In my opinion this property does not lie within a 100 year flood plain according to Fayette County's MNGWPD 2013 Limited Detail Study. (F.I.R.M. #13113C0082E Dated 09/26/2008)

9. There are no groundwater recharge areas on the property.

10. There are no state waters on this property.

11. There are no wetlands on this property as per Fayette County GIS Site. All wetlands are under the jurisdiction of the U.S. Army Corps of Engineers and/or the state of Georgia Department of Natural Resources. Lot owners are subject to penalty by law for disturbance to these protected areas without the proper permit application and approval.

12. This survey is subject to all easements right-of-way and restrictions shown or not shown, recorded or not recorded.

13. This survey as performed without the benefit of a current and accurate title search, therefore any covenants, easements, and restrictions of record are to be incorporated with this plat.

14. Sewer service is provided by individual septic systems on each lot.

15. Lots water service is provided by individual wells.

16. All distances shown are horizontal ground distance. no conversion factor used.

17. All existing structures, buildings, or improvements on the property, to remain.

18. This Survey complies with both the rules of the Georgia Board of Registration for Professional Engineers and Land Surveyors and the Official Code of Georgia Annotated (OCGA) 15-6-67 as amended by HB1004 (2016), in that where a conflict exists between those two sets of specifications, the requirements of law prevail.

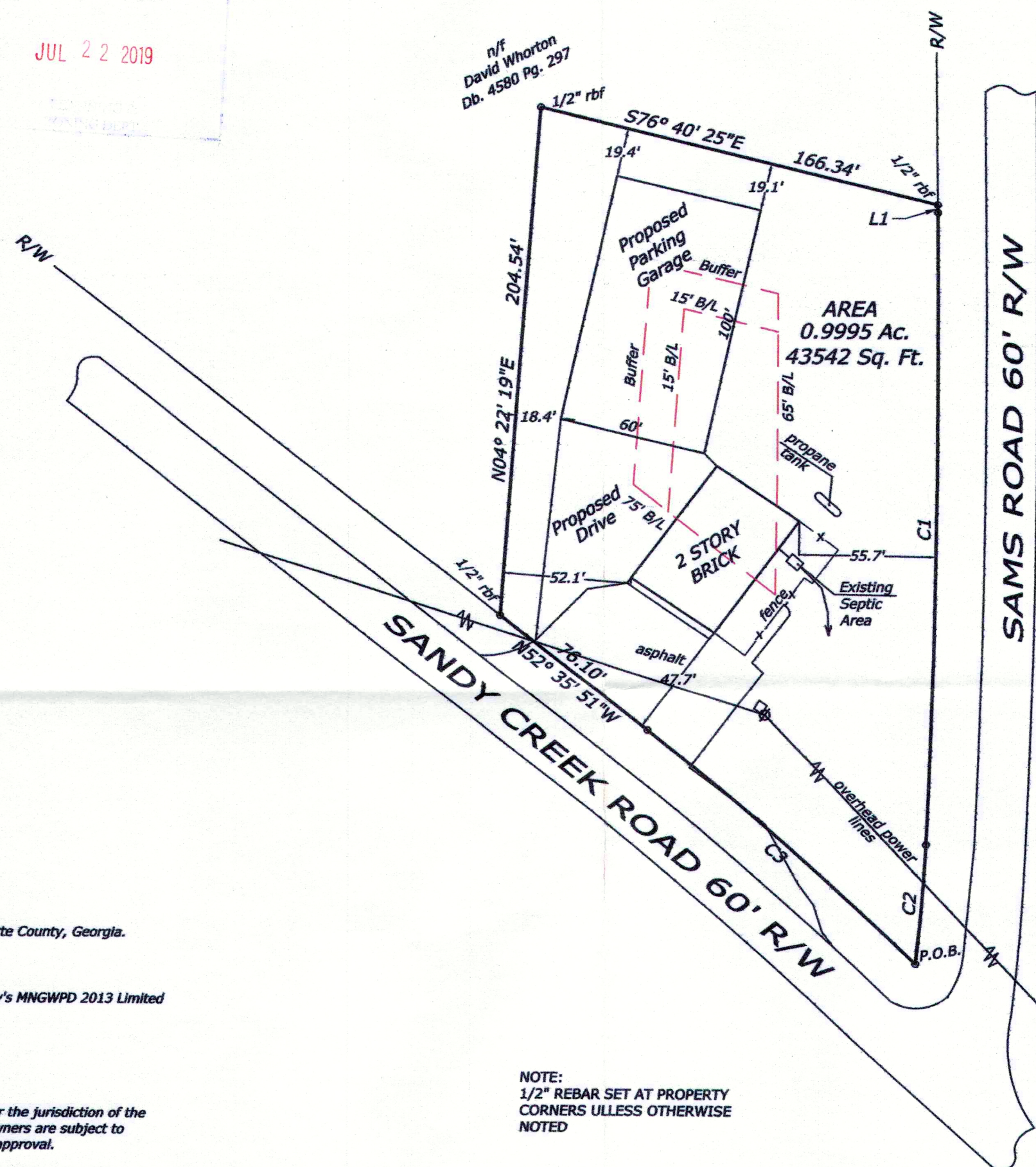
19. Declaration is made to original purchaser of the survey. Any use by third parties is at their own risk. Survey is valid only if print has original seal and original signature of surveyor.

