

**PETITION NUMBER: V24-16**

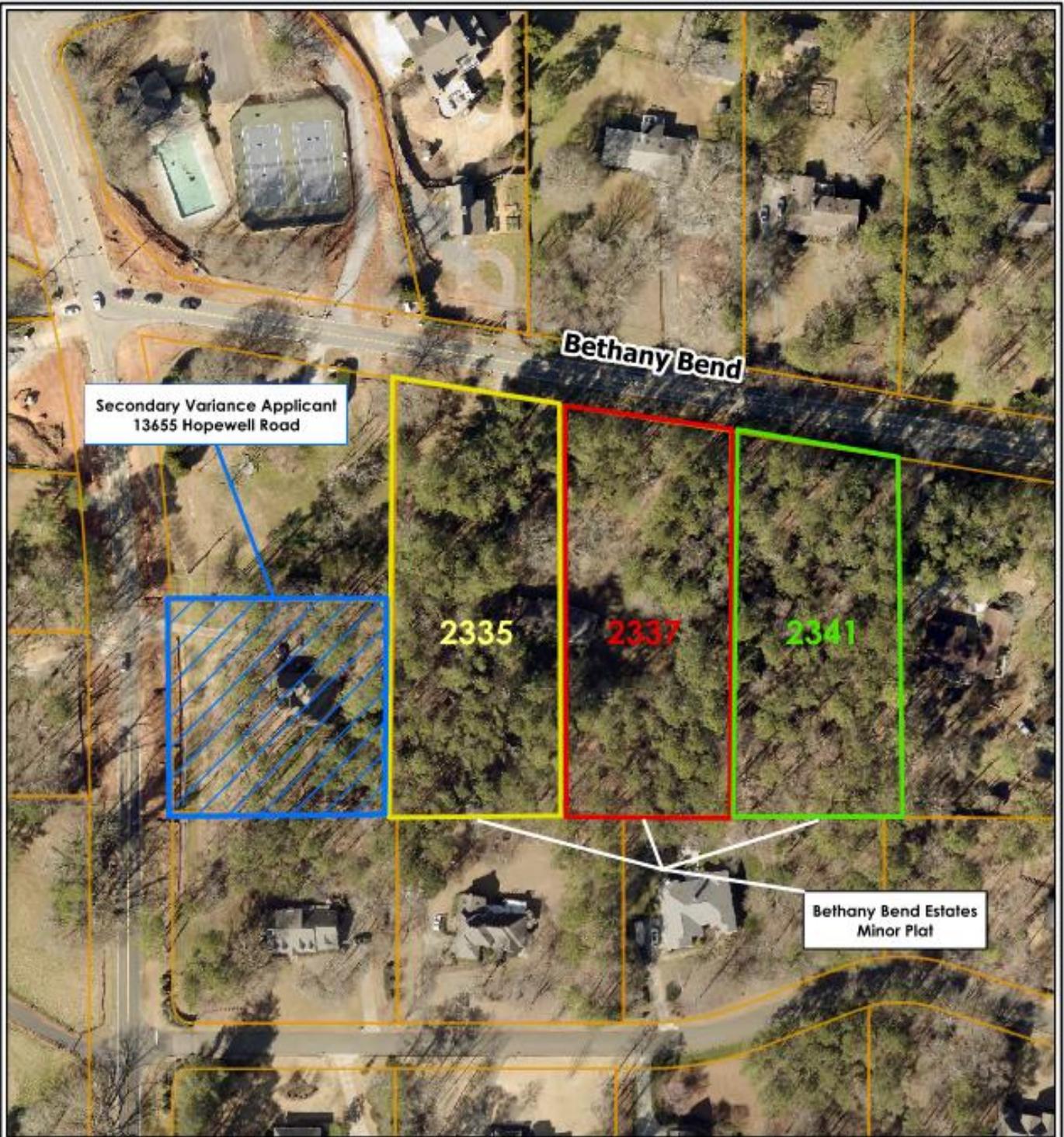
<b>PROPERTY INFORMATION</b>	<b>2335 Bethany Bend</b>
<b>DISTRICT, LAND LOT</b>	2/ 893
<b>OVERLAY DISTRICT</b>	Rural Milton
<b>EXISTING ZONING</b>	AG-1
<b>ACRES</b>	1.52
<b>EXISTING USE</b>	Single Family Residence
<b>FUTURE LAND USE DESIGNATION</b>	Agriculture, Equestrian, Estate Residential

**Request(s):** Secondary Variance request challenging the interpretations of the Community Development Director regarding:

- Retaining walls to be constructed on property located at 2335 Bethany Bend. **Unified Development Code Sec.9.3.7, Retaining Walls.**
- Public notification requirements for subdivisions as applied to properties located at 2335 Bethany Bend. **Unified Development Code Sec.13.1, Defined Terms; Sec. 12.6.2 H, Subdivision, General Requirements, Compliance with City Procedures**
- Demolition permit notice requirements for property located at 2335 Bethany Bend. **Unified Development Code Sec. 12.8.6.A, Demolition Permits, Findings and Purpose.**
- Public notification requirements for demolition permits reviewed by the City of Milton Design Review Board as applied to property located at 2335 Bethany Bend. **Unified Development Code Sec.12.8.6.E, Demolition Permits, Public Hearing.**

