

**APPLICATION FOR VARIANCE  
TO THE CITY OF SMYRNA**

Type or Print Clearly

(To be completed by City)

**Ward:** \_\_\_\_\_

**Application No:** \_\_\_\_\_

**Hearing Date:** \_\_\_\_\_

**APPLICANT:** CMS Custom Homes, LLC

Business Phone: (404) 569-8113 Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Representative's Name (print): Scott Peters

Address: Schreeder, Wheeler & Flint, LLP, 1100 Peachtree St. NE, Suite 800, Atlanta, GA 30309

Business Phone: (404) 954-9836 Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

E-Mail Address: speters@swflp.com

Signature of Representative: \_\_\_\_\_ 

**TITLEHOLDER:** CMS Custom Homes, LLC

Business Phone: (404) 569-8113 Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Address: 3350 Riverwood Pkwy. Suite 2220, Atlanta, GA 30339-3362

Signature: \_\_\_\_\_ 

**VARIANCE:**

Present Zoning: R-20 Type of Variance: Variance in accordance

with Section 1208 to vary from lot size requirement set forth in Section 801

Explain Intended Use: Single Family residence on existing substandard lot  
of record

Location: 1470 Memory Lane, F.M. Collier Subdivision Lot 11

Land Lot(s): 557 District: 17 Size of Tract: 0.4498 Acres

(To be completed by City)

Received: \_\_\_\_\_

Posted: \_\_\_\_\_

Approved/Denied: \_\_\_\_\_

**CONTIGUOUS ZONING**

**North:** R-20 \_\_\_\_\_

**East:** R-20 (substandard) \_\_\_\_\_

**South:** R-20 (substandard) \_\_\_\_\_

**West:** R-15 and R-20 \_\_\_\_\_

**NOTIFICATION OF CONTIGUOUS OCCUPANTS OR LAND OWNERS TO  
ACCOMPANY APPLICATION FOR VARIANCE**

By signature, it is hereby acknowledged that I have been notified that CMS Custom Homes, LLC

Intends to make an application for a variance for the purpose of development of a single  
family residence on an existing substandard lot

on the premises described in the application.

| <b>NAME</b>                                | <b>ADDRESS</b>                                      |
|--|---|
| <u>Mrs. Dewey Switzer</u>                  | <u>1461 Memory Ln., Smyrna, GA 30080-4441</u>       |
| <u>Chad and Kathryn Koenig</u>             | <u>1471 Memory Ln., Smyrna, GA 30080-4441</u>       |
| <u>Rachel E. Harris</u>                    | <u>1481 Memory Ln. SE, Smyrna, GA 30080-4441</u>    |
| <u>Ronald S. Ingram</u>                    | <u>1480 Memory Ln., Smyrna, GA 30080-4442</u>       |
| <u>Elisabeth L. Spencer</u>                | <u>1463 Collier Dr. SE, Smyrna, GA 30080-4474</u>   |
| <u>Bobby J. Haisten &amp; Emily Deeter</u> | <u>1453 Collier Dr. SE, Smyrna, GA 30080-4474</u>   |
| <u>Peter and Lee Dicenso</u>               | <u>1445 Collier Dr. SE, Smyrna, GA 30080-4474</u>   |
| <u>Cecil and Patricia C. Warfel</u>        | <u>1425 Collier Dr., Smyrna, GA 30080-4407</u>      |
| <u>Jessica C. Brickse</u>                  | <u>3194 Northview Pl. SE, Smyrna, GA 30080-4445</u> |
| <u>Raymond and Stacy Mason</u>             | <u>3184 Northview Pl. SE, Smyrna, GA 30080-4445</u> |
| <u>Keith G. and Heather L. Watson</u>      | <u>3174 Northview Pl. SE, Smyrna, GA 30080-4445</u> |

Please have adjacent property owners sign this form to acknowledge they are aware of your variance request. Also, you may provide certified mail receipts of notification letters sent to adjacent properties. Adjacent and adjoining properties include any property abutting the subject property as well as any directly across a street.



