



AV170001

APPEALS OF ZONING BOARD OF APPEALS DECISION APPLICATION

RECEIVED BY	FOR OFFICE USE ONLY	DATE STAMP <i>[Signature]</i> 17 NOV 17 PM 4:52
PIN # _____	BOC DISTRICT# _____	ZONING: _____ ZA# _____ AP # _____

Appeals of decisions made by the Zoning Board of Appeals may be taken by any person aggrieved by any decision. Appeals of ZBA decisions shall be made within ten (10) days of the date of the decision or action being appealed. The Board of Commissioners shall confine the evidence to matters related to the issue set forth in the minutes of the Zoning Board of Appeals and the petition for review.

A. APPLICANT INFORMATION (REQUIRED FOR ALL APPLICANTS):

Applicant Status: ☒ Owner ☐ Authorized Agent

Name: **Scott Vandewiele**

Address: **5490 Honeysuckle Trail, Gainesville, GA 30506**

E-mail Address: **jbeard@mhtlegal.com**

B. ATTORNEY REPRESENTATION INFORMATION (IF APPLICABLE):

Preferred Contact: ☐ Applicant ☒ Attorney

Name: **Miles Hansford & Tallant, LLC - Jonathan C. Beard**

Address: **202 Tribble Gap Road, Suite 200, Cumming, GA 30040**

Phone#: **770-781-4100**

E-mail Address: **jbeard@mhtlegal.com**

C. PROPERTY INFORMATION (REQUIRED FOR ALL APPLICANTS):

Tax Map & Parcel #(s): (e.g. xxx-xxx, xxx-xxx) **323-134**

Zoning: **R2R**

Affected Applications: (e.g. ZAXXXX, SP08XXXX, etc.) **N/A**

Subdivision Name: **Lanier Forest**

Lot # (s): (e.g. 1, 3, 5-7) **9A**

Property Address: **5490 Honeysuckle Trail, Gainesville, GA 30506**

D. REQUEST AN APPEAL OF A DECISION (REQUIRED FOR ALL APPLICANTS):

What is the Zoning Board of Appeal's (ZBA) application #

VA170022

What was the date of the ZBA decision that is now subject of this appeal?

11/07/2017

Complete the following by providing as much information as possible. Attach additional sheets only if additional space is necessary. A site plan is optional and should only be submitted if said site plan graphically helps to present the facts.

Briefly explain the decision being appealed. Clearly and concisely explain the reasons why the Board of Commissioners should review the ZBA decision. The description must include any error, procedural or substantive, allegedly committed by the Zoning Board of Appeals.

Please see attached.

Jonathan C. Beard
jbeard@mhtlegal.com

**Supplement to Application for
Appeal of Zoning Board of Appeals Decision regarding VA170022
Requested by Scott Vandewiele
&
Written Evaluation Pursuant to UDC § 8-8.3(B)
Reservation of Constitutional Rights**

Scott Vandewiele (the “Appellant”) files this Supplement to Section D. of the Application, which is submitted contemporaneously herewith and incorporated herein by this reference. This statement shall also serve as the Appellant’s Written Evaluation pursuant to UDC § 8-8.3(B).

The Appellant has filed a timely application (the “Application”) to appeal a Zoning Board of Appeals decision, made Tuesday, November 7, 2017, regarding VA170022, a copy of which is attached hereto and incorporated herein by this reference. The Appellant has provided all required information, and has submitted all appropriate application fees. The Application meets all judicial and statutory requirements for approval.

I. Procedural History.

The variance request at issue in this appeal (VA170022) was filed by Scott Vandewiele for property located at Appellant’s home on Honeysuckle Trail. The variances requested sought to reduce the required front setback, an accessory square footage variance of 775.4 square feet to allow an accessory structure to be 1775.4 square feet rather than the maximum 1000 square feet, as well as a building height variance of 5 feet to allow an accessory structure to be 40 feet in height and an accessory structure height variance of 10 feet to allow an accessory structure to be 10 feet taller than the primary structure on Scott Vandewiele’s lot. VA170022 came before the Zoning Board of Appeals (ZBA) for a hearing and decision on November 7, 2017. The ZBA voted to deny VA170022.

The Appellant now appeals the decision of the ZBA denying VA170022.

