



APPLICANT: XC Properties, LLC  
678-778-3754

PETITION NO: Z-33

REPRESENTATIVE: Sams, Larkin & Huff, LLP  
Garvis L. Sams, Jr. 770-422-7016

HEARING DATE (PC): 11-03-09

HEARING DATE (BOC): 11-17-09

TITLEHOLDER: Marylin C. Berggrun

PRESENT ZONING: R-20

PROPOSED ZONING: LRO

PROPERTY LOCATION: Located at the southwest intersection of  
Bells Ferry Road and Mosby Drive.

PROPOSED USE: Child Development Center

ACCESS TO PROPERTY: Bells Ferry Road

SIZE OF TRACT: 1.32 acres

DISTRICT: 16

PHYSICAL CHARACTERISTICS TO SITE: Existing house

LAND LOT(S): 141

PARCEL(S): 21

TAXES: PAID X DUE \_\_\_\_\_

COMMISSION DISTRICT: 3

**CONTIGUOUS ZONING/DEVELOPMENT**

- NORTH: R-20/ Single-family houses
- SOUTH: R-20/ Single-family houses
- EAST: R-20/ Single-family houses
- WEST: R-20/ Single-family houses

OPPOSITION: NO. OPPOSED \_\_\_\_\_ PETITION NO: \_\_\_\_\_ SPOKESMAN \_\_\_\_\_

**PLANNING COMMISSION RECOMMENDATION**

APPROVED \_\_\_\_\_ MOTION BY \_\_\_\_\_

REJECTED \_\_\_\_\_ SECONDED \_\_\_\_\_

HELD \_\_\_\_\_ CARRIED \_\_\_\_\_

**BOARD OF COMMISSIONERS DECISION**

APPROVED \_\_\_\_\_ MOTION BY \_\_\_\_\_

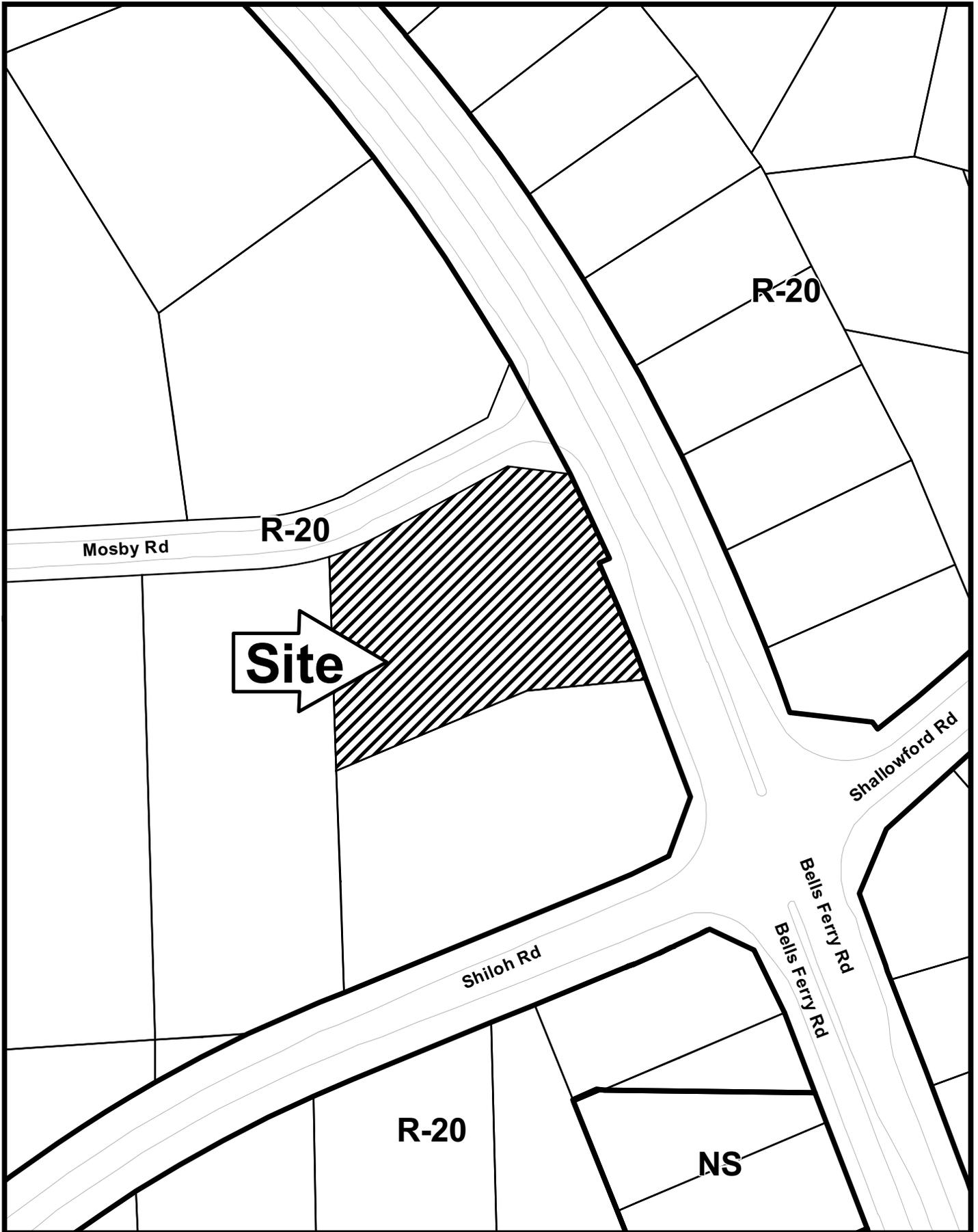
REJECTED \_\_\_\_\_ SECONDED \_\_\_\_\_

HELD \_\_\_\_\_ CARRIED \_\_\_\_\_

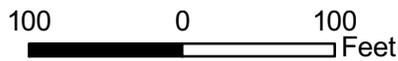
STIPULATIONS:



# Z-33



This map is provided for display and planning purposes only. It is not meant to be a legal description.



-  City Boundary
-  Zoning Boundary

APPLICANT: XC Properties, LLC

PETITION NO.: Z-33

PRESENT ZONING: R-20

PETITION FOR: LRO

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**ZONING DIVISION COMMENTS:** Staff Member Responsible: John P. Pederson, AICP

**Land Use Plan Recommendation:** Neighborhood Activity Center

**Proposed Number of Buildings:** 1 **Total Square Footage of Development:** 11,080

**F.A.R.:** 0.19 **Square Footage/Acre:** 8,394

**Parking Spaces Required:** 20 **Parking Spaces Provided:** 33

The applicant is requesting the LRO zoning district to develop a child development center. The building would be one-story in height with a brick exterior. The facility will be open Monday through Friday, from 6:30 am to 6:30 pm. There will be 195 children at the facility. The applicant has submitted a zoning impact analysis, which is attached for review (see exhibit "A"), and a letter of agreeable stipulations (see Exhibit "B").

