

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JULY 16, 2024
9:00 A.M.**

The Board of Commissioners' Zoning Hearing was held on Tuesday, July 16, 2024, in the second-floor public meeting room of Cobb County Building A, 100 Cherokee Street, Marietta, Georgia. Present and comprising a quorum of the Board were:

Lisa Cupid, Chairwoman arrived at 9:52 a.m.
Commissioner Jerica Richardson, Vice Chairwoman
Commissioner JoAnn Birrell
Commissioner Keli Gambrill
Commissioner Monique Sheffield

CALL TO ORDER – VICE CHAIRWOMAN RICHARDSON

Vice Chairwoman Richardson called the hearing to order at 9:02 a.m.

Commissioner Birrell presented the following *revised* statement dated 5/14/24 to the Clerk which was attached to each vote taken at today's hearing (attached and made a part of these minutes):

In light of the Supreme Court's ruling last week regarding Standing on the Home Rule issue, my position regarding the home rule challenge still stands.

I do not support the Home Rule Challenge of the majority of this board. It is unconstitutional and illegal. I voted against the amended map three times in 2022 (1/25/22, 10/11/22 and 10/25/22).

I have a duty to represent my constituents and will not have my vote suppressed as I was duly elected on November 8, 2022, under the state map (HB 1154) voted on by the Georgia General Assembly in February 2022 and signed into law by Governor Kemp on March 2, 2022 and certified by the Cobb Board of Elections on November 15, 2022.

In addition, I do support the Order on Cross Motions for Summary Judgment (Civil Action File No. 23-1-02428-56) from Judge Ann B. Harris in the Superior Court of Cobb County dated January 8, 2024 which finds the County's Amendment to Act 562 (the "Amendment or Amended Act") is an act excluded from the County's Home Rule authority granted in the Georgia Constitution, and therefore is void.

At the June 11, 2024, BOC Meeting, Commissioner Gambrill submitted a statement and an amicus brief and asked that the following statement be attached to each vote taken at today's hearing (attached and made a part of these minutes):

When the Board first entered Executive Session in March 2022 to discuss the "Home Rule" challenge, I challenged the County Attorney's Office on the premise and requested outside counsel to be sought.

While the County Attorney's Office claims the Association of County Commissioners of Georgia (ACCG) provided legal advice, I too am in receipt of the documents from the ACCG regarding Home Rule, to which it clearly defines the limit of this Board's Constitutional powers as to redistricting. I also contend that the Board of Commissioners did not follow the Home Rule challenge in its entirety.

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Commissioner Gambrill's statement (cont.)

In addition, the Georgia Supreme Court has ruled that the GA Constitution limits legislative action by the Board of Commissioners to matters for which no provision has been made by general law. Furthermore, the "Home Rule" powers granted to the Board of Commissioners do not extend to any matters which the Georgia General assembly by general law has preempted, like the redistricting map here in Cobb Co. Commissioners of Wayne Co. v. Smith 240 Ga. 540 (1978); Brophy v. McCranie 264 Ga. 187 (1994).

In fact, even in Federal Court in Georgia, the court has ruled the General Assembly is the only legislative body with the power to enact redistricting legislation for the counties; therefore, where the General Assembly failed to enact reapportionment legislation for a certain county, although it was entitled to consideration as an expression of county policy, a reapportionment plan proposed by a county was not a legislatively enacted plan requiring deferential treatment and the district court was required to fashion a reapportionment plan. Bodker v. Taylor, 2002 U.S. Dist. LEXIS 27447 (N.D. Ga. June 5, 2002). In January, Georgia State Attorney General, Chris Carr stated that the Cobb County Commission's move to amend its electoral redistricting map is "inappropriate and not legally binding."

Per the letter dated December 22, 2022, from C. Ryan Germany, General Counsel for the Office of the Secretary of State, "you should not consider the ministerial function of filing the Amendment with our office or the publishing of the Amendment to the comment on whether the Amendment is allowable under state law or a proper exercise of the authority by the Cobb County Commission, nor should you rely on this to attempt to establish the validity of the Amendment." "In fact" he continues "it appears that the Amendment is very likely an unauthorized exercise of authority by the Cobb County Commissioner that does not comply to Georgia Law or the State Constitution.

With the majority of this Board actions on October 25, 2022 and the resulting filing and recording with the Office of the Secretary of State on October 26, 2022, the boundaries of the districts from which county commissioners were elected in Districts 1 and 3 were changed (14) days prior to the General Election, and eight (8) days after early voting had begun using district boundaries for Districts 1 and 3 as approved by the Governor.

Furthermore, the Board of Elections certified the election of Commissioners in District 1 and 3 using the map as approved by the Governor on March 2, 2022 on November 15, 2022 and not the maps that the Board of Commissioners made effective on October 26, 2022.

In a letter dated October 3, 2022 Deputy Legislative Counsel D. Stuart Morelli, "It is practically indisputable that a county home rule resolution or ordinance changing the boundaries of the districts from which county commissioners are elected would be an action affecting the procedure for the election of the county's governing authority. O.C.G.A. 36-35-4.1, no such statutory authority exists for Georgia counties.

In January, I was unjustifiably removed from this dais and prevented from representing my constituents and carrying out the duties I was elected to perform, based on an opinion that is not supported by law or policies of this Board.

Quotes by DaShanne Stokes, "Leadership by deception isn't leadership. It's fraud. Truth is hard, propaganda is cheap."

While I am here representing my constituents and fulfilling my duties as an elected official, I hereby request the clerk to attach this statement to each vote that is recorded herein.

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Mr. John Pederson, Zoning Division Manager, reviewed the hearing procedures and announced the following cases which were *withdrawn or continued*.

WITHDRAWN AND CONTINUED CASES

Z-34 **DRIVEN COLLISION, LLC** (Greer Holdings 2.0, LLC and Driven Collision LLC, owner) requesting rezoning from **GC** to **LI** for automotive paint shops and body repair shops in land lot 175 of the 20th district. Property is located on the east side of Cobb Parkway and on the west side of Old 41 Highway (2196 Cobb Parkway). ***WITHDRAWN WITHOUT PREJUDICE***

O.B. 8 To consider a reduction of required lot size from 20,000 square-feet to 16,289 square-feet for Terry Kastner. Property is located on the south side of West Pointe Drive, east of Liberty Lane in land lot 258 of the 20th district (West Pointe Drive). ***(Previously held by the Board of Commissioners (BOC) from the March 19, 2024, BOC Zoning hearing until the April 16, 2024, BOC Zoning hearing; continued by Staff from the April 16, 2024, through the June 18, 2024, BOC Zoning hearings until the July 16, 2024, BOC Zoning hearing). WITHDRAWN WITHOUT PREJUDICE***

Z-15'²³ **SDP ACQUISITIONS, LLC** (McCamy Investments, L.P.; McCamy Properties, LLC; BK Properties, L.P.; VKEP-B, LLC owners) requesting rezoning from **R-20, RA-4, GC, O&I, NS, and OS** to **PVC and OS** for a mixed-use development consisting of townhomes, multifamily residential, office, retail, and wholesale distribution in land lots 364, 365, 428, and 429 of the 16th district. Property is located on the south side of Chastain Road, on the west side of Chastain Meadows Parkway (Chastain Road, Chastain Meadows Parkway). ***(Previously continued by Staff from the May 2, 2023, through the September 5, 2023, Planning Commission (PC) hearings until the October 3, 2023, PC hearing; held by the PC from the October 3, 2023, and November 7, 2023, PC hearings until the December 5, 2023, PC hearing; held by the Board of Commissioners (BOC) from the December 19, 2023, BOC Zoning hearing until the February 20, 2024, BOC Zoning hearing; continued by Staff from the February 20, 2024, through the July 16, 2024, BOC Zoning hearing until the August 20, 2024, BOC Zoning hearing; therefore, was not considered at this hearing).***

Z-2 **FLOURNOY DEVELOPMENT GROUP, LLC** (Cobb County, owner) requesting rezoning from **GC** to **RRC** for a multifamily residential building in land lots 763 and 764 of the 17th district. Property is located on the west side of Atlanta Road and on the east side of I-285, south of the intersection of I-285 and Atlanta Road (4600 Atlanta Road). ***(Previously continued by Staff from the February 6, 2024, through the August 6, 2024, Planning Commission (PC) hearings until the September 3, 2024, PC hearing; therefore, was not considered at this hearing).***

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WITHDRAWN AND CONTINUED CASES (CONT.)

