

SUBJECT: Appeal of Decision of the Historic Preservation Commission  
Concerning Property Located at 1354 The By Way

***ATTACHMENTS (PAGES)***

1. *Attachment list (page 1)*
2. *Appeal and supplementals (pages 2-16)*
3. *Certificate of Appropriateness and Decision Form (pages 17-19)*

**(All information below this line was provided to the preservation commission for their consideration in making their decision.)**

*Administrative Record*

4. *Photos (pages 20-47)*
  1. *Photos from the Real Estate Listing*
  2. *Photos from Google Streetview Overtime*
  3. *Photos from Staff site visit August 2021*
5. *August Record (New appeal) (pages 48-84)*
  1. *Staff report*
  2. *1354 The By Way Application and Response to Remand*
  3. *Opposition Materials*
6. *June Record (previously remanded) (pages 85-198)*
  1. *Approved Application and supporting materials*
  2. *1997 COA info*
  3. *Appeal to BOC*
  4. *Tree removal violation*

# Appeal, Supplement, and Supporting Letters



Chief Executive Officer  
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director  
Andrew A. Baker, AICP

## Application to Appeal a Decision of the DeKalb County Historic Preservation Commission

**All appeals must comply with the procedures set forth herein.**

An application to appeal a decision of the Historic Preservation Commission on a certificate of appropriateness application must be filed within fifteen (15) calendar days after the issuance or denial of the certificate of appropriateness.

**To be completed by County:**  
**Date Received:**

**To be completed by appellant:**

**Name:** Hamish Caldwell and Dalia Judovitz

**Address of appellant:** 1366 The By Way NE, Atlanta, GA 30306

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**Address of Property:** 1354 The By Way NE, Atlanta, GA 30306

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This appeal is a review of the record of the proceedings before the preservation commission by the governing authority of DeKalb County, Georgia. The governing authority is looking for an abuse of discretion as revealed by the record. An abuse of discretion exists where the record presented to the governing authority shows that the preservation commission: (a) exceeded the limits of its authority; (b) that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or; (c) that the preservation commission's decision was otherwise arbitrary and capricious.

**If the governing authority finds no abuse of discretion, then it may affirm the decision of the preservation commission. If the governing authority finds that the preservation commission abused its discretion in reaching a decision, then it may; (a) reverse the preservation commission's decision, or; (b) it may reverse the preservation commission's decision and remand the application to the preservation commission with direction.**

**Date(s) of hearing, if any:** HPC 3/15/21 and 5/17/21 and 8/30/21; BOC Appeal 7/13/21

**Date of Historic Preservation Commission decision:** Decision 8/31/21; COA 8/31/21

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DEPARTMENT OF PLANNING & SUSTAINABILITY

Historic Preservation Commission  
Appeal Form  
Page 2 of 2

In the space provided below the Appellant must describe how the preservation commission's decision constitutes an abuse of discretion. Specifically, the appellant must, citing to the preservation commission's written decision, show at least one of the following: that the preservation commission exceeded the limits of its authority, or that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) of the DeKalb County Code or on the guidelines adopted by the preservation commission pursuant to section 13.5-6 of said code or that the preservation commission's decision was otherwise arbitrary and capricious.

**Grounds for appeal:**

The decision by HPC is arbitrary and capricious and constitutes an abuse of discretion in multiple ways including: (1) By not requiring large replacement trees in the State stream buffer, the decision fails to follow BOC direction. (2) The decision contravenes HPC's historic preservation mission, the Druid Hills Historic Guidelines, Dekalb Ordinance Sec. 14-44.1 (a) (1) and GA Rules & Regulations Rule 391-3-7-.05. (7) (c) and (d) thus permitting continuing violations. For these and additional reasons described in the accompanying Supplemental Explanation the decision must be reversed and the application remanded to HPC to uphold its mandate for historic landscape preservation with direction to modify the planting plan to include 8 large trees on the streambank and revegetation with native-only species, multi-riparian conditions in the State and County stream buffers with plants of all sizes instead of lawn.

The appellant may submit a written supplementary explanation in support of the appeal. The supplementary explanation shall be submitted with the appeal. The supplementary explanation may not exceed three pages and must be typewritten and double-spaced using a twelve-point font with a one-inch margin on all four sides. The governing authority will not consider text in excess of the page limit set forth herein.

Date: 9/13/21

Signature:  / 

**Instructions:** The appellant shall also deliver copies of this appeal to the planning department and the county attorney. The appellant and any person who has filed a statement in opposition to, or in support of the appeal may attend the meeting at which the appeal is considered and may be called upon by any member of the governing authority to provide information or answer questions. There shall be no other public participation in the appeal.

10/24/201

## APPELLANT'S SUPPLEMENT TO APPEAL

APPEAL OF	)	Historic Preservation Commission
HAMISH CALDWELL	)	Property 1354 The By Way NE
& DALIA JUDOVITZ	)	Decision Dated 31 August, 2021

**Introduction:** The Historic Preservation Commission decision to approve a COA is arbitrary and capricious and an abuse of discretion in multiple ways.

**Item 1:** The replanting of overstory trees **on the streambank in the State stream buffer** was the focus of the appeal that resulted in the **BOC in July reversing the May HPC decision and remanding the application with direction**. Neither the Staff recommendation nor the August application complies with the BOC direction that HPC pay “particular attention to the role of overstory trees” on the streambank. The **August application makes no change** from the previous May submittal with respect to overstory trees on the streambank. **By ignoring BOC direction the decision constitutes an abuse of discretion.**

**Item 2:** The decision **fails to fulfill the HPC historic preservation mission** by disregarding Olmsted’s plans for Druid Hills which were about landscape design. It creates a gap-tooth suburban lawn appearance where 12 trees, 25 years into maturation, had been standing until December 2020. It fails to remediate the violation of historic landscape on the streambank and it fails to address neighborhood community concerns about protecting the historic landscape and canopy. **Thus the decision is an abuse of discretion.**

**Item 3:** Legally, HPC’s decision a) vacates the prior COA, b) contravenes the Historic Design Guidelines, c) violates Dekalb ordinances and d) violates GA Rules & Regulations and consequently **is an abuse of discretion.**

(a) In 1997 the HPC affirmed the **landscape on the lot as being historic** by granting a COA for the development of the property based upon an application that included commitments

explicitly related to **preserving the historic landscape in the stream buffer.**

(b) The decision permits plantings “as shown in the Tree Permit Plan” that are a violation of the recommendation of **Druid Hills Design Guideline Sec. 9.3** that **“The native list should be used for natural areas within the district, such as creek corridors and drainage ways”**. According to the Druid Hills- Recommended Plant Materials List, the three kousa dogwoods proposed to be planted on the streambank are **NOT native**.

(c) The decision fails to “preserve any existing mature riparian forest that can provide shade, leaf litter, woody debris and erosion protection to the stream” on the streambank in the State stream buffer as required by **Dekalb County Ordinance Sec. 14-44.1 (a) (1)**.

(d) Irrespective of the conditions of the 12 large trees that were illegally removed from the streambank, or the applicant’s August justifications, **GA Rules & Regulations Rule 391-3-7-.05. (7) (c) and (d) for Buffer Variance Procedures and Criteria** state that **“Mitigation is required”** and it **“shall offset the buffer encroachment and any loss of buffer functions”** resulting in **“Restoration of the buffer to a naturally vegetated state”**.

**Item 4:** The decision is based on Staff interpretation of Area of Influence that was incorrect and **fails to take into account landscape features of other properties in the immediate neighborhood. Design Guideline Section 7.1** explicitly applies to **“new buildings or additions”** whereas the **application had zero construction** and **was only for “Installation of new trees”**. The AOI used neglected the historic landscape, historic canopy and unique stream topography that are the whole scope of this COA and the decision. The **appropriate AOI and immediate neighborhood** are the 4 lots that make up the Oakdale Commons Subdivision, including the subject. The other 3 lots have extensive tree canopy and no lawn in their front yards consistent with their location by a stream at the bottom of a ravine. In stating the “application relates to an existing building” rather

than historic landscape and canopy preservation, the decision fails to address those real issues under consideration in this COA. **Thus the decision is arbitrary and capricious.**

**Item 5:** HPC were willing to give over-riding consideration to the owner's safety concerns, though raised after the fact, based on undated arborist reports, to justify his removal of the 12 river birches in violation of State stream buffer ordinances. HPC failed to recognize that **no attempt was ever made by the owner to nurture the continued safe growth of any of the maturing trees by pruning or selective removal**. The decision also neglected the rebuttal from independent ISA Certified Arborist reports provided to Staff, and existing evidence of historic woodland conditions on abutting lots, that refute the notion than no large trees can be safely grown on this site. These reports confirm that overstory trees can be safely grown on streambanks and planting trees in floodplains is good and in compliance with **Historic Design Guideline Sec. 8.2 "Trees should be replaced"** including when trees **"are removed for safety reasons"** and **"Replacement trees should be of adequate size to make a visual impact in the district"**. By failing to protect the historic landscape, the decision fails to address safety concerns related to increased risks of flooding and erosion damage on our abutting property and shared driveway, and downstream lots, and denies and dismisses ancillary benefits of safety, restoration and protection of the stream bank. **Thus the decision is arbitrary and capricious.**

**Conclusion:** The decision must be reversed and the application remanded to HPC to uphold its mandate for historic landscape preservation with direction to modify the planting plan to include 8 large trees on the streambank and revegetation with native-only species, multi-riparian conditions in the State and County stream buffers with plants of all sizes instead of lawn.



TO: DeKalb County Board of Commissioners

FROM: Phil Moïse, 948 Oakdale Rd NE, at The Byway

CC: DeKalb County Department of Planning & Sustainability  
Hamish Caldwell and Dalia Judovitz  
Druid Hills Civic Association

DATE: September 16, 2021

RE: Support for the Caldwell/Judovitz Appeal of the Historic Preservation Commission's  
Second Approval of the Certificate of Appropriateness for the Property Located at  
1354 The Byway

Ladies and Gentlemen:

I'm writing this letter to support the Caldwell/Judovitz appeal of the approval by the DeKalb County Historic Preservation Commission (the "HPC") of a replacement replanting plan for the property located at 1354 The Byway (the "1354 property"), and to suggest that the important underlying historical preservation issues be addressed in depth by the interested parties prior to any further action by the HPC. I'm entitled to participate in this appeal because I live at 948 Oakdale Rd NE, which is within 1500 feet of the 1354 property.

A number of objections addressed in the first appeal still have not been met:

- Replacing existing native ground cover in the stream buffer in favor of a grass lawn is not acceptable.

- The Homeowner's landscape replacement plan is insufficient to address the 27 trees that were improperly cut down.
- The Homeowner's replacement plan impacts the character of the stream buffer that is out of place with the surrounding areas stream buffer's conditions and natural native ground cover. As noted in the support letter from The Lullwater Garden Club, failing to protect the stream bed will have serious downstream consequences, and I concur in all of the Garden Club's objections.

My biggest concern, which I raised in my support letter for the first appeal, is that:

“the original platting in 1996 of the 1354 property required the landscape to comply with the Druid Hills District's historic landscape requirement and prohibited any land disturbance on any and all trees over 12” in diameter; and in 1997 a conditional COA approval for development of the 1354 property required it to conform to the then-new Historic District Guidelines for Druid Hills.”

The HPC's second approval of the Homeowner's application again goes against both prior requirements granted to the 1354 property. I have read the report to the HPC by the Department of Planning & Sustainability, and I attended the August 30 HPC meeting. There seems to be an alarming disagreement between the HPC (upon the advice of the Department), on the one hand, and the neighborhood, on the other hand, as to the protection required to be given the neighborhood's tree overstory. Those of us who bought into this neighborhood and have lived here many years did so in part because of the historic tree overstory developed under the original Olmstead plan has always gone hand in hand with the historic structures. It

is therefore disturbing that established historic guidelines appear to have been brushed aside by the HPC apparently due to an innocent, but very real, misunderstanding of these guidelines. Based on these concerns I request that you reverse the HPC's second approval of the 1354 COA application and once again remand the Homeowner's application to the HPC with express directions to address the specific regulatory issues raised by 1354 COA application.

I also believe the residents of Druid Hills should not be left in the dark as to whether the HPC will enforce the overstory historic guidelines or will not enforce them. Given the serious implications of how this question is answered, I believe it should be addressed in a formal sit-down meeting of interested parties (including but not limited to the appellants, the Druid Hills Civic Association and the Department of Planning & Sustainability) instead of asking the HPC to once again attempt to address this issue as one item on a long monthly agenda.

Thank you for your consideration.



September 16, 2021

To: DeKalb County Clerk of Commissioners, DeKalb County Board of Commissioners and  
Department of Planning & Sustainability

RE: Support for the Appeal of the DeKalb Historic Preservation Commission's 8/31/21  
decision/approval of the Certificate of Appropriateness for the property located at 1354  
The By Way NE

To the DeKalb County Board of Commissioners,

As a neighbor who lives at 1193 The By Way, I write in support of the Caldwell/Judovitz appeal filed for your consideration relating to the DeKalb's Historic Preservation Commission's 8/31/21 decision/approval of the Certificate of Appropriateness for the property at 1354 The By Way. I believe the approval provided conflicts with the design guidelines that the DeKalb Historic Preservation Commission is required to uphold. The areas of concern area as follows:

- Replacing existing native ground cover in the stream buffer in favor of a grass lawn which is out of place with the surrounding area's steam buffers conditions
- Insufficient landscape replacement plan to address the extensive removal of 27 trees
- Replacing 12 overstory trees within the stream buffer out of the 27 cut down with 3 Kousa dogwoods that are classified as small trees in the Druid Hills Plant Material list and are not native
- Original platting in 1996 of the lot required the landscape comply with the Druid hills District's historic landscape requirement and no land disturbance on any and all trees

over 12" in diameter. In 1997 a conditional COA approval for development of the subject lot required it conform to the then-new Historic District Guidelines for Druid Hills. This application approval goes against both prior requirements granted to the subject property

- Setting a precedent for the extensive removal of trees that would degrade the amenity of Druid Hills

Based on these concerns, which are shared by many other homeowners in the neighborhood, I respectfully ask that the county consider reversing the HPC's approval of the Certificate of Appropriateness in connection with the appeal filed and direct the HPC that any future approval of the homeowner's COA application for 1354 The By Way must provide for the Caldwell/Judovitz request of modifying the planting plan to include 8 large native trees on the streambank and revegetation with plants of all sizes in multi-riparian conditions instead of a grass lawn in the stream buffers.

Thank you for your consideration.

Sincerely,

*Melanie Pinkerton Mackie*

Melanie Pinkerton Mackie

# Applicant response to the appeal

## **RESPONSE TO APPEAL OF 1354 THE BY WAY NE COA APPROVAL AUGUST 2021**

The second unanimous approval by the HPC and DeKalb County staff for the submitted Tree Permit Plan for a certificate of appropriateness, by the defining nature of the words, voids the affirmed decision's ability to be "arbitrary and capricious."

Regarding the approved plan, Dekalb County staff has been involved in four site visits and multiple entities within county staff including the Floodplain Coordinator, Master Arborist, Senior Planners, and Historic Commissions have now unanimously approved the submitted Tree Permit Plan (topic of COA) twice. The EPD has been made aware of the plans and has approved the work to be completed in compliance with EPD guidelines, stating a variance is not necessary. Proof of this has been submitted to the record. The violation that occurred in December 2020 was issued by the LIA and processed through the Magistrate Court of Dekalb County. The same LIA that issued the violation has now approved the re-planting plan twice. Senior Planners made a final site visit July, 2021 and issued an extensive staff report supporting the recommended approval for the Tree Permit Plan to be carried out.

The appeal recurrently cites "an abuse of discretion" in reference to what in actuality, is a contradiction to one's personal opinion.

In the July 13, 2021 Dekalb County BOC meeting, the BOC remanded the May COA to the HPC requesting they pay "particular attention to the landscape plan, the role of overstory trees, and Guideline 8.2 (Tree Conservation) of the Design Manual for the Druid Hills Local Historic District". In **Item 1** of the appeal, the appellant claims that direction by the BOC was ignored by the HPC because no change was made to the planting plan on the streambank. In reality, the role of overstory trees within the submitted Tree Permit Plan was thoroughly examined by county staff and the HPC as demonstrated in the county staff reports, and much discretion was used in making a final determination on the recommended approval. Just

because no change was required does not constitute ignorance or lack of discretion. In addition, another overstory tree was added to the August COA plan in the stream buffer.

Gap-tooth appearance concerns stated in **Item 2** of the appeal will be fully remediated once the approved tree plantings are installed. Additionally, the approved holly hedge along the roadside will mitigate any gap in vegetation along the road upon maturation. The approved plan remediates the necessary vegetation lost; it simply does not remediate it in the fashion the appellant would prefer.

Regarding **Item 3** of the appeal; the granting of a COA in 1997 for a home to be built did not require the development to fall under the historic (built before 1946) guidelines. **Section 7.0 New Construction & Additions** would have been the guidelines for the development to abide by. Second, the trees removed along the streambank did not exist on the property at the time the COA was granted in 1997. This was affirmed in the arborist report submitted to the record for the August, 2021 HPC meeting. Consequently, the River Birches in question were NOT part of the historic landscape at the time of the 1997 COA issuance, and there is no documentation that ever granted their approval to be planted. Moreover, it draws on the presumption that preserving historic landscaping in the stream buffer requires a homeowner to neglect hazardous vegetation to human life and home for the sake of historic preservation. It's prudent to note that the *Druid Hills Design Guidelines 8.2 Tree Conservation* states "Trees in deteriorated conditions or of advance age should be removed and replaced." The replacement of overstory trees on this streambank was NOT recommended by the Certified Arborist as they were not an adequate species for the site, and in the future would create the same safety hazards as the removed River Birches. Furthermore, overstory trees have been incorporated into the plantings throughout other parts of the property on the approved COA, and a more appropriate choice of understory trees have been selected to be planted on the streambank. In total there will be 57 trees on this .66 acre property which already includes a 4321 sq. ft home, drive way, hardscaping and creek. In rebut to **Item 3(c)(d)** no stream buffer variance was ever issued for the work, therefor it cannot be assumed that a variance would have been required and

mitigation correlating with said variance is necessary. However, we do know that per the violation a re-planting plan is necessary and has now been approved by members of the LIA twice. The planting plans DO offset any loss of the buffer's function and the buffer has already returned to a naturally vegetated state.

Considering **Item 4** of the appeal, the staff report generated for the COA specifically depicts the landscape features of properties in the immediate neighborhood, and how the approved COA is similar in nature to areas of influence. It is contradictory that the appellant discredits the county staff's interpretation of an Area of Influence stating "**Section 7.1** explicitly applies to new buildings or additions whereas the application had zero construction and was only for installation of new trees" yet, the appellant has been insistent with Mr. Franck Vignon Houenou that we obtain a building permit for this work. The appellant's perspective and opinion on the appropriate Area of Influence is assumed to be the correct one and implies it should supersede county staff's judgement.

**Item 5** Rebut: The Certified Arborist report in support of the COA clearly states the River Birches had been over-pruned leading to accelerated decay and the best option was removal. Again, it is assumed by the appellant that an unsolicited independent arborist report (which did not perform an on-site assessment of the tree conditions prior to removal, or after) was neglected. Trees removed are being replaced in compliance with Dekalb County code, have been approved by Dekalb County's Master Arborist, and are of adequate size to make a visual impact on the district and comply with **Section 8.2** of the Design Manual. The approved plan allows for planting of vegetation to satisfy the mitigation assumed necessary by the appellant.

After eight months of ongoing communication with county staff to ensure compliance and remediation, and having obtained a second unanimous approval we, Charles and Anne Marie Aubry, respectively request the BOC affirm the COA issued in August, 2021 for our property 1354 The By Way NE.

## Decision of the DeKalb County Historic Preservation Commission

### Remanded from the BOC

Name of Applicant: \_\_\_\_\_ Charles Aubry \_\_\_\_\_

Address of Property: \_\_\_\_\_ 1354 The By Way \_\_\_\_\_

Date(s) of hearing if any: \_\_\_\_\_ August 30, 2021 \_\_\_\_\_

Case Number: \_\_\_\_\_ 1244878 \_\_\_\_\_

☒ Approved      ☐ Denied      ☐ Deferred

**Approval:** The Historic Preservation Commission, having considered the submissions made on behalf of the applicant and all other matters presented to the Preservation Commission finds that the proposed change(s) will not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic district and hereby approves the issuance of a certificate of appropriateness.

Any conditions or modifications are shown below.

☒ Pursuant to Code of DeKalb County, § 13.5-8(3), the Preservation Commission has considered the historical and architectural value and significance; architectural style; scale; height; setback; landscaping; general design; arrangement; texture and materials of the architectural features involved and the relationship of such texture and materials to the exterior architectural style; pertinent features of other properties in the immediate neighborhood, as prescribed generally by county code and specifically by the district design guidelines.

☒ This application relates to an existing building, pursuant to the authority granted to the Preservation Commission by Code of DeKalb County, § 13.5-8(3), the Preservation Commission has also used the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guideline for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings therein as guidelines. The Preservation Commission finds that all relevant guidelines have been met.

#### **Additional pertinent factors:**

Plant six overstory trees (two purple beech, three scarlet oak, and one Ginkgo biloba) and four small trees (three dogwood and one Yoshino cherry) as shown in the Tree Permit Plan dated April 7, 2021. Plant twenty-two Nellie R. Stevens hollies as a hedge along the By Way right-of-way.

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Application is approved with conditions or modifications ☐/without conditions or modifications ☒

**Conditions or modifications (if applicable):**

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**Denial:** The Preservation Commission has determined that the proposed material changes in appearance would have a substantial adverse effect on the aesthetic, historic or architectural significance and value of the historic property or the historic district ☐ / or, the applicant has not provided sufficient information for the Preservation Commission to approve the application ☐. Specifically, the Preservation Commission finds as follows:

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**Deferral:** The Preservation Commission has deferred action on this application for the following reasons:

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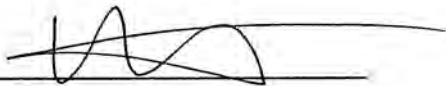
The application will be re-heard by the Historic Preservation Commission at its meeting on

\_\_\_\_\_.

**Date:**

8/31/21

**Signature:**



**Chair, DeKalb County  
Historic Preservation Commission**





**CERTIFICATE OF APPROPRIATENESS**

August 31, 2021

Site Address: 1354 THE BY WAY  
ATLANTA, GA 30306-

Parcel ID: 18-002-06-092

Application Date:

Applicant: Charles Aubry

Mailing Address: 1354 The By Way  
Atlanta, GA 30306

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**THIS IS TO ADVISE YOU THAT THE DEKALB COUNTY HISTORIC PRESERVATION COMMISSION, AT ITS REGULARLY SCHEDULED PUBLIC MEETING ON August 30, 2021, REACHED THE FOLLOWING DECISION ON THIS APPLICATION:**

**ACTION: Approval**

Plant six overstory trees (two purple beech, three scarlet oak, and one Ginkgo biloba) and four small trees (three dogwood and one Yoshino cherry) as shown in the Tree Permit Plan dated April 7, 2021. Plant twenty-two Nellie R. Stevens hollies as a hedge along the By Way right-of-way.

Photos taken prior to the current owners purchase of the property in 2020.

Downloaded from Trulia.com August 3, 3021.

















# Google Streetview Photos Overtime (2007 to present)





Image capture: Nov 2007 © 2021 Google

Atlanta, Georgia  
Google  
Street View



Image capture: Nov 2007 © 2021 Google

Atlanta, Georgia  
Google  
Street View





Image capture: Nov 2007 © 2021 Google

Atlanta, Georgia



Street View



Image capture: Apr 2012 © 2021 Google

Atlanta, Georgia



Street View







Image capture: Apr 2012 © 2021 Google

Atlanta, Georgia



Street View

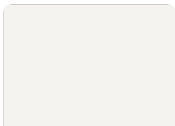
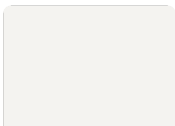


Image capture: Mar 2016 © 2021 Google

Atlanta, Georgia



Street View





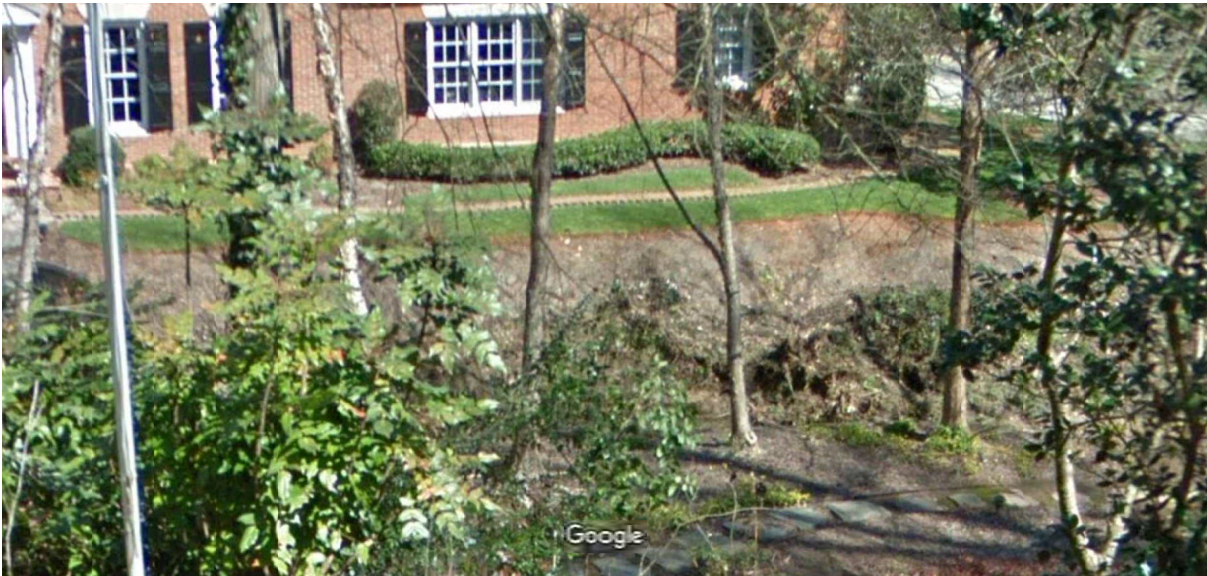


Image capture: Mar 2016 © 2021 Google

Atlanta, Georgia



Street View

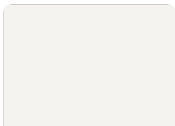


Image capture: Mar 2016 © 2021 Google

Atlanta, Georgia



Street View







Image capture: Aug 2016 © 2021 Google

Atlanta, Georgia



Street View



Image capture: Sep 2018 © 2021 Google

Atlanta, Georgia



Street View







Image capture: Oct 2019 © 2021 Google

Atlanta, Georgia



Street View

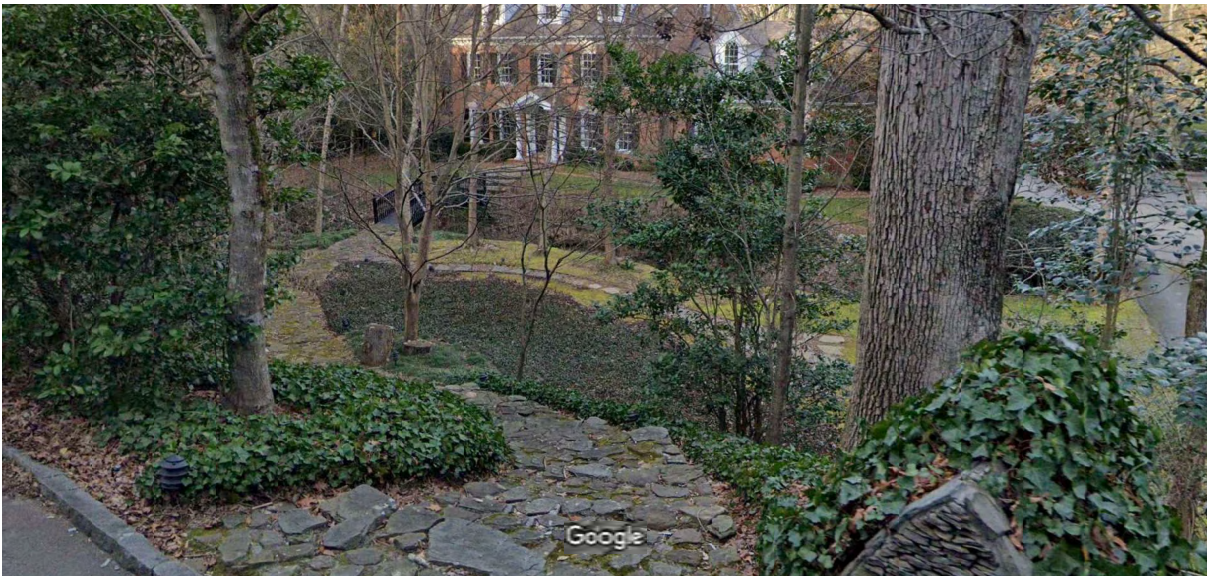
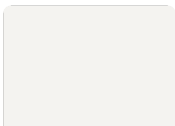


Image capture: Feb 2020 © 2021 Google

Atlanta, Georgia



Street View







Google Maps 1354 The by Way NE

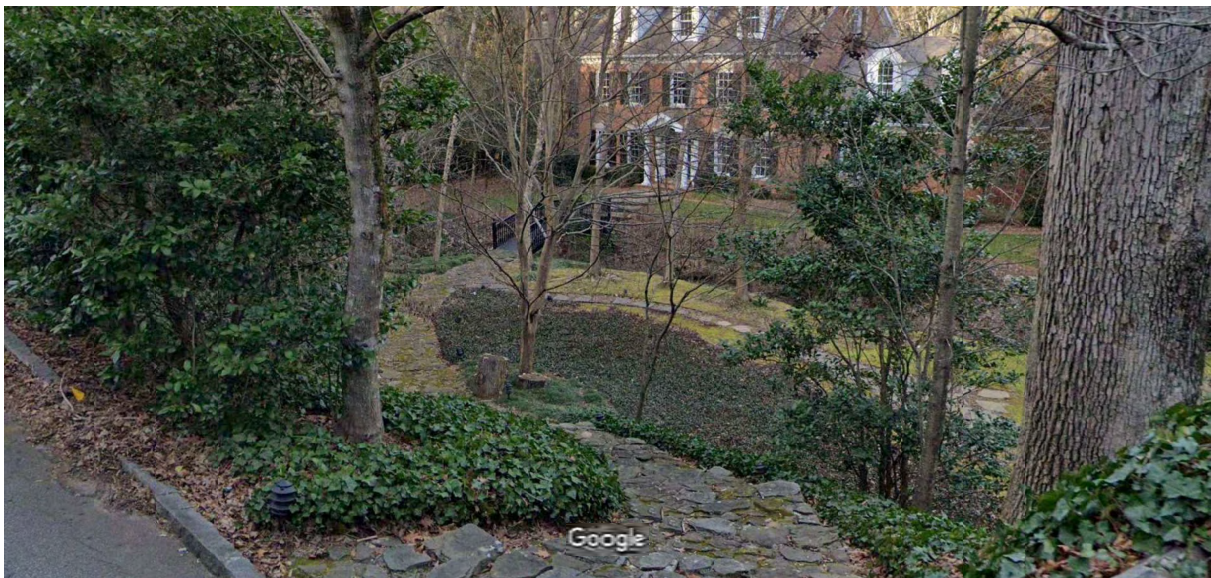


Image capture: Feb 2020 © 2021 Google

Atlanta, Georgia



Street View



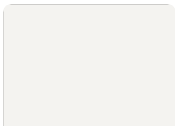


Image capture: Feb 2020 © 2021 Google

Atlanta, Georgia



Street View





Photos taken during  
Staff site visit  
August 2021





































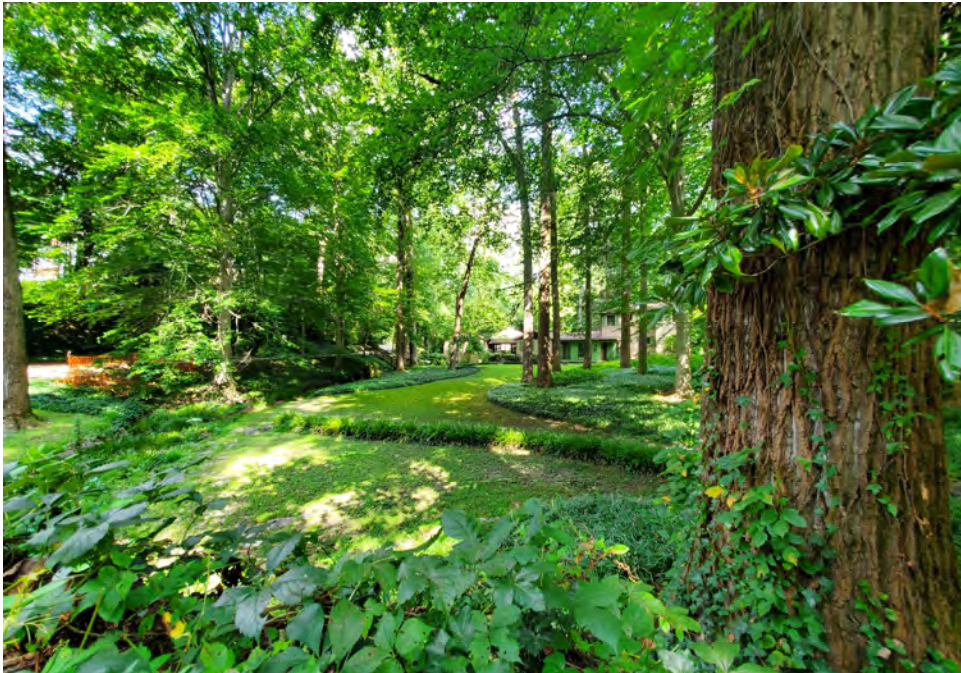














# DeKalb County Historic Preservation Commission

Monday, August 30, 2021- 6:00 P.M.

## Staff Report

### Regular Agenda

G. 1354 The By Way, Charles Aubry. Installation of new trees and shrubs. 1244878 **Remanded on appeal**

Built 1998. (18 002 06 092)

This property is in the Druid Hills National Register Historic District and the Druid Hills Character Area 1.

5-97 1354 The By Way, Mr. and Mrs. David Odel, to build new house

11-97 1354 The ByWay, Amy Oedel. Construct footbridge over creek in front of the house. **Approved**

3-21 1354 The By Way (DH), Charles Aubrey. Remove trees and install new landscaping and grass pavers. **Deferred, then withdrawn**

This is a nonhistoric property. (*Druid Hills Design Manual*, Glossary, page ii: **Nonhistoric** — Nonhistoric properties within the district are those properties built after 1946. Nonhistoric properties are identified on the Historic District Map.)

## Remand

The preservation commission approved this application on May 17, 2021. The decision was appealed by the neighbors, Hamish Caldwell and Dalia Judovitz. The appeal was heard by the Board of Commissioners on July 13. The board reversed the preservation commission's decision and remanded the application with directions. The text of the decision is below.

"I move to reverse and remand the Historic Preservation Commission's decision approving the subject Certificate of Appropriateness relating to 1354 The ByWay, with direction that the Commission reconsider the application with particular attention to the landscape plan, the role of overstory trees, and Guideline 8.2 (Tree Conservation) of the Design Manual for the Druid Hills Local Historic District."

A remand requires the HPC to reconsider the application following the directions provided by the BOC. The HPC's decision may still be approval, denial or approval with modifications. The remand does not require the applicant to make changes to their application although they may do so.

A remand reopens the case record. As well as the documents considered in the original review, those associated with the appeal are added and new documents may be submitted by the applicant or any other party.

## Proposal

The applicant has applied for a CoA for to plant trees and a hedge along the street. He proposes planting six overstory trees, two purple beech, three scarlet oak and one Ginkgo biloba, all of which are shown as large trees in the recommended plants list in the Design Manual. The applicant also proposes planting four small trees (dogwood and cherry) and a row of Nellie Stevens holly shrubs along the street as a hedge.

Much has been made of the applicant's use of the word "lawn" on the Tree Permit Plan. Whether it is an accurate description of the groundcover or not is not relevant to this review. The applicant is only seeking approval of new tree plantings.

### **History**

This 0.66 acre property is part of the Oakdale Commons subdivision, which was created in 1996 or 1997, prior to the designation of the historic district. The property was not rezoned. Most of the land was cleared, although large trees were retained near the road and near the left front corner of the property.

The preservation commission approved a certificate of appropriateness for construction of the house in June 1997, less than a year after designation of the district, and another for construction of a bridge across the stream a few months later. Neither site plan shows any trees and neither certificate of appropriateness mentions trees. Copies of both case files have been added to this record.

### **Tree removals**

In late 2020 the applicant removed 24 trees from his property. This was reported to the county and a stop-work notice was issued. The applicant was fined for removing more than five trees without a permit.

The trees removed included twelve river birches planted in a row along the south side of the stream and other trees on the west, rear and within five feet of the house. Several shrubs or small trees along the street that were in poor condition or dead have also been removed and one dead white oak is still to be removed.

The Tree Permit Plan shows that thirteen existing overstory trees will be retained. These are listed as large trees in the Design Manual. Some of the trees are mature specimens.

