



Case # SLUP-6
Public Hearing Dates:
PC: 07-03-18
BOC: 07-17-18

Cobb County Community Development Agency
Zoning Division
1150 Powder Springs St. Marietta, Georgia 30064

SITE BACKGROUND

Applicant: Mequity Acquisitions, LLC

Phone: (404) 303-8700

Email: Bill.marsh@mequity.com

Representative Contact: Garvis L. Sams, Jr.

Phone: (770) 422-7016

Email: gsams@slhb-law.com

Titleholder: 2141 PF, LLC

Property Location: Off a private easement on the northeast side of Powers Ferry Road, north side of Interstate North Parkway

Address: 2141 Powers Ferry Road

Access to Property: Private easement from Powers Ferry Road

QUICK FACTS

Commission District: 2-Ott

Current Zoning: O&I (Office & Institutional)

Current use of property: Offices

Proposed use: Climate-Controlled Self-Service Storage Facility

Future Land Use Designation: RAC (Regional Activity Center)

Site Acreage: 2.556 ac

District: 17

Land Lot: 1056 and 1057

Parcel #: 17105600050

Taxes Paid: Yes

FINAL ZONING STAFF RECOMMENDATION: (Zoning staff member: Jason Campbell)

Based on the analysis of this application, Staff recommends approval subject to the following:

1. Site plan received by the Zoning Division on May 11, 2018;
2. District Commissioner to approve final architecture;
3. Water and Sewer Division comments and recommendations;
4. Stormwater Management Division comments and recommendations; and
5. Department of Transportation comments and recommendations.

**SLUP-6
(2018)**

CLIENT: MECHITY ACQUISITIONS, LLC
1729 MOUNT VERNON ROAD, SUITE 100
DUNWOODY, GA 30338

PROJECT: SELF STORAGE FACILITY
2740 POWERS FERRY ROAD
HARETTA, GA 30087

PROPOSED SITE PLAN

SCALE: 1/8" = 1'-0"

DATE: 05/01/18

PROJECT NO.: 2018-001

DATE: 05/01/18

PROJECT NO.: ASP-100

REVISIONS:

NO.	DATE	DESCRIPTION
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CONTRACTOR: FRANK G. REIF ARCHITECT, P.C.

PROJECT NO.: ASP-100

DATE: 05/01/18

PROJECT NO.: ASP-100

REVISIONS:

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SUMMARY OF BULK REGULATIONS
(DISTRICTS: US-424S (11/13/99))

REQ. NO.	REQUIRED	PROPOSED
1	MIN. LOT AREA	MIN. LOT AREA
2	MIN. LOT WIDTH	MIN. LOT WIDTH
3	MIN. LOT DEPTH	MIN. LOT DEPTH
4	MIN. FRONT YARD SETBACK	MIN. FRONT YARD SETBACK
5	MIN. SIDE YARD SETBACK	MIN. SIDE YARD SETBACK
6	MIN. REAR YARD SETBACK	MIN. REAR YARD SETBACK
7	MIN. MAX. BUILDING HEIGHT	MIN. MAX. BUILDING HEIGHT
8	MIN. MAX. BUILDING FOOTPRINT	MIN. MAX. BUILDING FOOTPRINT
9	MIN. MAX. BUILDING VOLUME	MIN. MAX. BUILDING VOLUME
10	MIN. MAX. BUILDING AREA	MIN. MAX. BUILDING AREA
11	MIN. MAX. BUILDING FLOOR AREA	MIN. MAX. BUILDING FLOOR AREA
12	MIN. MAX. BUILDING FLOOR AREA PER FOOTPRINT	MIN. MAX. BUILDING FLOOR AREA PER FOOTPRINT
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BUILDING AREAS
(USING BULK REGULATIONS: US-424S)

