

**ACTION UPHOLDING AN ADMINISTRATIVE DECISION**

APPLICATION SUBMITTED BY: Kelly B. Etchells

APPLICATION SUBMISSION DATE: June 21, 2024

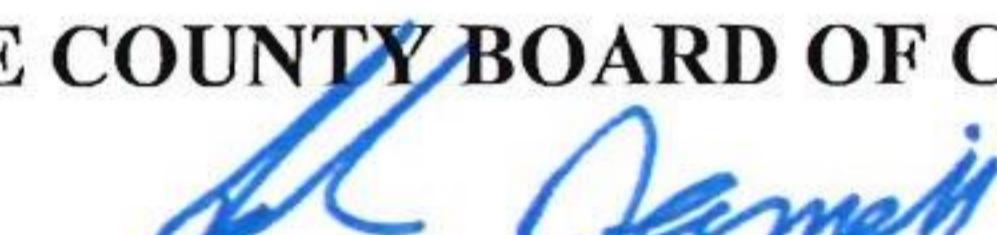
RE: Request for an Appeal of Administrative Decision on a ±0.5-acre tract of land located 2362 Gober Road in Oconee County, Georgia, (A-07-026CT), to appeal the determination made by Planning Department staff that a variance, if granted, would constitute a change in use.

After consideration and a motion and second, the Oconee County Board of Commissioners does hereby uphold the Administrative Decision that a variance, if granted, would constitute a change in use and would therefore not be accepted for processing.

Said upholding of an Administrative Decision is supported by the documents: as set forth in "Exhibit A" attached hereto.

This 10<sup>th</sup> day of September, 2024.

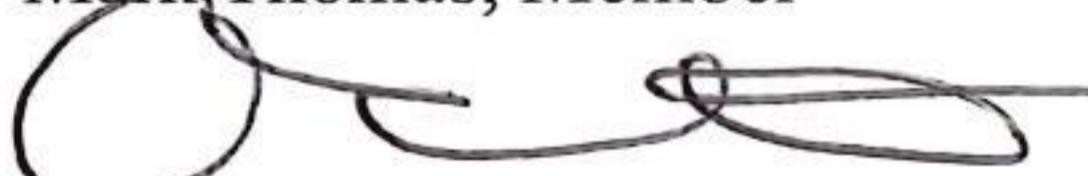
**OCONEE COUNTY BOARD OF COMMISSIONERS**

BY: 

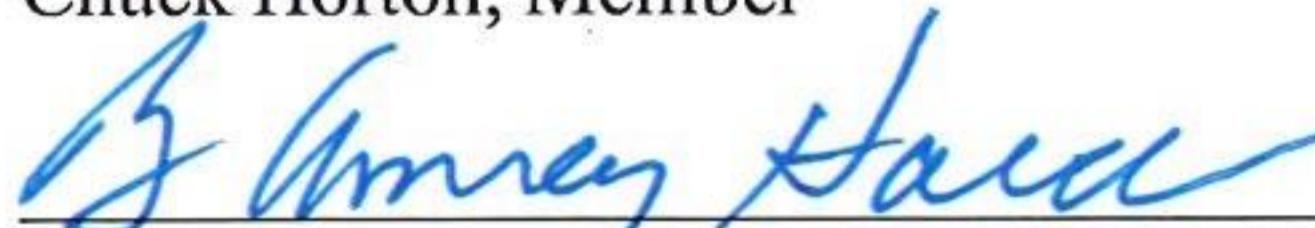
John Daniell, Chairman



Mark Thomas, Member



Chuck Horton, Member



Amrey Harden, Member



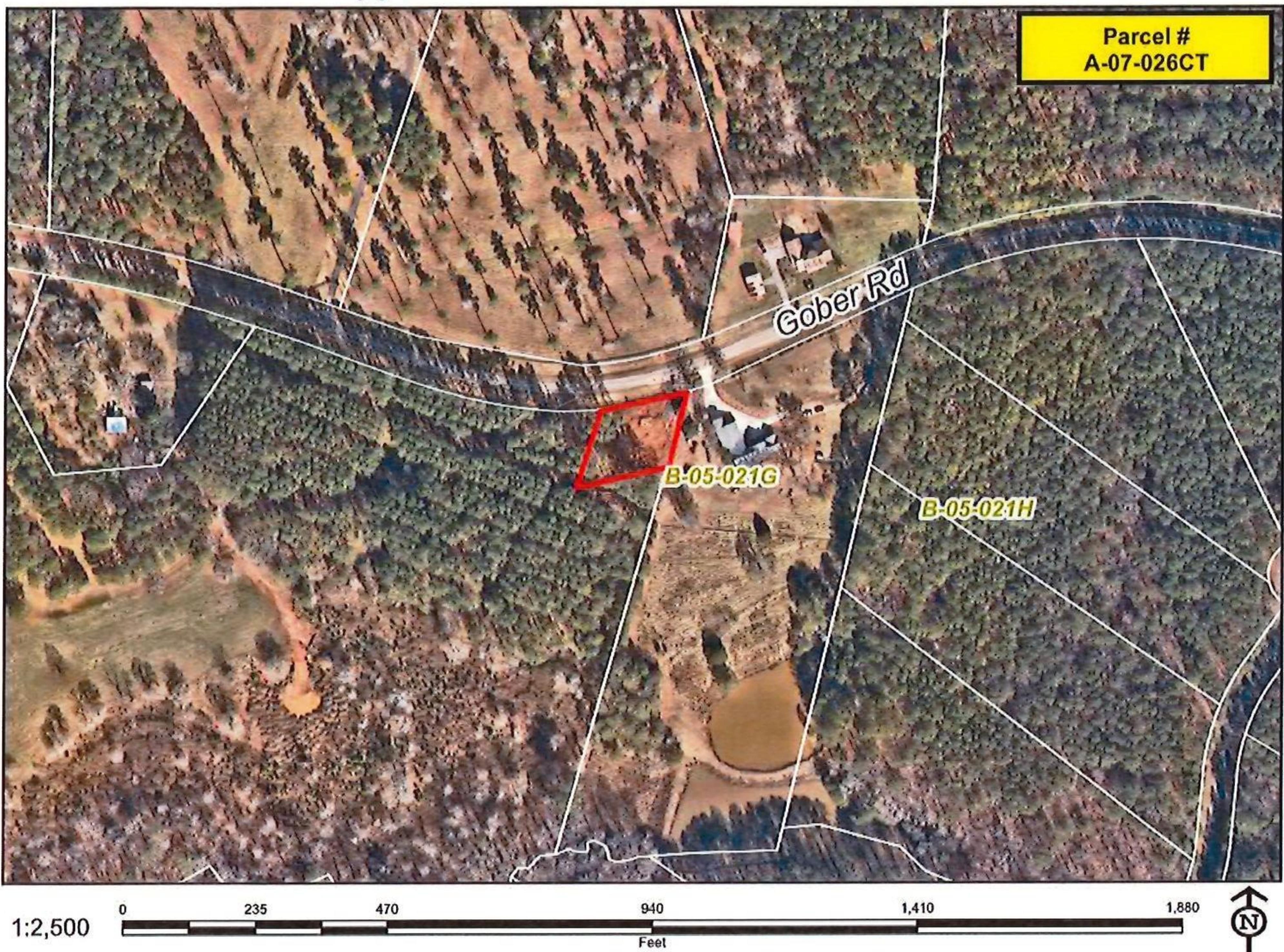
Mark Saxon, Member

ATTEST:

