

Community Development
 4119 Adrian Street
 Tucker, GA 30084
 Phone: 678-597-9040
 Email: permits@tuckerga.gov
 Website: www.tuckerga.gov

FIRST AMENDED Land Use Petition Application

Type of Application: Rezoning Comprehensive Plan Amendment Special Land Use Permit Concurrent Variance

APPLICANT INFORMATION		
Applicant is the: <input type="checkbox"/> Property Owner <input type="checkbox"/> Owner's Agent <input checked="" type="checkbox"/> Contract Purchaser		
Name: Betancourt Construction, LLC, c/o Dennis J. Webb, Jr.		
Address: 1230 Peachtree Street, Suite 3100		
City: Atlanta	State: GA	Zip: 30309
Contact Name: Dennis J. Webb, Jr.		
Phone: 404-815-3620	Email: dwebb@sgrlaw.com	
OWNER INFORMATION		
Name: SEE ATTACHED LIST		
Address:		
City:	State:	Zip:
Contact Name:		
Phone:	Email:	
PROPERTY INFORMATION		
Property Address: SEE ATTACHED LIST		
Present Zoning District(s): R-85 and R-100	Requested Zoning District(s): R-60 and R-75	
Present Land Use Category: SUB	Requested Land Use Category:	
Land District: 18TH	Land Lot(s): 212 and 227	Acreage: 22.486
Proposed Development: Midvale and Lavista		
Concurrent Variance(s): § 46-95: reduce front yard setback (32-36); § 46-95: reduce lot frontage (32-36)		
RESIDENTIAL DEVELOPMENT		
No. of Lots/Dwelling Units: 63	Dwelling Unit Size (Sq. Ft.): Varies	Density: 2.8 Units Per Acre
NON-RESIDENTIAL DEVELOPMENT		
No. of Buildings/Lots:	Total Building Sq. Ft.:	Density:

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122-19-0005

LAND USE PETITION APPLICATION

ORIGINAL

PROPERTY OWNER NAMES AND ADDRESSES

PARCEL NO.	OWNER'S NAME	PROPERTY ADDRESS
18 212 01 002	Charles A. Orth, as Trustee of the Item III Trust U/W of Eunice Whitmire Ewing	4704 LaVista Road Tucker, GA
18 212 01 006	Charles A. Orth, as Trustee of the Item III Trust U/W of Eunice Whitmire Ewing	4738 LaVista Road Tucker, GA
18 212 01 019 (Rear)	Charles A. Orth, as Trustee of the Item III Trust U/W of Eunice Whitmire Ewing	4738 LaVista Road Tucker, GA
18 227 04 042	Charles A. Orth, as Trustee of the Item III Trust U/W of Eunice Whitmire Ewing	2470 Henderson Road Tucker, GA
18 212 01 018	Gary Alan Carter, as Co-Trustee of the Carter Descendants Trust dated December 24, 2007	4700 LaVista Road Tucker, GA

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**R-60 ZONING
LEGAL DESCRIPTION**

ALL THAT PARCEL OF LAND LYING IN LAND LOTS 212 AND 227 OF THE 18TH DISTRICT OF DEKALB COUNTY, GEORGIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2-INCH REBAR WITH CAP SET AT THE SOUTHEASTERLY END OF THE MITERED INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE OF LAVISTA ROAD (VARIABLE RIGHT-OF-WAY) AND THE NORTHEASTERLY RIGHT-OF-WAY LINE OF MIDVALE ROAD (60-FOOT RIGHT-OF-WAY); THENCE ALONG SAID MITERED INTERSECTION, NORTH 76°46'40" WEST A DISTANCE OF 38.75 FEET TO A 1/2-INCH REBAR WITH CAP SET; THENCE ALONG SAID RIGHT-OF-WAY LINE OF MIDVALE ROAD THE FOLLOWING 2 COURSES AND DISTANCES: NORTH 36°43'23" WEST A DISTANCE OF 323.94 FEET TO A 1/2-INCH REBAR WITH CAP SET AND FOLLOWING THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 38.77 FEET (SAID ARC HAVING A RADIUS OF 255.00 FEET AND BEING SUBTENDED BY A CHORD OF NORTH 41°04'45" WEST A DISTANCE OF 38.74 FEET) TO A 1/2-INCH REBAR WITH CAP SET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, NORTH 27°21'00" EAST A DISTANCE OF 65.67 FEET TO A T-POST FOUND; THENCE NORTH 56°58'06" EAST A DISTANCE OF 71.06 FEET TO A POINT; THENCE FOLLOWING THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 135.35 FEET (SAID ARC HAVING A RADIUS OF 975.00 FEET AND BEING SUBTENDED BY A CHORD OF NORTH 29°03'06" WEST A DISTANCE OF 135.24 FEET) TO A POINT; THENCE NORTH 25°04'29" WEST A DISTANCE OF 71.84 FEET TO A POINT; THENCE FOLLOWING THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 61.72 FEET (SAID ARC HAVING A RADIUS OF 90.00 FEET AND BEING SUBTENDED BY A CHORD OF NORTH 05°25'38" WEST A DISTANCE OF 60.52 FEET) TO A POINT; THENCE NORTH 14°13'14" EAST A DISTANCE OF 103.36 FEET TO A POINT; THENCE NORTH 41°04'59" EAST A DISTANCE OF 87.33 FEET TO A POINT; THENCE NORTH 74°08'38" EAST A DISTANCE OF 82.38 FEET TO A POINT; THENCE SOUTH 15°51'22" EAST A DISTANCE OF 72.52 FEET TO A POINT; THENCE SOUTH 10°03'00" WEST A DISTANCE OF 94.51 FEET TO A POINT; THENCE SOUTH 79°57'00" EAST A DISTANCE OF 4.79 FEET TO A POINT; THENCE FOLLOWING THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 211.62 FEET (SAID ARC HAVING A RADIUS OF 1342.32 FEET AND BEING SUBTENDED BY A CHORD OF NORTH 50°27'39" EAST A DISTANCE OF 211.40 FEET) TO A POINT; THENCE SOUTH 44°42'36" EAST A DISTANCE OF 87.74 FEET TO A POINT; THENCE SOUTH 44°42'36" EAST A DISTANCE OF 12.26 FEET TO A POINT; THENCE NORTH 44°21'28" EAST A DISTANCE OF 39.05 FEET TO A POINT; THENCE SOUTH 62°10'15" EAST A DISTANCE OF 25.92 FEET TO A POINT; THENCE SOUTH 62°10'15" EAST A DISTANCE OF 25.92 FEET TO A POINT; THENCE SOUTH 62°12'54" EAST A DISTANCE OF 100.06 FEET TO A POINT; THENCE SOUTH 73°14'28" EAST A DISTANCE OF 124.09 FEET TO A POINT; THENCE SOUTH 68°41'22" EAST A DISTANCE OF 60.96 FEET TO A POINT; THENCE SOUTH 55°01'37" EAST A DISTANCE OF 79.85 FEET TO A POINT; THENCE SOUTH 49°50'49" EAST A DISTANCE OF 60.09 FEET TO A POINT; THENCE SOUTH 43°15'25" WEST A DISTANCE OF 103.32 FEET TO A POINT; THENCE FOLLOWING THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 33.81 FEET (SAID ARC HAVING A RADIUS OF 60.00 FEET AND BEING SUBTENDED BY A CHORD OF SOUTH 63°06'12" EAST A DISTANCE OF 33.36 FEET) TO A POINT; THENCE NORTH 43°02'20" EAST A DISTANCE OF 100.21 FEET TO A POINT;