**PETITIONER/OWNER ADDRESS** James Napier  
13655 Hopewell Road  
Milton, GA 30004

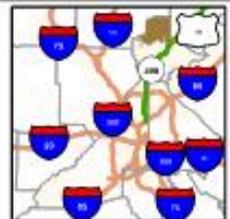
**REPRESENTATIVE ADDRESS** James Napier  
13655 Hopewell Road  
Milton, GA 30004



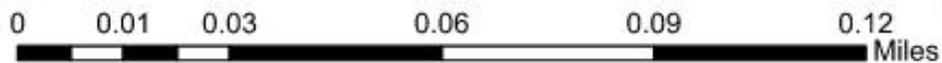
**V24-16**

2335 Bethany Bend

-  Parcels
-  Milton City Limits
-  City Limits



City of Milton  
2024



## COMMUNITY DEVELOPMENT STAFF ANALYSIS

STAFF CONTACT: Michael Cardamon  
678.242.2524

### Background:

The applicant seeking a secondary variance is James Napier who resides at 13655 Hopewell Road. The applicant's property is immediately west of 2335 Bethany Bend. 2335 Bethany Bend is a 1.52-acre parcel located on the south side of Bethany Bend. The property is zoned AG-1 and is located in the Rural Milton Overlay District. Applicable setbacks for the lot are a 60-foot front setback, two (2) 25-foot side setbacks, and a 50-foot rear setback. 2335 Bethany Bend was one of three (3) properties located in the Bethany Bend Estates Minor Plat approved on the October 2, 2023, Mayor & City Council Consent agenda, and recorded with Fulton County Superior Court on October 4, 2023, as shown in **Exhibit A**.

The applicant is seeking a Secondary Variance request challenging the interpretations of the Community Development Director regarding:

1. Retaining walls to be constructed on property located at 2335 Bethany Bend. **Unified Development Code Sec.9.3.7, Retaining Walls.**
2. Public notification requirements for subdivisions as applied to properties located at 2335 Bethany Bend. **Unified Development Code Sec.13.1, Defined Terms; Sec. 12.6.2 H, Subdivision, General Requirements, Compliance with City Procedures**
3. Demolition permit notice requirements for property located at 2335 Bethany Bend. **Unified Development Code Sec. 12.8.6.A, Demolition Permits, Findings and Purpose.**
4. Public notification requirements for demolition permits reviewed by the City of Milton Design Review Board as applied to property located at 2335 Bethany Bend. **Unified Development Code Sec.12.8.6.E, Demolition Permits, Public Hearing.**

# James Napier Letter

James L. Napier  
13655 Hopewell Road  
Milton, GA 30004

August 7, 2024

## **Detailed Letter Regarding Secondary Variance Application for Appeal**

Secondary variance request(s)

- I am making a secondary variance request regarding the interpretation by the Community Development Director regarding retaining walls as indicated in the City Code and UDC. I am also appealing to a review that the required engineered drawings and permit procedures have been provided and followed in reference to the following codes:

64-2403- Retaining Walls

(2)

*Applicability and exemptions.* The regulations and requirement contained herein shall apply to all retaining walls erected in the City of Milton, except the following:

a.

Retaining walls measuring a height of less than four feet, which shall be exempt from requiring a permit.

f.

*Height limitation.* No single retaining wall shall exceed six feet in height at any point except as allowed in subsection [64-2403\(2\)b.i.](#)

g.

*Permitting.* A permit shall be required for all retaining walls that retain four or more feet of unbalanced fill. Any retaining wall greater than six feet tall allowed by variance shall require engineered drawings:

i.

Walls above four feet in height shall require engineered drawings for city staff to review and approval.

UDC-

All of 9.3.7 Regarding retaining wall and required engineered drawings, approval, and permitting.

- I am making a secondary variance request regarding the interpretation by the Community Development Director regarding the definition of a Subdivision and Minor Subdivision as indicated in the City Code. I am also appealing that the procedures regarding Public Notice were not followed as required and in reference to the following codes:

**Sec. 50-1. - Definitions.**

*Subdivider* means any property owner, person, individual, firm, partnership, association, corporation, estate, trust, agent of property owner, or any other group or combination acting as a unit dividing or proposing to divide land so as to constitute a subdivision.

Subdivision, *major*, means a subdivision that does not qualify as a minor subdivision.

Subdivision, *minor*, means a subdivision of no more than three lots, or if any number of single family residential lots provided are each a minimum of three acres or more in size, that, at the time of subdivision, does not necessarily, but may involve:

(1)

A land disturbance permit;

(2)

New streets; or

(3)

The extension of a utility or other municipal facility.

Subdivision, *residential and nonresidential*, means any division of a lot, tract or parcel, regardless of its existing or future use, into two or more lots, tracts or parcels. The term "subdivision" means the act or process of dividing property, except that, where appropriate to the context, the term "subdivision" may be used in reference to the aggregate of all lots held in common ownership at the time of subdivision.

**Sec. 50-71. - Compliance with city procedures and guidelines required.**

All proposals to subdivide combine or recombine parcels of land under the provision of these regulations shall be in compliance with the City of Milton's Standard Procedures and Guidelines for Subdividing Property.

(1)

All final plats, replats and minor plats shall have the consent of the owners of all affected lots shown on said plat. Replats or new plats showing modifications to common areas shall require the consent of owners of all lots shown in the original final plat.

(2)

Proposals for the subdivision, combination or recombination of lawful previously platted lots or parcels, or portions thereof, shall be in compliance with the zoning ordinance ([chapter 64](#)).

