



ZONING BOARD OF APPEALS MEETING MINUTES SUMMARY

Stonecrest City Hall - 6:30 PM *Spoke-in-Person Meeting
September 19, 2023

As set forth in the Americans with Disabilities Act of 1990, the City of Stonecrest will assist citizens with special needs given notice (7 working days) to participate in any open meetings of the City of Stonecrest. Please contact the City Clerk's Office via telephone (770-224-0200).

I. Call to Order

Commissioner Michael Armstrong called the meeting to order 07.02 pm.

II. Roll Call

Chairman Michael Armstrong (District 4) called the roll. Ms. Gwendolyn Green (District 2) and Mr. Shedrick Harris (District 5) were present. Ms. Kelly Ross (District 1) and Ms. Sonja Hicks (District 3) were absent. There was a quorum.

The Planning & Zoning - Ray White, Deputy Director – Matthew Williams, Senior Planner – Tre'Jon Singletary and Planner - Abeykoon Abeykoon were present. Attorney Alicia Thompson, Fincher Denmark, LLC, virtually attended.

III. Approval of the Agenda Need:

Chairman Michael Armstrong (District 4) called for a motion. The Zoning Board of Appeals Meeting Agenda dated September 19, 2023 was called for a motion to approve. Mr. Shedrick Harris (District 5) motioned to **APPROVE**. Ms. Gwendolyn Green (District 2) second the motion. The motion was unanimously **APPROVED**.

IV. Minutes:

Commissioner Michael Armstrong called for a motion. The Zoning Board of Appeals Meeting Minutes Summary dated **June 20, 2023**, was called for a motion to approve the Zoning Boards of Appeals Meeting Minutes Summary dated **June 20, 2023**. Ms. Gwendolyn Green (District 2) motioned to **APPROVE**. Mr. Shedrick Harris (District 5) seconded the motion. The motion was unanimously **APPROVED**.

V. Announcement:

The Planning & Zoning – Senior Planner – Tre'Jon Singletary explains about the Planning & Zoning "Project Viewer" which provides more information to the public regarding different planning and zoning projects that are currently going through the process. The project viewer is an interactive digital map showing planning activities such as Land Development Permits (LDP), Rezoning (RZ), Special Land Use Permits (SLUP), Variances (V) and Special Administrative Permits (SAP).

