

# PLANNING COMMISSION PACKET

February 29, 2024

**Hello All,**

Enclosed please find your packet for the meeting of March 4, 2024.

For consideration we have:

- 1 resurvey (previously approved and expired prior to recordation)
- Amended application processes for rezoning (general) and PUD rezoning (specific)
- Annual Election of Officers

If you receive any citizen inquiries regarding these cases the plans may be viewed by going to:

[www.mtnbrook.org](http://www.mtnbrook.org)

- Calendar (upper right corner)
- Planning Commission (March 4, 2024)
- Meeting Information (for agenda) and Supporting Documents (*to view proposed plans select link associated with the case number*)

If you have any questions about these cases please don't hesitate to give me a call at 802-3816 or send me an email at [hazend@mtnbrook.org](mailto:hazend@mtnbrook.org).

**Looking forward to seeing you on Monday!**

***Dana***

**MEETING AGENDA**  
**CITY OF MOUNTAIN BROOK**  
**PLANNING COMMISSION**

**MARCH 4, 2024**

**PRE-MEETING: (ROOM A106) 5:00 P.M.**  
**REGULAR MEETING: (ROOM A108) 5:30 P.M.**  
**CITY HALL, 56 CHURCH STREET**  
**MOUNTAIN BROOK, AL 35213**

**FOR APPLICANTS AND PERSONS WHO WISH TO SPEAK, THE MEETING IS TO BE HELD IN-PERSON AT CITY HALL.**

**ZOOM VIDEO CONFERENCING IS PROVIDED MERELY AS A CONVENIENCE FOR MEMBERS OF THE PUBLIC WHO WISH TO FOLLOW ALONG (BUT WILL NOT BE AFFORDED AN OPPORTUNITY TO SPEAK).**

**ZOOM ACCESS INSTRUCTIONS MAY BE FOUND ON CITY WEBPAGE AT: MTNBROOK.ORG - CALENDAR (UPPER RIGHT CORNER) - PLANNING COMMISSION – MARCH 4, 2024**

1. Call To Order
2. Approval of Agenda
3. Approval of Minutes: November 6, 2023
4. **Case P-24-01:** Cooney Addition to Mountain Brook recorded in instrument number 201106-19122 in the Office of the Judge of Probate Jefferson County, Alabama; situated in the NE ¼ of Section 5, Twp-18S, R-2W, Jefferson County, Alabama.  
**-3613 Montclair Road**
5. **Consideration for Recommendation to the City Council:** Amendments to Article XVI (Planned Unit Development) and Article XXV (Amendments) of the Zoning Code.
6. **Annual Election of Officers**
7. Next Meeting: **April 1, 2024**
8. Adjournment



## Planning Commission Application PART I

### Project Data

Address of Subject Property 3613 Montclair Road

Zoning Classification Residence A

Name of Property Owner(s) Virginia & Patrick Cooney

Phone Number \_\_\_\_\_ Email \_\_\_\_\_

Name of Representative Agent (if applicable)

Charlie Beavers

Phone Number (205) 580-1185 Email CBEAVERS@BEAVERSLAWLLC.COM

Name of Engineer or Surveyor Weygand LLC

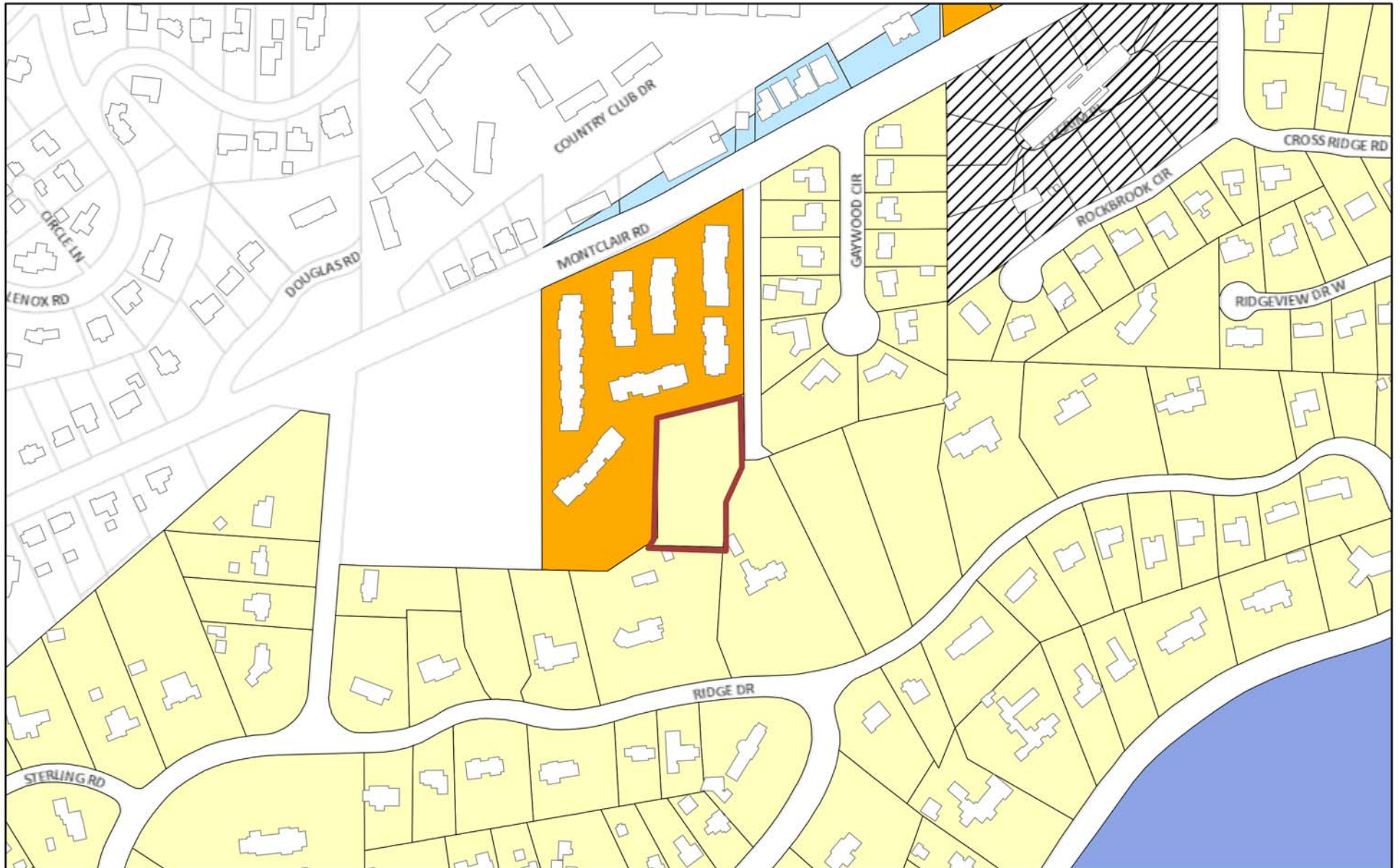
Phone Number (205) 942-0086 Email Info@weygand.com

☒ Property owner or representative agent must be present at hearing

### Plans

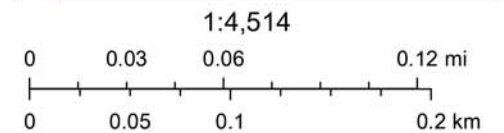
☒ See applicable Section of the Zoning Ordinance for submittal requirements pertaining to your particular application. Applicable Code Section may be found in Part II, list of application types. Contact City Planner with any specific questions as to required plans submittal.