THENCE SOUTH 44°02'00" EAST A DISTANCE OF 71.78 FEET TO A POINT; THENCE SOUTH 24°19'41" EAST A DISTANCE OF 61.57 FEET TO A POINT; THENCE SOUTH 08°25'50" WEST A DISTANCE OF 148.92 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF LAVISTA ROAD (VARIABLE RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING 4 COURSES AND DISTANCES: SOUTH 69°18'16" WEST A DISTANCE OF 432.98 FEET TO A CONCRETE MONUMENT FOUND, FOLLOWING THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 4.32 FEET (SAID ARC HAVING A RADIUS OF 2333.83 FEET AND BEING SUBTENDED BY A CHORD OF SOUTH 69°15'06" WEST A DISTANCE OF 4.32 FEET) TO A 1/2-INCH REBAR WITH CAP SET, ALONG A CURVE TO THE LEFT A DISTANCE OF 29.01 FEET (SAID ARC HAVING A RADIUS OF 2333.83 FEET AND BEING SUBTENDED BY A CHORD OF SOUTH 68°50'32" WEST A DISTANCE OF 29.01 FEET) TO A PK NAIL AND SHINER SET, AND ALONG A CURVE TO THE LEFT A DISTANCE OF 250.54 FEET (SAID ARC HAVING A RADIUS OF 2333.83 FEET AND BEING SUBTENDED BY A CHORD OF SOUTH 65°24'39" WEST A DISTANCE OF 250.42 FEET) BACK TO THE POINT OF BEGINNING.

CONTAINING 497,584 SQUARE FEET OR 11.423 ACRES.

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R-75 ZONING
LEGAL DESCRIPTION

ALL THAT PARCEL OF LAND LYING IN LAND LOTS 212 AND 227 OF THE 18TH DISTRICT OF DEKALB COUNTY, GEORGIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 1/2-INCH REBAR WITH CAP SET AT THE SOUTHEASTERLY END OF THE MITERED INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE OF LAVISTA ROAD (VARIABLE RIGHT-OF-WAY) AND THE NORTHEASTERLY RIGHT-OF-WAY LINE OF MIDVALE ROAD (60-FOOT RIGHT-OF-WAY); THENCE ALONG SAID MITERED INTERSECTION NORTH 76°46'40" WEST A DISTANCE OF 38.75 FEET TO A 1/2-INCH REBAR WITH CAP SET; THENCE ALONG SAID RIGHT-OF-WAY LINE OF MIDVALE ROAD THE FOLLOWING 2 COURSES AND DISTANCES: NORTH 36°43'23" WEST A DISTANCE OF 323.94 FEET TO A 1/2-INCH REBAR WITH CAP SET AND FOLLOWING THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 38.77 FEET (SAID ARC HAVING A RADIUS OF 255.00 FEET AND BEING SUBTENDED BY A CHORD OF NORTH 41°04'45" WEST A DISTANCE OF 38.74 FEET) TO A 1/2-INCH REBAR WITH CAP SET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, NORTH 27°21'00" EAST A DISTANCE OF 65.67 FEET TO A T-POST FOUND, SAID POINT BEING THE **POINT OF BEGINNING**.

