



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2019-3210

5/7/2019

File Status: Preliminary Item

Public Hearing: YES NO

Department: Planning & Sustainability

SUBJECT:

COMMISSION DISTRICT(S): 5 & 7

Application of Rose C. Evans to rezone property from R-100 (Single-Family) District to C-1 (Local Commercial) District to develop a contractor's office with truck parking, at 1422 & 1450 Rock Chapel Road.

PETITION NO: D2. Z-19-1235180

PROPOSED USE: Contractor's Office with Truck Parking

LOCATION: 1422 & 1450 Rock Chapel Road, Lithonia, GA.

PARCEL NO.: 16-189-01-002 & 16-189-01-003

INFO. CONTACT: Marian Eisenberg

PHONE NUMBER: 404-371-4922

PURPOSE:

Application of Rose C. Evans to rezone property from R-100 (Single-Family) District to C-1 (Local Commercial) District to develop a contractor's office with truck parking. The property is located on the east side of Rock Chapel Road, approximately 62 feet north of Rock Mountain Road at 1422 and 1450 Rock Chapel Road, Lithonia, Georgia. The property has approximately 583 feet of frontage along Rock Chapel Road and contains 8.53 acres.

RECOMMENDATION:

COMMUNITY COUNCIL: (4-8-19) DENIAL; (2-11-19) DENIAL.

PLANNING COMMISSION: (3-5-19) FULL CYCLE DEFERRAL

PLANNING STAFF: Full Cycle Deferral

STAFF ANALYSIS: The proposed request for C-1 (Local Commercial) District on the subject site is not appropriate for the current and proposed use on the site. The use of vocational dump trucks elevates the intensity level of commercial uses beyond what is basically permitted in a general local commercial district. Planning Staff is of the opinion that another zoning district may be more appropriate for the intended use of the site. Discussions and analysis must take place between the applicant and Current and Long-Range Planning Staff to determine the appropriate district for the site. Therefore, the Planning and Sustainability Department

recommends, "Full Cycle Deferral".

PLANNING COMMISSION VOTE: (3-5-19) Full Cycle Deferral 8-0-0. J. West moved, P. Womack, Jr. seconded for a full cycle deferral.

COMMUNITY COUNCIL VOTE/RECOMMENDATION: (4-8-19) Denial 8-1-0. Business is currently operating illegally on the site without the proper zoning district; (2-11-19 Denial 10-0-0. Other sites available for industrial uses.



DeKalb County Department of Planning & Sustainability

330 Ponce De Leon Avenue, Suite 300

Decatur, GA 30030

(404) 371-2155 / plandev@dekalbcountyga.gov

Planning Commission Hearing Date: May 07, 2019, 6:30 P.M.

Board of Commissioners Hearing Date: May 28, 2019, 6:30 P.M.

STAFF ANALYSIS

Case No.: Z-19-1235180 **Agenda #:** D.2

Location/Address: The east side of Rock Chapel Road, approximately 101 feet north of Rock Mountain Road at 1422 and 1450 Rock Mountain Road, Lithonia, Georgia. **Commission District:** 5 **Super District:** 7

Parcel ID: 16-189-01-002 & 16-189-01-003

Request: To rezone property from R-100 (Residential Medium Lot) District to C-1 (Local Commercial) District to develop a contractor’s office with truck parking.

Property Owners: Arnold Bowen

Applicant/Agent: Rose Evans

Acreage: 8.53 Acres

Existing Land Use: Two (2) Single-Family Residential Structures

Surrounding Properties: Single-Family Detached Residences

Adjacent & Surrounding Zoning: North: R-100 (Residential Medium Lot) District
East, South & West: R-100 (Residential Medium Lot) District
Further South: M (Light Industrial) District

Comprehensive Plan: Suburban (SUB) Consistent X

Proposed Residential Units: N/A	Existing Residential Units: 2
Proposed Lot Coverage: <80%	Existing Lot Coverage: <35% Per Lot

SUBJECT PROPERTY & PROJECT ANALYSIS

The subject site consists of two (2) adjacent properties located on the east side of Rock Chapel Road (a major arterial) in unincorporated DeKalb County. North and east of the site are scattered single-family detached residences along Rock Chapel Road and Stephenson Road. Other surrounding land uses include a mixture of industrial uses further east along Rock Mountain Road.

