

DeKalb County Department of Planning & Sustainability

Andrew A. Baker, AICP Director

Michael L. Thurmond Chief Executive Officer

APPLICATION TO AMEND OFFICIAL ZONING MAP OF DEKALB COUNTY, GEORGIA

		Filing I	E00:
Date Received:	Application No.:		
Applicant: Arpon, LLC c/o Battle Law, P.C.	E-Mail:_	mlb@battlelawpc.c	com
Applicant Mailing Address: One West Court S	3q., Suite 750, Decatur	, GA 30030	
Applicant Phone: 404-601-7616	Fax: _	404-745-0045	
Owner(s): Byron Higginbotham (If more than one owner, attach as B	E-Mail:		
Owner's Mailing Address: 283 Woods Rd,	Brooks, GA 30205		
Owner(s) Phone:	Fax:		
Address/Location of Subject Property:5672	Redan Road		
District(s):16 Land Lot(s):062	Block:02	Parcel(s:	008
Acreage:	ommission District(s):	5 & 7	
Present Zoning Category: R-100	Proposed Zonir	ng Category:C	-1
Present Land Use Category: SUB	****	******	******
	E FOLLOWING BEFO		
This form must be completed in its entirety be attachments and filing fees identified on the a attachments, shall be determined as incomplete	attachments. An applic	ation, which lacks	
In accordance with the Conflict of Interest in Zomust be answered: Have you the applicant made \$250 or more in two years immediately preceding the filling of the	campaign contribution	hapter 36-67A, the	
If the answer is yes, you must file a disclose showing; 1. The name and official position contribution was made. 2. The dollar amount and description immediately preceding the filing of	of the local governion of each campaign of	ment official to whontribution made di	nom the campaign
The disclosure must be filed within 10 days after C.E.O. and the Board of Commissioners, DeKa	er the application is firs alb County, 1300 Comm Arpon, L.C By:	t filed and must be s perce Drive, Decaru	submitted to the r, Ga. 30030.
NOTARY		F APPLICANT / DA	ATE .
EXPIRATION DATE / SEAL	Check One: Ov	vner Agen	tX



404.371.2155 (o) 404.371.4556 (f) DeKalbCountyGa.gov Clark Harrison Building 330 W. Ponce de Leon Ave Decatur, GA 30030

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: October // , 2019	a a constant of the constant o
CHECK TYPE OF APPLICATION:	
() LAND USE PLAN	
(X) REZONE	
() MINOR MODIFICATION	
TO WHOM IT MAY CONCERN:	
(1) (WE), Byron Higginbotham (Name of	of owner(s))
being (owner)/(owners) of the property described b	elow or attached hereby delegate authority to
Battle Law, P.C. and	2
	Agent Representing Owner)
to file an application on (my) / (our) behalf.	
JAMES LORD Notary Public, Georgia Fayette County My Commission Expires June 19, 2022	Sgint Hising Allen
	Owner Byron Higginbotham
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 to Amendment Official Zoning Map

by

ARPON, LLC

for

____1.6 ± Acres of Land located at 5672 Redan Road Land Lot 62, 16th District, DeKalb County

Submitted for Applicant by:

Michèle L. Battle, Esq.
Battle Law, P.C.
One West Court Square, Suite 750
Decatur, GA30030
404-601-7616

I. STATEMENT OF INTENT

The Applicant, Arpon, LL, is seeking to rezone a 1.6-acre tract of land located at 5672 Redan Road from R-100 to C-1 for the development of a Self-Storage Facility in connection with the property located at 5636 Redan Road (the "Adjacent Property"), which is zoned C-1 pursuant to CZ18-22137. The Subject Property is located within the Suburban Land Use District is developed with a one-story house. Simultaneously with this Application, the Applicant has applied for a Major Change of Conditions Application to amend the conditions which currently prohibit the development of a Self-Storage Facility on the Adjacent Property.

