SANDY SPRINGS
GEORGIA

Variance Petition No. 201403960

HEARING & MEETING DATES
Board of Appeals Hearing January 8, 2015 - DEFERRED February 12, 2015

APPLICANT/PETITIONER INFORMATION		
Property Owner	**Petitioner**	**Representative**
Melanie Born	Paul Marotte	Paul Marotte

PROPERTY INFORMATION	
Address, Land Lot(s), and District	1122 Kingston Drive Land Lot 15, 17th District
Council District	5 Tiberio 'Tibby' DeJulio
Frontage	Approximately 70.9 feet of frontage along the northeasterly side of Kingston Drive
Area	Approximately 1.0 acres
Existing Zoning	R-2 (Single Family Dwelling District)
Existing Use	Currently undeveloped
Overlay District	N/A
2027 Comprehensive Future Land Use Map Designation	Residential 0 to 1 units per acre

INTENT

The applicant is proposing to reduce the front yard setback for the construction of a single-family residence. The applicant is requesting two (2) primary variance(s) from the Zoning Ordinance:

1. One (1) primary variance from Section 4.2.10 of the Zoning Ordinance to increase distance at which minimum lot width is measured to allow construction of a new single family home.

2. One (1) primary variance from Section 6.2.3(f) of the Zoning Ordinance to reduce minimum lot width to one hundred and eight (108) feet to allow construction of a new single family home.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION

201403960 – 1) APPROVAL CONDITIONAL
2) APPROVAL CONDITIONAL

Standards for Consideration

VARIANCE #1

A primary variance from Section 4.2.10 of the Zoning Ordinance to increase distance at which minimum lot width is measured to allow construction of a new single family home.

Zoning Ordinance

Section 22.3.1 of the City's Zoning Ordinance includes one or more criteria which must be met before a variance can be approved by the Board of Appeals:

Section 22.3.1. Variance Considerations.

A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or,

Finding:

The intent of the Zoning Ordinance is to maintain the character and uniformity of the neighborhood. Based on the shape of the lot, narrowing towards Kingston Drive, the applicant is requesting relief from the distance at which minimum lot width is measured. Minimum lot width is measured between the front setback and the sum of the front and rear setbacks. For the R-2 zoning district, this would be between 60 feet and 100 feet from the right-of-way. The site plan provided shows the new house would sit approximately 157 feet from the Kingston Drive right-of-way. Adjacent homes sit approximately the same distance from the right-of-way, supporting the Protected Neighborhoods provision of the Comprehensive Plan:

Land Use Policies – Protected Neighborhoods (2027 Comprehensive Plan, Chapter 5: Policies – Page 100)

The following policies apply to all properties within the boundary of protected neighborhoods as shown on the future land use plan map. Where consistent with the context, such policies may be determined appropriate in transitional areas.

6) Residential infill development in protected neighborhoods should maintain the existing dwelling setback pattern in relation to the street.

Based on these considerations, staff is of the opinion that <u>this condition has been satisfied.</u>

B. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or,

Finding:

Presently, a home could be constructed at the rear of the property. The topography of the property increases in elevation to the mid-point of the lot, then decreasing in elevation toward the rear of the property. The variance would allow a buildable area in front of this steep topography. The proposed home would be in line with adjacent properties as well as others along Kingston Drive. Based on these considerations, staff is of the opinion that <u>this condition has been satisfied.</u>

<u>VARIANCE #2</u>

A primary variance from Section 6.2.3(f) of the Zoning Ordinance to reduce minimum lot width to one hundred and eight (108) feet to allow construction of a new single family home.

<u>Zoning Ordinance</u>

Section 22.3.1 of the City's Zoning Ordinance includes one or more criteria which must be met before a variance can be approved by the Board of Appeals:

Section 22.3.1. Variance Considerations.

A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or,

Finding:

The intent of the Zoning Ordinance is to maintain the character and uniformity of the neighborhood. Based on the shape of the lot, narrowing towards Kingston Drive, the applicant is requesting relief from minimum lot width. The site plan submitted shows the lot width would be decreased to 108 feet. While many surrounding lots are wider, 1122 Kingston Drive has a similar width as the adjacent lot which also lies on the outside of a curve on Kingston Drive. Minimum side and rear yard setbacks on the property would be met. Based on these considerations, staff is of the opinion that <u>this condition has been satisfied.</u>

B. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or,

Finding:

The topography of the property increases in elevation to the mid-point of the lot, then decreasing in elevation toward the rear of the property. The current buildable area of the lot is at the rear of the property. The variance would allow a buildable area closer to the street, in front of some of this steep topography. The shape of the lot, which narrows toward Kingston Drive, presently limits the buildable area to the rear of the property as well. The proposed home would be in line with adjacent properties as well as others along Kingston Drive. Based on these considerations, staff is of the opinion that this condition has been satisfied.

Department Comments

Focus Meeting held on Wednesday December 3, 2014, and no comments were provided from the following departments: Arborist, Fire, Code Enforcement, Transportation, Building and Permitting or Site Development.

Conclusion

After being granted deferral at the January 8, 2015 Board of Appeals hearing, the applicant provided a revised site plan to staff. The revised plan shows a reduced footprint for the house, moving further from the property line shared with 1120 Kingston Drive. The site plan also shows holly trees 6 feet in height planted along the property line shared with 1130 Kingston Drive. Staff has reviewed the request relative to the variance standards contained in Section 22.3.1 of the Sandy Springs Zoning Ordinance. Based upon this review, staff recommends **APPROVAL CONDITIONAL** of the variance request from Section 4.2.10 of the Zoning Ordinance to increase distance at which minimum lot width is measured to allow construction of a new single family home, and **APPROVAL CONDITIONAL** of the variance request from Section 6.2.3(f) of the Zoning Ordinance to reduce minimum lot width to one hundred and eight (108) feet to allow construction of a new single family home.

