



404.371.2155 (o)
404.371.4556 (f)
DeKalbCountyGa.gov

Clark Harrison Building
330 W. Ponce de Leon Ave
Decatur, GA 30030

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

**APPLICATION TO AMEND COMPREHENSIVE LAND USE PLAN
OF DEKALB COUNTY, GEORGIA**

Application No.: _____ Date Received: _____

Applicant's Name: Joseph Cooley, Esq. (agent for owner) _____ E-Mail: cooleylandlaw@gmail.com

Applicant's Mailing Address: 243 Highland Rose Way, Sugar Hill, GA 30518 _____

Applicant's Daytime Phone #: (770) 778-4776 _____ Fax: _____

(If more than one owner, attach information for each owner as Exhibit "A")

Owner's Name: MH Lithonia Holdings LLC & Neisem Prop LLC E-Mail: mnhabif@habifproperties.com

Owner's Mailing Address 3717 Roswell Rd NE #100 Atlanta, GA 30342.

Owner's Daytime Phone # (404) 522-9358 _____ Fax: _____

Address/Location of Subject Property:

District(s): 16th _____ Land Lot(s): 167, 168 _____ Block(s): 01 _____ Parcel(s): 008

Acreage: 1.224 _____ Commission District(s): District 5, Super-District 7

Current Land Use Designation: SUB _____ Proposed Land Use Designation: LIND _____

Current Zoning Classification(s): RE (concurrent zoning request to M)

PLEASE READ THE FOLLOWING BEFORE SIGNING

- I. **This application form must be completed in its entirety. In addition, any application that lacks any of the required attachments or payment of the filing fee shall be determined to be incomplete and shall not be accepted.**
- II.
- III. Disclosure of Campaign Contributions: In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered: Have you, the applicant, made \$250 or more in campaign contributions to a local government official within two years immediately preceding the filling of this application? _____ Yes X No
- IV.

If the answer is yes, you must file a disclosure report with the governing authority of DeKalb County showing:

1. The name and official position of the local government official to whom the campaign contribution was made.
2. The dollar amount and description of each campaign contribution made during the two years immediately preceding the filing of this application and the date of each such contribution.

The disclosure must be filed within 10 days after the application is first filed and must be submitted to the C.E.O. and the Board of Commissioners, DeKalb County, 1300 Commerce Drive, Decatur, Ga. 30030.

NOTARY

Joseph Cooley, Esq.
SIGNATURE OF APPLICANT

EXPIRATION DATE / SEAL _____ Check One: Owner _____ Agent X _____ DATE _____

ATTACHMENT "A"

Application to Amend Official Zoning Map
DeKalb County, GA

Owners' Information

Owner(s): **MH Lithonia Holdings LLC — Morris Habif, Managing**

Partner **E-Mail: mnhabif@habifproperties.com**

Owner's Mailing Address: **3717 Roswell Rd. NE #100, Atlanta, GA 30342**

Owner(s) Phone: **(404) 522-9358** Fax: _____

Owner(s): **Neisem Properties LLC — Morris Habif, Managing**

Partner **E-Mail: mnhabifnhabifproperties.com**

Owner's Mailing Address: **3717 Roswell Rd. NE #100, Atlanta, GA 30342**

Owner(s) Phone: **(404) 522-9358** Fax: _____

DEPARTMENT OF PLANNING & SUSTAINABILITY

LAND USE (FUTURE DEVELOPMENT) MAP AMENDMENT APPLICATION
AUTHORIZATION

Completion of this form is required if the individual making the request is not the owner of the property.

DATE: 10/12/20

CHECK TYPE OF APPLICATION:

(X) LAND USE MAP AMENDMENT

(X) REZONE

() MINOR MODIFICATION

() SPECIAL LAND USE PERMIT

TO WHOM IT MAY CONCERN:

(I) / (WE), Morris Habib (mng. member of LLC)

MH Lithonia Holdings LLC & Neisem Properties LLC

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

Joseph Cooley, Esq. Cooley Planning and Land Use Law LLC

(Name of Applicant or Agent Representing Owner)

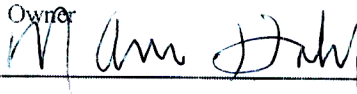
to file and application on (my) / (our) behalf.

