

**DECEMBER 15, 2009 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM #1

PURPOSE

To consider a Settlement of Litigation proposal regarding LUP-26 (Miles Seymour) of August 17, 2004, for property located at the northeast intersection of Sandy Plains Road and Bryant Lane, south of Priscilla Drive in Land Lot 483 of the 16th District.

BACKGROUND

This application for a Land Use Permit was denied by the Board of Commissioners. The Board of Commissioners decision is attached. The applicant filed a law suit challenging the Board of Commissioners decision. Prior to this case going to court, mediation was conducted and as a result of that mediation a Consensual Settlement of Litigation was formulated which is attached. The Zoning Analysis prepared for the original application is also attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the Settlement of Litigation proposal.

ATTACHMENTS

Board of Commissioners Decision
Settlement of Litigation Proposal
Original Zoning Analysis

ORIGINAL DATE OF APPLICATION: 08-17-04

APPLICANTS NAME: MILES SEYMOUR

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

BOC DECISION OF 10-19-04 ZONING HEARING:

MILES SEYMOUR for a **Land Use Permit (renewal)** for the purpose of Custom Frame and Furniture Repair in Land Lot 483 of the 16th District. Located at the northeast intersection of Sandy Plains Road and Bryant Lane, south of Priscilla Drive (3003 Sandy Plains Road).

The public hearing was opened and Mr. George Butler addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Lee, second by Goreham, to **reject** Land Use Permit.

VOTE: **ADOPTED** unanimously

Following the motion and vote on LUP-26 additional discussion ensued, and the following amended motion was made:

AMENDED MOTION: Motion by Lee, second by Goreham, to **reject** Land Use Permit, and to **direct** Applicant to cease business operation at this location no later than thirty (30) days from the date of this hearing.

VOTE: **ADOPTED** unanimously

(1) No later than December 22, 2009, plaintiff shall dismiss this suit with prejudice, subject to the continuing terms of this Consent Order, by filing the requisite pleading with the clerk of court.

(2) As of December 16, 2009, plaintiff shall cease parking any vehicle which carries a sign or advertisement for any business at a location where the sign or advertisement is easily visible from the streets surrounding 3003 Sandy Plains Road. However, plaintiff shall be allowed to park such vehicle near his house, such that it is partially obscured by the structure of the house and carport. By January 15, 2010, plaintiff shall relocate the wooden fence which is currently parallel to and northeast of the carport, such that the fence will be located directly under the edge of the ceiling/roof of that portion of the carport which faces in a northeasterly direction. The parties' intent is that the fence align with the edge of the roof and ceiling of the carport similar to what would occur if the carport were to be enclosed. Also, by January 15, 2010, the entire fence at or near the carport shall be painted the same color as the trim of the house which shall be a solid color which is cream, beige, or white.

(3) No later than February 28, 2010, plaintiff shall notify the Zoning Division of Cobb County in writing that he has made one of two elections which are described below, which he shall then be free and obligated to pursue:

(a) retain the previously referenced fence until April 30, 2010 at which time the fence shall be removed in its entirety and no further business activity of any kind shall thereafter be conducted or fencing

allowed at the property unless and until proper permits therefor are first obtained; or

(b) immediately remove the previously referenced wooden fence in its entirety, but be allowed to continue to operate his furniture refinishing and picture frame business at the property until July 31, 2010, at which time all business activity at the property shall cease unless and until proper permits therefor are first obtained, subject to the provisions of Section (4) below.

(4) Plaintiff agrees that he shall not again apply for another temporary land use permit on the property—and that he will not conduct any other business at the property, other than that temporarily contemplated in this consent order, unless and until proper permits therefor are first obtained. Plaintiff further agrees to otherwise comply with all applicable Cobb County Ordinances relevant to the property.

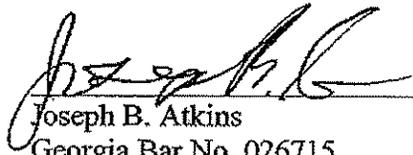
SO ORDERED this 12 day of NOVEMBER, 2009.



