

APPLICANT: Zions First National Bank

(801) 844-7214

REPRESENTATIVE: Melissa J. Perignat (770) 956-9600

Holt Ney Zatcoff & Wasserman, LLP

TITLEHOLDER: Zions First National Bank

PROPERTY LOCATION: West side of Powder Springs Road, south

of Chauncey Lane

(2424 Powder Springs Road).

ACCESS TO PROPERTY: Powder Springs Road

PHYSICAL CHARACTERISTICS TO SITE: Powder Springs Road

CONTIGUOUS ZONING/DEVELOPMENT

NORTH: R-15/Wevr Runn Subdivision

SOUTH: R-20/Single-family Houses

EAST: LRO/Assisted Living

WEST: R-30/Single-Family Houses

PETITION NO: Z-34

HEARING DATE (PC): 07-08-13

HEARING DATE (BOC): 07-16-13

PRESENT ZONING: NS

PROPOSED ZONING: LRO

PROPOSED USE: Daycare Center and

Other LRO Uses

SIZE OF TRACT: 3.7 acres

DISTRICT: 19

LAND LOT(S): 714

PARCEL(S): 5

TAXES: PAID X **DUE** _____

COMMISSION DISTRICT: 4

OPPOSITION: NO. OPPOSED ___ **PETITION NO:** ___ **SPOKESMAN** _____

PLANNING COMMISSION RECOMMENDATION

APPROVED ___ **MOTION BY** _____

REJECTED ___ **SECONDED** _____

HELD ___ **CARRIED** _____

BOARD OF COMMISSIONERS DECISION

APPROVED ___ **MOTION BY** _____

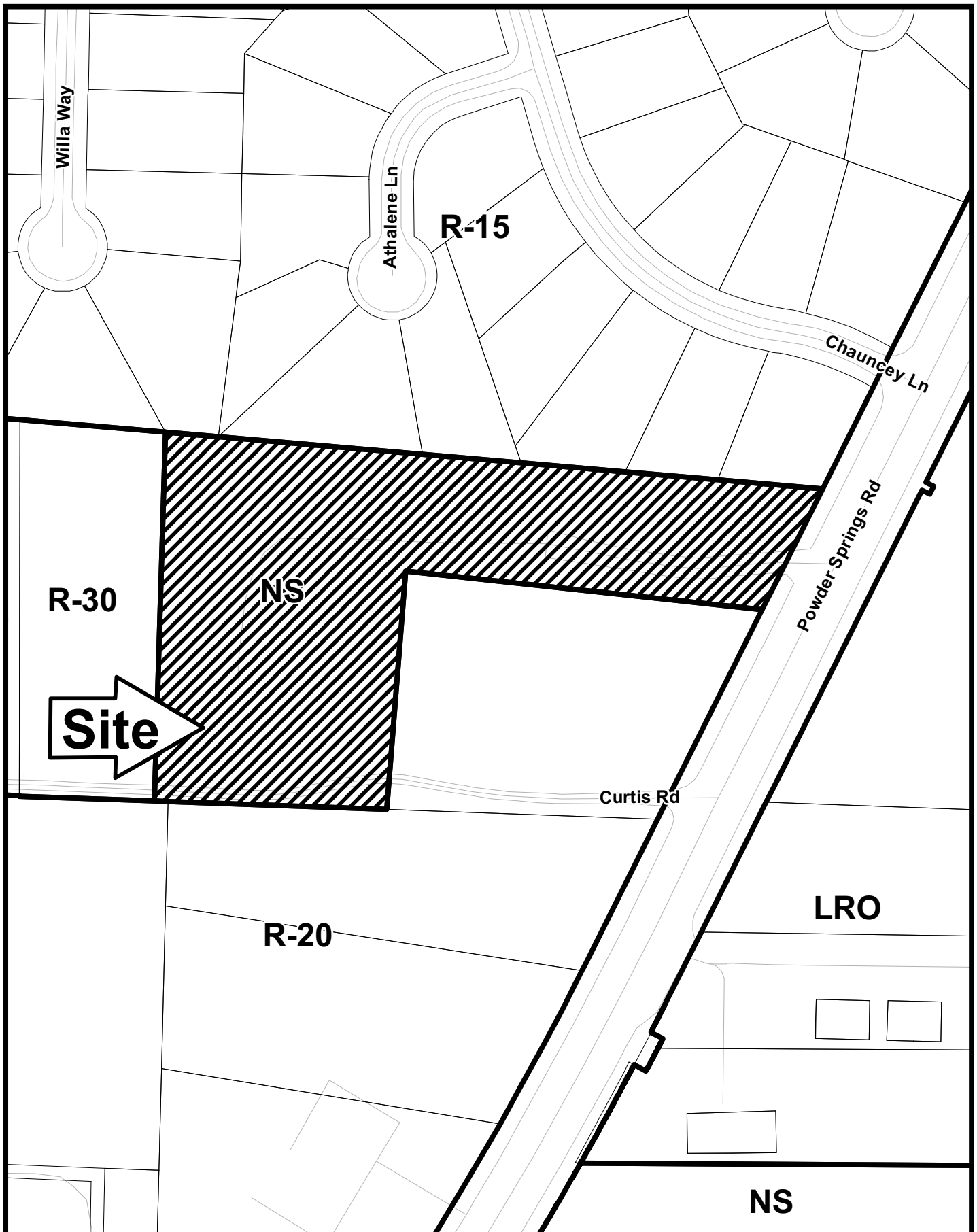
REJECTED ___ **SECONDED** _____

HELD ___ **CARRIED** _____

STIPULATIONS:



Z-34



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

100 0 100 Feet



City Boundary
Zoning Boundary

APPLICANT: Zions First National Bank

PETITION NO.: Z-34

PRESENT ZONING: NS

PETITION FOR: LRO

ZONING COMMENTS:

Staff Member Responsible: Jason A. Campbell

Land Use Plan Recommendation: Low Density Residential (1-2.5 units per acre)

Proposed Number of Buildings: 2/Existing **Total Square Footage of Development:** 11, 291

F.A.R.: .070 **Square Footage/Acre:** 3,051

Parking Spaces Required: 20 **Parking Spaces Provided:** Unmarked Concrete

Applicant is requesting the Low Rise Office (LRO) zoning category in order to utilize the former daycare facility. The property was rezoned to Neighborhood Shopping (NS) for the purpose of a daycare and kindergarten in 1980 (Z-72/minutes attached) and was used as such for more than 20 years. As referenced in the attached Applicant’s Summary of Intent, the property was approximately 