



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2016-54 **Legistar #:** 20161093
Board of Zoning Appeals Hearing: **Monday, November 28, 2016 – 6:00 p.m.**
Property Owner: **Vernon & Yukie Howard**
 2474 Cumberland Parkway
 #321
 Atlanta, GA 30339
Applicant: **Same as above**
Address: **1435 Cunningham Road**
Land Lot: 00080 **District:** 17 **Parcel:** 0040
Council Ward: 2B **Existing Zoning:** RA-8 (Single Family Residential Attached)

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

1. Variance to increase the allowable height of a fence in a front yard from 4’ to 6.’ [*§710.04 (D.1)*]
2. Variance to reduce the setback for a fence from 2’ to 0.’ [*§710.04 (D.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



1435 Cunningham Road



Fence at front corner stake

Recommended Action:

Denial. Vernon and Yukie Howard are requesting variances for their newly constructed fence at 1435 Cunningham Road. The subject property is a vacant parcel approximately two (2) acres in size, and is zoned RA8 (Single Family Residential – Attached). Properties to the north and south are also zoned RA8. Across Cunningham Road to the west are single family detached homes zoned R-4 (Single Family Residential – 4 units / acre). To the east is a neighborhood of duplexes zoned RA-4.

The City of Marietta demolished a dilapidated, burned out shell of a house on this property in October of 2015. The current property owners acquired the property on October 5, 2016, and soon thereafter constructed a 6’ tall, wood fence along the entire Cunningham Road frontage with a matching wood gate for the driveway. In the letter from the property owners, they state that a 6 ft. fence is necessary to prevent trash and dog waste from being thrown over the fence, and to keep their guard dogs from jumping over it. However, material can easily be thrown over a 6 ft. fence; and other than the fence, there is no other structure on the property, so it is not clear what the dogs are guarding.

The fence is located on the property line near the street, and may actually be within the right of way. The property owner states that they “deliberated” on where to put the fence, and apparently did not consider the fact that they don’t own the street right of way and are not allowed to build within it.

In some cases that the Board has considered, variances for fences have been granted with the stipulation that 6’ tall evergreen trees, spaced no more than 15’ apart, be planted along the frontage. However, that may not be an option in this case, since such plantings would be within the road right of way and not on the owner’s property.

Section 710.04 (D.) clearly states “In all zoning districts, except LI, HI, and PID [see 710.04(E)]:

1. *Fences or walls within the front yard of any parcel of land on a public/private street shall not exceed 4 feet in height, shall not be constructed within 2 feet of a public right-of-way, and shall be ornamental or decorative in nature.*

The fence meets the ornamental requirement but not the requirement for setback or height. The height restriction is intended to allow fenced front yards but not at a height that would create the appearance of a fortress, and an unwelcome environment for pedestrians along the roadway. It is also intended to prevent sight distance issues for drivers exiting the property.

In the application letter the owner argues that Section E was followed when designing and constructing the fence. However, Section E applies only to industrial properties – those zoned LI, HI, and PID. The statement under Section E “*In all other instances, fences and walls shall be no more than 8 feet in height and shall not be constructed within 2 feet of a public right-of-way*” is intended to allow properties zoned LI, HI, and PID and located on local streets to have fences in the front yard up to 8 feet.



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

The property owners were clearly aware that the City of Marietta had regulations on fences, but chose to build the fence as they wanted without confirming that their interpretation was correct. As such, *Staff recommends denial of this variance request.*



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Marietta, GA 30060
Brian Binzer, AICP, Director

APPLICATION FOR VARIANCE OR APPEAL
(Owner/Applicant/or Representative must be present at all public hearings)

For Office Use Only:

Application #: V2016-54 Registrar #: BZA Hearing Dt: 11-28-16
City Council Hearing Dt (if applicable) #: PZ #: 16-576

This is a variance/appeal application for:

Board of Zoning Appeals checkbox (checked)

Board of Zoning Appeals

City Council checkbox (unchecked)

City Council

Owner's Name: VERNON OR YUKIE HOWARD

Address: 2474 CUMBERLAND PARKWAY #321 Atlanta, GA Zip Code: 30339

Telephone Number: 404-216-9878 Email Address: vernonhoward@yahoo.com

COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant
Address Zip Code
Telephone Number Email Address

Address of property for which a variance or appeal is requested:

1435 CUNNINGHAM RD Date of Acquisition: Oct 5, 2016

Land Lot(s) 8 District 17 Parcel 4 Acreage 1.975 Zoned RA-8 Ward 23 FLU MDR
00080 0040 2.0

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

VARIANCES FOR FRONT FENCE PLACEMENT & HEIGHT.
PLEASE SEE ATTACHED ADDITIONAL INFORMATION.

