

**VARIANCE(S):**

**V-2014-011**

**CITY OF SUWANEE  
VARIANCE ANALYSIS**

**CASE NUMBER:** V-2014-011  
**REQUEST:** ACCESSORY STRUCTURE EXCEEDING  
MAXIMUM SQUARE FOOTAGE  
**APPLICABLE SECTION:** SECTION 501A.1.C  
**LOCATION:** 451 MAIN STREET  
**DISTRICT/LAND LOT:** 7-236-063  
**ZONING:** R-100 SINGLE FAMILY RESIDENTIAL  
DISTRICT

**APPLICANT/OWNER:** BRENDAN AND TAMARA BRIGGS  
451 MAIN STREET  
SUWANEE, GA 30024

**CONTACT:** MARIAN ADEIMY  
**PHONE:** 770-822-0900

**RECOMMENDATION:** **APPROVAL WITH CONDITIONS**

**ANALYSIS:**

The applicant seeks a variance from Section 501A.1.C of the City of Suwanee Zoning Ordinance to allow for an accessory building exceeding the maximum permitted square footage. The subject property is roughly one acre in size and is located in Historic Old Town at 451 Main Street. The applicant is requesting an accessory building that has roughly 1,890 square feet of space, which is 1,090 square feet over the maximum permitted size. The maximum permitted size for accessory buildings, per the zoning ordinance, is 800 square feet. The proposed building is a two story building with a two car garage, unenclosed parking and storage space on the ground floor and finished space and unfinished space on the second floor. The accessory building replaces an existing garage that was also larger than 800 square feet.

The applicant applied for a building permit for the accessory structure in January 2014. During the permit approval process, there was a miscalculation that led to the permit being approved in error. During the construction of the building, a foundation inspection was requested and the City's inspector noticed that the foundation was too large for an accessory building that had not been granted a variance. Therefore, the accessory building is partially complete at this time.

Like the subject property, the neighboring properties on Main Street are also single family homes that are zoned R-100. Several other properties in Old Town have larger accessory structures. Accessory buildings are permitted uses in all of the City's residential zoning districts. All of the residential zoning districts have the same standard for accessory buildings in terms of maximum square footage allowed, which is 800 square feet. The houses along Main Street are some of the oldest homes in the City. As such, many of the parcels, homes and structures along Main Street do not conform to the current regulations of the zoning ordinance. The Historic Old Town area

of the City, in general, contains structures and uses more commonly found in small towns and rural areas. In these situations, larger barns and multiple accessory structures are fitting with the character of the area.

According to the plans submitted, the accessory building will be a two story structure containing 1,494 square feet of interior space including an accessory dwelling unit. The Downtown Suwanee Master Plan encourages accessory dwelling units in the Old Town area to provide a variety of housing types. There will also be a 396 square foot open carport area which will be paved resulting in 1,890 total square feet. The architecture of the building matches the existing home on the property. The proposed accessory building will feature a tin roof and cement siding that respects the historic feel of the area. The structure's location on the lot is appropriate, as it is behind the rear building line of the existing home.

The City of Suwanee's Zoning Ordinance grants the Zoning Board of Appeals the authority to grant variances. According to Section 2006 of the Ordinance, the Board is authorized to grant variances when literal enforcement of the Ordinance will result in unnecessary hardship to a property owner. A variance may be granted if the conditions are unique to the property and/or are unlikely to cause substantial detriment to the public good or if the variance will not undermine the intent of the zoning ordinance. In addition, a variance may be granted when such conditions are not the result of any actions of the property owner.

In conclusion, while there does not appear to be a hardship, approval of the variance would not be a substantial detriment to the public good. The intent of the zoning ordinance is to limit the number and size of accessory buildings on smaller lots in more densely populated neighborhoods. Residences on Main Street existed long before the City adopted the zoning ordinance and Old Town has a unique development pattern. The property is near a number of parcels with similarly sized accessory structures. Additionally, the new structure with the architecture of the primary structure will be replacing an older non-conforming accessory structure with a building that is more consistent. As such, staff recommends **APPROVAL WITH CONDITIONS** of V-2014-011.

**V-2014-011**

**Planning Department Recommendation:**

Approval of a variance for an accessory structure greater than maximum square footage allowed subject to the following conditions:

1. The accessory building shall be substantially consistent with the architecture design shown in exhibit "D" and the dimensions provided in exhibit "E".

## Standards for Consideration

Pursuant to Section 2009A of the City of Suwanee Zoning Ordinance, the City finds the following standards are relevant in considering all applications for a Variance.

**A. Will approval of the variance unreasonably increase the congestion in public streets?**

Approval of this variance would not increase the congestion in public streets.

