

DEPARTMENT OF PLANNING & SUSTAINABILITY

MAJOR MODIFICATION APPLICATION

Existing Conditional Zoning No.: C2-02081

APPLICANT NAME: Duke Land Group, LLC

Daytime Phone#: 770-294-6543 Fax #: _____ E-mail: Bill@Duke-Land.com

Mailing Address: 4828 Ashford Dunwoody Road, Atlanta, GA 30338

OWNER NAME: East Atlanta Highway 85, LLC (If more than one owner, attach contact information for each owner)

Daytime Phone#: 770-318-5154 Fax #: _____ E-mail: _____

Mailing Address: 4828 Ashford Dunwoody Road, Suite 100, Atlanta, GA 30338

SUBJECT PROPERTY ADDRESS OR LOCATION: _____

2130 Flat Shoals Road, Atlanta, DeKalb County, GA, 30316

District(s): 18th Land Lot(s): 141 and 148 Block(s): _____ Parcel(s): 15-141-01-001

Acreage or Square Feet: 31.5 acres Commission District(s): 3 and 6 Existing Zoning: RCM

I hereby authorize the staff of the Planning and Development Department to inspect the property that is the subject of this application.

Have you, the applicant, made a campaign contribution of \$250.00 or more to a DeKalb County government official within the two year period that precedes the date on which you are filing this application?

____ Yes No If "yes", see page 4. (Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A)

Owner: _____ Agent:
(Check One)

Signature of Applicant: 

Printed Name of Applicant: Eyal Livnat on behalf of Duke Land Group, LLC **Major Modification Application**

February 14, 2019

~~THE EMBRY GROUP~~/DUKE LAND GROUP/2130 FLAT SHOALS ROAD
CONDITIONS OF ZONING
CZ-02081

1. Subject Property will be rezoned ~~TND-RSM~~ (conditional) and will contain no more than ~~388 single~~ 38 single-family detached homes, ~~146 single family townhouses, 332 live/work/loft units and 16,000 square feet of accessory commercial space developed substantially in accordance with the Site Plan dated December 2, 2002, prepared by Clark Design Group, P.C., and filed with the Planning Department on December 3, 2002~~ and 167 single-family townhouses.
2. Underground utilities will be utilized. Any exterior lights will be screened, shielded, and/or shaded so as to minimize glare and the casting of light outside the new development. Security lighting shall be installed in the accessory commercial portion of the development.
3. The minimum size of each dwelling unit will be ~~1500~~ 1,800 square feet per townhouse, and ~~1900~~ 1,900 square feet per single-family detached dwelling.
4. Sidewalks will be installed during ~~the~~ the development process on the internal street of the Subject Property well as along the Flat Shoals Road and Keystone Drive frontages of the Subject Property.
5. The height of any building on the Subject Property shall be restricted to 4.3 stories.
6. The residential units shall consist of brick, hardcoat stucco, stacked stone, hardiplank siding or cedar shake (excluding architectural treatment of features such as gables, dormers, bay windows, fireplace chases and/or ~~any~~ other cantilevered areas).
7. The area designated as "Open Space" on the Site Plan shall be preserved as common green space, for the benefit of future residents of this development. This area may be improved to create a passive recreational amenity. Otherwise, it shall not be disturbed except to the extent necessary to fulfill these conditions of zoning approval, for the installation and maintenance of utilities as necessary and as per the Site Plan.
8. Applicant shall file a landscape plan for the accessory commercial entrance to the Subject Property and for the Keystone Drive/Flat Shoals Road intersection at the time of filing for development permits.
9. The development shall have a mandatory homeowners association that shall be responsible for maintenance of all exterior, common, landscaped, detention, and entrance areas.
10. Security fencing in the form of a black, vinyl-dipped chain link fence shall be installed along the northern property line of the Subject Property which adjoins the ~~accessory commercial area~~ project site.
11. Applicant shall comply with the DeKalb County Tree Ordinance.

~~12. Applicant shall plant a screening buffer consisting of Leland Cypress trees at least 6 feet in height at a distance of 10 feet on center to provide a visual screen between the Travis property and the live/work units/accessory commercial space.~~

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

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: Duke Land Group Phone: 7/318-5154 Email: bill@duke-land.com

Property Address: 2130 Flat Shoals Rd

Tax Parcel ID: 15-141-01-001 Comm. District(s): 3:6 Acreage: 2.03 31.5

Existing Use: undeveloped Proposed Use ⁽²¹⁾ 23 Townhomes

Supplemental Regs: _____ Overlay District: NA DRI: NA

Rezoning: Yes No (65) (5.33)

Existing Zoning: RSM Proposed Zoning: AR-1 Square Footage/Number of Units: 10.95 6.38

Rezoning Request: _____

Land Use Plan Amendment: Yes No _____

Existing Land Use: SUB Proposed Land Use: FD Consistent _____ Inconsistent _____

Special Land Use Permit: Yes _____ No _____ Article Number(s) 27- _____

Special Land Use Request(s) _____

Major Modification:

Existing Case Number(s): CZ-02081

Condition(s) to be modified:

