

**STATE OF GEORGIA**

**DEKALB COUNTY**

**CITY OF STONECREST**

**ORDINANCE NO. \_\_\_\_ - \_\_\_\_\_**

**AN ORDINANCE BY THE MAYOR AND CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA TO REZONE 4700 BROWNS MILL ROAD BY APPROVING MAJOR CHANGES TO CONDITIONS ON THE PROPERTY; TO PROVIDE SEVERABILITY; TO PROVIDE A PENALTY; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.**

**WHEREAS**, the governing body of the City of Stonecrest (“City”) is the Mayor and City Council thereof; and

**WHEREAS**, Article IX, Section II, Paragraph IV of the 1983 Constitution of the State of Georgia authorizes the City to adopt plans and exercise the power of zoning; and

**WHEREAS**, the governing authority of the City is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs, and local government; and

**WHEREAS**, the Mayor and City Council desire to rezone 4700 Browns Mill Road by approving major changes to conditions on the property; and

**WHEREAS**, pursuant to Sec. 7.3.10. (*Modifications and Changes to Approved Conditions of Zoning*.) of the City’s Zoning Code any major changes to conditions attached to an approved zoning amendment shall require an application and public hearings before the planning commission and the city council; and

**WHEREAS**, the following shall be deemed to constitute major changes:

1. The movement of any building or structure adjacent to an exterior boundary line, closer to the boundary line of the property;
2. Any increase in the number of dwelling units or any increase in the total amount of floor space of any nonresidential building;
3. Any decrease in the size of residential units imposed in the original conditional zoning amendment;
4. Any change in any buffer requirements imposed in the original conditional zoning amendment;
5. Any increase in the height of any building or structure;
6. Any change in the proportion of floor space devoted to different authorized uses; or
7. Any change to conditions, except minor changes, as defined in subsection A. of this section, imposed by the city council when approving any change to the official zoning map, commonly referred to as a rezoning or a zoning amendment.

**WHEREAS**, the rezoning case, CZ-05-32 for 4700 Browns Mill Road, initially went through the entitlement process in 2005 by way of Dekalb County to rezone subject property from R-100 to RA-8 to allow for a senior community of 112 attached townhome units; and

**WHEREAS**, the petition was approved on June 14, 2005, with ten (10) conditions; and

**WHEREAS**, the applicant is seeking a major modification of conditions 1, 6, 7, and 10 of the subject property to change conditions from zoning case number CZ-05-32 to allow for the development; and

**WHEREAS**, from time-to-time amendments may be proposed for public necessity, general welfare, or sound zoning practice that justify such action; and

**WHEREAS**, the Director of Planning and Zoning recommends three approvals and one denial with one additional condition of the major changes to conditions of property located at 4700 Browns Mill Road based on the City Staff Report attached hereto and incorporated by reference as Exhibit A; and

**WHEREAS**, the matter was heard in the City's Community Planning Information Meeting pursuant to the provisions of the City's Zoning Procedures Law; and

**WHEREAS**, a public hearing and recommendation pursuant to the provisions of the City's Zoning Procedures Law has been provided by the Planning Commission; and

**WHEREAS**, a public hearing pursuant to the provisions of Georgia's Zoning Procedures Law has been properly held by the City Council prior to the adoption of this Ordinance; and

**WHEREAS**, the health, safety, and welfare of the citizens of the city will be positively impacted by the adoption of this Ordinance.

**BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA**, and by the authority thereof:

**Section 1.** The official zoning map of the City of Stonecrest, Georgia is hereby rezoned by approving major changes to conditions of the property located at 4700 Browns Mill Road parcel number: 16-012-01-007.

**Section 2.** The conditions shall be amended as follows:

**Condition 1:** The maximum number of units shall be 112 single-family attached townhome units. 49 single-family detached units.

**Condition 6:** The proposed development shall be conditioned upon the concept site plan prepared by James Harwick & Partners, dated March 3, 2005. final site plan submitted to the Planning Department prior to the final City Council hearing.

**Condition 7:** Any and all single-family ~~attached townhome unit(s)~~ detached units shall have a minimum heated floor area of ~~700~~ 1,200 square feet.

**Condition 10:** ~~The entrance to the development shall be gated, and fencing around the community shall be black aluminum with columns of either brick or stacked stone. DELETE~~

**Section 3.** The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

**Section 4.** (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause, or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph, or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional, or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or section of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and

effect.

**Section 5.** The City Clerk, with the concurrence of the City Attorney, is authorized to correct any scrivener's errors found in this Ordinance, including its exhibits, as enacted.

**Section 6.** All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

**Section 7.** The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Stonecrest.

**Section 8.** It is the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances, City of Stonecrest, Georgia.

**ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.**

**[SIGNATURES TO FOLLOW]**

**CITY OF STONECREST, GEORGIA**

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**Jazzmin Cobble, Mayor**

**ATTEST:**

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**City Clerk**

**APPROVED AS TO FORM:**

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**City Attorney**

## **EXHIBIT A**

(vacant)  
Director  
Planning and Zoning  
Department



Matthew  
Williams  
Deputy Director  
Planning and  
Zoning  
Department

**TO:** Mayor and City Council

**FROM:** Planning and Zoning Department

**SUBJECT:** RZ-23-003

**ADDRESS:** 4700 Browns Mill Road

**MEETING DATE:** October 23, 2023

**Summary:** Applicant is seeking a major modification of the conditions of the subject property to change the conditions from zoning case number CZ-05-32, to allow for 46 Single-Family Detached Dwellings.

