



CLEMENTS ELECTRICAL, INC.

CLEMENTS ELECTRICAL, INC.
P.O. BOX 2041
SENECA, S.C. 29679
Phone - (864) 882-7759
FAX - (864) 882-7751
Website – www.clementselectrical.com

Article 7. – Variances and Special Exceptions

Warehouse Expansion

Sec. 38-7.1. - Variances.

The board of zoning appeals may grant a variance in an individual case of unnecessary hardship if the board of zoning appeals makes and explains in writing the following findings:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (2) These Conditions do not generally apply to other property in the vicinity;
- (3) Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (4) The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a. The board of zoning appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for variance.
 - b. The board of zoning appeals may grant a variance to extend physically an existing nonconforming use provided that the expansion does not adversely affect the character of the community and is designed so as to minimize any negative secondary impacts.
 - c. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.
 - d. The developer shall have the burden of providing evidence to the county of compliance with the general requirements of this chapter and the specific requirements of the applicable section. The board of zoning appeals may impose whatever reasonable conditions it deems necessary to ensure that any proposed development will comply substantially with the objectives in this chapter.

Defense – Clements Electrical, Inc.

- (1) Upon building the current warehouse space, Clements Electrical, Inc. had underestimated the space needed for material and is in need of an expansion. In order for the material to be safe and out of the public sight, the addition is best option in terms of safety and visual appeal. The current situation is pictured in Figure1, and the location reasoning for the addition is shown in Figure 2.
- (2) In general, these conditions do not apply to other property in the vicinity because there are not many businesses or property owners in the vicinity that are susceptible to growth as an electrical contractor may be. Most of the land in the immediate vicinity is farmland.
- (3) This particular piece of property is unreasonably restricted by the current Chapter due to company growth and as demonstrated in Figure 2, the location requested is our only viable option.
- (4) If this variance is authorized, substantial detriment to adjacent uses or to the public good will not occur. As seen in all figures the adjacent properties, in the area of the addition, are lined with trees, and are open areas in the adjacent properties with no formal use; resulting in little to no difference as far as uses or public good is concerned. We believe the character of the district will not be harmed by granting the variance because we will be removing unsightly objects from the additions proposed location and replacing it with an identical additional bay of legitimate storage space.

Please See Figures 1-3 on the Following Pages.



Figure 1: Current Configuration

— Approximate Property Line



Figure 2: Current Configuration and Location Proposal



Figure 3: Rendering of Proposed Addition

FOR PERMITTING	12/3/15
FOR VARIANCE REQUEST	2/2/16

REVISIONS

Project No: 15-1203
Sheet Title:
GENERAL
CONSTRUCTION
PLAN

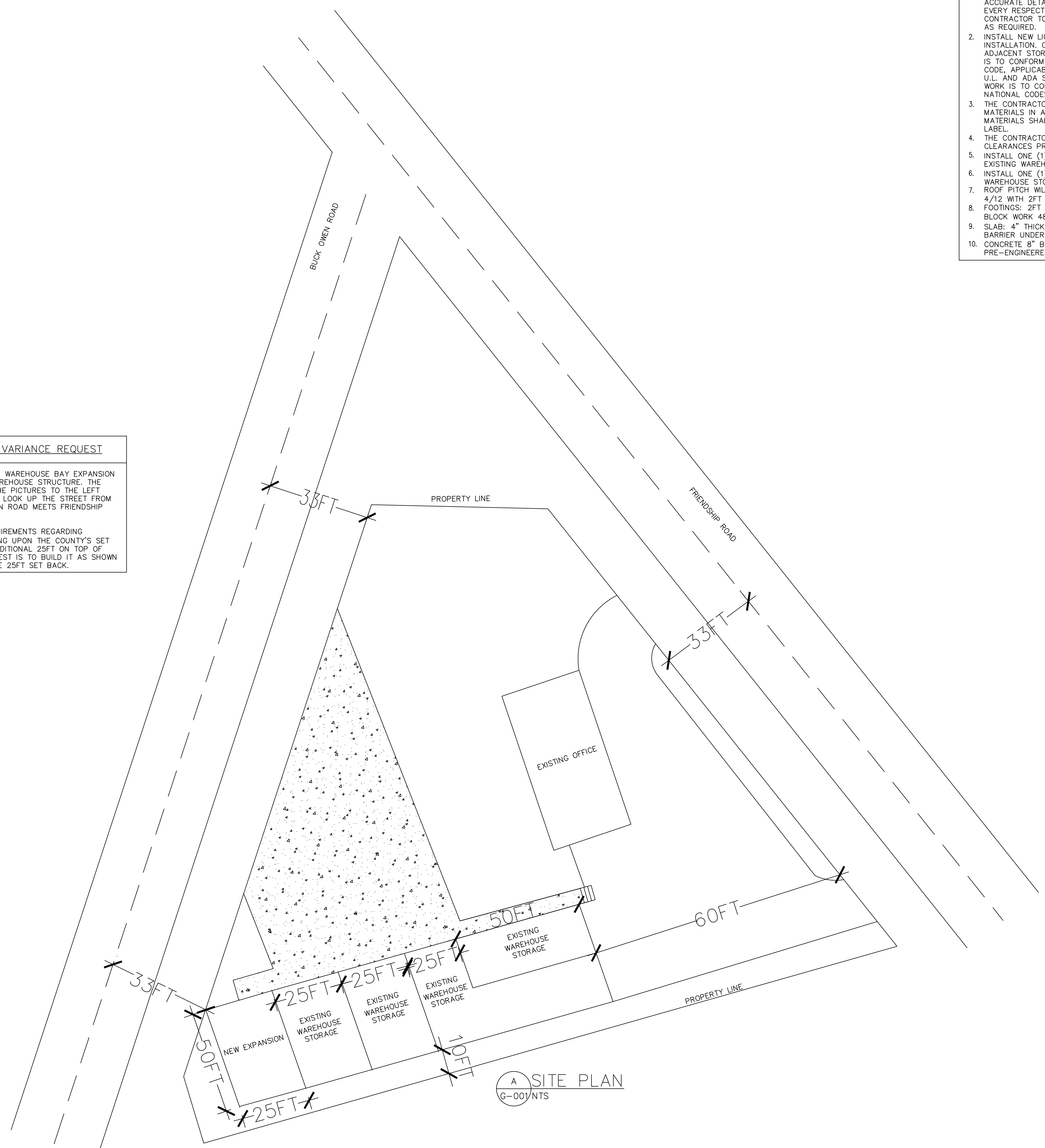
Sheet No: **G-001**

- GENERAL WAREHOUSE CONSTRUCTION NOTES:
1. THE DRAWINGS MAY NOT SHOW THE COMPLETE OR ACCURATE DETAILS OF THE BUILDING OR SYSTEM IN EVERY RESPECT. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN ANY ADDITIONAL INFORMATION AS REQUIRED.
 2. INSTALL NEW LIGHTS MEETING IBC FOR WAREHOUSE INSTALLATION. CONNECT TO EXISTING CIRCUITRY IN ADJACENT STORAGE BAY. ALL ELECTRICAL CONSTRUCTION IS TO CONFORM TO THE 2011 NATIONAL ELECTRICAL CODE, APPLICABLE NEMA, ANSI AND IEEE PUBLICATIONS, U.L. AND ADA STANDARDS AND OSHA REQUIREMENTS. WORK IS TO COMPLY WITH LOCAL, COUNTY, STATE AND NATIONAL CODES HAVING JURISDICTION.
 3. THE CONTRACTOR SHALL FURNISH AND INSTALL ALL MATERIALS IN A NEAT AND WORKMANLIKE FASHION. ALL MATERIALS SHALL BE NEW, WITH FIRST QUALITY AND UL LABEL.
 4. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CLEARANCES PRIOR TO INSTALLATION.
 5. INSTALL ONE (1) MANUAL ROLL UP DOOR MATCHING EXISTING WAREHOUSE STORAGE BAYS.
 6. INSTALL ONE (1) MAN DOOR MATCHING EXISTING WAREHOUSE STORAGE BAYS.
 7. ROOF PITCH WILL MATCH EXISTING FOR EXPANSION AT 4/12 WITH 2FT OVERHANG, METAL ROOF.
 8. FOOTINGS: 2FT WIDE X 1FT DEEP, REBAR DOWELS IN BLOCK WORK 48" ON CENTER.
 9. SLAB: 4" THICK, 3000 PSI CONCRETE WITH MOISTURE BARRIER UNDERNEATH THE SLAB
 10. CONCRETE 8" BLOCK WALLS, 12" TALL. USE PRE-ENGINEERED WOOD TRUSS.

CLEMENTS ELECTRICAL VARIANCE REQUEST

IT IS OUR REQUEST TO BUILD A WAREHOUSE BAY EXPANSION ATTACHED TO THE EXISTING WAREHOUSE STRUCTURE. THE CURRENT AREA IS SHOWN IN THE PICTURES TO THE LEFT AND WOULD BE AS YOU WOULD LOOK UP THE STREET FROM THE CORNER WHERE BUCK OWEN ROAD MEETS FRIENDSHIP ROAD.

WE WOULD MEET THE DOT REQUIREMENTS REGARDING SETBACK BUT WE ARE INFRINGING UPON THE COUNTY'S SET BACK REQUIREMENTS OF AN ADDITIONAL 25FT ON TOP OF THE DOT SET BACK. OUR REQUEST IS TO BUILD IT AS SHOWN WHICH WOULD TAKE ALL OF THE 25FT SET BACK.



A SITE PLAN
G-001/NTS



SEAU
466
162
0





THE JOURNAL

210 W. North 1st Street, Seneca, SC 29678
 Ph. 864.882.2375 Fax: 864.882.2381
 classadmgr@upstatetoday.com

The Journal is a
UpstateToday.com

Classified Advertising Invoice

OCONEE COUNTY COMMUNITY DEVELOPM
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Date:	Order#:	Type
02/05/2016	16559	BILLED ACCOUNT

Total Amount: 30.70

Amount Due: 30.70

Comments: TMS3 281-00-01-106

Attention: Please return the top portion of this invoice with your payment including account and ad number.

Ad Copy

THE OCONEE COUNTY Board of Zoning Appeals will conduct a public hearing on Monday, February 22nd, 2016 at 8:00 p.m. in the Council Chambers of the County Administrative Complex, 415 S. Pine Street, Walhalla, SC 29691. The applicant, Clemens Electrical Inc. is requesting a variance from the required front setback for proximity within the Control Free District, outlined in Chapter 38 of the Oconee County Code of Ordinances, specifically at 802 Friendship Rd., Seneca, SC, 29678 (TMS# 201-00-01-106). If you would like additional information concerning this request please contact the Community Development Office at 864-638-4218.

PUBLISHER'S AFFIDAVIT

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE**

OCONEE COUNTY COMMUNITY DEVELOPM

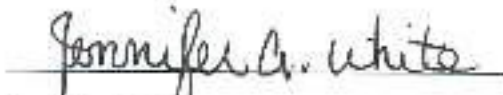
IN RE: TMS3 281-00-01-106

BEFORE ME the undersigned, a Notary Public for the State and County above named, This day personally came before me, Hal Welch, who being first duly sworn according to law, says that he is the General Manager of THE JOURNAL, a newspaper published Tuesday through Saturday in Seneca, SC and distributed in **Oconee County, Pickens County** and the Pendleton area of **Anderson County** and the notice (of which the annexed is a true copy) was inserted in said papers on 02/06/2016 and the rate charged therefore is not in excess of the regular rates charged private individuals for similar insertions.



Hal Welch
General Manager

Subscribed and sworn to before me this
02/06/2016



Jennifer A. White
Notary Public
State of South Carolina
My Commission Expires July 1, 2024

JENNIFER A WHITE
NOTARY PUBLIC
State of South Carolina
My Commission Expires July 1, 2024

SUBJECT TO ASSESSMENTS, DEONCE AD VALOREM TAXES, EASEMENTS AND/OR RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% deposit in certified funds is required. The deposit will be applied towards the purchase price unless the bidder defaults. In which case the deposit will be forfeited. If the successful bidder fails or refuses to make the required deposit, or comply with his bid within 30 days, then the property will be resold at his risk. No persons or deficiency judgment being demanded, the buying will not remain open after the date of sale, but compliance with the bid may be made immediately. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 2.4% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Onslow County Clerk of Court at CA 115 CP-37-00100.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.

Beverly H. Whitfield
Clerk of Court
for Onslow County
John J. Moore
P.O. Box 100200
Attorney for Plaintiff
Columbia, SC 29202-3200
(803) 749-4444
013203 06304

Website: www.nc.tlc.com (see link to Resources/Foreclosure Sales)

Development Office at 884-838-4218.

THE DEONCE COUNTY

Scene of Zoning Appeals will conduct a public hearing on Monday, February 22nd, 2010 at 8:00 p.m. in the Council Chambers of the County Administrative Complex, 415 S. Pine Street, Watha, SC 29891. The applicant, Clemons Electrical Inc. is requesting a variance from the required front setback for property within the Central Area District, outlined in Chapter 98 of the Deonice County Code of Ordinances, specifically at 902 Friendship Rd., Seneca, SC 29678 (TMS# 291-00-01-100). If you would like additional information concerning this request please contact the Community Development Office at 884-838-4218.

Notice is hereby given that FLORES-MARANA, LLC intends to apply to the South Carolina Department of Revenue for a license/permit that will allow the sale and on premises consumption of beer, wine and liquor at 1010 By pass 123 Seneca, SC 29678. To object to the issuance of the permit/consent, written protest must be postmarked no later than February 24, 2010. For a protest to be valid, it must be in writing and should include the following information: (1) the name, address and telephone number of the person filing the protest; (2) the specific reasons why the application should be denied; (3) that the person protesting is willing to attend a hearing if one is reconvened by the applicant; (4) that the person protesting resides in the same county where the proposed place of business is located or within two miles of the business; and (5) the name of the applicant and the address of the

the property. The sale of the above-described property, then the sale of the property will be null, void and of no force and effect, and the sale will be rescheduled for the next available sales day.
David P. Price Jr.
Attorney for Plaintiff
The Honorable Beverly Whitfield
Clerk of Court for Deonice County
Date: December 2, 2015

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CRUISER** • 60K miles • \$7,995
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Daze Saturdays • 8:30am-2pm



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2008 LINCOLN MKZ
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101 S Highway 11
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688-7845



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TOWN COUNTRY**
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County and Used Cars
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2013 CHEVROLET SPARK
Automatic • 32K miles • \$11,500
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101 S Highway 11
West Union
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89 BMW 635 CS
90K Miles • \$8,200
Pete's Auto
402 Oak St • Seneca
802-1167

LEGAL NOTICES

LEGALS

NOTICE OF SALE
BY VIRTUE of a decree heretofore



Board of Zoning Appeals

415 S. Pine St. • Walhalla, South Carolina 29691
Phone (864) 638-4218 • Fax (864) 638-4168

NOTICE OF APPEAL

Date

I, (owner) (agent of owner)

hereby request an appeal to the following action (be specific):

The narrow nature of the lot at 149 Bonner Road, Mountain Rest SC and the DHEC Septic requirements has necessitated that the Slotter home be positioned close to Lake Becky. This application is to request a variance from the Planning and Zoning Back Set back requirements to allow them to build a deck on the back of the house that is of uniform size and symmetrical to the home.

Reason for appeal:

The attached foundation plan shows the lower level of the home and the position of the six deck foundation pads.
Post #1 is 5 feet into the Side setback and this post has been eliminated to remove any side setback variance needs.
Post #2 is on line and not in the side setback
Post #3 is not in a setback
Post #4 is 2.45 feet in the back set back
Post #5 is 6.32 feet in the back set back
Post #6 is 9.99 feet in the back set back
Since the use of the lake and construction of docks and boat houses are permitted by the property deed and lake rules respectively, we request that the variance will allow the deck to be built as planned extending into the back set backs adjacent to lake property only.

Applicant's Name

Address

Mailing Address (if different)

Phone Number Fax Number

Signature: 

Please be advised that an Appeals Application Fee of \$100 must be paid in full at the time the application is received by the Planning Department. Applicants shall be notified at the specified mailing address once a public hearing date is set.

[Print Form](#)

There are extraordinary and exceptional conditions pertaining to the particular piece of property;

1. The lot is very narrow and required special home and driveway placement in order for DEHEC to approve the septic permit.
2. The lot was purchased prior to the new zoning setbacks.
3. FEMA flood plain elevations were not in place when the lot was purchased and this coupled with the zoning regulations have created a need to be in the 2012 setbacks.

These conditions do not generally apply to other property in the vicinity;

1. The adjacent lots are much larger and/or were built upon prior to the current zoning regulations.

Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

1. The deck of the home would be drastically reduced in size and not fit symmetrically with the home. It would have an unusual shape.
2. We have already altered the left end of the deck (viewing from inside the home) to help comply with the zoning regulations.
3. Further redesign of the home and deck would cause an additional financial burden on the homeowners.

The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

1. The home will in fact look better with the deck uniform in size.
2. The area in question looks over a small mountain lake and does not impact the use or view of the neighboring property.
3. The county has granted a driveway permit in that location.
4. The construction of this home, as designed, will add value to the existing properties on Lake Becky.

Attached: Plat showing setbacks and home positioning, DEHEC septic permit,

Pictures from adjacent properties, plan view showing deck posts.

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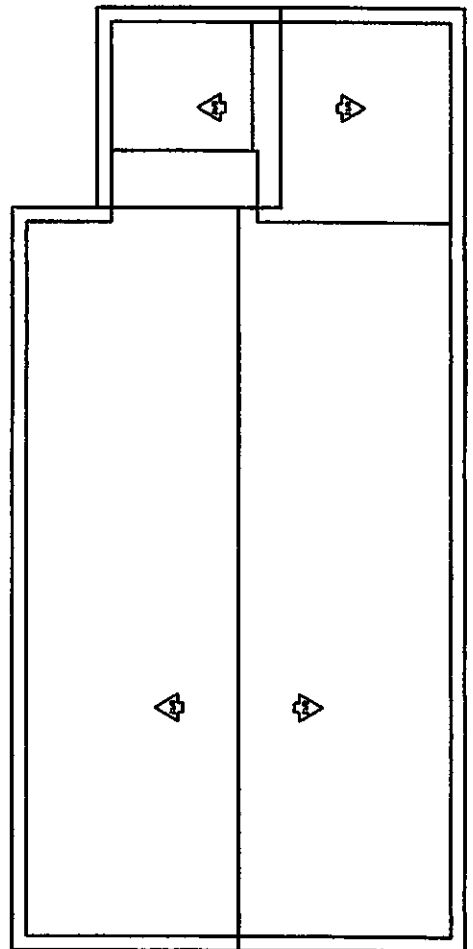
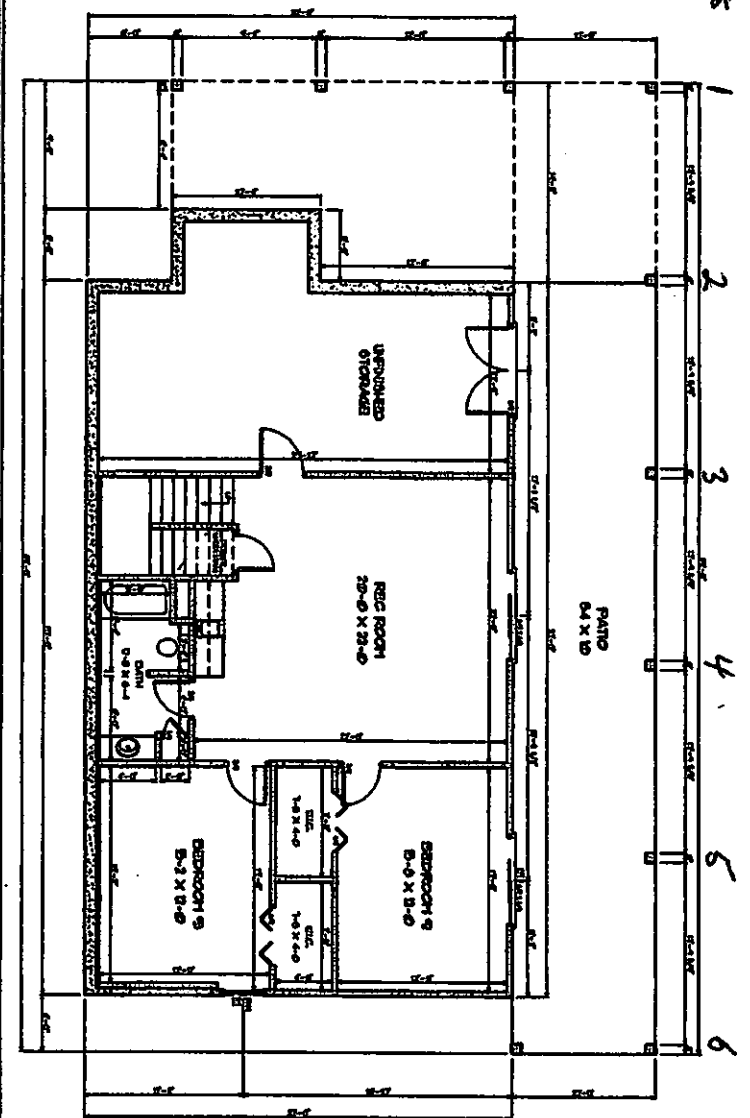
MOUNTAIN LAKE FISHING & BOATING CLUB
RULES OF THE LAKE
Revised January 2015

1. Each member of the Lake Association shall be allowed to operate no more than two properly marked watercraft (motorized or otherwise) on the lake at the same time.
2. All motorized watercraft used on the lake shall have permanently affixed, to the right front side, the current decal issued by the lake association, motorized being defined as the use of gas or battery operated motor.
3. No guest watercraft or non-member watercraft of any kind shall be allowed on the lake.
4. There shall be no launching or retrieval of watercraft from the dam or spillway areas.
5. Jet Skis/personal watercraft shall be allowed on the lake, with the following restrictions:
 - A. No Jet Ski/personal watercraft shall enter a cove with fishing boat(s) or swimmer(s) present, except to depart or re-enter the watercraft operator's property, and then only at low speed (5 miles per hour.)
 - B. Jet Skis/personal watercraft shall follow all other rules for motorized watercraft on the lake.
 - C. Jet Ski/personal watercraft operators shall follow all South Carolina laws pertaining to the use of Jet Skis and personal watercraft.
 - D. All Jet Ski/personal watercraft shall use the lake only between the hours of 0900 – 1800. (9:00 AM – 6:00 PM)
 - E. No newly acquired Jet Ski/personal watercraft will be given decals or allowed on the lake after March 1, 2005.
6. All watercraft must travel in a counterclockwise direction on the lake.
7. All powered watercraft and water skiers shall stay a minimum of 25 feet away from all piers, boathouses, fishermen, swimmers, and shorelines.
8. All watercraft towing skiers, tubers, or persons upon any other floating object must have either an observer aboard, in addition to the driver of the boat, or a wide-angle rearview mirror. Any person(s) being towed on skis, tubes, etc., shall wear a Coast Guard approved life jacket.
9. No skiing, tubing, etc., shall be done after dark.
10. All watercraft must use boating lights if operated after dark. Speed shall not exceed 5 miles per hour after dark.
11. The maximum speed on the lake shall be 30 miles per hour. The maximum speed in coves shall be 5 miles per hour.
12. No racing shall be allowed on the lake.
13. Littering of any type shall not be permitted.

14. No person or persons shall use the lake in a hazardous or unsafe manner. No watercraft shall follow a skier or tuber in line with the towboat.
15. Any property owner having a private boat ramp must gate and lock it to prevent use by non-members.
16. No person(s) other than those duly authorized by the Board shall attempt to operate the valves on the spillway intake structure.
17. All persons will be required to maintain a minimum distance of 25 feet from the intake structure.
18. All fishing shall be done in accordance with South Carolina laws. No trot lines, fish baskets, jug fishing, or netting of fish is allowed.
19. If a dispute arises as to the interpretation of the boating rules, such dispute shall be resolved by reference to the South Carolina Boater's Handbook. Any such dispute shall be brought to the attention of the Board of Directors by a written request for interpretation. The Board of Directors will act upon the request at its next scheduled meeting.
20. The level of Mountain Lake (Lake Becky) will be lowered every fourth year in order to allow members to perform work projects in the lake bed. The lake valve will be opened the first of November of each year it is scheduled to be lowered, and the valve will be closed the first of February of the following year. (i.e. The Lake will be up for three years, then lowered on the fourth year.)
21. Docks, piers, and boathouses may not extend more than 25 feet into the lake. The dimensions of any structure extending into Lake Association property shall be measured from the established lot lines; such line or stau shall be located and flagged by the property owner.
22. Seawalls and/or riprap shall follow lakefront property lines. Minor deviations will be allowed in order to obtain straight lines. In no instance shall seawalls and/or riprap encroach onto Lake Association property.
23. Any dredging or building of any structures on the lake bottom must be approved by the board. No rock or fill shall be placed on the lake bottom for any reason without permission from the board. Members must contact the board with plans for approval prior to beginning such project(s).
24. No new boat ramps shall be built into or onto the lake bottom.
25. In accordance with the conveyance of control on file, all properties on the lake shall have a minimum of 50 (Fifty) feet of lake frontage in order to qualify for membership in the club. Those currently having less than 50 (Fifty) feet at the present time shall be grandfathered at their present footage.
26. Any violation of lake rules shall be subject to the following scheduled punishments:
 - A. First offense – A warning shall be issued, and the violator informed of the rule(s) broken and the reason for such rule(s).
 - B. Second offense – Immediate sanction by the Board of Directors at the next scheduled meeting, including either revocation or restriction of lake privileges.
27. Any member desiring to contest an imposed sanction shall do so by submitting to the Board a written intention to contest. The Board of Directors shall permit the party contesting the sanction to be present at the next scheduled meeting of the Board. The Board will determine whether a sanction is in order. Any member desiring to appeal the Board's decision shall do so by submitting to the Board a written intention to appeal and presenting their case at the next annual meeting of the Lake Association membership. A decision by the Lake Association membership shall be final without any further right of appeal.

DOOR OPENING IS 1'-0" FROM STUD WALL
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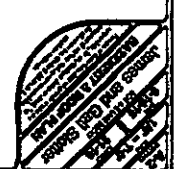
Posts



- GENERAL NOTES**
1. THESE SPECIFICATIONS REFERENCED SHALL BE THE LATEST EDITION UNLESS OTHERWISE SPECIFIED.
 2. ALL WORK TO BE DONE IN ACCORDANCE WITH THE REQUIREMENTS OF THE NATIONAL BUILDING CODE OF CANADA.
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- NOTES**
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DATE: 11/15/2023
BY: [Signature]
PROJECT: [Project Name]



Issued/Revised By: Ray S. Boss

Date: 6/24/2010

DRAINLINES MUST FOLLOW LEVEL SURFACE CONTOURS
 USE STEP-DOWNS BETWEEN LINES AS NEEDED
 DRAINLINES TO BE 10'+ ON CENTER
 SYSTEM MUST BE 5'+ FROM FOUNDATION AND PROPERTY LINES
 DO NOT DRIVE OR PARK OVER SEPTIC SYSTEM
 OWNER IS PLANNING TO PLACE A SLUDGE PUMP IN THE BASEMENT TO ALLOW FOR PLUMBING IN THE
 BASEMENT
 KEEP THE TANKS 50'+ FROM THE LAKE
 PLUMB THE UPSTAIRS INTO THE SEPTIC TANK BY UTILIZING GRAVITY FLOW FROM THE HOUSE
 INSTALL A BAFFLED SEPTIC TANK DUE TO THE PROPOSED SLUDGE PUMP IN THE BASEMENT
 KEEP THE SEPTIC SYSTEM 50'+ FROM THE LAKE AND ALL WELLS
 SURVEY AND MARK THE PROPERTY LINES PRIOR TO INSTALLATION OF THE SEPTIC SYSTEM
 KEEP THE DRAINLINES 25'+ FROM THE BASEMENT CUT/ FOUNDATION DRAIN
 FILL THE PARKING PAD, INSTEAD OF CUTTING DOWN, SO THERE IS NOT AN EMBANKMENT BELOW THE
 DRAINFIELD
 SUPPLY MANIFOLD = 2" SCH 40 PVC
 INCLUDE: 1. CHECK VALVE 2. FLOAT CONTROLS 3. FLOAT ALARM
 THIS DEPT. MUST CHECK THE FLOAT CONTROLS
 SUBMIT A COPY OF THE PUMP CURVE AND ELECTRICAL CONNECTION FORM WHEN COMPLETE
 INSTALL A 2X2' BOX AS SHOWN
 INSTALL THE PUMP AND CONTROLS EXACTLY AS SHOWN ON THE ATTACHED DIAGRAM
 INSTALL THE DRIVE AS SHOWN ALONG THE SIDE PROPERTY LINE
 LIMIT DRIVE WIDTH TO 9' ALONG THE DRAINFIELD AREA
 ANY DEVIATION VOIDS THIS PERMIT

SPECIAL INSTRUCTIONS/CONDITIONS
 THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC.
 ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.



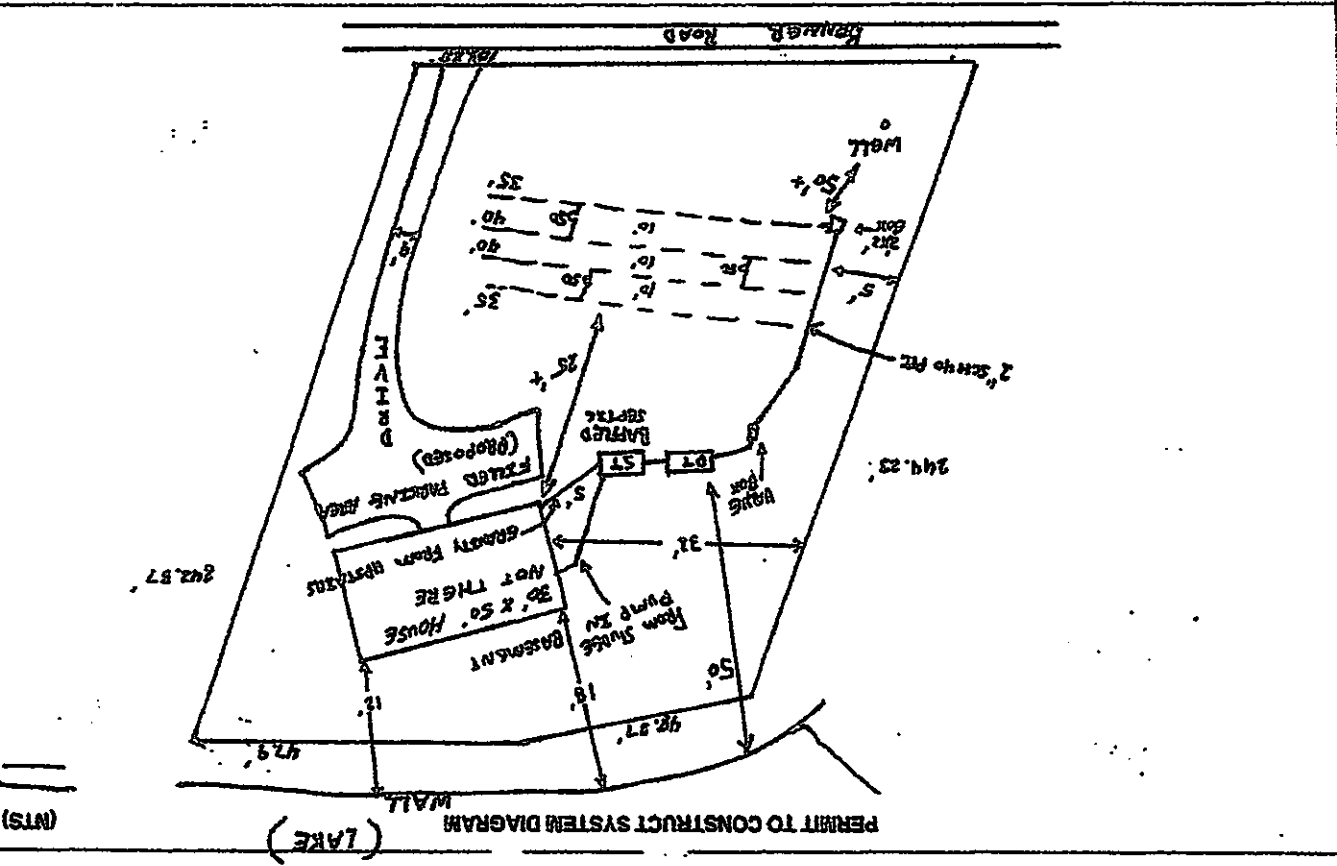
**PERMIT TO CONSTRUCT AND OPERATE
Onsite Wastewater System**

File Number: 2010050012
 County: Oconee

Issued/Revised By: *Boye S. B. III*

Date: *6/24/2010*

This Permit is Applicable Under the Administrative Procedures Act. This Permit will Expire and Become Null and Void Five (5) Years from the Issuance Date. There may be an Additional Fee for Changes in this Permit that Require a Site Reevaluation.



See Attached Page...

SPECIAL INSTRUCTIONS/CONDITIONS
THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

For ID - 4637

Name: JAMES SLOTTER Type Facility: HOUSE Address: 1598 CARILTON PARK DR OVIDO, FL 32765 Site: BONNER RD (149) MOUNTAIN REST, SC 29864 Block: Lot 4-5 Program Code: 360 System Code: 133 TM#: 082-04-01-0256 Water Supply: PRIVATE	Daily Flow (gpd): 360 Tank Sizes (gal): Septic Tank: 1000 Pump Chamber: 1000 Grease Trap:	LTAR: 40 Trenches: Length (ft): 150 Width (in): 36 Max. Depth (in): 66 Agg. Depth (in): 48"	Min Pump Capacity: 10 gpm at 7' to be determined ft. of Head
---	--	---	--

PERMIT TO CONSTRUCT AND OPERATE
 Onsite Wastewater System
 File No: 2010060012
 County: Oconee

Revised to James Slotter 7/20/10

VARIANCE REQUEST

FOR THE

NEW RESIDENTIAL SUBDIVISION ALONG

KEOWEE SCHOOL ROAD

LOCATED IN

OCONEE COUNTY, SOUTH CAROLINA

Prepared For:
LK Acquisitions, LLC
9821 Cogdill Road, Suite 1
Knoxville, Tennessee 37932

Prepared By:
Alliance Consulting Engineers, Inc.
124 Verdae Boulevard
Bonaventure II, Suite 505
Greenville, South Carolina 29607-3843

Project Number 15201-0037

MARCH 2016



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Exhibit C SCDOT’s Position on Alternative #412

1.0 Project Overview

1.1 Narrative

LK Acquisitions, LLC is proposing a new subdivision within Tax Map Number 149-00-03-038 in Oconee County, South Carolina. The approximately 149-Acre property is bounded by Crooked Creek Road (S-175) to the north, Lake Keowee to the east, and Keowee School Road (SC-188) to the west. Both Crooked Creek Road and Keowee School Road are South Carolina Department of Transportation (SCDOT) maintained roadways. Vickery Road is currently a sixteen (16) foot wide roadway with a prescriptive easement. It has been stated that Oconee County currently maintains from ditch line to ditch line. The current access to a majority of the property is provided by existing logging roads connected to Vickery Road and Crooked Creek Road.

LK Acquisitions, LLC and Alliance Consulting Engineers, Inc. have been working with the Oconee County Community Development Department and the Oconee County Roads and Bridges Department since December 2015 concerning the access into this new subdivision. In preparation for this project and after meeting with Oconee County Roads and Bridges and Administration, LK Acquisitions, LLC purchased a fifty (50) foot wide easement along Vickery Road to access their property. The first sketch plan showed the initial alternative to widen Vickery Road to the south to increase the overall roadway width and accessibility. The design intent was to maintain the existing traffic pattern and stormwater drainage onto Keowee School Road. The comment concerning the Vickery Road access came up once the Sketch Plat Stipulation Letter was issued on December 15, 2015. The comment stated that (1) deeded Right-of-Way from any/all affected property owners will need to be provided and (2) other options can be discussed in order to perform any necessary upgrade work. LK Acquisitions, LLC and Alliance Consulting Engineers, Inc. were told at that time that given the prescriptive easement conditions and that the new roadway would not be centered within the proposed right-of-way, no improvements could be completed without a full abandonment process of the roadway.

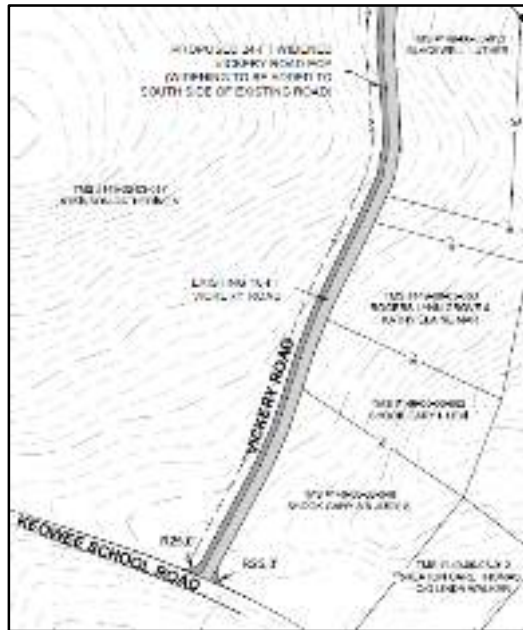
The following sections of this report will describe the alternatives considered, the specific details for this variance request, and special conditions.

1.2 Alternatives Considered

In efforts to investigate all feasible options to access the new subdivision, six (6) total alternatives were considered prior to requesting this variance.

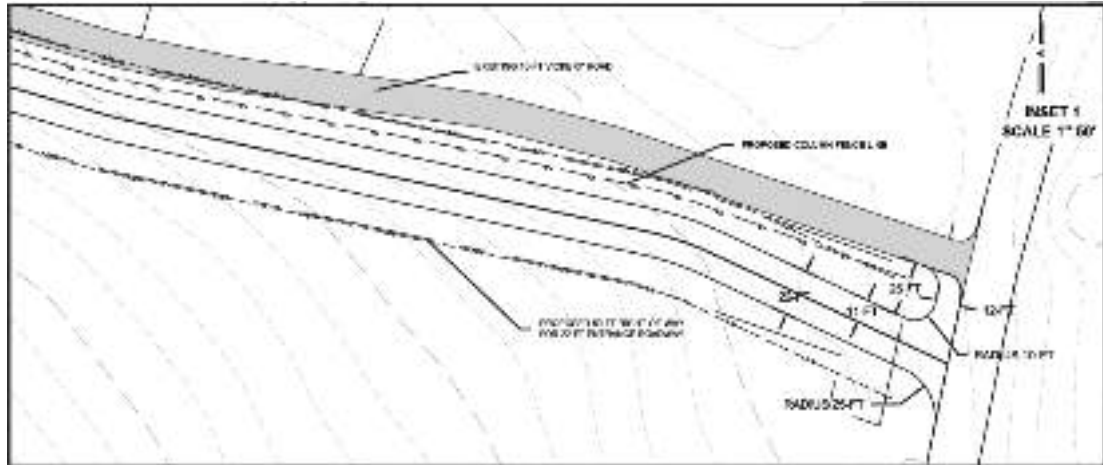
○ **Alternative 1 – Road Widening Option #1**

The first alternative considered for the main access into this property was to widen the existing, sixteen (16) linear-foot wide, Vickery Road to twenty-four (24) feet wide. This was the layout submitted for Sketch Plat approval. Eighty-three (83) lots were accessible from this entrance with this design. Although the owner owns half of the Vickery Road roadway proposed to be widened, this option was not approved given that the final roadway bed would not be centered within the right of way.

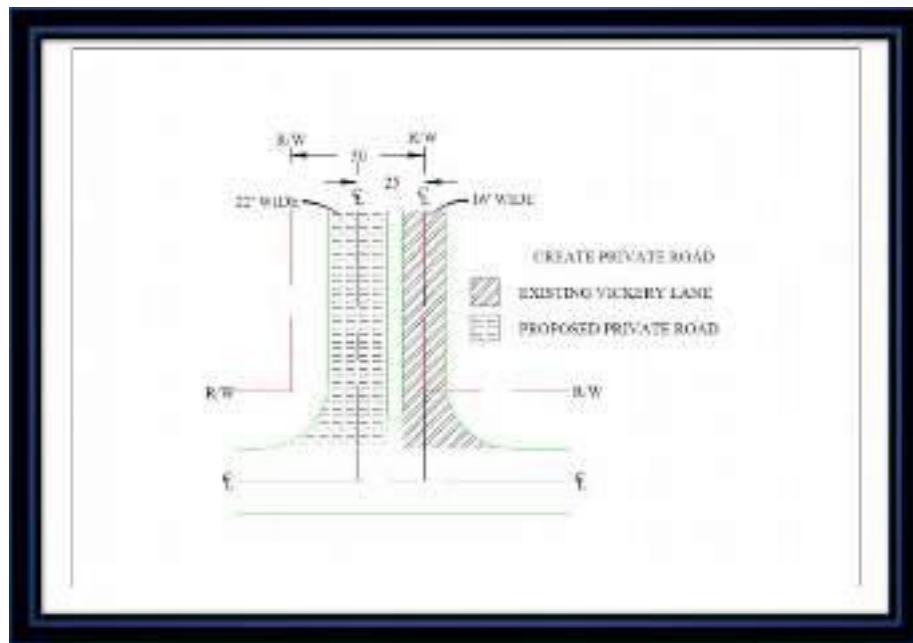


○ **Alternative 2 – Dual Entrance and Parallel Roadways**

The second alternative was developed after having several meetings between LK Acquisitions, LLC, Oconee County, and Alliance Consulting Engineers, Inc. This alternative was to provide a twenty-two (22) linear-foot wide, new roadway centered within LK Acquisitions, LLC’s fifty (50) linear-foot swath adjacent to Vickery Road. This alternative did not propose any work along the existing Vickery Road roadbed, however, grading activities would need to be done for stormwater conveyance and constructability. A dual entrance, as shown below, was considered in this design to provide separation of traffic into both entrances and to provide a pull-off area. In addition, the number of lots was reduced to be below the eighty (80) lot maximum accessible from a twenty-two (22) linear-foot wide roadbed per Article 6 of Chapter 32 of the Oconee County Code of Ordinances.



This alternative was proposed and supported by the Oconee County Roads and Bridges Department. This graphic below show the exhibit shown during the Oconee County Transportation Committee Meeting Presentation on March 8, 2016 as one of the options to be considered.



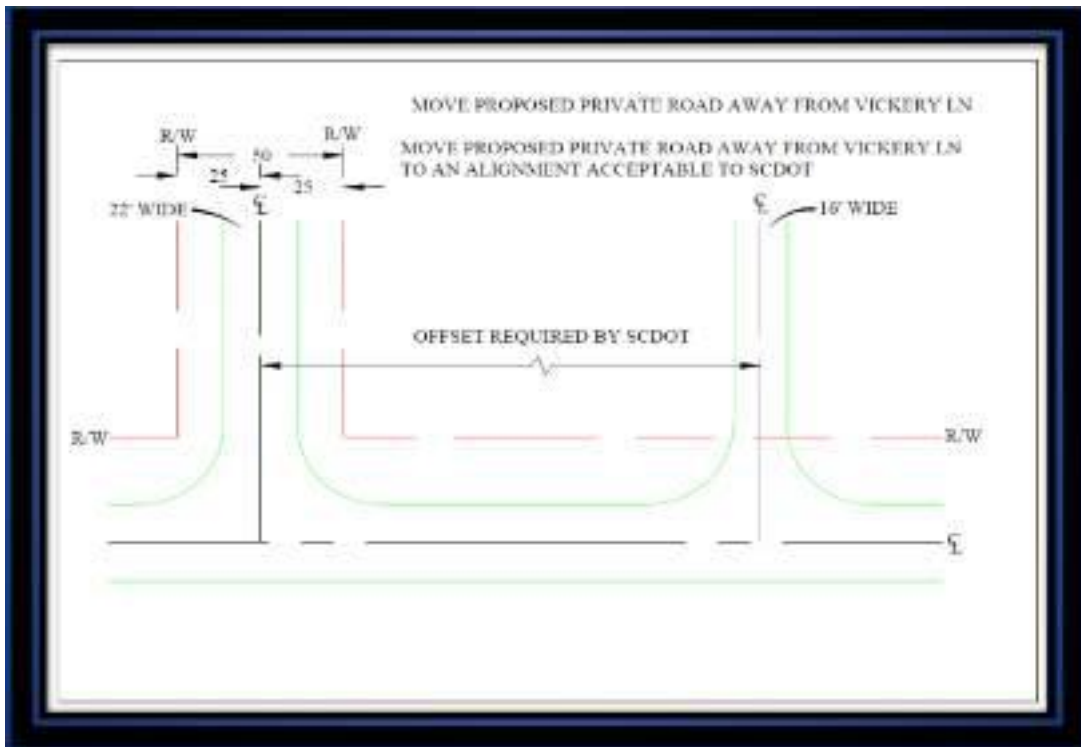
This design, however, was not approvable by SCDOT. A copy of this correspondence can be seen in Exhibit A of this report. Given that Keowee School Road is a SCDOT maintained roadway, all new driveway entrances and additional work within SCDOT’s right of way would need to be approved in their encroachment permit process. After meeting on February 22, 2016, Alliance Consulting Engineers, Inc. were notified that this proposed access “does not meet spacing criteria set forth in the ARMS manual and would create several conflict points and

confusion for the traveling public” and that no engineer at the SCDOT District 3 office would be willing to sign off on a permit to allow this design.