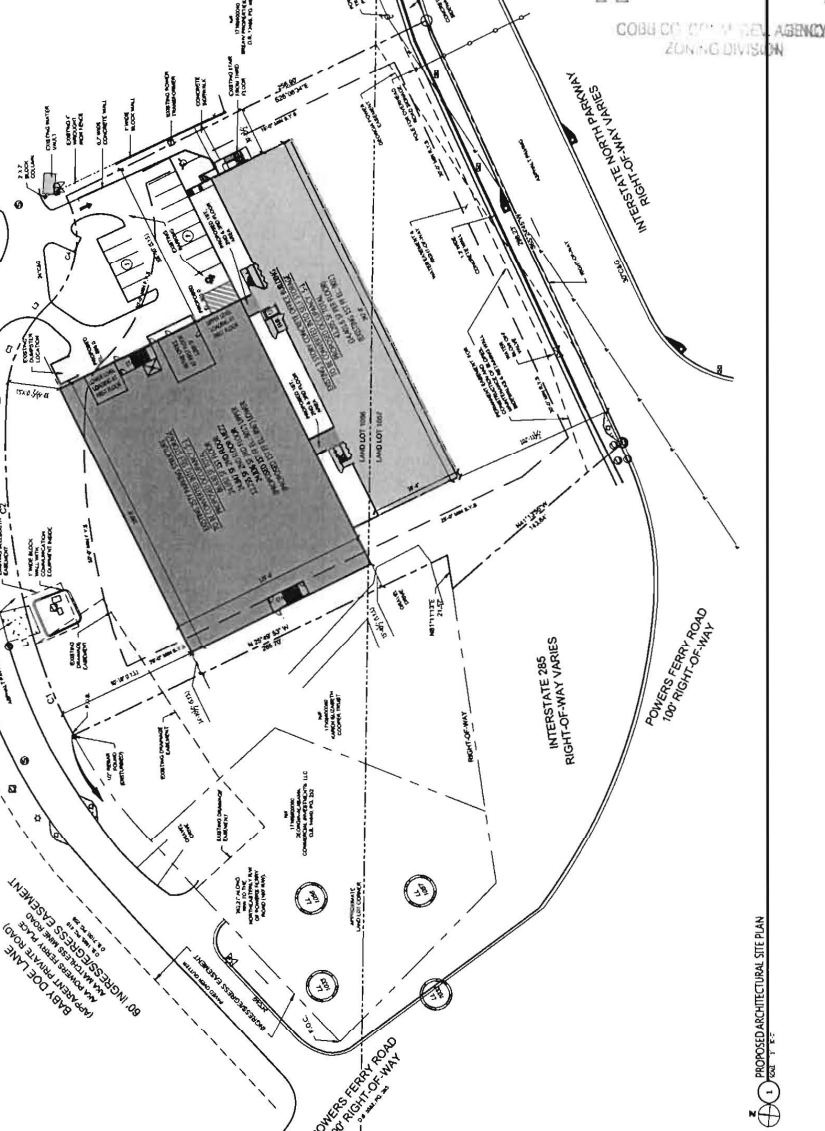
NO.	AREA	AREA	AREA
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RECEIVED
MAY 11 2018
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

RECEIVED
MAY 11 2018
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

PROPOSED ARCHITECTURAL SITE PLAN
SCALE: 1/8" = 1'-0"

SLUP-6 2018-Aerial Map



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

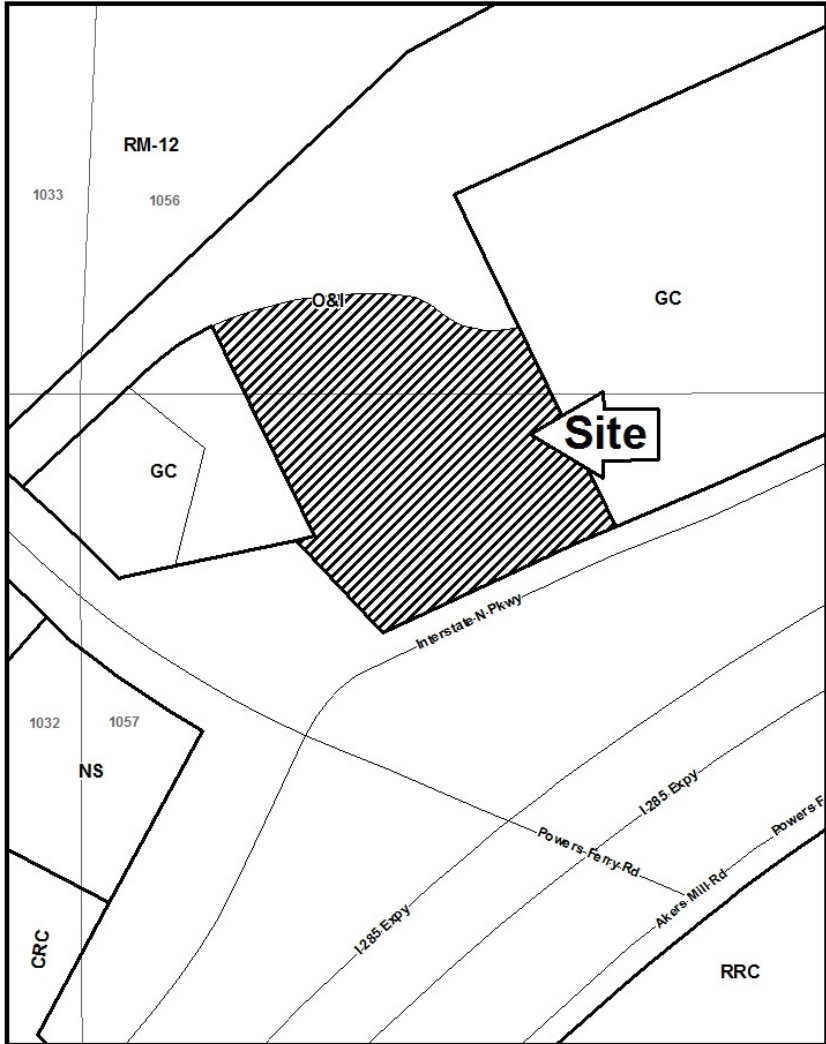
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Land Lot
City Boundary

