



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2016-30 **Legistar #:** 20160495
Board of Zoning Appeals Hearing: Monday, June 27th, 2016 – 6:00 p.m.
Property Owner: BJB, Jr., LLC
900 Circle 75 Parkway SE
Suite 800
Atlanta, GA 30339
Applicant: Same as above
Address: 541 & 561 Powder Springs St
Land Lot: 218 **District:** 17 **Parcel:** 0450
Council Ward: 1A **Existing Zoning:** NRC (Neighborhood Retail Commercial)

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

1. Variance to reduce the buffer from 30’ to 10.’ [§708.15 (I.)]
2. Variance to disturb and replant the buffer except in areas of adequate existing vegetation. [§710.05]

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



Property prior to clearing (February 2015)



Property after clearing (March 2016)



561 Powder Springs Street



Illegal parking on 561 Powder Springs Street



Remaining buffer against residences on Lovejoy Street

Recommended Action:

Denial. BJJ, Jr., LLC is requesting variances from the landscape buffer regulations for the properties located at 541 and 561 Powder Springs Street. Both properties are zoned NRC (Neighborhood Retail Commercial); 541 Powder Springs Street is vacant and the building on 561 Powder Springs Street functions as New Bethesda Community Baptist Church. Single family homes on Lovejoy Street are to the north and east and are zoned R-4 (Single Family Residential – 4 units / acre) and R-3 (Single Family Residential – 3 units / acre). Aqua Rama Pools & Spas, also zoned NRC, is located immediately to the south.

The City’s Tree Protection and Landscaping Ordinance requires prior approval by Development Services staff prior to removing any dead, dying, diseased, infested or otherwise hazardous tree(s). This is to allow staff to verify that the claim is valid and to determine what replacement options are available.

In February 2016, the city received a complaint from a resident on Lovejoy Street that the buffer on 561 Powder Springs Street was being cleared; and the property owner was notified by City Code Enforcement staff of the violation (CE16-618). In this instance, since many of the trees removed were in the required 30’ buffer between NRC and residential districts, the trees would have to be replaced at the minimum standard for that requirement. Staff determined that, in order to be in compliance, the applicant must replant the 30’ buffer with three staggered rows of evergreen trees (minimum height of 6 ft.) plus the required fence.

The applicant has chosen to apply for a variance to reduce the buffer to 10' and plant one row of evergreen trees along the rear where the existing vegetation is not mature. The applicant has stated that a 6' privacy fence will be constructed in the areas where there is no current privacy fence.

Also, the applicant should be made aware that parking on an unpaved surface is not allowed. The unpaved portions of the site may not be used for vehicular parking of any kind. It is unclear how the imposition of the full buffer would hinder the applicant's ability to properly use the property, as stated in the application letter.

While this proposal would certainly improve the current situation, one row of trees would not seem to be adequate to provide a buffer to the adjacent residential properties. ***Staff recommends denial of this variance request.***

However, if the Board wishes to consider approval of the requested variances, Staff recommends the following conditions:

1. A wooden privacy fence with a minimum height of six (6) foot must be installed along the rear property line (properties facing Lovejoy Street), with the finished side facing the exterior of the property.
2. A twenty (20) foot buffer must be planted with two (2) staggered rows of evergreen trees. Trees must be a minimum height of 6 ft. when planted, and spacing should be no less than 10 ft. on center.



Department of Development Services
205 Lawrence Street
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 #: V2016-30 Legistar #: 20160495 BZA Hearing Dt: 6-27-16
City Council Hearing Dt (if applicable) #: PZ #: 16-269

This is a variance/appeal application for:

[X] Board of Zoning Appeals

[] City Council

Owner's Name BJJ, Jr., LLC
Address 900 Circle 75 Pkwy, SE, Ste. 800, Atlanta, Georgia Zip Code: 30339
Telephone Number: 770-422-7016 Email Address: arozen@slhb-law.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:

541 Powder Springs Rd & 561 Powder Springs Rd. Date of Acquisition: March 15, 2014
Land Lot (s) 218 District 17 Parcel 430 & 45 Acreage 1.88 Zoned NRC Ward 1A FLU Mixed

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

Sec. 708.15H - Reduce the 30' setback to 10'; Sec. 708.15I - reduce the 30' buffer adjoining residential to 10'; and Sec. 710.05f *****

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

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.