**B. Will approval increase the danger of fire or endanger public safety?**

Approval of this variance would not increase the danger of fire or endanger public safety.

**C. Will approval unreasonably diminish or impair established property values within the surrounding area?**

Approval of the variance would not unreasonably diminish or impair property values within the surrounding area.

**D. Will approval in any other aspect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City?**

Approval of this variance, with the appropriate conditions would not impair the public health, safety, comfort, morals, or welfare.

**APPLICATION FOR VARIANCE FROM THE  
CITY OF SUWANEE ZONING BOARD OF APPEALS**

Please complete this application and submit with all necessary attachments as stated on the Variance Information Form (please type or print)

**APPLICANT INFORMATION**

Name: Brendan and Tamara Briggs  
Address: c/o Andersen, Tate & Carr, P.C., 1960 Satellite Blvd., Ste 4000  
City: Duluth  
State: Georgia  
Phone: (770) 822-0900  
E-mail address: madeimy@atclawfirm.com

**OWNER INFORMATION**

Name: Brendan and Tamara Briggs  
Address: 451 Main Street  
City: Suwanee  
State: Georgia  
Phone: (770) 822-0900

CONTACT PERSON: Marian C. Adeimy, Attorney for Applicant

PHONE: (770) 822-0900

ADDRESS OF PROPERTY 451 Main Street

LAND DISTRICT 7 LAND LOT 236 PARCEL 063 LOT \_\_\_\_\_

SUBDIVISION OR PROJECT NAME (IF APPLICABLE) \_\_\_\_\_

ZONING R-100

VARIANCE REQUESTED Variance from 800 sq. ft. requirement for an accessory, 2-story garage to include a building pad of 1,188 sq. ft. with the enclosed floor space for each level to be a max of 799 sq. ft. (approx. 792 sq. ft. for the enclosed garage and approx. 701 sq. ft. for second-story storage)

NEED FOR VARIANCE A variance is required to repair, renovate, and improve the existing accessory garage due to the age of the home and owners' goal to improve and increase property value. The garage elevations reflect a design and exterior comparable and consistent with that of the existing residential home.

**\*A VARIANCE FROM A CONDITION OF ZONING CANNOT BE ACCEPTED.  
SECTION 2007, APPLICANT AND/OR A REPRESENTATIVE.**

**\*\*\*The property owner, applicant and /or a representative thereof shall be present at all meetings of the Zoning Board of Appeals, Planning Commission and/or Mayor and Council at which official action is requested on any variance or application for amendment. The failure of the property owner, applicant and/or a representative to attend such meetings shall result in the denial of said variance or application for amendment.**

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July 21, 2014

## Via E-mail

City of Suwanee Zoning Board of Appeals  
c/o City of Suwanee Planning Department  
Attn: Matt Dickinson  
330 Town Center Avenue  
Suwanee, Georgia 30024

**Re: CONSTITUTIONAL OBJECTIONS AND LETTER OF INTENT IN  
SUPPORT OF VARIANCE APPLICATIONS FOR BRENDON AND  
TAMARA BRIGGS ("Variances")**

Dear Zoning Board of Appeals, Director and Staff:

Please see the attached elevations and site plan in support of these Variances for the property located at 451 Main Street, Suwanee, Georgia 30024 (the "Property").

The requested Variances seek:

- 1) A variance from the 800 sq. ft. requirement under Section 501, governing residential uses, to allow for an accessory, two-story garage building, with a building pad totaling 1188 sq. ft., with finished floor space of approximately 792 sq. ft. on the ground floor, and approximately 701 sq. ft. for storage use on the second floor; and
- (2) An administrative variance to reduce the side setback requirement from 10 ft. to 7 ft., due to the existing property shape, size, and the location of the existing residential home, garage and driveway.

On or about January 10, 2014, the property owners and applicants obtained a permit to build a garage and accessory building on their Property, known as Permit No. PB 14-007 (the "Permit"). That Permit allows for a 2 story, 40 ft. wide accessory garage with a total heated floor area of 1,837 sq. ft. The owners state that the proposed site plan and structure meet those requirements.

