

**SEPTEMBER 11, 2013 VARIANCE HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 1**

ITEM # 1

PURPOSE

To consider a stipulation amendment for Bruce Smith regarding variance application V-53 of 2002 (Lewis and Brenda Gass), for property located off of a private easement in Land Lot 66 and 87 of the 20th District.

BACKGROUND

The subject property was granted a variance in 2002 to allow three homes off a private easement. The applicant has purchased the property in order to keep horses. One of the Stormwater Management comments prohibits farm animal and horses in the floodplain. This was worded in this fashion to keep animals out of Proctor Creek. The applicant will not have any animals in the creek due to the fact the existing fencing on the property prevents animal access to the creek. Stormwater Management has submitted comments, which are below. If approved, all previous stipulations would remain in effect.

FUNDING

N/A

DEPARTMENT COMMENTS

Stormwater Management: The Stormwater Management Division is not opposed to allowing the floodplain portion of the subject parcel to be utilized as pasture for livestock as long as there is paddock access for the animals to get out of the floodplain during a flood event. Based on my site visit, the existing fence location prevents animal access to Proctor Creek and appears to provide adequate heavily wooded, undisturbed buffering to protect the stream.

RECOMMENDATION

The Board of Zoning Appeals conduct a Public Hearing and consider the proposed stipulation amendment.

ATTACHMENTS

Other Business application and stipulations.

Application for "Other Business" BZA

Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)

Hearing Date Requested: 9-11-2013

Applicant: Bruce Smith Phone #: 4046807921
(applicant's name printed)

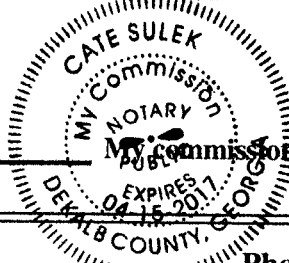
Address: 3295 New Mcever Road E-Mail: bsmith1920@bellsouth.net

Bruce Smith Address: 1920 HAZELBROOK WAY 30339
(representative's name, printed)

Bruce E Smith Phone #: 4046807921 E-Mail: bsmith1920@bellsouth.net
(representative's signature)

Signed, sealed and delivered in presence of:

Cate Sulek My Commission expires: 4-15-17
Notary Public



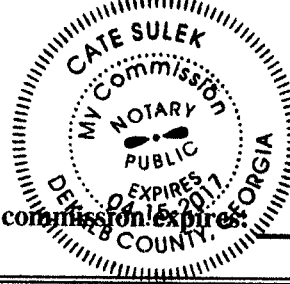
Titleholder(s): Bruce Smith Phone #: 404680
(property owner's name printed) 30339

Address: 1920 HAZELBROOK WAY MARIETTA E-Mail: bsmith1920@bellsouth.net

Bruce E Smith
(Property owner's signature)

Signed, sealed and delivered in presence of:

Cate Sulek My Commission expires: 4-15-17
Notary Public



Commission District: 1 Case: V-53 of 2002

Original Date of Hearing: _____

Location: 3295 New Mcever Road
(street address, if applicable; nearest intersection, etc.)

