



**RECEIVED**

*By Rachel Bragg at 4:30 pm, Feb 02, 2023*

**DeKalb County Department of Planning & Sustainability**

Hon. Michael Thurmond  
Chief Executive Officer

Andrew Baker, AICP,  
Director

**ZONING BOARD OF APPEALS APPLICATION FOR PUBLIC HEARING  
(VARIANCES, SPECIAL EXCEPTIONS, APPEALS OF ADMINISTRATIVE DECISIONS)**

BOA No. \_\_\_\_\_

Applicant and/or  
Authorized Representative Elizabeth Finnerty Martin c/o Battle Law, P.C.

Mailing Address: 3562 Habersham at Northlake, Bldg J. Suite 100

City/State/Zip Code: Tucker, GA 30084

Email: jsm@battlelawpc.com

Telephone Home: \_\_\_\_\_ Business: 404-601-7616

**OWNER OF RECORD OF SUBJECT PROPERTY**

Owner: David and Elizabeth Martin

Address (Mailing): 1136 Lullwater Rd NE, Atlanta, GA 30307

Email: Bfinnerty@skylandtrail.org

Telephone Home: \_\_\_\_\_ Business: 678-686-5930

**ADDRESS/LOCATION OF SUBJECT PROPERTY**

Address: 1176 Lullwater Rd NE City: Atlanta State: GA Zip: 30307

District(s): 18 Land Lot(s): 054 Block: 06 Parcel: 001

Zoning Classification: R-85 Commission District & Super District: 2 & 6

**CIRCLE TYPE OF HEARING REQUESTED:**

- ☒ VARIANCE (From Development Standards causing undue hardship upon owners of property.)
- SPECIAL EXCEPTIONS (To reduce or waive off-street parking or loading space requirements.)
- OFFICIAL APPEAL OF ADMINISTRATIVE DECISIONS.

**\* PLEASE REVIEW THE FILING GUIDELINES ON PAGE 4. FAILURE TO FOLLOW GUIDELINES MAY RESULT IN SCHEDULING DELAYS. \***

**TO BE COMPLETED BY PLANNING AND SUSTAINABILITY DEPARTMENT:**

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

Fee Paid: \_\_\_\_\_



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## ZONING BOARD OF APPEALS APPLICATION

### AUTHORIZATION OF THE PROPERTY OWNER

I hereby authorize the staff and members of the Zoning Board of Appeals  
To inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property subject to the application.

DATE: 2/2/2023

Applicant: Elizabeth Finnerty Martin  
Signature Elizabeth Finnerty Martin

DATE: 2/2/2023

Battle Law, PC  
Applicant: By: MLB  
Signature Michele L. Battle, President

## LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 2 of the 18th District of DeKalb County, Georgia, being described according to survey for Phillip Clark Builders prepared by Caleb A. McGaughey, R.L.S. No. 3174, for GA Land Surveyor, dated October 25, 2016, last updated 2/1/2023, and more particularly described as follows:

Beginning at an iron pin set located on the northwesterly side of Lullwater Road (50' R/W), 149.9 feet southwesterly as measured along the right of way of Lullwater Road, from a point of curve (1" Open Top Pipe Found) where the right of way of Lullwater Road leads into North Decatur Road; running thence South 21 degrees 58 minutes 18 seconds West as measured along the right of way of Lullwater Road a distance of 100.33 feet to a ½ inch rebar found; thence leaving said Lullwater Road and running North 57 degrees 43 minutes 29 seconds West a distance of 190.30 feet to a 1 inch open top pipe found; running thence North 30 degrees 35 minutes 39 seconds East a distance of 99.90 feet to a 1 inch open top pipe found; running thence South 57 degrees 20 minutes 59 seconds East a distance of 175.29 to a iron pin located on the northwesterly side of the right of way of Lullwater Road and the point of beginning; being known as No. 1176 Lullwater Road, According to the current system of numbering in DeKalb County, Georgia.



Return to:  
EDNA HAWES  
MCCURDY & CANDLER  
P.O. BOX 57  
DECATUR, GA 30031

Deed Book 19466 Pg 122  
Filed and Recorded Dec-13-2006 08:56am  
2006-0226894  
Real Estate Transfer Tax \$129.00  
Linda Carter  
Clerk of Superior Court  
DeKalb County, Georgia

EXECUTOR'S DEED—STATE OF GEORGIA, COUNTY OF DEKALB

THIS INDENTURE made this 30th day of November in the Year of our

Lord Two Thousand and Six, Between

Reuben Pierce Head, Jr.

duly constituted Executor of the Last Will and Testament of

Jeanne Stokes Head

, deceased, as Grantor, and

David Martin and Elizabeth Finnerty Martin

the Grantee.

In this deed, wherever the context so requires, the masculine gender includes feminine and/or neuter and the singular number includes the plural. Wherever herein a verb, pronoun or other part of speech is used in the singular, and there be more than one Grantor or Grantee, said singular part of speech shall be deemed to read as the plural, and each Grantor shall always be jointly and severally liable for the performance of every promise and agreement made herein. Wherever herein Grantor or Grantee is used, the same shall be considered to mean as well, the heirs, executors, administrators, successors, representatives and assigns of the same.

Witnesseth: That pursuant to and in conformity with the powers and authority granted in the Last Will and Testament of the deceased, duly probated in solemn form in the Probate Court of DeKalb

County, Georgia, and in consideration of the sum of One Hundred Twenty Nine

Thousand and no/100 Dollars (\$ 129,000.00 ),

cash in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, Grantor has bargained and sold and by these presents does grant, bargain, sell and convey unto the said Grantee the following described property:

(For Legal Description, see Exhibit "A" attached hereto and made a part hereof.)

This deed and the conveyance hereby made is given subject to all restrictions and easements of record, if any.

TO HAVE AND TO HOLD the said tract of land together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in any wise appertaining to the only proper use, benefit and behoof of the said Grantee in FEE SIMPLE in as full and as ample a manner as the same was possessed or enjoyed by the deceased in his lifetime.

IN WITNESS WHEREOF, the said Grantor has hereunto set his hand and seal the day and year first above written.

(Seal)  
Reuben Pierce Head, Jr.  
Reuben Pierce Head, Jr.

(Seal)  
as Executor of the Last Will and Testament of the

Signed, sealed and delivered in the presence of:

deceased Jeanne Stokes Head

Witness

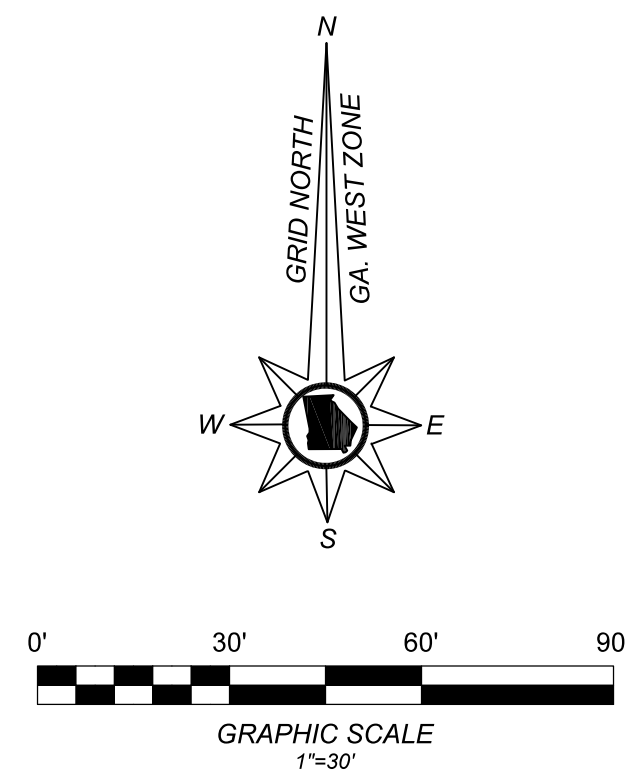
Notary Public

(Affix stamp & seal)

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 2 of the 18th District of DeKalb County, Georgia, being described according to survey prepared by Joseph C. King, Registered Land Surveyor, for Reuben Pierce Head, Jr., and more particularly described as follows:

Beginning at an iron pin set located on the northwesterly side of Lullwater Road (50' R/W), 150.0 feet southwesterly as measured along the right of way of Lullwater Road, from a point of curve where the right of way of Lullwater Road leads into North Decatur Road; running thence South 24 degrees 00 minutes West as measured along the right of way of Lullwater Road a distance of 100.0 feet to an iron pin set; running thence North 55 degrees 27 minutes 25 seconds West a distance of 191.0 feet to an iron pin set; running thence North 32 degrees 56 minutes 06 seconds a distance of 100.0 feet to an iron pin set; running thence South 54 degrees 55 minutes 21 seconds East a distance of 175.52 feet to iron pin set located on the northwesterly side of the right of way of Lullwater Road and the point of beginning; being known as No. 1176 Lullwater Road, according to the current system of numbering in DeKalb County, Georgia.



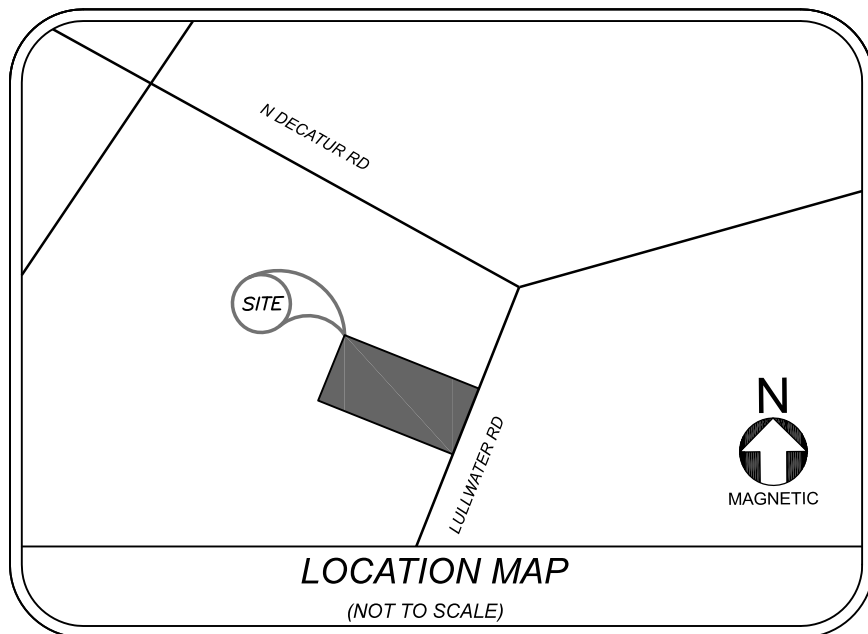
### CLOSURE STATEMENT

### LEGEND

THIS PLAT 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.



**SHEET**  
**1**  
**OF**  
**1**



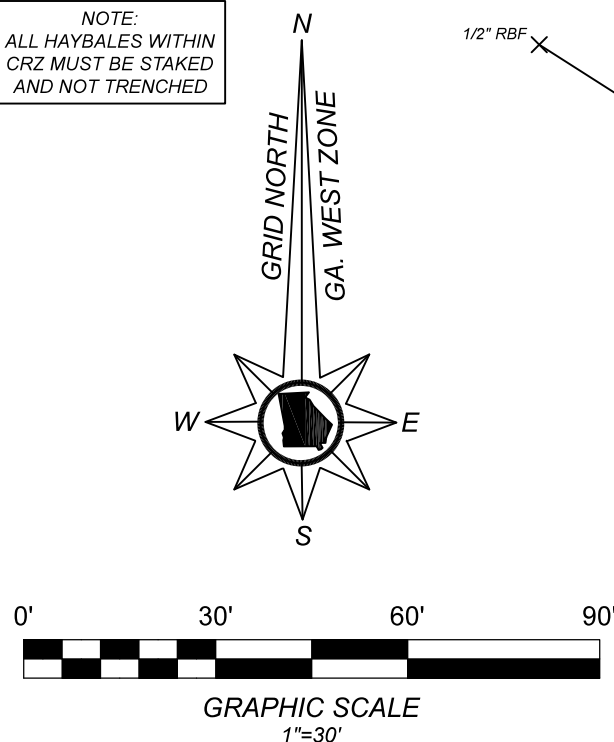
#### IMPERVIOUS SURFACE CALCULATIONS:

PROPOSED IMPERVIOUS SURFACE: 3,601 S.F.  
House = 1,954  
drive = 1,119  
deck & steps = 423  
steps = 24  
open terrace = 302  
covered porch = 202  
dirt under deck = -423

TOTAL IMPERVIOUS AREA: 3,601 S.F.  
TOTAL LOT AREA: 18,142 S.F.  
TOTAL PROPOSED LOT COVERAGE: 19.8% (35% max)

24 HOUR EROSION CONTACT  
RAY BONGERS  
404-949-9130

NOTE:  
ALL HAYBALES WITHIN  
CRZ MUST BE STAKED  
AND NOT TRENCHED



#### SITE NOTES:

- THRESHOLD ELEVATION IS THE ELEVATION OF THE TOP OF THE SUBFLOOR IN THE OPENING THAT IS DESIGNATED AS THE FRONT DOOR OF THE DWELLING.
- BUILDING HEIGHT OF THE NEW STRUCTURE NOT TO EXCEED 35 FEET.
- NO GRADES TO EXCEED 3:1
- THERE ARE NEW UTILITIES PROPOSED FOR THIS SITE.
- REFERENCES FOR THE BOUNDARY INFORMATION SHOWN HEREON WERE MADE TO DEED BOOK 19466, PAGE 122, DEKALB COUNTY.
- A PORTION OF THIS PROPERTY LIES WITHIN A SPECIAL FLOOD HAZARD ZONE AS IDENTIFIED ON FIRM COMMUNITY PANEL No. 13089C0062K, DATED AUGUST 15, 2019.
- EXISTING ZONING: R-85  
SETBACKS:  
FRONT: 35'  
SIDE: 8.5'  
REAR: 40'
- SIDE SETBACK ALONG WESTERN BOUNDARY LINE IS PROPOSED TO BE 5'.
- TOTAL DISTURBED AREA: 6,640 S.F.
- ALL ELEVATIONS ON SITE SHALL BE VERIFIED PRIOR TO CONSTRUCTION.

