



# DeKalb County Government

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

## Agenda Item

**File #:** 2019-4078

11/19/2019

**File Status:** Preliminary Item

**Public Hearing:** YES  NO

**Department:** Planning & Sustainability

**SUBJECT:**

**COMMISSION DISTRICT(S):** 3 & 6

**Application of Otto Tract No. 10 LLC c/o Battle Law to rezone property from MU-4 (Mixed Use High Density) District to MR-1 (Medium Density Residential-1) District within Tier 2 of the 1-20 Overlay District, at 3101 Clifton Springs Road.**

**PETITION NO:** D7. Z-19-1243388

**PROPOSED USE:** 300 Multi-Family Units

**LOCATION:** 3101 Clifton Springs Road

**PARCEL NO. :** 15-090-01-013

**INFO. CONTACT:** Marian Eisenberg

**PHONE NUMBER:** 404-371-4922

**PURPOSE:**

Application of Otto Tract No. 10 LLC c/o Battle Law to rezone property from MU-4 (Mixed Use High Density) District to MR-1 (Medium Density Residential-1) District to develop 300 multi-family units at a density of 6.25 units per acre within Tier 2 of the 1-20 Overlay District. The property is located on the west side of Flat Shoals Road, approximately 679 feet east of the southwest intersection of Clifton Springs Road and Flat Shoals Parkway at 3101 Clifton Springs Road, Decatur, GA. The property has approximately 168 feet of frontage along the west side of Flat Shoals Parkway and contains 48 acres.

**RECOMMENDATION:**

**COMMUNITY COUNCIL:** (10/9/19) NO RECOMMENDATION; (8/14/19) DENIAL.

**PLANNING COMMISSION:** (11/05/19) WITHDRAWAL WITHOUT PREJUDICE; (9/10/19) FULL CYCLE DEFERRAL

**PLANNING STAFF:** WITHDRAWAL WITHOUT PREJUDICE

**STAFF ANALYSIS:** The proposed rezoning request from MU-4 (Mixed Use High Density) District to MR-1 (Medium-Density Residential - 1) District is compatible with developed residential property zoned MR-1 zoning northeast of the subject site on Columbia Drive. Located within a Neighborhood Center Character area designation, the request for 300 multi-family units at a density of 6.25 units per acre is consistent with the

following 2035 Comprehensive Plan policy: “Encourage the maximum density of residential in mixed use projects not to exceed 24 dwelling units per acre, with the most intense development located towards the commercial and/or office core of the Neighborhood Center”. The request to the MR-1 district is a less-intense zoning district than the previously approved MU-4 District. Given that the proposed development requires a traffic study and archeological study, Planning Staff previously recommended a full cycle deferral to allow the applicant to submit these documents for Staff review. However, Planning staff was notified on Tuesday, November 5, 2019 of the applicant’s intent to withdraw the requested rezoning petition. Therefore, the Planning and Sustainability Department recommends **WITHDRAWAL WITHOUT PREJUDICE**.

**PLANNING COMMISSION VOTE: (11/05/2019) Withdrawal Without Prejudice 7-0-0.** J. Johnson moved, G. McCoy seconded for withdrawal without prejudice per the applicant's request. **(9/10/19) Full Cycle Deferral 9-0-0.** V. Moore moved, A. Atkins seconded for a full cycle deferral per Staff recommendation.

**COMMUNITY COUNCIL VOTE/RECOMMENDATION: (10/9/19) No discussion. No vote.; (8/14/19) Denial 8-0-2.** The Board acknowledged that the distribution center would bring jobs but pointed out that plans for other distribution centers have not been realized. The Board expressed concerns about truck traffic related to the distribution center and thought that the proposal would result in too many apartment units.



**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: November 05, 2019, 6:30 P.M.  
Board of Commissioners Hearing Date: November 19, 2019, 6:30 P.M.**

**STAFF ANALYSIS**

**Case No.:** Z-19-1243388 **Agenda #:** D.7

**Location/Address:** The west side of Flat Shoals Road, approximately 679 feet east of the southwest intersection of Clifton Springs Road and Flat Shoals Parkway at 3101 Clifton Springs Road, Decatur, GA. **Commission District:** 3 **Super District:** 6

**Parcel ID:** 15-090-01-013

**Request:** To rezone property from MU-4 (Mixed Use High Density) District to MR-1 (Medium Density Residential-1) District to develop a 300 multi-family unit development at a density of 6.25 units per acre.

**Property Owners:** Otto Tract No. 10, LLC

**Applicant/Agent:** Otto Tract No. 10, LLC/Battle Law, P.C.

**Acreage:** 48 Acres

**Existing Land Use:** Undeveloped

**Surrounding Properties:** North is zoned C-1 (Local Commercial) District and is developed with a QuikTrip convenience store with gas outlet, various retail commercial uses and DeKalb County Board of Health. Southeast along Flat Shoals Parkway is zoned NS (Neighborhood Shopping) District and developed with retail uses. Northeast near the intersection of Columbia Drive and Flat Shoals Parkway is zoned RSM (Residential Medium Lot) District and MR-1 (Medium Density Residential-1) District. Residential developments include Orchard Lane Condominiums, Vinings Crest Townhomes and The Life apartment homes. DeKalb County Library is located east of the site on Flat Shoals Parkway on property zoned R-100 (Residential Medium Lot) District.

**Comprehensive Plan:** Neighborhood Center (NC) Consistent X

<b>Proposed No of Units:</b> 300	<b>Existing Residential Sq. Footage:</b> None
<b>Proposed Lot Coverage:</b> <65%	<b>Existing Lot Coverage:</b> None

## **SUBJECT PROPERTY**

The subject site is approximately 48 acres of heavily wooded undeveloped land on the west side of Flat Shoals Parkway and south of Clifton Springs Road. The southern portion of the site is within a flood zone area. The site is within Tier 2 of the I-20 Overlay District.

Surrounding land uses include a mixture of residential, office and commercial developments. Along the east side of Flat Shoals Parkway is Orchard Lane Condominiums, Vinings Crest Townhomes and The Life apartment homes. Existing commercial uses in the immediate area include Burger King, Zoom Car Wash, Flat Shoals Crossing Shopping Center and Battle's Plaza Shopping Center. Public facilities and institutional uses in the area include the Flat Shoals Library on Flat Shoals Parkway and DeKalb County Board of Health along Clifton Springs Road.

Quik-Trip convenience store with auto fuel pumps is west of the site. Contiguous to the site is undeveloped property designated for commercial and residential uses as part of an approved mixed-use development. Twenty-seven (27) acres of the contiguous property is proposed for rezoning from MU-4 (Mixed Use High Density) District to M (Light Industrial) District pursuant to Z-19-124386

## **ZONING & SITE HISTORY:**

**DRI #1850 (Development of Regional Impact) September 8, 2008** - The site is part of DRI #1850, a traffic study conducted by GRTA (Georgia Regional Transportation Authority) on 79 acres at the intersection of Clifton Springs Road and Flat Shoals Parkway. The overall development was proposed as a mixed-use project consisting of retail, office, commercial and residential development at the intersection of Clifton Springs Road and Flat Shoals Parkway. The residential component consisted of 600 multi-family units which initiated the DRI review by GRTA. The DRI was approved with conditions for development included in the notice of decision.

**LP-08-15001 – Approved February 10, 2009** - The DeKalb County Board of Commissioners approved Land Plan Amendment (LP-08-15001) to amend the Comprehensive Land Use Plan from Suburban (SUB) to Neighborhood Center (NC) on the subject site.

