

APPLICANT: Clifton A. Brashier, Jr. and Gail Riesenber **PETITION NO.:** V-15
PHONE: 770-931-5805 **DATE OF HEARING:** 02/08/12
REPRESENTATIVE: Sams, Larkin & Huff, LLP **PRESENT ZONING:** R-30
PHONE: Parks Huff 770-422-7016
TITLEHOLDER: Clifton A. Brashier, Jr. **LAND LOT(S):** 1, 1097, 1098
PROPERTY LOCATION: On the north side of **DISTRICT:** 1, 17
Columns Drive, east of Atlanta Country Club Drive **SIZE OF TRACT:** 2.796 acres
(4561 Columns Drive). **COMMISSION DISTRICT:** 2

TYPE OF VARIANCE: 1) Waive the rear setback for an accessory structure (tennis courts) from the required 40 feet to zero feet; and 2) waive the side setback for an accessory structure from the required 12 feet to zero feet adjacent to the western property line.

COMMENTS

TRAFFIC: This request will not have an adverse impact on traffic.

DEVELOPMENT & INSPECTIONS: No comments.

SITE PLAN REVIEW: No comment.

STORMWATER MANAGEMENT: No objection to setback variances proposed. However, the owners need to be aware that there may be Metropolitan River Protection Act (MRPA) implications associated with the proposed lot boundary revision. These two lots are part of the same MRPA review.

HISTORIC PRESERVATION: After examining Civil War trench maps, Cobb County historic property surveys, county maps, and various other resources, staff has no comments regarding the impact or treatment of historic and/or archaeological resources.

CEMETERY PRESERVATION: No comment.

WATER: No conflict.

SEWER: No conflict.

OPPOSITION: NO. OPPOSED _____ PETITION NO. _____ SPOKESMAN _____

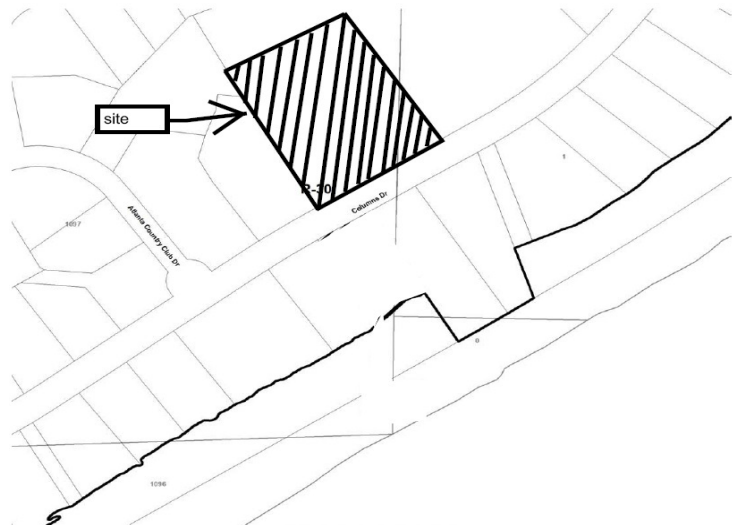
BOARD OF APPEALS DECISION

APPROVED _____ **MOTION BY** _____

REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

STIPULATIONS: _____



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Cobb County Fire and Emergency Services

