



**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: November 5, 2019, 6:30 P.M.**  
**Board of Commissioners Hearing Date: November 19, 2019, 6:30 P.M.**

**STAFF ANALYSIS**

**Case No.:** SLUP-19-1243377 **Agenda #:** D2

**Location/Address:** 3645 Chamblee Tucker Road, Atlanta **Commission District:** 2 **Super District:** 7

**Parcel ID(s):** 18-285-02-009

**Request:** Special Land Use Permit for an alcohol outlet (alcohol sales in a convenience store) in a C-1 (Local Commercial) District, in accordance with Chapter 27, Article 4, Table 4.1 Use Table of the DeKalb County Code.

**Property Owner(s):** Alli Properties, LLC

**Applicant/Agent:** Mumtaz Alli c/o Hilliard Starkey Law

**Acreage:** .42 acres

**Existing Land Use:** A vacant auto repair establishment with fuel pumps and a hand car wash service.

**Surrounding Properties:** To the north and northeast: offices, retail, and the Hunan Inn restaurant (zoned C-1); to the east, south, and southeast: the Henderson Park condominiums (zoned RSM); to the southwest and west: the Galaxy Diner restaurant and the Embry Hills shopping center (zoned C-1); to the northwest: offices, auto-related uses, restaurants (zoned C-1 and OI).

**Comprehensive Plan:** TC (Town Center)  **Consistent**  **Inconsistent**

<b>Proposed Square Ft.:</b> 4,270	<b>Existing Square Feet:</b> 18,129
<b>Proposed Lot Coverage:</b> 84%	<b>Existing Lot Coverage:</b> Information not provided

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

**SITE AND PROJECT ANALYSIS**

The subject property is a 4,270 square foot site at the southwest corner of Chamblee Tucker Road and Henderson Mill Road, approximately 2,000 feet east of the I-285 – Chamblee Tucker Road interchange. The property is developed with a vacant auto repair shop with fuel pumps. The repair shop also operated a hand car wash service.

Both Chamblee Tucker Road and Henderson Mill Road are two-way, four-lane arterials. A traffic signal is located at the intersection. Vehicular access to the property is provided by two curb cuts on Chamblee Tucker Road and two

curb cuts on Henderson Mill Road. Sidewalk segments are located at the corner of the site and between curb cuts; however the segments are so short and the sidewalk pavement is so deteriorated that the sidewalk appears to be ineffective as a pedestrian connector to other nearby properties.

The site is located within a Town Center character area that is characterized by a mixture of retail, office, and service land uses, as well as several multifamily residential developments, including the Henderson Park condominiums, located across Henderson Mill Road to the east. The Embry Hills shopping center, is located within walking distance approximately 500 feet to the west. Embry Hills is anchored by a Kroger grocery store and contains a range of services including a post office, a fitness center, and several restaurants.

The 2035 Comprehensive Plan states that the intent of the Town Center character area is to “promote the concentration of residential and commercial structures, which serve many communities in order to reduce automobile travel, promote walkability, and increase transit usage.” (p. 64) Walkability should be facilitated by redevelopment of properties in older commercial centers for higher-density residential land uses (townhomes and apartments) and for commercial and service uses (retail, offices, health care facilities, public and civic facilities) with good pedestrian and bicycle connections between residential and non-residential land uses. Auto-oriented land uses such as auto repair shops, service stations, and car washes, should be discouraged. Parking should be minimized, enclosed by “liner” buildings, located at the rear of properties instead of next to sidewalks, or constructed in parking decks that use land efficiently and avoid the kind of “heat islands” that result from surface parking. New street blocks should be relatively short, intersections should be relatively narrow to allow safe crossing by pedestrians; crosswalks should be constructed across curb cuts, and pedestrians on sidewalks should be buffered from street traffic and shaded by landscape strips with street trees. Raised pedestrian paths and refuge areas should be constructed in surface parking lots.

The proposal under consideration is to redevelop the site for a 3,759 square foot convenience store and attached automatic car wash facility at the rear of the building. Vehicles would enter the car facility from a curb cut on Chamblee Tucker Road, travel through the car wash via a dedicated lane that would circle behind the building, then go to parking spaces along the Chamblee-Tucker Road side of the site for drying and detailing. No bypass lane is provided. A new sidewalk is proposed along both street frontages. A dumpster is located next to the curb cut on Henderson Mill Road, adjacent to the proposed sidewalk.

