



DeKalb County Zoning Board of Appeals

Department of Planning & Sustainability
330 Ponce De Leon Avenue, Suite 300
Decatur, GA 30030



Michael L. Thurmond

Wednesday, December 9, 2020 at 1:00 PM

Chief Executive Officer

Planning Department Staff Analysis

N2 Case No: A-20-1244430

Parcel ID(s): 15-230-01-010, -028, -034, -008, -007, -006, and -005

Commission District: 04 / Super District: 06

Applicant: AHS Residential, LLC, c/o Battle Law, PC
One West Court Square, Suite 750
Decatur, GA 30030

Owner: Various – see application.

Location: the south side of 4159, 4179, 4183, 4187, 4195, 4203, and 4213 Memorial Drive

REQUEST: To request the following variances: (1) reduce the width of the required transitional buffer, (2) increase the front maximum setback, (3) allow parking in the front yard, and (4) allow a 12-foot and 16-foot non-tiered retaining wall adjacent to non-residential zoned properties, for a proposed multi-family apartment complex.

Staff

Recommendation: **DENIAL of the variance to reduce the width of the required transitional buffer;**
DENIAL of the variance to increase the maximum front setback;
DENIAL of the variance to allow parking in the front yard; and
APPROVAL of the variances to allow a 12-foot and 16-foot non-tiered retaining wall adjacent to non-residential zoned properties.

STAFF FINDINGS:

Site Location: The subject property is an 11.25-acre site with approximately 990 feet of frontage on the south side of Memorial Drive, a six-lane major thoroughfare. The property is located approximately 550 feet from the Kensington MARTA station.

Surrounding Zoning and Land Uses

	Adjacent Zoning	Adjacent Land Use
North, Northeast	OI	Undeveloped, wooded
East, Southeast, South	MR-2	Multifamily Residential
West, Northwest	---	(bounded by Memorial Drive)
	Adjacent Zoning	Adjacent Land Use
Southwest	R-75	A place of worship
Street Type	(Memorial Drive) Major Thoroughfare	

Site Conditions: The westernmost parcel in the development tract is used for the Kensington Office Park, the easternmost parcel is undeveloped and wooded, and the five parcels in between are developed with two day care centers and two office buildings. One of the office buildings is a vacated chiropractic office; the other is unidentified. A sidewalk is located along the entire front of the development site. The topography of the undeveloped parcel drops at a slope of approximately 30% from the sidewalk. The next four developed properties are level with the grade of the sidewalk. The buildings of the Kensington Office Park, on the westernmost parcel, sit approximately 14 feet below that of the sidewalk. A retaining wall is located approximately 25 feet from the edge of the northern and southwestern property lines. A 13-foot to twenty-foot transitional buffer is located on the interior of the southwestern property line.

On October 27, 2020 the Board of Commissioners rezoned the property from O-I and HR-3 (with conditions) to HR-3, pursuant to CZ-20-1243836, for development of a 476-unit multifamily development. The approval was conditioned on the site plan.

Variance request: The applicant requests the following variances:

- A. Decrease the required transitional buffer on the southwestern side of the subject property from 50 feet to 0 feet;
- B. Increase the maximum front yard from 20 feet to 84 feet;
- C. Allow parking in the front yard; and
- D. Allow 12-foot and 16-foot, non-tiered retaining walls on the north, west, southwest, and east sides of the property.

Variance Analyses

A. Variance to reduce the required transitional buffer on the southwestern side of the subject property from 50 feet to 0 feet

1. By reason of exceptional narrowness, shallowness or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district:

At approximately 990 feet, the width of the subject property far exceeds the minimum width of 100 feet in the HR-3 zoning district. There is no minimum lot area for the HR-3 district against which to compare the area of the subject property. The property is rectangular. Thus there are no exceptional lot conditions related to size, shape, or dimensions. The grade of the western side of the property is an exceptional topographic condition that was not created by the applicant or owner. It was created by a previous developer who leveled the property to build the office park. However, the differential in grade between the southwestern and western side of the subject property and the adjoining property does not, in itself, make it more difficult for the developer to provide a transitional buffer than it would be for owners of other properties without the difference in grade.

The variance is not requested because it would be prohibitively difficult to develop the property and provide the buffer at the same time; it is requested because the developer would like to use space that would otherwise be required for the buffer, for the surface

parking that is required for some of the desired residential units. If fewer units were proposed, fewer spaces would be required and more space would be available for the transitional buffer. Thus, the request for a variance from the transitional buffer requirement does not meet this criteria.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located:

The request to completely eliminate the transitional buffer is the maximum amount of relief possible, so it is not possible to evaluate it against standard of minimum relief.

The subject property does not have more or fewer limitations related to provision of a transitional buffer than any other property with the same zoning classification. To conclude that it is limited by virtue of its adjacency to single-family residential zoning would be tantamount to assuming that no other HR-3 property might be adjacent to a zoning classification. Moreover, relief could also be afforded to the applicant through a variance to reduce the number of parking spaces, and such relief is available to all property owners if proper justification is available. The zoning ordinance already furnishes partial relief from the parking standard by reducing the per unit parking requirement for a development that is close to a MARTA station through a density bonus, thereby implying that a variance to reduce parking is justified due to proximity to rapid transit.

3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located:

Elimination of the transitional buffer would decrease the quality of the proposed development by replacing green space with pavement. The effect of this substitution would contribute to a gradual countywide reduction of greenspace that ultimately has detrimental consequences on the public welfare.

4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship:

Application of the requirement for a transitional buffer would require elimination of some parking spaces, or elimination of some dwelling units and a commensurate reduction of the number of required parking spaces. From the applicant's point of view, this would be a hardship. Insofar as it is necessary to impose a hardship to further the public interest, and considering that all zoning regulations may be considered to impose such a hardship, it would be necessary in this case to impose this hardship on the developer in order to preserve green space in the form of the transitional buffer.

5. The requested variance would be consistent with the spirit and purpose of this Chapter and the DeKalb County Comprehensive Plan text:

The requested variance would not be consistent with the spirit and purpose of the zoning regulations and the DeKalb County Comprehensive Plan text.

B. Variance to increase the maximum depth of the front yard from 20 feet to 84 feet.

C. Variance to allow parking in the front yard.

1. By reason of exceptional narrowness, shallowness or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district:

As previously shown, the property has no exceptional lot conditions related to size, shape, or dimensions. The grade of the western side of the property is an exceptional topographic condition that was not created by the applicant or owner, but it doesn't make it difficult or impossible to provide a front yard depth that meets the standard. The layout of the development, particularly the provision of two rows of surface parking in the front yard, drive the request for the variance.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located:

There doesn't appear to be any engineering or spatial conditions that necessitate two rows of parking in the front yard, particularly on the properties that are currently developed with the Kensington Office Park, where the grade of the property provides an opportunity to construct underground parking.

3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located:

Granting this variance will be materially detrimental to the public welfare by establishing a negative precedent for future multifamily residential development and by diminishing the attractiveness of the development as seen from Memorial Drive and as experienced by pedestrians who walk along the front of the property to go to and from the Kensington MARTA station.

4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship:

The applicant has not provided evidence that the development would not be able to go forward without two lanes of parking in the front yard.

