

**MAY 19, 2009 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 4**

ITEM #1

PURPOSE

To consider a site plan approval for JDH Capital, LLC regarding Z-6 (CHRISTMAS CREEK INVESTMENT CO., L.P. AND ROBERT J. MCCAMY) of February 18, 1997 for property located in Land Lot 631 of the 19th District. Located at the northeast intersection of Austell Road and Milford Church Road

BACKGROUND

The subject property is zoned CRC. The Board of Commissioners decision is attached. One of the conditions requires the final site plan to be approved by the Board of Commissioners. This request is to approve the attached site plan. The site plan indicates a proposed shopping center that includes a 34,928 square foot Food Lion grocery store and an additional 19,560 square feet of retail space. There are also two out parcels each containing free standing buildings. The subject property has an existing natural gas main running diagonally through the property that also runs through the adjacent Crest Ridge subdivision. The gas main is being partially relocated so the shopping center can be constructed and a portion of the gas main is being relocated within the 35 foot landscaped buffer. The site plan indicates a 35 foot landscape buffer along the northern and eastern property line and an 8 foot privacy fence will also be erected per the stipulation letter. Although there will not be 35 feet of landscaping where the gas main is being relocated, the landscaping is being supplemented in this area to help screen the shopping center from the adjacent single family subdivision. Mr. Kevin Moore who is representing the applicant has met with the adjoining subdivision representatives and also attached is a letter of stipulations derived from the meetings. The Other Business application is also attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider approval of the site plan and if approved should be subject to the requirements at Plan Review

ATTACHMENTS

Board of Commissioners Decision
Proposed Site Plan
Stipulation Letter
Other Business Application

Application for Rezoning Cobb County

816-3213

Application No. 276
PC Hearing: 2/14/97
BOC Hearing: 2/19/97

Applicant Christmas Creek Investment Co., LP and Robert J. McCamy Business Phone 404-262-9210 Home Phone 404-237-1232

MARK TILLER/HENDON Prop. Address 3076 Maple Drive, Atlanta, Georgia 30305
(representative's name, printed)

[Signature] Business Phone 262-7400
(representative's signature)

Signed, sealed and delivered in presence of: _____ (representative's signature)

[Signature]
Notary Public

MY COMMISSION EXPIRES
SEPTEMBER 12, 2000
My commission expires: _____

Titleholder Robert J. McCamy Business Phone 404-262-9210 Home Phone 404-237-1232

Signature [Signature] Address 3076 Maple Drive, Atlanta, GA 30305
(attach additional signatures, if needed)

Signed, sealed and delivered in presence of: _____

[Signature]
Notary Public

MY COMMISSION EXPIRES
SEPTEMBER 12, 2000
My commission expires: _____

Zoning Request From Planned shopping center to community retail commercial

For the Purpose of shopping center (present zoning) shopping center (proposed zoning) Size of Tract 21.95 Acre(s)

Location Corner of Austell Road and Milford Church Road
(subdivision, restaurant, warehouse, apt., etc.)

Land Lot(s) 631 District 19th
(street address, if applicable; nearest intersection, etc.)

We have investigated the site as to the existence of archeological and/or architectural landmarks. I hereby certify that there ~~are~~/are no such assets. If any, they are as follows:

Christmas Creek Inv. Co.
G.P. [Signature] Robert J. McCamy
(applicant's signature)

We have investigated the site as to the existence of any cemetery located on the above property. I hereby certify that there ~~is~~/is not such a cemetery. If any, they are as follows:

Christmas Creek Inv. Co.
G.P. [Signature] Robert J. McCamy
(applicant's signature)

ORIGINAL DATE OF APPLICATION: 2/97

APPLICANTS NAME: CHRISTMAS CREEK INVESTMENT CO, ROBERT J. MCCAMY

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE COBB COUNTY BOARD OF COMMISSIONERS

BOC DECISION OF 2-18-97 ZONING HEARING: The Board of Commissioners, as part of the Consent Agenda, approved Rezoning to the CRC zoning district subject to: 1) final plans for the shopping center to be approved by the Board of Commissioners; 2) project subject to Stormwater Management Division comments and recommendations; 3) project subject to Cobb DOT comments and recommendations; 4) owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns. Motion by Wysong, second by W. Thompson, carried 5-0.

