



Meeting Agenda

Board of Zoning Appeals

Thursday, August 3, 2023

6:00 PM

Board Room

Notice is hereby given that a meeting of the Board of Zoning Appeals will be held on the date, time, and location listed above. Additional information can be found at www.franklintn.gov/planning. For accommodations due to disabilities or other special arrangements, please contact the Human Resources Department at (615) 791-3216, at least 24 hours prior to the meeting. Accommodations have been made to ensure that the public is able to participate in the meeting. The public may participate in the following ways:

- Watch the meeting on FranklinTV or the City of Franklin website.
- Watch the live stream through the City of Franklin Facebook and YouTube accounts.
- Email comments to planningintake@franklintn.gov to be provided in full to the Commission and included in the minutes, but not read aloud in their entirety during the meeting. Emailed comments are accepted until 12:00 PM (noon) on the day before the meeting.
- Comment in-person in the Board Room. Speakers will be asked to fill out a speaker card prior to the meeting starting. Speakers may sit in the Boardroom or wait in the lobby.

CALL TO ORDER

CITIZEN COMMENTS (Open for citizens to be heard on any issue or concern, including those related to items on the agenda. Please submit a Speaker Card at the beginning of the meeting if you would like to address the Commission. If you would like to speak on an agenda item, the Chair will hold your comment until the public comment period associated with the item. As provided by law, the Commission shall make no decisions or consideration of action of citizen comments for items not on the agenda, except to refer the matter to the Planning Director/Staff for administrative consideration, or to a schedule the matter for consideration at a later date. Those addressing the Commission are requested to come to the microphone and identify themselves by name and address for the official record. The Chair may restrict the period for public comment, including the length of the public comment period, the number of individuals who can speak and the length of time each individual may speak. When time allows, the standard individual public comment time is two minutes.)

Comments on agenda items may be made in person at city hall or by emailing planningintake@franklintn.gov before noon on the day of the meeting. Emailed comments will be provided to the Commission and included in the minutes, but not read aloud in their entirety during the meeting.

APPROVAL OF MINUTES

1. Consideration Of Approval Of The July 6, 2023 BZA Minutes.

ANNOUNCEMENTS

APPLICATIONS

2. A **variance request** to allow a 2.4-foot encroachment into a 5-Foot side yard setback for a paved driveway, for the property located at 2013 Orange Leaf Circle (F.Z.O. 3.10.7)

Sponsors:

Emily Wright, Amy Diaz-Barriga, Ariella Stanford

OTHER BUSINESS

ADJOURN

Anyone needing accommodations due to disabilities please contact the ADA Coordinator at 615-791-3277 at least 24 hours prior to the meeting.



DRAFT Meeting Minutes

Board of Zoning Appeals

Thursday, July 6, 2023

6:00 PM

Board Room

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CALL TO ORDER

Vice Chair Caesar called the meeting to order at 06:02 PM.

Board Members Present: Greg Caesar, Vice Chair, Lee Reeves, William Scales

Board Members Absent: Jonathan Langley, Chair, Jeff Fleishour

Staff Present: Bill Squires, Shanna McCoy, Amy Diaz-Barriga, Ariella Stanford

CITIZEN COMMENTS (Open for citizens to be heard on any issue or concern, including those related to items on the agenda. Please submit a Speaker Card at the beginning of the meeting if you would like to address the Commission. If you would like to speak on an agenda item, the Chair will hold your comment until the public comment period associated with the item. As provided by law, the Commission shall make no decisions or consideration of action of citizen comments for items not on the agenda, except to refer the matter to the Planning Director/Staff for administrative consideration, or to a schedule the matter for consideration at a later date. Those addressing the Commission are requested to come to the microphone and identify themselves by name and address for the official record. The Chair may restrict the period for public comment, including the length of the public comment period, the number of individuals who can speak and the length of time each individual may speak. When time allows, the standard individual public comment time is two minutes.)

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APPROVAL OF MINUTES

1. Consideration Of Approval Of The May 4, 2023 BZA Minutes.

Sponsors:

A motion was made by Commissioner Scales, seconded by Commissioner Reeves to the Minutes from the May 4, 2023, meeting. The motion carried 3-0

ANNOUNCEMENTS

Amy Diaz-Barriga - (inaudible)

APPLICATIONS

2. **A Variance Request To Allow A 21-Foot Encroachment Into The Required 35-Foot Side Yard Setback For An Existing Principal Building, For The Property Located At 328 Franklin Road (F.Z.O. 3.3.5).**

Sponsors: Emily Wright, Amy Diaz-Barriga, Ariella Stanford

Staff Presentation: Ms. Stanford stated that the subject property is located at 328 Franklin Road and is zoned ER Estate Residential. This property is located within the Central Franklin Overlay, Historic Preservation Overlay, and the 500-foot Buffer of Hillside Overlay. Because the property is within the Historic Preservation Overlay, the proposed additions will need to be approved by the HZC. The Variance Request is regarding the side yard setback for the existing principal building. The principal building was built in the 1950s on 3 lots that were each 70 feet wide. The principal building was originally built approximately 14 feet from the side lot line, and the proposed addition to the principal building would not bring the building any closer to that side lot line. The existing detached garage and car port in the backyard meet the side yard setback requirements for an accessory structure, and the proposed addition to the detached garage also meets the side yard setbacks for accessory structures.

The BZA may authorize a variance only when the request has met all three criteria in accordance with F.Z.O §20.10.6 and State law. The staff has completed an analysis of the request considering these criteria:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the Zoning Ordinance or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition, such a piece of property is not able to accommodate development as required under this Ordinance.

The principal building was built in the 1950s across three narrow lots, and the plat for this property did not list side yard setbacks. The principal building was built much closer to the side lot line than the current Zoning Ordinance allows, and they are not requesting that the principal building move any closer to that side lot line. Because the house was built in the 1950s and is within the Historic District, it will need to get recommendation from the HZC to move or demolish the home. The HZC will likely not permit the property owner to move the existing house, given its historic nature.

Staff finds this criterion is met.

2. The strict application of any provision enacted under the Zoning Ordinance would result in peculiar and exceptional practical difficulties for or exceptional or undue hardship for the owner of the property.

Provided the applicant is given the predicted recommendation from the HZC, they will likely not be able to move the existing principal building. This means the principal building would not be able to comply with the 35-foot side yard setback requirement for Estate Residential Zoning.

Staff finds this criterion is met.

3. Such relief may be granted without substantial detriment to the public good and without substantially impairing the purpose and intent of the Zoning Ordinance.

Staff finds that this request would not be a detriment to the public good and would not substantially impair the purpose and intent of the Zoning Ordinance. The proposed renovations and additions will not encroach any closer to the side lot line than the existing principal building and detached garage already are.

For this reason, the request would not negatively affect the nature of the neighborhood and views from the street. Staff finds this criterion is met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to approve the variance request to allow a 21-foot encroachment into the required 35-foot side yard setback for an existing principal building, for the property located

at 328 Franklin Road, because the criteria for granting a variance have been met.

Seeing no citizens present for comment on the current item, Vice-Chair Caesar asked for a motion to close the public comment portion.

Commissioner Scales motioned to close the public comment portion of the item, seconded by Commissioner Reeves.

Vice Chair Caesar asked the Commissioners to vote by roll call.

Vote Tally: 3-0

Motion Passes

Applicant: Matt Christensen, representing the homeowner. Mr. Christensen explained that the intent is to reasonably update the home and add an addition while maintaining the appropriate setback required by the city. The home was built in the 1950's with the home residing on the far-right side of three lots. The position of the house makes it difficult to follow the city ordinances and guidelines.

