

**JUNE 16, 2015 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 1**

ITEM OB-026

PURPOSE

To consider amending the site plan and zoning stipulations for M&J Wilkow, Ltd. regarding rezoning application Z-12 (The Kroger Company) of 2008, for property located at the northwest intersection of Macland Road and Lost Mountain Road in Land Lot 429 of the 19th District.

BACKGROUND

The subject property was rezoned to Neighborhood Retail Commercial (NRC) in 2008 in order to allow a fueling station at the Kroger shopping center. The Georgia Department of Transportation (GDOT) is currently making improvements to Macland Road and part of Lost Mountain Road. As part of the improvements, some property around Kroger is being condemned which causes three distinct problems for the Kroger property. First, applicant needs the site plan re-approved by the Board of Commissioners since GDOT is taking some of the property. Second, the condemnation reduces the number of parking spaces to 338 parking spaces, which is a nine parking space variance from the approved site plan. Third, the condemnation is reducing the front setback from 50 feet to 30 feet. If approved, all stipulations not in conflict will remain in effect.

RECOMMENDATION

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

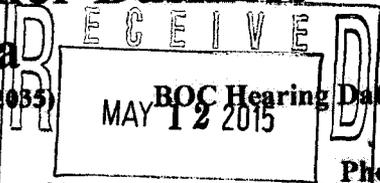
ATTACHMENTS

Other Business Application and zoning stipulations.

Application for "Other Business" Cobb County, Georgia

OB-026-2015

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



Applicant: M&J Wilkow, Ltd.

Phone #: 312-279-5901

Address: 20 South Clark Street, Suite 3000, Chicago, IL 60603

E-Mail: gmanojlovic@wilkow.com

Robert D. Griest, Esq.

Address: 1230 Peachtree St., NE, Ste. 3100, Atlanta, GA 30309

(representative's name, printed)

rgriest@sarlaw.com

[Signature]
(representative's signature)

Phone #: (404) 815-3617

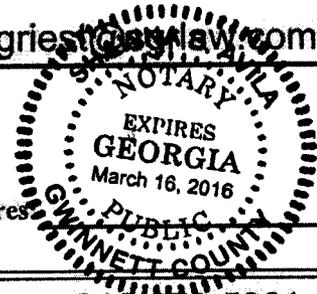
E-Mail: rgriest@sarlaw.com

Signed, sealed and delivered in presence of:

[Signature]
Shawna E. Avila

My commission expires: _____

Notary Public



Titleholder(s): Varner NLS LLC & Varner 203, LLC

Phone #: 312-279-5901

Address: 20 South Clark Street, Suite 3000, Chicago, IL 60603

E-Mail: gmanojlovic@wilkow.com

By: Varner Manager, Inc., the manager of the titleholders

By: *[Signature]*
(Property owner's signature) David S. Eisen - Senior Vice President



Signed, sealed and delivered in presence of:

[Signature]
Gloria M. Vitalo

My commission expires: _____

Notary Public

Commission District: 1

Zoning Case: Z-12

Date of Zoning Decision: March 18, 2008

Original Date of Hearing: March 18, 2008

Location: Macland Road

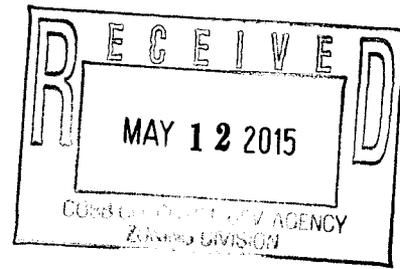
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 429

District(s): 19

State specifically the need or reason(s) for Other Business: GDOT's condemnation of land for roadway improvements will affect Subject Property's compliance with the County's Zoning Ordinance and conditions of a previous rezoning.

(List or attach additional information if needed)



APPLICATION FOR "OTHER BUSINESS"

of

M&J WILKOW, LTD.

for

**± 13.087 Acres of Land located in
Land Lot 429, 19th District, Cobb County, Georgia**

In order to correct issues of noncompliance created by GDOT's condemnation of portions of the Applicant's property, the Applicant respectfully requests:

- (1) An amendment to the site plan upon which a 2008 rezoning was conditioned;**
 - (2) A variance to reduce required parking; and**
 - (3) A variance to the front yard setback**
-

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
Robert D. Griest
Smith, Gambrell & Russell, LLP
Promenade, Suite 3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404-815-3500

I. INTRODUCTION

The Subject Property, owned by M&J Wilkow ("Applicant"), consists of three (3) parcels totaling \pm 13.087 acres located at the northwest corner of Macland Road SW and Lost Mountain Road SW: one primary commercial tract (11.054 acres) and two outparcels (1.001 and 1.032 acres). *See* Exhibit A. The Property is zoned "Neighborhood Retail Commercial" ("NRC") with conditions. The larger tract is currently developed for a Kroger store, along with an associated fuel center and adjacent strip mall building. The two smaller outparcels are currently undeveloped, but will likely be developed for stand-alone uses in the near future.

