

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.

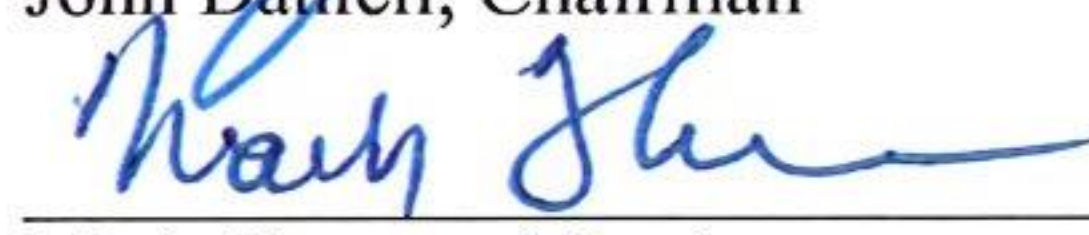
Said upholding of an Administrative Decision is supported by the documents: as set forth in "Exhibit A" attached hereto.

This 10th day of September, 2024.

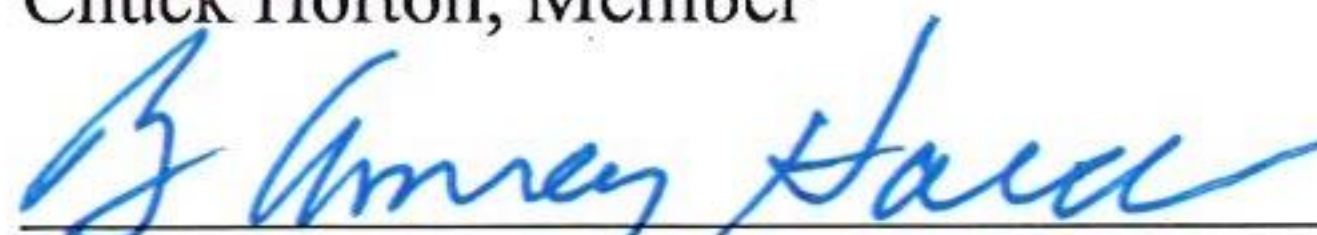
OCONEE COUNTY BOARD OF COMMISSIONERS

BY:


John Daniell, Chairman


Mark Thomas, Member


Chuck Horton, Member


Amrey Harden, Member

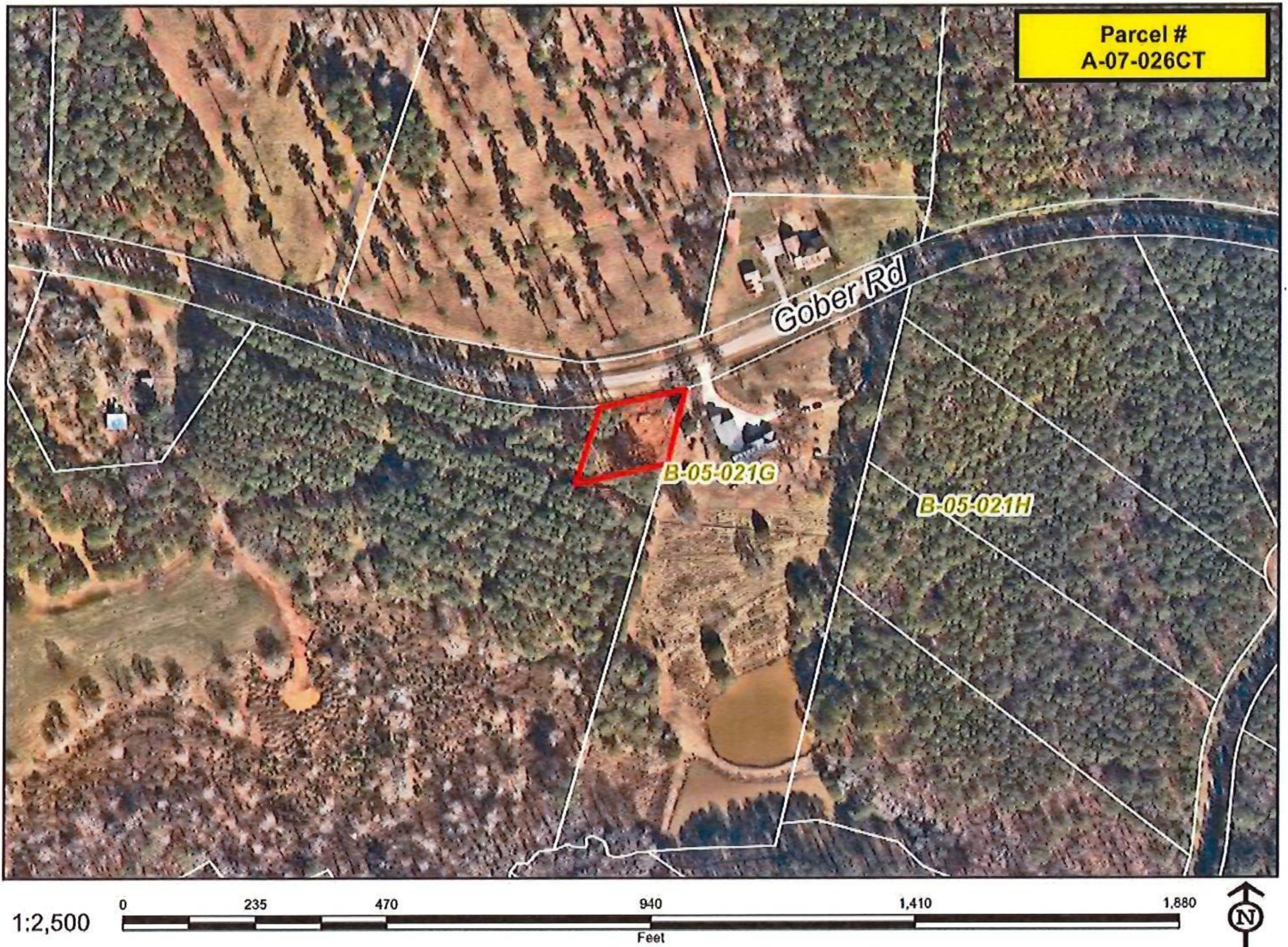

Mark Saxon, Member

ATTEST:


Holly Stephenson
Clerk, Board of Commissioners

TAX MAP

Appeal # P24-0124 - Patricia Harrison



INITIAL NOTICE

From: Guy Herring <gherring@oconee.ga.us>
Sent: Tuesday, May 21, 2024 10:45 AM
To: David Ellison <dfefbglaw.com>
Cc: Daniel Haygood <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. 960.60. 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

Oconee County Planning and Code Enforcement

7635 Macon Hwy, Suite 400

Watkinsville, GA 30677

706.769.3910 (o)

706.248.0378 (m)

www.OconeeCounty.com

NARRATIVE

FORTSON, BENTLEY AND GRIFFIN, P.A.

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DAVID K. UNDER
ROY E. MANOLL, III
WALTER W. HAYS, JR.
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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

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ATHENS, GEORGIA 30606
(706) 548-1151

CHRISTOPHER W. COLLINS
EMILY K. ESCOE
JOHNELLE SIMPSON, II
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

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

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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

