



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 6, 2018, 6:30 P.M.
Board of Commissioners Hearing Date: September 25, 2018, 6:30 P.M.**

STAFF ANALYSIS

Case No.: Z-18-1235086 **Agenda #:** N. 2

Location/Address: 2523 Clairmont Road **Commission District:** 2 **Super District:** 6

Parcel ID(s): 18-159-05-020

Request: Rezone property from R-100 (Residential-Medium Lot - 100) to RSM (Small Lot Residential Mix) in the Sagamore Hills Residential Infill Overlay District, for construction of a single-family house.

Property Owner(s): Nancy Gastel

Applicant/Agent: George Butler, Esq.

Acreage: .19 acre

Existing Land Use: Vacant, wooded.

Surrounding Properties: To the north, northeast, east, southeast, south: single-family residential; to the southwest, west, and northwest: The Greek Orthodox Church of Atlanta.

Adjacent Zoning: **North:** R-100 **South:** R-100 **East:** R-100 **West:** R-85 **Northeast:** R-100
Northwest: R-100 **Southeast:** R-100 **Southwest:** R-100

Comprehensive Plan: SUB (Suburban) **Consistent** **Inconsistent**

Proposed Density: N.A. (One lot)	Existing Density: N.A. (vacant)
Proposed Units: One	Existing Units/Square Feet: N.A. (vacant)
Proposed Lot Coverage: 42.1%	Existing Lot Coverage: N.A. (vacant)

PROJECT ANALYSIS

The applicant requests that the property be rezoned to allow construction of a single-family house on an existing lot. Although the property is zoned R-100, it would not be possible to develop the lot in compliance with the R-100 dimensional standards (e.g., minimum house size, setbacks, lot coverage).

The applicant proposes a 1,200 square foot, 2-story single-family detached cottage with a two-car detached garage. Vehicular access would be provided by a driveway from Clairmont Road. In accordance with the height limitations of the Sagamore Hills Residential Infill Overlay District, the cottage would not exceed 28 feet in height. The cottage is proposed to be set back at the average front yard setback of 87.7 feet from Clairmont Road. This would be

approximately the same distance as the houses on the adjoining lots to the north and south, which have front yard setbacks of 88.5 feet and 88.9 feet, respectively. The applicant proposes exterior materials of a wood shake or simulated wood shake material for the roof and cementitious wood siding.

Clairmont Road is a four-lane major arterial. The grade of the lots that front on Clairmont Road near the subject property are approximately eight to ten feet below that of Clairmont Road. There is no sidewalk on the Clairmont Road frontage of the subject property, nor is there a sidewalk on other Sagamore Hills properties that front on Clairmont Road.

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:

The proposal is consistent with the policies of the 2035 Comprehensive Plan for Suburban character areas. The size and scale of the proposed cottage would be in accordance with the intent of Suburban Policy No. 7, which encourages a variety of residential building types on infill lots. As an infill development that would comply with the height restrictions of the Sagamore Hills Residential Infill Overlay District, it would be in conformity with Suburban Policy No. 6 to “Enforce residential infill regulations in efforts to preserve and stabilize existing neighborhoods.”

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

Development of a single-family detached residence is a suitable use for a lot on the edge of a single-family residential neighborhood. The relatively small size of the lot prevents development of other housing types that are permitted in the RSM district (i.e., two- and three-family dwellings and single-family attached townhomes). As a further measure to ensure that the lot is developed in a suitable manner, Staff has recommended a condition that would ensure that the property is developed only with a single-family detached residence. Moreover, the applicant has proposed to build the house at a deeper front yard setback than what is required in the RSM district, to harmonize with the front yard setbacks of the adjoining houses on each side.

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

It appears that the property does not have economic use as currently zoned. The application contains a summary of the property owner’s attempts to obtain a determination that the lot could be used for a new single-family residence.

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

The zoning proposal is not expected to create nuisances such as noise or activity, or to cast objectionable shadows that would adversely affect the existing use or usability of adjacent or nearby property.

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:

Because the grade of the subject property and the adjoining houses is significantly lower than that of Clairmont Road, the homes that front on Clairmont are only partially visible from the street. The proposed house is expected to be similarly screened by this grade change. In addition, the applicant has proposed to screen the house with shrubbery on Clairmont Road, and Staff has recommended a condition to screen the subject property along its shared side and rear property lines. Proper screening and use of the natural grade change support approval of the proposal.

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:

The zoning proposal is not expected to excessively burden existing streets, transportation facilities, utilities, or schools.

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

There has been no indication that the zoning proposal will have greater adverse impacts on the environment or surrounding natural resources than what is typical when a wooded property is redeveloped.

Compliance with District Standards:

RSM STANDARD		REQUIRED/ALLOWED	PROVIDED/PROPOSED	COMPLIANCE
MAX. D.U.s/ACRE (BASE & W/BONUSES)		Not applicable to one s-f detached house.	Not applicable	Not applicable
MIN. LOT AREA		2,000 sq. ft.	8,256 sq. ft.	Yes
MIN. LOT WIDTH		20 ft.	40 ft.	Yes
MAX. LOT COVERAGE		50%	42.1%	Yes
BUILDING SETBACKS	FRONT	Average Front Yard Setback = 87.7 ft.	87.7 ft.	Yes
	INTERIOR SIDE	3 ft. w/min. 10 ft. between bldgs.	10 ft.	Yes
	REAR W/O ALLEY	20 ft.	25 ft.	Yes
	REAR W/ALLEY	Not applicable	Not applicable	Not applicable
MINIMUM UNIT SIZE		1,200 sq. ft.	1,200 sq. ft.	Yes
PARKING		Min. 2 spaces; Max 4 spaces	2 spaces	Yes

RSM STANDARD	REQUIRED/ALLOWED	PROVIDED/PROPOSED	COMPLIANCE
SIDEWALK, STREETSCAPING	Min. sidewalk: 6 ft.; Min. landscape strip width: 10 ft.	Not shown on the submitted site plan	Site must comply or variances are required.

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS.