LAW OFFICES  
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ATLANTA, GEORGIA 30309-4516

TELEPHONE: (404) 681-3450  
FACSIMILE: (404) 681-1046

Scott W. Peters

E-Mail: [speters@swflp.com](mailto:speters@swflp.com)

Direct Dial: (404) 954-9836

September 2, 2020

Mr. Rusty Martin  
Community Development Director  
City of Smyrna  
3180 Atlanta Road  
Smyrna, Georgia 30080  
[rgmartin@smyrnaga.gov](mailto:rgmartin@smyrnaga.gov)

RE: Variance Application – Comprehensive Narrative  
CMS Custom Homes, LLC  
Subdivided Lot 11 of F.M. Collier Subdivision  
1470 Memory Lane

Dear Mr. Martin:

Lot 11 of the F.M. Collier Subdivision (the “Subject Property”), along with the adjoining property consisting of Lot 12 of the F.M. Collier Subdivision, was originally subdivided and platted in 1951 pursuant to a plat recorded at Plat Book 9, Page 68 (Exhibit A). Thereafter, the same plat was re-recorded at Plat Book 9, Page 70, following the approval of the plat and acceptance of the dedication of the public streets depicted thereon by the Cobb County Planning Commission (Exhibit B). At the time of the recording of these plats, and at all times thereafter, the Subject Property has contained a total of +/- 19,595 square feet. Since the recording of these plats, there has been no further subdivision, combination, or other plat recorded which affects the legal boundaries of either Lot 11 or 12 of the F.M. Collier Subdivision. Further, any and all deeds transferring the Subject Property have always referred to the Subject Property at Lot 11 of the F.M. Collier Subdivision.

This property, among others, was then annexed into the City of Smyrna in June, 2001. At the time the property was annexed by the City of Smyrna, it was zoned to the R-20 zoning designation, despite the fact that the Subject Property was then a substandard lot under the R-20 zoning standards. As such, the Subject Property is a “substandard nonconforming lot of record” in accordance with Section 1208 of the Zoning Ordinance of the City of Smyrna, Georgia (the “Smyrna Zoning Ordinance”).

Pursuant to Section 406 of the Smyrna Subdivision Ordinance, no combination or replatting of any property within the City of Smyrna may be accomplished except through a plat which has been reviewed and approved by the Smyrna Planning Commission. Because no such approval has occurred since the property was annexed in 2001, the Subject Property remains a separate and distinct legal nonconforming lot.

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As directed by Section 1208 of the Smyrna Zoning Ordinance, CMS Custom Homes, LLC, seeks a variance pursuant to Article XIV to deviate from the standards applicable to R-20 lots. Specifically, a variance is requested from Section 801 to permit Lot 11 to be developed at a size less than 20,000 s.f. CMS Custom Homes, LLC shows that the final size of the lot may be subject to a request from the City of Smyrna for additional right of way dedication as part of the construction process. CMS Custom Homes, LLC shows that the existing lot is approximately 19,595 s.f., and requests approval for such size, less any required right of way dedication.

It should be noted that several other lots within the F.M. Collier Subdivision that do not comply with the R-20 lot standards were also annexed into the City of Smyrna, however those lots are zoned R-15. These lots include 3184 Northview Place, 3174 Northview Place, and 3162 Northview Place. Each of these lots are either across the street or within several hundred feet of the Subject Property.

There are also numerous other lots within this subdivision that do not comply with the R-20 lot standards. These include Lots 9 (1490 Memory Lane), 10 (1480 Memory Lane) and 12 (1460 Memory Lane). Further, a review of the Smyrna GIS site reveals numerous other lots in the immediate vicinity which are zoned R-20, but which do not meet the lot size standards of this zoning designation. Many of these, despite such lack of compliance, have recently been granted building permits for the construction of either new or expanded structures by the City of Smyrna. These include: 1445 Collier Drive (19,189.50 s.f.); 1453 Collier Drive (19,243.10 s.f.); and 3527 Pinetree Drive (17,366.28 s.f.).