5. The requested variance would be consistent with the spirit and purpose of this Chapter and the DeKalb County Comprehensive Plan Text:

The requested variance to the maximum depth of the front yard would not be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.

D. Variances for increased height and elimination of required tiers for retaining walls.

5.7.6(e)(2) Any single or tiered retaining wall over the maximum height shall be approved by the zoning board of appeals. The zoning board of appeals shall consider the following in making a decision:

- a. Grading changes necessitated for gravity flow and sewer connections.
- b. Grading changes necessitated to meet Chapter 14 road construction standards.
- c. Extremely steep slope, greater than 3 to 1 topographical changes on site as compared to adjacent existing subdivision.
- d. Structural engineer's sealed and signed statement of their evaluation of the consequence of retaining wall failure and recommendations for reducing the consequence and risk of failure in the event of failure. This may include increasing the required factors of safety for sliding, overturning, bearing capacity, and global stability. The applicant shall provide a plan of action to include additional setbacks from both sides of the retaining wall, frequency of inspection, and maintenance practices.
- e. Whether the wall height is necessary to address life/safety.
- f. A variance to increase height granted by the ZBA may result in an increased setback.

The engineer for the project has submitted a statement to the effect that the increased height is necessary from a structural engineering standpoint. The height and non-tiered design of the retaining wall are driven by engineering properties and are assumed to be only that which are required to safely retain the earth.

FINAL STAFF ANALYSIS:

There are no exceptional lot conditions related to size, shape, or dimensions. The grade of the western side of the property is an exceptional topographic condition that was not created by the applicant or owner. It was created by a previous developer who leveled the property to build the office park. However, the differential in grade between the northeastern and southwestern side of the subject property and the southwestern side of the property and the adjoining property does not, in itself, make it more difficult for the developer to provide a transitional buffer, a front yard at the allowed maximum, or parking in the allowed areas of the property than it would be for owners of other properties without the difference in grade. No undue hardships are apparent in a scenario that involves development of the property without the requested variances to the transitional buffer, the depth of the front yard, or the prohibition against parking in the front yard. For these variances, staff has found that the granting of the variances would be materially detrimental to the public good and inconsistent with the spirit and purposed of the Zoning Ordinance and the DeKalb County Comprehensive Plan text. However, it does not appear necessary to restrict the height and tiering of the retaining walls

since the applicant's engineer has shown that the proposed height is necessary for engineering reasons, given the topographic conditions on the lot. Therefore, the Department of Planning and Sustainability recommends:

DENIAL of the variance to reduce the width of the required transitional buffer;

DENIAL of the variance to increase the maximum front setback;

DENIAL of the variance to allow parking in the front yard; and

APPROVAL of the variances to allow a 12-foot and 16-foot non-tiered retaining wall adjacent to non-residential zoned properties.



DeKalb County Department of Planning & Sustainability

Hon. Michael Thurmond
Chief Executive Officer

Andrew Baker, AICP,
Director

ZONING BOARD OF APPEALS APPLICATION FOR PUBLIC HEARING
(VARIANCES, SPECIAL EXCEPTIONS, APPEALS OF ADMINISTRATIVE DECISIONS)

BOA No. _____

Applicant and/or
Authorized Representative AHS Residential, L.L.C. c/o Battle Law P.C.

Mailing Address: One West Court Square, Suite 750

City/State/Zip Code: Decatur, GA. 30030

Email: mlb@battlelawpc.com

Telephone Home: 404.601.7616 Business: 404.601.7616 Fax No.: 404.745.0045

OWNER OF RECORD OF SUBJECT PROPERTY

Owner: See Attached Exhibit A

Address (Mailing): See Attached Exhibit A

City/State/Zip Code: See Attached Exhibit A

Email: See Attached Exhibit A

Telephone Home: See Attached Exhibit A Business: See Attached Exhibit A Fax No.: See Attached Exhibit A

ADDRESS/LOCATION OF SUBJECT PROPERTY

Address: See Attached Exhibit A City: Decatur State: GA. Zip: 30030

District(s): Land Lot(s): Block: Parcel:

District(s): Land Lot(s): Block: Parcel:

District(s): Land Lot(s): Block: Parcel:

Zoning Classification: H-2 Proposed Commission District & Super District: 4 & 6

CIRCLE TYPE OF HEARING REQUESTED

VARIANCE (From Development Standards causing undue hardship upon owners of property.)

SPECIAL EXCEPTIONS (To reduce or waive off-street parking or loading space requirements.)

OFFICIALS APPEALS OF ADMINISTRATIVE DECISIONS.

TO BE COMPLETED BY PLANNING AND SUSTAINABILITY DEPARTMENT

Date Received: _____

Fee Paid: _____



ZONING BOARD OF APPEALS APPLICATION

AUTHORIZATION OF THE PROPERTY OWNER

I hereby authorize the staff and members of the Zoning Board of Appeals
To inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property subject to the application.

Battle Law, P.C.

DATE: 10/8/2020

Applicant: By: 
Signature

DATE: _____

Applicant: _____
Signature



ZONING BOARD OF APPEALS APPLICATION

**AUTHORIZATION TO REPRESENT THE PROPERTY OWNER
AND APPLICANT**

I hereby authorize the staff and members of the Zoning Board of Appeals
to inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property and that I authorize the applicant/agent to apply for a hearing to the Zoning
Board of Appeals for the requests as shown in this application

DATE: 10/07/2020 Applicant/Agent: Battle Law, P.C.
Signature: [Signature]

TO WHOM IT MAY CONCERN:

(I)/ (WE) Yossi Kagan
(Name of Owners)

being (owner/owners) of the property described below or attached hereby delegate authority to:

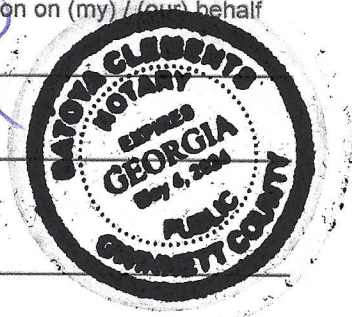
AHS Residential, L.L.C.
(Name of Applicant or Representative)

To file an application on (my) / (our) behalf

Notary Public

Notary Public

Notary Public



Owner

Owner

Owner

DEPARTMENT OF PLANNING & SUSTAINABILITY

AUTHORIZATION

The property owner should complete this form or a similar signed and notarized form if the individual who will file the application with the County is not the property owner.

Date: 2-21-2020

TO WHOM IT MAY CONCERN:

(I) (WE) William C. Ritchie
Name of owner(s)

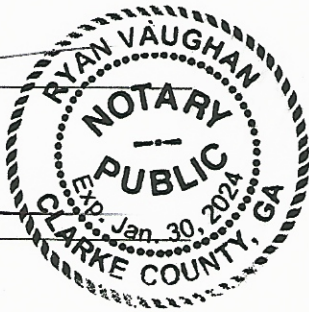
being (owner) (owners) of the subject property described below or attached hereby delegate authority to

AHS Residential (Contact: Juan G. Fernandez / Engineer Contact: Kimley Horn - Alex Hensley, PE)
Name of Agent or Representative

to file an application on (my) (our) behalf.

