



DeKalb County Department of Planning & Sustainability

330 Ponce De Leon Avenue, Suite 300

Decatur, GA 30030

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

Planning Commission Hearing Date: July 09, 2019, 6:30 P.M.

Board of Commissioners Hearing Date: July 23, 2019, 6:30 P.M.

STAFF ANALYSIS

Case No.: Z-19-1235180 **Agenda #:** D.3

Location/Address: The east side of Rock Chapel Road, approximately 101 feet north of Rock Mountain Road at 1422 and 1450 Rock Chapel Road, Lithonia, Georgia. **Commission District:** 5 **Super District:** 7

Parcel ID: 16-189-01-002 & 16-189-01-003

Request: To rezone property from R-100 (Residential Medium Lot) District to C-2 (General Commercial) District for the development of a heavy construction contractor’s office with no outdoor storage.

Property Owners: Arnold Bowen

Applicant/Agent: Rose Evans/ Battle Law, P.C.

Acreage: 8.53 Acres

Existing Land Use: One commercial office building & one (1) dilapidated residential structure

Surrounding Properties: Single-Family Detached Residences; Rock Quarry

Adjacent & Surrounding Zoning: North: R-100 (Residential Medium Lot) District
East, South & West: R-100 (Residential Medium Lot) District
Further South: M (Light Industrial) District

Comprehensive Plan: Suburban (SUB) Inconsistent X (Proposed LP-19-1235181)

Proposed Residential Units: N/A	Existing Residential Units: None
Proposed Lot Coverage: <80%	Existing Lot Coverage: <35% Per Lot

SUBJECT PROPERTY & PROJECT ANALYSIS

The subject site consists of two adjacent properties located on the east side of Rock Chapel Road (a major arterial) in unincorporated DeKalb County. North and east of the site are scattered single-family detached residences along Rock Chapel Road and Stephenson Road. Other surrounding land uses include a mixture of industrial uses further east along Rock Mountain Road.

Per the submitted revised letter-of-Intent, the applicant seeks to rezone the subject site to operate a heavy construction contractor's office. Per staff's observation, the one lot at 1422 Rock Chapel Road is developed with a small wood frame structure that serves as an office for truck parking in the rear of the site. Staff noted a few truck cabs and cars parked on the site. The parking lot appears to be asphalt; however, parking spaces are not delineated. The adjacent lot at 1450 Rock Chapel Road is heavily wooded with mature trees and shrubbery. A small deteriorated and uninhabitable residential structure sits on the site. Per the submitted site plan and survey, it appears there is no immediate future use for the 1450 Rock Chapel Road property at this time.

ZONING CASE HISTORY

Pursuant to Z-06-1078, the subject site was part of a large 27- acre site with frontage on Rock Chapel Road and Stephenson Road proposed for rezoning from R-100 (Single-Family Residential) District to RM-75 (Multi-Family Residential) District and C-1 (Local Commercial) District to develop 230 attached townhome units on 24.94 acres and retail uses on 2.20 acres. A concurrent Land Plan Amendment from LDR (Low Density Residential) to MDR (Medium Density Residential) was also proposed pursuant to LP-06-1129. The Planning Commission recommended Denial of the rezoning case and Deferral of the Land Plan Amendment. Both petitions were withdrawn without prejudice at the Board of Commissioners hearing on January 28, 2006.

Pursuant to LP-07-13649, a Land Plan Amendment application was filed on a portion of the subject site (5.432 acres) located at 1422 Rock Chapel Road to change the land use designation from SUB (Suburban) to IND (Light-Industrial). A concurrent rezoning application pursuant to Z-07-13650 was filed to change the zoning from R-100 (Residential) to M (Light Industrial) on the subject site. Both petitions received a denial recommendation by District 5 Community Council on August 27, 2007. The Planning Commission voted to deny both petitions on September 5, 2007. Both petitions were withdrawn without prejudice at the Board of Commissioners hearing on September 27, 2007.

ZONING ANALYSIS

The site is currently zoned R-100 (Residential Medium Lot) District without conditions. The subject application requests an amendment to the Official Zoning Map pursuant to Chapter 27, Article 7.3 of the DeKalb Code of Ordinances to rezone the site to the C-2 (General Commercial) District to allow a heavy construction contractor's office with no outdoor storage. Per the submitted Statement of Intent, employees use the dump trucks that are parked at the site. Upon arriving in the morning, employees park their personal vehicles on the site and switch to a dump truck for pick-up and deliveries. The empty trucks are returned to the site where they remain, and the employees return home in their personal vehicle.

Per Article 2.27.1.A, the intent of the C-2 (General Commercial) zoning district is to provide convenient general business and commercial service areas within the county for all residents. The request allows the owner to dispatch commercial dump trucks to conduct business off-site. The site plan depicts a 100-foot

transitional buffer along the north property line to protect an adjacent residential property. The site also allows sufficient land area to provide a 100-foot transitional buffer along the east property line adjacent to residential zoned property. The provision of these extensive transitional buffers diminishes any negative impact on adjacent zoned residential properties.

