



Lorraine Cochran-Johnson

Chief Executive Officer

**DeKalb County Zoning Board of Appeals**  
Department of Planning & Sustainability  
178 Sams Street,  
Decatur, GA 30030

**Wednesday July 9, 2025**

**Planning Department Staff Analysis**



Cedric Hudson

Interim Director

**N3. Case No: A-25-1247582**

**Parcel ID(s): 18 152 01 054**

**Commission District 02 Super District 06**

Applicant: CSS 18, LLC c/o Battle Law, P.C.  
1600 Mount Mariah Road NE  
Atlanta, GA 30329

Owner: CSS 18, LLC c/o Battle Law, P.C.  
1600 Mount Mariah Road NE  
Atlanta, GA 30329

Project Name: 1600 Mount Mariah – Transitional buffer reduction

Location: 1600 Mount Mariah Road NE, Atlanta, GA 30329

Requests: Application by CSS 18, LLC, c/o Battle Law to request variances from Section 27-4.2.42 of the DeKalb County Zoning Ordinance to allow facility in the HR-2 (High Density Residential-2) zoning district.

1. Reduce transitional buffer from fifty (50) feet to zero (0) feet along the eastern Property line and
2. Reduce parking buffer on the eastern property line from twenty (20) feet to five (5) feet

**Staff Recommendation:** Denial

## **STAFF FINDINGS:**

The applicant, CSS 18, LLC c/o Battle Law, P.C., seeks variances from Section 27-2.2.1 of the DeKalb County Zoning Ordinance to reduce the required 50-foot transitional buffer to 0.8 feet and to allow parking area encroachment into the transitional buffer on a 0.77-acre parcel currently developed as a place of worship with an accessory classroom building. The accessory classroom building was installed in 2022 without development permits. This variance is to retroactively approve the location of building.

The request is a follow-up an approved Special Land Use Permit (SLUP) application intended to formalize the site's legal status while recognizing the historic use of the property as a place of worship for more than 60 years. The applicant asserts that the longstanding size and layout of the site, combined with its small lot area relative to zoning expectations for places of worship, create unique conditions necessitating the requested variances.

**1. There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), 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 distinguished from a special privilege or convenience sought by the property owner.**

The property's size of 0.77 acres is significantly below the three-acre lot size typically required for places of worship under current zoning regulations. The surrounding context includes a historic cemetery, multi-family residential, and vacant commercial properties, which the applicant argues reduces the potential impact of transitional buffer reductions.

Although the lot is smaller than required, it does not inherently justify the placement of new accessory structures or parking within the buffer. Alternative site configurations that maintain the required transitional buffer appear possible.

**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 requested variances may not be the minimum necessary to bring the existing site improvements into compliance as there are alternative placements to be considered. The placement of the classroom trailer and associated improvements within the buffer represents a self-created condition. The site could be reconfigured to remain functional for this use while respecting buffer requirements.

**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 the requested variances is unlikely to result in material detriment to public welfare, as the use has operated in its current location for decades without reported adverse impacts on traffic, noise, or adjacent properties. The property's relationship with surrounding land uses, including a cemetery, further reduces potential conflicts.

The proposed buffer reduction is adjacent to a cemetery in an R-75 zoned district. It is unlikely that the classroom's proximity to a cemetery would adversely impact that longstanding use.

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

Strict application of the buffer requirements would require the removal or relocation of existing site improvements, including the temporary classroom trailer, and the reconfiguration of parking areas.

The hardship related to the trailer's location is self-imposed, as the structure's location was selected and the building installed without appropriate approvals and could potentially be relocated within the site to meet buffer requirements.

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

The HR-2 zoning district and the Comprehensive Plan support the provision of community-serving institutional uses within established neighborhoods, emphasizing compatibility and the maintenance of neighborhood character. The requested variances could support the continued operation of the place of worship while addressing historical nonconformities. The Comprehensive Plan and zoning ordinance also seek to preserve buffers between incompatible uses to protect residential and community character, however, the neighboring uses of place of worship and cemeteries may be compatible with each other.

**FINAL STAFF ANALYSIS:**

**Staff recommends denial of the variance request.** The small lot size and historic use support consideration of limited relief; however, unresolved compliance issues with the temporary classroom trailer and propane tank, as well as concerns regarding the scale of the buffer reduction, warrant additional review.

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

Applicant and/or  
Authorized Representative: CSS 18, LLC c/o Battle Law PC  
Mailing Address: 3562 Habersham at Northlake, Building J, Suite 100  
City/State/Zip Code: Tucker, GA, 30084  
Email: cag@battlelawpc.com  
Telephone Home: 678-424-0387 Business: 404-601-7616

**OWNER OF RECORD OF SUBJECT PROPERTY**

Owner: 2490 N. Druid LLC  
Mailing Address: 121 Alhambra Plaza, Suite 1600, Coral Gables, FL 33134  
Email: \_\_\_\_\_ Telephone: \_\_\_\_\_ Business: \_\_\_\_\_

**ADDRESS/LOCATION OF SUBJECT PROPERTY**

Address: 1600 Mount Mariah City: Atlanta State: GA Zip: 30329  
District(s): \_\_\_\_\_ Land Lot(s): \_\_\_\_\_ Block: \_\_\_\_\_ Parcel: 18 152 01 054  
Zoning Classification: HR-2 Commission District & Super District: 2 & 6

**CHECK 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.)

☐

OFFICIAL APPEAL OF ADMINISTRATIVE DECISIONS.

**\*PLEASE REVIEW THE FILING GUIDELINES ON PAGE 4. FAILURE TO FOLLOW  
GUIDELINES MAY RESULT IN SCHEDULING DELAYS.\***

## 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.

5-20-2025

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

*[Handwritten Signature]* - *Chief, Authorized Representative*

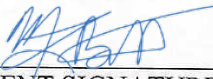
DEPARTMENT OF PLANNING & SUSTAINABILITY

**AUTHORIZATION TO REPRESENT 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 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.

5-20-2025  
DATE: \_\_\_\_\_

  
APPLICANT/AGENT SIGNATURE \_\_\_\_\_

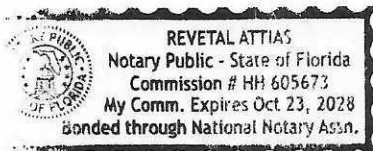
TO WHOM IT MAY CONCERN:

(I)/ (WE): 2490 N Druid, LLC  
Name of Owner(s) \_\_\_\_\_

being (owner/owners) of the property described below or attached hereby delegate authority to the above signed agent/applicant.

