



TO: Zoning Board of Appeals

FROM: Planning and Zoning Department

SUBJECT: V23-007

ADDRESS: 3654 Salem Drive

DISTRICT: 4 – Councilman George Turner, Jr.

CYCLE MEETING DATES: December 14, 2023 (CPIM) | | January 16, 2024 (ZBA)

Summary: Applicant is seeking a variance to encroach into a stream buffer for the construction of an attached garage for an existing home.

STAFF RECOMMENDATION: **Denial**



V23-007

Planning and Zoning Department

PROPERTY INFORMATION	
Location of Subject Property: 3654 Salem Drive Stonecrest, GA 30038	
Parcel Number: 16 052 05 016	
Road Frontage: Salem Drive	Total Acreage: 0.37
Current Zoning: R-100 – Residential Medium Lot	Overlay District: N/A
Future Land Use Map/ Comprehensive Plan: SN – Suburban Neighborhood	
Zoning Request: Applicant is seeking a variance to encroach into a stream buffer for the construction of an attached garage for an existing home.	
Zoning History: N/A	

APPLICANT / PROPERTY OWNER INFORMATION
Applicant Name: Diva Thomas
Applicant Address: 3654 Salem Drive Stonecrest, GA 30038
Property Owner Name: David Thomas
Property Owner Address: 3654 Salem Drive Stonecrest, GA 30038



DETAILS OF ZONING REQUEST

Diva Thomas (the “Applicant”) requesting a variance to encroach into a stream buffer for the construction of a driveway extension as well as an attached two-car garage on +/- 0.37 acres of land being Tax Parcel No. 16 052 05 016 having frontage on 3654 Salem Drive (the “Subject Property”).

The current use of the subject property is a single-family detached dwelling. The proposed attached two-car garage will not exceed 529 square feet. The proposed garage will replace the existing deck, which is shown in the site photos. The applicant calculated the current encroachment of the deck, which is 25% into the farthest buffer. Per Section 4.2.2. (Accessory buildings, structures and uses; location, yard and building restrictions) of the Zoning Ordinance, it states that accessory structures must not encroach in the minimum yard setbacks for the district in which they are located and accessory buildings or structures shall meet the minimum side yard setback for the district or ten feet, whichever is less, and shall not be located closer than ten feet to a rear lot line in any district.

Stream Buffers

The state of Georgia requires that a 25-foot buffer be maintained between the edge of a stream and any new development. DeKalb County requires an additional 50 feet of buffer (for a total of 75 feet). Vegetated buffers near streams provide for filtration of storm water runoff, shade water in streams, and allow wildlife a critical corridor for moving throughout an ecosystem. Any proposed development in the state or county buffer requires a variance from the appropriate agency.

ADJACENT ZONING & LAND USE

NORTH	Zoning: R-100 (Residential Medium Lot-100)	Land Use: Single-Family Dwelling
SOUTH	Zoning: R-100 (Residential Medium Lot-100)	Land Use: Single-Family Dwelling
EAST	Zoning: R-100 (Residential Medium Lot-100)	Land Use: Single-Family Dwelling
WEST	Zoning: R-100 (Residential Medium Lot-100)	Land Use: Single-Family Dwelling



PHYSICAL CHARACTERISTICS & INFRASTRUCTURE

This site is currently developed with one road frontage (Salem Drive). There is a stream driven through the rear boundaries of the property. Stream buffer requirement had limited the buildable area of the property.

MODIFICATIONS AND CHANGES TO APPROVED CONDITIONS OF ZONING CRITERIA

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.**

RECOMMENDATION

Staff recommends the following:

- **DENIAL** due to the Applicant is creating an unnecessary hardship, as there is space where the current garage can be constructed or renovate the existing garage area.



V23-007

Planning and Zoning Department

Attachments Included:

- **Code of Ordinance(s)**
- **Future Land Use Map**
- **Overlay Zoning Map**
- **Zoning Map**
- **Aerial Map**
- **Site Photos**
- **Site Plan/Survey**
- **Letter of Intent**

ARTICLE VII. STREAM BUFFER

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)

Sec. 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

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- 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;

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- (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.

(Ord. No. 2018-06-03, § 14-544, 6-3-2018)

Sec. 4.2.2. Accessory buildings, structures and uses; location, yard and building restrictions.