# P-21-11 Zoning



4/27/2021, 3:50:01 PM

- |                         |                                  |                      |
|-------------------------|----------------------------------|----------------------|
| CADStreetCenterlines    | JeffcoMunicipalBoundary_Negative | Residence A District |
| InterimTaxParcels       | Tax_Parcels                      | Residence D District |
| JeffCoMunicipalBoundary | PUD                              | Residence F District |



Hunter Simmons, JeffCoAL, Esri, HERE, Garmin, INCREMENT P, USGS,

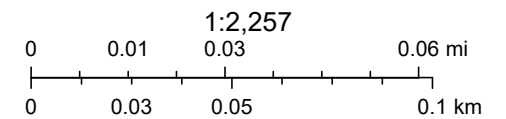


# P-24-01 Aerial



2/28/2024, 2:39:57 PM

----- Lot Lines Aerial 2021  
■ Red: Band\_1 ■ Green: Band\_2 ■ Blue: Band\_3



Jefferson County Department of Information Technology , JeffCoAL, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

ArcGIS Web AppBuilder

# P-24-01

## Resurvey in existing Residence A zoning

- ✓ Subdivision plat for a single-family lot in Res-A; on May 3, 2021, the planning commission approved this same plat, but it was not recorded in the requisite 60-day period.
- ✓ Said property has frontage on an unimproved right-of-way; permission to pave with a driveway was granted by the city council via the attached encroachment agreement on November 13, 2023. The applicant and the civil engineer have satisfied the Fire Marshal and city council with regard to improvements necessary to provide for adequate emergency ingress/turnaround, as well as to provide proper drainage in the right-of-way.
- ✓ Meets the Zoning Regulations for the Res-A district.
- ☒ **May be approved as a final plat.**
- ✓ **Overall layout is acceptable**, with the final plat to fully comply with all applicable requirements of the Mountain Brook Subdivision Regulations.
- ✓ No floodplain present.

- **Project Data:**

NAME: Cooney Addition to Mountain Brook

CURRENT ZONING: Residence A

OWNERS: Virginia and Patrick Cooney

LOCATION: 3613 Montclair Road



STATE OF ALABAMA)  
JEFFERSON COUNTY)

The undersigned, Thomas Scott Dreher, Professional Land Surveyor, State of Alabama, and Patrick S. Cooney & Virginia L. Cooney, (Members of Lizbeth B. Cooney 2011 Qualified Personal Trust No. 1), hereby certify that this plat or map was made pursuant to a survey made by said surveyor, and that this plat or map was made at the instance of said owner, that this plat or map is a true and correct plat or map of land shown therein and known or to be known as COONEY ADDITION TO MOUNTAIN BROOK, showing the subdivisions into which it is proposed to divide said lands, giving the length and bearings of the boundaries of each lot and its number, showing the streets, alleys and public grounds, giving the bearings, length, width and name of each street, as well as the number of each lot and block, and showing the relation of the lands to the government survey of Sections 5, Township 18 South, Range 2 West, and that iron pins have been installed at all lot corners and curve points as shown and designated by small open circles on said plat or map. I, Thomas Scott Dreher, hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief. Said owner also certifies that it is the owner of said lands.

In Witness Whereof, we have hereunto set our hands this the \_\_\_\_ day of \_\_\_\_\_, 2024.

By: Thomas Scott Dreher DATE: FEBRUARY 9, 2024  
Thomas Scott Dreher,  
PLS AL 50407



STATE OF \_\_\_\_\_  
(COUNTY)

I, \_\_\_\_\_, a Notary Public in and for said County and State hereby certify that Thomas Scott Dreher, whose name is signed to the foregoing certificate as Land Surveyor and who is known to me, acknowledged before me, on this day, that being informed of the contents of the certificate, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2024.

By: \_\_\_\_\_  
Notary Public - My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
(COUNTY)

I, \_\_\_\_\_, a Notary Public in and for said County and State hereby certify that Patrick S. Cooney, (Trustees of the Lizbeth B. Cooney 2011 Qualified Personal Residence Trust No. 1), whose name is signed to the foregoing certificate as Owner, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, she executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2024.

By: \_\_\_\_\_  
Notary Public - My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
(COUNTY)

I, \_\_\_\_\_, a Notary Public in and for said County and State hereby certify that Virginia L. Cooney, (Trustees of the Lizbeth B. Cooney 2011 Qualified Personal Residence Trust No. 1), whose name is signed to the foregoing certificate as Owner, and who is known to me, acknowledged before me, on this day that, being informed of the contents of the certificate, she executed same voluntarily on the day the same bears date.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2024.

By: \_\_\_\_\_  
Notary Public - My commission expires: \_\_\_\_\_

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Chairman, Mountain Brook Planning Commission

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Secretary, Mountain Brook Planning Commission

NOTE:  
Environmental Services Department approval indicates that this document has been reviewed for provision of future or existing sanitary sewers; however this does not mean sanitary sewers have been built or will be built in the future. Any change in Right of Way or Easement boundaries after this date may void this approval.

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Director of Environmental Service

NOTES:  
ALL EASEMENTS ON THIS MAP ARE FOR PUBLIC UTILITIES, SANITARY SEWERS, STORM SEWERS, STORM DITCHES, PRIVATE TELEVISION CABLE SYSTEMS, AND MAY BE USED FOR SUCH PURPOSES TO SERVE PROPERTY BOTH WITHIN AND WITHOUT THIS SUBDIVISION UNLESS OTHERWISE NOTED. NO PERMANENT STRUCTURE OR OTHER OBSTRUCTION SHALL BE LOCATED WITHIN THE LIMITS OF A DEDICATED EASEMENT.

BUILDER IS RESPONSIBLE FOR THE DRAINAGE ON EACH LOT AND IN AND AROUND EACH BUILDING.

BUILDER WILL BE RESPONSIBLE FOR ADJUSTING THE LIDS OR TOP ELEVATION FOR ALL MANHOLES AND YARD INLETS ON EACH LOT.

THE LOT OWNER/BUILDER SHALL USE APPROPRIATE METHODS, WHETHER PIPES, UNDERDRAIN, DITCHES, GRADING OR OTHER MEANS, TO PROVIDE A BUILDING SITE FREE OF SURFACE OR SUBSURFACE DRAINAGE PROBLEMS WITHOUT ADVERSELY AFFECTING ADJACENT LOTS.

THE LOT OWNER/BUILDER SHALL FIELD VERIFY THE LOCATION AND ELEVATION OF SANITARY SEWER SERVICE LINE OR SEPTIC TANK LOCATION PRIOR TO CONSTRUCTION OF BUILDING FOUNDATIONS.

ELEVATION OF ALL SANITARY SEWER LATERALS TO EACH LOT SHOULD BE VERIFIED BY BUILDER PRIOR TO SETTING LOWEST FLOOR OF RESIDENCE TO BE SERVED.

NO HOUSE SHALL HAVE A FINISHED FLOOR ELEVATION LESS THAN TWO (2) FEET ABOVE TOP OF ANY ADJACENT STORM SEWER WITHOUT ENGINEER'S APPROVAL.

NO FENCE SHALL IMPEDE THE FLOW OF WATER IN ANY DRAINAGE WAY.

WEYGAND, LLC IS NOT RESPONSIBLE FOR SOIL COMPACTIONS AND DID NOT CONDUCT ANY SURFACE OR SUBSURFACE INVESTIGATIONS.

NORTH ARROW SHOWN ON THIS MAP IS NOT TRUE NORTH AND SHOULD ONLY BE CONSIDERED AS APPROXIMATE.