VI. Presentations: Upcoming Cases Presented by Ms. Abeykoon Abeykoon, Planner

V-23-005

VII. Old Business: No Old Business.

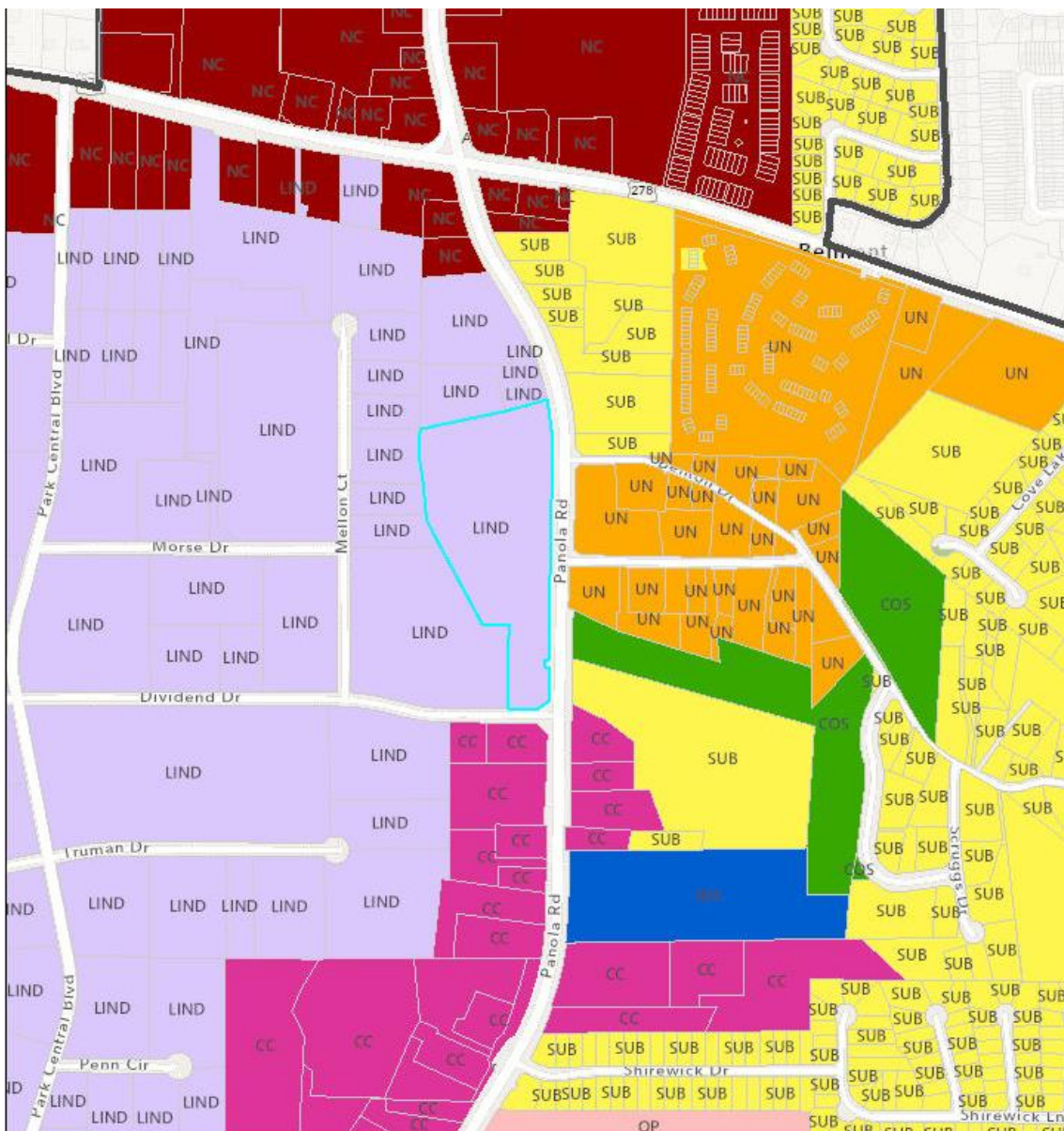
VIII. New Business

LAND USE PETITION: V23-005
 PETITIONER: Battle Law P.C. on behalf of Atlanta Residential Investors LLC
 LOCATION: 2375 Panola Road
 OVERLAY DISTRICT: I-20 Tier 2
 PETITIONER'S REQUEST: Petitioner is seeking a Variance to reduce stream buffer from seventy-five (75) feet to fifty (50) feet.

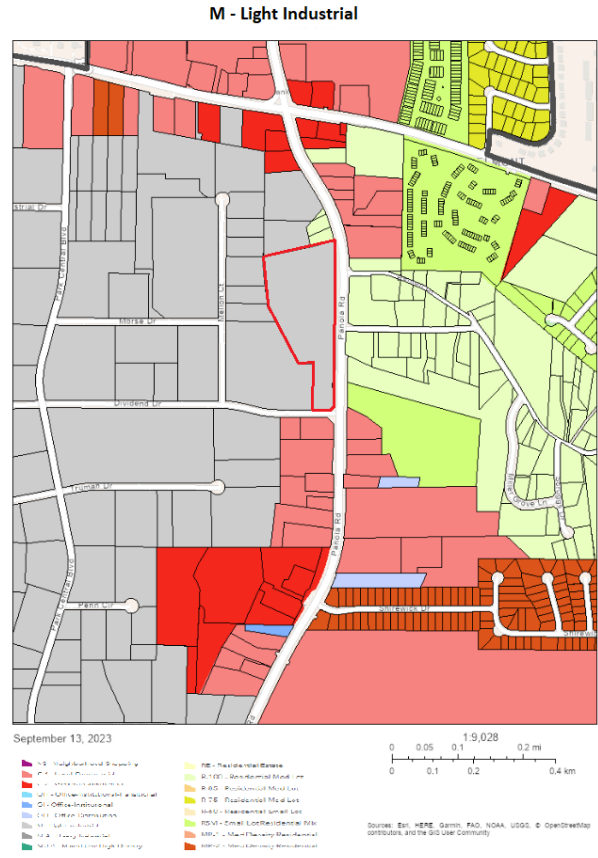
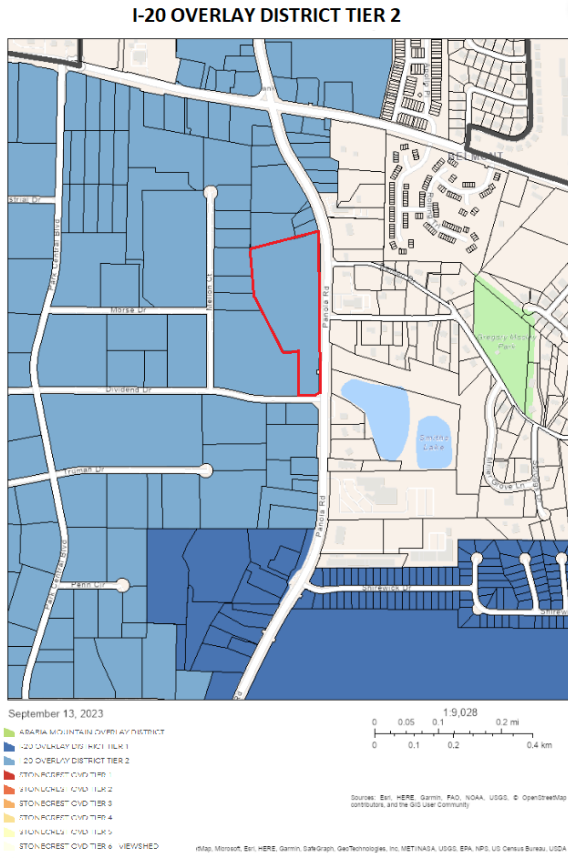
The Planning & Zoning, Planner – Abeykoon Abeykoon Presented V-23-005.