○ **Alternative 3 – Keowee School Road Entrance Shift**

A third alternative was to shift the new roadway entrance off of Keowee School Road further south. Given that this Keowee School Road is a forty-five (45) mile per hour road with average annual daily traffic (AADT) greater than 2,000, the driveway spacing requirement is 325 linear-feet. LK Acquisitions, LLC spoke with the representatives at the SCDOT District 3 office to determine the spacing dimensions that they would consider to obtain an Access Waiver to the encroachment permit. The SCDOT representative stated that they would entertain 225-250 linear-feet minimum spacing for this waiver. LK Acquisitions, LLC asked the adjacent property owner to the south (Catherine Atkinson) if they would be interested in selling a section of their property in this location. The property owner would not entertain this option.

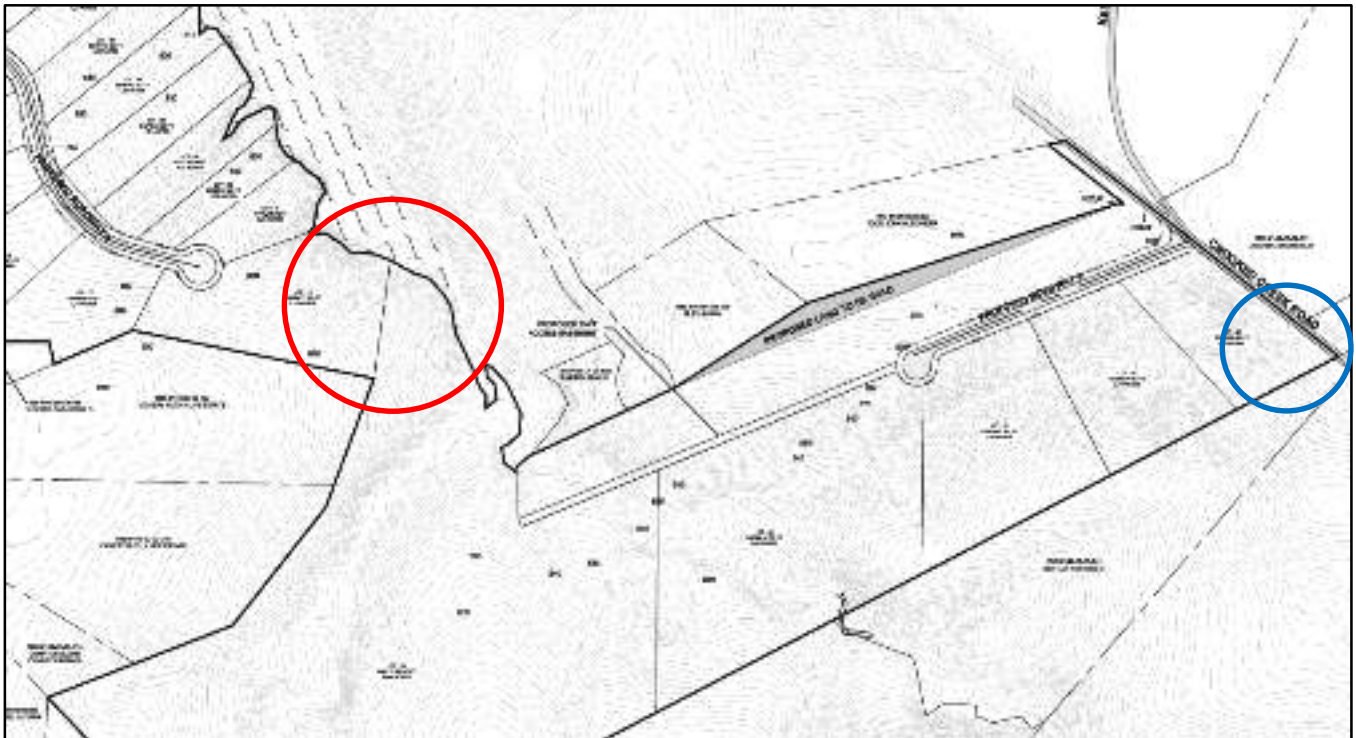
The image below was provided from the Oconee County Transportation Committee Meeting Presentation on March 8, 2016 to further illustrate Alternative 3.



○ **Alternative 4 – Crooked Creek Access**

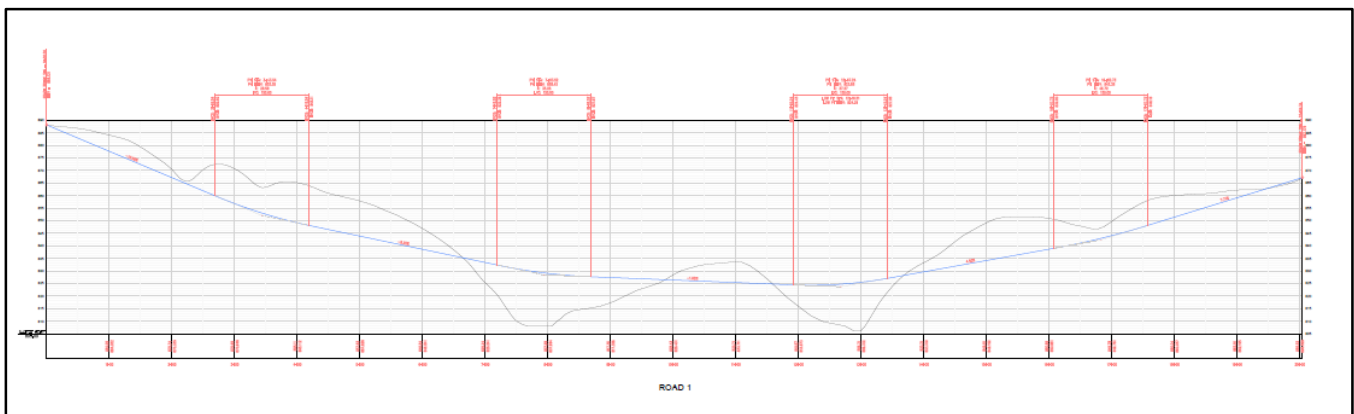
The fourth alternative was to make the main entrance into the subdivision from Crooked Creek Road. In the initial Sketch Plat submittal, an eight (8) linear-foot wide gravel driveway was proposed to connect Proposed Roadway 5 and Proposed Roadway 6. Proposed Roadway 5 is the northernmost cul-de-sac accessible from Vickery Road and Proposed Roadway 6 is the entrance from Crooked Creek Road. After much consideration of observing access and safety in this area, the owner decided to eliminate several lots in this area to create one (1), approximately twenty-five (25) acre tract with a twenty (20) linear-foot access easement from Proposed Roadway 6.

There are three (3) major challenges with using this area as the main point of access: existing topography, wetland areas, and the property line geometry close to the edge of the lake. The roadway would also need to be increased to a twenty-four (24) linear-foot wide roadway with a sixty-six (66) linear-foot wide right of way in order to access the over eighty (80) lots within this proposed subdivision.



In order to allow for additional room to turn into the area where the property line pinches close to the lake (circled in red above), the Oconee County Roads and Bridges Department recommended analyzing if the Proposed Roadway 6 entrance from Crooked Creek Road could be shifted as far north as possible within the property (circled in blue above). Alliance Consulting Engineers, Inc. spoke with the SCDOT District 3 office to see if they had any opposition to this alternative. Their main comment was to ensure that sight distance requirements were met. Based on the County LiDAR information, it was determined that the sight distance requirements could not be achieved at this location. Correspondence from the SCDOT District 3 office regarding this requirement can be seen in Exhibit C.

Alliance Consulting Engineers, Inc. analyzed what would be necessary to construct a roadway between Proposed Roadway 6 and Proposed Roadway 5 should the current proposed location of Proposed Roadway 6 remain as shown in the graphic above. Important design standards taken into consideration per Chapter 26 of the Oconee County Code of Ordinances include a minimum of 150 linear-feet of tangent distance between reverse curves, a minimum of 150 linear-feet for roadway radii, and rates of vertical curvature no less than 26 for a proposed speed limit of 25 miles per hour. The proposed alignment would require two (2) major stream crossings approximately twenty (20) to thirty (30) linear-feet in height. Both crossings may require spanning approximately 100 linear-feet of wetland area each. This would need to be done with (1) expensive bridge structures or (2) wetland mitigation costs. Both options are not viable nor economical options for this eighty (80) lot subdivision. In addition, the height of the proposed roadway could greatly restrict the accessibility to the surrounding lots and could cause safety concerns given the close proximity to the lake. Per Oconee County Standard Section 26-8(e), “the paramount issue for all variance requests shall be the reasonable safety of the road under the proposed circumstances.” Based on the topography and wetlands concerns presented with this Alternative, this option does not present itself as a safe alternative for access into the new subdivision.



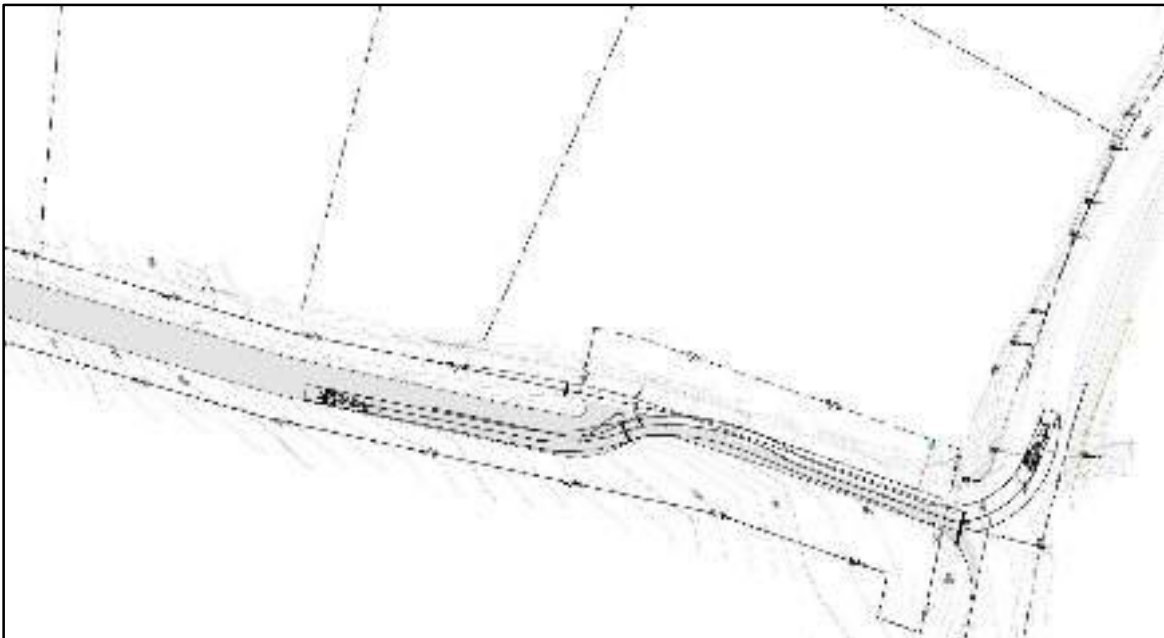
○ **Alternative 5 – Proposed Alternative for Variance Request**

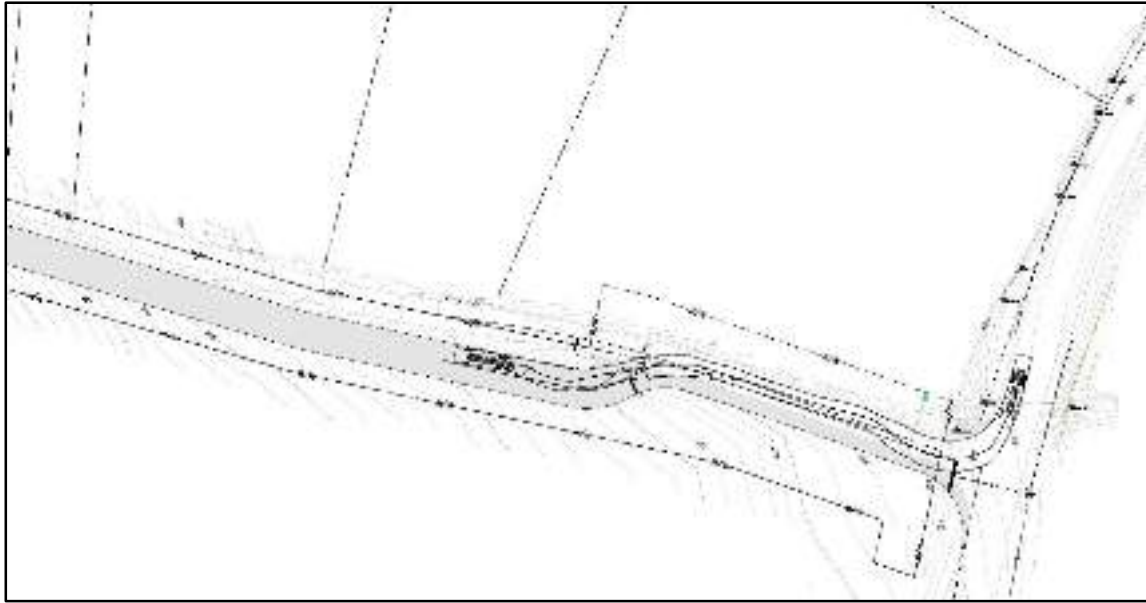
The fifth proposed alternative was to connect the new proposed roadway into Vickery Road. This proposed layout can be seen in Exhibit B of this report. Based on discussions with the Oconee County Roads and Bridges Department, the important factors that were to be considered were (1) safety, (2) applying for the appropriate variances to the Code of Ordinances, and (3) obtaining the necessary right of way for the Gary Shook property (TMS # 149-00-03-048). The details regarding items (2) and (3) are included in Sections 2 and 3 of this report. This alternative was presented as an acceptable option by Oconee County as long as certain conditions would be met.

This proposed option involved an angled intersection connecting with Vickery Road. The Oconee County Roads and Bridges Department requested that there be a minimum of seventy-five (75) linear-feet between the existing SCDOT right of way along Keowee School Road and the new roadway. This distance will be provided as shown in Exhibit B.

Another concern of the Oconee County Roads and Bridges Department was safety. Alliance Consulting Engineers, Inc. and LK Acquisitions, LLC are proposing three (3) new stop bars and two (2) new stop signs with twenty-four (24) hour solar flashing beacons. These efforts will help safely route traffic traveling towards Keowee School Road. The proposed stop bar on Vickery Road at the proposed intersection will help yield the existing eight (8) property owners at this new intersection.

This alternative also included improving the existing Vickery Road between the new intersection and the existing entrance from Keowee School Road. The improvements are to widen the existing roadway eight (8) linear-feet to the south. This additional width achieves two (2) things: (1) roadway width compliance with Oconee County Codes of Ordinances and (2) additional space for emergency vehicle access. Per Chapter 32, Article 6, a collector roadway width (twenty-four (24) linear-foot width) is required should the average daily traffic (ADT) exceed 800. There are seventy-eight (78) proposed lots accessible from this driveway within the new subdivision along with the nine (9) existing property owners that would use this entrance. At a rate of ten (10) ADT per lot, this would place this section of roadway in the collector roadway category. In addition, this additional width allows for improved emergency vehicle access onto Vickery Road as shown below.





○ **Alternative 6 – Road Widening Option #2**

The sixth alternative was to construct a new roadway within LK Acquisitions, LLC’s property south of the existing centerline of Vickery Road. This would involve the placement of a twenty-two (22) linear-foot wide roadway consisting of a new road base and pavement constructed to Oconee County’s standards. The end product would be a new roadway within LK Acquisitions, LLC’s property (the fifty (50) linear-foot swath adjacent to Vickery Road). The remaining eight (8) linear-feet not within LK Acquisitions, LLC’s property would be delineated with new striping and be designated for pedestrian use. A graphic has been included with this option on the following page.

The Oconee County Roads and Bridges Department did not support this option as the proposed roadway centerline would not be the center of the new right of way.

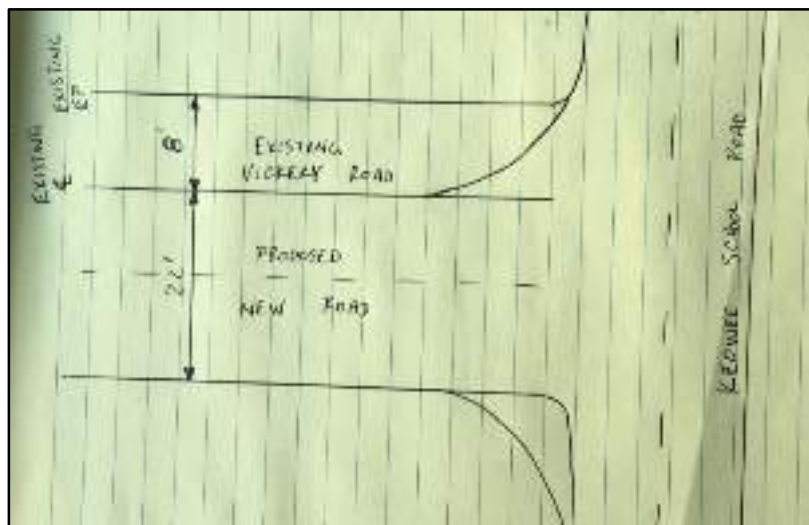


Exhibit A SCDOT's Position on Alternative #2

Christine G. Hunter

From: Holden, Michael C <HoldenMC@scdot.org>
Sent: Friday, February 26, 2016 8:58 AM
To: Christine G. Hunter
Subject: RE: New Subdivision in Oconee County

Christine,

I discussed this with Eric Dillon again yesterday to clarify our position on this. SCDOT will not allow a parallel access that close to the existing Vickery Rd. The access does not meet spacing criteria set forth in the ARMS manual and would create several conflict points and confusion for the traveling public. It's really bad design and there is no engineer here that would sign off on a permit to allow this.

Thank You,

Michael C. Holden, PE

SCDOT District Permit Engineer

Office:(864)239-6036

Mobile:(864)979-4168

From: Christine G. Hunter [mailto:CHunter@alliancece.com]
Sent: Wednesday, February 24, 2016 2:52 PM
To: Holden, Michael C
Cc: Daniel A. Esteban; Dillon, Eric C
Subject: RE: New Subdivision in Oconee County

Hey Michael,

Just wanted to follow up on this request. Do you all think you can send us an email about this? Let us know when you get a chance.

Sincerely,

Christy G. Hunter, EIT, LEED Green Associate
Engineering Associate
Alliance Consulting Engineers, Inc.
124 Verdae Boulevard, Suite 505
Greenville, SC 29607-3843
Tel: (864) 284-1740
Fax: (864) 284-1741
Cell: (931) 374-8869
E-Mail: chunter@alliancece.com
Web: www.allianceCE.com
Bluffton, SC | Charleston, SC | Charlotte, NC | Columbia, SC | Greenville, SC



From: Christine G. Hunter
Sent: Tuesday, February 23, 2016 4:09 PM
To: 'Holden, Michael C' <HoldenMC@scdot.org>
Cc: Daniel A. Esteban <DEsteban@alliancece.com>; Eric Dillon (dillonec@scdot.org) <dillonec@scdot.org>
Subject: RE: New Subdivision in Oconee County

Good afternoon Mike,

Hope you are doing well. Our client has asked if you all could provide your position on this design in writing. They essentially need an explanation of how/why Oconee County's plan is not approvable by SCDOT. The owner rep needs this for their internal discussions. We appreciate your help with this.

Sincerely,

Christy G. Hunter, EIT, LEED Green Associate
 Engineering Associate
 Alliance Consulting Engineers, Inc.
 124 Verdae Boulevard, Suite 505
 Greenville, SC 29607-3843
 Tel: (864) 284-1740
 Fax: (864) 284-1741
 Cell: (931) 374-8869
 E-Mail: chunter@alliancece.com
 Web: www.allianceCE.com
 Bluffton, SC | Charleston, SC | Charlotte, NC | Columbia, SC | Greenville, SC



From: Holden, Michael C [<mailto:HoldenMC@scdot.org>]
Sent: Friday, February 19, 2016 12:07 PM

To: Christine G. Hunter <CHunter@alliancece.com>

Subject: RE: New Subdivision in Oconee County

That's fine.

Thank You,

Michael C. Holden, PE

SCDOT District Permit Engineer

Office:(864)239-6036

Mobile:(864)979-4168

From: Christine G. Hunter [<mailto:CHunter@alliancece.com>]

Sent: Friday, February 19, 2016 12:00 PM

To: Holden, Michael C

Cc: Cisson, Jason S.; Daniel A. Esteban

Subject: RE: New Subdivision in Oconee County

Thanks Michael. Monday afternoon would work great for our schedules. Could we do around 1:30pm?

Christy G. Hunter, EIT, LEED Green Associate

Engineering Associate

Alliance Consulting Engineers, Inc.

124 Verdae Boulevard, Suite 505

Greenville, SC 29607-3843

Tel: (864) 284-1740

Fax: (864) 284-1741

Cell: (931) 374-8869

E-Mail: chunter@alliancece.com

Web: www.allianceCE.com

Bluffton, SC | Charleston, SC | Charlotte, NC | Columbia, SC | Greenville, SC



2015



2013 2014 2015

ENRSoutheast



2014 2015

From: Holden, Michael C [<mailto:HoldenMC@scdot.org>]

Sent: Friday, February 19, 2016 11:51 AM

To: Christine G. Hunter <CHunter@alliancece.com>

Cc: Cisson, Jason S. <CissonJS@scdot.org>; Daniel A. Esteban <DEsteban@alliancece.com>

Subject: RE: New Subdivision in Oconee County

We have some availability next week either Monday afternoon or Tuesday afternoon.

Thank You,

Michael C. Holden, PE

SCDOT District Permit Engineer

Office:(864)239-6036

Mobile:(864)979-4168

From: Christine G. Hunter [<mailto:CHunter@alliancece.com>]

Sent: Thursday, February 18, 2016 12:38 PM

To: Holden, Michael C

Cc: Cisson, Jason S.; Daniel A. Esteban

Subject: RE: New Subdivision in Oconee County

We would be happy to meet you all anytime tomorrow to explain this project and how this has developed to what you see on the layouts provided. Please let us know if there is an available timeslot that we could meet you all at your offices.

Sincerely,

Christy G. Hunter, EIT, LEED Green Associate
Engineering Associate

Alliance Consulting Engineers, Inc.

124 Verdae Boulevard, Suite 505

Greenville, SC 29607-3843

Tel: (864) 284-1740

Fax: (864) 284-1741

Cell: (931) 374-8869

E-Mail: chunter@alliancece.com

Web: www.allianceCE.com

Bluffton, SC | Charleston, SC | Charlotte, NC | Columbia, SC | Greenville, SC



2015



2013 2014 2015



2014 2015

From: Christine G. Hunter

Sent: Thursday, February 18, 2016 8:18 AM

To: 'Holden, Michael C' <HoldenMC@scdot.org>

Cc: Cisson, Jason S. <CissonJS@scdot.org>; Daniel A. Esteban <DEsteban@alliancece.com>

Subject: RE: New Subdivision in Oconee County

Thanks Michael. We appreciate the quick response. Would you be willing to meet tomorrow to discuss this? Please note that this design was based on the requirements from Oconee County.

Sincerely,

Christy G. Hunter, EIT, LEED Green Associate

Engineering Associate
Alliance Consulting Engineers, Inc.
124 Verdae Boulevard, Suite 505
Greenville, SC 29607-3843
Tel: (864) 284-1740
Fax: (864) 284-1741
Cell: (931) 374-8869
E-Mail: chunter@alliancece.com
Web: www.allianceCE.com
Bluffton, SC | Charleston, SC | Charlotte, NC | Columbia, SC | Greenville, SC



2015



2013 2014 2015



2014 2015

From: Holden, Michael C [<mailto:HoldenMC@scdot.org>]
Sent: Thursday, February 18, 2016 8:05 AM
To: Christine G. Hunter <CHunter@alliancece.com>
Cc: Cisson, Jason S. <CissonJS@scdot.org>; Daniel A. Esteban <DEsteban@alliancece.com>
Subject: Re: New Subdivision in Oconee County

Our initial answer is no, we can't allow this. Obvious spacing issues and if I recall there is a road coming in at a bad skew across the street that u don't show. If u want to meet and talk about it we can.

Mike H

Sent from my iPhone

On Feb 12, 2016, at 4:01 PM, Christine G. Hunter <CHunter@alliancece.com> wrote:

Good afternoon Michael and Jason,

Hope that you both are doing well. We are working on residential subdivision project along Keowee School Road in Oconee County. We initially reached out to Barbara Dean and she asked that we reach out to you all instead. We have attached our Sketch Plat of the subdivision and a Google Earth pin for your reference.

We had a meeting with Mack Kelly along with several other individuals with Oconee County yesterday afternoon. In order to satisfy Oconee County's Road Department, they are only allowing us to access our client's property as shown on the attached sketch plat. We can only access the property via a 50' strip of property that meets with Keowee School Road. The County is not allowing us to touch the existing Vickery Road bed as it is a prescribed easement and there is no existing right of way along this road. A zoomed in view of the proposed entrance is shown on the attached PDF as well. Approximately 78-lots will be accessed off of this entrance from Keowee School Road.

We will be submitting a formal encroachment permit for this project in the near future, however, we wanted to present this to you all in advance as we are still in the early stages of design. Please let us know your thoughts on this when you get a chance.

Sincerely,

Christy G. Hunter, EIT, LEED Green Associate
Engineering Associate
Alliance Consulting Engineers, Inc.
124 Verdae Boulevard, Suite 505
Greenville, SC 29607-3843
Tel: (864) 284-1740
Fax: (864) 284-1741
Cell: (931) 374-8869
E-Mail: chunter@allianceCE.com
Web: www.allianceCE.com
Bluffton,SC | Charleston,SC | Charlotte,NC | Columbia,SC | Greenville,SC

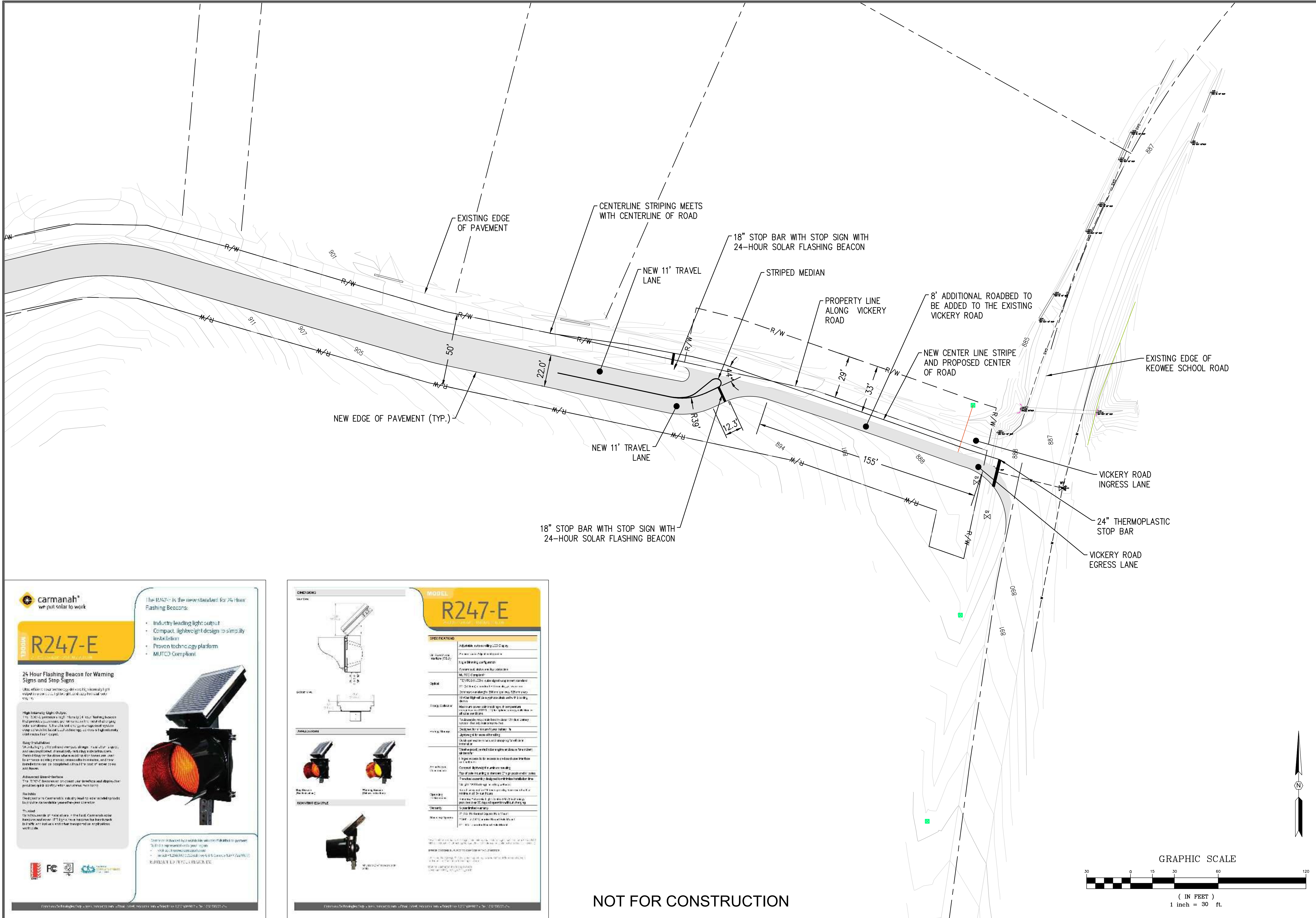


<Overall Sketch Plan-sketch plan.pdf>

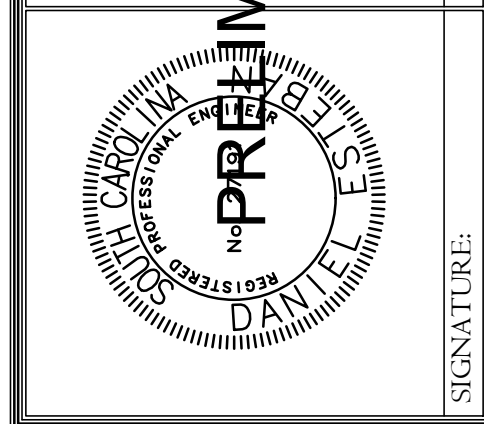
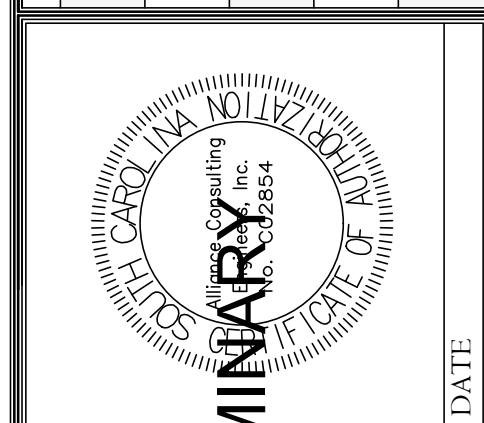
<15201-0037.kmz>

Exhibit B Alternative #5

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APPROVALS	
ENGINEER	DAE
DESIGNER	ISW
TECHNICIAN	TFD
CHECKED BY	DAE
APPROVED	DAE



PRELIMINARY

ALLIANCE CONSULTING ENGINEERS

Alliance Consulting Engineers, Inc.
 1000 Highway 101, Suite 100
 Post Office Box 8147, Oconee, South Carolina 29834
 Phone (803) 779-2076 Fax (803) 779-2070

EXHIBIT B

SHEET

ENGINEERING SERVICES FOR
 THE VICKERY SUBDIVISION
 LOCATED ALONG CROOKED
 GREEK ROAD
 OCONEE COUNTY,
 SOUTH CAROLINA

FILE NAME:	15201-0037 BASE.dwg
PROJECT NO.	15201-0037
DWG NO.	01.970-D17

carmanah
we put solar to work

R247-E

24 Hour Flashing Beacon for Warning Signs and Stop Signs

- Industry leading light output
- Compact, lightweight design to simplify installation
- Proven technology platform
- MUTCO Compliant

The R247-E is the new standard for 24 Hour Flashing Beacons.

High Intensity Light Output: The R247-E provides a 120° field of view, 24 hour flashing beacon that provides excellent visibility in all weather conditions. The ultra-bright LED light output provides superior visibility in all weather conditions.

Easy Installation: The R247-E is designed for easy installation. The compact design allows for easy installation in tight spaces. The beacon is designed for easy installation in tight spaces.

Advanced Beam-Reflector: The R247-E features a beam-reflector that provides superior visibility in all weather conditions.

Robust: The R247-E is designed for long life and reliability. The beacon is designed for long life and reliability.

Compliant: The R247-E is designed to meet all MUTCO requirements.

MODEL R247-E

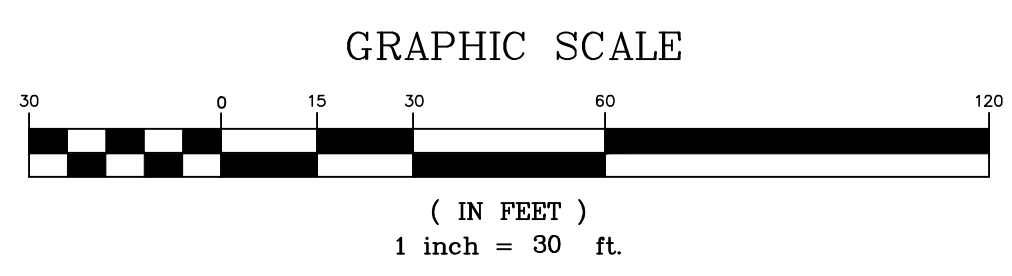
CONCLUSIONS

SPECIFICATIONS

Adjustable reflector	120° beam
24 hour flashing beacon	120° beam
Compact design	120° beam
Proven technology platform	120° beam
MUTCO Compliant	120° beam

MONITORING EQUIPMENT

NOT FOR CONSTRUCTION



March 22, 2016 - 7:52:48 AM S:\Projects\15201-0037-00-Lot-Vickery-Subdiv-Crooked-Creek-Rd-Oconee-County\Working\15201-0037-Vickery-Exhibit-B.dwg

Exhibit C SCDOT's Position on Alternative #4

Christine G. Hunter

From: Holden, Michael C <HoldenMC@scdot.org>
Sent: Friday, March 18, 2016 1:22 PM
To: Christine G. Hunter; Nelson, Craig D
Cc: Daniel A. Esteban
Subject: RE: New Subdivision in Oconee County

Christine,

Not sure if anyone has responded to this yet, but you are correct. We would not allow a commercial drive with 100 ft of sight distance.

Thank You,

Michael C. Holden, PE

SCDOT District Permit Engineer

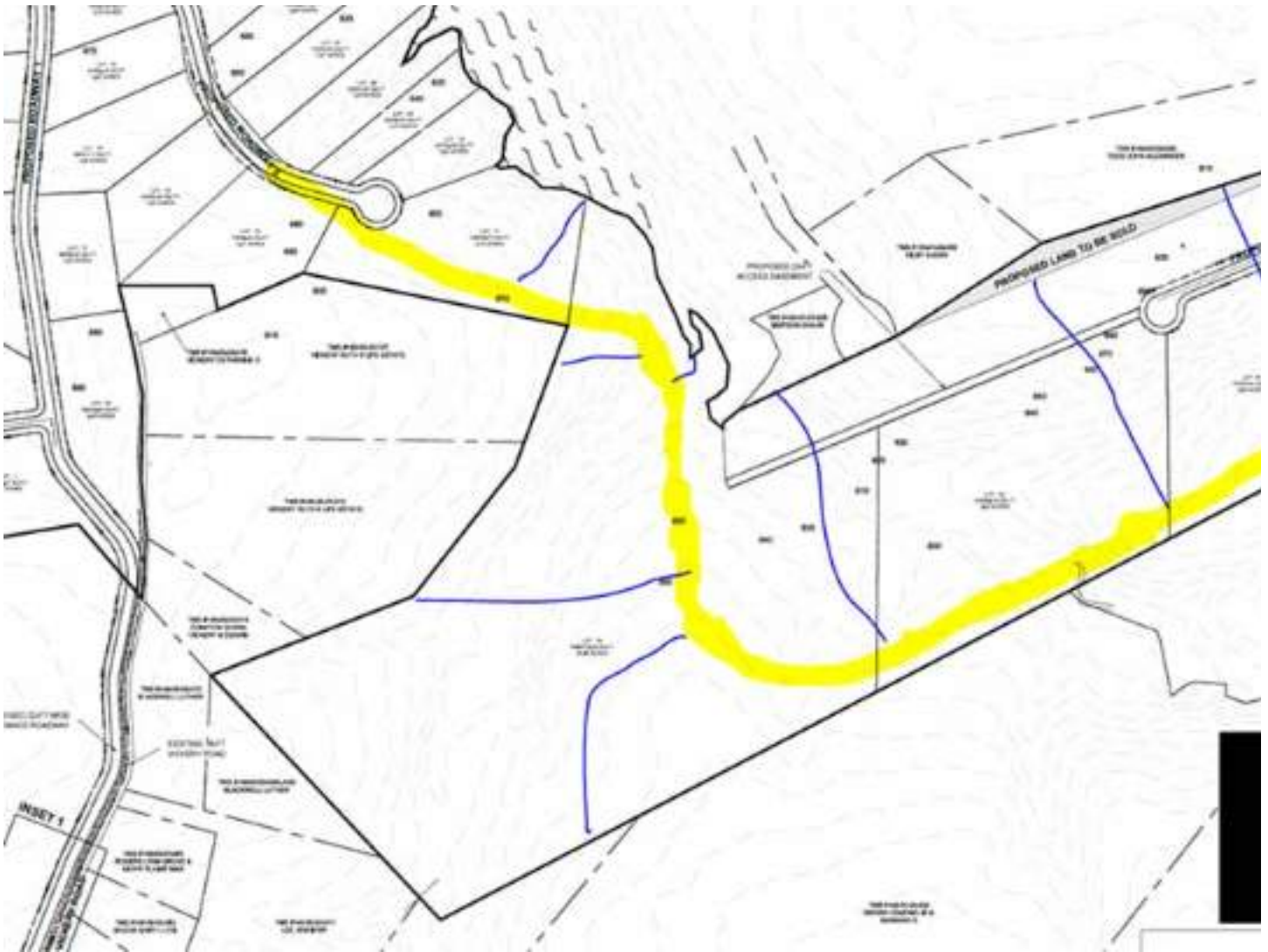
Office:(864)239-6036

Mobile:(864)979-4168

From: Christine G. Hunter [mailto:CHunter@alliancece.com]
Sent: Thursday, March 10, 2016 4:24 PM
To: Nelson, Craig D
Cc: Holden, Michael C; Daniel A. Esteban
Subject: RE: New Subdivision in Oconee County
Importance: High

Good afternoon Craig,

Thank you for your time this morning. We had a conference call this morning with the developer and the County to see what directions we can go with obtaining variances for this project. One of the questions that was asked if our main point of entrance could be off of Crooked Creek Road. In order to make this a possibility, shifting the entrance further north along Crooked Creek Road would need to be done to make the sharp turns within the property to connect with the cul-de-sac next to the lake (see the sketch below). The spacing requirement per the ARMS manual is 325 LF for 45 mph. We may be around 275-300LF from Kelly Mills. We understand a waiver could be obtained for that, although it is not a guarantee. It is our understanding from our conversation this morning that the important item to check would be sight distance. Based on the current location on the plan (aligned across from Kelly Mills) we are meeting the sight distance (430LF). If the roadway was shifted close to the yellow alignment shown below, we would not have even 100 LF of sight distance looking right from the proposed driveway along Crooked Creek. Can you all please confirm that due to these circumstances, SCDOT would not approve the driveway location on your Right of Way? We would appreciate a formal response as soon as you can.



Sincerely,

Christy G. Hunter, EIT, LEED Green Associate
Engineering Associate
Alliance Consulting Engineers, Inc.
124 Verdae Boulevard, Suite 505
Greenville, SC 29607-3843
Tel: (864) 284-1740
Fax: (864) 284-1741
Cell: (931) 374-8869
E-Mail: chunter@alliancece.com
Web: www.allianceCE.com
Bluffton, SC | Charleston, SC | Charlotte, NC | Columbia, SC | Greenville, SC

2.0 Variance Request

A public meeting was held on March 8, 2016 with the Transportation Committee and the Oconee County Council to discuss the access of this project and what could be acceptable if a variance is obtained successfully. Alliance Consulting Engineers, Inc., LK Acquisitions, LLC, and Oconee County representatives had a conference call to discuss the proposed Alternative #5 and what would be necessary for a variance. Alliance Consulting Engineers, Inc. and LK Acquisitions, LLC were provided a rough sketch of the angled intersection into Vickery Road. Based on this discussion, the following items are requested with this variance: (1) driveway radius, (2) distance between radius and intersection, (3) intersection angle, (4) shoulder width, (5) roadway centerline shift, and (6) roadway taper. Each are outlined in the following sections below.

2.1 Driveway Radius

Requirement: Centerline radius minimum of 150 linear-feet per Section 26-3 (e) (3).

Provided: Centerline radius minimum of 39 linear-feet. In order to accommodate the private road to run parallel to Vieckery Road, the driveway radius cannot be 150 linear-feet.

2.2 Distance Between Radius and Intersection

Requirement: Minimum 100 linear-feet from curve to any intersection road right-of-way per Section 26-3 (e) (3).

Provided: Tangent distance between the proposed driveway radius and the intersection with Vickery Road is approximately twelve (12) linear-feet. In order to accommodate the private road to run parallel to Vickery Road, the tangent distance cannot meet 100 linear-feet.

2.3 Intersection Angle

Requirement: Angle of intersection is to be no less than 75 degrees per Section 26-3 (e) (5).

Provided: Angle of proposed intersection is 44 degrees. In order to accommodate the private road to run parallel to Vickery Road, the connection cannot be 75 degrees.

2.4 Shoulder Width

Requirement: Minimum six (6) linear-feet shoulder width along major local roadways per Section 26-3 (e) (1)

Provided: Given the limited space between the proposed roadway and the existing Vickery Road, there is not sufficient distance for a six (6) linear-foot shoulder. This area will be utilized for the routing of stormwater between the two (2) roadways in a consistent drainage path to the current conditions.

2.5 Roadway Centerline Shift

Requirement: No reference has been found within the current Oconee County Code of Ordinances. The Oconee County Roads and Bridges Department have stated that the centerline of any proposed roadway should be within the center of the new right of way.

Provisions: This is contingent upon LK Acquisitions, LLC obtaining the thirty-three (33) linear-feet of right of way width on the Shook Property. The byproduct would be obtaining the shifting of the centerline so that it is along the middle of the right of way.

2.6 Roadway Taper

Requirement: A minimum of 100:1 taper section shall be used to transition from one roadway width to another per Section 26-3 (a)

Provided: Based on the direction provided by Oconee County to make the connection near the Shook property, there is not enough distance to obtain the 400 linear-feet needed for the taper.

3.0 Conditions

It is Alliance Consulting Engineers, Inc.'s understanding that the approval of this variance is dependent upon satisfying two (2) special conditions.

3.1 Property Purchase from Gary S. and Judy S. Shook

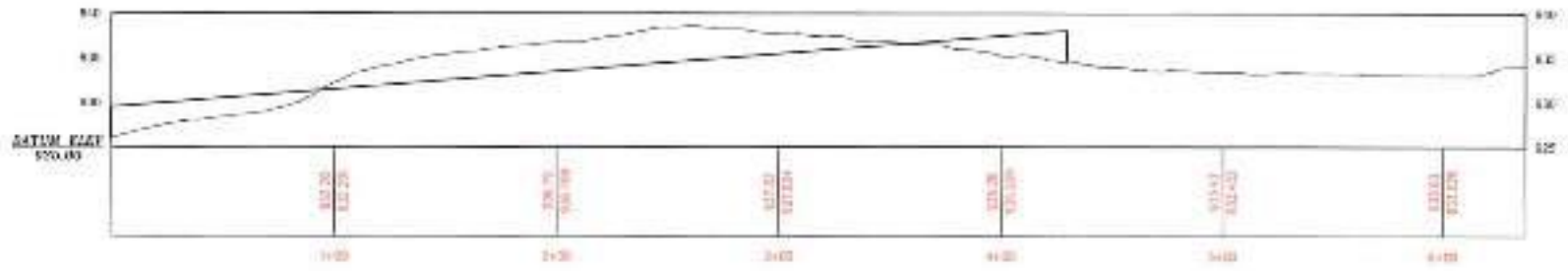
In order to be able to improve the existing Vickery Road, it is Alliance Consulting Engineers, Inc.'s and LK Acquisitions, LLC's understanding that thirty-three (33) linear-feet of right of way will need to be obtained from the Shook property. This would be offset from the proposed centerline of the new widened Vickery Road entrance. This would be from the intersection with Keowee School Road through the new proposed driveway intersection

3.2 Signalization

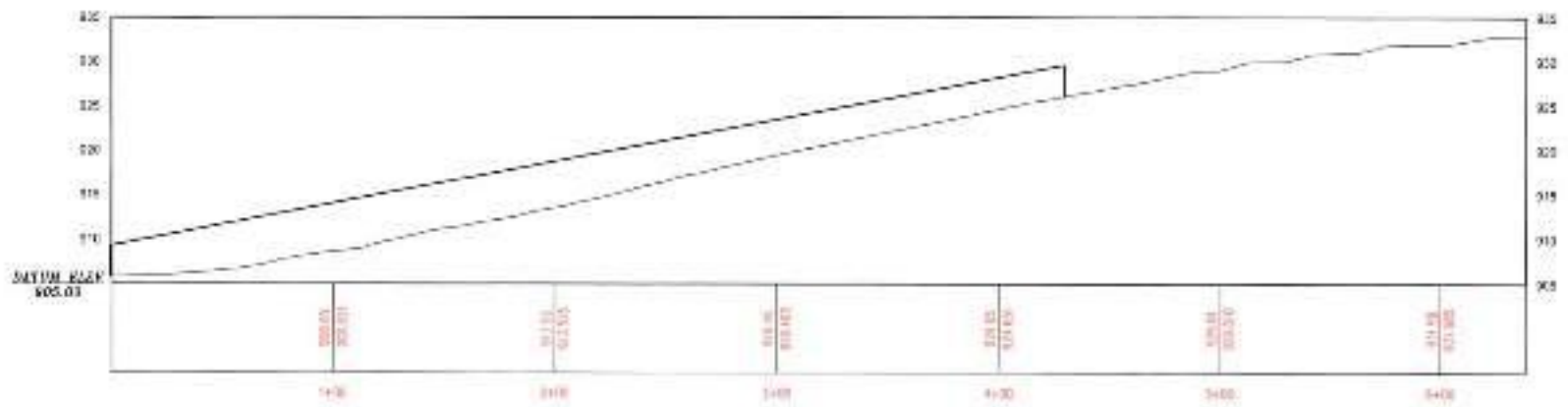
As shown on Exhibit B, three (3) stop bars and two (2) stop signs with 24-hour solar flashing beacons will be provided. A detail for the proposed 24-hour solar flashing beacon is also shown on the Exhibit. Not only does this provide a controlled traffic movement, but also the placement of the stop bars and signs allows for the ease of the driver's view leaving the proposed subdivision. Drivers at both stopped areas at the proposed intersection have a clear line of sight for one another. If sensed lights are desired by the County, LK Acquisitions is willing to accommodate for this proposed entrance.

