

**APRIL 20, 2010 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 2**

ITEM #5

PURPOSE

To consider amending the stipulations regarding Application #147 (WILLIAM M. REED, II) of July 19, 1988 for property located in Land Lot 924 of the 17th District on the west side of Powers Ferry Road, 850.0 ft. north of Terrell Mill Road, 700.0 ft. south of Delk Road.

BACKGROUND

The subject property is zoned Neighborhood Shopping (NS) subject to numerous conditions/stipulations which are attached. This request seeks to modify the first stipulation for retail/professional office use only. Mr. Reed is requesting to remove this stipulation and be allowed to use all of the permitted uses in NS except for the uses he is excluding within his request letter. Mr. Reed is also requesting that since the property is developed and the Powers Ferry Road improvement project acquired a portion of his property frontage, he be allowed to use the existing setbacks that were reduced by the acquisition. A site plan is attached indicating the existing improvements that have been constructed on the site. The other business application which includes his request letter is attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners first determine if the request is minor. If it is determined to be minor, consider the request and if approved, should be subject to the submitted site plan for existing improvements excluding the permitted uses within the attached request letter and all previous stipulations/conditions to remain in effect

ATTACHMENTS

Board of Commissioners Decision
Site Plan
Other Business Application

Application for Rezoning COBB COUNTY

(type or print clearly)

Application No. 147
Hearing Date July 19, 1988

Applicant WILLIAM MARCUS REED Business Phone 955-3090 Home Phone 955-5821
WILLIAM MARCUS REED I Address 4099 River Cliff Chase, Marietta, Ga 3006

(representative's name, printed)
William Marcus Reed Business Phone 955-3090 Home Phone 955-5821
(representative's signature)

Titleholder WILLIAM MARCUS REED, II Business Phone 955-3090 Home Phone 955-5821
Signature William Marcus Reed Address 4099 River Cliff Chase, Marietta, Ga 30067

(attach additional signatures, if needed)

Zoning Request From O & I (Office Institutional) to NS (Neighborhood Shopping)
(present zoning) (proposed zoning)

For the Purpose of Retail/Office Building Size of Tract 1.17 acre(s)

(subdivision, restaurant, warehouse, apts., etc.)
Location West side of Powers Ferry Road, 850' North of Terrell Mill Road and

(street address, if applicable, nearest intersection, etc.) 700' South of Delk Road
Land Lot(s) 924 District 17th

We have investigated the site as to the existence of archeological and/or architectural landmarks. I hereby certify that there are no there are such assets. If any, they are as follows: None

William Marcus Reed
Applicant's Signature

FOR OFFICIAL USE ONLY

Recommendation of Planning Commission Planning Commission recommended application be approved subject to the following conditions: 1) retail/professional office use only; 2) 10 ft. landscaped, maintained buffer along southern property line (as shown on site plan to be approved by staff); 3) landscaped, maintained buffer between Powers Ferry Road and parking spaces to be approved by staff; 4) signage to be constructed to code with no variances

Stanley A. Connerly Chairman

Board of Commissioners' Decision Board of Commissioners approved application as stated above. Motion by Powell, seconded by Paschal, carried 4-0.

Carl E. Smith Chairman

COBB COUNTY BOARD OF COMMISSIONERS OF ROADS AND REVENUES
COBB COUNTY PLANNING COMMISSION

Date of Application _____ Date of Hearing 7/19/88

Applicant's Name William Marcus Reed II

Address 4099 River Cliff Chase, Marietta, GA 30067

Recommendation of Planning Commission (Cont. from Page 1)

anticipated; 5) no portable signs to be established on site; 6) no billboard signs to be established on site; 7) Cobb DOT comments and Cobb DOT to determine the number of curb cuts and where they are to be located; 8) installation of a chain link fence between the property and the school.

Motion by Christian, seconded by McAfee, carried 5-0.

_____, Chairman

Final Decision of Board of Commissioners (Cont. from Page 1)

[Handwritten signature]

DATE	11/28/88
JOB NO.	8805200
DRAWN BY	JRM/30
SHEET	OF

BOUNDARY & TOPOGRAPHIC SURVEY
 WILLIAM MARCUS REED II
 LAND LOT 924
 DISTRICT 17, SECTION 2
 COB COUNTY, GEORGIA

NO.	DATE	REVISIONS

THIS DRAWING IS THE PROPERTY OF THE ENGINEER AND MAY NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF J.S. ROSS & ASSOCIATES, INC.



