



# DeKalb County Government

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

## Agenda Item

**File #:** 2020-0835  
**File Status:** Preliminary Item

9/1/2020

**Public Hearing:** YES  NO  **Department:** Planning & Sustainability

**SUBJECT:**

**COMMISSION DISTRICT(S):** 2 & 6

**Application of Stein Investment Co., LLC c/o Dennis J Webb to request a rezoning of properties from C-1 (Local Commercial) and C-2 (General Commercial) to HR-3 (High Density Residential-3) district to allow for the construction of a mixed use development consisting of approximately 10,000 square feet of accessory restaurant and retail space and 264 multi-family apartments, at 2814 Clairmont Road.**

**PETITION NO:** N3. Z-20-1244108 2020-0835

**PROPOSED USE:** Mixed Residential and Commercial Development

**LOCATION:** 2794, 2778, 2804, 2806, 2810, 2814, 3080, & 3070 Clairmont Road and 3068 Briarcliff Road, Atlanta, GA.

**PARCEL NOS.:** 18-196-04-029, -033, -034, -035, -037, -038, -039, -040, -041

**INFO. CONTACT:** Melora Furman

**PHONE NUMBER:** 404-371-2155 x4

**PURPOSE:**

Application of Stein Investment Co., LLC c/o Dennis J Webb to request a rezoning of properties from C-1 (Local Commercial) and C-2 (General Commercial) to HR-3 (High Density Residential-3) district to allow for the construction of a mixed use development consisting of approximately 10,000 square feet of accessory restaurant and retail space and 264 multi-family apartments. The property is located on the northwest corner of Clairmont Road and Briarcliff Road, approximately 120 feet south of Interstate 85 at 2794, 2778, 2804, 2806, 2810, 2814, 3080 and 3070 Clairmont Road, and 3068 Briarcliff Road in Atlanta, Georgia. The property has approximately 670 feet of frontage along Clairmont Road and approximately 196 feet of frontage on Briarcliff Road and contains 3.85 acres.

**RECOMMENDATIONS:**

**COMMUNITY COUNCIL:** Deferral.

**PLANNING COMMISSION:** Pending.

**PLANNING STAFF:** Denial.

**STAFF ANALYSIS:** The proposal is not consistent with the policy and intent of the 2035 Comprehensive Plan. Re-designation of the subject property to Regional Center to allow the proposed HR-3 zoning could lead,

through precedent, to a re-designation of other properties in the surrounding Neighborhood Center, either gradually over time or to rationalize the land use amendment on the subject property. However, the area in which the proposed development would be located show few of the characteristics of Dekalb County regional centers: the Williamsburg/Williamsburg Village and Briarcliff shopping centers are relatively small centers occupied by specialty stores, and public transit consists of only one MARTA bus line, along Clairmont Road. Likewise, re-zoning to the HR-3 zoning classification could establish a precedent that would lead to further rezonings for higher-density or -intensity developments with which the street, utility, and service infrastructure would not be able to keep pace. In addition, the 69 units/acre density of the residential portion of the development, and the six-story height of the proposed residential buildings (earned through a density bonus) is inconsistent with that of nearby apartment and condominium developments. Non-compliance with the standards for building setbacks, parking, and landscape strip widths indicate that the size of the site cannot accommodate the magnitude of the development that is proposed for the site. Therefore, the Department of Planning and Sustainability recommends “Denial”.

**PLANNING COMMISSION VOTE: Pending.**

**COMMUNITY COUNCIL VOTE/RECOMMENDATION: Deferral 4-0-0.** The Community Council Board recommended deferral to allow more time for community input.



**DeKalb County Department of Planning & Sustainability**

**330 Ponce De Leon Avenue, Suite 500  
Decatur, GA 30030  
(404) 371-2155 / plandev@dekalbcountyga.gov**

**Planning Commission Hearing Date: September 1, 2020  
Board of Commissioners Hearing Date: September 24, 2020**

**STAFF ANALYSIS**

**Case No.:** Z-20-1244108 **Agenda #:** N. 3

**Location/Address:** 2794, 2778, 2804, 2806, 2810, 2814, 3080 & 3070 Clairmont Road and 3068 Briarcliff Road, Atlanta, Georgia. **Commission District:** 2 **Super District:** 6

**Parcel ID(s):** 18-196-04-029, -033, -034, -035, -037, -038, 040, & -041

**Request:** Rezoning of property from the C-1 (Local Commercial) and the C-2 (General Commercial) districts to the HR-3 (High Density Residential-3) district to allow for the construction of a mixed use development consisting of approximately 14,000 square feet of accessory restaurant and retail space and 264 multi-family apartments.

**Property Owner(s):** JMAR Investors, LP and 3068 Briarcliff, LLC

**Applicant/Agent:** Stein Investment Co., LLC c/o Dennis J. Webb, Jr.

**Acreage:** 3.85 acres

**Existing Land Use:** Various uses related to auto repair

**Surrounding Properties:** To the west: (zoned MR-2) The Rivera Terrace Condominiums; to the northwest and north: (zoned HGR-2) an open space portion of the Camden St. Clair Apartments, and the Interstate-85 right-of-way; to the northeast: (zoned MR-2) the Audubon Briarcliff Apartments; to the east: (zoned C-1) a Popeye’s restaurant and the Williamsburg Retail Plaza; to the southeast: (zoned C-1) a Chevron gas station; to the south: (zoned C-1) a Quick Trip gas station/convenience store and the Briarcliff shopping center (formerly containing a Piggly Wiggly grocery store); to the southwest: the Kings Ridge Senior Residence.

**Comprehensive Plan:** NC (Neighborhood Center) **Consistent**  **Inconsistent**  See LP-20-1244107

<b>Proposed Density:</b> 69 units/acre	<b>Existing Density:</b> Not applicable
<b>Proposed Units/Square Ft.:</b> 264/approx. 10,000	<b>Existing Units/Square Feet:</b> N.A./Info. not provided.
<b>Proposed Lot Coverage:</b> 84%	<b>Existing Lot Coverage:</b> Information not provided

**Companion Application:** LP-20-1244107: An application to amend the Future Land Use Map from NC (Neighborhood Center) to RC (Regional Center) to allow rezoning of the property to HR-3 classification.

**Zoning History:** In May, 2018, rezoning and SLUP applications (Z-18-22035, SLUP-18-22037, SLUP-18-22038, and SLUP-18-22039) were filed to allow development of a RaceTrac convenience store with alcohol sales and fuel pumps, and a Wendy's drive-through restaurant. The Board of Commissioners granted the applicant's request to withdraw the applications in June, 2018.