Recommended Condition(s)

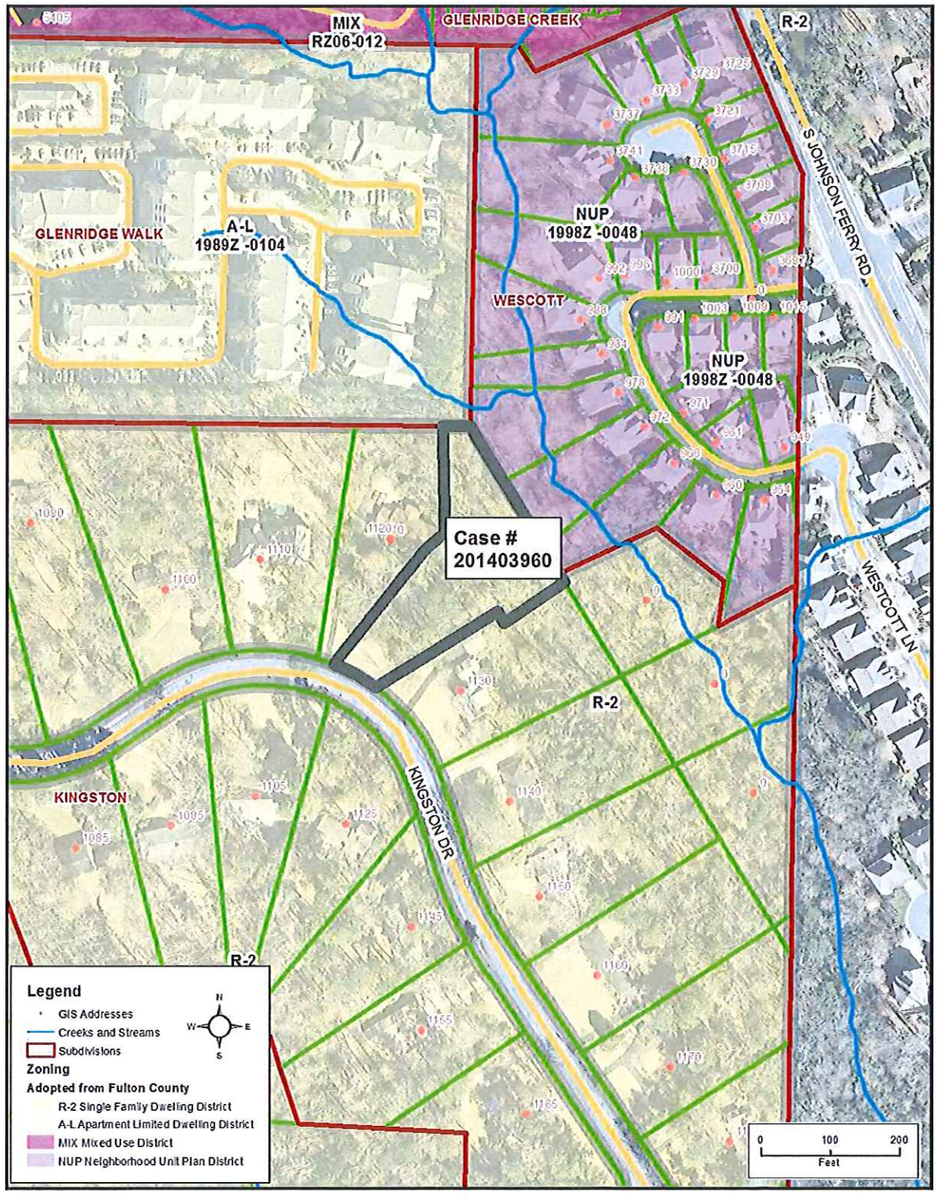
Should the Board of Appeals choose to approve the request in its entirety, staff recommends the following conditions:

1. To increase distance at which minimum lot width is measured to allow construction of a single family home, as shown on the site plan dated received January 20, 2015 by the Department of Community Development.

2. To reduce minimum lot width to one hundred and eight (108) feet to allow construction of a single family home, as shown on the site plan dated received January 20, 2015 by the Department of Community Development.

ATTACHMENTS:
Parcel Map
Letter of Appeal – Dated received October 31, 2014
Letter of Deferral – Dated received December 26, 2014
Letters of Opposition from Neighbors – Dated received December 16, 2014
Petition from Neighbors – Dated received December 13, 2014
Revised Site Plan – Dated received January 20, 2015
Original Site Plan – Dated received October 31, 2014
Site Photographs

1122 Kingston Drive



Prepared by the City of Sandy Springs Department of Community Development for the Board of Appeals Hearing on January 8, 2015.

October 31, 2014

Mr. Kevin Howard
Planner I
City of Sandy Springs
7840 Roswell Road, Suite 300
Atlanta, GA 30350

Re: Letter of Appeal
Variance Application
0 Kingston Drive (AKA 1122 Kingston Drive)
Tax ID# 17-0015-0001-039-4
Zoning: R-2

Dear Mr. Howard,

This letter along with application and site plan are submitted to staff for the consideration of zoning variance for the above referenced property.

Variance Request:

Reduce front yard setback from 235 feet (as shown on the recorded subdivision plat) to 157.8 feet.
Reduce the lot width from 150 feet to 108.3 feet.

Petitioner:

Paul R. Marotte
4920 Roswell Road #45B-104
Atlanta, GA 30342
Phone: 404-502-0427
Email: pmarotte@gmail.com

Owner:

Melanie Born
1276 Stanyan St
San Francisco, CA 94117

Introduction:

The subject property is approximately one acre fronting Kingston Drive and is has no structures on it. It is part of the Kingston Subdivision dating back to 1959 and most the houses on the street were built in 1959 to 1961. The subject property was further subdivided in 1993. A copy of that

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subdivision plat is attached. That plat shows a front yard building setback 235 feet. The property is zoned R-2 so normally the front setback would be 60 feet.

Justification:

As you can see from the attached subdivision plat recorded in 1993, there is a 235 foot front building setback. That would put the house well behind both the houses to the left and to the right. The front door would then look directly into the back of the houses on either side. Additionally, most of the buildable area on the 1993 subdivision plat is unusable due to steep topography that far back on the lot. Both are extreme hardships.