Per the submitted revised Letter-of-Intent, the applicant seeks to rezone the subject site to operate a contractor’s office with truck parking. Per Staff’s observation, the one lot at 1422 Rock Chapel Road is developed with a small wood frame structure that serves as an office for truck parking in the rear of the site. Staff noted a few truck cabs and cars parked on the site. The parking lot appears to be asphalt; however, parking spaces are not delineated. The adjacent lot at 1450 Rock Chapel Road is heavily wooded with mature trees and shrubbery. A small deteriorated and uninhabitable residential structure sits on the site. Per the submitted site plan and survey, it appears there is no immediate future use for the 1450 Rock Chapel Road property at this time.

ZONING ANALYSIS

The site is currently zoned R-100 (Residential Medium Lot) District without conditions. The subject application requests an amendment to the Official Zoning Map pursuant to Chapter 27, Article 7.3 of the DeKalb Code of Ordinances to rezone the site to the C-1 (Local Commercial) District to allow a contractor’s office and overnight vocational truck storage. Per the submitted Statement of Intent, employees use the dump trucks that are parked at the site. Upon arriving in the morning, employees park their personal vehicles on the site and switch to a dump truck for pick-up and deliveries. The empty trucks are returned to the site where they remain, and the employees return home in their personal vehicle.

Per Article 2.26.1.A, the intent of the C-1 (Local Commercial) zoning district is to provide convenient local retail shopping and service areas within the county for all residents. The applicant’s request to rezone the site to the C-1 District increases the intensity of land uses allowed on the site. The proposed C-1 zoning district is inconsistent with adjacent residential zoned properties along Rock Chapel Road and the west side of Stephenson Road. The proposed use is not convenient retail for residents. Staff notes there are industrial uses in the area primarily south and further east of Rock Mountain Road, which serves as the line of demarcation between industrial and suburban land uses established by the Comprehensive Plan along Rock Chapel Road. The proposed C-1 zoning district may not be appropriate for the site given the types of heavy equipment affiliated with the proposed use.

COMPLIANCE WITH DISTRICT STANDARDS

Property zoned C-1 Local Commercial) must comply with minimum development standards per Article 2- Table 2.2 Non-Residential Zoning Districts Dimensional Requirements of the DeKalb County Zoning Ordinance.

STANDARD	REQUIREMENT	PROPOSED	COMPLIANCE
LOT WIDTH (C-1) Table 2.2	A minimum 100 feet of lot width on a public street frontage	Approximately 583 feet of frontage along Rock Chapel Road.	Yes
LOT AREA (C-1)	20,000 Square Feet	8.53 acres or 371,567 Square Feet	Yes
FRONT BUILDING SETBACK	60 Feet	>110 Feet	Yes

SIDE BUILDING SETBACK	Side Interior 20 Feet	N/A	N/A
REAR SETBACK	30 Feet	>30 Feet	Yes
TRANSITIONAL BUFFER Table 5.2(a)	75 Feet adjacent to residential zoned properties	None. Submitted plans fail to depict required buffers along the north, south and east property lines adjacent to residential zoned properties.	No, but there is enough land to accommodate required buffers.
HEIGHT	Max 3 stories	1-story	Yes
PARKING Article 6	Minimum 1 space for each 500 square feet of floor area. Existing building is approximately 1,084 square feet.	Submitted plan depicts 12 parking spaces.	Yes

Chapter 27-Article 7.3.5. Standards and factors governing review of proposed amendments to the Official Zoning Map. The following standards and factors are found to be relevant to the exercise of the county's zoning powers and shall govern the review of all proposed amendments to the Official Zoning Map:

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

The 2035 Comprehensive Plan designates this site within a Suburban (SUB) Character Area. The proposed C-1 (Local Commercial) District is permitted within a Suburban Character Area. However, the proposed use is inconsistent with the following 2035 plan policy: Protect stable neighborhoods from incompatible development that could alter established residential development patterns and density. The applicant has filed a companion Land Use Plan Amendment (LP-19-1235181) to request a change from Suburban (SUB) to Light Industrial (LIND) on the subject site.

B. 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.

The rezoning request to C-1 (Local Commercial) District to operate a dispatch office for on-site dump trucks will permit a use that is not suitable in view of the existing single-family detached residence north and east of the site along Rock Chapel Road.