4.0 Summary

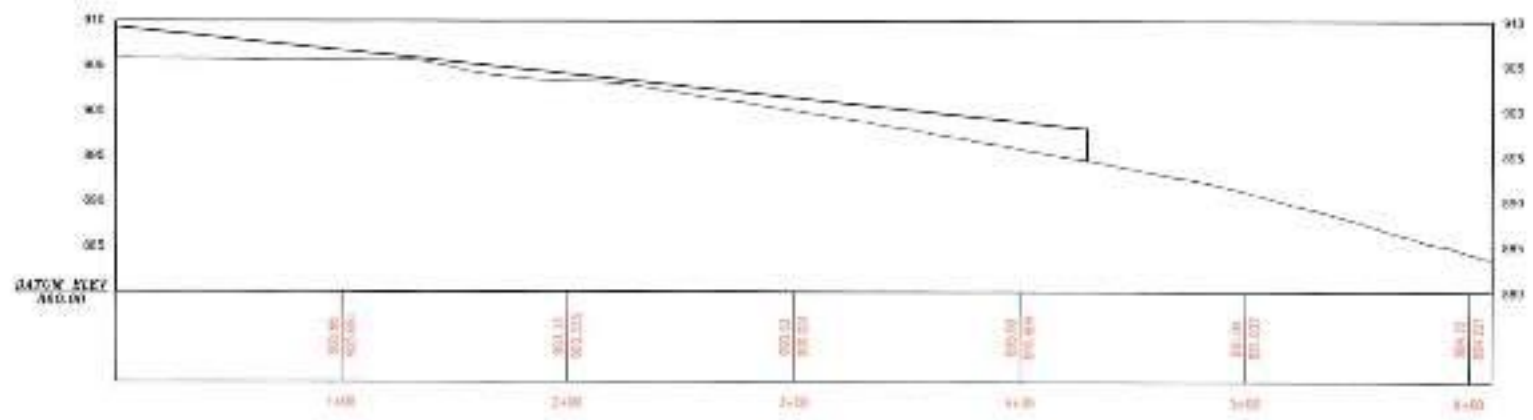
Per the Oconee County Transportation Committee Meeting Presentation on March 8, 2016, it was stated that it was important that the road be upgraded in accordance with Oconee County Standard Section 26-5(c)(4). This section reads that "road improvement projects to match existing county standards, to the extent practicable." Given the time and efforts taken to investigate multiple options presented by both the design team and Oconee County, Alternative #5 appears to provide the most practical option for all parties. All proposed Vickery Road improvements as shown on Exhibit B will be constructed in accordance with Section 26-3(f). This alternative provides safe access to current Vickery Road residents and the potential new subdivision through stopped traffic conditions and signalization. In addition, this option provides additional spacing within Vickery Road for emergency vehicle access.



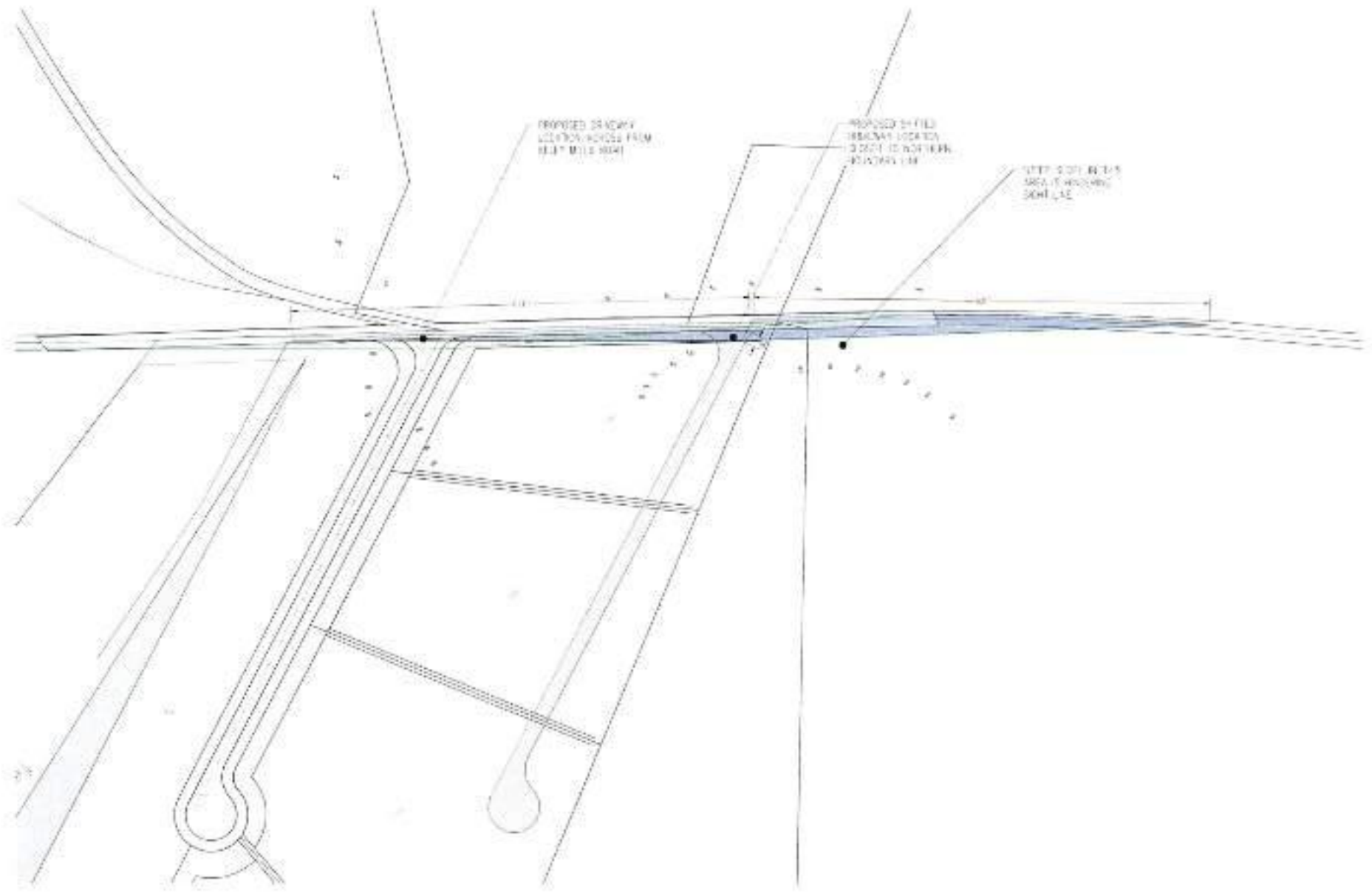
Crooked Creek - Looking Right SHIFT



Crooked Creek - Looking Right



Crooked Creek - Looking Left

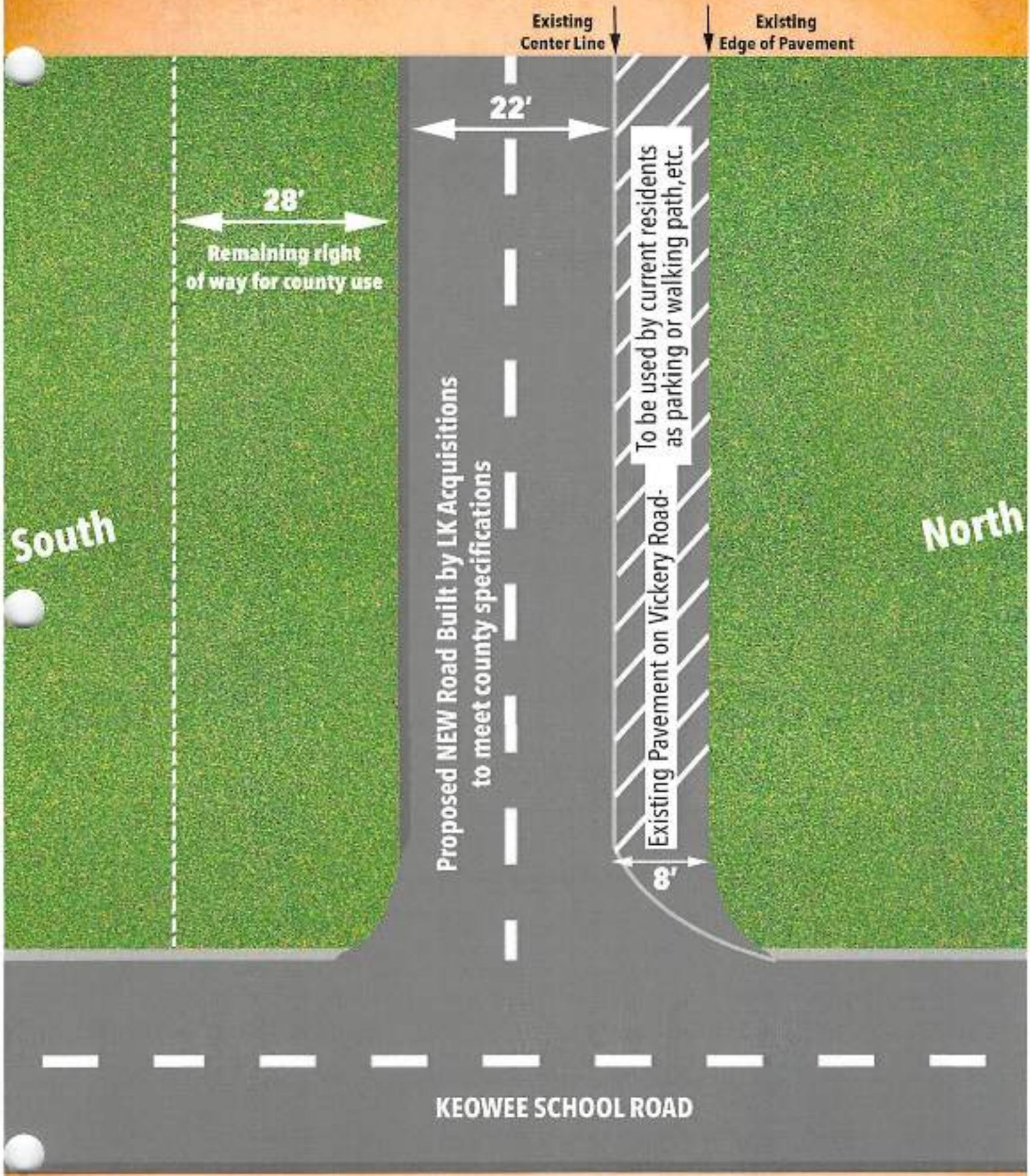


PROPOSED DRIVEWAY
UTILITY CROSSING FROM
HEAT MILE ROAD

PROPOSED SHIFED
UTILITY LOCATION
3 FEET TO NORTH
BOUNDARY LINE

UTILITY CROSSING
AREA IS HOLLOWING
SCHEDULE

Vickery Road Proposal



Staff Report of Findings

To: Board of Zoning Appeals
From: Mack Kelly
County Engineer
Date: March 28, 2016
Subject: Vickery Road /Timber Bay

Facts

1. On November 24, 2015, the applicant's engineer, Alliance Consulting Engineers, Inc., electronically submitted conceptual plans for Timber Bay in accordance with Oconee's Sketch Plan review procedures.
2. Sketch Plan approval letter, was released to applicant on December 16, 2015 with a number of items noted, should the project move forward to Preliminary Review.
3. Vickery Road could be upgraded, depending on the Traffic Impact Study (**not submitted**), by obtaining right-of-way on either side of the road and obtaining an encroachment permit from SCDOT. **Right-of-way along both sides of the road has not been obtained.**
4. The developer purchased 50 feet of right-of-way along the southern side of Vickery Road. The required right-of-way could be a minimum of 66 feet or more depending on the Traffic Impact Study (**not submitted**).
5. The developer could shift Vickery Road to the center of the purchased 50 feet right-of-way, if adequate, pending SCDOT encroachment permit approval and the judicial abandonment and closure of the northern 8 feet of pavement along Vickery Road (connecting existing driveways to newly aligned Vickery Road). **The Developer has not petitioned Oconee County to judicially closed and abandon the northern section of Vickery Road.**
6. The developer could run a parallel private road along Vickery Road and access Keowee School Road. SCDOT denied an encroachment permit to construct this access. The decision could be appealed. **An appeal has not been pursued from SCDOT.**




D. Mack Kelly, Jr.
PE, PLS, CFM
Director of Public Works
County Engineer

Public Works Complex
15022 Wells Highway
Seneca, SC 29678


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Fax: 864-886-1071

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mckelly@oconeesc.com





Oconee County
Public Works



D. Mack Kelly, Jr.
PE, PLS, CFM
Director of Public Works
County Engineer

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15022 Wells Highway
Seneca, SC 29678

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mkelly@oconeesc.com

7. The developer could provide a main access on Crooked Creek Road. The developer's engineer inaccurately indicates that limited site distance exists. Additionally claims are made that road would be expensive to construct; however, no alignment is shown. The developer's engineer explains cost associated with extending proposed Road 6. I walked about 500yards of the property line (northern boundary adjoins Bently and Brown) which is near a ridge line the profile provided didn't seem to match topography that I observed. Constructing the road along the northern property line would be cheaper than extending proposed road 6. **The alternate access has not been evaluated properly.**
8. The developer proposes to obtain variances to make an unsafe connection to Vickery Road and upgrade a section of Vickery Road. **An encroachment permit from SCDOT has not been obtained to widen and improve Vickery Road, as well as contributing a significant amount of stormwater runoff to the SCDOT's stormwater system. Right-of-way from Shook has not been obtained.**
9. The Engineer does not provide any of the required road construction plans. Of specific interest is the cross-section of Vickery Road and Private Road. If the purchased right-of-way section is shown and only roadside swales and shoulders are used (assuming a shared ditch, minimum depth, between Private Road and Vickery Road) the minimum required width is 52 feet. This exceeds the purchased right-of-way and does not account for sloping the road bank slope on a 2:1 slope. Near the proposed intersection, I measured 6.2 feet of vertical elevation change, which requires an additional 16 feet, which means 68 of right-of-way is necessary, instead of the purchased 50 feet. **The private road as proposed, cannot be constructed within the purchased 50 feet of right-of-way purchased.**



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E-mail:
mkellys@oconeesc.com

10. The Engineer has not provided a certification that the requested waivers and proposed design meet any standard for safety.

The intersection as proposed is defined as a skewed intersection by the Federal Highway Administration. In the Federal Highway Administration publication "Intersection Safety: A Manual for Local Rural Road Owners, potential problems associated with skewed intersections include:

- Vehicles may have a longer distance to traverse while crossing or turning onto the intersecting roadway, resulting in an increased period of exposure to the cross-street traffic;
- Older drivers may find it more difficult to turn their heads, necks, or upper bodies for an adequate line of sight down an acute-angle approach;
- The driver's sight angle for convenient observation of opposing traffic and pedestrian crossings is decreased;
- Drivers may have more difficulty aligning their vehicles as they enter the cross street to make a right or left turn;
- Drivers making right turns around an acute-angle radius may encroach on lanes intended for oncoming traffic from the right;
- The larger intersection area may confuse drivers and cause them to deviate from the intended path;
- Motorists on the major road making left turns across an obtuse angle may attempt to maintain a higher than normal turning speed and cut across the oncoming traffic lane on the intersecting street; and
- The vehicle body may obstruct the line of sight for drivers with an acute-angle approach to their right."

Pertinent Ordinance or Regulation

Oconee County Code of Ordinances Section 26-1(4), -3, -7, and -8.

Recommendations

Deny request for all variances. Parallel private road and access are unsafe. Other safe options exist that have not been pursued by the developer.

cc: Mr. Josh Stevens



PUBLISHER'S AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE.

OCONEE COUNTY COMMUNITY DEVELOPM

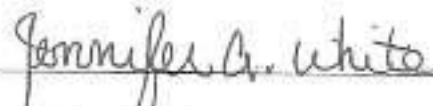
IN RE: TMS3 281-00-01-106

BEFORE ME the undersigned, a Notary Public for the State and County above named, This day personally came before me, Hal Welch, who being first duly sworn according to law, says that he is the General Manager of THE JOURNAL, a newspaper published Tuesday through Saturday in Seneca, SC and distributed in **Oconee County, Pickens County** and the Pendleton area of **Anderson County** and the notice (of which the annexed is a true copy) was inserted in said papers on 02/06/2016 and the rate charged therefore is not in excess of the regular rates charged private individuals for similar insertions.



Hal Welch
General Manager

Subscribed and sworn to before me this
02/06/2016



Jennifer A. White
Notary Public
State of South Carolina
My Commission Expires July 1, 2024



COONEE AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% deposit in certified funds is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit, or comply with his bid within 20 days, then the property will be resold at his risk. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The successful bidder will be required to pay interest on the amount of the bid from date of sale to the date of compliance with the bid at the rate of 2.4% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Oconee County Clerk of Court at OCA #15-CP-57-00109.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.

Beverly H. Whitfield
Clerk of Court

for Oconee County

John J. Heam

P.O. Box 106200

Attorney for Plaintiff

Columbia, SC 29202-3200

(803) 744-4444

013263-08304

Website: www.tl-law.com (see link to Resources/Foreclosure Sales)

NOTICE OF SALE

THE COONEE COUNTY

Board of Zoning Appeals will conduct a public hearing on Monday, February 22nd, 2016 at 6:30 p.m. in the Council Chambers of the County Administrative Complex, 415 S. Pine Street, Waffala, SC 29581. The applicant, Clements Electrical Inc. is requesting a variance from the required front setback for property within the Central Pine District, outlined in Chapter 38 of the Oconee County Code of Ordinances, specifically at 802 Friendship Rd., Seneca, SC, 29678 (TMS# 261-00-01-109). If you would like additional information concerning this request please contact the Community Development Office at 864-638-4218.

Notice is hereby given that FLORES-MAHANA, LLC intends to apply to the South Carolina Department of Revenue for a license/permit that will allow the sale and on premises consumption of beer, wine and liquor at 1018 By pass 123 Seneca, SC 29678. To object to the issuance of this permit/license, written protest must be postmarked no later than February 24, 2016. For a protest to be valid, it must be in writing, and should include the following information: (1) the name, address and telephone number of the person filing the protest; (2) the specific reasons why the application should be denied; (3) that the person protesting is willing to attend a hearing (if one is requested by the applicant); (4) that the person protesting resides in the same county where the proposed place of business is located or within five miles of the business; and (5) the name of the applicant and the address of the


subject property. If the sale of the property will be null, void and of no force and effect, and if sale will be rescheduled for the next available sales day.
David H. Pico, Jr.
Attorney for Plaintiff
The Honorable Beverly Whitfield
Clerk of Court for Oconee County
Date: December 2, 2015

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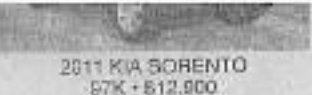




2006 CHRYSLER PT
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Bobby Wood Used Cars
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West Union
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101 S Highway 11
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542 W N 1st Street
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221-9949



88 BMW 635 CSI
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Pete's Auto
402 Oak St. • Seneca
632-1467

LEGAL NOTICES

LEGALS

NOTICE OF SALE
BY VIRTUE of a decree heretofore

Public Comment
Monday, March 28, 2016

First Name – Last Name / Non-Agenda or Special Exception

1. Lang Brandt / SLOTTEN VARIANCE
2. Carol Johnson Jones Lake Beachy / Slotted Variance
3. Levi Shook / Vickery Rd
4. Gary Shook / Vickery Rd
5. _____ / _____
6. _____ / _____
7. _____ / _____
8. _____ / _____
9. _____ / _____
10. _____ / _____
11. _____ / _____
13. _____ / _____
14. _____ / _____
15. _____ / _____

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

BEFORE THE OCONEE COUNTY
BOARD OF ZONING APPEALS

James R. Slotter and Gail G. Slotter,
Applicants for Variance

vs.

Oconee County, South Carolina

**RESPONSE OF
JUYNE M. JOHNSON AND BILLIE W. STEVENSON
(Adjacent Property Owners)**

Larry C. Brandt
Larry C. Brandt, P.A.
P.O. Box 738
3691 Blue Ridge Blvd.
Walhalla, South Carolina
864/638-5406
864/638-7873 (fax)
***Attorney for Juyne M. Johnson
and Billie W. Stevenson***

TIME LINE OF EVENTS

DATE	EVENT
11/6/2008	<p>Oconee County Zoning Ordinance 2007-18 was adopted by Council to be implemented on 5/1/2009.</p> <p><u>§38-10.2</u> Established Control Free Districts (CFD) and provided that those districts shall comply with all adoptive performance standards, overlay districts or any other applicable Ordinance of Oconee County.</p> <p><u>§38-10.7</u> Set minimum yard requirements for residential use of a front setback measured from the street 25'; side setbacks 5'; and rear setback 10'. The minimum lot size was 1/2 acre if utilities were not available.</p> <p><u>§ 38-12.2: Definitions</u> States the use of words in the Ordinance shall have the customary meaning and defines setback as “the required minimum distance between the structure and lot lines of the lot on which it is located.” Building setbacks are also defined as “the minimum distance from the property line to closest projection of the exterior face of buildings, walls, or other form of construction (i.e. decks, landings, terraces, porches and patios on grade).”</p>
6/24/2010	<p>Slotter obtained a permit to construct and operate an onsite waste water system (septic permit). This was approximately 18 days prior to the deed being signed conveying the property to him.</p> <p>The permit issued by DHEC required his septic system to be 5' from foundation and property lines; tanks 50' from the lake; and any part of the septic system to be 50' from the lake and the wells. Drain lines required to be 25' from basement cut foundation and there could not be any embankment below drain field.</p> <p>Have a rough drawing evidently prepared by Bryan Ball of DHEC. The drawing is not to scale so it is unknown if the distances indicated were measured distances or just a drawing of the distances required. It is noted that the arrows go to the lake wall and seem to indicate 50' from the sewer system; however, it does not go to the lake boundary and, again, whether it is merely a picture of the requirements or is a measured distance is unknown. (Ex. A)</p>

7/12/2010	Slotter purchases property and deed is recorded on 7/14/2010. (Ex. B)
5/15/2012	<p>Ordinance 2012-14 was enacted by Council. This revised an amended Ordinance 2007-18 but it also included §38-10-2 Control Free Districts (CFD)</p> <p>Ordinance 2012-14 contains specific language that the chapter dealing with zoning was first adopted as Ordinance 2007-18 on 11/6/2008 and implemented on 5/1/2009. The provisions pertaining to CFD are identical in Ordinance 2012-14 as they were in 2007-18. Like 2007-18, it requires CFD usage to comply with all adoptive performance standards, i.e. - setbacks. The setbacks for residential uses are identical to the 2008 Ordinance requiring 25' from the road; side 5'; and rear 10'. The density and lot size, again, require 1/2 acre if utilities are not provided.</p> <p>Building setback is defined as minimum distance from property line to closest projection of exterior face of buildings, walls or other form of construction, i.e. - decks, landings, terraces, porches and patios on grade. This is identical to the language in Ordinance 2007-18.</p>

8/30/2015	<p>Email from James Slotter to Gwen Fowler Brown, a realtor in Oconee County. His email, in part, states:</p> <p>“It came as a surprise that there appeared to be a small strip of land between our property and the seawall which belongs to our neighbors, the Johnsons. After looking at the plat plans for our property and the Johnsons’ property, I agree the Johnsons own a small strip of land behind the seawall.”</p> <p>The email continued and stated:</p> <p>“The builders Gail and I met with all advised us that they would not able to replace the seawall or <u>build our house</u> where we desired unless we were able to purchase a strip of land from our neighbors.”</p> <p>He then goes forward and asks if Gwen Fowler would approach the Johnsons to buy a strip of land or a piece of the Johnson property to accommodate their needs concerning setbacks and the seawall.</p> <p style="text-align: right;">(Ex. C)</p>
10/7/2015	<p>Slotter’s letter to Juyne Johnson sending a letter for Juyne Johnson’s signature concerning the seawall. It references a verbal ok from Mrs. Johnson to replace the seawall.</p> <p style="text-align: right;">(Ex. D)</p>
10/7/2015	<p>Mr. Slotter’s letter prepared by him for Juyne Johnson to sign agreeing to allow him to rebuild the seawall in front of her property and on the adjacent property.</p> <p style="text-align: right;">(Ex. E)</p>
10/8/2015	<p>Letter dated and signed by Juyne Johnson, which is the letter referenced in Mr. Slotter’s 10/7/2015 letter to her, requesting her signature.</p> <p style="text-align: right;">(Ex. D &E)</p>

<p>10/12/2015 and 10/13/2015</p>	<p>Subsequent to mailing the letter to Mr. Slotter, Ms. Johnson changed her mind about the seawall and on Monday, 10/12/2015, and Tuesday, 10/13/2015, Juayne Johnson called Mr. Slotter to discuss this matter. Phone records indicate that the 10/12/2015 phone call lasted 8 minutes and the 10/13/2015 phone call lasted 7 minutes. Ms. Johnson states that she asked him for her letter back and told him she had changed her mind about the seawall.</p> <p style="text-align: right;">(Ex. F)</p>
<p>10/17/2015</p>	<p>The Lake Board met and considered the issue of the seawall and apparently told Mr. Slotter it was alright with the Lake Board but that he would need permission from Ms. Johnson to put the seawall in front of her property. This letter bearing that date also advised him that they would need Ms. Johnson's consent in writing in order for him to construct the seawall.</p> <p style="text-align: right;">(Ex. G)</p>
<p>10/22/2015</p>	<p>Eddie Cartee, President of the Lake Board, receives Juayne Johnson's letter, dated 10/8/2015, to Mr. Slotter. This is the same one that he had written for her to consent to the seawall replacement and the one Juayne Johnson asked to be returned to her on 10/12/2015 and 10/13/2015.</p> <p style="text-align: right;">(Exs. E & F)</p>
<p>10/25/2015</p>	<p>Mr. Slotter wrote a letter to Ms. Johnson and accompanying it was a copy of her letter that she had sent to him dated 10/8/2015; however, it was not the original. In that letter Mr. Slotter states he was sorry for the delay in sending the letter to her but says he "was out of town last week," and maid told him the letter did not arrive until Tuesday. It is noted that the prior Tuesday was 10/20/2015 and certainly acknowledges that Ms. Johnson asked him to return her letter.</p> <p style="text-align: right;">(Ex. H)</p>

10/30/2015	<p>There is a letter from Mr. Cartee, President of Lake Association, referencing the 10/17/2015 meeting, stating that the seawall was okayed at the meeting but advising Mr. Slotter that he needed permission from Juyne. The letter also expressed understanding that Slotter had now received that letter. Mr. Cartee advised that he thinks he received the letter around 10/22/2015 but is not certain of that date.</p> <p>(Ex. I)</p>
11/25/2015	<p>James Slotter wrote Juyne Johnson proposing to buy what is shown on his survey as Lot 3A consisting of 81 square feet.</p> <p>(Ex. J)</p>
01/08/2016	<p>Juyne Johnson deeded her property on Lake Becky to her daughter, Carol Jones, reserving unto herself a life estate.</p> <p>(Ex. K)</p>
02/04/2016	<p>James Slotter again wrote a letter to Ms. Johnson concerning the purchase of a triangle of land behind the seawall to him. This letter acknowledged that he had been advised by his attorneys that ownership of the Johnson property had been conveyed to the daughter, Carol. It also said that he was glad that Juyne was willing to continue with the sale of the 81 square feet; however, Juyne Johnson denies that she told him that or intended to indicate that in anyway.</p> <p>(Ex. L)</p>
02/12/2016	<p>James Slotter wrote a letter resending a copy of the plat of the 81 square foot triangle asking her to review the information with Carol and let him know a good time to call to speak with both of them.</p> <p>(Ex. M)</p>

02/18/2016	<p>Larry C. Brandt, Attorney, wrote Mr. Slotter a letter telling him that Juayne only had a life estate and that she was agreeable with giving him permission to leave the seawall as it is "now" with a clear understanding that she may revoke permission at any time upon 30 days' notice. He further advised Mr. Slotter as to the status of the ownership of the property and what could or could not be done with the property by Ms. Johnson, but stated that neither Ms. Johnson nor Carol wished to convey an interest in the property to him in any fashion or form, either by way of fee simple deed or an easement, for the seawall for any specific period of time. The letter further advised him to direct any future correspondence concerning this matter to Ms. Johnson or Carol through his office. To date, no response nor inquiry has been made.</p> <p style="text-align: right;">(Ex. N)</p>
02/28/2016 Through 03/12/2016	<p>Eddie Cartee emails to Mr. Bunn about silting problem in lake from building site and Bunn's responses</p> <p style="text-align: right;">(Ex. O)</p>
03/__/2016	<p>Pictures of muddy lake from construction site silt taken by Carol Jones a day or so after Bunn worked on silt problem from Johnson property without permission.</p> <p style="text-align: right;">(Ex. P)</p>
03/__/2016	<p>Multiple pictures taken by Carol Jones and Larry Brandt showing obstruction of Stevensons' view of lake and topography of premises. They further show that water is carrying silt to Johnson property and the fact that Mr. Bunn has trespassed upon Johnson land to construct silt fences. They also attest to the flow of surface water in concentrated form from Slotter property to Johnson property and clearly evidence that the house cannot be constructed or the surface water run off controlled without encroachment on the Johnson property because Slotter's placement of the dwelling within the setbacks does not leave room to do so.</p> <p style="text-align: right;">(Exs. U-Y)</p>

03/01/2016

Thomas J. Bunn, Mr. Slotter's contractor, filed a notice of appeal stating that the application was to request a variance from the Planning and Zoning setback requirements to allow them to build a deck on the back of the house that is uniform in size and symmetrical to the home.

The notice of appeal claims that post #1 was into the side setback but had been eliminated to remove any side setback variance needs.

Mr. Bunn further states that post #2 is on the line but not in the side setback.

He says post #3 is not within a setback but concedes that post #4 is 2.45' within the back setback (lake side); post #5 is 6.32' into the back (lake side) setback; and post #6 is 9.99' in the back (lake side) setback.

(Ex. Q)

Exception is taken to what he's designated as post #2, however, as it does encroach into the side setback by 6". This is according to Jay Cooper of Clemson Engineering who surveyed the Johnson line and measured the distance from Post#2 to the Johnson boundary. According to his measurement the distance from the Johnson line to the metal bolt in the post closest to the Johnson line is only 4.6 feet but to the concrete part of the post it is only 4.5 feet. This means that Post # 2 is within the setback.

(Ex. R)

Note, this does not include any calculation as the roof overhang which would put the encroachment further into the setback.

It should be noted that, at least on one of the documents filed with the application, it indicates that the roof overhang or the eaves would extend beyond the wall from 1" to 10". Nothing has been filed, however, to show that the particular roof and/or overhang in relation to the setbacks.

(Ex. S)

See: Lewis v. City of Myrtle Beach et. al.
297 SC 170, 375 SE2d 327 (Ct. App., November 28, 1988)

Note:

The Lewis case holds that eaves and roof overhang are to be included in determining setback encroachment as does the definition of building setbacks set forth in Sec. 38-12.2 of Ordinance 2012-14 and former Ordinance 2007-18.

To support the Application for the Variance, Mr. Bunn avers that there are extraordinary and exceptional conditions pertaining to the particular piece of property. Addressing each of them specifically, the following is submitted:

#1: The lot is very narrow and requires special home and driveway placement.

It is acknowledged that the lot is not a very wide lot but it is certainly one upon which a home may be constructed. The home that Mr. Slotter desires to build may not fit upon the lot, but a home or cottage of a smaller size will certainly fit without setback encroachment.

Apparently, in order for Mr. Slotter to build the home he desires, there are problems from a septic standpoint, but it is submitted that on 6/20/2010, one month prior to him purchasing the property, DHEC issued a septic permit placing certain restrictions upon the location and construction of the septic system, all of which he knew at the time he purchased the property some 22 days later, on 7/12/2010. He cannot now take advantage of that difficulty which he knew about before he ever purchased the property. (Exs. A & B)

#2: The lot was purchased prior to the new zoning setbacks.

This is absolutely not true. The Zoning Ordinance was originally passed in November 2008 with the same setback requirements as the present Zoning Ordinance 2012-14. The 2008 Ordinance was implemented on 05/01/2009; however, that was over a year prior to the purchase of the property by Mr. Slotter. Mr. Slotter also knew the septic permit, dated 6/20/2010, clearly shows a designation toward the Johnson property indicating a 5' setback on that side. In addition to the requirements that the septic system be 50' from the well and 50 feet from the lake. Slotter knew before he ever purchased the property what the requirements were and the limitations that they placed upon the size, design and location of any house constructed thereon. He cannot now claim that he is being unfairly or unjustly crowded by the setbacks. The fact that he cannot build on the lot the home that he desires does not deprive him of the use of his lot for a residence of a smaller size.

(Ex. A, the Zoning Ordinance dates, and Ex. B)

#3: FEMA Flood Plain elevations were not in place when the lot was purchased and this, coupled with the zoning regulations, have created a need to be in the 2012 setbacks.

This is totally false. Flood Plain elevations are used by insurance companies to rate customers for cost of insurance under the national flood insurance program. They do encompass design methods of construction within flood plains to assist the owner in obtaining flood plain insurance rather than be denied but this affects the cost of insurance, not the use or size of the a dwelling built in the flood plain.

It does not prohibit Slotter from building a residence but, depending on where he locates it on the lot, may affect the insurability of it. FEMA Flood Plain regulations are, therefore, irrelevant in the board's consideration of the variance.

#4: These conditions do not generally apply to other property in the vicinity.

Mr. Bunn argues that the adjacent lots are much larger and/or were built upon prior to the current zoning regulations. There are lots around the lake with comparable dimensions and topography. There are lots that are larger but that is because the property owners bought additional lots such as did the Johnsons which is evidence that the community wants space between them rather than be jammed together. The setbacks apply to all property in the Lake Becky community, not just the Slotter lot. Any structures on the lake that are in the setbacks were built long before the zoning ordinances were adopted and are grandfathered. If they are ever torn away and replaced they will have to honor the setbacks. This argument, therefore, has no merit and cannot serve as a basis for granting a variance.

#5: Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict utilization of the property.

This is untrue. The mere size of any lot, even without restrictions, restricts the utilization of the property to some extent. In a residential neighborhood, even if there are no lot lines or setbacks for residences, the lot size certainly determines what you can or cannot do on a lot. Certainly, the property can still be used as a residence. DHEC says one can fit there provided certain conditions are met. The County zoning ordinance says a dwelling may be built on the lot provided certain it complies with certain performance standards. There are many houses around the lake that are on lots of comparable size and topography. Mr. Slotter had knowledge of the performance requirements on that lot prior to the purchase of it. It is, therefore, submitted that this argument is neither grounds nor reason for a variance to be granted. Neither Bunn nor Slotter argue that a residence can't be fitted on the lot but only that the one they have planned can't be fitted without invading the setback requirements. "I can't have a porch or deck on the home I want" is totally without merit in support of granting a variance.

We have already altered the left end of the deck viewing from inside the home to help comply with the zoning regulations.

Again, this is not a consideration. A person does not get credit for complying with the law. One is not entitled to relief or advantage based upon hardship which he, himself, has caused. Slotter/Bunn argues that further redesign of the home and deck would cause an additional financial burden on the Slotters, but, again, this is not a valid reason or basis for granting a variance. The law is clear that an undue and/or financial hardship caused by the owner, cannot be used as

a basis for obtaining a variance.

Restaurant Row Associates v. Horry County
335 SC 209, 516 SE2d 442 (Sup. Ct., May17, 1999)

Rush v. City of Greenville
246 SC 268, 143 SE 2d 527 Sup. Ct., July 20, 1965)

- #7: The authorization of a variance would not be a substantial detriment to adjacent uses or to the public good and the character of the district will not be harmed by the granting of the variance.**

Granting of this variance is a substantial detriment to both the Stevensons and the Johnsons. It is crowding their property on both sides. It is significantly blocking the Stevensons' view of the lake and it has diminished the value of their property. The home also crowds the Johnsons enjoyment of their property, because it is in the setbacks leaving little or no room to control the flow of surface waters and silt from invading their property. The purpose of setback is to keep people from crowding the neighbor and to give space to handle things like drainage, erosion and construction as well as future maintenance. There is already a drainage and silt problem for the Johnson property emanating from the construction site. Bunn has even erected silt fences on Johnson property and accessed the lake from the Johnson property to clean up a silt problem he created because he had no room to correct the problems from/on the Slotter land. This is evidence that he cannot construct the home that Slotter wants on the property without encroaching upon, not just the setbacks, but someone else's property? If repairs to the home have to be made, how will any kind of equipment be able to access Slotter's property to do the repairs without encroaching on the Johnson's property. Bunn has already removed the Johnson corner pin and filled in Johnson property behind the seawall without permission and when confronted about it by Carol Jones he stated that "he moved it because he had to, to do what he needed to do." The topography of the land and the way he has placed the building on it is going to collect water in concentrated form and be released upon or channeled toward the Johnson property. Erosion is already occurring. Proposed placement of the deck into the setbacks does not leave sufficient room on the side or rear (lake) to do much at all to control the directional flow of surface waters and there is no information of record to allow the board to consider and make any findings as to the full impact that the setback variance or encroachment requested will have upon any of the adjacent property. Without such evidence to consider the Board is powerless to do anything but to deny the request for the variance as all of the available evidence raises a substantial issue regarding same.

(Exs. U-Y)

#8: The home will, in fact, look better with a deck uniform in size.

This, like the other factors raised by Mr. Bunn does not support the granting of a variance. Mr. Slotter has created his hardship by selecting a house plan that just does not fit upon his lot. It is his doing. It is his desire to build a particular house with a deck on it, but it should be noted that not all the houses up there have decks. One has to utilize his property in accordance with restrictions that he knows before he buys it. No one has the right to buy a lot knowing or by the exercise of due diligence should have known of the restrictions and then claim that they should be relieved from the restrictions because they prevent construction of a house that they desire to build.

#9: The area in question looks over a small mountain lake and does not impact the use or view of the neighboring property.

This is absolutely untrue. The Stevensons' view of the lake is materially obstructed by the placement of the house within the setbacks and the corner of the deck that will encroach into the rear or lakeside setback will obstruct it even more. It will certainly detract from the salability and value of the Stevensons' property and unfairly deprive them of their right to the maximum enjoyment of their property as well as the lake. According to Mr. Bunn the westernmost back corner of the Slotter house is right on top of the setback line on the Stevenson side but, again, this does not count the roof overhang. Allowing Slotter to extend the house out even farther into the lakeside setback and obstruct the view of the lake, even if only a few inches, will have a substantial affect on the Stevenson's view and enjoyment of the lake and will unfairly increase their feeling of being over crowded.

(Ex. T)

#10: The County has granted the driveway permit in that location.

No credit is to be given here. People can get a driveway for an empty lot or just one in which they don't care to build upon. They can also get a driveway to a much smaller house. The fact that the County issued a driveway permit is in no way in play here and is not a valid consideration for a variance.

See: Lewis v. City of North Myrtle Beach
297 SC 170, 375 SE2d 327 (Ct. App., Nov. 28, 1988)

#11: The construction of this home as designed will add value to the existing properties on Lake Becky.

This is certainly denied. There is no evidence anywhere other than an unsupported opinion of Slotter's builder (Bunn) that his house will add value to the existing properties around Lake Becky. The Stevenson's believe that it will certainly de-value their property because it crowds it and obstructs the view of the lake. Juayne Johnson and Carol Jones believe that it will also devalue their property because of the erosion and water drainage problem that is already evident and growing. Mr. Slotter has not filed with the County any building plans, elevations or renderings of what the house will look like after it is completed to enable anyone to make a judgment as to his claim. The mere fact that the applicant thinks that what he will build will enhance the values of the surrounding property owners, particularly his closest neighbors, has never been a consideration for a variance grant although the negative impact on neighbors' property is a consideration per SC Code 6-29-800 (2) and the opinions of the adjacent property owners revealing their concerns of negative effect the granting of a variance would have on their property values and the character of the neighborhood is relevant and are to be considered. Our courts have specifically held that testimony from the adjacent property owners revealing concerns for drainage, overcrowding, the loss of vegetation and a negative effect on property values should the variance be approved are among the issues Boards of Adjustment should consider in rendering a decision as the granting of a variance. When these concerns are considered in this case, the variance must be denied.

Pictures are attached depicting the silt fences on Johnson property (Ex. U), erosion and water runoff problems (Ex. V), silting of Johnson property (Ex. W), the accessing of the lake via the Johnson property to clean up the silt problem, (Ex. X), the Stevensons' view obstruction and crowding (Exs. T and U), and the location or porch pilings that encroach upon the setbacks. (Ex. Y)

See; Witherspoon v. City of Columbia
291 SC 44, 351 SE2d 903 (CT. App., Dec. 1986)

Mailed to James Slotter 7/10/10, cm

PERMIT TO CONSTRUCT AND OPERATE
Onsite Wastewater System

File Nbr: **2010060012**
County: Oconee

Name: **JAMES SLOTTER** Address: **1696 CARILLON PARK DR** Program Code: **360**
 Type Facility: **HOUSE** OVIEDO, FL 32765 System Code: **133**
 Subdivision: **LAKE BECKY** Site: **BONNER RD (149)** TM#: **082-04-01-0355**
 Block: Lot: **4-5** MOUNTAIN REST, SC 29864 Water Supply: **PRIVATE**

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS Aggregate: **52 Flow** 4/13/10

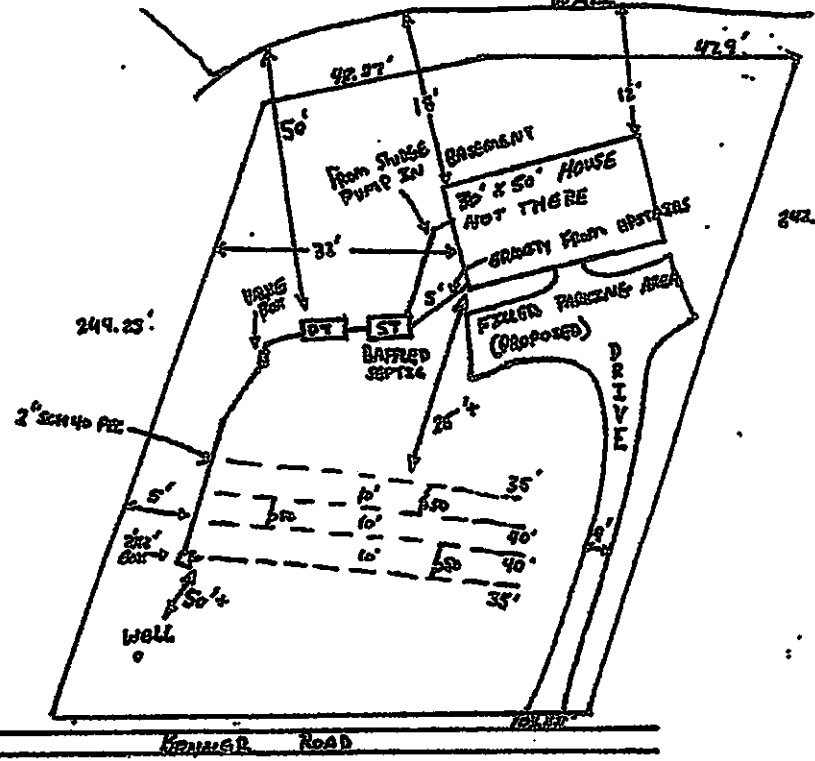
Daily Flow (gpd): **360** Tank Sizes (gal): Septic Tank: **1000** Pump Chamber: **1000** Grease Trap: **1000**
 LTAR: **.40** Trenches: Length (ft): **160** Width (in): **36** Max. Depth (ft): **66** Agg. Depth (in): **48"**
 Min Pump Capacity: **10** gpm at **7.0** ft. of Head

SPECIAL INSTRUCTIONS/CONDITIONS
 THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC.
 ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

See Attached Page...

Tot ID = 4637

PERMIT TO CONSTRUCT SYSTEM DIAGRAM



Issued/Revised By: Rayna S. Bell

Date: 6/24/2010

DHEC 1781 (8/2/2005)

This Permit is Appealable Under the Administrative Procedures Act.
 This Permit will Expire and Become Null and Void Five (5) Years from the Issuance Date.
 There may be an Additional Fee for Changes in this Permit that Require a Site Reevaluation.