J.S. ROSS & ASSOCIATES, INC.
 1256 Marietta Parkway
 Suite 122
 Marietta, Georgia 30067
 404-439-4732



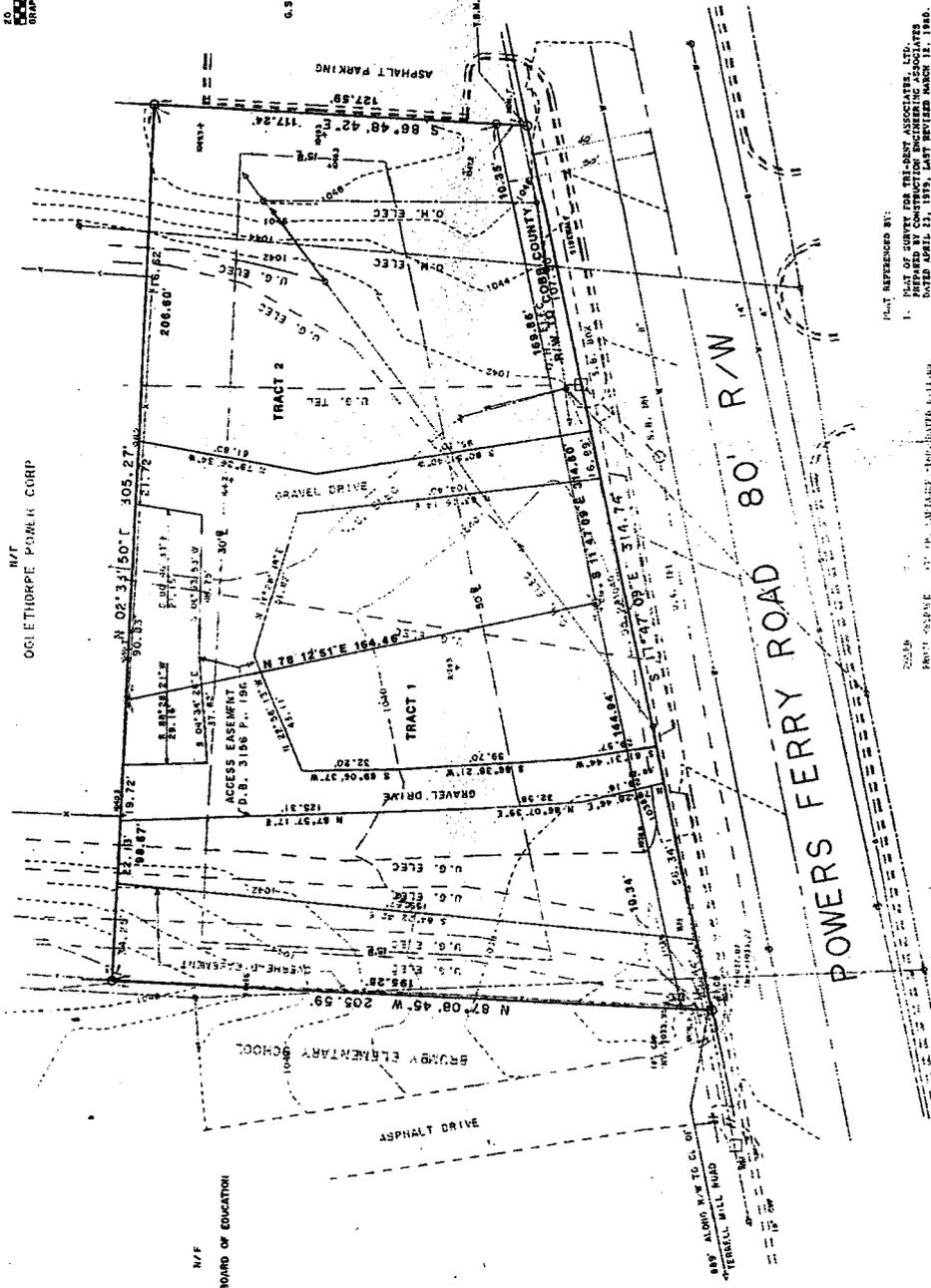
LOCATION MAP
 N.T.S.
 LOCATED IN LAND LOT 924
 DISTRICT 17, SECTION 2
 COB COUNTY, GEORGIA

TRACT 1 - 0.495 AC.
 TRACT 2 - 0.889 AC.
 R/W - 0.072 AC.
 TOTAL - 1.166 AC.

