

#### **DEPARTMENT OF PLANNING & SUSTAINABILITY**

#### MAJOR MODIFICATION APPLICATION

Existing Conditional Zoning No.: C -77077
APPLICANT NAME: Lalani Ventures, LLC C/O Battle Law, P.C.
Daytime Phone#: 404-601-7616 <sub>Fax</sub> #: E-mail:dtract@lalaniventures.com
Mailing Address: <u>3562 Habersham at Northlake Bldg J, Suite 100 Tucker, GA 30084</u>
OWNER NAME:Albert Tookes (If more than one owner, attach contact information for each owner)
Daytime Phone#:Fax #:E-mail:
Mailing Address:2650 Foxlair Trail College Park, GA 30349
SUBJECT PROPERTY ADDRESS OR LOCATION:6061 Redan Road
, DeKalb County, GA,30058
District(s): <u>16</u> Land Lot(s): <u>068</u> Block(s): <u>02</u> Parcel(s): <u>018</u>
Acreage or Square Feet: <u>43,560 sf</u> Commission District(s): <u>5.7</u> Existing Zoning: <u>C-2</u>
I hereby authorize the staff of the Planning and Development Department to inspect the property that is the subject of this application.
Have you, the applicant, made a campaign contribution of \$250.00 or more to a DeKalb County government official within the two year period that precedes the date on which you are filing this application? <u>X</u> Yes No If "yes", see page 4. (Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A)
Owner: Agent: _X (Check One)
Signature of Applicant:
Printed Name of Applicant:

**Major Modification Application** 



3562 Habersham at Northlake, Bldg. J, Ste 100 Tucker, Georgia 30084

#### Zoom Instructions:

Go to <u>https://battlelawpc.zoom.us/join</u> and Enter the Meeting ID that you have been provided with in the appropriate field and click "Join". To join by phone, please dial (646) 558-8656. If you are unable to attend or would like to learn more about the proposed project, please call our office at the number below.

We encourage you to come out and participate!

For More Information Contact Jordan Battle at: Phone: 404-601-7616 ext. 8 Fax: 404-745-0045 Email: jeb@battlelawpc.com

#### COMMUNITY MEETING TO DISCUSS A CHANGE OF CONDITIONS APPLICATION TO ALLOW FOR A GAS STATION

#### Project Title: 6061 Redan Road

When: February 15th, 2024

Time: 6:00 PM Eastern (US and Canada)

Register in advance for this meeting: <u>https://battlelawpc.zoom.us/join</u>

> Meeting ID: 879 5933 4761 Password: 160137

#### **PROPOSED LOCATION(S):**

Parcel Number - 16 068 02 0218

TOOKES ALBERT C	2650 FOXLAIR TRL	COLLEGE PARK GA 30349
FAIRFIELD BAPTIST CHURCH OF	6133 REDAN RD	LITHONIA GA 30058
REAVES LATASHA D	1554 YOUNG RD	LITHONIA GA 30058
ST PHILIP AME CHURCH INC	240 CANDLER RD SE	ATLANTA GA 30317
CDMRI 1517 YOUNG ROAD SUB LLC	6017 REDAN RD	LITHONIA GA 30058
CD MOODY CONSTRUCTION COMPANY	6017 REDAN RD	LITHONIA GA 30058
SHERRILL VALORIE L	1546 YOUNG RD	LITHONIA GA 30058
MILES JOE	1475 DOE VALLEY DR	LITHONIA GA 30058
CDMRI 1539 YOUNG ROAD SUB LLC	6017 REDAN DL # 301	LITHONIA GA 30058
SCRUGGS KATHY	1435 DOE VALLEY DR	LITHONIA GA 30058
BOYD JEREMY	1478 DOE VALLEY DR	LITHONIA GA 30058
CD MOODY CONSTRUCTION COMPANY	6017 REDAN RD	LITHONIA GA 30058
FAIRFIELD BAPTIST CHURCH OF	6133 REDAN RD	LITHONIA GA 30058
GREEN GREGORY	1516 YOUNG RD	LITHONIA GA 30058
FAIRFIELD BAPTIST CHURCH OF	6133 REDAN RD	LITHONIA GA 30058

#### Campaign Contribution Disclosure Statement Last Updated 11/9/2023

#### **CAMPAIGN CONTRIBUTIONS DISCLOSURE STATEMENT**

Pursuant to the provisions of 36 O.C.G.A. 67(A), please find below a list of those contributions made by Michele Battle, of Battle Law, P.C. in the past two years, aggregating \$250.00 or more, to local government officials who will consider this application.