II. The ZBA’s decision denying VA170022 should be reviewed and reversed.

The ZBA’s denial of VA170022 was erroneous and the Appellant appeals its decision on the following grounds:

- (1) The ZBA’s denial of VA170022 has resulted in a procedural and substantive error which has materially prejudiced the rights of the Appellant;

- (2) The ZBA's denial of VA170022 creates an undue hardship of a personal and financial nature upon the Appellant by reason of the denial of the application by the ZBA, such hardship not being occasioned by a negligent or willful act on the part of the Appellant or attributable to him;
- (3) The ZBA's denial of VA170022 creates substantial costs laid upon the Appellant, by reason of the denial of the application by the ZBA, such costs not being occasioned by a negligent or willful act on the part of the Appellant or attributable to him;
- (4) The ZBA's denial of VA170022 results in an substantial hardship to the rights and interests of the Appellant disproportionate to any benefit conferred by denial of the application;
- (5) The ZBA's decision was arbitrary, capricious, and irrational in that it based its decision upon erroneous and irrelevant information.
- (6) VA170022 and each variance requested therein satisfies all requirements of UDC § 8-6.4(c)(4)(a):
 - (i) The variance shall not have the effect of negating any of the various purposes and intentions of this Code;
 - (ii) The variance if granted will not be detrimental to the public safety, health, or welfare of the public or injurious to other property;
 - (iii) The conditions on which the request is based are unique to the property for which the relief is sought and are not applicable generally to other property;
 - (iv) Because of the particular physical surroundings, shape, size, or topographical conditions of the specific property involved, an extraordinary hardship or practical difficulty would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
 - (v) The variance requested is the minimum necessary to accomplish the development or building; and
 - (vi) In the case of an amendment to a buffer or setback required by this Code, including those specified in Chapter Twenty-One, the variance application shows how equal or greater protection will be achieved of the adjacent property or natural resource affected by the proposed development, should the variance be granted.

In addition to the grounds stated above, the ZBA erred in that it failed to legitimately consider the factors of UDC § 8-6.4(C)(4). Instead, the ZBA denied VA170022 based upon an understanding that the Appellant had ownership in the company that remodeled the accessory structure. Consideration of such factors is not a valid basis upon which the ZBA must determine whether the UDC imposes an unnecessary hardship upon the subject property and the applicant.

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November 17, 2017

The Appellant incorporates herein all claims, statements, reservations of rights, and materials contained in its letter to the ZBA dated April 24, 2017, a copy of which is attached and incorporated herein by this reference, as well as all such claims, statements, reservations, and materials stated at the ZBA's November 7, 2017 hearing on VA170022, also incorporated herein by this reference.

In addition, the Appellant asserts that the denial of VA170022 imposes a disproportionate hardship on the Appellant without accruing any benefits to any surrounding property owners.

In particular, the denial of VA170022 will result in a substantial diminution in value of Appellant's home and constitutes a taking of valuable property rights without compensation, and is unconstitutional in that it constitutes a taking of the Appellant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Fifth and Fourteenth Amendments to the Constitution of the United States. Denial of VA170022 furthers this unconstitutional application of law, and is unconstitutional in and of itself for the same reasons.

Forsyth County's denial of VA170022 is unconstitutional and discriminates in an arbitrary, capricious and unreasonable manner between the Appellant and the owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Furthermore, the ZBA's denial of VA170022 is an unreasonable application of local land use authority, which bears no relationship to the public health, safety, morality or general welfare of the public and constitutes an arbitrary and irrational abuse of discretion by the ZBA and, if upheld, by the Forsyth County Board of Commissioners, in violation of Art. I, Section I, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States. The Appellant maintains that a refusal to approve VA170022 as requested by the Appellant constitutes an abuse of discretion under the power granted to local governments by the Georgia Constitution and the Zoning Procedures Law, O.C.G.A. Section 36-66-1 et seq., as well as under the UDC.

The Appellant respectfully requests that the Board of Commissioners reverse the ZBA's denial of VA170022 and approve the application as requested. In filing this petition, the Appellant hereby reserves all rights and remedies available to it under the Constitution of the United States, the Constitution of the State Georgia, all applicable federal, state, and local laws and ordinances, and in equity. The Appellant reserves the right to amend this Application by attachment of further responses and documents.

