



**STAFF REVIEW AND RECOMMENDATION**

**Variance Case #:** V2020-14                      **Legistar #:** 20200251

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

**Property Owner:** Russ Masterson  
133 Frances Ave  
Marietta, GA 30060

**Applicant:** Same as owner.

**Address:** 133 Frances Avenue

**Land Lot:** 1087    **District:** 16                      **Parcel:** 00290

**Council Ward:** 4B    **Existing Zoning:** R-3 (Single Family Residential – 3 units/acre)

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

1. Variance to reduce the side yard setback from 10 feet to 2 feet for an accessory structure (fireplace). [§708.03 (F.1)]

**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**



**133 Francis Avenue**



**133 Francis Avenue**

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**Recommended Action:**

**Approval with stipulation.** The owner, Russ Masterson, is requesting a variance for a new accessory structure at 133 Frances Avenue. This property is located in the Church and Cherokee Historic District and is zoned R-3 (Single Family Residential – 3 units/acre). Properties to the south, west and east are also zoned R-3. The properties immediately to the north are zoned OI (Office Institutional) and are either vacant or contain an office building. The owner wishes to revitalize their rear yard to an outdoor recreation space with an outdoor fireplace and other amenities such as fire pit, grill island and seating area. The proposed location of the outdoor fireplace is located within the required side yard setback.

The applicant wishes to enhance their landscaping between the back of the house and their garage (labeled carriage house). The design of the outdoor space appears to aim for entertainment purposes. Along the eastern side of the property a wooden fence with wooden benches will be aligned with a slate chip gravel walking path. In addition, the outdoor fireplace would be placed along the eastern property line along the fence line at 2 feet from the property line. However, the proposed location of the fireplace, which is considered an accessory structure, does not comply with the current zoning standards. According to the zoning ordinance, *an accessory structure shall be located upon the same lot and to the side or rear of the principal use at least 10 feet from side or rear lot lines.*

If required to accommodate the required 10-foot distance from the side property line, the fireplace would be placed in the center of the entertainment area. Although the applicant has not explicitly provided a hardship, supporting letters from all the adjacent residential neighbors, including those across Francis Street to the south, have been provided.

A similar request was granted by the Board of Zoning Appeals in October 2019 for the construction of a fireplace in the front yard of 243 Kennesaw Avenue (V2019-32).

The lot is landscaped with mature evergreens along the eastern property line. It is not clear if the trees would be removed in order to build the fireplace at its proposed location. Also, the height of the fireplace is unknown but it cannot exceed the height of the main building, so it will not be seen from the road. Therefore, staff recommends approval of this variance request with the following stipulation:

- 1. The variance shall only apply to the proposed fireplace. Any new accessory structure would have to comply with regulations or seek an additional variance.***

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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 #: V2020-14 Legistar #: 20200251 BZA Hearing Dt: 4-27-20
City Council Hearing Dt (if applicable) #: - PZ #: 20-90

This is a variance/appeal application for:

Checked box for Board of Zoning Appeals

Board of Zoning Appeals

Unchecked box for City Council

City Council

Owner's Name RUSS MASTERSON

EMAIL Address: RUSSMASTERSON@GMAIL.COM

Mailing Address 133 FRANCES AVE. Zip Code: 30060 Phone Number 404.502.8605

COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant:

EMAIL Address:

Mailing Address Zip Code: Phone Number

Address of subject property: 133 FRANCES AVE. Date of Acquisition: 7/2013

Land Lot (s) 1078 District 16 Parcel 00290 Acreage .31 Zoned R3 Ward 4B FLU: LDR
1087

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

- Build covered patio with 3' of eastern property line and fireplace
would be within 2' of eastern property line.

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

[Signature]  
Signature of Applicant

Russ Masterson  
Print Name

Russ Masterson  
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.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
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 of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
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

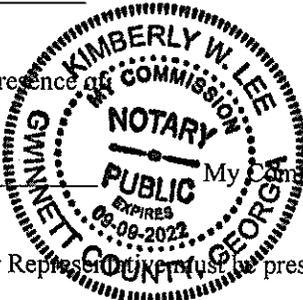
RUSS MASTERSON  
Please Print

133 FRANCES AVENUE MARIETTA, GA 30060  
Address

March 6, 2020  
Date

Signed, sealed and delivered in the presence of

[Signature]



My Commission Expires: 9/9/2022

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

Agreement to Variance Application by 133 Frances Avenue

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Date: 3/3/2020

Name: Iedd Mendelsohn

Address: 141 Frances Ave.

