RECEIVED
Jun 30 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM OCCONEE COUNTY
Court of Common Pleas
The Honorable J. Cordell Maddox, Jr.

Case No. 2022-CP-37-00396
Appellate Case No. 2022-001796

---

John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon,

Appellants,

v.

Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC, Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina Limited Partnership,

Respondents.

---

# RECORD ON APPEAL

---

David L. Paavola, SC Bar No. 100714
Kenison, Dudley & Crawford, LLC
1122-B Barnwell Street
Columbia, South Carolina 29201
(864) 242-4899
paavola@conlaw.com
Attorney for Appellants

James W. Logan, Jr., SC Bar No. 3385
Logan & Jolly, LLP
Post Office Box 259
Anderson, South Carolina 29622
(864) 226-1910
logan@loganandjolly.com
Attorney for Respondent Oconee County Board of Zoning Appeals

Larry C. Brandt, SC Bar No. 856
Larry C. Brandt, P.A.
Post Office Box 738
Walhalla, South Carolina 29691
(864) 638-5406
lcb.brandtlawfirm@att.net

Andrew Kent Holliday, SC Bar No. 101754
Derrick, Ritter, Williams & Morris, P.A.
Post Office Box 795
Seneca, South Carolina 29679
(864) 882-2747
andrew@drwmlaw.com
Attorneys for Respondents Ridgewater Engineering & Surveying, LLC, Globe, A South Carolina Limited Partnership, and Farmes, a South Carolina Limited Partnership

## INDEX

### Orders

1. Order Denying Appellants' Appeal (September 15, 2022)…..…..……...…….....3

2. Order Denying Appellants' Motion to Alter or Amend Order Denying Relief (November 21, 2022)...……..13

### Pleadings and Motions

3. Amended Complaint with Exhibits (June 9, 2022) ..…….……16

4. Amended Summons and Notice of Appeal (June 9, 2022)……97

5. Answer of Oconee County Board of Zoning Appeals (July 27, 2022)…….100

6. Brief of Appellants…….….....110

   a. Exhibit A: Images of the Road Striping…….....137

   b. Exhibit B: Ratliff Family Scaled Drawings ..……...145

   c. Exhibit C: Site Plans Prepared by Applicant……149

   d. Exhibit D: Affidavit of Jan Ratliff……158

   e. Exhibit E: Oconee County Ord. Sec. 26-1, 26-2, 26-3..……..161

   f. Exhibit F: Oconee County Ordinances 2006 ..…….……167

7. Petitioners' Motion to Alter or Amend Order Denying Relief (September 23, 2022) …180

### Transcripts

8. Record on Appeal from Oconee County Board of Zoning Appeals pp. 1-444……..191

9. Transcript of Oconee County Board of Zoning Appeals Meeting pp. 35-180 (November 30, 2021)……...637

10. Transcript of Oconee County Board of Zoning Appeals Meeting pp. 5-38 (January 24, 2022)……..…….……784

11. Transcript of Oconee County Board of Zoning Appeals Meeting pp. 13-161

(April 25, 2022)…….....819

12. Transcript of Record of Circuit Court Appeal Hearing pp. 1-52 (August 16, 2022)…....969

I certify that this designation contains no matter which is irrelevant to this appeal.

/s/ *David L. Paavola*_____
David L. Paavola, SC Bar No. 100714
Kenison, Dudley & Crawford, LLC
1122-B Barnwell Street
Columbia, South Carolina 29201
(864) 242-4899
paavola@conlaw.com
Attorney for Appellants

May 26, 2023

ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | |
|---|---|
| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF OCONEE ) | IN THE COURT OF COMMON PLEAS<br><br>Case No. 2022-CP-37-00396 |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br>v.<br><br>Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents,<br><br>And<br><br>Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina, Limited Partnership,<br><br>Defendants/Respondents-Intervenors. | **ORDER** |

The Petitioners/Appellants ("Ratliff") filed an Amended Summons and Notice of Appeal as well as an Amended Complaint against the Oconee Board of Zoning Appeals ("BOZA") and Ridgewater Engineering & Surveying, LLC ("Ridgewater") appealing the BOZA decision of May 11, 2022 granting road variance application #VA21-011. In addition, Globe, a South Carolina Limited Partnership ("Globe") and Farmes, a South Carolina Limited Partnership ("Farmes") also filed a Motion to Intervene as Defendants/Respondents in these matters subsequent to the BOZA decision. This Court granted the Motion to Intervene by Order dated August 23, 2022.

The Ratliff pleadings challenge the BOZA decision in question dated May 11, 2022 which is based upon evidence and testimony gathered over the course of three public hearings held

ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

November 30, 2021, January 24, 2022, and April 25, 2022. Each of those hearings pertained to variance application #VA21-011 that requested "a variance of 18.1' from the 50' right-of-way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way."

A hearing was held before this Court on August 16, 2022. Present at the hearing were David L. Paavola and Keith M. Babcock of Lewis Babcock, LLP, attorneys for Ratliff, James W. Logan, Jr. of Logan & Jolly, LLP, attorneys for BOZA, Larry C. Brandt of Larry C. Brandt, PA, R. Boatner "Bo" Bowman of Boatner Bowman Law, and Andrew Holliday of Derrick Ritter Williams and Morris, PA, attorneys for Ridgewater, Globe, and Farmes. In addition to the Record on Appeal pertaining to all three hearings, a transcript of the April 25, 2022 hearing before BOZA was also filed and made a part of the Record on Appeal before this Court. Based upon this Court's review of this record, the pleadings and memoranda filed by the parties, as well as oral arguments from all parties at the hearing on August 16, 2022 referenced above, it is the Court's opinion that the relief sought by Ratliff in their pleadings should be denied.

## FINDINGS OF FACT

1. Ridgewater submitted variance application #VA21-011 requesting an 18.1' variance from the 50' right-of-way for the entrance of the subdivision because the end of the existing road did not grant full access into the property. TMS #150-00-01-459 is an unaddressed parcel with the closest address of 599 Ellenburg Road, Seneca, South Carolina 29672. This application was submitted by Ridgewater on behalf of Globe and Farmes.

2. Globe and Farmes jointly own an undeveloped 15-acre tract or peninsula on Lake Keowee, TMS #150-00-01-459 (referred to as "Arrowhead Point"), with the trunk section of this track being adjacent to 585 Ellenburg and 599 Ellenburg. Globe and Farmes purchased Arrowhead

Point in 2008 (Deed Book 1695 at page 87, Oconee County Records) and have entered into a contract for the development of Arrowhead Point for a nineteen-home subdivision. Further, the area of property affected by the variance request is solely on Globe and Farmes' real property. Therefore, as defined by the application, the variance requested is located at the end of Ellenburg Road and the beginning of the Globe/Farmes property line where the width of their property line pinches down to a short narrow strip of land. Accordingly, the variance requested and granted by BOZA does not directly involve the Ratliff's property.

3. During the BOZA hearing on November 30, 2021, the following information was furnished by the Ratliff family:

a. While Ratliff has used access to all of Ellenburg Road from 585 Ellenburg Road, it was admitted that Ratliff only owns approximately one-half of the old Ellenburg Road right-of-way at the point where it abuts the property line of the Globe and Farmes property, that Globe and Farmes own approximately the remailing half of the old Ellenburg Road right-of-way in that area, and that Ratliff was, in fact, using some of the old Ellenburg Road right-of-way located on the Globe and Farmes property in the conduct of its business interests;

b. Ratliff described the history of Ellenburg Road in Oconee County as running all the way from Knox Road and along the lakebed of what is now Lake Keowee; that a portion of that roadbed continuing under Lake Keowee was a tar and gravel road; and that, at a point about where the Globe/Farmes property line is located, Ellenburg Road split and a dirt road went along the lakebed toward High Falls but that Route 1 Ellenburg continued along the edge of the shoreline of the Globe/Farmes property which is now flooded but can still be seen as a tar and gravel road under the water;



ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

c. Finally, Ratliff stated that Ellenburg Road was a State road when the address of his mother's house was Route 1 Box 258 Ellenburg Road; that he "guessed" the State of South Carolina later transitioned all such roads, including Ellenburg Road, to local governments, in this case, Oconee County, and thus Ellenburg Road would have become an Oconee County Road.

4. The Record on Appeal also reveals that Oconee County representatives furnished the following information regarding the "institutional knowledge" of Oconee County concerning Ellenburg Road:

a. Kyle Reid, Oconee County Road Supervisor, testified regarding County work on Ellenburg Road in 2012 and explained that the 2012 paving repairs did not go all the way to the end of the prior pavement; that his road supervisor at that time, Matt Kelly, instructed him to stop short of the end of the road as they were merely trying to patch the "cracked up and alligatored" part of the road past the subdivision up the hill (Harbor Oaks); that he was instructed to get the worst of it and then pull back; that there was no evidence that the road was ever turned over to the adjoining property owners; that the "institutional knowledge" of Oconee County is that Ellenburg Road is a County road that runs all the way to the Globe and Farmes property line; that a photograph in the record shows a County sign at the edge of the Globe/Farmes property line stating "County Maintenance ENDS Here" with a date stamp of January 16, 2015, and, that Oconee County maintains the right-of-way for that road to the end of the existing pavement.

b. Both Reid and David Root, Oconee County Attorney, as well as counsel for Ridgewater stated that there is no "institutional knowledge" of any abandonment procedure ever being brought pursuant to S.C. Code § 57-9-10, et seq. pertaining to Ellenburg Road

but that said road is shown as being in the Oconee County inventory with the number WA42.

5. In addition to the "institutional knowledge" referenced above, several plats in the Record on Appeal specifically refer to and/or show the right-of-way for Ellenburg Road running along the Ratliff property in question to the property of Globe and Farmes, in particular, a plat prepared for James L. Ratliff and Lucretia B. Morgan referenced in Deed Book 2633 at page 1 and recorded in Plat Book B754 at page 6, Oconee County records. This plat is also shown on page 283 of the Transcript of Record. This plat was prepared for James L. Ratliff and Lucretia B. Morgan (two (2) of the Ratliff Petitioners/Appellants) and recorded on December 4, 2020 in the Oconee County records. Another deed and plat in the Record on Appeal also show the continuation of that Ellenburg Road right-of-way past the above referenced Ratliff and Morgan property to the property of Globe and Farmes. That deed is recorded in Deed Book 14-I at page 102 and references a plat recorded on August 30, 1974 in Volume P-39 at page 61, and is contained in the Record on Appeal at P. 293-294, Oconee County records. Accordingly, the right-of-way for Ellenburg Road at these two critical sections involved in this case is shown, as a matter of public record, as a right-of-way that affects both the Ratliff property and the Globe/Farmes property and the deeds for these properties refer to the conveyances as being subject to "…easements or rights-of-way for roadways…"

6. The Record on Appeal also establishes that the area of the real property for which this variance is requested is solely located on the real property owned by Globe and Farmes. BOZA clearly defined the variance area as located beginning at Globe/Farmes' property line where the width of their property pinches down to a short narrow strip of land for which the variance was





ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

requested. Therefore, BOZA correctly found that the variance granted does not directly involve the property of Ratliff.

7. The Record on Appeal also establishes that the tract of land owned by Globe and Farmes containing 15.35 acres was conveyed to them by Special Warranty Deed from Crescent Communities S.C., LLC, recorded in Deed Book 1695 at page 87 (Oconee County Records) subject to exceptions contained therein including, but not limited to, "(6) easements, covenants, restrictions and conditions of record and rights-of-way of public and private streets and roads, including, but not limited to, the right-of-way shown on the plat as Ellenburg Road." Exhibit A to that deed refers to a plat dated December 8, 2008 and recorded in Plat Book B291 at page 1, Oconee County Records. That Deed and Plat are contained in the Record on Appeal on pp. 20 – 35 and p. 46, respectively.

## LEGAL ANALYSIS

The history of Ellenburg Road presented to BOZA during the hearings regarding this matter support a determination that Ellenburg Road was once a state-maintained road running from Knox Road across and now under what is now the lakebed for Lake Keowee. At some point in the past, the State abandoned that road and Ellenburg Road became an Oconee County road. Further, the absence of any evidence that an abandonment procedure was ever brought to terminate the public right-of-way for Ellenburg Road requires a determination that, as a matter of law, Ellenburg Road remains an Oconee County maintained road. See *Wessinger v. Goza,* 231 S.C. 607, 99 S.E.2d 395 (Sup.Ct. 1957), *Sloan v. State Highway Department,* 150 S.C. 337, 148 S.E. 183, S.C. Code §57-9-10, *S.C. DOT v. Hinson Family Holdings, LLC,* 361 S.C. 649, 505 S.E.2d 781 (Sup.Ct. 2004), and *Bancohio National Bank v. Neville,* 310 S.C. 323, 426 S.E.2d 773 (Sup.Ct. 1993). This determination is certainly in line with the "institutional knowledge" established by the testimony





ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

of the Oconee County representatives and the plats referenced above on file in the Office of the Register of Deeds for Oconee County showing the existence of Ellenburg Road and its right-of-way. These plats clearly show the existence of the right-of-way in question extending past the Ratliff property to the real property owned by Globe and Farmes.

South Carolina law provides, in essence, in S.C. Code § 57-5-120, that if the State abandons a portion of a road, that portion of that road reverts to the local government, in this case, Oconee County, and is subject to an abandonment procedure brought to terminate the public right-of-way pursuant to S.C. Code § 57-9-10, et seq. As previously stated, there is no history/evidence of such an abandonment procedure having ever being brought.

Under South Carolina law, "the findings of fact by the Board of Appeals must be treated in the same manner as the findings of fact by a jury, and the Court may not take additional evidence." S.C. Code Ann. § 6-29-840(A). Further, "a jury's factual findings will not be disturbed on appeal unless the record contains no evidence reasonably supporting the jury's findings." *Boehm v. Town of Sullivan's Island Bd. Of Zoning Appeals,* 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018) (citing *Austin v. Bd. Of Zoning Appeals,* 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004)). In addition, "in determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A). It is well settled that the Court may look to written documents as well as records of proceedings to determine whether the record is sufficient and in proper format for final decisions, i.e., the format of the final decision is immaterial as long as the substance of the decision is sufficiently detailed in the record so as to allow the reviewing Court to determine if the decision is supported by the facts *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct.App. 2004).

ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

The decision in *Venture Engineering, Agent for DT, LLC v. Horry County Zoning Board of Appeals*, 433 S.C. 419, 858 S.E.2d 638 (Ct.App. 2/2021) holds that a decision by the Board must not be disturbed if there is supporting evidence in the record. (S.C. Code Ann. §6-29-840). That court also held that a court must not substitute its judgment for that of the Board of Zoning Appeals even if it disagrees with the decision and also holds that a court reviewing the Board's decision may rely on uncontroverted facts that appear in the record. Certainly, the history of the right-of-way of Ellenburg referenced in the transcripts in the Record on Appeal and the facts giving rise to that right-of-way claim are uncontroverted facts that do appear in the record. In addition, the record establishes that BOZA was provided the final location of the road in question. It is only reasonable and proper that BOZA received that information and considered it.

Therefore, the Record on Appeal is supportive of the facts/conclusions as determined by BOZA in its written decision in this case which complies with the statutory obligations of BOZA pursuant to S.C. Code 6-29-800 (A)(2), i.e.:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of a variance will not be of substantial detriment to adjacent users or to the public good, and that the character of the district will not be harmed by the granting of the variance.

Accordingly, this Court finds that the decision of BOZA was not arbitrary and capricious, that those facts and decisions have a reasonable relation to a lawful purpose, and that BOZA did not abuse its discretion as the decision of BOZA is clearly supported by the evidence presented to it.

It is therefore Ordered, Adjudged, and Decreed that the Ratliff Appeal of the BOZA decision is denied, and the Ratliff Summons and Complaint against BOZA and Ridgewater be, and the same are hereby, dismissed, with prejudice.

It is so ORDERED. This _____ day of _____, 2022.

_____
Honorable Presiding Judge
Tenth Judicial Circuit

September 9, 2022

ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Sep 15 12:11 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Oconee Common Pleas

| | |
|---|---|
| **Case Caption:** | Johns Marine Service Inc , plaintiff, et al VS Oconee County Board Of Zoning Appeals |
| **Case Number:** | 2022CP3700396 |
| **Type:** | Order/Other |

So Ordered

s/ J. Cordell Maddox Jr.

ELECTRONICALLY FILED - 2022 Nov 21 2:10 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | |
|---|---|
| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF OCONEE ) | IN THE COURT OF COMMON PLEAS<br><br>Case No. 2022-CP-37-00396 |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br>v.<br><br>Oconee County Board of Zoning Appeals, | **ORDER DENYING PETITIONERS'/APPELLANTS' MOTION TO ALTER OR AMEND ORDER DENYING RELIEF** |
| Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents,<br><br>And<br><br>Globe, a South Carolina Limited Partnership, and Farmes, a South Carolina, Limited Partnership,<br><br>Defendants/Respondents-Intervenors. | |

On September 23rd, 2022, Petitioners/Appellants filed a Motion to Alter or Amend Order Denying Relief. This motion requested that the Court alter/amend its previous Order Denying Relief on the grounds that this order did not address several arguments that the Petitioners/Appellants raised in their pre-hearing brief and during the August 16, 2022, hearing. After careful consideration and review of the record on appeal and the arguments raised during the August 16, 2022, hearing, the Court determined that Ellenburg Road is within the inventory of Oconee County and subject to the jurisdiction of the Oconee County Board of Zoning

Appeals. Accordingly, it was not necessary for the Court to reach the arguments cited by Petitioners'/Appellants' Motion to Alter or Amend Order Denying Relief.

Therefore, Petitioners'/Appellants' Motion to Alter or Amend Order Denying Relief is DENIED.

It is so ORDERED. This _____ day of _____, 2022.

_____
Honorable Presiding Judge
Tenth Judicial Circuit

ELECTRONICALLY FILED - 2022 Nov 21 2:10 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Nov 21 2:10 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Oconee Common Pleas

| | |
|---|---|
| **Case Caption:** | Johns Marine Service Inc , plaintiff, et al VS Oconee County Board Of Zoning Appeals |
| **Case Number:** | 2022CP3700396 |
| **Type:** | Order/Other |

So Ordered

s/ J. Cordell Maddox Jr.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF OCONEE | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE TENTH JUDICIAL CIRCUIT |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br>v.<br><br>Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents. | ) | Case No. 2022-CP-37-00396<br><br>**AMENDED COMPLAINT**<br>**(Appeal from the Board of Zoning Appeals)** |

Petitioners/Appellants John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon (collectively, "Petitioners"), appealing a decision by the Oconee County Board of Zoning Appeals ("BOZA") granting road variance application #VA21-011, respectfully allege unto this Court:

This appeal concerns whether Oconee County has a prescriptive easement over a paved section of Ellenburg Road that is privately owned by Petitioners and the adjacent property owners, and whether from that prescriptive easement the BOZA can then grant a right-of-way variance for the construction of a new public road (and accompanying nineteen-home subdivision) that will tie in to that prescriptive easement. The paved private driveway is partially on Petitioners' property (585 Ellenburg Road and 599 Ellenburg Road) and partially on adjacent landowners' property, with the majority of the paving on Petitioner's property.[1]

The BOZA grant of variance application #VA21-011 was erroneous for the following reasons:

[1] Petitioners do not waive, and specifically reserve, the right to claim ownership of the entire area of the private driveway that they paved, used, and maintained for forty years.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

i. BOZA concluded that Oconee County held a prescriptive easement over Petitioners' property without having any sworn testimony, documentary, or any other evidence supporting the existence of such an easement, and where Petitioners provided documents and sworn affidavits to the contrary. Prescriptive easements must be shown by clear and convincing evidence. This standard was not met. Because the BOZA failed to find a prescriptive easement by clear and convincing evidence, it lacked jurisdiction to grant a variance for a new public road and order the abandonment of Petitioners' land.

ii. BOZA's decision unilaterally increased and modified the burden on Petitioners' property. Assuming Oconee County has an easement over Petitioners' property, which is expressly denied, the BOZA's grant of the variance expands a dead end road for the development of a nineteen-home subdivision bringing an estimated additional 200 cars a day past Petitioners' property. Such additional traffic will impact the way John's Marine has conducted business at the same location for the past forty years. It was error for BOZA to grant a variance that materially increases and changes the burden on Petitioners' property.

iii. BOZA's Order granting the variance states that the "character of the district *WILL be harmed* by the granting of the variance." (Emphasis added). Granting a variance in light of such a conclusion is arbitrary, capricious, and an abuse of discretion.

iv. BOZA granted the variance application without knowing the final location of the proposed public roadway. Documents submitted to the BOZA showed that the location of the roadway was not final and that under certain scenarios it may push the roadway nine feet onto Petitioners' property, which will further negatively impact John's Marine's ability to conduct business. BOZA's decision to approve the variance without knowing the final location of the roadway and the full impact to John's Marine was arbitrary, capricious, and an abuse of discretion.

v. BOZA is required by statute to provide a written explanation for its findings. The BOZA Order granting the variance does not contain an explanation for why the variance will not be of substantial detriment to John's Marine under the varying road location scenarios. BOZA was presented with drawings showing that under certain scenarios Petitioners will lose land and John's Marine's operations will be greatly impacted. The BOZA did not adequately explain its finding of no substantial detrimental impact to John's Marine in light of the information before it that the roadway location was not final.

For these reasons, the BOZA Order should be reversed.

## PARTIES, JURISDICTION, AND VENUE

1. Petitioner John's Marine Service, Inc., ("John's Marine") is an entity organized and existing under the laws of the state of South Carolina, with its primary place of business operations located at 599 Ellenburg Road Seneca, South Carolina (TMS #150-00-01-100, hereinafter "599 Ellenburg").

2. Petitioners Frances J. Ratliff, Edward J. ("Jay") Ratliff Jr., Sherri Akers Crisp, and Amy Cawthon each have an ownership interest in 599 Ellenburg.

3. Petitioner James L. ("Jimmy") Ratliff is the President of John's Marine Service, an owner of 599 Ellenburg, and an owner of real property located at 585 Ellenburg Rd Seneca, South Carolina (TMS#150-00-01-099, hereinafter "585 Ellenburg").

4. Petitioner Lucretia B. Morgan is an owner of 585 Ellenburg.

5. Oconee County is a political subdivision of the State of South Carolina and a body politic and corporate pursuant to S.C. Code Ann. § 4-1-10. In accordance with S.C. Code Ann. § 6-29-780, Oconee County created a Board of Zoning Appeals, which is a quasi-judicial body



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

empowered to hear appeals from Zoning Administrators, applications for variances, and application for special exceptions.

6. Defendant/Respondent Ridgewater Engineering & Surveying, LLC is a South Carolina limited liability company with its principal place of business in Anderson County, South Carolina, and was the applicant for the variance at issue in this appeal.

7. This Court has jurisdiction over the parties and the subject matters as provided by S.C. Code § 6-29-820(A), which states that "A person who may have a substantial interest in any decision of the board of appeals . . . may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law."

8. Venue is proper in Oconee County as the acts herein occurred in Oconee County and the properties at issue are located in Oconee County.

## PROCEDURAL BACKGROUND

9. This appeal is from the April 25, 2022 decision of the BOZA granting Ridgewater Engineering and Surveying's ("Ridgewater") variance application #VA21-011 for a variance of 18.1' from the 50' right-of-way required for construction of a new public road.

10. Variance application #VA21-011 initially came before the BOZA on November 30, 2021, then again on January 24, 2022, and finally for a vote on April 25, 2022.

11. The BOZA order being appealed in this matter was issued and mailed on May 11, 2022, attached as **Exhibit 1** (the "Variance Order").

12. The Variance Order sets forth the following conclusions:

i. There ARE extraordinary and exceptional conditions pertaining to the particular piece of property;

ii. These conditions DO NOT generally apply to other property in the vicinity;

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

iii. Because of these conditions, the application of this chapter to the particular piece of property WOULD effectively prohibit or unreasonably restrict the utilization of the property; and

iv. The authorization of a variance WILL NOT be of substantial detriment to adjacent uses or to the public good, and the character of the district *WILL be harmed* by the granting of the variance. (Emphasis added).

13. The Variance Order was approved with the following conditions:

i. Order approved subject to proper abandonment procedures;

ii. Compliance with all ordinances and state law on acceptance into the County roadway system;

iii. Developer grant/ deed John's Marine property so that there is reasonable, unimpeded access to the new road.

14. The Variance Order is premised on Oconee County having a preexisting prescriptive easement along the entire paved section of Ellenburg Road, including in front of John's Marine. This fact is disputed by Petitioners. Petitioners objected to variance application #VA21-011 and submitted documents showing that Oconee County does not have a prescriptive easement across 585 Ellenburg and 599 Ellenburg.

15. The Variance Order is also premised on the assumption that Oconee County can unilaterally increase the burden of a prescriptive easement on a servient estate. Petitioners dispute this conclusion.

16. The Variance Order concludes that the variance will not be of substantial detriment to adjacent uses. Petitioners submitted documents showing that variance application #VA21-011 would be of substantial detriment to John's Marine. Petitioners also submitted drawings showing that the location of the final roadway was not final and there is a possibility that the location of the final roadway would shift considerably towards John's Marine and cause further detriment. The

BOZA approved the variance application without knowing the location of the final roadway and the full extent of the impacts to John's Marine.

17. The BOZA voted to approve variance application #VA21-011 over Petitioners' objections.

## FACTUAL BACKGROUND

18. Edward (John) Ratliff and Francis (Jan) Ratliff purchased 599 Ellenburg in 1981 and co-located their home on the property along with John's Marine, which was moved to the property from downtown Seneca in 1982.

19. At the time the Ratliff's purchased 599 Ellenburg in 1981, T.B. Ellenburg owned the adjacent property located at 585 Ellenburg. Descendants of T.B. Ellenburg owned 585 Ellenburg until 2020 when it was sold to Petitioners James Ratliff and Lucretia Morgan.

20. Upon information and belief, at some point before or around the mid-1980's, Oconee County paved a portion of Ellenburg Road from Knox Road to approximately the western edge of 585 Ellenburg, at which location Oconee County installed an "End of County Maintenance" sign. In the mid-1980's, T.B. Ellenburg and John Ratliff, as fee owners of the private driveway running in front of 585 & 599 Ellenburg, undertook the expense of paving their respective portions of the private drive and for forty years have maintained the road as a private driveway (hereinafter, the "Private Driveway"). The Private Driveway dead ends at John's Marine. The paved Private Driveway is on Petitioners' property (585 Ellenburg Road and 599 Ellenburg Road) and the adjacent landowners' property, with the majority on Petitioner's property.



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

21. Upon information and belief, Oconee County undertook at certain times to stripe the center line of the public section of Ellenburg Road, stopping where the Private Driveway begins and never reaching 599 Ellenburg. Attached as **Exhibit 2** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 155-161).

22. Upon information and belief, Oconee County has no records of public maintenance of the Private Driveway.

23. Jan Ratliff, who has been an owner of 599 Ellenburg since 1981, provided an affidavit to Oconee County stating that:

i. In 2009, she, along with her daughter-in-law, met with employees of the Oconee County Roads and Bridges Department. These employees provided Ms. Ratliff with a plat indicating that the county's maintenance of Ellenburg Road ended at green highlighted marker at 565 Ellenburg Road.

ii. The green marker was where the "End of County Maintenance" sign had been located for years before it was moved.

iii. Her family has continuously maintained the paved portion of Ellenburg Road to the east of the endpoint of county maintenance, and the county has not engaged in any maintenance of the Private Driveway. **Exhibit 3** (Jan Ratliff Aff. (Jan. 7, 2022)).

24. Globe, A South Carolina Limited Partnership, ("Globe"), and Farmes, A South Carolina Limited Partnership, ("Farmes"), jointly own an undeveloped 15-acre tree or arrowhead-shaped peninsula on Lake Keowee, TMS #150-00-01-459 (referred to as "Arrowhead Point").[2]

[2] The deed reflects TMS#150-00-01-444, which is believed to now be known as TMS#150-00-01-459. Oconee County Register of Deeds Book/Page 1695/87.

The "trunk" section of this tract is adjacent to 585 Ellenburg and 599 Ellenburg and a portion of this property is part of the paved Private Driveway.

25. Globe and Farmes purchased the Arrowhead Point in 2008. At the time Globe and Farmes purchased this property, Oconee County Ordinances required a 50' right-of-way for roads serving more than ten homes. **Exhibit 4** (Excepts from Amended Minutes April 25, 2022, 368-379 (Ordinance 2000-09, § 6.2.3 Private Roads; Ordinance 2006-12, § 2.7.7 Road Design)).

26. Upon information and belief, Globe and Farmes have entered into a contract for the development of Arrowhead Point for a nineteen-home subdivision. Upon information and belief, the size of the Arrowhead Point subdivision will require the developer to construct a public road.

27. Arrowhead Point does not currently have public road access and it is not adjacent to the public road system. The closest vehicular access to the Arrowhead Point is Petitioners' Private Driveway.

28. Property lines for 585 Ellenburg, 599 Ellenburg, and Arrowhead Point run along the Private Driveway, the majority of which is on Petitioners' property.

**VARIANCE APPLICATION**

29. Pursuant to Oconee County Ordinance Section 26-3(e)(1), public roads require a minimum of 50' right-of-way.

30. According to the drawings and application submitted by Ridgewater, the narrowest section of the proposed public road to service Arrowhead Point is 31.9'. As such, Ridgewater submitted variance application #VA21-011 requesting an 18.1' variance from the 50' right-of-way required for public roads. See **Exhibit 5** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 85, 94-95, 103-107).



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

31. At all points where the proposed new public road is adjacent to Petitioners' property, the 50' right-of-way requirement cannot be met unless Petitioners' Private Driveway is included in the public right-of-way calculation. **See Exhibit 5** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 85, 94-95, 103-107). In voting to approve variance application #VA21-011, BOZA necessarily assumed as a fact that the county has an existing right-of-way over Petitioners' Private Driveway that can be used to satisfy the 50' requirement along the rest of the newly proposed public road. This conclusion is not correct.

32. On November 30, 2021, variance application #VA21-011 was first placed on the BOZA agenda. During this meeting, county staff suggested that Oconee County has a prescriptive easement across the Private Driveway; however, this conclusion is not correct and was contested by Petitioners. The November 30, 2021 meeting ended without a vote and with a directive from the BOZA for county staff to answer the question of who owns the Private Driveway. **Exhibit 6** (Excerpt of Minutes, November 30, 2021 BOZA Meeting 1, 5-7).

33. On January 24, 2022, variance application #VA21-011 was again discussed by the BOZA. The application was removed from the table before discussion of ownership of the Private Driveway began. Oconee County staff indicated continuing conflicting evidence over whether the County maintained the traveling surface of the Private Driveway. A vote on the application was postponed. **Exhibit 7** (Excerpt of Minutes, January 24, 2022 BOZA Meeting 1-3).

34. On April 25, 2022, variance application #VA21-011 was again before the BOZA on continuation from the January 24, 2022 hearing.

35. The minutes of the April 25, 2022 meeting reflect "the County position that the road is under a prescriptive easement based on institutional knowledge, but that the affidavits presented call that into question." **Exhibit 8, at 3** (Excerpt of Minutes, April 25, 2022, 1, 3-7).

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

36. When asked if the county has a prescriptive easement on the Private Driveway, County Attorney David Root stated that nothing had changed from his January opinion that the "County's corporate or institutional memory or knowledge is that it has prescriptive easement to the end of the pavement," but that he also had two affidavits from Jan Ratliff and Laurie Ellenburg Bright calling the ending of the location of the easement into question. (April 25, 2022 BOZA Hearing 19:40, https://www.youtube.com/watch?app=desktop&v=uAZ6uupnsWI&t=5196s (hereinafter "BOZA Hearing")). As Mr. Root summarized, "that's all I have." (BOZA Hearing at 20:27). Corporate or institutional memory is not evidence and the county provided no affidavits or other documentary evidence of a prescriptive easement over the Private Driveway.

37. The BOZA was provided with an Oconee County staff opinion stating that the county has a prescriptive easement over the Private Driveway that ends at the edge of the pavement. **Exhibit 9** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 98). No documents were submitted or cited by staff in support of this position. *Id*. Staff did not submit any evidence at all in support of this position. During the April 25, 2022 meeting, county staff employee Kyle Reid reiterated that the staff's opinion of prescriptive easement was based solely on "institutional knowledge" and further stated that he contacted the state and the state had no records showing that Ellenburg Road was ever a state road, there were no records of state maintenance or abandonment of Ellenburg Road, and the county had no records that it ever accepted Ellenburg Road into the county road system. (BOZA Hearing 24:45-25:45).

38. In making its decision to approve the variance, the BOZA had no written documentation or evidence of any kind showing that Oconee County has a prescriptive easement over the Private Driveway. Oconee County did not provide the BOZA with any maintenance records reflecting that Oconee County has ever performed maintenance on the Private Driveway.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

39. The BOZA recognized that deciding the prescriptive easement was a predicate issue to its decision on the variance application, and foundational to the entire approval and development process, stating: "If it's decided there is no prescriptive easement there the county's got no business there, there isn't going to be no road built. . . . it all depends on that getting decided somewhere." (BOZA Hearing 2:00:55). Even so, the BOZA decided it was " not competent to decide that issue . . . we are not going to decide that." (BOZA Hearing 1:57:40). Yet, the BOZA moved forward with a vote deciding to "go ahead and decide this as if were an easement," noting that if someone wants to challenge in court they can do that. (BOZA Hearing 1:57:50).

40. At the time it voted to approve variance application #VA21-011, the BOZA had the following evidence before it concerning ownership and use of the Private Driveway by Petitioners:

i. November 22, 2021 letter from Petitioner Jimmy Ratliff, attached as **Exhibit 10** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 150-153). Mr. Ratliff explained that:

   a. His father John Ratliff started John's Marine in 1972 and moved it to its current location at 599 Ellenburg Road in 1982;

   b. Oconee County maintenance on Ellenburg Road ended west of 585 Ellenburg and for decades John's Marine owned and maintained from 585 Ellenburg to the dead end at 599 Ellenburg;

   c. Petitioners, and their predecessors in interest, have maintained the Private Driveway since 1981.

ii. April 22, 2022 letter from Petitioner Jimmy Ratliff, attached as **Exhibit 11** (Excerpt from April 25, 2022 Hearing Exhibit Backup Materials, 303-314). Mr. Ratliff attached documents and explained that:

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

a. In 2009, Oconee County Roads and Bridges employees provided the Ratliff family with a plat dated 2008 indicating end of County maintenance west of 585 and 599 Ellenburg (attachment #1); see also affidavit Jan Ratliff attached as **Ex. 3**;

b. Pictures of Ellenburg Road show the end of Oconee County center lane stripes at 565 Ellenburg Road (attachment #2);

c. Ratliff family has maintained the Private Driveway serving 599 Ellenburg for over 40 years;

d. Laurie Ellenburg Bright provided an affidavit indicating that she resided at 591 Ellenburg Road for 40 years prior to March 2021, and her recollection that an "End of County Maintenance" sign was located between 575 Ellenburg Road and 585 Ellenburg Road for years (attachment 3);

e. There are no deed restrictions and no easements reflected on the recorded plat for 599 Ellenburg (attachments 4, 5).

41. At the time it voted to approve variance application #VA21-011, the BOZA had the following information before it concerning the impact to John's Marine:

i. November 22, 2021 letter from Petitioner James Ratliff, attached as **Ex. 10**. Mr. Ratliff explained that:

a. The boat repair shop is located at the point of the 18.1' variance;

b. John's Marine parks boats and trailers on the Private Driveway, which under the proposed plan will become a public right-of-way;

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

c. John's Marine uses the entire area of the Private Driveway to maneuver boats and trailers;

d. Customers use the entire area of John's Marine and the Private Driveway to deliver boats and trailers for repair and service;

e. John's Marine services disabled boats on Lake Keowee and it uses the entire area of the Private Driveway to facilitate this service;

f. Disabled boats are stored all along the Private Driveway until diagnosis and repair;

g. John's Marine's centralized location permits it to respond quickly to distress calls on the lake;

h. John's Marine would be unable to function if the variance were granted.

ii. April 22, 2022 letter from Petitioner Jimmy Ratliff, attached as **Ex. 11**, additionally set forth:

a. Applicant's proposed road diagram overlayed with boats and trailers as John's Marine currently uses its property and showing that applicant only has 22.8' at the location of the variance rather than the claimed 31.9' (attachment 6), which would require Petitioners' property to be used for the proposed road.

b. Images depicting entire use of the Private Driveway for repair shop access and boat and trailer storage (attachment 7);

c. Scale drawings showing that in order to meet the 31.9' right-of-way, the developer would have to account for 9.1' gap in

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

measurement that would push the public road onto Petitioners' Private Driveway, which would impact the ability to maneuver boats into the repair shop (attachments 8, 9). The final location of the proposed public road was uncertain at the time of the variance application.

iii. Diagram prepared by the applicant showing the 9.1' of Petitioners' property in the proposed right-of-way needed for the new public road. **Ex. 5**, at 1.

iv. Oconee County staff reported to the BOZA that the new development could add as many as 200 daily trips past John's Marine. **Ex. 8**, at 4.

v. Public comments from Petitioner Jay Ratliff, a South Carolina licensed Professional Engineer, informed the BOZA that the roadway designs provided by the developer reflected a variation in road placement such that under certain scenarios, up to 9-feet of Petitioners' property would be needed to make the roadway meet the 31.9' proposed width, taking away the ability of John's Marine to maneuver boats. (BOZA Hearing 45:20-47:35; **Ex. 5**, at 1). Mr. Ratliff relayed to BOZA the developer's admission that it will not know the exact dimensions of the road until it is built. (BOZA Hearing 49:00-49:50). Mr. Ratliff also raised the issue of placement of the utilities in the right of way, which could further impact John's Marine. (BOZA Hearing 49:50-50:50). Additionally, road and home construction will impact John's Marine. (BOZA Hearing 50:10).

42. During the April 25, 2022 hearing, county staff raised the issue of needing to know as part of the variance application the exact location of the county's proposed right-of-way for the

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

new public road. (BOZA Hearing 2:32:52-2:33:52). This question was not answered and the BOZA Order does not address it, underscoring Petitioners' concerns about the shifting nature of the location of the public road and uncertain impact to their property.

43. The BOZA had records before it showing that when Globe and Farmes bought Arrowhead Point, Oconee County Ordinance 2000-09, Section 6.2.3, required 50' right-of-way even for private roads. **Ex. 4** (Oconee County Council Meeting (Aug. 1, 2000)).

44. Despite abundant evidence on the absence of a prescriptive easement along the Private Driveway and evidence of substantial detrimental impacts to John's Maine, the BOZA voted to approve the variance.

**FIRST CAUSE OF ACTION**
**(Lack of Jurisdiction to Grant Variance for Proposed Public Road)**

45. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

46. Variance application #VA21-011 was before the BOZA requesting a variance for the construction of a new public road.

47. The BOZA granted the variance for a new public road based on its erroneous conclusion that Oconee County held a prescriptive easement along Petitioners' Private Driveway such that this new public road could tie in to, and become part of, the existing county road system.

48. As part of its Order, the BOZA also conditioned its variance approval on abandonment of Petitioners' Private Driveway.

49. The BOZA assumed the existence of a prescriptive easement without first requiring that the prescriptive easement be proved by Oconee County by clear and convincing evidence. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170-71 (2015).

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

50. Because BOZA failed to find a prescriptive easement by clear and convincing evidence, it lacked jurisdiction to grant variance application #VA21-011 for the construction of a new public road and lacked jurisdiction to order abandonment of Petitioners' Private Driveway. This was error.

**SECOND CAUSE OF ACTION**
**(Grant of Variance Application Based on Error of Law in Finding Prescriptive Easement)**

51. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

52. Prior to voting to approve variance application #VA21-011 to grant a variance for a future public road, the BOZA necessarily had to determine that it had a prescriptive easement across the entire paved section of Ellenburg Road, including Petitioner's Private Driveway. Based on this asserted prescriptive easement, the BOZA then determined it could grant a variance for a future public road that will tie into the existing prescriptive easement along Ellenburg Road.

53. Oconee County does not have a prescriptive easement along the Private Driveway.

54. A prescriptive easement must meet all of the following elements:

i. Continued and uninterrupted use or enjoyment of the right for a period of twenty years;

ii. The identity of the thing enjoyed; and

iii. Use or enjoyment which is either adverse or under claim or right. *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015).

55. A prescriptive easement must be proven by clear and convincing evidence. *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170-71 (2015).

56. The only evidence cited by Oconee County for asserting the existence of a prescriptive easement over the Private Driveway was "institutional memory." Institutional

memory is not evidence. The BOZA had no documentary or testimonial evidence before it reflecting any Oconee County use or maintenance of the Private Driveway. Conversely, evidence presented by Petitioners included testimony, affidavits, and documents reflecting that Petitioners paved the Private Driveway and have maintained it for forty years and that Oconee County's road maintenance ended west of the Private Driveway.

57. The BOZA made an error of law when it granted the variance application premised on a finding of a prescriptive easement without first determining the existence of a prescriptive easement with all elements met by clear and convincing evidence.

**THIRD CAUSE OF ACTION**
**(Grant of Variance Application Based on Error of Law Unlawful Expansion of Easement)**

58. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

59. Even assuming the existence of a prescriptive easement, which Petitioners expressly deny, the BOZA's grant of a variance application will result in a material increase in the burden on Petitioners' property and imposed a new and additional burdens.

60. Granting a variance for a private development of nineteen homes with an estimated 200 trips per day driving along Petitioners' property will result in a material increase in the burden on Petitioners' property. The only current users of the dead end Private Driveway are Petitioners, their visitors, and patrons of John's Marine. Installation of a public road servicing a brand new subdivision will materially change the character of the Private Driveway and increase the burden of vehicular traffic on Petitioners' property.

61. Transforming the Private Driveway into a public road also places new burdens on Petitioners' property. John's Marine has been operating at it current location for forty years. Petitioners testified that John's Marine will no longer be able to operate on the property should



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

the Private Driveway be transformed into a public road for nineteen new homes. John's Marine uses the entirety of the Private Driveway to conduct its business. If the Private Driveway is no longer available to John's Marine, this is a new and substantial burden that has never been placed on Petitioners' land and a restriction Petitioners never assented to.

62. It was error for BOZA to approve the variance which will materially increase the burden and create new burdens on Petitioners' land. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). This was an error of law.

**FOURTH CAUSE OF ACTION**
**(Arbitrary and Capricious Grant of Variance Application)**

63. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

64. The BOZA determined that "The authorization of a variance WILL NOT be of substantial detriment to the adjacent uses . . ." but that "the character of the district *WILL be harmed* by the granting of the variance." (Emphasis added).

65. The BOZA's decision to approve a variance when the character of the district "WILL be harmed" is arbitrary, capricious, and an abuse of discretion. Moreover, this is contrary to the statutory requirement, and local ordinance, that requires a finding that "the district *will not be harmed* by the granting of the variance." S.C. Code Ann. § 6-29-800(A)(2)(d); Oconee County Code Sec. 38-7.1.(4).

66. Petitioners submitted scale drawings showing that in order for the applicant, or developer, to meet the 31.9' right-of-way to construct the new public road, the applicant will either have to fill in a substantial amount of land currently underwater, or the roadway will have to shift toward John's Marine and be placed on top of the location where John's Marine currently

maneuvers boats and trailers. The applicant's own drawings reflected this 9.1' shift onto Petitioners' property needed for the new public road.

67. Petitioners testified that the substantial increase in traffic (200 cars a day) will detrimentally impact its business, even without this shift in the proposed road. If the road in fact must shift, such that John's Marine will now be a public roadway for 200 cars a day, it will have an even more detrimental impact on Petitioners.

68. In reviewing a variance application, the BOZA is charged with determining whether the requested variance will "be of substantial detriment to adjacent property." S.C. Code Ann. § 6-29-800 (A)(2)(d); Oconee County Code Sec. 38-7.1.(4). "The developer shall have the burden of providing evidence to the county of compliance with . . . the specific requirements of this applicable section." Oconee County Code Sec. 38-7.1. Only where the BOZA determines the variance *will not* be of substantial detriment can a variance be granted.

69. In this instance, the BOZA approved the variance application without sufficient definiteness as to the final location of the proposed public roadway. Moreover, the developer did not present the BOZA with sufficient evidence as to the final location of the roadway. As demonstrated by Petitioners, the detrimental impact analysis changes as the placement of the final roadway shifts. The BOZA did not conduct sufficient analysis of the detrimental impact on Petitioners' property under the various scenarios of the final road placement, and did not sufficiently review the impact of utility placement, road construction, and home construction.

70. The BOZA's finding of no substantial detriment to Petitioners' property and its decision to approve the variance application without sufficient definiteness as to the final location of the roadway was arbitrary, capricious, and an abuse of discretion.





ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**FIFTH CAUSE OF ACTION**
**(Violation of Statutory & Code Requirement for Explanatory Findings)**

71. Petitioners reallege each and every allegation set forth above as if repeated verbatim herein.

72. In order to grant a variance application, the BOZA must review four state statutory requirements, which are incorporated in the Oconee County ordinance. S.C. Code Ann. § 6-29-800(A)(2); Oconee County Code Sec. 38-7.1.(1)-(4). The BOZA's review of each requirement, and findings as to how each requirement is satisfied, must be explained in writing. *Id.* S.C. Code Ann. § 6-29-800(A)(2) ("A variance may be granted . . . if the board *makes and explains in writing*" the four requirements); Oconee County Code Sec. 38-7.1. ("The board of zoning appeals may grant a variance . . . if the board of zoning appeals makes and explains in writing" the four requirements).

73. Here, the BOZA's Order on variance application #VA21-011, does not contain written explanatory findings as to each of the four statutory requirements. See **Exhibit 1**. The BOZA Order simply repeats verbatim the four requirements without any explanatory analysis or comment.

74. Moreover, the BOZA Hearing transcripts contains no analysis by the BOZA of the impacts to John's Marine under the varying road location scenarios. The BOZA was presented with drawings indicating that under certain scenarios, property from Petitioners would need to be taken to meet the 31.9' right-of-way, and under this scenario Petitioners would lose land rather than gain any land, which contradicts one of the assumptions underlying the BOZA's vote approving the variance.

75. Because the BOZA Order on variance application #VA21-011 was not accompanied by written explanatory findings and the transcript is devoid of sufficient analysis on these points, it must be voided.

WHEREFORE, Petitioners pray that this Court reverse and void the BOZA's grant of variance application #VA21-011, and that the application be denied; and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ David L. Paavola

Keith M. Babcock, S.C. Bar No. 456
kmb@lewisbabcock.com
David L. Paavola, S.C. Bar No. 100714
dlp@lewisbabcock.com
Lewis Babcock L.L.P.
P.O. Box 11208
Columbia, SC 29211
(803) 771-8000
Attorneys for Petitioners/Appellants

Columbia, SC
June 9, 2022

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Oconee County
Board of Zoning Appeals
415 South Pine Street
Walhalla, SC 29691
864-364-4218

COPY

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**BOARD ORDER ON VARIANCE HEARING**
**Hearing date: April 25, 2022**
**Permit Application: VA21-011**

The Board of Zoning Appeals held a public hearing on Monday, April 25, 2022, to consider the request for a variance in accordance with County Ordinances, by application, for variance request #VA21-011: Continuation from 1/24/2022 BZA hearing postponement: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.

**The Board makes the following conclusions:**
Based on the evidence presented to the Board regarding the proposed Variance:

1. There ARE extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions DO NOT generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property WOULD effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of a variance WILL NOT be of substantial detriment to adjacent uses or to the public good, and the character of the district WILL be harmed by the granting of the variance.

Therefore, by A VOTE OF 5-0, the Board of Zoning Appeals orders that a variance from the required 50' right-of-way of 18.1' located at TMS# 150-00-01-459 has been APPROVED with the following condition:
**Order approved subject to proper abandonment procedures, compliance with all ordinances and state law on acceptance into the County roadway system. Developer grant/ deed John's Marine property so that there is reasonable, unimpeded access to the new road.**

Date issued: 5/11/22

Chairman

Secretary

Date mailed to parties in interest: 5.11.22 Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

**EXHIBIT 1**

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



**Ellenburg Road - 2021**




**EXHIBIT 2**

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

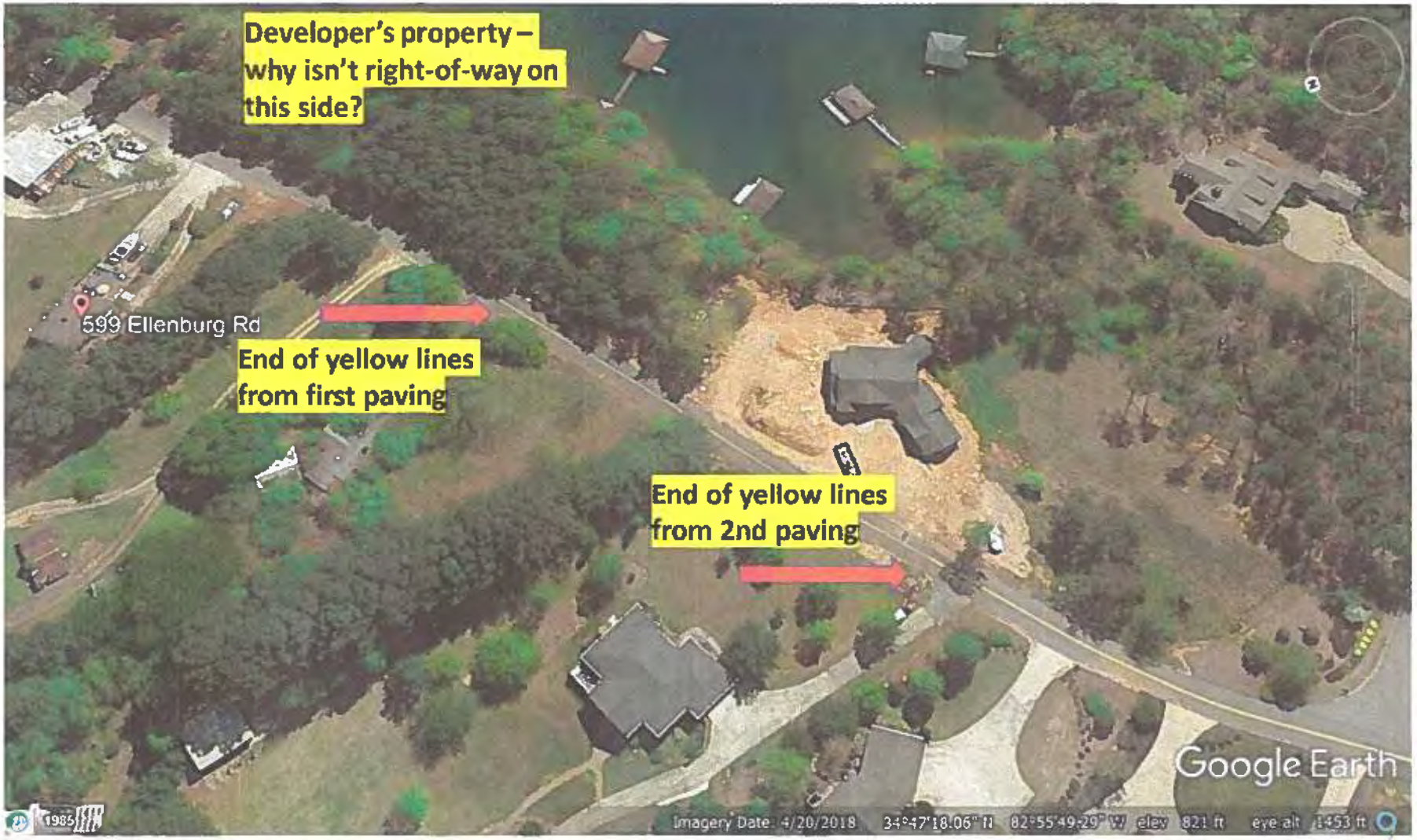
ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

COPY

STATE OF SOUTH CAROLINA )
)
COUNTY OF OCONEE )

**AFFIDAVIT OF JAN RATLIFF**

BEFORE ME appeared, Frances ("Jan") J. Ratliff, who deposes and says:

1. I reside at 599 Ellenburg Road, Seneca, South Carolina 29672, and have personal knowledge of the matters set forth herein.
2. On October 1, 2009, I, along with Karen Rasbornik, attended a meeting at the offices of the Oconee County Roads and Bridges Department. Also present were County employees Matt Kelley, Price Brown, and Larry Hardin.
3. At the time of the meeting, Karen Rasbornik and I were given a copy of the Plat attached to as **Exhibit "A"** by employees of the Oconee County Roads and Bridges Department.
4. Exhibit "A" bears the initials of "GBP" (George Prince Brown) and is dated 08-15-08.
5. At the time of the meeting, employees of the Oconee County Roads and Bridges Department stated that the County's maintenance of Ellenburg Road ends where the point is highlighted in green immediately to the west of parcel on Exhibit "A" as 103.
6. The place where County employees stated that County maintenance ends was marked for many years with a sign indicating the end of County Maintenance until someone moved the sign. The Plat reference also coincides with where the road striping ended for many years.
7. The point represented by County employees as the end of County Maintenance is a long distance from my property.



**EXHIBIT 3**

8. My family has continuously maintained the paved portion of Ellenburg Road to the east of the endpoint of County Maintenance. The County has not engaged in any maintenance of the portion of Ellenburg Road in question.

FURTHER AFFIANT SAYETH NAUGHT.

Frances J. Ratliff

FRANCES J. RATLIFF

SWORN to before me this 7 day of Jan., 2022.

Michelle Nauldin

Print Name: Michelle Nauldin
Notary Public for State of SC
My Commission Expires: 12/9/2029



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**AGENDA**
**OCONEE COUNTY COUNCIL MEETING**
**TUESDAY, August 1, 2000**
**7:00 PM**
**OCONEE COUNTY ADMINISTRATIVE OFFICES**
**415 SOUTH PINE STREET**
**WALHALLA, SC**

1. Call to Order
2. Invocation
3. Approval of Minutes
4. Public Comment Session (Not to exceed thirty minutes)
5. Second Reading of Ordinance 2000-09, "AN ORDINANCE TO AMEND ORDINANCE 99-14, UNIFIED PERFORMANCE STANDARDS ORDINANCE AND LAND DEVELOPMENT REGULATIONS TO INCLUDE SUBDIVISION AND LAND DEVELOPMENT & VARIANCE PROCEDURE FOR SUBDIVISIONS" – Mr. Tommy Abbott, Chairman, Planning Commission
6. Presentation of Draft Proposal for Fall Creek & Town Creek Landing Parks – Dr. Grant Cunningham
7. Consideration of Approval of Grant Application for Federal Assistance in the Amount of $2,420,078 for the Airport – Mrs. Melissa Brown, Grants Coordinator
8. Consideration of Approval of FY2000 Solid Waste Bonus Grant Application in the Amount of $10,000 – Mrs. Melissa Brown, Grants Coordinator
9. Consideration of Approval of Tentative Listing of Surplus Equipment to be Sold at Auction – Ms. Marianne Dillard, Purchasing Agent
10. Consideration of Approval to Dispose of Timber at the Vehicle Maintenance Facility – Ms. Marianne Dillard, Purchasing Agent
11. Consideration of Approval of Change Order for Road Department – Mr. Jon Caime, County Engineer
12. Consideration of Approval of Memorandum of Agreement Between Oconee County & Department of Juvenile Justice

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



**Open Session Period Continued:**

Mr. Steve Sokol addressed Council regarding the formation of the Oconee Keowee Alliance, which is opposed to the boat race during Waterfest 2000. Mr. Sokol further informed Council they had received 1200 signatures of people who are opposed to the boat race.

Mr. Steven Ancona spoke in opposition of the proposed subdivision regulations ordinance.

Mr. Warren Carpenter stated he supported the concept of the subdivision regulations ordinance, however, he felt it needed more study. Mr. Carpenter is opposed to the 100 foot set back for septic tanks, he requested the ordinance be sent back to the Planning Commission. (See attached statement)

Mr. Tom Markovich spoke in opposition of the subdivision regulations and requested that Council review it more closely. He also expressed feeling that the ordinance violated the Fifth Amendment and the Twelfth Amendment. (See attached statement)

Mr. John Hamrick also spoke in opposition of the way property would have to be divided under the proposed subdivision regulations.

Mr. Rick Thompson stated that if the ordinance is adopted, zoning in Oconee County will be adopted, he further stated he felt the ordinance should be less restrictive. (See attached statement)

Mr. B. J. Littleton stated he was in support of using the whole block where the courthouse is located for the courthouse. He also asked how many houses would you want to place on a .57 acre tract of land, the houses should not be crowded together, he also stated he felt the setbacks in the ordinance are reasonable.

**Ordinance 2000-09:**

Mr. Hall made a motion that Ordinance 2000-09, "AN ORDINANCE TO AMEND ORDINANCE 99-14, UNIFIED PERFORMANCE STANDARDS ORDINANCE AND LAND DEVELOPMENT REGULATIONS TO INCLUDE SUBDIVISION AND LAND DEVELOPMENT & VARIANCE PROCEDURE FOR SUBDIVISIONS" be referred to the next Council Meeting when full Council is present. However, this motion died for lack of a second.

Mr. Thomas made a motion, seconded by Mr. Hamilton, approved 2 – 1 (Mr. Hall voting against that Ordinance 2000-09 (titled above) be referred to the Law Enforcement, Safety, Health, Welfare & Services Committee for further study.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

2

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC
COUNCIL MEETING DATE: 4/4/06
COUNCIL MEETING TIME: 5:00 pm

ITEM TITLE OR DESCRIPTION:

Subdivision & Land Use Ordinance

BACKGROUND OR HISTORY:

Oconee County Road & Transportation Committee recommended significant changes to the Subdivision & Land Use Ordinance.

SPECIAL CONSIDERATIONS OR CONCERNS:

Changes to the Subdivision & Land Use Ordinance are part of the ordinance of moratorium.

STAFF RECOMMENDATION:

Council adopt ordinance on first reading and refer to Planning Commission.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft Subdivision & Land Use Ordinance

Submitted or Prepared By:

Tom Hendricks

Approved for Submittal to Council:

Ron H. Thaven, County Administrator

Reviewed by/Initials:

_____:County Attorney

_____:Finance

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

(Revisions 3/24/06)
These revisions are in *bold italics*
(Offices of Brad Norton)

Performance Standards, Chapter 6.

# 6.0 SUBDIVISION AND LAND DEVELOPMENT

## 6.1 AUTHORITY AND JURISDICTION

### 6.1.1 Authority

These land development and subdivision regulations are adopted under authority granted by Title VI, Chapter 29 (6-29-1120) et. seq. of the Code of Laws of South Carolina, 1976.

### 6.1.2 Jurisdiction

a. These regulations shall apply to the development and subdivision of land within the unincorporated areas of Oconee County as now or hereafter established and any incorporated municipality which contracts with the Oconee County Council for these regulations to be administered within such municipality. Regulations contained within this ordinance that apply to the construction and maintenance of roads shall apply to all roads and drainage structures, whether public or private, constructed within any unincorporated area of Oconee County and municipalities contracted with the Oconee County Council for administration of these regulations. Regulations contained within this Ordinance that apply to the construction and maintenance of roads, appurtenancies or drainage structures shall apply to all public and private roads, drives and driveways in the unincorporated areas of Oconee County; also included shall be all municipalities contracted with the Oconee County Council to administer these regulations. These regulations shall not apply to those roads completed, under construction, or approved by Oconee County prior to adoption of this Ordinance by County Council. In the event that a regulation in this ordinance conflicts with any other county regulation, the more stringent standard shall apply.

## 6.2 PURPOSE AND SHORT TITLE

### 6.2.1 Purpose

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

k. be signed in accordance with adopted E-911 Addressing regulations.

l. allow at least one hundred (100) feet of sight distance for each ten (10) miles per hour of the posted speed limit where the private drive intersects a public road. The sight distance shall be measured from a seeing height of three and one-half (3 ½) feet to an object one foot in height above the grade of the public road. If the proposed drive does not meet the sight distance requirement, a waiver must be signed by the individuals(s) constructing the private drive stating that the owner(s) is liable and responsible for any accidents, injuries, problems, and property damage resulting from improper sight distance.

m. meet all applicable storm water management and sediment control regulations.

n. be approved in writing by Planning Commission staff prior to submission of plat(s) the Register of Deeds for recording. The following shall be prominently printed on the plat(s) in all capital letters:

> **"THE ROAD RIGHT-OF-WAY EASEMENTS SHOWN ON THIS PLAT SHALL BE PRIVATE DRIVES NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY, AND WERE NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAY EASEMENTS SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE UNLESS CONSTRUCTED IN ACCORDNANCE WITH ADOPTED OCONEE COUNTY SUBDIVISION REGULATIONS."**

o. Comply with the State Manual for Uniform Traffic Control Devices.

6.3.3 **Private Roads** – Private roads shall provide vehicular access and road frontage to developments, or sections of developments, containing more than ten (10) single-family residential lots. All private, non-dedicated roads shall be prominently indicated as such on plats prior to subdivision approval. Maintenance arrangements for such roads must be noted in writing on subdivision plat submitted and must be subsequently recorded. The development served by a private road shall have direct access onto a public road, and no such private road shall be laid out so as to serve property outside the development. All private roads shall:

a. serve a maximum of seven (7) lots;

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

b. have a minimum right-of-way crossement width of fifty (50) feet

c. have a minimum road frontage requirement of thirty (30) feet for all lots

d. be constructed in accordance with the regulations set forth in section 6.8 of these regulations.

e. be maintained by an individual, association of property owners, or active Home Owner's Association as recorded in appropriate deed covenants and restrictions.

f. be legally certified for compliance by a surveyor/engineer licensed by the State of South Carolina.

g. be named in accordance with adopted E-911 Addressing regulations.

h. meet all storm water management and sediment control regulations.

i. be properly approved in writing by Planning Director prior to submission of plats to the Register of Deeds for recording. The following shall be prominently printed on the plat(s) in all capital letters:

"THE ROAD RIGHT-OF-WAY EASEMENTS SHOWN ON THIS PLAT SHALL BE PRIVATE ROADS, NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY AND NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAY EASEMENTS SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE UNLESS CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE."

j. Comply with the State Manual for Uniform Traffic Control Devices.

With the exception of the requirements put forth in this section, all private roads shall meet the requirements of Section 6.8 Public Roads of the Subdivision and Land Development Ordinance.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



**Ordinance 2006-11:**

Mr. Lyles made a motion, seconded by Mr. Crumpton, approved 5 – 0 that Ordinance 2006-11, "AN ORDINANCE REGULATING THE USE OF COUNTY ROADS" be adopted on first reading.

**Ordinance 2006-12:**

Mr. Rinehart made a motion, seconded by Mr. Lyles, approved 5 – 0 that Ordinance 2006-12, "AN ORDINANCE AMENDING SECTION 6: SUBDIVISION & LAND USE DEVELOPMENT OF ORDINANCE 99-14, OCONEE COUNTY UNIFIED PERFORMANCE STANDARDS AND LAND USE DEVELOPMENT REGULATIONS AS ADOPTED BY ORDINANCES 2001-04, 2002-05 & 2004-14" be adopted on first reading.

**Ordinance 2006-07:**

Mr. Moore made a motion, seconded by Mr. Crumpton, approved 5 – 0 that Ordinance 2006-07, "AN ORDINANCE IMPOSING A SIX MONTH MORATORIUM ON THE APPROVAL OF SITE PLANS AND/OR BUILDING PERMITS FOR ANY CONSTRUCTION PROJECT WITHIN ONE THOUSAND (1,000') OF LAKES THAT ARE WITHIN OR ADJACENT TO OCONEE COUNTY UNLESS SAID PROJECT INCLUDES A TWENTY-FIVE (25') FOOT RIPARIAN BUFFER AND A SIX MONTH MORATORIUM ON THE APPROVAL OF SITE PLANS AND/OR BUILDING PERMITS FOR ANY SUBDIVISION AS DEFINED IN THIS ORDINANCE THAT WILL RESULT IN THE NEED TO UPGRADE A COUNTY ROAD IN ACCORDANCE WITH THIS ORDINANCE" be adopted on second reading.

**Ordinance 2007-09**

Mr. Crumpton made a motion, seconded by Mr. Rinehart, approved 5 – 0 that Ordinance 2007-09, "AN ORDINANCE REGULATING FALSE FIRE ALARMS TO WHICH OCONEE COUNTY RURAL FIRE DEPARTMENTS RESPOND" be adopted on first reading.

**Auction Listing:**

Mr. Crumpton made a motion, seconded by Mr. Moore, approved 5 – 0 that the attached listing of surplus properties be adopted and a date of May 6, 2006 be established for the auction.

3

# Oconee County Planning Commission

415 S. Pine St. • Walhalla, South Carolina 29691
Phone (864) 638-4218 • Fax (864) 638-7046

The Golden Corner

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**Memorandum 42-00**

**May 23, 2000**

**To:** **Oconee County Council**

**From:** **Planning Commission**

**Subject:** **Performance Standards Ordinance**

Please find attached the following:

1. An amendment to the Performance Standards Ordinance.
2. The proposed Chapter 2 of the Performance Standards Ordinance.

The amendment will allow a variance procedure for the proposed chapter 2. The original ordinance allowed a variance for all chapters except chapter 2. This language will correct that omission.

The proposed chapter 2, Subdivision and Land Development has been reviewed and approved by the Planning Commission. Some parts of the chapter are contentious and council members will hear from some disgruntled developers. The chapter will solve many of the ongoing problems created by development.

Cc: Harrison Orr
Planning Commission wo\encl

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

3

# ATTACHMENT 1- PROPOSED AMENDMENT TO THE PERFORMANCE STANDARDS ORDINANCE

## New section to 1.4.1 (h)

**(h) Variance-** to hear and decide requests for variance from the requirements of Chapter 2, of the Performance Standards Ordinance concerning the standards for the subdivision and land development, when strict application of the provisions of the ordinance would result in unnecessary hardship. Variances shall be decided by the Planning Commission pursuant to *Section 1.5.5.3* of this ordinance, *General Criteria for Granting a Variance.*

# 2.0 SUBDIVISION AND LAND DEVELOPMENT

## 2.1 AUTHORITY AND JURISDICITON

### 2.1.1 Authority

These land development and subdivision regulations are adopted under authority granted by Title VI, Chapter 29 (6-29-1120) et. seq., of the Code of Laws of South Carolina, 1976.

### 2.1.2 Jurisdiction

These regulations shall apply to the development and subdivision of land within the unincorporated areas of Oconee County as now or hereafter established and any incorporated municipality which contracts with the Oconee County Council for these regulations to be administered within such municipality. Regulations are also contained herein which shall apply to the construction and maintenance of all roads whether or not they are part of subdivision development.

## 2.2 PURPOSE AND SHORT TITLE

### 2.2.1 Purpose

The purpose of this ordinance is to protect and promote the public health, safety and general welfare of the citizens of Oconee County, South Carolina, providing for the harmonious, progressive, and orderly development of land. These regulations are established for the following specific purposes, among others, as provided for in the South Carolina Local Government Comprehensive Planning Enabling Act Of 1994 (Section 6-29-1120 of the Code of Laws of South Carolina, 1976, et seq.):

(1) to encourage the development of an economically sound and stable county;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. In addition, the permit-issuing authority may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles. Not withstanding the other provisions of this subsection, no temporary dead-end street in excess of one thousand (1,000) feet may be created unless no other practicable alternative is available.

**2.7.3 Private Roads** - All private, non-dedicated roads must be indicated as such prior to subdivision approval. Maintenance arrangements for such roads must be stated in writing on subdivision plat submittals. The development shall have direct access into a public road and no such private road may be laid out so as to serve property outside the development. Each private road must indicated as such on all plats and deeds.

**2.7.4 Road Names** - A proposed road which is obviously in alignment with or an extension of an existing named road shall bear the name of the existing road. Except for the above, in no case shall the name of a proposed road duplicate or be phonetically similar to an existing road name, irrespective of the use of suffix (road, avenue, boulevard, drive, place, court, lane, etc.). It shall be unlawful for any person in laying out any new road to name such road on any final plat or in any deed or instrument, without first obtaining the approval of the Oconee E-911 Addressing Office and the Planning Commission.

**2.7.5 Local Roads** - Local roads shall be so laid out that their use by through traffic will be discouraged.

**2.7.6 Residential Buffers for Major Roads** - Where a subdivision abuts or contains an existing or proposed collector or arterial road, the Planning Commission may require that lots which abut or are adjacent to the major road shall face a minor interior access road. Other treatment may also be required, as necessary, for adequate protection of residential properties and for separation of through and local traffic. Special treatment may be required, such as screen planting contained in a non-access reservation along the rear property line adjacent to the major road.

**2.7.7 Road Design (Geometric Criteria)** - In general, geometric criteria for road design shall be in accordance with standards of the South Carolina Department of Transportation (SCDOT). Said standards are those contained in the latest edition of "A Policy on Geometric Design of Highways and Streets" by the American Association of State Highway and Transportation Officials". Local and collector residential roads (public or private) shall be designed in accordance with the following standards.

a. Minimum right-of-way and pavement width shall be as follows:

3

| Road Type | Right-of-Way | Pavement |
|---|---|---|
| Local (closed drainage) | 50' | 22' |
| Local (open drainage) | 50' | 22' |
| Collector | 50' | 24' |

For high density residential or nonresidential subdivisions or portions thereof, additional right-of-way or pavement width shall be provided when determined as necessary by the Planning Commission or County Supervisor.

b. Cul-de-sacs shall not exceed one thousand (1000) feet in length, except where unusual topographic or other physical conditions dictate otherwise, and shall have a turnaround with a minimum diameter of seventy (70) feet to pavement edge and a minimum diameter of one hundred (100) feet to the right-of-way line. Dead-end streets without turnarounds are prohibited.

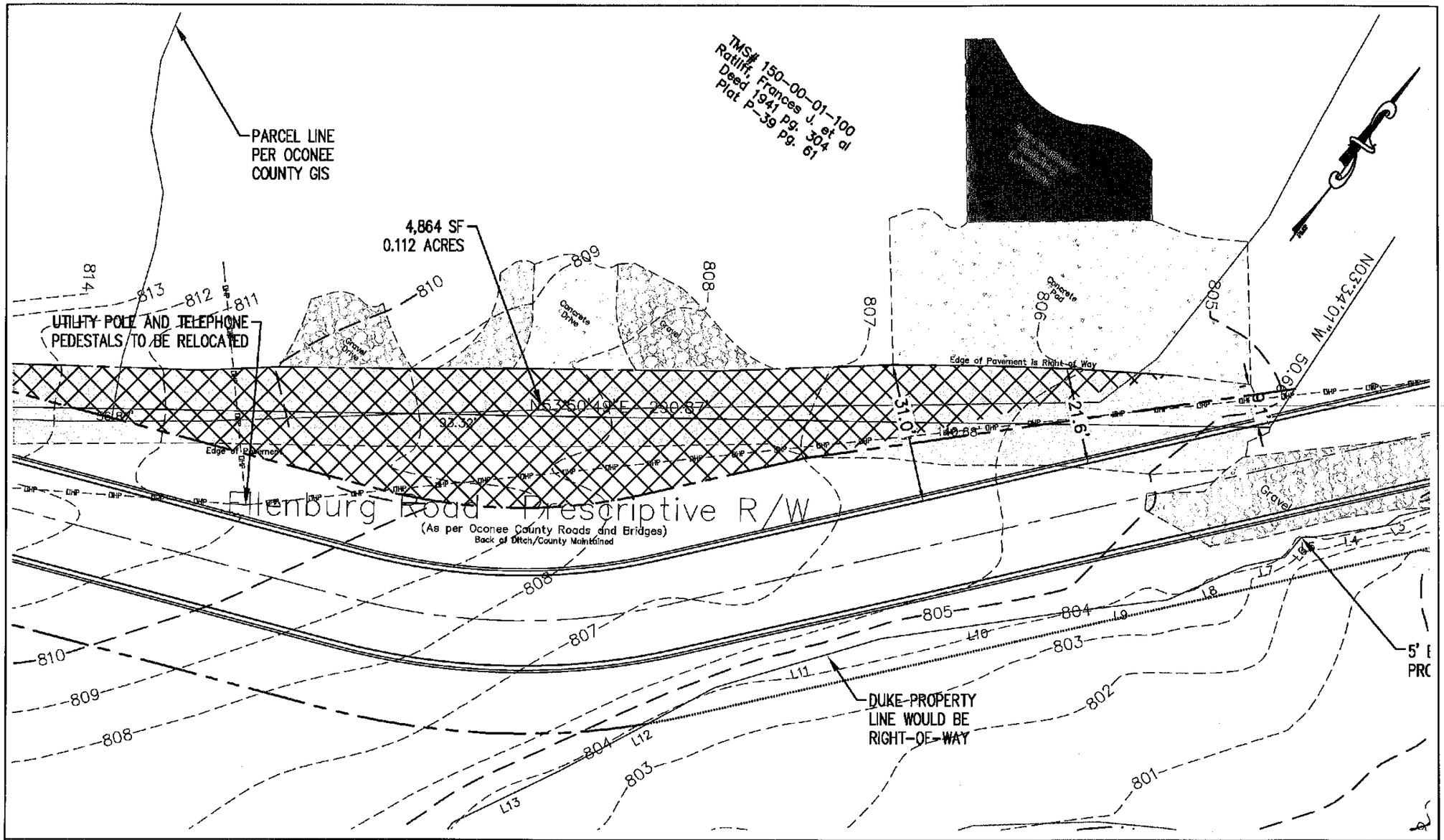
c. Horizontal curvature shall be introduced at any change in road direction, and the minimum centerline radius shall be one hundred fifty (150) feet for local roads and two hundred fifty (250) feet for collector roads. Arterial road curvature shall be in accordance with State Highway Department standards. Minimum tangent between reverse curves shall be one hundred (100) feet for local roads, and sixty (60) feet from curve to any intersecting road.

d. Stopping sight distance on vertical curves be shall at least one hundred fifty (150) feet (25 mph design speed) for local roads and three hundred twenty five (325) feet (45 mph design speed) for collector roads. If a collector road may reasonably be expected to serve more than one subdivision, it shall be designed for at least a fifty five (55) mph design speed (450' minimum sight distances). Minimum sight distance at intersections shall be established by provision of a clear sight triangle right of way measured at least twenty five (25) feet from the intersection of the road right-of-way in either direction which triangle shall be entered upon the final plat prior to recording. Modifications may be required by the County Engineer in order to insure safety.

e. Roads shall be designed to intersect as nearly as possible at right angles but no less than seventy five (75) degrees. Minimum radius of curb or pavement edge at intersections shall be at least twenty (20) feet at intersections with local roads and twenty five (25) feet at intersections with collector roads.



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



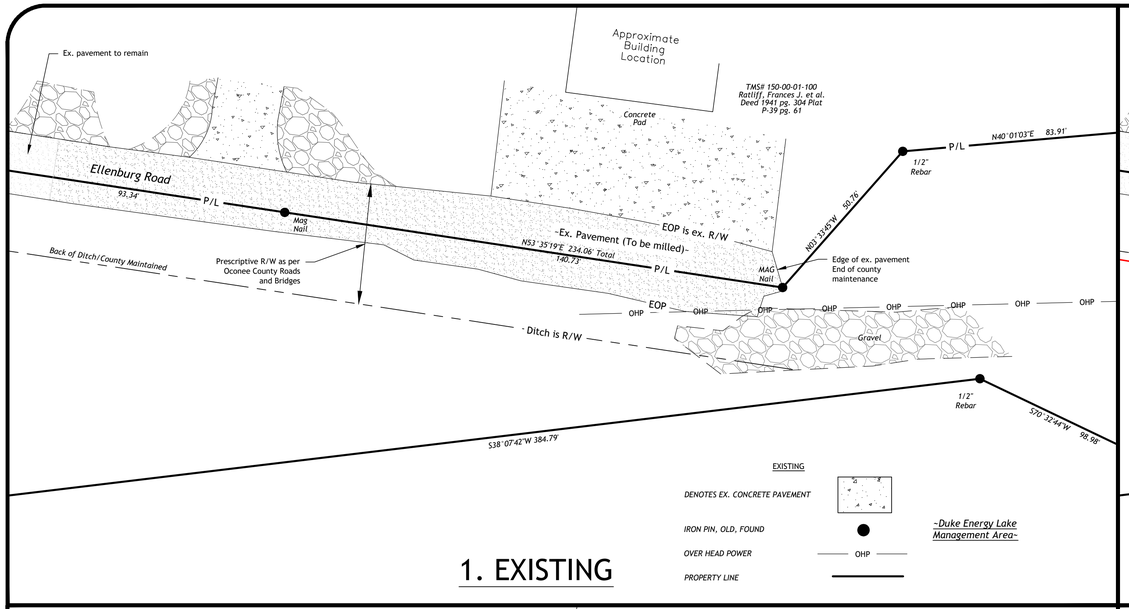

Site Plan
SCALE: 1"=20'

Arrowhead Point
Project # 1764.1 3/21/22

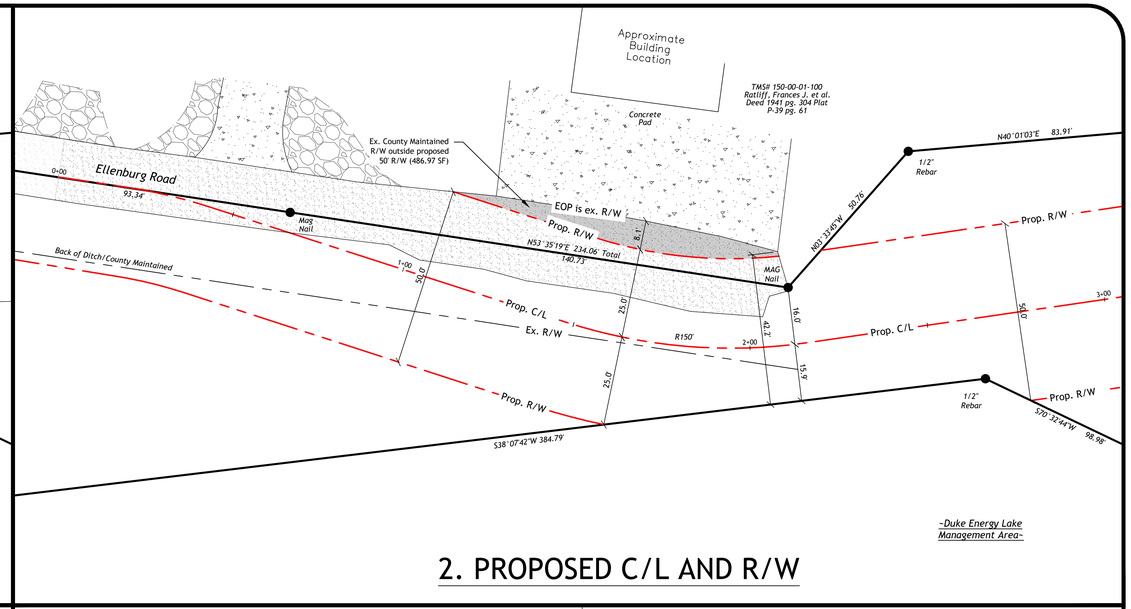
**EXHIBIT 5**



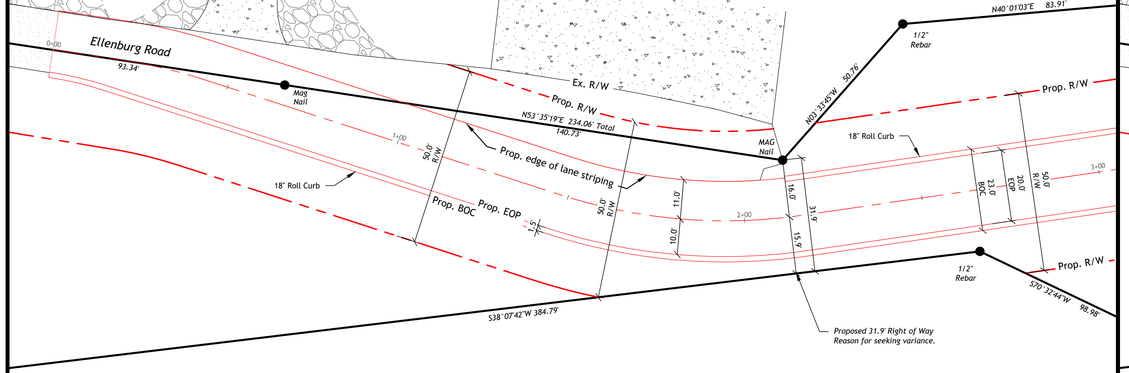
ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



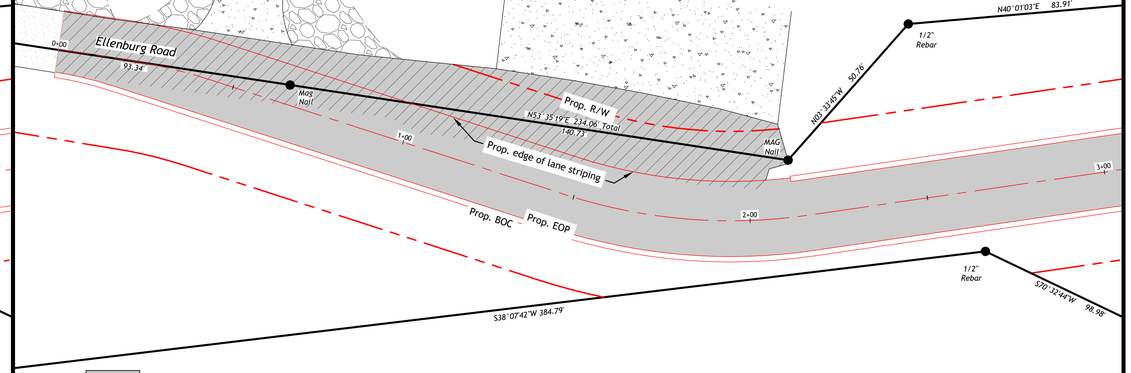

# 1. EXISTING




# 2. PROPOSED C/L AND R/W




# 3. PROPOSED ROAD DIMENSIONING




# 4. PROPOSED PAVEMENT/REPAVEMENT

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

***CAUTION***

PALMETTO UTILITY LOCATION SERVICE

3 DAYS BEFORE DIGGING CALL TOLL FREE 811

A ONE CALL SYSTEM FOR COMMUNITY AND JOB SAFETY.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

RIDGEWATER ENGINEERING & SURVEYING
PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

GRID NORTH
S.C.S.P.C. NAD 83 (2011)

20 0 10 20
SCALE: 1 in = 20 ft.

THIS DRAWING AND THE DESIGN SHOWN THEREON ARE THE PROPERTY OF RIDGEWATER ENGINEERING & SURVEYING, LLC. THE REPRODUCTION, COPYING OR USE OF THIS DRAWING WITHOUT WRITTEN CONSENT IS PROHIBITED AND ANY INFRINGEMENT WILL BE SUBJECT TO LEGAL ACTION.

SOUTH CAROLINA
RIDGEWATER ENGINEERING & SURVEYING
No. 5816
CERTIFICATE OF AUTHORIZATION

Arrowhead Point

Oconee County, South Carolina

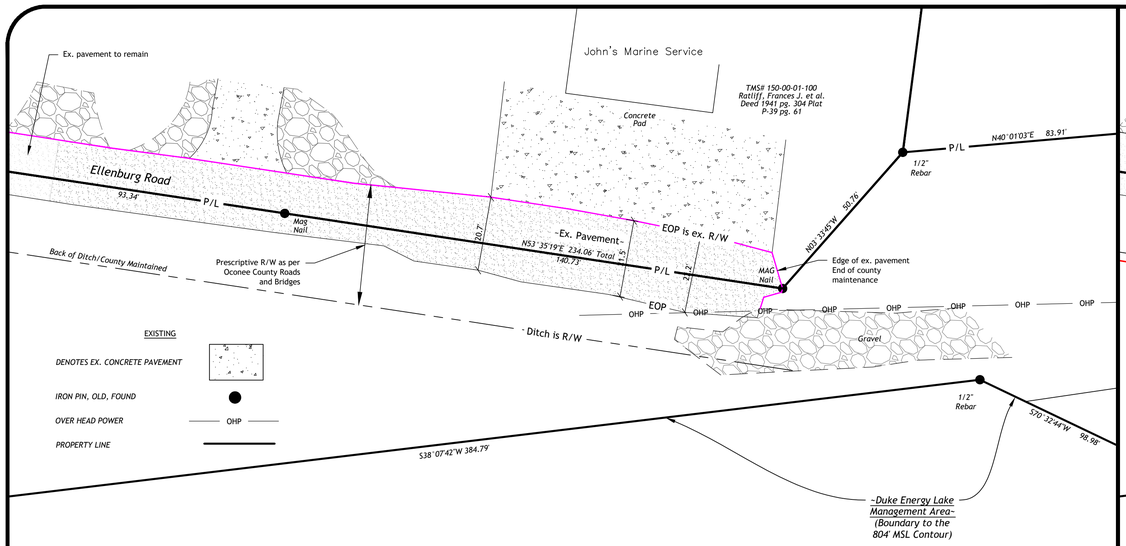
DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | ISSUE FOR REVIEW |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |

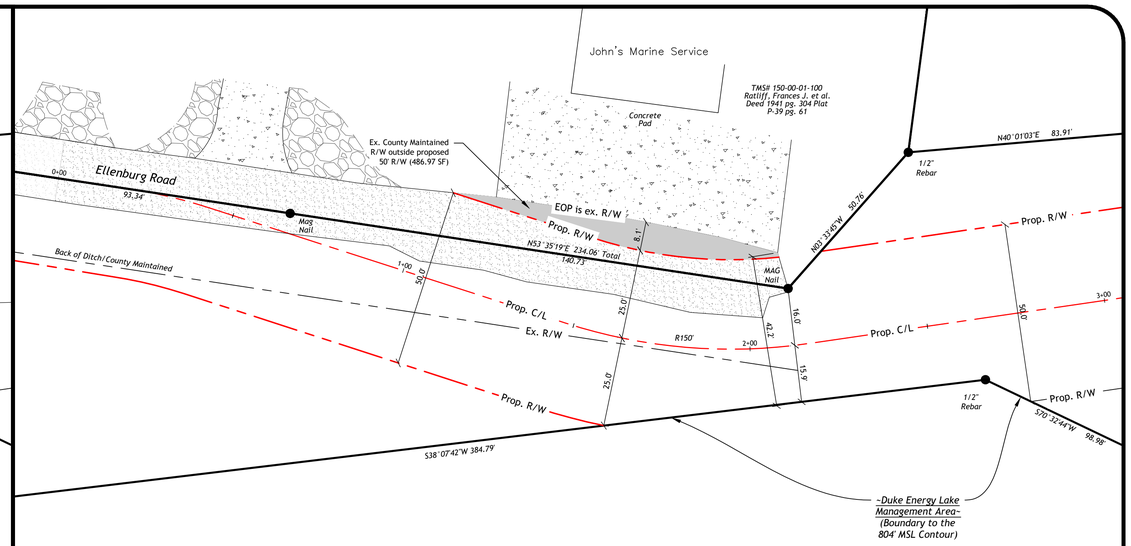
SHEET

Variance Request

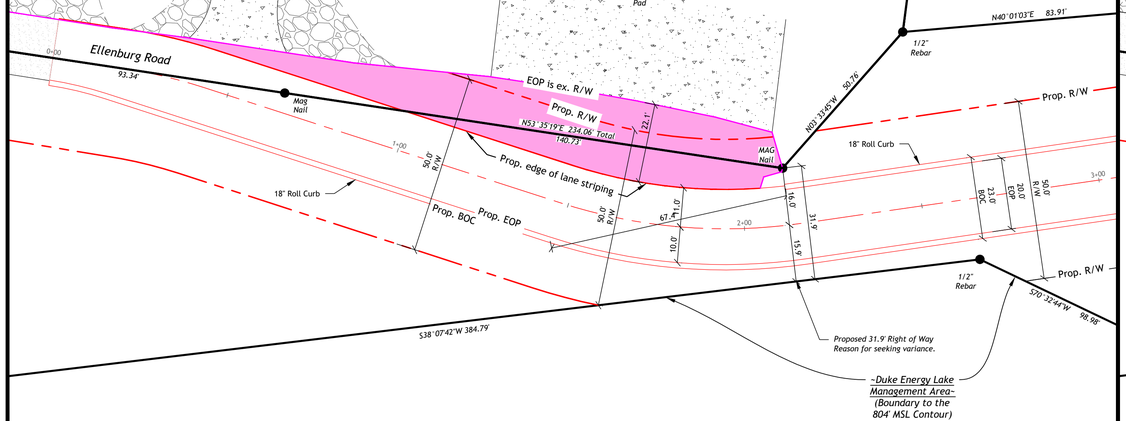
C - 2



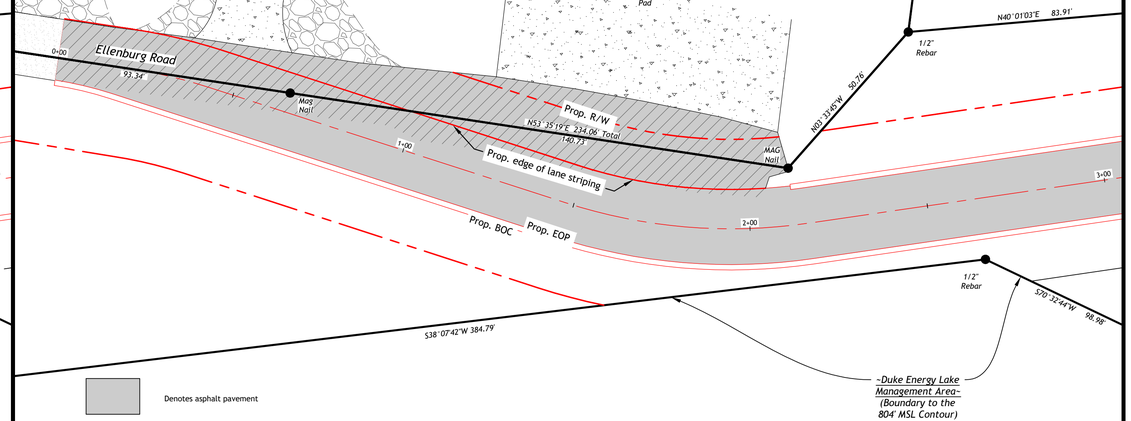

## 1. EXISTING




## 2. PROPOSED CENTERLINE AND RIGHT-OF-WAY




## 3. PROPOSED ROAD DIMENSIONING




## 4. PROPOSED PAVEMENT/REPAVEMENT

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

***CAUTION***

PALMETTO UTILITY LOCATION SERVICE
3 DAYS BEFORE DIGGING CALL TOLL FREE 811
A ONE CALL SYSTEM FOR COMMUNITY AND JOB SAFETY.

RIDGEWATER ENGINEERING & SURVEYING
PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

GRID NORTH
S.C.S.P.C. NAD 83 (2011)

20 0 10 20
SCALE: 1 in = 20 ft.

THIS DRAWING AND THE DESIGN SHOWN THEREON ARE THE PROPERTY OF RIDGEWATER ENGINEERING & SURVEYING, LLC. THE REPRODUCTION, COPYING OR USE OF THIS DRAWING WITHOUT WRITTEN CONSENT IS PROHIBITED AND ANY INFRINGEMENT WILL BE SUBJECT TO LEGAL ACTION.

