

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

Type or Print Clearly

(To be completed by City)

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

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

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

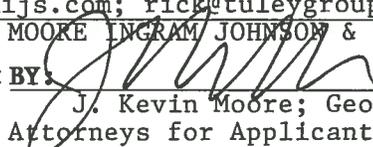
**APPLICANT:** Tuley & Tuley, Inc. - Richard Tuley, Jr., President  
**Representative** (See Attached for Applicant Information)

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; rick@tuleygroup.com  
MOORE INGRAM JOHNSON & STEELE, LLP

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

**TITLEHOLDER**

Name: Iglesia Evangelica Cristiana Espiritual, Inc.  
(Titleholder's name, printed)

Address: 3263 McKown Road, Douglasville, GA 30135

Business Phone: (770) 973-8820 Cell Phone: (404) 899-0344 Home Phone: \_\_\_\_\_

E-mail Address: rarzet@hotmail.com  
IGLESIA EVANGELICA CRISTIANA ESPIRITUAL

Signature of Titleholder: BY:   
(Attach additional signatures, if needed)  
Moises Moreno, Secretary

(To be completed by City)

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

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

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

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

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

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

**ATTACHMENT TO APPLICATION FOR REZONING**

**Application No.:** \_\_\_\_\_  
**Hearing Dates:** **April 13, 2015**  
**May 18, 2015**

**Applicant:** **Tuley & Tuley, Inc.**  
**Titleholder:** **Iglesia Evangelica Cristiana Espiritual**

**Applicant:** Tuley & Tuley, Inc.  
Richard Tuley, Jr., President  
Suite 605  
3745 Cherokee Street, N.W.  
Kennesaw, Georgia 30144  
(404) 409-9455  
(404) 601-9345 (Telefax)  
E-mail: [rick@tuleygroup.com](mailto:rick@tuleygroup.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  
(770) 429-8631 (Telefax)  
E-mail: [jkm@mijs.com](mailto:jkm@mijs.com)

**ZONING REQUEST**

From     R-15     to     RAD      
Present Zoning Proposed Zoning

**LAND USE**

From     Moderate Density Residential;  
    Industrial Area     to     Moderate Density Residential      
Present Land Use Proposed Land Use

For the Purpose of     Upscale Single-Family Attached and Detached Development      
Size of Tract     1.31 acres    

Location     1514 Hawthorne Avenue (southerly side of Hawthorne Avenue; easterly of  
    (Street address is required. If not applicable, please provide nearest intersection, etc.) Old Roswell Road)    

Land Lot (s)     592     District     17th    

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



**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:

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**TRANSPORTATION**

Access to Property? Via Hawthorne Avenue

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Improvements proposed by developer? Private Drive Access

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Comments:

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**ZONING DISCLOSURE REPORT**

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)**

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 13th day of March, 20 15.

TULEY & TULEY, INC.

BY:   
(Applicant's Signature)

Richard Tuley, Jr., President  
(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.

APPLICANT'S AND TITLEHOLDER'S REPRESENTATIVE

ZONING DISCLOSURE REPORT

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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Not Applicable.

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Not Applicable.

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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.

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

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**APPLICANT'S AND TITLEHOLDERS' REPRESENTATIVE**  
**ZONING DISCLOSURE REPORT (CONTINUED)**

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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Not Applicable.

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We certify that the foregoing information is true and correct, this 13<sup>th</sup> day of March, 20 15.

MOORE INGRAM JOHNSON & STEELE, LLP

BY: \_\_\_\_\_

(Applicant's Signature)

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

\_\_\_\_\_  
(Attorney's Signature, if applicable)

Notes

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\*\* 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 is suitable in light of existing attached and detached single-family homes on the adjacent and nearby properties.

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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 proposal is consistent with adjacent residential attached and detached properties and will, therefore, not adversely affect same.

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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 reasonable economic 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 proposal, given its limited size, will not have an excessive impact on infrastructure.

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

The proposal is in conformity with the intent of the Land Use Plan to promote home-ownership in a detached and attached single-family setting.

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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.

Existing and changing conditions support approval of the proposal. The existing area consists of many attached residences, many aged. The proposal provides new attached and detached single-family residences which should result in increased values for the area.

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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 proposal would significantly increase aesthetic values in the area by providing new, quality homes in an otherwise aging area.

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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 single-family attached and detached homes are compatible with existing, older housing in the area; and, therefore, will not create any nuisance or incompatibility.

