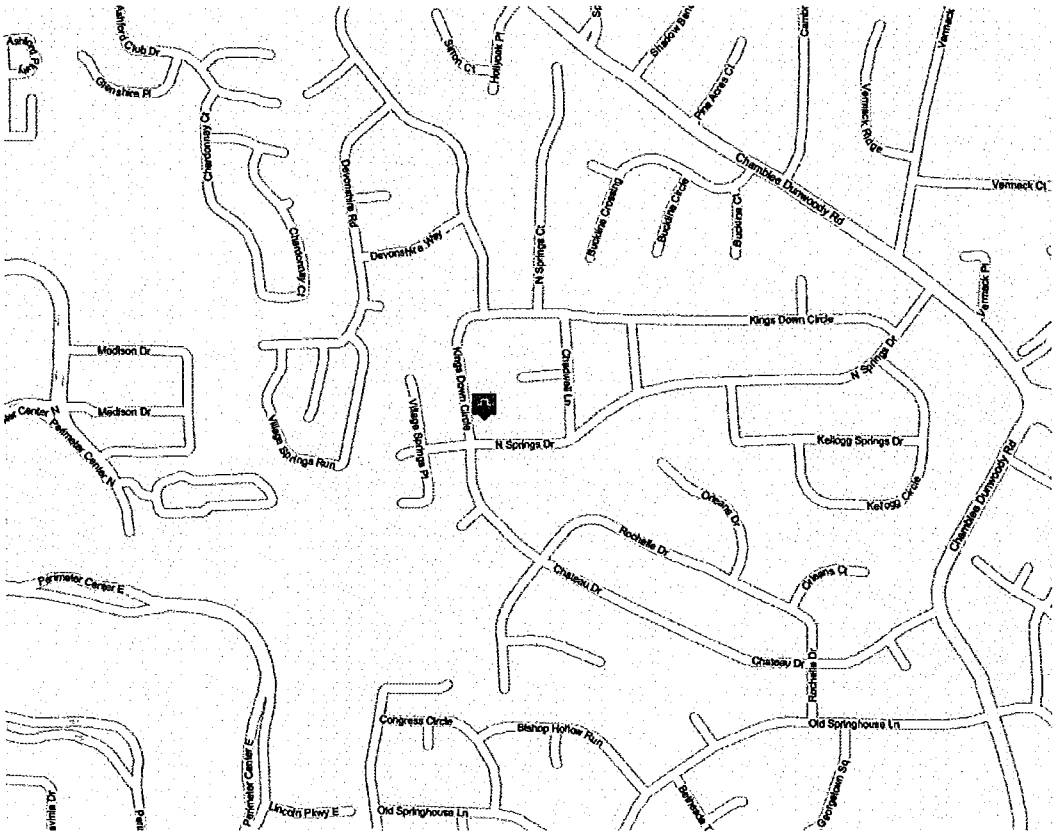
Hearing Date:	**November 5, 2009**
Property Location	**1463 Kings Down Circle (LL 351)**
Owner/Petitioner	**William and Kelly Blake** **1463 Kings Down Circle** **Dunwoody, Georgia 30338**
Variance Request	**Increase the allowable height of an already-constructed front yard fence in a single-family residential neighborhood from four (4) feet to six (6) feet**

Vicinity Map



The site is a corner lot located in the North Springs subdivision, on the northeast corner of North Springs Circle and Kings Down Circle. The property is currently zoned R-100 (Single-Family Residential district). The applicant's request is for a variance to the height of an already-constructed front yard fence in a single family district to six (6) feet from four (4) feet.

History

The applicants applied for and received a building permit to construct a deck on their home on July 2, 2009. On August 11, the applicants failed their final inspection for the construction of the deck, as there was no solid surfacing at the bottom of the stairs leading from the deck to the yard. The applicants were not satisfied with the findings of the inspector, and called the community development department for an on-site meeting with the chief building official. At that meeting, the chief building official confirmed the result from the earlier inspection of the deck, and also noted that the fence constructed on the property was non-compliant with the zoning ordinance, as it was over the maximum allowable height of four (4) feet.

Analysis

The applicant now seeks a variance to the following section of the city Zoning Ordinance:

"Sec. 4-54. Walls, Fences and Retaining Walls.

(a) No wall, fence, and retaining wall shall be more than eight (8) feet in height. No wall or fence shall be constructed in any public right-of-way except upon approval of the director of public works. <u>No wall or fence in a front yard in a residential district shall exceed four (4) feet in height.</u> When this Chapter requires a wall or fence to be constructed, the wall or fence shall be completed prior to issuance of a certificate of occupancy for the principal structure..."