JOEL L. LARKIN

PARKS F. HUFF

JAMES A. BALLI

ADAM J. ROZEN

SUITE 100

376 POWDER SPRINGS STREET

MARIETTA, GEORGIA 30064-3448

770•422•7016

TELEPHONE

770•426•6583

FACSIMILE

WWW.SLHB-LAW.COM

May 16, 2016

VIA HAND DELIVERY:

Mr. Russell J. Roth, AICP
Planning & Zoning Manager
City of Marietta
Department of Development Services
205 Lawrence Street
Marietta, GA 30060

Re: Variance Application of BJF, JR., LLC regarding a 1.88 Acre Tract located in
Land Lot 218, 17th District, City of Marietta, Cobb County, Georgia

Dear Rusty:

This firm has been engaged by and represents BJF, Jr., LLC concerning the above-captioned Variance Application. The Application is scheduled to be heard and considered by the City of Marietta Board of Zoning Appeals on June 27, 2016.

The property at issue consists of a 1.88 acre tract of land located on the southeasterly side of Powder Springs St, south of its intersection with Gramling St. The subject property is zoned NRC and for its recent history has been occupied solely by the New Bethesda Community Baptist Church to the front of the property. The remaining portion of the tract has remained generally a grass field and cleared being utilized for activity solely limited to parking and other uses customary with its zoning and occupation.

The Applicant's recent landscaping of the property was prompted in an effort to improve the landscaping and utility of the property. At the time, trees located to the rear of the lot and along the adjoining property line were dead, diseased or dying and were otherwise creating a dangerous situation for the property and its neighboring residential properties. These trees were also preventing proper growth of the existing and planted landscaping along the property line. Imposition of the landscaping and buffer requirements creates a hardship for the Applicant especially in light of the commercial nature of this corridor of Powder Springs St, the limited activity conducted on the property and the currently existing fencing and planted buffer. The requested variances are necessary in order to properly utilize the property, while also prioritizing the protection of its neighboring residential users.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY:

Mr. Russell J. Roth, AICP
Planning & Zoning Manager
City of Marietta
Department of Development Services
May 16, 2016
Page 2

For all the reasons stated herein above and with all of the information and documentation which is before you, we respectfully request that the Variance Application be approved. Of course, during the pendency of the Application, I will remain available to address any possible concerns brought forward. In fact, an effort has already begun to establish and maintain an open line of communication with the neighboring property owners. At the appropriate time, I will address any necessary stipulations and conditions in the form of a stipulation letter, or otherwise, which shall become a part of the grant of the requested variances and binding upon the subject property thereafter. In the interim, please do not hesitate to contact me should you have any questions whatsoever regarding these matters.

Sincerely,

SAMS, LARKIN, HUFF & BALLI, LLP



Adam J. Rozen
arozen@slhb-law.com

Enclosure

cc: Mr. Bennett J. Frye, Jr., BJF, JR., LLC (via email w/attachments)
Mrs. Karen Shearer Frye, CFO & Secretary, Aqua Rama Pools & Spas (via email w/ attachments)

TO: Marietta Daily Journal
FROM: City of Marietta
RUN DATE: June 10, 2016

PUBLIC NOTICE OF VARIANCES and SPECIAL LAND USE PERMITS

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, June 27, 2016 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

V2016-30 [VARIANCE] BJJ, JR., LLC is requesting variances for property located in Land Lot 218, District 17, Parcel 0450, 2nd Section, Marietta, Cobb County, Georgia and being known as 541 & 561 Powder Springs Street. Variance to reduce the buffer from 30' to 10;' variance to disturb and replant the buffer except in areas of adequate existing vegetation. Ward 1A.