North

Zoning: O&I (Office & Institutional)
Future Land Use: RAC (Regional Activity Center)

SLUP-6 2018-GIS



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

WEST

Zoning: GC
 (General Commercial)

Future Land Use: RAC
 (Regional Activity Center)

EAST

Zoning: GC
 (General Commercial)

Future Land Use: RAC
 (Regional Activity Center)

SOUTH

Zoning: RRC (Regional Retail Commercial) and NRC
 (Neighborhood Retail Commercial)
Future Land Use: RAC (Regional Activity Center)

DEPARTMENT COMMENTS- Zoning Division

Current zoning district for the property

The O&I district is established to provide locations for nonretail commercial uses such as offices and financial institutions, which are on properties delineated within or on the edge of a community activity center and a regional activity center as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990. The office and institutional district is designed primarily to provide for four-story and smaller office developments, office uses, motels, hotels, banking and professional offices that complement and provide step-down nodal zoning away from more intensive commercial uses and otherwise to implement the stated purpose of this chapter.

Summary of the applicant's proposal

The applicant is requesting a Special Land Use Permit (SLUP) for the purpose of a climate-controlled self-service storage facility. The applicant is concurrently requesting the Regional Retail Commercial (RRC) zoning district (Z-38) for the proposed climate-controlled self-service storage facility with ancillary office use. The existing three-story office building will be converted into a 43,205 square-foot storage facility, and the plan includes the construction of a new three-story, 86,630 square-foot storage facility with a retail office on the first floor, in place of the existing parking structure. The proposed hours of operation for the storage offices will be from 8 a.m. until 7 p.m., Monday through Saturday, and from 1 p.m. to 6 p.m. on Sundays. Access to the buildings shall be via key cards and/or punch code pads, and there will be no access from midnight to 6 a.m.

Non-residential criteria

Proposed # of buildings: 2
Proposed # of stories: 3
Total sq. footage of development: 129,835
Floor area ratio: 1.16
Square footage per acre: 50,796
Required parking spaces: 12
Proposed parking spaces: 14
Acres in floodplain or wetlands: 0
Impervious surface shown: 43%

DEPARTMENT COMMENTS- Zoning Division (continued)

Are there any zoning variances?

Yes, the proposed site plan will require the following contemporaneous variances:

1. Waive the side setback from the required 50 feet to 15 feet on the eastern property line;
2. Waive the side setback from the required 50 feet to 25 feet on the western property line; and
3. Waive the front setback (Interstate North Parkway) from the required 50 feet to 30 feet.

DEPARTMENT COMMENTS- Fire Department

No comment.

DEPARTMENT COMMENTS- Site Plan Review (County Arborist)

No comment.

DEPARTMENT COMMENTS- Cemetery Preservation

No comment.

DEPARTMENT COMMENTS- School System

No comment.

DEPARTMENT COMMENTS- Stormwater Management

1. Flood hazard: No
2. Flood hazard zone: Zone X
3. Drainage Basin: Chattahoochee River
4. Wetlands: No
5. Streambank buffer zone: No
6. Project located within ARC Metropolitan River Protection Area (within 2000' of Chattahoochee River). Subject to requirements of original MRPA review (RC-78-11CC)
7. Stormwater discharges must be controlled not to exceed the existing capacity of the downstream storm drainage system.

