

**AUGUST 19, 2014 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM OB-46

PURPOSE

To consider amending the site plan for Edens and Avant Financing II Limited Partnership regarding rezoning application Z-23 of 2011 (Edens and Avant Financing II Limited Partnership), for property located on the southwest side of Shallowford Road, west side of Sandy Plains Road and the east side of Gordy Parkway in Land Lots 385, 386, 407 of the 16th District.

BACKGROUND

The subject property was rezoned to the Community Retail Commercial (CRC) zoning district in 2011 for retail subject to the site plan submitted. The applicant is planning on renovating the shopping center to produce more curb appeal for the shopping center patrons. The applicant would like to extend the sidewalk five-feet away from the shops in order to provide a more walkable environment, and the applicant will also renovate the facades of the buildings. The applicant is not proposing any new buildings, and this site plan amendment will not affect the parking lot or parking spaces. If, approved all previous zoning conditions not in conflict would remain in effect.

FUNDING

N/A

RECOMMENDATION

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

ATTACHMENTS

Other Business application, zoning stipulations and proposed site plan.

(Site Plan Amendment)

Application for "Other Business" Cobb County, Georgia

JUL 15 2014

OB-46

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

BOC Hearing Date Requested: 08/19/2014

Applicant: Edens & Avant Financing II Limited Partner- Phone #: (803) 779-4420
(applicant's name printed) ship

Address: Suite 1000, 1221 Main Street, Columbia, SC E-Mail: _____

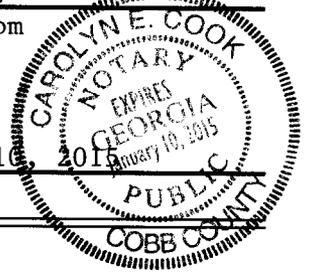
Moore Ingram Johnson & Steele, LLP 29201

John H. Moore Address: Emerson Overlook, 326 Roswell Street
(representative's name, printed) Marietta, GA 30060

BY: [Signature] Phone #: (770) 429-1499 E-Mail: jmoore@mijs.com
(representative's signature) Georgia Bar No. 519800 w7@mijs.com

Signed, sealed and delivered in presence of:

[Signature] My commission expires: January 10, 2015
Notary Public



Titleholder(s): Edens & Avant Financing II Phone #: _____
Limited Partnership (property owner's name printed)

Address: Suite 1000, 1221 Main Street, Columbia, SC E-Mail: _____
29201

See Attached Exhibit "A"
(Property owner's signature)

Signed, sealed and delivered in presence of:

_____ My commission expires: _____
Notary Public

Commission District: 3 (Birrell) **Zoning Case:** #223 (1988); Z-23 (2011)

Date of Zoning Decision: 12/20/1988 **Original Date of Hearing:** 11/15/1988

Location: Westerly side of Sandy Plains Road; southerly side of Shallowford Road; and
Easterly side of Gordy Parkway (existing Sandy Plains Shopping Center)
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 385, 386, 407 **District(s):** 16th

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

See Exhibit "B" attached hereto and incorporated herein by reference.

(List or attach additional information if needed)

EXHIBIT "A" - ATTACHMENT TO APPLICATION FOR "OTHER BUSINESS"
(SITE PLAN AMENDMENT)

Application Nos.: #223 (1988)
Z-23 (2011)
Original Hearing Dates: November 15, 1988
July 19, 2011
Date of Zoning Decisions: December 20, 1988
July 19, 2011
Current Hearing Date: August 19, 2014

JUL 15 2014

BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant/Titleholder: Edens & Avant Financing II Limited Partnership

EDENS & AVANT FINANCING II LIMITED PARTNERSHIP,
A Delaware Limited Partnership

BY: E&A FINANCING II, LLC,
A Delaware Limited Liability Company,
Its General Partner

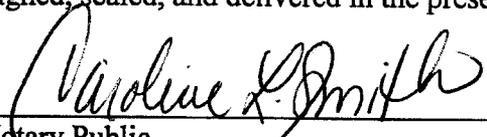
BY: E&A SPECIAL PURPOSE II, INC.,
A Delaware Corporation,
Its Managing Member