Name	Position	Amount	Date
Lorraine Cochran-Johnson	Commissioner	\$750.00	6/17/22
Mereda Davis Johnson	Commissioner	\$1,000.00	11/1/23

Ву:\_\_\_\_\_

Printed Name: Michele Battle



#### **DISCLOSURE OF CAMPAIGN CONTRIBUTION**

In accordance with the Conflict of Interest in Zoning Act, OCGA Chapter 36-67A, the following questions <u>must</u> be answered.

Have you, the applicant, made \$250.00 or more in campaign contribution to a local government official within two years immediately preceding the filling of this application?

NoX Yes

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

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

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

IN THE REAL PROPERTY OF lotary Pe COUNT 

For: Lalani Ventures, LLC

Signature of Applicant /Date

Check one: Owner\_\_\_\_Agent\_\_\_

Expiration Date/ Seal

\*Notary seal not needed if answer is "no".



#### DEPARTMENT OF PLANNING & SUSTAINABILITY

#### AUTHORIZATION

The property owner should complete this form or a similar, signed and notarized form if the individual who will file the application with the County is not the property owner.

1.5

Date:

Notary Public

TO WHOM IT MAY CONCERN:

(I), (WE), <u>Albert Tooks</u> Name of Owner(s)

being (owner) (owners) of the subject property described below or attached hereby delegate authority to

Battle Law P.C.

Name of Applicant or Representative

to file an application on (my), (our) behalf.

Notary Public NOTARY PUBLIC	Albert C. Tookes
Notary Publice	Owner
Notary Public	Owner

Owner



#### **DISCLOSURE OF CAMPAIGN CONTRIBUTION**

In accordance with the Conflict of Interest in Zoning Act, OCGA Chapter 36-67A, the following questions <u>must</u> be answered.

Have you, the applicant, made \$250.00 or more in campaign contribution to a local government official within two years immediately preceding the filling of this application?

<sub>No</sub>X \* Yes

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

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

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Whit C. Jooker Albert Tookes 7

Signature of Applicant /Date

Check one: Owner\_\_\_\_Agent\_\_\_\_

Expiration Date/ Seal

\*Notary seal not needed if answer is "no".



#### **STATEMENT OF INTENT**

and

Other Material Required by DeKalb County Zoning Ordinance For A Major Modification of Zoning Conditions from CZ-77077 of

> Lalani Ventures, LLC., c/o Battle Law, P.C.

> > for

+/- 1.01 Acres of Land Being 6061 Redan Road, Georgia and Parcel No. 1606802018

Submitted for Applicant by:

Joshua Mahoney, Esq. Battle Law, P.C. Habersham at Northlake, Building J, Suite 100 Tucker, Georgia 300384 (404) 601-7616 Phone jsm@battlelawpc.com

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Lalani Ventures, LLC., (the "Applicant") is seeking to develop on +/- 1.01acres of land being Tax Parcel No. 1606802018 having frontage on 6061 Redan Road (the "Subject Property") with a fuel station with a convenience store. The Subject Property is zoned C-2, which would permit this use. However, zoning conditions were applied to the Subject Property in 1977 when the Subject Property acquired the C-2 zoning.

The Applicant is requesting to modify two conditions from CZ-77077 to allow them to build the fuel station with a convenience store. First, the Subject Property is use-limited to specifically only an auto repair facility and no other use. The Applicant is seeking to modify this condition to allow for a fuel station, which is one of the allowable uses in other C-2 zones. Second, the Subject Property is height-limited to one story. The Applicant is seeking to modify this condition to allow for a second story office to support the convenience store.

The Applicant's two proposed modifications to the existing zoning conditions will allow for a modern structure to replace the auto-repair facility on the site without expanding beyond what is allowed for similarly situated parcels in C-2 zones. This document serves as a statement of intent, analysis of the criteria under Section 27-832 under the DeKalb County Zoning Ordinance, and contains notice of constitutional allegations as a reservation of the Applicant's rights.