WEYGAND, LLC  
THOMAS SCOTT DREHER, PLS AL 50407  
173 Oxmoor Road, Homewood, AL 35209  
PHONE: (205) 942-0086

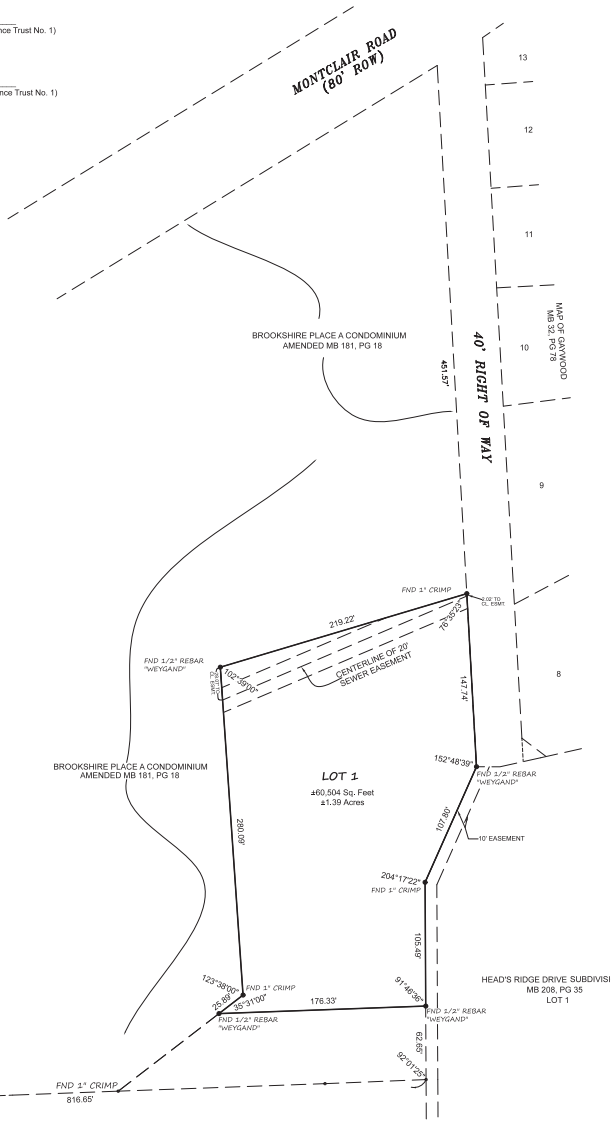
DATE: FEBRUARY 2024

SW CORNER  
NW 1/4 OF NE 1/4  
SECTION 5, T-18S, R-2W  
JEFFERSON COUNTY, ALABAMA

# COONEY ADDITION TO MOUNTAIN BROOK

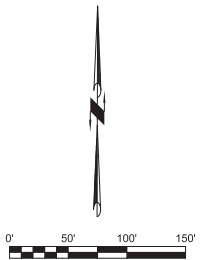
RECORDED IN INSTRUMENT NUMBER:201106-19122 IN THE OFFICE OF THE JUDGE OF PROBATE  
JEFFERSON COUNTY, ALABAMA

SITUATED IN THE NE 1/4 OF SECTION 5, TOWNSHIP 18 SOUTH, RANGE 2 WEST,  
JEFFERSON COUNTY, ALABAMA

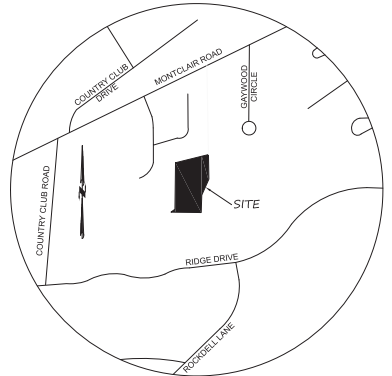


## LEGEND

SQ. FT.	.....	SQUARE FEET
AC.	.....	ACRES
+/-	.....	MORE OR LESS
Δ	.....	DELTA ANGLE
d	.....	DEFLECTION ANGLE
T	.....	TANGENT
R	.....	RADIUS
CH	.....	CHORD
L	.....	LENGTH
ESMT	.....	EASEMENT
EX	.....	EXISTING
M.B.	.....	MAP BOOK
PG.	.....	PAGE
FND	.....	FOUND
ROW	.....	RIGHT-OF-WAY
O	.....	REBAR SET
MIN	.....	MINIMUM
C/L	.....	CENTERLINE
D.B.	.....	DEED BOOK
---	.....	NOT TO SCALE



Zoned Residence A District  
Front Setback = 40 FEET  
Rear Setback = 40 FEET  
Side Setback = 15 FEET



VICINITY MAP  
(NOT TO SCALE)

THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA  
(ZONE "X") AS PER MAP NO. 01073C0394g, DATED SEPTEMBER 29, 2006.

Notes: (a) No title search of the public records has been performed by this firm, and land shown hereon was not abstracted for easements and/or rights-of-way, recorded or unrecorded. The parcel shown hereon is subject to setbacks, easements, zoning, and restrictions that may be found in the public records of said county and/or city. (b) All bearings and/or angles are deduced from map unless otherwise noted in each form as Measured (Direct) (c) Underground portions of foundations, footings, and/or other underground structures, utilities, cemeteries or burial sites were not located unless otherwise noted. (d) The shown north arrow is based on deduced map. (e) This survey is not transferable. (f) Easements not shown on recorded map are not shown above. (g) All iron pins set (IPSI) by this firm are 1/2" rebar with an orange cap inscribed C450309 and shall not be removed. (h) All corners set MAG, nails and washer will be silver and inscribed WEYGAND C450309.

SCALE: 1" = 50'	APPROVED BY: Thomas Scott Dreher PLS DATE: 02/09/2024	WEYGAND	0' 50' 100' 150'
SURVEYED BY TSD/DRAWN BY TSD		Job # 20231893	GRAPHIC SCALE: 1" = 50'
		Copyright ©	



## CITY OF MOUNTAIN BROOK

Department of Planning, Building &  
Sustainability  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3810  
[www.mtnbrook.org](http://www.mtnbrook.org)

# P-21-11

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### PLANNING COMMISSION MEETING SUMMARY

Meeting Date: May 3, 2021

Case Number: P-21-11

Address: 3613 Montclair Road

Applicant(s): Edgar Welden

Representative(s): Ray Weygand, Weygand Surveyors, [ray@weygandsurveyor.com](mailto:ray@weygandsurveyor.com)

Request: Weldens Addition to Mountain Brook, being a resurvey of acreage in the NE ¼ of Section 5, Twp-18S, R-2W, Jefferson County, Alabama.

Action Taken: The Planning Commission voted to approve the plat as submitted. Approved plats must be recorded in the Jefferson County Office of the Probate Judge within 60 days of the date of approval by the Planning Commission.

A handwritten signature in dark ink, appearing to read "Dana O. Hazen".


Dana O. Hazen, MPA, AICP  
Director of Planning, Building and Sustainability



**RESOLUTION NO. 2023-194**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a right-of-way encroachment agreement between the City and Patrick S. Cooney and Virginia L. Cooney as trustees of the Lizbeth B. Cooney Qualified Personal Residence Trust No. 1, in the form as attached hereto as Exhibit A, with respect to the property located at 3613 Montclair Road subject to appropriate language being added to provide flexibility.

**ADOPTED:** This 13th day of November, 2023.

  
Council President

**APPROVED:** This 13th day of November, 2023.

  
Mayor

**CERTIFICATION**

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on November 13, 2023, as same appears in the minutes of record of said meeting.

