

**DECEMBER 17, 2013 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 2**

ITEM # 4

PURPOSE

To consider stipulation amendments regarding rezoning application #335 of 1983 (Crow Land Development, Inc.), for property located on the south side of Cobb Parkway, east of Akers Mill Road in Land Lots 948 and 979 of the 17th District.

BACKGROUND

The subject property was rezoned to General Commercial in 1983 for a shopping center. The shopping was built and is still in use today. Two of the thirteen zoning conditions concerned the signage on the property. The applicant would like to amend these two conditions since the area around the shopping center has significantly changed since 1983. The applicant would like to delete stipulation #3 which states *“The signs appearing on the face of the buildings shall be individual letters, which shall be backlighted and no more than twenty-four inches in height; such lettering or signage on the front of the buildings shall not extend more than fifteen feet off the ground”*. The applicant would like to amend stipulation #4 to delete the requirement the entrance sign be *“similar in design and materials to the exterior of the shopping center”*. If approved, the applicant would still be subject to the sign ordinance and all previous zoning stipulations would remain in effect.

FUNDING

N/A

RECOMMENDATION

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

ATTACHMENTS

Other Business application and stipulations.

Application for "Other Business" Cobb County, Georgia

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

BOC Hearing Date Requested: 12/17/2013

Applicant: Wilmer Properties (see attached) list of Phone #: _____
(applicant's name printed) owners and contact information)

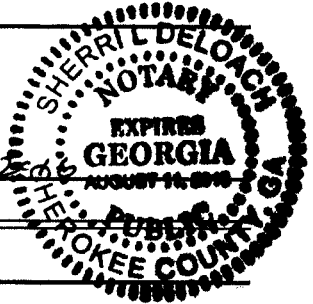
Address: _____ **E-Mail:** _____

James M. Ney, Esq. Address: Holt Ney Zatzcoff & Wasserman, LLP 100 Galleria
(representative's name, printed) Parkway, Suite 1800, Atlanta, Georgia 30339

James M. Ney Phone #: 770.956.9600 E-Mail: jney@hnzw.com
(representative's signature)

Signed, sealed and delivered in presence of:

Sherril DeLoach My commission expires: Aug. 11, 2015
Notary Public



Titleholder(s): See attached Phone #: _____
(property owner's name printed)

Address: _____ **E-Mail:** _____

(Property owner's signature)

Signed, sealed and delivered in presence of:

Notary Public My commission expires: _____

Commission District: 2 **Zoning Case:** 335 (1983)

Date of Zoning Decision: 9/13/1983 **Original Date of Hearing:** 9/13/1983

Location: 2980 Cobb Parkway, Atlanta, Georgia 30339
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 948 **District(s):** 17th

State specifically the need or reason(s) for Other Business: To delete condition #3 of
1983 zoning conditions restricting shopping center tenant signage; to delete the
phrase "and it shall be similar in design and materials to the exterior of the
shopping center" from condition #4 of the 1983 zoning conditions.

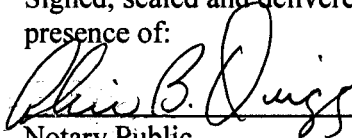
(List or attach additional information if needed)

APPLICANT AND PROPERTY OWNER SIGNATURE AND AUTHORIZATION
COBB COUNTY "OTHER BUSINESS" APPLICATION

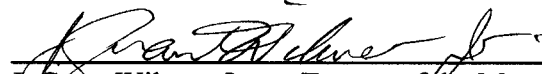
We, the undersigned, collectively, own the shopping center and real property commonly known as the Cumberland Festival Shopping Center located at 2980 Cobb Parkway SE, Atlanta, Cobb County, Georgia. We authorize James M. Ney and Ellen W. Smith, attorneys with Holt Ney Zatzoff & Wasserman, LLP, to serve as our representatives with respect to this Application.

Our contact information is in care of: J. Wilmer Grant, Jr., Esq., Arnall Golden Gregory, 171 17th Street NW, Suite 2100, Atlanta, Georgia 30363, (404) 873-8686, fax (404) 873-8687.