20. No new streets or roads are created or no new utility improvements are required or no new sanitary sewer or approval of a septic tank is required.

21. The purpose of this variance plat is to revise the building lines between the residential lot to allow the building of the parking garage.

Variance Plat of 731 Sandy Creek Road

Land Lot 44 of the 7th District
Fayette County, Georgia



NOTE:
1/2" REBAR SET AT PROPERTY
CORNERS UNLESS OTHERWISE
NOTED

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

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

Surveyor's Certificate:

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

BY:
GA R.L.S. Ronald T. Godwin

2696
License NO.

07/16/19
Date

GRAPHIC SCALE 1" = 50'
0 25 50 100

Line Table		
Line #	Length	Direction
L1	3.20'	S00° 51' 20"E

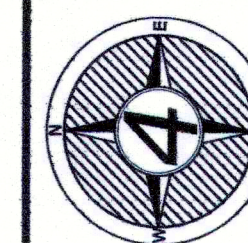
Curve Table				
Curve #	Length	Radius	Bearing	Chord
C1	254.08'	4498.73'	N00° 48' 03"E	254.05'
C2	47.75'	630.95'	N04° 44' 34"E	47.74'
C3	143.74'	1503.41'	N49° 40' 51"W	143.68'

CLOSURE DATA:
Field Closure=1" IN 10,000+
Angle Point Error=< 20"
Equipment Used=Topcon 3005W, Sokkia
SX, & Topcon Hyper GA GPS System
Adjustment Method=Compass Rule
Plat Closure=1" IN 100,000+

Magnetic

FOUR CORNERS
SURVEYING

P.O. BOX 15 Tyrone, GA 30290 770-560-3910 & 770-823-9377
FOUR_CORNERS@BELLSOUTH.NET



Page:	31-32
Plat/Deed Book:	46

Location

731 Sandy Creek Road
Land Lot 44 Of The 7th Land District
Fayette County, Georgia

Prepared For:

David Whorton

Job #:
17-030_var

Drawn By: RTG
Reviewed By: RTG
Date: 07/16/19
F.W.P.D.: n/a
Scale: 1" = 50'
Sheet: 1 of 1

PETITION NO. A-706-19
105 Thornton Drive
Fayetteville, GA 30214
Public Hearing Date August 26, 2019

The subject property is zoned R-40 and located at 105 Thornton Drive. The applicant is requesting a Variance as follows:

Variance to Sec. 110-79. (e) Residential accessory structures located in front yard, to allow an existing pool on a corner lot to remain.

