

AMENDED AND RESTATED
STATEMENT OF INTENT
DATED DECEMBER 19, 2016

REVISION

CITY OF TUCKER

JAN - 5 2017

RECEIVED

SLUP-16-003

VS-16-003-01

VS-16-003-02

And

Other Material Required by
City of Tucker, Georgia Zoning Ordinance
For

A Special Land Use Permit for a Place of Worship pursuant to
the City of Tucker Zoning Ordinance

Of

MT. MORIAH MISSIONARY BAPTIST CHURCH OF TUCKER, GEORGIA, INC.

For

+/-14.366 acres of Land
located at
1983 Brockett Road in
Land Lot 186, 18th District, City of Tucker, City of Tucker

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 Subject Property is a 14.366-acre tract of land located at 1983 Brockett Road, which is currently zoned R-85 and has been used by the Applicant, Mt. Moriah Missionary Baptist Church, as a place of worship for in excess of 30 years. The Subject Property is currently improved with the following:

Existing Improvements:

Student Center/Former Chapel:	5,600 sq. ft.
Existing Sanctuary/Former Gym:	12,400 sq. ft.
Existing Administrative Bldg:	4,500 sq. ft.

As indicated above, the original chapel is now used as a Student Center, and the Sanctuary was moved into the 12,400 sq. ft. building that was formerly used as a gym, as a result of the growth of the Church's congregation. Due to the differing needs of the congregation, the Church desires to develop a 14,500 sq. ft. family life center on the Subject Property will provide for additional office space, classrooms and a new multi-purpose room that will primarily be used as a basketball court. In order to develop the family life center a Special Land Use Permit must be issued for the Church, which is currently a legal non-conforming use. It should be noted that the Subject Property does, however, meet the Supplemental Requirements set forth in the City of Tucker's Zoning Ordinance Section 27-4.2.42 (d) and (e) as the Subject Property is in excess of three acres, it has in excess of 100 ft of frontage on Brockett Road and Brockett Road is a minor arterial road according to the DeKalb County 2014 Transportation Plan Map 1 Recommended Functional Classification Map.

ZONING ORDINANCE SECTION 27-7.4.6 - CRITERIA

- A. Adequacy of the size of the Site for contemplated use:** The site is adequate for the proposed use. The subject property is 14.366 acres and provides ample space for the proposed use.
- B. Compatibility of the proposed use with adjacent properties:** The proposed use is compatible with the adjacent properties, which include both residential uses, as well as another place of worship located on the southern boundary line of the Subject Property.
- C. Adequacy of public services, facilities and utilities:** There are adequate public services, facilities and utilities to support the proposed uses.
- D. Adequacy of the public street:** The Subject Property is located on Brockett Road, which is classified as a "Minor Arterial" street, and as such has adequate capacity to handle the volume of traffic to be generated by the proposed use.

E. Possibility of adverse effect along access routes to the site: There is no possibility of adverse effect along the access route to the Subject Property as a result of the used of the Subject Property as a place of worship, including the development of the family life center.

F. Ingress and egress to the subject property: There is adequate ingress and egress to the Subject Property. The Subject Property has two driveways, which allow for adequate circulation for ingress and egress.

G. Adverse impact on adjoining land use by reason of noise, smoke, odor, dust or vibration: The Applicant's proposed use of the Subject Property will not create an adverse impact on the adjoining land uses by reason of noise, smoke, odor, dust or vibration.

H. Adverse impact on adjoining land use by reason of hours of operation: The Applicant's hours of operation will not have an adverse impact on the adjoining land uses. The Church is open throughout the week during normal business hours. All evening activities at the Church are typically over by no later than 9pm. During the weekend the Church has similar hours between 8am and 9pm on Saturday and 8am and 7pm on Sunday.

I. Adverse impact by manner of operation: The manner of operation of the Applicant will not have an adverse impact on the adjoining land uses.

J. Use consistent with zoning district classification: The use of the Subject Property for a place of worship is consistent with the R85 Zoning District Regulations.

K. Use consistent with the Comprehensive Land Use Plan: The use of the Subject Property for a place of worship is consistent with the Comprehensive Land Use Plan designation for the Subject Property, which is Suburban.

L. Compliance with buffer zones and setback requirements: The proposed uses will be developed in compliance with the development requirements for the R-85 District Regulations and with the Zoning Ordinance's supplemental regulations applying to Places of Worship.

M. Adequate provision for refuse and service areas: There is adequate provision for refuse and service areas.

N. Length of time for SLUP: The special land use permit should not be limited in duration.

O. Appropriateness of size, scale and massing of buildings in comparison to adjacent properties: The size, scale and massing of the existing building is appropriate in comparison to the surrounding residential uses.

P. Adverse historic impact: The proposed project will not have an adverse impact on any historic buildings, sites, districts or archaeological resources in the surrounding area.

Q. Satisfaction of Supplemental Regulations: N/A

R. Appropriateness of height: The proposed uses will be in compliance with the R-85 District regulations, and will not exceed 35 feet in height, subject to the approval the concurrent variance submitted with this SLUP Application.

S. Compatibility with Community Needs. The Subject Property has been a place of worship for in excess of 30 years. Its presence is woven into the fabric of the surrounding community, as it services the spiritual needs of those attending.

CONSTITUTIONAL ALLEGATIONS

The portions of the City of Tucker 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 City of Tucker 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 City of Tucker Mayor and City Council 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 City of Tucker Mayor and City Council to rezone the Subject Property to the classification as requested or issue the special land use permit requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the Property or granting of a special land use permit subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would

have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

V. CONCLUSION

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

**AMENDED AND RESTATED
CONCURRENT VARIANCE JUSTIFICATION
DATED DECEMBER 19, 2016**

APPLICANT: Mt. Moriah Missionary Baptist Church of Tucker, Georgia,
Inc.

SUBJECT
PROPERTY: 1983 Brockett Road

ATTORNEY: Michèle L. Battle, Esq.
Battle Law, P.C.
One West Court Square, Suite 750
Decatur, Georgia 30030
Phone: 404.601.7616

REVISION

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SLUP-16-003

VS-16-002-01

VS-16-002-02

The Subject Property is a 14.366-acre tract of land located at 1983 Brockett Road, which is currently zoned R-85 and has been used by the Applicant, Mt. Moriah Missionary Baptist Church, as a place of worship for in excess of 30 years. The Subject Property is currently improved with the following:

Existing Improvements:

Student Center/Former Chapel:	5,600 sq. ft.
Existing Sanctuary/Former Gym:	12,400 sq. ft.
Existing Administrative Bldg:	4,500 sq. ft.

As indicated above, the original chapel is now used as a Student Center, and the Sanctuary was moved into the 12,400 sq. ft. building that was formerly used as a gym, as a result of the growth of the Church's congregation. Due to the differing needs of the congregation, the Church desires to develop a 14,500 sq. ft. family life center on the Subject Property will provide for additional office space, classrooms and a new multi-purpose room that will primarily be used as a basketball court. In order to develop the family life center a Special Land Use Permit must be issued for the Church, which is currently a legal non-conforming use. It should be noted that the Subject Property does, however, meet the Supplemental Requirements set forth in the City of Tucker's Zoning Ordinance Section 27-4.2.42 (d) and (e) as the Subject Property is in excess of three acres, it has in excess of 100 ft of frontage on Brockett Road and Brockett Road is a minor arterial road according to the DeKalb County 2014 Transportation Plan Map 1 Recommended Functional Classification Map.

In order to avoid the removal of a significant number of trees, as well as not interfering with the drainage ditch/stream buffer in the rear yard of the property, the Applicant is seeking the following concurrent variances:

1. Allow parking within the front yard for an accessory use; and
2. To allow an accessory use of 35 feet in height

VARIANCE CRITERIA

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;

The Subject Property has been developed as a place of worship for in excess of 30 years, with three existing structures being currently located on the site. The church sanctuary now sits to the rear of the original sanctuary and administrative building. Behind the sanctuary is a very heavily wooded area which provides a buffer from the residential community that lies immediately to the East of the Subject Property. Additionally, within the rear yard is a drainage ditch. The parking lots are located within the side yards of the Subject Property. Therefore, the majority of the Subject Property is already built out. The area in which the Church proposes to locate the accessory building, is on a grassed area that serves no useful purpose, and would allow the Church to develop the Family Life Center with little to no disruption to the current use of the Subject Property.

With respect to the request height increase, the proposed Family Life Center will not exceed the 35ft height of the existing sanctuary. The additional height in excess of the allow 24' is needed in order to allow for the gymnasium and the office space and classrooms that will be provided for within the building.

The topographic conditions of the Subject Property were not created by the Applicant and support the approval of this concurrent variance request, as the strict application of the requirements of the City of Tucker Zoning Ordinance would deprive the Applicant of rights and privileges enjoyed by other places of worship.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located

It is the Applicant's contention that the requested variances do not go beyond the minimum necessary to afford relief, and do not constitute a special privilege.

3. The grant of the variances will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located

The granting of the requested variances will not have a negative impact on the surrounding community or be detrimental to the public welfare. In fact, the failure to grant the requested variance will result in negatively impacting the surrounding community.

4. The literal interpretation and strict application of the applicable provisions or requirements of the Zoning Ordinance will cause undue and unnecessary hardship on the Applicant.

The literal interpretation and strict application of the applicable provision or requirements of the Zoning Ordinance would cause undue and unnecessary hardship on the Applicant, and thereby cause the Applicant to be treated in a manner which is dissimilar to other comparable businesses.

5. The requested variance would be consistent with the spirit and purpose of the City of Tucker Zoning Ordinance and the Comprehensive Plan text.

The requested variances are consistent with the spirit, purpose and intent of the City of Tucker Zoning Ordinance and the Comprehensive Plan text.

CONSTITUTIONAL ALLEGATIONS

The portions of the Zoning Resolution of the City of Tucker as applied to the Subject Property which classify or may classify the 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 1 and 2 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.

In addition, the development of the Subject Property subject to the present standards set forth in the Zoning Ordinance 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.

