



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2020-13 **Legistar #: 20200165**

Board of Zoning Appeals Hearing: Monday, May 18, 2020 – 6:00 p.m.

Property Owner: Marcotulio Mazariegos
405 Pat Mell Rd SW
Marietta, GA 30060

Applicant: Glenn Landry
870 Oaklen View Dr
Buford, GA 30518

Address: 1177 Bellemeade Drive

Land Lot: 0066 **District:** 17 **Parcel:** 01200

Council Ward: 2B **Existing Zoning:** CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to allow off-site parking to satisfy the minimum parking requirements for a place of assembly. [*§716.07 (A)*]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.

3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



1177 Bellemeade Drive



Off-Site Parking area

Recommended Action:

Approval with stipulation. On behalf of the owner, Marcotulio Mazariegos, Glenn Landry is requesting a variance at 1177 Bellemeade Drive in order to operate a place of assembly. The subject property is 0.616 acres and zoned CRC (Community Retail Commercial). The adjacent properties are also zoned CRC. The applicant is requesting a variance to meet the minimum parking standards by providing parking spaces off-site at the adjacent property at 1137 Powder Springs Street.

The owner recently purchased the property last June with the intent to remodel the space from a restaurant to an event hall. However, the owner was notified during the business license and tenant move-in process that he could not proceed due to insufficient parking. The previous restaurant use only required 27 parking spaces (1 space per 175 sq.ft); but according to the Zoning Ordinance a place of assembly with no fixed seating must provide 1 space for every 40 square feet of the largest assembly area. The floor plan for the facility shows one assembly area, approximately 4,200 square feet in total, which includes a stage, dance floor, seating, and bar area. As such, 105 parking spaces are required, but the site only contains 33 parking spaces.

The owner of the shopping plaza adjacent to the site has agreed to grant a revocable lease agreement to allow the use of 72 parking spaces for use by the events facility. With that agreement, the event facility would have 105 parking spaces available for their use. Technically, the shopping plaza only exceeds their minimum parking requirements by 16 spaces, but the hours of operation of the event hall would not usually conflict with the shopping center's daily traffic activity.

The adjacent property shares a dedicated access drive with the subject property so the traffic pattern should be safe and predictable. Since the operation of the event facility would likely be during the off-hours of the shopping center, *staff recommends approval with the following stipulation:*

- 1. The owner of the event facility/place of assembly shall maintain a current lease agreement with the adjacent property owner (1137 Powder Springs Street) for the use of the additional spaces.*

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Department of Development Services
205 Lawrence Street
Marietta, GA 30060
Phone: 770-794-5440

APPLICATION FOR VARIANCE OR APPEAL

(Owner/Applicant/or Representative must be present at all public hearings)

(NOTE: CORRESPONDENCE IS HANDLED VIA EMAIL UNLESS OTHERWISE REQUESTED)

For Office Use Only:

Application #: 12020-13 Legistar #: 20200165 BZA Hearing Dt: 3-30-20
City Council Hearing Dt (if applicable) #: - PZ #: 20-64

This is a variance/appeal application for:

X

Board of Zoning Appeals

City Council

Owner's Name Marcotulio Mazariegos
EMAIL Address: info@diamondevents hall.com
Mailing Address 405 Pat Mell Rd SW Zip Code: 30060 Phone Number

COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant: Glenn Landry
EMAIL Address: macord@bellsouth.net
Mailing Address 870 OAKLEN VIEW DR, BUFORD, GA, Zip Code: 30518 Phone Number 770-652-7440

Address of subject property: 1177 Bellemeade Dr Date of Acquisition: 6/17/2019

Land Lot (s) 66 District 17th Parcel 01200 Acreage 0.616 Zoned CRC Ward 2B FLU: CAC

List the variance(s) or appeal requested (please attach any additional information):

Parking Spaces

Required Information

- 1. Application fee (\$250)
2. Completed notarized application. The original application must be submitted with ALL original signature(s) - Copies of the application or signature(s) will NOT be accepted.
3. Copy of the deed that reflects the current owner(s) of the property.
4. Letter describing the reason for the variance request, stating why strict adherence to the code would result in a particular hardship (as distinguished from a mere inconvenience or desire to make more money).
5. Site plan - drawn to scale. Site plans must illustrate property lines and all relevant existing information and conditions in addition to proposed additions or modifications within the referenced property lines of the tract(s).
Copies Required: One (1) - (8 1/2" x 11") -or- (11" x 17") drawn to scale.
Optional Additional Plat size: (24"x 36"). If providing (24"x 36") then 5 copies REQUIRED.
6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.