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

Currently zoned R-100 (Residential Medium Lot) District, the property has a reasonable economic use if developed and used as a single-family residence. However, a non-residential zoning district on the site may yield more economic options.

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

The rezoning request may adversely affect the existing use or usability of adjacent and nearby residential properties by permitting a commercial use land use in close proximity with existing single-family residences.

E. 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.

Existing zoned and residential land use patterns north and east of the site give supporting grounds for disapproval of the request to change residential zoning to a commercial zoning district.

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

It is not known whether the proposed C-1 (Local Commercial) District will have an adverse effect on historic buildings, sites, districts, or archaeological resources.

G. 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.

The site has frontage on a major arterial (Rock Chapel Road). Access routes to the site may not cause an excessive burden on existing streets. The proposed rezoning will have no impact on area schools.

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

It appears the rezoning proposal to the C-1 (Local Commercial) District may not adversely impact the environment or surrounding natural resources.

Staff Recommendation: FULL CYCLE DEFERRAL

The proposed request for C-1 (Local Commercial) District on the subject site is not appropriate for the current and proposed use on the site. The use of vocational dump trucks elevates the intensity level of commercial uses beyond what is basically permitted in a general local commercial district. Planning Staff is of the opinion that another zoning district may be more appropriate for the intended use of the site. Discussions and analysis must take place between the applicant and Current and Long-Range Planning Staff to determine the appropriate district for the site. Therefore, the Planning and Sustainability Department recommends "**Full Cycle Deferral**" of the applicant's request.

Attachments:

1. Department and Division Comments
2. Application
3. Site Plan
4. Zoning Map & Land Use Map
5. Aerial Photograph/Site Photographs

Traffic Comments - March 2019 Zoning Agenda

N1 & N2. Rock Chapel Road is SR 124. GDOT review and permits required. . Contact Justin Hatch at GDOT District 7 (juhatch@dot.gov). Rock Chapel Road is classified as a major arterial. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements. Right of way dedication of 50 feet from centerline required. All public infrastructure is required on public right of way- even if it exceeds 50 feet from centerline. Applicant is encouraged to seek an access easement across private property to obtain access to the traffic signal at Rock Mountain Rd and Rock Chapel Road. Street lighting along Rock Chapel Road required.

N3. No customer parking within public right of way along Chantilly Road due to close proximity of multiple intersections. Chantilly Road is classified as a local road. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements. Right of way dedication of 27.5 feet from centerline of Chantilly Road. These requirements will be applied with any land development permits.

N4. Rice Road, Classified as a local road. No comment.

N5. Lexington Trace is classified as a local road. Agape Way is classified as a local road. Agape Road is located within the I-285 right of way. GDOT review and approval is required. Contact Justin Hatch at GDOT District 7 (juhatch@dot.gov). Applicant must coordinate with the Major Mobility Improvement Projects (MMIP) proposed managed lanes project along the east wall of I-285. Contact Tim Matthews (TMatthews@dot.ga.gov) prior to permitting. Local roads require a 27.5 foot right of way dedication from centerline, 5 foot landscape strip, 5 foot sidewalk. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements. Streetlights required. Infrastructure improvements required on all frontages.

N6. Nicole Lane is classified as a local road. Reginald Court is classified as a local road. No comment.

N7 & N8. E. Tupelo Street is classified as a local roads. Oldfield Road is classified as a local road. All local public roads require a 27.5 foot right of way from centerline, five foot landscape strip, five foot sidewalk and street lights. Infrastructure improvements required on all frontages. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements.

N9. Wellborn Road is classified as a collector road. Collector Roads require a 35 foot right of way dedication from centerline, 6 foot sidewalk, 4 bike lane, 5 foot landscape strip, and streetlights. Covington Hwy is classified as major arterial. Requires GDOT approval and review. Contact Justin Hatch at GDOT District 7 (juhatch@dot.gov). Major arterials require a 50 right of way dedication from centerline, 6 foot sidewalks, 4 foot bike lane, 5 foot landscape strip and street lights. Number of units requires two access points per code. Eliminate the acceleration lane at entrance. GDOT has just awarded an intersection project at the intersection of Covington Hwy at Wellborn Rd/Cove Lake Road. Coordinate with construction awarded to Baldwin Paving. Install a roundabout at the access point on Wellborn Road- eliminates the right turn lane and the left turn lane. The Transportation Division will support the one entrance with the installation of a roundabout, but still requires Board action to vary from the code.