A denial of this Application would constitute an arbitrary and capricious act by the City of Tucker 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, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the City of Tucker Mayor and City Council to grant the variances as proposed 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 variances or special exceptions granted with respect to the subject Property that are 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 the Applicant's utilization of the subject Property would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

2016-121 L

AMENDED APPLICATION

5LUP-16-003 CITY OF TUCKER
VS-16-003-of-submittal
VS-16-003-02 OCT 05 2016
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APPLICANT INFORMATION	OWNER INFORMATION
NAME: <u>Mt. Moriah Missionary Baptist Church of Tucker, Georgia, Inc.</u>	NAME: <u>Mt. Moriah Missionary Baptist Church of Tucker, Georgia, Inc.</u>
ADDRESS: <u>c/o Battle Law. P.C., One West Court Square, Suite 750,</u>	ADDRESS: <u>1983 Brockett Road</u>
CITY: <u>Decatur</u>	CITY: <u>Tucker</u>
STATE: <u>Georgia</u> ZIP: <u>30030</u>	STATE: <u>Georgia</u> ZIP: <u>30084</u>
PHONE: <u>404-745-0045</u>	PHONE: <u>770-934-5002 ext. 108</u>

CONTACT PERSON: Michele L. Battle PHONE: 404-745-0045

CONTACT'S E-MAIL: mlb@battlelawpc.com

APPLICANT IS THE:

OWNER'S AGENT PROPERTY OWNER CONTRACT PURCHASER

PRESENT ZONING DISTRICT(S): R85 REQUESTED ZONING DISTRICT: _____

PRESENT LAND USE CATEGORY: _____ REQUESTED LAND USE CATEGORY: _____

LAND DISTRICT(S): 18 LAND LOT(S): 186 ACREAGE: 14.366

ADDRESS OF PROPERTY: 1983 Brockett Road

PROPOSED DEVELOPMENT: existing church and a new 12,000 square-foot family life center as Accessory Use for the existing church
Allow 35ft accessory structure

CONCURRENT VARIANCES: Allow an accessory use within the front yard

RESIDENTIAL DEVELOPMENT

No. of Lots/Dwelling Units _____

Dwelling Unit Size (Sq. Ft.): _____

Density: _____

NON-RESIDENTIAL DEVELOPMENT

No. of Buildings/Lots: 1

Total Building Sq. Ft. 12,000 Sq. Ft.

Density: _____

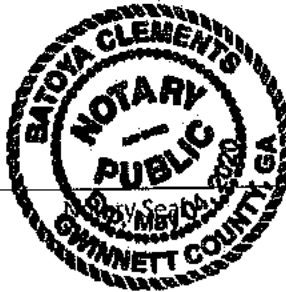
APPLICANT'S CERTIFICATION

THE UNDERSIGNED BELOW STATES UNDER OATH THAT THEY ARE AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 24 MONTHS FROM THE DATE OF LAST ACTION BY THE MAYOR AND CITY COUNCIL.

Wayne Morehead 9/24/16
Signature of Applicant Date

Wayne Morehead, Business Administrator
Type or Print Name and Title

[Signature] 09/24/2016
Signature of Notary Public Date



PROPERTY OWNER'S CERTIFICATION

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of DeKalb County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Tucker, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning (RZ), Comprehensive Plan Amendment (CA), Special Land Use Permit (SLUP), & Concurrent Variance (CV) in request of the items indicated below.

I, Wayne Morehead, authorize, Michele L. Battle,
(Property Owner) (Applicant)

to file for SLUP, at 1983 Brockett Road
(RZ, CA, SLUP, CV) (Address)

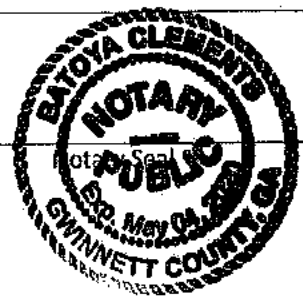
on this date 9/24/16, 2016
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
- I understand that if an application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the mayor and city council on the previous special land use permit.
- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the Tucker Zoning Ordinance) will result in REJECTION OF THE APPLICATION.
- I understand that preliminary approval of my design plan does not authorize final approval of my zoning or signage request. I agree to arrange additional permitting separately, after approval is obtained.
- I understand that representation associated with this application on behalf of the property owner, project coordinator, potential property owner, agent or such other representative shall be binding.

Wayne Morehead
Signature of Property Owner Date

Wayne Morehead, Business Administrator
Type or Print Name and Title

[Signature] 9/24/2016
Signature of Notary Public Date



Amended and Restated
Environmental Site Analysis (ESA)

1. **Conformance with the Comprehensive Plan.** The Subject Property is located in a single-family residential district, zoned R-85. It has been used as a place of worship for the last thirty years. The 2025 Comprehensive Plan shows the Subject Property as having a land use designation of Suburban. Therefore, it is the Applicant's belief that the special land use proposal of the Subject Property as a place of worship will allow for a use that is more compatible with the surrounding uses.
2. **Environmental Impacts of the Proposed Project.**
 - (a) **Wetlands.** According to the National Wetlands Inventory Wetlands Mapper, the Subject Property is not located within any area designated as wetlands
 - (b) **Floodplain.** According to the FEMA National Flood Hazard interactive mapping system, a small portion to the rear of the Subject Property is in flood hazard Zone AE.
 - (c) **Streams/stream buffers.** Based on field observation and verification by the Applicant's surveyor, there are no streams located on the Subject Property.
 - (d) **Slopes exceeding 25 percent over a 10-foot rise in elevation.** Based on field observation and verification by the Applicant's surveyor, there are no slopes exceeding 25 percent over a 10-foot rise in elevation on the Subject Property.
 - (e) **Vegetation (including endangered species).** To the Applicant's knowledge and based on field observation there are no endangered species located on the Subject Property.
 - (f) **Wildlife Species (including fish and endangered species).** Based on field observation, and to the Applicant's knowledge, there are no wildlife species, including fish and endangered species located on the Subject Property.
 - (g) **Archeological/Historical Sites.** Based on field observation and to the Applicant's knowledge, there are no archeological or historical sites located on the Subject Property.
3. **Project Implementation Measures**
 - (a) **Protection of environmentally sensitive areas.** There are no environmentally sensitive areas located on the Subject Property.
 - (b) **Protection of water quality.** All stormwater runoff generated from the site shall be adequately treated before discharge in accordance with local requirements.
 - (c) **Minimization of negative impacts on existing infrastructure.** The existing infrastructure surrounding the Subject Property will not be negatively impacted by the development of the proposed project. It is the Applicant's intent to comply with all City of Tucker development regulations, and to connect into the existing utilities in the area in order to minimize disturbance in the surrounding community.

- (d) **Minimization on archeological/historically significant area.** To the Applicant's knowledge, there are no archeological/historically significant areas located on or near the Subject Property.
- (e) **Minimization of negative impacts on environmentally stressed communities.** The proposed uses in the proposed project are generally compatible with nearby residential communities, and will be contained wholly within the building, and to the knowledge of Applicant, will not generate any measurable dust, vibrations, odor, glare, emissions or noise beyond the Subject Property.
- (f) **Creation and preservation of green space and open space.** The proposed project will not result in the removal of trees from the Subject Property. A significant amount of open green space will remain on the Subject Property.
- (g) **Protection of citizens from the negative impacts of noise and lighting.** All lighting on the Subject Property will be in compliance with the County rules and regulations, and in accordance with the County's noise regulations.
- (h) **Protection of parks and recreational green space.** To the Applicant's knowledge, there are no parks or recreational green space in the area.
- (i) **Minimization of impacts to wildlife habitats.** To the Applicant's knowledge, there are no wildlife habitats on or near the Subject Property.

Environmental Impact Report

- 1. Environmental Adverse Uses.** There are no environmentally sensitive uses located on the Subject Property.
- 2. Impact on noise levels of the surrounding area.** The use of the Subject Property will be in compliance with the City of Tucker's rules and regulations regarding noise levels. As the use on the Subject Property will be wholly contained within the proposed improvements with adequate and required noise buffering, there should be no impact on the surrounding area from the proposed use of the Subject Property.
- 3. Impact on air quality of surrounding area.** As previously stated, the proposed project will not generate any measurable dust, vibrations, odor, glare, emissions or noise beyond the Subject Property.
- 4. Impacts of water quality/resources.** All stormwater runoff generated from a site shall be adequately detained and treated before discharged.
- 5. Impacts on vegetation, fish and wildlife species.** There are no state waters, made ponds or other water features on Subject Property. To the best of Applicant's knowledge there is no wildlife located on or near the Subject Property. No trees will be removed during the development of the Subject Property.
- 6. Impacts of thermal and explosive hazards on the surround areas.** The Subject Property will be used for a family life center which will provide office space, classrooms, and a multi-purpose room. There is no intent for thermal or explosive hazards to be located on the Subject Property, and to the extent that any such uses may be located on the Subject Property in accordance with the R-85 District Regulations, such uses will be conducted in accordance with all Federal, State and local laws and regulations.
- 7. Impacts of hazardous wastes on the surrounding area.** The Subject Property will be used for a family life center which will provide office space, classrooms, and a multi-purpose room, and to the extent that any hazardous waste is generated in connection with the operation of any business to be located on the Subject Property in accordance with the R-85 District Regulations, such waste shall be disposed of in accordance with all Federal, State and local laws and regulations.
- 8. Minimization of negative impacts on environmentally stressed communities.** The proposed uses in the proposed project will be contained wholly within the building, and to the knowledge of Applicant, will not generate any measurable dust, vibrations, odor, glare, emissions or noise beyond the Subject Property. Furthermore, to the best of the Applicant's knowledge, there are no environmental stressed communities within the general vicinity of the Subject Property.

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And

Other Material Required by
City of Tucker, Georgia Zoning Ordinance
For

A Special Land Use Permit for a Place of Worship pursuant to
the City of Tucker Zoning Ordinance

Of

MT. MORIAH MISSIONARY BAPTIST CHURCH OF TUCKER, GEORGIA, INC.

For

+/-14.366 acres of Land
located at
1983 Brockett Road in
Land Lot 186, 18th District, City of Tucker, City of Tucker

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 Subject Property is a 14.366-acre tract of land located at 1983 Brockett Road, which is currently zoned R-85 and has been used as a place of worship for in excess of 30 years. Since the Applicant acquired the Subject Property, the Church has modified its use of the existing improvements. The original sanctuary is now used as a Student Center, the Sanctuary has been moved into the building formerly used as a gym, and the administrative building is still used for the same purpose. Due, however, to the differing needs of the congregation, the Church desires to develop a 12,000 sq. ft. family life center on the Subject Property will provide for additional office space, classrooms and a new multi-purpose room that will primarily be used as a basketball court. In order to develop the family life center a Special Land Use Permit must be issued for the Church, which is currently a legal non-conforming use. Brockett Road is a minor arterial road, and the Subject Property is in excess of 3 acres.

SECTION 27-873 CRITERIA

- A. Adequacy of the size of the Site for contemplated use:** The site is adequate for the proposed use. The subject property is 14.366 acres and provides ample space for the proposed use.
- B. Compatibility of the proposed use with adjacent properties:** The proposed use is compatible with the adjacent properties, which include both residential uses, as well as another place of worship located on the southern boundary line of the Subject Property.
- C. Adequacy of public services, facilities and utilities:** There are adequate public services, facilities and utilities to support the proposed uses.
- D. Adequacy of the public street:** The Subject Property is located on Brockett Road, which is classified as a "Minor Arterial" street, and as such has adequate capacity to handle the volume of traffic to be generated by the proposed use.
- E. Possibility of adverse effect along access routes to the site:** There is no possibility of adverse effect along the access route to the Subject Property as a result of the used of the Subject Property as a place of worship, including the development of the family life center.
- F. Ingress and egress to the subject property:** There is adequate ingress and egress to the Subject Property. The Subject Property has two driveways, which allow for adequate circulation for ingress and egress.
- G. Adverse impact on adjoining land use by reason of noise, smoke, odor, dust or vibration:** The Applicant's proposed use of the Subject Property will not create an adverse impact on the adjoining land uses by reason of noise, smoke, odor, dust or vibration.
- H. Adverse impact on adjoining land use by reason of hours of operation:** The Applicant's hours of operation will not have an adverse impact on the adjoining land uses. The

Church is open throughout the week during normal business hours. All evening activities at the Church are typically over by no later than 9pm. During the weekend the Church has similar hours between 8am and 9pm on Saturday and 8am and 7pm on Sunday.