ROBERT E. FLOURNOY, III, JUDGE
SUPERIOR COURT OF COBB COUNTY

[ADDITIONAL SIGNATURES ON NEXT PAGE]

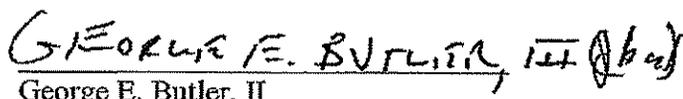
CONSENTED TO BY:



Joseph B. Atkins
Georgia Bar No. 026715

Cobb County Attorney's Office
100 Cherokee Street, Suite 350
Marietta, Georgia 30090-7003
Telephone (770) 528-4000
Facsimile (770)528-4010

Attorneys for Defendants



George E. Butler, II
Georgia Bar No. 099575
(By Joseph B. Atkins with express permission)

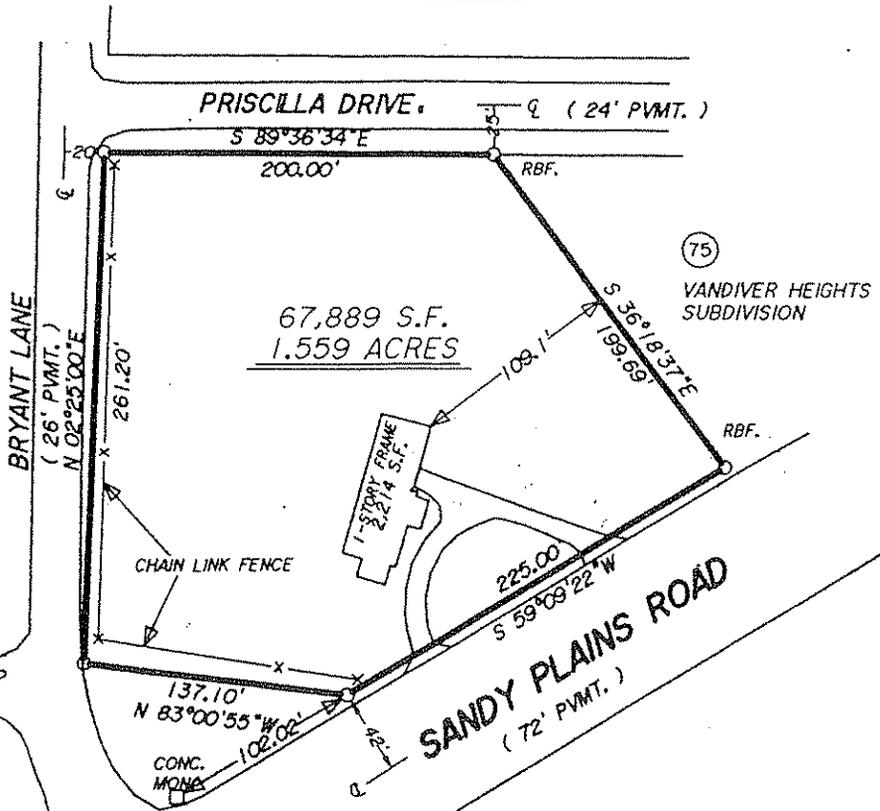
132 Hawkins Street
Dahlonega, GA 30533
Telephone (404) 873-2544
Facsimile (404) 875-5130

Attorney for Plaintiff

LUP-26

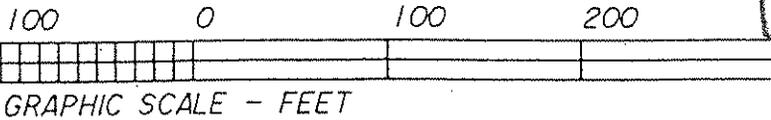
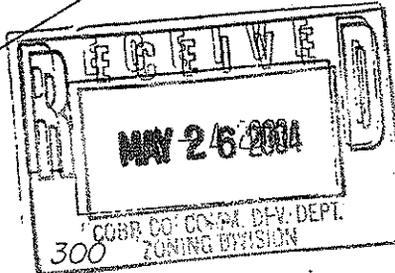
THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 22540 FEET, AND AN ANGULAR ERROR OF 0.2" SECONDS PER ANGLE POINT. AND WAS ADJUSTED USING CRANDALL RULE. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS ACCURATE WITHIN ONE FOOT IN 199286 FEET.