1. Add 23 Townhomes, delete commercial, change site plan
(21)

Name	Property Owner Mailing Address (if different)	Property Address	City	Zip Code	Parcel No.
Brighton Village Homeowners Association	4125 Old Milton Parkway, Alpharetta, GA 30005-4443	2130 Shropshire Lane	Atlanta	30316	15 141 01 061
Alaran Ayodele M and Alaran Oluqatoyin		2123 Shropshire Lane	Atlanta	30316	15 141 01 062
Nicholas LaFronz		2127 Shropshire Lane	Atlanta	30316	15 141 01 063
Victoria Wright		2131 Shropshire Lane	Atlanta	30316	15 141 01 064
LaToya Brisbane		2139 Shropshire Lane	Atlanta	30316	15 141 01 065
Travis Robinson		2142 Shropshire Lane	Atlanta	30316	15 141 01 082
2018 2 IH Borrower LP	1717 Main Street, Suite 2000, Dallas, TX 75201	2134 Shropshire Lane	Atlanta	30316	15 141 01 081
Helena Foutain		2124 Shropshire Lane	Atlanta	30316	15 141 01 080
Daniel Riley		2114 Shropshire Lane	Atlanta	30316	15 141 01 079
Michael Glass	2106 Shropshire Lane, SE, Atlanta, GA 30316	2117 Somerset Place	Atlanta	30316	15 141 01 078
Donna Summer and Carla Korch		2133 Somerset Place	Atlanta	31316	15 141 01 077
Berell Gipson	395 Laurent Street NW, Unit 8, Atlanta, GA 30318	2143 Somerset Place	Atlanta	30316	15 141 01 076
Peter and Sheri Heid		2151 Somerset Place	Atlanta	30316	15 141 01 075
Brighton Village Homeowners Association	4125 Old Milton Parkway, Alpharetta, GA 30005-4443	2140 Somerset Place	Decatur	30032	15 141 01 049
2018 2 IH Borrower LP	1717 Main Street, Suite 2000, Dallas, TX 75201	2096 Somerset Place	Atlanta	30316	15 141 01 060
Hana and Joshua White		2104 Somerset Place	Decatur	30032	15 141 01 059
Karen Rommelfanger and Paul Boshears	182A Feld Avenue, Decatur, GA 30030	2112 Somerset Place	Atlanta	30316	15 141 01 058
Mark Grier		2120 Somerset Place	Atlanta	30316	15 141 01 057
Jacqueline Taylor		2128 Somerset Place	Atlanta	30316	15 141 01 056
Alexander Langford		2136 Somerset Place	Atlanta	30316	15 141 01 055
Lakeshia Gunn		1710 Valencia Road	Decatur	30032	15 148 13 001
Faye Jones		1706 Valencia Road	Decatur	30032	15 148 13 002
All or Nothing Investments III	1072 West Peachtree Street, Suite 78962, Atlanta, GA 30357-3034	1702 Valencia Road	Decatur	30032	15 148 13 003
1696 Valencia Road, LLC	589 Palisade Drive, Suite 533, Brunswick, GA 31523	1969 Valencia Road	Decatur	30032	15 148 13 004
Joseph Cromwell and Adams Edgar Neely IV		1692 Valencia Road	Decatur	30032	15 148 13 005
1686 Valencia, LLC	3350 Riverwood Parkway, Suite 1900, Atlanta, GA 30339	1686 Valencia Road	Decatur	30032	15 148 13 006
Annie Mae Beal		1682 Valencia Road	Decatur	30032	15 148 13 007
Klenneth Montgomery	472 Sheppard Road, Stone Mountain, GA 30083	1676 Valencia Road	Decatur	30032	15 148 13 008
Valor Homes 110, LLC	315 Corrigan Trace, Peachtree City, GA 30269-3288	1672 Valencia Road	Decatur	30032	15 148 13 009
Philip and Jennifer Schreck	2239 Madora Place, Decatur, GA 30032	2239 Madora Place	Decatur	30032	15 148 06 006
We Do Dwellings LLC	1227 Rockbridge Road SW, Suite 208-222, Stone Mountain, GA 30087	1685 Valencia Road	Decatur	30032	15 148 06 005
Charlotte Cunningham and Edgar Cunningham		1691 Valencia Road	Decatur	30032	15 148 06 004
James Anderson	5315 Forest Springs Drive, Dunwoody, GA 30338-3603	1695 Valencia Road	Decatur	30032	15 148 06 003
Michael Moreland		1701 Valencia Road	Decatur	30032	15 148 06 002
Gine and Basil Stevenson	1744 E Gate Drive, Stone Mountain, GA 30087-1909	1709 Valencia Road	Decatur	30032	15 148 06 001
Alice Marie and Eddie Henry Turpin		1717 Valencia Road	Decatur	30032	15 148 06 025
Bessie D and Steven Tyner Jr.		1723 Valencia Road	Decatur	30032	15 148 06 024
Thelma Corry		1727 Valencia Road	Decatur	30032	15 148 06 023
Vinson Randolph		1733 Valencia Road	Decatur	30032	15 148 06 022
Derek King	4007 Peachtree Farms Road, Rex, GA 30273-1391	1741 Valencia Road	Decatur	30032	15 148 06 021
Elmer Johnson Brown Sr.	635 Highway 81 W, McDonough, GA 30253-6414	1742 Valencia Road	Decatur	30032	15 148 02 043
Vernita and Alfred Lockhart	3587 River Edge Loop, Decatur, GA 30034-5055	1738 Valencia Road	Decatur	30032	15 148 02 042
Cecil Render		1734 Valencia Road	Decatur	30032	15 148 02 041
Keith Adams and Terri Lawson-Adams	315 W Ponce de Leon Ave, Suite 602, Decatur, GA 30030-2498	1728 Valencia Road	Decatur	30032	15 148 02 040
FEVCO, LLC		1724 Valencia Road	Decatur	30032	15 148 02 039
Deborah Working		1718 Valencia Road	Decatur	30032	15 148 02 038
Buffalo Creek Construction Co.	1630 Dekalb Avenue, NE, #E, Atlanta, GA 30307-2148	2118 Flat Shoals Road	Atlanta	30316	15 148 02 173
Vineyards of Flat Shoals LP		2090 Flat Shoals Road	Atlanta	30316	15 148 02 037
Henry Properties, Inc.	125 Parkview Trace Pass SW, Lilburn, GA 30047-7044	2173 Flat Shoals Road	Atlanta	30316	15 141 03 003
Henry Properties, Inc.		2159 Flat Shoals Road	Atlanta	30316	15 141 03 005
NAVRANG, LLC	5129 Thurman CT SW, Lilburn, GA 30047	2155 Flat Shoals Road	Atlanta	30316	15 141 03 051
G and H Legacy, LLC	2135 Briarwood Trail, Cumming, GA 30041	2157 Flat Shoals Road	Atlanta	30316	15 141 03 054
Mary and Willie Holley	3789 Radcliffe Boulevard, Decatur, GA 30034-6058	2153 Flat Shoals Road	Atlanta	30316	15 141 03 002
G and H Legacy, LLC	2135 Briarwood Trail, Cumming, GA 30041	2151 Flat Shoals Road	Atlanta	30316	15 141 03 053
Vineyards of Flat Shoals LP		2097 Vineyard Walk #1	Atlanta	30316	15 141 03 001