The following provisions apply to accessory buildings, structures, and uses of land that are incidental to authorized and permitted uses:

- A. All accessory buildings, accessory structures, and accessory uses of land, including off-street parking, shall be located on the same lot as the principal buildings to which they are accessory.
- B. All accessory structures in which effluent is produced shall be connected to water and sewer if the primary structure is connected to water and sewer.
- C. Yard and setbacks.
 - 1. All accessory buildings or structures shall be located in the rear yard of the lot, with the exception of ATM bank machines which are also allowed in the front or Side yard:
 - 2. Accessory structures must not encroach in the minimum yard setbacks for the district in which they are located.
 - 3. Accessory buildings or structures shall meet the minimum side yard setback for the district or ten feet, whichever is less, and shall not be located closer than ten feet to a rear lot line in any district.
 - 4. Basketball goals attached to the principal residential structure or erected adjacent to and abutting the driveway of the principal residential structure shall be allowed in the front yard but not within the right-of-way of a public street. No basketball goal shall be erected in such a manner that the play area for the basketball goal is located within any portion of a public right-of-way.
 - 5. Additional supplemental regulations in this article regarding minimum yards and setbacks for specific accessory buildings, structures, or uses of land may also apply.
- D. Corner lot, rear yards. Where the rear yard of a corner lot adjoins the side yard of a lot in a residential district, no accessory building or structure shall be located closer than 15 feet to the rear property line and no closer to the side street right-of-way line than the principal building.
- E. Materials. Accessory structures that are buildings or sheds shall be constructed out of a material similar to the principal structure.
- F. No accessory building or structure in a nonresidential district shall be used by anyone other than employees of the owner, lessee or tenant of the premises, unless otherwise allowed by provisions of this chapter.
- G. Where an accessory building or structure is attached to the principal building by a breezeway, passageway or similar means, the accessory building or structure shall comply with the yard setback requirements of the principal building to which it is accessory.
- H. Setbacks for swimming pools, as accessory structures in a residential district, shall be measured from the edge of the decking to the applicable property line. No part of the decking for an accessory swimming pool shall be within five feet of a side or rear property line.
- I. Except as expressly provided elsewhere in this chapter, an accessory structure shall be limited to the lesser of 24 feet in height or the height of the principal structure, whichever is less.
- J. The floor area of an accessory buildings that is accessory to a single-family, two-family, or three-family residential structure shall not exceed the maximum floor areas set forth in Table 4.2, below.

Table 4.2. Maximum Accessory Building Floor Area - Select Residential Structures

Maximum Accessory Building Floor Area	
Property Size	Maximum Floor Area
0 to 0.999 acres	900 square feet
1 to 4.999 acres	1,200 square feet
5 to 9.999 acres	2,000 square feet
10 or more acres	No size limit

(Ord. of 8-2-2017, § 1(4.2.2))

FUTURE LAND USE MAP





Suburban Neighborhood (SN)

The intent of the Suburban Neighborhood character area is to recognize those areas of the city that have developed in traditional suburban land use patterns while encouraging new development to have increased connectivity and accessibility. These areas include those developed (built out) and those under development pressures. Those areas are characterized by low pedestrian orientation, limited transit access, scattered civic buildings and curvilinear street patterns. The proposed density for areas of this type is up to 8 dwelling units per acre.

