

Z-72
(2014)

Revision	No.	Date	Description



APPLICANT: Lubin A. Trivino

PHONE#: (770) 906-2123 **EMAIL:** lubintriv@mindspring.com

REPRESENTATIVE: C. David Trivino

PHONE#: (404) 457-3283 **EMAIL:** t4lawgroup@gmail.com

TITLEHOLDER: Lubin A. Trivino and Aura Trivino

PROPERTY LOCATION: South side of Windy Hill Road, east of

Sandtown Road

(186 Windy Hill Road).

ACCESS TO PROPERTY: Windy Hill Road

PHYSICAL CHARACTERISTICS TO SITE: Existing one-story

frame restaurant

CONTIGUOUS ZONING/DEVELOPMENT

NORTH: R-20/ Undeveloped

SOUTH: NS/ Undeveloped

EAST: RM-12/ Piedmont Villa Apartments

WEST: NS/ Undeveloped

PETITION NO: Z-72

HEARING DATE (PC): 10-07-14

HEARING DATE (BOC): 10-21-14

PRESENT ZONING: NS

PROPOSED ZONING: NRC

PROPOSED USE: Restaurant

SIZE OF TRACT: 0.3587 acre

DISTRICT: 17

LAND LOT(S): 202

PARCEL(S): 42

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**

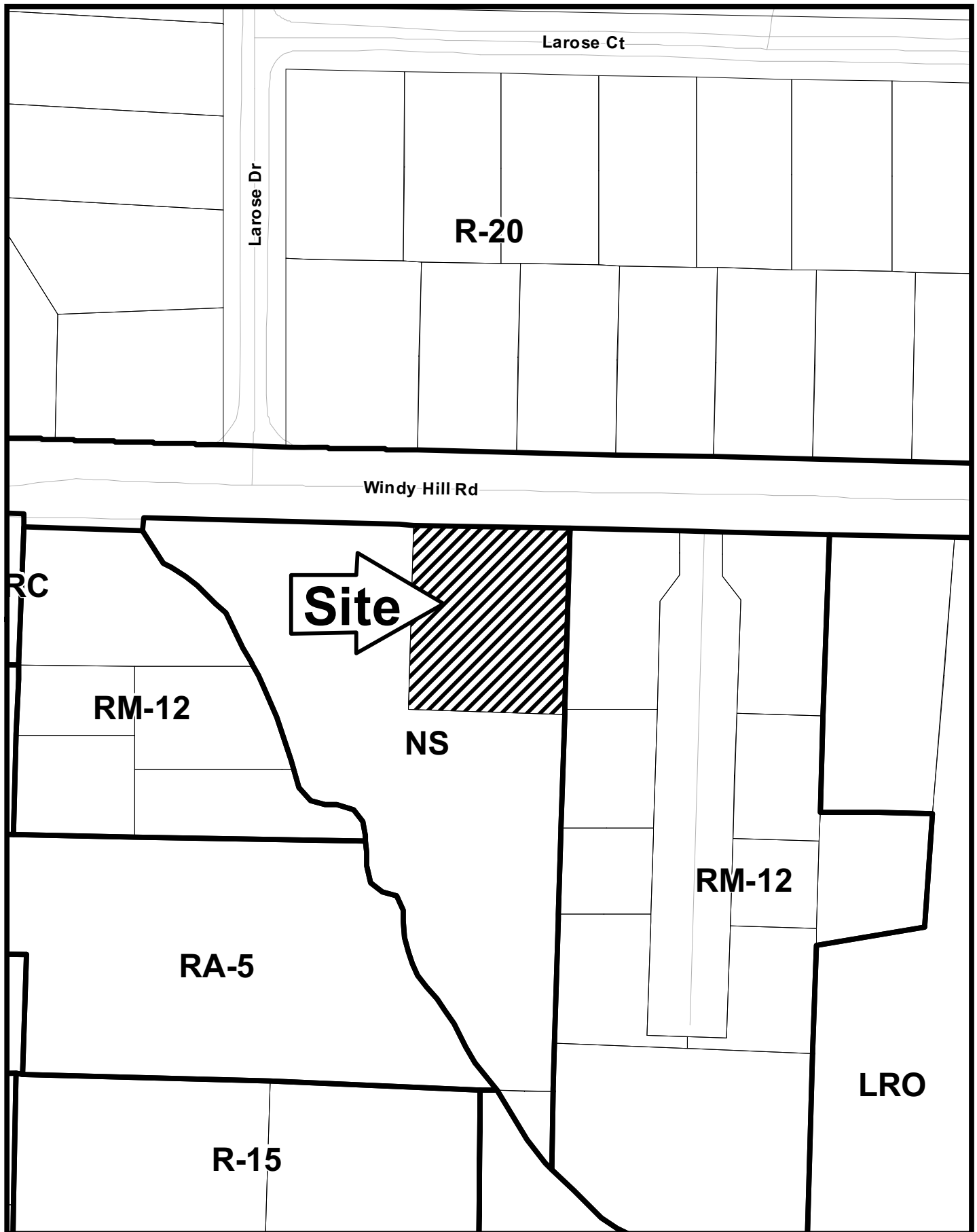
REJECTED **SECONDED**

HELD **CARRIED**

STIPULATIONS:



Z-72



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

0 100 200 Feet



City Boundary
Zoning Boundary

APPLICANT: Lubin A. Trivino

PETITION NO.: Z-72

PRESENT ZONING: NS

PETITION FOR: NRC

ZONING COMMENTS:

Staff Member Responsible: Terry Martin, MPA

Land Use Plan Recommendation: Neighborhood Activity Center (NAC)

Proposed Number of Buildings: 1 **Total Square Footage of Development:** 1,379 sq. ft.