“Today we have only one case it is V-23-005. The Address is 2375 Panola Road. The applicant is seeking a stream buffer variance to reduce the required seventy-five (75) foot stream buffer to fifty (50) feet for a mixed-use development. The subject property belong to council District 2 and District representative is Mr. Rob Turner. Future Land use or the Character area of the property is Light Industrial. Underline Zoning of the property is M – Light Industrial and it also property is within the I -20 overlay district Tier 2.”

Future Land use of the area

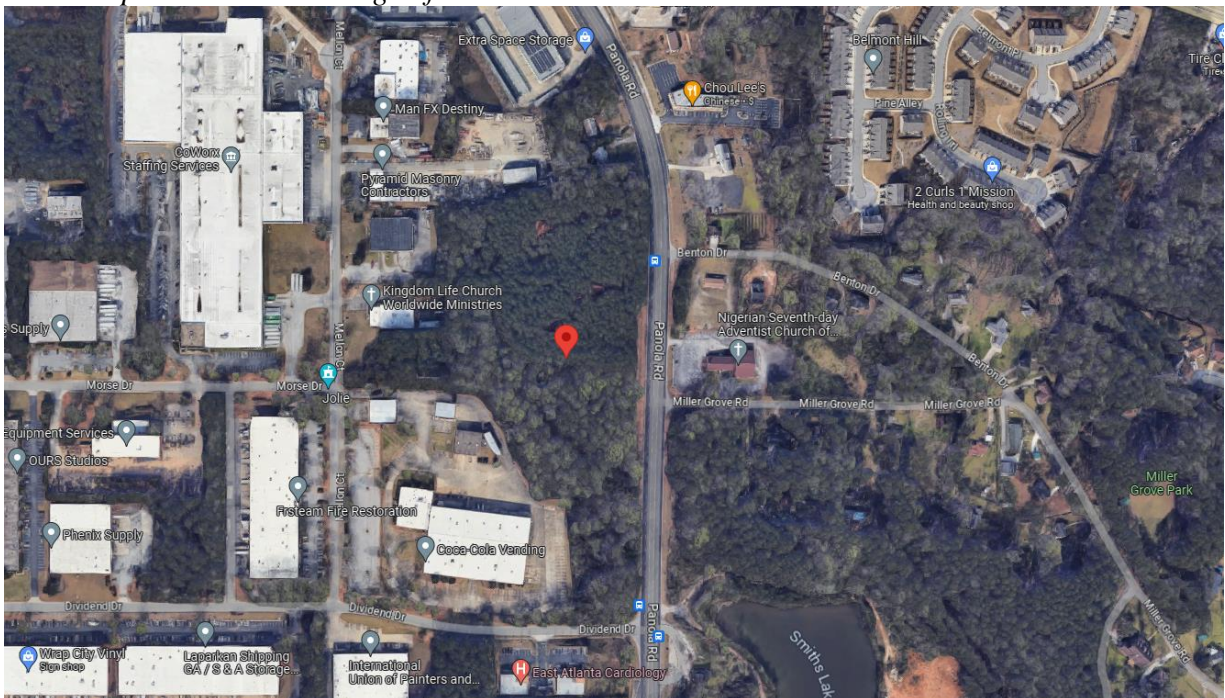


Overlay and Underline Zoning Districts of the property.