GDOT is making improvements to State Route 360 (Macland Road) which requires the condemnation of portions of the Subject Property along Macland Road and Lost Mountain Road. The condemnation affects 0.351 acres of required right of way and 0.111 acres of permanent easement. A site plan depicting the post-condemnation layout is attached as Exhibit B. As a direct result of the condemnation, the Subject Property will become nonconforming with respect to the County's Zoning Ordinance and the Subject Property's conditions of zoning in the following respects: (1) noncompliance with the site plan upon which a 2008 rezoning was conditioned; (2) elimination of nine (9) required parking spaces; and (3) reduction of the front yard setback from 50 feet to 30 feet. Accordingly, the Applicant formally requests the following amendment and variances described in detail below.

II. REQUESTS FOR AMENDMENT AND VARIANCES

1. Amendment to Site Plan (Condition of 2008 Rezoning)

On March 18, 2008, the Cobb County Board of Commissioners approved a rezoning of the Subject Property to allow for construction of a Kroger Fueling Station near the Lost Mountain Road frontage. *See* Exhibit C (also attached are the original 1998 rezoning minutes). The rezoning was approved subject to a number of conditions, one of which was development in accordance with a site plan dated January 3, 2008, and incorporated into the approval. GDOT's condemnation will materially alter the layout of the site and therefore force the Property into noncompliance with the 2008 site plan. Accordingly, the Applicant requests an amendment to the conditions of rezoning by replacing the 2008 site plan with a revised plan showing the site layout post-condemnation. *See* Exhibit B.

2. Variance to Reduce Required Parking

Prior to the 2008 rezoning, the Subject Property provided a total of 411 parking spaces. Following the rezoning and addition of the Fueling Station, 64 spaces were eliminated, which reduced the total number of spaces below what is required by the Zoning Ordinance (363 spaces were required and 347 were provided). However, this reduction in parking was expressly approved as part of the 2008 rezoning. *See* Exhibit C. GDOT's condemnation will eliminate a number of the existing parking spaces and create nonconformity with the 2008 rezoning approval. While the Applicant has tried to reconfigure the parking lot to add additional spaces, a net total of nine (9) spaces will be lost as a result of the condemnation. Accordingly, the Applicant requests a variance to further reduce required on-site parking to 338.

3. Variance to Front Yard Setback

The Subject Property is positioned so that its "front yard" is the frontage along Lost Mountain Road, an arterial roadway. Under the NRC zoning district regulations, the required front yard setback along an arterial roadway is 50 feet. While the current site layout is in conformance with the required setback, GDOT's condemnation of property along the Lost Mountain Road frontage will reduce the distance between the roadway and the canopy of the Fueling Station. Accordingly, the Applicant requests a variance to reduce the front yard setback to 30 feet to account for GDOT's condemnation.

III. PRESERVATION OF CONSTITUTIONAL RIGHTS

A refusal to grant the requested amendment and variances would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

A refusal to grant the requested amendment and variances would discriminate unfairly between the owner of the Subject Property and other property owners similarly situated, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

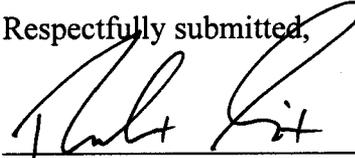
A refusal to grant the requested amendment and variances would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

A refusal to grant the requested amendment and variances would be invalid inasmuch as the Zoning Ordinance of Cobb County is unlawful, null and void because its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

Cobb County's Zoning Ordinance lacks adequate standards for the Board of Commissioners to exercise its power to review and act on this Application. The standards, or lack thereof, are not sufficient to contain any discretion vested in the Board of Commissioners or to provide the Courts with a reasonable basis for judicial review. Because the standards (individually and collectively) are too vague and uncertain to provide reasonable guidance, or are absent completely, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section III, Paragraph I and Article I, Paragraphs I and II of the Constitution of State of Georgia of 1983.

This 12th day of May, 2015.