II. SUBJECT PROPETY

The Subject Property is located off of an alley way behind Judah House of Praise at 5670 Redan Road, a Cell Tower property at 5674 Redan Road, and property owned by Ace Homes, LLC which appears to be used as an automobile repair facility at 5680 Redan Road. All of the properties to the entrance of 5672 Redan Road are zoned C-2 and are located within Tier II of the Greater Hiddens Hills Overlay District. The Subject Property IS NOT located within the Overlay District. While the house built in 1940, is zoned R-100, it is clear from the area photos of the property, and the pictures taxes by the County's Appraiser, that the Subject Property is not being used strictly for residential usage. The cars from the property at 5680 Redan Road are parked in front of and to the east of the improvements located on the Subject Property. It appears as if the Subject Property and the property at 5680 Redan Road are being used jointly for a junk yard or some type of repair facility, as the cars are also located within the Redan right of way in no orderly fashion. This area is in desperate of cleaning up, and we believe that the proposed rezoning of the Subject Property, will make a major dent in cleaning up this area, along with the County's code enforcement officers.

Based on the information obtained, it is questionable as to whether there is running water and sewer connected to the Subject Property. There is a reported stench to the property which suggests that there are sewage issues on the Subject Property. The Applicant is seeking to acquire the Subject Property, work with code enforcement to get the vehicles currently located on the Subject Property removed and clean up the area. This would go a long way toward the revitalization of the Subject Property and area leading up to the Subject Property.

In connection with the review of this Application, the Applicant is the proposed zoning conditions attached hereto as <u>Exhibit "A"</u> which are substantially consistent with the conditions currently imposed on the Adjacent Property.

III. IMPACT ANALYSIS

(a) <u>Suitability of use</u>: The proposed application will permit uses that are suitable in view of the uses and developments adjacent and nearby the Subject Property. The Subject Property is surrounded by C-1 and C-2 uses South, East and West of the Subject Property. The northeastern boundary of the Subject Property abuts the railroad. The uses on Redan Road include an older strip center, with gas pumps, automobile repair facilities.

beauty salons and the DeKalb County Fire Station. A new Waffle House and Family Dollar are slated to be opened on the western boundary of the Subject Property off of Panola Road. As stated above, the properties which line the street up to the Subject Property are zoned C-2. Therefore, the proposed use is consistent with the existing and proposed uses in the area.

- (b) Effect on adjacent property: The use of the Subject Property as contemplated in this Application will have no adverse impact on the adjacent property owners. The proposed used will allow for the development of this undeveloped parcel which has become a dumping ground. The proposed use will bring more presence along the street, and as well as security cameras to assist with making the area safer. The proposed improvements will have a positive impact on the redevelopment of the street, and the surrounding area.
- (c) Economic use of current zoning: The Subject Property has no use as currently zoned R-100. The area in which the Subject Property is located is 100% commercial, with C-2 properties and C-1 properties abutting the Subject Property, along with the railroad tracks. The Subject Property is no longer suitable for residential use, and based on the current state of the Subject Property which is overloaded with cars, it is clear that the Subject Property is being used for more than residential purposes.
- (d) <u>Effect on public facilities</u>: The Subject Property is in an area with public utility availability. The proposed rezoning will not cause excessive use of streets, transportation facilities, utilities, or schools in the area.
- (e) <u>Effect on historic building, sites, etc.</u> The approval of this Rezoning Application will not have any adverse impact on any historic buildings, sites, districts or archaeological resources in the area.
- (f) <u>Environmental Impact</u>. The approval of this Rezoning Application will not result in any adverse environmental impact.
- (g) <u>Conformity with Comprehensive Plan or Land Use Plan:</u> The Subject Property has a land use designation of Suburban. Rezoning the Subject Property to C-1 is consistent with both the Suburban Land Use Designation, as well as with the Neighborhood Center designation for the Adjacent Property.
- (h) Others: The following constitutional allegations are given in order to preserve the rights of the Applicant to appeal any adverse decisions that may be rendered by DeKalb County with respect to this Application:

NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF CONTITUTIONAL 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 II, 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 amend the land use and/or 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 land use amendment and/or 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 land use amendment and/or 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 land use designation and/or 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 land use designation and/or 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.

