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August 6, 2021

## VIA ELECTRONIC FILING

Planning and Zoning Commission  
c/o Ms. Kimberly Smith, Director  
Department of Planning and Community Development  
City of East Point City Hall  
2757 East Point Street  
East Point, GA 30344

RE: Letter of Intent and Justification For Approval Of Variances; 3049 Stone Road

Dear Chairman and Members:

This firm represents Rockhaven Homes, Brad Hughes, the applicant who seeks variances to complete the development of a partially developed subdivision located at 3049 Stone Road (the "Property"). The Property received variances pursuant to 2020V-001-01 on April 16, 2020 to reduce setbacks on certain lots within the originally approved 32-lot subdivision. Subsequently, a previous developer sought permits to implement the initially approved plans and in that process the road alignment and location was changed at the direction of the City. The road location was changed to align the entrance to the subdivision with Grant Estates Drive across Stone Road. The permits were issued and development ensued, including grading, clearing (including removal of trees), and installation of roads, detention ponds, and water and sewer lines. The individual utility lines for each home in the 32 lot subdivision have been installed, including boxes for water meters. Then development stopped.

Subsequently, due to heavy rains and the incomplete development, washouts and gulleys have formed. In addition, the detention pond has been filled in with silt. Kudzu and other invasive species have growth quickly, including kudzu that has enveloped trees along the rear property line.

Rockhaven Homes is now (and was not previously) the developer of the Property. In reviewing the approved plans and the previously approved variance, Rockhaven discovered that the approved plans and partially-developed subdivision is inconsistent with the previously approved variances. This application is sought to bring the revised and partially-built subdivision into alignment with the strict requirements of the Zoning Ordinance. No additional lots are requested in the subdivision; both the original and the current plan proposes 32 detached single-family homes.

For the reasons stated below, these variances meet the criteria for approval of these requests and accordingly the applicant respectfully requests that these variances be approved. Each variance will be addressed in turn below with reference to each criterion.

1. **Variance To Reduce 25 Foot Landscape Strip Along Public Street To 10 Feet.**

The applicant requests a variance from Section 10-2020.3(e)(1) to reduce the 25 landscape strip to 10 feet along Stone Road, due to the fact that the steep slope downward from Stone Road on the property and the severe change in topography on the Property (which is much lower than the Stone Road elevation) within 15 feet of Stone Road negates the need for a buffer along the Road and is impossible due to the fact that there does not exist 25 feet of land at the Stone Road elevation to landscape. The landscape strip would be largely downhill and well below the Stone Road line-of-sight.

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the requirements of this ordinance would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district.

By reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the 25 foot landscape strip requirement deprives the owner of the rights and privileges enjoyed by other owners in the same zoning district. The enclosed topographical survey shows that the property has a significant amount of severe topographical disparity, with a changes in slope of over 100 feet in elevation across the Property. More importantly, the finished elevation of the existing roadbed on the Property is approximately at 960 feet above sea level, meaning that the finished floor elevations of the homes across the Property will be at approximately 962 feet above sea level. The elevation of the Stone Road roadbed varies with a range from 970 feet above sea-level to 985 feet above sea level. Therefore, a retaining wall ranging from approximately 8 feet in height to 23 feet in height will be constructed along the Stone Road frontage behind the proposed 10 foot landscape strip, with the homes being 8 to 23 feet below the Stone Road elevation.

As such, the landscape strip would be located along residential lots that are not visually connected to or related to the street. In short, the property owners would be required to plant and maintain a landscape strip on a steep rise and then below a retaining wall that is 8 to 23 feet below Stone Road.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district

The proposed reduction of the 25 foot landscape strip to 10 feet is the minimum necessary. The applicant is ready and willing to provide a 10 foot landscape strip, for which the applicant can provide the requisite area and tree planting within the buffer.

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3. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance.

Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance. The purpose of the landscaped strip, whether it be an aesthetic benefit to the travelling public or a space for air and light to be unobstructed, is still met due to the proposal for a 10 foot landscape strip and the resulting open air beyond the landscape strip as viewed from Stone Road. The proposed homes will be located significantly below the Stone Road elevation so that the visual impact, and impact on light and air, to Stone Road will be very minimal. Furthermore, the slope leading higher to the roadbed itself acts as a barrier to noise and vibration that are generated by the residential community. No detriment to the public good or intent of the Zoning Ordinance results from the approval of this variance request. There is no benefit to installing a landscape strip 8 to 23 feet below Stone Road at the base of a retaining wall.

1. Variance to Allow the 10 Foot Undisturbed Buffer And 10 Foot Improvement Setback To Be Waived To Allow Fencing And Disturbance Of The Land

Applicant seeks a variance from the requirement of Section 10-2020(3)(e)(2) to allow the buffer to be disturbed and, in addition, to allow fencing within the 10 foot improvement setback. The requirement is that the buffer area remain natural and undisturbed. At this time, however, the interior property lines are covered in kudzu and thick, undesirable undergrowth. The entire site was previously cleared, so that the current buffer area is not well-established growth, but rather kudzu and understory bushes or weeds. The applicant proposes to grade and remove the kudzu and provide a buffer to be more aesthetically pleasing and easier to maintain than rapidly growing kudzu and undergrowth.

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the requirements of this ordinance would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district.

By reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the requirement that a buffer be “undisturbed” deprives the owner of the rights and privileges enjoyed by other owners in the same zoning district. The natural features of the site currently include kudzu and other undesirable undergrowth which the applicant proposes to remove and to grade in a manner that is accessible and similar to the finished elevation of the residential community. The rights and privileges enjoyed by other property owners to have a buffer area that is free from invasive growth would be deprived of the owner of the Property if this variance was not approved.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district

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The requested variance does not go beyond the minimum necessary because the applicant does not propose to eliminate the buffer; the applicant merely proposes to disturb it to remove undesirable trees, kudzu and other invasive undergrowth and replant the buffer in accordance with buffer standards.

3. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance.

Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance. The purpose of the buffer and improvement setback is to provide a visual barrier and transition between similar uses. These goals will still be met with the slight exception that kudzu and other undesirable growth will be removed and the buffer will be replaced with a buffer that is coordinated with a more sightly and organized standard.

3. Variance To Reduce Front Yard Setbacks To Allow Homes On Lots Where Infrastructure Has Been Installed

Applicant seeks a variance from the requirement of Section 10-2061(e)b to reduce the front yard setback from the required 40 feet to those setbacks as shown on the site plan. Many of the lots are double frontage lots, requiring front yard setbacks from two sides. Also, due to the practical requirement of installing retaining walls to accommodate the severe topography of the site, and given the fixed location of the already installed utilities and road network (as required by the City) there is a limited amount of area where a home can be placed on each lot. Therefore, the applicant requests that the frontyard setbacks be reduced as shown on the site plan.

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the requirements of this ordinance would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district.

By reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the requirement that each lot have a front yard setback of 40 feet deprives the owner of the rights and privileges enjoyed by other owners in the same zoning district. Many of the lots are technically double-frontage lots, thereby requiring a 40 foot setback from two sides. In addition, the topographical features of the site currently include severe and steep changes in elevation, more than 100 feet change in elevation over the property, a road network previously developed at a particular elevation of approximately 960 feet above sea level, infrastructure (including detention ponds and underground pipes for water and sewer), and kudzu/undergrowth.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district

The requested variance does not go beyond the minimum necessary because the applicant is balancing the home size, rear and front yards, property lines and location of existing street to provide for a consistent and aesthetic frontyard for all homes in the proposed community.

3. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance.

Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance. The applicant proposes front yard setbacks along the new streets and alley that are consistent and harmonious. As to the lots that face Stone Road, the steep drop-off from Stone Road, as well as the drop in elevation from the proposed sidewalk along Stone Road, results in elevations where the homes will not have visual interaction or line-of-site with Stone Road. There is no relationship of the homes to Stone Road because of the steep change in topography. No direct vehicular or pedestrian access from the homes along Stone Road to Stone Road is feasible or proposed. Therefore, the reduced setbacks along Stone Road will have no aesthetic or functional impact on the Stone Road frontage.

4. Variance To Allow Homes Along Stone Road To Be Oriented Towards Internal Streets

Applicant seeks a variance from the requirement of Section 10-2020(m) to eliminate the requirement that the homes be oriented to both internal proposed streets and Stone Road. These lots are double frontage l, requiring front yard setbacks from two sides. Also, due to the practical requirement of installing retaining walls to accommodate the severe topography of the site, and given the fixed location of the already installed utilities and road network (as required by the City) there is a limited amount of area where a home can be placed on each lot. Therefore, the applicant requests that the frontyard setbacks be reduced as shown on the site plan.

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the requirements of this ordinance would deprive the property owner of the rights and privileges enjoyed by other property owners in the same zoning district.

By reason of exceptional topographic conditions not created by the owner or applicant, the strict application of the requirement that each lot along Stone Road be oriented to both the interior street and Stone Road deprives the owner of the rights and privileges enjoyed by other owners in the same zoning district. These lots are technically double-frontage lots, thereby requiring an orientation to both public streets. In addition, the topographical features of the site currently include severe and steep changes in elevation, a road network previously developed,

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infrastructure (including detention ponds and underground pipes for water and sewer), and kudzu/undergrowth. Other property owners in the same zoning district are not required to orient their homes in two opposite directions.

The severe topography, fixed elevations of Stone Road and fixed elevations of the installed streets on the Property and the necessity for retaining walls to accommodate those fixed elevations limit the ability to place a home on the Property in a manner enjoyed by other property owners in the same zoning district.

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district

The requested variance does not go beyond the minimum necessary because the applicant only seeks this variance for those lots that abut Stone Road.

3. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance.

Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance. The applicant proposes this variance for only the lots that face Stone Road, which has a steep drop-off from Stone Road, as well as the drop in elevation from the proposed sidewalk along Stone Road. This change in topography results in finished floor elevations for homes so far below the elevation of Stone Road that the homes will not have visual interaction or line-of-site with Stone Road. There is no relationship of the homes to Stone Road because of the steep change in topography. No direct vehicular or pedestrian access from the homes along Stone Road to Stone Road is feasible or proposed. Therefore, the orientation of the homes along Stone Road towards the internal street network will have no negative or detrimental aesthetic or functional impact on the Stone Road frontage.

#### Notice of Constitutional Objection

As you know, Georgia law requires that if a property owner and applicant believe that any action other than approval as requested could implicate their constitutional rights, they are required to place the decisionmaking authority on notice of such belief. Accordingly, this notice is to respectfully place this Board on notice that the refusal to approve the application as requested or agreed to by the applicant would result in the deprivation of certain constitutional rights, including those guaranteed by Article I, Section I, Paragraph I; Article I, Section I, Paragraph II; and Article I, Section III, Paragraph I of the Georgia Constitution and the 5<sup>th</sup> and 14<sup>th</sup> amendments to the US Constitution.

However, given that this application is consistent with already approved permits and requests and seeks no additional dwelling units, but rather seeks merely to harmonize the already-developed infrastructure to the current regulations, we believe that this request is justified under the criteria for approval of variances and serves the purposes and intent of the

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zoning ordinance and general welfare. We therefore respectfully request approval of the variances.

Sincerely,

WILSON BROCK & IRBY, L.L.C.



Stephen Rothman

Enclosures