

**DECEMBER 18, 2018 ZONING HEARING**  
**“OTHER BUSINESS”**  
**COMMISSION DISTRICT 1**

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**ITEM OB-050**

**PURPOSE**

To consider a reduction of minimum lot size and a reduction of public road frontage for proposed lots #5 and #6, for 6M properties, LLC for property located on the west side of Acworth Due West Road, north of Brigade Trail, in Land Lot 259 of the 20<sup>th</sup> District. *(Continued by Staff from the October 16, 2018 and November 20, 2018 Board of Commissioners hearings).*

**BACKGROUND**

The Board of Commissioners considers all reductions to minimum lot size and public road frontage pursuant to a code amendment to Sec. 134-271(7)(a) adopted on February 27, 2018. The subject property is zoned R-30 and does not have the minimum amount of public road frontage of 75' for lots 5 & 6; there is actually zero feet of frontage for both lots. Also, lots are required to be 80,000 square feet when they are located off an easement without any public road frontage. Lots 5 has 55,016 square feet and lot 6 has 63,292 square feet. The proposal meets other zoning criteria such as setbacks and impervious surface.

**STAFF COMMENTS**

**Stormwater Management:** The Stormwater Management Division cannot support any additional lot splits within this development. If approved, the entire development will need to be redesigned to provide a stormwater management facility for the entire 6 lots.

**Water and Sewer:** If lot 5 is split, both lots must connect to sanitary sewer since they are <80,000 ft<sup>2</sup>. The Estates was approved as a 5-lot subdivision, with two lots being existing houses with existing septic systems. The three new lots (proposed lots 2, 3, and 5) were each >80,000 ft<sup>2</sup>, allowing them to be considered for septic systems per County Code 122-130.

**RECOMMENDATION**

The Board of Commissioners conduct a Public Hearing and consider the proposed reduction of minimum lot size and a reduction of public road frontage.

**ATTACHMENT**

Other Business application.

# Application for "Other Business" Cobb County, Georgia

OB-050-2018

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

BOC Hearing Date Requested: October 16, 2018

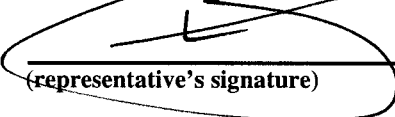
**Applicant:** 6M Properties LLC **Phone #:** (770) 792-7979  
(applicant's name printed)

**Address:** 1049 Acworth Due West Road, Kennesaw, GA 30152 **E-Mail:** peterbright333@gmail.com

SAMS, LARKIN, HUFF & BALLI, LLP  
by: Garvis L. Sams, Jr.

**Address:** 376 Powder Springs Street, Suite 100, Marietta, GA 30064

(representative's name, printed)



**Phone #:** 770-422-7016 **E-Mail:** gsams@slhb-law.com

(representative's signature)

Signed, sealed and delivered in presence of:

Karen S. King  
Notary Public



My commission expires: 2-27-19

**Titleholder(s):** See Attached **Phone #:** \_\_\_\_\_  
(property owner's name printed)

**Address:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

(Property owner's signature)

Signed, sealed and delivered in presence of:

\_\_\_\_\_  
Notary Public **My commission expires:** \_\_\_\_\_

**Commission District:** 1 (Weatherford) **Zoning Case:** V-17 of 2017 & OB 6 of 2017

**Size of property in acres:** Lot 5 - 1.263 acres  
Lot 6 - 1.453 acres **Original Date of Hearing:** March 15, 20178

**Location:** On the west side of Acworth Due West Road (The Estates on Acworth Due West)  
(street address, if applicable; nearest intersection, etc.)

**Land Lot(s):** 259 **District(s):** 20th

**State specifically the need or reason(s) for Other Business:** To waive the required minimum road frontage to allow splitting of one (1) lot in The Estates on Acworth Due West to two (2) lots constituting 1.453 acres and 1.263 acres, respectfully, in size.

(List or attach additional information if needed)

\* Applicant specifically reserves the right to amend any information set forth in this Other Business Application at any time during the Other Business process.

# PROPOSED SITE PLAN

**GENERAL NOTES**

1. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF AUSTIN ANGUS AND WILLIAM T. WILLIAMS, JR. AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 15817 / PAGE 318.

2. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF WILLIAM F. & JANET L. MORRISON, AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 14341 / PAGE 445.

3. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF SCOTTIE & JULIE W. FARLEY, AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 14341 / PAGE 445.

4. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF DAVID E. ESTED AND ELLEN B. ESTES, AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 14341 / PAGE 445.

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6. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF JAMES MICHAEL MITCHELL AND VERLEY A. WYNNE, AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 14341 / PAGE 445.

7. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF PATRICIA P. WILLMAN, AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 15817 / PAGE 318.

8. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF ROBERT H. & KAREN GERGER, AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 15817 / PAGE 318.

9. THE SURVEY HAS BEEN MADE FROM THE EXISTING SURVEY OF THE PROPERTY OF BRIAN & TRACEY SMITH, AS SHOWN ON THE PLAT OF THE SURVEY OF THE ESTATES ON ACWORTH DUE WEST ROAD, BRIDGE TRAIL (VARIABLE FRONT OF 94.7') FILED IN BOOK 15817 / PAGE 318.