Based on DeKalb County records, it appears that the C-1 and C-2 zoning of the property has not changed since adoption of the first zoning ordinance and map in 1956.

## **PROJECT ANALYSIS**

The subject property is a 3.85-acre tract located at the northwest corner of Clairmont Road, a major arterial, and Briarcliff Road, a minor arterial. The tract is comprised of nine lots; five of the lots are occupied with an auto-related business, some which occupy more than one lot: an auto repair business, an oil-change business, and an auto salvage/storage business. Three of the lots, including a land-locked lot, are developed with vacant commercial buildings and asphalt parking areas that appear to have been used for auto-related businesses, and the remaining lot at the north end of the parcel is undeveloped open space.

The property is located approximately 135 feet south of the on- and off-ramps to Interstate 85. The cities of Brookhaven and Chamblee are located on the other side of the Interstate, to the northwest and the northeast, respectively.

The intersection of Clairmont Road and Briarcliff Road forms the center of a commercial/multifamily residential node that is designated as a Neighborhood Center activity area. Commercial uses in the Neighborhood Center include the Williamsburg and Williamsburg Village shopping centers, the Briarcliff shopping center, several chain restaurants, two service stations, and a wide range of single-use commercial buildings that contain retail and service businesses. Five multifamily and single-family attached developments are located within the Neighborhood Center, listed by starting with the development that is closest to the Clairmont Road-Briarcliff Road intersection and ending with the development that is furthest to the intersection: Rivera Condominiums (approximately 19 units/acre); Camden St. Clair Apartments (26 units/acre); Audubon Briarcliff apartments (8 units per acre); Kings Bridge senior housing development (49 units/acre), .the Villas on Briarcliff (12 units/acre).

The proposal is for a mixed use development comprised of

- a two-story restaurant at the corner of Clairmont and Briarcliff Roads;
- a six-story residential building with ground floor retail,
- A five-six story residential building with internal parking deck and walk-out units onto Clairmont Road

The site plan shows bike lanes along both Clairmont and Briarcliff Roads. In addition, streetscaping is provided along both frontages, consisting of landscape strips back of curb, planted with street trees, and sidewalks six to eight feet wide.

The property line will move if the Clairmont Road and Briarcliff Road rights-of-way are relocated as indicated on the site plan, making the buildings non-compliant with the minimum HR-3 setbacks of 10 feet. In addition, the proposed number of residential parking spaces is 26 spaces less than the required minimum; the number of commercial spaces is eight spaces less than the minimum. Landscape strips are 4-8 feet narrower than required.

**Access and Transportation Considerations:** Vehicular access to the development would be provided on the west side of the site off of the private drive that serves the Camden St. Clair apartments driveway, and by a point of access at Clairmont Road.

A traffic study prepared by Kimley Horn states that certain site improvements are needed to serve the background road network traffic plus the traffic from the proposed development, including turn lanes on Briarcliff Road. This would require revisions to the site plan, which currently does not depict the turn lanes, and may necessitate building setback variances. The traffic study states that existing peak hour levels of service at the Briarcliff Road-Clairmont Road intersection are D-E (level of service F is considered to be a failure of the road system to provide adequate traffic circulation). The study states that future levels of service would be D-E, which represent an improvement over current levels, partly a result of GDOT's plan to construct an additional southbound lane on Clairmont.

The site plan depicts provision of the required sidewalks and bike lanes along both Briarcliff Road and Clairmont Road.

**Compliance with District Standards:**

HR-3 STANDARD		REQUIRED/ALLOWED	PROVIDED/PROPOSED	COMPLIANCE
MAX. D.U.s/ACRE (BASE, W/BONUSES)		Base: 60 units/acre W/Bonuses: 120 units/acre	69 units/acre	Yes (see bonus calculations)
DENSITY BONUSES		Provision of structured parking allows 20% density bonus.  (60/acre base + 12/acre bonus units = 72/acre allowed)	Structured parking provided for residential component.	Yes
MIN. OPEN SPACE		15%	21%	
MIN. OPEN SPACE /ENHANCED OPEN SPACE (Applicable if project is > 5 ac. or ≥ 36 d.u.s)		No minimum	N.A.	N.A.
MIN. LOT AREA		None required.	N.A.	N.A.
MIN. LOT WIDTH		100 feet	196 feet (Briarcliff Rd.)	Yes
MAX. LOT COVERAGE		85%	84%	Yes
BUILDING SETBACKS	FRONT (For entire bldg. site)	(Briarcliff Road): Minimum 10 feet Maximum 20 feet	Before road widening– 12 ft.  After road widening – 0 ft.	Yes  After road widening, a variance will be needed.
	INTERIOR SIDE	0 ft.; w/ 3-ft. separation between buildings	Superceded by transitional buffer	N.A.
	SIDE - CORNER LOT	(Clairmont Road): Minimum 10 feet Maximum 20 feet	Before road widening – 18.5 ft.;  After road widening -- 2 ft.;	Yes  After road widening, a variance will be needed.
	REAR W/O ALLEY	MF & MU:20 ft.  CM/OF/MU: 15 ft.	20 feet	Yes

HR-3 STANDARD	REQUIRED/ALLOWED	PROVIDED/PROPOSED	COMPLIANCE
MINIMUM UNIT SIZE	650 square feet	Information not provided.	Non-compliance will necessitate a variance.
MAX. BLDG. HEIGHT	No limit.	2 – 6 stories	Yes
MIN. TRANSITIONAL BUFFER	(along west property line): 30 feet & 6-foot high fence	30 feet	Yes
TRANS'L HEIGHT PLANE	Not required.	N.A.	N.A.,
PERIMETER LANDSCAPE STRIP	Required along rear property line.	Not provided.	No; a variance will be necessary.
PARKING	<u>MF- Res.</u> : Min. – 1.5 spaces/unit = 396 spaces; Max. – 3 spaces/unit = 792 spaces  <u>Commercial (including restaurant)</u> : Min. – 1 space/150 s.f. = 66 spaces; Max. – 1 space/75 s.f. = 133 spaces	370 spaces  57 spaces	Does not meet minimum; a variance will be necessary.  Does not meet minimum; a variance will be necessary.
BIKE LANES	4 feet on Briarcliff and Clairmont	4 feet on Briarcliff and Clairmont	Yes
MIN. STREETScape DIMENSIONS - PROPERTY FRONTAGES ON ARTERIALS IN ACTIVITY CENTERS	10-ft. landscape strip back of curb, 6-ft. sidewalk, street trees planted min. 40 ft. on center	(Relative to existing ROW): Briarcliff Rd.: 4-ft. landscape strip; 6-ft. sidewalk; trees approx. 35' on center  Clairmont Rd.: 6-ft. and 2-ft landscape strips; 8-ft. sidewalk; trees approx. 35' on center	No; variances will be needed for non-compliance of landscape strips

### LAND USE AND ZONING ANALYSIS

Section 27-832 of the Zoning Ordinance, “Standards and factors governing review of proposed amendments to the official zoning map” states that the following standards and factors shall govern the review of all proposed amendments to the zoning maps.