- I am making a secondary variance request regarding the interpretation by the Community Development Director regarding Demolition as indicated in the City Code. I am also

appealing that the procedures regarding Public Notice were not followed as required and in reference to the following codes:

#### **DIVISION 5. - DEMOLITION PERMITS**

##### **Sec. 64-2423. - Purpose.**

In support and furtherance of its findings and determination that the historical, cultural, and aesthetic heritage of the City of Milton, Georgia is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity, and general welfare of the people.

The Milton City Council hereby declares it to be the purpose and intent of this article to establish criteria for approving demolition permits and provide for penalty provisions for the protection, perpetuation and use of buildings, having historical, cultural, archeological or aesthetic interest or value, in accordance with the provisions of the division.

[\(Ord. No. 15-05-246](#), § 1, 5-18-2015)

##### **Sec. 64-2424. - Applicability.**

A demolition permit shall be submitted to the community development department for the request of demolition for all buildings, structures, or objects and shall be reviewed by the City of Milton Design Review Board.

##### **Sec. 64-2427. - Public hearings.**

The design review board shall conduct a public hearing with respect to each demolition permit application before considering the application. The hearing shall be conducted according to the procedures established in [section 64-2082](#). Notice of the hearing shall be published in the newspaper utilized by Milton as the legal organ not less than 30 and not more than 45 days prior to the date set for the public hearing. Notice shall also be mailed to the owner of the property as reflected on the current tax records of Fulton County as retrieved by the city's geographic information system.

[\(Ord. No. 23-09-542](#), § 1, 9-6-2023)

##### **Sec. 64-2082. - Regulations.**

(g)

The department shall give notice by regular mail to the subject property owner and all property owners or current residents within 500 feet of the boundaries of the subject property with a minimum of 75 owners who appear on the city tax records as retrieved by the city's geographic information system. The notices shall be mailed a minimum of 14 days prior to the community zoning information meeting (CZIM). Renotification by mail is required when a petition is recommended for deferral by the planning commission for any amount of time or is deferred by the mayor and city council.

- I am making a secondary variance request regarding the interpretation by the Community Development Director regarding Permitting as indicated in the UDC. I am also appealing that the procedures regarding Public Notice were not followed as required and in reference to the following codes:
- **12.1.1. Summary of Review Authority**
- Table 12.1.1 summarizes the review, approval, and appeal authority of the various review bodies and
- officials that implement and administer this UDC. The table is not all-inclusive. If there are conflicts
- between Table 12.1.1 and the text of this UDC, then the text governs.
- **Table 12.1.1. Summary of Review Authority**
- Key:
- R = Review & Recommendation
- D = Final Decision
- A = Appeal
- PH = Public Hearing
- C = Confirmation
- **Approval Process**
- **Approval Authority**
- Cross Reference
- Design Review
- Board
- Comm. Dev.
- Director
- HPC
- Board of Zoning
- Appeals
- Planning
- Commission
- City Council **Legislative Review**
- UDC Text Amendment (Zoning) Sec. 12.3 R R-PH D-PH
- UDC Text Amendment (Not Zoning) Sec. 12.3 R D-PH
- Zoning Map Amendment (Rezoning) Sec. 12.3 R R R-PH D-PH
- Regulating Plans, Infill Regulating
- Plans (Form-Based Codes) Article 7 R R R-PH D-PH
- Use Permit Sec. 12.5.2 R R R-PH D-PH
- **Subdivision Review**
- Preliminary Plat Sec. 12.6.3 D R-PH A-PH
- Final Plat Sec. 12.6.4, R D-PH
- Minor Plat Sec. 12.6.5 D A-PH
- **Form-Based Code Review**
- Code Compliance Certificate Article 7 D A-PH
- **Permit Review**
- Administrative Permit Sec 12.5.1 D A-PH
- Land Disturbance Permit Sec.12.8.2 R[1] D A-PH
- Certificate of Endorsement Sec. 12.8.1 R D A-PH
- Certificate of Appropriateness Sec. 12.7.4 D A
- Building Permit Sec. 12.2.3 R[1] D A-PH
- Demolition Permit Sec. 12.8.6 D A-PH

- Tree Removal Permit Sec. 11.1 D A-PH
- **Relief**
- Administrative Variance, Administrative
- Minor Variance, Minor Variance Sec. 12.4.2.A D
- A-PH
- Administrative Modification Sec. 12.4.2.B D[2] C
- Warrant (Form-Based Codes) Article 7 D
- Primary Variance Sec. 12.4.2.A R D-PH[3]
- Secondary Variance Sec. 12.4.2.A D-PH
- Concurrent Variance Sec. 12.4.2.A R R R-PH D-PH
- Zoning modification Sec. 12.4.2.B R D-PH
- Tables notes:
- [1] Review is limited. See Sec. 12.2.3 [2] Appeals are processed as a Zoning Modification.
- [3] Includes stream buffer variances that are not concurrent with rezoning, use permit, or zoning modification.

### **12.2.3. Design Review Board**

#### **E. Notice of Design Review Board Meetings**

##### **Associated with Rezoning and Use Permit**

##### **Applications**

1. Notice of the Design Review Board must

be given at least 10 days before the date

of the Design Review Board meeting

and must be published in a newspaper

of general circulation. The notice must

contain the location, applicant and the

date, time, and location of the meeting.

2. The Director must give notice by

regular mail to all property owners or

current residents within 500 feet of the

boundaries of the subject property with

a minimum of 75 owners who appear

on the Fulton County tax records as

retrieved by the City's GIS. The notices

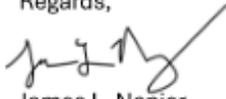
must be mailed at least 10 days before

the Design Review Board meeting. It

must contain the location, applicant,  
date, time, and location of the meeting.

