



STAFF REPORT

MORGAN COUNTY PLANNING COMMISSION

PETITION FOR: ZONING MAP AMENDMENT

Property location:	1361 Grayson Pointe Drive, Buckhead, Georgia 30625
Property tax parcel:	064C-013
Acreage:	1.17 acres
Applicant:	Christine May, 72 Blackburn Road, Summit, New Jersey 07901
Applicant's Agent:	N/A
Property Owner:	Christine May, 72 Blackburn Road, Summit, New Jersey 07901
Existing Zoning:	Lakeshore Low Density Residential (LR1)
Proposed Zoning:	Lakeshore High Density Residential (LR3)

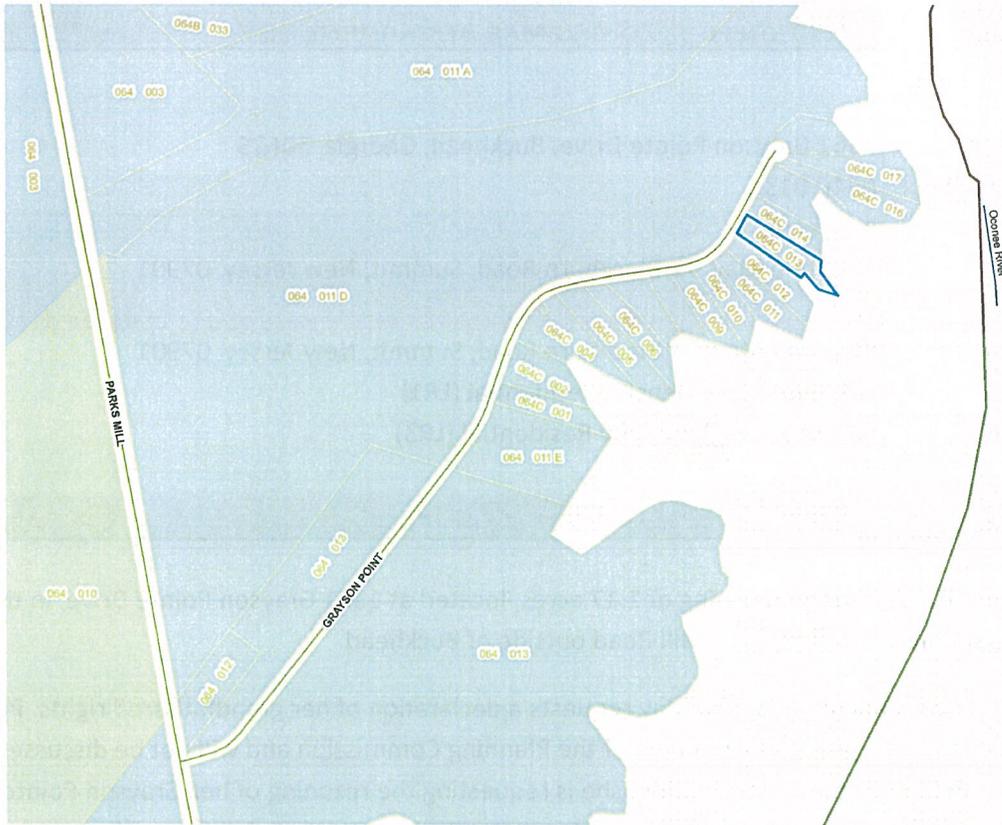
Summary

Christine May has requested the rezoning of 1.17 acres, located at 1361 Grayson Pointe Drive, in the Grayson Pointe subdivision off of Parks Mill Road outside of Buckhead.

In the attached support documents, Ms. May requests a declaration of her grandfathered rights. Please note that this action is outside of the purview of the Planning Commission and will not be discussed. As an alternative to the above mentioned action, she is requesting the rezoning of her Grayson Pointe property to LR3 from LR1. Please also note that the support documents contain information regarding previous legal actions regarding Ms. May's use of the property as a short term rental. As you are aware, the decision to rezone a property is based on the criteria outlined in the Morgan County Zoning Ordinance and not on the proposed use. Therefore, discussion regarding the proposed use and any legal actions regarding the past use should be kept to a minimum.

History of prior zoning actions

One prior zoning action has been requested for this property. The applicant requested a variance to the rear yard setback in June 2004. The application was withdrawn until July, and then withdrawn again until August. The Planning Commission made a recommendation to not approve the application. The application was tabled at the September Board of Commissioners meeting and withdrawn from the October agenda by the applicant's attorney. No further discussion regarding the application was found in the BOC Minutes. See attached excerpts from the August 26, 2004 Planning Commission meeting, and from the September 14, 2004 and October 5, 2004 Board of Commissioners meetings.



The zoning map for the area shows the subject parcel is zoned Lakeshore Low Density Residential (LR1) (light blue). The entire Grayson Point subdivision is zoned LR1, as well and all of the lakeshore property surrounding the subdivision. Agricultural Residential (AR)(light green) zoning is located across Parks Mill Road.

Requirements for Zoning Districts

The current requirements for LR1 are a minimum of 1.5 acres and 100 feet of road frontage. However, the Grayson Point subdivision was developed under the 1989 zoning regulations which required a minimum of 1 acre and 100 foot of read frontage.

The current requirements for the requested zoning of LR3 are a minimum of 1 acre and 100 foot of road frontage. If rezoned, the property could not be divided.

From Article 4, the descriptions of the zoning districts are as follows:

Chapter 4.16 Lakeshore Low Density Residential District (LR1)

The purpose of the LR-1 District is to encourage the development of low density, single family residential neighborhoods, and certain uses allied to or customarily incidental to traditional residential developments, while stressing the preservation of the natural beauty of the lakeshore line and surrounding land.

This district is appropriately located in areas shown as lake community on the Future Land Use Map of the Comprehensive Plan.