- A. **Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan:** Because the zoning proposal is a companion to a land use amendment that would re-designate the property as a Regional Center, it isn’t useful to evaluate whether not it is consistent with the Neighborhood Center character

area policies. Moreover, the proposal is not consistent with the policy and intent visualized for Regional Centers in the 2035 Comprehensive Plan. The Plan describes Regional Activity Centers as “a concentration of regional serving activities” that have “a high intensity of regional commercial, office, employment areas and higher-education facilities” characterized by “high vehicular traffic and high transit use, including stops, shelters and transfer points”. While the proposed restaurant might draw customers from the entire region, the store and services that would comprise the retail component are unlikely to do so, and the development doesn’t provide an employment center that would employ a regional work force. The site is too small to accommodate a transit stop, let alone the mixture of transit and other uses that are visualized by the Comprehensive Plan.

An idea to re-designate the entire surrounding Neighborhood Center as a Regional Center has been presented to staff by the applicant. It appears to be an attempt to rationalize the land use amendment on the subject property, which is necessary only to allow the HR-3 zoning classification and the residential density desired by the applicant. However, the area in which the proposed development would be located shows few of the characteristics that would support a regional centers: the Williamsburg/Williamsburg Village and Briarcliff shopping centers are relatively small centers occupied by specialty stores, and public transit consists of only one MARTA bus line, along Clairmont Road. Densities of existing residential developments within the Neighborhood Center are an average of 22 units per acres, which is consistent with Neighborhood Center densities; re-designation to a regional center could stimulate redevelopment of older residential complexes, leading to displacement and loss of the character that these older apartment and condominium developments lend to the Neighborhood Center.

- 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 69 units/acre density of the residential portion of the development, and the six-story height of the proposed residential buildings (earned through a density bonus) are inconsistent with that of nearby apartment and condominium developments. Non-compliance with the standards for building setbacks, parking, and landscape strip widths indicate that the size of the site cannot accommodate the magnitude of the development that is proposed for the site.
- C. **Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned:** It appears that the site has economic use as currently zoned. The C-1 and C-2 zoning districts allow a wide range of uses. However, the current use of the site does not realize its potential for commercial uses, and a May 2018 proposal to redevelop the site was not realized because the rezoning and SLUP applications that would have allowed it were withdrawn.
- D. **Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property:** The proposed development is well buffered and separated by streets from adjoining and nearby properties, and is not likely to adversely affect their use and usability.
- 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:** Re-zoning to the HR-3 zoning classification could establish a precedent that would lead to further rezonings for higher-density or – intensity developments with which the street, utility, and service infrastructure would not be able to keep pace.
- F. **Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources:** No historic buildings, sites, districts, or archaeological resources are located on the property or in the surrounding area.
- 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:** There has been no indication from reviewing

agencies and departments that the proposed development would be excessively burdensome on the existing infrastructure. The traffic study prepared by Kimley Horn calls for site improvements, including turn lanes on Briarcliff Road. This would require revisions to the site plan, which currently does not depict the turn lanes, and may necessitate building setback variances and/or adjustments to the site plan during building permitting. Staff is recommending denial of the rezoning request; however, if it is the desire of the Planning Commission to recommend approval, staff recommends that any recommendation for a conditional site plan state that the site plan is to be subject to standards implemented by the Transportation Division. At the time this report is being written, the Board of Education has not yet commented on the impact of the development on the school system.

- H. **Whether the zoning proposal adversely impacts the environment or surrounding natural resources:** The buildings and paved portions of the proposed development would be located on property that is already paved, and redevelopment of the property would offer an opportunity to improve the quality and amount of water runoff from the site. However, the proposed development would use more energy and other natural resources than the existing uses of the site.

**STAFF RECOMMENDATION: DENIAL.**

The proposal is not consistent with the policy and intent of the 2035 Comprehensive Plan. Re-designation of the subject property to Regional Center to allow the proposed HR-3 zoning could lead, through precedent, to a re-designation of other properties in the surrounding Neighborhood Center, either gradually over time or to rationalize the land use amendment on the subject property. However, the area in which the proposed development would be located show few of the characteristics of Dekalb County regional centers: the Williamsburg/Williamsburg Village and Briarcliff shopping centers are relatively small centers occupied by specialty stores, and public transit consists of only one MARTA bus line, along Clairmont Road. Likewise, rezoning to the HR-3 zoning classification could establish a precedent that would lead to further rezonings for higher-density or –intensity developments with which the street, utility, and service infrastructure would not be able to keep pace. In addition, the 69 units/acre density of the residential portion of the development, and the six-story height of the proposed residential buildings (earned through a density bonus) is inconsistent with that of nearby apartment and condominium developments. Non-compliance with the standards for building setbacks, parking, and landscape strip widths indicate that the size of the site cannot accommodate the magnitude of the development that is proposed for the site. Therefore, the Department of Planning and Sustainability recommends “Denial”.

**Attachments:**

1. Department and Division Comments
2. Board of Health Comments
3. Application
4. Site Plan
5. Zoning Map
6. Land Use Plan Map
7. Aerial Photograph
8. 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 or residential space and for use of property for a business. Floor plans may be required for certain types of occupants.)*
- **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** *(A Certificate of Appropriateness is 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** *(Required to seek 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 major changes to zoning conditions that were approved by the Board of Commissioner for 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 requires submittal of application and supporting documents, and payment of fees. Please consult with the appropriate department/division.**

**PUBLIC WORKS DEPARTMENT, TRANSPORTATION DIVISION  
COMMENTS**

**N.2 & N.3A:** Clairmont Road is SR 155. GDOT review and approval required prior to permitting. Clairmont Road is classified as a major arterial. Right of way dedication of 50 foot from centerline or such that all public infrastructure is within the right of way, whichever greater, required. Six-foot wide sidewalks, bike lanes (or ten-foot wide multiuse path in lieu of bike lanes), 10-foot landscape area, streetlights required. Briarcliff Road is classified as a minor arterial. Right of way dedication of 40 foot from centerline or such that all public infrastructure is within the right of way, whichever greater, required. Six-foot wide sidewalks, bike lanes (or ten-foot wide multiuse path in lieu of bike lanes), 10-foot landscape area, streetlights required. Verify intersection and turning sight distances meet AASHO requirements at permitting. Access points are to remain as far away from the intersection of Clairmont Rd and Briarcliff Rd as possible. Coordinate and donate right of way necessary for GDOT PIs 0015680 and 0015956. Provide pedestrian connections between site destinations and sidewalks on public right of way. Verify intersection and turning sight distances meet AASHO requirements at permitting.



