

**APPLICATION FOR REZONING
TO THE CITY OF SMYRNA**

Type or Print Clearly

(To be completed by City)

Ward: 3
Application No: 216-021
Hearing Date: 12/19/16

APPLICANT: Traton Homes, LLC (See Attached for Applicant Information)

Representative
Name: Moore Ingram Johnson & Steele, LLP - J. Kevin Moore
(Representative's name, printed)

Representative
Address: Emerson Overlook, 326 Roswell Street, Marietta, GA 30060

Business Phone: (770) 429-1499 Cell Phone: (678) 516-1609 Fax Number: (770) 429-8631

E-Mail Address: jkm@mij.com; cliff@tratonhomes.com
MOORE INGRAM JOHNSON & STEELE, LLP

Signature of Representative BY: [Signature]
J. Kevin Moore; Georgia Bar No. 519728
Attorneys for Applicant and Property Owner

TITLEHOLDER

Name: Donald I. Adams
(Titleholder's name, printed)

Address: 1435 Pierce Avenue, Smyrna, GA 30080

Business Phone: _____ Cell Phone: (770) 331-5575 Home Phone: _____

E-mail Address: _____

Signature of Titleholder: [Signature]
(Attach additional signatures, if needed)
Donald I. Adams

(To be completed by City)
Received: 10/14/16
Heard by P&Z Board: 12/12/16
P&Z Recommendation: _____
Advertised: 12/2/16 - MDJ
Posted: 10/24/16
Approved/Denied: _____

ATTACHMENT TO APPLICATION FOR REZONING

Application No.:

Hearing Dates:

November 14, 2016

December 19, 2016

Applicant:

Traton Homes, LLC

Titleholder:

Donald I. Adams

Applicant:

Traton Homes, LLC

William C. Poston, Jr., Member

720 Kennesaw Avenue

Marietta, Georgia 30060

(770) 427-9064 (Office)

(770) 427-2714 (Fax)

E-mail: clif@tratonhomes.com

Applicant's Representative:

J. Kevin Moore, Esq.

Moore Ingram Johnson & Steele, LLP

Attorneys at Law

Emerson Overlook

326 Roswell Street

Marietta, Georgia 30060

(770) 429-1499 (Office)

(770) 429-8631 (Telefax)

E-mail: jkm@mijs.com

ZONING REQUEST

From R-20 (Cobb County) to RAD-PD (City of Smyrna)
Present Zoning Proposed Zoning

LAND USE

From Low Density Residential to Moderate Density Residential
Present Land Use (Cobb County) Proposed Land Use

For the Purpose of Detached, Single-Family Residential

Size of Tract 10.63

Location Bounded on the north by Belmont Avenue; bounded on the south by
Pierce Avenue; bounded on the east by Reed Street; bounded on the west
(Street address is required. If not applicable, please provide nearest intersection, etc.)
by Davis Drive (1435 Pierce Avenue)

Land Lot (s) 562 District 17th

We have investigated the site as to the existence of archaeological and/or architectural landmarks. I hereby certify that there are no ~~XXXXXX~~ such assets. If any, they are as follows:
to the best of our knowledge, information, and belief.

Not Applicable.

(To be completed by City)
Recommendation of Planning Commission:

Council's Decision:

CONTIGUOUS ZONING

North: R-15 (City of Smyrna)

East: R-20 (Cobb County)

South: R-20 (Cobb County)

West: R-20 (Cobb County)

CONTIGUOUS LAND USE

North: Moderate Density Residential (City of Smyrna)

East: Low Density Residential (Cobb County)

South: Low Density Residential (Cobb County)

West: Low Density Residential (Cobb County)

INFRASTRUCTURE

WATER AND SEWER

A letter from Scott Stokes, Director of Public Works Department is required stating that water is available and the supply is adequate for this project.

A letter from Scott Stokes, Director of Public Works Department is required stating that sewer is available and the capacity is adequate for this project.

- If it is Cobb County Water, Cobb County must then furnish these letters.

Comments:

TRANSPORTATION

Access to Property? Belmont Avenue; Pierce Avenue; Reed Street; Davis Drive

Improvements proposed by developer? Installation of new connecting public street per Site Plan.

Comments:

ZONING DISCLOSURE REPORT
(Applicant)

Has the applicant* made, within two years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to the Mayor or any member of the City Council or Planning and Zoning Board who will consider this application?

No.