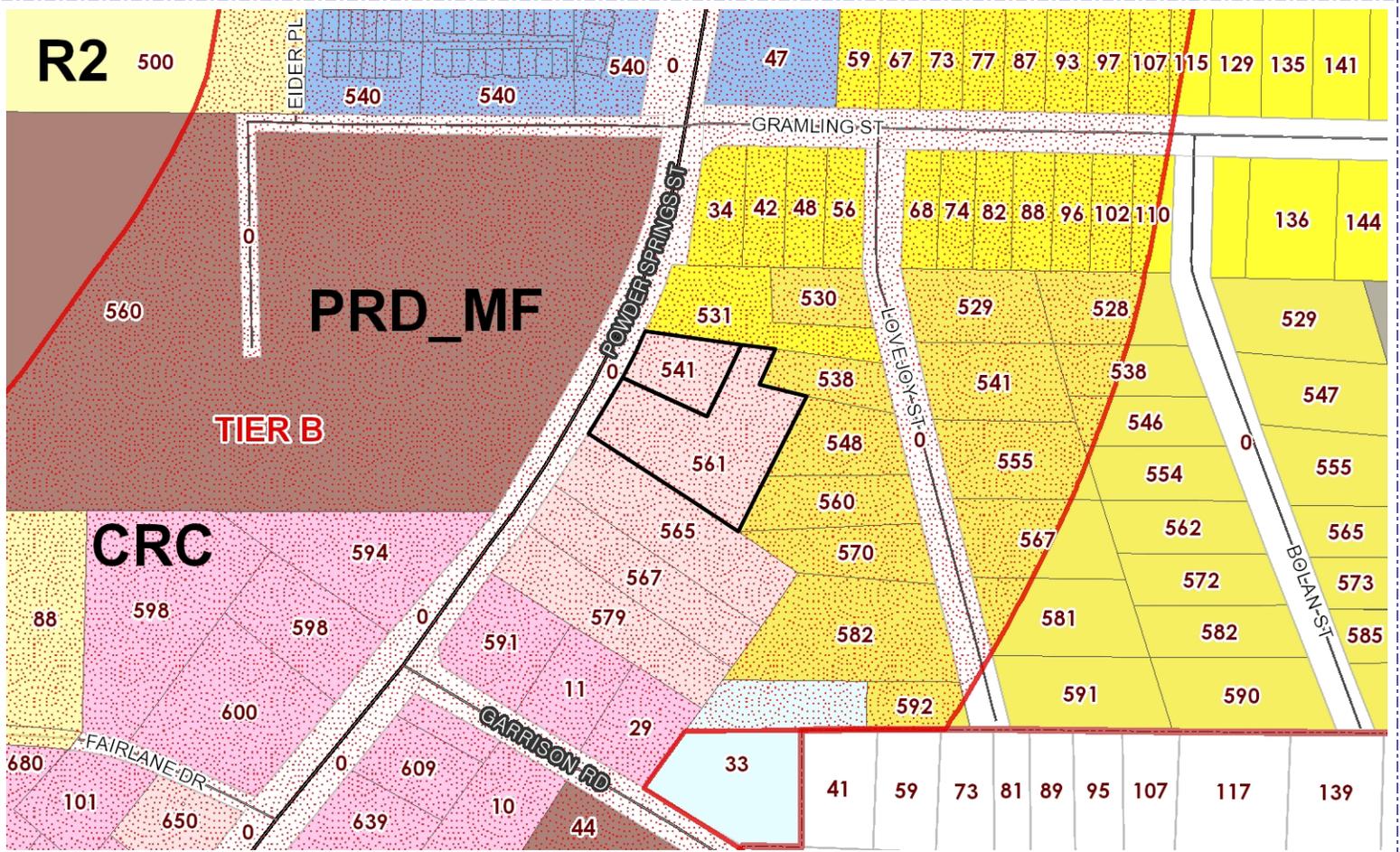
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

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
541 POWDER SPRINGS ST	17021800430	0.34	1A	NRC	MXD
561 POWDER SPRINGS ST B	17021800450	1.071	1A	NRC	MXD

Property Owner:	BJF, Jr., LLC
Applicant:	
BZA Hearing Date:	06/27/2016
Acquisition Date:	
Case Number:	V2016-30

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

City of Marietta Planning & Zoning

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 58,889 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 XXX,XXX FEET.

TOTAL AREAS: #561 = 52,678 SQUARE FEET OR 1.21 ACRES
 #541 = 12,067 SQUARE FEET OR 0.28 ACRES
 #531 = 17,325 SQUARE FEET OR 0.40 ACRES
 COMBINED AREA = 82,070 SQUARE FEET OR 1.88 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 (# 811) BEFORE ANY EXCAVATIONS ARE BEGUN TO ENSURE AND VERIFY THE CORRECT LOCATION AND DEPTH OF ALL UTILITIES.

REFERENCES:

- PLAT BOOK 211, PAGE 57
- PLAT BOOK 3, PAGE 138
- DEED BOOK 14903, PAGE 5923
- DEED BOOK 14347, PAGE 5003
- DEED BOOK 13347, PAGE 2812
- DEED BOOK 13347, PAGE 2809
- DEED BOOK 4978, PAGE 207