  
Holly Stephenson  
Clerk, Board of Commissioners

TAX MAP

Appeal # P24-0124 - Patricia Harrison



## INITIAL NOTICE

From: Guy Herring <[gherring@oconee.ga.us](mailto:gherring@oconee.ga.us)>  
Sent: Tuesday, May 21, 2024 10:45 AM  
To: David Ellison <[dfe@fbglaw.com](mailto:dfe@fbglaw.com)>  
Cc: Daniel Haygood <[daniel@dch2001.com](mailto:daniel@dch2001.com)>  
Subject: RE: [EXTERNAL EMAIL] RE: Variance application for 2632 Gober Road

[EXTERNAL]

Good Morning David,

In response to your variance application for the property at 2362 Gober Rd., staff has determined that the variance application cannot be accepted (see below for code references). If the barn structure is not built as proposed and permitted, the facility would no longer qualify as an Alternate ("Stealth") Towers and Antennae and the use would change. The new use would be "Telephone, Cellular and Other Wired or Wireless Telecommunications Carriers (except Satellite)." This use is not permitted in the agricultural zoning district.

The property at 2362 Gober Rd, is zoned agricultural. A rezoning to B-1 or OIP would be required to permit the Telecommunications facility at this location. Staff would not support the rezoning as the Oconee County Comprehensive Plan classifies the property as part of the Agricultural Preservation Character Area. This Character Area does not support any commercial zoning.

The application does not meet the requirements for a variance due to:

1. Not meeting the requirements of Sec;7960;60;.Limitations.on.hardship.variance. approval;In.no.case.shall.a.hardship.variance.be.requested.or.granted.for.any.of.the. following;a;A.condition.created.by.the.applicant?including.the.result.of.an.unwise. investment.decision.or.real.estate.transaction;
2. Sec;962;60;.Construction.requirements;All.non\_residential.buildings.not.exempt. under.this.Section.shall.be.constructed.on\_site.and.shall.not.be.manufactured.or. prefabricated.off\_site.unless.approved.by.the.Board.of.Commissioners.as.a.special. exception.variance;
3. It does not qualify for a Special Exception Variance under Sec;7969;68;Special. exception.variances.shall.be.limited.to.relief.from.the.following.requirements.of.this. Development.Code;o;.Construction.requirements.for.nonresidential.uses;.In this case, the change in construction would change the use..

**INITIAL NOTICE**

4. Not building the barn to surround the facility would disqualify the use as a "Alternate ("Stealth") Towers and Antennae." Having a fence screening in lieu of a structure does not provide the same compatibility with allowed uses in the Agricultural zoning district. An enclosed building provides masking for both noise reduction and visual screening.
5. This would be a change of use, with the proper remedy being a rezoning action.
6. A "Use Variance" is not allowed as variance under Article 13. Appeals.

Staff also notes the building use has started without a Certificate of Occupancy.

The following are options for a path forward:

1. Complete the project as permitted with the barn enclosure of the ILA. The project and lease area can be expanded when another ILA needs to be built at a future date.
2. Submit a rezoning application to rezone the property to OIP (Office-Institutional-Professional) or B-1 (General Business) to permit the facility as "Telephone, Cellular and Other Wired or Wireless Telecommunications Carriers (except Satellite)" facility. If the rezoning is successful, the applicant would have to comply with any conditions of zoning to receive a Certificate of Occupancy.

Regards,

Guy Herring

Director

Ocnee County Planning and Code Enforcement

7635 Macon Hwy, Suite 400

Watkinsville, GA 30677

706.769.3910 (o)

706.248.0378 (m)

[www.OcneeCounty.com](http://www.OcneeCounty.com)

NARRATIVE

FORTSON, BENTLEY AND GRIFFIN, P.A.

ELBERT N. WHITMIRE, III, C.P.A.

G. MARCUS HODGE (GA & SC)

DAVID K. LUNDER

ROY E. MANOLL, III

WALTER W. HAYS, JR.

MICHAEL J. MCCLEARY

V. KEVIN LANG

TREVOR T. JONES (GA & AL)

DAVID F. ELLISON

WADE A. SCHUENEMAN

GREGORY O. DEBACKER

PARKER C. MORGAN

KELLY B. ETCHELLS

ELINORE R. YOUNG

ATTORNEYS AT LAW  
2500 DANIELL'S BRIDGE ROAD  
BUILDING 200, SUITE 3A  
ATHENS, GEORGIA 30606

—  
(706) 548-1151

CHRISTOPHER W. COLLINS

EMILY K. ESCOE

JOHNELLE SIMPSON, III

HANNA C. SCHERER

UPSHAW C. BENTLEY, JR.  
(1924 – 2013)  
EDWIN B. FORTSON  
(1913-2007)  
JOHN E. GRIFFIN  
(1923-2002)  
HERBERT T. HUTTO  
(1933-1998)

June 18, 2024

**VIA HAND DELIVERY:**

Mr. Guy Herring  
Oconee County Planning & Code Enforcement  
7635 Macon Highway  
Watkinsville, Georgia 30677

**AND EMAIL:** [gherring@oconee.ga.us](mailto:gherring@oconee.ga.us)

Re: *Appeal of Interpretation on Variance Requests for 2632 Gober Road*

Dear Mr. Herring:

I represent DC BLOX, Inc. ("DC"), and DC submitted an Application for a Special Exception Variance and Hardship Variance on May 8, 2024 for the real property known as 2362 Gober Road (Tax Map Parcel A 07 026CT) ("the Property"). On May 21, 2024, I received your interpretation of Oconee County's Unified Development Code ("UDC") stating that DC is unable to apply for a hardship or special exception variance from the requirements of Section 335.02 of the UDC. Please accept this correspondence as an appeal of an administrative decision pursuant to Section 1306 of the UDC.

DC understands that you believe that it fails to satisfy the requirements of a hardship variance because no hardship variance may be granted when the condition is created by the applicant. See UDC Section 1304.04.a. We understand that DC must carry its burden of demonstrating that it is not the cause of its own hardship, but we believe whether an applicant has met this burden should be left for the Board of Commissioners. This interpretation is consistent with notice and hearing requirements of due process and Article 9, Section 2, Paragraph IV of the Georgia Constitution which vests zoning powers with the local governing authority. See e.g. *Cobb County Board of Commissioners v. Poss*, 257 Ga. 393 (1987).

NARRATIVE

**FORTSON, BENTLEY AND GRIFFIN**  
A PROFESSIONAL ASSOCIATION

Mr. Guy Herring  
Oconee County Planning & Code Enforcement  
June 18, 2024  
Page 2 of 3

In that same vein, DC believes the decision of whether an applicant has met the requirements of a Special Exception Variance should be reserved for the Board of Commissioners. DC understands that it has the burden of proving that it satisfies all requirements of a Special Exception Variance, but it believes it has the procedural right to a hearing before the local governing authority vested with exclusive zoning powers under the Georgia Constitution before there can be any such decision finding that it has not met that burden.