- I. Adverse impact by manner of operation:** The manner of operation of the Applicant will not have an adverse impact on the adjoining land uses.
- J. Use consistent with zoning district classification:** The use of the Subject Property for a place of worship is consistent with the R85 Zoning District Regulations.
- K. Use consistent with the Comprehensive Land Use Plan:** The use of the Subject Property for a place of worship is consistent with the Comprehensive Land Use Plan designation for the Subject Property, which is Suburban.
- L. Compliance with buffer zones and setback requirements:** The proposed uses will be developed in compliance with the development requirements for the R-85 District Regulations and with the Zoning Ordinance's supplemental regulations applying to Places of Worship.
- M. Adequate provision for refuse and service areas:** There is adequate provision for refuse and service areas.
- N. Length of time for SLUP:** The special land use permit should not be limited in duration.
- O. Appropriateness of size, scale and massing of buildings in comparison to adjacent properties:** The size, scale and massing of the existing building is appropriate in comparison to the surrounding residential uses.
- P. Adverse historic impact:** The proposed project will not have an adverse impact on any historic buildings, sites, districts or archaeological resources in the surrounding area.
- Q. Satisfaction of Supplemental Regulations:** N/A
- R. Appropriateness of height:** The proposed uses will be in compliance with the R-85 District regulations, and will not exceed 35 feet in height.
- S. Compatibility with Community Needs.** The Subject Property has been a place of worship for in excess of 30 years. Its presence is woven into the fabric of the surrounding community, as it services the spiritual needs of those attending.

CONSTITUTIONAL ALLEGATIONS

The portions of the City of Tucker 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 City of Tucker 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 City of Tucker Mayor and City Council 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 City of Tucker Mayor and City Council to rezone the Subject Property to the classification as requested or issue the special land use permit requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the Property or granting of a special land use permit subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

**AMENDED AND RESTATED
CONCURRENT VARIANCE JUSTIFICATION**

APPLICANT: Mt. Moriah Missionary Baptist Church of Tucker, Georgia,
Inc.

SUBJECT
PROPERTY: 1983 Brockett Road

ATTORNEY: Michèle L. Battle, Esq.
Battle Law, P.C.
One West Court Square, Suite 750
Decatur, Georgia 30030
Phone: 404.601.7616

The Subject Property is a 14.366 acre tract of land located at 1983 Brockett Road which is currently zoned R-85 and has been used as a place of worship for in excess of 30 years. Since the Applicant acquired the Subject Property, the Church has modified its use of the existing improvements. The original sanctuary is now used as a Student Center, the Sanctuary has been moved into the building formerly used as a gym, and the administrative building is still used for the same purpose. Due, however, to the differing needs of the congregation, the Church desires to develop a 12,000 sq. ft. family life center on the Subject Property will provide for additional office space, classrooms and a new multi-purpose room that will primarily be used as a basketball court. In order to avoid the removal of a significant number of trees, as well as not interfering with the drainage ditch/stream buffer in the rear yard of the property, the Applicant is seeking the following concurrent variances:

1. Allow parking within the front yard for an accessory use; and
2. To allow an accessory use of 35 feet in height

VARIANCE CRITERIA

1. **By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;**

The Subject Property has been developed as a place of worship for in excess of 30 years, with three existing structures being currently located on the site. The church sanctuary now sits to the rear of the original sanctuary and administrative building. Behind the sanctuary is a very heavily wooded area which provides a buffer from the residential community that lies immediately to the East of the Subject Property.

Additionally, within the rear yard is a drainage ditch. The parking lots are located within the side yards of the Subject Property. Therefore, the majority of the Subject Property is already built out. The area in which the Church proposes to locate the accessory building, is on a grassed area that serves no useful purpose, and would allow the Church to develop the Family Life Center with little to no disruption to the current use of the Subject Property.

With respect to the request height increase, the proposed Family Life Center will not exceed the 35ft height of the existing sanctuary. The additional height in excess of the allow 24' is needed in order to allow for the gymnasium and the office space and classrooms that will be provided for within the building.

The topographic conditions of the Subject Property were not created by the Applicant and support the approval of this concurrent variance request, as the strict application of the requirements of the City of Tucker Zoning Ordinance would deprive the Applicant of rights and privileges enjoyed by other places of worship.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located

It is the Applicant's contention that the requested variances do not go beyond the minimum necessary to afford relief, and do not constitute a special privilege.

3. The grant of the variances will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located

The granting of the requested variances will not have a negative impact on the surrounding community or be detrimental to the public welfare. In fact, the failure to grant the requested variance will result in negatively impacting the surrounding community.

4. The literal interpretation and strict application of the applicable provisions or requirements of the Zoning Ordinance will cause undue and unnecessary hardship on the Applicant.

The literal interpretation and strict application of the applicable provision or requirements of the Zoning Ordinance would cause undue and unnecessary hardship on the Applicant, and thereby cause the Applicant to be treated in a manner which is dissimilar to other comparable businesses.

5. The requested variance would be consistent with the spirit and purpose of the City of Tucker Zoning Ordinance and the Comprehensive Plan text.

The requested variances are consistent with the spirit, purpose and intent of the City of Tucker Zoning Ordinance and the Comprehensive Plan text.

CONSTITUTIONAL ALLEGATIONS

The portions of the Zoning Resolution of the City of Tucker as applied to the Subject Property which classify or may classify the 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 1 and 2 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.

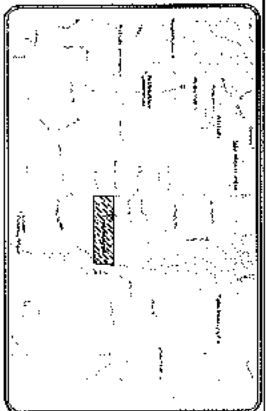
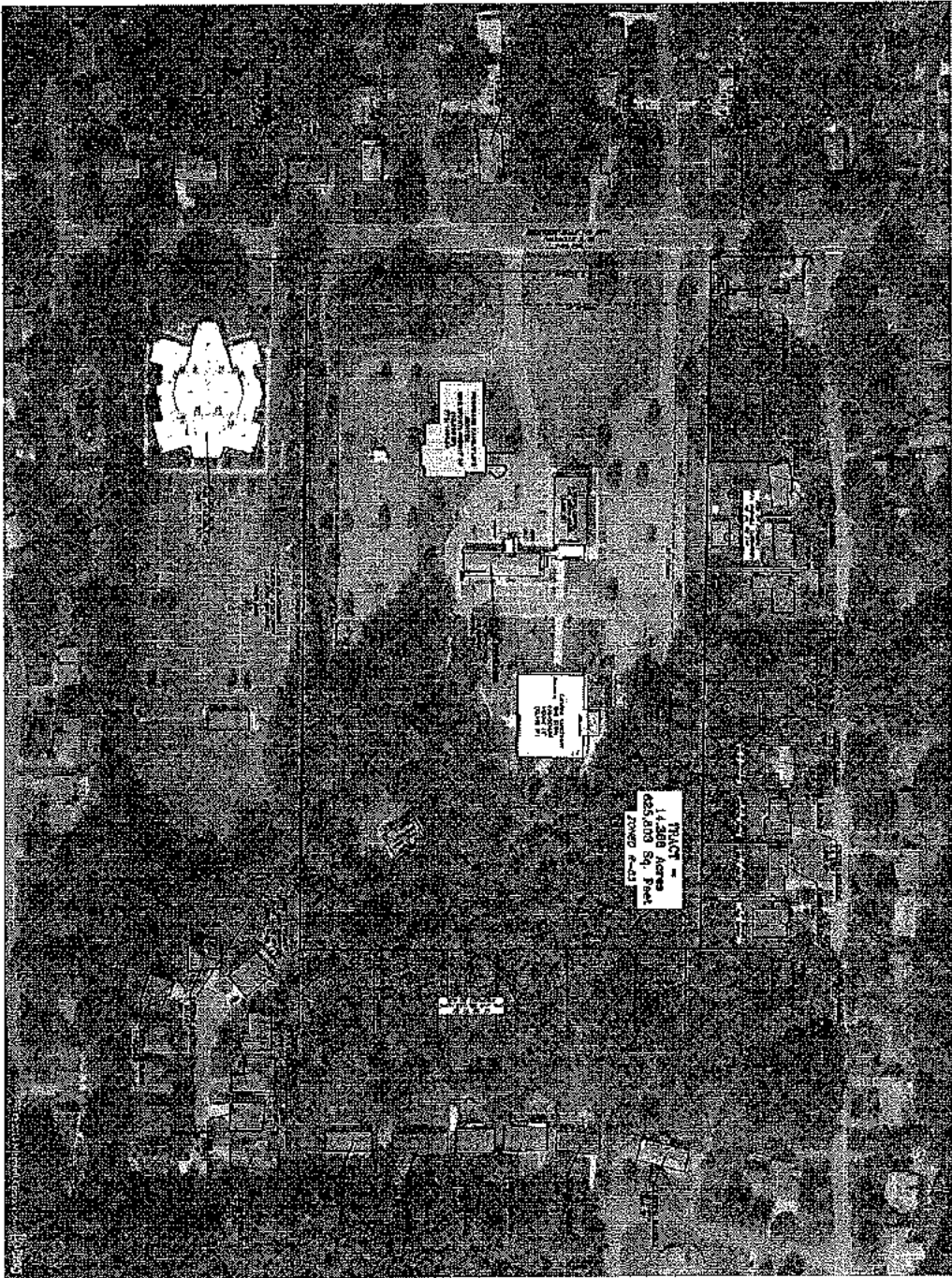
In addition, the development of the Subject Property subject to the present standards set forth in the Zoning Ordinance is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's property without just 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.

A denial of this Application would constitute an arbitrary and capricious act by the City of Tucker 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, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the City of Tucker Mayor and City Council to grant the variances as proposed 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 variances or special exceptions granted with respect to the subject Property that are 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 the Applicant's utilization of the subject Property would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

MOUNT MORIAH BAPTIST CHURCH

FAMILY LIFE CENTER ADDITION



LOCATION MAP
N.T.S.

OWNER/DEVELOPER
DR. JEROME KING
M.T. MORIAH BAPTIST CHURCH
1501 BROCKETT ROAD
TUCKER, GA 30084

ENGINEER
MARK WRIGHT
ENGINEERING ASSOCIATES, INC.
1100 W. BUCKLEY BLVD., SUITE 200
ATLANTA, GEORGIA 30349
(770) 452-7849

2 HOUR CONTACT
CONTACT: WAVE WOODHEAD
770-934-5000
WAVEWOOD@GMAIL.COM

SITE DATA
ZONING USE: R-43
TOTAL AREA: 14,388 AC
DISTURBED AREA: 1,857 AC

DEKALB COUNTY, GA
LAND LOT 186: 18TH DISTRICT
PARCEL # 18 186 01 027

BUILDING DATA
PROPOSED BUILDING SQUARE FOOTAGE:
12,000 sq. ft.