6.7 acres at the time of the 1980 rezoning and at some point, the owner sold approximately three acres to the west. The current daycare facility was grandfathered under its current NS zoning because the land use plan designation of Low Density Residential does not allow the NS zoning. The property has been vacant more than 12 months and, as a result, lost its grandfathered status. Existing buildings, infrastructure and buffers will be utilized. No new development, additions or modifications to the existing structures or improvements are being proposed.

Cemetery Preservation: No comment.

FIRE COMMENTS:

Plans must be submitted to the Cobb County Fire Marshal’s Office to initiate the Certificate of Occupancy process.

APPLICANT: Zions First National Bank
PRESENT ZONING: NS

PETITION NO.: Z-34
PETITION FOR: LRO

* * * * *

PLANNING COMMENTS:

The applicant is requesting a rezoning from NS to LRO for purpose of a Daycare Center and other LRO uses. The 3.7 acre site is located at the west side of Powder Springs Road, south of Chauncey Lane.

Comprehensive Plan

The parcel is within a Low Density Residential (**LDR**) future land use category, with NS zoning designation. The purpose of the Low Density Residential (LDR) category is to provide for areas that are suitable for low density housing between one (1) and two and one-half (2.5) dwelling units per acre. This category presents a range of densities.

Master Plan/Corridor Study

Not applicable.

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.

Design Guidelines

Is the parcel in an area with Design Guidelines? ☐ Yes ☒ No
 If yes, design guidelines area _____
 Does the current site plan comply with the design requirements?

APPLICANT Zions First National Bank

PETITION NO. Z-034

PRESENT ZONING NS

PETITION FOR LRO

WATER COMMENTS:

NOTE: Comments reflect only what facilities were in existence at the time of this review.

Available at Development: ☒ Yes ☐ No

Fire Flow Test Required: ☐ Yes ☒ No

Size / Location of Existing Water Main(s): **8" DI / W side of Powder Springs Rd**

Additional Comments: existing water customer

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.