- LEGEND**
- I.P.F. • IRON PIN FOUND
 - I.P.S. • IRON PIN SET
 - R.B.F. • RE-BAR FOUND
 - R.B.S. • RE-BAR SET
 - O.T. • OPEN TOP
 - C.T. • CRIMPED TOP
 - R/W. • RIGHT OF WAY
 - P.L. • PROPERTY LINE
 - C.L. • CENTER LINE
 - B.L. • BUILDING LINE
 - L.L. • LAND LOT
 - L.L.L. • LAND LOT LINE
 - G.M.D. • GEORGIA MILITIA DISTRICT
 - P.P. • POWER POLE
 - P- • POWER LINE
 - X- • FENCE LINE
 - R. • RADIUS
 - CH. • CHORD
 - TAN. • TANGENT
 - N/F. • NOW OR FORMERLY
 - D.B. • DEED BOOK
 - P.B. • PLAT BOOK
 - PG. • PAGE
 - D.E. • DRAINAGE EASEMENT
 - S.E. • SEWER EASEMENT
 - F.H. • FIRE HYDRANT
 - M.H. • MANHOLE
 - C.B. • CATCH BASIN
 - 999.0 E. • EXISTING SPOT ELEVATION
 - 999.0 F. • FINISHED SPOT ELEVATION
 - 999.0 P. • PROPOSED SPOT ELEVATION
 - F.F.E. • FINISHED FLOOR ELEVATION
 - DIRECTION OF SURFACE DRAINAGE



IN MY OPINION, THIS IS A CORRECT REPRESENTATION OF THE LAND PLATTED.

Rufus Gerald Sadler



SURVEY FOR:			
MILES SEYMOUR			
LAND LOT	483	16TH	DISTRICT
2ND SECTION	COUNTY OF COBB	GEORGIA	
SCALE: 1" = 100'	DATE: 05-16-2003		
LOT -			
JOB No. 75VANDY	SADLER AND ASSOCIATES LAND SURVEYING / ENGINEERING MARIETTA - ALPHARETTA, GEORGIA (770) 514-9792 FAX. (770) 514-7372		