At a meeting on Friday August 28, 2009, the applicants were made aware of the Dunwoody zoning code §4-54 related to fences and walls: "No wall or fence in a front yard in a residential district shall exceed four (4) feet in height."; as well as §4-25 related to corner lots: "On corner lots the side having the least street frontage shall be deemed to be the front of the lot for the purpose of applying required yards and setbacks."

The applicant's lot has 121+/- feet of frontage along Kings Down Circle, and 119+/- feet of frontage along North Springs Drive. The fence in question extends beyond the building façade on the southern side of the house, the side facing North Springs Drive. According to the Dunwoody zoning ordinance, this southern exposure of the home faces the lot's front yard, no matter the architectural orientation of the structure itself.

The applicant's letter of intent references the chief hardship which they seek to overcome is safety and security of their children from speeding vehicles on the street(s). Not only is this situation not any function of the lot's shape or topographic condition, it is a temporary condition that should dissolve as the children age. Conversely, the institution of a variance does not dissolve over time; the allowances afforded a property by variance run with the land until such time that the lot dissolves by a boundary alteration.

This variance would be granted to alleviate the requirement that the applicant move, remodel, or remove the fence as it is currently constructed. The hardships presented by the applicants do not overcome the preponderance of a regulatory taking; they excuse the non-compliant construction of the fence. The home was situated on a corner lot when the applicants purchased the home and moved in, and it still exists today as a corner lot. Introducing the temporary conditions of occupancy to the situation does not rise to the level of a natural hardship which would preclude the use and enjoyment of the lot, similar to other home owners in the same zoning district.

Conditions of the Zoning Ordinance

Article 27, Section 5D-14 identifies the following criteria for evaluation that should be examined when determining the appropriateness of a variance:

a) Variances from the provisions or requirements of this Chapter shall be authorized only upon making all of the following findings:

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this Chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district; *The lot is predominantly square and flat; it is not exceptionally narrow or shallow and has no exceptional natural topographic features. Causing the fence to be moved or altered to be compliant would not preclude the use and enjoyment of the lot in the manner enjoyed by other property owners in the same zoning district.*

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located; *The request does not exceed the minimum required to allow the already-existing fence to continue to exist. Affording the applicant the ability to keep this fence as-is would certainly be a special privilege not available to other properties in the zoning district.*

3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located; *Staff cannot determine any public safety concerns related to this request, either from the perspective of the owners nor the public at-large.*

4. The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship; *The request is discretionary in nature and not required to avoid an undue and unnecessary hardship. Any hardship would be neither undue nor unnecessary, as it was created by the applicants' construction of the fence in its current form.*

   and

5. The requested variance would be consistent with the spirit and purpose of this Chapter and the City of Dunwoody Comprehensive Plan text. *The applicant's request is not consistent with the spirit and purpose of the zoning ordinance; however, it does not impact the Comprehensive Plan.*

Recommendation

Staff **does not support** the requested variance, due to its discretionary and self-created nature.

Attachments

1. Application materials, including letter of intent and petition of neighbor's support, provided by the applicant.
2. Photos, supplied from both the applicant and staff.
3. Boundary survey, dated 07-01-09 and stamped 'Received' by the Community Development Department on October 1, 2009.

1463 Kings Down Circle

08.20.2009 11:20

08.20.2009 11:21

08.20.2009 11:19

08.20.2009 11:21

CHADWELL COURT
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CIRCLE
LANE
SPRINGS
NORTH
PLACE
CHATEAU
Front
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ZBA 09 102

Variance Application

City of Dunwoody
41 Perimeter Center East
Dunwoody, GA 30346
Phone: (678) 382-6800
Fax: (770) 396-4828

RECEIVED 2009

Type

Type of Request: ☐ Variance (BZA) ☐ Variance (Administrative)

Concurrent Variance(s)? ☐ Yes ☒ No If yes, please provide rezoning case #:

	Square Feet	Acre	Minimum Setback Requirements	Proposed Setback Requirements
Total Area of Lot	21,833	.501	Front	Front
Building Footprint			Side	Side
# of Parking Spaces			Rear	Rear
Height			Other	Other

Project

Name of Project/Subdivision: NORTH SPRINGS / CHATEAU SPRINGS

Property Address/Location: 1463 KINGS DOWN CIRCLE, DUNWOODY, GA 30338

Land Lot: 351	District: 18th	Section:	Property ID:
Lot Number: 6	Block: H	Present Zoning: R100	Proposed Zoning:

Applicant Information

Name: WILLIAM + KELLY BLAKE

Company: N/A

Address: 1463 KINGS DOWN CIRCLE, DUNWOODY, GA 30338

Phone: (770) 399.9484 Fax:

Cell: (770) 337.2020 Email: BLAKES@G

Representative

Name: N/A

Company:

Address:

Phone: Phone:

Cell: Cell:

Affidavit

To the best of my knowledge, this variance application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I understand that failure to supply all required information (per the relevant Applicant Checklists and Requirements of the Dunwoody Zoning Ordinance) will result in the rejection of this application. I have read the provisions of the Georgia Code Section 36-67A-3 as required regarding Campaign Disclosures. My Signed Campaign Disclosure Statement is included with the Application.

