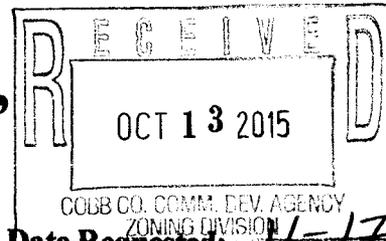


Application for "Other Business" Cobb County, Georgia

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



08-051-2015

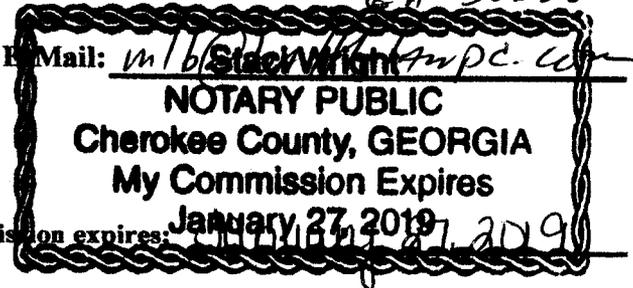
BOC Hearing Date Requested: 11-17-2015

Applicant: Leon Montgomery Phone #: 404-601-7616
(applicant's name printed) *CLP/134 McLaw PC*

Address: One West Court Sq, Suite 750 E-Mail: m16@battellawpc.com
Decatur, GA 30030

Michèle L. Battle Address: One West Court Sq, Suite 750, Decatur,
(representative's name, printed) *GA 30030*

[Signature] Phone #: 404-601-7616
(representative's signature)



Signed, sealed and delivered in presence of:

[Signature]
Notary Public

My commission expires: January 27, 2019

Titleholder(s): Austell Investments, Inc. Phone #: 404-373-3434
(property owner's name printed)

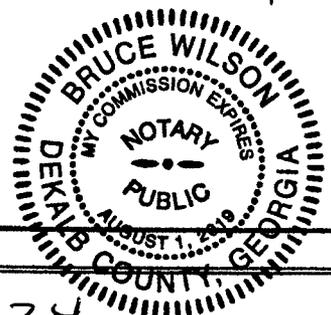
Address: 1406 Winston Place, Decatur, GA 30033 E-Mail: mrscoco@mindspring.com

[Signature] President Austell Investments, Inc.
(Property owner's signature)

Signed, sealed and delivered in presence of:

[Signature]
Notary Public

My commission expires: _____



Commission District: 4 Zoning Case: Z-24

Date of Zoning Decision: 3-22-90 Original Date of Hearing: 3-22-90

Location: 1850 Austell Rd, Cobb County, GA 30008
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 155 District(s): 17

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

This parcel is zoned O&I with a daycare use stipulation. Applicant has a contract for the purchase of this building and parcel contingent on the removal of the current stipulation. Applicant is seeking the removal of this stipulation so he can use this O&I parcel and building to own and operate a funeral home without a crematory. Titleholder is in support of applicant and will not be able to finalize the sale of this property without the removal of the current stipulation on this parcel. Not allowing a change to other business will create a hardship for both applicant and titleholder.

(List or attach additional information if needed)

AUSTELL INVESTMENTS, INC.
1406 Winston Place
Decatur, Georgia 30033
404-310-2774
mrsoco@mindspring.com

To: Cobb County Zoning Division

Re: Other Business Application of Leon Montgomery.

Please note that the Titleholder of the subject property is Austell Investments, Inc., a domestic corporation organized under the laws of the State of Georgia. This letter will serve as written authentication, with the presence of the corporate seal of Austell Investments, Inc., that the President of the corporation to whom the by-laws and the directors have delegated the responsibility for authenticating records of the corporation, hereby attests:

- a) That the corporate seal affixed to this letter in regard to the accompanying Application for Other Business is in fact the seal of the corporation;
- b) That the President, Anita Cenko Wilson, of the corporation executing this letter and the accompanying Application for Other Business does in fact occupy the official position indicated, and that the President is duly authorized to execute such documents on behalf of the corporation, and that the signature of the President subscribed thereto is genuine; and
- c) That the execution of this letter and the accompanying Application for Other Business on behalf of the corporation has been duly authorized.



Anita Cenko Wilson, President
Austell Investments, Inc.