Respectfully submitted,



Kathryn M. Zickert
Dennis J. Webb, Jr.
Robert D. Griest

Attorneys for Applicant

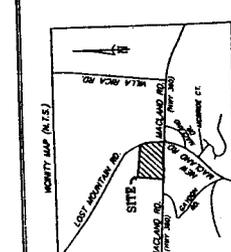
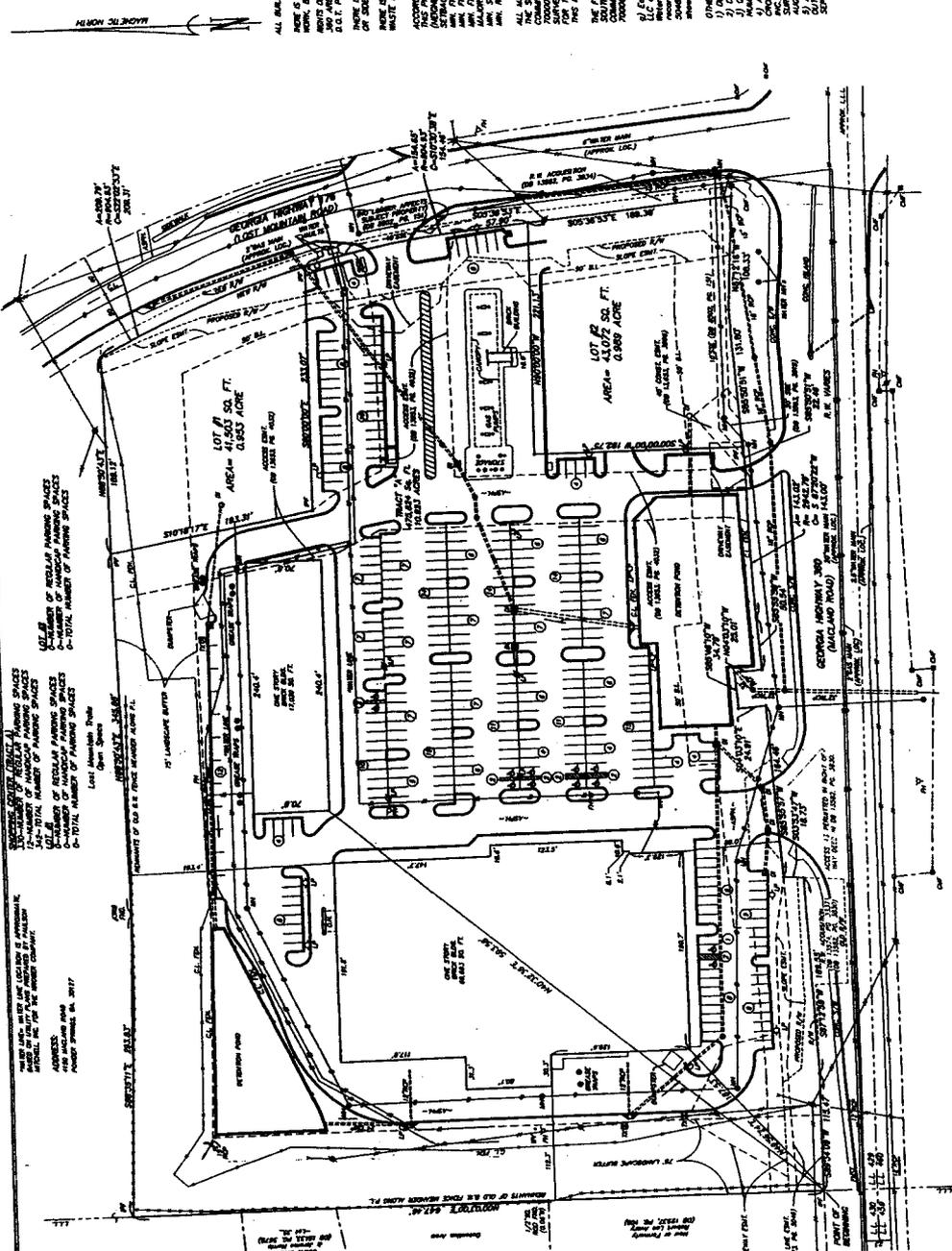
Smith, Gambrell & Russell, LLP
Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

GENERAL NOTES -

THE FIELD DATA SHOWN ON THIS PLAN IS BASED ON THE FIELD DATA SHOWN ON THE PREVIOUS PLAN AND HAS BEEN ADJUSTED TO REFLECT THE FIELD MEASUREMENTS. THE FIELD MEASUREMENTS WERE MADE BY THE SURVEYOR ON THE DATE SHOWN ON THIS PLAN. THE FIELD MEASUREMENTS WERE MADE BY THE SURVEYOR ON THE DATE SHOWN ON THIS PLAN. THE FIELD MEASUREMENTS WERE MADE BY THE SURVEYOR ON THE DATE SHOWN ON THIS PLAN.

ALL BUILDING DIMENSIONS SHOWN HEREON ARE EXTERNAL UNLESS OTHERWISE NOTED. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPOSED CONSTRUCTION OR BUILDING ADJUSTMENTS. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPOSED CONSTRUCTION OR BUILDING ADJUSTMENTS. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPOSED CONSTRUCTION OR BUILDING ADJUSTMENTS.

THE FOLLOWING TITLE REFERENCES ARE LISTED IN THE COMMENDATORY TITLE REFERENCE COLUMN OF THE INSTRUMENT DATED JANUARY 17, 2015:
 1) DEED TO THE SOUTH-EASTERN TITLE AND ESCROW COMPANY, INC. DATED SEPTEMBER 1, 2011, REVISED MARCH 9, 2008.
 2) DEED TO THE SOUTH-EASTERN TITLE AND ESCROW COMPANY, INC. DATED SEPTEMBER 1, 2011, REVISED MARCH 9, 2008.
 3) DEED TO THE SOUTH-EASTERN TITLE AND ESCROW COMPANY, INC. DATED SEPTEMBER 1, 2011, REVISED MARCH 9, 2008.



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**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
MARCH 18, 2008
PAGE 4**

Z-12

THE KROGER COMPANY (Varner 203, LLC and Varner NLS, LLC, owners) requesting Rezoning from NRC with Stipulations to NRC with Stipulations for the purpose of Amending Prior Rezoning Stipulations to Allow a Kroger Fueling Station in Land Lot 429 of the 19th District. Located at the northwest intersection of Macland Road and Lost Mountain Road.