Thank you for your consideration and acceptance of my application to appeal.

Regards,



James L. Napier

## Community Development Director Responses

1. Retaining walls to be constructed on property located at 2335 Bethany Bend. **Unified Development Code Sec.9.3.7, Retaining Walls.**

The building permit for the proposed new single-family home was submitted to the Community Development Department on January 24, 2024, and the permit was issued on April 26, 2024. The proposed retaining walls are part of the single-family home building permit, and all the proposed retaining walls do not exceed the maximum of six (6) feet in height and meet the minimum terracing retaining walls distance requirement of six (6) feet as shown on site plan in **Exhibit B**. The applicant submitted engineered drawings of the retaining walls, and the design standards of the U.D.C are met with a proposed brick veneer exterior.

Retaining walls connected to the foundation of a single-family home are allowed to be part of the single-family home building permit, and do not require a separate retaining wall building permit. The proposed retaining walls along the western property line are subterranean, with only three (3) inches of exposed height above grade. The tallest point of the retaining walls is at elevation 1080.3', while the contour line located to the west of the retaining walls is at elevation 1080' as shown on the site plan in **Exhibit C**. Furthermore, the UDC definition of 'height' indicates that height is measured from grade. Therefore, although the retaining walls are no taller than the 6 ft. allowed, they are technically only 3 in. high.

In summary, all of the retaining walls were reviewed by the Community Development Department, and it was determined that the retaining walls that are part of the single-family home building permit issued on April 26, 2024, meet **Sec.9.3.7 Retaining Walls** as referenced in **Exhibit D**.

2. Public notification requirements for subdivisions as applied to properties located at 2335 Bethany Bend. **Unified Development Code Sec.13.1, Defined Terms; Sec. 12.6.2 H, Subdivision, General Requirements, Compliance with City Procedures.**

A **Minor Subdivision** is a subdivision of no more than three (3) lots, or of any number of single-family residential lots provided each are a minimum of three (3) acres or more in size.

A **Major Subdivision** is a subdivision that does not meet Minor Subdivision requirements and is a subdivision of four (4) or more lots. Bethany Bend Estates has a total of three (3) lots and falls under the **Minor Subdivision** definition.

Regarding procedure, after the review and approval by the Director of the Minor Subdivision, a Minor Plat, (the 'finished drawing' of the minor subdivision), is placed on the City Council's agenda for consideration. After being confirmed by the City Council, the plat must be recorded with the clerk of the superior court of Fulton County as referenced in **Exhibit F**. Public notice letters for adjoining properties are not required for a Minor Plat and

the City has never sent them. For subdivisions with four (4) lots or greater, (Major Subdivision), letters to adjoining property owners are sent, a hearing is held at the Planning Commission, and additional steps are taken in compliance with UDC Sec. 12.6.2 h.

The Bethany Bend Estates Minor Plat was approved by the Mayor & City Council at their October 2, 2023 meeting. It is Community Development Director's determination, as affirmed by the City Council, that the Bethany Bend Estates Minor Plat has met all the requirements of the Unified Development Code.

**3. Demolition permit notice requirements for property located at 2335 Bethany Bend. Unified Development Code Sec. 12.8.6.A, Demolition Permits, Findings and Purpose.**

An application for a demolition permit was submitted to the Community Development Department on December 21, 2023, and the permit was approved and issued on January 9, 2024. Public notice letters for adjoining properties are not required for a Community Development approved demolition permit.