LEGEND

RECREATION	○
WATER VALVE	◇
FIRE HYDRANT	●
SANITARY SEWER	—
STORM DRAIN	—
GAS MAIN	—
WATER MAIN	—
RAILROAD	—
ROAD WALL	—
POWER POLE	—
POWER LINE	—
UNDERGROUND ALIC.	—
CONV. VINE	—
GATE VALVE	—
FENCE LINE	—

EXHIBIT "A"
Limit



- PLAT REFERENCED BY:
1. PLAT OF SURVEY FOR THE TRISTEET ASSOCIATES, LTD., DATED APRIL 23, 1979, LAST REVISED MARCH 12, 1980.
 2. PLAT OF SURVEY OF TERRELL HILL 115-120V SUBSTATION RECORDED IN PG 21, PAGE 101, COB COUNTY RECORDS, LAST REVISED SEPTEMBER 1978.
 3. PLAT OF SURVEY PREPARED BY J. S. ROSS & ASSOCIATES, INC., DATED FEBRUARY 3, 1979, LAST REVISED MAY 23, 1979.

NOTE: UNDERGROUND UTILITIES ARE SHOWN AS RECORDED ON PLATS CENSORED BY RESPECTIVE UTILITY COMPANY.

NOTE: EASEMENT FOR ACCESS TO TRACT 1, TRACT 2, AND TRACT 3 IS SHOWN AS RECORDED ON PLAT 115-120V SUBSTATION RECORDED IN PG 21, PAGE 101, COB COUNTY RECORDS, LAST REVISED SEPTEMBER 1978.

W/T
 OGLETHORPE POWER CORP

N/T
 COB CO. BOARD OF EDUCATION

PLAT CLOSURE - 1" IN LENGTH

Year 2010 Form

5

Application for "Other Business" Cobb County, Georgia

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

BOC Hearing Date Requested: 4-20-10

Applicant: WILLIAM MARCUS REED II Phone #: 404-862-6359
(applicant's name printed)

Address: 97 ADMIRALS POINT CIRCLE E-Mail: WMREED@MINDSPRING.COM
DAWSONVILLE, GA 30534

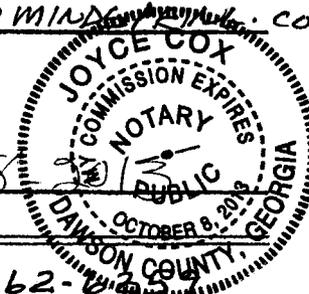
WILLIAM MARCUS REED II Address: SAME
(representative's name, printed)

William Marcus Reed II Phone #: 404-862-6359 E-Mail: WMREED@MINDSPRING.COM
(representative's signature) 3-12-10

Signed, sealed and delivered in presence of:

Joyce Cox
Notary Public 3-12-10

My commission expires: 10-08-2013



Titleholder(s): WILLIAM MARCUS REED II Phone #: 404-862-6359
(property owner's name printed)

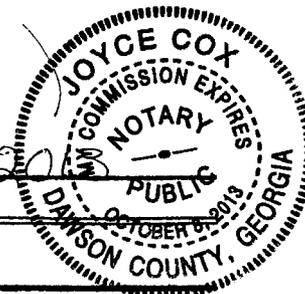
Address: 97 ADMIRALS POINT CIRCLE E-Mail: WMREED@MINDSPRING.COM
DAWSONVILLE, GA. 30534

William Marcus Reed II
(Property owner's signature) 3-12-10

Signed, sealed and delivered in presence of:

Joyce Cox
Notary Public 3-12-10

My commission expires: 10-08-2013



Commission District: 2 Zoning Case: 147

Date of Zoning Decision: _____ Original Date of Hearing: 7-19-88

Location: WEST SIDE OF POWERS FERRY RD., 850' NORTH OF TERRELL MILL RD, 700' SOUTH OF
1270 & 1280 POWERS FERRY ROAD, MARIETTA, COBB CO., GA. 30067
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 924 District(s): 17

State specifically the need or reason(s) for Other Business: SEE ATTACHED
EXHIBIT "A"

(List or attach additional information if needed)

EXHIBIT "A" - Page 1

REASONS FOR "OTHER BUSINESS" APPLICATION

My property was rezoned at the July 19, 1988 hearing before the Cobb County Board of Commissioners from O&I (Office Institutional) to NS (Neighborhood Shopping). At the time of the rezoning, I did not have a specific tenant or user for my property, but NS would have given me the ability to do any number of commercial/retail uses and I even considered the possibility of a two-story building with the first floor commercial and the second floor as office space.

The Planning Commission recommended approval subject to the following conditions:

- 1- Retail/Professional office use only;
- 2- 10 ft. landscaped, maintained buffer along southern property line (as shown on site plan to be approved by staff);
- 3- Landscaped, maintained buffer between Powers Ferry Road and parking spaces to be approved by staff;
- 4- Signage to be constructed to code with no variances anticipated;
- 5- No portable signs to be established on site;
- 6- No billboard signs to be established on site;
- 7- Cobb DOT comments and Cobb DOT to determine the number of curb cuts and where they are to be located;
- 8- Installation of a chain link fence between the property and the school.