  
Notary Public \_\_\_\_\_

 *Authorized Representative*  
Owner Signature \_\_\_\_\_



Chief Executive Officer  
Michael Thurmond

## DEPARTMENT OF PLANNING & SUSTAINABILITY

Interim Director  
Cedric Hudson

### PRE-APPLICATION FORM ZONING BOARD OF APPEALS

#### **Applicant**

Applicant Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

#### **Meeting Information**

Date/Time: \_\_\_\_\_ Planner Name: \_\_\_\_\_

Planner Email: \_\_\_\_\_

#### **Subject Property**

Property Address: \_\_\_\_\_

Comm. District(s): \_\_\_\_\_ Tax Parcel ID: \_\_\_\_\_

Zoning: \_\_\_\_\_ Land Use: \_\_\_\_\_ Overlay: \_\_\_\_\_

Existing Use: \_\_\_\_\_ Supplemental Regs: \_\_\_\_\_

#### **Proposed Project**

Code sections and Amounts seeking a variance from:

Case context and intended project:

## ***Ordinance Criteria for Variance Hardships***

*Derived from the ordinance and translated into Layman's Terms*

*(Chapter 27 Section 7.5.2)*

### **1. Physical Conditions of the site – *What did mother nature do?***

Address the specific issues of the ***physical condition*** of the property that make it a special case. This could be its narrowness, shallowness, unique shape, or other physical features such as floodplains, trees, or a steep slope. These conditions should be the result of natural order, not created by you or a prior owner.

### **2. Minimum Variance Necessary – *Are you asking for just the right amount?***

Demonstrate that your request is only for the ***minimum necessary*** to make your property usable and does not provide any special advantages that aren't available to other property owners in your zoning district.

### **3. Public Welfare – *Does this harm or benefit your neighbors?***

Discuss the ***potential impact*** of your proposed changes on your neighborhood and community. Show that the variance you're seeking won't harm public welfare, neighboring properties, or any improvements in the same zoning district.

### **4. Ordinance Hardship – *Does the ordinance prevent your project?***

Detail how a ***strict interpretation of the zoning laws*** would cause undue hardship for you. This could be in terms of impracticality or inability to use your property effectively. Think of this as, ***“if denied, what would happen?”***

### **5. Alignment with the Spirit of the Law**

Demonstrate how your variance request aligns with the overall purpose of the zoning laws and the DeKalb County Comprehensive Plan. Show that your proposal does not undermine these broader goals and policies, but rather seeks a reasonable adaptation to them. Ask your assigned planner for text regarding the parcel's assigned land use.



## THE ZBA PROCESS – “The Four Bus Stops”

### The Application Itself

- Application requirements
  - Application
    - Owner Authorization
    - Property Access Form
    - Application Authorization
  - Letter of Intent (LOI)
    - See Page 4, *Preparing your Letter of Intent*
  - Site Plan
    - Georgia-registered engineer/surveyor validation stamp
    - Property lines and dimensions; To-Scale
    - Locations of existing and proposed structures
    - Landmark features including trees and fences
    - Lot area and coverage breakdown
    - Legal description required if not within a platted subdivision
  - Other relevant materials (Photographs, Letters of Support, Citations, etc.)
- Things to know
  - Your application will be publicly available
  - Your application is what represents your case – Ensure your case is well represented! The onus is yours.
  - Staff maintains a “case file” of your application – You are welcome to continue adding documents to your case file by emailing staff. This case file will be forwarded to the ZBA ahead of the hearing

### Public Notice Requirements

- The State of Georgia requires a minimum 30-day public notice in the form of an on-property sign posting & legal ad displayed in a geographically relevant newspaper.
  - Newspaper Legal Ad/Online Posting
    - This is handled on planning staff’s end.
    - You may view all applications and the agenda here:
      - [Public Hearings Agendas & Minutes | DeKalb County GA](#)
  - Sign Posting
    - Planning staff will email you ahead of time with a PDF file of the sign itself and instructions on ordering & posting. (See page X)
    - Failure to post the sign the time will result in a 60-day deferral of the case.

### Staff Report & Agenda

- Planning staff will prepare a **staff report** ahead of the meeting in which they evaluate your case against ordinance criteria for variance hardships. This report will include a staff recommendation for ZBA’s action. (Approve, deny, defer, etc.)
  - Hot-tip: Staff’s recommendation isn’t based on how we feel, it is based on the variance hardship criteria from the previous page. Essentially, we are representing the ordinance itself. ZBA can still vote anyway they’d like as they are a board appointed by elected officials.
- Staff will email this report along with the **agenda for the ZBA Meeting** when the report is prepared, typically the week before the meeting.

**The Zoning Board of Appeals (ZBA) Meeting**

- The Zoning Board of Appeals (ZBA) is a quasi-judicial board of seven members appointed by the Board of Commissioners who meet once a month to determine actions on variance requests and appeals.
- When your case is called by the Chairperson:
  - The assigned **planner will present case context and the staff report** along with the staff recommendation. Typically this portion is quick – Five minutes at most.
  - Community is given opportunity to **state their oppositions and support**.
    - Chairperson grants five minutes *collectively* to each side.
  - ZBA will have guided **open discussion** in which **they will ask you questions**.
    - This means **you or a representative are required to attend the meeting**.
    - It is important to be prepared to answer any questions.
    - Staff recommends to best be prepared for any questions It is their job to “poke holes” at your proposal in conjunction with the five hardship criteria.
  - ZBA will then make a motion for an action regarding your case. (Approval, denial, defer, etc.)

## YOUR VARIANCE TIMELINE

Application Deadline: \_\_\_\_\_

Sign Posting Deadline: \_\_\_\_\_

ZBA Meeting: \_\_\_\_\_

## APPLICATION SUBMITTAL INSTRUCTIONS

- 1. Compile all completed materials into a single PDF file, preferably in the following order.**
  - a. ZBA Public Hearing Application
  - b. Owner Authorization
  - c. Property Access Form
  - d. Application Authorization (If Applicable)
  - e. Letter of Intent
  - f. Site Plan
  - g. Other relevant materials (Photographs, Letters of Support, Citation, etc.)
- 2. Head over to <https://epermits.dekalbcountyga.gov/> to create/update your account.**
  - a. Head to the above link and create/update your account
  - b. Start a “ZBA-Variance” application and follow instructions to fill in the prompted fields and submit your PDF file.
  - c. If done correctly, you should see your application number (**1247XXX**). This number is your case! You will need this for the next step.
  - d. You will be notified to pay the \$300 ZBA application fee.
- 3. Email [LJCarter@DeKalbCountyGA.gov](mailto:LJCarter@DeKalbCountyGA.gov) your application number (**1247XXX**) and application package/contents**
  - a. This alerts staff that you’ve submitted your application and acts as a failsafe should there be technical errors. Failure to do so may result in a deferral.

## PREPARING YOUR LETTER OF INTENT

Your Letter of Intent (LOI) serves a crucial role when seeking a zoning variance. It's your opportunity to clearly communicate your unique circumstances, address the specific zoning requirements of DeKalb County, and demonstrate how your proposal aligns with the broader goals of the community.