- Z-9** **THOMAS OROK** (Florence Odang Okonta, owner) requesting rezoning from **CRC** and **R-20** to **RM-8** for a townhome community in land lot 1300 of the 19th district. Property is located on the north side of Veterans Memorial Highway and on the west side of Burrus Road (1558 Veterans Memorial Highway). *(Previously continued by Staff from the March 5, 2024, through the July 2, 2024, Planning Commission (PC) hearings until the August 6, 2024, PC hearing; therefore, was not considered at this hearing).*
- Z-25** **LCD ACQUISITIONS, LLC; TOWNPARK RENAISSANCE, LLC** (Townpark Renaissance, LLC, owner) requesting rezoning from **OMR** to **RRC** for purpose-built student housing in land lots 358 and 363 of the 16th district. Property is located on the east side of Townpark Drive, north of Townpark Lane (112 Townpark Drive). *(Continued by Staff from the May 7, 2024, Planning Commission (PC) hearing until the June 4, 2024, PC hearing; held by the PC from the June 4, 2024, PC hearing until the July 2, 2024, PC hearing; continued by Staff from the July 16, 2024, Board of Commissioners' (BOC) Zoning hearing until the August 20, 2024, BOC Zoning hearing; therefore, was not considered at this hearing).*
- Z-30** **BENTLEY RESIDENTIAL PROPERTIES, LLC; SUMMEROUR PROPERTIES, LLLP, ESTATE OF JAMES W. BENTLEY, JAMES W. BENTLEY, JR.** (Bentley Residential Properties, LLC; Summerour Farm LLLP; Lynn Bentley Taylor and Justin Ottinger, owners) requesting rezoning from **CF** and **R-20** to **RA-4** for single-family residences in land lot 224 of the 17th district. Property is located on the south side of Rebecca Drive, west of Pair Street (106 Rebecca Drive). *(Continued by Staff from the July 16, 2024, Board of Commissioners' (BOC) Zoning hearing until the August 20, 2024, BOC Zoning hearing; therefore, was not considered at this hearing).*
- Z-32** **EMILY G. DUNN** (Larimore Holdings, LLC, owner) requesting rezoning from **GC** to **NRC** for retail and a warehouse in land lot 60 of the 16th district. Property is located on the west side of Canton Road, north of Jamerson Road (4925 Canton Road). *(Continued by Staff from the July 2, 2024, Planning Commission hearing until the August 6, 2024, PC hearing; therefore, was not considered at this hearing).*
- SLUP-6** **LCD ACQUISITIONS, LLC; TOWNPARK RENAISSANCE, LLC** (Townpark Renaissance, LLC, owner) requesting a **Special Land Use Permit** for purpose-built student housing in land lots 358 and 363 of the 16th district. Property is located on the east side of Townpark Drive, north of Townpark Lane (112 Townpark Drive). *(Continued by Staff from the May 7, 2024, Planning Commission (PC) hearing until the June 4, 2024, PC hearing; held by the PC from the June 4, 2024, PC hearing until the July 2, 2024, PC hearing; continued by Staff from the July 16, 2024, Board of Commissioners' (BOC) Zoning hearing until the August 20, 2024, BOC Zoning hearing; therefore, was not considered at this hearing).*

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WITHDRAWN AND CONTINUED CASES (CONT.)

Z-33 **O'DWYER PROPERTIES, LLC** (ADP Old Bankhead Highway, LLC, owner) requesting rezoning from **NS** and **R-20** to **RA-4** for a townhome community in land lots 1296 and 1297 of the 19th district. Property is located on the southeast side of Old Bankhead Highway, west of Brenda Drive, and north of Haggard Drive (1035 Old Bankhead Highway).

Mr. Pederson presented the Applicant's request for a continuance of Z-33; thereafter the following motion was made:

MOTION: Motion by Sheffield, second by Birrell, to **continue** Z-33 to the August 20, 2024, Board of Commissioners' Zoning Hearing.

VOTE: **ADOPTED** 4-0, Cupid not present (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

O.B. 31 To consider amending the site plan and stipulations for Whataburger regarding rezoning application Z-115 of 1998 and Z-116 of 1996, for property located at the southeast intersection of Sandy Plains Road and Shallowford Road in land lots 386 and 387 of the 16th district (3550 Sandy Plains Road). (*Previously continued by the Board of Commissioners (BOC) from the June 18, 2024, BOC Zoning hearing until the July 16, 2024, BOC Zoning hearing*).

Mr. Pederson presented the Applicant's request for a continuance of O.B. 31; thereafter the following motion was made:

MOTION: Motion by Birrell, second by Sheffield, to **continue** O.B. 31 to the August 20, 2024, Board of Commissioners' Zoning Hearing.

VOTE: **ADOPTED** 4-0, Cupid not present (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

O.B. 42 To consider amending the site plan and stipulations for Portico Properties, Inc. regarding rezoning application Z-157 of 1998 and Z-23 of 1999. Property is located on the north side of Miller Drive, north of Piedmont Road in land lots 558, 559, 594, and 595 of the 16th district (1793 Miller Drive).

Mr. Pederson presented the Applicant's request for a continuance of O.B. 42; thereafter the following motion was made:

MOTION: Motion by Birrell, second by Sheffield, to **continue** O.B. 42 to the August 20, 2024, Board of Commissioners' Zoning Hearing.

VOTE: **ADOPTED** 4-0, Cupid not present (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

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Mr. Pederson made the following announcement and read in the cases for the Consent Agenda:

INFORMATION REGARDING ZONING CASES

All information regarding zoning cases must be turned in to the Zoning Office on the Wednesday prior to the zoning hearing for consideration. If said information is turned in past the deadline, then it is at the Board's discretion as to whether the information will be considered.

CONSENT AGENDA

MOTION: Motion by Richardson, second by Birrell, to **approve** the following cases on the Consent Agenda, *as revised*:

Z-31 **CARMAX AUTO SUPERSTORE, INC.** (Huey Allen Hobgood and Melissa G. Hobgood, owners) requesting rezoning from **R-20** to **CRC** for used auto sales in land lot 208 of the 20th district. Property is located on the south side of Quarry Road, west of Greers Chapel Road (1878 Quarry Road).

To **approve** Z-31 to the **CRC** zoning district, subject to:

1. Letter of agreeable conditions from David C. Kirk dated June 24, 2024 (attached and made a part of these minutes)
2. District Commissioner to approve the final Site Plan
3. Buffer to be a 20-foot landscape buffer
4. No outdoor storage of vehicle parts
5. Fire Department comments and recommendations
6. Water and Sewer Division comments and recommendations
7. Stormwater Management Division comments and recommendations
8. Department of Transportation comments and recommendations

LUP-20 **ST. ANDREW UMC** (St. Andrew U.M.C. of Marietta, Inc., owner) requesting a **Temporary Land Use Permit** to allow a farmers' market in land lots 371, 372, 421, and 422 of the 16th district. Property is located on the west side of Canton Road and on the south side of Blackwell Circle (3455 Canton Road, Blackwell Circle).

To **approve** LUP-20 for **24 months**, subject to:

1. Letter of agreeable conditions from Blackwell Farmers Market received by the Zoning Division on April 18, 2024 (attached and made a part of these minutes)
2. Hours of operation shall be from 8:30 a.m. until 1:00 p.m., Saturday *only*
3. All parking shall be in the church parking lot
4. Total square footage of proposed signs not to exceed 20 square feet
5. Site Plan Review comments and recommendations

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CONSENT AGENDA (CONT.)

LUP-20 ST. ANDREW UMC (CONT.)

- 6. Fire Department comments and recommendations**
- 7. Department of Transportation comments and recommendations**
- 8. Staff comments and recommendations, *not otherwise in conflict***

SLUP-7 CARMAX AUTO SUPERSTORE, INC. (Huey Allen Hobgood and Melissa G. Hobgood, owners) requesting a **Special Land Use Permit** for used auto sales in land lot 208 of the 20th district. Property is located on the south side of Quarry Road, west of Greers Chapel Road (1878 Quarry Road).

To **approve** SLUP-7, subject to:

- 1. Letter of agreeable conditions from David C. Kirk dated June 24, 2024 (attached and made a part of these minutes)**
- 2. District Commissioner to approve the final Site Plan**
- 3. Buffer to be a 20-foot landscape buffer**
- 4. No outdoor storage of vehicle parts**
- 5. Fire Department comments and recommendations**
- 6. Water and Sewer Division comments and recommendations**
- 7. Stormwater Management Division comments and recommendations**
- 8. Department of Transportation comments and recommendations**

OTHER BUSINESS

O.B. 37 To consider a reduction of required public road frontage from 75-feet to 0-feet and to consider other variances for Reginald C. Black. Property is located off a private easement on the south side of Wright Road in land lot 376 of the 19th district (5551 Wright Road).

To **approve** O.B. 37, subject to:

- 1. Letter of agreeable conditions from Rob Hosack dated June 17, 2024 (attached and made a part of these minutes)**
- 2. Variances as stated in the Other Business Item**

At the call for O.B. 39 (Darrell Harris), the Applicant was not present, and there was no opposition present. The case was pulled from the Consent Agenda until Staff could contact the Applicant. Later in the hearing, the Applicant was present; therefore, the case was added back to the Consent Agenda (see page 12 of these minutes for the motion).

O.B. 40 To consider a reduction of required lot size from 20,000 square-feet to 5,732 square-feet, a reduction of road frontage from 75-feet to 49.84 square-feet, and a house size variance for Oscar Arreaza. Property is located on the east side of Joyner Avenue, south of Austell Road in land lots 282 and 295 of the 17th district (1311 Joyner Avenue).

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CONSENT AGENDA (CONT.)

OTHER BUSINESS (CONT.)

O.B. 40 (CONT.)

To **approve** O.B. 40, subject to:

- 1. Fire Department comments and recommendations contained in the Other Business Item**
- 2. Cobb DOT comments and recommendations contained in the Other Business Item**
- 3. Variances as stated in the Other Business Item**

O.B. 41 To consider amending the site plan and stipulations for Jenn Santelli regarding rezoning application Z-111 of 2000. Property is located on the southwest side of Ernest Barrett Parkway, north of Powder Springs Road, and on the east side of Laura Brown Way (private drive) in land lot 790 of the 19th district (6652 Ernest Barrett Parkway).