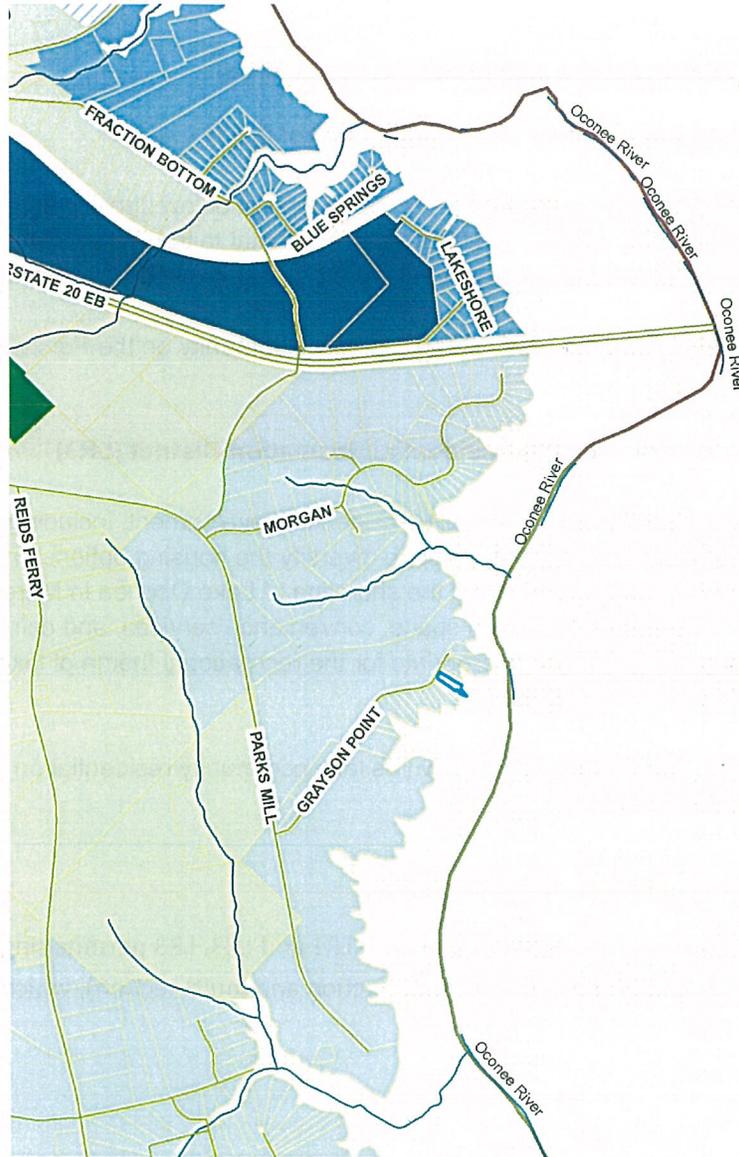
Chapter 4.18 Lakeshore High Density Residential/Recreation District (LR3)

The LR3 district provides areas for higher intensity residential development, including the development of apartment homes, condominiums and townhouses to diversify the housing options and provide opportunities for second home properties along the shoreline of Lake Oconee in Morgan County. This district is also intended to accommodate open space, convenience services, and community facilities that compliment higher density living and are appropriate for the recreational theme of lakeside living, as part of a designed master plan and development.

This district is appropriately located in areas shown as lake community residential on the Future Land Use Map of the Comprehensive Plan.

Permitted Uses

Single family detached dwellings are permitted in both LR1 and LR3. LR3 permits single family attached, multi-family, and manufactured homes (both single section and multi section), which are prohibited in LR1.



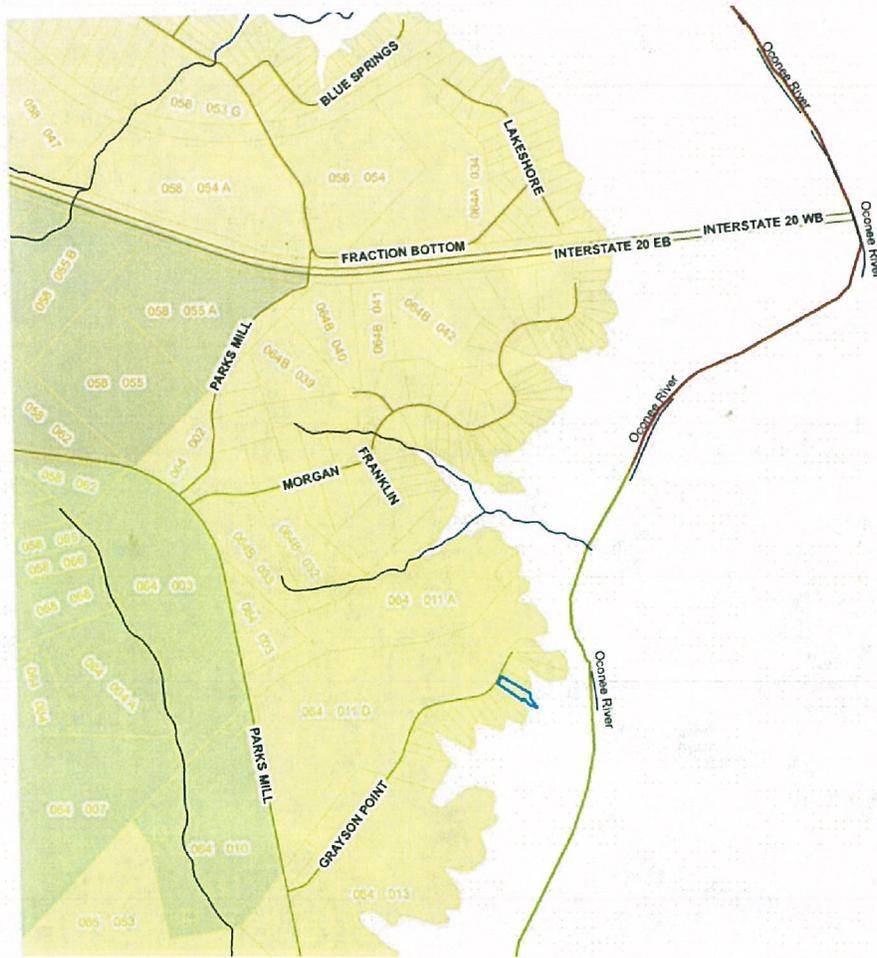
A wider view of the area zoning shows that the LR1 zoning continues along Lake Oconee to the south. Above I-20, there are areas of Lakeshore Medium Density Residential (LR2)(medium blue) and Lakeshore High Density Residential (LR3)(dark blue).