From a substantive standpoint, DC respectfully disagrees with your interpretation that DC seeks a change in uses rather than a variance on construction requirements for nonresidential uses. DC's interpretation is grounded in the principle that

The word "use," as employed in use regulations, refers to any possible use on or of lands or buildings, including the erection of buildings or excavations on lands, the presence and use of all tangibles on lands or in buildings, and all occupations and activities of persons occurring upon land or within buildings. Accordingly, *the word "use", in connection with zoning may refer to a building itself or to the use of that building for a business or activity.*

8 McQuillin Mun. Corp. § 25:1 (3d ed.) (Emphasis added). In this instance, DC intends to carry on the exact same activity on the Property, but it simply seeks a variance on the construction requirements for the buildings that contain this activity.

Section 335.02 of the UDC states that a certain type of building, an "Alternative ("Stealth") Tower and Antenna Structure" must not be readily discernible as an antenna or tower. Appendix B to the UDC then offers several photographic examples to supply a standard for determining whether the construction requirements for an alternative tower structure is not "readily ascertainable." Since DC's desired activity on the Property is nonresidential and remains the same regardless of whether a variance is granted, Section 13.02.o of the UDC gives DC the right to seek a special exception variance from these construction requirements. DC understands that Planning Staff may disagree as to whether DC has met its burden of obtaining a Special Exception Variance and Staff may disagree as to whether this fence does an adequate job of ensuring these structures are not "readily ascertainable." However, my client believes that it has the right to a hearing before the Board of Commissioners so that DC can have the opportunity to demonstrate that it can achieve the UDC's purpose of ensuring that such structures are not "readily ascertainable" through less burdensome means that cause no harm the community.

NARRATIVE

**FORTSON, BENTLEY AND GRIFFIN**  
A PROFESSIONAL ASSOCIATION

Mr. Guy Herring  
Oconee County Planning & Code Enforcement  
June 18, 2024  
Page 3 of 3

Finally, DC asks the County to please bear in mind that Georgia law requires "strict construction against the county and liberal construction in favor of the landowner. Dekalb County v. Post Apt. Homes, L.P., 234 Ga. App. 409, 410-411 (1998)

Georgia follows a majority of states in holding that zoning ordinances should be strictly construed in favor of the property owner, and ambiguities in the language of zoning ordinances should be resolved in favor of the free use of property. Therefore, any ambiguity or uncertainty in a land regulation ordinance must be construed in favor of the free use of the land. Id.

In light of the foregoing, DC respectfully requests an appeal of your interpretation, and it reserves the right to supplement and amend this appeal prior to a decision from the Board of Commissioners.

Sincerely,

**FORTSON, BENTLEY AND GRIFFIN, P.A.**

/s/ David F. Ellison

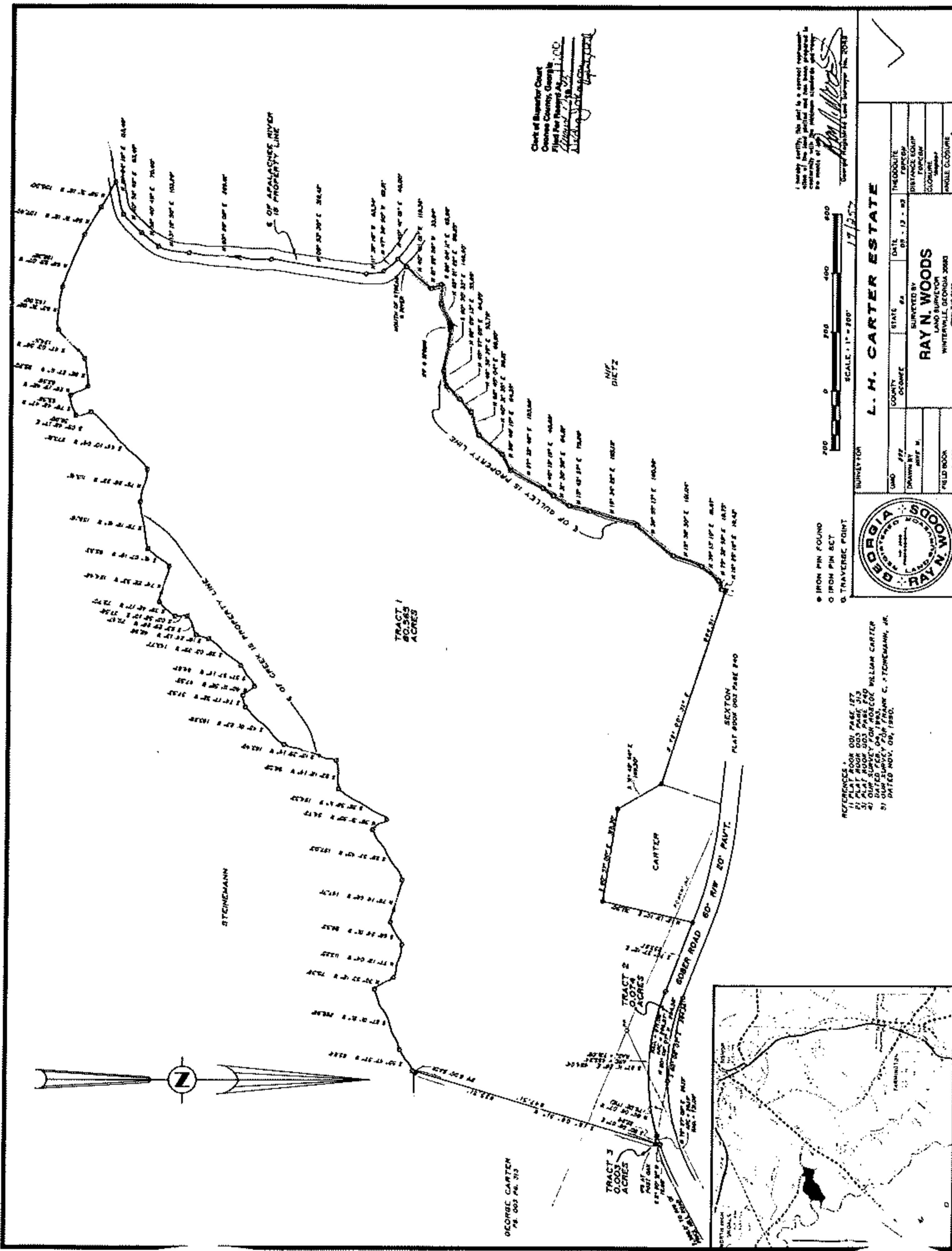
David F. Ellison

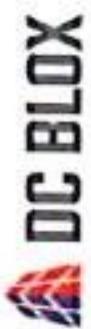
DFE/mtn

cc. Daniel Haygood, Esq.  
daniel@dch2001.com

## RECORDED PLAT

257





LEGAL DESCRIPTION:

**NOTES:**

1. INFORMATION OBTAINED FROM SURVEY DRAWINGS  
PREPARED BY SAW ENGINEERING GROUP, INC. DATED  
03/29/2023.
2. CONTRACTOR TO SITE VERIFY ALL DIMENSIONS AND  
CONDITIONS PRIOR TO CONSTRUCTION. REPORT ANY  
DISCREPANCIES TO THE ENGINEER.
3. CONTRACTOR IS RESPONSIBLE TO LOCATE AND IDENTIFY  
ANY AND ALL BURIED SERVICES IN THE VICINITY OF  
REQUIRED EXCAVATION PRIOR TO CONSTRUCTION.