Notary Public



Notary Public

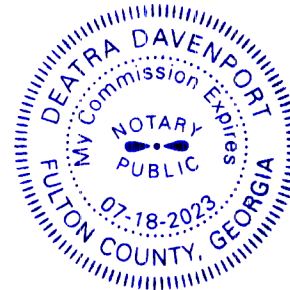
Owner



Owner

Notary Public

Owner



Letter of Intent
Rezoning & Land Use Change

For

2346 Pine Mountain Street (#16 168 01 008) (Subject Property), DeKalb County, Georgia

Rezoning/Land Use Change of the Subject Property from RE (Residential Estate) to M (Light Industrial) and from SUB (Subdivision) to LIND (Light Industrial) was applied for on August 28, 2008. Staff recommendations were for approval of the Land Use Change and approval of the Rezoning with conditions; however, the Land Use Change application was denied by the DeKalb County Board of Commissioners, and the Rezoning Application was not heard. The required two-year timeframe prior to resubmitting Rezoning and Land Use Applications has expired.

The Subject Property consists of approximately 1.224 acres. It is located west of Turner Hill Road; directly north of the City of Lithonia; and approximately 0.15 miles south of the Stonecrest city limits. (*see attachments*). It is currently zoned RE. The parcel is mostly cleared with concrete and gravel areas which are visible in the attached aerial photograph. Past structures on the parcel included a dilapidated mobile home and shed. The mobile home has been antidotally described by neighboring land owners as a "crack house". The structures were demolished and the property has been vacant since.

The Subject Property is completely surrounded to the north, south, east and west with parcels zoned M. The surrounding future land use classification of the properties is primarily LIND.

The parcels immediately to the south, east and northeast also belong to the Owner. Those parcels consist of approximately 8.61 acres, are zoned M, and are designated LIND on the future land use map. The parcels were previously cleared, but remain undeveloped. The parcels have approximately 811 feet of frontage on Turner Hill Road, with direct access to Turner Hill Road via Turn Hill Road N. Combined with the Subject Property the total acreage is approximately 10.25 acres.

The Subject Property has no value as currently zoned Residential Estate and with a Suburban land use designation. By combining the Subject Property with the Owner's adjacent properties, which has direct access to Turner Hill Road, the Subject Property has possibilities for beneficial economic uses. This would ultimately be an economical benefit for the community and DeKalb County.

There was opposition to the application at the Board of Commissioners Land Use Change hearing over two years ago. Person speaking expressed a fear of an increase of illegal activities, such as prostitution and illegal drug sales, increased traffic that might be generated from future redevelopment, and change of character to the area. Some wanted to see a site development plan to know exactly what was to be built there.

As much as it may be desired, a site development plan cannot be realistically determined or prepared until such time that the parcels are consolidated with all having the same zoning and future land use designation. The character of the area surrounding the Subject Property is not Suburban as currently classified. Concept plans, site plans and review/approval of all future development plans will involve working with the community, the Planning and Sustainability Department, the Development Authority of DeKalb County (DADC), and other DeKalb County departments. Some issues, such as potential traffic impacts, cannot be properly addressed until such time as to a development concept is developed.

The Owner (Mr. Morris Habib and Habib Properties) have been consolidating and redeveloping properties in the Atlanta area for many years. He was a key participant in the redevelopment south of Five Points since 1968 and has been featured in the Atlanta Journal Constitution several times regarding the positive work he has been doing for the area. ("Another Chance of a Lifetime awaits South Downtown Area", Torpy, AJC, Oct. 4, 2018; attached). Mr. Habib has successfully consolidated parcels to encourage development and redevelopment throughout his career. His company has a substantial list of successful projects in the Atlanta area (see <https://habifproperties.com> for more detailed information).

The Applicant requests the land use designation of the "Subject Property" be changed from SUB (Suburban) to LIND (Light Industrial). This would bring the Subject Property into consistency with:

- 1) The current uses of surrounding properties and zoning all of said properties which are currently zoned M — Light Industrial;
- 2) the predominate future land use map designation of surrounding properties as LIND – Light Industrial;
- 3) the text and policies of the 2021 DeKalb County Comprehensive Plan Policy;
- 4) and the Owner's right and ability to develop his land to have an economically viable use.

We respectfully request that the DeKalb Board of Commissioners approve the concurrent Land Use and the Rezoning Applications.