Commissioner Reeves asked the staff to pull up the applicant documents and asked for more explanation about the addition proposed.

Vice Chair Caesar asked Mr. Christensen to explain where the addition is proposed.

Mr. Christensen stated that the addition will include extending the master bedroom and the addition of a porch. The garage and other outbuildings will remain on the property.

Commissioner Scales motioned to approve the variance request to allow a 21-foot encroachment into the required 35-foot side yard setback for an existing principal building, for the property located at 328 Franklin Road because the criteria for granting a variance have been met, seconded by Commissioner Reeves.

Commissioner Reeves stated that after staff's analysis and recommended approval and the requirements for granting a variance have been met, the evidence speaks for itself.

There being no further discussion, Vice Chair Caesar asked the Commissioners to vote by roll call.

Vote Tally: 3-0

Motion Passes

3. **A Variance Request To Allow Four Wall Signs To Be Placed Above The Main Roofline Of A Principal Building, For The Property Located At 5019 Aspen Grove Drive (F.Z.O. 15.15).**

Sponsors: Emily Wright, Amy Diaz-Barriga, Ariella Stanford

Staff Presentation: Ariella Stanford. Ms. Stanford stated that the subject property is located at 5019 Aspen Grove Drive. The property is zoned PD Planned District and is within the McEwen Place Subdivision. The principal building has already been approved and built, except for signage. The existing building has parapets surrounding the building, which is consistent with other buildings within the McEwen Place subdivision. The business that will be occupying the building is Fink's Jewelers. Fink's Jewelers is proposing to place one "Fink's Jewelers" business sign on each side of the building, on the existing parapets. Although the parapets surrounding the building give the allusion of the main roofline, the main roofline of the building is below the height of the parapets. Because the proposed placement of the signs is above the main roofline of the building, the applicant is requesting a variance to place the signs above the main roofline of the principal building.

The BZA may authorize a variance only when the request has met all three criteria in accordance with F.Z.O §20.10.6 and State law. The staff has completed an analysis of the request in light of these criteria:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the Zoning Ordinance or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition, such a piece of property is not able to accommodate development as required under this Ordinance.

There are other principal buildings within the McEwen Place subdivision whose existing signage is like the requested signage placement. As shown in the applicant's submittal, these businesses have their signage located above the roofline. However, the requirements for signage being located below the roofline are clearly outlined in the Zoning Ordinance, and signage is not approved with the site plan. The condition that makes this situation unique is that the principal building was already built before Fink's Jewelers became involved and proposed their signage. This limits Fink's Jewelers options for signage placement. The existing building is designed similarly to other buildings in the McEwen Place subdivision, with parapets wrapping around the whole building.

Because Fink's Jewelers have been given unique and limited options for signage placement on the existing principal building, Staff finds this criterion met.

2. The strict application of any provision enacted under the Zoning Ordinance would result in peculiar and exceptional practical difficulties for or exceptional or undue hardship for the owner of the property.

Staff finds no peculiar or exceptional practical difficulties for the owner of the property.

Staff finds this criterion not met.

3. Such relief may be granted without substantial detriment to the public good and without substantially impairing the purpose and intent of the Zoning Ordinance.

Staff finds that this request would not be a detriment to the public good and would not substantially impair the purpose and intent of the Zoning Ordinance. Given that there are other buildings in the McEwen Place subdivision with similar signage placement, the requested signage placement for Fink's Jewelers would not negatively affect the aesthetic nature of the surrounding area. This design also meets the intent of the Zoning Ordinance. The intent of the Zoning Ordinance in this case is to ensure that building signage does not overwhelm the view from the street, and to avoid false parapets for the sake of signage placement. The design for this building's signage matches the buildings surrounding it, and the parapet goes around the whole building, so it gives the illusion of being the roofline.

Staff finds this criterion met.

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to deny the variance request to allow four wall signs to be placed above the main roofline of a principal building, for the property located at 5019 Aspen Grove Drive, because the criteria for granting a variance have not all been met.

Applicant: Madison Haynes, attorney with Bradley Aaron Boulton Cummings, address 1600 Division Street, Nashville, TN, attorney for the applicant. Ms. Haynes explained that Gary Clifton is also present and is the security and property manager for Fink's Jewelers along with John Harlin, a representative of Boyle, the property owner. Ms. Haynes also stated that Mark Pirtle is present, and he is the vice president of operations for MTLC Building Group and can address any technical questions regarding construction of the building. Ms. Haynes stated that the team hopes to provide enough information to show that criteria two, for granting a variance, has been met because of the undue hardship to Fink's marketing plan and the consistency with the surrounding development.

Gary Clifton: Mr. Clifton stated that Fink's is a 3rd and 4th generation family-owned business originating in Roanoke, VA. Fink's has 10 stores throughout the southeast and is an official Rolex Jeweler as well as Cartier, David Yurman and many other sought after brands. Rolex considered several peer retailers for the second point of distribution; however, Fink's was selected for its reputation of high quality, well-run stores with knowledgeable associates. Mr. Clifton went on to say that Fink's is seeking a variance so that the exterior parapet wall signs can be installed above the building's roofline on the

parapet wall, like other retailers and restaurants around the site. Mr. Clifton summarized the signage limitations if a variance is not granted. If a sign is required to be placed below the roofline, the sign would be significantly smaller and more difficult to see. The building location is downhill from the main entrance to McEwen Northside and uphill from the larger development to the north of the property, obstructing the view of the sign. Denial of the variance would leave Fink's with inadequate signage and poor visibility, which is detrimental to the business.

John Harlin, representing Boyle Investment Company. Mr. Harlin stated that he is the owner, operator, and developer of McEwen Northside and is attending this meeting in support of the variance request by Fink's. Much of the signage around Cool Springs and Berry Farms is very similar to Fink's variance request. Mr. Harlin stated that Fink's requested signage is consistent and compatible with the surrounding signage the currently exists.

Commissioner Reeves asked Mr. Harlin, as the developer of the area, what their intent for tenant signage was.

Mr. Harlin stated that a separate architectural committee for the development reviews signage requests, but in general the sign should be visible and tastefully designed. Mr. Harlin explained that his company was aware of the signage zoning ordinance but didn't expect the size of the signage to become an issue based on how the ordinance was interpreted for the surrounding buildings. We try to maximize the tenant's ability to use the surface area while adhering to the ordinance city codes.

Ms. Haynes finished the applicant presentation by stating that a variance is based on the physical characteristic of the property. The hardship on Fink's business to be consistent with the city codes, renders the sign unseemly and obstructed from view from the east and west bound lanes. Tab 4 of the provided handout depicts how the sign would look if the variance were granted and tab 3 depicts the signage without granting the variance request.

Commissioner Reeves asked Ms. Haynes for more explanation of the photos in the provided handout.

Ms. Haynes stated that Tab 4 of the provided handout depicts how the sign would look if the variance were granted and tab 3 depicts the signage without granting the variance request. Ms. Haynes noted that the scroll work on the sign is part of the branding of the new Fink stores. The building/construction person may be able to speak as to whether it's too late or feasible to remove the scroll work feature.

Commissioner Reeves asked how that construction had begun to the point it can't be removed.

Ms. Haynes stated that Fink's would like to be treated consistently as the other businesses were treated regarding signage. Perry's, Shake Shack, and Springhill Suites, all of which are new and must have been constructed under the current zoning ordinance, have a very similar signage style and size.

Vice-Chair Caesar asked for more detail about the application photo page that depicts two Fink's signs. He asked if it was the intent to have more than one sign in this area of the building.

Ms. Haynes stated that the intent is one sign, as seen on tab 4 of the submitted document.