An aerial shows that the property contains one single family residence. The Tax Assessor's records show the house as 2,726 square feet and constructed in 2007. One expired remodel building permit was issued for the property in 2011. No inspections have been requested since February 2012 and no Certificate of Occupancy was issued.

Comprehensive Plan and Future Land Use Map

The Comprehensive Plan states that the lakeshore residential areas should focus on high quality development and environmental sensitivity. From Chapter 6 of the Morgan County Comprehensive Plan: *The area of the unincorporated county that is adjacent to and include Lake Oconee is a unique resource for Morgan County and adjacent Greene and Putnam counties. While Morgan County does not have direct jurisdiction over Lake Oconee or its immediate buffers, the County does have jurisdiction over the adjacent areas that are identified as Lake Community Residential. Due to the desirability of development in this area, special regulations and guidelines should be established to ensure high quality development and environmental sensitivity.*



The future Land Use Map shows the subject parcel and surrounding area as Lake Community Residential (yellow). Note that the area above I-20 is also identified as Lake Community Residential, indicating that the current zoning and the proposed zoning would both be part of this future land use district.

Criteria for Consideration

(Please note that the criteria below are bulleted in the Morgan County Zoning Ordinance. They are numbered here for ease of use. Staff comments are written in blue.

1. Compatibility with Adjacent Uses and Districts: Existing uses and use districts of surrounding and nearby properties, whether the proposed use district is suitable in light of such existing uses and use districts of surrounding and nearby properties, and whether the proposal will adversely affect the existing use or usability of adjacent or nearby properties. There is no LR3 zoned property in the immediate vicinity; the closest LR3 zoned property is above I-20.
2. Property Value: The existing value of the property contained in the petition under the existing use district classification, the extent to which the property value of the subject property is diminished by the existing use district classification, and whether the subject property has a reasonable economic use under the current use district. The Tax Assessors have the property value listed as \$600,600 (total of \$270,000 land, \$319,800 house and \$10,800 accessory value). Changing the zoning classification should have no effect on the property value, although property taxes could go up if the use is changed from a single family home to an income generating use.
3. Suitability: The suitability of the subject property under the existing use district classification, and the suitability of the subject property under the proposed use district classification. The current zoning classification is suitable for the property, as the subdivision was created as a single family residential neighborhood and the existing structure is a single family home. The proposed zoning classification would be incompatible with the surrounding zoning and is, therefore, unsuitable.
4. Vacancy and Marketing: The length of time the property has been vacant or unused as currently used under the current use district classification; and any efforts taken by the property owner(s) to use the property or sell the property under the existing use district classification. The subject property is not currently for sale, but Staff understands that the house has been for sale in the past. The applicant will need to answer any questions related to the length of time the property was for sale and why it was removed from the market.
5. Evidence of Need: The amount of undeveloped land in the general area affected which has the same use district classification as the map change requested. It shall be the duty of the applicant to carry the burden of proof that the proposed application promotes public health, safety, morality or general welfare. There are still several undeveloped lots in the Grayson Pointe subdivision. However, the subdivision was created as a single family neighborhood and a single family home already exists on the property. Therefore, there is no evidence of need, as the property was developed according to the proposed use of the subdivision.
6. Public Facilities Impacts: Whether the proposal will result in a use, which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks or other public facilities and services. The impact to public facilities, should the property be rezoned, could result in additional uses of existing streets, and other public facility services. For

instance, if the residence is to be used, as proposed by the applicant, as a short term rental, there could be an increase in traffic and litter, as well as a potential increase in law enforcement and fire calls and responses, due to the transitory nature of the primary occupants of the residence. Such additional uses could become excessive or burdensome.

7. Consistency with Comprehensive Plan: Whether the proposal is in conformity with the policy and intent of the locally adopted comprehensive plan. Both the existing zoning classification and the proposed zoning classification are identified as Lakeshore Community Residential on the Future Land Use Map. Therefore, the rezoning would have no effect on the Future Land Use Map. Regarding the Comp Plan language that *high quality development and environmental sensitivity* is desired in the lakeshore area, the language is ambiguous and would be difficult to qualify or quantify its application to the rezoning request.
8. Other Conditions: Whether there are any other existing or changing conditions affecting the use and development of the property that give supporting grounds for either approval or disapproval of the proposal. There has been strong opposition to any presentation given by the applicant and it is probable that neighbors will attend the public hearing to voice opposition. Opponents and proponents for the application should be kept on topic, which is the rezoning and whether the proposed zoning district is appropriate for the location.

Staff Comments

Staff opinion is that the criteria does not support the rezoning of the property. The property value will not be diminished, evidence of need has not been presented and the proposed zoning district, with its emphasis on high density and multi-family uses, is unsuitable in a single family neighborhood. The most concerning issue, however, is the compatibility with the surrounding zoning districts; rezoning to LR3 would result in spot zoning.

