



# DeKalb County Government

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

## Agenda Item

**File #:** 2019-4356  
**File Status:** Preliminary Item

11/7/2019

**Public Hearing:** YES ☒ NO ☐

**Department:** Planning & Sustainability

**SUBJECT:**

**COMMISSION DISTRICT(S):** 3 & 7

**Application of Phoenix City Holdings, LLC c/o Battle Law P.C. to rezone property from R-100 (Residential Medium Lot-100) District to RSM (Small Lot Residential Mix) District to develop sixty-one single family attached townhomes at a proposed density of 5.94 units per acre, at 3792 Harvest Drive.**

**PETITION NO:** N10. Z-19-1243522

**PROPOSED USE:** Townhomes

**LOCATION:** 3792 Harvest Drive, Decatur GA, 30034

**PARCEL NO. :** 15-060-01-191

**INFO. CONTACT:** Marian Eisenberg

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

**PURPOSE:**

Application of Phoenix City Holdings, LLC c/o Battle Law P.C. to rezone property from R-100 (Residential Medium Lot-100) District to RSM (Small Lot Residential Mix) District to develop sixty-one single family attached townhomes at a proposed density of 5.94 units per acre. The property has 100 feet of frontage along Harvest Drive and contains 10.265 acres.

**RECOMMENDATION:**

**COMMUNITY COUNCIL:** NO QUORUM. NO RECOMMENDATION.

**PLANNING COMMISSION:** PENDING

**PLANNING STAFF:** APPROVAL WITH CONDITIONS

**STAFF ANALYSIS:** The proposed request to rezone property from R-100 (Residential Medium Lot-100) District to RSM (Small Lot Residential Mix) District to construct 61 single family attached townhomes at a proposed density of 5.94 units per acre is compatible with the surrounding and adjacent properties and complies with the RSM district standards. The request to allow for the development of 61 single family attached townhomes is compatible with the Suburban (SUB) Character Area in the 2035 Comprehensive Land Use Plan and the following policies: density increases, infill development and residential protection. Therefore, it is the

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recommendation of Planning and Sustainability Department that the rezoning from R-100 (Residential Medium Lot-100) District to RSM (Small Lot Residential Mix) District be, “Approved with Staff’s recommended conditions.”

**PLANNING COMMISSION VOTE: Pending**

**COMMUNITY COUNCIL VOTE/RECOMMENDATION: No quorum. No recommendation.**

## Recommended Conditions

Z-19-1243522

1. Subject property shall be developed with no more than 61 attached single-family townhomes per the site plan dated 8/19/19 submitted to the Planning and Sustainability Department on 9/5/2019.
2. Internal and external five-foot sidewalks and five-foot landscape strip along Harvest Drive.
3. The Land Development Division of the Department of Planning and Sustainability requires off street paved parking to ensure safe vehicle circulation.



## **DeKalb County Department of Planning & Sustainability**

**330 Ponce De Leon Avenue, Suite 300**

**Decatur, GA 30030**

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

Michael Thurmond  
Chief Executive Officer

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

**Board of Commissioners Hearing Date: November 21, 2019, 6:30 P.M.**

### **STAFF ANALYSIS**

**Case No.:** Z-19-1243522 **Agenda #:** N.10

**Location/Address:** 3792 Harvest Drive **Commission District:** 03 **Super District:** 07

**Parcel ID:** 15-060-01-191

**Request:** To rezone property from R-100 (Residential Medium Lot 100) District to RSM (Small Lot Residential Mix) District to allow the development of 61 single family attached townhomes.

**Property Owner/Agent:** Phoenix City Holdings, LLC.

**Applicant/Agent:** Phoenix City Holdings, LLC c/o Battle Law P.C.

**Acreage:** 10.265

**Existing Land Use:** Wooded Lot

**Surrounding Properties/  
Adjacent Zoning** North of the site is zoned MU-1 (Mixed Use Low Density) District with single family detached homes and MR-1 (Medium Density Residential-1) District with multifamily apartment units. The properties south, east and west of the site are zoned R-100 (Residential Medium Lot-100). Properties to the south and west contain single family attached townhomes and single family detached homes. The property east of the subject site contains multifamily apartment units.

**Comprehensive Plan:** Suburban (SUB)



**Consistent**



**Inconsistent**

<b>Proposed Density:</b> 5.94 units per acre	<b>Existing Density:</b> N/A
<b>Proposed Square Ft.:</b> N/A	<b>Existing Units/Square Feet:</b> N/A
<b>Proposed Lot Coverage:</b> N/A	<b>Existing Lot Coverage:</b> N/A

## **SUBJECT PROPERTY**

The subject site contains 10.265 acres of heavily wooded undeveloped land with just under 100 feet of frontage along Harvest Drive. The site is surrounded by a mixture of residential developments. Single family attached townhomes borders the western and southern boundary lines and single family detached homes borders the western and northern boundary lines. Multi-family apartments border the northeastern and east boundary lines.

## **ZONING HISTORY**

The site is currently zoned R-100 (Residential Medium Lot-10) District.

## **ZONING ANALYSIS**

The site is currently zoned R-100 (Residential Medium Lot-10) District. 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 entire 10.265-acre site to the RSM (Small Lot Residential Mix) District to allow for the development of 61 single family attached townhomes. The surrounding zoning west, south and east of the property is R-100 (Residential Medium Lot-100) District. Typically, R-100 permits only single-family detached homes. However due to a court order, single family attached townhomes borders the western and southern subject property and multi-family apartments borders east of the subject property. The zoning north of the subject property is split with MU-1 (Mixed Use Low Density) District which contains single-family detached homes and MR-1 (Medium Density Residential-1) District which contains multi-family apartments. The proposed rezoning to RSM (Small Lot Residential Mix) District would be compatible with the surrounding zoning and residential land uses.

The proposed rezoning to RSM (Small Lot Residential Mix) District is appropriate for this site given its consistency with the 2035 Comprehensive Land Use Plan which designates this within the Suburban (SUB) Character Area. The intent of the Suburban (SUB) Character Area is to recognize those areas of the county that have developed in traditional suburban land use patterns while encouraging new development to have increased connectivity and accessibility. The future land use for the surrounding properties to the west, south and east are all designated Suburban (SUB) Character Area. The future land use for the property north of the subject site is the Neighborhood Center (NC) Character Area. The proposed rezoning to RSM (Small Lot Residential Mix) District would be compatible with the future land use for both Suburban (SUB) and Neighborhood Center (NC) Character Area.