To **approve** O.B. 41, subject to:

- 1. Cobb DOT comments and recommendations contained in the Other Business Item**
- 2. Site Plan received by the Zoning Division on June 11, 2024, with the District Commissioner approving minor modifications (attached and made a part of these minutes)**
- 3. All previous stipulations and conditions, *not otherwise in conflict with this amendment*, to remain in effect**

Prior to approving the Consent Agenda, Commissioner Birrell requested that Z-29 be added to the Consent Agenda. With no opposition present, Mr. Pederson read in the case and Commissioner Birrell added her stipulations.

Z-29 **CREATOR'S GROUP INVESTMENTS 1, LLC** (The Henson Family Trust, Connie Petty, Stanley Henson, James Max Henson, Linda Baggett, owners) requesting rezoning from **R-20** to **RSL** for residential senior living, non-supportive residential units in land lot 18 of the 20th district. Property is located on the east side of Wade Green Road, north of Meadow Oaks Drive (4856 Wade Green Road). ***(Continued by the Planning Commission (PC) from the June 4, 2024, PC hearing until the July 2, 2024, PC hearing).***

To **approve** Z-29 to the **RSL** zoning district, subject to:

- 1. Maximum of 39 homes**
- 2. 10% rental cap**
- 3. Final Site Plan and elevations to be approved by the District Commissioner**

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CONSENT AGENDA (CONT.)

Z-29 CREATOR'S GROUP INVESTMENTS 1, LLC (CONT.)

4. No variances
5. Planning Commission comments and recommendations, *not otherwise in conflict* (attached and made a part of these minutes)
6. Staff comments and recommendations, *not otherwise in conflict*

Commissioner Sheffield requested that LUP-12 (Reginald A. Rutherford) be added to the Consent Agenda. The Applicant was not present, and there was no opposition present. The case remained off the Consent Agenda until the Applicant could be contacted. Later in the hearing, after contact with the Applicant, the Board decided to add LUP-12 to the Consent Agenda (see page 12 for the motion).

CONSENT VOTE: **ADOPTED** 4-0, Cupid not present (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

REGULAR AGENDA

Z-15 DILLON INVESTMENTS, LLC (Dillon Investments, LLC, owner) requesting rezoning from **LRO** and **R-80** to **LRO** and **R-80** for a professional office and single-family residence in land lot 428 of the 19th district. Property is located on the north side of Macland Road and on the west side of Villa Rica Road (2080 Villa Rica Road). (*Previously held by the Planning Commission from the April 2, 2024, Planning Commission (PC) hearing until the May 7, 2024, PC hearing; continued by Staff from the May 7, 2024, PC hearing until the June 4, 2024, PC hearing; continued by the PC from the June 18, 2024, Board of Commissioners' (BOC) Zoning hearing until the July 16, 2024, BOC Zoning hearing*).

The public hearing was opened; Parks Huff and Patrick Dodson addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Gambrill, second by Richardson, for Tract "A" (reference Site Plan dated June 12, 2024, attached and made a part of these minutes), to **delete** from LRO to the **R-30** zoning district, subject to:

1. A Limited Professional Service Permit (LPSP) shall be approved per code Section 134-29 **39**, but deleting the (c)(5) requirement that the LPSP shall be for a specific user and use *only*
2. The following definition shall be added under *permitted uses*:
Professional offices means a structure wherein services are performed involving predominately administrative, professional, or clerical operations such as the following: law, doctor, optician,

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REGULAR AGENDA (CONT.)

Z-15 DILLON INVESTMENTS, LLC (CONT.)

- audiologist, accounting, tax preparation, tutoring, real estate, stockbroker, architect, engineer, manufacturer representative, professional counselor, dentist, investigative services, photographer, insurance, contractor, land surveyor, telephone sales, political/campaign, veterinarian (no day boarding), or travel bureau
3. There shall be no outside storage of vehicles or heavy equipment on-site
 4. All other sections of Section 134-29 39 shall apply
 5. Adherence to the Macland Road Design Guidelines
 6. A 20-foot landscape buffer on Tract “A” adjacent to Tract “B”
 7. The existing permitted signage size and location to remain with a maximum signage size to be 32 square-feet and eight feet high

And for Tract “B”, to delete to the **R-80** zoning district, subject to:

1. The lot split shall be recorded with the Superior Court Clerk no later than September 20, 2024

The following conditions are applicable to both parcels (Tract “A” and Tract “B”):

1. Fire Department comments and recommendations
2. Water and Sewer Department comments and recommendations
3. Stormwater Management Division comments and recommendations
4. Department of Transportation comments and recommendations
5. District Commissioner to approve the final Site Plans and elevations

VOTE: **ADOPTED** 4-0, Cupid not present (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

Later in the hearing, Commissioner Gambrill amended her previous motion for Z-15 (see page 11 of these minutes for the motion).

Chairwoman Cupid arrived at 9:52 a.m.

- Z-26 NGC Holdings, LLC** (BK Canton, LLC, owner) requesting rezoning from **GC** to **NRC** for a convenience store with fuel sales and retail in land lot 60 of the 16th district. Property is located on the south side of Jamerson Road, and the west side of Canton Road (4815 Canton Road). (*Previously continued by Staff from the May 7, 2024, Planning Commission (PC) hearing until the June 4, 2024, PC hearing; held by the PC from the June 4, 2024, PC hearing until the July 2, 2024, PC hearing.*)

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REGULAR AGENDA (CONT.)

Z-26 NGC Holdings, LLC (CONT.)

The public hearing was opened; Parks Huff, Lawton Jordan, and Carol Brown addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Richardson, to **approve** Z-26 to the NRC zoning district, subject to:

- 1. Letter of agreeable stipulations from Canton Road Neighbors dated May 20, 2024 (attached and made a part of these minutes)**
- 2. List of *prohibited uses* include the following:**
 - A. Billiards or pool halls**
 - B. Vape and smoke shops**
 - C. Automotive uses**
 - D. Convenience stores with fuel sales**
 - E. Gun shops**
 - F. Pawn and title shops**
 - G. Massage parlors**
 - H. Recycling collection location**
- 3. Two speed bumps to be added: one entering Jamerson Road, and another one along the border line of the shopping center and the old Rite Aid property**
- 4. Hours of operation shall be Monday through Sunday, from 6:00 a.m. until 11:00 p.m.**
- 5. Staff comments and recommendations, *not otherwise in conflict***
- 6. Planning Commission comments and recommendations, *not otherwise in conflict* (attached and made a part of these minutes)**
- 7. Final Site Plan to be approved by the District Commissioner**

VOTE: **ADOPTED** 4-0, Cupid abstained as she was not present for the presentation (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

Z-15 DILLON INVESTMENTS, LLC (CONT.)

MOTION: Motion by Gambrill, second by Richardson, to **amend** the motion for Z-15 (2024) to correct the references of Limited Professional Services Permit from 134-29 to 134-39 (correction shown in the previous motion as 134-29 **39**)

VOTE: **ADOPTED** 4-0, Cupid abstained (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

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CONSENT AGENDA (CONT.)

Mr. Pederson read in O.B. 39 (Darrell Harris) and the stipulations, and the case was added back to the Consent Agenda.

O.B. 39 To consider a reduction of required lot size from 20,000 square-feet to 11,250 square-feet and to consider other variances for Darrell Harris. Property is located on the west side of Joyner Avenue, south of Austell Road in land lot 281 of the 17th district (1390 Joyner Avenue).

To **approve** O.B. 39, subject to:

- 1. Stormwater Management Division comments and recommendations contained in the Other Business Item**
- 2. Variances as stated in the Other Business Item**

MOTION: Motion by Birrell, second by Sheffield, to **add** O.B. 39 back to the Consent Agenda

VOTE: **ADOPTED 5-0** (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

Mr. Pederson read in LUP-12 (Reginald A. Rutherford), and the following motion was made to add LUP-12 to the Consent Agenda:

MOTION: Motion by Sheffield, second by Birrell, to **add** LUP-12 to the Consent Agenda as follows:

LUP-12 **REGINALD A. RUTHERFORD** (Reginald Allen Rutherford, owner) requesting a **Temporary Land Use Permit** to allow a business and related vehicle parking in land lots 1244, 1245, 1272, 1273, and 1319 of the 19th district. Property is located on the south side of Hiram Lithia Springs Road, east of Holloman Road (5280 Hiram Lithia Springs Road). (*Previously held by the Planning Commission (PC) from the April 2, 2024, through the June 4, 2024, PC hearings until the July 2, 2024, PC hearing.*)

To **approve** LUP-12 for **12 months**, subject to:

- 1. ~~June—4~~ July 2, 2024 Planning Commission comments and recommendations (attached and made a part of these minutes)**

VOTE: **ADOPTED 5-0** (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

Clerk's Note: *The Planning Commission's (PC) comments and recommendations for LUP-12 were made during the July 2, 2024 PC hearing rather than the June 4, 2024 PC hearing date as read in.*

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REGULAR AGENDA (CONT.)

Z-27 **RICHARD BOROWIEC, RICHIE BS LLC** (Richie B's, LLC, owner) requesting rezoning from **O&I** to **NRC** for a professional office (contractor) and warehouse in land lot 493 of the 16th district. Property is located on the southwest side of Chance Road and on the north side of Shaw Park Road (Chance Road). *(Continued by Staff from the June 4, 2024, Planning Commission (PC) hearing until the July 2, 2024, PC hearing).*

The public hearing was opened; Richard Borowiec and Carol Brown addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Sheffield, to **deny** Z-27.

