

DEPARTMENT OF PLANNING & SUSTAINABILITY

**Rezoning Application to Amend the Official Zoning Map of DeKalb
County, Georgia**

RECEIVED

By Rachel Bragg at 1:57 pm, May 02, 2023

Date Received: _____ Application No: _____

Applicant Name: ArcOne Construction Company c/o Battle Law, P.C.

Applicant E-Mail Address: mlb@battlelawpc.com

Applicant Mailing Address: 3562 Habersham at Northlake, Tucker, GA. 30084

Applicant Daytime Phone: 404-601-7616 ext. 1 Fax: _____

Owner Name: ArcOne Construction Company

If more than one owner, attach list of owners.

Owner Mailing Address: 945 North Point Drive #1042, Alpharetta, GA. 30022

Owner Daytime Phone: _____

Address of Subject Property: 1481 LaVista Road, Atlanta, GA. 30324

Parcel ID#: 18 108 06 006

Acreage: 0.7 Commission District: 2, 6

Present Zoning District(s): R-75

Proposed Zoning District: R-60

Present Land Use Designation: SUB

Proposed Land Use Designation (if applicable): N/A

REZONING APPLICATION CHECKLIST

Submit 4 printed, collated sets of the complete application (no staples, no binders) and a PDF version on a flash drive

_____ 1. Schedule a mandatory **Pre-Application Conference** with Planning & Sustainability staff by appointment. Obtain **Pre-Application form** (to be completed in pre-application meeting). Please call 404-371-2155 for appointment.

_____ 2. Hold a **Pre-Submittal Community Meeting** with surrounding neighborhood associations and residents. Provide documentation of the meeting (**meeting notice and sign in sheets**). Letter(s) from homeowners association(s) may also be provided.

_____ 3. Submit **Application** (Submit 4 printed, collated sets and a PDF version on a flash drive. Please assemble materials in the following order.)

_____ **A. Application form** with name and address of applicant and owner, and address of subject property;

_____ **B. Pre-submittal community meeting notice and sign-in sheet** and other documentation of meeting, if any;

_____ **C. Letter of application and impact analysis**

1. **Letter of application** identifying a) the proposed zoning classification, b) the reason for the rezoning or special use or modification request, c) the existing and proposed use of the property, d) detailed characteristics of the proposed use (e.g. floor area, height of building(s), number of units, mix of unit types, number of employees, manner and hours of operation), d)(optional) statement of conditions discussed with the neighborhood or community, if any.

2. **Impact analysis** of the anticipated impact of the proposed use and rezoning on the surrounding properties in response to the standards and factors specified in Article 7.3 of the DeKalb County Zoning Ordinance, as attached. If a Major Modification, please include previously approved conditions and Board of Commissioner meeting minutes.

_____ **D. Authorization Form**, if applicant is not the owner. Must be signed by all owners of the subject property and notarized. Authorization must contain the mailing address and phone number of any applicant or agent who is authorized to represent the owner(s) of the subject property. Please include warranty deed, if property ownership is less than 2 years.

_____ **E. Campaign disclosure statement** (required by State law).

_____ **F. Legal boundary survey** of the subject property, (showing boundaries, structures, and improvements), prepared and sealed within the last year by a professional engineer or land surveyor registered in the State of Georgia. *(If survey shows property on opposite sides of a public street right-of-way, file a separate application for each property.)*

_____ **G. Site Plan**, printed to scale, folded, of any existing and or proposed development/redevelopment. For projects larger than 1 acre, site plan should be at least 1:50 scale. The site plan must include the following:

_____ a. complete boundaries of subject property;

_____ b. dimensioned access points and vehicular circulation drives;

_____ c. location of all existing and proposed buildings, structures, setbacks and parking;

_____ d. location of 100 year floodplain and any streams;

_____ e. notation of the total acreage or square footage of the subject property;

_____ f. landscaping, tree removal and replacement, buffer(s); and

_____ g. site plan notes of building square footages, heights, density calculations, lot coverage of impervious surfaces, parking ratios, open space calculations, and other applicable district standards.

_____ **H. Reduced Site Plan**, reduced to 8.5" x 11".

_____ **I. Written Legal Description** of metes and bounds of the subject property (can be printed on site plan or survey).

_____ **J. Building Form Information**. Elevation (line drawing or rendering), or details of proposed materials, in compliance with Article 5 of the Zoning Ordinance.

_____ **K. Completed, signed Pre-application Form** (Provided at pre-application meeting.)

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

DEPARTMENT OF PLANNING & SUSTAINABILITY

DISCLOSURE OF CAMPAIGN CONTRIBUTION

In accordance with the Conflict of Interest in Zoning Act, OCGA Chapter 36-67A, the following questions must be answered.