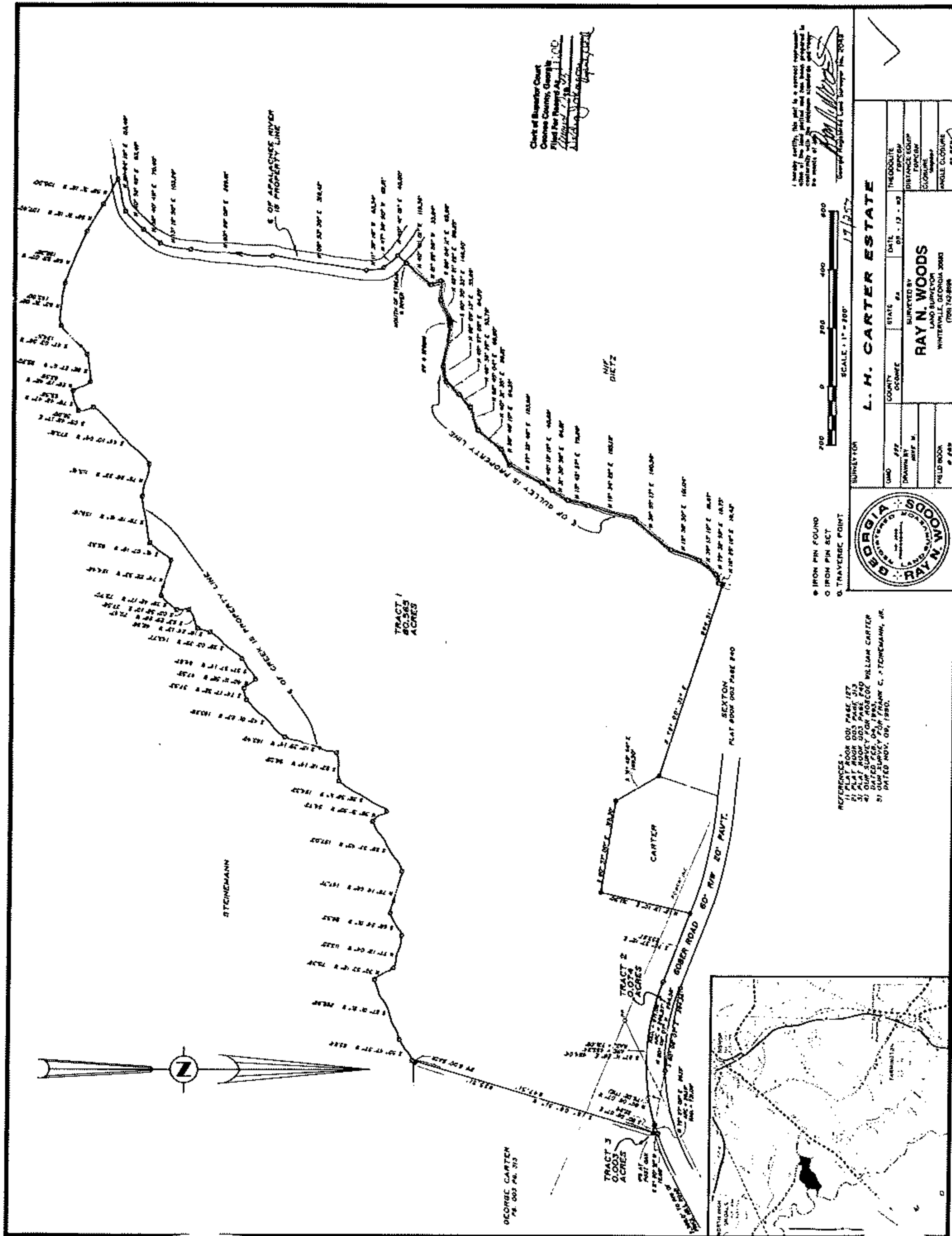
David F. Ellison

DFE/mtn

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

RECORDED PLAT

257

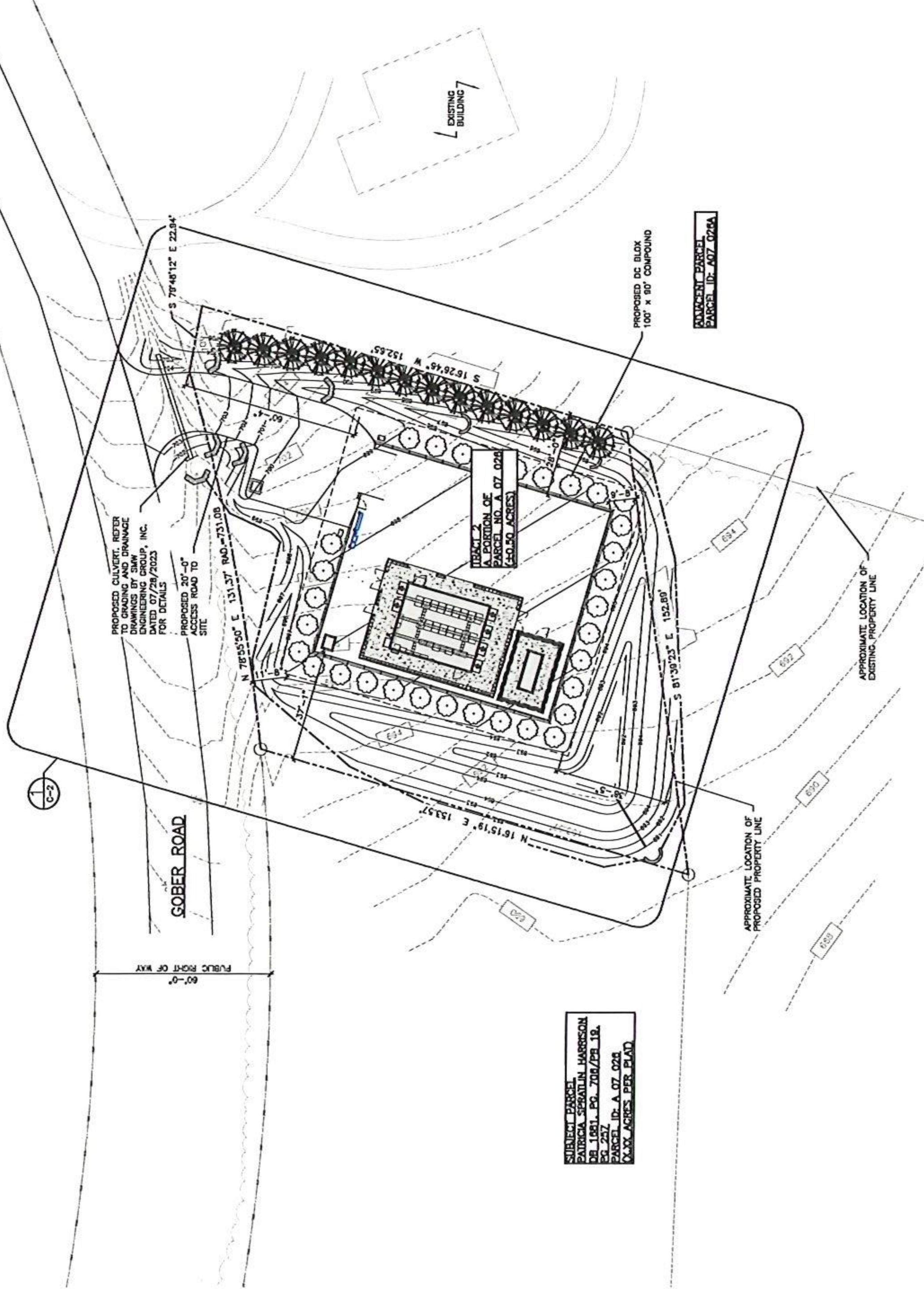


CONCEPT PLAN



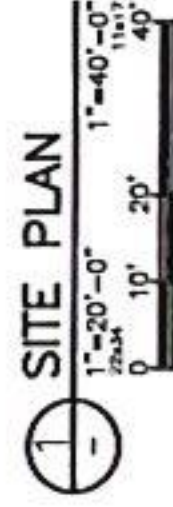
TRUE NORTH ARROW SHOWN ON
THIS DRAWING IS APPROXIMATE
ONLY AND MUST BE VERIFIED

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



SUBSEQUENT PARCEL
PATRICIA SEPATLIN HARRISON
DB 1881, PO. 706/PR 18,
PG. 237, ID: A-07 02A
40.50 ACRES PER PLAT

ADJACENT PARCEL
PARCEL ID: A07 020A



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 SURVEY.

LEGAL DESCRIPTION:

BEING A PORTION OF THE JOE L. HARRISON, III TRACT AS DESCRIBED IN DEED BOOK 1880, PAGE 3, AND PLAT BOOK 18, PAGE 183 AS RECORDED IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF COCKE COUNTY, GEORGIA, HAVING BEEN PART OF THE COCKE COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A FOUND AXLE, HAVING GEORGIA WEST STATE PLANE COORDINATES OF N 130°33'04.08" AND E 