

**SEPTEMBER 18, 2012 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 2**

ITEM # 3

PURPOSE

To consider a stipulation amendment for S & B Investments, Inc. regarding property located at the northwest intersection of Johnson Ferry Road and Paper Mill Road, in Land Lots 73 of the 1st District.

BACKGROUND

The subject property is zoned Future Commercial (CF) and R-80 and was developed as part of a commercial development pursuant to a court order issued May 7, 1981 by the Superior Court of Cobb County based on a previous court order from October 12, 1973. The court order allowed the development of Paper Mill Village and outlots pursuant to a conceptual site plan, architectural renderings and covenants entered into by the developer, area residents and Cobb County. On September 19, 1995 the Board of Commissioners granted consent to allow redevelopment of this building into a Starbucks Coffee and a bagel/bakery/deli store only. The Starbucks is still there, however the bagel shop is gone. The applicant would like to divide the leasable space in the building into three spaces that would contain Starbucks, a nail salon and a dry cleaner. The exterior of the building, site plan, and landscaping would remain in its current state. The applicant has been in discussions with some of the neighbors mentioned in the covenants. Additionally, in order to expedite the permitting of potential tenants in the future, the applicant is requesting that the permitted uses under LRC (Limited Retail Commercial) be used as a guideline in the future, or the District Commissioner be permitted to approve future uses for this property. If approved all other stipulations and conditions would remain in effect.

FUNDING

N/A

RECOMMENDATION

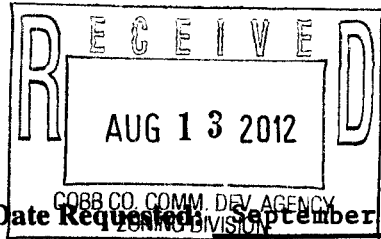
The Board of Commissioners conduct a Public Hearing and consider the stipulation amendment.

ATTACHMENTS

Other Business Application and stipulations.

Application for "Other Business" Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)



3

BOC Hearing Date Requested: September 18, 2012

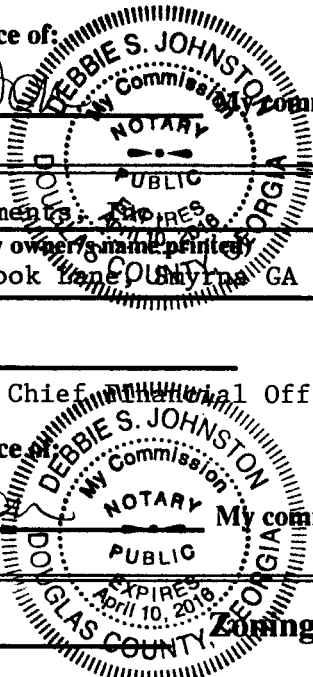
Applicant: S & B Investments, Inc. **Phone #:** (404) 933-3694
(applicant's name printed)

Address: 2698 Woodland Brook Lane, Smyrna Ga 30080 **E-Mail:** bharti@bellsouth.net

Joel L. Larkin **Address:** 376 Powder Springs St. #100 Marietta GA 30064
(representative's name, printed)

[Signature] **Phone #:** (770) 422-7016 **E-Mail:** jllarkin@samslarkinbuff.com
(representative's signature)

Signed, sealed and delivered in presence of:
Debbie S. Johnston **Commission expires:** April 10, 2016
Notary Public



Titleholder(s): S & B Investments, Inc. **Phone #:** (404) 933-3694
(property owner's name printed)

Address: 2698 Woodland Brook Lane, Smyrna GA **E-Mail:** bharti@bellsouth.net

[Signature]
Suresh Parmar, Secretary and Chief Financial Officer

Signed, sealed and delivered in presence of:
Debbie S. Johnston **My commission expires:** April 10, 2016
Notary Public

Commission District: 2 **Zoning Case:** _____

Date of Zoning Decision: 09/19/1995 **Original Date of Hearing:** 09/19/1995

Location: 31 Johnson Ferry Road, Marietta, GA 30067
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 73 **District(s):** 1st

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

Request is to amend zoning stipulation number 3 to allow additional commercial uses.

Zoning stipulation presently restricts use of property to "Starbucks Coffee and bagel/baker/deli store." Applicant proposes that the property be used for Starbucks Coffee, nail salon and dry cleaners.

(List or attach additional information if needed)

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP

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

SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

770-422-7016
TELEPHONE
770-426-6583
FACSIMILE

JUSTIN H. MEEKS

SAMSLARKINHUFF.COM

August 14, 2012

VIA EMAIL

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

Re: Other Business Application of S & B Investments, Inc. to Amend
Other Business Item # 1 (Starbucks) approved by the Board of Commissioners
on September 19, 1995

Dear John:

Thank you for taking the time to meet with me regarding the above-captioned Other Business Application which was filed yesterday on August 13, 2012 and which will be heard and considered by the Cobb County Board of Commissioners on September 18, 2012.

In accordance with our discussions the purpose of this letter is to amend the Application consistent with your suggestions. First, in addition to the continuation of Starbucks on the site, we are asking that the uses also include a nail salon and a drycleaners (which was originally approved in 1993). However, in order to broaden that request so that the Property Owner will not have to come back before the Board of Commissioners in the event of other uses presenting themselves after leases expire, please amend the Other Business Application to include all permitted uses under the Limited Retail Commercial ("LRC") district or, in the alternative, uses reviewed and approved by the District Commissioner.

In addition to the foregoing, just to be clear, with the 1995 approval of the Starbucks and the bagel/deli shop, the Property Owner agreed that there would be no free-standing signs on the property, that the signs on the property would be restricted to two (2) signs and that the signs would be constructed in accordance with the Paper Mill Village Covenants. The Applicant/Property Owner is still agreeable to those stipulations/conditions; however, with the additional use which is now being requested, please amend the Other Business Application to reflect a request for a total of three (3) signs which will be constructed in accordance with the Paper Mill Village Covenants and with the size and color to be agreed upon by the Property Owner and the Chattahoochee Plantation Community Association ("CPCA").

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP

VIA EMAIL

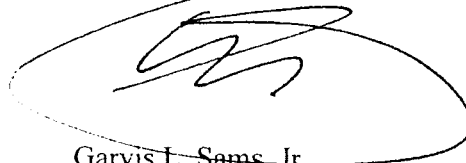
Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
August 14, 2012
Page 2

Lastly, in accordance with the approval in 1995, notwithstanding the fact that a drycleaners business is requested, the Property Owner will continue to agree that there will be no drive-thru or drive-up component and that there will be an agreement with all of the stipulations/conditions negotiated between the Property Owner and CPCA in 1995 which are not in conflict herewith.

