

# APPLICATION FOR REZONING TO THE CITY OF SMYRNA

*Type or Print Clearly*

(To be completed by City)

Ward: \_\_\_\_\_

Application No: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

\***APPLICANT:** Covenant United Methodist Church, Inc.

**Representative**

Name: Moore Ingram Johnson & Steele, LLP - J. Kevin Moore

(Representative's name, printed)

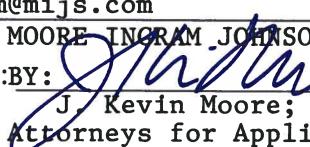
**Representative**

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: jkmc@mijs.com

MOORE INGRAM JOHNSON & STEELE, LLP

Signature of Representative: BY: 

J. Kevin Moore; Georgia Bar No. 519728  
Attorneys for Applicant and Titleholder

## **TITLEHOLDER**

Name: Jane Adams MacKenna, as Trustee of the Trust Created Under  
Item Seven of the Last Will and Testament of William Jay MacKenna  
(Titleholder's name, printed)

Address: 334 Campbell Road, Smyrna, GA 30080

Business Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Home Phone: (770) 434-8984

E-mail Address: \_\_\_\_\_

Signature of Titleholder: BY: 

(Attach additional signatures, if needed)

Jane Adams MacKenna, Trustee

(To be completed by City)

Received: \_\_\_\_\_

Heard by P&Z Board: \_\_\_\_\_

P&Z Recommendation: \_\_\_\_\_

Advertised: \_\_\_\_\_

Posted: \_\_\_\_\_

Approved/Denied: \_\_\_\_\_

\*See Attached Exhibit "A" for Applicant Information

**EXHIBIT "A" - ATTACHMENT TO APPLICATION FOR REZONING**

**Application No.:** \_\_\_\_\_  
**Hearing Dates:** February 13, 2017  
March 20, 2017

**Applicant:** Covenant United Methodist Church, Inc.  
**Titleholder:** Jane Adams MacKenna, as Trustee of the Trust  
Created Under Item Seven of the Last Will and  
Testament of William Jay MacKenna

COVENANT UNITED METHODIST CHURCH, INC.

BY: 

David F. Moore, Pastor

Date Executed: January 11, 2017

(Corporate Seal)

Covenant United Methodist Church, Inc.  
4336 King Springs Road, S.E.  
Smyrna, Georgia 30082-4214  
(770) 435-9722  
E-mail: [covenant@covenantumcng.org](mailto:covenant@covenantumcng.org)

**EXHIBIT "A" - ATTACHMENT TO APPLICATION FOR REZONING**

**Applicant:** Covenant United Methodist Church, Inc.  
**Titleholder:** Jane Adams MacKenna, as Trustee of the Trust  
Created Under Item Seven of the Last Will and  
Testament of William Jay MacKenna

**Applicant:** Covenant United Methodist Church, Inc.  
4336 King Springs Road, S.E.  
Smyrna, Georgia 30082-4214  
(770) 435-9722  
E-mail: [covenant@covenantumcng.org](mailto:covenant@covenantumcng.org)

**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: [ikm@mijs.com](mailto:ikm@mijs.com)

## ZONING REQUEST

From NS to OI  
Present Zoning Proposed Zoning

## LAND USE

From Medium Density Residential to NAC  
Present Land Use Proposed Land Use

For the Purpose of Church and related facilities

Size of Tract 5.50 acres

Location Intersection of the southeast side of Campbell Road and the  
northeast side of Atlanta Road

(Street address is required. If not applicable, please provide nearest intersection, etc.)

Land Lot (s) 700 District 17th

We have investigated the site as to the existence of archaeological and/or architectural landmarks. I hereby certify that there are no ~~xxxxx~~  
~~xxxxx~~  
~~xxxxx~~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:

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Council's Decision:

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### **CONTIGUOUS ZONING**

North: R-15

East: R-15

South: RM-12

West: RAD, R-15, RM-12, GC

### **CONTIGUOUS LAND USE**

North: Public/Institutional; Suburban Residential

East: Suburban Residential

South: Urban Residential

West: Medium Density Residential; Urban Residential

## **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:

Water and sewer are available to serve the proposed project.