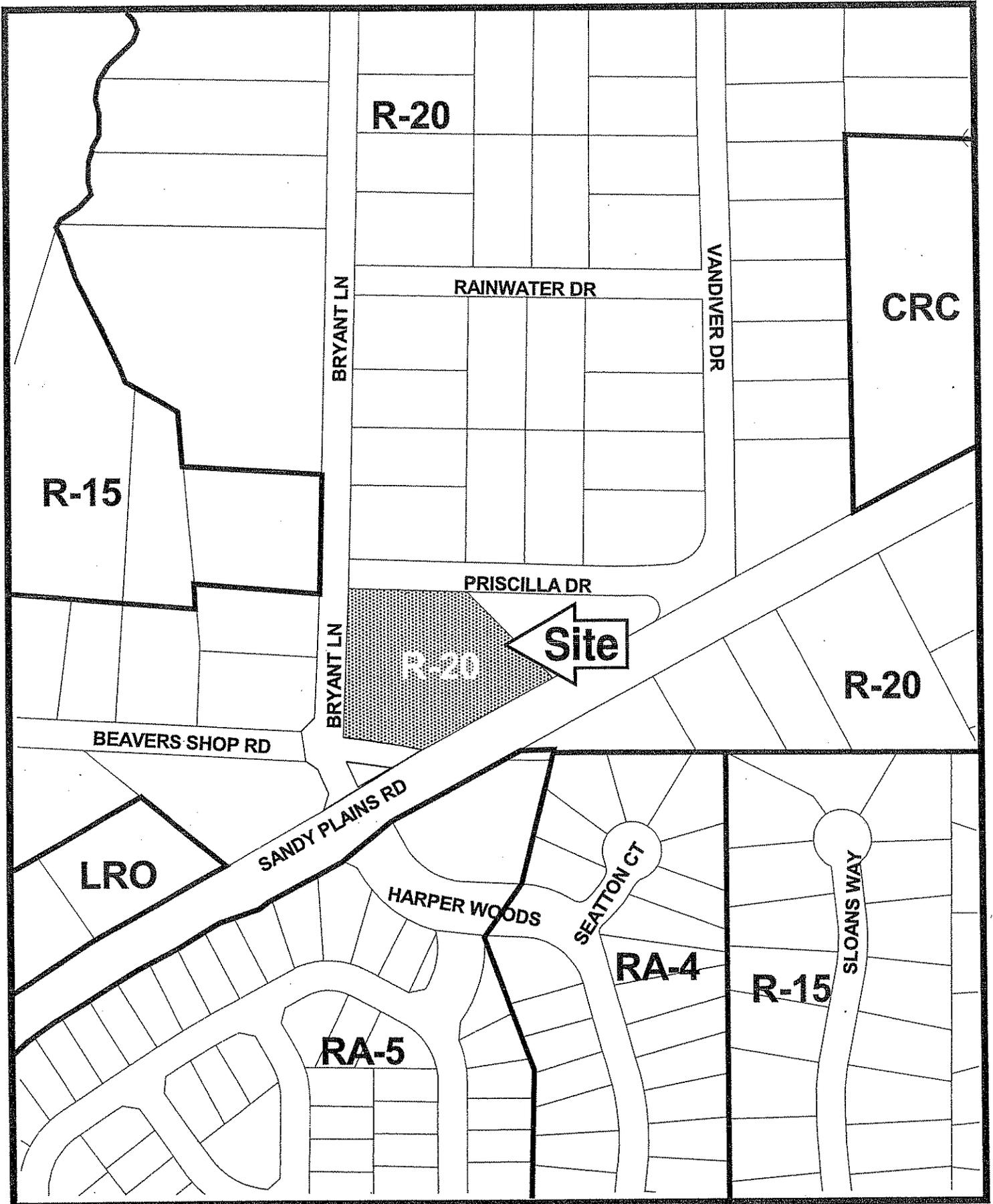
REF: PB. 24 PG. 112
 COBB COUNTY RECORDS

EQUIPMENT USED :
 TOPCON GTS-213
 TOTAL STATION

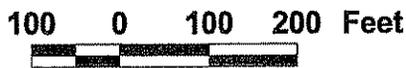
THE FLOOD INFORMATION ON THIS PLAT HAS BEEN DETERMINED AFTER REVIEW OF MAPS WHICH ONLY APPROXIMATE THE LOCATION OF THE APPLICABLE FLOOD HAZARD AREA. A COMPREHENSIVE FLOOD EVALUATION STUDY IS SUGGESTED FOR MORE ACCURATE INFORMATION.

I HAVE THIS DATE, EXAMINED THE " FIA OFFICIAL FLOOD HAZARD MAP " AND THE REFERENCED PARCEL DOES NOT APPEAR TO BE IN AN AREA HAVING SPECIAL FLOOD HAZARDS.

LUP-26



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



-  Approximate Zoning Boundaries
-  Draft Parcel Boundaries

APPLICANT: Miles Seymour

PETITION NO.: LUP-26

PRESENT ZONING: R-20

PETITION FOR: LUP

PLANNING COMMENTS: Staff Member Responsible: John P. Pederson

Applicant is requesting a renewal for a Temporary Land Use Permit for the purpose of operating a custom frame and furniture repair shop from this residential property. Applicant has indicated he will be working five or six days per week from 10 a.m. until 6 p.m. Mr. Seymour has also indicated he anticipates one customer per day and possibly eight per week. Applicant will have inventory and has also requested to have a 6 square-foot sign in his front yard. See Exhibit "A" for previously approved application. Based on a field check, it appears the applicant has intensified activity at the house, by expanding the business activity to the front exterior of the house.