  
City Clerk



**CITY OF MOUNTAIN BROOK**

**Dana O. Hazen, AICP**  
**Director of Planning, Building & Sustainability**  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205/802-3816  
Fax: 205.879.6913  
hazend@mtnbrook.org  
www.mtnbrook.org

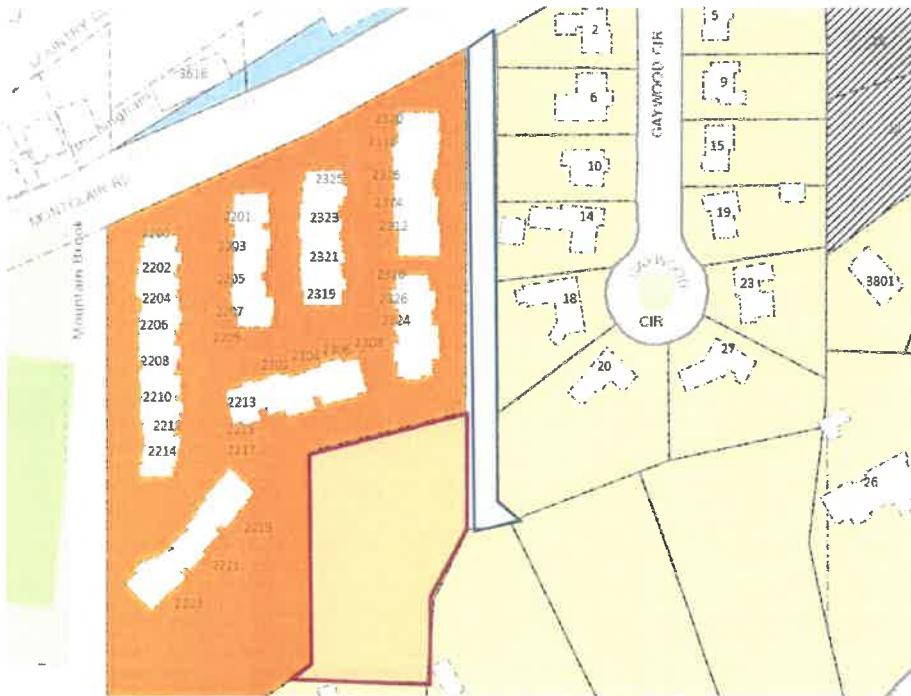
**DATE:** November 13, 2023

**TO:** Mayor, City Council & City Manager

**FROM:** Dana Hazen, City Planner

**RE:** ROW Encroachment Agreement – 3613 Montclair Road

The applicant wishes to build a single family dwelling on the Res-A site shown below in red. This property has road frontage on the unpaved road ROW shown in blue:



The subject ROW was created in 1927 as a 40-foot right-of-way to serve 4 lots at the southern terminus of the ROW, in the City of Birmingham at that time. The subject single family lot (taken together with several acres on the south side of Montclair Road) was subsequently annexed into the city of Mountain Brook and zoned Residence-A.

See attached plan and profile for the driveway (embedded in the encroachment agreement). The applicant has been working with the Fire Marshal on the driveway as to its ability to support emergency vehicles weight and turnaround; it has been approved accordingly.

**THIS INSTRUMENT PREPARED BY:**

Whit Colvin  
Bishop Colvin, LLC  
1910 First Avenue North  
Birmingham, AL 35203

Clerk: NICOLE

**JEFFERSON COUNTY     }**  
**STATE OF ALABAMA    }**

**RIGHT-OF-WAY ENCROACHMENT AGREEMENT**

This **Right of Way Encroachment License Agreement** (the "Agreement") is entered this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **City of Mountain Brook, Alabama**, a municipal corporation (hereinafter the "City" or "Licensor"), and **Patrick S. Cooney and Virginia L. Cooney as trustees of the Lizbeth B. Cooney 2011 Qualified Personal Residence Trust No. 1** (hereinafter individually or collectively referenced for purposes of this Agreement as the "Licensee").

**WITNESSETH:**

**WHEREAS**, the Licensee represents that they own the following real property located in the City of Mountain Brook, Jefferson County, Alabama:

Address:       3613 Montclair Road, Mountain Brook, Alabama 35213  
Parcel ID #:   28-00-05-1-002-019.000  
Legal Description:   See attached ***Exhibit A***

(the "Property");

**WHEREAS**, the Licensee has proposed to develop the Property as a single family, detached, residential dwelling (the "Development Plan"); and

**WHEREAS**, access to the Property is provided by a forty (40) foot wide, unimproved public right-of-way which extends to the Property from Montclair Road, as depicted on the survey attached hereto as ***Exhibit B*** (the "City Right-of-Way"); and

**WHEREAS**, the Licensee desires to install and maintain a private drive within the City Right-of-Way in accordance with the plan (the "Plan") prepared by Live Oak Engineering, dated the 17<sup>th</sup> day of February, 2023, a copy of which is attached hereto as ***Exhibit C*** (hereinafter the "Improvement"), and intends that the Improvement will be used as access to the Property by the occupants of the Property, their guests and invitees, City fire, police and emergency vehicles, and other service and emergency vehicles; and

**WHEREAS**, part or all of the area in which the Improvement will be installed lies within and encroaches upon the City Right of Way (hereinafter, the "Encroachment Area"); and



**WHEREAS**, the City finds and determines that, under the specific facts and circumstances, the significant public benefit of constructing the Improvement within the City Right-of-Way justifies the use of City Right-of-Way for the purposes requested; and

**WHEREAS**, subject to terms, conditions, and understandings herein, the City agrees to grant the Licensee a license to install and use the encroaching Improvement within the City Right-of-Way.

**NOW, THEREFORE**, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The City grants the Licensee license to utilize the City Right-of-Way for purposes reasonably related to the construction, installation, maintenance and use of above-described encroaching Improvement within the Encroachment Area (the "License").

2. The Licensee agrees and acknowledges that this Agreement grants only a license, not any interest, title, permanent right, or estate. The grant made hereunder runs with land and to Licensee and subsequent purchasers, mortgagees, and occupants of the Property, but not to any other lands or parties. Further, the Licensee agrees to not claim any title interest in the Encroachment Area by entering into this Agreement or by its use of any contemplated encroaching Improvement, the Licensee, for itself and its successors and assigns, recognizing that the Encroachment Area remains a public way.

3. The Licensee agrees to (a) keep the Encroachment Area clean and free of debris, weeds or overgrown grass, (b) maintain the contemplated encroaching Improvement in good and sound condition, and (c) not use the Encroachment Area or any encroaching Improvement in a manner that creates a hazard or causes damage to any third persons or adjacent properties.

4. The Licensee may not assign or transfer this Agreement (or any benefit, right or obligation hereunder) to any third party (except to subsequent purchasers, mortgagees, and occupants of the Property) without advance written consent by the City, which consent shall not be unreasonably withheld.

5. All plans, designs and work to construct any contemplated encroaching Improvement shall be subject to review and approval of the City's Building Inspection Department, or such other department as the City may designate. Further, the Licensee agrees that all operations related to the installation or maintenance of any such Improvement will comply with applicable federal, state and local laws, ordinances and regulations (including but not limited to, license and permit requirements) that relate to those operations.

6. The Licensee shall not permit any mechanic's or materialman's lien to be filed against the City or concerning the Encroachment Area by reason of any labor, services, materials or equipment supplied or claimed to have been supplied to construct or maintain any encroaching Improvement (collectively, a "Lien"). If such a Lien is filed, then the Licensee, after notice of its filing, promptly shall either (a) cause the same to be discharged by depositing adequate funds in court or issuing a bond; or (b) indemnify the City against any loss from a Lien by posting security or taking other actions that are reasonably satisfactory to the City.



7. The Licensee, for itself and on behalf of any of its heirs, personal representatives, authorized assigns or other persons or entities that may succeed to its interest in this Agreement (collectively the "Licensee" for purposes of this provision) agrees to waive, release, indemnify, defend and hold harmless the City, and its officers, employees, and representatives (collectively for purposes of this provision, the "City"), from and against any claim, liability, loss, expense (including, reasonable attorney fees and costs of court), demand or action asserted against the City by the Licensee or by any third party claiming personal injury, property damage or any other loss of any kind (collectively, a "Claim") that arises from or is in any manner related to (a) the Licensee's use of the License granted herein or the Encroachment Area, or (b) any encroaching Improvement placed in the City Right-of-Way. The scope of this indemnification obligation includes Claims that are caused or allegedly caused in whole or part by the negligence of the City; provided that the Licensee shall not be obligated hereunder to indemnify the City for Claims that are caused by the gross negligence or willful misconduct of the City.

8. If the Licensee removes or substantially modifies an encroaching Improvement after this Agreement is executed, it shall not replace or construct another or different Improvement or structure in the City Right-of-Way without advance approval from the City; provided that nothing herein shall prohibit the Licensee from maintaining, repairing or refurbishing any encroaching Improvement contemplated by this Agreement.