Applicant's Signature: Date: 9/30/09

Representative's Signature: N/A Date:

Notary

Sworn to and subscribed before me this 30th Day of September 2009

Notary Public: Alexis Nelms

Signature:

Date: 09/30/09

ALEXIS NELMS
Notary Public
Fulton County
State of Georgia
My Commission Expires Jan 29, 2013

Office Use

Fee: $ 250.00 Reciept#9859 Payment: ☐ Cash ☒ Check ☐ CC – Visa/MC Date: 10/01/01

☐ Approved ☐ Denied By: Date:

Campaign Disclosure Statement

City of Dunwoody
41 Perimeter Center East
Dunwoody, GA 30346
Phone: (678) 382-6800
Fax: (770) 396-4828

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By

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating $250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission?

☐ YES ☒ NO

Applicant / Owner	
Signature:	
Address:	1463 Kings Down Cir, Dunwoody, 30338
Date:	Aug. 29, 2009

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

Variance Application

City of Dunwoody
41 Perimeter Center East
Dunwoody, GA 30346
Phone: (678) 382-6800
Fax: (770) 396-4828

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OCT 1 2009

Request

Please explain the reason for the request and attach additional information as necessary.

We request a variance to allow a 6 Foot fence on the North Springs Drive facing side of our house. Please see letter of intent and 2 pages (8 total photos) of photos for reference. Also included is a survey of our property.

Orientation

Prior to the submission of a variance application, the applicant is required to schedule an orientation meeting with the appropriate planner in the Planning and Zoning Division of the Community Development Department. The purpose of this meeting is to determine the number and nature of the variances requested, become familiar with the appeals process and obtain preliminary input from staff. A meeting date before the Board of Zoning Appeals will be scheduled upon a determination of completeness and compliance of the application. The applicant or representative must attend the meeting and make the presentation. An Orientation Meeting is NOT required for an Administrative Variance.

Orientation Meeting Date: Aug. 28, 2009 with Tom LePenna

Board Meeting Date:

Remarks

Zoning Director Comments:

Planning & Zoning Director: Date:

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OCT 1 2009
By

September 24, 2009

City of Dunwoody

Dear Board of Appeals,

We are William and Kelly Blake and have three children – 4 years, 3 years and 4 weeks old. We moved to Dunwoody into our current residence 4.5 years ago from Alpharetta. Since then, we have seen many changes in Dunwoody including the creation of the city – which we supported.

On April 13, during a wind storm, a large 150 year old oak tree fell damaging the back of our house and our fence. The damaged fence was removed and subsequently replaced with a new 6 foot shadow box fence with top caps on the boards and copper covers on the posts (added to increase the aesthetics of the fence). The fence provides security, safety and privacy for our family from the Kings Down Circle and North Springs traffic and privacy and safety from our neighbor's driveway (North Springs). The constructed fence does not obstruct any views of the street corner.

Our house is on a corner lot at the intersection of Kings Down Circle and North Springs Drive. Our address coincides with our front door which faces Kings Down Circle – the "front" of our property. According to this ordinance, our front yard (Kings Down Circle – front door faces this) is technically our side yard and our side yard (North Springs Drive – garage faces this) is technically our front yard. The difference between the side and front lineage, according to the property survey is 2.18 feet. These 2 feet dictate that our present 6 foot fence in our backyard is not in compliance despite the fact it encompasses and secures our backyard, not our front.

The ordinance states corner lots having the least street frontage shall be deemed to be the front lot for purposes of applying required yards and setbacks. Enforcement of the ordinance creates a hardship because of safety, security and privacy for our family. During our 4.5 year residence in this home we have seen several patterns which are of concern to us which solidified the decision to construct a 6 foot fence:

- Vehicles speeding down both streets (North Springs Dr. and Kings Down Circle) which are commonly used as a cut thru to Chamblee Dunwoody Rd.
- Vehicles running the 4-way stop sign at the intersection of N. Springs Dr. and Kings Down Circle
- Frequent break-ins (day and night) into homes, garages and vehicles the neighborhood – police have even stopped by the houses in the neighborhood warning to keep gates to fences closed and garages shut even if you are home.