**STAFF RECOMMENDATION:** 3 APPROVALS AND 1 DENIAL with 1 additional condition

**PLANNING COMMISSION RECOMMENDATION:** Deferral to address the issue traffic, design/elevations, price point, and undeveloped land use for a green space.





RZ-23-003

Planning and Zoning Department

**District #4: George Turner, Jr.**

PROPERTY INFORMATION	
<b>Location of Subject Property:</b> 4700 Browns Mill Road	
<b>Parcel Number:</b> 16-012-01-007	
<b>Road Frontage:</b> Browns Mill Road	<b>Total Acreage:</b> 24.02 +/-
<b>Current Zoning:</b> RSM (Small Lot Residential Mix)	<b>Overlay District:</b> N/A
<b>Future Land Use Map/ Comprehensive Plan:</b> SUB (Suburban)	
<b>Zoning Request:</b> Applicant is seeking a major modification of conditions of the subject property to change the conditions from zoning case number CZ-05-32, to allow for 46 Single-Family Detached Dwellings.	
<b>Zoning History (CZ-05-32):</b> Subject property went through a rezoning process in June 2005 by way of Dekalb County. The applicant was City of Hope Ministries, Incorporation who desired to construct a townhome subdivision.	

APPLICANT / PROPERTY OWNER INFORMATION
<b>Applicant Name:</b> Battle Law P.C.
<b>Applicant Address:</b> 3562 Habersham at North Lake, Building J, Suite 100
<b>Property Owner Name:</b> Ray of Hope Christian Church Disciples of Christ, Inc.
<b>Property Owner Address:</b> 4700 Browns Mill Road



RZ-23-003

Planning and Zoning Department

### DETAILS OF ZONING REQUEST

The rezoning case, **CZ-05-32**, initially went through the entitlement process in 2005 by way of Dekalb County. The Applicant at that time, City of Hope Ministries, Inc. petitions to rezoned subject property from R-100 to RA-8 to allow for a senior community of 112 attached townhome units. The petition was approved on June 14, 2005, with ten (10) conditions.

The Applicant, Battle Law P.C., on the behalf of the property's owner, Ray of Hope Christian Church Disciples, is seeking to develop 46 single-family detached homes on the subject parcel. The Applicant is seeking a Major Modification of Conditions of the Subject Property to change the following conditions from zoning case number CZ-05-32 to allow for the development: conditions 1, 6, 7, and 10. The original conditions are listed below with the proposed changes in red.

**Condition 1:** The maximum number of units shall be ~~112 single-family attached townhome units.~~ 49 single-family detached units.

**Condition 6:** The proposed development shall be conditioned upon the ~~concept site plan prepared by James Harwick & Partners, dated March 3, 2005.~~ final site plan submitted to the Planning Department prior to the final City Council hearing.

**Condition 7:** Any and all single-family ~~attached townhome unit(s)~~ detached units shall have a minimum heated floor area of ~~700~~ 1,200 square feet.

**Condition 10:** ~~The entrance to the development shall be gated, and fencing around the community shall be black aluminum with columns of either brick or stacked stone. DELETE~~

### ADJACENT ZONING & LAND USE

<b>NORTH</b>	<b>Zoning:</b> R-100 (Residential Medium Lot)	<b>Land Use:</b> Single-Family Dwellings
<b>SOUTH</b>	<b>Zoning:</b> R-100 (Residential Medium Lot)	<b>Land Use:</b> More Than Conquerors Church
<b>EAST</b>	<b>Zoning:</b> R-100 (Residential Medium Lot)	<b>Land Use:</b> Single-Family Dwellings
<b>WEST</b>	<b>Zoning:</b> R-100 (Residential Medium Lot)	<b>Land Use:</b> Single-Family Dwellings



RZ-23-003

Planning and Zoning Department

### PHYSICAL CHARACTERISTICS & INFRASTRUCTURE

The site is currently undeveloped with one (1) road frontage (Browns Mill Road). There are floodplain and/or statewaters on the subject property.

### MODIFICATIONS AND CHANGES TO APPROVED CONDITIONS OF ZONING CRITERIA

1. The movement of any building or structure adjacent to an exterior boundary line, closer to the boundary line of the property;
2. Any increase in the number of dwelling units or any increase in the total amount of floor space of any nonresidential building;
3. Any decrease in the size of residential units imposed in the original conditional zoning amendment;
4. Any change in any buffer requirements imposed in the original conditional zoning amendment;
5. Any increase in the height of any building or structure;
6. Any change in the proportion of floor space devoted to different authorized uses; or
7. Any change to conditions, except minor changes, as defined in subsection A. of this section, imposed by the city council when approving any change to the official zoning map, commonly referred to as a rezoning or a zoning amendment.

### RECOMMENDATION

Staff recommends the following:

- **APPROVAL** of Modification of Condition 1
- **APPROVAL** of Modification of Condition 6
- **APPROVAL** of Modification of Condition 7
- **DENIAL** of Modification of Condition 10

Recommended Approval Condition(s):

1. The development shall be subject to senior housing only.

The Planning Commission recommends deferral to address issues of the community.