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### **TRANSPORTATION**

Access to Property? Atlanta Road; Campbell Road

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Improvements proposed by developer? Decel lane and sidewalk connectivity to Atlanta Road; additional access, decel on Campbell Road.

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Comments:

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**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.

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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.

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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.

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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.

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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.

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

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**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.

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

Not Applicable.

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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.

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

Not Applicable.

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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 13th day of January,  
2017.

COVENANT UNITED METHODIST CHURCH, INC.

BY:

  
(Applicant's Signature)  
David F. Moore, Pastor

(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

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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

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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.

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

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**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.

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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 13th day of January,  
2017.

MOORE INGRAM JOHNSON & STEELE, LLP

BY: 

~~Applicant's Signature~~

J. Kevin Moore  
Georgia Bar No. 519728

~~Attorneys for Applicant and Titleholder~~

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.

Development of a proposed church is consistent with other institutional uses in close proximity; as well as, retail and more dense residential uses. Church use provides transition to single-family areas.

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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 the Subject Property will not adversely affect adjacent or nearby properties given the less intense church use.

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

The current NS zoning provides some economic viability, but impact to residential areas to a much larger degree than the proposed use.

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### **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 low impact, low intensity use of a church does not unduly burden the existing infrastructure.

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

The proposed use is not in conformity with the existing Medium Density Residential land use category; however, given the character and conditions of similarly situated properties on Atlanta Road, the proposed use is justified and actually provides better transition.

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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.

Expansion of commercial, office, and institutional uses along Atlanta Road; as well as, additional high density residential projects, supports the proposed use which is far less in intensity and impact.

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## **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 Proposed use as a church will enhance the area architecturely and culturally.

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

The proposed use as a church will not create a nuisance, but will actually provide better transition in uses.

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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 proposed use will affect the area positively given the low impact and low intensity of a church use as compared to current zoning and land use designations.

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FOR APPLICATION NOTICE SEE HS  
DE BOOK 15104 PAGE 2810

Deed Book 14670 Pg 1816  
Filed and Recorded Mar-02-2009 04:39pm  
2009-0024532  
Real Estate Transfer Tax \$0.00

When recorded return to:

Ann D. Salo, Esq.  
SALO & WALKER  
3235 Roswell Road Suite 400  
Atlanta, Georgia 30305

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

STATE OF GEORGIA :

COUNTY OF COBB :

EXECUTOR'S DEED OF ASSENT

THIS INDENTURE made and entered into this 29 day of December, 2008, by and between JANE ADAMS MACKENNA, Executor under the Last Will and Testament of William Jay MacKenna, Sr., deceased, Party of the First Part, and JANE ADAMS MACKENNA, as Trustee of the Trust created under Item Seven of said Will, Party of the Second Part.

W I T N E S S E T H:

That said Party of the First Part, by virtue of the Last Will and Testament of William Jay MacKenna, Sr. (which Will was probated in Solemn Form on February 20, 2006, in the Probate Court of Cobb County, Georgia, and recorded in the Will Record Book of said Court), and in order to assent to the devise provided in Item Seven of said Will; and said Party of the First Part has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said Party of the Second Part, her heirs, successors and assigns, all of William Jay MacKenna, Sr.'s interest in and to all that tract or parcel of land lying and being in Land Lots 700, 740 and 741 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia, and being more particularly described on Exhibit A, attached hereto and made a part hereof.

TO HAVE AND TO HOLD the above described property, together with all and singular the rights, members and appurtenances thereunto belonging, or in any way appertaining, to the only proper use, benefit and behoof of the said Party of the Second Part, her heirs, successors and assigns, in as full and ample a manner as the same was possessed and enjoyed by the said William Jay MacKenna, Sr., in his lifetime.

IN WITNESS WHEREOF, the said Party of the First Part has

hereunto set her hand and affixed her seal, the day and year first  
above written.