Signed, sealed and delivered in
the presence of:



Notary Public
My Commission Expires: _____



Corporate Seal of Austell Investments, Inc.

CONSTITUTIONAL ALLEGATIONS

The portions of the Cobb County Zoning Ordinance, facially and as applied to the Subject Property, which restrict or classify or may restrict or classify the Subject Property so as to prohibit its development as proposed by the Applicant are or would be unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Cobb County Zoning Ordinance to the Subject Property which restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the Cobb County Board of Commissioners without any rational basis therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Cobb County Board of Commissioners to rezone the Subject Property to the classification as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the Property subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Subject Property to an unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

The existing zoning classification on the Subject Property is unconstitutional as it applies to the Subject Property. This notice is being given to comply with the provisions of O.C.G.A. Section 36-11-1 to afford the County an opportunity to revise the Property to a constitutional classification. If action is not taken by the County to rectify this unconstitutional zoning classification within a reasonable time, a claim will be filed in the Superior Court of Cobb County demanding just and adequate compensation under Georgia law for the taking of the Subject Property, diminution of value of the Subject Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

Application for Rezoning COBB COUNTY

Z-37 (2015)
Previous Minutes

(type or print clearly)

Application No. 2-24
Hearing Date 3-20-90

Applicant AUSTELL INVESTMENTS INC Business Phone 320-1647 Home Phone 320-1647
243 CIRCLEWOOD RD Address ATLANTA, GA. 30345

(representative's name, printed)

SUSAN C. LACHIN Business Phone 634-6692 Home Phone 320-1647

(representative's signature)

Susan C. Lachin

Titleholder SAME Business Phone _____ Home Phone _____

Signature _____ Address _____

(attach additional signatures, if needed)

Zoning Request From RM 12 To NS
(present zoning) (proposed zoning)

For the Purpose of DAYCARE CENTER, RETAIL Size of Tract 13.7 acre(s)
(subdivision, restaurant, warehouse, apts., etc.)

Location 1850 AUSTELL RD., MARIETTA
(street address, if applicable, nearest intersection, etc.)

Land Lot(s) 134, 155 District 17

We have investigated the site as to the existence of archeological and/or architectural landmarks. I hereby certify that there are no there are such assets. If any, they are as follows: _____