VOTE: **ADOPTED 5-0** *(Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.)*

LUP-21 **EDWIN STAFFORD** (Olabisi Muibat Adeyi, owner) requesting a **Temporary Land Use Permit** for an antique store and yard sales in land lots 1019 and 1054 of the 19th district. Property is located on the east side of Austell Powder Springs Road, south of Furr Avenue (4509 Austell Powder Springs Road).

The public hearing was opened, and Edwin Stafford addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Sheffield, second by Birrell, to **deny** LUP-21, subject to:

1. Code Enforcement shall continue to visit the property and issue citations and fines until the property is brought into compliance

VOTE: **ADOPTED 5-0** *(Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.)*

Chairwoman Cupid called for a brief recess from 10:48 a.m. until 11:00 a.m.

OTHER BUSINESS

O.B. 38 To consider a reduction of required public road frontage from 75-feet to 28-feet for Lot 2 for Naushad Ahmed. Property is located on the north side of Hembree Drive in land lot 886 of the 16th district (2357 Hembree Drive).

The public hearing was opened; Naushad Ahmed, Patrick Dodson, and Shelly Carey addressed the Board. Following the presentation and discussion, Chairwoman Cupid called for a brief recess from 11:42 a.m. until 11:45 a.m.

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JULY 16, 2024
PAGE 14**

OTHER BUSINESS

O.B. 38 (CONT.)

Following the recess, the following motion was made:

MOTION: Motion by Richardson, second by Birrell, to continue O.B. 38 until the August 20, 2024, Board of Commissioners' Zoning Hearing.

VOTE: **ADOPTED 5-0** (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

Following the vote, Commissioner Richardson amended her motion for O.B. 38 as follows:

MOTION: Motion by Richardson, second by Birrell, to hold O.B. 38 until the August 20, 2024, Board of Commissioners' Zoning Hearing.

VOTE: **ADOPTED 5-0** (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

O.B. 43

To consider a Settlement of Litigation for Aquas Vivas Centro Familiar de Adoracion, Inc. regarding case Z-9 of 2023. Property is located on the north side of South Gordon Road, east of Starling Drive in land lots 386 and 412 of the 18th district (540 South Gordon Road).

The public hearing was opened; Kevin Moore and Steve Jungk addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Sheffield, second by Birrell, to approve O.B. 43, subject to:

- 1. Letter of agreeable conditions and Site Plan from Kevin Moore dated July 12, 2024 (attached and made a part of these minutes)**
- 2. Elevations to be approved by the District Commissioner**
- 3. Landscaping to be approved by the District Commissioner**
- 4. Lighting to be approved by the District Commissioner**
- 5. All other Staff comments and recommendations, including the comments and recommendations from Z-9 of 2023, *not otherwise in conflict***

VOTE: **ADOPTED 5-0** (*Statements previously submitted by Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes.*)

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JULY 16, 2024
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ADJOURNMENT

The hearing adjourned at 12:12 p.m.



Robin L. Stone, Deputy County Clerk
Cobb County Board of Commissioners

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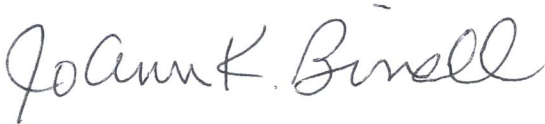
Commissioner Birrell's Statement - Revised 5/14/24

In light of the Supreme Court's ruling last week regarding Standing on the Home Rule issue, my position regarding the home rule challenge still stands.

I do not support the Home Rule Challenge of the majority of this board. It is unconstitutional and illegal. I voted against the amended map three times in 2022 (1/25/22, 10/11/22 and 10/25/22).

I have a duty to represent my constituents and will not have my vote suppressed as I was duly elected on November 8, 2022 under the state map (HB 1154) voted on by the Georgia General Assembly in February 2022 and signed into law by Governor Kemp on March 2, 2022 and certified by the Cobb Board of Elections on November 15, 2022.

In addition, I do support the Order on Cross Motions for Summary Judgement (Civil Action File No. 23-1-02428-56) from Judge Ann B. Harris in the Superior Court of Cobb County dated January 8, 2024 which finds the County's Amendment to Act 562 (the "Amendment or Amended Act") is an act excluded from the County's Home Rule authority granted in the Georgia Constitution, and therefore is void.



Jo Ann K. Birrell
District 3 Commissioner

Commissioner Gambrell's statement

When the Board first entered Executive Session in March 2022 to discuss the "Home Rule" challenge, I challenged the County Attorney's Office on the premise and requested outside counsel to be sought.

While the County Attorney's Office claims the Association of County Commissioners of Georgia (ACCG) provided legal advice, I too am in receipt of the documents from the ACCG regarding Home Rule, to which it clearly defines the limit of this Board's Constitutional powers as to redistricting. I also contend that the Board of Commissioners did not follow the Home Rule challenge in its entirety.

In addition, the Georgia Supreme Court has ruled that the GA Constitution limits legislative action by the Board of Commissioners to matters for which no provision has been made by general law. Furthermore, the "Home Rule" powers granted to the Board of Commissioners do not extend to any matters which the Georgia General Assembly by general law has preempted, like the redistricting map here in Cobb Co. Commissioners of Wayne Co. v. Smith 240 Ga. 540 (1978); Brophy v. McCranie 264 Ga. 187 (1994).

In fact, even in Federal Court in Georgia, the court has ruled the General Assembly is the only legislative body with the power to enact redistricting legislation for the counties; therefore, where the General Assembly failed to enact reapportionment legislation for a certain county, although it was entitled to consideration as an expression of county policy, a reapportionment plan proposed by a county was not a legislatively enacted plan requiring deferential treatment and the district court was required to fashion a reapportionment plan. Bodker v. Taylor, 2002 U.S. Dist. LEXIS 27447 (N.D. Ga. June 5, 2002). In January, Georgia State Attorney General, Chris Carr stated that the Cobb County Commission's move to amend its electoral redistricting map is "inappropriate and not legally binding."

Per the letter dated December 22, 2022, from C. Ryan Germany, General Counsel for the Office of the Secretary of State, "you should not consider the ministerial function of filing the Amendment with our office or the publishing of the Amendment to the a comment on whether the Amendment is allowable under state law or a proper exercise of the authority by the Cobb County Commission, nor should you rely on this to attempt to establish the validity of the Amendment." "In fact" he continues "it appears that the Amendment is very likely an unauthorized exercise of authority by the Cobb County Commissioner that does not comply to Georgia Law or the State Constitution.

With the majority of this Board's actions on October 25, 2022 and the resulting filing and recording with the Office of the Secretary of State on October 26, 2022, the boundaries of the districts from which county commissioners were elected in Districts 1 and 3 were changed (14) days prior to the General Election, and eight (8) days after early voting had begun using district boundaries for Districts 1 and 3 as approved by the Governor.

Furthermore, the Board of Elections certified the election of Commissioners in District 1 and 3 using the map as approved by the Governor on March 2, 2022 on November 15, 2022 and not the maps that the Board of Commissioners made effective on October 26, 2022.

In a letter dated October 3, 2022 Deputy Legislative Counsel D. Stuart Morelli, "It is practically indisputable that a county home rule resolution or ordinance changing the boundaries of the districts from which county commissioners are elected would be an action affecting the procedure for the election of the county's governing authority. O.C.G.A. 36-35-4.1, no such statutory authority exists for Georgia counties.

In January, I was unjustifiably removed from this dais and prevented from representing my constituents and carrying out the duties I was elected to perform, based on an opinion that is not supported by law or policies of this Board.

Quotes by DaShanne Stokes, "Leadership by deception isn't leadership. It's fraud. Truth is hard, propaganda is cheap."

While I am here representing my constituents and fulfilling my duties as an elected official, I hereby request the clerk to attach this statement to each vote that is recorded herein.

Rezoning Plat

2080 Villa Rica Road

Cobb County, Georgia

Land Lot 428, 19th District, 2nd Section

prepared for:

Mr. Michael Dillon

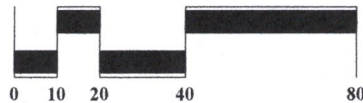
DGM

LAND PLANNING
CONSULTANTS, INC.