SOUTH CAROLINA
RIDGEWATER ENGINEERING & SURVEYING
No. 5816
CERTIFICATE OF AUTHORIZATION

Arrowhead Point

Oconee County, South Carolina

DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

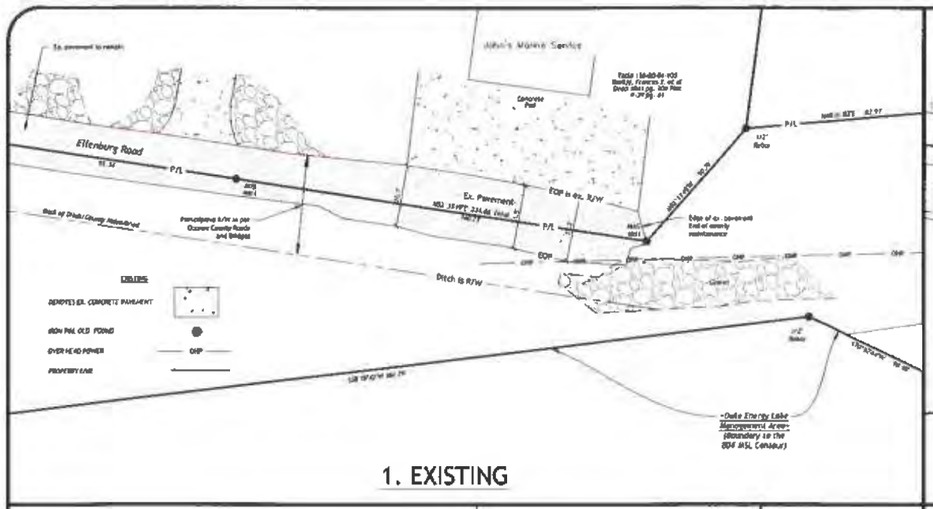
| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | ISSUE FOR REVIEW |
| 1 | 11-29-21 | PLANNING COMMISSION MTG. |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |

SHEET

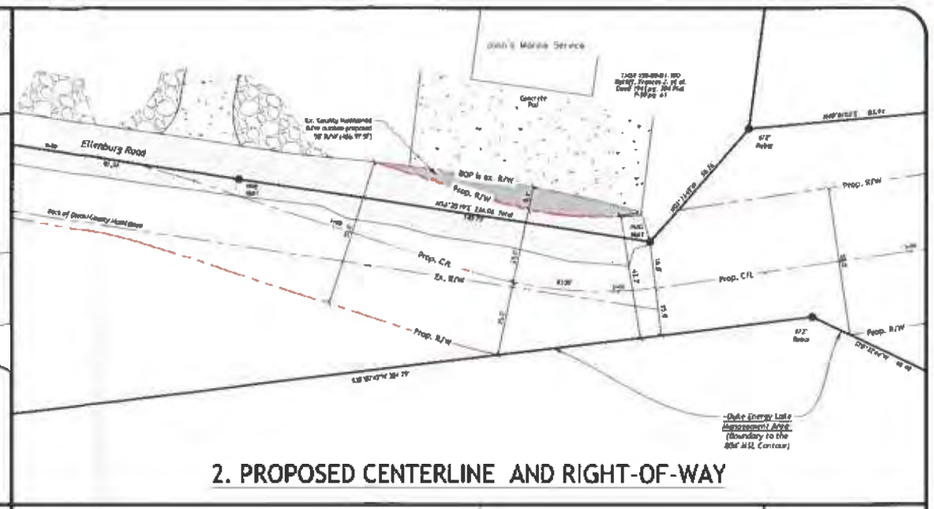
Variance Request

C - 2

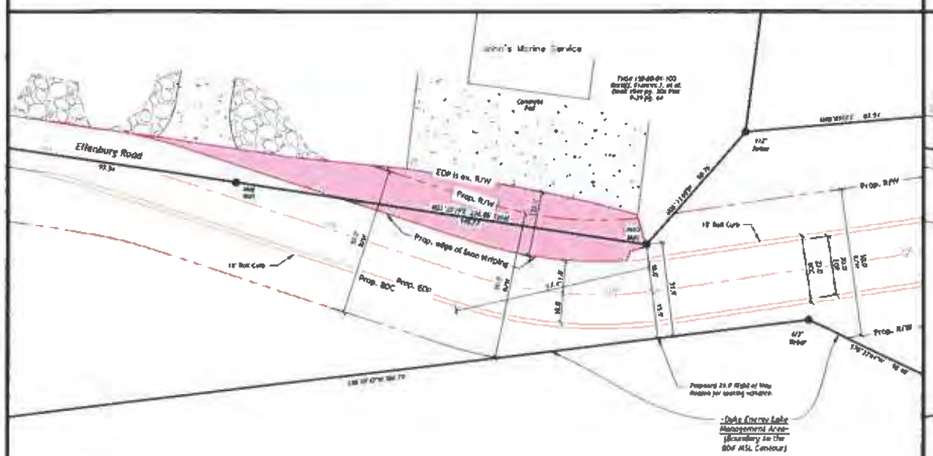
ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



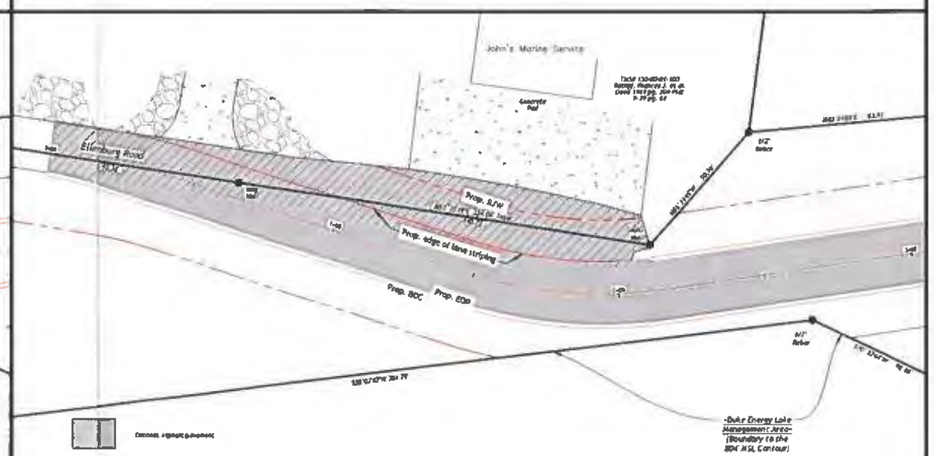

1. EXISTING




2. PROPOSED CENTERLINE AND RIGHT-OF-WAY




3. PROPOSED ROAD DIMENSIONING




4. PROPOSED PAVEMENT/REPAVEMENT

Graphics 1-4

***CAUTION***

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

RIDGEWATER
ENGINEERING & SURVEYING
PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

SCALE: 1in = 10ft.

Arrowhead Point

Oconee County, South Carolina

DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | PRMC FOR REVIEW |
| 1 | 11-29-21 | PLANNING COMMISSION MTG |

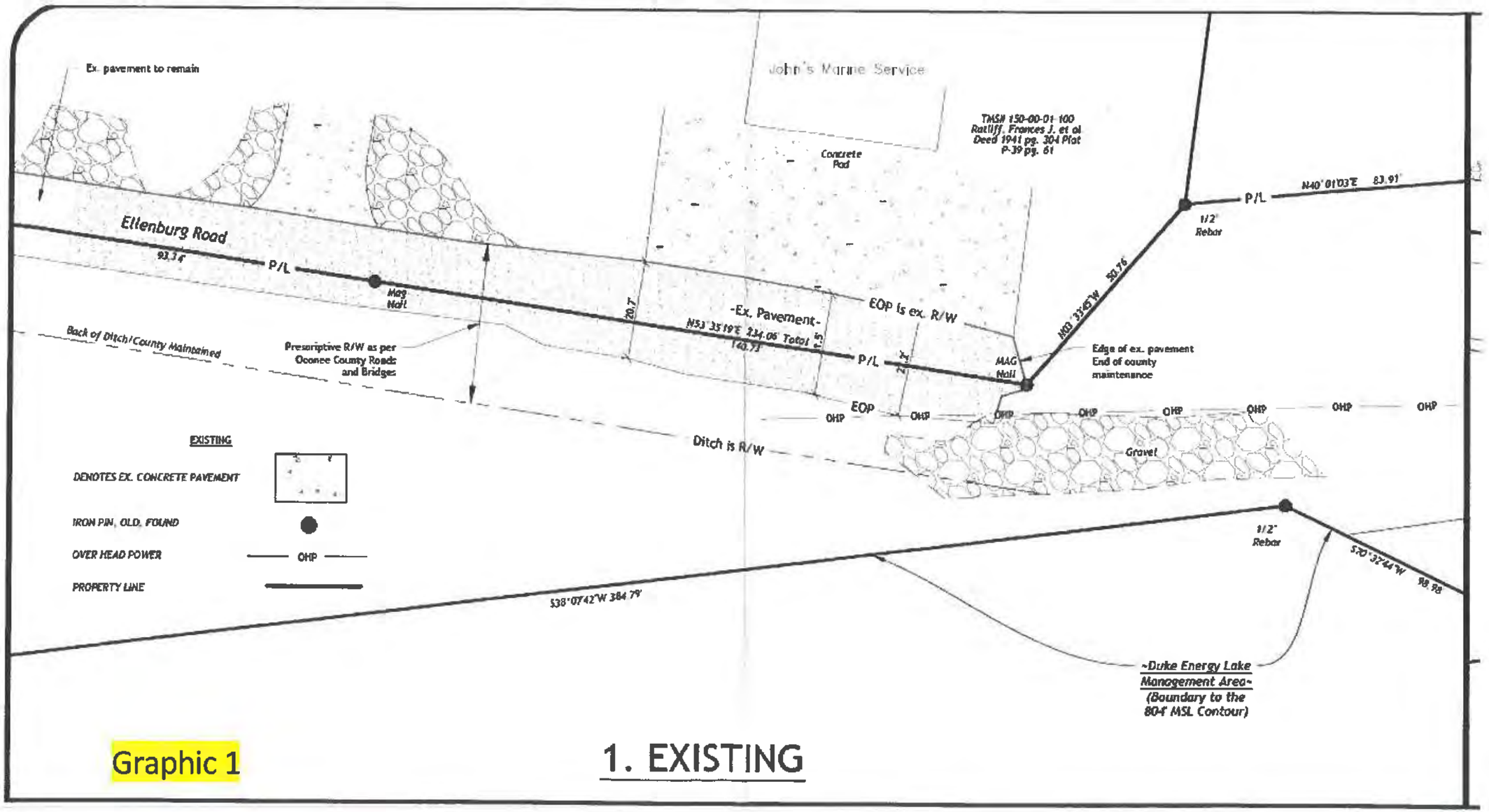
SHEET

Variance Request

C - 2

3

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



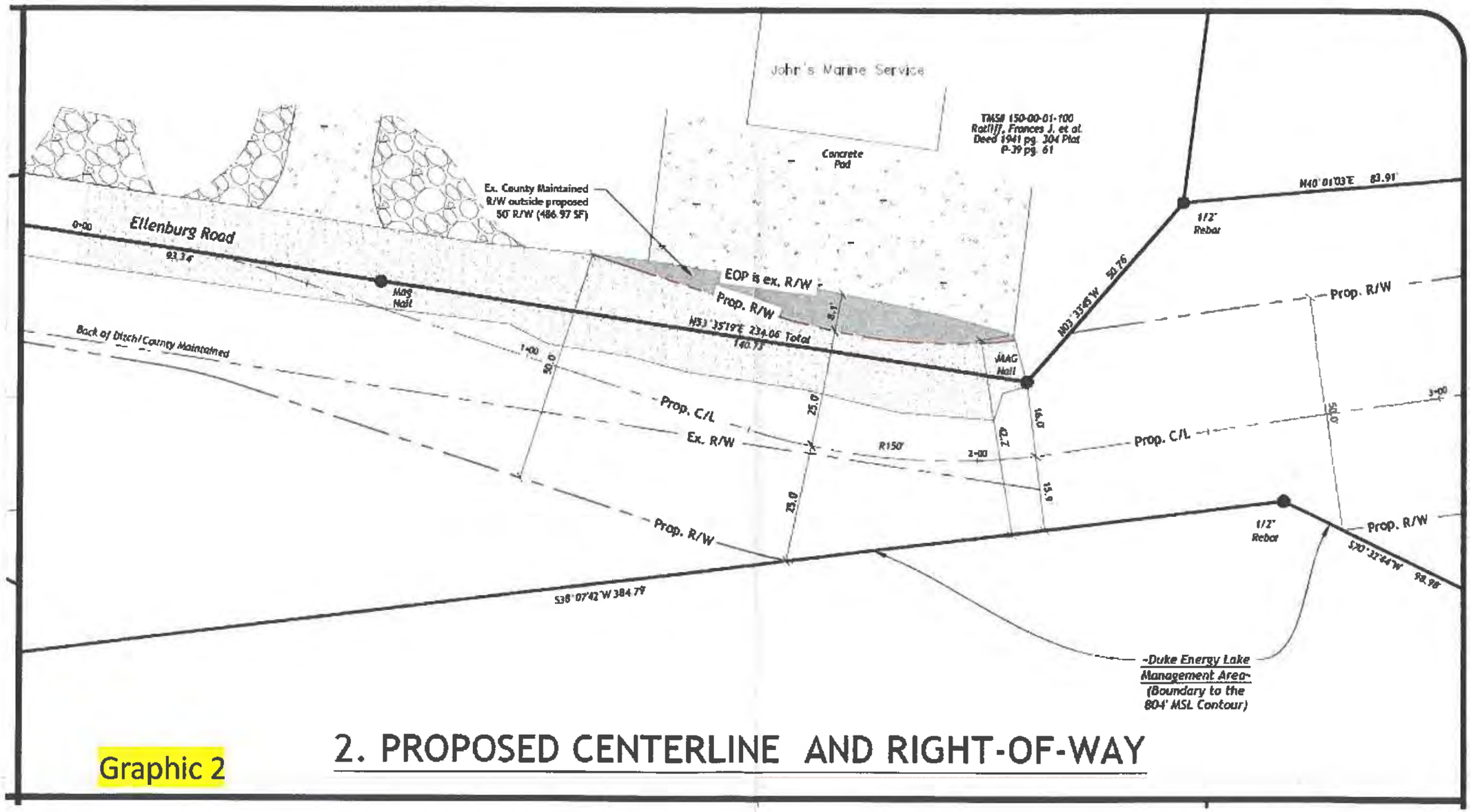

Graphic 1

# 1. EXISTING

4



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



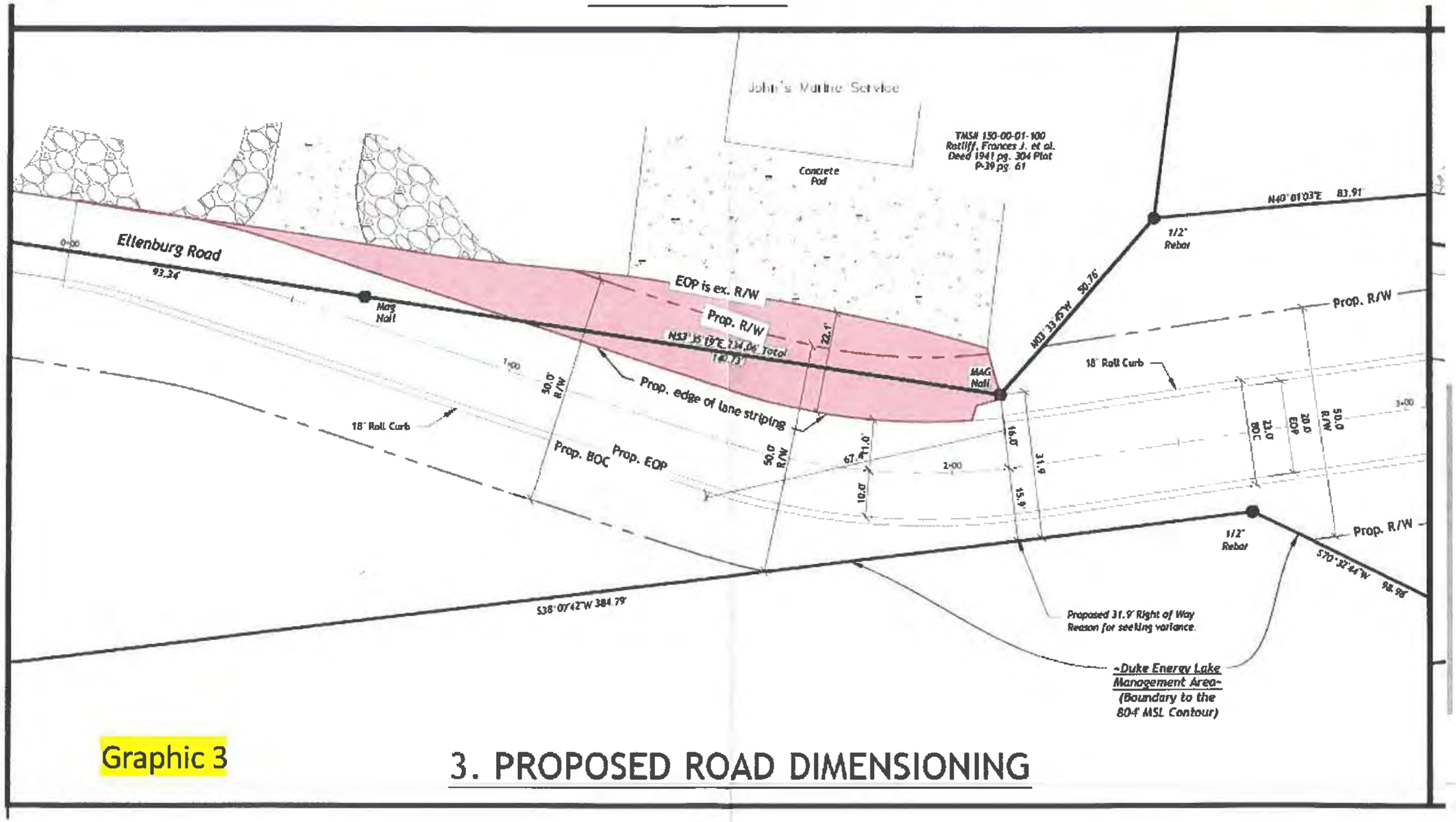

Graphic 2

## 2. PROPOSED CENTERLINE AND RIGHT-OF-WAY

5



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



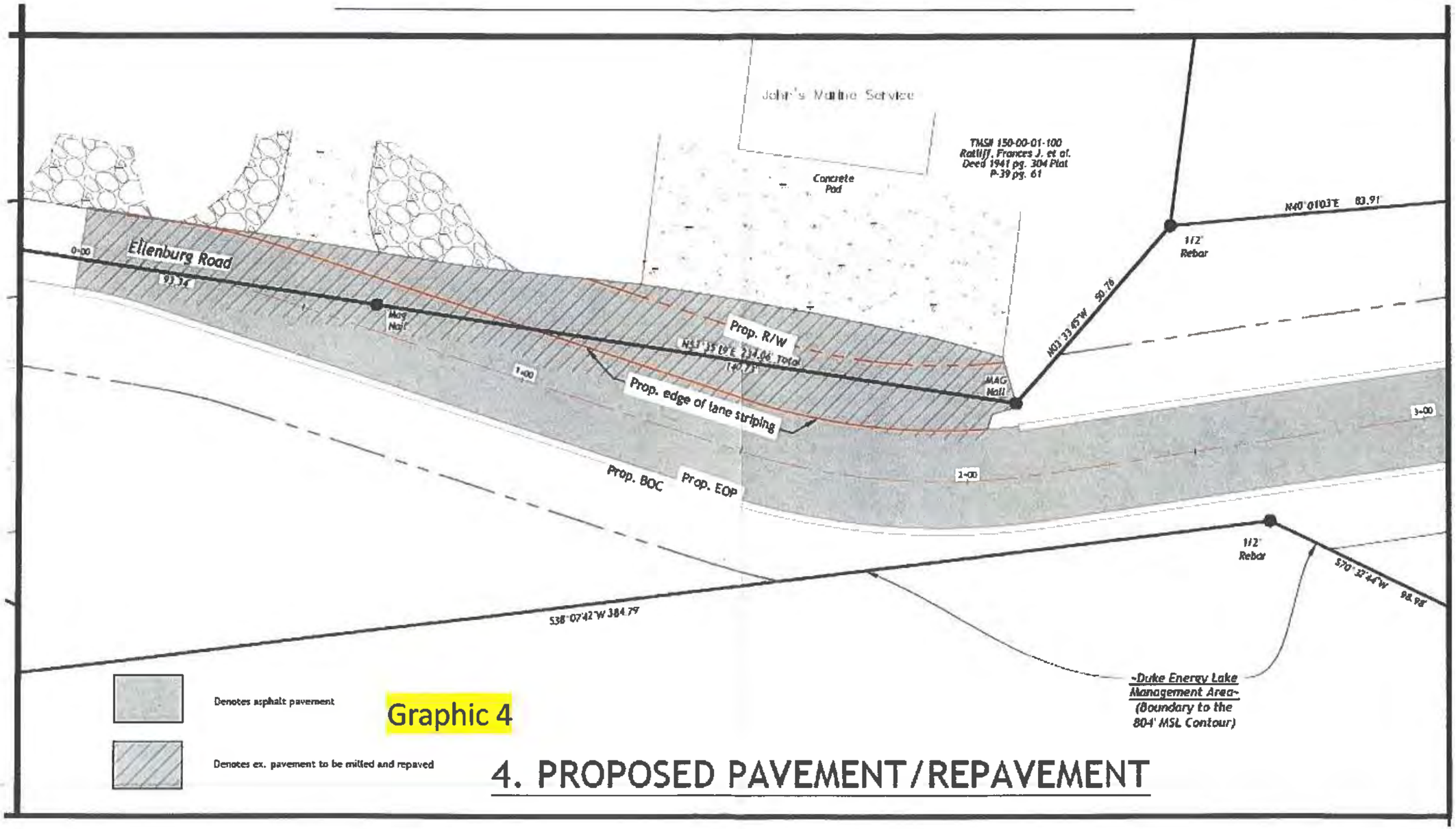

Graphic 3

## 3. PROPOSED ROAD DIMENSIONING

(6)



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396




# 4. PROPOSED PAVEMENT/REPAVEMENT

7



ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

**Minutes**
6:00 PM – November 30, 2021

**Members in Attendance**

| | |
|---|---|
| Gwen Fowler | Tim Mays |
| Marty McKee | Jim Codner |
| Bill Gilster | John Eagar |
| Bill Decker | |

**Staff**
James Coley
Vivian Kompier

**Media**
Lauren Pierce, The Journal

**ITEM 1 – Call to Order –** Mr. Codner called the meeting to order at 6:00 PM.

**ITEM 2 – Approval of minutes of May 24, 2021 meeting –** Mr. Eagar made a motion to approve; seconded by Mr. McKee. Vote 4/0 to approve, with Mr. Mays, Mr. Gilster and Mr. Decker recusing themselves.

**ITEM 3 – Brief statement about rules and procedures –** Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide an 8-minute presentation to state their request. Mr. Codner asked presenters not to be overly verbose.
- For the opposition to the request, the Board asked that one or two people summarize the opposition—concerns, problems, etc.
- Citizen comments – Mr. Codner asked that speakers avoid identical comments in the interest of brevity. He added that the Board has received close to 100 emails that they have reviewed and they understand the issues. It is important that everyone have their say, but asked everyone to be brief if at all possible.
- Applicant rebuttal
- Board member questions, with input from Planning Staff when requested.
- Voting

**ITEM 4 – Variance request application #VA21-010: Seamon Whiteside and Associates, Inc. – Paul Talbert is requesting a variance allowing the side setback**

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved.**
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Decker. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 7 | 0 |

Mr. Codner noted that variance request was approved.

**Item 5 – Variance request application #VA21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' right-of-way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch-to-ditch right-of-way. TMS #150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.**

**Applicant's opening statement and provision of evidence:**
Reah Smith, Development Team, Lake Keowee Real Estate, spoke on behalf of the applicant for the variance. She presented evidence that the property has geographic and physical constraints that require the variance and that each of the four criterion can be met to approve the variance. Ms. Smith added that the Road Ordinance that is referenced was adopted after the property was purchased. Ms. Smith described the positive impact the variance will have on John's Marine and the nearby County roads. Board members asked questions to clarify certain points.

**Staff comments:** Mr. Coley explained that the request is a road variance, not necessarily a zoning ordinance, and Planning staff have met with staff from the Roads & Bridges Department to discuss. Notable findings from the meetings include agreement that the current road right-of-way is prescriptive and ends at the pavement on either side of the road, the variance is for a section that is 100 ft. in length and 31.9 ft. at its narrowest point, and the applicant is shifting the proposed entrance south from the center of the road so that it is all on their property. Mr. Coley also noted that granting this variance would not allow construction to begin immediately. The applicant would still need Roads & Bridges' approval for their plan to fit road shoulders, appropriate drainage, and all utilities in a narrow right-of-way. In addition, a traffic study would need to be completed as well as approvals for access and turn radiuses from Emergency Management.

**Public comment time:**

- Rick McDuff, Attorney, Spokesman for John's Marine (Ratliff family), stated the opposition to the ordinance. Points of opposition included:

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

  - The portion of the road in question is not owned by Oconee County. Ownership is split between the developer and Ratliff's, with the majority by the Ratliff's.
  - The belief that the BZA has no authority to make this decision; must be decided between the two private parties.
  - No evidence a prescriptive easement has been obtained by the County
  - Applicant is attempting to change a contour of an easement that they are not a party to
  - Negative impact on John's Marine and the Ratliff property and absence of legal remedies to address the impact

  Discussion with the Board followed.

- Edward John "Jay" Ratliff, Jr., outlined the Ratliff family's opposition to the variance, the history of the business and the negative impact of the approval of the variance.
  Discussion with the Board followed.
- Mike Johnson, citizen, expressed his support for the variance approval, citing the changes to the County ordinance that regulates roads and right-of-ways over the years, specifically regarding private roads.
- Maggie Johnson, citizen, spoke in support of the variance approval and property owner's right to use their property as allowed.
- Chad Knot, citizen, expressed his opposition to the variance approval noting issues with the legality of Board deciding this application, infringement of the Duke 804 line, traffic, and the impact on John's Marine.
- Chris Holder, citizen Greenville, SC, stated his opposition to the variance approval. Mr. Holder referred to the negative impact on John's Marine specific to the space needed to navigate boat trailers and traffic.
- Jon Martin, citizen, stated his opposition to the variance with concern that John's Marine will lose their business and/or Oconee County taxpayers will have to defend decision in appellate court.
- Bruce Hadley, citizen, expressed his concern that the Board has no jurisdiction over this application as the road is private land and there is no plan to allow for a similar business if John's Marine is forced out of business
- Barry Steele, citizen, expressed his opposition to the variance approval based on his concerns with erosion and limited room for tractor trailers used for deliveries.
- Doug Cooper, Harbor Oaks HOA President, expressed his opposition to the variance approval citing safety concerns with regards to increased traffic.
- Mr. Codner made a motion to take a 5-minute break, seconded by Mr. Eagar. Mr. Codner called for a vote. The motion passed unanimously 7/0
- Mr. Codner made a motion that the Board reconvene, seconded by Mr. McKee. Mr. Codner called for a vote. The motion passed unanimously 7/0
- Mr. Codner read a sample of emails submitted by the public into the record.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**Applicant rebuttal:** Mr. Larry Brandt, attorney for the applicant, presented a summary rebuttal to the argument against the requested variance. A question-answer session with the Board followed. Andy Lee, Developer, addressed the opposition presented during public comment specifically the size of the cul-de-sac, piece of land between the two properties, encroachment into the 804, flood plain easement with regards to the 810, existence and "ownership" of the prescriptive easement, stabilization of the shoreline, and traffic. Discussion with Board followed. Ms. Smith made closing remarks.

**Board discussion:** Discussion by the Board included, but was not limited to, the Board's jurisdiction in this case considering the conflicting legal opinions of the applicant and the opposition, John's Marine, and traffic and pedestrian safety—specifically **section 26-8 (a) Variance from road standards** of the Oconee County Ordinances. Mr. Codner made a motion to table the variance request, with the supposition directing Planning Staff answer the question of who owns the property (road), and the two parties meet and try to resolve this issue—specifically the piece of land between the two properties—coming back to the Planning Department to schedule a new hearing; seconded by Mr. McKee. Mr. Codner called for a vote. The vote was approved unanimously 7/0.

**Item 6 – Adjourn**

Mr. Codner asked for a motion to adjourn

Motion – Mr. Mays made a motion; seconded by Mr. Eagar

Vote – Mr. Codner called for a vote. Motion was unanimously approved 7/0.

Meeting was adjourned at 6:58 PM.

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

**Minutes**
6:00 PM – January 24, 2022

**Members in Attendance**

Gwen Fowler
Jim Codner
John Eagar
Tim Mays
Bill Gilster

**Staff**

James Coley, Planning Director
Vivian Kompier, Planner/Zoning Administrator
David Root, Attorney

**Media**

Lauren Pierce, The Journal

**ITEM 1 – Call to Order –** Mr. Coley called the meeting to order at 6:00 PM.

**ITEM 2 – Election of officers –** Mr. Coley called for nominations for Chair. Mr. Eagar made a motion that Mr. Codner continue as Chair; seconded by Mr. Gilster with no discussion. Mr. Coley called for a vote. The motion was approved 5/0. Mr. Codner called for nominations for Vice-Chair. Mr. Eagar made a motion for Ms. Fowler to serve as Vice-Chair. Ms. Fowler declined the nomination. Mr. Codner made a motion for Mr. Eagar serve as Vice-Chair; seconded by Ms. Fowler with no discussion. Mr. Codner called for a vote. The motion was approved 5/0. Mr. Codner made a motion that Mr. Coley serve as Secretary; seconded by Mr. Eagar with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

**ITEM 3 – Approval of 2022 calendar –** Mr. Eagar made a motion that the proposed 2022 calendar be adopted; seconded by Mr. Mays with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

**ITEM 4 – Brief statement about rules and procedures –** Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide a presentation to state their request.
- Staff will be asked to make any comments regarding the request.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

- Citizens are allowed to voice their approval or opposition to the proposed. Please do not repeat opinions that have already been stated into the record.
- Applicant rebuttal
- Board members will discuss in detail.
- Voting

**ITEM 5 – Approval of minutes of November 30, 2021 meeting –** Mr. Eagar made a motion to approve the November 30th minutes; Mr. Gilster seconded. Discussion: Mr. Codner noted that Mr. Ratliff sent an extensive letter pointing out issues with the minutes. Mr. Codner asked County Attorney, David Root to define and explain what minutes should provide. Mr. Root stated that minutes for public bodies are defined by statute. They should include when a meeting is held, the subject matter of the meeting, and who is present. With regards to the essence of what was spoken, the statute says minutes should capture the substance of what was said; it is not a transcript. Mr. Codner summarized that approval of the minutes would be agreement that the minutes are a fair representation of what happened in that meeting. When asked, Mr. Coley stated that he believes the minutes are a fair representation. Discussion included agreement that the proposed minutes are adequate and suggestion that all public comments, including the letter questioning the minutes, should be included with the approved minutes. Mr. Coley confirmed that as procedure, all citizen emails would be attached to the minutes as part of the record after the minutes are approved. In addition, the Ratliff letter will be attached to the minutes as well. Mr. Eagar noted the spelling of his name was incorrect in the minutes. Mr. Codner called for a vote. The motion was approved unanimously 5/0.

**ITEM 6 - Variance request Continuation #VA 21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.** – Mr. Codner explained that this request is a continuation from the January meeting and the requesting and responding parties have presented their cases and all public comments have been entered into the record. Public comment was closed with the closing of the last meeting, with the exception of the letter received from Mr. Ratliff concerning the minutes. In preparation of this continuation, the Board asked staff to present a delineation of who owns the road in question and they asked the two parties to attempt to come to an agreement. Mr. Coley deferred to Mr. Root for clarification on ownership of the road. As a matter of parliamentary procedure, Mr. Root asked Mr. Codner to first take action to remove the request from the table before proceeding. Mr. Eagar made a motion to remove Variance request #VA21-011 from the table; seconded by Mr. Mays. Mr. Codner called for a vote. The motion was approved 5/0.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Mr. Root explained that there is no question on who owns the rights to the land underneath the road. The question at hand is the traveling surface of the road. Records show that Oconee County Roads & Bridges maintained the road to the end of the paved section for 20 years (the requirement for a prescriptive easement). However, Mr. Root has recently received affidavits that questioned his findings and he needs more time to research the facts.

**Board questions:** Mr. Root answered questions from members of the Board regarding the definition of the term prescriptive easement, clarifying the County's authority to approve or deny a request to change the location of a road (prescriptive easement), if and how right-of-ways should be considered, and clarification of the need for permit approval in the future.

Mr. Codner summarized the actions the Board can take at this juncture. Based on his conversations with the legal counsel for both parties, Mr. Root stated that a postponement may be in order. Attorneys for the applicant and the opposing party agreed. Mr. Eagar made a motion to postpone the request until the applicant asked for it to be reinstated on the BZA agenda; Mr. Gilster seconded the motion. Discussion led to amending the motion on the table. Mr. Codner amended the motion to limit the postponement for a total of six months. Mr. Codner called for a vote of motion as amended. The motion was approved 5/0.

**ITEM #7 - Variance application #VA 21-012A: Variance allowing the side setback for lot lines dividing attached single family units to be reduced to zero feet thus allowing the construction of individually-platted, attached single family units. Variance application VA21-012B: 27' Variance from the 50' road right of way to allow for the new townhomes to be consistent with the existing townhomes. Resideum, LLC – Greg Kurzner is requesting these variances. TMS# 257-00-02-008 an unaddressed parcel with the closest address of 304 Breakwater Lane, Seneca, SC 29678.**

**Applicant's opening statement and provision of evidence:** Greg Kurzner**,** Managing Member of Resideum LLC, presented their answers to the four questions on the Variance application, noting that they are trying to complete the development of a previously approved community in the fashion, consistent with the existing individually platted for sale units and to protect the integrity and investment of the current homeowners. He also noted that the required 50' road right-of-way was not in place at the time the development was originally designed, permitted and built.

**Public Comment:**

- Gary Moss, citizen, requested more information on how approval of the variance will affect the established homes off Shiloh Road.

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**Minutes**
6:00 PM – April 25, 2022

**Members in Attendance**

Tim Mays
Marty Mckee
John Eagar
Bill Gilster
Jim Codner

**Staff**

David Root, County Attorney
James Coley, Planning Director
Vivian Kompier, Senior Planner
Kyle Reid, Roads and Bridges

**Media**

Lauren Pierce, The Journal

**ITEM 1 – Call to order –** Mr. Codner called the meeting to order at 6:00 PM.

**ITEM 2 – Brief statement about rules and procedures –** Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide a presentation to state their request (5 minutes).
- Staff will be asked to make any comments regarding the request.
- The public is allowed to voice their approval or opposition to the proposed. Please do not repeat opinions that have already been stated into the record (3-5 minutes).
- Applicant rebuttal
- Board members will discuss in detail.
- Voting

**ITEM 3 – Approval of minutes from February 28, 2022 –** Mr. Eagar made a motion to approve the minutes from February 28th; seconded by Mr. Mays Discussion – none. Mr. Codner called for a vote. The motion passed 5/0,

**ITEM 4 – Special exception application #SE22-003 – Faulk & Foster – Victoria Farmer is requesting a special exception to construct a 172' monopole telecommunications tower (182' top of lightning rod) TMS#285-00-05-001 an**

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

3. Suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with appropriate in appearance to the existing or intended character of the general vicinity:
    a. Motion – Mr. Eagar made a motion in the affirmative, seconded by Mr. Mays. A brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

    Mr. Codner noted that the criterion passed.

4. Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.
    a. Motion – Mr. Eagar made a motion in the affirmative; seconded by Mr. Mckee. A brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

    Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed special exception be **approved with the following condition: No Outside Boarding, pet runs, outside kennels, pet daycare.**
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

**ITEM 5 – Variance application #VA 21-011-Continuation from 1/24/2022 BZA hearing postponement: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.**

**Applicant's opening statement and provision of evidence:** Ms. Smith noted that the applicant has made attempts to reach a resolution with the Ratliff's, and have reached an been unable to resolve the issue, and are coming back to the board for a decision. She believes that they meet the criteria for the variance. The geography and topography

limit the development of the property. The lake is an additional factor limiting the applicant's ability to develop the property. It is the applicants position that the ordinance is overly restrictive and granting of the variance will not negatively impact the adjacent property owners. Ms. Smith detailed the applicant's roadway design.

**Staff comments and Board questions:**

- Mr. Root stated the County position that the road is under a prescriptive easement based on institutional knowledge, but that the affidavits presented call that into question.
- Mr. Reid explained the road surface area, and the right-of-way. Right-of-way is additional space for maintenance, utility, drainage, widening. Mr. Reid explained that there is no record that the property was ever turned over to the property owners. To the best knowledge of the County staff, the road was originally a state road, that the County assumed responsibility for after the creation of the lake. Neither the state nor the County have documentation relating to Ellenburg Road. Mr. Reid also contacted Crescent to see if they had any documentation, and they did not.

**Public Comment:**

- Rick McDuff- The BZA does not have authority to make this decision. The Ratliff family has paved and maintained the end of the road. There is no evidence of County maintenance on the road. Institutional knowledge is not the basis for changing the proposed course of the road.
- Ken Charles- concerned about fire safety, against the variance
- Jay Ratliff- Mr. Ratliff stated his qualifications, he showed a drawing he overlayed with boats, trucks, and use of the property. Mr. Ratliff showed his revised right-of-way drawings. The family believes there will be a negative impact on the family business. The board asked about usage of the road for the business and discussion about the impacts of the variance. Mr. Ratliff confirmed that they have not been able to reach resolution. Mr. Ratliff is concerned the board is using economic interests as justification.
- Larry Brandt- The Ratliff plats and deeds show public right-of-way. Ellenburg is a public road and cannot be abandoned without following proper procedures. The applicant is willing to deed property to the Ratliff's to maintain access to the road.
- John Richardson- against, the unique property should be protected.
- Doug Cooper- Mr. Cooper thanked the board for allowing additional public comment. The developer has placed filled on the site. Mr. Cooper believes the developer has indicated they have permission from Duke, but they actually have not. Mr. Cooper believes the County does not maintain the end of the road. Mr. Cooper believes the 50' right-of-way was in effect when the property was purchased.
- Bruce Dew- against, variance is a problem for the business.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

- Serena Richardson- road is dangerous and narrow. Ms. Richardson believes illegal fill has been added to the property. Ms. Richardson believes emergency services will not be able to access the property. Ms. Richardson is concerned that locals are not being looked after, and that investors are being prioritized.
- Chris Leonard- against
- Lucretia Morgan- Ms. Morgan stated issues with statements made by Mr. Johnson at the November 2021 meeting regarding this variance. Ms. Morgan provided copies of minutes from a 2006 County Council meeting where 50' right-of-way requirements for subdivisions were in place (see exhibit 2). Ms. Morgan stated in addition, dating back to 2000, Ordinance 99-14 Section 6.7.3 Private Roads, the 50' ROW was in place. On August 1, 2000 John Hamrick attended the county council meeting to discuss proposed changes to Ordinance 99-14 and was in opposition to the way property would have to be divided under the proposed subdivision regulations (Exhibit 1). Ms. Morgan provided the deeds proving the home size statements made by the developer were inaccurate. Ms. Morgan stated the developer needs the Ratliff's in order to make their plan work. Ms. Morgan stated that a variance cannot be approved based on only profitability per Oconee County Code of Ordinances Section 32-5. Ms. Morgan is opposed to granting the variance.

**Applicant rebuttal:** Mr. Andy Lee stated the plats along Ellenburg show the right-of-way. Mr. Lee stated the road standards have changed over the years and that roads have widened as standards have improved. Mr. Lee stated the County repaved the bad part of the road and left the remainder due to where the previous construction took place. Mr. Lee stated the portion at the end of the road could not have been abandonment as described opposition. Mr. Lee stated he does not need Duke's permission to develop. Mr. Lee reviewed the need for the variance.

**Board questions for Staff:**

- Mr. Root clarified that the board has the ability to make a decision.
- Mr. Reid clarified that the 200 average daily trips number was not an official estimation, and was a general statement to a question. He confirmed that a professional traffic study would be required for this development. Mr. Reid stated the work on the upper section of the road was done after construction and was a large patch job where the road was crumbling.
- Mr. Coley confirmed that Emergency Management will review turn abounds
- Mr. Reid confirmed that the Road paving on Ellenburg was at the direction of the County Engineer.

**Mr. Codner made a Motion to take a 10-minute beak seconded by Mr. Mays, motion passed 5-0**

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**Mr. Codner called the meeting back to order at 7:55 pm**

**Board Discussion:**

- Mr. Eagar the board should make a decision
- Mr. Mays the applicant still has a lot of other requirements
- Mr. Codner, the narrow point in on the applicant's property
- Mr. Mckee who will do the work on the road- the developer will be responsible to road construction
- Mr. Root discussed road abandonment
- A traffic study is required for road width determination
- Safety is paramount
- Mr. Codner everyone wants John's Marine to stay
- Discussion of use of the road as part of the business
- Discussion of if there is more space for John's Marine after the new road is constructed.
- Duke power issues are not applicable to this discussion
- County roads are not built to accommodate pedestrian traffic
- This is not being evaluated based on economic impacts
- Safety is the primary review criteria
- Mr. Coley reviewed the applicant had reached out for a decision by the Board after attempting to reach a resolution
- Discussion regarding conditions

**Consideration of VA21-011:**

1. There ***are*** extraordinary and exceptional conditions pertaining to the particular piece of property:
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

2. These conditions ***do not*** generally apply to other property in the vicinity:
    a. Motion – Mr. Eagar made a motion, seconded by Mr. McKee. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

3. Because of these conditions, the application of this chapter to the particular piece of property ***would*** effectively prohibit or unreasonably restrict the utilization of the property; and
    a. Motion – Mr. Eagar made a motion, seconded by Mr. May. Brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

    Mr. Codner noted that the criterion passed.

4. The authorization of a variance ***will not*** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
    a. Motion – Mr. Eagar made a motion; seconded by Mr. May. Discussion- does this harm John's Marine? Will the impact have severe impacts? Discussion- does this harm John's Marine? Will the impact have severe impacts?
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

    Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved.**
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. Vote. No Discussion

| In-favor | Opposed |
|---|---|
| 5 | 0 |

    Mr. Codner noted that variance request was **approved** with the following conditions:

    **Order approved subject to proper abandonment procedures, compliance with all ordinances and state law on acceptance into the County roadway system. Developer grant/ deed John's Marine property so that there is reasonable, unimpeded access to the new road.**

**Item 6 Adjourn –** Mr. Eagar made a motion to adjourn; seconded by Mays. Mr. Codner called for a vote. Motion passed unanimously 5/0.

BZA

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Staff Opinion

BZA #VA21-011 Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive "ditch to ditch" right-of-way. TMS # 150-00-01-459 is an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672

Applicant has requested a variance from the road standards under Sec 26-8 of the Oconee County Code of Ordinances. They have requested the variance from Sec 26-3(e)(1) Public Road Minimum right-of-way, pavement, and shoulder width shall be as follows: minor local 50' right-of way.

The applicant is connecting to the existing Ellenburg Rd, a county road, with a new road to develop land past the end of the existing road. Their design as presented would shift the road to the south, establishing a new road layout with curb and gutter on the south side of the road and curb and gutter on both sides past the end of the current road.

- Currently the road right-of-way is prescriptive and ends at the edge of pavement.
- The right-of way request is for a section of the road approximately 100 foot in length with a varying width, which at its narrowest is 31.9 foot
- Sketch is shifting the road to the applicant's side of the property line.

The applicant has meet with the Roads and Bridges Department (notes attached at the end), and based on the initial conversation the Department does not believe that the relocation of the road would have an adverse effect of road maintenance. If the variance is approved they would still need to show the ability to place the road, shoulders, drainage, and utilities in the proposed, narrowed, right-of-way, would need to have a traffic study completed, and would need approvals on access and turning radius with emergency management.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

James L. Ratliff, Owner/Operator
John's Marine Service
599 Ellenburg Road
Seneca, SC 29672
November, 22 2021

Jim Codner, Chairman
Oconee County Board of Zoning Appeals
415 South Pine Street
Walhalla, SC 29691

LETTER of OPPOSITION to Variance request application #VA 21-011 – TMS #150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672

Dear Mr. Codner,

My family and I are in opposition to the development of the proposed 19-home subdivision as presented on the sketch prepared by Ridgewater Engineering & Surveying. My father (John Ratliff) started John's Marine Service to serve boaters on Lake Keowee in 1972. In 1982, he opened his shop at 599 Ellenburg Road which borders TMS #150-00-01-459, the unaddressed parcel in the variance request application. I now own and operate the repair shop and my son is also learning the trade. The unaddressed parcel was purchased in 2008 by GLOBE, LLC & FARMES, LLC (agent John Hamrick). At that time, I was starting to operate the business because my father was diagnosed with Alzheimer's. John Hamrick approached my father multiple times attempting to negotiate with him to sell his property. Fortunately for my family, my father did not sell. Prior to my father passing away, I became the owner of the business to support my parents and my family. This business is our livelihood and the means of support for my family for approximately four decades at the present location.

The proposed development, which is titled "Arrowhead Point" on the sketch plan attached to the variance request application, will have a detrimental and crippling impact to my business and property. The area directly adjoining the 31.9-foot bottleneck is my repair shop. In addition to the bottleneck, yesterday a sketch was added to the meeting backup material. At first glance, it appeared that this will not hinder my business, however upon further examination, he is proposing to take part of my property for his much-needed county right-of-way. The sketch contains a proposed re-pavement and an added county right-of-way which will hinder access for me to utilize my property per Oconee County Code of Ordinance 26-7.f.1. This ordinance prohibits parking within 3-feet of the pavement. Traffic in this area will directly impact my ability to operate the marine service business. Customers typically deliver their boats by trailer and they routinely need assistance with backing and parking their boats. I routinely back boats from the front of my property multiple times daily. When pulling boats out on the ramp or maneuvering them on land, a wide turning radius is needed. We must use all of our property to make

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

the turn and back down the road into the shop or onto the ramp for lake-testing. Since we are on a dead-end road, there have been no issues with operation since the shop was built almost 40 years ago in 1982. Creating a bottleneck directly in this path with the size of the planned development will create a dangerous situation for my business and the public. Traffic from the residential and proposed rental homes will also remain a hazard, not only for my business and customers but also the surrounding public and neighbors walking and bicycling on Ellenburg Road. When the owner purchased this parcel in 2008, he was aware of the shop's existence and the impact to the public. This proposed variance will have a crippling impact on my customer's ability to deliver their boats for repair and service.

We also have a boat ramp to accommodate customers who don't own a trailer or have access to a trailer. We haul boats out of the lake using our ramp and our trailers for service and repairs. Disabled boats are often towed to our docks by water to have emergency repairs performed.

Beyond the boat service business that my father created and I have sustained, we perform various deeds for the good of the general public. Over the years, we rescued families who were lost or stranded on the lake. We assisted boaters who've had engine fires and those with sinking boats. Due to our shop's central location on Lake Keowee, it gives us quick access to assist distressed boaters. Our long-standing reputation in the community enables people to have us on "speed-dial" to handle emergency situations. Once while lake testing a boat, I was flagged to the county park for emergency response to a distressed family. I went closer and learned a person went under and did not resurface. I dove in the water and began an underwater search. After several free dives, I found the victim on the bottom of the lake and I pulled him to shore. Unfortunately, the outcome was not positive, and the individual did not survive. For my service, Oconee County honored me with recognition at a county council meeting for my emergency response (Proclamation P2012-06). I only wish it would have been for saving a life. The public good has been served by our business for almost 40 years and many boaters stand ready to give statements of support to its continued operation.

After obtaining the variance application #VA 21-011 via a Freedom of Information Act request and reviewing the applicant's response to the fourth question, it was disingenuous of the applicant to assert that "no detriment will be created to the adjacent uses or the public good" given that my boat service business is directly adjacent, has been in operation since 1982 and it is obvious that it will be impacted. As a former Crescent developer, the buyer of TMS #150-00-01-459 the unaddressed parcel, knew what he was purchasing and the detrimental impact it would have on my adjacent business, my livelihood, my family and the public. The unaddressed parcel was purchased with inadequate entry for the size of the planned development and the owner is now asking for a variance that will have a substantial detriment to me, the adjacent user, and a substantial detriment to the public good.

As the Zoning and Appeals Board evaluates the variance application #VA 21-011, below are our responses.

**Application Responses to Section 38-7.1:**
**Question 2:**
Are the circumstances affecting the subject property the result of actions by the applicant/owner?

**Response:**
The applicant/owner purchased this property knowing that the direct access to their parcel was much less than 31.9-foot width at its narrowest point. County maintenance on Ellenburg Road

has been established at 585 Ellenburg (adjacent property up the road from 599 Ellenburg Road) for decades. John's Marine has owned and maintained the property between 585 Ellenburg and the unaddressed parcel described as Arrowhead Point since the shop was built in 1982 as a private road. On July 31, 2021, we noticed construction activities were performed without our knowledge or consent to backfill portions of the property between 599 Ellenburg Road and the Lake Keowee full pond FERC boundary and possibly below the FERC boundary. We approached the vehicles to inquire as to who authorized this activity. Their response was that they didn't know and they produced no documentation. These activities appear to create the condition for seeking a variance for less footage than would otherwise be needed for the 50-foot county ordinance. Video evidence of the backfill activities is available upon request.

**Question 4:**
Will the proposed variance result in an activity that will not be of substantial detriment to the adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance?

**Response:**
Granting this variance will have a substantial detriment to the adjacent uses by John's Marine Service, the marine service customers, the general public, and the Ratliff family. These uses have been in place for over 40 years and are for the good of the public. The granting of this variance will in essence put John's Marine Service out of business. As aforementioned, for John's Marine to properly and safely service boats, a wide swath of land is necessary for boats to be maneuvered safely, stored on the property while being repaired and have access to the ramp for lake testing. Storage of disabled boats has been paramount to my business to enable John's Marine to diagnose and repair the issues. The central location of John's Marine on Lake Keowee has allowed me to be of service in emergent situations, where at a moment's notice, I can respond to people in distress in their boats on the lake. My son and I hope to continue to provide service for the next half of a century on Lake Keowee.

Granting this variance will also have a substantial detriment to the public good for safety reasons. Ellenburg Road is a quiet road without much car traffic and the surrounding community love and respect John's Marine. The unexpected increase in car traffic on Ellenburg Road from the size of the development that is being proposed will create safety issues for the surrounding property owners who are accustomed to walking their dogs, riding their bikes and have been for 40 years.

Of additional, significant concern is the potential fire safety hazards from a roadway not suitable to meet the size of the residential development that is being proposed. The small direct access will impact the ability of emergency vehicles for emergency response.

Obviously, if the variance is granted, the construction to expand the roadway will be very impactful to my business as it will be difficult to maneuver boats efficiently and safely and it will create a substantial business interruption.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

My family and I request the board deny Variance Request Application #VA 21-011 due to the impacts on my business, the good of the public, and my family. We desire to continue serving the public by owning and operating John's Marine as we have for the past 49 years, of which 40 years have been at its present location.

Sincerely,

James L. Ratliff
Owner/Operator John's Marine Service

Distribution:
Impacted property owners of 599 Ellenburg Road:
Frances J Ratliff
Sherri D Akers
Amy L Cawthon
Edward John Ratliff Jr.
James L Ratliff

Board of Zoning Representatives:
Gwen Fowler
Bill Gilster
Marty McKee
Tim Mays
John Eager
William Decker

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

John's Marine Service
599 Ellenburg Road
Seneca, SC 29672

April 22, 2022

Board of Zoning Appeals
Mr. Codner, Chairperson
415 South Pine Street
Walhalla, SC 29691

Re: Ratliff family opposition to variance application VA21-011 (Ridgewater Engineering and Surveying TMS#150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672).

Opposition to the variance application to include:

- Property rights and ownership of 599 Ellenburg Road (TMS#150-00-01-100).
- Substantial detriment to adjacent property (John's Marine).

Dear Mr. Codner and Members of the Board of Zoning Appeals,

The Ratliff family requests denial of VA21-011 based on lack of resolution from the requirements outlined by the Board in the 11/30/2021 BZA meeting.

Below are the requirements on which the Applicant has failed to meet its Burden of Proof:

**Property rights and ownership of 599 Ellenburg Road (TMS#150-00-01-100) includes a private driveway on the property and Applicant and County has failed to show that County has any rights over such:**

***1)*** Oconee County Roads and Bridges employees provided a copy of the attached Plat dated 2008 to the Ratliff family documenting the Ellenburg Road termination to the west of the Ratliff property. [Attachment 1]

***2)*** The physical evidence of pavement transition and road striping are consistent with the documentation dated 2008 provided to the Ratliff family where the road terminates to the west of the Ratliff property. [Attachment 2]

***3)*** When the lake was built, the County terminated Ellenburg Road to the west of the Ratliff property line and the Ratliff family has maintained our property with a private driveway serving Jan Ratliff's private residence and John's Marine for over 40 years.

***4)*** The County has not performed maintenance on the private driveway and/or Ratliff property and the County has not offered any evidence of maintenance.

***5)*** Laurie Ellenburg Bright has provided an affidavit of the termination of Ellenburg Road as evidenced by the End of County Maintenance sign. Laurie resided on Ellenburg Road adjacent to the Ratliff property for a period of 40 years. She is a current resident of Oconee County. [Attachment 3]

***6)*** There are no restrictions, easements, or right of ways on the Ratliff property from the property lines on the Deed and Plat. [Attachment 4 and 5]

***7)*** The Ratliff family has maintained both sides of the private driveway for over 40 years.

***8)*** Oconee County does not have a prescriptive easement over 599 Ellenburg Road and the private driveway.

***9)*** Oconee County has no jurisdiction to issue a variance over a private driveway.

**Substantial detriment to adjacent property (John's Marine) remains and Applicant has failed to show otherwise:**

***1)*** There will be a crippling, substantial detrimental impact of the variance on John's Marine business. [Attachment 6]

***2)*** There would be substantial detriment to John's Marine, preventing the ability to maneuver, park and service boats/trailers, in addition to severely limiting maneuvering by delivery trucks who bring in large motors, and equipment for boat repair. [Attachment 7]

***3)*** The service business requires maneuvering boats and large trailers on the Ratliff property. [Attachment 7]

***4)*** John's Marine uses the entire private driveway to pull boats out of the water, to put boats into the water, to maneuver boats into the shop for repair, to park boats and to maneuver trailers. [Attachment 7]

***5)*** A large number of boats are frequently maneuvered on Ratliff property. [Attachment 7]

***6)*** Boats that arrive by water need to be put onto a trailer, pulled from the water, and maneuvered into the shop for repair utilizing the private driveway in front of the shop.

***7)*** The variance would permit the developer to change the current road from a private driveway to a private road or public road. This change would allow much more vehicle traffic (~200 cars per day as represented by Oconee County Roads and Bridges) which will prevent John's Marine from using the private driveway to maneuver and service boats as they have been doing for over 40 years in a very narrow stretch of land. This coupling of residential traffic and commercial traffic will be a disaster. [Attachments 8, 9 and 10]

***8)*** There would be a substantial detriment to the health and safety of the public with approval of this variance with ~200 additional cars per day on a narrow road.

In conclusion, the Oconee County BZA does not have the authority to take Ratliff property. The applicant has failed to meet the burden of proof for criterion #4 (…substantial determinant to adjacent uses…).

The Oconee County BZA is encouraged to acknowledge these facts and vote against the variance.

We appreciate your consideration in this matter, and we will attend the BZA meeting on 4/25/2022 to continue to represent the Ratliff position.

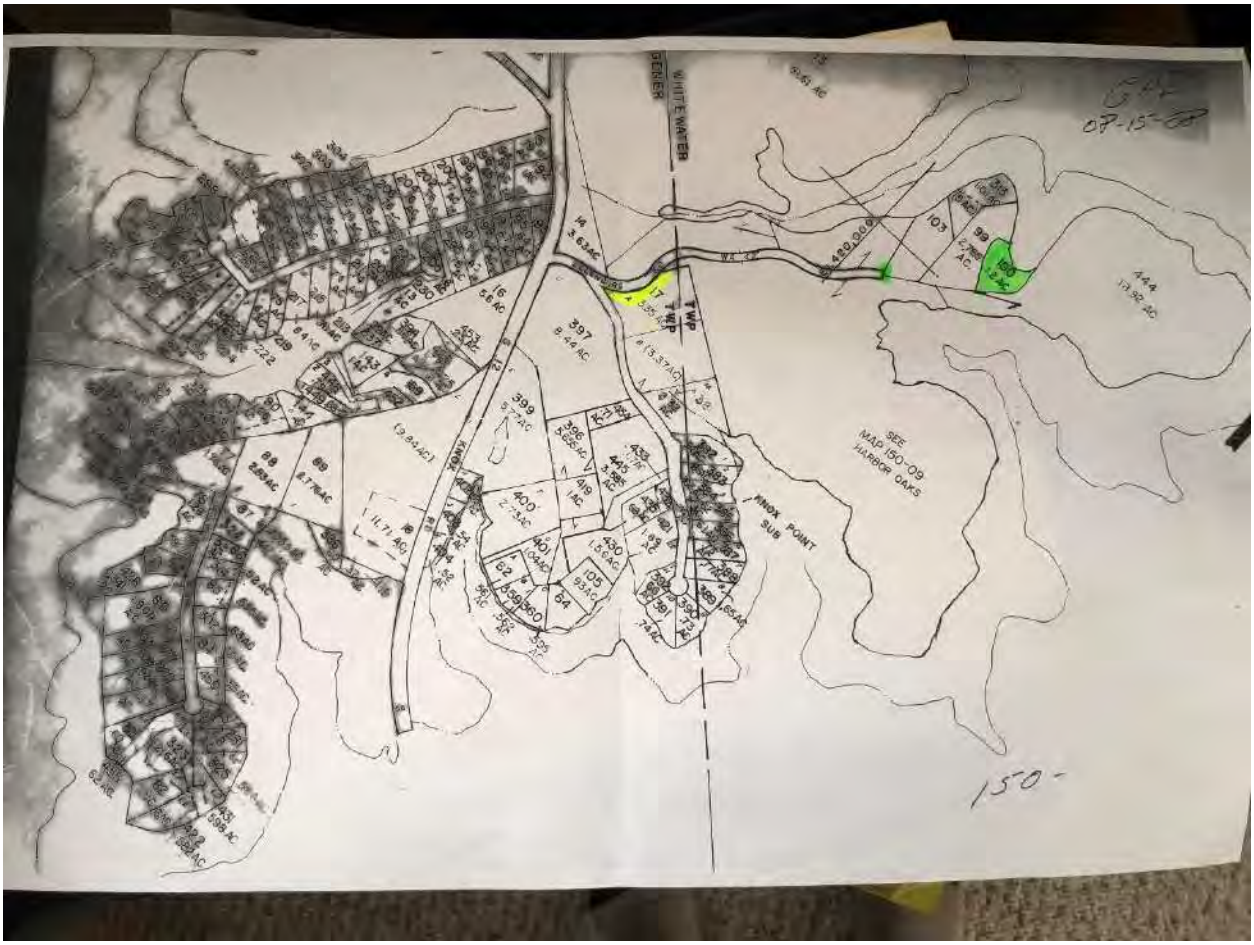
Thank you,

Jimmy Ratliff
John's Marine Service

cc: Edward (Jay) Ratliff Jr.
Sherri D. Crisp
Amy L. Cawthon
Frances J. Ratliff
County Council members:
John Elliot, Chair
Matthew Durham
Paul A. Cain, Esq.
Julian Davis III
James Glenn Hart

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment #1 (Map of end of county maintenance provided to the Ratliff family in 2008):




ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 2 (Physical evidence of road termination):

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 3 (Ellenburg affidavit End of County Maintenance)

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

STATE OF SOUTH CAROLINA )
)
COUNTY OF OCONEE )

**AFFIDAVIT OF LAURIE ELLENBURG BRIGHT**

BEFORE ME appeared, Laurie Ellenburg Bright, who deposes and says:

1. I reside at 178 Madison Pointe Drive, Seneca, South Carolina, 29678 and have personal knowledge of the matter set forth herein.
2. Prior to moving to my current residence in March 2021, I resided at 591 Ellenburg Road, Seneca, South Carolina 29672.
3. I grew up/resided at 591 Ellenburg Road for a period of 40 years. Intermittently, I left Ellenburg Road from 1995-2002.
4. I am the grand-daughter of T.B. Ellenburg, the original owner of the property who sold a portion of his farmland for the creation of Lake Keowee.
5. My grandfather, T.B., was given naming rights for the road and he chose to name it Ellenburg Road.
6. After the creation of Lake Keowee, I recall an "End of County Maintenance" sign between 575 Ellenburg Road and 585 Ellenburg Road. I drove past this "End of County Maintenance" sign for years. This "End of County Maintenance" sign was located near a bathtub that my grandfather used to water his cattle.

FURTHER AFFIANT SAYETH NAUGHT.

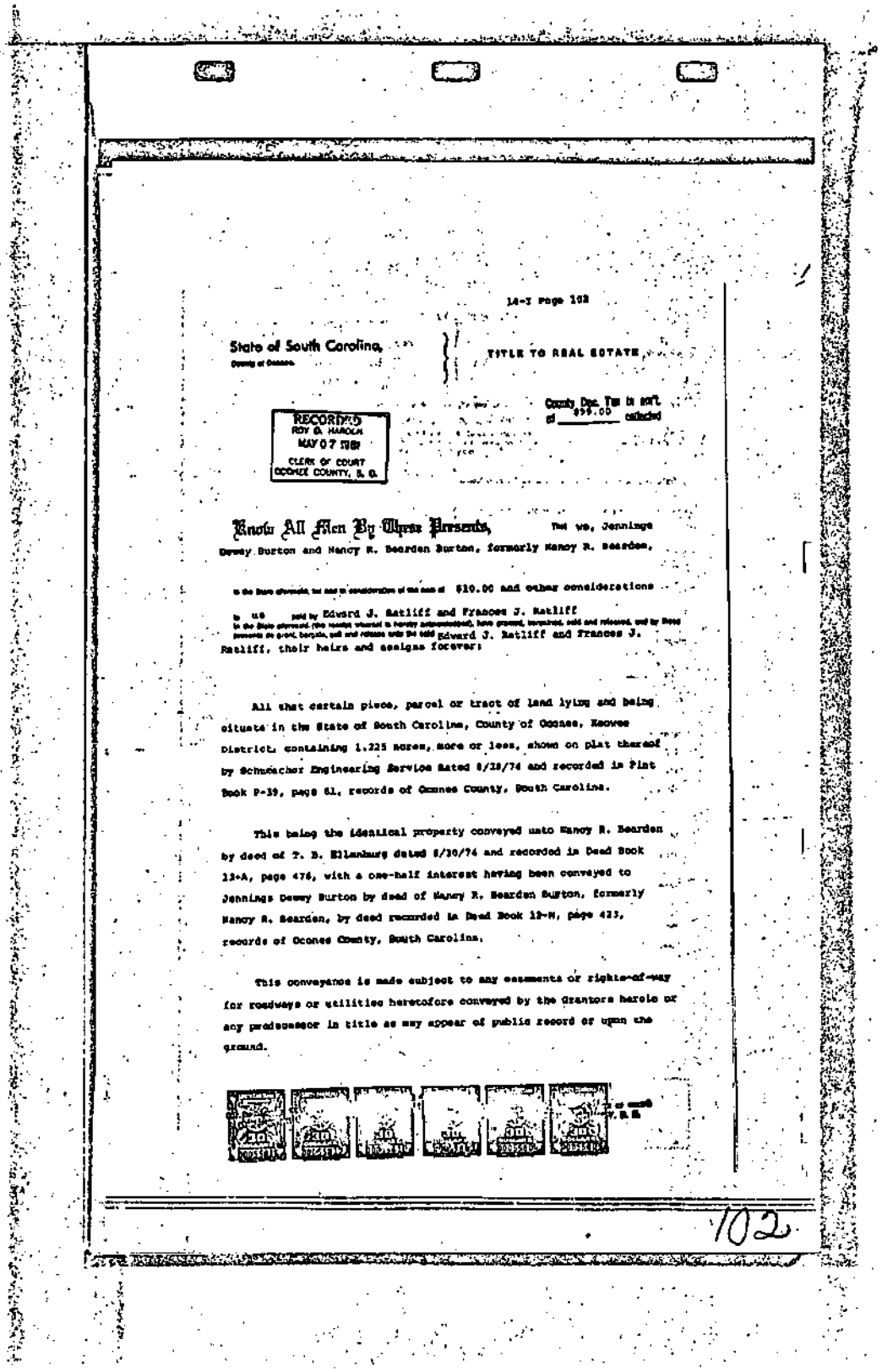
Laurie Ellenburg Bright
LAURIE ELLENBURG BRIGHT

1

SWORN to before me this 21st. day of April, 2022.

James E. Moore
Print Name: James E. Moore
Notary Public for State of S.C.
My Commission Expires: 7-24-2025

Attachment 4 (Ratliff deed book 14-I page 102)



14-I Page 102

State of South Carolina,
County of Oconee.

TITLE TO REAL ESTATE

County Tax Tax is not
of $59.00 collected

RECORDED
ROY O. HAROLD
MAY 07 1980
CLERK OF COURT
OCONEE COUNTY, S. C.

Know All Men By These Presents, That we, Jennings Dewey Burton and Nancy R. Bearden Burton, formerly Nancy R. Bearden,

in the State aforesaid, for and in consideration of the sum of $10.00 and other considerations to us paid by Edward J. Ratliff and Frances J. Ratliff in the State aforesaid, (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Edward J. Ratliff and Frances J. Ratliff, their heirs and assigns forever:

All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Oconee, Keowee District, containing 1.225 acres, more or less, shown on plat thereof by Schumacher Engineering Service dated 8/28/74 and recorded in Plat Book P-39, page 61, records of Oconee County, South Carolina.

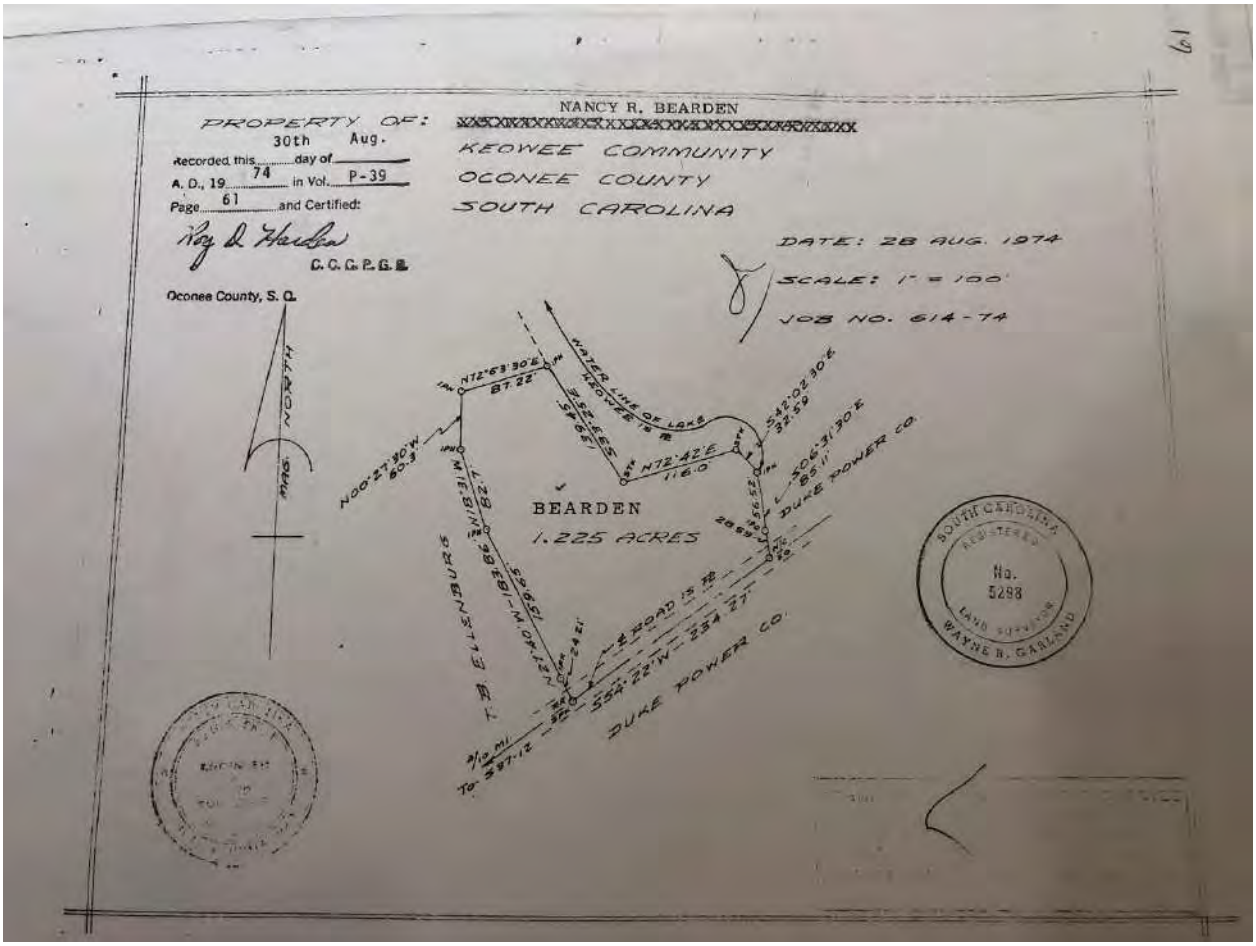
This being the identical property conveyed unto Nancy R. Bearden by deed of T. B. Ellenburg dated 8/30/74 and recorded in Deed Book 13-A, page 476, with a one-half interest having been conveyed to Jennings Dewey Burton by deed of Nancy R. Bearden Burton, formerly Nancy R. Bearden, by deed recorded in Deed Book 13-N, page 413, records of Oconee County, South Carolina.

This conveyance is made subject to any easements or rights-of-way for roadways or utilities heretofore conveyed by the Grantors herein or any predecessor in title as may appear of public record or upon the ground.

102

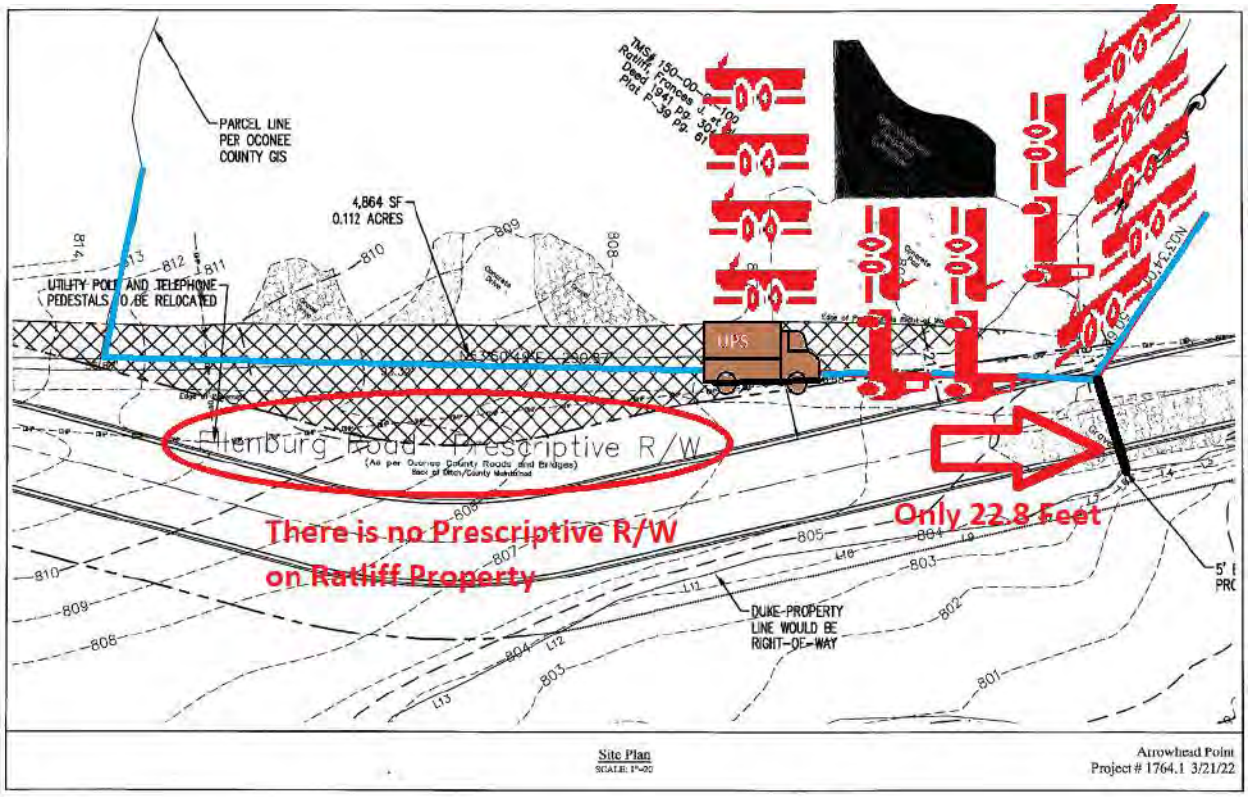
ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 5 (Ratliff Platt Book P-39 page 61):




ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 6 (Developer plan designed by Goldie and Associates):




ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 7 (John's Marine servicing boats on Ratliff property):

Pic #1: 20 foot pontoon being serviced

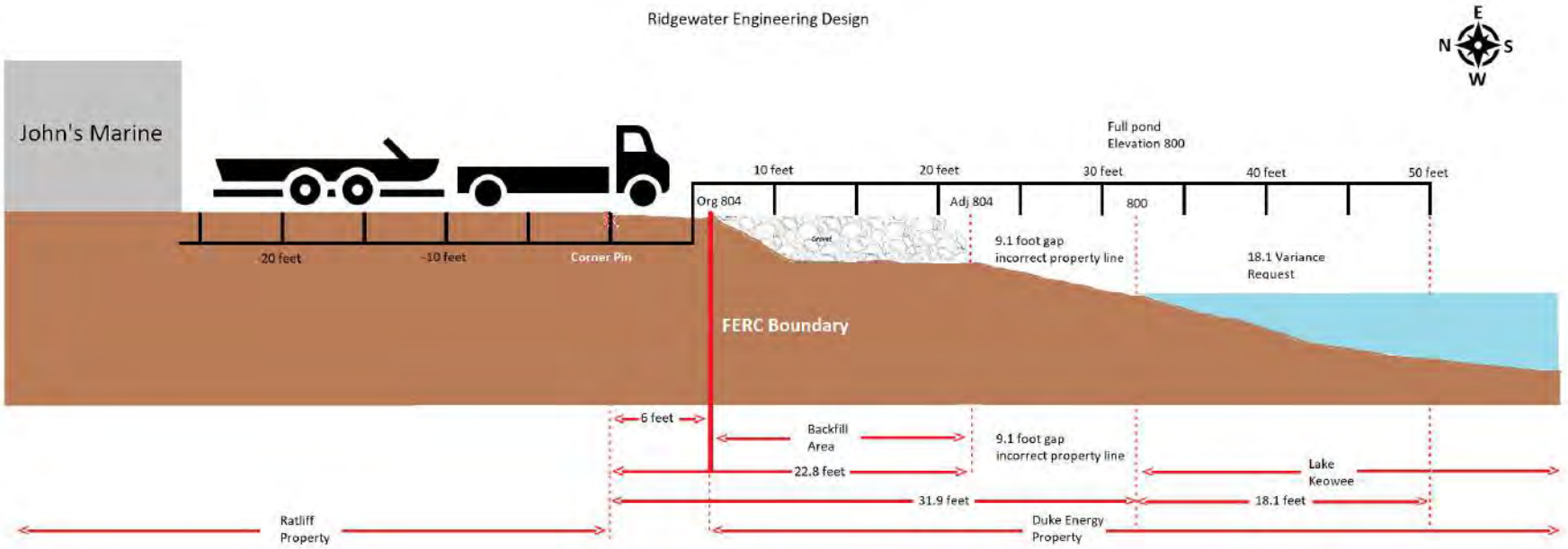
Pic #2: View standing in center of proposed 9.1 foot right of way

Pic #3: Customer pickup and delivery of boats.

Pic #4: Google street view from 2008.

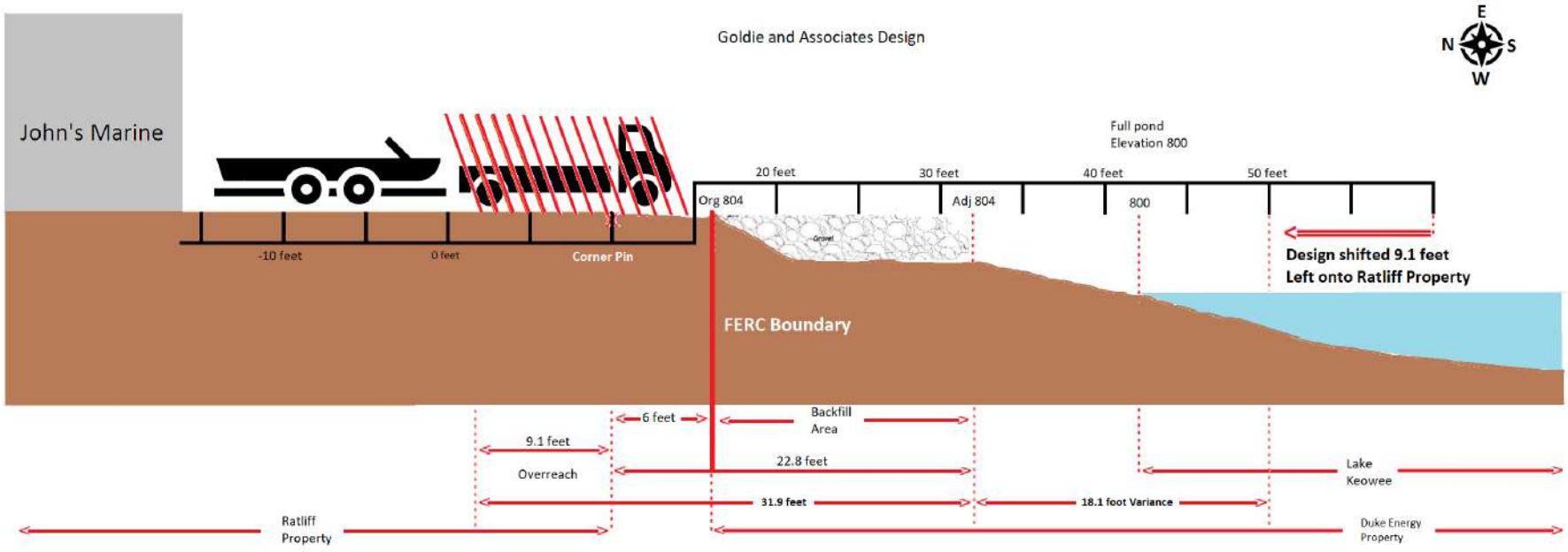
ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 8 (Scale diagram of Ridgewater Engineering design]:



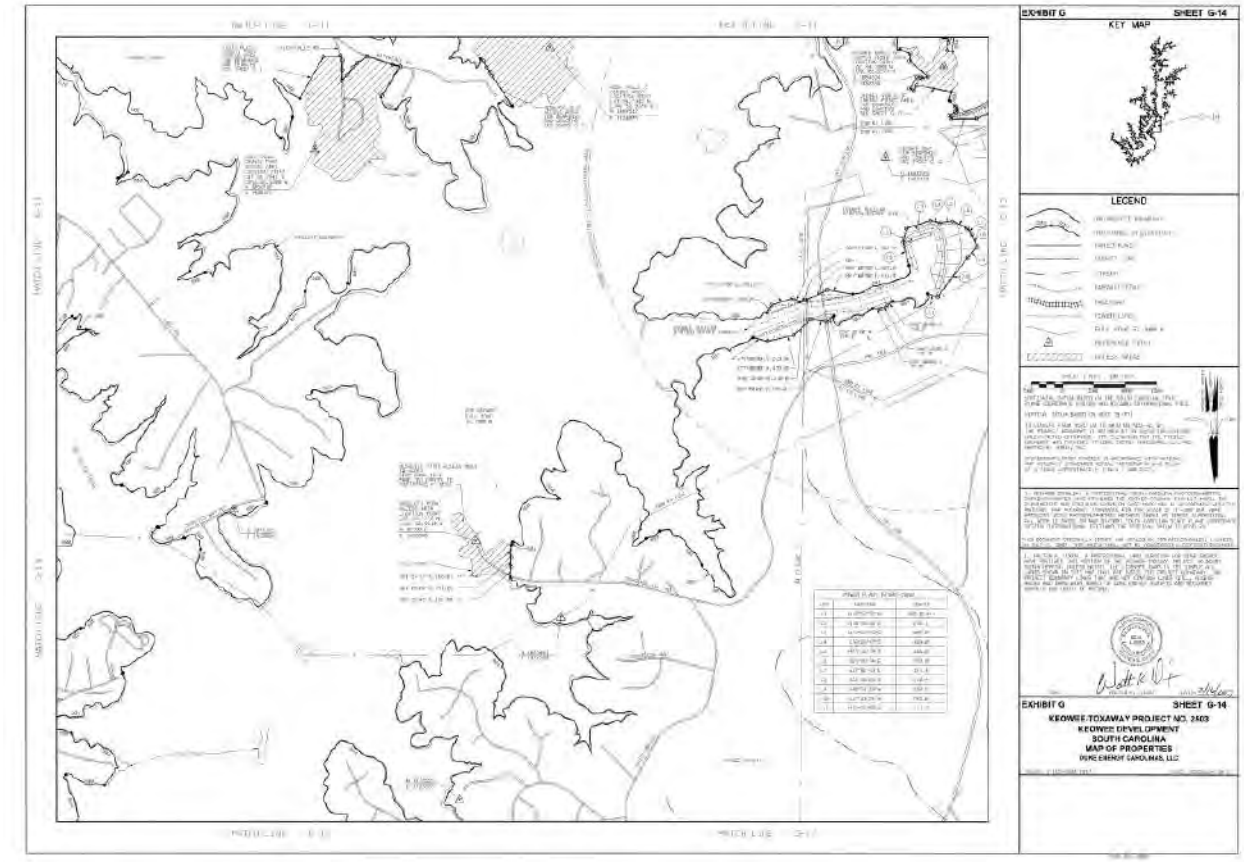

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

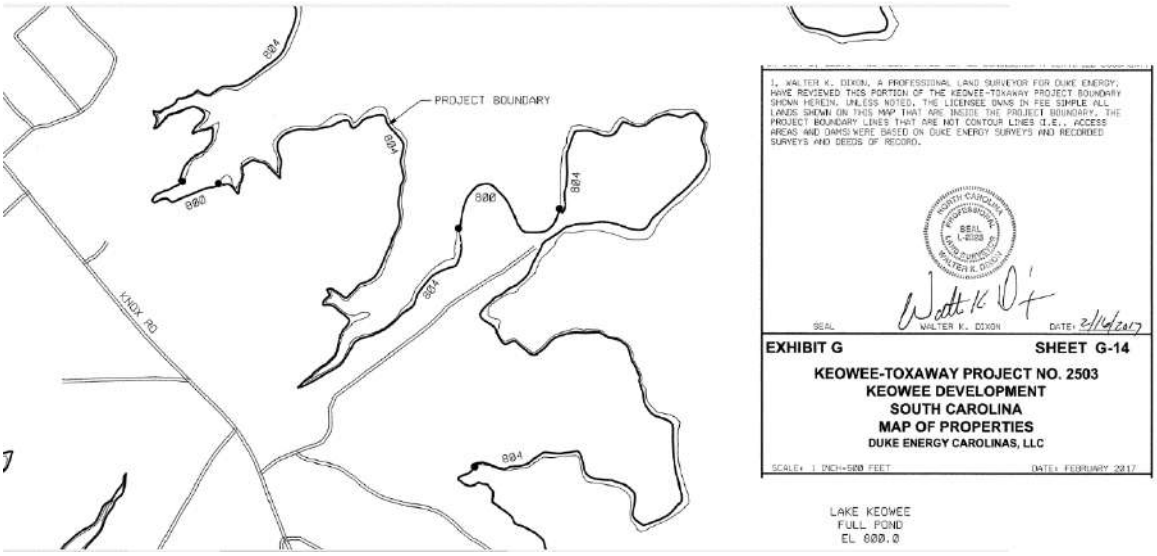
Attachment 9 (Scale diagram of Goldie and Associates design):




ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 10 (Project boundary map provided by Federal Energy Regulatory Commission):




ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF OCONEE | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE TENTH JUDICIAL CIRCUIT |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br>v.<br><br>Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents. | ) | Case No. 2022-CP-37-00396<br><br>**AMENDED SUMMONS AND NOTICE OF APPEAL (from the Board of Zoning Appeals)** |

TO THE DEFENDANTS/RESPONDENTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint/Appeal in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint/Appeal on the subscriber at their offices, 1513 Hampton Street, Post Office Box 11208, Columbia, South Carolina, 29211, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint/Appeal within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

The Petitioners/Appellants John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon, appeal from the Order of the Oconee County Board of Zoning Appeals ("BOZA") finding a prescriptive easement across Petitioners' private property for the purpose of then granting a request for variance (#VA21-011) from the required 50' right-of-way of 18.1' located at TMS #150-00-01-459, for the eventual construction of a new public road. Such appeal is made pursuant to S.C. Code Ann. §6-29-820. The decision was made on April 25, 2022, and the Order was mailed on May 11, 2022.

ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

The BOZA grant of variance application #VA21-011 was erroneous for the following reasons:

i. BOZA concluded that Oconee County held a prescriptive easement over Petitioners' property without having any sworn testimony, documentary, or any other evidence supporting the existence of such an easement, and where Petitioners provided documents and sworn affidavits to the contrary. Prescriptive easements must be shown by clear and convincing evidence. This standard was not met. Because the BOZA failed to find a prescriptive easement by clear and convincing evidence, it lacked jurisdiction to grant a variance for a new public road and order the abandonment of Petitioners' land.

ii. BOZA's decision unilaterally increased and modified the burden on Petitioners' property. Assuming Oconee County has an easement over Petitioners' property, which is expressly denied, the BOZA's grant of the variance expands a dead end road for the development of a nineteen-home subdivision bringing an estimated additional 200 cars a day past Petitioners' property. Such additional traffic will impact the way John's Marine has conducted business at the same location for the past forty years. It was error for BOZA to grant a variance that materially increases and changes the burden on Petitioners' property.

iii. BOZA's Order granting the variance states that the "character of the district *WILL be harmed* by the granting of the variance." (Emphasis added). Granting a variance in light of such a conclusion is arbitrary, capricious, and an abuse of discretion.

iv. BOZA granted the variance application without knowing the final location of the proposed public roadway. Documents submitted to the BOZA showed that the location of the roadway was not final and that under certain scenarios it may push the roadway nine feet onto Petitioners' property, which will further negatively impact John's Marine's ability to conduct

business. BOZA's decision to approve the variance without knowing the final location of the roadway and the full impact to John's Marine was arbitrary, capricious, and an abuse of discretion.

v. BOZA is required by statute to provide a written explanation for its findings. The BOZA Order granting the variance does not contain an explanation for why the variance will not be of substantial detriment to John's Marine under the varying road location scenarios. BOZA was presented with drawings showing that under certain scenarios Petitioners will lose land and John's Marine's operations will be greatly impacted. The BOZA did not adequately explain its finding of no substantial detrimental impact to John's Marine in light of the information before it that the roadway location was not final.

For these reasons, the BOZA Order should be reversed.

Respectfully submitted,

s/David L. Paavola
Keith M. Babcock, S.C. Bar No. 456
kmb@lewisbabcock.com
David L. Paavola, S.C. Bar No. 100714
dlp@lewisbabcock.com
Lewis Babcock L.L.P.
P.O. Box 11208
Columbia, SC 29211
(803) 771-8000
Attorneys for Petitioners/Appellants

Columbia, SC
June 9, 2022





ELECTRONICALLY FILED - 2022 Jun 09 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF OCONEE | )<br>)<br>) | IN THE COURT OF COMMON PLEAS<br>TENTH JUDICIAL CIRCUIT |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br><br>v.<br><br>Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents. | ) | C/A NO: 2022-CP-37-00396<br><br>**ANSWER OF OCONEE COUNTY BOARD OF ZONING APPEALS TO PETITIONERS/APPELLANTS' AMENDED COMPLAINT AND APPEAL** |

The Defendant, Oconee County Board of Zoning Appeals ("BOZA"), in answer to Petitioners/Appellants' Amended Complaint and Appeal from the decision of BOZA granting road variance application #VA21-011, would respectfully show unto the Court as follows:

As a preliminary matter, BOZA would show and allege that Plaintiffs' Introduction contained in the first three (3) paragraphs of Plaintiffs' Amended Complaint and Appeal sets forth only a summary of the grounds asserted by the Petitioners/Appellants and requires no response from BOZA. To the extent it is determined that a response is required, BOZA denies said allegations and demands strict proof thereof and incorporates herein all allegations contained in the defenses hereinafter set forth.

**FOR A FIRST DEFENSE**

1. BOZA would show that the Amended Complaint/Appeal fails to state facts sufficient to constitute causes of action against BOZA and that the alleged causes of action so stated in said Amended Complaint0 fail to state claims on which relief can be granted and,

therefore, said Amended Complaint should be dismissed as to BOZA pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A SECOND DEFENSE**

2. The allegations contained in the first defense hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

3. BOZA denies each and every allegation contained in the Amended Complaint/Appeal not hereinafter specifically admitted, modified or explained.

4. BOZA admits, based upon information and belief, the allegations contained in Paragraph 1, 2, 3, 4, 5 and 6 of the Amended Complaint/Appeal.

5. BOZA admits the allegations contained in Paragraphs 7, 8, 9, 10 and 11 of the Amended Complaint/Appeal.

6. BOZA denies, as pleaded, the allegations contained in Paragraph 12 of the Amended Complaint/Appeal. Further answering said allegations contained in Paragraph 12, BOZA would show that the Board Order dated April 11, 2022 contained a scrivener's error when it used the language in the 4th conclusion of that Order that stated "…the character of the district *will be harmed* by the granting of the variance." BOZA would show that this error was immediately corrected by the issuance of a Board Order of the same date titled "Scrivener's Error Corrected" to change the language in question to "…the character of the district *will not be harmed* by the granting of the variance."

7. BOZA admits the allegations contained in Paragraph 13 of the Amended Complaint/Appeal.

8. BOZA denies, as pleaded, the allegations contained in Paragraphs 14, 15 and 16 of the Amended Complaint/Appeal and demands strict proof thereof.





ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

9. BOZA admits the allegations contained in Paragraph 17 of the Amended Complaint/Appeal.

10. BOZA admits, based upon information and belief, the allegations contained in Paragraph 18 and 19 of the Amended Complaint/Appeal.

11. BOZA admits, based upon information and belief, so much of the allegations contained in Paragraph 20 of the Amended Complaint/Appeal as alleges that at some point before or around the mid 1980's Oconee County paved a portion of Ellenburg Road from Knox Road to approximately the western edge of 585 Ellenburg. The remaining allegations contained in Paragraph 20 of the Amended Complaint/Appeal are denied, based upon information and belief, and strict proof thereof is demanded.

12. BOZA admits so much of the allegations contained in Paragraph 21 of the Amended Complaint/Appeal as alleges that Oconee County undertook at certain times to stripe the center line of a section of Ellenburg Road. The remaining allegations contained in Paragraph 21 of the Amended Complaint/Appeal are denied and strict proof thereof is demanded.

13. BOZA denies the allegations contained in Paragraph 22 of the Amended Complaint/Appeal and demands strict proof thereof.

14. BOZA admits so much of the allegations contained in Paragraph 23 of the Amended Complaint/Appeal as alleges that Jan Ratliff provided an affidavit to Oconee County stating the items referenced in said Paragraph 23 and craves reference to said affidavit as the best evidence of its contents. The remaining allegations in Paragraph 23 of the Amended Complaint/Appeal are denied, based upon a lack of information and belief, and strict proof thereof is demanded.

15. BOZA admits, based upon information and belief, the allegations contained in Paragraph 24, 25 and 26 of the Amended Complaint/Appeal.

16. BOZA denies the allegations contained in Paragraph 27 and 28 of the Amended Complaint/Appeal and demands strict proof thereof.

17. BOZA admits the allegations contained in Paragraph 29 and 30 of the Amended Complaint/Appeal.

18. BOZA denies the allegations contained in Paragraph 31 of the Amended Complaint/Appeal and demands strict proof thereof.

19. BOZA denies so much of the allegations contained in Paragraph 32 of the Amended Complaint/Appeal as alleges that "…however, this conclusion is not correct…." and demands strict proof thereof.