Please do not hesitate to call should you have any questions whatsoever regarding these matters. With kinds regards, I am

Very truly yours,

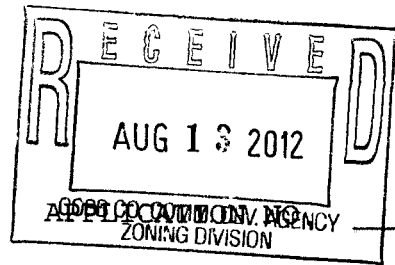
SAMS, LARKIN & HUFF, LLP



Garvis L. Sams, Jr.
gsams@samslarkinhuff.com

GLS, Jr./dsj

cc: S & B Investments, Inc. (via email)
Mr. Robert J. Ott, Commissioner (via hand delivery)



PAGE 2 OF 2

ORIGINAL DATE OF APPLICATION: 9/95

APPLICANT'S NAME: STARBUCKS COFFEE

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

OTHER BUSINESS ITEM OF 9-19-95

To consider granting consent to allow Starbucks Coffee to amend the court ordered development of Paper Mill Village to which Cobb County is involved.

Mr. Danneman reported that applicant requests the allowance of a coffee shop and bagel/bakery/deli instead of the previously allowed cleaners. Following this brief presentation the Board of Commissioners approved applicant's request; thereby granting consent to amend the court ordered development of Paper Mill Village, located in Land Lot 73 of the 1st District, at the corner of Johnson Ferry Road and Paper Mill Road, so as to allow for the construction of a Starbucks Coffee and bagel/bakery/deli store subject to: 1) site plan submitted, dated September 17, 1995; 2) rendering of architectural design submitted, dated September 17, 1995; 3) uses of structure limited to Starbucks Coffee and bagel/bakery/deli store; 4) submitted agreement dated September 12, 1995, between the Chattahoochee Plantation Association and Starbucks Coffee Co.; 5) submitted letter dated September 7, 1995 from William I. Abrams of Wilson and Associates Architects, Inc. to Mark Danneman; 6) letter of agreement dated August 30, 1995 submitted by Weltha Brouse to Mr. Rick Kelly; 7) approval by Cobb County Superior Court if required; 8) all other applicable court ordered covenants and stipulations pertaining to Paper Mill Village to remain in effect. Motion by Thompson, second by Byrne, carried 5-0. Clerk's Note: Copies of items 1, 2, 4, 5 and 6 attached and made a part hereof.

**SEPTEMBER 19, 1995 ZONING HEARING
OTHER BUSINESS**

Item #1

PURPOSE

To consider granting consent to allow Starbucks Coffee to proceed to amend the court ordered development of Paper Mill Village to which Cobb County is involved.

BACKGROUND

The subject property is zoned future commercial. The Cobb County Zoning Ordinance does not allow any permits to be issued under a future commercial district. Future Commercial only designates the property to have some commercial potential with no immediate right to use the property. On May 7, 1981 the Superior Court of Cobb County, based on a previous court order on October 12, 1973, allowed a mixed use development to be developed at the northwest intersection of Johnson Ferry Road and Paper Mill Road. The order allowed the development subject to its conformance to a conceptual site plan, renderings and drawings and covenants entered into between Cobb County, area residents and the developer. A copy of the conceptual site plan is attached (ATTACHMENT A). On February 9, 1993 the Board of Commissioners granted consent to allow the original bank use to be amended for a cleaners and retail space. Starbucks Coffee would like to amend the court ordered agreements and build a coffee shop and bagel/deli instead of the cleaners. Starbucks has contacted the remaining area residents who were party to the court order and covenants and has obtained their consent for this change as well as the Chattahoochee Plantation Community Association. Copies of their approval of the amendment is attached (ATTACHMENT B). A copy of Starbucks request is attached (ATTACHMENT C). The architectural design of the building will be consistent with the existing buildings within the Paper Mill Village. A copy of the proposed architectural rendering is attached (ATTACHMENT D). A copy of a proposed site plan is attached for your review (ATTACHMENT E).

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider granting consent to amend the court ordered development allowing a Starbucks Coffee and bagel/deli, subject to the submitted site plan, architectural design, specified uses only, agreements between the Chattahoochee Plantation Association, Cobb County and Starbucks Coffee Co. dated September 12, 1995, approval by the Cobb County Superior Court if required with all other applicable court ordered covenants and stipulations to remain in effect.

*This packet contains
Exhibits as referenced
in zoning minutes of
9-19-95 (Starbucks Coffee-
Paper Mill Village) Ken Hesch*

ATTACHMENTS

Conceptual Site Plan ATTACHMENT A
Consent Letters/Agreements ATTACHMENT B
Request Letter ATTACHMENT C
Architectual Design ATTACHMENT D
Site Plan ATTACHMENT E

PAPERMILL VILLAGE

SITE DATA | SITE AREA - 21.81 ACRES

PERMITTED PERCENT: 40% (MAXIMUM)

USE	AREA (SQ. FT.)	PERCENT
OFFICE	10,000	45.8%
COMMERCIAL	5,000	22.9%
RESIDENTIAL	5,000	22.9%
RECREATION	1,000	4.6%
UNDEVELOPED	700	3.2%
TOTAL	21,700	99.4%



BUILDING DATA	COMMERCIAL I	COMMERCIAL II	OFFICE I	OFFICE II	OFFICE III	OFFICE IV	TOTAL OFFICE USE
AREA (SQ. FT.)	5,000	5,000	10,000	10,000	10,000	10,000	40,000
PERCENT	22.9%	22.9%	45.8%	45.8%	45.8%	45.8%	183.2%

ATTACHMENT A

← Site

PAPERMILL VILLAGE
FOR
DRUELLE INVESTMENT CORP.

champion & associates

architects
a.i.a., inc.