Species	Number of retained trees
Pin oak	1
Red maple	2
Loblolly pine	1
River birch	2
Tulip poplar	2
Elm	1
Oak (species not specified)	3
Southern magnolia	1

### **Opposition**

The initial appeal and most of the other documents in opposition to the application are from Hamish Caldwell or from Hamish Caldwell and Dalia Judovitz. Other opposition documents have been filed by nearby resident Philip A. Moise, the Druid Hills Civic Association, and the Lullwater Garden Club. These documents are in the record and are available to the preservation commission and the public.

Most of the comments relate to tree replacement, the removal of trees, and the landscaping plan, primarily the lawn, as mentioned above. Other comments relate to protection of the stream buffer, causing erosion along the creek, both on this property and downstream, increasing the water flow resulting in increased flooding downstream, damaging existing ecosystems and similar concerns.

The comments by about tree replacement can be summarized as there not being enough new overstory trees being planted to make up for the overstory trees that have been removed and that trees should be planted along the stream.

The grounds for the appeal are quoted below.

The written decision by the DHPC constitutes an abuse of discretion in the following ways. Item 1. The decision does not take into consideration pertinent features of other properties that are in the immediate neighborhood, as required per § 13.5-8 (3). The historic landscape appearance that existed since the lots were developed would be lost. Item 2. Contrary to § 13.5-8 (12) the written decision is arbitrary and capricious in two distinct ways: (a) the decision is based on document inaccuracies (b) platting requirements from the Board of Commissioners and CoA conditions from the prior DHPC are overturned. The decision also is in violation of state and county stream buffer regulations. The decision must be reversed and the application remanded to the preservation commission with direction to amend the approval to include at least ten overstory trees on the stream bank and no lawn in the stream buffer.

### **Staff comments**

Most of the comments relate to tree replacement, the removal of trees, and the landscaping plan, primarily the lawn, as mentioned above. Other comments relate to protection of the stream buffer, causing erosion along the creek, both on this property and downstream, increasing the water flow resulting in increased flooding downstream, and damaging existing ecosystems. These are legitimate concerns, but are not within the purview of the preservation commission.

The concerns expressed in the appeal are addressed below.

Item 1. The decision does not take into consideration pertinent features of other properties that are in the immediate neighborhood, as required per § 13.5-8 (3).

DeKalb County Code section 13.5-8 (3) reads in full:

*Review of applications.* When reviewing applications for certificates of appropriateness, the preservation commission shall consider, in addition to any other pertinent factors, historical and architectural value and significance; architectural style; scale; height; setback; landscaping; general design; arrangement; texture and materials of the architectural features involved and the relationship thereof to the exterior architectural style; and pertinent features of other properties in the immediate neighborhood. When considering applications for existing buildings, the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guideline for Preserving, Rehabilitating,



Restoring and Reconstructing Historic Buildings, shall be used as a guideline. All local guidelines must be adopted in accordance with federal guidelines.

Pertinent features of other properties in the immediate neighborhood are one of the factors to be considered by the preservation commission among other, sometimes conflicting, factors. In this case, the appellant's property to the east and an undeveloped property to the west are wooded. The property to the north is wooded at the street, but includes a large area of lawn behind the subject property. The properties between the appellant and Lullwater Road and on the opposite side of The By Way also have many mature overstory trees, but also contain large areas of lawn or other groundcover.

Determining the area of influence is important in reviewing applications for nonhistoric properties. Guideline 7.1 defines the area of influence "that which will be visually influenced by the building, i.e., the area in which visual relationships will occur between historic and new construction." The glossary in the Design Manual defines "nonhistoric" as having been built after 1946.

Guideline 11.0 *Nonhistoric Properties* states that changes to a nonhistoric property should be evaluated for impact to historic development (architecture and natural and cultural landscapes).

Although this property has a visual influence on the property to either side, the left is undeveloped and the property to the right is nonhistoric, having been developed at the same time as the subject property. The only historic property that has a visual relationship to the subject property is 937 Oakdale Road, whose backyard is across the street. That property has a large front lawn with trees around the periphery and in the backyard.

Item 2(a). The decision is based on document inaccuracies

In the accompanying Supplement to the Appeal, the applicants describe the inaccuracies as

"the submitted landscape plan gave an **inaccurate portrayal of the situation by labelling that same part of the stream buffer as "existing lawn" and omitted the existing pavers and natural ground cover.**

As noted above, the application is for tree replacement, not landscaping. The existence of the lawn and natural groundcover is subject to dispute. The commission has been made aware of these and of the pavers.

Item 2(b). Platting requirements from the Board of Commissioners and CoA conditions from the prior DHPC are overturned. The decision also is in violation of state and county stream buffer regulations.

The enforcement of subdivision conditions and state and county stream buffer regulations is not in the preservation commission's purview. The commission is only authorized to determine compliance with the preservation ordinance.

The site plans presented in the certificate of appropriateness applications in 1997 did not show landscaping or trees, nor did the certificates of appropriateness issued for at that time mention landscaping or trees.

### Addressing the Directions

The directions in the remand order from the Board of Commissioners require the preservation commission to "reconsider the application with particular attention to the landscape plan, the role of overstory trees, and Guideline 8.2 (Tree Conservation) of the Design Manual."

1. As noted above, the certificate of appropriateness did not approve a landscape plan.
2. There are thirteen existing overstory trees that will be retained and six new overstory trees to be installed. This will be nineteen overstory trees on a relatively small (0.66) lot.
3. Guideline 8.2 states in part: *Trees should be replaced when mature trees are lost to age or damage or are removed for safety reasons.*

**8.2 Trees (p78) Recommendation** - The mature hardwood forest within the Druid Hills Local Historic District should be perpetuated through a district-wide replanting program. Trees should be replaced when mature trees are lost to age or damage or are removed for safety reasons. Replacement trees should be of identical or similar varieties to the original trees. A diversity of tree types is recommended to perpetuate the existing character of most tree groupings. Replacement trees of adequate size (1.5" caliper minimum) are recommended. Existing ordinances that provide for the protection and replacement of the district's tree resources should be applied to development activities within Druid Hills.

In this case, none of the trees that were removed were mature trees. The appellants state in their Supplement that the trees were planted in 1997, twenty-three years prior to removal. The largest trees that were removed had a diameter of 17 inches, as measured at the top of the stump. Two of the river birches removed had diameters of less than 10 inches. Among the 24 trees removed, only ten had diameters of more than 12 inches. The diameters are documented in the Notice of Violation of DeKalb County Tree Protection and Other Codes prepared by the Development Division of the Department of Planning and Sustainability and included in this record.

Below is a chart showing the diameters in inches and the locations of the trees that were removed. Other than the river birches in the front yard, species have not been identified.

Birches in the front yard	West side	Rear	Within five feet of the house
17	14	14	15
16	13	10	11
16		9	9
15		8	9
13		7	
13		7	
12			
12			
11			
8			
7			
decayed			

The University of Wisconsin Horticulture Department Extension states:

River birch is a medium to tall tree, growing 60-80 feet at maturity and about 40 wide. Trees typically live 50 -75 years. The trunk typically grows about 2 feet in diameter but occasionally will be much wider.

Neither the height nor canopy width of the trees that were removed have been provided. (Sources vary on mature height from a low of 40 feet to a high of 80 feet. This source was chosen because it was the only one found that addressed the mature width of the trunk.)

### **Recommendation**

1. The thick planting of evergreen Nellie Stevens hollies along the street will form a hedge, which is an enclosure with a similar effect as a fence. (As the appellant has correctly pointed out, that the Design Manual includes the Nellie Stevens holly in the list of shrubs, not trees.) Hedges along the front of properties are not found in the historic landscape designs in the district. The hedge does not comply with guidelines 9.4 and 9.7. However, in this instance the hedge improves safety along the street. The By Way is a narrow street with nothing to keep a pedestrian or car from falling off into the applicant's yard. The hedge will prevent pedestrians and possibly some cars from falling. For safety reasons, staff recommends approval of the hedge along the street. Otherwise, the application meets the guidelines.
2. For the reasons discussed above, it appears that the proposal to plant six overstory trees and four smaller trees complies with the guidelines and will not have a substantial adverse effect any historic property or on the historic district. Staff recommends approval.

## **Relevant Guidelines**

- 7.1 *Defining the Area of Influence* (p64) Guideline - In considering the appropriateness of a design for a new building or addition in a historic district, it is important to determine the area of influence. This area should be that which will be visually influenced by the building, i.e. the area in which visual relationships will occur between historic and new construction.
- 7.2 *Recognizing the Prevailing Character of Existing Development* (p65) Guideline - When looking at a series of historic buildings in the area of influence, patterns of similarities may emerge that help define the predominant physical and developmental characteristics of the area. These patterns must be identified and respected in the design of additions and new construction.
- 8.2 *Trees* (p78) Recommendation - The mature hardwood forest within the Druid Hills Local Historic District should be perpetuated through a district-wide replanting program. Trees should be replaced when mature trees are lost to age or damage or are removed for safety reasons. Replacement trees should be of identical or similar varieties to the original trees. A diversity of tree types is recommended to perpetuate the existing character of most tree groupings. Replacement trees of adequate size (1.5" caliper minimum) are recommended. Existing ordinances that provide for the protection and replacement of the district's tree resources should be applied to development activities within Druid Hills.
- 9.3 *Vegetation* (p83) Recommendation - The plant list is intended to assist in the selection of appropriate plant materials. Olmsted's list and the list from the Georgia Landscapes Project provide guidance in selecting materials appropriate for historic landscape projects. There are other sources that can be consulted to identify additional plants used by Olmsted in Druid Hills, such as historic planting plans and particularly the archival record at the Olmsted National Historic Site in Brookline, Massachusetts. The Olmsted list presented in this document should be considered a beginning. Residents of Druid Hills are encouraged to add to this list with historic plants that can be documented as having been used by Olmsted. The native list should be used for natural areas within the district, such as creek corridors and drainage ways. Places within the district where the retention of healthy ecological environments is critical are best landscaped with native varieties. Since native plants have been available since the colony of Georgia was established in 1733, native plants are also appropriate for historic landscapes.
- 9.4 *Enclosures and Walls* (p90) Guideline - Fences and walls should not be built in front yard spaces and are strongly discouraged from corner lot side yard spaces. Retaining walls should only be used in situations where topography requires their use.
- 9.7 *Residential Landscape Design* (p91) Recommendation - For residential yards, created without the assistance of landscape designers, historic landscape plans for other residential lots within the district should be used for guidance. These plans can be interpreted to create a new landscape plan that is based on historic traditions. Care should be taken to select designs for yards of similar size containing houses of similar style and scale.
- 11.0 *Nonhistoric Properties* (p93) Guideline - In reviewing an application for a Certificate of Appropriateness for a material change to a nonhistoric building, the Preservation Commission should evaluate the change for its potential impacts to any historic development (architecture and natural and cultural landscapes) in the area of influence of the nonhistoric property. Guidelines presented in *Section 7.0: Additions and new Construction* are relevant to such evaluations.

**Charles & Anne Marie  
Aubry**

**1354 The By Way NE,  
Atlanta GA, 30306**

**Property Owners  
Application for COA:  
August 16, 2021**



Charles & Anne Marie Aubry

1354 The By Way NE, Atlanta GA, 30306 Property Owners

Application for COA: August 16, 2021

Dear Commissioners,

We are resubmitting our Tree Permit Plan with certain modifications made pertaining to the Historic Druid Hills Design Manual Section 8.2 *Tree Conservation* as well as Dekalb County Code as requested by Dekalb County Commissioner Mr. Rader and Dekalb County Master Arborist Russell Tinning.

To comply with Dekalb County Code and the Historic Districts Design Manual Section 8.2, please note the following:

1. Suggested as a voluntary action in the design manual, a tree survey was performed by an ISA Certified Arborist and was submitted to the record.
  - a. Tree removals carried out were in accordance with the survey and abide by the design manuals section 8.2 *"Trees in deteriorated conditions or of advance age should be removed and replaced."*
    - i. The replacement is being carried out through the Tree Permit Plan submitted
2. The design manuals recommendation states: *"The **mature hardwood** forest within the Druid Hills Local Historic District should be perpetuated through a district-wide replanting program. Trees should be replaced when **mature trees** are lost to age or damage or are removed for safety reasons."*
  - a. All the trees cited in the violation report were planted after the property was developed in 1997. Based on the variety and age of those trees, **none** were mature hardwoods, but still, all of them are being replaced.
  - b. Per the Arborist report the property was overplanted leading to the issues that had arose. The plantings did not "adhere to ISA ANSI standards and should not have been planted in the fashion they were". "Most were improperly planted and poor choices for the environment in which they were planted, leading to the aforementioned health issues."
  - c. In total 34 trees are including in the submitted design. A proper mix of understory and overstory trees have been selected and placed for long term success.
3. The design manuals recommendation states: *"Replacement trees **should** be of identical or similar varieties to the original trees."*
  - a. Please note "should", not "must".
    - i. The River Birches removed do not comply with historic districts design manual's approved planting materials list.
    - ii. Per the arborist report it was recommended that overstory trees not be planted on the streambank in the floodplain as they do not do well in wet soils.

- iii. Furthermore, it was noted in the arborist report that the shady conditions of the site caused the trees to grow towards our home. Trees of a similar variety are likely to do the same and cause problems in the future.
  - iv. The recommendation of the arborist was to replant with understory trees.
  - v. The submitted plan calls for the planting of 5 trees within the stream buffer on proper spacing. 3 understory Kousa Dogwoods on the creekbank, and 2 overstory trees (Gingko and Purple Beech) properly located in a drier, elevated area of the property (but still in the stream buffer) with adequate sunlight for each variety where they would not hit our home should failure occur.
- 4. The design manual's recommendation states: *"A diversity of tree types is recommended to perpetuate the existing character of most tree groupings."*
  - a. The plan submitted requests the planting of 6 different varieties of trees. 3 of those varieties are overstory trees and 3 of those varieties are understory trees.
- 5. The submitted Tree Permit Plan promotes the continued conservation of the mature hardwood forest.
  - a. 6 overstory hardwood trees are being planted on proper spacing in the proper environment for long term health.
  - b. 28 understory trees are being planted to perpetuate the character of the district and selected in an effort to fulfill the replacement requirements.
    - i. As stated in the arborist report "Considering the underlying floodplain, stream buffer, house, and existing hardscaping on this property there is very little area suitable for the healthy planting of overstory trees."
- 6. 12 River Birches removed were considered to be wrongfully removed citing a violation. These 12 trees must be replaced per the Dekalb County Code Section 14-39. Tree Protection (h) *Tree Replacement Standards*
  - a. The Tree Permit Plan submitted complies with this section of the county code and has been approved by Dekalb County Master Arborist Russel Tinning per the approval of the HPC.

The appeal of the approved May COA stated concerns about ground cover. The "native ground cover" in question located in the existing lawn shown on the design refers to Asiatic Jasmine which was found primarily outside of the stream buffer and does not comply with § 9.0 *Cultural Landscape Guidelines – Recommended Plant Material List*. The existing lawn shown within the stream buffer consists of Tall Fescue, *poa annua*, Mondo Grass, Moss and a variety of weeds. This was confirmed through a site visit with county staff. Any future supplemental seeding of Tall Fescue would be done to enhance the lawn and Olmsted's intended residential vision as stated in the design manual § 9.7 *Residential Landscape Design*: *"Olmsted's intent for front yards included planting beds filled with ornamental vegetation with free-flowing bed edges surrounding an open lawn."*

The updated plan now meets all Dekalb County Code requirements and aligns with the Druid Hills Historic District Design Manual's tree ordinance, tree conservation measures, and cultural landscape guidelines.

Thank you for your time and consideration, we look forward to discussing the plan in August, 2021.

Charlie,

Find below an enhanced summary of my findings when surveying the trees on your property this past October 2020, as well as an assessment of your Tree Permit Plan. This report is derived from information gathered during the onsite review of the trees and their surrounding environment on the property at 1354 The By Way NE. Furthermore, it has come to my attention that other Arborists have been cited in documents submitted to the county. It should be noted that to my knowledge I am the only ISA Certified Arborist to review, assess, and make recommendations on the health, stability, and safety of all trees noted in the county violation while the trees were still alive and located on the property.

#### FRONT YARD

In October I inspected the entire yard for tree related issues. At that time, we identified a number of dead trees as well as several that had problems i.e., the river birches along the creek. It was very apparent that the previous owners had no tree care and chose to do nothing to maintain the trees. The river birches were planted too close together, overgrown, and what pruning had been done was to remove an entire lead which is pretty much a catastrophic event. Removing a lead in a river birch will always produce accelerated decay and the tree goes downhill from that point on. All of the river birches had been over pruned and I had recommended removal and replacement as the creek bank had considerable erosion from their location. In addition, when these trees were planted (1997) the overstory trees around them were much smaller and did not provide the shade as they do today. Any plant, including the river birch, that require sun are to be expected to decline and most did. Another problem the birches developed was a phototropic lean, (growing towards the light) and all their growth was towards the home. A number of the decaying leads were large enough to reach the structure should they fail. Again, I had recommended that the trees be replaced with a more suitable species and not on the stream bank (it is not true that the trees are good for erosion control). Overstory trees are not a good idea in this case as most do not do well in wet soils, I recommend we would replant with understory trees as they will do much better in this environment.

#### BACK YARD

4 Red maples that were planted around 24 years ago were all suffering from girdled roots. Two of the trees were completely dead and the remaining had dying tops that suggested the root related issues were present. I had recommended those also be replaced. Again, a more suited species will do great. The problems these trees had were due to poor planting in poor soils.

Secondly, a grouping of hollies and magnolias had been planted in the northwest corner of the property. As is the usual practice they were planted too close together and their health suffered. I had recommended removal and replacement as remediation was not possible.

#### SUMMARY

As is commonly seen the property was a prime example of overplanting for immediate gratification of the previous homeowners. As plants mature, they compete for nutrients and sunlight leading to irregular, unsafe growth habits eventually leading to death and hazardous trees. Quite frequently landscape designs are approved with the idea that "more is better" when it comes to trees, and it is

commonly seen that the long-term health and safety of the tree is not considered and leads to issues in the future.

It is my understanding that your property was developed in 1997. I can say with certainty that the River Birches, Umbrella Magnolia, American Hollies, Ornamental Magnolias, and some of the Red Maples on property were planted during or after the development of the property. Most were improperly planted and poor choices for the environment in which they were planted, leading to the aforementioned health issues.

To adhere to the Historic Druid Hills Design Manual section 8.2, trees in deteriorated condition should be removed (as was completed) and replaced. Furthermore, mature trees should be replaced when lost. Considering the underlying floodplain, stream buffer, house, and existing hardscaping on this property there is very little area suitable for the healthy planting of overstory trees. The variety, number, and manner in which these trees were planted after the development of this home on this property do not adhere to ISA ANSI standards and should not have been planted in the fashion they were.

### RECOMMENDATIONS

In reviewing the Tree Permit Plan designed by Viridian Studios, it appears the plan meets the Dekalb County: *Tree Replacement Standards* for replanting wrongfully removed trees. The plan utilizes available and appropriate land to plant some overstory trees with long term success. A more appropriate tree selection has been made in areas considering the safety of the home and human life. A substantial effort was made in the design to adhere to section 8.2 of the Historic District's Design Manual. A diversity of tree types have been selected further perpetuating the tree groupings on the property. Not all replacement trees are of identical varieties, however I would not recommend that the same trees be replanted for the reasonings mentioned in the report. Furthermore, not all varieties removed comply with the design manual. If further overstory trees are required to fulfill the historic districts requirements, it may be necessary to donate to a county tree bank. I strongly discourage the planting of overstory trees in a floodplain with a home in such close proximity where failure may lead to the hazards mentioned in this report and seen in previous failed tree plantings on this property.

I have reviewed the appeal. It is well written and does make a case. The problem with reciting verse is that it rarely has anything to do with what is reality. In this case the landscape planted in 1996-97 has evolved and is now not what it was. Our landscapes are ever changing and as much as we would like a painting and it to remain the same, it does not. This landscape was poorly maintained, and it showed. The lack of knowledge in this case is very evident as doing nothing would have led to additional problems bigger than just dead trees.

Chris Hall

ISA certified arborist

SO-1450



## REVISIONS

NO.	DATE	ISSUE
1	04/15/2021	CNTY CMTS
2	05/12/2021	CNTY CMTS
3	06/14/2021	PLAN NOTE
4	07/06/2021	ADD TREE

## PROJECT NAME

AUBRY  
RESIDENCE

## PROJECT ADDRESS

354 THE BY WAY  
ATLANTA, GA  
0306

AND LOT 2

TH DISTRICT  
KALB COUNTY  
RUID HILLS HISTORIC

## PROPERTY OWNER

CHARLES AND  
ANNE MARIE  
LUBRY

## SHEET TITLE

FREE  
PERMIT  
PLAN

DATE 04/07/2021

PROJ. NO. 2021037

PROFESSIONAL SEAL



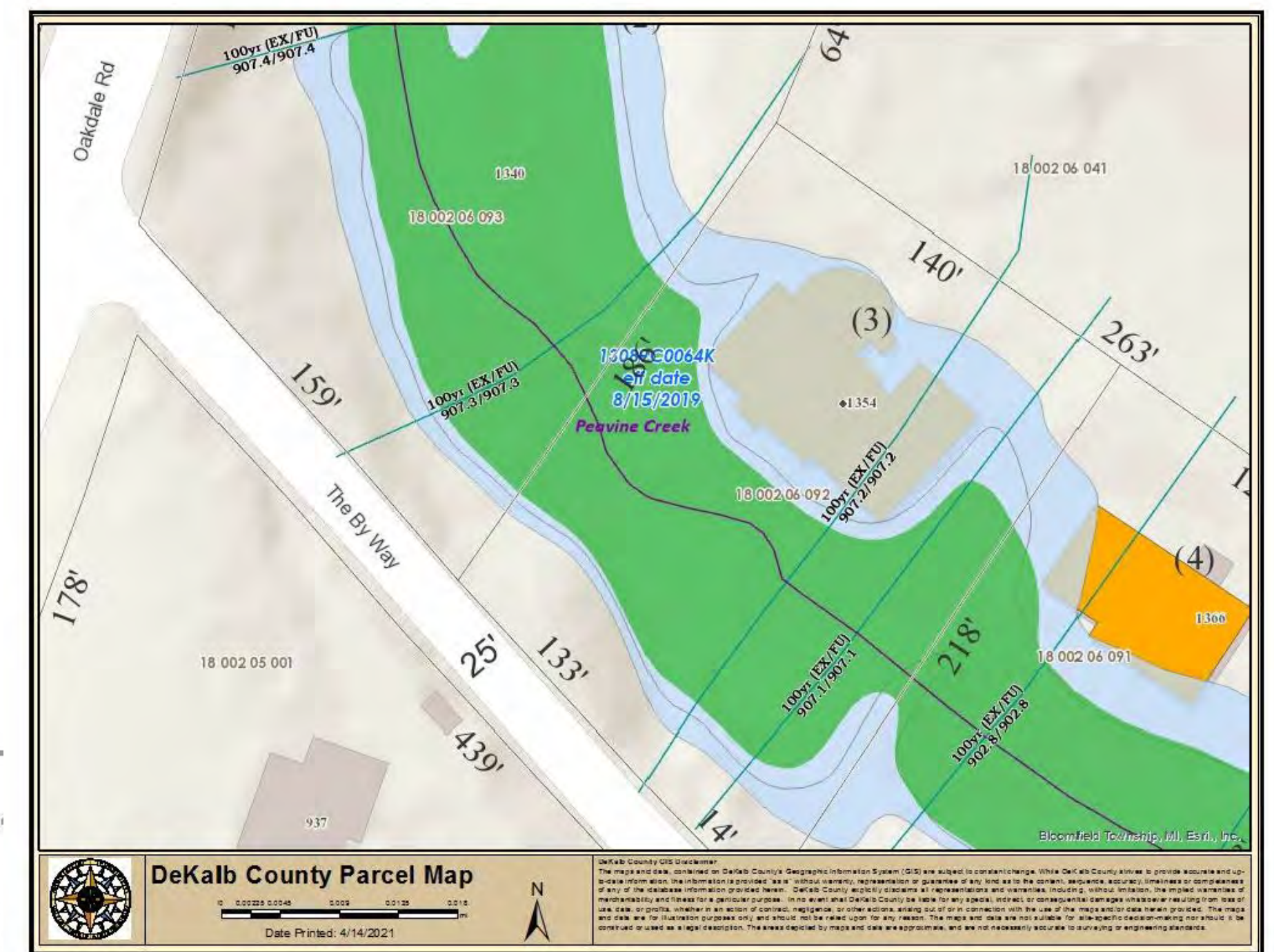
SHEET

# Γ1.1

PLANT MATERIAL SCHEDULE				
Qty.	COMMON NAME	BOTANICAL NAME	Min. Size	Notes
	<b>Trees to be planted</b>			
1	Ginkgo Biloba	Ginkgo biloba	2" Caliper	b&b, uniform, full branching, straight leader
3	Scarlet Oak	Quercus coccinea	2" Caliper	b&b, uniform, full branching, straight leader
2	Purple Beech	Fagus sylvatica 'atropunicea'	2" Caliper	b&b, uniform, full branching, straight leader
3	Kousa Dogwood	Cornus kousa	8' HGT.	b&b, uniform, full branching, straight leader
1	Yoshino Cherry	Prunus x yedoensis	8' HGT.	b&b, uniform, full branching, straight leader
22	Nellie R. Stevens Holly	Ilex x 'Nellie R. Stevens'	4-5' HGT.	b&b, uniform, full branching, straight leader
32	<b>Total Trees to be planted</b>			
5	<b>Dead and Dying trees to be removed</b>	see plan for location and condition		
20	Trees to remain			
57	<b>Total Trees proposed on property</b>			



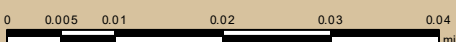
**1354 The By Way NE, Atlanta, Georgia,  
30306**







# 1354 The By Way



Date Printed: 8/2/2021



## DeKalb County GIS Disclaimer

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**Opposition Materials**

**1354 The By Way**

**Application for COA:**

**August 16, 2021**

## RE: 1354 The By Way August HPC comments

hamish\_caldwell@bellsouth.net <hamish\_caldwell@bellsouth.net>

Tue 8/10/2021 4:57 PM

To: Cullison, David <dccullis@dekalbcountyga.gov>

Cc: Bragg, Rachel L. <RLBragg@dekalbcountyga.gov>

**\*\* WARNING:** The sender of this email could not be validated and may not match the person in the "From" field. \*\*

Yes, plus we provided the letter that Lullwater Garden Club had sent to BOC Chief of Staff and that you had asked for.

Thanks, Hamish

Hamish Caldwell

Hamish\_Caldwell@bellsouth.net

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**From:** Cullison, David <dccullis@dekalbcountyga.gov>

**Sent:** Tuesday, August 10, 2021 12:54 PM

**To:** hamish\_caldwell@bellsouth.net

**Cc:** Bragg, Rachel L. <RLBragg@dekalbcountyga.gov>

**Subject:** Re: 1354 The By Way August HPC comments

Thank you. We will add these to the record.

Are the Appeal supplement, the support letter from DHCA and support letter from Mr. Moise the same documents that were submitted at the time of the appeal?

David Cullison

Senior Planner

DeKalb County Department of Planning & Sustainability

330 W. Ponce de Leon Avenue

Third Floor

Decatur, GA 30030

470/542-3023

404/371-4556 (fax)

The DeKalb County zoning map is now on-line

at [https://dekalbgis.maps.arcgis.com/apps/webappviewer/index.html?](https://dekalbgis.maps.arcgis.com/apps/webappviewer/index.html?id=f241af753f414cdfa31c1fdef0924584)

[id=f241af753f414cdfa31c1fdef0924584](https://dekalbgis.maps.arcgis.com/apps/webappviewer/index.html?id=f241af753f414cdfa31c1fdef0924584). The Department of Planning & Sustainability website

is <https://www.dekalbcountyga.gov/planning-and-sustainability/planning-sustainability>.



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**From:** [hamish\\_caldwell@bellsouth.net](mailto:hamish_caldwell@bellsouth.net) <[hamish\\_caldwell@bellsouth.net](mailto:hamish_caldwell@bellsouth.net)>

**Sent:** Tuesday, August 10, 2021 12:08 PM

**To:** Cullison, David <[dccullis@dekalbcountyga.gov](mailto:dccullis@dekalbcountyga.gov)>

**Cc:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>

**Subject:** 1354 The By Way August HPC comments

**\*\* WARNING:** The sender of this email could not be validated and may not match the person in the "From" field. \*\*

Hello Mr. Cullison,

We would like to submit to the record our input below and the attached documents for consideration by Staff and the HPC committee members in the review of the August COA submittal from Mr. Aubry.

1. The August application does not address the concerns that were the basis for the remanding decision made by Dekalb Board of Commissioners. Those concerns were documented in the appeal and in letters of support provided to Dekalb from Druid Hills Civic Association, Lullwater Garden Conservancy and adjacent property owner, Mr. Phil Moise. Copies of these documents are attached with this email for HPC review.
2. The August application makes no change from the previous May submittal with respect to overstory trees planted on the stream bank but rather repeats the same plan of only 3 ornamental dogwoods. It does not respond to the directions of the Board of Commissioners, nor resolves the concerns of the abutting property owner or the neighborhood community. Furthermore, the "gap tooth" design of a suburban lawn will be out of alignment with the historic woodland appearance when instead it should be restored back to being consistent with the immediate surrounding properties (see photo below).

Historic natural woodland on East abutting property, typical on this block of The By Way

Non-historic gap-tooth appearance on subject property with woodland abutting lot on West side

3. In the August submittal, rather than admit a violation was committed that resulted in the magistrate court levying a fine and the remand decision by the BOC, the application attempts to relitigate the case and does not provide a remedy for the removal of the 12 mature river birches on the stream bank.  
In response to the arborist report provided by the applicant we respectfully submit the attached reports from an independent licensed Arborist and Environmental Scientist/Ecologist (ie. One with whom we have no other professional or business association unlike Mr. Hall <https://www.linkedin.com/in/chris-hall-2788b410/> being affiliated with a company who is a supplier of products and services to the golf club where the applicant works: <https://www.arborguard.com/gallery/east-lake-golf-club/> ).  
Contrary to the explanations presented in the August application, the attached 8/9/21 arborist report from KADAS points out concerns of "false statements" and inaccuracies in Mr. Hall's report

and provides alternative professional recommendations. Along with the fact of the existence of healthy, mature, overstory trees on the stream bank on the abutting properties, the 8/9/21 KADAS report documents the following:

- a. Overstory trees grow well on streambanks
  - b. Planting trees in floodplains is a good idea
  - c. There are plenty of overstory tree species on the Druid Hills- Recommended Plant Materials List for the applicant to choose from
  - d. The proposed planting plan "is inadequate and should be revised to provide for a better planting plan that contains more plants of varying types and sizes"
  - e. "The three ornamental dogwoods are not adequate to replace the canopy coverage that was lost"
4. As was pointed out in the appeal to BOC, the March application requested permission to install a lawn in the stream buffer in the area the KADAS report confirms "is not actually an existing lawn" and there was significant concern and a move to deny that request by HPC. The August submittal reprises the inaccurate portrayal in the May submittal planting plan that showed the proposed lawn as existing.

Only a very few properties in Druid Hills, like the subject and abutting properties, have historic, natural woodland with a stream controlled by GA State EPD jurisdiction in their front yard. To claim lawn is acceptable in this unique ecology would be to claim that Olmsted's "vision" or Druid Hills Design Guidelines do not take into consideration site-specific conditions and they supersede State of Georgia EPD Law. It also would be to encourage the use of pesticides, fertilizers, insecticides and irrigation systems within the stream buffer. Rather than adding fescue lawn, the area in the stream buffer at the bottom of the slope down from The By Way should be reconstituted as contiguous undisturbed natural vegetative land in accordance with DeKalb County Ordinance Sec. 14-44.1 (a) (1).

In light of these facts we request that Dekalb Staff recommend, and HPC require, that the application be modified to include a reasonable number (e.g. 12 may have been too densely planted, but one would be woefully inadequate, so we now propose a minimum of 8 as a reasonable restoration number) of overstory trees planted on the stream bank to replace those removed in violation, and the stream buffer area be revegetated into a natural vegetative state with no fescue or other type of lawn.

Thank you for your time and consideration.

Regards,

Hamish Caldwell & Dalia Judovitz

1366 The By Way NE, ATL, GA 30306

[Hamish\\_Caldwell@bellsouth.net](mailto:Hamish_Caldwell@bellsouth.net)



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)



## 1354 The By Way August HPC comments

hamish\_caldwell@bellsouth.net <hamish\_caldwell@bellsouth.net>

Tue 8/10/2021 12:14 PM

To: Cullison, David <dccullis@dekalbcountyga.gov>

Cc: Bragg, Rachel L. <RLBragg@dekalbcountyga.gov>

 7 attachments (2 MB)

DHCA - 1354 The Byway - Letter in Support of Caldwell-Judovitz Appeal - 2021.06.18.pdf; 1354 The By Way- DHCA Support Letter for Appeal v06-14-21.pdf; LGC Letter Appeal.docx; 1354 The By Way Caldwell Judovitz Appeal Supplementary Explanation.pdf; 2021-05-006 1354 The By Way Buffer Plant Addendum II 8-9-2021.pdf; 2021-05-006 1354 The By Way Buffer Plant Assess 5-13-2021.pdf; 2021-05-006 1354 The By Way Buffer Plant Assess Adendum 5-23-2021.pdf;

**\*\* WARNING:** The sender of this email could not be validated and may not match the person in the "From" field. \*\*

Hello Mr. Cullison,

We would like to submit to the record our input below and the attached documents for consideration by Staff and the HPC committee members in the review of the August COA submittal from Mr. Aubry.

1. The August application does not address the concerns that were the basis for the remanding decision made by Dekalb Board of Commissioners. Those concerns were documented in the appeal and in letters of support provided to Dekalb from Druid Hills Civic Association, Lullwater Garden Conservancy and adjacent property owner, Mr. Phil Moise. Copies of these documents are attached with this email for HPC review.
2. The August application makes no change from the previous May submittal with respect to overstory trees planted on the stream bank but rather repeats the same plan of only 3 ornamental dogwoods. It does not respond to the directions of the Board of Commissioners, nor resolves the concerns of the abutting property owner or the neighborhood community. Furthermore, the "gap tooth" design of a suburban lawn will be out of alignment with the historic woodland appearance when instead it should be restored back to being consistent with the immediate surrounding properties (see photo below).

Historic natural woodland on East abutting property, typical on this block of The By Way

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3. In the August submittal, rather than admit a violation was committed that resulted in the magistrate court levying a fine and the remand decision by the BOC, the application attempts to relitigate the case and does not provide a remedy for the removal of the 12 mature river birches on the stream bank.  
In response to the arborist report provided by the applicant we respectfully submit the attached reports from an independent licensed Arborist and Environmental Scientist/Ecologist (ie. One with

whom we have no other professional or business association unlike Mr. Hall <https://www.linkedin.com/in/chris-hall-2788b410/> being affiliated with a company who is a supplier of products and services to the golf club where the applicant works: <https://www.arborguard.com/gallery/east-lake-golf-club/> ).

Contrary to the explanations presented in the August application, the attached 8/9/21 arborist report from KADAS points out concerns of “false statements” and inaccuracies in Mr. Hall’s report and provides alternative professional recommendations. Along with the fact of the existence of healthy, mature, overstory trees on the stream bank on the abutting properties, the 8/9/21 KADAS report documents the following:

- a. Overstory trees grow well on streambanks
  - b. Planting trees in floodplains is a good idea
  - c. There are plenty of overstory tree species on the Druid Hills- Recommended Plant Materials List for the applicant to choose from
  - d. The proposed planting plan “is inadequate and should be revised to provide for a better planting plan that contains more plants of varying types and sizes”
  - e. “The three ornamental dogwoods are not adequate to replace the canopy coverage that was lost”
4. As was pointed out in the appeal to BOC, the March application requested permission to install a lawn in the stream buffer in the area the KADAS report confirms “is not actually an existing lawn” and there was significant concern and a move to deny that request by HPC. The August submittal reprises the inaccurate portrayal in the May submittal planting plan that showed the proposed lawn as existing.

Only a very few properties in Druid Hills, like the subject and abutting properties, have historic, natural woodland with a stream controlled by GA State EPD jurisdiction in their front yard. To claim lawn is acceptable in this unique ecology would be to claim that Olmsted’s “vision” or Druid Hills Design Guidelines do not take into consideration site-specific conditions and they supersede State of Georgia EPD Law. It also would be to encourage the use of pesticides, fertilizers, insecticides and irrigation systems within the stream buffer. Rather than adding fescue lawn, the area in the stream buffer at the bottom of the slope down from The By Way should be reconstituted as contiguous undisturbed natural vegetative land in accordance with DeKalb County Ordinance Sec. 14-44.1 (a) (1).

In light of these facts we request that Dekalb Staff recommend, and HPC require, that the application be modified to include a reasonable number (e.g. 12 may have been too densely planted, but one would be woefully inadequate, so we now propose a minimum of 8 as a reasonable restoration number) of overstory trees planted on the stream bank to replace those removed in violation, and the stream buffer area be revegetated into a natural vegetative state with no fescue or other type of lawn.

Thank you for your time and consideration.