Have you, the applicant, made \$250.00 or more in campaign contribution to a local government official within two years immediately preceding the filling of this application?

Yes _____ No *

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 to the Board of Commissioners of DeKalb County, 1300 Commerce Drive, Decatur, GA 30030.



Notary



 3/29/23

Signature of Applicant /Date
Check one: Owner Agent _____

May 04, 2024

Expiration Date/ Seal

*Notary seal not needed if answer is "no".

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: 03/29/2023

TO WHOM IT MAY CONCERN:

(I) (WE) ArcOne Construction Company
Name of owner(s)

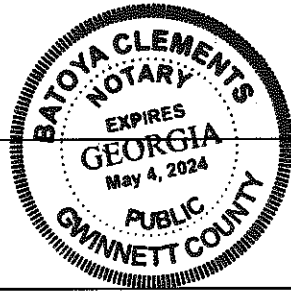
being (owner) (owners) of the subject property described below or attached hereby delegate authority to

Battle Law, P.C.
Name of Agent or Representative

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



Notary Public

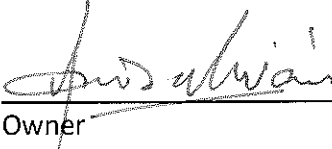


Notary Public

Notary Public

Notary Public

ArcOne Construction Company

By: 
Owner

Owner

Owner

Owner

DEPARTMENT OF PLANNING & SUSTAINABILITY

FILING FEES

At the time of submittal, a filing fee shall accompany each application as follows:

<u>Rezoning</u>	<u>FEE</u>
RE, RLG, R-100, R-85, R-75, R-60 MHP, RNC, RSM, MR-1. M-2	\$500.00
HR-1, HR-2, HR-3 MU-1, MU-2, MU-3, MU-4, MU-5 O-L, OD, OIT, NS, C-1, C-2, M. M-2	\$750.00

If the application is a request to rezone to more than one zoning district, the higher fee will apply.

Applications for non-contiguous property (separated by a street) must be filed separately. A separate fee will be charged for each application. Applications deferred “full cycle” do not require additional fees. An application that is withdrawn and later re- filed will be treated as a new case and will require a new fee.

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Interim Director
Cedric Hudson

PRE-APPLICATION FORM REZONE, SPECIAL LAND USE PERMIT, MODIFICATION, AND LAND USE (Required prior to filing application: signed copy of this form must be submitted at filing)

Applicant Name: Joshua Mahoney Phone: 404-597-6807 Email: jsm@battlelawpc.com

Property Address: 1481 LaVista Road, Atlanta, GA 30324

Tax Parcel ID: 18 108 06 006 Comm. District(s): 2 & 6 Acreage: 0.62

Existing Use: _____ Single family detached residential _____ Proposed Use: SFD

Supplemental Regs: _____ Overlay District: _____ DRI: _____

Rezoning: Yes No _____

Existing Zoning: R-75 Proposed Zoning: R-60 Square Footage/Number of Units: _____

Rezoning Request: Rezone from R-75 to R-60 to allow four single family detached houses.

WHAT TO KNOW BEFORE YOU FILE YOUR APPLICATION

Pre-submittal Community Meeting: _____ Review Calendar Dates: _____ PC: _____ BOC: _____

Letter of Intent: _____ Impact Analysis: _____ Owner Authorization(s): _____ Campaign Disclosure: _____

Zoning Conditions: _____ Community Council Meeting: _____ Public Notice, Signs: _____

Tree Survey, Conservation: _____ Land Disturbance Permit (LDP): _____ Sketch Plat: _____

Bldg. Permits: _____ Fire Inspection: _____ Business License: _____ State License: _____

Lighting Plan: _____ Tent Permit: _____ Submittal Format: NO STAPLES, NO BINDERS PLEASE

Review of Site Plan

Density: _____ Density Bonuses: _____ Mix of Uses: _____ Open Space: _____

Enhanced Open Space: _____ Setbacks: front _____ sides _____ side corner _____ rear _____

Lot Size: _____ Frontage: _____ Street Widths: _____ Landscape Strips: _____

Buffers: _____ Parking Lot Landscaping: _____ Parking - Auto: _____ Parking - Bicycle: _____

Screening: _____ Streetscapes: _____ Sidewalks: _____ Fencing/Walls: _____

Bldg. Height: _____ Bldg. Orientation: _____ Bldg. Separation: _____ Bldg. Materials: _____