THENCE NORTH 51°11'03" WEST A DISTANCE OF 59.86 FEET TO A T-POST FOUND; THENCE SOUTH 27°33'13" WEST A DISTANCE OF 66.68 FEET TO A 1/2-INCH REBAR WITH CAP SET ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF MIDVALE ROAD (60-FOOT RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY LINE, FOLLOWING THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 31.13 FEET (SAID ARC HAVING A RADIUS OF 255.00 FEET AND BEING SUBTENDED BY A CHORD OF NORTH 62°25'22" WEST A DISTANCE OF 31.11 FEET) TO A 1/2-INCH REBAR WITH CAP SET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, NORTH 14°33'46" EAST A DISTANCE OF 177.46 FEET TO A 1-INCH OPEN TOP PIPE FOUND; THENCE NORTH 74°11'09" WEST A DISTANCE OF 176.37 FEET TO A 1/2-INCH REBAR WITH CAP SET; THENCE NORTH 14°13'14" EAST A DISTANCE OF 355.83 FEET TO A 1-INCH CRIMPED TOP PIPE FOUND; THENCE NORTH 89°41'16" EAST A DISTANCE OF 624.71 FEET TO A 1/2-INCH CRIMPED TOP PIPE FOUND; THENCE NORTH 00°06'06" EAST A DISTANCE OF 213.27 FEET TO A 1-INCH OPEN TOP PIPE FOUND; THENCE NORTH 44°10'13" EAST A DISTANCE OF 165.68 FEET TO A 1/4-INCH REBAR FOUND; THENCE SOUTH 51°09'26" EAST A DISTANCE OF 875.09 FEET TO A 1/2-INCH OPEN TOP PIPE FOUND; THENCE NORTH 89°26'29" WEST A DISTANCE OF 287.32 FEET TO A 5/8-INCH REBAR FOUND; THENCE SOUTH 00°52'39" EAST A DISTANCE OF 393.26 FEET TO A 1/2-INCH REBAR FOUND ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF LAVISTA ROAD (VARIABLE RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY LINE, SOUTH 69°18'16" WEST A DISTANCE OF 114.95 FEET TO A POINT; THENCE LEAVING SAID RIGHT-OF-WAY LINE, NORTH 08°25'50" EAST A DISTANCE OF 148.92 FEET TO A POINT; THENCE NORTH 24°19'41" WEST A DISTANCE OF 61.57 FEET TO A POINT; THENCE NORTH 44°02'00" WEST A DISTANCE OF 71.78 FEET TO A POINT; THENCE SOUTH 43°02'20" WEST A DISTANCE OF 100.21 FEET TO A POINT; THENCE FOLLOWING THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 33.81 FEET (SAID ARC HAVING A RADIUS OF 60.00 FEET AND BEING SUBTENDED BY A CHORD OF NORTH 63°06'12" WEST A DISTANCE OF 33.36 FEET) TO A POINT; THENCE NORTH 43°15'25" EAST A DISTANCE OF

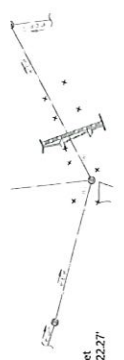
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CONTAINING 481,889 SQUARE FEET OR 11.063 ACRES.

COMPATIBILITY OF NEW AND EXISTING SUBDIVISIONS
 AVERAGE PERIMETER LOT WIDTH EXCEEDS 80% OF ADJACENT LOTS
 Total width at rear building line, slope 22 adjacent lots - 2690 linear feet
 Average rear lot width along rear setback of adjacent lots - 2690/22 = 122.27'
 122.27/80% = 91.87' for average rear lot width along rear setback

12 PROPOSED LOTS ALONG REAR PROPERTY LINE ADJACENT LOTS
 Total length of 40' rear setback on these lots - 1307'
 Average rear lot width along rear setback - 1307/12 = 108.9'
 108.9' average width of proposed lots exceeds 80% of average adjacent (91.87')

20' TRANSITIONAL BUFFER IS PROVIDED ON ALL LOTS
 THAT ADJUT ADJACENT EXISTING LOTS



TOTAL TRACT
 - 979,472 square feet (22.48 acres)

OPEN SPACE REQUIREMENTS
 20% Open Space - 195,894 square feet
 50% of Open Space to be Enhanced Open Space - 97,947 sq ft min
TOTAL OPEN SPACE PROVIDED - 235,500 square feet - 24.0%

ENHANCED OPEN SPACE PROVIDED - 98,000 sq ft
 (exceeds 20% of total open space)

