

**PROPERTY INFORMATION**

<b>ADDRESS</b>	SE Corner of Birmingham Hwy and Birmingham Road
<b>DISTRICT, LAND LOT</b>	2/2, 379, 380, 413, 414
<b>OVERLAY DISTRICT</b>	Birmingham Crossroads
<b>EXISTING ZONING</b>	MIX (Mixed Use) and AG-1 (Agricultural)
<b>ACRES</b>	22.12
<b>EXISTING USE</b>	Undeveloped

**OWNER/APPLICANT** OHC Birmingham LLC, Tad Braswell  
5256 Peachtree Road, Suite 195  
Atlanta, GA 30341

**INTENT**

A request to modify 1) ZM14-06 condition 2.a. to the revised site plan dated March 16, 2018 and to modify 2) ZM14-03 to delete condition 6.c., the reference to the Village Green. To request a concurrent variance (VC18-08) to delete the 75 foot undisturbed buffer and 10 foot improvement setback along the south property line of the MIX zoning district adjacent to AG-1 (Sec. 64-1142 (a)(3)(b)).

**COMMUNITY DEVELOPMENT DEPARTMENT RECOMMENDATION**

**ZM18-02 - Condition 2.a. - APPROVAL CONDITIONAL**  
**ZM18-02 – Condition 6.c. – APPROVAL CONDITIONAL**  
**VC18-08 – APPROVAL CONDITIONAL**



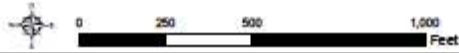
**Site Map**  
**ZM18-02/VC18-08**  
**SE Quadrant at Birmingham Hwy**  
**and Birmingham Road**