## **PROJECT ANALYSIS**

The applicant requests to rezone the property from R-100 (Residential Medium Lot 100) District to RSM (Small Lot Residential Mix) District to allow the development of 61 single family attached townhomes at a density of 5.94 units per acre. The submitted site plan and renderings depicts two-story front-loaded townhomes with one and two car garages. The site plan shows a private road from Harvest Drive with open space, detention pond and a pavilion. The proposed lot size(s) will be a minimum of 25 ft in width. This will be consistent with the abutting lot sizes along the southern and western property lines which contain single family attached townhomes that varies from 22 ft to 25 ft in width. The applicant is proposing to achieve the 50% density bonus by providing 34.3% of the total site with open space by including trails, pocket parks, green space, and a pavilion.

## **Impact Analysis**

**Section 27-7.3.4 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:**

The 2035 Comprehensive Plan designates the subject site within the Suburban (SUB) Character Area. The intent of the Suburban (SUB) Character Area is to recognize those areas of the county that have developed in traditional suburban land use patterns while encouraging new development to have increased connectivity and accessibility. The proposed rezoning and development are compatible with the policy and intent of the 2035 Comprehensive Plan.

**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 RSM (Small Lot Residential Mix) District to permit for the development of 61 single family attached townhomes at a proposed density of 5.4 units per acres is suitable given the adjacent Woodlands Townhome Community and surrounding mix of residential uses.

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

The site as currently zoned R-100 would be challenging in developing the minimum lots for single-family homes given the topography and lot configuration of the site. The current wooded lot does not provide a reasonable economic use as currently zoned.

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

The rezoning request to the RSM (Small Lot Residential Mix) District should not adversely affect the use or usability of adjacent and/or nearby residential properties along Harvest Drive.

**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:**

The fact that there are single family attached townhomes adjacent to this property, provide supporting grounds for approval of the zoning request.

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

The proposed rezoning will not adversely affect 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 zoning proposal to the RSM District to develop 61 townhomes would slightly increase traffic along Harvest Drive however the Department of Public Works Traffic Engineering found nothing that would disrupt traffic flow. The DeKalb County School District stated that this development would add 29 students to the following schools:

9 at Bob Mathis Elementary School, 4 at Chapel Hill Middle School, 8 at Southwest DeKalb High School and 8 at other DeKalb County School District schools. All three neighborhood schools have capacity for additional students.

The Land Development Division of the Department of Planning and Sustainability requires off street paved parking to ensure safe vehicle circulation.

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

The rezoning proposal to the RSM district will not adversely impact the environment or surrounding natural resources.

**COMPLIANCE WITH DISTRICT STANDARDS**

Per the chart below, the proposed RSM (Residential Small Lot) single-family attached townhomes can comply with minimum development standards of the RSM (Residential Small Lot) District per Table 2.2 of the DeKalb County Zoning Ordinance.

<b>RSM STANDARD</b>	<b>REQUIREMENT</b>	<b>PROPOSED</b>	<b>COMPLIANCE</b>
MIN. LOT WIDTH	25 ft.	25 ft.	YES
MIN. LOT AREA	1,000 sq. ft.	1,000 sq. ft.	YES
FRONT SETBACK	Min 20 ft.	20 ft.	YES
INTERIOR LOT - SIDE	N/A	N/A	N/A
REAR	15 ft.	20 ft.	YES
DWELLING UNITS PER ACRE	4 – 8	5.94 (Bonus Density)	YES
MAX. LOT COVERAGE	70%	Not labeled on submitted site plan	NO
HEIGHT	3 STORIES OR 45 FEET	2 STORIES	YES
MIN. PARKING Article 6	Minimum 1.75 parking spaces	Not labeled on submitted site plan	NO
OPEN SPACE	Minimum 20% if site is > 5 acres. Site is 10.265 acres	34.3%	YES
Linear Feet of Sidewalk	5-feet wide	None depicted on site plan	NO

**STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS**

The proposed request to rezone property from R-100 (Residential Medium Lot-100) District to RSM (Small Lot Residential Mix) District to construct 61 single family attached townhomes at a proposed density of 5.94 units per acre is compatible with the surrounding and adjacent properties and complies with the RSM district standards. The request to allow for the development of 61 single family attached townhomes is compatible with the Suburban (SUB) Character Area in the 2035 Comprehensive Land Use Plan and the following policies: density increases, infill development and residential protection.

Therefore, it is the recommendation of Planning and Sustainability Department that the rezoning from R-100 (Residential Medium Lot-100) District to RSM (Small Lot Residential Mix) District be APPROVED along with staff's recommendation conditions.

1. Subject property shall be developed with no more than 61 attached single-family townhomes per the site plan dated 8/19/19 submitted to the Planning and Sustainability Department on 9/5/2019.
2. Internal and external five-foot sidewalks and five-foot landscape strip along Harvest Drive.
3. The Land Development Division of the Department of Planning and Sustainability requires off street paved parking to ensure safe vehicle circulation.

**Attachments**

1. Department Comments
2. Division Comments
3. Application
4. Site Plan
5. Zoning Map
6. Land Use Map
7. Site Photos



## 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.)*

**Sketch Plat Approval** *(Required for the subdivision of property into three lots or more. Requires a public hearing by the Planning Commission.)*

**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.)*

**Minor Modification** *(Required if there are any proposed minor changes to zoning conditions that were approved by the Board of Commissioners. The review is administrative if the changes are determined to be minor as described by Zoning Code.)*

**Major Modification** *(Required submittal of a complete zoning application for a public hearing if there are any proposed changes to zoning conditions approved by the Board of Commissioner on a prior rezoning.)*

**Business License** *(Required for any business or non-residential enterprise operating in Unincorporated DeKalb County, including in-home occupations).*

**Alcohol License** *(Required permit to sell alcohol for consumption on-site or packaged for off-site consumption. Signed and sealed distance survey is required. Background checks will be performed.)*

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

## Zoning Comments 10/14/2019

N1. No offsite parking allowed due to curve in the road.

N2. No offsite parking allowed due to proximity to Briarcliff Road intersection.

N3. No comments.