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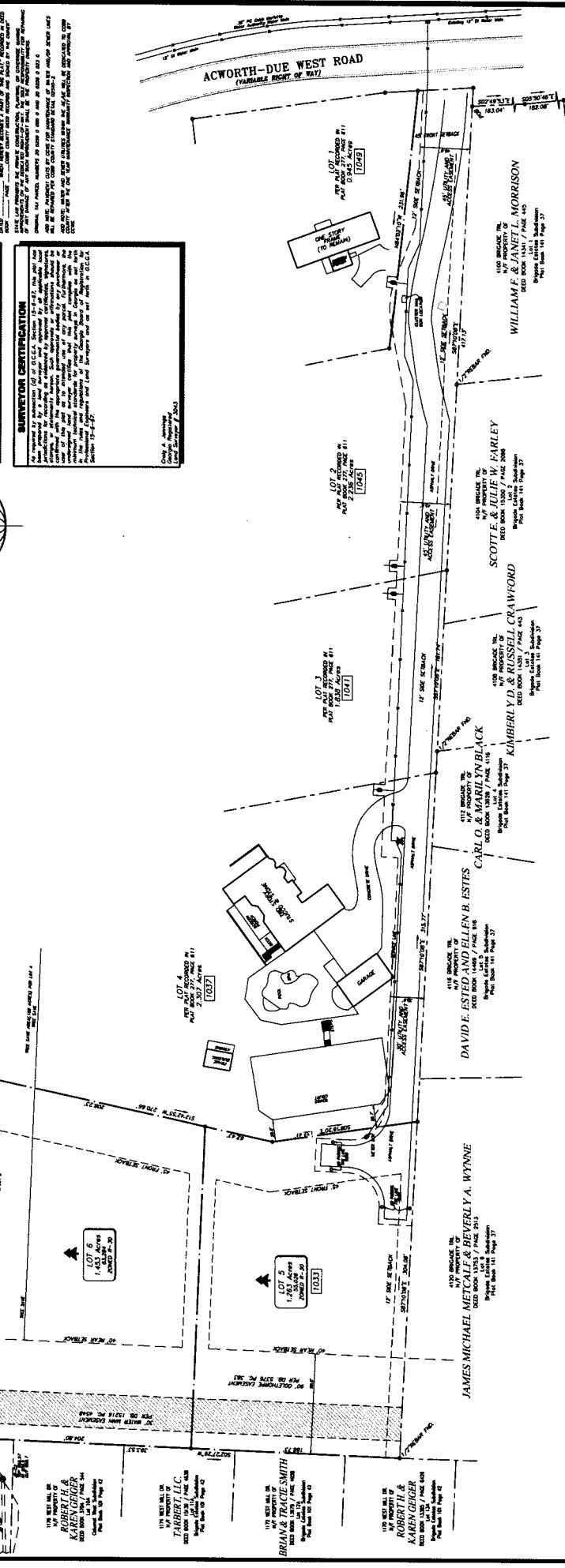
**NEIGHBOR MAP**

SEE LOCATION - LOT 5 - 20.7' CORNER OF 1/2" SECTION 34 OF 117'

**SURVEY CERTIFICATION**

I, the undersigned, being a duly Licensed Professional Surveyor in the State of Georgia, do hereby certify that I am the author of the foregoing Survey and that I am a duly Licensed Professional Surveyor in the State of Georgia.

DAVID A. HARRIS  
Professional Surveyor  
License No. 10000



**LOT 5: The Estates on Acworth Due West**

FOR

**6M Properties LLC**

CS JOB NO.	20180717	DRAWING SCALE	1" = 40'	DATE PLOTTED	08-14-2018
PROJECT NO.	15817	DIST.	DEKALB COUNTY, GA		
PROJ. NAME	CA	CLIENT	6M PROPERTIES LLC		
DATE	07/17/17	DATE	08/14/18		
DATE FILED	20180717-02:09p	REVISION	20		

**GeoSurvey, Ltd.**

Land Surveying & 3D Laser Scanning

15801 Gables Hill Road  
Suwanee, GA 30088

Phone: (770) 795-9800  
Fax: (770) 795-8888

www.geosurvey.com  
Email: info@geosurvey.com  
Certificate of Authorization 13F-000681

**6M PROPERTIES LLC**

N/A PROPERTY OF

**TOTAL SITE AREA**  
10.008 ACRES  
ZONED R-30

**GRAPHIC SCALE**  
0 20 40 100 200  
1" = 40'

**LEGEND**

STANDARD ABBREVIATIONS

- 1 CENTERLINE
- 2 POWER POLE
- 3 CURB WALL
- 4 DRIVE
- 5 DRIVE
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**CLOSURE STATEMENT**

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**811**

Know what's below.  
Call before you dig.  
Dial 811  
Or Call 800-282-1411

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.

JOEL L. LARKIN

PARKS F. HUFF

JAMES A. BALLI

SUITE 100

376 POWDER SPRINGS STREET

MARIETTA, GEORGIA 30064-3448

770•422•7016

TELEPHONE

770•426•6583

FACSIMILE

ADAM J. ROZEN

WWW.SLHB-LAW.COM

September 11, 2018

## **VIA HAND DELIVERY**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
1150 Powder Springs Road, Suite 400  
Marietta, GA 30064

Re: Other Business Application of 6M Properties LLC regarding Variance  
Application No. V-17 of 2017 & BOC Other Business Item No. 6 of 2017, to  
Amend Stipulations and Approve Revised Site Plan.

Dear John:

I represent 6M Properties LLC concerning the above-captioned Other Business Application. In that regard, on March 15, 2017, Variances on the subject property were approved by the Board of Zoning Appeals (No. V-17). Thereafter, on April 18, 2017, the Board of Commissioners granted a Special Exception by way of Other Business Item No. 6 subject to the Variance Hearing minutes for V-17.

Subsequently, on February 27, 2018, the Zoning Ordinance was amended to provide for the Board of Commissioners' consideration of reductions in minimum public road frontage or reductions in minimum lot size. Considering this amendment, enclosed please find an original Other Business Application which further communicates the underlying foundation and need for the filing of this Other Business Application to waive the road frontage so as to allow the addition of one (1) Lot to The Estates on Acworth Due West. Also enclosed are the following:

1. A copy of the March 15, 2017 approved Board of Zoning Appeals' minutes and referenced exhibits with respect to V-17 of 2017.
2. A copy of the April 18, 2017 approved Board of Commissioners' minutes and referenced exhibits with respect to O.B. 6 of 2017.
3. Five copies of the Proposed Revised Site Plan of the subject property and two 8 ½ x 11" copies of same.