If so, the applicant* and the attorney representing the applicant* must file a disclosure report with the Mayor and City Council of the City of Smyrna, within 10 days after this application is filed.

Please supply the following information, which will be considered as the required disclosure:

The name of the Mayor or member of the City Council or Planning and Zoning Board to whom the campaign contribution or gift was made:

Not Applicable.

The dollar amount of each campaign contribution made by the applicant* to the Mayor or any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application, and the date of each such contribution:

Not Applicable.

An enumeration and description of each gift having a value of \$250 or more by the applicant* to the Mayor and any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application:

Not Applicable.

Does the Mayor or any member of the City Council or Planning and Zoning Board have a property interest (direct or indirect ownership including any percentage of ownership less than total) in the subject property?

No, to the best of our knowledge, information, and belief.

If so, describe the natural and extent of such interest: Not Applicable.

ZONING DISCLOSURE REPORT (CONTINUED)
(Applicant)

Does the Mayor or any member of the City Council or Planning and Zoning Board have a financial interest (direct ownership interests of the total assets or capital stock where such ownership interest is 10% or more) of a corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust, which has a property interest (direct or indirect ownership, including any percentage of ownership less than total) upon the subject property?

No, to the best of our knowledge, information, and belief.

If so, describe the nature and extent of such interest:

Not Applicable.

Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

No, to the best of our knowledge, information, and belief.

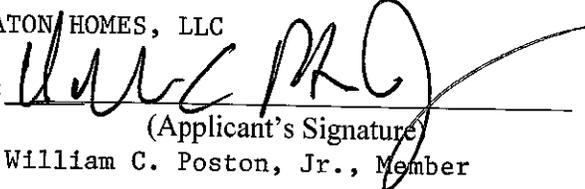
If so, describe the relationship and the nature and extent of such interest:

Not Applicable.

If the answer to any of the above is "Yes", then the Mayor or the member of the City Council or Planning and Zoning Board must immediately disclose the nature and extent of such interest, in writing, to the Mayor and City Council of the City of Smyrna. A copy should be filed with this application**. Such disclosures shall be public record and available for public inspection any time during normal working hours.

We certify that the foregoing information is true and correct, this 14th day of October, 2016.

TRATON HOMES, LLC

BY: 

(Applicant's Signature)

William C. Poston, Jr., Member

(Attorney's Signature, if applicable)

Notes

* Applicant is defined as any individual or business entity (corporation, partnership, limited partnership, firm enterprise, franchise, association or trust) applying for rezoning action.

** Copy to be filed with the City of Smyrna Zoning Department and City Clerk along with a copy of the zoning application including a copy of the legal description of the property.

ZONING DISCLOSURE REPORT

(Applicant's and Titleholder's Representative)

Has the applicant* made, within two years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to the Mayor or any member of the City Council or Planning and Zoning Board who will consider this application?

Yes.

If so, the applicant* and the attorney representing the applicant* must file a disclosure report with the Mayor and City Council of the City of Smyrna, within 10 days after this application is filed.

Please supply the following information, which will be considered as the required disclosure:

The name of the Mayor or member of the City Council or Planning and Zoning Board to whom the campaign contribution or gift was made:

Mayor Max Bacon; Council Member Doug Stoner

The dollar amount of each campaign contribution made by the applicant* to the Mayor or any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application, and the date of each such contribution:

\$1,000 (total) to Mayor Max Bacon (August 2015)

\$500 to Council Member Doug Stoner (August 2015)

An enumeration and description of each gift having a value of \$250 or more by the applicant* to the Mayor and any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application:

Political Contributions

Does the Mayor or any member of the City Council or Planning and Zoning Board have a property interest (direct or indirect ownership including any percentage of ownership less than total) in the subject property?

No, to the best of our knowledge, information, and belief.

If so, describe the natural and extent of such interest: Not Applicable.

ZONING DISCLOSURE REPORT (CONTINUED)

(Applicant's and Titleholder's Representative)

Does the Mayor or any member of the City Council or Planning and Zoning Board have a financial interest (direct ownership interests of the total assets or capital stock where such ownership interest is 10% or more) of a corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust, which has a property interest (direct or indirect ownership, including any percentage of ownership less than total) upon the subject property?

No, to the best of our knowledge, information, and belief.

If so, describe the nature and extent of such interest:

Not Applicable.

Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

No, to the best of our knowledge, information, and belief.