The proposal is consistent with the policies of the 2035 Comprehensive Plan for Suburban character areas. The size and scale of the proposed cottage would be in accordance with the intent of Suburban Policy No. 7, which encourages a variety of residential building types on infill lots. In this case, the infill lot is unbuildable under the current zoning classification of R-100. Because it would comply with the height restrictions of the Sagamore Hills Residential Infill Overlay District, the proposal would be in conformity with Suburban Policy No. 6 to “Enforce residential infill regulations in efforts to preserve and stabilize existing neighborhoods.” The proposed single-family detached residence is a suitable use for a lot on the edge of a single-family residential neighborhood. As a means of making the proposed house compatible in appearance with the other homes that front on the east side of Clairmont Road, the applicant proposes to set the house back almost 90 feet. This deep front yard setback is similar to those of adjacent and nearby homes, and exceeds the minimum required 50-foot front yard setback for the R-100 district. In addition, the recommended conditions are intended to further harmonize the proposed home with the surrounding neighborhood. Therefore, the Department of Planning and Sustainability recommends “Approval” with the following conditions:

1. The property shall be developed for a single-family detached residence (“Single-Family Residence”) and accessory structures as allowed on a single-family residential lot by the Zoning Ordinance.
2. The Single-Family Residence shall be set back from Clairmont Road 87 feet and shall have a maximum height of 28 feet.
3. The building form and architectural design of the Single-Family Residence shall be substantially similar to the form and design shown on the renderings labeled “Exhibit B”.
4. Understory shrubs shall be planted along the Clairmont Road frontage to visually screen the Single-Family Residence, subject to approval by the County Arborist.
5. An evergreen screen shall be planted along the side and rear property lines to screen views of the subject property from the neighboring properties, subject to approval by the County Arborist.
6. The roofing material of the Single-Family Residence shall be wood shakes or simulated wood shakes and the façades shall be clad with cementitious wood lap siding.
7. The approval of this rezoning application by the Board of Commissioners has no bearing on other approvals by the Zoning Board of Appeals or other authority, whose decision should be based on the merits of the application before said authority.

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.



**DEKALB COUNTY GOVERNMENT
PLANNING DEPARTMENT
DISTRIBUTION FORM**

The following areas below may warrant comments from the Development Division. Please respond accordingly as the issues relate to the proposed request and the site plan enclosed as it relates to Chapter 14. You may address applicable disciplines.

DEVELOPMENT ANALYSIS:

- **Transportation/Access/Row**

Consult the Georgia DOT as well as the DeKalb County Transportation Department prior to land development permit. Verify widths from the centerline of the roadways to the property line for possible right-of-way dedication. Improvements within the right-of-way may be required as a condition for land development application review approval. Safe vehicular circulation is required. Paved off-street parking is required.

- **Storm Water Management**

Compliance with the Georgia Stormwater Management Manual, DeKalb County Code of Ordinances 14-40 for Stormwater Management and 14-42 for Storm Water Quality Control, to include Runoff Reduction Volume where applicable is required as a condition of land development permit approval. Use Volume Three of the G.S.M.M. for best maintenance practices. Use the NOAA Atlas 14 Point Precipitation Data set specific to the site. The site is a stormwater hotspot.

- **Flood Hazard Area/Wetlands**

The presence of FEMA Flood Hazard Area was not indicated in the County G.I.S. mapping records for the site; and should be noted in the plans at the time of any land development permit application. Encroachment of flood hazard areas require compliance with Article IV of Chapter 14 and FEMA floodplain regulations.

- **Landscaping/Tree Preservation**

Landscaping and tree preservation plans for any building, or parking lot must comply with DeKalb County Code of Ordinances 14-39 and are subject to approval from the County Arborist.

- **Tributary Buffer**

State water and consequently, State water buffer was not reflected in the G.I.S. records for the site. Typical state waters buffer have a 75' undisturbed stream buffer and land development within the undisturbed creek buffer is prohibited without a variance per DeKalb County Code of Ordinances 14-44.1.

- **Fire Safety**

Plans for land development permit must comply with Chapter 12 DeKalb County Code for fire protection and prevention.

- **Retaining Wall**

Any proposed retaining wall must comply with DeKalb County Code of Ordinances Chapter 27-5.4.7

Furman, Melora L.

From: Hill, LaSondra
Sent: Monday, August 13, 2018 12:07 PM
To: Furman, Melora L.; Hill, Karen F.; Reid, John
Cc: Alexander, Michelle M.; Eisenberg, Marian
Subject: FW: Inter-Departmental Comments from P. Keeter

From: Keeter, Patrece
Sent: Monday, August 13, 2018 12:01 PM
To: Hill, LaSondra <lahill@dekalbcountyga.gov>
Cc: Alexander, Michelle M. <mmalexander@dekalbcountyga.gov>
Subject: RE: Request for Inter-Departmental Comments

N1. Lawrenceville Hwy is a major arterial on a state route. Dedicate right of way at least 50 from centerline. Install sidewalks along property frontage (ensure sidewalks are within right of way). GDOT review and permits required. Street lights required 1 foot behind sidewalks on right of way.

→ N2. Clairmont Road is a major arterial on a state route. Dedicate right of way at least 50 from centerline. GDOT review and permits required.

N3. Braircliff Road is a minor arterial and state route. GDOT review and permits required. No access allowed onto Braircliff Road.

N4. No Comments.

N5. No Comments.

N6. No Comments.

N7. No Comments.

N8 & N9. Columbia Drive is a minor arterial. See Section 5.4.3 of the Zoning Code for required improvements and Section 14-190 of the Land Development Code for required infrastructure improvements at time of permit. . (The Zoning Code trumps the Land Development Code- but when the Zoning Code is silent, the Land Development Code takes effect. Overlay Districts trump both of the above.) 40 foot right of way dedication from centerline. 6 foot sidewalks, 4 foot bike lanes. Street lights behind the sidewalk within right of way. As shown in the application, interior roads must be private.