Fire Marshal Comments

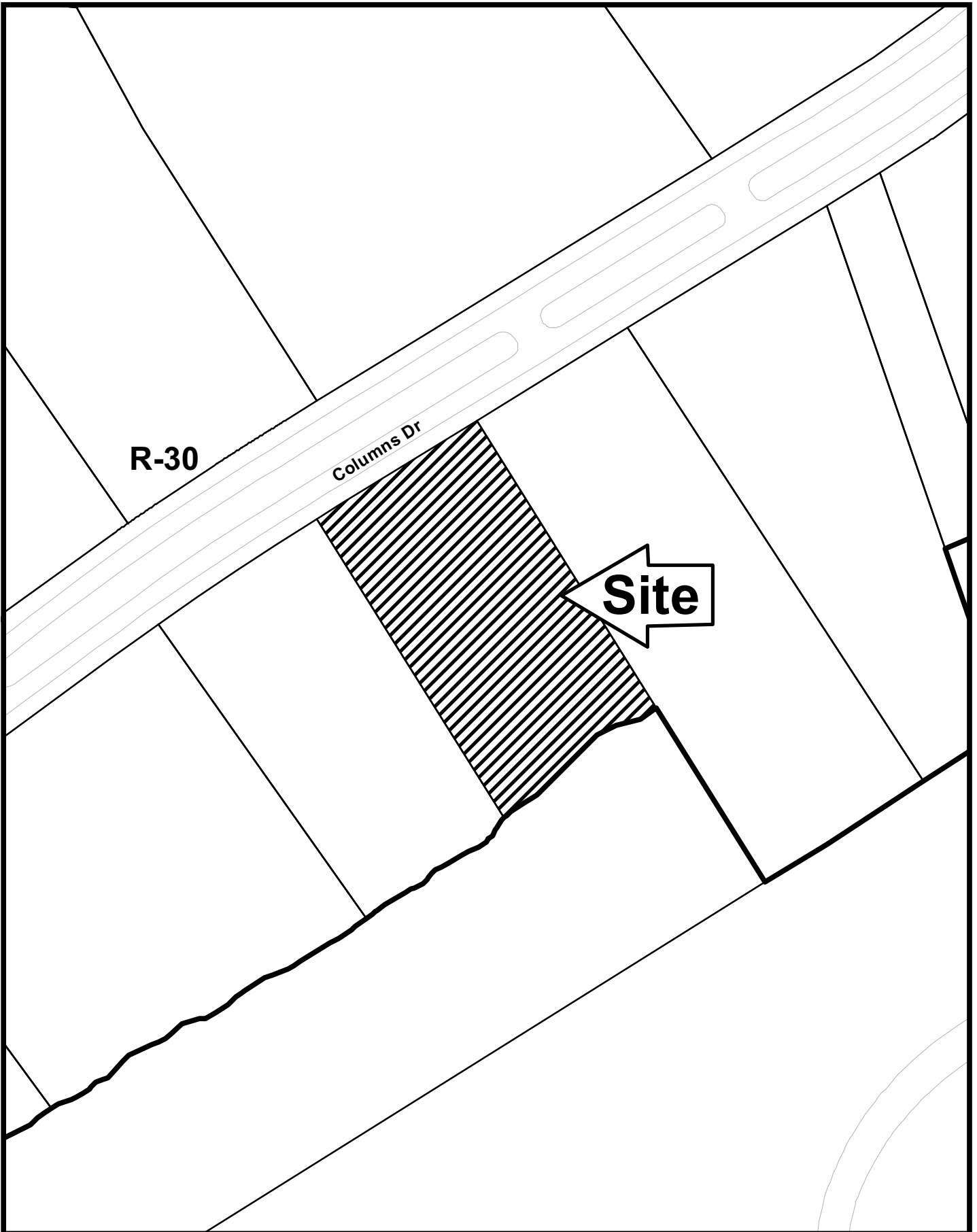
Applicant Name: **Clifton A. Brashier, Jr. & Gail Riesenberg**

Petition Number: V-15

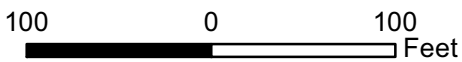
Date: 1/26/2012



NO COMMENTS: After analyzing the information presented for a Preliminary Review, the Cobb County Fire Marshal's Office is confident that all other items can be addressed during the Plan Review Stage.

V-15



This map is provided for display and planning purposes only. It is not meant to be a legal description.



-  City Boundary
-  Zoning Boundary

Application for Variance Cobb County

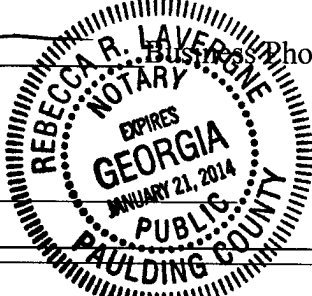
(type or print clearly)

Application No. V- 15
Hearing Date: 2/8/12

Applicants: Clifton A. Brashier, Jr. and Gail B. Riesenbergs Riesenbergs Home Phone (404) 931-5805
SAMS, LARKIN & HUFF, LLP 376 Powder Springs Street, Suite 100
Joel L. Larkin Address: Marietta, GA 30064
(representative's name, printed) (street, city, state and zip code)

[Signature] Business Phone (770) 422-7016 Cell Phone (770) 426-6583
(representative's signature)

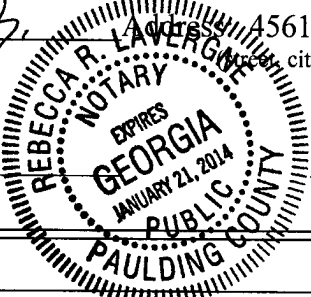
My commission expires: _____
SIGNED, SEALED AND DELIVERED IN PRESENCE OF:
[Signature] Notary Public



Titleholder: Clifton A. Brashier, Jr. Business Phone (404) 527-8755 Mobile Phone: (404) 444-4348

Signature [Signature] Address: 4561 Columns Drive SE, Marietta, GA 30067
(attach additional signatures, if needed) (street, city, state and zip code)

My commission expires: _____
SIGNED, SEALED AND DELIVERED IN PRESENCE OF:
[Signature] Notary Public



Present Zoning of Property R-30

Location 4561 Columns Drive, SE, Marietta, GA 300
(street address, if applicable; nearest intersection, etc.)

Land Lot(s) 1 & 1098 District 1st and 17th Size of Tract 2.796 acres Acre(s)

Please select the extraordinary and exceptional condition(s) to the piece of property in question. The condition(s) must be peculiar to the piece of property involved.