PERMIT TO CONSTRUCT AND OPERATE
Onsite Wastewater System

File Number: 2010080012
 County: Oconee

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC.
 ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

DRAINLINES MUST FOLLOW LEVEL SURFACE CONTOURS
USE STEP-DOWNS BETWEEN LINES AS NEEDED
DRAINLINES TO BE 10'+ ON CENTER
SYSTEM MUST BE 5'+ FROM FOUNDATION AND PROPERTY LINES
DO NOT DRIVE OR PARK OVER SEPTIC SYSTEM
OWNER IS PLANNING TO PLACE A SLUDGE PUMP IN THE BASEMENT TO ALLOW FOR PLUMBING IN THE BASEMENT
KEEP THE TANKS 50'+ FROM THE LAKE
PLUMB THE UPSTAIRS INTO THE SEPTIC TANK BY UTILIZING GRAVITY FLOW FROM THE HOUSE
INSTALL A BAFFLED SEPTIC TANK DUE TO THE PROPOSED SLUDGE PUMP IN THE BASEMENT
KEEP THE SEPTIC SYSTEM 50'+ FROM THE LAKE AND ALL WELLS
SURVEY AND MARK THE PROPERTY LINES PRIOR TO INSTALLATION OF THE SEPTIC SYSTEM
KEEP THE DRAINLINES 25'+ FROM THE BASEMENT CUT/ FOUNDATION DRAIN
FILL THE PARKING PAD, INSTEAD OF CUTTING DOWN, SO THERE IS NOT AN EMBANKMENT BELOW THE DRAINFIELD
SUPPLY MANIFOLD = 2"SOH 40 PVC
INCLUDE: 1. CHECK VALVE 2. FLOAT CONTROLS 3. FLOAT ALARM
THIS DEPT. MUST CHECK THE FLOAT CONTROLS
SUBMIT A COPY OF THE PUMP CURVE AND ELECTRICAL CONNECTION FORM WHEN COMPLETE
INSTALL A 2'X2' BOX AS SHOWN
INSTALL THE PUMP AND CONTROLS EXACTLY AS SHOWN ON THE ATTACHED DIAGRAM
INSTALL THE DRIVE AS SHOWN ALONG THE SIDE PROPERTY LINE
LIMIT DRIVE WIDTH TO 9' ALONG THE DRAINFIELD AREA
ANY DEVIATION VOIDS THIS PERMIT

Issued/Revised By: _____

Ray S. Ball

Date: _____

6/24/2010

DHEC 1761 (04/2005)

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2010 JUL 14 A 10:31



Doc ID: 003708020003 Type: DEE

BK 1783 Pg 124-126

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(RKW)

OCONEE COUNTY
STATE TAX 234.00
COUNTY TAX 99.00
EXEMPT

STATE OF SOUTH CAROLINA) TITLE TO REAL ESTATE
) JOINT TENANTS WITH RIGHT
COUNTY OF OCONEE) OF SURVIVORSHIP

KNOW ALL MEN BY THESE PRESENTS, that WE, PAUL D. DEHAVEN AND BARBARA A. DEHAVEN, in consideration of NINETY THOUSAND AND 00/100 (\$90,000.00) DOLLARS, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto JAMES R. SLOTTER AND GAIL G. SLOTTER, AS JOINT TENANTS, WITH THE RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON, THEIR HEIRS AND ASSIGNS forever, to wit:

FOR OFFICE USE ONLY
THIS PROPERTY DESIGNATED AS
MAP 082-04-01 BULKY PARCEL
ON OCONEE COUNTY TAX MAPS
OCONEE COUNTY ASSESSOR

ALL those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the State of South Carolina, County of Oconee, Mountain Rest School District, consisting of two (2) lots and collectively containing 0.358 of an acre, more or less, as shown and more fully described on a plat thereof prepared by Stephen R. Edwards, PLS #19881, dated June 30, 2010, and recorded in Plat Book B348, Page 3, records of Oconee County, South Carolina.

This conveyance is made subject to any and all easements, restrictions, covenants, conditions, easements, rights of way, zoning rules and laws and regulations, any of which may be found on the premises or of record in the Office of the Register of Deeds for Oconee County, South Carolina; and particularly to those certain covenants and restrictions shown in Deed Book 13-C, Page 199.

This being the identical property conveyed unto Paul D. DeHaven and Barbara A. DeHaven by deed of Deborah P. Timmerman dated May 5, 2006, and recorded May 8, 2006, in Deed Book 1501, Pages 16-17, records of Oconee County, South Carolina.

TAX MAP NO. 082-04-01-036

Recorded this 15 day of July
Book 2010 Page 12105
Fee
Kenneth E. Nix
Auditors/Oconee County, S.C.

GRANTEE'S ADDRESS: 1596 Carillon Park Dr., Oviedo, FL 32765-5125

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto said JAMES R. SLOTTER AND GAIL G. SLOTTER, AS JOINT TENANTS, WITH THE RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON, THEIR HEIRS AND ASSIGNS FOREVER. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantors(s) heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the said JAMES R. SLOTTER AND GAIL G. SLOTTER, AS JOINT TENANTS, WITH THE RIGHT OF SURVIVORSHIP, AND NOT AS TENANTS IN COMMON, THEIR HEIRS AND ASSIGNS FOREVER, against the Grantor(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's hand(s) and seal(s) this 12th day of July, 2010.

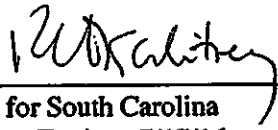
SIGNED, sealed and delivered in the presence of:

<u>Sandra L. Lee</u>	<u>Paul D. DeHaven</u> (SEAL)
	PAUL D. DEHAVEN
<u>Barbara A. DeHaven</u>	<u>Barbara A. DeHaven</u> (SEAL)
	BARBARA A. DEHAVEN

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGEMENT**
COUNTY OF OCONEE)

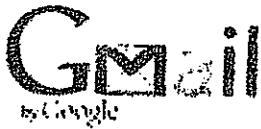
I, Robert K. Whitney, a Notary Public for South Carolina, do hereby certify that PAUL D. DEHAVEN AND BARBARA A. DEHAVEN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 12th day of July, 2010.



(L.S.)

Notary Public for South Carolina
My Commission Expires: 7/17/16



Gwen Fowler-Brown <gwentfowler@gmail.com>

Johnson

Follow-up to our Telephone Conversation

1 message

James Slotter <JSlotter@centurylink.net>

Sun, Aug 30, 2015 at 1:43 PM

To: Gwen Fowler-Brown <gwentfowler@gmail.com>

9551 Buck Haven Trail

Tallahassee, FL 32312

August 30, 2015

638 3599

Gwen Fowler

Dear Gwen,

Thank you for taking my call last Friday. As I mentioned, Gail and I would like to move forward on our retirement home on Lake Becky. The first step before we can do anything is that we need to replace the seawall. It came as a surprise when one of our potential builders mentioned that there appeared to be a small strip of land between our property line and the seawall, which belonged to our neighbors, the Johnsons. After looking at the plat plans for our property, and the Johnson's property, I agree, the Johnson's own a small strip of land behind the seawall.

The builders Gail and I met with all advised us that they would not be able to replace the seawall, or build our house where we desired, unless we were able to purchase this strip of land from our neighbors.

Gwen as a person who knows the area, we would like to engage you to negotiate on our behalf, to purchase this strip of land from Juyne Johnson, and file the necessary paper work with the Registrar of Deeds.

I am enclosing a copy of our Plat Plan and a copy of the Johnson's Plat Plan. (Note the little point in the lower right corner).

At the very least, we need to acquire the point of land from the "nail" in the lower right corner of the Johnson's Plat to the "IPF 2" axle that is behind the seawall. If it would be easier we would be willing to purchase the strip of land from the "IPF" axle on Bonner Road, to the "Nail" just right of the seawall, or a little more, (3- 10

feet past the "Nail").




At this point I have no clue how to proceed, so I am relying on you for your guidance. Please let us know if you are willing to take this on, and what should be our next steps.

Thank you in advance for your assistance.

Sincerely,

Jim & Gail Slotter

3 attachments

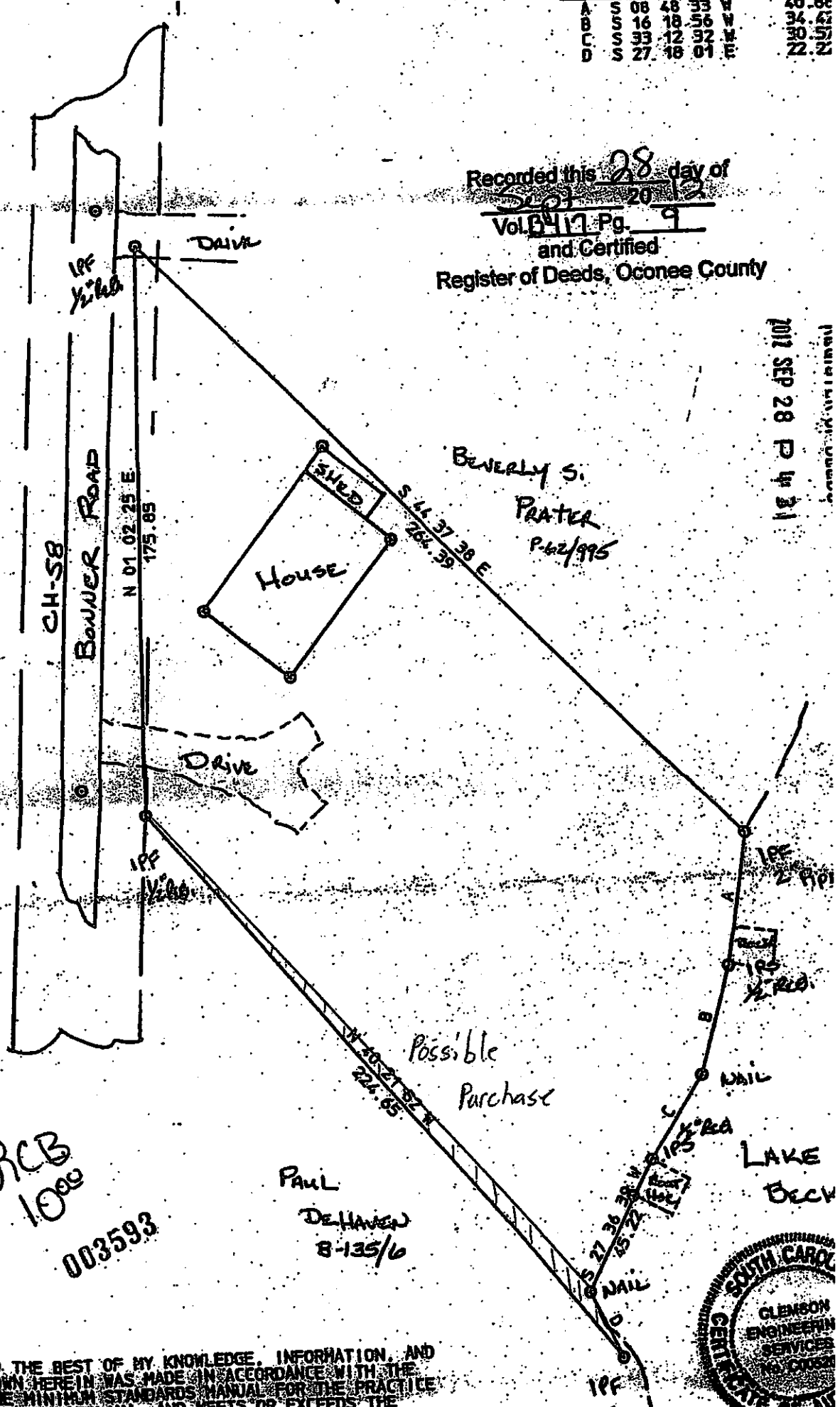
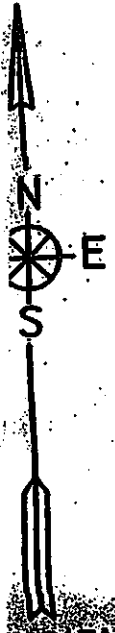
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2208K
-  **Johnson Plat005.pdf**
1851K
-  **Plat.pdf**
262K

A	S	08	48	33	M	45
B	S	16	18	56	M	34
C	S	33	12	32	M	08
D	S	27	18	01	M	22

Recorded this 28 day of SEP 2012
 Vol. B417 Pg. 9
 and Certified
 Register of Deeds, Oconee County

2012 SEP 28 P 4 31

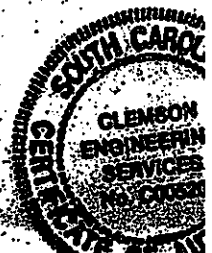
Doc ID: 00413670001 Type: PLA
 BK **B417** Pg 9



RCB
1000

003593

PAUL
DEHAVEN
8-135/6



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE

9551 Buck Haven Trail
Tallahassee, FL 32312
October 7, 2015

Dear Mrs. Johnson,

It was a great pleasure talking with you yesterday about Lake Becky and the beauty of the surrounding area. My wife and I appreciate that you are willing to allow us to replace the entire seawall that borders Lots 4 & 5 Bonner Road, including the section that may border your property.

As I mentioned in our conversation, before the Board of Directors makes any decision on the seawall, they would like something from you indicating that you give your permission to replace the wall. If you will permit us to replace the wall, would you please sign the enclosed letter, place it in the pre-addressed envelope, and mail it back to me at your earliest convenience. I will then email a copy of your letter to the Board in preparation for their October 17, 2015 meeting. If you have any questions or concerns, please call me at 407-748-0723.

On a separate note, I have ordered a new survey of Lots 4 & 5, with particular attention to the little spit of your land that extends behind the seawall, so that we can determine its actual size, and then discuss our potential purchase of the property.

I hope you are having a wonderful day, and I look forward to that time when we can call you our neighbor.

Sincerely,

A handwritten signature in black ink, appearing to read "James Slotter", written in a cursive style.

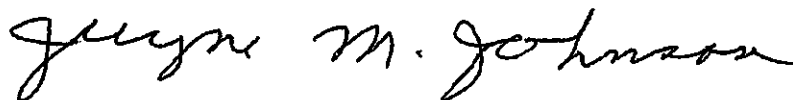
James Slotter

405 Playground Road
Walhalla, SC 29691
October 8, 2015

To Whom It May Concern:

I, Juyne M. Johnson as the sole owner of Lots 1, 2, 3 Bonner Road, parcel #082-04-01-039, give my permission to James and Gail Slotter, (aka The Slotter Family Trust), the owners of Lots 4 & 5 Bonner Road, parcel #082-04-01-036, to replace the existing seawall that separates their property from Lake Becky. This includes any portion of the seawall that may adjoin my property.

Sincerely,

A handwritten signature in black ink that reads "Juyne M. Johnson". The signature is written in a cursive style with a large, stylized initial "J".

Juyne M. Johnson

Shop myAT&T Support

Overview Billing, Usage, Payments Internet Home Phone Profile My Orders Digital Life

Billing & Usage

800.288.2020

Account: 120581014
View Plan Summary ▾

Total Amount Due by Mar 12, 2016: **\$0.00**

No payment is required

Bill Usage History Reports

Showing: Previously Billed Usage Sep 20, 2015 - Oct 19, 2015

Billing period: complete View paper bill for Oct 19, 2015

AT&T U-verse Voice Unlimited®



864.638.2166

Domestic Off-net Minutes [?]
82 of unlimited
min used

International
0
min used
[View rates](#)

Usage Details

Print | Download

View details for: All Calls

Show:	Nicknames	Numbers	Nickname a number	Manage contacts	Search by:	Number	Ex: 555-222-1234	
Date / Time	Contact	Location	Minutes	Charges (\$)				
10/19/2015 02:14PM	864.885.0058	Seneca	2	0.00				
10/19/2015 02:09PM	864.885.0058	Seneca	1	0.00				
10/19/2015 09:57AM	864.885.0058	Seneca	7	0.00				
10/19/2015 09:42AM	864.885.0058	Seneca	5	0.00				
10/18/2015 07:17PM	864.638.6198	Walhalla	1	0.00				
10/18/2015 02:56PM	864.638.6198	Walhalla	1	0.00				
10/17/2015 01:23PM	18002382727		10	0.00				
10/15/2015 04:01PM	407.748.0723	Orlando	9	0.00				
10/14/2015 10:49AM	864.638.4341	Walhalla	2	0.00				
10/13/2015 09:36PM	864.638.8111	Walhalla	2	0.00				
10/13/2015 12:34PM	407.748.0723	Orlando	7	0.00				
10/12/2015 12:29PM	407.748.0723	Orlando	8	0.00				
10/08/2015 05:21PM	18009749612		8	0.00				

Questions? Chat Live

9551 Buck Haven Trail
Tallahassee, FL 32312
October 25, 2015

Mrs. Juyne M. Johnson
405 Playground Road
Walhalla, SC 29691

Dear Juyne,

I am sorry it has taken so long to send the enclosed to you. I was out of town last week and I was told by our house sitter that your letter did not arrive until Tuesday. Per your request I am enclosing a copy of the letter you signed giving my wife and I permission to replace the seawall on lots 4&5 Bonner Road. I know you wanted to show a copy to your daughter, and I hope she understands that we are not trying to take advantage of you, we simply want to be your Lake Becky neighbors.

I have also talked to my builder and found that the land survey has been delayed until later this week due to the bad weather you experienced a few weeks ago. I will keep you informed, and send you a copy of their findings, so that we both have what we need to discuss a possible purchase of the little finger that extends behind the seawall.

I hope all is well with you, and please give our best to your family.
Take care.

Sincerely,



Jim Slotter

October 30, 2015

Mr. & Mrs. Slotter,

You recently talked to Eddie Cartee and Tom Bunn about building a house and replacing a seawall that runs along your property at Lots 4 & 5 Bonner Road and along the property of Mountain Lake Fishing and Boating Club. Your Lots 4&5 Bonner Road property also adjoins Lake Becky.

You also sent your request in writing to the Mountain Lake Fishing and Boating Club e-mail account.

The Mountain Lake Fishing and Boating Club Board of Directors meet on October 17, 2015 and discussed your proposal for replacing the existing seawall on said properties noted above. The board has given the approval for you to replace the existing seawall that runs along your property line. The board understands also that the existing seawall that runs along your property line also goes past your property line over in front of your neighbor, the Johnsons. In order for you to also replace the existing sea wall past your property line and over in front of the property line of the Johnsons, the Board feels you will need written approval from the Johnsons to replace that portion of the seawall. Since the Board meeting on October 17, 2015, I understand that you have received that written permission from Juayne M Johnson. The Board has a copy of the letter and will keep on file.

If you have any questions regarding this issue, please contact Eddie Cartee or Tom Bunn.

Thank you,



Eddie Cartee

President, Mountain Lake Fishing and Boating Club Board of Directors

9551 Buck Haven Trail
Tallahassee, FL 32312
November 25, 2015

Mrs. Juyne M Johnson
405 Playground Road
Walhalla, SC 29691

Dear Juyne,

By the time this letter reaches you I hope that you have enjoyed a wonderful Thanksgiving holiday with your family. As I mentioned during our previous conversations, my wife and I are planning to build our retirement home on the unimproved lot we own on Bonner Road that adjoins your property. Thank you for your letter permitting us to replace the seawall, the Homeowners Association has given us permission to proceed with the project.

What I would like to propose to you today is the purchase of that little triangle of your property that lies between our property and the seawall. We have repositioned our house so we do not need to purchase the property, but feel that acquiring the land will provide more precise property lines for both of us.

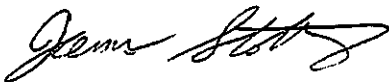
Enclosed you will find a copy of the recently completed survey that shows the triangle as "Lot 3-A", consisting of 81 square feet. To determine a price for the property I compiled the price and size of every lake front property for sale on the small lakes in the area. This includes Lake Becky, Mountain Rest Lake, Lake Cherokee, Whitewater Lake and Fiddlers Cove Lake. A copy of my worksheet and a description of each property is also included for your review.

Based on the value of these 14 properties, and because we want you to be satisfied, we would like to offer you \$450.00, (four hundred and fifty dollars), for the 81 square feet that make up Lot 3-A. We will also assume the cost of any filing fees associated with the purchase.

We feel this is a generous offer, well above what other properties are selling for in your area, and ask that you please take some time to review the enclosed documents. Once you have made your decision, or if you have any questions, please give me a telephone call at 407-748-0723, and let me know how you would like to proceed.

As always, we hope you have a wonderful Holiday season.

Sincerely

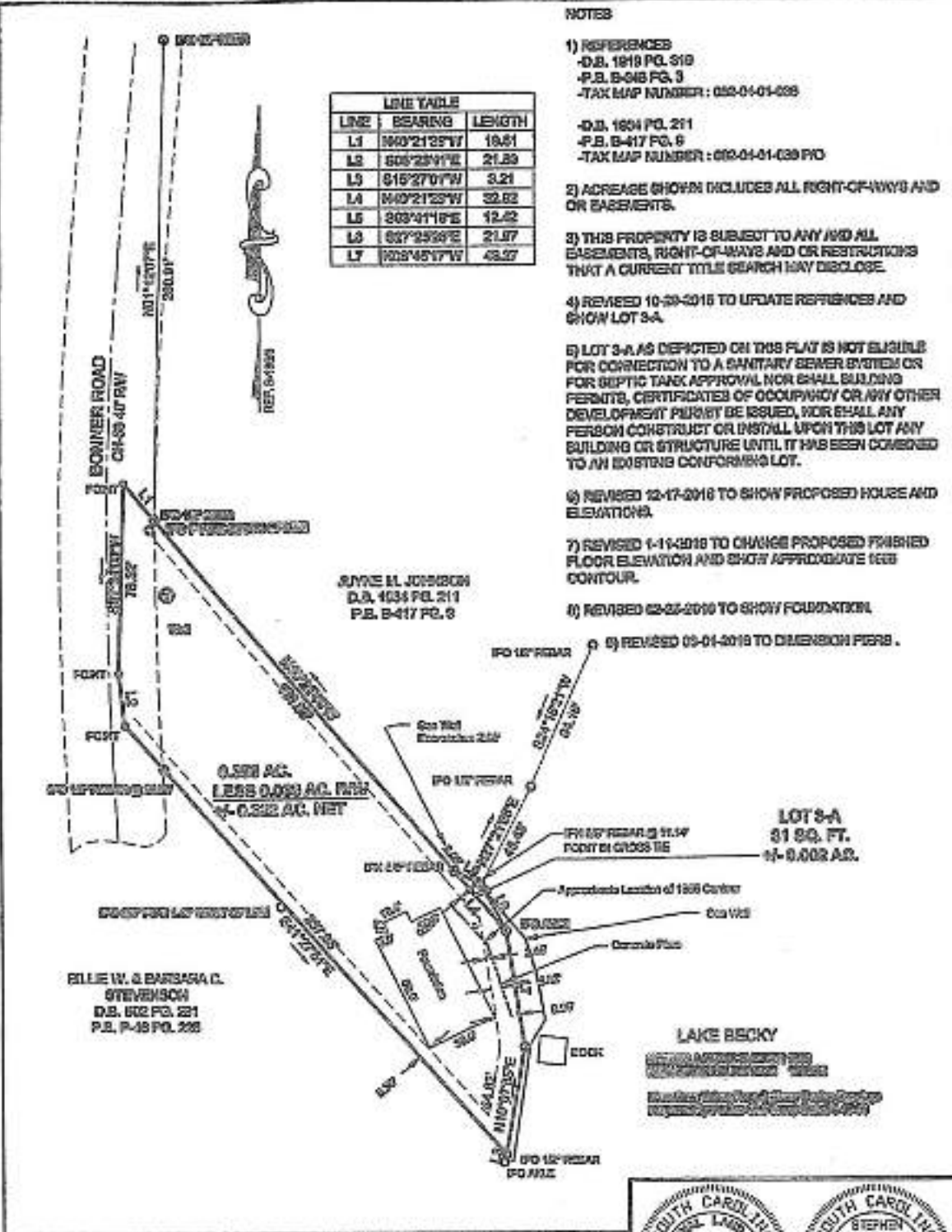


James Slotter

NOTES

- 1) REFERENCES
 -D.B. 1818 PG. 510
 -P.B. B-318 PG. 3
 -TAX MAP NUMBER : 050-04-01-038
- D.B. 1804 PG. 211
 -P.B. B-417 PG. 6
 -TAX MAP NUMBER : 050-04-01-039 P.O
- 2) ACRES SHOWN INCLUDES ALL RIGHT-OF-WAYS AND OR EASEMENTS.
- 3) THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAYS AND OR RESTRICTIONS THAT A CURRENT TITLE SEARCH MAY DISCLOSE.
- 4) REVISED 10-20-2016 TO UPDATE REFERENCES AND SHOW LOT 3-A.
- 5) LOT 3-A AS DEPICTED ON THIS PLAN IS NOT ELIGIBLE FOR CONNECTION TO A SANITARY SEWER SYSTEM OR FOR SEPTIC TANK APPROVAL NOR SHALL BUILDING PERMITS, CERTIFICATES OF OCCUPANCY OR ANY OTHER DEVELOPMENT PERMITS BE ISSUED, NOR SHALL ANY PERSON CONSTRUCT OR INSTALL UPON THIS LOT ANY BUILDING OR STRUCTURE UNTIL IT HAS BEEN COMBINED TO AN EXISTING CONFORMING LOT.
- 6) REVISED 12-17-2016 TO SHOW PROPOSED HOUSE AND ELEVATIONS.
- 7) REVISED 1-11-2018 TO CHANGE PROPOSED FINISHED FLOOR ELEVATION AND SHOW APPROXIMATE DECK CONTOUR.
- 8) REVISED 02-02-2018 TO SHOW FOUNDATION.
- 9) REVISED 03-01-2018 TO DIMENSION PIERS.

LINE	BEARING	LENGTH
L1	N00°21'32"W	19.81
L2	S05°25'47"E	21.29
L3	S15°27'07"W	3.21
L4	N40°21'23"W	32.62
L5	S03°41'18"E	12.82
L6	S37°25'38"E	21.07
L7	N02°45'17"W	43.57



ELIE W. & BARBARA C. STEVENSON
 D.B. 652 PG. 221
 P.B. P-15 PG. 232

JAYNE M. JOHNSON
 D.B. 4034 PG. 211
 P.B. B-417 PG. 6

LOT 3-A
 31,890 SQ. FT.
 0.6022 AC.

LAKE BECKY
 (Small text describing lake details)

SLOTTER FAMILY TRUST

STEPHEN R. EDWARDS & ASSOCIATES, P.C.
 1000 W. 10TH ST., SUITE 100
 CHARLOTTE, NC 28202
 (704) 375-1122

REVISED: 03-01-2018
 JOB NUMBER: 10-103

0 10 20 30
 SCALE: 1"=40'



SOUTH CAROLINA
 REAL ESTATE
 No. 19981
 STEPHEN R. EDWARDS

SOUTH CAROLINA
 PROFESSIONAL ENGINEER
 No. 00104
 STEPHEN R. EDWARDS

THESE RECORDS REPRESENT THE ORIGINAL RECORDS OF THE PROJECT AND ARE NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER OR SURVEYOR.

DATE OF RECORDING: 03-01-2018

BOOK: 2018-01-01-038

Any and all easements and/or rights-of-way as may appear of record, on the premises and/or as shown upon the referenced survey, including any and all zoning and setback requirements.

This is the identical property conveyed to Charles B. Johnson, Sr. and Juyné M. Johnson, as follows:

- a) **LAKE BECKY - 0.030 TRIANGLE - TRACT "C"**: Deed of Juyné Moffitt Johnson conveying a one-half (½) undivided interest in the subject property to Charles Brooks Johnson by deed dated 09/18/1989 and recorded 09/19/1989, in Deed Book 590, Page 118, in the Office of the Register of Deeds for Oconee County, South Carolina.
- b) **LAKE BECKY - NORTHERN PORTION OF LOT #1 C.N. BONNER S/D**: Deed of Juyné Moffitt Johnson conveying a one-half (½) undivided interest in the subject property to Charles Brooks Johnson by deed dated 09/18/1989 and recorded 09/19/1989, in Deed Book 590, Page 118, in the Office of the Register of Deeds for Oconee County, South Carolina.
- c) **LAKE BECKY - SOUTHERN PORTION OF LOT #1 C.N. BONNER S/D**: Deed of W.A. Johnson to Charles B. Johnson, dated and recorded 10/05/1984, in Deed Book 399, Page 288, records of Oconee County, South Carolina. Charles Brooks Johnson conveyed a one-half (½) undivided interest in the subject property to Juyné Moffitt Johnson by deed dated 09/18/1989 and recorded 09/19/1989, in Deed Book 590, Page 120, in the Office of the Register of Deeds for Oconee County, South Carolina.
- d) **LAKE BECKY/MTN. LAKE - NORTHERN HALF OF LOT #2 C.N. BONNER S/D**: Deed of Rochester Real Estate Company to C.B. Johnson and Juyné M. Johnson, dated 07/24/1958 and recorded 07/12/1989, in Deed Book 582, Page 316, in the Office of the Register of Deeds for Oconee County, South Carolina.

Charles B. Johnson, Sr. died testate on 03/20/2009 devising all of his property to his wife, Juyné M. Johnson (See Oconee County Probate Package #2009-ES-37-00-167). Reference is also invited to that Corrected Deed of Distribution, dated and recorded 12/12/2012, in Deed Book 1934, Page 211, in the Office of the Register of Deeds for Oconee County, South Carolina.

It is noted for clarification and identification that Charles B. Johnson, Sr. was also known during his lifetime as: C.B. Johnson, Charles Brooks Johnson, and Charles B. Johnson, and is the same person referenced in the derivations set forth above.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said CAROL JOHNSON JONES, her heirs and assigns forever, RESERVING, HOWEVER, UNTO THE GRANTOR HEREIN, JUYNE M. JOHNSON, A/K/A JUYNE MOFFITT JOHNSON, A LIFE ESTATE in the property herein described.

AND I do hereby bind myself and my Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the said CAROL JOHNSON JONES, her heirs and assigns forever, RESERVING, HOWEVER, UNTO THE GRANTOR HEREIN, JUYNE M. JOHNSON, A/K/A JUYNE MOFFITT JOHNSON, A LIFE ESTATE in the property herein described, from and against myself and my Heirs, Successors and Assigns, and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my hand and seal this 8 day of Jan. in the year of our Lord two thousand sixteen and in the two hundred thirty ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Debra C. Miller
Joel P. Wilk

Juyne M. Johnson (Seal)
JUYNE M. JOHNSON
a/k/a Juyne Moffitt Johnson

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Grantor(s) sign, seal and as Grantor's(s') act and deed, deliver the within deed, and that he/she with the other witness subscribed above witnessed the execution thereof.

Debra C. Miller

SWORN TO BEFORE ME THIS
8 DAY OF January, 2016.

Joel P. Wilk
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-15-2025

9551 Buck Haven Trail
Tallahassee, FL 32312
February 4, 2016

Mrs. Juyne M Johnson
405 Playground Road
Walhalla, SC 29691

Dear Juyne,

It was good to talk with you yesterday. As I mentioned I have been working with Bagwell & Corley to prepare the paperwork for the purchase of the triangle of land behind the seawall. I was surprised when the lawyers told me you had transferred ownership of the Bonner Road property to your daughter, but after speaking with you, it makes a lot of sense from an estate planning perspective.

I am also glad you are willing to continue with the sale of the 81 square feet that makes up Lot 3-A. Admittedly, the land is in a flood plain and can't be built upon, but I would like to use the land for a flower garden after our home is completed, and I appreciate your willingness to sell it to us.

Enclosed is a copy of the recently completed survey that shows the triangle as Lot 3-A, consisting of 81 square feet. I am also including a copy of the worksheet I used to calculate my purchase offer of \$450.00. You already have a copy of the Realtor.com descriptions of the 14 properties I used to determine my offer. These were the only small lake, waterfront properties for sale during the months of November and December 2015.

Please take some time to discuss our offer with your daughter. I hope she understands that the scope of the transaction is far smaller than what the realtor originally proposed several months ago. I will call next week to talk with you and Carol about our offer and answer any questions you may have. Please also feel free to call me at 407-748-0723.

As always, stay warm, and we look forward to becoming your neighbor on Lake Becky.

Sincerely,



James Slotter

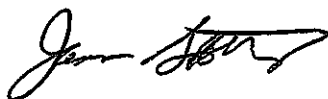
9551 Buck Haven Trail
Tallahassee, FL 32312
February 12, 2016

Dear Juyne,

As always, it was a pleasure talking with you today. I am glad you received the package I sent last week, but I am surprised that you cannot find the plat plan showing the 81 square feet parcel we would like to purchase. I am resending you a copy of the plat, as well as, how I calculated our offer price. Please review this information with Carol, and then let me know when would be a good time to call so that I can speak with both of you. My telephone number is 407-748-0723.

I am happy to hear that the new furnace is doing its job, and I look forward to speaking with you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "James Slotter". The signature is written in a cursive style with a large, sweeping initial "J".

James Slotter

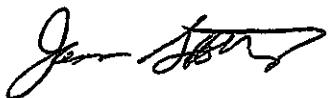
9551 Buck Haven Trail
Tallahassee, FL 32312
February 12, 2016

Dear Juyne,

As always, it was a pleasure talking with you today. I am glad you received the package I sent last week, but I am surprised that you cannot find the plat plan showing the 81 square feet parcel we would like to purchase. I am resending you a copy of the plat, as well as, how I calculated our offer price. Please review this information with Carol, and then let me know when would be a good time to call so that I can speak with both of you. My telephone number is 407-748-0723.

I am happy to hear that the new furnace is doing its job, and I look forward to speaking with you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "James Slotter", with a stylized flourish at the end.

James Slotter

NOTES

- 1) REFERENCES:
 -D.B. 107 PG. 419
 -D.B. 538 PG. 3
 -TAX MAP NUMBER: (88)14-4-224
- 2) A.S. 164 PG. 211
 -D.B. 547 PG. 9
 -TAX MAP NUMBER: (88)14-4-224 TO

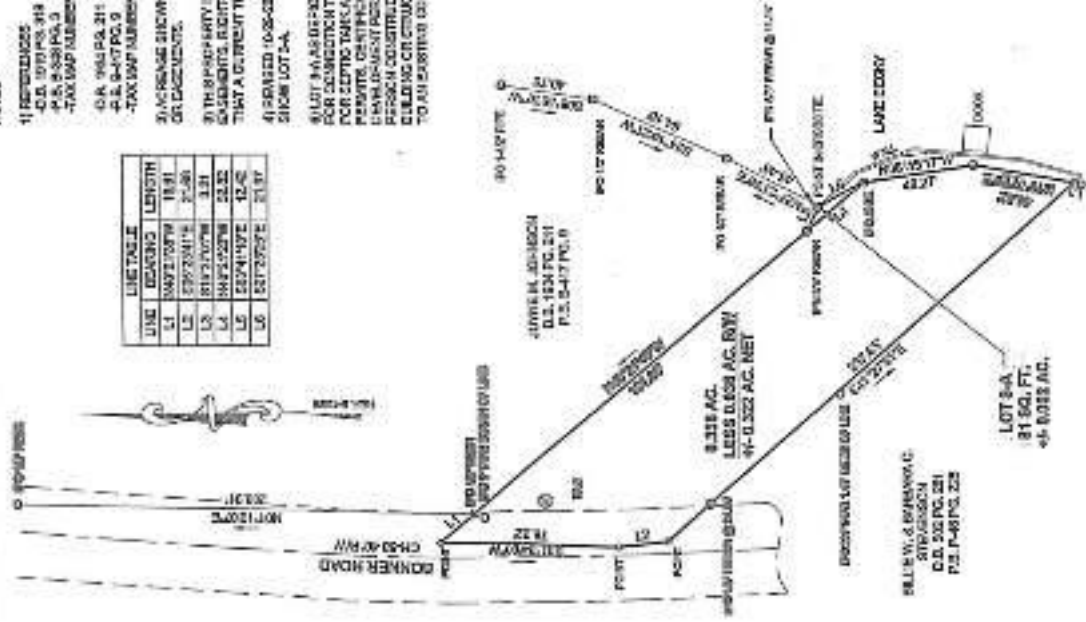
3) ACRES SHOWN INCLUDES ALL RIGHT-OF-WAYS AND OR CADDRESSES.

4) THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAYS AND OR RESTRICTIONS THAT A CURRENT TITLE SEARCH MAY REVEAL.

4) REVISION: 10-28-2015 TO UPDATE REFERENCE AND SHOW LOT 3-A.

5) LOT 3-A IS BEING PLOTTED ON THIS PLAN IS NOT BEING FOR CONNECTION TO A SANITARY SEWER SYSTEM OR FOR SEPTIC TANK APPROVAL. YOUR FINAL DESIGN PERMITS, OR THE RESULTS OF CONSTRUCTION ONLY CHECKS, SHALL BE YOUR RESPONSIBILITY. THE DESIGNER MAKES NO WARRANTY OR REPRESENTATION THAT ANY PERSON CONSTRUCTING OR INSTALLING THE SANITARY SEWER OR SEPTIC TANK WILL BE IN COMPLIANCE WITH ANY LOCAL, STATE OR FEDERAL REGULATIONS. THE DESIGNER DOES NOT GUARANTEE THE ACCURACY OF ANY INFORMATION OR DATA PROVIDED TO ANY SUBMITTER OF THIS PLAN.

LINE	BEARING	LENGTH
L1	N07°10'37"W	18.91
L2	S77°23'41"W	7.48
L3	S11°31'07"W	3.31
L4	S88°42'27"W	22.32
L5	S52°14'10"E	12.42
L6	S57°29'57"E	21.37



SLOTTER FAMILY TRUST

STEWART, EDWARDS & ASSOCIATES, INC.
 10000 W. 10TH AVENUE, SUITE 100
 DENVER, CO 80202
 PHONE: 303.733.1100
 FAX: 303.733.1101

DATE: 10/28/15
 DRAWN BY: [Signature]

SCALE: 1"=40'

Professional Engineer Seal: CAROL LIA, LICENSE NO. 11488, STATE OF COLORADO, EXPIRES 12/31/16

Professional Engineer Seal: CAROL LIA, LICENSE NO. 11488, STATE OF COLORADO, EXPIRES 12/31/16

Professional Engineer Seal: CAROL LIA, LICENSE NO. 11488, STATE OF COLORADO, EXPIRES 12/31/16



CONTRACT NO. 15-0000000000000000

LARRY C. BRANDT, P.A.

ATTORNEYS AT LAW

P.O. Box 738

3691 Blue Ridge Boulevard
Walhalla, South Carolina 29691

Phone: (864) 638-5406

Facsimile: (864) 638-7873

Larry C. Brandt
lcb.brandtlawfirm@att.net

R. Boatner Bowman
rbb.brandtlawfirm@att.net

Of Counsel

John F. Prescott, Jr.
jfprescott@bellsouth.net

February 18, 2016

Mr. James Slotter
9551 Buck Haven Trail
Tallahassee, Florida 32312

**Re: Juylene Johnson Property - Lake Becky
Seawall Encroachment**

Dear Mr. Slotter:

On behalf of my client, Ms. Juylene Johnson, and her daughter, Carol Jones, this is to advise you that the property which you wish to purchase, and upon which you have built your seawall, is not for sale. Juylene Johnson is agreeable, however, to grant you permission to leave the seawall as it is now with a clear understanding that she may revoke permission at any time upon thirty (30) days notice.

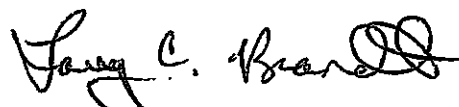
As you are aware, Ms. Johnson's daughter, Carol Jones, owns the underlying fee subject to a life estate which Ms. Johnson reserved in the property. As a life estate owner, Ms. Johnson can only grant to you permission to use the property, convey the property to you or convey to you an easement for her lifetime but, even assuming she did any of those, whatever she may grant to you would terminate upon her death unless Carol also joins in the grant or conveyance.

Presently, neither Ms. Johnson nor Carol wish to convey an interest in the property to you in any form or fashion, either by fee simple deed or by way of an easement, for the seawall for any specific period of time.

I trust that this letter is sufficient to clarify the present status of the seawall encroachment upon Ms. Johnson's property but if you have any questions concerning same or wish to discuss the matter further, please direct all correspondence to Ms. Johnson or Carol through this office.

Sincerely,

LARRY C. BRANDT, P.A.



Larry C. Brandt
Attorney

LCB/dcm



janet patterson <jpatterson112@gmail.com>

Slotter Property - House being built

4 messages

Cartee, Eddie <Eddie.Cartee@huber.com>

Sun, Feb 28, 2016 at 5:05 PM

To: Patricia Hesse <lakebecky57@gmail.com>, Stanley Gibson <sjgib@bellsouth.net>, Patti Byars <pattilabs@yahoo.com>, janet patterson <jpatterson112@gmail.com>, Dale Hesse <oldvintner@hotmail.com>, Howard Queen <action@notv.com>, Tom Bunn <thomasjbunn@gmail.com>

A concern was noted in the board meeting by more than one board member that water runoff was coming from the Slotter property where the new house was being built and running into the lake.

The water runoff was pulling mud, dirt, silt and other residue into the lake causing the lake to be muddy all over and causing a buildup of the mud, dirt, silt and residue onto the lake bottom.

I went over to the Slotter property with other board members and looked at the concern.

There was a 12-14 foot silt fence at the end of the sea wall. See Picture attached

Below the silt fence and the sea wall is where the mud, dirt, silt and other residue has run into the lake and built up on the lake bottom. See picture attached

discussed this concern with Tom Bunn. Tom stated he is aware of the concern. Tom said EHEC has looked at his work.

Tom said he would attempt to remove the mud, dirt, silt and other residue from the lake bottom.

I also talked to Jim Slotter. I let Jim know that some board members had raised a concern about water runoff in to the lake and this has caused mud, dirt, silt and other residue build up on the lake bottom.

Jim stated that would be a issue for Tom Bunn to take care of.

I told Jim I wanted him to be aware of the issue.

I have other pictures if needed. I could only send two pictures due to IT limitations.

If anyone has any questions, let me know.

Have a Safe and Great day.

Eddie Cartee, PHR, SHRM-CP
Senior Human Resources Manager
Huber Engineered Woods LLC
die.cartee@huber.com

<https://mail.google.com/mail/u/0/?ui=2&ik=34454883e2&view=pt&search=Inbox&th=15329eb3e087d749&siml=15329eb3e087d749&siml=1533ec8844857836&sel...> 1/5

Received Mar-15-2016 03:10pm

From-

To-Larry C. Brandt, P.A Page 011

(706) 336-3105 Phone
 (706) 336-3084 Fax

Confidentiality Notice:

THIS EMAIL TRANSMISSION AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE USE OF THE PERSON TO WHOM IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED OR OTHERWISE EXEMPT FROM DISCLOSURE. IF YOU ARE NOT THE INTENDED RECIPIENT OR THE PERSON AUTHORIZED TO DELIVER THIS EMAIL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OF THIS EMAIL IS PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLYING TO THIS MESSAGE AND DELETING ITS CONTENTS FROM YOUR INBOX

2 attachments



1 Phone 2-28-16 039.JPG
 4440K



1 Phone 2-28-16 033.JPG
 3648K

Cartee, Eddie <Eddie.Cartee@huber.com>

Thu, Mar 3, 2016 at 4:43 PM

To: "James.Slotter@hcahealthcare.com" <James.Slotter@hcahealthcare.com>, "JSlotter@Centurylink.net" <JSlotter@centurylink.net>, Tom Bunn <thomasjbunn@gmail.com>

Cc: Patricia Hesse <lakebecky57@gmail.com>, Stanley Gibson <sjgib@bellsouth.net>, Patti Byars <pattilabs@yahoo.com>, Janet Patterson <jpatterson112@gmail.com>, Dale Hesse <oldvintner@hotmail.com>, Howard Queen <action@nctv.com>

This is a follow up e-mail to the one I sent below on 2-28-16.

The concern noted below is that from the Slotter property there is a great deal of water runoff that is pulling mud, dirt, silt and other residue into the lake causing the lake to be muddy all over and causing a buildup of the mud, dirt, silt and residue onto the lake bottom. As we all know if we fill the lake bottom then we are just reducing the water level of the lake.

There are procedures that construction personnel perform on construction sites everyday that eliminates the mud, dirt, silt and other residue from running off the property they are

https://mail.google.com/mail/u/0/?ui=2&ik=3f45c803a2&view=pt&search=inbox&ui=10329eb3e007d749&siml=19329eb3e007d749&siml=1533ec8644657636&cl... 2/5

Received Mar-15-2016 03:10pm

From:

To: Larry C. Brandt, P.A Page 012

3/14/2016

Gmail - Slotter Property - House being built

Sincerely,

Jim Slotter

James Slotter**Manager, DSS East Team****HCA North Florida Division**

101 North Monroe Street, Suite 801

Tallahassee, FL 32301

Ph: (850) 523-3560

Email: James.Slotter@HCAhealthcare.com**From:** Tom Bunn [mailto:thomasjbunn@gmail.com]**Sent:** Thursday, March 03, 2016 6:21 PM**To:** Eddie Cartee <Eddie.Cartee@huber.com>**Cc:** Janet patterson <jpatterson112@gmail.com>; Stanley & Beth Gibson <sgib@bellsouth.net>;Patti Byars <pattilabs@yahoo.com>; Patricia Hesse <lakebecky57@gmail.com>; Slotter James<James.Slotter@hcahealthcare.com>; Dale Hesse <oldvintner@hotmail.com>; Howard Queen<action@nctv.com>; JSlotter@Centurylink.net**Subject:** [EXTERNAL] Re: FW: Slotter Property - House being built

[Quoted text hidden]

<https://mail.google.com/mail/u/0/?ui=2&ik=3f45c863a2&view=pt&search=Inbox&th=15329eb3e087d748&siml=15329eb3e087d749&siml=1533ec8944657696&sl...> 5/5

Received Mar-15-2016 03:15pm From-


To-Larry C. Brandt, P.A Page 002

3/14/2016

Gmail - Response to Board email regarding the Slotter property



Silt removal from lake bottom.JPG
792K

 To the Mountain Lake Fishing and Boating Club.docx
13K

Dale Hesse <oldvintner@hotmail.com>

Thu, Mar 10, 2016 at 7:15 PM

To: Tom & Cindy Bunn <thomasjbunn@gmail.com>, Eddie Cartee <eddie.cartee@huber.com>, Lake Becky <lakebecky57@gmail.com>, Howard Queen <action@nctv.com>, Janet Patterson <jpatterson112@gmail.com>, Patti Byars <pattilabs@yahoo.com>, Stanley Gibson <sjgib@bellsouth.net>, James Slotter <jslotter@centurylink.net>

I had to download individually pictures 1 & 3 to see what they were. I'm glad to see you have installed additional silt fences, and I will personally be monitoring them to be sure they hold adequately if and when we receive heavy rain.

