



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2026-03 Legistar #: 20260014

Board of Zoning Appeals Hearing: Monday, January 26th, 2026 at 6:00pm

Property Owner: [REDACTED]

Applicant: As above

Address: 318 Stewart Avenue

Land Lot: 1149 District: 16 Parcel: 0060

Council Ward: 4A Existing Zoning: R-3 (Single-Family Residential, 3 units/acre)

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

1. Variance to rebuild a nonconforming structure. [§706.03 (B.)]
2. Variance to reduce the western side setback of the principal building from 10' to 7'.
[§708.03 (H.)]

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



Front view of the subject property prior to demolition.



Subject property after demolition (1/7/25), in the process of rebuilding.



A construction worker stands at the edge of the part of the house in question which the applicant wishes to rebuild, which encroaches three (3) feet into the required 10-foot side setback.



Recommended Action: Approval, on condition of impacted neighbor's approval.

The applicant/property owner, [REDACTED], is requesting variances to rebuild a house that was demolished (without permit) seven (7) feet from the westerly side property line, three (3) feet beyond the required 10-foot setback by code. [REDACTED] received building permits to renovate both the house and a garage in the backyard (the garage having been granted variances in September 2025 to also build closer to the easterly side setback line than permitted by code, V2025-27). Although the approved building permit showed the house encroaching into the western side setback, work proposed was only cosmetic and to the interior of the space. Since the non-conformity was not to be expanded, it was permitted to remain grandfathered/in place as-is.

The applicant states that during renovations, it was discovered that much of the structure of the house was beyond repair. Rather than applying for a demolition permit, however, the applicant razed the structure completely, leaving only the foundation intact. Per Section 706.03 (B.):

“Any nonconforming building or structure existing as of June 9, 2010, may be retained, except that it shall not be...rebuilt...if such construction costs would exceed 50% of the replacement costs of the building...”

Since the building was knocked down, construction costs represent a complete replacement. Or, for an alternative interpretation of the same section:

“Any nonconforming building or structure existing as of June 9, 2010, may be retained, except that it shall not be...expanded, extended or enlarged in any manner which increase its non-conformity.” [Section 706.03 (A.)]

Given that the only remaining part of the former house was the foundation, building new walls on the non-conforming footprint would expand it vertically, which would increase the non-conforming slab.

While building plans have already been drawn up and approved based on the old footprint, the applicant could feasibly remove the non-conforming portion of the foundation and build the house according to current zoning code. Unfortunately, the portion of the house in question which encroaches into the side setback (and therefore would be lost) is supposed to contain a bathroom, making a redesign including plumbing more challenging than simply losing square footage. Still, as of January 8, the applicant has chosen to continue building the rest of the house in hopes that the variance request will be successful.

Only with recent updates to the Zoning Procedures Law (ZPL) was such a “small” variance not permitted to be handled administratively by the Director of Development Services. Before the ZPL update, the Director could grant a side setback variance up to four (4) feet if no neighbors objected. While the law has changed, the BZA might instead consider judging the variance request through the lens of degree of impact inflicted on the neighbor, and if that impact merits the denial of the



three (3)-foot setback variance being requested today. If the impacted neighbor is amenable, and the applicant is given the benefit of the doubt – potentially unaware of the need to submit a demolition permit application as well as that the remaining foundation did not itself preserve the grandfathering of the setback encroachment – then Staff has no significant qualms with the request.