Regards,

Hamish Caldwell & Dalia Judovitz

1366 The By Way NE, ATL, GA 30306

[Hamish\\_Caldwell@bellsouth.net](mailto:Hamish_Caldwell@bellsouth.net)



## APPELLANT'S SUPPLEMENT TO APPEAL

APPEAL OF	)	Historic Preservation Commission
HAMISH CALDWELL	)	Property 1354 The By Way NE
& DALIA JUDOVITZ	)	Decision Dated 20 May, 2021

**Introduction:** The Dekalb Historic Preservation Commission (“DHPC”) decision to approve a Certificate of Appropriateness (“COA”) is an abuse of discretion: (1) DHPC did not take into consideration “pertinent features of other properties that are in the immediate neighborhood”, as required per § 13.5-8(3). (2) Contrary to § 13.5-8(12) the decision by HPC is “arbitrary and capricious” in two distinct ways as discussed below. Exhibits supporting this appeal were offered but denied by Staff despite precedent in public record of 11/2/20 Hurwitz appeal.

**Item 1:** For over 20 years, at the bottom of a wooded ravine 12 birch trees had grown into mature, **overstory trees on the stream bank** that fulfilled historic guidelines, provided erosion, soil stabilization and water quality protection. Within 6 months of moving in the new owner **clear-cut them without required permission**. They were part of the total of 27 stumps identified in the 12/30/21 Environmental Incident Report. Listed as “Large Trees” in the Druid Hills Recommend Plant Materials list, the birches had provided visual continuity with the natural **woodland landscape that remains on the west and east-side abutting lots** along that same stream bank, per photos received by DHPC staff on 3/8/21. As replacements for the 12 overstory trees the decision permits the stream bank to have only “three kousa dogwoods” which are shallow-rooted and listed as a “small tree” in the Plant Materials list. The decision provides “Plant 31 trees” **but that includes “22 Nellie Stevens hollies”, which are “shrubs”, not “Large” nor even “Small” Trees** per the plant list. The hollies which “will be planted 3-5’ back from the street as a hedge” and the “Five canopy trees” **will not be in the stream bank**. The decision permits a) greatly reduced number of actual trees (i.e. 9) compared to the 21 or more removed, b) no overstory

replacement trees on the stream bank, c) replacement shrubs, **not trees**, located far from where the illegally removed stream bank large trees had been and d) a failure to fulfill the intent of recommendations in Sections 8 (“**Replacement trees should be of identical or similar varieties to the original trees.**”) & 9 (“**historic landscape plans for other residential lots within the district should be used for guidance**”) of the Historic District Guidelines. The **decision creates a long-lasting “gap tooth” appearance** in the middle lot of the three contiguous street-frontage Oakdale Commons Subdivision lots and is also contrary to a licensed arborist recommendations (recently provided to Dekalb staff). The lot will no longer fit the prevalent neighborhood historic woodland appearance. **Thus the decision fails to take into account pertinent features of other properties in the immediate neighborhood.**

**Item 2.a:** The March 2021 COA application planting drawing requested replacing the existing native ground cover by installing a lawn and replacing the existing grass pavers in the stream buffer. The March HPC meeting transcript shows DHPC members Hart and Stoddard **discussed at length their concerns** about these requests and saw them as grounds for denial of the application. In May, the submitted landscape plan gave an **inaccurate portrayal of the situation by now labelling that same part of the stream buffer area as “existing lawn” and omitted the existing pavers and natural ground cover.** The current actual conditions of natural ground cover, not lawn, were shown in a photo at the May DHPC. DHPC Commissioner Stoddard asked the owner to confirm if the existing pavers will remain but the transcript shows the **discussion did not address the natural ground cover.** Not having documents that show an accurate portrayal of the real situation and relying on a brief discussion of what amounted to a moving target of what was documented versus what is intended, has caused the DHPC to accept the owner statement “leave what’s there” to allow for a lawn that does not exist. **The decision violates Georgia Dept. of**



**Natural Resources guidance and Dekalb ordinance § 14-44.1(a)(1) that requires the stream buffer must remain in a natural, undisturbed state and contradicts the DHPC March position against lawn in the stream buffer. This is arbitrary and capricious.**

**Item 2.b:** When platted in Sept. 1996 the 3 contiguous Oakdale Commons Subdivision lots with street-frontage on The By Way would have non-historic buildings but be **required to comply with having historic landscape** per the June 1996 Druid Hills historic district designation. The subdivision received zoning approval from the Board of Commissioners with the condition that explicitly applied to the stream buffer and stated that development “involve no land disturbance and all trees over 12” diameter shall be undisturbed....”. In the 1997 conditional COA approval for development on the subject lot, DHPC accepted the owner’s commitment to conform with then-new Historic District Guidelines sections 8 (Natural Landscapes-Protecting the Design Context ) and 9 (Cultural Landscapes Guidelines-Maintaining "The Look"). These conditions addressed Druid Hills Civic Association and neighborhood concerns as per documents provided to Dekalb Staff on 3/19/21. **But for these reasons approvals would not have been permitted.** These approvals confirm that **in two separate decisions Dekalb County affirmed subject lot landscape is historic, then affirmed the compliance of the landscape with Historic District Guidelines**. In 1997, the original owner complied by planting the twelve birches on the stream bank. By permitting only “three kousa dogwoods” small tree replacements and lawn in the buffer, **the May 2021 decision overturns prior requirements for historic landscape by the BOC and the former DHPC and so is arbitrary and capricious.**

**Conclusion:** The decision must be reversed and the application remanded to the preservation commission with direction to modify planting plan to have at least 10 overstory trees on the stream bank and no lawn in the stream buffer.



To: DeKalb County Clerk of Commissioners, DeKalb County Board of Commissioners, &  
Department of Planning & Sustainability

**RE: DHCA Support for the Application to Appeal the DeKalb County Historic Preservation  
Commission's approval of the Certificate of Appropriateness for the property located at 1354  
The By Way. This letter serves as a Supplementary Explanation to our position.**

To the DeKalb County Board of Commissioners,

The Druid Hills Civic Association's Historic Preservation & Land Use Committee support the appeal filed for your consideration relating to approvals provided by DeKalb's Historic Preservation Commission for 1354 The By Way property. DHCA representatives requested a denial of this application at the recent hearing and were surprised at the Historic Preservation Commission's approval of certain aspects of the application, specifically as it relates to improvements sought within the stream buffer and corrective action required with the tree cutting that occurred, which the applicant was cited for by the county. The DHCA feels the approval provided is in conflict with the design guidelines the HPC is required to uphold. The areas of concern area as follows:



- Replacing existing native ground cover in the stream buffer in favor of a grass lawn is not acceptable.
- Insufficient landscape replacement plan to address the 27 trees that were improperly cut down.
- 12 Overstory Trees within the stream buffer out of the 27 cut down are to be replaced with 3 dogwoods that are classified as small trees in the Druid Hills Plant Material list is far short of a proper replacement plan.
- Impacts to the character of the stream buffer that is out of place with the surrounding areas stream buffer's conditions & natural native ground cover.
- Original platting in 1996 of the lot required the landscape comply with the Druid hills District's historic landscape requirement and no land disturbance on any and all trees over 12" in diameter. In 1997 a conditional COA approval for development of the subject lot required it conform to the then-new Historic District Guidelines for Druid Hills. This application approval goes against both prior requirements granted to the subject property.

DHCA requests you consider these points in your review of the application to appeal this C.O.A. by Caldwell-Judovitz, who are neighbors directly impacted by the applicant's illegal tree cutting, impacts to the stream buffer's natural environment should the C.O.A be upheld and change the character of The By Way. Our committee was surprised at the HPC's approval of the C.O.A. and

respectfully ask that the county consider overturning this approval in connection with the appeal filed.

Sincerely,

Rob Kincheloe on behalf of the Druid Hills Civic Associations DeKalb Land Use Committee





ENVIRONMENTAL  
ENGINEERING  
FORESTRY  
ARBORICULTURE  
STORMWATER  
TRAINING

**Stream Buffer Planting Plan Assessment  
1354 The By Way NE  
Atlanta, Georgia 30306  
Fulton County  
Project ID: 2021-05-006**

May 13, 2021

Hamish Caldwell  
1366 The By Way NE  
Atlanta, Georgia 30306

Dear Mr. Caldwell,

Thank you for contacting KADAS INC (KADAS) to perform a review of the planting plan associated with the replanting of the 25 foot State Stream Buffer on the property at 1354 The By Way NE. This assessment was performed by Mr. David Shostak, Principle Scientist with KADAS and a Graduate Forester, an International Society of Arboriculture (ISA) Certified Arborist, and an Alabama Registered Forester. Mr. Shostak is also the City Arborist for Alpharetta Georgia.

After reviewing all the documents provided for the Dekalb County May 17, 2021 HPC agenda item for the property as well as reviewing historical photos from Google Earth it is evident that the stream buffers on this property were historically forested. The latest aerial photo from Google Earth was dated December 2020 and indicated a mature tree canopy up to the streambank on both sides of the stream. Of note is that portions of the home lie within 25-feet of the top of the stream bank. There is also 100 year floodplain shown within this area that would need to be considered with any plan that moves soil or changes the existing grades within the flood plain limits.

The stream buffer on this property was forested and appeared to meet the historic appearance typical of Druid Hills and provide the ecological functions to protect water quality. These functions include but are not limited to shading the water to mitigate solar "heat" pollution, intercepting rainwater to prevent splash erosion from the impact of rain drops, filtering and slowing down the surface flow of stormwater and facilitating stormwater infiltration. In addition, the root systems of the mature trees, shrubs, and groundcover hold the soils in place preventing erosion.

With the trees removed these benefits no longer exists and the current planting plan by Viridian Studios last revised on 4/15/2021 does not adequately revegetate the buffer to provide the benefits needed and does little to protect water quality. In actuality this plan will increase water pollution and decrease water quality. This planting plan does not re-establish a significant tree canopy similar to what was present before the trees were removed. It also does not re-establish a filter strip, and it does not provide for deep rooting plants to hold soil in place. The most concerning part of this plan is the amount of turf grass proposed up to the water's edge. In order to successfully grow and maintain

this turf the owners will need to use fertilizers, herbicides, and pesticides. These chemicals will flow directly into the stream when it rains or it is watered without being filtered.

In order to replace the lost ecology and water quality benefits that the State Laws require of the 25' undisturbed stream buffer a new planting plan that completely plants the entire 25' stream buffer with trees, shrubs, and groundcover should be developed with. This plan should not include any turf within the stream buffer. It is important to note that the County may have additional stream buffers and impervious setbacks to enforce on this stream.

In order to provide adequate protections for water quality the planting plan should consist of native trees, shrubs, and groundcover plants to replace the lost ecology and water quality benefits. This plan should also mimic the natural systems as much as possible. This planting plan should include large native canopy trees, including ten overstory trees planted on the streambank as well as native midstory and understory trees so that all of the layers of a forest canopy are represented. In addition, native shrubs and groundcover plants should be planted interspersed between the trees to fill in any gaps and cover the forest floor. In addition, live staking along the stream bank with silky dogwood, boxelder, willows, etc. should be incorporated into this plan. Finally, a layer of natural organic mulch such as wood chips, pine straw, etc. should be spread to mimic the natural of leaf litter, twigs, and organic matter found within a forest.

KADAS would be happy to assist with the development of a stream buffer restoration plan.

Thank you for the opportunity to assist you with this assessment. Please let us know if you have any questions. We can be contacted by email or phone at [dshostak@kadasusa.com](mailto:dshostak@kadasusa.com) or (770)940-1625.

Sincerely,



David I Shostak, MS  
Principal Scientist  
ISA Certified Arborist: SO-5867A  
Alabama Registered Forester: #1994



**Addendum  
Stream Buffer Planting Plan Assessment  
1354 The By Way NE  
Atlanta, Georgia 30306  
Fulton County  
Project ID: 2021-05-006**

May 23, 2021

Hamish Caldwell  
1366 The By Way NE  
Atlanta, Georgia 30306

Dear Mr. Caldwell,

Please accept this document as an addendum to the document titled Stream Buffer Planting Plan Assessment dated May 13, 2021 provide by KADAS, Inc. This document was prepared after a site visit and a review of the final plat performed on May 21, 2021. The final plat for this subdivision was provided by Mr. Caldwell. This addendum will provide some observations and confirm and reinforce my opinions and recommendations provided in the previous report.

**Observations and Conclusions**

During the site visit it was observed that the majority of the vegetation between The By Way and the home at 1354 The By Way had been removed. This included the area within the 25' State of Georgia stream buffer as well as the area within the 100 year floodplain boundaries. A previous review of aerial photographs and Google Street View photographs revealed a mature tree canopy within this area prior to this land clearing operation.

In addition, the removal of the mature tree canopy does not fit with the character of this area, nor the historic nature. The two properties to either side of 1354 The By Way still have mature tree canopies that were also seen in the Google Earth aerial photographs going back many years.

At the time of the site visit, the disturbed area had not been fully stabilized. It appeared that grass seed had been spread over the area, but it had not fully germinated and was not providing for permanent stabilization. Seventy percent coverage was not observed over 100% of the site as is required for site stabilization after land disturbance. There were no other temporary or permanent erosion and sediment control measures observed.

The current planting plan by Viridian Studios last revised on 4/15/2021 identifies an area to the south of the creek as "EX LAWN", based upon my observations this area is not existing lawn nor was it existing lawn prior to the clearing. Again this was confirmed based upon a review of Google Earth aerial photographs from December 2020 and before.

An in-line weir/outlet control structure (OCS) was observed on the downstream (eastern) end of the property. This revealed this area as an in-stream detention pond, this observation was confirmed after reviewing the final plat. It is important to note that the streambanks within the in-stream detention pond are eroding and the presence of rills and gullies were observed. This erosion can cause instability in the stream bank as well as increased sedimentation within the detention pond. This increased sedimentation can reduce the design capacity of the pond and increase maintenance cycles and costs. Even though this is a detention pond it is still a stream channel and the state stream buffers, as shown on the final plat, are still required and should be enforced.

Finally, the increased erosion and sedimentation, can impact the shared driveway, access easements, pond components (weir and inlet headwalls), etc. increasing costs for any and all parties responsible for the maintenance of these items.

Based upon the observations from the site visit, I am now more concerned, with the health and longevity of this creek. This is due to the amount of erosion that has started to take place and the lack of temporary or permanent erosion and sediment control measures in place. It is still my opinion that the removal of the mature vegetation has had a detrimental effect upon the ecology and the character of this area. If not corrected soon, there could be long term negative impacts to this stream segment and beyond. The results of the disturbance of the mature tree canopy and lack of replacement could lead to increased streambank erosion and degradation, head cutting, loss of habitat, ending with an unhealthy incised urban stream.

Thank you for the opportunity to assist you with this assessment. Please let us know if you have any questions. We can be contacted by email or phone at [dshostak@kadasusa.com](mailto:dshostak@kadasusa.com) or (770)940-1625.

Sincerely,



David I Shostak, MS  
Principal Scientist  
ISA Certified Arborist: SO-5867A  
Alabama Registered Forester: #1994



**Addendum II**  
**Stream Buffer Planting Plan Assessment**  
**1354 The By Way NE**  
**Atlanta, Georgia 30306**  
**Fulton County**  
**Project ID: 2021-05-006**

August 9, 2021

Hamish Caldwell  
1366 The By Way NE  
Atlanta, Georgia 30306

Dear Mr. Caldwell,

This document is being provided as an addendum to the assessment titled Stream Buffer Planting Plan Assessment dated May 13, 2021 and Stream Buffer Planting Plan Assessment Addendum dated May 23, 2021 prepared by David Shostak, Principal Scientist with KADAS, Inc. a Graduate Forester, an International Society of Arboriculture (ISA) Certified Arborist, and an Alabama Registered Forester. Mr. Shostak is also the City Arborist for the City of Alpharetta Georgia.

It is my opinion that the findings detailed in the previous document, associated with the replanting of the 25 foot State Stream Buffer on the property at 1354 The By Way NE., are still valid and are based upon state and local laws; sound science and over 25 years of experience in ecology, forestry, arboriculture, and environmental sciences. Those beliefs still stand since not much has changed with the updated planting plan, provided by Viridian Studios, revised on July 6, 2021. These two documents are assessments of the planting plans. They are not assessments of the trees on the property prior to their removal.

The planting plan was required based upon a violation issued to the property owner of 1354 The By Way NE by DeKalb County, for removing trees and vegetation from the 25' State Stream Buffer. This area is considered a protected area to remain undisturbed per state and local regulations. Per DeKalb County Ordinance Sec. 14-44.1 (a) (1), "Stream buffers shall consist of the contiguous undisturbed natural vegetative land... (and) shall preserve any existing mature riparian forest that can provide shade, leaf litter woody debris and erosion protection to the stream..." Because this area was disturbed, the purpose of the planting plan was to revegetate the denuded and disturbed 25' State Stream Buffer that is in place to protect water quality and habitat. In determining if a planting plan is appropriate, the Druid Hills Historic Preservation Commission must defer to the natural ecology of the site, state and county regulations, and their own guidelines. In addition, many entities have published scientifically based guidance documents that can be utilized to design an appropriate planting plan to revegetate a natural stream buffer. Links to some of these guidance documents, as well as some regulatory information, has been provided in the appendix of this report.

After reviewing the updated plan, as well as the report by Chris Hall, ISA Certified Arborist, it is still my belief that the planting plan, as presented, is inadequate and should be revised to provide for a better planting plan that contains more plants of varying types and sizes. The three ornamental dogwoods are not adequate to replace the canopy coverage that was lost. The area shown as existing lawn is not actually an existing lawn and is made up of various groundcover plants and should remain that way and be enhanced with appropriate groundcover plants that are best suited to the ecological conditions and to continue the existing “look” that is compatible with the neighboring properties within this same subdivision. Moreover, the plan as provided is still recommending to plant the Purple beech in the buffer, which is not native. This is an opportunity to make the stream buffer better than it was before for the benefit of the environment and the Druid Hills Neighborhood.

There are a few items presented in Mr. Hall’s report that I disagree with and that are not backed by scientific literature. Below are a few examples:

- Mr. Hall stated that trees should not be planted on the stream bank and “it is not true that trees are good for erosion control”. In my opinion, this is a false statement as trees prevent erosion and are recommended for planting on stream banks and within riparian forests to prevent erosion and hold soil in place. This information can be found in multitudes of scientific and popular writings and can also be found in many of the links I have included in the appendix.
- Mr. Hall stated that “most overstory trees do not do well in wet soils.” Per the information provided in the guidance documents in the appendix as well as the US Corps of Engineers Wetland Delineation Manuals, many overstory type trees do well and are ecologically compatible with areas of wet soils and riparian forests that are inundated with water for extended periods of time. Some trees that do well in these conditions, are native, and are found on the Druid Hills Recommended Plant Materials List are Cottonwood, Red maples, Sycamore, and the various types of willows listed, among others. It is also my opinion that since the required replanting is in a state regulated stream buffer the owner should be able to deviate from this list and plant more site appropriate species.
- Mr. Hall stated that planting trees in a flood plain is not a good idea. This is also a false statement. Natural floodplains have developed with trees. Trees help to stabilize soils in a floodplain, uptake water, reduce downstream flooding. Planting trees in barren floodplains is recommended by the United States Department of Agriculture Natural Resources Conservation Service in the document provided in the appendix.

The updated plan includes barely any plantings within the 25’ stream buffer, does not plant both side of the stream, is still recommending non-native trees in the buffer, and does not include any shrubs, groundcover, or mulch.

We understand that it is difficult to balance what is required with what is desired. However, in this case the provided planting plan will have negative impacts upon the environment as well as the neighboring property owners. It is recommended to provide a more environmentally sensitive and ecologically compatible planting plan to revegetate the denuded buffers.

It is also understood that naturally forested areas often do not often comply with human guidelines and that a forested planting is not meant to comply with ISA Industry Standards or ANSI A300 tree care guidelines. It is meant to mimic a natural condition.

Again, I have provided some links for resources in the appendix to aid in understanding of buffers and



replanting recommendations. A quick review of these resources will provide you with some information that trees do prevent erosion and that native overstory trees and plants of all sizes are recommended to revegetate buffers.

KADAS would be happy to assist with the development of a stream buffer restoration plan.

Thank you for the opportunity to assist you with this assessment. Please let us know if you have any questions. We can be contacted by email or phone at [dshostak@kadasusa.com](mailto:dshostak@kadasusa.com) or (770)940-1625.

Sincerely,



David I Shostak, MS  
Principal Scientist  
ISA Certified Arborist: SO-5867A  
Alabama Registered Forester: #1994

## APPENDIX A

## SELECTED RESOURCES

Adopt a Stream, Georgia: Life at the Water's Edge: A Guide to Stream Care in Georgia,  
<https://adoptastream.georgia.gov/document/document/life-waters-edge-2020/download>

Chattahoochee River Keepers: Stream Buffers, <http://old.chattahoochee.org/our-work/enforcing-environmental-laws/stream-buffers/>

Dekalb County: Stream Buffer Ordinance,  
[https://www.dekalbcountyga.gov/sites/default/files/user18/stream\\_buffer\\_ordinance.pdf](https://www.dekalbcountyga.gov/sites/default/files/user18/stream_buffer_ordinance.pdf)

Druid Hills: Cultural Landscape Guidelines, Maintaining "The Look"  
<https://www.dekalbcountyga.gov/sites/default/files/user348/Section%20009.pdf>

State of Georgia Department of Community Affairs: Back Yard Buffers, Protecting Habitat and Water Quality, <https://www.dca.ga.gov/sites/default/files/dcabackyardbuffers.pdf>

United States Army Corps of Engineers: Wetlands Delineation Manual,  
<https://www.lrh.usace.army.mil/Portals/38/docs/USACE%2087%20Wetland%20Delineation%20Manual.pdf>

United States Department of Agriculture Natural Resources Conservation Service: Tree Planting in Flood Plains Forestry Technical Note,  
[https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs144p2\\_030196.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_030196.pdf)



TO: DeKalb County Board of Commissioners

CC: DeKalb County Department of Planning & Sustainability

DATE: June, 18, 2021

RE: Support for the Appeal of the Historic Preservation Commission's Approval of the  
Certificate of Appropriateness for the Property Located at 1354 The Byway

Ladies and Gentlemen:

I live at 948 Oakdale Rd NE, which is within 1500 feet of the property located at 1354 The Byway (the "1354 property"). I'm very familiar with the 1354 property, and I'm aware of the application by the owner of the 1354 property (the "Homeowner") for approval of proposed improvements within the stream buffer, certain aspects of which were approved by the DeKalb County Historic Preservation Commission (the "HPC"). I'm also aware that Hamish Caldwell and Dalia Judovitz at 1366 The Byway have appealed the HPC's approval. I support the Caldwell/Judovitz appeal and believe the HPC's approval of the Homeowner's application is in conflict with the design guidelines the HPC is required to uphold. The areas of concern are as follows:

- Replacing existing native ground cover in the stream buffer in favor of a grass lawn is not acceptable.
- The Homeowner's landscape replacement plan is insufficient to address the 27 trees that were improperly cut down.

- 12 Overstory Trees within the stream buffer out of the 27 cut down are to be replaced with 3 dogwoods that are classified as small trees in the Druid Hills Plant Material List, which is far short of a proper replacement plan.
- The Homeowner's replacement plan impacts the character of the stream buffer that is out of place with the surrounding areas stream buffer's conditions and natural native ground cover.
- The original platting in 1996 of the 1354 property required the landscape to comply with the Druid Hills District's historic landscape requirement and prohibited any land disturbance on any and all trees over 12" in diameter. In 1997 a conditional COA approval for development of the 1354 property required it to conform to the then-new Historic District Guidelines for Druid Hills. The approval of the Homeowner's application goes against both prior requirements granted to the subject property.

Based on these concerns, which are shared by many others in the neighborhood, I request that you reverse the HPC's approval, remand the Homeowner's application to the HPC, and direct the HPC that any approval of the Homeowner's application must give effect to the Caldwell/Judovitz request that the landscaping plan include at least ten overstory trees on the stream bank and with no lawn in the stream buffer. Allowing the HPC's approval to remain in place as-is will severely impact the stream buffer's natural environment and change the character of The Byway to the detriment of the entire neighborhood.



Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Philip H. Moïse". The signature is written in a cursive style with a large initial 'P' and a stylized 'M'.

Philip H. Moïse

Approved Application  
and supporting  
materials from  
June 2021



# DeKalb County Historic Preservation Commission

Monday, May 17, 2021- 6:00 P.M.

## Staff Report

### Regular Agenda

M. 1354 The By Way, Charles Aubry. Tree removal and plantings. 1244878

Built 1998. (18 002 06 092)

This property is in the Druid Hills National Register Historic District and the Druid Hills Character Area 1.

5-97 1354 The By Way, Mr. and Mrs. David Odel, to build new house

11-97 1354 The ByWay, Amy Oedel. Construct footbridge over creek in front of the house. **Approved**

3-21 1354 The By Way (DH), Charles Aubrey. Remove trees and install new landscaping and grass pavers. **Deferred, then withdrawn**

This is a nonhistoric property. (*Druid Hills Design Manual*, Glossary, page ii: **Nonhistoric** — Nonhistoric properties within the district are those properties built after 1946. Nonhistoric properties are identified on the Historic District Map.)

The applicant has removed a number of trees, as detailed in the county arborist's report. None of the trees were larger than 17" in diameter and all of them probably were planted after construction of the house.

The whole property is in the stream buffer, some of it also in the floodplain. The front yard is about 18 feet down a steep slope from the street.

The applicant proposes to:

1. Plant 31 trees. Five of these will be canopy trees - three oaks and two beech trees, with the remainder smaller trees – three kousa dogwoods, a Yoshino cherry and 22 Nellie Stevens hollies. The hollies will be planted 3-5' back from the street as a hedge. (There are the remnants of a hedge along the street. This appears to have been planted without a CoA and the plants are in poor condition.) The applicant says the hollies will be maintained at a height of 6'. All of the trees except the cherry and the hollies are on the recommended plant list in the Design Manual. Nellie Stevens holly is a hybrid, one of whose parent plants, *Ilex cornuta*, is on the recommended plant list.
2. Remove five trees that are either dead or in very poor condition. These are identified on the revised site plan.

### **Recommendation**

The thick planting of evergreen trees along the street will form a hedge, which is an enclosure with a similar effect as a fence. Hedges along the front of properties are not found in the historic landscape designs in the district. The hedge does not comply with guidelines 9.4 and 9.7. However, in this instance the hedge improves safety along the street. The By Way is a narrow street with nothing to keep a pedestrian or car from falling off into the applicant's yard. The hedge will prevent pedestrians and possibly some cars from falling. For safety reasons, staff recommends approval of the hedge along the street. Otherwise, the application meets the guidelines. The application will not have a substantial adverse effect on the district and staff recommends approval

### **Relevant Guidelines**

- 8.2 *Trees* (p78) Recommendation - The mature hardwood forest within the Druid Hills Local Historic District should be perpetuated through a district-wide replanting program. Trees should be replaced when mature trees are lost to age or damage or are removed for safety reasons. Replacement trees should be of identical or similar varieties to the original trees. A diversity of tree types is recommended to perpetuate the existing character of most tree groupings. Replacement trees of adequate size (1.5" caliper minimum) are recommended. Existing ordinances that provide for the protection and replacement of the district's tree resources should be applied to development activities within Druid Hills.
- 9.3 *Vegetation* (p83) Recommendation – The plant list is intended to assist in the selection of appropriate plant materials. Olmsted's list and the list from the Georgia Landscapes Project provide guidance in selecting materials appropriate for historic landscape projects. There are other sources that can be consulted to identify additional plants used by Olmsted in Druid Hills, such as historic planting plans and particularly the archival record at the Olmsted National Historic Site in Brookline, Massachusetts. The Olmsted list presented in this document should be considered a beginning. Residents of Druid Hills are encouraged to add to this list with historic plants that can be documented as having been used by Olmsted. The native list should be used for natural areas within the district, such as creek corridors and drainage ways. Places within the district where the retention of healthy ecological environments is critical are best landscaped with native varieties. Since native plants have been available since the colony of Georgia was established in 1733, native plants are also appropriate for historic landscapes.
- 9.4 *Enclosures and Walls* (p90) Guideline - Fences and walls should not be built in front yard spaces and are strongly discouraged from corner lot side yard spaces. Retaining walls should only be used in situations where topography requires their use.
- 9.7 *Residential Landscape Design* (p91) Recommendation - For residential yards, created without the assistance of landscape designers, historic landscape plans for other residential lots within the district should be used for guidance. These plans can be interpreted to create a new landscape plan that is based on historic traditions. Care should be taken to select designs for yards of similar size containing houses of similar style and scale.



## Decision of the DeKalb County Historic Preservation Commission

Name of Applicant: \_\_\_\_\_ Charles Aubry \_\_\_\_\_

Address of Property: \_\_\_\_\_ 1354 The By Way \_\_\_\_\_

Date(s) of hearing if any: \_\_\_\_\_ May 17, 2021 \_\_\_\_\_

Case Number: \_\_\_\_\_ 1244878 \_\_\_\_\_

☒ Approved

☐ Denied

☐ Deferred

**Approval:** The Historic Preservation Commission, having considered the submissions made on behalf of the applicant and all other matters presented to the Preservation Commission finds that the proposed change(s) will not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic district and hereby approves the issuance of a certificate of appropriateness.

Any conditions or modifications are shown below.

☒ Pursuant to Code of DeKalb County, § 13.5-8(3), the Preservation Commission has considered the historical and architectural value and significance; architectural style; scale; height; setback; landscaping; general design; arrangement; texture and materials of the architectural features involved and the relationship of such texture and materials to the exterior architectural style; pertinent features of other properties in the immediate neighborhood, as prescribed generally by county code and specifically by the district design guidelines.

☐ This application relates to an existing building, pursuant to the authority granted to the Preservation Commission by Code of DeKalb County, § 13.5-8(3), the Preservation Commission has also used the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guideline for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings therein as guidelines. The Preservation Commission finds that all relevant guidelines have been met.

### Additional pertinent factors:

Plant 31 trees. Five of these will be canopy trees - three oaks and two beech trees, with the remainder smaller trees – three kousa dogwoods, a Yoshino cherry and 22 Nellie Stevens hollies. The hollies will be planted 3-5' back from the street as a hedge. The hollies will be maintained at a height of 6'. Remove five trees that are either dead or in very poor condition.

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Application is approved with conditions or modifications ☐ /without conditions or modifications ☒

**Conditions or modifications (if applicable):**

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**Denial:** The Preservation Commission has determined that the proposed material changes in appearance would have a substantial adverse effect on the aesthetic, historic or architectural significance and value of the historic property or the historic district ☐ / or, the applicant has not provided sufficient information for the Preservation Commission to approve the application ☐. Specifically, the Preservation Commission finds as follows:

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**Deferral:** The Preservation Commission has deferred action on this application for the following reasons:

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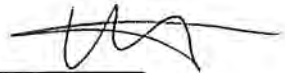
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The application will be re-heard by the Historic Preservation Commission at its meeting on

\_\_\_\_\_.

**Date:** 05/20/2021

**Signature:** \_\_\_\_\_ Heather Shuster



**Chair, DeKalb County  
Historic Preservation Commission**





**CERTIFICATE OF APPROPRIATENESS**

May 25, 2021

Site Address: 1354 THE BY WAY  
ATLANTA, GA 30306-

Parcel ID: 18-002-06-092

Application Date:

Applicant: Charles Aubry

Mailing Address: 1354 The By Way  
Atlanta, GA 30306

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**THIS IS TO ADVISE YOU THAT THE DEKALB COUNTY HISTORIC PRESERVATION COMMISSION, AT ITS REGULARLY SCHEDULED PUBLIC MEETING ON May 17, 2021, REACHED THE FOLLOWING DECISION ON THIS APPLICATION:**

**ACTION: Approval**

Plant 31 trees. Five of these will be canopy trees - three oaks and two beech trees, with the remainder smaller trees – three kousa dogwoods, a Yoshino cherry and 22 Nellie Stevens hollies. The hollies will be planted 3-5' back from the street as a hedge. The hollies will be maintained at a height of 6'. Remove five trees that are either dead or in very poor condition.

**RECEIVED**

By Rachel Bragg at 10:05 am, Apr 29, 2021

Chief Executive Officer  
Michael Thurmond

## DEPARTMENT OF PLANNING &amp; SUSTAINABILITY

Director  
Andrew A. Baker, AICP

## Application for Certificate of Appropriateness

Date Received: \_\_\_\_\_ Application No.: \_\_\_\_\_

Address of Subject Property: 1354 THE BY WAY NE, ATLANTA GA, 30306Applicant: CHARLES AUBRY E-Mail: CAUBRYCHZ@GMAIL.COMApplicant Mailing Address: 1354 THE BY WAY NE, ATLANTA GA 30306Applicant Phone(s): 248-563-9005 Fax: \_\_\_\_\_Applicant's relationship to the owner: Owner ☒ Architect: ☐ Contractor/Builder ☐ Other ☐Owner(s): CHARLES AUBRY E-Mail: CAUBRYCHZ@GMAIL.COMANNE MARIE AUBRYE-Mail: AM@RVOKA@GMAIL.COMOwner(s) Mailing Address: 1354 THE BY WAY NE, ATLANTA GA, 30306Owner(s) Telephone Number: 248-563-9005Approximate age or date of construction of the primary structure on the property and any secondary structures affected by this project: 1998

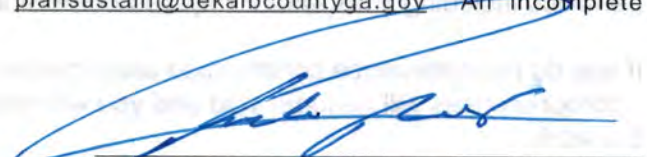
Nature of work (check all that apply):

New construction ☐ Demolition ☐ Addition ☐ Moving a building ☐ Other building changes ☐  
New accessory building ☐ Landscaping ☒ Fence/Wall ☐ Other environmental changes ☐  
Sign installation or replacement ☐ Other ☐

Description of Work:

REMOVAL OF 4 SMALL & 1 LARGE DEAD OR DYING TREES ALONG THE  
ROADSIDE. INSTALLATION OF 31 TREES.

This form must be completed in its entirety and be accompanied by supporting documents, such as plans, list of materials, color samples, photographs, etc. All documents should be in PDF format, except for photographs, which may be in JPEG format. Email the application and supporting material to [plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov). An incomplete application will not be accepted.

  
Signature of Applicant/Date



**Charles & Anne Marie Aubry**  
**1354 The By Way NE, Atlanta GA, 30306 Property Owners**  
**Application for COA: May 17, 2021**

Dear Commissioners,

We are applying for a certificate of appropriateness to gain approval and make upgrades to our property's landscaping through the installation of new trees.

We have worked with several environmental specialists and developed the submitted tree permit plan to address the property's new trees with a focus on long term environmental sustainability, community and property safety, and to address any concerns the commission has stated in previous historic preservation COA meetings. In working with these individuals, we developed a plan that perpetuates the historic district's character, instills pride in its residents, and will create a safe environment for our young children to enjoy and inspire an appreciation for mother nature. In total we are requesting to plant 31 trees.

Since a portion of the property lies within a floodplain, the submitted tree permit plan was presented to the DeKalb County Floodplain Coordinator, Donovan Cushnie. He approved the plan, requesting floodplain data be overlaid. This information has been added and is shown in the submitted material. In addition, the tree permit plan was also approved by DeKalb County's Master Arborist, Russell Tinning. Both approval emails have been attached with the COA submission.

We are requesting 5 overstory hardwood trees be planted in a void on the southwest hillside of the property. These trees are on the suggested planting list of the Historic Druid Hills Design manual and are selected to aid in perpetuating the hardwood forest of the district through increasing the density of the tree canopy where there is currently none. There is one additional understory Mock Cherry tree we are requesting be planted at the base of the hillside. This too can be found on the approved tree planting list in the design manual. Within this void there is a large dead White Oak that has been neglected prior to our purchase of the property. This tree was deemed dead and hazardous by an ISA certified arborist and is noted in the submitted report. The plan is to remove this tree.

In addition, we are requesting to plant 3 Flowering Dogwood trees along the streambank. An understory tree is an ideal selection in this scenario due to the encroaching canopies of the existing mature Tulip Poplars, Water Oak, and Paper Bark Elm Trees, as well as the heavily forested properties to the East and West of the location. The trees are set to be planted on 20-foot centers. This is an appropriate spacing to avoid root and canopy encroachment and ensure proper growth and health for long term success. As stated in the Arborist report, the previous trees were planted too close together (8-10 foot centers) leading to health and growth issues, in turn, creating a hazard to the property. As the Dogwoods mature their canopies should stay condensed to a height of 15-25 feet. This will avoid leggy "reaching" growth toward the home and ensure the trees do not become hazardous to our home in the future.

Lastly, we are requesting to plant 22 Nellie R. Stevens Holly trees along the roadside. In this area there is a large safety issue for drivers, joggers, bikers, as well as our family. There is a 20-foot drop to the creek on this stretch of road with no vegetative buffer to act as a guide for vehicles. The requested hedge would be planted 3-5 feet off the edge of the road and maintained at a height of 6 feet tall. The hedge would be routinely pruned to keep vegetation out of the road. There are currently 4 small trees along the edge of the road that were deemed dead, diseased, dying, or hazardous by an ISA certified arborist and have been approved for removal by Dekalb County's Master Arborist, Russell Tanning. These are requested for removal in lieu of the Nellie Stevens Hollies being planted. This work shall be conducted in a timely sequential order to minimize time without a vegetative border.

Thank you for your time and consideration.



Charley,

Thank you so much for having me out to access your trees. You have a beautiful new home and we are very happy to help you get it into playing conditions.. It is very apparent that there are a number of trees issues that should be addressed.. Below are my findings and recommendations..