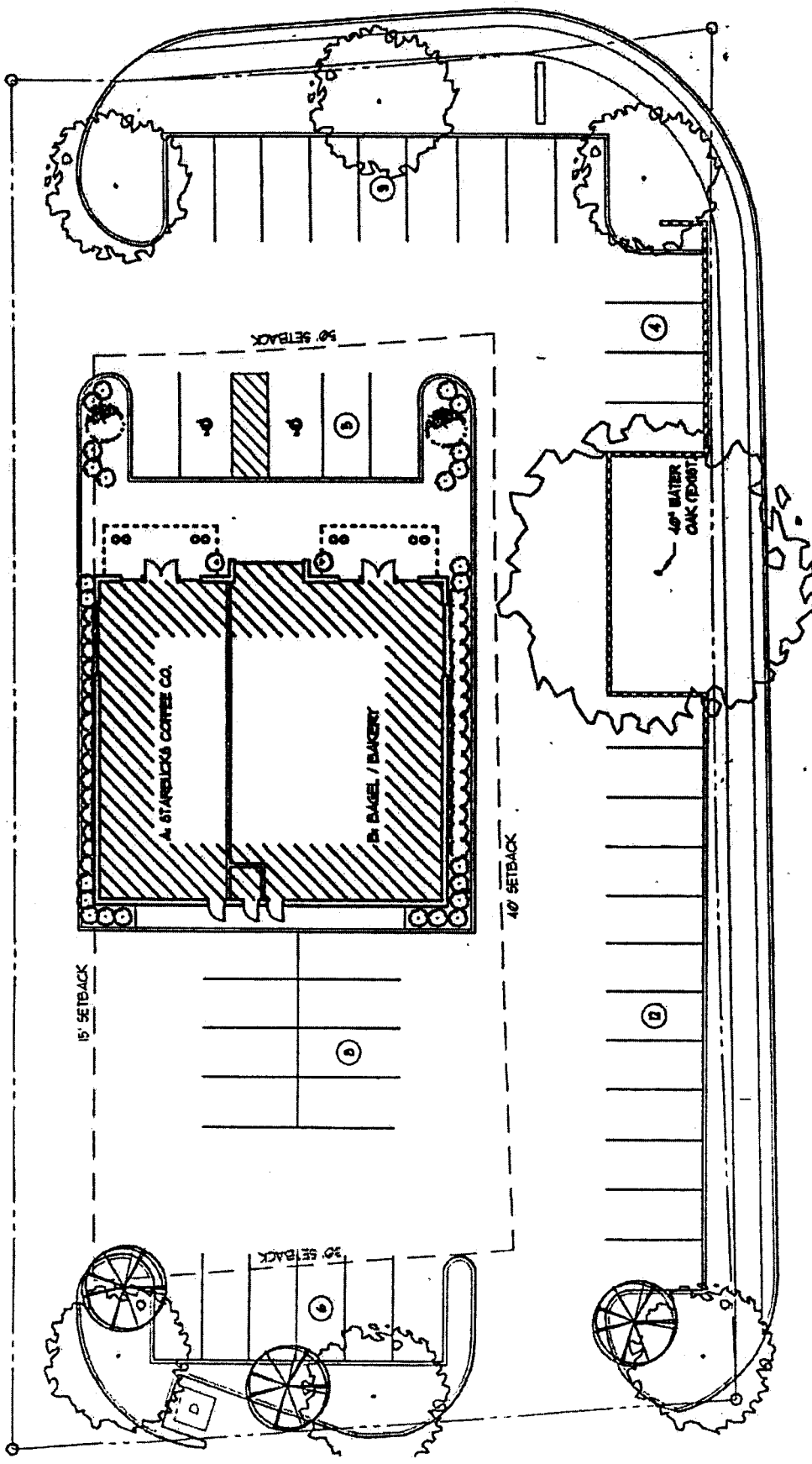
2020 PENNSYLVANIA AVENUE
ANNAPOLIS, MARYLAND 21403
PHONE 404-455-0275

NOT FOR CONSTRUCTION
PRELIMINARY PLAN
SITE PLAN

SITE PLAN
DATE: 11/17/77

JOHNSON FERRY ROAD
 page 2
 of site
 plan

ATTACHMENT E



PAPER MILL ROAD

SK-1
 05033
 9/7/95

PROJECT:
STARBUCKS COFFEE CO.
 CONCEPTUAL SITE PLAN
 JOHNSON FERRY RD & PAPER MILL RD.

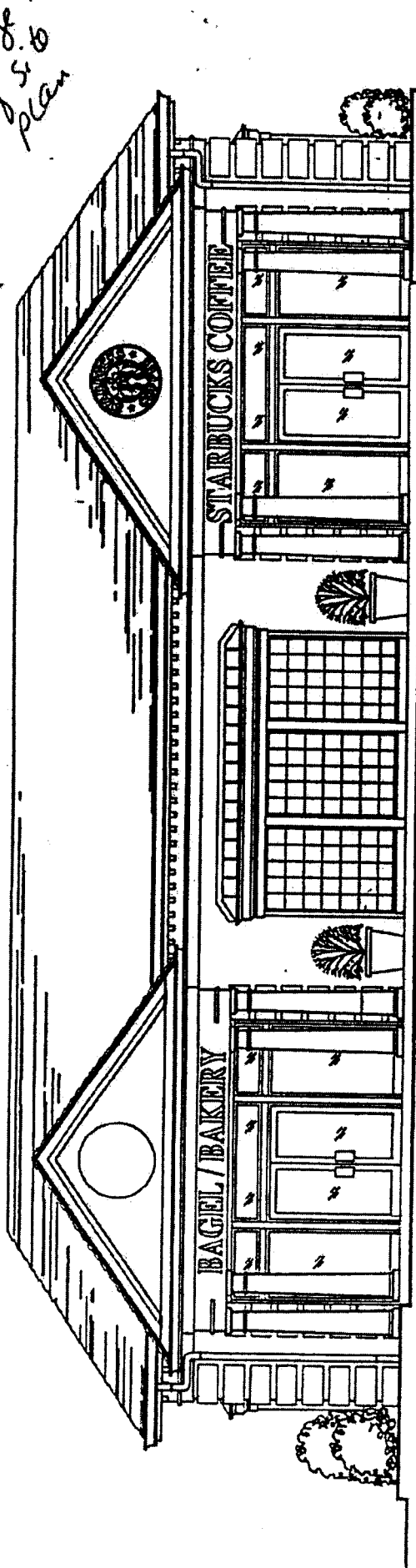
Mulvan

1788 CENTURY BOULEVARD, SUITE A, ATLANTA, GA 30345 (404) 325-5631 (404) 325-2265 FAX

Large site plan
on file in zoning
manager's office
(large plan incorporated
pages 1+2 of this
document) @

Starbucks
(Paper Mill Village)
As referenced in
zoning minutes of
9-19-95. Kow-Nick

page 1
of site
plan



PROJECT:	STARBUCKS COFFEE CO.	
	CONCEPTUAL FRONT ELEVATION	
	JOHNSON FERRY RD & PAPER MILL RD.	
	SK-1	
	05033	9/7/95

Mullison



*Starbucks
(Paper Mill Village)
As referenced
in zoning minutes
9-19-95 Karblack*

To: Chattahoochee Plantation Community Association and Cobb County

From: Suresh Parmar - Landowner
Rick Kelly - Real Estate Manager, Starbucks Coffee Company

Date: September 12, 1995

Re: Agreement Regarding Site Plan Proposed at Johnson Ferry Rd. & Paper Mill Rd.