Sincerely,

Joseph L. Cooley, Esq.
Cooley Planning & Land Use Law, LLC
Attorney for the Owner

APPLICANT'S STATEMENT OF IMPACT ANALYSIS FOR ZONING APPLICATION

A. Whether the zoning proposal is in conformity with the policy and intent of the Comprehensive Plan?

Yes, the proposal is in conformity with the intent of the Comprehensive Plan. The parcel is 1.22 acres of undeveloped land currently zoned RE (Residential Estate) with a Comprehensive Plan designation of SUB (suburban). The Owner's adjacent 8.61 acre properties are designated LIND (light industrial) and zoned M. The Subject Property is completely surrounded by parcels zoned M.

2021 Comprehensive Plan 5 Year Update: Policies

The primary land use policies for the SUB include (pg. 118):

- Single Family Detached Residential
- Townhomes
- Assisted Living Facilities
- Neighborhood Residential
- Schools
- Libraries
- Health Care Facilities
- Parks and Recreation Facilities
- Public and Civic Facilities
- Institutional Uses.

The primary land use policies for the LIND include (pg. 115-116)

- Light Industrial Uses
- Manufacturing
- Warehouse/Distribution
- Wholesale/Trade
- Automotive
- Accessory Commercial
- Education Institutions
- Community Facilities

SUB use policies (as stated in the Comprehensive Plan) are clearly ***inconsistent and inappropriate*** for the Subject Property due to surrounding zoning and land uses. It is within an area of surrounding properties designated LIND and zoned M.

Whereas, ***LIND*** use policies are ***clearly consistent*** with surrounding property uses and M zoning. The concurrent Land Use Designation change application and zoning change application would make the Subject Property consistent in zoning and land use, and be consistent with surrounding zoning, land use categories, and current uses.

B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties?

Yes, the surrounding properties are primarily used are either undeveloped or used for light industrial and service industries. The Subject Property owners are also the owners of the 8.5 acre property adjacent to and east of the Subject Property. (parcel #16 167 08 024). Both parcels have been impacted from previous clearing in mining operations. The rezoning would allow a sensible consolidation of parcels to be in the same zoning and land use classification.

C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned?

No. The subject property is currently zoned RE (residential estate) but is surrounded by M (light industrial) zoned land. As currently zoned (RE) one single-family estate residence could be constructed on the property, but it would be surrounded by property zoned M (light industrial). It is not a suitable, usable, or a realistic use for a single-family residence. Approval of the applications to LIND and M would allow the Owner a viable use for the property.

D. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby properties?

No, the property is located within a large area of M zoned properties and would have no negative affect on surrounding properties. The property northeast of the property is zoned M, but an existing older home is still utilized as a rental. The Owner would be acceptable to a buffer requirement between the two properties at the time more defined development plans are being considered.

E. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for approval or disapproval of the zoning proposal?

The Subject Property was rezoned in 1985 (CZ-83005). The Applicant submitted an Open Records Act request, but the County could not find the rezoning file or any records related to the rezoning.

The zoning and land use have already changed in the surrounding area, making the Subject Property unusable as RE. Other properties of the same block are all zoned M. Properties having older residential structures have been converted to service-related businesses. The rezoning of the property to M (light industrial) would be consistent with existing uses and conditions of adjacent properties.

F. Whether the zoning proposal will adversely affect historic buildings, site, district or archaeological resources?

There are no historic buildings or archaeological resources on the site to the knowledge of the owner and no historic districts close to the property.

G. Whether the zoning proposal will result in a use, which will or could cause excessive burdensome use of existing streets, transportation facilities, utilities or schools?

No negative or burdensome impacts are expected from the rezoning of the Subject Property. All properties along Pine Mountain Street, except for one, have already been zoned M.

GENERAL NOTES:

1: This Plat has been prepared without the benefit of a current title report. Easements or encumbrances may exist that are not shown on this plat.

2: This plat is subject to any restrictions, easements, covenants or restrictions that may exist either written or unwritten.

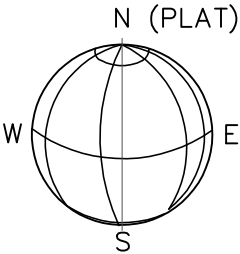
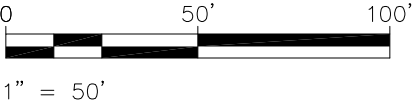
3: Underground utilities not shown hereon may exist. The Surveyor does not take responsibility for absence or presence of any such utilities.

4: No Geodetic monuments were found within 500 feet of this site

5: This Plat has been prepared for the exclusive use of the person(s) or entities named hereon.