The building height and width has not changed since that permit was approved. Despite the consistent site plan, the owners were instructed to file a variance application

due to the increased square footage of the building pad slab, only, and due to the impact on the side setback, where the building encroaches by a maximum of 3 feet. *into the typical 10 ft. side setback. Accessory buildings are permitted a 5 ft. side setback or greater.*

**Constitutional and Statutory Justifications**

The portions of the Zoning Ordinance for the City of Suwanee which classify or condition the Property into any more or less intensive zoning classification and/or zoning conditions other than as requested by the Applicant and property owner are and would be unconstitutional in that they would destroy the Applicant's and property owner's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the City of Suwanee Zoning Ordinance, as applied to the Property, which restricts its use to the present zoning classification, uses, regulations, requirements, and conditions is unconstitutional, illegal, null and void, constituting a taking of the Applicant's and the property owner's property in violation of the Just Compensation Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia of 1983, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States denying the Applicant and property owner any economically viable use of the Property while not substantially advancing legitimate state or local government interests.

The Property is presently suitable for development subject only to the approval of the Permit and variances hereby requested by the Applicant, and is not economically suitable for development under its present zoning and development classification, conditions, regulations, and restrictions due to its location, shape, size, surrounding development, and other factors. A denial of any of the requested variances would constitute an arbitrary and capricious act by the Mayor, Council, and/or Zoning Board of Appeals without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia of 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Mayor, Council and/or Zoning Board of Appeals to approve the Applicant's and property owner's requested variances, with only such additional conditions as agreed to by the Applicant, so as to permit the only feasible economic use of the Property, would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

Any rezoning or conditions subjecting the Property to conditions which are different



from the requested variances and conditions by which the Applicant may amend its application, to the extent such different conditions would have the effect of further restricting the Applicant's and the Owner's utilization of the subject Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions as set forth hereinabove.

**Conclusion**

The owners assert that they have a vested, constitutional property right to the proposed 2 story building as permitted, as long as the gross floor area for each story remains under 800 sq. ft. The owners believe that they meet the current permitting conditions and requirements under the Zoning Ordinance for the City of Suwanee. However, in an abundance of caution, the owners submit applications for ~~both~~ of the requested Variances.

Thank you in advance for your time and consideration of the Applicant's amended requests. The Applicant and its representatives welcome the opportunity to meet with staff and Board Members to answer any questions.

Respectfully submitted this 21<sup>st</sup> day of July, 2014.

  
\_\_\_\_\_  
Marian C. Adeimy  
Attorney for Applicant

*not*  
Enclosures

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## Notes to Variance Application

### 451 Main St.

This variance is requested for a building that is already under construction. The building permit was approved January 15, 2014 (see attached). The only thing that has changed since the permit was approved is that, due to a measurement error, the side setback reduced from 9 feet to 7 feet.

In the original permit request the drawings I submitted showed a 23' x 38' (874 sqft) garage on a slab with an attached carport/porte cochere which I proposed would have a gravel base. The drawing showed an upstairs with two dormers which extended over the garage and carport/porte cochere. I was advised that the garage needed to be under 800 square feet and that Suwanee did not allow gravel and that the carport/porte cochere needed to be concrete. I submitted a revised drawing showing the garage resized to 24' x 33' (792 sqft) with an attached 12' x 33' carport/porte-cochere. I also advised that I would concrete the carport as requested. The permit was approved.

In April I forwarded the attached professionally drawn plans to the inspection department to be added to the file.

Subsequent to that we had two inspections of the slab prior to concrete pour – one for footings and one for rough plumbing. Both were approved with no comment being made about the size.

This addition will be finished in the same style as the house and, while it will not overpower the main structure, will be a dramatic improvement over the shed that was in its place when we purchased the property (see included photo). Total cost of the renovation project will be in excess of \$60,000.