Sincerely,



Jonathan C. Beard
Attorney for Appellant

Jonathan C. Beard
jbeard@mhtlegal.com

**Written Evaluation and Reservation of Constitutional and Other Legal Rights
For the Variance Application of Scott Vandewiele**

This statement is intended to comply with application procedures established by Forsyth County, Georgia, for submittal of variance applications as required by the Forsyth County Unified Development Code (“UDC”) and other Forsyth County Ordinances and Standards and is intended to reserve all constitutional and statutory protections available to Scott Vandewiele (the “Applicant”). The Applicant has filed a timely application, has provided all required information and has submitted the appropriate application fee. The requested application meets all judicial and statutory requirements for approval.

The Applicant incorporates all statements made in Section C. of the Variance Application form as its Written Evaluation required by UDC § 8-6.3(B).

Refusal to grant approval of the requested variances described in the variance application attached hereto and incorporated herein by this reference (the “Variance Application”) would impose a disproportionate hardship on the Applicant without accruing any benefits to any surrounding property owners. The portions of the UDC that require the development of the property to be different from the Applicant’s plan are unconstitutional in that they constitute a taking of the Applicant’s property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by Forsyth County to approve this Variance Application so as to permit viable economic use of the property is unconstitutional and discriminates in an arbitrary, capricious and unreasonable manner between the Applicant and the owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Furthermore, a decision that denies the Applicant the requested variances would constitute an arbitrary and irrational abuse of discretion and an unreasonable application of local land use authority bearing no relationship to the public health, safety, morality or general welfare of the public in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States. The Applicant maintains that a refusal to grant the requested variances would be an abuse of discretion under the power granted to local governments by the Georgia Constitution and the Zoning Procedures Law codified in O.C.G.A. Section 36-66-1, et seq.

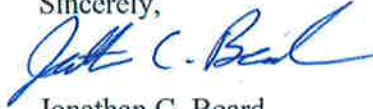
Page 2 of 2
April 24, 2017

The Applicant further asserts that the UDC, Comprehensive Plan and Future Development Map were not adopted in compliance with the laws or constitutions of the State of Georgia or of the United States, and a refusal to approve the Variance Application based upon provisions illegally adopted would deprive the Applicant of due process of law.

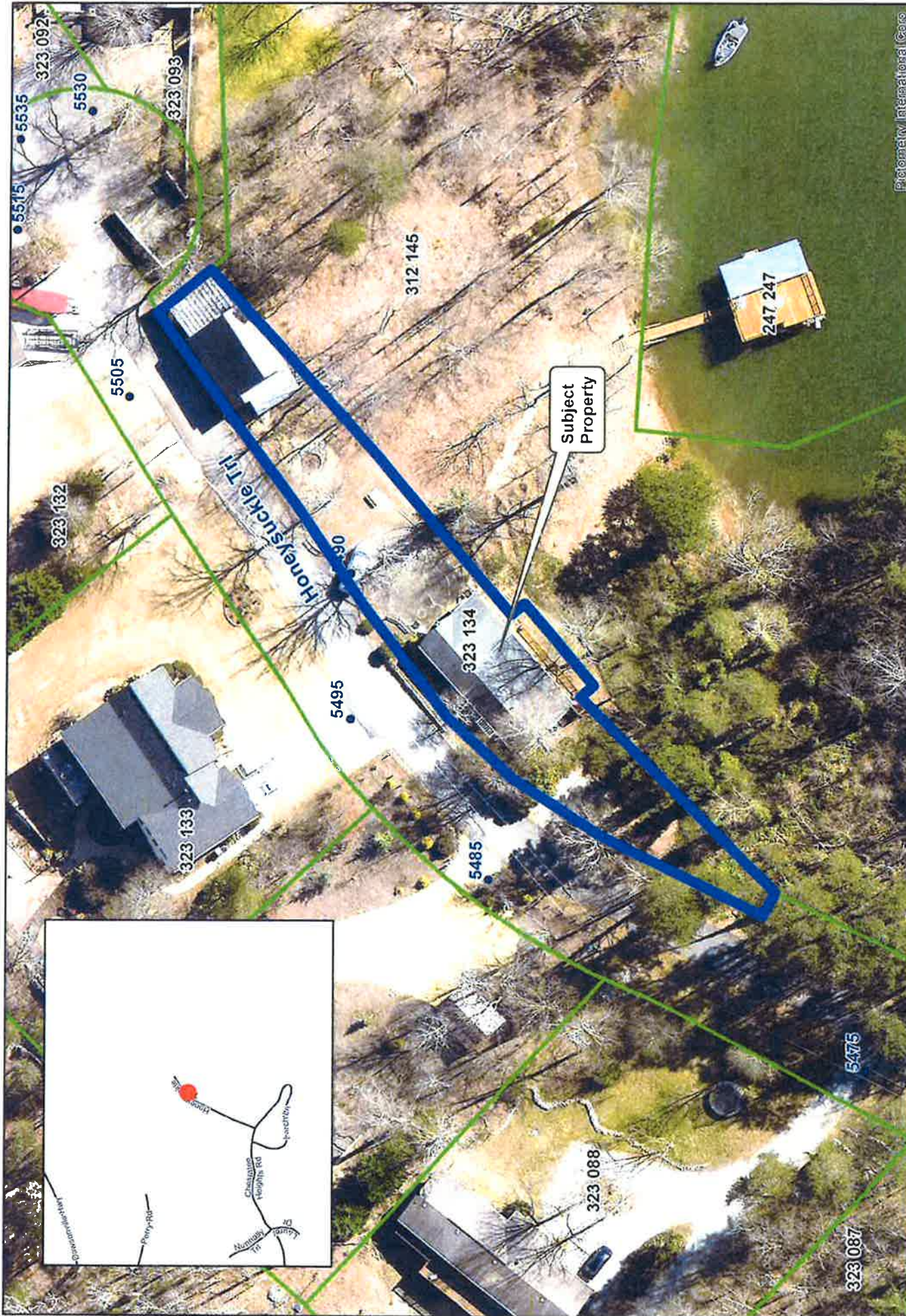
The Applicant reserves all other rights and privileges under the Constitutions of the United States and the State of Georgia, and available at law and in equity, in the event Forsyth County refuses to approve this Variance Application as requested by the Applicant.