Signed, sealed and delivered  
in the presence of:

Ann D. Dalo  
Unofficial Witness

Jane Adams Mackenna <sup>(SEAL)</sup>  
JANE ADAMS MACKENNA, Executor

Qiu Manneh  
Notary Public

[SEAL]

Notarial Date: 12/29/08



EXHIBIT A

TRACT 1: All that tract or parcel of land lying and being in land lot 700 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, of Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the northeasterly side of the Old Right-of-Way of the Marietta Electric Car Line and the southeasterly right-of-way line of Campbell (said point being 137.6 feet northeasterly from the intersection of the said southeasterly side of Campbell Road and the northeasterly side of Old Marietta-Atlanta Road) and running thence northeasterly, along the said southeasterly side of Campbell Road, 370 feet, more or less, to a point (said point being 1720 feet, as measured along the southeasterly side of Campbell Road, southwesterly from the intersection of the said southeasterly side of Campbell Road and the southerly side of the right-of-way of the N.C. & St. L. Railroad; running thence southeasterly side 1,000 feet, more or less, to the original south line of the property known as the Argyle Tract, thence westerly, along the said original south line of the Argyle Tract, 461 feet to the north-easterly side of the Old Right-of-way of the Marietta Electric Car line; thence northwesterly, along the said northeasterly side of the Old Right-of-way of the Marietta Electric Car Line, 752 feet to the point of beginning. The above described property contains approximately 6.4 acres.

TRACT 2: All that tract or parcel of land lying and being in Land Lots 740 and 741 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, of Cobb County, Georgia and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, start at the iron pin at the northeasterly corner of Land Lot 740 and proceed southerly, along the easterly line of Land Lot 740, 845 feet to the TRUE POINT OF BEGINNING; running thence southerly, along the said easterly line of Land Lot 740 and continuing southerly along the easterly line of Land Lot 741, a total distance of 833 feet, more or less, to an iron pin which is at the intersection of the easterly line of Land Lot 741 and the original south line of the property known as the Argyle Tract; running thence in a direction slightly north of west, along the said original south line of the Argyle Tract, 740.8 feet to a point; thence northeasterly 1,100 feet to the point of beginning. The above described property contains approximately 6.9 acres.

LESS AND EXCEPT from the above, Lot 1, Section I; Lots 2-5, Section III and Lots 6-12, Section V, Argyle Estates, as shown on plat of survey entitled "Argyle Estates Section V," recorded in Plat Book 62, page 52, Cobb County, Georgia records.



Printed: 1/12/2017

**Cobb County Online Tax Receipt**

Thank you for your payment!

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

Payer:  
JANE ADAMS MACKENNA

**MACKENNA WILLIAM JAY SR TRUST**  
**MACKEENA JANE ADAMS TRUSTEE**

**Payment Date: 10/7/2016**

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due	
2016	17070000040	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	\$51.47	\$0.00



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

[Log In](#)**Real Estate**[View Bill](#)[View bill image](#)As of **Bill Year** 2016**Bill** 9751**Owner** MACKENNA WILLIAM JAY SR TRUST**Parcel ID** 17070000040[View payments/adjustments](#)

Installment	Pay By	Amount	Payments/Credits	Balance	Interest	Due
1	11/15/2016	\$17.94	\$17.94	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>		<b>\$17.94</b>	<b>\$17.94</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

©2017 Tyler Technologies, Inc.