If so, describe the relationship and the nature and extent of such interest:

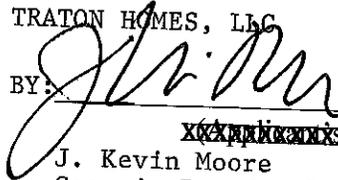
Not Applicable.

If the answer to any of the above is "Yes", then the Mayor or the member of the City Council or Planning and Zoning Board must immediately disclose the nature and extent of such interest, in writing, to the Mayor and City Council of the City of Smyrna. A copy should be filed with this application**. Such disclosures shall be public record and available for public inspection any time during normal working hours.

We certify that the foregoing information is true and correct, this 14th day of October, 2016.

TRATON HOMES, LLC

BY:



~~X (Applicant's Signature) X~~

J. Kevin Moore
Georgia Bar No. 519728

~~X (Attorney's Signature, if applicable) X~~

Attorneys for Applicant and Titleholder

Notes

* Applicant is defined as any individual or business entity (corporation, partnership, limited partnership, firm enterprise, franchise, association or trust) applying for rezoning action.

** Copy to be filed with the City of Smyrna Zoning Department and City Clerk along with a copy of the zoning application including a copy of the legal description of the property.

REZONING ANALYSIS

Section 1508 of the Smyrna Zoning Code details nine zoning review factors which must be evaluated by the Planning and Zoning Board and the Mayor and Council when considering a rezoning request. Please provide responses to the following using additional pages as necessary. **This section must be filled out by the applicant prior to submittal of the rezoning request.**

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

The proposed use of detached, single-family homes is consistent with
adjacent and nearby property, which includes single-family homes and
townhomes. The proposed density is suitable given the need for quality
in-fill development north of Hawthorne Avenue.

2. Whether the zoning proposal or the use proposed will adversely affect the existing use or usability of adjacent or nearby property.

The proposed use of detached, single-family homes will not adversely
affect the usability of similarly situated single-family homes in the area.

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

As currently zoned, the Property does not have a reasonable economic use
given the Property is a relatively large undeveloped "in-fill" tract; and
given the existence of higher density residential developments in the
immediate and surrounding areas.

REZONING ANALYSIS (CONTINUED)

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

The proposed use will not result in an excessive burden on local infrastructure, as the use is detached, single-family homes; consistent with surrounding property.

5. Whether the zoning proposal is in conformity with the policy and intent of the land use plan.

While the proposal slightly exceeds the current Land Use Plan designation in terms of overall density; it is consistent with City land use policies to encourage in-fill development of detached, single-family homes and given the opportunity to attract quality, new homes in the immediate area.

6. 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.

Existing and changing conditions in the surrounding area support the proposal. Extensive redevelopment of nearby Belmont Hills; as well as, the Williams Park Neighborhood, support quality in-fill development. Development of detached and attached homes in the area suggests continued need for quality in-fill development. The proposal for detached, single-family homes is, therefore, fully supported by these conditions.

REZONING ANALYSIS (CONTINUED)

7. Whether the development of the property under the zoning proposal will conform to, be a detriment to or enhance the architectural standards, open space requirements and aesthetics of the general neighborhood, considering the current, historical and planned uses in the area.

The proposal will enhance the architectural standards of the neighborhood by engaging existing streets and elevating the quality of housing options in the adjoining area. Maintaining the existing pond as an area, visual amenity likewise enhances the overall aesthetics of the neighborhood.

8. Under any proposed zoning classification, whether the use proposed may create a nuisance or is incompatible with existing uses in the area.

The proposal is consistent and compatible with existing detached and attached residential uses common in the area at-large.

9. Whether due to the size of the proposed use, in either land area or building height, the proposed use would affect the adjoining property, general neighborhood and other uses in the area positively or negatively.

The proposal located on a relatively large in-fill tract offers the opportunity to set a higher quality of housing and development in a neighborhood that has not seen improvements in the residential market. As such, the proposal will affect the neighborhood in a positive manner.

Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

mail
This instrument prepared by:
Adams & Adams
P.O. Box 310
Smyrna, Ga. 30080
678) 305-9654

STATE OF GEORGIA
COUNTY OF COBB
DEED PREPARATION ONLY

2/18

Quit-Claim Deed

This Indenture, made this 28TH day of JANUARY, 2005, between

ELLAVEE ADAMS

of the County of COBB in the State of GEORGIA as party or parties of the first part, hereinafter called Grantor, and

DONALD L ADAMS

of the County of Fulton in the State of GEORGIA, as party or parties of the second part, hereinafter called Grantee (the words "Grantor and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

Witnesseth:

That Grantor for and in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid at and before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does hereby remise, convey and forever QUITCLAIM unto the said grantee,

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED
HERETO AND INCORPORATED HEREIN BY REFERENCE.