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Exhibit 'D'  
Pg. 1



Front Elevation

V. 2014.011

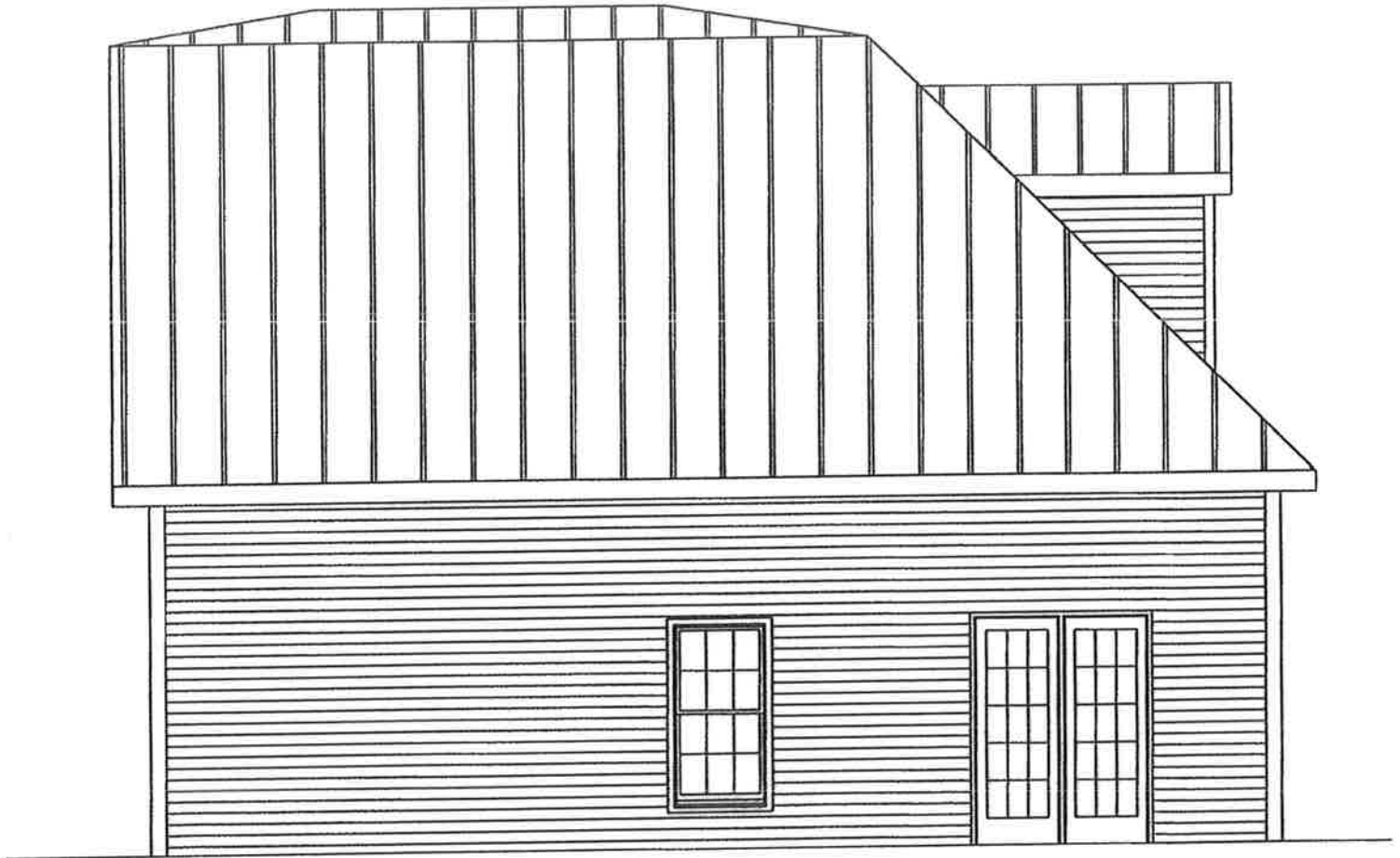
Exhibit 'D'  
Pg. 2



Rear Elevation

V.2014.011