**Historic Preservation:** After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps, staff finds that no known significant historic resources appear to be affected by this application. No further comment. No action by applicant requested at this time.

**Cemetery Preservation:** No comment.

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**FIRE COMMENTS:**

Fire Apparatus Access Road

All access roads shall have an all weather driving surface capable of supporting 75,000 pounds meeting **AASHTO HS20** Loading with an unobstructed width of not less than 20 feet, 25 feet inside turning radius, 50 foot outside turning radius and unobstructed vertical clearance of not less than 13 feet 6 inches.

Access road shall extend to within 150-feet of all portions of the facility or any portion of the exterior wall of the first floor.

Aerial apparatus access shall be required for all structures over 30 feet in height measured from the lowest level of fire department access to the ceiling height of the highest occupiable floor level. Aerial fire apparatus roads shall be a minimum width of 24 feet face of curb to face of curb maximum of 40 feet from the structure and be positioned parallel to the long side of the building for its entire length. No overhead utility and power lines shall be located within the aerial apparatus access.

Dead-end access roads in excess of 150-feet shall be provided with a turn-around by one of the following methods:

Commercial: Cul-de-sac without an island to have a 60 foot paved radius **or** Hammerhead turnaround – total of 110-feet needed (45 feet + 20 foot wide roadway + 45 feet).

Fire Hydrant

Commercial: Fire hydrant within 500 feet of most remote part of structure.

**To start the Certificate of Occupancy process, site and building plans must be submitted to the CCFMO.**

**All applicable inspections must be obtained before a C/O will be issued to include underground piping.**

APPLICANT XC Properties, LLC

PETITION NO. Z-033

PRESENT ZONING R-20

PETITION FOR LRO

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NOTE: Comments reflect only what facilities appeared of record at the time of this review. Field verification required by developer.