LEGAL DESCRIPTION

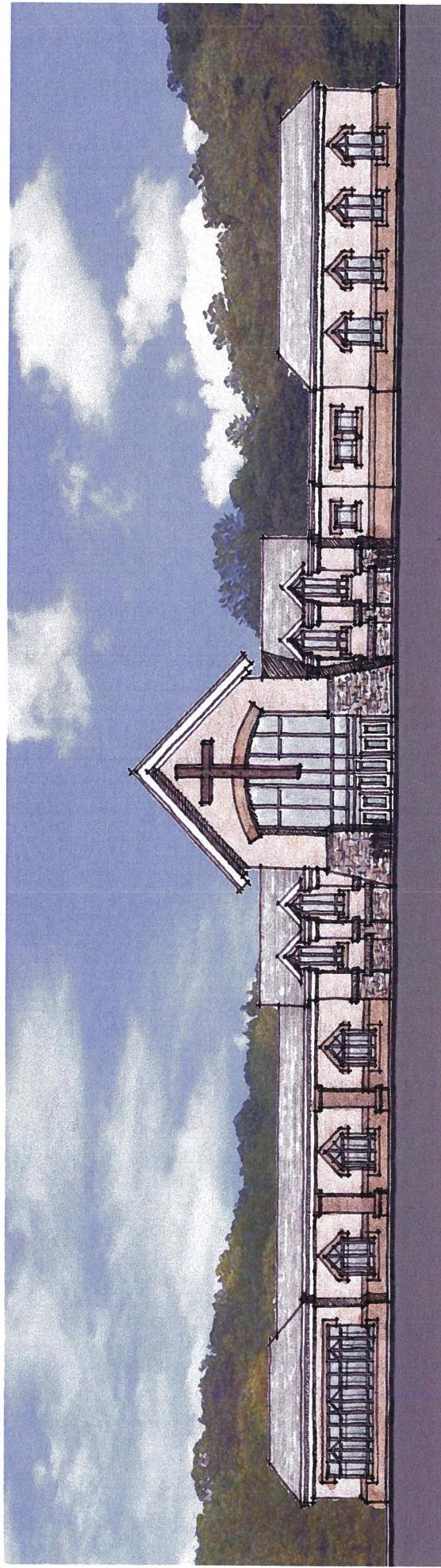
All that tract or parcel of land lying and being in the City of Smyrna in Land Lot 700 of the 17<sup>th</sup> District, Cobb County, Georgia, and being more particularly described as follows:

Commencing at a 5/8-inch rebar set at the intersection of the easterly right-of-way line of Campbell Road having a variable right of way and the northerly right of way of Atlanta Road having a variable right of way and thence run along said northerly right of way along the arc of a curve to the right having an arc length of 240.61 feet, with a radius of 3175.00 feet, being subtended by a chord bearing of South 48 degrees 44 minutes 45 seconds West, for a distance of 240.55 feet to a 5/8-inch rebar set and the POINT OF BEGINNING; thence from said Point of Beginning and leaving said right-of-way line and run North 59 degrees 00 minutes 21 seconds East a distance of 84.87 feet to a 5/8-inch rebar set; thence North 55 degrees 38 minutes 05 seconds East a distance of 289.43 feet to a 5/8-inch rebar set; thence South 42 degrees 16 minutes 46 seconds East a distance of 794.60 feet to a 5/8-inch rebar set; thence South 89 degrees 35 minutes 38 seconds West a distance of 501.25 feet to a 5/8-inch rebar set on said northerly right-of-way; thence run along said northerly right-of-way along a curve to the left having an arc length of 517.07 feet, with a radius of 3175.00 feet, being subtended by a chord bearing of North 41 degrees 54 minutes 34 seconds West, for a distance of 516.50 feet to a 5/8-inch rebar set and the POINT OF BEGINNING.

Said tract of land contains 5.500 Acres.

Covenant United Methodist Church

Smyrna, Georgia



Conceptual Elevation

South Atlanta Rd.

City of Smyrna, GA

10837

Lyman  
Davidson  
Dooley, Inc.



Covenant United Methodist Church

Smyrna, Georgia

110

**GENERAL NOTES:**

1. THIS ESTIMATE SHOULD BE RECORDED AS A PRELIMINARY  
1.1. THE Bidders, Bidders, and their Agents are not liable to pay for any loss or damage resulting from any omission, misdescription or any other error made in this estimate.
2. THE Bidders, Bidders, and their Agents are not liable to pay for any loss or damage resulting from any omission, misdescription or any other error made in this estimate.
3. THE Bidders, Bidders, and their Agents are not liable to pay for any loss or damage resulting from any omission, misdescription or any other error made in this estimate.
4. THE Bidders, Bidders, and their Agents are not liable to pay for any loss or damage resulting from any omission, misdescription or any other error made in this estimate.