N4. Welborn Road- Collector. Requires pedestrian street lights at 80 foot spacing, 5-foot landscape strip, 6-foot sidewalks, bike lanes, right of way dedication of 35 from centerline or to ensure all public infrastructure is within right of way, whichever greater. Dekalb Medical Parkway- local. Requires pedestrian scale street lights, 3-foot landscape strip and a 6 foot sidewalk. Covington Hwy- Major Arterial and State Route. GDOT review required prior to permitting. Coordinate with GDOT PI No 0008228 and dedicate any necessary right of way. Minimum of 50 from centerline. Sidewalks and pedestrian scale street lighting can be installed under the GDOT project in exchange of the right of way dedication. Ensure all access point meet minimum stopping and intersection sight distance requirements per AASHTO with permitting. Need at least 2 feet of ROW on back of sidewalk for streetlights. Interior roads to be private or must meet the requirements for a local road. (55-foot right of way dedication, five foot landscape strip, 6 foot sidewalk, street lighting.)

N5. Covington Hwy- Major. GDOT permits/review required prior to permitting. Add sidewalks and pedestrian scale lighting along property frontage. Five-foot landscape strip, 6-foot sidewalk. ROW dedication of 50 foot from centerline or to cover public infrastructure, whichever greater. Need at least 2 feet of ROW on back of sidewalk for streetlights.

N6. Wesley Chapel Road- Major. Requires five-foot landscape strip, 6-foot sidewalk, pedestrian scale lights, bike lanes and ROW dedication of 50 feet from centerline or to cover all public infrastructure, whichever greater. Need at least 2 feet of ROW on back of sidewalk for streetlights. Ensure all access point meet minimum stopping and intersection sight distance requirements per AASHTO with permitting.

N7 & N8. Panola Road- Major. Requires five-foot landscape strip, 6-foot sidewalk, pedestrian scale lights, bike lanes and ROW dedication of 50 feet from centerline or to cover all public infrastructure, whichever greater. Need at least 2 feet of ROW on back of sidewalk for streetlights. Access must meet sight distance requirements (stopping and intersection) per AASHTO guidelines.

N9. White Mill Road- Collector. Dedicate 35 feet from centerline of road or to cover all public infrastructure, whichever greater. Need at least 2 feet of ROW on back of sidewalk for streetlights. Access must meet sight distance requirements (stopping and intersection) per AASHTO guidelines. Requires 5-foot landscape strip, 6-foot sidewalk, pedestrian scale street lighting, bike lanes. Kelly Lake Road- local. Requires dedication of 27.5 feet from centerline of road or to cover all public infrastructure, whichever greater. Need at least 2 feet of ROW on back of sidewalk for streetlights. Five-foot landscape strip, 6-foot sidewalk, pedestrian scale street lighting. Access must meet sight distance requirements (stopping and intersection) per AASHTO guidelines. New roads, of public, require a ROW dedication of 55 feet, five-foot landscape strip, 6 foot sidewalk, and street lighting. Miter right of way corner at Whites Mill Road at Kelly Lake Road.

N10. Harvest Drive- Local. Verify ownership. Looks like part of the proposed roadway to access this property is on 3659 Harvest Road- owned by others. New roads- local. If public, requires 55 foot right of way, five-foot landscape strip, pedestrian scale lighting.

N11. Covington Hwy- Major. GDOT review required prior to permitting. Dedicate ROW of 50 feet from centerline or to cover all public infrastructure, whichever greater. Sign must be off right of way and a sight distance analysis performed to ensure that the sign does not restrict line of sight for Glen Haven Circle or any adjacent driveway access.

N10



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) AND/OR LASONDRA HILL  
[lahill@dekalbcountyga.gov](mailto:lahill@dekalbcountyga.gov)

COMMENTS FORM:  
PUBLIC WORKS TRAFFIC ENGINEERING

Case No.: Z-19-1243522 Parcel I.D. #: 15-060-01-191

Address: 3792  
HARVEST DRIVE

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) 6/7<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. Found nothing that would disrupt traffic flow.

Signature: AM Davidson Ross

**DeKalb County School District  
Development Review Comments**

**Analysis Date:** 10/28/2019

**Submitted to:** DeKalb County

**Case #:** Z-19-1243522

**Parcel #:** 15-060-01-191

**Name of Development:** Harvest Drive  
**Location:** 3792 Harvest Drive

**Description:** Proposed sixty-on (61) single-family attached townhomes

**Impact of Development:** When fully constructed, this development would be expected to house 29 students: 9 at Bob Mathis ES, 4 at Chapel Hill MS, 8 at Southwest DeKalb HS, and 8 at other DCSD schools. All three neighborhood schools have capacity for additional students.

<b>Current Condition of Schools</b>	<b>Bob Mathis ES</b>	<b>Chapel Hill MS</b>	<b>Southwest DeKalb HS</b>	<b>Other DCSD Schools</b>	<b>Private Schools</b>	<b>Total</b>
Capacity	500	1,076	1,825			
Portables	4	0	0			
Enrollment (Oct. 2019)	406	841	1,249			
Seats Available	94	235	576			
Utilization (%)	81.2%	78.2%	68.4%			
<b>New students from development</b>	<b>9</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>29</b>

New Enrollment	415	845	1,257
New Seats Available	85	231	568
New Utilization	83.0%	78.5%	68.9%

<b>Yield Rates</b>	<b>Attend Home School</b>	<b>Attend other DCSD School</b>	<b>Private School</b>	<b>Total</b>
Elementary	0.154989	0.083011	0.002137	0.240138
Middle	0.061042	0.028745	0.004098	0.093886
High	0.124341	0.019111	0.002049	0.145501
<b>Total</b>	<b>0.3404</b>	<b>0.1309</b>	<b>0.0083</b>	<b>0.4795</b>

<b>Student Calculations</b>				
<b>Proposed Units</b>	61			
<b>Unit Type</b>	TH			
<b>Cluster</b>	Southwest DeKalb HS			

<b>Units x Yield</b>	<b>Attend Home School</b>	<b>Attend other DCSD School</b>	<b>Private School</b>	<b>Total</b>
Elementary	9.45	5.06	0.13	14.64
Middle	3.72	1.75	0.25	5.72
High	7.58	1.17	0.12	8.87
<b>Total</b>	<b>20.75</b>	<b>7.98</b>	<b>0.50</b>	<b>29.23</b>

<b>Anticipated Students</b>	<b>Attend Home School</b>	<b>Attend other DCSD School</b>	<b>Private School</b>	<b>Total</b>
Bob Mathis ES	9	5	0	14
Chapel Hill MS	4	2	0	6
Southwest DeKalb HS	8	1	0	9
<b>Total</b>	<b>21</b>	<b>8</b>	<b>0</b>	<b>29</b>



