



**STAFF REVIEW AND RECOMMENDATION**

**Variance Case #:** V2016-42      **Legistar #:** 20160764  
**Board of Zoning Appeals Hearing:** Monday, August 29<sup>th</sup>, 2016 – 6:00 p.m.  
**Property Owner:** Bentley Commercial Properties, LLC  
363 Seminole Drive  
Marietta, GA 30060  
**Applicant:** Same as above  
**Address:** 344 Kathleen Drive  
**Land Lot:** 05050      **District:** 17      **Parcel:** 0450  
**Council Ward:** 7A      **Existing Zoning:** LI (Light Industrial)

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

1. Variance to allow automobile sales within 50’ of a residentially zoned property. [§708.26 (B.7.c)]

**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**



**344 Kathleen Drive**



**344 Kathleen Drive**



**Residence across the street from 344 Kathleen Drive**



**Residence across the street from 344 Kathleen Drive**



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**Recommended Action:**

**Approval.** Bentley Commercial Properties, LLC is requesting a variance for the property at 344 Kathleen Drive. This property is zoned LI (Light Industrial) and is situated north of the American Business Center, also zoned LI, at the corner of South Marietta Parkway and Cobb Parkway South. Marietta Auto Salvage is located immediately to the north and is zoned LI. Properties zoned CRC (Community Retail Commercial) are located directly to the west. Across Kathleen Drive to the east are three single family residences zoned R-2 (Single Family Residential – 3 units/acre).

In the past, the subject property has been used as a tow yard, auto repair facility, and car sales business. Automobile sales is a permitted use in the LI zoning district as long as the property is 50 feet away from any property zoned for residential purposes. The residential properties across Kathleen Drive are 40 feet from the subject property. However, because the most recent car sales business ceased operations at this location in December 2014, car sales can no longer be considered a legally nonconforming use that can continue. Thus, the applicant is requesting a variance from this requirement.

The homes across Kathleen Drive are remnants of a residential neighborhood that began transitioning to industrial after the construction of I-75 in the 1960s. The future land use map is intended to guide land use decisions. This entire area, including the residential properties, is classified as having a future land use of IW (Industrial Warehousing). Protecting a discouraged use (residential) will delay the industrial transition the City is trying to encourage in this area. As a result, *staff recommends approval of this variance request.*



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 #: 2016-42 Legistar #: BZA Hearing Dt: 8-29-16
City Council Hearing Dt (if applicable) #: PZ #: 16-411

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 BENTLEY Commercial Properties LLC

Address 363 Seminole Dr Marietta Zip Code: 30060

Telephone Number: 404 884 5299 Email Address: gebentley1954@gmail.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:

344 Kathleen Dr Date of Acquisition: 8/2008

Land Lot(s) 505 District 17 Parcel 450 Acreage 2.11 Zoned LI Ward 7A FLU IW
0505 0450

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

variance of 50' distance from residential to 40'
LI to residential set back

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

BENTLEY COMMERCIAL PROPERTIES, LLC

363 Seminole Drive

Marietta, Georgia 30060

7/7/2016

I am requesting a zoning variance for 344 Kathleen Drive to reduce the setback of Light Industrial Zoning to Residential Zoning by ten feet from fifty feet to 40 feet, for the purpose of a car sales lot. The Marietta City Zoning Dept. has agreed to a temporary variance contingent upon approval by the Board of Zoning Appeals to allow for the afore-mentioned 10 ft. set-back reduction change. We understand that this allowance will be withdrawn if the requested set-back reduction is not approved by the Board of Zoning Appeals of the City of Marietta.



June W. Bentley Member

**TO: Marietta Daily Journal**  
**FROM: City of Marietta**  
**RUN DATE: August 12, 2016**

**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, August 29, 2016 at 6:00 P.M.**, City Hall. Anyone wishing to attend may do so and be heard relative thereto.

**V2016-42 [VARIANCE] BENTLEY COMMERCIAL PROPERTIES, LLC** is requesting variances for property located in Land Lot 505, District 17, Parcel 0450, 2<sup>nd</sup> Section, Marietta, Cobb County, Georgia and being known as 344 Kathleen Drive. Variance to allow automobile sales within 50' of a residentially zoned property. Ward 7A.