# Conceptual Site Plan

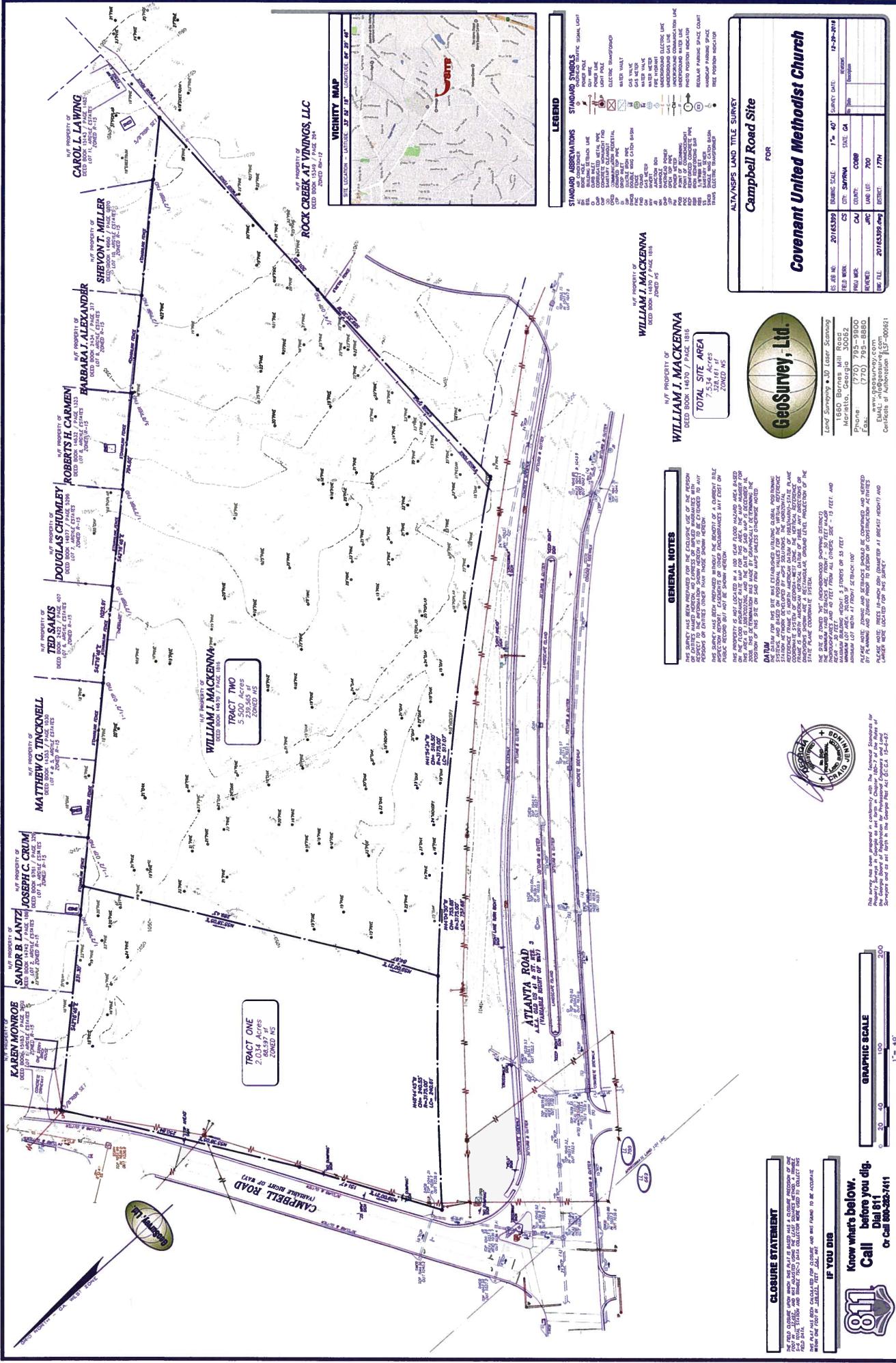
## South Atlanta Rd.

## City of Smyrna, GA

10817

Lyman  
Davidson  
Dooley, Inc.





3236

**Covenant United Methodist Church**

4336 King Springs RD SE  
Smyrna, GA 30082

PAY TO THE  
ORDER OF  
City Of Smyrna

One Thousand Five Hundred Only\*\*\*\*\*

Security features. Details on back

**SUNTRUST**  
ACH RT 081000104  
64-10/610

1/11/2017

\$ \*\*\*1,500.00

DOLLARS

Checks over \$500 require a second signature.

MEMO Rezoning Application fee

"000003236" 1:06 1000104:1000195032320"

*Marilyn J. Hayes*  
Sarah J. Hayes

AUTHORIZED SIGNATURE

**Covenant United Methodist Church**  
4336 King Springs Rd SE  
Smyrna, GA 30082

PAY TO THE  
ORDER OF  
City Of Smyrna

Five Hundred Only \*\*\*\*\*

ACH RT 081000104  
64-10/610

1/11/2017

Security features. Details on back.