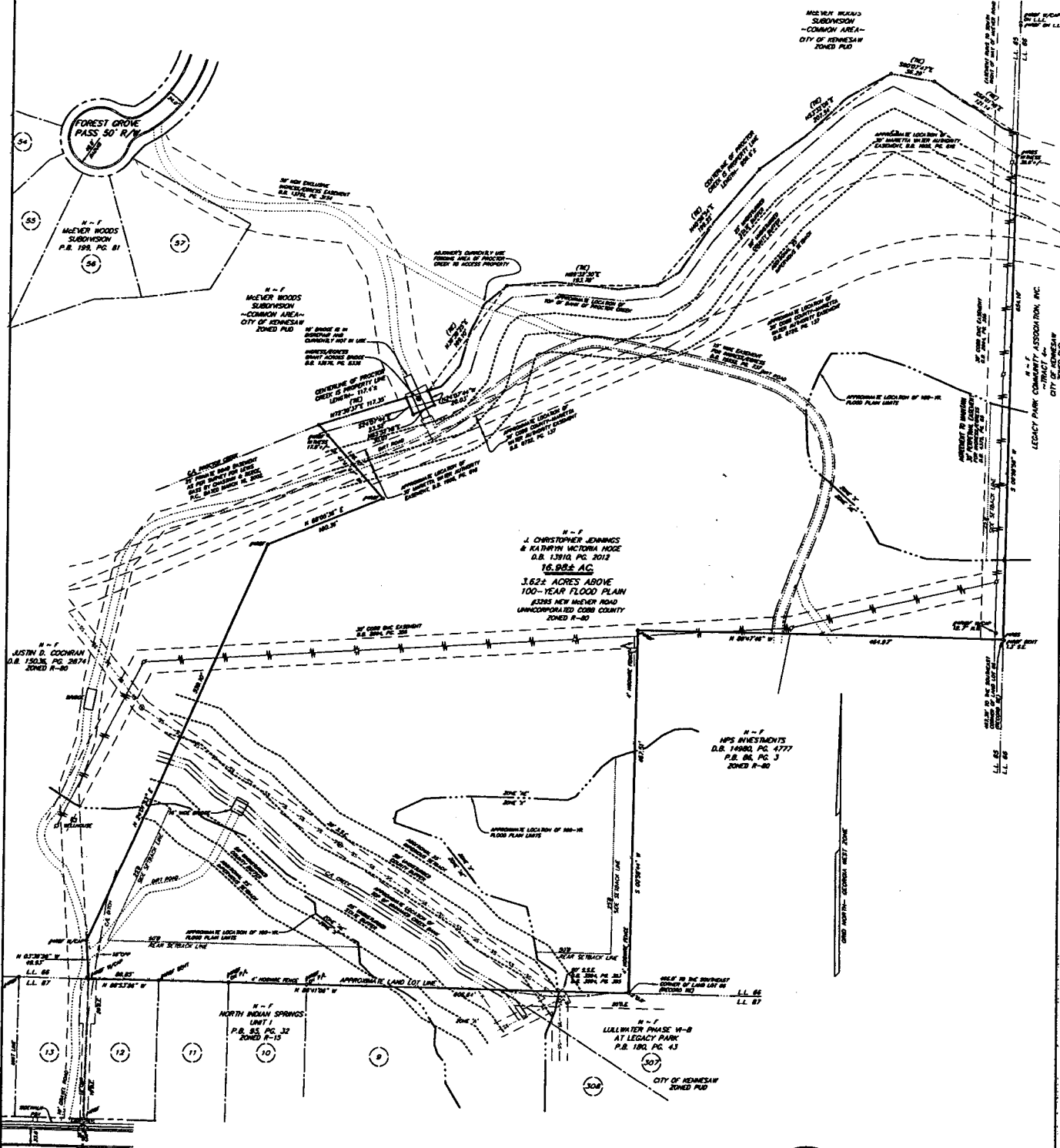
Land Lot(s): 66 District(s): 20

State specifically the need or reason(s) for Other Business: Amend variance stipulations regarding the Stormwater Management comments prohibiting animals in the floodplain. The animals will be maintained on the property in the existing fenced areas. The existing fenced areas keeps the animals out of the creek.

LEGEND	
□ P.P. - POWER POLE	□ CB - CATION BASH
□ L.P. - LIGHT POLE	□ R.C.P. - REINFORCED CONCRETE PIPE
□ F.H. - FIRE HYDRANT	□ C.M.P. - CORRUGATED METAL PIPE
□ S.M. - SANITARY SEWER MANHOLE	□ F.F.E. - FINISHED FLOOR ELEVATION
□ W.M. - WATER METER	□ W.V. - WATER VALVE
□ G.M. - GAS METER	□ TELEPHONE MANHOLE
□ R.S. - REINFORCING BAR SET	□ UNDERGROUND ELECTRICAL LINE
□ R.C.F. - REINFORCING BAR FOUND	□ OVERHEAD POWER LINES
□ C.T.P. - CRIMP TOP PIPE FOUND	□ T.H. - HEADWALL
□ O.T.P. - OPEN TOP PIPE FOUND	□ POWERPOLE
□ R/W MON. - RIGHT-OF-WAY MONUMENT	□ WATER LINE
□ T.F. - TYPE OF FENCE	□ UNDERGROUND TELEPHONE LINE
□ J.B. - JUNCTION BOX	□ GAS LINE
□ D.I. - DROP INLET 7' YARD INLET	