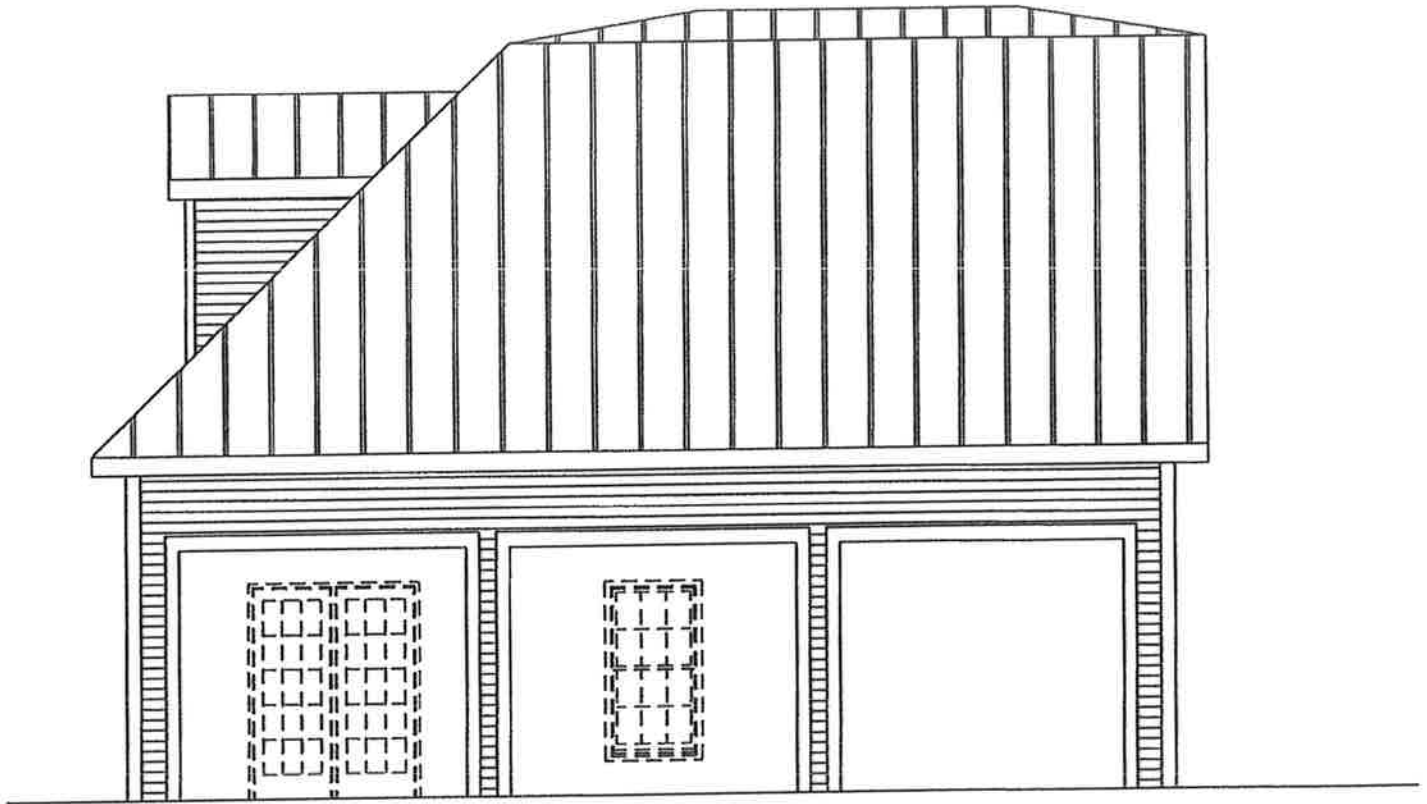
Exhibit 'D'  
pg. 3



Left Side Elevation

V.2014.011

Exhibit 'D'  
Pg. 4

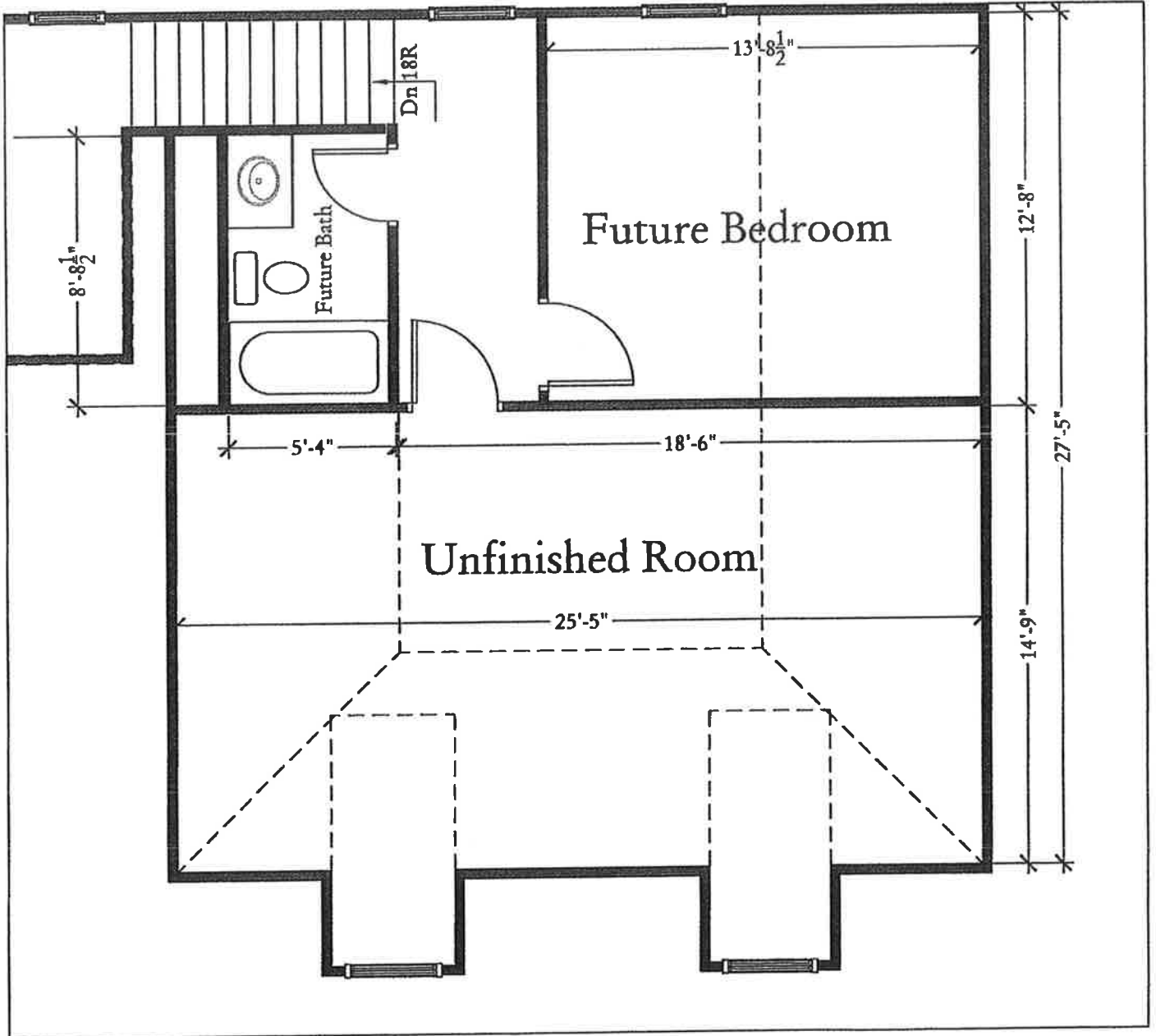


Right Side Elevation

V.2014.011

Exhibit 'E'  
Pg. 1