**WATER COMMENTS:**

Available at Development?  Yes  No

Fire Flow Test Required?  Yes  No

Size / Location of Existing Water Main(s) 12" DI / W side Bells Ferry Rd

Additional Comments:

Developer may be required to install/upgrade water mains, based on fire flow test results or Fire Department Code. This will be resolved in the Plan Review Process.

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**SEWER COMMENTS:**

In Drainage Basin?  Yes  No

At Development?  Yes  No

Approximate Distance to Nearest Sewer: 900 ft N crossing Bells Fy Rd

Estimated Waste Generation (in G.P.D.): **A D F** 2500 **Peak** 6250

Treatment Plant: Noonday

Plant Capacity Available?  Yes  No

Line Capacity Available?  Yes  No

Projected Plant Availability:  0 - 5 year  5 - 10 years  over 10 years

Dry Sewers Required?  Yes  No

Off-site Easements Required?  Yes\*  No

Flow Test Required?  Yes  No

Septic Tank Recommended by this Department?  Yes  No

Subject to Health Department Approval?  Yes  No

\* If off-site easements are required, Developer must submit easements to CCWS for review / approval as to form and stipulations prior to the execution of easement(s) by the property owner(s). All easement acquisitions are the responsibility of the Developer.

Additional Comments:

Sewer extension by developer required to upper property line.

Kitchen facilities require submittal of architectural plans

Notes FYI: *Applicant's site plan proposes extension of sewer to north (lower) property line*

Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains, obtaining on and/or off site easements, dedication of on and/or off site water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.

APPLICANT: **XC Properties, LLC**

PETITION NO.: **Z-33**

PRESENT ZONING: **R-20**

PETITION FOR: **LRO**

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**DRAINAGE COMMENTS**

FLOOD HAZARD:  YES  NO  POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: **Noonday Creek** FLOOD HAZARD INFO: Zone X

- FEMA Designated 100 year Floodplain Flood.
- Flood Damage Prevention Ordinance DESIGNATED FLOOD HAZARD.
- Project subject to the Cobb County Flood Damage Prevention Ordinance Requirements.
- Dam Breach zone from (upstream) (onsite) lake - need to keep residential buildings out of hazard.

WETLANDS:  YES  NO  POSSIBLY, NOT VERIFIED

Location:

- The Owner/Developer is responsible for obtaining any required wetland permits from the U.S. Army Corps of Engineer.

STREAMBANK BUFFER ZONE:  YES  NO  POSSIBLY, NOT VERIFIED

- Metropolitan River Protection Area (within 2000' of Chattahoochee River) ARC (review 35' undisturbed buffer each side of waterway).
- Chattahoochee River Corridor Tributary Area - County review (\_\_\_\_\_ undisturbed buffer each side).
- Georgia Erosion-Sediment Control Law and County Ordinance - **County Review**/State Review.
- Georgia DNR Variance may be required to work in 25 foot streambank buffers.
- County Buffer Ordinance: **50'**, 75', 100' or 200' each side of creek channel.

DOWNSTREAM CONDITION

- Potential or Known drainage problems exist for developments downstream from this site.
- Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system.
- Minimize runoff into public roads.
- Minimize the effect of concentrated stormwater discharges onto adjacent properties.
- Developer must secure any R.O.W required to receive concentrated discharges where none exist naturally
- Existing Lake Downstream \_\_\_\_\_.  
Additional BMP's for erosion sediment controls will be required.
- Lake Study needed to document sediment levels.
- Stormwater discharges through an established residential neighborhood downstream.
- Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on downstream **existing system and 36-inch RCP culvert under Mosby Drive.**

**APPLICANT: XC Properties, LLC**

**PETITION NO.: Z-33**

**PRESENT ZONING: R-20**

**PETITION FOR: LRO**

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DRAINAGE COMMENTS CONTINUED

SPECIAL SITE CONDITIONS

- Provide comprehensive hydrology/stormwater controls to include development of out parcels.
- Submit all proposed site improvements to Plan Review.
- Any **spring activity** uncovered must be addressed by a qualified geotechnical engineer (PE).
- Structural fill \_\_\_\_\_ must be placed under the direction of a qualified registered Georgia geotechnical engineer (PE).
- Existing facility.
- Project must comply with the Water Quality requirements of the CWA-NPDES-NPS Permit and County Water Quality Ordinance.
- Water Quality/Quantity contributions of the existing lake/pond on site must be continued as baseline conditions into proposed project.
- Calculate and provide % impervious of project site.
- Revisit design; reduce pavement area to reduce runoff and pollution.