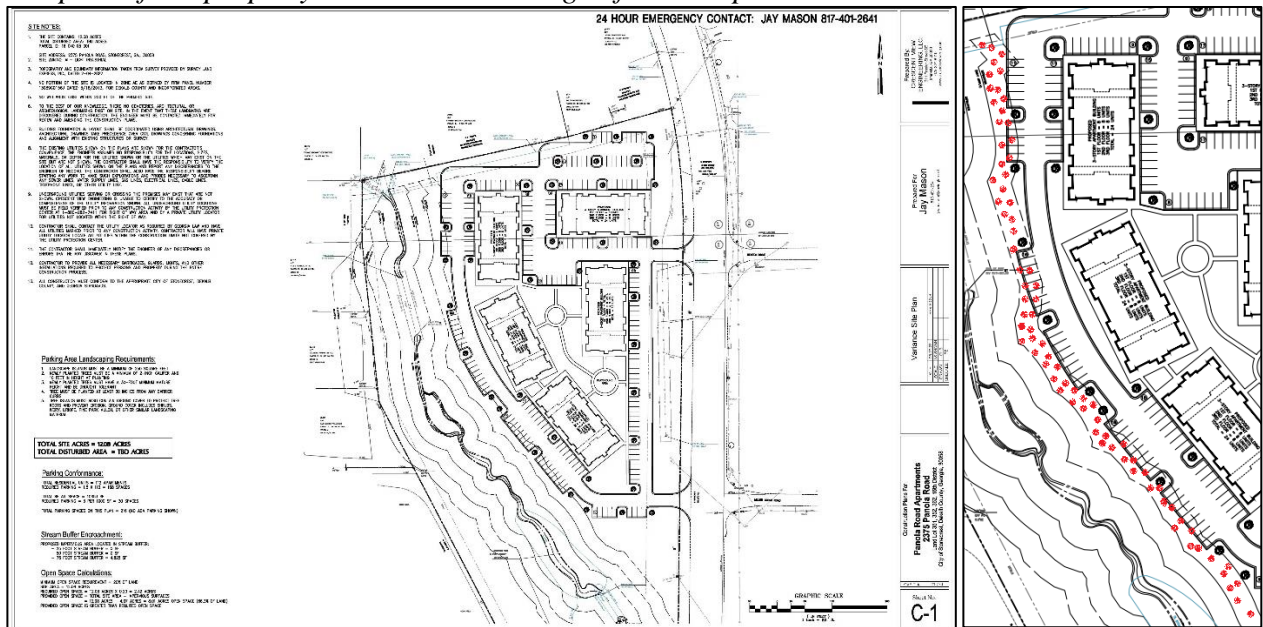
“According to the areal map of the area the property is currently undisturbed vacant land.”

Areal map and the areal image of the area



“Site plan shows the proposed mixed-used development. Staff provided an enhanced image that clearly shows the requested 25 stream buffer and the development that will take place on that encroached area.”

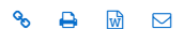
Site plan of the property and Enhanced image of the site plan



“The Petitioner’s Stated Hardship, it is the unusual shape of property, and the Stream traverses the rear of the subject property and stream buffer requirement (75 feet) had limited the buildable area. The Zoning Ordinance that applicant seek the release is Chapter 14 (Land Development) – Article 7 – Sec.14-543 (minimum Stream Buffer Requirements). Petitioner’s request variance to reduce stream buffer requirement from seventy-five (75) feet to fifty (50) feet.

Chapter 14 (Land Development) – Article 7 (Stream Buffer) – Sec. 14-543 (Minimum Stream Buffer Requirements)

Sec. 14-543. - Minimum stream buffer requirements.