Vice Chair Caesar asked if there was anyone from the public who would like to comment on the item, seeing none, Vice Chair Caesar asked for a motion to close the public comment portion of the item.

Commissioner Reeves motioned to close the public comment, seconded by Commissioner Scales.

Vice Chair Caesar asked for a roll call vote.

Vote Tally: 3-0

Motion Passes

Commissioner Reeves asked the staff about the existing buildings in the McEwen development that appear to have similar signage the Fink's is requesting a variance for.

Ms. McCoy stated that some of the building's signage was reviewed and approved, in the past, by staff in error. The errors occurred during a period of high staff turnover. Ms. McCoy stated that none of the building applicants were granted a

variance for the signage.

Commissioner Reeves asked what the intent is of the signage variance.

Ms. McCoy stated that the intent is to prevent large parapets from being built to specifically house signage and to prevent unsightly signage in the City of Franklin.

Vice Chair Caesar stated that he appreciates the applicant's efforts to follow the correct procedures despite the outcome of the variance request.

Commissioner Scales asked staff if it was accurate to say that if the variance request under discussion is granted, it would be the first variance request granted for the McEwen North development.

Ms. McCoy confirmed that this was correct.

Vice Chair Caesar stated that he would entertain a motion on the item.

Commissioner Reeves stated that if the Board grants variance requests because construction had already begun and reconstruction may not be possible, then the BZA may begin to see a trend or strategy of similar variance requests.

Vice Chair Caesar suggested that a motion be made before any further discussion.

Commissioner Reeves made a motion to disapprove a variance request to allow four wall signs to be placed above the main roofline of a principal building, for the property located at 5019 Aspen Grove Drive, seconded by Commissioner Scales.

Commissioner Reeves stated his concerns about variance requests becoming a strategy used because construction has already begun on a building and the applicant doesn't want to rebuild or correct the noncompliant aspect of the building. Mr. Reeves also stated his concern about setting a precedent by granting variances for the same reason.

Vice Chair Caesar stated that standards are set by a community to prevent things from going forward. Setting a precedent is often discussed, but an ordinance should stand on its own, specific to each situation. Given where this building will be built, one could say that strict application of the zoning ordinance could result in a peculiar and exceptional practical difficulty for the owner and potentially for the business operator that would want to occupy this property. You're setting an unfair advantage for those who have better locations and more visible signs because of the Board's decision to strictly apply the zoning ordinance.

Commissioner Scales stated that he has concerns about the applicant having knowledge of the ordinance at the time the building underwent construction. If deviations are allowed ahead of time without enforcement of the ordinance, what good is an ordinance if it is not enforced? Is it possibly the way the building has been constructed that creates a disadvantage by the construction company?

Commissioner Reeves noted that the tab showing all the surrounding buildings signs makes a compelling argument that permitting the variance would impair the purpose and intent of the zoning ordinance.

Vice Chair Caesar stated that builders in the Franklin area should be aware of the zoning ordinances and commended the Boyle group on having a separate committee that reviews signage. The Board of Mayor and Alderman did not enact the zoning ordinances for them not to be followed.

Vice Chair Caesar stated that there is a motion to deny the variance request, seconded and discussed. Mr. Caesar noted that as the City of Franklin continues to develop, that zoning ordinances are enacted for specific reasons. There is an unfair advantage to those who have not adhered to the ordinances compared to those who follow city processes and procedures by requesting a variance for situations that fall outside of the city ordinances.

Commissioner Reeves stated that he would like to call the question to a vote.

Vice Chair Caesar called for a roll call vote.

Vote Tally: 2-1 (Vice Chair Caesar voted against the motion)
Motion Passes.

4. **An Appeal Of Administrative Decision Classifying A Use As Clinic, And Thereby Prohibiting The Use In The Downtown District, For The Property Located At 212 E Main Street (F.Z.O. 5.1.3).**

Sponsors: Emily Wright, Amy Diaz-Barriga, Ariella Stanford, Shanna McCoy

Staff Presentation: Ariella Stanford. Ms. Stanford stated that the subject property is located at 212 E Main Street and is zoned in the Downtown District. Roark Orthodontics and Aesthetics is seeking an Administrative Appeal of Decision, based on the Zoning Determination Letter given to them by the City's Zoning Administrator, Shanna McCoy. The business is proposing to provide aesthetic services and smile alignment. The Zoning Determination Letter determined this use to be classified as a 'clinic'.

The applicable Zoning Ordinance Provisions
20.18 Appeal of Administrative Decision

In this case, the purpose of the Appeal of Administrative Decision is to provide a process for interpretation of the zoning map when there are disputed questions about lot lines or district boundary lines as they arise in the administration of the zoning regulations. For map interpretation, the BZA shall use the best available data to make a final interpretation of the zoning map boundary.

5.1.3. Permitted Principal Uses by Zoning District

The chart in section 5.1.3. of the Zoning Ordinance shows that 'Clinic' Principal Use is not permitted in the Downtown District.

RECOMMENDED MOTION:

Staff does not recommend approval or disapproval of this item, as this is an appeal of a staff decision.

Shanna McCoy, City of Franklin, City Zoning and Floodplain Administrator. Ms. McCoy stated that the city staff received a building plan submittal for the remodel of the structure located at 212 East Main Street. The building is located within the Downtown Zoning District, Historic Preservation Overlay, and the Central Franklin Overlay. The building plans indicated that it was a remodel from a general office to a dentist office beyond the normal waiting room, staff lounge, and private office. The plans also indicated that there would be five treatment rooms, a sterilization area consultation room, a lab, and an imaging room. During this review, zoning staff checked the zoning district to verify the proposed use was permitted. Staff considered this used to be a clinic per the permitted use chart 5.1.3 of the Zoning Ordinance. Clinics are not a permitted use in the Downtown District.

The property located at 212 E. Main Street is currently zoned Downtown District (DD) and is located within the Central Franklin and Historic Preservation Overlay District. The Zoning Ordinance defines a clinic as an establishment providing therapeutic, preventative, or corrective medical treatment or health care services. Activities include health care appointments, medical procedures, surgical procedures, emergency treatment, diagnostic services, walk in medical services and other health related care services are provided on an outpatient basis, generally requiring a stay of less than 24 hours. Upon receiving the plan review comments, the applicant reached out to me to clarify that this would be an orthodontist office, not a regular dentist office. The applicant was advised that they should request a zoning determination letter for an official determination of use. Upon receiving that determination request, I reviewed the applicant's description of the use as well as the building plans. Also considered was that some of the services an orthodontist can offer beyond most often thought of services of braces. An orthodontist may also extract teeth, perform x-ray services, provide some prescriptions, and can provide treatment for TMJ, which is considered a medical disorder, not just a dental disorder. I also considered that orthodontists are consider doctors as a Doctor of Dental Surgery or a GDM Doctor of Dental Medicine. It was determined the use most closely meets the definition of a clinic rather than a personal service. Personal service is defined in the Zoning Ordinance as an establishment primarily engaging in providing services generally involving the care of the person or persons possessions. Personal services include laundry and dry-cleaning services, barbershops, salons, day spa, informational and instructional services, tanning salons, photography services and other personal care services. Services associated with an animal are not included in this definition. The applicant has stated in their appeal to the board that they may also be offering some of the services offered in a day spa. If this is the case, my determination would remain the same

for the orthodontic portion of the business. I would determine that this is a mix of uses, clinic and personal service. This would not alter the determination that a clinic is not permitted in the downtown district. Staff does recognize that there are several legally non-conforming clinics and dental clinics within the downtown area, legally non-conforming as they were legally established before a Zoning Ordinance change that would now prohibit them. They are allowed to remain until such time as they are converted to a conforming use or discontinued or abandoned for a period of 30 months as specified by Tennessee Code Annotated 13-7-2. As the Zoning Administrator for the City of Franklin, Ms. McCoy stated that she is charged with overseeing the Zoning Ordinance to ensure enforcement of the provisions of this ordinance, investigate zoning uses and determine applicability of each use as defined in the ordinance.