20. BOZA admits the allegations contained in Paragraph 33, 34 and 35 of the Amended Complaint/Appeal.

21. BOZA denies any and all allegations contained in Paragraph 36 of the Amended Complaint/Appeal that are inconsistent with the transcript of the April 25, 2022 meeting, the contents of which are incorporated herein, by reference thereto, as well as the statement of the Petitioners/Appellants that allege that "corporate or institutional memory is not evidence and the county provided no affidavits or other documentary evidence of a prescriptive easement over the Private Driveway", and demands strict proof thereof.

22. BOZA admits so much of the allegations contained in Paragraph 37 of the Amended Complaint/Appeal that are consistent with Exhibit 9 referenced therein and the transcript of the meeting which is incorporated herein by reference thereto. Any allegations contained in said Paragraph 37 that are inconsistent therewith are denied and strict proof is demanded.

23. BOZA denies the allegations contained in Paragraph 38 of the Amended Complaint/Appeal and demands strict proof thereof.





ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

24. BOZA denies so much of the allegations contained in Paragraph 39, 40 and 41 of the Amended Complaint/Appeal that are inconsistent with the transcript of the meeting which is incorporated herein by reference thereto and demands strict proof thereof.

25. BOZA denies any and all allegations contained in Paragraph 42, 43 and 44 of the Amended Complaint/Appeal that are inconsistent with the transcript of the meeting which is incorporated herein by reference thereto and demands strict proof thereof.

26. In response to the allegations contained in Paragraph 45 of the Amended Complaint/Appeal, BOZA incorporates herein by reference thereto its responses to Paragraphs 1 through 44 of the Amended Complaint/Appeal set forth above.

27. BOZA admits the allegations contained in Paragraph 46 and 47 of the Amended Complaint/Appeal.

28. BOZA denies, as stated, the allegations contained in Paragraph 48 of the Amended Complaint/Appeal and demands strict proof thereof.

29. BOZA denies the allegations contained on Paragraph 49 and 50 of the Amended Complaint/Appeal and demands strict proof thereof.

30. In response to the allegations contained in Paragraph 51 of the Amended Complaint/Appeal, BOZA incorporates herein by reference thereto its responses to Paragraphs 1 through 50 of the Amended Complaint/Appeal set forth above.

31. BOZA denies the allegations contained in Paragraph 52 and 53 of the Amended Complaint/Appeal and demands strict proof thereof.

32. BOZA would show that the allegations contained in Paragraphs 54 and 55 of the Amended Complaint/Appeal are conclusions of law to which no response is necessary. To the

extent a response is deemed necessary, BOZA denies any allegation of fault or liability as to it and demands strict proof thereof.

33. BOZA denies that allegations contained in Paragraphs 56 and 57 of the Amended Complaint/Appeal and demands strict proof thereof.

34. In response to the allegations contained in Paragraph 58 of the Amended Complaint/Appeal, BOZA incorporates herein by reference thereto its responses to Paragraphs 1 through 57 of the Amended Complaint/Appeal set forth above.

35. BOZA denies the allegations contained in Paragraph 59, 60, 61 and 62 of the Amended Complaint/Appeal and demands strict proof thereof.

36. In response to the allegations contained in Paragraph 63 of the Amended Complaint/Appeal, BOZA incorporates herein by reference thereto its responses to Paragraphs 1 through 62 of the Amended Complaint/Appeal set forth above.

37. BOZA denies the allegations contained in Paragraph 64 of the Amended Complaint/Appeal and demands strict proof thereof. In further answering the allegations contained in said Paragraph 64, BOZA admits that the original Order of BOZA contained a scrivener's error which was immediately corrected so that the wording in question read "the character of the district *will not* be harmed by the granting of the variance."

38. BOZA denies the allegations contained Paragraph 65, 66 and 67 of the Amended Complaint/Appeal and demands strict proof thereof and craves reference to the transcript of the meeting/record on appeal which is incorporated herein by reference thereto.

39. BOZA admits the allegations contained in Paragraph 68 of the Amended Complaint/Appeal to the extent it is consistent with the legal authorities cited therein. To the





ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

extent the allegations contained in said Paragraph 68 are inconsistent with said legal authorities, BOZA denies the allegations and strict proof thereof is demanded.

40. BOZA denies the allegations contained in Paragraph 69 and 70 of the Amended Complaint/Appeal and demands strict proof thereof.

41. In response to the allegations contained in Paragraph 71 of the Amended Complaint/Appeal, BOZA incorporates herein by reference thereto its responses to Paragraphs 1 through 70 of the Amended Complaint/Appeal set forth above.

42. BOZA admits so much of the allegations contained in Paragraph 72 of the Amended Complaint/Appeal as are consistent with the Code provisions stated therein. BOZA would further show that it complied in all respects with the requirements of the Code Section cited therein.

43. BOZA denies the allegations contained in Paragraph 73 of the Amended Complaint/Appeal and demands strict proof thereof. To the extent of any deficiencies in BOZA's said Order, any such alleged deficiencies are cured by the contents of the complete written transcript of the hearing which is incorporated herein by reference thereto as a part of this response.

44. BOZA denies the allegations contained in Paragraph 74 and 75 of the Amended Complaint/Appeal.

**FOR A THIRD DEFENSE**

45. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

46. This Defendant pleads the provisions of the South Carolina Tort Claims Act, South Carolina Code §15-78-10, *et seq.,* including all of the immunities, limitations, including, but not limited to, statute(s) of limitations, and defenses granted or preserved by the Act.

ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**FOR A FOURTH DEFENSE**

47. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

48. This Defendant affirmatively pleads and asserts §15-78-60 (1), (2), (3), (4), (5), (7), (8), (10), (13, (15), and (20), South Carolina Code of Laws, 1976, as amended. Further, this Defendant pleads and asserts as a complete bar, absolute, and affirmative defense to Plaintiffs' claims any and all conditions of recovery, statute of limitations, limitations of liability, and above listed exceptions from liabilities and/or immunities as set forth in the South Carolina Tort Claims Act.

**FOR A FIFTH DEFENSE**

49. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto

50. Any injury or damage sustained by Plaintiffs as a result of the matters alleged in the Amended Complaint/Appeal were caused by events over which this Defendant had no control or right of control, thereby relieving this Defendant from any liability or responsibility.

**FOR A SIXTH DEFENSE**

51. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

52. Any damages suffered by the Plaintiffs were not due to any action on the part of BOZA.

**FOR A SEVENTH DEFENSE**

53. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

54. This Defendant, at all times relevant hereto and during the performance or non-performance of the acts alleged in the Amended Complaint/Appeal, did not perform any acts or fail to perform any acts in bad faith, in a malicious manner, or with corrupt motives and this Defendant is, therefore, immune from suit.

**FOR AN EIGHTH DEFENSE**

55. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

56. This Defendant would show that at all times alleged in the Plaintiffs' Amended Complaint/Appeal, it acted reasonably and in good faith and did not violate any clearly established right of the Plaintiffs and, therefore, is qualifiedly immune from suit.

**FOR A NINTH DEFENSE**

57. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

58. Plaintiffs have not suffered any damages caused by the actions of this Defendant. This Defendant further asserts Plaintiffs failed to properly mitigate damages.

**FOR A TENTH DEFENSE**

59. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

60. Any injury or damage sustained by the Plaintiffs as a result of the matters alleged in the Amended Complaint/Appeal were a proximate result of the acts of a third-party which this Defendant affirmatively pleads as a complete bar to this action.

ELECTRONICALLY FILED - 2022 Jul 27 2:27 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**FOR AN ELEVENTH DEFENSE**

61. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

62. This Defendant asserts the applicable statute of limitations as a defense to Plaintiffs' Amended Complaint/Appeal.

**FOR A TWELFTH DEFENSE**

63. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

64. This Defendant places the Plaintiff on notice that it will subsequently move to amend this Answer should it appear through discovery or continued fact investigation that additional defenses and/claims are available.

**LOGAN & JOLLY, LLP**

s/James W. Logan, Jr.
James W. Logan, Jr. (SC Bar #3385)
Post Office Box 259
Anderson, South Carolina 29622
864-226-1910
logan@loganandjolly.com

Attorneys for Oconee County Board of Zoning Appeals

Dated: July 27, 2022

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF OCONEE | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE TENTH JUDICIAL CIRCUIT |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br>v.<br><br>Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents. | ) | Case No. 2022-CP-37-00396<br><br>**BRIEF OF APPELLANTS** |

This is an appeal from an Oconee County Board of Zoning Appeals' ("BOZA") order, (hereinafter, "Variance Order"), granting road variance application #VA21-011 (hereinafter, the "Variance Application"). Petitioners/Appellants are landowners and business operators directly impacted by the Variance Order that approves the construction of a public road running over their private driveway. For the reasons set forth herein, Petitioners/Applicants respectfully request that the Variance Order be reversed.

The central issue in this appeal is whether Oconee County has a prescriptive easement over a paved section of Ellenburg Road that is privately owned by Petitioners and the adjacent property owners Globe, A South Carolina Limited Partnership, ("Globe"), and Farmes, A South Carolina Limited Partnership, ("Farmes"). The paved private driveway is partially on Petitioners' property (585 Ellenburg Road and 599 Ellenburg Road) and partially on Globe's and Farmes' property, with the majority of the paving on Petitioner's property (hereinafter, the "Private Driveway").

The BOZA's grant of the Variance Application was erroneous for the following reasons:

i. The BOZA did not have jurisdiction to resolve the disputed factual issue as to whether Oconee County holds a prescriptive easement over the Private Driveway. In hearing

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

evidence on the prescriptive easement, assuming the existence of a prescriptive easement, and then approving the Variance Application based on this assumption, the BOZA effectively determined this disputed question of fact. In this manner, BOZA acted outside of its limited jurisdiction to hear variance applications.

ii. Even assuming the BOZA could move forward on the Variance Application, the BOZA abused its discretion when it assumed Oconee County held a prescriptive easement over the Private Driveway in light of the evidence before it where the county only provided reports of "institutional knowledge" and Petitioners provided sworn affidavits, documentation, and testimony that they had maintained the Private Driveway for the past forty years. Given the evidence, deciding this assumption in Oconee County's favor was arbitrary, capricious, and an abuse of discretion.

iii. BOZA's decision unilaterally increased and modified the burden on Petitioners' property. Assuming Oconee County has a prescriptive easement over Petitioners' property, which is expressly denied, the BOZA's grant of the variance expands a dead end road for the development of a nineteen-home subdivision bringing an estimated additional 200 cars a day past Petitioners' property. Such additional traffic will impact the Petitioners that live on this road and the way John's Marine Service, Inc. ("John's Marine") has conducted business at the same location for the past forty years. It was arbitrary, capricious, and an abuse of discretion for BOZA to grant a variance that materially increases and changes the burden on Petitioners' properties.

iv. BOZA granted the Variance Application without knowing the final location of the proposed public roadway. Documents submitted to the BOZA showed that the location of the roadway was not final and that under certain scenarios it may push the roadway nine feet onto Petitioners' property, which will further negatively impact John's Marine's ability to conduct

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

business and negatively impact the Petitioners' use of their properties. BOZA's decision to approve the variance without knowing the final location of the roadway and the full impact to John's Marine was arbitrary, capricious, and an abuse of discretion.

v. BOZA is required by statute to provide a written explanation for its findings. The BOZA Order granting the variance does not contain an explanation for why the variance will not be of substantial detriment to John's Marine and the other Petitioners under the varying road location scenarios. BOZA was presented with drawings showing that under certain scenarios Petitioners will lose land and John's Marine's operations will be greatly impacted. The BOZA did not adequately explain its finding of no substantial detrimental impact to John's Marine and the other Petitioners in light of the information before it that the roadway location was not final.

For these reasons, the BOZA's Variance Order should be reversed.

**PROCEDURAL BACKGROUND**

On April 25, 2022, the BOZA granted Ridgewater Engineering and Surveying's ("Ridgewater") Variance Application for a variance of 18.1' from the 50' right-of-way required for construction of a new public road. Ridgewater sought the variance as an agent for Globe and Farmes. The new public road would service a currently undeveloped 15-acre tree or arrowhead-shaped peninsula on Lake Keowee referred to as "Arrowhead Point." The "trunk" section of this tract is adjacent to 585 Ellenburg and 599 Ellenburg and a portion of this property is part of the paved Private Driveway. The new public road would connect an eventual nineteen-home subdivision to the existing paved private section of Ellenburg Road that dead ends at the location of Petitioners' private property. The Variance Application initially came before the BOZA on November 30, 2021, then again on January 24, 2022, and finally for a vote on April 25, 2022.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

**November 30, 2021 BOZA Meeting**

On November 30, 2021, the Variance Application was first placed on the BOZA agenda. During this first meeting, the BOZA heard from the applicant about the requested variance and the proposed plans to construct a new public road to service an eventual nineteen-home subdivision on the 15-acre peninsula past Johns' Marine. (BOZA Hearing Tr. 151:20-152:1 (Nov. 30, 2021)). The applicant asserted that Oconee County has a prescriptive easement over the Private Driveway in front of Petitioners' properties up to the point where the pavement and road dead ends, which is where proposed new public road would be placed. (BOZA Hearing Tr. 39:7-13; 143:24-144:4 (Nov. 30, 2021)).

During public comments, Petitioners informed the BOZA that they disputed that Oconee County holds a prescriptive easement over their Private Driveway. (BOZA Hearing Tr. 57:22-58:5; 60:9-61:22 (Nov. 30, 2021)). Petitioners brought to BOZA's attention the fact that: (1) Petitioners and their family members, or predecessors in interest, had paved and maintained the Private Driveway for the last forty years, BOZA Hearing Tr. 75:25-77:3; 81:21-82:11 (Nov. 30, 2021); and (2) Ellenburg Road itself reflects the difference between County and non-County maintained travel surfaces where the pavement quality differs and where the County stopped its yellow-line road striping at the location where the Private Driveway begins, (*Id.* at 60:9-61:5; 76:4-9; *see also* **Exhibit A** (R. pp. 60-66, images of the road striping).

Petitioners also raised concerns about (1) BOZA's jurisdiction to grant a variance affecting two private parties, BOZA Hearing Tr. 85:22-86:9 (Nov. 30, 2021); (2) the legality with moving forward to consider the Variance Application without first showing that Oconee County had a prescriptive easement over the Private Driveway, (*Id.* at Tr. 61:5-22); and (3) the legality of

Oconee County unilaterally changing the easement burden on Petitioners' properties, assuming Oconee County held a prescriptive easement, (*Id.* at Tr. 61:22-63:25).

BOZA recognized that it if the county does not maintain the Private Driveway, then it would not have the authority to grant the Variance Application. (BOZA Hearing Tr. 86:15-22 (Nov. 30, 2021)). After closing public comments, members of the BOZA noted: (1) the predicate question to considering the Variance Application is whether the BOZA has authority over the Private Driveway by virtue of a prescriptive easement, (*Id.* at Tr. 163:19-164:14); (2) traffic and safety with the continuing operation of John's Marine are issues to be resolved, (*Id.* at Tr. 165:15-20, 168:7-14; 169:13-24; 170:11-21; 171:22-24); and (3) John's Marine uses the entirety of the Private Driveway to conduct its business, (*Id.* at Tr. 168:19-169:11). Ultimately, BOZA voted to table the Variance Application pending a resolution of whether Oconee County holds a prescriptive easement over the Private Driveway. (*Id.* at Tr. 174:20-175:15; 178:6-11).

**January 24, 2022 BOZA Meeting**

On January 24, 2022, the Variance Application was again on the BOZA agenda. The application was removed from the table before discussion of ownership of the Private Driveway. (BOZA Hearing Tr. 18:25-19:20 (Jan. 24, 2022)). Oconee County Attorney David Root, Esq., informed BOZA that there was no question that the land under the Private Driveway belonged to private parties. (*Id.* at Tr. 19:25-20:2). According to Attorney Root, the question was whether Oconee County maintained the paved traveling surface of the Private Driveway such that it holds a prescriptive easement. (*Id.* at Tr. 20:2-3; 22:18-20). On this question, Attorney Root could offer no definitive answer in light of an affidavit he received—believed to have been provided by Jan Ratliff who has been an owner of 599 Ellenburg since 1981—that conflicted with information he had received from the roads and bridges department. (*Id.* at Tr. 20:3-22).



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attorney Root informed BOZA that Oconee County, assuming it has a prescriptive easement over the Private Driveway, has no right to expand that easement (*Id.* at Tr. 22:1-3). Attorney Root further informed BOZA that what the county has done, or its level of maintenance on the Private Driveway over the previous twenty years, is what defines what the county can do going forward. (*Id.* at Tr. 24:24-25:6). BOZA postponed a vote on the Variance Application until a later time. (*Id.* at Tr. 34:24-35:1).

**April 25, 2022 BOZA Meeting**

On April 25, 2022, the Variance Application was again on the BOZA agenda for a vote. The applicant was given another opportunity to present its request, and it again asserted that Oconee County has a prescriptive easement over the Private Driveway. (BOZA Hearing Tr. 18:15-17 (April 25, 2022)). The applicant also asserted that the proposed roadway would give John's Marine *more room* to maneuver boats, such that it would not be detrimental to the adjacent property owners. (*Id.* at Tr. 20:20-21:1). Petitioners disputed this assertion. (*Id.* at Tr. 75:9-23). During its presentation, the applicant repeatedly asserted that the 50' right-of-way requirement did not exist at the time the owners purchased the property in 2008. (*Id.* at Tr. 17:15-23; 19:16-17; 22:5-8). However, Petitioners provided BOZA with ordinances reflecting that the 50' right-of-way requirement had been in place at least since 2006, before the owners purchased the property. (*Id.* at Tr. 73:10—74:9, R. pp. 258-269; attached as **Exhibit F**). County staff, Mr. Reid, agreed that the 50' right-of-way requirement had been in place since 2006. (*Id.* at Tr. 95:7-12).

After the applicant's presentation, the BOZA asked county staff to present information on the existence of the prescriptive easement over the Private Driveway. As he had at the January 24, 2022 meeting, County Attorney Root addressed the BOZA, as did County Roads and Bridges employee Kyle Reid. The only additional information Mr. Root had gathered since the January

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

24, 2022 meeting was an affidavit from Lori Ellenburg Bright that further called into question the county's asserted prescriptive easement along the Private Driveway. Mr. Root's and Mr. Reid's comments on the prescriptive easement were as follows:

> MR. ROOT:
> The -- I expressed the opinion on the Jan -- or during the January meeting, nothing has changed with that opinion which was to the effect that the county's corporate or institutional memory or knowledge is that it has a prescriptive easement to the edge of the pavement to the end of the pavement, abutting the -- the property that's to be developed. *I understand though at that time I had one affidavit from Jan Ratliff, I have another one now, I believe her name is Ms. -- yeah, Lori Ellenburg Bright, that calls that into question as -- as far as where that prescriptive easement ends, if it ends somewhere west of that. And that's all I have.* I -- I'm not a final arbiter or fact finder in that regard. I can't make a decision in -- just to make my role clear, I'm here to as best I can help with the integrity of the proceedings to make sure it goes smoothly. There's able counsel here for both sides and it would be, you know, just not right for me to advocate for any particular position. I'll answer any questions I can but as far as the facts on that prescriptive easement issue, that's what we have.
>
> MR. CHAIRMAN:
> So it's kind of unclear as to what –
>
> MR. ROOT:
> I -- I -- I would say --
>
> MR. CHAIRMAN:
> It's unclear.
>
> MR. ROOT:
> I wouldn't even use that moniker on it. I would say we've got the county maintains that it has the end of the pavement but I do understand that we have sworn statements provided by Mr. Ratliff's side we'll say that contradict that.

(*Id.* at Tr. 23:5-24:13 (emphasis added)). Mr. Reid offered the following comments on his research into the issue of a prescriptive easement:

> To our -- *to our institutional knowledge*, yes, sir, it -- it is a county road, all the way to the end as shown on -- on the plan.
> . . .
>
> And I can -- I can speak generally. Well, first, I've contacted the state and they don't have any record of Ellenburg Road that -- that shows that it was a state road.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

> *Now all of the institutional knowledge again says that it was a state road*. As far as anything that where the state abandoned their maintenance responsibility and gave it to the county, again there is no record that shows that, the -- the state did not have any records as such and we don't have any records as such to that end. *So, it is institutional knowledge that has – that has led us to that we own to that point of the road*.

(*Id.* at Tr. 28:1-3, 28:24-:29:10 (emphasis added)). The extent of the evidence provided to the BOZA showing that Oconee County holds a prescriptive easement over the Private Driveway was verbal assertions of "institutional knowledge."

The BOZA again heard testimony from Petitioners and their agents that the yellow centerline striping ends before the Private Driveway begins, the pavement quality changes at that point, the end of county maintenance sign had been located west of the Private Driveway for decades, and Petitioners have maintained the Private Driveway for forty years. (*Id.* at Tr. 37:4-23). Petitioner Jay Ratliff reiterated to the BOZA that Petitioners had been using and maintaining the Private Driveway for forty years and provided pictures of John's Marine using the entirety of the Private Driveway to conduct its business. (*Id.* at Tr. 45:24-46:20; R. p. 296).

Petitioner Jay Ratliff is a licensed South Carolina professional engineer. (*Id.* at Tr. 44:1-10). Mr. Ratliff prepared and provided the BOZA with scaled drawings based on the applicant's design. (*Id.* at 44:3-5; R. pp. 295, 297-98, also attached as **Exhibit B**;). These drawings called into question the measurements that form the basis for the Variance Application. Whereas the applicant claimed to own 31.9' of land available for the proposed roadway and only need an 18.1' variance, Mr. Ratliff explained that the applicant's designs showed that it only owned 22.8' of land and in fact needed closer to a 27.2' variance. (*Id.* at Tr. 44:10-45:23; Compare R. p. 286 (Variance Request Survey dated Aug. 26, 2021), with R. p. 285 (Site Plan dated Mar. 21, 2022)); see also site plans prepare by applicant attached as **Exhibit C** (R. pp. 13-14, 40-44, 285).

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Mr. Ratliff's drawings depict a truck connected to a boat trailer for service as they typically are at John's Marine and based on the original design submitted by applicant to the BOZA. (R. p. 297; Ex. B at 2). Under the applicant's original design, there is only 22.8' of land between the corner pin of Petitioners' property and the 804 boundary, below which the applicant cannot develop. Mr. Ratliff explained that prior to the landowner's backfill activities, which occurred on or about July 2021 (BOZA Hearing Tr. 79:17-19 (Nov. 30, 2021)), the original 804 boundary was only six feet from the end of Petitioners' property line. (R. p. 297; Ex. B at 2). Even with the new backfill, under the original design provided by Ridgewater, the only way to achieve 31.9' to satisfy the Variance Application would be to fill-in an additional 9.1' of land owned by Duke on the lake-side of the property below the 804 boundary. (BOZA Hearing Tr. 46:20-47:19 (Apr. 25, 2022); R. p. 297; Ex. B at 2).

Mr. Ratliff then pointed out that a second design was prepared by Goldie and Associates dated March 21, 2022, just before the April BOZA meeting. (R. pp. 285, 298; Ex. B at 3). Under this new design, the roadway was shifted 9.1' onto Petitioners' property to satisfy the 31.9' of land required for the proposed new public roadway without requiring fill below the 804 boundary. (*Id.* at Tr. 47:19-48:13; R. p. 298; Ex. B at 3). Such a shift would have a significant detrimental impact on John's Marine by eliminating the area necessary to service boats, especially with the potential of 200 new cars a day driving past the business. (*Id.* at Tr. 48:2-9, 49:8-13; 51:16-19; R. p. 288-89).[1]

[1] County staff provided a preliminary estimate that nineteen homes could possibly result in an additional 200 cars a day past Petitioners' property. (BOZA Hearing Tr. 91:2-92:1 (Apr. 25, 2022)).

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Prior to voting on the Variance Application, the BOZA observed that it was not competent to decide the prescriptive easement issue; however, it moved forward with a vote anyway based on its assumption that a prescriptive easement did in fact exist.

> MR. CHAIRMAN:
> Is anyone -- anyone not comfortable with that approach? Okay. Let's start out with the prescriptive easement. We've heard a lot of input on both sides, the county attorney, everyone else. What are your thoughts on the prescriptive easement?
>
> MR. EAGAR:
> I think -- I think from what we've heard so far that -- that does not bind us in any way in terms of whether, you know, and it -- from a decision standpoint we can go ahead with a decision that perceptively the easement doesn't impede us in any way from what I understood from Mr. Root, is that true?
>
> MR. ROOT:
> From my position, staying neutral, I believe you can craft an order that addresses the fact that the prescriptive easement may -- they may not express a direct opinion on the prescriptive easement but you address the variance of that pinch point, yes.
>
> MR. EAGAR:
> So I think that -- I think -- I think we should do that then and disregard the perceptive easement. This is a discussion?
>
> MR. CHAIRMAN:
> We are not competent to decide that issue.
>
> MALE VOICE:
> All right.
>
> MR. CHAIRMAN:
> We just don't -- we don't have the (inaudible).
>
> MALE VOICE:
> Right.
>
> MR. CHAIRMAN:
> We don't have business in that so we're not gonna decide that but as -- as John's suggesting we ought to go ahead and -- and decide this as though there were an easement and -- and if someone wants to go to court to --
>
> MALE VOICE:
> Yup.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

> MALE VOICE:
> Yeah.
> . . .

(BOZA Hearing Tr. 100:1-101:17 (Apr. 25, 2022)).

The BOZA recognized that if the county does not have a prescriptive easement, a new public road could not be built as the applicant requested.

> MR. CHAIRMAN:
> Well, I guess let's decide if there's no prescriptive easement there the county is not doing business down there and there isn't gonna be a road built, doesn't matter who's gonna, you know, it all depends on that getting decided somewhere.

(BOZA Hearing Tr. 105:14-19 (Apr. 25, 2022)).

Concerning the impact to adjacent property owners, the BOZA decided that John's Marine would have more room after the new public road was constructed and the previous prescriptive easement area was abandoned, as well as better access to its business. (*Id.* at Tr. 115:17-116:15; 118:19-119:3; 140:17-21; 143:14-19). The BOZA made this determination without addressing Petitioners' drawings showing that an additional 9.1' of its land could be required for placement of the new public right of way. (See Ex. B). Even though BOZA recognized that it was approving a variance application for a new public road without knowing exactly where the location of the new public right-of-way would be located, it moved ahead with a vote. (*Id.* at Tr. 153:20-156:14).

Ultimately, the Variance Application was approved. (*Id.* at Tr. 161:1-3). The Variance Order sets forth the following conclusions:

i. There ARE extraordinary and exceptional conditions pertaining to the particular piece of property;

ii. These conditions DO NOT generally apply to other property in the vicinity;

iii. Because of these conditions, the application of this chapter to the particular piece of property WOULD effectively prohibit or unreasonably restrict the utilization of the property; and

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

iv. The authorization of a variance WILL NOT be of substantial detriment to adjacent uses or to the public good, and the character of the district WILL NOT be harmed by the granting of the variance.

(R. p. 444).

The Variance Order was approved with the following conditions:

v. Order approved subject to proper abandonment procedures;

vi. Compliance with all ordinances and state law on acceptance into the County roadway system;

vii. Developer grant/ deed John's Marine property so that there is reasonable, unimpeded access to the new road.

(R. p. 444).

**Notice of Appeal**

The Variance Order was issued and mailed on May 11, 2022. (R. p. 443). An amended Variance Order was issued on June 22, 2022, to correct a scrivener's error in the original order that stated the "character of the district WILL be harmed," when it should have read "WILL NOT be harmed." (R. p. 444). Petitioners had thirty days to appeal the Variance Order pursuant to S.C. Code Ann. § 6-29-820(A):

> A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed

Petitioners timely filed their Notice of Appeal and Complaint on June 8, 2022. Petitioners filed an amended Complaint on June 9, 2022, to name Ridgewater as a party in an abundance of caution. On June 21, 2022, Globe and Farmers moved to intervene as substitute parties for Ridgewater. Petitioners did not oppose this motion. This appeal followed.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

## STATEMENT OF THE FACTS

Edward (John) Ratliff and Francis (Jan) Ratliff purchased 599 Ellenburg in 1981 and co-located their home on the property along with John's Marine Service, which was moved to the property from downtown Seneca in 1982. (R. p. 56). At the time the Ratliffs purchased 599 Ellenburg in 1981, T.B. Ellenburg owned the adjacent property located at 585 Ellenburg. Descendants of T.B. Ellenburg owned 585 Ellenburg until 2020 when it was sold to Petitioners James Ratliff and Lucretia Morgan. (BOZA Hearing Tr. 76:14-18 (Nov. 30, 2021)).

At some point before or around the mid-1980's, Oconee County paved a portion of Ellenburg Road from Knox Road to approximately the western edge of 585 Ellenburg, at which location Oconee County installed an "End of County Maintenance" sign. (BOZA Hearing Tr. 81:21-83:12 (Nov. 30, 2021); R. pp. 60, 63-66, 290, 292). Oconee County did not pave all the way to the dead end of Ellenburg Road. (BOZA Hearing Tr. 81:21-83:12 (Nov. 30, 2021)).

In the mid-1980's, T.B. Ellenburg and John Ratliff, as fee owners of the private driveway running in front of 585 & 599 Ellenburg, undertook the expense of paving their respective portions of the Private Driveway and for forty years have maintained the road as private property. (BOZA Hearing Tr. 81:21-83:12 (Nov. 30, 2021); Jan Ratliff Affidavit ¶¶ 3-8 (Jan. 7, 2022), attached as **Exhibit D**[2]; R. p. 290). The Private Driveway dead ends at John's Marine and it is paved on Petitioners' property (585 Ellenburg Road and 599 Ellenburg Road) and the adjacent landowners' property, with the majority on Petitioner's property.

[2] While Ms. Ratliff's affidavit does not appear to be included in the materials before the BOZA, County Attorney Root referenced it several times in relation to the existence of a prescriptive easement. (BOZA Hearing Tr. 20:12-14 (Jan. 20, 2022); BOZA Hearing Tr. 23:5-17 (Apr. 25, 2022)). Accordingly, Petitioners request that it be included as part of the Record on Appeal.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

At some point, Oconee County undertook to stripe the center line of the public section of Ellenburg Road, stopping where the Private Driveway begins and never reaching 585 Ellenburg or 599 Ellenburg. (R. pp. 60, 63-66, 288, 291; Ex. A). Significantly, Oconee County did not present any records of public maintenance of the Private Driveway at any of the three BOZA hearings in this matter.

In 2009, Jan Ratliff, who has been an owner of 599 Ellenburg since 1981, along with her daughter-in-law, met with employees of the Oconee County Roads and Bridges Department. (Ratliff Aff. ¶ 2, Ex. D). These employees provided Ms. Ratliff with a plat indicating that the county's maintenance of Ellenburg Road ended at green highlighted marker at 565 Ellenburg Road. (*Id.* at ¶¶ 3-4, Ex. D; R. p. 290). According to Jan Ratliff, the green marker was where the "End of County Maintenance" sign had been located for years before it was moved by an unknown person moved it. (*Id.* at ¶ 6, Ex. D).[3] Also according to Jan Ratliff, her family has continuously maintained the paved portion of Ellenburg Road to the east of the endpoint of county maintenance, and the county has not engaged in any maintenance of the Private Driveway. (*Id.* at ¶ 8, Ex. D).

Laurie Ellenburg Bright is the grand daughter of T.B. Ellenburg who sold part of his farm land for the creation of Lake Keowee. (R. p. 292). Ms. Bright grew up and resided at 591 Ellenburg Road for forty years. (R. p. 292). According to Ms. Bright's affidavit, after the creation of Lake Keowee, and "End of County Maintenance" sign was stationed between 575 Ellenburg and 585 Ellenburg Road. (R. p. 292 ¶ 6). Ms. Bright drove past this sign for years, and particularly recalled the location of the sign because it was located next to a bathtub that her grandfather used to water his cattle. (R. p. 292 ¶ 6). This information was provided to the BOZA.

[3] The sign was moved by an unknown person and temporarily placed at the end of Ellenburg Road; however, it is no longer there. (BOZA Hearing Tr. 60:12-21; 130:14-17 (Nov. 30, 2021); BOZA Hearing Tr. 38:11-18 (Apr. 25, 2022)).

No documents or testimony were provided to the BOZA contradicting the affidavits from Jan Ratliff and Laurie Ellenburg Bright.

John's Marine uses the entirety of the Private Driveway to conduct is business and has done so for forty years. (BOZA Hearing Tr. 45:8-13 (Apr. 25, 2022); R. p. 56-57, 288-289).

## STANDARD OF REVIEW

On appeal, "[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840(A). "A jury's factual findings will not be disturbed on appeal unless the record contains no evidence reasonably supporting the jury's findings." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018) (citing *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004)).

"In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A). "However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Boehm*, 423 S.C. at 182, 813 S.E.2d at 880-81 (citations omitted). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* (citations omitted). A zoning board's decision will be overturned based on errors of law or "where there is no legal evidence to support it." *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 754-55 (1953). Such errors occurred here.



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

## ARGUMENT

### I. The BOZA Did Not Have Jurisdiction to Decide a Factual Dispute Over the Existence of a Prescriptive Easement.

The BOZA did not have the jurisdiction to decide whether Oconee County has a prescriptive easement over Petitioners' Private Driveway. In hearing evidence on the prescriptive easement, assuming the existence of a prescriptive easement, and then approving the Variance Application based on this assumption, the BOZA effectively determined this disputed question of fact. In this manner, BOZA acted outside of its limited jurisdiction to hear variance applications. This was error.

Prior to voting to approve the Variance Application, the BOZA recognized that the issue of whether Oconee County held a prescriptive easement across the Private Driveway had to be determined. (BOZA Hearing Tr. 163:19-164:14 (Nov. 30, 2001) ("That's our first question, do we have authority?")). This was the reason the BOZA did not vote when the application first came before it on November 30, 2021, BOZA Hearing Tr. 178:6-11 (Nov. 30, 2001), and the reason the application was not determined at the January 24, 2022 meeting, BOZA Hearing Tr. 20:2-24, 30:10-12 (Jan. 24, 2022).

Ultimately, however, without waiting for a legal determination on this issue from a court of competent jurisdiction, the BOZA simply assumed the existence of a prescriptive easement. (BOZA Hearing Tr. 101:8-13 (Apr. 25, 2022) (Chairman indicating they would go ahead and decide the application as though there were an easement)). Based on this assumed prescriptive easement, the BOZA determined that it could grant the Variance Application for a future public road that will tie into this existing prescriptive easement. This was error.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

The BOZA is a body of limited jurisdiction. S.C. Code Ann. § 6-29-800 (setting forth the powers of a board of zoning appeals). Concerning variances, a board of zoning appeals' jurisdiction is as follows:

> (2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
>
> (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
>
> (b) these conditions do not generally apply to other property in the vicinity;
>
> (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
>
> (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

S.C. Code Ann. § 6-29-800.

Oconee County ordinances set forth the requirements for new private and public roads. Oconee County Ord. Sec. 26-2, 26-3, attached as **Exhibit E**. *Private driveways* service up to three residential dwellings and have few additional requirements. Ord. Sec. 26-2(a). *Private drives* serve up to ten lots or dwellings, require a minimum 50' right-of-way, and "shall connect to another road, *either public or private*, on one end only." Ord. Sec. 26-2(b)(7) (emphasis added). *Private roads* serve a minimum of eleven lots, require a minimum 50' right-of-way, and require that "the development served by a private road shall have direct access into a public road." Ord. Sec. 26-2(c), (c)(1). Finally, public roads required the continuation of an adjoining public road system. Ord. Sect. 26-3(a).

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Pursuant to these Oconee County road ordinances, a future nineteen-home subdivision would either require a *private road* or a *public road*. Both a *private road* and a *public road* require direct access to the public road system. Ord. Sec. 26-2(c), (c)(1), Sect. 26-3(a), Ex. E. Here, the applicant sought a variance for the construction of a public road. Because the applicant's proposed road plans depict its connection to the public road system through the Private Driveway, the character of the Private Driveway at the point of intersection is a determining factor of the type of road the developer can construct. As such, the character (public or private) of the Private Driveway needed to be settled prior to a determination on the Variance Application. If the Private Driveway is a not a public road, then the Variance Application for a new public road would have to be denied and the developer would have to revise its roadway plans and work directly with Petitioners to obtain the appropriate rights for the construction of a new roadway to tie in to Petitioners' private property.

Had the prescriptive easement and character of the Private Driveway not been in dispute, the BOZA could have moved forward on the Variance Application without jurisdictional questions. However, once it became clear that the character (public or private) of the Private Driveway was disputed, the BOZA did not have the jurisdiction to resolve the prescriptive easement issue or the jurisdiction to move forward on the Variance Application under an assumption that effectively resolved the factual dispute over the prescriptive easement, which is what happened here.

The BOZA recognized that (1) a determination of the existence of a prescriptive easement was a predicate to its determination on the Variance Application, BOZA Hearing Tr. 86:15-22, 163:19-164:14 (Nov. 30, 2021), which is why it initially deferred consideration of the application until this issue was resolved, BOZA Hearing Tr. 174:20-175:15, 178:6-11 (Nov. 30, 2021); and

(2) it did not have the jurisdiction to determine the existence of the prescriptive easement, BOZA Hearing Tr. 100:1-101:13 (Apr. 25, 2022) ("we are not competent to decide that issue"; "we ought to go ahead and . . . decide this as though there were an easement"). Yet, in assuming the existence of the prescriptive easement, the BOZA resolved this factual dispute in favor of Oconee County and the applicant, and effectively did the very thing it recognized that it did not have the power to do. This was error.

Not only did the BOZA decide the existence of the prescriptive easement, it then approved modified boundaries of the easement, ordered certain sections of the easement to be abandoned, and modified the burden of the easement on Petitioners' property. BOZA did not have the jurisdiction to make these determinations. This was an abuse of discretion and legal error. Accordingly, the Variance Order should be reversed.

## II. BOZA Abused its Discretion When it Assumed that Oconee County Has A Prescriptive Easement Over the Petitioners' Private Driveway.

The BOZA abused its discretion when it assumed that Oconee County holds a prescriptive easement over the Private Driveway. The BOZA did not have jurisdiction to decide the factual dispute over the prescriptive easement. (*See* Argument I, *supra*). However, even assuming the BOZA could make an assumption on the existence of a prescriptive easement in order to move forward on the Variance Application, the BOZA abused its discretion when it assumed Oconee County held a prescriptive easement over the Private Driveway in light of the evidence before it.

A prescriptive easement must satisfy all of the following elements:

i. Continued and uninterrupted use or enjoyment of the right for a period of twenty years;
ii. The identity of the thing enjoyed; and
iii. Use or enjoyment which is either adverse or under claim or right.



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

*Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015). A prescriptive easement must be proven by clear and convincing evidence, *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170-71, its existence cannot merely be assumed to exist. The proponent of the easement carries the burden of proof.

Oconee County admitted during the BOZA hearings that it did not own the fee to the Private Driveway and if it had any rights at all over the Private Driveway they were by prescriptive easement. (BOZA Hearing Tr. 19:15-20:22 (Jan. 24, 2022)). However, Oconee County did not present any evidence to BOZA of its continued uninterrupted use of the Private Driveway for twenty years, it did not produce any maintenance records reflecting work done on the Private Driveway, and it did not present any testimony from county employees, or anyone else, who had personal knowledge of performing maintenance work on the Private Driveway. The only "evidence" cited by Oconee County for asserting the existence of a prescriptive easement over the Private Driveway was "institutional memory." BOZA Hearing Tr. 23:5-24:13; 28:1-3, 28:24-29:10 (Apr. 25, 2022)). Institutional memory is not evidence. The BOZA had no documentary or testimonial evidence before it showing Oconee County's continued and uninterrupted maintenance or use of the Private Driveway for twenty years.

Conversely, Petitioners presented evidence to the BOZA including (1) two affidavits stating that Oconee County placed an End of Maintenance sign at or around 585 Ellenburg Road where it stayed for decades, Ex. D, R. 292; (2) documents and public statements that Petitioners have maintained the Private Driveway for the last forty years, Ex. D, R. p. 288, BOZA Hearing Tr. 45:8-13 (Apr. 25, 2022); and, (3) photographs depicting the end of the county's yellow striping before the Private Driveway began, R. p. 63, 66, 291, Ex. A.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Even under a preponderance of the evidence standard, the evidence presented to the BOZA weighed in Petitioners' favor showing that such an easement cannot be assumed to exist. Under a clear and convincing evidence standard, it is even more clear that Oconee County did not provide sufficient evidence to justify BOZA's assumption that a prescriptive easement existed over the Private Driveway.

When fairly viewing the evidence presented, the assumption should have been in Petitioners' favor that the Private Driveway is not a public road. Once this assumption is corrected, the entire basis for approving the Variance Application fails. Without a public road to tie directly into, the applicant cannot construct a new public road.

Given the evidence before it, the BOZA's assumption that Oconee County held a prescriptive easement over the Private Driveway was arbitrary, capricious, and an abuse of discretion. Accordingly, the Variance Order should be reversed based on the BOZA's erroneous assumption and error of law.

### III. BOZA Erred in Unilaterally Expanding the Easement Burden on Petitioners' Properties.

Assuming that Oconee County has a prescriptive easement over the Private Driveway, which Petitioners expressly deny, the BOZA's grant of the Variance Application will result in a material increase in the burden on Petitioners' property and impose new and additional burdens. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). Oconee County's attorney informed the BOZA of this legal principle. (BOZA Hearing Tr. 22:1-3 (Jan. 24, 2022)).

Assuming the existence of a prescriptive easement, the only pre-existing burden on the Private Driveway would have been occasional county maintenance—though no documents reflect

any maintenance to have ever occurred. Granting a variance for a private development of nineteen homes with an estimated 200 trips per day driving along Petitioners' property will result in a material increase in the burden of vehicular traffic on Petitioners' property. The only current users of the dead-end Private Driveway are Petitioners, their visitors, and patrons of John's Marine. Installation of a public road servicing a brand-new subdivision will materially change the character of the Private Driveway and increase the burden of vehicular traffic on Petitioners' properties.

Transforming the Private Driveway into a public road also places new burdens on Petitioners' property. John's Marine has been operating at its current location for forty years. Petitioners testified that John's Marine will no longer be able to operate on the property should the Private Driveway be transformed into a public road for nineteen new homes. (BOZA Hearing Tr. 45:8-49:9 (Apr. 24, 2022); R. p. 289). John's Marine uses the entirety of the Private Driveway to conduct its business. If the Private Driveway is no longer available to John's Marine, this is a new and substantial burden that has never been placed on Petitioners' land and a restriction Petitioners never assented to. (*Id.*)

It was arbitrary, capricious, and an abuse of discretion for BOZA to approve the Variance Application that will materially increase the existing burden and create new burdens on Petitioners' land. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). This was an error of law and the Variance Order should be reversed.

## IV. BOZA's Approval of the Variance Application was Arbitrary and Capricious Because the Location of the Roadway Was Left Undetermined.

At the time it approved the Variance Application, BOZA recognized that the final location of the roadway was uncertain. (BOZA Hearing Tr. 153:20-156:14 (Apr. 25, 2022)).



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Petitioners submitted scale drawings showing that in order for the applicant, or developer, to meet the 31.9' right-of-way to construct the new public road, the applicant will either have to fill in a substantial amount of land currently underwater belonging to Duke, or the roadway will have to shift toward John's Marine and be placed on top of the location where John's Marine currently maneuvers boats and trailers. (R. p. 297-98; Ex. B at 2-3). The applicant's own drawings reflected this 9.1' shift onto Petitioners' property needed for the new public road. (R. p. 285; Ex. C at 1).

Petitioners testified that the substantial increase in traffic (200 cars a day) will detrimentally impact its business, even without this 9.1' shift in the proposed roadway onto their property. (BOZA Hearing Tr. 45:8-49:9 (Apr. 24, 2022); R. p. 289). If the road must shift, such that John's Marine's boat service area will become a public roadway for 200 cars a day, it will have an even more detrimental impact on Petitioners. (*Id.*).

In reviewing a variance application, the BOZA is charged with determining whether the requested variance will "be of substantial detriment to adjacent property." S.C. Code Ann. § 6-29-800 (A)(2)(d); Oconee County Code Sec. 38-7.1.(4). "The developer shall have the burden of providing evidence to the county of compliance with . . . the specific requirements of this applicable section." Oconee County Code Sec. 38-7.1. Only where the BOZA determines the variance *will not* be of substantial detriment can a variance be granted.

In this instance, the BOZA approved the variance application without sufficient definiteness as to the final location of the proposed public roadway. Moreover, the developer did not present the BOZA with sufficient evidence as to the final location of the roadway. As demonstrated by Petitioners, the detrimental impact analysis changes as the placement of the final roadway shifts. The BOZA did not conduct sufficient analysis of the detrimental impact on

Petitioners' property under the various scenarios of the final road placement and did not sufficiently review the impact of utility placement, road construction, and home construction.

The BOZA's finding of no substantial detriment to Petitioners' property and its decision to approve the variance application without sufficient definiteness as to the final location of the roadway was arbitrary, capricious, and an abuse of discretion. As such, the Variance Order should be reversed.

## V. BOZA Failed to Provide the Statutorily Required Explanatory Written Findings.

BOZA failed to explain in writing why the indeterminant nature of the proposed roadway was not a substantial detriment to Petitioners. At all points where the proposed new public road is adjacent to Petitioners' property, the 50' right-of-way requirement cannot be met unless Petitioners' Private Driveway is included in the public right-of-way calculation. (R. p. 416-418; Ex. C).

In order to grant a variance application, the BOZA must review four state statutory requirements, which are incorporated in the Oconee County ordinance. S.C. Code Ann. § 6-29-800(A)(2); Oconee County Code Sec. 38-7.1.(1)-(4). The BOZA's review of each requirement, and findings as to how each requirement is satisfied, must be explained in writing. *Id.* S.C. Code Ann. § 6-29-800(A)(2) ("A variance may be granted . . . if the board *makes and explains in writing*" the four requirements); Oconee County Code Sec. 38-7.1. ("The board of zoning appeals may grant a variance . . . if the board of zoning appeals makes and explains in writing" the four requirements).

Here, the BOZA's Variance Order, (R. p. 444), does not contain written explanatory findings as to element four "detriment to adjacent uses," specifically as to how the variance is not detrimental to John's Marine considering the drawings provided by Petitioners showing that in order for the applicant to meet the 31.9' minimum right-of-way, the applicant would have to



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

encroach on Petitioners property. (R. p. 297-98; Ex. B at 2-3). Further, the BOZA hearing transcripts contains no analysis of the detrimental impact to John's Marine under the varying road location scenarios.

Petitioners presented BOZA with drawings indicating that under certain scenarios, property from Petitioners would need to be taken to meet the 31.9' right-of-way, and under this scenario Petitioners would lose land rather than gain any land, (R. p. 297-98; Ex. B at 2-3), which directly contradicted one of the primary assumptions underlying the BOZA's vote approving the variance where it concluded John's Marine would gain land rather than lose land, (BOZA Hearing 115:17-116:15; 118:19-119:3; 140:17-21; 143:14-19 (Apr. 25, 2022)). However, the BOZA had no discussion about this issue. (BOZA Hearing Tr. 44-51 (no questions from BOZA on shifting road location diagrams provided by Petitioners) (Apr. 25, 2022)).

Because the Variance Order was not accompanied by written explanatory findings and the transcript is devoid of sufficient analysis on these points, it failed the meet the statutory requirements and must be voided.

**CONCLUSION**

The BOZA recognized that a determination of whether Oconee County holds a prescriptive easement over the Private Driveway was a predicate issue to its vote on the Variance Application. If Oconee County did not hold a prescriptive easement over the Private Driveway, then the applicant's proposed public road would not abut the public road system and it would not qualify to become a new public road. Rather than waiting for a court of competent jurisdiction to decide this predicate issue, the BOZA effectively decided this disputed factual question by assuming that Oconee County held a prescriptive easement. In making this assumption, the BOZA exceeded its limited jurisdiction to decide variance applications.



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Even assuming that the BOZA could weigh the evidence before it and make its own assumption on the existence of a prescriptive easement, its assumption that Oconee County has an easement over the Private Driveway was not supported by the evidence and was an abuse of discretion. Taking the testimony and documents as a whole, the only evidence Oconee County relied upon in stating its claim to a prescriptive easement over the Private Driveway was "institutional memory," which is no evidence at all. On the other hand, Petitioners provided testimony, documents, and sworn statements showing that they had maintained the Private Driveway for the past forty years. The BOZA abused its discretion when it determined from the evidence before it that it should assume the existence of a prescriptive easement.

From its faulty assumption that a prescriptive easement exists, BOZA then proceeded to approve the Variance Application that not only unilaterally changed the location and dimensions of the assumed public right-of-way on Petitioners' property, but also materially increased the burden on Petitioners' land. Even assuming the existence of a prescriptive easement for the sake of argument, the burden of such an existing easement would be minimal and consist of periodic road maintenance by the county. In approving the Variance Application, the BOZA granted the applicant the ability to construct a public road sending potentially 200 cars a day across Petitioners' property, interfering with its ability to conduct its business. This is a unilateral material change in the easement burden on Petitioners, something that the county appeared to recognize that it could not do, but went ahead and did anyway.

Finally, the BOZA approved the Variance Application without knowing where the proposed roadway would be located and whether the roadway would actually take land from Petitioners rather than give them land. When BOZA evaluated the impact to John's Marine from the variance, it concluded that Petitioners would gain land as part of the project. BOZA ignored

drawings from Petitioners demonstrating that unless the applicant was planning to fill in land below the 804 boundary belonging to Duke, in order to meet its 31.9' minimum right-of-way the applicant must place the roadway on Petitioners' property. BOZA did not explain why it chose to disregard Petitioners' drawings or how it reconciled this information with the applicant's claim that Petitioners would gain land as part of the project. This was arbitrary, capricious, and an abuse of discretion.

For these reasons, Petitioners request that the Variance Order be reversed.

Respectfully submitted,

s/ David L. Paavola
Keith M. Babcock, S.C. Bar No. 456
kmb@lewisbabcock.com
David L. Paavola, S.C. Bar No. 100714
dlp@lewisbabcock.com
Lewis Babcock L.L.P.
P.O. Box 11208
Columbia, SC 29211
(803) 771-8000
Attorneys for Petitioners/Appellants

Columbia, SC
August 10, 2022

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

# Exhibit A

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



**Ellenburg Road - 2021**

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

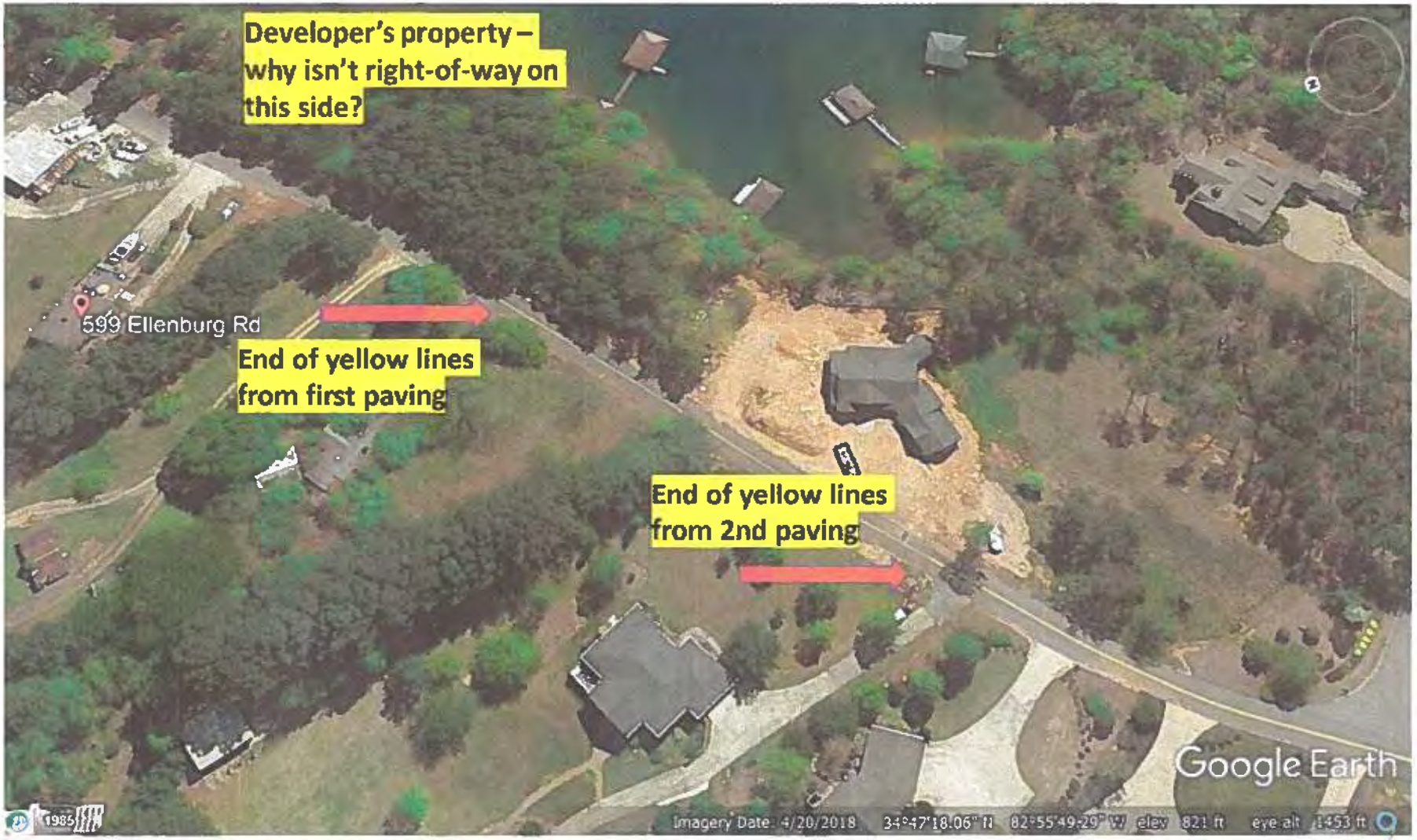
ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

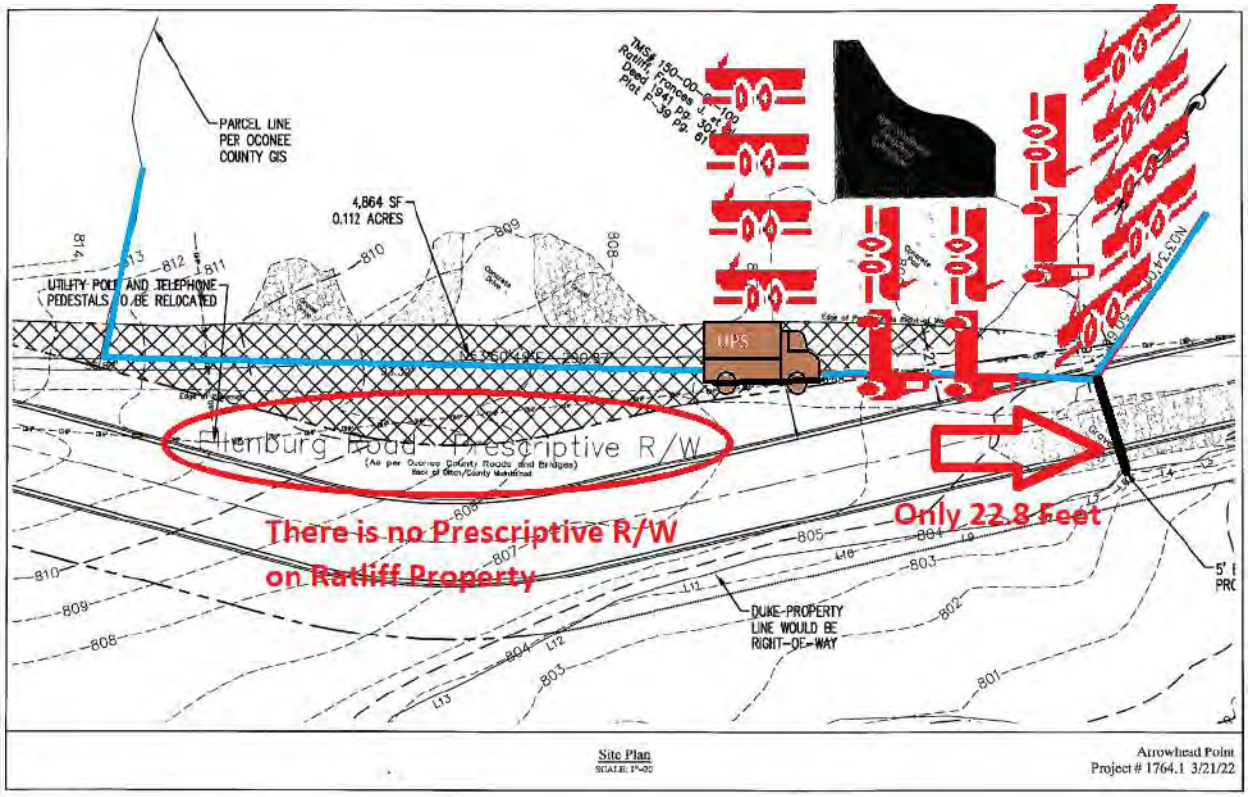
ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



# Exhibit B

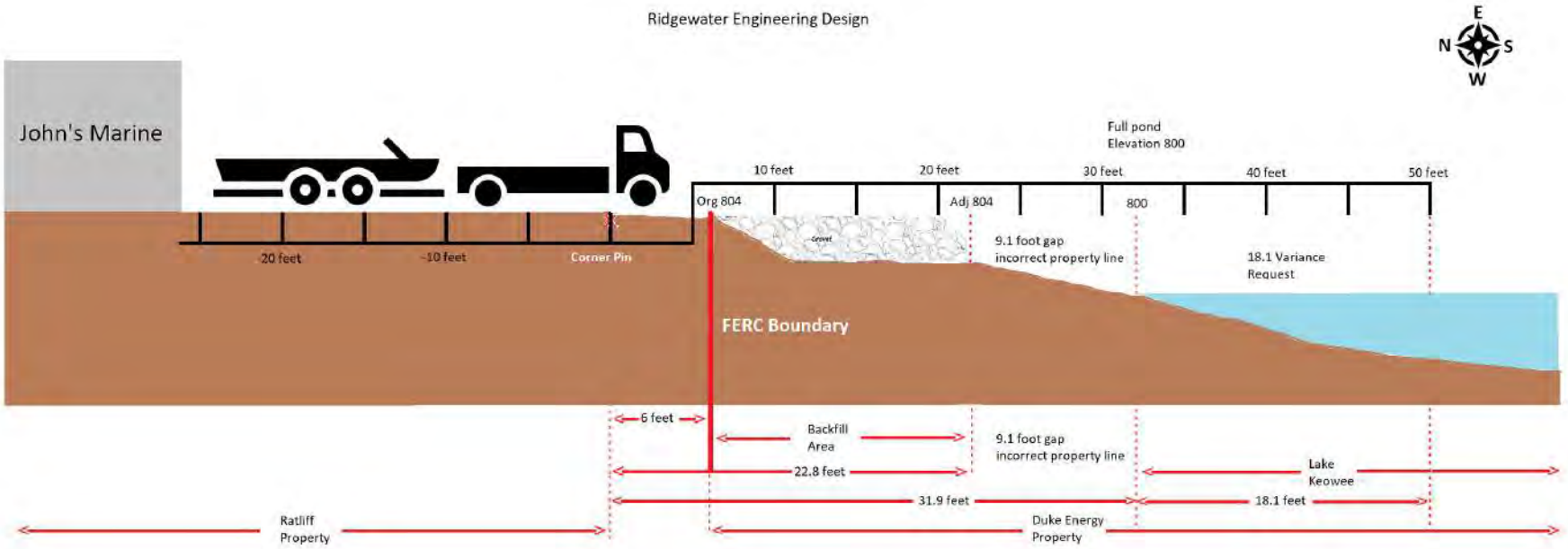
ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 6 (Developer plan designed by Goldie and Associates):




ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 8 (Scale diagram of Ridgewater Engineering design]:

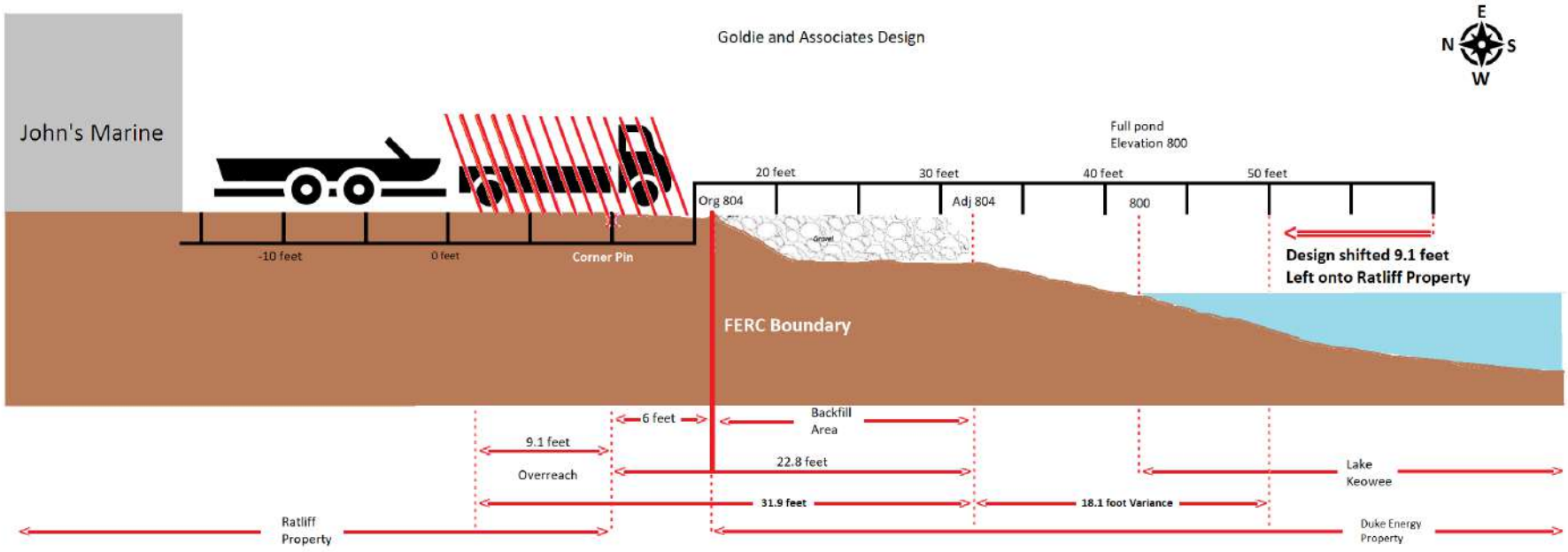







ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Attachment 9 (Scale diagram of Goldie and Associates design):



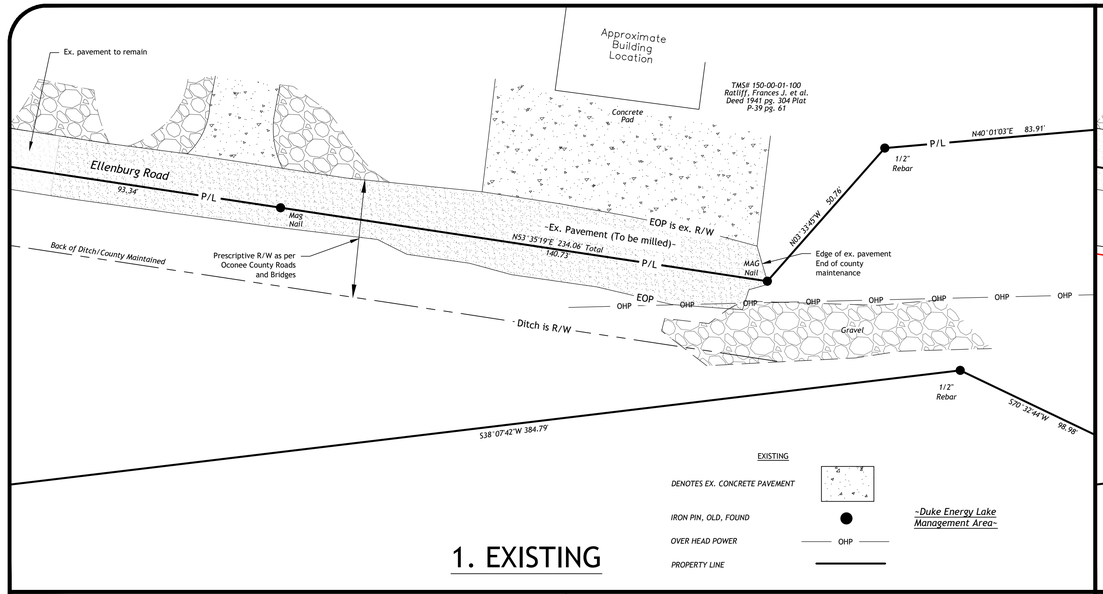




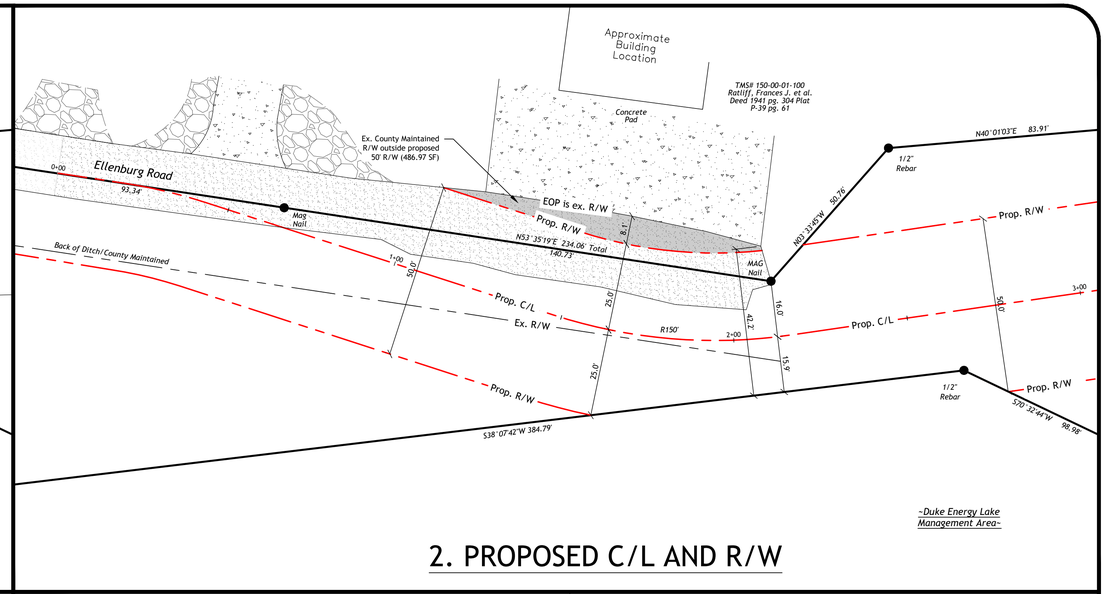

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

# Exhibit C

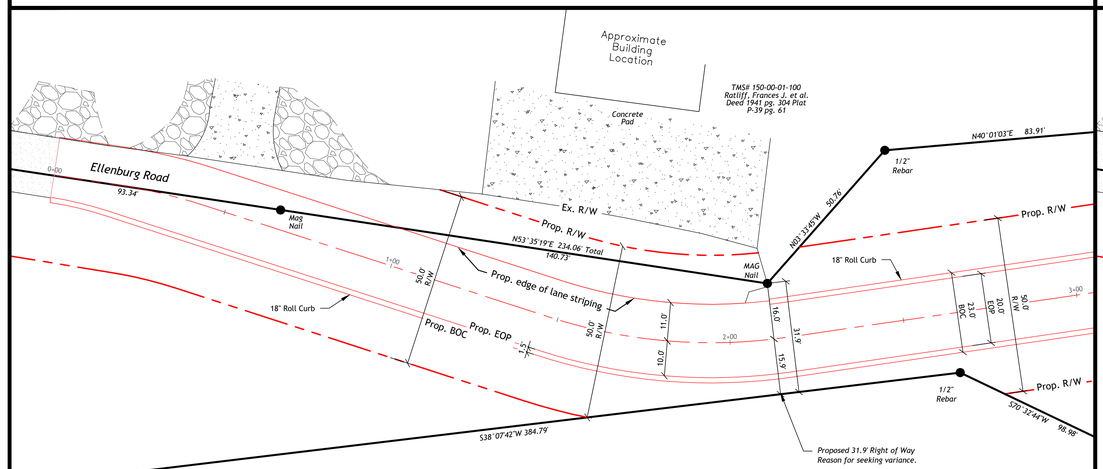
ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



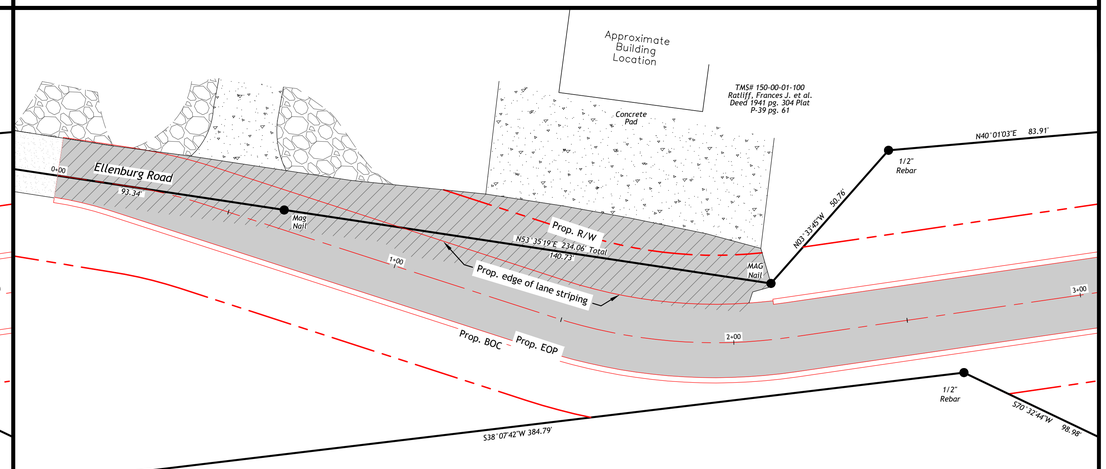

## 1. EXISTING




## 2. PROPOSED C/L AND R/W




## 3. PROPOSED ROAD DIMENSIONING




## 4. PROPOSED PAVEMENT/REPAVEMENT

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

***CAUTION***

PALMETTO UTILITY LOCATION SERVICE

3 DAYS BEFORE DIGGING CALL TOLL FREE 811

A ONE CALL SYSTEM FOR COMMUNITY AND JOB SAFETY.

RIDGEWATER
ENGINEERING & SURVEYING

PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

GRID NORTH
S.C.C.P.C. (NAD 83 (2011))

20 0 10 20
SCALE: 1 in = 20 ft.

THIS DRAWING AND THE DESIGN SHOWN THEREON ARE THE PROPERTY OF RIDGEWATER ENGINEERING & SURVEYING, LLC. THE REPRODUCTION, COPYING OR USE OF THIS DRAWING WITHOUT WRITTEN CONSENT IS PROHIBITED AND ANY INFRINGEMENT WILL BE SUBJECT TO LEGAL ACTION.

SOUTH CAROLINA
RIDGEWATER ENGINEERING & SURVEYING
No. 5816
CERTIFICATE OF AUTHORIZATION

Arrowhead Point

Oconee County, South Carolina

DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

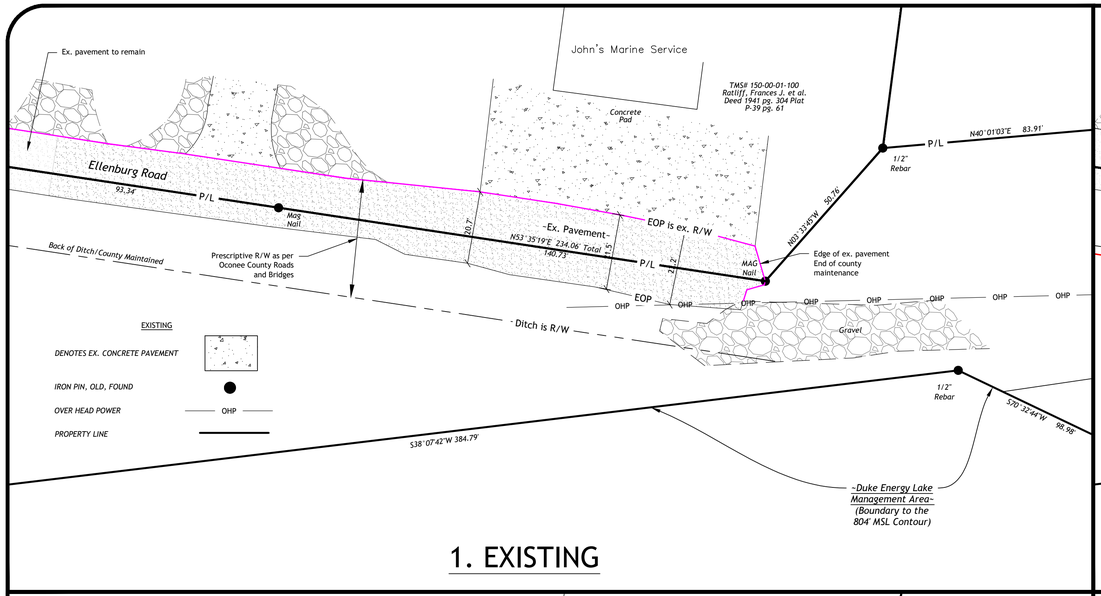
| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | ISSUE FOR REVIEW |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |

SHEET

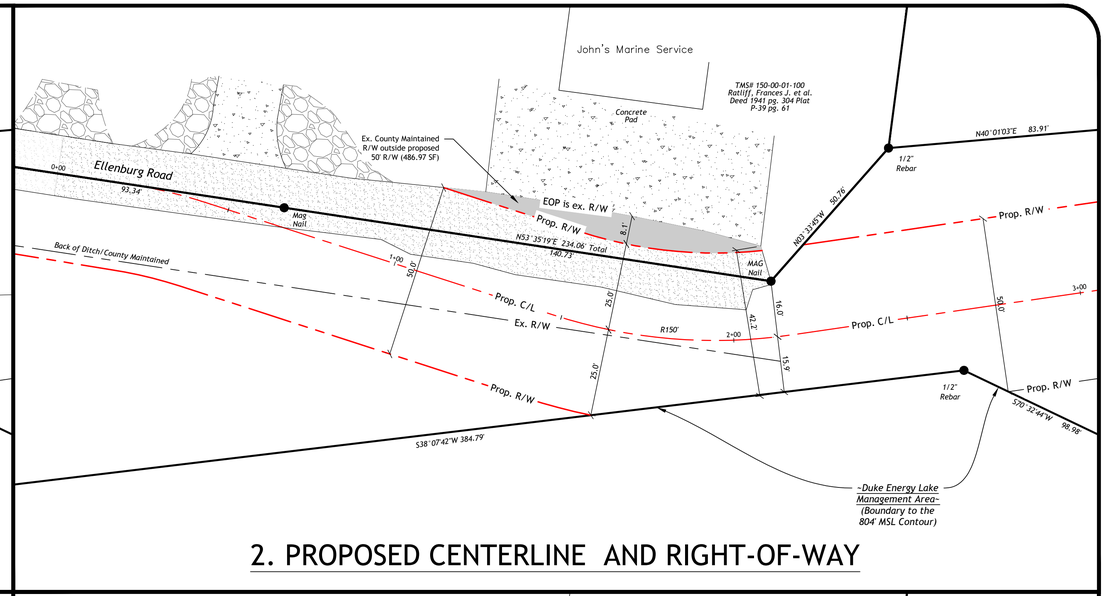
Variance Request

C - 2

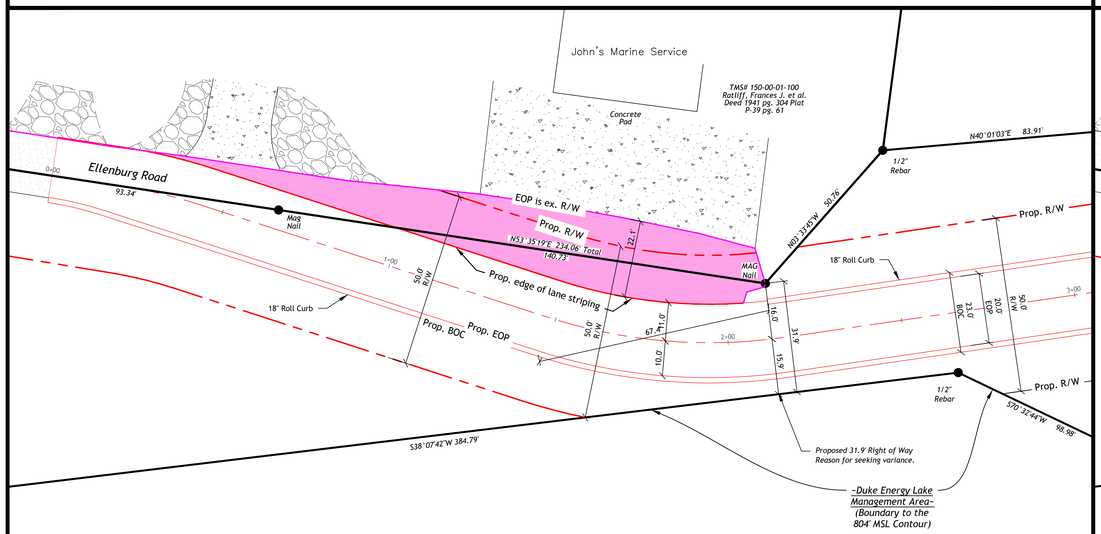
ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



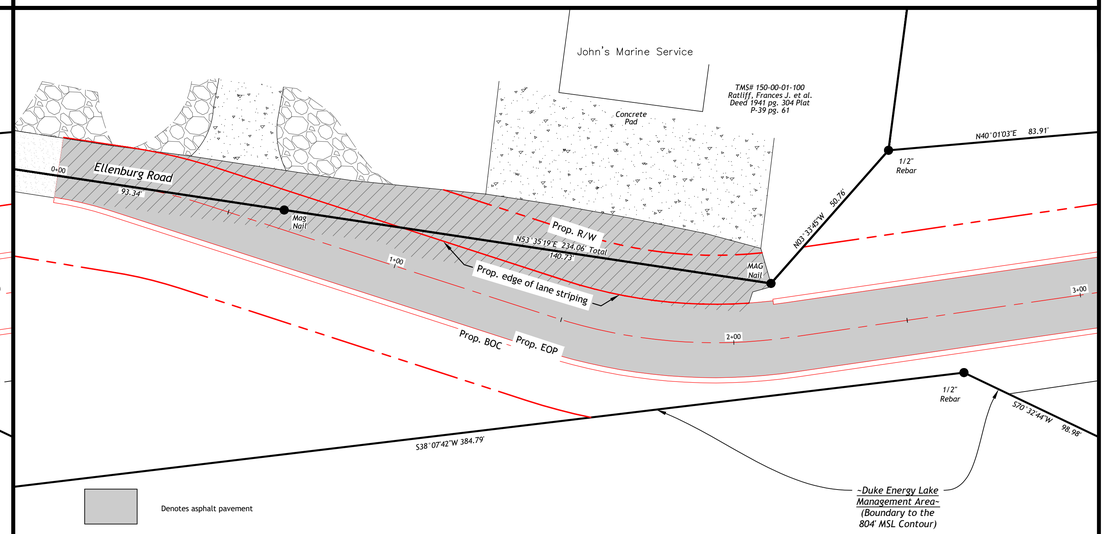

## 1. EXISTING




## 2. PROPOSED CENTERLINE AND RIGHT-OF-WAY




## 3. PROPOSED ROAD DIMENSIONING




Denotes asphalt pavement

Denotes ex. pavement to be milled and repaved

## 4. PROPOSED PAVEMENT/REPAVEMENT

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

***CAUTION***

PALMETTO UTILITY LOCATION SERVICE

3 DAYS BEFORE DIGGING CALL TOLL FREE 811

A ONE CALL SYSTEM FOR COMMUNITY AND JOB SAFETY.

RIDGEWATER
ENGINEERING & SURVEYING

PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

GRID NORTH
S.C.C.P.C. (NAD 83 (2011))

20 0 10 20
SCALE: 1 in = 20 ft.

THIS DRAWING AND THE DESIGN SHOWN THEREON ARE THE PROPERTY OF RIDGEWATER ENGINEERING & SURVEYING, LLC. THE REPRODUCTION, COPYING OR USE OF THIS DRAWING WITHOUT WRITTEN CONSENT IS PROHIBITED AND ANY INFRINGEMENT WILL BE SUBJECT TO LEGAL ACTION.

SOUTH CAROLINA
RIDGEWATER ENGINEERING & SURVEYING
No. 5816
CERTIFICATE OF AUTHORIZATION

Arrowhead Point

Oconee County, South Carolina

DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

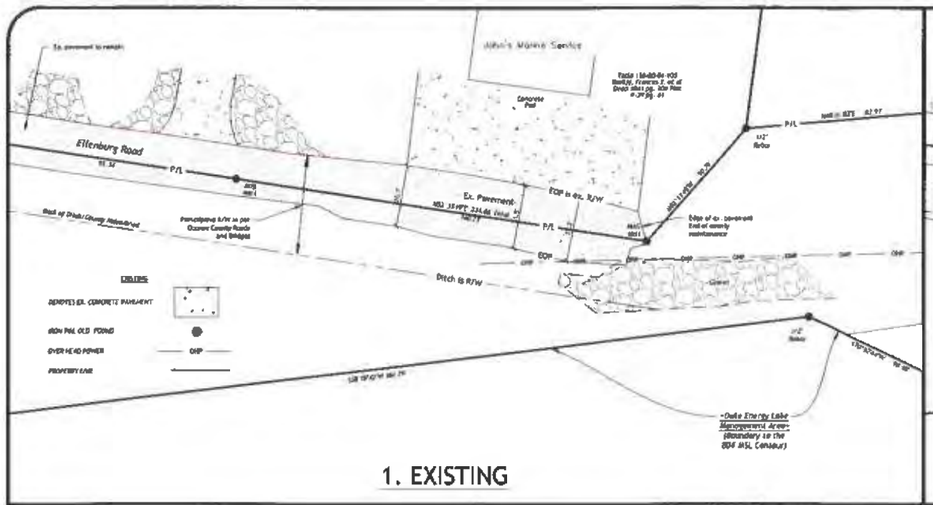
| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | ISSUE FOR REVIEW |
| 1 | 11-29-21 | PLANNING COMMISSION MTG. |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |
| ... | ... | ... |

SHEET

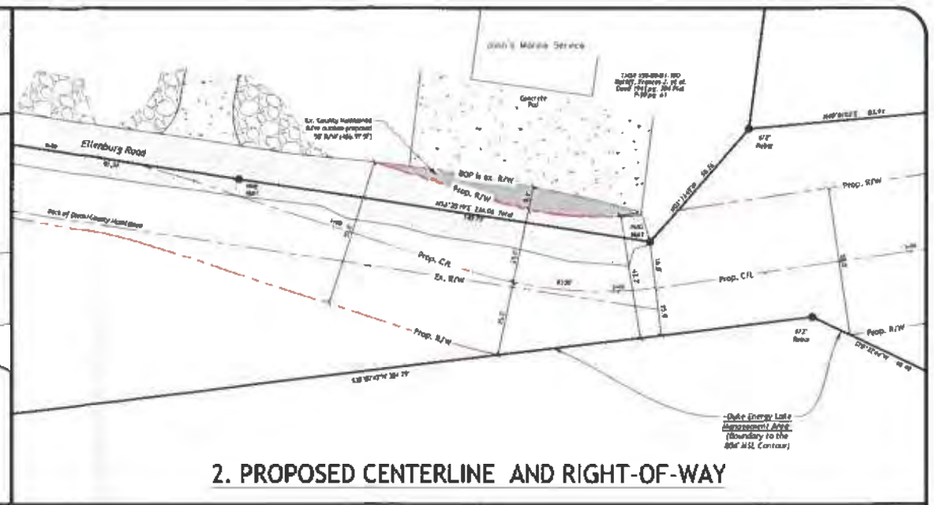
Variance Request

C - 2

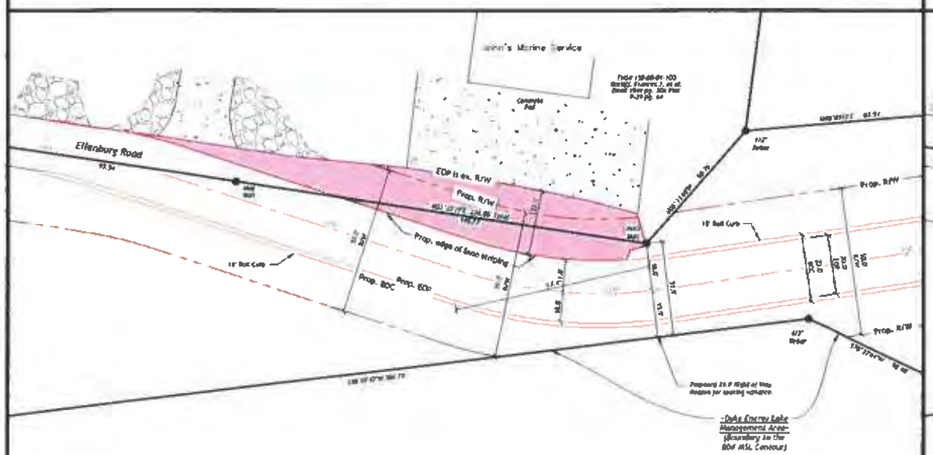
ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



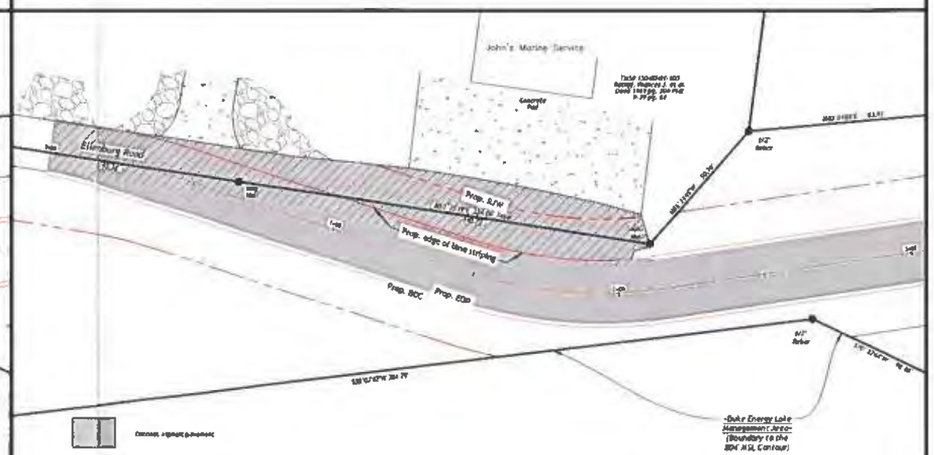

1. EXISTING




2. PROPOSED CENTERLINE AND RIGHT-OF-WAY




3. PROPOSED ROAD DIMENSIONING




4. PROPOSED PAVEMENT/REPAVEMENT

Graphics 1-4

***CAUTION***

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

RIDGEWATER
ENGINEERING & SURVEYING
PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

SCALE: 1 in = 100 ft.