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

## VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
September 11, 2018  
Page 2

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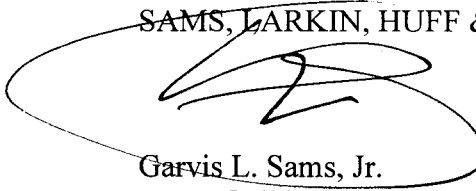
4. A copy of the receipt for payment of 2017 taxes from the Cobb County Tax Commissioner's Office.
5. A Constitutional Challenge.
6. A check made payable to Cobb County in the sum of \$300.00 representing the application fee. A check for the signage fees will be submitted separately at the time of submission.

We are asking that this Other Business Application be heard on the Board of Commissioners' Other Business Agenda which will immediately follow the regularly scheduled Zoning Hearings on October 16, 2018. We will provide notification in writing to all property owners within a thousand feet of the subject property. My staff will handle that notification process and provide your office with a Certificate of Mailing consistent with existing Other Business notification protocols.

Please do not hesitate to contact me should you have any questions whatsoever regarding these matters. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP



Garvis L. Sams, Jr.  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)

GLS, Jr./klk  
Enclosures

cc: 6M Properties, LLC (via email w/attachments)

ATTACHMENT TO APPLICATION FOR OTHER BUSINESS

Application No.: OB-50  
BOC Hearing Date:

Applicant: 6M Properties, LLC  
Titleholder(s): Jeffrey D. Espenship  
PIN#: 20025900050 (1033 Acworth Due West Road)

PROPERTY OWNER'S CERTIFICATION

The undersigned(s) below, or as attached, is the owner of the property considered in this application.

Jeffrey D. Espenship Signature of Owner Sept 8, 2018 Date

Title: OWNER

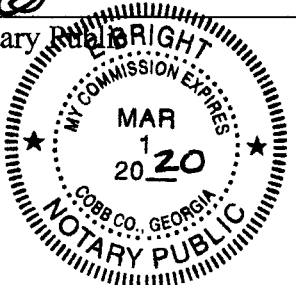
Printed Name: Jeffrey D. Espenship

Address: 968 Argonne Ave NE  
Atlanta GA 30309

Telephone No.: (770) 356-6240

[Signature] Signature of Notary Public 9/8/2018 Date

(Notary Seal)



Return Recorded Document to:  
**JEFFREY D. ESPENSHIP**  
968 ARGONNE AVE NE  
ATLANTA, GA 30309

**LIMITED WARRANTY DEED**

STATE OF GEORGIA,

COUNTY OF COBB

File #: 55095KLH

This Indenture made this 17th day of August, 2018 between 6M PROPERTIES, LLC , as party or parties of the first part, hereinafter called Grantor, and JEFFREY D. ESPENSHIP , as party of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

**WITNESSETH that:** Grantor, for and in consideration of the sum of **TEN AND 00/100'S (\$10.00) Dollars** and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor, the following described property:

**ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 259 OF THE 20TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA, BEING LOT 5, THE ESTATES ON ACWORTH DUE WEST SUBDIVISION, AS PER PLAT RECORDED IN PLAT BOOK 277, PAGE 611, COBB COUNTY, GEORGIA RECORDS. BEING MORE COMMONLY KNOWN AS 1033 ACWORTH DUE WEST ROAD NW, KENNESAW, GA 30152**


**THIS CONVEYANCE is made subject to all zoning ordinances, easements and restrictions of record affecting said bargained premises.**

**TO HAVE AND TO HOLD** the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoove of the said Grantee in **FEE SIMPLE**, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

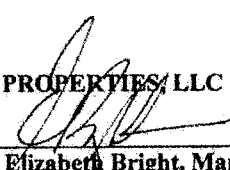
AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons arising under Grantor only.

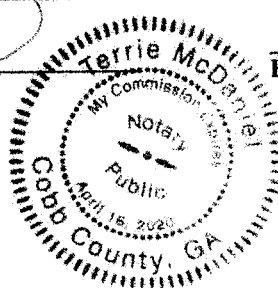
**IN WITNESS WHEREOF**, the Grantor has hereunto set grantor's hand and seal this day and year first above written.

Signed, sealed and delivered in the presence of:

Witness  
  
Notary Public

6M PROPERTIES, LLC

By:  (Seal)  
Elizabeth Bright, Manager



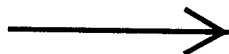
**MINUTES OF VARIANCE HEARING  
COBB COUNTY BOARD OF ZONING APPEALS  
MARCH 15, 2017  
PAGE 3**

**CONSENT AGENDA**

MOTION: Motion by Gunther, second by McDaniel, to **approve** the following cases on the Consent Agenda, *as presented*:

**V-17**            **BEB INVESTMENTS, LLC** (6M Properties, LLC, owner) requesting a variance to 1) waive the minimum road frontage from the required 75 feet to five feet for lot 2; 2) allow three lots to have no public road frontage to access off a private easement for lots 3 through 5; 3) reduce the required lot size for a lot off a private easement from 80,000 square feet to 75,358 square feet for lot 3; and 4) waive the front setback for lots 2 through 5 from the required 50 feet to 45 feet in Land Lot 259 of the 20<sup>th</sup> District. Located on the west side of Acworth Due West Road, north of Brigade Trail (1049 Acworth Due West Road). (*Held by the Board of Zoning Appeals from their February 15, 2017 hearing*)