### Formatting your letter

- Intro – Setting context
  - *Kindly* introduce yourself to the Zoning Board of Appeals (ZBA)
  - Start by addressing the specific code and amount you're seeking a variance for
  - Describe the entire scope of work for your intended project and where the variance applies
  - Brownie Points – Things that may not fall under the hardship criteria
- Body – Addressing the hardship criteria
  - Address the five variance criteria (Page 2) individually, 1-2 paragraphs each
  - This is why we walked through them together!
    - Physical Conditions
    - Minimum Necessary
    - Public Welfare
    - Ordinance Hardship
    - Alignment with Spirit of the Law
- Conclusion
  - Summarize your request and thank the ZBA for their time and consideration

### Pro Tips

- Consider your audience! Keep it simple, but not too simple.
- Respect the process; Don't bite the hands that feed you.
- Cost & time of your project is not a hardship. Mentioning cost may even hurt your case.
- If using AI software, ensure that all information is correct as AI can "hallucinate"
- Reach out to a planner if you're unsure of anything
- Ensure your application represents your case to the best of your ability

*Variances aren't granted, they're earned.*

## **Example Letter of Intent**

Subject: Variance Request for Rear Yard Setback Reduction - Section 27-2.2.1 – Accessory Structure Construction

Dear Members of the Zoning Board of Appeals,

My name is Grover, and I am writing to formally request a variance from Section 27-2.2.1 of the DeKalb County Zoning Ordinance. My request pertains to the reduction of the rear yard setback requirement from 40 feet to 30 feet for my property located at 124 Sesame Street. The purpose of this variance is to facilitate the construction of an accessory dwelling unit, aptly named, “The Bird’s Nest.” The intended resident requires specific dimensions for his living quarters.

### **1. Physical Conditions of the Site:**

The unique physical conditions of my property constitute a special case necessitating this variance. The parcel is characterized by a narrow and irregular shape, making compliance with the 40-foot rear yard setback particularly challenging. Additionally, the presence of specimen trees, a natural feature of the land, further restricts the feasible location for constructing the accessory structure. These conditions are inherent and not a result of any actions taken by me or previous property owners.

### **2. Minimum Variance Necessary:**

I assure you that my request is solely for the minimum variance necessary to render my property usable, the Bird’s Nest must be constructed to a specific parameter and size to accommodate the resident that will be residing there. The 30-foot setback is essential for the practical and reasonable placement of the Bird's Nest, ensuring that I can enjoy full use of my property without seeking advantages beyond those available to other property owners in the same district.

### **3. Public Welfare:**

The proposed addition will provide a positive impact on the neighborhood and community. I have received a letter of support from my neighbor, Oscar, who resides at 125 Sesame Street and does not feel the addition would intrude on his privacy nor create additional noise or traffic in the area. The reduced setback will not pose any harm to public welfare, neighboring properties, or the overall improvements in the R-75 zoning district. The Bird's Nest will be a modest and tasteful addition, enhancing the property without imposing adverse effects on the surrounding area.

### **4. Ordinance Hardship:**

A strict interpretation of the zoning laws, in this case, would cause undue hardship for me. The impracticality of adhering strictly to the 40-foot setback would limit my ability to use the property effectively. The variance is, therefore, essential to prevent unnecessary hardship and allow for a reasonable use of my land.

### **5. Alignment with the Spirit of the Law:**

I firmly believe that my variance request aligns with the intent of the Suburban Character Area, as outlined in the DeKalb County Comprehensive Plan. The proposed construction of the Bird's Nest is in line with the goals of recognizing traditional suburban land use patterns while encouraging increased connectivity and accessibility. The development aims to enhance community connectivity, preserve and improve existing greenspace, and align with the proposed density of up to 8 dwelling units per acre for areas of this type.

In conclusion, I appreciate your time and consideration of my variance request. I am committed to working collaboratively to ensure that my proposed changes align with the broader goals and policies of DeKalb County. Thank you for your attention to this matter.

Sincerely,

**Grover**

***Variance Criteria***

***In ordinance terms***

***(Chapter 27 Section 7.5.2)***

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.
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.
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.
4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.
5. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.

***Planner's Notes***



# Battle Law

## **STATEMENT OF INTENT**

and

Other Material Required by  
DeKalb County Zoning Ordinance  
For

A Variance from Section 4.2.42(A) and (C) to  
Reduce the Transitional Buffer from Fifty (50) Feet to 0.8 Feet and to Allow the Parking Area to  
Encroach into the Buffer

of

**CSS 18, LLC.**  
**c/o Battle Law, P.C.**

for

**+/-0.77 Acres of Land**  
Being 1600 Mount Mariah Road  
DeKalb County, Georgia and  
Parcel Nos. 18 152 01 054

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](mailto:mlb@battlelawpc.com)





# Battle Law

## **I. LETTER OF INTENT**

CSS 18, LLC. (the “Applicant”) is seeking relief for existing buildings on +/- 0.77 acres of land being Tax Parcel No(s). 18 152 01 054 having frontage on 1600 Mount Mariah Road (the “Subject Property”). The Subject Property is developed with place of worship and an accessory classroom. The Applicant is seeking variances of the Subject Property to reduce the transitional buffer from fifty (50) feet to 0.8 feet and to allow the parking area to encroach into the required buffer. This document serves as a statement of intent, analysis of the criteria under the DeKalb County Code of Ordinances and contains notice of constitutional allegations as a reservation of the Applicant’s rights.

## **II. DEKALB COUNTY VARIANCE CRITERIA**

According to the DeKalb County Code of Ordinances variance from the provisions or requirements of this chapter shall be authorized only upon making all the following findings in writing:

1. *There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), 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 distinguished from a special privilege or convenience sought by the property owner;*

The Subject Property is just 0.77 acres in size. The DeKalb County Code of Ordinances calls for a three (3) acre lot size for places of worship. So, the Subject Property is much smaller than the property for other places of worship. This is likely because the synagogue has been on the Subject Property for decades – well before the current zoning ordinances was in effect. The result is that the Subject Property’s size presents an exceptional physical condition that prevents the Applicant from complying with Section 4.2.42.

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 requested variance is the minimum required to provide relief for the Subject Property because the requested reduction would bring the buildings and parking into conformity and no more.

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 the variances requested will not be detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the property is located. The variances will not allow for new construction. Rather, the variances will bring the Subject Property – with



## Battle Law

the existing improvements – into conformity with the DeKalb County Code of Ordinances. So, the variances will not result in a change on the Subject Property.

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

The literal interpretation and strict application of the applicable provision or requirements of this chapter would result in the demolition of the synagogue and accessory classroom and prevent the Applicant from using the Subject Property as a place of worship.

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

The requested variances are consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.

### **III. CONCLUSION**

For the foregoing reasons, the Applicant hereby requests that the Board of Zoning Appeals approves the application for a variance to reduce the transitional buffer from fifty (50) feet to 0.8 feet and to allow the parking lot to encroach into the buffer. 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.



## Battle Law

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 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 Zoning Board of Appeals to grant the variance of 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 Variance 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 variance 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 variance 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 DeKalb 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.

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Michele L. Battle, Esq.  
Attorney for the Applicant



## SURVEYORS NOTES

## CLOSURE STATEMENT

- THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE PRECISION OF 1 FOOT IN 36,380 FEET AND AN ANGULAR ERROR OF 4 SECONDS PER ANGLE POINT, AND WAS ADJUSTED USING THE COMPASS RULE.
- THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND ITS ACCURACY IS 1 FOOT IN 277,480 FEET.

## EQUIPMENT AND FIELD SURVEY STATEMENT

- LINEAR MEASUREMENTS AND ANGULAR MEASUREMENTS OBTAINED USING A LEICA TS16A TOTAL STATION.
- FIELD SURVEY COMPLETED ON 12-09-2020.