History: The subject property's survey was recorded on August 13, 1973 in Plat Book 8 and Page 14. Tax Assessor's records indicate that the applicant purchased the property in 2017.

As part of the permitting process for a building permit for an addition to the home, a survey is required. Through researching the property aials of the home the violation was discovered. The aials shows the pool foundation located in the front yard along Thornton Drive.

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 July of 2017 I purchased what is now my home 105 Thornton Drive. I had discussed the possibility of just restoring and reselling this property with my wife, however during the restoration process my wife decided that this is where she wants to be. The house has become a beautiful place, the neighborhood is great so peaceful and quiet. We constantly have neighbors walk up to us, knock on our door, even getting out of their vehicles just to congratulate and compliment us on all our hard work. Which feels great, however we have four little hearts that are important to us and how they feel is what matters the most. Their happiness and wellbeing is everything to me.

When I first saw this house and I laid my eyes on that pool I just knew my children would feel just that, lots and lots of happiness. I love my children and I work hard every day for them, but going on vacation is not easy for this family of 6. Now when they're in the pool they think it's a vacation and we're good with that. Recently, my wife lost her mother, she went into the care of Hospice in our home where she quickly passed away surrounded by all her loved ones, and the loves of her life my children who were completely devastated by their loss. As their father I am

committed to making them smile and laugh as much as I can so to see them do just that in our pool completes me. They like our new home they love being in the pool and I enjoy every second of their laughter and smiles in there.

JUSTIFICATION OF REQUEST

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

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

We purchased our home located at 4105 Thornton Road, which is located on the corner of Thornton Drive and Kenwood Road in July 2017. We purchased this house because it was unusual and different. One of the key reasons, that we purchased this house was the fact that that the house had an existing pool for use by our four (4) children. It was big deal for my four children. When I attempted to get a permit to place a roof over a grill area, it brought to our attention by the Planning and Zoning staff that the existing pool was located in the front yard along Thornton Drive. We were told that we needed to obtain a variance for the existing pool before getting a permit for a roof over the grill area.

Since our home is on a corner lot, we learned that we have two (2) front yards, and the pool was placed in the 2nd front yard along Thornton Road. We also learned that the pool was built by a previous owner or tenant most likely without a permit. It also projects out in front of the main house.

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

When we purchased the house the pool was already existing and we were unaware that the pool was constructed without a permit and a variance. The thought of even telling my kids that we may have to remove the pool will devastate them. We have invested time and money into the repairing and up keeping the pool, since it serves as our kid's vacation. The pools also keeps them active outside house as one alternative to playing video games.

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

Since the house and the pool sit on this particular corner lot, a variance is necessary to keep the pool since the most of the clear area lies along in front of the house in the 2nd front along Thornton Road. There is almost no area to place a pool either along the side or behind the house. Also, the house does not have a back door access the back yard, therefore the only access is through the grill / pool area. We were attempting to get a roof over the grill area, so my family can enjoy the pool, when the issue that the pools was located in the 2nd front yard came up.

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**

This pool does not negatively impact my neighbors, in fact, my neighbors and their children use the pool quite often. Our neighbors have come to our door to compliment us on how we have beautified the house and help to improve the neighborhood. A variance will help to make us work harder beautifying our neighborhood. We ask for your understanding and help by granting us a variance for problem that we did not know existed because the pool was improperly built by a previous owner or tenant. Granting us the privilege to keep pool will not hurt the surrounding neighbors, or the community in general.

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

Granting us the privilege to keep the pool will not hurt the surrounding neighbors, or the community, in general. Allowing us to keep our pool, does not hurt our neighbors, since they also have a right to have a pool.

DEPARTMENTAL COMMENTS

ENVIRONMENTAL HEALTH: No comment.

ENVIRONMENTAL MANAGEMENT: No comment.

FIRE MARSHAL: The Bureau of Fire Prevention will neither approve nor deny request that fall outside the scope of fire prevention code requirements.