RZ-23-003

Planning and Zoning Department

**Attachments Included:**

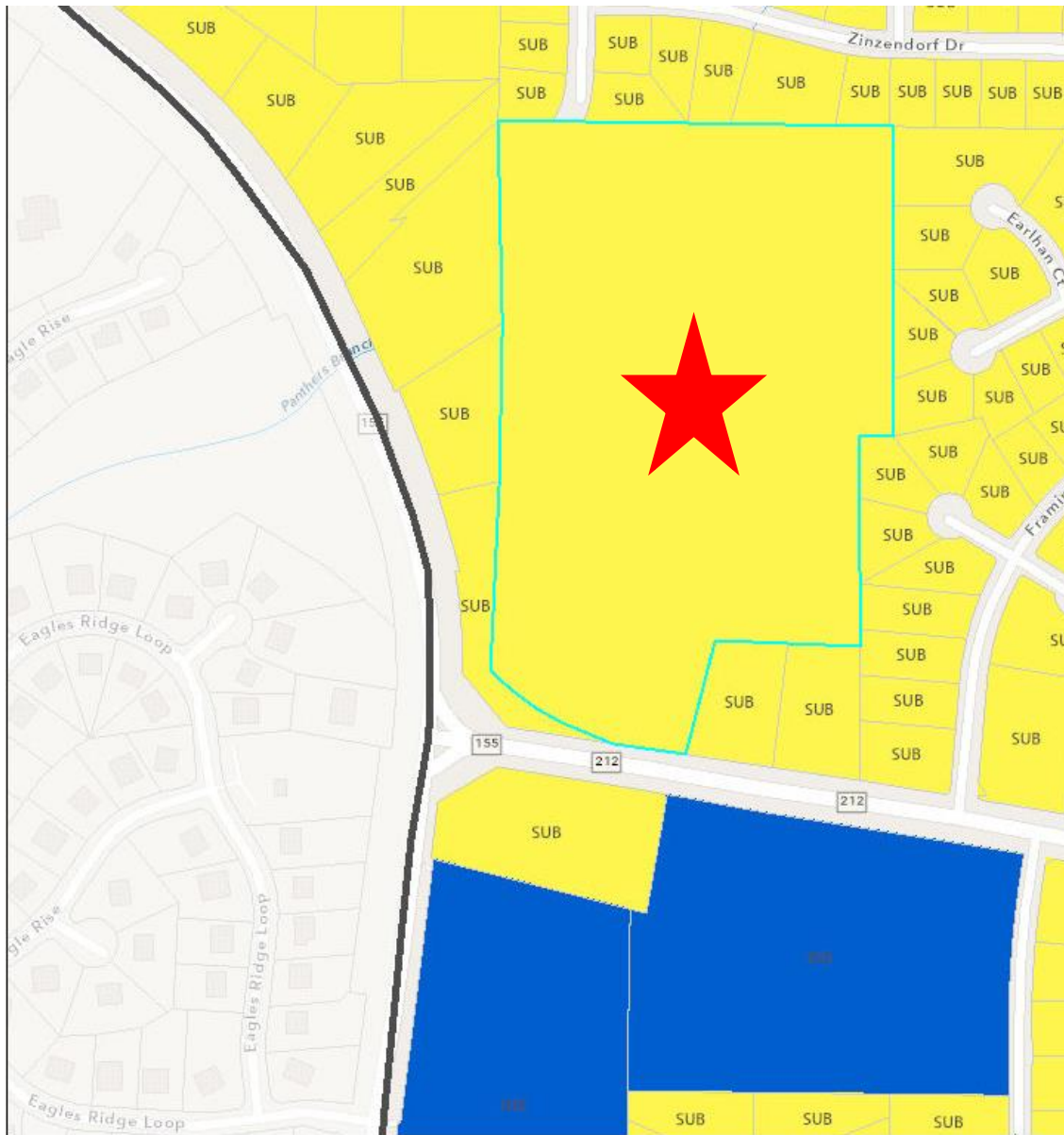
- **Future Land Use Map**
- **Zoning Map**
- **Aerial Map**
- **Site Plan/Survey**
- **Zoning Conditions**
- **Letter of Intent**
- **Environmental Site Analysis**



RZ-23-003

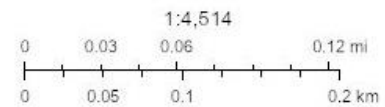
Planning and Zoning Department

## Future Land Use Map



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|---|--------------------|---|-----------------|
|  | Stonecrest Parcels |  | Future Land Use |
|  | City Limits        |  | Institutional   |
|  | DeKalb Parcels     |  | Suburban        |