Susan C. Lachin
Applicant's Signature

FOR OFFICIAL USE ONLY

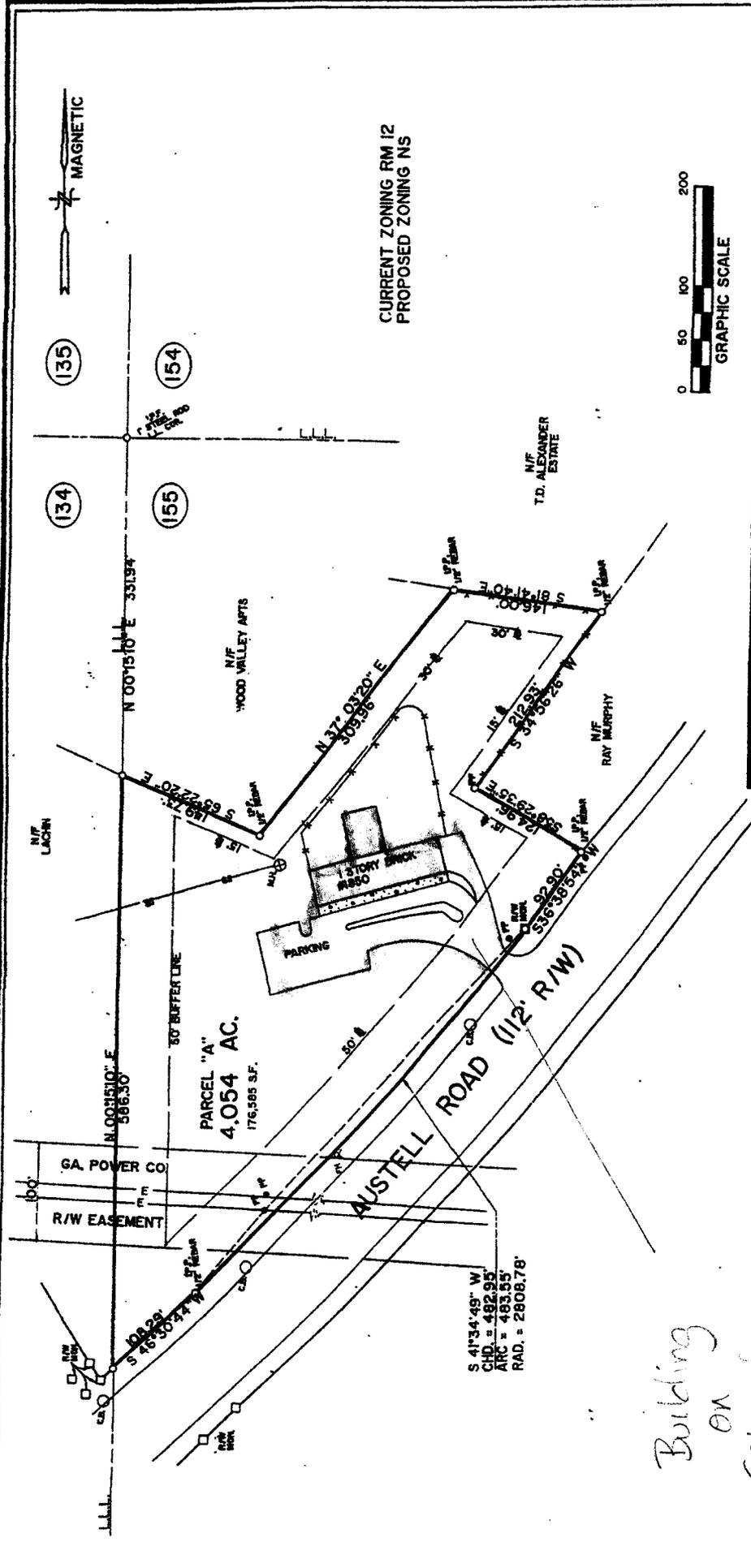
Recommendation of Planning Commission 3-22-90 Planning Commission recommended approval of application subject to: 1) deletion of request to the OI category, and per the new site plan marked Exhibit "A" on file in the Zoning offices, (with revised site size of 4.054 acres); 2) day care center only; 3) Cobb Dept. of Transportation comments; 4) Water & Sewer Dept. comments; 5) landscaping

to be provided along Austell Road, and will be subject to Staff approval. Motion by Dameron, second by
Philip A. Dawson Chairman Dawson, carried 5-0.

Board of Commissioners' Decision 3-22-90 Board of Commissioners approved application as recommended by the Planning Commission. VOTE: 5-0.

Philip A. Dawson Chairman

49



ZONING PLAT FOR

AUSTELL INVESTMENTS, INC.

LOT	BLOCK	REVISIONS
PARCEL "A"		
PLAT BOOK	PAGE	
LAND LOT 155		
DISTRICT -- 17	SEC. 2	
COUNTY -- COBB		
STATE -- GEORGIA		
DATE: 02-21-90	SCALE: 1" = 100'	000290A

IN MY OPINION THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PLATTED.

PERIME SURVEYING & ENGINEERING
 Kenneth J. Perime
 1065 SANDTOWN RD, S.W.
 MARIETTA, GEORGIA 30060
 (404) 421-1186

REGISTERED PROFESSIONAL SURVEYOR
 STATE OF GEORGIA

I HAVE THIS DATE, EXAMINED THE "FIA OFFICIAL FLOOD HAZARD MAP" AND FOUND REFERENCED LOT (IS NOT) IN AN AREA HAVING SPECIAL FLOOD HAZARDS.

THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN N/A FEET AND AN ANGULAR ERROR OF N/A SECONDS PER ANGLE POINT, AND WAS ADJUSTED USING CRANDALL RULE. THIS MAP OR PLAT HAS BEEN CHECKED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 100,000 FEET.

Building on Subject parcel 2.151 acres



Printed: 10/13/2015 3:03:24 PM

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
AUSTELL INVESTMENTS INC

AUSTELL INVESTMENTS INC

Payment Date: 10/5/2015

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2015	17015500010	10/15/2015	Pay: N/A or	10019.21

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$10,019.21	\$6,952.56	\$0.00