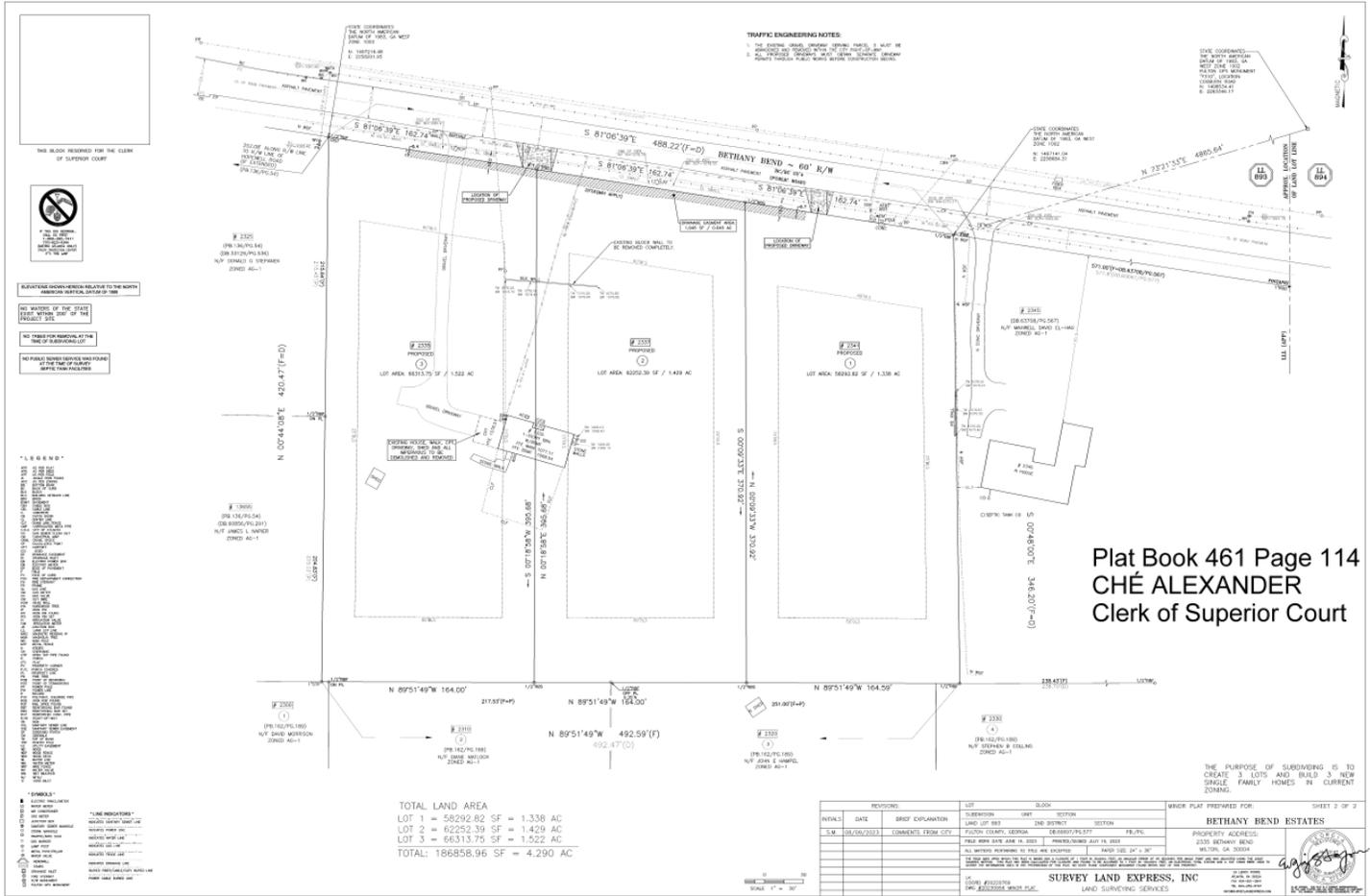
**4. Public notification requirements for demolition permits reviewed by the City of Milton Design Review Board as applied to property located at 2335 Bethany Bend. Unified Development Code Sec.12.8.6.E, Demolition Permits, Public Hearing.**

An application for demolition approval was submitted to the Design Review Board and approved at the November 8, 2023, DRB Meeting. The notification requirements of Sec. 12.3.2A stipulate that a notice of the meeting be published in a newspaper utilized by Milton and a notice shall be sent to the **property owner**. Both of these items were done and the notification requirement was met, as shown in **Exhibit G**. No other notification is required. Which means that surrounding property owners are not required to be notified.

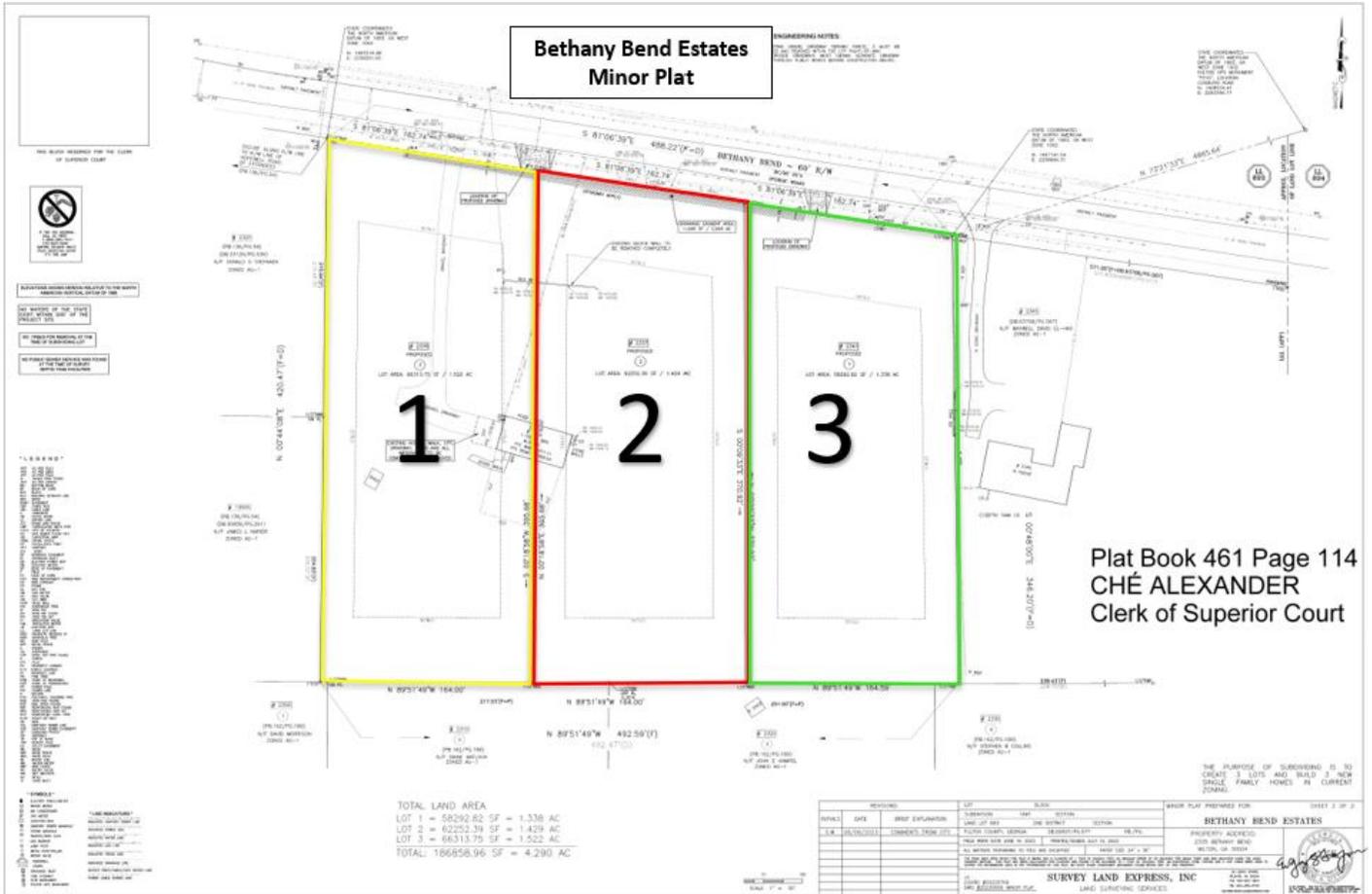
The UDC includes *general* notice requirements for the Design Review Board when a public hearing is involved which does require neighbor notifications; however, specific situations that stipulate alternate requirements, such as 12.3.2A, supersede the general requirements.