**SUNTRUST**

ACH RT 081000104  
64-10/610

\$ \*\*500.00

DOLLARS

Checks over \$500 require a second signature.

MEMO The protection plan

1100000323711 10610001041100019503232011

3238

**Covenant United Methodist Church**  
4336 King Springs RD SE  
Smyrna, GA 30082



**SunTRUST**  
ACH RT 061000104  
64-10/610

1/11/2017

PAY TO THE  
ORDER OF  
City Of Smyrna

Five Hundred Only\*\*\*\*\*

DOLLARS

\$ \*\*500.00

Checks over \$500 require a second signature.

MEMO Land Use Plan

Authorizing Signature

*Matthew J. Kelly*

*Solomon J. Kelly*

Authorizing Signature

Security features. Details on back.

11000003238110001000190110001100019503232011

**ATTACHMENT TO APPLICATION FOR REZONING**

Application No.: \_\_\_\_\_  
Hearing Dates: February 13, 2017  
March 20, 2017

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

**CONSTITUTIONAL CHALLENGE  
ATTACHMENT TO APPLICATION FOR REZONING**

COME NOW, Applicant, COVENANT UNITED METHODIST CHURCH, INC. (hereinafter referred to as "Applicant"), and Titleholder, JANE ADAMS MacKENNA, AS TRUSTEE OF THE TRUST CREATED UNDER ITEM SEVEN OF THE LST WILL AND TESTAMENT OF WILLIAM JAY MacKENNA (hereinafter referred to as "Titleholder"), and assert the following:

1.

By Application for Rezoning dated and filed January 13, 2017, Applicant and Titleholder applied for rezoning of certain real property, being approximately 5.50 acres, more or less, lying and being located within the City of Smyrna, Cobb County, Georgia, a more particular description and delineation of the subject property being set forth in said Application (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 Neighborhood Shopping ("NS") to the proposed zoning category of Office/Institutional ("OI"), as established by the governing authority of the City of Smyrna, Georgia, under and pursuant to the Zoning and Planning Ordinance of the City of Smyrna, Georgia.

3.

With respect to the current NS zoning classification for the Subject Property, Applicant and Titleholder do contend the Zoning and Planning Ordinance of the City of Smyrna is unconstitutional as applied to the Subject Property in that said Ordinance does not permit the Applicant and Titleholder to utilize the Property to the highest and best use set forth within the Application for Rezoning without the necessity of rezoning. However, Applicant and Titleholder do not contend the current zoning category of NS is unconstitutional, per se, only as applied. Thus, the Zoning and Planning Ordinance of the City of Smyrna deprives Applicant and Titleholder 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. Also violated are the Applicant's and Titleholder's rights to unfettered use of their Property, as stated above, 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 Ordinance is unconstitutional in that it is arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss on the Applicant and Titleholder.

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 Subject Property to any category other than as requested, said Ordinance is further unconstitutional in that same violates the Applicant's and Titleholder's constitutionally guaranteed rights to due process, both

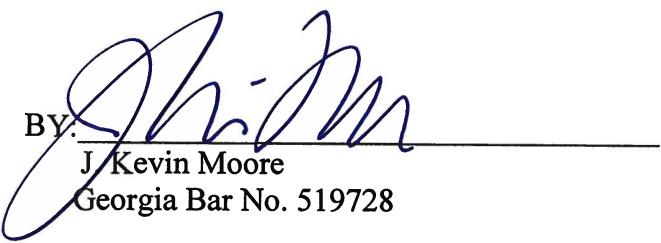
substantive and procedural. Furthermore, any such action by the Mayor and City Council, or as allowed by the Zoning and Planning Ordinance of the City of Smyrna, is an unconstitutional use of the zoning power and would constitute an abuse of discretion with no justification or benefit flowing to the 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 Zoning Application 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 13<sup>th</sup> day of January, 2017.

MOORE INGRAM JOHNSON & STEELE, LLP

BY:   
J Kevin Moore  
Georgia Bar No. 519728

Attorneys for Applicant and Titleholder