**DEKALB COUNTY GOVERNMENT  
PLANNING DEPARTMENT  
DISTRIBUTION FORM**

**NOTE: PLEASE RETURN ALL COMMENTS VIA EMAIL OR FAX TO EXPEDITE THE PROCESS TO  
MADOLYN SPANN [MSPANN@DEKALBCOUNTYGA.GOV](mailto:MSPANN@DEKALBCOUNTYGA.GOV) OR JOHN REID [JREID@DEKALBCOUNTYGA.GOV](mailto:JREID@DEKALBCOUNTYGA.GOV)**

**COMMENTS FORM:  
PUBLIC WORKS TRAFFIC ENGINEERING**

Case No.: LP-20-124107 Parcel I.D. #: 18-196-04-029, 033, 034

Address: 2772, 2804, 2806, 2810,  
2814, 3080 Clairmont Rd  
Atlanta GA. 30329

3068 Briarcliff Rd  
Atlanta GA.

**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:**

<u>Plans and field reviewed. No problem that</u>
<u>would interfere with Traffic flow.</u>

Signature: *Jerry White*



DEKALB COUNTY GOVERNMENT  
PLANNING DEPARTMENT  
DISTRIBUTION FORM

**NOTE:** PLEASE RETURN ALL COMMENTS VIA EMAIL OR FAX TO EXPEDITE THE PROCESS TO MICHELLE M ALEXANDER [mmalexander@dekalbcountyga.gov](mailto:mmalexander@dekalbcountyga.gov) OR JOHN REID [JREID@DEKALBCOUNTYGA.GOV](mailto:JREID@DEKALBCOUNTYGA.GOV)

COMMENTS FORM:  
PUBLIC WORKS WATER AND SEWER

Case No.: Z-20-1244108

Parcel I.D. #: 18-196-04-029, 18-196-04-033, 18-196-04-034, 18-196-04-035, 18-196-04-037, 18-196-04-038, 18-196-04-039, 18-196-04-040, 18-196-04-041

Address: 2794, 2778, 2804, 2806, 2810, 2814, 3080, and 3070 Clairmont Road and 3068 Briarcliff Road  
Atlanta, Georgia

WATER:

Size of existing water main: 8" DI & 30" DI Water Main *ms* (adequate/inadequate)

Distance from property to nearest main: Adjacent to Property

Size of line required, if inadequate: N/A

SEWER:

Outfall Servicing Project: North Fork Peachtree Creek Basin

Is sewer adjacent to property: Yes (X) No ( ) If no, distance to nearest line: \_\_\_\_\_

Water Treatment Facility: R M Clavton WTF ( ) adequate ( ) inadequate

Sewage Capacity; \* (MGPD)

Current Flow: 127 (MGPD)

COMMENTS:

\* Please note that the sewer capacity has not been reviewed or approved for this project. A Sewer Capacity Request (SCR) must be completed and submitted for review. This can be a lengthy process and should be addressed early in the process.

Signature: *[Handwritten Signature]*

Board of Health

08/13/2020

To: Current Planning  
From: Ryan Cira, Environmental Health Manager  
Cc: Alan Gaines, Technical Services Manager  
Re: Rezone Application Review

General Comments:

DeKalb County Health Regulations prohibit use of on-site sewage disposal systems for:

- multiple dwellings
- food service establishments
- hotels and motels
- commercial laundries
- funeral homes
- schools
- nursing care facilities
- personal care homes with more than six (6) clients
- child or adult day care facilities with more than six (6) clients
- residential facilities containing food service establishments

If proposal will use on-site sewage disposal, please contact the Land Use Section (404) 508-7900.

Any proposal, which will alter wastewater flow to an on-site sewage disposal system, must be reviewed by this office prior to construction.

This office must approve any proposed food service operation or swimming pool prior to starting construction.

Public health recommends the inclusion of sidewalks to continue a preexisting sidewalk network or begin a new sidewalk network. Sidewalks can provide safe and convenient pedestrian access to a community-oriented facility and access to adjacent facilities and neighborhoods.

For a public transportation route, there shall be a 5ft. sidewalk with a buffer between the sidewalk and the road. There shall be enough space next to sidewalk for bus shelter's concrete pad installation. Recommendation: Provide trash can with liner at each bus stop with bench and monitor for proper removal of waste.

Since DeKalb County is classified as a Zone 1 radon county, this office recommends the use of radon resistant construction.

Board of Health

**New Cases:**

- N.1 SLUP-20-12244105 2020-0833 / 18-111-03-018  
2933 North Druid Hills Road, Atlanta, GA 30329
  - Please review general comments.
  - Septic system installed on location surrounding 2933 North Druid Hills. The location with septic system installed was 2814 North Druid Hills Road on 08/02/1963.
  
- N.2 LP-20-1244107 / 2020-0834 / 18-196-04, 18-196-04-033, 18-196-04-034, 18-196-04-035, 18-196-04-037, 18-196-04-038, 18-196-04-039, 18-196-04-040, 18-196-04-041  
2814 Clairmont Road, Atlanta, GA 30329
  - Please review general comments.
  - Septic installed on property 2920 Clairmont Road on 04/07/1974 within the vicinity of property 2814 Clairmont.
  
- N.3 Z-20-1244108 / 2020-0835 / 18-196004-029, 18-196-04-033, 18-196-04-034, 18-196-04-035, 18-196-04-037, 18-196-04-038, 18-196-04-039, 18-196-04-040, 18-196-04-041  
2814 Clairmont Road, Atlanta, GA 30329
  - Please review general comments.
  
- N.4 SLUP-20-1244110 / 2020-0836 / 18-283-02-012, 18-283-02-007, 18-283-02-008  
3214 Chamblee-Tucker Road, Chamblee, GA 30341
  - Please review general comments.
  - Septic system installed on property 04/13/1961
  
- N.5 LP-20-1244114 / 2020-0837 / 16-252-02-002  
8400 Pleasant Hill Way, Lithonia, GA 30058
  - Please review general comments.
  - Septic system installed on property near vicinity at 8406 Pleasant Hill Way
  
- N.6 Z-20-1244113 / 2020-0838 / 16-254-02-002  
8400 Pleasant Hill Way, Lithonia, GA 30058
  - Please review general comments.
  