-  Subject Parcel
-  Rivers
-  Waterbodies
-  Parcels
-  Milton City Limits



City of Milton

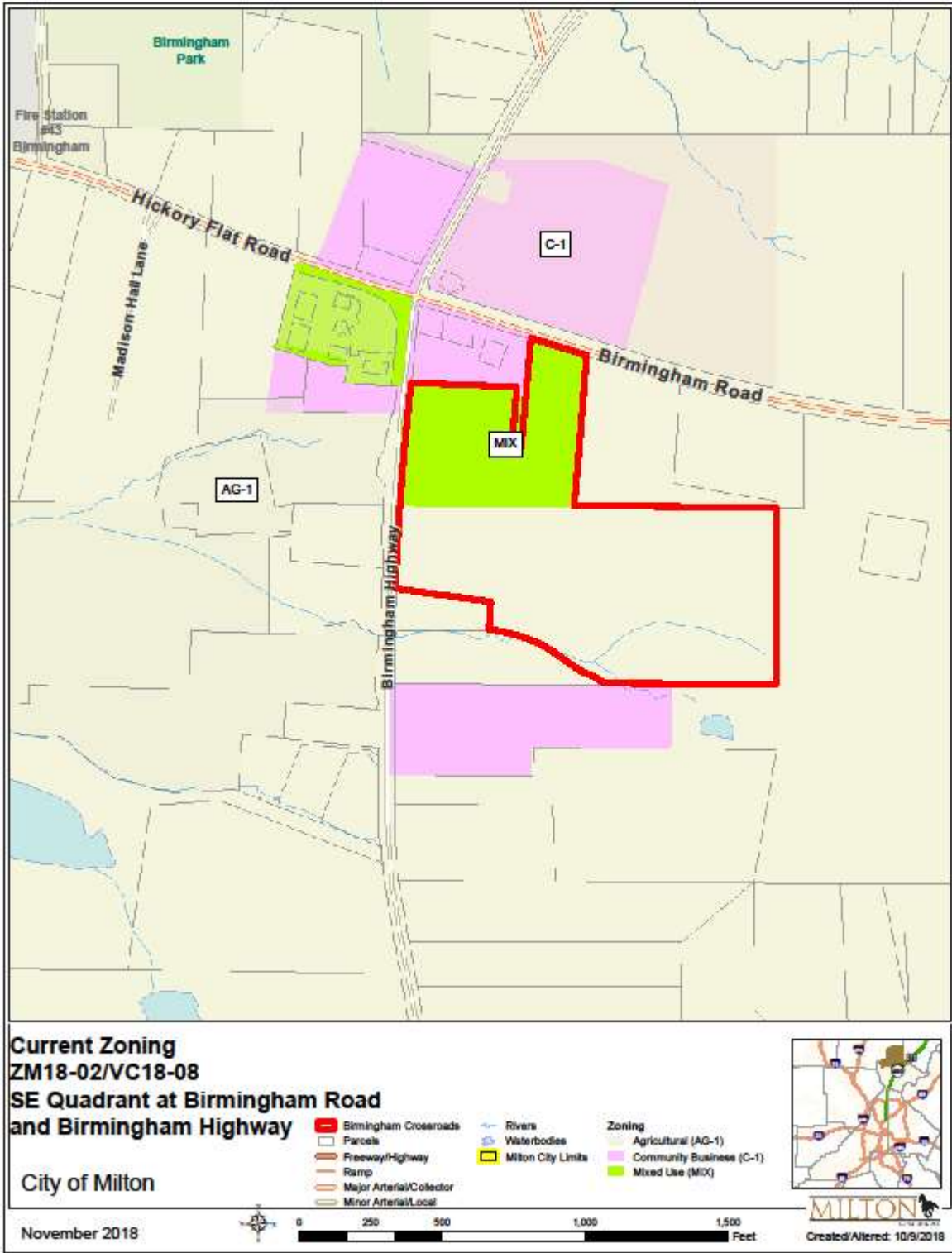
October 2018



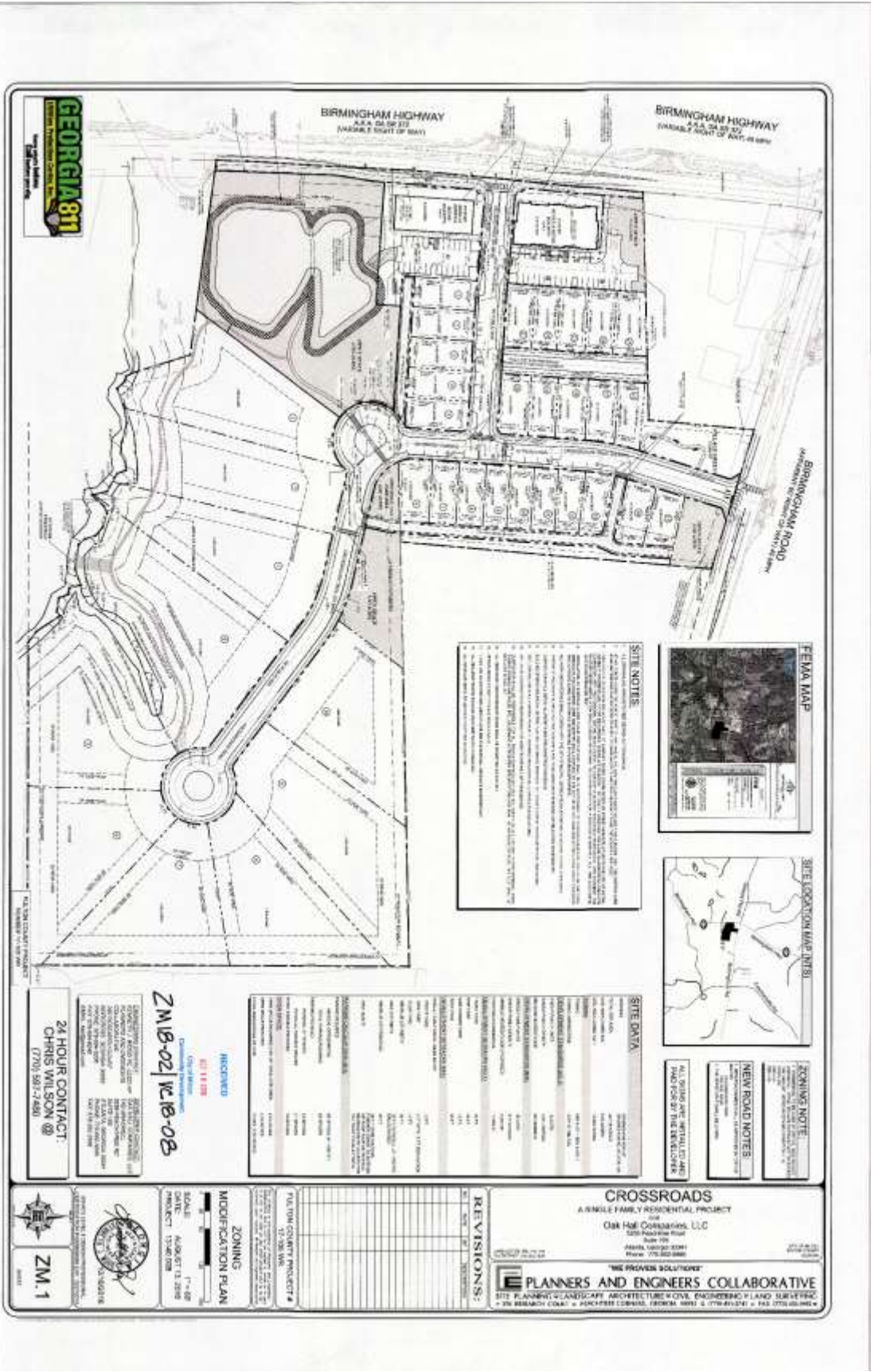
**MILTON**  
 Created/Altered: 9/25/2018