*Apartments

2130 Flat Shoals Road - Duke Land Group

MEETING SIGN-IN SHEET

Project:	zoning case CZ-02071	Meeting Date:	2.27.2019
Facilitator:	Bill Probst	Place/Room:	Wesley Chapel Library

	Name	Company	Are You a Resident	Phone	E-Mail	Address
1.	Mark Gipe		yes			2120 Somerset Pl SE Atlanta, GA 30316
2.	Louca Montgomery		yes			2176 Somerset Pl Atlanta GA 30316
3.	Deborah M Houston		YES			2213 Leicester Way Atl, 30316
4.	Dominic Barino		yes			2144 Somerset Pl Atl. GA 30316
5.	Jacqueline Taylor		yes			2128 Somerset Pl SE Atlanta GA
6.	Elizabeth Rosder		yes		ERosder@gmail.com	1880 S Hampton Lane Atlanta GA 30316
7.	Janetta Cureton		yes	770 254 9114	jdCureton74@gmail.com	
8.	Ellen Aspegod		Yes			
9.	Samuel		Yes			4107 Oxford Court Dr Doraville GA 30034
10.	Lakeshia Gunn		Yes	404 309 4733	Lgunn54@gmail.com	1710 Valencia Rd dec, GA
11.	Zakia Funchess		Yes	678-458-6946		2160 Somerset Pl Atlanta, GA 30316
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						

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: FEB. 8 2019

TO WHOM IT MAY CONCERN:

(I), (WE) EAST ATLANTA HIGHWAY 85 L.L.C.
Name of owner(s)

being (owner) (owners) of the subject property described below or attached hereby delegate authority to
DUKE LAND GROUP.
Name of Agent or Representative

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

[Signature]
Notary Public



Notary Public

Notary Public

Notary Public

[Signature]
Owner *manager*

Owner

Owner

Owner

TRACT DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND LYING OR BEING IN LAND LOTS 141, AND 148, OF THE 15th LAND DISTRICT, DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE FROM THE LAND LOT CORNER COMMON TO LAND LOTS 140, 141, 148, AND 149 THENCE TRAVELING ALONG THE LAND LOT LINE COMMON TO LAND LOTS 141 AND 148 THE FOLLOWING THREE COURSES AND DISTANCES: NORTH 89 DEGREES 23 MINUTES 01 SECONDS WEST A DISTANCE OF 421.50 FEET TO A IRON PIN FOUND (ONE-HALF INCH REBAR); THENCE NORTH 89 DEGREES 29 MINUTES 37 SECONDS WEST A DISTANCE OF 1,127.17 FEET TO A IRON PIN FOUND (THREE-QUARTER INCH CRIMP TOP); THENCE NORTH 89 DEGREES 18 MINUTES 57 SECONDS WEST A DISTANCE OF 30.00 FEET TO A EIGHTEEN INCH OAK TREE; THENCE DEPARTING SAID LAND LOT LINE COMMON TO LAND LOTS 141 AND 148 NORTH 01 DEGREES 16 MINUTES 34 SECONDS EAST A DISTANCE OF 80.50 FEET TO A EIGHT INCH HICKORY TREE; THENCE SOUTH 89 DEGREES 35 MINUTES 42 SECONDS WEST A DISTANCE OF 452.36 FEET TO A IRON PIN SET (ONE-HALF INCH REBAR); BEING THE TRUE POINT OF BEGINNING; THENCE FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED SOUTH 00 DEGREES 02 MINUTES 20 SECONDS EAST A DISTANCE OF 201.96 FEET TO A IRON PIN SET (ONE-HALF INCH REBAR); THENCE SOUTH 51 DEGREES 12 MINUTES 12 SECONDS EAST A DISTANCE OF 22.29 FEET TO A IRON PIN SET (ONE-HALF INCH REBAR); THENCE SOUTH 38 DEGREES 57 MINUTES 39 SECONDS WEST A DISTANCE OF 166.78 FEET TO A IRON PIN SET (ONE-HALF INCH REBAR) ON THE NORTHERLY RIGHT-OF-WAY LINE OF FLAT SHOALS ROAD (HAVING A 30 FOOT WIDE RIGHT-OF-WAY FROM CENTERLINE); THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF FLAT SHOALS ROAD THE FOLLOWING TWO COURSES AND DISTANCES: ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2,390.13 FEET, AN ARC LENGTH OF 74.29 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 51 DEGREES 32 MINUTES 44 SECONDS WEST AND A CHORD DISTANCE OF 74.29 FEET TO A POINT; THENCE NORTH 51 DEGREES 06 MINUTES 12 SECONDS WEST A DISTANCE OF 280.16 FEET TO A IRON PIN SET (ONE-HALF INCH REBAR) ON THE EASTERLY RIGHT-OF-WAY LINE OF KEYSTONE DRIVE (HAVING A 60 FOOT WIDE RIGHT-OF-WAY); THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LINE OF FLAT SHOALS ROAD, AND ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF KEYSTONE DRIVE NORTH 38 DEGREES 57 MINUTES 11 SECONDS EAST A DISTANCE OF 239.26 FEET TO A IRON PIN FOUND (ONE-HALF INCH REBAR); THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE OF KEYSTONE DRIVE SOUTH 50 DEGREES 24 MINUTES 15 SECONDS EAST A DISTANCE OF 99.69 FEET TO A IRON PIN SET (ONE-HALF INCH REBAR); THENCE NORTH 89 DEGREES 35 MINUTES 42 SECONDS EAST A DISTANCE OF 136.34 FEET TO THE TRUE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 2.029 ACRES (BEING 88,371 SQUARE FEET), INCLUDING ALL EASEMENTS.