228°12'17.14" (THESE COORDINATES ARE FOR A DISTANCE OF 2.73 ACRES TRACT AS RECORDED IN DEED BOOK 1881, PAGE 706; THENCE S 31°21'20" E FOR A DISTANCE OF 169.05 FEET TO A 7" METAL POST MARKING A SOUTHWESTERLY CORNER OF A TRACT OF LAND AS DESCRIBED AND RECORDED IN BOOK 1880, PAGE 3 AND PLAT BOOK 18, PAGE 183, AND HAVING GEORGIA WEST STATE PLANE COORDINATES OF N130°33'04.08" E 228°12'17.14"; THENCE S 87°23'44" E FOR A DISTANCE OF 937.88 FEET TO A POINT AND THE POINT OF BEGINNING; THENCE N 16°08'51" E FOR A DISTANCE OF 155.27 FEET TO A POINT ON THE SOUTHERLY SIDE OF SOUTHERLY LINE OF GOBER ROAD; THENCE LEFT WITH A BEARING OF N 78°11'37" E AND A DISTANCE OF 131.89 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°08'07" E FOR A DISTANCE OF 22.84 FEET TO A POINT; THENCE S 60°08'51" W FOR A DISTANCE OF 154.29 FEET TO A POINT; THENCE S 91°30'23" E FOR A DISTANCE OF 152.80 FEET TO THE POINT OF BEGINNING. THIS TRACT OF LAND CONTAINS 21.8448 SQUARE FEET OR 0.50 ACRES, MORE OR LESS.