BY: 

Jodie W. McLean
President and Chief Investment Officer

Date Executed: 7.14.14

Signed, sealed, and delivered in the presence of:



Notary Public
My Commission Expires: Aug 27, 2013

[Notary Seal]

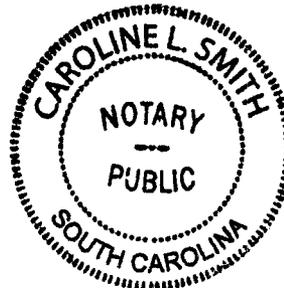


EXHIBIT "B" - ATTACHMENT TO APPLICATION FOR "OTHER BUSINESS"
(SITE PLAN AMENDMENT)

Application Nos.: #223 (1988)
Z-23 (2011)
Original Hearing Dates: November 15, 1988
July 19, 2011
Date of Zoning Decisions: December 20, 1988
July 19, 2011
Current Hearing Date: August 19, 2014

JUL 15 2014

BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant/Titleholder: Edens & Avant Financing II Limited Partnership

Application No.: Z-55 (2013)
Original Hearing Date: September 17, 2013
Date of Zoning Decision: September 17, 2013
Date of OB Decision: November 19, 2013
Current Hearing Date: March 18, 2014

The property which is the subject of this Application for "Other Business" is located at the southwesterly intersection of Shallowford Road and Sandy Plains Road, and on the easterly side of Gordy Parkway, in Land Lots 385, 386, and 407, of the 16th District, 2nd Section, Cobb County, Georgia, and is known as the Sandy Plains Shopping Center (hereinafter "Property" or "Subject Property"). The Property was originally rezoned by the Board of Commissioners in December 1988 as part of a larger development which included retail, office, and residential. The Applicant/Owner of the Property is undertaking renovations and improvements, both interior and exterior, to the shopping center buildings. As part of the renovation, the exterior façade of the center is being renovated and enhanced.

Applicant/Owner seeks an amendment to the currently approved site plan for the Subject Property to allow for extensions of sidewalks and installation of new curbing for the existing shopping center buildings, as more particularly shown and reflected on the Zoning Site Plan, Sheets Z-1 and Z-1.1, dated July 8, 2014, prepared by Haines Gipson & Associates, true and correct copies of which are attached collectively hereto as Exhibit "1" and incorporated herein by reference. No new buildings are proposed for construction and no parking spaces will be affected by the proposed site plan amendments. Extending the sidewalks and replacement of the curbing will allow for enhancement to the exterior façade of the overall center, thus allowing for more "curb appeal" to recruit new tenants and subsequently attract more shoppers to the renovated center.

The amendment requested and presented above in no way adversely impacts or affects the Subject Property or the shopping center, or any part of the approvals made during prior rezonings. If the amended Site Plan is approved, as submitted in this Application, it shall become an additional part of the final rezoning and shall be binding upon the Subject Property.

The balance and remainder of the stipulations and conditions specifically enumerated in the official minutes, and attachments thereto, of the Board of Commissioners Zoning Hearings held on December 20, 1988, and July 19, 2011, applicable to the Subject Property are unaltered by this request for Site Plan Amendment and shall remain in full force and effect.

**ZONING SITE PLANS PRESENTED FOR
APPROVAL BY BOARD OF
COMMISSIONERS IN
APPLICATION FOR “OTHER BUSINESS” -
AUGUST 19, 2014
(DESIGNATED AS EXHIBIT “1” IN
EXHIBIT “B” NARRATIVE)**

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JULY 19, 2011
9:00 A.M.**

The Board of Commissioners' Zoning Hearing was held on Tuesday, July 19, 2011 at 10:00 a.m. in the second floor public meeting room of the Cobb County building, Marietta, Georgia. Present and comprising a quorum of the Board were:

Chairman Tim Lee
Commissioner JoAnn Birrell
Commissioner Helen Goreham
Commissioner Robert Ott
Commissioner Woody Thompson

Z-23

EDENS & AVANT FINANCING II LIMITED PARTNERSHIP (owner) requesting Rezoning from NS to CRC for the purpose of Retail, Fueling Center and Restaurant With Drive-Thru in Land Lots 385, 386 and 407 of the 16th District. Located on the southwest side of Shallowford Road and the west side of Sandy Plains Road, east of Gordy Parkway.