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 25 copies REQUIRED.
6. Copy of current tax bill showing payment or documentation certified by the City of Marietta Tax Office.
7. Documentation authorizing applicant to submit application by property owners if applicant is not owner.

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

THE VARIANCE REQUEST

710.4 Fences and walls

- A. In all cases, the finished side of a fence shall be to the exterior.
- **The constructed fence has the finished side to the outside.**
- B. Decorative or ornamental fences or walls, as required by this ordinance, shall be constructed of wood, brick, stone, or wrought iron in all zoning districts.
- **The privacy fence is constructed from 3/4 "pressure treated slats that resist warping and bowing over years of service.**
- C. The Planning and Zoning Director is hereby authorized to grant administrative variances to the fence and wall materials, if they are similar in nature to those listed above.
- **We are requesting authorization to leave the fence constructed as built.**
- D. In all zoning districts, except LI, HI, and PID [see 710.04(E)]:
1. Fences or walls within the front yard **of any parcel of land on a public/private street** shall not exceed 4 feet in height, shall not be constructed within 2 feet of a public right-of-way, and shall be ornamental or decorative in nature.
 2. Fences or walls within major side yards or within the rear yard of double frontage lots shall not exceed 6 feet in height and shall be ornamental or decorative in nature.
 3. **In all other instances, fences and walls shall be no more than 8 feet in height and shall not be constructed within 2 feet of a public right-of-way.**
- E. Fences or walls located in the front yard of **any parcel of land located on arterial or collector streets** on property zoned LI, HI, or PID shall have a maximum height of 4 feet, shall not be constructed within 2 feet of the public right-of-way, and shall be ornamental or decorative in nature. **In all other instances, fences and walls shall be no more than 8 feet in height and shall not be constructed within 2 feet of a public right-of-way.**

Narrative:

- **Before constructing the fence we read and determined there was no permit required for this type fence since it was less than 8'-0" and constructed of wood.**
- **The Ordinance very clearly states there are three categories of streets. The fence is being viewed from whether it is a private/public, arterial, or collector street.**
- **Cunningham Road is a "collector street" with public/private streets emptying into this collector street. Cunningham runs between Austell Road and Powder Springs Road which are arterial streets.**
- **As far as the height is concerned, we request a variance for the fence as per the first part of the last sentence of paragraph E. "In all other instances, fences and walls shall be no more than 8 feet in height". We have a 6 foot fence constructed as not allow trash and dog waste thrown over the fence. If required to minimize fence height to 4 feet, our guard dogs can very easily jump over.**
- **In protecting the health, safety and welfare of the neighbors and their pets, we deliberated on what the actual size of landscaping strips between the walkway and fence should be. Currently we have 6'-2" from the back edge of sidewalk to the fence. The inspector has**

requested additional 22". We made several observations and studies to determine our findings. (see the attached drawings)

- If we are to tear down our fence and provide an additional 22", this will enable passerby's throw and accumulate more trash, dog feces and create unnecessary landscaping which is out of our budget. We are the ones held responsible for maintaining beauty of the ROW to the curb. If you are inclined to see nasty things that are already happening on the ROW, we have photos to share with you.
- We determined the relationship of ROW and property lines varies up and down Cunningham Rd by the use of county and city tax maps, aerial photos and our survey. (See the attached photos and drawings). We realize a portion of Cunningham Rd. is still in the county; however, we have still found inconsistency within the City of Marietta portion as well. See photos of fence across the street (About the same distance we presently have), Shannon Way monument signs (4'-0" +/- into the ROW and no space between the edge of the sidewalk) and the apartments monument sign north of the property.
- Presently the power poles on our side of Cunningham Rd have a distance of 4'-4" from the center line of the pole to the fence this is more than adequate space for landscaping to beautify the street. We have an additional 1'-10" from the back edge of the sidewalk to the centerline of the power pole, a total of 6'-2" will provide more landscape area than most properties that have fences along Cunningham Rd.