Thank you for the update.

Dale Hesse

Date: Thu, 10 Mar 2016 15:45:24 -0500

Subject: Response to Board email regarding the Slotter property

From: thomasjbunn@gmail.com

To: Eddie.Cartee@huber.com; oldvintner@hotmail.com; lakebecky57@gmail.com; action@nctv.com; jpatterson112@gmail.com; pattilabs@yahoo.com; sjgib@bellsouth.net; JSlotter@centurylink.net; thomasjbunn@gmail.com

[Quoted text hidden]

Dale Hesse <oldvintner@hotmail.com>

Thu, Mar 10, 2016 at 7:20 PM

To: Tom & Cindy Bunn <thomasjbunn@gmail.com>, Eddie Cartee <eddie.cartee@huber.com>, Lake Becky <lakebecky57@gmail.com>, Howard Queen <action@nctv.com>, Janet Patterson <jpatterson112@gmail.com>, Patti Byars <pattilabs@yahoo.com>, Stanley Gibson <sjgib@bellsouth.net>, James Slotter <jslotter@centurylink.net>

Thanks for the additional pictures; had to download 1 and 3 in order to view them.

Dale

Date: Thu, 10 Mar 2016 15:45:24 -0500

Subject: Response to Board email regarding the Slotter property

From: thomasjbunn@gmail.com

To: Eddie.Cartee@huber.com; oldvintner@hotmail.com; lakebecky57@gmail.com; action@nctv.com; jpatterson112@gmail.com; pattilabs@yahoo.com; sjgib@bellsouth.net; JSlotter@centurylink.net; thomasjbunn@gmail.com

[Quoted text hidden]

3/14/2016

Gmail - Response to Board email regarding the Slotter property



janet patterson <jpatterson112@gmail.com>

Response to Board email regarding the Slotter property

4 messages

Tom Bunn <thomasjbunn@gmail.com>

Thu, Mar 10, 2016 at 3:45 PM

To: "Cartee, Eddie" <Eddie.Cartee@huber.com>, Dale Hesse <oldvintner@hotmail.com>, Patricia Hesse <lakebacky57@gmail.com>, Howard Queen <action@ncv.com>, Janet Patterson <jpatterson112@gmail.com>, Patti Byars <patilabs@yahoo.com>, Stanley & Beth Gibson <sjgib@bellsouth.net>, James Slotter <JSlotter@centurylink.net>, Tom Bunn <thomasjbunn@gmail.com>

I am attaching a Word Document and pictures that address the email from the board regarding the Slotter property and silt control.

I will attach the document and 4 pictures in the first email and send a second email with the remaining 4 pictures.

Let me know if you have any trouble receiving or opening the files.

Also, please let me know that you received this email.

Thanks,

Tom Bunn

5 attachments



Mulch and backfill on left side of Slotter foundation facing Stevenson home.jpg

2786K



Mulch and backfill on Stevenson side.jpg

1609K



Silt fence looking up from retaining wall between Johnson and Slotter lots.jpg

2197K

To the Mountain Lake Fishing and Boating Club:

I have been asked to respond to the email generated by the president of the club regarding the silt run off created by the construction of the Slotter residence.

We are sorry that run off went into the lake from the Slotter property. I'm sure we all know that having the lake level down this year and the excess rainfall during the time that the lake was down also resulted in much soil and accumulated sediment from the exposed lake shore around the entire perimeter of the lake to be eroded deeper into the lake and affected the water clarity in doing so. On the positive side, many improvements have been made around the lake this year, including construction of new docks, repair of several existing docks, and replacing several decaying and environmentally unsafe sea walls.

To respond to the request of how we have corrected and stabilized the lot, we have done the following:

- 1. After the excavation and installation of the sea wall and home foundation, curing time, and application of the exterior waterproofing system, we have now backfilled the seawall, and home foundation.**
- 2. Mulch has been applied to all exposed soil with exception of the stockpile needed for final grading. The mulch helps dissipate the energy of the rain when it hits the ground and lessens the movement of disturbed soil.**
- 3. Silt fencing has been re-installed after the backfill and mulching to help eliminate or reduce further erosion at the site.**
- 4. Additional stone has been added to the driveway to stabilize that area.**
- 5. Silt was removed from the lake in the corner left of the retaining wall when the backfilling was being done.**

This is the same approach I have taken on all lake homes I have built in this community as well as others. The silt fencing and mulch will need to be monitored when we have heavy rain events and adjusted as needed.

Several pictures will be attached to the email along with this Word document

Tom Bunn (Bunn Construction and Landscaping, LLC)

3/14/2016

Email - Response to Board email regarding the Slotter property

Fri, Mar 11, 2016 at 8:03 AM

Cartee, Eddie <Eddie.Cartee@huber.com>

To: Tom Bunn <thomasjbunn@gmail.com>

Cc: Dale Hesse <oldvintner@hotmail.com>, Patricia Hesse <lakebecky57@gmail.com>, Howard Queen
tion@nctv.com>, Janet Patterson <jpatterson112@gmail.com>, Patti Byars <pettilabs@yahoo.com>, Stanley &
Beth Gibson <sjgib@bellsouth.net>, James Slotter <JSlotter@centurylink.net>

Thanks for the information.

I have only received one e-mail that had 4 pictures and a word document.

The note below says I will receive an addition e-mail with 4 more pictures.

I have not received that e-mail yet.

Did you send the second email with 4 additional pictures and I just missed it somehow? Or have you just not sent the addition e-mail yet?

Have a Safe and Great day.

Eddie Cartee, PHR, SHRM-CP
Senior Human Resources Manager
Huber Engineered Woods LLC
eddie.cartee@huber.com
(706) 336-3105 Phone
(706) 336-3084 Fax

Confidentiality Notice:

THIS EMAIL TRANSMISSION AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE USE OF THE PERSON TO WHOM IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED OR OTHERWISE EXEMPT FROM DISCLOSURE. IF YOU ARE NOT THE INTENDED RECIPIENT OR THE PERSON AUTHORIZED TO DELIVER THIS EMAIL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OF THIS EMAIL IS PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLYING TO THIS MESSAGE AND DELETING ITS CONTENTS FROM YOUR INBOX

From: Tom Bunn [mailto:thomasjbunn@gmail.com]

Sent: Thursday, March 10, 2016 3:45 PM

To: Cartee, Eddie; Dale Hesse; Patricia Hesse; Howard Queen; Janet Patterson; Patti Byars; Stanley & Beth Gibson; James Slotter; Tom Bunn

Subject: Response to Board email regarding the Slotter property

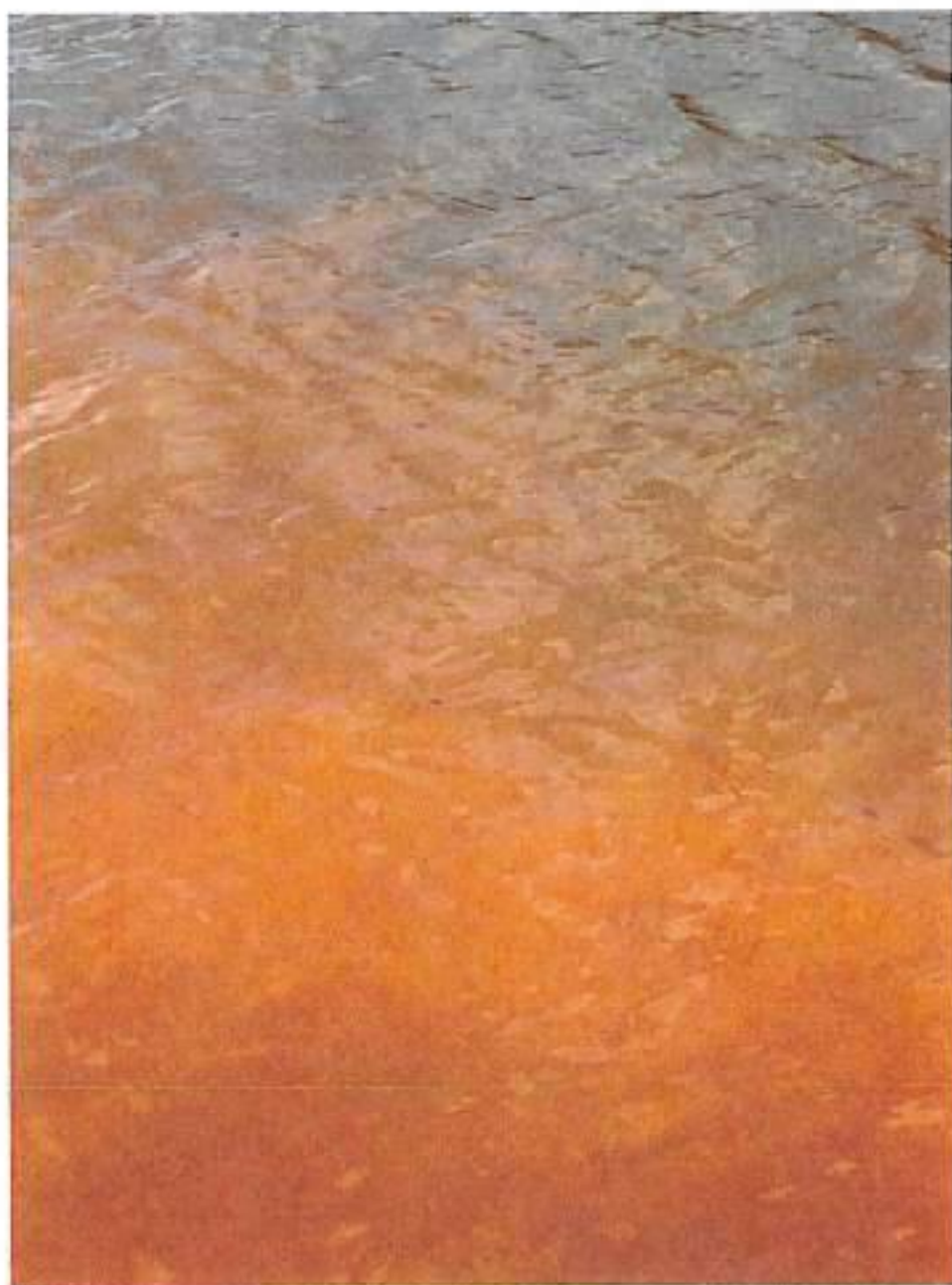
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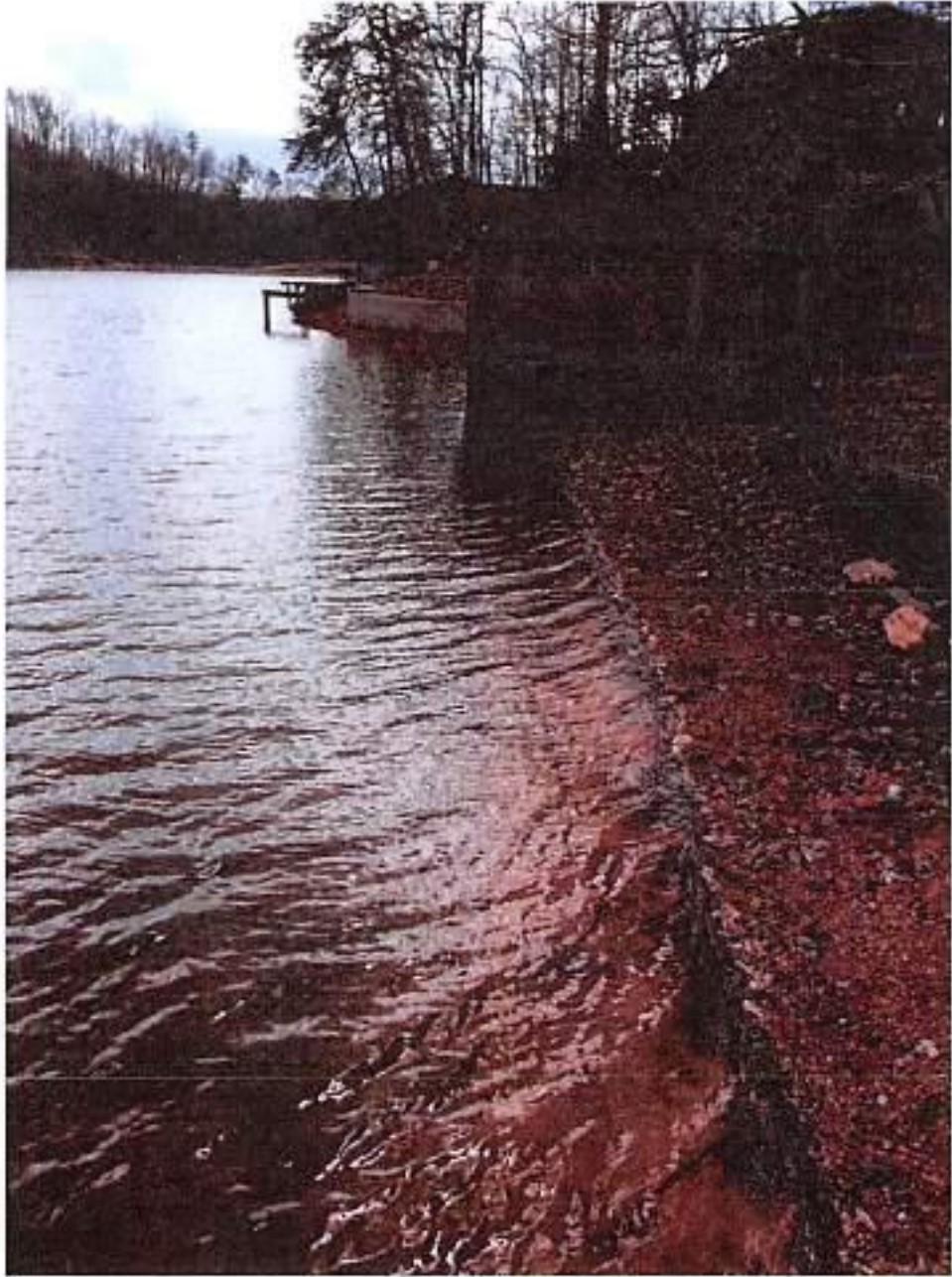
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Received Mar-15-2016 09:15pm

From-

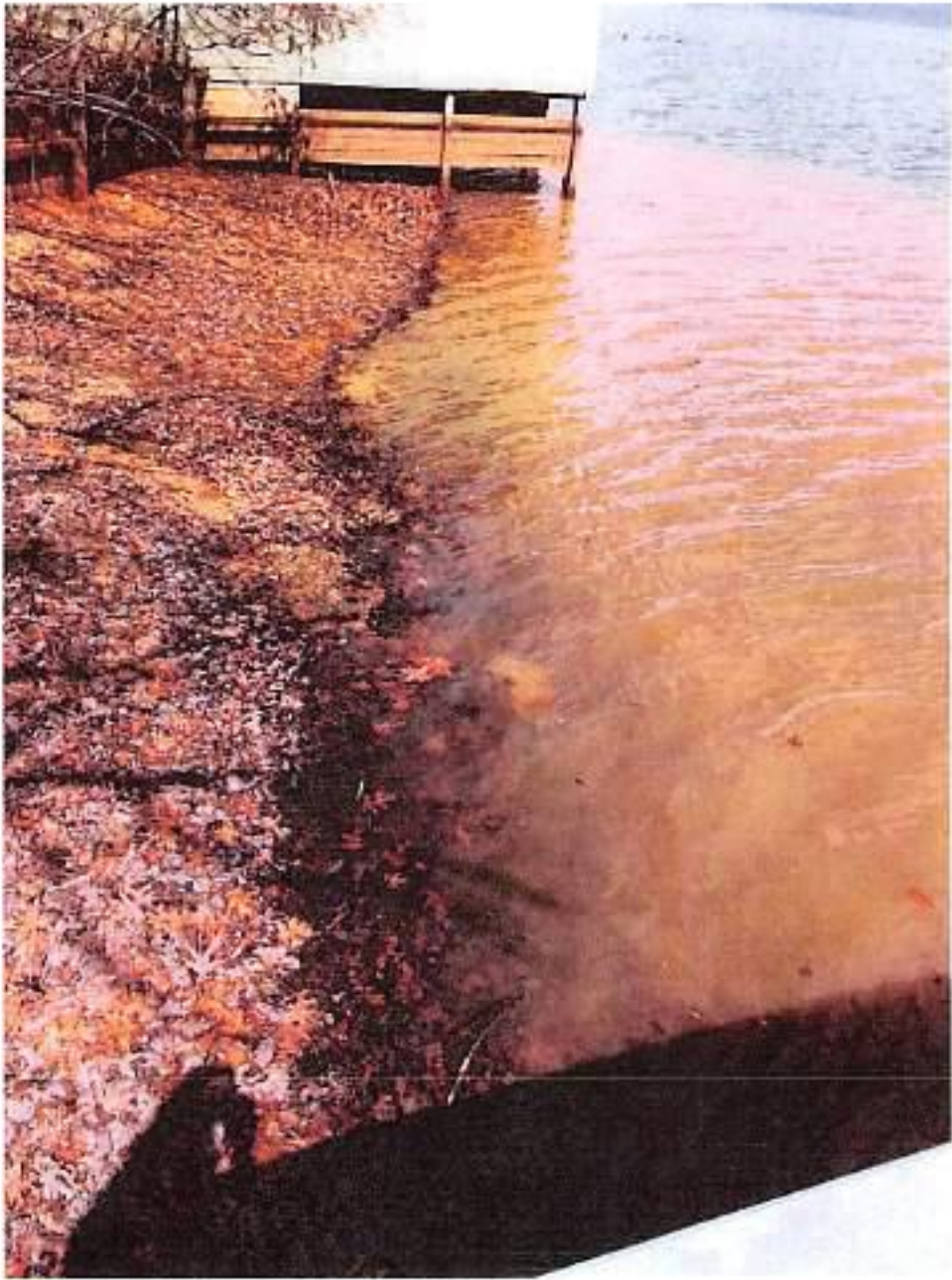
To-Larry C. Brandt, P.A Page 004















Board of Zoning Appeals

415 S. Pine St. • Walhalla, South Carolina 29691
Phone (864) 638-4218 • Fax (864) 638-4168

NOTICE OF APPEAL

Date March 1, 2016

I, Thomas J. Bunn (agent of owner) (owner) (agent of owner)

hereby request an appeal to the following action (be specific):

The narrow nature of the lot at 149 Bonner Road, Mountain Rest SC and the DHEC Septic requirements has necessitated that the Slotter home be positioned close to Lake Becky. This application is to request a variance from the Planning and Zoning Back Set back requirements to allow them to build a deck on the back of the house that is of uniform size and symmetrical to the home.

Reason for appeal:

The attached foundation plan shows the lower level of the home and the position of the six deck foundation pads.
Post #1 is 5 feet into the Side setback and this post has been eliminated to remove any side setback variance needs.
Post #2 is on line and not in the side setback
Post #3 is not in a setback
Post #4 is 2.45 feet in the back set back
Post #5 is 6.32 feet in the back set back
Post #6 is 9.99 feet in the back set back
Since the use of the lake and construction of docks and boat houses are permitted by the property deed and lake rules respectively, we request that the variance will allow the deck to be built as planned extending into the back set backs adjacent to lake property only.

Applicant's Name Thomas Jay Bunn (for The Slotter Family Trust)

Address 149 Bonner Road, Mountain Rest, Sc 296643 082-04-01-036

Mailing Address (if different) 356 Burnt Tanyard Rd, West Union, Sc 29696

Phone Number 864-638-2784

Fax Number _____

Signature: 

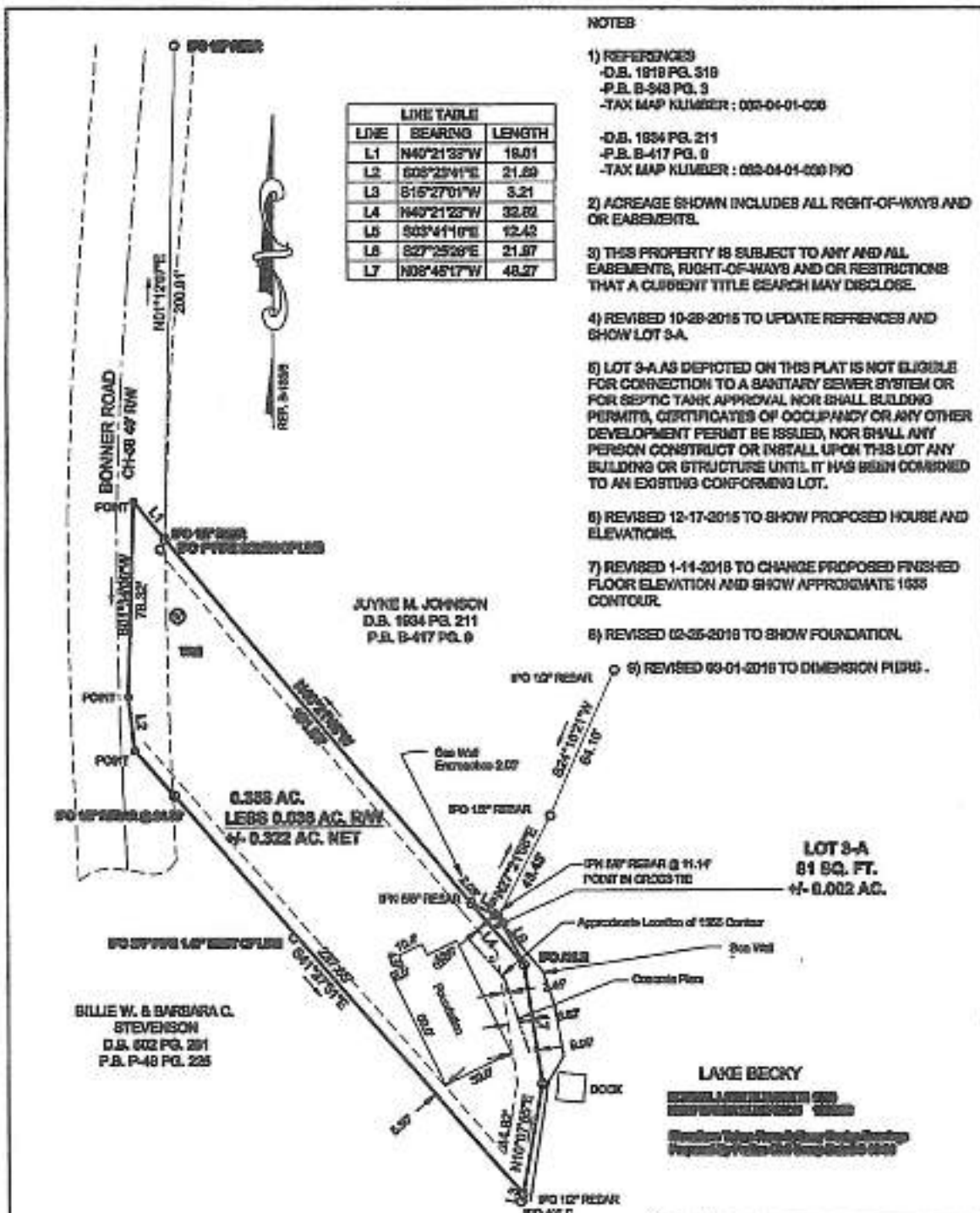
Please be advised that an Appeals Application Fee of \$100 must be paid in full at the time the application is received by the Planning Department. Applicants shall be notified at the specified mailing address once a public hearing date is set.

Print Form

NOTES

- 1) REFERENCES
 -D.B. 1918 PGL 319
 -P.B. B-348 PG. 3
 -TAX MAP NUMBER : 003-04-01-000
- D.B. 1934 PGL 211
 -P.B. B-417 PG. 0
 -TAX MAP NUMBER : 003-04-01-000 PVO
- 2) ACREAGE SHOWN INCLUDES ALL RIGHT-OF-WAYS AND OR EASEMENTS.
- 3) THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAYS AND OR RESTRICTIONS THAT A CURRENT TITLE SEARCH MAY DISCLOSE.
- 4) REVISED 10-29-2015 TO UPDATE REFERENCES AND SHOW LOT 3-A.
- 5) LOT 3-A AS DEPICTED ON THIS PLAN IS NOT ELIGIBLE FOR CONNECTION TO A SANITARY SEWER SYSTEM OR FOR SEPTIC TANK APPROVAL NOR SHALL BUILDING PERMITS, CERTIFICATES OF OCCUPANCY OR ANY OTHER DEVELOPMENT PERMIT BE ISSUED, NOR SHALL ANY PERSON CONSTRUCT OR INSTALL UPON THIS LOT ANY BUILDING OR STRUCTURE UNTIL IT HAS BEEN COMBINED TO AN EXISTING CONFORMING LOT.
- 6) REVISED 12-17-2015 TO SHOW PROPOSED HOUSE AND ELEVATIONS.
- 7) REVISED 1-11-2016 TO CHANGE PROPOSED FINISHED FLOOR ELEVATION AND SHOW APPROXIMATE 1935 CONTOUR.
- 8) REVISED 02-25-2016 TO SHOW FOUNDATION.
- 9) REVISED 03-01-2016 TO DIMENSION PIER.

LINE	BEARING	LENGTH
L1	N40°21'32"W	18.01
L2	S03°23'41"E	21.69
L3	S15°27'01"W	3.21
L4	N40°21'23"W	32.62
L5	S03°44'10"E	12.42
L6	S27°25'26"E	21.07
L7	N08°45'17"W	48.27



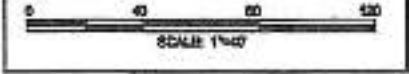
SLOTTER FAMILY TRUST
 CHATHAM TRUST, CHATHAM COUNTY, GA.
STEPHEN R. EDWARDS & ASSOCIATES, INC.
 1407 LAKE BECKY DRIVE, SUITE 100
 WYOMING, OHIO 43085-1700
 REVISED 02-23-2016
 JOB NUMBER 10-00



STEPHEN R. EDWARDS
 No. 19681
 STATE OF SOUTH CAROLINA

STEPHEN R. EDWARDS & ASSOCIATES, INC.
 No. C02104
 STATE OF SOUTH CAROLINA

DATE OF RECORDATION: 02/23/2016
 COUNTY: CHATHAM
 BOOK: 10-00
 PAGE: 100



There are extraordinary and exceptional conditions pertaining to the particular piece of property;

- 1. The lot is very narrow and required special home and driveway placement in order for DEHEC to approve the septic permit.**
- 2. The lot was purchased prior to the new zoning setbacks.**
- 3. FEMA flood plain elevations were not in place when the lot was purchased and this coupled with the zoning regulations have created a need to be in the 2012 setbacks.**

These conditions do not generally apply to other property in the vicinity;

- 1. The adjacent lots are much larger and/or were built upon prior to the current zoning regulations.**

Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

- 1. The deck of the home would be drastically reduced in size and not fit symmetrically with the home. It would have an unusual shape.**
- 2. We have already altered the left end of the deck(viewing from inside the home) to help comply with the zoning regulations .**
- 3. Further redesign of the home and deck would cause an additional financial burden on the homeowners.**

The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

- 1. The home will in fact look better with the deck uniform in size.**
- 2. The area in question looks over a small mountain lake and does not impact the use or view of the neighboring property.**
- 3. The county has granted a driveway permit in that location.**
- 4. The construction of this home, as designed, will add value to the existing properties on Lake Becky.**

Attached: Plat showing setbacks and home positioning, DEHEC septic permit,

Pictures from adjacent properties, plan view showing deck posts.



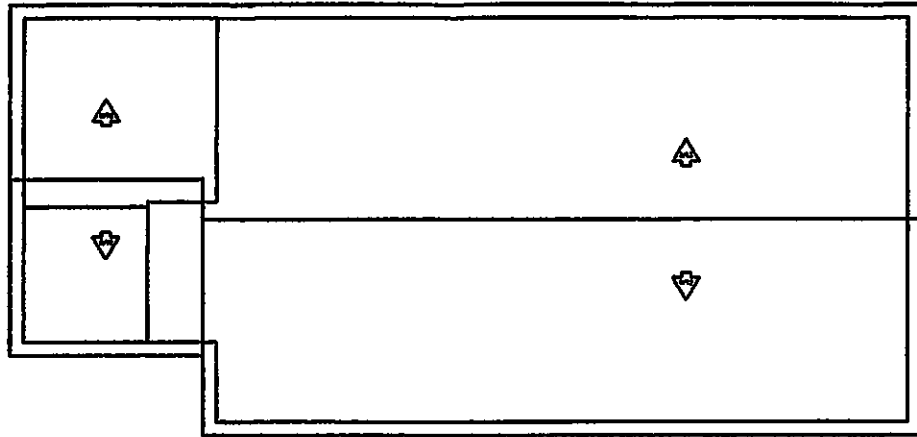






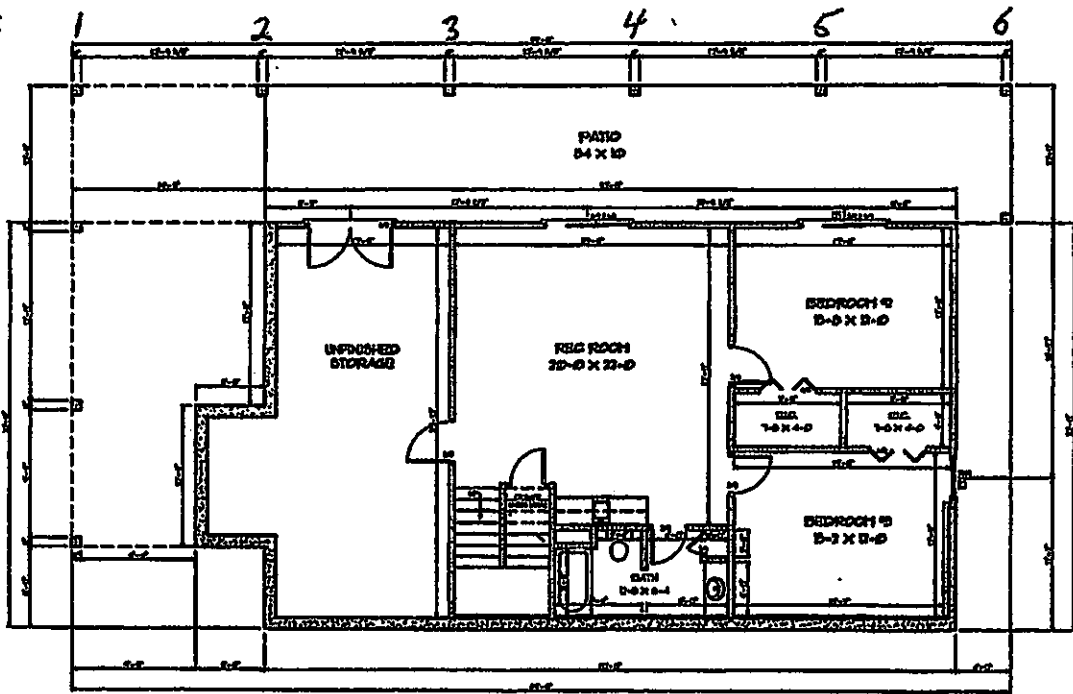
ALL DIMENSIONS UNLESS NOTED OTHERWISE
 CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE BOOKS AND LOCAL ORDINANCES.
 ALL DIMENSIONS UNLESS NOTED OTHERWISE
 CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE BOOKS AND LOCAL ORDINANCES.

ROOF OVERHANG IS 1'-0" FROM STUD WALL.
 ROOF PITCH IS 8/12 UNLESS NOTED OTHERWISE.
 ROOF PLAN PROVIDED FOR LAYOUT AND DESIGN.
 ROOF LOADS AND DESIGN AS PER TRADE
 MANUFACTURER PLANS AND SPECIFICATIONS.



- GENERAL NOTES**
1. DRAWING PREPARED EXPLICITLY FOR THE PURPOSE OF OBTAINING BIDDING AND PERMITS. OWNER PROVIDES OCCUPANCY CLASSIFICATION.
 2. ALL WORK TO COMPLY WITH SPECIFICATIONS DERIVED BY APPLICABLE CODES ADOPTED BY STATE AND/OR LOCAL JURISDICTION.
 3. PRIOR TO CONSTRUCTION, OWNER TO VERIFY ALL CONSTRUCTION AND FROM FUTURE.
 4. OWNER RESPONSIBLE FOR SIZE AND LOCATION OF ALL CONSTRUCTION (E.G. FOUNDATION, FOOTING, FOUNDATION, STAIRS) PER CODE.
 5. MECHANICAL AND ELECTRICAL SPECIFICATIONS TO BE PROVIDED BY OWNER. OWNER TO LOCATE AND VERIFY EXISTING HEAVY AND MECHANICAL.

Posts

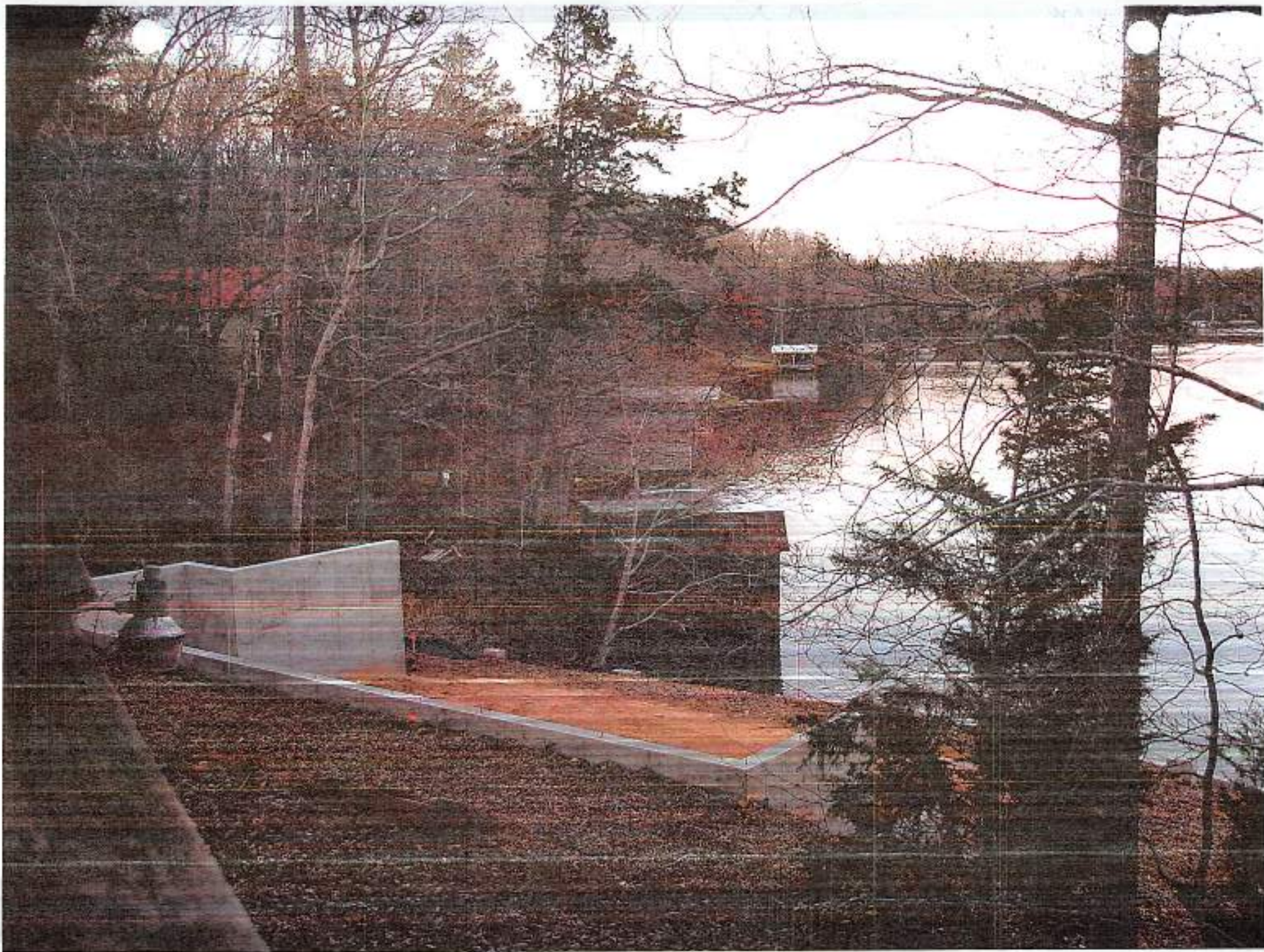


- NOTES**
1. ALL DIMENSIONS UNLESS NOTED OTHERWISE.
 2. ALL OPENINGS ARE TO STUD WALL. CHECK FOR DEPTH OF FOUNDATION.
 3. ALL WINDOW HEIGHTS ARE 0'-0" UNLESS NOTED OTHERWISE.
 4. SLAM DOOR AND SHOCK RESIST PROVIDED. OWNER TO VERIFY RFD PER MANUFACTURER. DOORS: 2 1/2" x 6 1/2" x 1 3/4" TYPE: 2 1/2" x 6 1/2" x 1 3/4" TYPE.
 5. [] INDICATES EMERGENCY ESCAPE ROUTES. AS PER CODE, OWNER TO LOCATE & VERIFY EXITS AND VERIFIED ESCAPE.
 6. ALL STAIRS AND RAMP SHALL BE NOTED OTHERWISE.
 7. CONTRACTOR TO PROVIDE FOR RADIUM PROTECTION.

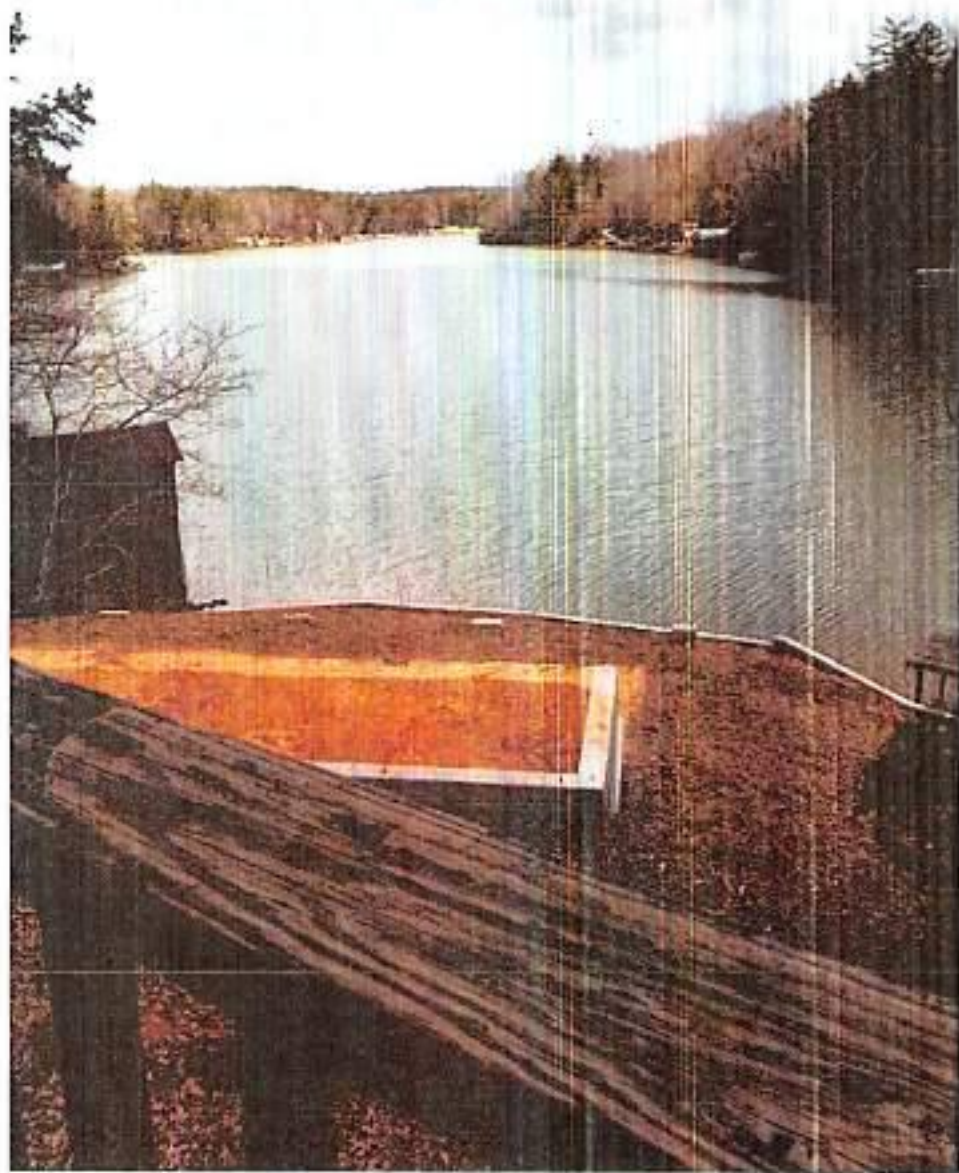
UNLESS NOTED OTHERWISE,
 CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE BOOKS AND LOCAL ORDINANCES.