Note: The Department of Development Services reserves the right to obtain additional information that reasonably may be required in order that an informed decision may be made.

OVER

CAMPAIGN CONTRIBUTIONS

The Owner and Applicant herein certify that he/she has has not made campaign contributions or gifts aggregating \$250.00 or more to the Mayor, any member of Council or any member of the Board of Zoning Appeals within the two (2) years preceding the filing of this application.

[Signature]
Signature of Owner

Marcotulio R Mazariegos
Print Name

[Signature]
Signature of Applicant

Glenn A. Laundry
Print Name

FINANCIAL INTEREST

The Applicant herein certifies that he/she has has not a financial interest in the property which is ten percent (10%) or more.

[Signature]
Print Name

[Signature]
Signature of Applicant

APPLICANT CERTIFICATION

- The Applicant certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Applicant's knowledge and belief. Should any portion not be true, then the application may be rejected.
- Penalty for false or fraudulent statement: Whoever, in any matter, knowingly and willingly falsifies or makes any false, fictitious or fraudulent statement of representatives concerning this application shall be denied the request stated in this application.

[Signature]
Signature of Applicant

2-17-2020
Date

Glenn A. Laundry
Please Print

OWNER CERTIFICATION

- The Owner certifies that all information in this application, and all information furnished in support of this application, is true and complete to the best of the Owners's knowledge and belief. Should any portion not be true, then the application may be rejected.
- Penalty for false or fraudulent statement: Whoever, in any matter, knowingly and willingly falsifies or makes any false, fictitious or fraudulent statement of representatives concerning this application shall be denied the request stated in this application.
- The Owner hereby gives permission to enter on the property for inspection during the time application is pending.

[Signature]
Signature of Owner

Marcotulio Mazariegos
Please Print

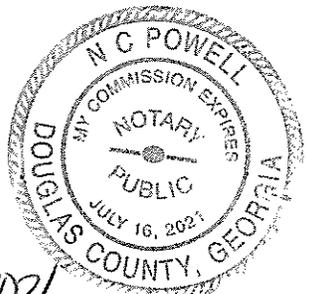
405 Pat Mell Rd. SW., Marietta, GA 30060
Address

2-17-2020
Date

Signed, sealed and delivered in the presence of:

[Signature]

My Commission Expires: July 16, 2021



Note: Owner, Applicant or Representative must be present at meeting in order for case to be heard.

The Diamond Hall, LLC

1177 Bellemeade Dr.

Marietta, GA 30008

February 17, 2020

City of Marietta
Board of Zoning
205 Lawrence St.
Marietta, GA 30060

RE: Request for Variance – 1177 Bellemeade Dr.

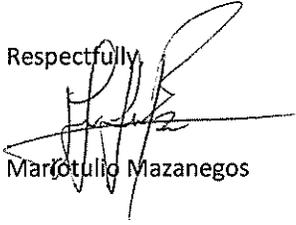
Dear Sir/Madame,

Please accept this letter of Request For Variance for the above mentioned property. We acquired this property June, 2019 which previous use was a restaurant. Our intent is to convert the property into an event center, where families in the community and outside of the community can hold family events and make memorable moments.

Upon submission of the plans for a building permit, it was revealed that the property has inadequate parking for use. The shopping center owner(s) has agreed to allow use of adjacent parking which will meet the required parking. Without this agreement and approval of variance, a hardship exist in that the property as purchased with the intended use cannot produce income and will not be of use since it does not and cannot meet the code parking requirements on its own.

Therefore, we request this variance be granted and we can move forward to making this a successful, dream come true business endeavor.

Respectfully,



Maritullio Mazanegos

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REVOCABLE LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into this 14th day of February 2020, by and between Boyd Georgia Property, LLC (hereinafter referred to as "Licensor") and The Diamond Hall, LLC (hereinafter referred to as "Licensee").

In consideration of the mutual covenants set forth herein, and other good and valuable consideration, Landlord does hereby license to Licensee, that portion of the parking lot as more particularly shown on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Licensed Property") which Licensed Property is a part of that property known as Bellemeade Plaza located at 1135 - 1171 Powder Springs Street, SW, Marietta, Cobb County, Georgia, 30064, which, together with any existing improvements located thereon or any improvements which may be subsequently added thereto (hereinafter referred to as the "Property").