- N.7 Z-20-1244119 / 2020-0839 / 18-050-12-005  
1377 Scott Blvd., Decatur, GA 30030
  - Please review general comments.



# BRIARCLIFF WOODS

C I V I C A S S O C I A T I O N

August 11, 2020

Subject: Proposal by Stein Investment Co., LP 20 1244107 2814, parts 1 and 2,  
Z 20 1244108 2814, part 3 (Agenda items N2 and N3)  
2814 Clairmont Rd., Atlanta, GA 30329

Dear Community Council Members:

On behalf of the Briarcliff Woods Civic Association, we wish to express our support for the proposed changes in land use from Neighborhood Center (NC) to Regional Center (RC), and the proposed rezoning from C-1 (Local Commercial) and C-2 (General Commercial) to HR-3 (High Density Residential-3).

We believe that the proposed redevelopment of this property is appropriate for the parcels, and that it will add value to the neighborhood, without unduly burdening traffic and infrastructure.

Signed on behalf of the Briarcliff Woods Civic Association Board of Directors.

Sincerely,  
Gunter Sharp

Chair, Zoning and Public Planning Committee





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. \_\_\_\_\_

Filing Fee: \_\_\_\_\_

Date Received: \_\_\_\_\_ Application No.: \_\_\_\_\_

Applicant: Stein Investment Co, LLC (Virginia), E-Mail: dwebb@sgrlaw.com
c/o Dennis J. Webb, Jr.

Applicant Mailing Address:
1230 Peachtree Street, N.E., Suite 3100, Atlanta, Georgia 30309

Applicant Phone: (404) 815-3620 Fax: (404) 685-6920

Owner(s): See Exhibit "A" E-Mail: \_\_\_\_\_
(If more than one owner, attach as Exhibit "A")

Owner's Mailing Address:
See Exhibit "A"

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

Address/Location of Subject Property: See Exhibit "A"

District(s): 18th Land Lot(s): 196 Block: 04 Parcel(s): See Exhibit "A"

Acreage: +/- 3.845 Commission District(s): 2nd and 6th

Present Zoning Category: C-1/C-2 Proposed Zoning Category: HR-3

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? [X] Yes [ ] No

If the answer is yes, you must file a disclosure report with the governing authority of DeKalb County showing:

- 1. The name and official position of the local government official to whom the campaign contribution was made.
2. The dollar amount and description of each campaign contribution made during the two years immediately preceding the filing of this application and the date of each such contribution.

The disclosure must be filed within 10 days after the application is first filed and must be submitted to the C.E.O. and the Board of Commissioners, DeKalb County, 1300 Commerce Drive, Decatur, Ga. 30030.

Notary signature and seal for Sheila Johnson, Notary Public, Dec. 29, 2023, Expiration Date / Seal

Applicant signature and date, Check One: Owner [ ] Agent [X]



EXHIBIT "A"

Address/Location of Subject Property

JMAR Investors, LP

2814 Clairmont Road/18 196 04 029

2810 Clairmont Road/18 196 04 040

2806 Clairmont Road/18 196 04 039

2804 Clairmont Road/18 196 04 037

2794 Clairmont Road/18 196 04 035

2778 Clairmont Road/18 196 04 034

3080 Clairmont Road/18 196 04 033

3070 Clairmont Road/18 196 04 038

3068 Briarcliff, LLC

3068 Briarcliff Road/18 196 04 041

Promenade, Suite 3100  
1230 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3592  
Main: 404 815-3500  
www.sgrlaw.com

SMITH, GAMBRELL & RUSSELL, LLP  
Attorneys at Law

Dennis J. Webb, Jr.  
Direct Tel: 404-815-3620  
Direct Fax: 404-685-6920  
dwebb@sgrlaw.com

June 16, 2020

Re: Community Meeting

Dear Neighbor:

You are receiving this notification because you are a property owner within 500' of the following properties:

<u>Property Address:</u>	<u>Parcel No.</u>
2814 Clairmont Road	18 196 04 029
2810 Clairmont Road	18 196 04 040
2806 Clairmont Road	18 196 04 039
2804 Clairmont Road	18 196 04 037
2794 Clairmont Road	18 196 04 035
2778 Clairmont Road	18 196 04 034
3080 Clairmont Road	18 196 04 033
3070 Clairmont Road	18 196 04 038
3068 Briarcliff Road	18 196 04 041

Stein Investment Co, LLC, will be submitting an Application to the Amend Official Zoning Map of DeKalb County from C-1 (Local Commercial) and C-2 (General Commercial) to HR-3 (High Density Residential-3) or MU-5 (Mixed-Use Very High Density) and an Application to Amend Comprehensive Land Use Plan to change the current land use designation from NC (Neighborhood Center) to RC (Regional Center), all to allow for a mixed use development with +/-14,000 square feet of commercial/restaurant space and 264 multi-family units.



Neighboring Property Owners  
June 16, 2020  
Page 2

You are invited to participate in a virtual Community Meeting on July 1, 2020 at 7:00 PM.

**To join the meeting via internet, use the following instructions**

Meeting number: 129 702 6789  
Password: maYuj6tX4w8

Wednesday, July 1, 2020  
7:00 pm | (UTC-04:00) Eastern Time (US & Canada) | 2 hrs

From an internet browser navigate to [sgrlaw.webex.com](https://sgrlaw.webex.com)  
Enter the meeting number in the "join a meeting" field.  
Press Enter  
Enter the meeting password  
Click Ok  
Click Join Meeting

Note there may be some software to install/run depending on the user's computer configuration.

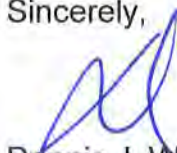
**To join by phone, use the following**

+14043971516 US Toll  
8773093457 US Toll Free  
Access code: 129 702 6789

Note the system will ask for an "attendee ID" to be entered or for # to be pressed to bypass - there is no attendee ID, so press #.

Should you have any questions regarding this application, please feel free to contact me.