The proposal does not advance the vision of a Town Center contained in the Comprehensive Plan as follows:

- Both the convenience store and the car wash are auto-oriented use that would involve frequent automobile movements in and out of the site, potentially interfering with pedestrians on sidewalks that lead from nearby residential properties to the Embry Hills shopping center;
- There would be no pedestrian connections to other uses in the Embry Hills shopping center;
- Parking spaces for detailing automobiles are proposed next to the sidewalk along Chamblee-Tucker Road
- Parking for the convenience store would be located in front of the building;
- The dumpster is proposed next to the sidewalk on Henderson Mill Road.

**Compliance with District Standards:**

<b>C-1 STANDARD</b>	<b>REQUIRED/ALLOWED</b>	<b>PROVIDED/PROPOSED</b>	<b>COMPLIANCE</b>
MIN. LOT AREA	20,000 s.f.	18,129 square feet	The lot appears to be legally nonconforming.
MIN. LOT WIDTH	100 ft.		

C-1 STANDARD		REQUIRED/ALLOWED	PROVIDED/PROPOSED	COMPLIANCE
MAX. LOT COVERAGE		90%	84%	Yes
MIN. OPEN SPACE		10% of total site area.	Not applicable; 3,759 s.f. building is proposed	Not applicable.
MIN. TRANSITIONAL BUFFER		None required; adjacent properties are C-1	None required.	N.A.
BUILDING SETBACKS	FRONT	Arterials: Min. – 20 ft.; Max. 60 ft.	32 feet	Yes
	INTERIOR SIDE	Min. 15. ft.	6.5 feet	Building must comply or a variance must be granted.
	SIDE – CORNER LOT (along Chamblee-Tucker)	Min. 30 ft.	59 feet	Yes
	REAR	Min. 20 ft.	19 feet	Building must comply or a variance must be granted.
MAX. BLDG. HEIGHT WITHOUT SLUP		2 stories and 35 feet	One story, maximum 35 feet	Yes
TRANS'L HEIGHT PLANE		Not required; adjoining properties are commercial	Not required.	Not required.
PARKING		Convenience store: Min. 3 spaces/1,000 s.f. = 11 spaces. Max. 4 spaces/1,000 s.f. = 15 spaces  Car wash: Min. 2 stacking spaces & 2 drying spaces/lane stacking, 2 drying spaces Max. 3 stacking spaces & 3 drying spaces/lane	Convenience store: 8 spaces  Car wash: lane can accommodate 3 stacking spaces. 4 drying spaces are shown at the Chamblee-Tucker side of the site.	Site must comply or a variance must be granted.

**QUALITY OF LIFE METRICS**

Open Space: Not required.

Linear Feet of New Sidewalk: Information not provided.

**STAFF RECOMMENDATION: WITHDRAWAL WITHOUT PREJUDICE.**

The applicant has requested “Withdrawal Without Prejudice”. Staff concurs with this request and recommends “Withdrawal Without Prejudice”.


**Attachments:**

1. Department and Division Comments
2. Board of Health Comments
3. Board of Education Comments
4. Application
5. Site Plan
6. Building Design Renderings
7. Zoning Map
8. Aerial Photograph
9. Site Photographs

## Comments – Transportation Division

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

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



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

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

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

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

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



**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.: SLUP-19-1243377

Parcel I.D. #: 18-285-02-009

Address: 3645 Chamblee Tucker Road

Atlanta, Georgia

**WATER:**

Size of existing water main: 6" CI & 48" CS Water Main (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. Clayton 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: 

# DEKALB COUNTY

## Board of Health

8/15/2019

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

DeKalb County Board of Health

404.508.7900 • www.dekalbhealth.net

8/15/2019

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N.1

SLUP-19-1243346/18-145-05-015

1513 Frazier Road, Decatur, GA 30333

Amendment

- Please review comments.

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N.2

Z-19-1243376 2019-4069 18-001-05-021, 18-001-5-022, 18-001-05-023

1051,1047 & 1043 Braircliff Road, Atlanta, GA 30306

Amendment

- Please review comments.



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N.3

SLPU-19-1243377 2019-4070 19-285-02-009

3645 Chamblee Tucker Road, Chamblee, GA 30341

Amendment

- Please review comments.

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N.4

Z-19-1243380 2019-4071 18-043-01-026

5100 Memorial Drive, Decatur, GA

Amendment

- Please review comments



RECEIVED  
JUL 03 2019

DEPARTMENT OF PLANNING & SUSTAINABILITY

SPECIAL LAND USE PERMIT APPLICATION

Amendments will not be accepted after 5 working days after the filing date.