The applicant has filed a companion Land Use Plan Amendment (LP-19-1235181) to request a change from Suburban (SUB) to Light Industrial (LIND) for the subject site which allows a C-2 zoning district. Staff notes there are industrial uses in the area primarily south and further east of Rock Mountain Road, which is compatible with the proposed C-2 district on the site.

COMPLIANCE WITH DISTRICT STANDARDS

Property zoned C-2 (General Commercial) District must comply with minimum development standards per Article 2- Table 2.2 Non-Residential Zoning Districts Dimensional Requirements of the DeKalb County Zoning Ordinance.

STANDARD	REQUIREMENT	PROPOSED	COMPLIANCE
LOT WIDTH (C-2) Table 2.2	A minimum 100 feet of lot width on a public street frontage	Approximately 583 feet of frontage along Rock Chapel Road.	Yes
LOT AREA (C-1)	30,000 Square Feet	8.53 acres or 371,567 Square Feet	Yes
FRONT BUILDING SETBACK	60 Feet	>110 Feet	Yes
SIDE BUILDING SETBACK	Side Interior 20 Feet	N/A	N/A
REAR SETBACK	30 Feet	>30 Feet	Yes
TRANSITIONAL BUFFER Table 5.2(a)	50 Feet adjacent to residential zoned properties	100-foot buffer along the north property line and 50-foot buffer along east property line adjacent to residential zoned properties.	Yes
HEIGHT	Max 3 stories	1-story	Yes
PARKING Article 6	Minimum 1 space for each 500 square feet of floor area. 3 spaces required based on 1,084 square feet.	Submitted plan depicts 12 parking spaces.	Yes

Chapter 27-Article 7.3.5. Standards and factors governing review of proposed amendments to the Official Zoning Map. The following standards and factors are found to be relevant to the exercise of the county's zoning powers and shall govern the review of all proposed amendments to the Official Zoning Map:

A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.

The 2035 Comprehensive Plan designates this site within a Suburban (SUB) character area. The proposed C-2 (General Commercial) District is not permitted within a Suburban character area. The applicant has filed a companion Land Use Plan Amendment (LP-19-1235181) to request a change from Suburban (SUB) to Light Industrial (LIND) on the subject site.

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

The rezoning request to C-2 (General Commercial) District to operate a heavy construction contractor's office with proposed 100-foot transitional buffers adjacent to residential development will permit a use that is suitable in view of nearby industrial uses.

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

Currently zoned R-100 (Residential Medium Lot) district, the property has a reasonable economic use if developed as single-family residences. However, a non-residential zoning district on the site may yield more economic options.

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

The rezoning request with proposed 100-foot transitional buffers adjacent to existing residential development may not adversely affect the existing use or usability of residential properties.

E. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

The site is near other industrial uses along Rock Mountain Road.

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

It is not known whether the proposed C-2 (General Commercial) District will have an adverse effect on historic buildings, sites, districts, or archaeological resources.

G. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The site has frontage on a major arterial (Rock Chapel Road). Access routes to the site may not cause an excessive burden on existing streets. The proposed rezoning will have no impact on area schools.

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

It appears the rezoning proposal to the C-2 (General Commercial) District may not adversely impact the environment or surrounding natural resources.

Staff Recommendation: DENIAL

The proposed request for C-2 (General Commercial) District is not appropriate given the Suburban (SUB) land use character area designation on the site. Therefore, the Planning and Sustainability Department recommends **Denial** of the applicant's request. However, should the Board of Commissioners choose to approve the requested land plan amendment for LIND (Light Industrial) on the subject site, Planning suggests the following recommended conditions for C-2 zoned property on the subject site:

1. The rezoning shall be subject to the site plan revision dated 5-21-19 and submitted to the Planning and Sustainability Department on May 24, 2019.
2. Limit the use of the property for a heavy contractor's office only in the existing building located at 1422 Rock Chapel Road with no outside storage.
3. Landscape Buffer between the street and the existing building located at 1422 Rock Chapel Road, with no land disturbance permitted except for the installation of a commercial curb cut, signage and utilities.
4. All trucks on the property must be owned by the owner of the business. No leasing space for commercial trucks by other owners.
5. No more than 12 parking spaces as depicted on the submitted site plan for parking of owner's trucks.
6. Provide a 100-foot undisturbed buffer along the north and east property lines adjacent to residential zoned property.
7. No on-site and/or outside storage permitted on property.
8. The use of the property at 1450 Rock Chapel Road shall be limited to the following uses:
 - a. Mini-Warehouse Self-Storage
 - b. Heavy Contractor's Office with a 75 ft landscape buffer within the front yard setback with no land disturbance permitted with no land disturbance permitted except for the installation of a commercial curb cut, signage and utilities.
 - c. General Office Space
 - d. Trade Shop with no outdoor storage
 - e. Landscape Business

Attachments:

1. Department and Division Comments
2. Application
3. Site Plan
4. Zoning Map & Land Use Map
5. Aerial Photograph/Site Photographs

Traffic Comments - March 2019 Zoning Agenda

N1 & N2. Rock Chapel Road is SR 124. GDOT review and permits required. . Contact Justin Hatch at GDOT District 7 (juhatch@dot.gov). Rock Chapel Road is classified as a major arterial. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements. Right of way dedication of 50 feet from centerline required. All public infrastructure is required on public right of way- even if it exceeds 50 feet from centerline. Applicant is encouraged to seek an access easement across private property to obtain access to the traffic signal at Rock Mountain Rd and Rock Chapel Road. Street lighting along Rock Chapel Road required.