N10. Flowers Road is classified as a collector road. Collector Roads require a 35 foot right of way dedication from centerline, 6 foot sidewalk, 4 foot bike lake, 5 foot landscape strip, and streetlights. Covington Hwy is classified as major arterial. Extend infrastructure improvements along all property lines. Intersection, stopping and left turn sight distance required to be verified by Professional Engineer at entrance on Wellborn Road due to curve and possible hill crest along Wellborn Road. Minimum sight distance requirements must be met for permitting.

NZ



DEKALB COUNTY GOVERNMENT PLANNING DEPARTMENT DISTRIBUTION FORM

NOTE: PLEASE RETURN ALL COMMENTS VIA EMAIL OR FAX TO EXPEDITE THE PROCESS TO MICHELLE ALEXANDER MMALEXANDER@DEKALBCOUNTYGA.GOV OR JOHN REID JREID@DEKALBCOUNTYGA.GOV

COMMENTS FORM: PUBLIC WORKS TRAFFIC ENGINEERING

Case No. 2019-3210 Z-19-1235180 Parcel I.D. #: 16-189 01-003
1422 + 1450 Address: Rock Mountain Road
Lithonia, Georgia

Adjacent Roadway (s):

(classification) (classification)

Capacity (TPD) _____	Capacity (TPD) _____
Latest Count (TPD) _____	Latest Count (TPD) _____
Hourly Capacity (VPH) _____	Hourly Capacity (VPH) _____
Peak Hour. Volume (VPH) _____	Peak Hour. Volume (VPH) _____
Existing number of traffic lanes _____	Existing number of traffic lanes _____
Existing right of way width _____	Existing right of way width _____
Proposed number of traffic lanes _____	Proposed number of traffic lanes _____
Proposed right of way width _____	Proposed right of way width _____

Please provide additional information relating to the following statement.

According to studies conducted by the Institute of Traffic Engineers (ITE) 6/7TH Edition (whichever is applicable), churches generate an average of fifteen (15) vehicle trip end (VTE) per 1, 000 square feet of floor area, with an eight (8%) percent peak hour factor. Based on the above formula, the _____ square foot place of worship building would generate _____ vehicle trip ends, with approximately _____ peak hour vehicle trip ends.

Single Family residence, on the other hand, would generate ten (10) VTE's per day per dwelling unit, with a ten (10%) percent peak hour factor. Based on the above referenced formula, the _____ (Single Family Residential) District designation which allows a maximum of _____ units per acres, and the given fact that the project site is approximately _____ acres in land area, _____ daily vehicle trip end, and _____ peak hour vehicle trip end would be generated with residential development of the parcel.

COMMENTS:

Did not see any traffic engineering concerns at this time

Signature: John Reid

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

APPLICATION TO AMEND OFFICIAL ZONING MAP
OF DEKALB COUNTY, GEORGIA

Z/CZ No. _____ Filing Fee: _____

Date Received: August 16, 2018 Application No.: 1235180

Applicant: Rose Evans E-Mail: rose.evans100@yahoo.com

Applicant Mailing Address: 106 Horseshoe Spring Ct, Conyers, GA 30013

Applicant Phone: 770-256-6088 Fax: _____

Owner(s): ARNOLD Bowen E-Mail: ENVIROEXPRESSIVE@yahoo.com
(If more than one owner, attach as Exhibit "A")

Owner's Mailing Address: 1422 Rock Chapel Rd, Lithonia, GA 30058

Owner(s) Phone: 404-227-6042 Fax: _____

Address/Location of Subject Property: 1422 & 1450 Rock Chapel Rd Lithonia, GA 30058

District(s): 16 Land Lot(s): 189 Block: _____ Parcel(s): 16 189 01 003

Acreage: 8.525 Commission District(s): ~~Basic~~ District 5; Super District 7

Present Zoning Category: R-100 Proposed Zoning Category: M-1

Present Land Use Category: Residential

PLEASE READ THE FOLLOWING BEFORE SIGNING

This form must be completed in its entirety before the Planning Department accepts it. It must include the attachments and filing fees identified on the attachments. An application, which lacks any of the required attachments, shall be determined as incomplete and shall not be accepted.

Disclosure of Campaign Contributions

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

Have you the applicant made \$250 or more in campaign contributions to a local government official within two years immediately preceding the filing 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.