This will acknowledge our meeting of September 8, 1995 with the Homeowners Association/Zoning Representatives for Chattahoochee Plantation Association to discuss the development plans for the above referenced property.

In this meeting, CPCA has agreed to endorse an amendment to the existing site plan for the property dated 11-03-92 and subject to Suresh Parmar and Rick Kelly of Starbucks Coffee Company agreeing to the following stipulations:

1. Suresh Parmar (land owner) and lessee, Starbucks Coffee Company and their sublease tenant recognize the Court ordered Agreement of December, 1973 that runs with the land and will adhere to the development of the property under those specific conditions in addition to the following detailed agreement.
2. Erect a brick enclosure of same brick as main building which will shield dumpster from Sherwood Lane residents and Paper Mill traffic and to be located in the Northwest corner of property.
3. Include some "architectural" character to the Paper Mill side view of the building so that it will not have a commercial blank wall appearance. Stucco or brick quoins of the same design as the corners of the building facing Johnson Ferry Road as shown on the conceptual site plan, dental molding extended along the side of the building as shown in the front, and adequate landscaping in front of this side wall with no building overhang. Colors on building other than brick will be subdued dark green or dark brown.
4. In compliance with Cobb County Arborous' regulations, stringent precautions to protect the roots and branches of the oak tree facing Paper Mill Road will be taken

during and after construction. Area surrounding this tree to be attractively landscaped, and all landscaped areas to be serviced by sprinkler system.

5. Berms: Existing berms on Paper Mill Road will remain and be landscaped to conceal parking areas. Where berms do not exist landscaping will be used to conceal parking lot from Paper Mill Road to the extent practicable.

6. Lights: Parking lot and security lights will be low level and low density and ground mounted Williamsburg lantern-type fixtures and designated to direct the light towards the building and/or parking areas. State of the art lighting will be used.


7. There will be no free standing signs on the property. The signs on the property are restricted to two, which will be attached to the building facing Johnson Ferry Road in accordance with "Paragraph D", page 6 of the restrictive covenants. No neon, back-lighted or plastic signs shall be allowed. The size and color of these two signs to be agreed upon by Starbucks Coffee and CPCA.

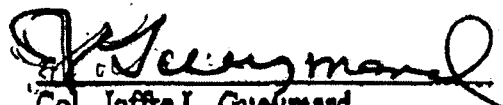
8. Outdoor music or events promoting loud noises are prohibited.


9. There will be no drive-up window.

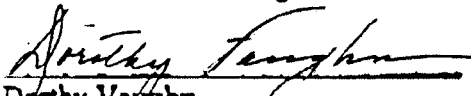
These stipulation will become a part of the official approved site plan on record with Cobb County and are enforceable by the County on any heirs, assignees or future property owners. Property owner agrees that this document will become part of all leases on this property and all lessees, present and future, will make this document a part of their subleases.

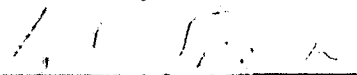
The signatures below acknowledge that the issues outlined in this memorandum comply with their understanding of our agreements.


Suresh Parmar
Land Owner


Col. Joffre L. Gueymard
CPCA
Co-Chairman - Zoning Committee

By: 
Richard Ungaro
for: Starbucks Coffee Company
Real Estate Manager ZONE VICE PRESIDENT


Dorothy Vaughn
CPCA
Chairman - Zoning Committee


Joel Brenner
CPCA
President

Wilson

September 7, 1995

WILSON & ASSOCIATES ARCHITECTS, INC.

Mark Danneman
 Cobb County Zoning Dept.
 100 Cherokee Street
 Suite 500
 Marietta, GA 30090-9674

ARCHITECTURE

INTERIOR DESIGN

PLANNING

1788 CENTURY BOULEVARD

SUITE A

ATLANTA, GA 30345

(404) 325-5631

Dear Mr. Danneman:

We are submitting to you our request for placement on the docket for the September 19 meeting of the Board. We are requesting a change in occupancy use of the 37,000 square foot site, landlot 73, parcel 15, of the first district, on the corner of Johnson Ferry Road and Paper Mill Road.

Rick Kelly, the southeast coordinator for Starbucks Coffee Company, Thad Deas Starbucks local construction coordinator and myself met with you in June of this year to first discuss this request. As you know, the history of this site is complex. We are hoping to finally close this chapter with your help. The site is currently zoned future commercial, conditional for a 6,000 sq. ft. building. The land is owned by Suresh Parmer and approval exists for the use of the site for a One Hour Martinizing Drycleaner. He has since agreed to work with Starbucks Coffee Company to reduce the size of the building to approximately 4,000 sq. ft. Starbucks is requesting approval to open up one of their stores in conjunction with a Bagel/Bakery store on this site.

Our understanding is that the change of use requires a "staff decision" and the support of all organizations and covenant groups of the area. We have already met with Mr. & Mrs. Felton and Mr. & Mrs. Brouse of the Architectural Covenants group and received their consent. A letter written by Mrs. Brouse is enclosed with this submittal confirming their support of Starbucks concept. A meeting is scheduled for tomorrow, September 8, with the Neighborhood Association and the Atlanta Country Club. We expect that the letters of support from these organizations will be ready for submittal on Monday, September 11.

If you have any questions or concerns, please give me a call. The September 19 meeting of the board will be attended by Rick Kelly and Thad Deas of Starbucks Coffee and Marshall Wilson of Wilson & Associates Architects. I want to thank you and Linda for all your help concerning this site.

Sincerely,

Wilson & Associates Architects, Inc.

William I. Abrams

William I. Abrams

ATTACHMENT B

August 30, 1995

*Starbucks
Paper Mill
Village*

*As referenced
in zoning minutes
of 9-19-95.
K. Han*

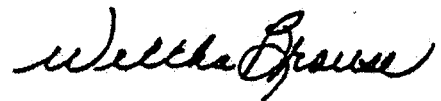
Mr. Rick Kelly
Real Estate Representative
Starbucks Coffee Company
1800 Century Boulevard, Suite 545
Atlanta, Georgia 30345

Dear Mr. Kelly:

This will acknowledge the meeting of Mr. & Mrs. Fellton and Mr. & Mrs. Brouse on August 25, 1995 with Starbucks' representatives to discuss your plans for the development of the corner property at Johnson Ferry Road and Paper Mill Road in Paper Mill Village.