N3. No customer parking within public right of way along Chantilly Road due to close proximity of multiple intersections. Chantilly Road is classified as a local road. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements. Right of way dedication of 27.5 feet from centerline of Chantilly Road. These requirements will be applied with any land development permits.

N4. Rice Road, Classified as a local road. No comment.

N5. Lexington Trace is classified as a local road. Agape Way is classified as a local road. Agape Road is located within the I-285 right of way. GDOT review and approval is required. Contact Justin Hatch at GDOT District 7 (juhatch@dot.gov). Applicant must coordinate with the Major Mobility Improvement Projects (MMIP) proposed managed lanes project along the east wall of I-285. Contact Tim Matthews (TMatthews@dot.ga.gov) prior to permitting. Local roads require a 27.5 foot right of way dedication from centerline, 5 foot landscape strip, 5 foot sidewalk. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements. Streetlights required. Infrastructure improvements required on all frontages.

N6. Nicole Lane is classified as a local road. Reginald Court is classified as a local road. No comment.

N7 & N8. E. Tupelo Street is classified as a local roads. Oldfield Road is classified as a local road. All local public roads require a 27.5 foot right of way from centerline, five foot landscape strip, five foot sidewalk and street lights. Infrastructure improvements required on all frontages. See Chapter 14-190 and Chapter 5 of the Zoning Code for required infrastructure improvements.

N9. Wellborn Road is classified as a collector road. Collector Roads require a 35 foot right of way dedication from centerline, 6 foot sidewalk, 4 bike lane, 5 foot landscape strip, and streetlights. Covington Hwy is classified as major arterial. Requires GDOT approval and review. Contact Justin Hatch at GDOT District 7 (juhatch@dot.gov). Major arterials require a 50 right of way dedication from centerline, 6 foot sidewalks, 4 foot bike lane, 5 foot landscape strip and street lights. Number of units requires two access points per code. Eliminate the acceleration lane at entrance. GDOT has just awarded an intersection project at the intersection of Covington Hwy at Wellborn Rd/Cove Lake Road. Coordinate with construction awarded to Baldwin Paving. Install a roundabout at the access point on Wellborn Road- eliminates the right turn lane and the left turn lane. The Transportation Division will support the one entrance with the installation of a roundabout, but still requires Board action to vary from the code.

N10. Flowers Road is classified as a collector road. Collector Roads require a 35 foot right of way dedication from centerline, 6 foot sidewalk, 4 foot bike lake, 5 foot landscape strip, and streetlights. Covington Hwy is classified as major arterial. Extend infrastructure improvements along all property lines. Intersection, stopping and left turn sight distance required to be verified by Professional Engineer at entrance on Wellborn Road due to curve and possible hill crest along Wellborn Road. Minimum sight distance requirements must be met for permitting.

NZ



DEKALB COUNTY GOVERNMENT PLANNING DEPARTMENT DISTRIBUTION FORM

NOTE: PLEASE RETURN ALL COMMENTS VIA EMAIL OR FAX TO EXPEDITE THE PROCESS TO
MICHELLE ALEXANDER MMALEXANDER@DEKALBCOUNTYGA.GOV OR JOHN REID
JREID@DEKALBCOUNTYGA.GOV

COMMENTS FORM: PUBLIC WORKS TRAFFIC ENGINEERING

Case No. 2019-3210 Z-19-1235180 Parcel I.D. #: 16-189 01-003
1422 + 1450 16-189 01-002
Address: Rock Mountain Road
Lithonia, Georgia

Adjacent Roadway (s):

(classification) (classification)

Capacity (TPD) _____	Capacity (TPD) _____
Latest Count (TPD) _____	Latest Count (TPD) _____
Hourly Capacity (VPH) _____	Hourly Capacity (VPH) _____
Peak Hour. Volume (VPH) _____	Peak Hour. Volume (VPH) _____
Existing number of traffic lanes _____	Existing number of traffic lanes _____
Existing right of way width _____	Existing right of way width _____
Proposed number of traffic lanes _____	Proposed number of traffic lanes _____
Proposed right of way width _____	Proposed right of way width _____

Please provide additional information relating to the following statement.