Date Received: \_\_\_\_\_ Application No.: 1243377

APPLICANT NAME: MUMTAZ ALLI

Daytime Phone #: 678-770-7477 Fax #: \_\_\_\_\_

Mailing Address: 2820 MANOR BROOK COURT, SNELLVILLE, GA  
30078 E-mail: MUMTAZFASHIONS@YAHOO.COM

OWNER NAME: ALLI PROPERTIES, LLC (If more than one owner, attach contact information for each owner)

Daytime Phone #: 678-770-7477 Fax #: \_\_\_\_\_

Mailing Address: 2820 MANOR BROOK COURT, SNELLVILLE, GA  
30078 E-mail: MUMTAZFASHIONS@YAHOO.COM

SUBJECT PROPERTY ADDRESS OR LOCATION: 3645 CHAMBLEE TUCKER ROAD  
\_\_\_\_\_, DeKalb County, GA, 30341

District(s): #18 Land Lot(s): 285 Block(s): \_\_\_\_\_ Parcel(s): 18 285 02 009

Acreage or Square Feet: 0.416 Commission District(s): 1+7 Existing Zoning: C1

Proposed Special Land Use (SLUP): ALCOHOL OUTLET (AT GROCERY STORE + CAR WASH).

I hereby authorize the staff of the Planning and Development Department to inspect the property that is the subject of this application.

Owner:  Agent: \_\_\_\_\_ Signature of Applicant: [Signature]  
(Check One)

Printed Name of Applicant: MUMTAZ ALLI

Notary Signature and Seal:

Kelly Santiago



Notice Date: April 16, 2019

## PUBLIC NOTICE

TO

### Request for a Special Land Use Permit

Filed by: All Properties LLC

Located at: 3645 Chamblee Tucker Road

Atlanta, GA 30341

Current Use – Fuel Station

Proposed Use – Convenience Store/ Car Wash

Hours of Operation

Current: Shut down

Proposed: Sun – Sat 6:00am- 4:00am (22 Hours)

Bldg. size: 3,500 sf

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PRE-SUBMITTAL COMMUNITY MEETING TO TAKE PLACE AT: Chamblee –

Tucker at Henderson Mill Road (Proposed project site)

Location: 3645 Chamblee Tucker Road, Atlanta, GA 30341

Date & Time: May 1<sup>st</sup>, 2019 at 7:00pm

NOTICE  
MEETING ~~AGENDA~~ SHEET

	Acknowledgement of Notice	Initial
	<del>ccc</del>	
Copy 366 Chamberlain	ccc ✓	
3610 Chamberlain	ccc ✓	
3660 Chamberlain	ccc ✓	
3662 Chamberlain	ccc ✓	
3664 Chamberlain	ccc ✓	
3666 Chamberlain	ccc ✓	
3668 Chamberlain	ccc ✓	
3670 Chamberlain	ccc ✓	
3672 Chamberlain	ccc ✓	
3674 Chamberlain	ccc ✓	

name

5/1/19

7:00 PM

Signature Sheet

Time Arrived

Name  
ABRAR PAINTER

Address  
3588, Graystone  
Circle, Atlanta  
GA 30341

6:45 p.m.

Culvan Deniz

3592 Graystone  
Circle Atlanta

6:50 pm

Amin Ajit

GA 30341  
35415 Old  
Chamblee Trce

7:20 PM

CARLOS  
ORTIZ

3306 Henderson  
mill P.D  
CHAMBLEE, GA  
30341

7:25 pm

meeting

Finished @ 7:45 PM 1hr meeting



# HILLIARD STARKEY LAW

260 PEACHTREE STREET, N.W., SUITE 401  
ATLANTA, GEORGIA 30303  
404.389.9085

OFFICES:  
MABLETON, GA  
ATLANTA, GA

Jeremy Berry  
[jberry@hstarlaw.com](mailto:jberry@hstarlaw.com)

July 1, 2019

VIA HAND DELIVERY

Andrew A. Baker, AICP, Director  
DeKalb County Department of Planning and Sustainability  
330 West Ponce de Leon Avenue  
Decatur, Georgia 30043

RE: Letter of Application  
Application for Rezoning of Mumtaz Alli  
3645 Chamblee Tucker Road, DeKalb County, Georgia  
0.416 acres; Land Lot 285, 18<sup>th</sup> District.