PARKING DATA
REQUIRED PARKING
ONE (1) SPACE FOR EACH FOUR (4)
SEATS IN THE LARGEST ASSEMBLY ROOM
LARGEST ASSEMBLY ROOM: SANCTUARY
SANCTUARY CONTAINS 975 SEATS

REQUIRED PARKING = 675 / 4
REQUIRED PARKING = 168.75 SPACES
REQUIRED PARKING = 168 SPACES

EXISTING PARKING PROVIDED: 309 SPACES
4 HANDICAP SPACES
2 VAN H/C SPACES

GRAPHIC SCALE
1" = 100' 0"

1" = 100' 0"
1" = 100' 0"

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DEKALB COUNTY
PLANNING DEPARTMENT
1501 BROCKETT ROAD
TUCKER, GA 30084
(770) 452-7849

LAND MARKING
ON-TOPOGRAPHIC
LANDSCAPE ARCHITECTURE

PROJECT:
MOUNT MORIAH BAPTIST CHURCH
LAND LOT 186
18TH DISTRICT
DEKALB COUNTY, GEORGIA
1983 BROCKETT ROAD
PARCEL: 18 186 01 027

SLUP ADJOINING PROPERTY STUDY

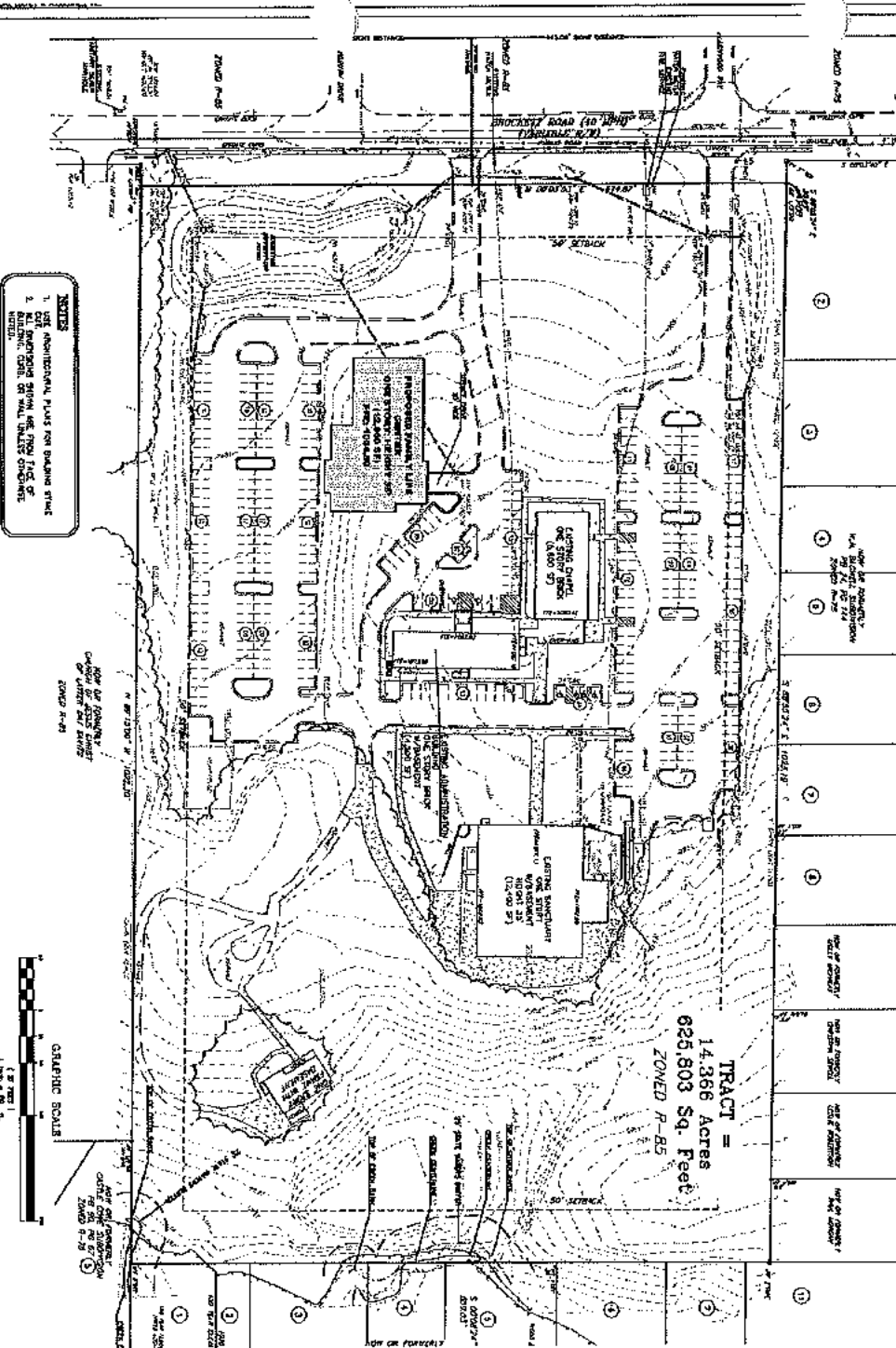
SCALE: 1" = 60'
DATE: 10/04/2010
DRAWN BY: ANTHONY SAMPLI
PROJECT MANAGER: MARK WRIGHT
C/C CHECK: KEITH EDWARDS

SHEET NO.
EX.1

PROJECT NO.
0P16-271

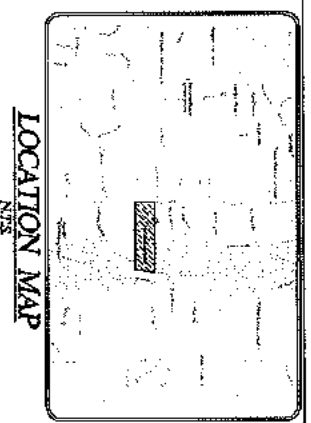
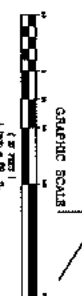
MOUNT MORIAH BAPTIST CHURCH

FAMILY LIFE CENTER ADDITION



TRACT =
14,366 Acres
626,803 Sq. Feet
ZONED R-85

- NOTES**
1. SEE ARCHITECTURAL PLANS FOR BUILDING STRUCTURE
 2. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED
 3. SEE SITE PLAN FOR ALL UTILITIES



OWNER/DEVELOPER
DR. JEROME KING
MOUNT MORIAH BAPTIST CHURCH
1963 BROCKETT ROAD
TUCKER, GA 30084

ENGINEER
R. B. HARRIS & ASSOCIATES, INC.
1863 CENTURY PLACE
SUITE 202
ATLANTA, GEORGIA 30345
(770) 452-7515

24 HOUR CONTACT
STEVE WATKINS
WATKINS ENGINEERING
WATKINS@GMAIL.COM

SITE DATA
ZONING USE: R-85
TOTAL ACRES: 14,366 AC
DISTURBED ACRES: 1.83 AC
DEKALB COUNTY, GA
LAND LOT 186, 18TH DISTRICT
PARCEL # 16 186 01 027

BUILDING DATA
PROPOSED BUILDING SQUARE FOOTAGE:
12,000 sq. ft.

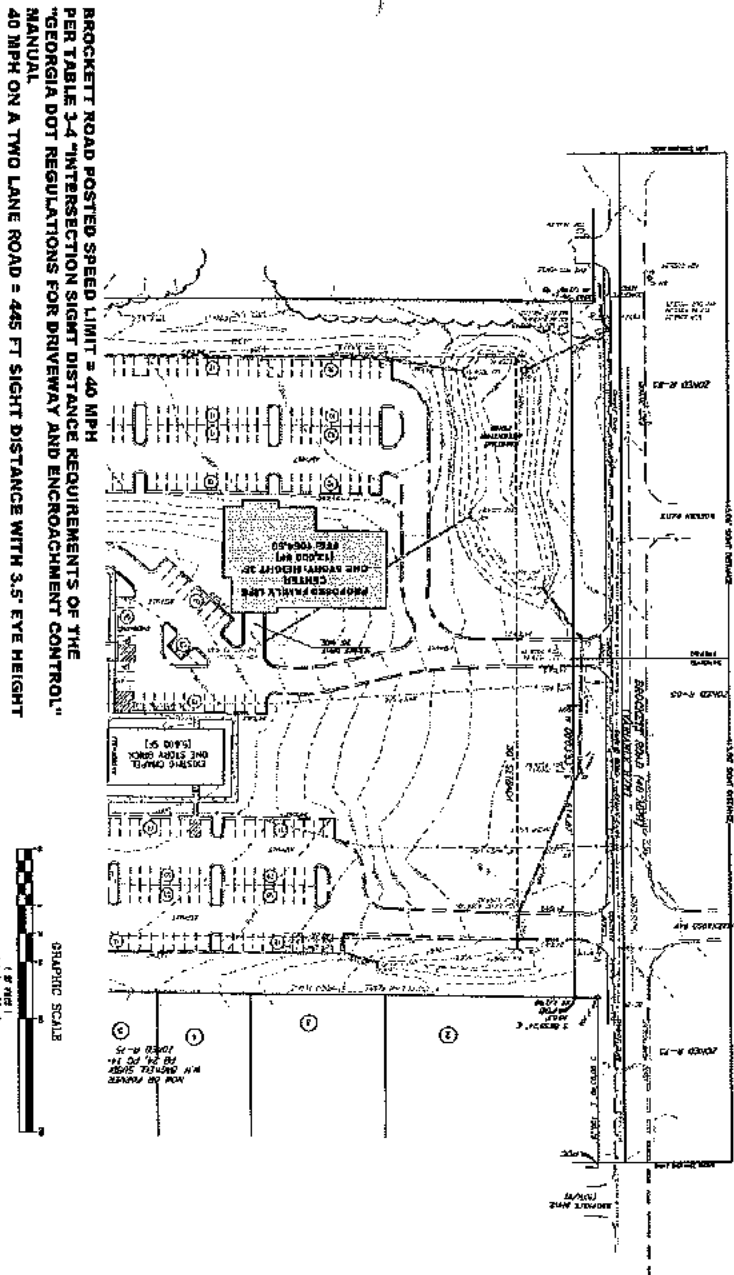
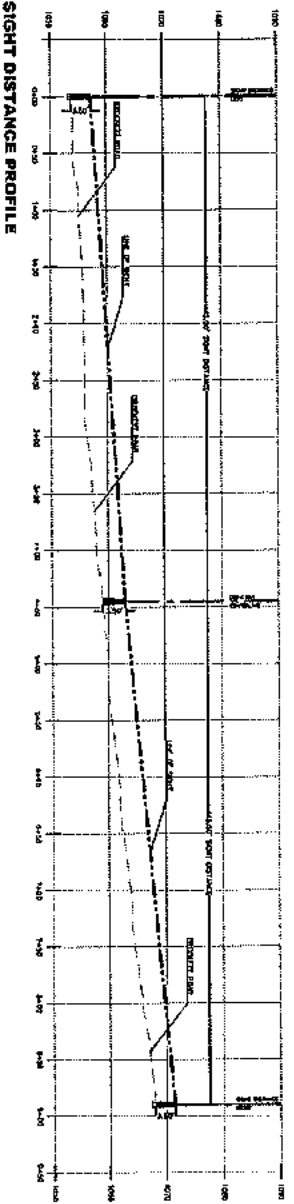
PARKING DATA
REQUIRED PARKING
ONE (1) SPACE FOR EACH TOUR (4)
SEATS IN THE LARGEST ASSEMBLY ROOM
LARGEST ASSEMBLY ROOM: SANCTUARY
SANCTUARY CONTAINS 675 SEATS