MOTION: Motion by Goreham, second by Kesting, as part of the Consent Agenda, to approve Rezoning to the NRC with stipulations zoning district subject to:

- site plan received by the Zoning Division Jaauary 3, 2008 (attached and made a part of these minutes) as it applies to proposed fuel station and adjoining parking area, subject to Plan Review and approval by District Commissioner
- letter of agreeable conditions from Ms. Ali Daughtry dated February 19, 2008 not otherwise in conflict with Staff comments and recommendations and with the followiag changes (attached and made a part of these miautes):
 - Item No. 1 - delete paragraph and refer to Staff comments and recommendations
 - Item No. 10 - chaage second sentence to read "*A separate monument sign as proposed on drawing will not be allowed at the Kroger Fuel Center.*"
- hours of operation to be from 6:00 a.m. to 11:00 p.m.
- final approval of architectural plan by District Commissioner and subject to Plan Review
- ao outdoor display of merchandise, except as described ia the letter of agreeable conditions
- canopy lighting (including lenses) to be flush with the bottom of the canopy, *with no illuminated signage on the fuel station canopy*
- no signage allowed on the fuel center kiosk
- Lost Mountain Road sidewalks to be connected to interior of the project, requiring additional sidewalk and surface striping in parking lot extending to west end of the area marked *new striping* on site plan subject to approval by Cobb DOT at Plan Review
- District Commissioner to approve minor modifications
- County Arborist review and approval of all landscaped areas
- all previous zoning stipulations (not ia conflict with the fuel station additins) to remain in effect
- Water and Sewer Division comments and recommendations
- Stormwater Management Division comments and recommendations
- Cobb DOT comments and recommendations

VOTE: ADOPTED unanimously

February 19, 2008

Cobb County Zoning Division
191 Lawrence Street
Marietta, GA 30060

PAULSON MITCHELL
INCORPORATED

LAND PLANNERS
ENGINEERS - SURVEYORS
TRANSPORTATION
LANDSCAPE ARCHITECTS

Re: Application for Rezoning for Site Plan Amendment & Change in Conditions, and
Reduction in Parking Required to add a Kroger Fuel Center
Original zoning case: Z102 dated 7/21/98
Existing Kroger Shopping Center GA453
4150 Macland Road (PMI# 2007203.01)

Min. Bk. 55 Petition No. Z-12
Doc. Type letter of
agreeable conditions
Meeting Date 3-18-2008

To Whom It May Concern:

Paulson Mitchell, Inc. is representing The Kroger Co. (applicant) and Varner 203, LLC and Varner NLS, LLC (property owners) in their application for a rezoning (site plan amendment & change in conditions) and reduction in parking required with regard to the above-referenced property. After meeting with the planning and zoning staff and corresponding with P.L.A.N. and representatives of the area neighborhoods, we are submitting this letter of stipulations that The Kroger Co. will agree to if this application is approved. The stipulations are as follows:

- (1) The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions which are currently in place on the subject property.
- (2) The site plan from zoning case Z102, dated 07.21.98, shall be amended to include a Kroger Fuel Center on the existing Kroger parcel. The site plan amendment shall be subject to the Zoning Site Plan by Paulson Mitchell, Inc., dated 12.06.07. The "Site Analysis" on the Zoning Site Plan shows the proposed reduction in parking required for the addition of the fuel center (363 spaces required reduced to 347 spaces proposed).
- (3) In the event the "Convenience Store with Self-Service Fuel Sales" ("fuel station facilities"), which is the subject of this zoning 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 Common Area of the Varner Crossing Shopping Center using materials comparable in quality to those materials used in the Common Area at the time of such removal.
- (4) There shall be no merchandise displayed outside the Kroger Fuel Center kiosk, except for soda, ice and water bins and an oil merchandiser box on the sides of the kiosk. The fuel center kiosk will include bricked "wing walls" on the front and rear of the

I:\2007\2007203\Doc\Rezoning\GA453 Stip Letter 021908.doc

85-A Mill Street, Suite 200
Roswell, GA 30075
(770) 650-7685

17799 Panama City Beach Pkwy.
Panama City Beach, FL 32413
(850) 236-0722

Petition No. 2-12
Meeting Date 3-18-2008
Continued

kiosk to screen these items. The storage area behind the kiosk building shall be screened by a white (PVC) picket fence enclosure and gate.

- (5) The Kroger Fuel Center canopy shall have a mansard-type metal roof and shall be "Hemlock Green" to 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.
- (6) 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.
- (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'-6" 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 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 two existing Kroger monument signs. 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. The wattage of the canopy lighting shall be no more than 320 watts.
- (13) No public phone or vacuum station shall be located at the Kroger Fuel Center; however, an air station and a hose bibb shall be located in the area along Lost Mountain Road, on the side 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 final plan for the Kroger Fuel Center shall be reviewed by the Cobb County Fire Department.