WATER SYSTEM: No conflict.

VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: Kelvin Pavan

MAILING ADDRESS: 105 Thornton Dr Fayetteville, GA 30214

PHONE: 770-900-3489 E-MAIL: Kelvin.pavan40@gmail.com
kelvinpavan@hotmail.com

AGENT FOR OWNERS: Nancy Pavan

MAILING ADDRESS: 105 Thornton Dr

PHONE: 770-900-3489 E-MAIL: _____

PROPERTY LOCATION: LAND LOT 229 LAND DISTRICT 5th PARCEL 055001008

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 1.93 acres

ZONING DISTRICT: R-40

ZONING OF SURROUNDING PROPERTIES: R-40, AR

PRESENT USE OF SUBJECT PROPERTY: Single family Res

PROPOSED USE OF SUBJECT PROPERTY: Single family Res

★

(THIS AREA TO BE COMPLETED BY STAFF): PETITION NUMBER: A-706-19

[] Application Insufficient due to lack of:

by Staff: _____ Date: _____

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

by Staff: _____ Date: _____

DATE OF ZONING BOARD OF APPEALS HEARING: August 26, 2019

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

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

Date Paid: _____ Receipt Number: _____

PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM

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

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

Helvin Paxon Carmen Rivas
Please Print Names

Property Tax Identification Number(s) of Subject Property: 055001008

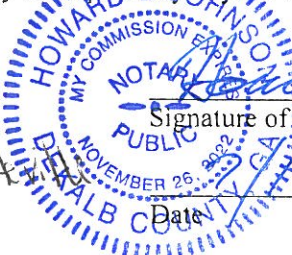
(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the 309th District, and (if applicable to more than one land district) Land Lot(s) 229 of the District, and said property consists of a total of 1 acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to Nancy Paxon 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

105 Thornton Dr. Fayette
Address



[Signature]
Signature of Notary Public

8/19
Date

Signature of Property Owner 2

Address

Signature of Notary Public

Date

Signature of Authorized Agent

Address

Signature of Notary Public

Date

VARIANCE INFORMATION

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

Ordinance/Section	Requirement	Proposed	Variance Amount
Sec. 110-177. (a) Sec. 110-137 (d) (4) at	Front yard setback: (Major Thoroughfare): Arterial 60 feet	Front YARD to 25 SETBACKS	35 feet
Sec. 110-177. (e)	Residential accessory structures in front yard.		

★ VARIANCE SUMMARY

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

JUSTIFICATION OF REQUEST

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

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

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

The unnecessary hardship my family would face is my children knowing and seeing the pool, yet never being able to enjoy it, and the constant explanation knowing that they would never truly understand

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

1) Extraordinary and exceptional conditions

We purchased our home located at 4105 Thornton Drive, which is located on the corner of Thornton Drive and Kenwood Road in July 2017. We purchased this house because it was unusual and different. One of the key reasons, that we purchased this house was the fact that the house had an existing pool for use by our four (4) children. It was a big deal for my four (4) children.

When I attempted to get a permit to place a roof over our grill area, it was brought to our attention by the Planning and Zoning staff that the existing pool was located in the 2nd front yard along Thornton Drive. We were told that we needed to obtain a variance for the existing pool before getting a permit for the roof over the grill area.

Since our home is on a corner lot, we learned that we have two (2) front yards, and the pool was placed in the 2nd front yard along Thornton Road. We also learned that the pool was built by a previous owner or tenant most likely without a permit. It also projects out in front of the main house.

2) Unnecessary hardship

When we purchased the house the pool was already existing and we were unaware that the pool was constructed without a permit and a variance. The thought of even telling my kids that we may have to remove the pool will devastate them. We have invested time and money into repairing and up-keeping the pool, since it serves as our kid's vacation. The pool also keeps them active outside the house as one alternative to playing video games.

3) Conditions peculiar to this particular property.