The fence provides a secure place for the children to play, unseen from the street, and protected from the speeding traffic on this busy corner. In addition, Kelly is disabled with a spinal cord injury and is unable to run or walk fast so the boys can scale a 4 foot fence and can reach the street before Kelly could stop them. A 6 foot fence keeps the boys safe in the back yard.

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By

Another security and safety concern is that our adjacent neighbor's driveway (1538 N. Springs Drive) is on our property .2 feet and elevated above our backyard by 1.5 feet. (please see photos) Our backyard faces directly into this neighbors garage and driveway. Our new fence protects the children from her elevated driveway. It also screens the backyard from the view into her garage and driveway as well as allows us to enjoy our backyard and view from the newly renovated house. The neighbor has a bright light in the back of the garage which shines into our yard and the new fence helps block the light.

We have included 8 photos of the house to help illustrate our property orientation and explanation. Also find a petition signed by our neighbors in support of the fence. We have had only positive feedback from our neighbors and Dunwoody Citizens regarding the fence and not one compliant.

For these above reasons, we are requesting a variance to allow the fence to remain as is in our backyard.

We met with Tom LePenna on August 28 to discuss this issue and were directed to file a variance with the Board of Appeals.

Thank you.

William and Kelly Blake
1463 Kings Down Circle
Dunwoody, GA 30338

September 24, 2009

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By

City of Dunwoody

Dear Board of Appeals,

I have signed the attached to show support of my neighbors William and Kelly Blake at 1463 Kings Down Circle, Dunwobdy, GA 30338 regarding the fence on their property. The fence is in accordance with the spirit of the neighborhood and City of Dunwoody standards.

The reason for the 6' fence is to provide security and privacy for their family from the Kings Down Circle and North Springs traffic. The fence does not obstruct any views of the street corner.

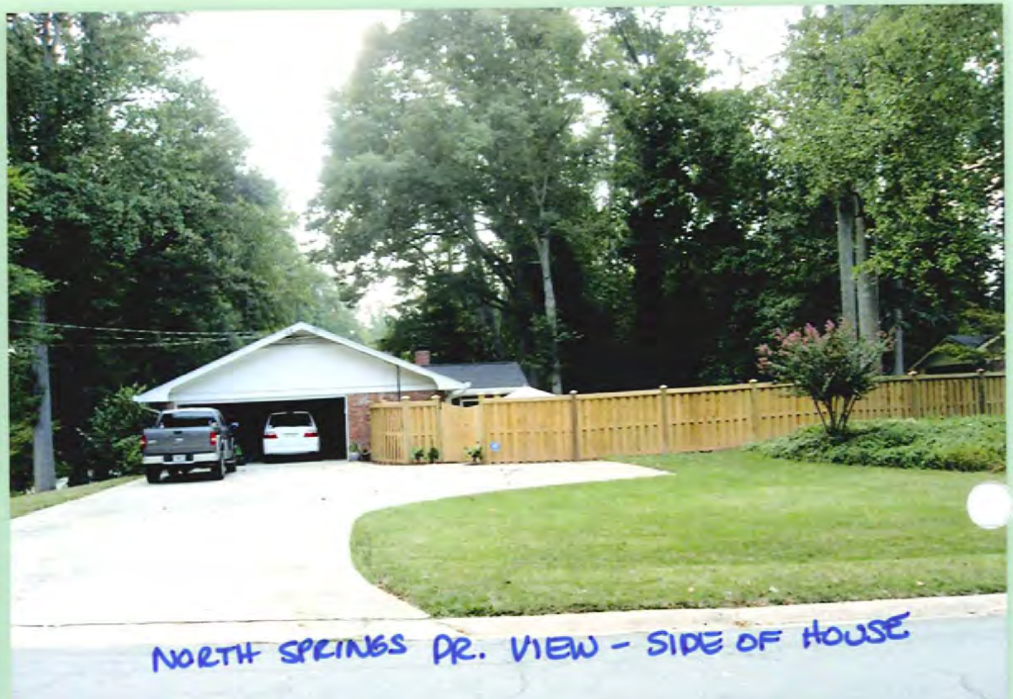
Thank you.