4. THIS DRAWING DOES NOT REPRESENT A LIBRARY.

BEING A PORTION OF THE JOE L. HARRISON, III TRACT AS  
DESCRIBED IN DEED BOOK 1080, PAGE 3, AND PLAT  
BOOK 19, PAGE 193 AS RECORDED IN THE OFFICE OF  
THE CLERK OF THE SUPERIOR COURT OF OCONEE  
COUNTY, GEORGIA, LYING AND BEING IN THE 222ND  
DISTRICT, G.M. OF OCONEE COUNTY, GEORGIA, GEORGIA,  
AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT A FOUND AXLE, HAVING GEORGIA WEST  
STATE PLANE COORDINATES OF N: 13833384.056 AND E:  
2008384.251, AND MARKING THE SE CORNER OF A  
CALLED 2.75 ACRES TRACT, AS RECORDED IN DEED BOOK  
1081, PAGE 706; THENCE S 31°21'20" E FOR A DISTANCE  
OF 100.05 FEET TO A 7" METAL POST MARKING A  
SOUTHWESTERLY CORNER OF A TRACT OF LAND AS  
DESCRIBED AND RECORDED IN BOOK 1080, PAGE 3, AND  
PLAT BACK 10, PAGE 193, AND HAVING GEORGIA WEST  
STATE PLANE COORDINATES OF N: 13833219.69  
E: 22508442.22; THENCE S 88°23'44" E FOR A DISTANCE  
OF 937.08 FEET TO A POINT AND THE POINT OF  
BEGINNING; THENCE N 10°08'51" E FOR A DISTANCE OF  
155.27 FEET TO A POINT ON THE SOUTHERLY  
RIGHT-OF-WAY LINE OF GOBER ROAD; THENCE ALONG  
SAID SOUTHERLY RIGHT-OF-WAY AND A CURVE TO THE  
LEFT WITH A BEARING OF N 78°11'37" E AND A DISTANCE OF  
131.09 FEET, WITH A RADIUS OF 731.08 FEET AND AN  
ARC DISTANCE OF 131.54 FEET TO A POINT; THENCE  
LEAVING SOUTHERLY RIGHT-OF-WAY LINE, S 80°06'07" E  
FOR A DISTANCE OF 22.04 FEET TO A POINT; THENCE S  
10°08'51" W FOR A DISTANCE OF 154.29 FEET TO A  
POINT; THENCE S 81°39'23" W FOR A DISTANCE OF  
152.08 FEET TO THE POINT OF BEGINNING. SAID LEASE  
AREA CONTAINS 21.8408 SQUARE FEET OR 0.50 ACRES.

SUBMITALS

DATE	REVISION NUMBER	REVISION COMMENTS	REVISION FOR REVIEW
11/4	NOV 09/11	THESES ADDED	AD
3	NOV 07/23	REVISED PER COMMENTS	AD
1	OCT 27/23	ISSUED FOR REVIEW	AD
0	AUG 01/23	FINAL CG's	AD
0	JUL 07/23	REVISED PER COMMENTS	AD
0	JUL 06/23	REVISED PER COMMENTS	AD
0	APR 26/23	ISSUED FOR REVIEW	AF
1	FEB 24/23	ISSUED FOR REVIEW	AF

A circular identification card with a black border. Inside, the text "MICHAEL LEE P.E." is written vertically along the right edge, and "PROFESSIONAL" is written horizontally across the center. A five-pointed star is positioned at the top and bottom center. A blue ink scribble is visible across the center of the card.