Arrowhead Point

Oconee County, South Carolina

DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | ISSUE FOR REVIEW |
| 1 | 11-29-21 | PLANNING COMMISSION MTG |

SHEET

Variance Request

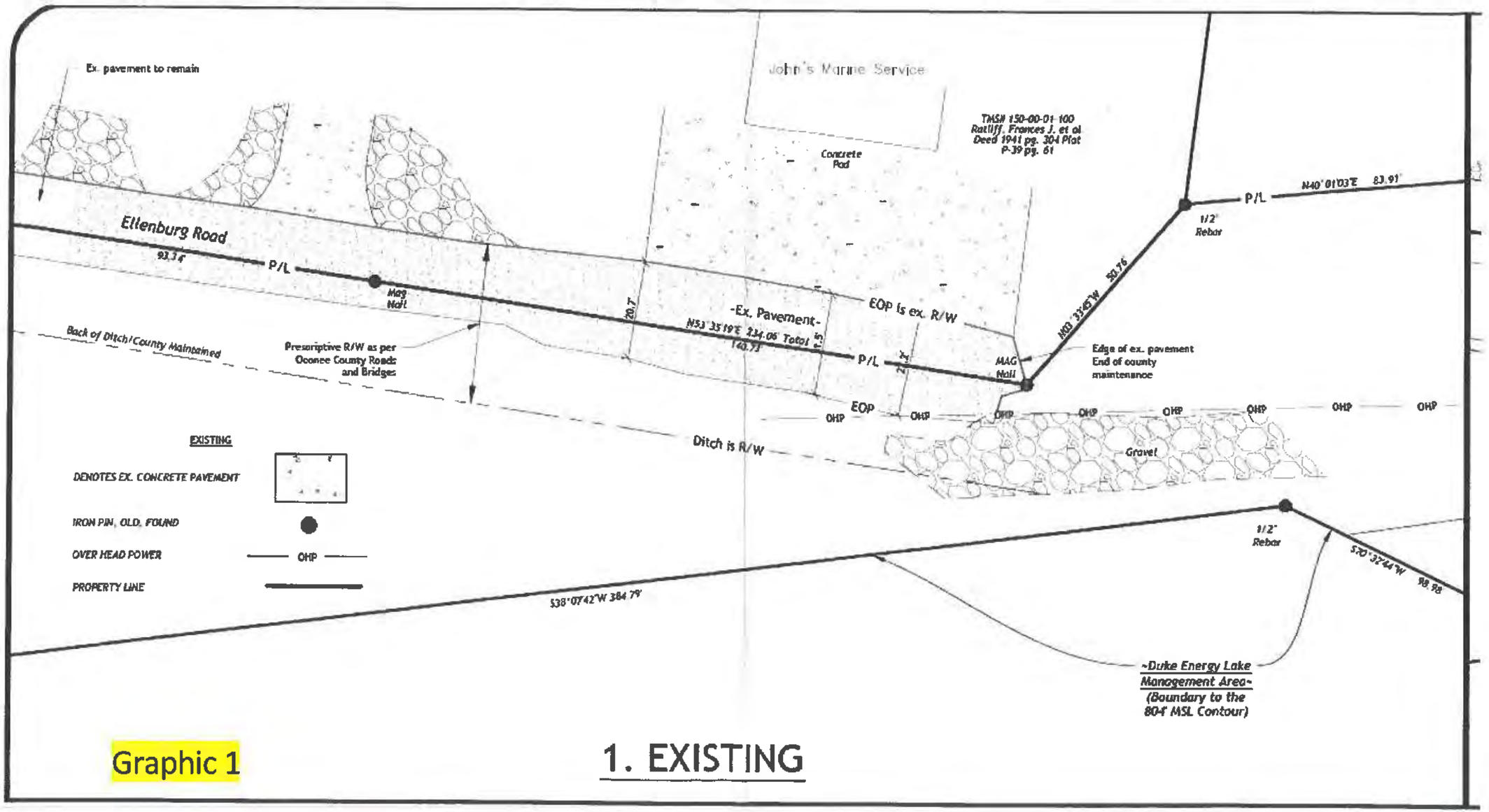
C - 2

3





ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

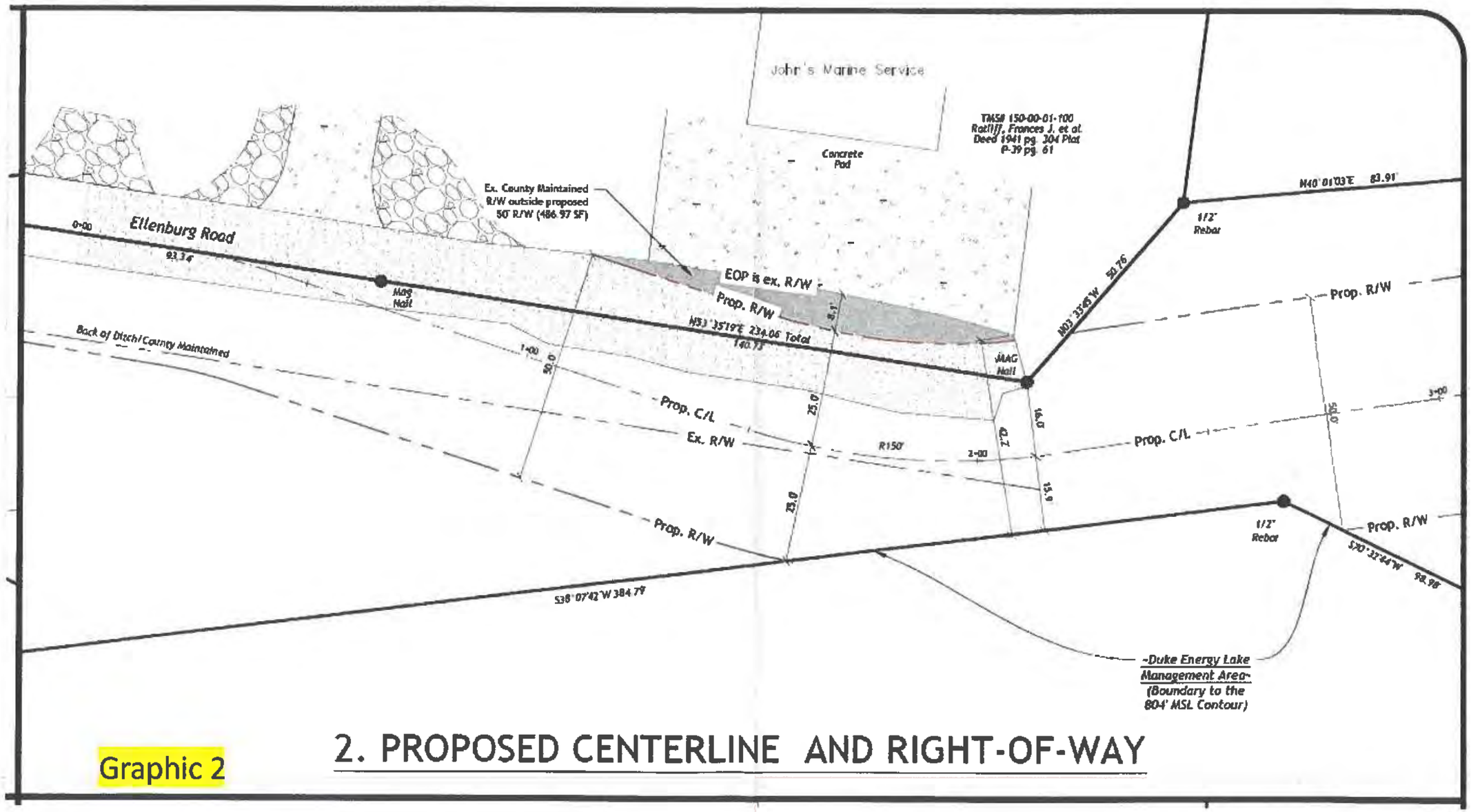



Graphic 1

## 1. EXISTING



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

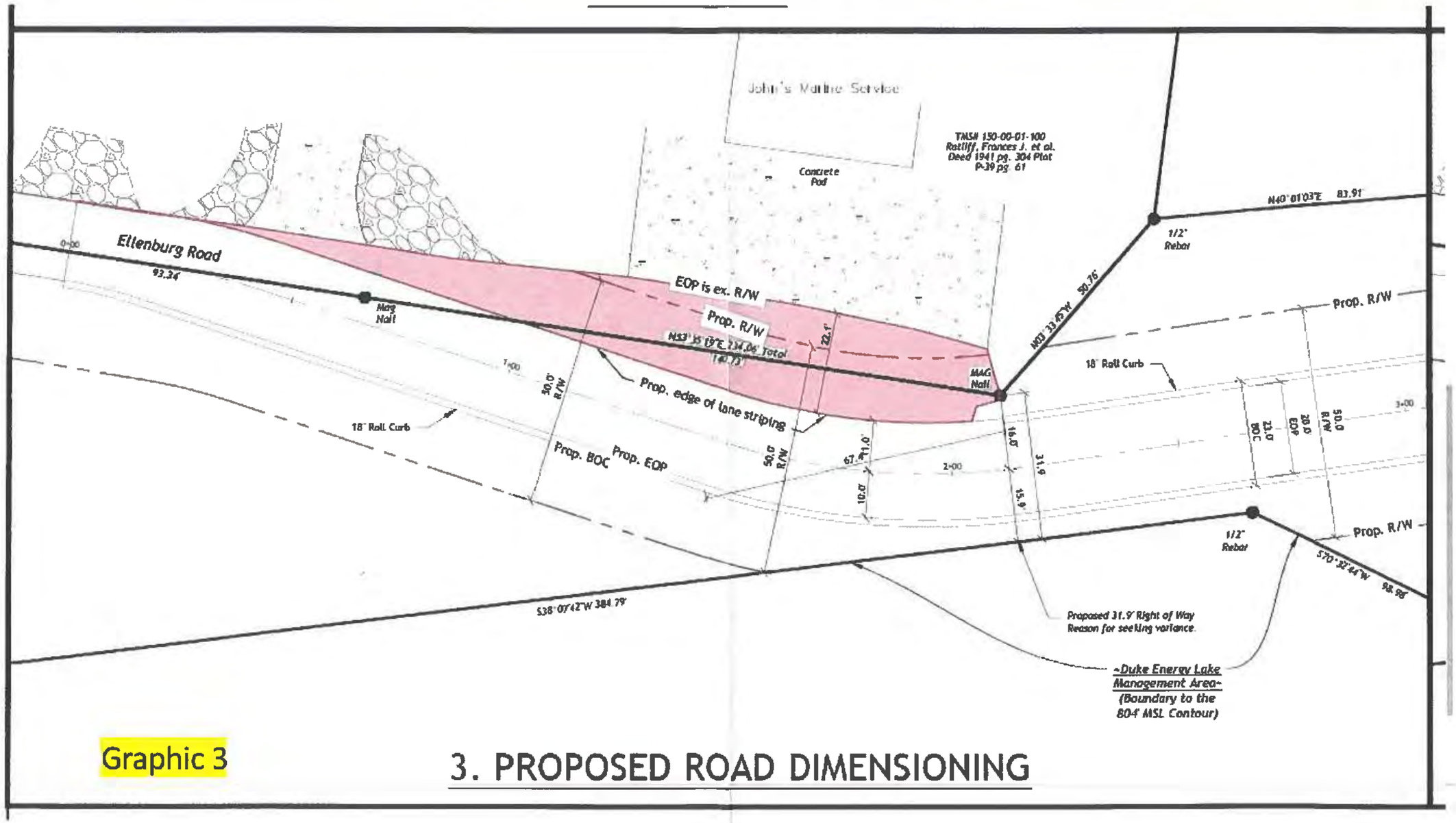



Graphic 2

## 2. PROPOSED CENTERLINE AND RIGHT-OF-WAY



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

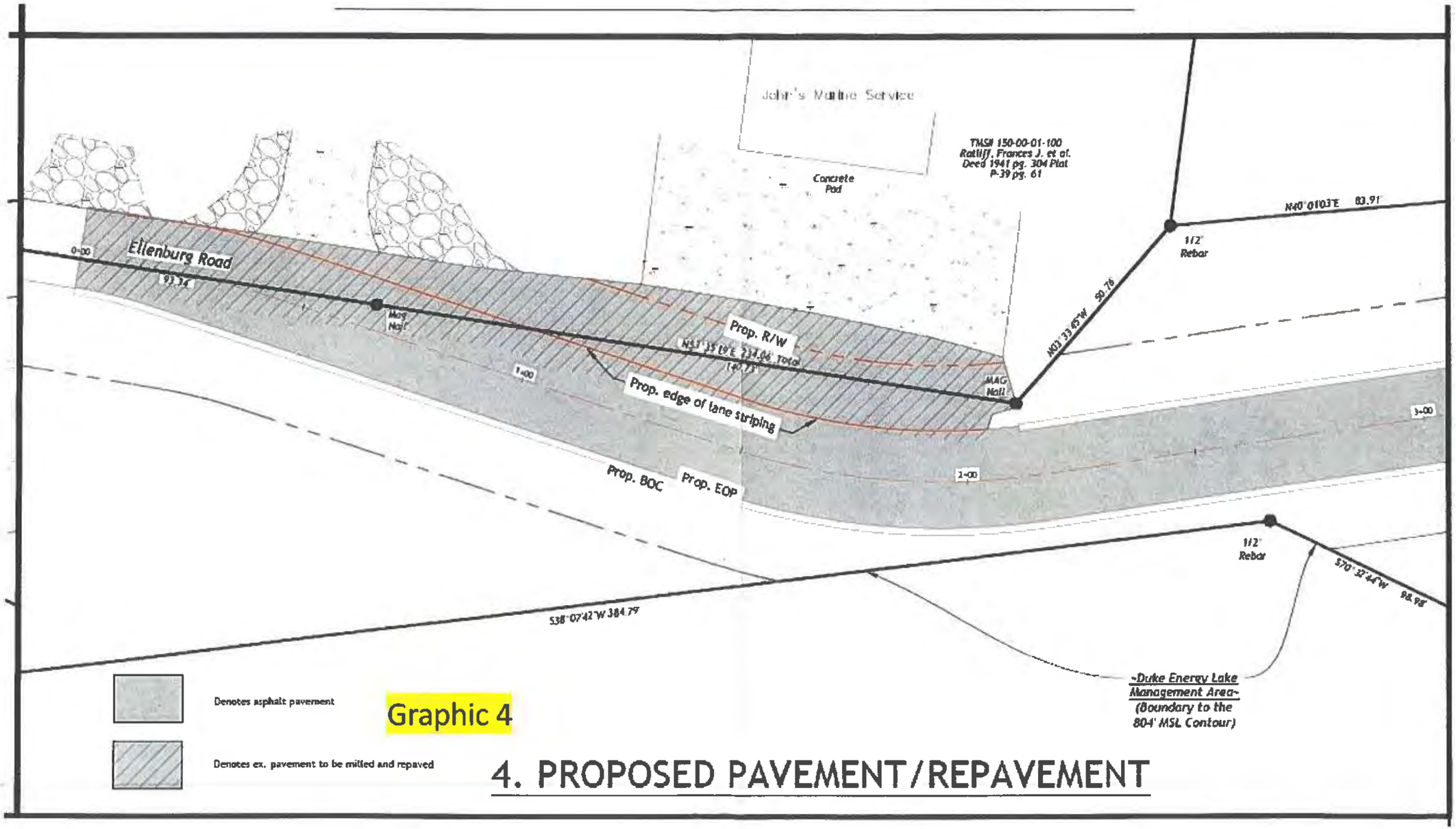



Graphic 3

## 3. PROPOSED ROAD DIMENSIONING



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396




# 4. PROPOSED PAVEMENT/REPAVEMENT

7





ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

PARCEL LINE
PER OCONEE
COUNTY GIS

TMS# 150-00-01-100
Ratliff, Frances J. et al
Deed 1941 pg. 304
Plat P-39 pg. 61

4,864 SF
0.112 ACRES

UTILITY POLE AND TELEPHONE
PEDESTALS TO BE RELOCATED

Edge of Pavement is Right-of-Way

N53°50'49"E 290.87'

93.32'

N03°34'01"W 50.6'

31.0'

21.6'

140.68'

Edge of Pavement

Henburg Road - Prescriptive R/W
(As per Oconee County Roads and Bridges)
Back of Ditch/County Maintained

DUKE PROPERTY
LINE WOULD BE
RIGHT-OF-WAY

5' E
PRO

Concrete Drive
Gravel Drive
Concrete Pad
Gravel

Site Plan
SCALE: 1"=20'

Arrowhead Point
Project # 1764.1 3/21/22





ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

# Exhibit D

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

STATE OF SOUTH CAROLINA )
)
COUNTY OF OCONEE )

COPY

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

# AFFIDAVIT OF JAN RATLIFF

BEFORE ME appeared, Frances ("Jan") J. Ratliff, who deposes and says:

1. I reside at 599 Ellenburg Road, Seneca, South Carolina 29672, and have personal knowledge of the matters set forth herein.
2. On October 1, 2009, I, along with Karen Rasbornik, attended a meeting at the offices of the Oconee County Roads and Bridges Department. Also present were County employees Matt Kelley, Price Brown, and Larry Hardin.
3. At the time of the meeting, Karen Rasbornik and I were given a copy of the Plat attached to as **Exhibit "A"** by employees of the Oconee County Roads and Bridges Department.
4. Exhibit "A" bears the initials of "GBP" (George Prince Brown) and is dated 08-15-08.
5. At the time of the meeting, employees of the Oconee County Roads and Bridges Department stated that the County's maintenance of Ellenburg Road ends where the point is highlighted in green immediately to the west of parcel on Exhibit "A" as 103.
6. The place where County employees stated that County maintenance ends was marked for many years with a sign indicating the end of County Maintenance until someone moved the sign. The Plat reference also coincides with where the road striping ended for many years.
7. The point represented by County employees as the end of County Maintenance is a long distance from my property.

8. My family has continuously maintained the paved portion of Ellenburg Road to the east of the endpoint of County Maintenance. The County has not engaged in any maintenance of the portion of Ellenburg Road in question.

FURTHER AFFIANT SAYETH NAUGHT.

Frances J. Ratliff

FRANCES J. RATLIFF

SWORN to before me this 7 day of Jan., 2022.

Michelle Nauldin

Print Name: Michelle Nauldin
Notary Public for State of SC
My Commission Expires: 12/9/2029



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

# Exhibit E

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Sec. 26-1. - General provisions.

These general provisions shall apply to both private roads and drives and public roads. The definitions section of the land development and subdivision chapter of the Oconee County Unified Performance Standards Ordinance (Ordinance 2008-20, [as codified in chapter 32, article VI, §§ 32-211—32-226]) shall apply to this article.

(1) *Survey standards.* Route surveys and plats shall be prepared and survey data entered thereon in accordance with the most recently adopted version of the "Minimum Standards Manual of the Practice of Surveying in South Carolina" established by the South Carolina Board of Registration for Professional Engineers and Land Surveyors, provided that all elevations information shall refer to Mean Sea Level Datum or other established datum (with a minimum of two benchmarks). Accuracy of plats and attendant data shall be no less that than required in said manual for Class B Suburban Land Surveys.

(2) *Utilities.* When utilizing a road right-of-way, all utility lines shall be buried at a depth of at least 36 inches. Such lines shall be located a minimum of two feet, outside the portion of the road to be surfaced to prevent having to cut into the paved surface or reconstruct drainage structures to serve abutting properties. In order to prevent future road cuts, utility stub-outs shall be added to all utility lines extending beyond the roadway to each property line.

(3) *Road signs.* Road name signs shall be installed at all intersections within a subdivision. All other signs shall be installed as required by and at the direction of the county engineer or his/her designee. All signage will be in accordance with the manual of uniform traffic control devices. The developer shall be responsible for all cost of road signage for private drives, private roads, and proposed county roads (at a cost determined by resolution of county council from time to time) prior to acceptance of road by the county. Any person who shall willfully or maliciously damage, deface, remove or otherwise tamper with a sign erected by a subdivider or the county designating the name of any county road shall be guilty of a misdemeanor and punished in accordance with this article. In addition thereto, such person shall be liable to the county for the cost incurred by the county as a result of said criminal acts.

(4) *Submission of road plans.* Construction plans for roads shall include accurate topographic information with increments of no more than five feet. In addition, all such plans should note the following items: the location and dimensions of all drainage features; routes of surface water drainage for the entire development; a typical cross section of the proposed roadway; road profiles; horizontal and vertical curve designs; right-of-way dimensions; the location of all cuts and fills; finished grade elevation; all necessary erosion control practices, which may include but are not limited to, permanent vegetation, lined or piped ditches or vegetated waterways; and contact information of all interested parties.

(5) *Road alignment and location.* The direction and pattern of roads shall take advantage of the land contour to eliminate or reduce excessive cutting and filling, and provide roads with reasonable grades.

(Ord. No. 2008-19, Art. 1(1—5), 12-16-2008)

Sec. 26-2. - Private road standards and regulations.

Oconee County shall have no responsibility for nor control of the design, engineering, construction, inspection or maintenance of private driveways, drives and roads in Oconee County and shall only be involved with private driveways, drives and roads to enforce these regulations and to the extent required for the county to carry out its other duties and

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

functions, such as approving the subdivision of property.

(a) *Private driveways.* Private driveways shall serve no more than three residential dwellings, and shall be maintained by the property owner(s). No design standards shall apply to private driveways, but driveways must comply with applicable building and fire codes.

(b) *Private drives.* All private drives existing and in use at the time of adoption of these regulations, as well as those private drives under construction prior to the time of adoption, shall be exempted from the standards contained in this section. This exemption shall also extend to those private drives approved by the planning department prior to the time of adoption. All other private drives shall:

(1) Serve no more than ten lots or dwellings;

(2) Have a minimum road right-of-way of 50 feet, or an appropriately executed private roadway easement as defined by these regulations;

(3) Have an appropriate encroachment permit from either the county or the South Carolina Department of Transportation;

(4) Have a minimum driving surface width of 20 feet constructed of no less than five inches of compacted crushed stone or gravel base; a minimum height clearance of 13½ feet; and appropriate documentation from a professional engineer licensed by the State of South Carolina certifying the maximum weight limit of any bridge or culvert located along the drive. All bridges and any culvert over which a private drive crosses a perennial stream must include appropriate signage (located at each end of the bridge) displaying the structure's weight limits;

(5) Be maintained by an individual, association of property owners, or commonly held by the property owners fronting the private drive;

(6) Comply with all current fire regulations and codes;

(7) Shall serve no more than ten dwellings, and shall connect to another road, either public or private, on one end only. In the event proposed construction and/or development will result in an existing private drive serving 11 or more dwellings, the existing drive shall be upgraded so as to meet the standards put forth in these regulations for private roads;

(8) Parcel boundaries may extend to centerline of the road, with the appropriate road right-of-way shown on all plats and deeds;

(9) Be named in accordance with adopted E-911 addressing regulations and procedures;

(10) Allow at least 100 feet of sight distance for each ten miles per hour of the posted speed limit where the private drive intersects a public road. The sight distance shall be measured from a seeing height of 3½ [feet], offset 15 feet from edge of road, to an object 4¼ feet in height above the grade of the public road, as stated in SCDOT's 1996 Access and Roadside Management Manual. If the proposed drive does not meet the sight distance requirement, a waiver must by signed by the individual(s) constructing the private drive stating that the property owner(s) is liable and responsible for any accidents, injuries, problems, and property damage resulting from improper sight distance;

(11) Meet all applicable stormwater management and sediment control regulations;

(12) Be approved in writing by planning commission or designated staff prior to submission of plat(s) to the register of deeds for recording. The following shall be prominently printed on the plat(s):

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

"THE ROAD RIGHT-OF-WAY SHOWN ON THIS PLAT SHALL BE PRIVATE DRIVES NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY, AND WERE NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAYS SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE UNLESS CONSTRUCTED IN ACCORDANCE WITH ALL ADOPTED OCONEE COUNTY REGULATIONS. MAINTENANCE OF THE RIGHT-OF-WAY SHALL BE THE RESPONSIBILITY OF _____."

(13) Signage shall comply with the manual for uniform traffic control devices.

(c) *Private roads.* Private roads shall provide vehicular access and road frontage to developments, or sections of developments, containing more than ten dwellings. All private, nondedicated roads shall be prominently indicated as such on plats prior to subdivision approval. Maintenance arrangements for such roads must be noted in writing on subdivision plat submittals and must be subsequently recorded. The development served by a private road shall have direct access into a public road, and no such private road shall be laid out so as to serve property outside the development. All private roads shall:

(1) Serve a minimum of 11 lots;

(2) Have a minimum road right-of-way width of 50 feet;

(3) Be designed in accordance with the regulations set forth in subsection 26-3(e) of these regulations;

(4) Be constructed in accordance with the regulations set forth in subsection 26-3(f) of these regulations;

(5) Be maintained by an association of property owners or the developer and be designated on all plats and recorded in appropriate deed covenants and restrictions, or an appropriately executed private roadway easement as defined by these regulations;

(6) Parcel boundaries may extend to the centerline of the road, with the appropriate right-of-way designated on all plats and deeds;

(7) Be legally certified for compliance by a surveyor/engineer licensed by the State of South Carolina;

(8) Be named in accordance with adopted E-911 addressing regulations;

(9) Meet all stormwater management and sediment control regulations;

(10) Be properly approved in writing by planning director prior to submission of plat(s) to the register of deeds for recording. The following shall be prominently printed on the plat(s):

"THE ROAD RIGHT-OF-WAY SHOWN ON THIS PLAT SHALL BE PRIVATE ROADS, NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY AND NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAY SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE UNLESS CONSTRUCTED IN ACCORDANCE WITH ALL OCONEE COUNTY REGULATIONS. MAINTENANCE OF THE RIGHT-OF-WAY SHALL BE THE RESPONSIBILITY OF THE _____."

(11) Have installed signs that control the traffic flow in a safe manner as specified by standards in the Manual for Uniform Traffic Control Devices.

With the exception of the requirements put forth in this section, all private roads shall meet the requirements for all public roads as defined by this article.

(Ord. No. 2008-19, Art. 2(1—3), 12-16-2008; Ord. No. 2013-16, § 2A, 7-16-2013)

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Sec. 26-3. - Public roads.

(a) *Continuation of adjoining road system.* The proposed road layout shall extend existing roads on a logical course at a width which meets the minimum required by this article. A minimum 100:1 taper section shall be used to transition from one width to another.

(b) *Road system coordination.* The road system within a subdivision shall be coordinated with existing, proposed, and anticipated roads (hereinafter "surrounding roads") outside the subdivision, as determined by the county or the State of South Carolina. Subdivision roads shall intersect with surrounding roads at safe and convenient locations and where necessary to permit the efficient movement of traffic between residential neighborhoods by emergency service vehicles. Subdivision roads shall only enter arterial roads when absolutely necessary. Whenever connections to surrounding roads are required by this section, the road right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. In addition, the permit-issuing authority may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles. All temporary dead-end streets must be approved by the planning director and the county engineer.

(c) *Road names.* A proposed road which is obviously in alignment with or an extension of an existing named road shall bear the name of the existing road. Except for the above, in no case shall the name of a proposed road duplicate or be phonetically similar to an existing road name, irrespective of the use of suffix (road, avenue, boulevard, drive, place, court, lane, etc.). It shall be unlawful for any person in laying out any new road to name such road on any final plat or instrument, without first obtaining the approval of the Oconee E-911 Addressing Office.

(d) *Residential buffers for collector or arterial roads.* Where a subdivision abuts or contains an existing or proposed collector or arterial road; lots which abut or are adjacent to these existing or proposed collector or arterial roads shall face a local road. Other treatment may also be required, as necessary, for adequate protection of the landscape and residential properties and for separation of through and local traffic. Special treatment may be required, such as screen planting contained in a nonaccess reservation along the rear property line adjacent to the arterial road.

(e) *Road design (geometric criteria).* In general, geometric criteria for road design shall be in accordance with standards of the South Carolina Department of Transportation (SCDOT). Said standards are those contained in the latest edition of "A Policy on Geometric Design of Highways and Streets" by the American Association of State Highway and Transportation Officials. Local and collector residential roads (public) shall be designed in accordance with the following standards.

(1) Minimum right-of-way, pavement, and shoulder width shall be as follows:

| Road Type | Right-of-Way | Pavement | Shoulder |
|---|---|---|---|
| Arterial [1] | 66′ or greater | 28′ | 10′ |

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | | | |
|---|---|---|---|
| Collector | 50′ | 24′ | 8′ |
| Major local | 50′ | 22′ | 6′ |
| Minor local | 50′ | 20′ | 4′ |

[1] As determined by county engineer

For high density residential or nonresidential subdivisions or portions thereof, additional right-of-way or pavement width shall be provided when determined as necessary by the planning commission or county engineer.

(2) Cul-de-sacs shall comply with current fire regulations and codes. Dead-end streets without turnarounds are prohibited. All unpaved islands located within perimeters of a cul-de-sac shall be round in configuration, centered within the right-of-way, curbed and properly drained. The area utilized by any unpaved island shall not be considered part of the minimum area needed to meet the required dimensions for the cul-de-sac or right-of-way and shall be governed by the same standards for planted median islands, as set forth in this article.

(3) Horizontal curvature shall be introduced at any change in road direction, and the minimum centerline radius shall be 150 feet for local roads and 250 feet for collector roads. Arterial road curvature shall be in accordance with state highway department standards. Minimum tangent between reverse curves shall be 150 feet for local roads, and 100 feet from curve to any intersecting road right-of-way.

(4) Stopping distance on vertical curves, horizontal curves, or normal intersections shall allow at least 100 feet of sight distance for each ten miles per hour of the posted speed limit where the road intersects another public road.

a. The sight distance shall be measured from a seeing height of 3½ feet, offset 15 feet from edge of road, to an object 4¼ feet in height above the grade of the public road, as stated in SCDOT's 1996 Access and Roadside Management manual. See drawing.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

# Exhibit F

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

1

**AGENDA**
**OCONEE COUNTY COUNCIL MEETING**
**TUESDAY, August 1, 2000**
**7:00 PM**
**OCONEE COUNTY ADMINISTRATIVE OFFICES**
**415 SOUTH PINE STREET**
**WALHALLA, SC**

1. Call to Order
2. Invocation
3. Approval of Minutes
4. Public Comment Session (Not to exceed thirty minutes)
5. Second Reading of Ordinance 2000-09, "AN ORDINANCE TO AMEND ORDINANCE 99-14, UNIFIED PERFORMANCE STANDARDS ORDINANCE AND LAND DEVELOPMENT REGULATIONS TO INCLUDE SUBDIVISION AND LAND DEVELOPMENT & VARIANCE PROCEDURE FOR SUBDIVISIONS" – Mr. Tommy Abbott, Chairman, Planning Commission
6. Presentation of Draft Proposal for Fall Creek & Town Creek Landing Parks – Dr. Grant Cunningham
7. Consideration of Approval of Grant Application for Federal Assistance in the Amount of $2,420,078 for the Airport – Mrs. Melissa Brown, Grants Coordinator
8. Consideration of Approval of FY2000 Solid Waste Bonus Grant Application in the Amount of $10,000 – Mrs. Melissa Brown, Grants Coordinator
9. Consideration of Approval of Tentative Listing of Surplus Equipment to be Sold at Auction – Ms. Marianne Dillard, Purchasing Agent
10. Consideration of Approval to Dispose of Timber at the Vehicle Maintenance Facility – Ms. Marianne Dillard, Purchasing Agent
11. Consideration of Approval of Change Order for Road Department – Mr. Jon Caime, County Engineer
12. Consideration of Approval of Memorandum of Agreement Between Oconee County & Department of Juvenile Justice

**Open Session Period Continued:**

Mr. Steve Sokol addressed Council regarding the formation of the Oconee Keowee Alliance, which is opposed to the boat race during Waterfest 2000. Mr. Sokol further informed Council they had received 1200 signatures of people who are opposed to the boat race.

Mr. Steven Ancona spoke in opposition of the proposed subdivision regulations ordinance.

Mr. Warren Carpenter stated he supported the concept of the subdivision regulations ordinance, however, he felt it needed more study. Mr. Carpenter is opposed to the 100 foot set back for septic tanks, he requested the ordinance be sent back to the Planning Commission. (See attached statement)

Mr. Tom Markovich spoke in opposition of the subdivision regulations and requested that Council review it more closely. He also expressed feeling that the ordinance violated the Fifth Amendment and the Twelfth Amendment. (See attached statement)

Mr. John Hamrick also spoke in opposition of the way property would have to be divided under the proposed subdivision regulations.

Mr. Rick Thompson stated that if the ordinance is adopted, zoning in Oconee County will be adopted, he further stated he felt the ordinance should be less restrictive. (See attached statement)

Mr. B. J. Littleton stated he was in support of using the whole block where the courthouse is located for the courthouse. He also asked how many houses would you want to place on a .57 acre tract of land, the houses should not be crowded together, he also stated he felt the setbacks in the ordinance are reasonable.

**Ordinance 2000-09:**

Mr. Hall made a motion that Ordinance 2000-09, "AN ORDINANCE TO AMEND ORDINANCE 99-14, UNIFIED PERFORMANCE STANDARDS ORDINANCE AND LAND DEVELOPMENT REGULATIONS TO INCLUDE SUBDIVISION AND LAND DEVELOPMENT & VARIANCE PROCEDURE FOR SUBDIVISIONS" be referred to the next Council Meeting when full Council is present. However, this motion died for lack of a second.

Mr. Thomas made a motion, seconded by Mr. Hamilton, approved 2 – 1 (Mr. Hall voting against that Ordinance 2000-09 (titled above) be referred to the Law Enforcement, Safety, Health, Welfare & Services Committee for further study.



ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

2

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC
COUNCIL MEETING DATE: 4/4/06
COUNCIL MEETING TIME: 5:00 pm

ITEM TITLE OR DESCRIPTION:

Subdivision & Land Use Ordinance

BACKGROUND OR HISTORY:

Oconee County Road & Transportation Committee recommended significant changes to the Subdivision & Land Use Ordinance.

SPECIAL CONSIDERATIONS OR CONCERNS:

Changes to the Subdivision & Land Use Ordinance are put on the ordinance of moratorium.

STAFF RECOMMENDATION:

Council adopt ordinance on first reading and refer to Planning Commission.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft Subdivision & Land Use Ordinance

Submitted or Prepared By:

Tom Hendricks

Approved for Submittal to Council:

Ron H. Track, County Administrator

Reviewed by/Initials:

_____:County Attorney

_____:Finance

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

(Revisions 3/24/06)
These revisions are in *bold italics*
(Offices of Brad Norton)

Performance Standards, Chapter 6.

# 6.0 SUBDIVISION AND LAND DEVELOPMENT

## 6.1 AUTHORITY AND JURISDICTION

### 6.1.1 Authority

These land development and subdivision regulations are adopted under authority granted by Title VI, Chapter 29 (6-29-1120) et. seq. of the Code of Laws of South Carolina, 1976.

### 6.1.2 Jurisdiction

a. These regulations shall apply to the development and subdivision of land within the unincorporated areas of Oconee County as now or hereafter established and any incorporated municipality which contracts with the Oconee County Council for these regulations to be administered within such municipality. Regulations contained within this ordinance that apply to the construction and maintenance of roads shall apply to all roads and drainage structures, whether public or private, constructed within any unincorporated area of Oconee County and municipalities contracted with the Oconee County Council for administration of these regulations. **Regulations contained within this Ordinance that apply to the construction and maintenance of roads, appurtenacies or drainage structures shall apply to all public and private roads, drives and driveways in the unincorporated areas of Oconee County; also included shall be all municipalities contracted with the Oconee County Council to administer these regulations. These regulations shall not apply to those roads completed, under construction, or approved by Oconee County prior to adoption of this Ordinance by County Council.** In the event that a regulation in this ordinance conflicts with any other county regulation, the more stringent standard shall apply.

## 6.2 PURPOSE AND SHORT TITLE

### 6.2.1 Purpose

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

k. be signed in accordance with adopted E-911 Addressing regulations.

l. allow at least one hundred (100) feet of sight distance for each ten (10) miles per hour of the posted speed limit where the private drive intersects a public road. The sight distance shall be measured from a seeing height of three and one-half (3 ½) feet to an object one foot in height above the grade of the public road. If the proposed drive does not meet the sight distance requirement, a waiver must be signed by the individuals(s) constructing the private drive stating that the owner(s) is liable and responsible for any accidents, injuries, problems, and property damage resulting from improper sight distance.

m. meet all applicable storm water management and sediment control regulations.

n. be approved in writing by Planning Commission staff prior to submission of plat(s) the Register of Deeds for recording. The following shall be prominently printed on the plat(s) in all capital letters:

> "THE ROAD RIGHT-OF-WAY EASEMENTS SHOWN ON THIS PLAT SHALL BE PRIVATE DRIVES NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY, AND WERE NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAY EASEMENTS SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE UNLESS CONSTRUCTED IN ACCORDNANCE WITH ADOPTED OCONEE COUNTY SUBDIVISION REGULATIONS."

o. Comply with the State Manual for Uniform Traffic Control Devices.

6.3.3 **Private Roads** – Private roads shall provide vehicular access and road frontage to developments, or sections of developments, containing more than ten (10) single-family residential lots. All private, non-dedicated roads shall be prominently indicated as such on plats prior to subdivision approval. Maintenance arrangements for such roads must be noted in writing on subdivision plat submitted and must be subsequently recorded. The development served by a private road shall have direct access onto a public road, and no such private road shall be laid out so as to serve property outside the development. All private roads shall:

a. serve a maximum of seven (7) lots;

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

b. have a minimum right-of-way crosssect width of fifty (50) feet

c. have a minimum road frontage requirement of thirty (30) feet for all lots

d. be constructed in accordance with the regulations set forth in section 6.8 of these regulations.

e. be maintained by an individual association of property owners, or active Home Owner's Association as recorded in appropriate deed covenants and restrictions.

f. be legally certified for compliance by a surveyor/engineer licensed by the State of South Carolina.

g. be named in accordance with adopted E-911 Addressing regulations.

h. meet all storm water management and sediment control regulations.

i. be properly approved in writing by Planning Director prior to submission of plats to the Register of Deeds for recording. The following shall be prominently printed on the plat(s) in all capital letters:

"THE ROAD RIGHT-OF-WAY EASEMENTS SHOWN ON THIS PLAT SHALL BE PRIVATE ROADS, NOT OWNED, MAINTAINED OR SUPERVISED BY OCONEE COUNTY AND NOT CONSTRUCTED PURSUANT TO ANY PLAN FOR FUTURE ACCEPTANCE BY OCONEE COUNTY. ROAD RIGHT-OF-WAY EASEMENTS SHOWN UPON THE PLAT SHALL NOT BE ACCEPTED FOR MAINTENANCE BY OCONEE COUNTY AT ANY TIME IN THE FUTURE UNLESS CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE."

j. Comply with the State Manual for Uniform Traffic Control Devices.

With the exception of the requirements put forth in this section, all private roads shall meet the requirements of Section 6.8 Public Roads of the Subdivision and Land Development Ordinance.

18

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



**Ordinance 2006-11:**

Mr. Lyles made a motion, seconded by Mr. Crumpton, approved 5 – 0 that Ordinance 2006-11, "AN ORDINANCE REGULATING THE USE OF COUNTY ROADS" be adopted on first reading.

**Ordinance 2006-12:**

Mr. Rinehart made a motion, seconded by Mr. Lyles, approved 5 – 0 that Ordinance 2006-12, "AN ORDINANCE AMENDING SECTION 6: SUBDIVISION & LAND USE DEVELOPMENT OF ORDINANCE 99-14, OCONEE COUNTY UNIFIED PERFORMANCE STANDARDS AND LAND USE DEVELOPMENT REGULATIONS AS ADOPTED BY ORDINANCES 2001-04, 2002-05 & 2004-14" be adopted on first reading.

**Ordinance 2006-07:**

Mr. Moore made a motion, seconded by Mr. Crumpton, approved 5 – 0 that Ordinance 2006-07, "AN ORDINANCE IMPOSING A SIX MONTH MORATORIUM ON THE APPROVAL OF SITE PLANS AND/OR BUILDING PERMITS FOR ANY CONSTRUCTION PROJECT WITHIN ONE THOUSAND (1,000') OF LAKES THAT ARE WITHIN OR ADJACENT TO OCONEE COUNTY UNLESS SAID PROJECT INCLUDES A TWENTY-FIVE (25') FOOT RIPARIAN BUFFER AND A SIX MONTH MORATORIUM ON THE APPROVAL OF SITE PLANS AND/OR BUILDING PERMITS FOR ANY SUBDIVISION AS DEFINED IN THIS ORDINANCE THAT WILL RESULT IN THE NEED TO UPGRADE A COUNTY ROAD IN ACCORDANCE WITH THIS ORDINANCE" be adopted on second reading.

**Ordinance 2007-09**

Mr. Crumpton made a motion, seconded by Mr. Rinehart, approved 5 – 0 that Ordinance 2007-09, "AN ORDINANCE REGULATING FALSE FIRE ALARMS TO WHICH OCONEE COUNTY RURAL FIRE DEPARTMENTS RESPOND" be adopted on first reading.

**Auction Listing:**

Mr. Crumpton made a motion, seconded by Mr. Moore, approved 5 – 0 that the attached listing of surplus properties be adopted and a date of May 6, 2006 be established for the auction.

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

3

**Oconee County Planning Commission**
415 S. Pine St. • Walhalla, South Carolina 29691
Phone (864) 638-4218 • Fax (864) 638-7046

**Memorandum 42-00**

**May 23, 2000**

**To:** **Oconee County Council**

**From:** **Planning Commission**

**Subject:** **Performance Standards Ordinance**

Please find attached the following:

1. An amendment to the Performance Standards Ordinance.
2. The proposed Chapter 2 of the Performance Standards Ordinance.

The amendment will allow a variance procedure for the proposed chapter 2. The original ordinance allowed a variance for all chapters except chapter 2. This language will correct that omission.

The proposed chapter 2, Subdivision and Land Development has been reviewed and approved by the Planning Commission. Some parts of the chapter are contentious and council members will hear from some disgruntled developers. The chapter will solve many of the ongoing problems created by development.

Cc: Harrison Orr
Planning Commission wo\encl

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

3

# ATTACHMENT 1- PROPOSED AMENDMENT TO THE PERFORMANCE STANDARDS ORDINANCE

## New section to 1.4.1 (h)

**(h) Variance-** to hear and decide requests for variance from the requirements of Chapter 2, of the Performance Standards Ordinance concerning the standards for the subdivision and land development, when strict application of the provisions of the ordinance would result in unnecessary hardship. Variances shall be decided by the Planning Commission pursuant to *Section 1.5.5.3* of this ordinance, *General Criteria for Granting a Variance.*

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396



# 2.0 SUBDIVISION AND LAND DEVELOPMENT

## 2.1 AUTHORITY AND JURISDICITON

### 2.1.1 Authority

These land development and subdivision regulations are adopted under authority granted by Title VI, Chapter 29 (6-29-1120) et. seq., of the Code of Laws of South Carolina, 1976.

### 2.1.2 Jurisdiction

These regulations shall apply to the development and subdivision of land within the unincorporated areas of Oconee County as now or hereafter established and any incorporated municipality which contracts with the Oconee County Council for these regulations to be administered within such municipality. Regulations are also contained herein which shall apply to the construction and maintenance of all roads whether or not they are part of subdivision development.

## 2.2 PURPOSE AND SHORT TITLE

### 2.2.1 Purpose

The purpose of this ordinance is to protect and promote the public health, safety and general welfare of the citizens of Oconee County, South Carolina, providing for the harmonious, progressive, and orderly development of land. These regulations are established for the following specific purposes, among others, as provided for in the South Carolina Local Government Comprehensive Planning Enabling Act Of 1994 (Section 6-29-1120 of the Code of Laws of South Carolina, 1976, et seq.):

(1) to encourage the development of an economically sound and stable county;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. In addition, the permit-issuing authority may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles. Not withstanding the other provisions of this subsection, no temporary dead-end street in excess of one thousand (1,000) feet may be created unless no other practicable alternative is available.

**2.7.3 Private Roads** - All private, non-dedicated roads must be indicated as such prior to subdivision approval. Maintenance arrangements for such roads must be stated in writing on subdivision plat submittals. The development shall have direct access into a public road and no such private road may be laid out so as to serve property outside the development. Each private road must indicated as such on all plats and deeds.

**2.7.4 Road Names** - A proposed road which is obviously in alignment with or an extension of an existing named road shall bear the name of the existing road. Except for the above, in no case shall the name of a proposed road duplicate or be phonetically similar to an existing road name, irrespective of the use of suffix (road, avenue, boulevard, drive, place, court, lane, etc.). It shall be unlawful for any person in laying out any new road to name such road on any final plat or in any deed or instrument, without first obtaining the approval of the Oconee E-911 Addressing Office and the Planning Commission.

**2.7.5 Local Roads** - Local roads shall be so laid out that their use by through traffic will be discouraged.

**2.7.6 Residential Buffers for Major Roads** - Where a subdivision abuts or contains an existing or proposed collector or arterial road, the Planning Commission may require that lots which abut or are adjacent to the major road shall face a minor interior access road. Other treatment may also be required, as necessary, for adequate protection of residential properties and for separation of through and local traffic. Special treatment may be required, such as screen planting contained in a non-access reservation along the rear property line adjacent to the major road.

**2.7.7 Road Design (Geometric Criteria)** - In general, geometric criteria for road design shall be in accordance with standards of the South Carolina Department of Transportation (SCDOT). Said standards are those contained in the latest edition of "A Policy on Geometric Design of Highways and Streets" by the American Association of State Highway and Transportation Officials". Local and collector residential roads (public or private) shall be designed in accordance with the following standards.

a. Minimum right-of-way and pavement width shall be as follows:

ELECTRONICALLY FILED - 2022 Aug 10 9:54 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| Road Type | Right-of-Way | Pavement |
|---|---|---|
| Local (closed drainage) | 50' | 22' |
| Local (open drainage) | 50' | 22' |
| Collector | 50' | 24' |

For high density residential or nonresidential subdivisions or portions thereof, additional right-of-way or pavement width shall be provided when determined as necessary by the Planning Commission or County Supervisor.

b. Cul-de-sacs shall not exceed one thousand (1000) feet in length, except where unusual topographic or other physical conditions dictate otherwise, and shall have a turnaround with a minimum diameter of seventy (70) feet to pavement edge and a minimum diameter of one hundred (100) feet to the right-of-way line. Dead-end streets without turnarounds are prohibited.

c. Horizontal curvature shall be introduced at any change in road direction, and the minimum centerline radius shall be one hundred fifty (150) feet for local roads and two hundred fifty (250) feet for collector roads. Arterial road curvature shall be in accordance with State Highway Department standards. Minimum tangent between reverse curves shall be one hundred (100) feet for local roads, and sixty (60) feet from curve to any intersecting road.

d. Stopping sight distance on vertical curves be shall at least one hundred fifty (150) feet (25 mph design speed) for local roads and three hundred twenty five (325) feet (45 mph design speed) for collector roads. If a collector road may reasonably be expected to serve more than one subdivision, it shall be designed for at least a fifty five (55) mph design speed (450' minimum sight distances). Minimum sight distance at intersections shall be established by provision of a clear sight triangle right of way measured at least twenty five (25) feet from the intersection of the road right-of-way in either direction which triangle shall be entered upon the final plat prior to recording. Modifications may be required by the County Engineer in order to insure safety.

e. Roads shall be designed to intersect as nearly as possible at right angles but no less than seventy five (75) degrees. Minimum radius of curb or pavement edge at intersections shall be at least twenty (20) feet at intersections with local roads and twenty five (25) feet at intersections with collector roads.

ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF OCONEE | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE TENTH JUDICIAL CIRCUIT |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br><br>v.<br><br>Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents. | ) | Case No. 2022-CP-37-00396<br><br>**PETITIONERS'/APPELLANTS' MOTION TO ALTER OR AMEND ORDER DENYING RELIEF** |

Petitioners/Appellants move pursuant to Rule 59(e), SCRCP, and the Court's inherent authority, for the Court to reconsider its Order Denying Relief (the "Order") to address the following arguments raised in Petitioners' Brief filed in support of their appeal that were not addressed in the Court's Order:[1]

1. BOZA exceeded its limited statutory jurisdiction in adjudicating the existence of a prescriptive easement.
2. BOZA abused its discretion in assuming that Oconee County holds a prescriptive easement across Petitioners' Private Driveway.
3. BOZA erred in unilaterally approving an increase in easement burdens on Petitioners' properties.
4. BOZA's approval of the Variance Application was arbitrary and capricious because the location of the proposed roadway was undetermined, and BOZA failed to provide the

[1] Petitioners fully incorporate herein the Brief of Appellants filed August 1, 2022.

ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

statutorily required explanatory writing findings concerning the variance's detrimental impact to adjacent uses.

## INTRODUCTION

Petitioners are appealing an Oconee County Board of Zoning Appeals' ("BOZA") order, (hereinafter, "Variance Order"), granting road variance application #VA21-011 (hereinafter, the "Variance Application").

The central issue in this appeal is whether Oconee County has a prescriptive easement over a paved section of Ellenburg Road that is privately owned by Petitioners and the adjacent property owners Globe, A South Carolina Limited Partnership, ("Globe"), and Farmes, A South Carolina Limited Partnership, ("Farmes"). The paved private driveway is partially on Petitioners' property (585 Ellenburg Road and 599 Ellenburg Road) and partially on Globe's and Farmes' property, with the majority of the paving on Petitioner's property (hereinafter, the "Private Driveway").

## ARGUMENT

### I. The Order Does Not Address Whether BOZA Had Jurisdiction to Decide the Disputed Prescriptive Easement.

Petitioners contend that BOZA did not have jurisdiction to determine the disputed issue of whether Oconee County holds a prescriptive easement over Petitioners' Private Driveway. BOZA's decision approving the Variance Application effectively decided this disputed issue. The Court's Order concludes that BOZA had sufficient information before it to determine this issue, Order at 6, but the Order does not address whether BOZA had jurisdiction to decide this disputed issue of a prescriptive easement.

The BOZA is a body of limited jurisdiction. S.C. Code Ann. § 6-29-800 (setting forth the powers of a board of zoning appeals). BOZA can only grant a variance where it answers the following four questions in the affirmative:

(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;

(b) these conditions do not generally apply to other property in the vicinity;

(c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

S.C. Code Ann. § 6-29-800.

BOZA does not have jurisdiction within its variance application review process to decide disputed issues falling outside of these four questions, such as the existence of a prescriptive easement.

In order for the Ridgewater Engineering's Variance Application to be approved for a nineteen-home subdivision, its proposed roadway must tie directly into a public road. Oconee County Ord. Sec. 26-2(c)(1), 26-3(a). Here, the proposed roadway is designed to connect to Ellenburg Road in front of Petitioners' properties, which Petitioners contend is a private driveway not a public road. As such, if Ellenburg Road at the point of connection to the proposed roadway is not public, then the Variance Application for a nineteen-home subdivision must be denied. It follows, that a determination of the character of Ellenburg Road at the point of connection to the proposed roadway is a predicate question to making a determination on the Variance Application. The BOZA recognized that this predicate question and its limited jurisdiction impacted its ability to move forward on the Variance Application during its first meeting on this application:

MALE VOICE:
That was my question is if the county doesn't maintain it all how can the county --
FEMALE VOICE:
Have any authority.





ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

MALE VOICE:
Yeah, have any authority.

(BOZA Hearing Tr. 86:15-20 (Nov. 30, 2021)).

MALE VOICE:
I've got one burning question.
MR. CHAIRMAN:
Yes, sir.
MALE VOICE:
Is does the county have the - - do we have the authority to give this based of off, you know, if the county has maintained it or abandoned it. It looks like they've given us where there's two lines where we've stopped paving so, you know, if – if the county doesn't then we're – we have no authority. That's our first question, do we have that authority?
MR. CHAIRMAN:
Kind of where I come out is that's a legal question, we ain't got nothing to do with that.
FEMALE VOICE:
Well I think it needs to be tabled until somebody tells us.
MALE VOICE:
I agree.

(BOZA Hearing Tr. 163:15-164:10 (Nov. 30, 2021)).

MR. CHAIRMAN:
I think one issue we need to resolve is – is the ownership.
MALE VOICE:
Ownership.
MR. CHAIRMAN:
Ownership of the property.
MALE VOICE:
Ownership.
MALE VOICE:
Present ownership and if it was at one time, if it was an Oconee County road and it has been abandoned.
. . .
Or if it was a state road and was abandoned.

(BOZA Hearing Tr. 174:24-175:15 (Nov. 30, 2021)).

BOZA did not vote on the Variance Application at its first presentation in November 2021, but instead opted to get more information on road maintenance and ownership. At the BOZA's January 24, 2022 and April 25, 2022 meetings, it was clear from testimony and documents





ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

presented that the existence of an easement was still unresolved. Regardless, at the April 25, 2022 meeting, BOZA decided to move ahead on the Variance Application and it effectively decided the disputed prescriptive easement issue in favor of Oconee County by approving the Variance Application.

> MR. CHAIRMAN:
>
> Let's start out with the prescriptive easement. We've heard a lot of input on both sides, the county attorney, everyone else. What are your thoughts on the prescriptive easement?
>
> MR. EAGAR:
>
> I think - - I think from what we've heard so far that – that does not bind us in any way in terms of whether, you know, and it - - from a decision standpoint we can go ahead with a decision that perceptively the easement doesn't impede us in any way from what I understood from Mr. Root, is that true?
>
> MR. ROOT:
>
> From my position, staying neutral, I believe you can craft an order that addresses the fact that the prescriptive easement may - - they may not express a direct opinion on the prescriptive easement but you address the variance of that pinch point, yes.
>
> MR. EAGAR:
>
> So I think that - - I think - - I think we should do that then and disregard the perceptive [sic] easement. This is a discussion?
>
> MR. CHAIRMAN:
>
> We are not competent to decide that issue.
>
> MALE VOICE:
>
> All right.
>
> MR. CHAIRMAN:
>
> We just don't - - we don't have the (inaudible).
>
> MALE VOICE:
>
> Right.
>
> MR. CHAIRMAN:
>
> We don't have business in that so we're not gonna decide that but as - - as John's suggesting we ought to go ahead and – and decide this as though there were an easement and – and if someone wants to go to court to –
>
> . . .
>
> Decide that they can do that but it's - -

(BOZA Hearing Tr. 100:3-101:21 (Apr. 25, 2022)).

BOZA approved the Variance Application on the assumption that the prescriptive easement existed. In so doing, BOZA effectively decided this disputed legal issue that falls outside of its

jurisdiction. This was an abuse of discretion and legal error. Accordingly, the Variance Order should be reversed.

## II. The Order Does Not Address Whether BOZA Abused its Discretion When it Assumed that Oconee County Has A Prescriptive Easement Over the Petitioners' Private Driveway.

Petitioners contend that the BOZA abused its discretion when it assumed that Oconee County holds a prescriptive easement over the Private Driveway. The Order does not address this issue.

A prescriptive easement must satisfy all of the following elements:

i. Continued and uninterrupted use or enjoyment of the right for a period of twenty years;
ii. The identity of the thing enjoyed; and
iii. Use or enjoyment which is either adverse or under claim or right.

*Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015). A prescriptive easement must be proven by clear and convincing evidence, *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170-71; its existence cannot merely be assumed to exist. The proponent of the easement carries the burden of proof.

Oconee County did not present any evidence to BOZA of its continued uninterrupted use of the Private Driveway for twenty years, it did not produce any maintenance records reflecting work done on the Private Driveway, and it did not present any testimony from county employees, or anyone else, who had personal knowledge of performing maintenance work on the Private Driveway. The only "evidence" cited by Oconee County for asserting the existence of a prescriptive easement over the Private Driveway was "institutional memory." (BOZA Hearing Tr. 23:5-24:13; 28:1-3, 28:24-29:10 (Apr. 25, 2022)). Institutional memory is not evidence. The BOZA had no documentary or testimonial evidence before it showing Oconee County's continued and uninterrupted maintenance or use of the Private Driveway for twenty years.



ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Conversely, Petitioners presented evidence to the BOZA including (1) two affidavits stating that Oconee County placed an End of Maintenance sign at or around 585 Ellenburg Road where it stayed for decades; (2) documents and public statements that Petitioners have maintained the Private Driveway for the last forty years; and, (3) photographs depicting the end of the county's yellow striping before the Private Driveway began.

Even under a preponderance of the evidence standard, the evidence presented to the BOZA weighed in Petitioners' favor showing that such an easement cannot be assumed to exist. Under a clear and convincing evidence standard, it is even more clear that Oconee County did not provide sufficient evidence to justify BOZA's assumption that a prescriptive easement existed over the Private Driveway.

When fairly viewing the evidence presented, the determination should have been in Petitioners' favor that the Private Driveway is not a public road. Once this determination is corrected, the entire basis for approving the Variance Application fails. Without a public road to tie directly into, the applicant cannot construct a new roadway to serve nineteen homes.

Given the evidence before it, the BOZA's assumption that Oconee County held a prescriptive easement over the Private Driveway was arbitrary, capricious, and an abuse of discretion. Accordingly, the Variance Order should be reversed based on the BOZA's erroneous assumption and error of law.

### III. The Order Does Not Address the Unilateral Expansion of the Easement Burden on Petitioners' Properties.

BOZA's grant of the Variance Application will result in a material increase in the burden on Petitioners' property and impose new and additional burdens. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). The Order does not address this argument.

ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Assuming the existence of a prescriptive easement, the only pre-existing burden on the Private Driveway would have been occasional county maintenance—though no documents reflect Oconee County ever having performed any maintenance on Petitioners' section of Ellenburg Road. Granting a variance for a private development of nineteen homes with an estimated 200 vehicle trips per day driving along Petitioners' property changes the character of Petitioners' section of Ellenburg Road and materially increases the burden of vehicular traffic flowing across Petitioners' properties.

Transforming the Private Driveway into a public road also places new burdens on Petitioners' property. John's Marine has been operating at its current location for forty years. Petitioners testified that John's Marine will no longer be able to operate on the property should the Private Driveway be transformed into a public road for nineteen new homes. (BOZA Hearing Tr. 45:8-49:9 (Apr. 24, 2022); R. p. 289). John's Marine uses the entirety of the Private Driveway to conduct its business. If the Private Driveway is no longer available to John's Marine, this is a new and substantial burden that has never been placed on Petitioners' land and a restriction Petitioners never assented to. (*Id.*)

It was arbitrary, capricious, and an abuse of discretion for BOZA to approve the Variance Application that will materially increase the existing burden and create new burdens on Petitioners' land. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). This was an error of law and the Variance Order should be reversed.

## IV. The Order Does Not Address the Uncertainty of the Proposed Roadway's Location and BOZA's Lack of Writing Findings on this Issue.

At the time it approved the Variance Application, BOZA recognized that the final location of the roadway was uncertain. (BOZA Hearing Tr. 153:20-156:14 (Apr. 25, 2022)). Petitioners

contend BOZA abused its discretion in approving the Variance Application without a final roadway location.

Petitioners submitted scale drawings showing that in order for the applicant, or developer, to meet the 31.9' right-of-way to construct the new public road, the applicant will either have to fill in a substantial amount of land currently underwater belonging to Duke, or the roadway will have to shift toward John's Marine and be placed on top of the location where John's Marine currently maneuvers boats and trailers. (R. p. 297-98). The applicant's own drawings reflected this 9.1' shift onto Petitioners' property needed for the new public road. (R. p. 285).

Petitioners testified that the substantial increase in traffic (200 cars a day) will detrimentally impact its business, even without this 9.1' shift in the proposed roadway onto their property. (BOZA Hearing Tr. 45:8-49:9 (Apr. 24, 2022); R. p. 289). If the road must shift, such that John's Marine's boat service area will become a public roadway for 200 cars a day, it will have an even more detrimental impact on Petitioners. (*Id.*).

In reviewing a variance application, the BOZA is charged with determining whether the requested variance will "be of substantial detriment to adjacent property." S.C. Code Ann. § 6-29-800 (A)(2)(d); Oconee County Code Sec. 38-7.1.(4). Only where the BOZA determines the variance *will not* be of substantial detriment can a variance be granted. The BOZA's review and findings must be explained in writing. S.C. Code Ann. § 6-29-800(A)(2) ("A variance may be granted . . . if the board *makes and explains in writing*" the four requirements); Oconee County Code Sec. 38-7.1. ("The board of zoning appeals may grant a variance . . . if the board of zoning appeals makes and explains in writing" the four requirements).

In this instance, the BOZA approved the variance application without sufficient definiteness as to the final location of the proposed public roadway. As demonstrated by



ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Petitioners, the detrimental impact analysis changes as the placement of the final roadway shifts. The BOZA did not conduct sufficient analysis of the detrimental impact on Petitioners' property under the various scenarios of the final road placement and did not sufficiently review the impact of utility placement, road construction, and home construction and set forth its findings in writing. As such, the BOZA's finding of no substantial detriment to Petitioners' property and its decision to approve the variance application without sufficient definiteness as to the final location of the roadway was arbitrary, capricious, and an abuse of discretion.

**CONCLUSION**

Petitioners request that the Court reconsider its Order Denying Relief to address the following bases for relief raised in Petitioners' Brief: (1) BOZA exceeded its limited statutory jurisdiction in adjudicating the existence of a prescriptive easement; (2) BOZA abused its discretion in assuming that Oconee County holds a prescriptive easement across Petitioners' Private Driveway; (3) BOZA erred in unilaterally approving an increase in easement burdens across Petitioners' Private Driveway; and, (4) BOZA's approval of the Variance Application was arbitrary and capricious because the location of the variance was left undetermined, and BOZA failed to provide the statutorily required explanatory writing findings concerning the variance's detrimental impact to adjacent uses.

For these reasons, Petitioners request the Court to reconsider its Order and reverse the Variance Order.



ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

Respectfully submitted,

s/ David L. Paavola

Keith M. Babcock, S.C. Bar No. 456
kmb@lewisbabcock.com
David L. Paavola, S.C. Bar No. 100714
dlp@lewisbabcock.com
Lewis Babcock L.L.P.
P.O. Box 11208
Columbia, SC 29211
(803) 771-8000
Attorneys for Petitioners/Appellants

Columbia, SC
September 23, 2022

ELECTRONICALLY FILED - 2022 Sep 23 1:56 PM - OCONEE - COMMON PLEAS - CASE#2022CP3700396

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF OCONEE | ) | IN THE COURT OF COMMON PLEAS<br>FOR THE TENTH JUDICIAL CIRCUIT |
| John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers Crisp, Amy Cawthon,<br><br>Petitioners/Appellants,<br><br>v.<br><br>Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC,<br><br>Defendants/Respondents. | ) | Case No. 2022-CP-37-00396<br><br>**CERTIFICATION OF RECORD ON APPEAL FROM THE OCONEE COUNTY BOARD OF ZONING APPEALS** |

**CERTIFICATION OF SECRETARY**
**OF THE OCONEE COUNTY BOARD OF ZONING APPEALS**

I, James Coley, as Secretary of the Oconee County Board of Zoning Appeals ("BZA"), hereby certify that the accompanying documents and materials constitute a true, accurate, and complete copy of the record of proceedings of the BZA for the hearings conducted in the matter of BZA #VA21-011, a road variance request by Ridgewater Engineering and Surveying – Joe Meaders.

The materials included in the record, by hearing date, are as follows:

November 30, 2021

1. Meeting agenda
2. VA21-011 application
3. Public comment signup sheet
4. Staff opinion
5. Applicant's site plans / exhibits
6. Plat Nov. 2008
7. Deed: Book 1695 Page 87-102
8. QPublic topo map
9. Rhea Smith presentation (for applicant)
10. Ratliff letter of opposition
11. Emailed public comments
12. Approved minutes

13. Publisher's affidavit

January 24, 2022

14. Meeting agenda
15. Public comment signup sheet
16. Staff opinion
17. Ratliff letter, objecting to minutes of November 20, 2021 meeting
18. Approved minutes
19. Publisher's affidavit

April 25, 2022

20. Meeting agenda
21. Andy Lee presentation materials (applicant)
22. Lucretia Morgan handouts (opposition)
23. Ratliff letter (opposition)
24. Emailed public comments
25. Approved minutes
26. Publisher's affidavit
27. Order of Board of Zoning Appeals
28. Order of Board of Zoning Appeals – Scrivener's Error Corrected

Additional Materials

29. Audio recordings (see accompanying flash drive)
30. Link to Your Oconee YouTube page (videos of proceedings) https://www.youtube.com/channel/UCDSqrQTlYk9ynVApyugUfHw
31. Transcripts of the hearings are being prepared.

James Coley, Secretary of the Oconee County Board of Zoning Appeals

STATE OF SOUTH CAROLINA )
)
COUNTY OF OCONEE )

The foregoing was acknowledged before me, Katie M. Brown, on July 25th, 2022, by James Coley, as Secretary of the Oconee County Board of Zoning Appeals.

Notary Public for South Carolina
My Commission expires 4/25/2029

[SEAL]

# Meeting agenda
# Tuesday, November 30, 2021 6:00pm

**Oconee County Board of Zoning Appeals**

Council Chambers
415 South Pine Street
Walhalla, S.C. 29691

www.oconeesc.com

**YouTube**: "YourOconee"

**Staff contact**
846-638-4218
planninginfo@oconeesc.com

1. Call to order
2. Approval of minutes: 07/26/2021
3. Brief statement about rules and procedures
4. Variance request application #VA 21-010: Seamon Whiteside and Associates, Inc. – Paul Talbert is requesting a variance allowing the side setback for lot lines dividing attached single family units to be reduced to 0', thus allowing the construction of individually platted, attached single family units. TMS # 271-00-01-940/943/942/941/939/938 unaddressed parcels with the closest address of 201 W. Cherry Rd. Seneca, SC 29678
5. Variance request application #VA 21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.
6. Adjourn

**BOARD MEMBERS**

Jim Codner, Chairman, District I
Gwen Fowler, District II
John Eager, At-Large
Marty McKee, District IV
Bill Gilster, Vice Chairman, District III
Tim Mays, District V
Bill Decker, At-Large

# Freedom of Information Act - Variance Application

## Permitting Information

| | | | |
|---|---|---|---|
| Code section from which a variance is requested | 26-2.c.2 | **Upload Supporting Documentation Here** | |
| Application is | | Application is not | X |

APPLICANT RESPONSES TO SECTION 38-7.1

| | |
|---|---|
| Describe the extraordinary and exceptional condition (such as size, shape, and topography) that pertains to the subject property that does not generally apply to other land or structures in the vicinity.: | Property is located on a peninsula at the end of a dead end county road, Ellenburg Rd., which only has a prescriptive right-of-way. The road maintenance stops just short of being able to provide direct access to the parcel. The parcel only has a 31.9 foot width at it's narrowest point and is bordered by Lake Keowee/Duke Energy property on one side. |
| Are the circumstances affecting the subject property the result of actions by the applicant/owner? Explain. | No. The end of road maintenance has existed for some time and was not done at the property owners direction. The property lines do not have any recent changes that have created the issue at hand. |
| Describe the ways in which application of the requirement(s) of the ordinance effectively prohibit or unreasonably restrict the utilization of the subject property.: | The private road standards, Section 26-2.c.2, require that all new roads have a 50 foot right-of-way with the roadway centered within. Due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way, and the property having a pinch point of 31.9 feet in width, the property is not able to be accessed by a full 50 foot right-of-way to meet the ordinance. |
| Will the proposed variance result in an activity that will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance. Explain.: | No. Granting of the variance will allow for development of a single-family residential subdivision which is the best use for the property. Due to the fact that the surrounding areas are also single-family residential lots, no detriment will be created. Additionally, having only 19 lots on approximately 16 acres will not harm the character of the district. |

**General Contractor**

ICC 113.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code of the rules legally adopted there under have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

Comments

OCONEE COUNTYS APPROVAL, PERMITTING, AND/OR INSPECTION(S) OF THIS PROJECT DOES NOT MEAN THAT THE PROJECT IS IN COMPLIANCE WITH ALL APPLICABLE SUBDIVISION AND/OR HOMEOWNERS ASSOCIATION, OR SIMILAR ENTITYS, BUILDING AND LAND USE REQUIREMENTS OR RESTRICTIONS, BY SIGNING BELOW YOU ACKNOWLEDGE THAT COMPLIANCE WITH ANY SUCH STANDARDS IS YOUR RESPONSIBILITY.

## Workflow Reviews Information

| Type | Creation Date | Due Date | Completion Date | Status | Description |
|---|---|---|---|---|---|
| Application Check | 10/26/2021 | 10/27/2021 | 10/27/2021 | Approved | |
| Planning and Zoning Review | 10/26/2021 | 11/03/2021 | 04/25/2022 | Approved | |
| Review Complete | 10/26/2021 | 05/12/2022 | 05/20/2022 | Conditional Approval | |

## Inspection Information

## Activities Information

| Type | Creation Date | Due Date | Completion Date | Status | Description |
|---|---|---|---|---|---|
| Online Payment Received | 11/15/2021 | 11/22/2021 | 11/15/2021 | Complete | |
| Online Payment Received | 11/15/2021 | 11/22/2021 | 11/15/2021 | Complete | |
| Online Document Upload | 11/15/2021 | 11/22/2021 | 11/15/2021 | Complete | Ridgewater Engineering and Surveying Joe Meaders has uploaded the following documents online: - Updated to remove inaccurate topographic information.: 10-26-21 Arrowhead Point Sketch Plan Rel 0-R1.pdf |
| Online Document Upload | 11/15/2021 | 11/22/2021 | 11/15/2021 | Complete | Ridgewater Engineering and Surveying Joe Meaders has uploaded the following documents online: - Updated to remove inaccurate topographic information.: 10-26-21 Arrowhead Point Sketch Plan Rel 0-R1.pdf |

## Documents Information

| Creation Date | File Name | Source |
|---|---|---|
| 10/26/2021 | 10-26-21 Arrowhead Point Sketch Plan Rel 0.pdf | Upload Supporting Documentation Here |
| 10/26/2021 | Your application has been received.htm | System Email Notification |
| 11/15/2021 | Permit Review.htm | Email |
| 11/15/2021 | Your citizenserve payment has been received.htm | System Email Notification |
| 11/15/2021 | Receipt.htm | Merge document |
| 11/15/2021 | Permit Email.htm | Email |
| 11/15/2021 | 10-26-21 Arrowhead Point Sketch Plan Rel 0-R1.pdf | Online Document Upload |
| 11/23/2021 | Permit Review.htm | Email |
| 11/29/2021 | 11-24-21 Arrowhead Point Variance Request Rel 0.pdf | Document |
| 11/29/2021 | 11-29-21 Arrowhead Point Variance Request Rel 1-Exhibit 1.pdf | Document |
| 11/29/2021 | 11-29-21 Exhibit 2.pdf | Document |
| 11/29/2021 | PlatB291pg1.pdf | Document |
| 11/29/2021 | 20354As_BuiltTopoZoom.pdf | Document |
| 11/29/2021 | Permit Review.htm | Email |
| 05/20/2022 | DOC278.pdf | Document |
| 05/20/2022 | Board Order VA21 0011.pdf | Document |

## History

| Creation Date | Note Type | Note |
|---|---|---|
| 10/26/2021 | Contact Added | Andy Lee was added to the case by System User. |

| | | |
|---|---|---|
| 10/26/2021 | Contact Added | Joe Meaders was added to the case by System User. |
| 10/26/2021 | Contact Added | GLOBE A SC LIMITED PARTNERSHIP was added to the case by System User. |
| 10/26/2021 | Document Attached | Document "10-26-21 Arrowhead Point Sketch Plan Rel 0.pdf" was attached to the case. |
| 10/26/2021 | Application Check - Activity | A Application Check activity has been assigned to Vivian Kompier in the Community Development department. |
| 10/26/2021 | Planning and Zoning Review - Activity | A Planning and Zoning Review activity has been assigned to Vivian Kompier in the Community Development department. |
| 10/26/2021 | Review Complete - Activity | A Review Complete activity has been assigned to Vivian Kompier in the Community Development department. |
| 10/26/2021 | Portal Submitted | Online application for Arrowhead Point Subdivision - 50' R/W Variance on Submitted by Ridgewater Engineering and Surveying - Joe Meaders and 10/26/2021 01:36 PM |
| 10/26/2021 | Document Attached | Document "Your application has been received.htm" was attached to the case. |
| 10/27/2021 | Status Updated | # VA21-000011 status was changed from Online Application Received to Under Review by Vivian Kompier |
| 10/27/2021 | Activity Update | Application Check assigned to Vivian Kompier was completed by Vivian Kompier on 10/27/2021 |
| 10/27/2021 | Activity Update | Application Check assigned to Vivian Kompier status changed from Pending to Approved by Vivian Kompier on 10/27/2021 |
| 10/27/2021 | Activity Update | Planning and Zoning Review assigned to Vivian Kompier status changed from Pending to Under Review by Vivian Kompier on 10/27/2021 |
| 11/15/2021 | Document Attached | Document "Permit Review.htm" was attached to the case. |
| 11/15/2021 | Payment Added | Payment of $250.00 added to VA21-000011 receipt #2844 |
| 11/15/2021 | Online Payment Received - Activity | A Online Payment Received activity has been assigned to Cynthia Adams in the Community Development department. |
| 11/15/2021 | Document Attached | Document "Your citizenserve payment has been received.htm" was attached to the case. |
| 11/15/2021 | Document Attached | Document "Receipt.htm" was attached to the case. |
| 11/15/2021 | Document Attached | Document "Permit Email.htm" was attached to the case. |
| 11/15/2021 | Activity Update | Online Payment Received assigned to Cynthia Adams was completed by Cynthia Adams on 11/15/2021 |
| 11/15/2021 | Document Attached | Document "10-26-21 Arrowhead Point Sketch Plan Rel 0-R1.pdf" was attached to the case. |
| 11/15/2021 | Online Document Upload - Activity | A Online Document Upload activity has been assigned to Cynthia Adams in the Community Development department. |
| 11/15/2021 | Online Document Upload - Activity | Activity Online Document Upload has been reassigned from Cynthia Adams to Vivian Kompier. |
| 11/15/2021 | Activity Update | Online Document Upload assigned to Vivian Kompier was completed by |

| | | |
|---|---|---|
| | | Vivian Kompier on 11/15/2021 |
| 11/23/2021 | Document Attached | Document "Permit Review.htm" was attached to the case. |
| 11/29/2021 | Document Attached | Document "11-24-21 Arrowhead Point Variance Request Rel 0.pdf" was attached to the case. |
| 11/29/2021 | Document Attached | Document "11-29-21 Arrowhead Point Variance Request Rel 1-Exhibit 1.pdf" was attached to the case. |
| 11/29/2021 | Document Attached | Document "11-29-21 Exhibit 2.pdf" was attached to the case. |
| 11/29/2021 | Document Attached | Document "PlatB291pg1.pdf" was attached to the case. |
| 11/29/2021 | Document Attached | Document "20354As_BuiltTopoZoom.pdf" was attached to the case. |
| 11/29/2021 | Document Attached | Document "Permit Review.htm" was attached to the case. |
| 01/14/2022 | Planning and Zoning Review - Activity | Activity Planning and Zoning Review has been reassigned from Vivian Kompier to James Coley. |
| 01/14/2022 | Review Complete - Activity | Activity Review Complete has been reassigned from Vivian Kompier to James Coley. |
| 05/11/2022 | Activity Update | Planning and Zoning Review assigned to James Coley was completed by James Coley on 05/11/2022 |
| 05/11/2022 | Activity Update | Planning and Zoning Review assigned to James Coley status changed from Under Review to Approved by James Coley on 05/11/2022 |
| 05/20/2022 | Document Attached | Document "DOC278.pdf" was attached to the case. |
| 05/20/2022 | Document Attached | Document "Board Order VA21 0011.pdf" was attached to the case. |
| 05/20/2022 | Activity Update | Review Complete assigned to James Coley was completed by James Coley on 05/20/2022 |
| 05/20/2022 | Activity Update | Review Complete assigned to James Coley status changed from Pending to Conditional Approval by James Coley on 05/20/2022 |

# OCONEE COUNTY BOARD OF ZONING APPEALS

1

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

## Variance VA21-011 "Arrowhead Road Variance"

**Public Comment – First Name, Last Name - please print legibly**

Rick McDuff John Ratliff
Jimmy

1. Mike Johnson - Private Citizen
2. Maggie Johnson
3. EDWARD RATLIFF
4. RICK McDUFF - ATTORNEY FOR JOHNS MARINE
5. ~~Lucretia Morgan - Private Citizen~~
6. Sherri Crisp
7. GARY COLDEN
8. CHAD KNOTT
9. CHRIS HOLDEN
10. John Reeves
11. ROGER CHAPMAN
12. Jon Martin
13. FRANK Powell

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

## Variance VA21-011 "Arrowhead Road Variance"

**Public Comment – First Name, Last Name - please print legibly**

1. Bruce Hadley
2. Barry & Teala
3. Doug Cooper
4. 
5. 
6. 
7. 
8. 
9. 
10. 
11. 
12. 
13. 

**Applicant's opening statement and provision of evidence:**

**Public comment-time:**

Mr. Codner then opened up the public comment portion of the meeting and asked people to be concise with their comments as there are many people signed up to speak.

| | Name | For | Against | Why? |
|---|---|---|---|---|
| #1 | Patrick Tierney | | | |
| #1 | Chris Lenard | | | |
| | | | | |
| | Rick McDuff Atty | | ✓ | Everything |
| | Edward Ratliff | | ✓ | |
| | Mike Johnson | ✓ | | |
| | Maggie Johnson | ✓ | | |
| | Chad Knott | | ✓ | Everything |
| | Chris Holder | | ✓ | Traffic |
| | John Martin | | ✓ | |
| | Bruce Hadley | | ✓ | |
| | Barry Steel | | ✓ | |
| | Doug Cooper | | ✓ | |
| | Larry Brandt | ✓ | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

BZA

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

Staff Opinion

BZA #VA21-011 Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive "ditch to ditch" right-of-way. TMS # 150-00-01-459 is an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672

Applicant has requested a variance from the road standards under Sec 26-8 of the Oconee County Code of Ordinances. They have requested the variance from Sec 26-3(e)(1) Public Road Minimum right-of-way, pavement, and shoulder width shall be as follows: minor local 50' right-of way.

The applicant is connecting to the existing Ellenburg Rd, a county road, with a new road to develop land past the end of the existing road. Their design as presented would shift the road to the south, establishing a new road layout with curb and gutter on the south side of the road and curb and gutter on both sides past the end of the current road.

- Currently the road right-of-way is prescriptive and ends at the edge of pavement.
- The right-of way request is for a section of the road approximately 100 foot in length with a varying width, which at its narrowest is 31.9 foot
- Sketch is shifting the road to the applicant's side of the property line.

The applicant has meet with the Roads and Bridges Department (notes attached at the end), and based on the initial conversation the Department does not believe that the relocation of the road would have an adverse effect of road maintenance. If the variance is approved they would still need to show the ability to place the road, shoulders, drainage, and utilities in the proposed, narrowed, right-of-way, would need to have a traffic study completed, and would need approvals on access and turning radius with emergency management.

James,
Here are the bullets from my conversation with the developer and his engineers concerning the development at the end of Ellenburg Rd. (these are not commentary on the variance requested for the BZA and the below was based on hypotheticals as no plan was presented):

- The developer asked about where Ellenburg Rd stops being county maintained. I told them it was the end of the asphalt and that we did not have deeded right-of-way as the road is maintained by prescriptive easement. I also showed him what we have been maintaining as the extent of our right-of-way.
- They asked about upgrading the road and told me getting right-of-way from the adjacent property owner would likely be difficult. They asked about being able to place the road entirely on their property with a reduced right-of-way than the 50' standard required by the ordinance. I told them that any variance from the road standards would have to be heard by the BZA.
- They asked if there was anything additional that they would need to consider. I told them without a sketch plan it would be hard to hit all the points, but with a subdivision more than 10 lots there would have to be a traffic impact study for Ellenburg Rd that would need to be done at the preliminary plat phase along with an encroachment permit to tie onto the end of the county maintained portion of Ellenburg Rd.
- They asked me about the new road in the development becoming a county maintained road. I told them that the road would need to meet all county standards and have an approved turn around.
- They asked me about the being able to put a gate on the road. I told them it could not be a county maintained road if there was a gate.

ZONING REQUIREMENTS:

SITE ZONING: CFD

OVERLAY DISTRICT: KEOWEE/ JOCASSEE OVERLAY

| | FRONT | REAR | SIDE | SIDE |
|---|---|---|---|---|
| BUILDING SETBACKS: | 15 | 5 | 5 | 10' UNLESS NOTED OTHERWISE<br>25' VEGETATIVE BUFFER TAKES PRECEDENCE OVER THE 10' REAR SETBACK LINE WHERE APPLICABLE. |

- 10' (5' EITHER SIDE) DRAINAGE AND UTILITY EASEMENT ON SIDE LOT LINES
- PROPERTY LINE ALONG LAKE KEOWEE IS ALONG THE 800' MSL CONTOUR
- DUKE ENERGY FLOOD EASEMENT TO THE 810' MSL CONTOUR
- 25' NATURAL VEGETATIVE BUFFER RESERVED BY OCONEE CO. ALONG LAKE KEOWEE FULL POOL (800' MSL CONTOUR)

19 TOTAL LOTS

MINIMUM LOT SIZE = 21,780 SQ. FT. (1/2 ACRE)

MINIMUM LOT WIDTH = 80 FT.

**ROAD NOTE:**
THE ROAD RIGHT-OF-WAY SHOWN ON THIS PLAN SHALL BE PUBLIC. TO BE OWNED AND MAINTAINED BY OCONEE COUNTY ROADS AND BRIDGES DEPARTMENT.

**NOTE:**
THE COUNTY BUILDING PERMITS SHALL BE ISSUED FOR PROJECTS ON INDIVIDUAL LOTS PRIOR TO THE RECORDING OF A FINAL PLAT IN THE OFFICE OF THE REGISTER OF DEEDS.

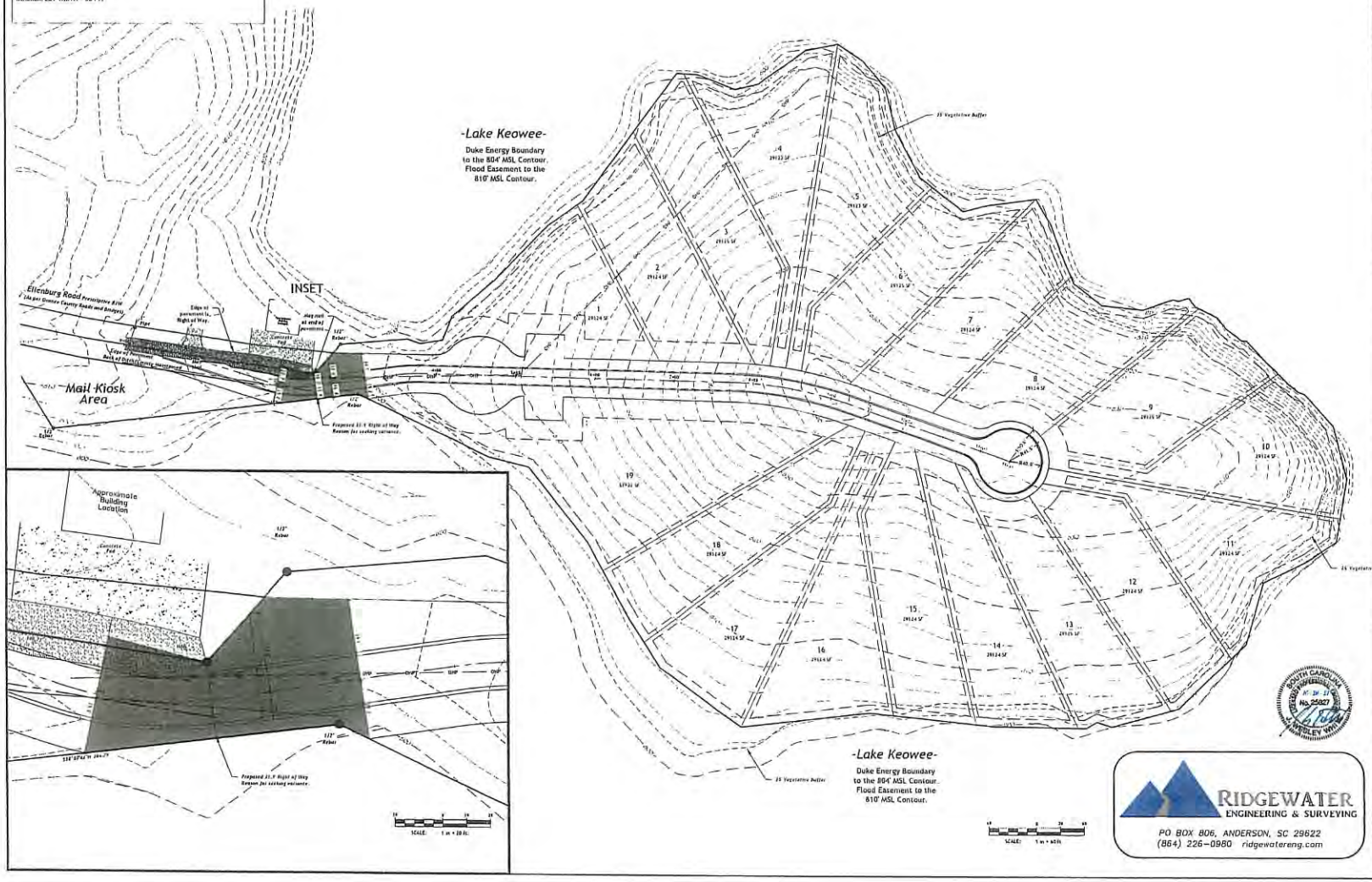
**25' VEGETATIVE BUFFER**
25' TAKEN FROM 800' CONTOUR LINE/PROPERTY LINE. THIS BUFFER TAKES PRECEDENCE OVER THE 10' REAR SETBACK LINE WHERE APPLICABLE.

**EXISTING CONTOUR NOTE:**
TOPOGRAPHIC SURVEY PROVIDED BY WILLIAM HUTCHINS PLS. 906 FREEMAN RD. LIBERTY SC 29657

**UTILITY NOTE:**
ALL LOTS TO UTILIZE PUBLIC WATER (WALHALLA WATER) AND INDIVIDUAL SEPTIC TANKS.

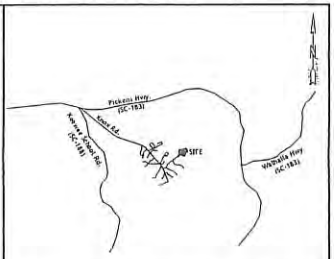
EXISTING

IRON PIN, OLD, FOUND
NAIL OR NAIL & BOTTLE CAP SET UNLESS NOTED
COMPUTED POINT
OVER HEAD POWER — OHP —
OVER HEAD POWER & TELEPHONE — OHPT —
FIBER OPTIC CABLE — FOC —
UTILITY POLE
GUY WIRE
PROPERTY LINE
ADJACENT PROPERTY LINE
WETLANDS










LOCATION MAP

# SKETCH PLAN

## OWNER'S CERTIFICATION

As the owner of the land, as shown on the sketch plan, I certify that the drawing was made from an actual survey, and accurately portrays the existing land and site features and the proposed development and improvements shown.

Date: _____

(Owner) (Agent) (Name): _____

Signed: _____

## DESIGN PROFESSIONAL CERTIFICATION

It is hereby certified that the sketch plan was prepared using a survey of the property prepared by William Hutchins, PLS, and dated 9-15-21. And further that the proposed subdivision meets all requirements of the Oconee County Development Standards Ordinance, as applicable to the property.

By (Name: _____

Signed: _____

Registered Professional No. _____

Address: _____

Telephone No. _____

Date: _____

## CERTIFICATE OF PROJECT APPROVAL

All applicable requirements of the Oconee County Development Standards Ordinance relative to Project Approval having been fulfilled, approval of this sketch plan is hereby granted by the Manager or the Subdivision Administrator, subject to further compliance with all provisions of said development regulations.

Manager or Subdivision Administrator: _____

Date: _____

TMS # 150-00-01-459
D.B. 1695, PAGE 87
P.B. B291, PAGE 1

Arrowhead Point

| Lake Keowee Development Group Inc. 896 N. Walnut St. Seneca, SC 29678 | Ridgewater Engineering & Surveying, LLC P.O. Box 806 Anderson SC 29622 |
|---|---|
| OWNER | ENGINEER OR SURVEYOR |

NO. OF ACRES: ±15.37 MILES OF NEW ROADS: ±1140 LF

NO. OF LOTS: 19 DATE: 10-26-2021

ZONE: CFD

OVERLAY DISTRICT: KEOWEE/JOCASSEE OVERLAY

| | |
|---|---|
| DRAWN BY: | KOC |
| CHECKED: | JWW |
| JOB NUMBER: | 21286 |
| REVISIONS: | 0 |
| SKETCH-PLAN | |

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER No. 25827 J. WESLEY WHITE

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER & SURVEYING No. 5815 CERTIFICATE OF AUTHORIZATION

RIDGEWATER ENGINEERING & SURVEYING
PO BOX 806, ANDERSON, SC 29622
(864) 226-0980 ridgewatereng.com

THIS DRAWING AND THE DESIGN SHOWN THEREON ARE THE PROPERTY OF RIDGEWATER ENGINEERING & SURVEYING, LLC. THE REPRODUCTION, COPYING OR USE OF THIS DRAWING WITHOUT WRITTEN CONSENT IS PROHIBITED AND ANY INFRINGEMENT WILL BE SUBJECT TO LEGAL ACTION.

ZONING REQUIREMENTS:

SITE ZONING: CFD

OVERLAY DISTRICT: KEOWEE/JOCASSEE OVERLAY

| | HEIGHT | REAR | LEFT | SIDE |
|---|---|---|---|---|
| BUILDING SETBACKS: | 35 | 5 | 5' | 10' UNLESS NOTED OTHERWISE<br>25' VEGETATIVE BUFFER TAKES PRECEDENCE OVER THE 10' REAR SETBACK LINE WHERE APPLICABLE. |

- 10' (5' EITHER SIDE) DRAINAGE AND UTILITY EASEMENT ON SIDE LOT LINES
- PROPERTY LINE ALONG LAKE KEOWEE IS ALONG THE 800' MSL CONTOUR
- DUKE ENERGY FLOOD EASEMENT TO THE 810' MSL CONTOUR
- 25' NATURAL VEGETATIVE BUFFER RESERVED BY OCONEE CO. ALONG LAKE KEOWEE FULL POOL (800' MSL CONTOUR)

19 TOTAL LOTS

MINIMUM LOT SIZE = 21,780 SQ. FT. (1/2 ACRE)

MINIMUM LOT WIDTH = 80 FT.

ROAD NOTE:

THE ROAD RIGHT-OF-WAY SHOWN ON THIS PLAN SHALL BE PUBLIC. TO BE OWNED AND MAINTAINED BY OCONEE COUNTY ROADS AND BRIDGES DEPARTMENT.

NOTE:

NO COUNTY BUILDING PERMITS SHALL BE ISSUED FOR PROJECTS OR INDIVIDUAL LOTS PRIOR TO THE RECORDING OF A FINAL PLAT IN THE OFFICE OF THE REGISTER OF DEEDS.

25' VEGETATIVE BUFFER

25' TAKEN FROM 800' CONTOUR LINE/PROPERTY LINE. THIS BUFFER TAKES PRECEDENCE OVER THE 10' REAR SETBACK LINE WHERE APPLICABLE.

EXISTING CONTOUR NOTE:

TOPOGRAPHIC SURVEY PROVIDED BY WILLIAM HUTCHINS PLS. 906 FREEMAN RD. LIBERTY SC 29657

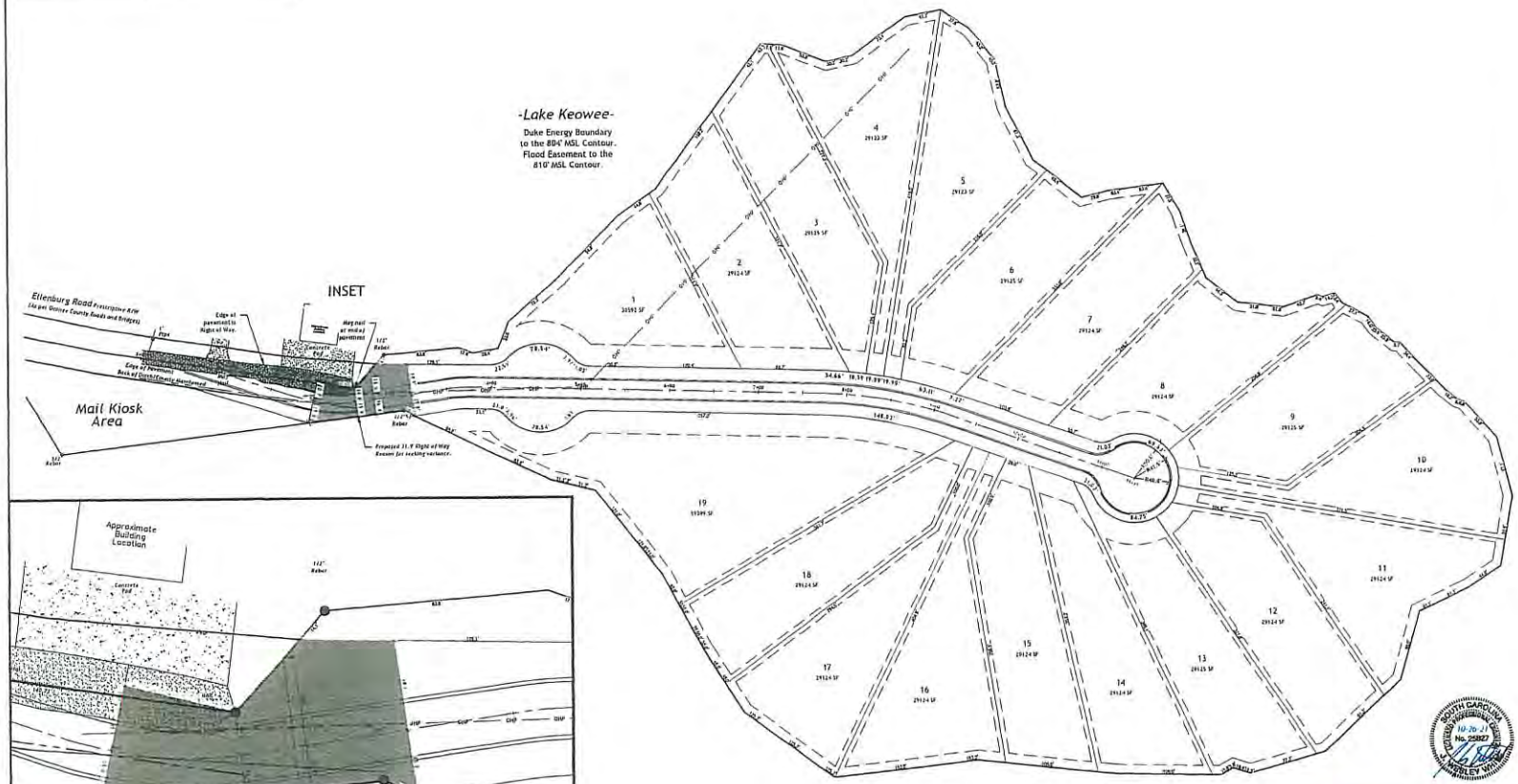
UTILITY NOTE:

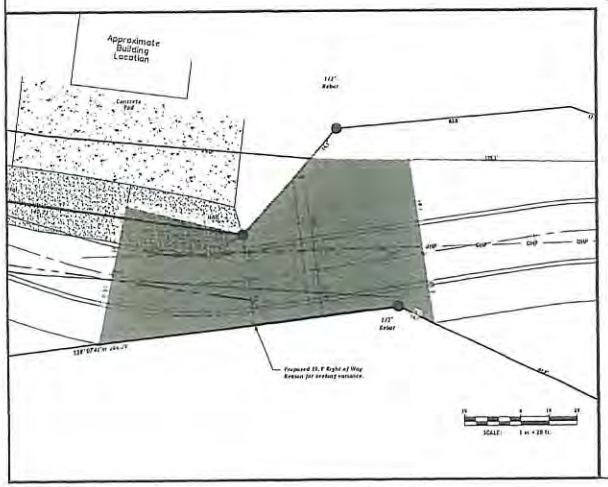
ALL LOTS TO UTILIZE PUBLIC WATER (WALHALLA WATER) AND INDIVIDUAL SEPTIC TANKS.

EXISTING

- IRON PIN, OLD, FOUND
- NAIL OR NAIL & BOTTLE CAP (NEW UNLESS NOTED)
- COMPUTED POINT
- OVER HEAD POWER — OHP —
- OVER HEAD POWER & TELEPHONE — OHPT —
- FIBER OPTIC CABLE — FOC —
- UTILITY POLE
- GUY WIRE
- PROPERTY LINE
- ADJACENT PROPERTY LINE
- WETLANDS

LOCATION MAP




# SKETCH PLAN

## OWNER'S CERTIFICATION

As the owner of this land, as shown on this sketch plan, I certify that this drawing was made from an actual survey, and accurately portrays the existing land and its features and the proposed development and improvements thereto.