9. In the event that the City elects to improve, or otherwise authorizes the improvement of, the City Right of Way as a public street or road such that access to the Property is provided thereby, the License shall be revoked, and this Agreement terminated. In such event, all Improvements may be removed by City at its discretion.

10. All notices that may be required to be given hereunder shall be deemed to have been properly given if in writing and (a) if personally delivered, or (b) sent either by registered or certified mail, postage prepaid, and addressed as follows, or by nationally recognized overnight courier to the following address (or such other address as a party may designate in writing):

To the City:

City of Mountain Brook, Alabama  
Attention: City Manager  
56 Church Street  
Mountain Brook, AL 35213

To the Licensee:

Patrick S. Cooney and Virginia L. Cooney as trustees of the Lizbeth B. Cooney  
2011 Qualified Personal Residence Trust No. 1

3021 CHEROKEE ROAD  
MOUNTAIN BROOK, AL 35223

Notices shall be deemed given upon receipt or refusal of delivery.

11. Miscellaneous Provisions.

(a) This Agreement may not be amended or modified unless all parties execute a writing that is signed by their duly authorized representatives.

(b) The failure of the City to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of its right to subsequently compel enforcement of that or any other term, condition or provision herein. The rights, benefits and obligations under this Agreement may be waived only in a writing signed by the parties.

(c) This Agreement, and the conditions, terms and provisions herein, do not create, and are not intended to create or confer any benefit to any third party, except as set forth in this Agreement.

(d) This Agreement contains the complete agreement of the parties concerning the subject matter herein. Any prior negotiation, agreement or understanding, whether oral or written, concerning the matters addressed herein is superseded and of no effect unless expressed herein.

(e) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile or other form of electronic transmission, and any signature so transmitted will be given the same force and effect as an original signature.

(f) If requested by the City, Licensee shall record a fully executed form of this Agreement in the real property records of the Probate Court for Jefferson County.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the date hereinabove set forth.

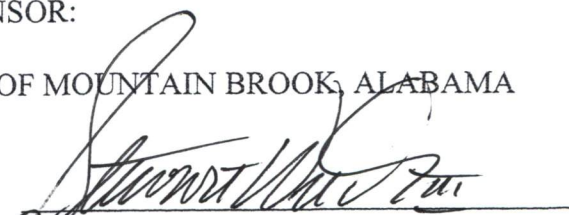
ATTEST:

  
City Clerk

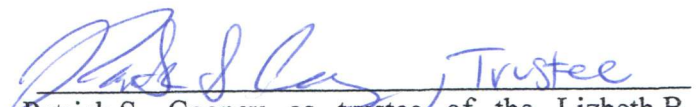
LICENSOR:

CITY OF MOUNTAIN BROOK, ALABAMA

By:

  
Stewart H. Welch, III  
Its Mayor

LICENSEE:

 Trustee  
Patrick S. Cooney as trustee of the Lizbeth B.  
Cooney 2011 Qualified Personal Residence Trust  
No. 1

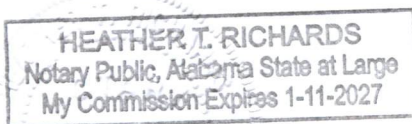


Virginia L. Cooney, trustee  
Virginia L. Cooney as trustee of the Lizbeth B. Cooney 2011 Qualified Personal Residence Trust No. 1

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Stewart H. Welch, III, whose name as Mayor of the City of Mountain Brook, Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Mayor and with full authority, executed same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this 27<sup>th</sup> day of November, 2023.



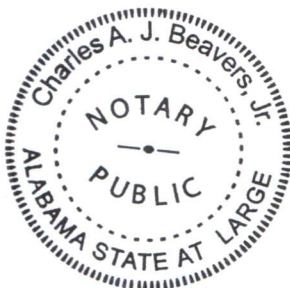
Heather T. Richards  
NOTARY PUBLIC

My Commission expires: 1-11-2027

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Patrick S. Cooney, whose name as trustee of the Lizbeth B. Cooney 2011 Qualified Personal Residence Trust No. 1, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Trustee and with full authority, executed same voluntarily for and as the act of said Trust.

Given under my hand and official seal this 18<sup>th</sup> day of NOVEMBER, 2023.



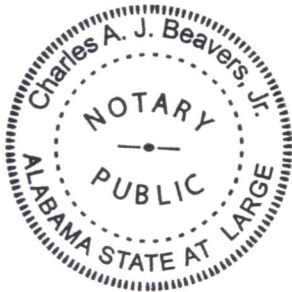
Charles A. J. Beavers, Jr.  
NOTARY PUBLIC

My Commission expires: MAY 4, 2025

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Virginia L. Cooney, whose name as trustee of the Lizbeth B. Cooney 2011 Qualified Personal Residence Trust No. 1, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she, as such Trustee and with full authority, executed same voluntarily for and as the act of said Trust.

Given under my hand and official seal this 18<sup>th</sup> day of NOVEMBER, 2023.