[Signature]
Notary Public

[Signature]
Notary Public



[Signature]
Owner

[Signature]
Owner

Notary Public

Owner

Notary Public

Owner

ZONING BOARD OF APPEALS APPLICATION
AUTHORIZATION TO REPRESENT THE PROPERTY OWNER
AND APPLICANT

I hereby authorize the staff and members of the Zoning Board of Appeals to inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property and that I authorize the applicant/agent to apply for a hearing to the Zoning Board of Appeals for the requests as shown in this application

DATE: 10/07/2020

Applicant/Agent: [Signature]
Signature

TO WHOM IT MAY CONCERN:

(I) (WE) Agustin Abalo
(Name of Owners)

being (owner/owners) of the property described below or attached hereby delegate authority to:

AHS Residential, L.L.C.
(Name of Applicant or Representative)

[Signature]
To file an application on (my) / (our) behalf.
Notary Public

[Signature]
Owner

Notary Public

[Signature]
Owner

Notary Public

[Signature]
Owner



NOTARY COMM. EXPIRES:
October 31st, 2023



DeKalb County
GEORGIA

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ZONING BOARD OF APPEALS APPLICATION

AUTHORIZATION TO REPRESENT THE PROPERTY OWNER
AND APPLICANT

I hereby authorize the staff and members of the Zoning Board of Appeals
to inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property and that I authorize the applicant/agent to apply for a hearing to the Zoning
Board of Appeals for the requests as shown in this application

DATE: 10/07/2020

Applicant/Agent: [Signature]
Signature

TO WHOM IT MAY CONCERN:

(I)/ (WE) Michelle I. Robinson
(Name of Owners)

being (owner/owners) of the property described below or attached hereby delegate authority to:

AHS Residential, L.L.C.
(Name of Applicant or Representative)

To file an application on (my) / (our) behalf

Gabrielle C. Opie
Notary Public

Notary Public

Notary Public

[Signature]
Owner

Administrator of the Estate of Michelle Robinson
Owner SARINAH ROBINSON

Owner



IN THE PROBATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

IN RE: ESTATE OF)

INETTIE MICHELLE ROBINSON,)
DECEASED)

ESTATE NO. 2020-1017

LETTERS OF ADMINISTRATION

[Bond Waived and/or Certain Powers Granted at Time of Appointment]

At a regular term of Probate Court, this Court granted an order allowing **SAKINAH ROBINSON** to qualify as Administrator of the above-named Decedent, who was domiciled in this County at the time of her death or was domiciled in another state but owned property in this County at the time of her death, and that upon so doing, Letters of Administration be issued to such Personal Representative.

THEREFORE, the said Administrator, having taken the oath of office and complied with all necessary prerequisites of the law, is legally authorized to discharge all the duties and exercise all powers of Personal Representative, according to Georgia law. In addition, this Court:

[Initial all that apply]

BCH (a) **POWERS GRANTED:** Grant to the Administrator all the powers contained in O.C.G.A. § 53-12-261.

BCH (b) **REPORTS WAIVED:** Grant to the Administrator the specific power to serve without making and filing inventory, and without filing any annual or other returns or reports to any court; but the fiduciary shall furnish to the heirs, at least annually, a statement of receipts and disbursements.

BCH (c) **BOND WAIVED:** Waive the specific requirement to post bond.


IN TESTIMONY WHEREOF, I have hereunto affixed my signature as Judge of the Probate Court of said County and the seal of this office this 25th of August, 2020.

Bedelia C Hargrove

Judge of the Probate Court

NOTE: *The following must be signed if the Judge does not sign the original of this document:*

Issued by:


Doris F. Scbt, Clerk of the Probate Court

STATE OF GEORGIA
COUNTY OF DEKALB
[Seal and stamp of the Probate Court, including the date 25th of August, 2020, and the name Bedelia C Hargrove.]

STATEMENT OF INTENT
AND
VARIANCE JUSTIFICATION

APPLICANT: AHS Residential L.L.C. c/o Battle Law, P.C.

SUBJECT
PROPERTY:

15 230 01 010	4159 Memorial Drive Decatur, GA 30032
15 230 01 028	4179 Memorial Drive Decatur, GA 30032
15 230 01 034	4183 Memorial Drive Decatur, GA 30032
15 230 01 008	4187 Memorial Drive Decatur, GA 30032
15 230 01 007	4195 Memorial Drive Decatur, GA 30032
15 230 01 006	4203 Memorial Drive Decatur, GA 30032
15 230 01 005	4213 Memorial Drive Decatur, GA 30032

ZONING

DESIGNATION: H-2 proposed

ATTORNEY:

Michèle L. Battle, Esq.
Battle Law, P.C.
One West Court Square, Suite 750
Decatur, Georgia 30030
Phone: 404.601.7616

STATEMENT OF INTENT

The Subject Property is a +/-11.25 acre assembled tract of land located on Memorial Drive at the intersection of Memorial Drive and Covington Highway. The Applicant, AHS Residential L.L.C., is proposed to develop a new 476-unit work-force housing multi-family apartment development (the "Project") on the Subject Property. In connection with the development of the Project, the Applicant is seeking the following variances:

1. **§ 5.4.5 Tables 5.2(a) and 5.2(b)**: Decrease transitional buffer on the Subject Property's southwestern side from fifty (50) feet to zero (0) feet.
2. **§ 2.11.2 Table 2.4**: Increase the front maximum setback from twenty (20) feet to eighty-four (84) feet.
3. **§ 6.1.3 (B)(5)**: Allow parking in front yard.
4. **§ 5.4.7 Table 5.3**: Allow a 16', non-tiered retaining wall adjacent to a non-residential zone on the north side of the property.

5. § 5.4.7. Table 5.3: Allow a 16', non-tiered retaining wall adjacent to a non-residential zone on the west side of the property.
6. § 5.4.7 Table 5.3: Allow a 12', non-tiered retaining wall adjacent to a residential zone on the southwest side of the property.
7. § 5.4.7 Table 5.3: Allow a 12', non-tiered retaining wall adjacent to a residential zone on the east side of the property.

VARIANCE JUSTIFICATION

1. **By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.**

The Subject Property is located on Memorial Drive near the intersection of Covington Highway and Memorial Drive and is made up of seven parcels each with frontage on Memorial Drive. The southwest side of the Subject Property abuts a parcel zoned R-75 where Avondale Alliance Church (Church) is currently situated.

The Subject Property suffers from intense slopes across the site. From the southwestern corner of the Subject Property to the northeastern corner of the Subject Property there is a grade different of sixty (60) feet. In fact, the grade currently drops ten (10) feet from Memorial Drive to the twenty (20) foot setback line along the frontage of the Subject Property at 4159 Memorial Drive. As a result, the entire site must be balanced by cutting in the front and filling in the rear. This filling will result in some lost space along the rear of the Subject Property. In some places the Applicant will lose up to thirteen (13) feet to filling after accounting for the minimum rear setback and required transitional buffer.