DEPARTMENT COMMENTS- Stormwater Management (Continued)

8. Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on existing downstream drainage system(s).
9. Existing facility.
10. Special site conditions and/or additional comments:
 - There is an existing master stormwater management facility that provides detention for this site. No additional stormwater will be required if the new or reformed impervious coverage is less than 10,000 square feet. (Water quality will be required for any new or reformed area exceeding 5,000 sf).

DEPARTMENT COMMENTS- Planning Division

No comment.

DEPARTMENT COMMENTS- Water and Sewer

No additional comments. See Z-38 (2018) comments.

DEPARTMENT COMMENTS- Transportation

1. 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 north side of Interstate North Parkway, a minimum of 50' from the roadway centerline.
2. Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.
3. Recommend applicant verify that a minimum intersection sight distance of 390' is available for Baby Doe Lane access.
4. Recommend applicant coordinate with GDOT to ensure compatibility with any proposed interstate improvement projects.

STAFF ANALYSIS

There are fifteen criteria that must be considered for a Special Land Use Permit. The criteria are below in bold, with the staff analysis written unbolded:

(1) Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.

It is Staff's opinion that the applicant's proposal will not have an adverse effect on the usability of adjacent or nearby properties. The proposed use is a quiet, low traffic generating use and will decrease the amount of traffic that could be generated by other permitted retail uses.

(2) Whether or not the use is otherwise compatible with the neighborhood.

It is Staff's opinion that the applicant's proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The property is located in an area that includes a hotel, convenience store with fuel sale, retail, office, multi-family residential and an auto dealership.

(3) Whether or not the use proposed will result in a nuisance as defined under state law.

The use should not be a nuisance as defined by state law.

(4) Whether or not quiet enjoyment of surrounding property will be adversely affected.

The quiet enjoyment of surrounding properties will not be adversely affected due to the location of the applicant's proposal being accessed from a private drive on the north side. The convenience store to the west is more intense for traffic and noise.

(5) Whether or not property values of surrounding property will be adversely affected.

The use should not adversely affect surrounding property values.

(6) Whether or not adequate provisions are made for parking and traffic considerations.

There are adequate provisions for parking and traffic considerations. The proposed plan will meet the minimum number of parking spaces.

(7) Whether or not the site or intensity of the use is appropriate.

The applicant's site is appropriate for the use. The proposed use is less intense than the surrounding uses.

(8) Whether or not special or unique conditions overcome the board of commissioners' general presumption that residential neighborhoods should not allow noncompatible business uses.

There are no special or unique conditions which would prohibit the use in this area. The site is situated in an area having multi-family residential, office, retail and auto dealership uses.

STAFF ANALYSIS (continued)

(9) Whether or not adequate provisions are made regarding hours of operation.

The proposed office hours will be from 8 a.m. until 7 p.m., Monday through Saturday, and from 1 p.m. to 6 p.m. on Sundays.

(10) Whether or not adequate controls and limits are placed on commercial and business deliveries.

Deliveries should be limited to normal office hours only.

(11) Whether or not adequate landscape plans are incorporated to ensure appropriate transition.

The proposed project will need landscape plan approval during the Site Plan Review process, and/or the District Commissioner.

(12) Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.

The use should not adversely affect the public health, safety, welfare, or moral concerns of the surrounding properties.

(13) Whether the application complies with any applicable specific requirements set forth in this chapter for special land use permits for particular types of uses.

It is Staff's opinion that the applicant's proposal meets the minimum standards that shall apply to freestanding climate-controlled self-service storage facilities.

(14) Whether the applicant has provided sufficient information to allow a full consideration of all relevant factors.

It is Staff's opinion that the applicant's proposal meets the minimum standards that shall apply to freestanding climate-controlled self-service storage facilities.

(15) In all applications for a special land use permit the burden shall be on the applicant both to produce sufficient information to allow the county fully to consider all relevant factors and to demonstrate that the proposal complies with all applicable requirements and is otherwise consistent with the policies reflected in the factors enumerated in this chapter for consideration by the county.

The applicant has provided sufficient information that demonstrates the proposal's compliance with all applicable requirements.

The staff analysis and recommendation 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.