DEED OF GIFT.

TO HAVE AND TO HOLD the said described premises to grantee, so that neither grantor nor any person or persons claiming under grantor shall at any time, by any means or ways, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in the presence of:

Rachel L. Adams
WITNESS

(SEAL)

[Signature]
NOTARY PUBLIC
My commission expires:
FOR:QUITCLAIM.ORG



Eveecee Adams
(SEAL)

EXHIBIT A

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT NO. 562 OF THE 17TH DISTRICT AND 2ND SECTION, COBB COUNTY, GEORGIA AND BEING 10.5 ACRES AS PER PLAT AND SURVEY BY J. P. PHILLIPS, SURVEYOR, DATED OCTOBER 23, 1957, AND RECORDED IN PLAT BOOK 25, PAGE 130, OFFICE OF THE CLERK OF THE SUPERIOR COURT OF COBB COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN WHICH IS LOCATED AT THE SOUTHWEST INTERSECTION OF REED STREET AND BELMONT AVE. AND RUNNING THENCE WEST ALONG THE SOUTH SIDE OF BELMONT AVE., 858 FEET TO A POINT AND CORNER MARKED BY AN IRON PIN AT THE SOUTHEAST INTERSECTION OF DAVIS DRIVE AND BELMONT AVE., RUNNING THENCE SOUTH ALONG THE EAST SIDE OF DAVIS DRIVE 500 FEET TO A POINT AND CORNER MARKED BY AN IRON PIN AT THE NORTHEAST INTERSECTION OF DAVIS DRIVE AND PIERCE AVE., AND RUNNING THENCE EAST ALONG THE NORTH SIDE AND FOLLOWING THE CURVATURES OF PIERCE AVE. 874 FEET TO A POINT AND CORNER MARKED BY AN IRON PIN AT THE NORTHWEST INTERSECTION OF PIERCE AVE. AND REED STREET; THENCE RUNNING NORTH ALONG THE WEST SIDE OF REED STREET 590 FEET TO THE POINT OF BEGINNING.

5.00



STATE OF GEORGIA,

COBB

County.

THIS INDENTURE, made this 2nd day of May

in the year of our Lord One Thousand Nine Hundred and Eighty Eight

Between The Estate of HENRY ADAMS

of the State of Georgia

and ELLAVEE ADAMS

and County of Cobb

of the State of Georgia

and County of Cobb

COBB COUNTY, GA
FILED IN OFFICE
88 MAY 17 PM 2:30
CLERK OF SUPERIOR COURT

WITNESSETH: That the said part Y of the first part, for and in consideration of the sum of AS PER WILL

in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said part Y of the second part, her heirs and assigns, all that tract and parcel of land lying and being in

All that tract or parcel of land lying and being in Land Lot No. 562 of the 17th District and 2nd Section, Cobb County, Georgia and being 10.5 acres as per plat and survey by J.P. Phillips, Surveyor, dated October 23, 1957 and recorded in Plat Book 25, Page 130, Office of the Clerk of the Superior Court of Cobb County, Georgia and being more particularly described as follows:

BEGINNING at an iron pin which is located at the southwest intersection of Reed Street and Belmont Ave. and running thence west along the south side of Belmont Ave. 858 feet to a point and corner marked by an iron pin at the southeast intersection of Davis Drive and Belmont Ave.; running thence south along the east side of Davis Drive 500 feet to a point and corner marked by an iron pin at the northeast intersection of Davis Drive and Pierce Ave, and running thence east along the north side and following the curvatures of Pierce Ave. 874 feet to a point and corner marked by an iron pin at the northwest intersection of Pierce Ave. and Reed Street; thence running north along the west side of Reed Street 590 feet to the point of beginning.

This deed is made pursuant to Item Four of Henry Adams Will which has been probated in solemn form in the office of the Clerk of the Probate Court of Cobb County Georgia, being Estate No. 88-104.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in any wise appertaining, to the only proper use, benefit and behoof of her the said part Y of the second part, her heirs and assigns forever, IN FEE SIMPLE.