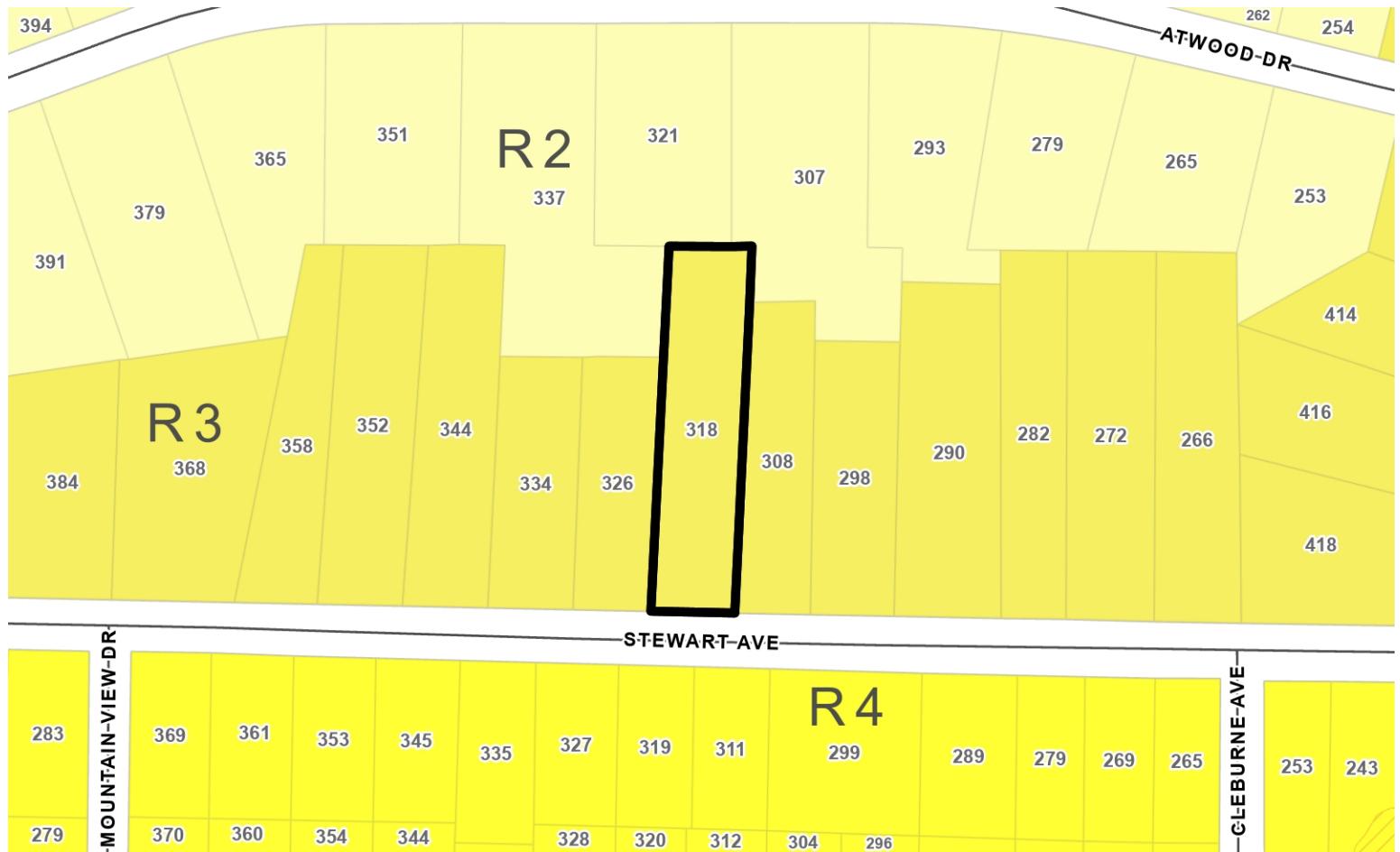
Note, however, that the Fire Department will have to be consulted regarding the need for the house to be sprinklered as it will be built back within 10 feet of a property line.

Fire Department Comments:

This proposed building will be required to be protected by a fire protection sprinkler system in accordance with Marietta Code 2-6-140.

Fire protection systems (Fire Alarm, Fire Sprinkler, etc.) must be permitted separately from the main building permit. Plans and calculations will be required for permitting and review through the Fire Marshal's Office.

Variance



Address	Parcel Number	Acreage	Ward	Zoning	FLU
318 STEWART AVE	16114900060	0.593	4A	R3	LDR
Property Owner:					
Applicant:					
BZA Hearing Date:	01/26/2026				
Acquisition Date:					
Case Number:	V2026-03				
City of Marietta Planning & Zoning					
Zoning Symbols <ul style="list-style-type: none"> 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 					

Aerial Map



Address	Parcel Number	Acreage	Ward	Zoning	FLU				
318 STEWART AVE	16114900060	0.593	4A	R3	LDR				
Property Owner:	Thraikill	Legend							
Applicant:	 Railroads  City Limits  Cobb County Pockets								
City Council Hearing Date:									
Planning Commission Hearing Date:									
BZA Hearing Date:	01/26/2026	Case Number:	V2026-03						
Comments:									
City of Marietta Planning & Zoning									



Department of Development Services
205 Lawrence Street
Marietta, GA 30060

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 #: V2026-03 Legistar #: 20260014 BZA Hearing Dt: Jan 26, 2026
City Council Hearing Dt (if applicable) #: _____ PZ #: 25-087

This is a variance/appeal application for:

Board of Zoning Appeals

City Council

Owner's Name _____

Documentation showing names of Principals authorized to sign application is **required for Corporations**.