An applicant does have the ability to file an appeal of administrative decision within 30 days of the date of the determination. The applicant has met that criterion per section 20.18.6 of the Zoning Ordinance for administrative decisions other than MAP revisions. The order decision, determination or interpretation shall not be reversed or modified unless there is competent and substantial evidence in the record that it fails to comply with either the procedural or substantive requirements of this ordinance and state law.

Applicant Presentation: Ashley Roark. Ms. Roark stated the services that she provides such as alignment of bites, orthodontics with braces and Invisalign. Some patients wear elastics/rubber bands to help align the bite. Ms. Roark stated that she does not treat infection, decay, extract teeth, treat cavities, do cleanings, or root canals or treat periodontal disease. Ms. Roark stated that she is certified to give Botox filler. Ms. Roark referenced two medical spas businesses in the downtown district that are classified as personal services. The first medical spa, per their website, employs a board-certified plastic surgeon and a registered nurse. They offer Botox and filler and offer treatments that include PRP. PRP is a process of drawing blood from the patient, spinning it around a centrifuge and using platelet rich plasma for other treatments. The second medical spa is owned by a nurse practitioner, registered nurses and a certified medical doctor that serves as the medical director per their website. This business offers weight loss injections which are prescription medications. Ms. Roark explained that she believes her business aligns with the referenced businesses in the downtown district. Ms. Roark respectfully asked the Board to consider her business classification as personal services instead of a clinic.

Commissioner Scales asked the applicant where her business is located currently.

Ms. Roark stated that she is currently an associate with Lucas Orthodontics in Nolensville and is planning to open her own practice.

Vice Chair Caesar asked if the dental procedures that Ms. Roark will not offer are due to a personal preference or a licensure/certification.

Ms. Roark stated that once you pass/take your specialty license in Tennessee you can no longer practice general dentistry. The business plan is set up to offer orthodontics and skincare services. Ms. Roark explained she had no intent to employ individuals who may have a general dentistry licensure.

Vice Chair Caesar asked if there were any citizens who would like to comment on the items.

Matt Brown, 821 Walden Drive, Franklin. Mr. Brown stated that he is a City of Franklin Alderman, but more importantly he owns the business on the second floor above the subject property located at 212 East Main Street. Mr. Brown spoke in support of Ms. Roark's request as it more closely aligns with personal care than a true medical clinic, in his opinion. Also, the space has been vacant for a year and a half and was previously an office for the State's child support services for 25 years. Needless to say, the State did very little in updating the location. A lot of work and money will be required to update the space and is not a good retail location as businesses in this area have gone in and out of business for this reason. Due to the amount of money required to update the space, a professional personal service such as Ms. Roark's business plan would better fit and could support the updates required. Mr. Brown went on to say that not many people are inquiring about leasing the empty delapidated building and it would be nice to see new activity and a thriving business of a young entrepreneur such as Ms. Roark. Mr. Brown finished by stating that he would love to see approval of this application as it is an appropriate use of the space and to bring economic vitality to this block of Main Street. Mr. Brown thanked the Board members for their service to the city.

There being no additional citizen comments, Vice Chair asked for a motion from the Board to close the citizen comment portion of the item.

Commissioner Scales moved to close the public comment, seconded by Commissioner Reeves.

Vote by Roll call

Tally: 3-0

Motion passes

Commissioner Reeves stated that it comes down to the definition of the two use terms and it's difficult to define everything.

Ms. McCoy explained that it is difficult to classify each and every "use," so it comes down to classifying the "use" as to what the "use" most closely relates to. In reading the definition, this application related more closely to a clinic than personal service.

Commissioner Scales asked Ms. McCoy to read the definitions again.

Ms. McCoy - Clinic is defined as an establishment providing therapeutic preventative, corrective medical treatment, or health care services. Activities include health care appointments, medical procedures, surgical procedures, emergency treatment, diagnostic services, walk in medical services and other health related care services are provided on an outpatient basis. Personal service is defined as an establishment that primarily engages in providing services, generally involving the care of the person or person's possessions. Personal services include laundry and dry-cleaning services, barbershops, salons, day spa, informational and instructional services, tanning salons, photography services. Personal care services associated with an animal are not included in the definition.

Commissioner Reeves asked how an Optometrist would be classified and how does the city handle situations where a business adds additional services to their business plan.

Ms. McCoy stated that an Optometrist would be considered a clinic. Unless there is a complaint about a business, the city would not necessarily know if a business changes or adds additional services.

Mr. Squires suggested that the Board consider making a motion for further discussion.

Vice Chair Caesar asked for assistance with the correct language to disagree with the administrative decision.

Mr. Squires stated that because this is an appeal, your choices are to uphold or reverse the determination. This would mean that the determination of the zoning administrator is inaccurate and that the criteria for "use" in this location is met. You are not required to redefine the "use" of the space and that you agree that personal use is a permitted use for the space.

Vice Chair Caesar motioned to reverse the administrative decision for the property located at 212 East Main Street, seconded by Commissioner Reeves.

Vice Chair Caesar stated that there are several optometrists that practice in downtown Franklin. An orthodontist provides corrective care for teeth like an optometrist provides care for eyes. The intent of Ms. Roark's business plan doesn't appear to be to add general dentistry to her business plan. The doctor appears to be interested in building a business similar to other businesses in downtown Franklin and for these reasons, Vice Chair Caesar stated that he supports the reversal of the appeal.

Commissioner Scales asked staff if there is a process or mechanism in place that governs businesses if the business plan strays from permitted "uses" of downtown Franklin.

Ms. McCoy stated that yes, if a business veered from its issued certificate of occupancy the business would receive a notice of violation. If the business did not make changes to correct the violation, then the business owner would receive a court citation.

Commissioner Reeves asked for more information regarding why a clinic would not be permitted in the downtown area.

Ms. McCoy stated that when the zoning ordinances were updated, clinics were not a permitted "use" for the downtown area. Although, there are a few legally nonconforming clinics in the downtown district and there are some that appear to be in the downtown district but are in a different zoning district that permits a clinic as an approved "use."

Commissioner Reeves stated that allowing an entrepreneur to start a business filling empty buildings is a good thing, however the use is defined. The definitions are not extremely helpful to the Board when making determinations about appropriate “uses” for an applicant. It may be necessary for the Board of Mayor and Alderman to further define the terms of the Zoning Ordinance.

Commissioner Scales added that the definitions have a “gray” area and no harm to the spirit or intent of the ordinance if the appeal is reversed.

Vice Chair Caesar added that this is an example of why the BZA exists which is to discuss difficult requests and to make determinations on applications that are not clearly yes or no decisions.

Vice Chair Caesar called the question to a vote by roll call.

Vote Tally: 3-0

Motion passes.

OTHER BUSINESS

No Other Business.

ADJOURN

There being no further business, the meeting adjourned at 07:14 PM p.m.