# 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

Z/CZ No. 219-1243522  
Filing Fee: \_\_\_\_\_

Date Received: SEP 05 2019 Application No.: \_\_\_\_\_

Applicant: Phoenix City Holdings, 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): Phoenix City Holdings, LLC E-Mail: melissa@offsitebusiness.com  
(If more than one owner, attach as Exhibit "A")

Owner's Mailing Address: 1874 Piedmont Avenue, NE, Building D, Suite 470 Atlanta, GA 30324

Owner(s) Phone: 404.249.9979 Fax: \_\_\_\_\_

Address/Location of Subject Property: 3792 Harvest Drive Decatur, GA 30034

District(s): 15 Land Lot(s): 060 Block: 01 Parcel(s): 191

Acreage: 10.265 Commission District(s): 3 & 7

Present Zoning Category: R-100 Proposed Zoning Category: RSM

Present Land Use Category: SUB

### 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.



SIGNATURE OF APPLICANT / DATE

Check One: Owner      Agent X

330 West Ponce de Leon Avenue - Suites 100-500 - Decatur, Georgia - 30030  
[voice] 404.371.2155 - [Planning Fax] (404) 371-4556 [Development Fax] (404) 371-3007  
Web Address <http://www.dekalbcountyga.gov/planning>  
Email Address: [planninganddevelopment@dekalbcountyga.gov](mailto:planninganddevelopment@dekalbcountyga.gov)



Chief Executive Officer  
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director  
Andrew A. Baker, AICP

REZONE APPLICATION AUTHORIZATION

Completion of this form is required if the individual making the request is not the owner of the property.

DATE: 09/05/2019

CHECK TYPE OF APPLICATION:

- ( ) LAND USE PLAN  
(X) REZONE  
( ) MINOR MODIFICATION



TO WHOM IT MAY CONCERN:

( I ) (WE), Phoenix City Holdings, LLC  
(Name of owner(s))

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

Battle Law, P.C.  
(Name of Applicant or Agent Representing Owner)

to file an application on (my/our) behalf

Avery Kernaghan  
Notary Public



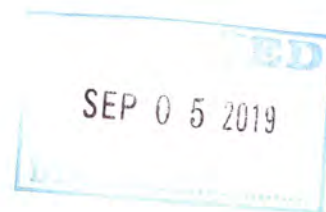
Melissa Darrow  
Owner

Notary Public

Owner

Notary Public

Owner



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

and

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

of

**Phoenix City Holdings, LLC**  
**c/o Battle Law, P.C.**

for

10.265± acres of land located at  
**3792 Harvest Drive**

**From R-100 to RSM**

Submitted for Applicant by:

Michèle L. Battle, Esq.  
Battle Law, P.C.  
One West Court Square, Suite 750  
Decatur, Georgia 30030  
Phone: (404) 601-7616  
Fax: (404) 745-0045  
Email: [mlb@battlelawpc.com](mailto:mlb@battlelawpc.com)



## **I. STATEMENT OF INTENT**

The Applicant, Phoenix City Holdings, LLC, is seeking to rezone the 10.265 acres of undeveloped land located at 3792 Harvest Drive in unincorporated DeKalb County (the "Subject Property") from R-100 to RSM for the development of 61 townhomes at a density of 5.94 units per acre. The Subject Property has a land use designation of Suburban.

It is the Applicant's desire to develop 61 townhomes on the Subject Property. The interior units will be 1 car garage units, and the exterior units will be 2 car garage units. The 50% density bonus is achieved by the Applicant providing 34.3% enhanced open space with trails, pocket parks, a pavilion and lawn areas. The units will be a minimum of 25ft in width and will be two stories, with hardi-plank siding with brick, stone, cedar shake and/or other textured hard coat accent materials. The Subject Property will have internal sidewalks, as well as sidewalks along the frontage on Harvest Drive.

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. IMPACT ANALYSIS**

- (a) Suitability of use: The proposed rezoning will permit uses that are suitable in view of the uses and developments adjacent and nearby the Subject Property. The Subject Property is abutted along its northern boundary by the Hancock Heights single family subdivision zoned MU-1, and the Chapel Park Condominium zoned MR-1. Northeast of the Subject

Property is Parkway Grand Apartment zoned R-100. Immediately South of the Subject Property is the Woodlands Townhome Community zoned R-100. Finally, West of the Subject Property is the Cherry Ridge single family subdivision zoned R-100. It is the Applicant's contention that the development of the Subject Property for townhomes is consistent with the abutting residential development, and will provide for new development in an area that has not seen any new development in over 20 years. The proposed development will allow for townhome units to be developed which are a step up in design and price points from the townhome units located in the Woodlands Townhome Community and the Chapel Park Condominium community.

- (b) Effect on adjacent property: The proposed development will have a positive impact on the surrounding community, as it will support the continued recovery of the area from the 2007 economic downturn which devastated South DeKalb. It is anticipated that the proposed units will have a sales price starting at \$175,000 and up. The development of the Subject Property as proposed will only benefit the surrounding properties which were built over 20 years ago and suffered significantly during the economic downturn.
- (c) Economic use of current zoning: The Subject Property has no use as currently zoned. The Subject Property has been undeveloped for in excess of 40 years. Prior to the current owner's acquisition of the Subject Property, the property was owned by Cornerstone Bank after it foreclosed on the prior owner of the Subject Property in August of 2011. Cornerstone Bank owned the property for 8 years with little to no interest being shown in the acquisition of the Subject Property.

- (d) Effect on public facilities: The Subject Property is in an area with public utility availability. The proposed rezoning will not cause excessive use of streets, transportation facilities, or utilities in the area.
- (e) Effect on historic building, sites, etc. The approval of this Application will not have any adverse impact on any historic buildings, sites, districts or archaeological resources in the area.
- (f) Compatibility with Comprehensive Land Use Plan. The Subject Property has a land use designation of Suburban and is abutted to the North by property with a land use designation of Neighborhood Commercial. The RSM zoning district is a permitted zoning district within the Suburban Land Use District and will support the policies to encourage housing diversity and the development of townhome units within the Suburban Land Use District.

#### **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 5<sup>th</sup> day of September, 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.