Signed, sealed and delivered in the presence of:



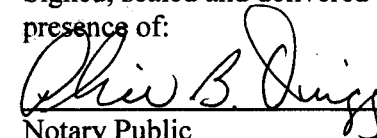
Notary Public
My Commission Expires: **ALICE B QUIGG**
Notary Public, DeKalb County, Georgia
My Commission Expires Jan. 12, 2014



J. Grant Wilmer, Jr., as Trustee of the Mary Charles F. Wilmer 2012 Trust

[NOTARY SEAL]

Signed, sealed and delivered in the presence of:



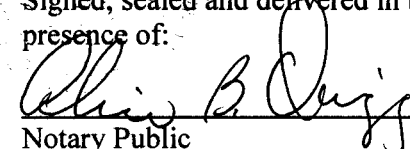
Notary Public
My Commission Expires: **ALICE B QUIGG**
Notary Public, DeKalb County, Georgia
My Commission Expires Jan. 12, 2014




J. GRANT WILMER, JR.

[NOTARY SEAL]

Signed, sealed and delivered in the presence of:



Notary Public
My Commission Expires: **ALICE B QUIGG**
Notary Public, DeKalb County, Georgia
My Commission Expires Jan. 12, 2014



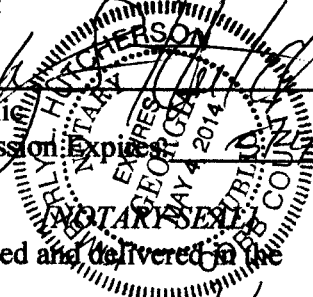
J. GRANT WILMER, JR. AS TRUSTEE OF THE J. GRANT WILMER, JR. GST TRUST


[NOTARY SEAL]

[signatures continued on following page]

Signed, sealed and delivered in the presence of:


Notary Public
My Commission Expires: 5/4/2014




Knox R. Wilmer, as Trustee of the Mary Charles F. Wilmer 2012 Trust

Signed, sealed and delivered in the presence of:

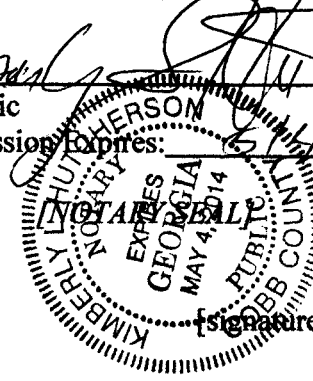

Notary Public
My Commission Expires: 5/4/2014

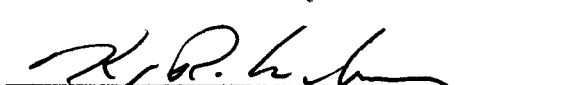



KNOX R. WILMER

Signed, sealed and delivered in the presence of:


Notary Public
My Commission Expires: 5/4/2014

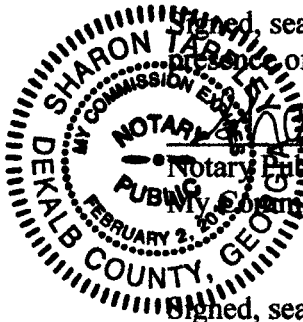



KNOX R. WILMER AS TRUSTEE OF THE KNOX R. WILMER GST TRUST

[signatures continued on following page]

Signed, sealed and delivered in the

presence of:

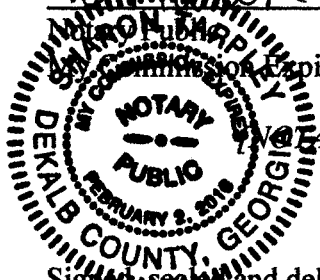


Sharon Tarpley
Notary Public
My Commission Expires: 2/2/16

[NOTARY SEAL]

Signed, sealed and delivered in the

presence of:

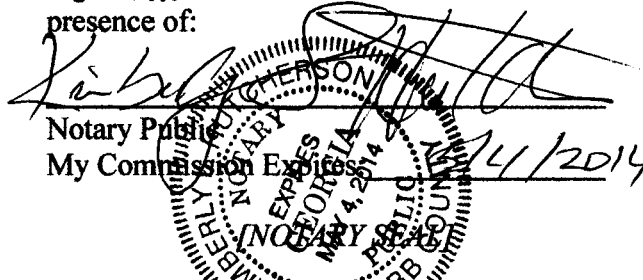


Sharon Tarpley
Notary Public
My Commission Expires: 2/2/16

[NOTARY SEAL]