	Name	Address
1	E. [illegible]	1577 North Springs Dr.
2	Jeff Leech	Same
3	Holly Blake	1541 N. Springs Drive
4	Nikki Martin	1464 Kings Down Cir
5	Jim Peterman	1473 Kings Down Circle
6	Jim Clegg	1514 Kings Down Circle
7	Lori Davila	1483 N Springs Dr.
8	David Green	1476 Kings Down Circle
9	Mary Goodman	1492 CHATEAU DRIVE
10	Sharon Apseloff	1556 ~~[illegible]~~ Kings Down Cir.
11	[illegible]	1546 N Springs Dr
12	[illegible]	1630 Kings Down Circle.
13	The O'Keefe's	1549 North Springs
14		
15		
16		

VIEW FROM 1538 N. SPRINGS DR. (NEIGHBOR'S HOUSE)

1538 N. SPRINGS DR.
ELEVATED DRIVE IN OUR BACKYARD

FRONT OF HOUSE - KINGS DOWN CIRCLE VIEW



NORTH SPRINGS DR. VIEW - SIDE OF HOUSE

BACKYARD FACING NEIGHBORS - 1538 N. SPRINGS

BACKYARD

PLAT OF CHATEAU SPRINGS SUBDIVISION

CONTINENTAL INVESTMENT CORP., DEVELOPER

LAND LOT 351 14TH DISTRICT

DEKALB COUNTY, GA.

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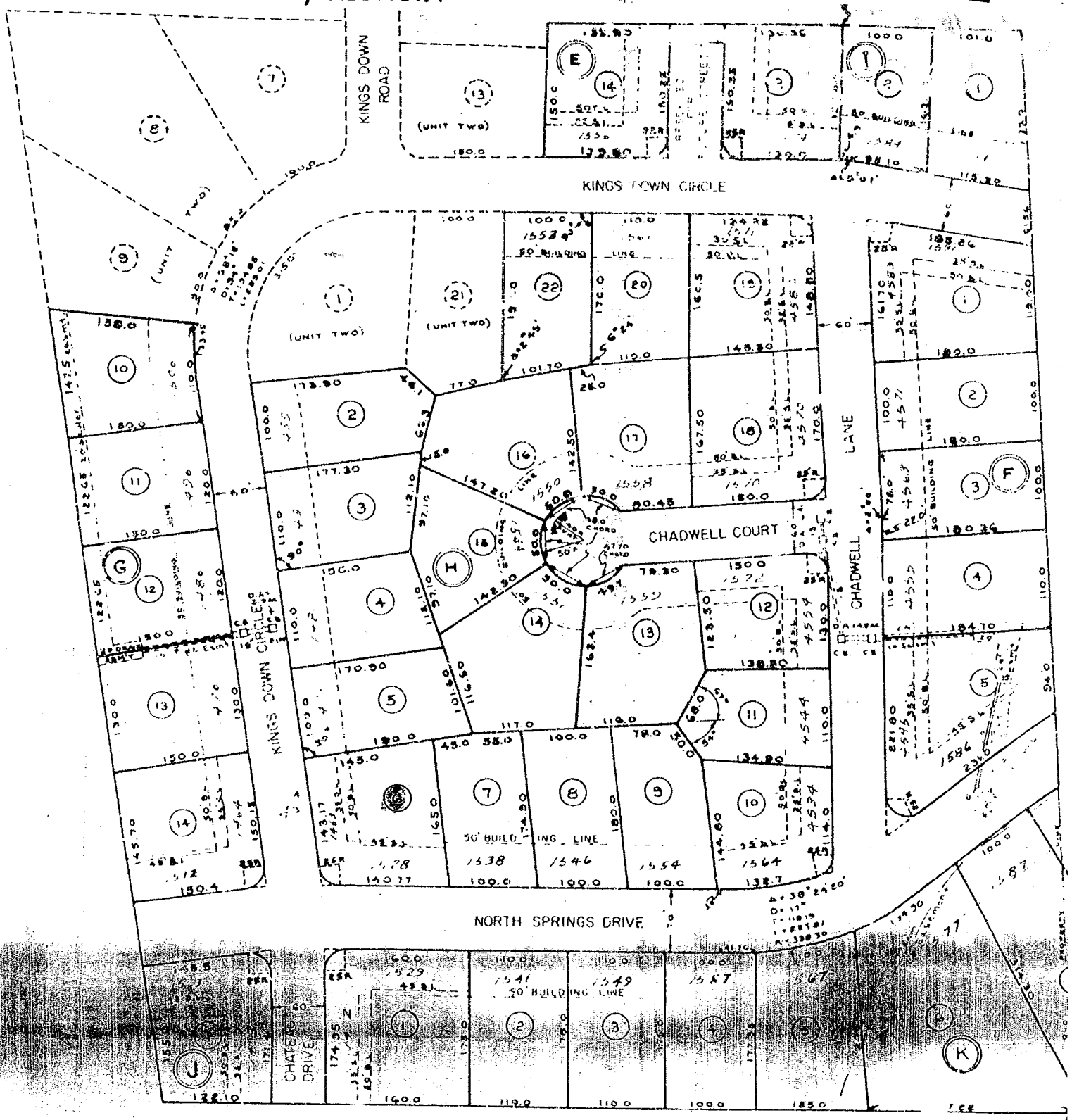
OCT 12 2009
By

BY: PATTERSON & DEWAR ENGRS.
1450 SCOTT BOULEVARD
DECATUR, GEORGIA



PROTECTIVE COVENANTS

1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than 3 cars.
2. Architectural Control. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the architectural control committee as to quality of workmanship and materials.
3. Dwelling Quality and Size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1500 square feet for a one-story dwelling, nor less than 1000 sq. ft. for a dwelling of more than one story.
4. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plan plat and over the rear ten feet of each lot.
5. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

The above covenants established this 20th Day of October 1964.