February 14, 2019

DUKE LAND GROUP/2130 FLAT SHOALS ROAD
CONDITIONS OF ZONING
CZ-02081

1. Subject Property will be rezoned RSM (conditional) and will contain no more than 38 single-family detached homes and 167 single-family townhouses.
2. Underground utilities will be utilized. Any exterior lights will be screened, shielded, and/or shaded so as to minimize glare and the casting of light outside the new development. Security lighting shall be installed in the accessory commercial portion of the development.
3. The minimum size of each dwelling unit will be 1,800 square feet per townhouse and 1,900 square feet per single-family detached dwelling.
4. Sidewalks will be installed during the development process on the internal street of the Subject Property well as along the Flat Shoals Road and Keystone Drive frontages of the Subject Property.
5. The height of any building on the Subject Property shall be restricted to 3 stories.
6. The residential units shall consist of brick, hardcoat stucco, stacked stone, hardiplank siding or cedar shake (excluding architectural treatment of features such as gables, dormers, bay windows, fireplace chases and/or other cantilevered areas).
7. The area designated as "Open Space" on the Site Plan shall be preserved as common green space, for the benefit of future residents of this development. This area may be improved to create a passive recreational amenity. Otherwise, it shall not be disturbed except to the extent necessary to fulfill these conditions of zoning approval, for the installation and maintenance of utilities as necessary and as per the Site Plan.
8. Applicant shall file a landscape plan for the accessory commercial entrance to the Subject Property and for the Keystone Drive/Flat Shoals Road intersection at the time of filing for development permits.
9. The development shall have a mandatory homeowners association that shall be responsible for maintenance of all exterior, common, landscaped, detention, and entrance areas.
10. Security fencing in the form of a black, vinyl-dipped chain link fence shall be installed along the northern property line of the Subject Property which adjoins the project site.
11. Applicant shall comply with the DeKalb County Tree Ordinance.

Major Modification Application

Applicant: Duke Land Group, LLC

Property: 2130 Flat Shoals Road, Atlanta, DeKalb County, Georgia 30316

IMPACT ANALYSIS

Section 7.3.5 of the Zoning Ordinance¹ requires the Board to consider eight general lines of inquiry when attempting to balance the general public's interests in health, safety, morality, and general welfare against the private interest of a property owner in the process of deciding whether to grant or deny a rezoning application. Applying these guideposts to the Application shows that the Property's "Conditions of Zoning" should be modified as outlined below and the Board should GRANT the Application.

1. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.

By way of this Application, the Applicant is not proposing a change in the rezoning of the Property; the Applicant instead proposes modifying the Property's existing "Conditions of Zoning". Applicant's proposal instead seeks a lesser intense use of the Property, seeking specifically to: (1) develop 21 single-family townhomes in lieu of 32 rental live/work/loft units and 16,000 square feet of accessory commercial space, (2) increase the minimum size of each dwelling unit to 1,800 square feet per townhouse, (3) eliminate the Leland cypress tree screen (because the commercial use is being eliminated and no screening is needed between residential uses), and (4) reduce the maximum height of any building on the Property to 3 stories. All other existing conditions will remain intact. Accordingly, if the Board's zoning decision is to grant the Application, such decision will be suitable given the existing planned use and development of the Property and the uses of adjacent and nearby properties zoned RSM, R-75, MR-2, and C-1. The zoning proposal is consistent with the 2035 Future Land Use Map, which identifies the area as Suburban.

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

If the Board grants the Application, the zoning decision will permit a use that is suitable in view of the use and development of adjacent and nearby property or properties. Adjacent and nearby properties are zoned RSM, R-75, MR-2, and C-1, which is consistent with Applicant's zoning proposal.

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

The Property does not have a reasonable economic use as currently zoned as evidenced by the fact that the surrounding property has been developed while this Property, entitled with commercial and rental residential uses has remained undeveloped. Additionally, the surrounding community and changes surrounding the property dictate that the Property has a reasonable economic use with a conversion of proposed use to fee simple, single-family townhomes. Granting the Application will allow the development to meet DeKalb County's need for additional single-family residences.

¹Capitalized terms not otherwise defined in this Analysis shall have the meanings ascribed to them in the Summary of Intent submitted by Applicant with its Application.

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

If the Board grants the Application, the zoning decision will not adversely affect the existing use or usability of adjacent or nearby properties. Adjacent and nearby properties are zoned RSM, R-75, MR-2, and C-1, all of which are consistent with Applicant's zoning proposal. The zoning proposal will remain consistent with the nature of the development as a residential area with single-family detached homes, single-family townhomes, and apartments. Additionally, conversion of the residential product proposed for the Property from loft-style rental to single family residential provides a stability of product for the area that is consistent with adjacent uses.

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 existing and changing conditions affecting the use and development of the Property which support grounds for approval of the zoning proposal. Specifically, the DeKalb County community's need for more single-family housing instead of rental, small square footage live/work/loft units, and the lack of need for commercial accessory space both support approval of the Application.

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

If the Board grants the Application, the zoning decision will not adversely affect historic buildings, sites, districts, or archaeological resources. This analysis was considered in 2003 when the Property was rezoned together with the larger tract.