SEP 05 2019

Chief Executive Officer  
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director  
Andrew A. Baker, AICP

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

Applicant Name: Phoenix City Holdings <sup>M. Jude Battle</sup> Phone: 404-601-7616 Email: mjb@battlelaw.pc

Property Address: 3792 Harvest Dr

Tax Parcel ID: 15-060-01-191 Comm. District(s): 3:7 Acreage: 10.265

Existing Use: undeveloped Proposed Use: 61 townhouses

Supplemental Regs: \_\_\_\_\_ Overlay District: \_\_\_\_\_ DRI: \_\_\_\_\_

Rezoning: Yes ☒ No \_\_\_\_\_

Existing Zoning: R-100 Proposed Zoning: RSM Square Footage/Number of Units: \_\_\_\_\_

Rezoning Request: 61 townhouses w/ 5.94

20% enhanced open space

Land Use Plan Amendment: Yes \_\_\_\_\_ No ☒ \_\_\_\_\_

Existing Land Use: SUB Proposed Land Use: \_\_\_\_\_ Consistent \_\_\_\_\_ Inconsistent \_\_\_\_\_

Special Land Use Permit: Yes \_\_\_\_\_ No ☒ Article Number(s) 27- \_\_\_\_\_

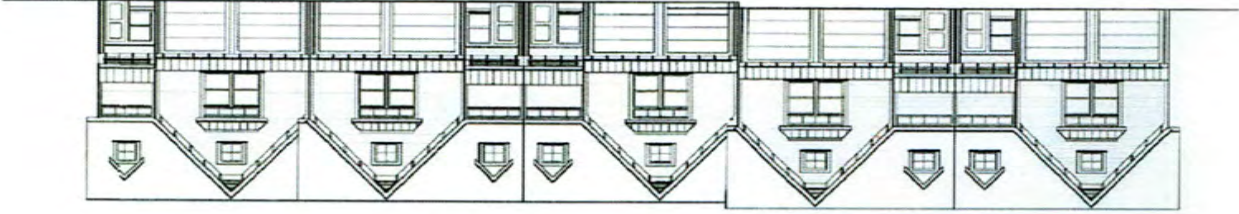
Special Land Use Request(s) \_\_\_\_\_

**Major Modification:**

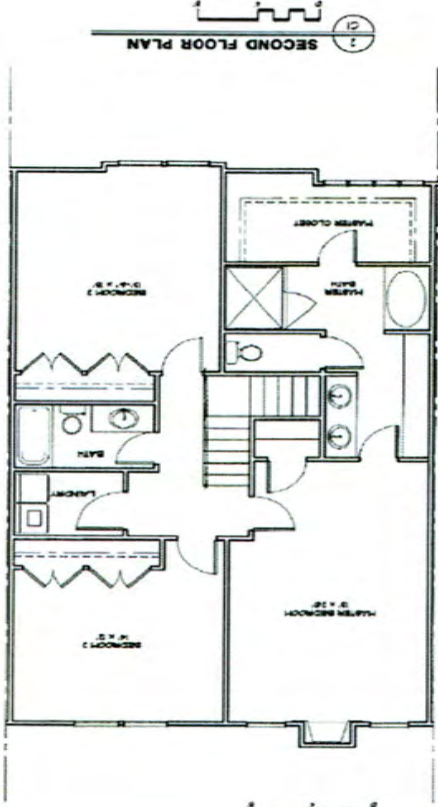
Existing Case Number(s): \_\_\_\_\_

Condition(s) to be modified:

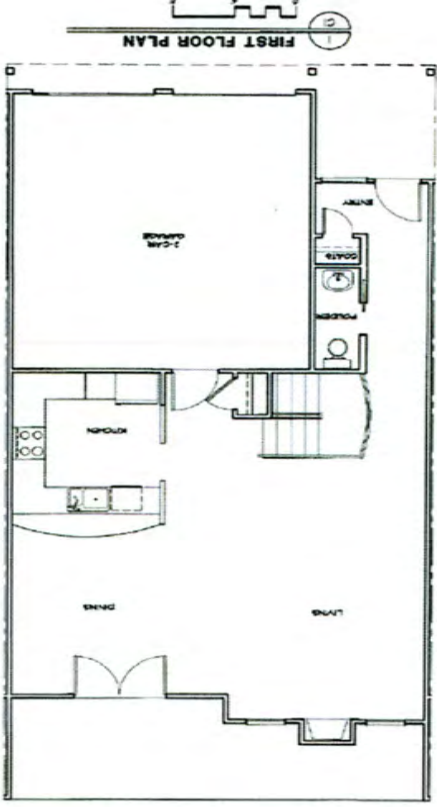
# Application Z-19-1243522, 3792 Harvest Drive Proposed RSM Zoning - 61 Townhomes Conceptual Elevations



1 BUILDING 1 ELEVATION



2 SECOND FLOOR PLAN



3 FIRST FLOOR PLAN



4 UNIT ELEVATION

SEP 12 2019  
 R.D. 1000











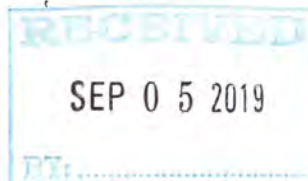
# FIRST AMERICAN TITLE INSURANCE COMPANY

## AMERICAN LAND TITLE ASSOCIATION

### LOAN POLICY

Policy No.: 84-E0004002

File No.: A2096A



#### EXHIBIT "A"

#### LEGAL DESCRIPTION - Additional Collateral Property

ALL THAT TRACT OR PARCELS OF LAND lying and being in Land Lot 60 and 61 of the 15th district, DeKalb County, Georgia and being more particularly described as follows:

Commencing at the intersection of the northwest right of way line of Flakes Mill Road (Variable R/W) and the intersection of the northeast right of way line of Harvest Drive (55' R/W); thence continuing along the right of way line of Harvest Drive the following courses and distances: North 80 degrees 50 minutes 17 seconds West a distance of 189.28 feet to a point; thence 110.52 feet along a arc of a curve to the right, said arc having a radius of 356.75 feet and a chord bearing and distance of North 71 degrees 57 minutes 47 seconds West 110.08 feet to a point; thence North 63 degrees 05 minutes 17 seconds West a distance of 200 feet to a point; thence 307.49 feet along a arc of a curve to the left, said arc having a radius of 607.50 feet and a chord bearing and distance of North 77 degrees 35 minutes 18 seconds West 304.21 feet to a point; thence South 87 degrees 54 minutes 42 seconds West a distance of 63.41 feet to a point; thence leaving said right of way line of Harvest Drive (55' R/W) 12.87 feet along a arc of a curve to the right, said arc having a radius of 15.00 feet and a chord bearing and distance of North 67 degrees 30 minutes 16 seconds West 12.48 feet to a point; thence 19.47 feet along a arc of a curve to the left, said arc having a radius of 50.00 feet and a chord bearing and distance of North 54 degrees 04 minutes 39 seconds West 19.35 feet to a point, said point being the True Point Of Beginning; thence 100 feet along a arc of a curve to the left, said arc having a radius of 50.00 feet and a chord bearing and distance of South 57 degrees 28 minutes 14 seconds West 84.85 feet to a point; thence South 88 degrees 18 minutes 21 seconds West a distance of 358.47 feet to a point; thence North 80 degrees 39 minutes 18 seconds West a distance of 473.50 feet to a point; thence North 07 degrees 05 minutes 21 seconds East a distance of 156.05 feet to a point; thence North 05 degrees 23 minutes 27 seconds East a distance of 338.37 feet to a point; thence North 34 degrees 36 minutes 33 seconds West a distance of 300.73 feet to a point; thence North 04 degrees 54 minutes 08 seconds East a distance of 202.51 feet to a iron pin set; thence South 82 degrees 58 minutes 41 seconds East a distance of 494.59 feet to a point; thence South 39 degrees 47 minutes 19 seconds East a distance of 774.86 feet to a point; thence South 58 degrees 18 minutes 15 seconds East a distance of 165.43 feet to a point, said point being the True Point Of Beginning.

Said tract contains 10.085 Acres.

SEP 05 2019

IVED

# COMMUNITY MEETING

## SIGN IN SHEET

3792 Harvest Drive

Flat Shoals Library - 4022 Flat Shoals Parkway, Decatur, GA 30034

Tuesday, August 20, 2019 6:30 PM - 8:00 PM

Please print legibly

First Name	Last Name	Address	City, State	Zip Code	Phone Number	Email Address
Gilda	BRYANT	3613 Spring Trace	Dec. GA	30034		
RONALD	BROOKS	3049 HARVEST	Dec GA	30034		rdbrooks1965@gmail.com
MARIA	F. BROOKS	"	"	"		
Delechia	Jay	3522 Hunters Way	Dec GA	30034		
Dion	Dixon	3492 Cherry Ridge Dr	Dec GA	30034		
Nancy	Vincent	3680 Harvest Dr	Decatur	30034		
BARBARA	Qden	3632 River Cliff Ct	"	30034		barbqden61@gmail.com
William	TRUNE	Cherry Ridge	Decatur	30034		
Andrew	Lovett	3648 Woodland Cove	Decatur	30034		<del>andrewlovett@gmail.com</del> (andrewlovett)@gmail.com
Bishop	Herrington	3508 Shepherds Path	Decatur	30034		bherringtonjr@gmail.com
Wendy	Golden	3763 Harvest Dr	Decatur	30034		golden252@bellsouth.net



SEP 05 2019

IVED

# COMMUNITY MEETING

## SIGN IN SHEET

3792 Harvest Drive

Flat Shoals Library – 4022 Flat Shoals Parkway, Decatur, GA 30034

Tuesday, August 20, 2019 6:30 PM – 8:00 PM

Please print legibly

First Name	Last Name	Address	City, State	Zip Code	Phone Number	Email Address
Erica	Birts	3765 Harvest Dr	Decatur	30034		EricaBirts@bellsouth.net
Vanitha	Embrey	3597 Spring Trace	Decatur	30034		
<del>DEBRA</del>	KNOX	3617 SPRING TR.	DECATUR	30034		
NADIA	FOUNTAIN	HARVEST DR	DECATUR	30034		
VAUGHN	FOUNTAIN	" "	"			sleepy0093@hotmail.com
Gloria	RICHARDS	3691 Harvest Dr.	"	30034		g104327@gmail.com
CHERYL	BLANDON	4492 Sherwood Oaks Dr	"	30034		BLANDONCR@yahoo.com



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 FROM R-100 TO RSM TO ALLOW FOR THE DEVELOPMENT OF TOWNHOMES**

**Community Meeting  
Tuesday, August 20, 2019  
6:30 pm until 8:00 pm  
Flat Shoals Library  
4022 Flat Shoals Pkwy  
Decatur, GA 30034**

### **PROPOSED LOCATION:**

**3792 Harvest Drive  
Decatur, GA 30034**



Campaign Contribution Disclosure Statements

CAMPAIGN CONTRIBUTIONS DISCLOSURE STATEMENT

Pursuant to the provisions of 36 O.C.G.A. 67(A), please find below a list of those contributions made by Michele L. Battle or Battle Law, P.C. in the past two years, aggregating \$250.00 or more, to local government officials who will consider this application.

NAME OF GOV'T OFFICIAL	OFFICIAL POSITION	AMOUNT OF CONTRIBUTION
Kathie Gannon	Commissioner	\$350
Mereda Davis Johnson	Commissioner	\$500
Larry Johnson	Commissioner	\$250
Lorraine Cochran-Johnson	Commissioner	\$250

By: 