And the said part Y of the first part, for his heirs, executors and administrators will warrant and forever defend the right and title to the above described property unto the said part Y of the second part, her heirs and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, That the said part Y of the first part has hereunto set her hand and affixed seal, the day and year above written.

Signed, sealed and delivered in the presence of:

Ellavee Adams (Seal)
ELLAVEE ADAMS, as Executrix and Trustee
Donald J. Adams (Seal)
DON ADAMS, AS EXECUTOR AND TRUSTEE
Notary Public, Georgia, State at Large
My Commission Expires Jan. 8, 1921

Cobb County Georgia
Paid
Date
Real Estate Transfer Tax
Jay C. Stephenson
Clerk of Superior Court



CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Printed: 10/14/2016

Cobb County Online Tax Receipt

Thank you for your payment!

Payer:
ADAMS DONALD I

ADAMS DONALD I

Payment Date: 8/18/2016

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due	
2016	17056200180	10/17/2016	Pay: N/A or	\$0.00	
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$6,271.34	\$0.00



Scan this code with your mobile phone to view this bill!

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 562 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the southerly right of way of Belmont Avenue (50' R/W) and the westerly right of way of Reed Street (50' R/W); said point being the POINT OF BEGINNING;

THENCE following along the westerly right of way of Reed Street (50' R/W), South 01 degrees 23 minutes 57 seconds West, 485.11 feet to a point on the westerly right of way of Reed Street (50' R/W);

THENCE following along the westerly right of way of Reed Street (50' R/W), South 00 degrees 36 minutes 42 seconds East, 60.77 feet to a point on the westerly right of way of Reed Street (50' R/W) and at the intersection of the westerly right of way of Reed Street (50' R/W) and the northerly right of way of Pierce Avenue (50' R/W);

THENCE following along the northerly right of way of Pierce Avenue (50' R/W), South 47 degrees 14 minutes 23 seconds West, 26.84 feet to a point on the northerly right of way of Pierce Avenue (50' R/W);

THENCE following along the northerly right of way of Pierce Avenue (50' R/W), North 88 degrees 09 minutes 42 seconds West, 178.37 feet to a point on the northerly right of way of Pierce Avenue (50' R/W);

THENCE following along the northerly right of way of Pierce Avenue (50' R/W), along a curve to the right, an arc distance of 177.36 feet, said curve having a radius of 851.09 feet and being subtended by a chord of 177.04 feet, at North 82 degrees 11 minutes 30 seconds West, to a point on the northerly right of way of Pierce Avenue (50' R/W);

THENCE following along the northerly right of way of Pierce Avenue (50' R/W), North 76 degrees 13 minutes 17 seconds West, 232.14 feet to a point on the northerly right of way of Pierce Avenue (50' R/W);

THENCE following along the northerly right of way of Pierce Avenue (50' R/W), along a curve to the left, an arc distance of 134.27 feet, said curve having a radius of 604.79 feet and being subtended by a chord of 133.99 feet, at North 82 degrees 34 minutes 53 seconds West, to a point on the northerly right of way of Pierce Avenue (50' R/W);

THENCE following along the northerly right of way of Pierce Avenue (50' R/W), North 88 degrees 56 minutes 29 seconds West, 102.21 feet to a point on the northerly right of way of Pierce Avenue (50' R/W) and at the intersection of the northerly right of way of Pierce Avenue (50' R/W) and the easterly right of way of Davis Drive (50' R/W);

THENCE following the easterly right of way of Davis Drive (50' R/W), North 43 degrees 42 minutes 51 seconds West, 28.27 feet to a point on the easterly right of way of Davis Drive (50' R/W),

THENCE following the easterly right of way of Davis Drive (50' R/W), North 01 degrees 10 minutes 22 seconds East, 445.60 feet to a point on the easterly right of way of Davis Drive (50' R/W) and at the intersection of the easterly right of way of Davis Drive (50' R/W) and the southerly right of way of Belmont Avenue (50' R/W);

THENCE following along the southerly right of way of Belmont Avenue (50' R/W), North 44 degrees 52 minutes 43 seconds East, 28.77 feet to a point on the southerly right of way of Belmont Avenue (50' R/W);

THENCE following along the southerly right of way of Belmont Avenue (50' R/W), North 88 degrees 49 minutes 57 seconds East, 263.68 feet to a point on the southerly right of way of Belmont Avenue (50' R/W);

THENCE following along the southerly right of way of Belmont Avenue (50' R/W), South 88 degrees 50 minutes 31 seconds East, 550.96 feet to a point on the southerly right of way of Belmont Avenue (50' R/W);

THENCE following along the southerly right of way of Belmont Avenue (50' R/W), South 44 degrees 50 minutes 48 seconds East, 29.42 feet to a point on the southerly right of way of Belmont Avenue (50' R/W) and at the intersection of the southerly right of way of Belmont Avenue (50' R/W) and the westerly right of way of Reed Street (50' R/W); said point being the POINT OF BEGINNING.