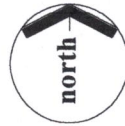
1635 Old Hwy 41
SUITE 112-314
KENNESAW, GA 30152

770-514-9006
DGMLPC.COM



Scale: 1" = 40'

June 12, 2024



Site Data

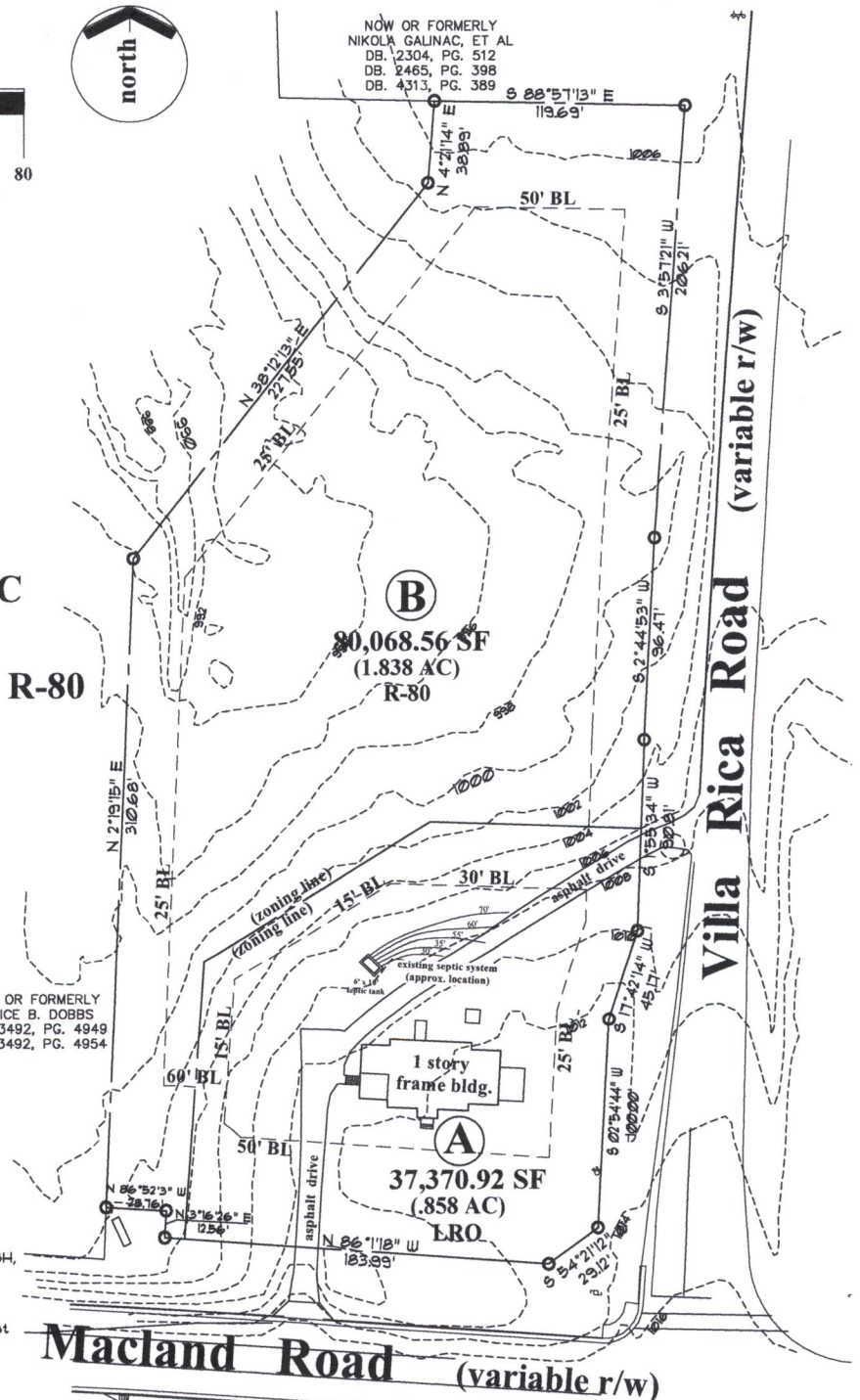
Total Site Area: **2.696 AC**
Existing Zoning: **R-80**
Current Zoning: **LRO & R-80**

Notes:

1. Boundary from Taso and Associates, November 15, 2015
2. Topography from Cobb County GIS.
2. According to Flood Insurance Rate Map (FIRM) #13067C00293H, no portion of this site contains floodplain.
3. No cemeteries are known to exist on site.
4. No streams or wetlands are known to exist on site.
5. No archeological or architectural landmarks are known to exist on site.
6. No utility easements are known to exist on site.

NOW OR FORMERLY
JANICE B. DOBBS
DB. 13492, PG. 4949
DB. 13492, PG. 4954

NOW OR FORMERLY
NIKOLA GALINAC, ET AL
DB. 2304, PG. 512
DB. 2465, PG. 398
DB. 4313, PG. 389



Canton Road Neighbors, Inc.

Planning Commissioner Christine Lindstrom
Members of Cobb Planning Commission
100 Cherokee St.
Marietta, GA 30090

May 20, 2024

Re: Z-26 NGC Holdings, LLC, south west corner of Jamerson and Canton, 4815 Canton Rd, to rezone from GC to NRC for Convenience Store with fuel sales, retail

Dear Planning Commissioner Lindstrom,

Unlike its predecessor Z-30 QT (for the same site), Z-26 is a better plan, with six fewer fuel positions (10 versus 16) and planned adaptive reuse of the existing vacant Rite Aid building. We note Staff recommends approval, but also recommended approval for the QuikTrip.

The challenges associated with the QT application remain although they are somewhat less, due to the reduced number of fuel pumps.

1. This is still a small site at 1.65 acres, and the Canton Road shared access driveway is still a problem. Compared to other gas stations located at signalized intersections, this driveway was not designed to handle a fairly high volume of traffic. Due to its distance from the signalized intersection the driveway can't be widened to better accommodate ingress and egress. Entering the driveway requires a steep U Turn to get to subject property.
2. The shared access driveway is on property owned by the contiguous business owners, meaning that a fairly high volume of traffic at peak hours will be crossing their property to get to the fuel canopy.
3. The projected visits to the site under the QT was 2,057 per day, or 4,114 turning movements. That was for the C Store and 16 fuel positions. The projected visits to the site (vpd) for Z-26 are 2,571, with the proposed retail plaza adding 534 vpd for a total of 3,105 vpd, or 1,009 vpd less than the Quik Trip.
4. The distance from the fuel pumps and canopy to the restaurant outdoor dining area has not changed.
5. Adequate parking for the adjacent business owners remains a problem. The location of the fuel pumps and canopy removes parking spaces which might be shared between the two parcels, as has been the practice since the restaurant opened in 2011, 13 years ago.

Conclusion

Several points are very clear, the original design of subject property did not envision a high traffic volume use like convenience store with fuel sales. That is apparently one of the most intense uses in terms of vpd that can be built. The shared driveway which is on the contiguous property was not designed to accommodate a high number of vehicles per day.

There is documentation of the joint driveway easement, but unfortunately documentation of shared parking between the two parcels can't be found. However, that has been the practice for 13 years.

While the contiguous property has appropriate parking for retail, it is underparked for restaurant use. Photographs taken last fall on a Friday evening at 8 pm (Kell football night) show that overflow parking takes up most of the area in front of the vacant Rite Aid, where the proposed fuel canopy would be built.

A quick look at the VPD on uses similar to the former Rite Aid explains why shared parking was possible:

Recent data on VPD at Walgreen's with a comparable size structure is 1,411

VPD data on an Aldi's/supermarket with a 14,000 sq ft building is 1,314

National average VPD at a 4,000 sq ft fast food restaurant is 1,870 per day.

While Z-26 is less intense than the previous QT application, it is still an intense use and will almost certainly have a negative impact on the contiguous businesses, two of which have been in operation for over a decade. The impact of a large C Store will certainly harm the early morning business of Ray's Donuts due to peak traffic volume and competition from sale of coffee and pastries.

We believe that the landowner has the right to an economically viable use of their property and should be given a viable zoning. However the available uses should not be so intense as to overwhelm three existing businesses which share the driveway crossing their property with the adjacent property owner. Therefore we would support the following:

Deletion to NRC for Neighborhood Retail, offices and other permitted uses under NRC subject to the following:

Excluded uses to include:

1. Convenience store with fuel sales
2. Automotive uses
3. Pawn or title pawn
4. Contractor as a special exception
5. No outdoor storage
6. No heavy equipment
7. Modification of site plan or amendment of stipulations to come before the BoC as Other Business
8. Adherence to Canton Design Guidelines
9. Canton Road driveway to be limited to Right in Right out
10. Staff Comments and Recommendations not otherwise in conflict.

Respectfully submitted,

Carol Brown, MA MRP
Canton Road Neighbors, Inc.

MINUTES OF ZONING HEARING
COBB COUNTY PLANNING COMMISSION
JULY 2, 2024
PAGE 4

Min. Bk. 99 Petition No. Z-26
Doc. Type 7-2-2024 Planning Commission
Comments & recommendations for Z-26
Meeting Date 7-16-2024

REGULAR AGENDA (CONT.)

~~Z-25 & LCD ACQUISITIONS, LLC; TOWNPARK RENAISSANCE, LLC
SLUP-6 (CONT.)~~

~~MOTION: Motion by Lindstrom, second by Beloin, to recommend denial of Z-25.~~

~~VOTE: FAILED 2-3, Vault, Anderson, and Hughes opposed~~

~~*Following the vote for Z-25, the following motion was made for companion case, SLUP-6:*~~

~~MOTION: Motion by Lindstrom, second by Beloin, to recommend denial of SLUP-6.~~

~~VOTE: FAILED 2-3, Vault, Anderson, and Hughes opposed~~

~~*Due to the failed motions for Z-25 and SLUP-6, Mr. Anderson made the following alternative motions:*~~

~~MOTION: Motion by Anderson, second by Hughes, to hold Z-25 and SLUP-6 until the July 2, 2024, Planning Commission Zoning Hearing.~~

~~VOTE: ADOPTED 5-0~~

~~*See page 5 for the final recommendation of Z-25 and SLUP-6.*~~

Chairman Vault called for a brief recess from 11:01 a.m. until 11:13 a.m.