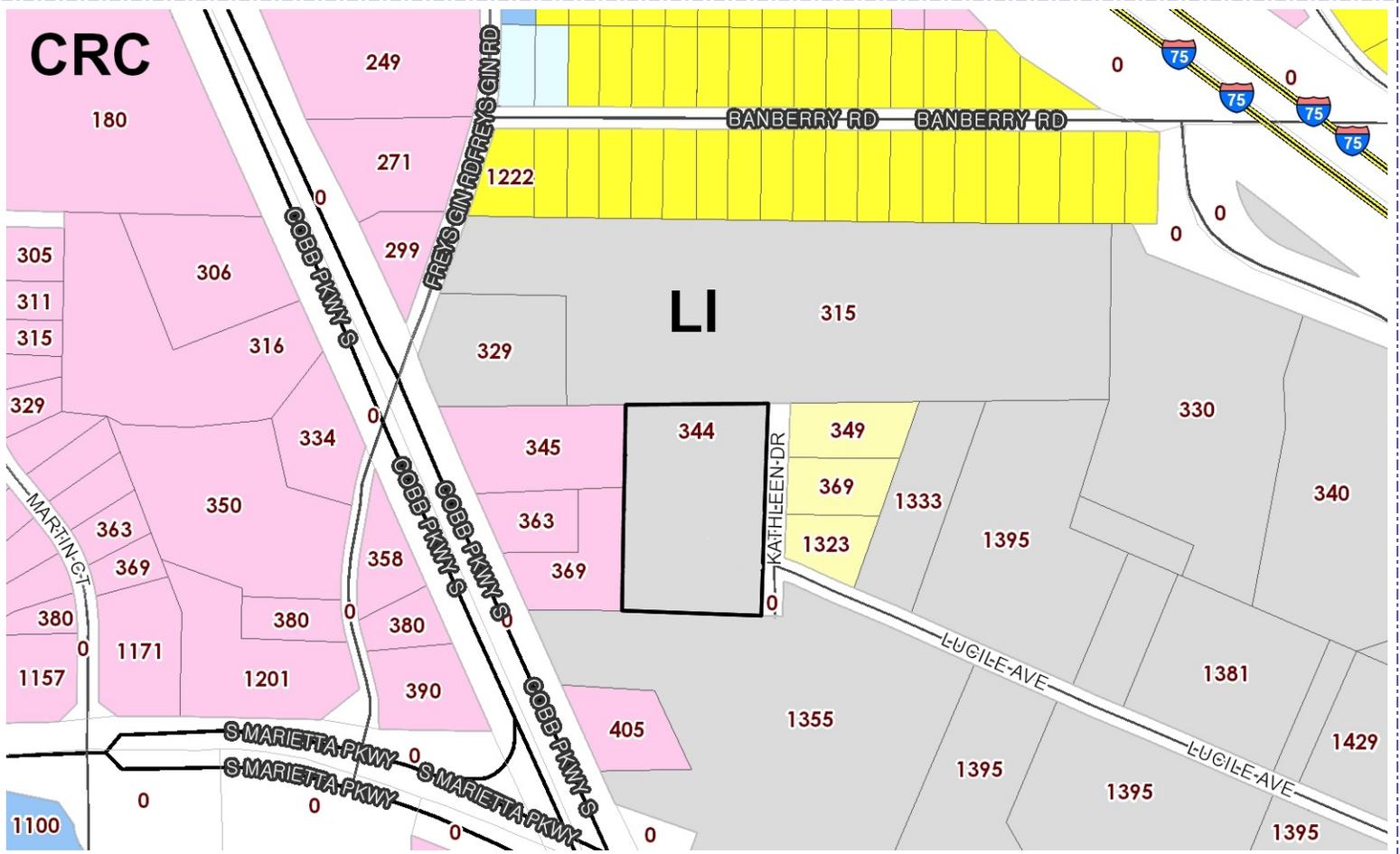
A description and plat of the property sought for the variances are on file in the Planning and Zoning Office, City Hall, and are available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

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
344 KATHLEEN DR	17050500450	2.11	7A	LI	IW

Property Owner: Bentley Commercial Properties, LLC

Applicant:

BZA Hearing Date: 08/29/2016

Acquisition Date:

Case Number: V2016-42

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

#344, #356, #366 & #378 OWNERS: Bentley Commercial Properties LLC  
 363 Seminole Drive  
 Marietta, GA 30060 (66.67%)  
 PHONE: 770-265-0905

THE UNDERSIGNED, AS PUBLIC WORKS DIRECTOR OF THE CITY OF MARIETTA, GEORGIA, HEREBY APPROVES THIS EXEMPTION PLAT FOR THE RECORDING OF SAME IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF COBB COUNTY.