#### CONSTRUCTION NOTES:

- THE INSTALLATION OF EROSION AND SEDIMENTATION CONTROL MEASURES AND PRACTICES SHALL OCCUR PRIOR TO OR CONCURRENT WITH LAND-DISTURBING ACTIVITIES.
- EROSION AND SEDIMENTATION CONTROL MEASURES WILL BE MAINTAINED AT ALL TIMES. IF FULL IMPLEMENTATION OF THE APPROVED PLAN DOES NOT PROVIDE FOR EFFECTIVE EROSION AND SEDIMENT CONTROL, ADDITIONAL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE IMPLEMENTED TO CONTROL OR TREAT THE SEDIMENT SOURCE.
- ADDITIONAL EROSION CONTROLS SHALL BE INSTALLED AS DEEMED NECESSARY BY THE ON-SITE INSPECTOR.
- ALL LOTS/SITES WITH 2' OF FILL OR GREATER WILL REQUIRE A COMPACTION CERTIFICATE BY A PROFESSIONAL REGISTERED ENGINEER PRIOR TO A BUILDING PERMIT AND OR PRIOR TO FOOTERS BEING POURED.
- LOCATE AND FIELD STAKE ALL UTILITIES, EASEMENTS, PIPES, FLOOD LIMITS, STREAM BUFFERS, AND TREE SAVE AREAS PRIOR TO ANY LAND DISTURBING ACTIVITIES.
- ALL TREE PROTECTION AREAS TO BE PROTECTED FROM SEDIMENTATION.
- ALL TREE PROTECTION DEVICES TO BE INSTALLED PRIOR TO LAND DISTURBANCE AND MAINTAINED UNTIL FINAL LANDSCAPING.
- ALL TREE PROTECTION FENCING TO BE INSPECTED DAILY AND REPAIRED OR REPLACED AS NEEDED.
- A FINAL AS-BUILT LOT SURVEY IS REQUIRED PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY.
- THERE ARE WATER QUALITY DEVICES DESIGNED FOR THIS SITE.
- DUMPSTERS AND OR TEMP. SANITARY FACILITIES SHALL NOT BE LOCATED IN STREET OR TREE PROTECTION AREA OR RIGHT OF WAY.
- WORK HOURS AND CONSTRUCTION DELIVERIES ARE:  
- MONDAY - FRIDAY 7:00 AM - 7:00 PM  
- SATURDAY 8:00 AM - 5:00 PM
- CALEB MCGAUGHEY CERTIFY UNDER PENALTY OF LAW THAT THIS PLAN WAS PREPARED AFTER A SITE VISIT TO THE LOCATIONS DESCRIBED HEREIN BY MYSELF OR MY AUTHORIZED AGENT, UNDER MY DIRECT SUPERVISION.

#### TREE PRESERVATION CALCULATION:

COMPUTED USING ONLY TREES OUT OF FLOOD PLAIN  
- DESTROYED - 9 TREES @ 57.0 units  
- SAVED - 9 TREES @ 88.0 units  
- DENSITY REQUIREMENTS 0.193 AC \* 15 UNITS/AC = 2.9 units  
- REQUIRED: 2.9 units  
NO ADDITIONAL TREES REQUIRED  
REQUIRED TREES TO REMAIN:  
- SAVED - 9 TREES @ 159 INCHES  
- SPECIMEN TREE REMOVED 1 @ 41 INCHES (1.5 x INCHES removed = additional 62 INCHES required)  
120 INCHES DBH PER ACRE X 0.193 ACRES = 23 INCHES  
62 INCHES + 23 INCHES = 85 INCHES (PROVIDED)  
18 TREES X 29 = 5 TREES (PROVIDED)  
0 PROPOSED TREE PLANTINGS AS PER ZONING  
TREE PROTECTION FENCES IN ACCORDANCE WITH THE APPROVED PLAN MUST BE INSTALLED PRIOR TO STARTING LAND DISTURBANCE ACTIVITIES, AND MAINTAINED UNTIL FINAL LANDSCAPING.

#### TREE NOTES:

DDH: DEAD, DISEASED, OR HAZARDOUS

IN FLOOD: TREE LOCATED IN FLOOD PLAIN

OFF SITE: TREE LOCATED OUTSIDE PARCEL BOUNDARY

NOTE: TREE NUMBERS 2, 3, 5, 6, & 16 HAVE OVER 20% IMPACT AND REQUIRE AN ARBORIST PRESCRIPTION

TREE NUMBER	SPECIES	CONDITION (GOOD, FAIR, POOR, DEAD)	DBH (INCHES)	DENSITY UNITS	REMAIN / REMOVE	CRZ (FEET) (IF TREE IS TO REMAIN)	% IMPACT ON CRZ
1	WATER OAK	POOR	POOR (37)	DDH	REMOVE	24	24.7
2	SWEET GUM	FAIR	24	6.0	REMAIN	24	24.4
3	ASH	FAIR	24	6.0	REMAIN	24	24.4
4	ASH	FAIR	18	4.8	REMOVE		
5	YELLOW POPLAR	GOOD	18	4.8	REMAIN	18	28.2
6	YELLOW POPLAR	GOOD	25	6.8	REMAIN	25	30.1
7	SWEET GUM	GOOD	15	4.0	REMOVE		
8	ASH	GOOD	IN FLOOD		REMAIN	19	0
9	LOBLOLLY PINE	GOOD	IN FLOOD		REMAIN	30	9.8
10	YELLOW POPLAR	GOOD	25	6.8	REMOVE		
11	YELLOW POPLAR	GOOD	12	3.2	REMOVE		
12	LOBLOLLY PINE	POOR (33)	DDH	REMOVE			
13	BEECH	GOOD	41	18.4	REMOVE		
14	HARDWOOD	GOOD	12	3.2	REMOVE		
15	HARDWOOD	GOOD	15	4.0	REMOVE		
16	LOBLOLLY PINE	GOOD	33	11.8	REMAIN	33	25.2
17	YELLOW POPLAR	GOOD	IN FLOOD	4.0	REMAIN	13	1.3
18	HARDWOOD	POOR	IN FLOOD	DDH	REMOVE		
19	YELLOW POPLAR	GOOD	IN FLOOD	10.4	REMAIN	31	0
20	YELLOW POPLAR	GOOD	IN FLOOD	8.6	REMAIN	28	0
21	YUPELO	GOOD	IN FLOOD		REMAIN	24	9.8
22	LOBLOLLY PINE	GOOD	28	8.6	REMOVE		
23	YELLOW POPLAR	GOOD	15	4.0	REMOVE		
24	YELLOW POPLAR	GOOD	IN FLOOD		REMAIN	53	14.7
25	PECAN	GOOD	IN FLOOD		REMAIN	8	0
26	YELLOW POPLAR	GOOD	IN FLOOD		REMAIN	24	0
27	YELLOW POPLAR	GOOD	IN FLOOD		REMAIN	30	0
28	HARDWOOD	GOOD	IN FLOOD		REMAIN	10	0
29	SWEET GUM	GOOD	OFF SITE		REMAIN	18	0
30	HARDWOOD	GOOD	OFF SITE		REMAIN	12	0
31	POST OAK	GOOD	OFF SITE		REMAIN	27	3.4
32	YELLOW POPLAR	GOOD	9	2.4	REMAIN	9	0
33	SWEET GUM	GOOD	9	2.4	REMAIN	9	0
34	SWEET GUM	GOOD	8	2.4	REMAIN	8	0
35	YELLOW POPLAR	GOOD	9	2.4	REMAIN	9	19.7
36	WATER OAK	POOR	POOR (11)	DDH	REMOVE		

TOTAL OUT OF FLOOD PLAIN = 18 TREES @ 125.0 units

#### LEGEND

##### DRAINAGE STRUCTURES

- SWCB = SINGLE WING CATCH BASIN
- DWCB = DOUBLE WING CATCH BASIN
- JB = JUNCTION BOX
- GI = GRATE INLET
- CI = CURB INLET
- YI = YARD INLET
- DI = DROP INLET
- HW = HEAD WALL
- SSMH = SANITARY SEWER MANHOLE
- SSCO = SANITARY SEWER CLEANOUT
- OT = OREASE TRAP
- FES = FLARED END SECTION

##### UTILITY SYMBOLS

- A/C = AIR CONDITIONING UNIT
- ET = ELECTRIC TRANSFORMER
- OPED = CABLE TV PEDESTAL
- FH = FIRE HYDRANT
- GM = GAS METER
- GV = GAS VALVE
- GUY = GUY WIRE
- TPED = TELEPHONE PEDESTAL
- UP = UTILITY POLE
- LP = LIGHT POLE
- WM = WATER METER
- WV = WATER VALVE

##### MISC. SYMBOLS

- POB = PARKING SPACE COUNT
- SD = SATURATE DISH

##### UTILITY LINETYPES

- P = POWER LINE (UP=UNDERGROUND)
- T = TELEPHONE LINE (UT=UNDERGROUND)
- C = CABLE TV LINE (UC=UNDERGROUND)
- G = GAS LINE

##### FENCE LINES

- CLF = CHAIN LINK FENCE (CLF)
- WF = WIRE FENCE
- WF = WOODEN FENCE

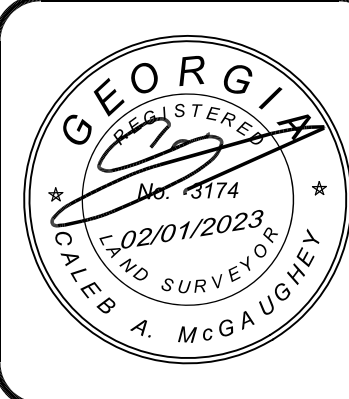
##### ABBREVIATIONS

- BC = BACK OF CURB
- BH = BUILDING HEIGHT
- B/L = BUILDING SETBACK LINE
- BO = BOTTOM OF WALL
- CBW = CURB AND CUTTER
- C/L = CENTERLINE
- CMP = CORRUGATED METAL PIPE
- CNF = CONCRETE MONUMENT FOUND
- CLJ = CLEAN JOINT
- CONC = CONCRETE
- CIT = CRIMP TOP PIPE FOUND
- DB/PG = DEED BOOK / PAGE
- DE = DRAINAGE EASEMENT
- DRP = DUCTILE IRON PIPE
| DWCB | = DOUBLE WING CATCH BASIN |
| DYL | = DOUBLE YELLOW LINE STRIPING |
| EP | = EDGE OF PAVING |
| F.I.R.M. | = FEDERAL INSURANCE RATE MAP |
| HDPE | = HIGH DENSITY POLY ETHYLENE PIPE |
| HE | = HEADWALL |
| IE | = INVERT ELEVATION |
| IPS | = 1/2" REBAR PIN SET W/CAP |
| LL | = LAND LOT |
| LL | = LAND LOT LINE |
| MM | = MONITORING WELL |
| N/F | = NOW OR FORMERLY |
| N/S | = NAIL SET |
| N/S | = NOT TO SCALE |
| OTS | = OPEN TOP PIPE FOUND |
| OSD | = OUTSIDE DIMENSION |
| OCS | = OUTLET CONTROL STRUCTURE |
| PG | = PLAT BOOK/PAGE |
| PL | = PROPERTY LINE |
| POB | = POINT OF BEGINNING |
| P.O.E | = POINT OF ENTRY |
| PM | = POLYETHYLENE CHLORIDE PIPE |
| RF | = REBAR PIN FOUND |
| RCP | = REINFORCED CONCRETE PIPE |
| R/W | = RIGHT OF WAY |
| S.F. | = SQUARE FEET |
| SRF | = SOLID ROD FOUND |
| SS | = SANITARY SEWER |
| SSE | = SANITARY SEWER EASEMENT |
| TBM | = TEMPORARY BENCH MARK |
| TBN | = TAX PARCEL NUMBER |
| POC | = POINT OF COMMENCEMENT |
| TW | = TOP OF WALL |
| TYP | = TYPICAL |
| WI | = WEIR INLET |