## FLOOD ZONE

- BASED ON GRAPHICAL INTERPRETATION, THIS PROPERTY IS SITUATED IN FLOOD ZONE "X" (AREAS DETERMINED TO BE OUTSIDE 500 YEAR FLOODPLAIN) AS DEPICTED BY THE NFIP FLOOD INSURANCE RATE MAP NO. 13089C0054K, HAVING AN EFFECTIVE DATE OF 08/15/2019. USER OF THIS INFORMATION IS CAUTIONED THAT A MORE PRECISE FLOOD DELINEATION MAY BE NECESSARY.

## ZONING

SITE IS ZONED R-85 (RESIDENTIAL MEDIUM LOT-S) DISTRICT (PER DEKALB COUNTY MAPS, NO ZONING INFORMATION PROVIDED)

- SURVEYOR MAKES NO WARRANTY AS TO THE EFFECT OF ZONING TO THE CURRENT OR FUTURE USE OF THE SUBJECT PROPERTY. USER OF THIS MAP IS HEREBY CAUTIONED TO CONSULT THE APPROPRIATE GOVERNING BODY FOR FINAL INTERPRETATION CONCERNING ZONING.

## PARKING SUMMARY

- REGULAR = 4
- HANDICAP = 0

## UTILITIES

- OVERHEAD AND UNDERGROUND UTILITIES THAT ARE SHOWN HEREON ARE BASED UPON FIELD SURFACE OBSERVATIONS AND MARKINGS PROVIDED BY A UTILITY LOCATION SERVICE. ONLY UTILITIES THAT WERE VISIBLE AND ACCESSIBLE WERE MEASURED. SITE EXCAVATION WAS NOT PERFORMED IN ANY WAY TO MEASURE ANY SUBSURFACE UTILITY OR FEATURE OF ANY TYPE. NOTICE IS HEREBY GIVEN THAT "KNOW WHAT'S BELOW CALL BEFORE YOU DIG" UTILITY LOCATION SERVICE (811) SHOULD BE NOTIFIED PRIOR TO ANY EXCAVATION OF THE SITE.

## STREAMS, BODIES OF WATER, &amp; WETLANDS

- ALL STREAMS, BODIES OF WATER, AND WETLANDS MAY BE SUBJECT TO STATE, COUNTY, AND LOCAL BUFFERS OR RESTRICTIONS. SURVEYOR MAKES NO INTERPRETATION REGARDING THESE BUFFERS OR RESTRICTIONS. USER OF THIS MAP IS CAUTIONED TO CONSULT WITH THE APPROPRIATE GOVERNING AUTHORITIES CONCERNING POSSIBLE BUFFERS OR RESTRICTIONS.

## ARCHEOLOGICAL &amp; HISTORIC

- UNLESS SHOWN HEREON, NO CEMETERIES, ARCHEOLOGICAL, OR ARCHITECTURAL LANDMARKS ARE KNOWN TO EXIST ON THIS SITE. HOWEVER, SURVEYOR HAS NOT EXCAVATED THE SITE OR CONSULTED WITH A QUALIFIED PROFESSIONAL IN THIS FIELD FOR ABSOLUTE CONFORMATION.

## CERTIFICATION

- THIS SURVEY WAS PREPARED FOR THE EXCLUSIVE USE FOR THE CLIENT NAMED HEREON AND REPRESENTS A SPECIFIC SCOPE OF SERVICES.

## REFERENCES

- TOPOGRAPHIC SURVEY FOR DEKALB COUNTY HOLDINGS, LLC AND CHICAGO TITLE INSURANCE COMPANY, PREPARED BY GEOMAGE, DATED 8/02/12.
- OTHER REFERENCES SHOWN HEREON.

## HORIZONTAL DATUM

- HORIZONTAL DATUM WAS ESTABLISHED USING RTK GPS METHODS WITH CORRECTIONS FROM THE CORS NETWORK. HORIZONTAL DATUM IS GEORGIA STATE PLANE, WEST ZONE, NAD83.

## NOTES:

- PURSUANT TO TABLE A, ITEM 16, THERE IS NO EVIDENCE OF CONSTRUCTION OR EARTH MOVING ACTIVITIES OBSERVED.
- PURSUANT TO TABLE A, ITEM 17, THERE IS NO EVIDENCE OF CHANGES IN STREET RIGHTS OF WAY OBSERVED.
- PROPERTY HAS ACCESS TO MOUNT MARIAH ROAD (PUBLIC ROAD), WHICH DEAD ENDS AT THE SOUTH PROPERTY LINE AS SHOWN HEREON.
- NO EVIDENCE OF WETLAND DELINEATION ACTIVITIES OBSERVED.
- THIS IS THE SAME PROPERTY DESCRIBED IN THE TITLE COMMITMENT REFERENCED HEREON.
- THE LEGAL DESCRIPTION OF THE PROPERTY DESCRIBES A MATHEMATICALLY CLOSED FIGURE, IS CONTIGUOUS AND THERE ARE NO GAPS, GORES OR OVERLAPS.
- TRACT 1 AND TRACT 2 ARE CONTIGUOUS TO EACH OTHER ALONG DEFINED BOUNDARY LINES, AND THERE ARE NO GAPS, STRIPS OR GORES SEPARATING ANY OF THE CONTIGUOUS BOUNDARY LINES.