Based upon the forgoing site challenges, it is the Applicant's contention that due to the extraordinary and exceptional topographical conditions of the Subject Property, the strict application of the requirements of Chapter 27 would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district, and therefore the Applicant should be granted the following variances for the reasons set forth below:

Transitional Buffer

Section 5.4.5(A) calls for a fifty (50) foot transitional buffer along the southwestern property line adjacent to the Church. The stated purpose of the transitional buffer is to "diminish the potential negative impacts of higher intensity residential development on adjacent single-family residential land uses." The adjacent Church does not constitute a single-family residential land use and should be zoned O-I based upon its location at the intersection of two major arterial roads. In fact, the Church is the only R-75 property within

the block that is zoned R-75, except for the property at 3500 Covington Highway, which is owned by DeKalb County and developed with office buildings. The irony is, if the Church property was properly zoned O-I, the 50ft transitional buffer requirement would be on the Church's property not the Subject Property, as once again the purpose of the buffer is to protect residential uses from nonresidential uses.

It should be further noted that Due to the need to cut the front of the Subject Property, maintaining the 50ft transitional buffer would significantly impact the site plan negotiated with the community and Commissioners for Districts 4 and 6.

Furthermore, the improvements on the Subject Property already encroach into the required transitional buffer, so no real change would occur. The Church's driveway and parking spaces currently abut the common boundary line of the Church and the Subject Property, and the existing office park was developed with parking within the 50 ft transitional buffer, as well as with a building that was within 25ft of the common boundary line. The proposed site plan only provides for parking spaces within the required buffer area, with a nine (9) foot landscape strip along the common boundary line.

Front Maximum Setback

The HR-2 District Regulations provide for a minimum and maximum setback along Memorial Drive. The maximum set back is twenty (20) feet, however, due to the intense slopes on the front of the Subject Property, along with the cutting that is required, the buildings are to be sighted in approximately the same locations as they are currently site which is eighty-one (81) feet from Memorial Drive. The Applicant is requesting a maximum setback of eighty-four (84) feet, which will allow for one row of parking which will not be visible to traffic passing along Memorial Drive, and it will be located at the base of the retaining wall 10ft below Memorial Drive. Additionally, the Fire Marshal requires an access drive adjacent to the west side of the building due to there being no vehicular access to the east side of the building which is abutted by required greenspace area.

Front Yard Parking

The proposed site plan does provide for one (1) row of parking spaces 20ft from the Memorial Drive property line. This technically complies with the current regulations, as the parking spaces would be outside of the 20ft maximum front yard setback; however, if the 84ft maximum front yard setback variance is granted, the parking spaces will be within the front yard. For the reasons set forth above, the building must be setback beyond the 20ft, however, the parking spaces should not be similarly pushed back. The parking requirements call for 714 spaces (1.5 spaces per unit), but the Applicant is only providing for 569 space (1.2 spaces per unit) based upon the Subject Property being within .25ft of a MARTA rail station. So, without front yard parking, the Subject Property will be extremely lacking on parking spots when compared to similar developments.

16-Foot, Non-Tiered Retaining Wall (North and West)

North

The Subject Property's intense slopes coupled with the Subject Property's small, 10-foot gap between the property line and parking lot does not leave any room for a tiered retaining wall. Additionally, the retaining wall will only be visible from the interior of the site. Applicant wishes to build a single retaining wall that goes no higher than the allowed height limit under § 5.4.7 in Table 3 of the DeKalb County Code of Ordinances but do so in a single wall format. Additionally, the 10-foot strip on the outside of the wall is intended for landscaping. So, the net difference between Applicant's proposal and the required design is negligible.

West

The west side of the Subject Property suffers from the same intense slopes that necessitate a 16-foot, non-tiered retaining wall on the north side. Since the topography is just as limiting on the west side as the north side, the argument for granting this variance is the same.

12-Foot, Non-Tiered Retaining Walls (East and Southwest)

East

Similar to the 16-foot, non-tiered retaining walls a smaller 12-foot retaining wall is required on the east side of the Subject Property where it abuts a residential land use. This side of the Subject Property suffers from the same intense slopes that call for the 16-foot, non-tiered retaining wall and thus, Applicant asks simply to build the allowed 12-foot wall just in a non-tiered fashion. Similar to the 16-foot wall, the net difference between Applicant's proposal and the required design is negligible.

Southwest

Lastly, another 12-foot retaining wall is required on the south side of the Subject Property where it abuts a residential zone, but a non-residential land use. Again, the entire Subject Property suffers from intense slopes that necessitate the retaining walls in a non-tiered fashion. Thus, Applicant asks to build the allowed 12-foot wall in a non-tiered fashion. The net difference between Applicant's proposal for the southern wall and the required design, like the other walls, is negligible.

- 2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located**

The Applicant is requesting the minimum variances needed to make reasonable use of the land. The variances do not constitute a special privilege but serve to remedy Applicant's diminished ability to reasonably use the Subject Property.

3. The grant of the variances will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located

The granting of the requested variances will not have a negative impact on the surrounding community or be detrimental to the public welfare. The variances will allow Applicant to develop the land in a way that will enhance public safety and improve property values in the area by attracting renters to the area and thereby stimulating the local economy.

4. The literal interpretation and strict application of the applicable provisions or requirements of Chapter 27 of the Zoning Ordinance will cause undue and unnecessary hardship on the Applicant.

The literal interpretation and strict application of the applicable provision or requirements of Chapter 27 of the Zoning Ordinance would cause undue and unnecessary hardship on the Applicant, and thereby cause the Applicant to be treated in a manner which is dissimilar to other comparable businesses by limiting the reasonable use of the Subject Property by the Applicant.

5. The requested variance would be consistent with the spirit and purpose of the DeKalb County Zoning Ordinance and the Comprehensive Plan text.

The requested variances are consistent with the spirit, purpose and intent of the DeKalb County Zoning Ordinance and the Comprehensive Plan text.