According to studies conducted by the Institute of Traffic Engineers (ITE) 6/7TH 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:

Did not see any traffic engineering concerns at this time

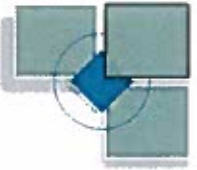
Signature: [Handwritten Signature]



DeKalb County Department of Planning & Sustainability

Michael L. Thurmond
Chief Executive Officer

Andrew A. Baker, AICP
Director



REVISED

AMENDED AND RESTATED
APPLICATION TO AMEND OFFICIAL ZONING MAP
OF DEKALB COUNTY, GEORGIA

Z/CZ No. 2-19-1235180
Filing Fee:

Date Received: Application No.:

Applicant: Rose Evans c/o Battle Law, P.C. E-Mail: mlb@battlelawpc.com

Applicant Mailing Address:
One West Court Sq., Suite 750, Decatur, GA 30030

Applicant Phone: 404-601-7616 Fax: 404-745-0045

Owner(s): Arnold Bowen E-Mail: enviroexpressinc@yahoo.com
(If more than one owner, attach as Exhibit "A")

Owner's Mailing Address:
1422 Rock Chapel Road, Lithonia, GA 30058

Owner(s) Phone: 404-227-6042 Fax:

Address/Location of Subject Property: 1422 & 1450 Rock Chapel Road, Lithonia, GA 30058

District(s): 16 Land Lot(s): 189 Block: 01 Parcel(s): 002 & 003

Acreage: 8.525 Commission District(s): 5 & 7

Present Zoning Category: R-100 Proposed Zoning Category: C-2

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 X No

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

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

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



Signature of Notary Public
Expiration Date / Seal: May 04, 2020

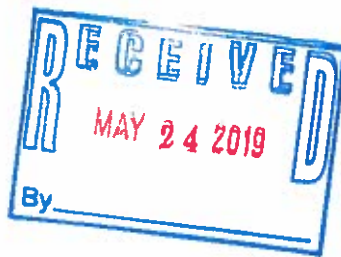
Signature of Applicant / Date
Check One: Owner Agent X

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

May 23, 2019

VIA E-MAIL

Marian Eisenberg, DeKalb County Zoning Administrator
330 W. Ponce De Leon Ave., 3rd Fl.
Decatur, GA 30030



Re: Rezoning Application Z19-1235180 – Full Cycle Deferral Request

Dear Marian:

On behalf of the Applicant, I am hereby submitting to you a Second Amended and Restated Rezoning Application, Letter of Intent and Updated Site Plan for Z19-1235180. The Application is being amended to change the rezoning request from C-1 to C-2 for the development of a heavy construction contractor's office with no outdoor storage. The current Land Use Amendment is to Light Industrial pursuant to Land Use Amendment Application LP-19-1235181. I would request that the enclosed Updated Site Plan be used to also amend the Land Use Amendment Application.

Finally, we will be requesting that this matter be deferred to the July Hearing agenda, and that this matter be placed at the end of the Agenda by staff as I have a conflict with a hearing in another jurisdiction that starts at 7:00pm.

Sincerely,

Michèle L. Battle

REVISED

**SECOND
AMENDED AND RESTATED
STATEMENT OF INTENT
AND
IMPACT ANALYSIS**

RECEIVED
JUN 03 2019
BY:.....

And

Other Material Required by
DeKalb County Zoning Ordinance
For

Rezoning Application pursuant to
the DeKalb County Zoning Ordinance

Of

ROSE EVANS

For

+/- 8.53 acres of Land
located in
Land Lots 189, 16th District, DeKalb County

Submitted for Applicant by:

Michèle L. Battle
Battle Law, P.C.
One West Court Square, Suite 750
Decatur, Georgia 30030
(404) 601-7616 Phone
(404) 745-0045 Facsimile
mlb@battlelawpc.com

I. STATEMENT OF INTENT

The Applicant, Rose Evans, acting on behalf of Arnold Bowen, the owner of 1422 and 1450 Rock Chapel Road (the "Subject Property") is seeking to rezone the Subject Property from R100 to C-2 to allow for a heavy construction contractor's office, with no outdoor storage. The Applicant has simultaneously submitted a Land Use Amendment Application to change the current land use designation from Suburban to Light Industrial. The Subject Property is an 8.53 acre tract of land. The property at 1422 Rock Chapel is improved with a 1,084 sq. ft. building that is used for office space. The property at 1450 Rock Chapel is improved with a 1,702 sq. ft. which is currently uninhabitable. The property at 1422 Rock Chapel is also improved with a parking area for the dump trucks, cars and trailer used in connection with the building. The parking area is to the rear of the building.

The intent is to use the property for heavy construction contractor offices. Currently, a dump truck contractor is occupying the building at 1422 Rock Chapel Road. The building is used for office space for the dump truck business. In the morning the employees check in at the office, park their personal vehicles, pick up the dump trucks owned by the business, make their required pick ups and deliveries, including from the businesses located on Rock Mountain Road adjacent to the Martina Marietta Quarry, and then return the empty dump trucks back to the property, where they pick up their personal vehicles, and go home. Rock Chapel is a major thoroughfare that is designed for this type of operation, which is supportive of the surrounding industrial uses. There is a dedicated lane for cars and trucks turning onto Rock Chapel Road from Rock Mountain Road that contains to the intersection of Rock Chapel Road and Stephenson Road. This lane was installed to allow trucks to can speed and transition smoothly into traffic on Rock Chapel Road.

This document is submitted both as a Statement of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and the Impact Analysis as required by the DeKalb County Zoning Ordinance, § 27-829(f). A surveyed plat and site plan of the Subject Property has been filed contemporaneously with the Application, along with other required materials.