# Sheet 2



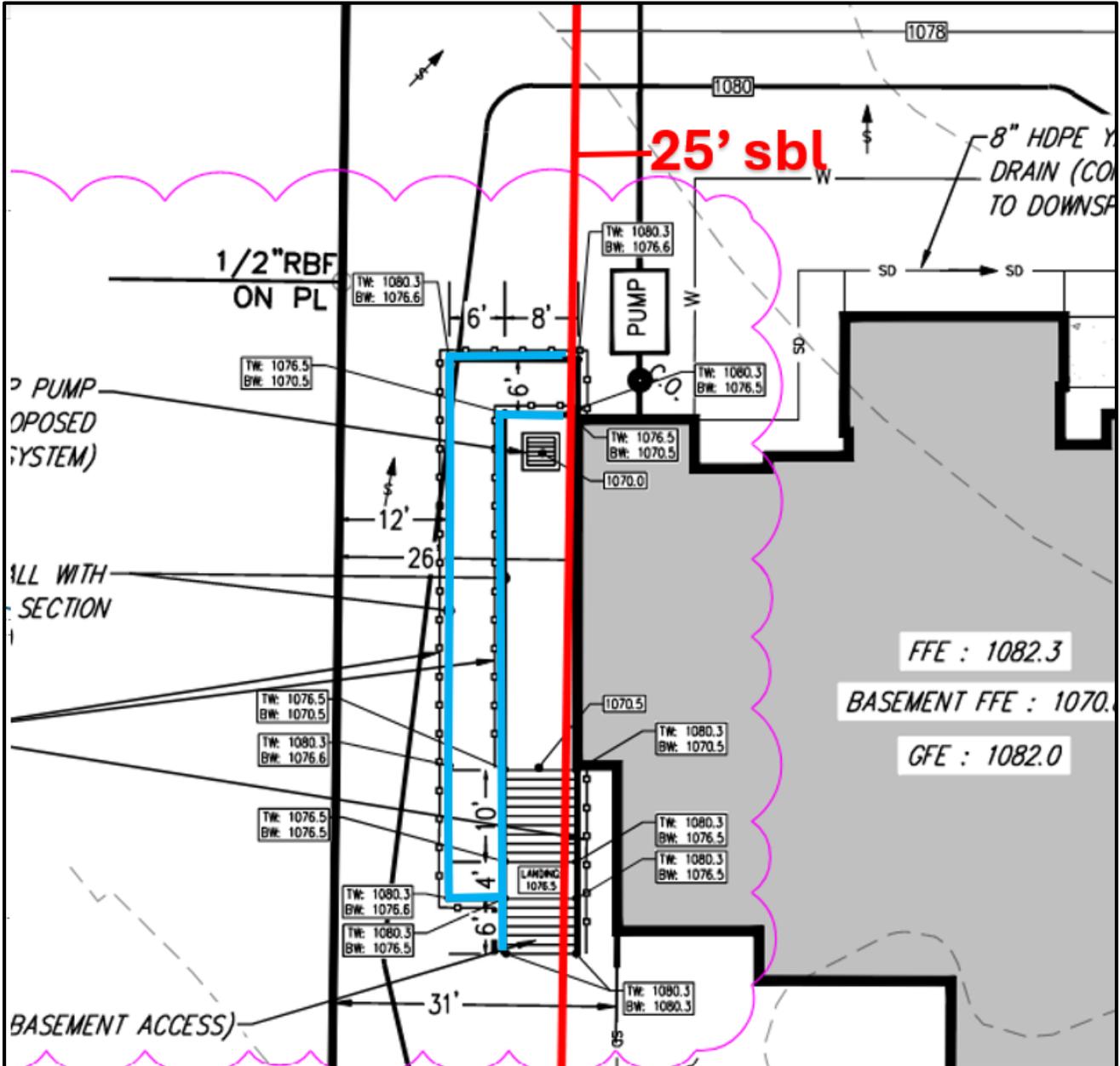
# Sheet 2 (Lots Highlighted)