Size of Property _____ Shape of Property _____ Topography of Property _____ Other x

The Cobb County Zoning Ordinance Section 134-94 states that the Cobb County Board of Zoning Appeals must determine that applying the terms of the Zoning Ordinance without the variance would create an unnecessary hardship. Please state what hardship would be created by following the normal terms of the ordinance.

Please see attached filing

List type of variance requested: 1) Reduce rear setback for tennis court from 40 feet to 0 feet
2) Reduce side setback for tennis court from 12 feet to 0 feet

V-15
2012

**ADDENDUM TO APPLICATION FOR VARIANCE
AND CONSTITUTIONAL OBJECTION**

Hearing Date: February 8, 2012

BEFORE THE COBB COUNTY BOARD OF ZONING APPEALS

COME NOW the Applicants, CLIFTON A. BRASHIER, JR. and GAIL RIESENBERG, (hereinafter collectively referred to as the "Applicant") and supplement their Application for Variance as follows:

1.

Clifton A. Brashier, Jr. is the owner of the real property and improvements located at 4561 Columns Drive SE, Marietta, Cobb County, Georgia. Gail B. Riesenbergs is the owner of the adjacent property located at 4571 Columns Drive SE, Marietta, Cobb County, Georgia. Both of said properties are zoned to the R-30 classification under the Cobb County Zoning Ordinance. Both lots, however, far exceed the minimum 30,000 square feet requirement for that district. In fact, 4561 Columns Drive is currently approximately 3.80 acres and 4571 Columns Drive is approximately 6.70 acres.

4561 Columns Drive is developed with a single family residence. It also contains a tennis court and a detached garage outbuilding. This detached garage is in addition to a separate multi-car garage that is contained within the residence structure.

4571 Columns Drive is also developed with a single family residence. In addition thereto, however, 4571 has been developed and used for more than 15 years as a non-profit riding stable.

Mr. Brashier and his wife recently decided that they desire to downsize. When Mrs. Riesenbergs heard that they were interested in selling their property, they began having discussions about her purchasing a portion of their acreage to be

incorporated into her non-profit riding facility. Those conversations culminated in an agreement between the parties pursuant to which Mrs. Riesenbergh has agreed to purchase the entirety of the 4561 Columns Drive Property with the intention of re-drawing the property lines, renovating the house and ultimately re-selling the house on a smaller, although still expansive, approximately 2.8 acre lot. The additional acreage would be added to Mrs. Riesenbergh's adjacent property, thereby increasing its lot size to approximately 7.8 acres.

The requested variances are solely to accommodate Mrs. Riesenbergh's re-platting for the property lines. The variances are not requested for the purpose of constructing new structures. Instead, Mrs. Riesenbergh primarily seeks to enlarge the pasture area for her non-profit riding stable by shifting certain property that is located to the rear of the 4561 Columns Drive Property (and largely within a Colonial Pipeline Easement Area) to the adjacent 4571 Columns Drive Property. The most productive re-platting for this purpose requires variances for the setbacks between the existing tennis court and the property lines. Current zoning requirements impose a 40 foot rear setback. The Tennis court is presently non-conforming in that it sits approximately 22 feet from the back property line. Your applicants propose that this setback be reduced further to 0 feet.

The proposed re-platting also contemplates that the tennis courts sit on a portion of the side property line. Essentially, your Applicants propose that the Tennis Court Fencing establish the property line between the re-platted 4561 Columns Drive Property and the pasture area for 4571. No additional structures are contemplated in this pasture area at this time. In fact, development within this area is largely prohibited

by virtue of the existing Colonial Pipeline easements.

2.

Given the foregoing desires of the parties and the purposes for which the variances are sought, the Applicant states that a literal interpretation and enforcement of Ordinance provisions creates a hardship.

3.

Enforcement of the Zoning Ordinance requirements concerning the Subject Property creates and would create an unnecessary and unreasonable hardship with no resulting substantial benefit to the public good.

4.

The variance sought by the Applicant concerning the subject property will not impair the purpose, spirit and intent of the Ordinance and stand to alleviate any and all non-compliance of the foregoing requirements while causing no substantial detriment to the public good.

5.

Applicable Ordinance provisions concerning the required variance are unconstitutional as applied to the Subject Property in that same deprive the Applicants of property under and pursuant to Article I, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of property without due process violates the constitutional prohibition against the taking of private property without just compensation.

6.

Applicable Ordinance provisions, as applied to the Subject Property, violate the Applicant's right to the unfettered use and development of the Subject Property in conformity with the existing Ordinance in that the Ordinance creates an unreasonable hardship totally unrelated to public health, safety, morality, or general welfare and is therefore confiscatory and void. Further, same is unconstitutional in that it is arbitrary, unreasonable and injurious resulting in relatively little gain or benefit to the public while at the same time inflicting serious injury and loss upon the Applicant.

7.

The Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with Applications for Variances also violate Article I, Section I, Paragraphs I, II and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

This 8th day of December, 2011.

SAMS, LARKIN & HUFF, LLP

By: 

JOEL L. LARKIN
Attorney for Applicant
Ga. Bar No. 438415