REQUIRED PARKING = 675 / 4 = 168.75 SPACES
REQUIRED PARKING = 168.75 SPACES
EXISTING PARKING = 188 SPACES
EXISTING PARKING PROVIDED: 309 SPACES
4 HANDICAP SPACES
2 VAN H/C SPACES

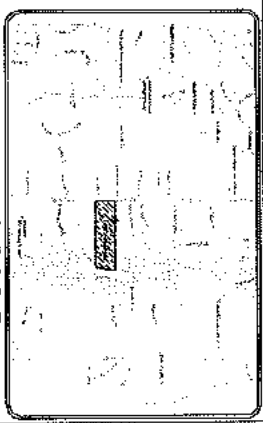
CALL 811
FOR ALL UTILITIES
BEFORE YOU DIG
MISSISSIPPI
811

<p>PROJECT NO. OP16-271</p> <p>SHEET NO. EX.2</p>	<p>SLURP SITE PLAN</p> <p>SCALE: 1" = 20'</p> <p>DATE: 10/04/2016</p> <p>DRAWN BY: ANTHONY SAMPLE</p> <p>PROJECT MANAGER: MIKE VERNON</p> <p>DATE CHECK: KEVIN TORRES</p>	<p>PROJECT:</p> <p>MOUNT MORIAH BAPTIST CHURCH</p> <p>LAND LOT 186 18TH DISTRICT DEKALB COUNTY, GEORGIA 1963 BROCKETT ROAD PARCEL: 16 186 01 027</p>		<p>LAND/DRAWN BY: D.W. ANDERSON</p> <p>LABORER/ENGINEER:</p>
		<p>TO: TRUSTEE FOR TRUSTEES MOUNT MORIAH BAPTIST CHURCH 1963 BROCKETT ROAD TUCKER, GA 30084</p>		

MOUNT MORIAH BAPTIST CHURCH FAMILY LIFE CENTER ADDITION



BROCKETT ROAD POSTED SPEED LIMIT = 40 MPH
PER TABLE 3-4 "INTERSECTION SIGHT DISTANCE REQUIREMENTS OF THE
"GEORGIA DOT REGULATIONS FOR DRIVEWAY AND ENCROACHMENT CONTROL."
MANUAL
40 MPH ON A TWO LANE ROAD = 445 FT SIGHT DISTANCE WITH 3.5" EYE HEIGHT



OWNER/DEVELOPER
DR. JEROME KING
MOUNT MORIAH BAPTIST CHURCH
1583 BROCKETT ROAD
TUCKER, GA 30084

ENGINEER
THE HEWITT
ENGINEERS & ASSOCIATES, INC.
1552 CENTURY PLACE
SUITE 202
ATLANTA, GEORGIA 30345
(770) 452-7845

24 HOUR CONTACT
CONTRACTOR: WALTER ROSENHEAD
CONTACT: WALTER ROSENHEAD
WALTERROSENHEAD@GMAIL.COM

SITE DATA
TOTAL LOT: P-85
TOTAL AREA: 1.366 AC.
DISTURBED ACREAGE: 1.63 AC.
DEKALB COUNTY, GA
LAND LOT 186, 18TH DISTRICT
PARCEL #: 18 186 01 027

BUILDING DATA
PROPOSED BUILDING SQUARE FOOTAGE:
12,000 sq. ft.

PARKING DATA
REQUIRED PARKING
ONE (1) SPACE FOR EACH FOUR (4)
SEATS IN THE LARGEST ASSEMBLY ROOM
LARGEST ASSEMBLY ROOM: SANCTUARY
SANCTUARY CONTAINS 675 SEATS
REQUIRED PARKING = 675 / 4
REQUIRED PARKING = 168.75 SPACES
REQUIRED PARKING = 169 SPACES
EXISTING PARKING PROVIDED: 109 SPACES
8 HANDICAP SPACES
1 VAN H/C SPACES

CALL 811
ONE HOUR
FOR ALL UTILITIES
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www.811.com

PROJECT NO.
OP16-271

DATE: 08/24/2016

PROJECT MANAGER: LISA TRIGG

SCALE: 1" = 50'

PROJECT:
MOUNT MORIAH
BAPTIST CHURCH
LAND LOT 186
18TH DISTRICT
DEKALB COUNTY, GEORGIA
1583 BROCKETT ROAD
PARCEL #: 18 186 01 027

REVISIONS:

NO.	DATE	DESCRIPTION

SLURP SIGHT DISTANCE PROFILE

SCALE: 1" = 50'

DATE: 08/24/2016

DRAWN BY: LISA TRIGG

PROJECT MANAGER: LISA TRIGG

QA/QC CHECK: KIMBERLY

LAND PLANNING
LANDSCAPE ARCHITECTURE

LAND PLANNING
LANDSCAPE ARCHITECTURE

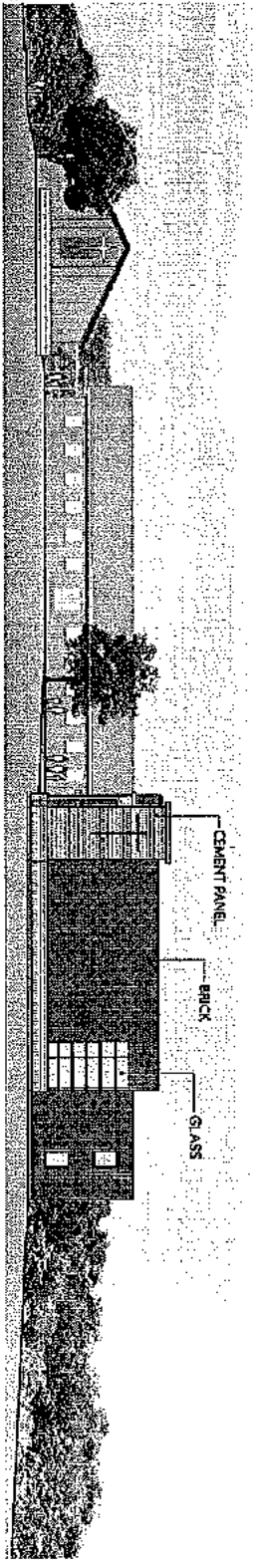
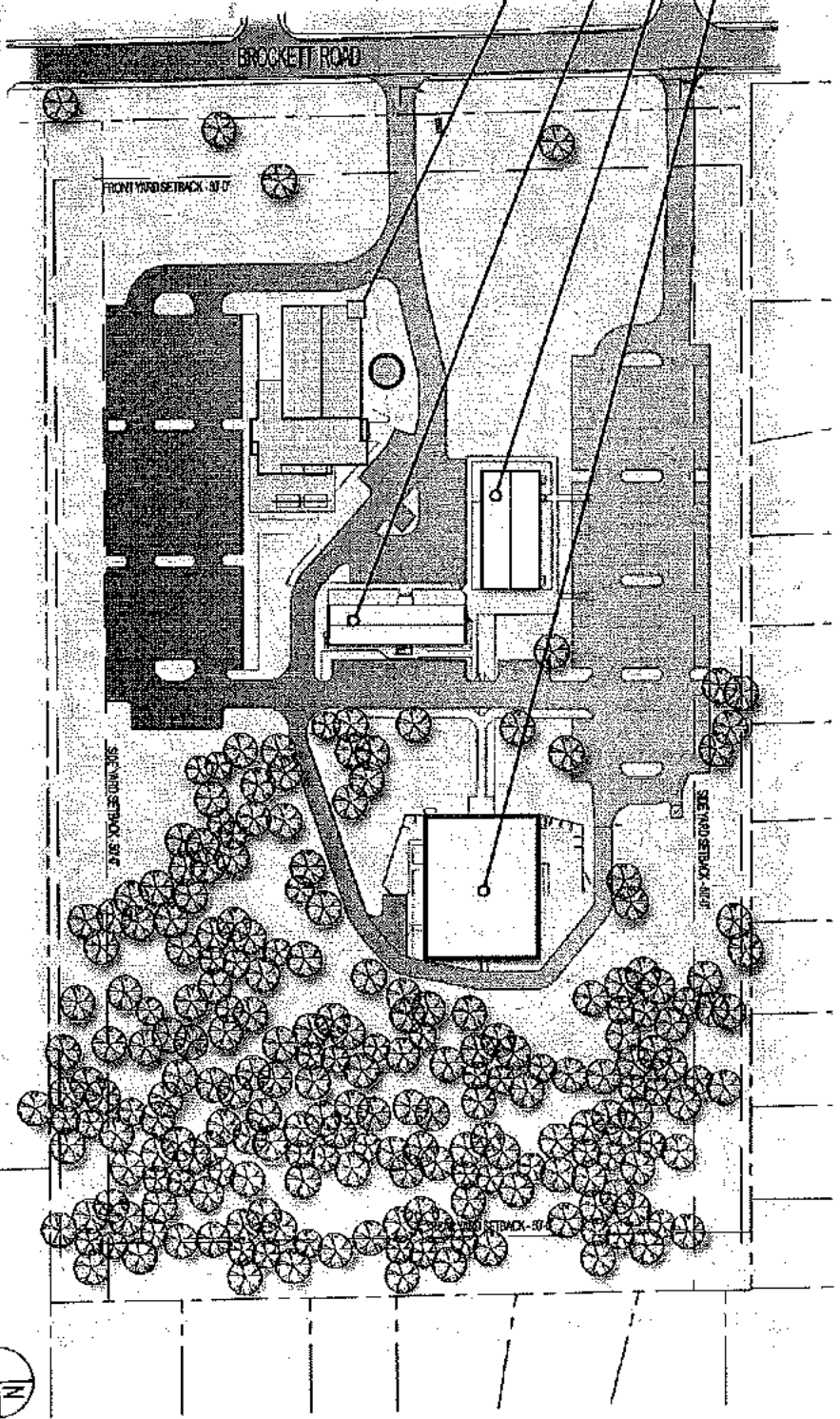
**THEY DESIGN THE PROJECTS
WE CONSTRUCT THE SITES FOR
MOUNT MORIAH BAPTIST CHURCH
MEMBERSHIP**

PROJECT NO.
OP16-271

EX.3

EXISTING SANCTUARY
 EXISTING CHAPEL
 EXISTING ADMINISTRATION BUILDING
 NEW FAMILY LIFE CENTER (2000sf)

OVERALL SITE PLAN
 SCALE: 1/8" = 1'-0"