The public hearing was opened and Mr. John Moore, Ms. Jill Flamm, Ms. JoEllen Smith, and Mr. Richard Calhoun addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Ott, to approve Rezoning to the CRC zoning district **subject to:**

- **site plan dated June 23, 2011, with the District Commissioner approving minor modifications, with final plan, including pedestrian crosswalk, to be approved at Plan Review (attached and made a part of these minutes)**
- **letter of agreeable conditions dated July 13, 2011 from Mr. John Moore (attached and made a part of these minutes)**
- **District Commissioner to approve building architecture for the fueling canopy and future restaurant**
- **Architectural Control Committee, as referenced in the original 1988 zoning, to remain intact for this project and any future development on this site (Gordy Architectural Control Committee stipulations attached and made a part of these minutes)**
- **restroom in kiosk to be "employees only" if allowed by Code**
- **products for sale in kiosk to be automotive related only**
- **no vehicles parked for advertising purposes in parking lot or on shopping center property**
- **maximum number of pump stations to be limited to five (5)**

- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations, *removing the requirement for installation of sidewalks on Gordy Parkway road frontage***

VOTE: **ADOPTED 4-1 (Lee opposed)**

Clerk's Notes: Commissioner Birrell encouraged Applicant to dialog with the North Hampton Homeowners Association and the neighboring community in order assist with plan for installation of streetlights along Gordy Parkway.

Upon completion of project, Commissioner Birrell directed DOT staff to review traffic signal timing on Gordy Parkway, Shallowford Road, and Sandy Plains Road.

Chairman Lee directed DOT staff to review final vehicle movement through parking lot from the Gordy Parkway right in/right out entrance due to the fact that the lot will be restriped and parking spaces removed.

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP
WWW.MIJS.COM

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OF COUNSEL:
JOHN L. SKELTON, JR.¹

¹ ALSO ADMITTED IN TN
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¹ ALSO ADMITTED IN KY
¹ ALSO ADMITTED IN NY
¹ ADMITTED ONLY IN TN
¹ ADMITTED ONLY IN FL

July 13, 2011

Hand Delivered

Mr. Jason A. Campbell
Planner III
Zoning Division
Cobb County Community Development Agency
Suite 400
1150 Powder Springs Road
Marietta, Georgia 30064

JUL 13 2011

Min. Bk. 63 Petition No. Z-23
Doc. Type letter of agree-
able conditions
Meeting Date 7/19/11

RE: Application for Rezoning - Application No. Z-23 (2011)
Applicant/Property Owner: Edens & Avant Financing II Limited Partnership
Property: 15.73 acres known as Sandy Plains Shopping
Center, located on the westerly side of Sandy Plains Road;
southerly side of Shallowford Road; and the easterly side of Gordy Parkway,
Land Lots 385, 386, and 407, 16th District
2nd Section, Cobb County, Georgia

Dear Jason:

The undersigned and this firm represent Edens & Avant Financing II Limited Partnership, the Applicant and Property Owner (hereinafter collectively "Applicant"), in its Application for Rezoning with regard to property located on the westerly side of Sandy Plains Road, the southerly side of Shallowford Road, and the easterly side of Gordy Parkway, being approximately 15.73 acres, Land Lots 385, 386, and 407, 16th District, 2nd Section, Cobb County, Georgia, and being the developed retail center known as Sandy Plains Shopping Center (hereinafter the "Property" or the "Subject Property"). After continuing meetings and