Signed, sealed and delivered in the

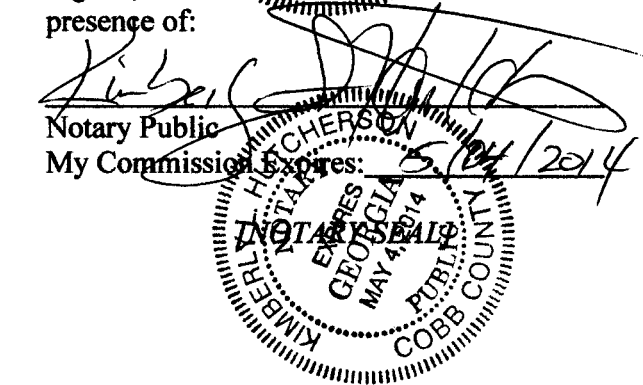
presence of:



Kimberley Hatcher
Notary Public
My Commission Expires: 5/4/2014

Signed, sealed and delivered in the

presence of:



Kimberley Hatcher
Notary Public
My Commission Expires: 5/4/2014

[NOTARY SEAL]

Charles I. Wilmer

CHARLES I. WILMER

Charles I. Wilmer

CHARLES I WILMER AS TRUSTEE OF
THE CHARLES I. WILMER GST TRUST

Catherine G. Wilmer

CATHERINE G. WILMER

Catherine G. Wilmer

CATHERINE G. WILMER AS TRUSTEE
F/B/O CAHTERINE WILMER DE
LADOUCETTE (former married name)

HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5947

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

James M. Ney

e-mail jney@hnzw.com

Ellen W. Smith

e-mail esmith@hnzw.com

November 12, 2013

BY HAND DELIVERY

Zoning Division

Community Development Agency

Cobb County, Georgia

1150 Powder Springs Street

Suite 400

Marietta, Georgia 30064

Re: Application for "Other Business" Cobb County, Georgia (the "***Application***") by Wilmer Properties¹ with respect to 2980 Cobb Parkway, Atlanta, Georgia (the "***Property***")

Ladies and Gentlemen:

This law firm has the pleasure of representing Wilmer Properties. Please accept this letter of intent in connection with and in support for the referenced Application. Specifically, Wilmer Properties submits the Application for purposes of modifying two outdated zoning conditions which unreasonably impact signage at the Cumberland Festival Shopping Center located on the Property, and we respectfully request the approval of the Application.

The Property was zoned in September 1983 from R-80 to GC for the purpose of a shopping center and related parking (1983 Case No. 335). At the time of the rezoning, there were a number of developmental conditions to which the shopping center developer and neighboring community members and groups, including the "Vinings Association" agreed. A copy of the existing zoning conditions is attached hereto for reference as Exhibit A (the "***Zoning Conditions***").

For thirty years, the Cumberland Festival Shopping Center has operated on the Property while adjacent and nearby properties have been developed and, lately, redeveloped. In those

¹The owners of the Property (collectively referred to herein as "***Wilmer Properties***") are: J. Grant Wilmer, Jr. and Knox R. Wilmer as Trustees of the Mary Charles F. Wilmer 2012 Trust; J. Grant Wilmer, Jr.; Knox R. Wilmer; Charles I. Wilmer; Catherine G. Wilmer; Catherine G. Wilmer as Trustee F/B/O Catherine Wilmer de Ladoucette (former married name); J. Grant Wilmer, Jr. as Trustee of the J. Grant Wilmer, Jr. GST Trust; Knox R. Wilmer as Trustee of the Knox R. Wilmer GST Trust; Charles I. Wilmer as Trustee of the Charles I. Wilmer GST Trust.

HOLT NEY ZATCOFF & WASSERMAN, LLP

Zoning Division
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three decades tenants have come and gone, and signage appearing on the face of the shopping center building generally has changed with those tenants. Although tenant signage generally has met the provisions of whatever then existing signage regulations the County has adopted, including, most recently, the provisions of Article VI, Chapter 134 of the Official Code of Cobb County, Georgia, as the same is amended from time to time (such Article being the “*Sign Ordinance*”), and as owners of the Shopping Center has changed, they have forgotten certain provisions of the Zoning Conditions with respect to signage. Perhaps most importantly, no one else has remembered them either as they are quite outdated and not consistent with development and signage trends.² A review of the shopping centers, businesses, restaurants, and other uses along Cobb Parkway in this area clearly indicates how out of date these two 1983 conditions are.

Specifically, Zoning Conditions 3 and 4 expressly deal with signage and limit the design of signage that is permissible on the Property:

3. The signs appearing on the face of the buildings shall be individual letters, which shall be backlighted and no more than twenty-four inches in height; such lettering or signage on the front of the buildings shall not extend more than fifteen feet off of the ground.