#### II. IMPACT ANALYSIS CRITERIA

# A. Whether the zoning proposal is in conformity with the policy and intent of the Comprehensive Plan;

The Future Land Use category for the Subject Property is Suburban, and Redan Road is a Minor Arterial. An updated fuel station and convenience store will be in conformity with the land use plan because it would be a permittable use in a C-2 zone but-for the zoning conditions on the property. The second story office space to support the convenience store does not exceed what is allowed for that C-2 zones.

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

The parcel is currently developed as an auto-oriented business along a minor arterial. The proposed modification retains that nature while creating a more visually activated convenience store, as opposed to the auto repair facility. The proposed modification will not permit any structures not allowed in C-2 zones. Furthermore, the immediately adjacent properties are listed as office or other commercial uses besides the church to the southeast. The property immediately south of the Subject Property appears to be vacant.

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



The use and height restrictions severely restrict the economic potential of the Subject Property to the extent that, as currently zoned, the zoning conditions prevent reasonable economic use of the Subject Property. Additionally, the current owner of the auto repair facility is ready to sell his property. It is highly unlikely that he will be able to do so if the conditions affecting his property do not change.

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

The Applicant is not requesting to modify the buffer condition of CZ-77077, so adjacent properties will continue to be separated by the same buffer they have been. The zoning proposal will not adversely affect the usability of adjacent or nearby properties.

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

The Applicant is not aware of any other conditions supporting grounds for either approval or disapproval of the zoning proposal.

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

The Applicant is not aware of adverse effects on any historic buildings, sites, districts, or archaeological resources.

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

The zoning proposal will not result in any burden on streets, transportation facilities, utilities, or schools. This zoning proposal will re-open the entrance on Young Road which will allow for better traffic flow into this new business.

#### III. <u>CONCLUSION</u>

For the foregoing reasons, the Applicant hereby requests that the application for a Major Modification of Zoning Conditions be approved. The Applicant welcomes any questions and feedback from the planning staff.

#### IV. <u>NOTICE OF CONSTITUTIONAL ALLEGATIONS AND PRESERVATION</u> <u>OF CONSTITUTIONAL RIGHTS</u>

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The portions of the DeKalb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of 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 DeKalb County Zoning Ordinance to the Subject Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary 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 II, Paragraph 1 of the Constitution of the State of Georgia.

A refusal by the DeKalb County Board of Commissioners 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 modification of CZ-77077 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 Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