**Z-12-18064 & SLUP-12-18066– Approved November 13, 2012** - The Board of Commissioners rezoned the 79-acre tract from R-100 (Single-Family Residential) District to C-1 (Local Commercial) District and OCR (Office-Commercial-Residential) District in accordance with conditions per GRTA. Tract 1 per the site survey (Attachment 1), allows for retail, office and commercial uses on 73.996 acres zoned OCR District. Tract 2 allows for retail, service commercial on 5.540 acres zoned C-1 District. The overall development allows for a maximum of 274,400 square feet of heated space for commercial uses and a maximum of 600 multi-family residential units at the intersection of Flat Shoals Road and Clifton Springs Road.

**DRI #1850 Revised Notice of Decision issued by GRTA on January 12, 2015** - The revisions were to include temporary site access until additional improvements and site access are installed, and to reduce the required distances for internal turning movements on certain site driveways. (See Attachments 2 & 3)

**Revised DeKalb Zoning Ordinance effective September 1, 2015** - renamed the OCR District to MU-4 (Mixed Use High Density).

## **ZONING ANALYSIS**

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 40 acres of the original 73.996 acres from MU-4 (Mixed Use High Density) District pursuant to MR-1 (Medium Density Residential-1) District to develop 300 multi-family units. The request to MR-1 is a down zoning to a less intense residential district and reduces the number previously approved 600 multi-family units by half to 300 units. The intent of the MR-1 zoning district is to encourage primarily residential, planned

developments that allow accessory retail, office, institutional, and civic uses. The proposed development would allow access to existing commercial, civic and institutional uses in the area. The applicant's request to rezone the site to the MR-1 District is compatible with nearby residential zoned properties along Columbia Drive and Flat Shoals Parkway. Northeast of the site along Columbia Drive is zoned MR-1. East of the site across Flat Shoals Parkway is zoned RSM (Small Lot Residential Mix) District). Per Chapter 27-Article 5.3.4.A of the DeKalb County Zoning Ordinance, multi-family developments with over 300 units require a traffic impact study. Given that the proposed development is 300 units with entrances on a major arterial (Flat Shoals Parkway) and a minor arterial (Clifton Springs Road), the Transportation Engineer is requiring a traffic study.

**PROJECT ANALYSIS**

Labeled Tract 1B on the submitted site plan, the site depicts several four-story buildings that will house the 300 multi-family units. The plan depicts an amenities area near the front entrance and detention in the rear of the site. Parking is depicted throughout the proposed development. Required stream buffers are shown on the submitted site plan. Per the chart below, the proposed development complies with all applicable development standards for the MR-1 zoning district and Tier 2 of the I-20 Overlay District. The submitted site plan depicts three points of access. One is direct access from Flat Shoals Parkway. A second access is via interparcel access with adjacent parcels to the east on Flat Shoals Parkway. The third access is via an existing curb cut on Clifton Springs Road.

**COMPLIANCE WITH MR-1 (MEDIUM DENSITY RESIDENTIAL-1) DISTRICT STANDARDS PER TABLE 2.4: Medium and High Density-Residential Zoning Districts & Article 3.33.9 Development standards per the I-20 Overlay District.**

STANDARD		REQUIREMENT	PROPOSED	COMPLIANCE
LOT WIDTH, STREET FRONTAGE		100 Feet	Approximately 168 feet along Flat Shoals Parkway	Yes
DWELLING UNITS/ACRE		Max 8 Units Per Acre	6.25 Units Per Acre	Yes
UNIT SIZE		Min. 650 Square Feet	Not Stated on Site Plan	Unable to determine
BUILDING SETBACKS	FRONT SETBACKS	Max. 20 Feet	20 Feet	Yes Yes
	REAR SETBACKS PER I-20 OVERLAY DISTRICT 3.33.9.A.3	10 Feet	Exceeds 10 Feet	Yes
HEIGHT PER I-20 OVERLAY DISTRICT 3.33.9.B		Max. 8 Stories	4 Stories	Yes
LOT COVERAGE		Max. 65%	Less than 65 %	Yes
OPEN SPACE I-20 OVERLAY 3.33.10.A		Min. 20% based	78% Open Space	Yes
LANDSCAPING I-20 OVERLAY 3.11.13		10 feet along property frontage 5 feet along side and rear property lines	Landscape Plan not submitted	Unable to determine
PARKING I-20 OVERLAY 3.33.9.E.4		375 parking spaces	450 Total parking spaces	Yes

## **IMPACT ANALYSIS:**

**Section 27-7.3.5 of the DeKalb County Code states that the following standards and factors 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:**

Located within a Neighborhood Center Character Area, the zoning proposal at a proposed density of 6.25 units per acre would be consistent with the following 2035 comprehensive plan policies and strategies: "Encourage the maximum density of residential in mixed use projects not to exceed 24 dwelling units per acre, with the most intense development located towards the commercial and/or office core of the Neighborhood Center". The density of the proposed residential development is 6.25 units per acre and would be surrounded by commercial, industrial and neighborhood service uses.

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

The proposed rezoning to the MR-1 (Medium Density Residential-1) District for multi-family units is suitable given nearby existing residential development (apartments, townhouses and condominiums) in the area along Columbia Drive and Flat Shoals Parkway.

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

Due to the owner's inability to develop 600 multi-family units as approved, there may not be a reasonable economic use as currently zoned MU-4. The proposed rezoning to the MR-1 (Medium Density Residential -1) District for 300 multi-family units allows a lower unit yield which may be more attractive to consumers.

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

The rezoning request to the MR-1 (Medium Density Residential-1) District for 300 multi-family units should not adversely affect the use or usability of adjacent properties.

**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:**

Given the location of the site adjacent to established non-residential neighborhood service uses along Flat Shoals Parkway, it appears the requested MR-1 zoning district proposal would allow an appropriate transitional use to more intense non-residential uses north and east of the site along Flat Shoals Parkway.

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

It is not known at this time whether the proposed MR-1 District will have an adverse effect on the Soapstone Historic District or archaeological resources. The petition was presented for initial review at the Historic Preservation Commission (HPC) meeting on August 19, 2019. A majority of the HPC recommended approval with an archeological survey to be conducted of the whole property. The minority recommended approval with an archeological survey to be conducted of the area of disturbance plus a 50-foot buffer. The applicant has ordered an archaeological study for the site.

**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 will have access from Flat Shoals Parkway (a four-lane major arterial with turn lanes). The request for 300 multi-family units would reduce the impact of the previously approved 600 multi-family units on the site and should not cause an excessive burden on existing streets, transportation facilities and utilities. There may be an increase in school enrollment.

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

The request for residential zoning on the site should not adversely impact the environment or surrounding natural resources. However, the applicant should submit for a Land Disturbance Permit (LDP) approval, storm water management and emergency vehicle access.

**STAFF RECOMMENDATION: WITHDRAWAL WITHOUT PREJUDICE**

The proposed rezoning request from MU-4 (Mixed Use High Density) District to MR-1 (Medium-Density Residential - 1) District is compatible with developed residential property zoned MR-1 zoning northeast of the subject site on Columbia Drive. Located within a Neighborhood Center Character area designation, the request for 300 multi-family units at a density of 6.25 units per acre is consistent with the following 2035 Comprehensive Plan policy: "Encourage the maximum density of residential in mixed use projects not to exceed 24 dwelling units per acre, with the most intense development located towards the commercial and/or office core of the Neighborhood Center". The request to the MR-1 district is a less-intense zoning district than the previously approved MU-4 District. Given that the proposed development requires a traffic study and archeological study, Planning Staff previously recommended a full cycle deferral to allow the applicant to submit these documents for Staff review. However, Planning staff was notified on Tuesday, November 5, 2019 of the applicant's intent to withdraw the requested rezoning petition. Therefore, the Planning and Sustainability Department recommends **WITHDRAWAL WITHOUT PREJUDICE**.