Sincerely,



Dennis J. Webb, Jr.  
Attorney at Law

DJW/vmo

BRIARCLIFF WEST – PRE-APPLICATION COMMUNITY MEETING  
JULY 1, 2020 (7:00PM) VIA WEBEX CONFERENCE

LIST OF MEETING ATTENDEES:

DW	Dennis (Den) Webb	Video	Mute
AZ	Adam Zuckerman	Video	Mute
AP	Alan Pinsker		Mute
BV	barbara Gibbs vargas	Video	Mute
B	BCurran	Video	Mute
	Call-in User_3		Mute
	Call-in User_4		Mute
	Call-in User_5		Mute
	Call-in User_6		Mute
C	ck		Mute
CD	Clayton Daspit		Mute
D	david		
DR	David & Nancy Romeiko		Mute
GS	Gunter Sharp	Video	Mute
JL	Jason Linscott	Video	Mute
JL	John LP	Video	Mute
L	Leah		Mute
MD	M. Drysdale		Mute
M	mahad		Mute
M	MJP		
NB	Nate Bradshaw		Mute
N	Nicole		Mute
RR	Ranyatta Roland		Mute
SB	Susan Bailey		Mute

**STATEMENT OF INTENT**

and

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

of

**Stein Investment Co, LLC**

for

± 3.845 Acres of Land  
located in  
Land Lot 196, 18<sup>th</sup> District, DeKalb County

**From C-1/C-2 to HR-3**

Submitted for Applicant by:

Dennis J. Webb, Jr.  
Kathryn M. Zickert  
J. Alexander Brock  
Smith, Gambrell & Russell, LLP  
Promenade, Suite 3100  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309  
404-815-3500

## **I. INTRODUCTION**

This Application seeks the rezoning of an assemblage of ± 3.845 acres of land located in Land Lot 196, 18<sup>th</sup> District of DeKalb County (“Subject Property”), from C-1 (Local Commercial) and C-2 (General Commercial) to HR-3 (High Density Residential--3). The Subject Property consists of nine tax parcels and is positioned in the Southwest quadrant of the intersection of Interstate 85 and Clairmont Road. This node is characterized by high traffic volumes; I-85 experiences approximately 250,000 vehicle trips per weekday and Clairmont Road 43,000 vehicle trips per weekday.

The northern portion of the intersection contains intense, regional commercial, office and employment uses and correspondingly intense land use designations. For example, the northeast quadrant lies in the City of Chamblee. It includes Century Center and is zoned MU-BC (Mixed-Use-Business Center). The MU-BC district is designed to “facilitate a high-rise urban form of development with a mix of uses.” (City of Chamblee Unified Development Ordinance, Section 210-12). Accordingly, it authorizes, among other things, multi-family, office, restaurant/retail and hotel uses with no restrictions on height or density. (Chamblee UDO at Section 210-12).

Similarly, the northwest quadrant of the node lies in the City of Brookhaven. It is zoned OI (Office-Institutional), a district intended to accommodate “institutional and office uses, as well as supporting retail and service uses.” (City of Brookhaven Zoning Ordinance, Section 27-261(d)). The OI district has a base height restriction of five stories or 70 feet, but allows greater heights with a Special Use Permit. (Brookhaven Zoning Code at Section 27-294).<sup>1</sup>

The southern portion of the node lies in unincorporated DeKalb County. Although

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<sup>1</sup> In addition to the more intense uses and entitlements on the north side of the node, the Applicant also notes that the \$1.5 B Children’s Healthcare of Atlanta campus and the \$1 B Emory Executive Park healthy innovation district development are in proximity at the intersection of I-85 and North Druid Hills Road. In addition to allowing for a variety of uses, these developments are projected to create 7,500 new jobs.



exposed to the same intensity as the properties to the north, the DeKalb parcels do not have the zoning and land use designations necessary for the “urban form of development” that the area justifies. Instead, the properties are zoned C-1 and C-2, which restrict building heights to two stories or 35 feet, or MR-2 (Medium Density Residential), which restricts building heights to three stories or 45 feet. Equally limiting, the properties are designated as “Neighborhood Center” on DeKalb County’s Comprehensive Plan, a classification that confines residential development to 24 units per acre or less. As a result, the parcels in the southern portion of the node have stagnated and are characterized by older, stand-alone, single-story commercial uses, strip centers with large parking fields, and garden-style apartments.

The Subject Property is no exception. At a gateway into unincorporated DeKalb County, the Subject Property is zoned C-1 and C-2 and contains five older, single-story buildings surrounded by asphalt. Two buildings are vacant. Of the remaining three, each houses an auto-related business, including auto repair, oil change, and auto salvage/outdoor auto storage. The Subject Property also has 15 full-access curb cuts, nine on Clairmont Road and six on Briarcliff Road.

The Applicant hopes to transform the Subject Property into vibrant, pedestrian-oriented, mixed-use development that is consistent with its location and the northern quadrants in this node. The development will include  $\pm$  10,000 square feet of restaurant/retail space and 264 multi-family units located in three buildings.<sup>2</sup> Building “C” is at the corner of Clairmont and Briarcliff Roads and will contain a two-story restaurant structure with a rooftop patio. Adjacent and to the west, Building “B” is envisioned as a six-story residential building with ground floor retail. To the north, Building “A” will consist of five/six-story residential building that wraps a

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<sup>2</sup> The residential density proposed is 69 units per acre. The Applicant will be relying upon a density bonus to achieve this density.

parking deck and provides walk-out units on Clairmont Road. Buildings “C” and “B” will be separated from Building “A” by an inviting pedestrian plaza and vehicular drop off area.

In contrast to the existing condition, the Subject Property will have only one direct access point onto the right-of way, a right-in/right-out on Clairmont Road. Further, the Clairmont and Briarcliff frontages will include significant streetscape, providing for a four foot bike lane, an eight foot sidewalk (compared to Dekalb’s six foot sidewalk requirement) and landscape strips, among other things. The development will provide 50% more open space than code requires and an outdoor amenity for residents. Finally, the development has been planned to allow for future right-of-way improvements on Clairmont Road. The Georgia Department of Transportation (“GDOT”) has plans (GDOT PI 0015956) to improve Clairmont Road along the entire frontage of the Subject Property extending south toward Audubon Drive by, among other things, constructing a raised median and creating an additional southbound thru-lane. This development has been specifically designed to accommodate and further enhance<sup>3</sup> GDOT’s proposed improvements.

This document is submitted as a Statement of Intent with regard to this Application, a preservation of the Applicant’s constitutional rights, and the Impact Analysis as required by the DeKalb County Zoning Ordinance, § 27-7.3.5. A survey of the Subject Property as well as a site plan and conceptual renderings have been filed contemporaneously with the Application, along with other required materials.

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<sup>3</sup> For example, the GDOT project contemplates a five foot sidewalk while the Applicant is proposing an eight foot sidewalk.