CONTINENTAL INVESTMENT CORPORATION
Developer

By [signature]

Title President

This Plat has been submitted to and considered by the Commissioner of Roads & Revenues of DeKalb Co. Georgia and is approved [illegible] This 7 Day of May 1965.

[signature]
Chairman, Board of Commissioners
of Roads & Revenues, DeKalb County, Georgia

The Owner of the land shown on this plat and whose name is subscribed hereto and in person or through a duly authorized agent, acknowledges that this plat was made from an actual survey and dedicates to the use of the public forever all streets, alleys, parks, water courses, drain easements and public places thereon shown for the purposes and considerations therein expressed.

CONTINENTAL INVESTMENT CORPORATION

By [signature]

Title President

This Plat has been submitted to and considered by the Planning Commission of DeKalb County Georgia and is approved by such commission dated this [illegible] Day of May 1964.

[signature] Chairman [signature] Secretary

It is hereby certified that this plat is true and correct and was prepared from an actual survey of the property made under my supervision.

[signature] Oct. 20, 1964
Registered Ga. Land Surveyor No. 799 - Registered Ga. Professional Engineer No. 2721

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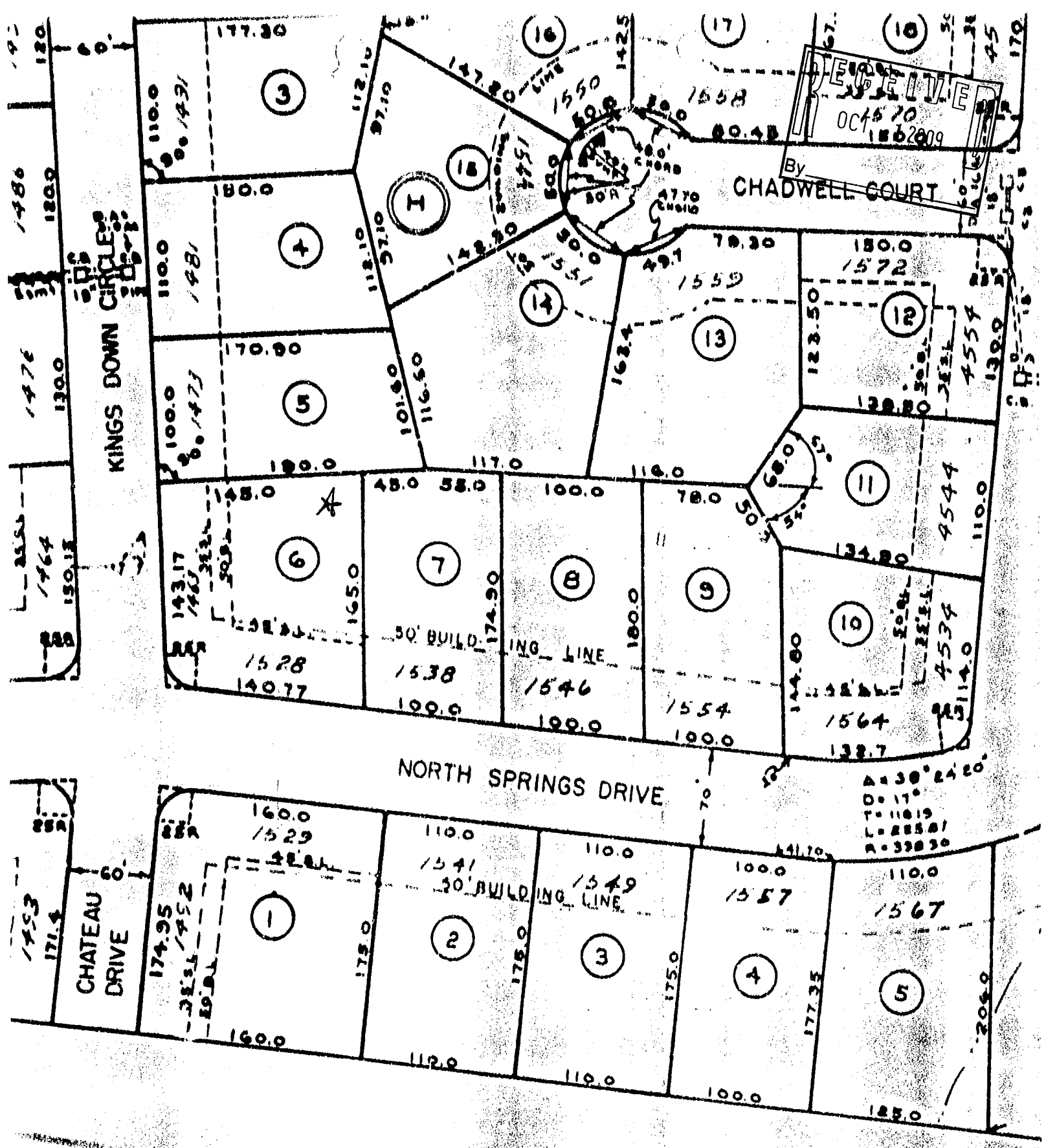
Recorded June 7, 1965. Plan B. Burgess, Clerk