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Planner III
Zoning Division
Cobb County Community Development Agency
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conferences with planning and zoning staff and various Cobb County departmental representatives, ongoing discussions and meetings with area civic and homeowner representatives, and reviewing the staff comments and recommendations and the uses of surrounding properties, we have been authorized by the Applicant to submit this revised letter of agreeable stipulations and conditions which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the Subject Property. This letter shall supersede and replace in full the prior letter of agreeable stipulations and conditions dated and filed June 29, 2011. The revised stipulations are as follows:

**STIPULATIONS APPLICABLE TO EXISTING RETAIL CENTER,
INCLUDING DEVELOPED SITE AREA**

- (1) Any and all stipulations and conditions specifically enumerated in the official minutes, and attachments thereto, of the Board of Commissioners Zoning Hearings held regarding Z-188 (1994) and Z-189 (1994), and any subsequent amendments thereto, unless in direct conflict with those set forth herein, shall remain in full force and effect.
- (2) Applicant seeks rezoning of the Subject Property from the existing zoning category of Neighborhood Shopping Center ("NS") to the proposed zoning category of Community Retail Commercial ("CRC"), with reference to the revised Zoning Site Plan prepared by Haines Gipson & Associates dated July 12, 2011, together with the revised detailed enlargement of the area proposed for the addition to the retail center; reduced copies of which are attached hereto collectively as Exhibit "A" and incorporated herein by reference.
- (3) By this revised letter of agreeable stipulations and conditions, Applicant amends its Application for Rezoning to include the revised Zoning Site Plan and revised detailed enlargement hereinabove referenced, same being prepared for Applicant by Haines Gipson & Associates dated July 12, 2011, and submitted contemporaneously herewith.
- (4) The Subject Property consists of 15.73 acres and is developed into the retail center known as "Sandy Plains Shopping Center." Applicant, by and through this rezoning, seeks to develop the portion of the Subject Property fronting on Shallowford Road, located between the out parcels, as more particularly shown

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and reflected on the referenced Zoning Site Plan, being approximately 1.9 acres (hereinafter "Developed Site"), for a Kroger Fueling Center and a drive-thru restaurant.

STIPULATIONS APPLICABLE TO KROGER FUELING CENTER

- (5) In the event the "Automobile Fueling Facility," which is the subject of this rezoning request, permanently ceases business operations, The Kroger Co. shall remove the fuel station facilities; including, without limitation, the underground gasoline storage tanks and associated fuel lines and equipment installed by The Kroger Co., and return the fuel station facilities to its previous condition as part of the overall Sandy Plains Shopping Center using materials comparable in quality to those materials used in the retail center at the time of such removal.
- (6) The Kroger Fuel Center canopy shall have a mansard-type metal roof and shall match the metal roof on the existing Kroger store. The kiosk building and canopy columns shall be dressed with brick to match the brick on the existing Kroger store. Additionally, the Kroger Fuel Center canopy and kiosk fascias shall be faced with a textured paint to give it a stucco-like appearance. The color of the canopy and kiosk fascias shall match the color of the fascia on the existing Kroger store. A copy of the rendering of the proposed Fuel Center is attached as Exhibit "B."
- (7) The height of the Kroger Fuel Center canopy shall be no higher than 22 feet at the highest point of the pitched metal roof. There shall be 15 feet 6 inches clearance underneath the canopy.
- (8) There shall be no lighted material attached to the Kroger Fuel Center canopy, with the exception of the Kroger Fuel Center logo, which shall be internally illuminated.
- (9) No neon signs, banners, balloons, or electronic reader boards shall be displayed at the Kroger Fuel Center. There shall be a three-product fuel pricing sign on the rear elevation of the canopy; not to exceed 46 square feet in area. The Kroger lettering and Kroger Fuel Center logo shall be allowed on the front elevation of the canopy; not to exceed 22 square feet in area. The Kroger Fuel Center logo

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shall be displayed on the front and rear elevations of the kiosk; not to exceed 10 square feet per kiosk elevation.