Dear Mr. Baker:

Our firm represents Mumtaz Alli with respect to the above-referenced application of Mumtaz Alli (the "Applicant") for a Special Land Use Permit ("SLUP") for an alcohol outlet in conjunction with the development of a grocery store and car wash at the above-referenced property located at 3645 Chamblee Tucker Road, DeKalb County, Georgia (the "Subject Property"). This letter is intended to serve as the required Letter of Application accompanying the subject application.

The Applicant intends to develop its proposed 3,500 square foot grocery store development with a car wash and associated parking on approximately 0.416 acres of land that is zoned C-1. Pursuant to Section 4.2.8 of the DeKalb County Code of Ordinances, the location must obtain a SLUP for the Subject Property for an alcohol outlet in order to be able to lawfully sell beer and wine by the package in conjunction with the Applicant's proposed grocery store. The Applicant has given special attention to ensure the layout and design of the site allows for efficient ingress and egress to the Subject Property, effective internal circulation for vehicular and pedestrian traffic and proper landscaping across the site. In addition, the Applicant is in the process of determining the hours of operation for the grocery store based upon similar nearby uses and other related considerations.

The Applicant has conducted an initial community meeting with the most immediate neighbors in the area and looks forward to further discussions with the neighbors, County officials and other interested parties to ensure the proposed grocery store blends effectively and efficiently with the surrounding area.

As always, thank you for your thoughtful attention to the foregoing request for rezoning. We look forward to working with you on this important matter.

Please call us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Berry', with a large, stylized initial 'J' and 'B'.

Jeremy Berry

Cc: Mumtaz Alli  
Hakim Hilliard, Esq.

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# **DOCUMENTED IMPACT ANALYSIS**

and

Other Material Required by  
DeKalb County Zoning Ordinance

For

## **SPECIAL LAND USE PERMIT**

.0416 acres of land  
located at  
3645 Chamblee Tucker Road  
DeKalb County, Georgia  
Land Lot 285, 18th District

Submitted for  
**MUMTAZ ALLI**

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by:

Jeremy Berry, Esquire  
M. Hakim Hilliard, Esquire  
Hilliard Starkey Law  
260 Peachtree Street, Suite 401  
Atlanta, Georgia 30303  
404.389.9085 (wk)  
hhilliard@hstarlaw.com

## INTRODUCTION

This Application is related to an existing convenience store with fuel pumps located at 2501 Columbia Drive, Decatur, Georgia. Specifically, it consists of approximately .416 acres of land located in Land Lot 285 of the 18<sup>th</sup> District, DeKalb County, Georgia (hereinafter referred to as the "Subject Property"). The Applicant seeks to redevelop the Subject Property with a 3,500 square foot grocery store and carwash facility. The Applicant seeks a Special Land Use Permit ("SLUP") for an alcohol outlet in conjunction with the development of a grocery store and car wash.

To accommodate the proposed redevelopment, the Applicant has filed the foregoing request for a SLUP. The Applicant conducted a pre-submittal community meeting on May 31, 2019 and intends to continue to meet with the impacted neighborhood, formally and informally, to discuss any appropriate conditions related to this request. Based upon our discussions thus far, the following conditions are proposed by the Applicant:

1. The Subject Property shall be developed substantially in accordance with the Site Plan filed herewith.
2. Any exterior lights shall be screened, shielded, and/or shaded so as to minimize glare on adjacent properties.
3. The Subject Property shall be maintained in compliance with the rules and regulations applicable to convenience store and fuel stations in DeKalb County.

This document is submitted as a Documented Impact Analysis with regard to this Application and as the impact analysis report as required by the DeKalb County Zoning Ordinance.

### A.

Adequacy of the size of the site for use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located;

An existing building is located on the Subject Property. The site and land area are adequate to accommodate the subject redevelopment project. All other development standards applicable to



the Subject Property are in conformity with the applicable requirements in the DeKalb County Code of Ordinances.

B.

Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district;

The location of the Subject Property near interstate I-285 in a commercial corridor continues to be a suitable and appropriate location for a convenience store and fuel station use.

C.

Adequacy of public services, public facilities, and utilities to serve the use contemplated;

This project, if approved, certainly will not affect existing transportation facilities to any greater degree than the existing convenience store and fuel station location on the Subject Property. Requisite parking is provided incidental to this development. The proposed development shall continue to provide two points of ingress and egress to the Subject Property on Chamblee Tucker Road and Henderson Mill Road. The Applicant does not anticipate any measurable increase in traffic based upon the redevelopment of the Subject Property as proposed.