Chair

Date



File #: 21-04926

DATE: July 13, 2023
TO: Board of Zoning Appeals
FROM: Emily Wright, Director of Planning and Sustainability
Amy Diaz-Barriga, Asst Director of Planning Development
Ariella Stanford, Planner

SUBJECT:

A **variance request** to allow a 2.4-foot encroachment into a 5-Foot side yard setback for a paved driveway, for the property located at 2013 Orange Leaf Circle (F.Z.O. 3.10.7)

PURPOSE:

PROJECT INFORMATION

COF Project Number: 8250
Applicant: Shenoda Faragalla
Owner: Shenoda Faragalla

BACKGROUND/STAFF COMMENTS:

Vicinity Zoning/Land Use

Site: PD Planned District / Residential
North: PD Planned District / Residential
South: PD Planned District / Residential
East: County / Residential
West: PD Planned District / Residential

Applicable Zoning Ordinance Provisions

20.10 Variance

A. The purpose of a variance is to:

1. Provide limited relief from the requirements of this Ordinance in cases where strict application of a particular requirement would create an unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Ordinance; and
2. Address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

B. Variances are not intended merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general.

3.10.7 Zoning Districts, PD Planned District

All building setbacks shall be determined by the BOMA through the adoption of a development plan.

Background

The subject property is located at 2013 Orange Leaf Circle and is zoned PD Planned District. The setbacks are determined by the BOMA through the adoption of a development plan, and memorialized by the plat that is recorded. The platted side yard setbacks are 5 feet. A critical lot plan was submitted and approved by the Building and Neighborhood Services Department, which established the approved plan for the driveway. The approved plan for the driveway shows an 18-foot wide driveway, and is compliant with the 5-foot side yard setbacks. The existing driveway was not built according to the approved plan and is not compliant with the 5-foot side yard setbacks. The existing driveway extends farther east (towards the back of the property) than the approved plan, and closer to the side lot line. The existing driveway is 5.07 feet from the side yard setback at the front of the property, and 2.67 feet from the side lot line at the back of the driveway. This means the driveway encroaches up to 2.4 feet into the side yard setback. The applicant is requesting a variance for the existing driveway to remain as is, encroaching 2.4 feet into the side yard setback.

Staff Analysis

The BZA may authorize a variance only when the request has met all three criteria in accordance with F.Z.O §20.10.6 and State law. The staff has completed an analysis of the request in light of these criteria:

1. Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the Zoning Ordinance or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition, such a piece of property is not able to accommodate development as required under this Ordinance.

The approved critical lot plan shows the driveway being a reasonable width and depth, and is compliant with the setback requirements. There are no exceptional topographic conditions or extraordinary conditions pertaining to the property itself that prevent the property from accommodating development as shown in the approved critical lot plan or as required under this Ordinance. Staff finds this criteria is not met.

2. The strict application of any provision enacted under the Zoning Ordinance would result in peculiar and exceptional practical difficulties for or exceptional or undue hardship for the owner of the property.

As shown by the approved critical lot plan, there is a logical and reasonable layout which would allow the driveway to comply with the Zoning Ordinance requirements. For this reason, staff does not find that the strict application of any provision enacted under the Zoning Ordinance creates a hardship for the owner of the property. Staff finds this criteria is not met.

3. Such relief may be granted without substantial detriment to the public good and without substantially impairing the purpose and intent of the Zoning Ordinance.

Staff finds that the existing driveway does impair the intent of the Zoning Ordinance. The intent of the Zoning Ordinance in this case is to maintain a buffer between buildings and their side lot line that is consistent along a street or within a neighborhood, and to ensure aesthetic consistency between properties. The intent in this case is also to ensure proper drainage is provided between properties. Staff did not consult with Engineering on the impact of this driveway on the drainage of the site. If proper drainage is not allowed, it could result in a negative impact on the neighboring property or the street. For this reason, Staff cannot determine whether or not the driveway would be a detriment to the public good. Staff finds this criteria is not met.

FINANCIAL IMPACT:

Unknown.

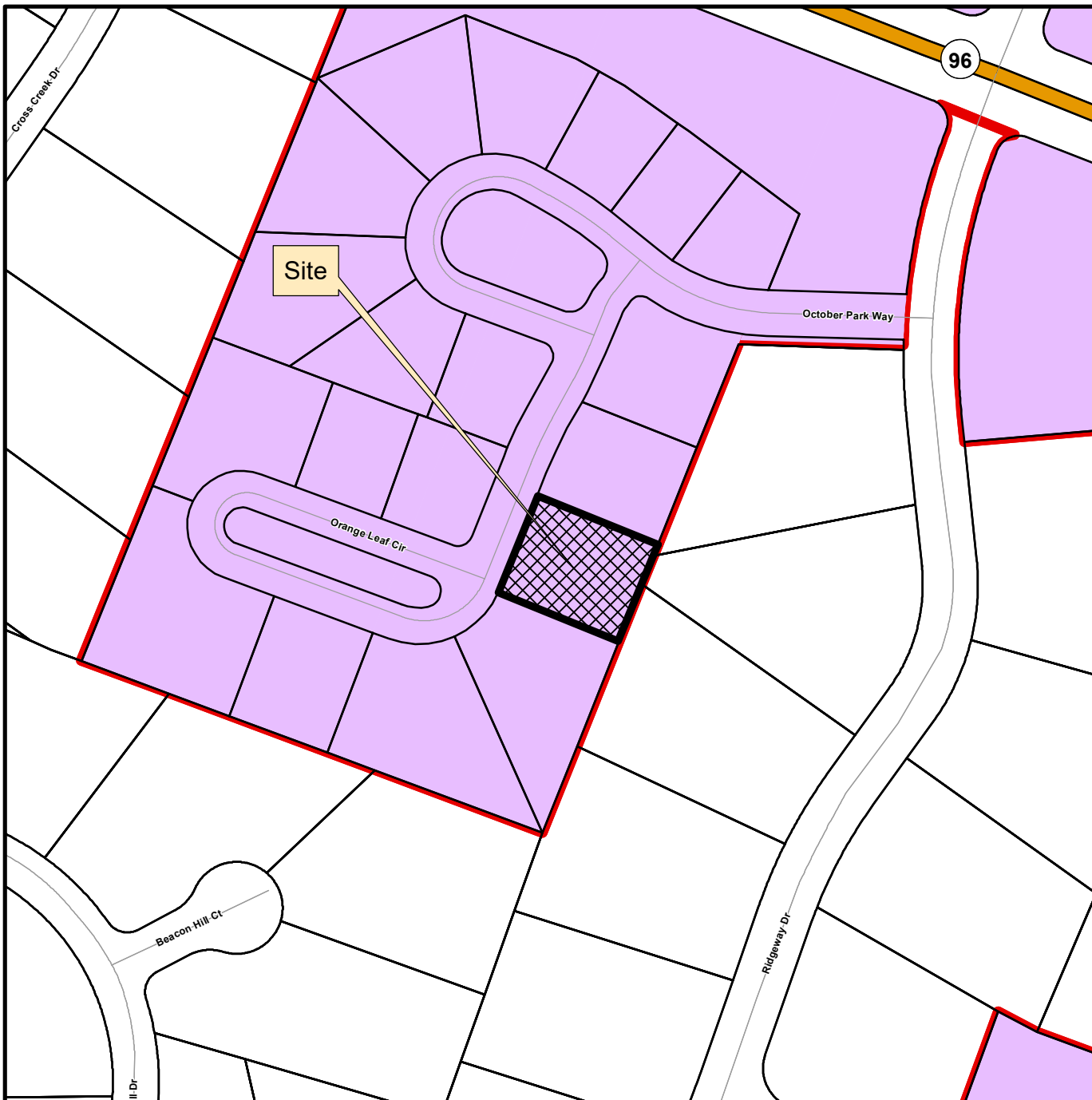
RECOMMENDATION:

RECOMMENDED MOTION: Staff recommends the Board of Zoning Appeals move to deny the **Variance Request** to allow a 2.4-Foot Encroachment Into A 5-Foot Side Yard Setback For A Paved Driveway, For The Property Located At 2013 Orange Leaf Circle, because the criteria for granting a variance have not been met.