In conclusion we would like to receive a variance for the current 6'-0" high fence in situ, providing an aesthetically pleasing and healthy relationship to the neighborhood and sidewalk.

Thank you for your time and consideration.



DEPARTMENT OF DEVELOPMENT SERVICES

205 Lawrence Street
P.O. Box 609
Marietta, GA 30061-0609
(770) 794-5439
Fax (770) 794-5433

October 6, 2016

Certified Mail: 7012 0470 0001 3984 3140

Vernon & Yukie Howard
Po Box 606
Green Cove Springs, FL 32043

Case Number: 16-00004465

Dear: Vernon & Yukie Howard,

One of the major objectives of the City of Marietta is to maintain an attractive, safe and healthy place in which to live. The Marietta Code Enforcement Division is one tool used by the City to aid in achieving this goal.

An inspection of your property, which you own, rent or lease at 1435 Cunningham Rd was conducted on October 05, 2016 at which time the Code Enforcement Officer left a violation notice on the door. Violations found and applicable corrective actions are detailed in the enclosed Violation Detail Report.

If such repairs, removal or violation corrections are not completed within the stated time of five (5) days, the Code Enforcement Officer shall institute legal proceedings as necessary charging the owner and/or tenant with the necessary legal action for the disposition of such violations.

If additional assistance or information is required, please call my office during regular business hours at 770-794-5447.

Sincerely,



Russell B. Chambers
Code Enforcement Officer

CASE NUMBER 16-00004465
PROPERTY ADDRESS 1435 CUNNINGHAM RD

VIOLATION: FENC QUANTITY: 1
DESCRIPTION: FENCES OR WALL DATE: 10/06/16
LOCATION: 1435 CUNNINGHAM

NARRATIVE :

A recent inspection revealed a 6 foot wooden fence has been installed along the right-of-way at 1435 Cunningham Rd Marietta, GA. Please review the enclosed copy of the Municipal Code Section 710.04 D 1. This Code requires a fence within the front yard to be no more than 4 feet tall and 2 feet away from a public right-of-way. To comply with Code the fence need to re removed of reconstructed to be 4 feet or less tall. Please be prepared to show property line pins to show fence is 2 feet behind the property line. Please contact the Planning and Zoning Department of the City of Marietta to find out the rules and regulation of fences before any more work is completed. The Marietta Planning and Zoning Dept. can be reached at 770-794-5440. Please correct the existing violations to prevent further legal actions from the Marietta Code Enforcement Dept. Thank-you for helping keep Cunningham Rd and Marietta beautiful.

ORDINANCE DESCRIPTION :

THERE EXISTS A FENCE, WALL OR SWIMMING POOL IN VIOLATION OF SECTION 710.04 (A-C) OF THE MARIETTA CITY CODE.

CORRECTIVE ACTION REQUIRED :

YOU ARE HEREBY GRANTED FIVE (5) DAYS FROM THE RECEIPT OF THIS NOTICE TO BRING THE VIOLATION INTO COMPLIANCE IN ACCORDANCE WITH SAID CODE.

TO: Marietta Daily Journal
FROM: City of Marietta
RUN DATE: November 11, 2016

**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 variance requests. The Board of Zoning Appeals will consider the following requests on **Monday, November 28, 2016 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

V2016-54 [VARIANCE] VERNON & YUKIE HOWARD are requesting a variance for property located in Land Lot 00080, District 17, Parcel 0040, 2nd Section, Marietta, Cobb County, Georgia and being known as 1435 Cunningham Road. Variance to increase the allowable fence height in the front yard from 4' to 6;' Variance to reduce the setback for a fence from 2' to 0.' Ward 2B.