Nancy Thomas 8/15/18
NOTARY

Rose Evans 8/15/18
SIGNATURE OF APPLICANT / DATE

July 17, 2020
EXPIRATION DATE / SEAL

Check One: Owner _____ Agent

AMENDED AND RESTATED
STATEMENT OF INTENT
AND
IMPACT ANALYSIS

And

Other Material Required by
DeKalb County Zoning Ordinance
For

Rezoning Application pursuant to
the DeKalb County Zoning Ordinance

Of

ROSE EVANS

For

+/- 8.53 acres of Land
located in
Land Lots 189, 16th District, DeKalb County

Submitted for Applicant by:

Michèle L. Battle
Battle Law, P.C.
One West Court Square, Suite 750
Decatur, Georgia 30030
(404) 601-7616 Phone
(404) 745-0045 Facsimile
mlb@battlelawpc.com

I. STATEMENT OF INTENT

The Applicant, Rose Evans, acting on behalf of Arnold Bowen, the owner of 1422 and 1450 Rock Chapel Road (the "Subject Property") is seeking to rezone the Subject Property from R100 to C-1 to allow for a general office space with truck parking which is a permitted use within the C-1 Zoning District. The Subject Property is an 8.53 acre tract of land. The property at 1422 Rock Chapel is improved with a 1,084 sq. ft. building that is used for office space. The property at 1450 Rock Chapel is improved with a 1,702 sq. ft. currently uninhabitable building. The property at 1422 Rock Chapel is also improved with a parking area for the dump trucks, cars and trailer used in connection with the building. The parking area is to the rear of the building.

The intent is to use the property for general contractor offices. Currently, a dump truck contractor is occupying the building at 1422 Rock Chapel Road. The building is used for office space for the dump truck business. In the morning the employees check in at the office, park their personal vehicles, pick up the dump trucks owned by the business, make their required pick ups and deliveries, including from the businesses located on Rock Mountain Road adjacent to the Martina Marietta Quarry, and then return the empty dump trucks back to the property, where they pick up their personal vehicles, and go home. Rock Chapel is a major thoroughfare that is designed for this type of operation, which is supportive of the surrounding industrial uses. There is a dedicated lane for cars and trucks turning onto Rock Chapel Road from Rock Mountain Road that contains to the intersection of Rock Chapel Road and Stephenson Road. This lane was installed to allow trucks to can speed and transition smoothly into traffic on Rock Chapel Road.

This document is submitted both as a Statement of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and the Impact Analysis as required by the DeKalb County Zoning Ordinance, § 27-829(f). A surveyed plat and site plan of the Subject Property has been filed contemporaneously with the Application, along with other required materials.

II. IMPACT ANALYSIS

A.

THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE COMPREHENSIVE PLAN

The Subject Property is designated Suburban under the DeKalb Comprehensive Land Use Plan through 2035, and is consistent with the economic development policies set forth in the Comprehensive Plan, as well as with the policies under the Suburban Land Use Designation regarding non-residential development.

B.

THE PROPOSED REZONING PERMITS A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY.

The Subject Property located along the Rock Chapel Road corridor which is a major arterial road. The Proposed Project will allow for a non-residential development on the corridor at a level of intensity that will have less of an impact on the surrounding community than a single-family residential subdivision under the R-100 District Regulations. The use of the Subject Property for a general office space with truck parking will be more compatible with the surrounding community and business in the

surrounding area. As no outdoor storage is allowed this space will function no differently than office space for any other business from a visual and functional perspective.

C.
**THE SUBJECT PROPERTY DOES NOT HAVE A
REASONABLE ECONOMIC USE AS PRESENTLY ZONED.**

The Subject Property has no reasonable economic use as presently zoned based on being located adjacent to a rock quarry. The Applicant and the Owner respectfully submit that the Zoning Ordinance of DeKalb County, Georgia, as amended from time to time and known as the "DeKalb County Zoning Ordinance", to the extent that it classifies the Subject Property in any zoning district which would preclude the development of the Proposed Project, is unconstitutional as a taking of property, a denial of equal protection, an arbitrary and capricious act, and an unlawful delegation of authority under the specific constitutional provisions later set forth herein. Any existing inconsistent zoning of the Subject Property pursuant to the DeKalb County Zoning Ordinance deprives the current owner of any alternative reasonable use and development of the Subject Property. Additionally, all other zoning classifications, including ones intervening between the existing classification and the one requested herein, would deprive the current owner of any reasonable use and development of the Subject Property. Further, an attempt by the Board of Commissioners to impose greater restrictions upon the manner in which the Subject Property will be developed than presently exist, such as by way of approving the zoning district requested but limiting development to standards allowed under more stringent zoning classifications, would be equally unlawful.