2335 Bethany Bend Building Permit Site Plan, zoomed in (Exhibit B)

Retaining walls (6' or less max height) – blue

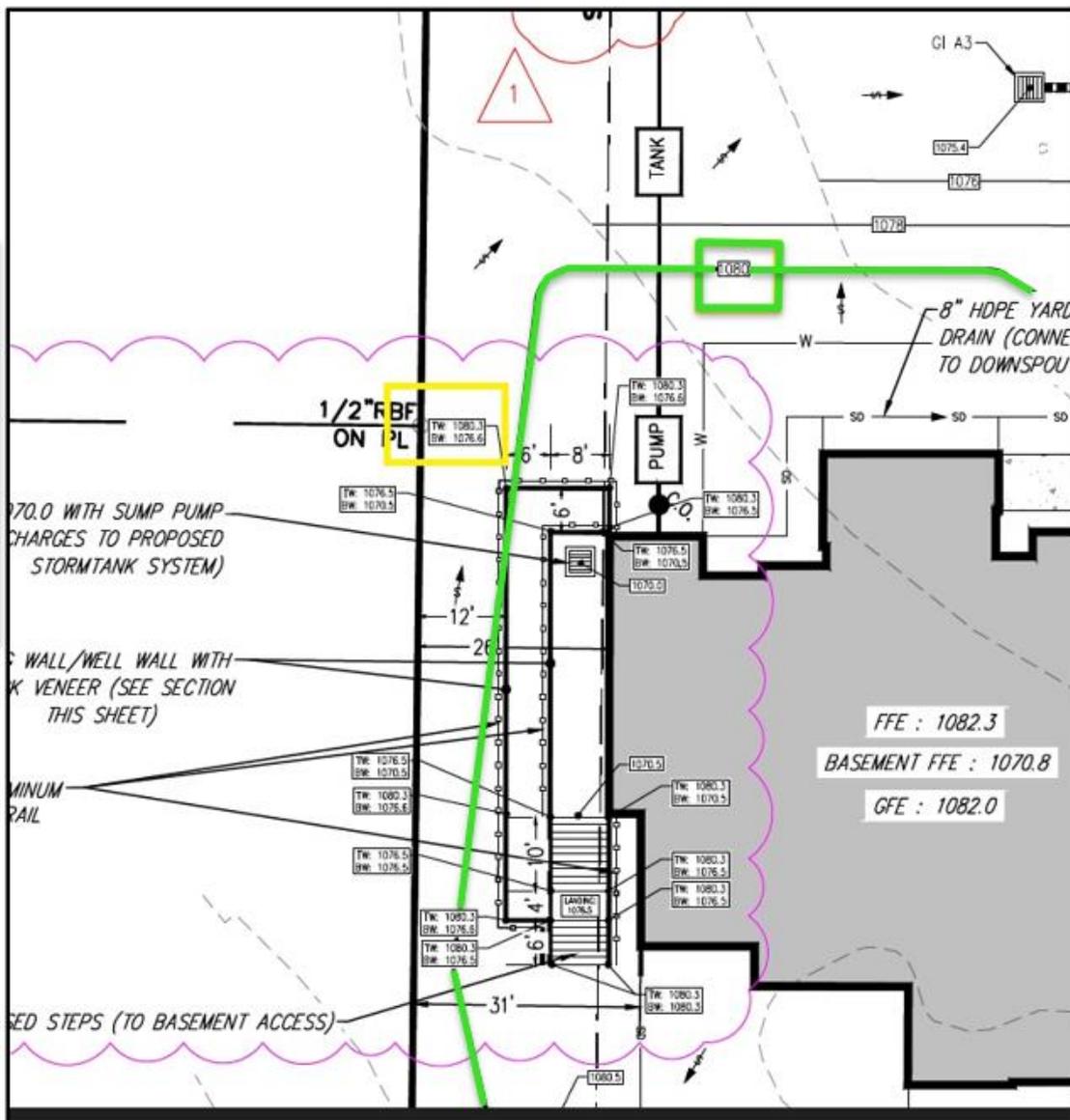


Western Contour Line Elevation (1080') Highest Elevation of retaining walls (1080.3') (Exhibit C)

Western contour line elevation 1080'  
 Green

Highest elevation of retaining walls  
 1080.3'  
 Yellow

3" of exposed retaining wall above grade



### **Sec. 9.3.7. Retaining Walls - Unified Development Code (Exhibit D)**

**A. Purpose and intent** This sub-section is intended to accomplish and ensure the following:

1. To allow for the review of retaining walls of a size that may impact surrounding buildings, land and uses;
2. To require the construction of retaining walls in a manner consistent with engineering and construction best practices; and
3. To lessen the impact of large retaining walls on abutting properties and the public by encouraging the use of landscaping and aesthetically pleasing design elements.

**B. Applicability and Exemptions** This sub-section applies to all retaining walls, except the following:

1. Retaining walls less than 4 feet high, which are exempt from requiring a permit.
2. Wing Walls
  - a. Wing walls are permitted up to 10 feet in exposed height for a maximum distance of 25 feet and then sloping at a maximum of a 4:1 slope to a maximum of 6 feet in height.
  - b. Any wing wall or a portion of a wing wall above 6 feet in height must be located outside of the minimum yard of the applicable zoning district or transect zone.
  - c. A wing wall must be finished with brick or stone veneer. Modular block walls are prohibited.
3. A terraced combination of walls, in which each separate wall retains less than 4 feet of unbalanced fill and in which each successive wall is separated by a distance of at least one times the height of the highest wall.