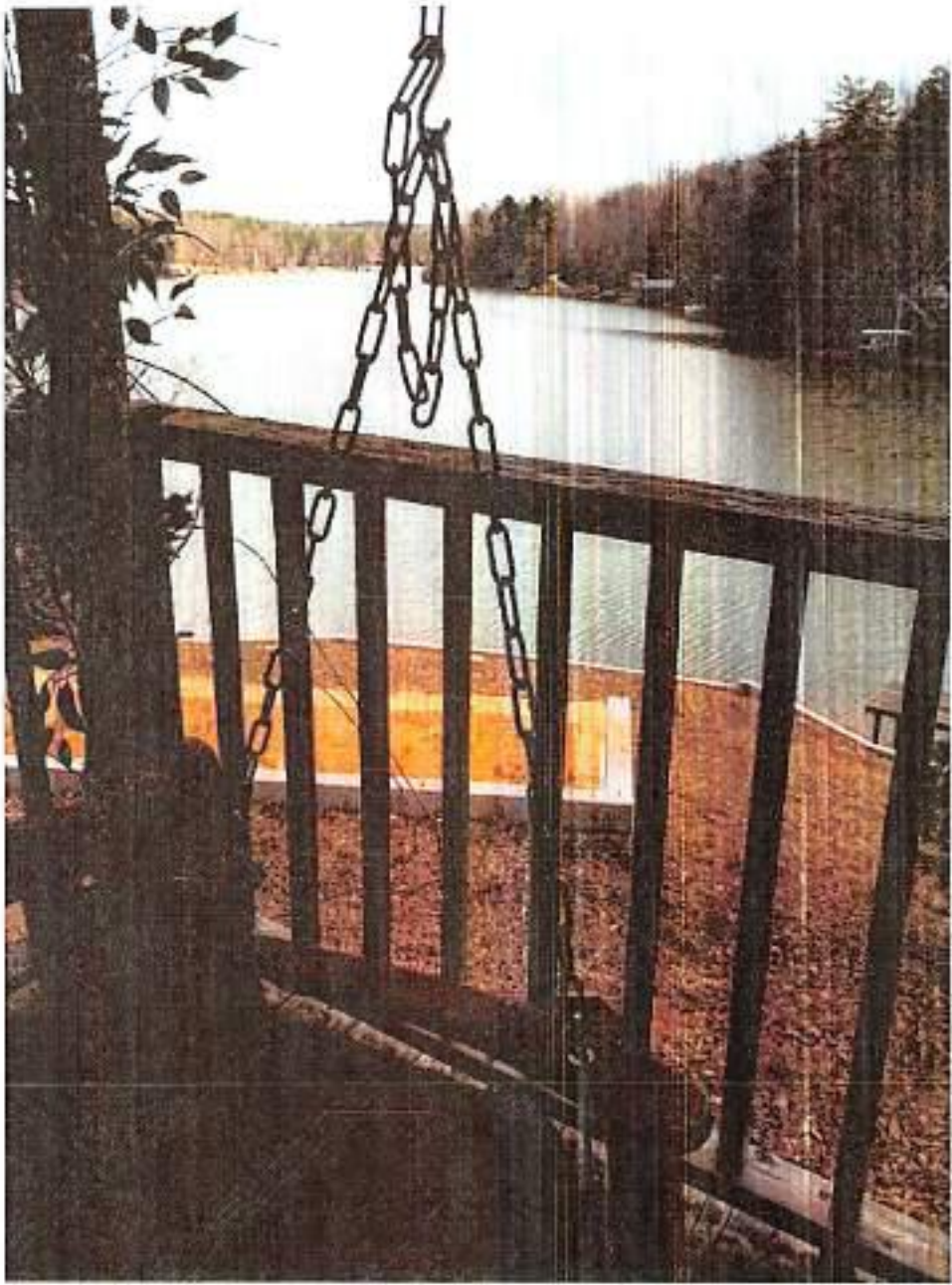


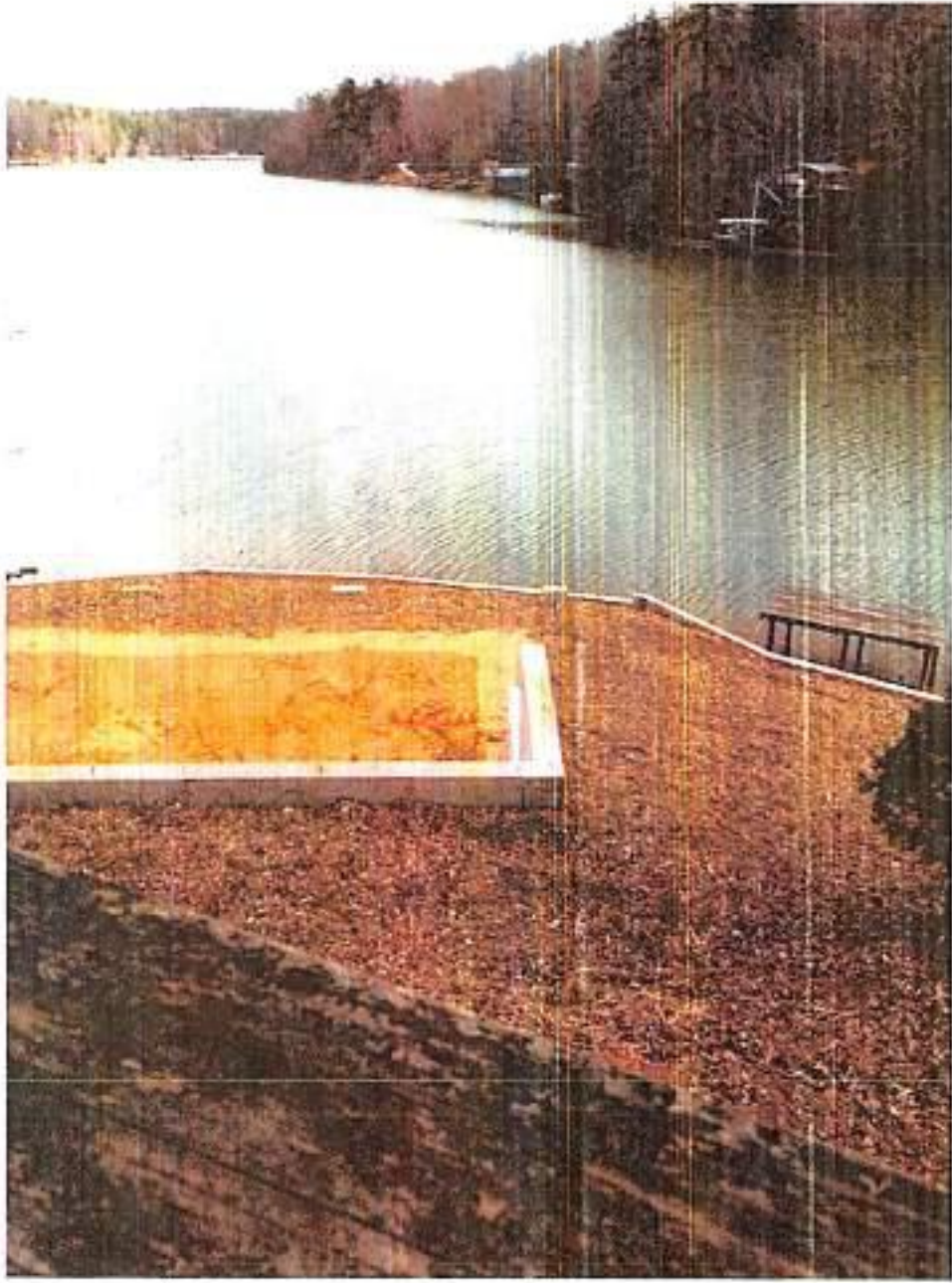


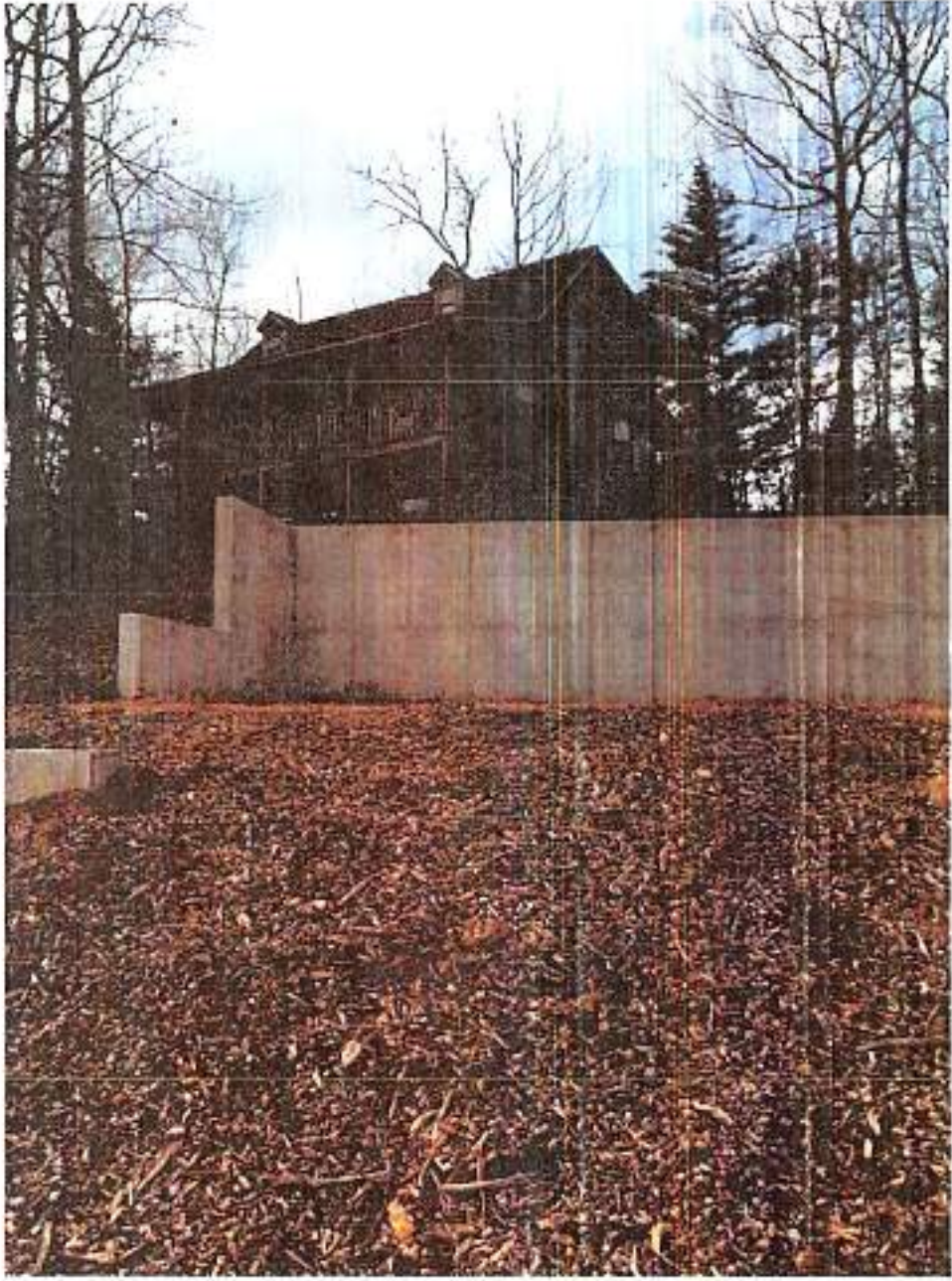


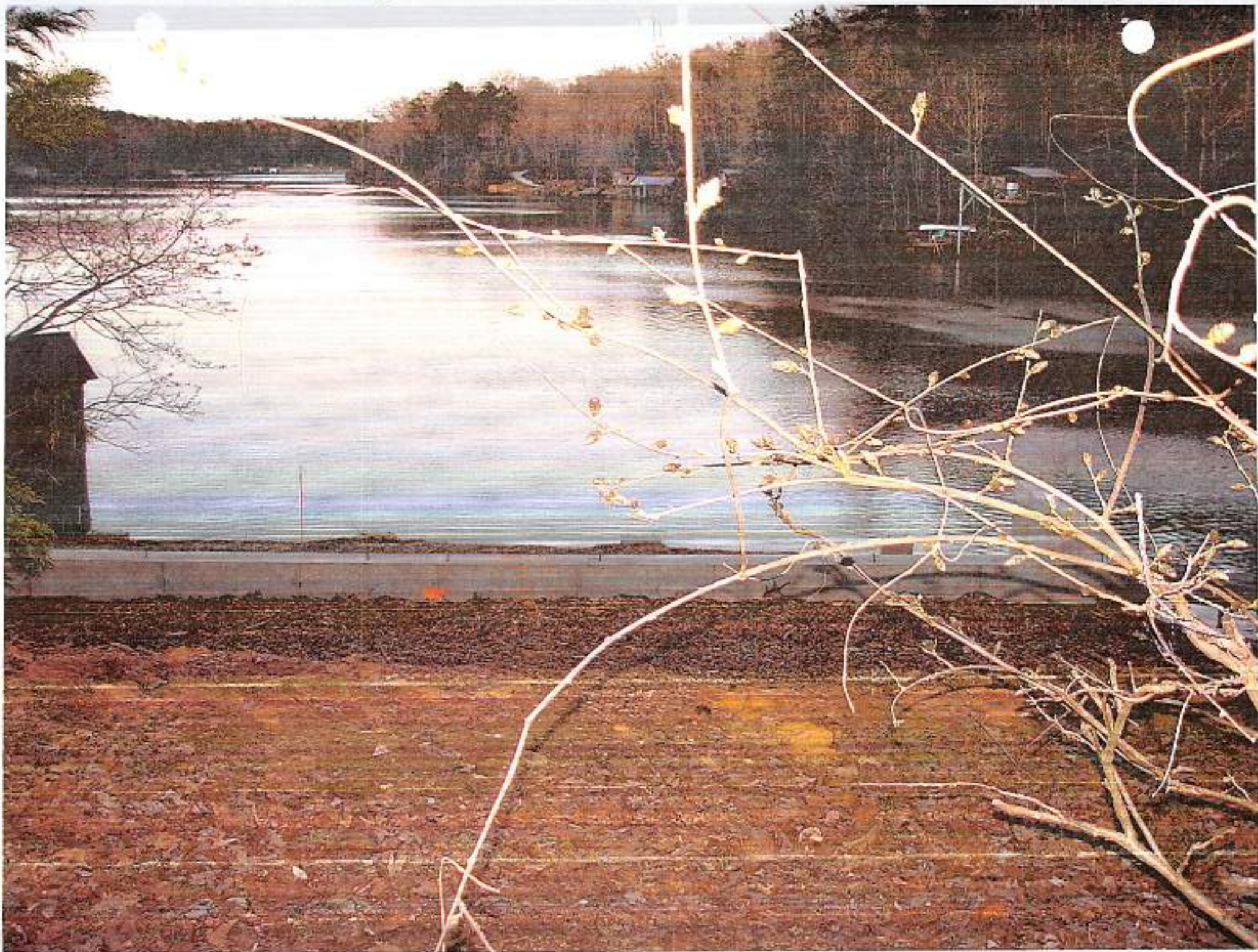


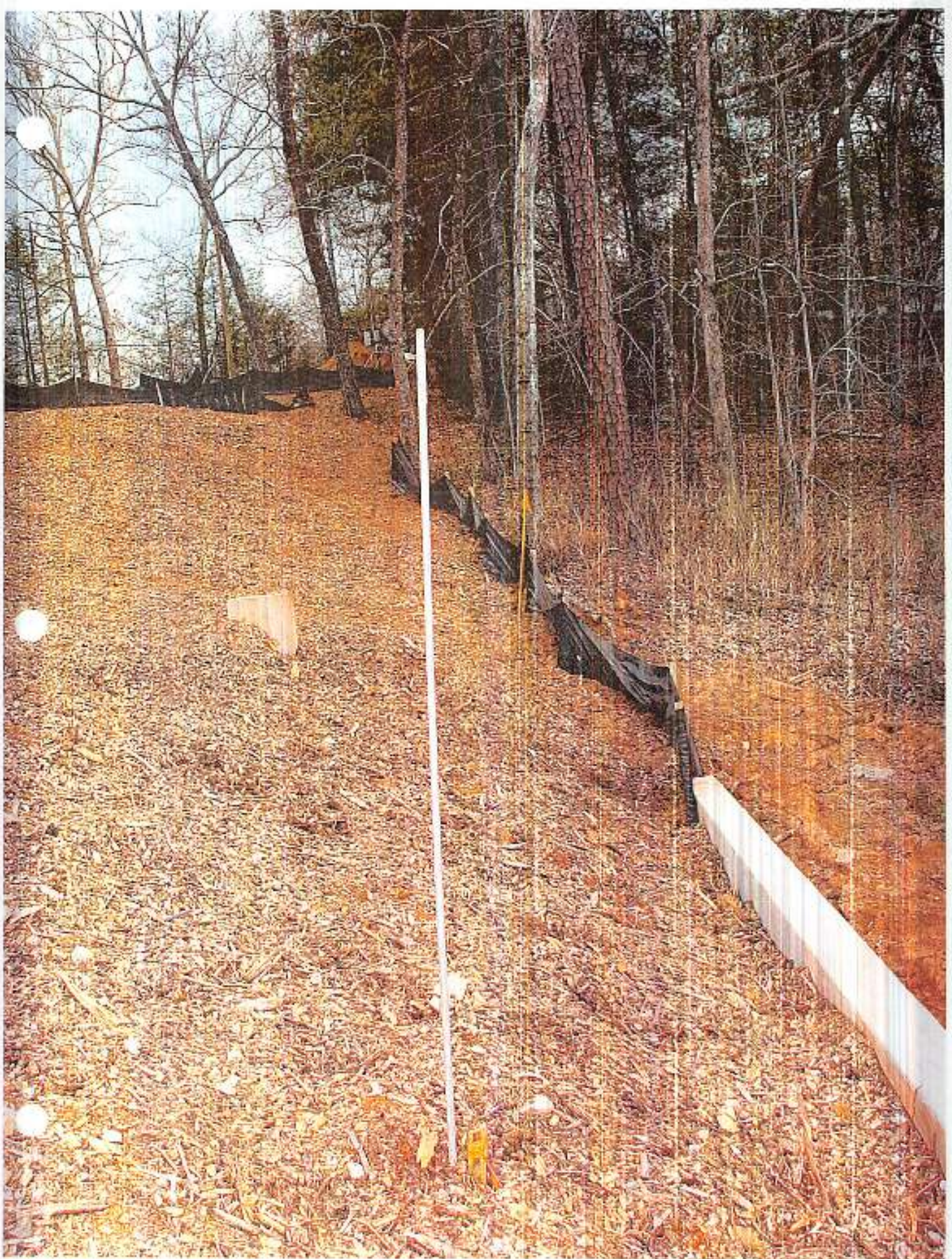


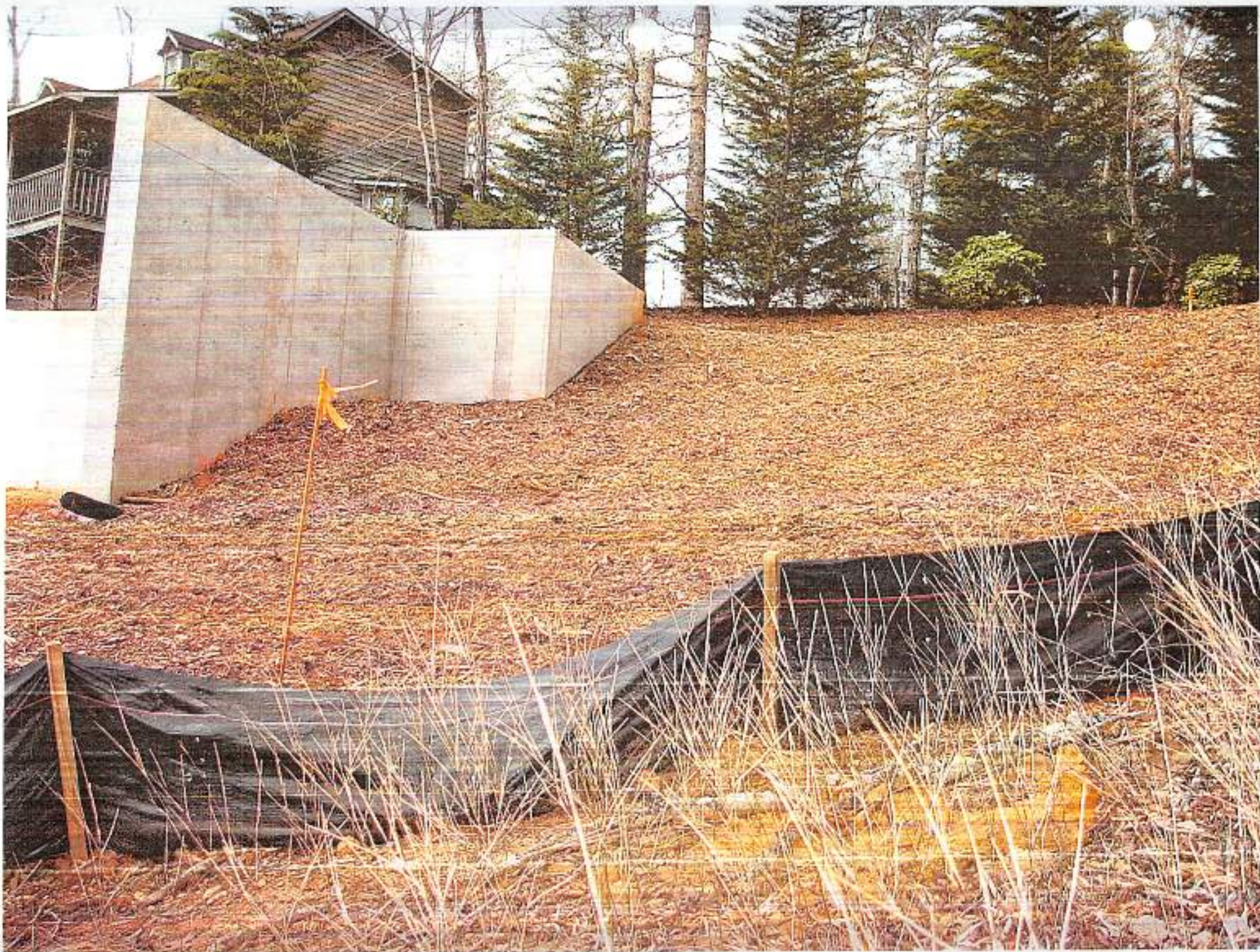
















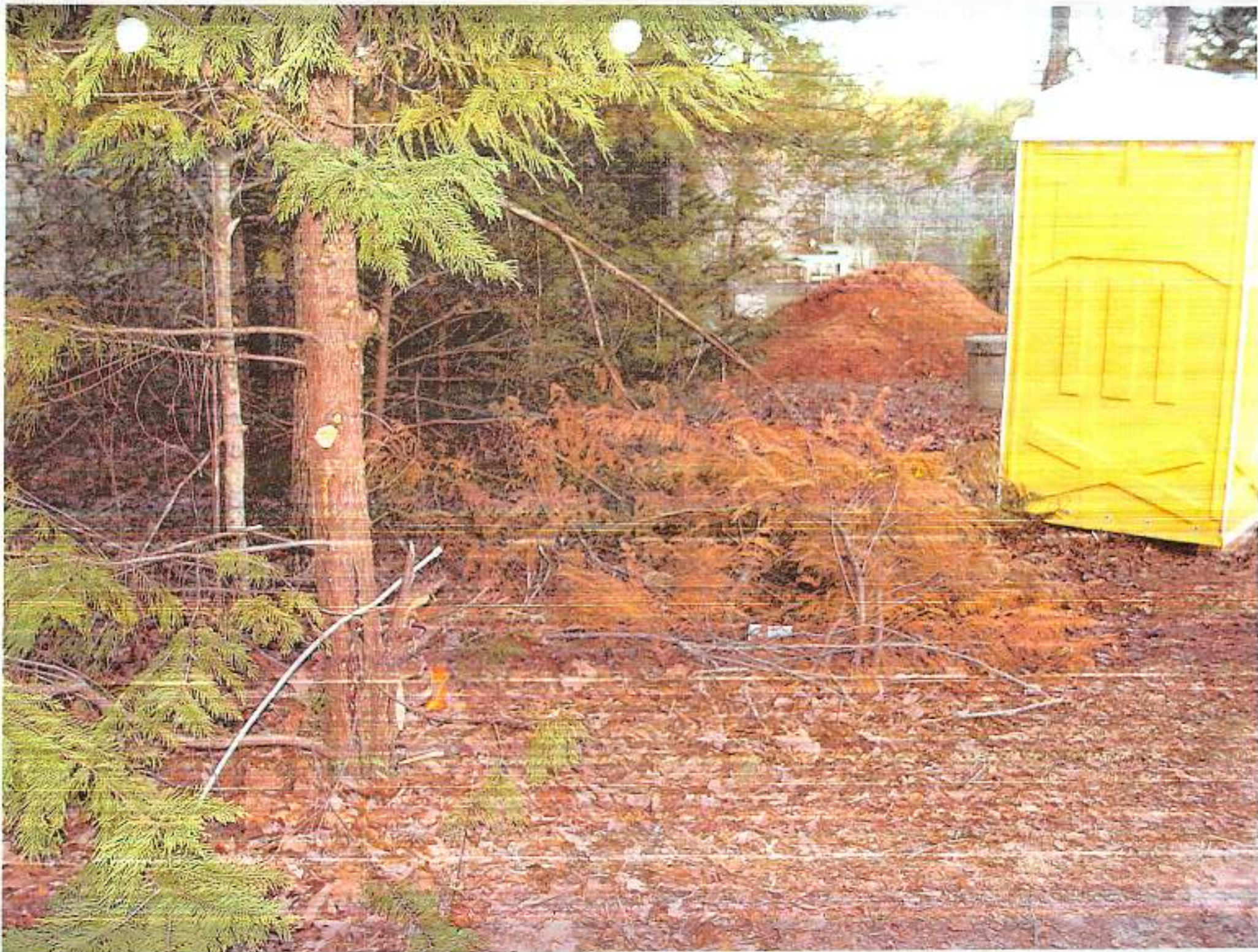


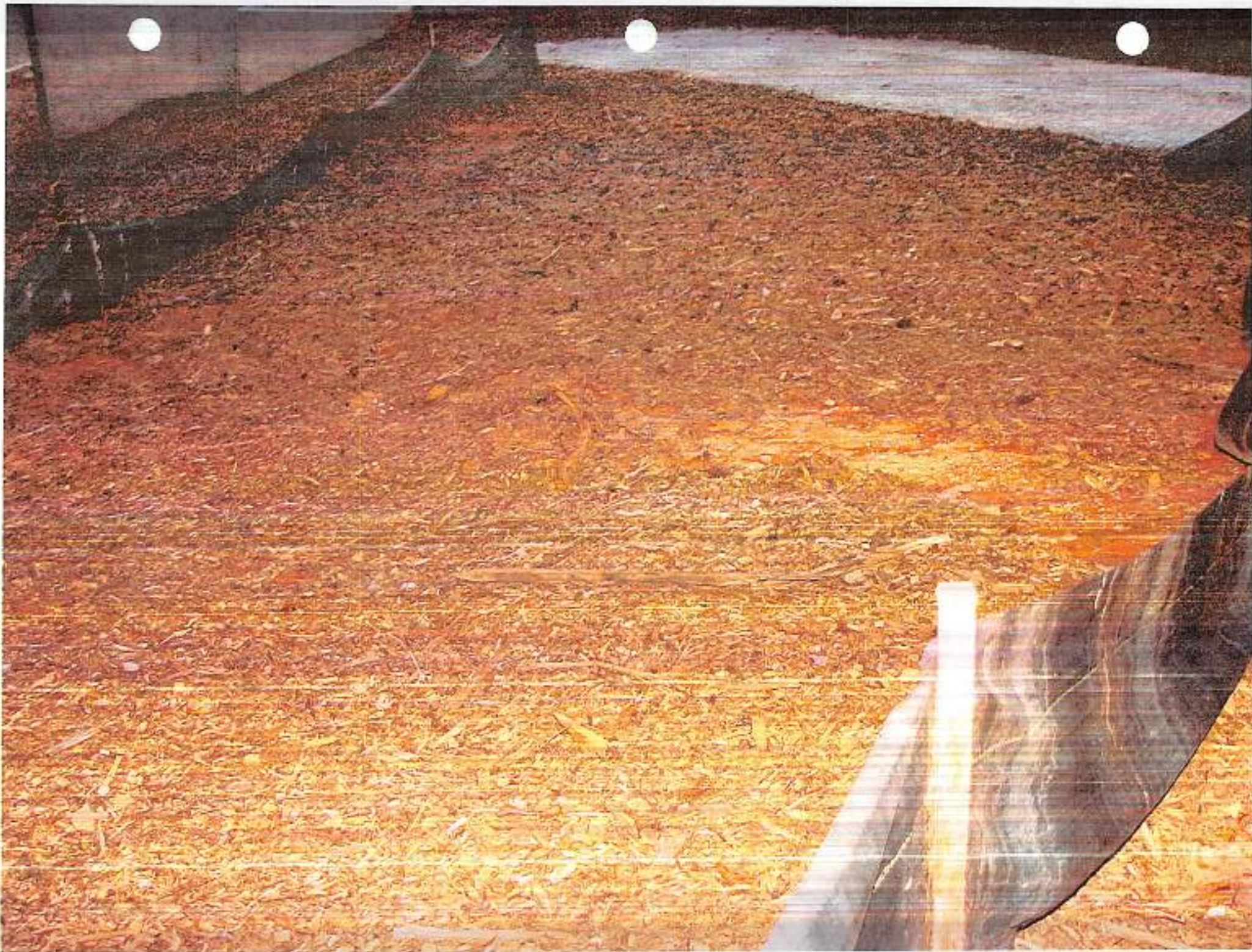






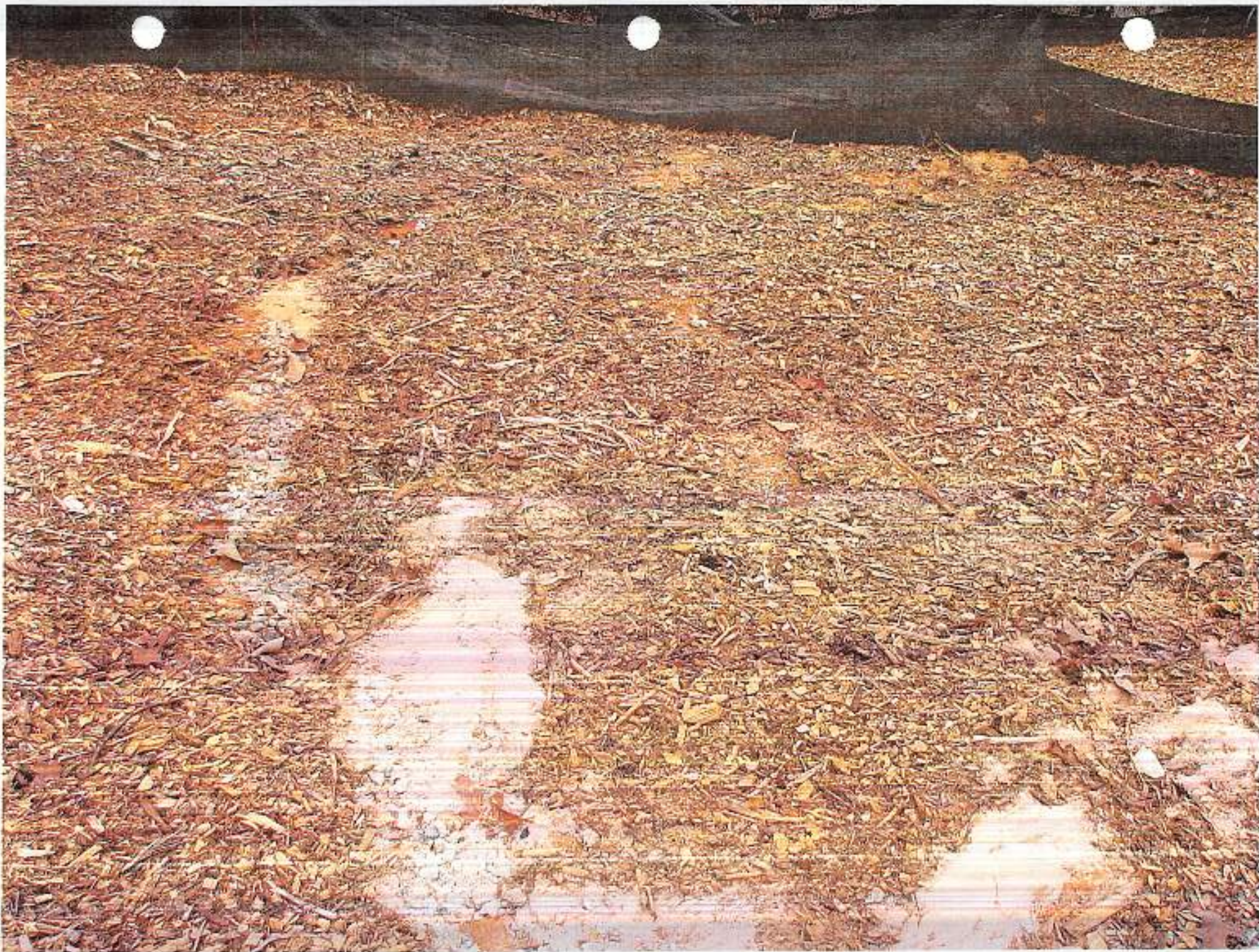








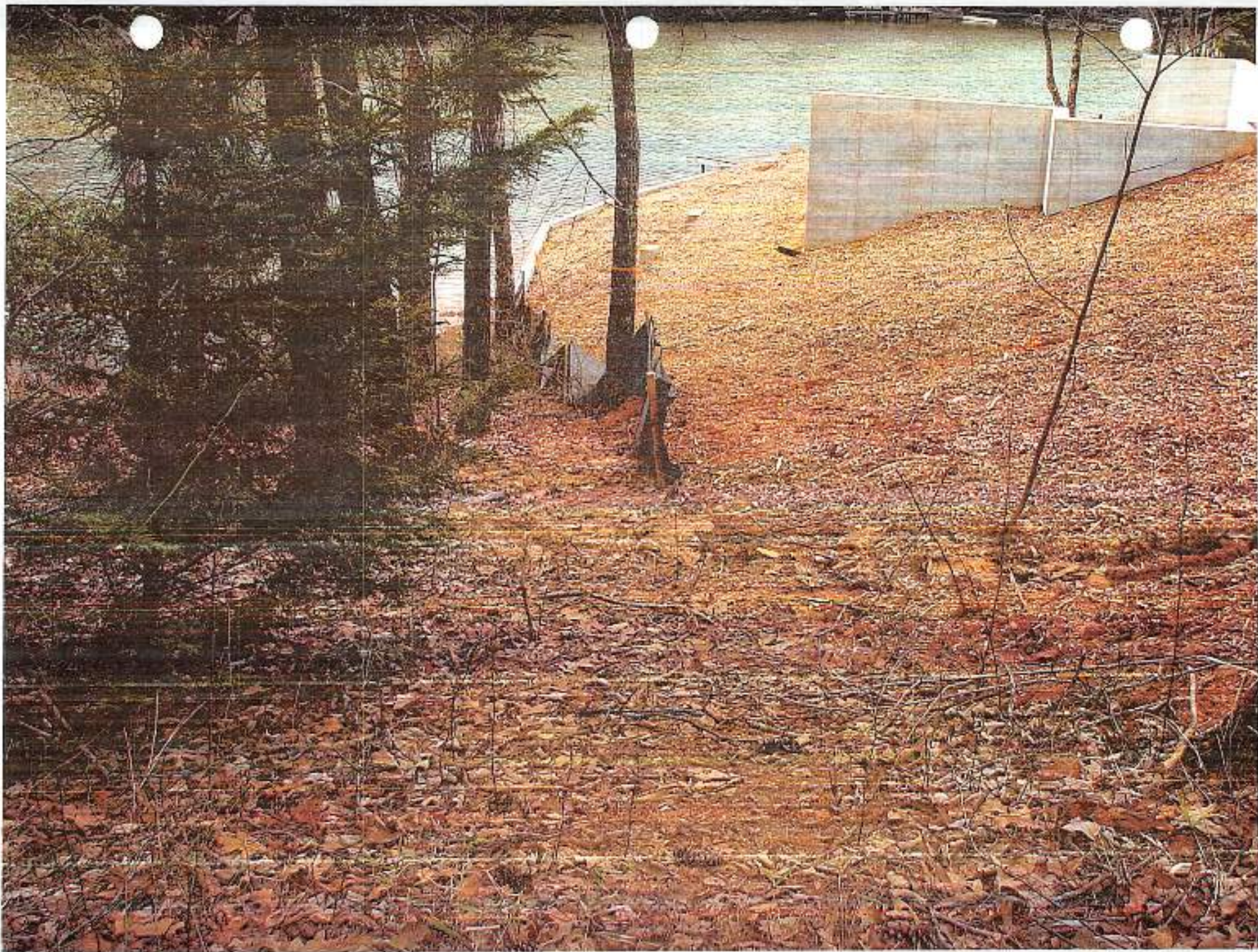






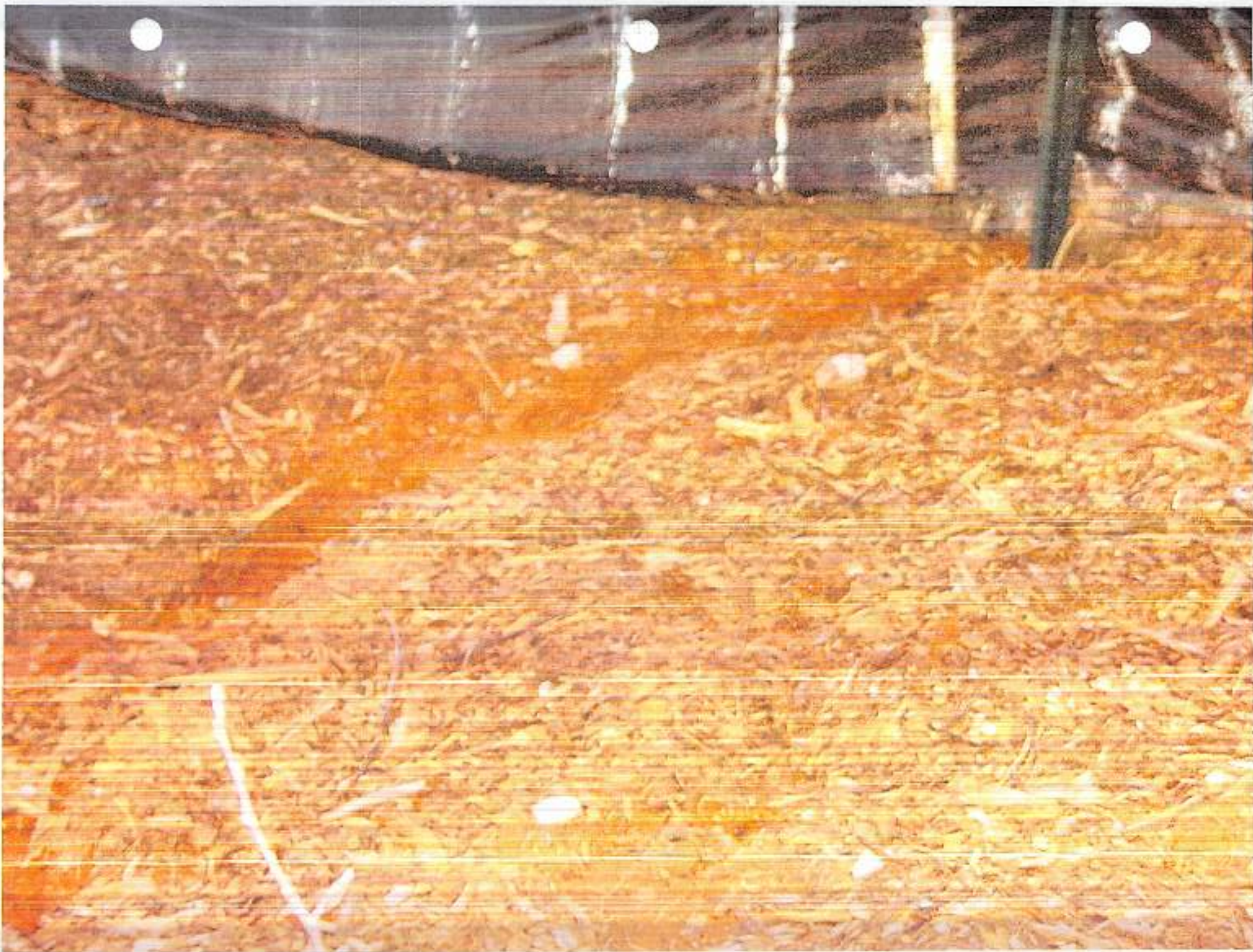


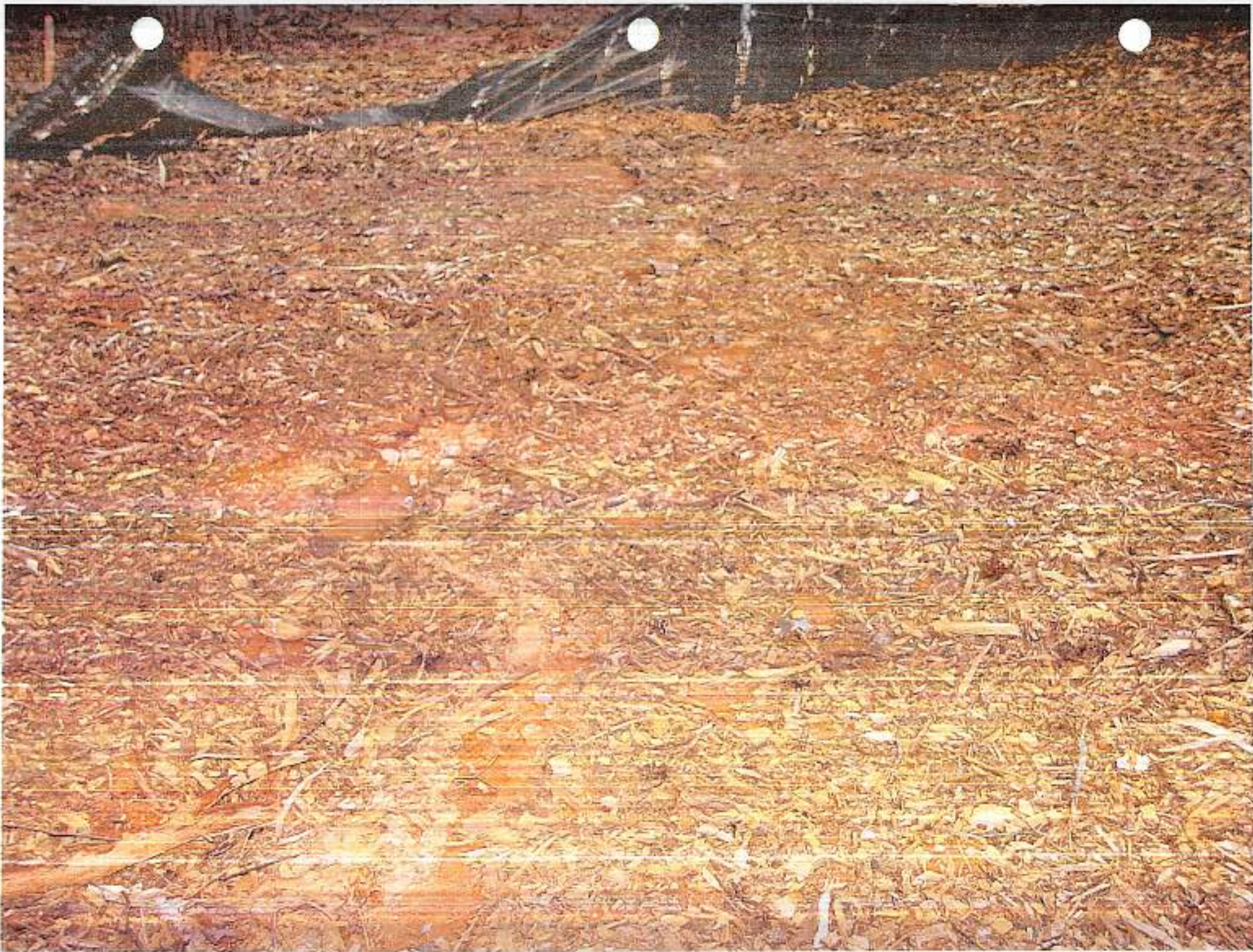








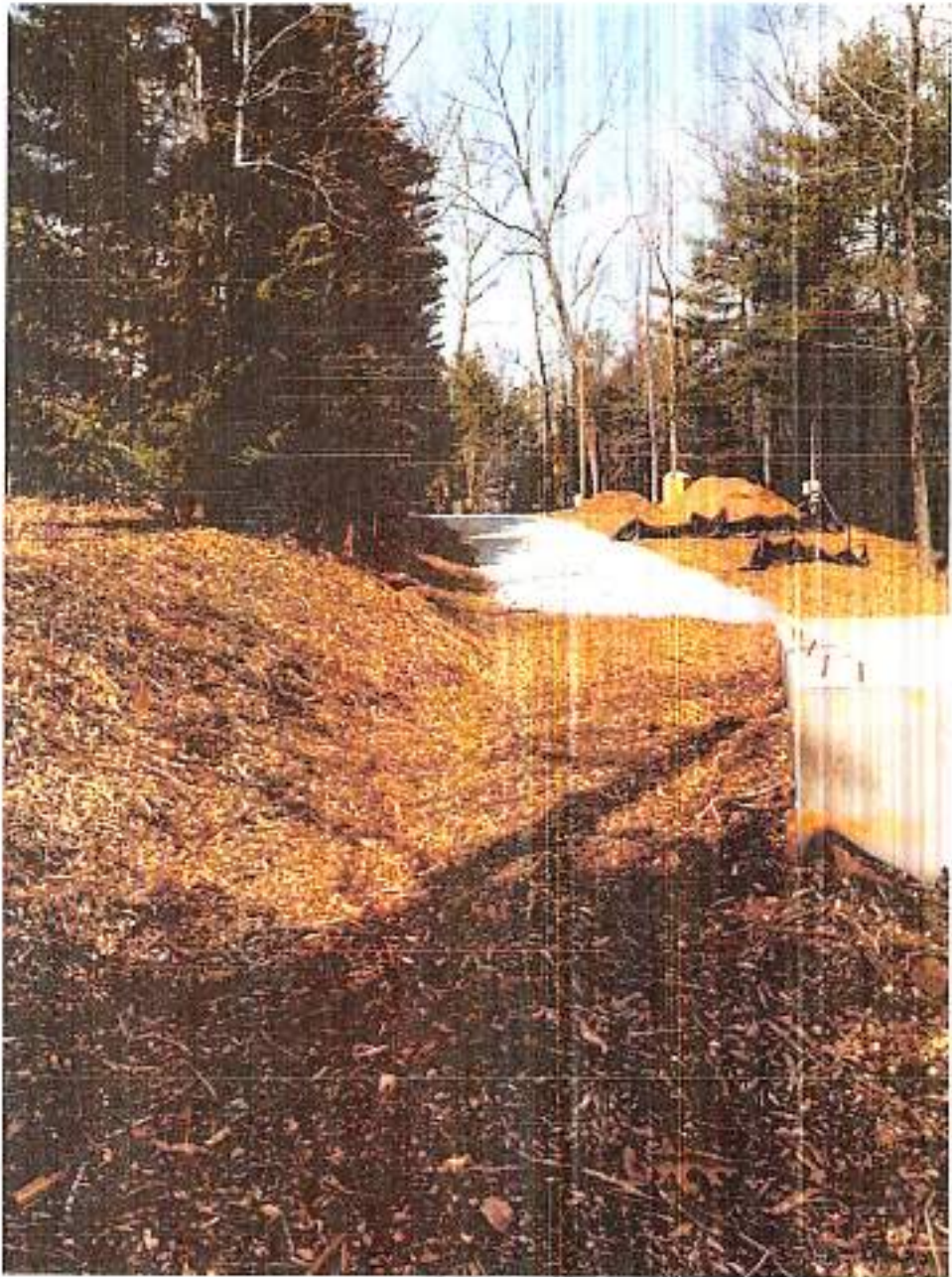








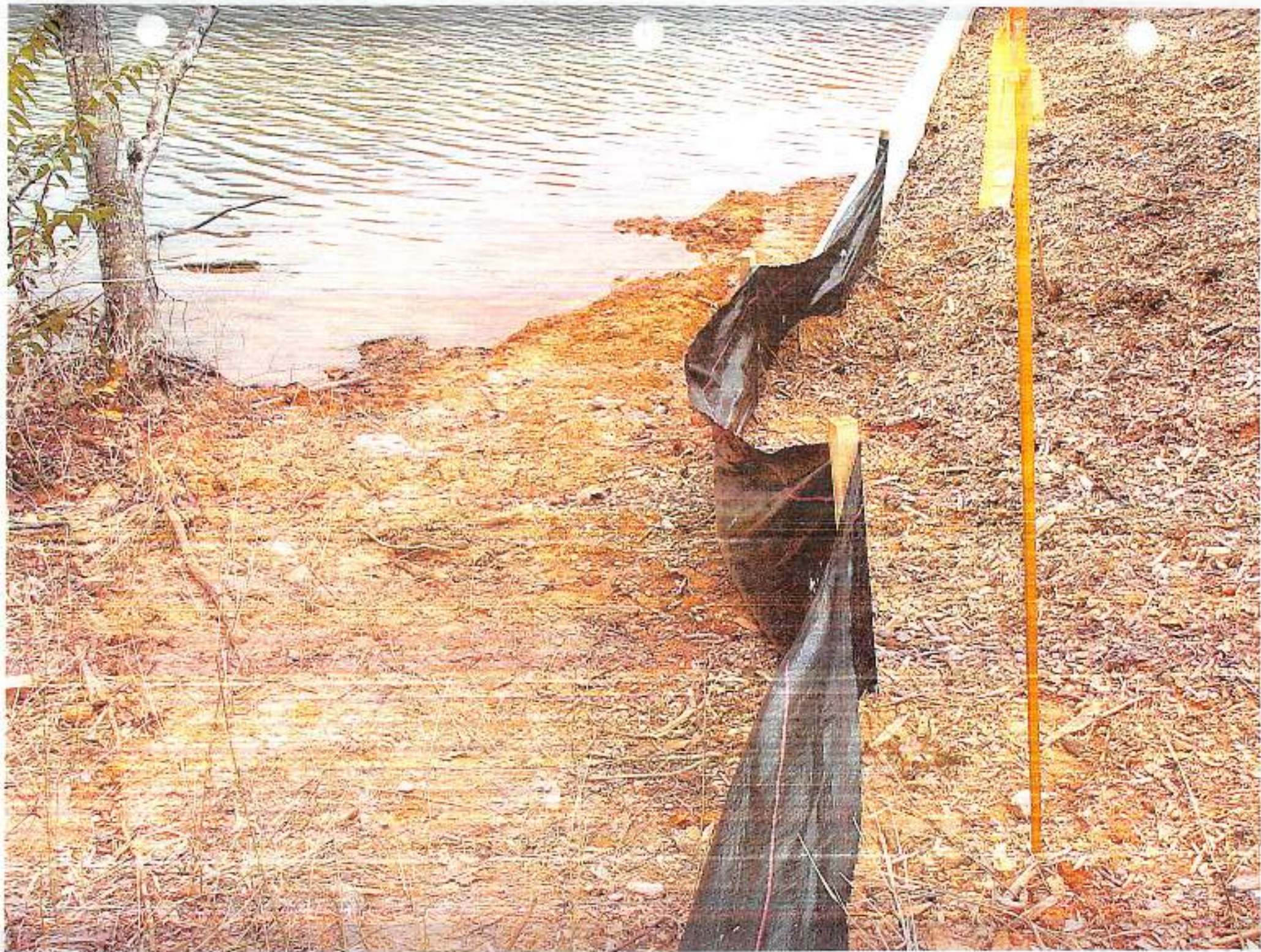


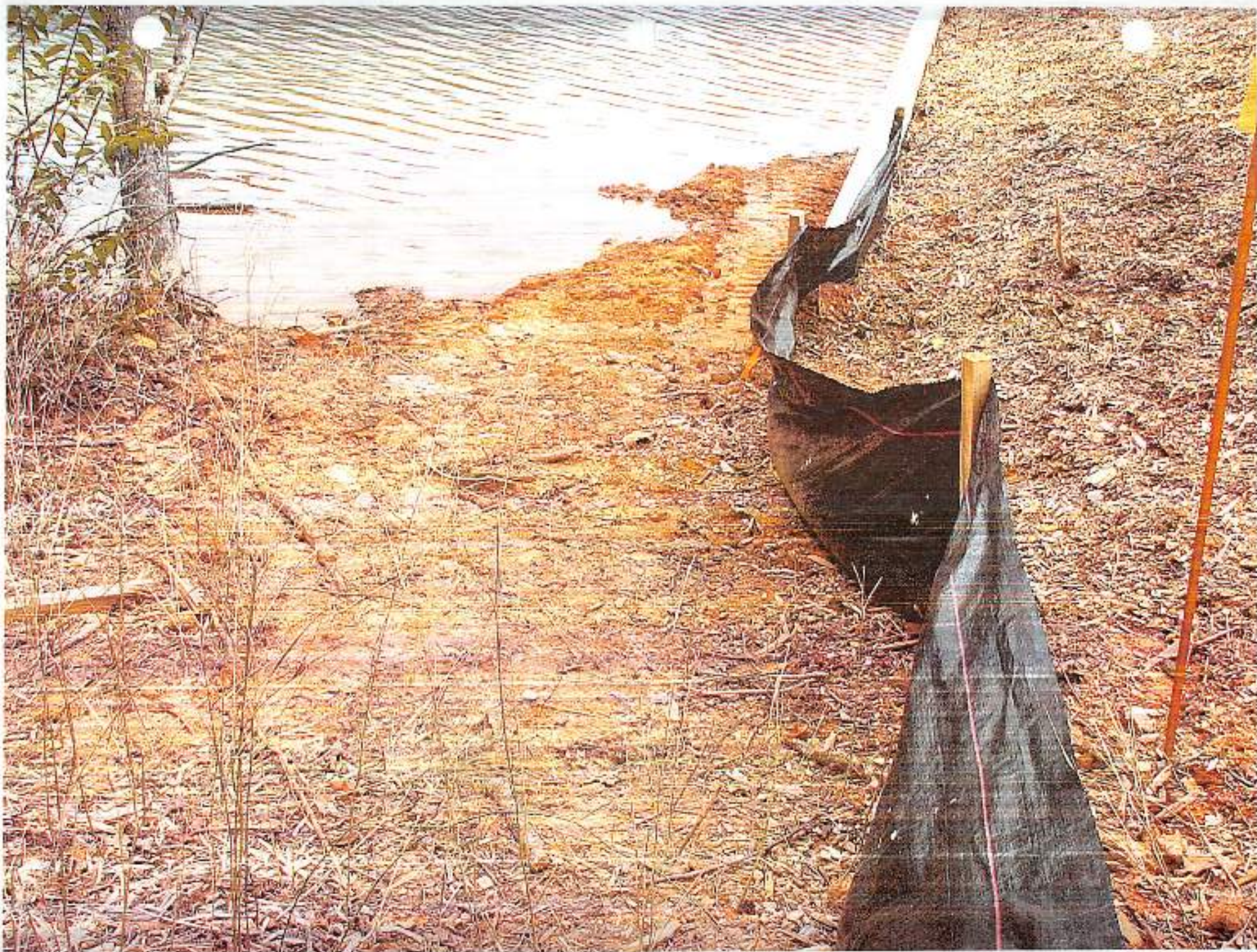




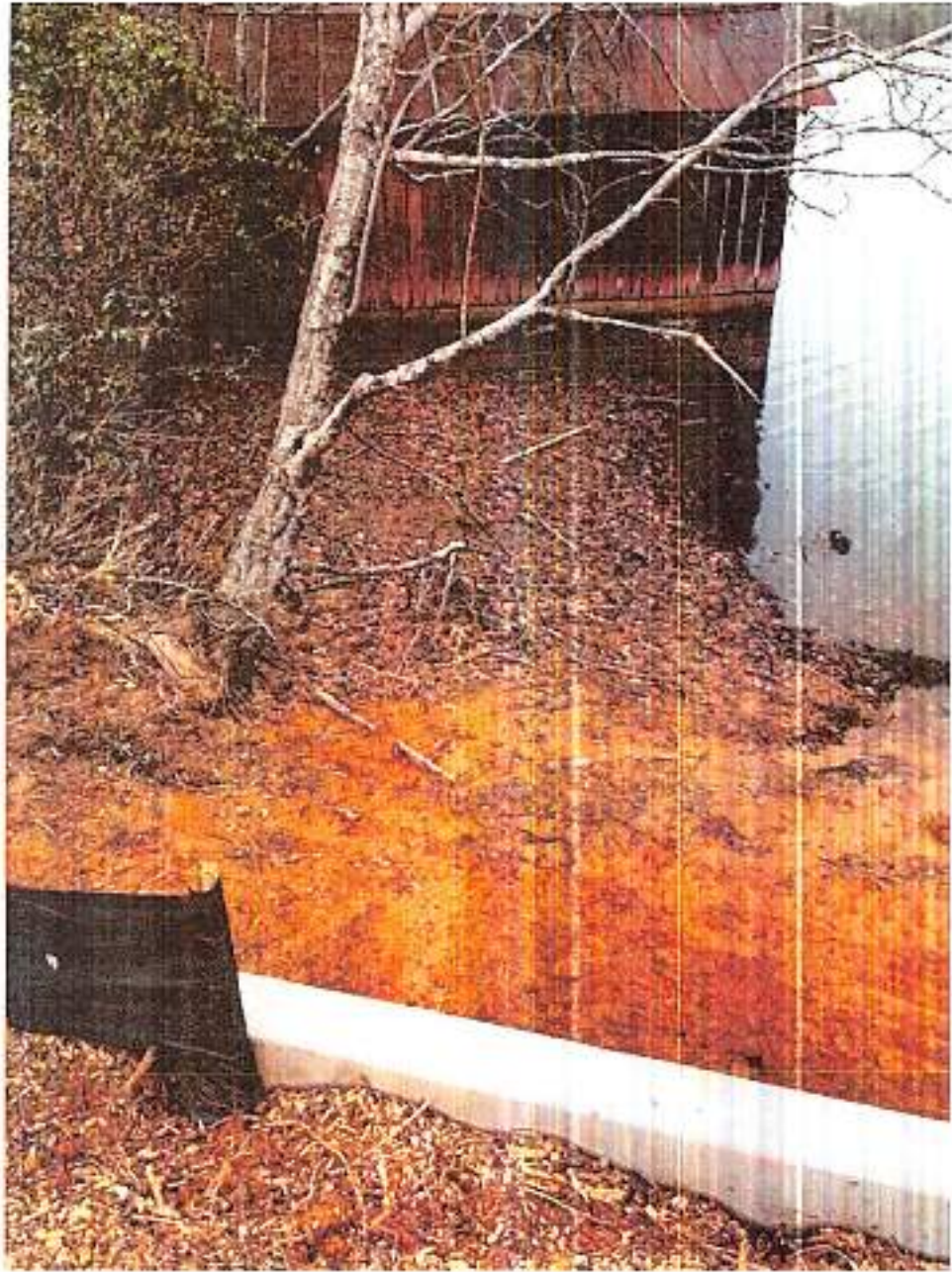












Thereafter Lewis appealed to the Building Board of Adjustments and Appeals seeking a certificate of occupancy. *173 The Board of Adjustments and Appeals summarily dismissed this appeal on the grounds that the Board had no authority to grant a variance to the City's zoning laws. It was after this appeal that the present action was instituted against the City and certain of its officers, agents and employees and Santee Cooper Electric Cooperative.

The first cause of action of Lewis's complaint alleges the basic facts set forth above and further that an ordinance known as Section 23-85 of the Code of North Myrtle Beach required the City to issue a "certificate of zoning compliance" before the initial moving permit was issued and before a second permit (repair/renovation) would be issued. Lewis alleged that the City did not comply with this ordinance. Lewis further alleged that the City is charged with enforcing Section 23-85 and that the purpose of the ordinance is, among other things, to protect people such as Lewis. Lewis alleges that the City's failure to comply with Section 23-85 and the consequent damages suffered by him constitute a denial of his rights to substantive due process of law and "lies in the face of equity." Lewis further alleges that he reasonably relied upon the expertise of the City personnel and their knowledge of applicable statutes and ordinances including Section 23-85, and as a result of said reliance he bought the subject lot and moved the house to it. Lewis alleges that because of the City's willful violation of the ordinance requiring a certificate of zoning compliance prior to the issuance of a moving permit or building permit, the City should be estopped from any attempt to enforce a setback ordinance as it may apply to the subject structure and lot.

Lewis's complaint also alleges (1) a second cause of action in negligence based upon the City's failure to enforce the provisions of Section 23-86 and the resulting injury he suffered, (2) a third cause of action for intentional tort, (3) a fourth cause of action seeking a writ of mandamus requiring the chief building inspector to issue an unconditional certificate of occupancy to Lewis and (4) two causes of action for violation of Lewis's civil rights.

The appealed order made extensive findings of fact which include (1) that the plot plan attached to Lewis's application was prepared by a reputable, licensed surveyor who had *174 extensive prior dealings with the City and city personnel in the preparation and submission of similar plans for similar purposes, (2) that the Lewis plot plan depicted nothing more, or anything less, than similar plot plans prepared by the same surveyor for the same purposes, (3) that the City was in a better position than Lewis to review, study and analyze the information submitted on Lewis's applications, (4) that Lewis did not know nor should he have known, that the measurements as shown on the October 22, 1984, plot plan were not made to the roof overhang, (5) that the City made a mistake in assuming that the plan, as submitted, showed measurements from the side lot lines to the nearest projection from the structure, (6) that Lewis reasonably relied upon the reputation of the surveyor and the surveyor's prior dealing with the City in the preparation of such plot plan, (7) that the character of the surrounding neighborhood would not be adversely affected by allowing the eaves on Lewis's house to remain and (8) that had Lewis known that the eaves would overhang into the side yard setback space once **330 located on the subject property, he would not have spent a substantial amount of money in the acquisition of the subject lot, the relocation and renovation of the house.

Based on the above findings of fact, the appealed order held and ordered that the City be estopped from enforcing the ten foot side yard setback ordinance.

ISSUE

The dispositive issue on appeal is whether the preponderance of the evidence of record supports the proposition that Lewis neither knew nor had means of knowing that his house when moved to his 60 foot lot would violate the side setback zoning laws of the City.

DISCUSSION

Lewis admitted he knew the City's zoning and setback requirements. The record clearly reflects that Lewis's surveyor was employed by Lewis and was his agent in the transaction and that he had the means of measuring the house, including the eaves, and determining that, when the house was placed on the 60-foot lot, the zoning ordinances of *176 North Myrtle Beach would be violated. The contra findings of fact by the trial judge were clearly erroneous and we so hold.

1 2 3 The essential elements of equitable estoppel are (1) lack, on the part of the one claiming estoppel, of the knowledge and means of knowledge of the truth as to the facts and circumstances upon which his claim of estoppel is predicated, (2) conduct, representations or silence of the party estopped, amounting to misrepresentation or concealment of facts; (3) reliance upon such conduct, representations or silence; and (4)

resulting action, to his detriment, by the party claiming the estoppel. *In re Nettles' Estate*, 231 S.C. 214, 97 S.E.2d 897 (1957). The Supreme Court as late as 1985 reasserted the principle that in order to successfully assert the doctrine of equitable estoppel, one must show that he was without knowledge or means of knowledge of facts upon which his claim of estoppel is predicated. See *Gibson v. Belcher*, 287 S.C. 315, 338 S.E.2d 330 (1985).

As noted above, the record before us clearly reflects that Lewis had the means of determining that when the two-story house he moved from the ocean-front lot was placed on the subject property that the side setback zoning ordinance would be violated. For this reason, we are compelled to reverse and remand the appealed order.

Finally, we note that Section 23-96 of the City's ordinances, contra to Lewis's argument, requires Lewis, himself, to apply for a certificate of compliance. Lewis does not contend that he applied for the certificate. We, therefore, reject the appealed order's holding that the City was equitably estopped to enforce the zoning laws because the City had failed to issue a certificate of zoning compliance pursuant to Section 23-96 of the City's ordinances; this holding is manifestly erroneous and we so hold.

LEWIS'S APPEAL

Lewis filed a number of exceptions relating to the trial judge's failure to award him damages and attorney fees. Since we reverse and remand for the reasons above stated, we hold that Lewis's exceptions and the questions he presents on appeal are without merit.

*176 CONCLUSION

For the above reasons,¹ the appealed order is reversed and the case is remanded for purposes of entering judgment in accordance with this decision.

REVERSED AND REMANDED.

SANDERS, C.J., and GOOLSBY, J., concur.

All Citations

297 S.C. 170, 375 S.E.2d 327

Footnotes

- 1 The appealed order held that equitable estoppel may lie against a municipality in the exercise of its police power. The City took no exception to this holding; we therefore do not address it.

End of Document

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Distinguished by *Harkins v. Greenville County, S.C.*, June 12, 2000

Original Image of 516 S.E.2d 442 (PDF)

Restaurant Row Associates v. Horry County 335 S.C. 209
 Supreme Court of South Carolina. May 17, 1999. 335 S.C. 209, 516 S.E.2d 442. (Approx. 13 pages)

RESTAURANT ROW ASSOCIATES and The Afterdeck, Inc., d/b/a Thee DollHouse, Petitioners,
 v.
HORRY COUNTY, a Political Subdivision of the State of South Carolina, Respondent.

No. 24944.
 Heard Jan. 5, 1999.
 Decided May 17, 1999.
 Rehearing Denied June 23, 1999.

Adult entertainment establishment sought review of decision of county board of adjustments and zoning appeals denying establishment's request for variance from county adult entertainment zoning ordinance. The Circuit Court, Horry County, Charles W. Whetstone, Jr., J., reversed. On appeal, the Court of Appeals, 327 S.C. 383, 489 S.E.2d 641, affirmed in part and reversed in part. Adult entertainment establishment sought review. Granting certiorari, the Supreme Court, Toal, J., held that: (1) claims of business disruption, loss of goodwill, relocation costs, and contractual obligations to existing location alone did not constitute unnecessary hardship; (2) zoning ordinance did not violate first amendment; (3) county board was not required to grant variance based on un rebutted testimony that operation of establishment did not produce any negative secondary effects; and (4) natural barrier of Atlantic Intracoastal Waterway did not require that establishment be granted a variance.

Affirmed as modified.

West Headnotes (18)

Change View

- 1 **Zoning and Planning** ⚙️ Grounds for grant or denial in general
 When deciding whether to grant a variance, a local zoning board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary.
- 2 **Zoning and Planning** ⚙️ Limitations on and sparing exercise of power
 Granting a variance from terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Code 1976, § 6-7-740.
 1 Case that cites this headnote
- 3 **Zoning and Planning** ⚙️ Validity of regulations in general
Zoning and Planning ⚙️ Decisions of boards or officers in general
 A strong presumption exists in favor of the validity and application of zoning ordinances.
- Zoning and Planning** ⚙️ Decisions of boards or officers in general

SELECTED TOPICS

Sexually Oriented Businesses; Adult Businesses or Entertainment

Adult Business Operators No Reasonable Alternative Avenues of Communication

Zoning and Planning

Variations or Exceptions
 Hardship of Nonconforming Lot
 Particular Structures or Uses
 Decision of City Zoning Board of Adjustment

Secondary Sources

Validity of ordinances restricting location of "adult entertainment" or sex-oriented businesses

10 A.L.R.5th 538 (Originally published in 1993)

...This annotation collects and analyzes the cases in which courts have considered the validity of statutes or ordinances restricting the location of adult businesses which implicate the First Amendment g...

§ 8.1. Other local regulation

12 S.C. Jur. Obscene & Sex Oriented Matters § 8.1

...Counties may regulate the location of sexually oriented businesses. In *Centaur, Inc. v. Richland County*, 301 S.C. 374, 392 S.E.2d 185 (1990) the court upheld such an ordinance as a valid "time, place a...

§ 6:18. Freedom of expression—Adult entertainment zoning

Gov. Discrim. § 6:18

...The Court has permitted zoning of adult movies and other wares and activities despite their being nonobscene under Miller. The Court seemed to follow an equal protection analysis and upheld the zoning ...

See More Secondary Sources

Briefs

RESPONDENTS' BRIEF ON THE MERITS

2001 WL 1575796
City of Los Angeles v. Alameda Books, Inc.
 United States Supreme Court Respondent's Brief.
 August 17, 2001

...FN* Counsel of Record Petitioner City of Los Angeles has divided its Statement of the Case into three discrete components. Part A discusses the legislative record, Part B discusses the facts pertaining...

BRIEF FOR THE PETITIONER

2001 WL 535685
City of Los Angeles v. Alameda Books, Inc.
 United States Supreme Court Petitioner's Brief.
 May 14, 2001

...The opinion of the United States Court of Appeals for the Ninth Circuit, initially filed July 27, 2000, and as amended August 28, 2000, (App. 1-21) is reported at 222 F.3d 719 (9th Cir. 2000). The Dist...

Brief of Appellants

- 4 Zoning and Planning ⇨ Determination supported by evidence
In the context of zoning, a decision of a reviewing body will not be disturbed if there is evidence in the record to support its decision; a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.

12 Cases that cite this headnote

- 6 Zoning and Planning ⇨ Decisions of boards or officers in general
Zoning and Planning ⇨ Decisions of boards or officers in general
A decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.

9 Cases that cite this headnote

- 6 Zoning and Planning ⇨ Presumptions and burden of proof
Variance applicant bears the burden of proving its entitlement to a variance from terms of zoning regulation. Code 1976, § 6-7-740.

1 Case that cites this headnote

- 7 Zoning and Planning ⇨ What constitutes in general
Variance applicants are not required to prove that without the variance there exists no feasible conforming use for the property in question in order to show unnecessary hardship. Code 1976, § 6-7-740.

- 8 Zoning and Planning ⇨ Self-created hardship; prior knowledge
A claim of unnecessary hardship entitling applicant to variance from terms of zoning regulation cannot be based upon conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him. Code 1976, § 6-7-740.

1 Case that cites this headnote

- 9 Zoning and Planning ⇨ Unique or peculiar hardship in general
Before a variance can be allowed on the ground of unnecessary hardship, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. Code 1976, § 6-7-740.

- 10 Zoning and Planning ⇨ Profit or disadvantage; financial considerations
Financial hardship does not automatically constitute unnecessary hardship entitling applicant to variance from terms of zoning regulation. Code 1976, § 6-7-740.

- 11 Zoning and Planning ⇨ Sexually-oriented businesses; nudity
Adult entertainment establishment's claims that business disruption, loss of goodwill, relocation costs, and contractual obligations to existing location entitled it to variances from adult use zoning regulations did fall within the scope of financial hardship, which alone did not constitute unnecessary hardship entitling it to variance. Code 1976, § 6-7-740.

2 Cases that cite this headnote

- 12 Constitutional Law ⇨ Secondary effects
Zoning and Planning ⇨ Sexually-oriented businesses; nudity
Zoning ordinance prohibiting location of an adult establishment within ECO part of a residential district did not violate the first amendment; ordinance was not aimed at content of speech but, rather, at the secondary effects of such businesses on the surrounding community and ordinance did not unreasonably limit alternative avenues of communication. U.S.C.A. Const. Amend. 1; Code 1976, § 6-7-740.

8 Cases that cite this headnote

2000 WL 3332149
ALLNO ENTERPRISES, INCORPORATED;
Lowe Chas Lingets & Co Shop,
Incorporated, Southall Enterprises,
Incorporated, d/b/a Southall World,
Plaintiffs - Appellants, v. BALTIMORE
COUNTY, Maryland, Defendant - Appellee,
United States Court of Appeals, Fourth
Circuit,
September 26, 2000

This case presents a substantial First Amendment question, based on the County's rezoning ordinance and video stores to heavy trucking zones, some of the most inflexible in the US 503 S.Mad, 2011 ...

See Also Briefs

Third Court Documents

GREENVILLE COUNTY, Plaintiff, v. KENWOOD ENTERPRISES, INC. and Elephant, Inc., d/b/a Platinum Plus, and Ken Wood, Defendants; Greenville County, Plaintiff, v. H&M, Inc., and First Plus Management, Inc., d/b/a Heartbreakers, Defendant; Greenville County, Plaintiff, v. Pretty Woman, Inc., Defendant.

2001 WL 3501643
GREENVILLE COUNTY, Plaintiff, v. KENWOOD ENTERPRISES, INC. and Elephant, Inc., d/b/a Platinum Plus, and Ken Wood, Defendants, Greenville County, Plaintiff, v. H&M, Inc., and First Plus Management, Inc., d/b/a Heartbreakers, Defendant, Greenville County, Plaintiff, v. Pretty Woman, Inc., Defendant, Court of Common Pleas of South Carolina, Carolina County
February 01, 2001

This matter before the Court on Plaintiff's motion for summary judgment. A hearing on the matter was held before me on January 2, 2001, attended by counsel for all parties. Prior to the hearing, ...

Marchant v. City of Columbia Zoning Adm T

2013 WL 10126220
Marchant v. City of Columbia Zoning Adm T
Court of Common Pleas of South Carolina, Lexington County
April 04, 2013

This zoning matter comes before the Court in its appellate capacity. Appellant seeks to have the Court reverse or remand the decision of the City of Columbia Board of Zoning Appeals ("BZA") upholding ...

Hendricks v. Hobbie

2004 WL 9844759
Hendricks v. Hobbie
Court of Common Pleas of South Carolina, Horry County
December 21, 2004

Under Judgment ORDERED. Hobbie, William T. Hobbie, Plaintiff. The above captioned case was referred to the undersigned, as Master-in-Equity for Horry County, to hear evidence, take testimony and to make a ...

See Also Third Court Documents

- 13 **Zoning and Planning** ☞ Sexually-oriented businesses; nudity
County board of adjustments and zoning appeals was not required to grant adult entertainment establishment a variance from adult use zoning regulation based on establishment's unrebutted testimony that its operation did not produce any negative secondary effects on the community. U.S.C.A. Const.Amend. 1; Code 1976, § 6-7-740.
- 14 **Zoning and Planning** ☞ Sexually-oriented businesses; nudity
Adult businesses cannot exclude themselves from legitimate zoning regulation by providing expert testimony that they do not currently produce negative secondary effects.
- 15 **Zoning and Planning** ☞ Sexually-oriented businesses; nudity
Local governments have the power to zone the location of adult businesses without any individualized showing the businesses produce negative secondary effects.
- 16 **Zoning and Planning** ☞ Sexually-oriented businesses; nudity
In adult use zoning cases, a reviewing body must take the expert testimony of the applicant seeking a variance into consideration, but the zoning board of appeals still has the authority to deny the variance if its zoning ordinance is constitutionally proper.
- 17 **Zoning and Planning** ☞ Sexually-oriented businesses; nudity
Natural barrier of the Atlantic Intracoastal Waterway did not prevent even the possibility of negative secondary effects from arising in the future from operation of adult entertainment establishment, and thus did not require that establishment be granted a variance from adult use zoning ordinance, where testimony revealed that a bridge was being constructed across the waterway very near the establishment and that a nearby tram ferried persons across the waterway. Code 1976, § 6-7-740.
- 18 **Zoning and Planning** ☞ Nature in general
Zoning is not only concerned about present conditions, but focuses on the future as well.

1 Case that cites this headnote

1 Case that cites this headnote

Attorneys and Law Firms

****444 *212** Luke Charles Lirot, of Luke Charles Lirot, P.A., of Tampa, Florida; and Willard D. Hanna, of Harris & Hanna, P.A., of Myrtle Beach, for petitioners.

Emma Ruth Brittain and John P. Henry, of Thompson Law Firm, of Conway, for respondent.

Opinion

TOAL, Justice:

This case is on appeal from the Court of Appeals' decision upholding the denial of Petitioner's zoning variance. We affirm as modified.

FACTUAL/PROCEDURAL BACKGROUND

Petitioners Restaurant Row Associates and the Afterdeck d/b/a Thee DollHouse ("Thee DollHouse") began its adult entertainment business in Horry County ("the County") in March 1988. On September 30, 1989, the County adopted Ordinance 92-89, establishing adult entertainment zoning regulations. Ordinance 92-89, now codified in the Horry County Zoning Code as section 526, granted a six-year amortization period to businesses existing at the time of the ordinance's enactment that were in violation of the ordinance so that they *213 could recoup their investments and seek other locations should the business desire to continue as an adult use.

The zoning plan prohibits the location of an adult entertainment establishment within 500 feet of a residential district. Thee DollHouse is a nonconforming use under the ordinance because it is located 350 feet from a residential district. Almost all of this 350 feet consists of the Atlantic Intracoastal Waterway that separates Thee DollHouse from the residential district. This residential district is comprised of a golf course and currently contains no residential development.

In early 1994, the Horry County Zoning Administrator wrote to Thee DollHouse, advising it that it was an "adult use" as defined by the County's Adult Use Zoning Regulations, and that its nonconforming use of the property would have to cease on or before January 1, 1995. Thee DollHouse responded by filing three separate petitions with the Horry County Board of Adjustments and Zoning Appeals ("the Board"). The first petition challenged the definition of "Adult Cabaret" as used in the ordinance. The second petition alleged that Ordinance 26-90, an ordinance passed after 92-89, effectively grandfathered in Thee DollHouse's adult use. The third petition requested a variance from the setback and amortization provisions of 92-89.