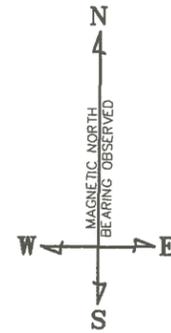
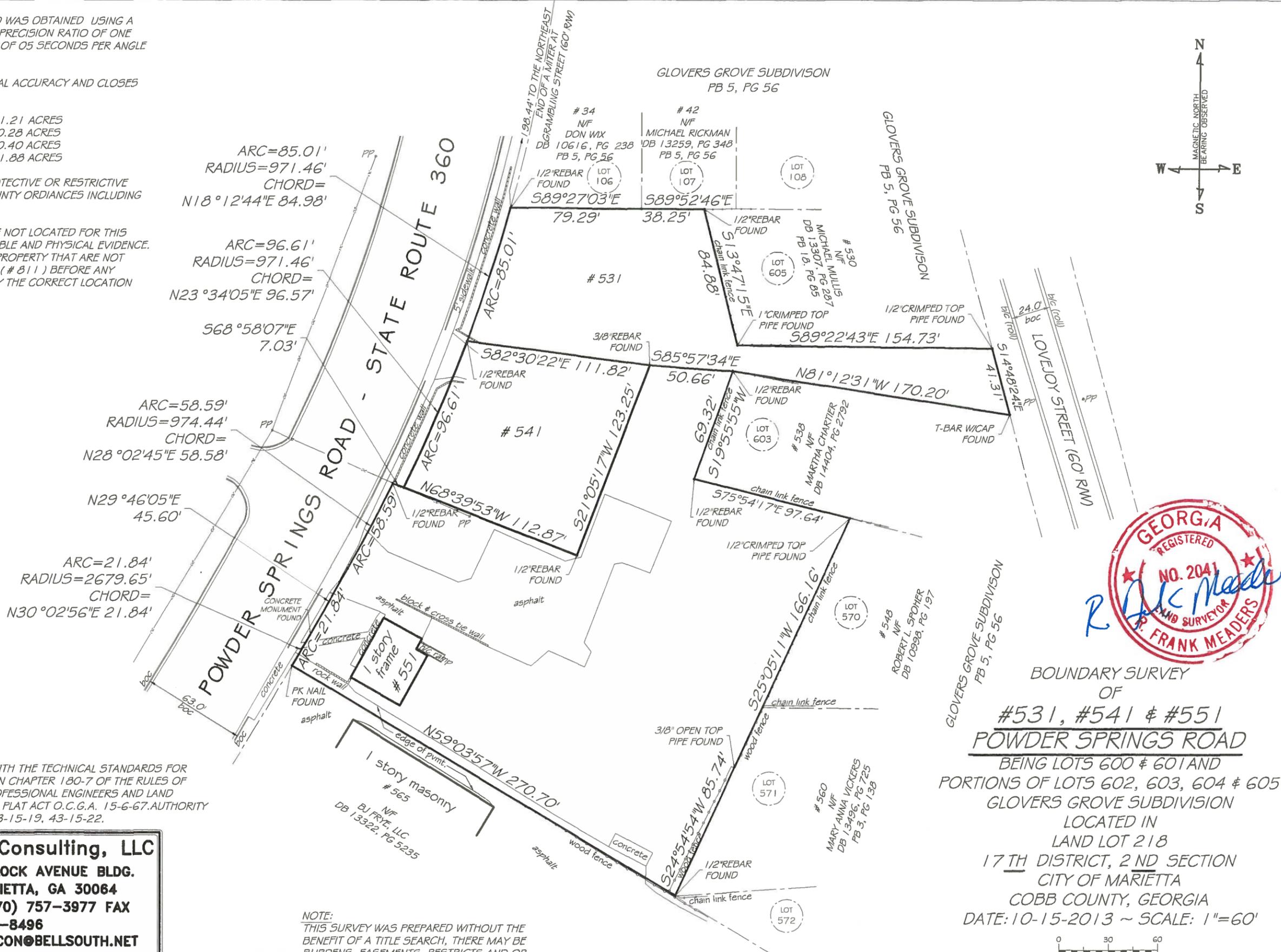
THIS SURVEY WAS PREPARED IN CONFORMITY WITH THE TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 180-7 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN THE GEORGIA PLAT ACT O.C.G.A. 15-6-67. AUTHORITY O.C.G.A. SECS. 15-6-67, 43-15-4, 43-15-6, 43-15-19, 43-15-22.



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 707 WHITLOCK AVENUE BLDG.
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Drafting By: Mack R. Price, Jr.
 Cell 678-313-9270
 FILE: powder springs road 2.dwg

NOTE:
 THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE SEARCH, THERE MAY BE BURDENS, EASEMENTS, RESTRICTS AND OR RIGHTS OF WAYS NOT SHOWN OR REFERENCED THAT A CURRENT TITLE REPORT WOULD REVEAL.