  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: MAY 4, 2025



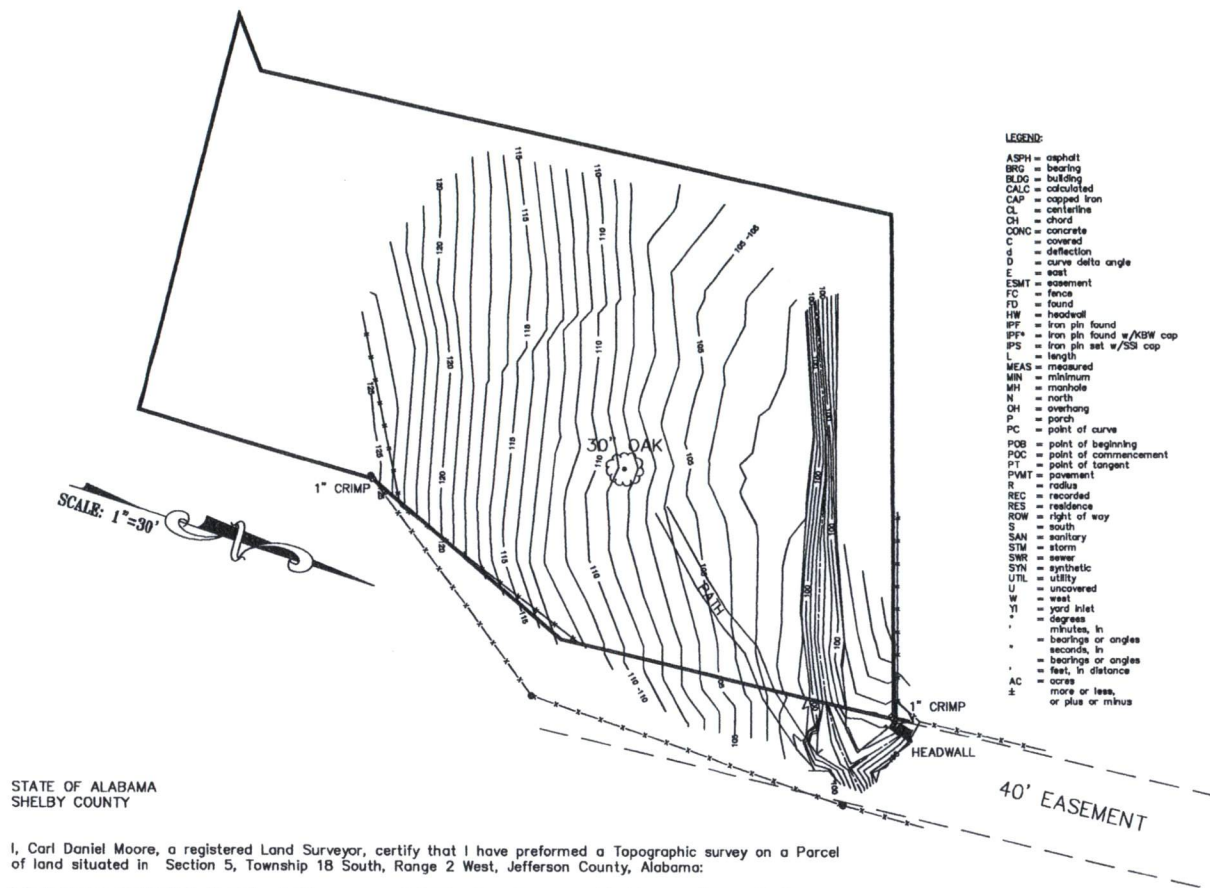
## **EXHIBIT A**

### **The Property**

#### **Legal Description:**

A tract of land situated in the northwest quarter of the northeast quarter of Section 5, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows: Commence at the southwest corner of said quarter-quarter section and thence run east along the south line of said quarter-quarter for a distance of 816.65 feet to a point; thence turn an angle to the left of 87 degrees 40 minutes 44 seconds and run northeasterly for a distance of 61.31 feet to the point of beginning; thence continue along last stated course for a distance of 105.78 feet to a point; thence turn an angle to the right of 24 degrees 16 minutes 00 seconds and run northeasterly for a distance of 107.80 feet to a point; thence turn an angle to the left of 28 degrees 15 minutes 34 seconds and run northerly for a distance of 148.92 feet to a point; thence turn an angle to the left of 102 degrees 46 minutes 35 seconds and run southwesterly for a distance of 218.92 feet to a point; thence turn an angle to the left of 77 degrees 16 minutes 34 seconds and run south for a distance of 279.97 feet to a point; thence turn an angle to the right of 56 degrees 16 minutes 51 seconds and run southwesterly for a distance of 25.71 feet to a point; thence turn an angle to the left of 144 degrees 02 minutes 48 seconds and run east for a distance of 176.33 feet to the point of beginning.

EXHIBIT "B"



- LEGEND:
- ASPH = asphalt
  - BKG = bearing
  - BLDG = building
  - CALC = calculated
  - CAP = capped iron
  - CL = centerline
  - CH = chord
  - CONC = concrete
  - C = covered
  - d = deflection
  - D = curve delta angle
  - E = east
  - ESMT = easement
  - FC = fence
  - FD = found
  - HW = headwall
  - IPF = iron pin found
  - IPF\* = iron pin found w/KBW cap
  - IPS = iron pin set w/SSI cap
  - L = length
  - MEAS = measured
  - MIN = minimum
  - MH = manhole
  - N = north
  - OH = overhang
  - P = porch
  - PC = point of curve
  - POB = point of beginning
  - POC = point of commencement
  - PT = point of tangent
  - PVMT = pavement
  - R = radius
  - REC = recorded
  - RES = residence
  - ROW = right of way
  - S = south
  - SAN = sanitary
  - STM = storm
  - SNR = sewer
  - STN = synthetic
  - UTL = utility
  - U = uncovered
  - W = west
  - YI = yard inlet
  - ' = degrees
  - " = minutes, in
  - ° = bearings or angles
  - ' = seconds, in
  - " = bearings or angles
  - ' = feet, in distance
  - AC = acres
  - ± = more or less, or plus or minus

STATE OF ALABAMA  
SHELBY COUNTY

I, Carl Daniel Moore, a registered Land Surveyor, certify that I have performed a Topographic survey on a Parcel of land situated in Section 5, Township 18 South, Range 2 West, Jefferson County, Alabama:

I furthermore certify that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information, and belief; according to my survey of September 7, 2020. Survey is not valid unless it is sealed with embossed seal or stamped in red.

Order No. 257121  
Owner: Dansby  
Type of Survey: Special purpose  
for a top of an area of land



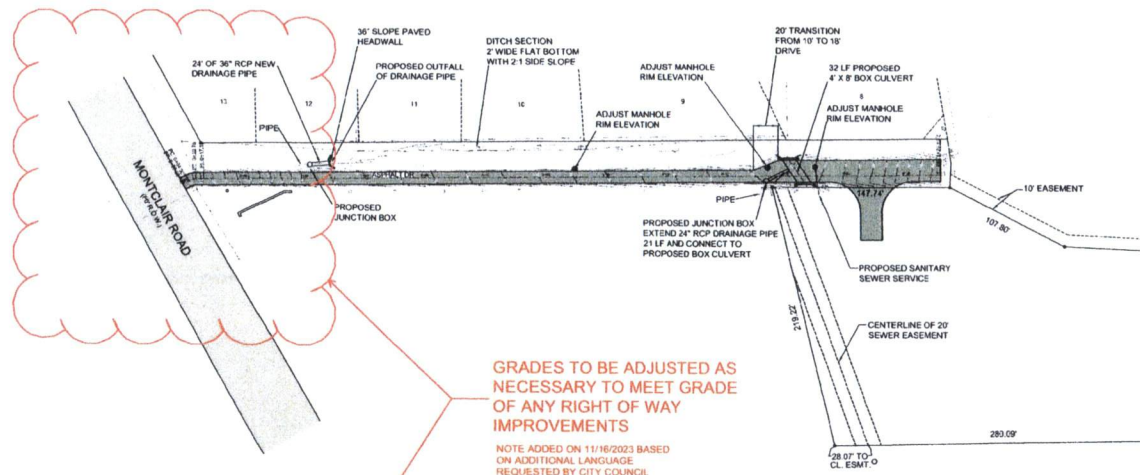
SURVEYING SOLUTIONS, INC.  
2232 CAHABA VALLEY DRIVE SUITE M  
BIRMINGHAM, AL 35242  
PHONE: 205-991-8965

*Carl Daniel Moore*

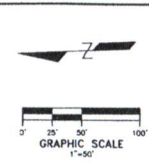
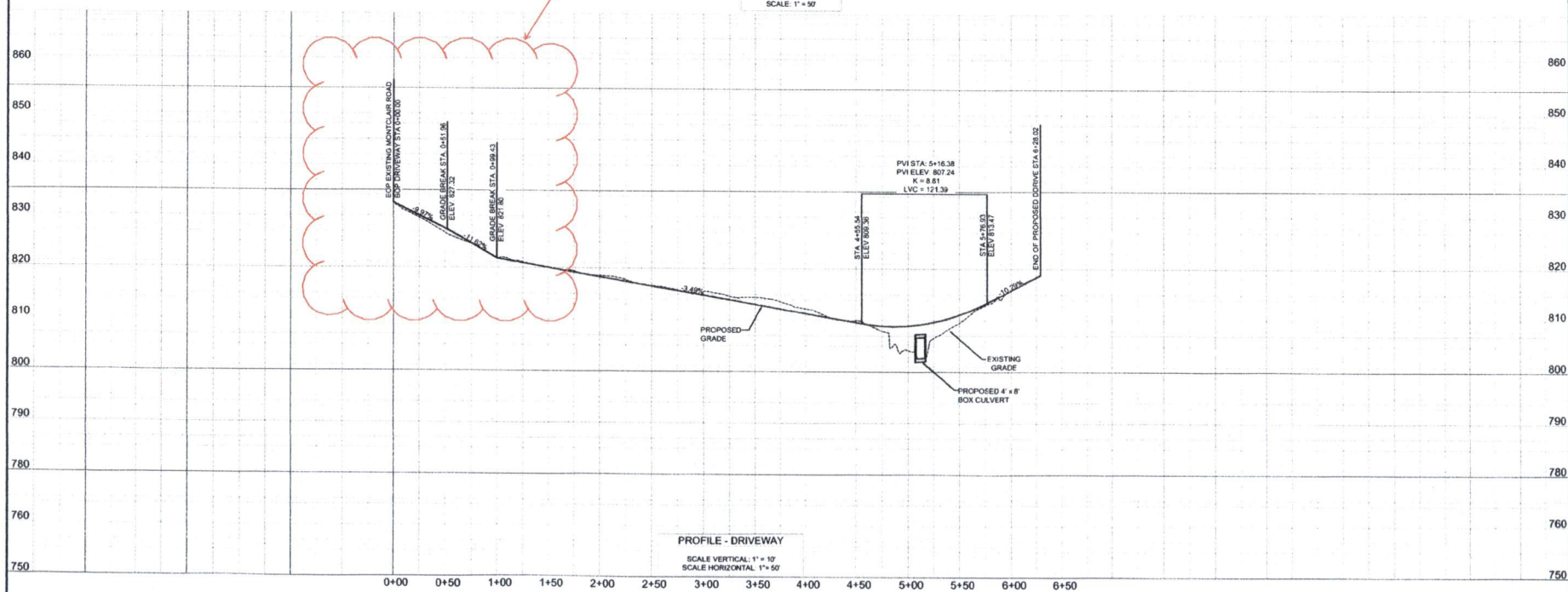
Carl Daniel Moore, Reg. L.S. #12159