2013 ORANGE LEAF CIRCLE
TAX MAP 079, GROUP G, PARCEL 01700
BOARD OF ZONING APPEALS
AUGUST 3, 2023

Legend

-  2013 Orange Leaf Circle
-  AG Agricultural District
-  ER Estate Residential District
-  R1 Residential 1 District
-  R2 Residential 2 District
-  R3 Residential 3 District
-  R4 Residential 4 District
-  R6 Residential 6 District
-  MR Mixed Residential District
-  PD Planned District
-  OR Office Residential District
-  CI Civic Institutional District
-  NC Neighborhood Commercial
-  CC Central Commercial District
-  DD Downtown District
-  1ST Avenue District
-  5TH Avenue District
-  RC6 Regional Commerce 6 District
-  RC12 Regional Commerce 12 District
-  GO General Office District
-  LI Light Industrial District
-  HI Heavy Industrial District



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It was compiled from the most authentic information available.
The City is not responsible for any errors or omissions contained hereon.
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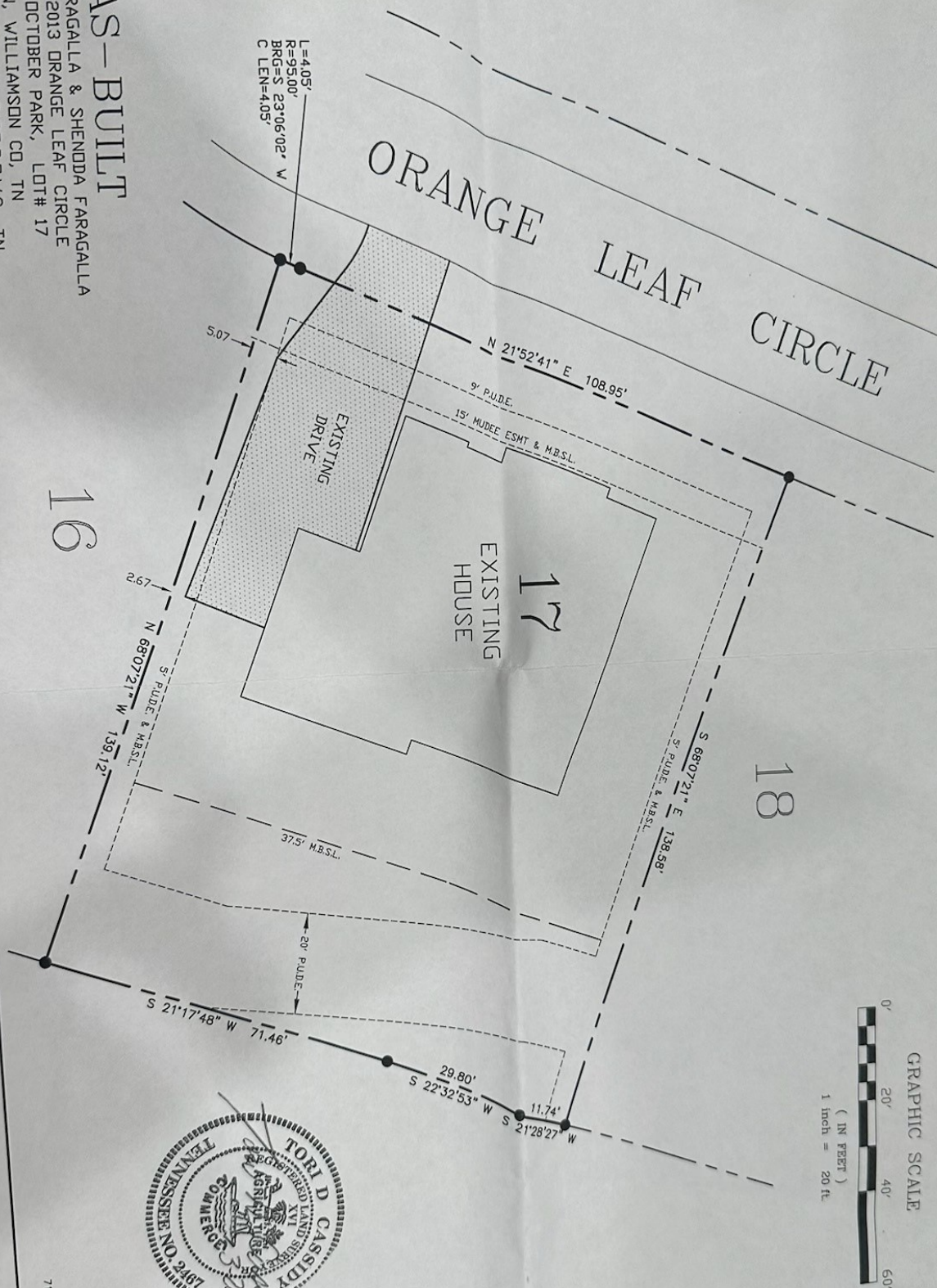
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Feet