II. IMPACT ANALYSIS

A.

THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE COMPREHENSIVE PLAN

The Subject Property is designated Suburban under the DeKalb Comprehensive Land Use Plan through 2035. Simultaneously with the submission of this Application the Applicant is requesting to amend the Land Use from to Light Industrial. It is the Applicant's contention that allowing the change is land use is appropriate as it will allow for a suitable transition from the Heavy Industrial Land Uses that existing along Rock Mountain Road south of the Subject Property and the single-family homes North of the Subject Property. There is no question that Rock Chapel Road is primarily an industrial corridor which begins to transition as you move North after the intersection of Rock Mountain Road and Rock Chapel Road. If the Land Use Amendment is approved, the proposed rezoning to C-2 is consistent with the economic development policies set forth in the Comprehensive Plan, as well as with the policies under the Light Industrial Land Use Designation.

B.
**THE PROPOSED REZONING PERMITS A USE THAT IS
SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND
NEARBY PROPERTY.**

The Subject Property located along the Rock Chapel Road corridor which is a major arterial road. The Proposed Project will allow for a non-residential development on the corridor at a level of intensity that will have less of an impact on the surrounding community than a single-family residential subdivision under the R-100 District Regulations. The use of the Subject Property for a heavy construction contractor's office without outdoor storage is compatible with the surrounding community and business in the surrounding area. As no outdoor storage is allowed this space will function no differently than office space for any other business from a visual and functional perspective.

C.
**THE SUBJECT PROPERTY DOES NOT HAVE A
REASONABLE ECONOMIC USE AS PRESENTLY ZONED.**

The Subject Property has no reasonable economic use as presently zoned based on being located adjacent to a rock quarry. The Applicant and the Owner respectfully submit that the Zoning Ordinance of DeKalb County, Georgia, as amended from time to time and known as the "DeKalb County Zoning Ordinance", to the extent that it classifies the Subject Property in any zoning district which would preclude the development of the Proposed Project, 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 Subject Property pursuant to the DeKalb County Zoning Ordinance deprives the current owner of any alternative reasonable use and development of the Subject Property. Additionally, all other zoning classifications, including ones intervening between the existing classification and the one requested herein, would deprive the current owner of any reasonable use and development of the Subject Property. Further, an attempt by the Board of Commissioners to impose greater restrictions upon the manner in which the Subject Property will be developed than presently exist, such as by way of approving the zoning district requested but limiting development to standards allowed under more stringent zoning classifications, would be equally unlawful.

The Applicant submits that the current zoning classification and any other zoning of the Subject 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 they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant. 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 Applicant. 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 Board of Commissioners' failure to approve the requested zoning change would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant 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.

The Applicant respectfully submits that the Board of Commissioners cannot lawfully impose more restrictive standards upon the development of the Subject Property than presently exist as to do so not only would constitute a taking of the Subject 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.

Finally, the Applicant protests any action which would prohibit development of the Subject Property as requested inasmuch as the Zoning Ordinance was adopted in violation of or in other respects does not comply with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq. and minimum procedural due process standards guaranteed by the Constitutional provisions set forth above.

This Application meets favorably the prescribed test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power, Guhl vs. Holcomb Bridge Road, 238 Ga. 322 (1977).

D.

THE PROPOSED REZONING WILL NOT ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY

The proposed rezoning will in no way adversely affect the existing use or usability of adjacent or nearby property. The Subject Property is located near the entrance of Rock Mountain Road which is the entrance to multiple industrial businesses such as Martin Marietta Lithonia Quarry, Quikrete, USA Ready Mix, War Trucking, and Pittman Construction Company. All of these properties are within .02 of the Subject Property. Additionally, the Applicant has agreed to place a 100 ft transitional buffer along the northern boundary line of the Subject Property.

E.

OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY

There are no existing or changing conditions affecting the use and development of the Subject Property.

F.

THE ZONING PROPOSAL WILL NOT ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS OR ARCHAEOLOGICAL RESOURCES

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

G.

**THE REQUESTED REZONING WILL NOT RESULT IN A USE WHICH
WILL OR COULD CAUSE EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS,
TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS**

The Proposed Project will not cause excessive or burdensome use of existing streets. Rock Chapel Road is a major arterial road which can handle any traffic generated by the Proposed Project. The Proposed Project will have no impact on the surrounding communities.

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,



Michèle L. Battle
Attorney For Applicant

CONSTITUTIONAL ALLEGATIONS

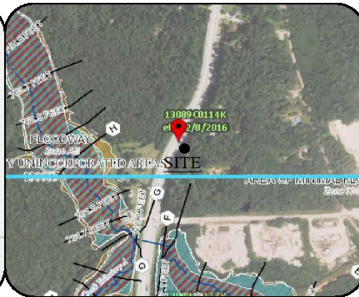
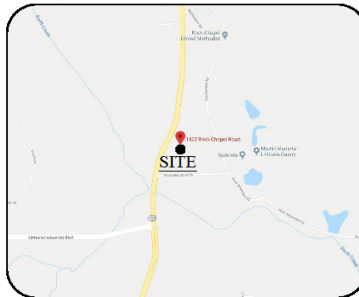
The portions of the DeKalb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to 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 and capricious act by the DeKalb County Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the DeKalb County Board of Commissioners to modify the CZ-07-3899 conditions of 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 modification 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 unconstitutional conditions and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

The existing zoning conditions 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 the unconstitutional zoning condition 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.