ELEVATION FROM BROCKETT RD.
 SCALE: 1/8" = 1'-0"

ML Moriah Baptist Church Family Life Center Addition
 1983 Brockett Rd.
 Tucker, GA 30084

Geode
 Van Slyke
 Architecture

Architect:
 Geode Van Slyke Architecture Inc.
 Atlanta, GA 30312
 404.521.4552

GENERAL CONTRACTOR



DATE: 02/01/15
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO: 140113.00

SP-01



7LUP-16-003
CITY OF TUCKER

SEP 26 2016 *BS*

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2016-121L

678-597-9040 ~ www.tuckerga.gov
4119 Adrian Street, Tucker, GA 30084

LAND USE PETITION CHECKLIST & APPLICATION FORM
REZONING, COMPREHENSIVE PLAN AMENDMENT,
SPECIAL LAND USE PERMIT & CONCURRENT VARIANCE

INSTRUCTIONS

A properly completed application and fees are due at the time of submittal. **An incomplete application will not be accepted.** Original signatures are required for the Application. **Note: Applicants are highly encouraged to meet with nearby property owners prior to filing an application.**

APPLICATION MATERIALS

REQUIRED ITEMS	NUMBER OF COPIES	CHECK <input type="checkbox"/>
Provide one (1) a digital copy of <u>all</u> submitted materials.	• One (1) CD or flash drive in .JPEG, .TIFF, .PDF or .DOC format	<input type="checkbox"/>
Pre-Application Meeting Form	• One (1) Copy	<input type="checkbox"/>
Application	• One (1) Copy	
Written Legal Description	• One (1) 8 1/2" x 11" Legal Description	
Boundary Survey and Proposed Site Plan (See Page 16 for Requirements)	• Ten (10) Full-Size (24" x 36") Copies of each • One (1) 8 1/2" x 11" Site Plan of each	<input type="checkbox"/>
Building Elevations (renderings or architectural drawings to show compliance with Article 5)	• One (1) Copy	<input type="checkbox"/>
Letter of Intent	• One (1) Copy	<input type="checkbox"/>
Analysis of standards/criteria listed in 7.3.4, 7.3.5, 7.4.6, 7.4.7, and/or 7.5.3	• One (1) Copy	<input type="checkbox"/>
Environmental Site Analysis Form	• One (1) Copy	<input type="checkbox"/>
Disclosure Form	• One (1) Copy	<input type="checkbox"/>
Peak-hour Trip Generation Count	• One (1) Copy	<input type="checkbox"/>
THE FOLLOWING ITEMS MAY BE REQUIRED		
Traffic Impact Study	• Three (3) Copies	<input type="checkbox"/>
Development of Regional Impact Review Form	• Three (3) Copies	<input type="checkbox"/>
Environmental Impact Report	• Three (3) Copies	<input type="checkbox"/>
Noise Study Report	• Three (3) Copies	<input type="checkbox"/>

APPLICATION

APPLICANT INFORMATION	OWNER INFORMATION
NAME: <u>Mt. Moriah Missionary Baptist Church of Tucker, Georgia, Inc.</u>	NAME: <u>Mt. Moriah Missionary Baptist Church of Tucker, Georgia, Inc.</u>
ADDRESS: <u>c/o Battle Law. P.C., One West Court Square, Suite 750,</u>	ADDRESS: <u>1983 Brockett Road</u>
CITY: <u>Decatur</u>	CITY: <u>Tucker</u>
STATE: <u>Georgia</u> ZIP: <u>30030</u>	STATE: <u>Georgia</u> ZIP: <u>30084</u>
PHONE: <u>404-745-0045</u>	PHONE: <u>770-934-5002 ext. 108</u>

CONTACT PERSON: Michele L. Battle PHONE: 404-745-0045

CONTACT'S E-MAIL: mlb@battlelawpc.com

APPLICANT IS THE:

OWNER'S AGENT
 PROPERTY OWNER
 CONTRACT PURCHASER

PRESENT ZONING DISTRICT(S): R85 REQUESTED ZONING DISTRICT: _____

PRESENT LAND USE CATEGORY: SUB REQUESTED LAND USE CATEGORY: _____

LAND DISTRICT(S): 18 LAND LOT(S): 186 ACREAGE: 14.366

ADDRESS OF PROPERTY: 1983 Brockett Road

PROPOSED DEVELOPMENT: Family Life Center as Accessory Use for an existing place of worship

CONCURRENT VARIANCES: Allow an accessory use within the front yard

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units _____	No. of Buildings/Lots: <u>1</u>
Dwelling Unit Size (Sq. Ft.): _____	Total Building Sq. Ft. +/-12,000 Sq. Ft.
Density: _____	Density: _____

PROPERTY OWNER'S CERTIFICATION

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of DeKalb County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Tucker, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning (RZ), Comprehensive Plan Amendment (CA), Special Land Use Permit (SLUP), & Concurrent Variance (CV) in request of the items indicated below.

I, Wayne Morehead, authorize, Michele L. Battle
(Property Owner) (Applicant)

to file for SLUP at 1983 Brockett Road
(RZ, CA, SLUP, CV) (Address)

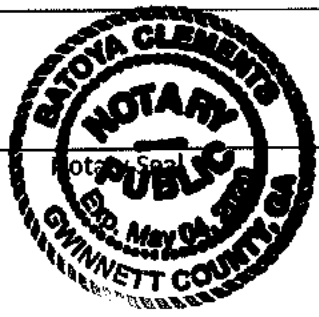
on this date 9/24/16, 20_____
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
- I understand that if an application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the mayor and city council on the previous special land use permit.
- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the Tucker Zoning Ordinance) will result in REJECTION OF THE APPLICATION.
- I understand that preliminary approval of my design plan does not authorize final approval of my zoning or signage request. I agree to arrange additional permitting separately, after approval is obtained.
- I understand that representation associated with this application on behalf of the property owner, project coordinator, potential property owner, agent or such other representative shall be binding.

Wayne Morehead
Signature of Property Owner Date

Wayne Morehead, Business Administrator
Type or Print Name and Title

[Signature]
Signature of Notary Public Date 9/24/2016



Environmental Site Analysis (ESA)

1. **Conformance with the Comprehensive Plan.** The Subject Property is located in a single-family residential district, zoned R-85. It has been used as a place of worship for the last thirty years. The 2025 Comprehensive Plan shows the Subject Property as having a land use designation of Suburban. Therefore, it is the Applicant's belief that the special land use proposal of the Subject Property as a place of worship will allow for a use that is more compatible with the surrounding uses.
2. **Environmental Impacts of the Proposed Project.**
 - (a) **Wetlands.** According to the National Wetlands Inventory Wetlands Mapper, the Subject Property is not located within any area designated as wetlands
 - (b) **Floodplain.** According to the FEMA National Flood Hazard interactive mapping system, a small portion to the rear of the Subject Property is in flood hazard Zone AE.
 - (c) **Streams/stream buffers.** Based on field observation and verification by the Applicant's surveyor, there are no streams located on the Subject Property.
 - (d) **Slopes exceeding 25 percent over a 10-foot rise in elevation.** Based on field observation and verification by the Applicant's surveyor, there are no slopes exceeding 25 percent over a 10-foot rise in elevation on the Subject Property.
 - (e) **Vegetation (including endangered species).** To the Applicant's knowledge and based on field observation there are no endangered species located on the Subject Property.
 - (f) **Wildlife Species (including fish and endangered species).** Based on field observation, and to the Applicant's knowledge, there are no wildlife species, including fish and endangered species located on the Subject Property.
 - (g) **Archeological/Historical Sites.** Based on field observation and to the Applicant's knowledge, there are no archeological or historical sites located on the Subject Property.
3. **Project Implementation Measures**
 - (a) **Protection of environmentally sensitive areas.** There are no environmentally sensitive areas located on the Subject Property.
 - (b) **Protection of water quality.** All stormwater runoff generated from the site shall be adequately treated before discharge in accordance with local requirements.
 - (c) **Minimization of negative impacts on existing infrastructure.** The existing infrastructure surrounding the Subject Property will not be negatively impacted by the development of the proposed project. It is the Applicant's intent to comply with all City of Tucker development regulations, and to connect into the existing utilities in the area in order to minimize disturbance in the surrounding community.
 - (d) **Minimization on archeological/historically significant area.** To the Applicant's knowledge, there are no archeological/historically significant areas located on or near the Subject Property.

- (e) **Minimization of negative impacts on environmentally stressed communities.** With the exception of possibly a joint and wood working premises, the proposed uses in the proposed project are generally compatible with nearby residential communities, and will be contained wholly within the building, and to the knowledge of Applicant, will not generate any measurable dust, vibrations, odor, glare, emissions or noise beyond the Subject Property.
- (f) **Creation and preservation of green space and open space.** The proposed project will not result in the removal of trees from the Subject Property. A significant amount of open green space will remain on the Subject Property.
- (g) **Protection of citizens from the negative impacts of noise and lighting.** All lighting on the Subject Property will be in compliance with the County rules and regulations, and in accordance with the County's noise regulations.
- (h) **Protection of parks and recreational green space.** To the Applicant's knowledge, there are no parks or recreational green space in the area.
- (i) **Minimization of impacts to wildlife habitats.** To the Applicant's knowledge, there are no wildlife habitats on or near the Subject Property.

Environmental Impact Report

- 1. Environmental Adverse Uses.** Section 27.771 of the Dekalb County Ordinance does not apply to the proposed use.
- 2. Impact on noise levels of the surrounding area.** The use of the Subject Property will be in compliance with the County rules and regulations regarding noise levels. As the use on the Subject Property will be wholly contained within the proposed improvements with adequate and required noise buffering, there should be no impact on the surrounding area from the proposed use of the Subject Property.
- 3. Impact on air quality of surrounding area.** As previously stated, the proposed project will not generate any measurable dust, vibrations, odor, glare, emissions or noise beyond the Subject Property
- 4. Impacts of water quality/resources.** All stormwater runoff generated from a site shall be adequately treated before discharge in accordance with Section 22.5 of the Dekalb County Code of Ordinances.
- 5. Impacts on vegetation, fish and wildlife species.** There are no state waters, made ponds or other water features on Subject Property. To the best of Applicant's knowledge there is no wildlife located on or near the Subject Property. No trees will be removed during the development of the Subject Property.
- 6. Impacts of thermal and explosive hazards on the surround areas.** The Subject Property will be used for a family life center which will provide office space, classrooms, and a multi-purpose room. There is no intent for thermal or explosive hazards to be located on the Subject Property, and to the extent that any such uses may be located on the Subject Property in accordance with the R-85 District Regulations, such uses will be conducted in accordance with all Federal, State and local laws and regulations.
- 7. Impacts of hazardous wastes on the surrounding area.** The Subject Property will be used for a family life center which will provide office space, classrooms, and a multi-purpose room, and to the extent that any hazardous waste is generated in connection with the operation of any business to be located on the Subject Property in accordance with the R-85 District Regulations, such waste shall be disposed of in accordance with all Federal, State and local laws and regulations.
- 8. Minimization of negative impacts on environmentally stressed communities.** The proposed uses in the proposed project will be contained wholly within the building, and to the knowledge of Applicant, will not generate any measurable dust, vibrations, odor, glare, emissions or noise beyond the Subject Property. Furthermore, to the best of the Applicant's knowledge, there are no environmental stressed communities within the general vicinity of the Subject Property.