Multiple horizontal lines for additional text or notes.

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

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May 13, 2009

Hand Delivered

Mr. Mark A. Danneman
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
Suite 300
191 Lawrence Street
Marietta, Georgia 30060-1661

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OF COUNSEL:
JOHN L. SKELTON, JR.†

† ALSO ADMITTED IN TN
* ALSO ADMITTED IN FL
** ALSO ADMITTED IN NM
*** ALSO ADMITTED IN NC
**** ALSO ADMITTED IN CA
• ADMITTED ONLY IN TN



RE: Application for "Other Business" - Application No. Z-6 (1997)
Applicant: JDH Capital, LLC
Property: 8.990 acres located at the intersection of the
Easterly side of Austell Road and the northerly side of
Milford Church Road, Land Lot 631, 19th District,
2nd Section, Cobb County, Georgia

Dear Mark:

As you know, the undersigned and this firm represent JDH Capital, LLC, the Applicant (hereinafter referred to as "Applicant"), in its Application for "Other Business" with respect to a 8.990 acre tract of property located at the intersection of the easterly side of Austell Road and the northerly side of Milford Church Road, Land Lot 631, 19th District, 2nd Section, Cobb County, Georgia (hereinafter the "Property" or the "Subject Property"). After meeting with planning and zoning staff and various Cobb County departmental representatives, meetings and discussions with area property owners and homeowner representatives, and reviewing the area and the uses of surrounding properties, we have been authorized by the Applicant to submit this letter of agreeable stipulations and conditions which, if the Application for "Other Business" is approved, as submitted, shall become a part of the approved zoning conditions and shall be binding upon the Subject Property. The referenced stipulations are as follows:

- (1) Applicant seeks approval of that certain site plan dated May 8, 2009, prepared by Development Planning & Engineering, Inc. for JDH Capital, LLC entitled "Buffer

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Mr. Mark A. Danneman
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
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Screening and Planting Plan" (hereinafter referred to as the "Site Plan"), which Site Plan is hereby submitted with this correspondence and shall replace in full any prior plans submitted by Applicant and Owner.

- (2) The Site Plan shall be approved with a variance to allow for the relocation of a gas line within a portion of the required thirty-five (35) foot landscape buffer along a portion of the eastern boundary of the Subject Property, as more particularly shown and reflected on the Site Plan.
- (3) Applicant agrees to the installation of a wooden privacy fence, eight (8) feet in height, along the easterly boundary of the Subject Property to be located specifically along the top of the retaining wall to be constructed along the thirty-five (35) foot landscape buffer line.
- (4) Applicant agrees to the installation of a wooden privacy fence, eight (8) feet in height, along the northern boundary of the Subject Property.
- (5) All landscaping and planted materials within the thirty-five (35) foot landscape buffer adjacent to residential property shall be planted, according and pursuant to the Site Plan.
- (6) Deliveries and dumpster pick-up shall be prohibited between the hours of 11:00 p.m. and 5:00 a.m. In addition, dumpster lids will have rubber bumpers to eliminate clanging of dumpster lids during pick-up.
- (7) Applicant agrees that lighting for the proposed development shall be environmentally sensitive, shoe-box style lighting, with glare from bulbs not to extend beyond the Subject Property's boundaries. In addition, any lighting to the rear of the proposed retail buildings shall be mounted, wall-pack lighting and hooded
- (8) Applicant agrees to provide the CrestRidge Homeowners Association with current contact information for the property manager of the proposed retail development and shall update such contact information to the CrestRidge Homeowners Association as needed or necessary in the future.
- (9) Applicant agrees to provide the CrestRidge Homeowners Association a list of businesses or tenants which will initially be located in the subject development at

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Zoning Administrator
Zoning Division
Cobb County Community Development Agency
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such time as the businesses become known and enter into leases for the retail space.