Marietta, GA 30060

Phone Number: 770-514-1225

Re: Variance application by Russ Masterson at 133 Frances Avenue, Marietta, GA 30060

Dear Board of Zoning Appeals

I have reviewed the site plan for the future covered patio as being presented by Russ and Kristy Masterson for variance. I believe this addition of roof structure and patio will add value to their home and the homes around it. I also have no issue with the design of this to encroach into the setback along the eastern property line. I understand this patio will be at 3' from the eastern side property line and the fireplace will be at 2' from the eastern side property line.

I believe this design will keep the home at 133 Frances Avenue at best possible design to merge with the existing historic home and utilize the backyard for maximum value for the property.

Sincerely,



**Agreement to Variance Application by 133 Frances Avenue**

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Date: 3/7/2020

Name: Cameron Clark + Katie Clark

Address: 125 Frances Avenue

Marietta GA 30060

Phone Number: 770-337-9428

Re: Variance application by Russ Masterson at 133 Frances Avenue, Marietta, GA 30060

Dear Board of Zoning Appeals

I have reviewed the site plan for the future covered patio as being presented by Russ and Kristy Masterson for variance. I believe this addition of roof structure and patio will add value to their home and the homes around it. I also have no issue with the design of this to encroach into the setback along the eastern property line. I understand this patio will be at 3' from the eastern side property line and the fireplace will be at 2' from the eastern side property line.

I believe this design will keep the home at 133 Frances Avenue at best possible design to merge with the existing historic home and utilize the backyard for maximum value for the property.

Sincerely,

Two handwritten signatures in black ink. The top signature is 'Cameron Clark' and the bottom signature is 'Katie Clark'. Both are written in a cursive, flowing style.

Agreement to Variance Application by 133 Frances Avenue

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

Name: Greg Litchfield

Address: 222 Washington Ave

Marietta GA 30060

Phone Number: 404-713-7317

Re: Variance application by Russ Masterson at 133 Frances Avenue, Marietta, GA 30060

Dear Board of Zoning Appeals

I have reviewed the site plan for the future covered patio as being presented by Russ and Kristy Masterson for variance. I believe this addition of roof structure and patio will add value to their home and the homes around it. I also have no issue with the design of this to encroach into the setback along the eastern property line. I understand this patio will be at 3' from the eastern side property line and the fireplace will be at 2' from the eastern side property line.

I believe this design will keep the home at 133 Frances Avenue at best possible design to merge with the existing historic home and utilize the backyard for maximum value for the property.



Sincerely,

**Agreement to Variance Application by 133 Frances Avenue**

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Date: 3/1/2020

Name: MATTHEW MELGEE

Address: 134 FRANCES AVE NE

MARIETTA, GA. 30060

Phone Number: 404.433.8111

Re: Variance application by Russ Masterson at 133 Frances Avenue, Marietta, GA 30060

Dear Board of Zoning Appeals

I have reviewed the site plan for the future covered patio as being presented by Russ and Kristy Masterson for variance. I believe this addition of roof structure and patio will add value to their home and the homes around it. I also have no issue with the design of this to encroach into the setback along the eastern property line. I understand this patio will be at 3' from the eastern side property line and the fireplace will be at 2' from the eastern side property line.

I believe this design will keep the home at 133 Frances Avenue at best possible design to merge with the existing historic home and utilize the backyard for maximum value for the property.

Sincerely,



**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<sup>th</sup>, 2020 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

**V2020-14 [VARIANCE] RUSS MASTERSTON** is requesting a variance for property zoned R-3 (Single Family Residential – 3 units/acre), located in Land Lot 1087, District 16, Parcel 0290, 2<sup>nd</sup> Section, Marietta, Cobb County, Georgia, and being known as 133 Frances Avenue. Variance to reduce the side yard setback from 10 feet to 2 feet for an accessory structure (fireplace). Ward 4B.