**Attachments:**

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

## NEXT STEPS

***Following an approval of this zoning action, one or several of the following may be required:***

- ✓ **Land Disturbance Permit** *(Required for of new building construction on non-residential properties, or land disturbance/improvement such as storm water detention, paving, digging, or landscaping.)*
- ✓ **Building Permit** *(New construction or renovation of a building (interior or exterior) may require full plan submittal or other documentation. zoning, site development, watershed and health department standards will be checked for compliance.)*
- ✓ **Certificate of Occupancy** *(Required prior to occupation of a commercial space and for use of property for any business type. The issuance follows the review of submitted plans if required based on the type occupancy.)*
- ✓ **Plat Approval** *(Required if any parcel is being subdivided, re-parceled, or combined. Issued “administratively”; no public hearing required.)*
- ✓ **Overlay Review** *(Required review of development and building plans for all new construction or exterior modification of building(s) located within a designated overlay district.)*
- ✓ **Historic Preservation** *(Certificate of Appropriateness required for any proposed changes to building exteriors or improvements to land when located within the Druid Hills or the Soapstone Geological Historic Districts. Historic Preservation Committee public hearing may be required.)*
- ✓ **Variance or Special Exception** *(Required seeking relief from any development standards of the Zoning Ordinance. A public hearing and action by the Board of Appeals are required for most variances.)*

**Each of the approvals and permits listed above require submittal of application, fees and supporting documents. Please consult with the appropriate department/division.**



## September 2019 Rezoning Traffic Comments

N1. No customer parking on Tolbert Drive between the driveway and Frazier Rd. All parking must be on property or east of driveway on Tolbert Drive as to not interfere with the intersection of Frazier Rd at Frazier Ct/Tolbert Dr.

N2. Briarcliff Road is SR 42. GDOT review and approval of access points and right of way improvements required prior to issuance of permits. Briarcliff Road is classified as a minor arterial. Right of way dedication of 40 feet from centerline required. 6-foot sidewalk, bike facilities and street lights required. Bring sidewalks and header curb up to current code requirements. Verify sight distance for access point prior within plan approval submittal.

N3. Owner needs to coordinate with the plans for the adjacent Kroger Shopping Center. Kroger has approval for proposed work in the right of way in front of this property to add a turn lane onto Henderson Mill Road (for the tapers). Chamblee Tucker Road and Henderson Mill Roads are both classified as minor arterials. Right of way dedication of 40 feet from centerline required. 6-foot sidewalk, bike facilities and street lights required. Bring sidewalks and header curb up to current code requirements. Only one access point allowed on each road as far away from traffic signal as possible. Provide ADA ramps for the crosswalks at signal (existing, but not shown on plan).

N4. Build sidewalks along entire frontage of Citadel Square on Memorial College Drive. Street lights required. Memorial Drive is classified as a collector. Right of way dedication required 35 feet from centerline. Bike lanes required- but if developer would install the 6' sidewalks along the entire shopping center property frontage on Memorial College Drive, I would support a variance for the bike lanes.

N5. Eastland Road is classified as a collector street. Right of way dedication of 35 from centerline required. 6-foot sidewalks, street lights and 5-foot landscape strip required. Bike lanes required. Lake Drive is classified as a local street. Must bring street up to standards- complete improvements of half the road along the frontage. Dedication 27.5 feet from centerline of right of way. 6-inch header curb, five-foot sidewalks, five-foot landscape strip, street lights.

N6. Flat Shoals Parkway is DR 155. GDOT review and approval of access points and right of way improvements required prior to issuance of permits. Flat Shoals Parkway is classified as a major arterial. 6-foot sidewalk, bike facilities, 50 right of way dedication, and street lights required. Only Right in/right out access point allowed. No acceleration lane. Local streets must have a 55 foot right of way, 12-foot travel lanes, 6-foot landscape strip, 5-foot sidewalk and street lights required. Verify sight distance for vehicles existing site within plan approval submittal.

N7. Coordination with GDOT's MMIP projects along I-20 required prior to permitting. Coordination with MARTA I-20 east line required prior to permitting. Bring Snapfinger Road along property frontage down to apartment driveway (Wesley Club Drive) up to current county standards (24 pavement, header curb, 5-foot sidewalk, landscape strip, and street lights). Please note that existing site plans appears to use a County owned ROW corridor (Kelly Chapel Road). Roundabout also appears to be on property owned by others. Streets beyond roundabout to be private.

N8. N8 is labeled as N7 with a different site plan. Coordination with GDOT's MMIP projects along I-20 required prior to permitting. Coordination with MARTA I-20 east line required prior to permitting. Bring Snapfinger Road along property frontage down to apartment driveway (Wesley Club Drive) up to current county standards (24 pavement, header curb, 5-foot sidewalk, landscape strip, and street lights). Add Street Lights at entrance on Kelly Chapel Road.

N9. Hard to make zoning comments without knowing the number of trips or specific use. 25 acres- need more info. DRI? Looks like N9 is being split into a 350K sq. foot distribution center and a 300-unit apartment complex.

N10. Requires traffic Study and sight distance study. Clifton Springs is a minor arterial. Requires 40 foot right of way donation from centerline, 6-foot planting strip, 6-foot sidewalk, bike facilities and street lights. Left turn lane into facility from Clifton Springs Road.

N11. Traffic Study Required. Flat Shoals Parkway is SR 155. GDOT review and approval of access points and right of way improvements required prior to issuance of permits. Flat Shoals Parkway is classified as a major arterial. 6-foot sidewalk, bike facilities, 50 right of way dedication, and street lights required. Only Right in/right out access point allowed. Traffic study should include impacts of U-turns on neighboring intersections and determine if pavement is available too accommodate U-turns.

N12. No Comments

N13. No Comments

N14. No Comments

N15. No Comments



# 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](mailto:MMALEXANDER@DEKALBCOUNTYGA.GOV) OR JOHN REID  
[JREID@DEKALBCOUNTYGA.GOV](mailto:JREID@DEKALBCOUNTYGA.GOV)

## COMMENTS FORM: PUBLIC WORKS TRAFFIC ENGINEERING

Case No.: Z-19-1243388 Parcel I.D. #: 15-090-0-013

Address: 3101  
Clifton Springs Rd  
Decatur, Ga

Adjacent Roadway (s):  
Flat Shoals Pkwy \_\_\_\_\_  
Major Thoroughfare \_\_\_\_\_  
(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) 6/7<sup>TH</sup> 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:

Plans and field reviewed, no problem found that would disrupt traffic flow.