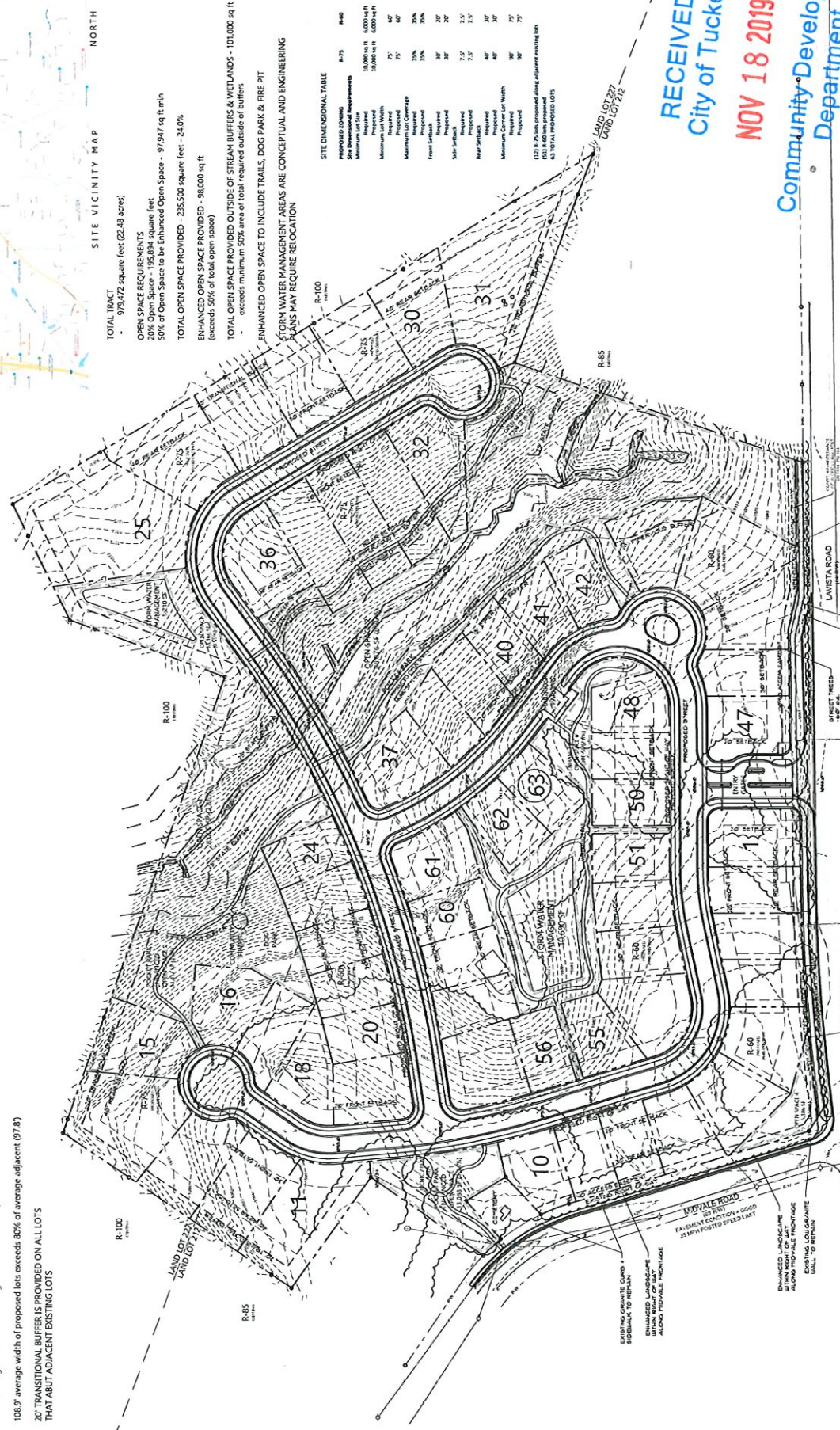
TOTAL OPEN SPACE PROVIDED OUTSIDE OF STREAM BUFFERS & WETLANDS - 101,000 sq ft
 exceeds minimum 50% area of total required outside of buffers

ENHANCED OPEN SPACE TO INCLUDE TRAILS, DOG PARK & FIRE PIT
STORM WATER MANAGEMENT AREAS ARE CONCEPTUAL AND ENGINEERING PLANS MAY REQUIRE RELOCATION

SITE DIMENSIONAL TABLE

PROPOSED ZONING	R-75	R-100	R-150
Minimum Lot Area	10,000 sq ft	10,000 sq ft	10,000 sq ft
Minimum Lot Width	75'	100'	150'
Maximum Lot Coverage	35%	35%	35%
Front Setback	30'	30'	30'
Side Setback	7.5'	7.5'	7.5'
Rear Setback	40'	40'	40'
Maximum Lot Width	90'	90'	90'

123 ft - 7 ft lot proposed along adjacent existing lots
 151 ft - 6 ft lot proposed
 10 ft - 10 ft proposed (R-75)



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NOVEMBER 15, 2019

SCALE IN FEET
 0 50 100 150 200

NORTH

SHEET L-1

SITE PLAN - LOT AREA AND DIMENSIONS

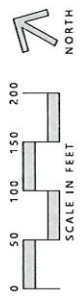
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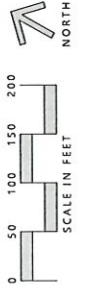
SITE DIMENSIONAL TABLE

PROPOSED ZONING	R-7.5	R-40
Minimum Lot Area	10,000 sq ft	6,000 sq ft
Maximum Lot Area	10,000 sq ft	6,000 sq ft
Minimum Lot Width	75'	60'
Maximum Lot Coverage	35%	35%
Front Setback	30'	30'
Side Setback	30'	30'
Rear Setback	30'	30'
Minimum Center Lot Width	40'	30'
Minimum Corner Lot Width	30'	30'

(12) R-7.5 lots proposed along adjacent existing lots.
 (3) TOTAL PROPOSED LOTS.



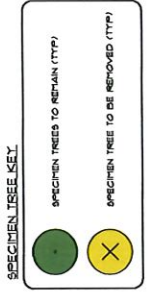
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POINT #	DBA	DESC	NOTE
10002	30'	HW	
31550	30'	HW	
31551	30'	HW	
31552	30'	HW	
31553	30'	HW	
31554	30'	HW	
31555	30'	HW	
31556	30'	HW	
31557	30'	HW	
31558	30'	HW	
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31594	30'	HW	
31595	30'	HW	
31596	30'	HW	
31597	30'	HW	
31598	30'	HW	
31599	30'	HW	
31600	30'	HW	

POINT #	DBA	DESC	NOTE
10002	30'	HW	
31550	30'	HW	
31551	30'	HW	
31552	30'	HW	
31553	30'	HW	
31554	30'	HW	
31555	30'	HW	
31556	30'	HW	
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31594	30'	HW	
31595	30'	HW	
31596	30'	HW	
31597	30'	HW	
31598	30'	HW	
31599	30'	HW	
31600	30'	HW	