Since the house and the pool sit on this particular corner lot, we need a variance to keep the pool. Unfortunately, most of the clear and open area lies in front of the house in the 2nd front yard along Thornton Road. There is almost no area to place a pool either along the side or behind the house. Also, the house does not have a back door access to the back yard, therefore the only access is through the grill / pool area. We were attempting to get a roof over this grill area, so my family can enjoy the pool, when the issue that the pool was located in the 2nd front yard came up.

4) Detriment to the Public

This pool does not negatively impact my neighbors, in fact, my neighbors and their children use the pool quite often. Our neighbors have come to our door, to compliment us on how we have beautified the house and help to improve the neighborhood. A variance will help to make us work harder beautifying our house.

We ask for your understanding and help by granting us a variance for a problem that we did not know existed because the pool was improperly built by a previous owner or tenant.

5) Rights of others in same zoning district

Granting us the privilege to keep the pool will not hurt the surrounding neighbors, or the community, in general. Allowing us to keep our pool, does not hurt our neighbors, since they also have a right to have a pool.

In July of 2017 I
purchased what is now
my home

105 Thornton Dr
I had discussed the possibility
of just restoring and reselling
this property with my wife,
however during the restoration
process my wife decided
that this is where she
wants to be.

The house has become
a beautiful place, the
neighborhood is great
so peaceful and quiet.

We constantly have neighbors
walk up to us, knock on our
door, even getting out of
their vehicles just to
congratulate and compliment
us on all our hard work,
which feels great, however
we have 4 little hearts that
are important to us and
how they feel is what
matters the most.

Their happiness and well
being is everything to
me.

When I first saw this house and I layed my eyes on that pool I just knew my children would feel just that, lot's and lot's of Happiness. I love my children and I work hard everyday for them, but going on vacation is not easy for this family of 6. Now when they're in the pool they think it's a vacation and we're good with that.

Recently my wife lost her mother, she went into the care of Hospice in our home where she quickly passed away surrounded by all her loved ones, and the loves of her life my children who were completely devastated by their loss.

As their father I am committed to making them smile and laugh as much as I can so to see them do just that in our pool completes me.

They like our new home
They love being in the pool.
and I enjoy every second of their laughter and smiles in there.


Doc ID: 010216290003 Type: WD
Recorded: 08/24/2017 at 09:45:00 AM
Fee Amt: \$180.00 Page 1 of 3
Transfer Tax: \$166.00
Fayette, Ga. Clerk Superior Court
Sheila Studdard Clerk of Court
BK **4647** PG **106-108**

Prepared By:
William Curphey
Curphey & Badger PA
1820 Water Place, Suite 270
Atlanta, Georgia 30339

Return to:
Lenders Title Solutions
25400 U.S. Hwy 19 N. Suite 245
Clearwater, FL 33763

Mail Tax Statements To:
Kelvin Ivan Pavon and Carmen J. Rivas
6091 Autumn Green Dr.
Fairburn, GA 30213

Property Tax ID#: 055001008
Order #: L-90306

WARRANTY DEED

This indenture made and entered into on this the 27 day of July, 2017, by and between SUB-UDOM PROPERTIES, INC., Grantors, and KELVIN IVAN PAVON, a married person, and CARMEN J. RIVAS, an unmarried woman, Joint Tenants, whose address is 6091 Autumn Green Dr., Fairburn, GA 30213, Grantees.

Witnesseth:

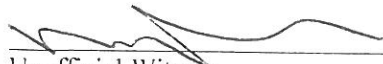
That for and in consideration of the sum of ONE HUNDRED SIXTY SIX THOUSAND and 00/100 (\$166,000.00) Dollars and other good and valuable considerations, cash in hand paid, receipt of which is hereby acknowledged, the Grantors have this day bargained and sold, and by these presents, does hereby sell, transfer and convey unto the said Grantees, Grantees' successors and assigns in fee simple, the following described real estate:

SEE COMPLETE LEGAL ATTACHED AS EXHIBIT "A"

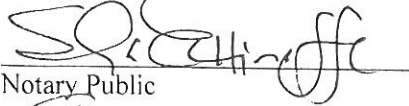
Property Address: 105 Thornton Drive, Fayetteville, GA 30214

To have and to hold the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise pertaining to the only proper use, benefit, and behalf of Grantees, Grantees' heirs, executors, administrators and assigns in fee simple. And the said Grantors, their heirs, executors and administrators, the said bargained premises onto the said Grantees, Grantees' heirs, executors and administrators; and all and every person or persons shall and will warrant and forever defend by virtue of these presents.