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

If the Board grants the Application, the zoning decision will not cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools. The Property is already zoned RSM and approved to be developed in accordance with the previously outlined conditions. The elimination of 32 rental live/work/lofts and 16,000 feet of commercial accessory space in favor of 21 single-family townhomes will mean less people burdening the County's infrastructure. Furthermore, this change will reduce the number of the site access points onto Flat Shoals Road from two to one access point with another access point connecting to an existing private roadway in Brighton Village. In sum, approval of the Application if granted, will reduce the anticipated burden on existing streets, transportation facilities, utilities, and schools as compared to the existing entitled commercial and multifamily uses.

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

If the Board grants the Application, the zoning decision will not adversely impact the environment or surrounding natural resources. The zoning proposal remains consistent with the existing conditions and will not produce any adverse impacts to the environment or surrounding natural resources.

Based on all of these factors, Applicant has produced sufficient information to allow the Board to fully consider all relevant factors and to demonstrate that the Application complies with all applicable requirements and is otherwise consistent with the policies reflected in the factors enumerated in this chapter for consideration by DeKalb County. The Board should APPROVE the Application.



Ellen W. Smith
Partner
Telephone: 678.690.5720
Direct Fax: 404.869.6972
ellensmith@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

February 28, 2019

Via Hand Delivery

Department of Planning and Sustainability
DeKalb County
Clark Harrison Building
330 West Ponce de Leon Avenue
Decatur, GA 30030

Re: Major Modification Application ("**Application**") by Duke Land Group, LLC ("**Applicant**") with respect to that certain approximately 31.5-acre property located at 2130 Flat Shoals Road, DeKalb County, Georgia (the "**Property**")

LETTER OF APPLICATION

Ladies and Gentlemen:

This law firm has the pleasure of representing Applicant with respect to the Application. Applicant respectfully submits for consideration the Application, seeking a downzoning and modification of the existing zoning conditions applicable to the Property to allow for the development of the Property with 21 single-family attached townhomes.

Background and Existing Conditions

The Property is an approximately 31.5-acre tract located on the north side of Flat Shoals Road. The Property is zoned Small Lot Residential Mix (RSM), and is surrounded by properties to the East and Southeast zone RSM, properties to the North and Northwest zoned R-75, properties to the East zoned MR-2, and properties to the South and Southwest zoned C-1. All properties nearby and adjacent to the Property are classified as Suburban on the 2035 Future Land Use map.

As part of a larger tract, the Property was zoned RSM-Conditional in 2003 commonly called "The Embry Group / Flat Shoals Road" pursuant to CZ02081 (2003). The remaining property subject to that 2003 zoning has been developed and the Property, originally conditioned to be improved with 16,000 square feet of accessory commercial with 32 rental live/work/loft units above it, has remained unimproved for more than 15 years. In addition to the commercial and rental units, there were additional conditions that would have allowed the minimum square footage of each rental unit to be only 1,500 square feet, the height of the building to be up to four (4) stories, and to install a Leland Cypress buffer for screening between the commercial portion of the project and the other residential portions of the project.

PPAB 4723794v2

Proposed Zoning Modifications and Ordinance Requirements

Applicant seeks to modify the 2003 zoning conditions to eliminate the commercial and rental multifamily uses and downzone to only 21 single-family townhomes. Applicant also proposes to increase the minimum square footage of each townhome from 1,500 to 1,800 square feet, to reduce the maximum height from four (4) to three (3) stories and to eliminate the Leland Cypress tree buffer since there is no commercial proposed that would require screening. As a reference, Applicant includes a list of proposed zoning conditions as well as, for reference, a comparison document showing the changes it proposes to the 2003 conditions. Unless modified as shown, all other conditions from 2003 remain unchanged.

The 21 single-family townhomes will be two-bedroom homes with rear-loading access and two car garages. The townhomes will be built in accordance with the existing condition number 6 that requires the unit exteriors to be brick, hardcoat stucco, stacked stone, hardiplank siding, or cedar shake. Applicant has proposed alternate modern and traditional elevations for consideration and is amenable to either. The site plan remains in compliance with the "Open space" condition, in which a 20% of the site remains preserved as common green space for the benefit of future residents. There will be one access road into the development on Flat Shoals road and a gated exit access into the existing Brighton Village neighborhood.

Application Requirements

Pursuant to 7.3 of The Zoning Ordinance of DeKalb County, Georgia, as amended from time to time (the "**Zoning Ordinance**"), Applicant seeks to modify zoning conditions as described above.¹ As more particularly described in the Impact Analysis and given that

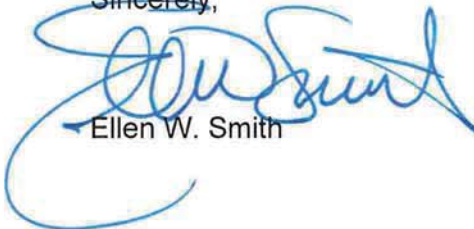
¹ Applicant notifies DeKalb County of its constitutional concerns with respect to its Application. If the DeKalb County Board of Commissioners (the "**Board**") denies the Application in whole or in part, then the Property does not have a reasonable economic use under the Zoning Ordinance. Moreover, the Application meets the test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power. *See Guhl vs. Holcomb Bridge Road*, 238 Ga. 322 (1977). If the Board denies the Application in whole or in part, such an action will deprive Applicant of the ability to use the Property in accordance with its highest and best use. Similarly, if the Board rezones the Property to some classification other than RSM or with conditions not requested by Applicant, either without Applicant's consent, then such approval would deprive Applicant of any reasonable use and development of the Property. Any such action is unconstitutional and will result in a taking of property rights in violation of the just compensation clause of the Constitution of the State of Georgia (*see Ga. Const. 1983, Art. I, § 3, para. 1(a)*), and the just compensation clause of the Fifth Amendment to the United States Constitution (*see U.S. Const. Amend. 5*). To the extent that the Zoning Ordinance allows such an action by the Board, the Zoning Ordinance is unconstitutional. Any such denial or conditional approval would discriminate between Applicant and owners of similarly situated property in an arbitrary, capricious, unreasonable and unconstitutional manner in violation of Article I, Section I, Paragraph 2 of the Georgia Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Also, a failure to grant the Application or a conditional approval of the Application (with conditions not expressly approved by Applicant) would constitute a gross abuse of discretion and would constitute an unconstitutional violation of Applicant's rights to substantive and procedural due process as guaranteed by the Georgia Constitution (*see Ga. Const. 1983, Art. I, § 1, para. 1*) and the Fifth and Fourteenth Amendments of the United States Constitution (*see U.S. Const. Amend. 5 and 14*). Nevertheless, Applicant remains optimistic that DeKalb County's consideration of the Application will be conducted in a constitutional manner.