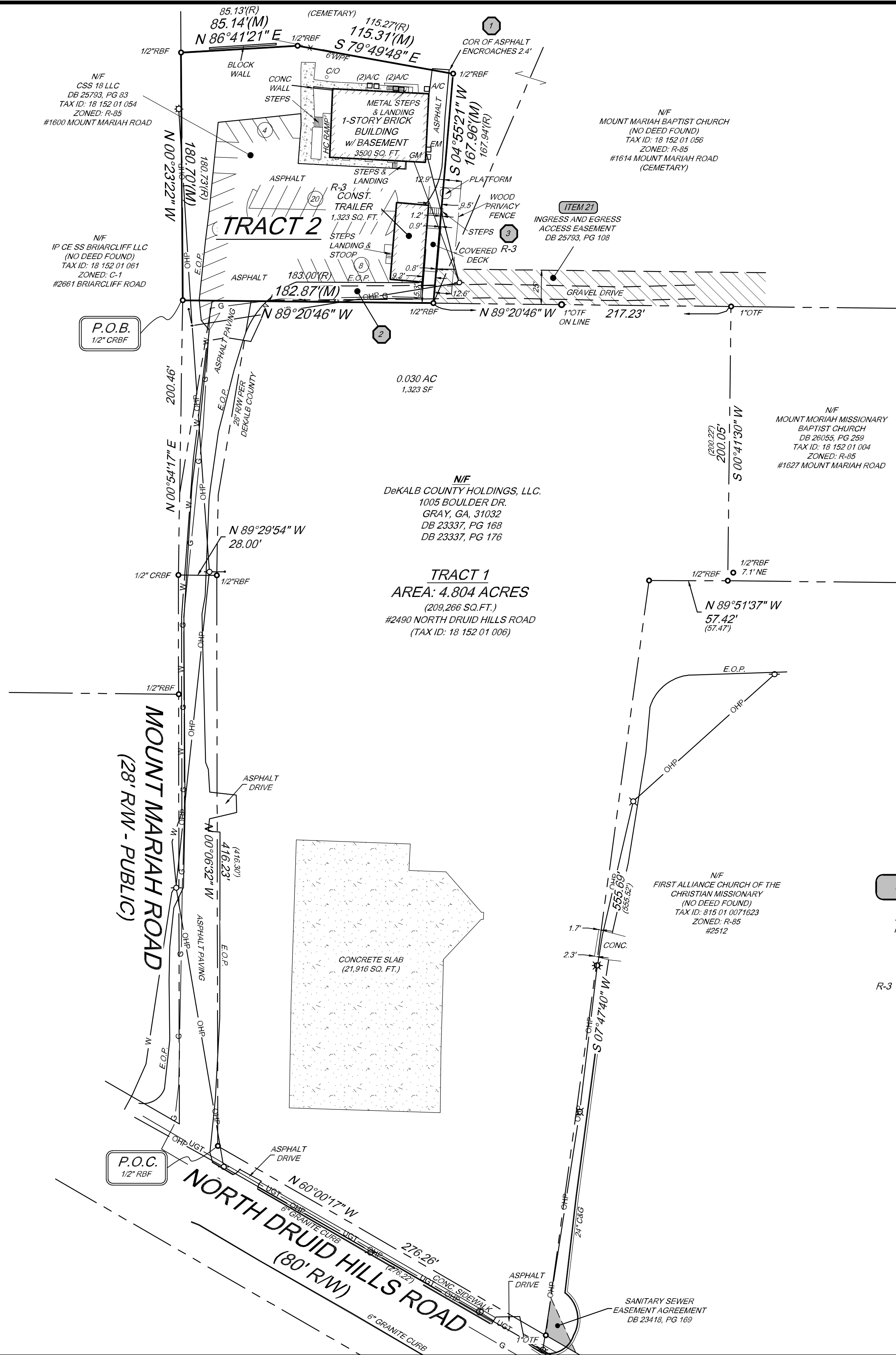
## TITLE EXCEPTIONS

FIDELITY NATIONAL TITLE INSURANCE COMPANY  
ALTA COMMITMENT FOR TITLE INSURANCE  
SCHEDULE B - PART II  
Commitment Number: 201515GA  
Commitment Date: November 19, 2021 at 12:00 AM

- ITEM 17 Easement from Mt. Moriah Church to Georgia Power Company, dated November 19, 1937, filed for record January 10, 1938, recorded in Deed Book 465, Page 592, Records of DeKalb County, Georgia. **NON-DESCRIPTIVE BLANKET EASEMENT. AFFECTS THE SUBJECT PROPERTY. CANNOT BE PLOTTED HEREON.**
- ITEM 18 Right-of-Way Easement from Mt. Moriah Baptist Church to Georgia Power Company, dated March 21, 1967, filed for record April 13, 1967, recorded in Deed Book 2189, Page 203, Records of DeKalb County, Georgia. **NON-DESCRIPTIVE BLANKET EASEMENT. AFFECTS THE SUBJECT PROPERTY. CANNOT BE PLOTTED HEREON.**
- ITEM 19 **INTENTIONALLY DELETED.**
- ITEM 20 **INTENTIONALLY DELETED.**
- ITEM 21 Ingress and Egress Access Easement Agreement between Mt. Moriah Missionary Baptist Church of Tucker Georgia, Inc. and CSS 18, LLC, dated September 12, 2016, filed for record September 15, 2016, recorded in Deed Book 53793, Page 106, Records of DeKalb County, Georgia. **BENEFITS THE SUBJECT PROPERTY AS SHOWN HEREON.**



Know what's below.  
Call before you dig.



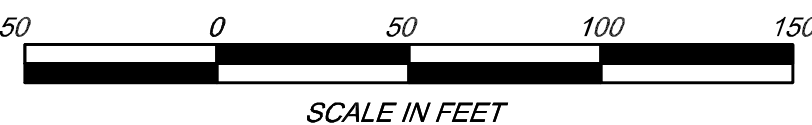
## STATEMENT OF ENCROACHMENTS &amp; SIGNIFICANT OBSERVATIONS

The statements below contain opinions based on field observations and may or may not coincide with facts relative to matter of the public records, actual use of the property, use of improvements, or actual property access.

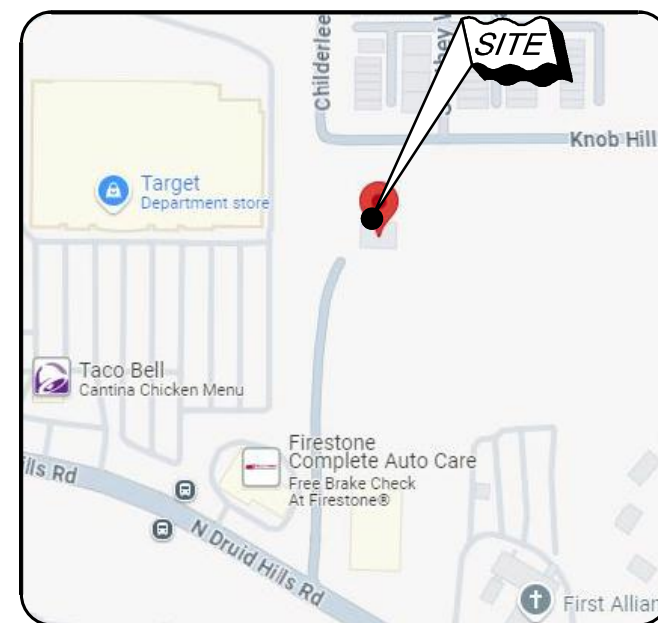
- 1 Corner of asphalt drive encroaches onto north adjoining property as shown hereon.
- 2 Gravel drive across subject property to Ingress and Egress Access Easement (ITEM 17).
- 3 Deck, fence, steps and platform constructed since our previous survey encroach onto adjoining property as shown hereon.

## TRACT 2

AREA = 0.789 ACRES/34,383 SQ. FT.



## LOCATION MAP



COPYRIGHT 2010 AERO SURVEYS OF GA., INC.  
(NOT TO SCALE)

## AS-SURVEYED PROPERTY DESCRIPTION

## Tract 2

All that tract or parcel of land lying and being in Land Lot 152, of the 18th District, DeKalb County, Georgia, and being more particularly described as follows:

To find the **TRUE POINT OF BEGINNING**, COMMENCE at a 1/2" rebar found at the right-of-way intersection of the easterly right-of-way line of Mount Mariah Road (having 28 foot right-of-way) with the northerly right-of-way line of North Druid Hills Road (having an 80 foot right-of-way), thence running along said easterly right-of-way line Mount Mariah Road, N 00°06'32" W a distance of 416.23 feet to a 1/2 inch rebar found; thence N 89°29'54" W a distance of 28.00 feet to a 1/2 inch rebar and plastic cap set; thence N 00°54'17" E a distance of 200.46 feet to a 1/2" rebar found being the **TRUE POINT OF BEGINNING**; thence N 00°23'22" W a distance of 180.70' to a 1/2" rebar found; thence N 86°41'21" E a distance of 85.14' to a 1/2" rebar found; thence S 79°49'48" E a distance of 115.31' to a 1/2" rebar found; thence S 04°55'21" W a distance of 167.96' to a 1/2" rebar found; thence N 89°20'46" W a distance of 182.87' 1/2" rebar found and the **TRUE POINT OF BEGINNING**.