- (a) Stream buffers are established along all perennial and intermittent streams in the City. These required stream buffers begin at the stream bank and extend 75 feet away from the stream. The buffers must remain undisturbed except as otherwise provided in [section 14-544](#).
 - (b) Any new stormwater discharge crossing a stream buffer or state buffer zone must be designed to ensure that sheet flow is established through the stream buffer and to prevent channelized flow through the stream buffer.
 - (c) Piping of streams is not allowed in required stream buffers unless a variance is granted.
- (Ord. No. 2018-06-03, § 14-543, 6-3-2018)

STAFF ANALYSIS

Following are the specific variance considerations listed in Sec 7.5.3 of the Stonecrest Zoning Ordinance that must be considered by the Board of Zoning Appeals to grant a variance. These considerations include:

- A. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), 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 an irregular lot shape and narrows in the southern portion. The natural structure of subject property (with a stream & rough topography) itself reduced the buildable area. Status of the property is an undisturbed lot (vacant). The magnitude of proposed development should not exceed the minimum requirements that impact on environmental sensitivity and sustainability.

- B. 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.**

The requested variance goes beyond the minimum necessary requirements to afford relief.

- C. The grant of the variance 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 grant of the stream buffer variance will impact on the water quality of the subject stream and reduce the positive impact of vegetated buffers near streams such as filtration of storm water runoff, water in streams, and disallow wildlife a critical corridor for moving throughout an ecosystem.

- D. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.**

The hardship of the development is basically not having sufficient buildable areas to accommodate requirements (such as parking) for the proposed project magnitude or scale of the development. Therefore, the redesign of the project could avoid the hardship.

- E. The requested variance would be consistent with the spirit and purpose of this chapter and the Stonecrest Comprehensive Plan text.**

The proposed variance does not comply with the spirit and purpose of this chapter and current ordinance.

STAFF RECOMMENDATION

Based on the findings and conclusions, it appears the requesting stream buffer variance does not comply with the city of Stonecrest ordinance chapter 27; Sec 7.5.3 (A) (1) and Chapter 14; Article VII; Sec. 14-544. Therefore, staff recommends Denial of V23-005.

Chapter 14 (Land Development) – Article 7 (Stream Buffer) – Sec. 14-544 (Exemptions and special administrative permits.)

14-544. - Exemptions and special administrative permits.