IV. CONCLUSION

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

Respectfully submitted,

Michele L. Battle

Attorney For Applicant

EXHIBIT "A"

Proposed Conditions

- 1. Limit site to general retail, commercial or office uses permitted within the C-1 (Local Commercial) District. Prohibitive uses shall be as listed within the DeKalb County Code, Chapter 27-Article 3.37.10 Prohibited Uses in Tier 2 of the Greater Hidden Hills Overlay District, in effect on the day of approval of this rezoning, provided, however, that a Self-Storage Facility shall be allow as a permitted use on the portion of the Subject Property located outside of Tier 2 of the Greater Hidden Hills Overlay District subject to the following conditions:
 - A. The primary building in which the office is located shall be a two-story climate-controlled building;
 - B. Security Cameras shall be installed within the two-story building, as well as throughout the perimeter of the facility, and connected to the DeKalb County law enforcement agency;
 - C. Access to the Self-Storage Facility shall be prohibited between the hours of 10pm and 7am daily;
 - D. The storage units may not be used for the follow:
 - i. Operating a business or service enterprise,
 - ii. Personal activities such as hobbies, arts and crafts, woodworking, repair, restoration or maintenance of machinery or equipment,
 - iii. Storage of hazardous or toxic materials,
 - iv. Living or sleeping quarters, or
 - v. Event space for parties, meetings, flea markets, or other similar activities.

Site plan is conceptual and subject to the approval of the Director of Planning and Sustainability for compliance to zoning code and approved conditions.

- 2. Building height shall not exceed 2 stories or 35 feet.
- 3. Access points on Redan Road are subject to approval by the Transportation Division of the Department of Public Works.
- 4. The number of allowable parking spaces shall be calculated using parking criteria consistent with the Greater Hidden Hills Overlay District per Article 3.37.32.
- 5. Provide road improvements (such as deceleration lanes, bike paths or a multipurpose lane) as may be required, approved or waived by the Transportation Division of the Department of Public Works.
- 6. Provide sidewalks and street lights per Article 5 of the DeKalb County Code.
- 7. All buildings shall be three (3) sided brick along the front and sides, provided, however,

this condition shall not apply to Self-Storage Facilities.

- 8. All refuse areas shall be located to the rear of the site and screened from public view with fencing or similar building materials to match the primary structure.
- 9. To maintain consistency on all potential commercial uses on the site, all signage must comply with the development standards within the Hidden Hills Overlay District per Article 3.37.26 of the DeKalb County Code.
- 10. Provide outside trash receptacles for patrons.
- 11. Screen roof-top equipment.
- 12. The approval of this rezoning application by the Board of Commissioners has no bearing on the requirements for other regulatory approvals under the authority of the Zoning Board of Appeals, or other entity whose decision should be based on the merits of the application under review by such entity.

GREATER HIDDEN HILLS OVERLAY DISTRICT

Sec. 3.37.10. - Prohibited uses in Tier 2.

The following principal uses of land and structures shall be prohibited in Tier 2:

- A. Adult entertainment establishment.
- B. Adult service facility.
- C. Automotive parts store.
- D. Automotive repair, major or minor, and body and paint shop.
- E. Blood collection center.
- F. Breeding kennel.
- G. Check cashing establishment to include automobile title loan and pay day loan establishment.
- H. Tire store where the majority of the tires offered for sale are used tires.
- I. Funeral home and crematory.
- J. Gold-buying establishment.
- K. Heavy truck and equipment repair and trade shop.
- L. Reserved.
- M. Motel.
- N. New and used automotive, truck, boat and trailer sales.
- O. Night club.
- P. Outdoor amusement and recreation facility.
- Q. Outdoor equipment and materials storage.
- R. Outdoor open sales and flea market.
- S. Pawn shop.
- T. Personal care home/child caring institution.
- U. Self storage facility.
- V. Car wash and detailing.
- W. Storage yard for damaged or confiscated vehicles.
- X. Storage/salvage and junk yard.
- Y. Tattoo establishment.
- Z. Thrift and consignment store, which is an establishment selling pre-owned merchandise.
- AA. Transitional housing and boarding house.
- BB. Truck stop and terminal.
- CC. Funeral home.
- DD. Temporary and/or outdoor sale unless authorized by special administrative permit from the planning director in accordance with the requirements of this division.

(Ord. No. 15-06, 8-25-2015)