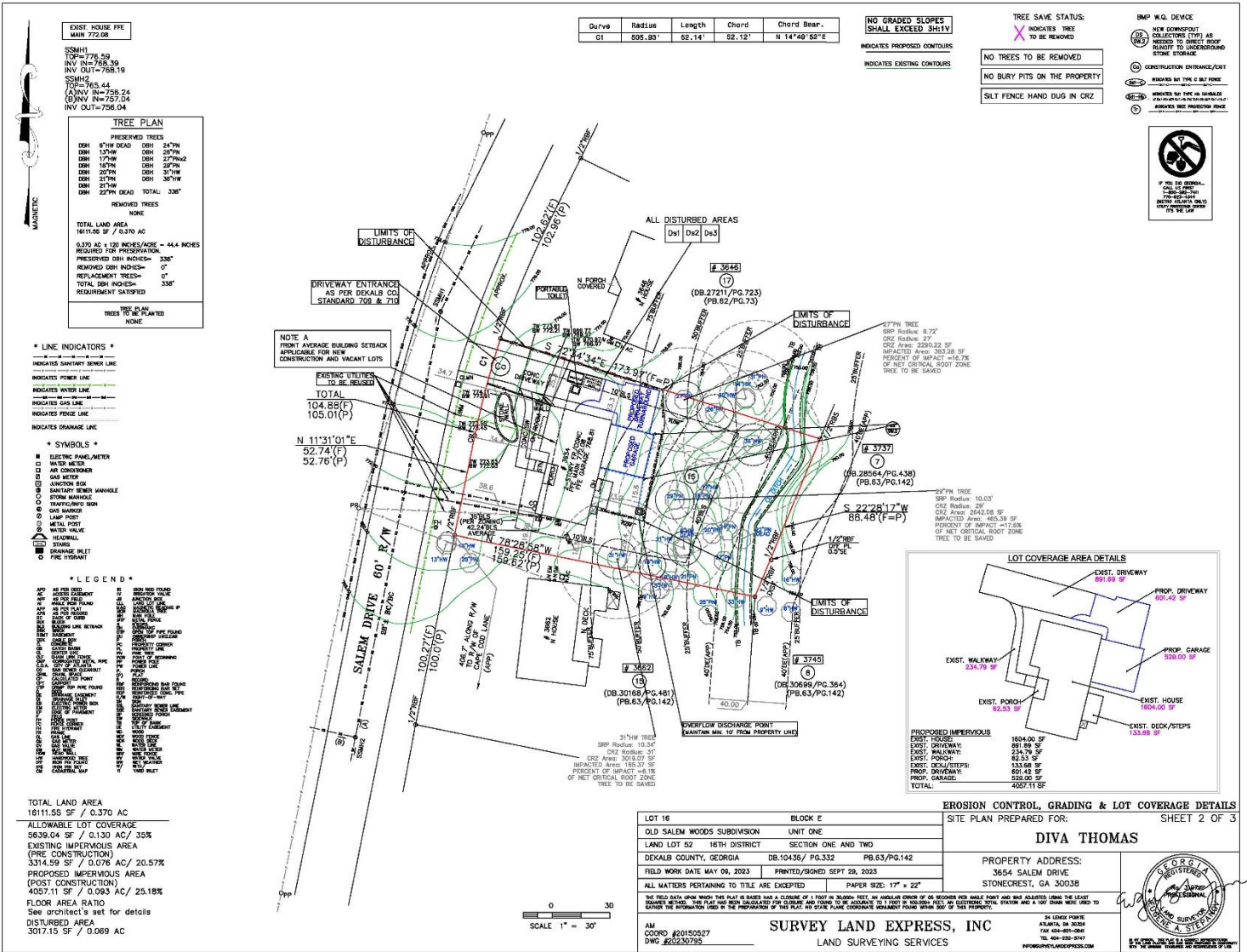
ZONING MAP | R-100



AERIAL MAP



SUBMITTED SITE PLAN





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SUBMITTED SITE PHOTOS



H01



H02



H03



H04



H05



H06



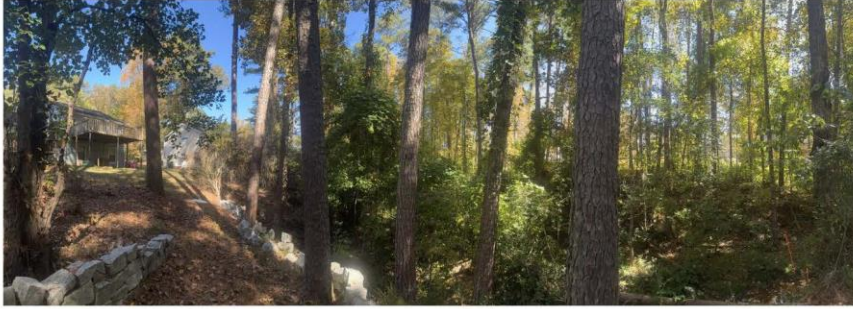
H07



H08



H09



H10



H11



H12

Letter of Intent

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Letter of Intent

Diva Thomas
3654 Salem Drive
Stonecrest, GA 30038
10/22/2023

City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, Georgia 30038

To whom it may concern,

I am writing to formally request a Stream Buffer Variance as per Chapter 14 of the Stonecrest Zoning Ordinance to construct a proposed attached two-car garage (not exceeding 529 sq ft or 23ft by 23ft) within the farthest buffer zone where multiple neighboring residential buildings are also located, either in this zone or closer to the stream. The garage will replace the existing deck, which currently encroaches approximately 25% into the farthest buffer. The proposed attached garage will occupy no more than 397 sq ft than the current existing deck, originally built with the house. To preserve the integrity of the area, we have ensured that there will be no encroachment closer than 50 feet from the only stream channel on the property.