- a) *Exemptions.* The stream buffer regulations of this article do not apply to any of the following activities, provided that any activity within a state-mandated stream buffer must meet state requirements. Exemption of these activities does not constitute an exemption from any other activity proposed on a property or a requirement to obtain a building/land development permit.
- (1) Work consisting of the usual and customary repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this section. Such usual and customary repair and maintenance activities cannot create any land disturbance, and must occur within the preexisting disturbed area;
 - (2) Maintenance, including the full replacement, of existing decks, porches or similar improvements attached to a dwelling that encroach into a city stream buffer so long as the work does not increase the degree of encroachment or any nonconformity. The complete replacement of these improvements is provided for, including the replacement of stairs and all supporting beams, posts and footings subject to compliance with applicable city codes. The necessary construction of new or improved footings as required to comply with current building codes is allowable up to a maximum of 100 square feet of land disturbance;
 - (3) Construction of new decks, porches or other similar additions no more than 200 square feet in area, to existing structures without a deck, porch or similar structure, provided that such construction does not require more than 100 square feet of land disturbance and does not further encroach more than ten feet into the city stream buffer;
 - (4) Existing development and on-going land-disturbance activities including existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land-disturbance activities on such properties is subject to all applicable buffer requirements;
 - (5) Public sewer line installation in easements running parallel with the stream where necessary, except that all easements (permanent and construction) and land disturbance within a state waters' buffer must meet state requirements. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including, but not limited to, manholes, vents and valve structures. This exemption may not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses expressly identified in this section;
 - (6) Removal of unwanted ground cover (e.g., poison ivy) using hand tools as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;
 - (7) Land development activities within a dedicated transportation right-of-way existing at the time this section takes effect or approved under the terms of this section;
 - (8) Within an easement of any utility existing at the time this section takes effect or approved under the terms of this section, land-disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including, but not limited to, manholes, vents and valve structures;
 - (9) Emergency work necessary to preserve life or property. However, when emergency work is performed, the person performing it must report such work to the Community Development Department on the next business day after commencement of the work. Within ten business days thereafter, the person must apply for a permit and perform such work within such time period as may be determined by the Director or designee to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area;
 - (10) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land-disturbance in the buffer that would otherwise be prohibited, then no other land-disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer;
 - (11) Activities to restore or enhance stream bank stability, riparian vegetation, water quality or aquatic habitat, so long as native vegetation and bioengineering techniques are used;
 - (12) The removal of dead, diseased, insect-infested, or hazardous trees (without any associated land disturbance), provided the property owner provides sufficient documentation of the condition of the trees before removal, including photographs and a report by a certified arborist; and
 - (13) Multi-use trails and related improvements that are part of a City Council-approved plan. Unless otherwise approved by the State, such encroachments must be located at least 25 feet from the banks of state waters when, after study of alternative trail alignments, the Director determines that the alignment is the most desirable alternative and that they are designed to minimize impervious surfaces and incorporate BMPs and other mitigation practices that minimize the impact of encroachments on water quality. Trail improvements that are part of a City Council-approved plan are not counted as part of a site's impervious surface area for the purposes of site development-related calculations and regulations.
- b) *Special administrative permits.* The following activities may be approved within the stream buffers required by [section 14-543](#) by special administrative permit, pursuant to the process outlined in the Zoning Ordinance:
- (1) Stream crossings by utility lines, roads, driveways or similar transportation routes, including trails for nonmotorized transportation;
 - (2) Public water supply intake or public wastewater outfall structures;
 - (3) Land development necessary to provide access to a property;
 - (4) Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the stream, fishing platforms and overlooks;
 - (5) Stormwater outfalls to the stream, by pipe or channel, necessary to protect the buffer from erosion caused by high-flow velocities due to steep slopes;
 - (6) Exclusive of the exemptions in subsections(a)(2) and (3) of this section, minor land-disturbing activities totaling no more than 200 square feet in area and located more than 25 feet from the stream, for the construction of decks, porches, or other additions to existing structures, and accessory structures where riparian vegetation is restored or replaced in any disturbed areas; and
 - (7) Construction and land disturbance that results in the reduction or removal of impervious surfaces.

Chapter 27 (Zoning Ordinance) – Article 7 (Administration) – Sec. 7.5.3 (Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.) A (1)

Sec. 7.5.3. - Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.



The zoning board of appeals shall hear and decide applications for variances from the strict application of the regulations of this chapter and [chapter 21](#) where the strict application of any regulation enacted under said chapters would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the board shall apply the criteria specified in this section to the facts of each case. The board may attach reasonable conditions to any approved variance in accordance with [section 7.3.9](#). Once imposed, conditions shall become an integral part of the approved variance and shall be enforced as such. No changes to an approved condition attached to a variance shall be authorized except by re-application to the zoning board of appeals in full compliance with the applicable provisions of this division. No relief may be granted or action taken under the terms of this division unless such relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this chapter and the comprehensive plan. The zoning board of appeals shall apply the following criteria to the types of applications specified below as follows:

- A. Variances from the provisions or requirements of this chapter other than variances described in [section 7.5.4](#) shall be authorized only upon making all of the following findings:
 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), 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.
 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.
 3. The grant of the variance 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.
 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.
 5. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.
- B. Appeals of decisions regarding building architectural design standards shall be evaluated using the same criteria as section 7.6.7.B.
- C. Appeals to the height standards, but not to add stories, shall be evaluated using the criteria as follows:
 1. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.
 2. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.
 3. Adequacy of public services, public facilities, and utilities to serve the proposed use.
 4. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.
 5. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.
 6. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

(Ord. of 8-2-2017, § 1(7.5.3))

Gwendolyn Green (District 2): Ask for a clarification staff analysis number 5; The requested variance would be consistent with the spirit and purpose of this chapter and the Stonecrest Comprehensive Plan text. *The Planning & Zoning, Planner – Abeykoon Abeykoon* states that the proposed variance does not comply with the spirit and purpose of this chapter and current ordinance.

Chairman Armstrong: asked is there a possible alternative franchise to obtain a relief to proposed steam buffer requirement. *The Planning & Zoning Director - Ray White* explains that the applicant who states the hardship should advocate alternatives and staff consider the characteristics of land, city ordinance and argument of the variance to offer a relief.