The Applicant submits that the current zoning classification and any other zoning of the Subject Property save for what has been requested by it as established in the DeKalb County Zoning Ordinance constitute an arbitrary and unreasonable use of the zoning and police powers because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant. All inconsistent zoning classifications between the existing zoning and the zoning requested hereunder would constitute an arbitrary and unreasonable use of the zoning and police powers because they bear or would bear no substantial relationship to the public health, safety, morality or general welfare of the public and would substantially harm the Applicant. Further, the existing inconsistent zoning classifications constitute, and all zoning and plan classifications intervening between the existing inconsistent zoning classification and that required to develop this project would constitute a taking of the owner's private property without just compensation and without due process in violation of 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 I of the Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Further, the Applicant respectfully submits that the Board of Commissioners' failure to approve the requested zoning change would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

The Applicant respectfully submits that the Board of Commissioners cannot lawfully impose more restrictive standards upon the development of the Subject Property than presently exist as to do so not only would constitute a taking of the Subject Property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution.

Finally, the Applicant protests any action which would prohibit development of the Subject Property as requested inasmuch as the Zoning Ordinance was adopted in violation of or in other respects does not comply with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. and minimum procedural due process standards guaranteed by the Constitutional provisions set forth above.

This Application meets favorably the prescribed 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, Guhl vs. Holcomb Bridge Road, 238 Ga. 322 (1977).

D.
THE PROPOSED REZONING WILL NOT ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY

The proposed rezoning will in no way adversely affect the existing use or usability of adjacent or nearby property. The Subject Property is located near the entrance of Rock Mountain Road which is the entrance to multiple industrial businesses such as Martin Marietta Lithonia Quarry, Quikrete, USA Ready Mix, War Trucking, and Pittman Construction Company. All of these properties are within .02 of the Subject Property.

E.
OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY

There are no existing or changing conditions affecting the use and development of the Subject Property.

F.
THE ZONING PROPOSAL WILL NOT ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS OR ARCHAEOLOGICAL RESOURCES

The Applicant knows of no historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the requested rezoning application.

G.
THE REQUESTED REZONING WILL NOT RESULT IN A USE WHICH WILL OR COULD CAUSE EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS

The Proposed Project will not cause excessive or burdensome use of existing streets. Rock Chapel Road is a major arterial road which can handle any traffic generated by the Proposed Project. The Proposed Project will have no impact on the surrounding communities.

IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Rezoning Application at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of DeKalb County so that such recommendations or input might be incorporated as conditions of approval of this Application.

Respectfully submitted,

Michèle L. Battle
Attorney For Applicant

CONSTITUTIONAL ALLEGATIONS

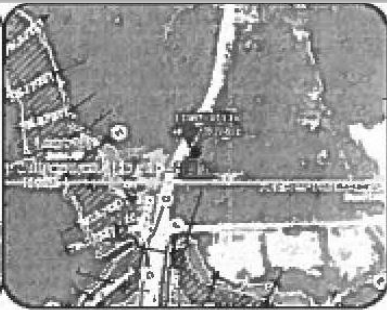
The portions of the DeKalb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the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

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

A denial of this Application would constitute an arbitrary and capricious act by the DeKalb County Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the DeKalb County Board of Commissioners to modify the CZ-07-3899 conditions 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 modification 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 unconstitutional conditions and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

The existing zoning conditions 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 the unconstitutional zoning condition 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.



Vicinity Map

FIRM Panel Vignette

ZONING M-1

APPLICABLE ZONING REGULATIONS AND REQUIREMENTS FOR THE M-1 ZONING DISTRICT.

OWNER

NAME AND ADDRESS OF THE PROPERTY OWNER.

BUILDER / 24 HR. EMERGENCY CONTACT

NAME AND ADDRESS OF THE BUILDER AND EMERGENCY CONTACT INFORMATION.

GENERAL NOTES

- List of general notes and specifications for the site plan, including zoning requirements and site-specific details.