1. Grant of License. Licensee shall have the right, but not the obligation, during the term of this Revocable License to use the Licensed Property under the terms and conditions set forth herein.
2. Term. The Term of this Revocable License shall commence on April 1, 2020 and terminate the date that is seven (7) days after Licensor or Licensee provides written notice of termination to the other.
3. Compensation. In consideration of Licensee's use of the Licensed Property, Licensee shall pay Licensor, in advance, the amount of Three Thousand and no/100 dollars (\$3,000.00) per month for April 2020 and May 2020 and thereafter Six Thousand and no/100 dollars (\$6,000.00) per month through the rest of the Term due on the 1st day of each month. Said amount shall not be pro-rated in the event either party terminates whereby only a partial month of the Licensed Property is used.
4. Limitations on Use. Licensee shall have the non-exclusive use of the Licensed Property in common with Licensor and its invitees, tenants and patrons of Licensor's with seven (7) days per week during the hours of 6:00 PM to 4:00 AM. Licensee shall only have the right to use the highlighted portion of the Licensed Property as shown in Exhibit A of this License Agreement, hereinafter defined as (Licensee's Parking). At no time shall Licensee be required to use the Licensed Property or perform any activities on behalf of the Licensor. Licensee shall have the right to use the Licensee's Parking only for short term automobile parking during events associated with Licensee's business located at 1177 Bellemeade Drive, SW, Marietta, Cobb County, Georgia, 30008 which is adjacent to the Property. Licensee hereby agrees to provide priority parking in the Licensed Area to Licensor, its tenants and invitees. "Licensee's Use" shall hereinafter be defined as any time period during which an employee or invitee of Licensee is parking in the Licensed Property. Licensee shall not use the Licensed Property for any other purpose other than for parking during an event of Licensee and at the hours stipulated herein.
5. "As-is" condition of Parking Lot. Licensee accepts the Licensed Property "as-is." Licensor shall have no obligation whatsoever to make any alterations or improvements or to provide any services specifically for the purpose of allowing Licensee to make full use of the Licensed Property.
6. Unlawful Use. Licensee shall not knowingly allow or permit any unlawful or illegal activity on the Licensed Property in connection with "Licensee's Use." "Licensee's Use" shall not knowingly create any nuisance on the Licensed Property.
7. Governmental Licenses and Permits. Licensee shall obtain, at its expense, any licenses or permits required for its use hereunder.
8. Assumption of Risk. Licensor shall not be liable for damage to persons or property of non-Users arising from or connected with "Licensee's Use" of the Licensed Property.
9. Indemnity. Licensee hereby agrees to indemnify and hold harmless Licensor, from any and all loss, liability, cost, claims, demands, damages, actions, causes of action, suits or expenses (including without limitation reasonable attorneys fees and expenses) arising out of, in any manner related to, or connected with, the actions of Licensee or the employees, agents, guests, or invitees of Licensee during "Licensee's Use." This paragraph shall survive the termination of this License Agreement.



10. Insurance. Licensee shall at his sole cost and expense keep in force throughout the term of this License a commercial general liability policy in an amount not less than Two Million Dollars (\$2,000,000.00), each occurrence and general aggregate which includes broad form property damage, contractual, personal injury and completed operations coverage with respect to the Licensed Property and shall add Licensor as an additional insured to such policy, all in such form as shall be reasonably satisfactory to Licensor. Evidence of the foregoing requirements shall be furnished to Licensor by valid certificate of insurance issued by or on behalf of Licensee's, insurance carrier which certificate shall be delivered to Licensor prior to commencement of Licensee's use of the Licensed Property.

11. Interest Created. This agreement is a License and shall not create any easement rights, leasehold interests or other interests in land. The rights of Licensee in and to the Licensed Property created under this Revocable License shall not be subject to levy, sale, assignment or subletting.

12. Notices. Any notices to a party under this License shall be to that party at the address shown below:

Licensor:
The Diamond Hall, LLC
405 Pat Mell Road
Marietta, GA 30060

Licensor:
Boyd Georgia Property, LLC
c/o Equitable Management Corporation
1215 Hightower Trail Suite B-200
Atlanta, GA 30350

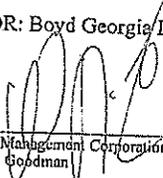
12. Changes to the License. This License incorporates all of the terms of our agreement concerning the use of the Licensed Property. No change to the terms of this Revocable License shall be effective unless it is in writing signed by both of the parties hereto.

13. Security/Maintenance. Throughout the term, Licensee shall be fully responsible for keeping the Licensed Property clean and free of all debris resulting from Licensee's Use. During Licensee's Use, Licensee shall employ exterior security during all hours that the Licensed Property is used.