4. There shall be only one sign along U.S. Highway 41 and it shall be similar in design and materials to the exterior of the shopping center.

No portion of the Sign Ordinance mimics the restrictions of Zoning Condition 3. Likewise, although Wilmer Properties agrees that the Shopping Center is entitled to only one monument or identification sign, Wilmer Properties desires to update the existing Shopping Center pylon sign and to not be limited to the “similar in design and materials” language of Zoning Condition 4. Accordingly, Wilmer Properties seeks to delete Zoning Condition 3 and to delete the following phrase “and it shall be similar in design and materials to the exterior of the shopping center” from Zoning Condition 4.

² Indeed, Zoning Condition 3 was brought to Wilmer Properties’ attention when one of its new tenants sought a sign permit for its sign and the County Code Enforcement Officer realized that Zoning Condition 3 had not been adhered to in quite some time. Specifically, the County Code Enforcement Officer issued a Notice of Violation to Wilmer Properties (Violation Number Code -2013-07807 dated October 8, 2013), a copy of which along with our law firm’s response to the Notice of Violation is enclosed as Exhibit B. This was not a result of any adjacent property owner or third party making a complaint about signage. Wilmer Properties has filed this Application to address the Notice of Violation.

HOLT NEY ZATCOFF & WASSERMAN, LLP


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The deletions requested will not change the Applicant's (or its tenants') obligations to comply with the requirements of the Sign Ordinance.

Enclosed together with the previously referenced exhibits are our law firm's checks in the amount of \$350.00 for the Application fee and \$18.00 for the sign fees. Wilmer Properties is happy to answer any questions or address any concerns that the Department may have regarding the Application, and we respectfully request that the Board of Commissioners approve this Application.

Thank you and best regards.

Sincerely,



James M. Ney

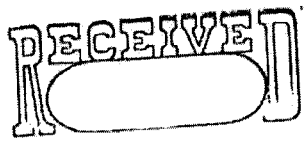


Ellen W. Smith

EWS/ljs

Enclosures

cc: J. Grant Wilmer, Jr., Esq.
Mr. Knox Wilmer



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

Date of Application July 28, 1983 Date of Hearing September 13, 1983
By: [Signature]
Titleholder United Jewelers and Distributors, Inc. Signature Title: Senior Vice President
(Authorized Party to Bind Said Entity)
Address 820 Fannin, Houston, Texas 77002 Phone 713-222-8080
Applicant Crow Land Development, Inc. Signature By: [Signature]
30339 CROW LAND DEVELOPMENT, INC.
Address 100 Galleria Parkway, Suite 1000, Atlanta, GA Day Phone 404-955-1300
To Zone From R-80 To GC Land Use _____
For the Purpose of a shopping center and related parking area.
Land Lot(s) 948 and 979 District 17th Section 2nd, Cobb County
Containing approx. 3.423 acres
Located approx. 540.42 feet southeast from the intersection of Stillhouse Road and U.S. Hwy. 41
This property being more particularly described ~~XXXXXXXXXX~~ on the legal description
attached hereto as Exhibit "A" and made a part hereof.

Additional information in regard to this property is provided on Exhibit "B" attached hereto and made a part hereof.

RECOMMENDATION OF PLANNING COMMISSION 9-13-83 - Planning Commission recommended application be approved subject to site plan as submitted and agreements marked exhibit A. Motion by Vansant, seconded by Adams; carried 7-0.

[Signature], Chairman

FINAL DECISION OF BOARD OF COMMISSIONERS 9-13-83 - Board of Commissioners approved application as stated above. Motion by Williams, seconded by Barrett; carried 5-0.

[Signature], Chairman

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Trammell Crow Company 404/855-1300
100 Galleria Parkway, N.W.
Suite 1000
Atlanta, Georgia 30339

EXHIBIT "A"

September 8, 1983

9-14-83
JLW

Vinings Association
c/o Ms. Linda Barnes Cater
23 Stillhouse Road, N.W.
Atlanta, Georgia 30339

Cobb County Board of Commissioners
of Roads and Revenues and
Cobb County Planning Commission
10 East Park Square, N.E.
Marietta, Georgia 30060

Re: Zoning Application of Crow Land Development, Inc.
pertaining to 3.423 acres fronting on U.S. Highway 41,
set for hearing before the Board of Commissioners of
Cobb County, Georgia on September 13, 1983, designated
as Zoning Item 335.