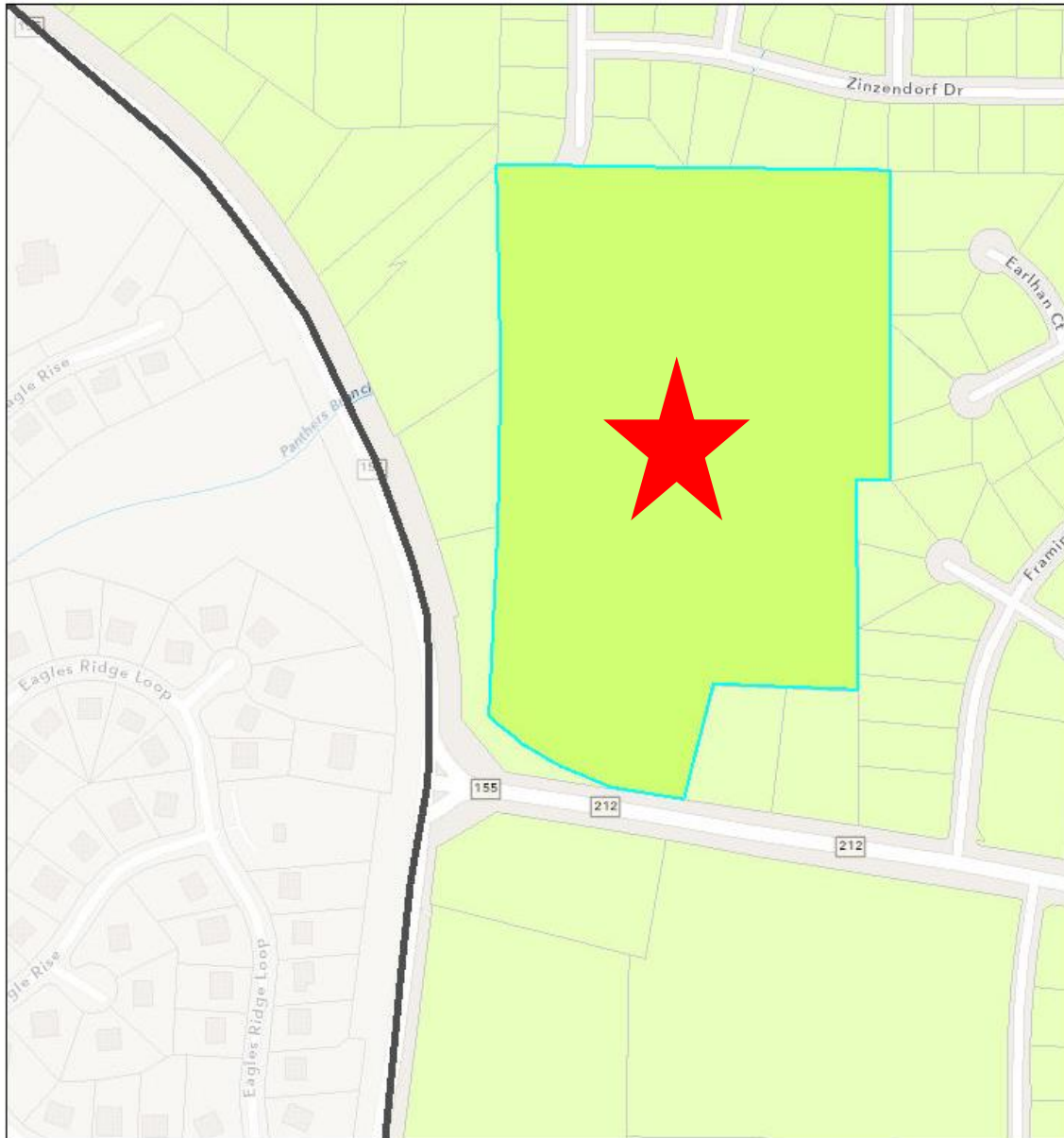




RZ-23-003

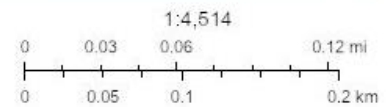
Planning and Zoning Department

## Zoning Map



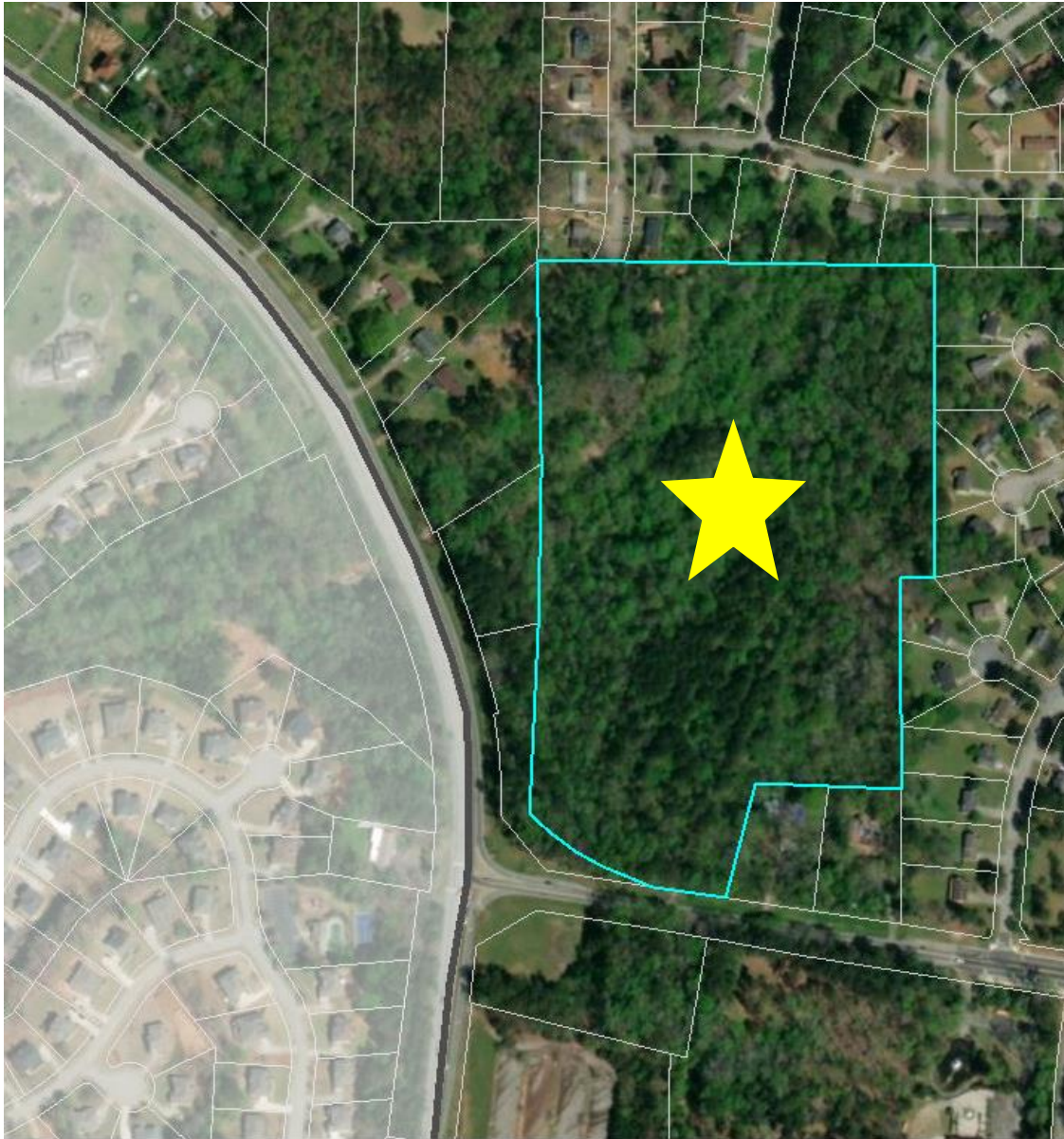
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|--|---|
|  Stonecrest Parcels | <b>Zoning</b>   |
|  City Limits        |  R-100 - Residential Med Lot     |
|  DeKalb Parcels     |  RSM - Small Lot Residential Mix |