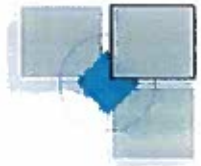
Signature: [Handwritten Signature]



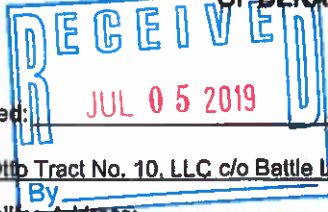
DeKalb County Department of Planning & Sustainability

Michael L. Thurmond
Chief Executive Officer

Andrew A. Baker, AICP
Director



APPLICATION TO AMEND OFFICIAL ZONING MAP
OF DEKALB COUNTY, GEORGIA



Date Received: JUL 05 2019 Application No.: 2-19-1243388
Z/CZ No.
Filing Fee:

Applicant: Otto Tract No. 10, LLC c/o Battle Law, P.C. E-Mail: mlb@battlelawpc.com

Applicant Mailing Address: One West Court Square, Suite 750 Decatur, GA 30030

Applicant Phone: 404.601.7616 Fax: 404.745.0045

Owner(s): Otto Tract No. 10, LLC E-Mail: maxieprice1@gmail.com
(If more than one owner, attach as Exhibit "A")

Owner's Mailing Address: 1261 Hammond Creek Trail Watkinsville, GA 30677

Owner(s) Phone: 770.317.3000 Fax:

Address/Location of Subject Property: 3101 Clifton Springs Road Decatur, GA 30034

District(s): 15 Land Lot(s): 090 Block: 01 Parcel(s): 013

Tract 1B

Acreage: 29.53 +/- 48 Commission District(s): 3 & 6

Present Zoning Category: MU-4 Proposed Zoning Category: MR-1

Present Land Use Category: NC

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

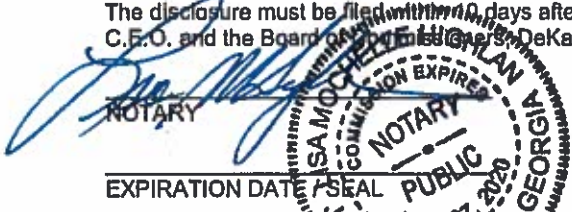
In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered:

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 X 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.



By: Otto Tract No. 10, LLC
Signature of Applicant / DATE: [Signature] 7/2/19

Check One: Owner X Agent

338 West Peachtree Street, Suite 100-500 - Decatur, Georgia - 30030
[voice] 404-371-3556 [Planning Fax] (404) 371-4556 [Development Fax] (404) 371-3007
Web Address http://www.dekalbcountyga.gov/planning
Email Address: planninganddevelopment@dekalbcountyga.gov

**B** Battle Law, P.C.  
Commercial Real Estate & Zoning  
ONE WEST COURT SQUARE, SUITE 750  
DECATUR, GA 30030

**What is a Community Meeting?**

Community meetings are designed to inform the surrounding communities of current rezoning, and special land use permit applications. It's an opportunity for the community to learn about the proposed projects, ask questions, present concerns, and make suggestions. We take this opportunity to encourage you to come out and participate. Owner? Renter? Doesn't matter. All are welcome.

For More Info Contact Batoya Clements at:

Phone: 404-601-7616 ext. 2

Fax: 404-745-0045

Email: [bdc@battlelawpc.com](mailto:bdc@battlelawpc.com)

**REZONING, LAND USE  
AMENDMENT AND SLUP FOR  
APARTMENTS, WAREHOUSE  
AND DRIVE THRU USE**

**Community Meeting  
Tuesday, June 26, 2019  
6:30 pm until 8:00 pm  
Flat Shoals Library  
4022 Flat Shoals Parkway  
Decatur, GA 30034**

**PROPOSED LOCATIONS:**

**4007 & 4025 Flat Shoals Parkway  
3101 Clifton Springs Road**



### 3101 Clifton Springs Mailing List

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
3146 Nectarine Circle Llc	Po Box 43512	Atlanta	GA	30336-0512
3167 Quince Tree Lane Llc	Po Box 422014	Atlanta	GA	30342-9014
3321 Peppertree Circle Decatur	450 Lexington Ave Fl 4	New York	NY	10017-3912
A To Z Management Llc	Po Box 370189	Decatur	GA	30037-0189
Acec Investments Llc	627 New Norwalk Rd	New Canaa	CT	06840-6437
Alma Jones	5712 Blackberry Row	Ellenwood	GA	30294-4917
Andrea M Kemp	2729 Vining Ridge Ter	Decatur	GA	30034-7505
Angela Heath	3234 Strawberry Ln	Decatur	GA	30034-4137
Annette Hill	3171 Quincetree Ln	Decatur	GA	30034-4100
Antonio Schuler	2483 Oak Cir	Ellenwood	GA	30294-3411
Current Property Owner	125 Hedgerow Trce	Duluth	GA	30097-8037
Current Property Owner	208 S Hill St	Buford	GA	30518-3114
Baf 1 Llc	5001 Plaza On The Lk Ste 200	Austin	TX	78746-1053
Baojin Zhang	5 Restorative Ln	Middletown	NY	10940-7661
Barbara J Moorehead	497 Townsend St	Grayson	GA	30017-5057
Barbara L Temple	2667 River Summit Ln	Decatur	GA	30034-3851
Battle Frank	3807 Tawny Birch Ct	Decatur	GA	30034-5142
Battle Properties Inc	Po Box 410	Buford	GA	30515-0410
Bay Business Properties Llc	1256 S Deshon Rd	Lithonia	GA	30058-6031
Betty Buchanan	2398 Tyler Way	Decatur	GA	30032-6328
Broadtree Homes Azep Llc	530 Clinton Sq	Rochester	NY	14604-1700
Burnett Singleton	2986 Vining Ridge Ln	Decatur	GA	30034-7504
Cameron V Mitchell	Po Box 373101	Decatur	GA	30037-3101
Casey Barry	1204 E 82nd St	Brooklyn	NY	11236-4944
Cathy L Mosley	1929 Boulder Gate Dr	Ellenwood	GA	30294-1680
Charissa T Tousant	225 Mels Way	Stockbridge	GA	30281-2308
Charles E Hadley	1911 Berkshire Eve Dr	Duluth	GA	30097-6296
Cheronae Porter	3200 Quincetree Ln	Decatur	GA	30034-4108
Corine R Key	3232 Strawberry Ln	Decatur	GA	30034-4137
Corinthians W Zachary	2966 Vining Ridge Ln	Decatur	GA	30034-4191
Cyan Properties Llc	2716 Beacon Dr	Doraville	GA	30360-2604
Darrell Favors	4505 South River Bnd	Ellenwood	GA	30294-3273
Deborah R Mordecai	5505 Huntington Mist Dr	Stone Mountain	GA	30087-3336
Dekalb County	1300 Commerce Dr	Decatur	GA	30030-3222
Delois Harmon	4895 Thames Ct	Lithonia	GA	30038-2261
Dozier Development Co Llc	8450 Holcomb Bridge Rd	Alpharetta	GA	30022-6817
Earl A Miller	3175 Quincetree Ln	Decatur	GA	30034-4100
Eliman E Jammeh	3166 Nectarine Cir	Decatur	GA	30034-4111
Elite Realtor	3148 Nectarine Cir	Decatur	GA	30034-4111
Ellistine Napier	3231 Georgian Woods Cir	Decatur	GA	30034-5106
Elmer J Thomas	3203 Quincetree Ln	Decatur	GA	30034-4108
Eugene C Omard	4093 Flat Shoals Pkwy	Decatur	GA	30034-4104