Signed, sealed, and delivered in the presence of:


Unofficial Witness


Print Name


Notary Public


Print Name

My Commission Expires: 2/20/21

SUB-UDOM PROPERTIES, INC.

By Vasana Smith



SHARNA ETTINOFFE
NOTARY PUBLIC
Cobb County
State of Georgia
My Comm. Expires Feb. 20, 2021

No title search was performed on the subject property by the preparer. The preparer of this deed makes neither representation as to the status of the title nor property use or any zoning regulations concerning described property herein conveyed nor any matter except the validity of the form of this instrument. Information herein was provided to preparer by Grantors/Grantee and /or their agents; no boundary survey was made at the time of this conveyance.



EXHIBIT "A"

SITUATED IN THE CITY OF FAYETTEVILLE, COUNTY OF FAYETTE, STATE OF GEORGIA.

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 229, OF THE 5TH DISTRICT, FAYETTE COUNTY, GEORGIA, BEING LOT 27, BLOCK A, BETHSAIDA WOODS SOUTH, UNIT ONE, AS PER PLAT OF SURVEY BY ESTON PENDLEY, DATED 9/7/73, RECORDED IN PLAT BOOK 8, PAGE 14, FAYETTE COUNTY RECORDS, SAID PLAT IS EXPRESSLY INCORPORATED HEREIN AND MADE A PART OF THIS DESCRIPTION BY REFERENCE; AND BEING PRESENTLY KNOWN AS 105 THORNTON DRIVE, FAYETTEVILLE, GEORGIA 30214, AND BEING MORE PARTICULARLY SHOWN ON A SURVEY FOR REX W. PIERCY BY KOONS, WOOD & ASSOCIATES, DATED 7/12/85.