Dear Ladies and Gentlemen:

The purpose of this letter is to set forth certain accords which have been reached between the applicant, Crow Land Development, Inc. ("Developer"), and the Vinings Association and its zoning subcommittee as the community group representing the best interests of the property owners in the area surrounding the property which is the subject of this rezoning.

It is contemplated that this letter shall be submitted as a part of the zoning application and the rezoning of this property shall be expressly conditioned upon each and every one of the items and provisions set forth and contained herein.

There have been numerous conferences with various property owners in the immediate area and at least four meetings with the community, Vinings Association or its zoning subcommittee reviewing the plans, designs and general approach to be undertaken in the development of this property. As a feature

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Trammell Crow Company

September 8, 1983
Page two

of these discussions, the community requested certain assurances in regard to the development of the property and these conditions are set forth herein and shall expressly become conditions of the rezoning of this property.

The conditions of the rezoning are as follows:

1. The project to be built upon the property shall be in accordance with the Site Plan designated "Cumberland Festival" for Trammell Crow/Allen Meredith, dated August 10, 1983, prepared by Gary B. Coursey & Associates. The project shall be one story and shall contain no more than 38,165 square feet of buildings. There will be no restaurants and generally all space will be occupied by boutique-type tenants thereby calling for far less parking than in a regular shopping center with grocery store or other anchor tenants or restaurants. There will be 162 parking spaces provided and a variance likely will be required to accommodate this reduced parking. The project which is indicated and shown thereon shall be developed by an entity of the Trammell Crow Company and all plans at this time are to refer to this project as "Cumberland Festival".
2. All light poles for the lighting of the project shall be no taller than thirty feet and all lights from these lighting facilities shall be directed downward and onto the site. The lights attached to the rear of the buildings shall be directed downward.
3. The signs appearing on the face of the buildings shall be individual letters, which shall be backlighted and no more than twenty-four inches in height; such lettering or signage on the front of the buildings shall not extend more than fifteen feet off of the ground.
4. There shall be only one sign along U. S. Highway 41 and it shall be similar in design and materials to the exterior of the shopping center.
5. There shall be no more than two points of access off of U. S. Highway 41 and both of these points of access shall be two-way facilities which allow for entrance and exit to the project as may be allowed by the Department of Transportation of the State of Georgia.
6. In providing for the sewerage disposal for the project, the Developer shall connect to and tap onto an

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Page three

existing sewer line either to the west of this site or to the southwest thereof as directed by Cobb County, Georgia or other governmental authority having jurisdiction over this type of connection.

7. The wall to be constructed along portions of the southern side of this project shall have a granite exterior and the landscaping to be achieved thereon shall be generally composed of evergreen vegetation, plants and trees. The wall to be constructed along the southern boundary line shall be broken into two levels and landscaping shall be accomplished on the mid-level and top of said wall. The construction of the wall, the landscaping and the berm to be located on top of the wall shall generally look like and appear as shown on the diagram which is marked Exhibit "A" and attached hereto and made a part hereof. The landscaping, including but not limited to all plants, trees and vegetation planted along and on the wall and throughout the shopping center, shall be maintained and cared for by the owner of the project and shall be replaced periodically as said plants, vegetation or trees may be killed or damaged by weather or other causes.

8. The roofs of the shopping center shall be a pitched, residential type of roof with a shingle which resembles the type normally associated with residential facilities.

9. Special provisions shall be made during the construction of this facility to detain surface water runoff on the property.

10. After construction has been completed, surface water shall be detained on the property as required by Cobb County, Georgia.

11. There shall be no visible garbage facilities in the rear of the facility.

12. There shall be no fire lane along the southern boundary (rear) of the property.

13. There shall be no storage of materials outside of and in the rear of the buildings on the site.

The foregoing conditions are submitted as a part of and a condition to the above zoning application and in the event of the rezoning of this property as requested, each and every one of these conditions shall be and become a part of such rezoning.

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September 8, 1983
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Let me thank you in advance for your cooperation and assistance.

CROW LAND DEVELOPMENT, INC.

By: 

Allen K. Meredith,
Vice President

AKM:JMN:acm

cc: Mr. George W. Humphreys
Mr. George M. Poole, Jr.