Felipe Gonzalez	14229 Tiara St	Van Nuys CA	91401-3620
Flat Shoals Llc	2240 Wentworth Dr	Montgome AL	36106-3235
Francisco Javier Mena	2820 Sw 32nd Ave	Miami FL	33133-3432
Fred Swann	3725 Tree Bark Trl	Decatur GA	30034-2120
Fresh So	4525 Flat Shoals Pkwy	Decatur GA	30034-5038
Gen Dekalb Dev Georgia	Po Box 704	Loganville GA	30052-0704
Georgia General Bk Llc	5505 Blue Lagoon Dr	Miami FL	33126-2029
Geraldine Parks	2731 Vining Ridge Ter	Decatur GA	30034-7505
Golden Alliance Management Llc	1924 Tucker Industrial Rd	Tucker GA	30084-6625
Gsls Ga Llc	Po Box 741109	Houston TX	77274-1109
Henry Grant	2439 E 21st St	Oakland CA	94601-1114
Hillel Artzi	6300 Wilshire Blvd	Los Angeles CA	90048-5204
Hollywood 77 Llc	6300 Wilshire Blvd Ste 970	Los Angeles CA	90048-5210
Jacob Dascomb	5850 Cameron Run Ter	Alexandria VA	22303-1860
Jacquelyn Madden	2976 Vining Ridge Ln	Decatur GA	30034-4191
Jacquelyn Madden	2976 Vining Ridge Ln	Decatur GA	30034-4191
James O Dixon	3144 Nectarine Cir	Decatur GA	30034-4111
Janice E Lyles	2829 Blue Grass Ln	Decatur GA	30034-3310
Jean Swan	619 Mount Ave	West Babyl NY	11704-1732
Karen M Carter	1014 Finsbury Ln	Forney TX	75126-3821
Kc Investment Holding Llc	1117 Midsummer Ct Ne	Marietta GA	30068-5300
Kelly Waite	7382 Harbor Cove Ln	Stone Moui GA	30087-6199
Kenny Burth	3180 Quincetree Ln	Decatur GA	30034-4100
Kids Time Of Bouldercrest Inc	Po Box 5446	Alpharetta GA	30023-5446
Kingdom Builders Covenant	3355 Columbia Dr	Decatur GA	30034-4149
Kmrs Properties Llc	240 Chastain Manor Dr	Norcross GA	30071-2185
Linda F Price	9340 Hillside Dr	Spring Valle CA	91977-2148
Malcom Whyte Llc	8345 Nw 66th St	Miami FL	33166-7896
Marilyn Forney	2635 Cloud Ln	Decatur GA	30034-2257
Marlon Massam	2727 Vining Ridge Ter	Decatur GA	30034-7505
Maz Properties Llc	2541 Eastwood Dr	Decatur GA	30032-3223
Medshare International Inc	3240 Clifton Springs Rd	Decatur GA	30034-4608
Meika Banks	3236 Strawberry Ln	Decatur GA	30034-4137
Meri McClintock	3209 Quincetree Ln	Decatur GA	30034-4164
Michael M Mordecai	Po Box 870055	Stone Moui GA	30087-0002
Michael Sheffield	5690 Montilly Cir	Atlanta GA	30349-3804
Mickey Kane	3237 Strawberry Ln	Decatur GA	30034-4137
Mihir Karanjkar	6557 Timber Ct	San Jose CA	95120-3028
Mitchell Green	3242 Strawberry Ln	Decatur GA	30034-4138
Mitchell R Green	813 Langley View Ct	Loganville GA	30052-8709
Ms Cads Llc	8925 Sw 148th St Ste 218	Palmetto B: FL	33176-8084
Nadia Francis	2655 Westchester Pkwy Se	Conyers GA	30013-2481
Nakisha K Polite	2738 Vining Ridge Ter	Decatur GA	30034-4196
Nicole M Bailey	2984 Vining Ridge Ln	Decatur GA	30034-7504



Of New York Lyons	1168 Sterling Pl	Brooklyn NY	11213-2607
Olhv Properties Llc	235 Morton Manor Ct	Alpharetta GA	30022-7433
Orchard Lane Condominium Ass	1441 Dunwoody Village Pkwy St	Atlanta GA	30338-4122
Orthodox Entity Llc	1550 N Brown Rd	Lawrencevi GA	30043-8145
Our Journey Trust	3539 Cherry Hill Ct	Decatur GA	30034-5018
P8 Sealy 3050 Lanier Llc	2 Seaport Ln	Boston MA	02210-2001
Panola Car Wash Partners Llc	3945 Flat Shoals Pkwy	Decatur GA	30034-4102
Patricia A Nichols	23841 Clayton St	Hayward CA	94541-4407
Patricia J Huntley	4055 Flat Shoals Pkwy	Decatur GA	30034-4104
Patricia J Huntley	4047 Flat Shoals Pkwy	Decatur GA	30034-4104
Pearl Real Estate Investments	22 Cotoneaster Ct	Monmouth NJ	08852-2319
Quiency E Dugger	2725 Vining Ridge Ter	Decatur GA	30034-7505
Quincetree Llc	3182 Quincetree Ln	Decatur GA	30034-4100
Rachel Honeywood	3250 Strawberry Ln	Decatur GA	30034-4138
Randolph Taylor	2998 Vining Ridge Ln	Decatur GA	30034-7504
Rashad Muhammad	4056 Flat Shoals Pkwy	Decatur GA	30034-4103
Raymond Randolph	5220 Argyll Ln	Douglasville GA	30135-6754
Real Net Investments Inc	2390 Glendale Dr	Decatur GA	30032-5815
Realexstate Atl 57 Llc	105 Nobel Ct	Alpharetta GA	30005-4161
Rickey Colbourne	2510 Paces Landing Dr Nw	Conyers GA	30012-2910
Risemberg Consultant Llc	3198 Quincetree Ln	Decatur GA	30034-4108
Robert Hawkins	2988 Vining Ridge Ln	Decatur GA	30034-7504
Robin Oneal	3000 Vining Ridge Ln	Decatur GA	30034-4190
Roderick D Battle	3204 Quincetree Ln	Decatur GA	30034-4108
Rodney Cornelius Dorsey-Briggs	1167 Alford Rd	Lithonia GA	30058-6093
Ronald McAdams	6344 Southland Forest Dr	Stone Mountain GA	30087-4941
Ronald McKenzie	3746 Chateauguay Dr	Decatur GA	30034-2107
Rosemarie Spaulding	1116 Camas Ave Nw	Palm Bay FL	32907-9464
Ruby Nell Johnson	4329 Wesley Way	Decatur GA	30034-3645
Salihah Brown	3225 Strawberry Ln	Decatur GA	30034-4137
Samantha Phillips	7324 Cardigan Cir	Atlanta GA	30328-1952
Sandra E McGirt	2735 Vining Ridge Ter	Decatur GA	30034-7505
Sanjay Mathan	1140 Hailey Springs Ct	Marietta GA	30062-4771
Shonta T Oliphant	2968 Vining Ridge Ln	Decatur GA	30034-4191
Spring Land Capital Llc	17 Dover Ln	East Windsor NJ	08520-4734
Srebro Real Estate Llc Liamia Llc	118 Sharon Pkwy	Griffin GA	30224-7457
Steve Foster	Po Box 4001	Warren OH	44482-4001
Stone Mountain Industrial Park I	Po Box 67	Tucker GA	30085-0067
Sun In America Co	23541 Venisia	Laguna Hills CA	92653-1932
Susan Schayes	2225 Bryant Place Ct	Marietta GA	30066-4689
Ta Le	1321 Azalea Brook Dr	Lawrencevi GA	30043-3217
Tah 2015 1 Borrower Llc	2365 Iron Point Rd	Folsom CA	95630-8711
Tatyana Adams	3248 Strawberry Ln	Decatur GA	30034-4138
Tegest Nega	3182 Nectarine Cir	Decatur GA	30034-4115