SUPERIOR REFERENCES	
D.B. 1401, PG. 418	
D.B. 2064, PG. 364	
D.B. 3594, PG. 303	
D.B. 3594, PG. 305	
D.B. 4125, PG. 63	
D.B. 8732, PG. 137	
D.B. 1353, PG. 737	
D.B. 13676, PG. 518	
D.B. 13751, PG. 315	

CURRENT OWNER:
 WAKE J. CHRISTOPHER JENNINGS &
 KATHRYN VICTORIA HOGE
 D.B. 13910, PG. 2012



WAKE J. CHRISTOPHER JENNINGS & KATHRYN VICTORIA HOGE
 D.B. 13910, PG. 2012
16.98± AC
 3.62± ACRES ABOVE
 100-YEAR FLOOD PLAIN
 AT 3295 NEW McEVER ROAD
 UNINCORPORATED COBB COUNTY
 ZONED R-80

THIS SURVEY WAS PREPARED IN CONFORMITY WITH THE TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 140-3 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN THE GEORGIA PRACTICE ACT O.C.G.A. 15-8-87.



SCALE IN FEET
 0 60 120

LOCATION OF UTILITIES EXHIBED ON OR BEHIND THE SUBJECT PROPERTY IS DETERMINED BY OBSERVABLE EVIDENCE ONLY. THIS PROPERTY MAY BE SUBJECT TO EASEMENTS, CLAIMS, PRESCRIPTIONS AND SUBSEQUENT CONVEYANCES THAT ARE NOT SHOWN ON THIS PLAT. THIS PLAT IS INTENDED FOR THE PURPOSES SET FORTH ON THE FACE OF SAID PLAT. THE USE OF THIS SURVEY BY THIRD PARTIES IS AT THEIR OWN RISK.

THIS PLAT IS PREPARED FROM A FIELD SURVEY USING A SECOND ORDER, SHEDDING AND ELECTRONIC DISTANCE MEASUREMENT INSTRUMENT PRECISION OF 1/30,000" ANGULAR ERROR: 1" PER POINT. THE BEARING AND DISTANCE ARE BASED ON THE COMPASS BEARING. THE AREA OF PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN 1 FOOT IN 30,000 FEET.

- SURVEY NOTES:**
- 1.) HORIZONTAL DATUM IS NAD 83. HORIZONTAL DATUM MATCHED RECORD DATUM FOR McEVER WOODS SUBDIVISION, PLAT BOOK 198, PAGE 81.
 - 2.) FLOOD PLAIN LOCATION SHOWN ON SURVEY IS BASED ON TOPOGRAPHY FROM COBB COUNTY GIS AND IS APPROXIMATE IN NATURE. FLOOD PLAIN NEEDS TO BE FIELD VERIFIED PRIOR TO CONSTRUCTION COMMITMENT ON PROPERTY.
 - 3.) NO OBSERVED EVIDENCE OF CONVEYANCE WHILE TRAVELING THE PERIMETER OF PROPERTY.
 - 4.) ALL DISTANCES ON SURVEY ARE HORIZONTAL DISTANCES.
 - 5.) ALL DISTANCES ON SURVEY ARE SHOWN AS "GROUND" DISTANCES.
 - 6.) ALL DISTANCES ON SURVEY ARE EXPRESSED IN U.S. SURVEY FEET.
 - 7.) ALL ANGULAR DIRECTIONS ARE EXPRESSED IN DEGREES, MINUTES AND SECONDS. IF MINUTES AND SECONDS ARE NOT SHOWN, IT IS TO BE UNDERSTOOD THAT MINUTES ARE 00 AND SECONDS ARE 00.

Gaskins	
1201 Peachtree Street NE Atlanta, Georgia 30309 Phone: (770) 654-2100	1201 Peachtree Street NE Atlanta, Georgia 30309 Phone: (770) 654-2100
FIELD DATE: 4-8-13	DRAWN BY: JMM
OFFICE DATE: 4-8-13	CHECKED BY: GAO
SCALE: 1"=60'	PLC: S/PMS/COB/2013

BOUNDARY RETRACEMENT SURVEY FOR:
BRUCE SMITH
 3295 NEW McEVER ROAD

LOCATED IN L.L. 66
 20th DISTRICT, 2nd SECTION
 COBB COUNTY, GA.