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The Applicant is not currently aware of any capacity limitations to this project, but will work closely with the relevant departments of DeKalb County to ensure adequate capacity as the project is developed. Adequate stormwater management practices and construction methods will be employed as the project is developed.

All affected providers of utilities have indicated availability thereof to this site.

Schools will not be impacted in any way by the proposed development.

D.

Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area;

The Subject Property fronts on Chamblee Tucker Road and Henderson Mill Road and it is more than adequate to continue to handle the traffic to and from the Subject Property subsequent to the redevelopment of the site. Any associated increase in traffic to the Subject Property shall be minimal.

E.

Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use;

Approval of the subject Application should not adversely impact existing land uses located along access routes to the site to any degree beyond the current circumstances.

F.

Ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular references to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency;

The Application contemplates no change to the current ingress and egress to the Subject Property.

G.

Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use;

The Application contemplates no change to the current conditions associated with the Subject Property.

H.

Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use;

The Application contemplates no change to the current conditions associated with the Subject Property, except that a car wash use will be added to the Subject Property which had otherwise existed a commercial retail space for several decades..

I.

Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use;

The Application contemplates no change to the current conditions associated with the Subject Property.

J.

Whether or not the proposed plan is consistent with all of the requirements of the zoning district classification in which the use is proposed to be located;

The proposed plan involves only the minor redevelopment of a permitted use on the Subject Property

K.

Whether or not the proposed use is consistent with the policies of the Comprehensive Plan;

The County's Comprehensive Development Plan consists of a text and series of maps. The Plan is accompanied by a procedure to link changes in zoning with corresponding changes in the Plan in order to avoid repeating the situation in which a static land use plan and an evolving zoning map become increasingly out of step with each other. Thus, with an updated Plan in effect and a mandatory planning/zoning consistency mechanism in place, it is extremely important that any rezoning request, such as this one, be based on sound land use planning and comprehensive planning principles.

The Plan designation associated with the Subject Property is consistent with the proposed plan and the Applicant submits that said proposal would be developed in a manner that effectively implement stated policies for this area of the DeKalb County.

L.

Whether or not the proposed plan provides for all required buffer zones and transitional buffer zones where required by the regulations of the district in which the use is proposed to be located;

The Application contemplates no change to the current conditions associated with the Subject Property.

M.

Whether or not there is adequate provision of refuse and service areas;

The Application contemplates no change to the current conditions associated with the Subject Property. Adequate provisions for refuse and service areas are currently provided.

N.

Whether the length of time for which the special land use permit is granted should be limited in duration;

No. The changes proposed by the Applicant in this instance will be permanent and, therefore, the Applicant submits that this request should not be permitted on a limited basis.

O.

Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of the adjacent and nearby lots and buildings;

The Application contemplates no change to the current conditions associated with the Subject Property. The size, scale and massing of the existing buildings are in compliance with the applicable development standards.

P.

Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources;

No.

Q.

Whether the proposed use satisfies the requirements contained within the Supplemental Regulations for such special land use permit;

The Application contemplates no change to the current conditions associated with the Subject Property.

R.

Whether or not the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building;

The Application contemplates no change to the current conditions associated with the Subject Property.

S.

Whether the proposed use would result in a disproportional proliferation of that or similar uses in the subject character area;

The Application contemplates no change to the current conditions associated with the Subject Property.

T.

Whether the proposed use would be consistent with the needs of the neighborhood or of the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objectives of the comprehensive plan.

The Application contemplates no change to the current conditions associated with the Subject Property. Adequate provisions for refuse and service areas are currently provided.

## CONCLUSION

Based upon the foregoing, the Applicant, on behalf the owners of the tract of land at issue in this request for a SLUP (the "Subject Property"), respectfully submits that the Zoning Ordinance of the DeKalb County, Georgia, as amended from time to time and known as the "DeKalb County Zoning Ordinance", to the extent that it classifies the Property in any zoning district which would preclude the Special Land Use Permit requested herein, is unconstitutional as a taking of property, a denial of equal protection, an arbitrary and capricious act, and an unlawful delegation of authority under the specific constitutional provisions later set forth herein. Any existing inconsistent zoning of the Property pursuant to the DeKalb County Zoning Ordinance deprives the current owner of any alternative reasonable use and development of the Property. Additionally, all other zoning classifications, including ones intervening between the existing classification and those requested herein, would deprive the current owner of any reasonable use and development of the Property. Further, any attempt by the Planning Commission or the DeKalb County Commission to impose greater restrictions upon the manner in which the property will be developed than presently exist would be equally unlawful.