Tesfaye Negewo	3193 Nectarine Cir	Decatur	GA	30034-4165
The Dream Illumination Foundat	26 Stonebridge Way	Newnan	GA	30265-6046
Thomas Jefferson	2978 Vining Ridge Ln	Decatur	GA	30034-4191
Timothy Carr	3206 Quincetree Ln	Decatur	GA	30034-4108
Tomika Chappell	301 Ladson Ct	Decatur	GA	30033-5376
Tracy S Hodges	536 Dogwood Dr Nw	Lilburn	GA	30047-3424
Virginia C High	Po Box 360991	Decatur	GA	30036-0991
Waffle House Inc	5986 Financial Dr	Norcross	GA	30071-2949
Wayne C Miller	2330 Bridgeport Cir	Rockledge	FL	32955-4340
Whinneyberg Investment Llc	25 Harriet Dr	Princeton	NJ	08540-3934
Willie Chestnut	1297 To Lani Dr	Stone Mountain	GA	30083-5379
Xianghuai Lu	1410 Country Lake Dr Sw	Lilburn	GA	30047-6762

**STATEMENT OF INTENT AND**  
**IMPACT ANALYSIS**

and

Other Material Required by  
DeKalb County Zoning Ordinance  
for the  
Application for Rezoning

of

**OTTO TRACT NO 10, LLC**

for

+/-48 Acres of Land  
located in  
Land Lot 90, 15th District, DeKalb County

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**From MU-4 to MR-1**

Submitted for Applicant by:

Michèle L. Battle, Esq.  
Battle Law, P.C.  
One West Court Sq., Suite 750  
Decatur, GA 30030  
404-601-7616

## **I. STATEMENT OF INTENT**

The Applicant, Otto Tract No. 10, LLC, is the owner of the 74.536 acre tract of land located at 3101 Clifton Springs Road (the "Master Tract") near the intersection of Clifton Springs Road and Flat Shoals Parkway. The Master Tract has a land use designation of Neighborhood Center (NC), is zoned MU-4 (Cond.) and is located within Tier 2 of the I-20 Overlay District. Currently the Master Tract can be developed for up to 600 multi-family apartment units. For the reasons set forth below, the Applicant is seeking to down zone +/-48 acres of the Master Tract, which tract is depicted as Tract IB on the Survey submitted with this Application (the "Subject Property"), from MU-4 to MR-1 in order to reduce the total number of multi-family units to be developed from 600 to 300 units, and remove the mixed use zoning conditions to which the Subject Property is currently subject under CZ-12-18066 approved on November 13, 2012.

This document is submitted both as a Statement of Intent regarding this Application, a preservation of the Applicant's constitutional rights, and the Impact Analysis of this Application as required by the DeKalb County Zoning Ordinance. A surveyed plat and conceptual site plan of the Subject Property controlled by the Applicant has been filed contemporaneously with the Application, along with other required materials.

## **II. PROPERTY HISTORY**

The Master Tract was rezoned to MU-4 f/k/a OCR for the development of a mixed-use project that was a Development of Regional Impact (the "DRI Project"). The DRI Project included up to 600 apartment units and in excess of 140,000 sq. ft. of commercial/retail space. It was the intent of the Applicant that the anchor for the commercial/retail space would be a

grocery store or other big box retailer. After the rezoning application for the proposed project was approved on November 13, 2012, the Applicant worked tirelessly to locate a grocery store or big box that would be interested in anchoring the site. Despite meeting with and extending offers to Kroger, Walmart, Lidl, Publix and other similar stores, no store was interested in locating at the site. The Applicant sought the assistance of the DeKalb County Economic Development Department to help locate a retailer, but to no avail. Even the efforts to develop the multi-family component of the project became a difficult sell due to the Applicant's inability to get a retailer on board for the DRI Project. Therefore, after 7 years of making a good faith effort to develop the Master Tract, the Applicant was approached by the CHI Acquisitions, LLC to acquire 27 acres of the Master Tract (the "Warehouse Tract") for the development of a distribution warehouse facility.

Simultaneously with this application, CHI Acquisitions, LLC has submitted a rezoning and land use amendment application in connection with the development of the Warehouse Tract for a warehouse distribution facility that will create over 200 jobs. The use of the Warehouse Tract for a warehouse distribution facility is consistent with the industrial uses in the area off of Clifton Springs Road between Patherville Road and Flat Shoals Parkway, including Roadrunner Freight Systems at 3290 Colonial Parkway, RoadTex Temperature Control Warehouse at 3245 Colonial Parkway, and Exide Technologies at 3155 North Lanier Parkway, all of which are zoned M and have a land use designation of LIND. While this is not the project initially imagined, it is a project that will promote the continued growth and development of the area, while creating much needed jobs and sustainability.

In order to facilitate the development of the warehouse distribution center, the Applicant

is seeking to reduce the total number of proposed multi-family units on the Subject Property from 600 units to 300 units at a density of 6.25 units per acre. A significant portion of the 48 acres is floodplain and stream buffer which limits the development of the Subject Property. It should be noted that the Applicant has consented to the extension of the PATH trail along the South River which is the southern boundary of the Subject Property. It is the Applicant belief that the provision of quality multi-family housing adjacent to the proposed warehouse will support the project and create a live/work environment for the over 200 prospective employees coming to the area. Additionally, the apartments will provide more roof tops in the area near the expressway, and within Tier II of the Overlay District, which supports the revitalization of the Flat Shoals corridor.

### **III. IMPACT ANALYSIS**

- (a) **Suitability of use:** The proposed rezoning from MU-4 to MR-1 will permit a use that is suitable as evidences by the current zoning for the Subject Property which requires the development of up to 600 multi-family units. The proposed down zoning will reduce the total number of units, while supporting the proposed warehouse project adjacent to the Subject Property.
- (b) **Effect on adjacent property:** The use of the Subject Property as contemplated in this Application will have no adverse impact on the adjacent property owners. The Subject Property is located between undevelopable floodplain and the QuikTrip at the intersection of Flat Shoals Parkway and Clifton Springs Road. Flat Shoals Parkway between the I-20 interchange and Clifton Springs is a commercial corridor in much need

of redevelopment. The proposed down zoning will eliminate some of the additional traffic flow, while still supporting the area businesses.


- (c) Economic use of current zoning: Due to the owner's inability to develop the Subject Property for its currently zoned use with the imposed conditions, the Subject Property has no economic use as currently zoned.
- (d) Effect on public facilities: The Subject Property is in an area with public utility availability and convenient access to major thoroughfares. The proposed rezoning will not cause excessive use of streets, transportation facilities, utilities, or schools in the area. In fact, the proposed down-zoning will reduce the impact on public facilities in the area, particularly the schools in the area, and existing traffic.
- (e) Effect on historic building. sites. etc. The approval of this Rezoning Application will not have any adverse impact on any historic buildings, sites, districts or archaeological resources in the area known to the Applicant.
- (f) Environmental Impact. The approval of this Rezoning Application will not result in any adverse environmental impact.
- (e) Conformity with Comprehensive Plan or Land Use Plan: The rezoning of the Subject Property from MU-4 to MR-1 is in conformity with the land use designation of NC for the Subject Property.

#### 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. Please note that the Applicant's Notice of Constitutional Allegations and Preservation of Constitutional Rights have been submitted with this Application and are attached hereto and by this reference incorporated herein.

This 3<sup>rd</sup> day of July, 2019.

Respectfully submitted,

  
Michele L. Battle, Esq.  
Attorney For Applicant



NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF  
CONSTITUTIONAL RIGHTS

The portions of the DeKalb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

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

A denial of this Application would constitute an arbitrary irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia.