Petition No. Z-1a
Meeting Date 3-18-2008
Continued

- (16) The Kroger Fuel Center shall adhere to the Cobb County Water and Sewer Division comments and recommendations.
- (17) The Kroger Fuel Center shall adhere to the Cobb County DOT comments and recommendations.
- (18) Landscaped evergreen hedge or bushes shall be planted along the front (east side) of the parking lot on the side of the Kroger Fuel Center.
- (19) The landscape plan for the Kroger Fuel Center shall be approved by the Cobb County Arborist.
- (20) 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.
- (21) Approval of the site plan amendment shall be contingent upon stipulation that The Kroger Co. meet with the P.L.A.N. representatives to work out landscaping, architectural and lighting plans, with final approval by the district commissioner.

We believe that the requested site plan amendment, change in conditions and reduction in parking required, pursuant to site plan referenced herein and the stipulations listed above, is an appropriate use of the subject property and takes into account the consideration of the surrounding property owners.

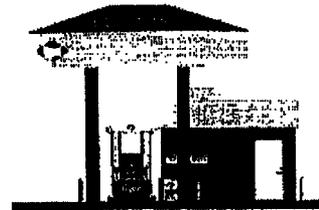
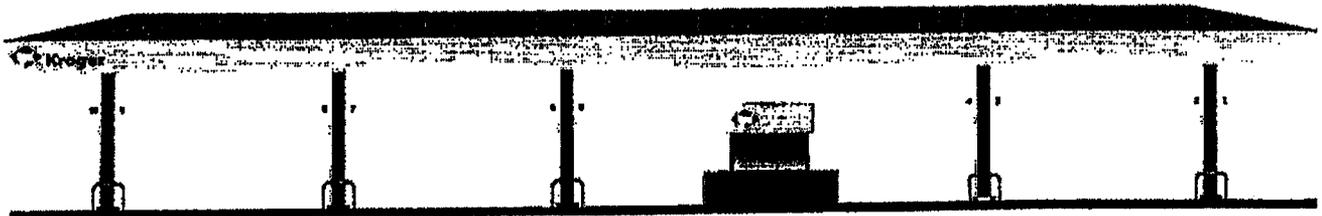
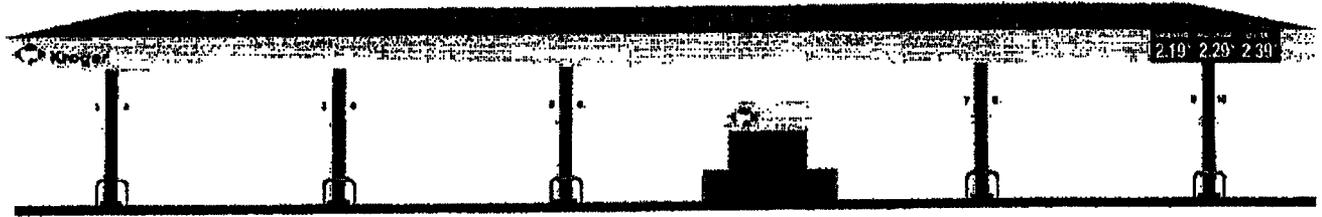
Thank you for your consideration in this matter.

Yours truly,
Paulson Mitchell, Incorporated


Ali R. Daughtry

Petition No. Z-12
Meeting Date 3-18-2008
Continued

RECEIVED
FEB 20 2008
CDBG CD. COMM. C. V. 11
ZONING DIVISION



Scale 1/8" = 1'

This is a plan view of the building facade.

Z-102 COLUMBIA PROPERTIES, INC. (Varner Enterprises, L.P., and John N. McEachern United Methodist Church, owners) for Rezoning from R-30 and NRC to NRC for the purpose of a Shopping Center in Land Lot 429 of the 19th District. 13.09 acres. Located at the northwest intersection of Macland Road and Lost Mountain Road. Following discussion among the Board and queries of Mr. Moore, the Board of Commissioners approved Rezoning to the NRC zoning district subject to: 1) installation of a six foot, black chain link fence along north and west sides of Brenda Clark-Howard's property which abuts this development; 2) increase in LRO buffer to 75 feet, LRO zoned property will have no buildings located therein; 3) letter of agreeable conditions from Mr. John Moore dated July 17, 1998; 4) architectural/elevation rendering dated 6/12/98 (large colored rendering on file in Zoning Division, small black/white copy attached and made a part hereof); 5) site plan dated 5/27/98 last revised and submitted 7/17/98 as referenced in 7/17/98 stipulation letter (attached and made a part hereof); 6) style, colors, and building materials of shopping center to be approved by County staff; 7) two out parcels to use the same design and materials as in the shopping center; 8) landscaping along Lost Mountain Road, Macland Road and heavily landscaped area surrounding the shopping center (landscape plan to be approved by staff); 9) subject to comments and recommendations from Historic Preservation; 10) project subject to Stormwater Management Division comments and recommendations; 11) 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; 12) project subject to Cobb DOT comments and recommendations; 13) this tract to be included in the 1998 Comprehensive Land Use Plan amendments to enlarge the commercial node at the site of the proposed shopping center; 14) all signage on the proposed development to be monument style, with final approval by County staff. Motion by Cooper, second by W. Thompson, carried 5-0.

Following vote on Z-102, a lunch break was taken from 11:45 a.m. until 1:30 p.m.