To **approve** V-17, subject to:

- 
1. **Site plan dated March 3, 2017 (attached and made a part of these minutes)**
  2. **Letter of agreeable conditions from Mr. Garvis L. Sams, Jr. dated March 10, 2017 (attached and made a part of these minutes), with the following change:**
    - A. **Paragraph 5. – deletion in its entirety**
  3. **Site Plan Review comments and recommendations**
  4. **Stormwater Management Division comments and recommendations**

~~**V-23**            **JAMES B. GLOVER, V** (James B. Glover, owner) requesting a variance to 1) allow an accessory structure (proposed approximately 400 square foot carport) to the side of the principal building; 2) waive the rear setback for an accessory structure (proposed approximately 400 square foot carport) from the 35 feet to 10 feet; and 3) allow parking and/or access to parking areas in a residential district on a non-hardened surface in Land Lot 290 of the 20<sup>th</sup> District. Located on the north side of Burnt Hickory Road, east of Wallis Farms Way (2070 Burnt Hickory Road).~~

To **approve** V-23



# Variance Request

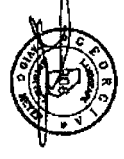
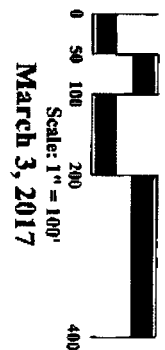
## The Estates

Cobb County, Georgia Land Lot 259, 20th District

prepared for:  
**6M Properties, LLC**

**DGM**  
 LAND PLANNING  
 CONSULTANTS

976 Gm Bus  
 Blvd Ste 212  
 KENNESAW  
 GA 30144  
 770 514-9005  
 FAX 514-9481



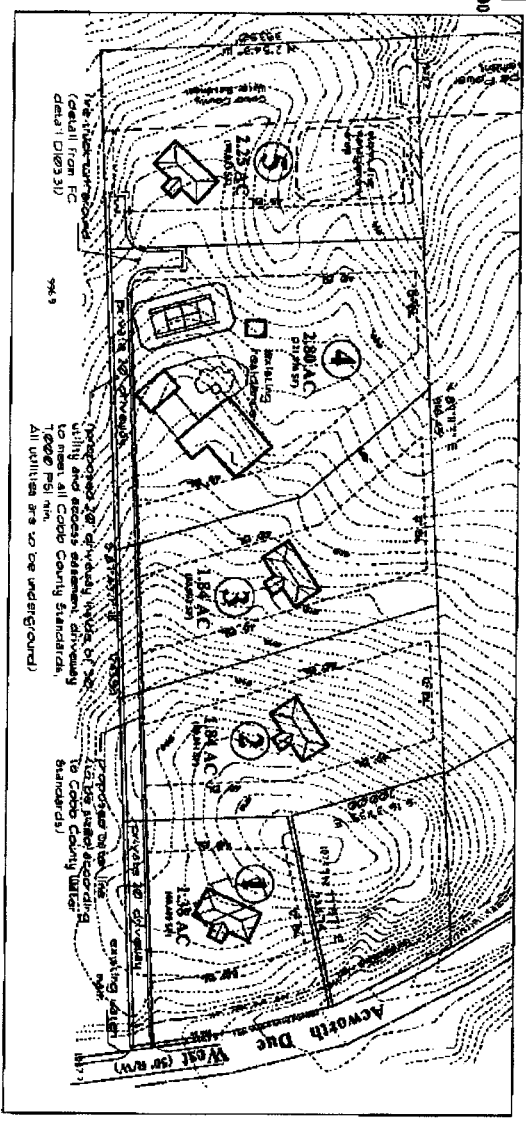
- NOTES:**
1. Boundary survey provided by owner dated April 14, 1993
  2. Topographic information provided by Cobb County GIS
  3. According to Flood Insurance Rate Map (FIRM) 5908327c August 16, 1993, no portion of this site lies within the 100 year flood zone.
  4. No easements are known to exist on this site.
  5. No streams or wetlands are known to exist on this site.
  6. No archaeological or architectural landmarks are known to exist on this site.
  7. Utility easements exist on this land and are shown.
  8. Utility structures and water quality structures are consistent in size and sit on the revised base on hydrologic study.

### Site Data

Total Site Area:	10.11 AC
Total Lots Shown:	5
Present Zoning:	R-30
Min. Lot Size:	30,000 SF

### \*Variance Request:

1. Reduction of public road frontage requirement for lot 2 from 75' to 5'.
2. Waive public road frontage requirement on lots 3, 4, and 5.



Min. Bk. 22 Petition No. V-17  
 Doc. Type Site plan  
 Meeting Date 3-15-17

**SAMS, LARKIN, HUFF & BALLI**

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.

JOEL L. LARKIN

PARKS F. HUFF

JAMES A. BALLI

ADAM J. ROZEN

SUITE 100  
376 POWDER SPRINGS STREET  
MARIETTA, GEORGIA 30064-3448

Meeting Date 3-15-17

770-422-7016

TELEPHONE

770-426-6583

FACSIMILE

SLHB-LAW.COM

March 10, 2017

**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
1150 Powder Springs Road, Suite 400  
Marietta, GA 30064

Re: Variance Application of BEB Investments, LLC regarding a 10.11  
Acre Tract (V-17)

Dear John:

As you know, this firm represents BEB Investments, LLC ("BEB") concerning the above-captioned Variance Application. The Application was heard, considered and Held by the Cobb County Board of Zoning Appeals ("BZA") last month and is now scheduled to be heard by the BZA at its next regularly scheduled meeting on March 15, 2017.