#### SITE PLAN FOR:

1176 LULLWATER ROAD

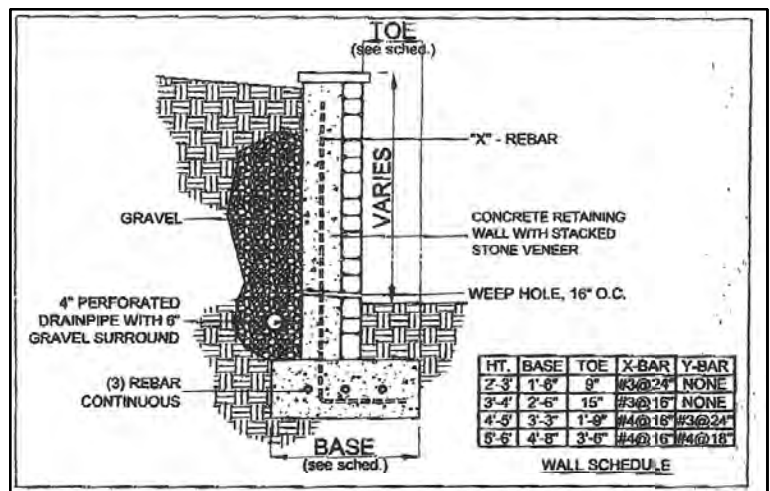
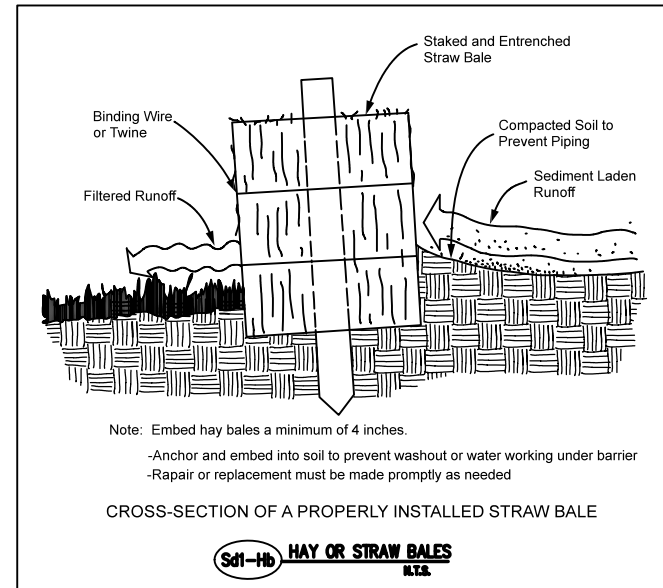
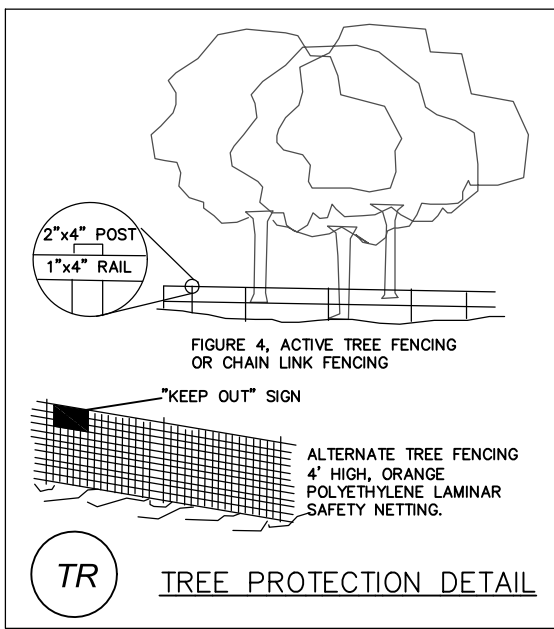
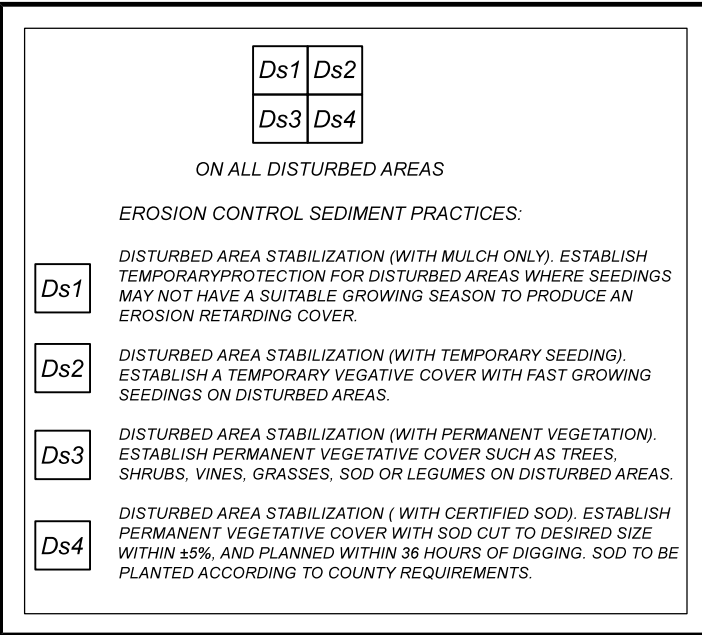
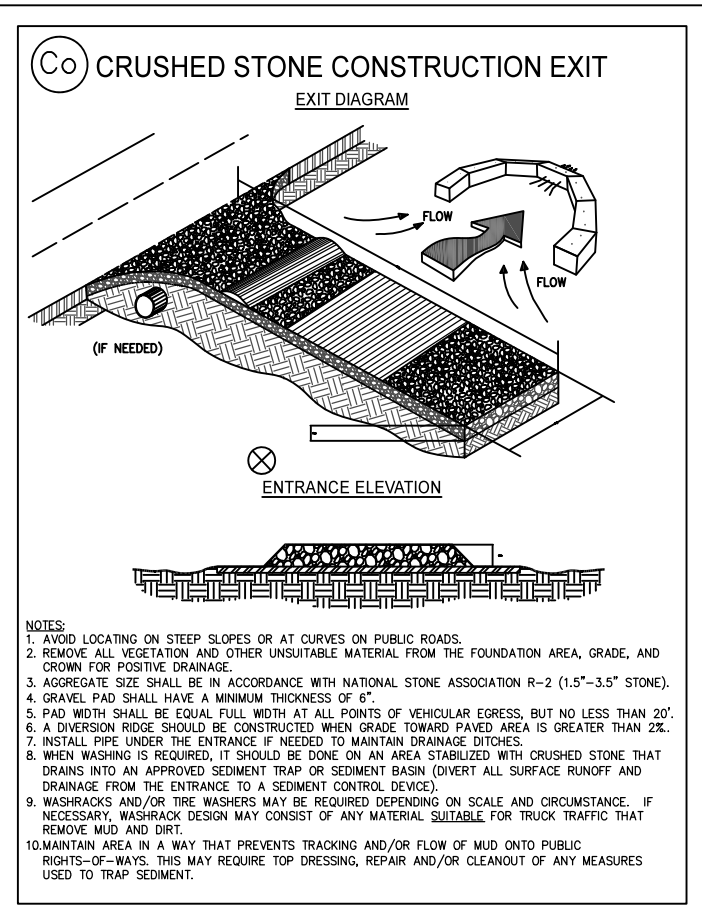
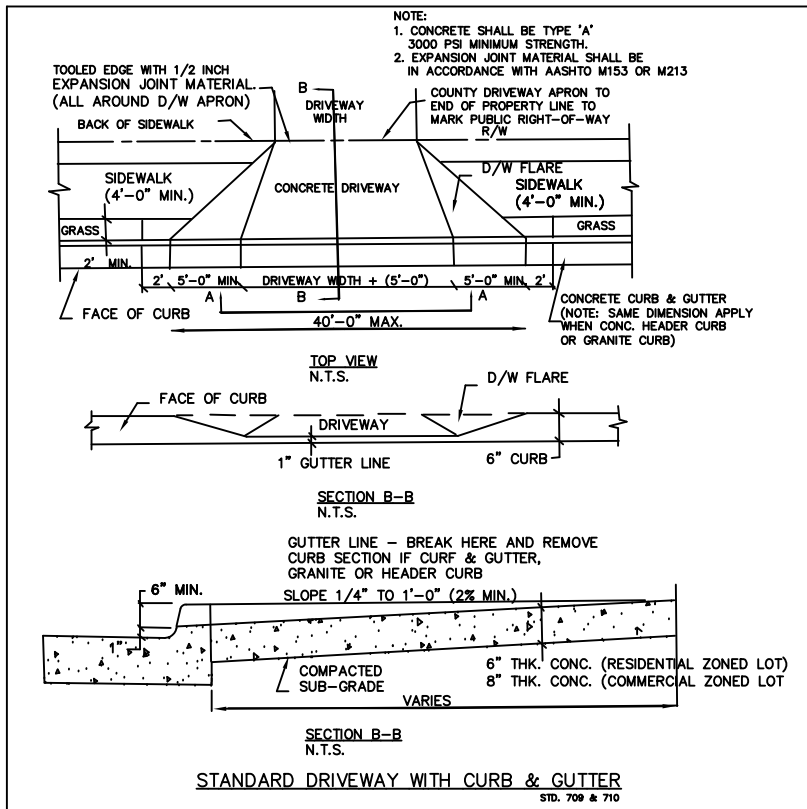
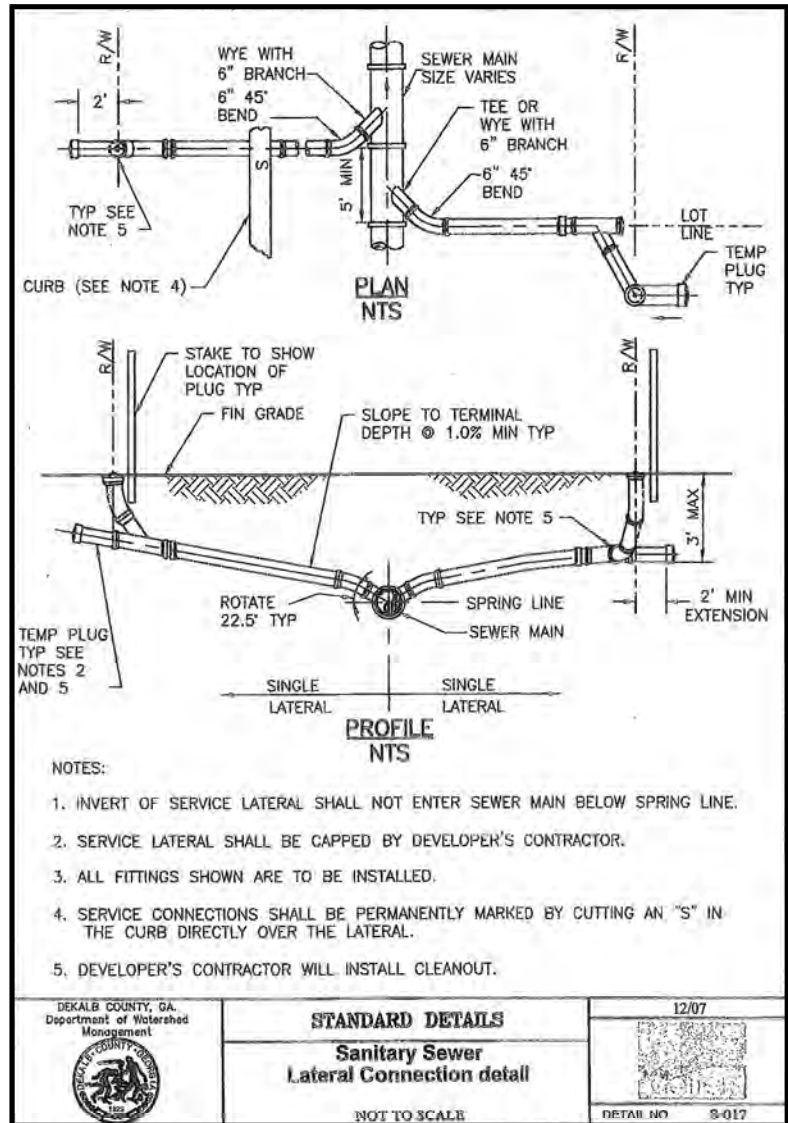
PART OF LOT 27C, BLOCK 13, DRUID HILLS S/D  
LAND LOT 2, 18th DISTRICT, DEKALB COUNTY, GEORGIA  
TAX PARCEL No. 18 054 06 001



LAND SURVEYOR  
**404-384-9577**  
GA LAND SURVEYOR, LLC  
3355 ANNANDALE LANE, STE 1  
SUWANEE, GA 30024

SHEET  
**1**  
OF  
**2**





## NDS Flo-Well Calculator

### Step 1:

Enter the Square Feet of Drainage Area 1: (Ex. Roof)

3,601

Enter the Square Feet of Drainage Area 2: (Ex. Grass)

0

### Step 2:

Choose the Coefficient of Runoff for Area 1:

1.0 (Concrete/Asphalt/Roof)

Choose the Coefficient of Runoff for Area 2:

0.35 (Grass)

### Step 3:

Choose the 25 Year Rainfall: (see rainfall map).

2.25 in/hr

### Step 4:

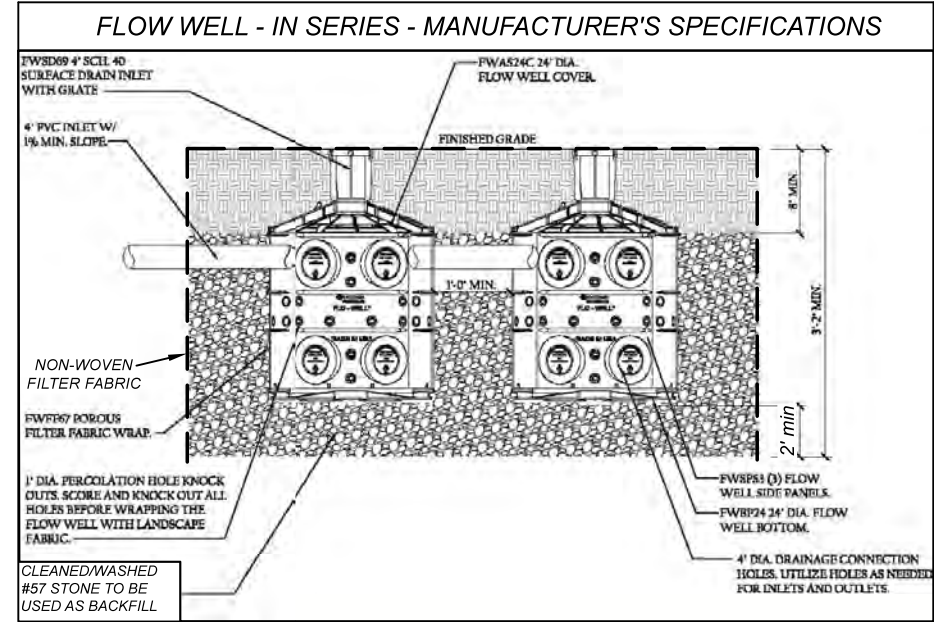
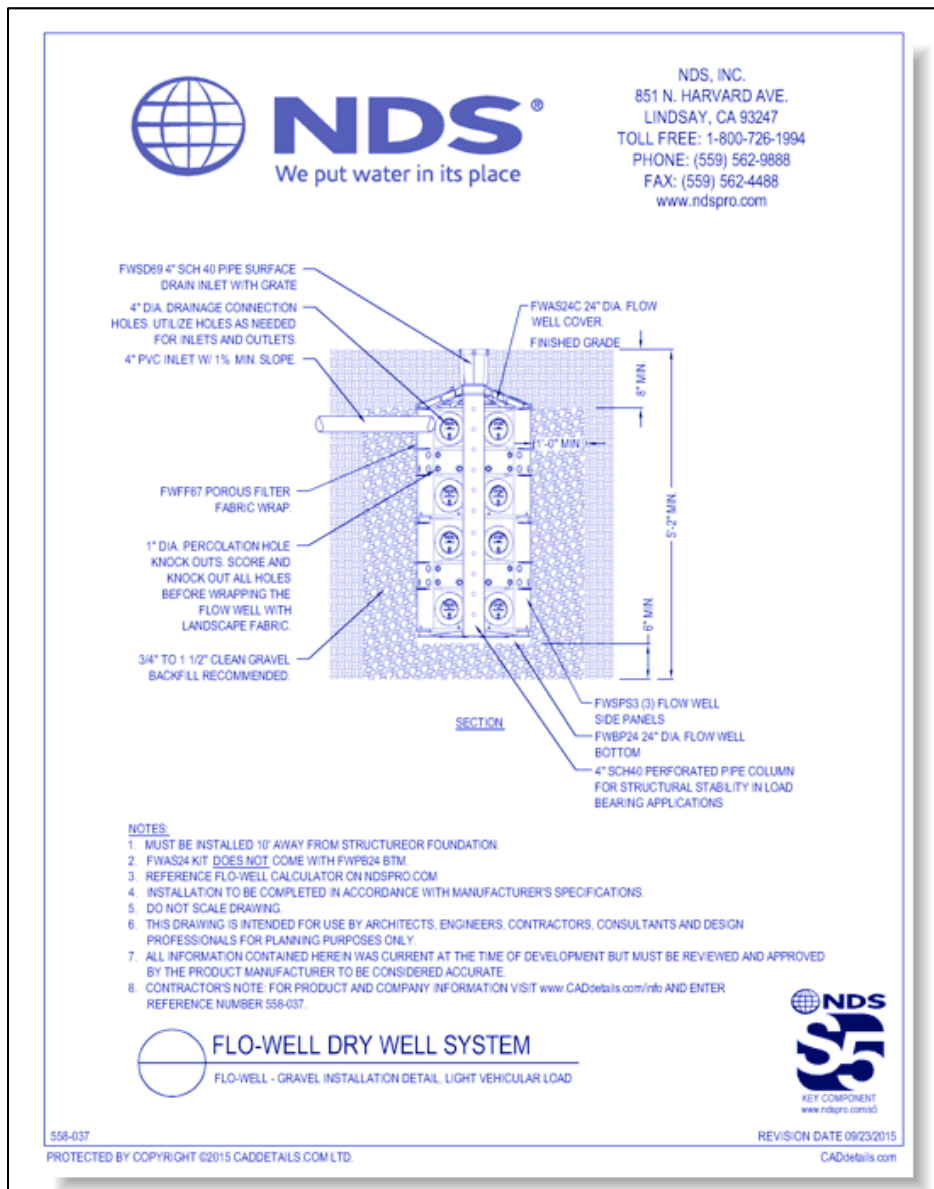
Enter the depth of the gravel backfill beneath the Flo-Well:

(Dimension A) <sup>2</sup> ft

### Step 5:

Enter the thickness of the gravel backfill around the Flo-Well:

(Dimension B) <sup>4.5</sup> ft



<b>Runoff</b>	84.2 gpm
	0.19 cfs
<b>Volume of water to be stored</b>	2526 Gallons
	337.7 Cubic feet
<b># of Flo-Well's Needed</b>	4
	2 DOUBLE STACK
<b>Amount of Gravel Needed</b>	26.18 Cubic yards
	706.86 Cubic feet

DATE: AUGUST 5, 2021	ISSUE	
SCALE: 1" = 30'	NO.	DESCRIPTION
ACREAGE: 0.4165	1	ADDED STREAM BUFFERS
LAND LOT(S): 2		
DISTRICT: 18th		
CITY:		
COUNTY: DEKALB STATE: GEORGIA		
SURVEYED: MAF DRAWN: MWR		
CHECKED: WGH APPROVED: CAM		
PROJECT #: 16-257		

SITE PLAN FOR:

1176 LULLWATER ROAD

PART OF LOT 27C, BLOCK 13, DRUID HILLS S/D

LAND LOT 2, 18th DISTRICT, DEKALB COUNTY, GEORGIA

TAX PARCEL No. 18 054 06 001



**GA**

LAND SURVEYOR

404-384-9577

GA LAND SURVEYOR, LLC

3355 ANNANDALE LANE, STE 1

SUWANEE, GA 30024

SHEET

2

OF

2



**Price Residential Design**  
**1595 Nottingham Way Atlanta, Georgia 30309**  
**dave@priceresidentialdesign.com**  
**404-245-4244**

February 2, 2023

Zoning Board of Appeals  
DeKalb County Planning and Sustainability Department  
330 W. Ponce de Leon Avenue -- Third Floor  
Decatur, GA 30030

**RE: 1176 Lullwater Road** - Request for Variance from DeKalb County Zoning Ordinance Section 27-2.2.1 Dimensional Requirements to reduce the south side yard setback from 8.5' to 5' and, Section 27-5.2.5(D)(2) to increase the elevation of the dwelling threshold from 874.2' (average natural grade at 35' front setback - setback averaging does not apply on this lot) to 883.1' elevation for this vacant lot.