REGEN 2  
HARRISON  
2362 GOBER ROAD  
BISHOP, GA 30621  
EATP

1

EXHIBIT "A" TO SPECIAL EXPOSITION VARIANCE NO. P24-0124

REFER TO DRAWINGS BY SWM ENGINEERING  
GROUP, INC. DATED 07/28/2023  
FOR GRADING AND DRAINAGE DETAILS

THE NORTH ARROW SHOWN ON THIS DRAWING IS APPROXIMATE ONLY AND MUST BE VERIFIED

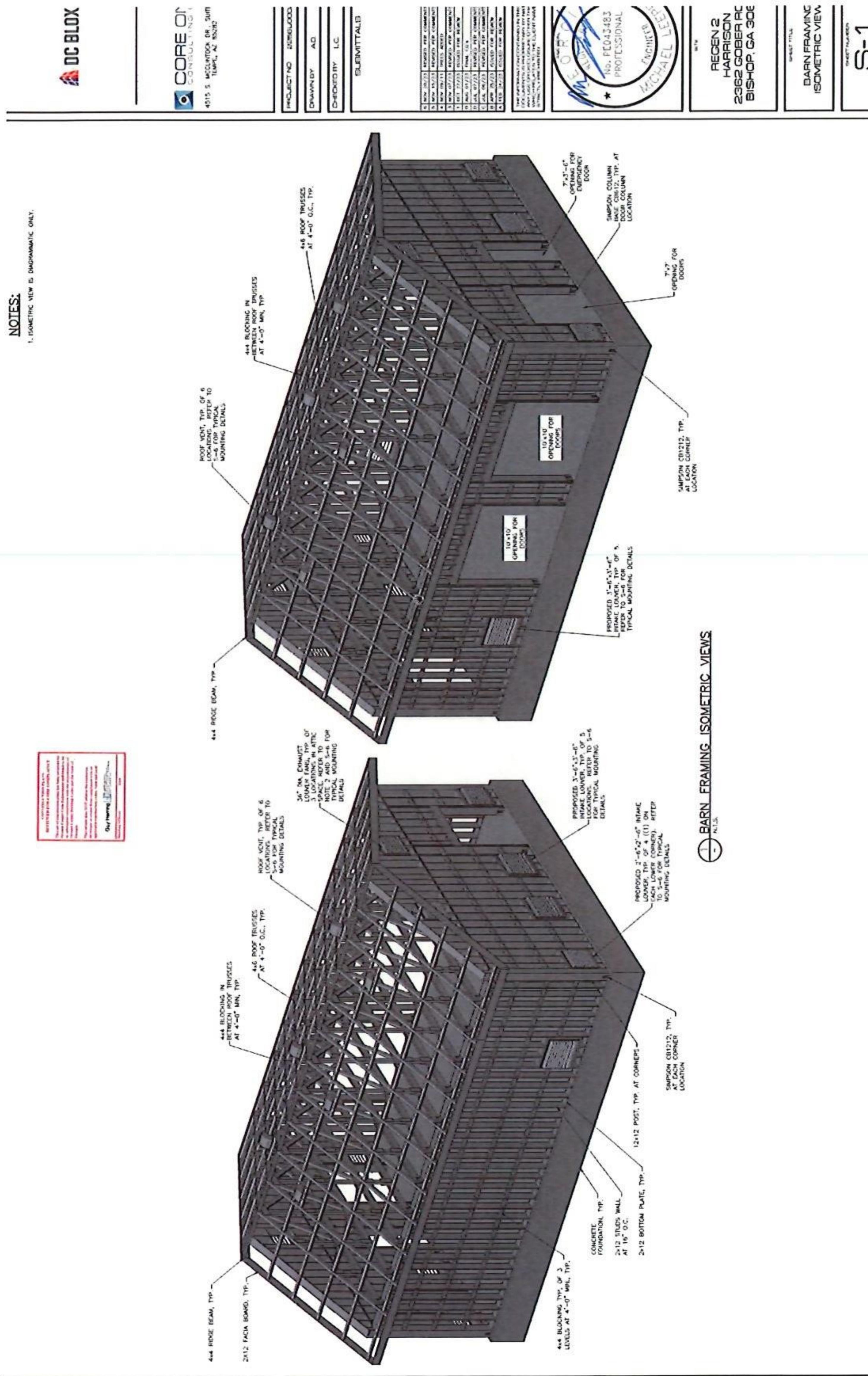
ARCHITECTURAL IMAGES



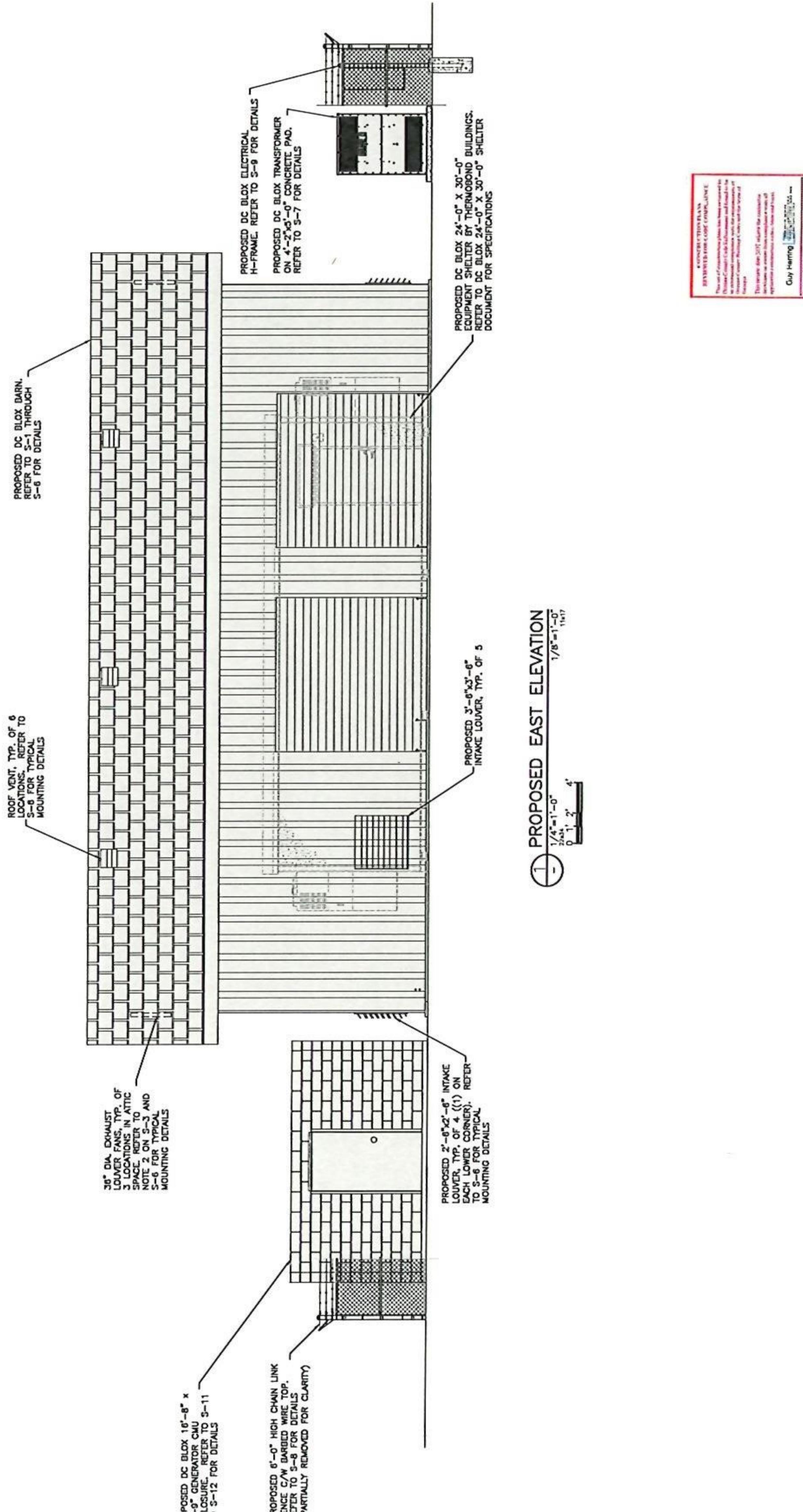
4 abr 2024 6:45:46 p. m.  
4317 Annistown Road  
Snellville  
Gwinnett County  
Georgia

**EXHIBIT "A" TO SPECIAL EXCEPTION VARIANCE NO. P24-0124**  
**Page 10 of 11**

## APPROVED PLANS



APPROVED PLANS



# Oconee County Memorandum

7635 Macon Hwy • Suite 400 • Watkinsville, GA 30677

P: (706) 769-3910

[www.oconeecounty.com](http://www.oconeecounty.com)

## Planning and Code Enforcement Department

DATE: August 29, 2024

TO: Oconee County Board of Commissioners

FROM: Guy Herring, Director of Planning & Code Enforcement

CC: David Webb, Senior Planner and Ethan Perry, Planner

RE: Appeal of an Administrative Decision P24-0124

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**Applicant:** Kelly B. Etchells (David F. Ellison attorney), representing DC Blox, Inc

**Property Owner:** Patricia Spratlin Harrison

**Location:** 2362 Gober Road

**Issue Summary:** The applicant is appealing the decision of the Planning Director that a variance application cannot be accepted due to the creation of a change of use. Staff found the proper administrative remedy is an application for rezoning to B-1 or OIP due to the proposed use changing.

**Analysis:** DC Blox applied for and was approved for an Alternate ("Stealth") Towers and Antennae to construct a fiber optic facility. At the time it was permitted, staff determined that if a barn structure was built with the telecommunications equipment enclosed, it would qualify as an Alternate ("Stealth") Towers and Antennae. The building permit was issued November 29, 2023.

The applicant applied for a Variance to commercial construction standards on May 9, 2024. The applicant has not completed the structure as permitted and has indicated a fence will serve the same purpose to screen the equipment building. The applicant was notified of the administrative decision on May 21, 2024, that if the barn structure is not built as proposed and permitted, the facility would no longer qualify as an Alternate ("Stealth") Towers and Antennae and the use would change. The new use would be "Telephone, Cellular and Other Wired or Wireless Telecommunications Carriers (except Satellite)." This use is not permitted in the agricultural zoning district. The property at 2362 Gober Rd, is zoned agricultural. A rezoning to B-1 or OIP would be required to permit the Telecommunications facility at this location.