Accordingly, Applicant submits that any other more extensive conditions imposed on the Property save for what has been requested by it as established in the DeKalb County Zoning Ordinance constitute an arbitrary and unreasonable use of the zoning and police powers because it bears no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Property owners. All inconsistent zoning classifications between the existing zoning and the zoning requested hereunder would constitute an arbitrary and unreasonable use of the zoning and police powers because they bear or would bear no substantial relationship to the public health, safety, morality or general welfare of the public and would substantially harm the Property owner. Further, the existing inconsistent zoning classifications constitute, and all zoning and plan classifications intervening between the existing inconsistent zoning classification and that

required to develop this project would constitute a taking of the owner's private property without just compensation and without due process 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 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

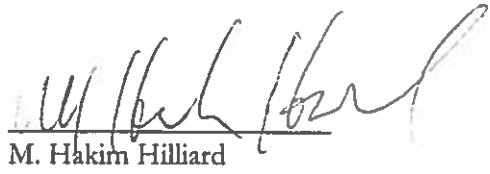
Further, the Applicant respectfully submits that the failure to approve the requested special land use permit would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Property owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Finally, the Applicant respectfully submits that DeKalb County cannot lawfully impose more restrictive standards upon the development of the property than presently exist as to do so not only would constitute a taking of the property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution.

### CONCLUSION

For the foregoing reasons, the Applicant respectfully request for a Special Use Permit 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.