G:\Tax\Community Dev\SiteMap\SiteMapBHam\_Crossroads\_ap\_v1.mxd

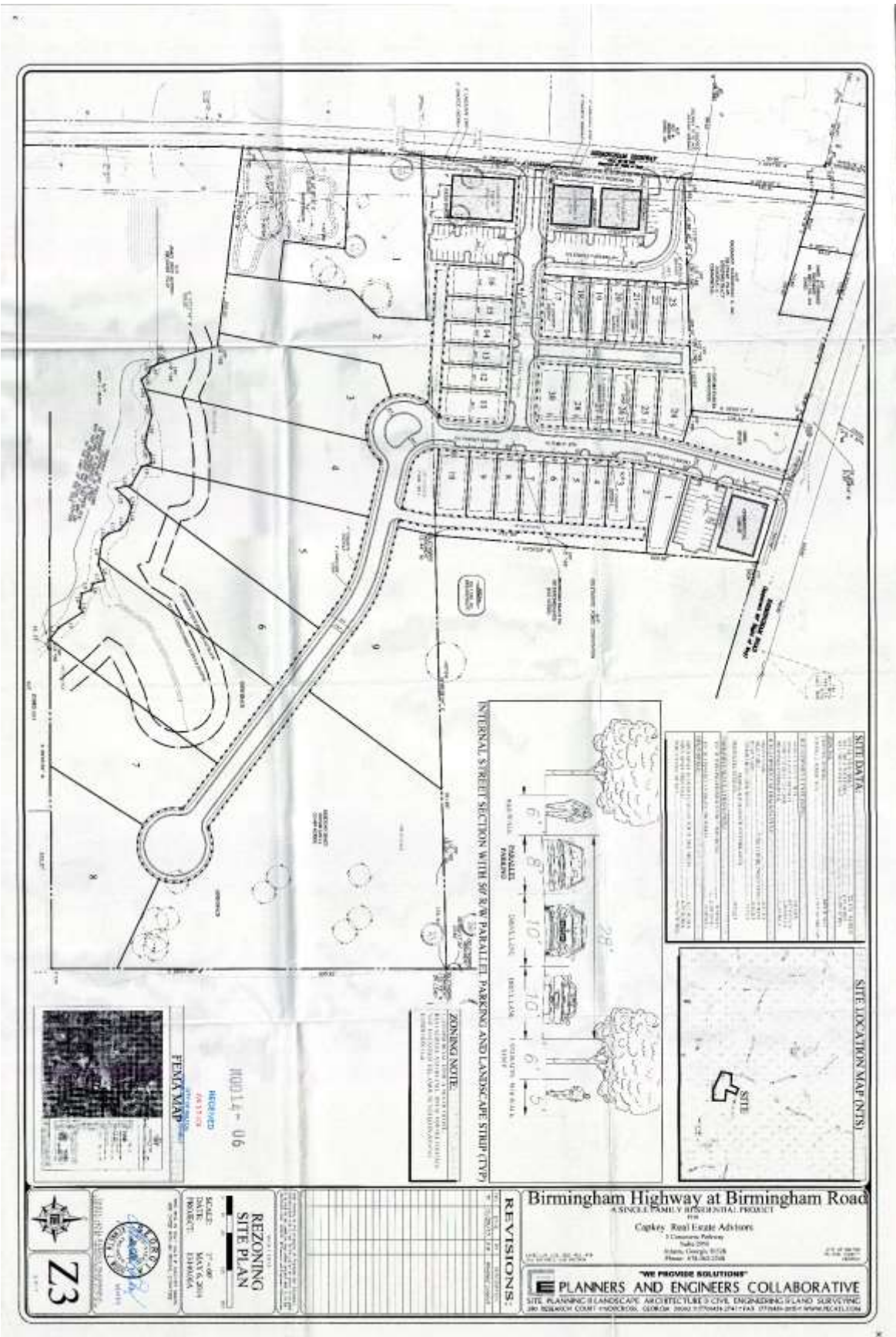
**LOCATION MAP**



**CURRENT ZONING**



**REVISED SITE PLAN SUBMITTED OCTOBER 18, 2018**



**REVISED SITE PLAN SUBMITTED JUNE 17, 2014 (ZM14-06)**

## **History and Background**

The subject site was rezoned from C-1 (Community Business) and M-1 (Manufacturing) to MIX (Mixed Use) on November 3, 2004 by the Fulton County Board of Commissioners. This site is one corner of three corners of the Birmingham Crossroads that was zoned pursuant to RZ04-116 (subject site) and RZ04-43 (northeast and southeast corners zoned C-1 Conditional).

### **RZ04-116/VC04-178 (November 3, 2004 - Fulton County)**

The final conditions approved for all three quadrants were derived from numerous meetings between the original developer, AG Armstrong and the community using the Birmingham Crossroads Plan (Amending the 2015 North Fulton Comprehensive Plan) which was approved by the Fulton County Board of Commissioners on March 3, 2004. In addition, the Birmingham Crossroads of the Northwest Fulton Overlay District was approved on March 3, 2004. This newly created overlay also guided the ultimate outcome of what was approved for the three quadrants of Birmingham Crossroads.

The central premise of both the Plan and the Overlay was that the Birmingham Crossroads should be a neighborhood node consisting of 27.1 acres which at that time recommended up to 100,000 square feet of commercial uses, up to 100,000 square feet of office uses, and up to five (5) residential units per acre.

Since the time of the rezoning in 2004, the northeast and southwest quadrants have been developed as approved. The southeast quadrant has remained undeveloped other than the existing structures on the 22.12 acres.

### **ZM14-03 – June 16, 2014**

At the June 16, 2014 Mayor and City Council, the applicant's request pursuant to ZM14-03 to amend Conditions 1.c., 1.d., 2.a., and 3.c were approved which reduced the approved density for the office, commercial retail, and eliminated the day care facility along Birmingham Road. In addition, the approved site plan replaced some of the townhouse units previously developed with single family detached homes. These amended conditions deleted the requirement for the day care facility and allowed single family detached homes.