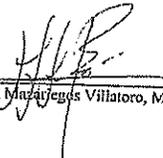
14. Advanced Payment. Upon execution of this License Agreement, Licensee shall remit \$3,000.00 to Licensor which shall be non-refundable and applicable to the compensation due Licensor for April 2020.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed under seal as of the day and year first above written.

LICENSOR: Boyd Georgia Property, LLC

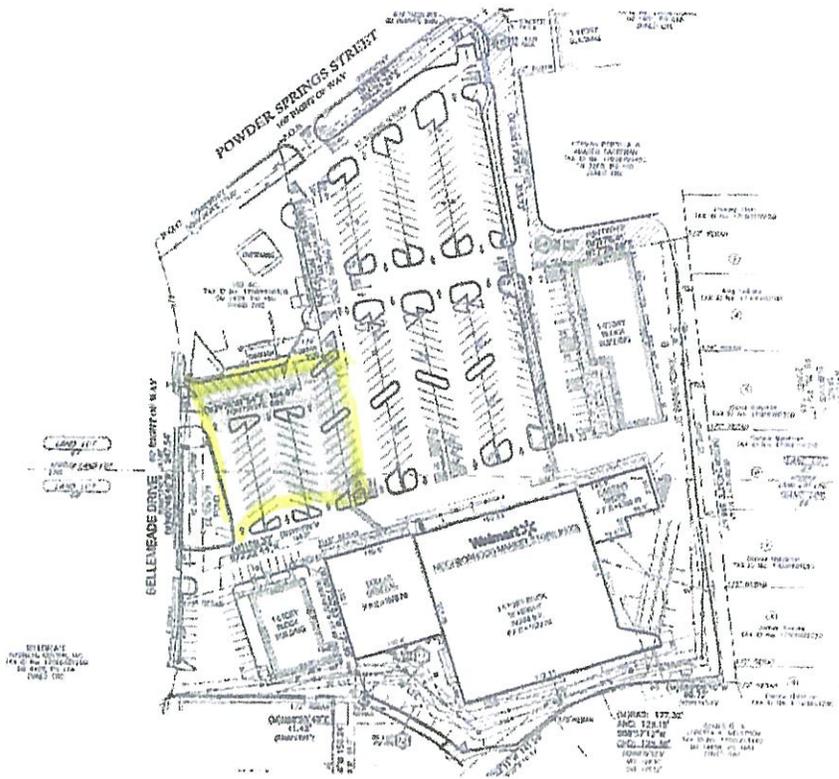
By: 
Equitable Management Corporation, Agent
Donald L. Goodman

LICENSEE: The Diamond Hall, LLC

By: 
Marcotulla R. Mazaregos Villatoro, Manager

1/1/19

EXHIBIT "A"
Licensed Property



PM

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TO: Marietta Daily Journal
FROM: City of Marietta
RUN DATE: May 1, 2020

**CITY OF MARIETTA
PUBLIC NOTICE OF VARIANCES**

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following requests. The Board of Zoning Appeals will consider the following requests on **Monday, May 18, 2020 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

V2020-13 [VARIANCE] GLENN LANDRY (MARCOTULIO MAZARIEGOS) is requesting a variance for property zoned CRC (Community Retail Commercial), located in Land Lot 66, District 17, Parcel 1200, 2nd Section, Marietta, Cobb County, Georgia, and being known as 1177 Bellemeade Drive. Variance to allow off-site parking satisfy the minimum parking requirements for a place of assembly. Ward 2B.