### **C. General Provisions**

1. Determining retaining wall height. The height of a retaining wall is the distance from the grade at the base of the face of the wall to the top of the finished wall. Terraced walls will be measured in the same manner.
2. Walls within yard setbacks. A retaining wall is allowed up to the property line in side and rear yards except as prohibited in Sec. 9.3.7.B.2.b for wing walls. Retaining walls 4 feet or greater must not be located within 10 feet of the front yard property line, with the exception that portions of such walls which measure less than 4 feet in height, are not subject to this requirement. On lots subject to the rural viewshed, retaining walls are prohibited within 60 feet of the right-of way.
3. Foundations. No part of the retaining wall or wing wall foundation may extend beyond the property line or into the rural viewshed.
4. Fall protection. All retaining or wing walls 4 feet or greater in height are required to provide fall protection. Fall protection systems may include, but are not limited to, permanent landscaping or fencing.
5. Terracing. There may only be a maximum of two walls, regardless of height for purposes of terracing.

- a. Minimum separation between terracing walls must match the highest segment of the highest wall.
- 6. Height limitation. No single retaining wall may exceed 6 feet high at any point except as allowed in Sec. 9.3.7.B.2.a.
- 7. Permitting. A permit is required for all retaining walls that retain 4 or more feet of unbalanced fill. Any retaining wall greater than 6 feet tall allowed by variance requires engineered drawings:
  - a. Walls above 4 feet in height require engineered drawings for City Staff to review and approve.

#### **D. Design Guidelines**

- 1. Timber retaining walls over 4 feet high are prohibited.
- 2. Poured concrete walls and block walls must be clad in brick or natural stone. Facing of such walls must be approved by the City Architect.
- 3. Modular block walls must be constructed of a beveled, three-piece system. The modular block style, block size, and material shall be approved by the city architect.
- 4. Retaining and wing walls must be landscaped to mitigate any adverse visual impacts. Plant species must be selected to preserve the structural integrity of the wall. A planting plan must be submitted to and approved by the City Arborist.

#### **E. Appeals**

Notwithstanding, anything in this UDC to the contrary, no primary variance maybe granted except for:

- 1. Retaining walls not meeting the setback requirements indicated in Sec. 9.3.7.C.2.
- 2. Retaining walls taller than 6 feet high at any point, or a tiered system of more than two walls provided that engineered drawings are submitted with the variance application.

### **Sec. 13.1 Defined Terms - Unified Development Code (Exhibit E)**

**Plat, minor.** A finished drawing of a subdivision of no more than three lots, or if any number of single family residential lots are each a minimum of 3 acres or more in size, that, at the time of subdivision, does not necessarily, but may involve: 1. A land disturbance permit; 2. New streets; 3. The extension of a utility or other municipal facility; and 4. Depicts all legal and engineering information required by UDC.

**Subdivision, major.** A subdivision that does not qualify as a minor subdivision.

**Subdivision, minor.** A subdivision of no more than three lots, or of any number of single family residential lots provided each are a minimum of 3 acres or more in size.

## **Sec. 12.6.2 Subdivision – Unified Development Code (Exhibit F)**

Minor Plat Approval A. Procedures 1. For a minor plat, after the Director determines that the application is complete, the Director will review the minor plat and must approve the plat unless the plat is inconsistent with any specific adopted plans or policies, or is inconsistent with the public health, safety and welfare. 2. After the review and approval by the Director, a minor plat will be placed on the consent agenda of the City Council meeting. 3. After being confirmed by the City Council, the City must cause the final plat to be recorded with the clerk of the superior court of Fulton County.

## **Sec.12.8.6.E, Demolition Permits, Public Hearing. - Unified Development Code (Exhibit G)**

Public Hearing the Design Review Board must conduct a public hearing with respect to each demolition permit application before considering the application. The hearing must be conducted according to the procedures established in Sec. 12.3.2.A. Notice of the hearing must be published in the newspaper utilized by Milton as the legal organ not less than 30 and not more than 45 days before the date set for the public hearing. Notice must also be mailed to the owner of the property as reflected on the current tax records of Fulton County as retrieved by the City's GIS.

## **Miscellaneous**

### **Sec. 13.1 Definitions**

**Height.** The vertical distance measured from the finished grade.

### **12.2.2. Community Development Director**

#### **A. Power and Duties**

**4. Interpretation** - The Director is authorized to interpret this UDC related to the following:

- a. Inconsistent, vague, or obscure language.
- b. Provisions which are in conflict or confusing.
- c. Conflicting or redundant procedural requirements.

#### **Sec. 11.6.5.B. - Application requirements.**

(1) Prior to any land-disturbing activity, the property in question must be part of an approved and recorded legal lot of record (including, but not limited to, exemption plat, minor plat, or final plat). Additionally, no land-disturbing activity, including grading, excavating, filling, and foundation work, shall be conducted within the city, until a land-disturbance permit **or a building permit** (for those projects not requiring a land-disturbance permit under this article) shall have been issued by the community development director allowing such activity, pursuant to the provisions herein provided.

#### **Sec. 11.6.1 General, C. - Exemptions.**

This Sec. 11.6 applies to any land-disturbing activity undertaken by any person on any land **except for the following:**

1. Surface mining, as the same is defined in O.C.G.A. § 12-4-72, "The Georgia Surface Mining Act of 1968," or its successors.
2. Granite quarrying and land clearing for such quarrying.
3. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences and other related activities which result in minor soil erosion;
4. The construction of single-family residences when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this section;