Z-26 **NGC Holdings, LLC** (BK Canton, LLC, owner) requesting rezoning from **GC** to **NRC** for a convenience store with fuel sales and retail in land lot 60 of the 16th district. Property is located on the south side of Jamerson Road, and the west side of Canton Road (4815 Canton Road). *(Continued by Staff from the May 7, 2024, Planning Commission (PC) hearing until the June 4, 2024, PC hearing; held by the PC from the June 4, 2024, PC hearing until the July 2, 2024, PC hearing).*

The public hearing was opened; Parks Huff and Carol Brown addressed the Planning Commission. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Lindstrom, second by Beloin, to recommend approval of Z-26 to the **NRC** zoning district, subject to:

REGULAR AGENDA (CONT.)

Z-26 NGC Holdings, LLC (CONT.)

1. Letter of agreeable stipulations from Canton Road Neighbors dated May 20, 2024 (on file in the Zoning Division)
2. List of *prohibited uses* include the following:
 - A. Billiards or pool halls
 - B. Vape and smoke shops
 - C. Automotive uses
 - D. Convenience stores with fuel sales
 - E. Gun shops
 - F. Pawn and title shops
 - G. Massage parlors
 - H. Recycling collection location
3. Two speed bumps to be added: one entering Jamerson Road, and another one along the border line of the shopping center and the old Rite Aid property
4. Hours of operation shall be Monday through Sunday, from 6:00 a.m. until 11:00 p.m.
5. Staff comments and recommendations, *not otherwise in conflict with the stated stipulations*

VOTE: ADOPTED 5-0

~~Z-27 RICHARD BOROWIEC, RICHIE BS LLC (Richie B's, LLC, owner) requesting rezoning from O&I to NRC for a professional office (contractor) and warehouse in land lot 493 of the 16th district. Property is located on the southwest side of Chance Road and on the north side of Shaw Park Road (Chance Road). (Continued by Staff from the June 4, 2024, Planning Commission (PC) hearing until the July 2, 2024, PC hearing.)~~

~~The public hearing was opened; McKayla Phelps and Carol Brown addressed the Planning Commission. Following the presentation and discussion, the following motion was made:~~

~~MOTION: Motion by Lindstrom, second by Hughes, to recommend denial of Z-27.~~

~~VOTE: ADOPTED 5-0~~

Chairman Vault called for a lunch recess at 11:58 a.m. The hearing reconvened at 1:05 p.m.

Reconsideration of Z-25 and SLUP-6

~~Following the lunch recess, Chairman Vault requested a motion to reconsider Z-25 and SLUP-6, thereafter, the following motions were made:~~

MINUTES OF ZONING HEARING
COBB COUNTY PLANNING COMMISSION
JULY 2, 2024
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Min. Bk. 99 Petition No. Z-29
Doc. Type 7-2-2024 Planning Commission
Comments & recommendations for Z-29
Meeting Date 7-16-2024

REGULAR AGENDA (CONT.)

~~Z-25 & LCD ACQUISITIONS, LLC; TOWNPARK RENAISSANCE, LLC
SLUP-6 (CONT.)~~

~~MOTION: Motion by Anderson, second by Lindstrom, to reconsider Z-25.~~

~~VOTE: **ADOPTED** 5-0~~

~~MOTION: Motion by Anderson, second by Lindstrom, to reconsider SLUP-6.~~

~~VOTE: **ADOPTED** 5-0~~

~~MOTION: Motion by Lindstrom, second by Anderson, to move Z-25 forward to the Board of Commissioners *with no recommendation*.~~

~~VOTE: **ADOPTED** 5-0~~

~~MOTION: Motion by Lindstrom, second by Hughes, to move SLUP-6 forward to the Board of Commissioners *with no recommendation*.~~

~~VOTE: **ADOPTED** 5-0~~

Z-29

CREATOR'S GROUP INVESTMENTS 1, LLC (The Henson Family Trust, Connie Petty, Stanley Henson, James Max Henson, Linda Baggett, owners) requesting rezoning from **R-20** to **RSL** for residential senior living, non-supportive residential units in land lot 18 of the 20th district. Property is located on the east side of Wade Green Road, north of Meadow Oaks Drive (4856 Wade Green Road). *(Continued by the Planning Commission (PC) from the June 4, 2024, PC hearing until the July 2, 2024, PC hearing).*

The public hearing was opened, and Kevin Moore addressed the Planning Commission. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Lindstrom, second by Beloin, to recommend approval of Z-29 to the **RSL** zoning district, subject to:

1. **Approval for 39 homes**
2. **All other RSL requirements apply**
3. **A tire washing station available at all times**
4. **All construction vehicles to be parked on the site**
5. **There shall be no stacking of cars or trucks on Wade Green Road**
6. **All trash to be removed each evening**
7. **Once paved, the streets are to be reviewed for loose nails**
8. **All garages shall be two-car garages**

REGULAR AGENDA (CONT.)

Z-29 CREATOR'S GROUP INVESTMENTS 1, LLC (CONT.)

9. A hard surface walkway shall be available to use between the sidewalk and covered pavilion
10. Landscaping including shade trees and shrubs to be approved by the County Arborist with final approval by the District Commissioner
11. Water sprinkler system to be installed at the front entrance
12. Include a minimum of two benches along the walkway
13. Letter of agreeable conditions from Kevin Moore dated June 24, 2024 (on file in the Zoning Division)
14. Staff comments and recommendations, *not otherwise in conflict with the stated stipulations*

VOTE: ADOPTED 5-0

Chairman Vault called for a brief recess from 1:28 p.m. until 1:34 p.m.

~~**LUP-12 REGINALD A. RUTHERFORD** (Reginald Allen Rutherford, owner) requesting a **Temporary Land Use Permit** to allow a business and related vehicle parking in land lots 1244, 1245, 1272, 1273, and 1319 of the 19th district. Property is located on the south side of Hiram Lithia Springs Road, east of Holloman Road (5280 Hiram Lithia Springs Road). *(Previously held by the Planning Commission (PC) from the April 2, 2024, through the June 4, 2024, PC hearings until the July 2, 2024, PC hearing).*~~

The public hearing was opened, and Reginald Rutherford addressed the Planning Commission. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Hughes, second by Anderson, to recommend approval of LUP-12 for **12 months**, subject to:

1. For this Applicant *only*
2. Quarterly inspections by Code Enforcement
3. Height of the fence shall be eight feet to ensure screening of equipment from adjoining property owners
4. Equipment stored on the property shall be the following (total of eight):
 - A. Two single-axle dump trucks
 - B. Two bucket trucks
 - C. Two landscape trucks
 - D. Two Bobcats
5. No more than five employees

~~VOTE: ADOPTED 5-0~~

David C. Kirk
david.kirk@troutman.com

Min. Bk. 99 Petition No. Z-31 and SLUP-7
Doc. Type Letter from David C. Kirk

Meeting Date 7-16-2024

June 24, 2024

VIA ELECTRONIC DELIVERY

Mr. John Pederson, AICP
Manager, Zoning Division
Cobb County Community Development
1150 Powder Springs Street, Suite 400
Marietta, Georgia 30064

Re: Rezoning and Special Land Use Permit Applications (Z-31 and SLUP-7)
Parcel #20020800050; also known as 1878 Quarry Road (the "Subject Property")
Applicant: CarMax Auto Superstores, Inc. ("CarMax")
Letter of Agreeable Stipulations

Dear Mr. Pederson:

This law firm serves as legal counsel for CarMax Auto Superstores, Inc. ("CarMax") in connection with the above-referenced applications (the "Applications"). Following discussions with staff of the Zoning Division, meetings with other staff members, discussions with nearby property owners, and following review of the Departmental Comments and Staff Recommendations, we have been authorized by CarMax to submit this letter of agreeable stipulations and conditions which, if the Applications are approved as submitted, shall become part of the grant of the requested Rezoning (with concurrent Variance) and Special Land Use Permit and shall be binding on the Subject Property. Approval of the Applications will permit the expansion of an automobile staging area associated with the existing CarMax Auto Superstore facility located at 1215 Ernest Barrett Parkway in Cobb County.

The proposed conditions and stipulations are as follows:

1. Applicant seeks approval of the Rezoning of the Subject Property from R-20 to CRC (with a concurrent variance to reduce the buffer to the adjacent R-20 property from 35 feet to 20 feet) as well as a Special Land Use Permit for the construction and operation of a vehicle staging lot associated with the existing CarMax store located at 1215 Ernest Barrett Parkway. The development shall be in general conformity with the Site Plan dated May 2, 2024, and submitted with the Applications on May 2, 2024, with approval of the final Site Plan by the District Commissioner. A reduced copy of the Site Plan is attached hereto as Exhibit "A" and incorporated herein by reference.

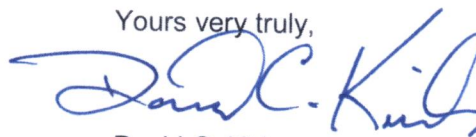
2. The buffer between the Subject Property and the adjacent R-20 parcel shall be reduced from the required 35 feet to 20 feet. The Applicant shall consult with the County Arborist to develop an enhanced landscaping plan for the buffer, with final approval by the District Commissioner.
3. No automobile maintenance activities shall be carried out and no vehicle parts shall be stored outside on the Subject Property.
4. Striping in the staging area shall designate parking lanes and spaces in a similar manner to the striping in the existing CarMax staging area, rather than individual parking spaces for each vehicle.
5. Lighting for the staging area shall be environmentally sensitive, shoe-box style and shall be fitted with non-glare lenses and cutoff shield to prevent light from spilling over the property line of the adjacent R-20 property. All lighting shall comply with Cobb County Code requirements.
6. The Applicant shall not be required to dedicate any right-of-way along Quarry Road to the County, as this road is a dead end and will provide no access to the Subject Property.
7. The District Commissioner shall have the authority to approved minor modifications to this development proposal as it proceeds through the Plan Review Process and thereafter, provided this authority shall not extend to modifications that:
 - a) Reduce the size of an approved buffer adjacent to property which is zoned in a more restrictive zoning classification;
 - b) Change the access location to a different roadway; or
 - c) Require variances to the provisions of the Cobb County Zoning Ordinance beyond any variance granted herein.