Said tract containing 0.789 acres or 34,383 square feet as depicted on that ALTANS/SPS Land Title Survey prepared by Metro Engineering and Surveying Company, Inc. of McDonough, Georgia, last revised 12-15-21, (Job No. 14999)

## RECORD PROPERTY DESCRIPTION

EXHIBIT "A"  
Legal Description

## Tract 2

All that tract or parcel of land lying and being in Land Lot 152, of the 18th District, DeKalb County, Georgia and being more particularly described as follows:

To find the True Point of Beginning, commence at an iron pin found under the pavement at the intersection of the Northeastern right of way of North Druid Hills Road (right of way varies) and the Westerly right of way of Mount Marian Road (right of way unknown); thence leaving the Northeastern right of way of North Druid Hills Road N 00°23'57" E a distance of 294.58' to a 5/8" rebar found; thence N 00°44'42" E a distance of 290.41' to a 3/4" solid rod found, said point being the True Point of Beginning.

From said True Point of Beginning, thence N 00°19'51" W 180.73' to a 1/2" rebar set; thence N 86°43'34" E a distance of 85.13' to a 1/2" rebar set; thence S 79°50'27" E a distance of 115.27' to a 1/2" rebar set; thence S 04°55'38" W a distance of 167.94' to a 1/2" rebar set; thence N 89°21'21" W a distance of 183.00' to a 3/4" solid rod found, said point being the True Point of Beginning.

Said tract containing 34,388.91 square feet or 0.789 Acres.

Together with the easement appurtenant to the above described land created by that certain Ingress and Egress Access Easement Agreement between Mt. Moriah Missionary Baptist Church of Tucker Georgia, Inc. and CSS 18, LLC, dated September 12, 2016, filed for record September 15, 2016, recorded in Deed Book 25793, Page 106, Records of DeKalb County, Georgia.

Said described property is located within an area having a Zone Designation of Zone "X" by the Secretary of Housing and Urban Development, on Flood Insurance Rate Map No. 13089C0054K, with a date of August 15, 2019, Identification of DeKalb County, for Community Number 1308650054K, in DeKalb County, State of Georgia, which is the current Flood Insurance Rate Map for the community in which said property is situated.

## LEGEND

P.O.B.	POINT OF BEGINNING	UGT	UNDERGROUND TELEPHONE
P.O.C.	POINT OF COMMENCEMENT	UGP	UNDERGROUND POWER
CTF	CRIMP TOP PIPE FOUND	W	WATER MAIN
OTF	OPEN TOP PIPE FOUND	G	GAS MAIN
RBF	REBAR FOUND	BSL	BUILDING SETBACK LINE
SWCB	SINGLE WING CATCH BASIN	EOP	EDGE OF PAVEMENT
GI	GRATE INLET	TRANS	TRANSMISSION LINE
CI	CURB INLET	EM	ELECTRIC METER
LP	LIGHT POLE	LL	SANITARY SEWER MANHOLE
PP	POWER POLE	EB	ELECTRIC BOX
SSM	SANITARY SEWER MANHOLE	OHP	OVERHEAD POWER
OWU	OVERHEAD POWER SVC LINE	BLOG	BUILDING
WV	WATER VALVE	P&T	OVERHEAD POWER & TELEPHONE
WM	WATER METER	FFE	FINISH FLOOR ELEVATION
GV	GAS VALVE	T/W	TOP OF WALL
GM	GAS METER	BK/C	BACK OF CURB (TOP)
FH	FIRE HYDRANT	FDC	FIRE DEPARTMENT CONNECTION
C/O	CLEAN OUT	SS	SANITARY SEWER LINE
RCP	REINFORCED CONCRETE PIPE	B/C	BACK OF CURB
CMP	CORRUGATED METAL PIPE	SW	SIDEWALK
(XXX'XX')	RECORD DISTANCES	X	SPOT ELEVATIONS
(R)	RECORD DISTANCES		
(M)	MEASURED DISTANCES		

## ALTA/NSPS LAND TITLE SURVEY

OF  
1600 MOUNT MARIAH ROAD  
TAX ID: 18 152 01 054

PROPERTY INFORMATION	
LAND LOTS:	152
DISTRICT:	18th
SECTION:	NA
COUNTY:	DEKALB
STATE:	GEORGIA
CITY:	

DRAWING INFORMATION	
DATE:	12-07-2021
SCALE:	1"=60'
DWN:	JRG
CHK:	JCS
JOB No.:	14999
FILE:	14999-ALTA-0
REVISIONS:	
12/10/2021	
12/15/2021	
R-3 9/12/24	

## ALTA / NSPS CERTIFICATION

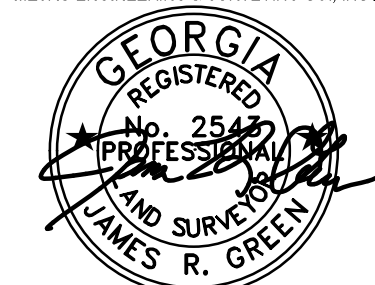
To: 2490 N Druid, LLC, ACP Druid Holdings, LLC, 2490 N Druid Developers, LLC, Trust Bank, as Administrative Agent, ATIMA ISACA and Fidelity National Title Insurance Company:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b), 7(c), 8, 9, 11, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The field work was completed on 12-09-2020.

Date of Plat or Map: 12-07-2021

JAMES R. GREEN.

FOR THE FIRM  
METRO ENGINEERING & SURVEYING CO., INC.



**METRO ENGINEERING & SURVEYING CO., INC.**  
SURVEYORS - ENGINEERS - PHOTOGRAMMETRISTS  
PROVIDING PROFESSIONAL SERVICE SINCE 1967  
1489 Highway 20 West - McDonough, Georgia 30253  
Phone: 770-707-0777 - Fax: 770-707-0765  
www.metro-engineering.com



## Filing Guidelines for Applications to the Zoning Board of Appeals

### 1. Submit Application Materials:

- a. To ensure proper processing and payment, please create a profile and upload at least page 1 of your application to: <https://epermits.dekalbcountyga.gov/> (no more than 10mb permitted).
  - If you have an existing account, you may use that account and create a *new application number* by selecting the proper application type.
  - Fill out *all* Account Portal Questions
  - Put your **email address under “WEB ACCOUNT”**
  - **SAVE APPLICATION NUMBER (124XXXX)** – send to staff when you email your complete application.
- b. After portal submittal, email one (1) combined PDF document of the completed application and materials to [plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov) and [ljcarter@dekalbcountyga.gov](mailto:ljcarter@dekalbcountyga.gov) along with application number.
- c. Please confirm we have received your application.
- d. For any questions, please contact [plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov)

### 2. Order of Submitted Materials:

- a. Application Form
- b. Signatures and authorization (including permission to go on property)
- c. Letter of Intent
- d. Surveys, site plans.
- e. Other relevant materials (e.g., photographs, letters of support, citation, etc.)