1. Dead hard woods at street.. Remove asap as it is a hazard
2. Number of river birch along creek bank.. These trees where planted very close together and for that reason have developed problems... the previous owners have over pruned the trees and the large leads are now dead due to poor pruning... unfortunately these leads are all on the house side of the trees and will reach the house should they fail. Two options ... first remove every other tree and prune out all the dead.. This does not leave much tree and is a temporary fix.. Better option is to remove and replant.. We would need better spacing and I would consider Bald Cypress as a replacement.
3. Maples in the back yard.. these trees are all root bound as the girdling roots are very visible .. The tops are now declining....Again I recommend that you remove and replace with a species suited for the site...
4. The other dead trees include magnolia on stream bank, maples in the rear of the house... all of these should be removed .

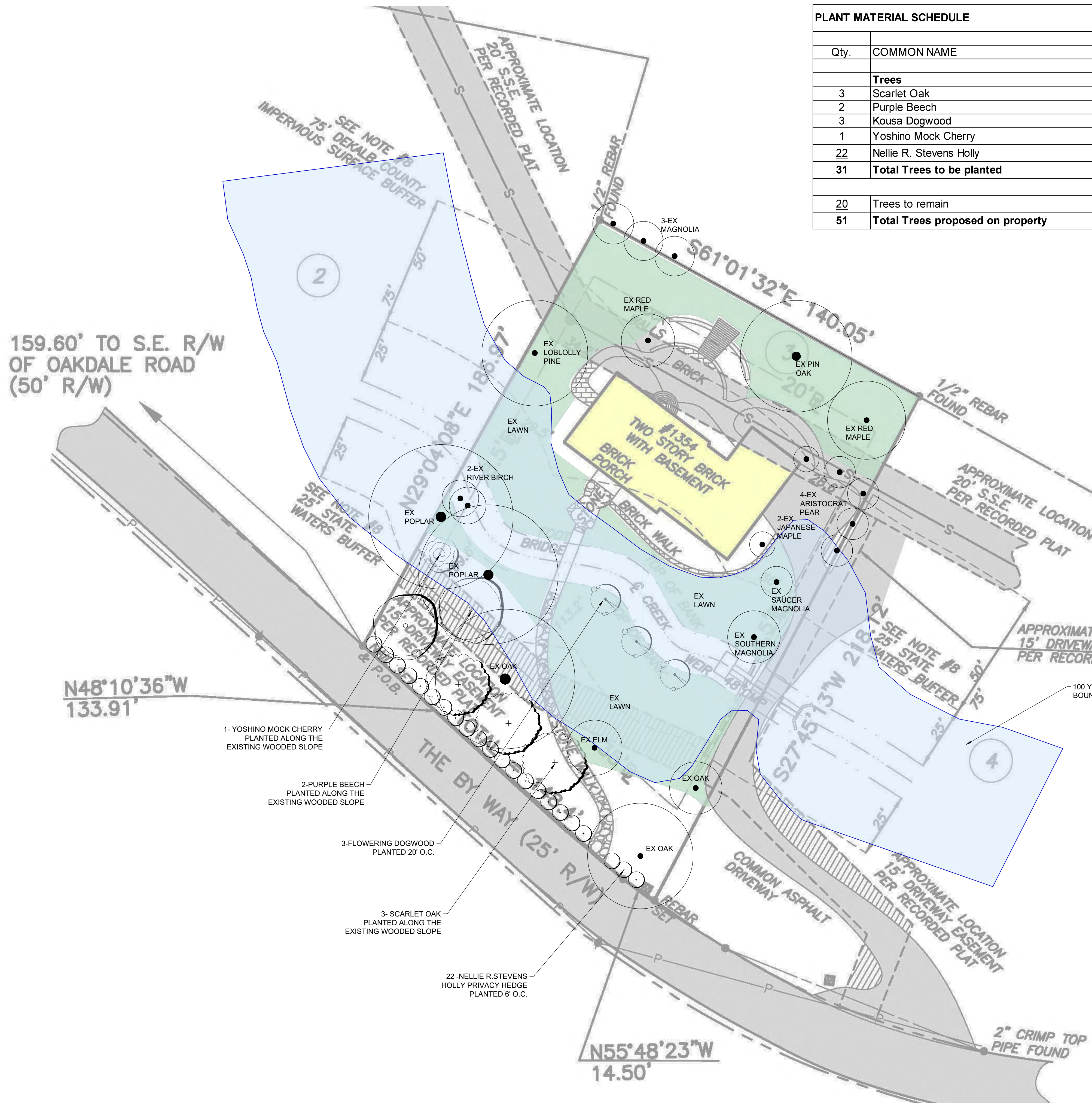
Should you need to discuss further I will be happy to speak further about these situations...

Chris Hall

ISA certified arborist

SO-1450





PLANT MATERIAL SCHEDULE				
Qty.	COMMON NAME	BOTANICAL NAME	Min. Size	Notes
<b>Trees</b>				
3	Scarlet Oak	Quercus coccinea	2" Caliper	b&b, uniform, full branching, straight leader
2	Purple Beech	Fagus sylvatica 'atropunicea'	2" Caliper	b&b, uniform, full branching, straight leader
3	Kousa Dogwood	Cornus kousa	8" HGT.	b&b, uniform, full branching, straight leader
1	Yoshino Mock Cherry	Prunus caroliniana	8" HGT.	b&b, uniform, full branching, straight leader
22	Nellie R. Stevens Holly	Ilex x 'Nellie R. Stevens'	4-5' HGT.	b&b, uniform, full branching, straight leader
31	Total Trees to be planted			
20	Trees to remain			
51	Total Trees proposed on property			

1354 The By Way NE, Atlanta, Georgia, 30306



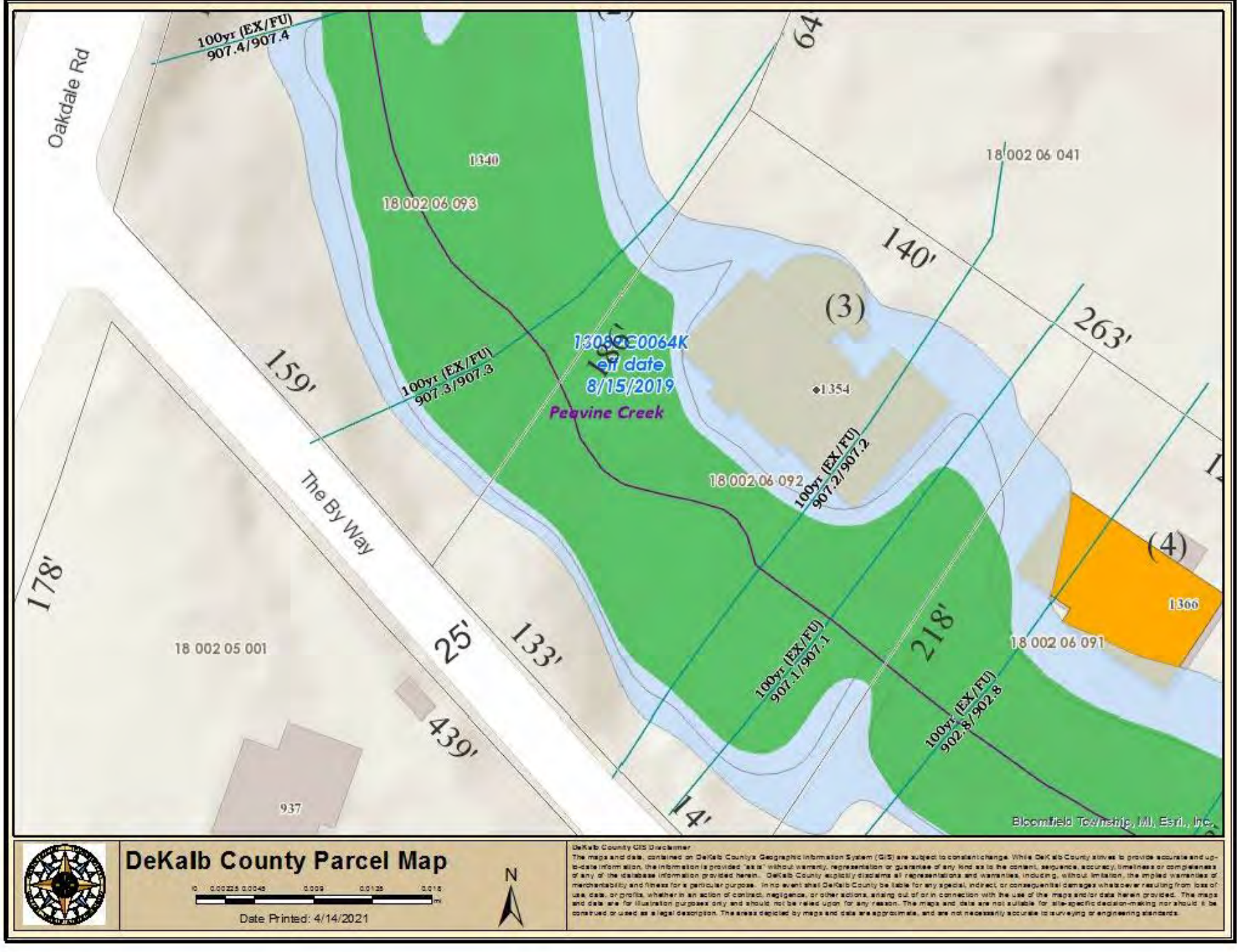
GEORGIA  
FLOOD MAP PROGRAM

Low Risk  
0.9 ft  
Minimal  
Minimal

Location Information  
Panel: 13089C0064K  
Watershed: Upper Chattahoochee  
County: DEKALB  
Community ID: 13089C  
Map Status: EFFECTIVE

Nature Doesn't Read Flood Maps  
Many people don't understand just how risky the floodplain can be. There is greater than 20% chance that a non-elevated home in the SFHA will be flooded during a 30-year mortgage period.  
The chance that a major fire will occur during the same period is less than 10%!

Legend with Flood Zone Designations  
1% Flood - Floodway (High Risk)  
1% Flood - Zone AE (High Risk)  
1% Flood - Zone A, AH, or AO (High Risk)  
5.25% Flood - X-Subsided (Moderate Risk)  
Area of Undetermined Flood Hazard  
1% Flood - Zone VE (High Risk)  
Area Not Included  
Letters of Map Revision  
Coastal Barrier Resource Area  
Limit of Moderate Wave Action  
Floodway Increase  
Floodway Decrease  
100-Year Flood Zone Decrease  
100-Year Flood Zone Increase  
Zone Change



REVISIONS

NO.	DATE	ISSU
1	04/15/2021	CNT
2		
3		
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5		
6		
7		
8		
9		
10		

PROJECT NAME

AUBRY  
RESIDENCE

PROJECT ADDRESS

1354 THE BY WAY NE  
ATLANTA, GA 30306

LAND LOT 2

18TH DISTRICT  
DEKALB COUNTY  
DRIUD HILLS HISTORIC

PROPERTY OWNER

CHARLES AND  
ANNE MARIE  
AUBRY

SHEET TITLE

TREE  
PERMIT  
PLAN

DATE

04/07/2022

PROJ. NO.

2021037

PROFESSIONAL SEAL

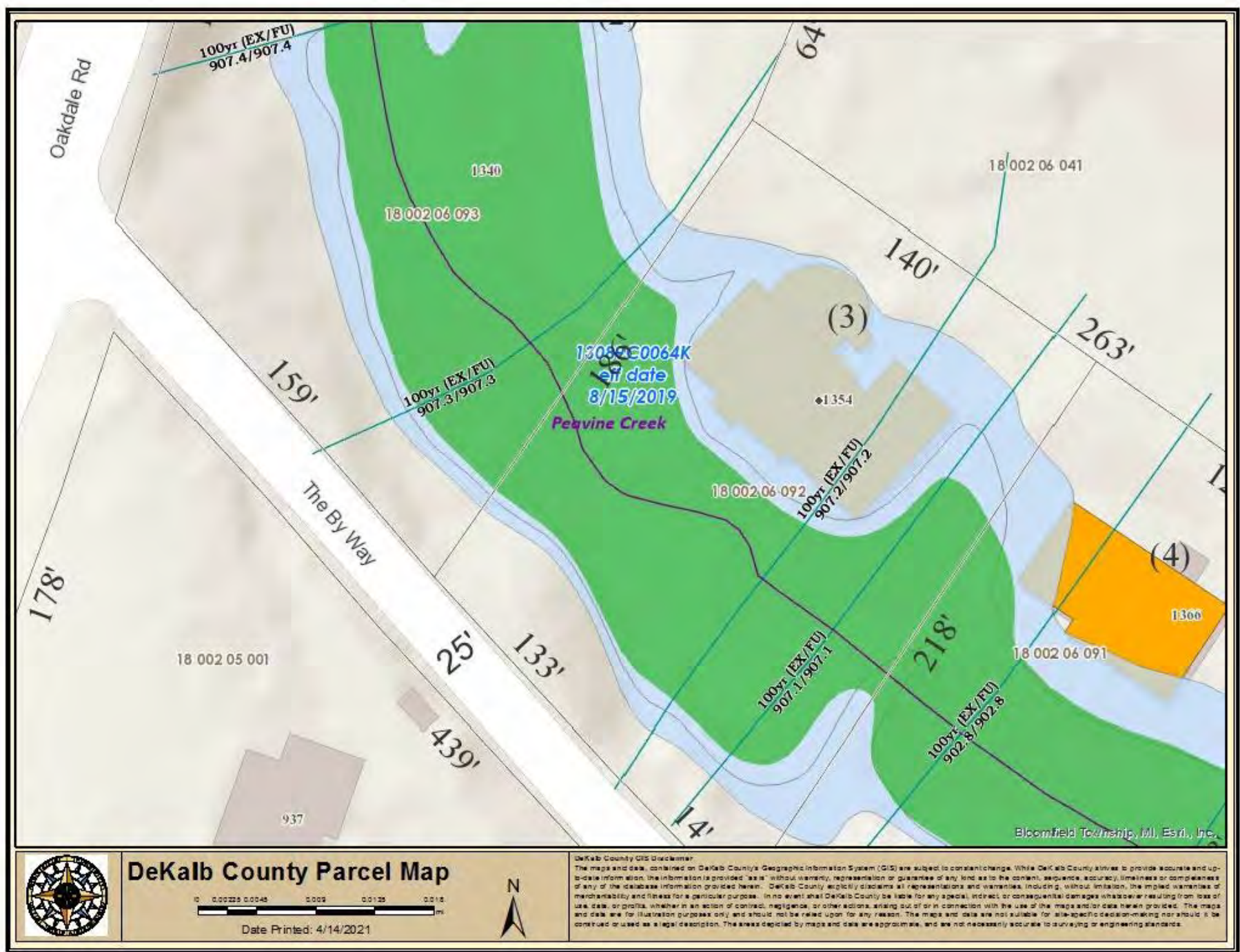
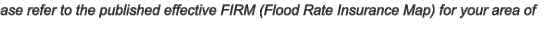
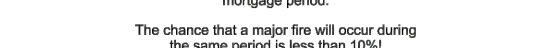
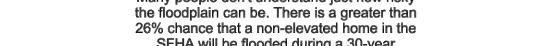
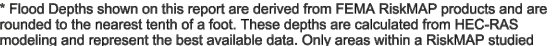
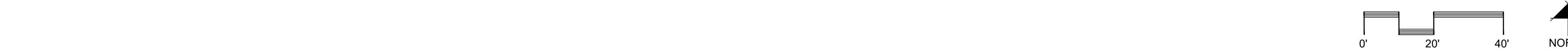


SHEET

T1.1



<u>20</u>	Trees to remain			
<b>56</b>	<b>Total Trees proposed on property</b>			





**Re: COA Application: 1354 The By Way NE**

Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>

Wed 5/12/2021 4:40 PM

To: Cullison, David <[dccullis@dekalbcountyga.gov](mailto:dccullis@dekalbcountyga.gov)>

Cc: Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>

1 attachments (2 MB)

Update Plan with Removals.pdf;

Mr. Cullison,

Please find attached the updated plan with removals depicted on it. I think there may have been some confusion about the additional tree removals. None of the removals are healthy trees. The Red Oak, Water Oak, and Maples in the backyard are all going to remain on property. I am not requesting to remove those trees. The removals are all in the front yard and notated on this update plan. One is a very large dead white oak (only the trunk remains), one is a small dead dogwood. The other three were in such poor condition they were unidentifiable by Russell Tinning upon reviewing them during an onsite assessment. The one tree had caused damage to the road itself.

The Cherry Tree requested to be planted is a Yoshino Cherry and can be found in the front yards of a few homes along Oakdale Road.

I think it is worth noting that a substantial effort was made to coordinate the plan with Dekalb County's Floodplain Coordinator, Donovan Cushnie, as well as Dekalb County's Master Arborist Russell Tinning. And also to note that both county officials had no objections to the planting plan.

Thank you

On Wed, May 12, 2021 at 3:43 PM Cullison, David <[dccullis@dekalbcountyga.gov](mailto:dccullis@dekalbcountyga.gov)> wrote:

The report is attached.

Do you want any documents pulled forward from your earlier application?

David Cullison  
Senior Planner  
DeKalb County Department of Planning & Sustainability  
330 W. Ponce de Leon Avenue  
Third Floor  
Decatur, GA 30030  
470/542-3023  
404/371-4556 (fax)

The DeKalb County zoning map is now on-line at <https://dekalbgis.maps.arcgis.com/apps/webappviewer/index.html?id=f241af753f414cdfa31c1fdef0924584>. The Department of Planning & Sustainability website is <https://www.dekalbcountyga.gov/planning-and-sustainability/planning-sustainability>.

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**From:** Cullison, David <[dccullis@dekalbcountyga.gov](mailto:dccullis@dekalbcountyga.gov)>

**Sent:** Wednesday, May 12, 2021 1:31 PM

**To:** Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>

**Cc:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>

**Subject:** Re: COA Application: 1354 The By Way NE

I'm writing the report now and will send it to you when complete.

I believe there is a small error in your planting list. Mock cherry is *Prunus caroliniana*, but Yoshino is a variety of Japanese cherry tree. You don't need to change anything but let me know in an email if the word Yoshino is incorrect.

David Cullison  
Senior Planner  
DeKalb County Department of Planning & Sustainability  
330 W. Ponce de Leon Avenue  
Third Floor  
Decatur, GA 30030  
470/542-3023  
404/371-4556 (fax)

The DeKalb County zoning map is now on-line at <https://dekalbgis.maps.arcgis.com/apps/webappviewer/index.html?id=f241af753f414cdfa31c1fdef0924584>. The Department of Planning & Sustainability website is <https://www.dekalbcountyga.gov/planning-and-sustainability/planning-sustainability>.



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**From:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>  
**Sent:** Tuesday, May 11, 2021 2:33 PM  
**To:** Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>  
**Cc:** Cullison, David <[dccullis@dekalbcountyga.gov](mailto:dccullis@dekalbcountyga.gov)>  
**Subject:** RE: COA Application: 1354 The By Way NE

Okay, great. We are still working on the staff reports now, however that was the only concern/request Mr. Cullison expressed during our joint review. My understanding is that Staff's recommendation to the HPC will be for approval of the application, although as I said we're still working through the details. I can share the staff report with you on Monday before the meeting.

I've copied him in case there's anything else he'd like to add.

Thanks!

**Rachel L. Bragg, MHP**  
[rlbragg@dekalbcountyga.gov](mailto:rlbragg@dekalbcountyga.gov)  
Cell Phone: 470-371-1494

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**From:** Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>  
**Sent:** Tuesday, May 11, 2021 2:20 PM  
**To:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>  
**Subject:** Re: COA Application: 1354 The By Way NE

I don't think that will be an issue. I can send photos I took of the trees as well when requesting permission from Mr. Tinning. I'm working with my architect now to develop the graphic. I am curious as to what other questions or concerns that Mr. Cullison may have, as well as what he is anticipating on behalf of the commission. I would also like to know what he will be recommending to the commission during the meeting.

Thank you,

Charles Aubry

On Tue, May 11, 2021 at 12:37 PM Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)> wrote:

Good afternoon,

We are working on our staff reports and try to anticipate the HPC's questions: Would you be able to submit a graphic/plan that shows which trees are proposed to be removed? I think it would help them to understand your application more fully.

Let me know if you have any questions and thanks!

**Rachel L. Bragg, MHP**  
[rlbragg@dekalbcountyga.gov](mailto:rlbragg@dekalbcountyga.gov)  
Cell Phone: 470-371-1494

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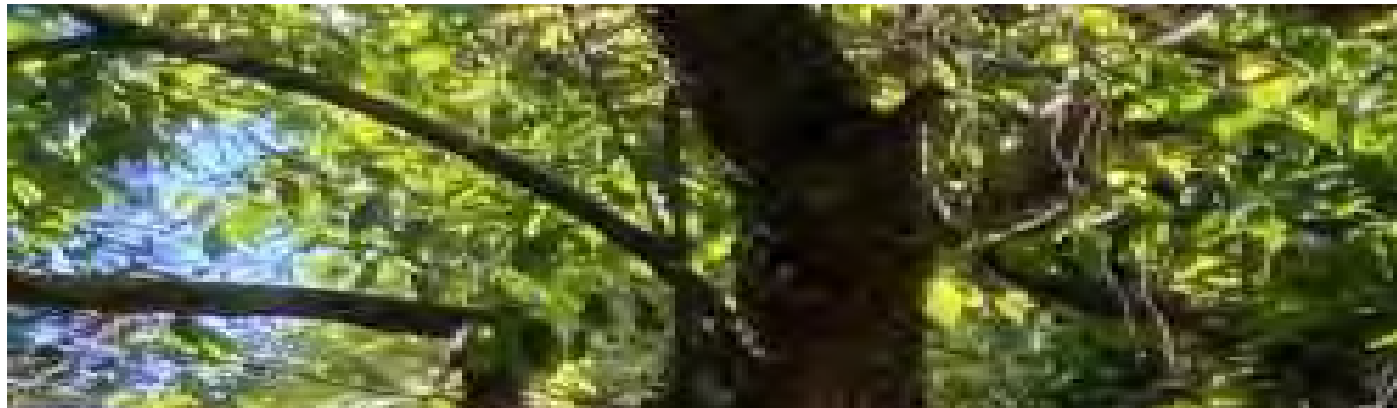
**From:** Bragg, Rachel L.  
**Sent:** Monday, May 10, 2021 9:22 AM  
**To:** 'Charles Aubry' <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>  
**Cc:** Cullison, David <[dccullis@dekalbcountyga.gov](mailto:dccullis@dekalbcountyga.gov)>  
**Subject:** RE: COA Application: 1354 The By Way NE

Received, thank you!

**Rachel L. Bragg, MHP**  
[rlbragg@dekalbcountyga.gov](mailto:rlbragg@dekalbcountyga.gov)  
Cell Phone: 470-371-1494

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**From:** Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>  
**Sent:** Friday, May 7, 2021 5:20 PM  
**To:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>  
**Cc:** Cullison, David <[dccullis@dekalbcountyga.gov](mailto:dccullis@dekalbcountyga.gov)>  
**Subject:** Re: COA Application: 1354 The By Way NE









Please confirm receipt.

Charles Aubry  
Class A Golf Course Superintendent  
East Lake Golf Club  
(248) 563-9003 - Cell

Good afternoon,

Your application for a Certificate of Appropriateness will be heard at the Historic Preservation Commission (HPC) meeting on May 17 at 6:00pm via Zoom. See below for the link to join. We recommend the applicant or their representative attend, as the HPC may have questions about the application.

Each applicant must post a sign in the front yard of the property, approximately five feet from the sidewalk or road. Signs can be picked up inside the front entry way at 330 West Ponce de Leon Avenue from Tuesday, April 4 to Friday, May 7, from 8:00 am to 6:00pm. When you enter the building, they will be on your left. They are a greenish color. Please send me a photo of the posted sign to add to your application. The sign **MUST** be posted by Friday, May 7 or your case may be deferred to the June meeting. Feel free to give me a call if you have any issues finding the building or your sign.

Thank you!

Join from PC, Mac, Linux, iOS or Android: <https://dekalbcountyga.zoom.us/j/84274498533>

Or Telephone:

Dial:

USA 602 333 0032

USA 8882709936 (US Toll Free)

Conference code: 691303

Find local AT&T Numbers: <https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=6023330032&accessCode=691303>

Or Skype for Business (Lync): <https://dekalbcountyga.zoom.us/skype/84274498533>

**Rachel L. Bragg, MHP**

[rlbragg@dekalbcountyga.gov](mailto:rlbragg@dekalbcountyga.gov)

Cell Phone: 470-371-1494

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**From:** Bragg, Rachel L.

**Sent:** Thursday, April 29, 2021 10:06 AM

**To:** Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>

**Subject:** RE: COA Application: 1354 The By Way NE

No problem, got it!

Thanks,

**Rachel L. Bragg, MHP**

[rlbragg@dekalbcountyga.gov](mailto:rlbragg@dekalbcountyga.gov)

Cell Phone: 470-371-1494

---

**From:** Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>

**Sent:** Thursday, April 29, 2021 10:04 AM

**To:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>

**Subject:** Re: COA Application: 1354 The By Way NE

Yes, my apologies. Here you go. Please confirm receipt.

Charles Aubry

On Thu, Apr 29, 2021 at 9:57 AM Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)> wrote:

Good morning,

Could you please send the completed CoA application form? We received your supporting documentation but not the form itself.

Thanks!

**Rachel L. Bragg, MHP**

[rlbragg@dekalbcountyga.gov](mailto:rlbragg@dekalbcountyga.gov)

Cell Phone: 470-371-1494

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**From:** Charles Aubry <[aubrychz@gmail.com](mailto:aubrychz@gmail.com)>

**Sent:** Wednesday, April 28, 2021 1:06 PM

**To:** Cullison, David <[dcullis@dekalbcountyga.gov](mailto:dcullis@dekalbcountyga.gov)>; Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>; Plansustain <[plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov)>

**Subject:** COA Application: 1354 The By Way NE

Mr. Cullison,

Please find attached the completed application form for a certificate of appropriateness with the proper accompanying material to be reviewed by the historic preservation commission and discussed during the May 17th, 2021 meeting.

Let me know if you have any questions and please confirm receipt.

Thank you,

Charles Aubry



April 2021 - Google Sheets

Atlanta, GA 10-Day Weather For...

Google Calendar - 2 weeks, start...

S.R. 949719: 1354 The By Way - ...

mail.google.com/mail/u/1/#inbox/FMfcgxwLtGnvmHjLHSWdxLKcpXzkzwxL?projector=1&messagePartId=0.1

AppsGoogleImportedNew TabGoogle CalendarGoogle SheetsAtlanta, GA 10-Day...7-Day Forecast for...WeatherSentry - Sp...GreenKeeperNSN ConnectGolf Agronomic Pro...AgronomicsFUNApps

Other bookmarks

Gmail

Compose

Inbox

Starred

Snoozed

Important

Sent

Drafts15

Categories

Notes

Personal

Taxes

Work

More

Meet

New meeting

Join a meeting

Hangouts

Charles

No Hangouts contacts

Find someone

4 of 1,278

Charles Aubry

to Donovan, Russell, David, Bret, Vignon, Ricky, Jeremy, Rachel

Mr. Cushnie, Mr. Tanning, and Mr. Cullison,

Good Afternoon,

Please find attached a Tree Planting Plan I had developed using a certified landscape architect. The plan shows all existing trees on the property as well as placement and varieties of new plantings. Please let me know if the plantings are something you would approve of, and if not, what changes may need to occur.

Thank you,

Charles Aubry

2021-04-07-TREE ...

Cushnie, Donovan

to me, Russell, David, Bret, Vignon, Ricky, Jeremy, Rachel

Mr. Aubry:

Good day. There is no objection or comment regarding the indicated plant selections or location. The plan however does not and must indicate the floodplain boundary, elevation, and FEMA FIRM panel data.

Donovan Cushnie,

Floodplain Coordinator,

Land Development Division,

Department of Planning and Sustainability,

Second Floor,

330 West Ponce de Leon Avenue,

Decatur,

Georgia 30030

Telephone 404 687 2414

A link to the DeKalb County Parcel Viewer is found here: https://arcg.is/14LLPn.

For flood water depth estimations Georgia DFIRM is an option: Georgia DFirm.

Type here to search

88%

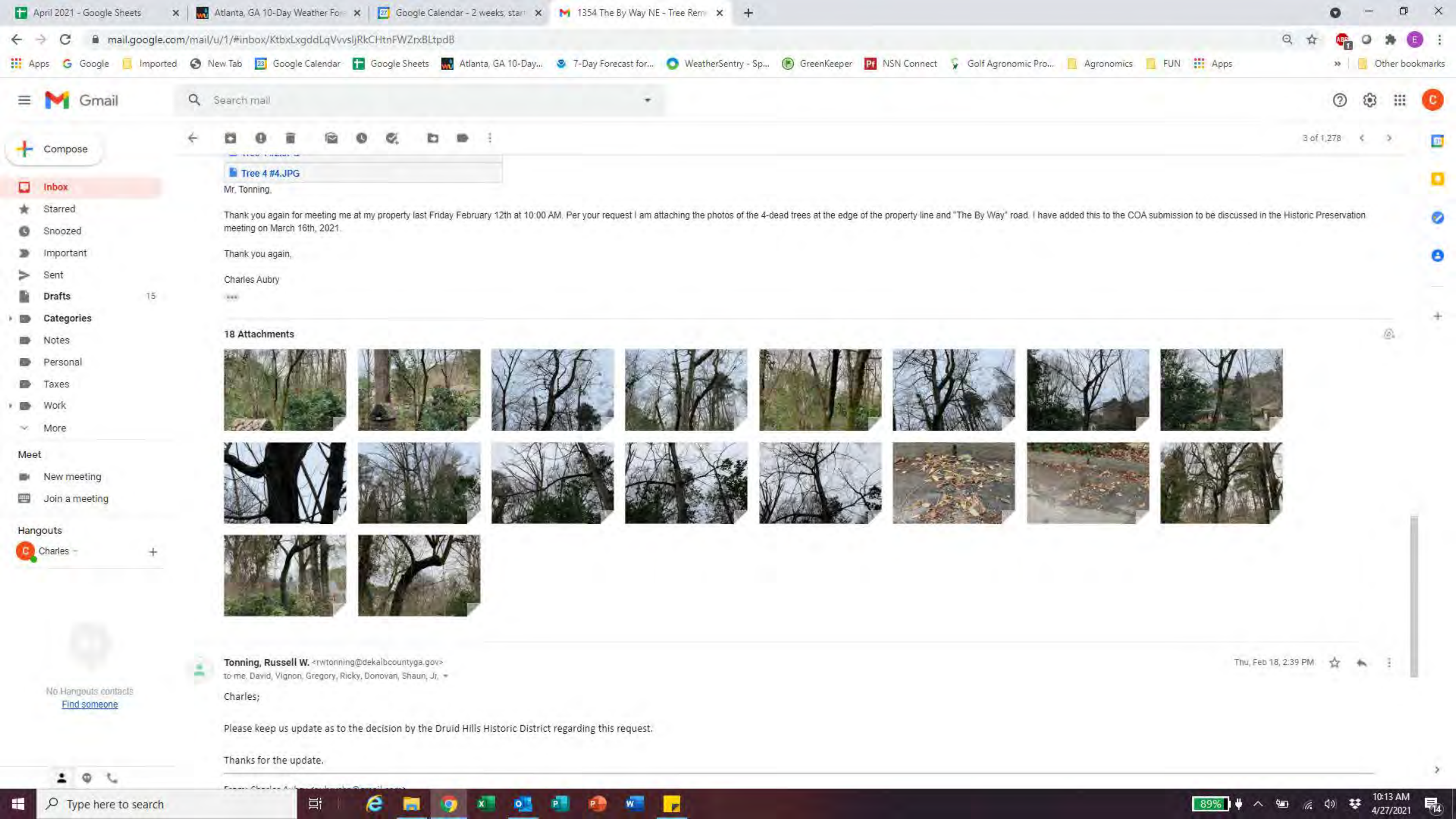
10:07 AM

4/27/2021



















HPC May 17, 2021

Agenda Item: 1354 The By Way NE.

Information presented by opposition





Recent erosion



3 May, 2021 high water





Erosion (March)



Expanded Erosion (May)



## Stream Buffer Existing Conditions

Natural ground  
Cover (recently  
killed off)

Path

Parking  
Pavers

Ground-up  
stumps  
On streambank



1997

COA Information



1354 The By Way

140.05'

20' RECREATION EASEMENT

NEW MH-2

N 66°54'00"W

40' REAR SETBACK

20' SANITARY SEWER EASEMENT

MINIMUM FLOOR  
ELEV. = 910.0

ABANDONED SEWER LINE

ABANDONED  
SEWER LINE

FOUNDATION

7/25/92

25' STREAM SETBACK

5

PROPOSED DETENTION LIMITS

8.5' SIDE YARD

PROPOSED  
PEDESTRIAN  
BRIDGE

25' STREAM SETBACK

35' FRONT SETBACK

# 1354

THE BY WAY

N 48°10'36"W

N 55°48'23"W

THE BY WAY

148.41' FRONTAGE

14.50'

25'

S 29°04'08"W 186.97'

DRIVEWAY

N 27°45'13"E



Address of Subject Property 1354 The By Way

Building Permit/Case # \_\_\_\_\_

## CERTIFICATE OF APPROPRIATENESS

The DeKalb County Historic Preservation Commission met on

May 14, 1997 and made the following decision on the attached:

☒ Approval of Construction of new house (brick) in accordance  
with attached HC-9606-914 & Southern Living Plans 1990  
Designs by William E Poole Cary N.C.

☐ Specified conditions (if any) \_\_\_\_\_

☐ Denial

*NO Appeals Filed  
6/30/97  
J. Michael*

*K. R. [Signature]*  
Chairman

May 14, 1997

Date

September 13, 1996

Address of Subject Property

1354 The Byway

Building Permit/Case #

97 B03592

**CERTIFICATE OF APPROPRIATENESS  
VERIFICATION**

In my opinion, the activity on this property appears to comply with the  
Certificate of Appropriateness issued by the DeKalb County Historic Preservation  
Commission on May 14, 1997.



Historic Preservation Planner

4-15-98

Date



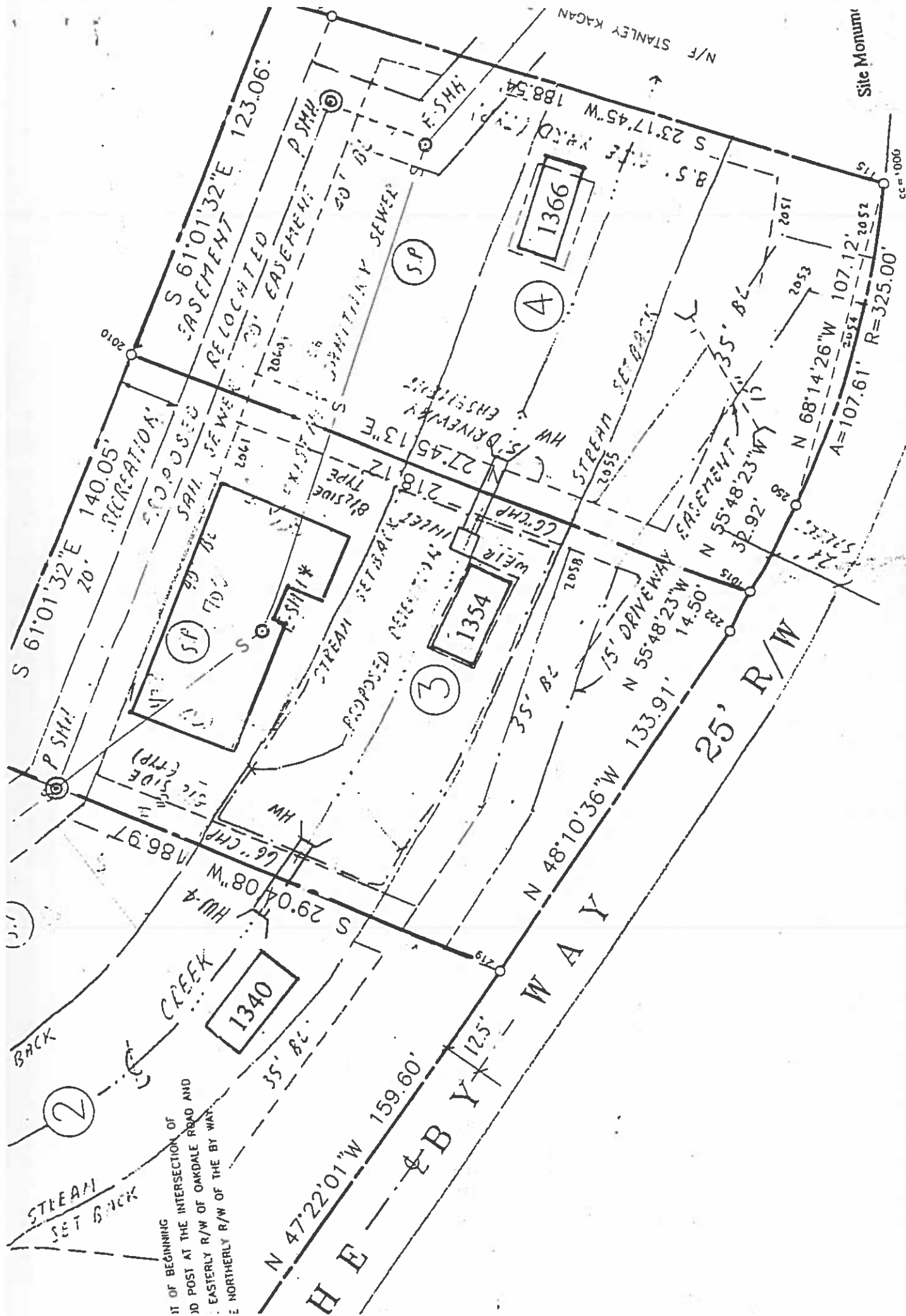
**Supplementary Materials  
In Support of the Application of  
David and Amy Oedel  
to the DeKalb County  
Historical Preservation Commission  
for a Certificate of Appropriateness  
With Reference to a Home  
Proposed for Construction at 1354 The By Way**

**May 14, 1997**

**David and Amy Oedel  
3828 The Prado  
Macon, Georgia 31204  
(912) 471-9168**

**Contents**

**Siting of the Proposed House on the Lot  
Topographic Map  
Elevations from Four Sides of the Proposed Structure  
Rough Floor Plan**







1. SITE BENCHMARK: DEKALB COUNTY BENCHMARK NO. 314, LOCATED AT THE NORTHWEST INTERSECTION OF OAKDALE ROAD AND THE BY WAY. (ELEVATION = 930.38)
2. TOPOGRAPHIC SURVEY INFORMATION OBTAINED IN THE FIELD BY ROESER CONSULTANTS, INC., ON MARCH 10, 1995.
3. SITE PLANS WILL BE REQUIRED FOR ALL NEW LOTS. SITE PLANS WILL INCLUDE LOCATIONS OF ALL TREES GREATER THAN TEN (10) INCHES IN DIAMETER.
4. U.S. ARMY CORPS OF ENGINEERS APPROVAL REQUIRED PRIOR TO ISSUANCE OF BUILDING PERMITS.