Since the Application was Held, my client, its consultants and I have continued a dialogue with the County's professional staff. Additionally, we have also established a dialogue with area residents, primarily those contiguous property owners within Brigade Estates, a subdivision which is contiguous and immediately south of the Subject Property. In that regard, enclosed please find the requisite number of copies of a Revised Site Plan, dated March 3, 2017, and a copy of the Revised Site Plan which is attached hereto, made a part hereof by reference and marked as Exhibit "A".

With respect to the foregoing, the balance of this letter will set forth the stipulations concerning which BEB is agreeable regarding the Variance Application. These stipulations shall, upon the Variance Application being approved, become conditions and a part of the grant of the requested Variance Application and binding upon the Subject Property hereafter. The referenced stipulations are as follows, to wit:

1. The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the property which constitutes the subject matter of the above-captioned Variance Application.

SAMS, LARKIN, HUFF & BALLI  
A LIMITED LIABILITY PARTNERSHIP

**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
March 10, 2017  
Page 2

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2. The driveway which will serve the proposed lots will consist of a twenty foot (20') driveway within a thirty foot (30') access easement with pavement twelve feet (12') in width, generally following the present positioning of the existing driveway on the Subject Property.

With respect to the paved part of the easement, BEB will follow the Cobb County Stormwater Management Division's comments and recommendations. In that regard, Stormwater Management does not support the installation of curb and gutter on the south side of the paved driveway because of the probability of precipitating unnecessary impoundment of Stormwater.

3. With respect to additional stormwater management issues, the vast majority of the Subject Property's stormwater flows in a west/northwesterly direction toward the Cobb County Water Easement on the western side of the Subject Property. The slight amount of property (less than five percent [5%]) which falls toward Brigade Estates generates stormwater which ultimately flows toward the existing detention easement and pond within Brigade Estates, far from any of the residences located therein.

The detention pond within Brigade Estates, as shown on the Final Plat of that subdivision, a copy of which is enclosed herein, and made part hereof by reference and marked as Exhibit "B", is served by a twenty foot (20') drainage easement and an additional thirty foot (30') Drainage & Access easement which traverses some of the lots within Brigade Estates.

4. The lots within the northern portion of Brigade Estates which are located contiguous to the Subject Property all have homes which are located between two hundred thirty-five feet (235') to four hundred ten feet (410') from the common property line between the Subject Property and Brigade Estates. All of that property (approximately four [4] acres) is heavily forested which assists in dissipating additional stormwater which may be generated outside of the natural flow of stormwater.

**SAMS, LARKIN, HUFF & BALLI**

A LIMITED LIABILITY PARTNERSHIP

**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
March 10, 2017  
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5. The Subject Property, as well as each of the lots within Brigade Estates, operates with existing septic tanks. Such will continue to be the case with respect to the Subject Property in compliance with Cobb County Water System's and the Health Department's comments and recommendations. All septic tanks and drain fields concerning the proposed lots regarding the Subject Property shall be located to the rear of the homes as depicted and oriented on the Revised Site Plan.<sup>1</sup>
6. Compliance with the recommendations from Cobb County's Historic Preservation Planner who, after examination of Civil War Trench Maps, Cobb County Historic Property Surveys, Cobb County Maps and various other resources, has stated that there is no adverse impact to historic and/or archeological resources concerning the Subject Property.<sup>2</sup>
7. BEB will follow Best Management Practices ("BMPs") with respect to stormwater management, water quality and downstream considerations. An examination of relevant contours and topography depicts that the Subject Property "falls" to the west/northwest with less than five percent (5%) of stormwater flowing toward the lots within Brigade Estates.
8. All utilities including, but not necessarily limited to, electric, telephone, cable are located underground now and shall continue to be located underground in the future.
9. Compliance with Cobb County Fire Department comments and recommendations with respect to Fire-Prevention and Life-Safety issues, including the International Fire Code ("IFC") Detail 103.31, as shown on the Revised Site Plan.

Additionally, the proposed twenty foot (20') driveway, within the thirty foot (30') Utility & Access easement, will meet all Cobb County Standards and Regulations in order to accommodate the requisite number of pounds per square inch ("PSI") for Fire Apparatus - utilizable rights-of-way (75,000 "PSI").

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<sup>1</sup> The positioning of septic tanks is subject to the suitability of soils and other relevant factors. BEB will secure a Soil Study which will be reviewed and approved by Staff as a part of the Plan Review process.

<sup>2</sup> As shown on Exhibit "B", lots 11 & 12 within Brigade Estates were required to be reviewed and approved by the "Cobb County Historic Preservation Society" prior to the issuance of building permits on said lots. However, none of the other lots within Brigade Estates were required to do so.

**SAMS, LARKIN, HUFF & BALLI**  
A LIMITED LIABILITY PARTNERSHIP

**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
March 10, 2017  
Page 4

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10. Compliance with Cobb County's Tree Preservation & Replacement Ordinance.
11. The submission of Covenants, Conditions and Restrictions ("CCRs") during the Plan Review process.
12. Compliance with recommendations from the Cobb County Department of Transportation ("DOT"). In that regard, BEB will meet or exceed Cobb County sight distance requirements concerning the Subject Property's frontage on Acworth Due West Road or, at DOT's direction, undertake remedial measures in which to mitigate same.
13. The District BZA Member shall have the authority to approve minor modifications to these stipulations/conditions, the site plan, and other issues as the development proposal proceeds through the Plan Review Process and thereafter, except for those that:
  - a. Increase the density of the residential project.
  - b. Reduce the size of approved buffer adjacent to property which is zoned the same or in a more restrictive zoning district.
  - c. Relocate a structure closer to the property line of adjacent property that is zoned in the same or a more restrictive zoning district.
  - d. Increase the height of a building that is adjacent to a property which is zoned the same or in a more restrictive zoning district.
  - e. Change access locations to a different roadway.