N10. Candler Road is a major arterial and a state route. GDOT review and permits required. Kelly Lake Road is a local road. See Section 5.4.3 of the Zoning Code for required improvements and Section 14-190 of the Land Development Code. (The Zoning Code trumps the Land Development Code- but when the Zoning Code is silent, the Land Development Code takes effect. Overlay Districts trump both of the above.) Right of way dedication of 50 from centerline on Candler Road, 6 foot sidewalks. Right of way dedication on Kelly Lake Road 27.5 feet from centerline, 5 foot sidewalks. Extend sidewalks along Kelly Lake Road within existing right of way to Candler Road. Street Lights required on back of sidewalk within right of way along both frontages. See Section 5.4.3 of the Zoning Code for required improvements and Section 14-190 of the Land Development Code for required infrastructure improvements at time of permit. (The Zoning Code trumps the Land Development Code- but when the Zoning Code is silent, the Land Development Code takes effect.)

N11. Treadway Road is classified local. See Section 5.4.3 of the Zoning Code for required improvements and Section 14-190 of the Land Development Code for required infrastructure improvements at time of permit. . (The Zoning Code trumps the Land Development Code- but when the Zoning Code is silent, the Land Development Code takes effect. Overlay Districts trump both of the above.) Public local roads require a 27.5 foot right of way from the centerline (for a total of 55 feet), 5 foot sidewalks, 5 foot landscape strip and street lights within the right of way. The right of way width show on the application does not seem to meet the 55 feet for the interior streets. Cul-de-sac appears to be substandard also. These will need to be corrected prior to permitting and will impact storm detention, setbacks, etc.



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 OR JOHN REID JREID@DEKALBCOUNTYGA.GOV**

COMMENTS FORM: PUBLIC WORKS TRAFFIC ENGINEERING

Case No.: C2-18-1235087 Parcel I.D. #: 18-084, 01-002

Address: 6754 Bermuda Road
Lithonia, Ga. 30087

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 _____

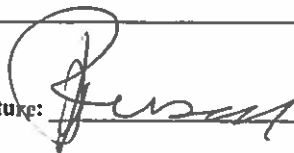
Please provide additional information relating to the following statement.

According to studies conducted by the Institute of Traffic Engineers (ITE) 5/7TH Edition (whichever is applicable), churches generate an average of fifteen (15) vehicle trip end (VTE) per 1, 000 square feet of floor area, with an eight (8%) percent peak hour factor. Based on the above formula, the _____ square foot place of worship building would generate _____ vehicle trip ends, with approximately ___ peak hour vehicle trip ends.

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

COMMENTS:

<u>No traffic engineering concerns at this time.</u>

Signature: 



8/24/2018

To: Ms. Madolyn Spann, Planning Manager
Mr. John Reid, Senior Planner
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.

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

DeKalb County Board of Health

404.508.7900 • www.dekalbhealth.net

8/24/2018

N.1

SLUP-18-1235085/19 062 08 075

1850 Lawrenceville Highway, Suite 700, Decatur, GA

Amendment

- Please review comments.

N.2

Z-18-1235086/18-159-05-020

2523 Clairmont Road

Amendment

- See review comments.

N.3

2018-2443/Z-18-1235090/18-054-12-001

1325 Emory Road, Atlanta, Ga

Amendment

- Please review comments.

N.4

SLUP-18-1235010/15-122 01 016

2501 Columbia Drive, Decatur, Ga

Amendment

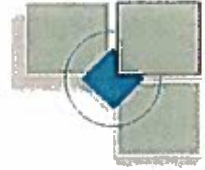
- Please review comments.



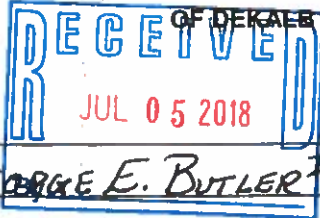
DeKalb County Department of Planning & Sustainability

Michael L. Thurmond
Chief Executive Officer

Andrew A. Baker, AICP
Director



APPLICATION TO AMEND OFFICIAL ZONING MAP
OF DEKALB COUNTY, GEORGIA



ZICZ No. 2-18-1235086
Filing Fee: 500.00

Date Received: Application No.:

Applicant: GEORGE E. BUTLER E-Mail: geb@lawyers.com

Applicant Mailing Address: 132 HAWKINS STREET, DAHLONEGA, GA 30533

Applicant Phone: 404-735-6054 Fax: 404-875-5130

Owner(s): NANCY GASTEL E-Mail: nancy.gastel@att.net
(if more than one owner, attach as Exhibit "A")

Owner's Mailing Address: 235 SOUTHWIND CIRCLE, ROSWELL, GA 30076

Owner(s) Phone: 770-578-1067 Fax: 706-864-3206

Address/Location of Subject Property: 2523 CLAIRMONT ROAD, ATLANTA, GA 30345

District(s): 18 Land Lot(s): 159 Block: B Parcel(s): PART OF LOT 1*

Acreage: .1895 Commission District(s): 2, SUPER DISTRICT 6

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

Present Land Use Category: SUBURBAN

PLEASE READ THE FOLLOWING BEFORE SIGNING

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

Disclosure of Campaign Contributions

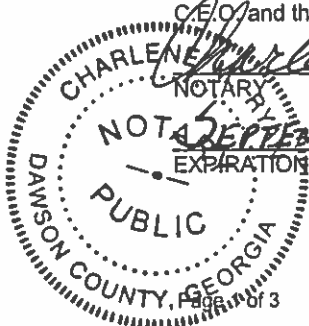
In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered:

Have you the applicant made \$250 or more in campaign contributions to a local government official within two years immediately preceding the filing of this application? Yes No

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

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

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



Signature of George E. Butler
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

* TAX PARCEL No. 18 159 05 020

Notice Date: Saturday, June 16, 2018

PUBLIC NOTICE

of

Proposed Rezoning

To Be Filed by: George E. Butler II, Esq., As Agent for Nancy Gastel
For Property Located at: 2523 Clairmont Road, Atlanta, GA 30329

Current Use: Vacant Non-Conforming Lot as to Size & Width (R-100).

Proposed Use: 1 approximately 1,200-sq.ft.* Single-Family Cottage (RSM).

Buffers: Notwithstanding Proposed Rezoning, Cottage will adhere to Standard R-100 Setbacks. Indeed, Front Setback will be increased from 50' to 88.7' to conform to the average of adjacent houses on Clairmont.

Proposed Front Elevation: See attachment.