Date: _____

[Owner] [Agent] (Name): _____

Signed: _____

## DESIGN PROFESSIONAL CERTIFICATION

It is hereby certified that this sketch plat was prepared using a survey of the property prepared by William Hutchins, PLS, and dated 7-15-21; and further that the proposed subdivision meets all requirements of the Oconee County Development Standards Ordinance, as applicable to the property.

By Name: _____

Signed: _____

Registered Professional No.: _____

Address: _____

Telephone No: _____

Date: _____

## CERTIFICATE OF PROJECT APPROVAL

All applicable requirements of the Oconee County Development Standards Ordinance relative to Project Approval having been fulfilled, approval of this sketch plan is hereby granted by the Manager or the Subdivision Administrator, subject to full compliance with all provisions of said development regulations.

Manager or Subdivision Administrator: _____

Date: _____

TMS # 150-00-01-459
D.B. 1695, PAGE 87
P.B. B291, PAGE 1

Arrowhead Point

| Lake Keowee Development Group Inc. 816 N. Walnut St. Seneca, SC 29678 | Ridgewater Engineering & Surveying, LLC P.O. Box 806 Anderson SC 29622 |
|---|---|
| OWNER | ENGINEER OR SURVEYOR |

NO. OF ACRES: ±15.37 MILES OF NEW ROADS: ±1140 LF

NO. OF LOTS: 19 DATE: 10-26-2021

ZONE: CFD

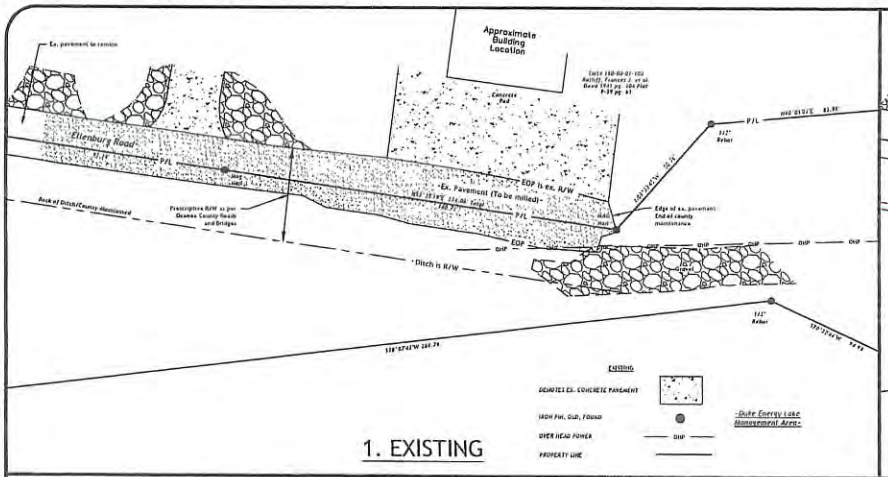
OVERLAY DISTRICT: KEOWEE/JOCASSEE OVERLAY

| | |
|---|---|
| DRAWN BY: | KDC |
| CHECKED: | JWW |
| JOB NUMBER: | 21286 |
| REVISIONS: | 0 |
| SKETCH-PLAN | |

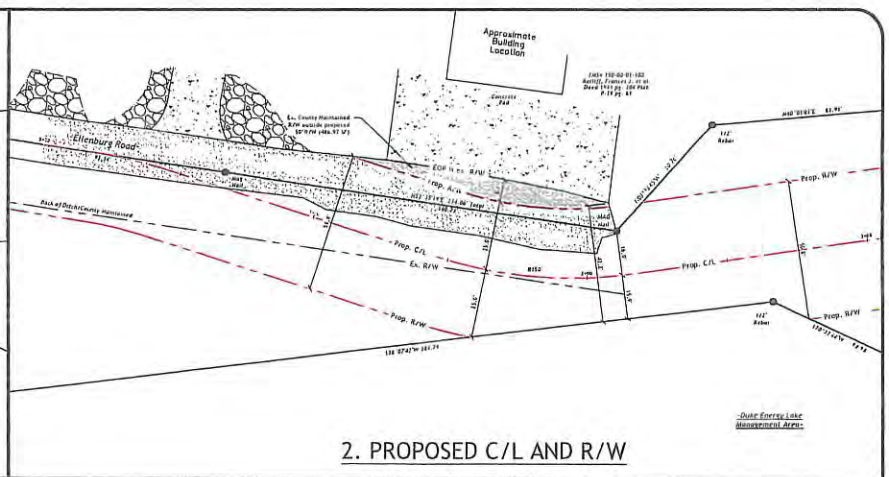
SOUTH CAROLINA — RIDGEWATER ENGINEERING & SURVEYING — No. 3018 — CERTIFICATE OF AUTHORIZATION

THIS DRAWING AND THE DESIGN SHOWN THEREON ARE THE PROPERTY OF RIDGEWATER ENGINEERING & SURVEYING, LLC. THE REPRODUCTION, COPYING OR USE OF THIS DRAWING WITHOUT WRITTEN CONSENT IS PROHIBITED AND ANY INFRINGEMENT WILL BE SUBJECT TO LEGAL ACTION.

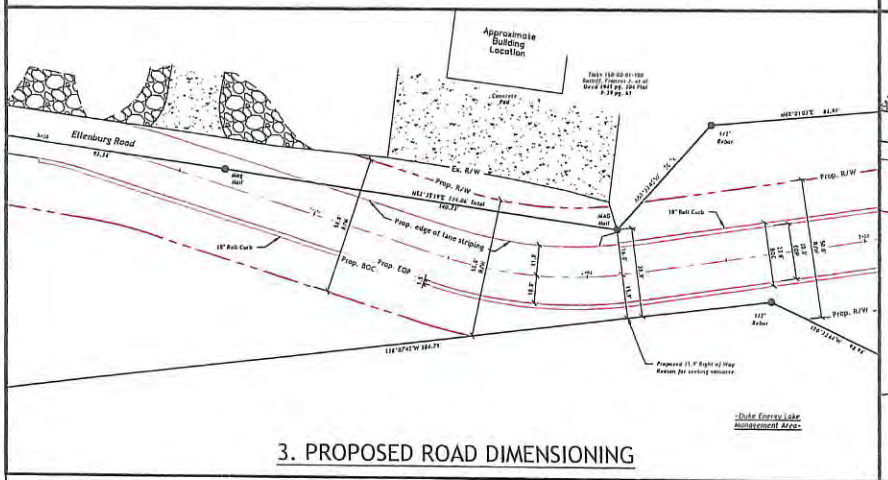
RIDGEWATER ENGINEERING & SURVEYING
PO BOX 806, ANDERSON, SC 29622
(864) 226-0980 ridgewatereng.com



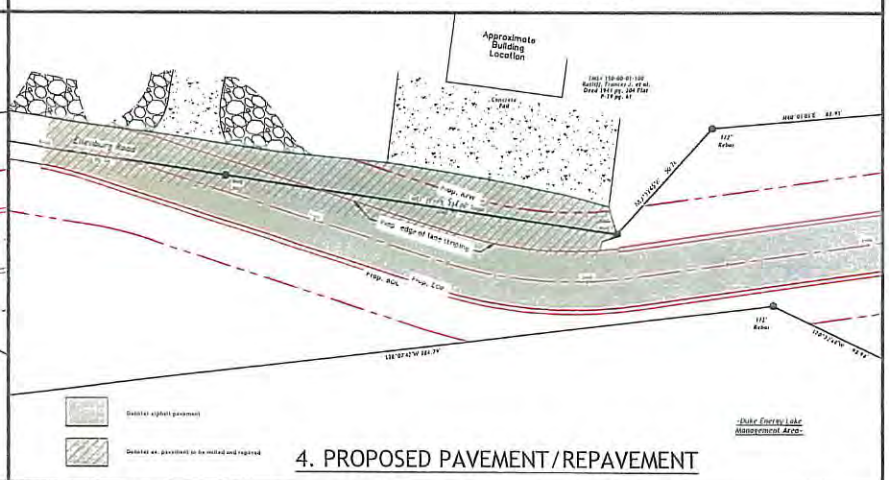

1. EXISTING




2. PROPOSED C/L AND R/W




3. PROPOSED ROAD DIMENSIONING




4. PROPOSED PAVEMENT/REPAVEMENT

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

***CAUTION***

PALMETTO UTILITY LOCATION SERVICE
3 DAYS BEFORE DIGGING CALL TOLL FREE 811
A ONE CALL SYSTEM FOR COMMUNITY AND JOB SAFETY

RIDGEWATER
ENGINEERING & SURVEYING
PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

SCALE: 1 in = 10 ft

SOUTH CAROLINA RIDGEWATER ENGINEERING & SURVEYING CERTIFICATE OF AUTHORIZATION

Arrowhead Point

Oconee County, South Carolina

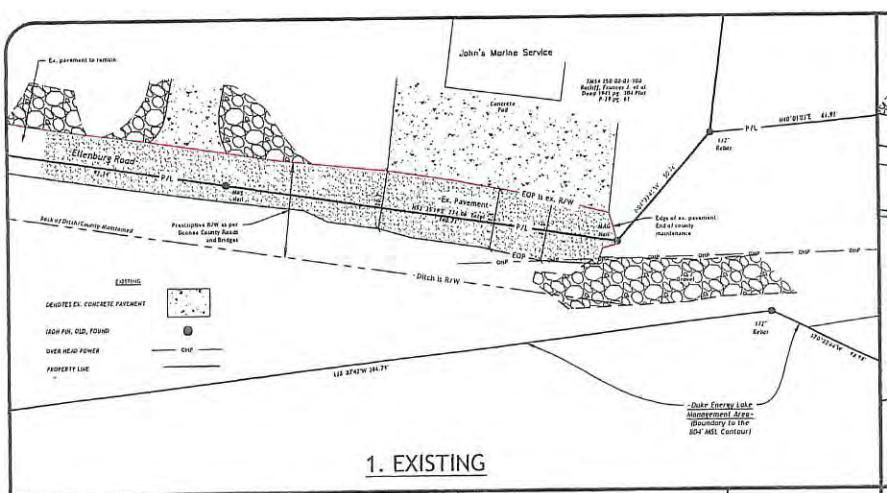
DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | ISSUE FOR REVIEW |
| --- | --- | --- |
| --- | --- | --- |
| --- | --- | --- |
| --- | --- | --- |
| --- | --- | --- |

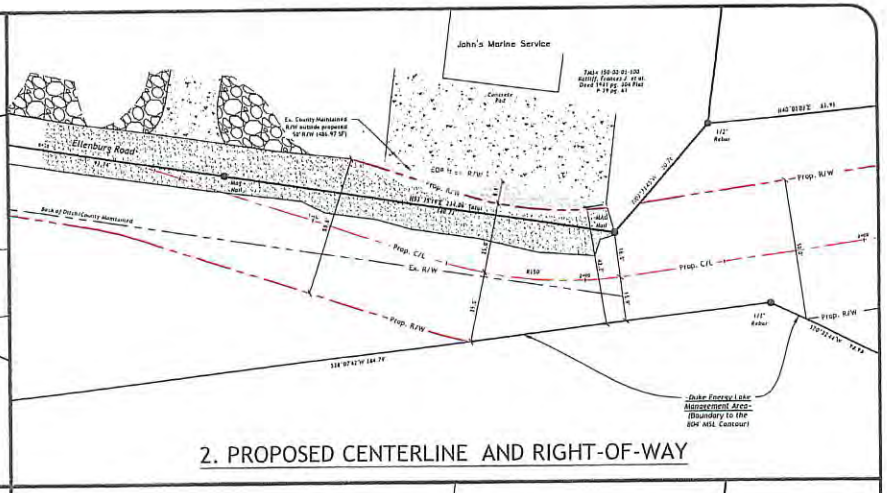
SHEET

Variance Request

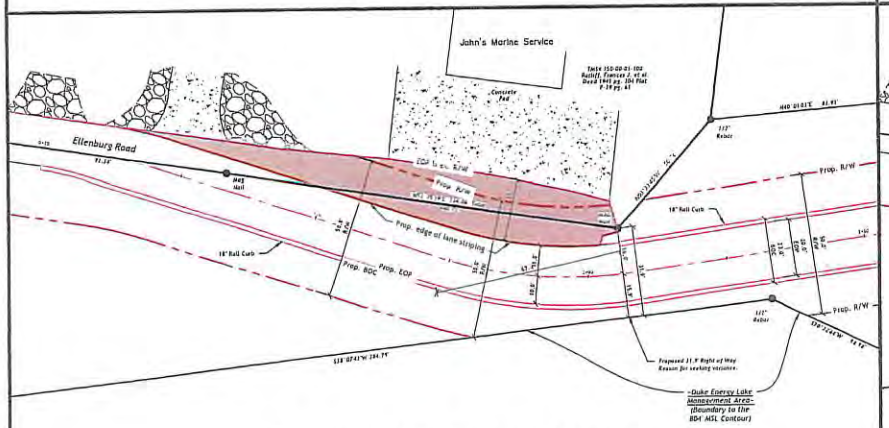
C - 2



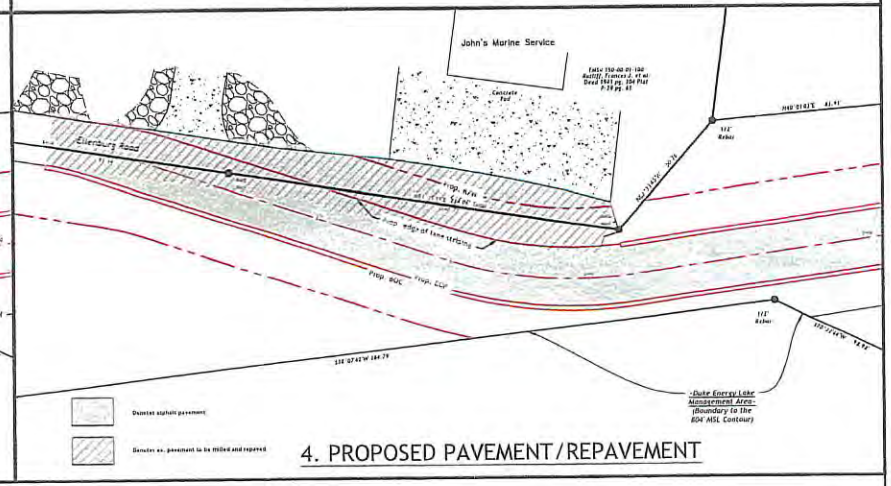

1. EXISTING




2. PROPOSED CENTERLINE AND RIGHT-OF-WAY




3. PROPOSED ROAD DIMENSIONING




4. PROPOSED PAVEMENT/REPAVEMENT

SITE LEGEND

| | |
|---|---|
| C/L | Centerline of Road |
| EOP | Edge of pavement |
| BOC | Back of curb |
| R/W | Right-of-way |
| R | Radius |
| Prop. | Proposed |
| Ex. | Existing |

***CAUTION***

PALMETTO UTILITY LOCATION SERVICE
3 DAYS BEFORE DIGGING CALL TOLL FREE 811
A ONE CALL SYSTEM FOR COMMUNITY AND JOB SAFETY

RIDGEWATER
ENGINEERING & SURVEYING
PO BOX 806
ANDERSON, SC 29622
(864) 226-0980
RIDGEWATERENG.COM

SCALE: 1 in = 25 ft.

SOUTH CAROLINA
RIDGEWATER ENGINEERING & SURVEYING
CERTIFICATE OF AUTHORIZATION

Arrowhead Point

Oconee County, South Carolina

DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21286

| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11-24-21 | ISSUE FOR REVIEW |
| 1 | 11-29-21 | PLANNING COMMISSION MTG. |

SHEET

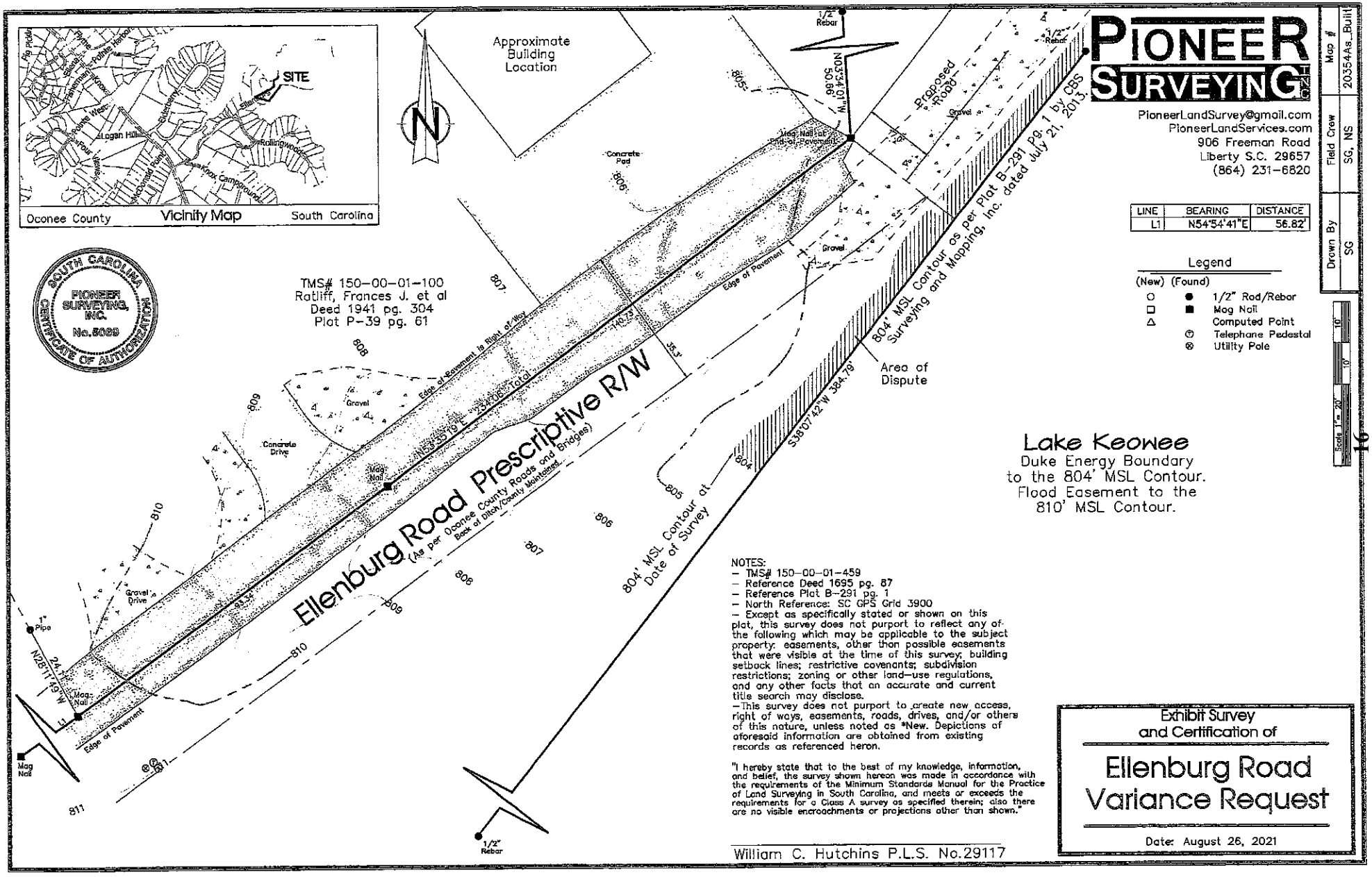
Variance Request

C - 2

R. p. 206

14

John's Marine
&
High Falls Boat Rental
Lake Keowee
Lake Keowee
Lake Keowee




| LINE | BEARING | DISTANCE |
|---|---|---|
| L1 | N54°54'41"E | 56.82' |

Legend

(New) (Found)

- ○ ● 1/2" Rod/Rebar
- □ ■ Mag Nail
- △ Computed Point
- Telephone Pedestal
- ⊗ Utility Pole

Scale 1" = 20' (10' 10' 10')

NOTES:
- TMS# 150-00-01-459
- Reference Deed 1695 pg. 87
- Reference Plat B-291 pg. 1
- North Reference: SC GPS Grid 3900
- Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject property: easements, other than possible easements that were visible at the time of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, and any other facts that an accurate and current title search may disclose.
- This survey does not purport to create new access, right of ways, easements, roads, drives, and/or others of this nature, unless noted as *New. Depictions of aforesaid information are obtained from existing records as referenced heron.

"I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown."

William C. Hutchins P.L.S. No.29117

PIONEER SURVEYING INC
PioneerLandSurvey@gmail.com
PioneerLandServices.com
906 Freeman Road
Liberty S.C. 29657
(864) 231-6820

| Map # | Field Crew | Drawn By |
|---|---|---|
| 20354As_Built | SG, NS | SG |

Exhibit Survey and Certification of

# Ellenburg Road Variance Request

Date: August 26, 2021

COPYRIGHT © 2003 CBS SURVEYING AND MAPPING, INC. ALL RIGHTS RESERVED
NO PORTION OF THIS PLAT MAY BE REPRODUCED BY PHOTOCOPYING OR BY ANY OTHER MEANS, STORED, TRANSMITTED OR ELECTRONICALLY TRANSMITTED WITHOUT PRIOR WRITTEN PERMISSION OF THE ORIGINAL PROFESSIONAL LAND SURVEYOR. NO USERS OF HEREIN, NON-CONTRACTUAL OR NON-OFFICIAL USE BY GOVERNMENT OFFICIALS AND PRECEDENCE LAND SURVEYORS FOR BOUNDARY RESOLUTION

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2003 NOV 18 P 3:20

P/L IS DUKE ENERGY CORP
PROJECT BOUNDARY AVE. +
APPROX. 804 CONTOUR

AREA = 15.37 ACRES

LAKE KEOWEE

ROBERT L. MORGAN
DB 1345 PG 191
PB F39 PG 057
TAX REF: 150 00 01 103

EDWARD J. RATLIFF
DB 14 PG 106
PB 35 PG 61
TAX REF: 139 00 01 100

TERRY V. ELLENBURG
DB 687 PG 510
PB P61 PG 077
TAX REF: 150 00 01 099

END PAVEMENT

LOT 144

ELLENBURG ROAD (WATERSHED R/W)

SC 6183 (MILL 83)

HARBOR OAKS SUBDIVISION
PLAT BOOK PBs 1 & 2

MICHAEL W. BOLT
DB 1160 PG 87
PB A653 PG 026
TAX REF: 150 00 01 017

BRENDA K. STARNEY
DB 1132 PG 226
PB A798 PG 003
TAX REF: 150 00 01 385

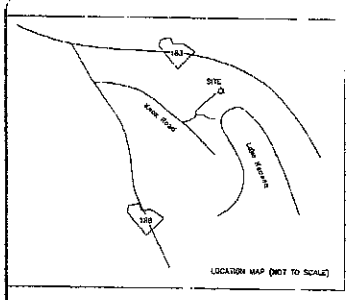
THOMAS G. PALMERT
DB 1019 PG 056
PB A663 PG 003
TAX REF: 150 00 01 391

KNOX POINTE ROAD

LAKE KEOWEE

Recorded this 18 day of Nov 2003
in Plat Bk. 1 and Certified
by Register of Deeds, Oconee County

| LINE | BEARING | DISTANCE |
|---|---|---|
| L229 | N03°29'39"W | 50.28' |
| L230 | N40°19'33"E | 33.81' |
| L231 | N84°16'51"E | 17.69' |
| L232 | N35°31'21"E | 28.43' |
| L233 | N23°34'37"W | 31.85' |
| L234 | N04°17'42"E | 73.27' |
| L235 | N00°26'11"W | 96.83' |
| L236 | N09°26'55"E | 43.55' |
| L237 | N69°37'59"W | 198.64' |
| L238 | N07°38'14"W | 42.10' |
| L239 | N48°36'49"E | 28.00' |
| L240 | N80°24'47"E | 90.78' |
| L241 | N32°21'56"E | 28.15' |
| L242 | N84°18'39"E | 74.52' |
| L243 | N34°32'30"E | 41.72' |
| L244 | N78°09'48"E | 37.80' |
| L245 | S81°10'48"E | 46.21' |
| L246 | S37°34'34"E | 33.77' |
| L247 | S72°34'19"E | 87.33' |
| L248 | N43°51'39"E | 89.24' |
| L249 | N36°24'30"E | 22.94' |
| L250 | N12°24'17"E | 61.32' |
| L251 | S74°58'03"E | 37.61' |
| L252 | S83°32'18"E | 18.10' |
| L253 | S08°11'13"E | 49.13' |
| L254 | N83°19'13"E | 44.58' |
| L255 | N81°26'07"E | 81.78' |
| L256 | N26°05'04"E | 40.69' |
| L257 | N84°06'17"E | 8.17' |
| L258 | N73°14'10"E | 14.91' |
| L259 | S67°10'18"E | 13.22' |
| L260 | N21°31'24"E | 39.70' |
| L261 | S89°06'48"E | 18.03' |
| L262 | N83°00'13"E | 55.66' |
| L263 | N12°26'00"E | 5.74' |
| L264 | S87°14'33"E | 34.30' |
| L265 | S69°24'23"E | 38.84' |
| L266 | N65°30'32"E | 18.21' |
| L267 | N82°21'28"E | 8.64' |
| L268 | S86°43'13"E | 33.81' |
| L269 | S39°37'48"E | 42.08' |
| L270 | S35°04'29"E | 85.12' |
| L271 | S41°15'47"W | 44.01' |
| L272 | S18°35'14"W | 61.09' |
| L273 | S20°04'37"E | 80.34' |
| L274 | S01°28'51"W | 117.00' |
| L275 | S31°12'27"W | 87.26' |
| L276 | S62°35'11"W | 19.04' |
| L277 | S03°36'33"W | 15.75' |
| L278 | S40°58'10"W | 118.80' |
| L279 | S51°01'04"W | 156.12' |
| L280 | S38°16'31"W | 163.24' |
| L281 | S80°12'29"W | 195.24' |
| L282 | N76°54'52"W | 36.18' |
| L283 | N33°57'44"W | 94.98' |
| L284 | N63°12'06"W | 131.05' |
| L285 | S49°25'16"W | 61.26' |
| L286 | S37°02'45"W | 83.88' |
| L287 | S70°01'28"W | 58.70' |
| L288 | N39°19'32"W | 365.00' |
| L289 | N76°41'31"W | 169.30' |
| L290 | N80°47'07"E | 124.59' |




GRAPHIC SCALE
( IN FEET )
1 inch = 200 ft.

NOTE: SEE PLAT BY THIS OFFICE IN PLAT SLIDE B143 FALES 7 & 8.

PLAT PREPARED FOR
CRESCENT RESOURCES LLC
7812 BALLANTYNE COMMONS PARKWAY
SUITE 300
CHARLOTTE, N.C. 28277

SOUTH CAROLINA

"I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARD MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND/OR UNDER MY DIRECT SUPERVISION; THAT IT IS A CLASS A SURVEY AS SPECIFIED THEREIN; AND THAT THE GRADE OF PRECISION AND THE POSITIONAL ACCURACY OF ANY POINT SHOWN HEREON DO NOT EXCEED THE APPLICABLE STANDARDS SPECIFIED THEREIN."

WITNESS MY SPECIAL SIGNATURE AND SEAL THIS 6th DAY OF NOVEMBER, 2003.

Doc ID: 008306660001 Type: PLA
Book 2251 Page 1 - 1

BOUNDARY SURVEY FOR:
CRESCENT COMMUNITIES S.C., LLC

SURPLUS TRACT NO. TH-4.02 — BLOCK: AS SHOWN
TOWNSHIP: KEOWEE WATERWATER — TAX I.D.: 150 00 01 444
COUNTY: OCONEE — STATE: SOUTH CAROLINA
DATE: JULY 21, 2003 — JOB NO.: 1108109

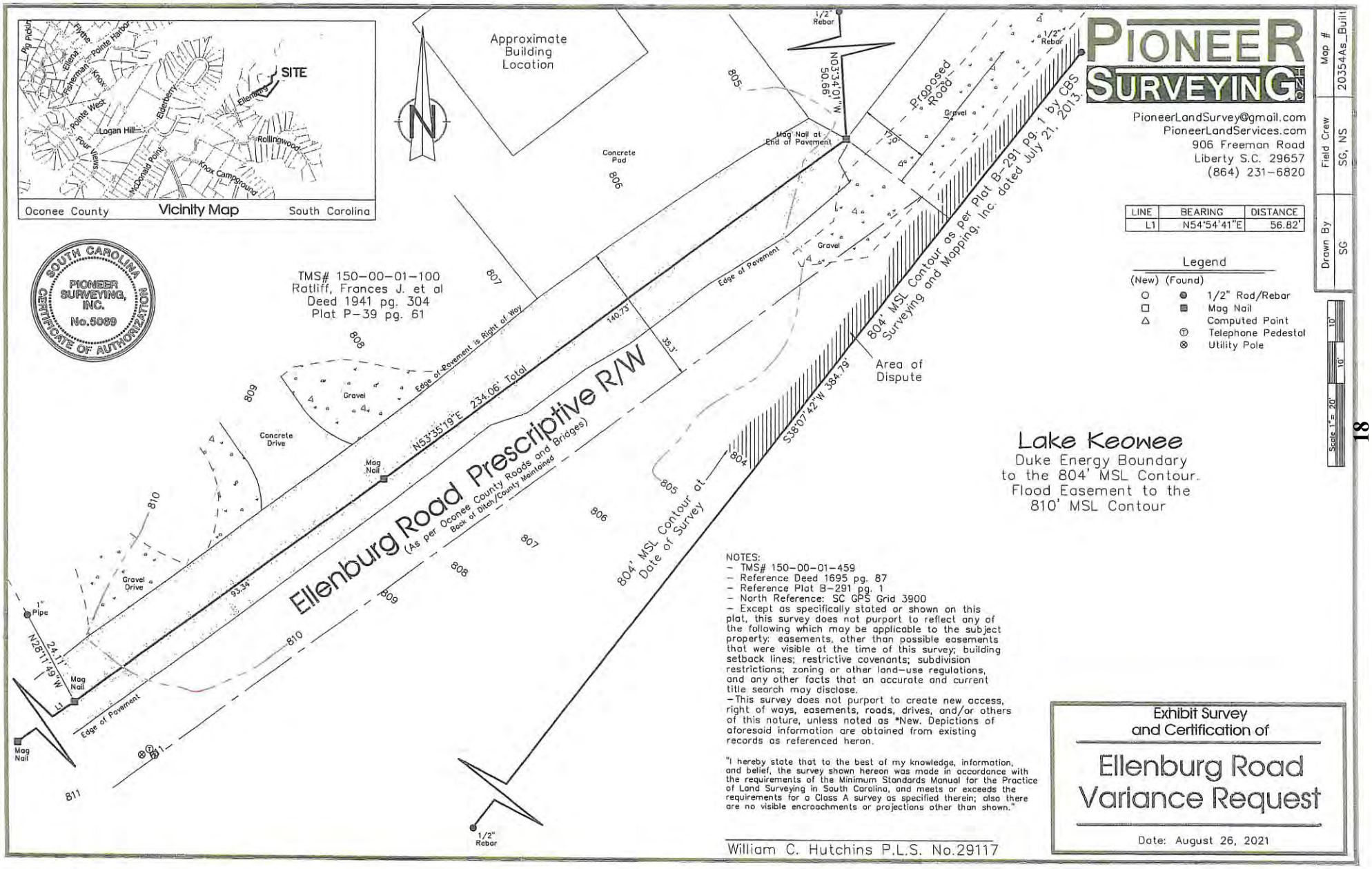
| REVISIONS | |
|---|---|
| DATE | DESCRIPTION |
| 11/4/2003 | SHOW REMAINING PROPERTY |

CBS Surveying & Mapping, Inc.
122 EAST ROBINSON STREET
GAFFNEY, SC 29340 (864) 489-5068

Ref: 10th 056419

R. p. 209

17




PIONEER SURVEYING, LLC
PioneerLandSurvey@gmail.com
PioneerLandServices.com
906 Freeman Road
Liberty S.C. 29657
(864) 231-6820

| LINE | BEARING | DISTANCE |
|---|---|---|
| L1 | N54°54'41"E | 56.82' |

Legend

(New) (Found)

- ○ ● 1/2" Rod/Rebar
- □ ■ Mag Nail
- △ Computed Point
- Ⓣ Telephone Pedestal
- ⊗ Utility Pole

| Drawn By | Field Crew | Map # |
|---|---|---|
| SG | SG, NS | 20354As_Built |

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION PIONEER SURVEYING, INC. No.5069

NOTES:
- TMS# 150-00-01-459
- Reference Deed 1695 pg. 87
- Reference Plat B-291 pg. 1
- North Reference: SC GPS Grid 3900
- Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject property: easements, other than possible easements that were visible at the time of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, and any other facts that an accurate and current title search may disclose.
- This survey does not purport to create new access, right of ways, easements, roads, drives, and/or others of this nature, unless noted as *New. Depictions of aforesaid information are obtained from existing records as referenced heron.

"I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown."

William C. Hutchins P.L.S. No.29117

Exhibit Survey and Certification of

# Ellenburg Road Variance Request

Date: August 26, 2021

1

COPYRIGHT © 2003 CBS SURVEYING AND MAPPING, INC. ALL RIGHTS RESERVED
NO PORTION OF THIS PLAT MAY BE REPRODUCED BY PHOTOCOPYING OR BY ANY OTHER MEANS, STORED, PROCESSED OR ELECTRONICALLY TRANSMITTED WITHOUT PRIOR WRITTEN PERMISSION OF THE ORIGINAL PROFESSIONAL LAND SURVEYOR. NO USERS OR ASSIGNS. THIS DOCUMENT IS NOT VALID WITHOUT AN ORIGINAL SIGNATURE AND SEAL. EXCEPTION-OFFICIAL USE BY GOVERNMENT OFFICIALS AND PROFESSIONAL LAND SURVEYORS FOR BOUNDARY RETRACEMENT

FILED FOR RECORD
OCONEE COUNTY S.C.
REGISTER OF DEEDS

2008 NOV 18 P 3:20

P.A. IS DUKE ENERGY CORP. PROJECT BOUNDARY AND APPROX. 804 CONTOUR

AREA = 15.37 ACRES

LAKE KEOWEE

ROBERT L. MORGAN
DB 1142 PG 191
PB P39 PG 067
TAX REF: 150 00 01 103

EDWARD J. RATLIFF
DB 141 PG 102
PB 39 PG 61
TAX REF: 150 00 01 100

TERRY V. ELLENBURG
DB 897 PG 210
PB P81 PG 577
TAX REF: 150 00 01 099

(TIE LINE)
1" I.PIPE(F)
N03°28'39"W
17.14'

HAUL(F) END PAVEMENT

N03°51'06"E 230.80'

MNS

NL(F)

LOT 24A

#4 REB(F)

#4 REB(F)
@ 129.92'

ELLENBURG ROAD (MAINTENANCE R/W)

SC GRID (NAD 83)

HARBOR OAKS SUBDIVISION
PLAT B160 PGs 1 & 2

MICHAEL W. BOLT
DB 1160 PG 87
PB A823 PG 006
TAX REF: 150 00 01 017

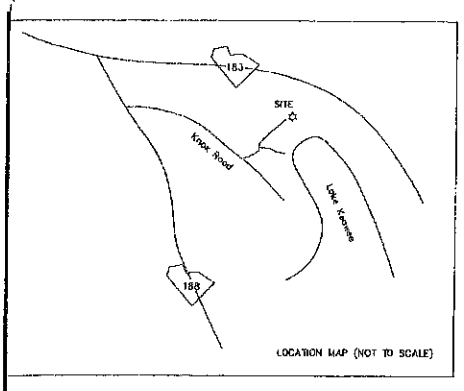
BRENDA K. STASNEY
DB 1132 PG 228
PB A798 PG 003
TAX REF: 150 00 01 396

THOMAS G. PALKERT
DB 1049 PG 036
PB A683 PG 002
TAX REF: 150 00 01 381

KNOX POINTE ROAD

| LINE | BEARING | DISTANCE |
|---|---|---|
| L229 | N03°28'39"W | 50.76' |
| L230 | N40°01'03"E | 83.91' |
| L231 | N84°08'50"E | 17.58' |
| L232 | N35°31'21"E | 28.43' |
| L233 | N23°31'32"W | 31.95' |
| L234 | N04°17'42"E | 72.27' |
| L235 | N00°58'01"W | 86.03' |
| L236 | N09°26'58"E | 53.35' |
| L237 | N08°37'03"W | 156.84' |
| L238 | N07°35'04"W | 42.10' |
| L239 | N48°56'16"E | 26.08' |
| L240 | N65°39'47"E | 80.78' |
| L241 | N32°21'56"E | 30.18' |
| L242 | N09°16'59"E | 73.42' |
| L243 | N34°32'32"E | 41.77' |
| L244 | N78°02'46"E | 37.80' |
| L245 | S84°19'48"E | 45.21' |
| L246 | S87°51'54"E | 53.77' |
| L247 | S72°34'19"E | 87.23' |
| L248 | N83°31'35"E | 89.24' |
| L249 | N30°54'30"E | 29.94' |
| L250 | N37°22'13"E | 53.43' |
| L251 | S74°56'03"E | 37.61' |
| L252 | S63°52'16"E | 38.10' |
| L253 | S68°11'33"E | 42.13' |
| L254 | N83°04'13"E | 44.38' |
| L255 | N51°28'07"E | 51.78' |
| L256 | N26°08'04"E | 40.69' |
| L257 | N84°29'17"E | 6.37' |
| L258 | N27°34'16"E | 14.21' |
| L259 | S80°10'18"E | 33.39' |
| L260 | N71°54'24"E | 32.20' |
| L261 | S82°09'46"E | 16.03' |
| L262 | N83°00'13"E | 25.86' |
| L263 | N47°26'00"E | 5.24' |
| L264 | S87°34'13"E | 34.35' |
| L265 | S89°24'27"E | 36.84' |
| L266 | N86°26'57"E | 18.21' |
| L267 | N83°31'28"E | 8.84' |
| L268 | S89°43'33"E | 33.81' |
| L269 | S39°37'48"E | 67.06' |
| L270 | S35°34'52"E | 80.12' |
| L271 | S11°16'47"W | 44.01' |
| L272 | S18°56'14"W | 61.09' |
| L273 | S29°04'57"E | 60.04' |
| L274 | S01°28'31"W | 117.00' |
| L275 | S29°32'25"W | 87.26' |
| L276 | S62°35'41"W | 19.86' |
| L277 | S13°38'23"W | 15.79' |
| L278 | S45°56'15"W | 118.00' |
| L279 | S51°03'04"W | 156.12' |
| L280 | S36°28'21"W | 163.24' |
| L281 | S80°32'29"W | 125.08' |
| L282 | N76°59'12"W | 65.10' |
| L283 | N73°27'54"W | 94.99' |
| L284 | N83°12'09"W | 121.05' |
| L285 | S58°25'16"W | 51.25' |
| L286 | S70°33'45"W | 83.58' |
| L287 | S70°31'12"W | 94.70' |
| L288 | S36°10'22"W | 385.06' |
| L289 | N76°11'51"W | 166.55' |
| L290 | N56°47'07"E | 126.52' |

Recorded this 18 day of Nov 2008
Vol. B291 Pg. 1 and Certified
Register of Deeds, Oconee County




LOCATION MAP (NOT TO SCALE)

GRAPHIC SCALE
200 0 100 200 400 800
( IN FEET )
1 inch = 200 ft.

NOTES:
(S) DENOTES OBJECT SET
(F) DENOTES OBJECT FOUND
PROPERTY SUBJECT TO ANY VALID AND ENFORCEABLE EASEMENTS, RESTRICTIONS AND RIGHTS OF WAY OF RECORD AND THOSE SHOWN, IF ANY, SHOULD BE INDEPENDENTLY VERIFIED. NO TITLE OPINION HAS BEEN PROVIDED TO THE SURVEYOR.
NAMES AND DEED REFERENCES SHOWN ARE FOR DESCRIPTIVE PURPOSES ONLY, NOT TO BE USED FOR DETERMINING TITLE.
WATER BOUNDARIES ARE SUBJECT TO CHANGE BY NATURAL CAUSES AND MAY EFFECT AREA AND LIMIT OF TITLE.
CM(F) = CONCRETE MONUMENT(F)
IPS = #5 REBAR(S)
MNS = MAGNETIC NAIL(S)
R/W = RIGHT OF WAY
P/L = PROPERTY LINE
C/L = CENTERLINE
TOP OF BANK
UTILITY POLE

NOTE: SEE PLAT BY THIS OFFICE IN PLAT SLIDE B143 PAGES 7 & 9.

Doc ID: 008586850001 Type: PLA
Book B291 Page 1 - 1

PLAT PREPARED FOR:
CRESCENT RESOURCES LLC
7810 BALLANTYNE COMMONS PARKWAY
SUITE 200
CHARLOTTE, N.C. 28277

SOUTH CAROLINA

"I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; AND THAT THE DEED DESCRIPTION RECORDED IN BOOK 1041 PAGE 225 IS CORRECT AS SHOWN HEREON. WITNESS MY ORIGINAL SIGNATURE AND SEAL THIS 4th DAY OF NOVEMBER, 2008."

BY: CHRISTOPHER E. BOWEN
PROFESSIONAL LAND SURVEYOR
7833
REGISTRATION NUMBER

BOUNDARY SURVEY FOR:
CRESCENT COMMUNITIES S.C., LLC

SURPLUS TRACT NO. 7114.02 — INDEX: AS SHOWN
TOWNSHIP: KEOWEE WHITEWATER — TAX I.D.: 150 00 01 444
COUNTY: OCONEE — STATE: SOUTH CAROLINA
DATE: JULY 21, 2003 — JOB NO.: 1106100

REVISIONS

| DATE | DESCRIPTION |
|---|---|
| 11/4/2008 | SHOW REMAINING PROPERTY |

CBS Surveying & Mapping, Inc.
122 EAST ROBINSON STREET
GAFFNEY, SC 29340 (864) 489-5088

Ref: ID DC 006419

,C. 131

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

Doc ID: 001664260016 Type: DEE
BK 1695 PG 87-102

2008 DEC -8 A 8:49

Prepared by: Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon St.
Suite 3000
Charlotte, NC 28202

Tract No. S-7114.02

007066

Return to: Crescent Resources, LLC
Attn: S. Higginson
7810 Ballantyne Commons Parkway
Suite 200
Charlotte, NC 28277

EXCISE TAX - $6,824.65

OCONEE COUNTY
STATE TAX 4795.70
COUNTY TAX 2028.95
EXEMPT

STATE OF SOUTH CAROLINA )
;
COUNTY OF OCONEE )

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that

CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company, ("Grantor"), whose address is 400 South Tryon Street, Suite 1300, Charlotte, NC 28285-0107, in consideration of the sum of One Million Eight Hundred Forty-Four Thousand Four Hundred and No/100 Dollars ($1,844,400.00), to it in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to the easements, restrictions, reservations, covenants, conditions and other exceptions set forth below, unto **FARMES, A South Carolina Limited Partnership**, an undivided 27% interest as tenant in common, and **GLOBE, A South Carolina Limited Partnership**, an undivided 73% interest as tenant in common ("Grantee"), whose address is 104 Greystone Court, Seneca, SC 29672, and its successors and assigns, all that certain tract of land described in Exhibit A attached hereto ("Property").

The Property is conveyed subject to the following easements, restrictions, reservations, covenants, conditions and other exceptions (collectively, "Exceptions"):

Recorded this 9 day of Dec. 2008 Page 84145
Fee
Brenda R. Tiki
Auditor Oconee County, S.C.

(1) flood easements in favor of Duke Energy Carolinas, LLC (formerly known as Duke Power Company and Duke Energy Corporation) and riparian rights of others, including, but not limited to, the flood easement to flood to the 810 foot contour line and all other reservations, restrictions and conditions contained in that deed recorded in Deed Book 635, Page 298 and Deed Book 652, Page 58;

(2) transmission line and retail electric line rights-of-way, if any, reserved by or granted to Duke Energy Carolinas, LLC;

(3) ad valorem taxes for the year 2008 and subsequent years;

2008 DEC -8 A 8:49

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

THIS PROPERTY DESIGNATED AS
MAP 150 SUB 00 BLK 01 PARC 444.16
ON OCONEE COUNTY TAX MAPS
Sarah Smith
OCONEE COUNTY ASSESSOR

PPAB 1504113v2

(4) "rollback" or other deferred ad valorem property taxes;

(5) matters affecting title to the Property as shown on the Plat or which would be shown on a current and accurate survey of the Property (including any encroachments);

(6) easements, covenants, restrictions and conditions of record, and rights-of-way of public and private streets and roads, including, but not limited to, the right-of-way shown on the Plat as "Ellenburg Road";

(7) easements, restrictions and rights-of-way as may be apparent from an inspection of the Property;

(8) zoning, subdivision, land use and other laws, regulations or ordinances applicable to the Property; and

(9) the General Deed Restrictions attached hereto as Exhibit B and incorporated herein by reference.

TOGETHER WITH, subject to the Exceptions, all and singular the rights, members, hereditaments and appurtenances to the Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular the Property, unto Grantee and Grantee's heirs, successors and assigns forever.

Subject to the Exceptions, the Grantor covenants to warrant specially the title to the Property against the lawful claims of any person claiming from, through or under it.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this 3rd day of December, 2008.

Signed, Sealed and Delivered in the Presence of:

Sandra S. Lewis
Print Name: Sandra S. Lewis
Witness #1

Kay H. Arnette
Print Name: Kay H. Arnette
Witness #2

CRESCENT COMMUNITIES, S.C., LLC,
a Delaware limited liability company

By: J. Scott Munday
J. Scott Munday
Vice President

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Personally appeared before me the undersigned witness who being duly sworn deposes and says that he/she saw the within named J. Scott Munday, Vice President of CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company, sign, and as its act and deed deliver the foregoing instrument for the uses and purposes therein mentioned, and that he/she, together with Kay H. Arnette (witness #2), the other witness subscribed above, witnessed the execution thereof.

Sandra S. Lewis
(Witness #1 sign here)

Sworn to and subscribed before me this the 3rd day of December, 2008.

Kay H. Arnette
Notary Public

Notary Public for North Carolina

My Commission Expires: June 28, 2009

[NOTARIAL STAMP-SEAL]

KAY H. ARNETTE NOTARY My Comm. Exp. June 28, 2009 PUBLIC MECKLENBURG COUNTY, N. C.

3

PPAB 1504113v2

## EXHIBIT A

All references to recording information shall refer to documents that were recorded in the Office of the Register of Deeds for the county in which the Property is located.

All that certain tract of land located in Keowee Whitewater Township, Oconee County, South Carolina, designated as "AREA = 15.37 ACRES" on plat recorded in Plat Book B291, Page 1 ("Plat"); AND BEING all or a portion of the land conveyed to S. C. Land & Timber Corp. (presently known as Crescent Resources, LLC) by deed from T. B. Ellenburg (K-54) recorded in Deed Book 9H, Page 214; by deed to Crescent Land & Timber Corp. (presently known as Crescent Resources, LLC) from Fay Ellenburg and Jerry Ellenburg (K-872) recorded in Deed Book 10N, Page 62; by deed to S. C. Land & Timber Corp. from Bertha D. Sloan and James E. Sloan (K-313) recorded in Deed Book 9Q, Page 154; by deed to S. C. Land & Timber Corp. from Doris C. R. Thacker, et al (K-10) recorded in Deed Book 9E, Page 7; and by deed to Crescent Communities S.C., LLC from Crescent Resources, LLC recorded in Deed Book 1511, Page 228.

Tax Parcel No.: 150-00-01-444

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 DEC -8 A 8:49

**EXHIBIT B**

**GENERAL DEED RESTRICTIONS**

THE PROPERTY SHALL BE CONVEYED SUBJECT TO THE FOLLOWING RESTRICTIONS, WHICH SHALL ENCUMBER THE PROPERTY AND SHALL RUN WITH TITLE TO THE PROPERTY.

1. **Definition of "Property" and "Lot".** As used herein, (i) "Property" means all of the property conveyed by Grantor to Grantee pursuant to this deed; and (ii) "Lot" means any portion of the Property that constitutes a legally established separate lot or parcel of land (whether created by the recordation of a subdivision plat or otherwise), as such lots or parcels of land may exist from time to time (collectively, "Lots"). If the Property consists of only one lot or parcel of land, then the term "Property" is synonymous with the term "Lot." If the Property consists of two or more lots or parcels of land, whether such lots or parcels exist on the date the Property is conveyed to Grantee or are later created by subdivision of the Property or other legal means, then each of those lots or parcels is a "Lot" for the purposes of these Restrictions.

2. **Single Family Use.** The Property shall be used only for detached, single-family residence purposes, together with the accessory buildings and structures permitted pursuant to Section 6 below. No more than one detached single-family residential dwelling may be constructed on any Lot. No condominium, townhouse, duplex, apartment or other multi-family residential uses are permitted on the Property. Further, no camper, trailer, motor home, boat (including, without limitation, any boat docked adjacent to the Property), recreational vehicle or similar habitable or transportable unit or structure shall be allowed to remain on or adjacent to the Property as a place of residence. The single-family residence restrictions set forth above shall not prohibit the construction of pools, tennis courts or other recreational facilities or amenities such as are commonly constructed and maintained for the benefit of lot owners within planned unit developments; provided that such recreational facilities or amenities shall be solely for the common use of the owners of one or more Lots and, provided further, that no such recreational facilities may be located within any Buffer Area (defined below).

3. **Restricted Activities.** The following activities are prohibited on the Property:

   (a) Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats or other usual and common household pets (which are registered, licensed and inoculated as required by law) may be permitted on the Property;

   (b) Any activity which violates local, state, or federal laws or regulations;

   (c) Institutional uses, including, but not limited to, group homes, day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns and beds and breakfasts; and

(d) Any business or trade, except that an owner or occupant residing on a Lot may conduct business activities within a dwelling on that Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling unit; (ii) the business activity conforms to all zoning requirements for the Lot; (iii) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on a Lot, or for which any parts, equipment supplies, raw materials, components or tools are stored on a Lot; and (v) the business activity is consistent with the residential character of the Property and does not constitute an unreasonable disturbance to adjoining land owners or others, a nuisance or a hazardous or offensive use. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales or similar activities provided that such activities are not held on the same Lot more than once in any six-month period. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a Lot for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

4. **Prohibited Conditions.** None of the following structures or improvements may be located upon the Property:

(a) Structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated or otherwise fallen into disrepair;

(b) Towers, antennas or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind which are located outside of the dwelling on a Lot other than (i) a customary antenna, which shall not extend more than ten feet above the top roof ridge of the dwelling; and (ii) a satellite disc or dish no larger than 18 inches in diameter;

(c) Any freestanding transmission or receiving towers or any non-standard television antennae; and

(d) Chain-link fences.

5. **Quality Craftsmanship/Dwelling Size.** All buildings and outbuildings erected upon the Property shall be built on site of new materials of good grade, quality and appearance and shall be constructed in a good and workmanlike manner, conforming to all applicable building codes. Further, all dwellings must meet the following construction requirements:

(a) If the dwelling is located on a Waterfront Lot (a "**Waterfront Lot**" is a lot, any portion of which is located within 100 feet (measured horizontally regardless of the actual ground measurement which may vary based upon the topography) of the Common Boundary Line (defined in Section 8 below)), then: (i) one story dwellings shall not contain less than 2,000 square feet of Heated Living Area (defined below); (ii) one and a half story dwellings shall not contain less than 2,200 square feet of Heated Living Area; and (iii) two (or more) story dwellings shall not contain less than 2,400 square feet of Heated Living Area;

(b) If the dwelling is not located on a Waterfront Lot, then: (i) one story dwellings shall not contain less than 1,600 square feet of Heated Living Area; (ii) one and a half story dwellings shall not contain less than 1,800 square feet of Heated Living Area; and (iii) two (or more) story dwellings shall not contain less than 2,000 square feet of Heated Living Area;

(c) All dwellings and accessory structures shall be completely supported with solid brick, brick or stone covered block, or stucco covered foundation;

(d) Roofs shall have not less than a 6 in 12 inch pitch, and not less than a 12 inch overhang, and shall be covered with asphalt or fiberglass shingles, terra cotta tile, real or man-made slate, copper sheathing or wood shingles or pre-painted metal roofing;

(e) The exterior surfaces of all dwellings and accessory structures shall be covered only with brick, stone, hard stucco (synthetic stucco is not permitted), wood, or siding consisting of wood, composite or vinyl material; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished; and

(f) Exteriors of all dwellings and accessory structures must be completed within one year after the commencement of construction, and a certificate of occupancy issued within two years after commencement of construction.

As used herein, "**Heated Living Area**" excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, Heated Living Area excludes vaulted ceilings areas, attics, unheated porches, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios. The term "**story**" shall mean a finished horizontal division of Heated Living Area extending from the floor of such division to the ceiling above it. The term "**half story**" shall mean a story which

contains 50 percent or less Heated Living Area than the story in the house containing the most Heated Living Area.

6. **Permitted Accessory Structures.** Except as otherwise expressly set forth herein, no buildings, structures or improvements of any kind may be located on a Lot other than one detached, single-family residential home, and the following permitted accessory structures:

(a) Storage and shop outbuildings, including detached garages, workshops, storage and utility buildings, greenhouses and similar buildings, not exceeding the height of the roof of the residence on the Lot. The total square footage contained within all such outbuildings combined shall not exceed 2,000 square feet. All outbuildings shall be permanently affixed to the Lot and shall be covered with the approved exterior materials described in Section 5(e) above. Further, no outbuildings shall be located wholly or partially within any Buffer Area (as defined below).

(b) Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures. The total square footage contained within such structures when combined shall not exceed 1,000 square feet in area. Further, no such structure shall be located wholly or partially within any Buffer Area (as defined below).

(c) To the extent permitted at the time of construction and installation by Duke Energy Carolinas, LLC (or its successor, with respect to ownership and/or management authority over the Lake, if applicable) ("Duke Energy") and all applicable governmental authorities, waterfront structures, including fixed piers, boat slips or floats, covered docks, boat ramps, decking and sitting areas attached to piers, walkways and other similar structures. Grantee acknowledges by acceptance of this deed that policies, laws and regulations regarding its ability to construct or install such structures may change from time to time before or after Grantee's acquisition of the Property and Grantor makes no representation or warranty as to Grantee's ability to construct or install such structures either now or in the future. Such structures may be located wholly or partially within the Buffer Area provided no more than a total of 200 square feet of such structures shall be located within the Buffer Area on any Lot.

7. **Site Development Requirements.** Each Lot shall be subject to the following specific development requirements.

(a) No portion (or portions) of a Lot greater than 2,000 square feet shall be: (i) denuded of ground cover or topsoil, (ii) graded, (iii) excavated or (iv) covered with earth or other natural or man-made fill material, unless all required building, grading and erosion control permits have been issued by the applicable municipal authorities.

(b) All denuded, graded, excavated or filled areas shall be stabilized and replanted on or before: (i) the 30th day following the initial denuding, grading, excavation, or

filling (unless footings and foundations are being installed upon the disturbed area and construction is being diligently and continuously pursued upon such area); or (ii) such time as construction is completed or interrupted for a period of 30 continuous days. In addition to, or in the absence of local or state government regulations on such land disturbance, none of the activities described in (i) through (iv) in **Section 7(a)** above shall be allowed to commence without compliance with the following requirements:

(i) The surveying and flagging of the Buffer Area (defined below) and any portion of the Buffer Area that may be disturbed as a result of any activities permitted hereunder;

(ii) The flagging of all trees in the Buffer Area that equal or exceed six inches in diameter, as measured four and one-half feet from the base of each tree. The trees, Buffer Area (defined below) and disturbed areas referenced in **Sections 7(a)** and **(b)** shall be clearly and distinctly flagged, staked or otherwise designated in order to prevent the unintentional violation of these restrictions by parties performing work upon the Property; and

(iii) The proper installation (in accordance with manufacturer's instructions) of construction silt fencing on the lower perimeters of all areas within the Lot to be disturbed, and any other areas which may be impacted by silt runoff from any disturbed areas located on the Lot.

8. **Buffer Area Restrictions.** As used herein, the term "**Buffer Area**" shall mean any portion of the Property that is located within 50 feet (measured horizontally regardless of the actual ground measurement which may very based upon the topography) of the 800 foot contour elevation ("**Contour Line**") of Lake Keowee ("**Lake**"); provided, however, that the inner boundary of the Buffer Area (i.e. the boundary that is inland from the Lake) shall not be less than fifty feet (measured horizontally regardless of the actual ground measurement which may vary based upon the topography) from the common boundary ("**Common Boundary Line**") of the Property and the Lake. No portion of the Buffer Area may be disturbed in any way, including any disturbance or removal of topsoil, trees and other natural growth. Neither the Common Boundary Line nor the Contour Line of the Lake shall change as a result of erosion or stabilization measures occurring following the conveyance of the Property to Grantee. Notwithstanding the second sentence in this **Section 8**, the following activities are permitted within the Buffer Area:

(a) Trees which are less than six inches in diameter, as measured four and one-half feet from the base of each tree may be removed. Any tree removal shall be performed using hand held gas or electric chain saws and/or manual handsaws. No other mechanical equipment or vehicles may be used in removing any trees. Additionally, trees having a greater diameter than that set forth above that have become diseased or damaged through natural processes may be removed in the same manner.

(b) Within each Lot, an access corridor may be created within the Buffer Area for the purpose of providing lake access to install shoreline stabilization or to install and use water access structures (such as docks or boat ramps) that have been approved in advance by Duke Energy and otherwise comply with Section 6(c) above. The access corridor may not exceed 15 feet in width. Trees with diameters equaling or exceeding six inches, as measured four and one-half feet from base, may be removed within the access corridor and grading or ground disturbance (which otherwise complies with the restrictions set forth herein) may be performed if reasonably necessary to provide access to the Lake for the purposes described above in this Section 8(b).

(c) Underbrush (defined as nuisance shrubs, vines and similar plant growth beneath the tree canopy, and generally growing less than six feet in height) may be removed.

(d) Pruning and trimming of trees is permitted, provided that pruning is limited to tree branches beginning with the lowest to the ground and extending up the tree trunk no more than one-half of the total height of the tree. Trimming may also be performed on any limbs or branches that are diseased or naturally damaged.

(e) The use of rip-rap, bulkheading or other shoreline stabilization methods or materials may be initiated with the prior written approval by Duke Energy and any shoreline stabilization shall be performed in compliance with Duke Energy's Shoreline Management Guidelines which are in effect at the time such stabilization occurs. Generally, Duke Energy allows structural stabilization to extend only to a height one foot above the Contour Line of the Lake. If Duke Energy authorizes Grantee to perform certain shoreline stabilization, then at all points where shoreline stabilization occurs, the inner boundary line of the Buffer Area (i.e. the boundary line opposite the Contour Line of the Lake) shall be adjusted inward (i.e. away from the Contour Line of the Lake) by the same distance that the stabilization structures or improvements extend from the Contour Line of the Lake into the Lot, provided, however, that in no event shall the width of the undisturbed Buffer Area be reduced to less than 50 feet between any portion of the interior edge of the stabilization structures or improvements and any residence or other structure or improvement located on the Lot (other than docks, boat ramps, or other water access structures which have been approved in writing by Duke Energy).

(f) An access road ("Roadway") for pedestrian and vehicular ingress, egress and regress may be installed, constructed, maintained and repaired within the Buffer Area at those locations where the width of the Property is less than 130 feet; provided, however, that the Roadway (and the construction activities associated therewith) are not allowed within any portion of the Buffer Area that is located more than 150 feet east of the Edward J. Ratliff property, as shown on the plat recorded in Plat Book B143, Pages 7 and 8 in Oconee County Register of Deeds.

In addition to the rights of enforcement set forth in Section 11 below, if the terms of this Section 8 are violated, then the owner of the Lot on which such violation occurs ("Violating Owner") shall, within 30 days after the Violating Owner discovers, receives notice of or otherwise has knowledge of the occurrence of the violation, retain a qualified environmental consultant to develop a plan to restore the Buffer Area to the condition of the Buffer Area that existed prior to the violation ("Buffer Restoration Plan") and submit the Buffer Restoration Plan to Grantor for review. All costs related to the development of the Buffer Restoration Plan shall be paid by the Violating Owner. Grantor shall either approve the Buffer Restoration Plan in writing or object to the Buffer Restoration Plan and deliver to the Violating Owner written notice specifying the objections. If Grantor approves the Buffer Restoration Plan, then the Violating Owner shall, at its expense, promptly perform the work required under the Buffer Restoration Plan in strict accordance with the Buffer Restoration Plan and diligently and continuously pursue the work required under the Buffer Restoration Plan to completion. If Grantor objects to the Buffer Restoration Plan, then the Violating Owner shall revise the Buffer Restoration Plan to address the objections made by Grantor and shall submit the revised Buffer Restoration Plan to Grantor for review. The foregoing process shall continue until Grantor approves the Buffer Restoration Plan. If the Violating Owner fails to comply with the terms of this paragraph, then Grantor shall have the right to perform all of the obligations of the Violating Owner under this paragraph and to charge the Violating Owner for all the costs thereof (including attorney fees and court costs incurred in collecting such costs). Any claim against a Violating Owner for such costs, together with interest accrued thereon and collection costs shall constitute a personal obligation of the Violating Owner and shall be secured by an equitable lien on the Violating Owner's Lot. The lien shall attach and be effective from the date of recording of a lien notice in the appropriate office of the County in which the Property is located. A copy of the lien notice shall be mailed to the Violating Owner within 30 days after the recording of the lien notice. The lien may be enforced by judicial foreclosure upon the Lot to which the lien attached in the same manner as a mortgage is judicially foreclosed under the laws of the State in which the Property is located. In any foreclosure, the Violating Owner shall be required to pay the reasonable costs and attorneys' fees in connection with the preparation and filing of the lien notice and the foreclosure. Notwithstanding anything contained in these General Deed Restrictions (including the terms of Section 11) to the contrary, the right to require, review and approve the Buffer Restoration Plan shall be limited to Grantor and its successors or assigns by merger or consolidation or by written assignment (including any property owners' association created with respect to all or any portion of the Property).

9. **No Claims.** No owner of a Lot or of any Benefited Property (defined below) shall have any claim or cause of action against Grantor or its affiliates arising out of the exercise, or non-exercise, or enforcement, or failure to enforce, or the amendment, release or grant of variance with respect to any covenant, condition, restriction, easement or other right reserved hereunder or referred to herein.

10. **No Delay.** No delay or failure on the part of Grantor to invoke an available remedy with respect to a violation of any restriction contained herein shall be held to be a waiver by Grantor of any right available to it upon the recurrence or continuance of said violation or the occurrence of a different violation.

11. **Rights of Enforcement.** The covenants, conditions and restrictions set forth herein shall run with the title to the Property and shall benefit Grantor and all property ("**Benefited Property**") owned on the date hereof by Grantor or its subsidiaries located within one thousand feet of any portion of the Property (other than any property located within the FERC boundaries of the Lake). If any Lot owner, its heirs, successors, tenants, or assigns shall violate or attempt to violate any of the covenants, conditions or restrictions contained herein, Grantor and any subsequent owner of any portion of the Benefited Property may enforce the covenants, conditions and restrictions set forth herein by any remedy available at law or in equity, either to prevent or remediate such violation, or recover damages for such violation, or both. Grantor (but not any other Benefited Property owner) shall have an easement over the Property for the purpose of entering a Lot in order to monitor or enforce compliance with these covenants, conditions and restrictions without court order. The party bringing such action shall be entitled to recover its reasonable attorney's fees and expenses incurred in such proceedings from the person or entity violating or attempting to violate the same. Nothing herein shall be held to impose any restriction on any other land owned by Grantor, its subsidiaries or affiliates.

12. **Modification, Amendment, Variances.** Grantor hereby reserves the right for itself and its successors or assigns, to amend or modify, release or grant variances with respect to the covenants, conditions, easements and restrictions set forth herein. As used in this **Section 12**, the term "successors or assigns" shall be limited to Grantor's successors or assigns by merger or consolidation or by written assignment.

13. **Reserved Easement.** Grantor hereby reserves unto itself and any successors in title, (i) a ten foot wide easement extending into the Property from and along each boundary line of the Property for the installation and maintenance of utility lines, drainage ditches or facilities or any other related improvements that may be required by Grantor or its successors or assigns; and (ii) a 15 foot wide easement extending into the Property from and along any public or private road rights-of-way for the installation and maintenance of utility lines, drainage ditches or facilities or any other related improvements that may be required by Grantor or its successors or assigns.

14. **Subdivision.** The Property may not be subdivided in a manner that will result in any Lot being created which is less than 29,000 square feet.

15. **No Modular or Mobile Homes.** No more than one mobile, manufactured or modular home or structure having the characteristics or appearance of a mobile, modular or manufactured home, including, without limitation, any mobile, modular or manufactured home as defined by the building codes or other applicable laws of the state in which the Property is located, shall be located upon the Property.

STATE OF NORTH CAROLINA )
)
COUNTY OF MECKLENBURG )

**AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says;

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located in Keowee Whitewater Township, bearing Oconee County Tax Map Number 150-00-01-444, was transferred by Crescent Communities S.C., LLC to FARMES, A South Carolina Limited Partnership, and GLOBE, A South Carolina Limited Partnership on December 4, 2008.

3. Check one of the following: The deed is

(a) ___X___ subject to the deed recording fee as a transfer consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) ___X___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 1,844,400.00

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No ___X___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

PPAB 1504095v2

(a) Place the amount listed in item 4 above here: $ 1,844,400.00

(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $ 1,844,400.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $ 6,824.65 .

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized Agent for Crescent Communities S.C., LLC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

J. Scott Munday

Responsible Person Connected with the Transaction
J. Scott Munday
Vice President

SWORN to before me this 3rd day of December, 2008.

Kay H. Arnette

Notary Public for North Carolina
My Commission Expires: June 28, 2009

KAY H. ARNETTE NOTARY PUBLIC My Comm. Exp. June 28, 2009 MECKLENBURG COUNTY, N. C.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 DEC -8 A 8:49

PPAB 1504095v2

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

**Exempted from the fee are deeds:**

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 53 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity in subject to the fee even if the realty is transferred to another corporation, a partnership, or a trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive

deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;

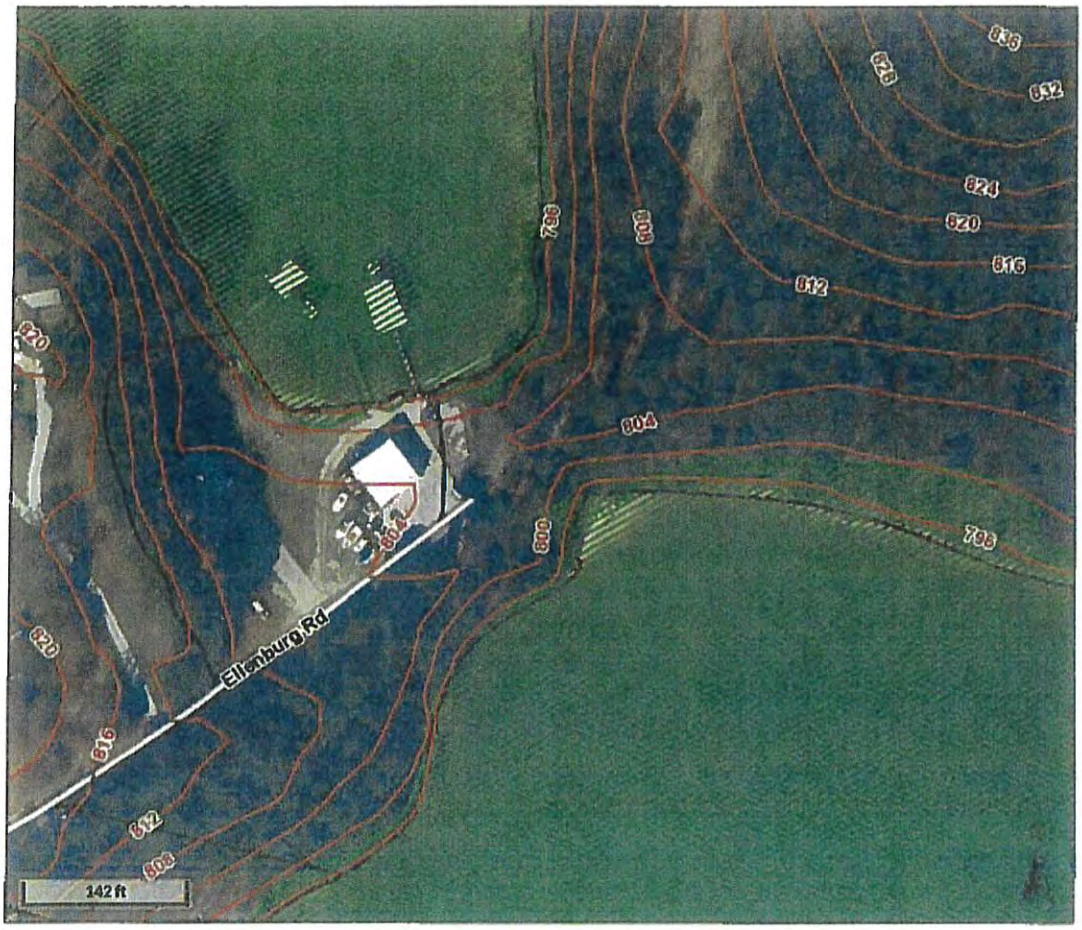
(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested to the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;

(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and

(15) transferring title to facilities for transmitting electricity that transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

qPublic.net™ Oconee County, SC



Legend

- Parcels
- Landhook
- Roads
- Topography

FEMA Flood Zones

- A: 1% Annual chanc of Flood Hazard
- AE: 1% Annual chance of Flood Hazard with BFE
- 0.2 PCT ANNUAL CHANCE FLOOD HAZARD

| | | | | | | Last 2 Sales | | | |
|---|---|---|---|---|---|---|---|---|---|
| Parcel ID | 150-09-01-041 | Alternate ID | 15176 | Owner Address | KNOTT CHADWICK S & NICOLE L | Date | Price | Reason | Qual |
| Sec/Twp/Rng | n/a | | | | 233 MOSSY CREEK PT | 7/5/2011 | $183500 | n/a | Q |
| Property Address | 555 ELLENBURG RD | Class | n/a | | CLEVELAND, GA 30528 | n/a | 0 | n/a | n/a |
| District | 11 | Acreage | 0.72 | | | | | | |
| Brief Tax Description | LOT 39 HARBOR OAKS (.720 AC) (Note: Not to be used on legal documents) | | | | | | | | |

Date created: 11/30/2021
Last Data Uploaded: 11/29/2021 9:27:50 PM

Developed by Schneider GEOSPATIAL

# TABLE OF CONTENTS

Page 1: Exhibit 1 Exhibit Survey of Ellenburg Road Zoning Request

Page 2: Exhibit 2--Aerial of the Parcel and surrounding immediate area

Page 3: Graphics 1-4 Overview

Page 4: Graphic 1--Existing Roadway

Page 5: Graphic 2--Proposed Centerline and Right-of-Way

Page 6: Graphic 3--Proposed Road Dimensioning

Page 7: Graphic 4--Proposed Pavement/Repavement

Supplements:

Page 8: Letter from Parcel Owner

Page 9: Plat of Parcel from 2008

Page 10: Letter from Assistant Director of Public Works (stapled)

Page 11: Variance Criteria Overview (stapled)

Page 12: Developer Bios

(Outside Packet) Deed for Parcel with Deed Restrictions

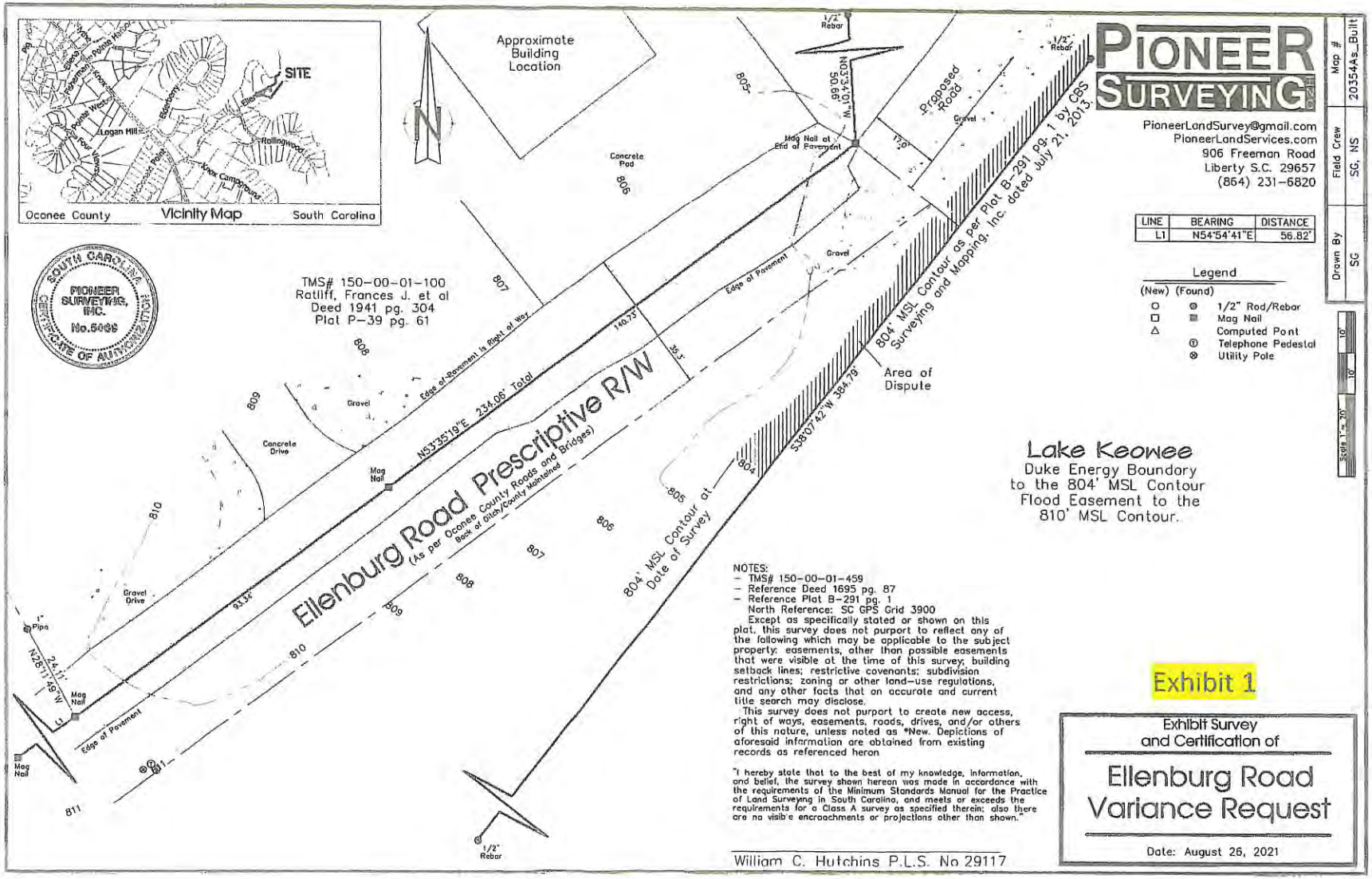
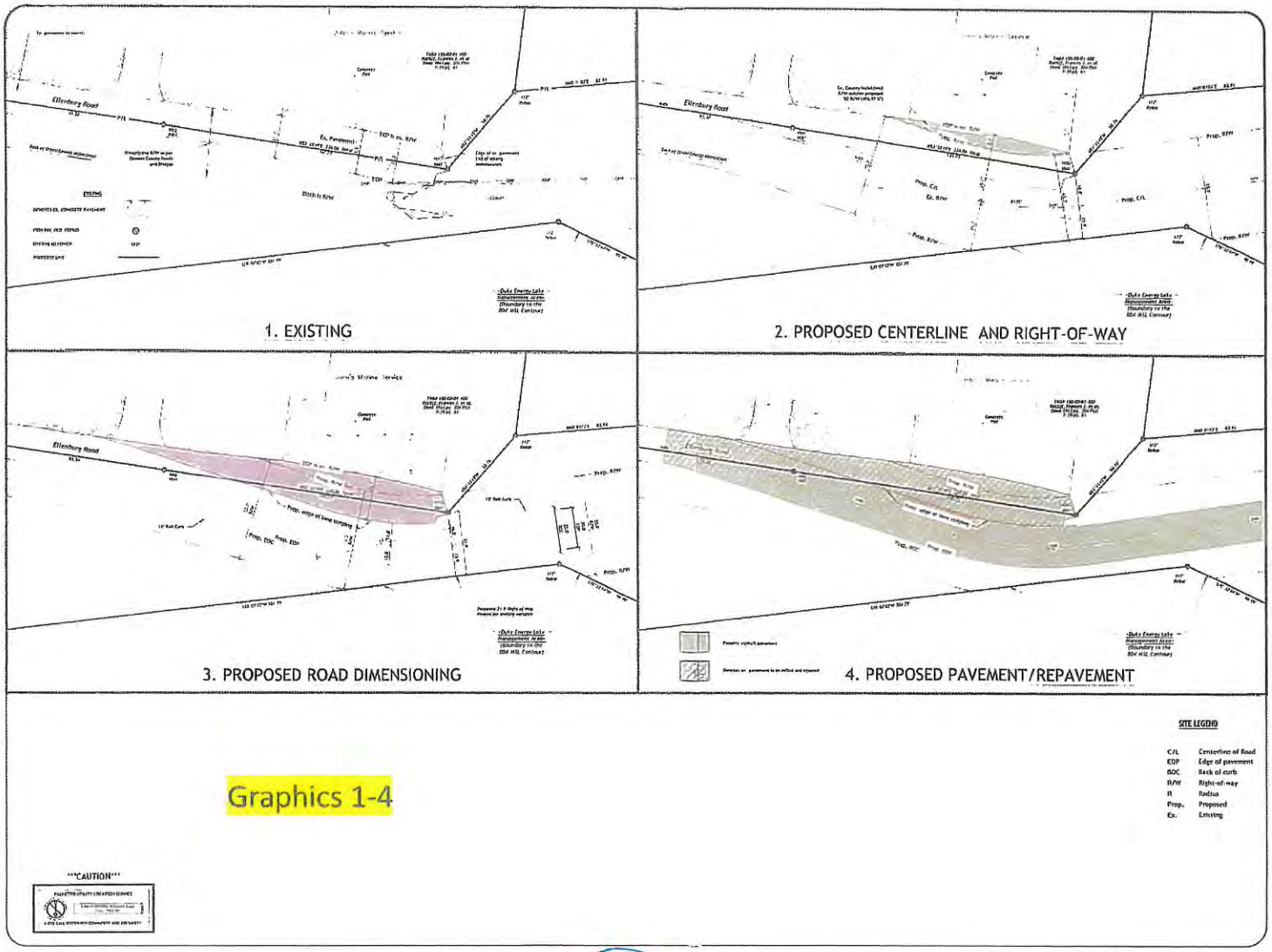

PIONEER SURVEYING LLC
PioneerLandSurvey@gmail.com
PioneerLandServices.com
906 Freeman Road
Liberty S.C. 29657
(864) 231-6820
Map # 20354As_Built
Field Crew SG, NS
Drawn By SG
Vicinity Map
Oconee County
South Carolina
SITE
Approximate Building Location
Proposed Road
Gravel
Concrete Pad
Mag Nail at End of Pavement
1/2" Rebar
N03°34'01"W 99.05'
TMS# 150-00-01-100
Ratliff, Frances J. et al
Deed 1941 pg. 304
Plat P-39 pg. 61
Edge of Pavement
Edge of Pavement is Right of Way
N53°35'19"E 234.06' Total
140.73'
35.3'
Ellenburg Road Prescriptive R/W
(As per Oconee County Roads and Bridges)
Back of Ditch/County Maintained
804' MSL Contour as per Plat B-291 pg. 1 by CBS Surveying and Mapping, Inc. doted July 21, 2013.
804' MSL Contour at Date of Survey
S38°07'42"W 384.79'
Area of Dispute
Concrete Drive
Gravel Drive
93.32'
N28°17'49"W 24.17'
1" Pipe
Mag Nail
LINE | BEARING | DISTANCE
L1 | N54°54'41"E | 56.82'
Legend
(New) (Found)
1/2" Rod/Rebar
Mag Nail
Computed Pont
Telephone Pedestal
Utility Pole
Scale 1" = 20'
Lake Keowee
Duke Energy Boundory
to the 804' MSL Contour
Flood Easement to the
810' MSL Contour.
NOTES:
- TMS# 150-00-01-459
- Reference Deed 1695 pg. 87
- Reference Plat B-291 pg. 1
North Reference: SC GPS Grid 3900
Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject property: easements, other than possible easements that were visible at the time of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, and any other facts that an accurate and current title search may disclose.
This survey does not purport to create new access, right of ways, easements, roads, drives, and/or others of this nature, unless noted as *New. Depictions of aforesaid information are obtained from existing records as referenced heron
"I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown."
William C. Hutchins P.L.S. No 29117
Exhibit 1
Exhibit Survey
and Certification of
Ellenburg Road
Variance Request
Date: August 26, 2021

Exhibit 2
John's Marine
&
High Falls Boat Rental
Arrowhead Point
Exhibit 2




Graphics 1-4

(3)

RIDGEWATER ENGINEERING & SURVEYING
PO BOX 806
ANDERSON, SC 29622
(864) 226-0900
RIDGEWATERENG.COM

Arrowhead Point

Oconee County, South Carolina

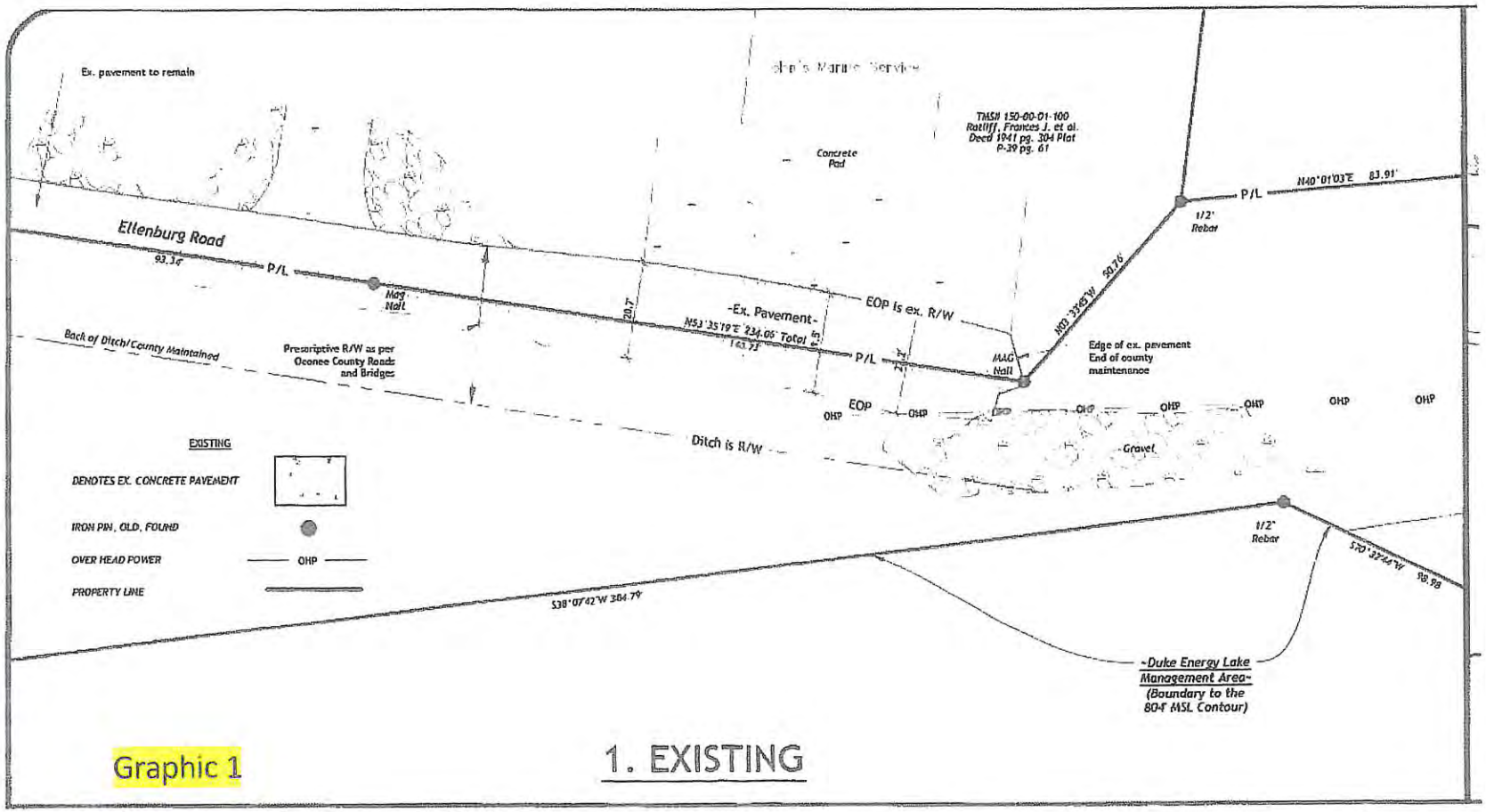
DRAWN BY: ROC
CHECKED: JWW
JOB NUMBER: 21286

| REV # | DATE | COMMENT |
|---|---|---|
| 0 | 11.24.21 | ISSUE FOR REVIEW |
| 1 | 12.29.21 | PLANNING COMMISSION MTG |

SHEET

Variance Request

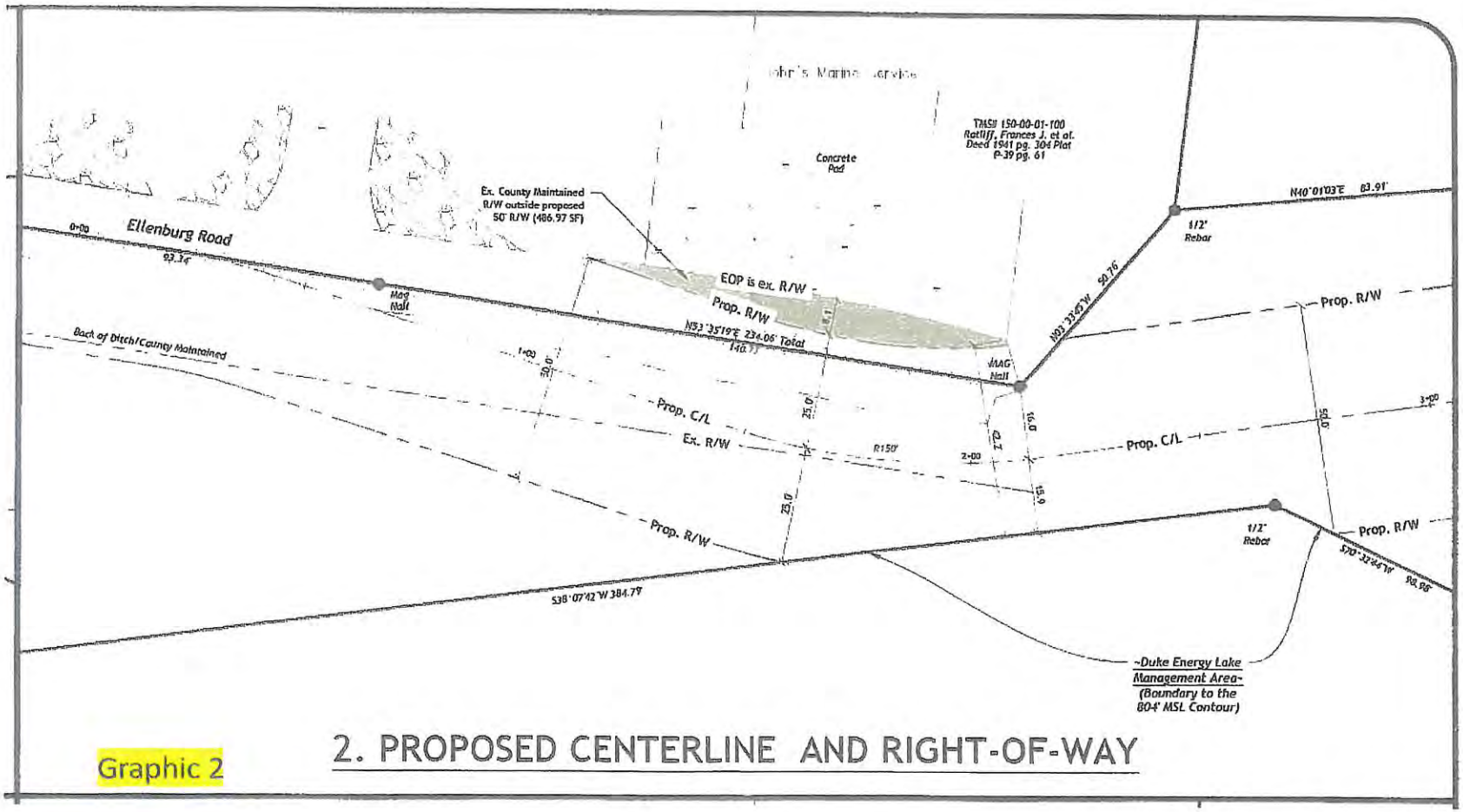
C - 2




Graphic 1

1. EXISTING

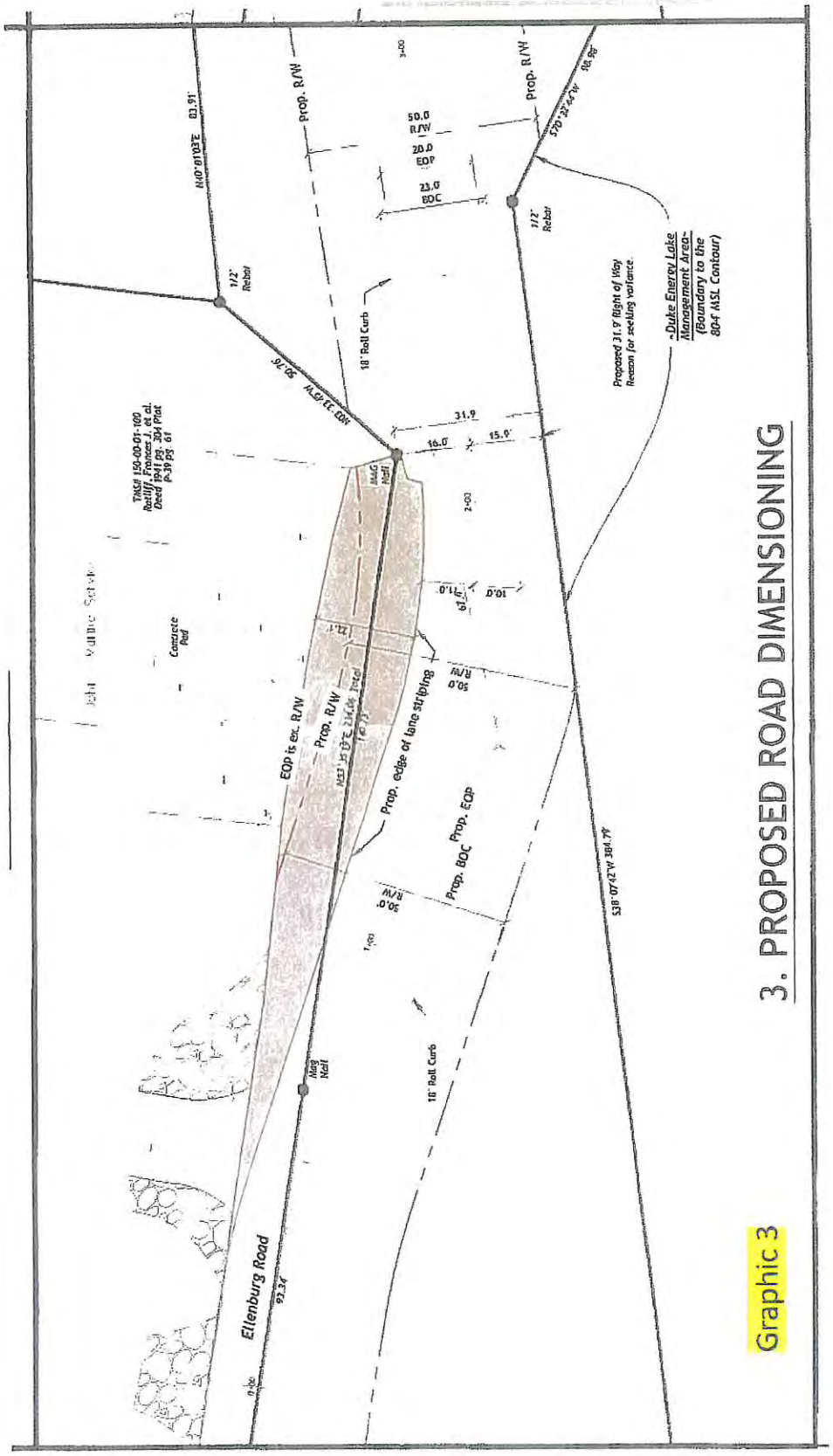
(4)



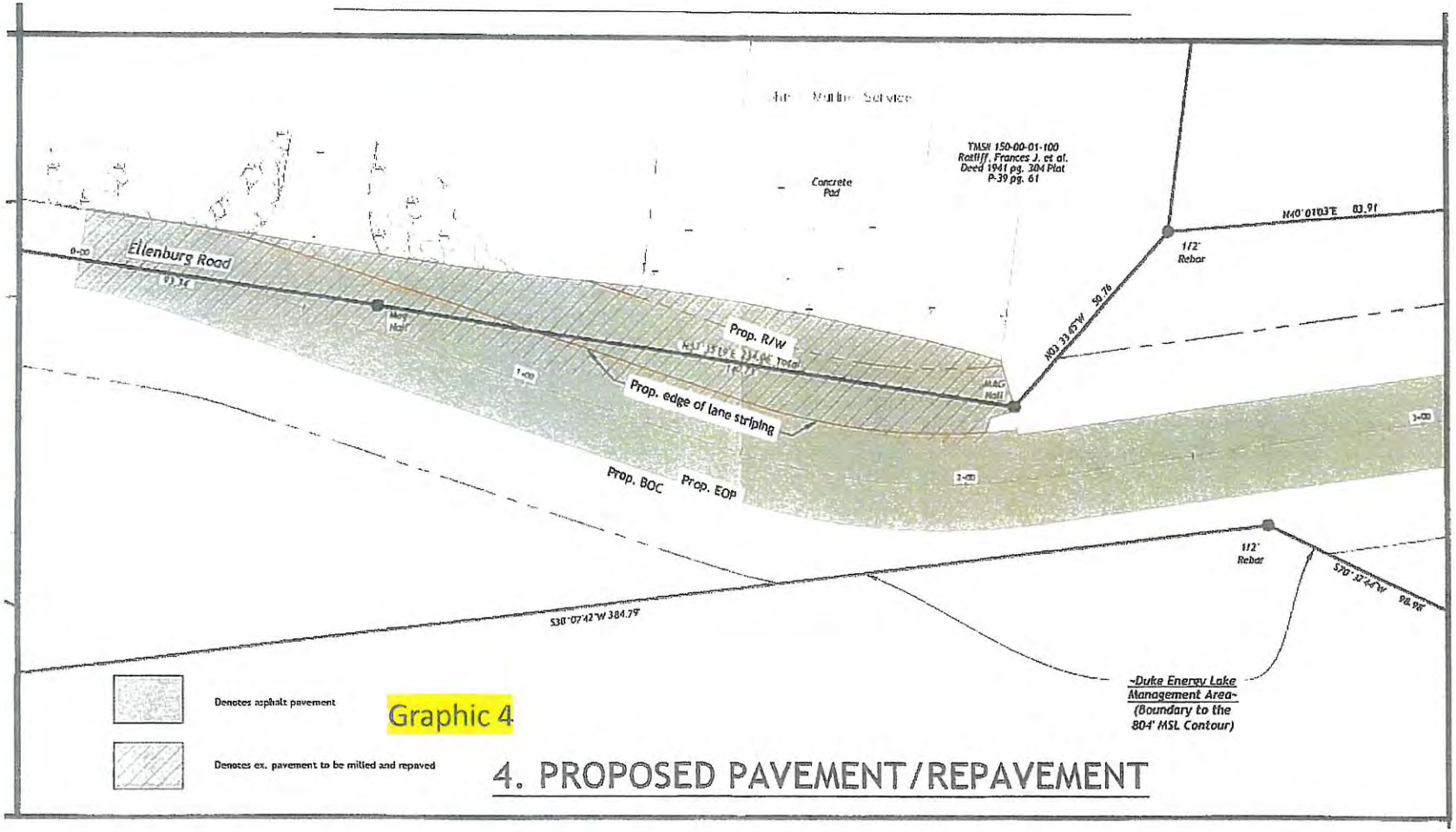

Graphic 2

## 2. PROPOSED CENTERLINE AND RIGHT-OF-WAY

(5)


3. PROPOSED ROAD DIMENSIONING
Graphic 3
Ellenburg Road
Prop. R/W
Prop. edge of lane striping
Prop. EOP
Prop. BOC
EOP is ex. R/W
50.0 R/W
20.0 EOP
23.0 BOC
10' Roll Curb
16' Roll Curb
1/2" Rebar
MAG Nail
Concrete Pad
Proposed 31.9' Right of Way Reason for seeking variance
--Duke Energy Lake Management Area-- (Boundary to the 804 MSL Contour)
TMS# 150-00-01-100 Ratliff, Frances J. et al. Deed 1941 PG 384 Plat P-39 PG 61
N40°01'03"E 83.91'
S70°23'44"W 168.88'
S38°07'42"W 384.79'
N69°33'45"W 90.76'
31.9
16.0
15.0'
97.34'

(9)


TMS# 150-00-01-100
Ratliff, Frances J. et al.
Deed 1941 pg. 304 Plat
P-39 pg. 61
Concrete
Pad
Ellenburg Road
Prop. R/W
Prop. edge of lane striping
Prop. BOC
Prop. EOP
1/2"
Rebar
N40°01'03"E 83.91
N03°33'45"W 50.76
S30°07'42"W 384.79'
S70°37'44"W 98.98'
-Duke Energy Lake
Management Area-
(Boundary to the
804' MSL Contour)
Denotes asphalt pavement
Denotes ex. pavement to be milled and repaved
Graphic 4
4. PROPOSED PAVEMENT/REPAVEMENT

(7)

Lake Keowee
REAL ESTATE

896 N. Walnut Street, Seneca, SC 29678

• 864.886.0098 • Fax 864.886.0075

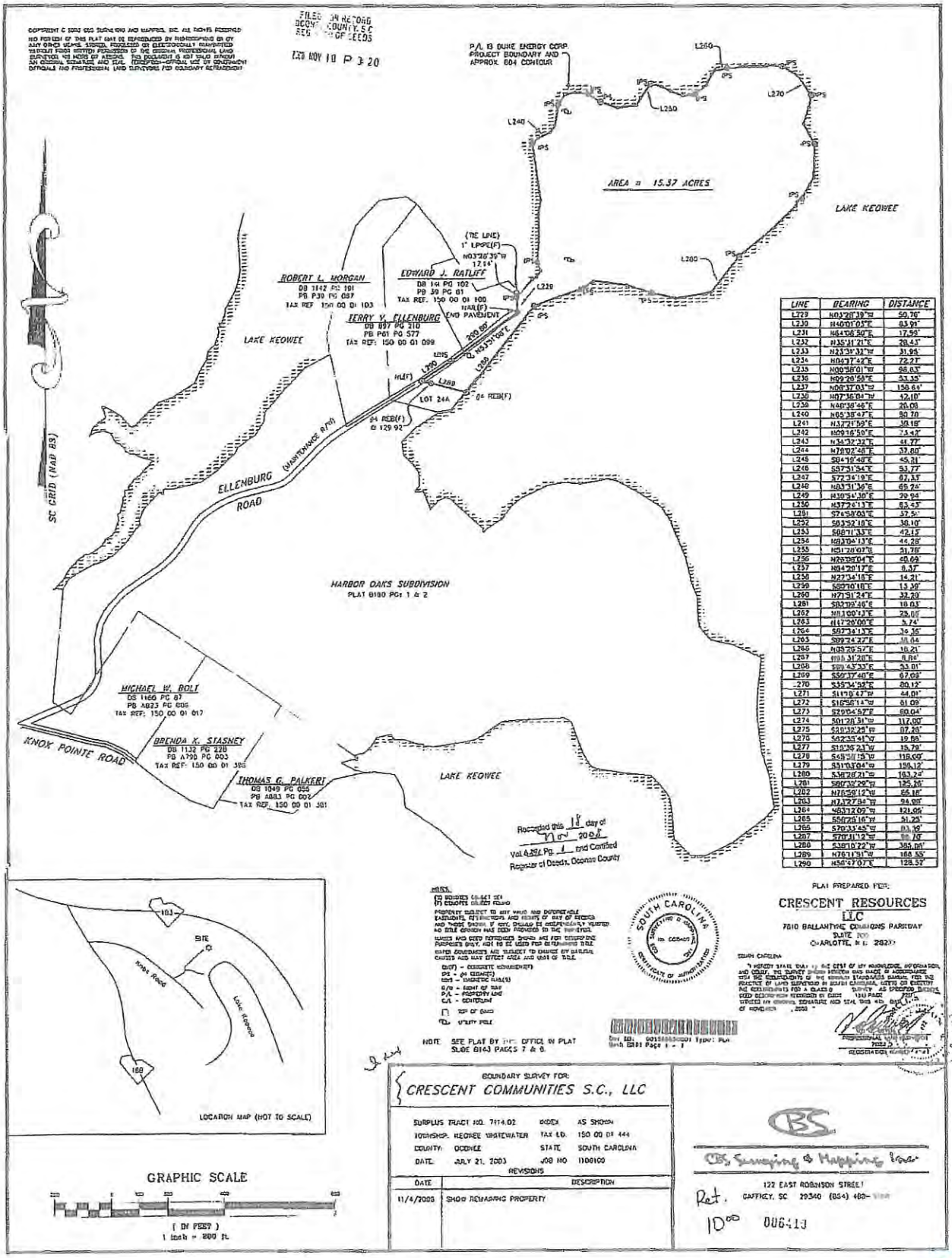
To Whom It May Concern,

I, John Hamrick, am the owner of this property located at the end of Ellenburg Road, Tax Map # 150-00-01-459. I am aware Andy Lee is working to get a variance for this property. I am in full support and appreciate any consideration given.