- (10) Applicant agrees that the following permitted uses under the Community Retail Commercial ("CRC") zoning classification shall be prohibited:
- (a) Tattoo parlors;
 - (b) Pawn shops;
 - (c) Check cashing establishments;
 - (d) Package store (though specialty wine shops shall be allowed);
 - (e) Adult-themed stores, as that term is defined in the Cobb County Zoning Ordinance;
 - (f) Pool halls; and
 - (g) Arcades.

We believe the requested site plan approval is an appropriate use of the Subject Property while taking into consideration the changes within the area and the impact of those changes upon area properties and owners. Thank you for your consideration in this request.

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



J. Kevin Moore

JKM:cc

Attachment

- c: Cobb County Board of Commissioners:
Samuel S. Olens, Chairman
Helen C. Goreham
Tim Lee
Robert Ott
George "Woody" Thompson
(With Copy of Attachment)

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Mr. Mark A. Danneman
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
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c: Amy Blitzer, President
CrestRidge Homeowners Association
(With Copy of Attachment)

JDH Capital, LLC
(With Copy of Attachment)

Application for "Other Business" Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2045)

BOC Hearing Date Requested: May 19, 2009

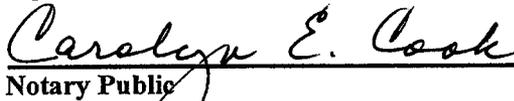
Applicant: JDH Capital, LLC Phone #: (704) 357-1220
(applicant's name printed)

Address: Suite B, 3735 Beam Road, Charlotte, North Carolina 28219 E-Mail: Not Applicable
Moore Ingram Johnson & Steele, LLP

J. Kevin Moore Address: Emerson Overlook, 326 Roswell Street
(representative's name, printed) Marietta, GA 30060

 Phone #: (770) 429-1499 E-Mail: jkm@mijss.com; w7@mijss.com
(representative's signature) Georgia Bar No. 519728

Signed, sealed and delivered in presence of:

 My commission expires: January 10, 2011
Notary Public

Commission District: 4 Zoning Case: Z-6 (1997)

Date of Zoning Decision: 02/18/1997 Original Date of Hearing: 02/18/1997

Location: Intersection of the easterly side of Austell Road and the northerly side of
(street address, if applicable; nearest intersection, etc.) Milford Church Road

Land Lot(s): 631 District(s): 19th

State specifically the need or reason(s) for Other Business: _____

See Exhibit "A" attached hereto and made a part hereof by reference.

(List or attach additional information if needed)

EXHIBIT "A"
ATTACHMENT TO APPLICATION FOR OTHER BUSINESS
(SITE PLAN APPROVAL)

Application No.:	Z-6 (1997)
Original Hearing Date:	February 18, 1997
Date of Zoning Decision:	February 18, 1997
Current Hearing Date:	May 19, 2009

BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant: IDH Capital, LLC

During the original zoning approval on February 18, 1997, the Cobb County Board of Commissioners reserved final approval of a site plan for any shopping center development on the property located at the intersection of the easterly side of Austell Road and the northerly side of Milford Church Road (hereinafter the "Subject Property"). In accordance with this zoning condition, Applicant seeks approval of the following:

- (1) Preliminary Site Plan dated January 9, 2009, prepared for Applicant by Development Planning and Engineering, Inc.
- (2) Site specific variances per the Preliminary Site Plan as follows:
 - (a) Waiver to allow for the reduction of the required thirty-five (35) foot landscape buffer along residentially zoned property to a thirty (30) foot proposed natural gas easement with a ten (10) foot landscaped buffer to allow for the relocation of an existing gas line; however, this request is limited to the specific area shown on the submitted Site Plan and does not seek a general reduction or waiver along the entire shared boundary line. (See § 134-218(5)(b))
- (3) Unless otherwise specifically set forth herein, the balance and remainder of the stipulations and conditions enumerated in the official minutes of the Board of Commissioners Zoning Hearing held on February 18, 1997, in Application No. Z-6 (1997), are unaltered or unchanged by this request for site plan approval.