### 3. Authorization:

- a. If property owner is different from the applicant, the form to authorize the application must be signed by the owner and stamped by a notary.
- b. If property is owned by more than one property owner, all property owners must authorize the request.

### 4. Letter of Intent:

- a. **Explain what you are asking for and why.**
- b. A typed statement indicating the request and clarifying justification for the proposal based on the criteria as indicated in Section 27-7.5.3 or 7.5.4 of the DeKalb County Zoning Ordinance (see attached information).
- c. Reference the section of the code you are requesting to vary and the amount of requested change, (such as to reduce the rear yard setback from forty (40) feet to twenty (20) feet to construct an addition).

### 5. Surveys and site plans of the Subject Property:

- a. Must be stamped by a professional engineer or surveyor, registered in the State of Georgia.
- b. All plans and surveys must include the following information:
  1. Must show all property lines with dimensions.
  2. Must show the location of all existing and proposed buildings, structures, parking and setbacks (their relationship to the property boundaries).
  3. Must show any other features related to the request such as trees, fences, topography, streams, etc.
  4. Must be to-scale
  5. Must show lot area and lot coverage (impervious materials, including paving and structures).

6. **Application Fee is \$300.** You will be able to pay by credit card on the epermitting portal. A receipt will be provided.

## DEPARTMENT OF PLANNING & SUSTAINABILITY

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### Writing the Letter of Intent

Please address the following criteria as appropriate:

#### **7.5.1 Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.**

The zoning board of appeals shall hear and decide applications for variances from the strict application of the regulations of this chapter and chapter 21 where the strict application of any regulation enacted under said chapters would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the board shall apply the criteria specified in this section to the facts of each case. The board may attach reasonable conditions to any approved variance in accordance with section 7.3.9. Once imposed, conditions shall become an integral part of the approved variance and shall be enforced as such. No changes to an approved condition attached to a variance shall be authorized except by re- application to the zoning board of appeals in full compliance with the applicable provisions of this division. No relief may be granted or action taken under the terms of this division unless such relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this chapter and the comprehensive plan. The zoning board of appeals shall apply the following criteria to the types of applications specified below as follows:

- A. Variances from the provisions or requirements of this chapter other than variances described in section 7.5.4 shall be authorized only upon making all of the following findings in writing:
  - 1. There is an extraordinary or exceptional physical condition(s) pertaining to the particular piece of property (such as, but not limited to, lot size, lot shape, specimen tree(s), steep slope(s), or preservation of historic characteristics of the property), which was not created by the current owner, previous owner, or applicant; by reason of a clearly demonstrable condition(s), 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 distinguished from a special privilege or convenience sought by the property owner.
  - 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.
  - 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.
  - 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.
  - 5. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.
- B. Appeals of decisions regarding building architectural design standards shall be evaluated using the same criteria as section 7.6.7(B).

## DEPARTMENT OF PLANNING & SUSTAINABILITY

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- C. Appeals to the height standards, but not to add stories, shall be evaluated using the criteria as follows:
1. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.
  2. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.
  3. Adequacy of public services, public facilities, and utilities to serve the proposed use.
  4. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.
  5. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.
  6. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

### **7.5.2 Applications for variances to reduce or waive off-street parking or loading space requirements.**

The zoning board of appeals shall hear and decide applications for variances to reduce or waive required off-street parking or loading spaces in accordance with the provisions and standards of this section. All such applications shall be heard and decided based on the notice requirements of section 7.2.4. The zoning board of appeals may waive or reduce the required number of parking or loading spaces in any district only upon an expressed finding that:

- A. The character of the use of the building(s) is such as to make unnecessary the full provision of parking or loading spaces;
- B. The lot upon which the building(s) is located is within one thousand (1,000) feet of the boundary of a MARTA RapidTransit Station;
- C. The provision of the full number of parking spaces would have a deleterious effect on a historic building, site, district or archaeological resource;
- D. The use has a characteristic that differentiates it from the typical use example used in the formulation of this Zoning Ordinance;
- E. The location of the proposed development is relatively isolated where the opportunity for diversity of use, pedestrian access, and alternative modes is not available; or
- F. The developer is providing the additional spaces for general public parking (for hourly or daily parking charges) to serve surrounding development.

## DEPARTMENT OF PLANNING & SUSTAINABILITY

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### Section 21-27. Sign Variances.

- (a) Where a literal application of this article, due to special circumstances, would result in an unusual hardship in an individual case, a variance may be granted by the zoning board of appeals after receiving evidence that the applicant meets all of the following criteria:
  - 1. Exceptional conditions pertaining to the property where the sign is to be located as a result of its size, shape, or topography, which are not applicable to other lands or structures in the area;
  - 2. Granting the variance would not confer on the applicant any significant privileges which are denied to others similarly situated;
  - 3. The exceptional circumstances are not the result of action by the applicant;
  - 4. The requested variance is the minimum variance necessary to allow the applicant to enjoy the rights commonly enjoyed by others similarly situated;
  - 5. Granting of the variance would not violate more than one (1) standard of this article; and
  - 6. Granting the variance would not result in allowing a sign that interferes with road or highway visibility or obstruct or otherwise interfere with the safe and orderly movement of traffic.
- (b) No variance shall be granted to the height of a sign or the aggregate area of signs permitted on a lot.
- (c) No variance shall be granted which increases the size of a sign more than twenty (20) percent of that allowed by this chapter. (Ord. No. 13-03, Pt. I, 6-10-03)

### 7.5.3 Appeals of decisions of administrative officials.

- A. *General Power.* The zoning board of appeals shall have the power and duty to hear and decide appeals where it is alleged by the appellant that there is error in any final order, requirement, or decision made by an administrative official based on or made in the enforcement of this Zoning Ordinance or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. Administrative officials must make final decisions covered by this section within one hundred and eighty (180) days of receipt of all necessary information to make such decision. A failure to act prior to the passage of one hundred and eighty (180) days shall not be construed to be a final order, requirement or decision within the meaning of this division. If a decision is not made by the 181<sup>st</sup> day, the requested decision is deemed denied, and becomes appealable. All such appeals shall be heard and decided following the notice requirements of section 7.2.4, and pursuant to the following criteria and procedural requirements.
- B. *Appeals of decisions of administrative officials.* Appeals of decisions of administrative officials may be filed by (1) any person aggrieved by; (2) any elected member of the DeKalb County Governing Authority affected by; or (3) an owner of property within two hundred and fifty (250) feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of an administrative official, based on or made in the enforcement of this Zoning Ordinance, or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. by filing with the secretary of the zoning board of appeals an application for appeal, specifying the grounds thereof, within fifteen (15) days after the action was taken by the official that is the subject of the appeal.
- C. *Appeal stays all legal proceedings.* An appeal of a decision of an administrative official stays all legal proceedings in furtherance of the action or decision appealed from unless the official from whom the appeal is taken certifies to the zoning board of appeals, after notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would, in that official's opinion, cause imminent peril to life or property. In such a case, legal proceedings shall be stayed only pursuant to a restraining order granted by a court of competent jurisdiction directed to the officer from whom the appeal is taken and on due cause shown.