It's logical to place the front of the new house in line with the houses on either side. This would give uniformity from the street and avoid having the front of a house facing the rear of the each adjoining house. As you can see from the site plan, the building footprint is behind a visual site line from the front corner of the house on the left to the front corner of the freestanding garage of the house on the right. This just makes good planning sense to locate the house there.

As a result, reducing the front setback to 157.8 feet then requires the lot width be reduced to 108.3 feet.

Thank you for all your time in working with us on this project. Please let me know if there are any questions.

Sincerely,

Paul R Marotte
Applicant

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December 26, 2014

Mr. Kevin Howard
Planner I
City of Sandy Springs
7840 Roswell Road, Suite 300
Atlanta, GA 30350

Re: Request for Deferral of Variance Hearing
0 Kingston Drive (AKA 1122 Kingston Drive)
Petition Number 201403960

Dear Mr. Howard,

As we discussed in our meeting earlier this week, I am formally requesting for the January 8, 2015 variance hearing be deferred to the February 12, 2015 hearing. This will give me time to make some modifications to the site plan to include detail of landscaping along the side property lines to minimize any impact on the adjoining neighbors.

Please let me know if staff has any issue with the deferral. Thanks.

Sincerely,

Paul R Marotte
Applicant

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Lee E. and Denise L. Whitfield
1130 Kingston Drive, NE
Sandy Springs, GA 30342
Tel. 404-252-2764
Email: leewhitfield1776@gmail.com

December 16, 2014

Kevin Howard
City of Sandy Springs
7840 Roswell Road, Suite 300
Sandy Springs, GA 30350

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RE: Petition 201403960

Dear Mr. Howard:

We oppose the request for a variance granting relief from 4.2.10 and 6.2.3(F) of the zoning ordinance concerning lot width for the property known as "1122 Kingston Drive, Sandy Springs, Georgia 30342".

The burden of proof is on the petitioner to explain why the City of Sandy Springs should grant the variance. The petitioner, in his application for variance, has failed to meet the burden stating only that it would be an "extreme hardship" for him to comply with the City's zoning regulations. We believe the regulations exist for a reason and we ask the City to consider the following:

<u>The Vast Majority of the Residents Oppose the Variance</u>

- ***94% of the available homeowners oppose the variance.*** (Note: Five homeowners were unavailable: Residents in two leased homes were not asked to sign as they are not owners, one home is unoccupied, and two homeowners were not at home.) To-date, at least fifteen (15) of the twenty-one (21) available homeowners on Kingston Drive have signed a petition opposing the request for variance while only one (1) homeowner (a real estate investor by occupation) favors the variance. As of this date, the homeowners at these addresses oppose the variance:

  - 1085 Kingston Drive
  - 1100 Kingston Drive
  - 1105 Kingston Drive
  - 1110 Kingston Drive
  - 1120 Kingston Drive
  - 1125 Kingston Drive
  - 1130 Kingston Drive
  - 1140 Kingston Drive
  - 1150 Kingston Drive
  - 1155 Kingston Drive
  - 1160 Kingston Drive

The Developer was Aware of the Condition of the Lot Prior to Making an Offer

- Through proper due diligence, the prospective developer knew or should have known that the lot would not be attractive to prospective homebuyers absent an investment on his part to make the lot suitable for construction. We do not believe that the burden of making the property marketable rests with the residents of the neighborhood; rather this burden is solely that of the developer.

In summary, we strongly oppose the variance for the reasons we stated and believe the petitioner has not met the burden of proof for a variance. Kingston Drive residents are proud of our neighborhood—note that some have been continuous residents since the first homes were built *circa* 1960. We trust the City of Sandy Springs will make a wise decision that considers the will of the residents over that of a single developer who will never live here.

Respectfully,

Lee E. Whitfield

Denise L. Whitfield

Attachment: Kingston Drive Petition

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RE: PETITION # 201403960

PLEASE SIGN THIS PETITION IF YOU DO NOT WANT VARIANCE GRANTED FOR PROPERTY LOCATED AT 1122 KINGSTON DRIVE. THANK YOU.

NAME John R Howard Jr
ADDRESS 1140 Kingston Dr
PH 404-255-7470

NAME Sara J Kinard
ADDRESS 1105 Kingston Dr
PH 404-255-4092

NAME Peter Brown
ADDRESS 1110 Kingston
PH 404-824-8434

NAME Molly Brown
ADDRESS 1110 Kingston Dr
PH 404-4730736

NAME
ADDRESS
PH

NAME
ADDRESS
PH

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NAME
ADDRESS
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RE: PETITION # 201403960

PLEASE SIGN THIS PETITION IF YOU DO NOT WANT VARIANCE GRANTED FOR PROPERTY LOCATED AT 1122 KINGSTON DRIVE. THANK YOU.

NAME Rebecca Redding
ADDRESS 1150 Kingston DR.
PH 404-252-4280

NAME Will L. Kinard
ADDRESS 1105 Kingston DR
PH 404-255-4092

NAME Russell Redding
ADDRESS 1150 Kingston Dr
PH 404 252 4280

NAME Lucille (Duke) DeLong
ADDRESS 1120 Kingston Dr
PH 404-257-9528

NAME Jean Strerman
ADDRESS 1170 Kingston D. NE
PH 404 255 8915

NAME Peter Block (Suzanne)
ADDRESS 1125 Kingston RD NE
PH 404.303.8425

NAME Vern F. Bliss
ADDRESS 1180 Kingston DR
PH 404 255 1730

NAME Denise Whitfield
ADDRESS 1130 Kingston DR. NE
PH 404-252-2764

NAME Jean D. Bliss
ADDRESS 1180 Kingston Dr
PH 404 255 1730

NAME [illegible]
ADDRESS 1130 Kingston DR. NE
PH 404-252-2764

NAME Sally S. Howard
ADDRESS 1140 Kingston Dr
PH 404-255-7470

NAME Diane Smith
ADDRESS 1100 Kingston Dr.
PH 404-518-6547

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The Burden of Proof

Is on the Petitioner

RE: Petition 201403960
Opposing the request for variance at "1122" Kingston Dr.