Dear Board members and staff:

We believe this request conforms to the criteria set forth in code and ask that the Board grant relief in this unique case.

*(1) by reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.*

The lot slopes steeply from south to north with a flood hazard area (Base Flood Elevation of 870.7) along the rear and northern side to create a buildable area which narrows considerably as you move towards the rear of the lot. It is a vacant conforming lot and is located in the Druid Hills Historic District and therefore new construction is limited to what is considered an appropriate size and location by the DeKalb County Historic Preservation Commission per its guidelines. The DeKalb County Tree Protection Ordinance also prohibits the removal of any trees from the flood hazard zone per Section 14-39(g)(10) with some exceptions (we must remove one pine tree infested with termites). The exceptional topography was not created by the owners and these variances are the only method of allowing a new single-family home appropriate to the Historic District.

*(2) the requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.*

The variance does not constitute a grant of special privilege or go beyond the minimum necessary to afford relief because the HPC guidelines 7.2 require that any new home must be consistent with the other properties in the district, including having a consistent building orientation, setback, directional emphasis, shape, massing, proportion, and scale to maintain the rhythm along the streetscape. The project was approved on July 19<sup>th</sup>, 2021, by the HPC based on the attached site plan, which creates the largest possible front setback, to align as closely as possible with the neighboring property's setback while also having the same orientation (slightly skewed versus the lot line) as the neighbor. The front left corner of the house will be 7.5' from the property line so it will only get close to the 5' proposed setback at two points. The threshold elevation will simply bring us into the pattern with the other existing properties along Lullwater Road. The existing southern neighbor's threshold elevation is 885.8', ours is proposed to be 883.1', and the elevation at the existing public sidewalk at future driveway is 881.5'. The grade along Lullwater Road drops slightly as you go north so the proposed threshold is in line with the existing pattern.

*(3) the grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.*

The granting of the variance would not be detrimental to the public welfare or injurious to the surrounding properties because, while we are closer than 8.5' to the lot line, a five-foot setback will be far enough from the property line to avoid any special fire separation considerations as per IRC section R302. Also, we are to the north of our only neighbor on Lullwater Road, so there will be no loss of sunlight to the neighbor's vegetation due to the proposed construction.

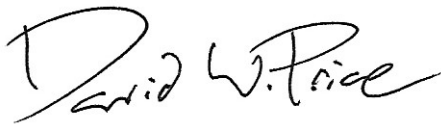
*(4) the literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship.*

The literal interpretation and strict application of the Zoning Ordinance would cause undue and unnecessary hardship because the flood hazard area has a BFE of 870.7, which county officials have told us we must be 3' above with our lowest floor, the garage. With a garage ceiling height lowered to the lowest possible, at 7.8', while still allowing the track of an overhead garage door, the lowest main floor threshold possible on this lot is 883.1'. This threshold elevation is consistent with the pattern along Lullwater Road. If a full 8.5' side setback is required, we would be changing either the massing/scale/proportion of the proposed and HPC-approved home or moving it closer to the street where the buildable area gets slightly wider, against HPC guideline for consistent front setback, or removing trees within the floodplain by moving the structure north, which is expressly prohibited by code except in specific exceptions. The only method of complying with the multiple layers of regulations which govern this specific lot is this request for modest relief from the Zoning Code.

*(5) the requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.*

The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text since the purpose of the variance process is to encourage flexibility when dealing with odd or non-conforming existing conditions which occasionally occur. Both proposed variances are modest and will allow a project consistent with the existing pattern on Lullwater Road as encouraged both by the goals of the Historic Preservation Commission and the DeKalb County Comprehensive Plan.

Thank you for your consideration,

A handwritten signature in black ink that reads "David W. Price". The signature is written in a cursive, flowing style.

David W. Price, Applicant



# DeKalb County Planning & Development Department

Burrell Ellis  
Chief Executive Officer

## STATE WATER DETERMINATION FORM

Parcel I.D. Number: 18-002 Date: 9-20-16

Site Address: 1176 Lullwater Rd

Name: GARY VALANTINO Title: Develop Insp. III

Property Owner/Requested By: IN House: Lee Azimi: LAND DEVELOPMENT

Phone #: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Water Feature: CONTAINED STATE WATER / site visited By: GARY VALANTINO

☐ River ☐ Stream ☒ Creek ☐ Branch ☐ Lake ☐ Reservoir ☐ Pond ☐ Drainage System ☐ Spring ☐ Well

Is there flow? ☒ Yes ☐ No  
(if yes) ☒ Surface ☐ Subsurface

Is there wretched edge vegetation? ☐ Yes ☒ No

Is there a defined channel? — SEA WALL ☒ Yes ☐ No SEA WALL ALONG CREEK  
THE LENGTH OF THE  
PROPOSED WORK ZONE.

Is it confined entirely on owner's property? ☐ Yes ☒ No

Are hydric soils present? ☐ Yes ☒ No

Is wetland vegetation present? ☐ Yes ☒ No

Final Determination: ☒ State Water STATE WATER CONTAINED  
NO (buffers required) By SEA WALL ALONG  
☐ No State Water observed PROPOSED WORK SITE.

Comments: NO Buffer Along SEA WALL  
Portion of site.

late Site visited: This form is only good for 12 months from Date Site Visited. Date Site 9-20-16  
'isited must be within 6 months of any Land Disturbing Activity Permit Application.



# DeKalb County Planning & Development Department

## STATE WATER DETERMINATION FORM

AP#

931464

FEE PAID: ☒ YES

☐ NO

☐ NO FEE APPLIED

Parcel I.D. Number:

18-054-06-001

Date:

Site Address:

1176 Lullwater Rd. 30307

Property Owner Name:

David A & Elizabeth F Martin

Name/Title of Agent:

David Martin

IF NOT OWNER, Requested By:

Phone Number:

404 308-0071

Fax:

Your Address:

1136 Lullwater Rd.  
Attn: GA 30307

Type of Water Feature:

Stream

Site Visited By:

94 Duff GH  
5-15-19

☐ River ☐ Stream ☒ Creek ☐ Branch ☐ Lake ☐ Reservoir ☐ Pond ☐ Drainage System ☐ Spring ☐ Well

Is there flow? (Circle) Yes or No (if yes Circle) Surface / Subsurface

Y / N

Comments

Is there wretched edge vegetation?

X

Concrete/Rock wall along creek.

Is there a defined channel?

X

11

11

Is it confined entirely on owner's property?

✓

Are hydric soils present?

X

Is wetland vegetation present?

✓

Comments

Final Determination:

☒ State Water

STATE WATER, \*NO Buffer AT wall.

☐ Buffers Required

☐ No State Water Observed

Comments:

10 FT EASEMENT, FOR COUNTY DRAINAGE  
EASEMENT.

\*THIS FORM IS ONLY GOOD FOR 12 MONTHS FROM THE DATE SITE VISITED. DATE SITE VISITED MUST BE WITHIN 6 MONTHS OF ANY LAND DISTURBING ACTIVITY PERMIT APPLICATION.\* GH 5-15-19

330 West Ponce de Leon Avenue, Suite 300. Decatur, Georgia 30030

Phone: 404.371.2517 Fax: 404.371.2760

Web Address: <http://www.dekalbcountyga.gov>

Email Address: [planninganddevelopment@dekalbcountyga.gov](mailto:planninganddevelopment@dekalbcountyga.gov)

Chief Executive Officer  
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director  
Andrew A. Baker, AICP

STATE WATER DETERMINATION FORM

AP# \_\_\_\_\_

FEE PAID: ☐ YES ☐ NO ☐ NO FEE APPLIED

Parcel I.D. Number: \_\_\_\_\_ Date: \_\_\_\_\_

Site Address: \_\_\_\_\_

Property Owner/Requested By: \_\_\_\_\_

Name/Title of Agent: \_\_\_\_\_

IF NOT OWNER, Requested By: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

-----  
Type of Water Feature: \_\_\_\_\_ Site Visited By: \_\_\_\_\_

☐ River ☐ Stream ☐ Creek ☐ Branch ☐ Lake ☐ Reservoir ☐ Pond ☐ Drainage System ☐ Spring ☐ Well

Is there flow? ☐ Yes ☐ No (if yes) ☐ Surface ☐ Subsurface

Is there wretched edge vegetation? ☐ Yes ☐ No \_\_\_\_\_

Is there a defined channel? ☐ Yes ☐ No \_\_\_\_\_

Is it confined entirely on owner's property? ☐ Yes ☐ No \_\_\_\_\_

Are hydric soils present? ☐ Yes ☐ No \_\_\_\_\_

Is wetland vegetation present? ☐ Yes ☐ No \_\_\_\_\_

Final Determination: ☐ State Waters \_\_\_\_\_  
☐ Buffers Required \_\_\_\_\_  
☐ No State Water observed \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

**\*\*This form is only good for 12 months from Date Site Visited. Date Site Visited must be within 6 months of any Land Disturbing Activity Permit Application**



178 Sams Street, 1<sup>st</sup> FL  
Decatur, GA 30030  
[teryder@dekalbcountyga.gov](mailto:teryder@dekalbcountyga.gov) 404.371.2406 (o)  
678.300.5259 (c)

CHIEF EXECUTIVE OFFICER

**Michael Thurmond**

**DEPARTMENT OF PLANNING & SUSTAINABILITY**

INTERIM DIRECTOR

**Cedric Hudson**

Date: 1/5/2023

Re: 1176 Lullwater Road

Owner: David and Elizabeth Martin

Subject: Location of Buffered Area on site

On 12/8/2022, 1176 Lullwater site was visited by me, Inspectors Pearson and McDyess, Mgr. Evans, Gamaliel Herry, Atty Josh Mahoney, David Martin (owner), and the surveyor (David ?).

The site visit was to discuss why the Planning & Sustainability department came to the decision that some areas of the property have buffers.

Attorney Mahoney, after the site visit on December 8<sup>th</sup>, 2022, this matter was turned over to Chief Building Official Marcus Robinson for final analysis and decision. CBO Robinson gathered information regarding the previous determinations made on the property, the letter from EPD Environmental Engineer Jennifer Hackney, and information from his land development team. CBO Marcus Robinson has concluded and made the final determination that the areas outlined in the attached document, **lullwater\_10282022 (page 2)**, are the buffered and nonbuffered areas.

- Where there is a visible wall – then there is no buffer
- Where there is no wall - there is a buffer in place

I have also attached a map indicating the flood zone on the property.

If not in agreement Attorney Mahoney, this matter can be brought before the ZBOA (Zoning Board of Appeals) by yourself or the owner. Please contact:

Andrea Folgherait  
[akfolgherait@dekalbcountyga.gov](mailto:akfolgherait@dekalbcountyga.gov)  
470-421-0196

Howard Johnson  
[hljohnson@dekalbcountyga.gov](mailto:hljohnson@dekalbcountyga.gov)  
404-275-2804

Regards,

***Tscharner E. Ryder* | Environmental & Compliance Inspections Supervisor**  
**[teryder@dekalbcountyga.gov](mailto:teryder@dekalbcountyga.gov)**  
**Dekalb County Planning and Sustainability**  
**678-300-5259**

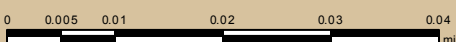
.cc CBO Robinson  
.cc Inspections Manager Adam Evans



Bloomfield Township, MI, Esri, Inc.



## DeKalb County Parcel Map



Date Printed: 1/5/2023



### DeKalb County GIS Disclaimer

The maps and data, contained on DeKalb County's Geographic Information System (GIS) are subject to constant change. While DeKalb County strives to provide accurate and up-to-date information, the information is provided "as is" without warranty, representation or guarantee of any kind as to the content, sequence, accuracy, timeliness or completeness of any of the database information provided herein. DeKalb County explicitly disclaims all representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. In no event shall DeKalb County be liable for any special, indirect, or consequential damages whatsoever resulting from loss of use, data, or profits, whether in an action of contract, negligence, or other actions, arising out of or in connection with the use of the maps and/or data herein provided. The maps and data are for illustration purposes only and should not be relied upon for any reason. The maps and data are not suitable for site-specific decision-making nor should it be construed or used as a legal description. The areas depicted by maps and data are approximate, and are not necessarily accurate to surveying or engineering standards.

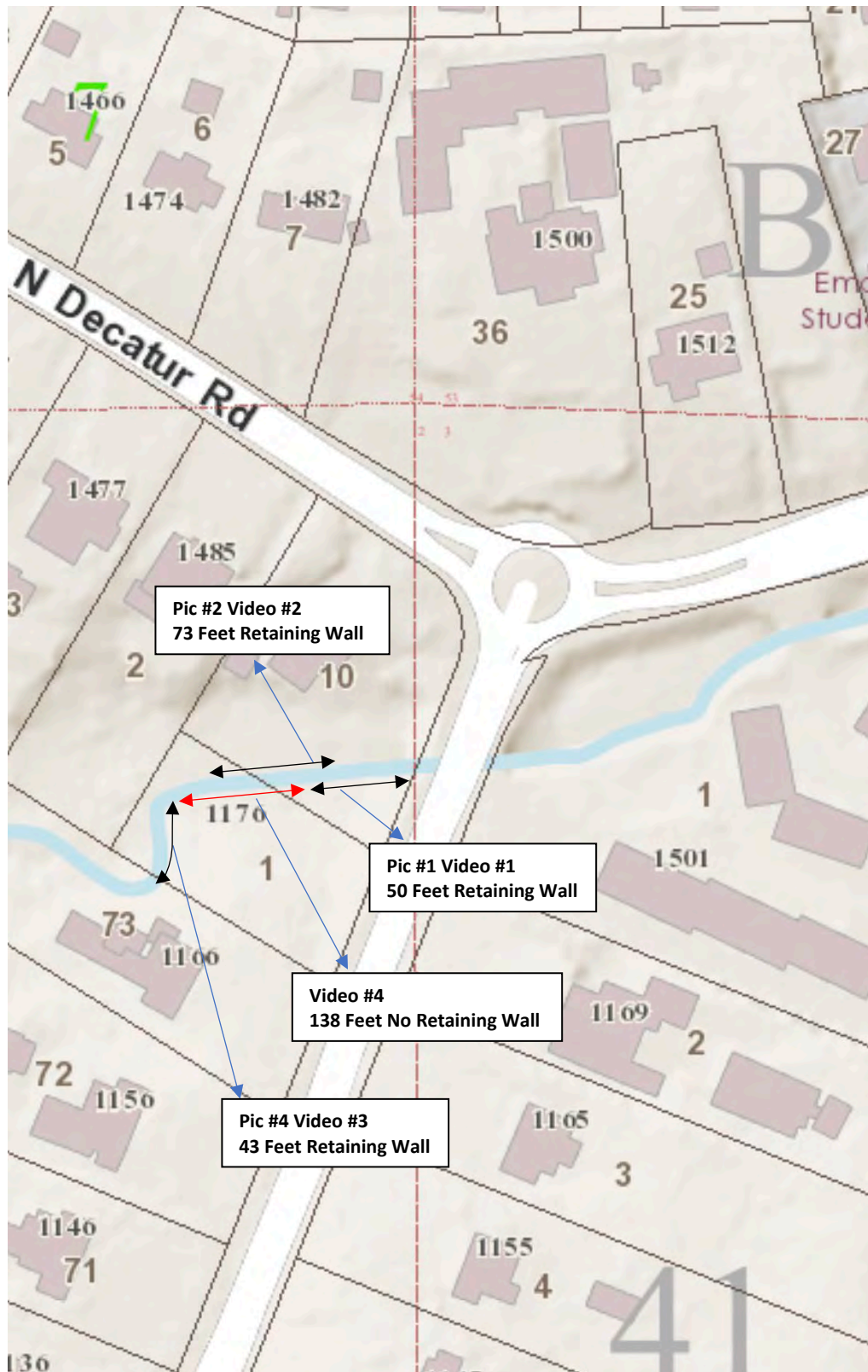


# 1176 Lullwater Road





## 1176 Lullwater Road

















Video Files:

1. Video # 1 50 Feet Retaining Wall  
<https://youtube.com/shorts/k-yhCn4mMgc>
2. Video # 2 73 Feet Retaining Wall  
<https://youtu.be/RBNYQwnD1sw>
3. Video # 3 43 Feet Retaining Wall  
[https://youtube.com/shorts/oOufIPhm8\\_Q](https://youtube.com/shorts/oOufIPhm8_Q)
4. Video # 4 138 Feet No Retaining Wall  
<https://youtu.be/2iBOdoRpty4>

**CERTIFICATE OF APPROPRIATENESS**

July 20, 2021

Site Address: 1176 LULLWATER RD  
ATLANTA, GA 30307-

Parcel ID: 18-054-06-001

Application Date:

Applicant: Dave Price

Mailing Address: 1595 Nottingham Way  
Atlanta, Georgia 30309

---

**THIS IS TO ADVISE YOU THAT THE DEKALB COUNTY HISTORIC PRESERVATION COMMISSION, AT ITS REGULARLY SCHEDULED PUBLIC MEETING ON July 19, 2021, REACHED THE FOLLOWING DECISION ON THIS APPLICATION:**

**ACTION: Approval**

1. Build a new house on a wooded lot. The house will be a two-story Colonial Revival-style house with an attic and basement. The basement will be aboveground at the rear and right side. The house will be clad with brick, except for the granite front terrace and basement level, and cement-fiber lap siding in the gables, on the dormers and on the rear wing. The roof will be side-gabled with three gabled dormers on the front roof slope. The roof will be clad with fiberglass shingles. The front entry portion of the terrace will have a hipped roof supported by tapered columns. An arched opening on the front of the basement level will lead to a one-car garage door set back more than 8' behind the front façade. A wooden deck and screened porch will be at the rear of the house. All windows will be wood with simulated divided lights.
2. A 10'3" wide concrete driveway will enter at the southeast corner of the lot and curve across to the basement level garage. A turn-around will be installed at the curve in the driveway. The distance between the end of the turn-around and the opposite side of the driveway will be 23'. A 1.5' high boulder wall will be installed along a portion of the driveway near the house. A 4' wide walkway will run from the driveway to the front terrace.
3. Ten trees will be removed. Two 3"-5" American beech trees will be planted in the front yard. Naturalistic plantings of native shrubs will be installed beside the sidewalk and flanking the driveway near the house.
4. The south side setback of 5' will require a zoning variance from the required 8.5'. The commission notes that other county departments may require further study of the floodplain and stream buffer.



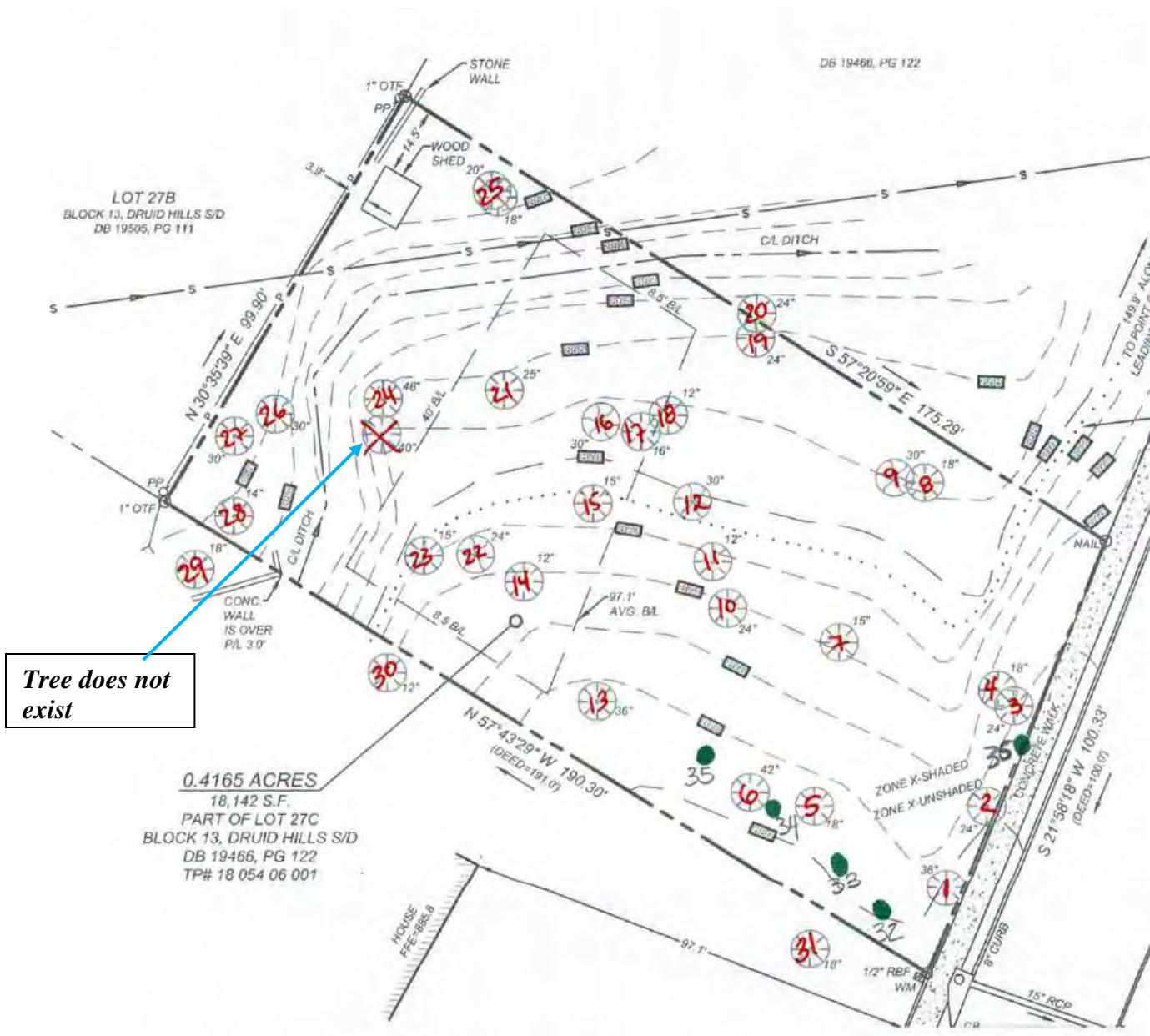
Tree Evaluation Report

1176 Lullwater Road, DeKalb County  
July 6, 2021

Description of property:

This is a vacant undeveloped lot with proposed new construction. Twenty-eight trees exist on the site with three boundary trees noted. There are eight specimen-sized trees on the property and one off site.

Observations: All observations were visual and made from the ground. No invasive tests, underground or aerial inspections were performed. The site visit was conducted on July 1, 2021. Diameters were measured at breast height, 4½ feet above the ground (DBH) and current conditions noted.



Tree #	Species	Actual DBH	Condition	Specimen	Dead	Buffer	Boundary	Target
1	Water Oak	37"	Bifurcated upper trunk, Covered in vines	Y	N	N	N	Y
2	Water Oak	24"	Covered in vines	N	N	N	N	Y
3	Ash	24"	Covered in vines	N	N	N	N	Y
4	Ash	18"	Covered in vines	N	N	N	N	Y
5	Yellow-poplar	18"	Appears Healthy	N	N	N	N	Y
6	Yellow-poplar	25"	Appears Healthy	N	N	N	N	N
7	Sweetgum	15"	Appears Healthy	N	N	N	N	N
8	Ash	19"	Appears Healthy	N	N	Y	N	N
9	Loblolly Pine	30"	Appears Healthy	Y	N	Y	N	N
10	Yellow-poplar	25"	Appears Healthy	N	N	N	N	N
11	Yellow-poplar	12"	Appears Healthy	N	N	N	N	N
12	Loblolly Pine	33"	Termites at the base, <20% LCR	Y	N	Y	N	N
13	Beech	41"	1 broken limb, Appears Healthy	Y	N	N	N	Y
14	Hardwood	12"	Appears Healthy	N	N	N	N	N
15	Hardwood	15"	Appears Healthy	N	N	N	N	N
16	Loblolly Pine	33"	Appears Healthy	Y	N	Y	N	N
17	Yellow-poplar	13"	Appears Healthy	N	N	Y	N	N
18	Hardwood	12"	Lean >20 degrees, decay in main trunk	N	N	Y	N	N
19	Yellow-poplar	31"	Appears Healthy	Y	N	N	N	N
20	Yellow-poplar	28"	Appears Healthy	N	N	N	N	N
21	Tupelo	24"	Appears Healthy	N	N	Y	N	N
22	Loblolly Pine	28"	Appears Healthy	N	N	N	N	Y
23	Yellow-poplar	15"	Appears Healthy	N	N	N	N	Y
24	Yellow-poplar	53"	Appears Healthy	Y	N	Y	N	N
25	Pecan	8"	Appears Healthy	N	N	Y	N	N
26	Yellow-poplar	24"	Roots starting to become eroded, Appears Healthy	N	N	Y	N	N
27	Yellow-poplar	30"	Appears Healthy	Y	N	Y	N	Y
28	Hardwood	10"	Appears Healthy	N	N	Y	N	N
29	Sweetgum	~18"	Appears Healthy	N	N	Y	Y	Y
30	Hardwood	12"	Appears Healthy	N	N	N	Y	Y
31	Post Oak	27"	Appears Healthy	N	N	N	Y	Y

Highlighted trees are of specimen size for DeKalb County

32	Yellow-poplar	9"	Appears Healthy, Outcompeted	N	N	N	N	N
33	Sweetgum	9"	Appears Healthy, Outcompeted	N	N	N	N	N
34	Sweetgum	8"	Appears Healthy, Outcompeted	N	N	N	N	N
35	Yellow-poplar	9"	Appears Healthy, Outcompeted	N	N	N	N	N
36	Water Oak	11"	Significant lean over street, unbalanced crown weight	N	N	N	N	Y

Trees (#32-36) not on original site plan

PAGE 3

1176 Lullwater Road, DeKalb County

Pictures (not in good condition):

Tree 1



Tree 12



Tree 18



Tree 26





PAGE 4  
1176 Lullwater Road, DeKalb County

Tree 36 leaning over street



Final Notes:

Consult with the International Society of Arboriculture for specific guidelines on tree removal, pruning and planting, [www.isa-arbor.com](http://www.isa-arbor.com).

This letter serves as an assessment of the specified trees. I certify that all the statements in this letter are true, complete, and correct to the best of my knowledge and belief, and that they are made in good faith. All trees will fail. No arborist can state exactly when, where, or how a tree will fail. Live trees that appear **healthy may fall as an "act of God" or with significant weather or environmental conditions that cannot be controlled.** All recommendations made in this letter are the sole responsibility of the homeowner to address, thus assuming any risk associated with not performing such recommendations.

This information was generated by Heidi Rieckermann Harrington, Certified Arborist (ISA #NY-1074A), Certified Forester (SAF #2756), HRH Trees, LLC.



PRICE RESIDENTIAL DESIGN  
1595 NOTTINGHAM WAY  
ATLANTA, GEORGIA  
30309  
dave@priceresidentialdesign.com  
404-245-4244

PRICE RESIDENTIAL DESIGN

---

LULLWATER RESIDENCE

1176 LULLWATER ROAD

REVISION 7-19-21  
REPLACED SINGLE  
HIPPED DORMER  
THREE SMALLER  
GABLED DORMERS TO  
SATISFY CONDITION #2  
OF HPC STAFF REPORT