- D. *Appeal stays land disturbance or construction activity in certain situations.* If the action or decision appealed from permits land disturbance or construction activity to commence or continue on residentially zoned property, the appeal stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal. Thereafter, land disturbance or construction activity in such cases shall only be stayed by an order from a court of competent jurisdiction. In all cases involving non-residentially zoned property, the appeal to the zoning board of appeals does not stay land disturbance or construction activity; such activity shall only be stayed by an order from a court of competent jurisdiction.
- E. Thereafter, in such situations land disturbance or construction activity shall only be stayed by an order granted by a court of competent jurisdiction.
- F. *Time of hearing.* The zoning board of appeals shall fix a reasonable time for the hearing of the appeal and give notice thereof pursuant to the requirements of section 7.2.4 as well as written notice to the appellant. Any party may appear at the hearing in person, by an agent, by an attorney, or by the submission of written documentation.
- G. *Decision of the zoning board of appeals.* Following the consideration of all testimony, documentary evidence, and matters of record, the zoning board of appeals shall make a determination on each appeal and shall issue a written decision explaining the reasons for its decision. The zoning board of appeals shall decide the appeal within a reasonable time, but in no event more than sixty (60) days from the date of the hearing. An appeal shall be sustained only upon an expressed finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact, erroneously applied the Zoning Ordinance to the facts, or that the administrative official acted in an arbitrary manner. In exercising its powers, the zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit, provided all requirements imposed by any applicable laws are met.

#### **7.5.4 Limitations of authority of the zoning board of appeals.**

No variance shall be granted by the zoning board of appeals to:

- A. Allow a structure or use not listed as a permitted use or a special use in the applicable zoning district or a density of development that is not authorized within such district. This prohibition does not apply to any variance from the supplemental regulations of Article 4 of this Zoning Ordinance or from any other accessory feature or characteristic of a permitted or special use, unless said variance is otherwise prohibited by the regulations of this chapter.
- B. Allow any variance which conflicts with or changes any requirement enacted as a condition of zoning or of a special land use permit by the board of commissioners.
- C. Reduce, waive or modify in any manner the minimum lot width unless the purpose is to reverse a lot merger.
- D. Reduce, waive or modify in any manner the minimum lot area established by this chapter.
- E. Extend the time period for a temporary outdoor social, religious, entertainment or recreation activity approved by the director of planning.
- F. Permit the expansion or enlargement of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit.

## DEPARTMENT OF PLANNING & SUSTAINABILITY

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- G. Permit the reestablishment of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit where such use has lapsed pursuant to the requirements and limitations of Article 8 of this chapter.
- H. Permit customer contact for a home occupation authorized by this chapter.
- I. Allow any variance to increase the height of a building which will result in adding a story.

## Summary of Zoning Board of Appeals Application Process:

1. **Timeline.** It takes ~45-60 days to submit your application and receive an initial decision from the Zoning Board of Appeals regarding your request.
2. **Pre-application Meetings.** DeKalb County now mandates pre-application meetings. Please email [plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov) to schedule a virtual appointment to meet with a Planner assigned to the Zoning Board of Appeals. During the virtual meeting, we will review and provide feedback regarding your request, review the application process, and answer any questions.
3. **Application Submittals.** Create a profile and upload at least page 1 of your application to: <https://epermits.dekalbcountyga.gov/> (no more than 10mb permitted). Email a combined PDF document of the completed application and materials to [plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov) and [lrcarter@dekalbcountyga.gov](mailto:lrcarter@dekalbcountyga.gov) along with the application number.
4. **Public Hearing Signs.** You will need to post at least one sign per street frontage of the property. Staff will prepare a sign template. You will need to coordinate sign printing and posting with a sign company of your choice, at least 30 days prior to the ZBA hearing. Sign(s) must remain posted until final Board of Appeals action regarding the request. If the application is deferred, you may update the sign(s).
5. **Revisions or amendments.** An application must be submitted in writing and must be received at least 14-days before the scheduled meeting to be addressed by the staff report.
6. **Staff Report.** Staff prepares reports and recommendations for each application. These recommendations are based on the attached criteria established by the [DeKalb County Zoning Code](#). Final staff reports are available to the applicant and the public prior to the scheduled Board of Appeals meeting. Find current reports on our website, here: <https://www.dekalbcountyga.gov/planning-and-sustainability/public-hearing-agendas-info>
7. **Monthly Meetings.** The Zoning Board of Appeals meets once a month, generally on the second Tuesday of each month at 1:00 P.M., via Zoom. Find agendas on our website, [HERE](#).
8. **Applicant and/or Representative must be Present.** Applicants or their representatives must be present at the public hearing to present the request to the Zoning Board of Appeals.
9. **Public Hearing portion of Meeting.** Applicants and others in favor of an application are given a total of five (5) minutes to present to the Board. That is five minutes combined, no matter how many people wish to speak. Applicants should be prepared to explain their variance, why they are requesting it and answer questions from the board. Anyone speaking in opposition also has a total of five (5) minutes to address the application in front of the board. Be prepared to raise your hand or announce yourself when the chair asks for those in support or opposition to the application.
10. **Applicant and/or Representative must be Present.** Applicants or their representative must be present at the public hearing to present the request to the Zoning Board of Appeals.
11. **Executive Session.** After the public hearing, the Board of Appeals will close the public hearing, go into executive session for discussion, and will then take an action on an application. Applicants are not allowed to address the Board of Appeals during Executive Session unless they are asked
12. **Zoning Board of Appeals Actions.** The Board of Appeals is authorized to:
  - a. Approve the application as submitted;
  - b. Approve a revised application;
  - c. Approve an application with conditions;
  - d. Deny an application (if an application is denied, no variance can be considered on the same site within 24 months);
  - e. Allow an application to be “Withdrawn without Prejudice” at the request of the applicant.

## DEPARTMENT OF PLANNING & SUSTAINABILITY

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13. **Compliance with standards upon denial.** In such case that a variance request is initiated due to an existing code violation and such application is denied, the violation shall be required to be brought into compliance within thirty (30) days of such denial or as specified by the board if a greater time period is approved.
14. **Successive applications.** Section 27-920 of the DeKalb County Zoning Ordinance states: An application for a variance or special exception affecting all or a portion of the same property which was denied by the Zoning Board of Appeals shall not be submitted more than once every twenty- four (24) months measured from the date of final decision by the zoning board of appeals. The Zoning Board of Appeals may waive or reduce this twenty-four-month time interval by resolution provided that if the application for a variance or special exception was denied by the Zoning Board of Appeals, the time interval between the date of said denial and any subsequent application or amendment affecting the same property shall be no less than six (6) months.
15. **Appeals of Decisions.** Any person aggrieved by a final decision of the board, or any officer, department, board or agency affected by such decision, may seek review of such decision by petitioning the Superior Court of DeKalb County. Such petition shall be filed within 30 days after the final decision of the board is rendered.