Lee and Denise Whitfield, 1130 Kingston Drive NE, Sandy Springs, GA 30342

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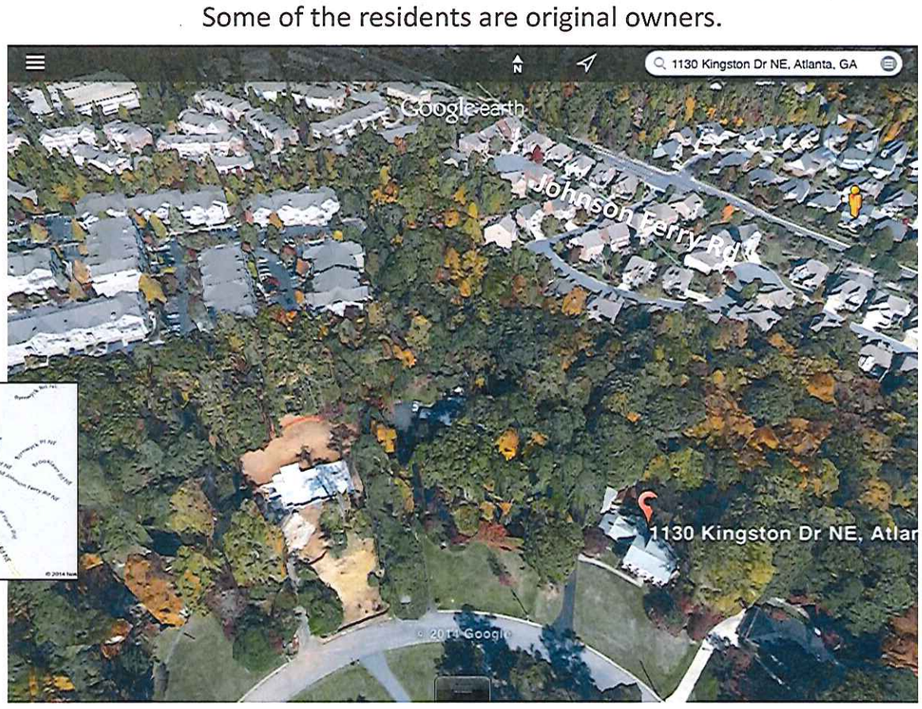
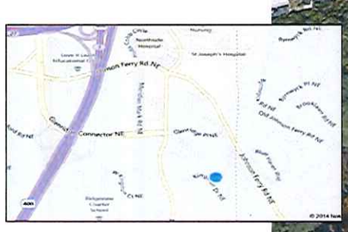
The property being discussed is south of Northside Hospital, off Peachtree-Dunwoody Rd.
This is a small neighborhood of 21 homes that were built in the early 1960's.
Some of the residents are original owners.





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What is the Basis for Making the Decision?

I. The Desire of the Construction Company
II. The Law
III. The Intent of the Original Developer
IV. The Desire of the Neighborhood

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I. The Desire of the Construction Company

- Construction Company asserts it can make money regardless of the location of the home on the site.
- Company claims "hardship" which effectively means they would make less money if not granted a variance.
- Making less money (as opposed to more) does not constitute a "hardship".
- Compared to 2 other homes built or under construction within the last 2 years on Kingston, Construction Company has a head start of approximately $200,000.
- >>A $200k head start should not be considered a hardship by the Board
- Company doesn't appear to own the property at present and therefore could avoid the "hardship" (making less money) if making less money were burdensome.

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III. The Intent of the Original Developer

The Original Developer did not intend for there to be an "1122" Kingston Drive. An extra home could not be built upon the lot while maintaining the desired character of the neighborhood.

- 1120 Kingston was sub-divided in 1993 for a reason the neighbors never understood.
- There are no "1132", "1142", etc. Kingston addresses. "1122" is an anomaly.
- >Granting a variance would permit a home to be built uncharacteristically close to the residents of 1120 and 1130 Kingston.
- >>We believe this would adversely affect the value of our homes and that it is poor public policy to disadvantage 2 or more homeowners simply to advantage one Construction Company.

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IV. The Desire of the Neighborhood

21 homes on Kingston Drive

16 signed a petition opposing the variance

- 1 resident out-of-state
- 2 renters (owner unavailable)
- 1 was unavailable due to work
- Only a single resident favors the variance

76% oppose the variance or **94%** of those able to be contacted

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The character of the neighborhood with its spacious yards and beautiful trees . . .