SEWER COMMENTS:

NOTE: Comments reflect only what facilities were in existence at the time of this review.

In Drainage Basin: ☒ Yes ☐ No

At Development: ☒ Yes ☐ No

Approximate Distance to Nearest Sewer: **On site**

Estimated Waste Generation (in G.P.D.): **A D F +0 Peak= +0**

Treatment Plant: **South Cobb**

Plant Capacity: ☒ Available ☐ Not Available

Line Capacity: ☒ Available ☐ Not Available

Projected Plant Availability: ☒ 0 - 5 years ☐ 5 - 10 years ☐ over 10 years

Drw Sewers Required: ☐ Yes ☒ No

Off-site Easements Required: ☐ 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 easements by the property owners. All easement acquisitions are the responsibility of the Developer

Flow Test Required: ☐ Yes ☒ No

Letter of Allocation issued: ☐ Yes ☒ No

Septic Tank Recommended by this Department: ☐ Yes ☒ No

Subject to Health Department Approval: ☐ Yes ☒ No

Additional Comments: Existing sewer customer. No new development or additions proposed

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 offsite easements, dedication of on and/or offsite 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: Zions First National Bank

PETITION NO.: Z-34

PRESENT ZONING: NS

PETITION FOR: LRO

STORMWATER MANAGEMENT COMMENTS

FLOOD HAZARD: ☐ YES ☒ NO ☐ POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Noses Creek & Olley 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 _____.

APPLICANT: Zions First National Bank

PETITION NO.: Z-34

PRESENT ZONING: NS

PETITION FOR: LRO

STORMWATER MANAGEMENT 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. This is an existing facility and no immediate site improvements are proposed. Any future improvements or redevelopment must meet current stormwater management requirements.

APPLICANT: Zions First National Bank

PETITION NO.: Z-34

PRESENT ZONING: NS

PETITION FOR: LRO

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
Powder Springs Road	21,150	Arterial	45 mph	Cobb County	100'
Curtis Road	N/A	Local	25 mph	Cobb County	50'

Based on 2006 traffic counting data taken by Georgia DOT (Powder Springs Road)

COMMENTS AND OBSERVATIONS

Powder Springs 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.

Curtis Road is classified as a local and according to the available information the existing right-of-way does not meet the minimum requirements for this classification.

RECOMMENDATIONS

Recommend applicant consider entering into a development agreement pursuant of O.C.G.A. 36-71-13 for dedication of the following system improvements to mitigate traffic concerns: a) donation of right-of-way on the north side of Curtis Road, a minimum of 25' from the roadway centerline.

Recommend sidewalk for the Powder Springs Road frontage.

Recommend upgrading existing driveway apron to Cobb County commercial standard.

Recommend a deceleration lane on Powder Springs Road for the entrance.

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

STAFF RECOMMENDATIONS

Z-34 ZIONS FIRST NATIONAL BANK

- 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 property was used as a daycare facility for over 20 years.
- 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. No new development is planned and existing structures, infrastructure and buffers will be utilized.
- 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 not in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property to be within the Low Density Residential (LDR) land use category. However, the land use plan was the same in 1980 when the property was rezoned to the Neighborhood Shopping (NS) zoning category. Since that time, and during the daycare use of the property, the land use plan was not changed. Applicant's proposal for Low Rise Office (LRO) will be less intensive than uses allowed under NS.
- 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. While the LRO zoning category is not compatible with the Low Density Residential land use category, Staff points out that the property was rezoned by the Board of Commissioners in 1980 to a commercial category (NS) while the land use plan was LDR and the commercial daycare use operated over 20 years, all while the land use category remained LDR. Properties across Powder Springs Road are zoned LRO in a Community Activity Center (CAC) land use category.

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

- Site plan received by the Zoning Division on May 2, 2013, with any changes to go back to the District Commissioner;
- Daycare use only;
- Maintaining existing buffers abutting the residentially zoned properties;
- Fire Department comments and recommendations;
- Water and Sewer comments and recommendations;
- Stormwater Management Division comments and recommendations;
- DOT comments and recommendations; and
- Owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns.

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.