LULLWATER RESIDENCE  
1176 LULLWATER RD  
ATLANTA, GEORGIA

EXTERIOR  
ELEVATIONS

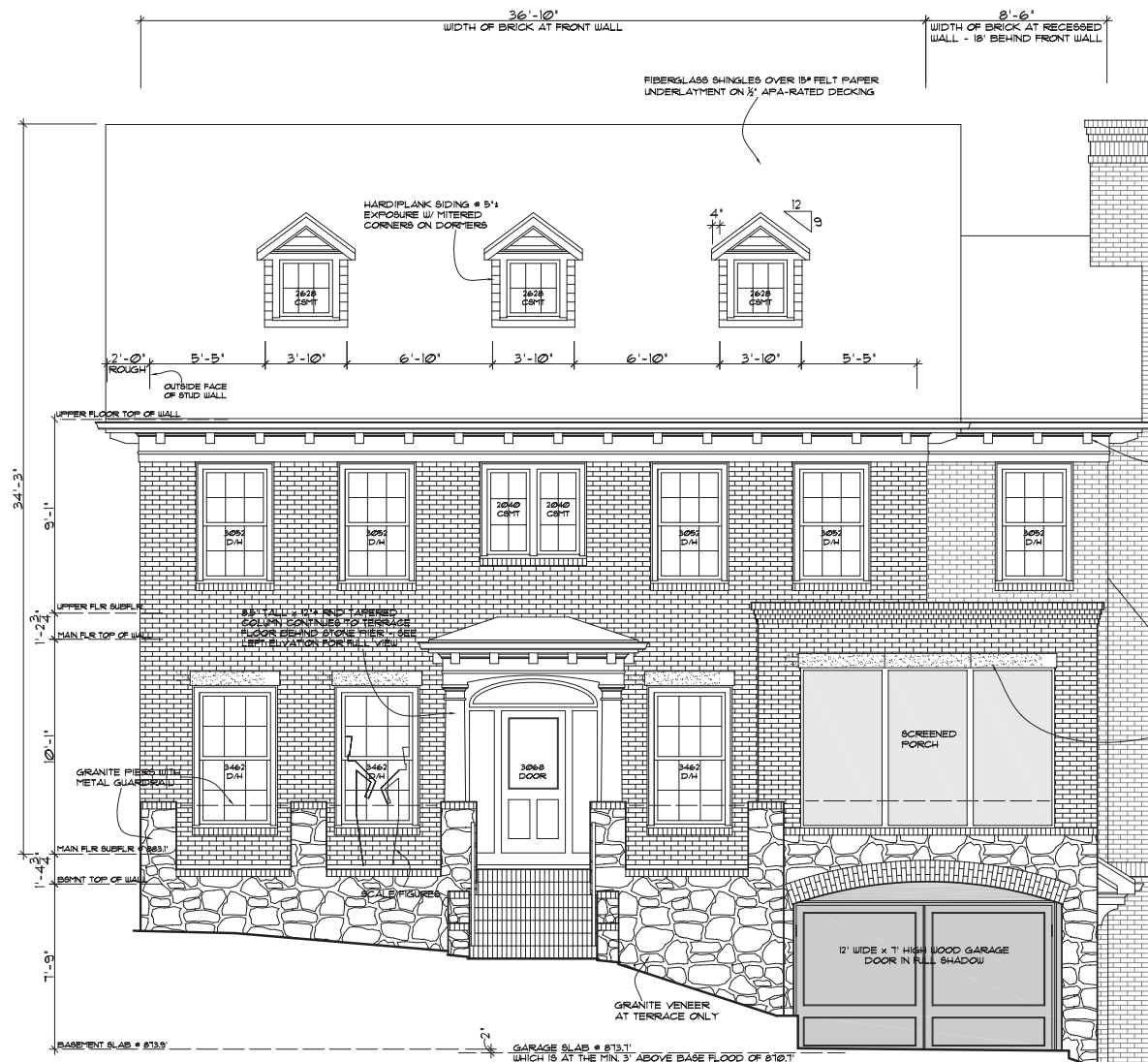
SHEET A-1

JUNE 25, 2021

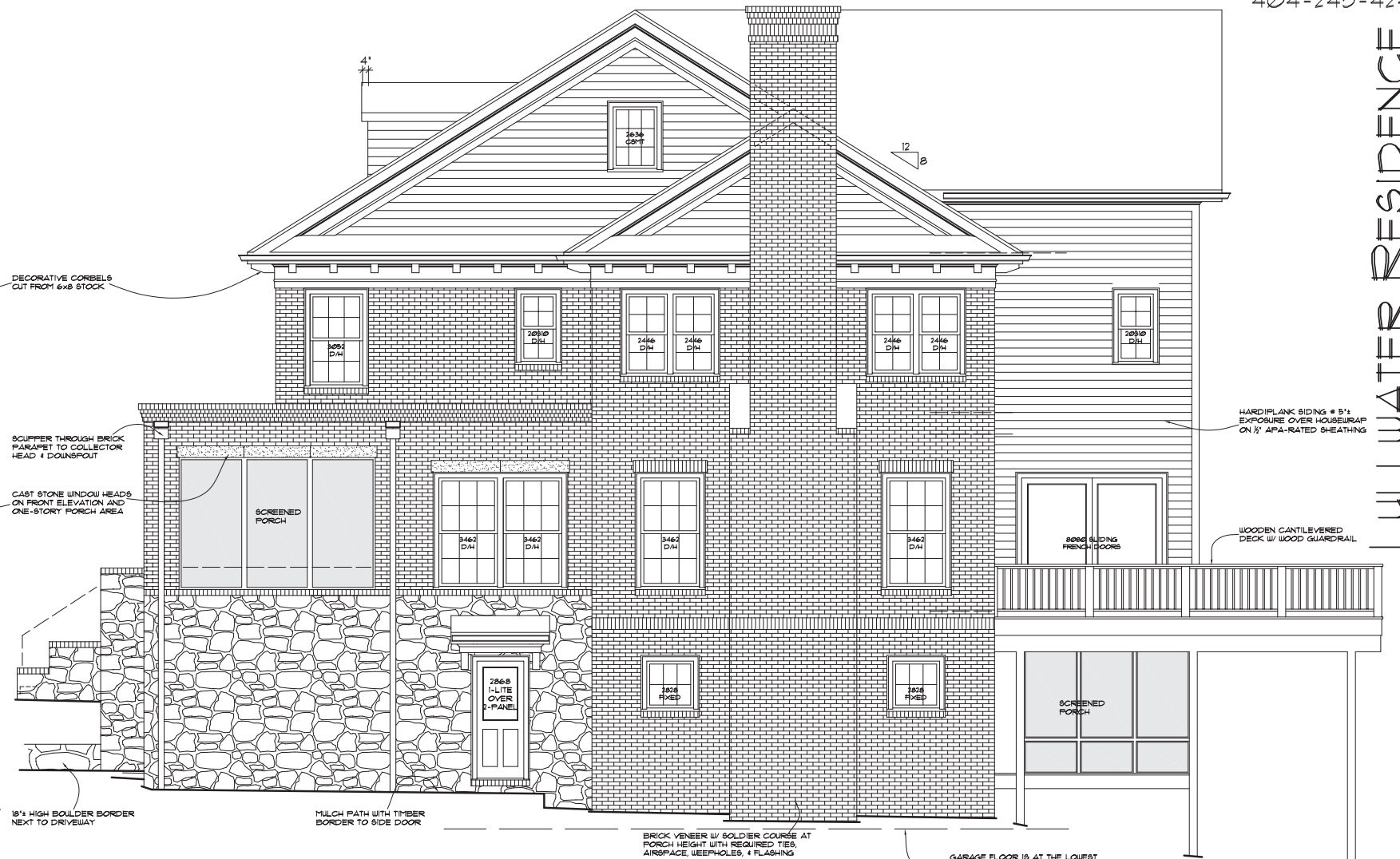
THERE WILL BE VERY LITTLE GRADING ON SITE IN ORDER TO PRESERVE EXISTING TREES EVENLY DISTRIBUTED AROUND LOT SO EXISTING CANOPY WILL REMAIN AS UNBROKEN AS POSSIBLE. SOME GRADING AND A 18" HIGH BOLDER WALL WILL BE REQUIRED NEXT TO DRIVEWAY.

A 6' WIDE SINGLE SLAB CONCRETE PORCH RECESSED OVER 8" HIGHER PORCH EDGE IN FULL SHADOW SO THAT, COMPARED TO A MORE TYPICAL SIDE-ENTRY GARAGE AND DRIVEWAY, WORK WILL MINIMALLY ENCROACH FLOOD ZONE, MAINTAIN A LOW LOT COVERAGE (23.3% WELL UNDER 35% MAXIMUM ALLOWED) AND INCUR MINIMAL LOSS OF EXISTING TREES. ONLY ONE TREE IN FLOOD ZONE WILL BE REMOVED DUE TO ACTIVE ROT.

AN EXISTING MASSIVE HEDGE (MOSTLY ON NEIGHBOR'S LOT) BUFFERS VIEW OF GARAGE DOOR FROM NORTHEAST; EXISTING TREES AND NEW NATURALISTIC SHRUBBERY NEXT TO PUBLIC SIDEWALK BUFFER DRIVEWAY FROM FRONT STREET. FRANKLIN PLANTINGS ALONG DRIVEWAY AND NEAR DRIVEWAY BUFFERS VIEW FROM THE SOUTH. NATIVE SHRUBBERY CHOSEN FROM DRUID HILLS RECOMMENDED PLANT MATERIALS LIST - 4-6" MATURE HEIGHT.



**FRONT ELEVATION**  
SCALE:  $\frac{1}{4}" = 1'-0"$

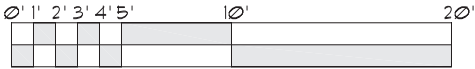


**RIGHT SIDE ELEVATION**  
SCALE:  $\frac{1}{4}" = 1'-0"$

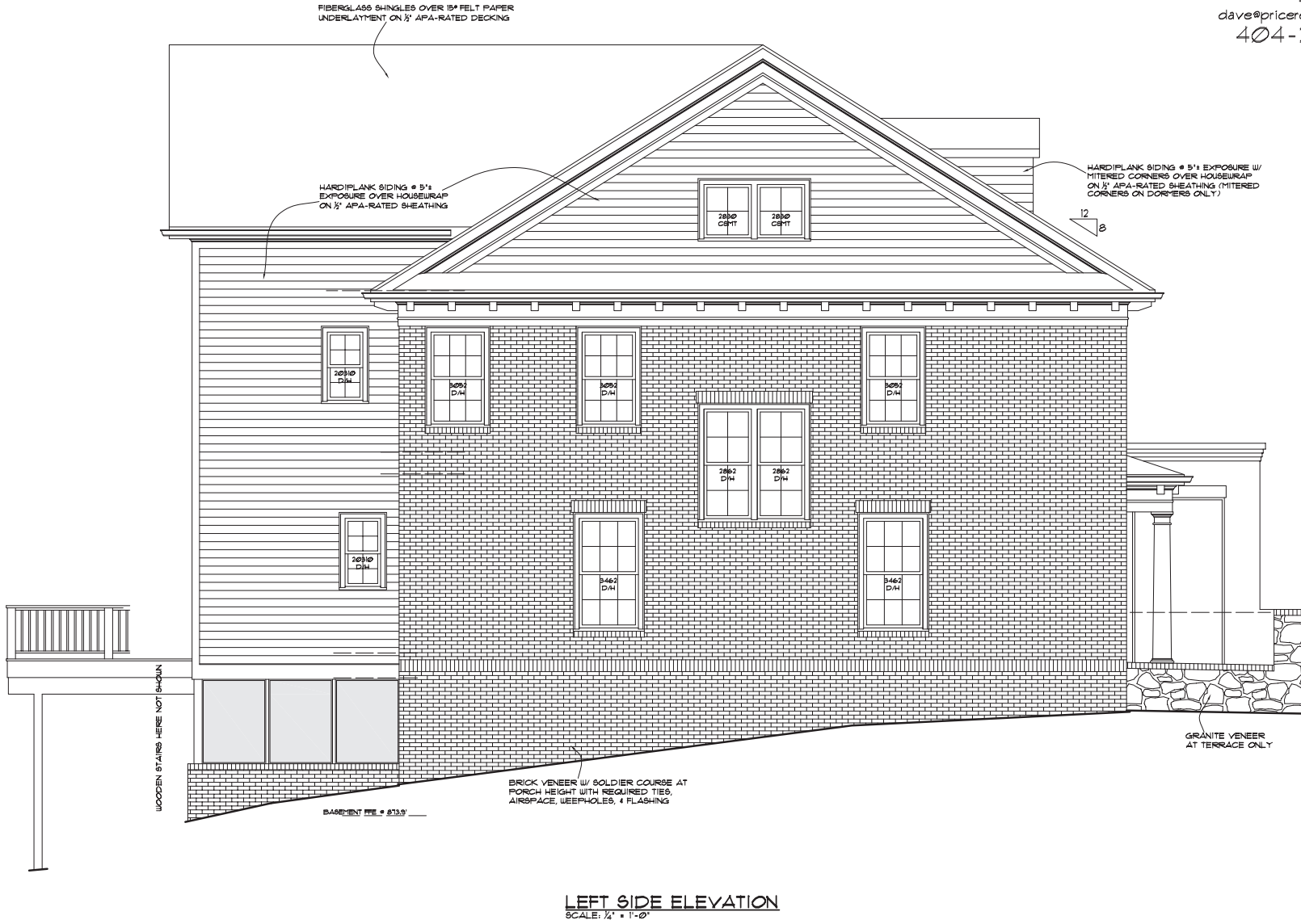
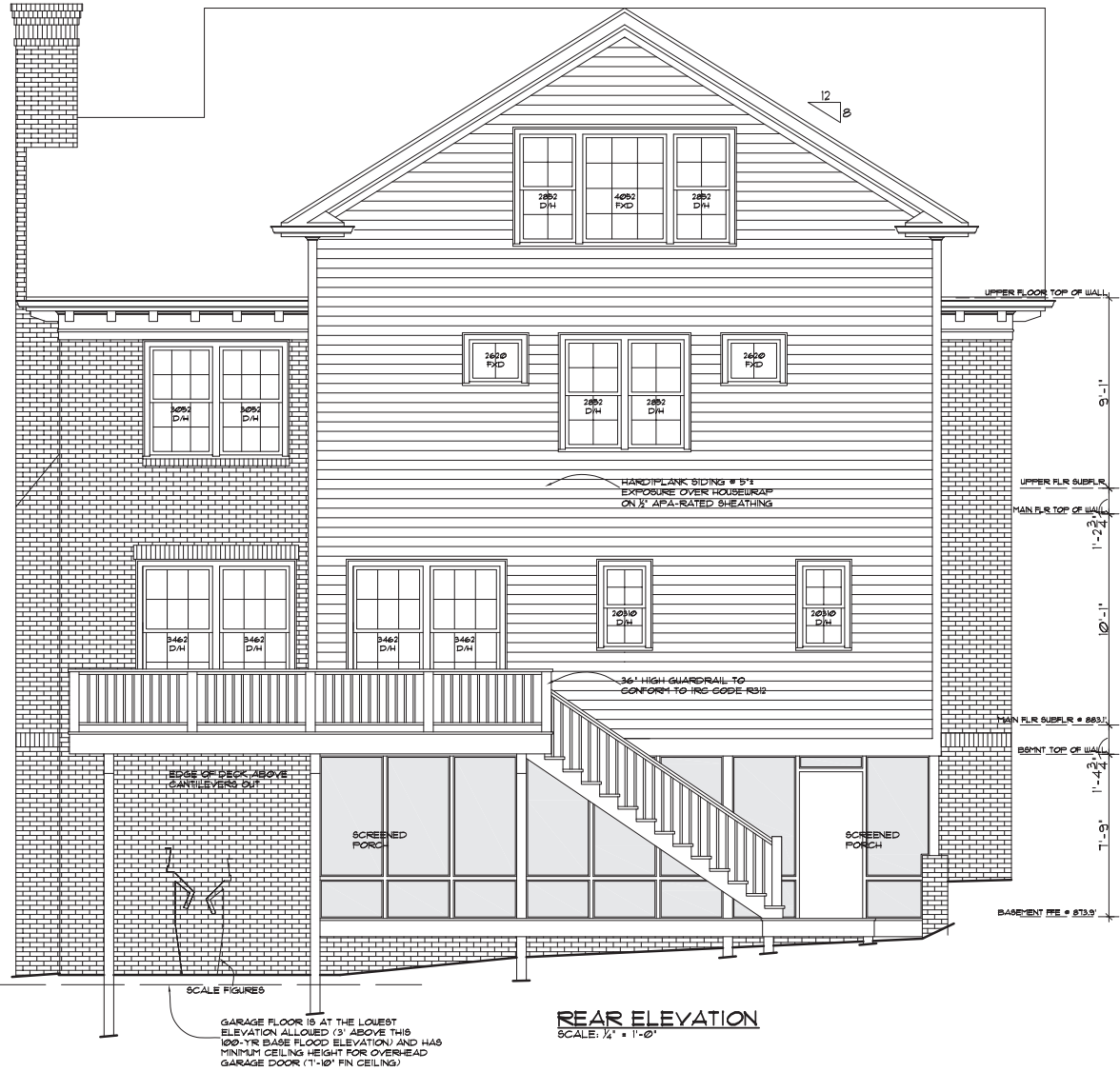
GARAGE FLOOR IS AT THE LOWEST ELEVATION ALLOWED (3' ABOVE THIS 100-YR BASE FLOOD ELEVATION) AND HAS MINIMUM CEILING HEIGHT FOR OVERHEAD GARAGE DOOR (7'-10" FIN CEILING)



GENERAL NOTE: EXCEPT AS NOTED,  
ALL WINDOWS SHALL BE  
PRIMED WOOD, SGL. W/ 3/4"  
MULTIPLY (APPLIED TO GLASS), LITE PATTERN AS SHOWN  
ALL DRS. SHALL BE WOOD.