Legal Description Mt. Moriah

All that tract or parcel of land lying and being in Land Lot 186 of the 18th District, City of Tucker, Dekalb County, Georgia and being more particularly described as follows:

To Reach the TRUE POINT OF BEGINNING commence at a the intersection of the southerly Right of Way of Brownlee Drive (60'R/W) and the easterly Right of Way of Brockett Road (Variable R/W); thence running along the easterly Right of Way of Brockett Road (Variable R/W) South 00° 03' 40" East a distance of 150.29 feet to a 2" rod found; thence South 88° 55' 24" East a distance of 20.83 feet to a 1/2" rebar found, said point being 51.5 feet from the centerline of Brockett Road (Variable R/W) and the TRUE POINT OF BEGINNING; from point thus established and leaving said Right of Way South 88° 55' 24" East a distance of 1023.19 feet to a 2" pipe found; thence South 00° 08' 24" West a distance of 609.03 feet to a 2" open top pipe found; thence North 89° 15' 00" West a distance of 1022.30 feet to an iron pin set on the easterly Right of Way of Brockett Road (Variable R/W); thence running along said Right of Way North 00° 03' 53" East a distance of 614.87 feet to the TRUE POINT OF BEGINNING. Said tract contains 14.366 Acres (625,803 Square Feet).



ONE WEST COURT SQUARE, SUITE 750
DECATUR, GA 30030

What is a Community Meeting?

Community meetings are designed to inform the surrounding communities of current rezoning, and special land use permit applications. It's an opportunity for the community to learn about the proposed projects, ask questions, present concerns, and make suggestions.

**SPECIAL LAND USE PERMIT
APPLICATION FOR
PLACE OF WORSHIP WITH FAMILY
LIFE CENTER**

**Community Meeting
Tuesday, June 28, 2016
6:30pm until 7:30pm
Mt. Moriah Baptist Church
1983 Brockett Road
Student Center
Tucker, GA 30084**

**PROPOSED LOCATION:
1983 BROCKETT ROAD
TUCKER, GA**

For More Info Contact Lisa Matthews at:

Phone: 404601-7516 ext.7

Fax: 404745-0045

Email: lhmattews23@gmail.com

KARCIAUSKATTE, RENATA
1934 AVIS AVE
TUCKER, GA 30085

RIESMAN DEEME YAZLI
1938 AVIS LANE
TUCKER, GA30084

LYTLE KATHRYN
1950 AVIS LANE
TUCKER, GA 30084

CHRISTOPHER WESTBROOK
1920 AVIS LANE
TUCKER, GA 30085

TONI HICKS
1923 AVIS LANE
TUCKER, GA 30084

REBECCA PORTER
1927 AVIS LANE
TUCKER, GA 30084

REGINALD EGGLESTON
1933 AVIS LANE
TUCKER, GA 30085

LONNIE BOSTIC
1937 AVIS LANE
TUCKER, GA 30084

GATLON M. RICE
1943 AVIS LANE
TUCKER, GA 30084

BARBARA NEALIS
1947 AVIS LANE
TUCKER, GA 30085

WALTER DAVIS
1931 BROCKETT ROAD
TUCKER, GA 30084

GAYLE SANDERS GROSS
4062 BROCKETT ROAD
TUCKER, GA 30084

DWORKIH MARTIN
4070 BROCKETT CREEK DRIVE
TUCKER, GA 30085

KREUNEN, RALPH
4078 BROCKETT CREEK DRIVE
TUCKER, GA 30084

HILL, ROSALINA. ROSSER
4086 BROCKETT CREEK DR.
TUCKER, GA 30084

JAMES LANGSTON HUGHES
4094 BROCKETT CREEK DRIVE
TUCKER, GA 30084

PAUL HAYNES
4102 BROCKETT CREEK DRIVE
TUCKER, GA 30084

CHARLES BATSON
4110 BROCKETT CREEK DR
TUCKER, GA 30084

JANG KYOUNG WOOK
4118 BROCKETT CREEK
TUCKER, GA 30084

GILBERT ANN C
4126 BROCKETT CREEK DR.
TUCKER, GA 30084

RYAN STALLINGS
4134 BROCKETTE CREEK DR.
TUCKER, GA30084

MIELKE, RICHARD
1909 BROCKETT ROAD
TUCKER, GA 30084

DOBB, KERRY
4033 BROCKETT CREEK RD
TUCKER, GA 30084

SIEG, RANDAL
POB 2703
TUCKER, GA 30084

MARGARET PSAILA
1894 BROCKETT ROAD
TUCKER, GA 30084

JANIE FINCH
1902 BROCKETT ROAD
TUCKER, GA 30084

LE SANG
1625 HARBOUR OAKS ROAD
TUCKER, GA 30084

DIDO KAYA BEDROS
POB 1184
TUCKER, GA 30085

BEATY, BRUCE
1942 BROCKETT ROAD
TUCKER, GA 30084

JOHN SMITH
1950 BROCKETT ROAD
TUCKER, GA 30084

SCOTT MARY BETH
3681 CAMERON CIRCLE
GAINSVILLE, GA 30506

STEWART, REBECCA
1964 BROCKETT ROAD
TUCKER, GA 30084

BRITT LENELL
4035 WOBUE DR.
TUCKER, GA 30084

ROBERT HENSON
4027 DRIVE
TUCKER GA 30084

FRERET, MATT
4019 WOBURN DR.
TUCKER, GA 30084

CHURCH OF JESUS CHRIST
50 NORTH E TEMPLE #22
SALT LAKE CITY, UT 84150

DIGBY, PATRICIA ANN
2013 BROCKETT ROAD
TUCKER, GA 30084

YVCE FEDAYI
2019 BROCKETT ROAD
TUCKER, GA 30084

AIKEN, DANIEL WATLER
4063 BROWNLEE DR
TUCKER, GA 30084

RYDER MILDRED PLACEE
4069 BROWN LEE ROAD
TUCKER, GA 30084

DAVID WILLIAMS
4077 BROWN LEE DRIVE
TUCKER, GA 30084

RUTH BOTTRER
4089 BROWNLEE DR.
TUCKER, GA 30084

MOLLY MUHAHAH
4101 BROWNLEE DRIVE
TUCKER, GA 30084

SHARON BARNES
4095 BROWNLEE DRIVE
TUCKER, GA 30084

SEWELL, CHRISTINA
4107 BROWNLEE DRIVE
TUCKER, GA 30084

ROBERTSON, LESLIE IRENE
4113 BROWNLEE DRIVE
TUCKER, GA 30084

MORGAN PAUL ARTHUR
4119 BROWNLEE DRIVE
TUCKER, GA 30084

JOEL, NORRIS
4125 BROWNLEE DRIVE
TUCKER, GA 30084

BIVEK, DILIP
4137 BROWNLEE DRIVE
TUCKER, GA 30084

COFER, CHARLES
2465 LENORA ROAD
LOGANVILLE, GA 30052

MURPHY, JESSIE
1992 AVIS LANE
TUCKER, GA 30084

CHRISTOPHER POLLETTE
1980 AVIS LANE
TUCKER, GA 30084

RUBY KAY,
77 HEDDEN CT
FRANKLIN, NC 28734

NG KWOK PUN
AVIS LANE
TUCKER, GA 30084

KELLY LEARY
1924 AVIS LANE
TUCKER, GA 30084

THR GEORGIA LP
1717 MAIN STREET
DALLAS, TX 75201

VARELA, TERESA
4034 ALLENWOOD WAY
TUCKER, GA 30084

DAVIS BRIAN JOHN
4026 ALLENWOOD WAY
TUCKER, GA 30084

JOHNSON V SUE
2771 RIVERRA CT
DECATUR, GA 30033

GRAYBOWSKI, FRANCES
4035 ARBORWOOD LANE
TUCKER, GA 30084

NICHOLS, MURIAM
4036 ARBORWOOD LANE
TUCKER, GA 30084

PERRY DANIELS
2050 BROCKETT ROAD
TUCKER, GA 30084

OWOLABI, FOLASSADE
2048 BROCKETT ROAD
TUCKER, GA 30084

Mt. Moriah Baptist Church
 REZONING COMMUNITY MEETING
 1983 Brockett Road (Student Center)

Tuesday, June 28, 2016 - 6:30pm

Please print legibly

First Name	Last Name	Address	City, State	Zip Code	Phone Number	Email Address
David	Smith	1950 Brockett Rd	Tucker GA	30084	770 938-7640	
Futh	Behrer	4089 Brounler	Tucker	30084	770 938-1613	rbahrer@yaho.com
Debbys	Bandy	4066 Brownee	Tucker	30084	770 939-1414	DBB@adl.com
DAN	WILLIAMS	4083 BEAVER LN	TUCKER	30084	67940807	
Dave	Williams	9077 Brown Leads	Tucker	30084	404 557-3729	
David	Hawk	4024 Webern Dr.	Tucker	30084	770-938-8340	
Malisa	Anderson-Strat	4051 Wilflower Ln	Tucker	30084	770 939-1193	
Eric	Strait	4051 Wilflower Ln	Tucker	30084	770 939-7193	
Kathryn	Lytte	1950 Avis Lane	Tucker	30084	678-662-3785	
Toni	Hicks	1923 Avis Lane	Tucker	30084	770 498-0141	
NEAL	MURPHY	1992 AVIS LANE	TUCKER	30084	770 938-7292	

STATEMENT OF INTENT

And

Other Material Required by
City of Tucker, Georgia Zoning Ordinance
For

A Special Land Use Permit for a Place of Worship pursuant to
the City of Tucker Zoning Ordinance

Of

MT. MORIAH MISSIONARY BAPTIST CHURCH OF TUCKER, GEORGIA, INC.

For

+/-14.366 acres of Land
located at
1983 Brockett Road in
Land Lot 186, 18th District, City of Tucker, 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 Subject Property is a 14.366 acre tract of land located at 1983 Brockett Road which is currently zoned R-85 and has been used as a place of worship for in excess of 30 years. Since the Applicant acquired the Subject Property, the Church has modified its use of the existing improvements. The original sanctuary is now used as a Student Center, the Sanctuary has been moved into the building formerly used as a gym, and the administrative building is still used for the same purpose. Due, however, to the differing needs of the congregation, the Church desires to develop a 12,000 sq. ft. family life center on the Subject Property will provide for additional office space, classrooms and a new multi-purpose room that will primarily be used as a basketball court. In order to develop the family life center a Special Land Use Permit must be issued for the Church, which is currently a legal non-conforming use. Brockett Road is a minor arterial road, and the Subject Property is in excess of 3 acres. City of Tucker Zoning Ordinance for obtaining a SLUP for a place of worship on residentially zoned property.