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COBB COUNTY ZONING DIVISION

Application No. Z-34

July 2013

Summary of Intent for Rezoning

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Part 1. Residential Rezoning Information (attach additional information if needed)

- a) Proposed unit square-footage(s): Not Applicable
- b) Proposed building architecture: _____
- c) Proposed selling prices(s): _____
- d) List all requested variances: _____
- _____
- _____
- _____

.....
Part 2. Non-residential Rezoning Information (attach additional information if needed)

- a) Proposed use(s): Day Care Center (and any permitted use in LRO)
- b) Proposed building architecture: see attached letter of intent.
- c) Proposed hours/days of operation: see attached letter of intent.
- d) List all requested variances: None
- _____
- _____
- _____

.....
Part 3. Other Pertinent Information (List or attach additional information if needed)

See attached Documented Impact analysis and
letter/Summary of Intent

.....
Part 4. Is any of the property included on the proposed site plan owned by the Local, State, or Federal Government?

(Please list all Right-of-Ways, Government owned lots, County owned parcels and/or remnants, etc., and attach a plat clearly showing where these properties are located).

N/A unless shown on survey.

COBB COUNTY GEORGIA
ZONING DIVISION

2013 MAY -2 PM 2:31

HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

COBB COUNTY ZONING DIVISION

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5960

TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

Ellen W. Smith
e-mail esmith@hnzw.com

Melissa J. Perignat
e-mail mperignat@hnzw.com

May 2, 2013

BY HAND DELIVERY

Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street
Suite 400
Marietta, Georgia 30064

SUMMARY OF INTENT

Re: Application for Rezoning, Cobb County, Georgia ("**Application**") by Zions First National Bank with respect to that certain approximately 3.7 acre property commonly known as 2424 Powder Springs Road (the "**Property**")

Ladies and Gentlemen:

This law firm has the pleasure of representing Zions First National Bank ("**Zions FNB**"), the Applicant with respect to the referenced Application. Zions FNB respectfully submits for your consideration the Application, seeking the rezoning of the Property from NS (a now discontinued zoning district) to LRO, the approval of which will allow the continuation of the day care facility use of the Property initially approved almost 25 years ago in 1980.

Background – The Property

The Property is an approximately 3.7 acre tract with frontage on Powder Springs Road. On April 2, 1980, in Case #72, the Cobb County Board of Commissioners (the "**Board**") unanimously approved the rezoning of the Property to NS subject to the condition that there be a thirty (30) foot buffer along the southern and eastern property lines (to serve as a buffer to neighboring R-20 property).¹ The Property subsequently was improved and, for more than 20 years, a day care facility operated on the Property.

¹ In 1980, the Property was approximately 6.7 acres. At some point, the owner of the Property sold approximately 3 acres to the west (rear of the Property from Powder Springs Road frontage).

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Cobb County, Georgia
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Proposed Rezoning

Zions FNB acquired the Property by Deed Under Sale of Power on October 4, 2011. Zions FNB now has a prospective purchaser for the Property who intends to operate a child day care facility at the Property. Although day care facilities are a permitted use under the Property's current NS zoning, Zions FNB has learned that the use may not be allowed. Specifically, effective on January 1, 1991, Cobb County determined that it would not accept new applications for rezoning to the NS (Neighborhood Shopping) district. Further, effective as of January 1, 1991, Chapter 134 of the Official Code of Cobb County, Georgia (the "**Zoning Ordinance**") was amended to reflect that "any existing developed NS zoning/use located outside of a community activity center or regional activity center shall be deemed to be a grandfathered, nonconforming use...." *See Zoning Ordinance, Section 134-162 (37)*.

Because the Property is not located within a community or a regional activity center, Cobb County has taken the position that the zoning and use of the Property are nonconforming. Further, because the day care facility ceased operations at the Property around the time Zions FNB acquired the Property in 2010, Cobb County has taken the position that the nonconforming use has been abandoned. *See Zoning Ordinance, Section 134-31*. Although Zions FNB disagrees with Cobb County's positions,² to avoid a dispute and to ensure that the Property has a current, conforming zoning, which will allow the purchaser to operate a day care facility, Zions FNB has filed this Application.³