Applicant's requested modifications significantly reduce the density and intensity of the use of the Property, modifying the zoning conditions is appropriate and permitted pursuant to Section 7.3. In support of the Application, Applicant submits the following:

- (1) Pre-Application Conference Form (pre-application conference held on January 15, 2019);
- (2) Documentation of Community Meeting (notice, mailing list and sign in sheets – meeting held on February 27, 2019);
- (3) Application form;
- (4) Authorization form;
- (5) Written legal description of Property;
- (6) Boundary Survey, Tree Survey and Site Plan;
- (7) Approved Conditions (and comparison showing changes);
- (8) this Letter of Application;
- (9) Impact Analysis;
- (10) Campaign Disclosure Statements;
- (11) Application Fee.

The Application, this letter, and accompanying documents support Applicant's request for modification of conditions; Applicant respectfully requests that the Zoning Division recommend approval of the Application to the Board. Applicant is happy to answer questions or provide any additional information that the Zoning Division may have with regard to this Application.

Sincerely,



Ellen W. Smith

CEM:EWS

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

Notary

[Handwritten signature]

DUKE LAND GROUP LLC
by: [Signature]
Signature of Applicant /Date

Check one: Owner _____ Agent _____

Expiration Date/Seal



Notary seal not needed if answer is "no".

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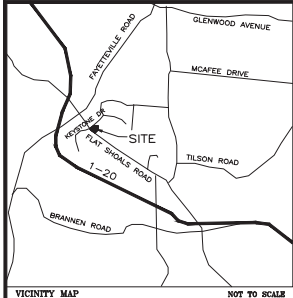
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Edith E. McLeod
Notary

[Signature]
Signature of Applicant/Date
Attorney for Owner and
Owner Agent X
Applicant

Expiration Date/Date
Notary seal not needed if answer is "No".