4515 S. MCCLINTOCK DR., SUITE 220
TEMPE, AZ 85282

PROJECT NO. 21060000

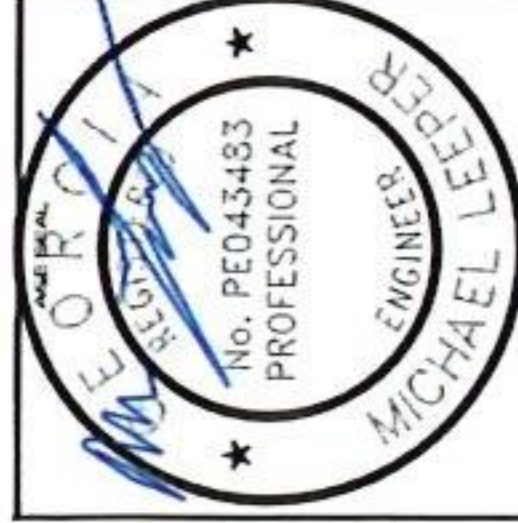
DRAWN BY: A.D.

CHECKED BY: L.C.

SUBMITTALS

6	NOV 30/23	REVISED PER COMMENTS	AD
5	NOV 16/23	REVISED PER COMMENTS	AD
4	NOV 09/23	THESES ADDED	AD
3	NOV 07/23	REVISED PER COMMENTS	AD
2	OCT 27/23	ISSUED FOR REVIEW	AD
1	AUG 01/23	FINAL CD	AD
C	JUL 06/23	REVISED PER COMMENTS	AD
B	JUL 06/23	REVISED PER COMMENTS	AD
A	FEB 24/23	ISSUED FOR REVIEW	AD

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PRELIMINARY IN NATURE AND IS NOT TO BE USED FOR ANY PURPOSES OTHER THAN THAT WHICH IS RELATED TO THE CLIENT'S PROJECT. IT IS STRICTLY PROHIBITED TO REPRODUCE OR TRANSMIT THIS INFORMATION IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER.