Based on the comments above, Staff suggests the following recommendation:

Recommendation to the Board of Commissioners to deny the rezoning of 1.17 acres located at 1361 Grayson Pointe Drive due to failure to satisfy the first, second, third and fifth criteria for zoning map amendments in the Morgan County Zoning Ordinance.

Christine May
1361 Grayson Pointe Drive
Buckhead, GA 30625

AMENDED DESCRIPTION OF REQUEST FOR REZONING

I, Christine May, file this petition to ask the commission for a declaration of my grandfathered right to rent my property for periods of less than 30 days and for damages under 42 U.S.C. §§ 1983 and 1988 resulting from Morgan County's failure to recognize this right, including but not limited to lost rental income, attorneys' fees and costs of litigation. In the alternative, pursuant to my proven grandfathered right to rent for periods of less than 30 days and in order to avoid further injustice, I seek to be rezoned to LR3, a classification that allows rentals for periods of less than 30 days as a conditional use.

I. Background

In 2012, after receiving a criminal citation for renting my home for periods of less than 30 days, I initiated legal action against Morgan County to have my grandfathered right to rent for periods of less than 30 days recognized. Judge Wingfield of the Superior Court of Morgan County originally ruled that because I lawfully rented my lake house prior to the County's new Regulation 15.35 (now Morgan County Zoning Ordinance Chapter 7.29) I had a grandfathered right to continue to do so.¹ Morgan County appealed Judge Wingfield's ruling to the Georgia Court of Appeals, claiming that I had not followed the appropriate procedural process before asserting my claim to have my grandfathered rights recognized. The County claimed that I was required to exhaust my administrative remedies prior to

¹ In his original order Judge Wingfield failed to address my claims that Regulation 15.35 as enacted is unconstitutional on its face. Should the Committee fail to recognize my rights to rent my property, I intend not only to pursue my grandfathered right to rent, but also my constitutional claim against the validity of Morgan County's short term rental ban. For further discussion of my constitutional claims against the validity of Morgan County's short term rental ban, see Plaintiff's Post-Trial Brief, Section B, attached hereto.

bringing my claim in Superior Court. The Court of Appeals remanded the case back to the trial court to determine whether I had in fact exhausted my administrative remedies and appealed within the proper timeframe. Judge Wingfield found that I had not exhausted my administrative remedies or appealed within the proper timeframe,² and for that reason, all of my claims failed. The Court of Appeals refused to hear my appeal of that decision. I am now filing this application to address the procedural steps the County says I must follow.

II. Applicable Law and Analysis

Morgan County Zoning Ordinance Chapter 7.29, formerly Regulation 15.35, prohibits short-term rentals except where specifically allowed as a conditional use. However, Georgia law and the Morgan County Zoning Ordinance both recognize a property owner's right to a grandfathered use. Morgan County Zoning Ordinance Chapter 8.3, "Continuation of Non-conforming Uses," reads "[t]he lawful use of any building, structure or land existing at the time of the enactment of this Ordinance may be continued, even though such use does not conform with the provisions of this Ordinance...." *See also Henry v. Cherokee County*, 290 Ga. App. 355 (2008) ("In order to establish a grandfathered, nonconforming use, it is necessary to show that the land was used for the nonconforming purpose prior to the enactment of the zoning ordinance."); *Flippen Alliance for Community Empowerment, Inc. v. Brannan*, 267 Ga. App. 134, 136, 601 S.E2d 106, 109 (2004) ("It is incumbent upon one seeking to use the property for a non-conforming use after the rezoning ordinance to show that his prior use of the property was legal and not unlawful.").

² Judge Wingfield's order did not specify the proper timeframe for appealing a zoning decision. I rely upon my letter to Danielle in the Planning Commission's office (attached to Application for Rezoning or Text Amendment), along with County Attorney Christian Henry's assertion that I could still apply for rezoning as of May 21, 2014 (See Defendant's Brief in Opposition to Plaintiff's Motion to Amend, Motion for Reconsideration, and Motion for New Trial, pp. 11-12 ("**Nothing prevents Plaintiff from applying to rezone her property now and appealing the denial of that decision to this Court within 30 days.**") to support my assertion that this Application is timely.

These and other similar cases, as well as Chapter 8.3 of the Zoning Ordinance, contain no requirement that grandfathered rights must be validated through the zoning commission or the superior court in order to be effective. Morgan County has unceasingly attempted to enforce the short-term rental ban laid out in Chapter 7.29 against me, despite the fact that I validly rented my home for periods of less than 30 days prior to the enactment of Regulation 15.35. This enforcement of the short-term rental ban against me constitutes a violation of my vested property right to continue renting as set forth in Chapter 8.3 and by well-settled Georgia law.

Based on the clear law establishing my right to rent my home as I did prior to the enactment of Morgan County's short term rental ban, I ask the Commission to declare that it is my right to rent my home for periods of less than 30 days regardless of the limitations on that action set out by Chapter 7.29 and award me damages in the amount of my lost rental income and the attorneys' fees and costs of litigation I have incurred pursuing this right. Should the Commission decline to declare my right to rent and my right to damages, and in order to avoid further injustice, I respectfully ask them to rezone my property to LR3 where short term rentals are allowed as conditional uses.