Chairman Michael Armstrong asked for a motion to open public hearing. *Gwendolyn Green (District 2)* motioned to open the public hearing. *Mr. Shedrick Harris (District 5)* seconded the motion. The vote was unanimously approved.

Michele Battle – Battle Law P.C (on behalf of the applicant) make the presentation. The location is an interesting place to proposed site which adjacent to the Industrial Park. The subject property is currently vacant and abuts industrial and industrial uses including Coca-Cola vending, Pyramid Masonry Contractors, and the Kingdom Life Church Worldwide Ministries. Property in question traverses by a stream located along the western perimeter of the site. That covers roughly half of the site and makes unusable land due to 75 feet buffer. When considering the entire site; it is very compacted because of the presence of stream buffer. The whole intent of the variance request is that the shape size and topography of the property would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.

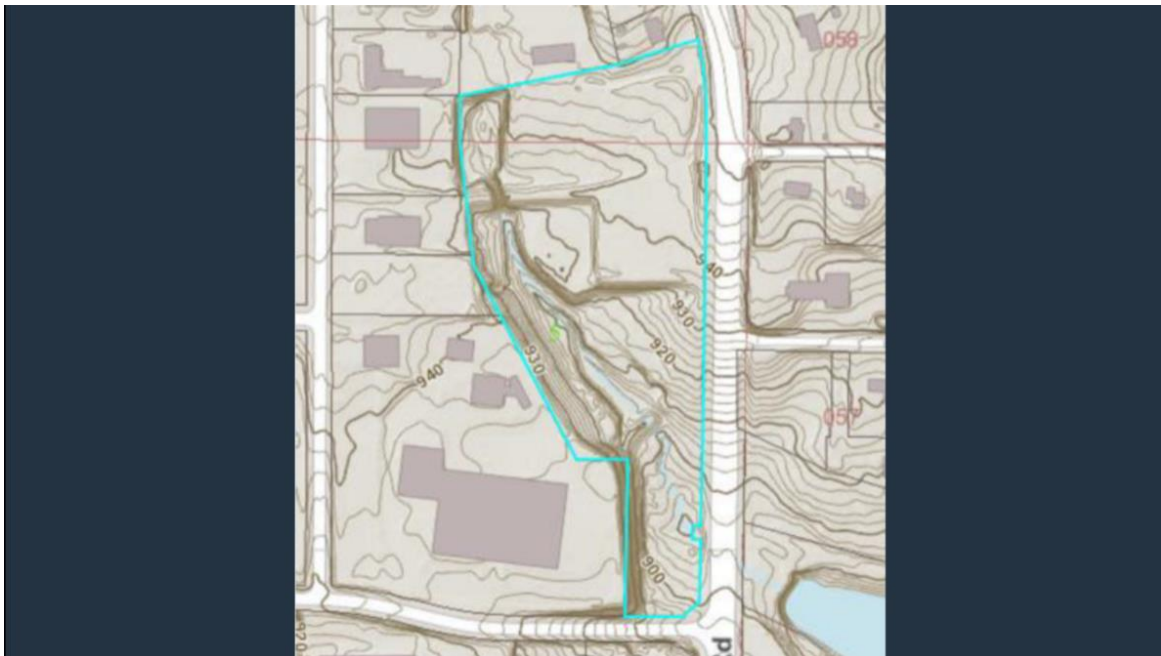
Presentation: Slide 01

The Subject Property is located off Panola Road at the intersection of Panola and Dividend Drive.

The Subject Property is currently vacant and abuts industrial and institutional uses including Coca-Cola Vending, Pyramid Masonry Contractors and the Kingdom Life Church Worldwide Ministries.