Proposed Site Plan: See attachment.

PRE-SUBMITTAL COMMUNITY MEETING TO TAKE PLACE AT:

Location: Meeting Room No. 2, The Ballroom at The Carlos Hellenic Community Center, 2500 Clairmont Road, Atlanta, GA 30329 (404-892-2359)

Date & Time: Monday, July 2, 2018 at 7:00 p.m.

*Assumed Maximum for Cottages (Will Gladly Increase Size, if Permitted.)

EXHIBIT

B

(PAGE 1 OF 14)

MEETING SIGN-IN SHEET

Project: 2523 CLAIRMONT ROAD
Facilitator: GEORGE E. BUTLER II

Meeting Date: JULY 2, 2018
Location: HELLENIC COMMUNITY CENTER

Name	Address	Phone	E-Mail
<u>Richard Haight</u>	<u>2519 CLAZAMONT</u>		
<u>Marcy Haight</u>	<u>2519 Clairmont Rd</u>		
<u>OWA WEBB</u>	<u>1803 Council</u>		
<u>MIKE HOLBROOK</u>	<u>BLUFF</u>		

Law Offices of
GEORGE E. BUTLER II, LLC

132 Hawkins Street
Dahlonega, GA 30533

E-MAIL geb@lawyers.com
WEB gebutlerlaw.com

OFFICE 706-864-3200 or
404-873-2544
FAX 706-864-3206 or
404-875-5130
CELL 404-735-6054

July 5, 2018

Mr. Andrew Baker
Director, DeKalb County
Department of Planning and Sustainability
1300 Commerce Drive
Decatur, Georgia 30030

BY HAND

**RE: LETTER OF APPLICATION/LEGAL ANALYSIS FOR
PROPOSED RSM REZONING OF PROPERTY AT 2523
CLAIRMONT ROAD, DeKALB COUNTY TAX
PARCEL NO. 18 159 05 020 OWNED BY NANCY
GASTEL, WITH 40 FEET OF FRONTAGE ON
CLAIRMONT ROAD AND HAVING TOTAL
ACREAGE OF 0.1895 (OR 8,256 SQ. FT.) (the "Subject
Property")**

Dear Mr. Baker:

As her legal counsel, I have been authorized by Ms. Nancy Gastel, the owner of the above-referenced Subject Property, to apply on her behalf for an RSM Rezoning of the Subject Property for purposes of building one single-family "cottage" on the Subject Property.

The requisite Pre-Application Conference was held on November 7, 2017, with your Planner Marian Eisenberg, and a copy of her written report is attached as Exhibit "A" hereto.

The Subject Property, which has been assigned DeKalb County Tax Parcel No. 18 159 05 020, is currently vacant as zoned and has both County water and sewer lines on site.

Ms. Gastel originally acquired ownership of the Subject Property by Tax Deed dated December 4, 2012. In the interim in 2014, despite a Staff Recommendation of “Approval” based on a Variance Site Plan prepared by Land Planner Ronald E. Gudger, Ms. Gastel was denied a Variance Application to render her lot of record buildable by (i) reducing the required R-100 lot width from 100 feet to 40 feet and (ii) reducing the required R-100 lot size from 15,000 square feet to 8,256 square feet—so as to build a new home within the R-100 Zoning District.

Subsequently, Ms. Gastel sought to have your Department certify that her lot was a valid “nonconforming lot of record” and/or a substandard lot “created by government action” so as to be exempt from the frontage, lot width, and acreage minima otherwise applicable to it under the R-100 classification.

By letter from you dated February 20, 2017, it was decided that the Subject Property is subject to the current R-100 “envelope” requirements. That decision was appealed by Ms. Gastel to the Zoning Board of Appeals, which subsequently affirmed your decision.

Accordingly, it is now and will continue to be the position of Ms. Gastel that the current R-100 Zoning Classification—as definitively interpreted by your Department and the DeKalb County Zoning Board of Appeals—is unconstitutional as applied to the Subject Property, which necessitates that the Subject Property be rezoned to a constitutional classification, such as the proposed RSM (Conditional) classification.

As Ms. Eisenberg found, the Subject Property is shown as “Suburban” on the DeKalb County 2035 Future Land Use Map, which is entirely consistent with the proposed new RSM classification; and it is in Commission District No. 2 and Super District No. 6.

Subsequently, on Monday, July 2, 2018, the required Pre-Submittal Community Meeting was held at The Carlos Hellenic Community Center across the street from the Subject Property at 2500 Clairmont Road. As per the Exhibit “B” hereto, a 4-page Public Notice (pages 1-4 of said Exhibit) was sent by mail to all property owners within 520 feet of any boundary of the Subject Property on June 15, 2018, as per pages 5-10 of said Exhibit; and additional e-mailed Public Notice was sent out on June 15, 2018, to representatives of neighborhood associations within ½ mile of the Subject Property and other interested parties as per pages 11-13 of said Exhibit.

There were only 4 attendees at the noticed July 2, 2018, Pre-Submittal Community Meeting; and the sign-in sheet for the Meeting is at page 14 of said Exhibit.

As pointed out in the Public Notice and as depicted on the Site Plan being submitted as part of this Application, notwithstanding the proposed RSM rezoning, the proposed 1,200-square-foot single-family cottage would adhere to the standard R-100 setbacks as per the proposed Rezoning Conditions below. Indeed, the front setback would be increased from 50 feet to 87.7 feet to conform to the average of adjacent houses on Clairmont. Also, consistent with the requirements of the Sagamore Hills Overlay District, the proposed cottage will not exceed 28 feet in elevation. Besides adhering to the standard setbacks required in the R-100 (as opposed to the RSM) District, given the single-family detached “cottage” being proposed, no transitional buffer is required as per Table 5.2(a) of Article 5 of the Land Use Ordinance.

Attached as Exhibit “C” hereto is the proposed front and right-side elevation of the proposed 1,200-square-foot cottage. The closest neighboring home is on the right side. As required by Article 5, the exterior of the home will be constructed of cementitious wood, with wood shingles or similar appearing product (but not asphaltic shingles) on the roof. Any required retaining walls will be constructed with brick or stone.