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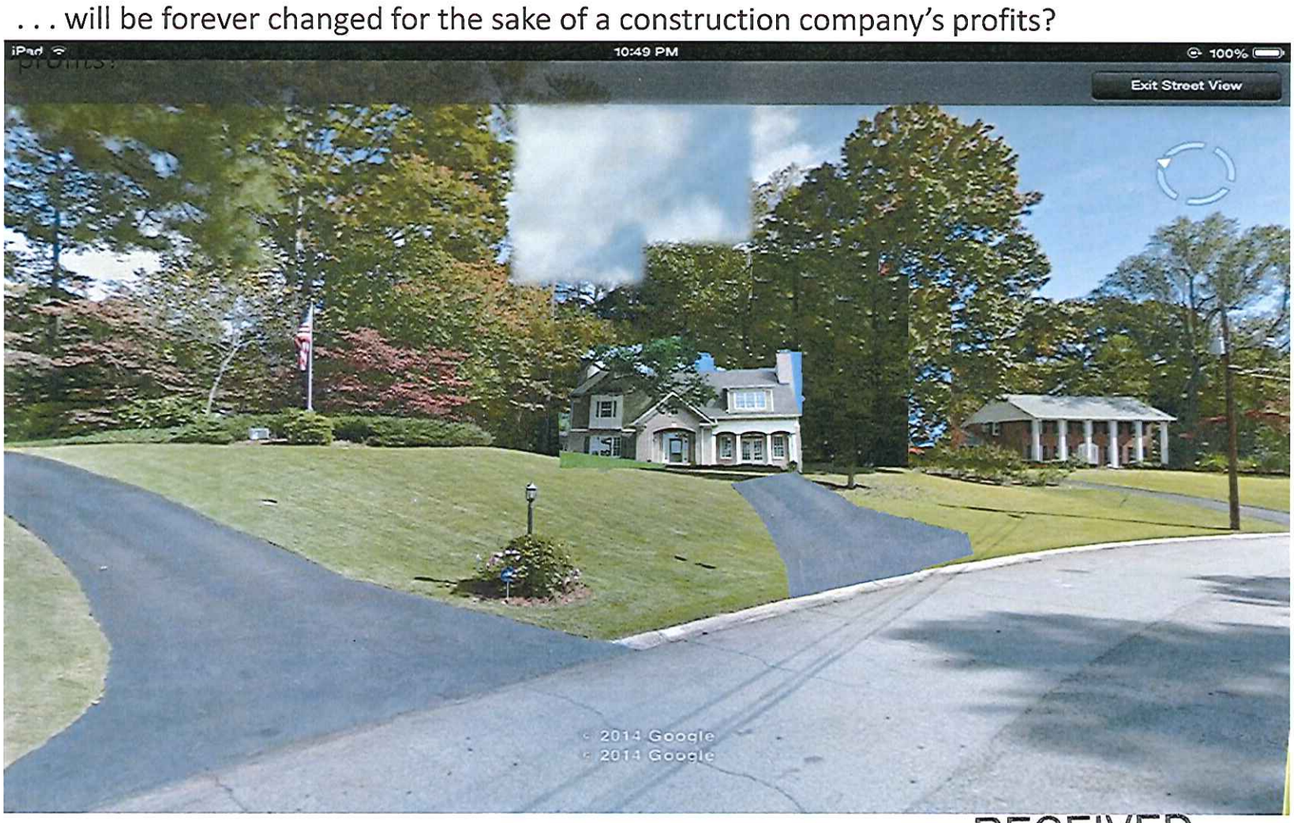
. . . will be forever changed for the sake of a construction company's profits?



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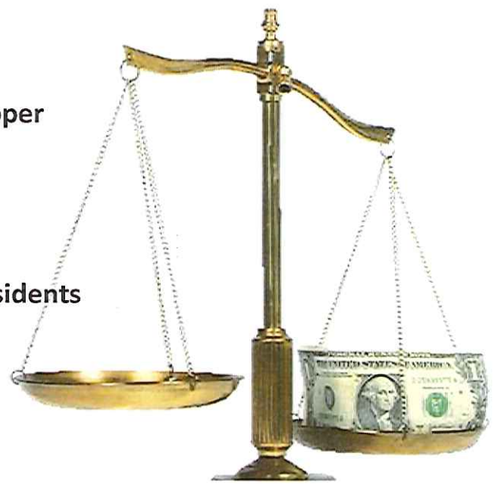
Construction Company failed to meet its burden of proof.

1. City of Sandy Springs Zoning Law
2. Violates the Intent of the Original Developer
3. Adversely affects property values of adjacent residents.
4. Goes against the desire of 94% of the Residents



1. Construction Company can make more money rather than less money.

Therefore the variance request should be denied

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Kingston Drive

Variance Meeting

February 12, 2015

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History

- Group of investors attempt to buy the neighborhood and in the process run down values with rentals
  - T&S Partners
  - Terminus investments
  - Bruce Capps
  - Kevin Engle
- Started Neighborhood association
  - Developed a covenant that prevented immediate purchase and rental of homes
  - 12 homeowners signed covenant
  - Investors bought first house on covenant and rented to a section 8 family
    - 1110 Kingston Drive
  - Covenant was uphold in state supreme court 60K in legal fees
  - House could not be rented, investors let it go into foreclosure

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2006-2009

- 13 of 28 homes were rentals non owner occupied
  - T&S Properties
  - Terminus
  - Bruce Capps
  - Kevin Engel
  - S&G Atlanta Partners LLC

- 46% of homes were rentals

- Issues
  - Criminal activity
  - Commercial Florist spotting 40,000 tractor trailers on key holidays
  - Numerous code infractions
  - All documented

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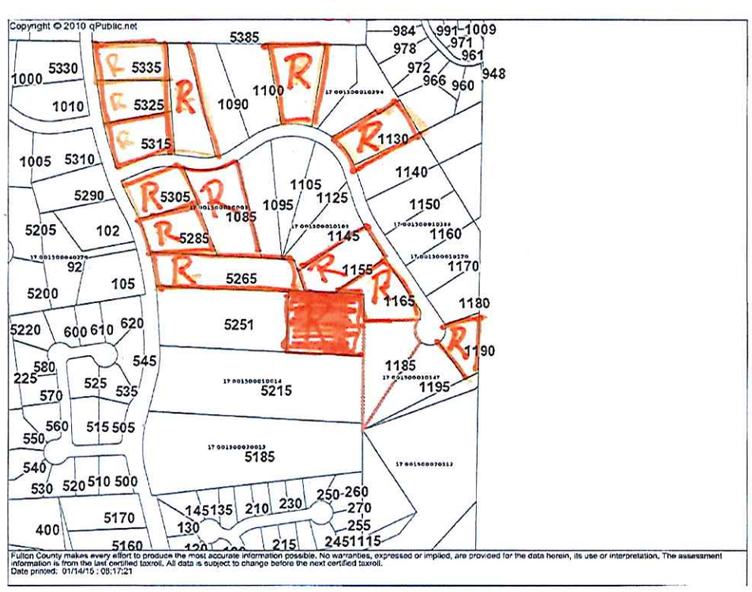
Rental Locations 2006-2009



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Current

- 9 of 28 homes were owned by investors
  - Terminus
  - Kevin Engel
  - SG Atlanta Partners LLC
- 9 of 28 homes are non owner occupied
- 32% of homes are rentals
- Getting better but still not there
- Homes are so neglected that in most cases they are knock downs, value is in the land