Total: 701.25 sq ft  
of interior floor space

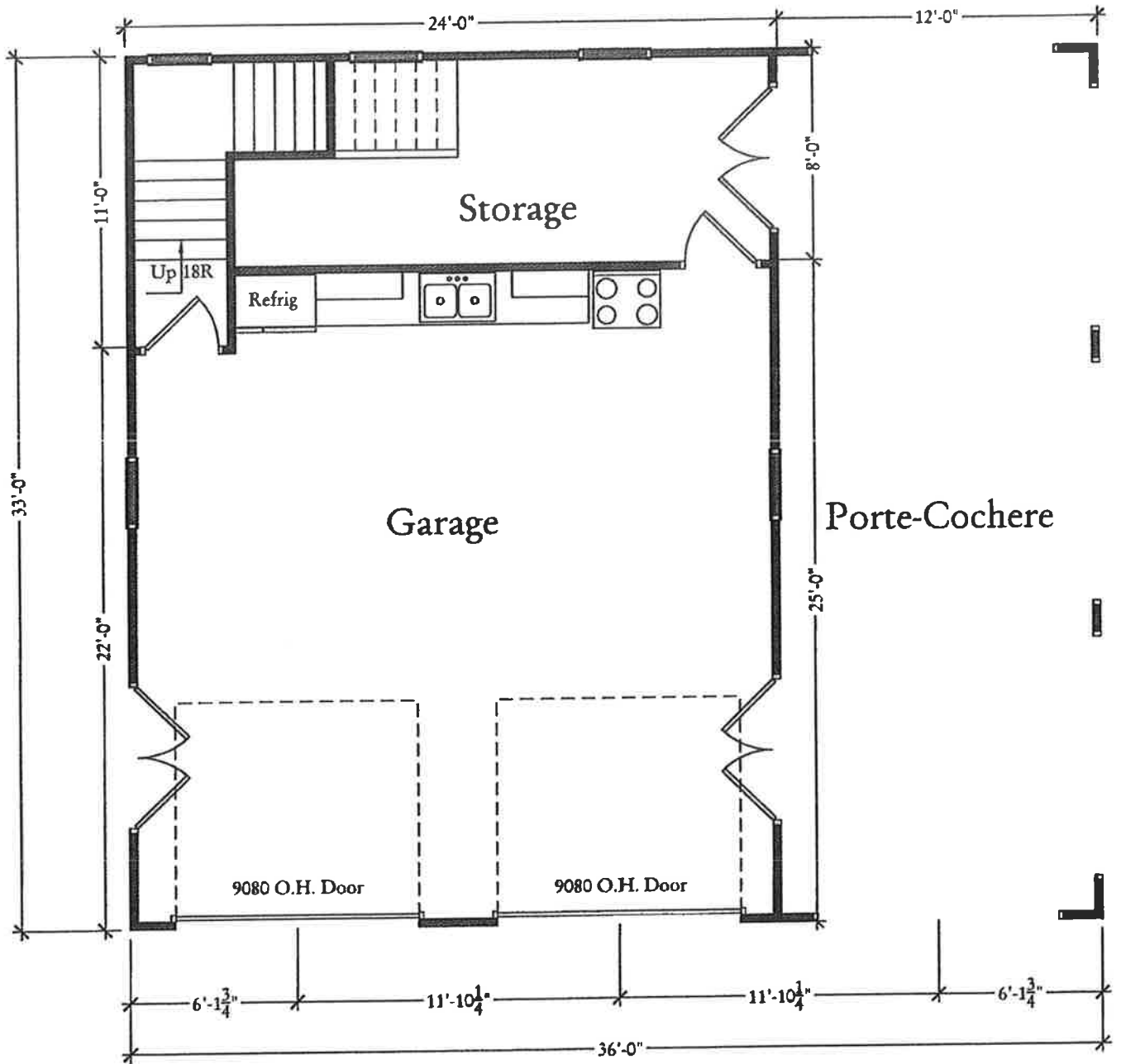


Upper Floor Plan

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Exhibit 'E'  
pg. 2

Total: 792 sq ft  
of interior floor space