BOUNDARY SURVEY
 OF
#531, #541 & #551
POWDER SPRINGS ROAD
 BEING LOTS 600 & 601 AND
 PORTIONS OF LOTS 602, 603, 604 & 605
 GLOVERS GROVE SUBDIVISION
 LOCATED IN
 LAND LOT 218
 17TH DISTRICT, 2ND SECTION
 CITY OF MARIETTA
 COBB COUNTY, GEORGIA
 DATE: 10-15-2013 ~ SCALE: 1"=60'



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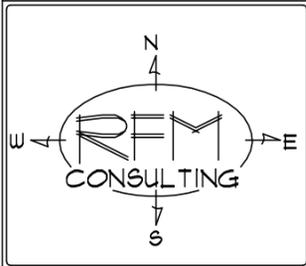
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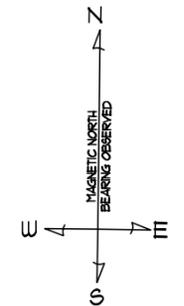
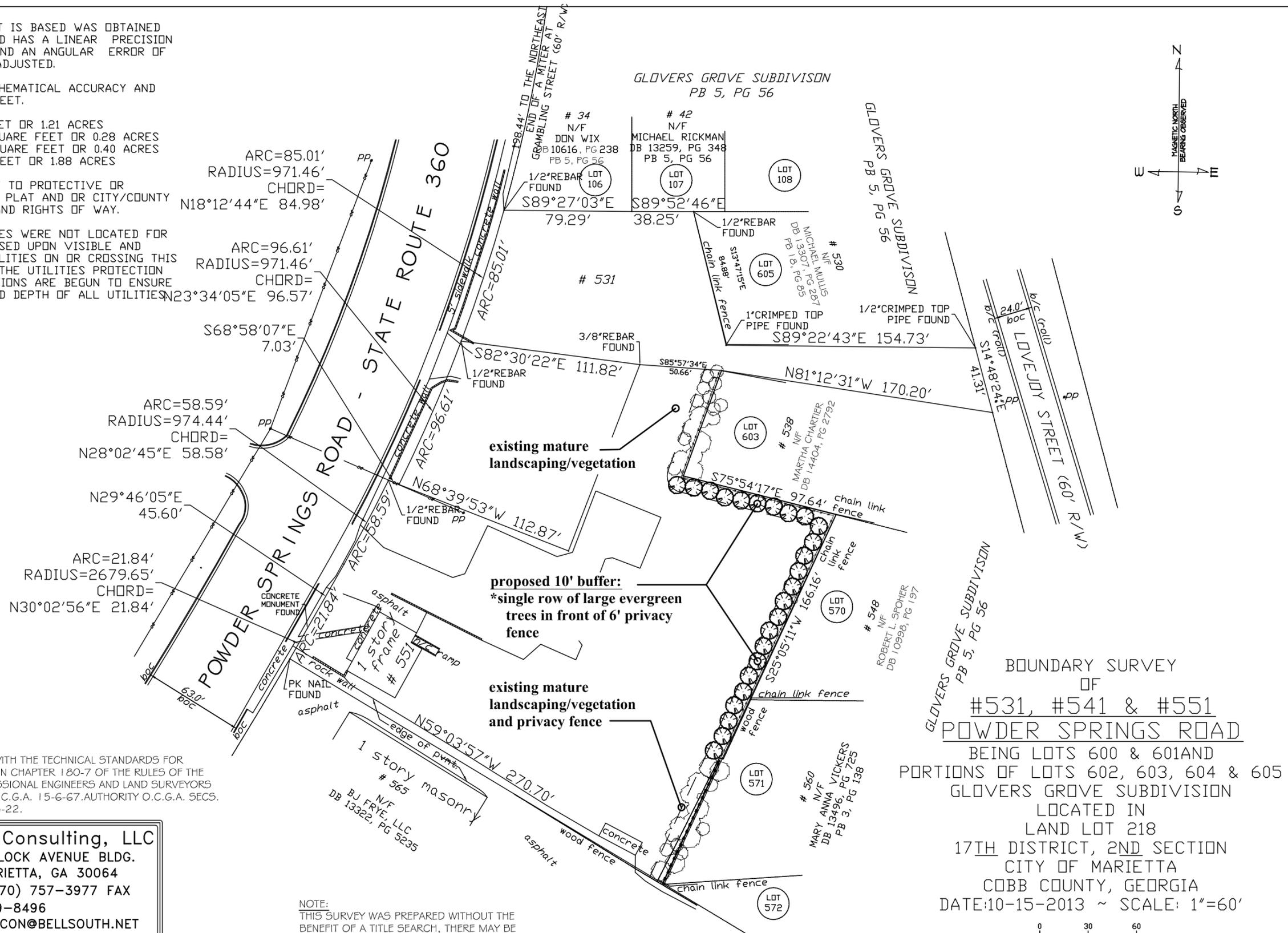
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