We believe approval of the requested Rezoning (with the concurrent variance) and Special Land Use Permit, with the stipulations set forth above and those recommended by staff that are not in conflict with the above, is an appropriate use of the Subject Property and consistent with the Subject Property's Future Land Use Plan designation, the Comprehensive Land Use Plan, applicable policy considerations of Cobb County, and the surrounding area.

We truly appreciate your assistance in this matter, as well as the thoughtful consideration of these requests by you and your staff, the Cobb County Planning Commission, and the Cobb County Board of Commissioners.

Should you have any questions, please do not hesitate to let me know.

Yours very truly,



David C. Kirk
Attorney for CarMax

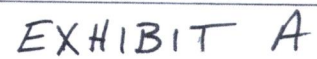
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Attachment

c: Cobb County Board of Commissioners
Lisa N. Cupid, Chairwoman
JoAnn K. Birrell
Keli Gambrill
Jerica Richardson
Monique Sheffield
(With Copy of Attachment)

Cobb County Planning Commission
Stephen Vault, Chairman
Fred Beloin
David Anderson
Christine Lindstrom
Michael Hughes
(With Copy of Attachment)

Terry L. Martin, AICP
Bradley Escobar (CarMax)
Steve Hudak (CarMax)

SHEET NO **SP1.0**

MINUTES OF ZONING HEARING
COBB COUNTY PLANNING COMMISSION
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Min. Bk. 99 Petition No. LUP-12
Doc. Type 7-2-2024 Planning Commission
Comments & recommendations for LUP-12
Meeting Date 7-16-2024

REGULAR AGENDA (CONT.)

~~7-29 CREATOR'S GROUP INVESTMENTS 1, LLC (CONT.)~~

- ~~9. A hard surface walkway shall be available to use between the sidewalk and covered pavilion~~
- ~~10. Landscaping including shade trees and shrubs to be approved by the County Arborist with final approval by the District Commissioner~~
- ~~11. Water sprinkler system to be installed at the front entrance~~
- ~~12. Include a minimum of two benches along the walkway~~
- ~~13. Letter of agreeable conditions from Kevin Moore dated June 24, 2024 (on file in the Zoning Division)~~
- ~~14. Staff comments and recommendations, *not otherwise in conflict with the stated stipulations*~~

~~VOTE: ADOPTED 5-0~~

Chairman Vault called for a brief recess from 1:28 p.m. until 1:34 p.m.

LUP-12 **REGINALD A. RUTHERFORD** (Reginald Allen Rutherford, owner) requesting a **Temporary Land Use Permit** to allow a business and related vehicle parking in land lots 1244, 1245, 1272, 1273, and 1319 of the 19th district. Property is located on the south side of Hiram Lithia Springs Road, east of Holloman Road (5280 Hiram Lithia Springs Road). *(Previously held by the Planning Commission (PC) from the April 2, 2024, through the June 4, 2024, PC hearings until the July 2, 2024, PC hearing).*

The public hearing was opened, and Reginald Rutherford addressed the Planning Commission. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Hughes, second by Anderson, to recommend approval of LUP-12 for **12 months**, subject to:

1. **For this Applicant only**
2. **Quarterly inspections by Code Enforcement**
3. **Height of the fence shall be eight feet to ensure screening of equipment from adjoining property owners**
4. **Equipment stored on the property shall be the following (total of eight):**
 - A. **Two single-axle dump trucks**
 - B. **Two bucket trucks**
 - C. **Two landscape trucks**
 - D. **Two Bobcats**
5. **No more than five employees**

VOTE: ADOPTED 5-0



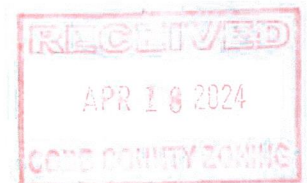
Hosted by St. Andrew UMC
3455 Canton Rd, Marietta, GA 30066
bfm@saumcmarietta.org

Agreeable Stipulations for the Establishment of a Farmers Market at St. Andrew UMC

1. List of Items Sold

The farmers market shall host vendors who sell the following items:

- Fruits
- Vegetables
- Mushrooms
- Herbs
- Grains
- Legumes
- Nuts
- Shell eggs
- Honey or other bee products
- Flowers
- Nursery stock
- Baked goods
- Jams and jellies
- Canned vegetables
- Dried fruit
- Syrups
- Salsas, Sauces, and Salad dressings
- Flours
- Chocolates
- Candy
- Coffee and Tea
- Meats
- Cheeses
- Smoked or canned meats or fish
- Sausages
- Items prepared by cottage food operators
- Handmade crafts



This list may be subject to additions or deletions as authorized by the district commissioner.



Hosted by St. Andrew UMC
3455 Canton Rd, Marietta, GA 30066
bfm@saumcmarietta.org

2. Property Owner's Acknowledgement and Authorization

St. Andrew United Methodist Church hereby acknowledges and authorizes the operation of the farmers market on the premises located at 3455 Canton Rd, Marietta, GA 30066.

3. Compliance with Noise Ordinance

The Applicant acknowledges that no loudspeakers shall be utilized during the farmers market, and that the market will comply with the provisions of the Cobb County Noise Ordinance.

4. Compliance with Health Regulations

The Applicant acknowledges that all vendors participating in the farmers market will comply with all applicable state and county health regulations, including those associated with food preparation and presentation.

5. Prohibition of Certain Activities

The Applicant acknowledges that there will be no mechanized rides, video arcades, or mechanized games conducted on the premises during the Farmers Market Operation

6. Cleanup Requirement

The Applicant acknowledges that the premises must be cleaned up within two hours of the end of the market.

7. Prohibition of Firearms Sales and Open Flame Cooking

The Applicant acknowledges that there shall be no firearms sales or open flame cooking conducted on the premises.

8. Emergency Contact Information

The emergency 24-hour contact person for use by the applicable county staff is the Chairman of the Trustees Committee at St. Andrew UMC, Chris Woods, reachable at phone number 770-309-6302 or email cewoods1268@gmail.com.

9. Onsite Manager Responsibilities

An onsite manager shall maintain and update a list of vendors with contact numbers and requisite business license numbers. This list shall be made available for inspection by county staff upon request.

BH3, LLC
309 N Rampart Street
Canton, Georgia 30114
770-235-5662
rhosack@outlook.com

Min. Bk. 99 Petition No. O.B.37
Doc. Type Letter from Rob Hosack
Meeting Date 7-16-2024



Rob Hosack, AICP
Director of Governmental Affairs

June 17, 2024

VIA EMAIL ONLY

Mr. John P. Pederson, AICP, Manager
Cobb County Community Development Agency
Zoning Division
1150 Powder Springs Road, Suite 400
Marietta, GA 30064

Re: Other Business Application for Reggie Black, 5551 Wright Road (OB-37)

Dear John:

We are hereby submitting this letter of agreeable stipulations/conditions to ensure quality which will become conditions and a part of the grant of the requested Other Business approval and run with the land. This letter will serve as the initial stipulation letter and, upon grant of the approval we agree to the following:

1. Applicant agrees that existing barn may require repairs and portions of may require re-building to ensure safety for both humans and livestock. In the event of such re-build or re-model, applicant agrees that footprint and size of existing barn will not increase. Applicant also agrees to properly permit any repair or re-build activity with Cobb County.
2. Applicant agrees to no residential units or habitable areas being established in the existing barn.
3. Applicant agrees to no commercial or non-residential use of the existing barn, other than a home office use (for Black Family only as allowed under Customary Home Occupation provisions of the Cobb County Zoning Ordinance) or boarding of livestock, as allowed under the applicable terms of the Cobb County Zoning Ordinance.
4. Applicant agrees to no commercial deliveries or customers visiting the site, other than those associated with boarding of livestock, as allowed under the applicable terms of the Cobb County Zoning Ordinance.

BH3, LLC
309 N Rampart Street
Canton, Georgia 30114
770-235-5662
rhosack@outlook.com

Petition No. O.B.37
Meeting Date 7-16-2024
Continued



Rob Hosack, AICP
Director of Governmental Affairs

Please do not hesitate to contact me should you or the staff require any further information or documentation prior to the Application being heard and considered by the Board of Commissioners.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob", is written below the word "Sincerely,".