## **II. IMPACT ANALYSIS**

### **A.**

#### **THE PROPOSED ZONING IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE COUNTY'S COMPREHENSIVE LAND USE PLAN.**

Concurrent with this request, the Applicant has filed an application to modify the Land Use Map designation for the Subject Property from the "Neighborhood Center (NC)" character area to "Regional Center (RC)" character area. As alluded to above, the node in which the Subject Property is located is already functioning as a regional center, from both a traffic standpoint and, on the north side, from a use and entitlement standpoint. Changing the designation on the Subject Property recognizes this fact and promotes a number of policies and goals of the County's Comprehensive Plan, including:

- Creating compact mixed-use districts and reducing automobile dependency and travel to obtain basic services.
- Creating pedestrian scale communities that focus on the relationship between the street, buildings, streetscaping and people.
- Improving street character with consistent signage, lighting, landscaping and other design features.
- Including a very high-density mix of retail, office, services, and employment opportunities to serve several neighborhoods.
- Providing setbacks and/or transitional buffers for developments when located adjacent to lower density residential uses.
- Adding traffic calming improvements, sidewalks, and increased street interconnections to increase safety and improve walkability.
- Identifying and encouraging new and innovative approaches to quality residential

development which expand housing opportunities and minimize public and private costs.

- Enhancing existing and developing new gateways throughout the County.

**B.**

**THE PROPOSED ZONING WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTIES.**

The Subject Property is in the southwest quadrant of a major node that, to the north, includes high-intensity office, commercial and residential uses and entitlements that will allow for more. On the south side and in immediate proximity to the Subject Property, the uses adjacent and nearby are comparable in both nature (i.e., multi-family at the Camden St. Clair (West) and commercial/restaurant at Williamsburg Village (East)) and height (i.e., Briarcliff Oaks Apartments (West) and Kingsbridge Retirement Community (Southwest)). Finally, the Subject Property also abuts property currently zoned HR-2 (High Density Residential—2) (Camden St. Clair (West)), a complimentary zoning district.

**C.**

**THE PROPERTY TO BE EFFECTED BY THE ZONING PROPOSAL HAS LIMITED ECONOMIC USE AS CURRENTLY ZONED.**

The Subject Property's has limited economic use as currently zoned. The best evidence of this fact are the existing uses on-site. Despite its prime location at the intersection of a major interstate and a major arterial road and despite its proximity to major employment centers like Century Center, the Subject Property is only partially occupied and is used exclusively for auto repair, oil change and auto storage/salvage.

**D.**

**THE PROPOSED ZONING WILL NOT ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTIES.**

See B above.

**E.**

**THERE ARE OTHER EXISTING AND CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH SUPPORT THE APPROVAL OF THE PROPOSED ZONING.**

Both the Subject Property's zoning and Land Use designation have lagged change and growth in the immediate area. The Applicant seeks to rectify that fact, proposing a development that will be an asset for the nearby community and, potentially, a catalyst for additional high-quality redevelopment for other parcels in area.

**F.**

**THE PROPOSED ZONING WILL NOT ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS, OR ARCHAEOLOGICAL RESOURCES.**

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

**G.**

**THE PROPOSED ZONING WILL NOT CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS.**

The development, if approved, will not adversely affect existing transportation facilities. The Applicant will be providing a Traffic Impact Study that directly responds to this issue and highlights two additional points relevant to traffic. First, through this development, the Applicant will be removing 15 full-access curb cuts and replacing them with only one direct

access point onto the right-of-way, a right-in and right-out on Clairmont Road. This change will improve traffic flow by controlling access to the right-of-way. Second, the Subject Property is zoned commercial now, meaning that the site is already entitled for a number of uses that could generate significantly more traffic than proposed (e.g., A health/fitness club and automated car wash are allowed on the site today as of right and would generate 31% more daily trips; a pharmacy without a drive-thru, a high-turnover sit-down restaurant and an automated car wash are allowed on the site today as of right and would generate 54% more daily trips).

Water and sewer exist at the Subject Property. Further, the Applicant is in the process of securing a sewer capacity letter from the County.

Finally, and as to schools, the Subject Property is served by Sagamore Hills Elementary School, Henderson Middle School and Lakeside High School. The Applicant notes that the majority of the multi-family units are studio and one-bedroom and, hence, not designed for families. Therefore, while the Subject Property may generate some additional school-aged children, the Applicant anticipates that the numbers will be low and should have, at best, a negligible impact on the County school system.

#### **H.**

#### **THE PROPOSED ZONING WILL NOT ADVERSELY IMPACT THE ENVIRONMENT OR SURROUNDING NATURAL RESOURCES.**

The Applicant will comply with all federal, state, and county regulations relating to environmental protection to ensure that the proposed development will not adversely affect the environment.

#### **III. NOTICE OF CONSTITUTIONAL CHALLENGE AND PRESERVATION OF CONSTITUTIONAL RIGHTS**

The Applicant respectfully submits that the existing zoning on the Subject Property is unconstitutional and that a refusal to approve the proposed rezoning, or any attempt to rezone the

Subject Property to an intervening classification, would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion, all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed rezoning, or any attempt to rezone the Subject Property to an intervening classification, would discriminate unfairly between the owner of the Subject Property and other property owners similarly situated, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph II of the Constitution of the State of Georgia.

A refusal to approve the proposed rezoning, or any attempt to rezone the Subject Property to an intervening classification, would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed rezoning, or any attempt to rezone the Subject Property to an intervening classification, 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 Constitution of the State of Georgia.

A refusal to approve the proposed rezoning, or any attempt to rezone the Subject Property to an intervening classification, would be invalid inasmuch as the Zoning Ordinance of DeKalb County is unlawful, null and void because its adoption and map adoption/maintenance did not

and does not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

DeKalb County's Zoning Ordinance lacks adequate standards for the Board of Commissioners to exercise its power to review this Application. Specifically, the "standards and factors" set out in Section 27-7.3.5 are not sufficient to contain the discretion of the Board of Commissioners and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia.

Any limitation on the time for presentation of the issues before the Board of Commissioners, which has the power to zone and rezone property, is a violation of the guarantees of free speech under the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph V of the Constitution of the State of Georgia. Further, said limitations are in violation of the right to petition and assemble, in violation of the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph IX of the Constitution of Georgia, as well as the due process clauses of the United States and Georgia Constitutions.

The Applicant raises the defenses of lack of standing and failure to exhaust administrative remedies.