SECTION 27-873 CRITERIA

- A. Adequacy of the size of the Site for contemplated use:** The site is adequate for the proposed use. The subject property is 14.366 acres and provides ample space for the proposed use.
- B. Compatibility of the proposed use with adjacent properties:** The proposed use is compatible with the adjacent properties, which include both residential uses, as well as another place of worship located on the southern boundary line of the Subject Property.
- C. Adequacy of public services, facilities and utilities:** There are adequate public services, facilities and utilities to support the proposed uses.
- D. Adequacy of the public street:** The Subject Property is located on Brockett Road which is classified as a "Minor Arterial" street, and as such has adequate capacity to handle the volume of traffic to be generated by the proposed use.
- E. Possibility of adverse effect along access routes to the site:** There is no possibility of adverse effect along the access route to the Subject Property as a result of the used of the Subject Property as a place of worship, including the development of the family life center.
- F. Ingress and egress to the subject property:** There is adequate ingress and egress to the Subject Property. The Subject Property has two driveways, which allow for adequate circulation for ingress and egress.
- G. Adverse impact on adjoining land use by reason of noise, smoke, odor, dust or vibration:** The Applicant's proposed use of the Subject Property will not create an adverse impact on the adjoining land uses by reason of noise, smoke, odor, dust or vibration.

- H. Adverse impact on adjoining land use by reason of hours of operation:** The Applicant's hours of operation will not have an adverse impact on the adjoining land uses. The Church is open throughout the week during normal business hours. All evening activities at the Church are typically over by no later than 9pm. During the weekend the Church has similar hours between 8am and 9pm on Saturday and 8am and 7pm on Sunday.
- I. Adverse impact by manner of operation:** The manner of operation of the Applicant will not have an adverse impact on the adjoining land uses.
- J. Use consistent with zoning district classification:** The use of the Subject Property for a place of worship is consistent with the R85 Zoning District Regulations.
- K. Use consistent with the Comprehensive Land Use Plan:** The use of the Subject Property for a place of worship is consistent with the Comprehensive Land Use Plan designation for the Subject Property, which is Suburban.
- L. Compliance with buffer zones and setback requirements:** The proposed uses will be developed in compliance with the development requirements for the R-85 District Regulations and with the Zoning Ordinance's supplemental regulations applying to Places of Worship.
- M. Adequate provision for refuse and service areas:** There is adequate provision for refuse and service areas.
- N. Length of time for SLUP:** The special land use permit should not be limited in duration.
- O. Appropriateness of size, scale and massing of buildings in comparison to adjacent properties:** The size, scale and massing of the existing building is appropriate in comparison to the surrounding residential uses.
- P. Adverse historic impact:** The proposed project will not have an adverse impact on any historic buildings, sites, districts or archaeological resources in the surrounding area.
- Q. Satisfaction of Supplemental Regulations:** N/A
- R. Appropriateness of height:** The proposed uses will be in compliance with the R-85 District regulations, and will not exceed 35 ft in height.
- S. Compatibility with Community Needs.** The Subject Property has been a place of worship for in excess of 30 years. Its presence is woven into the fabric of the surrounding community, as it services the spiritual needs of those attending.

CONSTITUTIONAL ALLEGATIONS

The portions of the City of Tucker 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 City of Tucker 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 City of Tucker 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.

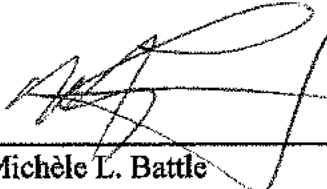
A refusal by the City of Tucker Board of Commissioners to rezone the Subject Property to the classification as requested or issue the special land use permit requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the Property or granting of a special land use permit subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

V. CONCLUSION

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

This 26th day of September, 2016.

Respectfully submitted.



Michèle L. Battle

CONCURRENT VARIANCE JUSTIFICATION

APPLICANT: Mt. Moriah Missionary Baptist Church of Tucker, Georgia, Inc.

SUBJECT PROPERTY: 1983 Brockett Road

ATTORNEY: Michèle L. Battle, Esq.
Battle Law, P.C.
One West Court Square, Suite 750
Decatur, Georgia 30030
Phone: 404.601.7616

The Subject Property is a 14.366 acre tract of land located at 1983 Brockett Road which is currently zoned R-85 and has been used as a place of worship for in excess of 30 years. Since the Applicant acquired the Subject Property, the Church has modified its use of the existing improvements. The original sanctuary is now used as a Student Center, the Sanctuary has been moved into the building formerly used as a gym, and the administrative building is still used for the same purpose. Due, however, to the differing needs of the congregation, the Church desires to develop a 12,000 sq. ft. family life center on the Subject Property will provide for additional office space, classrooms and a new multi-purpose room that will primarily be used as a basketball court. In order to avoid the removal of a significant number of trees, as well as not interfering with the drainage ditch/stream buffer in the rear yard of the property, the Applicant is seeking the following variance:

1. Allow parking within the front yard for an accessory use.

VARIANCE CRITERIA

1. **By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;**

The topographic conditions of the Subject Property that were not created by the Applicant support the approval of this concurrent variance request, as the strict application of the requirements of the City of Tucker Zoning Ordinance would deprive the Applicant of rights and privileges enjoyed by other places of worship.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located

It is the Applicant's contention that the requested variances do not go beyond the minimum necessary to afford relief, and do not constitute a special privilege.

3. The grant of the variances will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located

The granting of the requested variances will not have a negative impact on the surrounding community or be detrimental to the public welfare. In fact, the failure to grant the requested variance will result in negatively impacting the surrounding community.

4. The literal interpretation and strict application of the applicable provisions or requirements of Chapter 27 of the Zoning Ordinance will cause undue and unnecessary hardship on the Applicant.

The literal interpretation and strict application of the applicable provision or requirements of Chapter 27 of the Zoning Ordinance would cause undue and unnecessary hardship on the Applicant, and thereby cause the Applicant to be treated in a manner which is dissimilar to other comparable businesses.

5. The requested variance would be consistent with the spirit and purpose of the City of Tucker Zoning Ordinance and the Comprehensive Plan text.

The requested variances are consistent with the spirit, purpose and intent of the City of Tucker Zoning Ordinance and the Comprehensive Plan text.

CONSTITUTIONAL ALLEGATIONS

The portions of the Zoning Resolution of the City of Tucker as applied to the Subject Property which classify or may classify the 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 1 and 2 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.

In addition, the development of the Subject Property subject to the present standards set forth in the Zoning Ordinance 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.

A denial of this Application would constitute an arbitrary and capricious act by the City of Tucker 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, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the City of Tucker Board of Zoning Appeals to grant the variances as proposed 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 variances or special exceptions granted with respect to the subject Property that are 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 the Applicant's utilization of the subject Property would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

Mt. Moriah Baptist Church Family Life Center Addition

1885 Brockitt Rd
Tulsa, GA 30084

George Van Slyke Architecture

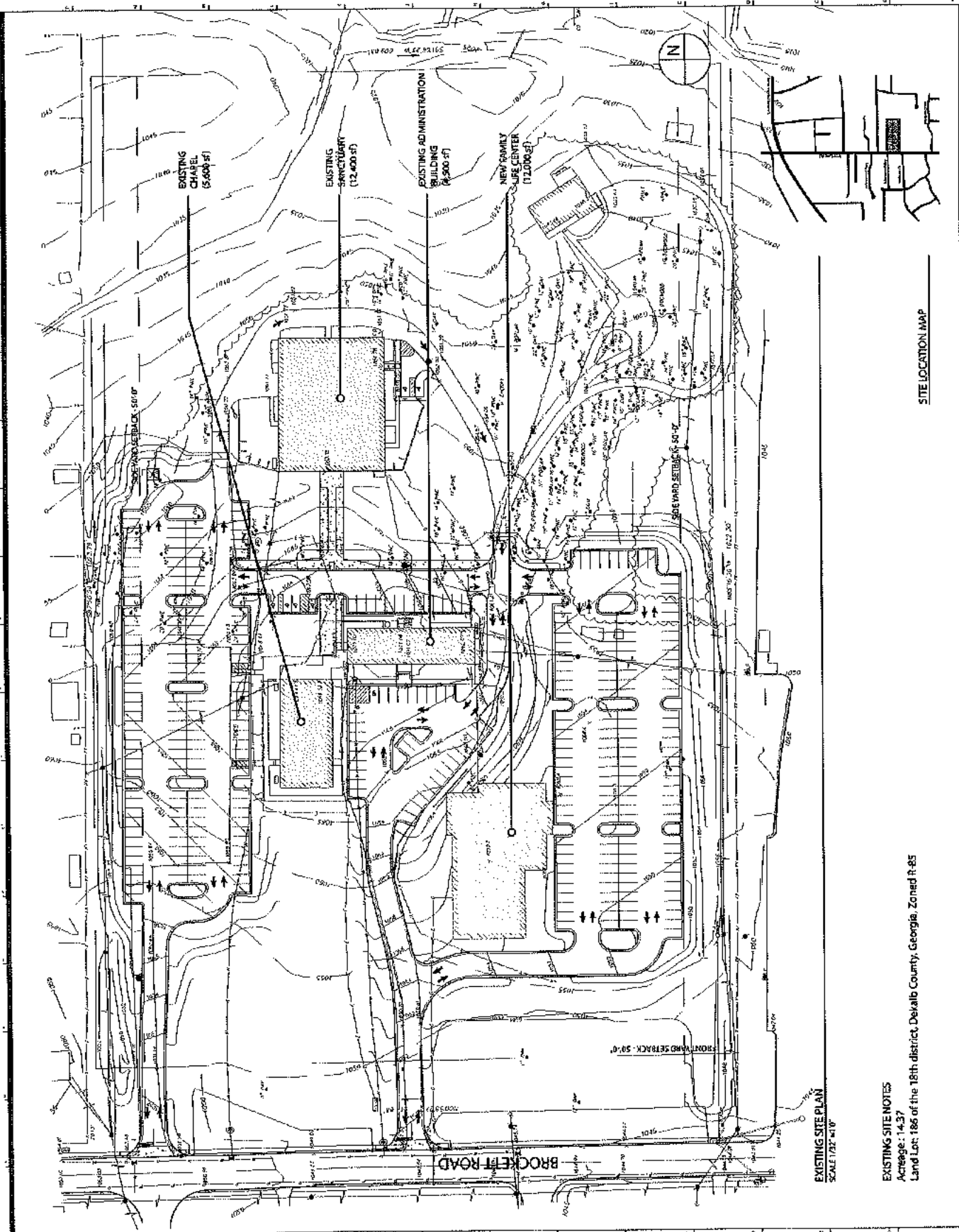
4000 N.W. 11th Street, Suite 100
Atlanta, GA 30328
404.525.1825

CONTRACT NO. 1885-01



DATE	10/1/01
BY	GV
DESCRIPTION	REVISED
DATE	10/1/01
BY	GV
DESCRIPTION	REVISED

SP-01



EXISTING SITE PLAN
SCALE: 1/32" = 1'-0"

EXISTING SITE NOTES
Acreage: 14.37
Land Lot: 186 of the 18th district, DeKalb County, Georgia, Zoned R-85

SITE LOCATION MAP