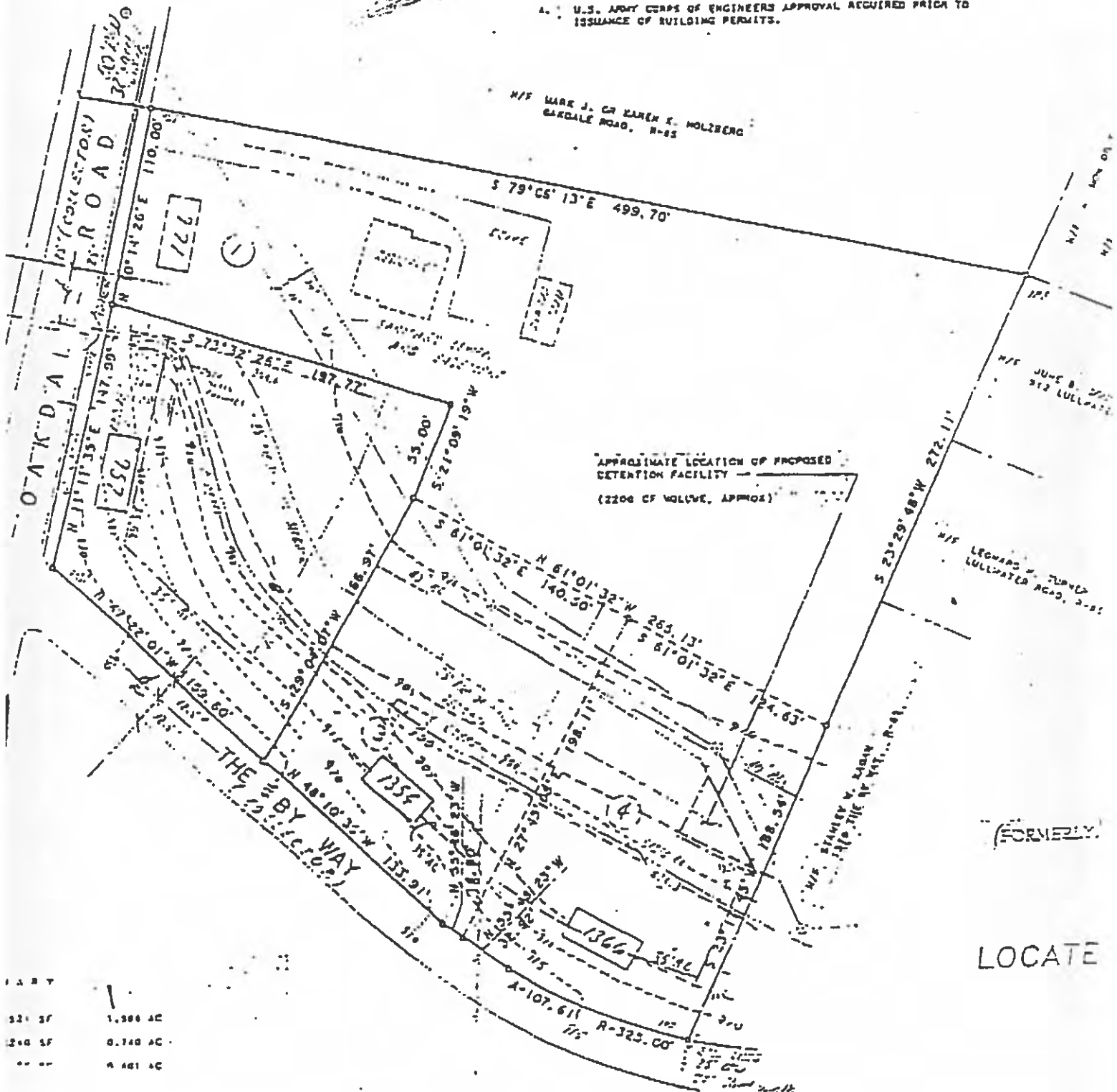
N/S MARK J. OR KAREN E. HOLZBERG  
OAKDALE ROAD, N-83

S 79°05'13"E 499.70'

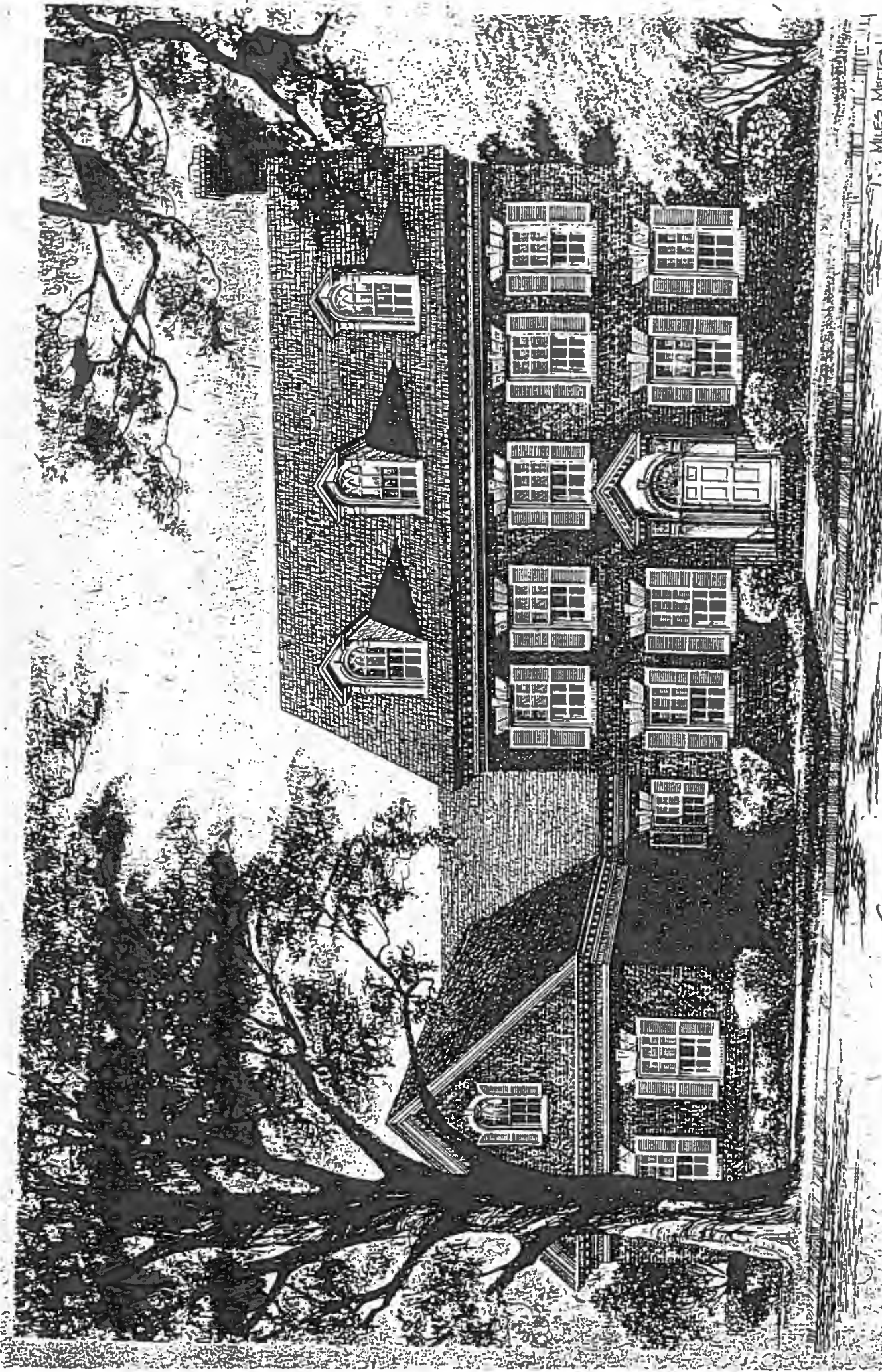
APPROXIMATE LOCATION OF PROPOSED  
DETENTION FACILITY  
(2206 CF VOLUME, APPROX)

(FORMERLY)

LOCATE







(WING TO BE REVERSED  
TO RIGHT SIDE)  
THE BOOTHE HOUSE

Southern Living

*Historical*  
COLLECTION

1 1/2 MILES WEST OF  
CARY, NC

HC-9606-914

## THE HISTORY OF THE BOOTHE HOUSE (c.1784)

This house on Princess Street in Alexandria, Virginia, has survived more than two centuries of owners, additions, and remodelings. Built for the Rev. David Griffith about 1784, the original section of the house was sited at the rear of the lot, a common practice that allowed the owner to add on to the front of the structure as his fortune grew.

Reverend Griffith's heirs added the right wing to the existing house in 1797, and Capt. William L. Boothe, who purchased the property in 1853, constructed the left wing shortly after the Civil War. Members of the Boothe family continued to remodel the house to meet their changing needs and tastes during the more than 100 years they lived in it.

The beautifully restored structure remains a fine example of Late Georgian architecture. Fluted pilasters with capitals, a pediment above a keystone-trimmed arch, and delicate dentil molding highlight the entry. The leaded fanlight features scalloped muntins, while the paneled sides echo the original six-paneled door.

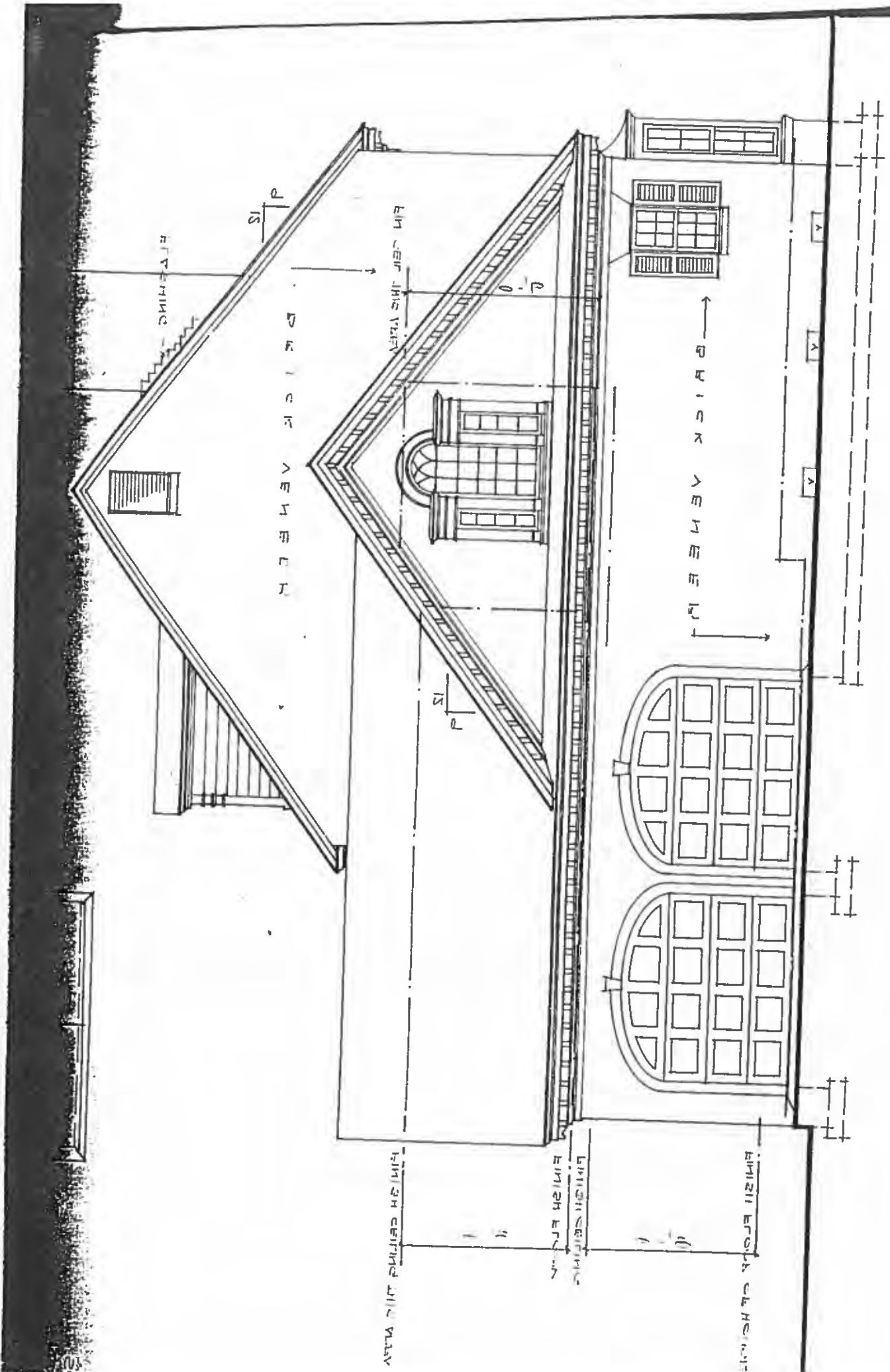
Painstakingly renovated to maintain the building's architectural integrity, this centuries-old dwelling now serves as the offices of Williams Whittle Associates, Inc., an advertising and public relations agency. The authentically restored rose and perennial garden, with its Jeffersonian brick and pebble paths and Chippendale benches, adds to the beauty of this historic site.



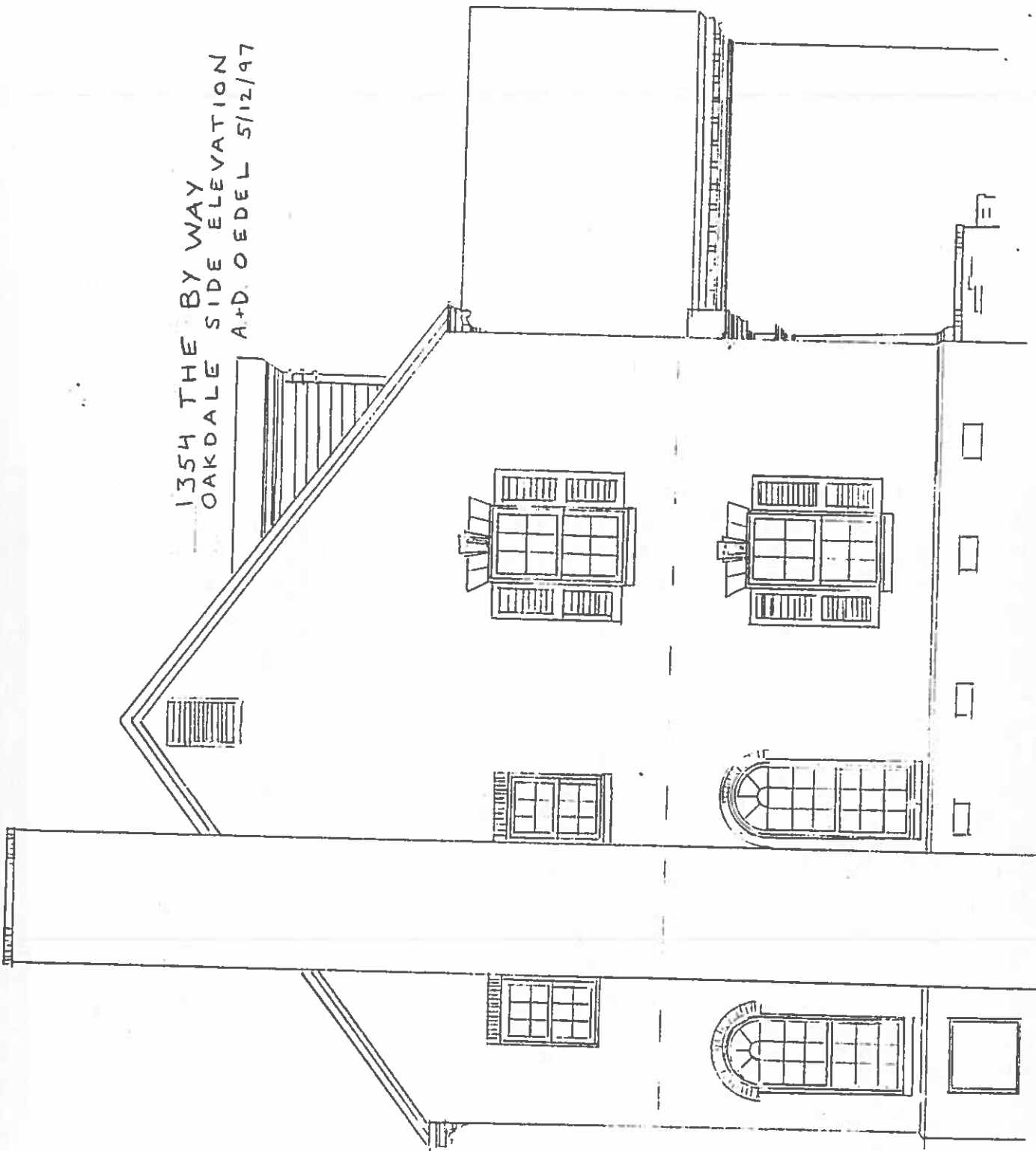
To order working drawings for THE BOOTHE HOUSE (HC-9606-914): 1 set...\$375/5 sets...\$475/each additional set...\$50/Alabama residents add 4% sales tax. Please make checks payable to: *Southern Living Plans*, P.O. Box 830349, Birmingham, AL 35283-0349. Credit card orders call 1-800-755-1122. Also available: *Our Southern Portfolio* (HC-9606-503 Vol. I, HC-9606-504 Vol. II), a collection of 40 designs each, for \$30; *The Southern Living Hometown Collection* (HC-9606-800), offering 20 plans commemorating the architecture of the 1920s is \$30; and *The Southern Living Cottage Collection* (HC-9606-700), with 20 affordable to build cottage-like designs is \$30.



0.11

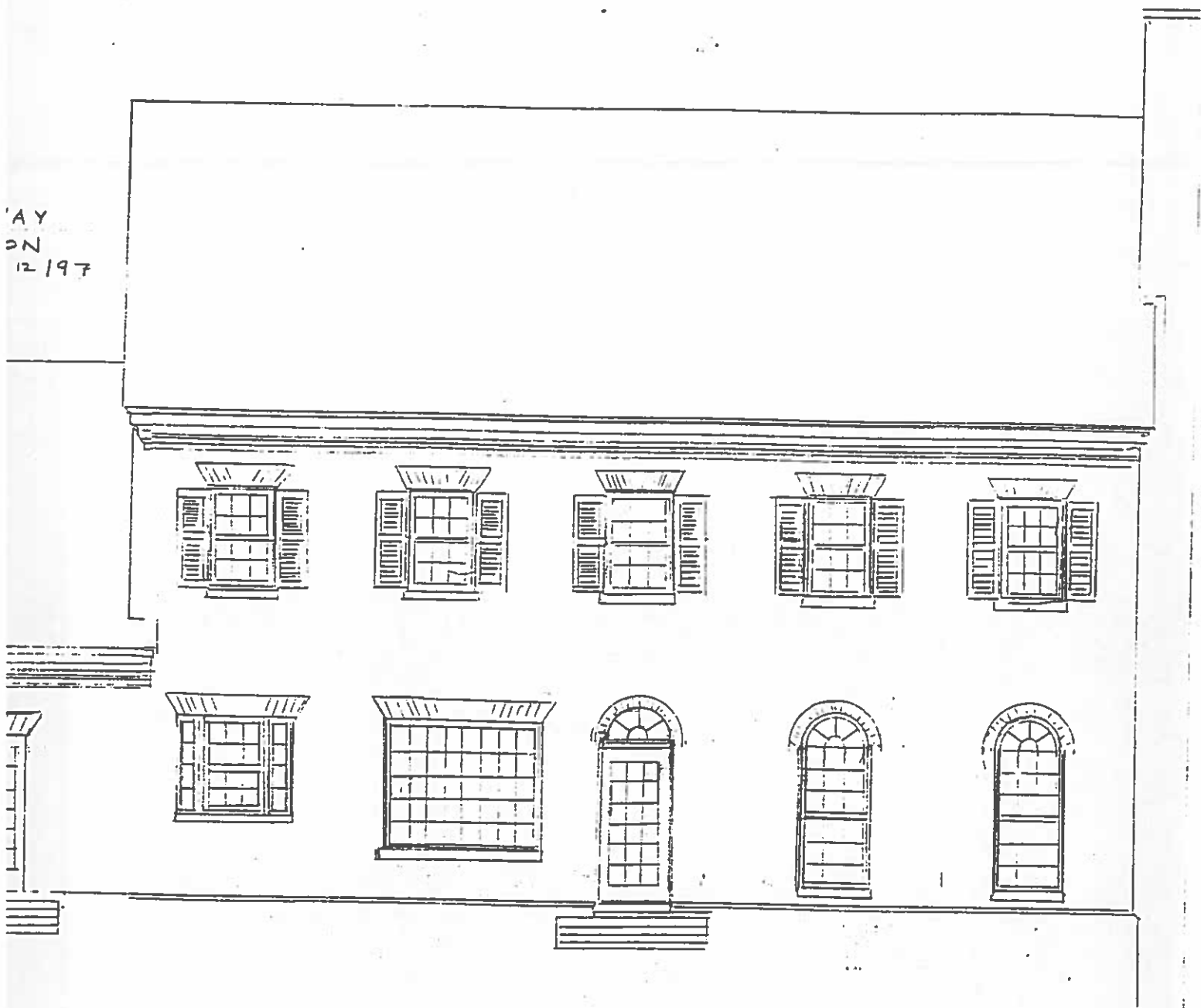


1354 THE BY WAY  
OAKDALE SIDE ELEVATION  
A+D O EDEL 5/12/97





AY  
DN  
12/97



1354 THE BY WAY  
REAR ELEVATION  
A + D OEDEL 5/12/97





**David and Amy Oedel**

840 Frederica Street, Atlanta, Georgia 30306 (404) 876-9311

November 12, 1997

DeKalb County Historic Preservation Commission  
Via fax c/o David Cullison  
Decatur, Georgia

Dear Commissioners,

On September 24, 1997, we filed an application for a certificate of appropriateness with respect to the construction of a pedestrian bridge at 1354 The By Way. On October 8, 1997, this Commission conducted a hearing with respect to that application, at which time the Commission considered a variety of issues that the applicants assert are unrelated to the Commission's charge of passing on issues of historical appropriateness. Specifically, the Commission considered extrinsic issues involving zoning, development and water laws.

On October 8, the Commission chose on its own initiative to defer any decision. The Commission apparently sought the delay in order to secure legal counsel and coordinate with other more appropriate authorities. The Commission incidentally sought the applicants' permission to defer its decision. However, the Commission never at any time asked for the applicants to agree in writing to such a deferral -- which according to the governing ordinance is the only way effectively to change the presumption that any application not acted upon within 45 days is deemed to have been granted. Now, more than 45 days after the applicants' application, the applicants' application by the plain language of the governing ordinance may be deemed to have been granted simply by operation of law.

Under pressure at the hearing on October 8, one of the applicants did orally accede to the Commission's demand that the applicants allow the Commission to defer the matter until such time as it could reach the merits of the bridge's historical appropriateness at the Commission's next meeting on November 12. Although such a forced oral concession, made without disclosure of the relevant law or counsel, is not legally effective to suspend the running of

the maximum statutory review period of 45 days, the applicants remain willing to proceed with the November 12 hearing.

However, the applicants also expect the Commission to reach the merits of the issues of historical appropriateness. So far, the Commission has given little indication of doing so, except during the hearing of October 8, when the Commission's staff person David Cullison openly and expressly warranted that during the deferral period he would on the Commission's behalf supply the applicants with information from the Commission's design guidelines that might arguably bear upon the relevant application.

The applicants immediately after the October 8 hearing began direct telephonic inquiries with Mr. Cullison to inquire about any such relevant design guidelines of the Commission. Specifically, the applicants inquired by phone with Mr. Cullison on October 10, October 13, October 14, October 15, October 24, November 4, and November 10, but Mr. Cullison refused on all those occasions to provide any promised information, offering instead only such excuses as "I have more important things to do" (October 15), and "I've been busy" (October 24).

Meanwhile, in their letter to this Commission dated October 14, 1997, the applicants have provided extensive evidence from the 1997 Olmsted Master Plan Update concerning the historical appropriateness of their proposed pedestrian bridge.

We are proceeding on the assumption that the hearing of November 12 will be confined to the historical appropriateness of the proposed pedestrian bridge, and that there will be no delay beyond November 12.

Sincerely,

*David Oedel Amy Oedel*

David and Amy Oedel

c. DeKalb County Attorney's Office  
*Tom Black*



# APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

9-24  
rec'd.

## DeKalb County Historic Preservation Commission

1. Address of Property: 1354 THE BY WAY  
Location: District \_\_\_\_\_ Land Lot \_\_\_\_\_ Block \_\_\_\_\_ Parcel \_\_\_\_\_  
DeKalb County Historic District/Property \_\_\_\_\_  
Owner: DAVE + AMY OEDEL Owner Address: 840 Frederica St  
Owner Telephone: 876-9311 AH. 30306
2. Name of Applicant: Amy Oedel  
You or your representative may be present at the meeting of the commission. You will be notified of the time, date, and location of the meeting.  
Mailing Address: Same as above  
Daytime Telephone: \_\_\_\_\_  
Relationship of Applicant to Property Owner: Owner ☒ Architect ☐ Contractor ☐  
Other ☐
3. Age of Structure: Approximate date of construction for the primary structure on the property and any secondary structures affected by this project: currently being constructed
4. Nature of Proposed Work:
- |   |  |
|---|--|
| <input type="checkbox"/> New Construction                                 | <input type="checkbox"/> Site Preparation/Clearance      |
| <input type="checkbox"/> Demolition                                       | <input type="checkbox"/> Moving a Building               |
| <input type="checkbox"/> Addition   | <input type="checkbox"/> Sign Erection or Replacement    |
| <input type="checkbox"/> New Freestanding Building                        | <input type="checkbox"/> Repairs or Alterations          |
| <input type="checkbox"/> Fence/Wall                                       | <input type="checkbox"/> Exterior Architectural Features |
| <input checked="" type="checkbox"/> Exterior Environmental Feature Change | <input type="checkbox"/> Landscaping                     |
| <input type="checkbox"/> Deck or Patio                                    | <input type="checkbox"/> Other                           |

Please describe your proposed work as simply and accurately as possible. Use the attached submittal criteria checklist to guide you in your description. Be sure to indicate building and landscape materials to be used. Accurate drawings and photographs are required. (Use extra sheet, if necessary.)

We propose to build a 5' wide footbridge across the stream  
which runs through the front of our property. The bridge will connect  
our front yard to our house's front door. It will have a concrete floor  
and wood or iron railings.

**IMPORTANT:** This form must be completed before the Historic Preservation Commission can consider the approval of any material change to a Historic Property or within a Historic District. This form, along with supporting documents (plans, material, color samples, and photos), must be filed with the Historic Preservation staff. DeKalb County Planning Department, 1300 Commerce Drive, Suite 400, Decatur, Georgia 30030-3221. Two (2) copies of plans or renderings for any new structures must be filed.

All applicable items from the attached checklist of Submittal Criteria must be addressed. Incomplete applications will not be docketed for consideration by the Historic Preservation Commission.

Case # \_\_\_\_\_

Date 9/23/97

Amy Z. Oedel  
Signature of Applicant

## **DeKalb County Historic Preservation Commission**

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Historic Preservation Commission  
Wednesday, October 8, 1997 - 7:00 P.M.

### ***Staff Comments***

#### ***Regular Agenda***

***L. 1354 The By Way, Amy Oedel. Construct footbridge over creek in front of the house.***

The main house is currently under construction.

The applicant has clarified since the application was filed that the railings of the bridge are to simulate wrought iron and that the depth of the concrete on the deck of the bridge is to be eight inches. As the application shows, the bridge is to be 22 feet long. There is a contradiction in the material presented by the applicant, in that the application form shows the bridge as five feet wide while the drawing submitted shows the width at six feet.

Two separate questions have been brought forward regarding this application. One is the legality of this construction being built across the creek; the other is the design of the bridge. The question of the construction itself is open to debate, but the interpretation and enforcement of state laws and DeKalb County ordinances other than the preservation ordinance, are outside the purview of the preservation commission. On the other hand, the Druid Hills Design Manual, Section 8.3 (p 79), provides these two guidelines: "All construction within the Druid Hills Local Historic District should follow a 25' setback requirement from the top of bank of creek corridors and drainage ways, as delineated on the official "Historic District Map." and "Methods used to address bankside erosion should complement the natural character of the creek corridor. Natural materials, such as native rock and plants should be used as the material in erosion control devices."

The design of the bridge appears rather heavy compared to the other bridges which were constructed in the area prior to the passage of the preservation ordinance. The tendency in the area is to design bridges which blend in rather stand out. The other bridges are built primarily of wood and are not arched.



Druid Hills Civic Association  
Historic Preservation Committee Comments

**MONTH OF REVIEW:**

October, 1997

**ADDRESS:**

1354 The By Way

**Character Area :**

This new construction is located in Character Area #1. The setbacks, lot size, siting and other characteristics of this historic area have not been followed in this development due to subdivision and platting approval prior to historic designation.

**Background:**

The historic integrity of the area is further compromised by the height and scale of the new house which is not in keeping with its surroundings. There are severe development limitations and conditions affecting this property which were known prior to approval for this development. The available footprint, siting problems, landscaping issues, and other considerations may constitute a typical "buyer beware" situation. Due to the sensitivity of the area the following comments are offered.

**Comments:**

We ask that the Historic Preservation Commission deny this application for the reasons listed below. If a denial is not acceptable then the application should be deferred until various permits and variances and landscaped plans can be obtained. It would seem a waste of the commissioners and public's time to review a project that may not even be allowed.

**Guideline 8.3 Protection of the Historic Watershed Design**

1. Both the guidelines and the state regulations do not allow building in the 25' stream buffer. The state requires a special variance because this is not an access point. To give approval by the Historic Preservation Commission would imply that DeKalb County approves of such a variance. In accordance with the design guidelines the bridge with its "poured concrete footings" should not be built in the 25' stream buffer.
2. The guidelines note that rock is one method to address erosion but the watershed expert in DeKalb County notes that rock is not a material to use in this size streambed. Also waterbars are not appropriate on a stream bank. Also this is a "perennial stream" not a drainage creek. A denial or deferral would allow opportunities to consult with DeKalb County in order to specifically identify the problems and solutions for this section of the stream.

The Druid Hills neighborhood, along with other neighborhoods, jurisdictions and organizations is participating in the Peavine Watershed Alliance (PWA) which is studying restoration of our streams and creeks. DeKalb County's representative could provide more than telephone advice with a site visit. Also, this neighborhood is fortunate to have a watershed expert live here who may be available for private consultation. Identifying all of the problems and appropriate solutions prior to work would avoid potential problems for other neighbors on the stream and assure a coordinated approach to restoring this stream. The willingness of the Oedels' to tackle this problem should be commended and the PWA would surely welcome their participation.

3. The foot bridges in the area of influence that are in the front yards are intrusions, built before historic designation and are not "traditional neighborhood bridges". Also, they are small in scale and they are wooden not "concrete, rebar and brick"; they also are up to 4' in width not 5' or 6'.

4. The Commission does not deal with zoning conditions, however, since the conditions are attached to the application it would appear negligent to ignore them. A condition states that the creek can only be crossed at a maximum of 2 points. There is still a third lot on this property that could be developed and would require a crossing point for access. To approve an additional crossing now will require a change in zoning conditions. The Preservation Commission does not have the power to de facto change zoning conditions (as much as we would like them to).

5. The need for a foot bridge is debatable but the location in the front yard requires additional sensitivity. The problems caused by the siting of too large a house on too small of a lot cannot be fixed with a "front walk" spanning the creek. The treatment of the landscape on the By Way side of the creek is an issue due to the attached zoning conditions and design guidelines. How to coordinate the application of two (2) departments regulations should be addressed prior to a review of a landscape plan. Such a plan is needed at this point in the process because the pedestrian path winds through the area zoned for "no land disturbance. The coordination process should be worked out prior to application for a landscape related COA.



## David and Amy Oedel

840 Frederica Street, Atlanta, Georgia 30306 (404) 876-9311

October 14 , 1997

DeKalb County Historic Preservation Commission  
c/o Planning Department  
1300 Commerce Drive  
Suite 400  
Decatur, Georgia 30030

Dear Commissioners,

This supplements our earlier memorandum to you that offered comments and materials in support of our application for a certificate of appropriateness with respect to the construction of a pedestrian bridge at 1354 The By Way, where a new house is under construction. Please include these materials as part of the record of the proceedings in this matter.

### The Applicants' Commitment to Historic Preservation

We enthusiastically support the Commission's general purpose of establishing a "uniform procedure for use in providing for the protection, enhancement, perpetuation and use of . . . districts . . . having special historical, cultural or aesthetic interest or value". DeKalb County Ordinances, Section 13.5-1. Both of us grew up in historic homes in historic neighborhoods that long predate the oldest structures in this area, and we are sensitive to the desirability of developing a uniform, fair, legal and enforceable system for preserving the historical, cultural and aesthetic values of Druid Hills as well. We would not already have invested hundreds of thousands of dollars in purchasing this land, embarking on our home construction project in a classic Georgian colonial revival style, and moving to this area, if we were not thoroughly committed to preserving and enhancing the basic integrity of this neighborhood in general, and this site in particular. We furthermore warrant that we intend to comply fully with all valid laws governing the development of our homestead, including laws governing environmental protection, soil erosion, drainage, and real estate development.



## The Applicants' General Objections and Reservation of Rights

Unfortunately, however, we suggest in this letter that the authority, procedures, rules and practices of the Commission are insufficiently clear, tailored, fair, uniform, legal and enforceable. By filing for a certificate of appropriateness, therefore, we do not thereby assent to the Commission's authority, rules and practices. We hereby formally serve notice of our particular objections, and expressly reserve our various rights legally to challenge them in any further hearing on our application by the Commission, upon any appeal to the DeKalb County Board of Commissioners and the County's Chief Executive, in any petition for certiorari to the Superior Court, or upon any subsequent appeal.

### The First Objection: Vagueness of the Standards

It is a first principle of any enforceable law that it must be stated with sufficient clarity to inform the citizenry that such a law exists, and how one might comply with it. Some aspects of the Commission's procedures are clear, but many of the most basic matters are so vague as to be incomprehensible. For example, the careful citizen attempting to comply with the Commission's regime is left baffled by the meaning of several critical terms, such as "historic," "appropriate," "aesthetic, historic and architectural significance and value," "exterior architectural features," "exterior environmental features," and "material change in appearance."

For example, the thrust of the ordinance establishing this Commission is that "historic" districts may be found whenever the County and the Commission conclude that areas have "special character" or "special . . . aesthetic value or interest" (quite apart from any historical value), or even simply "represent one or more periods, styles or types of architecture typical of one or more eras in the history of the county, state or nation." In short, any district anywhere in DeKalb County could so qualify. Then, once the designation is made, everything within the district is cloaked with the "historic" label regardless of whether or not it has any claim to "historic" character.

DeKalb County and this Commission appear to be using this ordinance to invent a history that never existed, at least on our homestead site. Even if one does not dispute that there are some characteristics of Druid Hills warranting an "historic" designation, it seems essentially meaningless to apply the designation to every property and site in the area. As the Druid Hills Civic Association president notes in the Fall 1977 Druid Hills News, Druid Hills includes plenty of structures ranging in



style from "1950s ranch style to Durand Mill contemporary." If the term "historic" applies to everything in Druid Hills, then the term is impermissibly vague. On the other hand, if the term applies only to some properties in Druid Hills, then its application in this case of an undeveloped lot is either overbroad or simply irrational, because the one arguably historical structure on this site was itself a pedestrian bridge.