Vicinity Map (NTS)

FIRM Panel Vignette (NTS)

ZONING: C-2

MINIMUM LOT AREA: 36,000 SF
 C-2 SETBACKS
 45 FEET ZONING
 FRONT: MIN 40 FT
 INTERIOR SIDE: 20 FT
 REAR: 30 FT
 MAXIMUM COVERAGE: 80%
 50' TRANSITIONAL BUFFER REQUIRED

THE SURVEYOR IN NO WAY INTENDS TO INTERPRET OR MAKE CONCLUSION REGARDING THE ZONING AND UTILITY DESIGNATION SHOWN HEREON. THIS INFORMATION IS REPORTED FROM PUBLIC INFORMATION OBTAINED FROM CITY OR COUNTY PLANNING AND ZONING DEPARTMENTS.

OWNER

VINCENT BEDWARD
 1422 ROCK CHAPEL ROAD
 LITHONIA, GEORGIA 30058

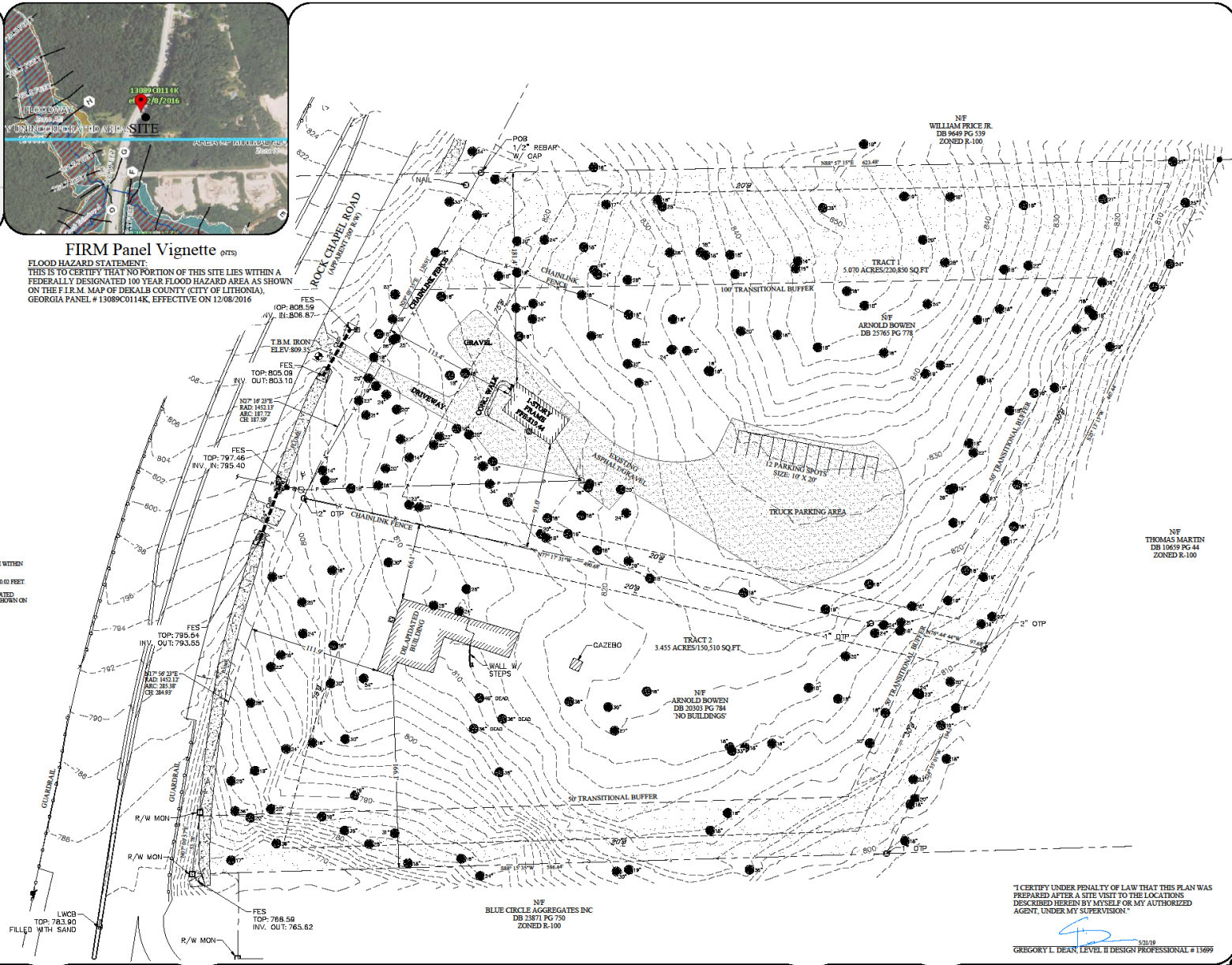
BUILDER / 24 HR. EMERGENCY CONTACT

VINCENT BEDWARD
 1422 ROCK CHAPEL ROAD
 LITHONIA, GEORGIA 30058
 404-227-6042

GENERAL NOTES:

- TRACT 1 & 2 TOTAL AREA: 8,525 ACRES / 371,360 SQUARE FEET
- BOUNDARY REFERENCE: DB 25761, PG 176, PG 2000, PG 794
- FIELDWORK PERFORMED ON 12/20/18
- THIS MAP OR PLAN HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 10,000 FEET
- THIS PLAT HAS BEEN PREPARED USING A TRIMBLE 5603 ROBOTIC TOTAL STATION
- THE FIELD DATA UPON WHICH THIS MAP OR PLAN IS BASED HAS A CLOSURE PRECISION OF 0.02 FEET
- FLOOD HAZARD STATEMENT:
 THIS IS TO CERTIFY THAT NO PORTION OF THIS SITE LIES WITHIN A FEDERALLY DESIGNATED FLOOD HAZARD AREA AS SHOWN ON THE FIRM MAP OF CITY OF LITHONIA AS SHOWN ON PANEL # 13080C0114K, EFFECTIVE ON 12/08/2016
- PROJECT NARRATIVE:
 SITE LOCATION:
 1422 ROCK CHAPEL ROAD
 LITHONIA, GEORGIA 30058
 CONSTRUCTION OF A SINGLE FAMILY RESIDENCE (SEE ARCHITECTURAL PLANS FOR MORE DETAIL)
 SANITARY SEWER IS PROVIDED BY A SEWER SYSTEM
 DRAINAGE STRUCTURES DO NOT EXIST ON THIS PROPERTY
 CREEKS OR STREAMS TRAILS DO NOT EXIST ON THIS PROPERTY
 NO NEW STORM DRAIN PIPES ARE PROPOSED
 THIS PROPERTY DOES NOT LIE WITHIN THE CHATTAHOOCHEE RIVER CORRIDOR
 THIS PROPERTY IS (NOT) ON OR WITHIN 200 FEET OF WATERS OF THE STATE

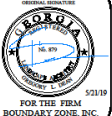
FLOOD HAZARD STATEMENT:
 THIS IS TO CERTIFY THAT NO PORTION OF THIS SITE LIES WITHIN A FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD AREA AS SHOWN ON THE FIRM MAP OF DEKALB COUNTY (CITY OF LITHONIA), GEORGIA PANEL # 13080C0114K, EFFECTIVE ON 12/08/2016



GRID NORTH
 GEORGIA WEST ZONE
 DATUM NAVD 1983
 SCALE: 1"=40'

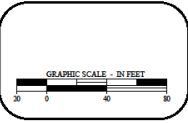
DATE	5/24/19
REVISION	REVISED ZONING & TRANSITIONAL BUFFER
NO.	1

ZONING EXHIBIT
 PREPARED FOR: VINCENT BEDWARD
 LAND LOT 189, 16TH DISTRICT
 1422 ROCK CHAPEL ROAD
 LITHONIA, GEORGIA 30058
 DATE: 12/26/2018



"I CERTIFY UNDER PENALTY OF LAW THAT THIS PLAN WAS PREPARED AFTER A SITE VISIT TO THE LOCATIONS DESCRIBED HEREIN BY MYSELF OR MY AUTHORIZED AGENT, UNDER MY SUPERVISION."
 GREGORY L. DEAN, LEVEL II DESIGN PROFESSIONAL # 13699