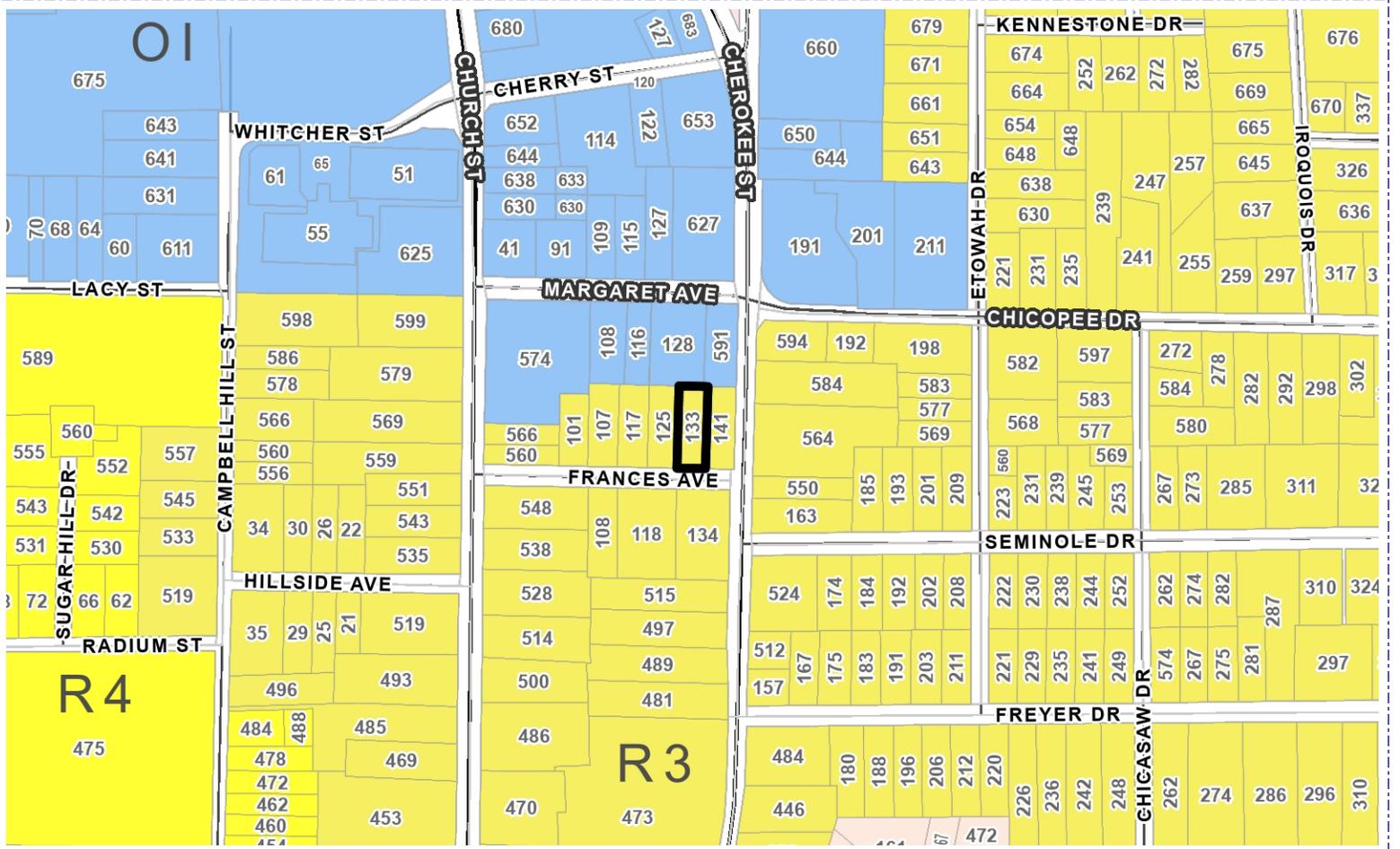
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto. You may also review the property file at [www.mariettaga.gov](http://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
133 FRANCES AVE	16108700290	0.313	4B	R3	LDR

Property Owner: Russ Masterson

Applicant:

BZA Hearing Date: 05/18/2020

Acquisition Date:

Case Number: V2020-14

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

**NOTES:**

THE FIELD DATA UPON WHICH THIS PLAT IS BASED WAS OBTAINED USING A GPT-3005W TOTAL STATION, AND HAS A LINEAR PRECISION RATIO OF ONE FOOT IN 32,216 FEET AND AN ANGULAR ERROR OF 05 SECONDS PER ANGLE AND WAS NOT ADJUSTED.