Accordingly, the Applicant respectfully asks that the Variance Application be approved as requested. The Applicant also reserves the right to amend this statement and the Variance Application by submitting further responses and documents.

Sincerely,



Jonathan C. Beard



Pictometry International Corp

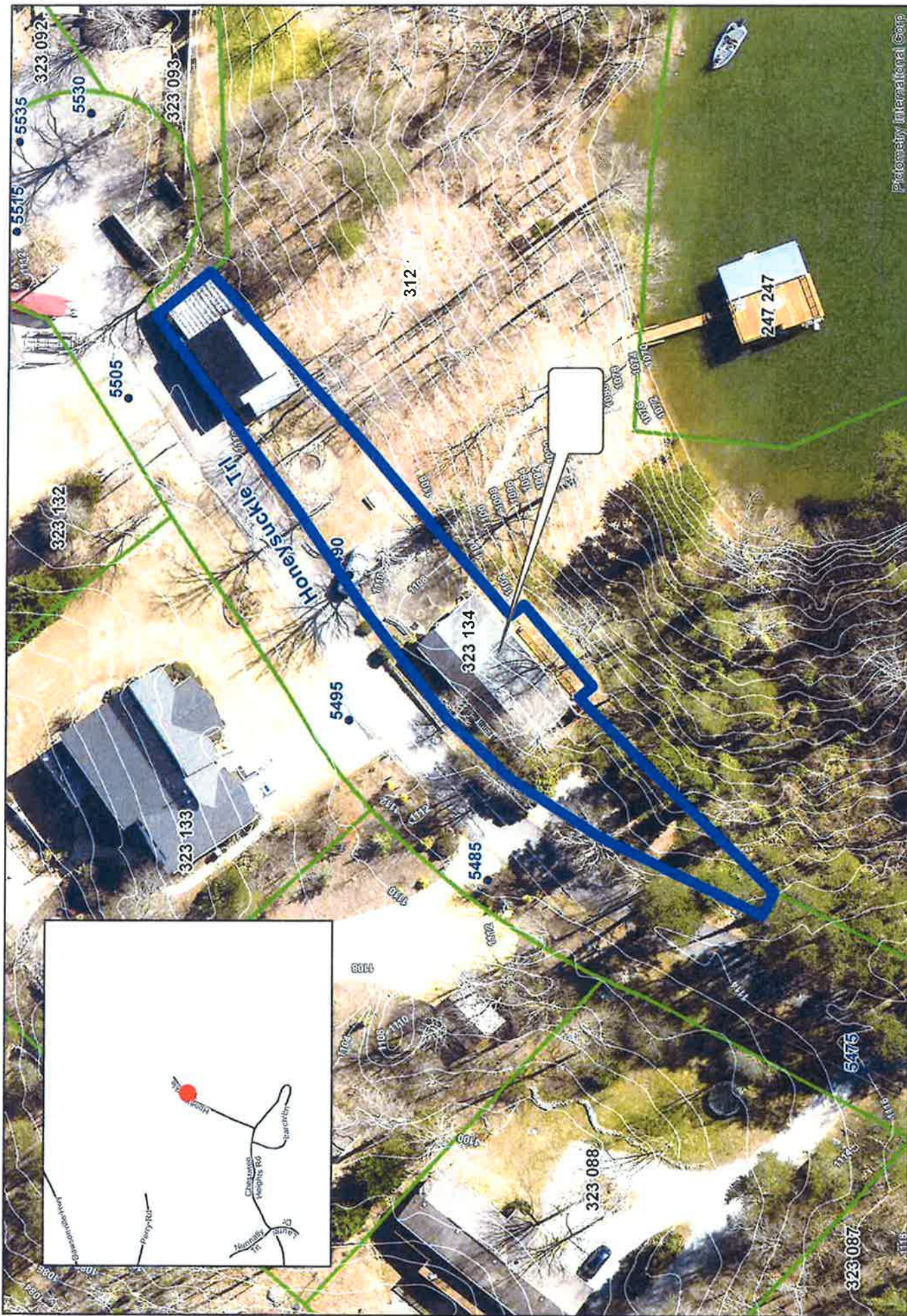
VA170



1 inch = 50 feet

2015 AERIAL PHOTO
 FORSYTH COUNTY
 DISCLAIMS ANY R
 LIABILITIES OR
 DAMAGES FROM
 OF THIS MAP.
 THIS MAP IS ONLY
 PURPOSES.

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT



Pictometry International Corp.



1 inch = 50 feet

VA170022

2015 AERIAL PHOTO
FORSYTH COUNTY
DISCLAIMS ANY F
LIABILITIES OR
DAMAGES FROM
OF THIS MAP.
THIS MAP IS ONLY
PURPOSES.

DEPARTMENT OF TRANSPORTATION

2017 Property Tax Statement

Matthew C. Ledbetter
Forsyth County Tax Commissioner
1092 Tribble Gap Rd
Cumming, GA 30040-2236

Bill No
2017-280500

Due Date
11/15/2017

TOTAL DUE
\$0.00

MAKE CHECK OR MONEY ORDER PAYABLE TO:
Forsyth County Tax Commissioner

Map: 323 134

Last payment made on: 11/01/2017

Today's date:
11/17/2017

Location: 5490 HONEYSUCKLE TL
INTEREST, PENALTIES, AND OTHER
FEES WILL APPLY AFTER DUE DATE.

VANDEWIELE SCOTT J & VANDEWIELE JANE A
127 E MAIN ST SUITE 301

If taxes are paid by your mortgage
company, send them the top portion of your statement only.

WOODSTOCK, GA 30188

Matthew C. Ledbetter
Forsyth County Tax Commissioner
1092 Tribble Gap Rd
Cumming, GA 30040-2236

Phone: (770) 781-2110 Fax: (678) 455-1207

Tax Payer: VANDEWIELE SCOTT J &
VANDEWIELE JANE A
Map Code: 323 134
Description: 14-1 1386 LT 9A LANIER
Location: 5490 HONEYSUCKLE TL
Bill No: 2017-280500
District: 001 FORSYTH COUNTY AT LARGE

Building Value	Land Value	Acres	Fair Market Value	Due Date			Exemptions	
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\$75,080.00 \$225,000.00 0.2900 \$300,080.00 11/15/2017