III. Conclusion

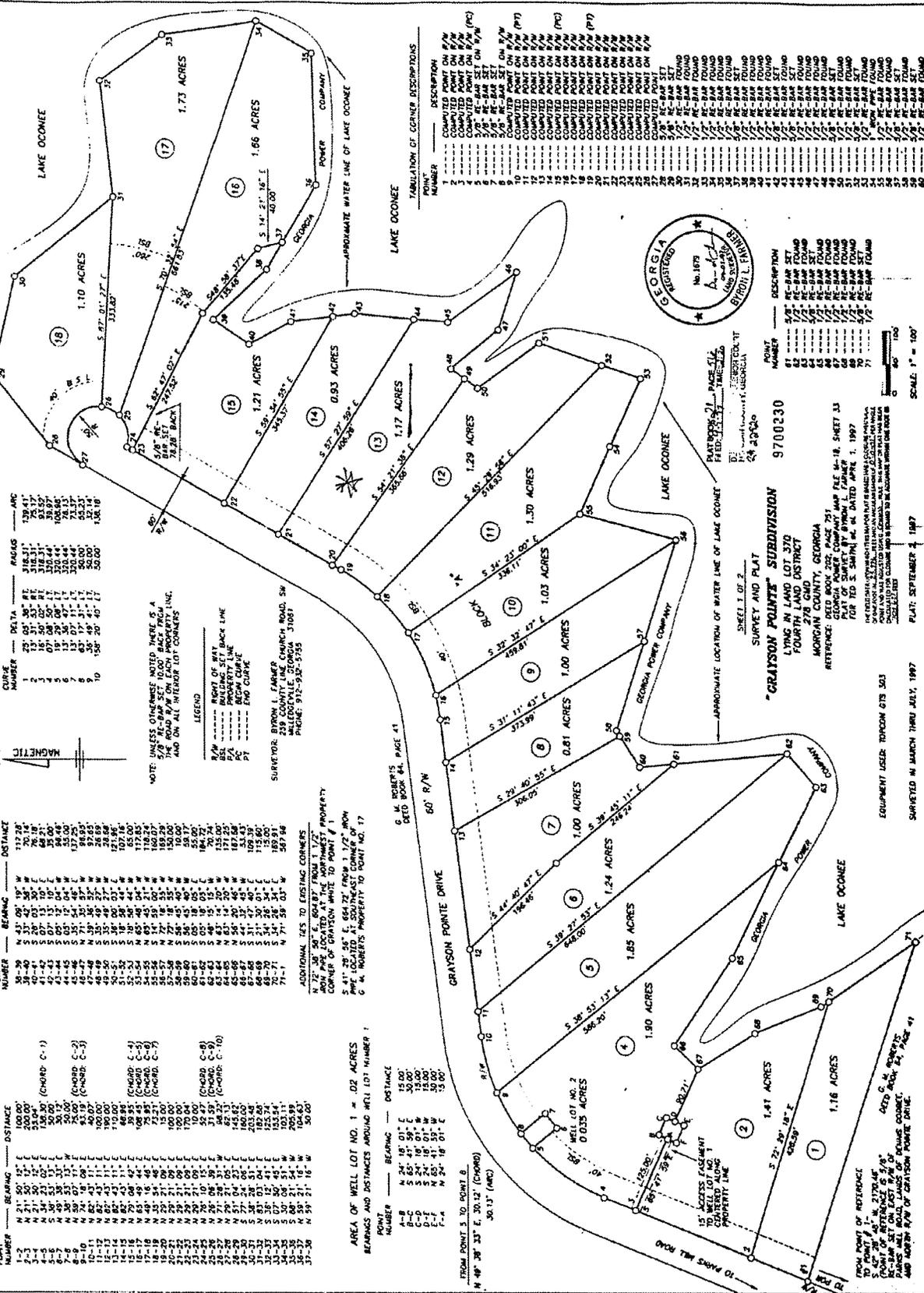
My house is an upscale, custom-designed and built timberframe structure that I want to rent only to families that will use the house to enjoy the lake and each other's company, just as my family and I do when we visit the house. Although I am in no way required to do so, I interview all potential renters to protect my property (and the community at large) from renters that will be deleterious to the home or the neighborhood. The effect of my renting my home for periods of less than 30 days on my neighbors and the community as a whole is minimal and cannot overcome my right to rent my home as I did

prior to the enactment of Morgan County's short-term rental ban. Furthermore, the people who can afford to rent my house will be excellent customers for the County's stores and restaurants. Notwithstanding the legal obligation to do so, it is in the best interest of Morgan County to allow me to continue renting my property for periods of less than 30 days.

If the Commission allows political influence to overcome justice and fails to recognize my right to rent for periods of less than 30 days, I will be forced to sell my family's dream home that took me years to laboriously and lovingly design and build for my enjoyment and the enjoyment of my three children and eight grandchildren. We have had many wonderful memories at the house for the past seven years, but I cannot financially support the house without the income from short-term rentals. I relied very heavily on my right and ability to rent on a short-term basis in deciding whether to build my lake home, and I pray that Morgan County will do nothing further to interfere with that right.

In conclusion, I ask the Commission to recognize and respect my grandfathered rights and to grant the relief requested by my application.

G. M. ROBERTS
DEED BOOK PAGE 41



BEARINGS AND DISTANCES AROUND PERIMETER

POINT NUMBER	BEARING	DISTANCE
1-2	N 21° 50' 18" E	100.00'
2-3	N 21° 50' 18" E	200.00'
3-4	N 34° 23' 05" E	138.30'
4-5	N 30° 53' 33" W	50.00'
5-6	N 30° 53' 33" W	50.00'
6-7	N 30° 53' 33" W	50.00'
7-8	N 30° 53' 33" W	50.00'
8-9	N 30° 53' 33" W	50.00'
9-10	N 30° 53' 33" W	50.00'
10-11	N 30° 53' 33" W	50.00'
11-12	N 30° 53' 33" W	50.00'
12-13	N 30° 53' 33" W	50.00'
13-14	N 30° 53' 33" W	50.00'
14-15	N 30° 53' 33" W	50.00'
15-16	N 30° 53' 33" W	50.00'
16-17	N 30° 53' 33" W	50.00'
17-18	N 30° 53' 33" W	50.00'
18-19	N 30° 53' 33" W	50.00'
19-20	N 30° 53' 33" W	50.00'
20-21	N 30° 53' 33" W	50.00'
21-22	N 30° 53' 33" W	50.00'
22-23	N 30° 53' 33" W	50.00'
23-24	N 30° 53' 33" W	50.00'
24-25	N 30° 53' 33" W	50.00'
25-26	N 30° 53' 33" W	50.00'
26-27	N 30° 53' 33" W	50.00'
27-28	N 30° 53' 33" W	50.00'
28-29	N 30° 53' 33" W	50.00'
29-30	N 30° 53' 33" W	50.00'
30-31	N 30° 53' 33" W	50.00'
31-32	N 30° 53' 33" W	50.00'
32-33	N 30° 53' 33" W	50.00'
33-34	N 30° 53' 33" W	50.00'
34-35	N 30° 53' 33" W	50.00'
35-36	N 30° 53' 33" W	50.00'
36-37	N 30° 53' 33" W	50.00'
37-38	N 30° 53' 33" W	50.00'