² Zions FNB disputes the necessity of having to rezone the Property to continue or resume day care facility use. First, Zions FNB contends that the amendment to the Zoning Ordinance affecting the NS zoning district description was not properly noticed in accordance with the Zoning Procedures Law, *O.C.G.A. § 36-66-1, et seq.*, and the Zoning Ordinance. Second, Zions FNB believes that it may have a vested interest in using the Property for use as a day care facility. Third, under Georgia law, notwithstanding the language of the Zoning Ordinance respecting the "presumption" of abandonment of nonconforming uses, Zions FNB contends that the day care use was not abandoned. *See Ansley House, Inc. v. City of Atlanta*, 260 Ga. 540, 542 (1990) (expiration of the time period set forth in an ordinance merely raises a rebuttal presumption that there has been an intent to abandon a nonconforming use). Fourth, the adoption of the future land use plan designating the Property as LDR (Low Density Residential) could be viewed as a rezoning of the Property, and Zions FNB has no evidence of Cobb County's compliance with the ZPL prior to adopting the plan. *See O.C.G.A. § 36-66-4(a)*. Finally, but without limitation, because the current zoning map still shows NS zoning on the Property, a day care or commercial use conforms to the Zoning Ordinance Map, and Zions FNB disputes that the rezoning of the Property is necessary to continue or resume that use.

³ Zions FNB notifies Cobb County of its constitutional concerns with respect to its Application. If the Board denies the Application in whole or in part, then the Property does not have a reasonable economic use under the Zoning Ordinance. Moreover, the Application meets the test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power. *See Guhl vs. Holcomb Bridge Road*, 238 Ga. 322 (1977). If the Board denies the

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The proposed rezoning to LRO will allow the Property to continue to be used as it has been for more than two decades. Zions FNB is not proposing any new development, addition or modification to the existing structures or improvements, all of which are shown on the survey being filed concurrently with this Application. Additionally, the proposed rezoning to LRO will be consistent with other properties zoned LRO directly across Powder Springs Road. The existing structures on the Property meet all of the LRO district requirements and no variances are necessary to ensure conformity.

Application Requirements

Section 134-121 of the Zoning Ordinance sets forth the various requirements applicable to requests for rezonings, some of which are addressed above and the remainder of which are addressed in supporting documents. Specifically, in support of the Application, Applicant submits the following documents:

Application in whole or in part, such an action will deprive Zions FNB and any future Property owner of the ability to use the Property in accordance with its highest and best use. Similarly, if the Board rezones the Property to some classification other than the LRO zoning district without Zions FNB's consent, or if the Board limits its approval by attaching conditions to such approval affecting the Property or the use thereof without FNB's consent, then such approval would deprive Zions FNB and any future Property owner of any reasonable use and development of the Property. Any such action is unconstitutional and will result in a taking of property rights in violation of the just compensation clause of the Constitution of the State of Georgia (*see Ga. Const. 1983, Art. I, § 3, para. 1(a)*), and the just compensation clause of the Fifth Amendment to the United States Constitution (*see U.S. Const. Amend. 5*). To the extent that the Zoning Ordinance allows such an action by the Board, the Zoning Ordinance is unconstitutional. Any such denial or conditional approval would discriminate between Zions FNB and any future Property owner and owners of similarly situated property in an arbitrary, capricious, unreasonable and unconstitutional manner in violation of Article I, Section I, Paragraph 2 of the Georgia Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Finally, a failure to grant the Application or a conditional approval of the Application (with conditions not expressly approved by Zions FNB) would constitute a gross abuse of discretion and would constitute an unconstitutional violation of Zions FNB's rights to substantive and procedural due process as guaranteed by the Georgia Constitution (*see Ga. Const. 1983, Art. I, § 1, para. 1*) and the Fifth and Fourteenth Amendments of the United States Constitution (*see U.S. Const. Amend. 5 and 14*). Zions FNB further challenges the constitutionality and enforceability of the Zoning Ordinance, in whole and in relevant part, for lack of objective standards, guidelines or criteria limiting the Board's discretion in considering or deciding applications for rezonings. Zions FNB remains optimistic that Cobb County's consideration of the Application will be conducted in a constitutional manner.