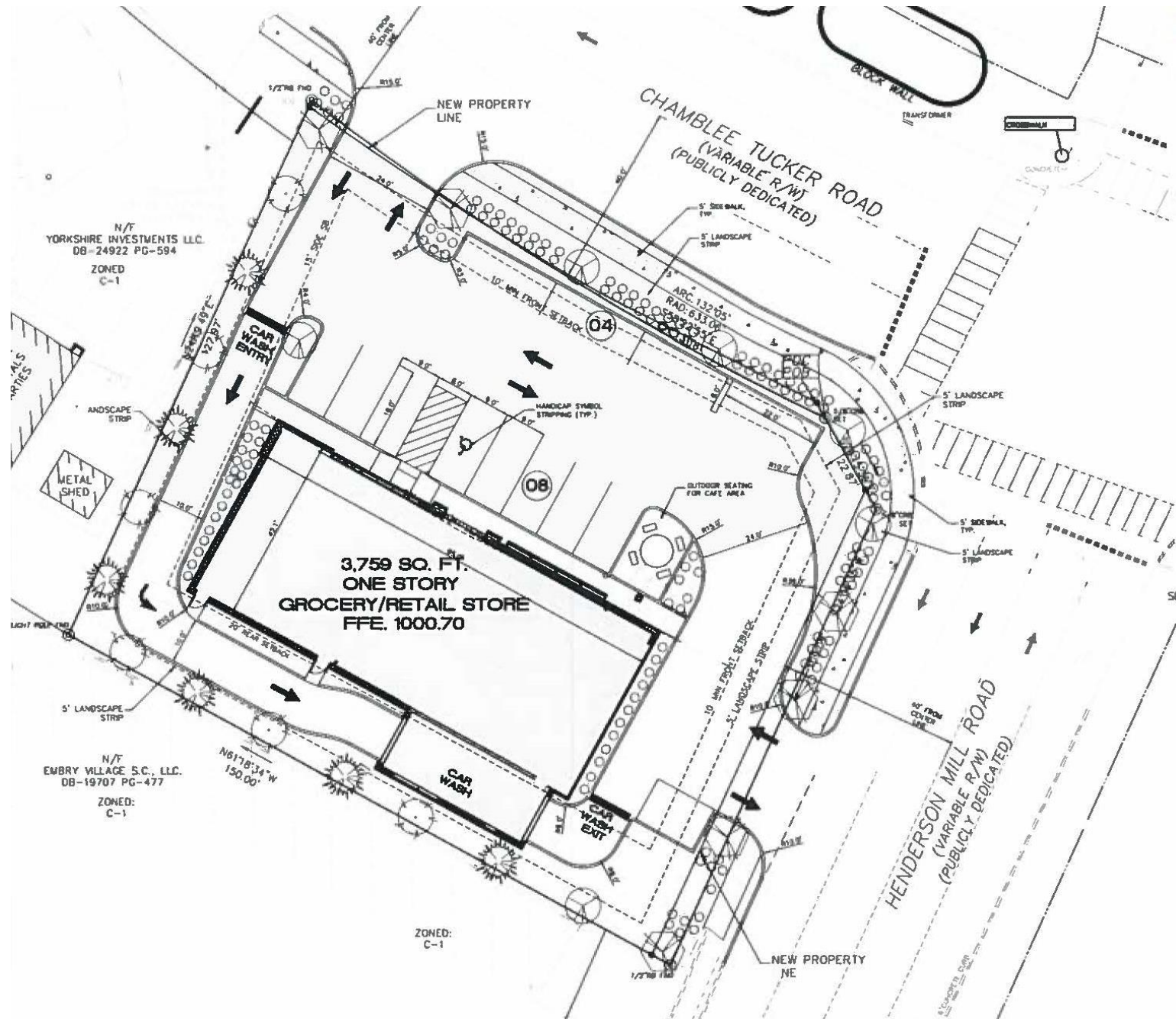
  
Jeremy Berry, Esquire  
Hilliard Starkey Law



M. Hakim Hilliard

260 Peachtree Street, Suite 401  
Atlanta, Georgia 30303

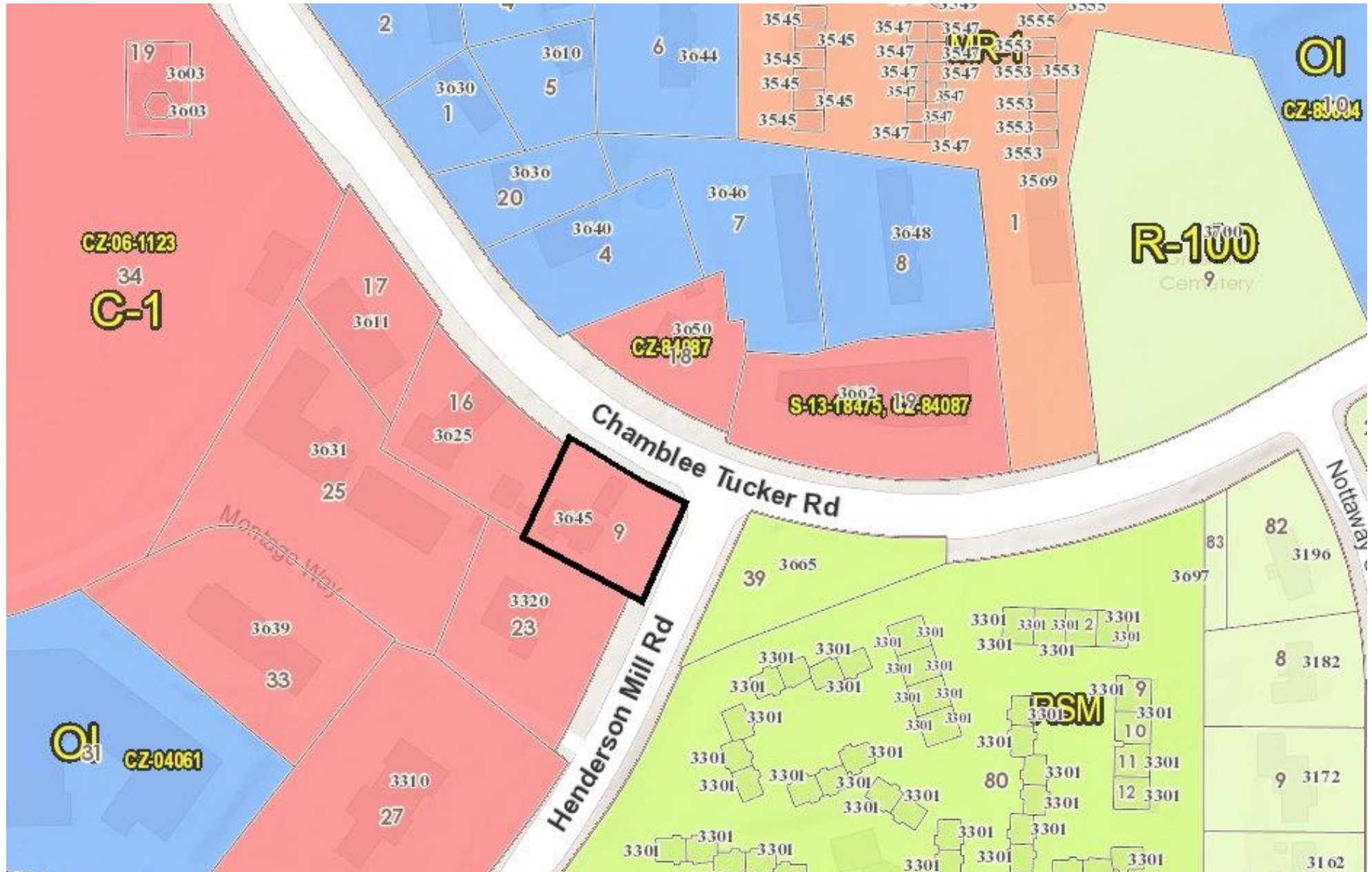