CURVE DATA

CURVE NUMBER	DELTA	RADIUS	ARC
1	29° 05' 30" E	316.31'	129.41'
2	181° 50' 02" E	316.31'	83.57'
3	0° 00' 00" E	316.31'	316.31'
4	0° 00' 00" E	316.31'	316.31'
5	0° 00' 00" E	316.31'	316.31'
6	131° 56' 37" E	316.31'	108.84'
7	131° 56' 37" E	316.31'	108.84'
8	43° 17' 31" E	316.31'	122.14'
9	38° 49' 41" E	316.31'	132.14'
10	158° 20' 40" E	316.31'	138.18'

TABULATION OF CORNER DESCRIPTIONS

NUMBER	DESCRIPTION
1	COMPUTED POINT ON R/W
2	COMPUTED POINT ON R/W
3	COMPUTED POINT ON R/W
4	COMPUTED POINT ON R/W
5	COMPUTED POINT ON R/W
6	COMPUTED POINT ON R/W
7	COMPUTED POINT ON R/W
8	COMPUTED POINT ON R/W
9	COMPUTED POINT ON R/W
10	COMPUTED POINT ON R/W
11	COMPUTED POINT ON R/W
12	COMPUTED POINT ON R/W
13	COMPUTED POINT ON R/W
14	COMPUTED POINT ON R/W
15	COMPUTED POINT ON R/W
16	COMPUTED POINT ON R/W
17	COMPUTED POINT ON R/W
18	COMPUTED POINT ON R/W
19	COMPUTED POINT ON R/W
20	COMPUTED POINT ON R/W
21	COMPUTED POINT ON R/W
22	COMPUTED POINT ON R/W
23	COMPUTED POINT ON R/W
24	COMPUTED POINT ON R/W
25	COMPUTED POINT ON R/W
26	COMPUTED POINT ON R/W
27	COMPUTED POINT ON R/W
28	COMPUTED POINT ON R/W
29	COMPUTED POINT ON R/W
30	COMPUTED POINT ON R/W
31	COMPUTED POINT ON R/W
32	COMPUTED POINT ON R/W
33	COMPUTED POINT ON R/W
34	COMPUTED POINT ON R/W
35	COMPUTED POINT ON R/W
36	COMPUTED POINT ON R/W
37	COMPUTED POINT ON R/W
38	COMPUTED POINT ON R/W
39	COMPUTED POINT ON R/W
40	COMPUTED POINT ON R/W
41	COMPUTED POINT ON R/W
42	COMPUTED POINT ON R/W
43	COMPUTED POINT ON R/W
44	COMPUTED POINT ON R/W
45	COMPUTED POINT ON R/W
46	COMPUTED POINT ON R/W
47	COMPUTED POINT ON R/W
48	COMPUTED POINT ON R/W
49	COMPUTED POINT ON R/W
50	COMPUTED POINT ON R/W
51	COMPUTED POINT ON R/W
52	COMPUTED POINT ON R/W
53	COMPUTED POINT ON R/W
54	COMPUTED POINT ON R/W
55	COMPUTED POINT ON R/W
56	COMPUTED POINT ON R/W
57	COMPUTED POINT ON R/W
58	COMPUTED POINT ON R/W
59	COMPUTED POINT ON R/W
60	COMPUTED POINT ON R/W

AREA OF WELL LOT NO. 1 = .02 ACRES

BEARINGS AND DISTANCES AROUND WELL LOT NUMBER 1

POINT NUMBER	BEARING	DISTANCE
A-B	N 24° 18' 01" E	15.00'
B-C	S 65° 43' 38" E	30.00'
C-D	S 24° 18' 01" W	15.00'
D-A	N 50° 18' 01" W	15.00'

ADDITIONAL LOTS TO EXISTING CORNERS

N 72° 38' 50" E, 604.87' FROM 1/2" CORNER LOCATED AT THE NORTHEAST PROPERTY CORNER OF SECTION 16, T12N, R10W, P1E. LOCATED AT SOUTHWEST CORNER OF G. M. ROBERTS' PROPERTY TO POINT NO. 17

LEGEND

- R/W RIGHT OF WAY
- P/W PROPERTY LINE
- BE- BEYOND CURVE
- PI- POINT OF INTERSECTION
- END CURVE

NOTE: UNLESS OTHERWISE NOTED THERE IS A 7/8" ROAD W/IN EACH PARCELS LINE AND ON ALL INTERIOR LOT CORNERS.