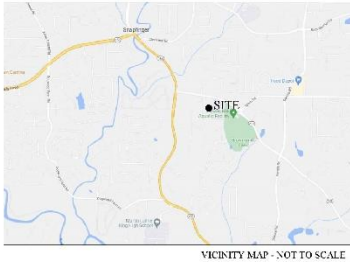


## Aerial Map



## Submitted Site Plan

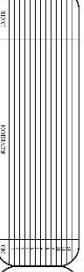
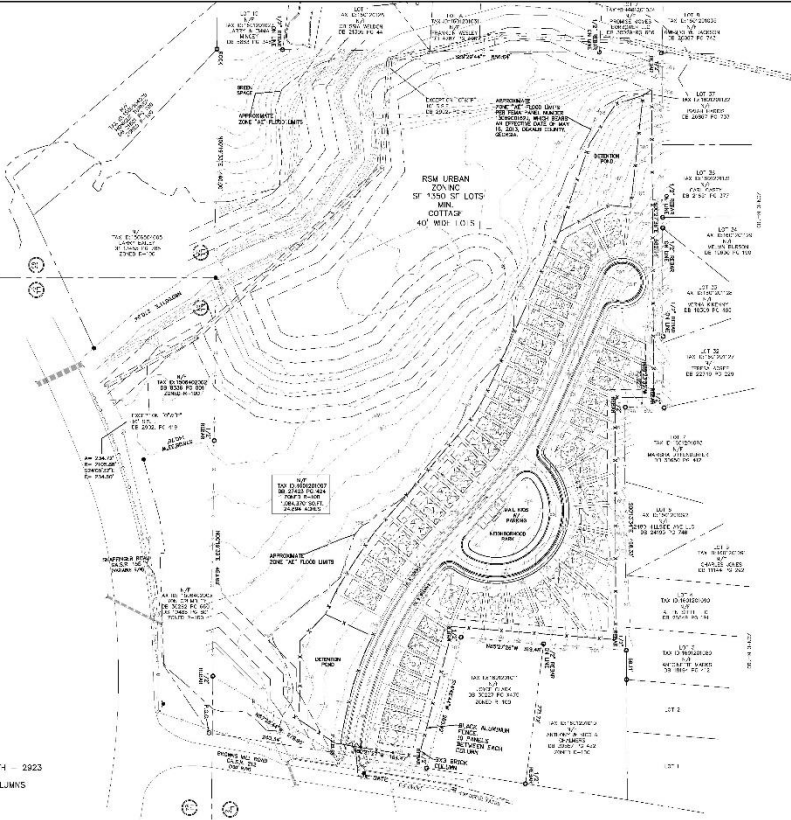
SUMMARY	
CURRENT ZONING:	RSM
GROSS ACREAGE:	24.9 AC
USABLE AREA*:	9.7 AC
TOTAL OPEN SPACE REQUIRED (20% OF GROSS ACREAGE):	5.0 AC
DEVELOPED AREA (LOTS 15.27 AC + ROADS 1.05 AC):	6.92 AC
TOTAL OPEN SPACE PROVIDED (GROSS ACREAGE 24.9 AC - DEVELOPED AREA 6.92 AC):	17.98 AC
ENHANCED OPEN SPACE REQUIRED:	2.5 AC
ENHANCED OPEN SPACE PROVIDED:	2.5 AC
GREEN SPACE:	2.08 AC
NEIGHBORHOOD PARK:	0.42 AC
TOTAL STORMWATER MANAGEMENT AREA:	1.45 AC
TOTAL UNITS ( 20' X 40' FOOTPRINT):	46 UNITS
GROSS DENSITY:	1.8 U/AC
NET DENSITY:	4.7 U/AC
FOR SITE ACCESS:	