THIS PLAN WAS MADE WITHOUT THE ASSISTANCE OF A CURRENT TITLE COMMITMENT, EASEMENTS AND ENCUMBRANCES MAY EXIST WHICH AFFECT AND BOUND THIS PROPERTY.
 THIS PLAN WAS PREPARED FOR THE EXCLUSIVE USE OF THE PROPERTY. PERMISSION OR CONSENT IS GRANTED HEREON AND DOES NOT EXTEND TO ANY UNLICENSED PERSON WITHIN A RECERTIFICATION BY THE SURVEYOR NAMED SAID PERSON.
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<ul style="list-style-type: none"> PROPERTY CORNER 1/2" IRON PIN WITH CAP SET LIP PIN 1/4" IRON PIN 1/4" GALV. NAIL WATER VALVE POWER POLE YARD DRAIN SEWER 	<ul style="list-style-type: none"> POWER METER AC LINE MARKER 1/4" GALV. NAIL WATER VALVE GAS VALVE CABLE BOX 	<ul style="list-style-type: none"> TELEPHONE BOX WATER LINE OVERHEAD UTILITY LINE SEWER LINE GAS LINE TELEPHONE LINE FENCE LINE SELF FENCE THIS PROJECTION 	<ul style="list-style-type: none"> 8" W/ FLOW WELL LINE NEW OR FORMERLY RIGHT-OF-WAY REEL BUILDING STRUCK LINE CASTLE CRITICAL ROOF ZONE STRUCTURAL ROOF PLATE LAND LOT 	<ul style="list-style-type: none"> CONC. CONCRETE TOP EDGE OF PAVEMENT CONTOR LINE F.F.E. FINISH FLOOR ELEVATION B.F.E. BASEMENT FLOOR ELEVATION G.F.E. GARAGE FLOOR ELEVATION GROUND SURFACE ELEVATION TOP OF WALL ELEVATION BOTTOM OF WALL ELEVATION 	<ul style="list-style-type: none"> TOP OF FOOTER ELEVATION SET FENCE DRAINAGE ARROW 	<ul style="list-style-type: none"> HARDWOOD TREE DOE TREE TO BE REMOVED
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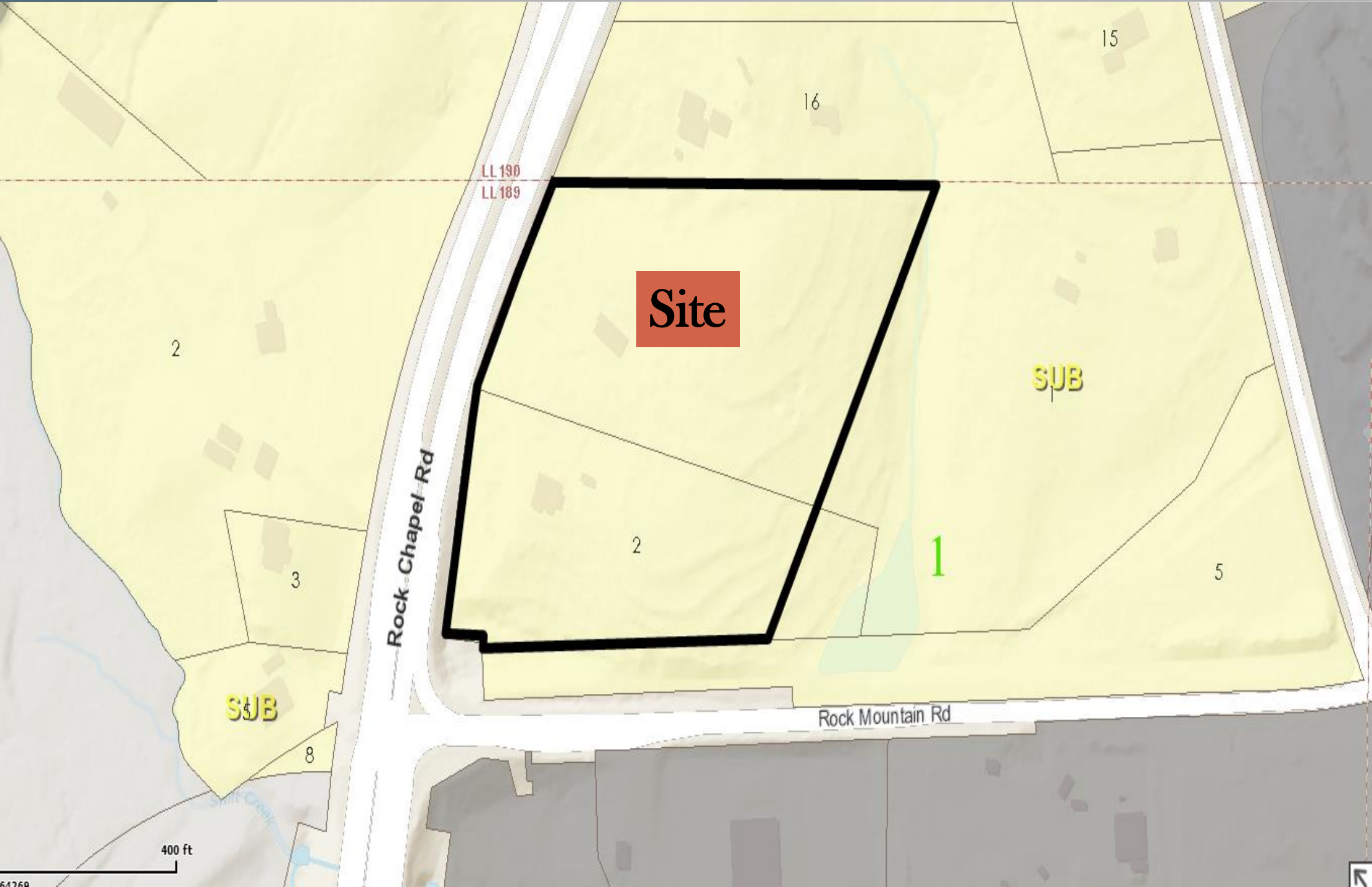


BOUNDARY ZONE, INC.
 LAND SURVEYING SERVICES
 LANDSCAPE ARCHITECTURE
 LAND PLANNING

BOUNDARY ZONE, INC. 2000 PINE BLVD. SUITE 200
 LITHONIA, GEORGIA 30058
 ATLANTA, GEORGIA 30328
 2000 PINE BLVD. SUITE 200
 LITHONIA, GEORGIA 30058
 (770) 271-5772 (913) 383-9226

PROJECT 19385.02
 SHEET 1 OF 1







Site

Rock Chapel Road

Rock Mountain Road

LL 190
LL 189

400 ft



1422 Rock Chapel Road