Equally vague are the standards that the Commission is supposed to employ in deciding whether a particular proposed use like ours is sufficiently "appropriate" to warrant the issuance of a certificate of appropriateness. The term is left undefined in the enabling ordinance. What is "appropriate" in a neighborhood where the homes are of diverse, eclectic architectural styles and ages? Given the understandable difficulty of stating with precision what "the" style of Druid Hills may be, the County has opted to decline to explain what "appropriate" may variously mean.<sup>1</sup>

It is no excuse for this lack of clear notice to the citizenry that the ordinance appears to limit the Commission's ability to deny an application, and orders the Commission to grant certificates if it "finds that the proposed change(s) in appearance would not have a substantial adverse effect on the aesthetic, historic or architectural value of the . . . historic district." Section 13.5-7. Even after the most diligent review of all statements of "factors" and "guidelines," citizens in most cases are very likely to remain just as mystified about the prospects for their applications. Citizens are left completely unclear how to avoid a determination by the Commission that their particular proposed uses of nonhistoric properties like ours (or even of legitimately historic properties) might have "substantial" and "adverse" effects on "aesthetic," "historic" or "architectural" "significance" or "value." The reliance by the Commission on a looseleaf binder of "design guidelines" (a binder that is incidentally not provided to applicants prior to or at the time of their filings) is not curative,

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<sup>1</sup> Section 13.5-8(3) does require the Commission in reviewing applications to "consider" such vague, general "factors" as "historical and architectural value and significance; architectural style; scale; height; setback; landscaping; general design; arrangement; texture and materials of the architectural features involved and the relationship thereof to the exterior architectural style; [] pertinent features of other properties in the immediate neighborhood" -- as well "any other pertinent factors". Rather than clarify matters, all this list does is to demonstrate the enormous arbitrary scope of the Commission's authority to strike down any proposed use that it might choose to characterize as inappropriate, on any ground that it might deem "pertinent."



because it does not predict, nor could it predict, the enormous variety of visually perceptible uses of property that are possible and even inevitable. In this case, for example, even the design guidelines provide absolutely no guidance about what is "appropriate" or "inappropriate" about any potential bridge design. Moreover, this Commission's staff member has yet to provide the applicants with a copy of any design guidelines that may otherwise relate to this application, despite four separate representations that he would do so, one each on October 8, October 10, October 13 and October 14, and despite the fact that one of the applicants asked this same staff member if there were any such guidelines relevant to our application at the time the application was filed in September, at which time the staff member issued a contradictory negative response.

In short, we suggest that no government under the rule of law may make it unlawful to offend the vaguely expressed (if not outright secret) essentially standardless stylistic sensibilities of a few citizens with titles, whether "professional" stylists or not. Nevertheless, that is precisely the sort of unprecedented power that the County has attempted to vest in this Commission.

Other key terms in the enabling ordinance are also riddled with such vagueness as to violate the U.S. and Georgia Constitutions. For example, it is unclear what a "material" change in appearance would be that would necessitate seeking a certificate of appropriateness. There is no statutory distinction between material and immaterial changes, and there is a strong sense in the ordinance that no proposed change could be immaterial. The ordinance defines "material" changes as any "change that will affect either the exterior architectural or environmental features of . . . any building, structure, site, object, landscape feature or work of art within a historic district . . . ." Section 13.5-2. A fair reading of this definition of "material change" suggests that there is no meaningful restriction on the types of changes that one must bring to the Commission's attention for a divination of appropriateness. For example, by its terms, the definition logically covers any proposed change in visual appearance, such as, for example, any re-roofing project, any felling or planting of any visible tree, bush, or shrub, any repair of a broken-down garage, any painting of house trim, any placement of a play structure in the yard, any treading of a path, any choice of a window treatment (e.g., blinds vs. curtains), any tacking up of a birdhouse, any decision about which grass seed to employ, which flowers to plant, and which fertilizer to use (recall that fertilizers are sold precisely for their efficacy in changing the material appearance of grass and plants), or, amazingly, what new car ("object") one may permissibly park in one's driveway. Are only vintage cars appropriate, or only Volvos? What about ugly minivans or low-brow sedans that may offend the Commissioners' sense of "aesthetic . . . value"? In short, this Commission by virtue



of its vague charge is potentially the arbiter of all visually perceptible change in Druid Hills -- a task of shocking intrusiveness and unprecedented proportions.

### Our Second Objection: The Ordinance is Overbroad

Even if we assume for the sake of argument that the County is properly within its authority in attempting to preserve the historic character of privately owned structures in Druid Hills, however, the County must endeavor to do so in ways that are not unnecessarily broad, and do not unnecessarily impinge on the many non-historic uses of property and land within the district. In the case of the Commission's designation of Druid Hills as an historic district, and in the subsequent attempt to control all visually perceptible modifications in the material appearance of any exterior architectural or environmental features of any building, structure, site, object, landscape feature or work of art within the historic district, DeKalb County has bitten off far more than it ever needed to achieve its relatively modest historic preservation goals, meanwhile unnecessarily infringing upon the basic property rights guaranteed to citizens under the U.S. and Georgia Constitutions. In this case, for instance, there is little reason to believe that cleaning up a crumbling, garbage-strewn, overgrown creekbank and constructing a walkway and pedestrian bridge far from the street in a large and undeveloped yard, has anything whatsoever to do with DeKalb County's arguably legitimate interests in historic preservation. Indeed, the Commission's flirtation in this case with a categorical prohibition against any such pedestrian bridge construction is decidedly anti-historical, and appears even to offend the constitutional expectation of substantive due process that there at least must be some minimally rational connection between a stated purpose (e.g., historic preservation) and a given action (e.g., a categorical ban against any pedestrian bridge on a nonhistoric site that is arguably historic only because it once had a pedestrian bridge).

### Our Third Objection: No Procedural Due Process

The U.S. and Georgia Constitutions guarantee that one may not be deprived of property rights without due process of law. The hearing that was held in this case on October 8, 1997, exhibited serious procedural flaws that fell short of basic constitutional expectations.

Before cataloging those problems, it is important to note how legally significant such a hearing is designed to be. As specified in Section 13.5-8 of the



ordinance, the hearing before the Commission is intended to be the only opportunity for the presentation and testing of evidence. Appeal to the Board of Commissioners of the County is only possible for a demonstrated abuse of discretion, and subsequent action in the Superior Court is only possible in the nature of a petition for certiorari - in which case the record is limited to the record that was presented below, before the Commission. In short, the hearing before the Commission is a quasi-judicial evidentiary hearing that must be conducted in such a way as to ensure basic notions of due process.

The minimal concept of a hearing requires that judges be present and disinterested, that applicants and opponents be given a fair opportunity to be identified, heard and cross examined, that the subject matter of the inquiry be duly restricted to legally relevant inquiries, and that a competent record of the proceedings be preserved. In the hearing that occurred in this case on October 8, 1997, none of these basic requirements were met.

For example, one Commissioner who was not present to hear testimony attempted to weigh in anyway with a letter to the Commission. That letter should have been disregarded as prejudgment and/or as incompetent testimony. Instead, it was read as if it were due some sort of legitimate deference. This conflicts with the basic understanding that one has a right to face one's judge at any hearing held before judgment. A judge may not fail to attend a hearing and still be accorded any right to participate in the relevant ruling.

Moreover, according to Section 13.5-3, at least a majority of the Commissioners on this Commission have been selected on the basis of their special professional interest in the subject matter. Service on this Commission is unpaid. It is not maligning individual Commissioners to surmise that such professionals may naturally be inclined to construe the law in this general arena in ways that tend to enhance the economic demand for their own professional services -- at least more so than would wholly impartial judges. The applicants object to this selection criterion for Commissioners, however well intentioned, because it minimizes the chances of an impartial, unbiased judgment on contested applications and on the development of the law in this arena. One would not legally require that a Planning and Zoning Commission be dominated by developers, just as one would not legally require a fox to take charge of a henhouse. A similar logic should apply here. Alternatively, the applicants hereby request disclosures from design professional Commissioners about the extent to which they might ever personally benefit from standards, practices, rules and interpretations developed and imposed by the Commission. To the extent that the Commissioners have personal economic stakes in the relevant markets for



professional services, they should recuse themselves. Any expertise necessary to apply valid, clear, non-vague and not-overbroad regulations could well be supplied by a nonvoting staff expert, as is typical in the planning and zoning context.

Of course, one has a right to face one's opposition as another basic feature of due process. One of two individuals at the October 8 hearing who voiced opposition to the application was permitted to read a list of negative comments ostensibly from several persons who were neither in the room nor were ever even personally identified. Such anonymous hearsay is the most infirm of possible forms of "testimony," and should never have been allowed to be heard. Incidentally, applicants hereby request the right to cross-examine all opponents of their petition in any further hearing on this matter, and are of course willing in return to submit to cross examination by any opponents.

Another minimal aspect of due process is that one has a right to expect that a judicial or quasi-judicial hearing will be restricted to the legally relevant subject matter. At the hearing on October 8, the two opponents, and even the Commissioners themselves, engaged primarily in discussion of laws about which this Commission, even given its vague and overbroad charge, has absolutely no authority either to interpret or enforce.

This is not merely a due process violation rendering the results of the process unlawful; it is also a violation of the applicants' property rights by those Commissioners who were so acting under color of state law. An individual Commissioner's liability in this regard is personal. Ordinarily, public officials are immune from personal liability for taking actions under color of state law even if they make negligent mistakes, because they have a need to exercise their discretion freely, without concern for personal liabilities, on those matters with respect to which the public has entrusted them with authority. However, when a public official takes the law into his own hands in an area in which he clearly knows or should know that he has no authority, he may incur personal liabilities.

On October 8, individual Commissioners entertained extensive discussion of natural resources regulation and zoning/development issues -- despite the fact that those Commissioners knew or should have known that they had no jurisdiction whatsoever to interpret or enforce those obviously separate laws. It was as if the dog catcher, uncertain of whether the police were doing an adequate job of enforcing the speeding laws, proceeded to arrest citizens for speeding. Under such circumstances, the dog catcher will be personally liable for falsely arresting the motorists, just as any Commissioners in this case will be personally liable if they continue to attempt to



invoke powers delegated to others. Under 42 U.S.C. sections 1983 and 1988, such Commissioners would not only be personally liable for all delays associated with such frolics, but for the attorneys' fees of the applicants in vindicating their federally guaranteed property rights.

Finally as a matter of due process, it is important that a competent transcription of the proceedings be made, especially in a proceeding that will be the sole fact-finding setting and will be accorded deference in all appellate settings. No such record was made of the hearing on October 8, 1997.

#### Our Fourth Objection: No Provision for Just Compensation

If this Commission for historical reasons were categorically to prohibit any walkway, bridge or other structure within 25 feet of any drainage creek (as suggested by Commissioner Wheaton at the October 8, 1997 hearing), and if such a regulation were unexpectedly upheld on appeal, the applicants hereby serve notice that they will file for compensation under the Fifth and Fourteenth Amendments of the United States Constitution, as such a prohibition would constitute a complete regulatory taking of a swath more than 50 feet wide sweeping clear across the applicants' property. See Lucas v. South Carolina Coastal Commission, 112 S. Ct. 2886 (1992). Similar claims for compensation could then be expected from other landowners in DeKalb County whose properties were also affected by the new and unprecedented rule.

If such a rule were to be adopted in our case, then the Commission and the County must be prepared to find a source of funding to compensate citizens who own creek-front property for the complete stripping of their property rights within 25 feet of such creeks. So far, neither the Commission nor the County has apparently given much thought to the staggering financial magnitude of such a blanket taking.

#### Supplementary Facts in Support of Our Application

We assert and are prepared to prove that pedestrian bridges have crisscrossed the creeks and streams in our neighborhood throughout the history of Druid Hills, and not just recently.

We further submit and are prepared to prove that bridges have crossed our



particular drainage creek for many years, and that our proposal is therefore to restore, rather than initially to erect, a particular bridge that has in recent years fallen into ruin.

We finally assert, and cite the Olmsted Master Plan Update (adopted by the DeKalb County Commission on August 12, 1997) for authority, that Olmsted himself envisioned a network of pedestrian bridges for Druid Hills, and only failed to implement his ambitious ideas because of the developer's financial problems. Moreover, we take note that our design is entirely consistent with Olmsted's Plan No. 97 for pedestrian walkways "that were wide, well-drained and smooth-surfaced." Master Plan Update, at 6. Indeed, Olmsted's walkway plan No. 97 appears to have included several pedestrian bridges, and is "consistent with Olmsted's design theory of providing separate pathways for pedestrians and vehicles." *Id.*, at 27. That is wholly consistent with our plan to route vehicular traffic over the creek separately from pedestrian traffic.

Like our planned walkway and bridge over the creek, Olmsted planned for walkways that "led visitors through the heart of the scenery and carefully shaped their experience of the landscape." *Id.* Just as our plan is for a gently curving walkway, the "gentle curves of [Olmsted's] paths repeat the graceful flow of the land." Just as our plan involves an intimate transition over the creek in our front yard, the Master Plan Update calls for completing Olmsted's proposals for intimate walkways and bridging that "will descend to the ravine bottom and be bridged over Lullwater Creek." P. 27. Furthermore, we note that Olmsted called for wide, gracious paths as we are planning, and that the Master Plan Update calls for using concrete-like "binder material to reduce problems of erosion" especially in creek areas, *id.*, just as we are planning so as to halt the ongoing erosion in our creekbank. We note moreover that the Master Plan Update calls for construction of concrete pedestrian bridging, architectural details of which we will incorporate into our design. See attached drawings from the Master Plan Update, page 27.

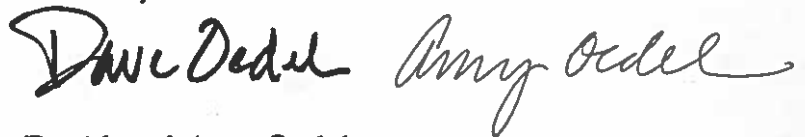
To the extent that this Commission has legitimate jurisdiction over landscaping (which we dispute), we warrant that we will restrict plantings in the vicinity of the bridge to those specified in the Olmsted Master Plan Update, which it would be our intent to use in any event.



### In Conclusion

For the foregoing reasons, we ask that you grant our application for a certificate of appropriateness, or take no action and let such a certificate issue by operation of law.

Sincerely,

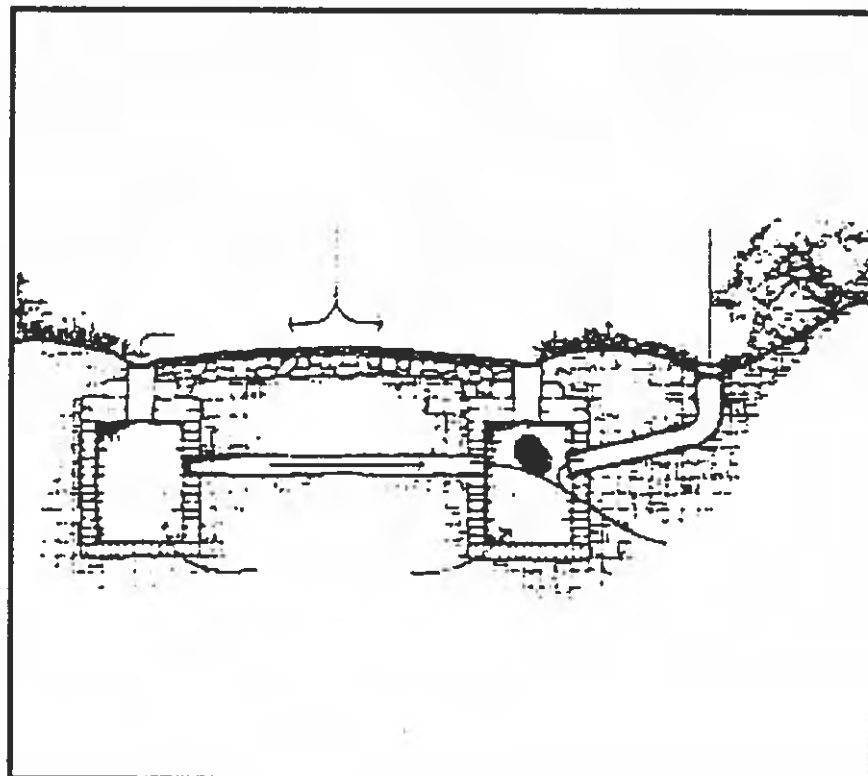
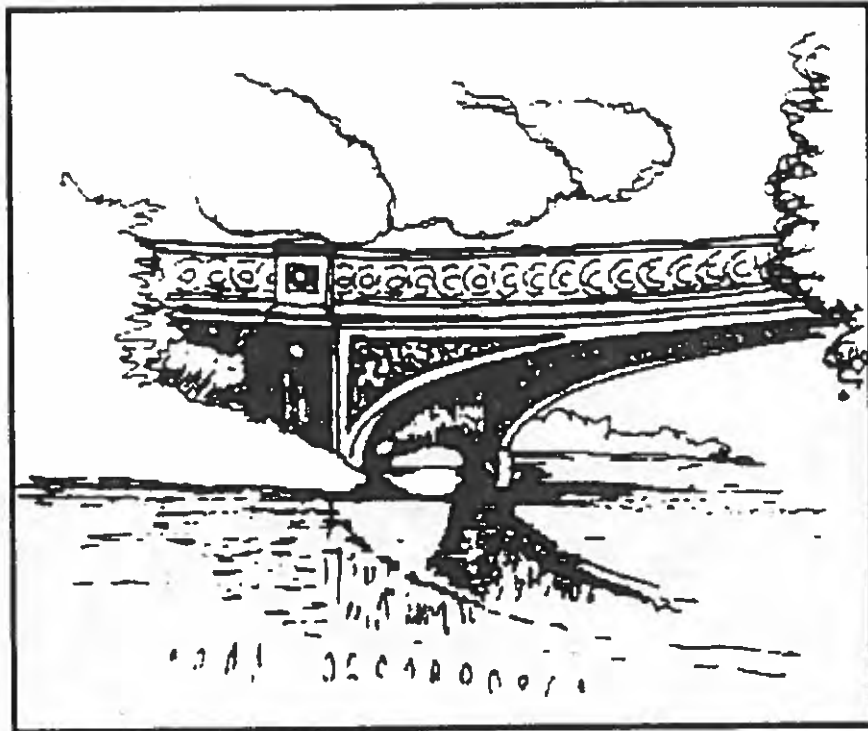
Handwritten signatures of David and Amy Oedel in black ink. The signature for David is on the left and for Amy is on the right.

David and Amy Oedel

- c. DeKalb County Board of Commissioners and Staff Member David Cullison  
DeKalb County Attorney  
DeKalb County Chief Executive Officer Liane Levetan  
DeKalb County Planning Department Head Ray White  
DeKalb County Public Works and Development Department Head Tom Black  
Druid Hills Civic Association



Example of an Olmsted-designed pedestrian bridge and walkway design, from the Druid Hills Master Plan Update (1997), at page 27, for use in realizing Olmsted's initial but unfinished vision for pedestrian walkways and bridges in Druid Hills:





## **DeKalb County Historic Preservation Commission**

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Historic Preservation Commission  
Wednesday, October 8, 1997 - 7:00 P.M.

### ***Staff Comments***

#### ***Regular Agenda***

- L. 1354 *The By Way, Amy Oedel. Construct footbridge over creek in front of the house.*

The main house is currently under construction.

The applicant has clarified since the application was filed that the railings of the bridge are to simulate wrought iron and that the depth of the concrete on the deck of the bridge is to be eight inches. As the application shows, the bridge is to be 22 feet long. There is a contradiction in the material presented by the applicant, in that the application form shows the bridge as five feet wide while the drawing submitted shows the width at six feet.

Two separate questions have been brought forward regarding this application. One is the legality of this construction being built across the creek; the other is the design of the bridge. The question of the construction itself is open to debate, but the interpretation and enforcement of state laws and DeKalb County ordinances other than the preservation ordinance, are outside the purview of the preservation commission. On the other hand, the Druid Hills Design Manual, Section 8.3 (p 79), provides these two guidelines: "All construction within the Druid Hills Local Historic District should follow a 25' setback requirement from the top of bank of creek corridors and drainage ways, as delineated on the official "Historic District Map." and "Methods used to address bankside erosion should complement the natural character of the creek corridor. Natural materials, such as native rock and plants should be used as the material in erosion control devices."

The design of the bridge appears rather heavy compared to the other bridges which were constructed in the area prior to the passage of the preservation ordinance. The tendency in the area is to design bridges which blend in rather stand out. The other bridges are built primarily of wood and are not arched.



Druid Hills Civic Association  
Historic Preservation Committee Comments

**MONTH OF REVIEW:**

October, 1997

**ADDRESS:**

1354 The By Way

**Character Area :**

This new construction is located in Character Area #1. The setbacks, lot size, siting and other characteristics of this historic area have not been followed in this development due to subdivision and platting approval prior to historic designation.

**Background:**

The historic integrity of the area is further compromised by the height and scale of the new house which is not in keeping with its surroundings. There are severe development limitations and conditions affecting this property which were known prior to approval for this development. The available footprint, siting problems, landscaping issues, and other considerations may constitute a typical "buyer beware" situation. Due to the sensitivity of the area the following comments are offered.

**Comments:**

We ask that the Historic Preservation Commission deny this application for the reasons listed below. If a denial is not acceptable then the application should be deferred until various permits and variances and landscaped plans can be obtained. It would seem a waste of the commissioners and public's time to review a project that may not even be allowed.

**Guideline 8.3 Protection of the Historic Watershed Design**

1. Both the guidelines and the state regulations do not allow building in the 25' stream buffer. The state requires a special variance because this is not an access point. To give approval by the Historic Preservation Commission would imply that DeKalb County approves of such a variance. In accordance with the design guidelines the bridge with its "poured concrete footings" should not be built in the 25' stream buffer.
2. The guidelines note that rock is one method to address erosion but the watershed expert in DeKalb County notes that rock is not a material to use in this size streambed. Also waterbars are not appropriate on a stream bank. Also this is a "perennial stream" not a drainage creek. A denial or deferral would allow opportunities to consult with DeKalb County in order to specifically identify the problems and solutions for this section of the stream.



The Druid Hills neighborhood, along with other neighborhoods, jurisdictions and organizations is participating in the Peavine Watershed Alliance (PWA) which is studying restoration of our streams and creeks. DeKalb County's representative could provide more than telephone advice with a site visit. Also, this neighborhood is fortunate to have a watershed expert live here who may be available for private consultation. Identifying all of the problems and appropriate solutions prior to work would avoid potential problems for other neighbors on the stream and assure a coordinated approach to restoring this stream. The willingness of the Oedels' to tackle this problem should be commended and the PWA would surely welcome their participation.

3. The foot bridges in the area of influence that are in the front yards are intrusions, built before historic designation and are not "traditional neighborhood bridges". Also, they are small in scale and they are wooden not "concrete, rebar and brick"; they also are up to 4' in width not 5' or 6'.

4. The Commission does not deal with zoning conditions, however, since the conditions are attached to the application it would appear negligent to ignore them. A condition states that the creek can only be crossed at a maximum of 2 points. There is still a third lot on this property that could be developed and would require a crossing point for access. To approve an additional crossing now will require a change in zoning conditions. The Preservation Commission does not have the power to de facto change zoning conditions (as much as we would like them to).

5. The need for a foot bridge is debatable but the location in the front yard requires additional sensitivity. The problems caused by the siting of too large a house on too small of a lot cannot be fixed with a "front walk" spanning the creek. The treatment of the landscape on the By Way side of the creek is an issue due to the attached zoning conditions and design guidelines. How to coordinate the application of two (2) departments regulations should be addressed prior to a review of a landscape plan. Such a plan is needed at this point in the process because the pedestrian path winds through the area zoned for "no land disturbance. The coordination process should be worked out prior to application for a landscape related COA.



To: DeKalb County Historic Preservation Commission  
Development and Building Permit Division, DeKalb County Public Works

From: David and Amy Oedel  
Homeowners, 1354 The By Way, 30307  
Temporary Address: 840 Frederica St., Atlanta 30306  
Temporary Phones: (404) 876-9311 (home); (912) 752-2629 (off.)  
Builder: Homestead Construction

Date: September 19, 1997

Re: Comments and Materials in Support of Our Applications for a Certificate of Appropriateness and a Building Permit for Construction of a Pedestrian Bridge at 1354 The By Way and Implementation of Control Measures to Remedy Existing Soil Erosion and Sedimentation Problems

Enclosed with this memorandum are materials in support of our application simultaneously to repair the creekbed and build a pedestrian bridge across the drainage creek at 1354 The By Way. These materials include a bridge elevation drawing, a layout drawing, a site plan, photos of the site and creek, photos of similar pedestrian bridges in the vicinity, and relevant ordinances and subdivision understandings.

#### Relationship Between the House and the Creek

The approved buildable footprint for the house presently under construction at 1354 The By Way provided only a sharply limited range of possibilities for house siting -- which grew even more limited than initially anticipated in light of the fact that the sanitary sewer, which effectively serves as the rear limit on the building footprint, had been relocated by the developer Tom Shim's contractor ten feet further south (toward the By Way) than had been warranted to us, the lot buyers and homeowners, at the time of our purchase of this lot last spring. A house plan that, to accommodate the already-shallow footprint, was already purposefully shallow (only 35 feet from front to back in the main section) was allowed almost no flexibility in siting. As



a result, the house as actually sited is only a few feet more than 25 feet from the creek bank. It is presently within the buildable footprint, but without much to spare.

The house's proximity to the creek bank makes it natural for the house's front walkway to want to progress across the creek. This is actually a typical phenomenon for the neighborhood, which has other pedestrian bridges that span drainage creeks in order to tie residences to their yards, or to tie portions of yards with other portions of yards. The closeness of the house to the creek in this case makes the need for the bridge especially critical. Without the ability of the front walk to span the creek, the house on this site would appear artificially pinched on the lot -- despite the fact that the house in fact has more than one hundred feet of a front yard.

### General Condition of the Drainage Creek

The drainage creekbed in question has been neglected for many years, and is in deplorable condition. The creekbed on this lot alone has long been encumbered with steel dams, metal structures, natural and artificial bridges, concrete drain pipes, dumped materials, and a wide array of miscellaneous trash that has individually and collectively altered the natural flow of the creek, and is currently choking the creek and redirecting the creekbed further. Meanwhile, the sorts of vegetation and bank-supporting materials that might well serve to diminish creekbed erosion have not been nurtured, maintained, planted or constructed. Moreover, water flows have increased over the years as a presumed result of capping of portions of the upstream watershed area. The net result is that this creekbed is now and has for many years been unnaturally and severely eroding the root structures of nearby trees. The proposed work on the creekbed in coordination with this pedestrian bridge proposal is designed to repair the creek and eventually restore it to a state of natural flow, grace and beauty.

### The Proposed Project

This is a proposal to build a bridge of approximately 22 feet across the drainage creek, meanwhile repairing the substantial creek bank damage that exists in the vicinity of the proposed bridge -- damage that has been caused in part by a massive unrecorded drain pipe system that until earlier this year



dumped effluent (apparently mostly yard drain runoff) from several properties north up the street on Oakdale. (In consultation with the County, the drain line in question was relocated slightly upcreek in June, 1997, when it was also given a new pipe -- all at private expense. That drain is currently being evaluated for its effects on the creekbed and on the creek's water quality.) The creekbed damages may also have been caused in part by increased upcreek water flows, and from the construction and subsequent breakdown of some sort of a makeshift steel dam that artificially re-directed the flow of the creek also in the vicinity of the proposed bridge.

As an incidental aspect of this project, artificially eroded portions of the creekbed will be restored using appropriate natural materials (i.e., soil, rock and plantings) and vegetation will be introduced throughout the creekbed to help preserve its contours. Natural wooden waterbars will be provided to calm increased levels of waterflow at peak periods.

The pedestrian bridge would be a slightly arching bridge constructed of poured concrete, rebar and brick, with simple, classically designed wooden or wrought iron balustrades, all on poured concrete footings that will simultaneously serve to support and define the traditional route of the creekbed. Although most of the pedestrian bridges in the neighborhood are flat rather than slightly arching, the proposed bridge is believed to be at least as aesthetically appealing as the traditional neighborhood bridges, without being so different as to appear out of keeping. Moreover, the bridge's footings will supply additional stability to the eroding creekbank. Finally, the bridge will be a substantial complement to the classical Georgian brick structure now under construction on the site, and will facilitate a tying together of the yards on both sides of the creek, as is typical for other homes in the neighborhood that have creeks bifurcating their yards.

### Legal Considerations

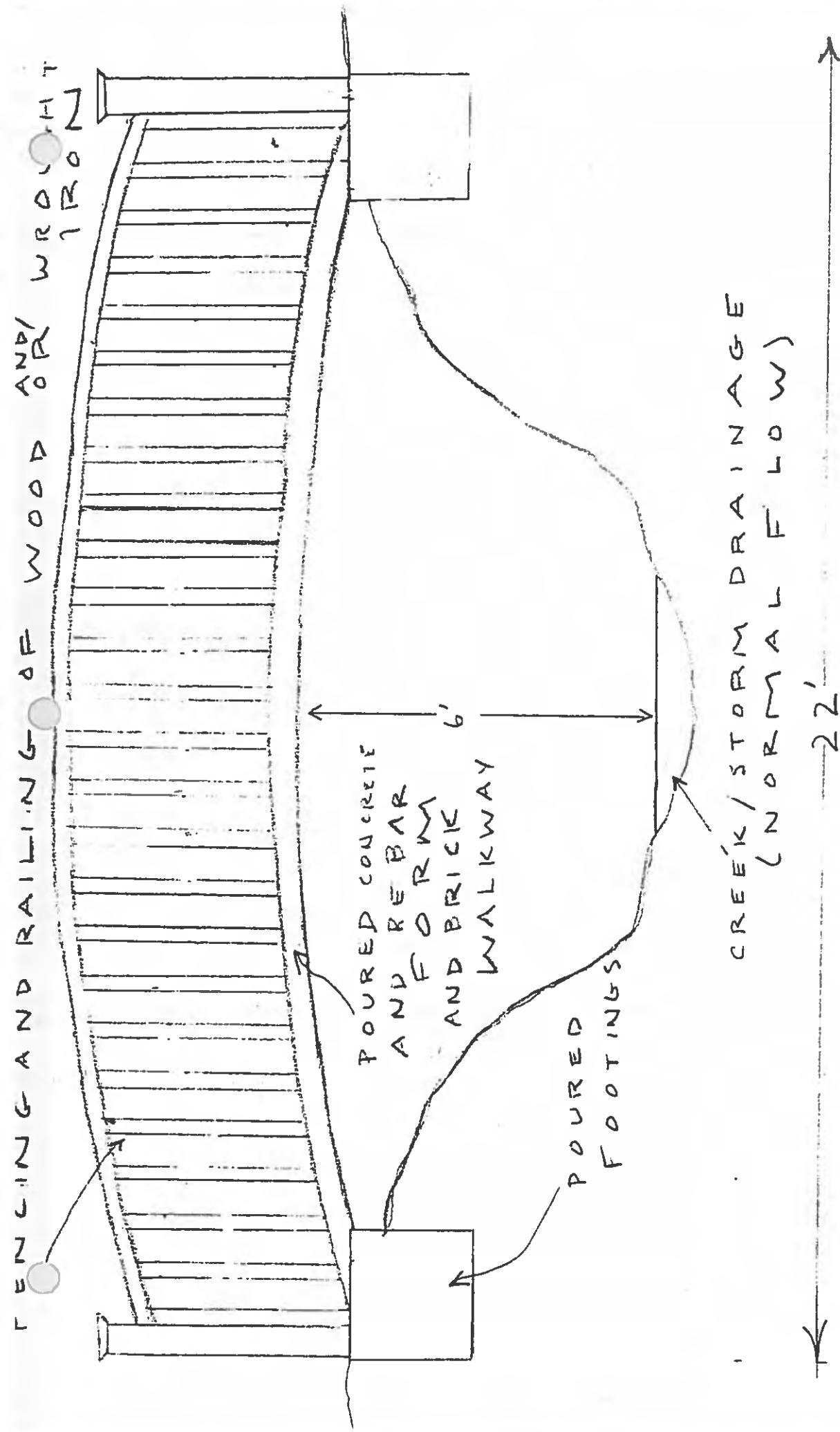
With respect to the bridge structure, the homeowners have the legal obligation of securing a certificate of historical appropriateness from the Historic Preservation Commission, and of securing a building permit from the county.



By ordinance of the Board of Commissioners dated March 11, 1997, the general house construction at this site, which presumably encompasses the bridge construction, is exempt from the requirements of Section 14-38(b)(2)(A) of the Code of DeKalb County as is all "construction of single-family residences, when such are constructed by or under contract with the owner for his or her own occupancy . . . ." This is just such an exempt case, because the lot is owned by the homeowners, who have privately contracted for construction services with a third party other than the developer, Tom Shim. However, the homeowners of 1354 The By Way remain subject to meeting the "Minimum requirements for erosion and sedimentation control" as specified in Section 14-38(b)(3) of the Code of DeKalb County.

In general, the erosion and sedimentation control requirements that do apply to this proposal oblige the homeowners to undertake the bridge construction in an environmentally sensitive way, as more fully explained in the ordinance. The homeowners warrant that they will proceed accordingly, in strict compliance with the letter and the spirit of the ordinance.