TREE TABULATIONS
 60 TREES ON TREE CHART
 41 TOTAL SPECIMEN TREES BAVED
 28 TOTAL SPECIMEN TREES REMOVED
 6 BOUNDARY TREES



LAND LOT 227
 LAND LOT 212

LAVISTA ROAD
 (SEE PLAN FOR TRAFFIC SIGNAL AND STREET LIGHT LOCATIONS)
 AS SHOWN IN POSTED SIGNAL UNIT

ASHLEYWOOD DRIVE

HYLEAR

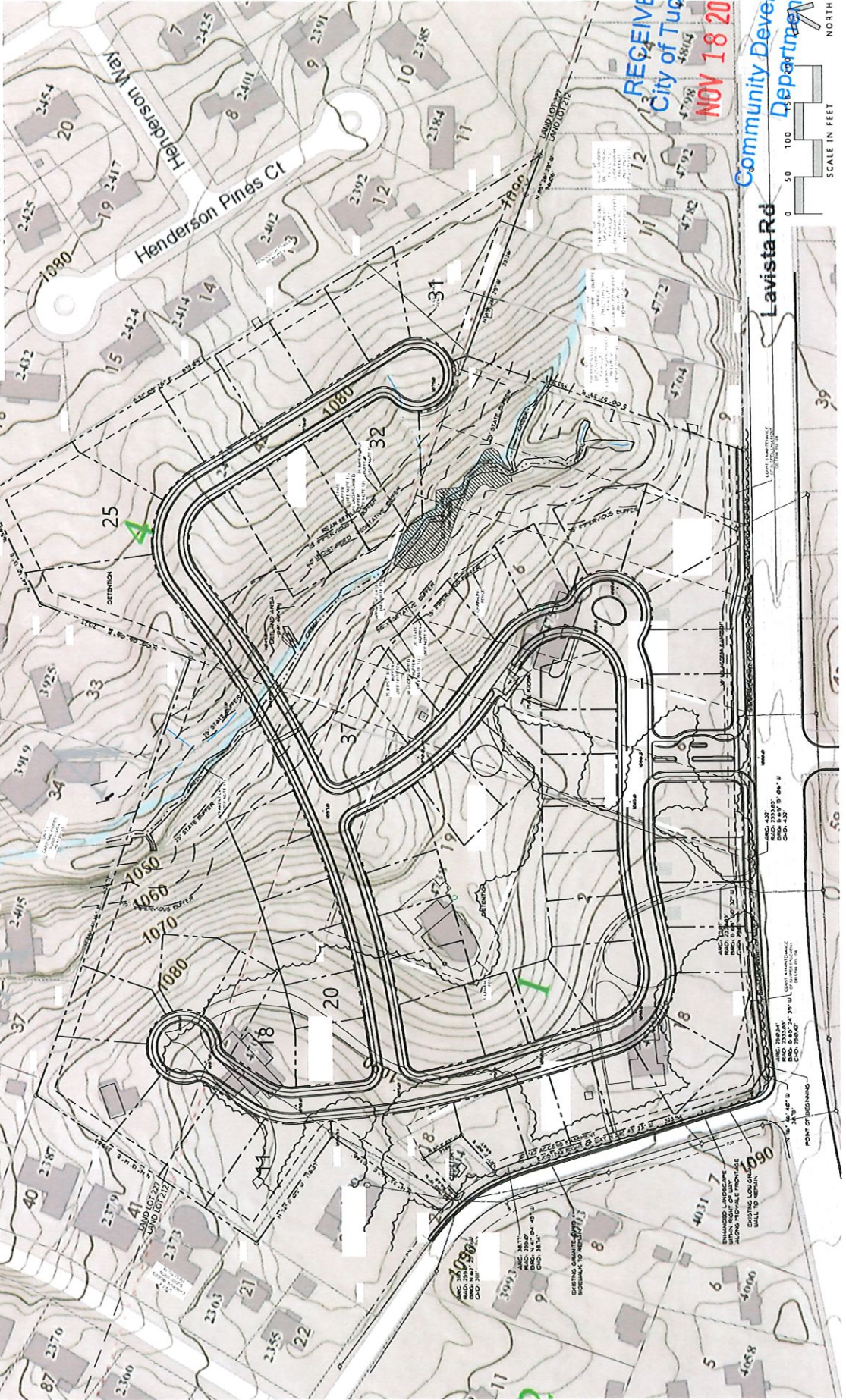
MIDVALE ROAD
 (SEE PLAN FOR TRAFFIC SIGNAL AND STREET LIGHT LOCATIONS)
 AS SHOWN IN POSTED SIGNAL UNIT

BARCLIFT ASSOCIATES
 LANDSCAPE ARCHITECTURE
 LAND PLANNING
 404 375 8655
 1000 BELLFLOWER BLVD
 SUITE 200
 ATLANTA, GEORGIA 30318

SITE ANALYSIS PLAN
 LAVISTA & MIDVALE PROPERTY
 TUCKER, GA
 BETANCOURT CONSTRUCTION



SITE VICINITY MAP



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Lavista Rd

Cardinal Ct

Henderson Pines Ct

Henderson Way

Midvale Rd

Point of Beginning

Scale in Feet

0 50 100

NORTH

SHEET L-2

FEMA MAP NOTE:
 No portion of this property lies within the 100 year flood plan

SOURCE:
 FEMA MAP NUMBER 13089C0076K
 MAP REVISED AUGUST 15, 2019
 PARCEL 76 of 201 DeKalb County, Georgia