As long as what you propose to build complies with the covenant, as the plan you showed us on August 25, 1995 appears to indicate, speaking for Mr. & Mrs. Fellton and Mr. & Mrs. Brouse, we have no objections to your locating a Starbucks Coffee and Bagel Shop at this sight.

Sincerely,



Weltha Brouse

cc: Mr. Mark Danneman, Division Manager of Zoning
Mr. William I. Abrams, Architect ✓
Ms. Michele Weitzman, Agent
Mr. & Mrs. Herman Fellton
Mr. & Mrs. John Sheahan

RECEIVED
WILSON & ASSOCIATES
ARCHITECTS, INC.

AUG 31 1995

SOMERS & ALTENBACH

FRED L. SOMERS, JR.
ROBERT E. ALTENBACH
JOHN W. GIBSON
FRED L. LESTER, JR.
CHARLES E. JABALEY
MARVIN M. RICE
STEPHEN C. WHICKER
DAVID W. DRAKE
JOHN G. HAUBENREICH

ATTORNEYS AT LAW
1150 HAMMOND DRIVE, SUITE 4100
ATLANTA, GEORGIA 30328
(404) 394-7200

HARRY L. COOPER
OF COUNSEL

May 13, 1981

Irma B. Glover, Esquire
Sams, Glover & Gentry
222 Washington Avenue
Marietta, Georgia 30060

George W. Darden, II, Esquire
Awtrey & Parker
P. O. Box 997
211 Roswell Street
Marietta, Georgia 30061

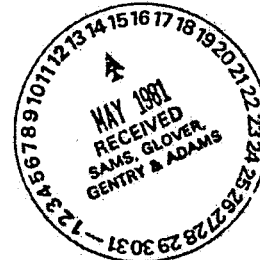
Larry Bogart, Esquire
Powell, Goldstein, Frazier & Murphy
1100 C&S Building
35 Broad Street
Atlanta, Georgia 30305

John Dunlap, Esquire
Suite 414
3030 Peachtree Street
Atlanta, Georgia 30305

Re: Drudell Investment Corporation vs.
Garvis L. Sams, et al
Civil Action File No. 81-1187

Gentlemen and Ms. Glover:

I am enclosing stamped file copies of the order and judgment entered in the above-referenced matter on May 7, 1981, and of the waiver of findings of fact and conclusions of law filed that date. You will note the interlineations added by Judge Brantley on the first page of the order. Except for this change, the order is as previously circulated.



Court orders

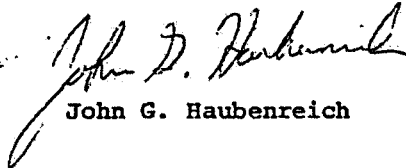
Use this!

Page 2.

May 13, 1981

If you should have any questions, please do not hesitate to contact me. Thank you for your cooperation in reaching an amicable resolution of this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John G. Haubenreich". The signature is written in dark ink and is positioned above the typed name.

John G. Haubenreich

JGH:jgs
Enclosures y

COBB COUNTY COURT OF COBB COUNTY
IN THE SUPERIOR COURT

STATE OF GEORGIA

81 APR 7 PM 2 03

DRUELLE INVESTMENT CORPORATION, *DRUELLE*

Plaintiff OF SUPERIOR COURT

vs.

CIVIL ACTION FILE NO. 81-1187

GARVIS L. SAMS, PETER R. FURNISS, GAIL S. FURNISS, RONALD J. BROUSE, WELTHA J. BROUSE, HERMAN FELLTON, and JOHN W. SHEAHAN, II,

Defendants

WAIVER OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff and Defendants in the above-styled action hereby waive findings of fact and conclusions of law by the Court, pursuant to Ga. Code Ann. §81A-152(a), and agree that no findings by the Court shall be required.

This 15th day of April, 1981.

SOMERS & ALTENBACH

Robert E. Altenbach Jr.
Robert E. Altenbach

John G. Haubenreich
John G. Haubenreich

ATTORNEYS FOR PLAINTIFF

1150 Hammond Drive
Suite 4100
Atlanta, Georgia 30328

(404) 394-7200

Consented to:

Garvis L. Sams
GARVIS L. SAMS

[SIGNATURES CONTINUED]

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

DRUPELL INVESTMENT CORPORATION,

Plaintiff

vs.

GARVIS L. SAMS, PETER R. FURNISS, GAIL S. FURNISS, RONALD J. BROUSE, WELTHA J. BROUSE, HERMAN FELLTON, and JOHN W. SHEAHAN, II,

Defendants

CIVIL ACTION FILE NO. 81-115

CLERK OF SUPERIOR COURT

[Handwritten signature]

81 NOV 7 PM 2 03

COBB COUNTY, GEORGIA FILED IN OFFICE

ORDER AND JUDGMENT

This is an action for a declaratory judgment brought by the Plaintiff seeking a declaration by this Court of the Plaintiff's right to develop certain real property located in Cobb County, Georgia, pursuant to a development plan submitted to this Court, under the terms of restrictive covenants applicable to the property described in Exhibit "A" (the Property). Named as Defendants are present and former adjacent property owners who were parties to the agreement creating the covenants, their successors in title, and a predecessor in title to the Property.

Handwritten note: Included by Cobb County Planning Commission

It appearing to the Court that the Court has jurisdiction over the subject matter and parties to this action, and that all of the parties hereto, except for Defendant Garvis L. Sams, have consented to the entry of this Order, and the Court having examined the record and pleadings and being fully advised in the premises, it is

ORDERED AND ADJUDGED, that Plaintiff, DRUPELL INVESTMENT CORPORATION, may proceed with the development of the Property, in accord with the conceptual site plan, renderings and drawings developed by Chapman & Associates, attached hereto as Exhibit "B" to this Order, in substantial conformity thereto and subject to the following conditions:

Handwritten note: *See insert on Page 5

Handwritten initials: JAB

1.

The existing covenants of record are enforceable to the benefit of the Defendants and each of them and their successors in title to their property and in favor of the Property; the covenants run with the land on the Property.

2.

The development and maintenance of the Property in conformity to the plans attached hereto as Exhibit "B" in lieu of the site plan developed by Heery & Heery specified in the existing covenants of record is held to be in compliance with the language and intent of the covenants.

3.

All sales contracts, encumbrances, deeds, and transfers of all or any interest in the Property shall be subject to the existing covenants of record and to the requirements of this Order.

4.

Any owners association, merchants association, or similar organization formed for purposes of holding title to any common areas within the development shall hold title subject to the existing covenants of record and the requirements of this Order.

5.

Plaintiff may utilize fiberglass or asphalt roof shingles for construction of the Williamsburg type structures to be placed on the Property.

6.