In further support of this variance request, CMS Custom Homes, LLC, submits the following statements in response to each of the factors listed in Section 1403 Smyrna Zoning Ordinance:

1. Whether there are unique and special circumstances or extraordinary and exceptional conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties in the same district.
  - a. *Yes. This property was originally subdivided and platted as an individual lot consisting of +/- 19,595 square feet in 1951, which subdivision was reviewed, approved and accepted by Cobb County at that time. As noted above, there are several lots within this subdivision which became substandard lots of record when the property was incorrectly designated as R-20 at the time of annexation. Such conditions are extraordinary and exceptional and do not generally apply to the vast majority of properties within the R-20 zoning district. Further, Section 1208 of the Smyrna Zoning Ordinance specifically provides that a variance is the appropriate manner to address such a nonconforming condition.*

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2. Whether any alleged hardship is self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions from which relief is sought.
  - a. *No. The Subject Property was subdivided via plat in 1951 by a predecessor in title to CMS Custom Homes, LLC. The vast majority of the subdivision was developed in accordance with the regulations of Cobb County, until its annexation by the City of Smyrna in 2001. The zoning of the Subject Property as R-20 at that time was in error, as such property should have been designated as R-15, consistent with the lots located across Northview Place from the Subject Property. The City has permitted single-family homes on surrounding lots to be expanded and redeveloped, and the Subject Property will be of a size that is equal to or larger than such neighboring lots. These conditions did not result from any action of the property owner, but rather as a result of the zoning of the Subject Property in a manner which caused it, along with numerous other proximate lots, to become substandard lots of record at the time of annexation.*
3. Whether strict application of the relevant provisions of the Zoning Code would deprive the applicant of reasonable use of the property for which the variance is sought.
  - a. *Yes. Strict application of the minimum square footage provision for R-20 would result in the owner losing the right to use the Subject Property as a legally subdivided nonstandard lot of record. The Subject Property is legally considered a separate lot, and application of the strict 20,000 square foot lot size requirement will result in a forfeiture of such legal status. The entire neighborhood and all surrounding lots are comprised of homes constructed on lots that are roughly within 10%, plus or minus, of the 20,000 square foot standard, with homes designed and situated in a manner consistent therewith. To force this owner to replat and combine the Subject Property and the adjoining lot into one lot of more than 39,000 square feet will result in an unreasonable use of the property, resulting in the development of a home far out of character with the remainder of the neighborhood. The clear intent of Smyrna in annexing the property was to preserve the character of the neighborhood, which is not furthered by denying the requested variance to use the Subject Property as an independent lot as was intended from its original subdivision in 1951.*
4. Whether the variance proposed is the minimum variance, which makes possible the reasonable use of the property.
  - a. *Yes. The sole variance requested is to the minimum lot size – a condition which has existed since the Subject Property was annexed by the City of Smyrna in 2001. No variances are requested for setbacks or any other limitations on the use of the*

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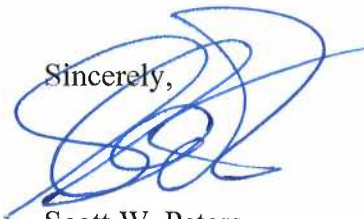
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*property. The minimum reasonable use of the Subject Property is as an independent lot consistent with the other lots within this subdivision which are slightly smaller in size than the ordinance standard 20,000 square feet.*

We respectfully request that the requested variance be granted so as to allow the Subject Property to be developed as an independent single family lot consistent with its status as a legal, nonstandard lot of record. To the extent this variance is not approved, we note that there are numerous other lots within this same area which will be prevented from redevelopment, or even major renovation, due to the strict enforcement of this requirement. We also note that the denial of this variance request will violate CMS Custom Homes, LLC's rights as more fully set forth on its Constitutional Objections submitted herewith as Exhibit C.

Thank you for your attention to this matter and please feel free to contact me to discuss this application at your convenience.