**SAMS, LARKIN, HUFF & BALLI**

A LIMITED LIABILITY PARTNERSHIP

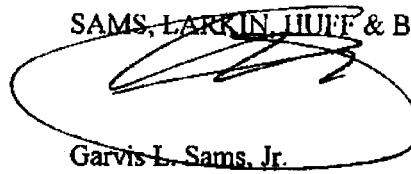
**VIA HAND DELIVERY & EMAIL:**

Mr. John P. Pederson, AICP, Manager  
Cobb County Zoning Division  
Community Development Agency  
March 10, 2017  
Page 5

My client, its consultants and I are meeting with residents of Brigade Estates next week prior to the BZA Variance Hearing on March 15, 2017. In that regard, if there are any changes, revisions, deletions or additions to the stipulations/conditions described hereinabove, I will ensure that they are brought to your and your staff's attention. Additionally, I will also notify members of the BZA. In the interim, please do not hesitate to contact me should you have any questions whatsoever regarding these matters. With kind regards, I am

Very truly yours,

~~SAMS, LARKIN, HUFF & BALLI, LLP~~



Garvis L. Sams, Jr.  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)

GLS/klk

Enclosures/Attachments

- cc: Members, Cobb County Board of Zoning Appeals (via email w/attachments)  
Mr. Dana Johnson, AICP, Director (via email w/attachments)  
Mr. Lee McClead, Deputy Director (via email w/attachments)  
Mr. Jason S. Gaines, AICP, Planning Division Manager (via email w/attachments)  
Mr. Jason Campbell, Planner III (via email w/attachments)  
Mr. Terry Martin, Planner II (via email w/attachments)  
Mr. Donald Wells, Zoning Analyst (via email w/attachments)  
Ms. Tannessa Bates, Zoning Analyst (via email w/attachments)  
Ms. Amy Diaz, P.E., Cobb County DOT (via email w/attachments)  
Ms. Ashley White, P.E., Cobb County DOT (via email w/attachments)  
Mr. Tim Davidson, Cobb County Water System (via email w/attachments)  
Mr. David Breaden, P.E., Cobb County Stormwater Management (via email w/attachments)  
Ms. Pam Mabry, County Clerk (via email w/attachments)  
Ms. Lori Barton, Deputy County Clerk (via email w/attachments)  
Ms. Robin Presley, Deputy County Clerk (via email w/attachments)  
Mrs. Ellen Estes, Brigade Estates Representative (via email w/attachments)  
Mr. David Meyer, RLA, DGM Land Planning Consultants (via email w/attachments)  
Mr. & Mrs. Peter Bright (via email w/attachments)

# Variance Request

## The Estates

Cobb County, Georgia

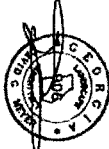
Land Lot 259, 20th District

prepared for:  
**6M Properties, LLC**

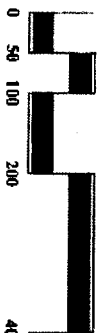
**DGM**

Land Planning  
CONSULTANTS

975 Oak Flare  
Bldg. Smt 212  
Kennesaw  
GA 30144  
770 514-8806  
Fax 514-9491



Scale: 1" = 100'  
March 3, 2017



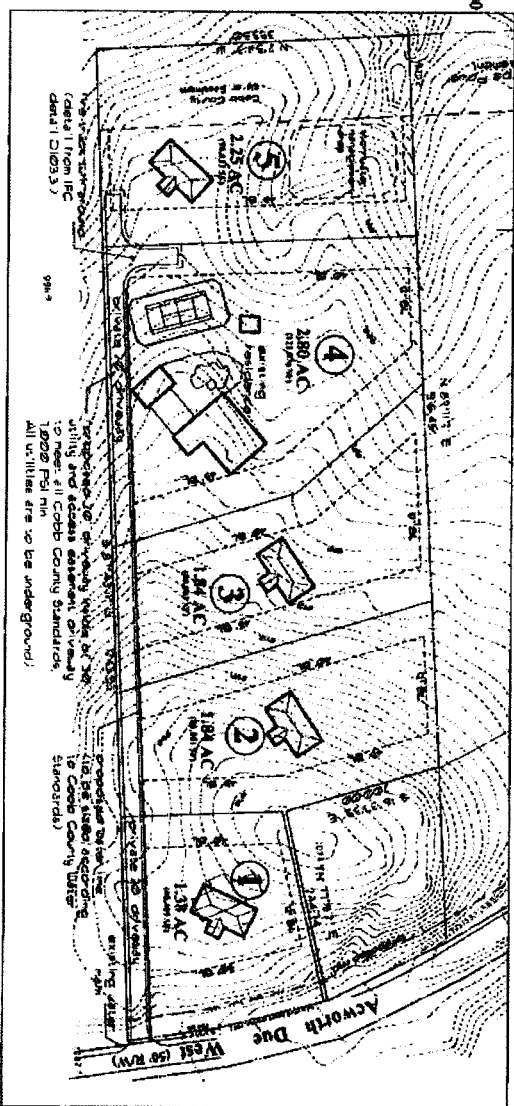
- Notes:**
1. Boundary survey provided by owner, dated April 4, 1997.
  2. Proposed site plan and subdivision provided by Cobb County DPW.
  3. All utility lines shown are for information only. No utility lines are shown in this plan.
  4. The owner has a sewer to enter on site.
  5. No stream or wetlands are shown to exist on site.
  6. No archaeological or historical records are known to exist.
  7. Utility, easements, rights on site and are shown.
  8. Structural engineer, and utility quality structures are conceptual in size and all, as revised based on hydrologic study.

### Site Data

Total Site Area: 10.11 AC  
Total Lots Shown: 5  
Present Zoning: R-30  
Min. Lot Size: 30,000 SF

### \*Variance Request:

1. Reduction of public road frontage requirement for lot 2 from 75' to 5'.
2. Waive public road frontage requirement on lots 3, 4, and 5.