Thank you,

John Hamrick

D




| LINE | BEARING | DISTANCE |
|---|---|---|
| L229 | N03°20'39"W | 50.76' |
| L230 | N40°01'05"E | 83.91' |
| L231 | N64°06'50"E | 17.56' |
| L232 | N35°11'21"E | 28.41' |
| L233 | N23°39'32"W | 31.95' |
| L234 | N06°37'42"E | 72.27' |
| L235 | N00°58'01"W | 96.63' |
| L236 | N09°20'58"E | 53.35' |
| L237 | N08°37'03"W | 150.64' |
| L238 | N07°16'04"W | 42.10' |
| L239 | N48°38'48"E | 20.08' |
| L240 | N65°38'47"E | 50.70' |
| L241 | N12°21'59"E | 30.18' |
| L242 | N09°16'50"E | 75.42' |
| L243 | N34°32'32"E | 41.77' |
| L244 | N79°02'48"E | 37.80' |
| L245 | S04°18'48"E | 45.21' |
| L246 | S07°31'34"E | 53.77' |
| L247 | S72°34'19"E | 67.33' |
| L248 | N03°31'36"E | 65.26' |
| L249 | N10°54'30"E | 70.94' |
| L250 | N37°26'13"E | 83.43' |
| L251 | S74°58'03"E | 57.5' |
| L252 | S83°52'18"E | 38.10' |
| L253 | S68°11'33"E | 42.12' |
| L254 | N89°04'13"E | 46.28' |
| L255 | N51°28'03"E | 51.76' |
| L256 | N26°58'04"E | 40.69' |
| L257 | N84°20'17"E | 8.37' |
| L258 | N27°34'18"E | 14.21' |
| L259 | S60°10'18"E | 13.38' |
| L260 | N71°51'24"E | 32.20' |
| L261 | S02°09'46"E | 18.03' |
| L262 | N81°00'13"E | 25.08' |
| L263 | N17°26'00"E | 5.74' |
| L264 | S07°34'13"E | 36.35' |
| L265 | S09°24'27"E | 38.64' |
| L266 | N28°28'52"E | 10.21' |
| L267 | N89°31'26"E | 8.86' |
| L268 | S89°43'33"E | 53.01' |
| L269 | S50°37'40"E | 97.09' |
| L270 | S35°34'58"E | 80.12' |
| L271 | S11°19'47"W | 64.01' |
| L272 | S16°56'11"W | 91.08' |
| L273 | S29°04'57"E | 60.04' |
| L274 | S01°26'31"W | 117.00' |
| L275 | S18°32'28"W | 87.20' |
| L276 | S62°35'41"W | 19.86' |
| L277 | S18°26'23"W | 15.79' |
| L278 | S45°21'15"W | 118.00' |
| L279 | S31°58'04"W | 156.12' |
| L280 | S34°26'21"W | 183.24' |
| L281 | S60°32'29"W | 125.26' |
| L282 | N76°59'12"W | 65.18' |
| L283 | N73°27'34"W | 94.08' |
| L284 | N83°12'02"W | 121.05' |
| L285 | S56°26'16"W | 51.25' |
| L286 | S70°33'45"W | 83.16' |
| L287 | S70°31'12"W | 98.78' |
| L288 | S38°10'22"W | 385.04' |
| L289 | N76°11'31"W | 188.55' |
| L290 | N56°27'07"E | 128.52' |

Gmail

Andy Lee <andyonkeowee@gmail.com>

# FW: Ellenburg Road - BZA hearing

2 messages

**James Coley** <jcoley@oconeesc.com> Mon, Nov 29, 2021 at 12:13 PM
To: Wesley White <wesley@ridgewatereng.com>, Andy Lee <andyonkeowee@gmail.com>

For your records.

Thanks,

**From:** Kyle Reid
**Sent:** Monday, November 29, 2021 9:58 AM
**To:** James Coley <jcoley@oconeesc.com>
**Cc:** David Root <droot@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>
**Subject:** RE: Ellenburg Road - BZA hearing

James,

Here are the bullets from my conversation with the developer and his engineers concerning the development at the end of Ellenburg Rd. (these are not commentary on the variance requested for the BZA and the below was based on hypotheticals as no plan was presented):

- The developer asked about where Ellenburg Rd stops being county maintained. I told them it was the end of the asphalt and that we did not have deeded right-of-way as the road is maintained by prescriptive easement. I also showed him what we have been maintaining as the extent of our right-of-way.
- They asked about upgrading the road and told me getting right-of-way from the adjacent property owner would likely be difficult. They asked about being able to place the road entirely on their property with a reduced right-of-way than the 50' standard required by the ordinance. I told them that any variance from the road standards would have to be heard by the BZA.
- They asked if there was anything additional that they would need to consider. I told them without a sketch plan it would be hard to hit all the points, but with a subdivision more than 10 lots there would have to be a traffic impact study for Ellenburg Rd that would need to be done at the preliminary plat phase along with an encroachment permit to tie onto the end of the county maintained portion of Ellenburg Rd.
- They asked me about the new road in the development becoming a county maintained road. I told them that the road would need to meet all county standards and have an approved turn around.
- They asked me about the being able to put a gate on the road. I told them it could not be a county maintained road if there was a gate.

As for the proposed variance from the road standards, I would not see an appreciable impact for us to maintain the road because of the fact that our road would terminate at the area with a narrowed right-of-way. They would have to grant us right-of-way in the area they are proposing to relocate the road which would enhance our ability to maintain it. The only other question I would have is for them to show the ability to get the road, shoulders, drainage, and utilities in the proposed narrowed right-of-way.

10

Thank you,

W. Kyle Reid

Assistant Director of Public Works

Oconee County Roads & Bridges

15022 Wells Hwy  Seneca, SC 29678

Phone: (864) 886-1072

Fax: (864) 886-1071

CONFIDENTIALITY NOTICE: All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA).

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential, proprietary, and/or privileged information protected by law. If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.

**From:** James Coley
**Sent:** Tuesday, November 23, 2021 1:37 PM
**To:** David Root <droot@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>; Kyle Reid <kreid@oconeesc.com>
**Subject:** RE: Ellenburg Road - BZA hearing

Kyle,

Can you please write up notes for your meeting with the developer, and how their proposal impacts roads and bridges, and your site meeting with them? I will incorporate your materials into a report to the board with the staff recommendations.

Have a great thanksgiving.

Thanks,

James Coley

**From:** David Root
**Sent:** Monday, November 22, 2021 12:53 PM
**To:** James Coley <jcoley@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>; Kyle Reid

<kreid@oconeesc.com>
**Subject:** Ellenburg Road - BZA hearing

Making sure you all had this section in mind also:

**Sec. 26-8. - Variance from road standards.**

(a) Any variance from these road standards shall be consistent with the intent of this article, and shall be approved in writing by the board of zoning appeals. Any person or entity requesting a variance from road standards shall submit a written request for a variance to the planning director of the county. A variance can only be granted for actions to take place in the future. No variance may be granted for past actions.

(b) Prior to scheduling a variance hearing before the board of zoning appeals, the person or entity requesting said variance shall work with the county planning department and the county road department in an effort to eliminate or minimize the need for a variance. After reasonable efforts and no other solution can be reached, a hearing shall be scheduled before the board of zoning appeals. The county staff shall submit written reports to the board of zoning appeals setting forth the county regulation in question, the efforts made to remedy the situation, and a recommendation setting forth the county's position regarding the variance. These written reports shall be submitted to the person or entity requesting the variance at least five days before the variance hearing.

(c) Notice of the variance hearing shall be provided by first-class mail to the person or entity requesting the variance at least 15 days prior to the hearing. Notice of the hearing shall also be published in a newspaper of general circulation in the county at least 15 days before the hearing.

(d) Any party may be represented by counsel. Any person or entity that would be directly impacted by the granting or denial of the variance may participate as a party in the hearing, provided notice of intent is submitted in writing to planning department at least seven days prior to the hearing. The planning department shall immediately notify all other parties of the new party's participation. The county may support or oppose the variance request or be neutral.

(e) The board shall make the initial determination concerning the variance request and may consider any and all evidence it deems relevant concerning the variance issue. The paramount issue for all variance requests shall be the reasonable safety of the road under the proposed circumstances. If the board concludes that a safe road can be constructed without strict application of the regulations set forth in this article or other county ordinances and policies, the board may then consider issues such as the cost of right-of-way acquisition, placement of utilities, and unusual circumstances in determining whether to grant a variance. The board should use reasonable discretion in its decision making.

(f) A person or entity whose request for a variance has been denied by the board may appeal the board's decision to the transportation committee of the county council.

James and Vivian – do you all need anything from me or Kyle prior to the hearing?

– David

David A. Root

Oconee County Attorney

415 South Pine Street

Walhalla SC 29691

Ph. 864-364-5332

*Attorney client / work product protections reserved*

CONFIDENTIALITY NOTICE: All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA).

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential, proprietary, and/or privileged information protected by law. If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.

Andy Lee <andyonkeowee@gmail.com> Mon, Nov 29, 2021 at 12:43 PM
Reply-To: andyonkeowee@gmail.com
To: Adam Chapman <adamcorychapman@gmail.com>

[Quoted text hidden]

**2 attachments**

image001.jpg
6K

image001.jpg
6K

## Variance Criteria Overview

General criteria for granting a variance. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

a) *There are extraordinary and exceptional conditions pertaining to a particular piece of property.*

**The parcel itself is a peninsula, it's bounded by water on all sides with exception of the center of the county road as a boundary. The peninsula is narrow in a small portion of the parcel and is unique in that the property line is the center of the road and does not have it's own right of way. There is only access easement to the parcel. These conditions are extraordinary and exceptional because of the limitations created by geography and topography within this parcel. The way a parcel of land lays, the geography, the topography are all acceptable reasons for granting a variance.**

b) *These conditions do not generally apply to other property in the vicinity.*

**In the geographic vicinity of this piece of property most roads have a 50 foot right of way because they are not geographically constrained. This property is bounded by a body of water. Most parcels in the vicinity are not bound by the water on both sides. Because of the unique geography of this parcel, meeting the current road ordinance goes beyond creating an unnecessary hardship and instead creates only impossibility of use. This impossibility creates a scenario which meets the criteria for granting a variance.**

(11)

c) *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

**Without granting this variance to the roads ordinance the application of the ordinance will unreasonably restrict the use of the property. The property was purchased prior to this ordinance being adopted and if you will reference the Deed Restrictions for the parcel you will see that these restrictions are designed in mind with an end use for single-family residential development which was and still remains the intent behind this purchase. The developments in the vicinity of this property have larger homesites and larger homes. The application of this ordinance effectively prohibits building like kind or similar developments for which this property was purchased for, as per the deed.**

d) *The authorization of a variance will not be substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.*

1) **The proposed improvement will relocate the existing edge of county pavement, as shown on exhibit 2, to provide John's Marine an additional 22 feet of area to maneuver, outside of the County maintained roadway.**
2) **We will extend his current driveway to meet the new roadway so that it is then contiguous to his drive and ramp, causing no disturbance in his business use.**
3) **Probably most helpful to improve current conditions for his operation is the installation of a cul-de-sac at the termination of the county road. This would be located 100% within the boundaries of our parcel, as you can see on Graphic 2 and does not encroach onto his property. John's Marine, his customer base, and**

the delivery truck drivers will be able to utilize this space to turn around trucks and trailered boats. John's Marine is currently using the county road as a parking lot and to turn around delivery trucks according to himself and what has been submitted by the public. Granting this variance would alleviate that current hardship by expanding the paved area and providing a paved cul-de-sac that is built to accommodate a circling school bus or fire truck. This should effectively eliminate the need for Fedex/UPS truck to turn around in adjacent owners driveways, road shoulders, or have a need to block the road. This will certainly benefit him and his customers to be able to turn around there.

4) We are improving the affected area an ageing county road to current county specifications, an improvement to the current conditions of the roadway. This improvement is at no cost to John's Marine, the neighbors, or to the taxpayers.

5) 19 more homesites also provides the opportunity for 19 more boats to service at the most convenient of distances. John's Marine, who already has an excellent customer base and strong reputation in our community as a top mechanic, will have a slightly expanded customer base in the community if he chooses to take on new clientele. Also, the impact of construction vehicles traveling the road way into the development is for a limited window of time while homes are being built.

William Anderson "Andy" Lee

As an Oconee County native Andy is a 5th generation builder and developer. After graduating from Walhalla High School and a tour of service in the United States Navy he returned to Oconee and has worked in construction and development. He is also a local small businessman having purchased the brokerage in 2011 after serving as construction manager for the firm 5+ years prior. Andy has developed over 40 Lake Keowee communities and successfully marketed and sold these homesites through Lake Keowee Real Estate.

Reah Land Smith

Also an Oconee County native, Reah has been with the Lake Keowee Real Estate since 2013 and in the real estate industry since 2010. Reah played an integral role in the development, marketing, and sales of the last 8 developments in the brokerage. She currently resides on Lake Keowee.

12

James L. Ratliff, Owner/Operator
John's Marine Service
599 Ellenburg Road
Seneca, SC 29672
November, 22 2021

Jim Codner, Chairman
Oconee County Board of Zoning Appeals
415 South Pine Street
Walhalla, SC 29691

LETTER of OPPOSITION to Variance request application #VA 21-011 – TMS #150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672

Dear Mr. Codner,

My family and I are in opposition to the development of the proposed 19-home subdivision as presented on the sketch prepared by Ridgewater Engineering & Surveying. My father (John Ratliff) started John's Marine Service to serve boaters on Lake Keowee in 1972. In 1982, he opened his shop at S99 Ellenburg Road which borders TMS #150-00-01-459, the unaddressed parcel in the variance request application. I now own and operate the repair shop and my son is also learning the trade. The unaddressed parcel was purchased in 2008 by GLOBE, LLC & FARMES, LLC (agent John Hamrick). At that time, I was starting to operate the business because my father was diagnosed with Alzheimer's. John Hamrick approached my father multiple times attempting to negotiate with him to sell his property. Fortunately for my family, my father did not sell. Prior to my father passing away, I became the owner of the business to support my parents and my family. This business is our livelihood and the means of support for my family for approximately four decades at the present location.

The proposed development, which is titled "Arrowhead Point" on the sketch plan attached to the variance request application, will have a detrimental and crippling impact to my business and property. The area directly adjoining the 31.9-foot bottleneck is my repair shop. In addition to the bottleneck, yesterday a sketch was added to the meeting backup material. At first glance, it appeared that this will not hinder my business, however upon further examination, he is proposing to take part of my property for his much-needed county right-of-way. The sketch contains a proposed re-pavement and an added county right-of-way which will hinder access for me to utilize my property per Oconee County Code of Ordinance 26-7.f.1. This ordinance prohibits parking within 3-feet of the pavement. Traffic in this area will directly impact my ability to operate the marine service business. Customers typically deliver their boats by trailer and they routinely need assistance with backing and parking their boats. I routinely back boats from the front of my property multiple times daily. When pulling boats out on the ramp or maneuvering them on land, a wide turning radius is needed. We must use all of our property to make

the turn and back down the road into the shop or onto the ramp for lake-testing. Since we are on a dead-end road, there have been no issues with operation since the shop was built almost 40 years ago in 1982. Creating a bottleneck directly in this path with the size of the planned development will create a dangerous situation for my business and the public. Traffic from the residential and proposed rental homes will also remain a hazard, not only for my business and customers but also the surrounding public and neighbors walking and bicycling on Ellenburg Road. When the owner purchased this parcel in 2008, he was aware of the shop's existence and the impact to the public. This proposed variance will have a crippling impact on my customer's ability to deliver their boats for repair and service.

We also have a boat ramp to accommodate customers who don't own a trailer or have access to a trailer. We haul boats out of the lake using our ramp and our trailers for service and repairs. Disabled boats are often towed to our docks by water to have emergency repairs performed.

Beyond the boat service business that my father created and I have sustained, we perform various deeds for the good of the general public. Over the years, we rescued families who were lost or stranded on the lake. We assisted boaters who've had engine fires and those with sinking boats. Due to our shop's central location on Lake Keowee, it gives us quick access to assist distressed boaters. Our long-standing reputation in the community enables people to have us on "speed-dial" to handle emergency situations. Once while lake testing a boat, I was flagged to the county park for emergency response to a distressed family. I went closer and learned a person went under and did not resurface. I dove in the water and began an underwater search. After several free dives, I found the victim on the bottom of the lake and I pulled him to shore. Unfortunately, the outcome was not positive, and the individual did not survive. For my service, Oconee County honored me with recognition at a county council meeting for my emergency response (Proclamation P2012-06). I only wish it would have been for saving a life. The public good has been served by our business for almost 40 years and many boaters stand ready to give statements of support to its continued operation.

After obtaining the variance application #VA 21-011 via a Freedom of Information Act request and reviewing the applicant's response to the fourth question, it was disingenuous of the applicant to assert that "no detriment will be created to the adjacent uses or the public good" given that my boat service business is directly adjacent, has been in operation since 1982 and it is obvious that it will be impacted. As a former Crescent developer, the buyer of TMS #150-00-01-459 the unaddressed parcel, knew what he was purchasing and the detrimental impact it would have on my adjacent business, my livelihood, my family and the public. The unaddressed parcel was purchased with inadequate entry for the size of the planned development and the owner is now asking for a variance that will have a substantial detriment to me, the adjacent user, and a substantial detriment to the public good.

As the Zoning and Appeals Board evaluates the variance application #VA 21-011, below are our responses.

**Application Responses to Section 38-7.1:**
**Question 2:**
Are the circumstances affecting the subject property the result of actions by the applicant/owner?

**Response:**
The applicant/owner purchased this property knowing that the direct access to their parcel was much less than 31.9-foot width at its narrowest point. County maintenance on Ellenburg Road

has been established at 585 Ellenburg (adjacent property up the road from 599 Ellenburg Road) for decades. John's Marine has owned and maintained the property between 585 Ellenburg and the unaddressed parcel described as Arrowhead Point since the shop was built in 1982 as a private road. On July 31, 2021, we noticed construction activities were performed without our knowledge or consent to backfill portions of the property between 599 Ellenburg Road and the Lake Keowee full pond FERC boundary and possibly below the FERC boundary. We approached the vehicles to inquire as to who authorized this activity. Their response was that they didn't know and they produced no documentation. These activities appear to create the condition for seeking a variance for less footage than would otherwise be needed for the 50-foot county ordinance. Video evidence of the backfill activities is available upon request.

**Question 4:**
Will the proposed variance result in an activity that will not be of substantial detriment to the adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance?

**Response:**
Granting this variance will have a substantial detriment to the adjacent uses by John's Marine Service, the marine service customers, the general public, and the Ratliff family. These uses have been in place for over 40 years and are for the good of the public. The granting of this variance will in essence put John's Marine Service out of business. As aforementioned, for John's Marine to properly and safely service boats, a wide swath of land is necessary for boats to be maneuvered safely, stored on the property while being repaired and have access to the ramp for lake testing. Storage of disabled boats has been paramount to my business to enable John's Marine to diagnose and repair the issues. The central location of John's Marine on Lake Keowee has allowed me to be of service in emergent situations, where at a moment's notice, I can respond to people in distress in their boats on the lake. My son and I hope to continue to provide service for the next half of a century on Lake Keowee.

Granting this variance will also have a substantial detriment to the public good for safety reasons. Ellenburg Road is a quiet road without much car traffic and the surrounding community love and respect John's Marine. The unexpected increase in car traffic on Ellenburg Road from the size of the development that is being proposed will create safety issues for the surrounding property owners who are accustomed to walking their dogs, riding their bikes and have been for 40 years.

Of additional, significant concern is the potential fire safety hazards from a roadway not suitable to meet the size of the residential development that is being proposed. The small direct access will impact the ability of emergency vehicles for emergency response.

Obviously, if the variance is granted, the construction to expand the roadway will be very impactful to my business as it will be difficult to maneuver boats efficiently and safely and it will create a substantial business interruption.

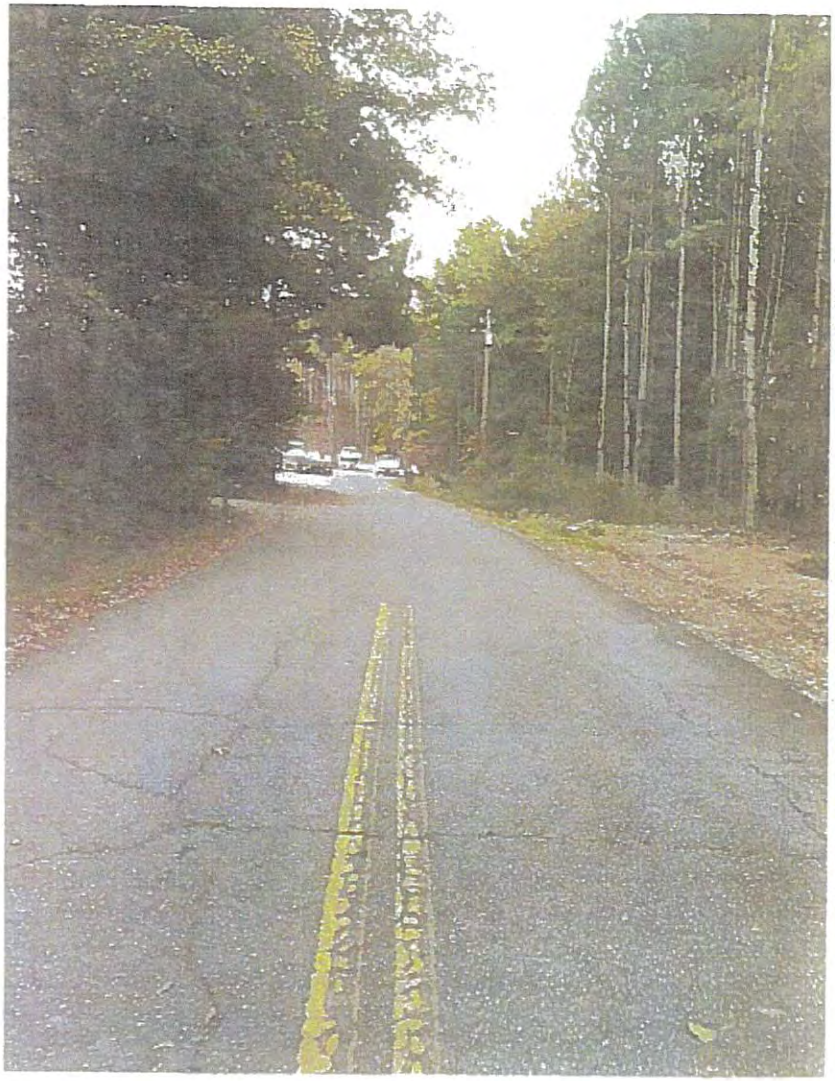
My family and I request the board deny Variance Request Application #VA 21-011 due to the impacts on my business, the good of the public, and my family. We desire to continue serving the public by owning and operating John's Marine as we have for the past 49 years, of which 40 years have been at its present location.

Sincerely,

James L. Ratliff
Owner/Operator John's Marine Service

Distribution:
Impacted property owners of 599 Ellenburg Road:
Frances J Ratliff
Sherri D Akers
Amy L Cawthon
Edward John Ratliff Jr.
James L Ratliff

Board of Zoning Representatives:
Gwen Fowler
Bill Gilster
Marty McKee
Tim Mays
John Eager
William Decker



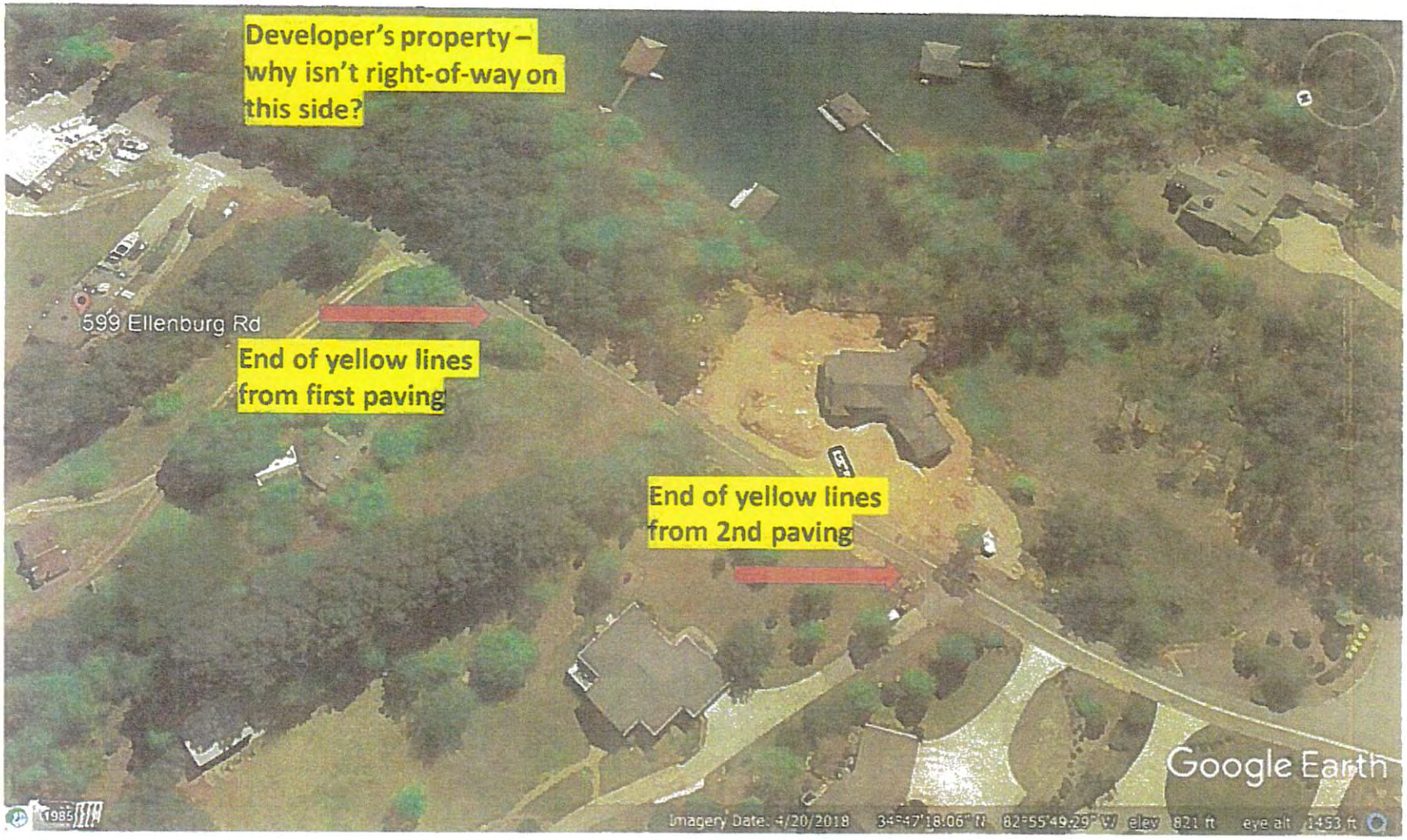
Ellenburg Road - 2021

Developer's property – Area
of proposed 18.1' Variance

4/2014
1935
2013
John's Marine Svc
2014 Aerial
599 Ellenburg Rd
Legend
599 Ellenburg Rd
End of yellow lines
Developer's property – why isn't right-of-way on this side?
N
Google Earth
100 ft

John's M ne Svc
2004 Aerial
Legend
599 Ellenburg Rd
End of yellow lines
Developer's property – why isn't right-of-way on this side?
Google Earth
100 ft
N

599 Ellenburg Rd
Legend
599 Ellenburg Rd
John's Marine Svc
2018 Aerial
Developer's property – why isn't right-of-way on this side?
End of yellow lines
Google Earth
200 ft
N


Developer's property – why isn't right-of-way on this side?
599 Ellenburg Rd
End of yellow lines from first paving
End of yellow lines from 2nd paving
Google Earth
Imagery Date: 4/20/2018 34°47'18.06" N 82°55'49.29" W elev 821 ft eye alt 1453 ft

**Vivian Kompier**

**From:** Rudy Carbone <rckc91@bellsouth.net>
**Sent:** Monday, November 22, 2021 11:24 AM
**To:** James Coley
**Subject:** Re: Property Zoning Variance

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Thank you for your attention regarding my request.
Rudolph Carbone
313 Shorewinds Ct
Seneca. SC. 29672

Sent from my iPad

On Nov 22, 2021, at 11:09 AM, James Coley wrote:

Thank you for your email concerning the variance. In order for your comment to be added to the review materials for the board, it must be signed. You may resubmit your comment to this email chain with your name, and it will be added to the documentation at the hearing.
Best regards,
*James Coley*
Director
Oconee County Planning and Zoning
415 S. Pine Street
Walhalla, SC 29691
Phone: (864) 638.4218
**CONFIDENTIALITY NOTICE:** *All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed, and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.*
*If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.*

**From:** rckc91 [mailto:rckc91@bellsouth.net]
**Sent:** Sunday, November 21, 2021 4:06 PM
**To:** Planning Info
**Subject:** Property Zoning Variance
**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

**To: County Board of Zoning Appeals**

I ask you to deny the zoning variance at the end of Ellenberg Road, Seneca. This variance would basically put John's Marine Service (serving Lake Keowee residents for 35 years) out of business. The reason being that this road variance would make it impossible for John's Marine to operate their business as is now done. There are many Lake Keowee property owners that do not have boat trailers because of the cost and the problem of where to park the unsightly trailers. At John's Marine, Keowee boat owners can bring their boats over to this business and have their boats pulled out of the water and receive full maintenance.

There is only one other Lake marine service on Lake Keowee located at the far south end of the lake. This facility is a long way to obtain boat repair and mainteuance for the heavily populated middle and north end residents of the lake. There are several marine maintenance companies that will come and do boat repairs at your boat but they are prohibited to change oil, etc at the dock because of lake pollution.

This closure would not only effect a long standing family busiuess but many boat owners who depend on this conveniently located establishment for their boat service. I ask that you deny or at least come up with some compromise arrangement that would accommodate all parties concerned. Perhaps a cud-da-sac could satisfy the community entry point and allow the marina to maneuver their boats in and out of their shop so maintenance could continue to be performed.

Thank you for your attention to this matter

A Lake Keowee Boat Owner

**Vivian Kompier**

---

**From:** Pamela Chambers <pgc1621@gmail.com>
**Sent:** Saturday, November 20, 2021 8:21 PM
**To:** Planning Info
**Subject:** Oppose variance

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I am opposed to the the variance that would allow deviation from the 50' road width.

**Vivian Kompier**

| | |
|---|---|
| **From:** | Elaine Chapa <elainemchapa@gmail.com> |
| **Sent:** | Sunday, November 21, 2021 5:08 PM |
| **To:** | Planning Info |
| **Subject:** | Variance for Ellenburg Rd |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I oppose the 50' road width variance request for this road. I do not want any adverse impact to the existing Marine business that exists now, as it is one of a very few boat up marine services on the lake.

Please don't allow the variance requested by this developer.

Elaine Chapa.
Oconee county resident.

Get Outlook for iOS

**Vivian Kompier**

| | |
|---|---|
| **From:** | Pamela Colden <coldrenpjc@gmail.com> |
| **Sent:** | Tuesday, November 23, 2021 12:17 PM |
| **To:** | James Coley |
| **Cc:** | a Coldren Gary; Doug Cooper |
| **Subject:** | Fwd: Variance request for Ellenburg Rd #VA 21-011 |
| **Attachments:** | 2021092095151957.jpg; IMG_8216 (1).jpg; IMG_8214 (1).jpg |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

As residents of Oconee County and Harbor Oaks, we emphatically agree with Doug Cooper's letter to you dated November 23, 2021, We live on Ellenburg Road and are very aware of the traffic and existing dangers. Several developments nearby are "walkers" and pass by daily. Many trucks, including many semi trucks, travel on Ellenburg Road daily to deliver to John's Marine, a business and good neighbor which is vital to Lake Keowee residents. Large trucks and cars pulling boats already have problems turning around at the end of the street. The requested variance will positively make matters worse! As it is now, we do not let our grandchildren ride their bikes or play near the entrance of our driveway. There are no sidewalks on Ellenburg Road. In fact, there are not even curbs! We have had incidents of trucks trying to turn around and driving over expensive landscaping.

We also question why a developer can get variances but residents do not.

This is not a case of "people on the lake do not want other people on the lake". This is about the safety of the current residents and many cars, trucks and people who travel on Ellenburg Road.

We are against the current proposed variance!

Sincerely,
Gary and Pam Coldren

---------- Forwarded message ---------
From: **Doug Cooper** <cooperd5908@gmail.com>
Date: Tue, Nov 23, 2021 at 10:13 AM
Subject: Variance request for Ellenburg Rd #VA 21-011
To: <jcoley@oconeesc.com>
Cc: Pam Coldren <coldrenpjc@gmail.com>, Don and Barbara Herriott <dherriot@aol.com>, Cindy Smoak <cindy.smoak@gmail.com>

I am currently the President of Harbor Oaks Home Owners Association and am writing this on behalf of our 37 lot community.

**We are strongly opposed to granting of this variance at the present time given the current state of the road and the already many safety issues we have.**

Harbor Oaks spent several thousand dollars last year altering the entrance at Rollingwood drive to enhance the safety of both Ellenburg Rd and Rollingwood Dr drivers and pedestrians. There is a lot more traffic on this road than most would imagine. Much of it John's Marine and delivery traffic. We have has several issues in the past and it is very much an issue given the developers current construction on upper Ellenburg Rd. When I discussed

Respectfully,

Doug Cooper
566 Ellenburg Rd
Seneca, SC 29672
843-819-3320

**Vivian Kompier**

---

**From:** Gary Crumbley <garycrumbley@yahoo.com>
**Sent:** Sunday, November 21, 2021 8:55 AM
**To:** Planning Info
**Subject:** Disapprove Variance adjacent request to John's Marine

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I would hate to see along time Family owned business suffer due to a developer trying to be greedy.

My family and friends have relied on John's for years to service our boats and would hate for that to change.

Thanks you for your consideration

Gary Crumbley

**Vivian Kompier**

**From:** David Schmidt <dhs3092@gmail.com>
**Sent:** Saturday, November 20, 2021 10:59 PM
**To:** Planning Info
**Subject:** Variance Request on Ellenburg Dr for proposed new subdivison

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I would like to formally ask that you do not acknowlege or accept a proposed variance to allow a new subdivsion at the expense and detriment of an established Oconee County business (Johns Marine Service). We have alway utilzed this establisment for our repair needs since moving to Oconee ourselves some thirty four years ago.

Unfortunately the developer made an investment in property that was not developable without a variance and should not be allowed this exception after the fact.

Additionally my concerns arise out of the fact in allowing such variance would indeed create a precedence that would open the floodgates for others to request similar variances throughout our beautiful county.

Please keep these items in mind as you consider the variance request and opt in favor of an exiting county businesses request to deny such variance.

Sincerely,

David Schmidt
864-304-4452

## Vivian Kompier

**From:** Steve Guthman <stguthman@banksouth.com>
**Sent:** Sunday, November 21, 2021 2:19 PM
**To:** Planning Info
**Cc:** johnsmarinesc@gmail.com
**Subject:** Zoning variance - affecting John's Marine Service

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Board Members,

I've lived on the lake 15 years and use John's marine on a regular basis to service my boat. Without Jimmy I'd be forced to find expensive alternatives. I do not own a boat trailer, and very few people I know own trailers. We absolutely rely on Jimmy's water access.

I understand development, and I understand growth. I do not understand the need to destroy a 3rd generation family-owned business.

I'm hoping you deny the variance request for the greater good.

Respectfully,

Steve Guthman, Production Partner
o: 864.990.4356 c: 770.634.0533
e: stguthman@banksouth.com f: 864.412.0648
w: www.sueannguthman.com
a: 105-A Ram Cat Alley, Seneca, SC 29678
NMLS # 690971 | MLO NMLS # 1966538
BankSouth MORTGAGE

Disclaimer

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication represents the originator's personal views and opinions, which do not necessarily reflect those of BankSouth. If you are not the original recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this email in error, and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you received this email in error, please immediately notify postmaster@banksouth.com.

**Vivian Kompier**

**From:** joan schmidt <joan3184@gmail.com>
**Sent:** Saturday, November 20, 2021 10:53 PM
**To:** Planning Info
**Subject:** Variance request on new subdivision

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To Whom It May Concern:
We are totally against the proposed variance being requested that will interfere with the operation of John's Marine Service on Ellenburg Road. We also live off Knox Road and have used John's Marine Service for 30 years. We have found them to be outstanding community members and business owners and we do not want to see an established Oconee business suffer due to the requested variance for an new subdivision.

Thanks for your consideration and hopefully protecting an established Oconee County Business.

Joan Schmidt
23053 McDonald Point Rd
Seneca, SC. 29672.
Sent from my iPad

**Vivian Kompier**

**From:** Donald Keller <kellerdonald@icloud.com>
**Sent:** Sunday, November 21, 2021 10:44 AM
**To:** Planning Info
**Subject:** Variance request Ellenburge rd Seneca

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To voters on board of zoning Oconee County. Nov 30 th. Please be advised
I am in opposition to the approval of this variance request. The reasons are both obvious and numerous.

Kind regards ,
Donald Keller

**Vivian Kompier**

**From:** Daniel McNew <dwmcnew318@gmail.com>
**Sent:** Tuesday, November 23, 2021 3:51 PM
**To:** James Coley
**Subject:** Variance Request. Location TMS# 150-00-01-459 Ellenburg Road, Seneca

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

As Harbor Oaks residence, we are opposed to the above variance request.

The reason we are opposed is the congestion and additional traffic that will occur as well as safety concerns on Ellenburg Road. In addition, John's Marina which has served this Lake Keowee area for 40 years would be adversely affected if 19 home sites were approved.

We understand that the property in question has every right to be developed; however, we suggest a density much less than 19 home sites be considered. This would eliminate the need for the variance request and reduce the traffic and safety concerns on Ellenburg Road.

Regards:

Dan and Carol McNew
151 Rollingwood Drive
Seneca, SC 29672

561-346-9692
dwmcnew318@gmail.com

**Vivian Kompier**

| | |
|---|---|
| **From:** | jaysavan@netzero.net |
| **Sent:** | Tuesday, November 23, 2021 8:34 AM |
| **To:** | Planning Info |
| **Cc:** | ksavan@hotmail.com |
| **Subject:** | Variance request application #VA 21-011 |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Hello,
We are writing in strong opposition to the referenced variance request. The 50' right-of-way in County ordinance exists for a reason and an 18.9' variance would amount to a completely unacceptable 37.8% exception. Setting aside the various negative implications for local neighborhoods and business - namely, John's Marine Service - this deviation from County ordinance is unacceptable on its face.
We will be in attendance at the County Board of Zoning Appeals meeting on November 30, but want to register our strong opposition to this variance request.
Thank you,
Karen M Savan
William Jay Savan
103 Rollingwood Drive, Seneca SC 29672
314 603 0595 mobile
jaysavan@netzero.net

---

Top News - Sponsored By Newser

- Defense Lawyer's Remark on Arbery's Toenails Spurs Outrage
- Kyle Rittenhouse Has a Bone to Pick With Biden
- 5 Cops Indicted on Charges of Murdering Man

**Vivian Kompier**

**From:** Mark Taylor <mataylorusa@hotmail.com>
**Sent:** Tuesday, November 23, 2021 9:02 AM
**To:** Planning Info
**Subject:** Variance Request Opposition - Ellenburg Rd.

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern,

This purpose of this email is to express my strong objection to the variance request near John's Marine Service at 599 Ellenburg Rd., Seneca, SC 29672. I will not be able to attend the appeals meeting on 11/30, so please accept this email as a strong voice against this variance.

The property in question for the proposed 19 home development will already have access without significantly increasing the traffic congestion and "bottlenecking" that will occur with the 19 extra homes. This additional, unnecessary traffic on Ellenburg Rd. will also have a severe, negative effect on John's Marine Service, which I have used for years.

What makes Jimmy Ratliff and his business unique is that I can pull up to his shop by water. Jimmy is then able to trailer my boat for me and pull it into his shop; all of which he can do safely b/c he is at the DEAD END of Ellenburg Rd. It is my understanding that the vast majority of his customers do the exact same thing that I do - arrive by water and utilize Jimmy's trailering service.

If this variance is approved, it will have an extreme negative impact on Jimmy Ratliff's business, one of which has been part of the Seneca community for three generations. Additionally, it will create a very dangerous traffic situation with so much thru traffic trying to access these 19 homes from an access point that is not a "must-have" but just a "nice-to-have" (Ellenburg Rd.).

I urge you to please to deny this variance request for the overall good of the community that surrounds that area, and most importantly, to preserve the current operation of John's Marine Service, which the entire lake has benefitted from for over 30 years.

I am not against allowing the developer to make use of recently acquired property; there is just no reason for that developer to severely damage and/or possibly shut down a family business and its livelihood in the process....all for an ADDITIONAL , unnecessary entrance to his subdivision.

Thank you for your careful consideration in this matter.

Sincerely,

Mark Taylor
209 New Timber Trail
Seneca, SC 29672

## Vivian Kompier

**From:** Van Laeke <van24@att.net>
**Sent:** Monday, November 22, 2021 1:43 PM
**To:** James Coley
**Subject:** RE: REQUEST FOR ZONING VARIANCE AT END OF ELLENBERG ROAD, SENECA

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

My name is Kenneth Van Laeke, 141 Northshores Drive, Seneca 29672-0445. Phone 864 886-1217. Have been a resident of Oconee County for thirty years. My comments reflect the opinions of several Waterside Crossing residents. Thank you for your consideration.

Ken Van Laeke

---

**From:** James Coley [mailto:jcoley@oconeesc.com]
**Sent:** Monday, November 22, 2021 11:13 AM
**To:** 'Van Laeke'; Planning Info
**Cc:** johnsmarine@gmail.com
**Subject:** RE: REQUEST FOR ZONING VARIANCE AT END OF ELLENBERG ROAD, SENECA

Thank you for your email concerning the variance. In order for your comment to be added to the review materials for the board, it must be signed. You may resubmit your comment to this email chain with your name, and it will be added to the documentation at the hearing.

Best regards,

*James Coley*
Director
Oconee County Planning and Zoning
415 S. Pine Street
Walhalla, SC 29691
Phone: (864) 638.4218

**CONFIDENTIALITY NOTICE:** *All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed, and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.*

*If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.*

**From:** Van Laeke [mailto:van24@att.net]
**Sent:** Sunday, November 21, 2021 9:46 AM
**To:** Planning Info
**Cc:** johnsmarine@gmail.com
**Subject:** REQUEST FOR ZONING VARIANCE AT END OF ELLENBERG ROAD, SENECA

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

**To: County Board of Zoning Appeals**

**We ask you to deny the zoning variance at the end of Ellenberg Road, Seneca. This variance would basically put John's Marine Service (serving Lake Keowee residents for 35 years) out of business. The reason being that this road variance would make it impossible for John's Marine to operate their business as is now done. There are many Lake Keowee property owners that do not have boat trailers because of the cost and the problem of where to park the unsightly trailers. At John's Marine, Keowee boat owners can bring their boats over to this business and have their boats pulled out of the water and receive full maintenance.**

**There is only one other Lake marine service on Lake Keowee located at the far south end of the lake. This facility is a long way to obtain boat repair and maintenance for the heavily populated middle and north end residents of the lake. There are several marine maintenance companies that will come and do boat repairs at your boat but they are prohibited to change oil, etc at the dock because of lake pollution.**

**A separate issue, we believe, is building 19 homes in this constricted area at the end of Ellenberg Road will be a nightmare for emergency vehicles.**

**Sincerely,**

**Concerned Waterside Crossing Residents**

**Vivian Kompier**

| | |
|---|---|
| **From:** | Gail White <scflgirl61@gmail.com> |
| **Sent:** | Saturday, November 20, 2021 7:53 PM |
| **To:** | Planning Info |
| **Subject:** | Variance request for property on Ellenburg Rd |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

We are writing in regards to the variance request at Ellenburg Rd. We are against this request as it will be harmful to the business located at 599 Ellenburg and this area does not need another subdivision on this road. The road is too narrow and adding another 19 home will be irresponsible on behalf of our county council.

Please donor allow this to happen. Thank you for your understanding in this matter.

Stanley and Gail White
23057 McDonald Point Rd
Seneca, SC

**Vivian Kompier**

**From:** Vince Wilson <daddyo2373@gmail.com>
**Sent:** Saturday, November 20, 2021 8:14 PM
**To:** Planning Info
**Subject:** Zoning variance

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Dear
I strongly oppose the variance request for more than 50 foot road width for property located beside John's Marine.
This is a family owned business that is vital to their family and is vital for Oconee County.
The proposed subdivision needs to adhere to the given law as it is and leave this family business alone.
Sincerely,
Vince Wilson

**Vivian Kompier**

| | |
|---|---|
| **From:** | Sherri Akers <sherridakers@yahoo.com> |
| **Sent:** | Friday, November 26, 2021 2:42 PM |
| **To:** | Planning Info |
| **Subject:** | Vote No to Varience |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I wanted to voice my opposition to the variance at 599 Ellenburg Rd. First of all, if this pointe is developed, boaters will lose access to sandy beaches. Also, Ellenburg Road cannot handle an increase in traffic. John's Marine Service is a commercial business that has served this community 50 years next year. Over the last 30 years traffic has steadily increased with new subdivisions and deliveries. Many customers come by water and this is invaluable. There is no where else that is lakefront that John's Marine could relocate to without having a detrimental effect on their business. I think the lake can survive without 19 more homes at the expense of a small, family run business. Don't you? So please vote NO!
Sincerely,
Sherri Crisp
Sent from Yahoo Mail for iPhone

**Vivian Kompier**

**From:** James Coley
**Sent:** Monday, November 29, 2021 9:43 AM
**To:** 'cawthonamy@yahoo.com'
**Subject:** -RE: Variance Request #VA 21-011

Ms. Cawthon,

Thank you for your email. Your statement will be added to the backup material which will be given to the board.

Best regards,

*James Coley*
Director
Oconee County Planning and Zoning
415 S. Pine Street
Walhalla, SC 29691
Phone: (864) 638.4218

**CONFIDENTIALITY NOTICE:** *All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed, and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.*
*If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.*

**From:** cawthonamy@yahoo.com [mailto:cawthonamy@yahoo.com]
**Sent:** Sunday, November 28, 2021 7:46 PM
**To:** Planning Info
**Subject:** Variance Request #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern:

I am voicing my opposition to the variance at the end of 599 Ellenburg Rd, Seneca, SC. I grew up on this road and was here when there weren't any subdivisions and only 4 homes at the end of this road. Over the last 15 years traffic has steadily increased as more development has occurred. Ellenburg Rd is hardly wide enough to handle the traffic now, much less adding 19 more homes. Where the entrance to the development will be is right in front of John's Marine Service, where my Dad built his business and my brother now owns. He specifically chose this location because it was rural and would have little impact for residents. For 40 years my Dad, then my brother, have grown this business at this location. By putting an entrance to a subdivision right at their front door, it will not only hinder the accessibility for customers, but cause a traffic jam that will also be a safety issue. Fire and emergency vehicles will not readily be able to access the entrance to the development with less than a 50 foot road. There will be no way to go around or have traffic move over. I'm sure the owner & or developer knew this when he approached my Dad before he ever bought this property, trying to buy him out. It seems to me he always knew he needed our property to access and develop this pointe. Since he couldn't buy it, now greed is the motivating factor behind this variance. Their attitude of "there is a way around everything " is evident in this matter. I want my family business to be a 4th and 5th generation owned business that my son or grandson/granddaughter can choose to make their livelihood and not worry about being run over when backing up a boat or walking to their car.
John's Marine Service is a commercial business that would significantly suffer with this variance. Although the owner & or developer stated there were NOT any commercial businesses that would be negatively affected in their application is simply a lie. I'm sure the owner & or developer is fully aware of this as the developer has been a long standing customer of John's Marine. This is why I'm opposed to this variance and why I hope you'll vote NO!
Sincerely,
Amy Cawthon

Sent from Yahoo Mail on Android

**Vivian Kompier**

**From:** islandspenders@aol.com
**Sent:** Wednesday, November 24, 2021 12:55 PM
**To:** Planning Info
**Subject:** John's Marine

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Please do not approve the variance that will extremely hinder the fantastic service at John's marine. To change things that will hinder or even put John's Marine out of business is not acceptable in my opinion.

They have been here for over 35 years and "progress: should not put them out of business. Their service is top notch and very much needed on the lake.

Thank you for your time,

Michael Babyak

**Vivian Kompier**

**From:** Bailey Gary <baileygrouse@gmail.com>
**Sent:** Friday, November 26, 2021 6:21 AM
**To:** Planning Info
**Subject:** Zoning variance request

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

We are in opposition to Variance Requests #VA21-010 and #VA21-011. This change would have a severe adverse effect on an important local business, John's Marine, putting its future existence in peril as well as safety concerns. Thank you for your consideration. Gary and Irma Bailey, 124 Pointe Harbor Dr., Seneca, S.C.

Sent from my iPad

**Vivian Kompier**

**From:** Dale Blazek <axman49@gmail.com>
**Sent:** Thursday, November 25, 2021 9:35 AM
**To:** Planning Info
**Subject:** Variace Request

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I understand that a variance request was been filed concerning a widening of a road. ((#VA 21-011). As I understand it the owner/developer after eight years is requesting to widen the road which will have a late impact on the business for Jon's Marina. This establishment has been in business for over 35 years and services more than 50% of boat owners, (Mostly east side of lake Keowee). The owner knew this when he purchased the property. Unless Duke energy is willing to give a variance to John's Marina for more lake access I do not support the variance request #VA 21-011that Rigeewater Engineering has submitted.

Dale Blazek
axman49@gmail.com
519 Tall Ship Dr. Unit#215
(704) 458-8752

November 29, 2021

To: Board of Zoning Appeals

I am writing to voice concern of the request for variance to extend Ellenburg Road with the addition of 19 homes to the area. I feel this will negatively impact the business of John's Marine which has been a staple to the lake community for decades. The amount of additional traffic in the area would appear to be challenging for the existing business and their clients. While I am a proponent of progress – I do feel the number of additional homes to be built under this request as well as the added traffic would be detrimental to the business as well as the surrounding community.

I appreciate your consideration of the concerns raised.

Regards,

Chris Kanipe

**Vivian Kompier**

**From:** Paul Crisp <1blimp@embarqmail.com>
**Sent:** Saturday, November 27, 2021 10:49 AM
**To:** Planning Info
**Subject:** No to Variance

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern:
I am opposed to the variance adjacent to 599 Ellenbug Rd, Seneca, SC. Allowing a developer to put a 19 home subdivision entrance right in front of a business, with less than 50 feet is a major safety issue. Fire trucks and emergency vehicles would not be able to safely navigate a curvy, narrow road that will have that much more traffic. Customers of John's Marine use the area in front of and beside the shop to turn and park boats, deliveries are made by multiple vendors daily and residents and customers would constantly find themselves in traffic jams. This would have a negative impact!
John's Marine has been in business for 49 years and at its current location for almost 40. They have been an asset to the Lake Keowee area that can never be replaced. Having boats come by water to be fixed, serviced or towed when they break down on the lake is a big convenience and a big part of John's Marine. Businesses like these are what has built this area into what it is today. We are going to lose exactly what attracts people to this area and why they've been moving here for years. These are just a few reasons why this variance should not be approved. We can't lose the foundation that built us.
Sincerely,
Paul Crisp

Sent from my iPhone

**Vivian Kompier**

**From:** kenneth culver <culvrken@bellsouth.net>
**Sent:** Friday, November 26, 2021 5:14 PM
**To:** James Coley
**Subject:** Variance and short term rental

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Hello all-
We just wanted to state our view that we are against the road variance and short term rental community being proposed by the new development next to Johns Boat shop and repair. The cove is already full with boat traffic from high falls park and other communities that allow short term rentals and Ellenburg road can not handle anymore traffic. We also do t think it is fair to John's Boat repair as this will jeopardize his business. He has been an outstanding member of our community and provides a valuable service to all. Please vote to preserve our area and help our small local vendors! Thank you for your time and consideration!

Sincerely,
Ken and Anna Culver
Lot 20 The Peninsula
Seneca, SC

Sent from my iPhone

**Vivian Kompier**

**From:** Mandy Ellison <mandyfellison@gmail.com>
**Sent:** Friday, November 26, 2021 1:25 PM
**To:** James Coley
**Subject:** Ellenburg Road Variance

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I am writing to voice my opposition to this variance. Ellenburg Road can not support the additional traffic that 19 home sites will bring. As a Realtor, I also know for a fact that this development is being heavily marketed to investors who will be building short term rentals, which will be disastrous for not only the survival of John's Boat Repair, but the other residences on Ellenburg Rd.

Please do not grant this variance.

Mandy Ellison

Sent from my iPhone

**Vivian Kompier**

| | |
|---|---|
| **From:** | lenamfox@aol.com |
| **Sent:** | Sunday, November 28, 2021 4:47 PM |
| **To:** | Planning Info |
| **Subject:** | Variance application #VA21-011 |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern.

I would like to express my objection to the variance for the purpose of extending Ellenburg Road, making way for a new subdivision. I have lived in the area for 10 years, and have come to appreciate the effort made to protect our lake and the natural habitats of native wildlife as well as vegetation. Property owners are expected to respect the county restrictions for disturbing vegetation in the 50' buffer. I do not believe that this restriction should be lifted to increase developer profits. Please say "NO" to this variance.

Lena Fox

**Vivian Kompier**

**From:** Michael Grant <mgrant0491@gmail.com>
**Sent:** Sunday, November 28, 2021 4:09 PM
**To:** Planning Info
**Subject:** Fwd: Variance on Ellenburg Rd

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

>
>
>
> To:BZA Board
>
> I am a resident on Ellenburg Road and I strongly oppose Variance Request VA 21-011. This road is already winding and narrow. There are many people in Harbor Oaks and surrounding neighborhoods walking their dogs and walking for exercise. With no shoulder to get off the road, it is very dangerous. Adding 19 more homes will only increase the danger.
>
> Approving this variance will have a detrimental impact on John's Marine Service, which has been here for nearly 40 years. This shop was here when the developer purchased the property and he was aware of the narrow entrance into this parcel. Now he wants to come in and develop this small parcel without the appropriate entrance required by Oconee County Roads and Bridges. They are not asking for just a few feet. The 18' variance is a substantial portion of the required 50'. Approving such a large variance sets the precedent moving forward. Why even have the requirement, if such a large portion can be deviated? This was put in place for safety reasons and emergency access. Safety should be the top priority for the county. I urge the council members to vote NO to this variance!
>
> Thank you, Michael Grant

**Vivian Kompier**

| | |
|---|---|
| **From:** | Bruce Hadley <bruce@hvacprecision.com> |
| **Sent:** | Monday, November 29, 2021 7:55 AM |
| **To:** | Planning Info |
| **Subject:** | Variance #VA21-011 |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I am not for allowing a variance for the above listed property. please
call me if you have further questions 301-252-1452
Bruce Hadley
167 Northshores drive
Seneca sc 29672

--
This email has been checked for viruses by AVG.
https://www.avg.com

**Vivian Kompier**

**From:** James Coley
**Sent:** Monday, November 29, 2021 9:27 AM
**To:** 'Catherine Halvorsen'
**Subject:** RE: John's Marine

Ms. Halvorsen,

Thank you for your email. Your statement will be added to the backup material which will be given to the board.

Best regards,

*James Coley*
Director
Oconee County Planning and Zoning
415 S. Pine Street
Walhalla, SC 29691
Phone: (864) 638.4218

**CONFIDENTIALITY NOTICE:** *All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed, and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.*
*If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.*

**From:** Catherine Halvorsen [mailto:halmom@aol.com]
**Sent:** Saturday, November 27, 2021 10:18 AM
**To:** Planning Info
**Cc:** carlhalvorsen@gmail.com
**Subject:** John's Marine

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

My husband and I received a letter from Jimmy at John's Marine about the variance request to be voted on at your November 30th meeting. John's Marine has been our go to boat service company for the many years we have lived in Keowee Key. Jimmy provides a valuable service to our community and the surrounding subdivisions. If passage of this variance impacts his business negatively I would expect your board to vote NO. It would be wrong to give this developer the relief he is looking for when it becomes detrimental to a business that has operated in our county for three generations.

Catherine Halvorsen
5 Crest Drive
Salem, SC

**Vivian Kompier**

**From:** Don Herriott <herriottdon@gmail.com>
**Sent:** Friday, November 26, 2021 10:51 AM
**To:** James Coley
**Cc:** Doug Cooper
**Subject:** Ellenburg road varience

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

The President of our Harbor Oaks HomeOwners association wrote to you about the safety concerns for the new development at the end of Ellenburg road. These issues certainly need to be addressed prior to granting any variance. In particular the ``Let them eat cake ``type of quote from the developer "those roads are built for cars, if people don't want to get hurt they need to stay off them". In the worst case if any limited variance is granted rather than discouraging a healthy activity such as walking the developer should provide a seperate walking path along Ellenburg.

--
Best Regards,

Don and Barbara Herriott
143 Rollingwood Drive

**Vivian Kompier**

| | |
|---|---|
| **From:** | Banks Hudson <wbhudson136@gmail.com> |
| **Sent:** | Sunday, November 28, 2021 9:57 AM |
| **To:** | Planning Info |
| **Subject:** | Variance Request Ellenburg Road |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Oconee County Board of Zoning Appeals
415 South Pine Street
Walhalla, SC

Members of the Board:

We write to express our concern regarding the variance request you will hear this coming Tuesday, November 30. We wish to express our objection to granting the variance. It would appear, as we read the request, that the subdivision developer wishes to enhance the access to the property being developed to the detriment of an adjacent property and business, John's Marine Service, which stands to lose the majority of its business if the variance is allowed because it would eliminate water access to the business. As long time customers of the business, we very much understand the problem.

As we understand it, the developer has owned the undeveloped property for more than ten years, and purchased it with full knowledge of the width of the right of way and how that would impact any future development. Rather than try to destroy an adjacent business, perhaps the developer should have considered the issue before purchasing.

We ask the Board to deny the request.

Sincerely,

Sidney and Banks Hudson
17 Marina Village Way
Salem, SC

Sent from my iPad

**Vivian Kompier**

| | |
|---|---|
| **From:** | Michael Huskey <mrvlle@yahoo.com> |
| **Sent:** | Saturday, November 27, 2021 8:25 AM |
| **To:** | James Coley |
| **Cc:** | cooperd5908@gmail.com; Lucretia Morgan Morgan; Pamela Colden; cindy.smoak@gmail.com; dherriot@aol.com; Jimmy Ratliff; Rita Huskey |
| **Subject:** | Variance Request for Ellenburg Rd #VA 21-011 |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Dear Sir

My name is Mike Huskey and I am a resident of Harbor Oaks community off of Ellenburg Road. I am writing you this letter to strongly oppose the proposed variance.

I am currently the VP of Operations and Supply Chain for Fiberon, a subsidiary of Fortune Brand Holdings. Our company is in the building and construction products business with a complete devotion to safety. This means that we take the safety of our products and our associates who make them very seriously. I am responsible for the Environmental - Health & Safety for the Fiberon division (EH&S) which includes 700 + people.

When I look at the proposed variance through my EH&S lens I see what we term a "SIF". This indicates a situation where there is Strong possibility for Serious Incident or Fatality. The current condition of Ellenburg (curves), limited sight distance, the speed at which contractors and others navigate the road is already dangerous. Our residents use the road for walking and exercising our Pets.

The proposed 19 home project will exacerbate an already congested condition. I work with Fire Marshalls and Rescue personnel on all of our (Fiberon) projects and I cannot believe that any one of them would approve this request.

I respectfully request that the county look at this from the safety of the current residents, the safety of John's Marine business that will certainly be impacted, and the certain creation of a Serious Incident or Fatality condition.

Regards,

Mike Huskey

**Vivian Kompier**

| | |
|---|---|
| **From:** | Jan Ratliffe <janratliffe@gmail.com> |
| **Sent:** | Friday, November 26, 2021 6:20 PM |
| **To:** | Planning Info |
| **Subject:** | 599 Ellenburg Rd variance |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern:
I live at 599 Ellenburg Rd, Seneca, SC. This has been my home since 1981 and our business, John's Marine Service, since 1982. The developer bought the adjoining property many years after John's Marine had been established, making numerous attempts to purchase our property. He knew when he initially purchased the property that there was not sufficient footage to build a development entrance. Even after my husband, John Ratliff, was diagnosed with Alzheimer's, the developer still approached him with minimal offers that could not begin to rebuild John's Marine Service.

Safety is the biggest concern with the lack of a 50 foot entrance to a 19 home subdivision. With the narrow width of the existing road and the bottleneck that will occur in front of our shop, traffic will not safely flow. Fire trucks cannot access the development with less than 50 feet, along with other emergency vehicles that will have to maneuver around UPS, FedEx, tractor trailers and vehicles towing boats. This can mean a difference between life and death.

John's Marine is a 3rd generation family business that solely supports me, my son and grandson. If this variance passes we will never be able to relocate on the water, have a ramp or docks by Duke Power's current stipulations. This is why I'm opposing this variance and ask that you do the same.

Sincerely,
Jan Ratliff

**Vivian Kompier**

**From:** James Coley
**Sent:** Monday, November 29, 2021 9:14 AM
**To:** 'Jerre Wippermann'
**Subject:** RE: Variance request application

Mr. Wippermann,

Thank you for your email. Your statement will be added to the backup material which will be given to the board.

Best regards,

James Coley
Director
Oconee County Planning and Zoning
415 S. Pine Street
Walhalla, SC 29691
Phone: (864) 638.4218

CONFIDENTIALITY NOTICE: All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed, and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.

-----Original Message-----
From: Jerre Wippermann [mailto:hapifeet53@aol.com]
Sent: Friday, November 26, 2021 12:28 PM
To: Planning Info <planninginfo@oconeesc.com>
Subject: Variance request application

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Please let it be known I am against #VA21-011.

Thank you
Jerre Wippermann

Sent from my iPad

**Vivian Kompier**

| | |
|---|---|
| **From:** | Kenyon Luce <kenyonluce@gmail.com> |
| **Sent:** | Saturday, November 27, 2021 10:37 AM |
| **To:** | Planning Info |
| **Cc:** | Kenyon J. Luce |
| **Subject:** | Variance Request Application #VA 21-011 |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

We are in opposition to Variance Request Application #VA 21-011 as it will severely impact the business of John's Marina located at 599 Ellenburg Road. This is a third generation business that has been at this address for over 35 years, and is of immense benefit to Lake Keowee boat owners like us.

We ask that you deny this variance request.

Regards,

Kenyon J. Luce Donna W. Luce

416 Long Reach Drive
Salem, SC 29676

**Vivian Kompier**

**From:** george nassor <geonassor@gmail.com>
**Sent:** Sunday, November 28, 2021 8:33 PM
**To:** Planning Info
**Subject:** Variance requests: VA21-010 and VA21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern,

This letter is to request that you do not grant the above variances which are on your docket on November 30 in Walhalla.
Being an adjoining property owner the increased construction and traffic will be a problem for the local property owners. More importantly the proposed building would irrepairably damage the business of Johns Marine Service, a respected local business that has been here for 35 years and 2 generations.
There just isn't enough room for the proposed construction and current rules would prohibit it. I don't see how changing the rules is good for anyone but the property owner trying to make money on the construction. Johns Marine is a valued neighbor an it would be terrible to ruin this families business so someone else can cram more houses into the neighborhood than is practical.

Thank you,
George Nassor
114 Pointe Harbor Dr
Seneca, SC

Sent from Mail for Windows

**Vivian Kompier**

---

**From:** Alicia Palmere <apalmere@comcast.net>
**Sent:** Friday, November 26, 2021 12:53 PM
**To:** James Coley
**Subject:** Support for John's

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Hello,

As a fellow neighbor, we support your efforts to not allow the development near your land. Best of luck!

Sincerely,
Alicia Palmere

Sent from Mail for Windows

**Vivian Kompier**

**From:** MARK-LAURA SANSBURY <sanslark@aol.com>
**Sent:** Sunday, November 28, 2021 5:15 PM
**To:** Planning Info
**Subject:** Variance request. 11/30 meeting

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

In reference to the request for variance VA 21-010, we would respectfully request that this variance NOT be approved /granted at the Ellenburg Rd location.

We are in the neighboring development (Pointe Harbor) and are well aware of the restrictions this area entails. This road is very narrow and a dead-end road. There are safety issues to consider: pedestrian walkers, added heavy construction equipment, and bottleneck issues near the marina, and simply tremendous volume added to a narrow business road.

Also this variation and resulting subdivision would negatively affect a long standing and valuable business to the lake community, John's Marine Service.

Lastly, allowing this deviation variance would be setting a dangerous precedent to upcoming similar proposals.

We would respectfully request that you oppose this variance!

Respectfully submitted,

Mark and Laura Sansbury
Pointe Harbor East

Sent from my iPad

**Vivian Kompier**

---

**From:** Sarah Cawthon <scawthon50@gmail.com>
**Sent:** Thursday, November 25, 2021 6:17 PM
**To:** Planning Info
**Subject:** Variance Request #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

My name is Sarah Cawthon and I am opposed to the variance because it will pose a safety hazard to all of the people who walk and ride bikes in the area. With the traffic of 19 homes through a bottle neck area and being only feet john's marine service it will create a hazard to pedestrians and their customers.

Also having 19 septic tanks on a small parcel of land, which is almost an island, poses a significant environmental risk.

**Vivian Kompier**

**From:** James Coley
**Sent:** Monday, November 29, 2021 9:44 AM
**To:** 'Joe Sears'
**Subject:** *RE: Variance request #VA 21-011

Mr. Sears,

Thank you for your email. Your statement will be added to the backup material which will be given to the board.

Best regards,

*James Coley*
Director
Oconee County Planning and Zoning
415 S. Pine Street
Walhalla, SC 29691
Phone: (864) 638.4218

**CONFIDENTIALITY NOTICE:** *All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed, and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.*
*If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.*

**From:** Joe Sears [mailto:jmsears41@gmail.com]
**Sent:** Sunday, November 28, 2021 8:30 PM
**To:** johnsmarinesc@gmai.com; Planning Info
**Subject:** Variance request #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I am expressing my opposition to the variance request above as I believe it will create a negative situation for the marine business which has operated there for 35 years as well as the proposed 19 home development. The location is already congested as is. It appears that the developer has already backfilled an area covered in large crushed stone at the requested area.
I am familiar with the location and I think the requested variance will create an undesirable atmosphere for the marine business and homeowners.
Joe Sears

**Vivian Kompier**

**From:** James Coley
**Sent:** Monday, November 29, 2021 9:18 AM
**To:** 'Greg Skene'
**Subject:** _RE: Variance Request #VA 21-011

Mr.Skene,

Thank you for your email. Your statement will be added to the backup material which will be given to the board.

Best regards,

*James Coley*
Director
Oconee County Planning and Zoning
415 S. Pine Street
Walhalla, SC 29691
Phone: (864) 638.4218

**CONFIDENTIALITY NOTICE:** *All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed, and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.*
*If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.*

**From:** Greg Skene [mailto:gskene9946@aol.com]
**Sent:** Friday, November 26, 2021 4:11 PM
**To:** Planning Info
**Subject:** Variance Request #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

For 15 years Johns Marine Service has serviced my boat that I get to via water. I do not have a trailer thus having it serviced directly off the lake at Johns Marine is critical to me.

We are against granting the Variance per request VA 21-011

Regards

Greg Skene
205 Windlake Drive
Seneca, SC 29672

Cell 770 316 6000

**Vivian Kompier**

**From:** Tom Wippermann <twipp730@aol.com>
**Sent:** Friday, November 26, 2021 12:23 PM
**To:** Planning Info
**Subject:** Variance request application

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I wish to go on record as being against #VA21-011.

Tom Wippermann

**Vivian Kompier**

| | |
|---|---|
| **From:** | Roswitha Yenawine <roswithaf@live.com> |
| **Sent:** | Sunday, November 28, 2021 6:06 PM |
| **To:** | Planning Info |
| **Subject:** | Variance Request #VA21-011 |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Zoning Board Members,
please allow me to voice my objection to the variance request. Many of the current residents , in Keowee Key and other neighborhoods, need the access to repair services by water.
Not any less objectionable is the fact that an established business and family is to be up-rooted against their will.
As all people, that buy lake property, are expected to check with Duke if the lot is dockable. Maybe Joe Meaders should have contacted Duke if he could gain access by building a dyke to the property.
Sincerely,
Roswitha Yenawine

**Vivian Kompier**

**From:** Ross Dalton <rosswdalton@hotmail.com>
**Sent:** Monday, November 29, 2021 12:44 PM
**To:** Planning Info
**Subject:** Objection comment to Variance Request app #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I am in opposition of the above referenced variance application. I believe it would have an immediate and detrimental impact to a local family-owned business we have patronized for over 16 years. This unique business is set up for its unique clientele and should be allowed to continue to operate as they have for many decades. This variance could create a situation where they would go out of business. There are no options to relocate the business in its current state to give its customers the current level of service and access. Please consider denying this variance application.

Thank you.

Ross Dalton
25 Skipper Lane
Salem, SC 29676

**Vivian Kompier**

**From:** dan fasolino <dan_fasolino@yahoo.com>
**Sent:** Monday, November 29, 2021 1:47 PM
**To:** Planning Info
**Subject:** VA 21-011 Ridgewater Engineering

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Hello,

With regards to Mr. Meader's request, I wonder why there is a request for variance from the 50' right of way and not a request for any leniency to perform the necessary steps to meet the 50' right of way? Particularly when the needed improvements could be added and performed during the construction of the new road. This appears merely an attempt to avoid cost and not the efforts of a good neighbor.

I share Mr. Ratliff's concerns about the impact on John's Marine in the absence of suitable passage.

It would also be concerning to favor one business venture over another where one gains a single financial windfall at the continued peril of another.

Thank you for your time,
Dan Fasolino
201 Pinecroft Ct.
(864) 888-7157

**Vivian Kompier**

**From:** Alan Fayard <alanfayard@gmail.com>
**Sent:** Monday, November 29, 2021 3:06 PM
**To:** Planning Info
**Subject:** #VA 21-010

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Board of Zoning Appeals,

I request you work with the developer requesting this variance so as not to have any negative impact on John's Marine Service. As a boat owner I take my boat via water for service at John's Marine Service. I do not own a trailer so I do not have the ability to take my boat out of the water and take it someplace for service.

While I can understand that a housing development could be good for our county I also believe limiting on water boat services can negatively impact our county and peoples desire to buy houses on Lake Keowee. Additionally I have been told the developer purchased this land knowing there was an issue in getting road access, which should have been addressed prior to purchase. I request that you deny this variance request.

Sincerely,
Alan E Fayard
513 High Hammock Drive
Seneca, SC 29672
7703299874

**Vivian Kompier**

| | |
|---|---|
| **From:** | clement germanier <germanic@bellsouth.net> |
| **Sent:** | Monday, November 29, 2021 3:57 PM |
| **To:** | Planning Info |
| **Subject:** | Variance John's Marine service |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Board of Zoning Appeals,

"What part of English does this developer not understand. John's Marine Service has been there for three generations. It is located so that customers have lake access with no safety concerns. If the developer wants use of the property he has access to, let him build a hotel / eating place up the road. The customers could use the lake for enjoyment away from the established business, Johns Marine. We against this variance.

Sincerely,

Clement and Patricia Germanier
Long time residents of Oconee County

**Vivian Kompier**

| | |
|---|---|
| **From:** | jdrichardson@mindspring.com |
| **Sent:** | Monday, November 29, 2021 3:20 PM |
| **To:** | James Coley; James Coley |
| **Cc:** | coldrenpjc@gmail.com; cooperd5908@gmail.com |
| **Subject:** | Variance request for Ellenburg Rd #VA 21-011 |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

We are homeowners in Harbor Oaks Subdivision and members of the Harbor Oaks Home Owners Association. We strongly oppose the granting of the variance at this time, unless the county can provide detailed plans on how they are going to assure the safety of home owners traveling on Ellenburg Rd. Adding an additional 19 lots and homes on a road that was never designed for that level of traffic will only increase the unsafe conditions on Ellenburg Rd especially during development of the land and the new community. We have experienced several unsafe conditions on Ellenburg Rd during recent property development along the road. Granting the variance to develop the land will only increase the number of unsafe conditions particularly with heavy construction vehicles. Also, adding 19 lots will increase the traffic on Ellenburg Rd significantly after full development especially if any of the properties are rentals.

We appreciate your desire to add more tax revenue to Oconee County, but we would ask that the safety of both current and future residents be considered and deny this variance request.

Sincerely,

John & Suzanne Richardson
311 Greentree Ct.
Seneca, SC 29672
jdrichardson@mindspring.com

**Vivian Kompier**

**From:** Aubrey Miller <aubs78@gmail.com>
**Sent:** Monday, November 29, 2021 4:13 PM
**To:** Planning Info
**Subject:** Subject VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Please accept this written statement as for the public hearing sections regarding the variance request for VA-21-011.

In Oconee County, one of our most significant resources is our Lakes and waterways. The county slogan reflects this philosophy by declaring us the land beside the water. Unfortunately, we have, on many occasions, not been the best stewards of this slogan. My family has been a member of this community for decades. I have watched the lake be overrun with development, much of which only benefits a select few. The water edge is being filled in with silt, and aquatic grasses are taking over. One day we will look back and wish we would have placed better land controls over our most prized resource.

When administering any land development regulations, the most challenging part of a board's responsibility is picking a winner and a loser because there is rarely a clear-cut solution where both sides can win. In this case, we have a parcel of land on a point, a valuable point if subdivided. We also have an ordinance that requires a 50-foot right-of-way to be dedicated to access this property. The applicant is asking that you allow them to dedicate less right-of-way so they can subdivide more property. Under the current ordinance, if they only subdivided three lots, they could access the areas with just a driveway. Instead, they would like to have 19 lots, including six lots that are flag lots, and any other zoning in the county would be illegal. The current map in the agenda shows a much larger right-of-way than the 31.9 feet show and creates many questions about what is happening. So much so that our planning staff has even asked for updated plans questioning the right-of-way width because they had the same questions about the plans that I did. The developer or the engineer has yet to provide these. Instead, they are going to ask that you grant them a variance without a clear idea of what is taking place if it is not essential to them to produce correct plans, how important it should be for the community to accept a variance request.

The zoning ordinance has some clear regulations that are required to be met to grant a variance. I have reviewed these questions and provided some of my comments on them below. I will point out that the applicant must prove they need an exception from these and the Board must find in favor of all four to grant the exception. Failure of one question should mean the variance is denied.

1: There are extraordinary and exceptional conditions pertaining to the particular piece of property.

The agenda provided does not show any proof from the developer or staff as to what extraordinary and exceptional condition applies to this property. Did the developer negotiate with the neighboring property owner for 18.1 more feet and was denied. Did the 19 lots exist before the adoption of the ordinance, making it non-conforming? The requirements are placed on the property owner to show why this should be answered in the affirmative. Just reviewing the plans, one can conclude that the property owners want to have more lots than three allowed, and this variance is expected.

2. The conditions do not generally apply to other properties in the area.

It would seem that every other subdivision of greater than three parcels in the area has complied with this requirement. Unless we are going to amend the provisions of 50 feet, making it smaller, I believe the Board must vote against approving this question.

3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

The Owner could still subdivide the property into three parcels or sell the whole existing parcel. By denying this, we are not creating unreasonable property restrictions or taking the property. In other words, the property can still be used reasonably. An owner does not have any assurances that they can be allowed a more advantageous use when the property does not meet the ordinances. The Board of Zoning appeals should not find in the affirmative on this question since the property still has value and use without a public right-of-way.

4. The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

> a. The Board of zoning appeals may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

Question 4(A) speaks for itself. The granting of a variance would allow for a 19 unit subdivision that would otherwise not be allowed. The last sentence address one of the prime arguments of most developers. Just because 19 lots may be more profitable does not mean it is better for the community. The Board should find against this question.

In addition to all these statements, the agenda package of the zoning appeals leaves much to be desired. The lack of information leaves much up to assumption. The county staff should provide more details, a staff report of their findings, the specific ordinances the applicant is seeking a variance from, and the applicant's application. How can a citizen, much less a board member, be expected to make an informed decision if the information of the decision cannot be obtained easily.

Regards,

Aubrey Miller

197 Knox Landing Drive

Seneca, SC 29672

**Vivian Kompier**

**From:** Lucretia Morgan <lbm1969@gmail.com>
**Sent:** Monday, November 29, 2021 12:04 PM
**To:** Planning Info
**Subject:** VA21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Dear Board of Zoning members,

I am an adjacent property owner on Ellenburg Road and I OPPOSE the variance requested by the developer for his subdivision.

Aside from my reason for the negative impact of MORE traffic on Ellenburg Road and the safety concerns which I'm sure you're aware of, this variance will pose a hardship on John's Marine Service.

Allowing this variance will grant over 36% of the required 50' for new roads. We're not talking about 5 or 6 feet, but over 18'. The developer that purchased the property back in 2008 must have done his due diligence and known what he was buying. After all, he developed numerous subdivisions on this lake, including Harbor Oaks just up the road.

If this variance is granted, it will be the first step in squeezing John's Marine out of the area. I live on an unrestricted lot near this business and knew it would be loud and have a lot of boating traffic coming in and out of the cove. An upscale subdivision will not be so "forgiving" when having to wait on him to back boats into his shop or when a customer brings a trailered boat in and has trouble parking. They also won't like looking at a shop with boats parked near the entrance to their nice subdivision.

The price paid for the property in 2008 is reflected for what is nearly an island and how many homes this limited access will allow. Also, in order to build the proposed 19 homes, the covenants were changed in 2016 to decrease the overall square footage for multi-stories, otherwise 19 homes would not "fit" with all of the setbacks including the 804 boundary.

Finally, in looking at the plat done by the developer's surveyor, the 804' DUKE/FERC boundary is within all of the area not meeting the 50' minimum width. Can the county rule on property that is within this boundary?

I urge the council to vote NO on this variance. All of the surrounding property is not only residential as stated in the applicant's variance application. It WILL certainly have a detrimental impact on John's Marine, the most direct adjacent property.

Thank you,
Lucretia Morgan
Ellenburg Road
Seneca, SC 29672

**Vivian Kompier**

**From:** Yahoo! <mwmurray@bellsouth.net>
**Sent:** Monday, November 29, 2021 11:06 AM
**To:** Planning Info
**Subject:** Subdivision variance

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Please do not grant the request to have a deviation in the width of the road where John's Marine is located. John's Marine has been in that location for over 35 years, to grant that variance would put them out of business. We have been residents here for 24 years and have always used John's to service our boat. We do not have a trailer and being able to use water access means a great deal to us and many others. Practice what you preach. Support our local business and do not take away their livelihood Walter and Marilyn Murray. 4 Anchorage lane. Salem

## Vivian Kompier

**From:** Michael Phillips <michaelphillips@charter.net>
**Sent:** Monday, November 29, 2021 4:01 PM
**To:** James Coley
**Subject:** Opposition to request

**Importance:** High

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I'm emailing in support of John's Boat Repair and in opposition to the neighborhood proposed at the end of Ellenburg Road. When is enough, enough? That road cannot support the traffic of a new subdivision, plus with the existing boat traffic problems in that area and infrastructure issues, why do we need another subdivision anyway? And, I understand its mainly big money looking to sell lots to investors of short term rentals. When will this stop? Please do not approve of the variance requested by these developers which put's John's Boat Repair business in jeopardy and furthers the developers greed to exploit this beautiful lake and what's left of the peacefulness in and around High Falls Park.

Michael and Suzanne Phillips – LOT 11 The Peninsula on Lake Keowee

**Vivian Kompier**

**From:** Harry Shucker-Retired <Harry.Shucker@furman.edu>
**Sent:** Monday, November 29, 2021 11:58 AM
**To:** Planning Info
**Subject:** Variance Request application #21011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern,

I want to voice my concerns as to the requested variance to the deviation from the 50ft width per road to a 31.9 ft. road width which will interfere with the customer base of John's Marine. John's Marine has had the same location for over 35 years and we have often taken our boat over there for service.

To put an additional 15 to 19 homes using the road in front of John's Marine will make the ability to trailer our boat and many others to use very little space for parking as well as for turning the boat into the shop or into the water. Traffic on the road will be disrupted and cause disruption of flow or serious accidents.

We live in Oconee County and are familiar with that area both from the land as well as from the lake. The point is probably suitable for 3 or 4 homes but 15 to 19 homes are simply destroying nature to make more money by the developer. Since the Lake is already overdeveloped, I think it is way past time to consider lake and land preservation so that a beautiful area does not continue to be desecrated for profit without regard for businesses that have been there for 35 years.

I think it is time to take a stand about what is an appropriate use of land along the lakeshore and how others are being affected by overdevelopment. We have lived on the lake for 23 years and have watched development after development destroy the natural beauty of the area for the sake of profits.

Thank you for your consideration of denying this requested variance.

Sincerely,

Dr. Harry B. Shucker

This individual is retired from Furman University. The content of this email does not necessarily represent the views of the University.

**Vivian Kompier**

**From:** Stoker <stokerjn@sbcglobal.net>
**Sent:** Monday, November 29, 2021 4:31 PM
**To:** Planning Info
**Subject:** OC Board of Zoning Appeals meeting 11/30/21, Variance request application #21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To the Zoning Appeals Board,

I am writing to express my opposition to variance application #21-011.

John's Marine Service is a valuable asset to everyone who boats on Lake Keowee. It is one of the few businesses on the Lake to which a customer can take his or her boat for service by water. Its existence at its present location is a great convenience to boaters in a way that land-locked repair facilities cannot duplicate. It is also important to have a place where boat rescue services, or Good Samaritans can tow a disabled boat for quick repairs, which is not possible otherwise.

The proposed development would include 19 houses to be used as homes and rental vacation houses. The increased traffic for the period of construction of the road and buildings due to construction equipment, and the ongoing traffic of 19 vacation houses would certainly have a negative impact on John's Marine Service. This could be minimized with a proper road moved further to the south, but the variance being requested would allow the developer to get away with creating and leaving a hazardous and difficult situation.