PRICE RESIDENTIAL DESIGN  
1595 NOTTINGHAM WAY  
ATLANTA, GEORGIA  
30309  
dave@priceresidentialdesign.com  
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REVISION 7-19-21  
REPLACED SINGLE  
HIPPED DORMER  
THREE SMALLER  
GABLED DORMERS TO  
SATISFY CONDITION #2  
OF HPC STAFF REPORT

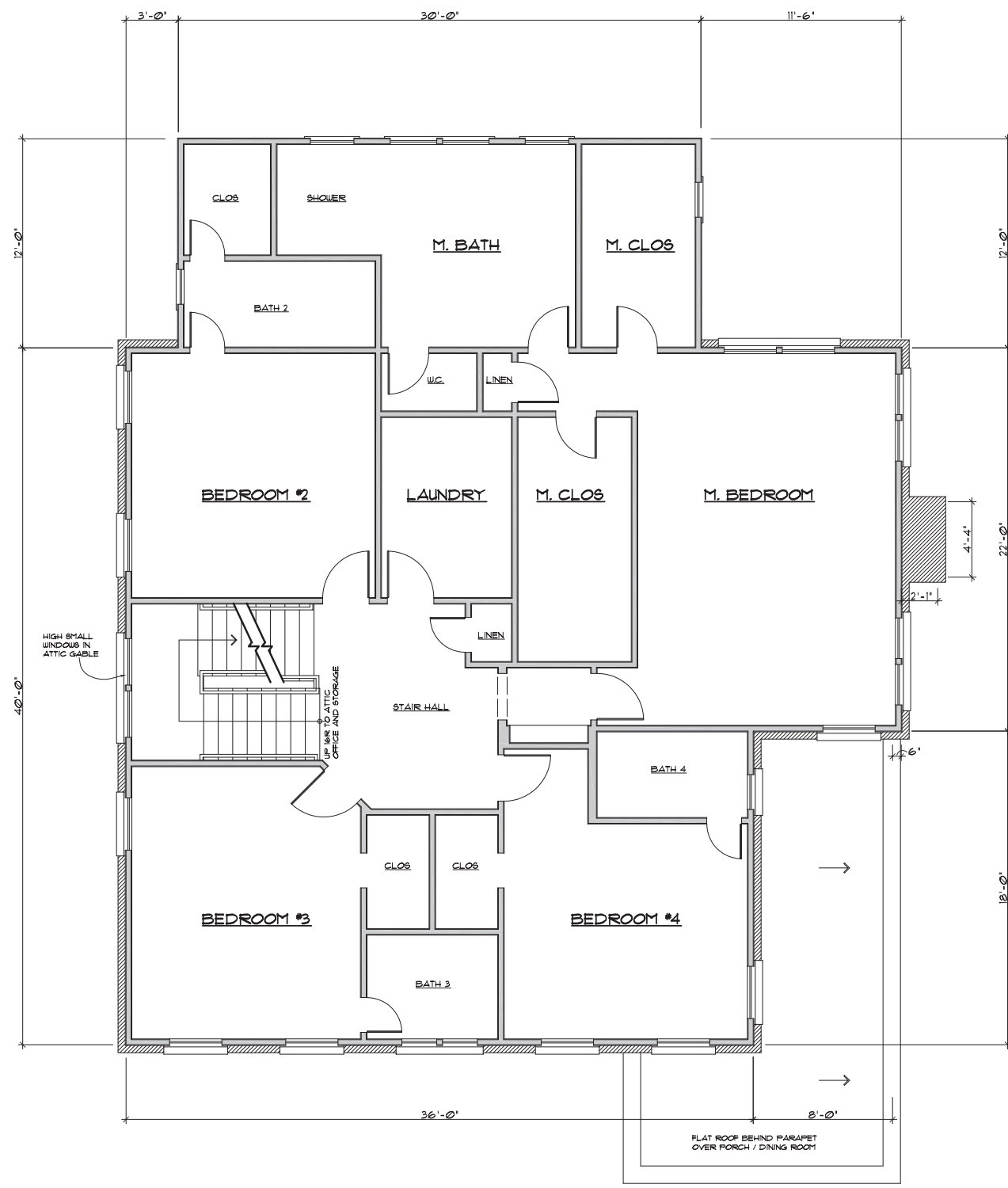
LULLWATER RESIDENCE  
1176 LULLWATER RD  
ATLANTA, GEORGIA  
EXTERIOR  
ELEVATIONS  
SHEET A-2  
JUNE 25, 2021



PRICE RESIDENTIAL DESIGN  
1595 NOTTINGHAM WAY  
ATLANTA, GEORGIA  
30309  
dave@priceresidentialdesign.com  
404-245-4244

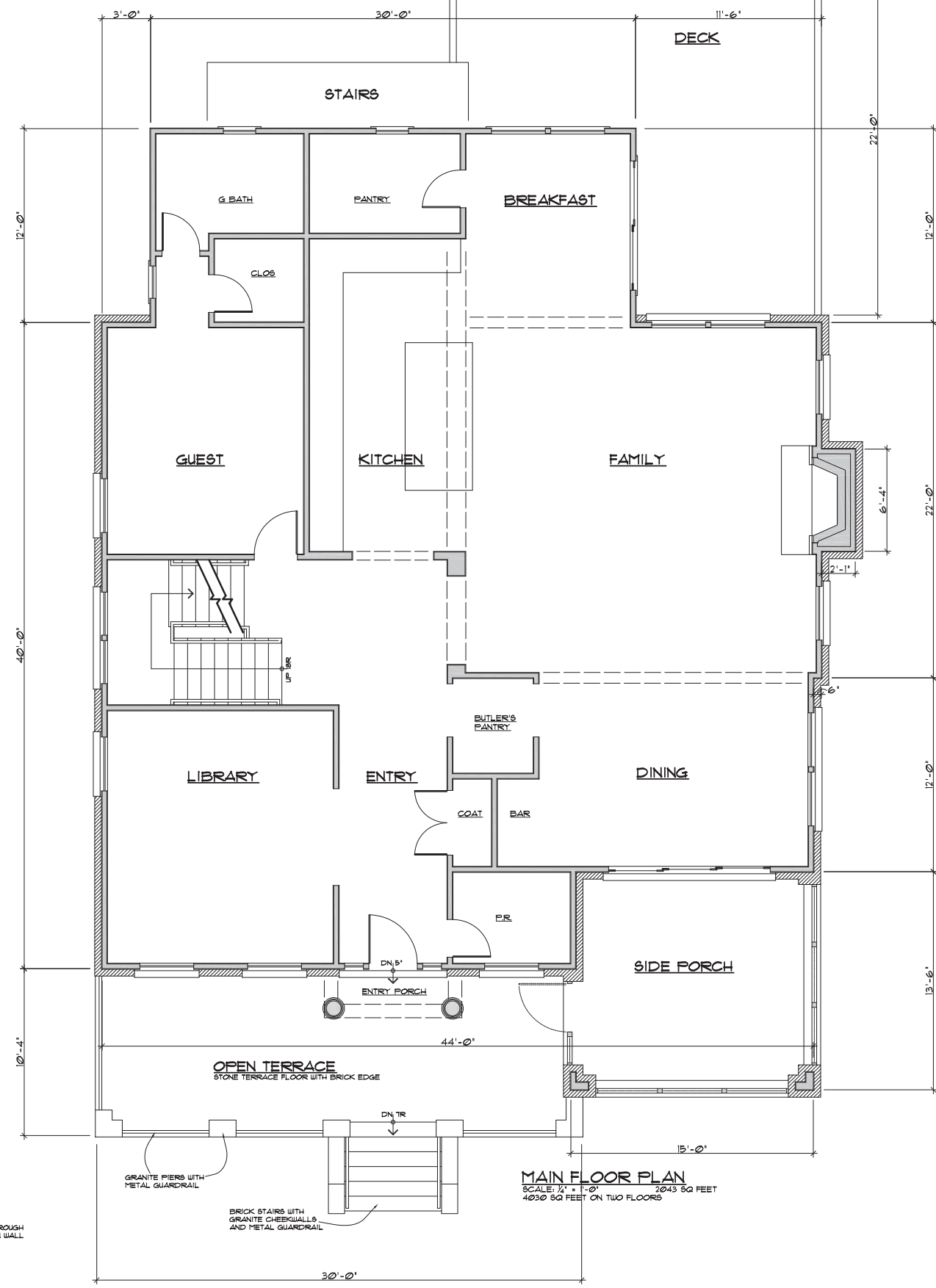
PRICE RESIDENTIAL DESIGN  
LULLWATER RESIDENCE  
1176 LULLWATER ROAD

LULLWATER RESIDENCE  
1176 LULLWATER RD  
ATLANTA, GEORGIA  
MAIN AND UPPER  
LEVEL FLOOR PLANS  
SHEET A-3  
JUNE 25, 2021



UPPER FLOOR PLAN  
SCALE: 1/4" = 1'-0"  
1981 SQ FEET  
4030 SQ FEET ON TWO FLOORS

TYPICAL DIMENSION EITHER TO ROUGH  
FRAMING OR ROUGH FOUNDATION WALL

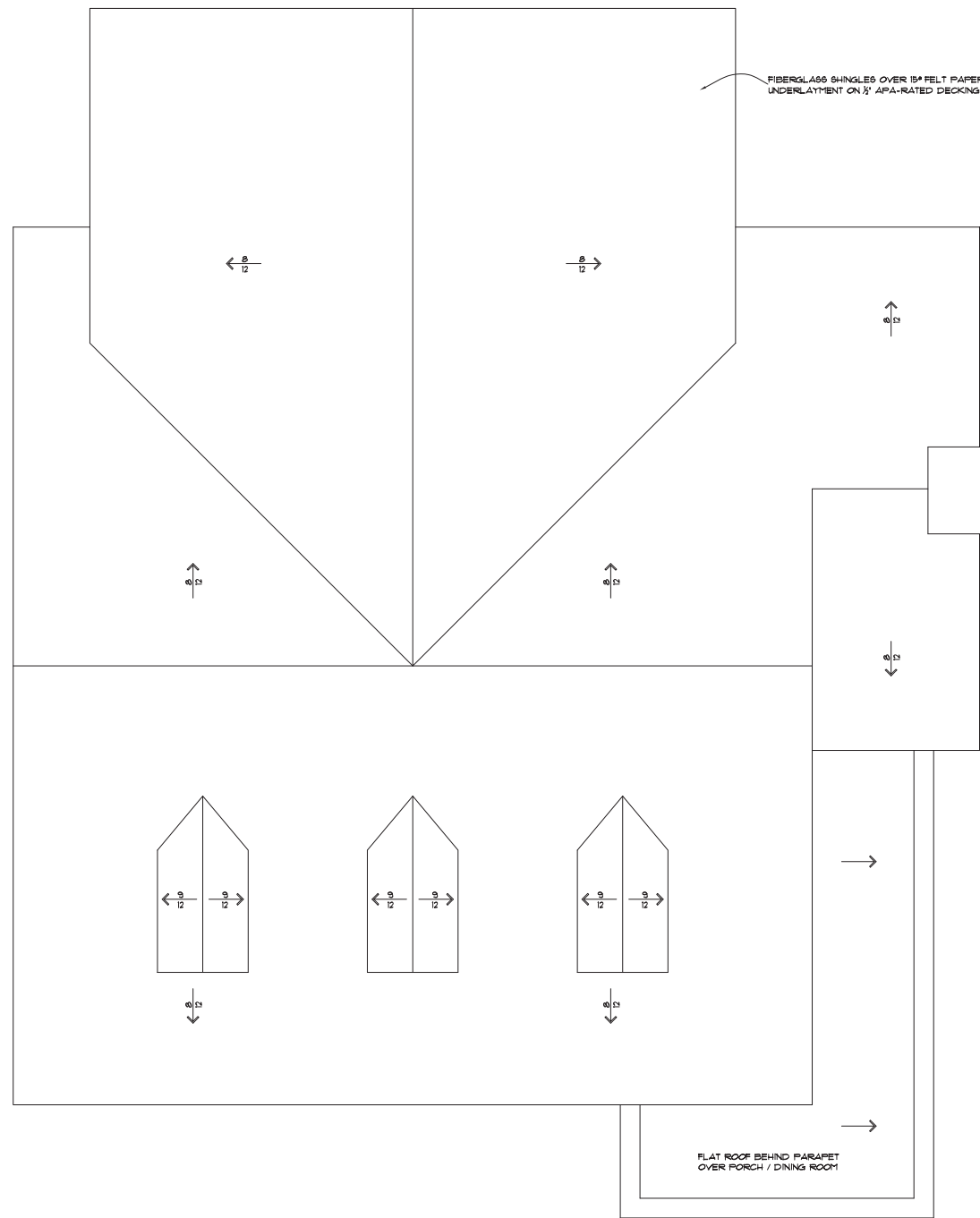


MAIN FLOOR PLAN  
SCALE: 1/4" = 1'-0"  
2043 SQ FEET  
4030 SQ FEET ON TWO FLOORS

GRANITE PIERS WITH  
METAL GUARDRAIL

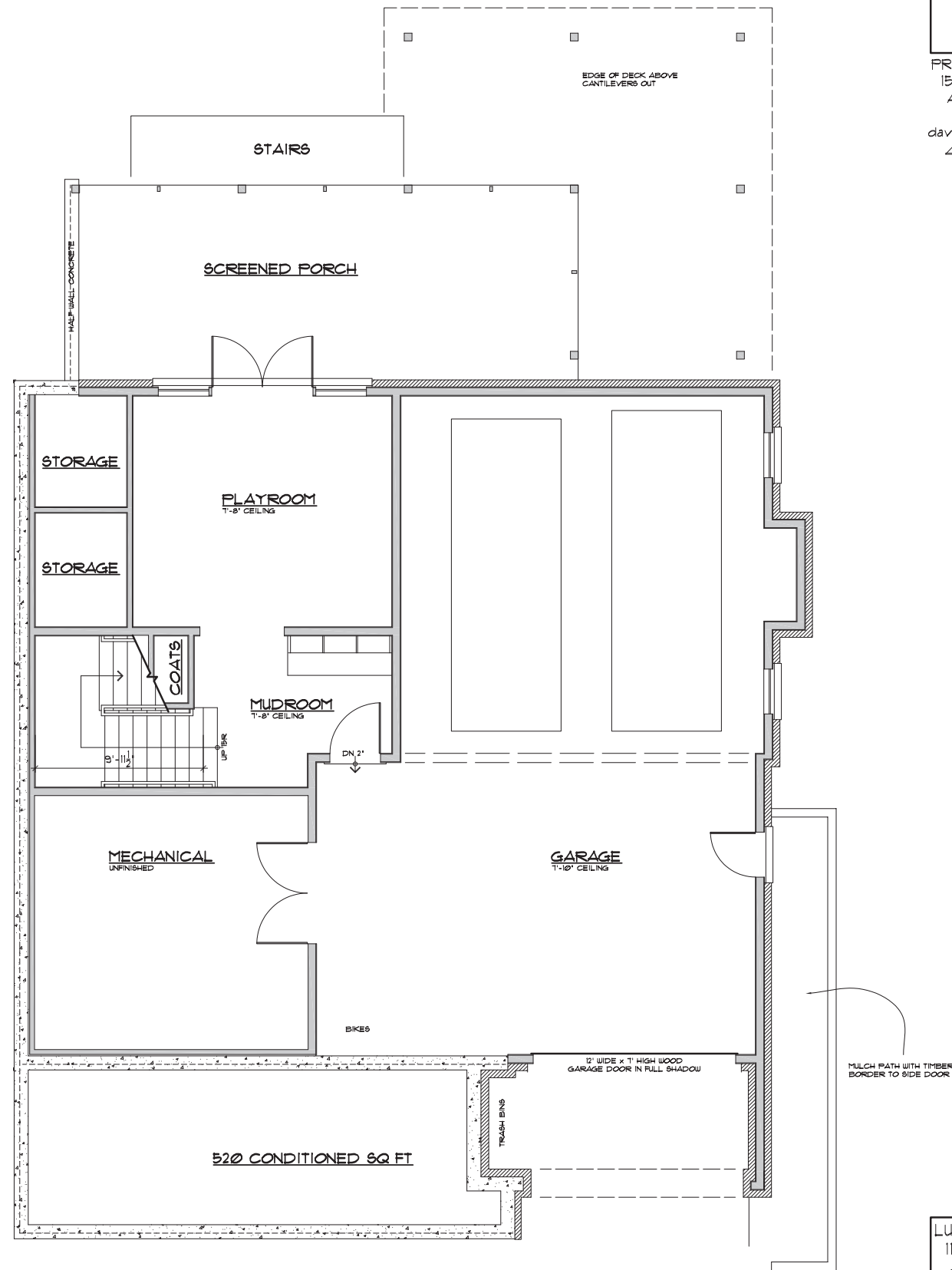
OPEN TERRACE  
STONE TERRACE FLOOR WITH BRICK EDGE

BRICK STAIRS WITH  
GRANITE CHEEKWALLS  
AND METAL GUARDRAIL



**ROOF PLAN**  
SCALE: 1/4" = 1'-0" SOME CONDITIONED SPACE  
(OFFICE, STORAGE) IN ATTIC - UNPLANNED

REVISION 7-19-21  
REPLACED SINGLE  
HIPPED DORMER  
THREE SMALLER  
GABLED DORMERS TO  
SATISFY CONDITION #2  
OF HPC STAFF REPORT