Cobb County

(type or print clearly)

Application No. V-53
Hearing Date: 05-09-02

Applicants LEWIS + BRENDA GASS Day Phone ⁷⁷⁰⁻ 974-5261 Home Phone 770-974-5261

LEWIS E GASS Address 3295 NEW McEVER RD, ACWORTH, GA 30101
(representative's name, printed) (street, city, state and zip code)

[Signature] Day Phone 770-974-5261
(representative's signature) 3228 NOWLIN RD., KENNESAW, GA 30144

Commission Expires
August 23, 2002

Signed, sealed and delivered in presence of:
[Signature]
Notary Public

My commission expires: [Signature]

Titleholder LEWIS E GASS
BRENDA GASS Day Phone ⁷⁷⁰ 974-5261 Home Phone ⁷⁷⁰ 974-5261

Signature [Signature] Address: 3295 McEVER RD, ACWORTH, GA 30101
(attach additional signatures, if needed) (street, city, state and zip code)

Commission Expires
August 23, 2002

Signed, sealed and delivered in presence of:
[Signature]
Notary Public

My commission expires: [Signature]

Present Zoning of Property R-80, R-15

Location 3295 McEVER RD, ACWORTH, GA 3828 NOWLIN RD., KENNESAW, GA
(street address, if applicable; nearest intersection, etc.)

Land Lot(s) 66, 87 District 20 Size of Tract 21.64 ACRES (ACWORTH, GA)
16,196 SQ FT (KENNESAW) 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

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.

INABILITY TO MAKE BEST USE OF THE LAND

DO NOT WRITE BELOW THIS LINE

List type of variance requested: WE REQUEST A VARIANCE TO USE A PRIVATE ROAD THROUGH A SUBDIVISION LOT TO ACCESS 3 BUILDING LOTS TO BE CREATED FROM ACREAGE LYING AT THE REAR OF LAND LOT 66. WAIVE THE PUBLIC ROAD FRONTAGE TO ALLOW 3 HOMES OFF A PRIVATE BASEMENT.

ORIGINAL DATE OF APPLICATION: 05-08-02APPLICANT'S NAME: LEWIS AND BRENDA GASS

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE COBB COUNTY BOARD OF ZONING APPEALS

THE BELOW STYLED VARIANCE WAS HEARD BY THE COBB COUNTY BOARD OF ZONING APPEALS ON May 8, 2002:

LEWIS AND BRENDA GASS request a variance to waive the public road frontage to allow 3 homes off of a private easement for tracts 1, 2 and 3 in Land Lots 66 and 87 of the 20th District. Located off of a private easement on the north side of Nowlin Road.

The public hearing was opened and Mr. Lewis E. Gass addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by McDonald, second by Homan, to approve variance request subject to:

- Cobb DOT Division comments and recommendations to include revisions dated May 2, 2002 (copy attached and made a part of these minutes)
- Development comments and recommendations
- Water and Sewer Division comments and recommendations
- Stormwater Management and Inspections Division comments and recommendations

VOTE: ADOPTED unanimously

At the conclusion of the variance agenda, by consensus, the Board reconsidered its decision regarding V-53 relative to Development and Inspections Division comments, and the motion was modified to read as follows:

MOTION: Motion by McDonald, second by Homan, to approve variance request subject to:

- Cobb DOT comments and recommendations
- Water and Sewer Division comments and recommendations
- Stormwater Management Division comments and recommendations to include revisions dated May 2, 2002 (copy attached and made a part of these minutes)
- *Revised* Development and Inspections Division comments and recommendations to read as follows: "Plat to be recorded by applicant through Site Plan Review Section/Community Development Agency to create lot(s) of record. Site plan to be submitted to Site Plan Review Section for approval prior to issuance of building permit. Subject to flood ordinance requirements. Subject to stream buffer requirements.

VOTE: ADOPTED unanimously

APPLICANT: Lewis and Brenda Gass **PETITION NO.:** V-53
PHONE: 770-974-5261 **DATE OF HEARING:** 5-08-02
REPRESENTATIVE: Lewis E. Gass **PRESENT ZONING:** R-80, R-1 5
PHONE: 770-974-5261 **LAND LOT(S):** 66, 87
PROPERTY LOCATION: Located off of a private **DISTRICT:** 20
easement on the north side of Nowlin Road. **SIZE OF TRACT:** 22.01 acres
COMMISSION DISTRICT: 1
TYPE OF VARIANCE: Waive the public road frontage to allow 3 homes off of a private easement for tracts 1, 2 and 3.