John's Marine Service has been at its present location for over 35 years. It has been owned and operated by the same family all of that time. It predates any plans to develop the virtual island beyond it. It is located at the dead-end of Ellenburg Road, beyond which is a low isthmus. The elevation of the isthmus is below the 804 line

I have been a happy customer of John's Marine Service for over eleven years. I am opposed to this application for a variance which I believe would be detrimental its continued existence.

Thank you all for your service to Oconee County,

Sincerely,

Joseph N. Stoker

401 S. Lynhurst Ct.
Seneca, SC 29672

## Vivian Kompier

**From:** Stoudenmire, B. Joel <JStoudenmire@nexsenpruet.com>
**Sent:** Monday, November 29, 2021 1:00 PM
**To:** Planning Info
**Subject:** Opposition to #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I am an Oconee County resident and I am strongly opposed to #VA 21-011 variance requested seeking a variance to the 50 foot right of way. How can you adversely impact and destroy the business that has been operating there for over 35 years? The property owner seeking the variance bought his property knowing exactly what the rules and conditions were. The traffic volume on this small amount of property will be overwhelming. There is too much development on the lake now and what was once a beautiful, peaceful lake will be ruined. Please do the right thing and vote no.

**B. Joel Stoudenmire**
Nexsen Pruet, LLC
104 South Main Street, Suite 900
Post Office Drawer 10648 (29603)
Greenville, SC 29601
T: 864.282.1127, F: 864.477.2621
JStoudenmire@nexsenpruet.com
www.nexsenpruet.com

www.nexsenpruet.com
NEXSEN PRUET

*** FIRM CONFIDENTIAL COMMUNICATION *** This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments. If you reply to this message, Nexsen Pruet, LLC may collect personal information including your name, business name and other contact details, and IP address. If you have any questions, please contact Privacy@nexsenpruet.com.

**Vivian Kompier**

**From:** THOMAS WAY <tcway@sbcglobal.net>
**Sent:** Monday, November 29, 2021 12:42 PM
**To:** Planning Info
**Subject:** Planning meeting on 11/30,2021 re: VA21-011

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Members of the Board of Zoning Appeals,

I'm writing as a long time and present resident of Oconee County and requesting that you deny the deviation request VA21-011 requesting a deviation of road width from 50' to 31.9' and prescriptive right-of-way. If granted this variance will prohibit me from using the marine services of John's Marine Service located at 599 Ellenburg Rd in Seneca. I have used this service for years for all of my boat servicing needs and it is my view that the variance would severely limit my ability to access John's Marine as I can only do so by water and Jimmy needs to use his ramp to pull my boat out of the water for it's servicing needs. I see no reason that the current road width will restrict access to the developers property, but rather the developer might be more interested in putting John's marine out of business such that it does not affect the appeal of prospective home buyers for homes in his parcel. John's Marine Service has been at this location for more than 35 years and the developer was aware of this when he bought the property. Also, the proposed development will certainly add much more traffic on this road and as such it seems that narrowing the road width will limit John's Marine access to conduct business and only exacerbate a probable traffic issue.

Please deny this Variance Request.

Respectfully,

Thomas Way
357 Stardust Ln
Seneca, SC 29672

tcway@sbcglobal.net
864-359-7002

**Vivian Kompier**

**From:** Alison Saavedra <alison.m.saavedra@gmail.com>
**Sent:** Tuesday, November 30, 2021 4:26 PM
**To:** Planning Info
**Subject:** John's Marine Service

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Dear Oconee County,

John's Marine Service has been my go to for boat work for years. One of the best things about this company is that they are excellent at what they do technically and with their customer service. The reason they can do this is because of their location - right on the water. They can serve customers who normally leave their boats in the water year round.

As Mr. Ratliff has said in his letter to you and at the hearing this evening, the matter of relocation is not feasible and will get rid of a third generation family owned business that grew up right in Oconee County. I respectively ask that you take this info into consideration when reviewing the parcel of land for development.

Thank you,
Alison Saavedra

**Vivian Kompier**

**From:** beth schonert <bschonert@hotmail.com>
**Sent:** Tuesday, November 30, 2021 9:43 AM
**To:** Planning Info
**Subject:** Variance Request #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To Whom It May Concern:

I am writing to state my vehement opposition to this requested variance. It will severely impede John's Marine Service, a long-standing local business, and their ability to continue serving the community in the best way they can. Jimmy Ratliff's availability to service the boats we have on the lake, both in the water in an emergency manner, and by trailering to his business, are vital to the lake community we call home. I personally have relied on, and always been impressed with, the service he provides in such a timely manner. Without boating on the lake, there isn't nearly as much of a draw, and without the most important boat repair services Jimmy provides, we wouldn't be able to enjoy the lake in nearly the same way. We all know, boats break, a lot! We see, so often, that these decisions side with the new reqeusts regardless of the effect on the existing community, but **I strongly urge you to do what is right, and side with the existing local community, and long-standing local business, John's Marine**, in this instance! It is to the greatest advantage of the area that his dependable service remains unimpeded and available to all of those who live on the lake.

Again, please vote against Variance #VA 21-011, and do what's best for the current residents of Lake Keowee!!

Beth Schonert
Jake Schonert
Camery Schonert
Hayden Schonert
Residents of Beacon Shores, Seneca, SC

**Vivian Kompier**

---

**From:** Terri <mitmfood2014@gmail.com>
**Sent:** Monday, November 29, 2021 5:03 PM
**To:** johnsmarinesc@gmail.com
**Cc:** Planning Info
**Subject:** variance

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Dear Mr. Ratliff,

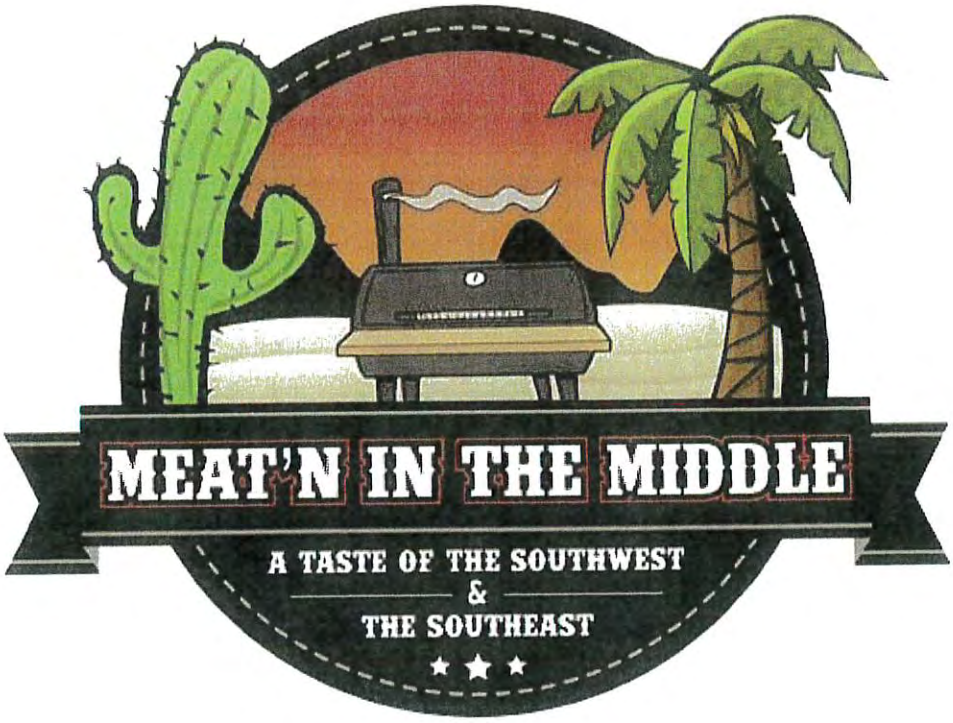
We have read your letter regarding the upcoming variance request that would negatively impact your business. My husband I have been to your property and understand how this would affect your business and the traffic.
We are for responsible progress in the county. This proposed variance is not responsible and it is rather selfish that your business should either suffer or have to close down. It seems like people put their opportunity for profits above caring about somebody else's livelihood. We will be there to support you at the meeting as well.

Carl and Theresa Meyerring
175 Tabor Ramp Rd.
Westminster, SC 29693

God Bless America

Terri Meyerring
Meat'n in the Middle
864-723-1185

Contact us for your catering needs


MEAT'N IN THE MIDDLE
A TASTE OF THE SOUTHWEST
&
THE SOUTHEAST

**Vivian Kompier**

---

**From:** Cathy Nance <cmnance4@gmail.com>
**Sent:** Tuesday, November 30, 2021 12:55 PM
**To:** Planning Info
**Subject:** Variance request application #VA21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Board of Zoning appeals,

As a customer of John's Marine Service and a resident of Oconee County, we oppose the subject variance request. We are very concerned that John's Marine ability to service our boat and those of hundreds of other customers will be adversely impacted by the proposed variance. We strongly urge that you vote against this variance and prevent the negative impact on a long established family business.

Sincerely,
Catherine M Nance
39 Quartermaster Dr.
Salem, SC 29676
864-918-4463

**Vivian Kompier**

**From:** Chad Knott <chad@yonahhomecompany.com>
**Sent:** Monday, November 29, 2021 6:58 PM
**To:** James Coley
**Subject:** Ellenburg Variance Request VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To Whom It May Concern:

My wife and I own a home at 555 Ellenburg Road, Seneca, SC 29672. We are members of and are part of the Harbor Oaks Subdivision. We are opposed to the variance for the following reasons, and believe that Oconee County is required to take the following matters into consideration:

First, pursuant to Chapter 38-212 of the Oconee County Code of Ordinance, "A Variance is a waiver of the dimensional terms of the zoning chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the chapter would result in unnecessary and undue hardship; and does not involve a change in the use of the property." Please note that the purchaser and current owner of the property, Farmes, a limited partnership, and Globe, a limited partnership, consists of John Hamrick and Frances Hamrick, as general partners. As you may or may not be aware, Mr. John Hamrick has regularly been involved in the real estate industry over the last 30 years, and has been active in the development and marketing of property for Crescent resources, including my subdivision, Harbor Oaks. Mr. Hamrick is well aware of the subdivision regulations which have been in effect prior to his acquisition of this property. These subdivision regulations require a 50' right of way. The subdivision regulations were established and approved to provide for the safety of the public and to provide a means of maintaining that safety if site line of distance and other factors necessitated more control, and to provide a mechanism for traffic to leave the road bed, where necessary, to deviate from collision due to mistake or error by oncoming traffic by having sufficient right of way for doing so. The variance request is a 36.2% percent reduction in the right of way, and remarkably, the variance of 18.1 feet represents nearly 56.7% of the final right of way. Oconee county's considering and granting such a right of way is absurd and is against the pubic interest for the following reasons:

1) Denying the variance does not impede the property owner's right to use the property. The owner of the property can acquire a building permit to build a home on the property without the need to obtain a variance. For that matter, they can construct up to three homes without a variance. The variance is needed for development and subdivision of the property only. As a result, the financial considerations of the benefit of the variance cannot be a consideration in whether the board should approve or deny the variance. Please see the case of S.C. Rush vs. City of Greenville, 143 S.E.2d 527 (The Supreme Court of South Carolina), which held that "going further and assuming that they will suffer substantially in a financial way, and this is obviously the only hardship that could possibly be expected to result to them, that alone is not sufficient. Although it is an element in the situation which is entitled to fair and careful consideration, mere disadvantage in property value or income, or both, to a single owner of property, resulting from application of zoning restrictions ordinarily does not warrant relaxation in his favor on the ground of practical difficulty or unnecessary hardship." Therefore, the variance should not be granted because the property owner can in fact utilize the property, they can build on it without the variance.....they simply need the variance for development and financial gain. Further, Section 38-7.1 of the Oconee County Code of Ordinances provides that granting a variance should be considered when (subsection (3)) "the application of this chapter to the particular piece of property would

effectively prohibit or unreasonably restrict the utilization of the property". The failure of Oconee county to grant the variance does not prohibit the utilization of the property nor does it restrict the utilization of the property. In addition, Section 38-7.1 (4) b. provides that "The board of zoning appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance." For the above reasons, Oconee county should not grant the variance.

2) The zoning regulations requiring a 50' right of way for a new subdivision were in place prior to their acquisition of the property. The property owner knew, or should have known of the regulations. Mr. John Hamrick was in the real estate business and was very familiar with subdivision regulations for Oconee County. When I purchased my property on Ellenburg road, my realtor told me that John Hamrick was going to build his retirement home on the tract. Many of us, familiar with the subdivision regulations, knew that the property did not have sufficient right of way for subdivision. The current owner purchased the property in 2008 pursuant to the plat recorded in plat book B291, page 1. This plat, last revised November 4, 2008, clearly shows that the property does not have sufficient right of way width for a subdivision pursuant to subdivision regulations which were in place at the time of the purchase. Also in S.C. Rush vs. City of Greenville, 143 S.E.2d 527 (The Supreme Court of South Carolina), the court held that "Where one purchases realty with intention to apply for variance, he cannot contend that restrictions caused him such peculiar hardship that entitles him to special privileges which he seeks". Therefore, the Supreme Court of South Carolina has reached the conclusion and has held that Farmes and Globe cannot purchase the property in 2008 with zoning regulations in effect which require a 50' right of way for subdivision development, and then now seek a variance from said regulations such that subdivision development will occur.

3) The property in which the variance is sought is below the 810' flood elevation line. Please see the drawings included with the variance application. Please also make a site visit. The current property owner purchased the property subject to "flood easements in favor of Duke Energy Carolinas, LLC and riparian rights of others, including, but not limited to, the flood easement to flood to the 810 foot contour line....." . Please see page one of their deed recorded in deed book 1695, pages 87-102. While we cannot predict the future, it is possible that Duke may allow the flooding of Lake Keowee such that the road would be under water. This is clearly a public hazard, and Oconee county faces significant liability for accident and injury associated with the approval of a public road which, by its design, could be underwater. I know of no place in Oconee County where access to a subdivision is approved in an area where the access road is below the 810' flood easement area. The thought of granting such a variance is ludicrous. Again, please make a site visit to see the area first hand.

4) The nature of the location of the variance, and the curvature of the road bed within and adjacent to the variance area will cause accidents between vehicles of oncoming traffic, particularly all of those potential property owners traversing in and out of the variance area with boat trailers. Again, I would encourage you to make a site visit. John's marine is a business which has been in place on Ellenburg road since lake keowee has been built. It is often that trucks, boats, and boat trailers, are regularly parked on the concrete pad and the property adjacent thereto in anticipation of repairs. While these boats and trailers are parked outside the right of way, they are parked within inches of the right of way and create significant line of sight problems for the variance area. As you can see from the diagrams provided by the engineering company, the subdivision access road has to make a deviation to the south and then quickly back north to prevent traffic from driving into Lake Keowee. I am confident that drivers will end up driving off of the road bed and into lake keowee in order to prevent being hit by oncoming traffic. This variance request is not simply reducing a right of way down to ~32 feet and the road is straight, and there is plenty of land adjacent thereto to absorb the mistakes and errors of drivers. This particular location is a combination of multiple traffic concerns and public safety concerns which include line of sight distance issues, curvature of the primary access road.....which is in the variance area, and immediate drop offs into Lake Keowee on both the north and south sides of the variance area.

5) The nature of Oconee county's prescriptive interest in Ellenburg Road will cause confusion, and additional road maintenance and liability for Oconee County. Oconee county's obligations to maintain Ellenburg Road are limited to maintaining Ellenburg road upon which asphalt has been laid, but nothing more. However, Oconee does in fact have an obligation to maintain this area of Ellenburg road regardless of what the developer constructs. The developer intends to construct a new road which is adjacent to, and splinters off from the existing paved surface of Ellenburg Road which Oconee County will continue to have to maintain. Therefore, as a driver is traveling East on Ellenburg Road, especially at night, the driver will be confused as to whether to travel straight...which will be the natural manner in which the driver will be inclined to travel versus deviating south to travel on the new road. As you can see, this will cause and create confusion and traffic accidents. I am not aware of any other location in Oconee county where such a road and traffic anomaly exists. This reason alone is sufficient to deny the variance as it is clearly against the public interest.

6) Granting such a variance will clearly impact and impede the activities at John's marine, an existing business which has been active and provides a required service to the local lake keowee boat owners. This would be contrary to Oconee County code of ordinance 38-7.1 (4) which states that "The authorization of a variance will not be of substantial detriment to adjacent uses". John's marine is regularly pulling into and out of Ellenburg Road backing boats down the boat ramp, pulling boats out of the boat ramp, pulling boats into and out of his shop. Traffic into and out of the proposed subdivision, whether from construction traffic, or property owners, will ultimately, and negatively impact John's marine.

For all the above reasons the variance should be denied, and I stand ready to take this issue to the Supreme court of South Carolina.

I would like the opportunity to speak at the hearing if Oconee County allows the public to speak as such a hearing. I would kindly ask that you let me know if there are any special circumstances required of me in order to speak.

Best Regards,

Chad Knott

**Vivian Kompier**

| | |
|---|---|
| **From:** | Jodie Paul <jkp1675@gmail.com> |
| **Sent:** | Tuesday, November 30, 2021 1:55 PM |
| **To:** | Planning Info |
| **Cc:** | Danny Paul |
| **Subject:** | Ellenburg Rd. Variance Opposition |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

We are writing to officially voice our opposition to the variance request for a new road on the end Ellenburg. We live close by and drive down there often so we have first hand knowledge of the set up and the work that has already been done to set up this road even though approval for the variance has not been granted. The proposed narrower road will be a big safety issue. How will fire trucks and construction equipment be able to safely pass through there? Where will the run off water go? Toward the adjoining business? Off the road into the 804? If the runoff causes a washout on the steep side of the road how will emergency vehicles access the neighborhood? The developer only has access to half of the current road. How are they going to safely run utilities under there without undermining the steep 804 side of the road or the side owned by John's Marine? There is a reason the County specified that 50 feet is a minimum for these roads - for safety. The developer knew this going into the project. John's Marine has been there the whole time - the fact that a business is blocking their big plans and there is a county ordinance prohibiting what they want to do are not surprises. The fact that the county will get tax revenue from this project should not be a reason for the safety of the neighborhood to be impacted. For these reasons we oppose the variance.

Dan and Jodie Paul
333 Elderberry Way
Seneca SC 29672

**Vivian Kompier**

**From:** DAVID & EVELYN KACZKOWSKI <kaz41@bellsouth.net>
**Sent:** Tuesday, November 30, 2021 4:44 PM
**To:** Planning Info
**Subject:** Ratcliff

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Zoning committee: As a former customer of this fine business, I appreciate the years of service provided to this community and wish to endorse John's Marina in this dispute. Sincerely submitted by: David and Evelyn Kaczkowski 103 Silo Aly Seneca, SC 29672 864-973-8434

**Vivian Kompier**

**From:** davidhumphrey@charter.net
**Sent:** Monday, November 29, 2021 5:52 PM
**To:** Planning Info
**Subject:** Opposition to Variance Request

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To all concerned,

In reference to Variance Request Application #VA 21-011, please know that I oppose approval for that variance. A variance requested should not have such a dramatic impact on the surrounding properties, especially that of a 3rd generation business that has no good alternative. You may very well put someone out of business that is well liked and respected in this community, and has been around for a very long time.

Thank you,
David Humphrey
60 Commodore Drive
Salem SC 29676

**James Coley**

**From:** Doug Cooper <cooperd5908@gmail.com>
**Sent:** Tuesday, November 30, 2021 3:26 PM
**To:** James Coley
**Cc:** Chad Knott; Lucretia Morgan
**Subject:** Variance meeting tonight
**Attachments:** IMG_2966.jpg; ATT00001.txt

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I want to submit this marked up drawing the developer submitted for tonight.
He and others have claimed there are not markings on the drawings to know where the 804 is.
As you can see just by zooming in using any PDF reader you clearly see the topology lines.
Blue is the 810' Flood line
Yellow is the 804'
Red is the 802'

Where everything is currently staked is more in line with the 802' line than the 804'. While the entire project is below the 810' line.

Doug

SKETCH PLAN
LOCATION MAP
RIDGEWATER
Lake Keowee
INSET
Main Adak
Area
TMS # 150-00-01-459
D.B. 1695, PAGE 87
P.B. 8291, PAGE 1
Airmarked Point
CERTIFICATE OF PROJECT APPROVAL
DESIGN PROFESSIONAL CERTIFICATION
OWNERS CERTIFICATION
oconeesc.com
https://oconeesc.com/c
Board of Zoning Appeals
Shop Our Weekly Ad
8:44 AM Sat Nov 13
34%

**Vivian Kompier**

| | |
|---|---|
| **From:** | Ed Zanowicz <zano737@gmail.com> |
| **Sent:** | Tuesday, November 30, 2021 1:53 PM |
| **To:** | Planning Info |
| **Cc:** | johnsmarinesc@gmail.com |
| **Subject:** | No to Variance on Ellenburg Road @ John's Marine Service |

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Dear Oconee Council,

I strongly object to the proposed variance request on Ellenburg Road adjacent to John's Marine Service. I'm against this for the following reasons. First, and most important, this narrow road will compromise safety between the marina workers and cars entering and leaving the proposed subdivision. Second, the developer knew about the marine business at the time he purchased the property and nothing has changed since he made since closing the deal. Three, not only would it be financially prohibitive from moving the business elsewhere on the lake, it is highly doubtful Duke Energy would even grant a permit to build such a large facility. Many boaters (and me included) on this side of the lake regularly use John's Marine service for our boating needs and would have to drive a great distance to get the same quality service.
Thank you for your consideration on this matter, and hope you do the right thing and refuse this variance request.

Respectfully,
Ed & Terry Zanowicz
Seneca

**Vivian Kompier**

**From:** Kim Masiello <kim.masiello1@gmail.com>
**Sent:** Monday, November 29, 2021 9:34 PM
**To:** Planning Info
**Subject:** Requested Variance near John's Marine Service

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To Whom it May Concern

We are long time customer's of John's Marine both via the road and the water. Jimmy's shop is one of the most recommended on the lake. His business would be negatively affected by this proposed variance. He provides a necessary service to many of the residents in the area. Please do not allow this variance to pass.

Sincerely

Gary and Kim Fortier

**Vivian Kompier**

**From:** Hjkenney <hjkenney@aol.com>
**Sent:** Tuesday, November 30, 2021 1:04 PM
**To:** Planning Info
**Subject:** Say no to Variance Request #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Good day Oconee County Board of Zoning,

I had planned on attending tonight's meeting, however am a bit under the weather and have elected to stay home.

I would like to voice my opposition to zoning variance request #VA 21-011.

The board should not be approving a variance from a home builder/developer that is going to negatively impact a business that has been in operation for 35 years. A business that is utilized by countless residents of Oconee County who live on Lake Keowee and access it by water.

Please come up with a better solution.

Thank you.

Howard J. Kenney
704 Cypress Bay Lane

**Vivian Kompier**

| | |
|---|---|
| **From:** | Joseph Fleskoski <jhfleskoski@icloud.com> |
| **Sent:** | Monday, November 29, 2021 6:23 PM |
| **To:** | Planning Info |
| **Subject:** | #5 on agenda 11-30-21 |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Dear Board Members

After reviewing the proposal on Variance Request to change a 50' Right of Way for a subdivision entrance for Joe Meaders, I believe this is wrong and an injustice to John's Marine and the boaters needing help and repairs. John's Marine is a unique repair shop and provides quality service for boaters on the lake and those trailering their boats to John's Marine. I am sure the Oconee County Board of Zoning Appeals would not want to hurt a longtime business and tax payer for the county who may need to close their doors because of the variance request. The expense to move a business is going to be outrageous, especially when John's Marine Service is operating just fine. Why turn other people's life apart to support the financials of a builder or even the county.

I am sure you will do what is right. Thank you for hearing me out.

Joe Fleskoski
229 Oak Stone Dr
West Union, SC. 29696
714-402-4066

Sent from my iPhone

**James Coley**

| | |
|---|---|
| **From:** | Joel Phillips <joelphillips@rocketmail.com> |
| **Sent:** | Monday, November 29, 2021 11:58 PM |
| **To:** | James Coley |
| **Cc:** | joelphillips@rocketmail.com; Alan.Stuart@duke-energy.com; Krystal Brock |
| **Subject:** | Variance request for Ellenburg Rd #VA 21-011 (In violation of Shoreline Management Guidelines) |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I am a homeowner within the Harbor Oaks subdivision for 11 years and respectfully request the denial of the above variance.

Regarding the above proposed variance, why would Oconee County/Duke power desire to approve construction of a new road that runs through the 804 boundary line and ultimately would be so proximal to lake water that automotive discharge would flow into the lake. At the very least, wouldn't Duke require an environmental study to determine impacts on water quality and marine life in order to not violate the licensing requirements delineated by FERC. For that matter, why would Duke consider a developer's request(if it does violate shoreline management guidelines), when said developer knew the rules when purchasing the land and the the alternative is preservation of a natural landmass for wildlife habitat, a goal more consistent with FERC licensing directives.

Additionally, John's Marine physical building is close enough to Ellenburg Rd that backing boats into the shop, launching boats, and deliveries all occupy/obstruct the road(not an issue at present as the area represents the current end of the road).
With development of up to 19 lots, some short term rentals, increased traffic flow will result in safety issues.

The communities along Knox and Ellenburg roads are very active with numerous walkers, joggers and cyclists on any given day. Ellenburg is a winding, blind curve road. While the developer has voiced his complete disregard for resident safety, adding 19 homes with higher volumes due to short term renters will create a very dangerous situation along the road.

Sincerely,

Joel C. Phillips, M.D.
124 Rollingwood Dr
Seneca, SC 29672
864-525-7132

Sent from my iPad

**Vivian Kompier**

**From:** John Graves <johncgraves@yahoo.com>
**Sent:** Monday, November 29, 2021 6:19 PM
**To:** James Coley
**Subject:** Zoning hearing

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern, I am totally against this development request it is over development in the worst case... Instead of a nice development this will be known as Helter Skelter. This is totally crazy filled with lunacy. I could not believe anyone in their right mind would approve this no matter what the County gets out of taxes. It will forever be known as a place not to go. And what of the county park do you want that to go to a new subdivision too? The people who will vote on this have an obligation to the citizens of the county and not to Rich developers. The developers will take the money and run... And the county will be left dealing with these problems forever.

November 30, 2021

Board of Zoning Appeals
Seneca, SC
planninginfo@oconeesc.com

cc: johnsmarinesc@gmail.com

RE: Variance Request Application #VA 21-011

Board Members:

It is our understanding that there is a variance request to be voted on tonight regarding access to a proposed subdivision across from John's Marine Service on Lake Keowee. We believe that the proposed road variance (from 50 feet to 31.9 feet) in front of John's Marine will create several issues of concern to the business, its hundreds of customers and future residents of the new subdivision.

As a 25 plus year customer of John's Marine, we are concerned that the construction vehicles and the ultimate increase in traffic on Ellenburg Road as a result of this new subdivision will create safety issues and difficulty trailering boats in/out. Ellenburg Road, in front of John's Marine, is narrow currently and requires one vehicle to drive on the shoulder if someone is passing while pulling a boat.

There are only a few qualified boat technicians on Lake Keowee and we do not want to lose one of them due to increased traffic and tight maneuvering space. Small business is the heart of our lake communities; John's Marine Service has been in business for over 50 years in the same location.

We hope your committee will carefully reconsider this plan and allow for John's Marine Service to continue serving its customers and our communities safely.

Respectfully submitted,

Joyce & Vince Malanga
210 Port View Ct.
Seneca, SC 29672
malangav@bellsouth.net
joycemalanga@bellsouth.net

**Vivian Kompier**

**From:** Laura Boggs <teamboggsrealtors@gmail.com>
**Sent:** Tuesday, November 30, 2021 9:05 AM
**To:** Planning Info
**Subject:** Zoning concerning John's Marine

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I have great faith that the right thing is going to be done with this case. I feel that it would be an absolute tragedy for the board to allow this developer to impact and possibly put this man out of business to create more rental properties on the lake. I also feel that it was gone about in a less than honorable way to get to this point. I believe that Mr Ratcliff spoke his concerns very early in the process and that the powers that be had already sided with Mr Hamrick.. I hope to be wrong about that last thought.
John's Marine has been helping people on the lake for my whole life! He has come to the aid of boaters when they were stuck on the lake and make quick repairs to let them get back out to having a fun time! Why would we push such a Vidal business off the lake? One that benefits all the people and not just 19 of them with this new development? I understand that money is money and unfortunately that sometimes wins off that fact alone but please I beg of you to think of the community as a whole and vote against this zone!

Thanks for your consideration
Laura Boggs

Sent from my iPhone

**Vivian Kompier**

**From:** L. Geltz <lgeltz08@gmail.com>
**Sent:** Monday, November 29, 2021 7:32 PM
**To:** Planning Info
**Subject:** John's Marine Service

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern,

As a resident of Oconee County, I oppose the variance pending. Please consider the effects of ANY changes to our county that would impede or negatively affect existing businesses and residence. Thank you for your time and consideration.

I VOTE.

LINCOLN GELTZ
201 S. CRAGGMORE DRIVE
SALEM, S.C. 29676
-
Office - 313-886-0807
Cell - 313-415-0885

**Vivian Kompier**

**From:** Mike Cauble <emltomc@gmail.com>
**Sent:** Tuesday, November 30, 2021 3:36 PM
**To:** Planning Info
**Subject:** variance request application #VA 21-011: Ridgewater Engineering

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

November 25, 2021

Oconee County (SC) Board of Zoning Appeals

RE: **Variance request #VA 21-011: Ridgewater Engineering**

This is writing is submitted to **oppose the approval of subject variance by registered Oconee voters Michael and Martha Cauble.**

We respectfully request the consideration of our opinion by this email in lieu of our attendance at the public meeting due to Covid health risks.

This variance request is not a matter of a small discrepancy, but 18 of 50 feet deficiency in right-of-way, amounting to over 1/3 deviation from the requirements. In fact, the present and existing status of this entry site is unchanged since the current owner purchased the property. Denial of the variance does not add any additional impairment beyond owner's initial acceptance of the site.

Approval of the variance does negatively impact and likely forces the termination of the long-term existing use of the adjacent property owned by the Ratliff family and operated as John's Marine. As a Keowee waterfront property owner since 2004, we attest that our boating recreation access to Lake Keowee has been enabled and enhanced by the boat maintenance and repair services offered by John's Marine. We represent a multitude of similar Lake Keowee recreational users with boats not under factory warranty, who will derive far greater benefit from the continued operation of John's Marine, than from this variance which will only enable and accommodate the maximum number of domiciles to be sold by the developer.

We concede that enabling the maximum number and density of homes on Lake Keowee does enhance Oconee County tax revenue, but oppose this as a primary determinate of variance decisions. We believe that government should play a primary protective role in preserving the quality of life and investment of pre-existing property owners by not undermining the effects of their prior investment decisions which were based upon prior zoning conditions.

John's Marine has been a long-term asset contributing to the growth of Lake Keowee by its reputable and trusted service to recreational boating users of the lake- a stated purpose of Duke Energy's permit. John's Marine is dependent upon its existing site and investment in their site-dependent facilities to actively perform work and operate this business. Approval of this variance constitutes a compromise of existing zoning requirements in favor of maximizing return on passive investment by developers. Oconee County should instead enforce its existing zoning conditions to support prior property owner investments by not approving subject variance.

Respectfully submitted,

Michael C. Cauble
Martha C. Cauble
--
Mike Cauble

cell phone 828-423-5742

**Vivian Kompier**

**From:** DAVID & EVELYN KACZKOWSKI <kaz41@bellsouth.net>
**Sent:** Tuesday, November 30, 2021 4:44 PM
**To:** Planning Info
**Subject:** Ratcliff

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Zoning committee: As a former customer of this fine business, I appreciate the years of service provided to this community and wish to endorse John's Marina in this dispute. Sincerely submitted by: David and Evelyn Kaczkowski 103 Silo Aly Seneca, SC 29672 864-973-8434

**Vivian Kompier**

**From:** Rebecca Payne <rebeccapayne2232@gmail.com>
**Sent:** Tuesday, November 30, 2021 2:33 PM
**To:** Planning Info
**Subject:** John's Marine Service

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern:

I am one of the many customers of John's Marine that lives on the lake. His marine shop being on the water has been a huge asset to me and my family for several years now. As with many of his clients that have their boats on the lake, many of us don't even own trailers and would not be able to get service without the use of John's Marine's dock.

Needless to say, I admittedly oppose this variance.

Respectfully,

Rebecca Payne
805 Treehaven Ct.
Seneca, SC 29672
757-412-8518

**Vivian Kompier**

---

**From:** Dick Stanford-Retired <dick.stanford@furman.edu>
**Sent:** Tuesday, November 30, 2021 3:16 PM
**To:** Planning Info
**Cc:** johnsmarinesc@gmail.com
**Subject:** Variance request application #VA 21-011

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I oppose variance request application #VA 21-011.

Respectfully, Richard Stanford
153C Deckhouse Lane
Salem, SC 29676

rstanford@furman.edu
8644212877

This individual is retired from Furman University. The content of this email does not necessarily represent the views of the University.

**Vivian Kompier**

**From:** Rosalynd Resendiz <rresendiz@tricorbraun.com>
**Sent:** Monday, November 29, 2021 8:25 PM
**To:** Planning Info
**Subject:** FW: VA 21-011 Ridgewater Engineering and Surveying

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it may concern,
I'm in opposition to the variance that is proposed by Joe Meaders. John's Marine has been operating in the same location now for three generations. The developer knew about John's Marine when the land for the subdivision was purchased.

Oconee County should choose to allow progress while protecting our family businesses. Many patrons in Oconee County use this road and water way to access John's Marine. Without proper access, it would hurt their business and hurt many of us who live on Lake Keowee, pay taxes, and appreciate ease of access to get boat repair. John's Marine is a staple to Lake Keowee much like other Seneca Marina or the Lighthouse. These are known spots that make Lake Keowee special and allow for special services and activities.

We ask you to oppose this variance and protect the interest of our small, family owned businesses. I would personally come tomorrow night but my family has Covid. Please use this as my voice.

Thanks,

Rosalynd Resendiz | Vice President of Supply Chain | TricorBraun
Direct 314 983 2054 | Cell 864 247 2888 | rresendiz@tricorbraun.com
6 CityPlace Drive | Suite 1000 | Saint Louis, MO 63141

**CLICK HERE TO READ THE LATEST ISSUE OF THE TRICORBRAUN PULSE,**
*YOUR MONTHLY GO-TO SOURCE FOR SUPPLY CHAIN UPDATES AND INFORMATION.*

*The information contained in this communication may be confidential and may be privileged; it may be disseminated by the recipient(s) only to persons in their own company with a need to know, for their own use only and not for redissemination. This email is for the use of the intended recipient(s) only. If you believe you have received this email in error, please notify the sender immediately and then delete it. If you are not the intended recipient, you must not keep, use, disclose, copy or distribute this email without the author's prior permission; any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. To the extent this communication pertains to the provision of goods or services it is subject to and includes our terms and conditions which will be stated in writing at such time as we enter into a transaction with you.*

**Vivian Kompier**

**From:** Ryan Baker <b2r2b202@gmail.com>
**Sent:** Monday, November 29, 2021 9:15 PM
**To:** Planning Info
**Subject:** Oppose....

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To whom it's may concerns,

I oppose the variance VA# 21-011. John's Marine Service has been tremendous service to those who need the boating services anywhere in Oconee County. Find another solution or leave Jimmy's business alone.

Best Regards,
Ryan Baker

**Vivian Kompier**

**From:** Toni Blackwell <tbwell90@gmail.com>
**Sent:** Tuesday, November 30, 2021 3:58 PM
**To:** Planning Info
**Subject:** Variance

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

I oppose the variance VA# 21- 011

**Vivian Kompier**

| | |
|---|---|
| **From:** | tyhix68@gmail.com |
| **Sent:** | Tuesday, November 30, 2021 12:05 PM |
| **To:** | Planning Info |
| **Subject:** | Opposition to Variance Application #VA 21-011 |

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

To Whom It May Concern,

I am writing to you today to voice my sincere opposition to this variance. I have owned a home and boat on Lake Keowee for approximately 15 years. Jimmy Ratliff and John's Marine Service have serviced my boat the entire time. I bring my boat to John's Marine Service on a boat trailer via this road and it's already a pretty tight fit as it is today. Narrowing the road for this variance would eliminate the ability to get my boat to John's Marine Service, which would be a travesty. I don't know where else I would go, as Jimmy has the best reputation on the Lake.

John's Marine Service is a pillar of the Lake Keowee boating community. Jimmy Ratliff is a hard working, honest, and honorable businessman, and hundreds of boat owners such as myself rely on him and his high quality service for our boats. Why would anyone allow the road to be narrowed, thus not only ruining the business for John's Marine Service, but also making it impossible for us boat owners to bring our boats to Jimmy for service.

I urge you to vote "No" on this variance and allow us to continue bringing our boats to John's Marine Service via this road in it's current condition/width.

Thank you for your consideration,
Ty Hix

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

**Minutes**
6:00 PM – November 30, 2021

**Members in Attendance**

Gwen Fowler
Marty McKee
Bill Gilster
Bill Decker
Tim Mays
Jim Codner
John Eagar

**Staff**
James Coley
Vivian Kompier

**Media**
Lauren Pierce, The Journal

**ITEM 1 – Call to Order** – Mr. Codner called the meeting to order at 6:00 PM.

**ITEM 2 – Approval of minutes of May 24, 2021 meeting** – Mr. Eagar made a motion to approve; seconded by Mr. McKee. Vote 4/0 to approve, with Mr. Mays, Mr. Gilster and Mr. Decker recusing themselves.

**ITEM 3 – Brief statement about rules and procedures** – Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide an 8-minute presentation to state their request. Mr. Codner asked presenters not to be overly verbose.
- For the opposition to the request, the Board asked that one or two people summarize the opposition—concerns, problems, etc.
- Citizen comments – Mr. Codner asked that speakers avoid identical comments in the interest of brevity. He added that the Board has received close to 100 emails that they have reviewed and they understand the issues. It is important that everyone have their say, but asked everyone to be brief if at all possible.
- Applicant rebuttal
- Board member questions, with input from Planning Staff when requested.
- Voting

**ITEM 4 – Variance request application #VA21-010: Seamon Whiteside and Associates, Inc. – Paul Talbert is requesting a variance allowing the side setback**

**for lot lines dividing attached single family units to be reduced to 0', thus allowing construction of individually platted, attached single family units. TMS #271-00-01-940/943/942/941/939/938 unaddressed parcel with the closest address of 201 W. Cherry Rd., Seneca, SC 29678.**

**Applicant's opening statement and provision of evidence:**
Paul Talbert stated he was representing the engineer of record for the subject development, Phase II of The Pier North. Mr. Talbert read the responses to questions on the variance application.

1. **Describe the extraordinary and exceptional condition that pertains to the subject property that does not generally apply to other land structures in the vicinity:** *The owner wishes to develop the subject property as attached single family units that are individually platted for sale. The code currently does not accommodate individually platted attached single family units due to the 5' side setback requirement for single family residential lots in the control free district. (Sec. 38-10.2) The owner requests a variance allowing the side setback for lot lines dividing attached single family units to be reduced to 0', thus allowing the construction of individually platted, attached single family units. All other setbacks, including side setbacks on end units, will meet Oconee County code. This will allow the owner to offer attached single family units for sale, providing an increased variety of housing products at various price points in the district. The availability for sewer on site due to access to private water treatment offers an opportunity for a higher density not present in other areas of the district.*
2. **Are the circumstances affecting the subject property the result of actions by the applicant/owner? Explain:** *No, the circumstances are due to an incompatibility between the existing single family zoning ordinance and the desire to provide attached single family dwellings on individually platted lots.*
3. **Describe the ways in which application of the requirement(s) of the ordinance effectively prohibit or unreasonably restrict the utilization of the subject property:** *The requirement for a 5' side setback on all single family residences prevents the development of attached single family units for sale rather than rental.*
4. **Will the proposed variance result in an activity that will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance? Explain:** *Yes, the proposed variance will not harm, but enhance the character of the district. The subject property is adjacent to multifamily apartments. Allowing attached single family units will provide a more seamless transition in density and use from the adjacent multifamily units to the proposed single family detached units and other surrounding single family development. The use of attached single family units will also allow units to be clustered, thus providing greater opportunity for common open space, as seen in the site plan. The*

*increased opportunity for home ownership rather than rental, will increase the investment of those living in the subdivision in the surrounding community.*

Discussion with the Board followed.

**Public Comment:**

- Mr. Codner read/summarized emails summited by the public into the record.
- Mr. Patrick Tierney, Citizen, stated that he could not discern where the proposed development was located from the back-up material provided.
- Mr. Chris Leonard, Citizen, asked if townhomes will be priced at a price for first-time home buyers. If so, stated that would be a good idea.
- Mr. Matomas, Citizen, expressed his opposition to the proposed variance. He lives in Point Harbor and is concerned about devaluation of the established homes in the area and increased boat traffic.

**Applicant rebuttal:**

- Mr. Talbert was given the opportunity to address the public comments. He clarified the exact location of the proposed variance using the projected map.
- Mr. Chip Orson, Four Star Group, who manages land acquisition for the developer addressed the question regarding price points for the townhomes. Mr. Orson added that within his years of experience he has not seen similar developments negatively affect the valuation of neighboring properties.
- Mr. Talbert stated that the opposition to boat traffic was not applicable to the variance request as the property is not on the water.
- Mr. Talbert addressed the issue of density that was raised in emails read into the record. He stated that if the variance would be denied, the density would not change. With regards to the traffic concerns, he advised they have commissioned and completed a traffic study. The project has received SCDOT approval and any improvements to traffic flow, to any of the surrounding streets will be addressed in the development as required by the traffic study and SCDOT.
- Ms. Tricia Chason, Entitlement Manager, Four Star Group, advised that turn lanes (right-hand and left-hand) will be constructed off of Cherry Road into the development, so it will be widened significantly. There will be two entrances into the development, one off Cherry Road and one off J P Stevens Road. There are no improvements required for the J P Stevens entrance. There is another access point that will be for emergency vehicles only; it will be gated to prevent additional traffic. Ms. Chason added that the traffic study also analyzed the surrounding intersections and found no improvements were needed. She advised that SCDOT has a funded project that is in development now to improve the intersection at J P Stevens Road and Cherry Road.

**Staff comments:**

- Ms. Kompier stated that the property in question is zoned Control Free, with no density limitations. She confirmed that density is not an issue tonight; it is strictly lot lines.

1. There ***are*** extraordinary and exceptional conditions pertaining to the particular piece of property:
   a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
   b. Vote

| In-favor | Opposed |
|---|---|
| 7 | 0 |

Mr. Codner noted that the criterion passed.

2. These conditions ***do not*** generally apply to other property in the vicinity:
   a. Motion – Mr. Eagar made a motion, seconded by Mr. McKee. No discussion.
   b. Vote

| In-favor | Opposed |
|---|---|
| 7 | 0 |

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property ***would*** effectively prohibit or unreasonably restrict the utilization of the property; and
   a. Motion – Mr. Gilster made a motion, seconded by Mr. Decker. Discussion followed.
   b. Vote

| In-favor | Opposed |
|---|---|
| 7 | 0 |

Mr. Codner noted that the criterion passed.

4. The authorization of a variance ***will not*** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
   a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. Discussion followed.
   b. Vote

| In-favor | Opposed |
|---|---|
| 7 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved.**
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Decker. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 7 | 0 |

Mr. Codner noted that variance request was approved.

**Item 5 – Variance request application #VA21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' right-of-way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch-to-ditch right-of-way. TMS #150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.**

**Applicant's opening statement and provision of evidence:**
Reah Smith, Development Team, Lake Keowee Real Estate, spoke on behalf of the applicant for the variance. She presented evidence that the property has geographic and physical constraints that require the variance and that each of the four criterion can be met to approve the variance. Ms. Smith added that the Road Ordinance that is referenced was adopted after the property was purchased. Ms. Smith described the positive impact the variance will have on John's Marine and the nearby County roads. Board members asked questions to clarify certain points.

**Staff comments:** Mr. Coley explained that the request is a road variance, not necessarily a zoning ordinance, and Planning staff have met with staff from the Roads & Bridges Department to discuss. Notable findings from the meetings include agreement that the current road right-of-way is prescriptive and ends at the pavement on either side of the road, the variance is for a section that is 100 ft. in length and 31.9 ft. at its narrowest point, and the applicant is shifting the proposed entrance south from the center of the road so that it is all on their property. Mr. Coley also noted that granting this variance would not allow construction to begin immediately. The applicant would still need Roads & Bridges' approval for their plan to fit road shoulders, appropriate drainage, and all utilities in a narrow right-of-way. In addition, a traffic study would need to be completed as well as approvals for access and turn radiuses from Emergency Management.

**Public comment time:**

- Rick McDuff, Attorney, Spokesman for John's Marine (Ratliff family), stated the opposition to the ordinance. Points of opposition included:

- The portion of the road in question is not owned by Oconee County. Ownership is split between the developer and Ratliff's, with the majority by the Ratliff's.
- The belief that the BZA has no authority to make this decision; must be decided between the two private parties.
- No evidence a prescriptive easement has been obtained by the County
- Applicant is attempting to change a contour of an easement that they are not a party to
- Negative impact on John's Marine and the Ratliff property and absence of legal remedies to address the impact

Discussion with the Board followed.

- Edward John "Jay" Ratliff, Jr., outlined the Ratliff family's opposition to the variance, the history of the business and the negative impact of the approval of the variance.
  Discussion with the Board followed.
- Mike Johnson, citizen, expressed his support for the variance approval, citing the changes to the County ordinance that regulates roads and right-of-ways over the years, specifically regarding private roads.
- Maggie Johnson, citizen, spoke in support of the variance approval and property owner's right to use their property as allowed.
- Chad Knot, citizen, expressed his opposition to the variance approval noting issues with the legality of Board deciding this application, infringement of the Duke 804 line, traffic, and the impact on John's Marine.
- Chris Holder, citizen Greenville, SC, stated his opposition to the variance approval. Mr. Holder referred to the negative impact on John's Marine specific to the space needed to navigate boat trailers and traffic.
- Jon Martin, citizen, stated his opposition to the variance with concern that John's Marine will lose their business and/or Oconee County taxpayers will have to defend decision in appellate court.
- Bruce Hadley, citizen, expressed his concern that the Board has no jurisdiction over this application as the road is private land and there is no plan to allow for a similar business if John's Marine is forced out of business
- Barry Steele, citizen, expressed his opposition to the variance approval based on his concerns with erosion and limited room for tractor trailers used for deliveries.
- Doug Cooper, Harbor Oaks HOA President, expressed his opposition to the variance approval citing safety concerns with regards to increased traffic.
- Mr. Codner made a motion to take a 5-minute break, seconded by Mr. Eagar. Mr. Codner called for a vote. The motion passed unanimously 7/0
- Mr. Codner made a motion that the Board reconvene, seconded by Mr. McKee. Mr. Codner called for a vote. The motion passed unanimously 7/0
- Mr. Codner read a sample of emails submitted by the public into the record.

**Applicant rebuttal:** Mr. Larry Brandt, attorney for the applicant, presented a summary rebuttal to the argument against the requested variance. A question-answer session with the Board followed. Andy Lee, Developer, addressed the opposition presented during public comment specifically the size of the cul-de-sac, piece of land between the two properties, encroachment into the 804, flood plain easement with regards to the 810, existence and "ownership" of the prescriptive easement, stabilization of the shoreline, and traffic. Discussion with Board followed. Ms. Smith made closing remarks.

**Board discussion:** Discussion by the Board included, but was not limited to, the Board's jurisdiction in this case considering the conflicting legal opinions of the applicant and the opposition, John's Marine, and traffic and pedestrian safety—specifically **section 26-8 (a) Variance from road standards** of the Oconee County Ordinances. Mr. Codner made a motion to table the variance request, with the supposition directing Planning Staff answer the question of who owns the property (road), and the two parties meet and try to resolve this issue—specifically the piece of land between the two properties—coming back to the Planning Department to schedule a new hearing; seconded by Mr. McKee. Mr. Codner called for a vote. The vote was approved unanimously 7/0.

**Item 6 – Adjourn**

Mr. Codner asked for a motion to adjourn

Motion – Mr. Mays made a motion; seconded by Mr. Eagar

Vote – Mr. Codner called for a vote. Motion was unanimously approved 7/0.

Meeting was adjourned at 6:58 PM.

# THE JOURNAL

Oconee Publishing, Inc.
210 W North 1st Street
Seneca, SC 29678

# INVOICE

DATE: 11/05/2021

ACCOUNT #: 63480

SALESPERSON: 0034

INVOICE #: 1066346

OCONEE COUNTY PLANNING & ZONING
VIVIAN KOMPIER
415 S PINE ST
WALHALLA SC 29691

**PAYMENT DUE UPON RECEIPT**

**For questions regarding your invoice, please phone (864) 973-6303.**

| DATE | REFERENCE NO. | DESCRIPTION | AMOUNT |
|---|---|---|---|
| 11/04/21 | 34856 | Notice of Public Hearing: Tuesda EMail Notice of Publi | $67.99 |

| AMOUNT DUE |
|---|
| $67.99 |

**IMPORTANT** - Please detach and return this portion to ensure proper credit.

| CUSTOMER NAME | | |
|---|---|---|
| OCONEE COUNTY PLANNING & ZONING | | |
| ACCOUNT | DATE | INV # |
| 63480 | 11/05/21 | 1066346 |
| AMOUNT DUE | AMOUNT ENCLOSED | |
| $67.99 | | |

**PAYMENT**

CHECK ENCLOSED ☐ Please make check payable to THE JOURNAL.
Be sure to include your account number on your check. Please do not staple or paperclip payment to remittance stub.

CHARGE MY CREDIT CARD
MASTERCARD ☐ VISA ☐ DISCOVER ☐

Please include credit card number, expiration date, security code and signature.

Exp. ____/____ CSC ____

Signature ____

THE JOURNAL

Oconee Publishing, Inc. 210 W North 1st Street, Seneca, SC 29678

**Laura Zimmerman**

**From:** accounting@upstatetoday.com
**Sent:** Tuesday, November 16, 2021 10:07 AM
**To:** Laura Zimmerman
**Subject:** Payment - Thank You

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

Have a good day!

# THE JOURNAL

P.O. Box 547, Seneca, SC 29679
Ph. 864.882.2375 • Fax: 864.882.2381

# Credit Card Transaction Form

**Credit Card Number**

XXXXXXXXXXXX8776

Expiration Date:

0823

**Account Name**

OCONEE COUNTY PLANNING & ZONING
CARDHOLDER (name,addr,zip)
LAURA ZIMMERMAN
415 S PINE ST, WALHALLA, SC, 29691

**Account#**

63480

**Salesperson ID**

0034

**Transaction Summary**

Trans Id

| Date |
| --- |
| Amount |
| 131954427315690 |
| DISPLAY ADVERTISERS |
| 67.99 |

| Date |
| --- |
| 11/16/2021 |
| **TOTAL** |
| 67.99 |

# PUBLISHER'S AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

OCONEE COUNTY PLANNING & ZONING

**IN RE: Notice of Public Hearing: Tuesday, November 30, 2021**

**BEFORE ME** the undersigned, a Notary Public for the State and County above named, This day personally came before me, Hal Welch, who being first duly sworn according to law, says that he is the General Manager of **THE JOURNAL**, a newspaper published Tuesday through Saturday in Seneca, SC and distributed in **Oconee County, Pickens County** and the Pendleton area of **Anderson County** and the notice (of which the annexed is a true copy) was inserted in said papers on 11/04/2021 and the rate charged therefore is not in excess of the regular rates charged private individuals for similar insertions.

Hal Welch
General Manager

Subscribed and sworn to before me this
11/04/2021

Jessica Wells
Notary Public
State of South Carolina
My Commission Expires November 13, 2030

Jessica Lee Wells
NOTARY PUBLIC
State of South Carolina
My Commission Expires
November 13, 2030

## LEGAL NOTICES

### LEGALS

d. Applicants: Georgia Power Company
e. Name of Project: North Georgia Project
f. Location: Savannah River basin on the Tallulah, Chattooga, and Tugalo Rivers, in Rabun, Habersham, and Stephens counties, Georgia, and Oconee County, South Carolina
g. Filed Pursuant to: Federal Power Act, 16 USC 791a - 825r
h. Applicant Contact: Courtenay O'Mara, Hydro Licensing & Compliance Supervisor, 241 Ralph McGill Boulevard, NE, BIN 10193, Atlanta, Georgia 30308-3374, 404-506-7219, comara@southernco.com
i. FERC Contact: Aneela Mousam, (202) 502-8357, aneela.mousam @ferc.gov
j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.
The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at http://www.ferc.gov/docs-filing/efiling.asp. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at http://www.ferc.gov/docs-filing/ecomment.asp. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport @ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P-2354-152. Comments emailed to Commission staff are not considered part of the Commission record.
The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.
k. Description of Request: Georgia Power Company (licensee) is requesting Commission approval to replace and upgrade four generating units in the Tugalo powerhouse. The licensee proposes to upgrade and rehabilitate the four project turbines, rewind and refurbish the generators, and replace the control room panels, intake trash racks and spillway gates. The unit modifications are expected to increase the rating for each unit by

## LEGAL NOTICES

### LEGALS

Notice of Public Hearing

Tuesday,
November 30, 2021 at 6PM
This meeting will be held in person at 415 S. Pine St. Walhalla, SC 29691 in Council Chambers.
You may also view on youtube.com, subscribe to Your Oconee.

The Oconee County Board of Zoning Appeals will hear:
1) Variance request application #VA 21-010: Seamon Whiteside and Associates, Inc. - Paul Talbert is requesting a variance allowing the side setback for lot lines dividing attached single family units to be reduced to 0', thus allowing the construction of individually platted, attached single family units. TMS # 271-00-01-940/943/942/941/939/938 unaddressed parcels with the closest address of 201 W. Cherry Rd. Seneca, SC 29678
2) Variance request application #VA 21-011: Ridgewater Engineering and Surveying - Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way.

Three methods of providing public input prior to the meeting:
Phone: Prior to meeting:
864-638-4218
Email: planninginfo@oconeesc.com
Mail: Oconee County Administrative Offices - Planning Department - 415 South Pine Street- Walhalla 29691

Clip & Go
YARD SALES

Yard Sale
& BBQ Fundraiser
*benefiting the Seneca High School band program*
*Saturday, Nov. 6,*
*7 a.m.-2 p.m.*
*Seneca High School*
*parking lot.*
*100 Bobcat Ridge, Seneca*
*BBQ plates from Choc's*
*BBQ for sale for $8*
Email senecabandboosters @gmail.com
*to pre-order a plate*
All proceeds benefit the Seneca High School band program!

Need a

SERVICE F

AUTO DETAILING

Blackwell's
Window Tinting
Auto Detailing
$20 OFF
Full Vehicle
Window Tint
*With This Ad.*
*Offer Expires 11/24/2021*
864.888.2269

HOME IMPROVEMENT

GARRETT REPAIR
*Service You Can Trust*
20% Senior Discount
Installing Atlas Roofing
Electrical
Plumbing
Handyman Services
FREE ESTIMATES!
LICENSED & INSURED!
864-647-4577
thompson@garrettrepair.com

LAWN

Call 973-6676
To List Your
Business In The
Service Finder!

NEED PRESSURE WASHING
*Now Is The Perfect Time!*
- Driveways & Sidewalks
- One-story Homes
- Porches & Decks
- Siding & Brick
- And More!

Call For FREE Estimates
HAM Grime Fighter
Jaxon Ham: 864-903-4040

CUSTOM MADE FURNITURE

CUSTOM MADE FURNITURE AND CABINETS
The Masters Wood Shop
864-965-8100

Spring Home Improvement Projects?

# Meeting agenda
## Monday, January 24, 2022 6:00pm

**Oconee County Board of Zoning Appeals**

Council Chambers
415 South Pine Street
Walhalla, S.C. 29691

www.oconeesc.com

**YouTube**: "YourOconee"

**Staff contact**
846-638-4218
planninginfo@oconeesc.com

1. Call to order
2. Election of officers – Chair, Vice-Chair, and Secretary
3. Approval of the 2022 calendar
4. Approval of minutes: 11/30/2021
5. Brief statement about rules and procedures
6. Variance request Continuation #VA 21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.
7. Variance application #VA 21-012A: Variance allowing the side setback for lot lines dividing attached single family units to be reduced to zero feet thus allowing the construction of individually-platted, attached single family units.
   Variance application VA21-012B: 27' Variance from the 50' road right of way to allow for the new townhomes to be consistent with the existing townhomes.
   Resideum, LLC – Greg Kurzner is requesting these variances. TMS# 257-00-02-008 an unaddressed parcel with the closest address of 304 Breakwater Lane, Seneca, SC 29678.

**BOARD MEMBERS**
Jim Codner, Chairman, District I
Gwen Fowler, District II
John Eager, At-Large
Marty McKee, District IV
Bill Gilster, Vice Chairman, District III
Tim Mays, District V
Bill Decker, At-Large

8. Variance application #VA21-013: Joe and Lynn Arve are requesting a 4.9' variance from the 25' required setback from the right-of-way to permit an existing foundation for a home. TMS# 149-04-01-050 with an address of 851 Little Bay Lane, Seneca, SC 29672.

9. Variance application #VA21-014: Dennis and Michelle Hill are requesting a 1.86' variance from the 25' required setback from the right-of-way to permit an existing porch for a home. TMS# 162-05-01-057 with an address of 419 Peninsula Rd, West Union, SC 29696.

10. Special Exception application SE21-005: Pandacon, LLC – Ben Collins is requesting a special exception for a rental cabin project in the Lake Overlay District. TMS# 209-00-01-051 with an address of 128 Tuscany Lane Seneca, SC 29672.

11. Adjourn

**BOARD MEMBERS**

Jim Codner, Chairman, District I
Gwen Fowler, District II
John Eager, At-Large
Marty McKee, District IV
Bill Gilster, Vice Chairman, District III
Tim Mays, District V
Bill Decker, At-Large

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

# There will be no more public comment for VA21-011 – Arrowhead Subdivision as this was tabled at the last meeting.

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC

TEL (864) 638-4218 FAX (864) 638-4168

## VA21-012A/012B – Townhomes on Breakwater Lane

**Public Comment – First Name, Last Name - please print legibly**

1. Gary Moss
2. Craig Eweringer
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

## VA21-014 – 419 Peninsula Road

## Public Comment – First Name, Last Name - please print legibly

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC

TEL (864) 638-4218 FAX (864) 638-4168

## VA21-013 – 851 Little Bay Lane

**Public Comment – First Name, Last Name - please print legibly**

1. DON BRADFORD - HOA Pres.
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

## SE21-005 – Rental Cabins - 128 Tuscany Lane

**Public Comment – First Name, Last Name - please print legibly**

1. JAMES SIMMONS – Scope? 3? Commercial Marina Points Noise Retention Long-term residential
2. Robert Senger Moore No - Expanding commercial Common good?
3. Steve Owings – Marina Points – Hospitality expansion – Crowds – Tiki Hut
4. 
5. Robt Sadler – New home adjacent 4 cabins 2. 3 → ? Event center
6. 
7. Danny Craig – Cabinets number? – Noise
8. 
9. Amy Sadler – Where swim? Play
10. 
11. 
12. 
13. 

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

Staff Report

| | |
|---|---|
| To: | Members, Board of Zoning Appeals |
| From: | James Coley |
| RE: | Agenda Items 6-10 |

| | |
|---|---|
| Item 6: | VA 21-011 |
| Property Owner: | Globe A SC Limited Partnership |
| Applicant: | Joe Meaders, Ridgewater Engineering and Surveying |
| Zoning: | CFD |
| Parcel Number: | 150-00-01-459 |
| Lot Area: | 15.37 acres |

County Code Reference: Section 26-2.C.2 (Private Roads)

Request: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.

Background: During the 11.30.21 BZA meeting the applicant presented their case, staff comments were presented, citizen comments were taken, unsworn public comments were presented, applicant gave their rebuttal, and board began their discussion.
Motion by Mr. Codner gave direction to staff to determine the validity of a County prescriptive easement along Ellenburg Road, and for the two parties to meet and try to resolve this issue, specifically the piece of land between the two properties. The motion was seconded by Mr. McKee, approved unanimously 7/0.
Staff has met and believes that a prescriptive easement exists the entire length of Ellenburg Road.
The parties have met and are actively attempting to come to a resolution.

Variance Standards: The standards the Board of Zoning Appeals must consider in order to grant a variance are listed below under Section 38-7.1 of the Zoning Ordinance:

Sec.38-7.1- Variances

The board of zoning appeals may grant a variance in an individual case of unnecessary hardship if the board of zoning appeals makes and explains in writing the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;

and

4. The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

    a. The board of zoning appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.
    b. The board of zoning appeals may grant a variance to extend physically an existing nonconforming use provided that the expansion does not adversely affect the character of the community and is designed so as to minimize any negative secondary impacts
    c. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

    The developer shall have the burden of providing evidence to the county of compliance with the general requirements of this chapter and the specific requirements of the applicable section. The board of zoning appeals may impose whatever reasonable conditions it deems necessary to ensure that any proposed development will comply substantially with the objectives in this chapter.

| | |
|---|---|
| Item 7: | VA 21-012A VA21-012B |
| Property Owner: | VPC-SC Holdings LLC |
| Applicant: | Greg Kurzner, Resideum LLC. |
| Zoning: | CFD |
| Parcel Number: | 257-00-02-008 |
| Lot Area: | 6.43 acres |

County Code Reference: Section 26-2.C.2 (Private Roads), 38.10.2 (Setback Requirements)

Request: #VA 21-012A: Variance allowing the side setback for lot lines dividing attached single family units to be reduced to zero feet thus allowing the construction of individually-platted, attached single family units.
Variance application VA21-012B: 27' Variance from the 50' road right of way to allow for the new townhomes to be consistent with the existing townhomes. Resideum, LLC – Greg Kurzner is requesting these variances. TMS# 257-00-02-008 an unaddressed parcel with the closest address of 304 Breakwater Lane, Seneca, SC 29678.

Background: This request is for multiple variances that are tied together. The right-of-way reduction shown in the exhibit is how the front setback is met. Additional consideration should be given

to Sec 38.9.3(2)(f) "Any garage door shall be set back a minimum of 20 feet from the property line that it faces so that vehicles may be parked in the driveway without encroaching into the right-of-way. If the district setback is greater than 20 feet, then the more restrictive setback shall prevail." Ensuring there is adequate space for a car to park without encroaching into the right-of-way, or road.

Variance Standards: The standards the Board of Zoning Appeals must consider in order to grant a variance are listed below under Section 38-7.1 of the Zoning Ordinance:

Sec.38-7.1- Variances

The board of zoning appeals may grant a variance in an individual case of unnecessary hardship if the board of zoning appeals makes and explains in writing the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
   and
4. The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

   a. The board of zoning appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.
   b. The board of zoning appeals may grant a variance to extend physically an existing nonconforming use provided that the expansion does not adversely affect the character of the community and is designed so as to minimize any negative secondary impacts
   c. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

   The developer shall have the burden of providing evidence to the county of compliance with the general requirements of this chapter and the specific requirements of the applicable section. The board of zoning appeals may impose whatever reasonable conditions it deems necessary to ensure that any proposed development will comply substantially with the objectives in this chapter.

Item 8: VA 21-013
Property Owner: Lynn Arve

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

Applicant: Joe and Lynn Arve
Zoning: CFD, Lake Overlay Region
Parcel Number: 149-04-01-050
Lot Area: .94 acres

County Code Reference: Section 38.10.2 (Setback Requirements)

Request: Joe and Lynn Arve are requesting a 4.9' variance from the 25' required setback from the right-of-way to permit an existing foundation for a home. TMS# 149-04-01-050 with an address of 851 Little Bay Lane, Seneca, SC 29672.

Background: Applicant has a valid application

Variance Standards: The standards the Board of Zoning Appeals must consider in order to grant a variance are listed below under Section 38-7.1 of the Zoning Ordinance:

Sec.38-7.1- Variances

The board of zoning appeals may grant a variance in an individual case of unnecessary hardship if the board of zoning appeals makes and explains in writing the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

a. The board of zoning appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.
b. The board of zoning appeals may grant a variance to extend physically an existing nonconforming use provided that the expansion does not adversely affect the character of the community and is designed so as to minimize any negative secondary impacts
c. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

The developer shall have the burden of providing evidence to the county of compliance with the general requirements of this chapter and the specific requirements of the

applicable section. The board of zoning appeals may impose whatever reasonable conditions it deems necessary to ensure that any proposed development will comply substantially with the objectives in this chapter.

| | |
|---|---|
| Item 9: | VA 21-014 |
| Property Owner: | Dennis and Michelle Hill |
| Applicant: | Dennis and Michelle Hill |
| Zoning: | RD, Lake Overlay Region |
| Parcel Number: | 162-05-01-057 |
| Lot Area: | .74 acres |

County Code Reference: Section 38.10.2 (Setback Requirements)

Request: Dennis and Michelle Hill are requesting a 1.86' variance from the 25' required setback from the right-of-way to permit an existing porch for a home. TMS# 162-05-01-057 with an address of 419 Peninsula Rd, West Union, SC 29696.

Background: Applicant has a valid application

Variance Standards: The standards the Board of Zoning Appeals must consider in order to grant a variance are listed below under Section 38-7.1 of the Zoning Ordinance:

Sec.38-7.1- Variances

The board of zoning appeals may grant a variance in an individual case of unnecessary hardship if the board of zoning appeals makes and explains in writing the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
   and
4. The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.

   a. The board of zoning appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.
   b. The board of zoning appeals may grant a variance to extend physically an existing nonconforming use provided that the expansion does not adversely affect the character of the community and is designed so as to minimize any negative secondary impacts

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

c. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

The developer shall have the burden of providing evidence to the county of compliance with the general requirements of this chapter and the specific requirements of the applicable section. The board of zoning appeals may impose whatever reasonable conditions it deems necessary to ensure that any proposed development will comply substantially with the objectives in this chapter.

| | |
|---|---|
| Item 10: | SE21-005 |
| Property Owner: | Lake Koewee Marina of Oconee LLC |
| Applicant: | Ben Collins, Pandacon LLC |
| Zoning: | CFD, Lake Overlay Region |
| Parcel Number: | 209-00-01-051 |
| Lot Area: | 17.78 acres |

County Code Reference: Section 38-11.1 (d)(1)(a)(4)

Request: Ben Collins is requesting a special exception for a rental cabin project in the Lake Overlay District. TMS# 209-00-01-051 with an address of 128 Tuscany Lane Seneca, SC 29672.

Background: The exception being sought is for additional commercial activity in the Lake Overlay Region. If approved the applicant will be required to apply for a specific plan adhering to Appendix A.

Special Exceptions Standards: The standards the Board of Zoning Appeals must consider in order to grant a variance are listed below under Section 38-7.2 of the Zoning Ordinance:

Sec.38-7.2- Special exceptions

The board of zoning appeals may grant a special exception only if it finds adequate evidence that any proposed development will meet all of the following general requirements as well as any specific requirements and standards listed for the proposed use. The board of zoning appeals shall among other things require that any proposed use and location be:

1. In accordance with the comprehensive plan and is consistent with the spirit, purposes, and the intent and specific requirements of this chapter, to include the definition and intent of the district in which the special exception is being requested; These conditions do not generally apply to other property in the vicinity;
2. In the best interests of the county, the convenience of the community and the public welfare;
3. Suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

4. Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.

The developer shall have the burden of providing evidence to the county of compliance with the general requirements of this chapter and the specific requirements of the applicable section. The board of zoning appeals may impose whatever reasonable conditions it deems necessary to ensure that any proposed development will comply substantially with the objectives in this chapter.

John's Marine Service
599 Ellenburg Road
Seneca, SC 29672

January 19, 2022

Board of Zoning Appeals
Mr. Codner, Chairperson
415 South Pine Street
Walhalla, SC 29691

Re: Meeting Minutes - November 30, 2021 Board of Zoning Appeals related to application VA21-011 (Ridgewater Engineering and Surveying TMS#150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672) -

Correction to the meeting minutes as drafted to include:

- this letter, dated January 10, 2022, which addresses the inaccurate and incomplete content in the draft minutes, and
- my letter to you, dated November 22, 2021, expressing my opposition to Variance VA21-011, which I handed to you, the Board members and various members of the public during the November 30, 2021 meeting, and
- the 75-80 emails that you indicated that the Board of Zoning Appeals received from the public regarding VA21-011.

Dear Mr. Codner,

The Ratliff family has reviewed the draft minutes and back up material from the November 30, 2021 Board of Zoning Appeals meeting and is requesting that the Board reject and/or revise the minutes due to the incomplete and inaccurate content. The minutes do not accurately document the concerns voiced during the meeting regarding John's Marine Service from both the public, as well as, the Ratliff family. These minutes are selective in what was included, and substantive information is missing.

Below are some of the examples of the incompleteness and inaccuracies in the minutes. This list is not exhaustive and only represents a portion of the concerns.

**Applicant's [hereinafter referred to as Developer] opening statement and provision of evidence:**

1) *Statement in Minutes:* *"She [Reah Smith, Development Team, Lake Keowee Real Estate] providing evidence that the property has geographic and physical constraints that require the variance and that each of the four criterion can be met to approve the variance. "*

*Reasons for Rejection:*

- The minutes are silent on Ms. Smith's evidence for the 4-criterion required for the Board to authorize a variance. Of particular note, the alleged evidence developer offered to support the statement that the variance will not be of substantial detriment to adjacent uses is completely missing from the minutes.

2) *Statement in Minutes:* *"Ms. Smith added that the Road Ordinance that is referenced was adopted after the praperty was purchased."*

*Inaccurate/Deficient Representation to the Board:*
It appears that the developer may have provided a deficient statement and clarification by the Board was not sought. Ms. Smith indicated that the Road Ordinance was adopted after the purchase of the property [12/2008]. However, her statement did not indicate that the 50' road requirement had been in place for subdivisions prior to that purchase date by the developer. See The Oconee County Council Meeting Minutes dated April 4, 2006 referencing the adopted and approved Ordinance 2006-12 "AN ORDINANCE AMENDING SECTION 6: SUBDIVISION & LAND USE DEVELOPMENT OF ORDINANCE 99-14, OCONEE COUNTY UNIFIED PERFORMANCE STANDARDS AND LAND USE DEVELOPMENT REGULATIONS AS ADOPTED BY ORDINANCES 2001-04, 2002-05 & 2004-14" wherein the ordinance states the 50' right-of-way road requirement.

Ms. Smith states: *"Before getting into the criteria [the four criterion] required to obtain a variance], I would like to clarify that the purchase of this parcel predates the existing Road Ordinance. At the time of the purchase no variance would have been needed to go straight into construction, however, given that we entered one of the most severe economic recessions in US history it would have been unwise to do so."*

The Board did not ask her to clarify the date of purchase of the parcel and whether there was an existing Road Ordinance at the time of purchase which required a 50' right-of-way for a road. The Ordinance 2006-12 clearly states the 50' right-of-way for road development.

3) *Statement in Minutes:* *"Ms. Smith described the positive impact the variance will have on John's Marine and the nearby County roads."*

*Reason for Rejection:*
While the minutes state the developer indicated that there would be an alleged positive impact on John's Marine, the minutes are silent on the specific alleged positive impacts.

**Staff comments:**

4) *Statement in Minutes:* *"Mr. Coley explained that the request is a road variance, not necessarily a zoning ordinonce, and Planning staff have met with staff from the Roads & Bridges Department to discuss. Notable findings fram the meetings include agreement that the current road right-of-way is prescriptive and ends at the pavement on either side of the road, the variance is for a section that is 100 ft in length and 31.9ft at its narrowest point, and the applicant is shifting the proposed entrance south from the center of the road so that it is all on their property."*

*Incomplete or incorrect statements by staff:*

Staff also commented in the meeting: *"The 31'9 feet minimum does not restrict their [Road and Bridges Department's] ability to maintoin the road. They [Road and Bridges Department] have made no statement as to same. For road maintenance, for right now, they are maintaining with zero right-of-way on the side of road."*

This statement was in response to a question by the Board as to why the County requires a 50' right-of-way and whether road can still be maintained with only the 31'9 feet minimum. The response by Staff is incorrect as Road and Bridges is NOT maintaining the portion of the road in front of 599 Ellenburg and has not in the past maintained same either.

On another note, there was no indication at the meeting whether the staff addressed with the Roads & Bridges Department whether the shifting of the road to the South would bring the road below the 804' MSL contour, which is the Duke Energy property and Lake Keowee FERC boundary. Nor did the Board seek clarification as to that issue.

**Public Comment Time:**

5) *Statement in Minutes: Rick McDuff, Attorney, Spokesman for John's Marine (Ratliff family), stated the opposition to the ordinance. Points of opposition included:*

- The portion of the road in question is not owned by Oconee County. Ownership is split between the developer and Ratliff's, with the majority by the Ratliff's.
- The belief that the BZA has no authority to make this decision; must be decided between the two private parties.
- No evidence a prescriptive easement has been obtained by the County
- Applicant is attempting to change a contour of an easement that they are not a party to
- Negative impact on John's Marine and Ratliff property and absence of legal remedies to address the impact

*Reasons for Rejection:*

The minutes are incomplete. The minutes are silent on the following:

- Mr. McDuff pointed out inaccurate information on the aerial map provided by the developer. Specifically, Mr. McDuff correctly identified that John's Marine is located at 599 Ellenburg and not the entirety of the area encompassed in yellow on the developer's aerial map and referenced by Ms. Smith, during her initial presentation on behalf of the developer, as being part of John's Marine.
- Mr. McDuff stated that if the proposed road were to be approved, then John's Marine would be cut-off from road access and effectively shutdown, with no way for customers to bring boats on trailers to the service shop. Nor, would there be a way for deliveries to be made to the service shop or for boats to be retrieved from the lake on a trailer and brought to the service shop.
- The minutes are also silent on the fact the developer offered, for the first time during the meeting, to connect the concrete slab to the proposed new road, however, no legal details regarding ownership of the connecting portion as well as rights for customer's use were mentioned. Without the legal interests of John's Marine documented in a recorded document, then the business would effectively be shutdown.
- Mr. McDuff stated that there was no demonstration by the developer on how this proposed variance is *not* going to have a negative impact on the business. The business has been at its present location for 39 years and pre-dates the purchase by the developer by a "long shot".

- Mr. McDuff indicated that under Duke's Shoreline Management Plan, John's Marine is identified as commercial use, everything else in the area is residential. There is no other location on the lake to move John's Marine if it were to shutdown due to this proposal. There is no permitting for a commercial marina with multiple docks on Lake Keowee.
- The minutes are silent on the deficiencies in the documents provided by the developer specifically regarding the 804 contour line. There appear to be discrepancies between the Exhibit 1 with the contour lines and the Pioneer Surveying with regard to the 804.
- Mr. McDuff stated that the pitch of the proposed new road that will create what is referred to as a "birdbath" where the water will pool, then drain toward the Ratliff property. The developer has already done fill work and has created a deviation in the contour of the roadway and the "bird bath" effect is evident. The water is pooling in front the shop and has the potential to create flooding in the shop.
- Mr. McDuff indicated that there might be a way to put a private driveway for the developer to obtain access to their property. The density of the development would need to be reduced.
- Mr. McDuff indicated that there would be significant safety issues due to the potential higher use of the narrow roadway, vehicles having to dodge the large tractor trailers which deliver motors/large items, delivery vehicles, etc. These safety issues would be especially significant if multiple, emergency vehicles need to get into the property.

**6)** *Statement in Minutes: Edward John "Jay" Ratliff Jr. outlined the Ratliff family's opposition to the variance, the history of the business and the negative impact of the approval of the variance.*

*Reasons for Rejection:*

The minutes are selective and incomplete. The minutes are silent on the following:

- Mr. Edward John "Jay" Ratliff explained that a letter was being given by Mr. James "Jimmy" Ratliff (his brother) to each member of the Board in attendance as well as Mr. Coley, Ms. Kompier and to those in the public audience who expressed an interest in receiving a copy.
- Mr. Edward John "Jay" Ratliff stated that John's Marine Service has been in business since 1972 in Seneca and servicing boats at its present location since 1982. John's Marine is a 3-generation family business, which was started by his father. It is currently being run by his brother, Jimmy. Jimmy is mentoring his son, Cameron, in the business.
- Jay described the crippling, substantial detrimental impact of the variance on John's Marine business. The service business requires maneuvering boats and large trailers. Jimmy uses the entire road to pull boats out of the water, to put boats into the water, to maneuver boats into the shop for repair, to park boats and to maneuver trailers. A large number of boats are frequently maneuvered in that area. Boats that arrive by water need to be put onto a trailer, pulled from the water and maneuvered into the shop for repair. The variance would permit the developer to change the current road from a private driveway to a private road or public road, allowing much more vehicle traffic, and allow the developer to change the current location of the road. Such would substantially impact, to the detriment of John's Marine, the ability to maneuver, park and service boats/trailers, in addition to

severely limiting maneuvering by delivery trucks who bring in large motors, and equipment for boat repair.

- The John's Marine business is using the full area on Ellenburg Road for the service business, from 565 Ellenburg Road (which has been the end of County maintenance) to the area past the shop toward Arrowhead Point. The Ratliff family has maintained this portion of the road for almost 40 years. The road being a dead-end, the only vehicles using that portion are vehicles/boats/trailers/trucks associated with John's Marine, or the Ratliff private home.

***7)*** *Statement in Minutes: "Mike Johnson, citizen, expressed his support for the varionce approval, citing the changes to the County ordinance that regulates roads and right-of-ways over the years, specifically regarding private roads."*

*Reasons for Rejection:*

The minutes are selective and incomplete. The minutes are silent on the following:

- Mr. Johnson also indicated that he is a member of the Oconee County Planning Commission.
- It appears that Mr. Johnson provided an inaccurate statement and clarification by the Board was not sought. Mr. Johnson represented that private road ordinance changed in 2013, bringing private roads up to match the public road 50' right-of-way standard. He pointed out that any inference that the "developer should have known" "at time of purchase" "just probably would not be true," given that Mr. Johnson alleges the private road 50' right-of-way ordinance did not come into effect until 2013. The Board did not ask Staff to verify this, nor did the Board challenge that statement. Contrary to his statement, the 50' right-of-way road requirement had been in place for subdivisions as far back as at least 2006, which is prior to the 2008 purchase by the developer. As stated previously, the Oconee County Council Meeting Minutes dated April 4, 2006 reference the adopted and approved Ordinance 2006-12, wherein the 50' right-of-way road requirement is stated for private roads.
- Mr. Johnson failed to mention his employment relationship with the developer.

***8)*** *Missing Statement from Minutes:*

Mr. Roger Chapman arose and spoke after Mr. Chris Holder and before Mr. John Martin. Mr. Roger Chapman, citizen, expressed that his concerns were addressed by previous speakers and that he recommended that the Board oppose the variance.

*Reasons for Rejection:*

The minutes are selective and incomplete. Mr. Chapman's recommendation that the Board oppose the variance was not included in the Minutes.

***9)*** *Statement in Minutes: "Mr. Codner read a sample of emails submitted by the public into the record."*

*Reasons for Rejection:*

The minutes are incomplete and selective.

- Mr. Codner stated that the Board received approximately 75-80 emails and that the bulk of the emails support John's Marine. Mr. Codner's statement about the quantity of emails received, as well as, their support for John's Marine is missing from the Minutes and should be included.
- In comparison to the Board of Zoning Appeals documentation attached as "Backup Material" for other variance requests, the "Backup Material" documentation of

VA21-011 appears to be selective. For example, variance #VA20-4 contains approximately 125 emails which citizens sent to the Board. All 125 emails were included in Board of Zoning Appeals "Backup Material" documentation. For VA21-011, Mr. Codner summarized a very small portion during the meeting and none of the 75-80 emails that the Board received were included in Board of Zoning Appeals "Backup Material" documentation. Each email received should be included in the minutes.

**Applicant rebuttal**:

***10)*** *Statement in Minutes: "Mr. Brandt, attorney for the applicant, presented a summary rebuttal to the argument against the requested variance.*
*Reason for Rejection:*
The minutes are silent on Mr. Brandt's rebuttal arguments.

***11)*** *Statement in Minutes: "Any Lee, Developer, addressed the opposition presented during public comment specifically the size of the cul-de-sac, piece of land between the two properties, encroachment into the 804, flood plain easement with regards to the 810, existence ond "ownership" of the prescriptive easement, stabilization of the shoreline, and traffic."*
*Reasons for Rejection:*

- The minutes are silent on the developer's rebuttal arguments.
- Andy Lee stated that tractor-trailers from John's Marine can use the first cul-de-sac as a turn-around. This statement appears to be inaccurate as a 53' tractor-trailer requires a minimum 55' turning radius; the standard 40' cul-de-sac for a subdivision will not accommodate this requirement. Additionally, tractor-trailers providing construction materials, moving freight liners and heavy equipment trucks will add to the congestion as they will also back down ~ 1/2 mile from the Harbor Oaks entrance.
- No evidence was provided during the meeting that the developer obtained approval with regard to the 804 backfill activities.
- No evidence was provided during the meeting that a shoreline stabilization plan for the road has been approved by the County or Duke Energy.

Many of the discrepancies noted above can be validated by watching the video from the Board of Zoning Appeals meeting on November 30, 2021 and comparing to publicly-available records.

The Ratliff family have submitted FOIA requests for the following:

- The minutes of the meetings between the Planning staff and the Road & Bridges Department that document the notable findings which were mentioned by Mr. Coley during the Staff Comments portion of the Board of Zoning Appeals meeting on November 30, 2021.
- The Ellenburg Road Maintenance Records
- The written reports of the Road and Bridges Code of Ordinance Section 26.8(b) that were submitted prior to the Board of Zoning Appeals meeting on November 30, 2021.
- Any emails or communications pertaining to the variance request and Ellenburg Road.

We appreciate your consideration in this matter and look forward to your response prior to the upcoming January 24th meeting that the minutes will be revised to include the aforementioned

information. As noted above, the contents of this letter are not exhaustive, but only provide some detail as to some of the important information that is missing from the minutes.

On a personal note, I'm shocked that I was not invited to participate in any of the meetings that the County held to discuss the changes being sought to the section of Ellenburg Road that my family has been maintaining for more than 40 years and which has a direct impact on my business and involves my property.

Thank you,
*Jimmy Ratliff*

Jimmy Ratliff
John's Marine Service

cc: John E. Ratliff
Sherri D. Crisp
Amy L. Cawthon
Frances J. Ratliff
County Council members:
John Elliot, Chair
Matthew Durham
Paul A. Cain, Esq.
Julian Davis III
James Glenn Hart

# OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC TEL (864) 638-4218 FAX (864) 638-4168

**Minutes**
6:00 PM – January 24, 2022

**Members in Attendance**
Gwen Fowler
Jim Codner
John Eagar
Tim Mays
Bill Gilster

**Staff**
James Coley, Planning Director
Vivian Kompier, Planner/Zoning Administrator
David Root, Attorney

**Media**
Lauren Pierce, The Journal

**ITEM 1 – Call to Order –** Mr. Coley called the meeting to order at 6:00 PM.

**ITEM 2 – Election of officers –** Mr. Coley called for nominations for Chair. Mr. Eagar made a motion that Mr. Codner continue as Chair; seconded by Mr. Gilster with no discussion. Mr. Coley called for a vote. The motion was approved 5/0. Mr. Codner called for nominations for Vice-Chair. Mr. Eagar made a motion for Ms. Fowler to serve as Vice-Chair. Ms. Fowler declined the nomination. Mr. Codner made a motion for Mr. Eagar serve as Vice-Chair; seconded by Ms. Fowler with no discussion. Mr. Codner called for a vote. The motion was approved 5/0. Mr. Codner made a motion that Mr. Coley serve as Secretary; seconded by Mr. Eagar with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

**ITEM 3 – Approval of 2022 calendar –** Mr. Eagar made a motion that the proposed 2022 calendar be adopted; seconded by Mr. Mays with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

**ITEM 4 – Brief statement about rules and procedures –** Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide a presentation to state their request.
- Staff will be asked to make any comments regarding the request.

- Citizens are allowed to voice their approval or opposition to the proposed. Please do not repeat opinions that have already been stated into the record.
- Applicant rebuttal
- Board members will discuss in detail.
- Voting

**ITEM 5 – Approval of minutes of November 30, 2021 meeting** – Mr. Eagar made a motion to approve the November 30th minutes; Mr. Gilster seconded. Discussion: Mr. Codner noted that Mr. Ratliff sent an extensive letter pointing out issues with the minutes. Mr. Codner asked County Attorney, David Root to define and explain what minutes should provide. Mr. Root stated that minutes for public bodies are defined by statute. They should include when a meeting is held, the subject matter of the meeting, and who is present. With regards to the essence of what was spoken, the statute says minutes should capture the substance of what was said; it is not a transcript. Mr. Codner summarized that approval of the minutes would be agreement that the minutes are a fair representation of what happened in that meeting. When asked, Mr. Coley stated that he believes the minutes are a fair representation. Discussion included agreement that the proposed minutes are adequate and suggestion that all public comments, including the letter questioning the minutes, should be included with the approved minutes. Mr. Coley confirmed that as procedure, all citizen emails would be attached to the minutes as part of the record after the minutes are approved. In addition, the Ratliff letter will be attached to the minutes as well. Mr. Eagar noted the spelling of his name was incorrect in the minutes. Mr. Codner called for a vote. The motion was approved unanimously 5/0.

**ITEM 6 - Variance request Continuation #VA 21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.** – Mr. Codner explained that this request is a continuation from the January meeting and the requesting and responding parties have presented their cases and all public comments have been entered into the record. Public comment was closed with the closing of the last meeting, with the exception of the letter received from Mr. Ratliff concerning the minutes. In preparation of this continuation, the Board asked staff to present a delineation of who owns the road in question and they asked the two parties to attempt to come to an agreement. Mr. Coley deferred to Mr. Root for clarification on ownership of the road. As a matter of parliamentary procedure, Mr. Root asked Mr. Codner to first take action to remove the request from the table before proceeding. Mr. Eagar made a motion to remove Variance request #VA21-011 from the table; seconded by Mr. Mays. Mr. Codner called for a vote. The motion was approved 5/0.

Mr. Root explained that there is no question on who owns the rights to the land underneath the road. The question at hand is the traveling surface of the road. Records show that Oconee County Roads & Bridges maintained the road to the end of the paved section for 20 years (the requirement for a prescriptive easement). However, Mr. Root has recently received affidavits that questioned his findings and he needs more time to research the facts.

**Board questions:** Mr. Root answered questions from members of the Board regarding the definition of the term prescriptive easement, clarifying the County's authority to approve or deny a request to change the location of a road (prescriptive easement), if and how right-of-ways should be considered, and clarification of the need for permit approval in the future.

Mr. Codner summarized the actions the Board can take at this juncture. Based on his conversations with the legal counsel for both parties, Mr. Root stated that a postponement may be in order. Attorneys for the applicant and the opposing party agreed. Mr. Eagar made a motion to postpone the request until the applicant asked for it to be reinstated on the BZA agenda; Mr. Gilster seconded the motion. Discussion led to amending the motion on the table. Mr. Codner amended the motion to limit the postponement for a total of six months. Mr. Codner called for a vote of motion as amended. The motion was approved 5/0.

**ITEM #7 - Variance application #VA 21-012A: Variance allowing the side setback for lot lines dividing attached single family units to be reduced to zero feet thus allowing the construction of individually-platted, attached single family units. Variance application VA21-012B: 27' Variance from the 50' road right of way to allow for the new townhomes to be consistent with the existing townhomes. Resideum, LLC – Greg Kurzner is requesting these variances. TMS# 257-00-02-008 an unaddressed parcel with the closest address of 304 Breakwater Lane, Seneca, SC 29678.**

**Applicant's opening statement and provision of evidence:** Greg Kurzner, Managing Member of Resideum LLC, presented their answers to the four questions on the Variance application, noting that they are trying to complete the development of a previously approved community in the fashion, consistent with the existing individually platted for sale units and to protect the integrity and investment of the current homeowners. He also noted that the required 50' road right-of-way was not in place at the time the development was originally designed, permitted and built.

**Public Comment:**

- Gary Moss, citizen, requested more information on how approval of the variance will affect the established homes off Shiloh Road.

- Craig Schweisinger, citizen, expressed his opposition to the request, including his concern for street parking and concern that the current HOA will control the new homes.
- Mr. Codner read emails received into the record.
    - Tim and Tanya Liddy voiced their support of the request.
    - Robert and Nancy Holmes voiced their support of the request.

**Applicant rebuttal:** Mr. Kurzner addressed Mr. Moss' concerns providing details on setbacks, road right-of-ways, and landscaping plans. The Board discussed the County standards applied to private roads. Mr. Kurzner confirmed the established HOA will have authority over the proposed homes. Mr. Kurzner shared plans for guest parking to be part of the common area in this new phase.

**Board Discussion:** Board members asked questions to clarify the questions of parking.

**Staff comments:** None

**Consideration of VA21-012A:**

1. There ***are*** extraordinary and exceptional conditions pertaining to the particular piece of property:
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

2. These conditions ***do not*** generally apply to other property in the vicinity:
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property ***would*** effectively prohibit or unreasonably restrict the utilization of the property; and
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. Brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

4. The authorization of a variance ***will not*** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved.**
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that variance request was approved.

**Consideration of VA21-012B:**

1. There ***are*** extraordinary and exceptional conditions pertaining to the particular piece of property:
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

2. These conditions ***do not*** generally apply to other property in the vicinity:
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property ***would*** effectively prohibit or unreasonably restrict the utilization of the property; and
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

    Mr. Codner noted that the criterion passed.

4. The authorization of a variance ***will not*** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

    Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved.**
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the variance request was approved.

**Item 8 – Variance application #VA21-013: Joe and Lynn Arve are requesting a 4.9' variance from the 25' required setback from the right-of-way to permit an existing foundation for a home. TMS# 149-04-01-050 with an address of 851 Little Bay Lane, Seneca, SC 29672.**

**Applicant's opening statement and provision of evidence:** Lynn Arve presented visuals to show the location of the existing foundation and where it violates the setback. She explained that not allowing the variance will impact and change the design of the home. Mr. Codner asked how it happened that the foundation is complete and in the setbacks. Ms. Arve explained it was an error by the foundation contractor.

**Public comment:**

- Don Bradford, President of Timber Bay Property Owners Association, voiced his opposition to approving the variance. He stated that this location of the house is

not the location that was approved by the POA's Architectural Committee and that no other home in the community has encroached on the County's setbacks. He noted that Ms. Arve had not offered any other solution to the problem. The Board asked Mr. Bradford if he has documentation of the Committee's review and approval. Mr. Coley stated the documents are part of the back-up. Mr. Bradford was asked what actions the POA would take if the BZA were to approve the variance. Mr. Bradford advised they are consulting an attorney and are presently unsure of the answer.

**Applicant rebuttal:** Ms. Arve stated she had not explored other solutions as they were cost prohibitive. The Board confirmed that the footer and foundation is all that is finished and that the garage is the only part of the house that is in the setback.

**Staff comments:** Mr. Coley confirmed that the variance application is valid, the foundation is clearly in the setback and it is within the Board's prevue to discuss and decide.

**Board discussion:** The Board engaged in a discussion that included, but was not limited to, the difference between asking for permission vs. forgiveness, the fact that all other homes in the neighborhood had complied with the setbacks, an approval would make it harder for HOA/POAs to maintain certain characteristics of an entire community, the BZA's approval would not nullify the POA's ability for them to enforce their covenants, the relative small size of the variance requested and the liability of the foundation contractor responsible for the error.

1. There ***are*** extraordinary and exceptional conditions pertaining to the particular piece of property:
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 1 | 4 |

Mr. Codner noted that the criterion failed.

2. These conditions ***do not*** generally apply to other property in the vicinity:
    a. Motion – Mr. Eagar made a motion, seconded by Ms. Fowler. A brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 0 | 5 |

Mr. Codner noted that the criterion failed.

3. Because of these conditions, the application of this chapter to the particular piece of property ***would*** effectively prohibit or unreasonably restrict the utilization of the property; and
    a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. Brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 0 | 5 |

    Mr. Codner noted that the criterion failed.