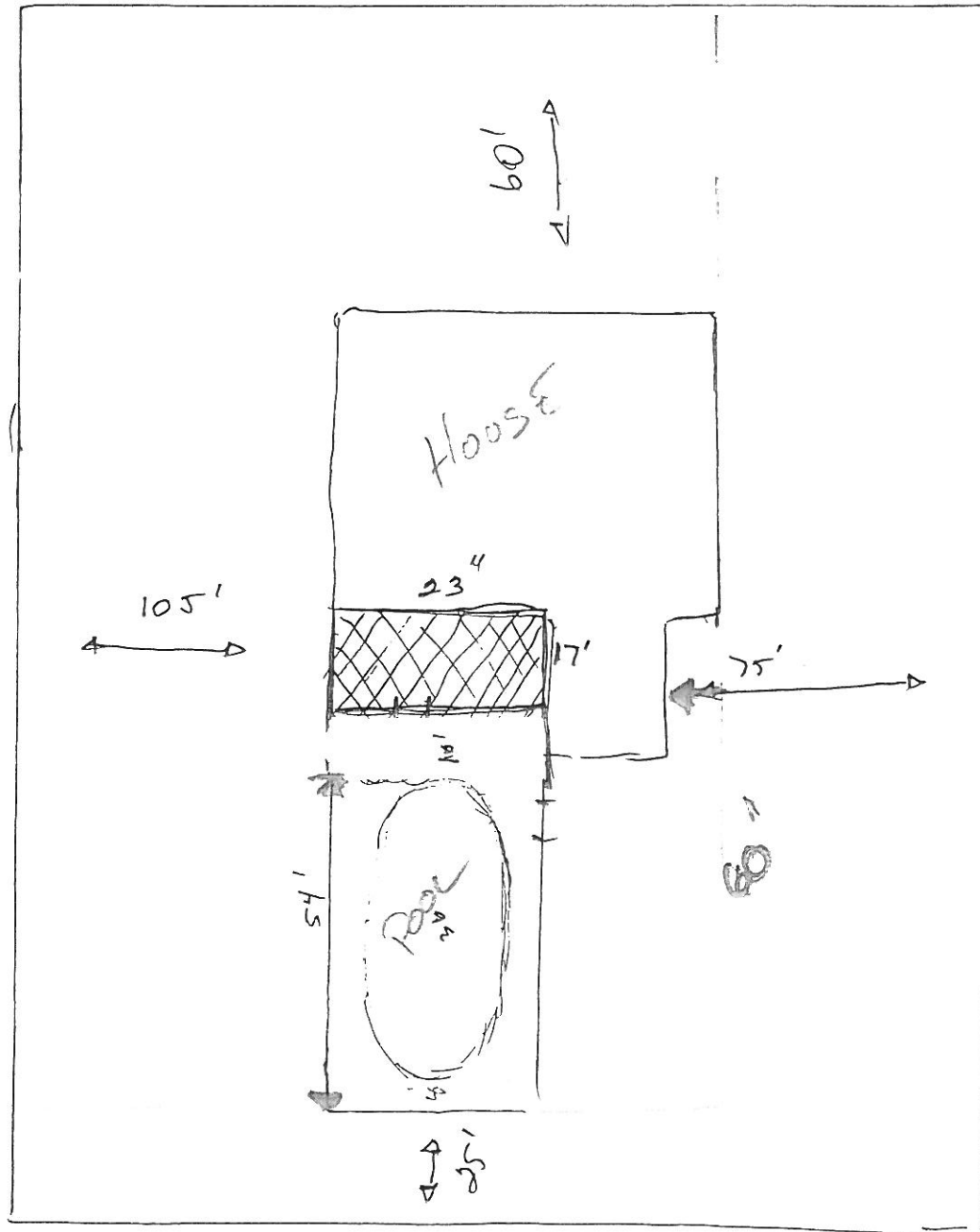
Also known as 105 Thornton Drive, Fayetteville, GA 30214

Parcel ID # 055001008

Lot 27 A

A-706-1

170.0'