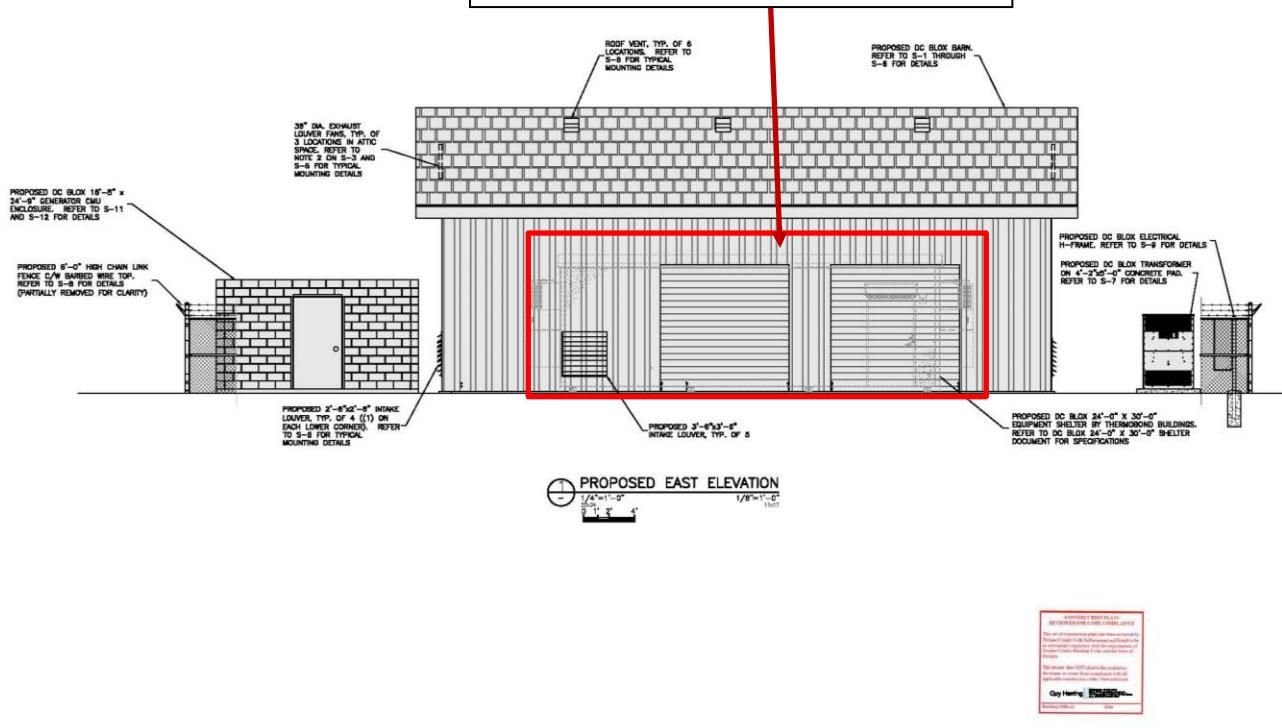
On May 22, 2024, Planning and Code Enforcement issued a notice of violation for:

1. Operating without a Certificate of Occupancy
2. Building has not been constructed per the building plans.

On June 20, 2024, the applicant submitted the Appeal of an Administrative Decision indicating that staff has not followed proper procedure in determining that a variance application cannot move forward for a public hearing.

The following illustrations, pictures and documents illustrate the basis of the staff finding on the permitted plans and what the fence screening the applicant proposes instead of a barn “shell.”

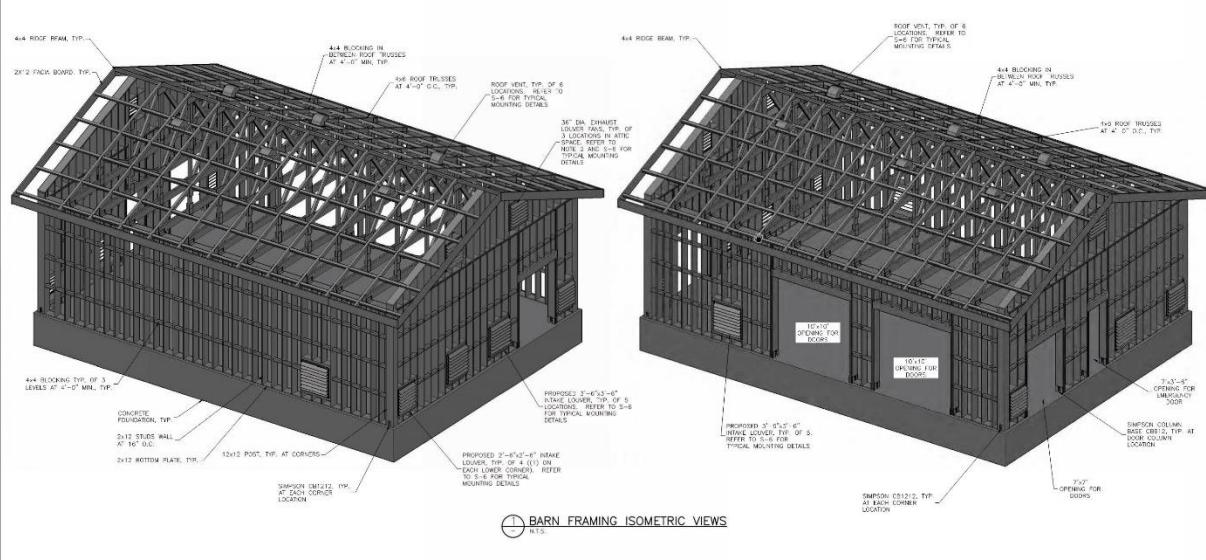
## Equipment Shed inside the barn shell



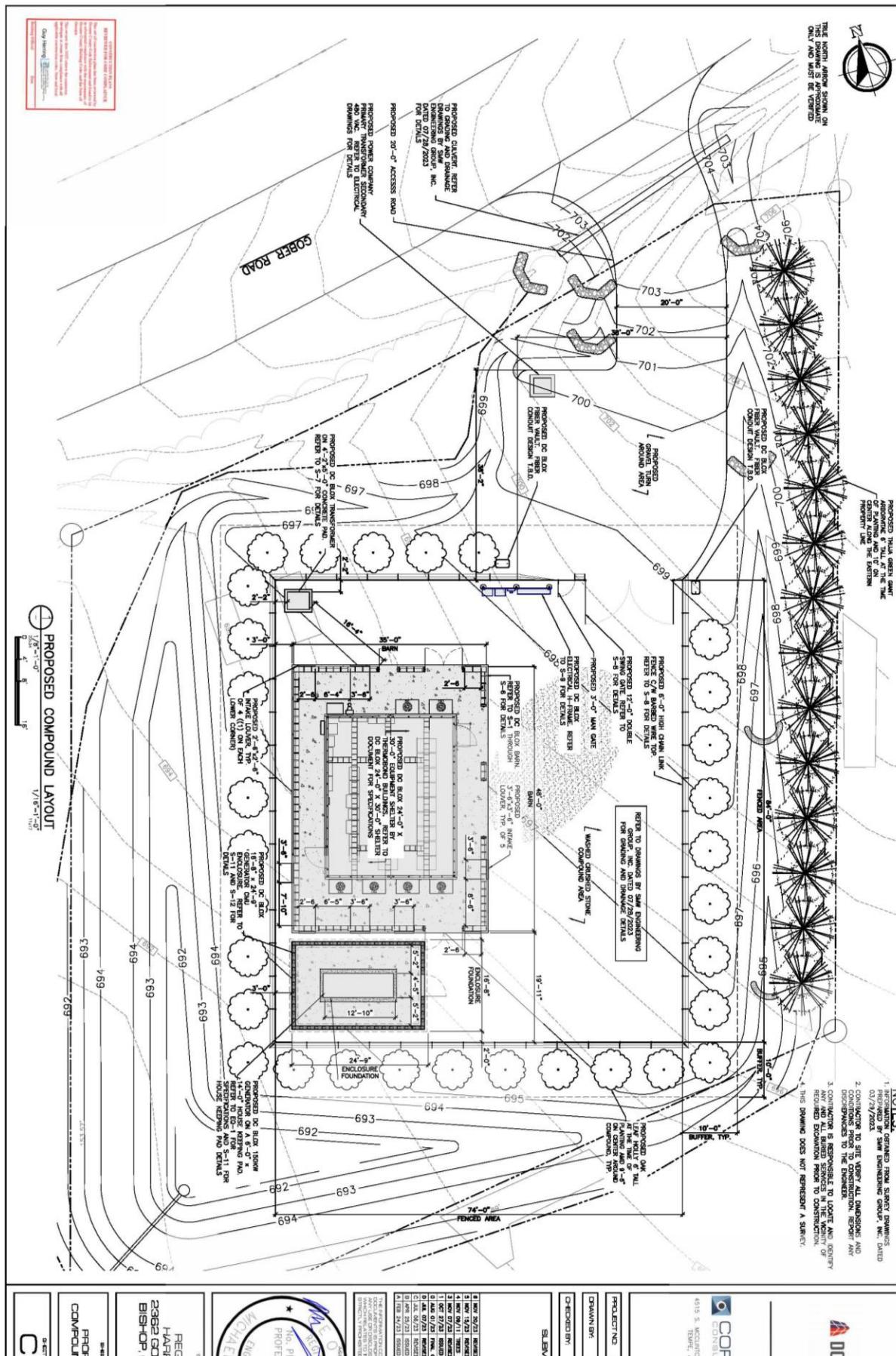
NOTES:

1. ISOMETRIC VIEW IS DIAGRAMMATIC ONLY.

DC BLOX



Approved Site Plan showing barn shell surrounding the equipment shed



Proposed Screening Fence that applicant indicates provides the same screening as a barn “shell”

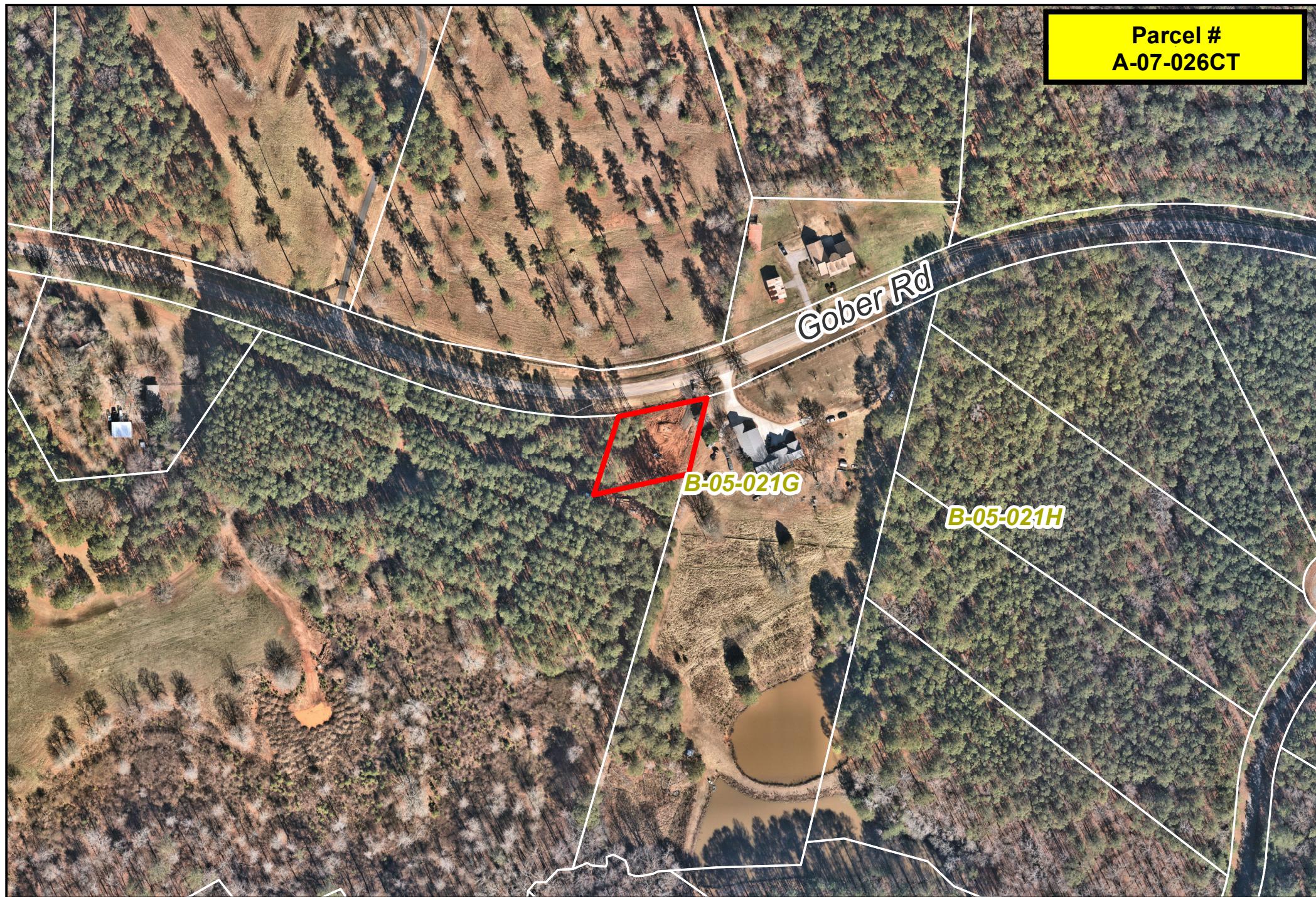


Current pictures of the equipment shed and transformer occupied and in use without a C/O