COMMENTS

TRAFFIC: Recommend a paved driveway apron at the end of access easement. Recommend all easements be recorded. Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to the project improvements.

DEVELOPMENT & INSPECTIONS: Plat to be recorded by applicant through Site Plan Review Section/Community Development Agency to create lot(s) of record. Site plan to be submitted to Site Plan Review Section for approval prior to issuance of building permit. Subject to flood ordinance requirements. Subject to stream buffer requirements. To access off Nowlin Road would force the renumbering of the addresses of this road to accommodate new development. Currently, there are over 100 residents on Nowlin Road. A 50 foot ingress/egress easement off of Forest Grove Pass has been approved through the City of Kennesaw for the existing lots. It is recommended that the 50 foot easement be split into two 25 foot easements to service the new lots. By doing this, the renumbering of Nowlin Road would not be necessary. Contact 770-528-2130 for assistance.

WATER: Water meters must be set on Nowlin Road right-of-way.

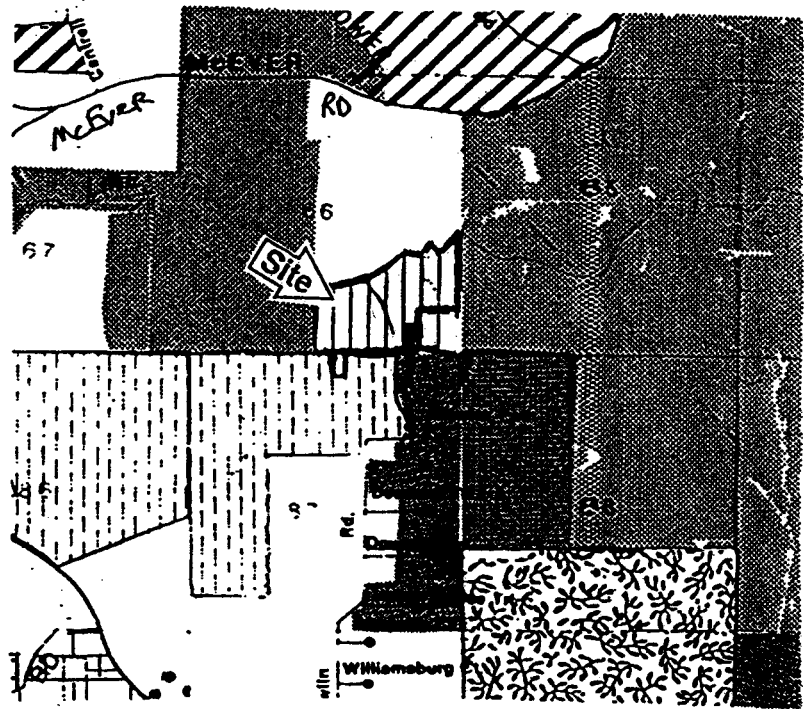
SEWER: Available. Tract 3 would need a private easement for connection.

COMMENTS CONTINUED ON NEXT PAGE.

OPPOSITION: NO. OPPOSED PETITION NO. SPOKESMAN

BOARD OF APPEALS DECISION

APPROVED **MOTION BY**
REJECTED **SECONDED**
HELD **CARRIED**
STIPULATIONS:



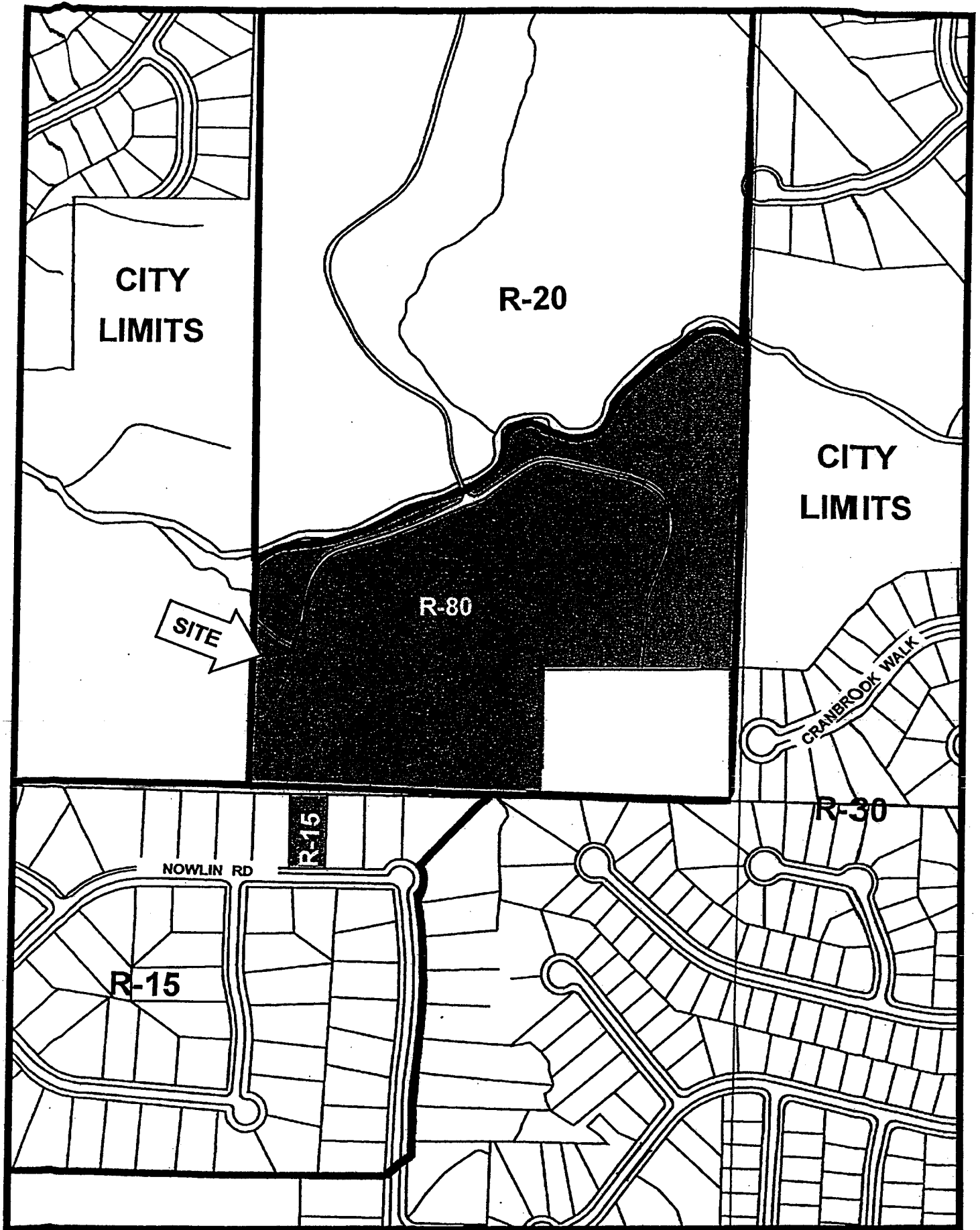
APPLICANT: Lewis and Brenda Gass PETITION NO.: V-53
PHONE: 770-974-5261 DATE OF HEARING: 5-08-02

COMMENTS (continued)

STORMWATER MANAGEMENT: Subdivision is new and not shown on current Tax Map. Property slopes down to creeks. Flood plain is substantial (may be greater than shown when evaluated). Stream buffers are 75' on Proctor Creek and 50' on side creek each side of channel. Property is predominantly in flood plain bottom of Proctor Creek. Recommend all access easements, roads, driveways be removed from stream buffers except to cross with approval of Stormwater Management. Access during flood stage must be provided or a hold harmless in favor of Cobb County filed encumbering each deed with Clerk of Superior Court. No farm animals/horses may be permitted in flood plain and density shall be as prescribed by the Natural Resources Conservation Service. Houses and septic tank services shall be located as far as possible away from the creeks and their flood plains. Each lot shall file a site plan with Stormwater Management for approval prior to building permit. The County Buffer Map notes the presence of a stream buffer. Per Cobb County Code, Chapter 50-75, a permanent natural undisturbed buffer shall be recorded on all plats and revisions and/or property deeds and will also contain a restrictive covenant in favor of Cobb County for conservation uses. It is recommended that the applicant determine the exact area of the stream buffer and illustrate same on the final plat and approved construction plans. The Restrictive Covenant text must be recorded on the final plat and with the Cobb Superior Court. Be advised: Proctor Creek has a Federal Emergency Management Agency regulatory floodway associated with it. All grading and structures to be located outside of floodway. Also, Mobile District is doing an Aquatic Restoration project on Proctor Creek. Coordinate all proposed activity along Proctor Creek with Mobile District.