- (10) Any signage for the Kroger Fuel Center shall be incorporated into the existing monument signage. A separate monument sign will not be allowed for the Kroger Fuel Center.
- (11) There shall be no beer or alcohol sales at the Kroger Fuel Center.
- (12) Lighting underneath the Kroger Fuel Center canopy shall be recessed with the lenses being flush with the canopy ceiling.
- (13) No public phone or vacuum station shall be located at the Kroger Fuel Center; however, an air station may be located in front of the fuel center, in view of the kiosk attendant.
- (14) An oil/grit separation device shall be provided for the proposed Kroger Fuel Center and shall be approved by the Stormwater Management Division.
- (15) The hours of operation for the Kroger Fuel Center shall be no earlier than 6:00 a.m. and no later than 11:00 p.m.

STIPULATIONS APPLICABLE TO PROPOSED DRIVE-THRU RESTAURANT

- (16) Applicant seeks to construct a restaurant facility, with dual drive-thru, on a portion of the "Developed Site."
- (17) The exterior of the proposed restaurant shall consist of four-sided architecture composed primarily of brick with accents, and shall be substantially similar to the renderings attached to this letter of agreeable stipulations and conditions as Exhibit "C."
- (18) Any roof-mounted HVAC equipment shall be screened by means of a continuous roof parapet.

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- (19) Entrance and directional signage for the proposed restaurant shall be ground based, monument style signage. The finish, materials, and colors for the signage shall be compatible with the building. Further, such signage shall contain no flashing sign components. There shall be no roof signs and no exterior, temporary signs excepting only grand opening signage, and signage indicating the coming development.
- (20) Security lighting on the structure shall be wall packs, hooded, environmentally sensitive and shall be fitted with non-glare lenses and cut off shields to prevent light from extending beyond the property line.
- (21) All dumpsters servicing the proposed restaurant facility shall be enclosed with a minimum six (6) foot high brick enclosure on three sides with a solid wooden screen gate or doors on the access side. All dumpsters shall contain rubber lids to minimize noise. Dumpsters shall be emptied Monday through Saturday from 7:00 a.m. to 7:00 p.m. The doors shall remain closed except for dumping.
- (22) All exhausts from the restaurant facility shall be filtered to minimize grease and odors.

STIPULATIONS FOR DEVELOPED SITE

- (23) There shall be no vehicles of any type parked in front of the Developed Site, along Shallowford Road, containing tenant identification signage or advertising signage. Additionally, there shall be no vehicles parked in front of the Developed Site with "for sale" signs posted thereon.
- (24) In lieu of installing sidewalks along Gordy Parkway, Applicant agrees to install a sidewalk from Shallowford Road to the proposed restaurant, as more particularly shown and reflected on the revised Zoning Site Plan attached hereto.
- (25) All utilities servicing the Developed Site shall be located underground.
- (26) The final plan for the Developed Site shall be reviewed by the Cobb County Fire Department during the plan review process.

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- (27) The Developed Site shall adhere to the Cobb County Water and Sewer Division Departmental Comments and Staff Recommendations.
- (28) The landscape plan for the Developed Site shall be reviewed and approved by the Cobb County Arborist during the plan review process.
- (29) Applicant agrees to meet all Cobb County Development Standards and Ordinances related to project improvements as to the Developed Site.
- (30) Minor modifications to the within stipulations, the referenced Zoning Site Plan, landscaping, architecture, site features, and the like, may be approved by the District Commissioner, as needed or necessary.
- (31) Parking lot cleaning for the Developed Site shall be by means of mechanical equipment and shall be timed to coincide with the cleaning of the existing retail center.