DEPARTMENT OF PLANNING & SUSTAINABILITY

Roofs: _____ Fenestration: _____ Façade Design: _____ Garages: _____ Pedestrian Plan: _____

Perimeter Landscape Strip: _____

Possible Variances: _____ Be cautious of requesting variance if you are proposing to create new lots, new development on new lots should conform. _____

Comments: _ There is a concern about rezoning from R-75 to R60 to maximize the number of new houses without additional justification- there are no nearby R-60 lots. _____

Planner: Rachel Bragg, Zoning Administrator Date: 3/20/2023

FILING FEES

REZONING: RE, RLG, R-100, R-85, R-75, R-60, MHP, RSM, MR-1	\$500.00
RNC, MR-2, HR-1, HR-2, HR-3, MU-1, MU-2, MU-3, MU-4, MU-5	\$750.00
OI, OD, OIT, NS, C1, C2, M, M2	\$750.00
LAND USE MAP AMENDMENT	\$500.00
SPECIAL LAND USE PERMIT	\$400.00

THIS BLOCK RESERVED FOR THE CLERK OF THE SUPERIOR COURT.

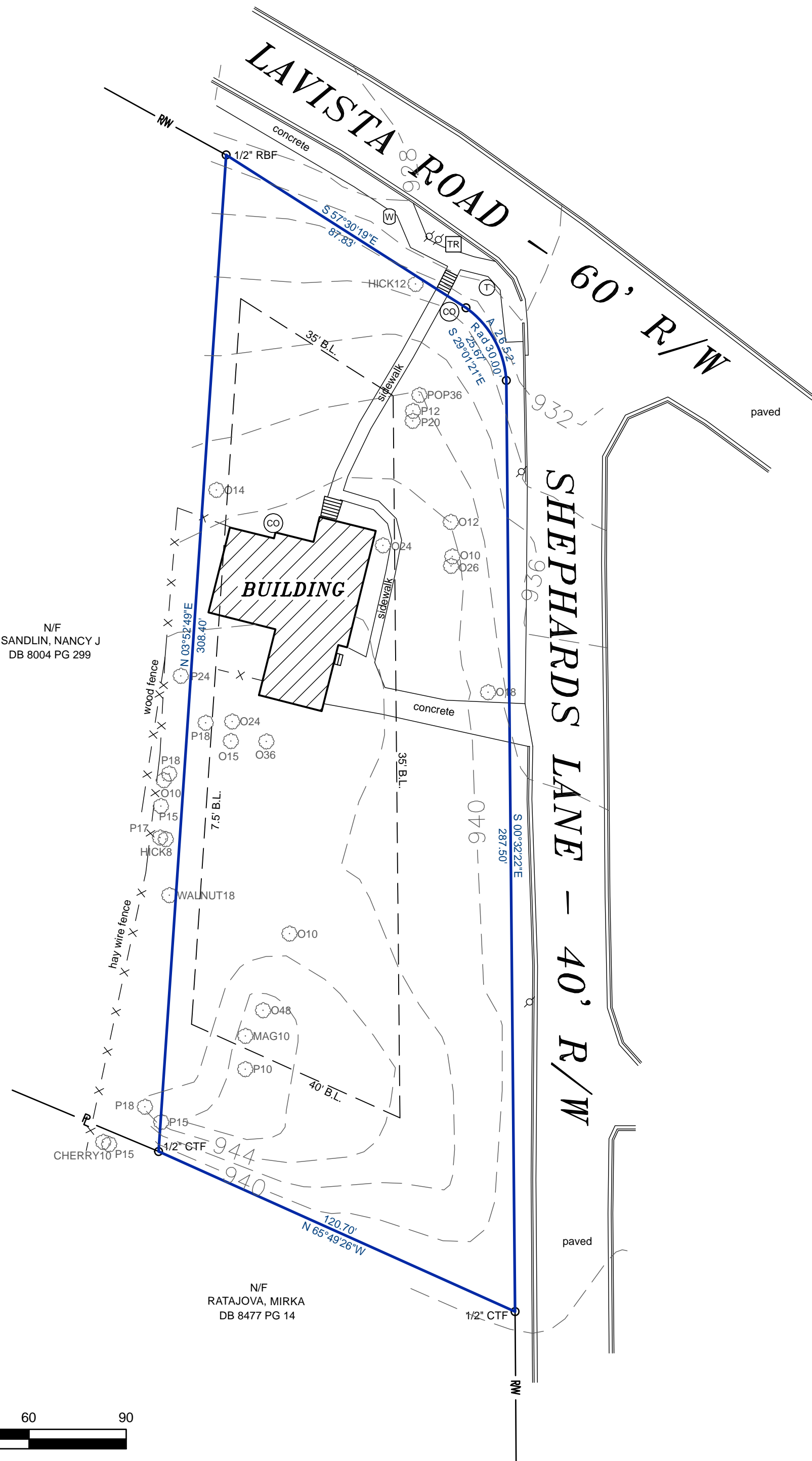


SURVEYORS CERTIFICATION:

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 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.