SITE
REGEN 2
HARRISON
2362 GOBER ROAD
BISHOP, GA 30621

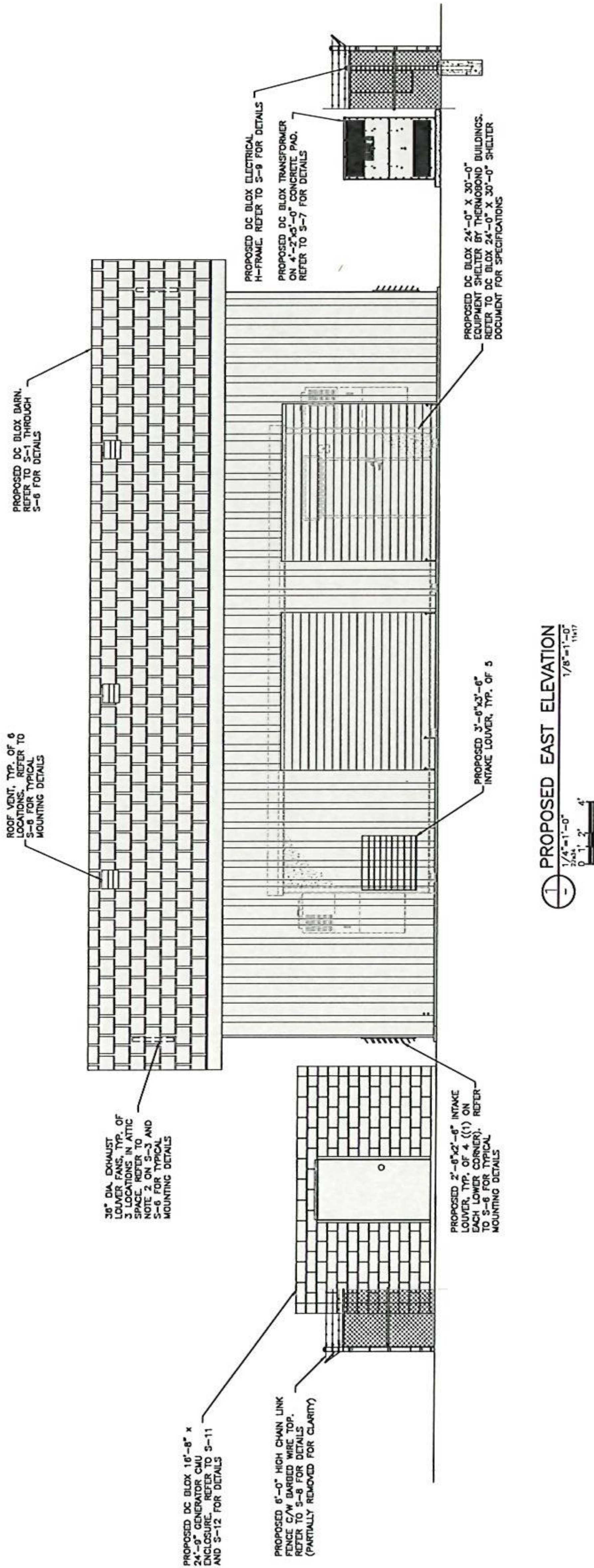
SHEET TITLE
SITE PLAN

SHEET NUMBER
C-1

ARCHITECTURAL IMAGES



APPROVED PLANS



Oconee County Memorandum

7635 Macon Hwy • Suite 400 • Watkinsville, GA 30677

P: (706) 769-3910

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

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:

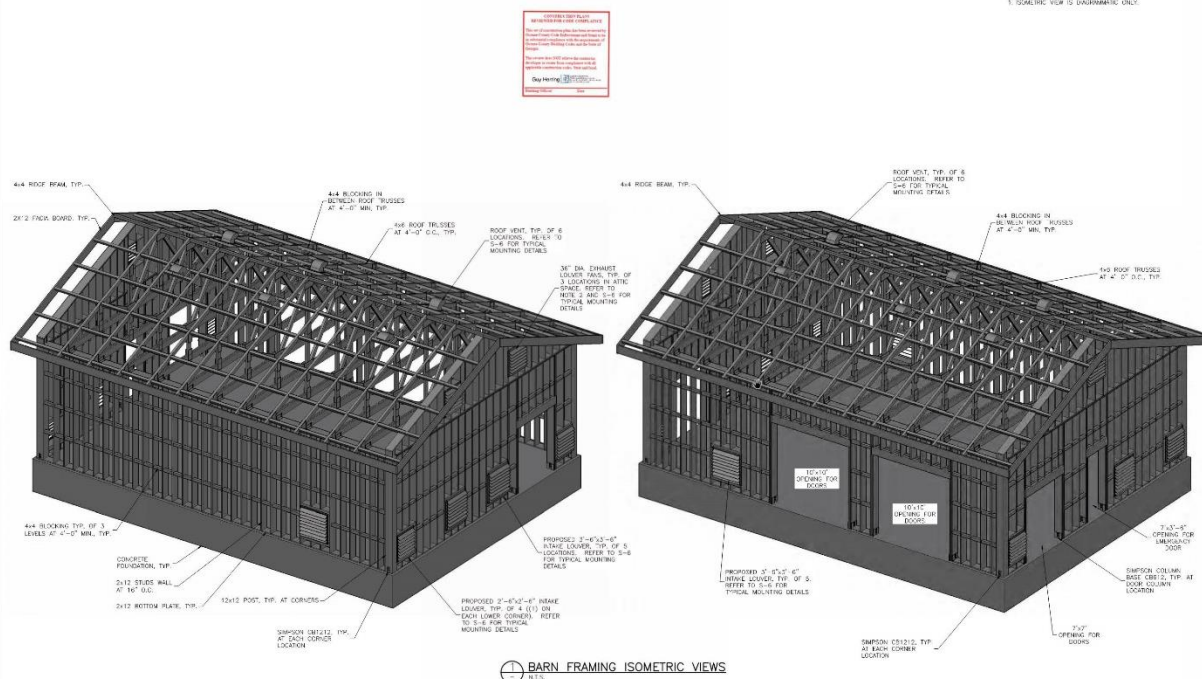
1. Operating without a Certificate of Occupancy
2. Building has not been constructed per the building plans.

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.

Equipment Shed inside the barn shell



NOTES:



CORE ON
CONSULTING

4515 S. MCCLINTOCK DR., SUITE 100
TEMPE, AZ 85282

1000

PROJECT NO. 2258-JCC

DELAWARE BY: _____	DATE: _____
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QUESTIONS

SUBMITTALS

6	NOV 20/23	REVISED PER COMMENT
5	NOV 15/23	REVISED PER COMMENT
4	NOV 09/11	THREE REDES
3	NOV 07/23	REVISED PER COMMENT
1	OCT 27/23	ISSUED FOR REVIEW
	AUG 01/23	FINAL CO's
0	JUL 07/25	REVISED PER COMMENT
0	JUL 06/23	REVISED PER COMMENT
0	APR 25/23	ISSUED FOR REVIEW
0	FEB 24/23	ISSUED FOR REVIEW

THE INFORMATION CONTAINED IN THIS DOCUMENT IS PROPRIETARY TO HANSON. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO THE CLIENT NAME IS STRICTLY PROHIBITED.