### NOTES:

1. SETBACKS ARE 20 FEET, 15 FEET, WITH 10' MINIMUM FOR DRIVEWAYS, SIDEWALKS, AND WATER TO BE PROVIDED BY LOCAL CITIES.
2. SETBACKS MAY BE REQUIRED ADJUSTMENT UPON FINAL 90% PLAN AND PERMITS AND TOP SURVEY BEING PROVIDED.
3. MAXIMUM BUILDING HEIGHTS TO BE 45 OR 55 FEET.
4. ALL ADJACENT PARKS AND OPEN SPACES.
5. ALL OPEN SPACES TO BE MAINTAINED BY THE CITY OF STONECREST.
6. COVERAGE IS BASED ON THE 2016 DEEDS COUNTY RECORD.

PR. FENCE LENGTH - 2923  
54 BRICK COLUMNS



CONCEPT PLAN 2  
PREPARED BY: ANDREW M. HARRIS  
DATE: 10/10/2023

THIS PLAN AND ALL INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF BOUNDARY ZONE, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF BOUNDARY ZONE, INC.

**LEGEND:**

- 1. PROPERTY CORNER
- 2. DRIVEWAY
- 3. SIDEWALK
- 4. LOT
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PROJECT  
25069.02  
SHEET  
OF 1





## Zoning Conditions – CZ-05-32

City Of Hope Ministries, Inc.  
Z-05-32  
Rezoning Conditions

COMM.	
ITEM NO.	14-11 6/14/05
CLERK'S OFFICE	Comm. H. Johnson

1. The maximum number of units shall be 112 single family attached townhome units.
2. The development <sup>shall</sup> ~~will~~ include sidewalks on both sides of <sup>all</sup> ~~internal~~ streets, underground utilities, and streetlights.
3. There shall be no vinyl or aluminum siding used within the development. All buildings shall have exteriors of brick, stucco, stone or other masonry, "Hardi-Plank" clapboards, cedar shake or shingles, or some combination of these materials.
4. The applicant agrees to provide for adequate turn lanes into the development <sup>as determined by</sup> ~~subject to approval of~~ DeKalb and Georgia DOT.
5. Each entrance to the development <sup>will have</sup> ~~shall have~~ a decorative landscaped entrance. The design plan shall be submitted with the sketch plat approval application and shall be subject to review <sup>and approval</sup> ~~by~~ by the Planning Commission.
6. The proposed development shall be conditioned upon the concept site plan prepared by James Harwick Partners dated March 3, 2005.
7. Any and all single family attached townhome unit(s) shall have a minimum heated floor area of 700 square feet.
8. There shall be an entrance monument identifying the development, to be constructed out of brick or stacked stone.
9. The roofing materials shall <sup>be</sup> ~~include~~ three dimensional, architectural styled shingles.
10. The entrance to the development shall be gated, and fencing around the community shall be black aluminum with columns of either brick or stacked stone.

including the decorative landscaped entrance  
g/h

6/14/05



# Battle Law

## STATEMENT OF INTENT

and

Other Material Required by  
the City of Stonecrest Zoning Ordinance  
For

A Major Modification of Conditions to  
Allow for 46 Single-Family Detached Homes not Restricted to Senior Living

of

**Ray of Hope Christian Church Disciples of Christ, Inc.  
c/o Battle Law, P.C.**

for

**+/-24.9 Acres of Land**  
Being 4700 Browns Mill Road  
Stonecrest, Georgia and  
Parcel Nos. 16 012 01 007

Submitted for Applicant by:

Michèle L. Battle, Esq.  
Battle Law, P.C.  
Habersham at Northlake, Building J, Suite 100  
Tucker, Georgia 300384  
(404) 601-7616 Phone  
(404) 745-0045 Facsimile  
[mlb@battlelawpc.com](mailto:mlb@battlelawpc.com)



# Battle Law

## **I. LETTER OF INTENT**

Ray of Hope Christian Church Disciples of Christ, Inc. (the "Applicant") is seeking to develop on +/- 24.9 acres of land being Tax Parcel No. 16 012 01 007 having frontage on 4700 Browns Mill Road (the "Subject Property") with 46 single-family detached homes. The property is currently zoned RSM (with conditions according to CZ-05-32) with a Suburban future land use designation. The Applicant is seeking a Major Modification of Conditions of the Subject Property to change a zoning condition of CZ-05-32 which restricts the use of the Subject Property to senior living only.

This document serves as a statement of intent, analyzes the criteria under the Stonecrest Code of Ordinances, and contains notice of constitutional allegations as a reservation of the Applicant's rights.

## **II. PROPERTY HISTORY**

The Applicant and/or its affiliated entity, City of Hope, Inc., have owned the Subject Property for over thirty-five (35) years. The Applicant has wanted to develop senior housing on the Subject Property for decades. So, in 2005 the Applicant worked with a developer to rezone the Subject Property to RA-8 (now RSM under the current Code of Ordinances) to develop 122 affordable senior apartments in a townhome configuration. After the rezoning, the deal with the developer fell through. For the last sixteen (16) years, the Applicant has tried to sell or partner with others to develop the approved senior community on the Subject Property. Several developers have all concluded that the numbers do not work.