*James W. Bentley*  
 DATE Sept. 6, 2012

*[Signature]*  
 DATE 9/6/12

and  
 Summerour Properties, LLLP  
 1330 Barnes Mill Rd  
 Marietta, GA 30062 (33.33%)

*Rebecca B. Summerour*  
 DATE 9-5-12

BK: 272 PG: 632  
 Filed and Recorded Sep-10-2012 10:45:06AM  
 DOCH: P2012-028811

BULK AND AREA REGULATIONS.  
 MINIMUM LOT SIZE: 20,000 SQ. FT.  
 MINIMUM LOT WIDTH: 100 FT.  
 MAXIMUM BUILDING HEIGHT: 50 FT.  
 MAXIMUM FLOOR AREA RATIO: 0.50  
 MAXIMUM IMPERVIOUS SURFACE: 75%  
 FRONT SETBACK (ARTERIAL): 75 FT.  
 FRONT SETBACK (COLLECTOR): 50 FT.  
 FRONT SETBACK (LOCAL): 50 FT.  
 SIDE SETBACK (MAJOR): 50 FT.  
 SIDE SETBACK (MINOR): 20 FT.  
 REAR SETBACK: 40 FT.

THE UNDERSIGNED, AS DEVELOPMENT SERVICES DIRECTOR OF THE CITY OF MARIETTA, GEORGIA HEREBY APPROVES THIS EXEMPTION PLAT FOR RECORDING OF SAME IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF COBB COUNTY.