Sincerely,

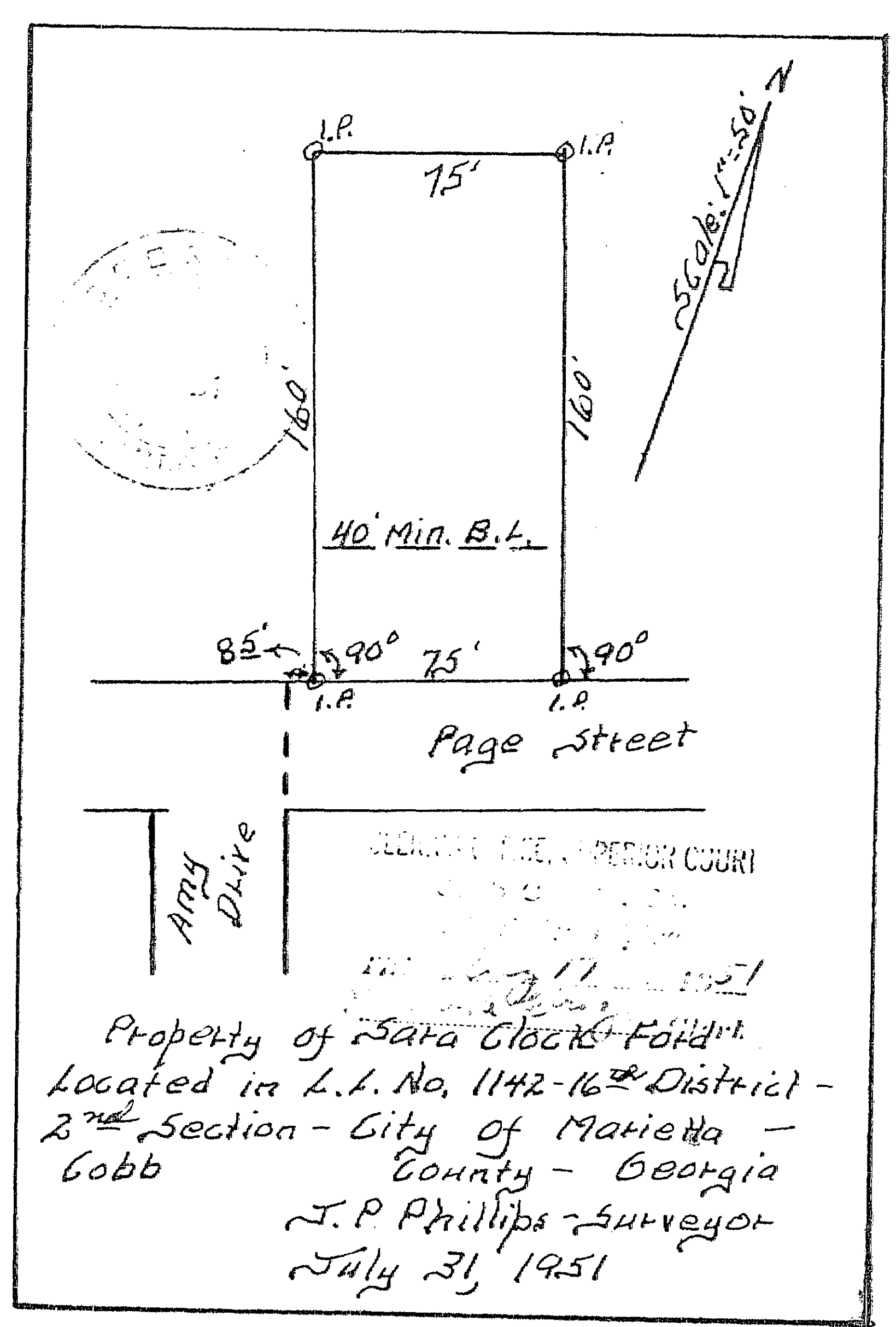