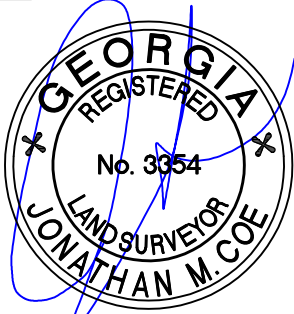
This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon.

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 15-6-67.



LEGEND

- EOP EDGE OF PAVEMENT (CURB)
- PP POWER POLE
- R/W RIGHT OF WAY
- IPF IRON PIN FOUND
- IPS 1/2" REBAR SET
- SW SIDE WALK
- BOLLARD
- OHP OVERHEAD POWER
- FH FIRE HYDRANT
- CB CATCH BASIN
- MH MANHOLE
- WM WATER METER
- WV WATER VALVE
- GV GAS VALVE
- GM GAS METER
- LP LIGHT POLE
- CONCRETE PAD



FOR
DEKALB SURVEYS, INC.
407 WEST PONCE DE LEON AVENUE
SUITE B
DECATUR, GEORGIA 30030
404.373.9003

IMPERVIOUS CALCULATIONS 2346 PINE MOUNTAIN STEET	
CONC. PADS = 3,629 S.F.	
GRAVEL = 7,470 S.F.	
IMPERVIOUS TOTAL = 11,099 S.F.	
LOT COVERAGE	
11,099 S.F.	/ 79,361 S.F. = 14.0%

REFERENCE: DB 21038 PG 155
DB 23479 PG 198
DB 19014 PG 250
SURVEY FOR SHARON ANDERSON BY E.G. DAVIS
DATED 3-25-2002

FLOOD HAZARD NOTE: THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD AREA AS DEFINED BY FIRM MAP OF DEKALB COUNTY, GEORGIA 13089C0178K EFFECTIVE DATE DECEMBER 8, 2016

SURVEY DATA:

TYPE OF SURVEY: RETRACEMENT
NORTH PROPERTY LINE IS BEARING BASIS
FROM SURVEY FOR SHARON ANDERSON BY E.G. DAVIS
DATED 3-25-2002

TOTAL AREA: 79,361 SQ FT, 1.822 AC

CALCULATED PLAT CLOSURE: 1:237,684

FIELD DATA:

DATE OF FIELD SURVEY 8-8-2018

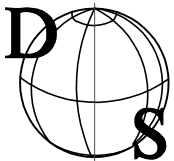
THE CALCULATED POSITIONAL TOLERANCE BASED ON REDUNDANT LINEAR MEASUREMENTS OF OBSERVED POSITIONS WAS FOUND TO BE 0.015 FEET.