#### **IV. CONCLUSION**

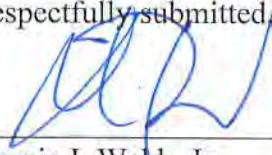
For the foregoing reasons, the Applicant respectfully requests that the proposed rezoning be approved. The Applicant also invites and welcomes any comments from Staff or other



officials of DeKalb County so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 2<sup>nd</sup> day of July, 2020.

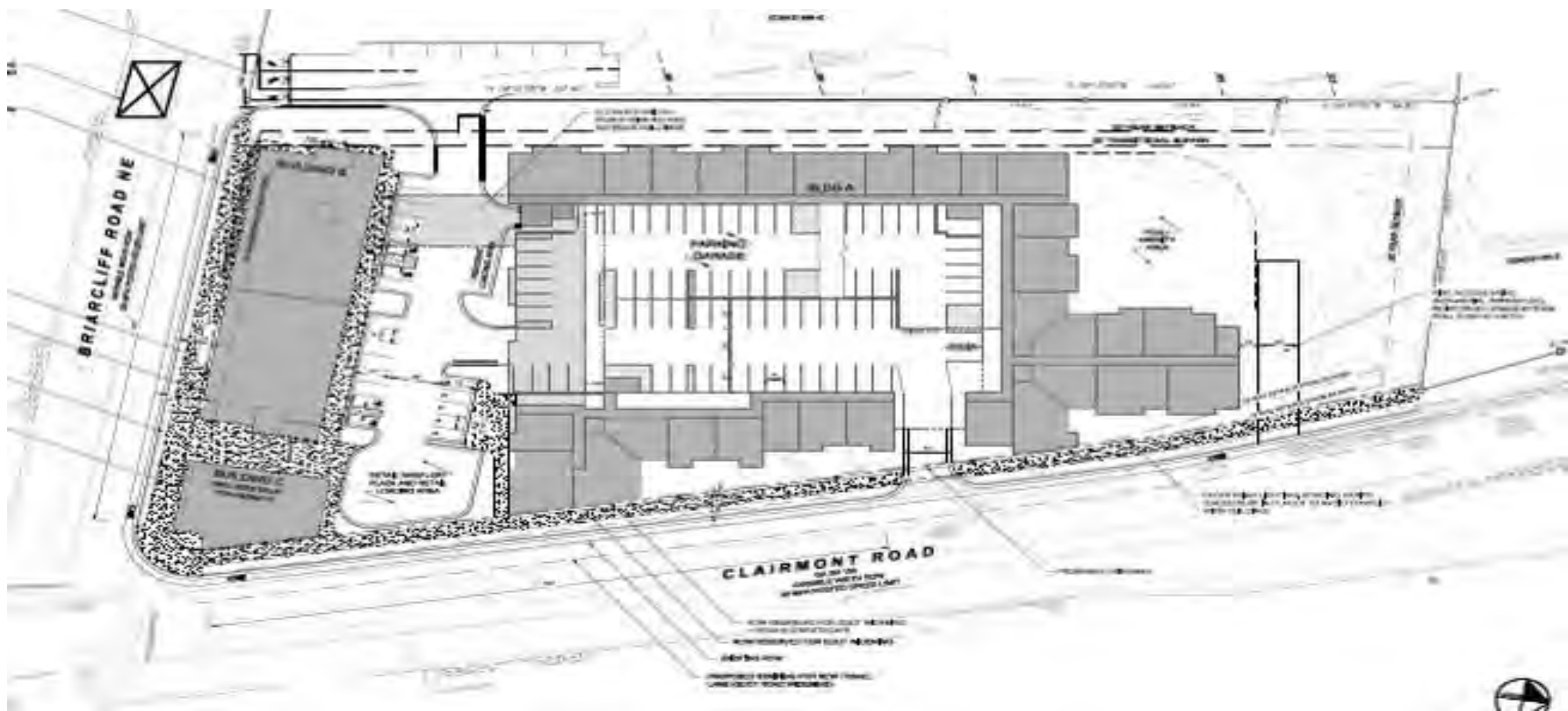
Respectfully submitted,



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Dennis J. Webb, Jr.  
Attorney for Applicant

Smith, Gambrell & Russell, LLP  
Promenade, Suite 3100  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309  
404-815-3500

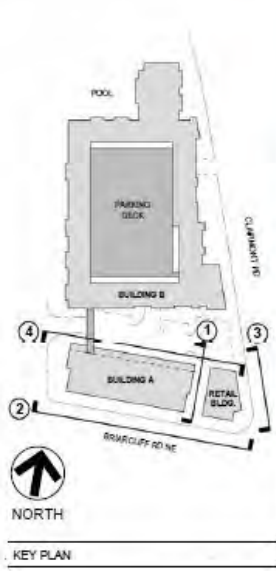






ELEVATION 1 - BUILDING A

ELEVATION 2 - BUILDING A (BRIARCLIFF RD)



ELEVATION 3 - RETAIL BUILDING

ELEVATION 4 - BUILDING A





ELEVATION 5 - BUILDING A



ELEVATION 6 - BUILDING B

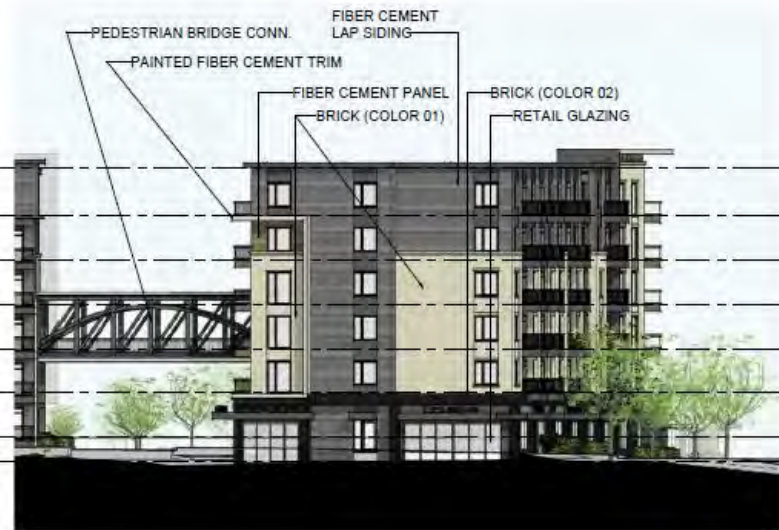


NORTH



Navigation and zoom controls for the elevation drawing, including a mouse cursor, hand icon, zoom in (+) and zoom out (-) buttons, a zoom level of 52.2%, a print icon, a PDF icon, a refresh icon, a crop icon, and an upload icon.





ELEVATION 5 - BUILDING A



ELEVATION 6 - BUILDING B