The maximum total gross square feet of the buildings to be constructed on the Property cannot exceed 210,000 square feet and none of the structures on the Property shall be over three stories high.

7.

The perimeter boundaries on that part of the Property not fronting on Johnson Ferry Road or Paper Mill Road shall

have a security shield utilizing retaining walls, vegetation or fences in accord with the covenants of record, and in addition thereto the north boundary of the property from a point 300 feet west of Johnson Ferry Road to the northwest corner of the property shall have a security shield consisting of galvanized chain link fence at least 48 inches in height, wood fencing, or a combination of wood and wire fencing and will be constructed within one hundred twenty (120) days after the commencement of construction. Such fencing shall have a vegetation cover on both sides in the form of vines or other ornamental vegetation.

8.

The existing earth berm along Paper Mill Road shall remain (or shall be constructed if not present), except at those points shown on the Exhibit "B" plans and drawings for entrance and egress to the Property, and excepting that part of the intersection with Johnson Ferry Road that necessarily must be low enough in elevation for vehicle safety on approaching the intersection. An earth berm shall be constructed along Johnson Ferry Road except at those points on the Exhibit "B" plans for entrance and egress to the Property and excepting that part of the intersection with Paper Mill Road that necessarily must be low enough in elevation for vehicle safety on approaching the intersection. All earth berms along Johnson Ferry Road and Paper Mill Road shall be of sufficient size to provide visual screening from passers-by in automobiles.

9.

The Property after development must be maintained in accordance with the Exhibit "B" plans and drawings and in accordance with the existing covenants of record for so long as those covenants are effective.

10.

Defendant John W. Sheahan, II, as successor in title to Peter R. Furniss and Gail S. Furniss, is a proper party Defendant to this action, in that he may enforce the covenants applicable to the Plaintiff's Property.

The Court hereby specifically finds that the development by Plaintiff of the subject property in accordance with the Exhibit "B" plan of development attached to this Order and incorporated therein shall not be in breach of the covenants applicable to this Property as contained in the agreement between Plantation Development Company and certain of the Defendants, recorded in Deed Book 1483, Pages 178-186 of the records of Cobb County, Georgia. The Plaintiff may proceed with the development of the Property described in accord with the Exhibit "B" site plans, renderings and drawings attached to this Order, and subject to the conditions imposed by the Court. Such development is hereby declared to be consistent with the covenants running with this Property. Judgment is accordingly entered in accord with the terms of this Order, with all costs to be paid by Plaintiff.

SO ORDERED, this 7 day of May, 1981.

G
G. Grant Brantley,
Judge, Superior Court of Cobb
County, Georgia

CONSENTED TO:

SOMERS & ALTENBACH

RS
Robert E. Altenbach

JS
John G. Haubenreich

ATTORNEYS FOR PLAINTIFF

1150 Hammond Drive
Suite 4100
Atlanta, Georgia 30328

(404) 394-7200

[SIGNATURES CONTINUED]

FFB

* and this matter having come before the Court regularly for hearing on this date, and the Court having heard evidence and argument of counsel for the Plaintiff and Defendant Garvis

L. Sams.

FFB


IN THE SUPERIOR COURT OF COSSA COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE NO. 81187
ORDER AND JUDGMENT

CONSENTED TO:

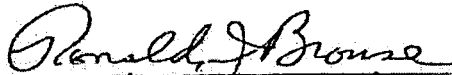


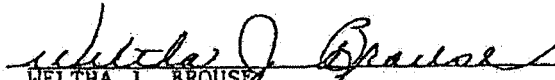
Peter R. Furniss



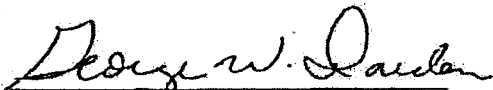
Gail S. Furniss

CONSENTED TO:


RONALD J. BROUSE

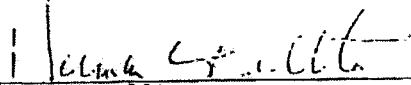

WELTHA J. BROUSE

CONSENTED TO:


GEORGE W. DARDEN
Attorney for RONALD J. BROUSE
and WELTHA J. BROUSE

P. O. Box 997
Marietta, Georgia 30061
(404) 424-3000

CONSENTED TO:


Herman Fellton

CONSENTED TO:

POWELL, GOLDSTEIN, FRAZIER &
MURPHY

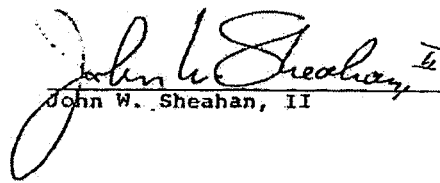

Larry Bogart, Esq.

ATTORNEY FOR HERMAN FELLTON

11th Floor
C&S National Bank Building
Atlanta, Georgia 30303

(404) 572-6600

CONSENTED TO:


John W. Sheahan, II

CONSENTED TO:


John Dunlap, Esq.

ATTORNEY FOR JOHN W. SHEAHAN, II

Suite 414
3030 Peachtree Street, N.W.
Atlanta, Georgia 30305

(404) 261-3880

All that tract or parcel of land lying and being in Land Lots 73 and 81 of the 1st District, 2nd Section, Cobb County, Georgia, being more particularly described as follows:

BEGINNING at a point where the western right of way of Johnson Ferry Road(having a 70 ft. right of way) intersects with the northern right of way of Paper Mill Road(having a 60 ft. right of way) and running thence in a southwesterly direction along the northern right of way of Paper Mill Road a distance of 1127.8 feet to an iron pin found as measured along the arc of said road and whose chord distance is 1127.52 feet to an iron pin found with a bearing of $S77^{\circ}52'15''W$; running thence $N09^{\circ}46'30''W$ a distance of 575.95 feet to an iron pin found; running thence $N11^{\circ}42'W$ a distance of 587.75 feet to an iron pin found, said point lying on the land lot line which divides Land Lots 73 and 72; thence running in an easterly direction along said land lot line $S89^{\circ}54'22''E$ a distance of 498.17 feet to an iron pin found; running thence $S00^{\circ}09'40''E$ a distance of 313.77 feet to an iron pin found; running thence $S89^{\circ}50'45''E$ a distance of 760.97 feet to an iron pin found, said point lying on the western right of way of Johnson Ferry Road(having a 70 ft. right of way); running thence in a southerly direction along the western right of way of Johnson Ferry Road a distance of 593.5 feet, as measured along the arc of said road, to an iron pin found, and whose chord distance is 592.56 feet to an iron pin found with a bearing of $S05^{\circ}44'30''E$, said point being the point of BEGINNING according to a plat of survey prepared for Marett Properties by J. B. Dixon, RLS, dated December 22, 1980, said tract containing 21.81 acres according to said survey.