A refusal by the DeKalb County Board of Commissioners to rezone the Subject Property to the classification as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the Property subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

A refusal to allow the rezoning in questions would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the

Georgia Constitution.

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

The existing 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 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.

Final Conditions for Z-12-18064  
Clifton Springs Corner Development LLC  
November 13, 2012

11/13/12  
Lee May  
LM

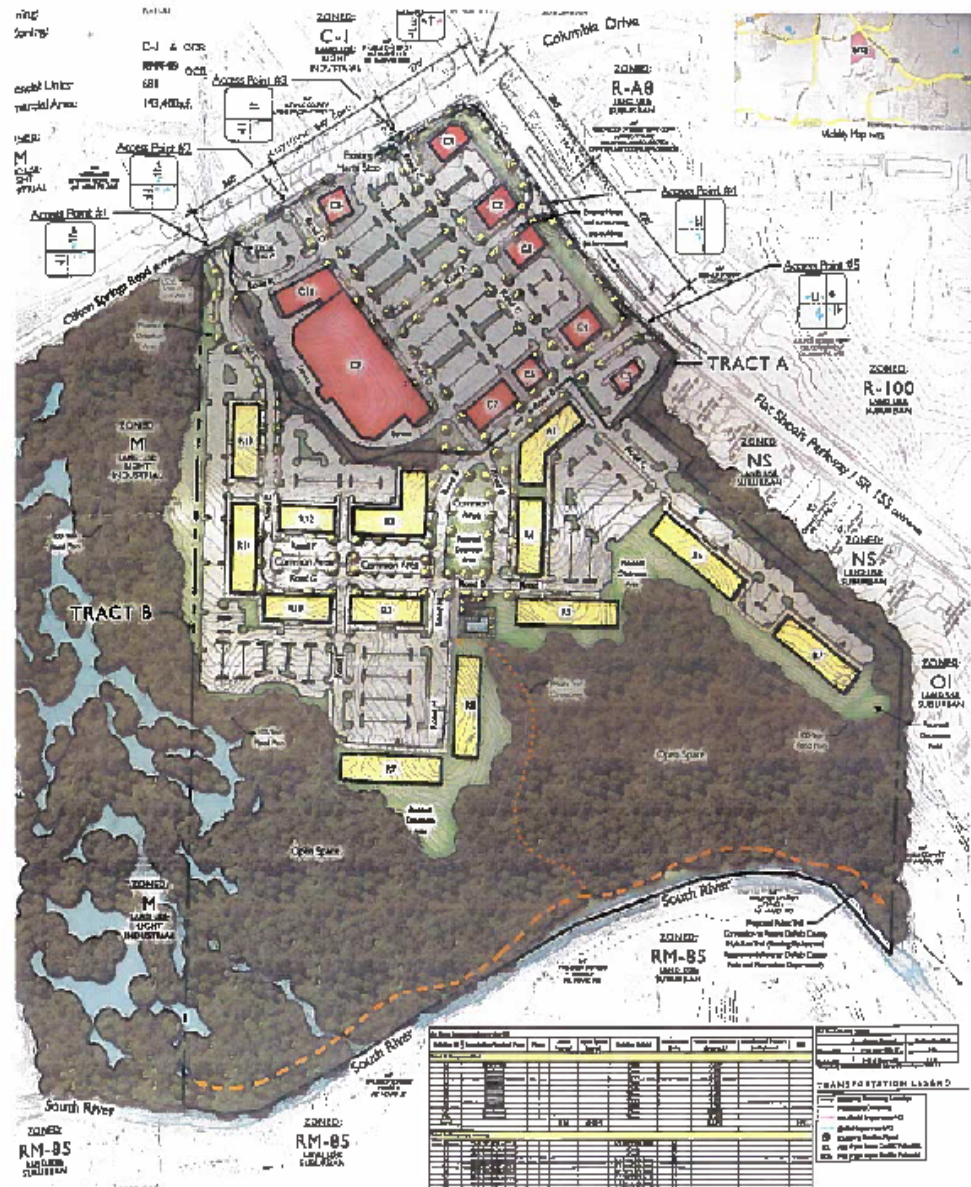
1. Approval of C-1 (Local Commercial) District allowing retail, service commercial, for property labeled Tract 2 (5.540 acres) on the Survey for Maxie Price (the "Survey") prepared by Rochester & Associates, Inc. for Maxie Price, dated March 26, 2012, last revised July 18, 2012, Job. No. G208051.CBT and received by the Planning and Sustainability Department on July 20, 2012. (See Attachment1)
2. Approval of OCR (Office-Commercial-Residential) District allowing retail, office and service commercial for property labeled Tract 1 (73.996 acres) on the Survey received by the Planning and Sustainability Department on July 20, 2012.
3. Approved in accordance with development conditions per Georgia Regional Transportation Authority (GRTA) Notice of Decision pursuant to DRI #1850 (See Attachment 2).
4. The 79.53 acre tract (the "Project Site") shall be developed in general conformity with the DRI site plan prepared by Hughes, Goode, O'Leary and Ryan, Inc. dated July 24, 2008, last revised September 4, 2008 (the "DRI Site Plan"), with such modifications as are approved by the Director of the Planning and Sustainability Development during the I-20 Overlay District compliance review. (See Attachment 3).
5. The Project Site shall adhere to the development standards of the I-20 Overlay District.
6. Sidewalks shall be installed along the perimeter of the Project Site.
7. Building structures with frontage on Flat Shoals Parkway or Clifton Springs Road shall be designed and implemented in a manner so as to give the look and feel of an urban environment. Deviation from the DRI Site Plan shall be allowed in order to facilitate denser development along Flat Shoals Parkway or Clifton Springs Road to foster an urban appearance.
8. Seek approval of and coordinate with the Georgia D.O.T. and DeKalb D.O.T. for a full median break in the median of Flat Shoals Parkway at Access Point 5 depicted on the DRI Site Plan.
9. The total number of multifamily dwelling units on the Project Site shall not exceed 600, with a maximum of 500 of the 600 units being available for occupancy for individuals under the age of 55 years old.
10. The total allowable heated square footage for the commercial area on the Project Site shall be a maximum of 274,400 sq. ft.