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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 proposal will affect the area in a significantly positive manner by providing new, more valuable single-family attached and detached homes.

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Re  
Wirt

Deed Book 14560 Pg 2088  
Filed and Recorded Dec-04-2007 11:38am  
2007-0184629  
Real Estate Transfer Tax \$0.00

STATE OF GEORGIA

COUNTY OF COBB

J.C. Stephenson

Jay C. Stephenson  
Superior Court Cobb Cty. Ga.

# QUITCLAIM DEED

**THIS INDENTURE**, made this 4<sup>th</sup> day of December, 2007, by and between **MARCARIO VINAJA a/k/a/ MACARIO VINAJA**, of the County of COBB, as party or parties of the first part, hereinafter called Grantor, and **IGLESIA EVANGELICA CRISTIANA ESPIRITUAL**, of the County of COBB, 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 DOLLAR (\$1.00)** and other valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, by these presents does hereby remise, convey and forever QUITCLAIM unto the said Grantee, its successors and assigns, all the right, title, interest, claim or demand which Grantor has or may have had in and to the following:

**ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 592, 17<sup>TH</sup> DISTRICT, 2<sup>ND</sup> SECTION, COBB COUNTY, GEORGIA, AND FURTHER DESCRIBED ON ATTACHED EXHIBIT "A" WHICH IS INCORPORATED HEREIN BY REFERENCE**

The purpose of the Quitclaim deed is to conveyance all of the interest in and to the above described real estate.

**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 and means or ways, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof.

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

Signed, Sealed and delivered  
in the presence of:

Melissa Perry  
UNOFFICIAL WITNESS

MARCARIO VINAJA  
MARCARIO VINAJA  
a/k/a MACARIO VINAJA

[Signature]

Notary Public  
My Commission Expires:

[Signature]  
IGLESIA EVANGELICA CRISTIANA  
ESPIRITUAL



EXHIBIT "A"

TRACT I

ALL THAT TRACT or parcel of land lying and being in Land Lot 592, 17th District, 2nd Section, Cobb County, Georgia and being more particularly described as follows:

BEGINNING at a point on the south side of Hawthorne Avenue a distance of 94 feet easterly from the intersection formed by the centerline of Old Roswell Road and the southerly right-of-way of Hawthorne Avenue; running thence south 1 degree 10 minutes 0 seconds west a distance of 75.0 feet to a point; running thence south 89 degrees 23 minutes 0 seconds east a distance of 30.0 feet to an iron pin; running thence south 1 degree 0 minutes 0 seconds west a distance of 125.15 feet to an iron pin; running thence south 82 degrees 42 minutes 10 seconds west a distance of 48.25 feet to an iron pin; running thence north 19 degrees 14 minutes 10 seconds east a distance of 159.5 feet to a point on the southeasterly right-of-way of Old Roswell Road; running thence north 76 degrees 23 minutes 0 seconds east a tangent distance of 83.74 feet and an arc distance along the southeasterly right-of-way of Old Roswell Road of 91.9 feet to an iron pin and the point of beginning.

TRACT II

ALL THAT TRACT or parcel of land lying and being in Land Lot 592, 17th District, 2nd Section, Cobb County, Georgia and being more particularly described as follows:

BEGINNING at a point on the southerly side of Hawthorne Street, 10 feet east of the intersection of the south side of Hawthorne Street and the center line of Roswell Street; running thence easterly along the southerly side of Hawthorne Street, 190 feet to a point and corner; thence southerly 80 feet to a point and corner; thence westerly 99.5 feet to a point and corner; thence northerly 5 feet to a point and corner; thence westerly 80.5 feet to a point and corner; thence northwesterly 80 feet to a point on the southerly side of Hawthorne Street, being the point of beginning.

TRACT III

ALL THAT TRACT or parcel of land lying and being in Land Lot 592, 17th District, 2nd Section, Cobb County, Georgia and being more particularly described as follows:

BEGINNING at a point on the southerly right-of-way of Hawthorne Avenue a/k/a Hawthorne Drive and a/k/a Hawthorne Street, a distance of 94.0 feet easterly from the intersection formed by the southerly right-of-way of Hawthorne Avenue and the centerline of Old Roswell Road; running thence north 89 degrees 10 minutes east along the southerly right-of-way of Hawthorne Avenue a distance of 144.0 feet to a point; running thence south 03 degrees 00 minutes west a distance of 191.0 feet to a point; running thence south 86 degrees 00 minutes west a distance of 202.0 feet to an iron pin; running thence south 82 degrees 42 minutes west a distance of 48.2 feet to an iron pin; running thence north 19 degrees 14 minutes west a distance of 159.5 feet to an iron pin on the southeasterly right-of-way of Old Roswell Road; running thence northwesterly along the southeasterly right-of-way of Old Roswell Road until it intersects with the southerly right-of-way of Hawthorne Avenue and continuing easterly along the southerly right-of-way of Hawthorne Avenue and a total distance along said right-of-way of 91.9 feet following the curvature of the southeasterly right-of-way of 91.9 feet following the southerly right-of-way of Hawthorne Avenue to an iron pin and the point of beginning.

PARID: 17059200040  
IGLESIA EVANGELICA CRISTIANA  
ESPIRITUAL

NEIGHBORHOOD: 17079990

TAX YEAR: 2014  
1514 HAWTHORNE AVE

**Parcel**

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Class	Exempt - Cemetery
Total Acres	1.3126
Total Land Sqft	57178
Address	1514 HAWTHORNE AVE
Neighborhood	1707 - 9990 EXEMPT OR PUBLIC PROPERTY

**Owner**

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Owner	IGLESIA EVANGELICA CRISTIANA ESPIRITUAL
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**Legal**

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Tax District	6 - SMYRNA
Subdivision Number	



# CITY OF SMYRNA

2800 King Street / P.O. Box 1226, Smyrna, Georgia 30081  
(770) 434-6600 / www.smyrnacity.com

## CITY OF SMYRNA

### WATER AND SEWER AVAILABILITY

The City of Smyrna has determined that water is available to the proposed development. Water is located within the roadway of Hawthorne Avenue. The Owner/Developer will be required to bore the road-way for each individual water tap and service and set all meter boxes for this subdivision.

Sanitary Sewer appears not to be available to the proposed subdivision. The Owner/Developer will be required to install a sewer main extension within the right-of-way from the intersection of Old Roswell Road and Hawthorne Avenue. Elevations are the responsibility of the developer.

This information is based on an untitled drawing submitted by Richard Tuley Realty, Inc.

Sincerely,

Scott Stokes  
Director Public Works

## LEGAL DESCRIPTIONS

### TRACT I

ALL THAT TRACT or parcel of land lying and being in Land Lot 592, 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia and being more particularly described as follows:

BEGINNING at a point on the south side of Hawthorne Avenue a distance of 94 feet easterly from the intersection formed by the centerline of Old Roswell Road and the southerly right-of-way of Hawthorne Avenue; running thence south 2 degrees 10 minutes 0 seconds west a distance of 75.0 feet to a point; running thence south 89 degrees 23 minutes 0 seconds east a distance of 30.0 feet to an iron pin; running thence south 1 degrees 0 minutes 0 seconds west a distance of 125.15 feet to an iron pin; running thence south 82 degrees 42 minutes 30 seconds west a distance of 48.25 feet to an iron pin; running thence north 19 degrees 14 minutes 30 seconds west a distance of 199.5 feet to a point on the southeasterly right-of-way of Old Roswell Road; running thence north 76 degrees 23 minutes 0 seconds east a tangent distance of 89.74 feet and an arc distance along the southeasterly right-of-way of Old Roswell Road of 91.9 feet to an iron pin and the point of beginning.

### TRACT II

ALL THAT TRACT or parcel of land lying and being in Land Lot 592, 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia and being more particularly described as follows:

BEGINNING at a point on the southerly side of Hawthorne Street, 70 feet east of the intersection of the south side of Hawthorne Street and the center line of Roswell Street; running thence easterly along the southerly side of Hawthorne Street, 190 feet to a point and corner; thence southerly 80 feet to a point and corner; thence westerly 99.5 feet to a point and corner; thence northerly 5 feet to a point and corner; thence westerly 60.5 feet to a point and corner; thence northwesterly 80 feet to a point on the southerly side of Hawthorne Street, being the point of beginning.

