

APPLICATION FOR VARIANCE TO THE CITY OF SMYRNA

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(To be completed by City)

Ward:

Application No: V21-029

Hearing Date: 3/24/21

APPLICANT: BARC Holdings, LLC

Business Phone: (770) 993-3111 Cell Phone: (770) 616-8910 Home Phone: _____

Representative's Name (print): J. Kevin Moore - Moore Ingram Johnson & Steele, LLP

Address: Emerson Overlook, Suite 100, 326 Roswell Street, Marietta, GA 30060

Business Phone: (770) 429-1499 Cell Phone: (678) 516-1609 Home Phone: _____

E-Mail Address: jkm@mijis.com

Signature of Representative: BY: _____

J. Kevin Moore; Georgia Bar No. 519728
Attorneys for Applicant/Titleholder

TITLEHOLDER: BARC Holdings, LLC

Business Phone: (770) 993-3111 Cell Phone: (770) 616-8910 Home Phone: _____

Address: 2993 Sandy Plains Road, Suite 225, Marietta, GA 30066

Signature: BY: _____

Joseph Marvin Dilbeck, Jr., Assistant Secretary

VARIANCE:

Present Zoning: R-15 Type of Variance: Waiver of required
15,000 square foot minimum lot size to 9,886 square foot minimum lot size

Explain Intended Use: Single-family residence 535 Benmac Rd

Location: Northerly side of Benmac Road; easterly of Old Spring Road

Land Lot(s): 348 District: 17th Size of Tract: 0.23 Acres

(To be completed by City)

Received: 3/1/21

Legal Ad Posted: 3/5/21

Signs Posted: _____

Approved/Denied: _____

CONTIGUOUS ZONING

North: R-15

East: R-15

South: R-15

West: R-15

17034800860

MARTIN RICHARD ALLEN
526 KENNESAW DR
SMYRNA
GA 30080

17034800790

MAINHART LAURA B
547 BENMAC RD SE
SMYRNA
GA 30080

17034800700

JACKSON ERIC
534 BENMAC RD
SMYRNA
GA 30080

17034800710

RANDALL JIMMIE LEE & CONNIE
540 BENMAC RD
SMYRNA
GA 30080

17034800810

BARC HOLDINGS LLC
2993 SANDY PLAINS RD SUITE 225
MARIETTA
GA 30066

17034800870

MARTINEZ FIDEL
454 VICTORIA RD
WOODSTOCK
GA 30189

17034800850

MOULTHROP CHRIS
4697 TRINITY CT
MARIETTA
GA 30068

17034800720

MENDOZA BARCENAS GUMARO
546 BENMAC RD
SMYRNA
GA 30080

17034800800

RAVEN NEIL & SUSAN
3303 COCHISE DR SE
ATLANTA
GA 30339

17034800840

FLYNN ROBERT A
2177 OLD SPRING RD
SMYRNA
GA 30080

17034800820

FERNALD RACHEL A
2197 OLD SPRING RD SE
SMYRNA
GA 30080

17034800830

SMYTH MOLLY OBRIEN
2187 OLD SPRING RD SE
SMYRNA
GA 30080

17034800690

ROBLERO SANDRA I
2215 OLD SPRING RD SE
SMYRNA
GA 30080

TAX PARCEL - 17034800860
RICHARD ALLEN MARTIN
526 KENNESAW DRIVE
SMYRNA, GA 30080

TAX PARCEL - 17034800870
FIDEL MARTINEZ
454 VICTORIA ROAD
WOODSTOCK, GA 30189

TAX PARCEL - 17034800840
ROBERT A. FLYNN
2177 OLD SPRING ROAD
SMYRNA, GA 30080

TAX PARCEL – 17034800790
LAURA B. MAINHART
547 BENMAC ROAD, S.E.
SMYRNA, GA 30080

TAX PARCEL – 17034800850
CHRIS MOULTHROP
4697 TRINITY COURT
MARIETTA, GA 30068

TAX PARCEL – 17034800820
RACHEL A. FERNALD
2197 OLD SPRING ROAD, S.E.
SMYRNA, GA 30080

TAX PARCEL – 17034800700
ERIC JACKSON
534 BENMAC ROAD
SMYRNA, GA 30080

TAX PARCEL – 17034800720
BARCENAS GUMARO MENDOZA
546 BENMAC ROAD
SMYRNA, GA 30080

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CHRIS MOULTHROP

4697 TRINITY COURT

MARIETTA, GA 30068

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RACHEL A. FERNALD

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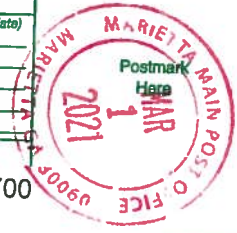
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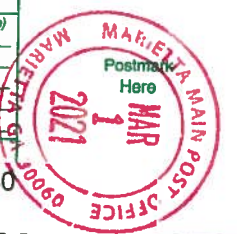
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SMYRNA, GA 30080

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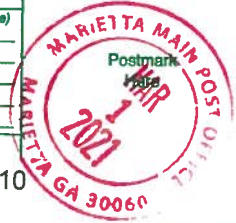
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State

Zip

Country

TAX PARCEL - 17034800810
BARC HOLDINGS, LLC
2993 SANDY PLAINS ROAD, SUITE 225
MARIETTA, GA 30066



ATTACHMENT TO APPLICATION FOR VARIANCE

Application No.: _____

Hearing Date: **March 24, 2021**

Applicant/Titleholder: **BARC Holdings, LLC**

COMPREHENSIVE NARRATIVE

Applicant/Titleholder, BARC Holdings, LLC (hereinafter “Applicant”), is the owner of a 0.23 acre parcel located on the northerly side of Benmac Road, easterly of Old Spring Road, Land Lot 348, 17th District, 2nd Section, Cobb County, Georgia, also being known as Lot 13, Block C, Green Hills Subdivision, Unit Four (“Property” or “Subject Property”). The Property is a legal platted lot within Green Hills Subdivision as per the subdivision plat of survey recorded April 16, 1953, in Plat Book 10, page 183, Deed Records of the Superior Court of Cobb County, Georgia.