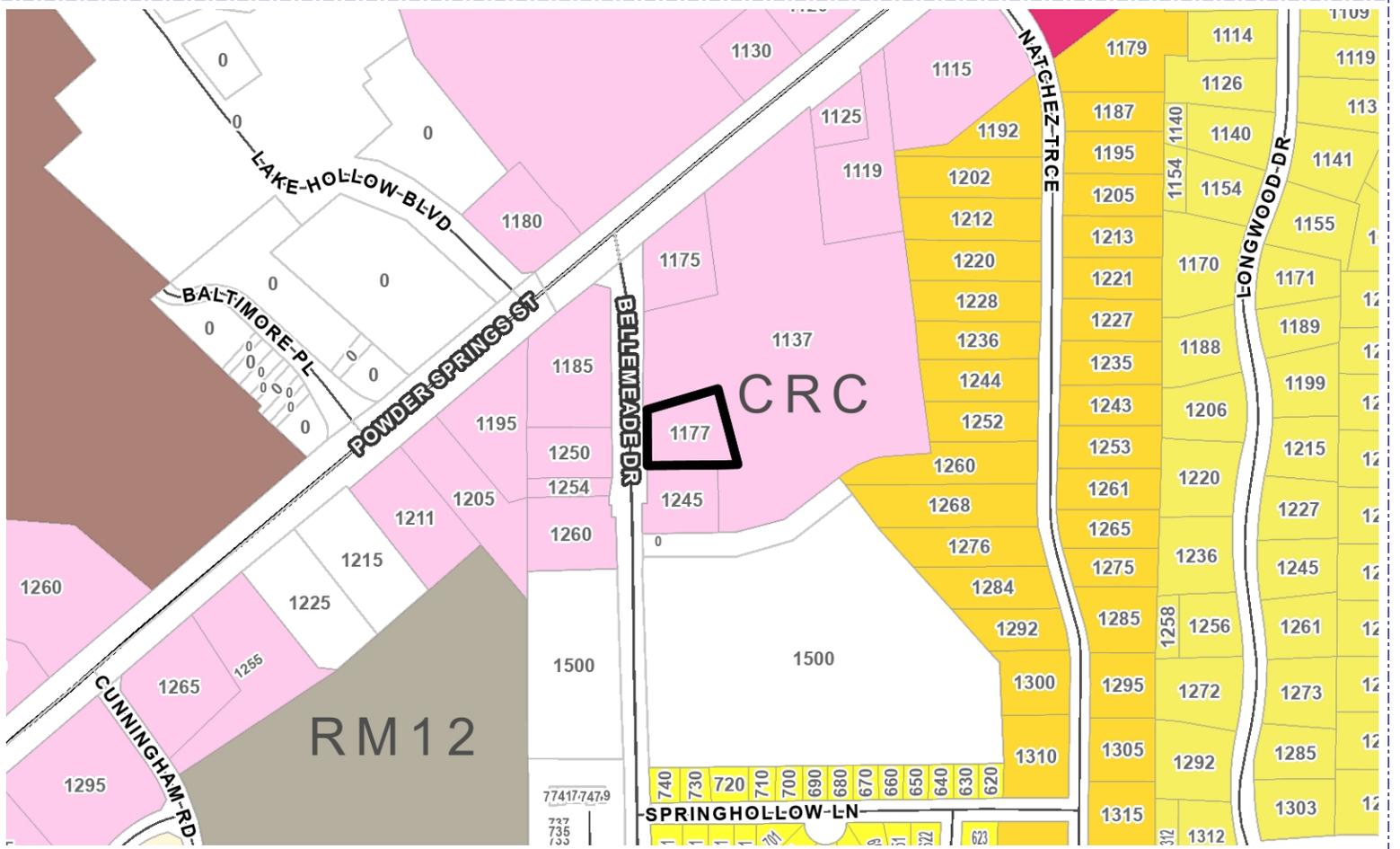
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto. You may also review the property file at www.mariettaga.gov and enter the case # in the search box.

For additional information please call the Planning and Zoning Office (770) 794-5669.

Accessibility to Meetings: If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call ADA Coordinator, at 770-794-5558 no later than 48 hours before the date of the above meeting.

City of Marietta
205 Lawrence Street
Marietta, Georgia 30060

Variance



Address	Parcel Number	Acreage	Ward	Zoning	FLU
1177 BELLEMEADE DR	17006601200	0.61	2B	CRC	CAC