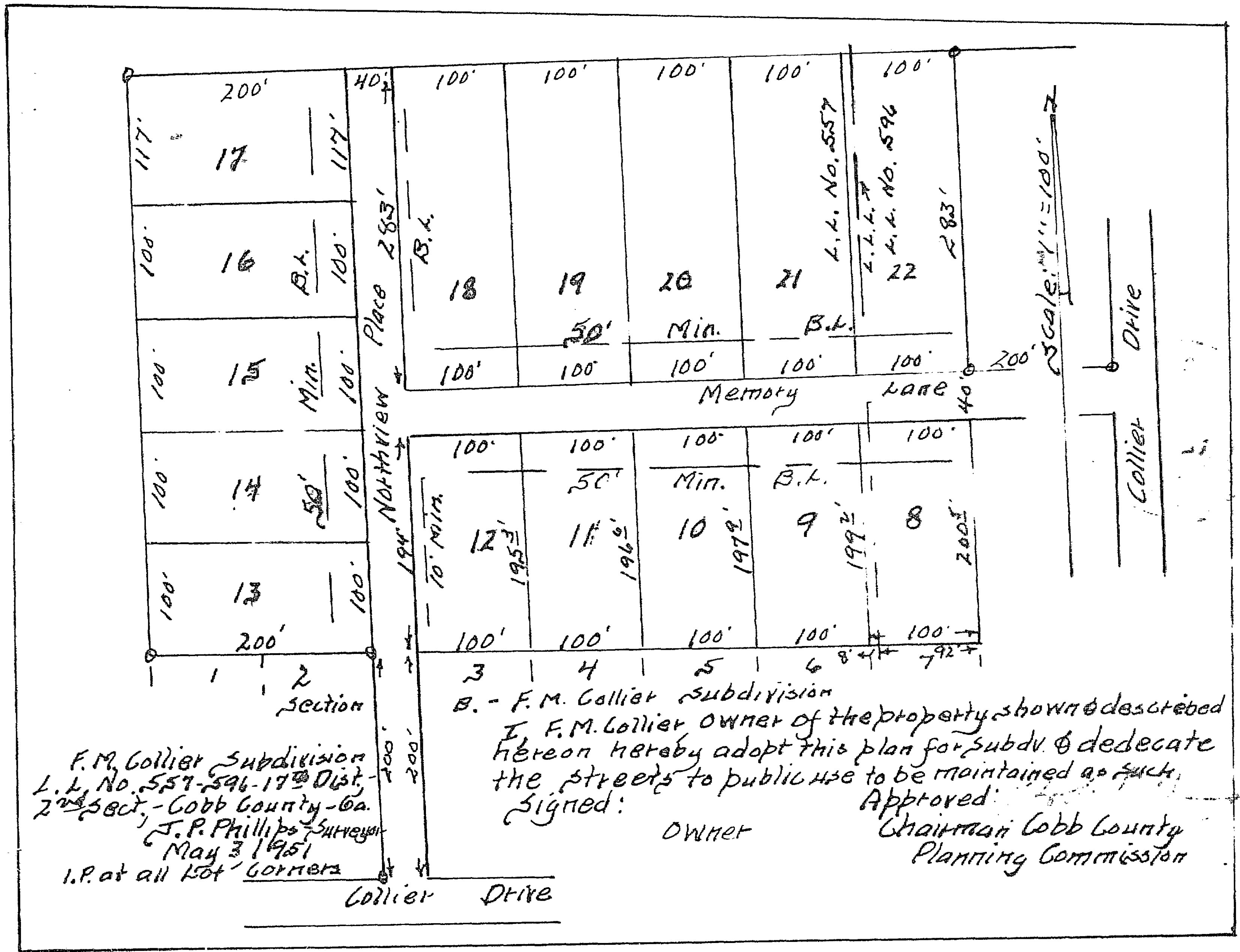
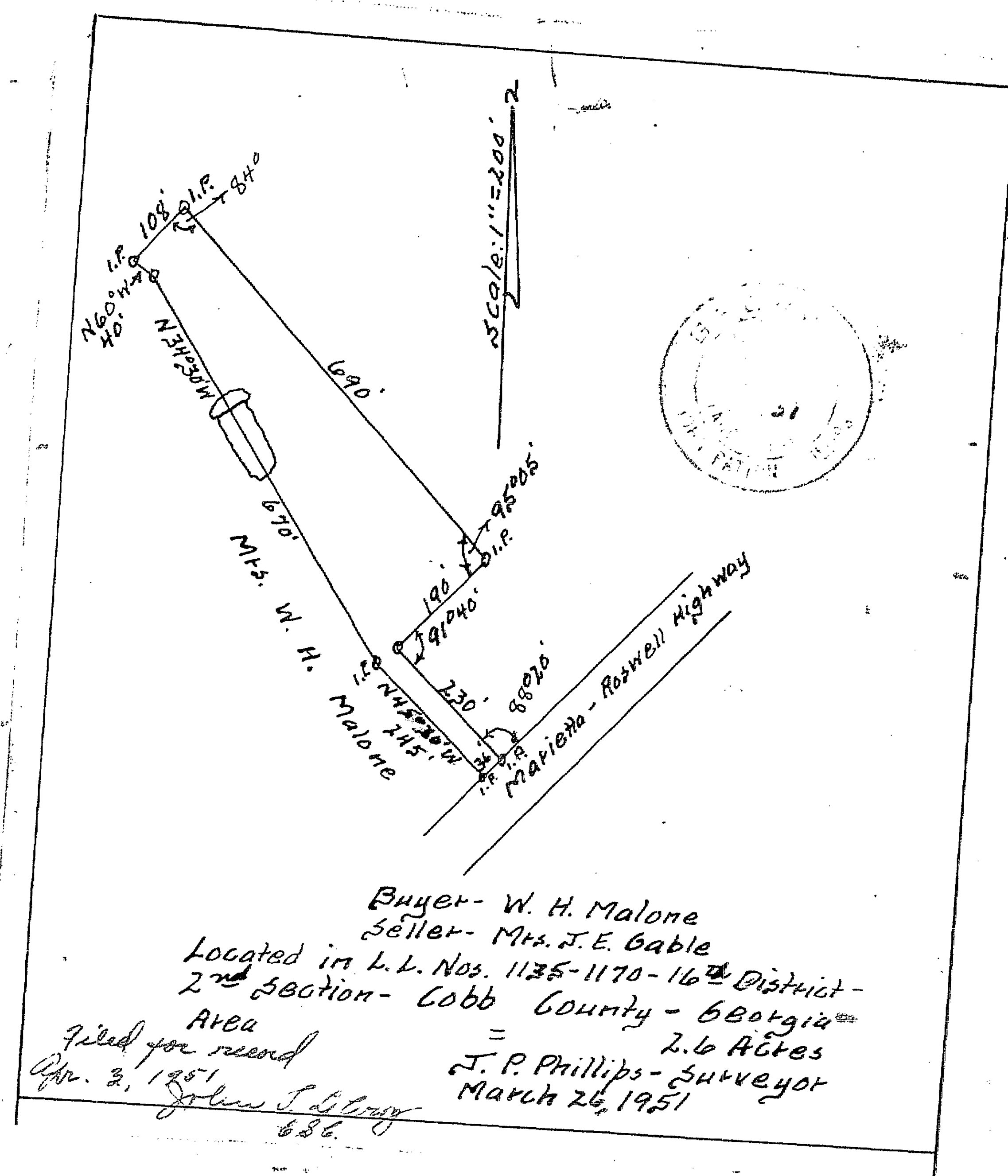