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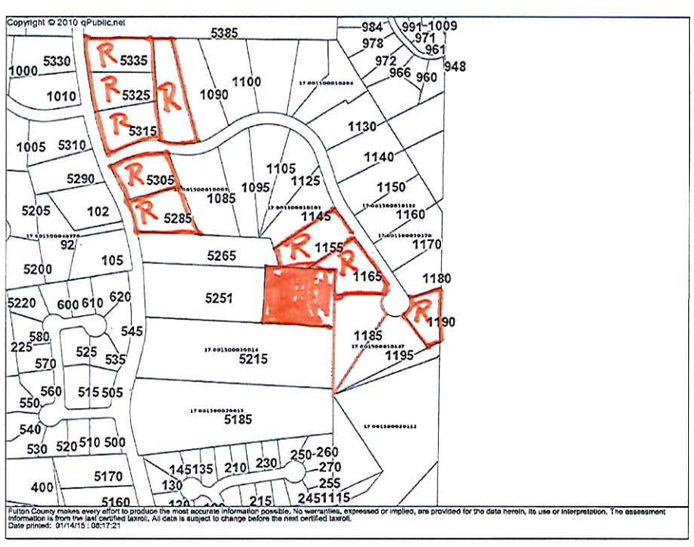
Current Rentals



Fulton County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.
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Kingston Drive home values significantly lower than comparable sales across the street

West Kingston	Sale Price	Year Sold
1005	$ 530,000	2005
5320	$ 1,950,000	2008
975	$ 505,000	2013
5240	$ 479,000	active
5260	$ 749,000	active
Kingston		
1130	$ 390,000	2010
1110	$ 290,000	2011
1110	$ 1,235,000	2012
1100	$ 345,000	2012
1095	$ 775,000	2014
1085	$ 370,000	2014

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Rentals

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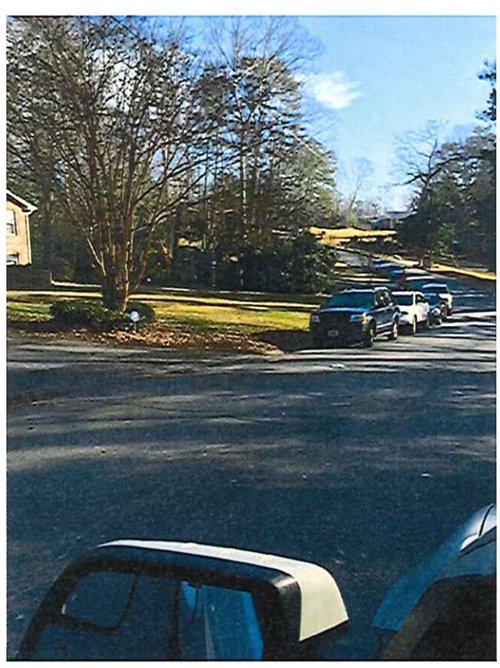
Morning After A Party



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2009-2014

- 1130 Kingston Drive bought out of foreclosure-2010
  - Lot next to property in question
- 1110 Kingston Drive New Construction 1.2M (foreclosure)
- 1085 Kingston Drive New Construction 1.5M (investor sold)
- 5265 Peachtree Dunwoody New Construction 1M+ (investor sold)

Investors are seeing opportunity

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1110 Kingston (foreclosure)

1085 Kingston Drive New Construction 1.5M (investor sold)

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Kingston Drive

- Past three years we have had 3 new homes built
- More new construction will add value to existing homes and lots
- Increase value will make it feasible for investors to sell
- Help us restore this back to a neighborhood occupied by home owners
- This is good for Kingston Drive and Sandy Springs

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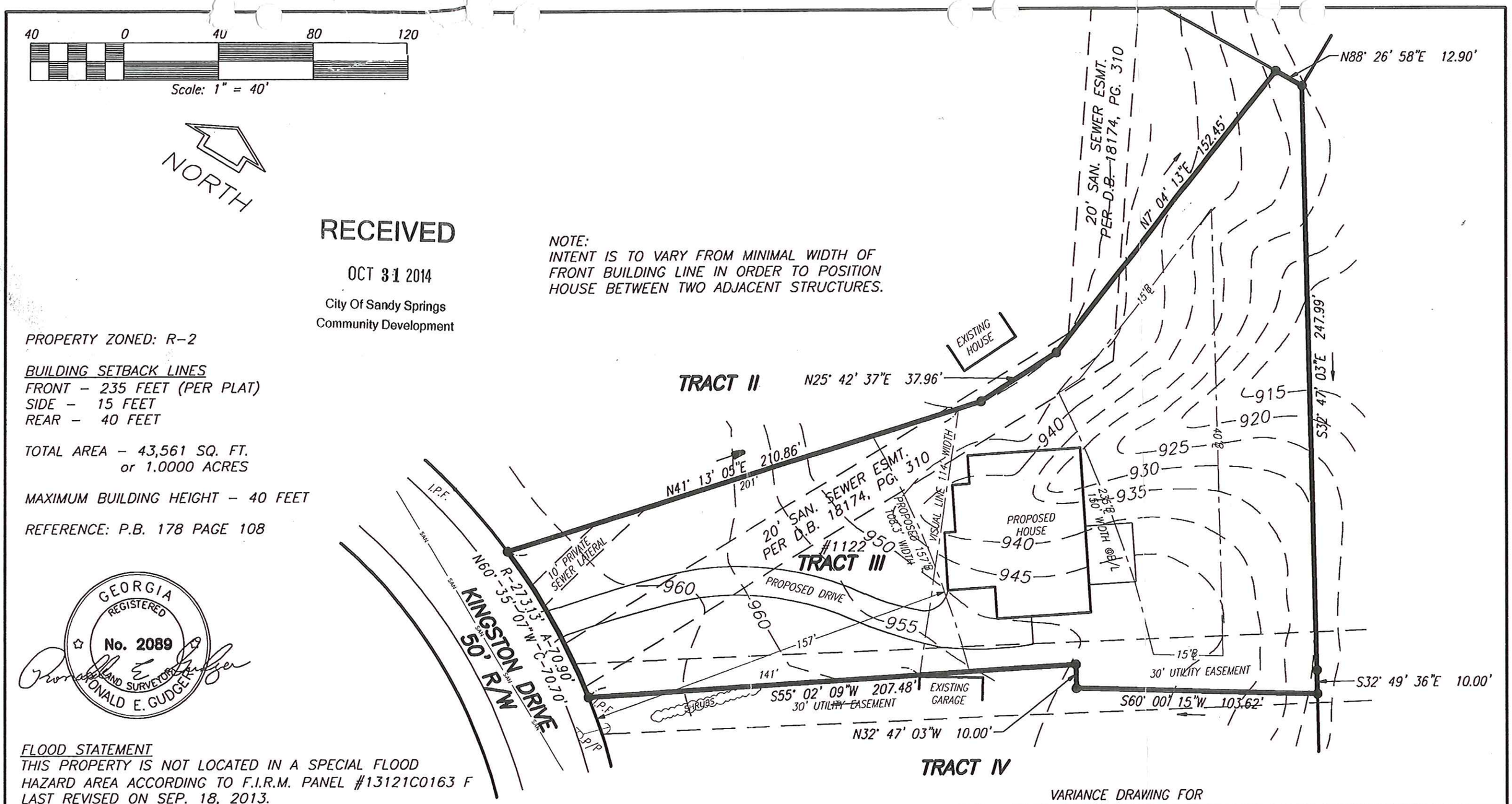
Change Is Hard