After years of trying, the Applicant has exhausted their efforts and is now looking to use the proceeds from the sale of the Subject Property to support the mission of the Church, including supporting seniors in the area. The Applicant has sought the input of development professionals and determined that the best course of action is to convert the apartment units into for-sale single-family detached homes. To achieve this goal, the Applicant has put together a team of development professionals to guide them through this process so the Applicant can develop the Subject Property for its highest and best use.

## **II. STONECREST MODIFICATION CRITERIA**

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

The zoning proposal is in conformity with the policy and intent of the comprehensive plan. The Applicant is seeking to change the zoning conditions of the Subject Property to no longer restrict the use of the property to senior-only residential. However, this request will not change the zoning district or general use of the Subject Property. Instead, it will remain residential.

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



## Battle Law

The zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The surrounding properties are developed with single-family detached homes. The Subject Property is zoned for residential development. This proposal will bring fewer units than is already permitted on the Subject Property and will allow for single-family detached units. Thus, this proposal will allow for a use precisely like the uses on surrounding properties.

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

The Subject Property has no reasonable economic use as currently zoned. The existing conditions limit the use of the Subject Property to a product that cannot be built. The Applicant has tried for sixteen (16) years to develop the Subject Property under the current zoning conditions with no success. It is time to remove the conditions so the Applicant can continue supporting its mission.

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

The zoning proposal will not adversely affect adjacent or nearby property's existing use or usability. The proposed community will serve as another residential development to enhance the area's housing market.

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

The area around the Subject Property is changing as local businesses start up nearby and new business owners update old commercial developments. The area is seeing a resurgence that can positively impact the value of the Subject Property, provided that this Modification of Conditions Application is approved. Without this approval, the Subject Property will have no value to the Applicant or anyone else, thereby depriving the Applicant of the opportunity to sell it for its highest and best use.

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

The zoning proposal will not adversely affect historic buildings, sites, districts, or archaeological resources.

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

The zoning proposal will not result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.



## Battle Law

### **III. NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION OF CONSTITUTIONAL RIGHTS**

The portions of the City of Stonecrest Zoning Ordinance, facially and as applied to the Subject Property, which restricts 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 the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and 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 would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The application of the City of Stonecrest 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 irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia

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



## Battle Law

A refusal to allow the land use amendment and/or Major Modification of Conditions in questions would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

A refusal to allow the land use amendment and/or Major Modification of Conditions in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A Section 36-66/1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

The existing land use designation and/or zoning classification on the Subject Property is unconstitutional as it applies to the Subject Property. This notice is being given to comply with the provisions of O.C.G.A. Section 36-11-1 to afford the County an opportunity to revise the Property to a constitutional classification. If action is not taken by the County to rectify this unconstitutional land use designation and/or zoning classification within a reasonable time, the Applicant is hereby placing the County on notice that it may elect to file a claim in the Superior Court of Fulton County demanding just and adequate compensation under Georgia law for the taking of the Subject Property, diminution of value of the Subject Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

### **III. CONCLUSION**

For the foregoing reasons, the Applicant hereby requests that the application for a Major Modification of Conditions to allow for 46 single-family detached homes not restricted to senior living be approved. The Applicant welcomes any questions and feedback from the planning staff.

On this 6<sup>th</sup> day of June 2023

Respectfully submitted,

Michele L. Battle, Esq.  
Attorney for the Applicant



## Battle Law

July 11, 2023

VIA EMAIL

Tre'Jon Singletary, Senior Planner  
City of Stonecrest  
3120 Stonecrest Blvd., Suite 190  
Stonecrest, GA 30038

Re: 4700 Browns Mill Road Zoning Condition Amendments

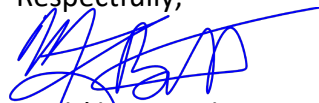
Dear Tre'Jon,

In connection with the Change of Condition Application filed for Ray of Hope, below are the conditions that we would like amended from DeKalb County Board of Commissioners Case No.: CZ-05-32:

1. Condition 1: The maximum number of units shall be 49 single family detached units.
2. Delete Conditions 6 and substitute therefore, the final site plan submitted to the Planning Department prior to the final City Council hearing.
3. Delete Condition 7, and substitute therefore a minimum heated floor area of 1,200 sq. ft.
4. Delete Condition 10. The prior community was to be a multi-family complex with internal driveways. This will be a fee simple single family detached community. There are not enough units to support having a gated entry and fence around the perimeter of the project based on the size of the subject property and the maintenance costs.

Please feel free to contact me should you have any questions.

Respectfully,



Michèle L. Battle, Esq.





## Environmental Site Analysis

**Analyze the impact of the proposed rezoning and provide a written point-by-point response to Points 1 through 3: 1. Conformance to the Comprehensive Plan:**

- a. Describe the proposed project and the existing environmental conditions on the site.