EXHIBIT "A"

*Plantation Development Company
1981
Cobb County
1981*

*D-17
8-31-82
Jew*

AGREEMENT

This Agreement made this ___ day of December, 1973, by and between Plantation Development Company (hereinafter called Plantation) as party of the first part; and Peter R. Furniss, Billy P. Whitley, Ronald J. Brouse and Herman Felton (hereinafter called Amellants) as parties of the second part:

WITNESSETH:

Section One

The parties hereto are litigants in Cobb County, Georgia, Superior Court File No. 38679-A, styled Cobb County Board of Commissioners vs. James Allgood, Carlos Jones, Sun Oil Company, Plantation Development Company (Intervenor), Peter R. Furniss, Billy R. Whitley, Ronald J. Brouse, Herman Felton (Intervenor). This action was initiated by The Board of Commissioners of Cobb County, Georgia, filing for a Declaratory Judgment regarding the use of certain property of James Allgood, Carlos Jones and Sun Oil Company. On March 22, 1973, Plantation intervened in the action, seeking a declaration regarding its use of property located in Land Lots 73 and 81 of the 1st District and 2nd Section of Cobb County, Georgia, as described in Exhibit "A" attached hereto and incorporated herein (hereinafter called the "Property"). By judgment and order of the Court on March 27, 1973, the Cobb County Board of Commissioners was ordered and directed to cause building permits to issue for construction of a neighborhood shopping center on the property. The finding of fact and law upon which the Court's order was based was that prior to December 26, 1972, there had not existed a legally valid zoning ordinance in Cobb County, and that because prior to such date Plantation had expended substantial funds in planning and preparing the property for commercial use in the form of a neighborhood shopping center, a substantial interest had arisen legally requiring issuance of a building permit allowing the property to be improved and used as a neighborhood shopping center. Thereafter, on April 25, 1973, the Cobb County Board of Commissioners moved that the Court correct or

modify its March 27, 1973 order as it related to the property for the reason that it had not previously been shown that Plantation had objected to the zoning ordinance of December 26, 1973, which if allowed to control, would not permit immediate construction of a neighborhood shopping center on the property. Additionally, the motion contended that Appellants had not been afforded an opportunity to be heard in the prior proceedings. Thereafter, on May 8, 1973, Appellants intervened in the proceedings, raising essentially the same contentions for correction or modification as those in the Commissioners' Motion on April 25, 1973. Thereafter, on September 13, 1973, the Court entered an order contra to Appellants' position, thus affirming the Order of March 27, that a building permit should issue for construction of a neighborhood shopping center on the property. On October 21, 1973, Appellants filed a Notice of Appeal from the Court's Orders of March 27, 1973, and September 13, 1973.

On November 15, 1973, Plantation, after notice to Appellants, moved that the Court require Appellants post a supersedeas bond pending appeal, and the Court ordered that on or before December 10, 1973, at 9:30 A.M., Appellants file with the Clerk of the Superior Court of Cobb County a bond in the amount of \$50,000, conditioned for the satisfaction of the judgment in full, together with costs, interest and damages for delay, if for any reason the pending appeal is dismissed or found to be frivolous, and to satisfy in full such modification of the judgment and such cost, interest and damages as the Appellate Court may award Plantation.- The Order further provides that failure to post such bond shall operate to vacate any supersedeas of Appellants' Notice of Appeal.

The orders of March 27, 1973, and September 13, 1973, have not been appealed from the Board of Commissioners of Cobb County, and the time within which such appeal could have been made has expired.

Section Two

The parties hereto are all owners of other property contiguous to or near "The Property". The general area in which the property is located is one of significant natural beauty, having located thereon tasteful and

expensive residential dwellings. The area also includes the recreational facilities of Atlanta Country Club and The Chattahoochee Plantation Club. The Property is a tract of 21.81 acres at the Northwest corner of Johnson's Ferry Road and Paper Mill Road. These roads are major traffic arteries for the area.

Section Three

This Agreement is entered into for multiple purposes; one of which is to terminate the litigation set forth in Section One hereof. Another purpose of paramount import is to insure that development of The Property be allowed to proceed, but only under certain specific conditions. This Agreement is intended to set forth these conditions and establish the concerted tenor of the development. As a preliminary to the specific conditions of development, Plantation states that its intentions are to construct improvements on The Property that are unique and different from those usually found in what is customarily known as the Metropolitan Atlanta Area. In arriving at the result of these intentions, Plantation has visited and inspected shopping and the commercial facilities in numerous other areas of the United States, and also in other countries of the world. As a result of Plantation's activities, they have concluded that a "Village" concept is consistent with the area in which the property is located. This concept, as contemplated by Plantation requires that:

A. The existing topography of The Property be generally retained except as may be necessary to create earth berms along Johnson Ferry Road and Paper Mill Road;

B. Buildings constructed on The Property be located in a manner as to avoid the usual shopping center concept of "rows of stores" with adjoining walls fronting on unbroken, massive areas of asphalt parking areas";

C. The entire Property area be visually screened, by topography and landscaping, from the view of passers-by and adjoining property owners;

D. The exterior design and materials be unlike the usual commercial structure because of design style and material type, and be generally of a residential character.

Pursuant to the aforesaid "Village" concept, Plantation has previously commissioned the preparation of architectural and engineering documents titled "The Panermill Village Center" (prepared by Heery and Heery), copies of which have been filed with the Building Permit administrative office of Cobb County, Georgia, and copies of which have been provided to the law firm of Sams, Dozier and Glover, Marietta, Georgia, Attorneys for Appellants. Revisions of Sheet Four of the Documents have been made as of November 28, 1973, a copy of such revisions having been provided to Appellants' attorneys. These documents are incorporated into this Agreement as if fully set forth.

Therefore, because of the aforesaid reasons, so that Appellants can effectively control the enumerated development aspects to follow, and for the mutual benefit of the parties hereto, the parties agree as follows:

Section Four

Plantation covenants and binds itself to construct improvements on The Property as follows:

A. PERIMETERS: The existing earth berm along Panermill Road shall remain (or shall be constructed if not present), except at those points shown on Sheet Four (Landscape Plan) for entrance and egress to the property, and excepting that part at the intersection with Johnson's Ferry Road that necessarily must be low enough in elevation for vehicle safety on approaching the intersection;

An earth berm shall be constructed along Johnson's Ferry Road except as those points on Sheet Four for entrance and egress and excepting that part at the intersection with Panermill Road that necessarily must be low enough in elevation for vehicle safety on approaching the intersection;

All earth berms along Johnson Ferry Road and Paper Hill Road should be of sufficient size to provide visual screening from passers-by;

The perimeter boundaries on that part of the property not fronting on Johnson's Ferry Road or Paper Hill Road shall have a security shield, utilizing retaining walls, vegetation, or fences; the primary purpose of which shall be to prevent children and animals from straying from adjoining property into traffic areas, and providing a visual screen to adjoining property. In the event fencing is used in any area, it shall be galvanized chain link at least 48 inches high and will be camouflaged on both sides by vines and/or other ornamental vegetation.