CURRENT ZONING:
 R-85 / R-100

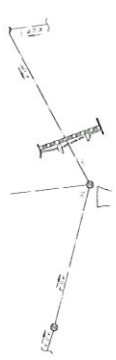
SEE SITE PLAN L-1 FOR PROPOSED ZONING

- TOTAL TRACT
 - 979,472 square feet (22.48 acres)
 PROPOSED R-75 ZONING
 - 480,882 square feet (11.04 acres)
 PROPOSED R-60 ZONING
 - 487,367 square feet (11.18 acres)
 PROPOSED LAVISTA ROAD RIGHT OF WAY
 DEDICATION
 - 11,273 square feet (0.26 acres)

SITE DIMENSIONAL TABLE

PROPOSED ZONING	R-75	R-60
Minimum Lot Size	10,000 sq. ft. (0.23 ac)	10,000 sq. ft. (0.23 ac)
Minimum Lot Width	Proposed	Proposed
Maximum Lot Coverage	Proposed	Proposed
Front Setback	Proposed	Proposed
Side Setback	Proposed	Proposed
Rear Setback	Proposed	Proposed
Minimum Lot Width	Proposed	Proposed
Proposed	75'	60'
Proposed	30%	30%
Proposed	30'	30'
Proposed	7.5'	7.5'
Proposed	40'	30'
Proposed	90'	75'

(22) R-75 lots proposed along adjacent existing lots
 (13) R-60 lots proposed
 (1) R-85 lot proposed
 (1) R-85 lot proposed



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FIRST AMENDED
STATEMENT OF INTENT

and

Other Material Required by
City of Tucker Zoning Ordinance
for the
Rezoning Application, with Concurrent Variances,

of

BETANCOURT CONSTRUCTION, LLC

for

± 22.486 Acres of Land
located in
Land Lots 212 and 227, 18th District, DeKalb County

Submitted for Applicant by:

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

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Department

I. INTRODUCTION AND ANALYSIS

This application seeks to rezone, with concurrent variances, ±22.486 acres in the City of Tucker from R-85 (Residential Medium Lot-85) and R-100 (Residential Medium Lot-100) to R-60 (Residential Small Lot-60) and R-75 (Residential Medium Lot-75) to allow for the development of single family homes. The property consists of five (5) parcels located in the northeast quadrant of the intersection of Lavista Road and Midvale Road (the "Subject Property"). The Subject Property is more particularly located at 4700 Lavista Road (Parcel ID 1821201018), 4704 Lavista Road (Parcel ID 1821201002), 4738 Lavista Road (Parcel ID 1821201006), 4738 Lavista Road REAR (Parcel ID 1821201019), and 2470 Henderson Road (Parcel ID 1822704042). The Applicant intends to develop the Subject Property with sixty-three (63) single family detached residences and appurtenant site improvements (the "Proposed Development"). The Proposed Development will contain approximately forty-six (46) R-60 lots and seventeen (17) R-75 lots. The intent is to have the larger R-75 lots on the exterior to buffer the established neighborhoods surrounding the Subject Property, while the smaller R-60 lots are on the interior and along Lavista and Midvale Roads.

The Subject Property is in a state of disrepair with several single family homes, a derelict pool house, pool, driveways and other site improvements situated on larger lots ranging in size from ±1.65 acres to ±7.65 acres. One of the homes is currently occupied by rental tenants, while the other two have been vacant for seven (7) to ten (10) years. The existing homes were built between 1947 and 1962, a time in Tucker's history when there were far fewer established subdivisions and the area was beginning to transition from rural to a modern residential suburb. This type of large lot residential development is an anomaly in the area today, which is characterized by single family detached homes on lots ranging in size from ±0.20 to ±0.75 acres.

In addition, the Subject Property is bisected by an existing stream, which limits the buildable area. The presence of stream buffers coupled with the shift in development trends is likely the reason that the Subject Property has remained vacant for almost a decade with little interest in redevelopment.

The Proposed Development and the proposed zoning are consistent with the existing residential developments surrounding the Subject Property. To the south, the Subject Property abuts the right-of-way of Lavista Road. To the south and west, the Subject Property abuts the right-of-way of Midvale Road. Also to the south and west, the Subject Property abuts the Bagwell Cemetery and a property containing a single family residence, both zoned R-85. To the west and north are single family residences within the Cardinal Woods subdivision, zoned R-85 and R-100. To the north, the Subject Property abuts single family residential properties within the Thawley Place subdivision, zoned R-60.¹ To the north and east are single family residences within the Henderson Trails subdivision, zoned R-100. To the east are single family properties fronting Lavista Road zoned R-85. Also, to the southeast, across Lavista Road are seven (7) properties containing single family detached homes, each zoned R-75. It is apparent from the mix of zonings in the vicinity, including existing R-60 and R-75, that the rezoning of the Subject Property to R-60 and R-75 is entirely appropriate for the area.

The Proposed Development will enhance the existing housing stock in the area with a modern, vibrant single family subdivision, blending harmoniously with the surrounding community. The Proposed Development's sixty (63) residences will be on lots of varying sizes, with the larger R-75 lots located to the north, adjacent to the existing neighborhoods and the R-60 lots situated to the south, closer to the right-or-way of Lavista and Midvale Roads. The site

¹ The Thawley Place property was rezoned in 1989 from R-100 to R-50 (R-50 later became R-60 under the 2015 DeKalb County Zoning Ordinance) pursuant to DeKalb County ordinance CZ-87041.

design will provide a transition and buffer against Lavista Road to the south and the established neighborhoods to the north. Moreover, the site design will incorporate onsite practices to lessen the impacts of the development, including the preservation of stream buffers and the incorporation of enhanced open space areas within the development. It is the Applicant's intent not to maximize the proposed density, but rather to create an attractive development that is fitting with the surrounding community and provides significant open space.