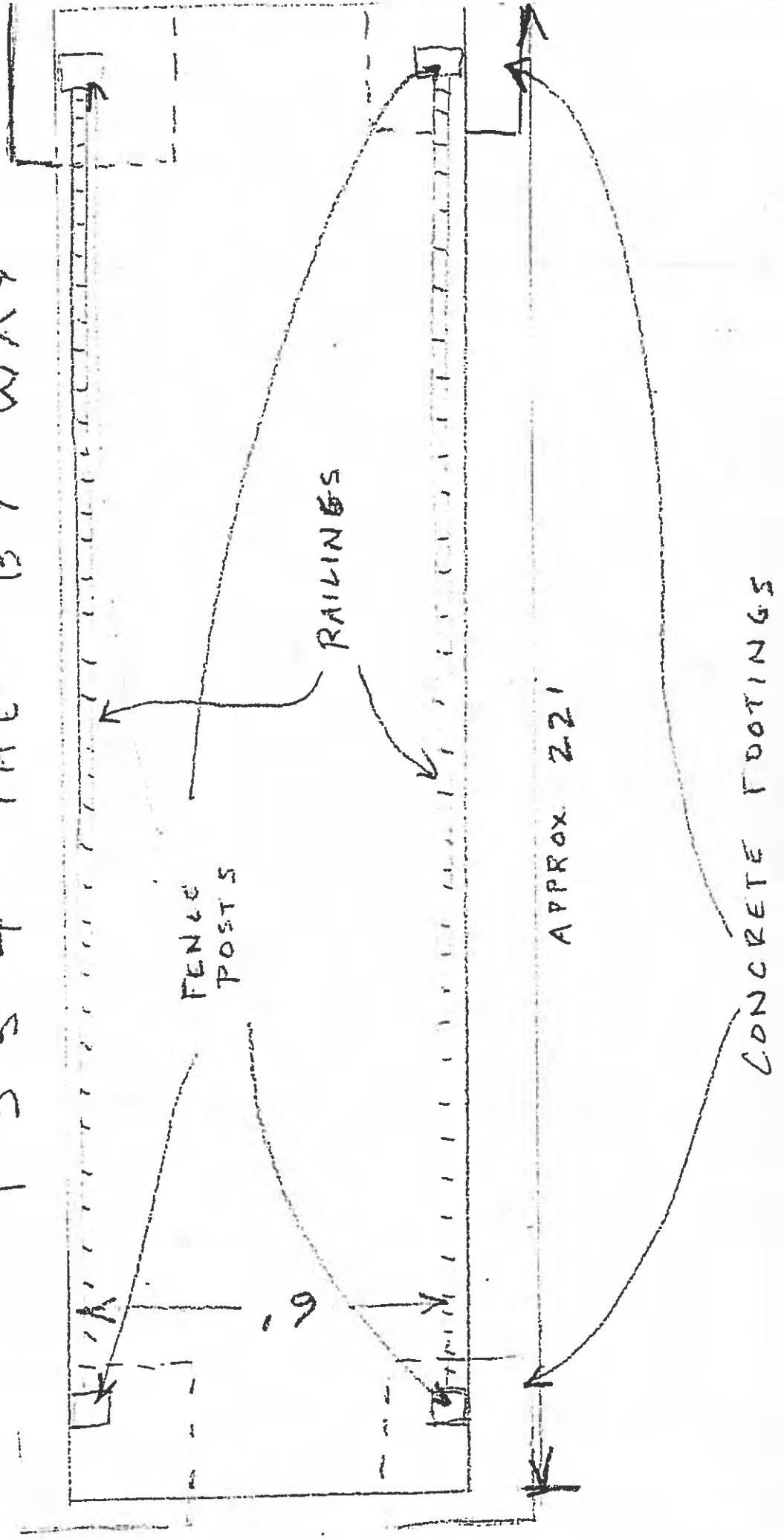


PROPOSED ELEVATION  
PEDESTRIAN BRIDGE  
1354 THE BY WAY  
SEPT. 19, 1997 DIA OEDL

SCALE  $\frac{1}{2}'' = 1'$



LAYOUT  
PROPOSED PEDESTRIAN  
BRIDGE  
1354 THE BYWAY





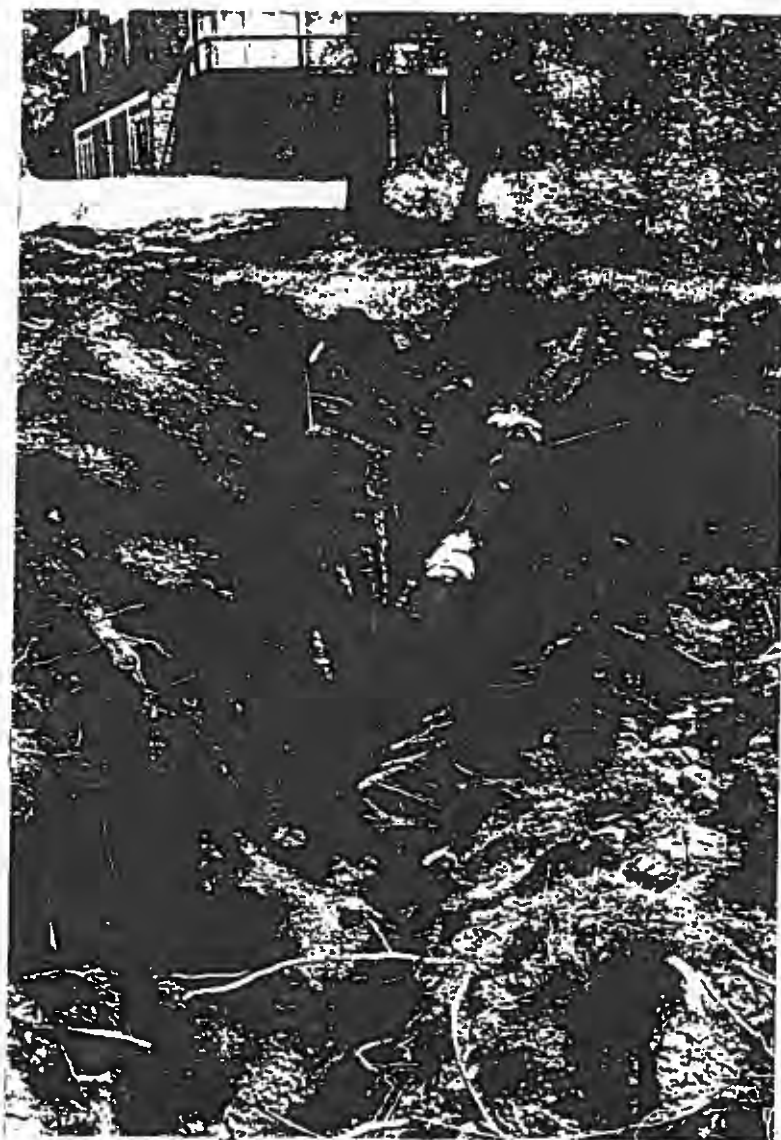


GALVANIZED  
METAL  
STRUCTURE  
REDIRECTING  
CREEK  
FLOW



TRADITIONAL  
WOODEN WATERBAR





← UNRECORDED  
DRAIN  
PIPE LEADING  
TO CREEK  
EVIDENCE  
OF  
REDIRECTION





LINE OF  
OLD DRAIN PIPE  
(NOTE DISMEMBERED  
CONCRETE SLEEVE)

OLD  
STEEL  
DAM

EDGE  
OF  
CREEK





STEEL  
POST

PIPE  
IN CREEK





WOODEN  
MEMBERS  
SPANNING  
CREEK

(FROM OLD BRIDGE OR NATURAL BRIDGE USED  
FOR CREEK CROSSING)



OTHER  
NEW CONSTRUCTION  
(DECASTRO/  
CASH  
RESIDENCE)



← THE  
BY WAY  
DRIVEWAY

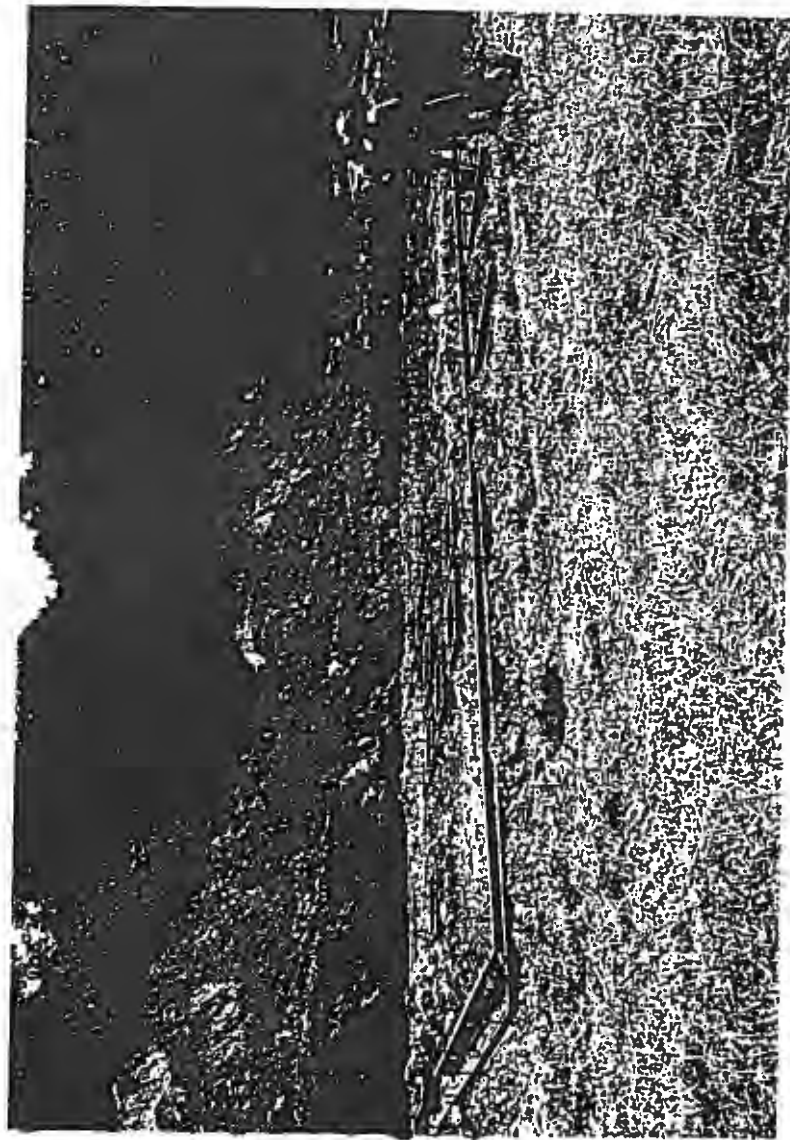
← CREEK

← FRONT  
OF  
HOUSE



REAR OF MAIN SECTION  
OF HOUSE





FROM CREEK BANK, LOOKING NORTH  
TO FOUNDATION FRONT





2 VIEWS OF  
THE REMAINS OF A  
FOOTBRIDGE  
ON LOT NEXT TO  
1354 THE BYWAY  
(AT THE BYWAY  
& OAKDALE RD.)







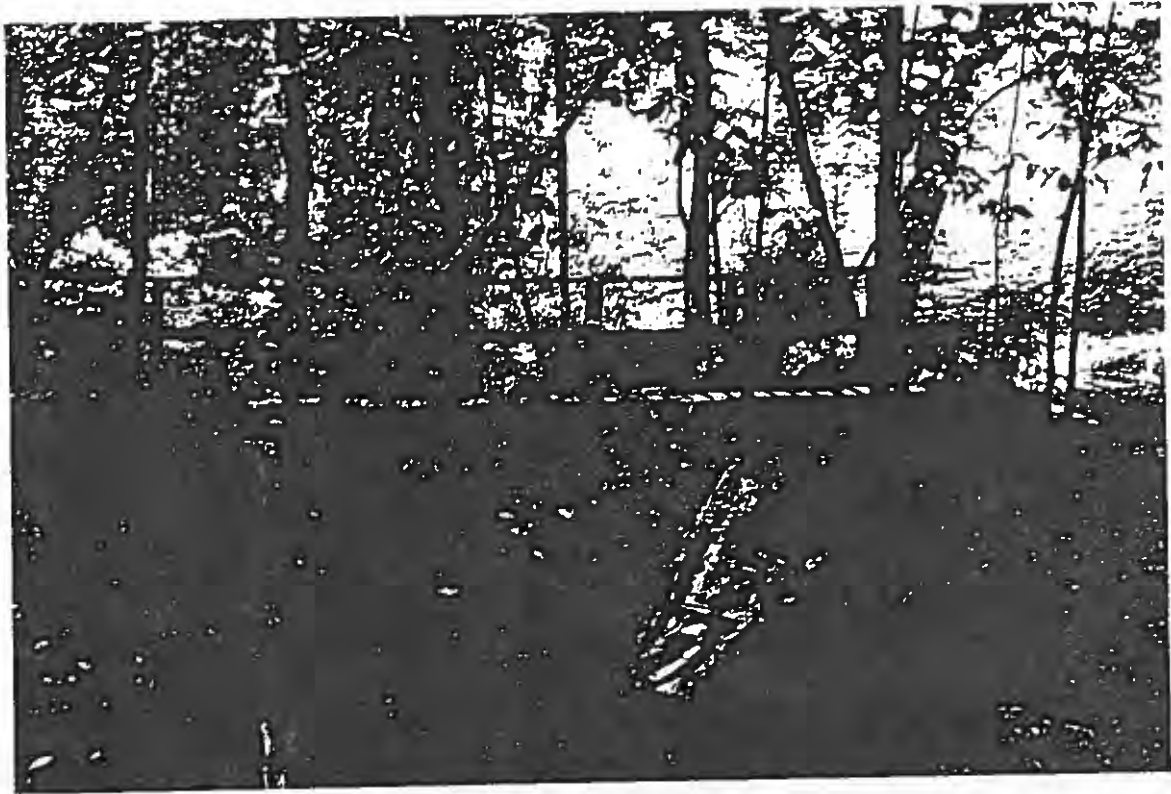
FOOTBRIDGE AT 1185 OAKDALE.



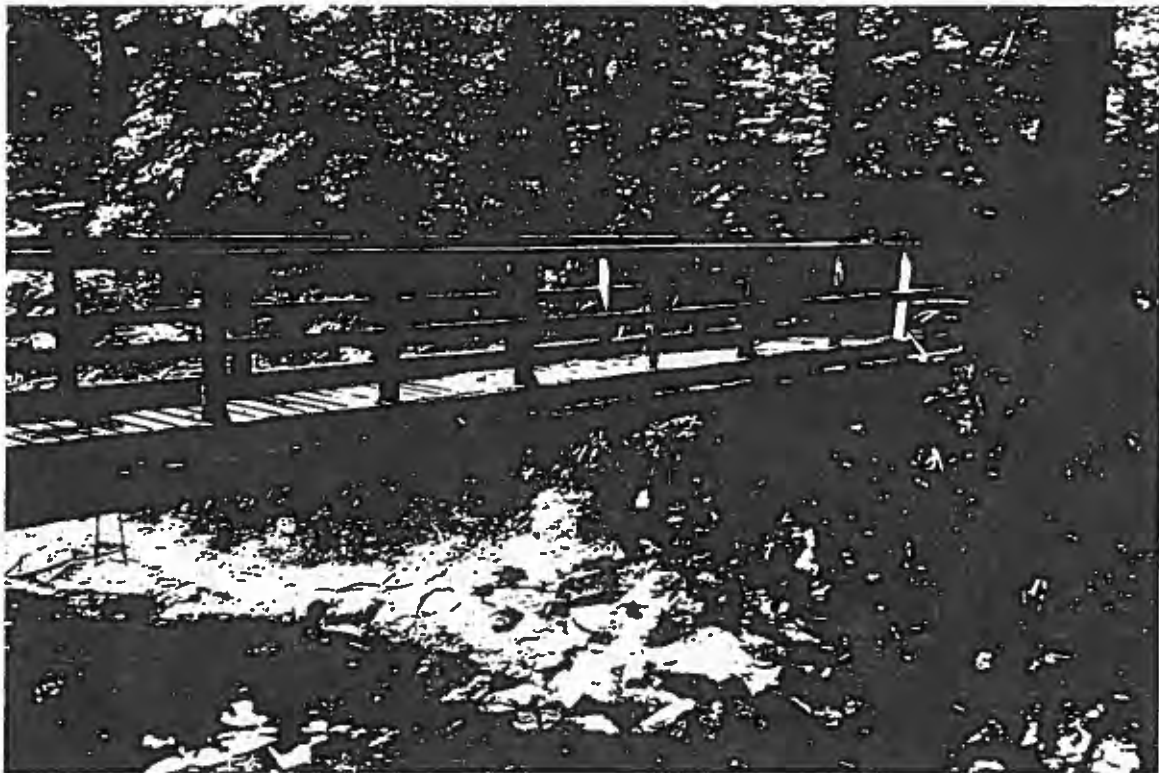


2 FOOT BRIDGES  
ON THE TWO HOUSES  
ADJACENT TO 1354  
THE BYWAY,  
GOING FROM THE  
BYWAY TOWARDS  
LULLWATER .





LULLWATER ESTATES PARK.







1185 THE BYWAY



LULLWATER ESTATES  
PARK





1185 THE BYWAY



AN ORDINANCE

9

AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA, CHAPTER 14, ARTICLE II REGARDING SOIL EROSION AND SEDIMENTATION TO COMPLY WITH 1995 AMENDMENTS TO O.C.G.A. 12-7-1 et. seq., THE EROSION AND SEDIMENTATION ACT OF 1975.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF DEKALB COUNTY, GEORGIA, and it is hereby ordained by the authority of same, that the Code of DeKalb County, Georgia, Chapter 14, Article II be amended as follows:

SECTION 1. Amend Section 14-38 (b)(2)A., by adding exemptions 6., 7., 8., and 9. As follows:

This section shall apply to any and disturbing activity undertaken by any person on any land except for the following:

- “6. Surface mining, as same is defined in O.C.G.A. § 12-4-72;
7. Granite quarrying and land clearing for such quarrying;
8. The construction of single-family residences, when such are constructed by or under contract with the owner for his or her own occupancy, or the construction of single-family residences not a part of a platted subdivision, a planned community, or an association of other residential lots consisting of more than two lots and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in (b)(3) of this section. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5, of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of (b)(3) of this section and the buffer zones provided by this section shall be enforced by the issuing authority;
9. Any project involving one and one-tenth acres or less; provided, however, that this exemption shall not apply to any land-disturbing activity within 200 feet of the bank of any state waters, and for purposes of this paragraph, “State Waters” excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves one and one-tenth acres or less, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the issuing authority from regulating any such project which is not specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, or 8 of this section.”

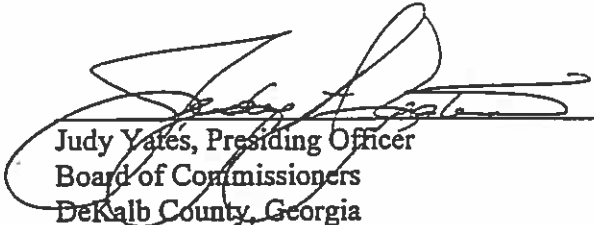


SECTION 2. Severability. If any section, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

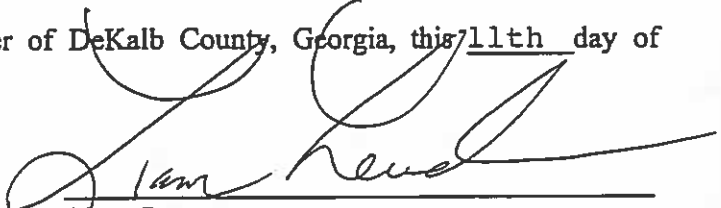
SECTION 3. Effective Date. This ordinance shall be effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

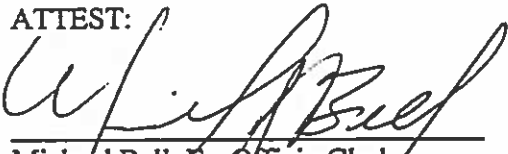
SECTION 4. Repealer. All laws and parts of laws in conflict with this ordinance are hereby repealed.

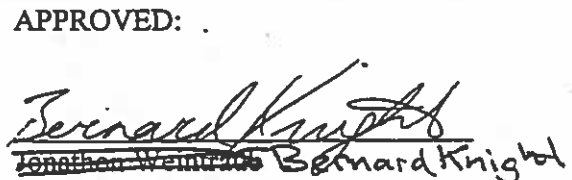
Adopted by the Board of Commissioners of DeKalb County, Georgia this 11th day of March, 1997.

  
Judy Yates, Presiding Officer  
Board of Commissioners  
DeKalb County, Georgia

Approved by the Chief Executive Officer of DeKalb County, Georgia, this 11th day of March, 1997.

  
Liane Levetan  
Chief Executive Officer  
DeKalb County, Georgia

ATTEST:  
  
Michael Bell, Ex-Officio Clerk  
Chief Executive Officer and Board of  
Commissioners  
DeKalb County, Georgia

APPROVED: .  
  
~~Jonathan Weinstock~~ Bernard Knight  
Asst. County Attorney



(3) *Minimum requirements for erosion and sedimentation control.*

- a. *General provisions.* Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities. Therefore, plans for those land-disturbing activities which are not excluded by this section shall contain provisions for application of soil erosion and sediment control measures. The provisions shall be incorporated into the erosion and sediment control plans. Soil erosion and sediment control measures shall conform to the requirements of this section. The application of measures shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sediment pollution during all stages of any land-disturbing activity.
- b. *Requirements.* The permittee shall follow sound conservation and engineering practices to prevent and minimize erosion and resulting sedimentation consistent with the following requirements:
1. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;
  2. Cut and fill operations must be kept to a minimum;
  3. Development plans must conform to topography and soil type so as to create the lowest practical erosion potential;
  4. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
  5. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
  6. Disturbed soil shall be stabilized as quickly as practical;
  7. Temporary vegetation or mulching shall be employed to protect ex-

posed critical areas during development;

8. Permanent vegetation and structural erosion control measures shall be installed as soon as practicable;
9. To the extent necessary, sediment in runoff water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized;
10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface of fills;
11. Cuts and fills may not endanger adjoining property;
12. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
13. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible and provided, in any such case, that such crossings are kept to a minimum. Disturbance to floodplain, to stream buffers, and banks due to the use of grading equipment or other excavating machinery shall be rectified by responsible parties through all efforts necessary to restabilize and restore any affected areas to as close to original condition as possible;
14. Land-disturbing activity plans for erosion and sedimentation control shall include provisions for control or treatment of any source of sediments and adequate sedimentation control facilities to retain sediments onsite or preclude sedimentation of adjacent streams beyond the levels specified in paragraph 18. of this subsection (b)(3);



15. Land-disturbing activities shall not be conducted within the one-hundred-year floodplain unless compliance with any applicable local floodplain management ordinance is demonstrated or such construction is in compliance with the federal emergency management agency regulations or flood storage compensation for floodwaters is provided;
16. An undisturbed natural vegetative buffer of twenty-five (25) feet measured from the stream banks shall normally be retained adjacent to any state waters except where otherwise required by the "Metropolitan River Protection Act," O.C.G.A. 12-5-440 et seq., or by the department pursuant to O.C.G.A. 12-2-8, or when the economic use and the contour of the land require a different buffer subject to the division's approval, or where a drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented;
17. Land-disturbing activities shall not be conducted within one hundred (100) feet (horizontal) of the banks of any state waters classified as "trout streams" pursuant to the "Georgia Water Quality Control Act," O.C.G.A. 12-5-20 et seq., unless a variance for such activity is granted by the director except where a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented; and
18. Discharges of stormwater runoff from disturbed areas shall be controlled to the extent that turbidity of the stormwater runoff shall not exceed fifty (50) nephelometric tur-

bidity units higher than the turbidity level of the receiving stream immediately upstream from the stormwater runoff discharge at the time of such discharge except where a roadway drainage structure must be constructed, the turbidity of the receiving stream downstream of the construction site shall not exceed sixty (60) nephelometric turbidity units higher than the turbidity level of the receiving stream immediately upstream from the construction site. Downstream turbidity measurements shall be taken at points where the entering discharge is fully mixed with the receiving stream flow. Should the division determine that other turbidity limits may be applicable, the issuing authority may accept same.

(4) *Application/permit process.*

- a. *Generally.* The landowner, developer and designated planners and engineer shall review the general development plans and detailed plans of the issuing authority that effect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, subdivision ordinance, this section and other ordinances which regulate the development of land within the boundaries of the issuing authority.
- b. *Application requirements.*
  1. No person shall conduct any land-disturbing activity within the confines of the county without first obtaining a permit from the issuing authority of the county to perform such activity.
  2. The application for a permit shall be submitted and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. The plans shall include, as a minimum, the data specified in subsection (b)(4)c. Soil



In order to protect the health, safety, and welfare of the community we agree to the following conditions on the approval of the preliminary plat:

1. A performance bond or letter <sup>of credit for costs</sup> associated with developing the driveway <sup>and moving the sewer</sup> prior to issuance of clearing and grubbing permit. *used*
2. The area between the creek and The Byway and between Oakdale Road and the southeasterly property line involve no land disturbance and all trees over 12" diameter shall be undisturbed, except for a 15' path to be cleared for a driveway. *period, no slope*
3. One curb-cut on The ByWay along lot #4.
4. Cross the creek at a maximum of 2 points.
5. 40' rear yard minimum.
6. 35' front yard minimum.
7. 8.3' side yard minimum.
8. Minimum 12,000 square feet per lot.
9. Building is brick, stone, and/or wood siding on 4 sides from grade level to eaves.
10. 35' maximum height to the ridge line of the roof. *"cloud" rel. enfln of Sci ledge*
11. Minimum heated living area of 2,000 square feet for houses.
12. If needed, retention pond to be constructed and lined with natural material.

  
Thomas Y. Shim

  
Martha S. Shim

7/25/95  
Date

17/96, Engls subm' plan -  
Lots 3+4 moved over (to U) by c. 20'  
Army Engls approval req. bef. bldg permit acc. comnts



# APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

DeKalb County Historic Preservation Commission

1. Name of Applicant: DAVID AND AMY OEDEL  
You or your representative may be present at the meeting of the commission. You will be notified of the time, date, and location of the meeting.

Mailing Address: 3828 THE PRADO, MACON, GEORGIA 31204  
Daytime Telephone: 912 471 9168 OR 912 452 2629  
Relationship of Applicant to Property Owner: Owner ☐ Architect ☐ Contractor ☐  
Other ☒ PROSPECTIVE OWNER  
Owner: TOM + MARTHA SHIM Owner Address: \_\_\_\_\_

2. Address of Property: 1354 THE BY WAY  
Location: District 18 Land Lot 002 Block 06 Parcel 092  
DeKalb County Historic District/Property Davis Hills

3. Nature of Proposed Work:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> New Construction           | <input type="checkbox"/> Site Preparation/Clearance      |
| <input type="checkbox"/> Demolition                            | <input type="checkbox"/> Moving a Building               |
| <input type="checkbox"/> Addition                              | <input type="checkbox"/> Sign Erection or Replacement    |
| <input type="checkbox"/> New Freestanding Building             | <input type="checkbox"/> Repairs or Alterations          |
| <input type="checkbox"/> Fence                                 | <input type="checkbox"/> Exterior Architectural Features |
| <input type="checkbox"/> Exterior Environmental Feature Change | <input type="checkbox"/> Landscaping                     |
| <input type="checkbox"/> Deck or Patio                         | <input type="checkbox"/> Other                           |

Please describe your proposed work as simply and accurately as possible. Use the attached submittal criteria checklist to guide you in your description. Be sure to indicate building and landscape materials to be used. Accurate drawings and photographs are required. (Use extra sheet, if necessary.)

NEW CONSTRUCTION ON OPEN LOT  
DRAWING IS REVERSED;  
GARAGE TO BE ON RIGHT

**IMPORTANT:** This form must be completed before the Historic Preservation Commission can consider the approval of any material change to a Historic Property or within a Historic District. This form, along with supporting documents (plans, material, color samples, and photos), must be filed with the Historic Preservation staff. DeKalb County Planning Department, 1300 Commerce Drive, Suite 400, Decatur, Georgia 30030-3221. Two (2) copies of plans or renderings for any new structures must be filed.

All applicable items from the attached checklist of Submittal Criteria must be addressed. Incomplete applications will not be docketed for consideration by the Historic Preservation Commission.

Case # \_\_\_\_\_

Date 5/2/97

David Oedel

Signature of Applicant



## COVER SHEET

### MONTH OF COA REVIEW:

May, 1997

### ADDRESS:

1354 The By Way

### CHARACTER AREA:

The proposed home to be located at 1354 The By Way, is within character area # 1, and area # 2 of the Historic Development Plat Map (page 13), known as the Springdale/Oakdale/Oxford/Lullwater corridors. This area was included in Olmsted's early conceptualizations for the suburb, based on historic development, Kauffman likely platted the areas prior to 1910. This area is part of the Druid Hills National Register Historic District and the Druid Hills Local Historic District. The setback for this area is within a 50-100' range, with lot sizes of 100' x 200' (.5 acre) and larger. The driveway access for this home is curvilinear from the street to the back yard. The homes in the area are predominantly 1 ½ to 2 story single-family detached dwellings with a full range of mid-twentieth century revival styles and some examples of the modernistic styles. The building materials consists of brick veneer, stucco and wood. Special features in the area are; by-walks, historic plat patterns, and high style architecture.

### AREA OF INFLUENCE:

The new construction will be a non-historic home, will be an example of a 2 story Georgian style home with specific details; a symmetrical facade with one door, an appendage (garage), a moderately pitched side-gabled roof, double hung 6/6 windows, stylized door and entrance, and an exterior side gable brick chimney.

### GENERAL GUIDELINES:

#### PROPOSED GUIDELINES

7.3 Respecting the Prevailing Character When Designing New Development (page 74)

7.3.1 New Construction and Subdivision Development  
(page 75)

8.0 Natural Landscapes-Protecting the Design Context  
(page 77)

8.1 Open Space and Parkland Preservation and Conservation  
(page 77)

8.2 Tree Conservation (page 78)

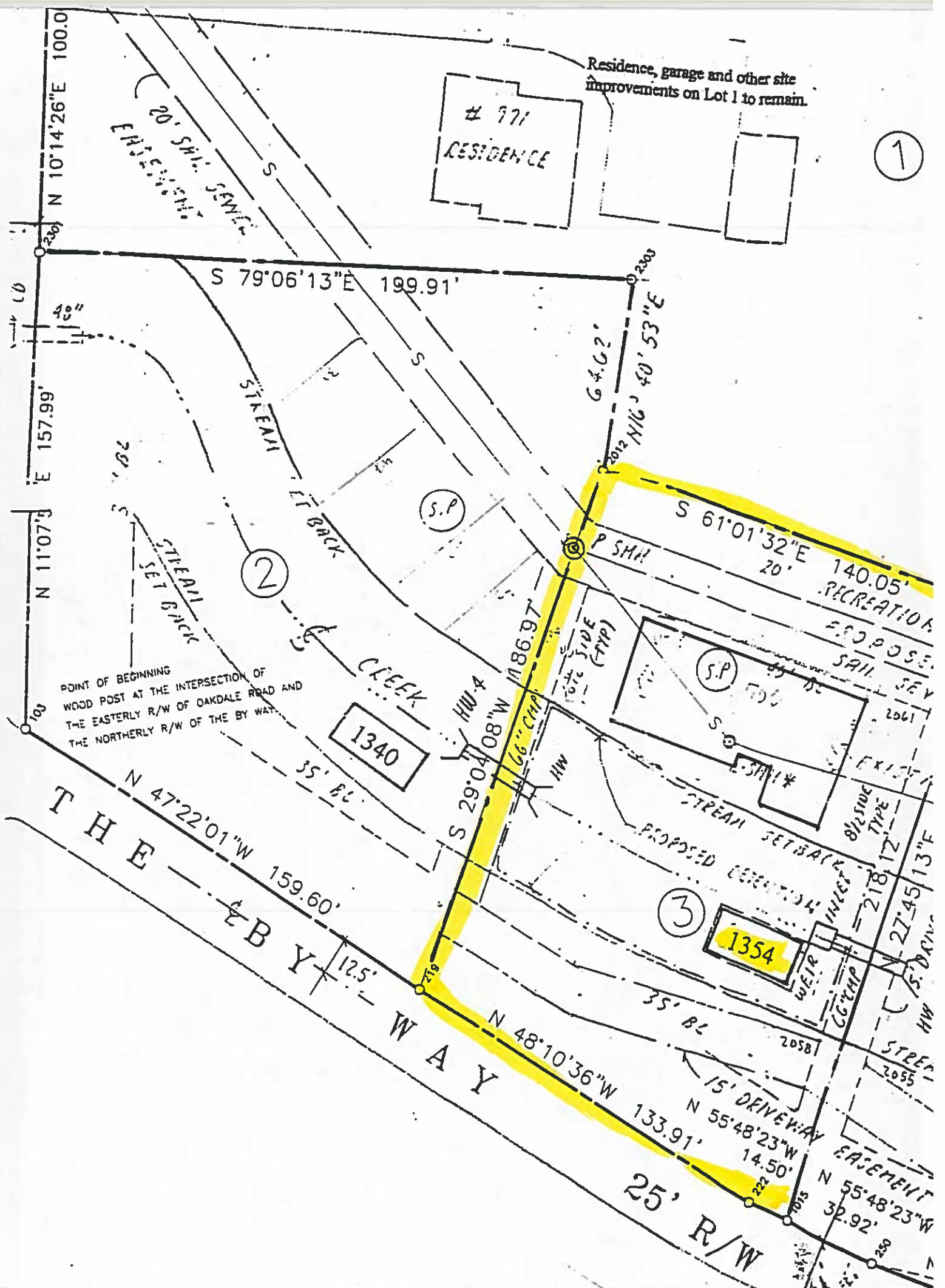
8.3 Protection of the Historic Watershed Design and Design Concept (page 79)

9.0 Cultural Landscapes Guidelines-Maintaining "The Look"  
(page 81)

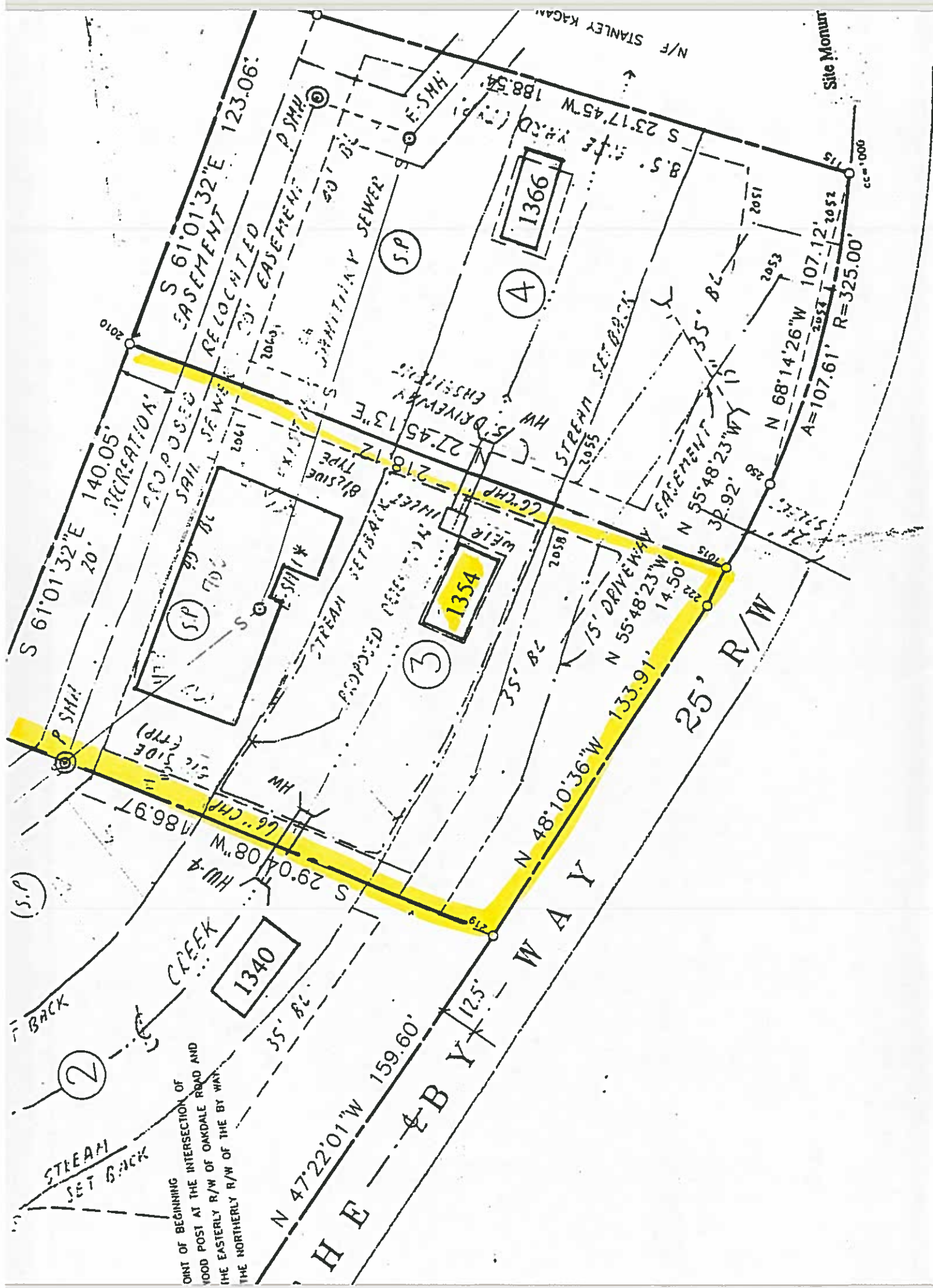
9.2 Traditional Streetscape Profile (page 81)

9.3 Vegetation (page 82)











## FIRST FLOOR (2,273 sq. ft.)

Foyer: double height, powder room, coat closet

Living Room: 10' ceiling, cased opening to foyer, French doors to family room

Dining Room: 10' ceiling, cased opening to foyer, single door to kitchen

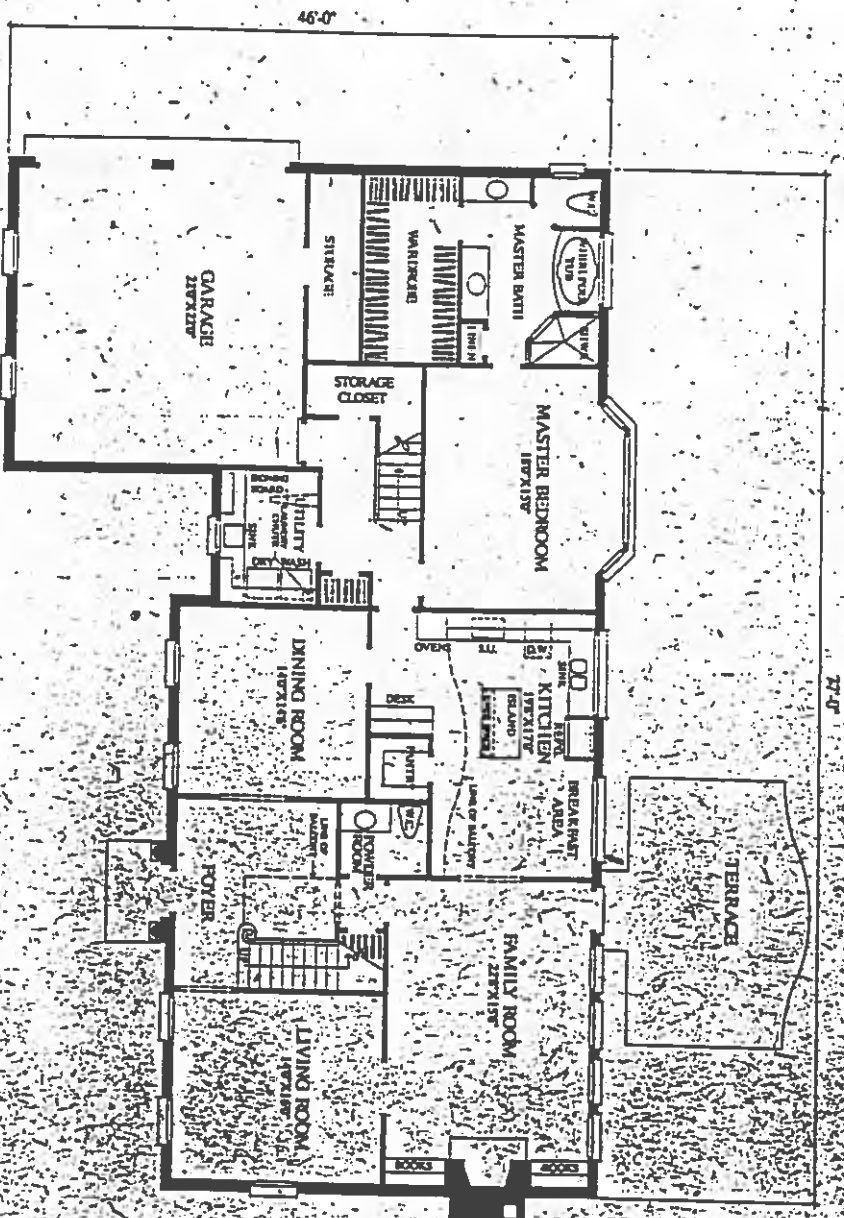
Family Room: 10' ceiling, French door, with fanlight transom, leading to terrace; fanlight window wall; fireplace; built-in bookcases

Kitchen: double height, fanlight window, balcony overlook, "in-line" and island work centers, walk-in pantry, built-in desk, adjoining breakfast area

Master Bedroom: 10' ceiling, bay window, access to back stairs

Master Bath: walk-in closet, two vanities, whirlpool, separate shower

Double Garage: storage area, access to utility room and back stairs, bonus space above





# THE BOOTHE HOUSE

914HP

An easy and charming interpretation of the Late Georgian style, our version of The Boothe House is carefully adapted to meet the practical requirements of a modern lifestyle. Cased openings, high ceilings, and well-placed windows keep the expansive, comfortable interiors light and open.