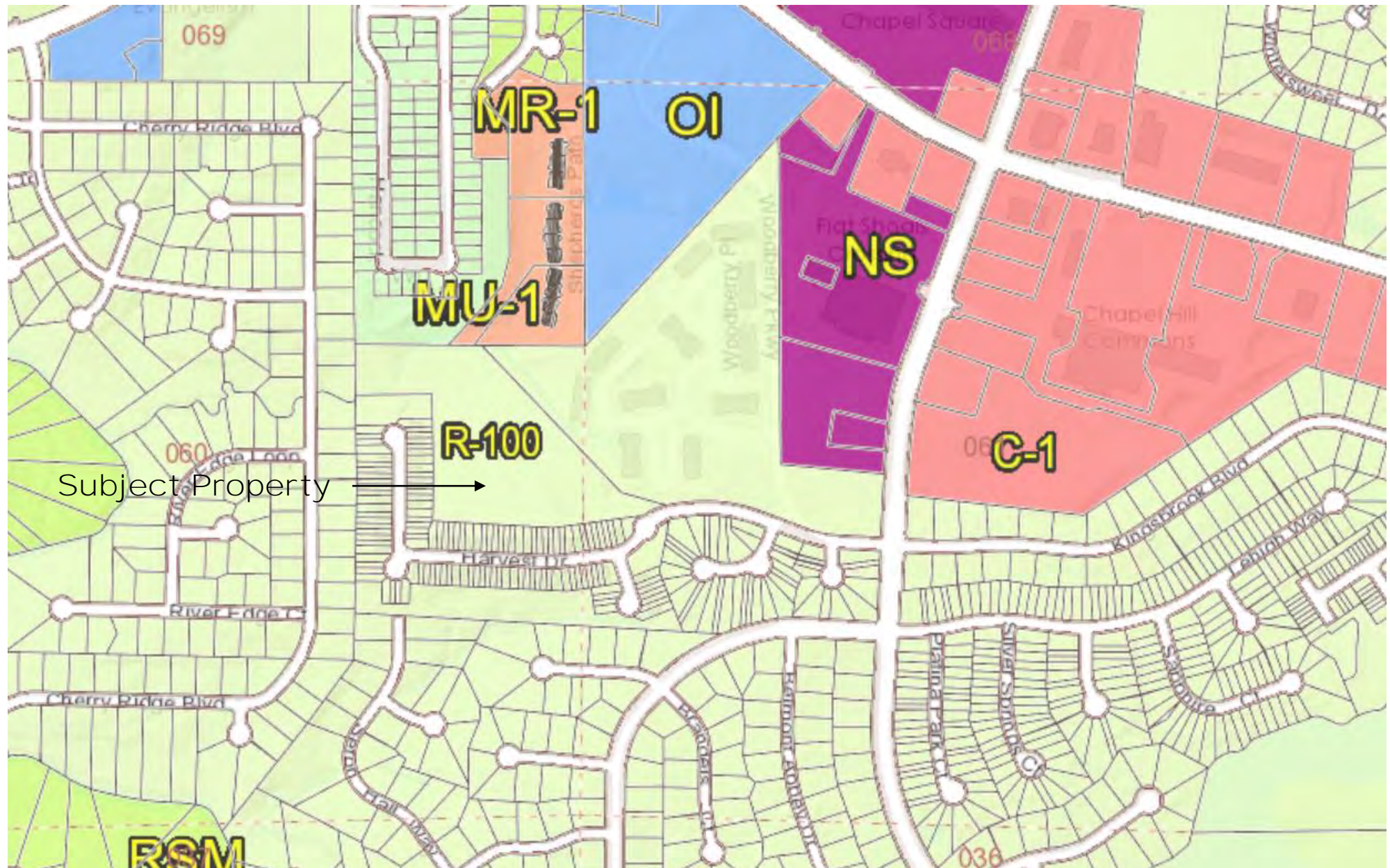
Printed Name: Michele L. Battle



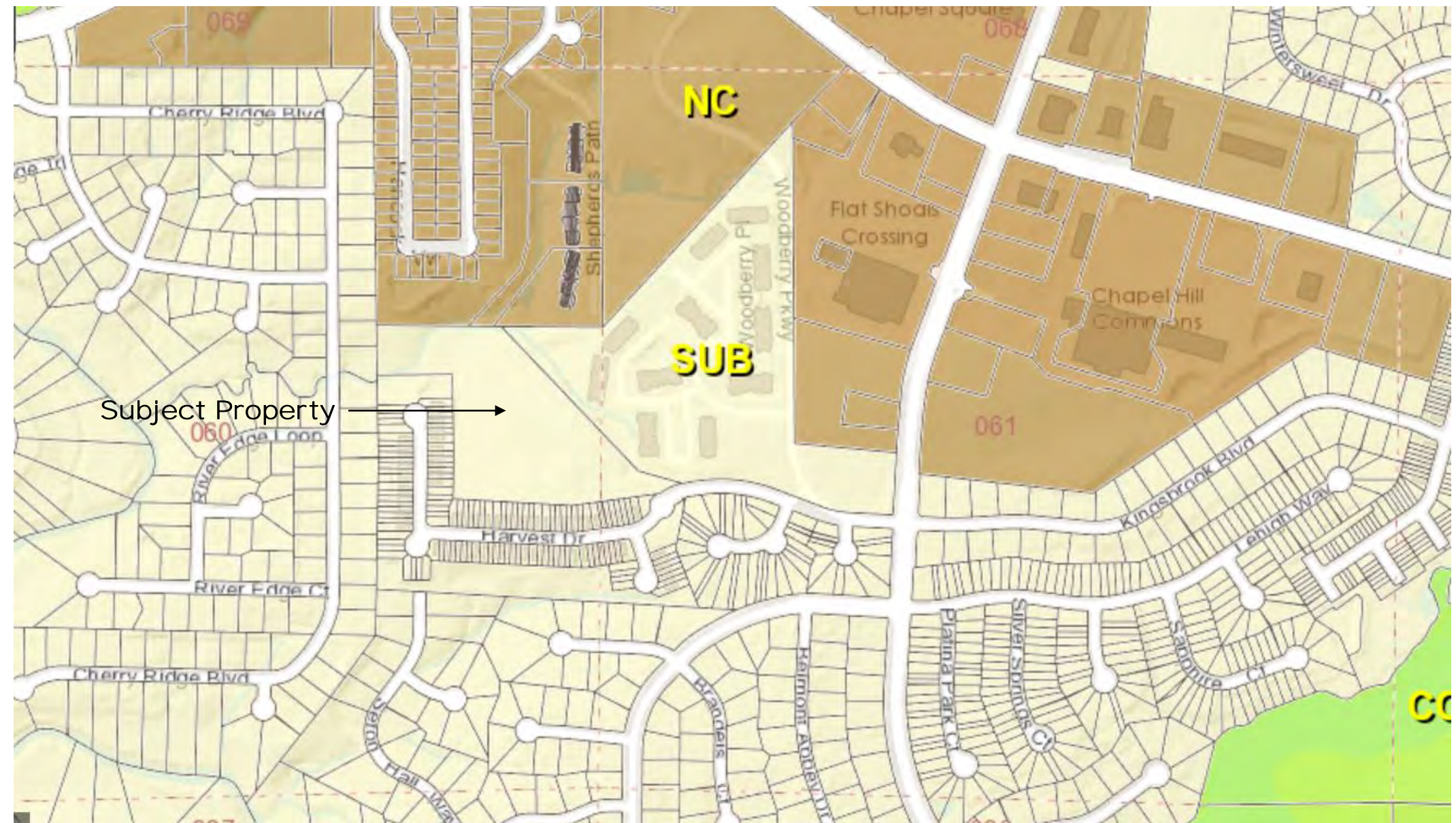
## Existing Conditions and Site Survey



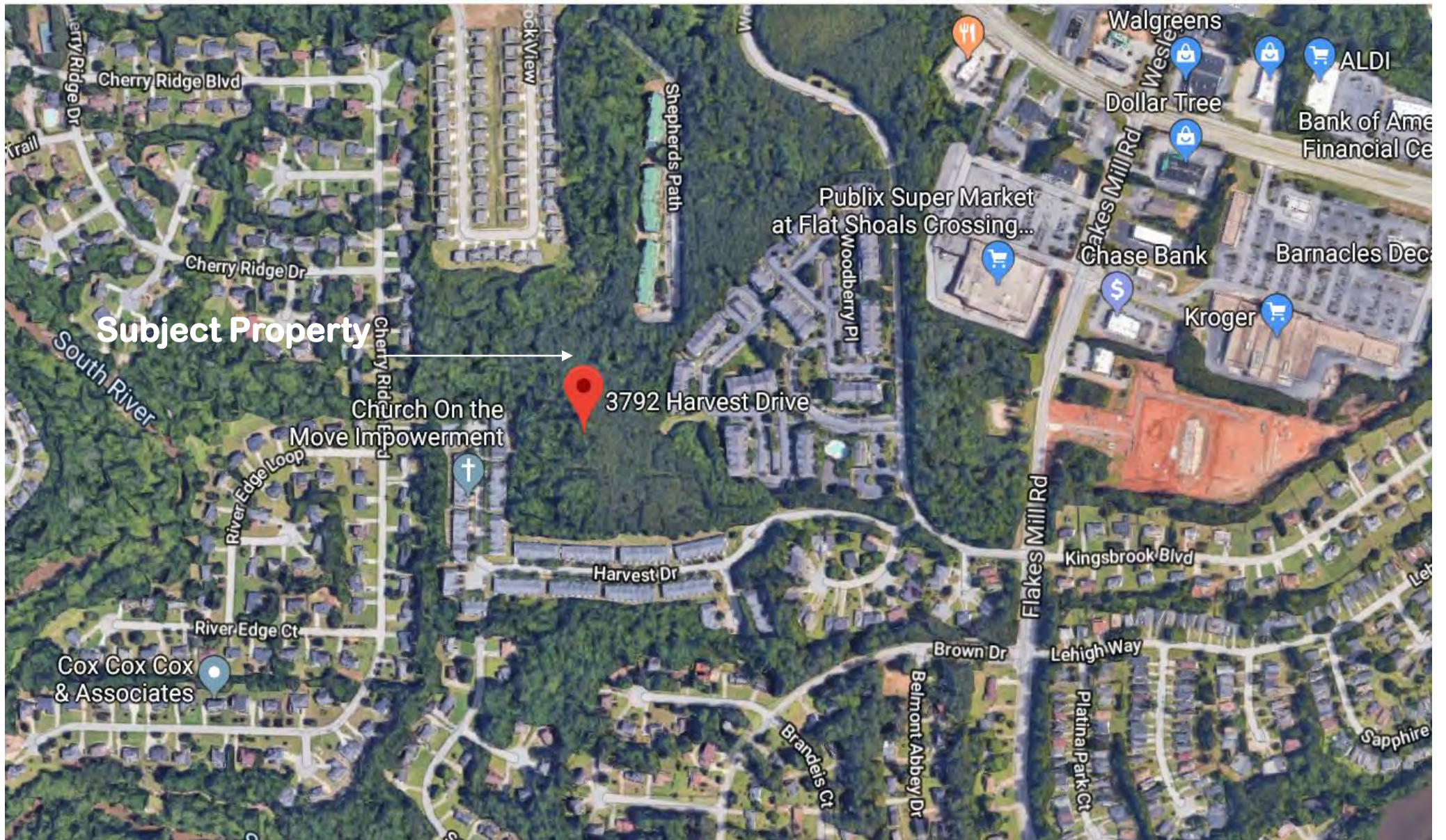












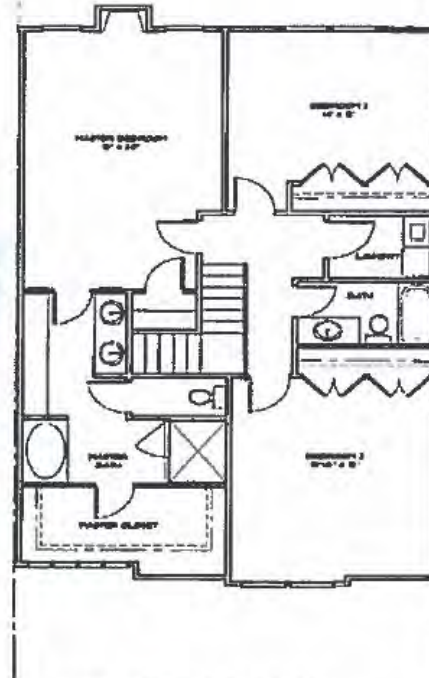