SURVEY FOR:		ERNEST WILLIAMS	
LAND LOT:	DATE	 1920 Railroad Street Statham Ga 30666 678-726-7582 garmonsurveying@gmail.com	
108	5/24/2019		
DISTRICT: 18	SCALE		
SECTION:	1"=30'	DRAWING NAME: 1481 LAVISTA RD	
COUNTY: DEKALB	JOB NO. 2019-149		



LEGEND

- RBF=REBAR FOUND
- IPS=IRON PIN SET
- OTF=OPEN TOP PIPE FOUND
- N/F=NOW OR FORMERLY
- PL=PROPERTY LINE
- R/W=RIGHT-OF-WAY
- DB=DEED BOOK
- PG=PAGE
- CON=CONCRETE
- ⊕=POWER POLE
- ⊙=TELEPHONE MANHOLE
- ⊠=TRAFFIC BOX
- ⊙=CLEAN OUT
- ⊙036=TREE
- ⊘=DIAMETER IN INCHES
- ⊘=TYPE
- P=PINE
- MAG=MAGNOLIA
- HICK=HICKORY
- O=OAK
- POP=POPLAR

18 108 06 006
1481 LAVISTA ROAD
ATLANTA, GA 30324
30,387.55 S.F.
0.70 Acres
ZONING R-75

NOTES

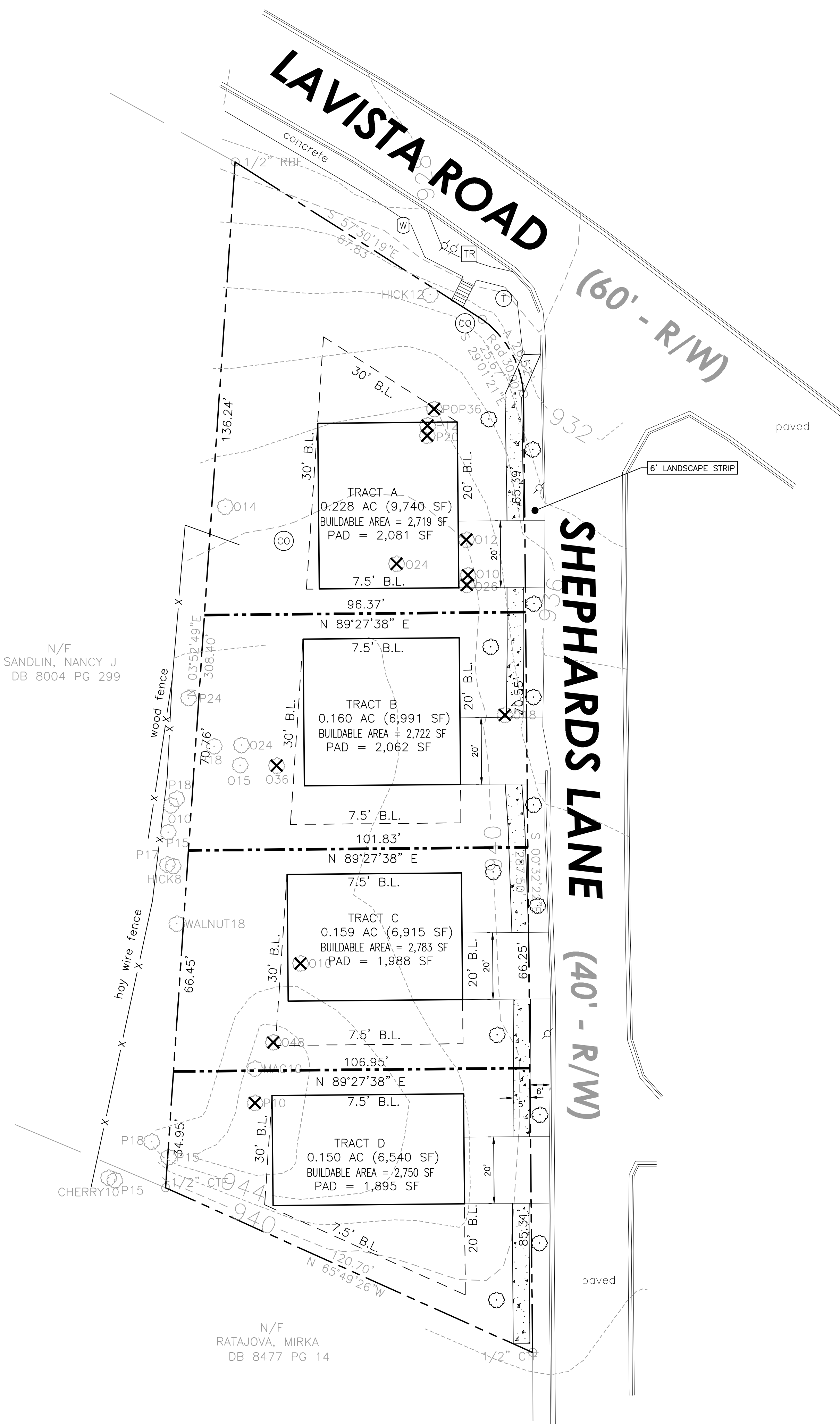
1. ALL IRON PINS SET ARE 1/2" REBAR UNLESS STATED OTHERWISE.
2. SURVEY AND BEARING BASIS ESTABLISHED WITH GPS USING A NETWORK ADJUSTED REAL TIME KINEMATIC ROVER.
3. THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS RELATIVE POSITIONAL ACCURACY OF +0.03 FEET.
4. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 150,000 FEET.
5. EQUIPMENT USED IN THIS SURVEY WAS A CARLSON SURVEYOR + DATA COLLECTOR AND A TOPCON GPT 3003LW TOTAL STATION.
6. FIELD WORK COMPLETED ON MAY 22, 2019.
7. SETBACKS ARE SHOWN FROM COUNTY CODE INFORMATION. GARMON LAND SURVEYING, LLC IS NOT LIABLE FOR ANY DISCREPANCIES.