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP

JOHN H. MOORE
STEPHEN C. STEELE
WILLIAM R. JOHNSON
ROBERT D. INGRAM
J. BRIAN O'NEIL
G. PHILLIP BEGGS
ELDON L. BASHAM
MATTHEW J. HOWARD
SARAH L. BARGO
DIANE M. BUSCH
DAVID IAN MATTHEWS
JERE C. SMITH
CLAYTON O. CARMACK
MICHELLE S. DAVENPORT
KEVIN B. CARLOCK
ALEXANDER T. GALLOWAY III
G. ANDY ADAMEK

J. KEVIN MOORE
WILLIAM C. BUHAY
SUSAN S. STUART
MICHAEL W. KITCHENS
RODNEY R. McCOLLOCH
DANIEL A. LANDIS*
BRIAN D. SMITH
HARRY R. TEAR III
MICHAEL R. WING
W. TROY HART
JAMES E. ALBERTELLI**
JOSEPH H. AKERS
JEFFREY A. DAXE
JENNIFER L. SCOLIARD
MELISSA W. GILBERT
M. SUZANNE CAUSEY*

* ALSO ADMITTED IN MO
** ALSO ADMITTED IN FL

192 ANDERSON STREET
MARIETTA, GEORGIA 30060

POST OFFICE BOX 3306
MARIETTA, GEORGIA 30061

TELEPHONE
(770) 429-1499

TELECOPIER
(770) 429-8631

July 17, 1998

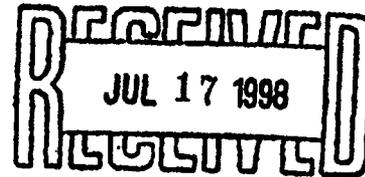
WRITER'S DIRECT DIAL NUMBER

Hand Delivered

Mrs. Judy Williams
Senior Planner
Zoning Division
Cobb County Community
Development Department
Suite 500
100 Cherokee Street
Marietta, Georgia 30090-9674

Z-102 of 1998
Letter as stipulated
in BOZ zoning minutes
of 7/21/98. Kery

Cobb County
Community Development Dept.
ZONING DIVISION



SENT TO: _____

RE: Application for Rezoning
Application No.: Z-102
Applicant: Columbia Properties
Incorporated
Owners: Varner Enterprises, L.P. and
John N. McEachern United
Methodist Church
Property: 13.09 acres located at the
northwest intersection of
Lost Mountain Road and
Macland Road, Land Lot 429,
19th District, 2nd Section,
Cobb County, Georgia

Dear Judy:

As you know, this firm represents Columbia Properties Incorporated, the Applicant (hereinafter referred to as "Applicant"), and Varner Enterprises, L.P. and John N. McEachern United Methodist Church, the Property Owners (hereinafter collectively referred to as "Owners"), in their Application for Rezoning with regard to the above-referenced property. After meeting with planning and zoning staff, meetings with representatives of area subdivisions and PLAN, and reviewing the staff comments and recommendations and the uses

MOORE INGRAM JOHNSON & STEELE

Mrs. Judy Williams
Senior Planner
Zoning Division
Cobb County Community
Development Department
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*2-1029 198
PS #2*

of surrounding properties, we have been authorized by the Applicant and Owners to submit this letter of agreed stipulations 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 property. This letter shall supersede and replace in full our previous letter to you dated July 2, 1998. The referenced stipulations are as follows:

- (1) The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions, in whatsoever form, which are currently in place on the subject property.
- (2) Rezoning of the subject property will be from the R-30 and Neighborhood Retail Commercial ("NRC") zoning categories to the NRC and Low Rise Office ("LRO") zoning categories with reference being made to that certain site plan prepared for Columbia Properties Incorporated by Paulson Mitchell Incorporated dated May 27, 1998, last revised and submitted to the Zoning Office July 17, 1998, with regard to the total acreage of 13.09 acres.
- (3) All structures to be constructed within the proposed development shall have brick exteriors on all sides.
- (4) All structures erected on out parcels within the proposed development shall have brick exteriors on all sides.
- (5) All mechanical shall be screened by roof lines of the buildings or screened by landscaping and fences.
- (6) Applicant agrees that the building elevation of the shopping center portion of the proposed development shall be substantially as shown and reflected on the renderings presented to the Board of Commissioners at the Zoning Hearing held on July 21, 1998; excepting only that

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Mrs. Judy Williams
Senior Planner
Zoning Division
Cobb County Community
Development Department
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PS #3

Applicant agrees to "beef up" designated sets of columns located along the front of the proposed shopping center.

- (7) Applicant agrees there shall be no primarily adult-themed businesses within the proposed development.
- (8) Applicant agrees that no gas stations, convenience stores, fast food restaurants, or oil-related businesses shall be constructed on the out parcel to the north proposed for NRC development.
- (9) Applicant agrees that if a gas station is erected on the south out parcel, said station shall be limited to eight (8) pump stations, a pump station being defined as an area containing a pump with the ability to service two (2) vehicles simultaneously.
- (10) The proposed development shall have a natural and landscaped buffer seventy-five (75) feet in width adjacent to all residentially zoned properties. Those areas which are not disturbed shall remain in their natural state; those areas which are materially disturbed or are without screening foliage shall be re-landscaped and shall have a four (4) foot berm.
- (11) That portion of the proposed development within the seventy-five (75) foot buffer referenced hereinabove shall be zoned LRO and shall have no buildings located therein. The balance of the proposed site shall be NRC.
- (12) All landscaping within the proposed development shall be reviewed by a designated representative of People Looking After Neighborhoods, Inc. (P.L.A.N.) and approved by the zoning staff and County arborist.