### **ZM14-06 – July 21, 2014**

After further evaluation of the site plan, with original conditions approved pursuant to 2004Z-116 by Fulton County, Staff determined that Condition 1.d. had not been met (Staff also notes that there are two conditions numbered 1.d. and this is a typo from the Fulton County conditions). Therefore, the need to modify it to eliminate the community park and community septic system. In addition, Staff requested that Condition 2.a. be included to

remove the reference to the "community waste water facility" indicated on the site plan within the AG-1 portion of the development. This modification was approved by the City Council on July 21, 2014

**15RLDP-000004 - Submittal of Land Disturbance Permit (LDP) – February 20, 2015**

The applicant submitted his LDP for the project to the Community Development Department on February 20, 2015 for review based on the approved site plan and conditions as discussed above. After various comments from Staff and resubmittals by the engineer, responses from the applicant's engineer stopped and the permit appeared to be abandoned.

**ZM16-01 – March 21, 2016**

The current owner, Mr. Tad Braswell requested a modification to the approved site plan to replace the retail buildings along Birmingham Hwy with townhomes. Staff recommended denial and the Mayor and City Council denied the request on March 21, 2016 based on the fact that it was not consistent with the Birmingham Crossroads Master Plan which contemplated this quadrant to provide a mix of uses including non-residential.

**17RLDP-000004 – Submittal of Land Disturbance Permit (LDP) – August 7, 2017**

The applicant submitted revised LDP plans based on the approved site plan and conditions as discussed above. Because of the length of time since the last submittal, Staff required the applicant to resubmit review fees and a new LDP number was issued. Once again, the review process of the LDP occurred with reviews by staff and re-submittals by the applicant. Staff informed the applicant in January 2018 that a Zoning Modification to the site plan as well as concurrent variances would be required to be in compliance with the RZ04-116 approved conditions, ZM14-06 site plan and the Birmingham Crossroads Overlay District.

**ZM18-01/VC18-04 – April 23, 2018**

The applicant requested that site plan dated June 17, 2014 (ZM14-06) be revised as well as the following based on a revised site plan submitted on March 16, 2018. In addition the applicant requested a concurrent variance to delete the 75 foot undisturbed buffer and 10 foot improvement setback along the south property line of the MIX zoning district adjacent to AG-1 (Sec. 64-1142 (a)(3)(b)). These requests were ultimately denied 6-1 by the Mayor and City Council on April 23, 2018.

At the City Council meeting the applicant stated that if denied the proposed changes requested in ZM18-01/VC18-04, he would pursue developing the site with the approved density of 33 townhomes pursuant to RZ04-116 along with the non-residential component.

## **Preliminary Plat Submittal – Planning Commission Meeting – July 25, 2018**

The applicant submitted the preliminary plat which proposed 30 townhome units and 10,000 square feet of non-residential development within the MIX and 11 single family homes on AG-1 (Agricultural). This plan also provided for the 75 foot undisturbed buffer and 10 foot improvement setback on the south property line adjacent to AG-1 zoning district. The Community Development Department approved the preliminary plat as submitted at the July 25, 2018 Planning Commission Meeting.

### **CURRENT REQUEST – ZM18-02/VC18-08**

Since the time of the approved preliminary plat, the applicant has submitted a site plan to be considered by the Mayor and City Council. The zoning ordinance requires that a denied item shall not be considered until at least six months has elapsed from the date of the decision pursuant to Sec. 64-1946(a)(1). The denial of ZM18-01/VC18-04 occurred on April 23, 2018. The subject application will not be considered until the November 5, 2018 City Council Meeting.

The submitted site plan provides for 25 single family homes and 17,000 square feet of retail and office within 2 buildings within the MIX (Mixed Use) zoning district. The AG-1 portion of the development contains 10 single family homes on minimum one acres lots. The previous plan from ZM18-01/VC18-04 indicated an additional small commercial building fronting Birmingham Road. The current request replaces the commercial building with open space.

### **Staff Comments**

The requested modifications to conditions are outlined below along with the detailed analysis and Staff recommendations. It is worth noting and acknowledging prior to offering this detailed analysis that the Staff recommendation being offered for ZM18-02/VC18-07 differs from Staff's previous recommendation of denial for ZM18-01/VC18-04 on April 23, 2018. As such, Staff would like to offer the following introductory comments regarding the current Staff recommendation for ZM18-02/VC18-07.

The role of planning staff is to proactively apply their subject matter expertise and extensive training; ensure best planning practices are adhered to; and to interpret and apply long-range planning documents and local ordinances. Staff make recommendations, but do not make the final determination.

Our role is to provide a thorough review and thoughtful analysis, not just exclusively applying the letter of the law, but also accounting for sound planning practices and using professional judgment to determine whether a modification and/or variance requested ultimately delivers a higher quality project for the community. Based on that review process, Staff then make a recommendation to Council for their review and



determination, and the public is afforded the opportunity to comment publicly regarding that recommendation.

Staff have a responsibility to make sound planning recommendations to Council, respecting and accepting the Council's final decision either way. In recent months, there is a renewed commitment among Staff to ensure to the greatest extent possible that all recommendations, for or against, ultimately serve to deliver the best possible development for the Milton community.