CONSTITUTIONAL ALLEGATIONS

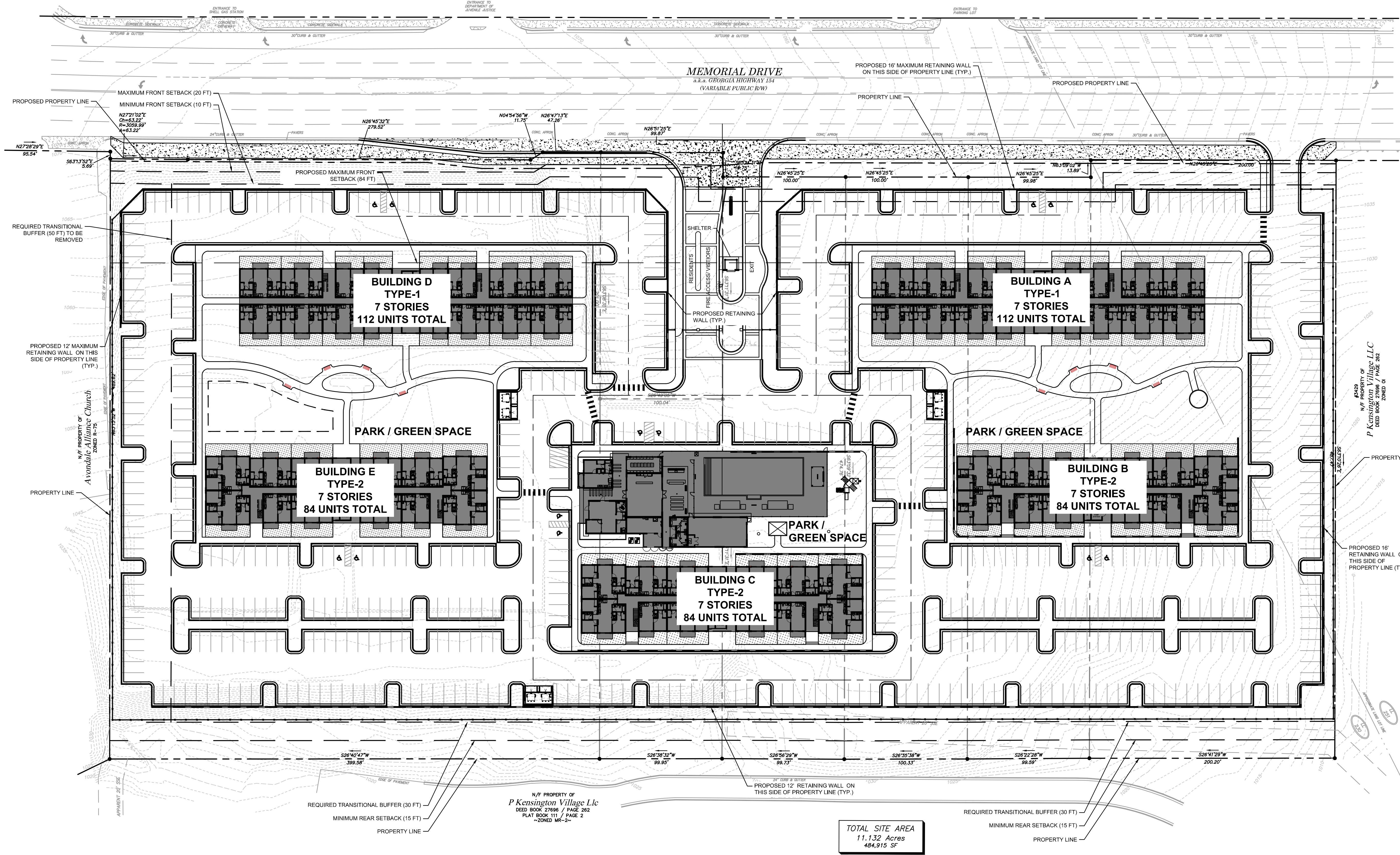
The portions of the Zoning Resolution of DeKalb County as applied to the Subject Property which classify or may classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph 1 and 2 of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I 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.

In addition, the development of the Subject Property subject to the present standards set forth in the Zoning Ordinance is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's

property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitutional and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

A denial of this Application would constitute an arbitrary and capricious act by the DeKalb County without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I 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 DeKalb County Board of Zoning Appeals to grant the variances as proposed by the Applicant 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 of the United States. Any variances or special exceptions granted with respect to the subject Property that are subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting the Applicant's utilization of the subject Property would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.



DEVELOPMENT SUMMARY:

SITE SUMMARY:

CURRENT ZONING:	OI & HR-3
PROPOSED ZONING:	HR-2
TOTAL SITE AREA:	11.13 ACRES
LOT COVERAGE (IMPERVIOUS):	7.75 ACRES (70.0%)
OPEN SPACE (PERVIOUS):	3.35 ACRES (30.0%)

BUILDING SETBACK:

REQUIRED SETBACKS:	
FRONT (MINIMUM):	10 FT
FRONT (MAXIMUM):	20 FT
REAR (MINIMUM):	15 FT
PROPOSED SETBACKS:	
FRONT (MINIMUM):	70 FT
FRONT (MAXIMUM):	84 FT
REAR:	84 FT

TRANSITIONAL BUFFER:

ADJACENT TO MR-2 ZONING: 30 FT

PROPOSED LAND USES & DENSITIES:

MULTIFAMILY RESIDENTIAL	476 UNITS (43 UNITS/ACRE)
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BUILDING SQUARE FOOTAGE SUMMARY:

BUILDING A:	15,369 SF
BUILDING B:	13,176 SF
BUILDING C:	13,176 SF
BUILDING D:	15,369 SF
BUILDING E:	13,176 SF
CLUBHOUSE/AMENITIES:	12,282 SF

PARKING SUMMARY:

REQUIRED PARKING:	714 SPACES (TOTAL)
MULTIFAMILY (476 UNITS)	714 SPACES (1.5/UNIT)
STANDARD	706 SPACES
HANDICAP	15 SPACES
PROPOSED PARKING:	569 SPACES (TOTAL)
MULTIFAMILY RESIDENTIAL	569 SPACES (1.195/UNIT)
STANDARD	555 SPACES
HANDICAP	12 SPACES
EV PARKING	2 SPACES

FLOODPLAIN & STREAM SUMMARY:

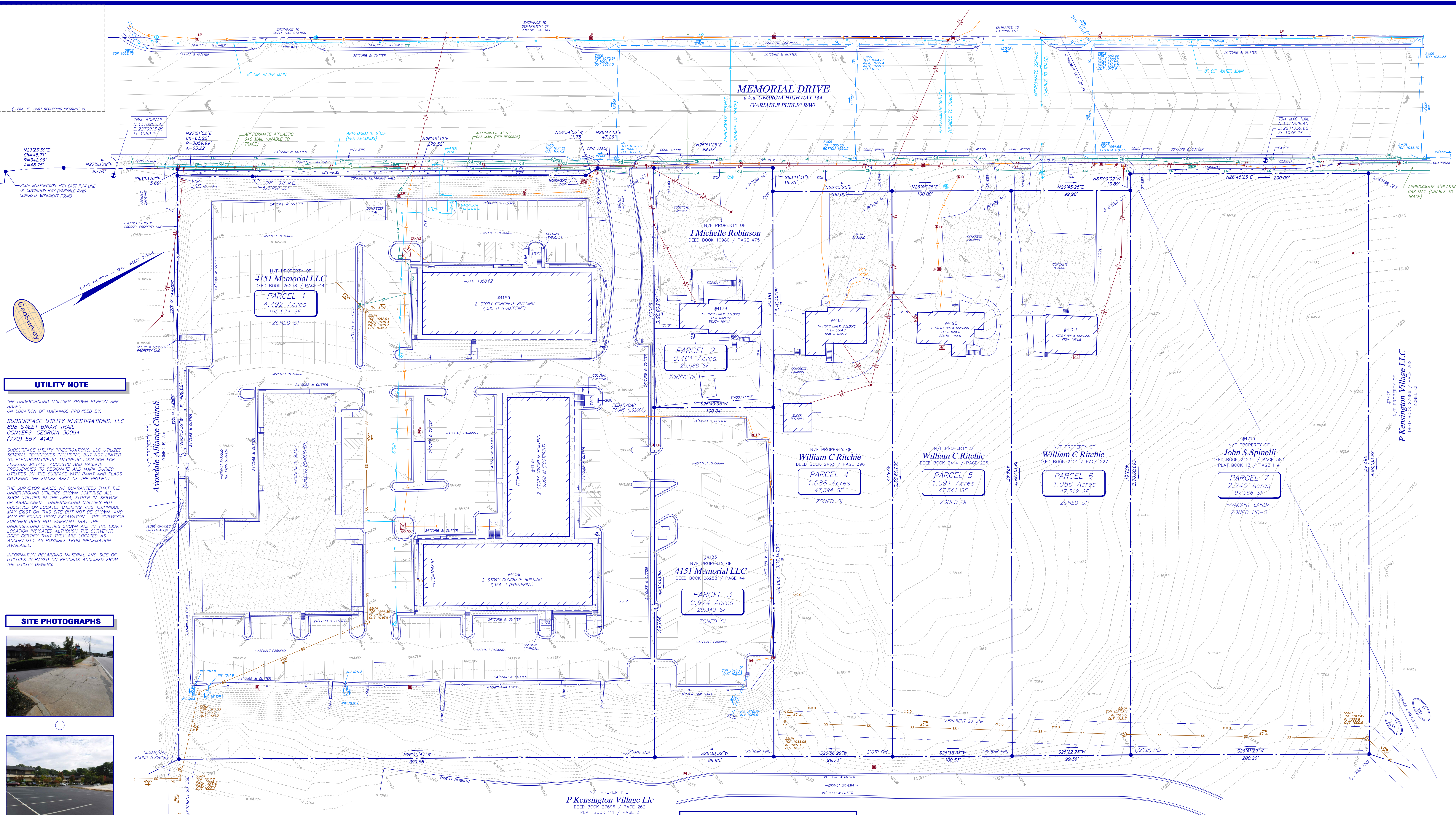
BASED ON REVIEW OF FEMA FIRM PANEL MAPS 1389C0069J (EFFECTIVE DATE 5/16/2013) AND 13809C0088J (EFFECTIVE DATE 5/16/2013), THERE ARE NO STREAMS LOCATED WITHIN THE PROPERTY AND THERE IS NO 100-YEAR FLOOD PLAIN TO BE NOTED.