MOORE INGRAM JOHNSON & STEELE

Mrs. Judy Williams
Senior Planner
Zoning Division
Cobb County Community
Development Department
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Z-1029 '98
PS #4

- (13) With regard to all buffers, same may be penetrated for installation of utilities, access, slopes, and stormwater drainage requirements.
- (14) Applicant agrees to the erection of a black chain link fence six (6) feet in height along the westerly and northerly boundaries of the subject property.
- (15) All grassed areas must be sodded.
- (16) Applicant agrees to the planting of Red Maple trees, on forty (40) foot centers, along the property of the proposed development fronting on Lost Mountain Road (State Route 176) and Macland Road (State Route 360).
- (17) Entrance signage for the proposed development shall be ground based, monument style signage, and shall be mounted on a brick base which matches the brick on the structures of the proposed development.
- (18) Environmentally sensitive, shoe-box type, recessed lighting shall be utilized on poles with a maximum height of thirty-five (35) feet. Light bulbs shall be recessed within the fixtures and not extending below the fixtures.
- (19) Applicant agrees that any emergency generators servicing businesses within the proposed development shall be located inside the structure of the respective business.
- (20) Applicant agrees to comply with all Cobb County Stormwater Management requirements.
- (21) Applicant agrees to comply with all Cobb County development standards and ordinances relating to project improvements.

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Mrs. Judy Williams
Senior Planner
Zoning Division
Cobb County Community
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PS#5

- (22) Applicant agrees to the following system improvements to mitigate traffic concerns:
- (a) Donation of right-of-way on the west side of Lost Mountain Road (State Route 176) a maximum of fifty (50) feet from the existing roadway centerline;
 - (b) Donation of right-of-way on the north side of Macland Road (State Route 360) a maximum of fifty (50) feet from the existing roadway centerline;
 - (c) Installation of curb and gutter along the entirety of the property frontages on Lost Mountain Road (State Route 176) and Macland Road (State Route 360);
 - (d) Maximum of three (3) entrance locations on Macland Road (State Route 360) and one (1) entrance location on Lost Mountain Road (State Route 176);
 - (e) A ten (10) foot no access easement along the property frontages of the out parcels designated as Outlot No. 1 and Outlot No. 2 on the referenced site plan;
 - (f) Construction of a one hundred fifty (150) foot deceleration/acceleration lane for ingress/egress purposes from Macland Road (State Route 360) and Lost Mountain Road (State Route 176); and
 - (g) All work encroaching upon state right-of-way shall require Georgia Department of Transportation approval and if the Georgia Department of Transportation requirements are different from the within stipulations, then the Georgia Department of Transportation requirements shall prevail.

MOORE INGRAM JOHNSON & STEELE

Mrs. Judy Williams
Senior Planner
Zoning Division
Cobb County Community
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2-10208 198
15 #16

We believe that the requested zoning, pursuant to the referenced site plan and the stipulations contained herein, is an appropriate use of the subject property while taking into consideration the properties and owners thereof surrounding the proposed development. Thank you for your consideration in this matter.

With kindest regards, I remain

Very truly yours,

MOORE INGRAM JOHNSON & STEELE, LLP


John H. Moore

JHM:cc

c: Cobb County Board of Commissioners:
William J. Byrne, Chairman
William A. Cooper
George Woody Thompson, Jr.
Joe L. Thompson
Gordon J. Wysong

Ms. Denise Rose, President
P.L.A.N.
(Telefax Transmission
To (770) 956-8553)

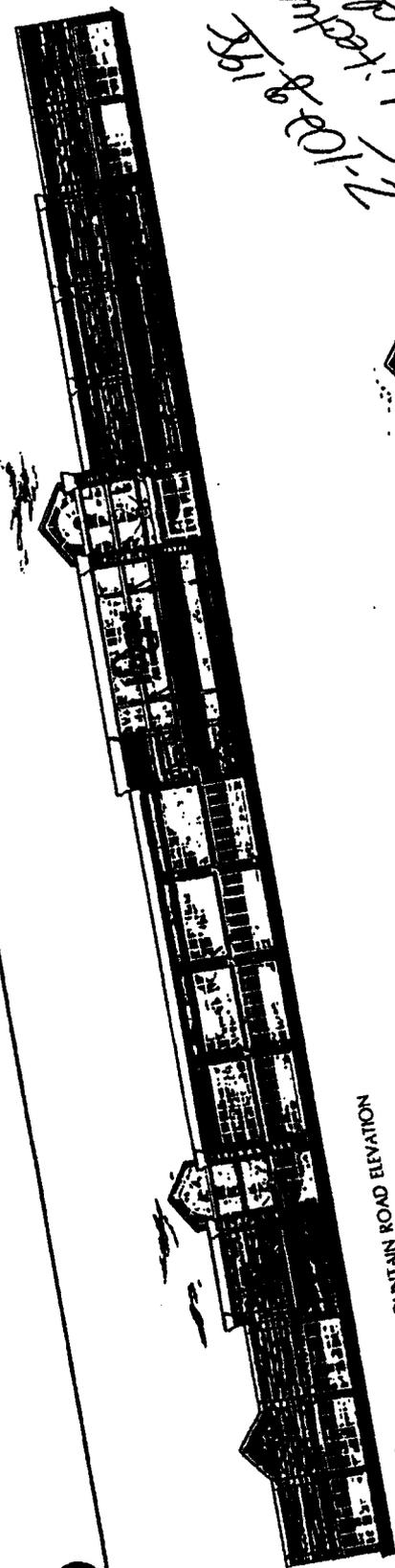
Mrs. Jacqueline Fortes
Oakleigh Subdivision