EMAIL Address: _____

Mailing Address _____

Phone Number: 300 64

COMPLETE ONLY IF APPLICANT IS NOT OWNER:

Applicant: _____

EMAIL Address: _____

Mailing Address _____ Zip Code: _____ Phone Number: _____

Address of subject property: 318 Stewart Ave Date of Acquisition: 3/31/25

Land Lot (s) 1149 District 16th Parcel 161149 Acreage .59 Zoned R3 Ward _____ FLU: _____
00068

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

Letter of Variance Requested is attached

Required Information

1. Application fee (Residential - \$250; Non-residential - \$350)
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. Documentation showing names of Principals authorized to sign application is **required for Corporations**.
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 (8 1/2" x 11") -or- One (11" x 17") drawn to scale.
Optional Additional Plat size: (24"x 36"). If providing (24"x 36") then 5 copies REQUIRED of the plat size pages.
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.

Variance Request Letter

To:
Planning and Zoning Division
City of Marietta
205 Lawrence Street
Marietta, GA 30060

Subject: Request for Zoning Variance – 318 Stewart Ave, Marietta, GA 30064

Dear Board of Zoning Appeals,

I am writing to formally request a zoning variance for the property located at *318 Stewart Ave*, which I own. This request is submitted in accordance with the City of Marietta's zoning ordinance and variance application procedures.

The specific variance I am seeking is to replace an existing section of the house that currently resides inside the 10' building restriction to an adjacent property. An 18' section of the left side of the house is currently located approximately 8' from the adjacent property line. The approved building plans allowed modifications to this section of the house, i.e. raising the ceiling by 1 foot and adding a new roof on this 18'x2' section of the house. As we started the remodel process, we discovered significant structural deficiencies and safety concerns.

Issues Identified

- Floor joists were not level; most boards were sagging, and some were rotting.
- Joists were not properly attached to the foundation.
- No pressure-treated seal plate or foundation anchors were present.
- Floors were uneven throughout the house.

The section of the house we are seeking the exception for will only be replaced, there is no change to the location of the house or the approved plans. The approved plans did not call for any new building in the area which would be non-compliant by today's building code.

Based on a current hardship I have we designed the new floorplan to utilize the existing footprint and to provide an open floor plan to accommodate easy movement and mobility throughout the house. This will allow me to Age-In-Place.

The current hardship I have is Familial Amyloidosis; it progresses as misfolded proteins build up in organs, causing damage, usually starting subtly with nerve/autonomic issues (numbness, tingling, GI problems, blood pressure drops) and eventually affecting the heart (stiffness, heart failure), kidneys, and eyes, leading to severe disability (wheelchair-bound) and potentially organ failure, with progression rates varying but often accelerating over time, impacting quality of life significantly.

The proposed variance is being requested to manage my Amyloidosis hardship. Allowing me to focus on energy conservation, fall prevention, and maximizing independence by modifying spaces with easy-reach items, clear pathways (no clutter), ergonomic furniture (raised toilet, shower seat), and technology (voice control), making the bathroom and kitchen highly accessible with grab bars, non-slip surfaces, and lowered counters, potentially using a professional designer to create "activity centers" for seated tasks, and considering major changes like first-floor bedrooms or stairlifts if needed.

In addition, granting this variance will not adversely affect the surrounding properties or the public interest. The proposed use and modifications are consistent with the character of the neighborhood and will maintain the intent of the zoning ordinance. The neighbor to the adjacent property has no concerns with the proposed plans.

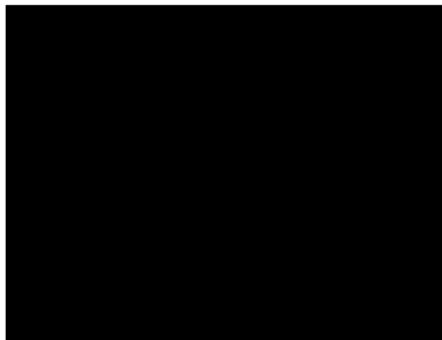
A professional survey, as of 12/15/25, has been requested and scheduled and will be provided as soon as it becomes available.

Attached to this letter are the following documents, including:

- Completed and notarized variance application
- Copy of the deed
- Current tax bill showing payment
- Supporting documentation and visuals

I respectfully request that this application be scheduled for review at the next available Board of Zoning Appeals hearing. I am available to attend the public hearing and provide any additional information needed.

Thank you for your consideration.