09-17-2020  
Date of Signature

EXHIBIT "C"



PLAN - DRIVEWAY  
SCALE: 1" = 50'



**LIVE OAK ENGINEERING**  
2009 7th AVENUE SOUTH  
BIRMINGHAM, AL 35203  
LIVEOAKENGINEERING.COM

PROPOSED DRIVEWAY  
3613 MONTCLAIR ROAD  
MOUNTAIN BROOK, AL

SHEET REVISIONS:

#	DATE/REFERENCE

STAMP:

SHEET TITLE:  
**ROADWAY  
PLAN/  
PROFILE**

DATE: 02.17.2023  
SHEET NUMBER: 1 OF 1

**GM-1**

## **Amendments to the Zoning Code**

Article XVI (Planned Unit Development)

Article XXV (Amendments)

### ***Summary***

Article XVI (PUD) was adopted in 2008, and since that time the city has been able to assess whether or not the adopted framework of that ordinance has achieved the goals it was intended to achieve (as far as processing and implementation). To that end the following amendments are proposed.

There are three major points to the proposed amendments to the two articles regarding the rezoning process (in general) and rezoning to PUD (more specifically); all involve the timing of PUD zoning expirations, and the granting of PUD time extensions prior to zoning expirations.

### ***Expiration of Approval PUD Zoning***

The first change is to revise Section 129-266, the one-year expiration of a PUD zoning approval (failure to begin construction) to two years; recognizing that, given the supply chain issues related to construction, allowing only one year to pull permits and begin construction may, practically, be too short a time period.

This code section currently grants the planning commission sole discretion as to whether a 6-month extension period may be granted prior to an expiration. The revision proposed is that the city council should hear and grant any extension of the zoning approval, rather than the planning commission.

### ***Wait Period Before Re-Application of Same Denied Zoning***

The second change is to revise Section 129-436, the two-year minimum waiting time required before an applicant for rezoning may reapply for the same zoning (or the same PUD master plan in the case of PUD rezoning), after having been denied for that same rezoning by the city council.

The proposed revision is 2-fold; the first is for the waiting period to be one year instead of two years. The second involves changing this section to where the wait period applies only to a case wherein the city council has voted to deny an application.

Currently, in addition to the imposing of a wait period in instances where a rezoning case has been denied by the city council, the code also imposes the wait period to a rezoning case wherein the applicant withdraws the case after the planning commission has made a recommendation to the city council, but before the city council has voted on that case.

The revision proposed herein is to strike that section of the code, altogether. So a rezoning case may be withdrawn prior to a city council vote, without penalty of a wait period to reapply. This would allow an applicant the opportunity to withdraw the case



and potentially make revisions to it, and return back to the planning commission without a wait period.

### ***Minor Clean-Up Revisions***

With regard to timelines, any references to *construction having begun* have been defined as “relevant permits must have been issued by the city, and related construction work must have commenced.”

Throughout the amendments the code describes the city official who oversees the rezoning application process and to whom the applications are submitted as the “city clerk.” The proposed revision is to change the language from “city clerk” to “zoning official;” this is how the process has operated for the past 16 years.

Old code references to the required submittal of 15 and 17 paper copies of the rezoning application and related plans has been revised to “one digital copy,” since we have long since ceased taking applications in paper form.

**CITY OF MOUNTAIN BROOK  
NOTICE OF PROPOSED AMENDMENTS TO THE ZONING  
ORDINANCE AND OF PUBLIC HEARING THEREUPON**

Notice is hereby given that at a regular meeting of the Planning Commission of the City of Mountain Brook, Alabama, to be held on March 4, 2024, at 5:30 p.m. in Council Chambers at Mountain Brook City Hall, 56 Church Street, Mountain Brook, Alabama, said Planning Commission will hold a public hearing to consider proposed amendments to Article XVI and Article XXV of the Code of the City of Mountain Brook as follows:

**“ARTICLE XVI. – Planned Unit Development (PUD)**

**Sec. 129-266. – Additional requirements and provisions.**

- (c) *Failure to begin construction.* Construction of the approved development must begin (relevant permits must have been issued by the city, and related construction work must have commenced) within ~~one two~~ years from the date of the approval of the master development plan by the city council ~~unless a different period is established by the city council as part of its approval of the application.~~ Any approved changes in the plan shall not extend the time at which said ~~one two~~-year period begins to run ~~unless otherwise specified by the City Council as part of approval of such changes.~~ The ~~planning commission city council~~ may, no sooner than 60 days prior to the end of said ~~one two~~-year period, upon the written request of the applicant, extend such ~~one two~~-year period for a period ~~to be determined by the City Council of not more than six months~~ if, in the judgment of the ~~planning commission city council~~, such additional time is warranted. In any event, the construction of the PUD must be started within ~~one two~~ years ~~and six months~~ or for other such time as is otherwise specified by the City Council, of the approval of the master development plan by the city council and must be completed within the period of time determined by the city council for each PUD (the "completion period"), subject to extension by the ~~planning commission city council~~, as provided hereinafter. If the ~~planning commission city council~~ extends the date by which construction of the PUD must be started, it may, but it shall not be obligated to, extend the completion period for the PUD by a period of time which may be less, but may not be greater, than the length of time by which the commencement date was extended. Failure to begin the development of the PUD within said ~~one two~~-year period, or the period as extended, or to complete the development within the completion period, or the extended completion period, shall automatically void the master development plan, and the zoning classification shall automatically revert to the zoning classification in effect for such parcel prior to its being rezoned a Planned Unit Development District.

No building permit shall then be issued (except a permit for a building which would be in compliance with such prior zoning classification) until a new master development plan has been resubmitted and approved in accordance with the procedures set forth in this article for an initial submission and approval. The development of a PUD shall be considered to be complete when the land has been resurveyed or subdivided in accordance with the subdivision regulations of the city (if such resurvey or subdivision is required), the subdivision plat has been recorded in the office of the Judge of Probate of Jefferson County, Alabama, the installation of all utilities which are to be used in the

PUD has been completed (except for service lines to individual dwelling units), all required streets (public or private), curbs, gutters and sidewalks have been installed in the PUD and the final coat of paving has been placed on all streets in the PUD.

- (d) *Development in phases.* If a PUD is to be constructed in stages, the construction (~~relevant permits must have been issued by the city, and related construction work must have commenced~~) of the first stage must begin within ~~one~~ two years from the date of the approval of the master development plan by the city council, and each additional stage must begin no later than the construction commencement date for each such stage as provided for in the development schedule approved by the city council. In all cases, progress towards completion of the development should proceed in accordance with said development schedule. Failure to comply with this provision shall constitute a deviation from the master development plan, and the provisions and procedures of this section shall apply accordingly.
- (e) When the PUD application is filed, a processing fee, as provided for in section 19-471(c), must be paid to the zoning officer, and the applicant shall provide the city with ~~17 copies~~ a digital copy of the preliminary plan and attendant documents and information. During the time the preliminary plan is under consideration by the planning commission, the applicant shall furnish the zoning officer with ~~17 copies~~ a digital copy of any revisions of the preliminary plan. During the time the preliminary plan or the master development plan is under consideration by the city council, the applicant shall furnish the zoning officer with ~~15 copies~~ a digital copy of any revisions of the preliminary plan or the master development plan.