Rob Hosack
Applicant Representative

cc: Reggie Black, via Email Only

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

MARIETTA, GEORGIA
EMERSON OVERLOOK
326 ROSWELL STREET
SUITE 100
MARIETTA, GEORGIA 30060
TELEPHONE (770) 429-1499

KNOXVILLE, TENNESSEE
408 N. CEDAR BLUFF ROAD
SUITE 500
KNOXVILLE, TENNESSEE 37923
TELEPHONE (865) 892-9039

JACKSONVILLE, FLORIDA
10201 CENTURION PARKWAY N.
SUITE 401
JACKSONVILLE, FLORIDA 32256
TELEPHONE (904) 428-1465

BRENTWOOD, TENNESSEE
12 CADILLAC DRIVE
SUITE 200
BRENTWOOD, TENNESSEE 37027
TELEPHONE (615) 425-7347

LEXINGTON, KENTUCKY
2408 SIR BARTON WAY
SUITE 375
LEXINGTON, KY 40509
TELEPHONE (859) 309-0026

ORLANDO, FLORIDA
390 N. ORANGE AVENUE
SUITE 625
ORLANDO, FLORIDA 32801
TELEPHONE (407) 367-6233

HARRISBURG, PENNSYLVANIA
101 ERFORD ROAD
SUITE 300
CAMP HILL, PA 17011
TELEPHONE (717) 790-2854

July 12, 2024

Via E-mail Only

Min. Bk. 99 Petition No. 0.B.43
Doc. Type Settlement of Litigation
Letter for Z-9 (2023)
Meeting Date 7-16-2024

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Suite 400
1150 Powder Springs Road
Marietta, Georgia 30064

RE: Application for Rezoning - Application No. Z-9 (2023)
Applicant: Aguas Vivas Centro Familiar
de Adoracion, Inc.
Property: 10.296 acres, more or less, located on the
north side of South Gordon Road, east of Starling Drive, being more particularly
known as 540 South Gordon Road, Land
Lots 386 and 412, 18th District, 2nd Section,
Cobb County, Georgia

AND

Aguas Vivas Centro Familiar de Adoracion, Inc. v. Cobb County, Georgia; *et al.*
Civil Action, File No.: 1:23-CV-4251-TWT
United States District Court, Northern District of Georgia, Atlanta Division

Dear John:

As you know, the undersigned and this firm represent Aguas Vivas Centro Familiar de Adoracion, Inc. ("Aguas Vivas") with regard to a total tract of 10.296 acres, more or less, located on the northerly side of South Gordon Road, east of Starling Drive, being more particularly known as 540 South Gordon Road, Land Lots 386 and 412, 18th District, 2nd Section, Cobb County, Georgia ("Property" or the "Subject Property"). This lawsuit arose from the July 19, 2023, decision by the Board of Commissioners to deny the Application to rezone the Property to the R-20 category, with stipulations, for a church. Aguas Vivas contends the denial was contrary to the laws of this State, the Constitutions of the United States of America and the State of

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 2 of 4
July 12, 2024

Georgia, and Federal Statutes. Cobb County removed the suit filed in the Superior Court of Cobb County to the United States District Court for the Northern District of Georgia, Atlanta Division, and responded to the lawsuit denying all allegations and contending the Plaintiff is not entitled to any relief under the law.

The settlement, as proposed in this letter, the stipulations contained herein, and the accompanying revised Site Plan, result from efforts to resolve the issues presented without the necessity of further litigation or further uncertainty with respect to the future development and use of the Property.

Aguas Vivas agrees to the following stipulations and conditions, subject to approval of the revised Site Plan submitted herewith, which, if approved, as submitted, shall be in complete settlement of the pending lawsuit and shall be binding upon the Subject Property. The referenced stipulations are as follows:

- (1) Aguas Vivas seeks rezoning of the Subject Property from the existing zoning classification of R-20, with stipulations, to the proposed zoning classification of R-20, with stipulations, including the contemporaneous approval of a Special Use Exception, for purposes of a Church (place of worship), site plan specific to the revised Site Plan prepared for Aguas Vivas by Miller Architecture and Planning, last revised July 12, 2024. A reduced copy of the revised Site Plan is attached as Exhibit "A."
- (2) The Church building shall contain a maximum of 6,808 net square feet, with maximum seating of 300.
- (3) There shall be established an undisturbed, natural and landscaped buffer, in conformance with County Code, adjacent to existing residentially zoned properties. For purposes of clarity, this buffer shall be landscaped where necessitated by clearance or disturbance or where natural screening is not present. In areas where natural vegetation provides adequate screening, such buffer shall be considered undisturbed and/or natural and maintained, as determined by the County Arborist.
- (4) For purposes of traffic mitigation, Aguas Vivas agrees to install a deceleration lane and left-turn lane on South Gordon Road substantially consistent with Exhibit "B," which includes Cobb County Department of Transportation recommendations. Final design and location of the deceleration lane and left-turn lane shall be subject to Cobb County Department of Transportation approval.

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 3 of 4
July 12, 2024

- (5) Signage for the proposed Church shall be ground-based, monument style signage, consistent with and complementary to the architectural style, finish, materials, and colors of the proposed Church building.
- (6) Lighting fixtures for the parking area shall be environmentally sensitive, shoe-box style, or other lighting style which contains the lighting within the boundary of the Subject Property.
- (7) Dumpsters shall be enclosed, with materials and color for the enclosure being comparable and consistent with the façade of the Church structure.
- (8) Aguas Vivas agrees to comply with all Stormwater Division Comments and Recommendations, including, but not limited to, compliance with all applicable stream buffer standards and ordinances.
- (9) Minor modifications to the within stipulations, the referenced revised Site Plan, lighting, landscaping, architecture, site features, signage, and the like, may be approved by the District Commissioner, as needed or necessary, except for those that:
 - (a) Increase the density of a residential project or the overall square footage of a non-residential project;
 - (b) Reduce the size of an approved buffer adjacent to a property that is zoned the same or in a more restrictive zoning district;
 - (c) Relocate a structure closer to the property line of an adjacent property that is zoned the same or in a more restrictive zoning district;
 - (d) Increase the height of a building that is adjacent to a property that is zoned the same or in a more restrictive zoning district;
 - (e) Change an access location to a different roadway;
 - (f) Would be in direct contradiction or conflict with any of the stipulations of this rezoning;
 - (g) Would be in direct contradiction or conflict with Cobb County Code and Ordinances; or

MOORE INGRAM JOHNSON & STEELE

Petition No. 0.B.43
Meeting Date 7-16-2024
Continued

Mr. John P. Pederson, AICP
Zoning Division Manager
Zoning Division
Cobb County Community Development Agency
Page 4 of 4
July 12, 2024

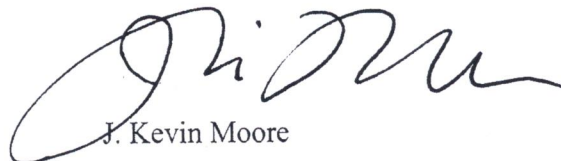
- (h) Would be in direct contradiction or conflict with any Staff Recommendations that were adopted into the final zoning decision.
- (10) Aguas Vivas agrees to comply with Cobb County Code and Development Standards.

We believe the requested rezoning and Special Use Exception, pursuant to the referenced, revised Site Plan and the stipulations set forth herein, is an appropriate use of the Subject Property while taking into consideration the overall area and uses of properties surrounding the proposed Church. In addition, we believe this offer of settlement in a disputed matter is reasonable and appropriate. If approved, Aguas Vivas shall dismiss the pending suit, with prejudice.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



J. Kevin Moore

JKM:cc

Attachments

c: Debra L. Blair, Esq.
Deputy County Attorney
(With Copies of Attachments)

Brian Scott Johnson, Esq.
Senior Associate County Attorney
(With Copies of Attachments)

Aguas Vivas Centro Familiar de Adoracion, Inc.
(With Copies of Attachments)



6732 Spring Street
Douglasville, GA 30134
millerap.com | info@millerap.com
678-715-1566

GENERAL CONSTRUCTION NOTES:

- THE CONTRACTOR SHALL GUARANTEE TO THE ARCHITECT THAT THE WORKMANSHIP SHALL BE FULLY INSURED BY THE CONTRACTOR FOR THE ENTIRE TERM OF THE CONTRACT. THE CONTRACTOR SHALL MAINTAIN ADEQUATE INSURANCE COVERAGE FOR THE ENTIRE TERM OF THE CONTRACT. THE CONTRACTOR SHALL MAINTAIN ADEQUATE INSURANCE COVERAGE FOR THE ENTIRE TERM OF THE CONTRACT. THE CONTRACTOR SHALL MAINTAIN ADEQUATE INSURANCE COVERAGE FOR THE ENTIRE TERM OF THE CONTRACT.

The contractor shall be responsible for all fees and obtaining all necessary and relevant permits and approvals relating to siting and construction of this project. The contractor shall comply with all relevant building, construction and work safety codes. The contractor shall verify all dimensions and deviations in the field before starting work and immediately report to the architect any discrepancies discovered.



AGUAS VIVAS CENTRO
FAMILIAR DE ADORACION
540 GORDON ROAD SW
AUSTELL, GA 30126

Agua Viva Centro Familiar de Adoracion
4750 Covenant Way
Powder Springs, GA 30127

DRAWING TITLE
SITE PLAN

PARAMETER	DATE	ISSUING OFFICE
REVISED SUMMARY	MAY 24, 1962	A-11
REVISED SUMMARY	JUNE 1, 1962	
COUNTY RECEIPT	AUG 13, 1964	
REVISED CAPACITY	AUG 13, 1960	
DATE	MAY 18, 1962	COMMISSIONER
REVISED SUMMARY	MAY 18, 1962	DRAWN BY THE

A-11

COMMISSION 200
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NORTH

CONCEPTUAL ZONING PLAN ONLY -
NOT FOR CONSTRUCTION

The drawings herein represent the physical and intellectual property of Muller Architecture and Planning and may not be reproduced or transmitted in any form without the prior written consent of said firm.

EXHIBIT "A"

SITE PLAN
SCALE: 1" = 50'-0"

SCALE 1" = 50'-0"