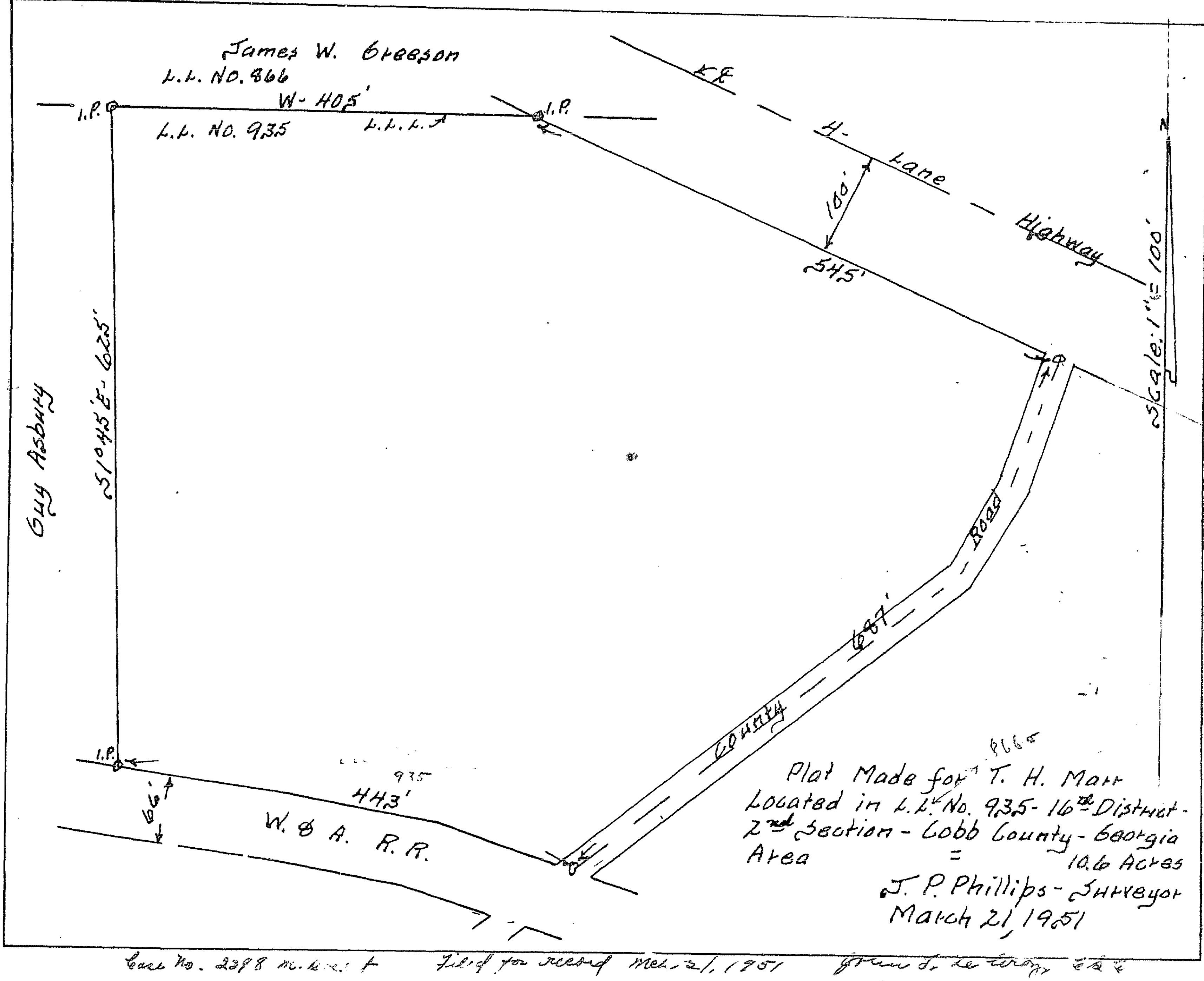