All that tract or parcel of land being in Land Lot 108 of the 18th district of DeKalb County, Georgia and being more particularly described as follows:

Beginning At The Point Of Intersection Of The Southerly Right-Of-Way Of Lavista Road (60' Right-Of-Way) and The Westerly Right-Of-Way Of Shephards Lane (40' Right-Of-Way); Thence Following The Right-Of-Way Of Shephards Lane With A Curve Turning To The Right With An Arc Length Of 26.52', With A Radius Of 30.00', With A Chord Bearing Of South 29°01'21" East, With A Chord Length Of 25.67', To A Point; Thence South 00°32'22" East A Distance Of 287.50 Feet To A Point; Thence Leaving Said Right-Of-Way North 65°49'26" West A Distance Of 120.70 Feet To A Point; Thence North 03°52'49" East A Distance Of 308.40 Feet To A Point Along The Right-Of-Way Of Lavita Road; Thence Following Said Right-Of-Way South 57°30'19" East A Distance Of 87.83 Feet To A Point; Which Is The Point Of Beginning,

Having An Area Of 30387.55 Square Feet, 0.698 Acres

C:\Users\jhamer\Desktop\2023-001_A\01 - 1481 Lavista Road, DeKalb County\Engineering\Design\Conceptual Drawing\2023-001_CP_1_PLOT.DWG: 4/26/2023 11:27 AM



FLOOD ZONE NOTE:

BY GRAPHICAL PLOTTING, ACCORDING TO F.I.R.M. MAP NO. 13089C0054K, WITH AN EFFECTIVE REVISED DATE OF 8-15-2019, THIS PROPERTY LIES WITHIN ZONE "X". ZONE "X" IS NOT A SPECIAL FLOOD HAZARD ZONE UNINUNATED BY THE 100-YR FLOOD.

BUILDING NOTE:

HOUSES SHOWN ON THIS PLAN ARE NOT MEANT TO REPRESENT THE FINAL FOOTPRINT OF THE HOUSES. SHAPE AND SIZE OF FOOTPRINT WILL NOT BE DETERMINED UNTIL THE TIME OF PERMITTING.

DRIVEWAY NOTE:

ALL DRIVEWAY ENTRANCES MUST BE AT LEAST FIFTY (50) FEET FROM AN INTERSECTION. THE DISTANCE IS MEASURED ALONG THE STREET FROM THE JUNCTION OF THE TWO (2) STREET CURB LINES TO THE NEAREST EDGE OF THE ENTRANCE.