Main Floor Plan

V. 2014-011



EXHIBIT "F"

Original Garage/Accessory Building



Exhibit "G"

New Structure Under Construction



MAIN ST.

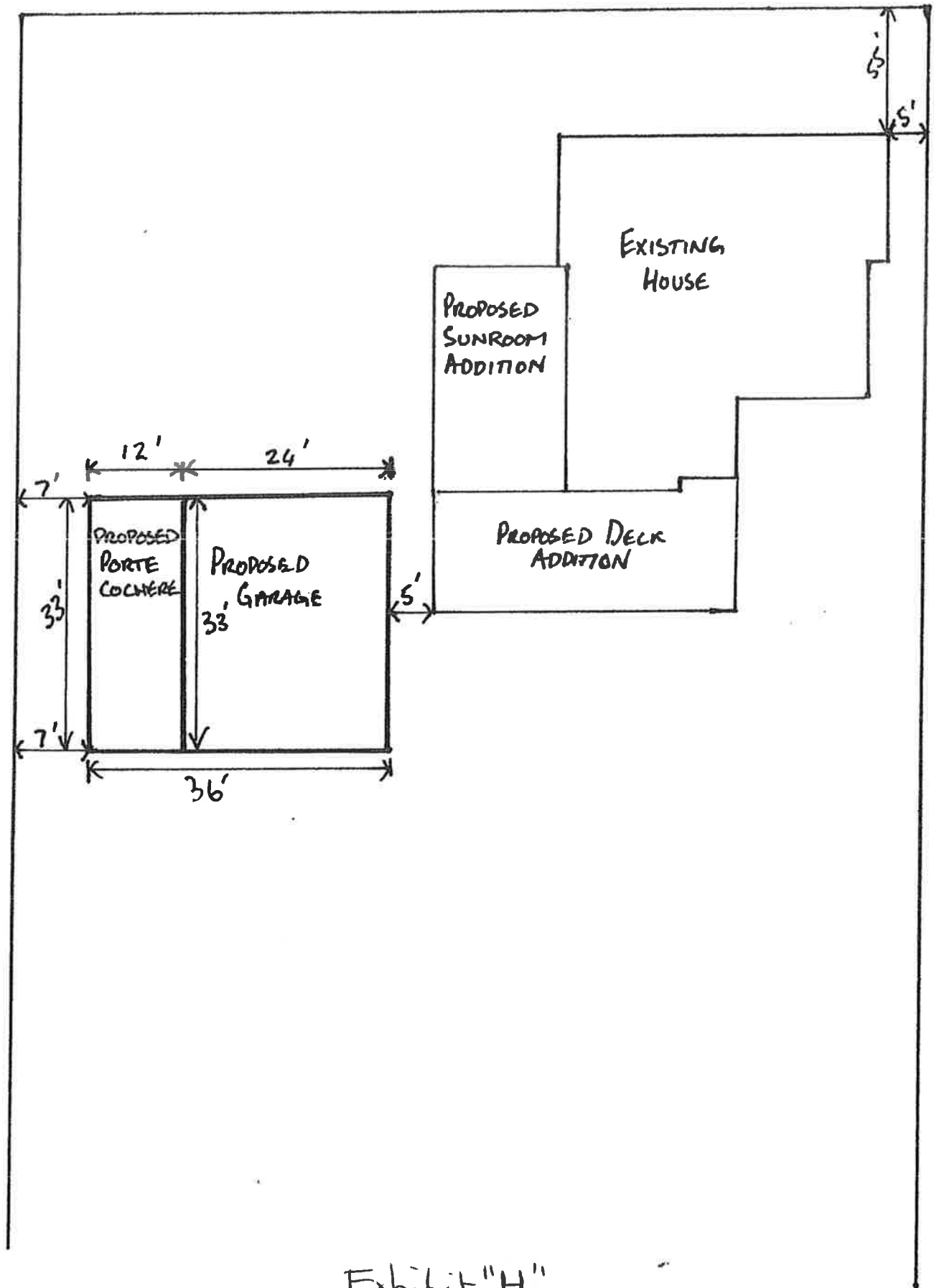


Exhibit "H"