THIS PLAT HAS BEEN CHECKED FOR MATHEMATICAL ACCURACY AND CLOSES WITHIN ONE FOOT IN 2,712,500 FEET.

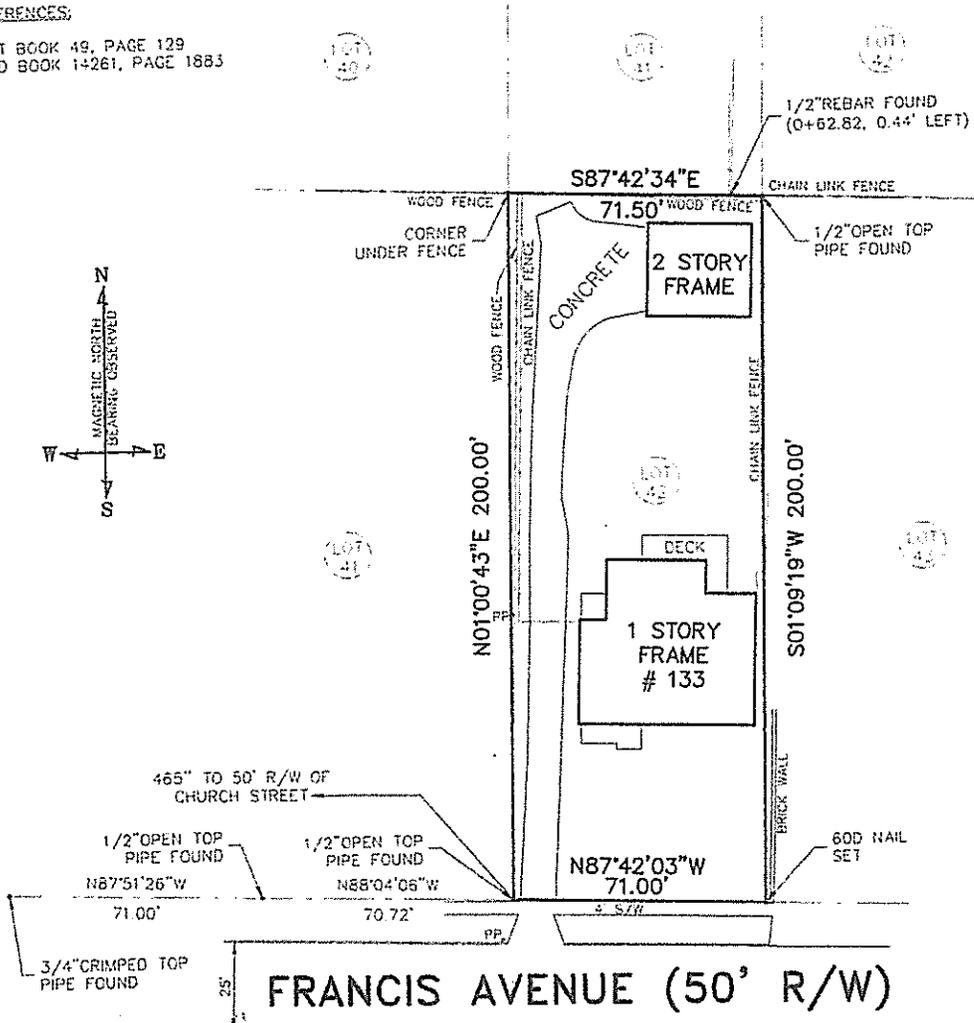
TOTAL AREA = 14,246 SQUARE FEET OR 0.33 ACRES.

PROPERTY MAY OR MAY NOT BE SUBJECT TO PROTECTIVE OR RESTRICTIVE COVENANTS AS PER FINAL PLAT AND OR CITY/COUNTY ORDINANCES INCLUDING ALL EASEMENTS AND RIGHTS OF WAY.

THE LOCATION OF UNDERGROUND UTILITIES WERE NOT LOCATED FOR THIS SURVEY. UTILITIES SHOWN ARE BASED UPON VISIBLE AND PHYSICAL EVIDENCE. THERE MAY BE UTILITIES ON OR CROSSING THIS PROPERTY THAT ARE NOT SHOWN. CALL THE UTILITIES PROTECTION CENTER (1-800-282-7411) BEFORE ANY EXCAVATIONS ARE BEGUN TO ENSURE AND VERIFY THE CORRECT LOCATION AND DEPTH OF ALL UTILITIES.