F.A.R.: 0.09 **Square Footage/Acre:** 3,845 sq. ft.

Parking Spaces Required: 14 **Parking Spaces Provided:** None Striped

The applicant is requesting a rezoning of the property from the existing NS neighborhood shopping district to the NRC neighborhood retail commercial district in order to reopen the existing restaurant facility on site. The property, currently zoned NS and located within a NAC neighborhood activity center future land use area, is considered “grandfathered” and thus, the rezoning is necessary as the business has been closed for the past three (3) years. The applicant intends to reopen the 1,379 square foot building as a restaurant which has been its use beginning in 1991. Proposed hours of operation are to be Monday through Saturday 9 a.m. to 9 p.m.

Currently, the site lacks certain improvements required by Code such as a 20 foot landscape buffer adjacent to residentially zoned property to the east as well as paved and striped parking stalls. There exists a grass, non-paved area of approximately 10 feet in width that could provide for some landscape screening. Also, if new spaces are provided adjacent to Windy Hill Road, a landscape strip may also be in order. If the applicant intends to install or utilize existing signage, it should be compliant with the current sign regulations found in the Code in all respects including ground based, monument style. The existing barbeque pit, if utilized in the future, should be given consideration regarding visual screening and odor abatement.

The applicant will need a variance of lot size from the required 20,000 square feet to the existing 15, 623.7 square feet as well as a front yard setback from the required 50 feet to the existing 44.92 feet adjacent to Windy Hill Road.

Cemetery Preservation: There is no significant impact on the cemetery site listed in the Cobb County Cemetery Preservation Commission's Inventory Listing which is located in this, or adjacent land lot.

FIRE COMMENTS:

After analyzing the information presented for a Preliminary Review, the Cobb County Fire Marshal’s Office is confident that all other items can be addressed during the Plan Review Stage.

APPLICANT: Lubin A. Trivino

PETITION NO.: Z-72

PRESENT ZONING: NS

PETITION FOR: NRC

PLANNING COMMENTS:

The applicant is requesting a rezoning from and NS to NRC for restaurant. The 0.358 acre site is located on the south side of Windy Hill road, east of Sandtown Road

Comprehensive Plan

The parcel is within a Neighborhood Activity Center (NAC) future land use category, with NS zoning designation. The purpose of the (NAC) category is to provide for areas that serve neighborhood residents and businesses. Typical land uses for these areas include small offices, limited retail and grocery stores.

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?

Incentive Zones

Is the property within an Opportunity Zone? ☐ Yes ☒ No

The Opportunity Zone is an incentive that provides \$3,500 tax credit per job in eligible areas if two or more jobs are being created. This incentive is available for new or existing businesses.

Is the property within an Enterprise Zone? ☒ Yes ☐ No

The Enterprise Zone is an incentive that provides tax abatements and other economic incentives for qualifying businesses locating or expanding within designated areas for new jobs and capital investments.

Is the property eligible for incentives through the Commercial and Industrial Property Rehabilitation Program? ☐ Yes ☒ No

The Commercial and Industrial Property Rehabilitation Program is an incentive that provides a reduction in ad valorem property taxes for qualifying redevelopment in eligible areas.

For more information on incentives, please call the Community Development Agency, Planning Division at 770.528.2018 or find information online at <http://economic.cobbcountyga.gov>.

APPLICANT: Lubin A. Trivino

PETITION NO.: Z-72

PRESENT ZONING: NS

PETITION FOR: NRC

PLANNING COMMENTS: (Continued)

Special Districts

Is this property within the Cumberland Special District #1 (hotel/motel fee)?

☐ Yes ☒ No

Is this property within the Cumberland Special District #2 (ad valorem tax)?

☐ Yes ☒ No

APPLICANT Lubin A. Trivino

PETITION NO. Z-072

PRESENT ZONING NS

PETITION FOR NRC

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): 10" DI / S side of Windy Hill Road

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 Existing sewer customer
Comments:

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: Lubin A. Trivino

PETITION NO.: Z-72

PRESENT ZONING: NS

PETITION FOR: NRC

STORMWATER MANAGEMENT COMMENTS

No site changes are proposed. Any future expansion or redevelopment will be required to meet current stormwater management regulations.