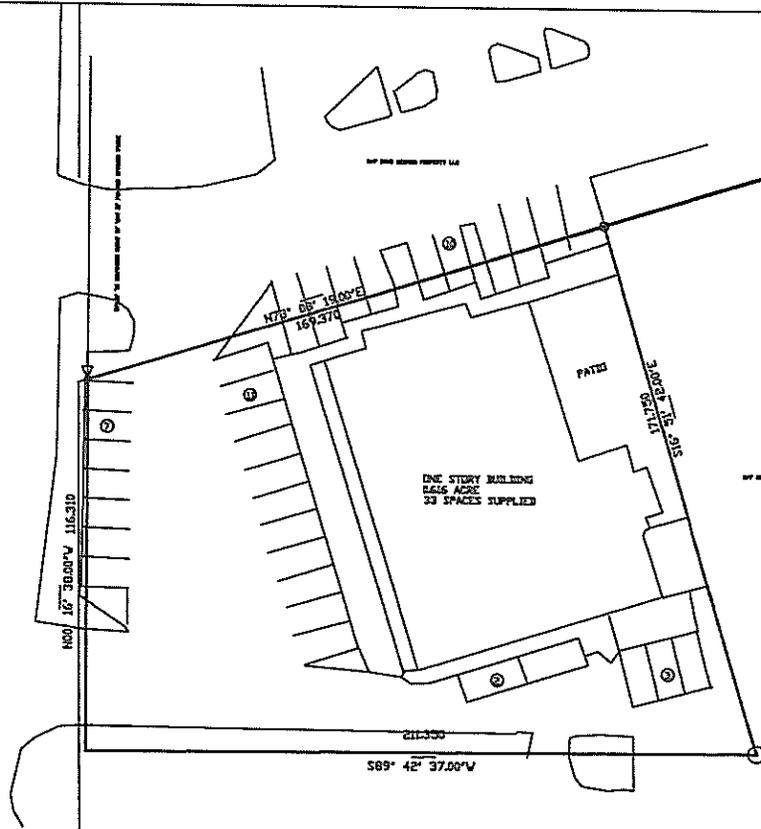
Property Owner:	Marcotulio Mazariegos
Applicant:	Glenn Landry
BZA Hearing Date:	05/18/2020
Acquisition Date:	
Case Number:	V2020-13
City of Marietta Planning & Zoning	

Zoning Symbols

- Railroads
- City Limits
- Cobb County Pockets
- NA
- R1 - Single Family Residential (1 unit/acre)
- R2 - Single Family Residential (2 units/acre)
- R3 - Single Family Residential (3 units/acre)
- R4 - Single Family Residential (4 units/acre)
- RA4 - Single Family Residential - Attached
- RA6 - Single Family Residential - Attached
- RA8 - Single Family Residential - Attached
- MHP - Mobile Home Park
- PRD-SF - Planned Residential Dev. Single Family
- RM8 - Multi Family Residential (8 units/acre)
- RM10 - Multi Family Residential (10 units/acre)
- RM12 - Multi Family Residential (12 units/acre)
- RHR - Residential High Rise
- PRD-MF - Planned Residential Dev Multi Family
- NRC - Neighborhood Retail Commercial
- CRC - Community Retail Commercial
- RRC - Regional Retail Commercial
- PCD - Planned Commercial Development
- LI - Light Industrial
- HI - Heavy Industrial
- PID - Planned Industrial Development
- MXD - Mixed Use Development
- CBD - Central Business District
- OIT - Office Institutional Transitional
- LRO - Low Rise Office
- OI - Office Institutional
- OS - Office Services
- OHR - Office High Rise



SITE



01-23-20

N/F RIVAS MARCOS A
1245 BELLEMEADE DR

LEGEND

Existing Center	---	Radius	R
Proposed Center	---	Guard Bearing	G
Start Spot Elev.	SP	Guard	G
Proposed Spot Elev.	SP	Service Pole	S
Surveying Station	ST	Lamp Pole	L
Fire Hydrant	HI	Downfall Utility Line	DUL
24\"/>			

THIS PLAT WAS COMPLETED WITHOUT BENEFIT OF TITLE REPORT AND IS SUBJECT TO ANY ITEMS FOUND IN REPORT.