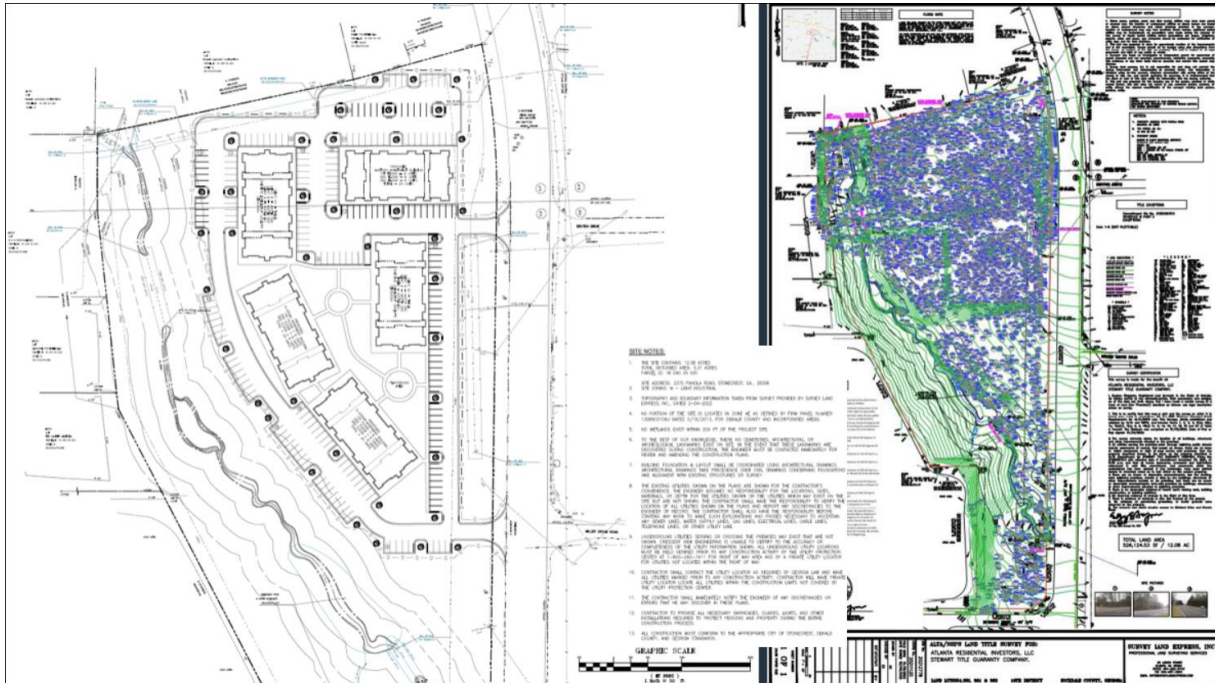


Presentation Slide 02:



The buildable area of this property significantly reduced because of the location of stream buffer. The site can be developed without any rezoning for multifamily products which consider a mixed-use product were providing retail on the first floor of the primary building. The site is located along the Panola corridor and if the project moved closer in the right way the project will require a setback reduction. Residence closer to an arterial road could be more hazardous. When the project needs to meet the parking requirements for the number of units the total number of parking spaces is 160. Because this is a mixed-use development, the developer must provide 30 additional parking spaces for the retail component. This is one of the first projects that would be along this corridor that have a mixed-use building. Many of the south side municipalities request the proposed type developments have a retail component on the first floor of the building.

Presentation Slide: 03



Presentation Slide 04: Proposed building visual.



There are no alternative adjacent units to the site which could provide required parking facilities for the residents. The proposed site can meet the water quality requirements to make sure the water quality of the stream and no record for threatened wildlife presence. Petitioners respectfully request a approval for the proposed variance.

Chairman Armstrong asked those in **support** to speak. There were none.

Chairman Hubbard asked those in **opposition** to speak. There were none.

Chairman Michael Armstrong asked for a motion to close the public hearing. Mr. Shedrick Harris (District 5) motioned to open the public hearing. Ms. Gwendolyn Green (District 2) seconded the motion. The vote was unanimously approved.

Chairman Michael Armstrong asked for a motion. Mr. Shedrick Harris (District 5) motioned to **RECOMMEND DENIAL OF PETITION V23-005** based on the staff recommendation and topography of the site. Ms. Gwendolyn Green (District 2) seconded the motion. The petition V23-005 was **unanimously DISAPPROVED**.

I. Public Comments: The Secretary, Abeykoon Abeykoon did not receive any public general comments to be read.

II. Adjournment

The vote was carried unanimously to adjourn the meeting at 7.36 PM. Gwendolyn Green (District 2) motioned to adjourn the meeting. Mr. Shedrick Harris (District 5) seconded the motion.

Visit the following link to view the meeting: [ZBA Meeting 9-19-2023](#)

APPROVED:

Michael D. Armstrong 1/16/24
Chairman Date

ATTEST:

Abeykoon K. Abeykoon 01/16/24
Secretary Date