Historic Preservation: According to the Cobb County Inventory of Potentially Historic Homes and the Cobb County Civil War Earthworks Map, there appears to be no known historic resources located on this property.

Cemetery Preservation: No comment.

WATER & SEWER COMMENTS:

Water and sewer available. Health Department requires use of public sewer.

TRAFFIC COMMENTS:

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

FIRE COMMENTS:

APPLICANT: Miles Seymour

PETITION NO.: LUP-26

PRESENT ZONING: R-20

PETITION FOR: LUP (R)

DRAINAGE COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Rubes Creek FLOOD HAZARD INFO: None

- 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. (New work)
- 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 stormdrainage system.

APPLICANT: Miles Seymour

PETITION NO.: LUP-26

PRESENT ZONING: R-20

PETITION FOR: LUP (R)

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. **(New work)**
- 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. **(New work)**
- 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/SUGGESTIONS

- 1) Tract drains down to northwest corner. Along the west property line is a band of trees approximately 75 feet wide, which serve to filter runoff and breakup energy of low.
- 2) Recommend the tree band along west property line be established as a protected buffer to continue its current flow mitigation and Water Quality service.
- 3) Recommend character of property and house be maintained as residential and that additions and changes be routed through Plan Review.
- 4) According to new Environmental Protection Division Directives, all stream crossings, which involve culvert backfill will be required to obtain buffer variances from Environmental Protection Division, if the stream has an ordinary high water mark (i.e.: vegetation wasted from channel by normal water flow) regardless of amount of water flow if any,
- 5) All detention ponds constructed on streams with ordinary high water mark, which include excavation of the stream bank buffer or embankment fill will be required to obtain buffer variances from Georgia-Environmental Protection Division.

STAFF RECOMMENDATIONS

LUP-26 MILES SEYMOUR

The applicant's proposal is located in an area designated as Low Density Residential on the *Cobb County Comprehensive Plan*. The applicant's proposal is in an area dominated by single-family residential houses. Staff believes the applicant's proposal, as summarized in the Planning Comments, is too intense for this residential part of Sandy Plains Road. Staff is also concerned that the applicant's business would intensify in the future (it's already proposed to be a full-time operation, with a sign), and possibly encourage additional requests along Sandy Plains Road. Additionally, since the Temporary Land Use Permit was approved, the applicant has erected a fence in front of the houses where work is done outside, and an accessory structure has been erected in front of the house without a variance or building permit. Based on the above analysis, Staff recommends DENIAL of this application.

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.

ORIGINAL DATE OF APPLICATION: 08-19-03APPLICANTS NAME: MILES SEYMOUR

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

BOC DECISION OF 08-19-03 ZONING HEARING:

MILES SEYMOUR for a **Land Use Permit** for the purpose of Custom Frame and Furniture Repair in Land Lot 483 of the 16th District. Located at the northeast intersection of Sandy Plains Road and Bryant Lane, south of Priscilla Drive (3003 Sandy Plains Road).

The public hearing was opened and Mr. Miles Seymour, Mr. Craig Harfoot, Mr. Don Brundage, and Mr. Bob Ott addressed the Board. Following presentations and discussion, the following motion was made:

MOTION: Motion by Olens, second by W. Thompson, to **approve Land Use Permit** for twelve (12) months subject to:

- no employees
- no commercial deliveries above and beyond customary residential deliveries
- all work to be done within the existing structures
- any noise related to the business to occur between 7:00 a.m. and 7:00 p.m.
- no commercial signage allowed

VOTE: ADOPTED 4-1; Lee opposed