INSUFFICIENT INFORMATION

- No Stormwater controls shown \_\_\_\_\_
- Copy of survey is not current - Additional comments may be forthcoming when current site conditions are exposed.
- No site improvements showing on exhibit.

ADDITIONAL COMMENTS

1. Since a concentrated discharge point does not currently exist at the southwest corner of this site where the proposed detention pond is located, a drainage easement will likely be required from the adjacent property owner to convey the pond discharge to the adjacent creek. This issue will need to be addressed at Plan Review.

**APPLICANT: XC Properties**

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**TRANSPORTATION COMMENTS**

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Bells Ferry Road	24800	Arterial	45 mph	Cobb County	100'
Mosby Drive	N/A	Local	25 mph	Cobb County	50'

*Based on 2009 traffic counting data taken by Cobb County DOT. (Bells Ferry Road)*

**COMMENTS AND OBSERVATIONS**

Bells Ferry Road is classified as an Arterial and according to the available information, the existing right-of-way does meet the minimum requirements for this classification.

Mosby Drive is classified as a Local and according to the available information, the existing right-of-way does meet the minimum requirements for this classification.

Sidewalk will be required along the Mosby Drive road frontage.

**RECOMMENDATIONS**

Recommend installing sidewalk along the Mosby Drive road frontage.

Recommend showing access to adjoining parcel.

Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

## STAFF RECOMMENDATIONS

### Z-33            XC PROPERTIES, LLC

- A.    It is Staff's opinion that the applicant's rezoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The applicant's property is located in a commercial activity node with other small commercial uses zoned NS, LRO, and NRC to the south.
- B.    It is Staff's opinion that the applicant's rezoning proposal will not have an adverse affect on the usability of adjacent or nearby property. This property is located at the end of the commercial node with residential property on four sides. The proposal provides a suitable transition in building scale and land use type for the adjacent residential uses.
- C.    It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.
- D.    It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property to be within a Neighborhood Activity Center that contains a text amendment that limits the use of the property to LRO zoning only.
- E.    It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for approving the applicant's rezoning proposal. The LRO zoning district provides a suitable transition in zoning intensity for the adjacent single-family houses. The *Cobb County Comprehensive Plan* calls for this property to be developed LRO, since it is at the end of the commercial node. The applicant's proposal would be compatible with uses along this portion of Bells Ferry Road.

Based on the above analysis, Staff recommends APPROVAL subject to the following conditions:

- Site plan received by the Zoning Division September 3, 2009, with the District Commissioner approving minor modifications;
- Letter from Mr. Garvis L. Sams, Jr., dated September 29, 2009;
- Fire Department comments;
- Water and Sewer comments and recommendations;
- Stormwater Management comments and recommendations; and
- DOT comments and recommendations;

**The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.**

**ZONING IMPACT STATEMENT FOR THE REZONING APPLICATION  
OF XC PROPERTIES, LLC**

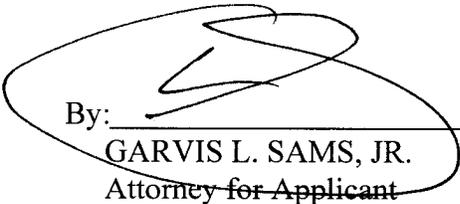
COMES NOW, XC PROPERTIES, LLC, and, pursuant to §134-121(a)(7) the Cobb County Zoning Ordinance, files this its Zoning Impact Statement, as follows:

- A. The zoning proposal will permit a use of the property which is suitable in the context of development and existing zonings along this section of the Bells Ferry Road Corridor.
- B. The zoning proposal will have no adverse effect or impact upon the exiting uses or usability of adjacent or nearby properties, the majority of which are commercial.
- C. The subject property to be affected by the zoning proposal has limited economic use as currently zoned.
- D. The zoning proposal will have no adverse impact upon the existing County infrastructure including, but not limited to, existing streets, transportation facilities, utilities or schools.