As such, Staff have applied expertise, executed best practices, and analyzed the legal considerations and recommend approval of ZM18-02/VC18-07, provided the additional Staff recommended conditions are accepted by the property owner. This project reduces residential density, and provides additional greenspace open to the public. And if the additional Staff recommended conditions are accepted by the property owner, this open/green space will be preserved in perpetuity through a Deed of Conservation Easement, thereby preventing future development. Please read below for the detailed analysis of each request and Staff recommendations and considerations.

### Requested Modifications to Conditions

2. To the owner's agreement to abide by the following:

- ~~a. To the revised site plan dated June 17, 2014 (ZM14-06) submitted to the Department of Community Development. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.~~
- a. Substantial compliance with the revised site plan received by the Community Development Department on October 18, 2018, and whereby the exact layout of the project may contain minor deviations approved by the Community Development Director provided the deviations remain consistent with the purpose and intent of the Council's approval of the petition. Notwithstanding the contents of the site plan, the project must meet or exceed the requirements of the Zoning Ordinance, all other applicable city ordinances and these conditions. The site plan may be revised with the approval of the Community Development Director in order to comply with city codes and zoning conditions. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.

6. To the owner's agreement to the following site development considerations:

- ~~c. Provide a village green on the south side of Birmingham Road that shall be a minimum of 50 feet in width and a minimum of 11,500 square feet in area measured according to the current setback and an additional 1,500 square feet within the development. (ZM14-03)~~

#### Requested Concurrent Variance – VC18-08

To delete the 75 foot undisturbed buffer and 10 foot improvement setback along the south property line of the MIX zoning district adjacent to AG-1 (Sec. 64-1142 (a)(3)(b))

#### **CZIM Meeting – October 3, 2018**

The applicant was present at the meeting and there were four attendees who signed the sign in sheet. They had the following concerns regarding the zoning modification and concurrent variance:

- 1) The requested concurrent variance does not meet the development standards for Birmingham Crossroads.
- 2) Asked that the AG-1 portion of the property be developed with “rural” development standards.
- 3) The site plan allows for more density, specifically for non-residential uses, on the site.
- 4) There is already back up of traffic on Birmingham Road and it will contribute more to the congestion at the crossroads.

#### **Analysis and Recommendation of Zoning Modifications and Concurrent Variance**

VC18-08 - To delete the 75 foot undisturbed buffer and 10 foot improvement setback along the south property line of the MIX zoning district adjacent to AG-1 (Sec. 64-1142 (a)(3)(b))

The Birmingham Crossroads Overlay District does not address buffers used to separate uses, but the Rural Milton Overlay District (previously called the Northwest Fulton Overlay District) does address this issue. The site is required to meet those development standards that are not addressed in the Birmingham Crossroads Overlay District but required in the Rural Milton Overlay. Although RZ04-116 was approved with a site plan without the required buffer shown in it, the Concurrent Variance requested pursuant to VC04-178 was only approved by the Fulton County Board of Commissioners to reduce the 75 foot buffer and 10 foot improvement setback to a 10 foot landscape strip adjacent to the east property line which abuts the electric sub-station. The minutes from the November 3, 2004 Board of Commissioner's meeting clearly states the concurrent variance was only

approved for the east property line and the south property line was not approved. Furthermore, the conditions of zoning stipulate the following in Condition 2.a.: "Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Resolution and these conditions prior to the approval of a Land Disturbance Permit." Therefore, the zoning ordinance (previously referred to as the zoning resolution in Fulton County) requirements must be met unless a concurrent variance is granted.

A variance must be based upon credible evidence submitted at a public hearing compliance with 1 through 4 of the following:

(1) Relief, if granted, would not offend the spirit or intent of this zoning ordinance.

It is Staff's opinion that the requested deletion of the buffer and improvement setback should be approved, because it would not offend the intent of the zoning ordinance to provide a transition between non-residential uses and single family uses or property zoned AG-1 based on the following facts regarding the revised site plan: 1) The revised site plan dated October 18, 2018 shows a detention pond that has been designed with a park the serves as an amenity to both the future residents as well as the general public. The pond is designed to provide a minimum of five feet of water year round and will have a shallow pond that will spill over to the larger pond and then have a greenway going through it for the public's enjoyment. Also, the additional open space located to the east of the roundabout provides a natural buffer between the MIX portion of the property and the AG-1 single family residences; 2) The Birmingham Crossroads Plan states "The goal of the plan is to create a framework for the development of a pedestrian oriented, mixed use neighborhood node with commercial and offices uses at the Birmingham Crossroads as set forth in the Neighborhood Node policy and that maintains the historic character and natural environment of the Crossroads; and 3) The purpose and intent of the Birmingham Crossroads Overlay District is "To promote a pedestrian oriented development by dividing the land in the Birmingham Crossroads into small walkable blocks with the construction of an internal road system". The incorporation of a 75 foot undisturbed buffer and 10 foot improvement setback will negatively impact the abovementioned goal and intent for the Birmingham Crossroads area.

(2) There are such extraordinary and exceptional situations or conditions pertaining to the particular piece of property that the literal or strict application of this zoning ordinance would create an unnecessary hardship due to size, shape or topography or other extraordinary and exceptional situations or conditions not caused by the variance applicant.

The required 75 foot buffer and 10 foot improvement setback does not create an unnecessary hardship due to size, shape or topography or other extraordinary and exceptional situations based on the fact that the site can still be developed with a mix of uses including commercial, office and residential but does not create the type of development as discussed above regarding the spirit and intent of the Birmingham Crossing Overlay District and Plan.