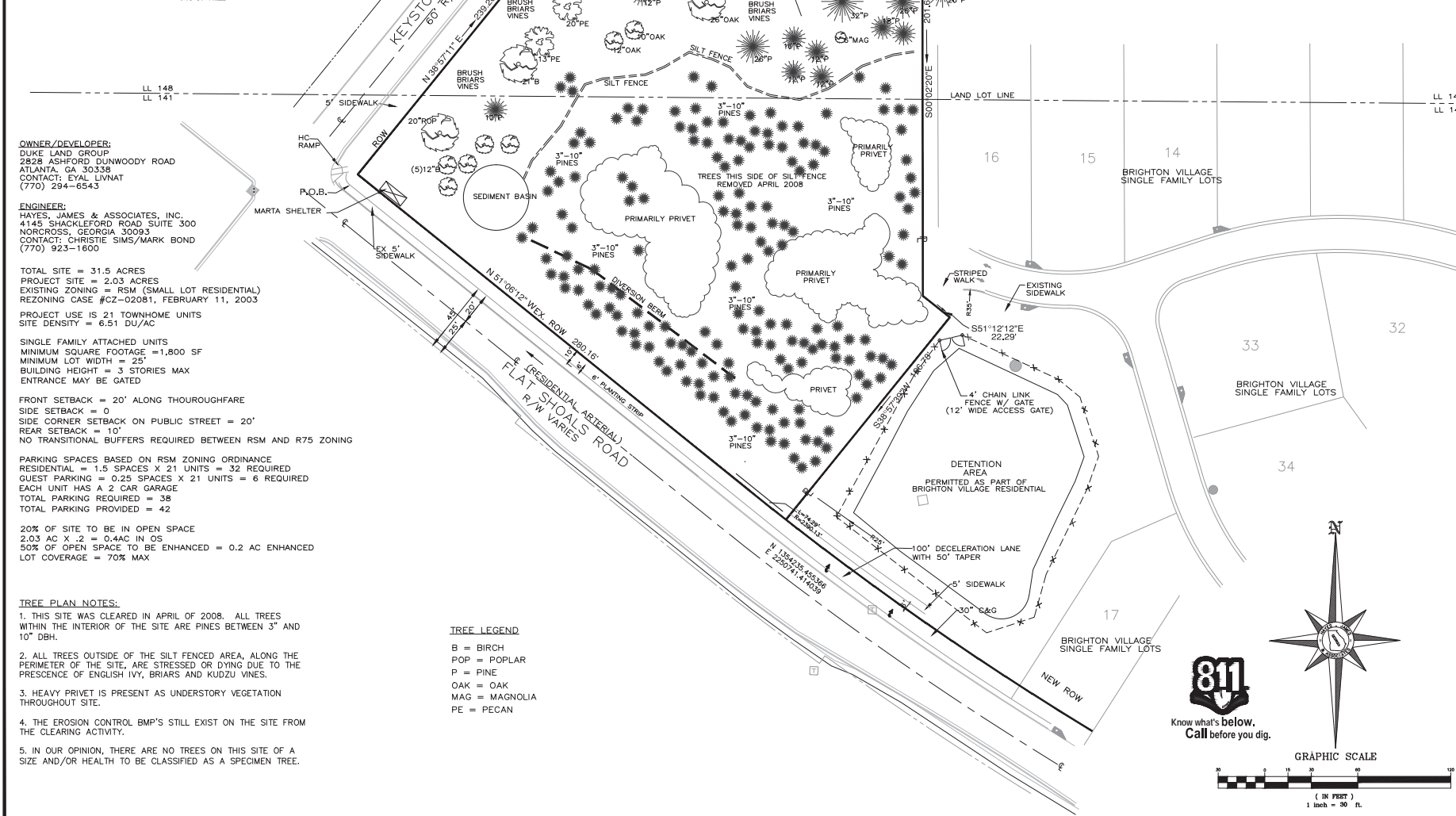




DO NOT BEGIN CONSTRUCTION BEFORE NOTIFYING
DEKALB COUNTY INSPECTIONS DEPARTMENT AT
(404) 371-2117.

24 HR. EMERGENCY CONTACT:
MR. EYAL LIVNAT

THIS PLAN IS A TREE SURVEY ONLY. IT IS
ONLY TO SHOW LOCATION AND SIZE OF
EXISTING SITE TREES



OWNER/DEVELOPER:
DUKE LAND GROUP
2828 ASHFORD DUNWOODY ROAD
ATLANTA, GA 30338
CONTACT: EYAL LIVNAT
(770) 294-6543

ENGINEER:
HAYES, JAMES & ASSOCIATES, INC.
4145 SHACKLEFORD ROAD SUITE 300
NORCROSS, GEORGIA 30093
CONTACT: CHRISTIE SIMS/MARK BOND
(770) 923-1600

TOTAL SITE = 31.5 ACRES
PROJECT SITE = 2.03 ACRES
EXISTING ZONING = RSM (SMALL LOT RESIDENTIAL)
REZONING CASE #CZ-02081, FEBRUARY 11, 2003
PROJECT USE IS 21 TOWNHOME UNITS
SITE DENSITY = 6.51 DU/AC

SINGLE FAMILY ATTACHED UNITS
MINIMUM SQUARE FOOTAGE = 1,800 SF
MINIMUM LOT WIDTH = 25'
BUILDING HEIGHT = 3 STORIES MAX
ENTRANCE MAY BE GATED

FRONT SETBACK = 20' ALONG THOROUGHFARE
SIDE SETBACK = 0
SIDE CORNER SETBACK ON PUBLIC STREET = 20'
REAR SETBACK = 10'
NO TRANSITIONAL BUFFERS REQUIRED BETWEEN RSM AND R75 ZONING

PARKING SPACES BASED ON RSM ZONING ORDINANCE
RESIDENTIAL = 1.5 SPACES X 21 UNITS = 32 REQUIRED
GUEST PARKING = 0.25 SPACES X 21 UNITS = 6 REQUIRED
EACH UNIT HAS A 2 CAR GARAGE
TOTAL PARKING REQUIRED = 38
TOTAL PARKING PROVIDED = 42

20% OF SITE TO BE IN OPEN SPACE
2.03 AC X .2 = 0.4AC IN OS
50% OF OPEN SPACE TO BE ENHANCED = 0.2 AC ENHANCED
LOT COVERAGE = 70% MAX

TREE PLAN NOTES:

1. THIS SITE WAS CLEARED IN APRIL OF 2008. ALL TREES WITHIN THE INTERIOR OF THE SITE ARE PINES BETWEEN 3" AND 10" DBH.
2. ALL TREES OUTSIDE OF THE SILT FENCED AREA, ALONG THE PERIMETER OF THE SITE, ARE STRESSED OR DYING DUE TO THE PRESENCE OF ENGLISH IVY, BRIARS OR KUDZU VINES.
3. HEAVY PRIVET IS PRESENT AS UNDERSTORY VEGETATION THROUGHOUT SITE.
4. THE EROSION CONTROL BMP'S STILL EXIST ON THE SITE FROM THE CLEARING ACTIVITY.
5. IN OUR OPINION, THERE ARE NO TREES ON THIS SITE OF A SIZE AND/OR HEALTH TO BE CLASSIFIED AS A SPECIMEN TREE.

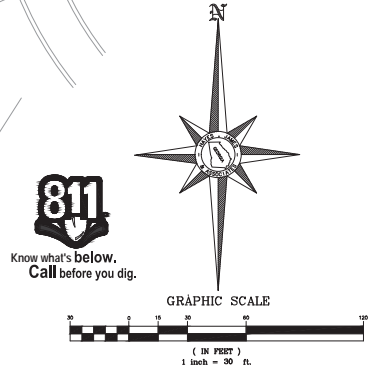
TREE LEGEND

- B = BIRCH
- POP = POPLAR
- P = PINE
- OAK = OAK
- MAG = MAGNOLIA
- PE = PECAN

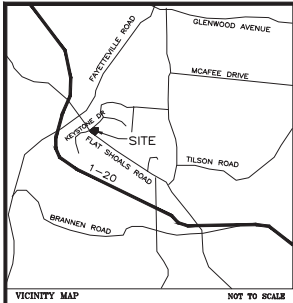
HAYES, JAMES & ASSOCIATES
CONSULTING ENGINEERS & ARCHITECTS
ATLANTA, GEORGIA
(770)923-1600

EXISTING TREE SURVEY
FOR
DUKE LAND GROUP
2130 FLAT SHOALS ROAD
DEKALB COUNTY, GEORGIA

DATE	ISSUE	NO.	DESCRIPTION	BY	DATE
FEBRUARY 14, 2018	ISSUE	00	COUNT SUBMITTAL	CS	2/15/18
SCALE: HORIZ. 1"=30'	VERT. 1"=30'				
LAND LOTS:	141 & 148				
TOWNSHIP:	15				
SECTION:					
COUNTY:	DEKALB				
STATE:	GEORGIA				
DESIGNED:	CS				
DRAWN:	CS				
CHECKED:	CS				
APPROVED:	CS				