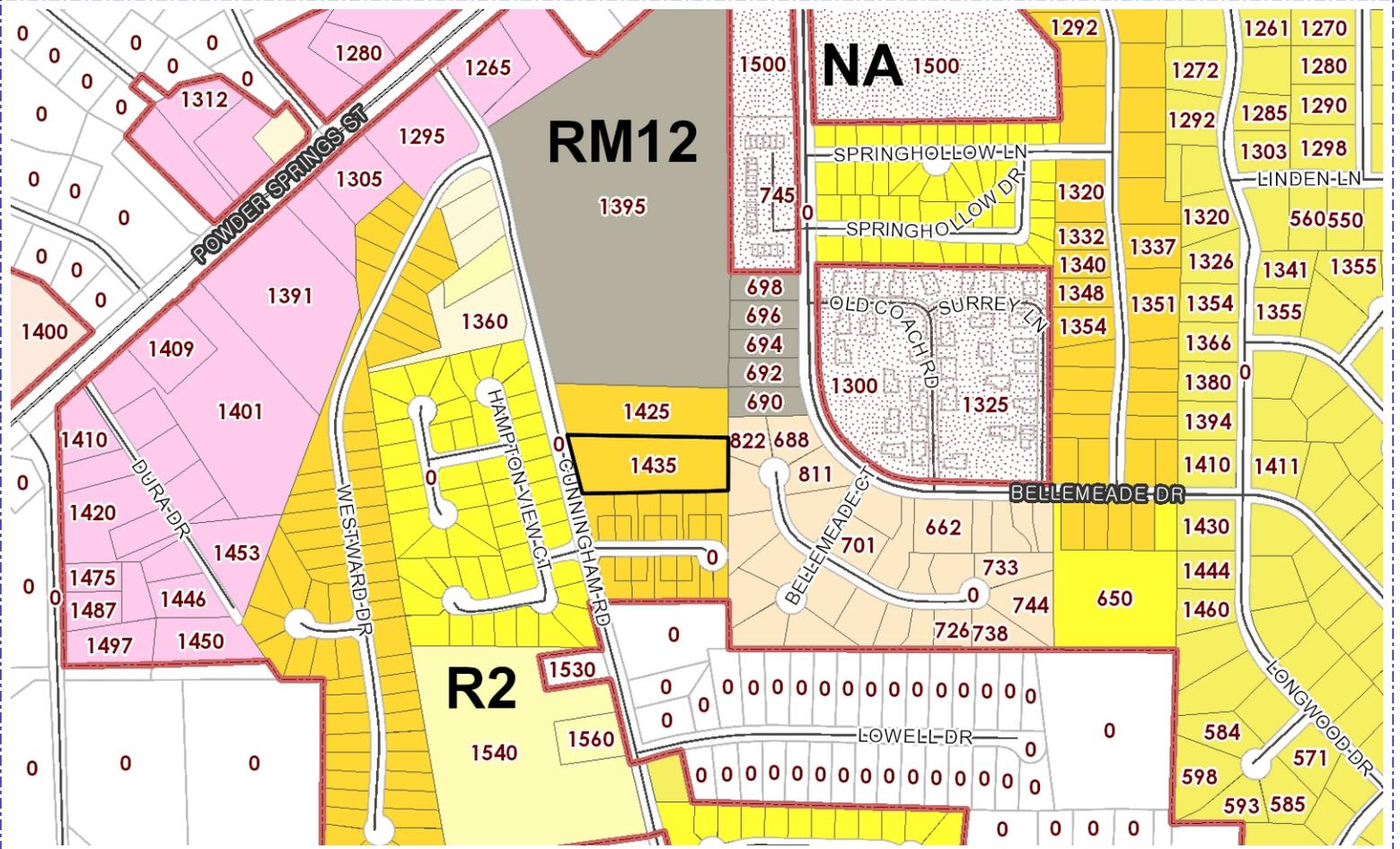
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

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 Mr. Patrick Henley, ADA Coordinator, at 770-794-5558 (voice) or 770-794-5560 (TDD) 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
1435 CUNNINGHAM RD	17000800040	2.005	2B	RA8	MDR