The rezoning was approved unanimously by the Board of Commissioners.

I was satisfied that the rezoning would allow me the ability to develop the property in a reasonable manner.

During dealings with Cobb DOT, I determined that their requirement to install an accel/decel lane on my property was unfeasible, and I applied for a Variance to the Cobb County Board of Appeals at the February 8, 1989 hearing. The Board of Appeals approved my application to waive the accel/decel requirement unanimously. See attached variance approval.

Subsequently, I was able to negotiate leases for two free-standing fast food restaurants on my property. Please see the attached CERTIFICATION OF ZONING dated October 16, 1989 and that letter dated October 18, 1989 from the Cobb County Planning and Zoning Department from Senior Planner Robert L. Hosack, indicating that the property was zoned NS and permitted the construction of a fast food restaurant.

I subsequently developed my property, and Cobb County approved plans for the construction of the two aforementioned fast food restaurants, which were constructed on the site. Please see the attached site plans showing the buildings and improvements.

For the next 15 plus years, the site was used for two fast food drive-through take-out delivery restaurants, specifically Checkers Hamburgers and Wok Express (Originally Mr. Ching).

Over the years I was approached by many various other commercial users asking me if I could terminate my leases and lease or sell to them. I was unable to do so since there were 15 year long-term leases in place with Checkers and Wok. With this in mind, in October of 2005 I was able to terminate my lease

William Williams

EXHIBIT "A" - PAGE 2

with Checkers, and in October of 2006 I was able to terminate the lease with Wok Express, freeing up my property for development for another credit tenant. Unfortunately, economic conditions prevented anything from happening at that time. Since that time, I have marketed the site for sale, lease or build to suit for a credit tenant. Over the past few years there has been a lot of interest in the property, but not the right fit as far as I was concerned. I pay the yearly property taxes.

In 2009 and 2010, I have had several serious prospects for my property. I knew the property was zoned NS and as I negotiated with each prospect I would tell them to do their due diligence and contact Cobb County Zoning to determine that their use would be allowed. Each time they approached Cobb County about the zoning, they were told that a rezoning would be required. When I inquired with the zoning office, I was told the same thing. I did not understand why a rezoning would be required for a use obviously allowed under the NS category. Finally, after many conversations with various representatives with Cobb County Zoning, I realized that because of the "ambiguous" and confusing language "Retail/Professional Office Use Only" used when the property was originally rezoned to NS back in 1988, it was confusing as to what could actually be allowed.

I recently have talked to several members of the Cobb County Planning and Zoning staff, including Mr. Terry Martin, Zoning Analyst, who recommended that I consider the Application for "Other Business" in order to clarify an inadvertent language use that was causing problems in the use of my property. I talked to Mr. Phillip Westbrook of the Planning Department, who concurred on this course of action. I subsequently had a meeting with Mr. Rob Hosack, Director of Community Development, and Mr. Mark Danneman of the Planning Department, at which time I was told that it appeared that I was being inadvertently penalized by language that was never meant to place an unreasonable burden on me and my property for its use. I did not feel it was Cobb County's intent to be overly harsh or unreasonable in regard the zoning, but considering the unfortunate original language used, I understand why there is some question because of that language. The above referenced staff at Cobb County said the easiest way to clarify and remedy this situation is by my making an Application for "Other Business."

Therefore, I am requesting that there be a clarification made on the zoning of my property stating it is zoned NS and allowing all uses covered by that classification. I do not wish to remove any stipulations placed on the property at the time of the original zoning, other than the stipulation about Cobb DOT determining the number of curb cuts, since the two in existence were previously approved and in fact serve the power sub-station to the rear of my property for their ingress/egress. Of course I want to keep in effect the variance I received waiving any accel/decel lane.

One other issue I would like to confirm, just in case it comes up in the future, is the issue of building setbacks from right of way. Because of the limited depth of my site from Powers Ferry Road to the rear property line at the power sub-station, the buildable area for my site is severely limited. Therefore, at the Cobb County Board of Appeals hearing on June 11, 1986, I applied for a variance and it was approved unanimously, establishing a 40' building setback from the proposed 100' R/W (there was an 80' R/W at the time) to be established in the future. Attached please see a copy of the application and approval of same. I agreed to donate the 10' of additional right-of-way on my side of Powers Ferry Road at no cost to Cobb County, which I did. Please note that when the property was developed with the Checkers Hamburgers and Wok Express buildings, under the NS zoning, that this 40' building setback was in effect.

I do wish to request that the following uses be excluded as uses for my property: no adult bookstores; no sale of alcoholic beverages; no pawn shops or like kind businesses; and no pool halls.