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HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5960

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

James M. Ney

e-mail jney@honzw.com

EXHIBIT

B

October 16, 2013

Ms. Cathey Pickett, Inspector
Cobb County – Community Development Agency
Code Enforcement Division
1150 Powder Springs Road, Suite 400
Marietta, Georgia 30064

Re: Notice of Violation dated October 8, 2013, being Violation Number – Code-2013-07807, pertaining to Cumberland Festival Shopping Center located at 2980 Cobb Parkway, S.E., in Land Lot 948 of the 17th District, Cobb County, Georgia (a copy of said Notice of Violation is attached hereto as Exhibit “A”)

Dear Ms. Pickett:

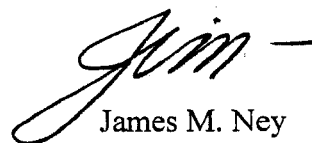
It was nice to confer with you earlier today in regard to the above matter and I appreciate your cooperation and assistance. As I advised you at that time, I have conferred with the owners of the Shopping Center and will be conferring with them in greater depth as we plan the exact measures to be undertaken. My general reaction is to bring an application for “other business” as you have suggested and simply seek to remove Condition No. 3 as it presently appears in the letter dated September 8, 1983, which were the conditions applicable to this rezoning which took place in 1983.

The purpose of my letter today is to ask you to please hold this matter until we have an opportunity to prepare the application and undertake such steps as may be necessary to bring and follow through with this application. It would be my early conclusion that we would think in terms of filing this application under “other business” at the November 12, 2013, filing deadline in order that it would come on for hearing before the Board of Commissioners under the “other business” schedule on December 17, 2013.

I hope this does not create any problems or concerns for you, and if it does, please give me a call in order that I may confer with you.

Thank you for your cooperation and we look forward to working with you.

Sincerely,



James M. Ney

JMN/sld
Enclosure



Cobb County... Expect the Best!

COBB COUNTY - COMMUNITY DEVELOPMENT AGENCY Code Enforcement Division

Mailing Address: P.O. Box 649 Marietta, GA 30061
Physical Address: 1150 Powder Springs Rd. Suite 400 Marietta, GA 30064
Phone: (770)528-2180
Fax: (770)528-2092

Notice of Violation

Violation Number CODE-2013-07807 **Date** October 8, 2013

The Cobb County Code Enforcement Division has grounds to believe the property located at:

<u>2980 COBB PKWY SE</u>		<u>17</u>	<u>0948</u>	<u>024</u>	<u>GC</u>
(Address)	(City/State/Zip)	(Dist)	(Land Lot)	(Par)	(Zoning)

and/or WILMER M C F & J G JR & K R & C I & (3535 ROSWELL RD, MARIETTA, GA 30062)
and/or DAVID MANNE THE SHOPPING CENTER GROUP LLC (300 GALLERIA PKWY 12TH FLOOR)

may be in violation of the Official Code of Cobb County, Georgia. You have 10 days to bring the violation(s) into compliance. An inspection will be made on or about 10 days from October 8, 2013 . Failure to comply could result in a citation being issued for you to appear in the Cobb County Magistrate Court, and you may be subject to a fine, imprisonment, or both.

<u>Violation</u>	<u>Code Section</u>	<u>Requirement for Compliance</u>
GENERAL REGULATIONS	134-313 (C)	ALL SIGNS REQUIRE A PERMIT. NO SIGN PERMIT APPLIED FOR NATIONWIDE SIGNAGE Zoning Stipulation Case Z-335 OF 1983. Per letter of agreeable conditions marked as exhibit A, Item #3 The signs appearing on the face of the buildings shall be individual letters, which shall be backlighted and no more than twenty-four inches in height; such lettering or signage on the front of the building shall not extend more than fifteen feet off of the ground. Nationwide, Mattress Firm and AT&T all have signage which include components that are not individual letters
PENALTIES	134-2	YOU MAY CONTACT THE ZONING DIVISION AT (770) 528-2045 FOR INFORMATION ON FILING AN OTHER BUSINESS ITEM FOR CONSIDERATION OF AMENDING THE CONDITIONS THAT WERE PLACED ON THE PROPERTY IN 1983.

EXHIBIT A

Cathey Pickett

Inspector

(770) 528-2112 8-9am
and 3:30-4:30pm Mon-Fri

Telephone

A COMPLETE COPY OF THE COBB COUNTY ORDINANCES MAY BE VIEWED AT WWW.COBBCOUNTY.ORG