DESCRIPTION OF PROPERTY

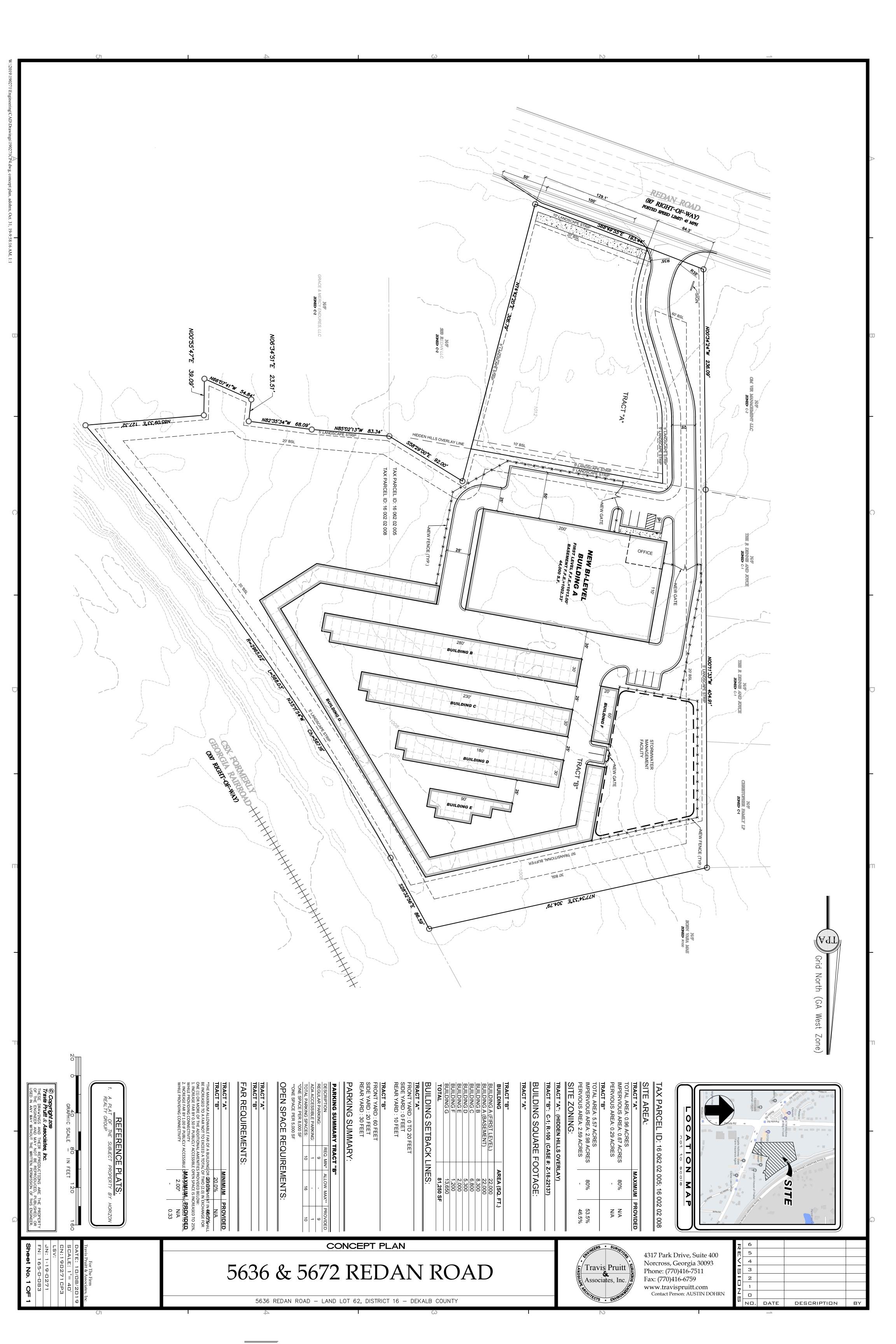
All that tract or parcel of land lying and being in Land Lot 62 of the 16th District, Dekalb County, Georiga and being more particularly described as follows:

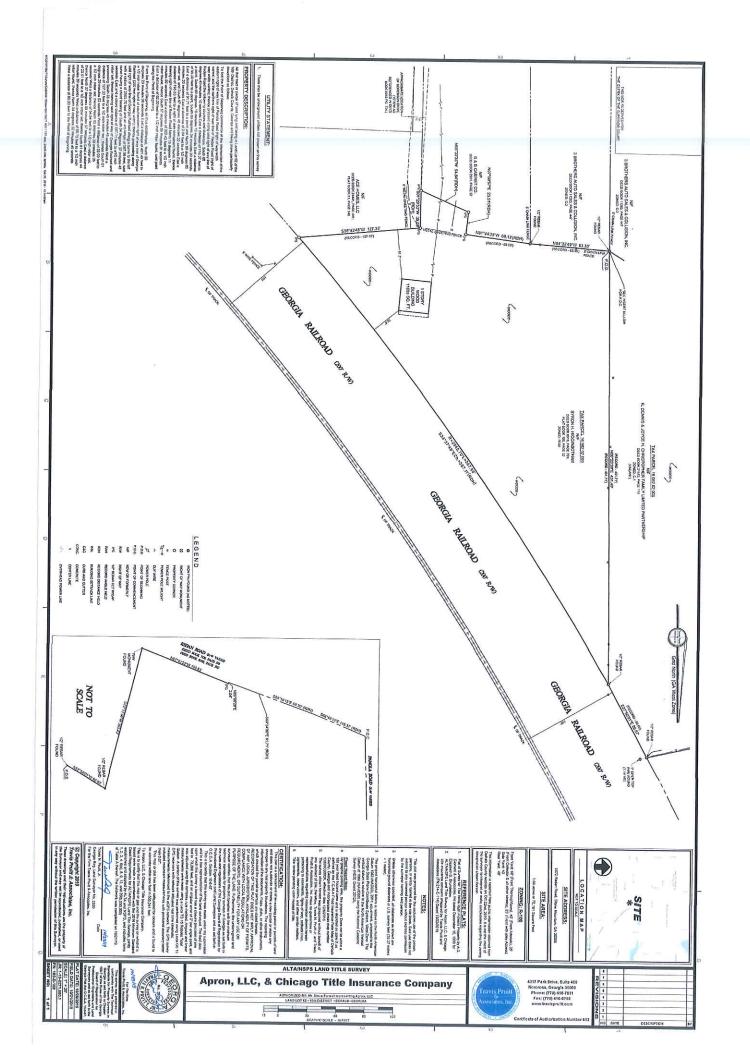
To find the Point of Beginning commence at the intersection of the eastern right of way line of Panola Road (right of way width varies) and the northern right of way line of Redan Road (right of way width varies); thence proceed along said right of way line of Redan Road the following courses and distances: South 66 degrees 49 minutes 10 seconds East a distance of 116.37 feet to a point, South 69 degrees 16 minutes 13 seconds East a distance of 99.30 feet to a point, South 69 degrees 34 minutes 30 seconds East a distance of 91.71 feet to a point and North 00 degrees 00 minutes 20 seconds East a distance of 2.64 feet to a 1/2 inch rebar set, and South 67 degrees 40 minutes 22 seconds East a distance of 195.83 feet to a right of way monument found, thence leaving right of way line of Redan Road North 15 degrees 11 minutes 56 seconds East a distance of 303.43 feet to a 1/2 inch rebar found, thence South 57 degrees 56 minutes 01 seconds East a distance of 92.00 feet to a 1/2 inch rebar found, said point being the Point of Beginning.

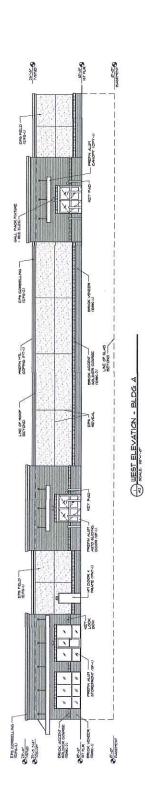
From the Point of Beginning, as thus established, North 00 degrees 23 minutes 38 seconds East a distance of 451.49 feet to a 1/2 inch rebar found at southwestern right of way line of Georgia Railroad (200 feet right of way width); thence proceeding along said right of way line of Georgia Railroad along a curve to the left with a radius of 2965.70 feet and an arc length of 567.98 feet, said curve having a chord bearing of South 34 degrees 37 minutes 48 seconds East and a chord distance of 567.11 feet to a1/2 inch rebar set; thence leaving said right of way of Georgia Railroad and proceeding South 85 degrees 43 minutes 48 seconds West a distance of 127.33 feet to a 1/2 inch rebar set; thence South 01 degrees 29 minutes 53 seconds West a distance of 39.09 feet to a 1/2 inch rebar set; thence North 65 degrees 33 minutes 35 seconds West a distance of 54.84 feet to a 1/2 inch rebar set; thence North 07 degrees 08 minutes 57 seconds East a distance of 23.51 feet to a 1/2 inch rebar set; thence North 81 degrees 44 minutes 39 seconds West a distance of 68.13 feet to a 1/2 inch rebar found; thence North 84 degrees 32 minutes 49 seconds West a distance of 83.33 feet to the Point of Beginning.