During the Board meeting, the Zoning Administrator made no recommendation to approve or deny the variance application. A paid consultant testified extensively for Thee DollHouse. The consultant offered testimony, including a written report, supporting Thee DollHouse's claim that it met the variance criteria. The Board also heard comments from several members of the public.

After hearing all the evidence, the Board denied Thee DollHouse's request for a variance as well as its other two petitions. Thee DollHouse then appealed the Board's decisions to the circuit court. The circuit court upheld the Board's determination that Horry County Ordinance 26-90 did not grandfather in adult uses, but nevertheless held that the denial of Thee DollHouse's variance request was "arbitrary and clearly erroneous in light of the lack of any residence on the golf course and the natural barrier created by the Intracoastal Waterway."

*214 The Court of Appeals found the circuit court erred in reversing the Board's denial of the variance. *Restaurant Row Associates v. Horry County*, 327 S.C. 383, 390, 489 S.E.2d 641, 645 (Cl.App.1997). The Court of Appeals held the Board correctly found Thee DollHouse failed to prove the element of unnecessary hardship. Having determined Thee DollHouse failed to meet one of the four necessary elements of a variance, the Court of Appeals did not discuss the remaining three elements. The Court of Appeals also disagreed with Thee DollHouse's argument that the circuit court erred in concluding that County Ordinance 26-90, which amended certain subsections of § 500 of the County's zoning ordinance, repealed the amortization period established in § 526.2J of Ordinance 92-89, and therefore grandfathered in all nonconforming adult entertainment uses. This Court granted certiorari to consider the following issue:

Did the Court of Appeals err in reversing the circuit court and thereby upholding the Zoning Board's determination that Thee DollHouse failed to meet the standards for receiving a variance?

LAW/ANALYSIS

Thee DollHouse argues that the Court of Appeals erred by failing to find the Board acted arbitrarily and capriciously in denying the variance. We disagree.

1 When deciding whether to grant a variance, a local board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953); *Schloss Poster Adv. Co. v. City of Rock Hill*, 190 S.C. 92, 2 S.E.2d 392 (1939). "The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." *City of Beaufort v. Baker*, 315 S.C. 146, 152, 432 S.E.2d 470, 472 (1993). Here, the County specifically adopted the statutory language of S.C.Code Ann. § 6-7-740 (1976 & Supp.1998) in Section 1204(B) of its zoning ordinance. That section provides:

The board of appeals ... shall have the following powers:

*215 (2) To authorize upon appeal in specific cases a variance from the terms of the ordinance or resolution as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance or resolution will, in an individual case, result in unnecessary hardship, so that the spirit of the ordinance or resolution shall be observed, public safety and welfare secured, and

substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography, and
- (b) The application of the ordinance or resolution of this particular piece of property would create an unnecessary hardship, and
- (c) Such conditions are peculiar to the particular piece of property involved, and
- (d) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the ordinance or resolution or the comprehensive plan, provided, however, that no variance may be granted for a use of land or building or structure that is prohibited in a given district by ordinance or resolution.

2 3 4 In order to grant a variance, the Board must make the factual determination that each of the four elements above favor granting the variance. See *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 418 S.E.2d 319 (Cl.App.1992). Granting a variance is an **446 exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953). A strong presumption exists in favor of the validity and application of zoning ordinances. *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 632 (1997). In the context of zoning, a decision of a reviewing body, in this case the Horry County Board of Adjustments and Zoning Appeals, will not be disturbed if there is evidence in the record to support its decision. *Id.*

5 6 *216 A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Peterson*, 327 S.C. at 235, 489 S.E.2d at 632. However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. See *id.*; *Knowles v. City of Aiken*, 305 S.C. 219, 407 S.E.2d 639 (1991); *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953); *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Cl.App.1995). This Court has summarized its standard of review in zoning appeals as follows:

It is a well settled proposition of zoning law that a court will not substitute its judgment for the judgment of the board. The court may not feel that the decision of the board was the best that could have been rendered under the circumstances. It may thoroughly disagree with the reasoning by which the board reached its decision. It may feel that the decision of the board was a substandard piece of logic and thinking. None the less, the court will not set aside the board's view of the matter just to inject its own ideas into the picture of things.

Talbot v. Myrtle Beach Board of Adjustment, 222 S.C. 165, 173, 72 S.E.2d 66, 70 (1952). As the variance applicant in this case, Thee DollHouse bore the burden of proving its entitlement to a variance. *Application of Groves*, 226 S.C. 459, 85 S.E.2d 708 (1955). If Thee DollHouse failed to meet the requirements of each element of the ordinance, then the Board correctly denied the variance.

Thee DollHouse argues that the Court of Appeals applied an incorrect standard for determining the unnecessary hardship element of the zoning ordinance. We agree, but nonetheless conclude that Thee DollHouse has failed to prove unnecessary hardship. The Court of Appeals held there was no unnecessary hardship because Thee DollHouse failed to present evidence suggesting "there was no feasible conforming use for the land in question." *Restaurant Row Associates v. Horry County*, 327 S.C. 383, 390, 489 S.E.2d 641, 645. Such a standard is akin to a Fifth Amendment regulatory taking analysis. See *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (Cl.App.1998) ("[W]hen the owner of real property has been called upon to sacrifice all economically beneficial *217 uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.").

7 Variance applicants are not required to prove that without the variance there exists no feasible conforming use for the property in question in order to show unnecessary hardship. This Court has upheld the granting of variances where there were feasible conforming uses of the property. See *Hartman v. City of Columbia*, 268 S.C. 44, 232 S.E.2d 15 (1977) (holding that zoning board of adjustment abused its discretion in denying landowner's

request for variance to permit her to establish child day care center in her brick, residence type house located in residential district); *Stevenson v. Board of Adjustment of City of Charleston*, 230 S.C. 440, 96 S.E.2d 456 (1957) (granting of variance to a church for construction and occupancy of addition for Sunday school was not abuse of discretion); see also *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 418 S.E.2d 319 (Ct.App.1992) (granting a variance in onsite parking requirements for commercial use of a beachfront lot).

In South Carolina, "The courts have never undertaken to formulate an all-inclusive definition of 'unnecessary hardship'. Although it has been stated that the phrase should be given a reasonable construction, it is recognized that it does not lend itself to precise definitions automatically resolving every case." *Stevenson v. Board of Adjustment of City of Charleston*, 230 S.C. 440, 448, 96 S.E.2d 456, 460 (1957); *Application of Groves*, 226 S.C. 459, 463, 85 S.E.2d 708, 709-10 (1955); *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 754 (1953). These cases support Thee DollHouse's position that the unnecessary hardship standard is not the same, or as demanding as, a takings analysis.

8 9 10 Although there is no set definition, this Court has established guidelines for determining "unnecessary hardship." First, a claim of unnecessary hardship cannot be based upon conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965). Thee DollHouse was in operation before the enactment of the County's adult uses ordinance so *218 this situation is not before the Court. Second, "before a variance can be allowed on the ground of 'unnecessary hardship', there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation." *Application of Groves*, 226 S.C. 459, 463, 85 S.E.2d 708, 710 (1955). S.C.Code Ann. § 6-7-740(2)(c) addresses this precedent by requiring that variance applicants show "Such conditions are peculiar to the particular piece of property involved." Lastly, financial hardship does not automatically constitute unnecessary hardship. *Application of Groves*, 226 S.C. at 464, 85 S.E.2d at 710. ("assuming that they will suffer substantially in a financial way ... that alone is not sufficient [to grant a variance].").

11 Thee DollHouse's claims of business disruption, loss of goodwill, relocation costs, and contractual obligations to the existing location all fall under the scope of its financial hardship. However, these claims alone do not automatically constitute unnecessary hardship, and in this case the Board concluded that they did not. It is important to remember that Thee DollHouse can continue in its existing location, the only restriction is that it cannot operate as an adult use without a variance. This situation is very different from the one found in *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 438 S.E.2d 273 (Ct.App.1993), where the landowner was entitled to a variance since the land was zoned residential and, without the variance, the landowner had no other possible use for the property.

Thee DollHouse argues that if it must relocate there will be at least a temporary loss of First Amendment rights, in addition to financial hardship, and this will constitute unnecessary hardship. Thee DollHouse argues that any loss of First Amendment rights would be unnecessary hardship because its business does not produce the secondary effects that allow the regulation of adult business under the First Amendment. We disagree.

12 Thee DollHouse argues that denying the variance was an unconstitutional application of the ordinance. Initially, the ordinance itself is constitutional under the decisions of the United States Supreme Court in *219 *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986), and this Court's opinion in *Centaur, Inc. v. Richland County*, 301 S.C. 374, 392 S.E.2d 165 (1990). Like the ordinances in *Young*, *Renton*, and *Centaur*, the County's ordinance is not aimed at the content of the speech, but rather at the secondary effects of such businesses on the surrounding community.¹ Local governments have a substantial interest in protecting their neighborhoods from secondary effects related to the operation of sexually oriented businesses. See *Young*, *Renton*, *supra*. "Content-neutral" *448 ordinances, such as the County's, designed to regulate the secondary effects of adult businesses, are therefore properly examined and analyzed as "time, place, and manner" regulations.

The County's zoning ordinance is a proper time, place, and manner restriction because it does not unreasonably limit "alternative avenues of communication." See *Renton*, 475 U.S. at 45, 106 S.Ct. at 928, 89 L.Ed.2d at 37; *Condor, Inc. v. City of North Charleston*, 328 S.C. at 177 n. 3, 493 S.E.2d at 345 n. 3. On appeal, Thee DollHouse does not contest that there

are areas of the County where the zoning scheme would allow it to operate as an adult business. With the County having met the *Renton* criteria, the burden of proof rests upon Thee DollHouse to prove the ordinance is unconstitutional as applied to it.

13 Even though the County's zoning ordinance is constitutionally valid, Thee DollHouse argues that the Board applied it unconstitutionally by denying the variance. Thee DollHouse argues that it provided un rebutted testimony to the *220 Board that it did not produce any negative secondary effects. Thee DollHouse's position is that the Board cannot deny a variance if there was no proof introduced to the Board that Thee DollHouse created any negative effects. We disagree.

14 15 16 *Renton* recognized that local governments need not wait for the secondary effects of adult businesses to actually manifest themselves before implementing zoning restrictions. In *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), Justice Souter's concurring opinion recognized that local governments did not have to repeatedly litigate the issue of whether adult businesses create any secondary effects or not. *Barnes*, 501 U.S. at 583-584, 111 S.Ct. at 2470 ("I do not believe that a State is required affirmatively to undertake to litigate [the secondary effects] issue in every case."). Adult businesses cannot exclude themselves from legitimate zoning regulation by providing expert testimony that they do not currently produce negative secondary effects. Local governments have the power to zone the location of adult businesses without any individualized showing the businesses produce negative secondary effects.² The purpose of zoning "is to enable municipalities and counties acting individually or in concert to preserve and enhance their present advantages, to overcome their present handicaps, and to prevent or minimize such future problems as may be foreseen." S.C.Code Ann. § 6-7-10 (Supp.1998) (emphasis added).

17 18 Thee DollHouse also argues that the natural barrier of the Atlantic Intracoastal Waterway prevents even the possibility of negative secondary effects from arising in the *221 future. This Court requires distance measurements of this nature be done "as the crow flies" and not based on the actual terrain that must be crossed. See *Brown v. State*, 333 S.C. 238, 510 S.E.2d 212 (1998) ("Courts addressing the issue have uniformly held proximity is measured in a straight line, or 'as the crow flies.' "). Thee DollHouse cites no cases to this Court in support of its "natural barrier" proposition.³ As to the merits of this argument, testimony in front of the Board revealed that there is a bridge being constructed across the Atlantic Intracoastal Waterway very near Thee DollHouse. There is also a nearby tram that ferries persons across the Intracoastal Waterway. What this testimony shows is that even though there may be a natural barrier now, there may be a bridge in the future. As **449 discussed above, zoning is not only concerned about present conditions, but focuses on the future as well.

The County's ordinance as applied to Thee DollHouse is constitutional. Other than the claim of a temporary loss of First Amendment rights during relocation and the financial hardship associated with such a move, Thee DollHouse did not produce for the Board evidence that would demand a finding of unnecessary hardship. Having failed to meet this required element of the variance criteria, the Board correctly denied Thee DollHouse's petition.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals is **AFFIRMED AS MODIFIED**.

FINNEY, C.J., MOORE, WALLER and BURNETT, JJ., concur.

All Citations

335 S.C. 209, 516 S.E.2d 442

Footnotes

1 The ordinance provides:

WHEREAS, by enacting Ordinance Number 92-89, the Horry County Council intended to prevent the recognized ill effects of allowing adult entertainment establishments too close to residential areas; and

WHEREAS, residential use existing in zones other than the ones specifically delineated in Section 526.2(C)1 as residential are

incompatible with and suffer a serious risk of harm by the location of an adult entertainment establishment near them, for the reasons outlined in the studies referenced in Ordinance Number 92-89, which studies are incorporated herein by reference as if set forth herein verbatim;

Horry County Ordinance Number 29-92.

- 2 We note that the secondary effects doctrine from *Renton* distinguishes the current case from our decision in *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 516 S.E.2d 439 (1999). In *Bannum*, this Court noted that the zoning board of appeals either "discounted or disregarded every single bit of evidence" put up by a special exception applicant. In adult use zoning cases, a reviewing body must take the expert testimony of the applicant into consideration, but the zoning board of appeals still has the authority to deny the variance if its zoning ordinance is constitutionally proper. In the current case, the County was not required to have testimony confirming that Thee DollHouse produced negative secondary effects in order to deny the variance.
- 3 *Vicary v. City of Corona*, 935 F.Supp. 1083 (C.D.Cal.1996), is the only case found in support of such a "natural barrier" theory. That case has since been overturned by the Ninth Circuit Court of Appeals. See *Vicary v. City of Corona*, 119 F.3d 8, 1997 WL 406768 (9th Cir.1997) (unpublished decision).

End of Document

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Westlaw is recommending documents based on your current research. **SELECTED TOPICS**

Declined to Follow by Lamb v. Zoning Bd. of Appeals of Taunton, Mass.App.Ct., April 2, 2010

Original Image of 143 S.E.2d 527 (PDF)

Rush v. City of Greenville 246 S.C. 268
 Supreme Court of South Carolina. July 20, 1965, 246 S.C. 268, 143 S.E.2d 527. (Approx. 9 pages)

S. C. RUSH, Respondent,

v.

CITY OF GREENVILLE and Members of Greenville City Council,
Appellants.

No. 18382.
 July 20, 1965.

Zoning case. The Common Pleas Court of Greenville County, Frank Eppes, J., ordered rezoning of property from residential to commercial use after city had refused to do so and city appealed. The Supreme Court, Moss, J., held that refusal of city to rezone portion of property extending from commercial into residential zone for commercial use or to grant variance was not arbitrary, unreasonable or unjust.

Reversed and remanded.

West Headnotes (13)

[Change View](#)

- 1 **Zoning and Planning** **Police power**
 Authority of municipality to enact zoning ordinances restricting use of privately owned property is founded in police power.
 3 Cases that cite this headnote
- 2 **Zoning and Planning** **Scope of Review**
 Governing bodies' exercise of zoning powers will not be interfered with unless there is plain violation of constitutional rights.
- 3 **Zoning and Planning** **Validity of regulations in general**
 There is strong presumption in favor of validity of municipal zoning ordinances and in favor of validity of their application.
 1 Case that cites this headnote
- 4 **Zoning and Planning** **Regulations**
Zoning and Planning **Regulations in general**
 Where municipal planning and zoning commission and city council have acted to establish municipal zoning after considering all facts, court should not disturb finding unless such action is arbitrary, unreasonable or in obvious abuse of municipality's discretion or unless it has acted illegally and in excess of its lawfully delegated authority.
 3 Cases that cite this headnote
- 5 **Zoning and Planning** **Regulations**
 Power to declare ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and

Zoning and Planning

Municipal Governing Body Primary
 Statutory Zoning Power

Judicial Review or Relief

Municipal Planning and Zoning
 Commission and City Council

Variances or Exceptions

Proper Scope of City Zoning Board of
 Appeals Inquiry Regarding Hardship

Secondary Sources

Validity, construction, and application of statutes, and regulations adopted thereunder, regarding county planning or zoning, or planning or zoning in territory outside municipal limits

131 A.L.R. 1055 (Originally published in 1941) *

...Other annotations on related subjects are listed in the ALR Digests under the title "Zoning." While questions relating to the validity, construction, and application of statutes, and regulations adopte...

Constitutionality of city or town
 planning statutes or ordinances

12 A.L.R. 679 (Originally published in 1921)

...This annotation does not purport to deal with the general question as to the validity of statutes or ordinances passed for esthetic purpose, except as it is involved in statutes or ordinances embodying...

Validity and application of zoning
 regulations relating to mobile home or trailer parks

42 A.L.R.3d 598 (Originally published in 1972)

...This annotation collects the cases which have deal with the validity and application of zoning regulations which expressly refer to trailer parks. Questions dealing with the right of a trailer park ope...

[See More Secondary Sources](#)

Briefs

Petition for Writ of Certiorari

1995 WL 17035668
PRO-ECO, INC., Petitioner, v. BOARD OF COMMISSIONERS OF JAY COUNTY, Indiana, Respondent.
 Supreme Court of the United States.
 September 05, 1995

...The parties to the proceedings below were the Petitioner, Pro-Eco, Inc., and the Respondent, the Board of Commissioners of Jay County, Indiana. The Petitioner, Pro-Eco, Inc. is an Indiana corporation,...