The 1,200-square-foot size limitation on the proposed single-family “cottage” is a product of the requirements of the RSM classification, which allows for the possibility within Suburban areas on the Future Land Use Map of a smaller lot the size of the Subject Property and which contemplates a corresponding reduction in the size of the allowable house—so that the size of the home will be proportional to the size of the lot. Indeed, much of the opposition to the previous Variance request by Ms. Gastel was based on the concern that she would build a so-called McMansion on the small lot in question. To eliminate any doubt as to what is being proposed, the 1,200-square-foot limitation is included in the Rezoning Conditions.

Given Ms. Gastel’s willingness to adhere to the reduced house size dictated by the RSM standards, subject to the possibility of a 10% administrative variance, and to adhere to the more stringent setback standards of the R-100 District, it is clear that the instant Application does not represent Spot Zoning. This is not a case where an individual is being permitted to put their property to a different and more intensive type of use than their neighbors. On the contrary, this is a single-family use that conforms to the R-100 setbacks and to the stricter RSM limitations on the size of the single-family home or cottage permitted.

The Subject Property, *i.e.*, 2523 Clairmont Road a/k/a Tax Parcel ID No. 18-159-05-020, is a “lot of record” as per Section 5.16 of Article 5.

Finally, as indicated by the accompanying Site Plan, given the existing topography of the Subject Property and the 87-foot setback from Clairmont Road, the proposed single-family cottage will sit at an elevation that will be approximately 23 feet below the

street level of Clairmont Road and (with a height of only 28 feet) will be largely hidden from street view. And, in addition to the required tree replantings by Ms. Gastel, she is amenable to a Zoning Condition that requires understory shrubs or other plantings along the Clairmont frontage that would render the proposed in-fill cottage even less visible to the neighborhood.

Accordingly, I have been authorized as the Applicant to propose the following zoning conditions:

1. The heated square footage of the proposed Single-Family Cottage would not exceed 1,200 square feet, subject to the possibility of a 10% administrative variance.
2. The Single-Family Cottage will be subject to the R-100 setback as shown on the Site Plan, including an 87-foot front setback; and it shall not exceed 28 feet in elevation.
3. The front and right-side elevations of the proposed cottage would be substantially as shown on the Exhibit "B" hereto.
4. A landscaping plan will be required that specifies additional understory shrubs along the Clairmont Road frontage to further lessen the visual impact of the proposed in-fill structure on the neighborhood.
5. The roofing material shall be wood shakes or simulated wood shakes that satisfy the requirements of Article 5, but not asphaltic shingles; the siding shall be cementitious wood; and any retaining wall shall be constructed of brick or stone.

DETAILED IMPACT ANALYSIS AS PER ARTICLE 7-3

- A. The proposed RSM rezoning conforms with the policy and intent of the Comprehensive Plan, since the Subject Property is in a Suburban area.
- B. The proposed Rezoning will permit a single-family detached residential use that is obviously suitable in view of the similar residential use and development of the adjacent and nearby properties.
- C. The Subject Property in the hands of the current owner—whose title derives from DeKalb County Tax Deeds executed by Claudia G. Lawson, as Tax Commissioner, and Ex-Officio Sheriff of DeKalb County, recorded at Deed Book 21733,

Page 490, and Deed Book 23478, Page 528, of the DeKalb County, Georgia, Records—has no economically-viable use as currently zoned.

D. The Zoning Proposal will not adversely affect the existing use or usability of the adjacent or nearby residential properties, given the consistent but scaled-back and proportional residential use being proposed and given the agreed adherence to the normal R-100 setbacks.

E. The changing conditions that support the approval of this Rezoning have to do with *inter alia* (i) the fact that the owner has exhausted her administrative remedies under the R-100 zoning classification with the result that it has now been definitively determined that the R-100 classification will not support any residential development of the lot, (ii) the emerging small-house movement nationwide and the fact that the existing DeKalb County RSM classification which is allowable in a Suburban Land Use Area under the Comprehensive Plan squarely contemplates that smaller lot sizes in the County can and should be allowed to accommodate smaller-size homes, and (iii) the fact that substantial acreage directly across Clairmont Road was rezoned for The Carlos Hellenic Community Center over strenuous neighborhood opposition as an unwanted and large institutional intrusion on a predominantly residential area—emphasizing the relative land use consistency and propriety of the minor and unobtrusive residential use being proposed for the Subject Property.

F. The proposed Rezoning will not adversely affect historic buildings, sites, districts, or archeological resources.

G. The proposed Rezoning will not result in a use which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools, given the small size of the allowable cottage, the location of the Subject Property on a busy thoroughfare, and the probability and current intention that the Owner, who is single and has no children, will live on the Subject Property herself.

LEGALITIES

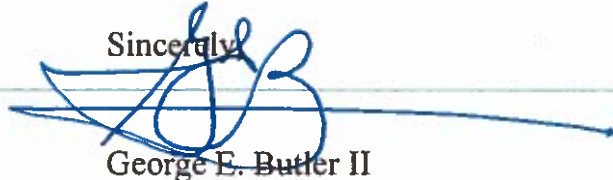
Applicant respectfully shows the County that any refusal by DeKalb County to rezone the Subject Property to the RSM (Conditional) classification being proposed by this Application would be unconstitutional and illegal in that application to the Subject Property of the existing R-100 classification and any and all inconsistent intervening zoning and map classifications and/or conditions constitutes (i) a taking of property without just compensation in violation of Art. I, Sec. I, Para. I, and Art. I, Sec. III, Para. I(a), of the Georgia Constitution of 1983, as Amended, in that there is no economically-viable use for the Subject Property as zoned, and (ii) a denial of substantive due process and equal protection under the Due Process and Equal Protection Clauses of the

MR. ANDREW BAKER
JULY 5, 2018
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Fourteenth Amendment of the United States Constitution and of the Georgia Constitution of 1983, as Amended, Art. I, Sec. I, Para. I, and Art. I, Sec. I, Para. II, in that the denial would impose a disproportionate hardship on the Owner without accruing any commensurate benefits to any surrounding property owners and without any substantial police power benefits to the public—entitling Applicant, *inter alia*, to seek a reversal of the refusal to rezone under state and federal law and attorney's fees pursuant to 42 U.S.C. §1988. Indeed, the predecessors-in-title of the contiguous neighbors on either side of the Subject Property and DeKalb County itself are the ones directly responsible for the creation of this Lot of Record and acknowledged Tax Parcel into which the Owner has sunk her substantial investment-backed expectations to build a home for herself.