All perimeters will have landscaped buffer areas of at least the widths shown on Sheet Four (Landscape) and the buffer areas on that part of The Property not fronting on Paper Hill or Johnson's Ferry Road shall be at least thirty (30) feet wide.

B. BUILDINGS: All buildings constructed on the property shall be residential in character. The buildings shall be used for general purpose commercial, shopping and professional offices. Exterior building materials shall be limited to stone, brick, textured concrete, stucco, wood and cedar shakes. Plastics and industrial metals shall not be used. Design and materials shall be consistent with that exemplified by the Heery and Heery Documents on sheets A1-7, S1-2, E1-3, M-1, P-1 (these sheets relating to the first of the buildings to be constructed, a bank facility, the design and materials for which have been approved by Cobb County); on sheets A1-11, S1-4, E1-3, M1-4, P1-5 (these sheets relating to the second building to be constructed, a restaurant facility, the design and materials for which have been approved by Cobb County). Reference is also made to certain photographic slides of developments in Heritage Village, Connecticut, copies of which have been delivered to Appellants' attorneys. By this reference, it is not intended that the buildings depicted shall be constructed, but that the concept of materials and residential character be adopted and expressly made a condition of this agreement.

*Deleted
clauses*

All exterior mechanical equipment or service yards required for the buildings shall be screened from view, including but not limited to such equipment that may be installed on the roof of any building.

The maximum total gross square feet of the buildings to be constructed on The Property shall not exceed 210,000 square feet ~~(excluding the area designated as future conference center as shown on Sheet Four)~~. It

is contemplated that the structures to be constructed on The Property shall not exceed two (2) stories (excluding basements); however, three (3) stories shall be permissible so long as in keeping with the total "Village" concept.

C. PARKING: Parking areas will be separated by landscaped buffers, in the manner indicated on Sheet Four. Each parking area shall be screened from others by trees and ornamental vegetation. The intent of such design is to guard against "a sea of asphalt and cars", and to allow traffic to specific areas of the center without travelling through the entire area.

D. EXTERIOR SIGNS AND LIGHTING: Signs will be allowed on the buildings only if painted directly on the buildings, or painted on wood material that is mounted in such manner that the signs do not protrude above the roof-line of buildings having the lowest elevation in the center. No neon, back lighted or plastic signs shall be allowed. All other lighting shall be low-level.

E. GENERAL: (i) The lake shown on Sheet Four is essentially in the location of the existing lake on the property, and shall be reworked and landscaped as shown, consistent with the entire center.

(ii) Plantation intends that revised Sheet Four specifically bind the property as to perimeter buffers, and further, that the buffers along the entire North boundary be at least thirty (30) feet wide.

F. Plantation agrees, covenants and accents as an express condition of this Agreement that this Agreement shall be recorded in the real property records in the Office of the Clerk of the Superior Court of Cobb County, Georgia, with the intent that the express conditions of this Agreement bind The Property as covenants to its development; particular emphasis is placed upon the tenor of the overall concept of the development.

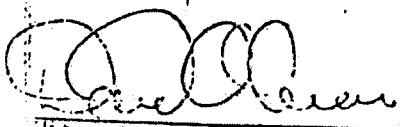
Section Five

Appellants agree that simultaneously with execution of this Agreement, their attorneys shall immediately proceed to dismiss their pending appeal in the aforesaid Cobb Superior Court, Civil File No. 32679-A.

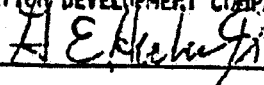
In order to insure enforcement of these covenants against Plantation's assigns and successors in title, it is agreed that Plantation shall execute and deliver a general warranty deed to Garvis L. Sams, for Ten Dollars (\$10.00) and other good and valuable considerations (such considerations including but not limited to dismissal of the appeal as aforesaid) conveying The Property and that said Garvis L. Sams shall, for Ten Dollars (\$10.00) and other good and valuable considerations (including but not limited to attorney's fees paid to said Garvis L. Sams) execute and deliver a general warranty deed to Plantation conveying The Property subject to the restrictive covenants contained in the within Agreement. Garvis L. Sams, for the purpose of enforcing these covenants running with the land, shall be authorized in law or equity to require compliance on the part of any violator of the covenants hereinbefore set out or to seek redress for breach thereof. In the event of a breach of the covenants herein by Plantation, its successors or assigns, Plantation covenants and binds itself, its successors and assigns to pay reasonable attorney's fees and costs arising from enforcement or redress of such breach.

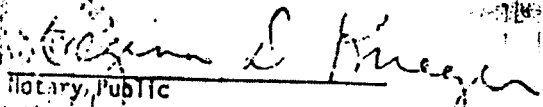
This Agreement shall be binding on the parties' heirs, executors, administrators, successors or assigns.

WHEREFORE, the parties have set their hands and seals the day and year first above written.



Witness

PLANTATION DEVELOPMENT COMPANY
By: 



Notary Public

Notary Public, State of Georgia
My Comm. Expires 12/31/2003

Original Date of Application: _____

Applicant's Name: PAPER MILL VILLAGE

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE COBB COUNTY PLANNING COMMISSION AND THE COBB COUNTY BOARD OF COMMISSIONERS

THE FOLLOWING IS AN EXCERPT OF THE MINUTES OF THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF 2-9-93:

Item #20: COMMUNITY DEVELOPMENT DEPARTMENT - APPROVAL TO ALLOW MR. DONALD A. ROLANDER TO PROCEED TO AMEND THE COURT ORDERED DEVELOPMENT OF PAPER MILL VILLAGE:

MOTION: Motion by Wysong to **approve** to allow Mr. Donald A. Rolander to proceed to amend the court ordered development of Paper Mill Village, allowing the development of a Classic Cleaners, subject to the submitted revised architectural design, specified use only, approval by the Cobb Superior Court System and all other applicable court ordered covenants and stipulations to remain in effect.

VOTE: **ADOPTED** unanimously

Karen L. Hach
Karen L. Hach, Deputy Clerk
Cobb County Board of Commissioners