## **ARTICLE XXV. – Amendments**

### **Sec. 129-432. – Petitions for rezoning.**

The owner of any parcel, or an authorized representative of such owner, may present a request for rezoning of such parcel by filing an application for rezoning and a preliminary site plan of such parcel with the ~~city clerk~~ zoning officer. Materials and/or information in addition to that provided for by the application may be required with respect to requests for changes to certain zoning classifications, as set forth in this chapter. Such additional materials or information must be filed with the application, or, if some or all of such additional materials are requested by the zoning officer or the planning commission after the application has been filed, such materials must be filed with the zoning officer within a reasonable time after such request, to enable the members of the planning commission to review the materials prior to the public hearing to be held by the planning commission.

### **Sec. 129-435. Amendment procedure.**

After an application for rezoning has been determined to contain all of the required materials and information, the application will be submitted to the planning commission for consideration. The planning commission will hold a public hearing, after giving notice, as permitted by applicable law, of its consideration of the rezoning application. Following the public hearing, the ~~zoning officer~~ ~~planning commission~~ shall forward to the city council ~~it's~~ the planning commission's recommendation with respect to the proposed rezoning. After receiving the ~~planning commission's~~ recommendation from the ~~planning commission~~ zoning

officer, the city council shall also give notice as permitted by applicable law and hold a public hearing to consider the proposed rezoning, after which the city council will take action on the proposed amendment.

**Sec. 129-436. Time limit.**

- (a) If the city council denies an application for an amendment to this chapter, another application for the same amendment to this chapter ("subsequent application") ~~(in the case of proposed PUD, the same master development plan), and made by the same applicant~~ shall not be considered by the planning commission or the city council until ~~two one~~ years ~~have has~~ elapsed from the date on which the application was denied by the city council ~~or, If the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, until two years have elapsed from the date on which the planning commission made its recommendation.~~ another application for the same amendment to this chapter may be made to the planning commission at any time.

Notwithstanding the foregoing, within less than ~~two one~~ years from the date on which an application for an amendment to this chapter was denied by the city council ~~or, if the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, within less than two one years from the date on which the planning commission made such recommendation,~~ the city council, by a resolution adopted by its members, may request the planning commission to make a recommendation to the city council with respect to, a subsequent application and, after receiving such recommendation from the planning commission, consider the subsequent application.

- (b) If the city council denies an application for a change in the zoning classification of a parcel, another application for the same change in the zoning classification of the parcel ~~(in the case of proposed PUD, the same master development plan), or any part of such parcel, and by the same applicant,~~ shall not be considered by the planning commission or the city council until ~~two one~~ years have elapsed from the date on which the application is denied by the city council or, if the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, until ~~two one~~ years have elapsed from the date on which the planning commission made its recommendation.
- (c) Notwithstanding the provisions of subsection (b) above, if the decision of the city council to grant an application for a change in the zoning classification of a parcel is challenged in the Jefferson County Circuit Court ("circuit court") and if the final judicial determination is that such application will not be granted, regardless of whether such decision is made by the circuit court or by an appellate court to which the decision of the circuit court is appealed, another application for the same change in the zoning classification of the parcel ~~(in the case of proposed PUD, the same master development plan), or any part of such parcel, and by the same applicant,~~ shall not be considered by the planning commission or the city council until ~~two one~~ years ~~have has~~ elapsed from:
- (i) the date on which the decision or order of the court, whether it be the circuit court



or an appellate court, is final and the time for appeal, or further appeal, has expired; or (ii) the date on which such legal proceeding is dismissed if it is dismissed prior to a final judicial determination being made with respect to such application.

- (d) Notwithstanding the provisions of subsection (b) above, if the decision of the city council to deny an application for a change in the zoning classification of a parcel is challenged in the circuit court and if the final judicial determination is that such application will not be granted, regardless of whether such decision is made by the circuit court or by an appellate court to which the decision of the circuit court is appealed, another application for the same change in the zoning classification of the parcel (in the case of proposed PUD, the same master development plan), or any part of such parcel, and by the same applicant, shall not be considered by the planning commission or the city council until five years have elapsed from: (i) the date on which the decision or order of the court, whether it be the circuit court or an appellate court, is final and the time for appeal, or further appeal, has expired; or (ii) the date on which such legal proceeding is dismissed if it is dismissed prior to a final judicial determination being made with respect to such application.
- (e) Notwithstanding the provisions of subsections (b), (c) and (d) above, the city council may consider an application for a proposed change in the zoning classification of a parcel, or any part of the parcel, and by the same applicant, which, under subsection (b), subsection (c) or subsection (d) above was not to have been considered within the respective ~~two one~~-year periods referred to in said subsections (b) and (c) or within the five year period referred to in said subsection (d), after receiving from the planning commission a recommendation with respect to such proposed rezoning of the parcel; provided, that prior to the consideration of the proposed change in the zoning classification of such parcel, or any part of such parcel, by the planning commission: (i) the city council determines that, because of reasons which would be proper for the city council to consider with respect to the proposed change in the zoning classification of the parcel, or such part of the parcel, it would be appropriate for the city council to consider changing the zoning classification of the parcel, or such part of the parcel, at such time; and (ii) the city council adopts a resolution providing that it has made such determination.
- (f) If an application for a change in the zoning classification of a parcel is filed with the ~~city clerk~~ zoning officer and: (i) at any time prior to the city council's consideration of the application at a meeting of the city council, the city council determines that the application is one which, under subsection (d) above, is not to be considered by the planning commission or the city council until the expiration of the five year period referred to in said subsection (d); (ii) the city council does not make the determination and adopt the resolution referred to in subsection (e) above; and (iii) ~~two one~~ years have has elapsed from the date on which the decision or order of the court referred to in subsection (d) above is final and time for appeal, or further appeal, has expired or ~~two one~~ years have has elapsed from the date on which the legal proceeding referred to in subsection (d) above is dismissed if it is dismissed prior to a final judicial determination being made with respect to the application which was the basis for such legal proceeding, the city council may, by a resolution adopted by its members, agree to consider the application on the conditions that the applicant agree in writing that: (i) if the city council denies the application to change the zoning classification of the parcel and the applicant challenges such decision of the city council in the circuit court, the

applicant shall be obligated to reimburse the city for the costs incurred by the city in defending such challenge (including, without limitation, attorneys' fees, court costs and fees and expenses of expert witnesses) (collectively, "costs") if the final court order with respect to such decision of the city council, whether it be the order of the circuit court or a decision of an appellate court, shall uphold the city council's decision to deny the application to change the zoning classification of the parcel; and (ii) that the applicant post a bond in an amount which the city council determines will be sufficient to reimburse the city for the costs ("bond"). "

At the aforesaid time and place, all persons who desire shall have an opportunity to be heard in opposition to or in favor of adoption of the proposed amendment.

**For questions concerning these proposed zoning amendments, please contact:**

Dana Hazen, AICP, MPA  
Director of Planning, Building & Sustainability  
205/802-3816  
hazend@mtnbrook.org

**CERTIFICATION**

I, Tammy Reid, Administrative Analyst for the City of Mountain Brook, Alabama, do hereby certify that I have caused notice of the proposed amendment to the zoning ordinance and of public meeting thereupon set forth above to be published and provided in the manner specified by Article XXV, Sec. 129-431, of the Mountain Brook City Code. I further certify that I have posted said notice in four conspicuous places within the City of Mountain Brook, in the manner and within the time permitted by law, said places being:

Mountain Brook City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road  
Cahaba River Walk, 3503 Overton Road  
Overton Park, 3020 Overton Road

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Tammy Reid, Administrative Assistant