**SUBDIVISION CERTIFICATION**

THE ENGINEER HAS REVIEWED THE PLAT AND HAS CONSIDERED THE PROVISIONS OF THE SUBDIVISION ACT AND THE SUBDIVISION REGULATION. HE HAS FOUND THAT THE PLAT COMPLIES WITH THE PROVISIONS OF THE ACT AND THE REGULATION. HE HAS THEREFORE ISSUED THIS CERTIFICATE OF APPROVAL.

DATE: 3/15/17

BY: [Signature]

**OWNER'S CERTIFICATION**

I, THE UNDERSIGNED, AS OWNER OF THE LAND SHOWN ON THIS PLAT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I HAVE READ THE PLAT AND UNDERSTAND THE CONTENTS THEREOF. I HAVE ALSO READ THE SUBDIVISION ACT AND THE SUBDIVISION REGULATION AND AM AWARE OF THE REQUIREMENTS THEREOF. I HAVE THEREFORE CAUSED THIS PLAT TO BE PREPARED AND SUBMITTED TO THE ENGINEER FOR HIS REVIEW AND APPROVAL.

DATE: 3/15/17

BY: [Signature]

**2009 ZONING CERTIFICATION**

THIS PLAT HAVING BEEN SUBMITTED TO THE ZONING COMMISSION AND HAVING BEEN APPROVED BY THE COMMISSION, THE ZONING COMMISSION HAS CONSIDERED THE PLAT AND HAS CONSIDERED THE PROVISIONS OF THE ZONING ACT AND THE ZONING REGULATION. IT HAS THEREFORE ISSUED THIS CERTIFICATE OF APPROVAL.

DATE: 3/15/17

BY: [Signature]

**PLANNING DEPARTMENT**

DATE: 3/15/17

BY: [Signature]

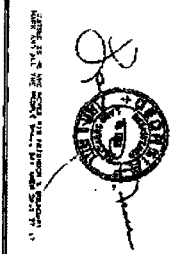
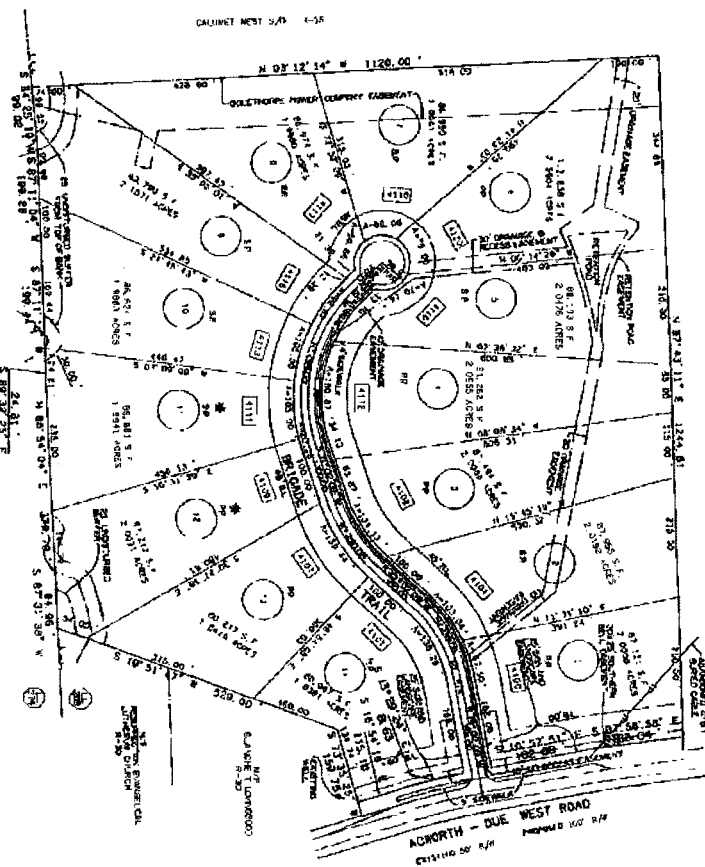
**COMMISSIONERS**

DATE: 3/15/17

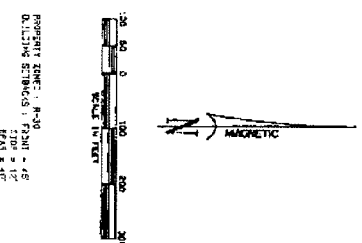
BY: [Signature]

**REMARKS:**

THE PLAT SHOWS THE PROPOSED SUBDIVISION OF THE LAND SHOWN THEREON INTO LOTS AND BLOCKS. THE PLAT ALSO SHOWS THE PROPOSED STREETS AND ALLEYS. THE PLAT HAS BEEN REVIEWED AND APPROVED BY THE ENGINEER AND THE ZONING COMMISSION. THE PLAT IS BEING SUBMITTED TO THE BOARD OF COMMISSIONERS FOR THEIR REVIEW AND APPROVAL.