Square Footage: approximately 3,700 heated

4 bedrooms and 4 1/2 baths

Crawl-space foundation

Exterior Material: brick

Designed by William E. Poole of Wilmington, North Carolina  
Copyright Southern Living, Inc., 1990

To order working drawings: 1 set...\$375/5 sets

\$475/each additional set...\$50/Alabama residents add

4% sales tax. Please make checks payable to: Southern

Living Plans, P.O. Box 830349, Birmingham, AL 35283-0349.

Credit card orders call 1-800-755-1122. Also available,

Our Southern Portfolio, a collection of more than 40

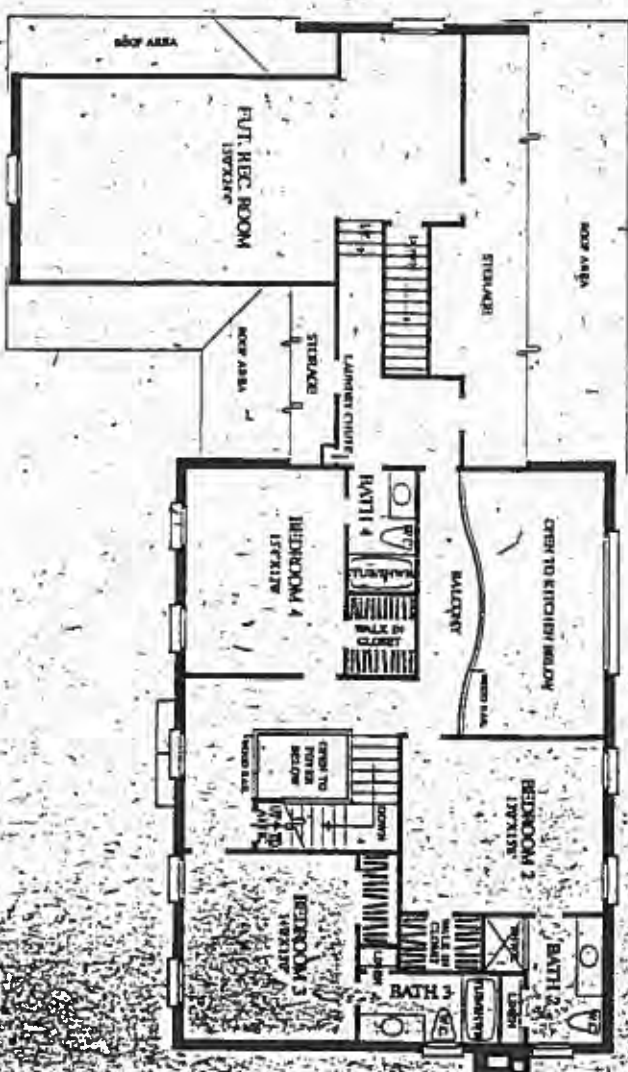
designs, for \$30. The Southern Living Hometown

Collection, offering 20 plans commemorating the architecture

of the 1920s is \$30; and The Southern Living

Cottage Collection, with 20 affordable to

build cottage-like designs is \$30.





# Appeal to BOC

## May 2021



Chief Executive Officer  
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director  
Andrew A. Baker, AICP

## Application to Appeal a Decision of the DeKalb County Historic Preservation Commission

**All appeals must comply with the procedures set forth herein.**

An application to appeal a decision of the Historic Preservation Commission on a certificate of appropriateness application must be filed within fifteen (15) calendar days after the issuance or denial of the certificate of appropriateness.

**To be completed by County:**  
**Date Received:**

**To be completed by appellant:**

**Name:** Hamish Caldwell and Dalia Judovitz

**Address of appellant:** 1366 The By Way NE, Atlanta, GA 30306

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**Address of Property:** 1354 The By Way NE, Atlanta, GA 30306

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This appeal is a review of the record of the proceedings before the preservation commission by the governing authority of DeKalb County, Georgia. The governing authority is looking for an abuse of discretion as revealed by the record. An abuse of discretion exists where the record presented to the governing authority shows that the preservation commission: (a) exceeded the limits of its authority; (b) that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or; (c) that the preservation commission's decision was otherwise arbitrary and capricious.

**If the governing authority finds no abuse of discretion, then it may affirm the decision of the preservation commission. If the governing authority finds that the preservation commission abused its discretion in reaching a decision, then it may; (a) reverse the preservation commission's decision, or; (b) it may reverse the preservation commission's decision and remand the application to the preservation commission with direction.**

**Date(s) of hearing, if any:** 3/15/21 and 5/17/21

**Date of Historic Preservation Commission decision:** Decision 5/20/21; COA 5/25/21

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DEPARTMENT OF PLANNING & SUSTAINABILITY

Historic Preservation Commission  
Appeal Form  
Page 2 of 2

In the space provided below the Appellant must describe how the preservation commission's decision constitutes an abuse of discretion. Specifically, the appellant must, citing to the preservation commission's written decision, show at least one of the following: that the preservation commission exceeded the limits of its authority, or that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) of the DeKalb County Code or on the guidelines adopted by the preservation commission pursuant to section 13.5-6 of said code or that the preservation commission's decision was otherwise arbitrary and capricious.

**Grounds for appeal:**

The written decision by DHPC constitutes an abuse of discretion in the following ways. Item 1. The decision does not take into consideration pertinent features of other properties that are in the immediate neighborhood, as required per § 13.5-8 (3). The historic landscape appearance that existed since the lots were developed will be lost. Item 2. Contrary to § 13.5-8 (12) the written decision is arbitrary and capricious in two distinct ways: (a) the decision is based on document inaccuracies (b) platting requirements from the Board of Commissioners and COA conditions from prior DHPC are overturned. The decision also is in violation of state and county stream buffer regulations. The decision must be reversed and the application remanded to the preservation commission with direction to amend the approval to include at least ten overstory trees on the stream bank and no lawn in the stream buffer.

The appellant may submit a written supplementary explanation in support of the appeal. The supplementary explanation shall be submitted with the appeal. The supplementary explanation may not exceed three pages and must be typewritten and double-spaced using a twelve-point font with a one-inch margin on all four sides. The governing authority will not consider text in excess of the page limit set forth herein.

**Date:** 6/7/21

**Signature:**

H. Caldwell / Daria J. Smith

**Instructions:** The appellant shall also deliver copies of this appeal to the planning department and the county attorney. The appellant and any person who has filed a statement in opposition to, or in support of the appeal may attend the meeting at which the appeal is considered and may be called upon by any member of the governing authority to provide information or answer questions. There shall be no other public participation in the appeal.

10/24/2017



## APPELLANT'S SUPPLEMENT TO APPEAL

APPEAL OF	)	Historic Preservation Commission
HAMISH CALDWELL	)	Property 1354 The By Way NE
& DALIA JUDOVITZ	)	Decision Dated 20 May, 2021

**Introduction:** The Dekalb Historic Preservation Commission (“DHPC”) decision to approve a Certificate of Appropriateness (“COA”) is an abuse of discretion: (1) DHPC did not take into consideration “pertinent features of other properties that are in the immediate neighborhood”, as required per § 13.5-8(3). (2) Contrary to § 13.5-8(12) the decision by HPC is “arbitrary and capricious” in two distinct ways as discussed below. Exhibits supporting this appeal were offered but denied by Staff despite precedent in public record of 11/2/20 Hurwitz appeal.

**Item 1:** For over 20 years, at the bottom of a wooded ravine 12 birch trees had grown into mature, **overstory trees on the stream bank** that fulfilled historic guidelines, provided erosion, soil stabilization and water quality protection. Within 6 months of moving in the new owner **clear-cut them without required permission**. They were part of the total of 27 stumps identified in the 12/30/21 Environmental Incident Report. Listed as “Large Trees” in the Druid Hills Recommend Plant Materials list, the birches had provided visual continuity with the natural **woodland landscape that remains on the west and east-side abutting lots** along that same stream bank, per photos received by DHPC staff on 3/8/21. As replacements for the 12 overstory trees the decision permits the stream bank to have only “three kousa dogwoods” which are shallow-rooted and listed as a “small tree” in the Plant Materials list. The decision provides “Plant 31 trees” **but that includes “22 Nellie Stevens hollies”, which are “shrubs”, not “Large” nor even “Small” Trees** per the plant list. The hollies which “will be planted 3-5’ back from the street as a hedge” and the “Five canopy trees” **will not be in the stream bank**. The decision permits a) greatly reduced number of actual trees (i.e. 9) compared to the 21 or more removed, b) no overstory



replacement trees on the stream bank, c) replacement shrubs, **not trees**, located far from where the illegally removed stream bank large trees had been and d) a failure to fulfill the intent of recommendations in Sections 8 (“**Replacement trees should be of identical or similar varieties to the original trees.**”) & 9 (“**historic landscape plans for other residential lots within the district should be used for guidance**”) of the Historic District Guidelines. The **decision creates a long-lasting “gap tooth” appearance** in the middle lot of the three contiguous street-frontage Oakdale Commons Subdivision lots and is also contrary to a licensed arborist recommendations (recently provided to Dekalb staff). The lot will no longer fit the prevalent neighborhood historic woodland appearance. **Thus the decision fails to take into account pertinent features of other properties in the immediate neighborhood.**

**Item 2.a:** The March 2021 COA application planting drawing requested replacing the existing native ground cover by installing a lawn and replacing the existing grass pavers in the stream buffer. The March HPC meeting transcript shows DHPC members Hart and Stoddard **discussed at length their concerns** about these requests and saw them as grounds for denial of the application. In May, the submitted landscape plan gave an **inaccurate portrayal of the situation by now labelling that same part of the stream buffer area as “existing lawn” and omitted the existing pavers and natural ground cover.** The current actual conditions of natural ground cover, not lawn, were shown in a photo at the May DHPC. DHPC Commissioner Stoddard asked the owner to confirm if the existing pavers will remain but the transcript shows the **discussion did not address the natural ground cover.** Not having documents that show an accurate portrayal of the real situation and relying on a brief discussion of what amounted to a moving target of what was documented versus what is intended, has caused the DHPC to accept the owner statement “leave what’s there” to allow for a lawn that does not exist. **The decision violates Georgia Dept. of**



**Natural Resources guidance and Dekalb ordinance § 14-44.1(a)(1) that requires the stream buffer must remain in a natural, undisturbed state and contradicts the DHPC March position against lawn in the stream buffer. This is arbitrary and capricious.**

**Item 2.b:** When platted in Sept. 1996 the 3 contiguous Oakdale Commons Subdivision lots with street-frontage on The By Way would have non-historic buildings but be **required to comply with having historic landscape** per the June 1996 Druid Hills historic district designation. The subdivision received zoning approval from the Board of Commissioners with the condition that explicitly applied to the stream buffer and stated that development “involve no land disturbance and all trees over 12” diameter shall be undisturbed....”. In the 1997 conditional COA approval for development on the subject lot, DHPC accepted the owner’s commitment to conform with then-new Historic District Guidelines sections 8 (Natural Landscapes-Protecting the Design Context ) and 9 (Cultural Landscapes Guidelines-Maintaining "The Look"). These conditions addressed Druid Hills Civic Association and neighborhood concerns as per documents provided to Dekalb Staff on 3/19/21. **But for these reasons approvals would not have been permitted.** These approvals confirm that **in two separate decisions Dekalb County affirmed subject lot landscape is historic, then affirmed the compliance of the landscape with Historic District Guidelines**. In 1997, the original owner complied by planting the twelve birches on the stream bank. By permitting only “three kousa dogwoods” small tree replacements and lawn in the buffer, **the May 2021 decision overturns prior requirements for historic landscape by the BOC and the former DHPC and so is arbitrary and capricious.**

**Conclusion:** The decision must be reversed and the application remanded to the preservation commission with direction to modify planting plan to have at least 10 overstory trees on the stream bank and no lawn in the stream buffer.



TO: DeKalb County Board of Commissioners

CC: DeKalb County Department of Planning & Sustainability

DATE: June, 18, 2021

RE: Support for the Appeal of the Historic Preservation Commission's Approval of the  
Certificate of Appropriateness for the Property Located at 1354 The Byway

Ladies and Gentlemen:

I live at 948 Oakdale Rd NE, which is within 1500 feet of the property located at 1354 The Byway (the "1354 property"). I'm very familiar with the 1354 property, and I'm aware of the application by the owner of the 1354 property (the "Homeowner") for approval of proposed improvements within the stream buffer, certain aspects of which were approved by the DeKalb County Historic Preservation Commission (the "HPC"). I'm also aware that Hamish Caldwell and Dalia Judovitz at 1366 The Byway have appealed the HPC's approval. I support the Caldwell/Judovitz appeal and believe the HPC's approval of the Homeowner's application is in conflict with the design guidelines the HPC is required to uphold. The areas of concern are as follows:

- Replacing existing native ground cover in the stream buffer in favor of a grass lawn is not acceptable.
- The Homeowner's landscape replacement plan is insufficient to address the 27 trees that were improperly cut down.



- 12 Overstory Trees within the stream buffer out of the 27 cut down are to be replaced with 3 dogwoods that are classified as small trees in the Druid Hills Plant Material List, which is far short of a proper replacement plan.
- The Homeowner's replacement plan impacts the character of the stream buffer that is out of place with the surrounding areas stream buffer's conditions and natural native ground cover.
- The original platting in 1996 of the 1354 property required the landscape to comply with the Druid Hills District's historic landscape requirement and prohibited any land disturbance on any and all trees over 12" in diameter. In 1997 a conditional COA approval for development of the 1354 property required it to conform to the then-new Historic District Guidelines for Druid Hills. The approval of the Homeowner's application goes against both prior requirements granted to the subject property.

Based on these concerns, which are shared by many others in the neighborhood, I request that you reverse the HPC's approval, remand the Homeowner's application to the HPC, and direct the HPC that any approval of the Homeowner's application must give effect to the Caldwell/Judovitz request that the landscaping plan include at least ten overstory trees on the stream bank and with no lawn in the stream buffer. Allowing the HPC's approval to remain in place as-is will severely impact the stream buffer's natural environment and change the character of The Byway to the detriment of the entire neighborhood.



Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Philip H. Moïse". The signature is written in a cursive style with a large initial 'P' and a stylized 'M'.

Philip H. Moïse



## RESPONSE TO APPEAL OF 1354 THE BY WAY NE COA APPROVAL MAY 2021

Our primary goal is to provide a safe home and property for our young children and the community's residents. After many years of deferred maintenance by the previous owner, in the matter of 12 months, we have initiated and executed an abundance of documented fact-based improvements. These improvements have quantifiable outcomes that have substantially increased the safety of the property.

In correspondence to the safety prerogative, a tree assessment of the property was performed by an ISA Certified Arborist in October 2020. This assessment revealed an irresponsible overplanting of trees had been installed on the property after the time of development in 1997. The 12 River Birch Trees in question were recommended for removal due to the following reasons: improper planting far too close on 8-10 foot centers, poor health that arose from improper pruning and planting, Basal Rot (fungal disease that rots the roots and inside of the tree) which was identified at the time of removal, and a very irregular phototropic growth habit stemming from an improper tree selected for the site conditions which caused the River Birches to grow angularly towards our home. As stated in the report, "the previous owners have over pruned the trees and the large leads are now dead due to poor pruning... unfortunately these leads are all on the house side of the trees and will reach the house should they fail." As the children's rooms are located in the front of the home, this was taken very seriously. Per DeKalb County Code § 14-39. *Tree Protection (c) exemptions (3) The removal of trees found to be diseased or insect infested by the county extension service, the state forestry commission, a certified arborist, the county arborist or urban forester,* and § 14-39. *Tree Protection (c) exemptions (6) The removal of any tree which has become, or threatens to become, a danger to human life or property,* I inadvertently assumed the trees were allowed to be removed and did so, citing a violation. The case has been resolved and is now closed.

The following response is an effort to address the appellants concerns and prove compliance with code affirming the HPC's unanimous approval. Coinciding with our primary goal, the tree replanting plan focuses on a safe replanting of the property for the community, our home and our children. The planting



of 31 new trees provides a historic in nature property where pertinent features of other properties in the immediate neighborhood are addressed. Nellie Stevens Holly Trees per Dekalb County Code § 14-19. APPENDIX A, *Ilex spp.* ‘Nellie R. Stevens’ are listed as small trees acceptable for replanting credits. These trees mature to a height of 15-25 feet. As these 22 trees mature, they will negate any “gap-tooth” appearance that may be of concern. Additionally, 5 more overstory trees (3 Scarlet Oaks, 2 Purple Beech Trees) will substantially aid in providing “visual continuity” with the surrounding lots. 4 understory trees (3 Kousa Dogwood, 1 Yoshino Cherry) and 1 overstory Purple Beech Tree will be planted in the stream buffer, replacing the overplanted River Birches. The design shows these trees will be planted on proper spacing and placement for long term health and safety and adheres to DeKalb County Code § 14-39. (h) *Tree Replacement Standards (4) Replacement trees shall be planted in manner that provides adequate space for nourishment, light, and maturation as recommended by the county arborist.* The Tree Replanting Plan was approved by DeKalb County Master Arborist, Russell Toning, prior to the May COA application. Considering the initial reasons for the River Birch removal, it would be a liability and irresponsible for any credentialed architect, arborist, or homeowner to require the replanting of overstory trees in the cited conditions affirmed by the appeal (Supplement: Item 1) “Woodland landscape that remains on the west and east-side abutting lots” and “at the bottom of a wooded ravine”. Identical or similar varieties of trees would be predisposed to the same fungal disease and planted in an environment encouraging growth towards the home, leading to plant failure or a hazardous tree, and a replicated scenario within the next twenty years. Furthermore, River Birches do not comply with the design manual. The contracting of Viridian Studios architect design exceedingly satisfies § 9.7 *Residential Landscape Design* and draws inspiration from “*Olmsted’s intent for front yards included planting beds filled with ornamental vegetation with free-flowing bed edges surrounding an open lawn.*” The “native ground cover” in question that is located in the existing lawn refers to Asiatic Jasmine which is found primarily outside of the stream buffer and does not comply with § 9.0 *Cultural Landscape Guidelines – Recommended Plant Material List*. The



existing lawn shown within the stream buffer consists of Tall Fescue, *poa annua*, Mondo Grass, and Moss. Photos supporting the existing lawn within the stream buffer prior to the tree removal can be provided upon request. Any future supplemental seeding of Tall Fescue would be done to enhance the lawn and Olmsted's intended residential vision.

Regarding conditions agreed upon for the subject area of property by Thomas and Martha Shim in 1995 for the approval of the preliminary plat for 1354 The By Way, "shall involve no land disturbance and all trees over 12" in diameter shall be undisturbed" pertained to the inceptual development of the property, not the maintenance necessitated after plat conception. The tree removals that occurred complied with the design manuals § 8.2 *Tree Conservation "Trees in deteriorated conditions or advance age should be removed and replaced."* and is fulfilled by the tree replanting plan. Furthermore, none of the trees removed existed on the property at the time the agreement was executed.

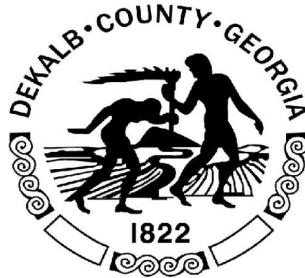
The approved COA for the Tree Permit Plan complies with § 8.0 *Natural landscapes – Protecting the Design Context* and § 9.0 *Cultural Landscape Guidelines – Maintaining "the look"*, takes into consideration pertinent features within the immediate neighborhood, supports Olmsted's vision for residential lots in Druid Hills, and responsibly addresses the replanting of trees utilizing a certified landscape architect.

In conclusion, the approved May 2021 COA supports the owner's fundamental goal of safety through the responsible replanting of trees and conforms to the historic district's guidelines. We have been in constant communication with county staff, including 3 site visits to ensure compliance with the county and historic district on the COA. This was confirmed through the approval of the Tree Permit Plan by Dekalb County's Floodplain Coordinator, Donovan Cushnie, Master Arborist, Russell Tanning, Senior Planner, David Cullison, and unanimously approved by 7 commissioners on the Historic Preservation Commission. We, Charles and Anne Marie Aubry, therefore, respectfully request the HPC's approval of the May 2021 COA be affirmed.



# DeKalb County Government

*Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030*



## Summary

**Tuesday, July 13, 2021**

**9:00 AM**

**Manuel J. Maloof Auditorium**

## **Board of Commissioners**

*Commissioner Steve Bradshaw, Presiding Officer, District 4  
Comm. Lorraine Cochran-Johnson, Deputy Presiding Officer, District 7*

*Commissioner Robert Patrick, District 1  
Commissioner Jeff Rader, District 2  
Commissioner Larry Johnson, District 3  
Commissioner Steve Bradshaw, District 4  
Commissioner Mereda Davis Johnson, District 5  
Commissioner Edward "Ted" Terry, Super District 6  
Commissioner Lorraine Cochran-Johnson, Super District 7*



[2021-2664](#)**Commission District(s): 5 & 7**

Traffic Calming Petition - Alice Ave between Old Greystone Ct and Cypress Trace. Cost to the County is \$15,150.00.

**Approved**

**“DECISION ONLY” ITEMS – NO PUBLIC HEARING****Planning & Sustainability**[2021-2120](#)**COMMISSION DISTRICT(S): 4 & 6**

Application of Inline Communities LLC c/o Battle Law to rezone properties from R-75 (Residential-Medium Lot-75) and MR-2 (Medium Density Residential-2) District to RSM (Small Lot Residential Mix) District to construct townhomes and single-family detached residences, at 671 Northern Avenue.

**Deferred to the next meeting, until July 27, 2021, for Decision Only**

**E. APPEALS****Planning and Sustainability**[2021-2763](#)**COMMISSION DISTRICT(S): 2 & 6**

Appeal of a Decision of the Historic Preservation Commission

**Reversed and remanded the Historic Preservation Commission decision approving the subject Certificate of Appropriateness relating to 1354 The ByWay, with direction that the Commission reconsider the application with particular attention to the landscape plan, the role of overstory trees, and Guideline 8.2 (Tree Conservation) of the Design Manual for the Druid Hills Local Historic District.**

**F. APPOINTMENTS****Chief Executive Office**[2021-2745](#)**Commission District(s): All Commission Districts**

Appointment to the DeKalb Regional Land Bank Authority Board -  
Quinn Green

**Approved**

**G. CONSENT AGENDA**



# Tree Violation



*Department of Planning & Sustainability*

## Notice of Violation DeKalb County Tree Protection and other Codes

The purpose of the DeKalb County tree protection ordinance is to facilitate the preservation and/or replacement of trees. These requirements are found in the **County's Tree Protection Code, Chapter 14 Section 39.**

Clearing and grading without a permit from DeKalb County may be in violation of the **County's Erosion & Sediment Control Ordinance as well as the Water Quality and Storm Water Ordinance.**

As a result of the removal of more than 5 trees at 1354 The By Way without a permit and without prior notification a Stop Work was issued by Brett Ford, Senior Land Development Inspector, Department of Planning & Sustainability, DeKalb County on December 29, 2020.

12/29/20 2:39 PM  
33.7802N 84.3354W  
The by Way Northeast

**DO NOT REMOVE**  
DEKALB COUNTY DEPARTMENT OF PLANNING & SUSTAINABILITY  
**LAND DEVELOPMENT DIVISION**  
TELEPHONE 404-272-1334

**STOP WORK ORDER**

\*ALL WORK AT THIS SITE SHALL STOP IMMEDIATELY. CONTACT IMMEDIATELY THE ABOVE INDICATED DIVISION OF THE DEKALB COUNTY DEVELOPMENT DEPARTMENT. FAILURE TO COMPLY WITH THIS ORDER WILL RESULT IN ISSUANCE OF A COURT CITATION TO APPEAR BEFORE THE DEKALB COUNTY MAGISTRATE COURT FOR VIOLATION OF THE DEKALB COUNTY CODE

CODING	DESCRIPTION OF VIOLATION
14-39	TREE REMOVAL
LOCATION/REMARKS	ISSUED BY
1354 THE BY WAY	B. FORD
DATE: 12/29/2020	

\*ONCE PROBABLY CONTACTED, WORK CAN BE DONE

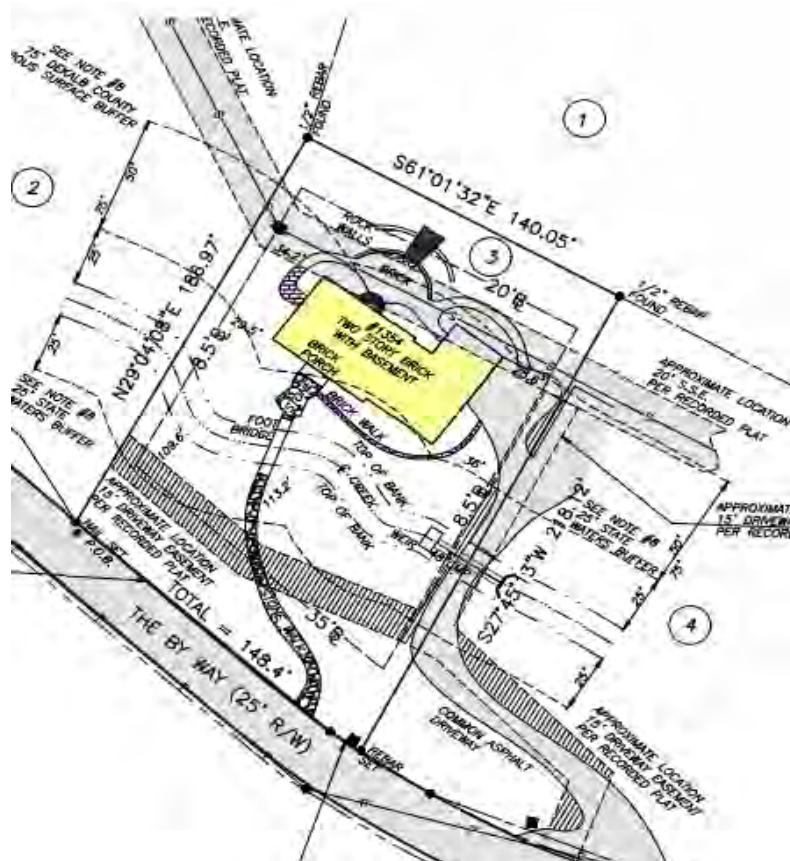


It is noted that 1354 The By Way is located in the Druid Hills Historic District. The Historic District has adopted a tree preservation program with the following recommendation:

**Recommendation** - The mature hardwood forest within the Druid Hills Local Historic District should be perpetuated through a district-wide re-planting program. Trees should be replaced when mature trees are lost to age or damage or are removed for safety reasons. Replacement trees should be of identical or similar varieties to the original trees. A diversity of tree types is recommended to perpetuate the existing character of most tree groupings. Replacement trees of adequate size (1.5" caliper minimum) are recommended. Existing ordinances that provide for the protection and replacement of the district's tree resources should be applied to development activities within Druid Hills.

On January 15th a site visit was conducted with the following present;

- Charles Aubry, Property Owner
- Russell Toning, DeKalb County Arborist
- Shaun Shaifer, Code Compliance Officer
- Chris Hall, Consulting Arborist





I counted the following river birch trees removed in the front of the house along the southern (opposite) side of the creek and measured the diameter of the trunks:

- 17"
- 16"
- 8"
- 15"
- 13"
- 16"
- 11"
- 13"
- 12"
- 12"
- Tree trunk was decayed.
- 7"

Trunks of trees removed on the west side of the house included the following;

13. 13"
14. 14"

In the rear of the house the following tree trunks were measured;

15. 10"
16. 9"
17. 7"
18. 7"
19. 8"
20. 14"

The following trees were removed within 5 feet from the house;

21. 9"
22. 11"
23. 15"
24. 9"

Property owner Charles Aubry had contacted Consulting Arborist Charles Hall who provided the following report regarding the condition of the trees prior to removal:

**Charley,**

***Thank you so much for having me out to access your trees. You have a beautiful new home and we are very happy to help you get it into playing conditions.. It is very apparent that there are a number of trees issues that should be addressed.. Below are my findings and recommendations..***

- ***Dead hard woods at street.. Remove asap as it is a hazard***
- ***Number of river birch along creek bank.. These trees where planted very close together and for that reason have developed problems... the previous owners have over pruned the trees and the large leads are now dead due to poor pruning... unfortunately these***



*leads are all on the house side of the trees and will reach the house should they fail. Two options ... first remove every other tree and prune out all the dead.. This does not leave much tree and is a temporary fix.. Better option is to remove and replant.. We would need better spacing and I would consider Bald Cypress as a replacement.*

- *Maples in the back yard.. these trees are all root bound as the girdling roots are very visible .. The tops are now declining....Again I recommend that you remove and replace with a species suited for the site...*
- *The other dead trees include magnolia on stream bank, maples in the rear of the house... all of these should be removed .*

*Should you need to discuss further I will be happy to speak further about these situations...*

*Chris Hall*

*ISA certified arborist*

*SO-1450*

Mr. Aubry had the 24 trees removed based on Hall's report.

Under Exemptions of the County's Tree Protection Ordinance a homeowner may remove trees under the following guidelines:

- The County's tree protection ordinance states that a single family homeowner may remove up to 5 healthy non-specimen trees per year. None of the 24 trees removed were specimen trees.
- The County's tree protection ordinance states that hazardous trees may be removed. **"The removal of any tree which has become, or threatens to become, a danger to human life or property."**
- **"The removal of more than five (5) trees, other than specimen trees, from an owner-occupied, single-family lot may be approved by the county arborist if the owner must remove trees in order to build a newly permitted structure, or to build an addition to or make improvements to an existing structure, or to improve the health of other trees in the landscape."**

Following the site visit property owner Aubry provided to the County the following vegetation plan:

### **1354 The By Way NE: Work & Planting Schedule with Materials**

#### **February 2021**

- **Finish remaining removals and grind stumps**

#### **March/April 2021**

- **28 – 7-gallon *Ilex opaca* (Nellie Stevens Hollies)**
- **6,300 square feet of Turf Type Tall Fescue Grass**



#### May 2021

- Installation of vegetative gabion on stream bank – plant material TBD
- Remove temporary walk path and concrete parking pavers
- Install grass paver parking pad

#### June 2021

- 8,700 square feet of Meyer Zoysia Grass

#### September/ October 2021

- 5 *Rosa 'don juan'* (Don Juan Climbing Roses)
- 50 *Dryopteris erythrosora* (Autumn Fern)
- 22 *Rosa 'meizorland'* (White Drift Roses)
- 12 *Buxus sempervirens* (American Boxwoods)
- 180 *Buxus microphylla* (Korean Boxwoods)
- 2 *Camellia sasanqua* 'Bonanza'
- 6 *Rhododendron* spp. 'Girard's Fushia' (Azaleas)
- 50 *Ajuga reptans* 'Chocolate Chip' (Carpet Bugleweed)
- 5 *Rhododendron 'catawbiense'*
- 26 *Hydrangea macrophylla* (Color Fantasy Hydrangea)
- 5 *Camellia hybrida* 'Winter's Star'

#### November 2021

- 20 *Fagus sylvatica* (Copper Beech Trees)

#### **OTHER:**

- All ornamental landscape beds to be mulched with double ground red oak mulch or pine bark nuggets
- All existing and new trees in landscape plan to be mulched with double ground red oak mulch or pine straw. Bed to be one half to two thirds of the tree's drip line

#### Remaining Removals:



**Front of property:**

- **Southern Red Oak with a DBH of 15.6" – In Dekalb County 50' Stream Buffer**
- **River Birch with a DBH of 8.2" – In GA EPD 25' Stream Buffer**
- **River Birch with a DBH of 13.6" – In GA EPD 25' Stream Buffer**
- **Water Oak with a DBH of 20.0" – In Dekalb County 50' Stream Buffer**

**Multiple small dead trees on property line along "The By Way" deemed hazardous by ISA Certified Arborist**

**Back of property:**

- **Red Maple with a DBH of 16.2" – Severe Root Girdling – Deemed a potential hazard to property and loss of life by ISA Certified Arborist**
- **Red Maple with a DBH of 13.3" – Severe Root Girdling with prolific die-back occurring from the top, down**

**Conclusion:**

Given the assessment by Arborist Chris Hall regarding the recommendation for the removal of dead, diseased and hazardous trees as well as the removal of trees causing (potential) property damage due to growing close to the house, and, the removal of trees to provide improved growing conditions for the trees that remain;

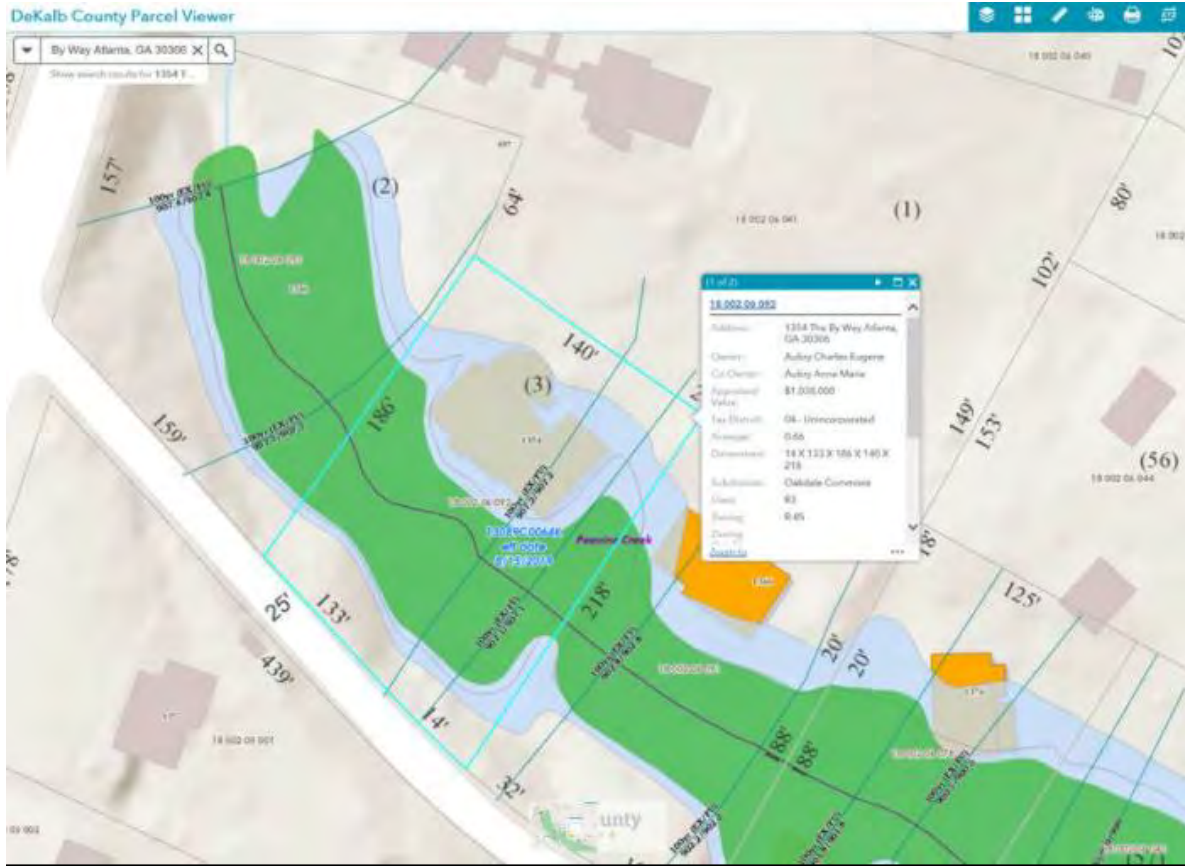
And having received a revegetation plan by the property owner;

It is my assessment that the removal of the 12 river birch trees should not have occurred and is a violation of the County's tree code.

Because the violation of the removal of these trees occurred in the stream buffer and because the property is located in the Druid Hills Historic District, it is my recommendation that the property owner be fined a total of \$2,000 and shall be **required to replace them per the "Druid Hills Historic District tree preservation program.**

The violations with regards to DeKalb County Floodplain Ordinance can be found in the County's Land Development Code Chapter 14 which specifically relates to floodplain regulations; 14-39.(g), 14-420, 14-432.(b).





Compliance with 14-430, 14-431, 14-40.(b)(12), and (13), 14-37.(b)(5) and 14-39.(g) will be required for proposed work in the floodplain. Compliance with the Georgia E.P.D. standards for streambank and shoreline stabilization will be required for the proposed plan.

**Having removed trees from the County 75' stream buffer, the property owner shall** submit a stream buffer variance application to the Planning & Sustainability Department. Also, the installation of a gabion along the stream bank will require a variance from the Department of Planning & Sustainability as well; and may require a variance from the State of Georgia E.P.D. It will be for the property owner to contact the E.P.D. to confirm whether a variance is required. The property, Charles Aubry, owner shall contact the Land Development section regarding the County Stream buffer variance application.

Notification shall be submitted by the property owner, Charles Aubry, to the County and to the Druid Hills Historic District for the removal of any additional trees.



Approval by the County and the Historic District shall be necessary before any additional trees may be removed.

The property owner will need to file an application for a Certificate of Appropriateness with the Druid Hills Historic District. The Certificate of Appropriateness will be considered at the March or later preservation commission meeting.

Russell Toning  
DeKalb County Arborist