EQUIPMENT:
ELECTRONIC TOTAL STATION

SURVEY FOR
SHARON ANDERSON

2346 PINE MOUNTAIN STREET

DEKALB COUNTY, GEORGIA
LAND LOT 167 & 168, DIST 16
DATE: AUGUST 23, 2018



www.dekalbsurveys.com
COA 1086

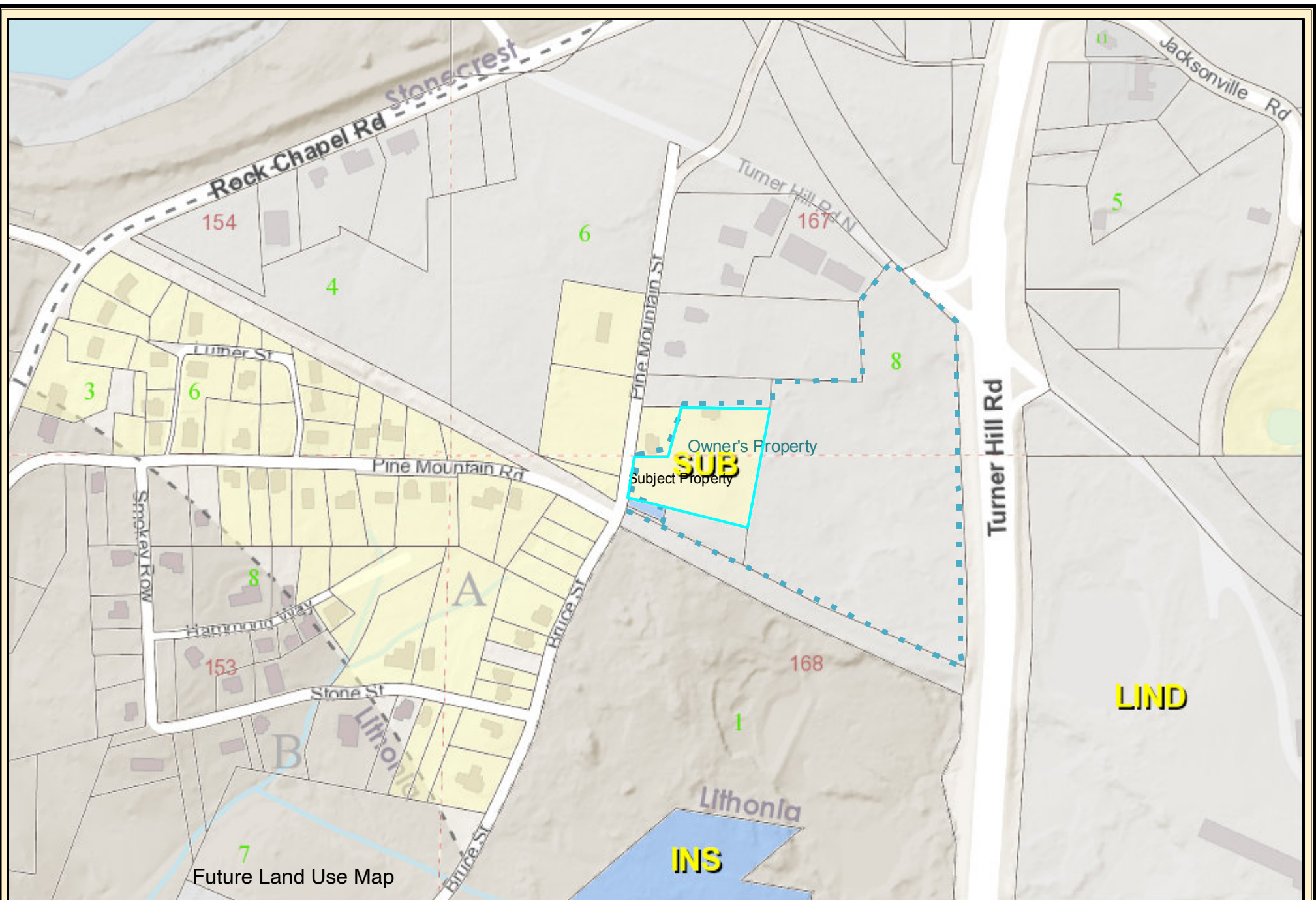
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USED IN ANY WAY WITHOUT THE
WRITTEN PERMISSION OF THIS
SURVEYOR

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 167 AND 168 OF THE 16TH DISTRICT OF DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN SET AT A POINT WHERE THE EASTERLY RIGHT-OF-WAY LINE OF PINE MOUNTAIN STREET (HAVING A 20 FOOT RIGHT-OF-WAY) MEETS THE NORTHERLY RIGHT-OF-WAY LINE OF OLD VENABLE RAILWAY. SAID POINT IS 26.8 FEET FROM THE CENTERLINE OF SAID RAILWAY AND PINE MOUNTAIN STREET; THENCE RUN ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PINE MOUNTAIN STREET NORTH 06 DEGREES 08 MINUTES 00 SECONDS EAST A DISTANCE OF 76.20 FEET TO A NAIL IN A CONCRETE DRIVE; THENCE RUN NORTH 88 DEGREES 16 MINUTES 00 SECONDS EAST A DISTANCE OF 83.00 FEET TO A POINT; THENCE RUN NORTH 16 DEGREES 01 MINUTE 53 SECONDS EAST A DISTANCE OF 126.87 FEET TO A POINT; THENCE RUN SOUTH 89 DEGREES 11 MINUTES 49 SECONDS EAST A DISTANCE OF 214.53 FEET TO AN IRON PIN SET; THENCE RUN SOUTH 05 DEGREES 41 MINUTES SS SECONDS WEST A DISTANCE OF 126.09 FEET TO A IRON PIN SET ON THE LINE DIVIDING LAND LOTS 167 AND 168; THENCE RUN SOUTH 03 DEGREES 54 MINUTES 01 SECOND WEST A DISTANCE OF 78.00 FEET TO AN IRON PIN SET; THENCE RUN NORTH 88 DEGREES 54 MINUTES 41 SECONDS WEST A DISTANCE OF 322.86 FEET TO AN IRON PIN SET AND THE POINT OF BEGINNING, CONTAINING 1.224 ACRES AS PER SURVEY PREPARED FOR SHARON ANDERSON, BY E. G. DAVIS, GEORGIA REGISTERED LAND SURVEYING NO. 2363, DATED MARCH 25, 2002.