SHEET	1
OF	1
SHEET 1 OF 1	
DRAWN BY: CS	
CHECKED BY: CS	
DATE: 2/15/18	



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24 HR. EMERGENCY CONTACT:
MR. EYAL LIVNAT

VICINITY MAP NOT TO SCALE

LL 148
LL 141

EXISTING MARTA SHELTER
LOADING ZONE

OWNER/DEVELOPER:
DUKE LAND GROUP
2828 ASHFORD DUNWOODY ROAD
ATLANTA, GA 30338
CONTACT: EYAL LIVNAT
(770) 294-6543

ENGINEER:
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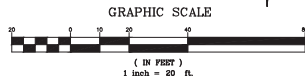
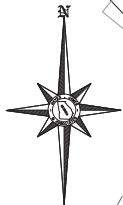
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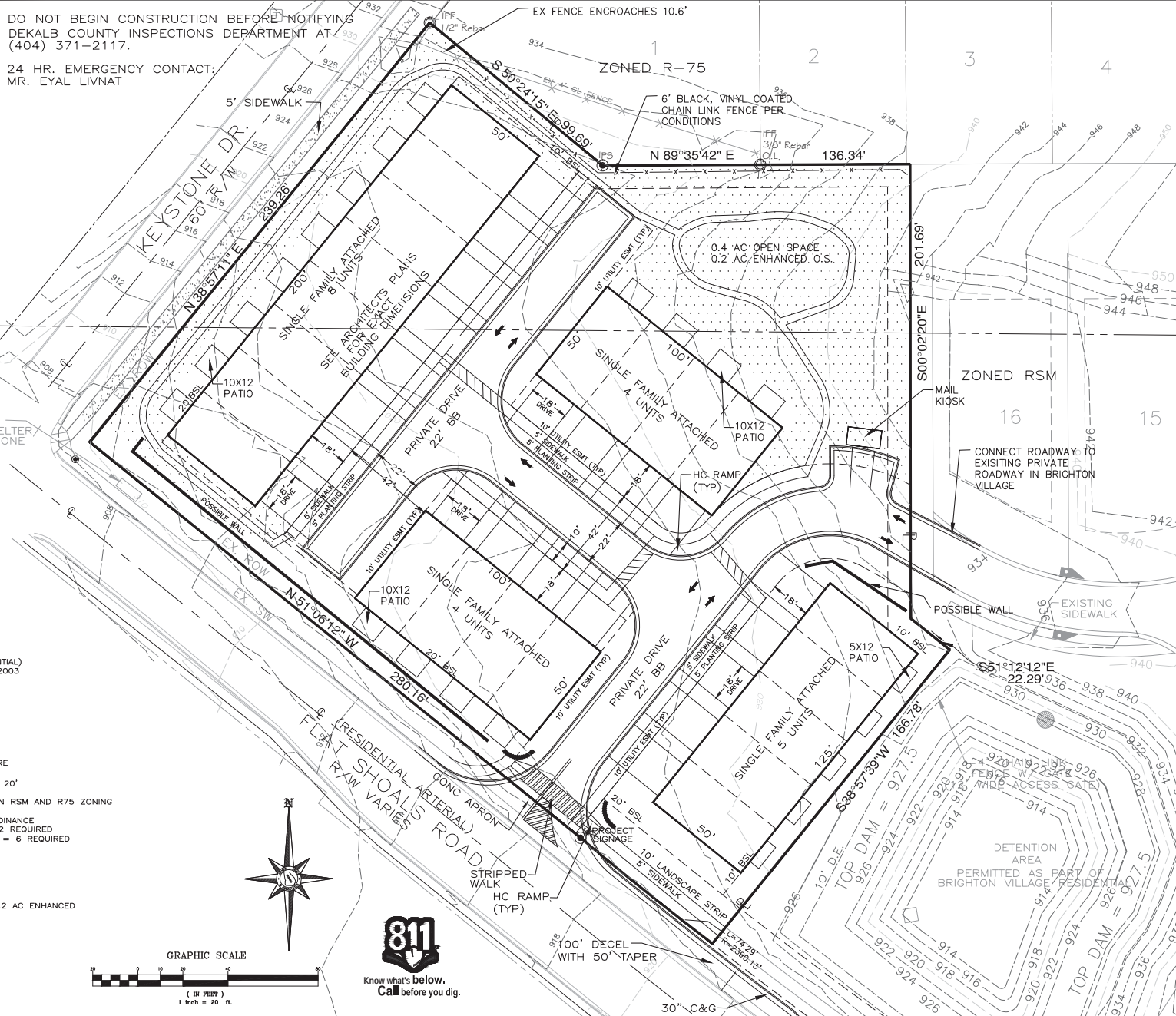
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LOT COVERAGE = 70% MAX



Know what's below.
Call before you dig.



HAYES, JAMES & ASSOCIATES
CONSULTING ENGINEERS ARCHITECTS & SURVEYORS
1000 W. MARKET STREET, SUITE 100
MOUNTAIN VIEW, GEORGIA 30151
(770) 923-1600

PRELIMINARY SITE PLAN
FOR
DUKE LAND GROUP
#2190 FLAT SHOALS ROAD
DEKALB COUNTY, GEORGIA

DATE	ISSUE	NO.	DESCRIPTION	BY	DATE	BY	DATE
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PROJECT:	DUKE LAND GROUP						
DRAWN:	CS						
CHECKED:	CS						
APPROVED:	CS						

SHEET	1
OF	1

SHEET 1 OF 1
DRAWN BY: CS
CHECKED BY: CS
DATE: 02/14/18