- E. The zoning proposal is consistent with those uses and purposes contemplated under Cobb County's Comprehensive Land Use Plan and Future Land Use Map with the subject property lying and being within an existing Neighborhood Activity Center (NAC).
- F. There is no substantial relationship between the existing zoning classification of R-20 which limits the property in terms of its present utilization and the public health, safety and general welfare. Additionally, considered in the context of development along this section of the Bells Ferry Road Corridor, there are no established land use planning principles or political considerations which would vitiate the zoning proposal.

Respectfully submitted, this the 3<sup>rd</sup> day of September, 2009.

SAMS, LARKIN & HUFF, LLP

By: 

GARVIS L. SAMS, JR.

Attorney for Applicant

Ga. Bar No. 623950

**SAMS, LARKIN & HUFF**  
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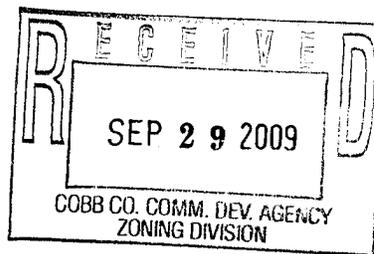
**GARVIS L. SAMS, JR.**  
**JOEL L. LARKIN**  
**PARKS F. HUFF**  
**JAMES A. BALLI**

**MELISSA P. HAISTEN**  
**JUSTIN H. MEEKS**

September 29, 2009

**VIA HAND DELIVERY**

Mr. John P. Pederson, AICP, Planner III  
Cobb County Zoning Department  
Suite 300  
191 Lawrence Street  
Marietta, Georgia 30060-1661



Re: Application of XC Properties, LLC to Rezone a 1.32 Acre Tract  
from R-20 to Low Rise Office (LRO) (No. Z-33)

Dear John:

As you know, this firm represents XC Properties, LLC concerning the above-captioned application for rezoning. The application is scheduled to be heard and considered by the Cobb County Planning Commission on November 3, 2009 and, thereafter, scheduled to be heard and considered for final action by the Cobb County Board of Commissioners on November 17, 2009.

In accordance with the dialogue which has been established thus far with the County's Professional Staff and representatives of various homeowners groups, we have been authorized by the Applicant to submit this letter of agreeable stipulations which, if the application for rezoning is approved, shall become conditions and apart of the grant of the requested rezoning and binding upon the subject property thereafter. The referenced stipulations are as follows, to-wit:

1. The stipulations and conditions set forth herein shall replace and supercede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the property which constitutes the subject matter of the above-captioned application for rezoning.
2. Rezoning of the subject property shall be from R-20 to Low Rise Office (LRO) specifically for the purposes of a child development center.
3. Development of the subject property shall be in substantial conformity to that certain site plan prepared by Frontline Surveying & Mapping, Inc. which was filed contemporaneously with the application for rezoning.

**VIA HAND DELIVERY**

Mr. John P. Pederson, AICP, Planner III  
Cobb County Zoning Department  
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4. The architectural style, composition and treatment of the building shall consist of a mixture of brick or stacked stone and hardi plank with architectural shingles.
5. Entrance signage on Bells Ferry Road for the child development center shall be ground-based, monument style with finished materials and colors matching the architectural style and composition as aforementioned.
6. The child development center will have an approximate number of 195 children (ranging in age from six (6) weeks to Pre-K); twenty (20) teachers and assistants and five (5) administrative personnel and be consistent with and not exceed State requirements.
7. The hours of operation shall be from 6:30 a.m. until 6:30 p.m., Monday through Friday, with staggered drop-off and pick-up times. Each child will be escorted to and from the center.
8. In addition to the child development center's programs and exceptional curriculum, there will be an after school program for children ranging up to twelve (12) years of age.
9. The parking area lighting shall be environmentally sensitive and fitted with non-glare lenses and cut-off shields to prevent illumination from penetrating outside the boundaries of the subject property.
10. Security lighting on the building shall be wall packs, hooded, environmentally sensitive and shall be fitted with non-glare lenses and cut-off shields to prevent illumination from penetrating outside the boundaries of the subject property.
11. The dumpster servicing the child development center shall be enclosed with a minimum of a six (6) foot high enclosure which matches the architectural style and composition as aforementioned on three (3) sides with a complementary painted, opaque wooden door on the access side which shall remain in a closed position except when the dumpster is being emptied. The dumpster shall have a rubber lid to minimize noise and the hours of pick-up shall be limited between 7:00 a.m. to 7:00 p.m.
12. The submission of a landscape plan during the Plan Review process, subject to final review and approval by the Community Development Agency, including the following:
  - a. The installation of a ten (10) foot planted landscaped buffer along the subject property's frontage on Bells Ferry Road.