HOLT NEY ZATCOFF & WASSERMAN, LLP


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Z-34 (2013)
Applicant's
Summary of
Intent

- (1) Original notarized signatures of titleholder and representative;
- (2) Secretary's Certificate evidencing corporate authorization;
- (3) Copy of the Deed Under Power of Sale evidencing Zions FNB as the owner of the Property;
- (4) Metes and bounds legal description of the Property;
- (5) Copy of the paid tax receipt indicating all taxes have been paid;
- (6) Copy of current as built boundary survey depicting all required items;
- (7) Zoning Application Disclosure forms;
- (8) Documented Impact Analysis;
- (9) Application Fee (\$1,000);
- (10) Signage Fee (\$309); and
- (11) This Summary of Intent.

The Application, this letter and accompanying documents support Zions FNB's request for rezoning, and Zions FNB respectfully requests that the Zoning Division recommend approval of the Application to the Board. Zions FNB is happy to answer questions or provide any additional information that the Zoning Division may have with regard to this Application.

Sincerely,



Ellen W. Smith



Melissa J. Perignat

For Holt Ney Zatcoff & Wasserman, LLP

EWS/ews

cc: Mr. Christopher Sayer
J. Scott Jacobson, Esq.
(both by e-mail only)

COBB COUNTY GEORGIA
HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

2013 MAY -2 PM 2:32

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5960

COBB COUNTY ZONING DIVISION TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

Re: Application for Rezoning
Applicant: Zions First National Bank
Property: 2424 Powder Springs Road

DOCUMENTED IMPACT ANALYSIS OF ZONING STANDARDS IN SUPPORT OF
ZIONS FIRST NATIONAL BANK'S REZONING APPLICATION

Section 134-121(a)(7) of the Zoning Ordinance¹ and O.G.C.A. § 36-67-3 require the Board to consider six general lines of inquiry when attempting to balance the general public's interests in health, safety, morality, and general welfare against the private interest of a property owner in the process of deciding whether to grant or deny a rezoning application. Applying these six guideposts to the Application shows that the Property should be rezoned to LRO and the Board should GRANT the Application.

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent or nearby property.

If the Board's zoning decision is to grant the Application, such decision will permit a use that is suitable in view of the use and development of adjacent or nearby property. Although the Property lies in an area of the County that is designated as LDR (Low Density Residential) on the Future Land Use Map to the Cobb County Comprehensive Plan as amended through 2011 (the "*FLUM*"), there are four properties directly to the east of the Property, across Powder Springs Road, which are zoned LRO. Additionally, given that this Property previously was zoned NS, and was used in accordance with that zoning designation since early 1980, this proposed use has been longstanding and unobjectionable. Accordingly, a decision to grant the Application and rezone the Property to LRO would be entirely consistent with and suitable in view of the surrounding uses.

However, if the Board's zoning decision is to deny the Application, such decision would ensure that the Property will remain vacant and unusable for the foreseeable future. The proposed use will take advantage of already existing improvements and avoid any significant disturbance of area residents.

2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.

If the Board grants the Application, then the zoning decision will not adversely affect the existing use or usability of adjacent or nearby property. Instead, it will ensure that the use of the Property will continue as intended generally per the zoning granted in 1980. The Application meets or exceeds all of the existing LRO zoning requirements and will ensure that already existing buffers are maintained.

¹Capitalized terms not otherwise defined in this Analysis shall have the meanings ascribed to them in the Statement submitted by Municipal Communications, LLC with its Application.

HOLT NEY ZATCOFF & WASSERMAN, LLP

Documented Impact Analysis of Zoning Standards in Support of
Zions First National Bank's Rezoning Application
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3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

This is an issue of dispute because Zions FNB believes that it could use the Property for a children's day care center without the rezoning because, among other reasons: (i) it has vested interest in using the Property for use as a day care facility, (ii) the day care use was not abandoned, and (iii) the current zoning map still shows NS zoning on the Property and a day care or commercial use is a permitted use thereunder. Nevertheless, if the County's position is correct, and Zions FNB could not use the Property in accordance with the NS zoning, then the Property has no reasonable economic use because under the County's theory, it has no zoning. In that case, there is no use of the Property permitted and Zions FNB has no reasonable economic use of the Property.

The sole offer that Zions FNB has received since it obtained ownership of the Property in 2011, is to purchase the Property for operation of a children's day care center. Because Applicant has not been able to use the Property to date, and because it appears to Applicant that it likely will not be able to make use of the Property until it is rezoned to LRO (absent litigation with the County), Applicant filed the Application. This factor strongly favors granting the Application.

4. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The Board's decision to grant the Application will not result in a use that will cause excessive or burdensome use of existing infrastructure. Zions FNB is not proposing any expansion of the improvements on the Property and no more children will be accepted into the day care than previously were allowed. Instead, Zions FNB is proposing merely a continuation of the same use of the Property that has existed for more than twenty years. Currently, Cobb County's infrastructure is sufficient to allow the continuation of the use of the Property in accordance with permitted uses in the LRO district.

5. Whether the zoning proposal is in conformity the policy and intent of the land use plan.

The FLUM reflects that the Property and all surrounding properties are LDR. That said, for more than twenty years, the FLUM has failed and continues to fail to reflect existing conditions, including the four parcels zoned LRO immediately across Powder Springs Road from the Property. Likewise, the FLUM does not reflect the need for day care in this area of the County. Although the Application may not be in conformity with the projection for this area as shown on the FLUM, the proposed rezoning to LRO would be a down (less intense) zoning because the number of permitted uses are severely limited by comparison to the existing NS permitted uses. Accordingly, this rezoning proposal does reflect a shift to less dense, more appropriate use that is comparable to adjacent and nearby single family residential.

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Documented Impact Analysis of Zoning Standards in Support of
Zions First National Bank's Rezoning Application
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- (6) Whether there are other existing or changing conditions affecting the use and development of the property, which give supporting grounds for either approval or disapproval of the zoning proposal.**

This rezoning will permit the existing conditions to remain in place and the Property to operate as it has for over twenty years. This supports the approval of the Application.

Based on all of these factors, Applicant has produced sufficient information to allow the Board fully to consider all relevant factors and to demonstrate that the Application complies with all applicable requirements and is otherwise consistent with the policies reflected in the factors enumerated in this chapter for consideration by Cobb County. The Board should APPROVE the Application.

NO. 72

COBB COUNTY BOARD OF COMMISSIONERS OF ROADS AND REVENUES

COBB COUNTY PLANNING COMMISSION

Date of Application 2/29/80 Date of Hearing, Wed. 4/2/80 1:00 P.M.

Titleholder H. L. Hendricks /s/ W. L. Hendricks

Address 2433 Powder Springs Rd - Marietta, Ga Phone 943-5762

Applicant Katherine W. Jones /s/ Katherine W. Jones

Address 14684 Wayland Circle, Acworth, Georgia 30101 Phone 974-4672

To Zone From R-20 To N-S Land Use

FOR THE PURPOSE OF Day Care and Kindergarten

Land Lot (s) 714, District 19th, Sec. 2nd Cobb County, Ga.,

CONTAINING 6.70 acres

LOCATED Powder Springs Road and Curtis Road

This property being more particularly described as follows:

BEGINNING at a point on the westerly side of Powder Springs Road 559.71 feet south of the east Land Lot Line of Land Lot 714; thence south westerly along the westerly right of way of Powder Springs Road a distance of 125 feet to a point; thence North 86 degrees 19 minutes, 38 seconds west a distance of 403.17 to a point; thence South 4 degrees 27 minutes, 3 seconds west a distance of 269.55 feet to a point; thence North 89 degrees 37 minutes, 5 seconds west a distance of 588.21 feet to a point; thence north 00 degrees 22 minutes, 59 seconds east a distance of 420.15 feet to a point; thence south 86 degrees, 19 minutes 38 seconds east a distance of 1064.32 feet to the point of Beginning.

Recommendation of Planning Commission: 4/2/80 Planning Commission recommended application be deleted to OI, subject to 30 foot buffer along the southern property line and the eastern property line, which abuts the property of J.W.

Cooper to remain zoned R-20. Motion by Diemer, seconded by Weeks; carried

4-2-1 Adams, Fowler opposed, Thompson abstained.

Bill Adams, Chairman

Final Decision of Board of Commissioners: 4/2/80 Board of Commissioners approved application for NS zoning subject to 30 foot buffer along the

southern and the eastern property lines which abuts the property of J.W. Cooper to remain zoned R-20. Motion by Ruff, seconded by Thompson; carried 5-0.

Conrad W. Barrett, Chairman