### **TRACT III**

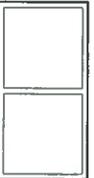
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BEGINNING at a point on the southerly right-of-way of Hawthorne Avenue a/k/a Hawthorne Drive and a/k/a Hawthorne Street, a distance of 94.0 feet easterly from the intersection formed by the southerly right-of-way of Hawthorne Avenue and the centerline of Old Roswell Road; running thence north 89 degrees 40 minutes east along the southerly right-of-way of Hawthorne Avenue a distance of 244.0 feet to a point; running thence south 03 degrees 00 minutes west a distance of 191.0 feet to a point; running thence south 86 degrees 00 minutes west a distance of 202.0 feet to an iron pin, running thence south 82 degrees 42 minutes west a distance of 48.2 feet to an iron pin; running thence north 19 degrees 14 minutes west a distance of 199.5 feet to an iron pin on the southeasterly right-of-way of Old Roswell Road; running thence northeasterly along the southeasterly right-of-way of Old Roswell Road until it intersects with the southerly right-of-way of Hawthorne Avenue and continuing easterly along the southerly right-of-way of Hawthorne Avenue for a total distance along said right-of-way of 91.9 feet following the curvature of the southeasterly right-of-way of Old Roswell Road and the southerly right-of-way of Hawthorne Avenue to an iron pin and the point of beginning.





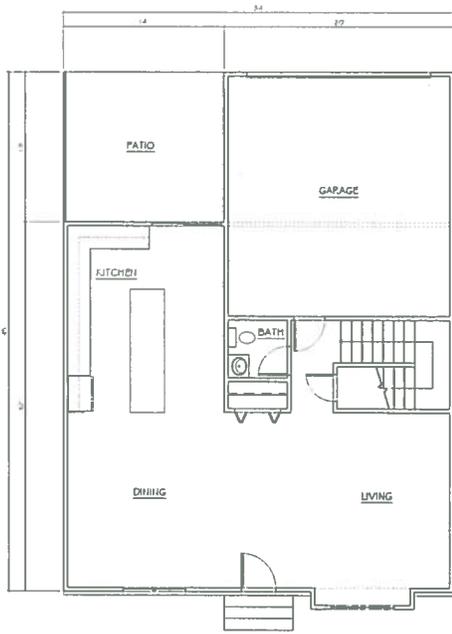
**RT3 Architects**  
Architecture • Design • Planning  
560 E. Mariposa Street, Canton, CA  
770-720-4669



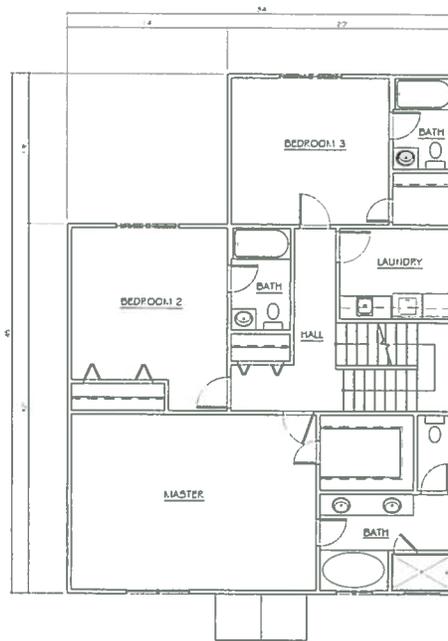
**HAWTHORNE  
AVENUE  
TOWN HOMES**

Revisions

SHEET NO.  
**A1**  
DATE: 3/13/13  
SCALE: as Noted



1 MAIN FLOOR PLAN  
A.1 SCALE: 1/8" = 1'-0"



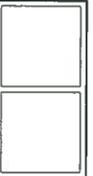
2 2ND FLOOR PLAN  
A.1 SCALE: 1/8" = 1'-0"



FRONT ELEVATION  
SCALE 1/4" = 1'



**RT3 Architects**  
Architecture • Design • Planning  
360 E. Marietta Street, Canton GA  
770-720-4669



**HAWTHORNE  
AVENUE  
TOWN HOMES**

Revisions

SHEET NO.  
**A2**  
DATE: 5/15/13  
Scale as Noted



**RT3 Architects**  
Architecture ♦ Design ♦ Planning  
360 E. Mariposa Street, Canton CA  
770-720-4669



**HAWTHORNE  
AVENUE  
TOWN HOMES**

Revisions

SHEET NO.  
**A2**  
DATE: 3/13/15  
Scale as Noted



FRONT ELEVATION  
SCALE 1/8" = 1'-0"