30 YEARS 2025 DE 28 with page 200 (4) 05-08
ACME AMERICAN LLC
architects engineers planners surveyors

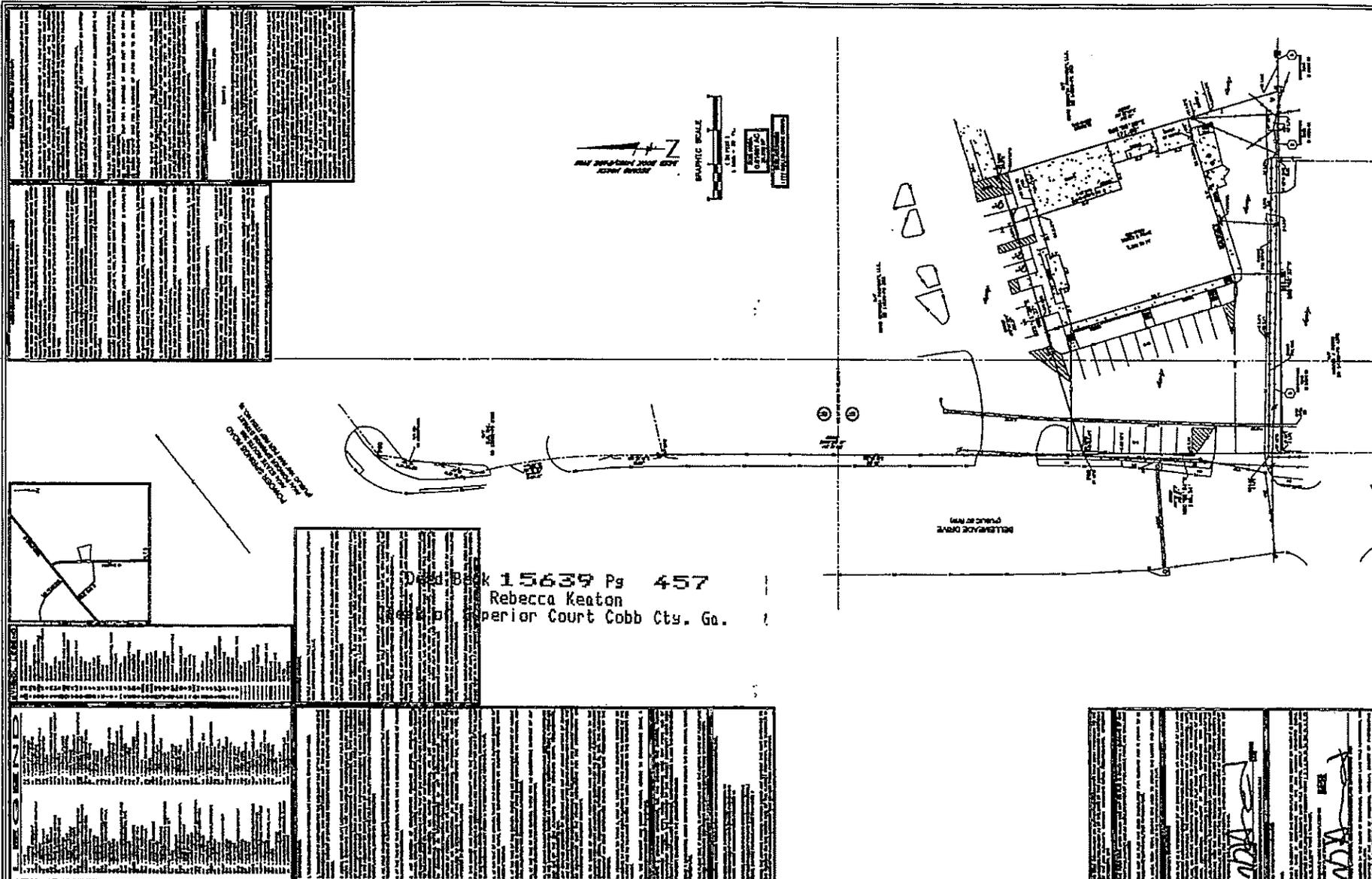
REFERENCE DB 15639 PG 457
PLAT BY WATSON BROWNING ENGINEERS, INC

title. VARIANCE PLAT
project. for **MARCOTULIO MAZAVIEGOS**
1177 BELLEMEADE DRIVE
MARIETTA, Georgia

LAND LOT 66
17th DISTRICT, 2nd SECTION
COBB COUNTY, GEORGIA
GRAPHIC SCALE (IN FEET)
1"=20'