(3) Relief, if granted would not cause a substantial detriment to the public good and surrounding properties.

It is Staff's opinion that the deletion of the buffer and improvement setback would provide the necessary transition from the MIX (Mixed Use) development to the AG-1 single family homes to the south if approved with the Recommended Conditions. In addition, the development was originally created to incorporate the AG-1 (Agricultural ) one acre lots into the mixed use component of the development and was not a separate AG-1 (Agricultural) development when first approved in 2004 and would not cause a substantial detriment to the public good and surrounding properties.

(4) That the public safety, health and welfare are secured, and that substantial justice is done.

It is Staff's opinion that the applicant has provided sufficient evidence that the public safety, health and welfare are secured and that substantial justice is done if approved with the Recommended Conditions.

Therefore, Staff recommends **APPROVAL of VC18-08.**

### **Request of Modification to ZM14-03**

6. To the owner's agreement to the following site development considerations:

- ~~c. Provide a village green on the south side of Birmingham Road that shall be a minimum of 50 feet in with a minimum of 11,500 square feet in area measured according to the current setback and an additional 1,500 square feet within the development.~~

The applicant has requested the above deletion of Condition 6.c. based on the fact that the Birmingham Crossroads Overlay District (Zoning Ordinance) requires the Village Green on the SE Quadrant be a minimum of 13,000 square feet in size. Staff recommends **APPROVAL of the deletion of 6.c (ZM14-03)** in order to "clean up" an incorrect condition previously approved in 2014. Staff notes that the site plan does comply with the required 13,000 square foot Village Green.

### **Request of Modification to ZM14-06**

2. To the owner's agreement to abide by the following:

- ~~a. To the revised site plan dated June 17, 2014 (ZM14-06) submitted to the Department of Community Development. Said site plan is conceptual~~

~~only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.~~

- a. Substantial compliance with the revised site plan received by the Community Development Department on October 18, 2018, and whereby the exact layout of the project may contain minor deviations approved by the Community Development Director provided the deviations remain consistent with the purpose and intent of the Council's approval of the petition. Notwithstanding the contents of the site plan, the project must meet or exceed the requirements of the Zoning Ordinance, all other applicable city ordinances and these conditions. The site plan may be revised with the approval of the Community Development Director in order to comply with city codes and zoning conditions. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.

The proposed site plan is consistent with the Birmingham Crossroads Plan goal to provide a framework for the development of a pedestrian oriented, mixed use neighborhood node with commercial and offices uses at the Birmingham Crossroads. In addition, the City Council approved ZM14-03 and ZM14-06 which were very similar to the current request which did not contemplate a 75 foot buffer and 10 foot improvement setback. Therefore, Staff recommends **APPROVAL of VC18-08 and APPROVAL of the Modification of Condition 2.a and the deletion of Condition 6.c.** as referenced above with the attached Recommended Conditions.

## RECOMMENDED CONDITIONS

Should the Mayor and City Council approve this petition, the recommended conditions and concurrent variance should be read as follows:

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. Retail, service commercial and/or office and accessory uses, including all exterior food and beverage service areas, on 6.63 acres within the Southeast Quadrant of the Birmingham Neighborhood Node at a maximum density of ~~1,266.97~~ 452.49 gross square feet per acre zoned for retail, service commercial uses and ~~5,671.2~~ 2,564.10 square feet per acre for office uses or a total of ~~8,400~~ 3,000 square feet of retail, service commercial and ~~37,600~~ 17,000 square feet of office, whichever is less, but excluding billboards, fast food restaurants, gas and service stations, commercial amusements (cinemas not included), liquor package stores, motels, hotels, adult entertainment establishments, check cashing stores, pawn shops, coin operated laundries, convenience stores, video arcades, pool halls, massage parlors, nail salons, beauty salons, barber shops, flea markets, discount retail shops, roadside vending, roadside produce stands or seasonal vending. Above described acreage shall be zoned MIX (Mixed Use) Conditional.
  - c. No more than ~~33 townhouse and/or~~ 25 single family dwelling units on 6.63 acres within the Southeast Quadrant of the Birmingham Neighborhood Node at a maximum density of ~~4.98~~ 3.77 units per acre, whichever is less. Above described acreage shall be zoned MIX (Mixed Use) Conditional.
  - e. To provide an executed copy of a recorded Deed of Conservation Easement ~~between the landowner and a third party~~ which maintains includes the ~~park~~ Village Green, Open Space/Park, Stormwater Management Facility, and Rural Viewshed in perpetuity prior to the issuance of the first Certificate of Occupancy for the development. ~~The developer/owner will be responsible for maintenance of the Village Green, Open Space/Park, Stormwater Management Facility, and Rural Viewshed and shall be open for use by the public.~~
  - f. Provide a minimum heated floor area of ~~1,500~~ 2,200 square feet per dwelling unit.
  - g. No more than 10 single family lots within the AG-1 (Agricultural) District
2. To the owner's agreement to abide by the following:
  - a. ~~To the revised site plan dated June 17, 2014 site plan (ZM14-06) submitted to the Department of Community Development. Said site plan is conceptual only and must meet or exceed the requirements of~~

~~the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.~~

a. Substantial compliance with the revised site plan received by the Community Development Department on October 18, 2018, and whereby the exact layout of the project may contain minor deviations approved by the Community Development Director provided the deviations remain consistent with the purpose and intent of the Council's approval of the petition. Notwithstanding the contents of the site plan, the project must meet or exceed the requirements of the Zoning Ordinance, all other applicable city ordinances and these conditions. The site plan may be revised with the approval of the Community Development Director in order to comply with city codes and zoning conditions. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.