HISTORIC
FRANKLIN
TENNESSEE

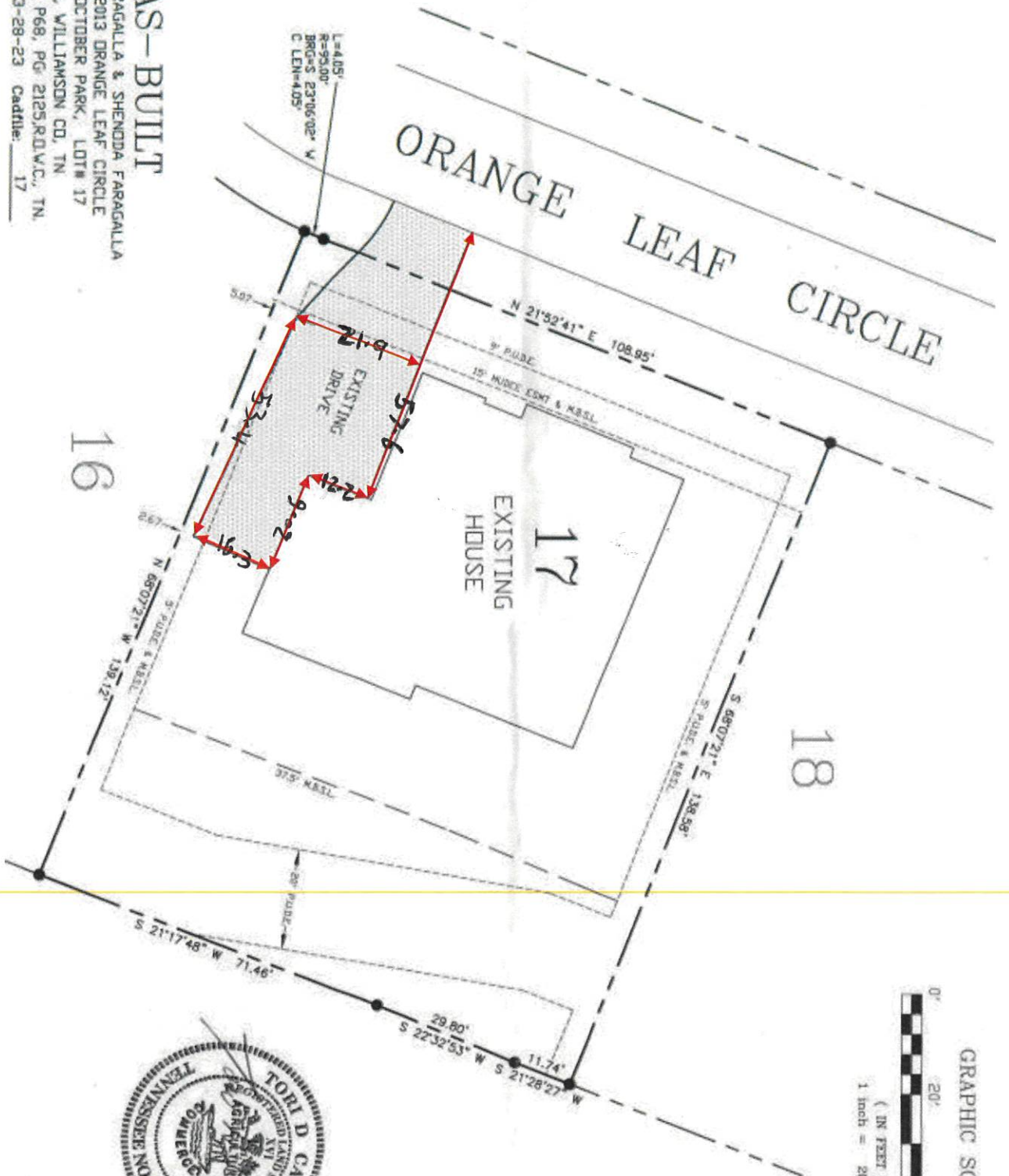
16

7121
121 Crossroads Blvd., Brentwood, TN
PHONE (615) 850-1501



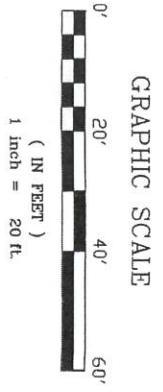
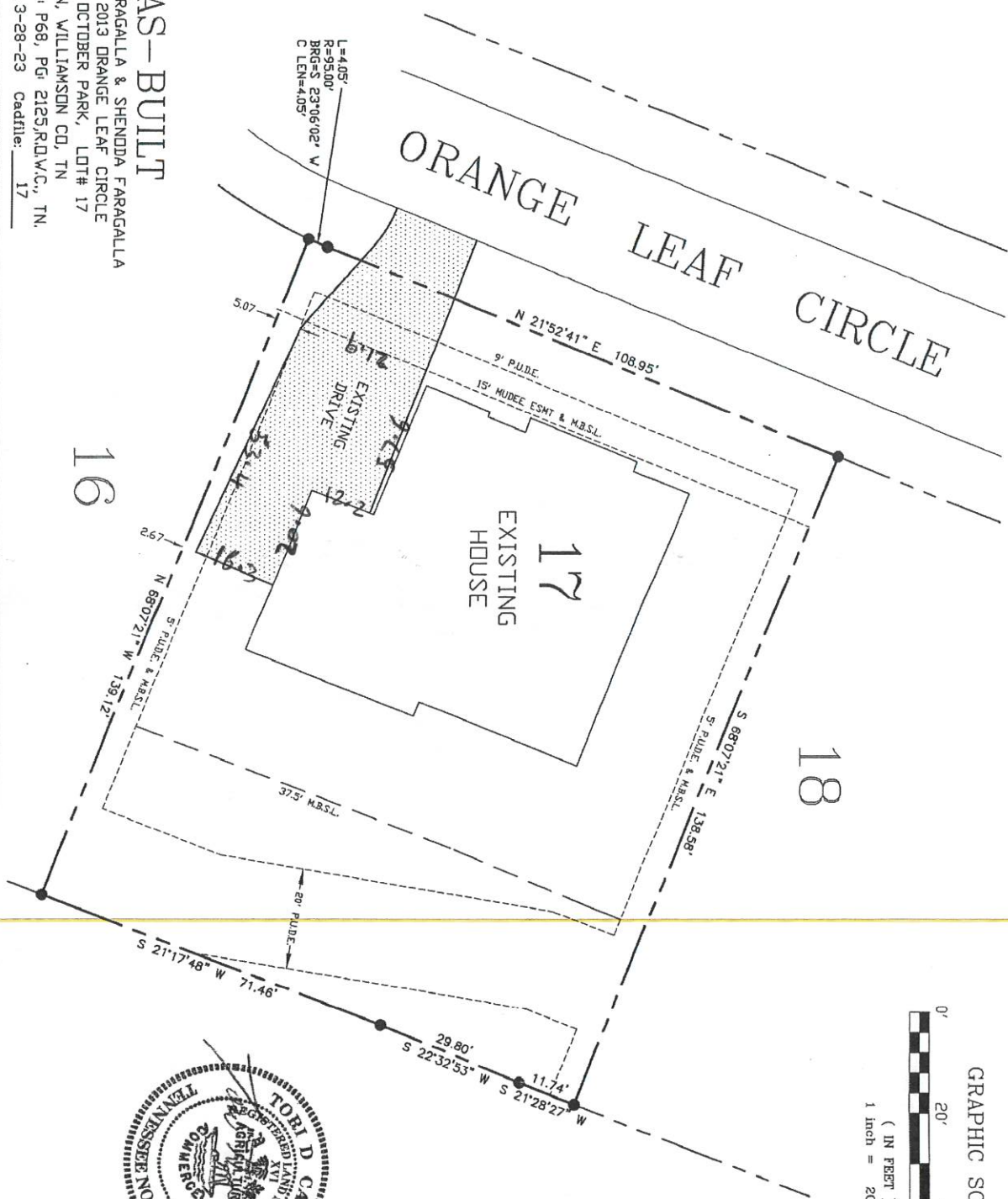
DRIVE AS-BUILT

Owner: BASANT FARAGALLA & SHENDRA FARAGALLA
 Property Address: 2013 ORANGE LEAF CIRCLE
 Property Location: OCTOBER PARK, LOT# 17
 Property: FRANKLIN, WILLIAMSON CO, TN
 Recorded: PLAT PKI P68, PG 2125, R.D.W.C., TN.
 Scale: 1"=20' Date: 3-28-23 Cadfile: 17



DELTA
Associates
 INCORPORATED
 7121 Chestnut Blvd., Brentwood, TN 37027
 PHONE: (615) 851-3301

DRIVE AS-BUILT
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 Scale: 1"=20' Date: 3-28-23 Cadfile: 17



DELTA
Associates
 INCORPORATED
 7121 Crossroads Blvd, Brentwood, TN 37027
 PHONE: (615) 850-3501

1 SURVEY FIELD WORK WAS PERFORMED ON APRIL 30TH, 2020

3. THIS CRITICAL LOT PLAN IS A NOT A GENERAL PROPERTY SURVEY AS DEFINED UNDER RULE 0820.3-07 THIS DOCUMENT REPRESENTS A LIMITED ACCURACY SURVEY OF THE PROPERTY DESIGNED HEREON PERFORMED UNDER THE AUTHORITY OF T.C.A. 62-18-126. IT SHOULD NOT BE RELIED UPON FOR THE CONSTRUCTION OF FENCES OR OTHER IMPROVEMENTS OR FOR ESTABLISHING THE LOCATION OF PROPERTY LINES.

4. THE PROPERTY SHOWN HEREON IS SUBJECT TO SUCH STATE OF FACT AS AN ACCURATE TITLE SEARCH, FLOOD STUDY, COMPREHENSIVE SURVEY, GEOLOGICAL AND SOILS STUDY MAY REVEAL.