4. The authorization of a variance ***will not*** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
    a. Motion – Mr. Eagar made a motion; seconded by Ms. Fowler. A brief discussion followed.
    b. Vote

| In-favor | Opposed |
|---|---|
| 0 | 5 |

    Mr. Codner noted that the criterion failed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Denied.**
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 4 | 1 |

Mr. Codner noted that the variance request was denied.

**Item 9 – Variance application #VA21-014: Dennis and Michelle Hill are requesting a 1.86' variance from the 25' required setback from the right-of-way to permit an existing porch for a home. TMS# 162-05-01-057 with an address of 419 Peninsula Rd, West Union, SC 29696.**

**Applicant's opening statement and provision of evidence:** Mr. Dennis Hill, property owner, the details of their request and admitted it was an error on their part and asked for forgiveness. The Board asked questions for clarification. Details discovered include the house is under construction at the framing stage and the County learned of the encroachment in a complaint made by a neighbor.

**Public comment:**

- Mr. Codner read an email from Erin Fisher, property owner, in support of approving the variance into the record.

**Applicant rebuttal:** None

**Board discussion:** The Board discussed the size of the variance request, the fact that the only public comment was favorable, and that there is no HOA that opposes the variance request.

**Staff comments:** None

1. There ***are*** extraordinary and exceptional conditions pertaining to the particular piece of property:
   a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A brief discussion followed.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

   Mr. Codner noted that the criterion passed.

2. These conditions ***do not*** generally apply to other property in the vicinity:
   a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. No discussion.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

   Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property ***would*** effectively prohibit or unreasonably restrict the utilization of the property; and
   a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. Brief discussion followed.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

   Mr. Codner noted that the criterion passed.

4. The authorization of a variance ***will not*** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
    a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved.**
    a. Motion – Mr. Eagar made a motion; seconded by Ms. Fowler. No discussion.
    b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that variance request was approved.

**Item 10 – Special Exception application SE21-005: Pandacon, LLC – Ben Collins is requesting a special exception for a rental cabin project in the Lake Overlay District. TMS# 209-00-01-051 with an address of 128 Tuscany Lane Seneca, SC 29672.**

**Applicant's opening statement and provision of evidence:** Mr. Ben Collins, Pandacon, LLC distributed supplementary back-up for his request. Mr. Collins asked the Board to consider the rationale of staff classifying the proposed rental cabin project as a commercial use when there are many single-family homes in Oconee County that are short-term or seasonal rentals that are not considered commercial. Mr. Collins presented a detailed case for the approval of the special exception, noting that the proposed development is consistent with the spirit and intent of the zoning ordinance, the lake overlay, and aspects of the Comprehensive Plan. Mr. Collins argued the cabins would be a welcomed and a needed residential component of the commercial businesses of Lake Keowee Marina. He also cited there are other privately owned short-term rentals in the neighboring areas. Mr. Collins stated that the special exception is for a land use exception; all other aspects of the development would still go through the Planning & Zoning department for their approval.

**Staff comments:** Mr. Coley confirmed that staff believes this is a commercial project and noted that there are many commercial businesses that are in the area that would have a hard time getting approved if they were being developed today. Mr. Coley also verified that the proposed development would be subject to the County's approval and permitting process.

**Board questions to applicant:** The Board asked for clarification regarding the location of Tuscany Lane. Mr. Clay Schile, Lake Keowee Marina, provided the response.

**Public comment:**

- Mr. James Simmons, citizen, expressed his concern of not knowing the complete scope of the project—will the development continue to expand and require additional approvals from the Board. The classification of the cabins as single-family dwellings or rentals and noise abatement was also a stated concern of Mr. Simmons.
- Robert Moore, citizen, expressed his opposition to the request citing that exceptions to the Lake Overlay should only be given when there are no alternatives and it serves the common good.
- Steve Owings, citizen, expressed his opposition to the request citing his concern of rental properties and the unknown regarding the complete scope of the project.
- Robert Sedler, citizen, expressed his opposition to the request citing his concern to the complete scope of the project, noise abatement and boat parking of future renters.
- Danny Greg, citizen, express his opposition to the request citing his concerns for noise abatement and the unknown of the scope of the project.
- Amy Sedler, citizen, expressed her concern on where the potential renters will be enjoying the lake—i.e. swimming.

**Applicant rebuttal:** Mr. Schile responded to the stated objections, stating that the nature of a marina is public. He stated that their target customer for renting the cabins are families. When asked if the development can be realized without being in the overlay, Mr. Schile answered no, due to constraints on the property. He added that he is aware of noise issues and they control as much as they can, stating that noise comes from all sides. Mr. Collins provided more input to diminish the public's concerns over the development being labeled a commercial project. He deferred to Mr. Schile on the question of possibly more cabins at a later date.

Staff was asked if the conceptual drawings of the cabins provided in the supplementary documents could meet Appendix A. Mr. Coley stated that it is hard to make a decision on pictures and it would require a more detailed review, but it would be required to meet Appendix A. Mr. Coley also clarified his remarks on the existing commercial developments' ability to gain approval in the overlay if submitted today. Ms. Kompier added that Appendix A can be amended to meet the needs. Mr. Coley also clarified that the applicant did not note in the application that the variance request was specifically for three cabins.

**Board discussion:** Discussion included, but was not limited to, the negative aspects of short-term rentals, noise, and the purpose of the lake overlay.

1. In accordance with the comprehensive plan and is consistent with the spirit, purposes, and the intent and specific requirements of this chapter, to include the definition and intent of the district in which the special exception is being requested:
   a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A brief discussion followed.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

   Mr. Codner noted that the criterion passed.

2. In the best interests of the County, the convenience of the community and the public welfare:
   a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A discussion followed that included limiting the number of cabins to be approved.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

   Mr. Codner noted that the criterion passed.

3. Suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with appropriate in appearance to the existing or intended character of the general vicinity:
   a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. Brief discussion followed.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

   Mr. Codner noted that the criterion passed.

4. Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.
   a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. Brief discussion followed.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed special exception be **Approved** with a restriction that the maximum of three cabins can be built as shown on the submitted site plan under this special exception.
   a. Motion – Mr. Eagar made a motion; seconded by Ms. Fowler. No discussion.
   b. Vote

| In-favor | Opposed |
|---|---|
| 5 | 0 |

Mr. Codner noted that the special exception was approved.

**Item 11 – Adjourn**

Mr. Codner asked for a motion to adjourn

Motion – Mr. Eagar made a motion; seconded by Mr. Mr. Mays

Vote – Mr. Codner called for a vote. Motion was unanimously approved 5/0.

Meeting was adjourned at 8:45 PM.

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC

TEL (864) 638-4218 FAX (864) 638-4168

# There will be no more public comment for VA21-011 – Arrowhead Subdivision as this was tabled at the last meeting.

# THE JOURNAL

Oconee Publishing, Inc.
210 W North 1st Street
Seneca, SC 29678

# INVOICE

DATE: 12/20/2021

ACCOUNT #: 63480

SALESPERSON: 0034

INVOICE #: 1084916

OCONEE COUNTY PLANNING & ZONING
VIVIAN KOMPIER
415 S PINE ST
WALHALLA SC 29691

**PAYMENT DUE UPON RECEIPT**

**For questions regarding your invoice, please phone (864) 973-6303.**

| DATE | REFERENCE NO. | DESCRIPTION | AMOUNT |
|---|---|---|---|
| 12/17/21 | 35330 | Notice of Public Hearing Monday, EMail Notice of Publi | $242.50 |

| AMOUNT DUE |
|---|
| $242.50 |

**IMPORTANT** - Please detach and return this portion to ensure proper credit.

| CUSTOMER NAME | | |
|---|---|---|
| OCONEE COUNTY PLANNING & ZONING | | |
| ACCOUNT | DATE | INV # |
| 63480 | 12/20/21 | 1084916 |
| AMOUNT DUE | AMOUNT ENCLOSED | |
| $242.50 | | |

**PAYMENT**

CHECK ENCLOSED ☐ Please make check payable to THE JOURNAL.
Be sure to include your account number on your check. Please do not staple or paperclip payment to remittance stub.

CHARGE MY CREDIT CARD
MASTERCARD ☐ VISA ☐ DISCOVER ☐

Please include credit card number, expiration date, security code and signature.

Exp. ____/____ CSC ____

Signature ____

THE JOURNAL

Oconee Publishing, Inc. 210 W North 1st Street, Seneca, SC 29678

**Laura Zimmerman**

**From:** accounting@upstatetoday.com
**Sent:** Tuesday, January 4, 2022 11:29 AM
**To:** Laura Zimmerman
**Subject:** Payment - Thank You

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you validate the sender and know the content is safe.

# THE JOURNAL

P.O. Box 547, Seneca, SC 29679
Ph. 864.882.2375 - Fax: 864.882.2381

# Credit Card Transaction Form

**Credit Card Number**

XXXXXXXXXXXX8776

**Expiration Date:**

0823

**Account Name**

OCONEE COUNTY PLANNING & ZONING
CARDHOLDER (name,addr,zip)
LAURA ZIMMERMAN
415 S PINE ST, WALHALLA, SC, 29691

**Account#**

63480

**Salesperson ID**

0034

**Transaction Summary**

**Trans Id**

| Date |
| --- |
| Amount |
| 200359337412874 |
| DISPLAY ADVERTISERS |
| 242.50 |

| Date |
| --- |
| 01/04/2022 |
| TOTAL |
| 242.50 |

# PUBLISHER'S AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

OCONEE COUNTY PLANNING & ZONING

**IN RE: Notice of Public Hearing Monday, January 24**

**BEFORE ME** the undersigned, a Notary Public for the State and County above named, This day personally came before me, Hal Welch, who being first duly sworn according to law, says that he is the General Manager of **THE JOURNAL**, a newspaper published Tuesday through Saturday in Seneca, SC and distributed in **Oconee County, Pickens County** and the Pendleton area of **Anderson County** and the notice (of which the annexed is a true copy) was inserted in said papers on 12/17/2021 and the rate charged therefore is not in excess of the regular rates charged private individuals for similar insertions.

Hal Welch
General Manager

Subscribed and sworn to before me this
12/17/2021

Jessica Wells
Notary Public
State of South Carolina
My Commission Expires November 13, 2030

Jessica Lee Wells
NOTARY PUBLIC
State of South Carolina
My Commission Expires
November 13, 2030

# Meeting agenda
## Monday, April 25, 2022 6:00pm

**Oconee County Board of Zoning Appeals**

Council Chambers
415 South Pine Street
Walhalla, S.C. 29691

www.oconeesc.com

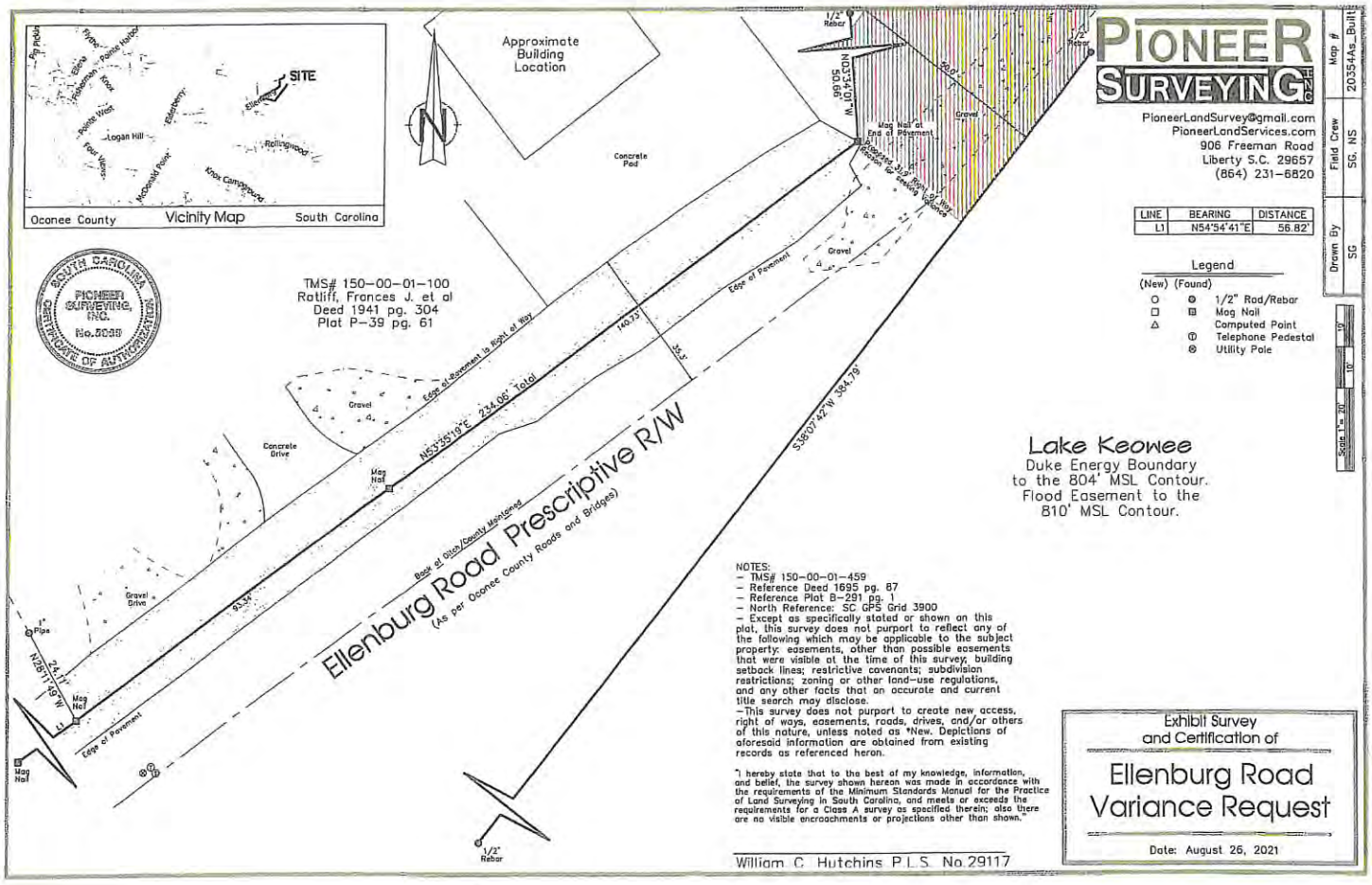
**YouTube**: "YourOconee"

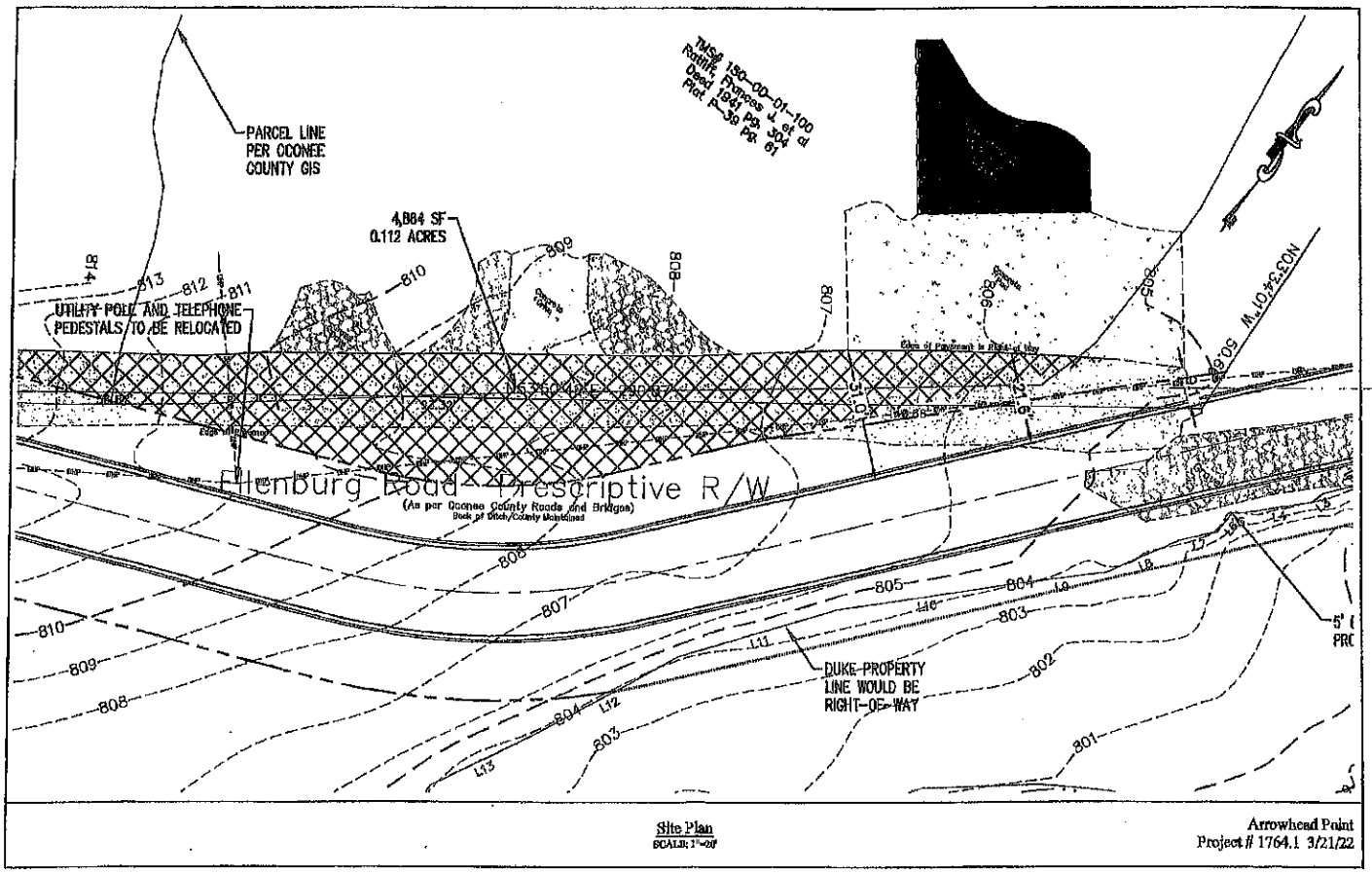
**Staff contact**
846-638-4218
planninginfo@oconeesc.com

1. Call to order
2. Approval of minutes: 03/28/2022
3. Brief statement about rules and procedures
4. Special exception application #SE22-003 – Faulk & Foster – Victoria Farmer is requesting a special exception to construct a 172' monopole telecommunications tower (182' top of lightning rod) TMS#285-00-05-001 an unaddressed parcel with the closest address of 315 Hopewell Church Rd. Westminster, SC 29693.
5. Variance application #VA 21-011-Continuation from 1/24/2022 BZA hearing postponement: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1' variance from the 50' Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672.
6. Adjourn

**BOARD MEMBERS**

Jim Codner, Chairman, District I
Gwen Fowler, District II
John Eager, Vice Chairman, At-Large
Bill Decker, At-Large
Marty McKee, District IV
Bill Gilster, District III
Tim Mays, District V


SITE
Vicinity Map
Oconee County
South Carolina
Approximate Building Location
Concrete Pad
Gravel
Edge of Pavement
Concrete Drive
Gravel Drive
Mag Nail
1/2" Rebar
Pipe
Ellenburg Road Prescriptive R/W
(As per Oconee County Roads and Bridges)
Base of Ditch/County Monument
TMS# 150-00-01-100
Ratliff, Frances J. et al
Deed 1941 pg. 304
Plat P-39 pg. 61
Edge of Easement is Right of Way
140.73'
234.06' Total
93.33'
24.17'
N26°11'49"W
N53°35'19"E
N03°34'01"W 50.66'
S38°07'42"W 384.79'
Lake Keowee
Duke Energy Boundary
to the 804' MSL Contour.
Flood Easement to the
810' MSL Contour.
PIONEER SURVEYING, INC.
PioneerLandSurvey@gmail.com
PioneerLandServices.com
906 Freeman Road
Liberty S.C. 29657
(864) 231-6820
LINE | BEARING | DISTANCE
L1 | N54°54'41"E | 56.82'
Legend
(New) (Found)
1/2" Rod/Rebar
Mag Nail
Computed Point
Telephone Pedestal
Utility Pole
Drawn By SG
Field Crew SG, NS
Map # 20354As_Built
Scale 1"= 20'
NOTES:
– TMS# 150-00-01-459
– Reference Deed 1695 pg. 87
– Reference Plat B-291 pg. 1
– North Reference: SC GPS Grid 3900
– Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject property: easements, other than possible easements that were visible at the time of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, and any other facts that an accurate and current title search may disclose.
–This survey does not purport to create new access, right of ways, easements, roads, drives, and/or others of this nature, unless noted as *New. Depictions of aforesaid information are obtained from existing records as referenced heron.
"I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown."
William C. Hutchins P.L.S. No.29117
Exhibit Survey
and Certification of
Ellenburg Road
Variance Request
Date: August 26, 2021


PARCEL LINE
PER OCONEE
COUNTY GIS
4,864 SF
0.112 ACRES
UTILITY POLE AND TELEPHONE
PEDESTALS TO BE RELOCATED
Ellenburg Road - Prescriptive R/W
(As per Oconee County Roads and Bridges)
Back of Ditch/County Maintained
DUKE-PROPERTY
LINE WOULD BE
RIGHT-OF-WAY
Site Plan
SCALE: 1"=20'
Arrowhead Point
Project # 1764.1 3/21/22

John's Marine
&
High Falls Boat Rental
Lake Keowee
Lake Keowee
Lake Keowee
Lake Keowee
RIDGEWATER
ENGINEERING & SURVEYING
PO BOX 866
ANDERSON, SC 29622
(864) 226-0990
RIDGEWATERENG.COM
Arrowhead Point
Oconee County,
South Carolina
DRAWN BY: KOC
CHECKED: JWW
JOB NUMBER: 21285
Exhibit 2

## Variance Criteria Overview

General criteria for granting a variance. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

a) *There are extraordinary and exceptional conditions pertaining to a particular piece of property.*

**The parcel itself is a peninsula, it's bounded by water on all sides with exception of the center of the county road as a boundary. The peninsula is narrow in a small portion of the parcel and is unique in that the property line is the center of the road and does not have it's own right of way. There is only access easement to the parcel. These conditions are extraordinary and exceptional because of the limitations created by geography and topography within this parcel. The way a parcel of land lays, the geography, the topography are all acceptable reasons for granting a variance.**

b) *These conditions do not generally apply to other property in the vicinity.*

**In the geographic vicinity of this piece of property most roads have a 50 foot right of way because they are not geographically constrained. This property is bounded by a body of water. Most parcels in the vicinity are not bound by the water on both sides. Because of the unique geography of this parcel, meeting the current road ordinance goes beyond creating an unnecessary hardship and instead creates only impossibility of use. This impossibility creates a scenario which meets the criteria for granting a variance.**

Item 1

c) *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

**Without granting this variance to the roads ordinance the application of the ordinance will unreasonably restrict the use of the property. The property was purchased prior to this ordinance being adopted and if you will reference the Deed Restrictions for the parcel you will see that these restrictions are designed in mind with an end use for single-family residential development which was and still remains the intent behind this purchase. The developments in the vicinity of this property have larger homesites and larger homes. The application of this ordinance effectively prohibits building like kind or similar developments for which this property was purchased for, as per the deed.**

d) *The authorization of a variance will not be substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.*

1) **The proposed improvement will relocate the existing edge of county pavement, as shown on exhibit 2, to provide John's Marine an additional 22 feet of area to maneuver, outside of the County maintained roadway.**
2) **We will extend his current driveway to meet the new roadway so that it is then contiguous to his drive and ramp, causing no disturbance in his business use.**
3) **Probably most helpful to improve current conditions for his operation is the installation of a cul-de-sac at the termination of the county road. This would be located 100% within the boundaries of our parcel, as you can see on Graphic 2 and does not encroach onto his property. John's Marine, his customer base, and**

the delivery truck drivers will be able to utilize this space to turn around trucks and trailered boats. John's Marine is currently using the county road as a parking lot and to turn around delivery trucks according to himself and what has been submitted by the public. Granting this variance would alleviate that current hardship by expanding the paved area and providing a paved cul-de-sac that is built to accommodate a circling school bus or fire truck. This should effectively eliminate the need for Fedex/UPS truck to turn around in adjacent owners driveways, road shoulders, or have a need to block the road. This will certainly benefit him and his customers to be able to turn around there.

4) We are improving the affected area an ageing county road to current county specifications, an improvement to the current conditions of the roadway. This improvement is at no cost to John's Marine, the neighbors, or to the taxpayers.

5) 19 more homesites also provides the opportunity for 19 more boats to service at the most convenient of distances. John's Marine, who already has an excellent customer base and strong reputation in our community as a top mechanic, will have a slightly expanded customer base in the community if he chooses to take on new clientele. Also, the impact of construction vehicles traveling the road way into the development is for a limited window of time while homes are being built.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 DEC -8 A 8:49

EXHIBIT B

GENERAL DEED RESTRICTIONS

THE PROPERTY SHALL BE CONVEYED SUBJECT TO THE FOLLOWING RESTRICTIONS, WHICH SHALL ENCUMBER THE PROPERTY AND SHALL RUN WITH TITLE TO THE PROPERTY.

1. **Definition of "Property" and "Lot".** As used herein, (i) "**Property**" means all of the property conveyed by Grantor to Grantee pursuant to this deed; and (ii) "**Lot**" means any portion of the Property that constitutes a legally established separate lot or parcel of land (whether created by the recordation of a subdivision plat or otherwise), as such lots or parcels of land may exist from time to time (collectively, "**Lots**"). If the Property consists of only one lot or parcel of land, then the term "Property" is synonymous with the term "Lot." If the Property consists of two or more lots or parcels of land, whether such lots or parcels exist on the date the Property is conveyed to Grantee or are later created by subdivision of the Property or other legal means, then each of those lots or parcels is a "Lot" for the purposes of these Restrictions.

2. **Single Family Use.** The Property shall be used only for detached, single-family residence purposes, together with the accessory buildings and structures permitted pursuant to **Section 6** below. No more than one detached single-family residential dwelling may be constructed on any Lot. No condominium, townhouse, duplex, apartment or other multi-family residential uses are permitted on the Property. Further, no camper, trailer, motor home, boat (including, without limitation, any boat docked adjacent to the Property), recreational vehicle or similar habitable or transportable unit or structure shall be allowed to remain on or adjacent to the Property as a place of residence. The single-family residence restrictions set forth above shall not prohibit the construction of pools, tennis courts or other recreational facilities or amenities such as are commonly constructed and maintained for the benefit of lot owners within planned unit developments; provided that such recreational facilities or amenities shall be solely for the common use of the owners of one or more Lots and, provided further, that no such recreational facilities may be located within any Buffer Area (defined below).

3. **Restricted Activities.** The following activities are prohibited on the Property:

   (a) Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats or other usual and common household pets (which are registered, licensed and inoculated as required by law) may be permitted on the Property;

   (b) Any activity which violates local, state, or federal laws or regulations;

   (c) Institutional uses, including, but not limited to, group homes, day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns and beds and breakfasts; and

(d) Any business or trade, except that an owner or occupant residing on a Lot may conduct business activities within a dwelling on that Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling unit; (ii) the business activity conforms to all zoning requirements for the Lot; (iii) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on a Lot, or for which any parts, equipment supplies, raw materials, components or tools are stored on a Lot; and (v) the business activity is consistent with the residential character of the Property and does not constitute an unreasonable disturbance to adjoining land owners or others, a nuisance or a hazardous or offensive use. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales or similar activities provided that such activities are not held on the same Lot more than once in any six-month period. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a Lot for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

4. **Prohibited Conditions.** None of the following structures or improvements may be located upon the Property:

(a) Structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated or otherwise fallen into disrepair;

(b) Towers, antennas or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind which are located outside of the dwelling on a Lot other than (i) a customary antenna, which shall not extend more than ten feet above the top roof ridge of the dwelling, and (ii) a satellite disc or dish no larger than 18 inches in diameter;

(c) Any freestanding transmission or receiving towers or any non-standard televisien antennae; and

(d) Chain-link fences.

5. **Quality Craftsmanship/Dwelling Size.** All buildings and outbuildings erected upon the Property shall be built on site of new materials of good grade, quality and appearance and shall be constructed in a good and workmanlike manner, conforming to all applicable building codes. Further, all dwellings must meet the following construction requirements:

(a) If the dwelling is located on a Waterfront Lot (a "**Waterfront Lot**" is a lot, any portion of which is located within 100 feet (measured horizontally regardless of the actual ground measurement which may vary based upon the topography) of the Common Boundary Line (defined in Section 8 below)), then: (i) one story dwellings shall not contain less than 2,000 square feet of Heated Living Area (defined below); (ii) one and a half story dwellings shall not contain less than 2,200 square feet of Heated Living Area; and (iii) two (or more) story dwellings shall not contain less than 2,400 square feet of Heated Living Area;

(b) If the dwelling is not located on a Waterfront Lot, then: (i) one story dwellings shall not contain less than 1,600 square feet of Heated Living Area; (ii) one and a half story dwellings shall not contain less than 1,800 square feet of Heated Living Area; and (iii) two (or more) story dwellings shall not contain less than 2,000 square feet of Heated Living Area;

(c) All dwellings and accessory structures shall be completely supported with solid brick, brick or stone covered block, or stucco covered foundation;

(d) Roofs shall have not less than a 6 in 12 inch pitch, and not less than a 12 inch overhang, and shall be covered with asphalt or fiberglass shingles, terra cotta tile, real or man-made slate, copper sheathing or wood shingles or pre-painted metal roofing;

(e) The exterior surfaces of all dwellings and accessory structures shall be covered only with brick, stone, hard stucco (synthetic stucco is not permitted), wood, or siding consisting of wood, composite or vinyl material; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished; and

(f) Exteriors of all dwellings and accessory structures must be completed within one year after the commencement of construction, and a certificate of occupancy issued within two years after commencement of construction.

As used herein, "**Heated Living Area**" excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, Heated Living Area excludes vaulted ceilings areas, attics, unheated porches, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios. The term "**story**" shall mean a finished horizontal division of Heated Living Area extending from the floor of such division to the ceiling above it. The term "**half story**" shall mean a story which

contains 50 percent or less Heated Living Area than the story in the house containing the most Heated Living Area.

6. **Permitted Accessory Structures.** Except as otherwise expressly set forth herein, no buildings, structures or improvements of any kind may be located on a Lot other than one detached, single-family residential home, and the following permitted accessory structures:

(a) Storage and shop outbuildings, including detached garages, workshops, storage and utility buildings, greenhouses and similar buildings, not exceeding the height of the roof of the residence on the Lot. The total square footage contained within all such outbuildings combined shall not exceed 2,000 square feet. All outbuildings shall be permanently affixed to the Lot and shall be covered with the approved exterior materials described in Section 5(e) above. Further, no outbuildings shall be located wholly or partially within any Buffer Area (as defined below).

(b) Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures. The total square footage contained within such structures when combined shall not exceed 1,000 square feet in area. Further, no such structure shall be located wholly or partially within any Buffer Area (as defined below).

(c) To the extent permitted at the time of construction and installation by Duke Energy Carolinas, LLC (or its successor, with respect to ownership and/or management authority over the Lake, if applicable) ("**Duke Energy**") and all applicable governmental authorities, waterfront structures, including fixed piers, boat slips or floats, covered docks, boat ramps, decking and sitting areas attached to piers, walkways and other similar structures. Grantee acknowledges by acceptance of this deed that policies, laws and regulations regarding its ability to construct or install such structures may change from time to time before or after Grantee's acquisition of the Property and Grantor makes no representation or warranty as to Grantee's ability to construct or install such structures either now or in the future. Such structures may be located wholly or partially within the Buffer Area provided no more than a total of 200 square feet of such structures shall be located within the Buffer Area on any Lot.

7. **Site Development Requirements.** Each Lot shall be subject to the following specific development requirements.

(a) No portion (or portions) of a Lot greater than 2,000 square feet shall be: (i) denuded of ground cover or topsoil, (ii) graded, (iii) excavated or (iv) covered with earth or other natural or man-made fill material, unless all required building, grading and erosion control permits have been issued by the applicable municipal authorities.

(b) All denuded, graded, excavated or filled areas shall be stabilized and replanted on or before: (i) the 30th day following the initial denuding, grading, excavation, or

filling (unless footings and foundations are being installed upon the disturbed area and construction is being diligently and continuously pursued upon such area); or (ii) such time as construction is completed or interrupted for a period of 30 continuous days. In addition to, or in the absence of local or state government regulations on such land disturbance, none of the activities described in (i) through (iv) in **Section 7(a)** above shall be allowed to commence without compliance with the following requirements:

(i) The surveying and flagging of the Buffer Area (defined below) and any portion of the Buffer Area that may be disturbed as a result of any activities permitted hereunder;

(ii) The flagging of all trees in the Buffer Area that equal or exceed six inches in diameter, as measured four and one-half feet from the base of each tree. The trees, Buffer Area (defined below) and disturbed areas referenced in **Sections 7(a)** and **(b)** shall be clearly and distinctly flagged, staked or otherwise designated in order to prevent the unintentional violation of these restrictions by parties performing work upon the Property; and

(iii) The proper installation (in accordance with manufacturer's instructions) of construction silt fencing on the lower perimeters of all areas within the Lot to be disturbed, and any other areas which may be impacted by silt runoff from any disturbed areas located on the Lot.

8. **Buffer Area Restrictions.** As used herein, the term **"Buffer Area"** shall mean any portion of the Property that is located within 50 feet (measured horizontally regardless of the actual ground measurement which may very based upon the topography) of the 800 foot contour elevation (**"Contour Line"**) of Lake Keowee (**"Lake"**); provided, however, that the inner boundary of the Buffer Area (i.e. the boundary that is inland from the Lake) shall not be less than fifty feet (measured horizontally regardless of the actual ground measurement which may vary based upon the topography) from the common boundary (**"Common Boundary Line"**) of the Property and the Lake. No portion of the Buffer Area may be disturbed in any way, including any disturbance or removal of topsoil, trees and other natural growth. Neither the Common Boundary Line nor the Contour Line of the Lake shall change as a result of erosion or stabilization measures occurring following the conveyance of the Property to Grantee. Notwithstanding the second sentence in this **Section 8**, the following activities are permitted within the Buffer Area:

(a) Trees which are less than six inches in diameter, as measured four and one-half feet from the base of each tree may be removed. Any tree removal shall be performed using hand held gas or electric chain saws and/or manual handsaws. No other mechanical equipment or vehicles may be used in removing any trees. Additionally, trees having a greater diameter than that set forth above that have become diseased or damaged through natural processes may be removed in the same manner.

(b) Within each Lot, an access corridor may be created within the Buffer Area for the purpose of providing lake access to install shoreline stabilization or to install and use water access structures (such as docks or boat ramps) that have been approved in advance by Duke Energy and otherwise comply with **Section 6(c)** above. The access corridor may not exceed 15 feet in width. Trees with diameters equaling or exceeding six inches, as measured four and one-half feet from base, may be removed within the access corridor and grading or ground disturbance (which otherwise complies with the restrictions set forth herein) may be performed if reasonably necessary to provide access to the Lake for the purposes described above in this **Section 8(b)**.

(c) Underbrush (defined as nuisance shrubs, vines and similar plant growth beneath the tree canopy, and generally growing less than six feet in height) may be removed.

(d) Pruning and trimming of trees is permitted, provided that pruning is limited to tree branches beginning with the lowest to the ground and extending up the tree trunk no more than one-half of the total height of the tree. Trimming may also be performed on any limbs or branches that are diseased or naturally damaged.

(e) The use of rip-rap, bulkheading or other shoreline stabilization methods or materials may be initiated with the prior written approval by Duke Energy and any shoreline stabilization shall be performed in compliance with Duke Energy's Shoreline Management Guidelines which are in effect at the time such stabilization occurs. Generally, Duke Energy allows structural stabilization to extend only to a height one foot above the Contour Line of the Lake. If Duke Energy authorizes Grantee to perform certain shoreline stabilization, then at all points where shoreline stabilization occurs, the inner boundary line of the Buffer Area (i.e. the boundary line opposite the Contour Line of the Lake) shall be adjusted inward (i.e. away from the Contour Line of the Lake) by the same distance that the stabilization structures or improvements extend from the Contour Line of the Lake into the Lot, provided, however, that in no event shall the width of the undisturbed Buffer Area be reduced to less than 50 feet between any portion of the interior edge of the stabilization structures or improvements and any residence or other structure or improvement located on the Lot (other than docks, boat ramps, or other water access structures which have been approved in writing by Duke Energy).

(f) An access road ("**Roadway**") for pedestrian and vehicular ingress, egress and regress may be installed, constructed, maintained and repaired within the Buffer Area at those locations where the width of the Property is less than 130 feet; provided, however, that the Roadway (and the construction activities associated therewith) are not allowed within any portion of the Buffer Area that is located more than 150 feet east of the Edward J. Ratliff property, as shown on the plat recorded in Plat Book B143, Pages 7 and 8 in Oconee County Register of Deeds.

In addition to the rights of enforcement set forth in Section 11 below, if the terms of this Section 8 are violated, then the owner of the Lot on which such violation occurs ("**Violating Owner**") shall, within 30 days after the Violating Owner discovers, receives notice of or otherwise has knowledge of the occurrence of the violation, retain a qualified environmental consultant to develop a plan to restore the Buffer Area to the condition of the Buffer Area that existed prior to the violation ("**Buffer Restoration Plan**") and submit the Buffer Restoration Plan to Grantor for review. All costs related to the development of the Buffer Restoration Plan shall be paid by the Violating Owner. Grantor shall either approve the Buffer Restoration Plan in writing or object to the Buffer Restoration Plan and deliver to the Violating Owner written notice specifying the objections. If Grantor approves the Buffer Restoration Plan, then the Violating Owner shall, at its expense, promptly perform the work required under the Buffer Restoration Plan in strict accordance with the Buffer Restoration Plan and diligently and continuously pursue the work required under the Buffer Restoration Plan to completion. If Grantor objects to the Buffer Restoration Plan, then the Violating Owner shall revise the Buffer Restoration Plan to address the objections made by Grantor and shall submit the revised Buffer Restoration Plan to Grantor for review. The foregoing process shall continue until Grantor approves the Buffer Restoration Plan. If the Violating Owner fails to comply with the terms of this paragraph, then Grantor shall have the right to perform all of the obligations of the Violating Owner under this paragraph and to charge the Violating Owner for all the costs thereof (including attorney fees and court costs incurred in collecting such costs). Any claim against a Violating Owner for such costs, together with interest accrued thereon and collection costs shall constitute a personal obligation of the Violating Owner and shall be secured by an equitable lien on the Violating Owner's Lot. The lien shall attach and be effective from the date of recording of a lien notice in the appropriate office of the County in which the Property is located. A copy of the lien notice shall be mailed to the Violating Owner within 30 days after the recording of the lien notice. The lien may be enforced by judicial foreclosure upon the Lot to which the lien attached in the same manner as a mortgage is judicially foreclosed under the laws of the State in which the Property is located. In any foreclosure, the Violating Owner shall be required to pay the reasonable costs and attorneys' fees in connection with the preparation and filing of the lien notice and the foreclosure. Notwithstanding anything contained in these General Deed Restrictions (including the terms of Section 11) to the contrary, the right to require, review and approve the Buffer Restoration Plan shall be limited to Grantor and its successors or assigns by merger or consolidation or by written assignment (including any property owners' association created with respect to all or any portion of the Property).

9. **No Claims.** No owner of a Lot or of any Benefited Property (defined below) shall have any claim or cause of action against Grantor or its affiliates arising out of the exercise, or non-exercise, or enforcement, or failure to enforce, or the amendment, release or grant of variance with respect to any covenant, condition, restriction, easement or other right reserved hereunder or referred to herein.

10. **No Delay.** No delay or failure on the part of Grantor to invoke an available remedy with respect to a violation of any restriction contained herein shall be held to be a waiver by Grantor of any right available to it upon the recurrence or continuance of said violation or the occurrence of a different violation.

11. **Rights of Enforcement.** The covenants, conditions and restrictions set forth herein shall run with the title to the Property and shall benefit Grantor and all property ("**Benefited Property**") owned on the date hereof by Grantor or its subsidiaries located within one thousand feet of any portion of the Property (other than any property located within the FERC boundaries of the Lake). If any Lot owner, its heirs, successors, tenants, or assigns shall violate or attempt to violate any of the covenants, conditions or restrictions contained herein, Grantor and any subsequent owner of any portion of the Benefited Property may enforce the covenants, conditions and restrictions set forth herein by any remedy available at law or in equity, either to prevent or remediate such violation, or recover damages for such violation, or both. Grantor (but not any other Benefited Property owner) shall have an easement over the Property for the purpose of entering a Lot in order to monitor or enforce compliance with these covenants, conditions and restrictions without court order. The party bringing such action shall be entitled to recover its reasonable attorney's fees and expenses incurred in such proceedings from the person or entity violating or attempting to violate the same. Nothing herein shall be held to impose any restriction on any other land owned by Grantor, its subsidiaries or affiliates.

12. **Modification, Amendment, Variances.** Grantor hereby reserves the right for itself and its successors or assigns, to amend or modify, release or grant variances with respect to the covenants, conditions, easements and restrictions set forth herein. As used in this Section 12, the term "successors or assigns" shall be limited to Grantor's successors or assigns by merger or consolidation or by written assignment.

13. **Reserved Easement.** Grantor hereby reserves unto itself and any successors in title, (i) a ten foot wide easement extending into the Property from and along each boundary line of the Property for the installation and maintenance of utility lines, drainage ditches or facilities or any other related improvements that may be required by Grantor or its successors or assigns; and (ii) a 15 foot wide easement extending into the Property from and along any public or private road rights-of-way for the installation and maintenance of utility lines, drainage ditches or facilities or any other related improvements that may be required by Grantor or its successors or assigns.

14. **Subdivision.** The Property may not be subdivided in a manner that will result in any Lot being created which is less than 29,000 square feet.

15. **No Modular or Mobile Homes.** No more than one mobile, manufactured or modular home or structure having the characteristics or appearance of a mobile, modular or manufactured home, including, without limitation, any mobile, modular or manufactured home as defined by the building codes or other applicable laws of the state in which the Property is located, shall be located upon the Property.

STATE OF NORTH CAROLINA )
)
COUNTY OF MECKLENBURG )

**AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says;

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located in Keowee Whitewater Township, bearing Oconee County Tax Map Number 150-00-01-444, was transferred by Crescent Communities S.C., LLC to FARMES, A South Carolina Limited Partnership, and GLOBE, A South Carolina Limited Partnership on December 4, 2008.

3. Check one of the following: The deed is

(a) ___X___ subject to the deed recording fee as a transfer consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) ___X___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **$ 1,844,400.00**

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No ___X___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: $ 1,844,400.00

(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $ 1,844,400.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $ 6,824.65 .

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized Agent for Crescent Communities S.C., LLC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

J. Scott Munday

Responsible Person Connected with the Transaction
J. Scott Munday
Vice President

SWORN to before me this 3rd day of December, 2008.

Kay H. Arnette

Notary Public for North Carolina
My Commission Expires: June 28, 2009

KAY H. ARNETTE NOTARY PUBLIC MECKLENBURG COUNTY, N. C. My Comm. Exp. June 28, 2009

FILED FOR RECORD
ODONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 DEC -8 A 8:49

PPAB 1304095v2

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

**Exempted from the fee are deeds:**

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

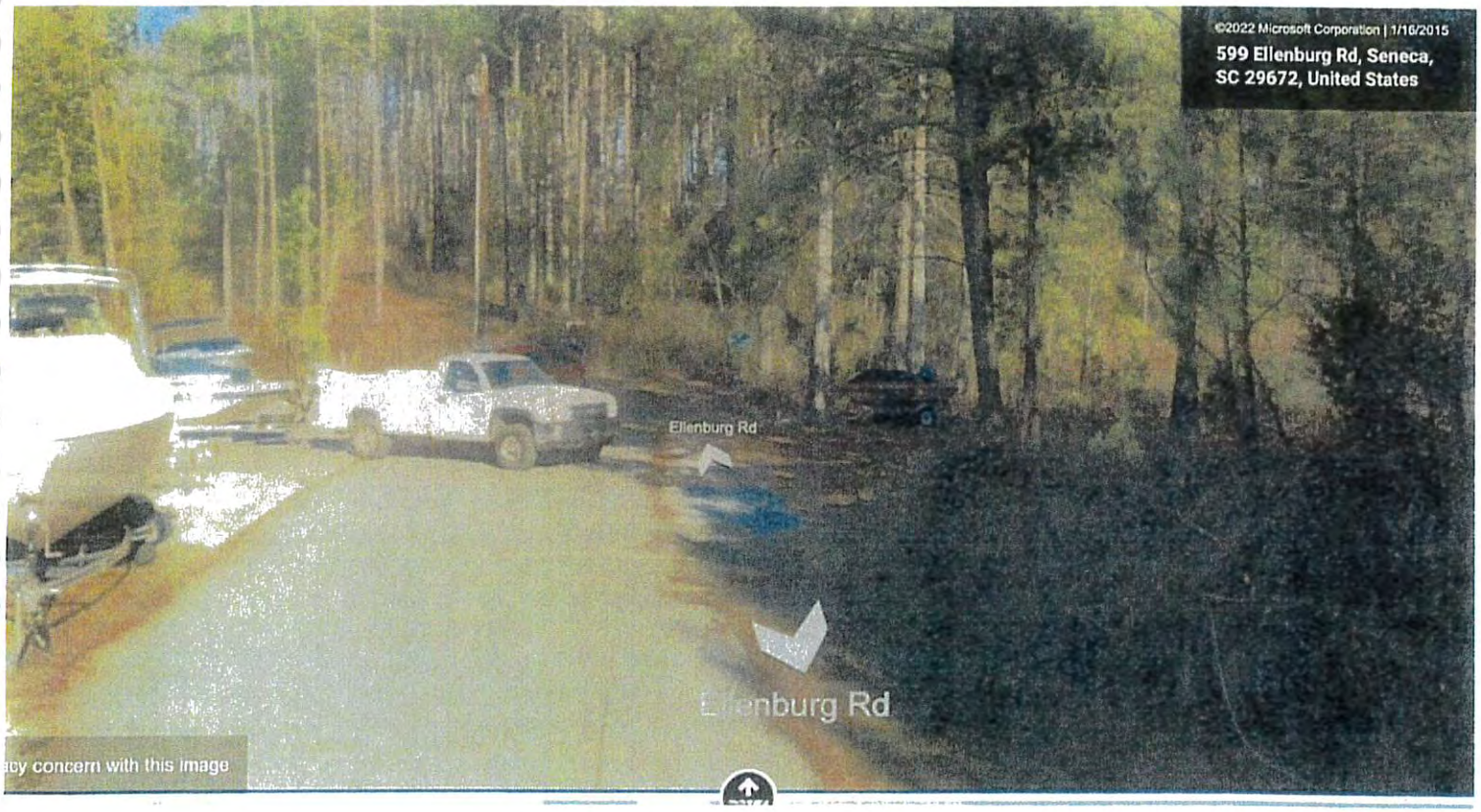
(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 53 of Title 39;

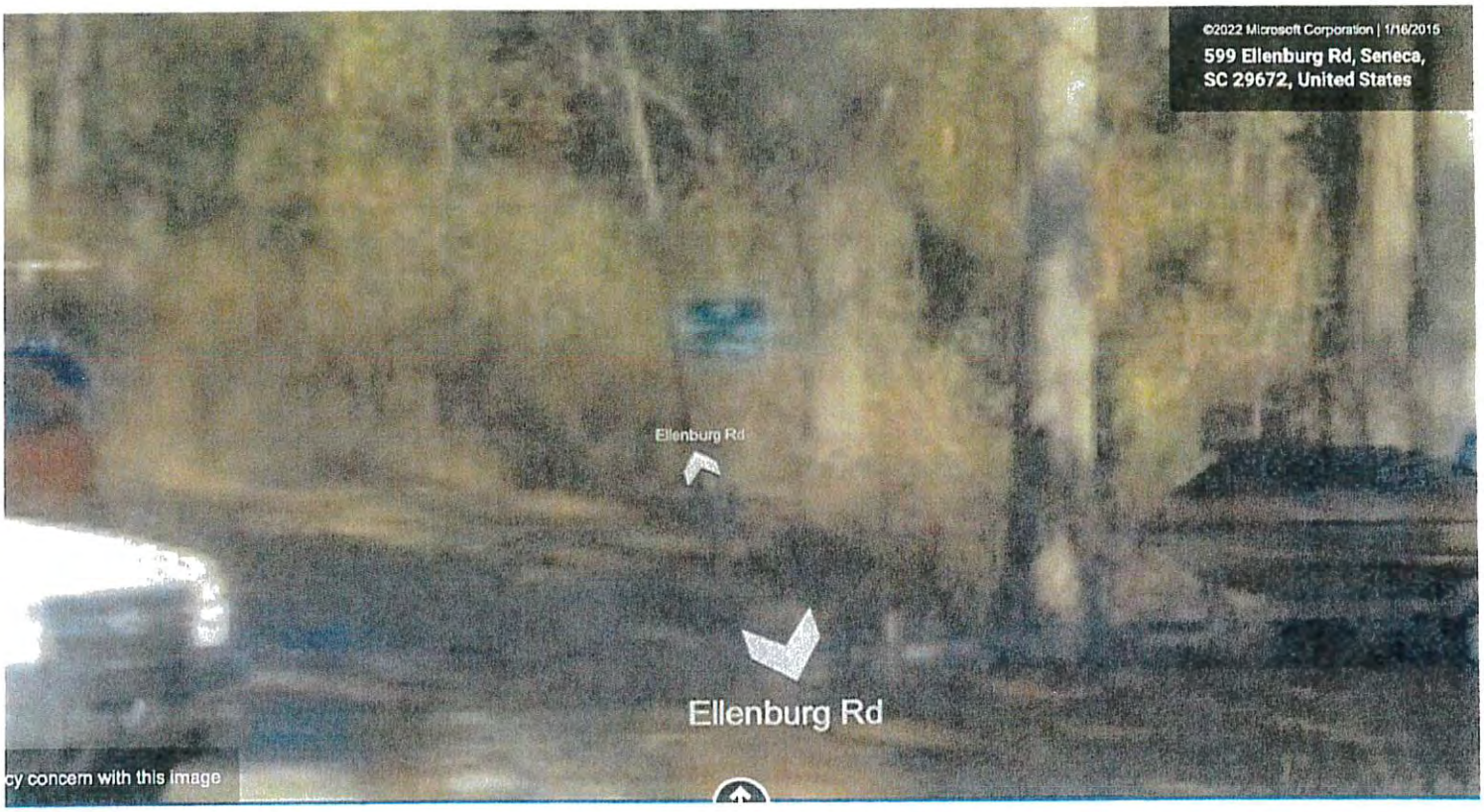
(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or a trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive


©2022 Microsoft Corporation | 1/16/2015
599 Ellenburg Rd, Seneca, SC 29672, United States
Ellenburg Rd
Ellenburg Rd
acy concern with this image

ITEM 7


©2022 Microsoft Corporation | 1/16/2015
599 Ellenburg Rd, Seneca, SC 29672, United States
Ellenburg Rd
Ellenburg Rd
cy concern with this image

ITEM 7

Gmail Andy Lee <andyonkeowee@gmail.com>

# FW: Ellenburg Road - BZA hearing

messages

**James Coley** <jcoley@oconeesc.com> Mon, Nov 29, 2021 at 12:13 PM
To: Wesley White <wesley@ridgewatereng.com>, Andy Lee <andyonkeowee@gmail.com>

For your records.

Thanks,

**From:** Kyle Reid
**Sent:** Monday, November 29, 2021 9:58 AM
**To:** James Coley <jcoley@oconeesc.com>
**Cc:** David Root <droot@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>
**Subject:** RE: Ellenburg Road - BZA hearing

James,

Here are the bullets from my conversation with the developer and his engineers concerning the development at the end of Ellenburg Rd. (these are not commentary on the variance requested for the BZA and the below was based on hypotheticals as no plan was presented):

- The developer asked about where Ellenburg Rd stops being county maintained. I told them it was the end of the asphalt and that we did not have deeded right-of-way as the road is maintained by prescriptive easement. I also showed him what we have been maintaining as the extent of our right-of-way.
- They asked about upgrading the road and told me getting right-of-way from the adjacent property owner would likely be difficult. They asked about being able to place the road entirely on their property with a reduced right-of-way than the 50' standard required by the ordinance. I told them that any variance from the road standards would have to be heard by the BZA.
- They asked if there was anything additional that they would need to consider. I told them without a sketch plan it would be hard to hit all the points, but with a subdivision more than 10 lots there would have to be a traffic impact study for Ellenburg Rd that would need to be done at the preliminary plat phase along with an encroachment permit to tie onto the end of the county maintained portion of Ellenburg Rd.
- They asked me about the new road in the development becoming a county maintained road. I told them that the road would need to meet all county standards and have an approved turn around.
- They asked me about the being able to put a gate on the road. I told them it could not be a county maintained road if there was a gate.

As for the proposed variance from the road standards, I would not see an appreciable impact for us to maintain the road because of the fact that our road would terminate at the area with a narrowed right-of-way. They would have to grant us right-of-way in the area they are proposing to relocate the road which would enhance our ability to maintain it. The only other question I would have is for them to show the ability to get the road, shoulders, drainage, and utilities in the proposed narrowed right-of-way.

EXHIBIT 9

https://mail.google.com/mail/u/0/?ik=48edcb8138&view=pt&search=all&permthid=thread-f%3A1717783536694444152&simpl=msg-f%3A1717783536

Thank you,

W. Kyle Reid

Assistant Director of Public Works

Oconee County Roads & Bridges

15022 Wells Hwy – Seneca, SC 29678

Phone: (864) 886-1072

Fax: (864) 886-1071

CONFIDENTIALITY NOTICE: All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA).

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential, proprietary, and/or privileged information protected by law. If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.

**From:** James Coley
**Sent:** Tuesday, November 23, 2021 1:37 PM
**To:** David Root <droot@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>; Kyle Reid <kreid@oconeesc.com>
**Subject:** RE: Ellenburg Road - BZA hearing

Kyle,

Can you please write up notes for your meeting with the developer, and how their proposal impacts roads and bridges, and your site meeting with them? I will incorporate your materials into a report to the board with the staff recommendations.

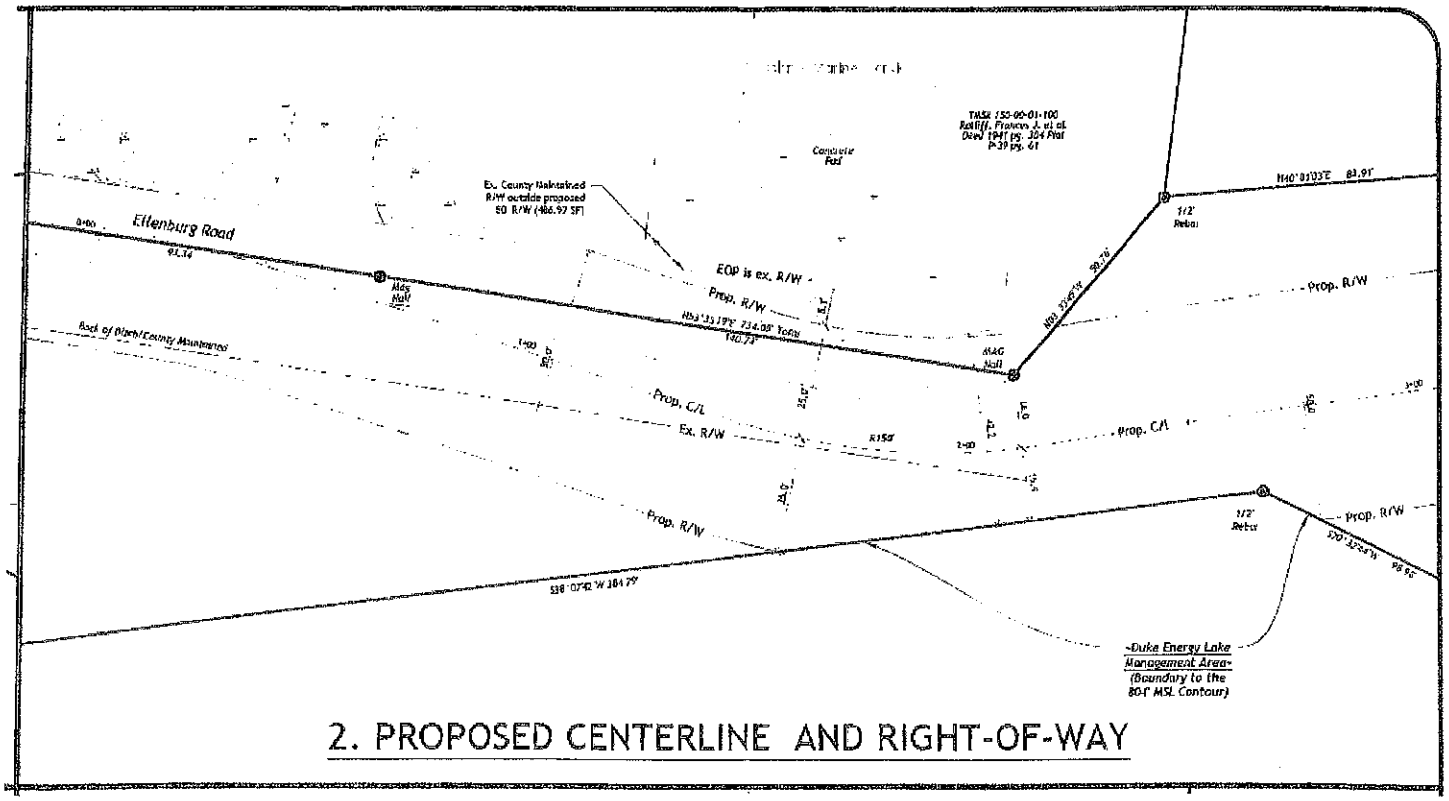
Have a great thanksgiving.

Thanks,

James Coley

**From:** David Root
**Sent:** Monday, November 22, 2021 12:53 PM
**To:** James Coley <jcoley@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>; Kyle Reid

ITEM 9




2. PROPOSED CENTERLINE AND RIGHT-OF-WAY

# TABLE OF CONTENTS

Item 1: Variance Criteria Overview

Item 2: Exhibit 2, Satellite Image with Plat Overlay

Item 3: Ellenburg Road Prescriptive R/W

Item 4: Proposed New Road

Item 5: Approximate Distances the Road will Move

Item 6: Letter from Assistant Director of Public Works

Item 7: Time Stamped Photos of Ellenburg Road (1/16/2016, source Bing, Microsoft Corp.) with County Maintenance Sign

Item 8: Parcel Deed Restrictions

## Variance Criteria Overview

General criteria for granting a variance. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

a) *There are extraordinary and exceptional conditions pertaining to a particular piece of property.*

**The parcel itself is a peninsula, it's bounded by water on all sides with exception of the center of the county road as a boundary. The peninsula is narrow in a small portion of the parcel and is unique in that the property line is the center of the road and does not have it's own right of way. There is only access easement to the parcel. These conditions are extraordinary and exceptional because of the limitations created by geography and topography within this parcel. The way a parcel of land lays, the geography, the topography are all acceptable reasons for granting a variance.**

b) *These conditions do not generally apply to other property in the vicinity.*

**In the geographic vicinity of this piece of property most roads have a 50 foot right of way because they are not geographically constrained. This property is bounded by a body of water. Most parcels in the vicinity are not bound by the water on both sides. Because of the unique geography of this parcel, meeting the current road ordinance goes beyond creating an unnecessary hardship and instead creates only impossibility of use. This impossibility creates a scenario which meets the criteria for granting a variance.**

Item 1

c) *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

**Without granting this variance to the roads ordinance the application of the ordinance will unreasonably restrict the use of the property. The property was purchased prior to this ordinance being adopted and if you will reference the Deed Restrictions for the parcel you will see that these restrictions are designed in mind with an end use for single-family residential development which was and still remains the intent behind this purchase. The developments in the vicinity of this property have larger homesites and larger homes. The application of this ordinance effectively prohibits building like kind or similar developments for which this property was purchased for, as per the deed.**

d) *The authorization of a variance will not be substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.*

**1) The proposed improvement will relocate the existing edge of county pavement, as shown on exhibit 2, to provide John's Marine an additional 22 feet of area to maneuver, outside of the County maintained roadway.**

**2) We will extend his current driveway to meet the new roadway so that it is then contiguous to his drive and ramp, causing no disturbance in his business use.**

**3) Probably most helpful to improve current conditions for his operation is the installation of a cul-de-sac at the termination of the county road. This would be located 100% within the boundaries of our parcel, as you can see on Graphic 2 and does not encroach onto his property. John's Marine, his customer base, and**

the delivery truck drivers will be able to utilize this space to turn around trucks and trailered boats. John's Marine is currently using the county road as a parking lot and to turn around delivery trucks according to himself and what has been submitted by the public. Granting this variance would alleviate that current hardship by expanding the paved area and providing a paved cul-de-sac that is built to accommodate a circling school bus or fire truck. This should effectively eliminate the need for Fedex/UPS truck to turn around in adjacent owners driveways, road shoulders, or have a need to block the road. This will certainly benefit him and his customers to be able to turn around there.

4) We are improving the affected area an ageing county road to current county specifications, an improvement to the current conditions of the roadway. This improvement is at no cost to John's Marine, the neighbors, or to the taxpayers.

5) 19 more homesites also provides the opportunity for 19 more boats to service at the most convenient of distances. John's Marine, who already has an excellent customer base and strong reputation in our community as a top mechanic, will have a slightly expanded customer base in the community if he chooses to take on new clientele. Also, the impact of construction vehicles traveling the road way into the development is for a limited window of time while homes are being built.

Gmail

Andy Lee <andyonkeowee@gmail.com>

# FW: Ellenburg Road - BZA hearing

messages

James Coley <jcoley@oconeesc.com>
To: Wesley White <wesley@ridgewatereng.com>, Andy Lee <andyonkeowee@gmail.com>

Mon, Nov 29, 2021 at 12:13 PM

For your records.

Thanks,

**From:** Kyle Reid
**Sent:** Monday, November 29, 2021 9:58 AM
**To:** James Coley <jcoley@oconeesc.com>
**Cc:** David Root <droot@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>
**Subject:** RE: Ellenburg Road - BZA hearing

James,

Here are the bullets from my conversation with the developer and his engineers concerning the development at the end of Ellenburg Rd. (these are not commentary on the variance requested for the BZA and the below was based on hypotheticals as no plan was presented):

- The developer asked about where Ellenburg Rd stops being county maintained. I told them it was the end of the asphalt and that we did not have deeded right-of-way as the road is maintained by prescriptive easement. I also showed him what we have been maintaining as the extent of our right-of-way.
- They asked about upgrading the road and told me getting right-of-way from the adjacent property owner would likely be difficult. They asked about being able to place the road entirely on their property with a reduced right-of-way than the 50' standard required by the ordinance. I told them that any variance from the road standards would have to be heard by the BZA.
- They asked if there was anything additional that they would need to consider. I told them without a sketch plan it would be hard to hit all the points, but with a subdivision more than 10 lots there would have to be a traffic impact study for Ellenburg Rd that would need to be done at the preliminary plat phase along with an encroachment permit to tie onto the end of the county maintained portion of Ellenburg Rd.
- They asked me about the new road in the development becoming a county maintained road. I told them that the road would need to meet all county standards and have an approved turn around.
- They asked me about the being able to put a gate on the road. I told them it could not be a county maintained road if there was a gate.

As for the proposed variance from the road standards, I would not see an appreciable impact for us to maintain the road because of the fact that our road would terminate at the area with a narrowed right-of-way. They would have to grant us right-of-way in the area they are proposing to relocate the road which would enhance our ability to maintain it. The only other question I would have is for them to show the ability to get the road, shoulders, drainage, and utilities in the proposed narrowed right-of-way.

C WHITE

Thank you,

W. Kyle Reid

Assistant Director of Public Works

Oconee County Roads & Bridges

15022 Wells Hwy – Seneca, SC 29678

Phone: (864) 886-1072

Fax: (864) 886-1071

**CONFIDENTIALITY NOTICE:** All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA).

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential, proprietary, and/or privileged information protected by law. If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.

**From:** James Coley
**Sent:** Tuesday, November 23, 2021 1:37 PM
**To:** David Root <droot@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>; Kyle Reid <kreid@oconeesc.com>
**Subject:** RE: Ellenburg Road - BZA hearing

Kyle,

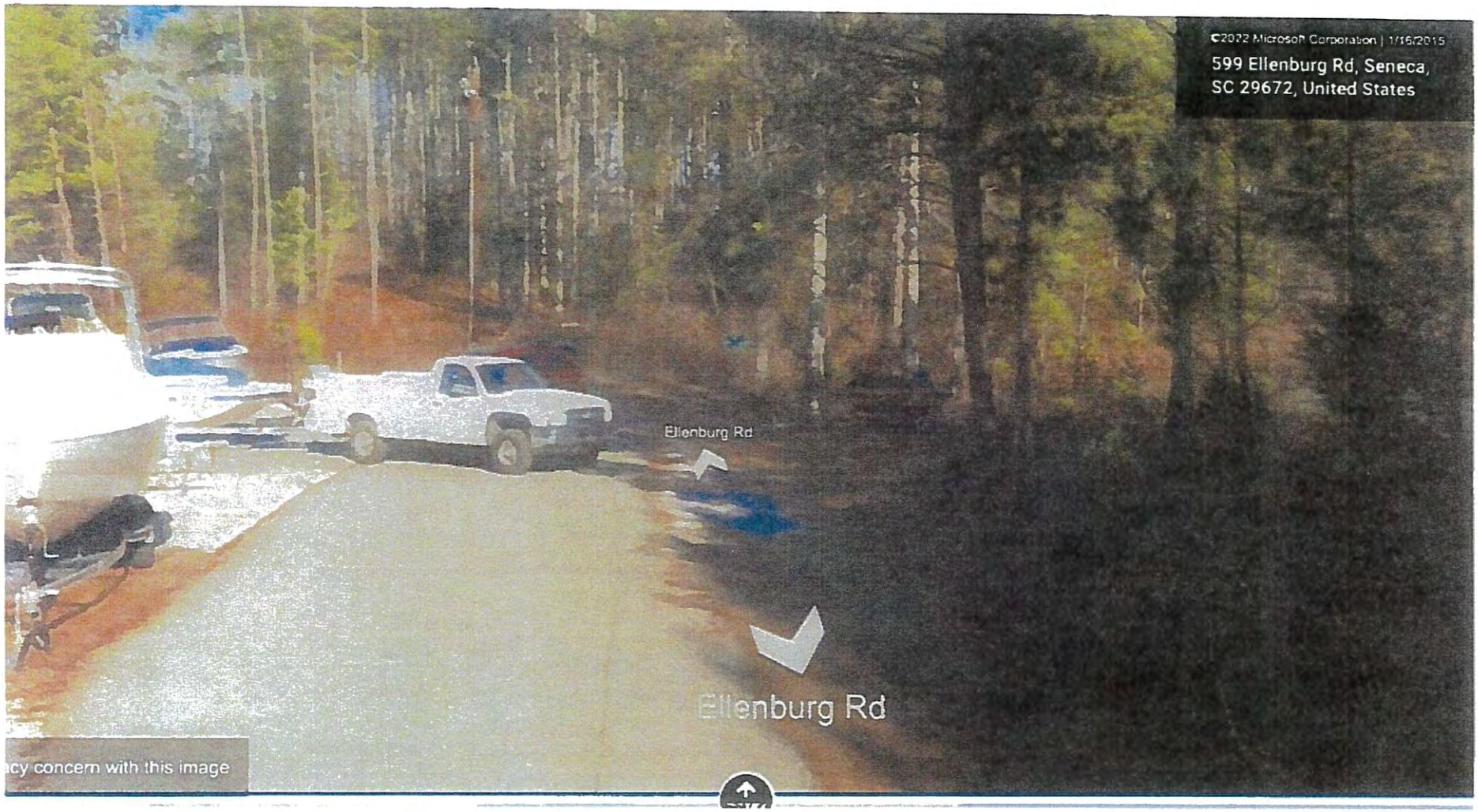
Can you please write up notes for your meeting with the developer, and how their proposal impacts roads and bridges, and your site meeting with them? I will incorporate your materials into a report to the board with the staff recommendations.

Have a great thanksgiving.

Thanks,

James Coley

**From:** David Root
**Sent:** Monday, November 22, 2021 12:53 PM
**To:** James Coley <jcoley@oconeesc.com>; Vivian Kompier <vkompier@oconeesc.com>; Kyle Reid


©2022 Microsoft Corporation | 1/16/2015
599 Ellenburg Rd, Seneca, SC 29672, United States
Ellenburg Rd
Ellenburg Rd
cy concern with this image

ITEM 7

©2022 Microsoft Corporation | 1/16/2015
599 Ellenburg Rd, Seneca, SC 29672, United States
Ellenburg Rd
Ellenburg Rd
cy concern with this image

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 DEC -8 A 8:49

**EXHIBIT B**

**GENERAL DEED RESTRICTIONS**

THE PROPERTY SHALL BE CONVEYED SUBJECT TO THE FOLLOWING RESTRICTIONS, WHICH SHALL ENCUMBER THE PROPERTY AND SHALL RUN WITH TITLE TO THE PROPERTY.

1. **Definition of "Property" and "Lot".** As used herein, (i) "**Property**" means all of the property conveyed by Grantor to Grantee pursuant to this deed; and (ii) "**Lot**" means any portion of the Property that constitutes a legally established separate lot or parcel of land (whether created by the recordation of a subdivision plat or otherwise), as such lots or parcels of land may exist from time to time (collectively, "**Lots**"). If the Property consists of only one lot or parcel of land, then the term "Property" is synonymous with the term "Lot." If the Property consists of two or more lots or parcels of land, whether such lots or parcels exist on the date the Property is conveyed to Grantee or are later created by subdivision of the Property or other legal means, then each of those lots or parcels is a "Lot" for the purposes of these Restrictions.

2. **Single Family Use.** The Property shall be used only for detached, single-family residence purposes, together with the accessory buildings and structures permitted pursuant to **Section 6** below. No more than one detached single-family residential dwelling may be constructed on any Lot. No condominium, townhouse, duplex, apartment or other multi-family residential uses are permitted on the Property. Further, no camper, trailer, motor home, boat (including, without limitation, any boat docked adjacent to the Property), recreational vehicle or similar habitable or transportable unit or structure shall be allowed to remain on or adjacent to the Property as a place of residence. The single-family residence restrictions set forth above shall not prohibit the construction of pools, tennis courts or other recreational facilities or amenities such as are commonly constructed and maintained for the benefit of lot owners within planned unit developments; provided that such recreational facilities or amenities shall be solely for the common use of the owners of one or more Lots and, provided further, that no such recreational facilities may be located within any Buffer Area (defined below).

3. **Restricted Activities.** The following activities are prohibited on the Property:

(a) Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats or other usual and common household pets (which are registered, licensed and inoculated as required by law) may be permitted on the Property;

(b) Any activity which violates local, state, or federal laws or regulations;

(c) Institutional uses, including, but not limited to, group homes, day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns and beds and breakfasts; and

(d) Any business or trade, except that an owner or occupant residing on a Lot may conduct business activities within a dwelling on that Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling unit; (ii) the business activity conforms to all zoning requirements for the Lot; (iii) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on a Lot, or for which any parts, equipment supplies, raw materials, components or tools are stored on a Lot; and (v) the business activity is consistent with the residential character of the Property and does not constitute an unreasonable disturbance to adjoining land owners or others, a nuisance or a hazardous or offensive use. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales or similar activities provided that such activities are not held on the same Lot more than once in any six-month period. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a Lot for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

4. **Prohibited Conditions.** None of the following structures or improvements may be located upon the Property:

(a) Structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated or otherwise fallen into disrepair;

(b) Towers, antennas or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind which are located outside of the dwelling on a Lot other than (i) a customary antenna, which shall not extend more than ten feet above the top roof ridge of the dwelling; and (ii) a satellite disc or dish no larger than 18 inches in diameter;

(c) Any freestanding transmission or receiving towers or any non-standard television antennae; and

(d) Chain-link fences.

5. **Quality Craftsmanship/Dwelling Size.** All buildings and outbuildings erected upon the Property shall be built on site of new materials of good grade, quality and appearance and shall be constructed in a good and workmanlike manner, conforming to all applicable building codes. Further, all dwellings must meet the following construction requirements:

(a) If the dwelling is located on a Waterfront Lot (a "**Waterfront Lot**" is a lot, any portion of which is located within 100 feet (measured horizontally regardless of the actual ground measurement which may vary based upon the topography) of the Common Boundary Line (defined in **Section 8** below)), then: (i) one story dwellings shall not contain less than 2,000 square feet of Heated Living Area (defined below); (ii) one and a half story dwellings shall not contain less than 2,200 square feet of Heated Living Area; and (iii) two (or more) story dwellings shall not contain less than 2,400 square feet of Heated Living Area;

(b) If the dwelling is not located on a Waterfront Lot, then: (i) one story dwellings shall not contain less than 1,600 square feet of Heated Living Area; (ii) one and a half story dwellings shall not contain less than 1,800 square feet of Heated Living Area; and (iii) two (or more) story dwellings shall not contain less than 2,000 square feet of Heated Living Area;

(c) All dwellings and accessory structures shall be completely supported with solid brick, brick or stone covered block, or stucco covered foundation;

(d) Roofs shall have not less than a 6 in 12 inch pitch, and not less than a 12 inch overhang, and shall be covered with asphalt or fiberglass shingles, terra cotta tile, real or man-made slate, copper sheathing or wood shingles or pre-painted metal roofing;

(e) The exterior surfaces of all dwellings and accessory structures shall be covered only with brick, stone, hard stucco (synthetic stucco is not permitted), wood, or siding consisting of wood, composite or vinyl material; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished; and

(f) Exteriors of all dwellings and accessory structures must be completed within one year after the commencement of construction, and a certificate of occupancy issued within two years after commencement of construction.

As used herein, "**Heated Living Area**" excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, Heated Living Area excludes vaulted ceilings areas, attics, unheated porches, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios. The term "**story**" shall mean a finished horizontal division of Heated Living Area extending from the floor of such division to the ceiling above it. The term "**half story**" shall mean a story which

contains 50 percent or less Heated Living Area than the story in the house containing the most Heated Living Area.

6. **Permitted Accessory Structures.** Except as otherwise expressly set forth herein, no buildings, structures or improvements of any kind may be located on a Lot other than one detached, single-family residential home, and the following permitted accessory structures:

(a) Storage and shop outbuildings, including detached garages, workshops, storage and utility buildings, greenhouses and similar buildings, not exceeding the height of the roof of the residence on the Lot. The total square footage contained within all such outbuildings combined shall not exceed 2,000 square feet. All outbuildings shall be permanently affixed to the Lot and shall be covered with the approved exterior materials described in Section 5(e) above. Further, no outbuildings shall be located wholly or partially within any Buffer Area (as defined below).

(b) Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures. The total square footage contained within such structures when combined shall not exceed 1,000 square feet in area. Further, no such structure shall be located wholly or partially within any Buffer Area (as defined below).

(c) To the extent permitted at the time of construction and installation by Duke Energy Carolinas, LLC (or its successor, with respect to ownership and/or management authority over the Lake, if applicable) ("**Duke Energy**") and all applicable governmental authorities, waterfront structures, including fixed piers, boat slips or floats, covered docks, boat ramps, decking and sitting areas attached to piers, walkways and other similar structures. Grantee acknowledges by acceptance of this deed that policies, laws and regulations regarding its ability to construct or install such structures may change from time to time before or after Grantee's acquisition of the Property and Grantor makes no representation or warranty as to Grantee's ability to construct or install such structures either now or in the future. Such structures may be located wholly or partially within the Buffer Area provided no more than a total of 200 square feet of such structures shall be located within the Buffer Area on any Lot.

7. **Site Development Requirements.** Each Lot shall be subject to the following specific development requirements.

(a) No portion (or portions) of a Lot greater than 2,000 square feet shall be: (i) denuded of ground cover or topsoil, (ii) graded, (iii) excavated or (iv) covered with earth or other natural or man-made fill material, unless all required building, grading and erosion control permits have been issued by the applicable municipal authorities.

(b) All denuded, graded, excavated or filled areas shall be stabilized and replanted on or before: (i) the 30th day following the initial denuding, grading, excavation, or

filling (unless footings and foundations are being installed upon the disturbed area and construction is being diligently and continuously pursued upon such area); or (ii) such time as construction is completed or interrupted for a period of 30 continuous days. In addition to, or in the absence of local or state government regulations on such land disturbance, none of the activities described in (i) through (iv) in Section 7(a) above shall be allowed to commence without compliance with the following requirements:

(i) The surveying and flagging of the Buffer Area (defined below) and any portion of the Buffer Area that may be disturbed as a result of any activities permitted hereunder;

(ii) The flagging of all trees in the Buffer Area that equal or exceed six inches in diameter, as measured four and one-half feet from the base of each tree. The trees, Buffer Area (defined below) and disturbed areas referenced in Sections 7(a) and (b) shall be clearly and distinctly flagged, staked or otherwise designated in order to prevent the unintentional violation of these restrictions by parties performing work upon the Property; and

(iii) The proper installation (in accordance with manufacturer's instructions) of construction silt fencing on the lower perimeters of all areas within the Lot to be disturbed, and any other areas which may be impacted by silt runoff from any disturbed areas located on the Lot.

8. **Buffer Area Restrictions.** As used herein, the term "**Buffer Area**" shall mean any portion of the Property that is located within 50 feet (measured horizontally regardless of the actual ground measurement which may very based upon the topography) of the 800 foot contour elevation ("**Contour Line**") of Lake Keowee ("**Lake**"); provided, however, that the inner boundary of the Buffer Area (i.e. the boundary that is inland from the Lake) shall not be less than fifty feet (measured horizontally regardless of the actual ground measurement which may vary based upon the topography) from the common boundary ("**Common Boundary Line**") of the Property and the Lake. No portion of the Buffer Area may be disturbed in any way, including any disturbance or removal of topsoil, trees and other natural growth. Neither the Common Boundary Line nor the Contour Line of the Lake shall change as a result of erosion or stabilization measures occurring following the conveyance of the Property to Grantee. Notwithstanding the second sentence in this Section 8, the following activities are permitted within the Buffer Area:

(a) Trees which are less than six inches in diameter, as measured four and one-half feet from the base of each tree may be removed. Any tree removal shall be performed using hand held gas or electric chain saws and/or manual handsaws. No other mechanical equipment or vehicles may be used in removing any trees. Additionally, trees having a greater diameter than that set forth above that have become diseased or damaged through natural processes may be removed in the same manner.

(b) Within each Lot, an access corridor may be created within the Buffer Area for the purpose of providing lake access to install shoreline stabilization or to install and use water access structures (such as docks or boat ramps) that have been approved in advance by Duke Energy and otherwise comply with Section 6(c) above. The access corridor may not exceed 15 feet in width. Trees with diameters equaling or exceeding six inches, as measured four and one-half feet from base, may be removed within the access corridor and grading or ground disturbance (which otherwise complies with the restrictions set forth herein) may be performed if reasonably necessary to provide access to the Lake for the purposes described above in this Section 8(b).

(c) Underbrush (defined as nuisance shrubs, vines and similar plant growth beneath the tree canopy, and generally growing less than six feet in height) may be removed.

(d) Pruning and trimming of trees is permitted, provided that pruning is limited to tree branches beginning with the lowest to the ground and extending up the tree trunk no more than one-half of the total height of the tree. Trimming may also be performed on any limbs or branches that are diseased or naturally damaged.

(e) The use of rip-rap, bulkheading or other shoreline stabilization methods or materials may be initiated with the prior written approval by Duke Energy and any shoreline stabilization shall be performed in compliance with Duke Energy's Shoreline Management Guidelines which are in effect at the time such stabilization occurs. Generally, Duke Energy allows structural stabilization to extend only to a height one foot above the Contour Line of the Lake. If Duke Energy authorizes Grantee to perform certain shoreline stabilization, then at all points where shoreline stabilization occurs, the inner boundary line of the Buffer Area (i.e. the boundary line opposite the Contour Line of the Lake) shall be adjusted inward (i.e. away from the Contour Line of the Lake) by the same distance that the stabilization structures or improvements extend from the Contour Line of the Lake into the Lot, provided, however, that in no event shall the width of the undisturbed Buffer Area be reduced to less than 50 feet between any portion of the interior edge of the stabilization structures or improvements and any residence or other structure or improvement located on the Lot (other than docks, boat ramps, or other water access structures which have been approved in writing by Duke Energy).

(f) An access road ("Roadway") for pedestrian and vehicular ingress, egress and regress may be installed, constructed, maintained and repaired within the Buffer Area at those locations where the width of the Property is less than 130 feet; provided, however, that the Roadway (and the construction activities associated therewith) are not allowed within any portion of the Buffer Area that is located more than 150 feet east of the Edward J. Ratliff property, as shown on the plat recorded in Plat Book B143, Pages 7 and 8 in Oconee County Register of Deeds.

In addition to the rights of enforcement set forth in Section 11 below, if the terms of this Section 8 are violated, then the owner of the Lot on which such violation occurs ("**Violating Owner**") shall, within 30 days after the Violating Owner discovers, receives notice of or otherwise has knowledge of the occurrence of the violation, retain a qualified environmental consultant to develop a plan to restore the Buffer Area to the condition of the Buffer Area that existed prior to the violation ("**Buffer Restoration Plan**") and submit the Buffer Restoration Plan to Grantor for review. All costs related to the development of the Buffer Restoration Plan shall be paid by the Violating Owner. Grantor shall either approve the Buffer Restoration Plan in writing or object to the Buffer Restoration Plan and deliver to the Violating Owner written notice specifying the objections. If Grantor approves the Buffer Restoration Plan, then the Violating Owner shall, at its expense, promptly perform the work required under the Buffer Restoration Plan in strict accordance with the Buffer Restoration Plan and diligently and continuously pursue the work required under the Buffer Restoration Plan to completion. If Grantor objects to the Buffer Restoration Plan, then the Violating Owner shall revise the Buffer Restoration Plan to address the objections made by Grantor and shall submit the revised Buffer Restoration Plan to Grantor for review. The foregoing process shall continue until Grantor approves the Buffer Restoration Plan. If the Violating Owner fails to comply with the terms of this paragraph, then Grantor shall have the right to perform all of the obligations of the Violating Owner under this paragraph and to charge the Violating Owner for all the costs thereof (including attorney fees and court costs incurred in collecting such costs). Any claim against a Violating Owner for such costs, together with interest accrued thereon and collection costs shall constitute a personal obligation of the Violating Owner and shall be secured by an equitable lien on the Violating Owner's Lot. The lien shall attach and be effective from the date of recording of a lien notice in the appropriate office of the County in which the Property is located. A copy of the lien notice shall be mailed to the Violating Owner within 30 days after the recording of the lien notice. The lien may be enforced by judicial foreclosure upon the Lot to which the lien attached in the same manner as a mortgage is judicially foreclosed under the laws of the State in which the Property is located. In any foreclosure, the Violating Owner shall be required to pay the reasonable costs and attorneys' fees in connection with the preparation and filing of the lien notice and the foreclosure. Notwithstanding anything contained in these General Deed Restrictions (including the terms of **Section 11**) to the contrary, the right to require, review and approve the Buffer Restoration Plan shall be limited to Grantor and its successors or assigns by merger or consolidation or by written assignment (including any property owners' association created with respect to all or any portion of the Property).

9. **No Claims.** No owner of a Lot or of any Benefited Property (defined below) shall have any claim or cause of action against Grantor or its affiliates arising out of the exercise, or non-exercise, or enforcement, or failure to enforce, or the amendment, release or grant of variance with respect to any covenant, condition, restriction, easement or other right reserved hereunder or referred to herein.

10. **No Delay.** No delay or failure on the part of Grantor to invoke an available remedy with respect to a violation of any restriction contained herein shall be held to be a waiver by Grantor of any right available to it upon the recurrence or continuance of said violation or the occurrence of a different violation.

11. **Rights of Enforcement.** The covenants, conditions and restrictions set forth herein shall run with the title to the Property and shall benefit Grantor and all property ("Benefited Property") owned on the date hereof by Grantor or its subsidiaries located within one thousand feet of any portion of the Property (other than any property located within the FERC boundaries of the Lake). If any Lot owner, its heirs, successors, tenants, or assigns shall violate or attempt to violate any of the covenants, conditions or restrictions contained herein, Grantor and any subsequent owner of any portion of the Benefited Property may enforce the covenants, conditions and restrictions set forth herein by any remedy available at law or in equity, either to prevent or remediate such violation, or recover damages for such violation, or both. Grantor (but not any other Benefited Property owner) shall have an easement over the Property for the purpose of entering a Lot in order to monitor or enforce compliance with these covenants, conditions and restrictions without court order. The party bringing such action shall be entitled to recover its reasonable attorney's fees and expenses incurred in such proceedings from the person or entity violating or attempting to violate the same. Nothing herein shall be held to impose any restriction on any other land owned by Grantor, its subsidiaries or affiliates.

12. **Modification, Amendment, Variances.** Grantor hereby reserves the right for itself and its successors or assigns, to amend or modify, release or grant variances with respect to the covenants, conditions, easements and restrictions set forth herein. As used in this Section 12, the term "successors or assigns" shall be limited to Grantor's successors or assigns by merger or consolidation or by written assignment.

13. **Reserved Easement.** Grantor hereby reserves unto itself and any successors in title, (i) a ten foot wide easement extending into the Property from and along each boundary line of the Property for the installation and maintenance of utility lines, drainage ditches or facilities or any other related improvements that may be required by Grantor or its successors or assigns; and (ii) a 15 foot wide easement extending into the Property from and along any public or private road rights-of-way for the installation and maintenance of utility lines, drainage ditches or facilities or any other related improvements that may be required by Grantor or its successors or assigns.

14. **Subdivision.** The Property may not be subdivided in a manner that will result in any Lot being created which is less than 29,000 square feet.

15. **No Modular or Mobile Homes.** No more than one mobile, manufactured or modular home or structure having the characteristics or appearance of a mobile, modular or manufactured home, including, without limitation, any mobile, modular or manufactured home as defined by the building codes or other applicable laws of the state in which the Property is located, shall be located upon the Property.

STATE OF NORTH CAROLINA )
)
COUNTY OF MECKLENBURG )

**AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says;

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located in Keowee Whitewater Township, bearing Oconee County Tax Map Number 150-00-01-444, was transferred by Crescent Communities S.C., LLC to FARMES, A South Carolina Limited Partnership, and GLOBE, A South Carolina Limited Partnership on December 4, 2008.

3. Check one of the following: The deed is

(a) ___X___ subject to the deed recording fee as a transfer consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ____ or No ____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

(a) ___X___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 1,844,400.00

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ____ or No ___X___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

PPAB 1504095v2

(a) Place the amount listed in item 4 above here: $ 1,844,400.00

(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: $ 1,844,400.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $ 6,824.65 .

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized Agent for Crescent Communities S.C., LLC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

J. Scott Munday

Responsible Person Connected with the Transaction
J. Scott Munday
Vice President

SWORN to before me this 3rd day of December, 2008.

Kay H. Arnette

Notary Public for North Carolina
My Commission Expires: June 28, 2009

KAY H. ARNETTE NOTARY PUBLIC MECKLENBURG COUNTY, N. C. My Comm. Exp. June 28, 2009

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 DEC -8 A 8:49

PPAB 1504095v2

**INFORMATION**

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

**Exempted from the fee are deeds:**

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 53 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity in subject to the fee even if the realty is transferred to another corporation, a partnership, or a trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive

My name is Lucretia Morgan and I own property on Ellenburg Road. I would like to share a few comments regarding the initial meeting for this variance from November 2021.

Back in November, the applicant and his team presented a lot of information regarding this proposed subdivision. There were many statements made which were inaccurate and misleading.

In the November several people stated the property owner knew what he was purchasing and had access for only 4 homes at the time of purchase. Mr. Mike Johnson, who mentioned that he is a "Planning Commissioner for Oconee County" and "while he was not here representing the Planning Commission or Oconee County", he said he "brings experience with regard to public interests, private property rights and a discussion on these ordinances". Mr. Johnson failed to state he is also a real estate agent of the developer, Mr. Andy Lee. Mr. Johnson stated there are many roads in Oconee County with the required 20' driving surface, but not a 50' ROW. Many subdivisions were mentioned, such as Harbor Oaks, The Summit, Waterside and so on, NONE of these nor any other subdivision have a less than 50' ROW at the entrance. These smaller roads and ROW's do exist, however they are servicing only 2-6 homes within the subdivision, not at the subdivision entrance for 19 homes channeled into a small pinch point.

Mr. Johnson also mentioned the "Private Road Ordinance changed in 2013... and the ordinance amends Chapter 26-2 under Private Road Standards. The ordinance appears to bring private roads up to match private ROW, that 50'. Any conversation about the developer should have known just probably isn't true." Well it is true. While the standard he mentioned didn't go into effect until 2013, the 50' ROW was in existence in the Subdivision and Land Development signed by Oconee County Council on April 4, 2006 which you can find a copy of in the Oconee County Council Meeting Minutes, backup material starting on page 39. I've also provided you with a copy of this (Exhibit 1, 2 and 3). In addition, dating back to 2000, Ordinance 99-14 Oconee County Unified Performance Standards and Land Use Development Regulations, Section 6.7.3 Private Roads – Serving more than 10 homes. It states a private road shall have a minimum right of way easement of 50 feet. So yes, the developer knew what he was purchasing in 2008. In fact, in the County Council Meeting Minutes from August 1, 2000, the property owner, Mr. John Hamrick, attended the meeting and spoke in opposition of proposed subdivision ordinance due to the way the property would have to be divided. The 50' ROW for local and collector residential roads (public or private) was also part of this ordinance. This requirement was not new and predates the 2008 property purchase by at least 8 years.

There was also a question regarding the square footage of the homes being reduced in 2016. When asked during the meeting, the developer denied this. In your packet you will find in exhibit 4 and 5 copies of the 2008 and 2016 deeds. Clearly the minimum home size was changed from 2400 ft2 on a two-story home to 2000 ft2 on a 1, 1.5 or 2-story home, thus reducing the home size. The basement was also previously excluded as part of the home's square footage. In 2016, the basement was removed from this exclusion. This is not like-kind

to Harbor Oaks. Lot sizes average nearly one acre and homes average nearly 4400 heated square feet.

There was also extensive discussion during the November meeting regarding a 25' ROW the developer was attempting to impose on John's Marine and giving or deeding a 22' section of property to John's Marine. This was very misleading. First of all, there is no existing 25' ROW on this property. The developer proposed adding it which will leave a 2-4" strip of "no man's land". This strip is approximately 22' long and runs parallel to the front of the shop. John's Marine currently owns this piece of property and the developer is not giving him additional room. In fact, the developer has no property to give in front of the shop. They need the Ratliff's and a 25' ROW for the utilities. What they need will only impede the access he currently has in front of his shop.

Nineteen homes are not for only 19 people. There are Amazon, UPS, FedEx and other deliveries. Friends, family, renters also add to the traffic. It's not a thru-road, so every car that goes in, must come out the same way. According to Roads and Bridges this can equate to 200 vehicles per day.

A variance should not be approved based on only profitability. As stated in South Carolina Powers of board of appeals; variances and special exceptions per S.C. Code of Laws Title 6, Chapter 29, 6-29-800 A, SC Local Government Comprehensive Planning Enabling Act of 1994, "The fact that property may be utilized more profitably, if a variance is granted, may not be considered as grounds for a variance. Oconee County Code of Ordinances Section 32-5 also states the same. These are found in Exhibit 6 and 7.

In the applicant's Variance Criteria Overview (exhibit 8), he states that this property is bounded by a body of water and most parcels in the vicinity are not are not bound by the water on both sides. He also states that "due to the unique geography of this parcel, meeting the current road ordinance goes beyond creating an unnecessary hardship and instead creates only impossibility of use". The owner/developer has access to his property. He has the same access as he did at the time of purchase. Nothing has changed, including the 50' ROW for public and private roads. John's Marine has been in the same location since 1982 – for 40 years. The developer states that he is only asking for a variance on the right of way, not the road width. I ask you to consider why the 50' ROW was put in place. The purpose of such regulations is to protect and promote the public health, safety and general welfare of the citizens of Oconee County. This proposal for 19 homes to enter with anything less than the 50 right of way is not upholding these standards.