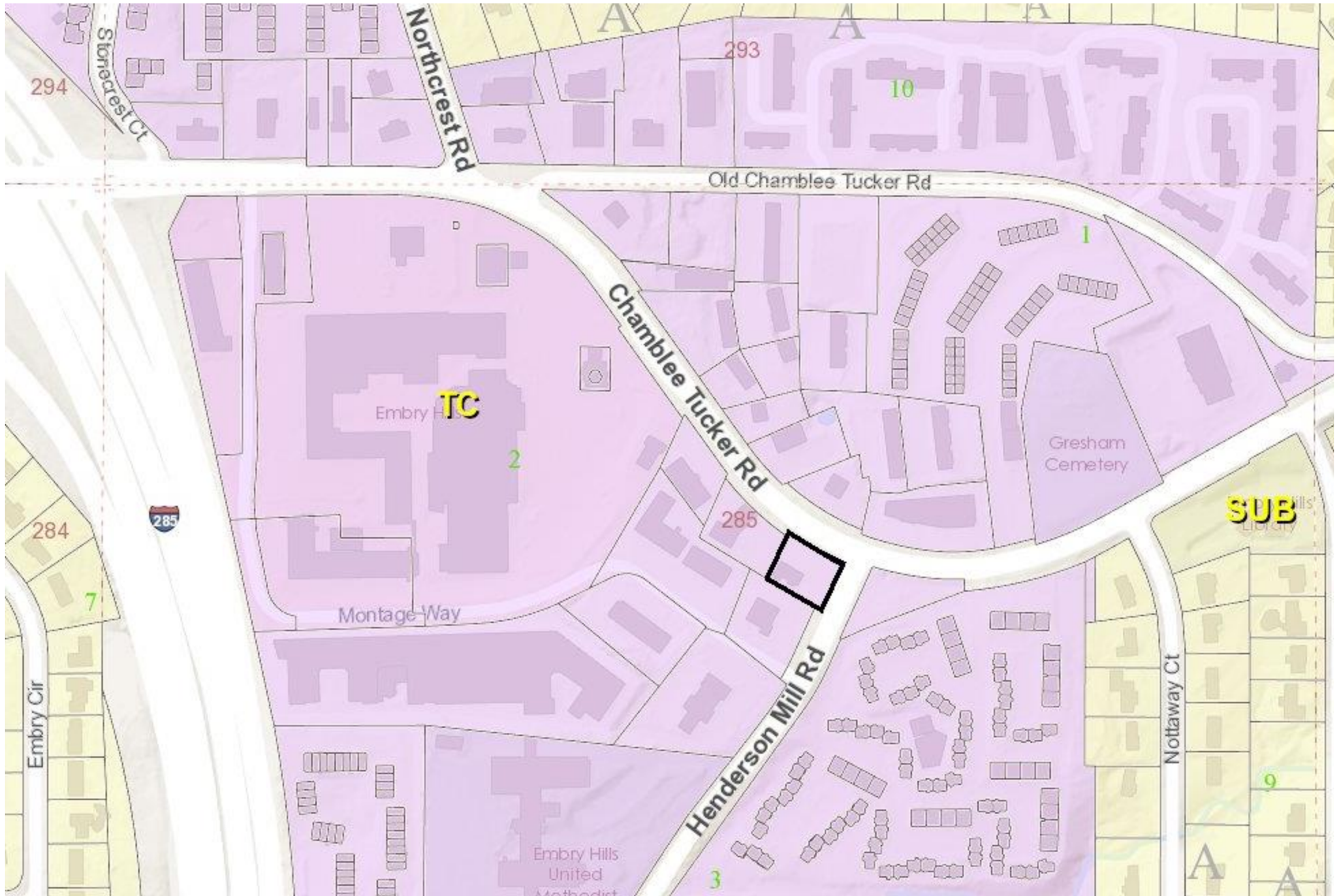
















Subject Property, viewed from the northeast





Subject Property, viewed from the northwest



East side of Subject Property