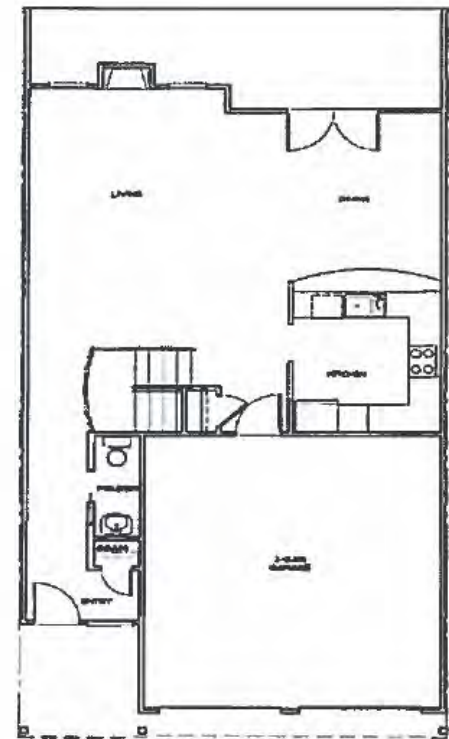
BUILDING 1 ELEVATION



UNIT ELEVATION



SECOND FLOOR PLAN



FIRST FLOOR PLAN





**View from Harvest Drive facing subject property**





**View from Harvest Drive facing subject property**