Petition for Writ of Certiorari

2002 WL 32134746
SAVE PALISADE FRUITLANDS, a Colorado unincorporated nonprofit association, Harry C. Talbot, Galen R. Wallace, and Allen M. (Mac) Williams, Petitioners, v. Monika TODD, in her official capacity as County Clerk of Mesa County, Colorado and Board of County Commissioners of Mesa County, Respondents.
 Supreme Court of the United States.
 May 07, 2002

cautiously, as it is not function of court to pass upon wisdom or expediency of municipal ordinances or regulations.

9 Cases that cite this headnote

- 6 **Zoning and Planning** ➡ Regulations in general
Burden of proving invalidity of zoning ordinance is on party attacking it.

3 Cases that cite this headnote

- 7 **Zoning and Planning** ➡ Self-created hardship; prior knowledge
Self-created or self-inflicted hardship intentionally created by owner of premises for purpose of laying basis for application for zoning variance cannot be considered for such purpose.

5 Cases that cite this headnote

- 8 **Zoning and Planning** ➡ Unique or peculiar hardship in general
Where one purchases realty with intention to apply for variance, he cannot contend that restrictions caused him such peculiar hardship that entitles him to special privileges he seeks.

4 Cases that cite this headnote

- 9 **Zoning and Planning** ➡ Public interest or welfare
In determining whether to grant variance, it is proper to take into consideration effect of granting on public generally.

- 10 **Zoning and Planning** ➡ Amendment or Rezoning, Sufficiency of Evidence
Trial court's finding that rezoning of strip of property in residential zone for commercial use would not adversely affect or depreciate any other property in area or create problems to residents thereof nor to city was unsupported by record.

- 11 **Zoning and Planning** ➡ Regulations in general
Regulation of extent of business area in municipality and its location is normally reserved under police power to legislative branch of local government.

- 12 **Zoning and Planning** ➡ Who may exercise power
Court has no power to zone property.

1 Case that cites this headnote

- 13 **Zoning and Planning** ➡ Change from residential use to business, commercial, or industrial use
Zoning and Planning ➡ Business, commercial, and industrial uses in general
Refusal of city to rezone portion of property extending from commercial into residential zone for commercial use or to grant variance was not arbitrary, unreasonable or unjust.

4 Cases that cite this headnote

Attorneys and Law Firms

*269 **528 W. H. Arnold, Greenville, for appellant.

*270 Sol E. Abrams, Greenville, for respondents.

Opinion

MOSS, Justice.

S. C. Rush, the respondent herein, on August 1, 1962, purchased from W. R. Lupo a lot of land in the City of Greenville, lying between Augusta Road and the Old Augusta Road. In the

...There are no parties in this case other than those disclosed in the caption. None of the parties is a private corporation. The opinion of the United States Court of Appeals for the Tenth Circuit is rep...

Brief Amicus Curiae of Jackson County, Missouri, in Support of the Petitioners

1985 WL 699609
THE CITY OF RENTON, et al., Appellants, v. PLAYTIME THEATERS, INC., A Washington Corporation, et al., Appellees.
Supreme Court of the United States.
June 28, 1985

...Jackson County, Missouri, a first class county having a constitutional charter form of government in the State of Missouri, comes now by and through its Office of the County Counselor, and respectfully...

See More Briefs

Trial Court Documents

In re Flamingo Investments.

2010 WL 7375884
In re Flamingo Investments.
United States Bankruptcy Court, C.D. California,
March 02, 2010

...Chapter 11 DATE: February 16, 2010
TIME: 11:00 a.m. CTRM: 302 The "Motion of Flamingo Investments For Order: (1) Authorizing Sale Of Real Property Pursuant To Section 363(f); (2) Approving Breakup Fee;...

In re Orleans Homebuilders, Inc.

2011 WL 2750754
In re Orleans Homebuilders, Inc.
United States Bankruptcy Court, D. Delaware.
May 03, 2011

...FN1. The Debtors in these Chapter 11 cases, along with the last four digits of each of the Debtors' tax identification numbers, are: Orleans Homebuilders, Inc. (4323), Brookshire Estates, L.P. (8725), ...

In re Sugarleaf Timber, LLC

2013 WL 6927342
In re Sugarleaf Timber, LLC
United States Bankruptcy Court, M.D. Florida.
November 22, 2013

...THIS CASE came before the Court for a final evidentiary hearing to consider confirmation of the Debtor's Chapter 11 Plan, as amended. (Doc. 211). Farm Credit of North Florida, ACA (Farm Credit) filed a...

See More Trial Court Documents

deed of conveyance the property is described according to a plat thereof made in June, 1962. The frontage of this lot on Augusta Road is 103.8 feet. The side lines of the main portion of this lot, which are approximately parallel, extend back from Augusta Road in a westerly direction for a distance of approximately 195 feet on the northern side thereof and 210 feet on the southern side. There is a small strip of land referred to in the record as an appendix or 'tail' which extends from the main portion of the said lot to Old Augusta Road, having a frontage thereon of 22.7 feet. This strip is approximately 102 feet *271 in length and the northern line thereof is an extension of the northern boundary line of the main lot.

When the respondent purchased the aforesaid property, the portion fronting on Augusta Road was zoned 'E-Local Commercial' to a depth of approximately 145 feet along the northern boundary thereof and 160 feet along the southern boundary. A commercial or business establishment could be constructed upon this portion of the lot. A strip across the back of the main lot about 50 feet in depth and 100 feet in width, together with the appendix or 'tail', a strip 22.7 feet by 102 feet was zoned 'A-1 Single Family Residential'.

It appears that the respondent petitioned the Planning and Zoning Commission and the City Council of Greenville to change so much of the aforesaid lot as was zoned 'A-1 Single Family Residential' to 'E-Local Commercial'. This request was granted as to the strip across the back of the main lot about 50 feet in depth and 100 feet in width, but was denied as to that portion of the property which fronts on Old Augusta Road, which has heretofore been described as the appendix or 'tail'. The reason for the action of the City Council was as follows:

'(1) That the use of the property on Augusta Road for commercial purposes is consistent with the character of that area and the suggested increase in depth will not affect the residential area to the west.

'(2) That the extension of a commercial district along Old Augusta Road is undesirable and that to permit this strip to become an entry to the proposed business development would be detrimental to the residential neighborhood of Old Augusta Road.'

The respondent instituted this action on July 9, 1963, and by his complaint alleged that he was the owner of the lot of land hereinbefore described and that he had made a proper request to the Planning and Zoning Commission and the City Council of Greenville to rezone the *272 said property so that the entire lot could be used by him for commercial purposes. He alleges that on June 13, 1963, his lot was zoned 'E-Local Commercial' as requested but the portion fronting on Old Augusta Road 22.7 feet in width and having a depth of 102 feet was retained in the 'A-1 Single Family Residential' zone. He asserts that this action was arbitrary, unreasonable and in violation of the due process clauses of both the State and Federal Constitutions in that he has been denied the full right and enjoyment of his property to which he is entitled and that the aforesaid action amounted to a taking of his property without just compensation **529 and without due process of law. He asks that the zoning ordinance, as it applied to the real estate owned by him fronting on Old Augusta Road, be declared null and void and that the court issue an order directing the City of Greenville to zone the small strip of land herein described as an 'E-Local Commercial' lot.

The City of Greenville, in its answer, admitted that the respondent was the owner of the property described in the complaint and alleged that he bought the small frontage of some 22.7 feet on Old Augusta Road knowing that it could not be used by him for either residential or business purposes. The other allegations of the complaint were denied.

Subsequent to the filing of the complaint and the answer in this case the respondent petitioned the Planning and Zoning Commission and the City Council of Greenville for a special permit to use the frontage of 22.7 feet on Old Augusta Road to a depth of some 102 feet in connection with the commercial purposes which he desired to adopt for his property fronting on Augusta Road and which had been zoned 'E-Local Commercial'. This request was denied and the reasons therefor are as follows:

'(1) The development of this strip of land, specifically 22.7 feet by 102 feet fronting on Old Augusta Road, for a parking area and driveway to a customer parking lot constitutes a further encroachment of business into a residential *273 neighborhood and would be detrimental to the residences of the area.

'(2) The development of this strip as a driveway entrance and exit would be detrimental to the traffic safety of Old Augusta Road.

'(3) The development of the proposed driveway would increase the traffic volume and movement at this location, and would, thereby, constitute a hazard to the many children who travel this street to and from Blythe Elementary School and Hughes Junior High School.'

This second application of the respondent was not referred to in the pleadings in this case but evidence thereabout was introduced without objection and such was considered in the determination of this cause. Even though no issue was made in the pleadings concerning this application, consideration will be given to such in the disposition of this appeal.

This case was tried before the Honorable Frank Eppes, Resident Judge of the Thirteenth Circuit. The testimony was taken and a number of exhibits were offered in evidence. Thereafter, on May 6, 1964, the Trial Judge, by his order, held that the respondent was entitled to the relief sought and that the action of the City Council and the Planning and Zoning Commission, in refusing such, was arbitrary, unreasonable and in violation of the due process clauses of both the State and Federal Constitutions, and that the respondent had been deprived of the use of his property without just compensation. The Trial Judge ordered the lot fronting on Old Augusta Road to be zoned 'E-Local Commercial' and required the city to amend its ordinances accordingly. It is from this order that the City of Greenville prosecutes this appeal.

The respondent testified that he proposed to erect a commercial building upon the lot fronting on Augusta Road and such would have a width of 103.8 feet, running from property line to property line. The building would be set *274 back 70 feet from Augusta Road and would have an approximate depth of 70 feet which would permit two row parking in the front and rear thereof. The respondent stated that it was his purpose to use the small strip of land which fronts on Old Augusta Road as an access way into the back parking area, it being necessary to have such because entrance could not be made thereto from Augusta Road. The respondent said that this small strip of land could not be used for residential purposes because it was not large enough square **530 footage wise. The respondent testified that when he purchased the property in question the title thereto was examined by his attorney but he was not informed then as to what the zoning was on the lot. However, he did admit that he knew the front part was zoned 'E-Local Commercial' and was so told by the seller and, on cross-examination, he said he knew that under the zoning ordinance the property on Old Augusta Road in the rear of his Augusta Road property was residential. It was suggested to the respondent that his commercial building fronting on Augusta Road could be made deeper and not as wide and leave a twelve foot driveway either on the southern or northern side of the lot, thereby permitting entrance from Augusta Road for the purpose of parking in the rear thereof. He did not approve of this suggestion and answered that people who wanted to occupy a building such as his wanted frontage rather than depth.

The respondent called as a witness an experienced real estate dealer. This witness testified that the value of real estate is based largely on the use that could be made of it. He said that the value of the respondent's commercial property would be substantially depreciated if he could not use the small strip or 'tail' as an entrance to the rear thereof. On cross-examination he admitted that if the respondent intended to put a business on the property and wanted to use this small strip of land as an entrance to the rear thereof, he should have found out what the zoning was and the possibility of changing such.

*275 The Assistant Director of the Planning and Zoning Commission of the City of Greenville testified as to the applications made by the respondent for rezoning of or for the commercial use of the strip of land fronting on Old Augusta Road and that such applications were denied for the reason 'to permit this parking lot to develop on this property would be a commercial encroachment into a substantial residential area along Old Augusta Road; and also that this parking lot would affect the traffic on Old Augusta Road, in that it would create a dangerous situation, because of the school children traveling this road, going to Blythe School and Hughes Junior High School in the area.'

The parties have stipulated that on May 7, 1964, the next day after the circuit order was filed in this case, the respondent and one Ernest E. Robinson applied to the City of Greenville to permit the property here involved to be used as a 'quick service carry out restaurant' and showed that the building proposed to be erected thereon would be only 25 feet in width and 42 feet in length. The appellants, in view of this development, petitioned the Trial Judge to rescind and nullify his order of May 6, 1964, on the ground that the same had been improvidently granted and that all proceedings be stayed until the appellants could be heard upon said petition. A rule to show cause was issued by the Trial Judge and all proceedings were stayed until May 20, 1964. Thereafter, the respondent withdrew his application for a permit to use the premises for a 'quick service-carry out restaurant'.

This appeal presents the question of whether the action of the City Council of Greenville, in refusing to rezone the 22.7 foot strip fronting on Old Augusta Road from 'A-1 Single Family Residential' to 'E-Local Commercial' was arbitrary, unreasonable and in violation of the process clauses of both the State and Federal Constitutions, and thereby amounted to the taking of respondent's property without just compensation. There are other incidental questions which will be considered.

*276 The zoning ordinance of the City of Greenville was adopted pursuant to the statutory authority contained in Sections 47-1001, et seq., 1962 Code of Laws, and these sections of the Code authorize the zoning of property within a municipality for the purpose of promoting health, safety, morals and the welfare of the community.

1 2 3 4 5 6 The authority of a municipality to enact zoning ordinances, restricting the **531 use of privately owned property is founded in the police power. The governing bodies of municipalities clothed with authority to determine residential and industrial districts are better qualified by their knowledge of the situation to act upon such matters than are the Courts, and they will not be interfered with in the exercise of their police power to accomplish desired end unless there is plain violation of the constitutional rights of citizens. There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and where the Planning and Zoning Commission and the city council of a municipality have acted after considering all of the facts, the Court should not disturb the finding unless such action is arbitrary, unreasonable, or in obvious abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority. Likewise, the power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations. The burden of proving the invalidity of a zoning ordinance is on the party attacking it to establish that the acts of the city council were arbitrary, unreasonable and unjust. *Bob Jones University v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843.

There was offered in evidence a plat showing the general area here involved, including the streets to which reference has herein been made, and showing how the lots abut thereon. Reference is here had to the case of *277 *James v. City of Greenville*, 227 S.C. 565, 88 S.E.2d 861, wherein there appears a diagram or sketch of such area. Lot No. 2 on this diagram is what was the Lupo lot when the respondent purchased a part of the same. This Lot No. 2 and the other lots south thereof and fronting on Old Augusta Road were zoned 'A-1 Single Family Residential'. It is admitted that the Lupo lot was thereafter subdivided into three distinct parcels. Lot No. 2.1 thereof is the property purchased by the respondent from Lupo and such had a frontage on Old Augusta Road of 22.7 feet. Lupo retained what is known as Lots Nos. 2 and 2.2 which now have a frontage on Old Augusta Road of 74.3 feet, and prior to the subdivision thereof Lupo owned a frontage of 97 feet on the said Old Augusta Road. Thus, it appears that prior to the subdivision and sale by Lupo to the respondent that the property owned by him on Old Augusta Road met the minimum requirements of the zoning ordinance that a residence lot should have an average width of not less than 60 feet and an area of not less than 9,000 square feet. It was the deliberate and arbitrary acts of Lupo and the respondent in subdividing the property that destroyed its adaptability to residential purposes. There were no acts on the part of the City Council of Greenville and the Planning and Zoning Commission that brought about this situation.

The Trial Judge found that the property, described as Lot No. 1 on the diagram shown in the James case, is zoned in its entirety as 'E-Local Commercial' and is being used by an automobile washing firm. He also found that the nearby property on Augusta Road is to a great extent being used commercially at this time and has been zoned for such usage. The rear of the lots other than the aforesaid corner lot and those fronting on Augusta Road are still zoned residential. The lots lying on the western side of Old Augusta Road are also zoned residential. Lot No. 1, as such appears on the diagram in the James case, was being used for commercial purposes prior to this area being annexed to the City of Greenville. After the annexation, the City Council *278 of Greenville zoned the James lot 'A-1 Single Family Residential' and notified the owner that the commercial use of the property would have to be discontinued. This Court held that the use which James was making of his property at the time of the passage of the zoning ordinance became the authoritative standard **532 for determining the use which he could continue to make of his property after the passage of the zoning ordinance. It was further held that the City of Greenville zoning ordinance requiring discontinuance of nonconforming uses was unconstitutional in its application to James whose land before incorporation into the city had been used

commercially and after incorporation was zoned residential. This is the reason that the lot is still zoned as commercial property and can be used as such.

7 B The respondent here knew, or should have known, when he purchased the lot off and fronting on Old Augusta Road, that such was restricted to residential use under the existing zoning ordinance of the City of Greenville. He likewise knew, or should have known, at the time of such purchase, that a lot zoned for residential purposes could not be subdivided so as to destroy its use for residential purposes and, thereafter, use such portion so purchased for commercial purposes in violation of the zoning ordinance. He now asserts that the refusal of the City of Greenville to rezone said lot or to grant him permission to use same as an access way into the back parking area located on his commercial property impose upon him an unnecessary hardship. Ordinarily, a claim of unnecessary hardship cannot be based upon conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him. A self-created or self-inflicted hardship intentionally created by an owner of premises for the purpose of laying a basis for an application for a variance cannot be considered for such purpose. 58 Am.Jur., Zoning, Sections 208, 209, pages 1053 and 1054. Where one purchases realty with intention to apply for variance, he cannot contend that restrictions caused him such peculiar hardship that entitles him to special privileges which he seeks. *Gleason v. Kewick Imp. Ass'n*, 107 Md. 46, 78 A.2d 154.

It has been held that where land lies partly in zone in which commercial buildings may be erected and partly in contiguous zone in which such buildings are prohibited there is not a sufficient reason for a variance. *Kindergan v. Board of Adjustment of Borough of River Edge*, 137 N.J.L. 208, 59 A.2d 857. In the case of *Lalman v. Board of Adjustment, etc.*, 9 N.J. 335, 88 A.2d 337, it was held that the difficulty of access to rear of tract of realty was not a sufficient basis upon which to grant a variance. It has been generally held that private lands within an area zoned for residential purposes cannot be used as a regular means of vehicular passage to and from commercial or business premises without being a violation of the zoning laws. In *Brookline v. Co-Hay Realty Co.*, 326 Mass. 208, 83 N.E.2d 581, where the defendant company owning land in Boston, located in a general residence district and also contiguous land in Brookline which was within the classification, "single residence district", proposed to construct an apartment building on the Boston area, it was held that the defendant should be enjoined from using any part of the Brookline land as a rear yard and service entrance for the proposed apartment house since such use would be in violation of the Brookline zoning law. In the case of *San Francisco, City and County of v. Safeway Stores*, 150 Cal.App.2d 327, 310 P.2d 66, 83 A.L.R.2d 1441, it was held that the use of a lot in a residential zone for ingress to and egress from an adjoining public garage in a business zone was a violation of the residential zoning ordinance. To the same effect are the cases of *Yonkers v. Rentways, Inc.*, 304 N.Y. 499, 103 N.E.2d 597; *Great Neck Estates v. Bemak & Lalman*, 248 N.Y. 651, 162 N.E. 562.

The Trial Judge held that by zoning the property in question so that the rear thereof cannot be used as a driveway or entrance, the use of the portion zoned for commercial purposes "280 has been greatly restricted, thus causing the commercial property to be greatly reduced in value. It should be remembered that at the time the respondent purchased the lot fronting on Old Augusta Road such was restricted to residential use and there has been no change in the zoning regulations since said purchase.

The case of *Simmons v. Board of Adjustment of City of Charleston*, 226 S.C. 488, 86 S.E.2d 708, was one in which the Charleston Lobster House made application for a permit to erect a public restaurant upon a leased site in a residential district. Such was denied by the zoning administrative officer of the City of Charleston because the zoning ordinance prohibited the erection of a restaurant in such district. The applicant appealed to the Board of Adjustment and, following a hearing, such board authorized the construction of the restaurant by granting a variance to the zoning ordinance. A petition for a writ of certiorari was filed by a number of residents of the area and the cause thereafter was referred to a special referee, who, following a duly convened reference, at which the testimony was taken, filed his report recommending that the variance sought, which had been approved by the Board of Adjustment, be granted. The Circuit Court affirmed the said report. An appeal to this Court followed. It was the position of the respondents that they would suffer loss in income or profit attributable to their inability to construct and operate the proposed restaurant if a permit to do so was denied. This Court, in reversing the action of the Board of Adjustment and the lower Court, said:

" * * But, going further and assuming that they will suffer substantially in a financial way, and this is obviously the only hardship that could possibly be expected to result to them, that alone is not sufficient. 'Although it is an element in the situation which is entitled to fair and careful consideration, mere disadvantage in property value or income, or both, to a single owner of property, resulting from application of zoning restrictions ordinarily does not *281 warrant relaxation in his favor on the ground of practical difficulty or unnecessary hardship.' 62 C.J.S., Municipal Corporations, § 227(11), p. 536. And in the case of Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128, 131, 168 A.L.R. 1, it is said that 'The financial situation or pecuniary hardship of a single owner affords no adequate grounds for putting forth this extraordinary power affecting other property owners as well as the public.'

In the Simmons case it was conceded that the State Ports Authority, which had leased the property to the Charleston Lobster House, would suffer pecuniary loss if the variance sought was denied. It was also conceded that this particular property could not be used for residential purposes. It was said by this Court in disposing of this issue, that:

'the Authority purchased this area after the zoning ordinance was in effect, and it must be assumed that any hardship, financial or otherwise, resulting from existing conditions were contemplated at the time of the purchase, and the owner should not now be relieved therefrom to the impairment of rights of others who also purchased in reliance on the ordinance and have made large expenditures of capital on the strength of the assurances therein.'

9 10 The Trial Judge found that the use of the property fronting on Old Augusta Road would not adversely affect or depreciate any other property in the area or create problems to the residents thereof nor to the City of Greenville. In determining whether to grant the variation of the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. A review of the record reveals no evidentiary support for the finding of the Trial Judge. The uncontradicted testimony is that to grant the request of the respondent would permit a commercial encroachment into a **534 residential area and would affect traffic on Old Augusta Road by creating a dangerous situation because of the school children traveling *282 this road going to and from Blythe School and Hughes Junior High School.

11 12 We have held that the extent of the business area in a municipality and its location are matters which cannot be controlled and determined by judicial decision. The regulation of such is normally reserved under the police power to the legislative branches of the local government. The Court has no power to zone property. Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 125 S.E.2d 628.

13 It is our conclusion that the respondent has failed to establish that the acts of the City Council of Greenville, in refusing to rezone the property in question or to grant a variance, were arbitrary, unreasonable and unjust. There is no evidence in the record that the action of the City Council of Greenville in any way violated any rule, regulation or ordinance in reaching their decision in this case. There has been no violation of any constitutional rights of the respondent on the grounds asserted by him.

The judgment of the lower Court is reversed and the cause remanded for entry of judgment in favor of the appellants.

Reversed and remanded.

TAYLOR, C. J., and LEWIS, BUSSEY and BRAILSFORD, JJ., concur.

All Citations

246 S.C. 268, 143 S.E.2d 527

End of Document

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Original Image of 831 S.E.2d 933 (FDP)

201 S.C. 44

Court of Appeals of South Carolina.

Witherspoon (J. Mac) v. City of Columbia, Zoning Board of Adjustment of City of Columbia
Court of Appeals of South Carolina. Decided by **UNPUBLISHED REPORTS**, 2/23/96

v.

THE CITY OF COLUMBIA, South Carolina, and the Zoning Board of
Adjustment of the City of Columbia, South Carolina, Appellants.

No. 0849.

Heard Nov. 18, 1985.

Decided Dec. 29, 1986.

Property owner appealed decision of zoning board of adjustment denying variance. The Richland County Court of Common Pleas, Ralph King Anderson, Jr., J., reversed, and appeal was taken. The Court of Appeals, Shaw, J., held that zoning board of adjustment properly denied variance to property owner.

Reversed.

West Headnotes (1)

Change View

- 1 Zoning and Planning Self-created hardship; prior knowledge
Zoning board of adjustment properly denied property owner variance where property owner knew or should have known at time of purchase that property could not be used for property owner's purpose, notwithstanding that property owner did not purchase property with intent to apply for variance and notwithstanding that board had granted variance on adjacent piece of property.

1 Case that cites this headnote

Attorneys and Law Firms

*803 *45 Roy D. Bales, James B. Maggs and Joseph Weilin, Office of the City Atty., of Columbia, for appellants.

Edmund H. Monteith, of Monteith & Monteith, Columbia, for respondent.

Opinion

SHAW, Judge:

Appellants, City of Columbia and the Zoning Board of Adjustment of the City of Columbia (the Board), appeal the circuit court's reversal of the Board's denial of respondent, J. Mac Witherspoon's, request for a zoning variance. We reverse.

In 1874, Witherspoon purchased the property at 2820 Blossom Street and the adjacent property at 2822 Blossom Street. Both properties are located in the City of Columbia. At the time of purchase, both properties were tri-plex dwellings and located in a district zoned RG-1. According to the criteria under RG-1 zoning, which requires 5,000 square feet of land for each unit, both properties contain square footage only sufficient to provide for a duplex.

In 1878, the City of Columbia notified Witherspoon the property at 2822 Blossom Street was not in compliance with zoning requirements. Witherspoon petitioned the Board for, and received, a variance to allow the tri-plex to remain at 2822 Blossom Street. In October of 1981, Witherspoon petitioned the Board for a similar variance for the property at 2820

Westlaw is recommending documents
related to this document.

Zoning and Planning

Variance or Dispense

Hardship of Nonconforming Use

Secondary Sources

Proof of Hardship Necessary for
Zoning Variance

181 Am. Jur. Proof of Facts 3d 552
(Originally published in 1912)

...Zoning in American cities often said to have begun in 1916 when New York City adopted the first comprehensive zoning ordinance. In 1925, the United States Supreme Court handed down several zoning...

§ 78. Square Footage—Parcels

SC Ordinance Law Annotations Zoning § 78
...The merger process in effect at the time of purchase of two contiguous lots applied to prohibit an addition being on the substantial lot. The two 4,000 sq. ft. lots were merged under the ordinance...

APPENDIX IV GUIDANCE AND TECHNICAL ASSISTANCE MANUALS

ADA Compliance Guide Appendix IV

...Under the Americans with Disabilities Act of 1990 (the "ADA"), an employer may ask disability-related questions and require medical exams not one of an applicant only after the applicant has been given...

See Also Secondary Sources

Briefs

Petition for Writ of Certiorari

2004 WL 1827152
Evansman v. The City of Highland Park
Supreme Court of the United States.
August 19, 2004

...The Petitioners in this case are Catherine P. Evansman and Ronald Z. Evansman. Lo Sable National Bank was primarily party in this case as respondent, as trustee of trust No. 0200021324. However, on 8/19/...

Brief for the United States as Amicus
Curiae Supporting Petitioners

1994 WL 388788
WILLAMSON COUNTY REGIONAL
PLANNING COMMISSION, et al., Petitioners,
v. HAMILTON BANK OF JOHNBOURNTON,
Supreme Court of the United States.
November 15, 1994

...This case raises important questions concerning the circumstances in which the government may be required to pay compensation for the enforcement of a regulatory measure that is held to constitute a "L..."

Brief in Opposition to Petition for Writ
of Certiorari

2004 WL 2296608
Evansman v. The City of Highland Park
Supreme Court of the United States.
October 09, 2004

...Respondent is respectfully request that the Petition for Writ of Certiorari be denied. In 1993, Petitioner bought a residential

Blossom Street. This petition was denied and Witherspoon appealed to the circuit court. The circuit court reversed the Board and granted the variance.

The property in question parallels the southern boundary of the property at 2822 Blossom Street. The lots to the north of the property in question are zoned RG-2. The criteria *46 under RG-2 zoning requires 5,000 square feet for each additional unit. Since the property in question contains approximately 10,608 square feet, it would be in compliance as a tri-plex if zoned RG-2. Based on these facts, the circuit court found the Board's denial of a variance unreasonable and an abuse of the Board's discretion. We disagree.

"There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application...." *Rush v. City of Greenville*, 246 S.C. 288, 143 S.E.2d 527, 531 (1965). A court should not disturb the governing bodies' exercise of their power unless there is a plain violation of someone's constitutional rights. *Rush*, 143 S.E.2d at 531.

The circuit court distinguished *Rush* from this case by finding, here, unlike in *Rush*, Witherspoon did not purchase the property with the intent to apply for a variance. We hold the application of *Rush* is not restricted to cases where a petitioner, **904 with knowledge of the zoning requirements, buys a piece of property with the *intention at the time of purchase* to apply for a variance.

Rush does contain language denying a petitioner a variance where he purchased property with the intention to apply for a variance based on a peculiar hardship caused by the zoning restrictions. However, *Rush*, in less restrictive language, states unequivocally "... nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him." 143 S.E.2d at 532.

The fact the Board issued Witherspoon a variance on an adjacent piece of property does not diminish the Board's discretion in all similar petitions thereafter. Witherspoon knew or should have known this property could not be used as a tri-plex when he purchased the property. Thus, his purchase of a nonconforming use cannot be held to be in good faith. We hold the Board acted within its discretion in denying the variance and the circuit court erred in reversing the Board's decision.

REVERSED.

SANDERS, C.J., and GARDNER, J., concur.

All Citations

291 S.C. 44, 351 S.E.2d 903

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property consisting of a house and backyard. Although the property include...

See More Briefs

Trial Court Documents

In re Orleans Homebuilders, Inc.

2011 WL 2750754
In re Orleans Homebuilders, Inc.
United States Bankruptcy Court, D.
Delaware.
May 03, 2011

...FN1. The Debtors in these Chapter 11 cases, along with the last four digits of each of the Debtors' tax identification numbers, are: Orleans Homebuilders, Inc. (4323), Brookshire Estates, L.P. (8725), ...

In re River Canyon Real Estate Investments, LLC

2013 WL 4792272
In re River Canyon Real Estate Investments, LLC
United States Bankruptcy Court, D. Colorado.
July 31, 2013

...THIS MATTER comes before the Court on the (i) Revised Fourth Amended Plan of Reorganization Proposed by River Canyon Real Estate Investments, LLC (the "Plan"), filed by Debtor River Canyon Real Estate ...

In re Seven Falls, LLC

2010 WL 6972691
In re Seven Falls, LLC
United States Bankruptcy Court, W.D. North Carolina.
July 06, 2010

...Chapter 11 This matter comes before the Court on Synovus Bank's ("Synovus") Motion to Dismiss (the "Motion to Dismiss") [Docket Entry 199] and the Debtors' Motion for Authorization to Obtain Post-Petit...

See More Trial Court Documents



2004 WL 6331123

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.
Hernandez v. Town of Mt. Pleasant Bd. of Zoning Appeals
 Court of Appeals of South Carolina, May 17, 2004. Not Reported in S.2d, 2004 WL 6331123 (Apprx. 4 pages)
 Court of Appeals of South Carolina

Jose and Cynthia HERNANDEZ, Appellants,

v.

TOWN OF MT. PLEASANT BOARD OF ZONING APPEALS & Mark Sargeant in his official capacity as **zoning administrator**, Respondents.

No. 2004-UP-034.
 Heard April 6, 2004.
 Decided May 17, 2004.

Appeal From Charleston County; A. Victor Rawl, Circuit Court Judge.

Attorneys and Law Firms

Thomas R. Goldstein, of Charleston, for Appellants.

R. Alan Young, of Mt. Pleasant, and Frances Isaac Cantwell, of Charleston, for Respondents.

Opinion**PER CURIAM**

*1 Jose Hernandez and Cynthia Hernandez appeal the circuit court's order affirming the denial of a zoning variance by the Mt. Pleasant Board of Zoning Appeals and dismissing their claims for violation of their rights to due process and equal protection. We affirm.

FACTS

The Hernandezs own a 7.7-acre lot in a subdivision in Mt. Pleasant. Originally, the unified lot extended from frontage on Bampfield Drive to frontage on Rainbow Drive, with a lake in the middle of the parcel. Now, however, because the Hernandezs sold highland around the perimeter of the lake to adjoining property owners, the lake blocks the Hernandezs' lot, separating the highland fronting Rainbow Drive from the highland fronting Bampfield Drive. The Hernandezs' home is on the Rainbow Drive side of the parcel of land. They decided to subdivide the parcel and create a new lot on the Bampfield Drive side of the lake.

The new lot is a roughly triangular shaped highland by the lake with a 26 feet by 172 feet corridor leading to Bampfield Drive. Under the town's zoning ordinances, the lot is classified as a flag lot. Neither party disputed this classification during the hearing before the circuit court. A flag lot is one failing to meet the minimum lot width for the applicable zoning district, as measured at the front setback building line. The new lot would be 25 feet wide at the setback line as opposed to the required 80 feet for the zoning district.

The Hernandezs applied for a variance from the ordinance to allow them to create the new lot. At the hearing before the Board of Zoning Appeals, the neighboring property owners objected to the granting of the variance. The Board denied the variance request, finding the proposed lot to be a detriment to the surrounding property values.

The Hernandezs then appealed the Board's decision to the circuit court, challenging the merits of the decision, the constitutionality of the procedure for hearing variance requests, and the constitutionality of the ordinance banning flag lots and asserting a takings claim. The circuit court held the Board of Zoning Appeals committed no error of law in hearing or processing their variance application. It found ample evidence in the record to support the Board's denial of the variance. The court found no merit to the Hernandezs' contention that

SELECTED TOPICS**Zoning and Planning**

Judicial Review of Zoning
 Supreme Court Scope of Review of
 Decision of Board of County
 Commissioners

Secondary Sources**APPENDIX V COURT CASES**

ADA Compliance Guide Appendix V
 Appendix V contains summaries of significant ADA decisions. See the Index for an alphabetical listing of court cases in the Guide. Readers should note that these cases were decided before the 2003 amendments.

§ 25:21. Appeal and error

SA 606a in Mun. Corp. § 25:21 (2004)
 Appeal of a trial court's appellate review of a zoning board's decision is governed by law and practice regarding appeal and error generally. Ordinarily, an appeal can be taken from the final order of.

APPENDIX IV: ADMINISTRATIVE LETTER RULINGS: DOL, WAGE AND HOUR DIVISION

FLSA Emp. Exemption Hobbs Appendix IV
 (The following article appeared in the July 1995 update to the Employer's Guide to the Fair Labor Standards Act, published by Thompson Publishing Group. Its intended to provide basic information on.)

See More Secondary Sources

Briefs**Brief of Appellee**

1996 WL 3495520
AT&T WIRELESS PCS, INCORPORATED, Plaintiff-Appellee, v. THE WINSTON-SALEM ZONING BOARD OF ADJUSTMENT, Defendant-Appellant
 United States Court of Appeals Fourth Circuit
 September 28, 1996
 AT&T Wireless PCS, Inc. ("AT&T Wireless"), brought this action pursuant to Section 704 of the Telecommunications Act of 1996 (TCA), which is codified at 47 U.S.C. § 332(c)(7). The TCA confers subject...

Appellate's Brief

2002 WL 1574504
USCOO OF GREATER MISSOURI, LLC, Appellant, v. CITY OF BERGUESON, MISSOURI, Appellee
 United States Court of Appeals Eighth Circuit
 May 15, 2002

In USCOO of Greater Iowa, Inc. v. Zoning Board of Adjustment of the City of Des Moines, 495 F.3d 817 (8th Cir. 2006), this Court provided a detailed overview of the Federal Telecommunications Act, 47 U.S.C.

Brief of Defendants-Appellees St. Croix County and Its Board of Adjustment

2002 WL 8017484
VOICES TREAM WINEAPOLIS, INC., Plaintiff-Appellee, v. St. Croix County, Inc., a Delaware corporation, Plaintiff-Appellant, v. ST. CROIX COUNTY, a Wisconsin political subdivision, and its Board of Adjustment, Defendants-

they were denied procedural and substantive due process. The court also rejected their argument that the Town zoning regulations that exclude flag lots are unconstitutional. The court held the new lot was not entitled to grandfathered status. Finally, in its amended order, the court held the Hernandezes' takings issue was premature and dismissed it without prejudice. This appeal followed.

LAW ANALYSIS

Appellants argue the circuit court erred in affirming the decision of the Board. We disagree.

I. Denial of variance

The South Carolina Local Government Comprehensive Planning Enabling Act (Zoning Enabling Act) sets forth the standard of review for appeals from local zoning boards of appeal: The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury. S.C. Code Ann. § 6-29-800 (2004). In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. *Id.* Thus, the factual findings of the zoning board will not be disturbed unless there is no evidence in the record to support its decision. *Hester v. Zoning Bd. of Appeals for the City of Beaufort*, 348 S.C. 401, 406, 562 S.E.2d 42, 45 (Ct. App. 2001).

*2 The Zoning Enabling Act empowers the Board to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. S.C. Code Ann. § 6-29-800(2) (2004). The Board may grant such a variance upon making and explaining in writing the following factors:

- (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (b) these conditions do not generally apply to other property in the vicinity;
- (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

S.C. Code Ann. § 6-29-800(2) (2004).

In order to grant a variance, the Board must make the factual determination that each of these four elements favors granting the variance. *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 210, 515 S.E.2d 442, 446 (1999). Granting a variance is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions. *Id.* at 215, 515 S.E.2d at 445-46. The party seeking the variance bears the burden of demonstrating all four of the above elements. *Id.* at 215, 515 S.E.2d at 445.

In the present case, the Board held that although the Hernandezes had met the first three elements of a variance, they had not met their burden of establishing that the variance would not be a substantial detriment to adjacent property or to the public good and the character of the district would not be harmed by the granting of the variance.

The Hernandezes assert the Board erred in considering the objections of the neighboring property owners.¹ We find no error in the Board's consideration of this testimony. Section 6-29-800(2) requires the Board to determine whether the authorization of a variance will be detrimental to adjacent property. Accordingly, the neighbors' testimony concerning the negative effect the granting of the variance would have on their property values and the character of the district was relevant to the Board's consideration of this fourth element and was entitled to as much weight as the Board deemed to accord it.

Considering the entire record, we find sufficient evidence to support the Board's decision to deny the variance. Testimony from the adjacent property owners revealed concerns for drainage, overcrowding, the loss of a substantial number of large trees, removal of yard debris, and a negative effect on property values should the new lot be approved. Accordingly, we hold the circuit court correctly affirmed the Board's decision as evidence exists in the record supporting the Board's decision.

Appellate
United States Court of Appeals, Seventh
Circuit
November 12, 2007

... Appellate Court No. 02-2083 Short Caption
Volo/Silver Municipal, Inc. v. St. Croix
County, et al. To enable the judges to
determine whether review is necessary or
appropriate, an attorney for a writ...

See More Briefs

Trial Court Documents

In re Charter Communications

2009 WL 488696
In re Charter Communications
United States Bankruptcy Court, S.D. New
York
March 27, 2009

... Chapter 11 Adversary Proceeding JAMES
W. PECK UNITED STATES BANKRUPTCY
JUDGE Since these cases were filed on
March 27, 2009, Charter Communications
Inc. ("CCI") and, together with its affiliates,
debtor...

In re Victor Valley Community Hoop.

2010 WL 5003156
In re Victor Valley Community Hoop,
United States Bankruptcy Court, C.D.
California
September 13, 2010

... Chapter 11 Hearing Date: November 9,
2010 11:00 a.m. Place: Courtroom 309
9400 Tenth St., Riverside, CA 92501
THE MATTER came before the Court upon
the Motion for the entry of an Order (s) As...

In re Capmark Financial Group Inc.

2011 WL 5018556
In re Capmark Financial Group Inc.
United States Bankruptcy Court, D.
Delaware
April 15, 2011

... Pkt. This constitutes the Court's findings of
fact and conclusions of law under Bankruptcy
Rules 7052 and 801-4, Chapter 11.1. Before
the court are competing motions relating to
the claims of the Debtor.

See More Trial Court Documents

II. Violation of rights to due process and equal protection

¹³ The Hernandezs argue the proceedings below violated their rights to due process and equal protection. At oral argument, the Hernandezs' counsel stated the Hernandezs were abandoning their challenges to the constitutionality of the Zoning Enabling Act and the municipal ordinance banning flag lots and proceeding only on their arguments that their rights were violated by the application of the statute and ordinance in their case.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *South Carolina Dept of Soc. Servs. v. Books*, 325 S.C. 243, 248, 401 S.E.2d 703, 705 (1997). Due process is flexible and calls for such procedural protections as the particular situation demands. *Stone River Envtl. Protection Ass'n v. South Carolina Dept of Health and Envtl. Control*, 385 S.C. 90, 94, 405 S.E.2d 340, 342 (1991). The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. *German Evangelical Lutheran Church of Charleston v. City of Charleston*, 352 S.C. 600, 608, 579 S.E.2d 160, 164 (2003).

The Zoning Enabling Act sets forth the procedure for a hearing before the Zoning Board of Appeals on a zoning variance request. S.C. Code Ann. § 6-29-800 (2004). An appeal from the Board's decision is to the circuit court, which has appellate jurisdiction only. S.C. Code Ann. §§ 6-29-820 and 6-29-840 (2004). The circuit court may not take additional evidence. § 6-29-840.

The Hernandezs contend the hearing before the Board was unfair. We disagree.

The Hernandezs were provided with an opportunity to be heard in a meaningful manner. They were allowed to present their position to the Board. Furthermore, as found above, the Board did not err in allowing the neighboring property owners to voice their objections to the variance request as their concerns were relevant to the Board's determination of whether the request met all of the statutory factors necessary for the granting of a variance. The Hernandezs were also afforded judicial review by their appeal to the circuit court. We hold the Hernandezs received all of the procedural protections afforded them under the Zoning Enabling Act.

The Hernandezs also raise another due process issue by asserting that as the Hobcow subdivision plat was approved prior to the enactment of the flag lot ordinance, the ordinance should not be allowed to deprive them of all economic use of the land.²

A landowner only acquires a vested right to continue a nonconforming use if that use is already in existence at the time his property is zoned. *Flanngate, Inc. v. Town of Irmo*, 290 S.C. 288, 289-70, 349 S.E.2d 891, 893 (Cl.App.1986) [A] contemplated use of property by a landowner on the date a zoning ordinance becomes effective to preclude such a use is not protected as a nonconforming use. *Id.* at 289, 349 S.E.2d at 893.

At the time the Town of Mt. Pleasant enacted the ordinance prohibiting flag lots, the Hernandezs' property was considered one lot and was in conformance with the ordinance. The Hernandezs made no attempt to subdivide their lot to create the nonconforming flag lot until after the enactment of the ordinance. Accordingly, as their use of the property as a separate lot was at the most merely contemplated at the time of the enactment of the ordinance, they are not entitled to any protection from enforcement of the ordinance.

¹⁴ The Hernandezs next assert their rights to equal protection were violated by enforcement of the ordinance prohibiting flag lots because although they are not being permitted to create a flag lot, there are five flag lots in the immediate vicinity of their property. The record reveals, however, that these lots were all created either prior to the area being annexed into the Town of Mt. Pleasant or prior to the enactment of the ordinance prohibiting flag lots. As such, this is not a case of disparate treatment of similarly situated individuals.

Finally, the Hernandezs suggest they were denied the variance because Mr. Hernandez is Hispanic. As this issue was neither raised to nor ruled on by the circuit court, it is not preserved for our review. See *Beaufort County v. Suñer*, 316 S.C. 465, 468, 451 S.E.2d 385, 388 (1994) (stating constitutional claims must be raised and ruled upon below to be preserved for appeal).

Accordingly, the decision of the circuit court affirming the Board's decision to deny the Hernandezs' request for a variance is

AFFIRMED.

HUFF and STILWELL, JJ., and CURETON, A.J., concur.

All Citations

Not Reported in S.E.2d, 2004 WL 6331123

Footnotes

- 1 The Hernandezes cite to *Boulevard Dev. and St. John's Inn v. City of Myrtle Beach*, Op. No.2001-UP-091 (S.C. CtApp. filed Feb. 13, 2001), Rule 239(d) (2), SCACR provides, Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.

- 2 As the parties have agreed to reserve the Hernandezes' takings claim until after the resolution of their variance appeal, we will treat this argument as an assertion that their lot should be grandfathered under the ordinance, as it was addressed by the circuit court.

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03/21/2016

Larry C Brandt, P.A.

3691 Blue Ridge Boulevard

Walhalla, South Carolina, 29691

To whom it may concern:

Mr. Larry C Brandt, P.A. is authorized to represent Bill W. & Barbara A. Stevenson for any matters relating to property located at 165 Bonner RD. Mountain Rest SC ,29664. Due to health and medical reasons we are not able to attend in person.

We have been asked to provide a summarized statement relating to the construction of a new home on the property adjacent to ours relating to application for zoning.

Several weeks ago, I was contacted by A R Bunn Construction Company with regards to a new construction for Mr. Slaughter owner of the property adjacent to our. It was to inquire about removing a large tree on the property line. A verbal agreement was completed to allow the tree removal. Further more the construction company advised that f any damages occurred as a result they would repair and replace anything free of charge. There are no issues to date.

We do want to mention during our conversation between builder and me, we were led to believe & understood the tree needed to come down because it was an obstacle to the construction. It truly never crossed our minds to inquire about the actual placement of the home in relation to our property. No other information was asked of us. The conversation was simply can we remove the tree. If there were other innuendos, it was never brought to our attention.

This is our family home; it is not only used by us, but also by our children, grandchildren, family & friends. Part of the character of the home which is loved by many is the view of the lake directly from our front porch & the tranquil surroundings of the area.

On our last trip back, we looked over the job completed. The tree and all debris was removed, no damages observed and the job was completed very professionally. No issues there, however we are concerned with the actual foundation placement of the home. Based on the size of the home and the location within the property, it will certainly have a direct impact to our view of the lake. I am knowledgeable enough to believe the home may be over built for the size of the lot. Furthermore, as construction is moving along, the home appears to close to our front porch; it will eliminate any privacy & potentially could be a fire hazard. With these circumstances, this could have a negative impact to the value of our home.

This property has been in our family since 1976, and a home was built on the property in 1992 after we retired. We love our home and want to preserve the character & nature of why we built it.

Regards,

Bill W Stevenson 

Barbara Stevenson 





