We believe the requested rezoning, pursuant to the revised Zoning Site Plan and the revised stipulations contained herein, is an appropriate use of the Developed Site and shall be an enhancement to the existing Sandy Plains Shopping Center and provide additional convenient services areas for area residents. Applicant desires to create a functional design for the Developed Site, with ease of flow for ingress and egress; as well as aesthetically pleasing building architecture and surrounding landscaping. Thank you for your consideration in this request.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



John H. Moore

JHM:cc
Attachments

MOORE INGRAM JOHNSON & STEELE

Mr. Jason A. Campbell
Planner III
Zoning Division
Cobb County Community Development Agency
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- c: Cobb County Board of Commissioners:
Timothy D. Lee, Chairman
George W. "Woody" Thompson
Helen C. Goreham
Robert Ott
Joann Birrell
(With Copies of Attachments)
- Jill Flamm, President
East Cobb Civic Association, Inc.
(With Copies of Attachments)
- Norm DeWalt, President
Northeast Cobb Homeowners Group
(With Copies of Attachments)
- Lee Berg
Northeast Cobb Coalition
(With Copies of Attachments)
- Richard Davis
NorthHampton Homeowners Association
(With Copies of Attachments)
- Edens & Avant Financing II Limited Partnership
(With Copies of Attachments)

Book 63 Petition No. 2-23
Type Gordy Architectural
Control Committee
Date 7/19/11

~~explicit paraphernalia or erotica. However,~~
nothing shall preclude any establishment from
selling or offering "standard" arrays or selections
of magazines, tapes, books, or popular movie-going
fare.

VII. LANDSCAPING

The entire development will conform to the Cobb County
Tree Ordinance in effect at the time of development.
Furthermore, all landscaping must be subjected to
Architectural Control Committee review and approval.

VIII. MATERIALS AND COLORS

All materials and colors shall be approved by the
~~Architectural Control Committee.~~

IX. ARCHITECTURAL CONTROL COMMITTEE (ACC)

Wherever it is envisioned under these conditions and
stipulations of zoning that matters will be left to the
Architectural Control Commission, that body will be
comprised of the following individuals:

- A representative of applicants, or their successors.
Larry B. Thompson here acknowledges that contractual
commitments require him to retain architectural control
of parcels which he may convey to others.
- b) Two land planners and/or architects retained by
applicants or their successors.
- c) A representative of the Cobb County Planning and Zoning
Department.

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- d) A representative designated by an "umbrella" civic association, such as the East Cobb Civic Association, which civic association is in existence at the time of appointment of members to the ACC.
- e) Applicants acknowledge the need for consistency and continuity in the overall design, construction, and maintenance of the land which is the subject of this rezoning application. Given the probability of changing architectural styles, the availability of building materials and methods, and other relevant criteria over the probable 8 to 10 years required for completion of the proposed development, applicants agree that the Architectural Control Committee shall approve architectural design, development design, materials, color, landscaping, and other significant criteria pertinent to the overall design of the project. However, interior design of any structure shall not be subject to ACC approval. The ACC shall have input only to the overall design and street layout of any residential subdivision envisioned under this rezoning proposal, as separate architectural control committees shall be established for residential subdivision purposes. The intent of this commitment on the part of applicants is to coordinate an overall design which emphasizes compatibility and continuity of style on matters of major significance. The control of

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Issued

the Architectural Control Committee shall be limited to building exteriors and site planning.

~~X. STIPULATIONS AND CONDITIONS OF ZONING APPLICABLE TO THAT PORTION OF PARCEL #10 LOCATED NORTH AND EAST OF THE PROPOSED LOOP ROAD.~~

No twenty-four hour outdoor storage of automobiles shall occur to any significant degree. However, this stipulation shall not preclude the occasional parking of an automobile overnight in isolated circumstances.

- b) No outside storage of oil or tires will be permitted.
- c) No twenty-four hour service of automobiles or other vehicles shall be permitted.
- d) Any establishments selling, replacing, or rotating tires shall be located on the extremities of the automobile maintenance building.
- e) No gasoline or diesel fuel sales shall be permitted in this parcel.
- f) No external loud speakers, phone bells, gongs, or other similar noise generating source will be utilized.
- g) No food services (other than incidental beverage, cracker and/or candy machines) shall be permitted.
- h) No automobile body repair work shall be permitted.

~~XI. In parcel #3, east of the designated loop road, office buildings shall be limited to two stories above the highest~~