4. To the owner's agreement to abide by the following requirements, dedication, and improvements:

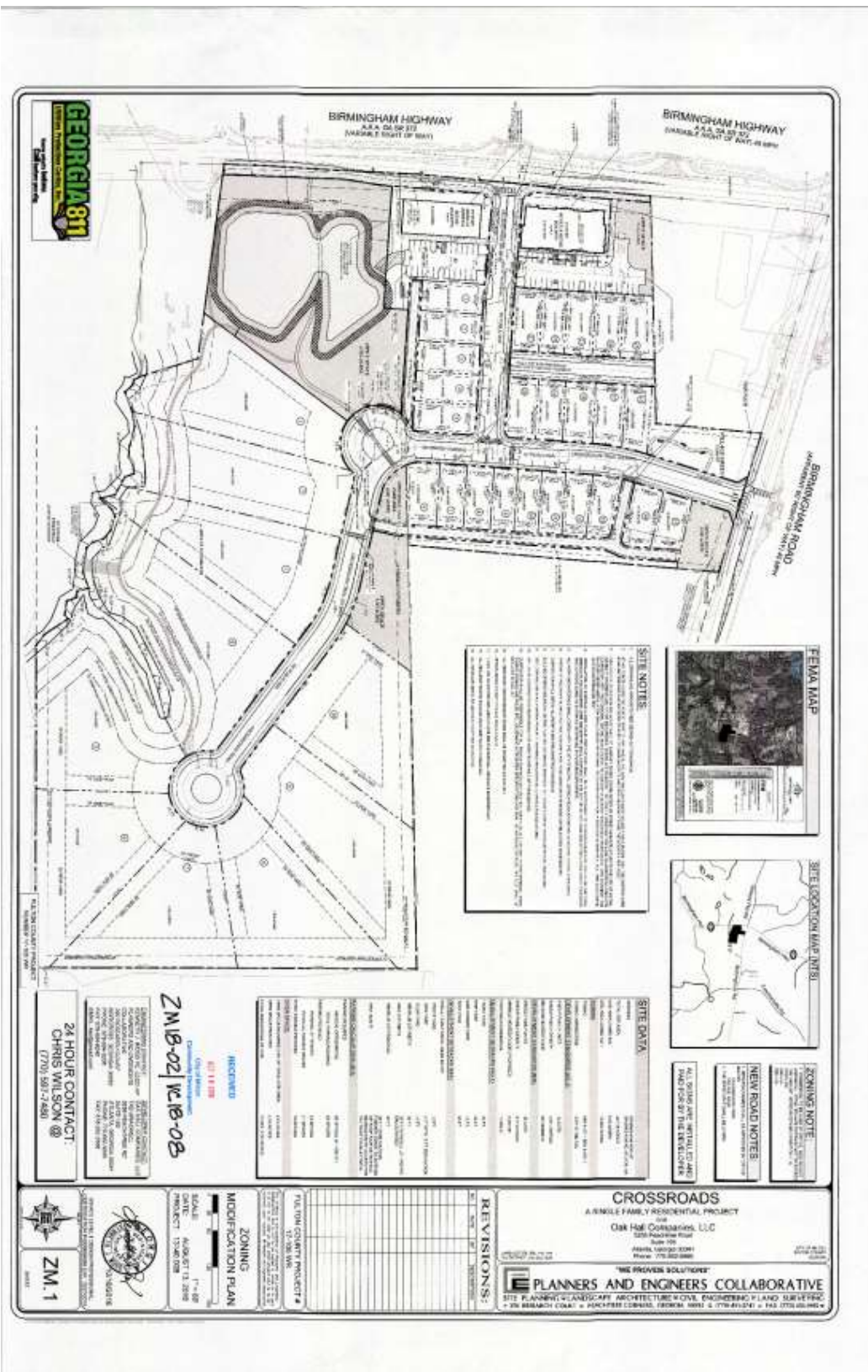
- i. Dedicate at no cost to the City of Milton or Georgia Department of Transportation (GDOT) prior to the approval of a Land Disturbance Permit, sufficient land as necessary to provide the following:
  - iii. Provide a 50 foot wide pedestrian trail easement free of any structures or above ground utilities ~~for future pedestrian inter-parcel access on the east property line on land lot 413 and~~ construct the improvements in the location shown on the revised site plan received on October 18, 2018 or as required and approved by the City of Milton Public Works Department. Pedestrian trail shall be open for use by the public.
- n. All street improvements shall extend across the entire street frontage. Sufficient public right of way shall be dedicated at no cost to the City or Georgia Department of Transportation to ensure that all improvements are contained within the right of way.