HISTORIC PRESERVATION: No comment.

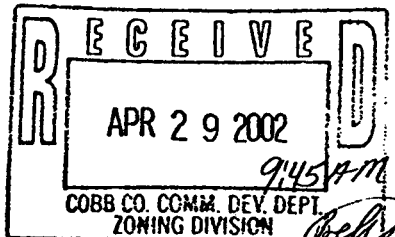
CEMETERY PRESERVATION: No comment.



COBB COUNTY WATER SYSTEM

Operations Facility
680 South Cobb Drive
Marietta, Georgia 30060-3111

Robert L. Brice
DIRECTOR



DIVISIONS:
Business Services
Customer Services
Engineering & Records
Solid Waste
Stormwater Management
System Maintenance
Water Protection

DATE: April 24, 2002
MEMO TO: Mark Danneman, Manager
Zoning Division
Community Development Agency
SUBJECT: V-53, LEWIS AND BRENDA GASS
MAY, 2002

Please consider this in addition to comments already presented for inclusion in book. In a recent conversation with Joan Immke certain additional facts, not presented on the application have come to light and have bearing on the resolutions of the Variance.

The property to the north identified as N/F John Darnell has been developed as McEver Woods in City of Kennesaw. Running out of the south side of McEver Woods is a 50-foot wide easement/R.O.W. and bridge over creek into Instant Variance Tract 3. This is shown on Exhibit near western corner of Tract 3.

The large property to southeast identified as N/F Nina Cole has been divided. Ms. Cole owns the western half and a Patty Rouse owns the eastern. Of interest is that both Ms. Cole and Ms. Rouse share the same street number off New McEver Road.

At Lot 13, in North Indian Springs, the proposed 25-foot wide access easement overlays a storm drain pipe and drainage easement varying from 10-feet to 20-feet wide. Stormwater Management cannot allow this. The easement for access if required must be moved off the already platted drainage easement. This would render Lot 13 virtually unbuildable. Noting further that on the Exhibit the north property line appears to be deleted, Lot 13 needs to be incorporated with Proposed Tract 1.

Considering all of the above, and the street numbering problems as explained by Ms. Immke, I see every reason why:

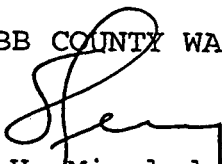
- (A) Tract 1, only, should be serviced off Nowlin by expanding Lot 13 of North Indian Springs to incorporate Tract 1;
- (B) Access Easement on Tract 1 should be eliminated;
- (C) The 50-foot wide easement from McEver Woods should be divided to two 25-foot wide easements with each servicing two lots (say Tract 2 and Nina Cole; and, Tract 3 and Patty Rouse);
- (D) The existing/proposed drive from Tract 1 to bridge @ McEver Woods through the massive Floodplain should be abandoned and service eliminated in favor of stream buffer which it violates and flood waters which could compromise service;

- (E) Easements/access from McEver Woods should be laid out to minimize impacts on stream buffer and floodplain vegetation; and
- (F) Hold Harmless/Deed Restrictions/Covenants should be required on Tracts 2 and 3 to protect County should access across this major creek be washed out. The same should be negotiated from Cole and Rouse, as well as they could be in jeopardy as well.

Please excuse the extent of these add-on comments. If the latent facts had been known earlier they would have been placed in the book comments.

Sincerely,

COBB COUNTY WATER SYSTEM



G. H. Mingledorff, P.E., RLS
Senior Engineer, Stormwater Management

GHM/syb

cc: BZA Commission Chairman Jerry Dawson
BZA Commissioner Murray Homan
BZA Commissioner Gary Pateau
BZA Commissioner Michael Paris
BZA Commissioner Tom McDonald
Bill Higgins
Rob Hosack
John Pederson