SURVEYOR: BYRON L. JAMES
1100 W. MARKET ROAD, SW
MILLEDGEVILLE, GEORGIA 31061
PHONE: 912-932-5955

APPROXIMATE LOCATION OF WATER LINE OF LAKE OCONEE

1.73 ACRES

1.66 ACRES

1.10 ACRES

1.21 ACRES

0.93 ACRES

1.17 ACRES

1.29 ACRES

1.30 ACRES

1.03 ACRES

1.00 ACRES

0.81 ACRES

1.24 ACRES

1.85 ACRES

1.90 ACRES

1.41 ACRES

1.16 ACRES

EXCERPT FROM PLANNING COMMISSION MINUTES AUGUST 26, 2004

III. **Christine May.** Ms. May is requesting a variance to section 8.1 Notes: A5 of the Morgan County Zoning Ordinance which requires a 40 foot setback from the Georgia Power lake right-of-way on property located at 1361 Grayson Pointe Drive, Buckhead, Georgia (Map 064C – Parcel 013).

Dr. Wade called upon Allison Moon to present the application and staff report.

Ms. Moon stated that Ms. May was requesting a waiver to the 40 foot setback requirement from the Georgia Power right of way at Lake Oconee. Ms. Moon also indicated that Section 4.3.1 of the Morgan County Development Regulations mandates that the construction of buildings be protected against flood damage at the time of initial construction. Chuck Jarrell had asked the applicant to submit a base flood elevation survey and/ or a letter of map amendment to clarify whether the property was located in a flood plain. Based on the Flood Insurance Rate Map (F.I.R.M.) data utilized by Morgan County, the location where Ms. May planned to build her house would be located within the flood plain.

Ms. Moon also specified that there was no indication of topographical hardship relevant to Ms. May's property. There was no indication that denying the variance would create a detriment to the value of the land. There had been no previous variance requests for other properties within Grayson Pointe subdivision, and allowing the variance to Ms. May's property may confer upon her a special privilege, which would be in conflict with the stipulations for granting a variance. Ms. Moon referenced the survey in the staff report which indicated the values of land, residential, and accessory building improvements of the lots in Grayson Pointe subdivision.

Joe Reitman presented the petition on behalf of Ms. May. He provided Commission members with a color-coded topographical map of Ms. May's property. Full pool level for Lake Oconee is at 435 feet. He indicated that point 48 of the Georgia Power right-of-way was placed in an irregular location. He suggests that typically the Georgia Power right-of-way is approximately 30-40 feet from the lake, but the placement of point 48 created a right-of-way that is approximately 100 feet away from the lake. Mr. Reitman suggested that the spirit and intent of the ordinance was to make sure that there was an adequate buffer between the home site and the lake. His client wished to shorten the 40 foot setback to approximately 15 feet, which would still, in his opinion be an adequate buffer between the home site and the lake. Mr. Reitman indicated that they would be willing to accept a conditional variance or development agreement to ensure that the home site is no more than 100 feet from the lake.

Mr. Reitman referenced a treatise known as "Georgia Jurisprudence," which deals with hardship and practical difficulty. Mr. Reitman indicated they felt that the topography of the land created a hardship. To remedy the county's concern regarding flooding, the applicant proposes a development agreement which will hold the county harmless in the event of flooding, and they also propose that the main level of the house will be no less than twelve feet above the 435 foot full pool level of Lake Oconee.

Ms. Moss asked where the flood line was on the survey submitted by Ms. May relevant to the map of the flood plain created by the county.

Chuck Jarrell responded that the map was digitized from F.I.R.M. maps supplied by FEMA, and though it lacked topographical lines, the only way to be certain that a building was constructed outside of the flood plain was by submitting a base flood elevation survey and a letter of map amendment to FEMA.

Mr. Reitman indicated that he felt the F.I.R.M. map was ambiguous, and in his estimation, he did not know why they had the 40 foot setback if they relied upon the F.I.R.M. maps.

Ms. Moon stated that the staff would be remiss if it wasn't pointed out that in a fax dated July 17, 2004, it was specifically stated to Mr. Reitman, "If the surveyor will provide a letter of map amendment certifying that by his measures, the base flood elevation is at the point marked 100 feet on his map, we will accept that as remedy to the concern about building in a flood plain." If this letter had been provided, the issue of building in the flood plain would not have applied to this petition. Ms. Moon also pointed out that it was the opinion of the staff that the situation was created by an action of the applicant. Ms. May had plenty of property to build her house within all applicable setbacks if she positioned it farther back from the lake. However, per her written statement, she wanted to position the house to better take advantage of the lake views, thus the placement of the house for aesthetic purposes was a situation she created herself.

Ms. Moss questioned what responsibility we had to future property owners to protect them from flooding.

Ms. Moon responded by citing section 4.3.1 of the Morgan County Development Regulations which mandates the county to minimize the private losses due to flood conditions by considering such conditions at the time of initial construction.

Ms. Moss asked if anyone else has built in the flood plain.

Mr. Jarrell responded that the houses constructed in Grayson Pointe were built prior to the F.I.R.M. maps coming out, and it is now the responsibility of the property owner to prove that they are out of the flood plain.

Mr. Reitman pointed out that the flood line would be at least the 442 line on his survey, which is a full seven feet above the full pool level. He did not know why FEMA would arbitrarily require that they pull the building back that far. He has not seen any evidence to suggest that other houses have a problem with flooding.

Ms. Moon indicated that the county staff would be willing to accept a letter of map amendment from the surveyor to remedy all concerns about building in the flood plain. Until the county received that letter, they did not have the authority to decide that the house was not in the flood plain.

Mr. Reitman asked if the full pool level and base flood elevation were the same thing.

precedent had been set, and reminded the Commission that a denial of the variance could be construed as abridging Ms. May's constitutional rights under the provisions of the Georgia Constitution.

Ms. Moss asked which variance requests specifically related to the provision for a 40 foot setback from the Georgia Power right-of-way from Lake Oconee.

Mr. Reitman referred her to August 3, 1999 Board of Commissioners decision, but he was not familiar with any of the details of the petition.

Ms. Moon supplied a copy of the Board of Commissioners Minutes for August 3, 1999 to Planning Commission members.