6. To the owner's agreement to the following site development considerations:

- ~~e. Provide a village green on the south side of Birmingham Road that shall be a minimum of 50 feet in width and a minimum of 11,500 square feet in area measured according to the current setback and an additional 1,500 square feet within the development.~~

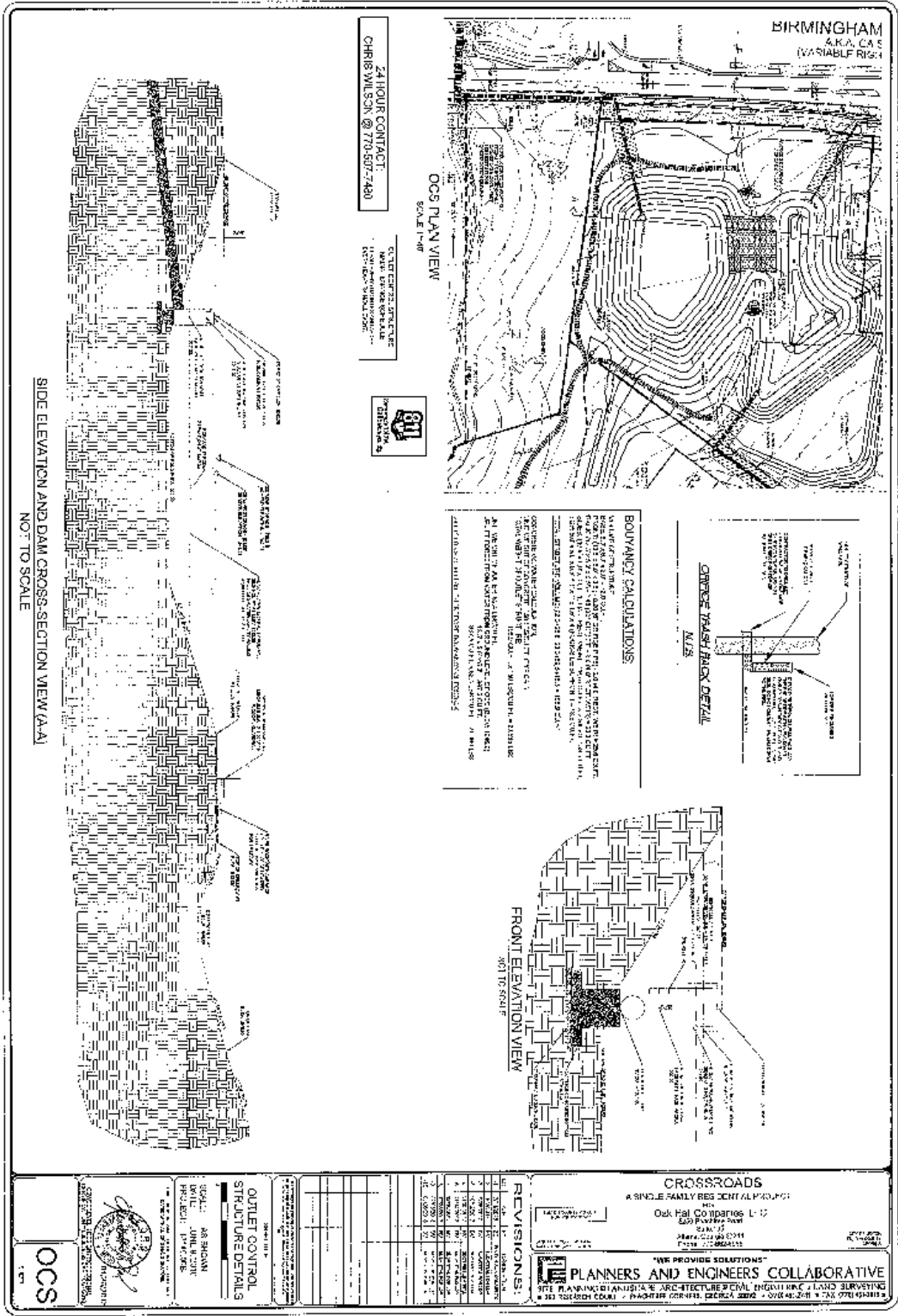
- q. To delete the 75 foot undisturbed buffer and 10 foot improvement setback along the south property line of the MIX zoning district adjacent to AG-1. (VC18-08)
  
- r. A stormwater management park that will serve as an amenity shall be created through a combination of the following landscape and hardscape elements as approved by the Director of Community Development:
  - I. Landscape materials around the stormwater pond shall consist of evergreen and deciduous trees and shrubs, as well as groundcovers, ornamental grasses, and perennials that are native to the region and require little maintenance. The plantings shall be designed to create aesthetic appeal and highlight the pond as an amenity rather than provide an evergreen screen to block views to it. The shallow areas at the edges of the pond shall be planted with native aquatic plants to create an appropriately vegetated littoral shelf.
  
  - II. Hardscape materials within the stormwater management park shall be specified as shown on Exhibit A and the pedestrian trail system should consist of natural materials suitable for location in a stream buffer.
  
  - III. The stormwater management park and stormwater management facility shall be constructed in substantial compliance with the plans as depicted in exhibit A and exhibit B and as approved by the Director of Community Development.
  
- s. Mail Kiosk and sanitary sewer lift station enclosure shall be subject to the approval of the City Architect.





**REVISED SITE PLAN SUBMITTED ON OCTOBER 18, 2018**

Exhibit A



**EXHIBIT A**

Exhibit B



**EXHIBIT B**