revisions:
date: 01-23-20
dwg. by: jwp
chkd. by: jwp
sheet number
B-1 of 1

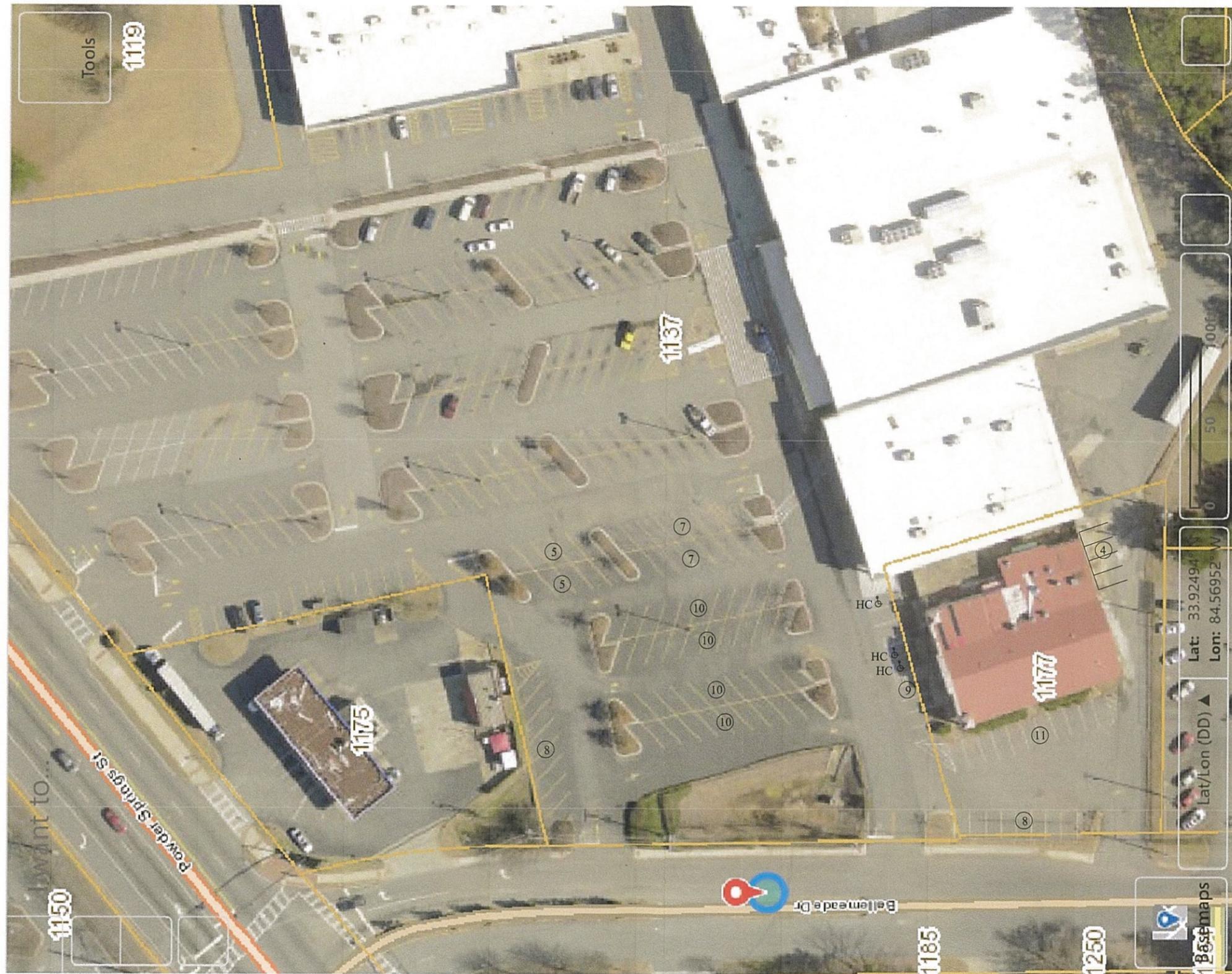
Exhibit '15



ALTANSPS LAND TITLE SURVEY FOR
MARCOTULIO MAZAVIEGOS
 LOCATED IN
 LAND LOT 88, 17TH DISTRICT, 2ND SECTION
 CITY OF MARIETTA
 COBB COUNTY, GEORGIA

Professional surveyor's seal and signature block. It includes a circular seal with a star and the text 'SURVEYOR', a signature, and the text 'STATE OF GEORGIA'.

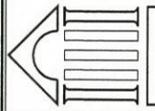
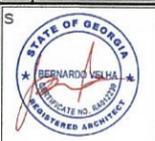
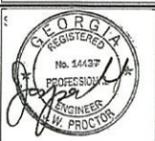
Map City **My Neighborhood: Cobb County, Georgia** is visible on Cobb Roads. 57 features visible on Parcels. Longitude: 84.5718 degrees West. Visible Features: 6
1177 Bellemeade Dr.



1 SITEPLAN
C100 SCALE: 1"=30'

NUMBER OF SEATS 3766/40=94 SPACES
100 PARKING SPACES PROVIDED.
3 HANDICAP SPACES ARE EXISTING.

RELEASED FOR CONSTRUCTION

 <p>319 Atlanta Street, Unit 240, Marietta, Georgia 30060 ACME AMERICAN, L.L.C. Architects, Construction Managers, Engineers voice (770) 425-6890 - fax (770) 425-5777</p>	
PROJECT#	
<p>SITEPLAN</p> <p>THE DIAMOND HALL 1177 BELLEMEADE DRIVE MARIETTA, GEORGIA 30008</p>	
 <p>10-14-19</p>	 <p>10-14-19</p>
revisions:	
date: 10-14-19	
dwg. by: JTD	
chkd. by: JWP	
sheet:	
C100	