Said tract or parcel of land contains 10.63 acres.

Description above is for a compiled zoning plat and does not represent boundary line confirmed by survey; therefore this description should not be used for transfer of property.

ATTACHMENT TO APPLICATION FOR REZONING

Application No.:

Hearing Dates:

November 14, 2016

December 19, 2016

**BEFORE THE PLANNING COMMISSION
AND THE MAYOR AND CITY COUNCIL
FOR THE CITY OF SMYRNA, GEORGIA**

**CONSTITUTIONAL CHALLENGE
ATTACHMENT TO APPLICATION FOR REZONING**

COME NOW, Applicant, TRATON HOMES, LLC (hereinafter referred to as "Applicant"), and Titleholder, DONALD I. ADAMS (hereinafter referred to as "Property Owner"), and assert the following:

1.

By Application for Rezoning dated and filed October 14, 2016, Applicant and Property Owner applied for annexation and rezoning of approximately 10.63 acres, more or less, of real property lying and being in Cobb County, Georgia, a more particular description and delineation of the subject property being set forth in said Applications (hereinafter referred to as the "Property" or the "Subject Property").

2.

The Application for Rezoning of the Property seeks rezoning from the existing zoning category of R-20, as established by the governing authority of Cobb County, Georgia, under and pursuant to Ga. Laws 1956, p. 2006 (hereinafter the "Zoning and Planning Ordinance of Cobb County"), as amended, to the proposed zoning category of RAD-PD, as established by the governing authority of the City of Smyrna, Cobb County, Georgia, under and pursuant to the Zoning and Planning Ordinance of the City of Smyrna, Georgia (hereinafter the "Zoning and Planning Ordinance of the City of Smyrna").

3.

The Zoning and Planning Ordinance of Cobb County and the Zoning and Planning Ordinance of the City of Smyrna (hereinafter collectively "Zoning Ordinances") are unconstitutional as applied to the Subject Property in that said Ordinances deprive Applicant and Property Owner of their Property under and pursuant to Art. I, § I, ¶¶ I and II of the Georgia Constitution of 1983, and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of Property without due process violates the constitutional prohibition against the taking of private property without just compensation. The R-20 zoning category, as it presently exists in Cobb County, together with any intervening zoning categories between the existing R-20 category and the requested RAD-PD zoning category in the City of Smyrna, violate the Applicant's and Property Owner's rights to unfettered use of their Property in that said zoning classifications do not bear a substantial relation to the public health, safety, morality, or general welfare and are therefore confiscatory and void. Further, said Ordinances are unconstitutional in that they are arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss on the Applicant and Property Owner.

4.

To the extent the Zoning and Planning Ordinance of the City of Smyrna allows or permits the Mayor and City Council to rezone the Property to any category other than as requested, said Ordinance is further unconstitutional in that same violates Applicant's and Property Owner's constitutionally guaranteed rights to due process, both substantive and procedural. Furthermore, any such action by the Mayor and City Council, or as allowed by the Zoning and Planning Ordinance of the City of Smyrna, is an unconstitutional use of the

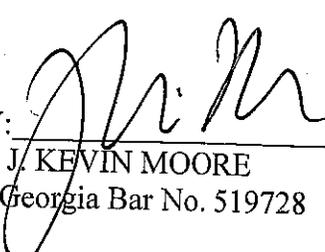
zoning power and would constitute an abuse of discretion with no justification or benefit flowing to the public welfare. Accordingly, said Ordinance or action would likewise represent a taking of private property rights without the payment of just and adequate compensation in violation of the Constitutions of the State of Georgia and the United States of America.

5.

The Zoning and Planning Ordinance of the City of Smyrna is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Application for Rezoning also violate Art. I, § I, ¶¶ I, II, and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

Respectfully submitted, this 14th day of October, 2016.

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