**REFERENCES:**

PLAT BOOK 49, PAGE 129  
DEED BOOK 14261, PAGE 1883



**R.F.M. Consulting, LLC**  
707 WHITLOCK AVENUE  
BLDG. A-37  
MARIETTA, GA 30064  
PHONE (770) 757-3977  
FAX (770) 499-8496  
EMAIL: RFMCON@BELLSOUTH.NET

IN ANY OPINION, THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PLATTED AND HAS BEEN PREPARED IN ACCORDANCE WITH THE CURRENT STANDARDS AND REQUIREMENTS OF LAW.

*R. Frank Meaders*

**SURVEY OF**  
**#133 FRANCIS AVENUE**  
**LOT 42**  
**FREYER SUBDIVISION**  
**LOCATED IN LAND LOT 1087**  
**16th DISTRICT, 2nd SECTION**  
**CITY OF MARIETTA**  
**COBB COUNTY, GEORGIA**  
**DATE: 06/14/2013**  
**SCALE: 1"=40'**

Drawing By Mark R. Price, Jr.  
Ced. 678-313-9276  
FILE FRANCIS AVENUE.dwg

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**PARADIGM  
LANDSCAPE**

1000 W. BROADWAY, SUITE 100  
ATLANTA, GEORGIA 30309  
404.525.1111

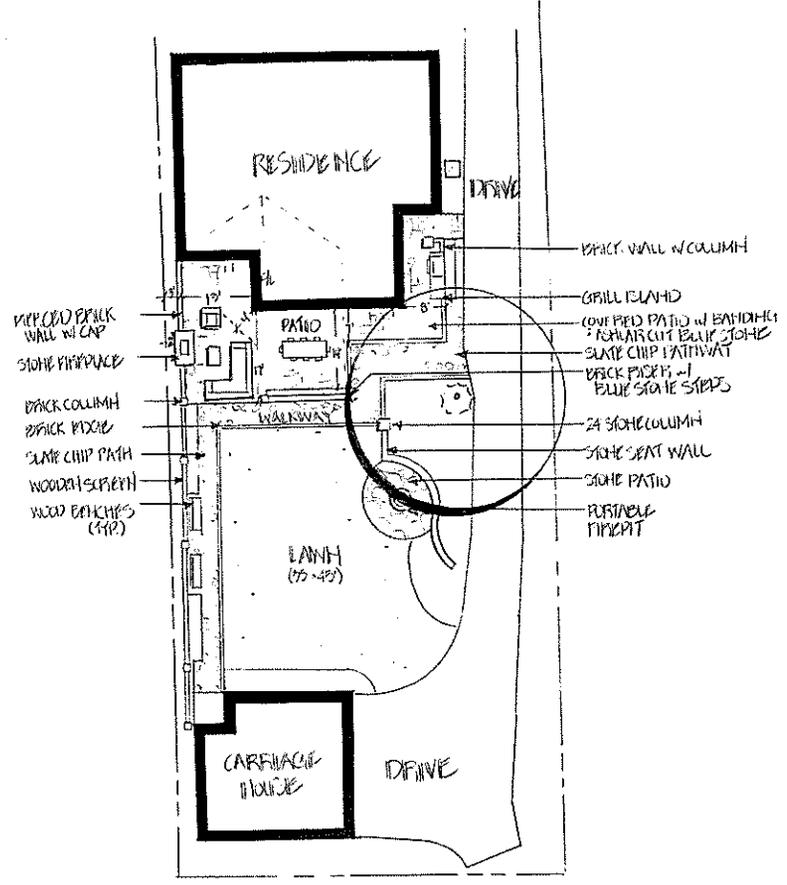
**MASSEPOSSON RESIDENCE**

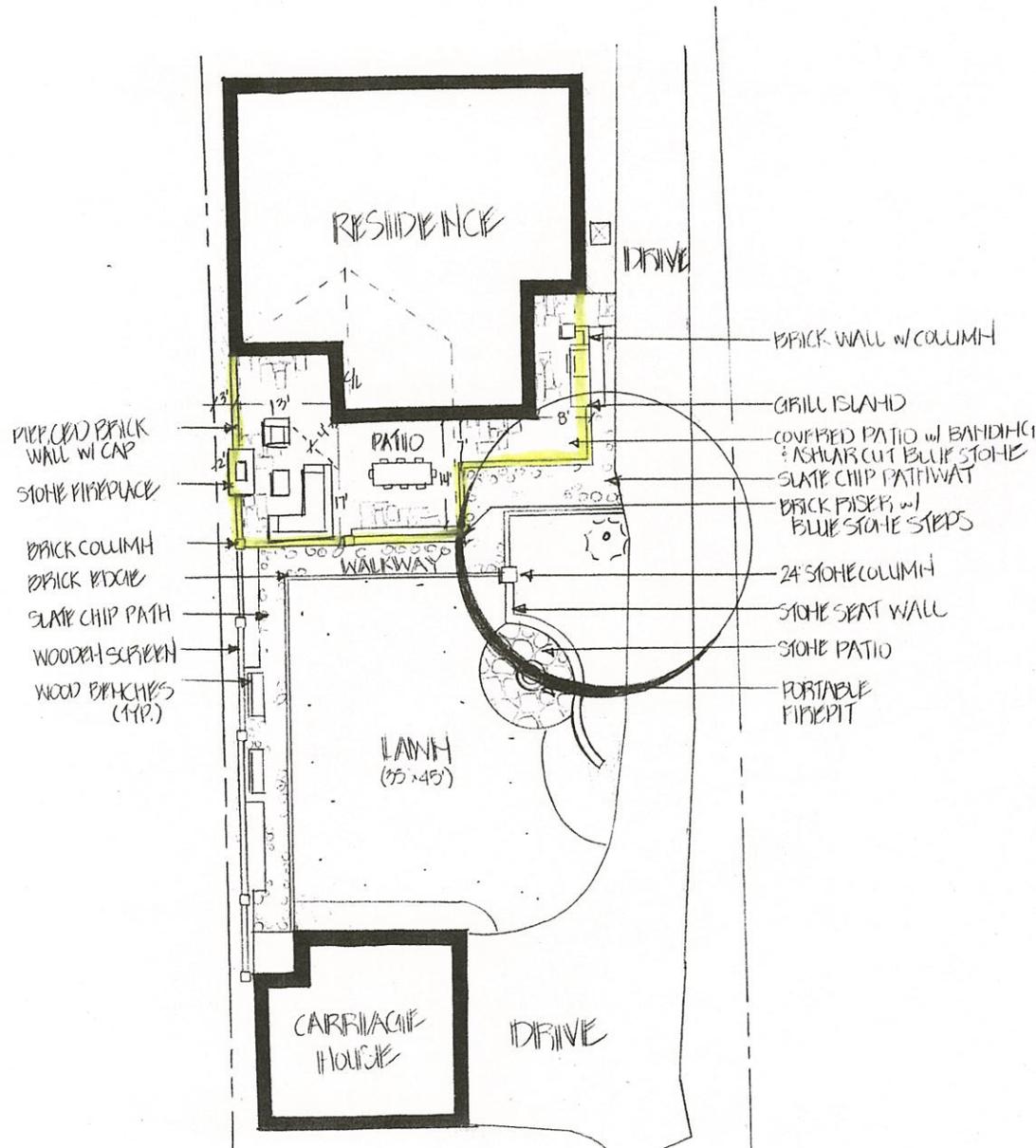
100 FRANKS AVE NE  
MARIETTA, GEORGIA

10-100

DATE	REVISION
2/17/20	

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RESIDENCE

DRIVE

- PIPER CAP BRICK WALL w/ CAP
- STONE FIREPLACE
- BRICK COLUMN
- BRICK RIDGE
- SLATE CHIP PATH
- WOODEN SCREEN
- WOOD BRANCHES (11P.)

LAWN  
(35' x 45')

PATIO

WALKWAY

CARRIAGE HOUSE

DRIVE

BRICK WALL w/ COLUMN

GRILL ISLAND

COVERED PATIO w/ BANDING

ASHLAR CUT BLUE STONE

SLATE CHIP PATHWAY

BRICK BASE w/ BLUE STONE STEPS

24' STONE COLUMN

STONE SEAT WALL

STONE PATIO

PORTABLE FIRE PIT