*Brigit*  
 DATE 9/6/12

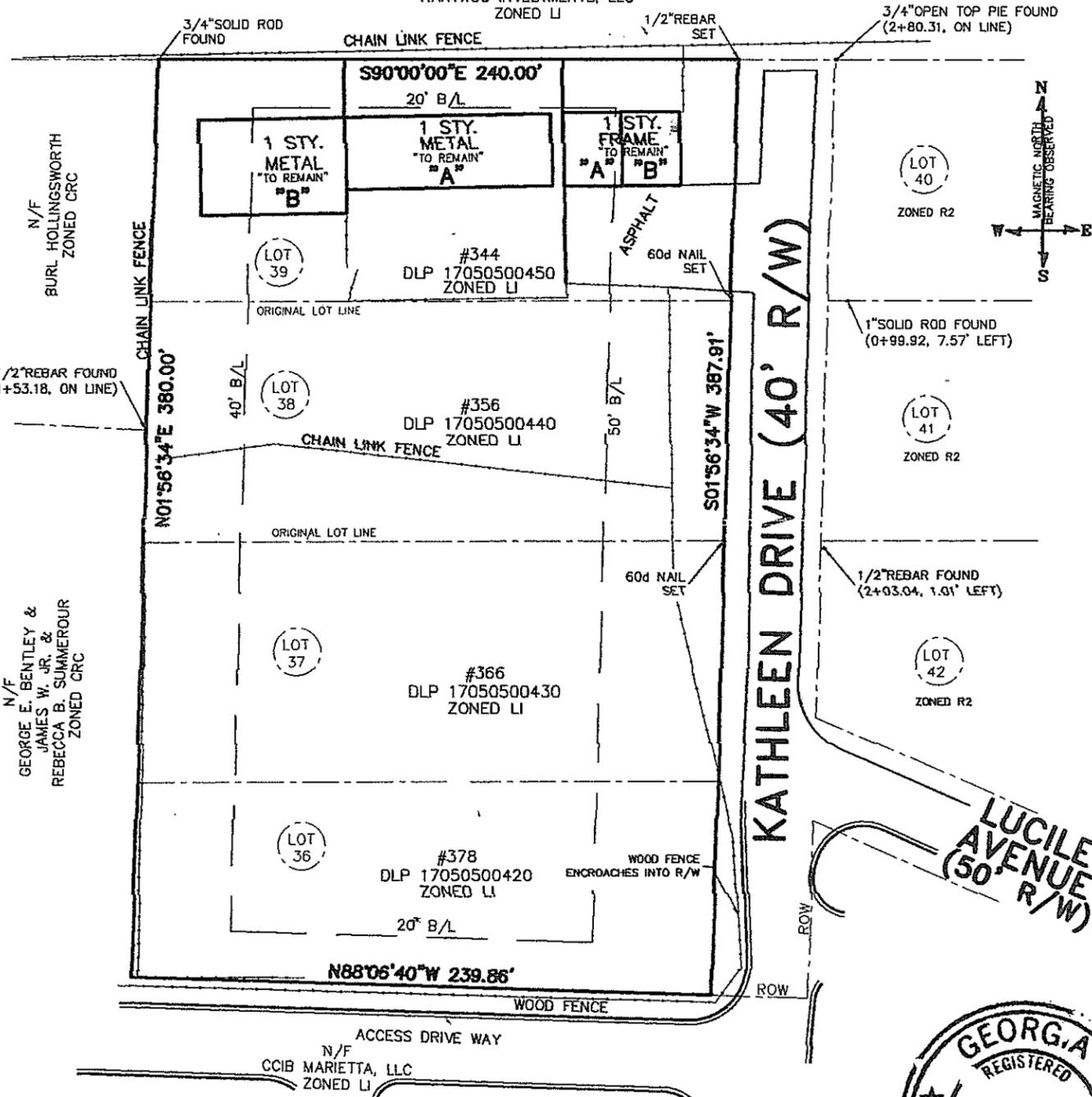
*Jay C. Stephenson*

JAY C. STEPHENSON  
 CLERK OF SUPERIOR COURT Cobb Cty. GA.

THE APPROVAL OF THIS PLAT SHALL NOT CONSTITUTE A RELEASE OF ANY RIGHT, TITLE OR INTEREST CURRENTLY OR PREVIOUSLY HELD BY THE CITY OF MARIETTA, INCLUDING ANY EASEMENTS, RIGHT-OF-WAY OR OTHER INTEREST IN THE REAL PROPERTY. THE CITY HEREBY RETAINS ANY AND ALL CURRENT OR PREVIOUS INTEREST IN SAID PROPERTY.

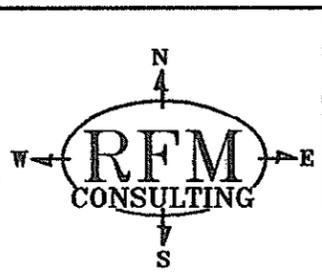
IT IS HEREBY CERTIFIED THAT THIS PLAT IS TRUE AND CORRECT PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

*R. Frank Meaders*  
 REGISTERED LAND SURVEYOR DATE 9/5/2012  
 N/F HARTWOOD INVESTMENTS, LLC  
 ZONED LI



NOTES:  
 THE PURPOSE OF THIS PLAT IS TO COMBINE 4 PARCELS (#344, #356, #366 & #378 KATHLEEN DRIVE) INTO ONE PARCEL 17050500450 TO BE KNOWN AS #344 KATHLEEN DRIVE.  
 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 > 10,000 FEET AND AN ANGULAR ERROR OF 02 SECONDS PER ANGLE AND WAS NOT ADJUSTED.  
 THIS PLAT HAS BEEN CHECKED FOR MATHEMATICAL ACCURACY AND CLOSES WITHIN ONE FOOT IN > 100,000 FEET.  
 BEARINGS SHOWN ARE CALCULATED FROM ANGLES TURNED BASED ON A SINGLE MAGNETIC OBSERVATION  
 TOTAL AREA = 92,096 SQUARE FEET OR 2.11 ACRES.  
 WOOD FENCE ENCLOSES INTO ROW.  
 ACCORDING TO MAP 13067C01096, DATED 12/16/2008, NO PORTION OF THIS PROPERTY IS LOCATED IN A FLOOD HAZARD ZONE.  
 SUBJECT PROPERTY IS ZONED LI.  
 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 15, PAGE 148

EXEMPTION PLAT FOR  
 #344 KATHLEEN DRIVE  
 LOCATED IN  
 LAND LOT 505, 17th DISTRICT  
 CITY OF MARIETTA  
 COBB COUNTY, GEORGIA  
 DATE: 08/20/12 - SCALE: 1" = 60'



R.F.M. Consulting, LLC  
 707 WHITLOCK AVENUE  
 BLDG. A-37  
 MARIETTA, GA 30064  
 PHONE (770) 757-3977  
 FAX (770) 488-8496  
 EMAIL: RFMCON@BELLSOUTH.NET  
 IN MY OPINION, THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PLATTED AND HAS BEEN PREPARED IN CONFORMITY WITH THE MINIMUM STANDARDS AND REQUIREMENTS OF LAW.  
*R. Frank Meaders*

Drafting By Mack R. Price, Jr.  
 Call 878-313-9270  
 File: C:\RFM\KATHLEEN DRIVE.dwg