STATEMENT OF INTENT

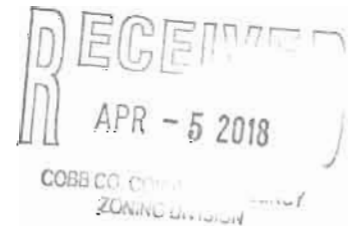
OF

MEQUITY ACQUISITIONS, LLC

**Special Land Use Permit Application
for an 2.556 Acre Tract of Land located in
Land Lots 1056 & 1057, 17th District, 2nd Section,
Cobb County, Georgia**

Submitted for the Applicant by:

**Garvis L. Sams, Jr.
Sams, Larkin, Huff & Balli, LLP
Suite 100
376 Powder Springs Street
Marietta, GA 30064
(770) 422-7016
gsams@slhb-law.com**



I. INTRODUCTION

This Application seeks both a Rezoning and a Special Land Use Permit ("SLUP") to allow the construction and development of a Climate Control Self-Service Storage Facility ("CCSSSF") on the subject property. The property at issue is situated on a tract of land approximately 2.556 acres in size located off of an easement from Powers Ferry Road, the north side of Interstate North Parkway and is contiguous to right-of-way owned by Cobb County. The subject property is presently zoned O&I and contains an existing office building and an existing parking deck. The office building was built in 1981. The County's Future Land Use Map ("FLUM") designates the subject property as located within the confines of a Regional Activity Center ("RAC"). The subject property shall be retrofitted, rehabbed and repurposed for a CCSSSF use which will support the adjacent residential and office uses, as proposed by the Applicant.

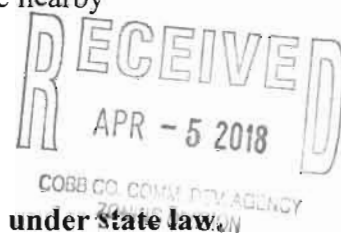
II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS

A. Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.

The subject property is bordered by properties zoned and used for high density residential (apartments) and considerable amounts of office space contained in stand-alone buildings and within office parks. The entirety of the southern property line of the subject property has direct contiguity to Interstate North Parkway which is a heavily traveled transit corridor. The area in which the proposed development will be located is specifically designed to accommodate high density residential, office and commercial uses and traffic; however, the proposed CCSSSF will produce little if any AM/PM peak hour traffic, the operations of which will be totally contained within the buildings. Therefore, the proposal will have no adverse impact upon neighborhoods or adjacent properties.

B. Whether or not the use is otherwise compatible with the neighborhood.

The neighborhoods and properties around the subject property are zoned GC, NS, CRC, O&I, RM-12 and RMR, and consist of high-density residential, commercial and office uses within a Regional Activity Center (“RAC”) under the County’s Future Land Use Map. Given these facts and the reality that the area already consists of a preponderance of high density residential uses and intense office development, which creates an extraordinary amount of “mass”, the proposed use is compatible with the nearby neighborhoods and commercial properties in which it will be located.



C. Whether or not the use proposed will result in a nuisance as defined under state law.

The proposed use will not result in a nuisance, either public or private, as that term is defined under Georgia law. In fact, the proposed construction of a CCSSSF in this location with direct contiguity to Interstate North Parkway and adjacent to I-285, will eliminate potential nuisances as defined under state law.

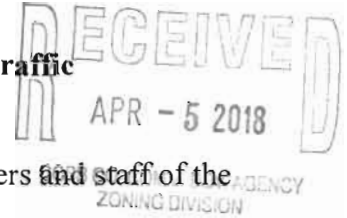
D. Whether or not the quiet enjoyment of surrounding property will be adversely affected.

The surrounding properties consist of high density residential developments, commercial uses and concentrated office developments which are more intense than the CCSSSF as proposed by the Applicant. Further, the proposed use is located with direct contiguity to Powers Ferry Road and Interstate North Parkway.

E. Whether or not property values of surrounding property will be adversely affected.

The surrounding properties consist primarily of higher density residentially-oriented properties, commercial and office uses. Therefore, the values of surrounding properties will not be adversely affected.

F. Whether or not adequate provisions are made for parking and traffic considerations.



The proposal will meet the needs of the traffic generated both by users and staff of the CCSSSF. The Regional Activity Center area in which the subject property is located was specifically designed for uses which generate heavy traffic; however, the current proposal will generate significantly less traffic than most any other non-residential use in general and specifically less in AM and PM peak hours.

G. Whether or not the site or intensity of the use is appropriate.

The subject property consists of 2.556 acres of land containing existing office building and parking deck. The size of the property is more than adequate to accommodate the proposed CCSSSF and its proposed Floor Area Ratio (“FAR”).