The Applicant submits this document as a Statement of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and a written justification for the Application as required by the City of Tucker Zoning Ordinance, § 46-1559. A Site Plan has been filed with the original Application, along with the other required materials.

III. ZONING HISTORY

The Subject Property is zoned R-85 and R-100 and is designated as being "Suburban" (SUB) on the City's Future Land Use Map. The Applicant's research of the Subject Property's history has not revealed any prior rezonings or conditions that affect the property. The SUB character area fully allows the proposed R-60 and R-75 zoning.

IV. IMPACT ANALYSIS

A. REZONING

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

The Proposed Development is consistent with the Tucker Tomorrow Comprehensive Plan, which indicates the Subject Property as being within the SUB character area. The Comprehensive Plan's stated policy and intent for the SUB character area is to preserve the suburban character of Tucker's neighborhoods. The proposed single family residences fall

neatly within this stated intent. Furthermore, the Proposed Development meets many of the expressed goals for the SUB character area:

- Ensuring that the expansion or improvement of single family homes within Tucker's existing neighborhoods are compatible with the existing housing stock in terms of building height, footprint and massing, particularly as viewed from the street.
- Giving special care to managing land use transitions along the periphery of residential neighborhoods to ensure that new development does not diminish the character of existing neighborhoods.
- In the majority of the suburban character areas, which feature more traditional development patterns, up to 4 units per acre may be allowed.
- Incorporate transitions from more intense densities and uses to existing residential uses
- Incorporate design features, such as greater setbacks, buffers, landscape treatment and height-plane considerations, to mitigate any impacts on adjacent residential properties.

The proposed use, therefore, is suitable vis-a-vis the policies of the Comprehensive Plan.

2. 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.

Yes. The adjacent and nearby properties are almost entirely residential single family uses of varying densities and the proposed R-60 and R-75 zoning is complementary and suitable to these uses. As noted in the paragraphs above, the surrounding zoning districts range from R-60, small lot residential, to R-100, large lot residential, with other intermediate densities. The proposed R-60 and R-75 zoning falls squarely within the existing range of residential density in the area.

3. WHETHER THE PROPERTY TO BE AFFECTED BY THE ZONING PROPOSAL HAS A REASONABLE ECONOMIC USE AS CURRENTLY ZONED.

No. It is highly unlikely that the Subject Property will ever be redeveloped or used in a manner consistent with the current R-85 and R-100 zoning. The Subject Property contains

several residences, two of which have been vacant for seven (7) to ten (10) years and the third is used as a rental property. There has been no interest in the property to maintain a residence on larger, estate-sized lots and the residences are likely to remain vacant. In addition, the presence of stream buffers on the site limits the buildable area and lessens the viability for redevelopment under R-85 and R-100. As a result, the Subject Property will remain vacant absent a rezoning to a more appropriate district.

4. WHETHER THE ZONING PROPOSAL WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY OR PROPERTIES.

No. The primary goal of land use planning is to eliminate or minimize the potential adverse effect of the dissimilar uses of adjacent tracts of land by establishing a harmonious transition between them. The traditional method of achieving this goal is through both "off-site" and "on-site" transition. Off-site transition consists of avoiding the placement of dissimilar uses next to each other by placing uses of intermediate density between them. On-site transition, which might either supplement or replace off-site transition, consists of measures imposed on or adjacent to the more intensive use to protect neighborhoods from adverse effects. Thus, this method of land use planning includes measures such as maintenance of buffers; walls, fences or berms; lighting control; noise control; aesthetic control; limitations on building location and orientation; location of or restrictions upon accessory uses; and prohibition of certain uses or hours of use normally permitted for that district. Many of these devices have been or will be utilized in this Application.

The Proposed Development will pay careful attention to scale, buffering, setbacks, and landscaping so that it will blend and complement the adjacent developments. Accordingly, rezoning the Subject Property to R-60 and R-75 will not adversely affect the nearby existing uses and will enhance the adjacent properties.

5. 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.

As stated in previous paragraphs, the development trends in the area reveal a shift towards smaller residential lot subdivisions similar to the Proposed Development. The Subject Property is a left-over vestige from a time when the area was more rural and +1-acre lots were more common, while the area has become almost entirely comprised of smaller lot suburban neighborhoods. The proposed R-60 and R-75 zoning will bring the Subject Property into conformance with the surrounding developments. Hence, the zoning requested here conforms to the ideals and spirit of the City of Tucker's Zoning Ordinance and complements the existing uses in the area.

6. WHETHER THE ZONING PROPOSAL WILL ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS, OR ARCHAEOLOGICAL RESOURCES.

The Subject Property abuts the existing Bagwell Cemetery at 4004 Midvale Road. There are no additional state or local buffers beyond the cemetery property and the Proposed Development will not encroach into the cemetery. Therefore, there will be no regulated disturbance to the cemetery from the construction of the Proposed Development. Regardless, the Applicant will take all due care to avoid any disturbance to the cemetery. The Applicant is not aware of any other 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 rezoning requested.