Mrs. Susan McShane
Windham Woods Subdivision

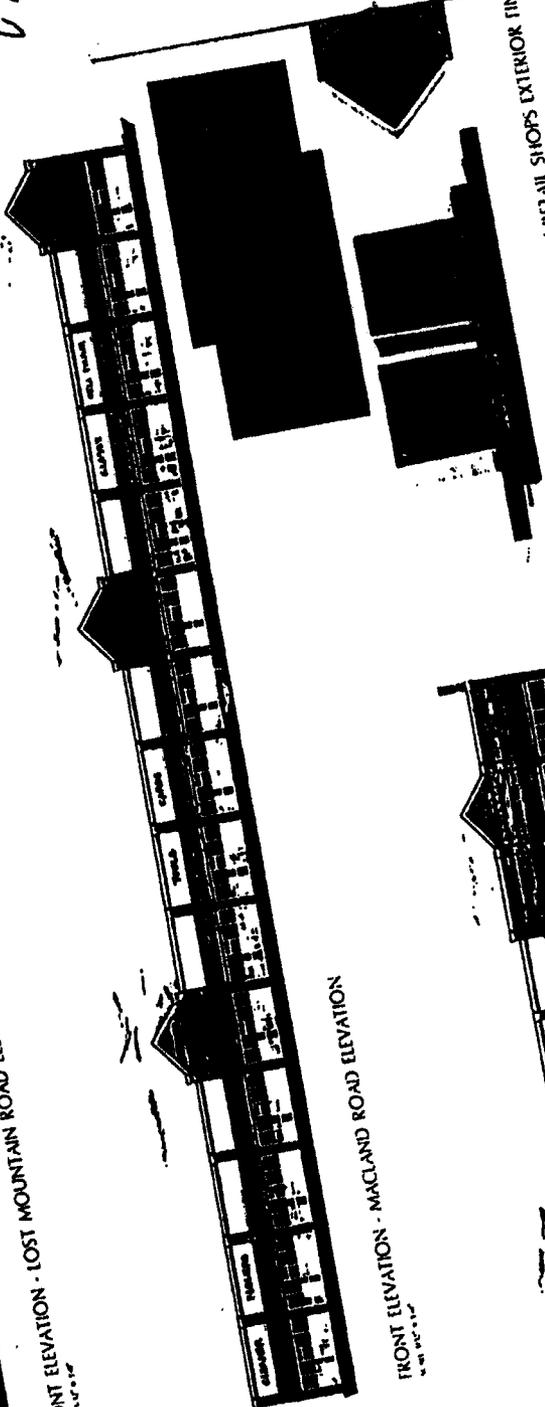
Ms. Brenda Howard

Mr. Bernard E. Inhulsen

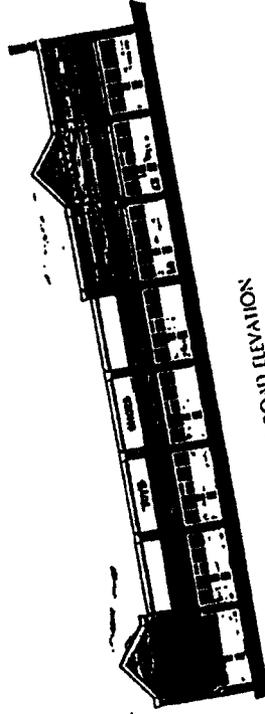
2-10-8-1987
 Order received
 Shipment allowed
 800 zoning
 minutes
 7/1/88
 Karcher



FRONT ELEVATION - LOST MOUNTAIN ROAD ELEVATION
 1/4" = 1'-0"



FRONT ELEVATION - MACLAND ROAD ELEVATION
 1/4" = 1'-0"



FRONT ELEVATION - MACLAND ROAD ELEVATION
 1/4" = 1'-0"

KROGER / RETAIL SHOPS EXTERIOR FINISHES

VARNER CROSSING

GEORGIA
 FOR
 COBB COUNTY
 COLUMBIA PROPERTIES, INCORPORATED
 GEORGIA
 MARIETTA