Said tract contains 72,161 square feet or 1.66 acres.

The above described property is shown on an ALTA/NSPS Land Title Survey for Arpon, LLC, and Chicago Title Insurance Company, prepared by Travis Pruitt & Associates, Inc., dated October 28, 2019. (FN:165-D-169)



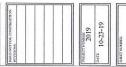




Redan Road Self Storage

5636 Redan Road Stone Mountain, GA









What is a Community Meeting?

DECATUR, GA 30030

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

YOU RECENTLY RECEIVED A COMMUNITY MEETING NOTICE REGARDING A

Rezoning Application for the Development of a Mixed-Use Project

PLEASE NOTE THE CORRECTED ADDRESS BELOW:

Community Meeting
Wednesday, October 30, 2019
6:30 pm until 8:00 pm
3203 GLENWOOD ROAD, SUITE E
DECATUR, GA 30032

SUBJECT PROPERTIES:

1816 Candler Road, 3211 & 3221 Glenwood Road Decatur, GA 30032 COMMUNITY MEETING

SIGN IN SHEET (Argroves)

5636 Redan Road, Stone Mountain, GA

Thursday, October 24, 2019 6:30 PM - 8:00 PM

Email Address			E)					
Phone Number								
Zip Code	300	3008	,					
ibly City, State				J.C.		٠		
Please print legibly Address		20 30x 565						
Last Name	Dennis							, in
First Name	Chamba	Andrew						

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:_____

5 5680 Redan Rd

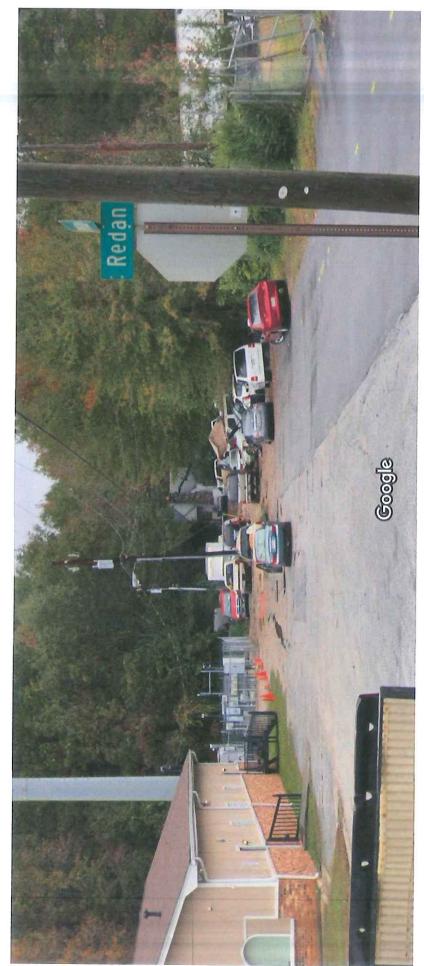
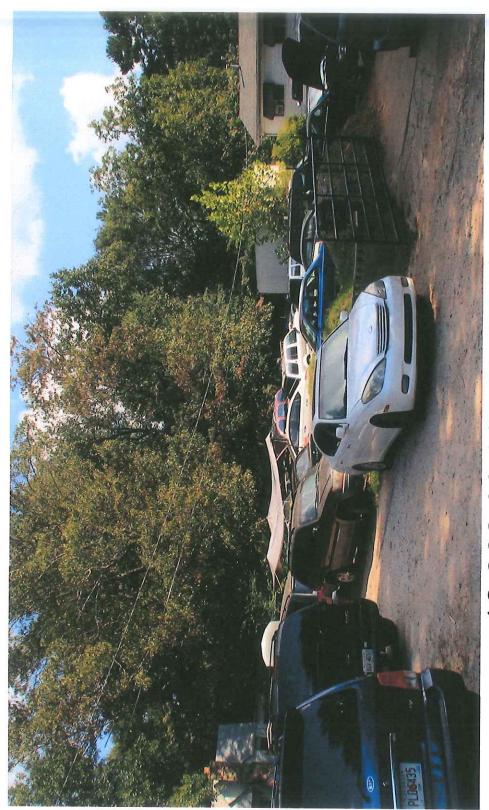


Image capture: Nov 2018 © 2019 Google

Stone Mountain, Georgia

Soogle Roogle

Street View - Nov 2018



16 062 02 032 09/26/2016