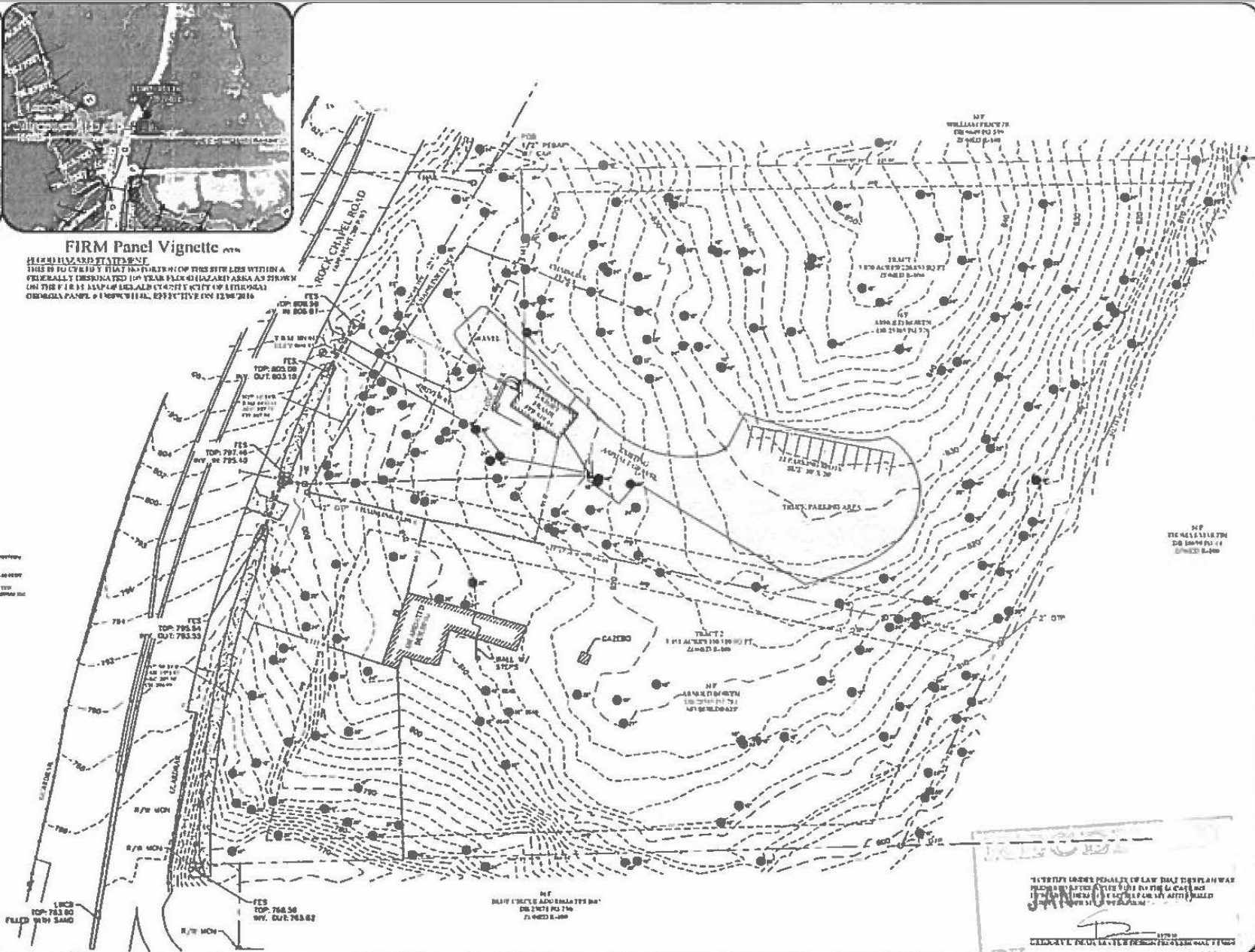


Table with columns for DATE, PREPARED BY, and other project details.

ZONING EXHIBIT PREPARED FOR VINCENT DEBOVARD LAND LOT 10, 11th DISTRICT 1422 ROCK CHANNEL ROAD LITHONIA, GEORGIA 30058 DATE: 12-20-2018



Additional notes and specifications at the bottom left of the page.



Legend table defining symbols for various site features such as structures, utilities, and zoning boundaries.



BOUNDARY ZONE INC. logo and contact information.