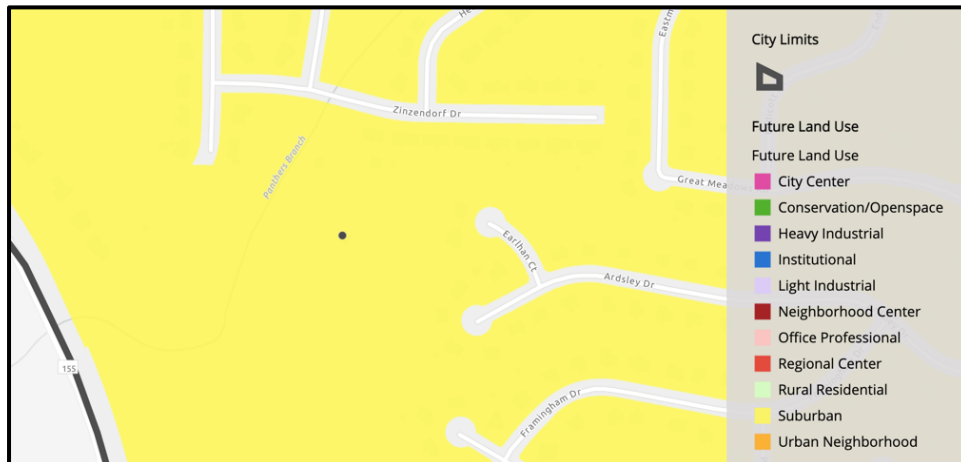
The Applicant is seeking to rezone the Subject Property, being Parcel No. 16 012 01 007 from RSM with conditions to RSM other conditions to allow for 46 single-family detached units.

- b. Describe adjacent properties. Include a site plan that depicts the proposed project.

Adjacent properties are primarily residential; RSM immediately adjacent and R-100 outside of that.

- c. Describe how the project conforms to the Comprehensive Land Use Plan.

The Future Land Use designation of the Subject Property is Suburban. The proposed change in conditions and proposed forty-six (46) unit single-family detached community both conform to the Comprehensive Land Use Plan, as they both fall within the Suburban Land Use category. The Applicant is not seeking to change the current zoning classification of the Subject Property, but rather change the zoning conditions. Include the portion of the Comprehensive Plan Land Use Map which supports the project's conformity to the Plan.



- d. Evaluate the proposed project with respect to the land use suggestion of the Comprehensive Plan as well as any pertinent Plan policies.

The proposed project is in conformance with the land use suggestion of the Comprehensive Plan and pertinent Plan policies. The Plan allows for RSM zoning within the Suburban Land Use designation. The proposed density is also supported by the Suburban land use designation.





## 2. Environmental Impacts of The Proposed Project

For each environmental site feature listed below, indicate the presence or absence of that feature on the property. Describe how the proposed project may encroach or adversely affect an environmental site feature. Information on environmental site features may be obtained from the indicated source(s).

### a. Wetlands

- U. S. Fish and Wildlife Service, National Wetlands Inventory (<http://wetlands.fws.gov/downloads.htm>)
- Georgia Geologic Survey (404-656-3214)
- Field observation and subsequent wetlands delineation/survey if applicable

To the Applicant's knowledge, there are no wetlands on the

property. b. Floodplain

- Federal Emergency Management Agency (<http://www.fema.org>)
- Field observation and verification

There is a floodplain on the Northwestern portion of the Subject Property.

### c. Streams/stream buffers

- Field observation and verification

There is a river, Panther's Branch, and buffer that intersects the Northwestern portion of the Subject Property.

### d. Slopes exceeding 25 percent over a 10-foot rise in elevation

- United States Geologic Survey Topographic Quadrangle Map
- Field observation and verification

To the Applicant's knowledge, there are no slopes exceeding 25% over a 10-foot rise in elevation.

- ### e. Vegetation • United States Department of Agriculture, Nature Resource Conservation Service
- Field observation

The property is heavily wooded.

### f. Wildlife Species (including fish)

- United States Fish and Wildlife Service
- Georgia Department of Natural Services, Wildlife Resources Division, Natural Heritage Program
- Field observation

To the Applicant's knowledge, there are no wildlife habitats on the property.

### g. Archeological/Historical Sites

- Historic Resources Survey
- Georgia Department of Natural Resources, Historic Preservation Division
- Field observation and verification

To the Applicant's knowledge, there are no archeological/historical sites.



### 3. Project Implementation Measures

Describe how the project implements each of the measures listed below as applicable. Indicate specific implementation measures required to protect environmental site feature(s) that may be impacted.

- a. Protection of environmentally sensitive areas, i.e., floodplain, slopes exceeding 25 percent, river corridors.

The applicant will do whatever deemed necessary to protect environmentally sensitive areas.

- b. Protection of water quality

The applicant will do whatever deemed necessary to protect water quality.

- c. Minimization of negative impacts on existing infrastructure

The applicant will do whatever deemed necessary to minimize negative impacts on existing infrastructure.

- d. Minimization on archeological/historically significant areas

To the Applicant's knowledge, there are no archeological/historically significant areas on the property.

- e. Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal (e.g., solid waste and wastewater treatment facilities, utilities, airports, and railroads) and industrial (e.g., landfills, quarries and manufacturing facilities) uses.

To the Applicant's knowledge, the community is not an environmentally stressed one.

- f. Creation and preservation of green space and open space



The proposed development includes 19.4 acres of open space, including 1.9 acres of enhanced open space.

g. Protection of citizens from the negative impacts of noise and lighting

The proposed single family-detached community minimally impact current citizens in terms of noise and lighting.

h. Protection of parks and recreational green space

To the Applicant's knowledge, the proposed development will not adversely impact existing parks and recreational green space.

i. Minimization of impacts to wildlife habitats

To the Applicant's knowledge, there is no nearby wildlife habitats.