7. WHETHER 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.

No. The Proposed Development will not overly burden existing streets or transportation

facilities. The Applicant has prepared a trip generation calculation for the Proposed Development which is attached to this Application. See Lavista & Midvale Residential Development – Trip Generation Report, prepared by LeCraw Engineering, dated August 23, 2019. The Proposed Development will generate a total of 47 trips during the A.M. peak hour, and 62 trips during the P.M. peak hour. The Proposed Development will have direct access to Lavista Road, which is a five-lane state route and classified as a minor arterial. The minor arterial classification indicates that the road is intended to carry large volumes of traffic and will be more than adequate to accommodate the additional trips the Proposed Development will generate. Therefore, the Proposed Development is not anticipated to contribute significantly to the trips on the surrounding roadways.

As for utilities, the Subject Property has access to water and sewer. Finally, the Proposed Development will not create an excessive or burdensome use of the community's schools. The Subject Property is served by Midvale Elementary School, Tucker Middle School, and Tucker High School service area. Midvale Elementary is listed as under capacity (83% capacity), and both Tucker Middle School and Tucker High School are listed as at capacity (Tucker MS is at 101% capacity with 1,232 students and Tucker HS is at 100% capacity with 1,769 students) according to DeKalb County Schools' Enrollment Data.² The Proposed Development will produce some additional students, however sixty-three (63) homes are not anticipated to produce a significant number of students to overly-burden local schools.

² See DeKalb County School District Planning website, *Enrollment and Capacity by School*, <https://www.dekalbschoolsga.org/operations/planning/> (last accessed August 22, 2019).

8. WHETHER THE ZONING PROPOSAL ADVERSELY IMPACTS THE ENVIRONMENT OR SURROUNDING NATURAL RESOURCES.

The Applicant will comply with all federal, state, and City regulations relating to environmental protection to ensure that the Proposed Development will not adversely affect the environment.

B. VARIANCES

1. § 46-95 (FRONT SETBACK – Lots 32-36)

The Subject Property is heavily wooded. The Applicant would prefer to keep as many trees on the Subject Property as possible, for both environmental and aesthetic reasons. The design layout proposed was created to achieve that goal, among others. Lots 32-36 all meet the minimum lot area requirement for the R-75 district. Each proposes a 20' front setback (which also includes the northern site yard for corner lot 36), however, which is below the R-75 requirement but consistent with the R-60 properties adjacent and to the south. The proposed 20'-setback is necessary to maintain the design integrity of the subject property and achieve a variety of inter-related goals.

This variance request is necessitated by an existing condition on the Subject Property which was not created by the Applicant, namely the location of a forested area worth preserving and other inter-related goals for this development. The requested variance seeks only the minimum necessary to afford relief, and does not constitute a grant of special privilege. The grant of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the zoning district; to the contrary, the code-required setback would inflict environmental harm with virtually no resultant public benefit. Finally, the literal interpretation and strict application of § 46-1336(b) to the Subject Property would cause undue

and unnecessary hardship and be inconsistent with the spirit and purpose of the Tucker Zoning Ordinance and Comprehensive Plan text.

2. § 46-95 (LOT WIDTH- Lots 32-36)

The Code requires a minimum 75-foot lot width. Lots 32-36 fall below this threshold but, as noted above, each meet the minimum R-75 Lot area. The lot width proposal for lots 32-36 is no less than 60 feet, which is consistent with the minimum lot width in other areas of the development. The width proposed is necessary to achieve a number of inter-related goals for the project, including maximization of open space and tree presentation. Hence, the Applicant seeks to lower the lot width requirement for lots 32-36 to 60 feet.

The requested variance seeks only the minimum necessary to afford relief, and does not constitute a grant of special privilege. The City has granted other variances to reduce lot width. (See, e.g. VC-18-005-01). The grant of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the zoning district, a point the City considered and conceded when it granted the variance referenced above. Finally, the literal interpretation and strict application of § 46-1336(b) to the Subject Property would cause undue and unnecessary hardship and be inconsistent with the spirit and purpose of the Tucker Zoning Ordinance and Comprehensive Plan text.

V. NOTICE OF CONSTITUTIONAL CHALLENGES AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The zoning on the Subject Property, and any intervening zoning district other than that requested, is unconstitutional. Further, the Zoning Ordinance of the City of Tucker, Georgia lacks adequate standards for the Mayor and City Council to exercise their power to zone and rezone. In essence, the standards are not sufficient to contain the discretion of the Mayor and City Council and to provide the Courts with a reasonable basis for judicial review. Because the

stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Mayor and City Council, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Ordinance also violates Article I, Section III, Paragraph 1; and Article I, Paragraphs 1 and 2 of the Constitution of State of Georgia, 1983.

The Mayor and City Council are granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of the City of Tucker, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinance presently in effect is contrary to the best interest of the health and welfare of the citizens of the City of Tucker, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance presently in effect is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States

Constitutional and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to rezone the Subject Property as requested, would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the Application for rezoning or to zone the property to any other classification including other intervening classifications, would be contrary to the best interest of the health and welfare of the citizens of the City of Tucker, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the Application would constitute a Violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the Mayor and City Council who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

The single family residences at issue in this Rezoning will provide housing opportunities to persons protected by the Fair Housing Act. A denial of this Rezoning will result in disparate treatment of individuals based on familial status in violation of the Fair Housing Act of the United States and Georgia.

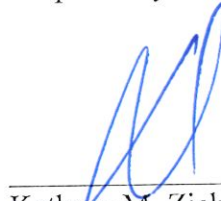
Opponents to this request lack standing, have failed to exhaust administrative remedies, and have waived their rights to appeal by failing to assert legal and constitutional objections.

VI. 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 the City of Tucker so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 18th day of November, 2019.

Respectfully submitted,



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