Property Owner:	Vernon or Yukie Howard	Zoning Symbols --- Railroads [Red Line] City Limits [Dotted] Cobb County Pockets [NA] NA [Light Yellow] R1 - Single Family Residential (1 unit/acre) [Yellow] R2 - Single Family Residential (2 units/acre) [Light Green] R3 - Single Family Residential (3 units/acre) [Green] R4 - Single Family Residential (4 units/acre) [Light Orange] RA4 - Single Family Residential - Attached [Orange] RA6 - Single Family Residential - Attached [Dark Orange] RA8 - Single Family Residential - Attached [Yellow-Orange] MHP - Mobile Home Park [Light Brown] PRD-SF - Planned Residential Dev. Single Family [Brown] RM8 - Multi Family Residential (8 units/acre) [Dark Brown] RM10 - Multi Family Residential (10 units/acre) [Dark Grey] RM12 - Multi Family Residential (12 units/acre) [Grey] RHR - Residential High Rise [Dark Grey] PRD-MF - Planned Residential Dev Multi Family [Pink] NRC - Neighborhood Retail Commercial [Light Pink] CRC - Community Retail Commercial [Red] RRC - Regional Retail Commercial [Dark Red] PCD - Planned Commercial Development [Light Blue] LI - Light Industrial [Dark Blue] HI - Heavy Industrial [Purple] PID - Planned Industrial Development [Dark Purple] MXD - Mixed Use Development [Blue] CBD - Central Business District [Light Blue] OIT - Office Institutional Transitional [Light Blue] LRO - Low Rise Office [Blue] OI - Office Institutional [Dark Blue] OS - Office Services [Darkest Blue] OHR - Office High Rise
Applicant:		
BZA Hearing Date:	11/28/2016	
Acquisition Date:		
Case Number:	V2016-54	
City of Marietta Planning & Zoning		

LEGEND

- #4RBF 1/2" REBAR FOUND
- #ARBS 1/2" REBAR SET
- 3/4" CTF 3/4" CRIMP TOP PIPE FOUND
- 3/4" OTF 3/4" OPEN TOP PIPE FOUND
- FIRE HYDRANT
- POWER POLE
- SANITARY SEWER MANHOLE
- LIGHT POLE
- GUY WIRE
- WATER METER
- WATER VALVE
- CABLE TV PEDESTAL
- TELEPHONE PEDESTAL
- OVERHEAD POWER
- FENCE

NORTH (DB 15368, PG 1654)

AREA
86049.85 Sq. Feet
1.975 Acres

SURVEY IS NOT VALID WITHOUT ORIGINAL SIGNATURE AND DATE ON SEAL. THIS DRAWING AND ANY COPIES THEREOF ARE THE PROPERTY OF WIDE OPEN LAND SURVEYING AND SHALL NOT BE REPRODUCED OR COPIED, IN WHOLE OR IN PART, OR OTHERWISE USED WITHOUT WRITTEN PERMISSION OF THE OWNER. NO WARRANTY, EXPRESSED OR IMPLIED, IS EXTENDED TO ANY UNNAMED THIRD PARTY.