Best regards.

Sincerely,

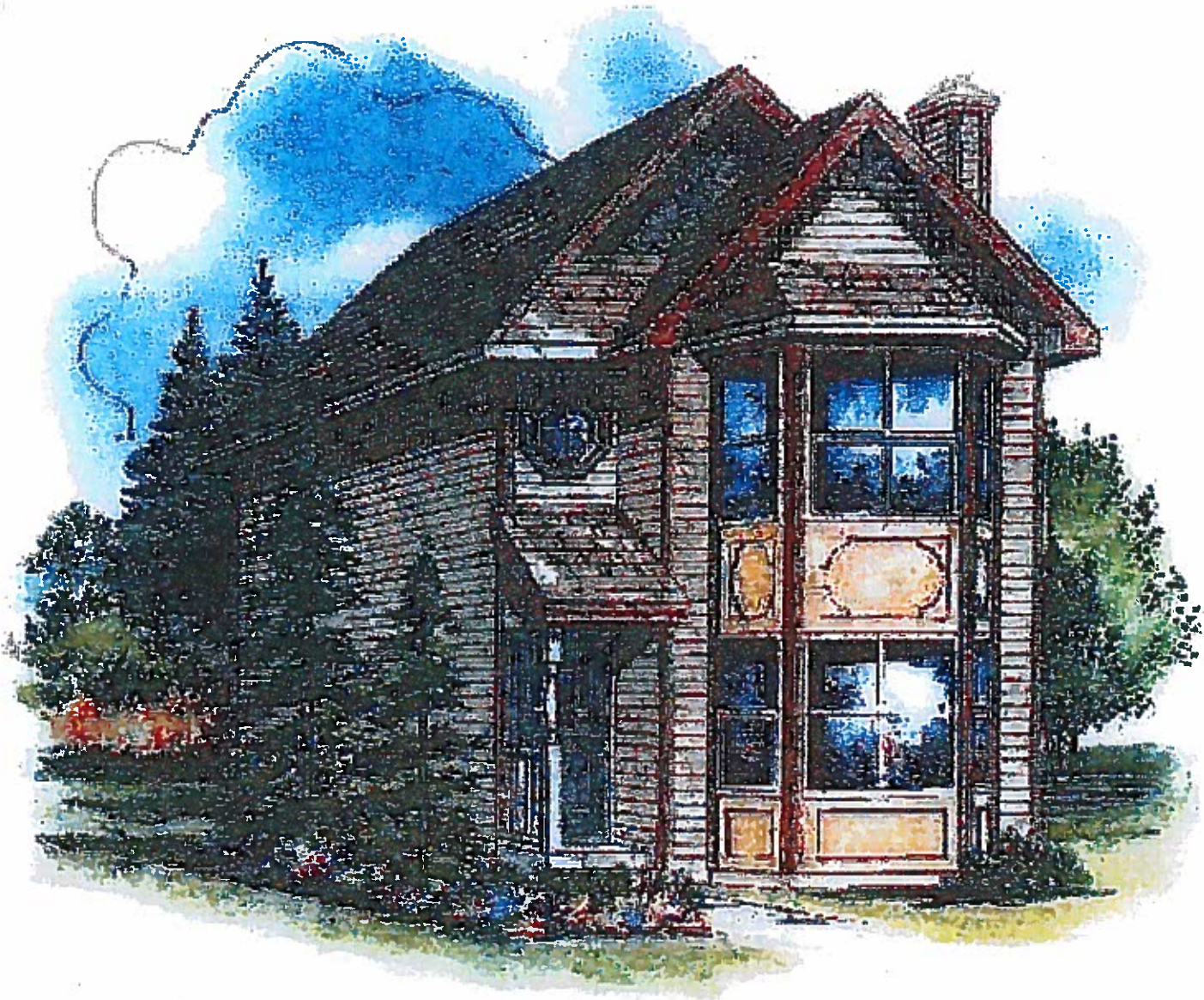


George E. Butler II

GEB/cr

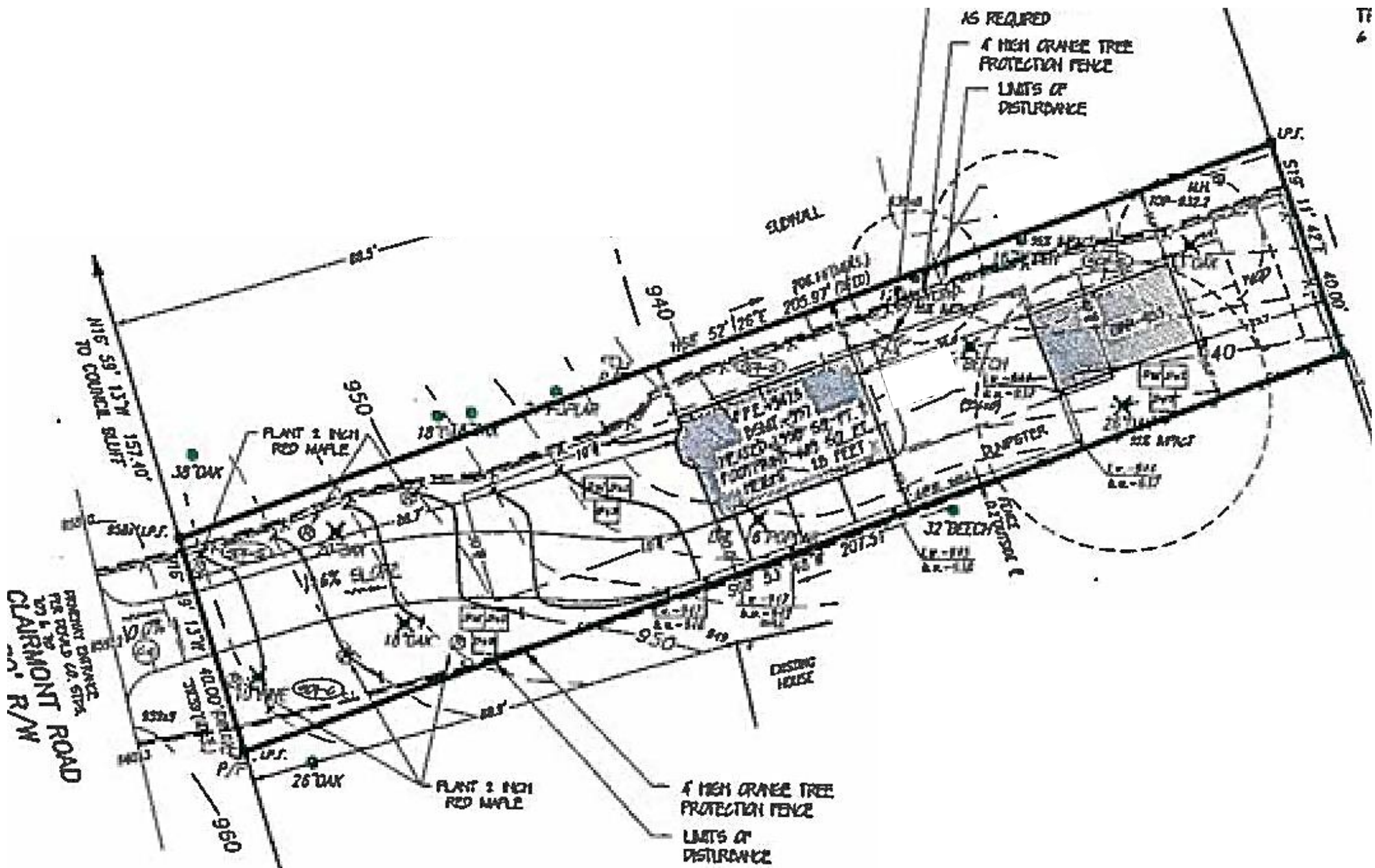
Enclosures

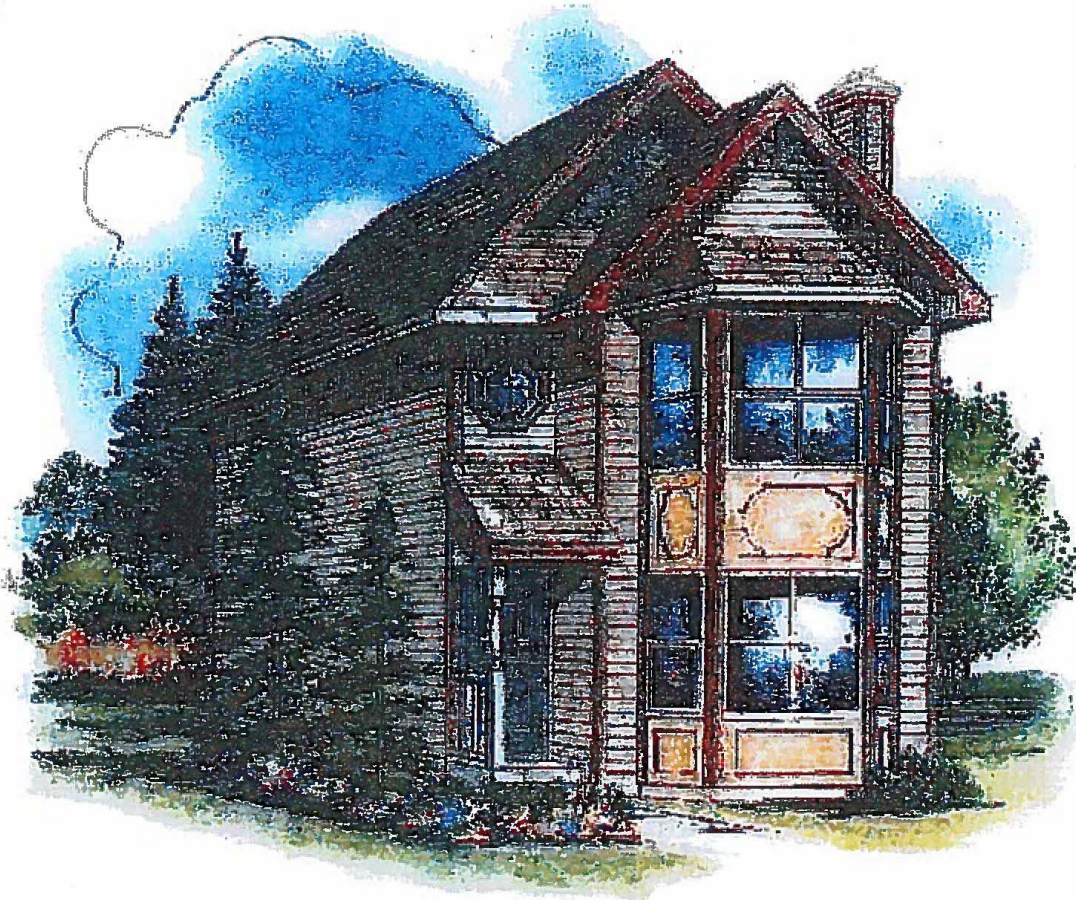
cc: Ms. Marian Eisenberg, DeKalb County Planner
(VIA E-MAIL: meisenberg@dekalbcountyga.gov)
Ms. Nancy Gastel, Owner (VIA E-MAIL: nancy.gastel@att.net)