TREE LEGEND:

- = EXISTING TREE TO REMAIN
- ✕ = EXISTING TREE TO BE REMOVED
- ⊙ = PROPOSED TREE

TREES TO BE REMOVED:

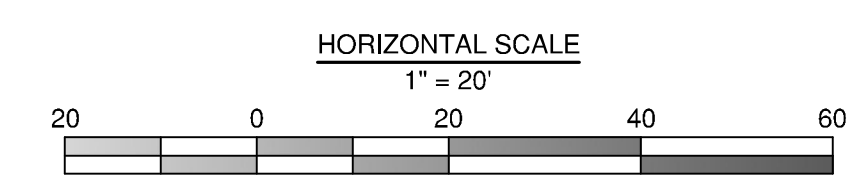
- TRACT A:**
- 36" POPLAR
 - 12" PINE
 - 20" PINE
 - 24" OAK
 - 12" OAK
 - 10" OAK
 - 26" OAK
- TRACT B:**
- 18" OAK
 - 36" OAK
- TRACT C:**
- 10" OAK
 - 48" OAK
- TRACT D:**
- 10" PINE

LANDSCAPE NOTE:

EACH SINGLE-FAMILY RESIDENTIAL LOT ON WHICH NEW DEVELOPMENT OCCURS SHALL BE PLANTED WITH A MINIMUM OF THREE (3) NEW TREES. STREET TREES ALONG THE LOT FRONTAGE SHALL COUNT TOWARDS THIS REQUIREMENT. THE SPECIES AND SPECIFICATIONS FOR THE TREES TO BE PLANTED IN COMPLIANCE WITH THIS REQUIREMENT SHALL MEET THE REQUIREMENTS OF A LIST APPROVED BY THE DEKALB COUNTY ARBORIST.

ZONING NOTES:

	EXISTING	PROPOSED
SITE ZONING	R75	R60
LOT AREA	0.70 AC (30,387.55 SF)	N/A
ZONING REQUIREMENTS (R60 ZONING)		
MINIMUM LOT WIDTH	60 FT	60 FT
MINIMUM AREA	6,000 SQFT	6,540 SQFT
MINIMUM LOT WIDTH AT BUILDING LINE	60 FT	66.25 FT
MAXIMUM LOT COVERAGE	35%	35%
MINIMUM HEATED SOFT	1,200 SQFT	1,200 SQFT
MAXIMUM BUILDING HEIGHT	35 FT	35 FT
MINIMUM OPEN SPACE	20%	20%
BUILDING SETBACKS (CSD ZONING)		
FRONT YARD SETBACK (LAVISTA ROAD)	30 FT	30 FT
FRONT YARD SETBACK (SHEPHARDS LANE)	20 FT	20 FT
SIDE YARD SETBACK	7.5 FT	7.5 FT
REAR YARD SETBACK	30 FT	30 FT
PROPOSED LOT SUMMARY		
AVERAGE LOT AREA	N/A	7,597 SQFT
TOTAL PROPOSED LOTS	N/A	4
LOT DENSITY	N/A	4 LOTS / 0.7 AC = 5.71 LOTS/AC
TOTAL PROPOSED PARKING	2/DU	2/DU



DATA SOURCE NOTE:

THE TOPOGRAPHIC AND ELEVATION DATA SHOWN HEREON WAS OBTAINED FROM _____ AND IS NOT CERTIFIED AS CORRECT BY THIS ENGINEER. USERS OF THIS DATA DO SO AT THEIR OWN RISK.



PRELIMINARY
NOT FOR
CONSTRUCTION



ENGINEERING & LAND SURVEYING
40 JOE KENNEDY BLVD
STATESBORO, GA 30458
913-488-7112 OFFICE
913-488-7125 FAX
NORTHWINDS III
2500 NORTHWINDS PKWY.
ALPHARETTA, GA 30009
404/893-1618 OFFICE
www.maxred.com

NOTE TO CONTRACTOR: IF ANY DISCREPANCIES BETWEEN THE ENGINEER'S PLANS OR CONSTRUCTION STAKES AND ACTUAL SITE CONDITIONS ARISE DURING THE COURSE OF CONSTRUCTION THE CONTRACTOR AND/OR DEVELOPER SHALL NOTIFY THE ENGINEER IMMEDIATELY. THE CONTRACTOR KNOWS OR CAN REASONABLY BE EXPECTED TO HAVE KNOWLEDGE OF ANY DISCREPANCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY CONSTRUCTION STAKES AND SHALL BE RESPONSIBLE FOR THE SAME. HE SHALL NOT BE ENTITLED TO COMPENSATION FOR ANY WORK OR EXPENSE INCURRED BY HIM, WHICH IS REQUIRED TO CORRECT ANY DISCREPANCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY CONSTRUCTION STAKES AND SHALL BE RESPONSIBLE FOR THE SAME. HE SHALL NOT BE ENTITLED TO COMPENSATION FOR ANY WORK OR EXPENSE INCURRED BY HIM, WHICH IS REQUIRED TO CORRECT ANY DISCREPANCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY CONSTRUCTION STAKES AND SHALL BE RESPONSIBLE FOR THE SAME. HE SHALL NOT BE ENTITLED TO COMPENSATION FOR ANY WORK OR EXPENSE INCURRED BY HIM, WHICH IS REQUIRED TO CORRECT ANY DISCREPANCIES.