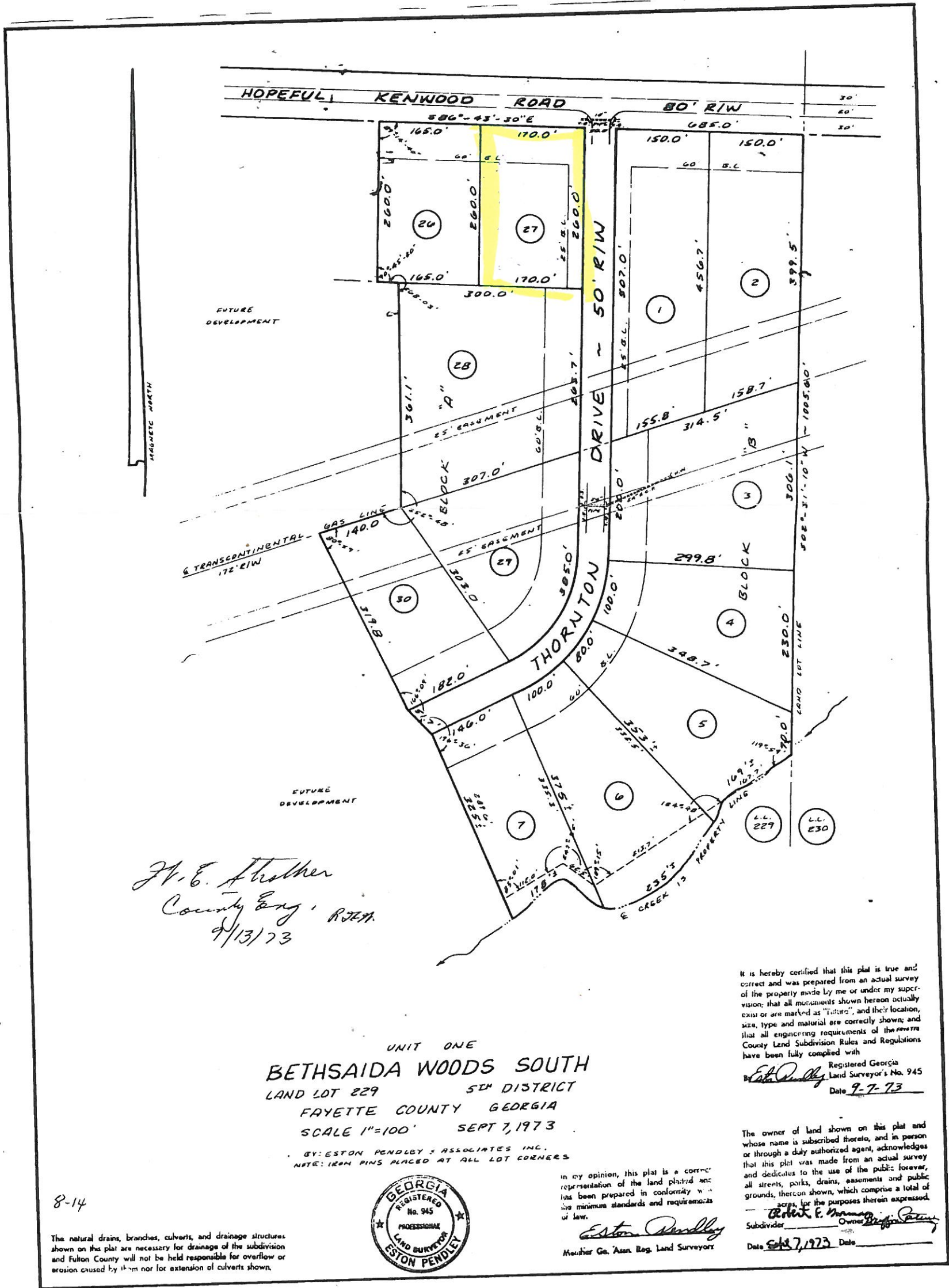
260.0'

Kenwood.

SCALE
1:40

ThornTON

A-706-19



J. E. Fletcher
County Eng. R.F.M.
9/13/73

UNIT ONE
BETHSAIDA WOODS SOUTH
LAND LOT 229 5TH DISTRICT
FAYETTE COUNTY GEORGIA
SCALE 1"=100' SEPT 7, 1973

BY: ESTON PENDLEY & ASSOCIATES INC.
NOTE: IRON PINS PLACED AT ALL LOT CORNERS



In my opinion, this plat is a correct representation of the land plotted and has been prepared in conformity with the minimum standards and requirements of law.
Eston Pendley
Member Ge. Assn. Reg. Land Surveyors

It is hereby certified that this plat is true and correct and was prepared from an actual survey of the property made by me or under my supervision; that all monuments shown hereon actually exist or are marked as "Tutors", and their location, size, type and material are correctly shown; and that all engineering requirements of the Fayette County Land Subdivision Rules and Regulations have been fully complied with.
Eston Pendley Registered Georgia Land Surveyor's No. 945
Date 9-7-73

The owner of land shown on this plat and whose name is subscribed thereto, and in person or through a duly authorized agent, acknowledges that this plat was made from an actual survey and dedicates to the use of the public forever, all streets, parks, drains, easements and public grounds, thereon shown, which comprise a total of _____ acres, for the purposes therein expressed.
Robert E. Manning Subdivider
Date 9-7-73 Date _____

Recorded 9-13-1973 W. A. Ballard, Clerk