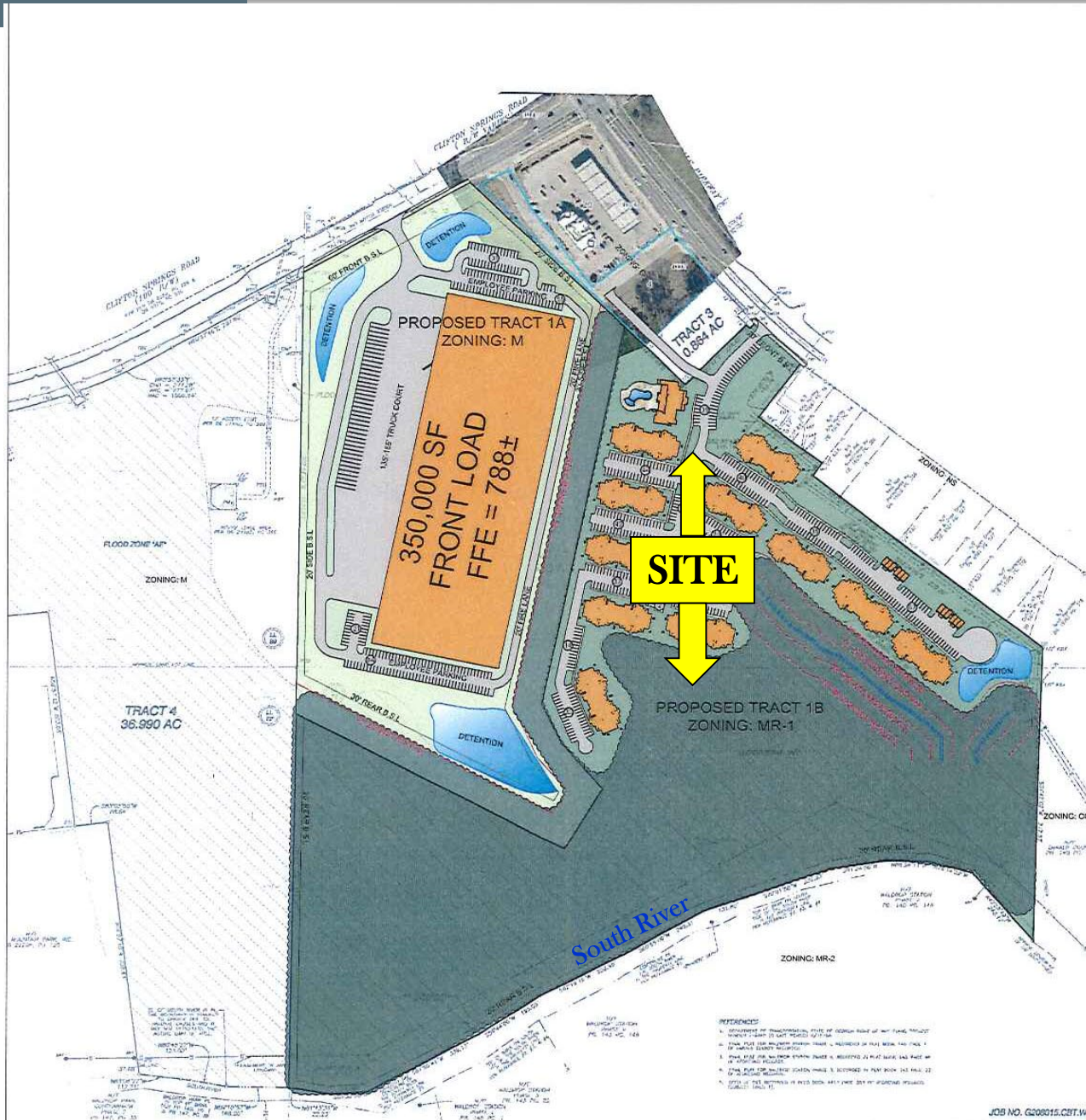
COMMUNITY DEVELOPMENT CLERK'S OFFICE

11/13/12  
Comm May

11. A minimum of one (1) acre of the open space required under Section 27-729.10 of the DeKalb County Zoning Ordinance (the "Zoning Ordinance") shall be developed to provide age appropriate amenities for the residents eligible to reside in residential communities developed on the Project Site, including, without limitation, dog walk areas, tennis courts, basketball courts, picnic tables, gazebos, park benches, outdoor fitness equipment, etc. Notwithstanding the foregoing, playground equipment, with a swimming pool area, shall be installed within the one (1) acre minimum open space.
12. In addition to the sidewalks required pursuant to Section 27-729.14 of the Zoning Ordinance, private sidewalks shall be constructed adjacent to all buildings, continuously connected throughout the entire Project Site to provide for continuous connectivity to the residential buildings, the retail, office buildings and to the main street sidewalks. If the pathway crosses a driveway or internal street, it shall be clearly marked with striping, pavers or raised crosswalk. The private sidewalks shall be a minimum of six (6) feet in width to provide for use as walking trails for the Project Site, but shall not be counted towards compliance with the one (1) acre minimum open space requirement set forth in Paragraph 11 above.
13. If an above-ground detention facility is placed within the interior of the Project Site, rather than on the outside edges of the Project Site, it shall be designed to look like an amenity and made to be a feature of the open space, such as a fountain or similar feature, but shall not be counted towards compliance with the one (1) acre minimum open space requirement set forth in Paragraph 11 above.
14. All wetlands shall be delineated and protected as set forth in the DeKalb County Ordinance, Chapter 14, Land Development.
15. If the PATH Foundation and the DeKalb County Natural Resources Department elect to move forward with the South River walking trail, all required permanent and temporary easements for the construction and maintenance of the trail shall be provided by the land owner, and an identifiable pervious path shall be constructed and maintained from the interior of the development to the South River path.
16. A fifty (50) foot planted landscape buffer shall be maintained behind building C-9 to provide visual screening between the residential dwelling units and Building C-9. In addition, a six (6) foot opaque fence shall be placed behind the C-9 building on the interior side of the buffer to provide visual screening from the rear of the buildings.
17. In addition to Paragraph 16 above, a combination of natural buffers, landscaped buffers, decorative fencing and/or gated entries for vehicular ingress and egress shall be incorporated into the DRI Site Plan for the Project Site between the residential and non-residential uses, in order to facilitate the privacy and safety of the multifamily dwelling units.
18. To the extent that the multifamily dwelling units have balconies, the balconies shall be useable and a minimum depth of five (5) feet.







LOCATION MAP  
N.T.S.

**EXISTING SITE DATA**

CURRENT ZONING: MU-4  
 TOTAL ACREAGE: 75± ACRES  
 DEKALB COUNTY, GA  
 LAND LOT 72 & 89; 15th DISTRICT  
 PARCEL #: 15 090 01 013

**PROPOSED TRACT 1A SITE DATA**

PROPOSED ZONING: M (LIGHT INDUSTRIAL)  
 PROPOSED ACREAGE: 27± ACRES  
 BUILDING SQUARE FOOTAGE: 350,000 sq. ft.  
 REQUIRED OPEN SPACE: 20%  
 PROVIDED OPEN SPACE: 32%  
 REQUIRED PARKING  
 MINIMUM ALLOWABLE: 1 PER 2,500 SF  
 = 140 SPACES  
 MAXIMUM ALLOWABLE: 1 PER 500 SF  
 = 700 SPACES

PARKING PROVIDED  
 191 TOTAL SPACES

**PROPOSED TRACT 1B SITE DATA**

PROPOSED ZONING: MR-1 (MEDIUM DENSITY RESIDENTIAL-1)  
 PROPOSED ACREAGE: 48± ACRES  
 NUMBER OF UNITS: 300± UNITS  
 NUMBER OF STORIES: 4 STORIES  
 SITE DENSITY: 6.25± UNITS PER ACRE  
 REQUIRED OPEN SPACE: 20%  
 PROVIDED OPEN SPACE: 78%  
 REQUIRED PARKING  
 MINIMUM ALLOWABLE: 1.5 PER UNIT  
 = 450 SPACES  
 MAXIMUM ALLOWABLE: 3 PER UNIT  
 = 900 SPACES  
 PARKING PROVIDED  
 450 TOTAL SPACES

- REFERENCES
1. SUBMITTED BY THE APPLICANT, CITY OF DEKALB, COUNTY OF DEKALB, GEORGIA.
  2. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-10.
  3. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-11.
  4. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-12.
  5. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-13.
  6. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-14.
  7. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-15.
  8. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-16.
  9. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-17.
  10. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-18.
  11. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-19.
  12. CITY OF DEKALB, GEORGIA, ZONING ORDINANCE, CHAPTER 15, ARTICLE 10, SECTION 15-10-20.

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