5. THE BUILDER IS SOLELY RESPONSIBLE FOR CONFORMING TO ALL ZONING REGULATIONS.

6. LOT HAS BEEN DEEMED A "CRITICAL TREE LOT" PER PLAT OF RECORD.

7. PER RECORDED PLAT REAR YARD SETBACK VARIES IN SUBJECT LOT SHOWN HEREON. GRAPHICALLY REAR SETBACK IS NOT OFFSET FROM REAR PROPERTY LINES AND DIMENSIONS SHOWN HEREON ON SCALED FROM PLAT AND APPROXIMATE.

8. ALL SURVEYED TREES ARE TO REMAIN

9. CONTOUR DATA SHOWN IS FOR REFERENCE ONLY AND IS BASED ON BEST AVAILABLE GEOGRAPHICAL INFORMATION SYSTEM (GIS) DATA. A FIELD RUN TOPOGRAPHIC SURVEY WAS NOT PERFORMED FOR THIS LOT. COLLIER ENGINEERING ENGINEERS STAMP DO NOT EXTEND TO CONTOUR DATA SHOWN. CONTRACTOR IS RESPONSIBLE FOR ALL VERTICAL CONSTRUCTION.

(PLAT DATA) BUILDING SETBACKS

ZONING - SPECIFIC DEVELOPMENT - RESIDENTIAL

DISTRICT - (SD-R-16)

CHARACTER OVERLAY - SWCO-3

% IMPERVIOUS	30%
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HOUSE
3,892 S.F.

LEADWALK 207 S.F.

DRIVEWAY
703 S.F.

LOT AREA (PER PLAT)

15,664 S.F.

NOTE: NO TREES ARE TO BE REMOVED WITHOUT APPROVAL FROM
CITY OF FRANKLIN PLANNING DEPARTMENT

TREE NO.	TRUNK (IN)	SPECIES
52	2	TREE
53	2	EVERGREEN
54	2	EVERGREEN
55	2	EVERGREEN
56	4	HOLLY
57	2	EVERGREEN
58	2	EVERGREEN
59	2	EVERGREEN
68	4	HOLLY
102	2	EVERGREEN
103	2	HOLLY
104	2	HOLLY

LOT NUMBER

WATER METER

FIRE HYDRANT

ELECTRIC BOX

IRON ROD 01

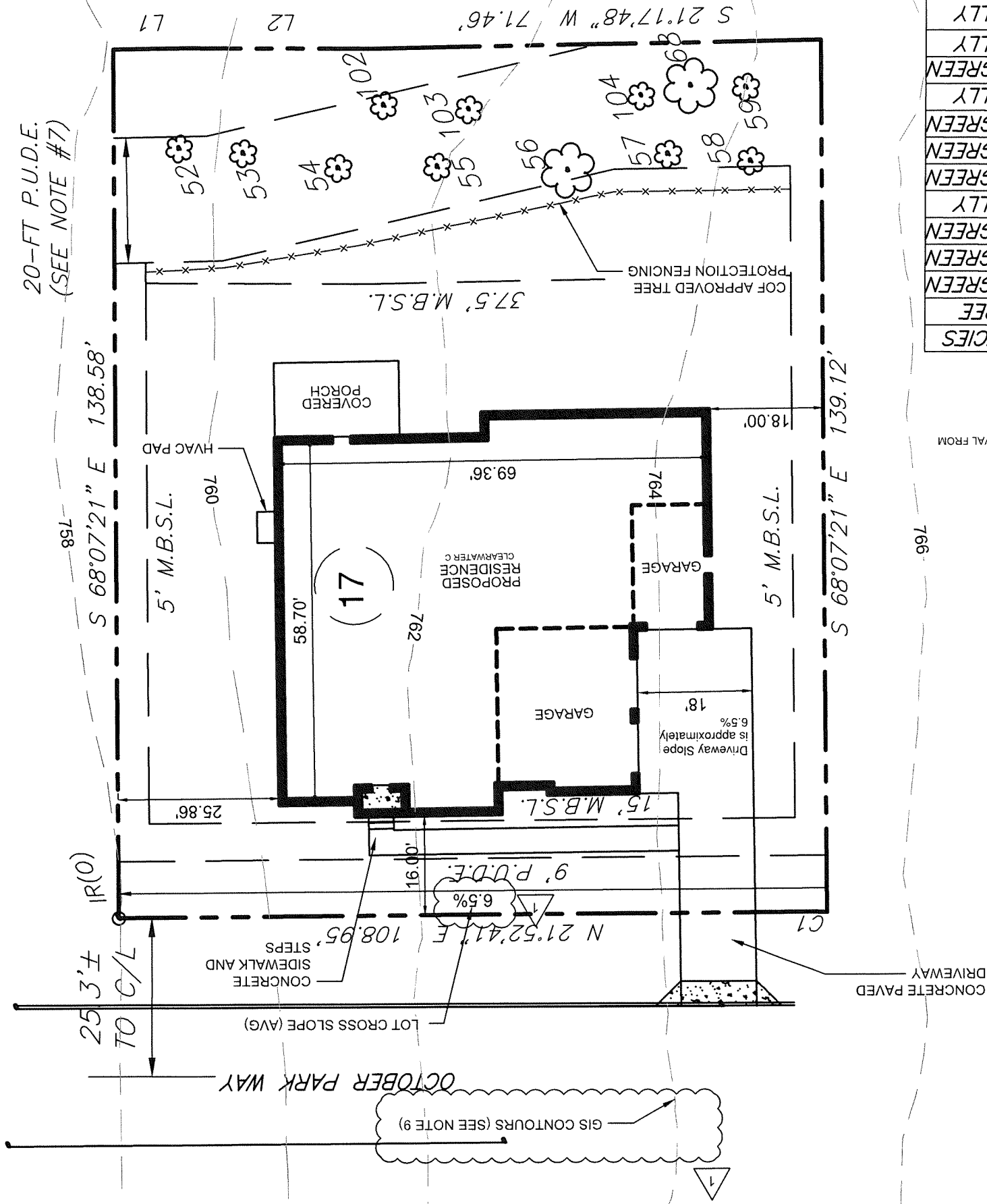
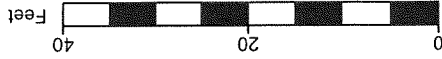
PROPERTY LINE

PROFEIT LINE

UNDERGROUND FL

MINOR CONTOUR

MAJOR CONTOUR



DALAMAR HOMES
LOT #17 - OCTOBER PARK SUBDIVISION
FINAL PLAT
14 CIVIL DISTRICT - CITY OF FRANKLIN - WILLIAMSON COUNTY

DATE: 05/01/2020
DRAWN BY: JWD
SUPERVISED BY: JWD
CHECKED BY: JWD
LAYOUT PLAN
C1.00

COLLIER
ENGINEERING CO., INC.
CONSULTING • DESIGN • CONSTRUCTION

2949 NOLENSVILLE PIKE, NASHVILLE, TN 37211
PHONE: (615) 331-1441 FAX: (615) 331-1050

[illegible]















In April 2021, I bought my house and I did a finale walk with the builder, and I found the drive walk too small and not enough to park in 2 cars or you can't get to the garage, and the builder told me it's too late to extend the drive walk, and he told me after the closing it is your house you can do what you want, and I hired the people working with the builder one day after the closing, and I payed them a large amount of cash money to extend my driveway and I didn't know I had to leave 5 feet from the property line to the driveway because I used to live in Hendersonville before I moved to Franklin, in Hendersonville city I don't have to leave 5 feet and I asked the concrete people to make it right and they told me everything was right and my driveway has been like this for over 2 years and I'm only missing 1 in a half feet to make it evenly 5 feet in my backyard side, and in my street side it is 10 in a half feet from the property line for the concrete. Please, I need everybody's help to extend the driveway because I have 2 large cars and 4 kids and I already spent a lot of money to extend my driveway, Thank you.