Parcels 1, 2, 3, 4, 5, 6 & 7

All that tract or parcel of land lying and being in Land Lots 230 and 251 of the 15th District, Dekalb County, Georgia, and being more particularly described as follows:

Commencing at a concrete monument found at the intersection of the Easterly right-of-way line of Covington Highway (variable right-of-way) and the Southeasterly right-of-way line of Memorial Drive, a.k.a. Georgia Highway 154 (variable right-of-way); Thence along the Southeasterly right-of-way line of Memorial Drive following along a curve to the right having an arc length of 48.75 feet, with a radius of 342.06 feet, being subtended by a chord bearing of North 23 degrees 23 minutes 30 seconds East, for a distance of 48.71 feet to a point; Thence North 27 degrees 28 minutes 29 seconds East, a distance of 95.54 feet to a point; Thence South 63 degrees 13 minutes 52 seconds East, a distance of 5.69 feet to a 5/8"-inch rebar set, said point being the TRUE POINT OF BEGINNING; Thence continue along said right-of-way line along a curve to the left having an arc length of 63.22 feet, with a radius of 3059.99 feet, being subtended by a chord bearing of North 27 degrees 21 minutes 02 seconds East, for a distance of 63.22 feet to a 5/8"-inch rebar set; Thence North 26 degrees 45 minutes 32 seconds East, a distance of 279.52 feet to a 5/8"-inch rebar set; Thence North 04 degrees 54 minutes 56 seconds West, a distance of 11.75 feet to a 5/8"-inch rebar set; Thence North 26 degrees 47 minutes 13 seconds East, a distance of 47.26 feet to a 5/8"-inch rebar set; Thence continue North 26 degrees 51 minutes 25 seconds East, a distance of 99.87 feet to a 5/8"-inch rebar set; Thence South 63 degrees 11 minutes 31 seconds East, a distance of 19.75 feet to a concrete monument found; Thence continue along said right-of-way line North 26 degrees 45 minutes 25 seconds East, a distance of 100.00 feet to a 5/8"-inch rebar set; Thence North 26 degrees 45 minutes 25 seconds East, a distance of 100.00 feet to a 5/8"-inch rebar set; Thence North 26 degrees 45 minutes 25 seconds East, a distance of 99.98 feet to a 5/8"-inch rebar set; Thence North 63 degrees 09 minutes 02 seconds West, a distance of 13.89 feet to a 5/8"-inch rebar set; Thence North 26 degrees 45 minutes 25 seconds East, a distance of 200.00 feet to a 5/8"-inch rebar set; Thence departing the Southeasterly right-of-way line of Memorial Drive South 63 degrees 10 minutes 26 seconds East, a distance of 487.47 feet to a 1/2-inch rebar found; Thence South 26 degrees 41 minutes 29 seconds West, a distance of 200.20 feet to a 1/2-inch rebar found; Thence South 26 degrees 22 minutes 28 seconds West, a distance of 99.59 feet to a 1/2-inch rebar found; Thence South 26 degrees 35 minutes 38 seconds West, a distance of 100.33 feet to a 2-inch open top pipe found; Thence South 26 degrees 56 minutes 29 seconds West, a distance of 99.73 feet to a 1/2-inch rebar found; Thence South 26 degrees 38 minutes 32 seconds West, a distance of 99.95 feet to a 5/8"-inch rebar found; Thence South 26 degrees 40 minutes 47 seconds West, a distance of 399.58 feet to a rebar with cap found; Thence North 63 degrees 13 minutes 52 seconds West, a distance of 489.62 feet to a 5/8"-inch rebar set, said point being the TRUE POINT OF BEGINNING.

Said tract of land contains 11.132 Acres.



UTILITY NOTE

THE UNDERGROUND UTILITIES SHOWN HEREON ARE BASED ON LOCATION OF MARKINGS PROVIDED BY SUBSURFACE UTILITY INVESTIGATIONS, LLC 898 SWEET BRIAR TRAIL CONYERS, GEORGIA 30094 (770) 557-4142

SUBSURFACE UTILITY INVESTIGATIONS, LLC UTILIZED SEVERAL TECHNIQUES INCLUDING, BUT NOT LIMITED TO, ELECTROMAGNETIC, MAGNETIC LOCATION FOR FERROUS METALS, ACUSTIC AND PASSIVE FREQUENCIES TO DESIGNATE AND MARK BURIED UTILITIES ON THE SURFACE WITH PAINT AND FLAGS COVERING THE ENTIRE AREA OF THE PROJECT.

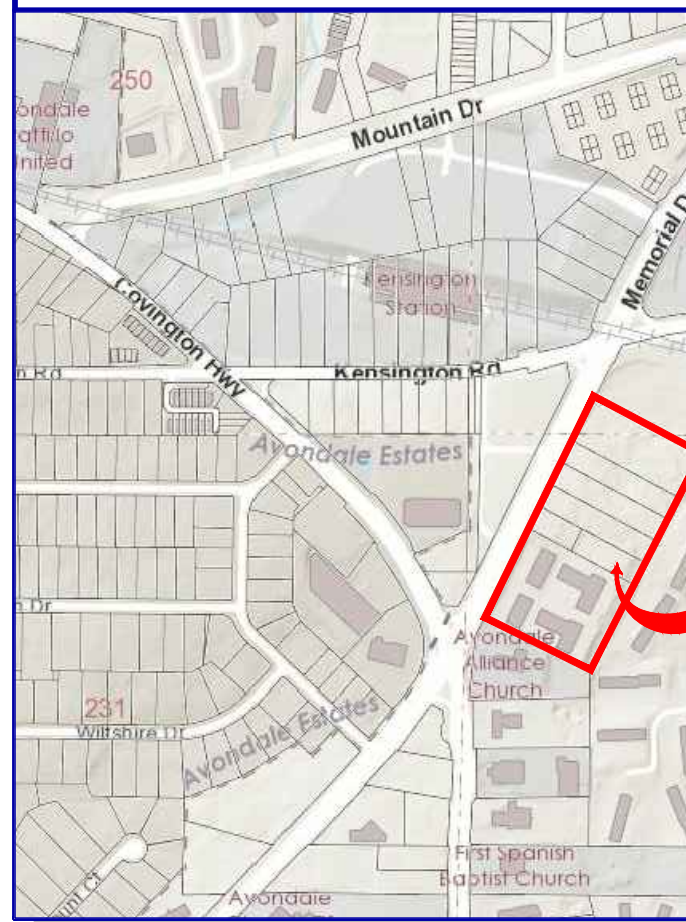
THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN-SERVICE OR ABANDONED. UNDERGROUND UTILITIES NOT OBSERVED OR LOCATED UTILIZING THIS TECHNIQUE MAY EXIST ON THIS SITE BUT NOT BE SHOWN, AND MAY BE FOUND UPON EXCAVATION. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH THE SURVEYOR DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE.