CLERK'S FILING STAMP BOX



SURVEY NOTES

THERE IS A 25' NON-DISTURBANCE BUFFER(WARM WATER STREAMS) AND A 50' NON-DISTURBANCE BUFFER(TROUT STREAMS) ADJACENT TO ANY STREAM OR BODY OF WATER MANDATED BY THE STATE AND THERE MAY BE ENHANCED BUFFERS PLACED ON THESE WATERS BY COUNTIES OR MUNICIPALITIES. THE PROPER AUTHORITY SHOULD BE CONTACTED BEFORE BEGINNING ANY DISTURBANCE NEAR THESE AREAS.

THIS PLAT WAS PREPARED FOR EXCLUSIVE USE BY THE PERSONS AND/OR ORGANIZATIONS NAMED HEREON. THIS PLAT DOES NOT EXTEND TO OTHERS WITHOUT THE PERMISSION OF THE SURVEYOR.

ORIGINAL PLATS, NOTES AND OTHER DRAWINGS PREPARED BY THE SURVEYOR AND HIS ASSOCIATES, INCLUDING ELECTRONIC FILES, ARE INSTRUMENTS OF SERVICE AND ARE THE PROPERTY OF THE SURVEYOR.

IF BUILDING SETBACKS ARE SHOWN HEREON THEY ARE BASED ON THE SURVEYORS BEST INTERPRETATION AND SHOULD BE RELIED UPON AFTER AFFIRMATION BY THE MARIETTA ZONING DEPARTMENT.

THERE MAY BE OTHER UTILITIES EXISTING ON THIS PROPERTY THAT ARE NOT SHOWN.

ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES.

LEGEND

CORNER MONUMENTATION:

—●— = IPS = CORNER SET WITH A 1/2" STEEL REINFORCING ROD

—○— CORNER FOUND

—△— UNMONUMENTED CORNER

—⊗— CORNER TO BE SET WHEN CONSTRUCTION PERMITS

—X— X— FENCE LINE

RR = STEEL REINFORCING ROD

OTP = OPEN TOP WATER PIPE

CTP = CRIMPED TOP WATER PIPE

PP = POWER POLE = ☐

C/L = CENTERLINE = ——

B/L = BUILDINGLINE = ——

R/W = RIGHT OF WAY

L.L.L. = LAND LOT LINE = ——

WATER MAINS = —W— W— W— W—

OVERHEAD POWER LINES = —E— E— E—

GAS MAINS = —G— G— G— G—

SANITARY SEWER MAIN = —SS— SS— SS—

N/F = NOW OR FORMERLY OWNED BY

NSAB = NAIL SET AT BASE

NFAB = NAIL FOUND AT BASE

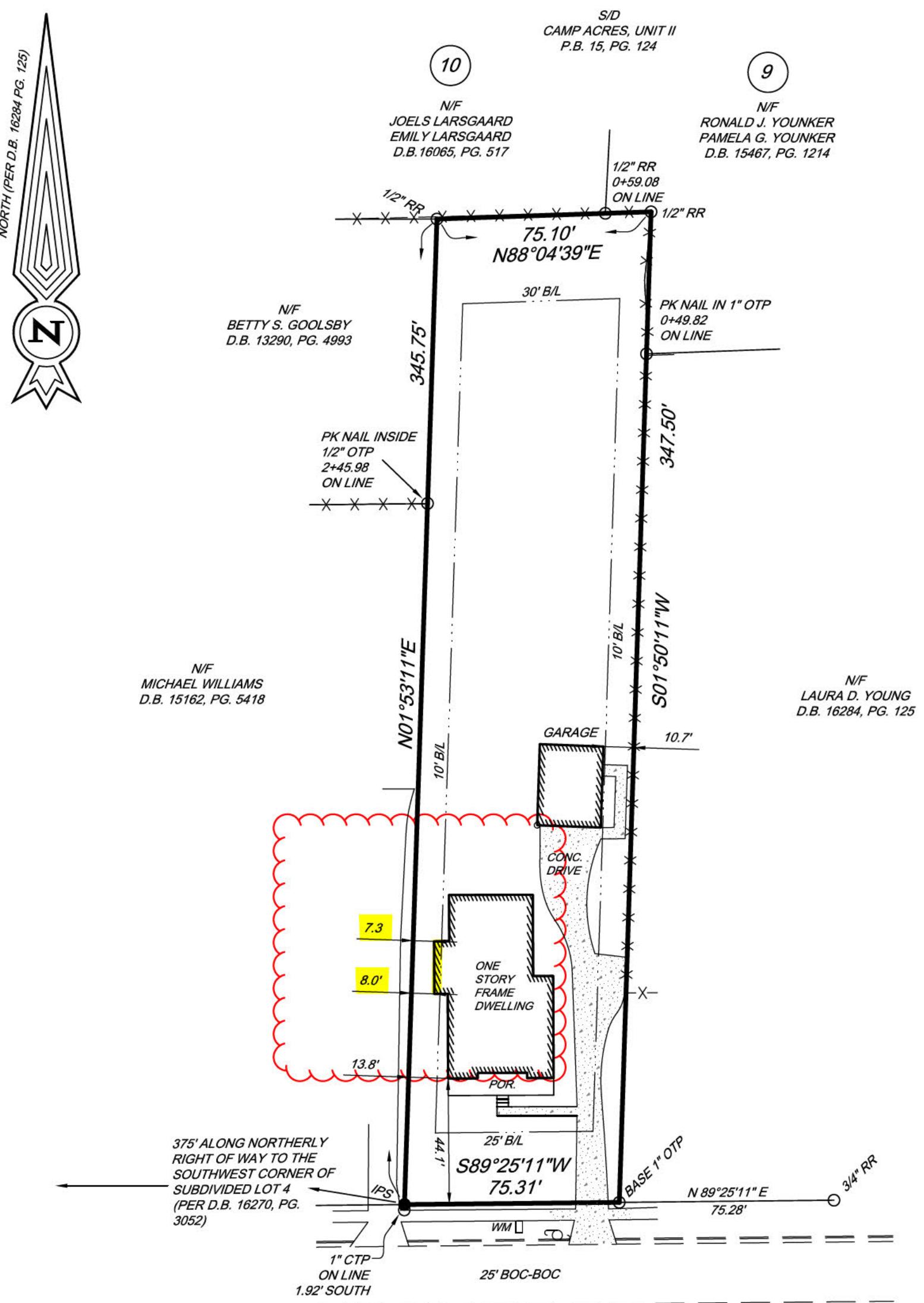
D.B. = DEED BOOK

P.B. = PLAT BOOK

R/W MON. = CONCRETE RIGHT OF WAY MONUMENT

WM = WATER METER

S/D
CAMP ACRES, UNIT II
P.B. 15, PG. 124



PLAT OF RETRACEMENT SURVEY FOR

LOCATED IN LAND LOT 1149, 16TH DISTRICT, 2ND SECTION,
COBB COUNTY, GEORGIA
CITY OF MARIETTA
BEING A PART OF BLOCK "M" OF M.M. SESSIONS
SUBDIVISION AS PER PLAT RECORDED P.B. 1, PG. 171

318 STEWART AVENUE

PARCEL AREA = 0.598 ACRES
26,028 SQ. FT.

ADDITIONAL SURVEY REFERENCES
SUBJECT PROPERTY DEED: D.B. 16270, PG. 3052

FLOOD STATEMENT

I HAVE THIS DATE EXAMINED THE FLOOD INSURANCE RATE MAPS, COMMUNITY PANEL NO: 13067C0108J
EFFECTIVE DATE: MARCH 4, 2013
THE MAP GRAPHICALLY DEPICTS THE SUBJECT PROPERTY TO LIE IN ZONE: "X"
"X" = AREAS DETERMINED TO BE OUTSIDE THE 100 YEAR (1% ANNUAL CHANCE) FLOODPLAIN

TECHNICAL DATA

TRAVERSE PRECISION: 1/23,740
ANGLE ERROR: 2 SEC. PER ANG.
SURVEY ADJUSTMENT: LEAST SQUARES
EQUIPMENT: SOKKIA IM50 TOTAL STATION
PLAT PRECISION: 1/231,220



REVISIONS

DATE	DESCRIPTION



PROJ. NO. C07612 FILE: C07612.DWG
FIELD SURVEY DATE: 12/16/2025
PLAT DATE: 12/19/2025 SCALE: 1" = 40'

SURVEYOR CERTIFICATION

THIS PLAT IS A RETRACEMENT OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT SUBDIVIDE OR CREATE A NEW PARCEL OR MAKE ANY CHANGES TO ANY REAL PROPERTY BOUNDARIES. THE RECORDING INFORMATION FOR THE DOCUMENTS, MAPS, PLATS, OR OTHER INSTRUMENTS WHICH CREATED THE PARCEL OR PARCELS ARE STATED HEREIN. RECORDING OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN THE O.C.G.A. SECTION 15-6-67.

Benjamin W. Cruselle
BENJAMIN W. CRUSSELLE RLS. 2841
DATE
12/19/2025