**TULEY & TULEY, INC**  
3745 CHEROKEE ST NW STE 605  
KENNESAW, GA 30144-6785

804

64-5/6 10 GA  
15441

DATE 3/12/2015

PAY  
TO THE  
ORDER OF

City of Smyrna  
Seven Hundred & 90/100 \$ 700.<sup>00</sup> DOLLARS

PERMIT TO  
DEPOSIT ON  
DECK

**Bank of America**

ACH R/T 081000052

1514 Newsham Ave - Application Fee  
FOR

Jenny Carter MP

⑈000804⑈ ⑆06⑆000052⑆ 003274600198⑈

**TULEY & TULEY, INC**  
3745 CHEROKEE ST NW STE 605  
KENNESAW, GA 30144-6785

805

64-5610 GA  
19441

DATE 3/12/2015

PAY TO THE ORDER OF City of Smyrna  
Five Hundred & 90/100 \$ 500.<sup>00</sup> DOLLARS

Security Features  
Printed on  
Bank

**Bank of America**

ACH R/T 08100052

FOR 1514 Kaysome Ave  
Free Protection Fee

Janey Cayte MP

⑈000805⑈ ⑈061000052⑈ 00327460198⑈

806

64-5610 GA  
15441

**TULEY & TULEY, INC**  
3745 CHEROKEE ST NW STE 605  
KENNESAW, GA 30144-6785

DATE 3/12/2015

DATE

\$ 500.00

SECURITY  
DRAWN ON  
BANK

DOLLARS

PAY TO THE ORDER OF City of Chazy  
Line Number 470/100

**Bank of America**

ACH R/T 061000052

Nancy Cayte MP

FOR 514 Newburg Ave.  
Hand Use Change Rec

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**ATTACHMENT TO APPLICATION FOR REZONING**

**Application No.:** \_\_\_\_\_  
**Hearing Dates:** **April 13, 2015**  
**May 18, 2015**

**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, TULEY & TULEY, INC. (hereinafter referred to as “Applicant”), and Titleholder, IGLESIA EVANGELICA CRISTIANA ESPIRITUAL, INC. (hereinafter referred to as “Titleholder”), and assert the following:

1.

By Application for Rezoning dated and filed March 13, 2015, Applicant and Titleholder applied for rezoning of certain real property, being approximately 1.31 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 R-15 to the proposed zoning category of RAD, 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.

3.

The Zoning and Planning Ordinance of the City of Smyrna is unconstitutional as applied to the Property in that said Ordinance deprives the 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. The R-15 zoning category, as it presently exists, together with any intervening zoning categories between the existing R-15 category and the requested category, violates the Applicant's and Titleholder'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 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.

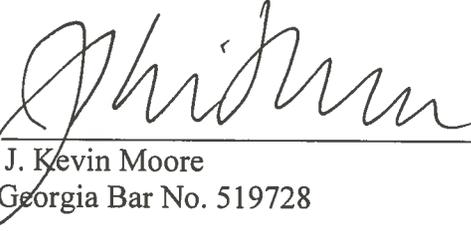
5.

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 March, 2015.

MOORE INGRAM JOHNSON & STEELE, LLP

BY:

  
\_\_\_\_\_  
J. Kevin Moore  
Georgia Bar No. 519728

Attorneys for Applicant and Titleholder



# CITY OF SMYRNA

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## CITY OF SMYRNA

### WATER AND SEWER AVAILABILITY

The City of Smyrna has determined that water is available to the proposed development. Water is located within the roadway of Hawthorne Avenue. The Owner/Developer will be required to bore the road-way for each individual water tap and service and set all meter boxes for this subdivision.

Sanitary Sewer appears not to be available to the proposed subdivision. The Owner/Developer will be required to install a sewer main extension within the right-of-way from the intersection of Old Roswell Road and Hawthorne Avenue. Elevations are the responsibility of the developer.

This information is based on an untitled drawing submitted by Richard Tuley Realty, Inc.

Sincerely,

Scott Stokes  
Director Public Works

MAYOR  
A. MAX BACON

CITY COUNCIL

WARD 1  
MELLENY PRITCHETT

WARD 2  
ANDREA BLUSTEIN

WARD 3  
TERI ANULEWICZ

WARD 4  
CHARLES A. WELCH

WARD 5  
SUSAN WILKINSON

WARD 6  
WADE LNENICKA

WARD 7  
RON FENNEL

CITY ADMINISTRATOR  
ERIC TAYLOR

CITY CLERK  
TERRI GRAHAM

CITY ATTORNEY  
SCOTT A. COCHRAN

MUNICIPAL COURT JUDGE  
E. ALTON CURTIS, JR.