REVISIONS

NO.	DATE	DESCRIPTION

PROP. RESIDENTIAL SUBDIVISION
1481 LAVISTA ROAD
DEKALB COUNTY, GA
CONCEPT PLAN A

DESIGNED BY: DJB
DATE: 04/20/2023
JOB NO.: 2023-001
SCALE: AS SHOWN

DRAWING NUMBER
C1.0
SHEET NUMBER 1 of 1



Battle Law

3562 Habersham at Northlake, Bldg. J, Ste 100
Tucker, Georgia 30084

Zoom Instructions:

Go to <https://otago.zoom.us/join> and Enter the Meeting ID that you have been provided with in the appropriate field and click "Join" . To join by phone, please dial (646) 558-8656. If you are unable to attend or would like to learn more about the proposed project, please call our office at the number below.

We encourage you to come out and participate!

For More Information Contact
Jordan Battle at:
Phone: 404-601-7616 ext. 8
Fax: 404-745-0045
Email: jnb@battlelawpc.com

COMMUNITY MEETING TO DISCUSS THE REZONING OF CURRENT PROPERTY FROM R75 TO R60 ALLOW FOR FOUR SINGLE FAMILY DETACHED HOMES

Title: 1481 LaVista Rd

When: April 13th, 2023

Time: 6:00 PM Eastern (US and Canada)

Register in advance for this meeting:

<https://otago.zoom.us/join>

Meeting ID: 838 7397 8673

Password: 755696

PROPOSED LOCATION(S):

Parel Number: 18 108 06 006



Battle Law

3562 Habersham at Northlake, Bldg. J, Ste 100
Tucker, Georgia 30084

PLEASE
PLACE
STAMP
HERE

«Name»

«Address»

«City», «State» «Zip»

First Name	Last Name	Email
Cindy	Cohen	cindy6000@bellsouth.net
Bryan	Warnock	president@lindberghlavista.org
Nancy		ns1477@yahoo.com
Michael	Morrison	M@Aliasmorrison.com
Sue	Sherrill	sesherrill@comcast.net
Wendy	Jacobson	wjaco02@gmail.com
Louis	Myer	Lamy@aol.com
Doris Robinson & Isaac Cady		isaac.cady@gmail.com
Andy	Kumar	andy@arconecosntruction.com
Lawrence	Toner	elptee@gmail.com
Ryan	Jordan	Ryan.jordan@arconeconstuction.com
Perry	Nicodemus	plnicodemus@comcast.net
Ryan	Jordan	Ryan.Jordan@arconeconstruction.com









1266

1266



1107











1221







Battle Law

STATEMENT OF INTENT

and

Other Material Required by
DeKalb County Zoning Ordinance
For
A Rezoning from R-75 to R-60 to allow for
Four (4) Single-Family Detached Homes

of

ArcOne Construction Company
c/o Battle Law, P.C.

for

+/-0.7 Acres of Land
Being 1481 LaVista Road, Atlanta, GA.
DeKalb County, Georgia and
Parcel Nos. 18 108 06 006

Submitted for Applicant by:

Michèle L. Battle, Esq.
Battle Law, P.C.
Habersham at Northlake, Building J, Suite 100
Tucker, Georgia 300384
(404) 601-7616 Phone
(404) 745-0045 Facsimile
mlb@battlelawpc.com



Battle Law

I. LETTER OF INTENT

ArcOne Construction Company (the “Applicant”) is seeking to develop on +/- 0.7 acres of land being Tax Parcel No(s). 18 108 06 006 having frontage on 1481 LaVista Road, Atlanta, GA (the “Subject Property”) with single-family detached homes. The Applicant is seeking a rezoning of the Subject Property from R-75 to R-60 to allow for four (4) single-family detached homes. The current land use designation for the Subject Property is Suburban.

This document serves as a statement of intent, analysis of the criteria under the DeKalb County Zoning Ordinance and contains notice of constitutional allegations as a reservation of the Applicant’s rights.