APPLICANT: Lubin A. Trivino

PETITION NO.: Z-72

PRESENT ZONING: NS

PETITION FOR: NRC

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
Windy Hill Road	26,400	Arterial	40 mph	Cobb County	100'

Based on 2008 traffic counting data taken by Cobb County DOT (Windy Hill Road)

COMMENTS AND OBSERVATIONS

Windy Hill Road is classified as an arterial 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 to 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 south side of Windy Hill Road, a minimum of 50' from the roadway centerline.

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

STAFF RECOMMENDATIONS

Z-72 LUBIN A. TRIVINO

- 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, formerly used as a restaurant, if reused as currently developed, with minor Code-compliant improvements, can be brought back into viable use while remaining suitable to the development of the area.
- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse effect on the usability of adjacent or nearby property. The applicant's request is to bring back into commerce the site which was formerly a restaurant and with the necessary improvements to bring the property better into compliance with Code requirements, it should not affect nearby properties negatively.
- 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 in conformity with the policy and intent of the *Cobb County Comprehensive Plan*. The property exists within an area delineated as NAC neighborhood activity center on the future land use map. This designation seeks to provide areas for compatible businesses that serve neighborhood residents. The reuse of the formerly "grandfathered" restaurant is such a business.
- 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. Seeking to reopen the existing restaurant site, the applicant's rezoning proposal which is necessary due to the loss of the property's "grandfathered" status, can be accomplished with the aforementioned variances and suggested improvements to bring the property more into compliance with today's Code. These improvements will aid the property to more successfully operate while lessening the potential impact it may have to adjacent residential neighbors.

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

- Contemporaneous variances granted in relation to lot size from the required 20,000 square feet to the existing 15,623.7 square feet and front setback from the required 50 feet to the existing 44.92 feet;
- Landscape plan depicting installation of a 10 foot landscape buffer along the eastern property line adjacent to residentially zoned property as well as eight foot (8') landscape strip along frontage adjacent to Windy Hill Road to be approved by County Arborist;
- Parking area pavement to be repaired where necessary and appropriate number of parking spaces to be striped per County Code- parking plan to be approved by Zoning Division manager or his designee;
- All signage to come into compliance with current sign regulations including ground based, monument style sign;

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STAFF RECOMMENDATIONS

(Continued)

Z-72 LUBIN A. TRIVINO

- Exterior color and architecture of existing and future improvements to be reviewed by the Zoning Division and have final approval by District Commissioner;
- If outdoor cooking facilities are utilized, they must be visually screened and odor abatement measures are to be utilized;
- Fire Department comments and recommendations;
- Water and Sewer Division comments and recommendations;
- Stormwater Management Division comments and recommendations;
- Department of Transportation 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.

Application No. Z-72

Oct. 2014

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): _____
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): RESTAURANT

b) Proposed building architecture: ONE STORY FRAME, 1379 SQUARE FEET
EXISTING STRUCTURE.
c) Proposed hours/days of operation: _____
MONDAY - SATURDAY 9 TO 9
d) List all requested variances: _____
NONE

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

APPLICANT HAS OWNED BUILDING AND PROPERTY SINCE 1991.

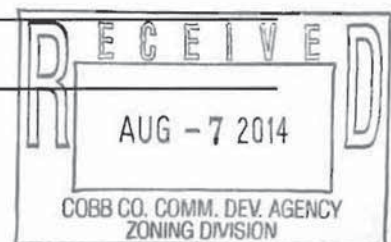
BUILDING HAS BEEN USED AS RESTAURANT SINCE 1993.

APPLICANT WILL BE RENTING PROPERTY TO AN OPERATOR.

APPLICANT WILL NOT BE OPERATING PROPOSED BUSINESS.
.....

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).



Answer to Question 9

Analysis of the impact of the proposed rezoning with respect to each of the following matters:

(a) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;

The intended use of the property is a restaurant. Neighboring properties are residential in nature. The use is suitable in view of the use and development of adjacent and nearby property.

(b) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

The building has been owned by applicant since 1991. The building has been rented as restaurant. The zoning proposal will allow continued operation as a restaurant.

(c) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

As currently zoned, the building may not be used for any purpose. Currently the property has a zero economic use.

(d) 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;

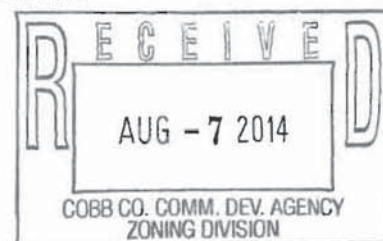
The property has been used as a restaurant since 1991. The proposed use of property will not cause excessive or burdensome use of existing street. The property has ample parking space. There is existing CCT transportation facilities located within walking distance of the property. There are no special requirements that would increase utilities. Since this is a commercial venture, schools will not be impacted.

(e) Whether the zoning proposal is in conformity with the policy and intent of the land use plan;

The proposed zoning is in conformity with the policy and intent of land use plan.

(f) 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.

There are not other existing or changing condition affecting the use and development of proposal. The property has been used since 1991 as a restaurant.



Applicant: Lubin A. Trivino