Dr. Wade called for comment from members of the public.

Mr. J.R. Sable (1371 Grayson Pointe Drive) asked what would be the distance from point 48 and the side of the house.

Mr. Reitman responded that it would be 15 feet.

Mr. Sable indicated that other property owners on the lake have abided by the 40 foot setback provision of the Morgan County ordinances. He was concerned that if Ms. May's request was granted he would be looking at the back and side of her house all the time, and he was concerned this would affect the resale value of his house. If she built within the required setbacks, he felt that it would bring her house more in line with the neighboring houses. He objected to placement of her house if the variance was granted.

Mr. McCauley asked Mr. Reitman if the adjoining property owners had been contacted in regard to the petition.

Mr. Reitman indicated that he had spoken to Ms. Sable and she was not comfortable signing a letter saying she was comfortable with the proposed action. He could not locate the property owners on the other side of Ms. May's lot.

Ms. Geraldine Sable (1371 Grayson Pointe Drive) said she had spoken with the neighbors on the other side. They live in LaVerne, and they could not attend. Ms. Sable indicated that they were not entirely comfortable with the petition either, and they had asked her to share information with them from the proceedings of the meeting.

Mr. Butch Thompson (1311 Grayson Pointe Drive) indicated that his lot was affected by the 40 foot setback because they have the deepest inlet from the lake on their property. He is not opposed to what Ms. May proposes, as long as her house is in alignment with the houses on either side and at least 40 feet off points 44 and 45 of the Georgia Power right-of-way. Mr. Thompson indicated that he also spoke for the property owners of lots 9 and 10. He specified that he was concerned that the site line of new homes does not enter into the view of existing homes and obstruct their view of the lake.

Mr. McCauley indicated that he did not see why a long, skinny house would have to be built, and he really felt that the central issue was aesthetic.

Motion: Mr. McCauley made a motion that the county commission not approve the variance.

Second: Ms. Moss

Vote: 9-0 to approve the motion to recommend that the county commission not approve the variance.

The motion was unanimously approved

EXCERPT FROM BOARD OF COMMISSIONERS MINUTES SEPTEMBER 14, 2004

2. Christine May requests a variance to §8.1 Notes: A5 of the Morgan County Zoning Ordinance which requires a 40' setback from any Georgia Power lake right-of-way. Property located at 1361 Grayson Pointe Drive, Buckhead, Georgia Map 064C, Parcel 013. Planning Commission recommended to deny the request 9-0.

County Planner Allison Moon briefed the Board on the property location and presented a plat of the parcel. Staff stated that this request did not meet the hardship requirements in order to grant an approval from the Planning Commission since there was available property on the backside of the lot that would allow a home to be built within the required setbacks. Staff also stated that the flood plain data would be forthcoming and the requested home site may be within the flood plain area.

Chairman Nabors asked for proponents to speak. Ms. Christine May was not present but Attorney Joe Reitman represented her. Mr. Reitman presented his argument and documents to be made part of the record. (See Miscellaneous Book). Mr. Reitman stated that the 20 foot variance would not cause substantial detriment to the public good or impair the purposes or intent of the ordinance. The home will be placed near the midline of the lot at least 20 feet from point 48 and would be in line with those of her next door neighbors. Chairman Nabors asked for opponents to speak. Mr. John Sable spoke against the request and stated that he did not want to see the side of Ms. May's home from his back porch. Ms. Geradline Sable stated that when Ms. May viewed the property in November 2003 she was told at that time about the setback requirements on the property. Mr. Gene Rogero spoke against the request and told the Board it would be special treatment if the request was granted. Joe Reitman stated that Ms. May was willing to change her request from 20 feet to 15 feet in order to move further away from the neighbors. Comm. McGinnis expressed his concern that Ms. May told him on an earlier occasion that she only wanted to improve her view to the lake. Comm. Thomas stated his concerns about granting a variance since the home site would be in the flood plane. Comm. Bohlen stated that he could not make a decision until he saw the flood plain map of the property which would be forthcoming. County Planner Allison Moon briefed the Board on the criteria that the Planning and Zoning use when making a decision on variance requests.

Cooner, Tara

From: Randy Newby [r.newby51@hotmail.com]
Sent: Wednesday, March 11, 2015 3:01 PM
To: Cooner, Tara
Cc: Randy Newby
Subject: Public Notice for Proposed Zoning Action parcel# 013

Hello, my name is Randy Newby and I am currently under contract to purchase a home at 1391 Grayson Point Dr in Buckhead. I am also scheduled to close on this property April 2nd 2015. Today 3/11/15 I was driving to the potential new home and noticed a sign posted for Public Notice regarding a Proposed Zoning action request to re-zone 1.17 acres at 1361 Grayson Pointe Dr from LR1 to LR3. Upon calling the (706) 342-4373 number to gain an understanding of the zone change request I am informing the Commission that I oppose the requested change. One of the reasons I have decided to move to Morgan County and in particular gain residence at 1391 Grayson Pointe Dr was to live in a single family environment or in a LR1 location. I feel changing to a LR3 would have a negative impact on property values and the lifestyle of living in a single family residence. As I was looking at houses in this particular area I witnessed how the home owners in the area take great care of their households and it appears they have the desire to do so in the future as well. If there would be a zone change I would be concerned that others wouldn't have the same approach in maintaining and keeping the area as beautiful as it currently is. I appreciate your time and consideration and support to continue to keep the zone as LR1. Thank you, Randy Newby

Sent from Windows Mail

Georgia Open Records Act: Under Georgia law, all information, including e-mail, written letters, documents and phone messages, sent to the County Board of Commissioners and County offices and employees is subject to Public Records law. This includes the sender's e-mail address, home address or phone number if shown in the message, the content of the message and any associated attachments to the mail.