11/27/64

4th May 65

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By

SURVEY NOTES

1. STORM SEWER, SANITARY SEWER AND OTHER BURIED UTILITIES MAY HAVE BEEN PAVED OR COVERED OVER. THE LOCATION OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVE GROUND STRUCTURES AND RECORD DRAWINGS PROVIDED TO THE SURVEYOR. LOCATIONS OF UNDERGROUND UTILITIES MAY VARY FROM LOCATIONS SHOWN HEREON. ADDITIONAL BURIED UTILITIES MAY BE ENCOUNTERED. NO EXCAVATIONS WERE MADE DURING THE PROGRESS OF THIS SURVEY TO LOCATE BURIED UTILITIES. BEFORE EXCAVATIONS ARE BEGUN, CALL THE UTILITIES PROTECTION CENTER FOR ADDITIONAL INFORMATION.

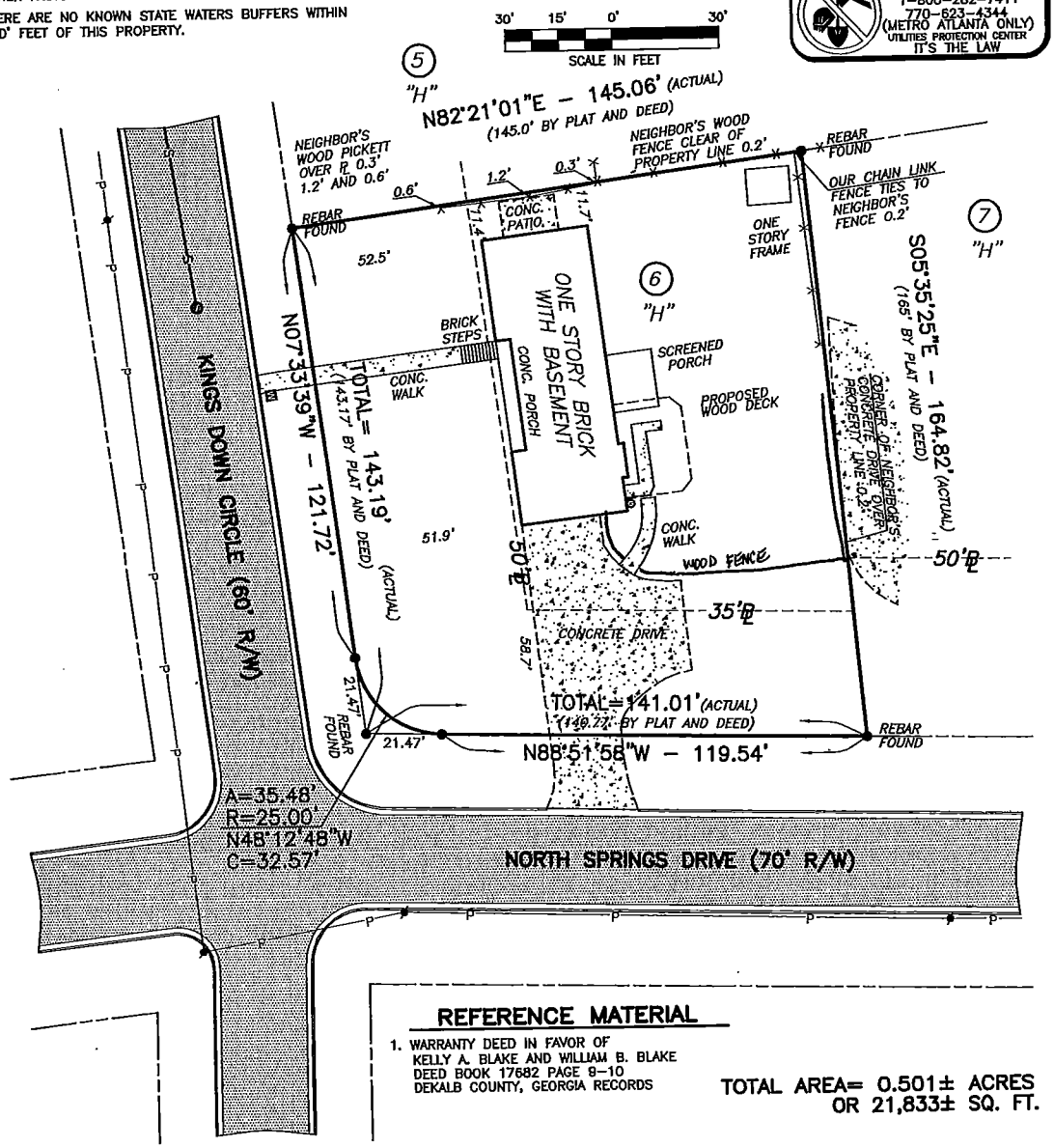
   THROUGH OUT GEORGIA 1-800-282-7411

2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT A CURRENT TITLE SEARCH MAY DISCLOSE.
3. THERE ARE NO KNOWN STATE WATERS BUFFERS WITHIN 200' FEET OF THIS PROPERTY.

SURVEY NOTES

4. THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON, PERSONS OR ENTITY NAMED HEREON. THIS PLAT DOES NOT EXTEND TO ANY UNNAMED PERSON, PERSONS, OR ENTITY WITHOUT THE EXPRESS RECERTIFICATION OF THE SURVEYOR NAMING SUCH PERSON, PERSONS OR ENTITY.
5. THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 10,000+ FEET, AND AN ANGULAR ERROR OF 02" PER ANGLE POINT, AND WAS ADJUSTED USING COMPASS RULE. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 100,000+ FEET. LINEAR AND ANGULAR MEASUREMENTS WERE OBTAINED BY USING A TOPCON TOTAL STATION.
6. BEARINGS SHOWN WERE COMPUTED FROM ANGLES TURNED FROM A SINGLE MAGNETIC OBSERVATION.