INFORMATION REGARDING MATERIAL AND SIZE OF UTILITIES IS BASED ON RECORDS ACQUIRED FROM THE UTILITY OWNERS.

SITE PHOTOGRAPHS

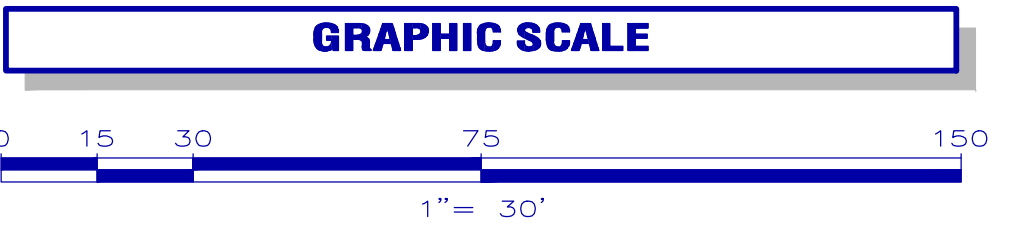


VICINITY MAP



LEGEND

STANDARD ABBREVIATIONS	STANDARD SYMBOLS
AC ARE CONDITIONER	AS OVERHEAD TRAFFIC SIGNAL LIGHT
BH BORE HOLE	PP POWER POLE
BSL BULKHEAD	WU GUY WIRE
CL CURB INLET	PL POWER LINE
CM CORRUGATED METAL PIPE	LP LIGHT POLE
CMF CONCRETE MONUMENT FND	ET ELECTRIC TRANSFORMER
CS SANITARY CLEANOUT	WV WATER VAULT
CPED COMMUNICATION PEDDESTAL	GV GAS VALVE
CTP CRIMPED TOP PIPE	GM GAS METER
DI DUCTILE IRON PIPE	WM WATER METER
DWCB DOUBLE WING CATCH BASIN	FD FIRE HYDRANT
FENCE	UE UNDERGROUND ELECTRIC LINE
FND FOUND	UG UNDERGROUND GAS LINE
GM GAS METER	UC UNDERGROUND COMMUNICATION LINE
INV INVERT	UW UNDERGROUND WATER LINE
JN JUNCTION BOX	PK PK NAIL SET
MH MANHOLE	PH PHOTO POSITION INDICATOR
OC OUTLET CONTROL STRUCTURE	RP REGULAR PARKING SPACE COUNT
OP OPEN TOP PIPE	HS HANDICAP PARKING SPACE
PM POWER METER	SWB SINGLE WING CATCH BASIN
POB POINT OF BEGINNING	TR TRANS
POC POINT OF COMMENCEMENT	
RR REINFORCED CONCRETE PIPE	
RBR IRON REINFORCING BAR	
RBS 5/8" RBR SET CAPPED LSF 621	
SS SANITARY SEWER	
SWCB SINGLE WING CATCH BASIN	
TRANS ELECTRIC TRANSFORMER	



GENERAL NOTES

THIS SURVEY HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE PERSON OR ENTITIES NAMED HEREON. NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE INFORMATION SHOWN HEREON IS TO BE EXTENDED TO ANY PERSONS OR ENTITIES OTHER THAN THOSE SHOWN HEREON.

THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE INSPECTION REPORT. EASEMENTS OR OTHER ENCUMBRANCES MAY EXIST ON PUBLIC RECORD BUT NOT BE SHOWN HEREON.

THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA BASED ON THE FLOOD INSURANCE RATE MAP FOR THIS AREA. THE MAP NUMBER FOR THIS AREA IS 13089C0084, AND THE DATE OF SAID MAP IS 05/16/13. THE PROPERTY LIES WITHIN "ZONE A". THIS DETERMINATION WAS MADE BY GRAPHICALLY DETERMINING THE POSITION OF THIS SITE ON SAID FIRM MAPS UNLESS OTHERWISE NOTED.

THE DATUM FOR THIS SITE WAS ESTABLISHED UTILIZING GLOBAL POSITIONING SYSTEMS AND BASED ON POSITIONAL VALUES FOR THE VIRTUAL REFERENCE STATION NETWORK DEVELOPED BY GPS SOLUTIONS. THE HORIZONTAL REFERENCE FRAME IS NORTH AMERICAN DATUM OF 1983 (NAD83)-STATE PLANE COORDINATE SYSTEM OF GEORGIA-NORTH ZONE. THE VERTICAL REFERENCE FRAME IS NORTH AMERICAN VERTICAL DATUM OF 1988. ANY DIRECTIONS OR DIMENSIONS SHOWN ARE A RECTANGULAR, GROUND LEVEL PROJECTION OF THE STATE PLANE COORDINATE SYSTEM.

NO ZONING REPORT OR ZONING LETTER WAS PROVIDED TO THE SURVEYOR. PARCELS 1-6 ARE ZONED "O1" (OFFICE-INSTITUTIONAL DISTRICT) AS SHOWN ON THE ZONING MAP OF DEKALB COUNTY. PARCEL 7 IS ZONED "R-1" (HIGH DENSITY RESIDENTIAL DISTRICT) AS SHOWN ON THE ZONING MAP OF DEKALB COUNTY. THE MINIMUM YARD SETBACKS ARE DETERMINED BY SITE PLAN.

PLEASE NOTE: ZONING AND SETBACKS SHOULD BE CONFIRMED AND VERIFIED BY PLANNING AND ZONING PRIOR TO DESIGN OR CONSTRUCTION ACTIVITIES.

RIGHT-OF-WAY LINES SHOWN ON THIS SURVEY THAT ARE NOT ACTUAL BOUNDARIES OF THE SUBJECT TRACTS ARE DEPICTED GRAPHICALLY AND ARE SHOWN APPROXIMATELY FOR INFORMATIONAL PURPOSES ONLY. SAID RIGHT-OF-WAY LINES SHOULD NOT BE UTILIZED FOR DESIGN PURPOSES.