TOGETHER WITH A PERPETUAL EIGHT (8) FOOT WIDE EASEMENT TOGETHER WITH ALL RIGHTS, AND PROVISION NECESSARY FOR THE FULL USE AND ENJOYMENT OF SAID EASEMENT, INCLUDING THE RIGHT OF INGRESS AND EGRESS, PASS AND REPASS, TO AND ACROSS SAID EASEMENT WHICH SAID EASEMENT IS MORE FULLY DESCRIBED IN THAT WARRANTY DEED FROM CHARLES C. FURGERSON TO RANDY LAMAR ANDERSON, DATED FEBRUARY 9, 1978, RECORDED IN DEED BOOK 3747, PAGE 823, DEKALB COUNTY, GEORGIA RECORDS.



DeKalb County Parcel Map

0 0.0175 0.035 0.07 0.105 0.14
mi

Date Printed: 10/13/2020



DeKalb County GIS Disclaimer

The maps and data, contained on DeKalb County's Geographic Information System (GIS) are subject to constant change. While DeKalb County strives to provide accurate and up-to-date information, the information is provided "as is" without warranty, representation or guarantee of any kind as to the content, sequence, accuracy, timeliness or completeness of any of the database information provided herein. DeKalb County explicitly disclaims all representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. In no event shall DeKalb County be liable for any special, indirect, or consequential damages whatsoever resulting from loss of use, data, or profits, whether in an action of contract, negligence, or other actions, arising out of or in connection with the use of the maps and/or data herein provided. The maps and data are for illustration purposes only and should not be relied upon for any reason. The maps and data are not suitable for site-specific decision-making nor should it be construed or used as a legal description. The areas depicted by maps and data are approximate, and are not necessarily accurate to surveying or engineering standards.



2346 Pine Mountain Street

Aerial of 2346 Pine Mountain Street
Parcel # 16 168 01 008

Legend

📍 2346 Pine Mountain St





Joseph L. Cooley AICP RLA JD
Attorney-at-Law
Land Use Planning/Land Use and Zoning Law

DeKalb County Rezoning of Property and Change of Land Use at
2346 Pine Mountain Road, DeKalb County

Appropriateness of Application

and

Constitutional Assertions

The Applicant in order to preserve all rights of appeal and as required by Georgia law for such appeals hereby asserts the following:

The portions of the zoning resolution of DeKalb County and comprehensive land amendment 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 and would be unconstitutional in that they would destroy the Applicant's property right without first paying fair, adequate and just compensation for such rights in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1083, Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the zoning resolution and comprehensive land amendment of DeKalb County to the Subject Property that restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of the Applicant's property in violation of the Just Compensation Clause of the First Amendment to the Constitution of the United States, Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of Georgia of 1983 and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the DeKalb County Board of Commissioners without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of Georgia of 1083, 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 Commissioners to approve this Application for rezoning and comprehensive plan amendment as proposed by the Applicant would be unconstitutional and discriminate in a arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated properties in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 10893 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any approval of this Application 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 the provisions of the State and Federal Constitutions set forth hereinabove.

PUBLIC NOTICE
to
Request for Rezoning of Property

Filed by : Joseph Cooley, Cooley Planning & Land Use Law LLC (agent)
for
MH Lithonia Holdings, LLC and Nessim Properties, LLC (owners)

Located at: 2346 Pine Mountain Street
Lithonia, GA 30058

Current Zoning: RE — Residential estate
Current Future Land Use — SUB (Subdivision)

Proposed Zoning: Light Manufacturing (M)
Proposed Future Land Use — Light Industrial
(LIND)

Current Use: Undeveloped

Proposed Use: Consolidation of parcels to same zoning district as all surrounding properties. Parcels currently owned by the "Owner" will be consolidated for future development and marketing. (not know at this time)

PRE-SUBMITTAL COMMUNITY MEETING TO TAKE PLACE VIA ZOOM:

Date: Wednesday, Feb. 3, 2021 Zoom Mtg #273 3121 2577