**VIA HAND DELIVERY**

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- b. The installation of a twenty (20) foot planted landscape buffer along the subject property's frontage on Mosby Road and along the western property line of the subject property.
  - c. Those areas between sections of the subject property reserved for required parking, as well as public rights-of-way, shall be included in the final landscape plan.
  - d. All landscaping shall be professionally designed, maintained and irrigated (where not disallowed by State or County water restrictions). Additionally, said landscaped areas shall be perpetually maintained and any dead or irrevocably diseased vegetation shall be replaced as necessary.
  - e. All landscaped and buffered areas may be penetrated for purposes of access, utilities and stormwater management.
  - f. The detention/water quality pond shall be visually screened with attendant landscaping and/or fencing (if required by Cobb County). Any chain link fence shall be green or black vinyl coated and screened by landscaping.
  - g. All HVAC and/or mechanical systems shall be screened from area residences and public rights-of-way.
13. Compliance with the following recommendations from the Cobb County Department of Transportation:
- a. No access to Mosby Road.
  - b. The installation of sidewalk, curb and gutter along Mosby Road.
  - c. The submission of an interior traffic circulation plan.
  - d. Interparcel access between the subject property and the parcel to the south.
  - e. Coordination with Cobb County DOT to ensure compatibility with the proposed SPLOST intersection project.
  - f. Right-in/Right-out turning movements on Bells Ferry Road.

**VIA HAND DELIVERY**

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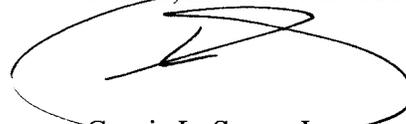
14. Compliance with recommendations from the Stormwater Management Division with respect to the location, configuration and methodology of on-site detention and water quality.
15. Compliance with recommendations from the Cobb County Fire Department as set forth in the Zoning Analysis.
16. Compliance with recommendations from the Cobb County Water System with respect to the availability and acquisition of water and sewer to service the subject property.
17. Minor modifications to the site-plan, landscape plan, architectural renderings/elevations and this letter of agreeable stipulations/conditions may be reviewed and approved by the District Commissioner.

The subject property is located within the confines of a Neighborhood Activity Center (NAC) as shown on Cobb County's Future Land Use Map and as defined under Cobb County's Comprehensive Land Use Plan. Being located within the NAC contemplates LRO utilization for the subject property and is supported by specific text within the Comprehensive Land Use Plan.

Please let me know if you need additional information or documentation prior to the formulation of your Zoning Analysis and Staff Recommendations. With regards, I am

Very truly yours,

SAMS, LARKIN & HUFF, LLP



Garvis L. Sams, Jr.

[gsams@samslarkinhuff.com](mailto:gsams@samslarkinhuff.com)

GLSjr/brl

cc: Shown next page.

**VIA HAND DELIVERY**

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Cobb County Zoning Department  
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cc: Members, Cobb County Board of Commissioners – (VIA Hand Delivery)  
Members, Cobb County Planning Commission – (VIA E-Mail and First Class Mail)  
Mr. Robert L. Hosack, Jr., AICP, Director, Cobb County Community Development  
Agency – (VIA Hand Delivery)  
Mr. Mark A. Danneman, Manger, Cobb County Zoning Department  
– (VIA Hand Delivery)  
Mr. David Breaden, P. E., Cobb County Stormwater Management – (VIA E-Mail)  
Ms. Jane Stricklin, P. E., Cobb County Department of Transportation – (VIA E-Mail)  
Ms. Karen King, Assistant County Clerk – (VIA Hand Delivery)  
Ms. Lori Presnell, Deputy County Clerk – (VIA Hand Delivery)  
Ms. Patricia Wegener, Bells Ferry Civic Association – (VIA E-Mail)  
Mr. Rich Nyburg, Arden Trace Subdivision - (VIA E-Mail)  
Mr. Eric McConaghy - (VIA E-Mail)  
Mr. John Shelley - (VIA E-Mail)  
Mr. Thomas E. Peay, Jr., RLS - (VIA E-Mail)