"The only person who likes change is a baby with a wet diaper."

- I hope you will consider the greater good.
- This is about restoring Kingston Drive to a neighborhood of owner occupied homes
- This is about providing family neighborhoods in Sandy Springs so that the new business's like Mercedes live here as well as work here.
- This is about helping to raise values to encourage the investors to sell, and replace those homes with families who care about the neighborhood.

Please approve this variance, lets not let a few feet stand between making this a better neighborhood for its residence and the city



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PROPERTY ZONED: R-2

BUILDING SETBACK LINES
FRONT – 235 FEET (PER PLAT)
SIDE – 15 FEET
REAR – 40 FEET

TOTAL AREA – 43,561 SQ. FT.
or 1.0000 ACRES

MAXIMUM BUILDING HEIGHT – 40 FEET

REFERENCE: P.B. 178 PAGE 108

GEORGIA REGISTERED No. 2089 LAND SURVEYOR RONALD E. GUDGER

FLOOD STATEMENT
THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA ACCORDING TO F.I.R.M. PANEL #13121C0163 F LAST REVISED ON SEP. 18, 2013.

VARIANCE DRAWING FOR

SURVEYED REG, CS
CALCULATED REG, RAM
DRAWN
DWG. NAME KINGSTON 1122
DATE OCT. 30, 2014

SITE WORKS SURVEYS & PLANNING
RONALD E. GUDGER, LS
404-731-8696
7000 PEACHTREE DUNWOODY ROAD
BUILDING 6, SUITE 250
ATLANTA, GEORGIA 30328
PHONE: 770-396-6011 FAX: 770-396-2379
e-mail: gudgersurveying@bellsouth.net

TRACT III
P/O LOT 16 & 17
KINGSTON S/D
L.L. 15, DISTRICT 17
CITY OF SANDY SPRINGS
FULTON COUNTY, GEORGIA

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40 0 40 80 120
Scale: 1" = 40'

NORTH

NOTE:
INTENT IS TO VARY FROM MINIMAL WIDTH OF FRONT BUILDING LINE IN ORDER TO POSITION HOUSE BETWEEN TWO ADJACENT STRUCTURES.

PROPERTY ZONED: R-2

BUILDING SETBACK LINES
FRONT – 235 FEET (PER PLAT)
SIDE – 15 FEET
REAR – 40 FEET

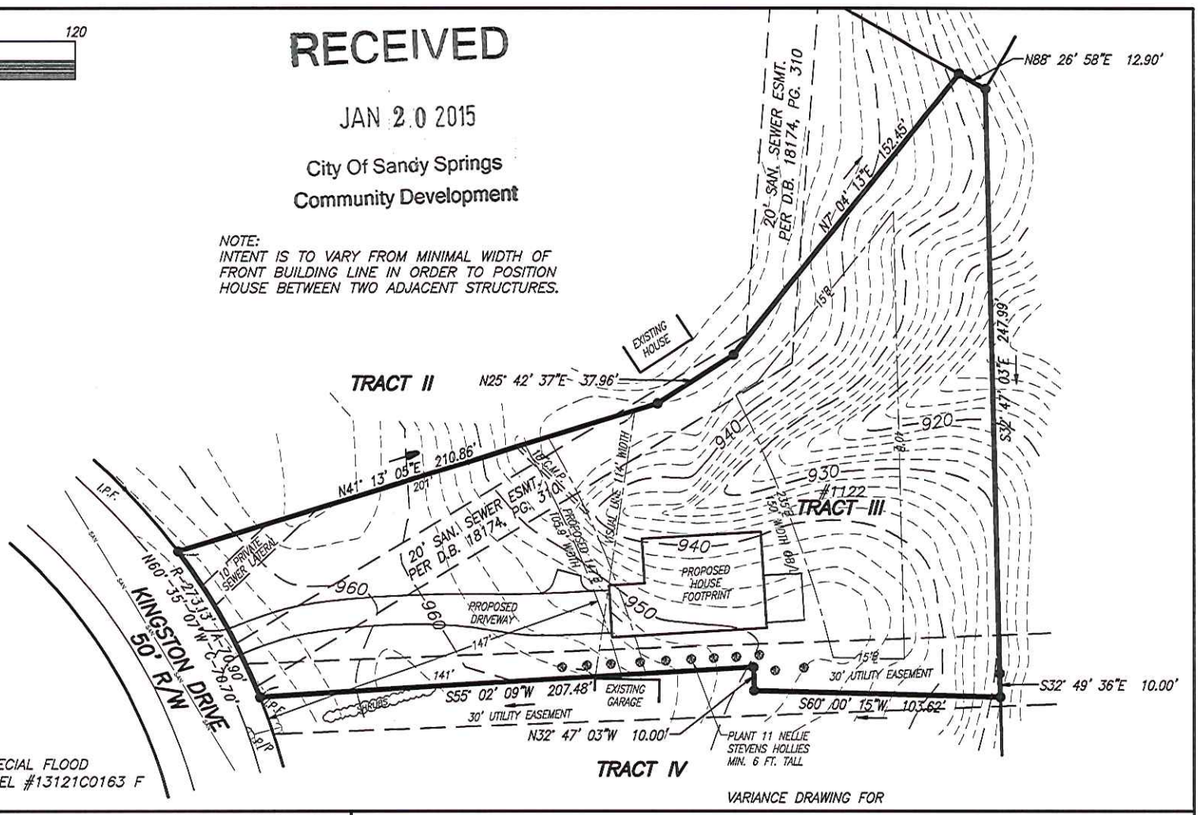
TOTAL AREA – 43,561 SQ. FT.
or 1.0000 ACRES