# Appeal # P24-0124 - Patricia Harrison

Parcel #  
A-07-026CT

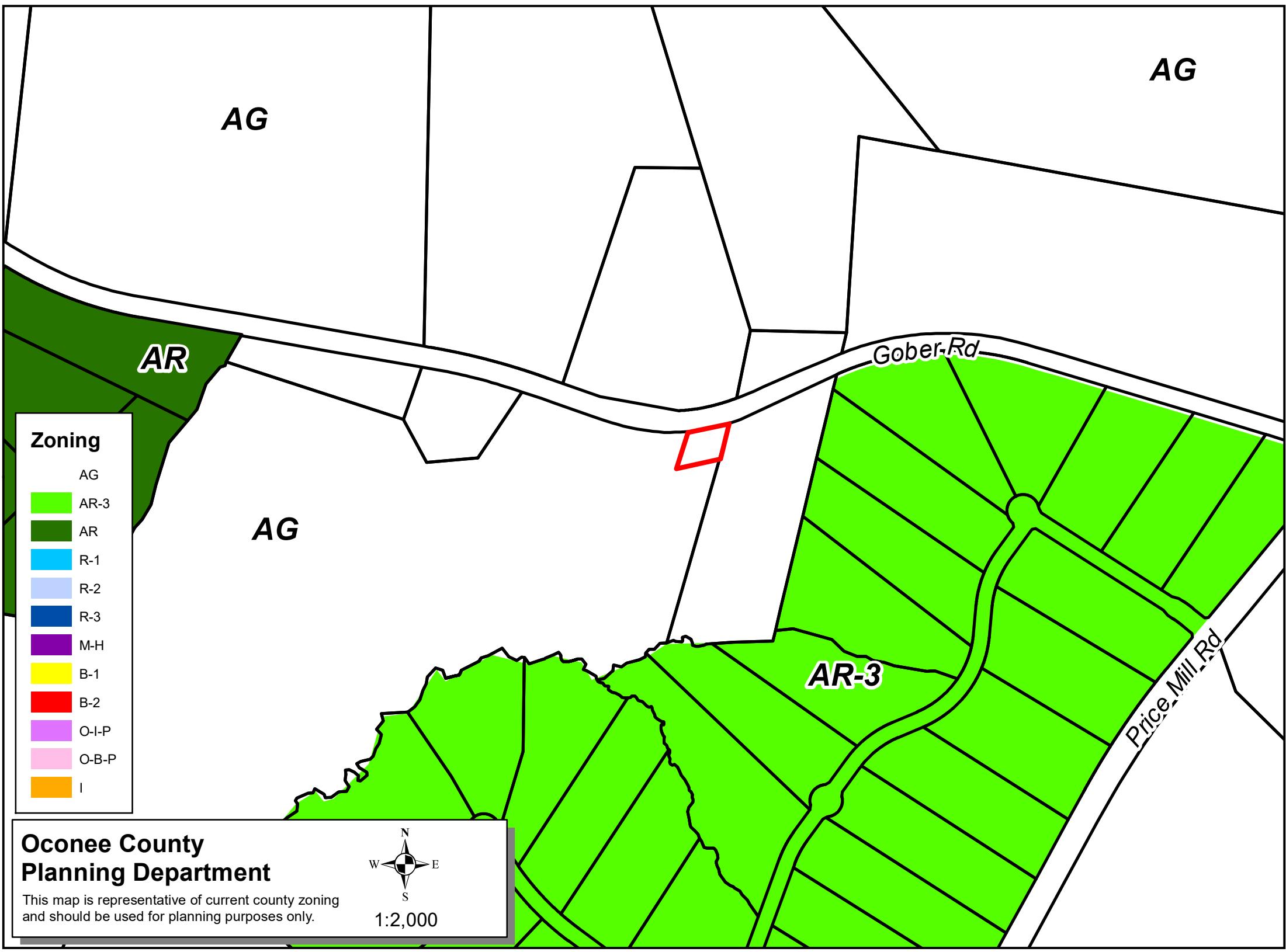


1:2,500

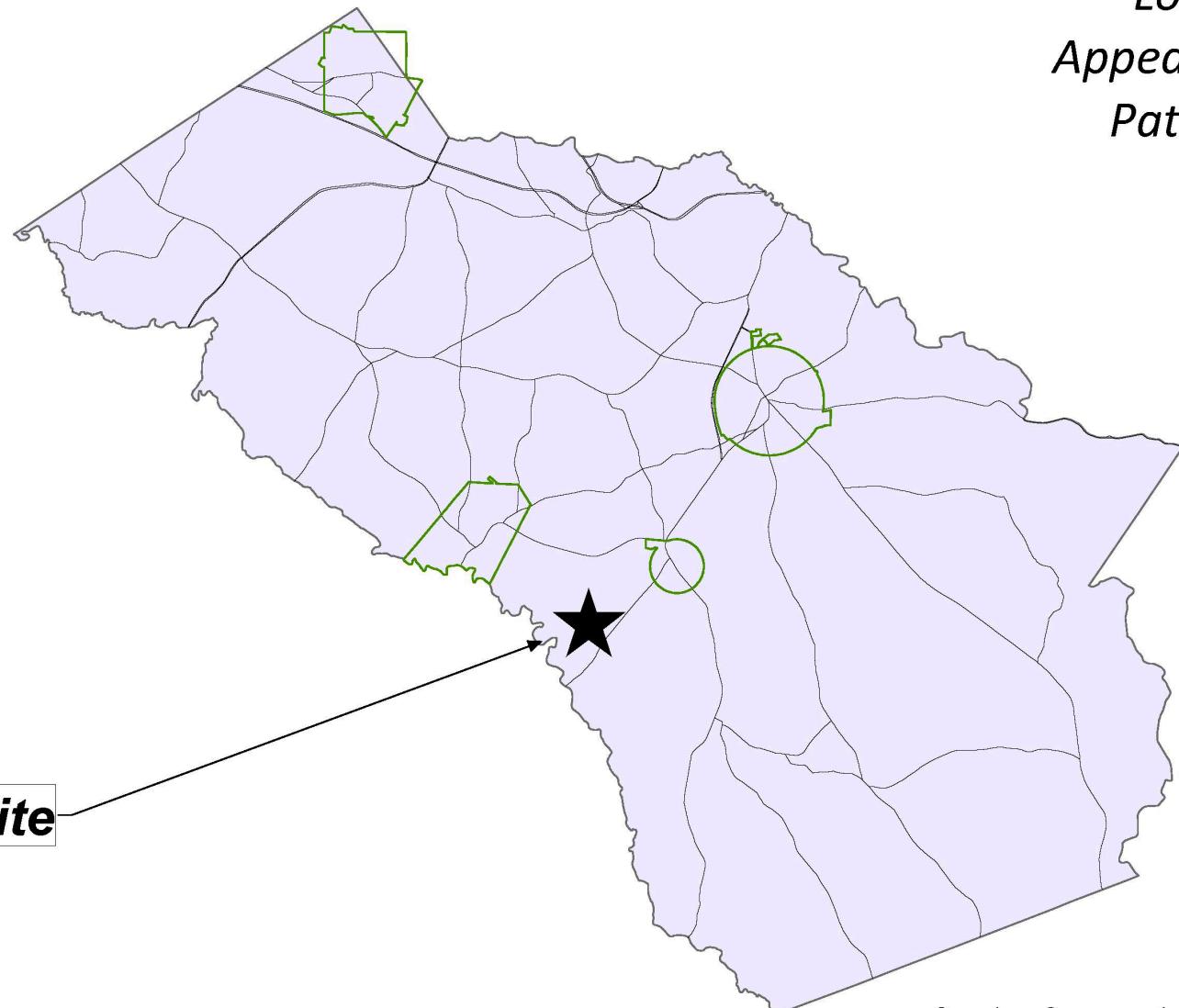
0 235 470 940 1,410 1,880

Feet



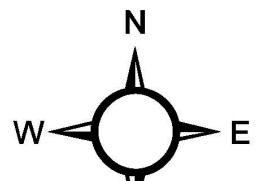


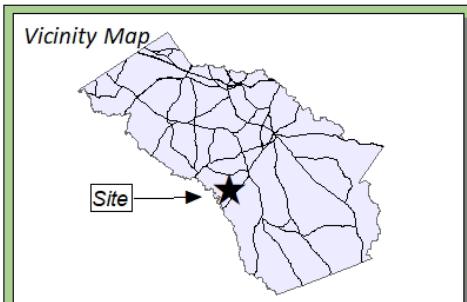
*Location Map -  
Appeal # P24-0124  
Patricia Harrison*



1:120,000

0 1 2 4 6 8 Miles





**Oconee County  
Planning Department**



This map is a representation of the future development map  
and should be used for planning purposes only

0 120 240 480 720 960  
Feet

*Rural Places*



*Agricultural Preservation*