A circular professional engineer seal for the State of Georgia. The outer ring contains the text "GEORGIA" at the top and "MICHAEL LEEPER" at the bottom. Inside the ring, the text "PROFESSIONAL ENGINEER" is written around a central star. The center of the seal contains the text "No. PE043483" and "PROFESSIONAL ENGINEER". There is a blue ink signature across the seal.

REGEN 2
HARRISON
2362 GOBER RD
BISHOP, GA 30611

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

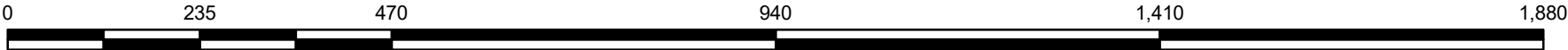
Parcel #
A-07-026CT

Gober Rd

B-05-021G

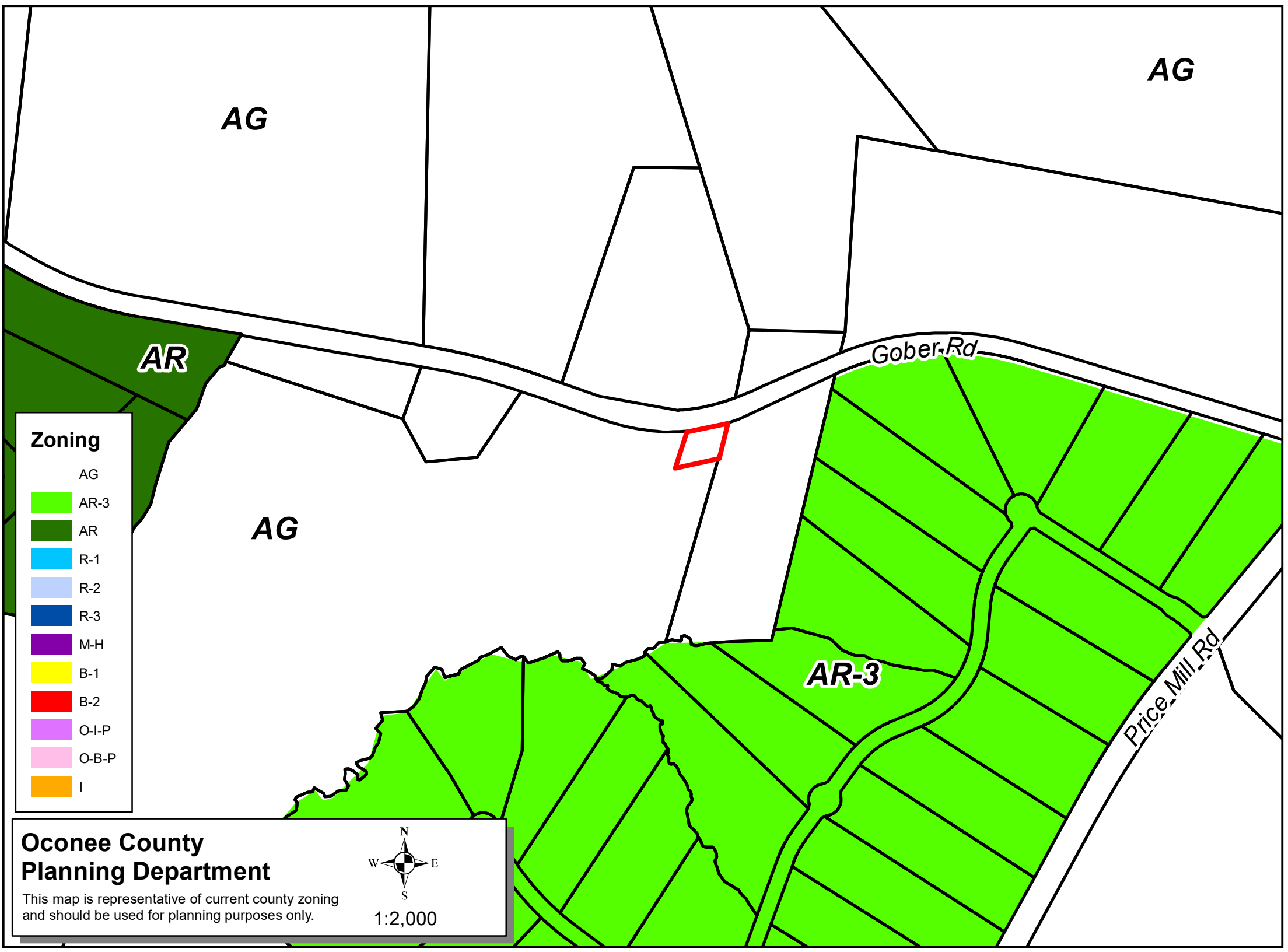
B-05-021H

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Feet



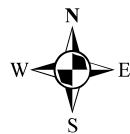


Zoning

- AG
- AR-3
- AR
- R-1
- R-2
- R-3
- M-H
- B-1
- B-2
- O-I-P
- O-B-P
- I

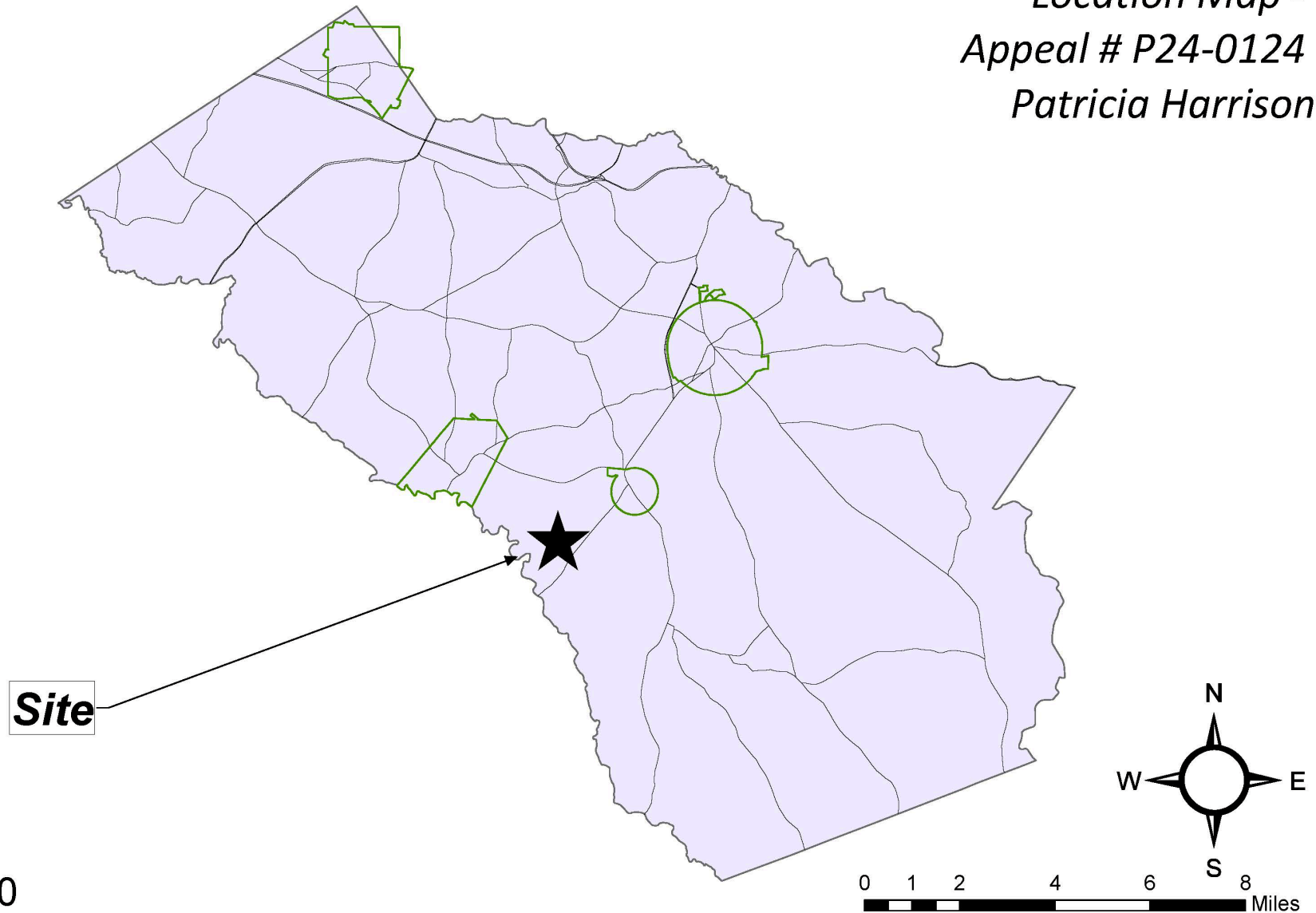
Oconee County Planning Department

This map is representative of current county zoning
and should be used for planning purposes only.



1:2,000

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



1:120,000