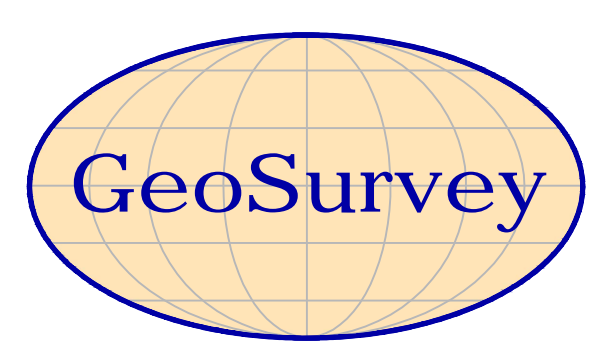
SURVEY REFERENCES
 19. RIGHT-OF-WAY PLAN FOR HWY 54, PREPARED BY ARCADIS FOR PROJECT CSPPP-0007-001300, DEKALB COUNTY, DATED 09/08/06.

CLOSURE STATEMENT

THE FIELD CLOSURE UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 25,245. AND WAS ADJUSTED USING THE LEAST SQUARES METHOD. A TRIMBLE "S" SERIES TOTAL STATION AND TRIMBLE TSC-3 DATA COLLECTOR WERE USED TO COLLECT THIS FIELD DATA.

THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND WAS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 265,668 FEET. (SIC. INT.)

TOTAL SITE AREA
 11.132 Acres
 484,915 SF



Land Surveying • 3D Laser Scanning
 1660 Barnes Mill Road
 Marietta, Georgia 30062
 Phone: (770) 795-9900
 Fax: (770) 795-8880
 www.geosurvey.com
 Email: info@geosurvey.com
 Certificate of Authorization #LSF-000621

SURVEYOR CERTIFICATION

This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated herein. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 43-6-67.

Bradley D. Cash
 Georgia Registered
 Land Surveyor # 2840

BOUNDARY & TOPOGRAPHIC SURVEY OF
#4159 - #4215 Memorial Drive

FOR
**4151 Memorial LLC
 Michelle Robinson
 William C Ritchie
 John S Spinelli**

NO.	DATE	REVISIONS

GS JOB NO:	20196287	DRAWING SCALE:	1" = 30'	SURVEY DATE:	10/22/2019
FIELD WORK:	CM/ZM	CITY:	UNINCORPORATED		
PROJ MGR:	BDC	COUNTY:	DEKALB	STATE:	GA
REVIEWED:	JRC	LAND LOT:	230 & 251		
DWG FILE:	20196287-01.dwg	DISTRICT:	15TH		

Second Floor of
First Office Building

Road Elevation +/- 1071

Existing Office Building 1058 FFE Eleva-
tion: +/- 13 Feet Lower Than Road Grade

KENSINGTON
OFFICE PARK

SPACE
FOR LEASE
OFFICE | MEDICAL
(813) 375-0000
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Second Office Building at 1048 FFE
(+/- 23' Below Road Grade)

Second Floor of First Office Building
First Floor 1058 FFE (+/- 13' Below Road Grade)

Road Elevation +/- 1071





REVISION

PROJECT NAME
**KENSINGTON
 STATION**

ADDRESS
 4151 MEMORIAL DRIVE
 DECATUR, GA

OWNER
 AHS RESIDENTIAL

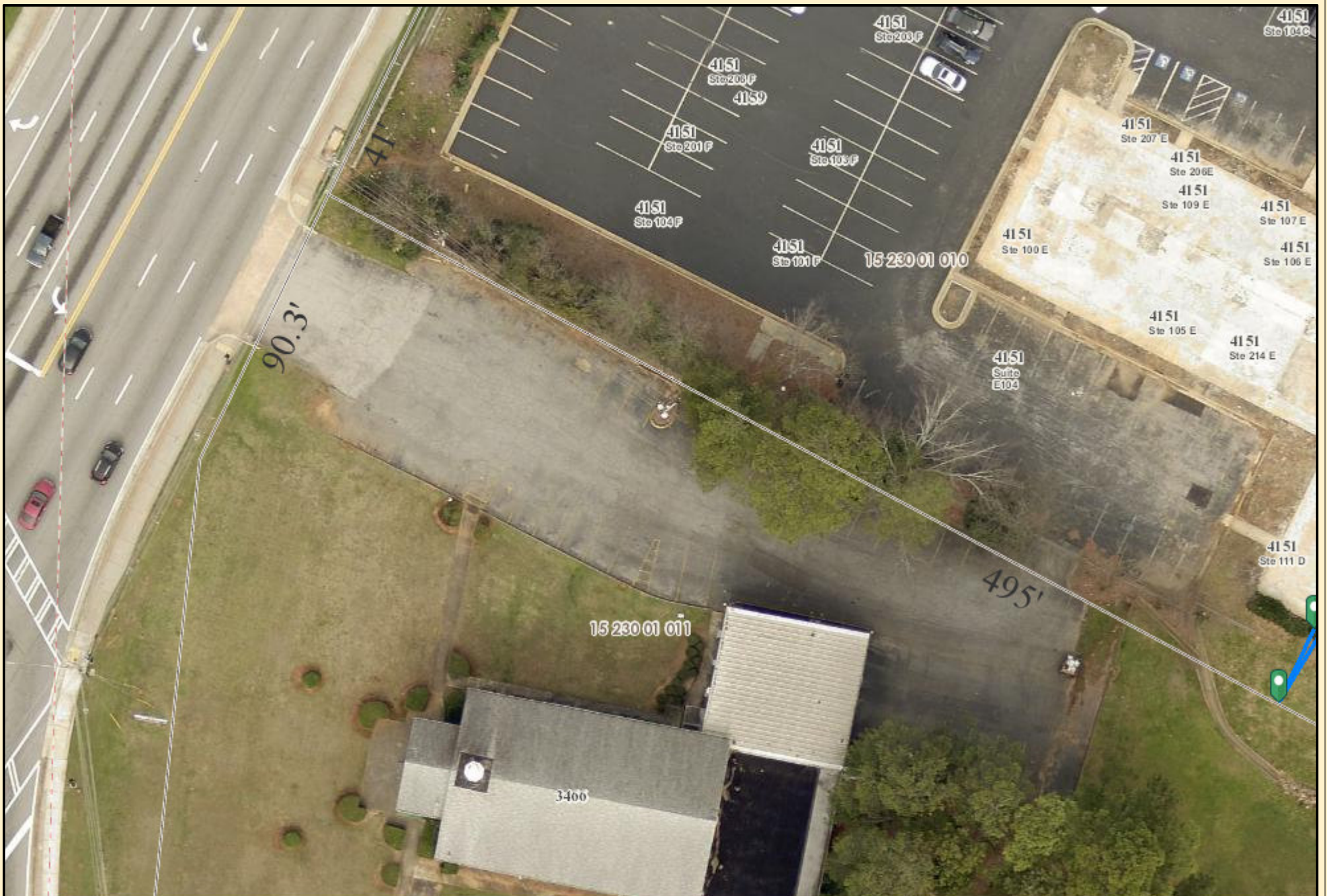
SHEET NAME
 ARCHITECTURAL
 ELEVATIONS

©2020 Street Works Architecture, LLC
 SEAL

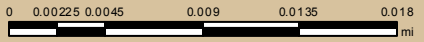
PROJ. NUMBER
 20107

DATE
 05/13/2020

SHEET
A101



DeKalb County Parcel Map



Date Printed: 10/8/2020



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