PROJECT 19385.02 SHEET 1 OF 1



Site

2
R-100

R-100

M-2

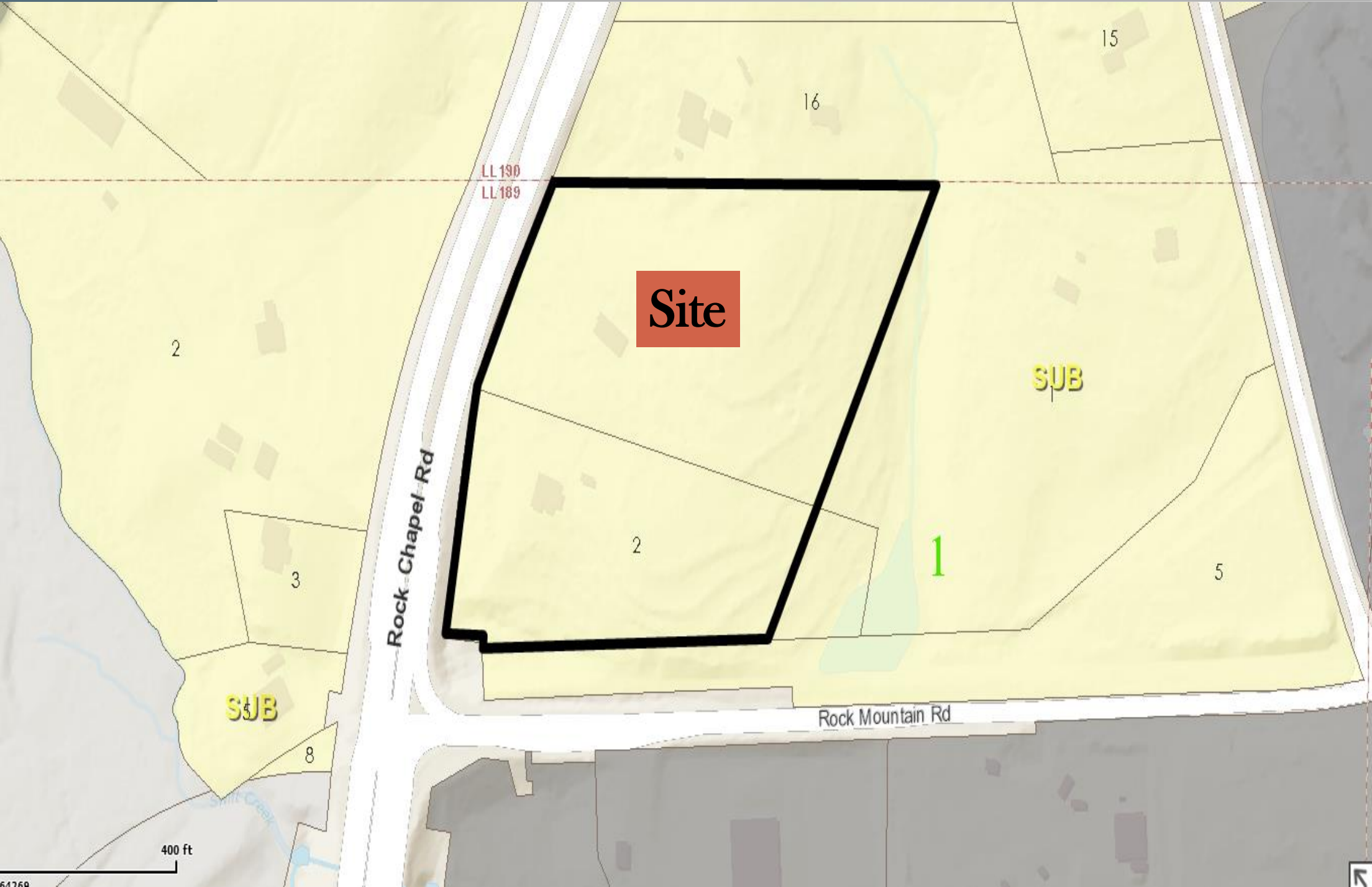
M

400 ft

CZ-09-15288, CZ-07-12945, CZ-92069

CZ-95051 M

CZ-09-15288, CZ-07-12945, CZ-92069
Multiple Zoning - refer to zoning case





Site

Rock Chapel Road

Rock Mountain Road

400 ft



1422 Rock Chapel Road