II. DEKALB COUNTY REZONING CRITERIA

1. *Whether the zoning proposal is in conformity with the policy and intent of the Comprehensive Plan;*

The zoning proposal is in conformity with the policy and intent of the Comprehensive Plan. The Subject Property has Suburban future land use and does not fall within an overlay. The zoning proposal seeks to rezone from R-75 to R-60 to allow for four single-family detached homes. R-75 and R-60 both allow for single-family detached homes and both are permitted zoning districts in the Suburban future land use designation. Additionally, the area immediately surrounding the Subject Property is developed with single-family detached homes, a health care facility, townhomes, and apartments. This development will serve as a suitable transition from the higher intensity uses east of the Subject Property to the lower intensity uses west and south of the Subject Property. So, the zoning proposal does not seek to introduce a new use to the area or a use that is incompatible with the Comprehensive Plan. Therefore, the zoning proposal is in conformity with the policy and intent of the Comprehensive Plan.

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

The zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The zoning proposal seeks to allow four single-family detached homes. The surrounding properties are developed with single-family detached homes. Additionally, the zoning proposal seeks to rezone the Subject Property from R-75 to R-60. While the surrounding properties are zoned R-75, OI, MR-2, and R-85, the properties south of the Subject Property are sixty-two (62) feet wide on average. So, those lots are non-conforming to their R-75 zoning. In fact, they are much closer in size to R-60. Rezoning the Subject Property to R-60 would allow for the lot sizes of the new homes to be closer to the size of the existing lots to the south. Therefore, the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties.



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3. *Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;*

The property to be affected by the zoning proposal does not have a reasonable economic use as currently zoned.

4. *Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby properties;*

The zoning proposal will not adversely affect the existing use or usability of adjacent or nearby properties. The zoning proposal will continue the suburban character of the existing neighborhood by extending the single-family detached use.

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

There are changing conditions affecting the use and development of the property which give supporting grounds for approval of the zoning proposal. Prior to the Applicant gaining possession of the Subject Property, the former owner left the Subject Property in state a of disrepair. Several neighbors have voiced their concerns about the state of the property and Code Enforcement has visited the Subject Property. The Applicant has been unable to act upon the Code Enforcement violations because they did not have control of the Subject Property. Now that the Applicant has control of the Subject Property, they are working diligently to address the Code Enforcement violations left over by the previous owner. The Applicant will be bringing the Subject Property into a much better state. This will ensure that the surrounding property owners are granted relief from any issues they are experiencing because of the state of the Subject Property. Therefore, there are changing conditions affecting the use and development of the property which give supporting grounds for approval of the zoning proposal.

6. *Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources;*

The zoning proposal will not adversely affect historic buildings, sites, districts, or archaeological resources. The Subject Property is not within a historic district nor is it near one. The Applicant is not aware of any historic buildings or archaeological resources on the site.

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

The zoning proposal will not result in a use which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. The zoning proposal seeks to allow four single-family detached homes. Any impact four homes have on any of the County's infrastructure or resources will be minimal. Therefore, the zoning proposal will not result in a



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use which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

8. *Whether the zoning proposal adversely impacts the environment or surrounding natural resources*

The zoning proposal will not adversely impact the environment or surrounding natural resources. The zoning proposal does seek to develop four homes on land with trees. However, this development will not impact the trees any more than any other development would. Additionally, there are no other environmental or natural resources nearby to be impacted. Therefore, the zoning proposal will not adversely impact the environment or surrounding natural resources.

III. CONCLUSION

For the foregoing reasons, the Applicant hereby requests that the application for a Rezoning from R-75 to R-60 to allow for four (4) single-family detached homes be approved. The Applicant welcomes any questions and feedback from the planning staff.

IV. NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The portions of the DeKalb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or 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 the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and 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 would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The application of the DeKalb County Zoning Ordinance to the Subject Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth 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 the State 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 irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and



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Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia.

A refusal by the DeKalb County Board of Commissioners to amend the land use and/or rezone the Subject Property to the classification as requested 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 Rezoning of the Property 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 Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

A refusal to allow the land use amendment and/or Rezoning in questions would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to allow the land use amendment and/or Rezoning in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A Section 36-66/1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

The existing land use designation and/or zoning classification on the Subject Property is unconstitutional as it applies to the Subject Property. This notice is being given to comply with the provisions of O.C.G.A. Section 36-11-1 to afford the County an opportunity to revise the Property to a constitutional classification. If action is not taken by the County to rectify this unconstitutional land use designation and/or zoning classification within a reasonable time, the Applicant is hereby placing the County on notice that it may elect to file a claim in the Superior Court of Fulton County demanding just and adequate compensation under Georgia law for the taking of the Subject Property, diminution of value of the Subject Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

MLB

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