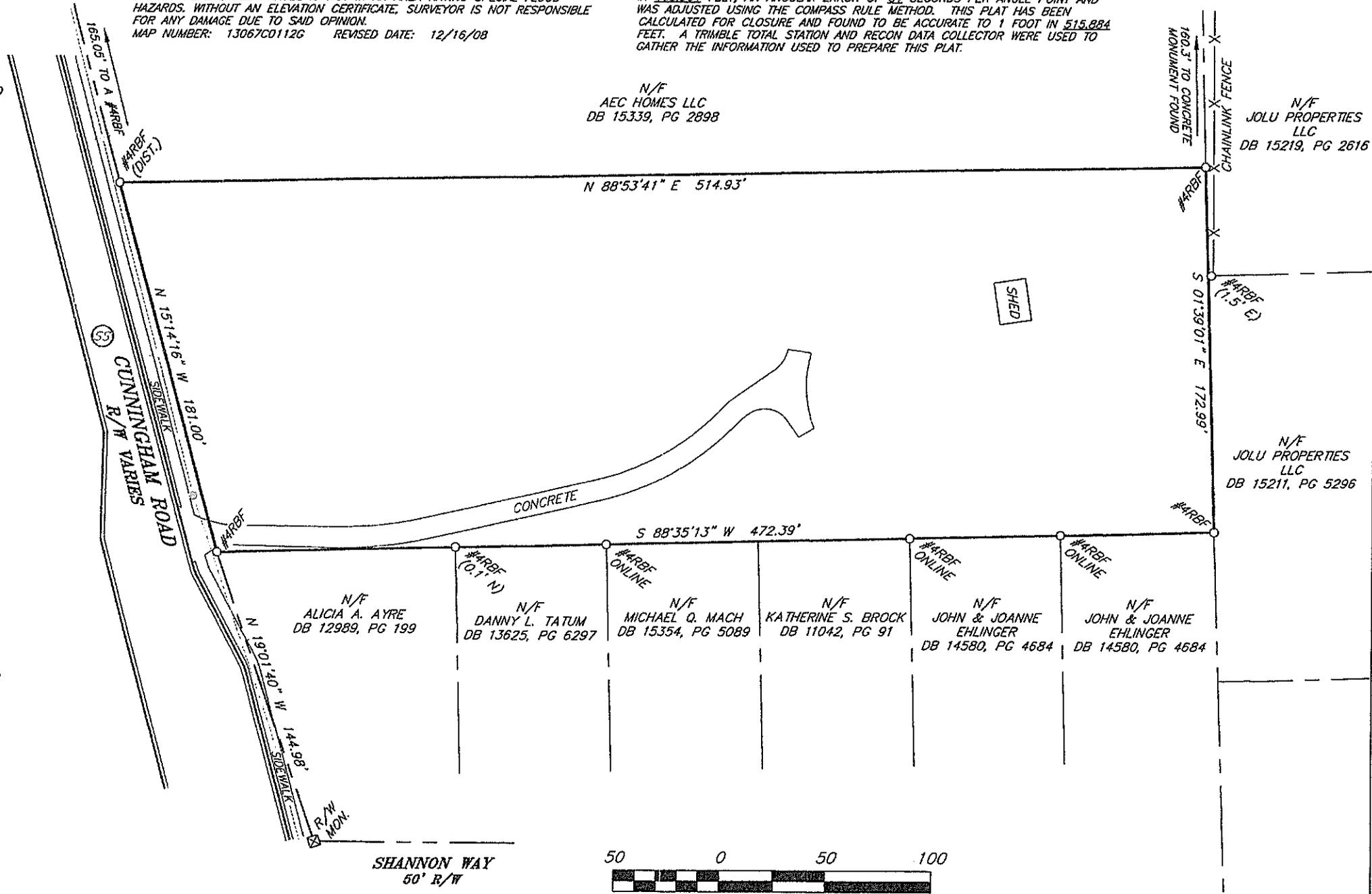
Jay Shy
9/15/16

FLOOD NOTE

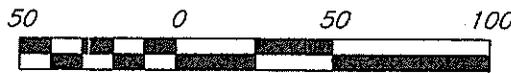
I HAVE EXAMINED THE "FIRM OFFICIAL FLOOD HAZARD MAP" AND FOUND IN MY OPINION REFERENCED PARCEL IS NOT IN AN AREA HAVING SPECIAL FLOOD HAZARDS. WITHOUT AN ELEVATION CERTIFICATE, SURVEYOR IS NOT RESPONSIBLE FOR ANY DAMAGE DUE TO SAID OPINION.
MAP NUMBER: 13067CD112G REVISED DATE: 12/16/08

CLOSURE NOTE

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 1 FOOT IN 105,264 FEET, AN ANGULAR ERROR OF 01 SECONDS PER ANGLE POINT AND WAS ADJUSTED USING THE COMPASS RULE METHOD. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND FOUND TO BE ACCURATE TO 1 FOOT IN 515,884 FEET. A TRIMBLE TOTAL STATION AND RECON DATA COLLECTOR WERE USED TO GATHER THE INFORMATION USED TO PREPARE THIS PLAT.