**BASEMENT PLAN**  
SCALE: 1/4" = 1'-0" 520 SQ FEET HEATED  
SHORT CEILING BECAUSE THRESHOLD HEIGHT  
HEIGHT AND FLOOD ZONE REGULATIONS CONFLICT

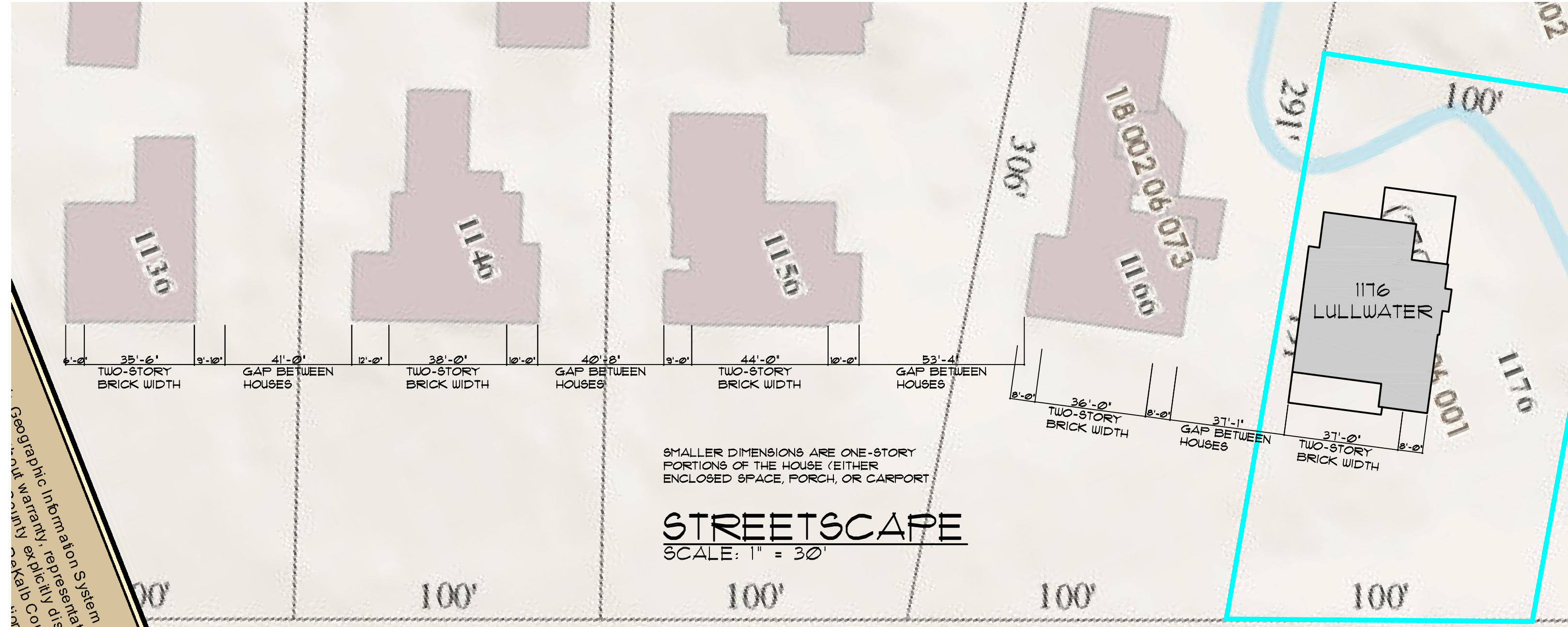


PRICE RESIDENTIAL DESIGN  
1595 NOTTINGHAM WAY  
ATLANTA, GEORGIA  
30309  
dave@priceresidentialdesign.com  
404-245-4244

PRICE RESIDENTIAL DESIGN  
LULLWATER RESIDENCE  
1176 LULLWATER ROAD

LULLWATER RESIDENCE  
1176 LULLWATER RD  
ATLANTA, GEORGIA  
BASEMENT AND  
ROOF PLANS  
SHEET A-4  
JUNE 25, 2021





1136



1146

GRADE CALCULATED USING  
DEKALB GIS MAP INFORMATION

FRONT WALL BRICK  
HEIGHT: 17'-1"  
(FROM MAIN FLOOR)



1156 NO WAY TO TAKE A  
STRAIGHT PHOTO

FRONT WALL BRICK  
HEIGHT: 17'-10"



1166

FRONT WALL BRICK  
HEIGHT: 17'-4"



1176

FRONT WALL BRICK  
HEIGHT: 18'-4"

WHILE WIDTHS ARE CORRECT, ROOF HEIGHT LOOKS MUCH  
SHORTER THAN IN A DRAWING. THIS RIDGE IS OVER 10'  
ABOVE EAVE, CALCULATED BY COUNTING BRICKS.



# Battle Law

## **STATEMENT OF INTENT**

and

Other Material Required by  
DeKalb County Zoning Ordinance  
For

A Stream Buffer Variance, Side Yard Setback Variance, and Threshold Elevation Variance  
pursuant to the DeKalb County Zoning Ordinance

of

**ELIZABETH FINNERTY MARTIN**  
**c/o Battle Law, P.C.**

for

**+/-0.41 Acres of Land**  
Being 1176 Lullwater Road  
DeKalb County, Georgia and  
Parcel Nos. 18 054 06 001

Submitted for Applicant by:

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# Battle Law

## **I. LETTER OF INTENT**

Elizabeth Finnerty Martin (the “Applicant”) and her husband, David Martin, own and are seeking to develop upon +/- 0.41 acres of land being Tax Parcel No. 18 054 06 001 having frontage on 1176 Lullwater Road (the “Subject Property”) with one single-family detached home. The Applicant is seeking the following three variances from the setback requirements for the Subject Property:

1. Request to allow for the encroachment of a single-family detached home into the fifty (50) foot Stream Buffer pursuant to Section 14-44.1 of the DeKalb County Land Development Ordinance according to the submitted site plan;
2. Request a Variance from DeKalb County Zoning Ordinance Section 27-2.2.1 Dimensional Requirements to reduce the south side yard setback from eight and a half (8.5) feet to five (5) feet; and
3. Request a Variance from DeKalb County Zoning Ordinance Section 27-5.2.5(D)(2) to increase the elevation of the dwelling threshold from 874.2 feet (average natural grade at thirty five (35) foot front setback – setback averaging not applying to this lot) to 883.1 feet in elevation for the Subject Property

This document serves as a statement of intent, analysis of the criteria under the DeKalb County Code of Ordinances, and contains notice of constitutional allegations as a reservation of the Applicant’s rights.

## **II. STREAM BUFFER VARIANCE CRITERIA**

- A. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.*

By reason of exceptional site conditions not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district. This Subject Property is in the unique position of having both a stream buffer encumbering it and being in the historic Druid Hills neighborhood. The regulations that preserve the historic character of the neighborhood call for a certain placement of a home in relation to the street and governs the size a home is permitted to be. The stream buffer excludes space from being built upon. These regulations combine to create a developable envelope that significantly burdens the property owner and Applicant. Importantly, neither the property owner nor the Applicant have created the hardship as it arises only out of the fact that there is a stream on the property, and that the regulations combine in such a way to diminish the developable envelope to a space well below what a typical lot would be afforded.





## Battle Law

Therefore, by reason of exceptional site conditions not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district.

*B. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.*

The variances requested does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privileges. The reductions requested are the absolute minimum the Applicant needs to build a home on the Subject Property.

*C. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.*

The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the Subject Property is located. The variances requested will allow the Applicant to construct a single-family detached home in an area where other single-family detached homes currently exist.

*D. The literal interpretation and strict application of the applicable provisions of or requirements of this chapter would cause undue and unnecessary hardship.*

Should the County literally interpret and strictly apply the provisions or requirements of this chapter, the Applicant would experience undue and unnecessary hardship. Failure to grant the requested variances would mean the Applicant simply cannot use the Subject Property. This would clearly be an undue and unnecessary hardship, and result in the taking of the Subject Property by the County without just compensation.

*E. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.*

The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan. The proposed development is compatible with the Comprehensive Plan. Furthermore, the Subject Property is exactly the type of property contemplated by the DeKalb County Zoning Ordinance's section on variances. The Subject Property is uniquely and unduly burdened by the County's stream buffer and setback requirements in such a way that makes the Subject Property unusable. A failure to grant the requested variances would deprive the Applicant of the rights and privileges afforded to other property owners in similar zoning districts. Therefore, the requested variance is wholly consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.



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### **III. SIDE YARD SETBACK CRITERIA**

- A. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.*

By reason of exceptional site conditions not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district. This Subject Property is in the unique position of having both a stream buffer encumbering it and being in the historic Druid Hills neighborhood. The regulations that preserve the historic character of the neighborhood call for a certain placement of a home in relation to the street and governs the size a home is permitted to be. The stream buffer excludes space from being built upon. These regulations combine to create a developable envelope that significantly burdens the property owner and Applicant. Specifically, the stream curves around the rear property in such a way that creates a stream buffer that leaves only the southern portion of the Subject Property open to development, forcing the developable envelope closer to the southern side property line. For any development on this property to take place, the side setback on the southern property line will need to be reduced to five (5) feet. The Historic Preservation Commission stated that this reduction would be necessary to accommodate the home it approved at its July 19, 2021 hearing.

Importantly, neither the property owner nor the Applicant have created the hardship as it arises only out of the fact that there is a stream on the property, and that the regulations combine in such a way to diminish the developable envelope to a space well below what a typical lot would be afforded.

Therefore, by reason of exceptional site conditions not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district.

- B. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located;*

The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located. The Applicant requests a reduction of three and a half (3.5) feet from the Code requirements to avoid encroaching into the stream buffer on the northern side of the Subject Property. This is the smallest amount of variance from the Code that the Applicant could request to accomplish this.

- C. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.*





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The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located. On the contrary, granting this variance will serve the public welfare by keeping development out of the stream buffer as much as possible. This will reduce the amount of stormwater runoff headed into the stream, thereby helping to preserve a delicate environmental asset for the public.

*D. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship; and*

The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship. Specifically, strict application of this chapter would deprive the property owner and Applicant of the right to use the property in any kind of economically viable way. The developable envelope would be so small, that nothing could be developed on the Subject Property, thereby depriving the property owner and Applicant their rights to use and enjoy their property and keeping them from enjoying similar rights enjoyed by property owners in similar zoning districts.

*E. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.*

The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text. This variance would put the property owner and Applicant back into a position similar to other property owners in a similar zoning district. Thus, this variance is consistent with the spirit and purpose of this chapter because it affords the property owner and Applicant an equal chance to develop their property in a way that is consistent with the neighborhood.

### **IV. THRESHOLD ELEVATION CRITERIA**

*A. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.*

The lot slopes steeply from south to north with a flood hazard area (Base Flood Elevation of 870.7) along the rear and northern side to create a buildable area which narrows considerably as you move towards the rear of the lot. It is a vacant conforming lot and is in the Druid Hills Historic District and therefore new construction is limited to what is considered an appropriate size and location by the DeKalb County Historic Preservation Commission per its guidelines. The DeKalb County Tree Protection Ordinance also prohibits the removal of any trees from the flood hazard zone per Section 14-39(g)(10) with some exceptions (we must remove one pine tree infested with termites). The exceptional topography was not created by the owners and these variances are the only method of allowing a new single-family home appropriate to the Historic District.



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*B. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.*

The variance does not constitute a grant of special privilege or go beyond the minimum necessary to afford relief because the HPC guidelines 7.2 require that any new home must be consistent with the other properties in the district, including having a consistent building orientation, setback, directional emphasis, shape, massing, proportion, and scale to maintain the rhythm along the streetscape. The project was approved on July 19<sup>th</sup>, 2021, by the HPC based on the attached site plan. The threshold elevation will simply bring us into the pattern with the other existing properties along Lullwater Road. The existing southern neighbor's threshold elevation is 885.8', ours is proposed to be 883.1', and the elevation at the existing public sidewalk at future driveway is 881.5'. The grade along Lullwater Road drops slightly as you go north so the proposed threshold is in line with the existing pattern.

*C. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.*

The granting of the variance would not be detrimental to the public welfare or injurious to the surrounding properties. The threshold elevation change will have no effect on the public welfare.

*D. The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship.*

The literal interpretation and strict application of the Zoning Ordinance would cause undue and unnecessary hardship because the flood hazard area has a BFE of 870.7, which county officials have told us we must be 3' above with our lowest floor, the garage. With a garage ceiling height lowered to the lowest possible, at 7.8', while still allowing the track of an overhead garage door, the lowest main floor threshold possible on this lot is 883.1'. This threshold elevation is consistent with the pattern along Lullwater Road.

*E. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.*

The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text since the purpose of the variance process is to encourage flexibility when dealing with odd or non-conforming existing conditions which occasionally occur. The proposed variance is modest and will allow a project consistent with the existing pattern on Lullwater Road as encouraged both by the goals of the Historic Preservation Commission and the DeKalb County Comprehensive Plan.



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### **V. CONCLUSION**

For the foregoing reasons, the Applicant hereby requests that the Variance applications be approved. The Applicant welcomes any questions and feedback from the Planning Staff, or other officials of DeKalb County so that such recommendations or input might be incorporated as conditions of approval for this Application.

### **VI. NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF CONSTITUTIONAL RIGHTS**

The portions of the DeKalb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The application of the DeKalb County Zoning Ordinance to the Subject Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia.

A refusal by the DeKalb Zoning Board of Appeals to amend the land use and/or rezone the Subject Property to the classification as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any Variances of the Property subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject





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Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

A refusal to allow the land use amendment and/or Variances in questions would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to allow the land use amendment and/or Variances in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A Section 36-66/1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

The existing land use designation and/or zoning classification on the Subject Property is unconstitutional as it applies to the Subject Property. This notice is being given to comply with the provisions of O.C.G.A. Section 36-11-1 to afford the County an opportunity to revise the Property to a constitutional classification. If action is not taken by the County to rectify this unconstitutional land use designation and/or zoning classification within a reasonable time, the Applicant is hereby placing the County on notice that it may elect to file a claim in the Superior Court of Fulton County demanding just and adequate compensation under Georgia law for the taking of the Subject Property, diminution of value of the Subject Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

Michele L. Battle, Esq.  
Attorney for the Applicant