PLAT NO.	2017-01-12
DATE	3/15/17
SCALE	1" = 100'
OWNER	BRIGADE ESTATES
PREPARED BY	WEST GEORGIA SURVEYORS INC.
CHECKED BY	[Signature]
DATE	3/15/17



**PROPERTY ZONE:** R-30

**DISTRICT:** 15

**NET ACRES:** 1.00

**GROSS ACRES:** 1.00

**PLAT NO.:** 2017-01-12

**DATE:** 3/15/17

**Exhibit "B"**  
**Brigade Estates Plat**  
**Submitted March 10, 2017**

**WEST GEORGIA SURVEYORS INC.**

1000 N. GASTON ST. SUITE 100  
 ATLANTA, GEORGIA 30309  
 (404) 525-1111  
 WWW.WGSURVEYORS.COM



**MINUTES OF ZONING HEARING  
COBB COUNTY BOARD OF COMMISSIONERS  
APRIL 18, 2017  
PAGE 9**

**CONSENT AGENDA (CONT.)**

**Z-1<sup>'17</sup> JACKIE PAYNE (CONT.)**

- 23. Fire Department comments and recommendations, *not otherwise in conflict***
- 24. Water and Sewer Division comments and recommendations, *not otherwise in conflict***
- 25. Stormwater Management Division comments and recommendations, *not otherwise in conflict***
- 26. Department of Transportation comments and recommendations, *not otherwise in conflict, except for that a sidewalk shall not be required to be installed in front of this property***
- 27. Owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns**

MOTION: Motion by Cupid, second by Weatherford to **add** Z-1<sup>'17</sup> to the Consent Agenda.

VOTE: **ADOPTED 5-0**

**O.B. 6** To consider a granting a Special Exception for a reduction of lot size and public road frontage as recommended by the Board of Zoning Appeals from their March 15, 2017 Variance Hearing regarding Variance Application V-17 BEB INVESTMENTS, LLC.

To **approve** O.B. 6, subject to:

- 1. Variance Hearing minutes for V-17 of March 15, 2017 (attached and made a part of these minutes)**
- 2. Fire Department comments and recommendations**

**MINUTES OF VARIANCE HEARING  
COBB COUNTY BOARD OF ZONING APPEALS  
MARCH 15, 2017  
1:00 P.M.**

Min. Bk. 81 Petition No. D.B.6  
Doc. Type 3-15-17 BZA Minutes  
for V-17  
Meeting Date 4-18-17

The Board of Zoning Appeals Variance Hearing was held on Wednesday, March 15, 2017 at 1:00 p.m. in the second floor public meeting room of the Cobb County Building A, Marietta, Georgia. Present and comprising a quorum of the Board were:

Murray Homan, Chair  
Skip Gunther  
Bryant McDaniel  
Monique Sheffield  
Judy Williams

**CHAIRMAN HOMAN – CALL TO ORDER**

Chairman Homan called the meeting to order at 1:04 p.m. and explained the procedures for the public hearing.

**CONSENT AGENDA**

MOTION: Motion by Gunther, second by McDaniel, to **approve** the following cases on the Consent Agenda, *as presented*:

**V-17**            **BEB INVESTMENTS, LLC** (6M Properties, LLC, owner) requesting a variance to 1) waive the minimum road frontage from the required 75 feet to five feet for lot 2; 2) allow three lots to have no public road frontage to access off a private easement for lots 3 through 5; 3) reduce the required lot size for a lot off a private easement from 80,000 square feet to 75,358 square feet for lot 3; and 4) waive the front setback for lots 2 through 5 from the required 50 feet to 45 feet in Land Lot 259 of the 20<sup>th</sup> District. Located on the west side of Acworth Due West Road, north of Brigade Trail (1049 Acworth Due West Road). *(Held by the Board of Zoning Appeals from their February 15, 2017 hearing)*

To **approve** V-17, subject to:

1. Site plan dated March 3, 2017 (attached and made a part of these minutes)
2. Letter of agreeable conditions from Mr. Garvis L. Sams, Jr. dated March 10, 2017 (attached and made a part of these minutes), with the following change:
  - A. Paragraph 5. – deletion in its entirety
3. Site Plan Review comments and recommendations
4. Stormwater Management Division comments and recommendations

CONSENT VOTE: **ADOPTED 5-0**



Printed: 9/10/2018

### Cobb County Online Tax Receipt

Thank you for your payment!

**CARLA JACKSON** TAX COMMISSIONER  
**CHELLY MCDUFFIE** CHIEF DEPUTY  
 Phone: 770-528-8600  
 Fax: 770-528-8679

Payer:  
 Elizabeth Bright

**6M PROPERTIES LLC**

**Payment Date: 4/17/2018**

Tax Year	Parcel ID	Due Date	Appeal Amount			Taxes Due
2017	20025900050	4/15/2018	Pay:	N/A	or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance	
\$174.48	\$229.14	\$0.00	\$0.00	\$15,066.12	\$0.00	



Scan this code with your  
 mobile phone to view this  
 bill!!

TO THE COBB COUNTY BOARD OF COMMISSIONERS  
COBB COUNTY, GEORGIA

**CONSTITUTIONAL CHALLENGE**

COMES NOW, 6M PROPERTIES, LLC, hereinafter referred to as the "Applicant", for itself and/or acting on behalf of the owners, asserts the following, to wit:

1.

By application to which this exhibit relates, the Applicant has applied for an Other Business Item regarding certain real property lying and being in Cobb County, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application seeks approval of an Other Business Application by the governing authority of Cobb County, Georgia to amend the stipulations and approve a revised site plan pertaining to a Variance Application No. V-17 of 2017 (BEB INVESTMENTS, LLC) and Board of Commissioners' Other Business Item No. 6 of 2017.

3.

The current stipulations/conditions are unconstitutional in that they deprive the Applicant under and pursuant to Article 1, 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. This deprivation of property rights without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.


The conditions/stipulations as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing conditions and stipulations do not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said requirements are unconstitutional in that they are arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The Cobb County Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with Other Business Applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 11<sup>th</sup> day of September 2018.

SAMS, LARKIN, HUFF & BALLI, LLP

By:   
GARVIS L. SAMS, JR.  
Attorney for Applicant  
Ga. Bar No. 623950

SAMS, LARKIN, HUFF  
& BALLI, LLP  
A LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS AT LAW  
SUITE 100  
376 POWDER SPRINGS ST.  
MARIETTA, GA 30064  
770.422.7016