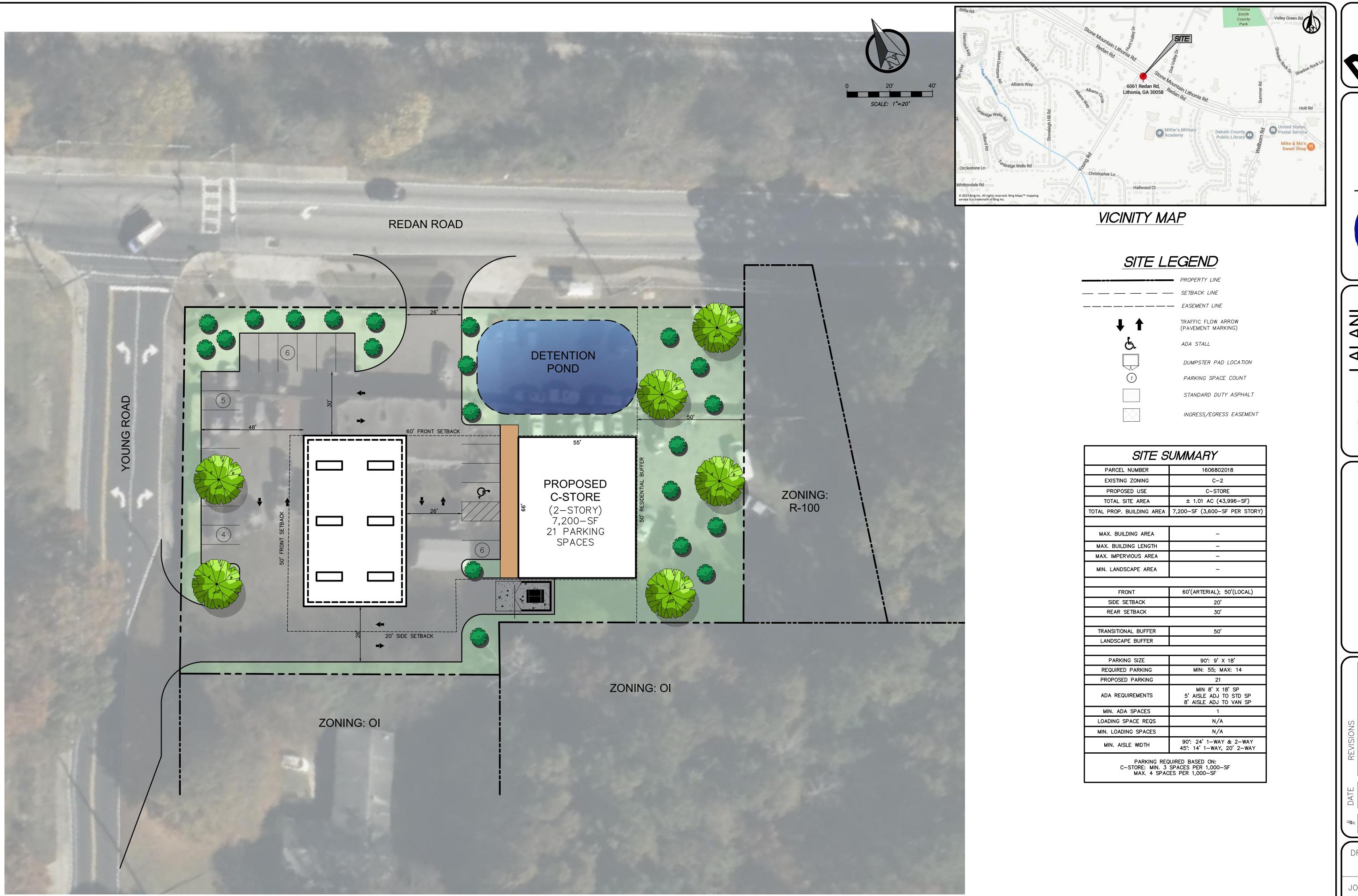
A refusal to allow the Major Modification of Zoning Conditions in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia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



A refusal to allow Major Modification of Zoning 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 DeKalb County demanding just and adequate compensation under Georgia law for the taking of the Subject Property, diminution of value of the Subject Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

> Joshua Mahoney, Esq. Attorney for the Applicant





SITE SUMMARY		
PARCEL NUMBER	1606802018	
EXISTING ZONING	C-2	
PROPOSED USE	C-STORE	
TOTAL SITE AREA	± 1.01 AC (43,996–SF)	
TOTAL PROP. BUILDING AREA	7,200-SF (3,600-SF PER STORY)	
MAX. BUILDING AREA	_	
MAX. BUILDING LENGTH	-	
MAX. IMPERVIOUS AREA	_	
MIN. LANDSCAPE AREA	_	
FRONT	60'(ARTERIAL); 50'(LOCAL)	
SIDE SETBACK	20'	
REAR SETBACK	30'	
TRANSITIONAL BUFFER	50'	
LANDSCAPE BUFFER		
PARKING SIZE	90°: 9' X 18'	
REQUIRED PARKING	MIN: 55; MAX: 14	
PROPOSED PARKING	21	
ADA REQUIREMENTS	MIN 8' X 18' SP 5' AISLE ADJ TO STD SP 8' AISLE ADJ TO VAN SP	
MIN. ADA SPACES	1	
LOADING SPACE REQS	N/A	
MIN. LOADING SPACES	N/A	
MIN. AISLE WIDTH	90°: 24' 1-WAY & 2-WAY 45°: 14' 1-WAY, 20' 2-WAY	
PARKING REQUIRED BASED ON: C-STORE: MIN. 3 SPACES PER 1,000-SF MAX. 4 SPACES PER 1,000-SF		

# **PRELIMINARY CONCEPT**

NOTE: THIS CONCEPTUAL DESIGN SHOULD BE UTILIZED AS A GRAPHICAL REPRESENTATION OF A POSSIBLE DESIGN CHOICE. THE INFORMATION ON THIS PLAN WAS DESIGNED FROM LIMITED MATERIAL AND HAS ITS INACCURACIES, THEREFORE IT SHOULD NOT BE USED FOR CONSTRUCTION UNTIL ALL APPLICABLE MATERIAL NEEDED HAS BEEN REVIEWED AND INCORPORATED.

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