Entity	Adjusted FMV	Net Assessment	Exemptions	Taxable Value	Millage Rate	Gross Tax	Credit	Net Tax
STATE TAX	\$300,080.00	\$120,032.00	\$0.00	\$120,032.00	0.0000	\$0.00	\$0.00	\$0.00
COUNTY M&O	\$300,080.00	\$120,032.00	\$0.00	\$120,032.00	7.4250	\$891.24	\$0.00	\$557.19
SALES TAX CREDIT			\$0.00	\$120,032.00	-2.7830	\$0.00	-\$334.05	\$0.00
COUNTY BOND	\$300,080.00	\$120,032.00	\$0.00	\$120,032.00	1.4190	\$170.33	\$0.00	\$170.33
SCHOOL M&O	\$300,080.00	\$120,032.00	\$0.00	\$120,032.00	17.3000	\$2,076.55	\$0.00	\$2,076.55
SCHOOL BOND	\$300,080.00	\$120,032.00	\$0.00	\$120,032.00	2.4180	\$290.24	\$0.00	\$290.24
FIRE DISTRICT	\$300,080.00	\$120,032.00	\$0.00	\$120,032.00	1.9750	\$237.06	\$0.00	\$237.06
Totals:					27.754	\$3,665.42	-\$334.05	\$3,331.37

Current Due \$3,331.37

Penalty \$0.00

Interest \$0.00

Other Fees \$0.00

Previous Payments \$3,331.37

Back Taxes \$0.00

Total Due \$0.00

If Back Taxes Are Due Please Call for correct amount due as interest continues to accrue!



E. CORPORATE / COMPANY DISCLOSURES

Pursuant to UDC 8-2.1(H): If the owner or authorized agent is a corporate entity, provide the names of the officers, directors, and stockholders if controlling 10% or more, unless the corporation has stock that is traded on a national stock exchange. Also identify any parties having a direct financial interest in the zoning application other than the owner and applicant (e.g. developer or anticipated commercial occupant). If such additional parties having a direct financial interest are corporations or companies, then provide the names of officers, directors, company members, stockholders with 10% ownership or greater, unless the corporation has stock that is traded on a national stock exchange. In the event that public disclosure of the developer or commercial occupant may cause such developer or occupant to withdraw from pursuing a project due to competition, trade secret, or proprietary business concerns, then an affidavit affirmatively declaring such shall be tendered with the application and in that event only the owner and or authorized applicant shall be identified:

N/A

F. PROPERTY OWNER AUTHORIZATION AFFIDAVIT (REQUIRED FOR ALL APPLICANTS): ADD ADDITIONAL SHEETS IF APPLICABLE.

Notice to Applicant. This application must be signed by the owner(s) as listed on the deed of record for the subject property. owner or authorized agent (i.e. applicant or representing attorney) may speak on behalf of this application at the public hearing. The undersigned hereby swear that he/she/they is/are the owner(s) of the subject property as identified on this application.

I/We hereby authorize the authorized agent or attorney listed on the front of this application to speak and act on behalf of the appeal
I/We realize that any action granted for this property will be binding on the property regardless of ownership.

Owner Name: Scott Vandewiele

Address: 5490 Honeysuckle Trail, Gainesville, GA 30506

Bus. Phone: 770-781-4100

E-mail: jbeard@mhtlegal.com

Signature of Owner: [Signature]

Date: 11-16-17

Signature of Notary: [Signature]

Date: 11-16-2017



G. APPLICANT CERTIFICATION (REQUIRED FOR ALL APPLICANTS): PLEASE READ AND INITIAL THE FOLLOWING STATEMENTS.

- ☒ 1) I hereby request the action contained within this application relative to the property associated with the VA# referenced above and further request that this item be placed on the Board of Commissioners (BOC) agenda for consideration of a public hearing.
- ☒ 2) I understand that my request will be rejected if all the necessary information and/or requirements are not presented.
- ☒ 3) I understand that I have an obligation to present all necessary information required by the Unified Development Code to enable the Board of Commissioners to make an informed determination on my request.
- ☒ 4) I understand that my request may be acted upon at the BOC public hearing and that I am required to be present or to be represented by the authorized representative as indicated on this application, so that someone is available to present all facts and answer questions. I understand that failure to appear at a public hearing may result in the postponement or denial of my request. I further understand that it is my responsibility to be aware of relevant public hearing dates and times regardless of notification from Forsyth County.
- ☒ 5) I understand that the Board of Commissioners shall receive either oral or written evidence from the petitioner, the applicant before the Zoning Board of Appeals and from property owners and parties of record at the time the Zoning Board of Appeals considered the matter.

H. APPLICANT WITHDRAWAL (ONLY SIGN IF OFFICIALLY WITHDRAWING APPLICATION REQUEST):

Signature of Applicant: _____ Date: _____