Since the construction of the residential house in 1988, the year the new house was acquired by the current property owner, over half of the existing attached house decks have always been situated within the 75' buffer (zone 3). Additionally, at least three houses on the same street have structures located within buffer zones 2 and 3 (please refer to the attached photo images for reference). For instance, the house on the left when viewed from the street has structural elements within zone 3 of the buffer (as shown in the attached photo image, "H08"), and the house on the right of the property from the street view also has existing structures within buffer zones 2 and 3 (as seen in the attached photo image, "H06"). Hence, the neighborhood, in existence since the 1970s, with no HOA fees, has historically seen no issues related to building within these buffer zones. Moreover, our property has remained stable for over 35 years, even when the ground becomes saturated after storms. We are only seeking permission to construct within zone 3, the farthest buffer from the stream, to enhance safety by reducing vehicle theft concerns and improving the neighborhood's aesthetic appeal by decreasing the number of vehicles in the driveway. This, in turn, will contribute to minimizing energy consumption and reducing the carbon footprint associated with defrosting and cooling vehicles parked in the driveway, thereby promoting the upkeep of vehicles and safety on the roads.

The proposed construction within the farthest buffer will have minimal impact on water quality. The stream behind the house is relatively small, with shallow depths of between 3-6 inches on average with ~3 feet across, and a natural reservoir (approximately 30 ft across) never fills more than 25% capacity with stream water and runoff. This reservoir also boasts plant growth that aids in water absorption. We plan to enhance this natural water quality measure by adding more

plants to further mitigate water quality issues. Furthermore, there is no historical evidence to suggest that water from the stream has ever impacted or flooded the property.

Should the proposed garage structure not be allowed within the buffer, it would necessitate construction below the high, slanted driveway, increasing the risk of accidents such as vehicles accidentally driving into the new attached garage, especially during hazardous conditions like icy roads, slippery surfaces, intoxicated driving, inexperienced driver accidents, or theft attempts using vehicles. Thus, the alignment of the new structure, directly below the slanted driveway, would lead to safety concerns and poor visual cohesion for visitors, potential buyers, and neighbors, which could have detrimental effects on property values in the neighborhood.

As mentioned earlier, there is an existing reservoir acting as a natural water quality measure on-site, which remains dry for most of the year and has never filled beyond one-fourth of its capacity. If the requested variance is granted, we intend to enhance the site with better landscaping, stormwater management, eco-friendly stream flow improvements, tree planting, and/or growing native plants, etc. These enhancements will not only beautify the area but also contribute to effective water quality control.

The proposed improvements to the site have the potential to substantially enhance the house's character and benefit the surrounding area by allowing for better discharge mitigation, further reducing the likelihood of any negative water impact. The variance, if granted, will not result in excessive use of existing infrastructure, transportation facilities, or schools, nor will it have any adverse effects on the environment or surrounding natural resources.

Additional Site Information:

Nature of Request: Stream Buffer Variance

Property Details:

Name of Project/Subdivision: Residential Attached Two-Car Garage Project / Old Salem Woods Subdivision

Property Address/Location: 3654 Salem Drive, Stonecrest, GA 30038

District: 4

Land Lot: R-100 – Residential Med Lot

Block: E

Property/Parcel ID: 16 052 05 016

Campaign Disclosure: No

Legal description including a narrative of the metes and bounds:

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 52 OF THE 16TH DISTRICT, DEKALB COUNTY, GEORGIA, BEING LOT 16, BLOCK E, OLD SALEM WOODS, SECTION ONE AND TWO, UNIT ONE, AS SHOWN AT PLAT BOOK 63, PAGE 142 [See "H15" for attached map site document], DEKALB COUNTY RECORDS, WHICH PLAT IS REFERRED TO AND MADE A PART OF THIS DESCRIPTION, BEING IMPROVED PROPERTY WITH A RESIDENCE LOCATED THEREON KNOWN AS 3654 SALEM DRIVE, ACCORDING TO THE PRESENT SYSTEM OF NUMBERING HOUSES IN DEKALB COUNTY, GEORGIA AND BEING MORE PARTICULARLY SHOWN ON SURVEY PREPARED BY PATRICK AND ASSOCIATES, INC., DATED JANUARY 28, 1988.

We request that you consider our application and grant the necessary variance. We are committed to adhering to the requirements and ensuring that the proposed variance is consistent with the embodiment and purpose of Chapter 14 and the City of Stonecrest Comprehensive Plan.

Should you require additional information or have any questions regarding our application, please do not hesitate to contact at 770-617-7369 or divathomas@hotmail.com.

Please feel free to reach out at any time with your questions or thoughts, and we eagerly await your response.

Thank you for your attention to this matter. We sincerely appreciate your consideration of our request.

Sincerely,

Diva Thomas
3654 Salem Drive
Stonecrest, GA 30038
divathomas@hotmail.com
(770) 617-7369