SHANNON WAY
50' R/W



BOUNDARY SURVEY FOR:
1435 CUNNINGHAM ROAD
YUKIE O. HOWARD
VERNON L. HOWARD



52 CURETON LANE
MORELAND, GA 30259
770-927-2801
WWW.WIDEOPENLANDSURVEYING.COM

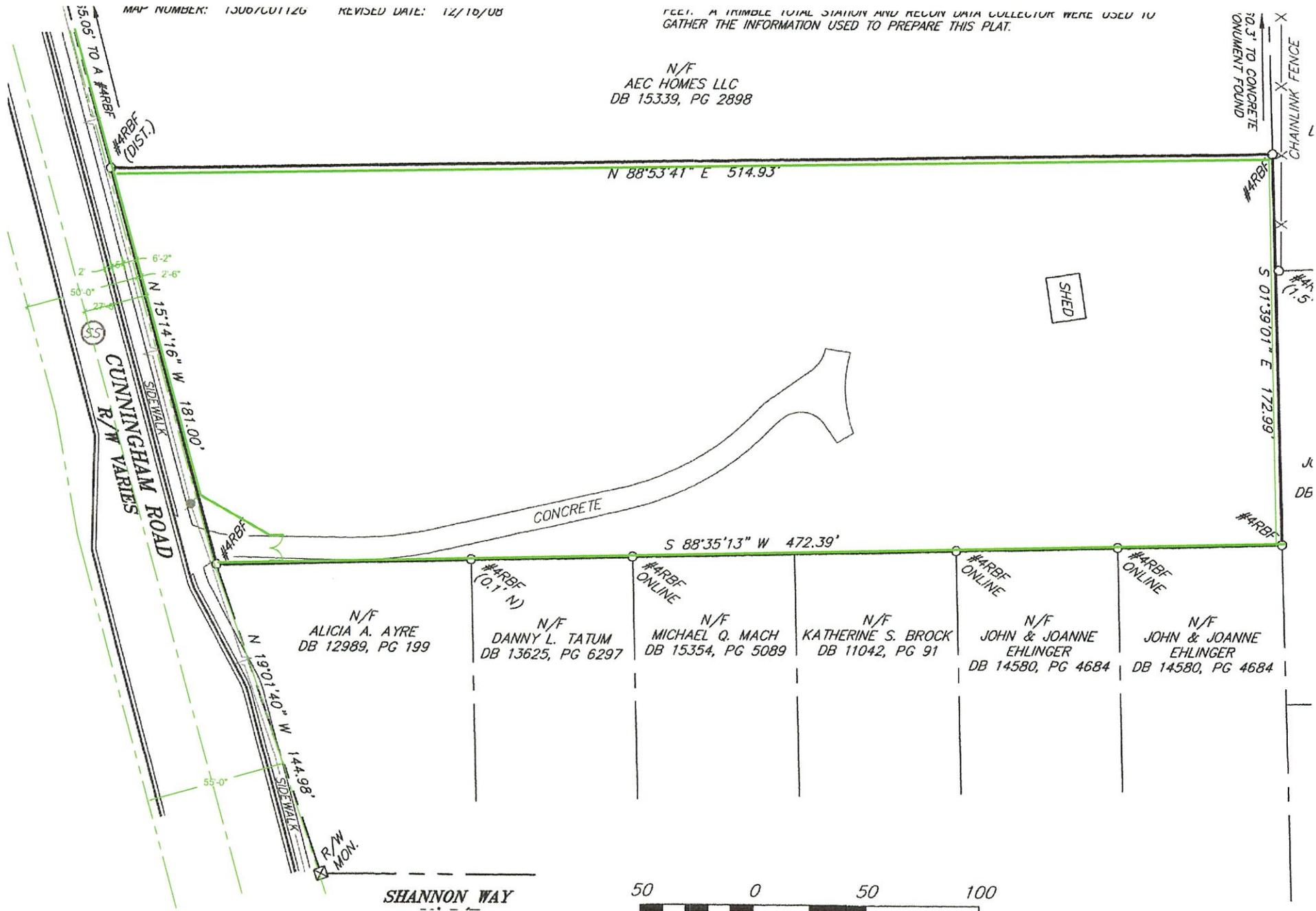
FIELD DATE:	9/13/15
PLAT DATE:	9/15/16
SCALE:	1"=50'
COUNTY:	COBB
DISTRICT:	17th
LAND LOT:	2

IN MY OPINION, THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PLATTED AND HAS BEEN PREPARED IN CONFORMITY WITH THE TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 180-7 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

MAP NUMBER: 1306701126 REVISED DATE: 12/16/08

FEEL: A TRIMBLE TOTAL STATION AND RECON DATA COLLECTOR WERE USED TO GATHER THE INFORMATION USED TO PREPARE THIS PLAT.

N/F
AEC HOMES LLC
DB 15339, PG 2898





Pic. 1 - Wood Privacy Fence at 1435 Cunningham RD.



Pic. 2 - Wood Privacy Fence at 1435 Cunningham RD.



Pic. 3 – Neighbor Dog waste Issues



Pic. 4 and 5 – Shannon Way Monument Signage 4'-0" into the ROW



Pic. 6 Fence across the street same relationship and Ht.



Pic. 7 ROW post centerline of pole Cunningham/Austell