7. THIS PLAT NOT INTENDED FOR RECORDING.

IF YOU DIG GEORGIA... CALL US FIRST! 1-800-282-7411 770-623-4344 (METRO ATLANTA ONLY) UTILITIES PROTECTION CENTER IT'S THE LAW



REFERENCE MATERIAL

1. WARRANTY DEED IN FAVOR OF KELLY A. BLAKE AND WILLIAM B. BLAKE DEED BOOK 17682 PAGE 9-10 DEKALB COUNTY, GEORGIA RECORDS

TOTAL AREA= 0.501± ACRES OR 21,833± SQ. FT.

No.	Revision	Date
1.	CORRECT DISTANCE AND REVISE FENCE	10-1-09

1463 KINGS DOWN CIRCLE
DUNWODY, GEORGIA

McCLUNG SURVEYING SERVICES, INC.
4833 South Cobb Drive Suite 200
Smyrna, Georgia 30080 (770) 434-3383

This property (●) (is not) located in a Federal Flood Area as indicated by F.I.R.M. Official Flood Hazard Maps.

In my opinion this plat is a correct representation of the land platted.

Fences should not be placed using side dimensions from house.

This original of this document was sealed and signed by Michael R. Noles L.S. #2646 on 6-29-09. THIS REPRODUCTION IS NOT A CERTIFIED DOCUMENT.

Michael R. Noles
Georgia RLS #2646
Member SAMSOG
JOB#227288B

LEGEND

RCP	REINFORCED CONCRETE PIPE
CMP	CORRUGATED METAL PIPE
●	POWER POLE
Ø	LIGHT POLE
Ⓔ	POWER METER
E	POWER BOX
A	AIR CONDITION
T	TELEPHONE BOX
Ⓖ	GAS METER
G	GAS VALVE
W	WATER METER
Ⓦ	WATER VALVE
J	JUNCTION BOX
D	DROP INLET
S	SANITARY SEWER MANHOLE

DB: DP

PROPERTY OF
KELLY BLAKE
WILLIAM BLAKE

LOT 6, BLOCK "H"
CHATEAU SPRINGS SUBDIVISION

LAND LOT 351
DISTRICT 18TH. SECTION
COUNTY DEKALB
GEORGIA

PB 42
PG 2
DB
PG

PLAT PREPARED: 7-1-09
FIELD: 6-29-09 SCALE: 1"=30'