V.2014.011



# EXHIBIT A V-2014-011

Location Map

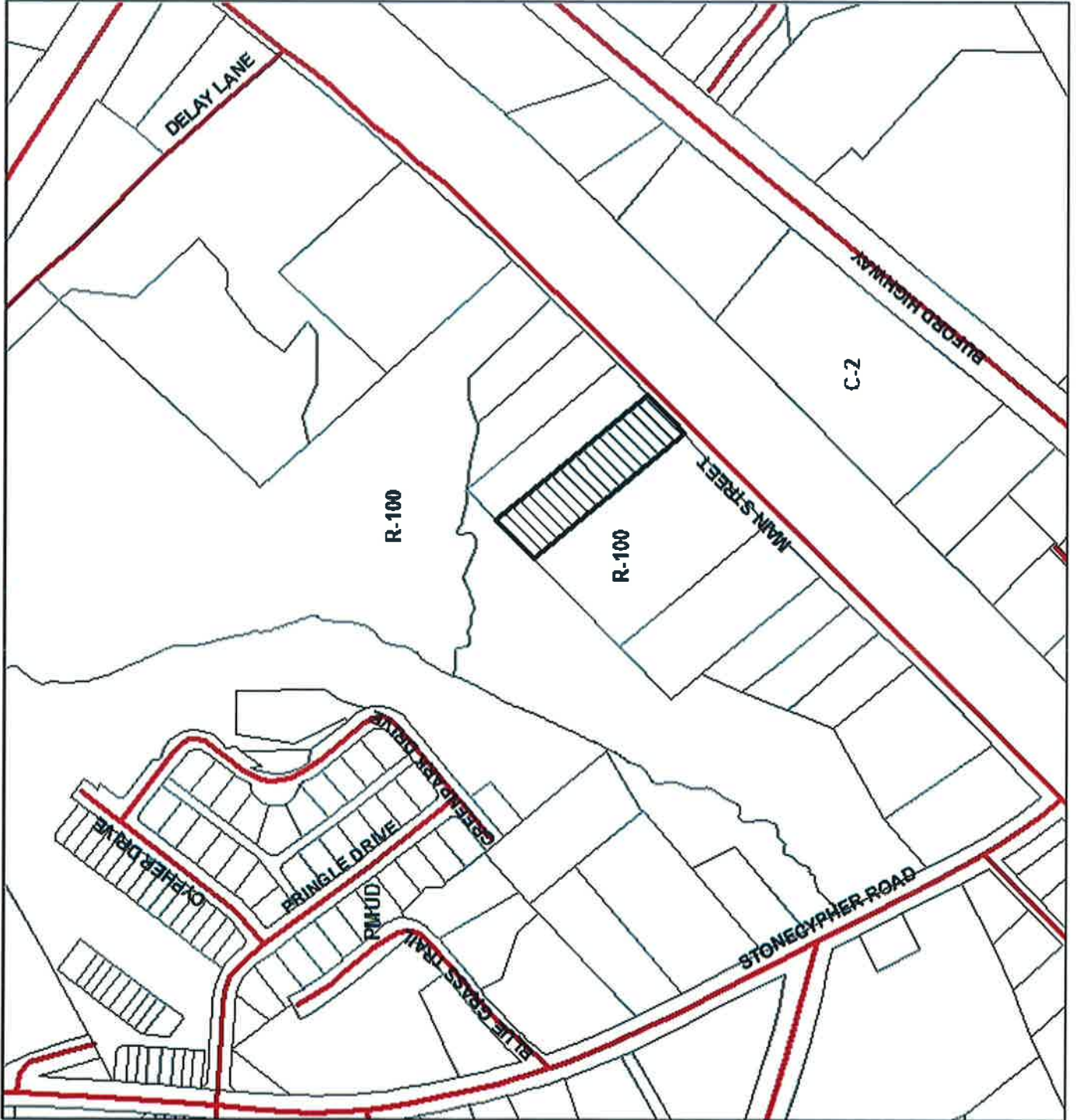
## Legend



V-2014-011



Major Road





# EXHIBIT B V-2014-011

Aerial Map

**Legend**

	V-2014-011
	Major Road