MAXIMUM BUILDING HEIGHT – 40 FEET

REFERENCE: P.B. 178 PAGE 108

GEORGIA REGISTERED No. 2089 LAND SURVEYOR RONALD E. GUDGER

FLOOD STATEMENT
THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA ACCORDING TO F.I.R.M. PANEL #13121C0163 F LAST REVISED ON SEP. 18, 2013.



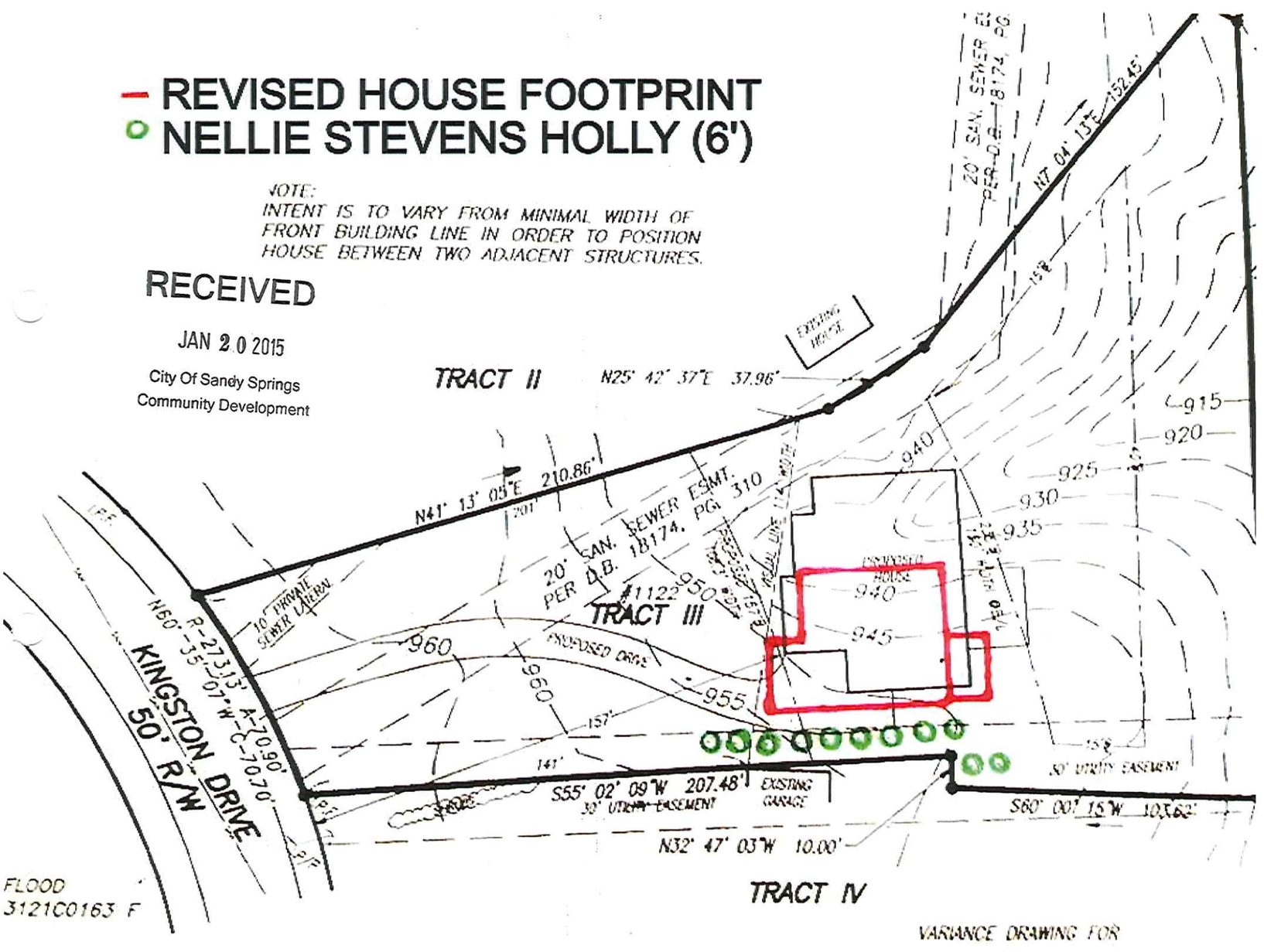
VARIANCE DRAWING FOR

SURVEYED REG, CS CALCULATED REG, RAM DRAWN DWG. NAME KINGSTON 1122 DATE NOV. 3, 2014 UPDATED JAN. 20, 2015	SITE WORKS SURVEYS & PLANNING RONALD E. GUDGER, LS 404-731-8696 7000 PEACHTREE DUNWOODY ROAD BUILDING 6, SUITE 250 ATLANTA, GEORGIA 30328 PHONE: 770-396-6011 FAX: 770-396-2379 e-mail: gudgersurveying@bellsouth.net	TRACT III P/O LOT 16 & 17 KINGSTON S/D L.L. 15, DISTRICT 17 CITY OF SANDY SPRINGS FULTON COUNTY, GEORGIA

– REVISED HOUSE FOOTPRINT
o NELLIE STEVENS HOLLY (6')

NOTE:
INTENT IS TO VARY FROM MINIMAL WIDTH OF FRONT BUILDING LINE IN ORDER TO POSITION HOUSE BETWEEN TWO ADJACENT STRUCTURES.

RECEIVED

JAN 20 2015

City Of Sandy Springs
Community Development