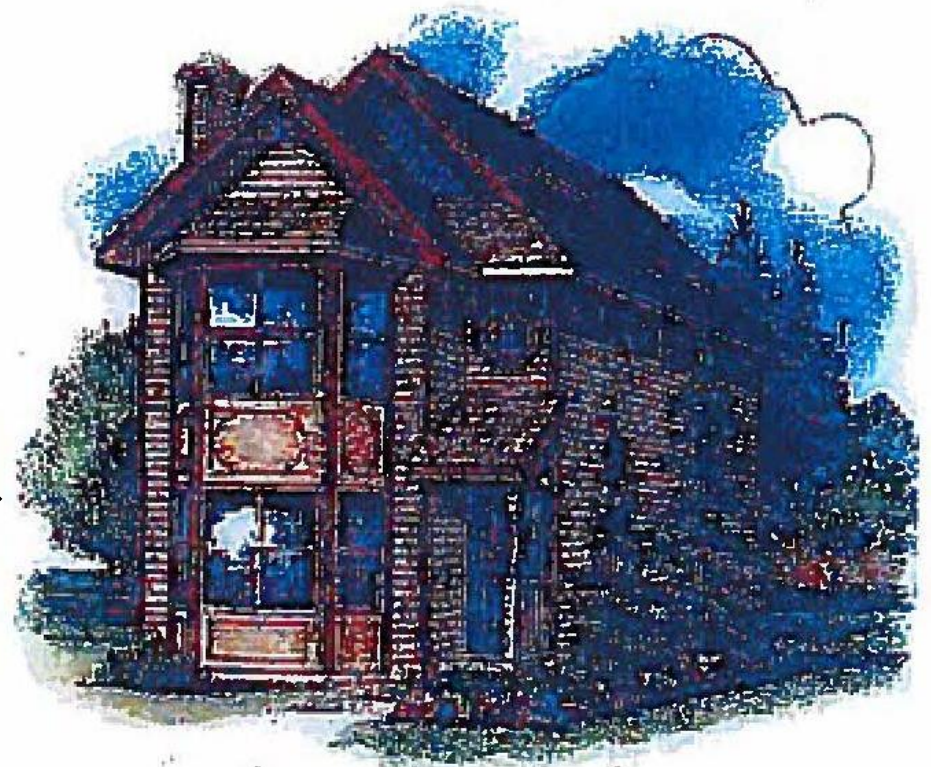
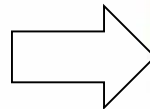
**MIRROR IMAGE OF PROPOSED FRONT ELEVATION
OF COTTAGE @ 2523 CLAIRMONT ROAD,
WHICH WILL BE REVERSED ON THE GROUND AS PER THE FOLLOWING:**

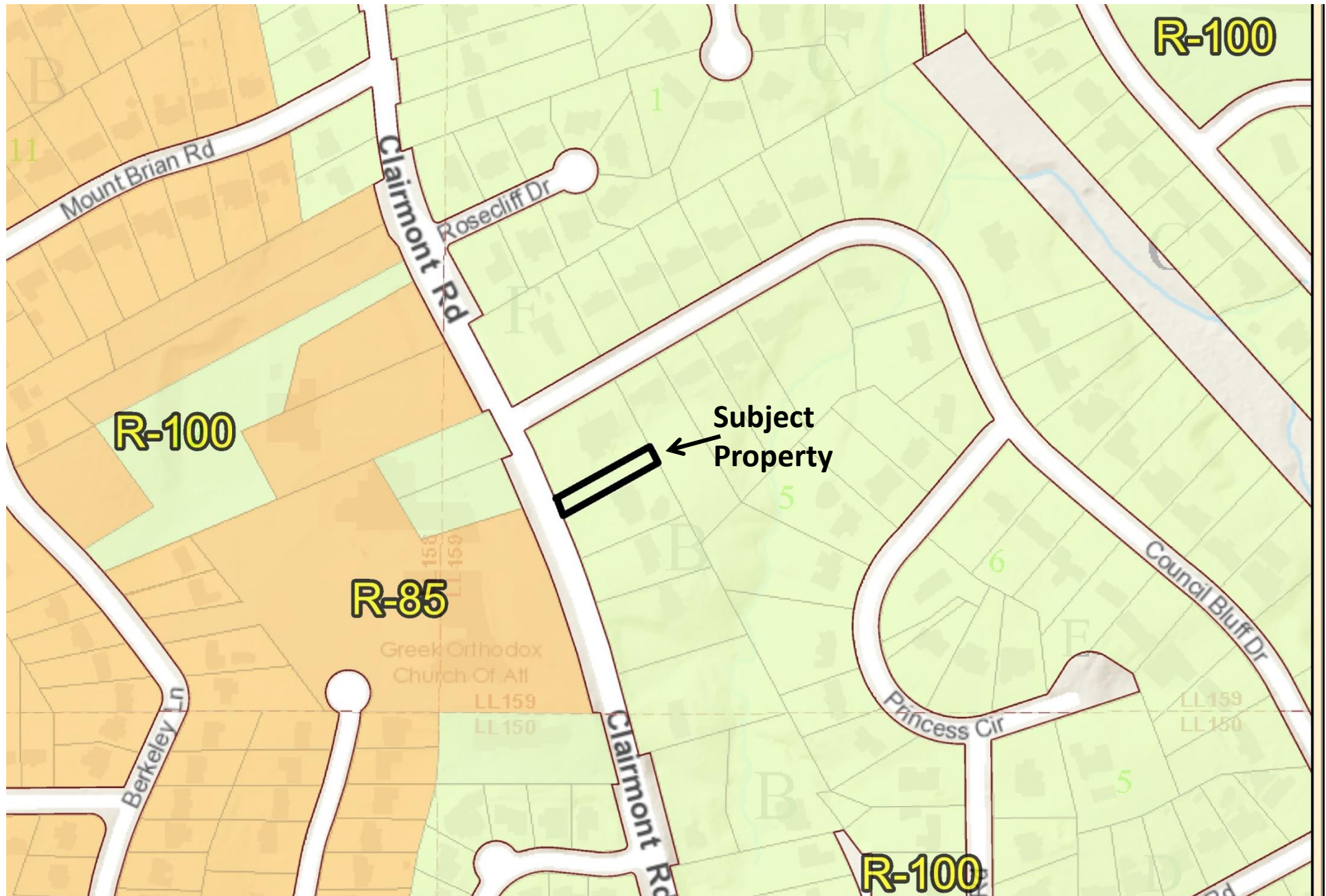






MIRROR IMAGE OF PROPOSED FRONT ELEVATION
OF COTTAGE @ 2523 CLAIRMONT ROAD,
WHICH WILL BE REVERSED ON THE GROUND AS PER THE FOLLOWING:











Subject Property

Adjoining Property to the south



Adjoining Property to the north