H. Whether or not special or unique conditions overcome the Board of Commissioners’ general presumption that residential neighborhoods not allow non-compatible businesses.

The proposed use is compatible with respect to high-density residential developments, the concentrated office parks and intense commercial utilizations surrounding the subject property. A CCSSSF will have little if any effect upon residential use or values in view of the fact the proposed use is compatible and complementary in nature.

I. Whether or not adequate provisions are made regarding hours of operation.

The hours of operation shall be from 8:00 a.m. until 7:00 p.m. Monday-Saturday and from 1:00 p.m. until 6:00 p.m. on Sundays.

J. Whether or not adequate controls and limits are placed on commercial and business deliveries.

Deliveries to the subject property will be commensurate in number and type to existing deliveries or visits to other CCSSSF facilities within RACs and in other parts of Cobb County.

K. Whether or not adequate landscape plans are incorporated to ensure an appropriate transition.



The Applicant will be submitting a landscape plan during the Plan Review Process subject to review and approval by the County's Arborist and the Community Development Department, with final review and approval by the District Commissioner.

L. Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.

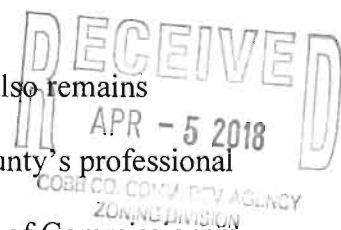
The surrounding "neighborhood" consists of high density residential uses, concentrated offices and commercial uses, all of which are compatible and provide extraordinary "mass" for the proposed CCSSSF.

M. Whether the Application complies with any applicable specific requirements set forth in this chapter for a Special Land Use Permit for particular types of uses.

This Application meets all of the requirements for a Special Land Use Permit and all required information has been supplied within the SLUP Application and the Rezoning Application packages, respectfully.

N. Whether the Applicant has provided sufficient information to allow a full consideration of all relevant factors.

The Applicant has addressed all issues raised by law. The Applicant also remains available to respond to additional questions or issues raised by the County's professional staff, Members of the Planning Commission or Members of the Board of Commissioners.

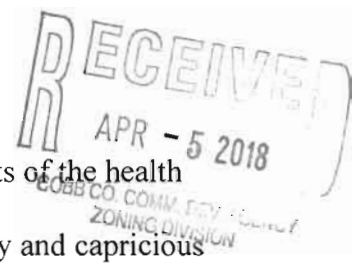


III. PRESERVATION OF CONSTITUTIONAL RIGHTS

The Zoning Ordinance of Cobb County, Georgia lacks adequate standards for the Board of County Commissioners to exercise its power to issue Special Land Use Permits. In essence, the standards are not sufficient to contain the discretion of the Board of Commissioners and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Board of Commissioners, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Resolution also violates Article I, Section III, Paragraph 1; and Article 1, Paragraphs 1 and 2 of the Constitution of the State of Georgia, 1983.

The Board of Commissioners is granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of Cobb County, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinances presently in effect is contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.



In addition, the Zoning Ordinance is unconstitutional in that it renders the subject property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of the Applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to approve the requested Special Land Use Permit for the subject property would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the Application for the Special Land Use Permit would be contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the application would constitute a violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the Board of Commissioners who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

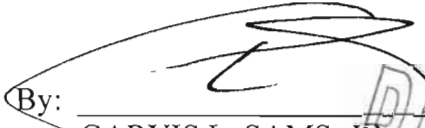
The Zoning Ordinance of Cobb County, Georgia is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.


IV. CONCLUSION

Based upon the foregoing reasons, the Applicant respectfully requests that the Special Land Use Permit at issue be approved with the Applicant soliciting any comments from staff or other officials of Cobb County so that such recommendations or input may be incorporated as conditions of approval of the Application.

Respectfully submitted, this the 4 day of April, 2018.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 
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Attorney for Applicant
Georgia Bar No. 623950



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(770) 422-7016

Planning Commission Decision

NO. OPPOSED: _____ APPROVED _____ DENIED _____ DELETED TO _____

NO. IN SUPPORT _____ MOTION BY: _____ SECONDED: _____ VOTE: _____

Names of those Opposed:

Comments:

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Stipulation letter from _____ dated _____

Board of Commissioners Decision

NO. OPPOSED: _____ APPROVED _____ DENIED _____ DELETED TO _____

NO. IN SUPPORT _____ MOTION BY: _____ SECONDED: _____ VOTE: _____

Names of those Opposed:

Comments:

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