The Property, along with all surrounding lots, is zoned R-15. Applicant proposes the construction of one single-family residence on the Property; and, therefore, seeks a variance waiving the required 15,000 square foot minimum lot size to 9,886 square foot minimum lot size.

The non-compliance of the Property occurred at the development of the subdivision in the 1950s. Strict compliance with the minimum lot size requirement would render the Property unusable and deny Applicant reasonable use of its Property for the purpose of a single-family residence, for which all surrounding properties are used.

ATTACHMENT TO APPLICATION FOR VARIANCE

Application No.:

Hearing Date: March 24, 2021

**BEFORE THE LICENSE AND VARIANCE BOARD OR
MAYOR AND CITY COUNCIL
FOR THE CITY OF SMYRNA, GEORGIA**

**CONSTITUTIONAL CHALLENGE
ATTACHMENT TO APPLICATION FOR VARIANCE**

COMES NOW, Applicant and Property Owner, BARC Holdings, LLC (hereinafter collectively referred to as “Applicant/Property Owner”), and asserts the following:

1.

By Application for Variance dated and filed March 1, 2021, Applicant/Property Owner applied for a variance as to the requirements of The Zoning Ordinance of the City of Smyrna, Georgia, and seeks a waiver which requires all lots located within the R-15 zoning classification have a minimum lot size of 15,000 square feet (hereinafter referred to as the “Minimum Lot Size Requirement”).

2.

The Zoning Ordinance of the City of Smyrna was established by the governing authority of the City of Smyrna, Georgia, being hereinafter referred to as “The Zoning Ordinance of the City of Smyrna, Georgia” or in the alternative the “Ordinance.”

3.

By Application for Variance, Applicant/Property Owner applied for a variance specifically as to certain real property lying and being in the City of Smyrna, Cobb County,

Georgia, a more particular description and delineation of the subject property being set forth in said Application (hereinafter referred to as the “Subject Property” or “Property”).

4.

The Application for Variance seeks a waiver of zoning requirements of the Minimum Lot Size Requirement, as applied to the Subject Property.

5.

There is no question but that enforcement of the Minimum Lot Size Requirement would create an unnecessary hardship in that same would deny reasonable use of the Property while causing no substantial detriment to the public good. The Application for Variance does not seek a use of the Property which is prohibited by any ordinance or resolution.

6.

The Zoning Ordinance of the City of Smyrna and the Code of the City of Smyrna are unconstitutional as applied to the Property in that said Ordinances deprive Applicant/Property Owner of its Property under and pursuant to Art. I, § I, ¶¶ I and II of the Georgia Constitution of 1983, and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of Property without due process violates the constitutional prohibition against the taking of private property without just compensation. Said Ordinances, as they presently exist, violate the Applicant/Property Owner’s right to unfettered use of its Property in that a refusal to grant the requested variances from said Ordinances would result in unwarranted loss of existing and proposed reasonable commercial use. Further, said Ordinances do not bear a substantial relation to the public health, safety, morality, or general welfare and are therefore

confiscatory and void as applied to the Property. Further, said Ordinances are unconstitutional in that same are arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant/Property Owner.

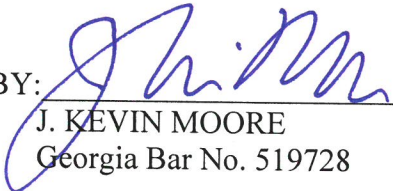
7.

The Zoning Ordinance of the City of Smyrna and the Code of the City of Smyrna are further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Application for Variance also violate Art. I, § I, ¶¶ I, II, and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

Respectfully submitted, this 1st day of March, 2021.

MOORE INGRAM JOHNSON & STEELE, LLP

BY:


J. KEVIN MOORE
Georgia Bar No. 519728

Attorneys for Applicant/Property Owner

Real Estate Paid Tax Statement

Parcel: 17-0348-0-0810

Location: BENMAC RD

Owner:	Status:	
TOMMY TURNER INC	Square	0
652 PHLOX WAY		
ACWORTH GA 30102	Land Valuation:	25,000
	Building Valuation:	0
	Exemptions:	0
	Taxable Valuation:	25,000

Deed Data:

Book/Page:

Year	Type	Due Date	Principal Due	Int/Pen	Date	Type	Amount
2020	RE-R	1 11/16/2020	89.90	0.00	10/26/2020	PD	89.90
Bill #	16819		89.90	0.00			89.90
Grand Totals			89.90	0.00			89.90

** End of Report - Generated by Mike Hickenbottom **



CARLA JACKSON TAX COMMISSIONER
HEATHER WALKER CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Printed: 2/25/2021

Cobb County Online Tax Receipt

Thank you for your payment!

Payer:
thomas turner

TOMMY TURNER INC**Payment Date: 10/17/2020**

Tax Year	Parcel ID	Due Date	Appeal Amount			Taxes Due
2020	17034800810	10/15/2020	Pay:	N/A	or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance	
\$0.00	\$0.00	\$0.00	\$0.00	\$274.90	\$0.00	



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