Scott W. Peters

SWP/mrs  
Enclosure







## **EXHIBIT “C”**

### **PRESERVATION OF CONSTITUTIONAL RIGHTS**

The failure to grant the Applicant’s proposed use or to grant the requested variance would constitute a taking of private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. Denial of the application would constitute an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because it would bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

The Applicant respectfully submits that the failure to approve the requested variance would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Subject Property’s owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States. The City has granted similar variances in the past, or has otherwise waived the applicable codes provisions to allow for development contrary thereto, in a manner similar to that requested by the Applicant.

A refusal to allow the use in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution. Further, a denial of the requested variance would constitute a violation of Applicant's rights due to the failure to follow the City's own stated standards governing the grant or denial of a variance based upon a quasi-judicial hearing, and would instead constitute an improper political adjudication of the Applicant's right to the relief requested.

A refusal to allow the use in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

CMS CUSTOM HOMES, LLC  
 MEMORY LANE ELEVATIONS

\*\*EACH HOME WILL HAVE 4-SIDES ARCHITECTURE\*\*



Front Elev. "The Oxford"  
 (INTERIOR LOT)



Front Elev. "The Hawthorne"  
 (CORNER LOT)

ELEVATION MATERIALS NOTE:  
 MATERIALS INCLUDED IN THESE  
 ELEVATIONS ARE BRICK, STONE,  
 AND FIBER CEMENT SHAKE.

2-13-20  
 20-1003/4



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