

**APRIL 20, 2010 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 4**

ITEM #2

PURPOSE

To consider amending the site plan and stipulations for Merganser Enterprises, Inc., regarding Z-142 (COVERED BRIDGE INVESTMENTS, LLC) of September 20, 2005, for property located in Land Lots 25, 26, 47 and 48 of the 17th District at the southeast intersection of Hicks Road and the East-West Connector.

BACKGROUND

The subject property is zoned Planned Village Commercial (PVC) subject to numerous conditions/stipulations that are attached. One of the stipulations allowed the District Commissioner to approve the final site plan. On September 17, 2007, Commissioner Kesting approved the attached site plan. The approved site plan indicated a total square footage of 80,000 square feet of retail, daycare and convenience store with gasoline sales. This request seeks to amend the approved site plan to allow a 45,600 square foot grocery store and an additional 31,964 square feet of retail space. The proposed site plan is attached. Also attached, is a stipulation letter that is intended to be incorporated into the previously approved conditions/stipulations if this request is approved. The other business application is also attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider the proposed site plan and submitted stipulations and if approved, all other previously approved conditions/stipulations not in conflict, are to remain in effect.

ATTACHMENTS

Board of Commissioners Decision
Approved Site Plan
Proposed Site Plan
Letter of Stipulations
Other Business Application

ORIGINAL DATE OF APPLICATION: 09-20-05APPLICANTS NAME: COVERED BRIDGE INVESTMENTS, LLC

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS

BOC DECISION OF 11-15-05 ZONING HEARING:

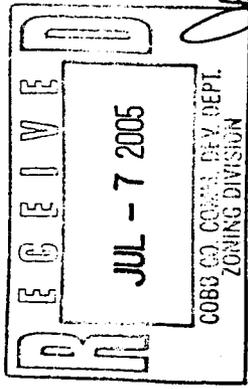
COVERED BRIDGE INVESTMENTS, LLC (Covered Bridge Investments, LLC and Janie Louise Twilley, owners) requesting Rezoning from **R-20** to **PVC** for the purpose of Addition of Property to a Previously Approved PVC Project in Land Lots 25, 26, 47 and 48 of the 17th District. Located at the southeast intersection of Hicks Road and the East-West Connector

MOTION: Motion by Lee, second by Kesting, as part of the Consent Agenda, to **approve** rezoning to the **PVC** zoning district **subject to:**

- **site plan received by the Zoning Division on July 7, 2005, with the District Commissioner approving the final plan (copy attached and made a part of these minutes)**
- **letter of agreeable stipulations from Mr. Joseph Pressley, dated October 28, 2005, *not otherwise in conflict* (copy attached and made a part of these minutes)**
- **Developer to install a fully planted buffer adjacent to AT&T easement to the south to be approved by Staff**
- **requirements of Atlanta Regional Commission (ARC) and Georgia Regional Transportation Authority (GRTA) regarding Development of Regional Impact (copy attached and made a part of these minutes)**
- **Water and Sewer comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations**
- **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**

VOTE: **ADOPTED** unanimously

Min. Bk. 38 Petition No. Z-142
 Doc. Type Site Plan
 Meeting Date 11/15/05

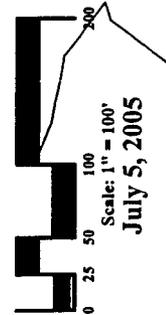


Preliminary Plan

Proposed Office/Retail Village

Cobb County, Georgia Land Lots 25, 26, 47, & 48, 17th District, 2nd Section
 prepared for:

Covered Bridge Investments, LLC



DGM
 Land Planning
 CONSULTANTS
 376 Oak Park
 Atlanta, Georgia 30344
 770 514-9008
 FAX 514-9481

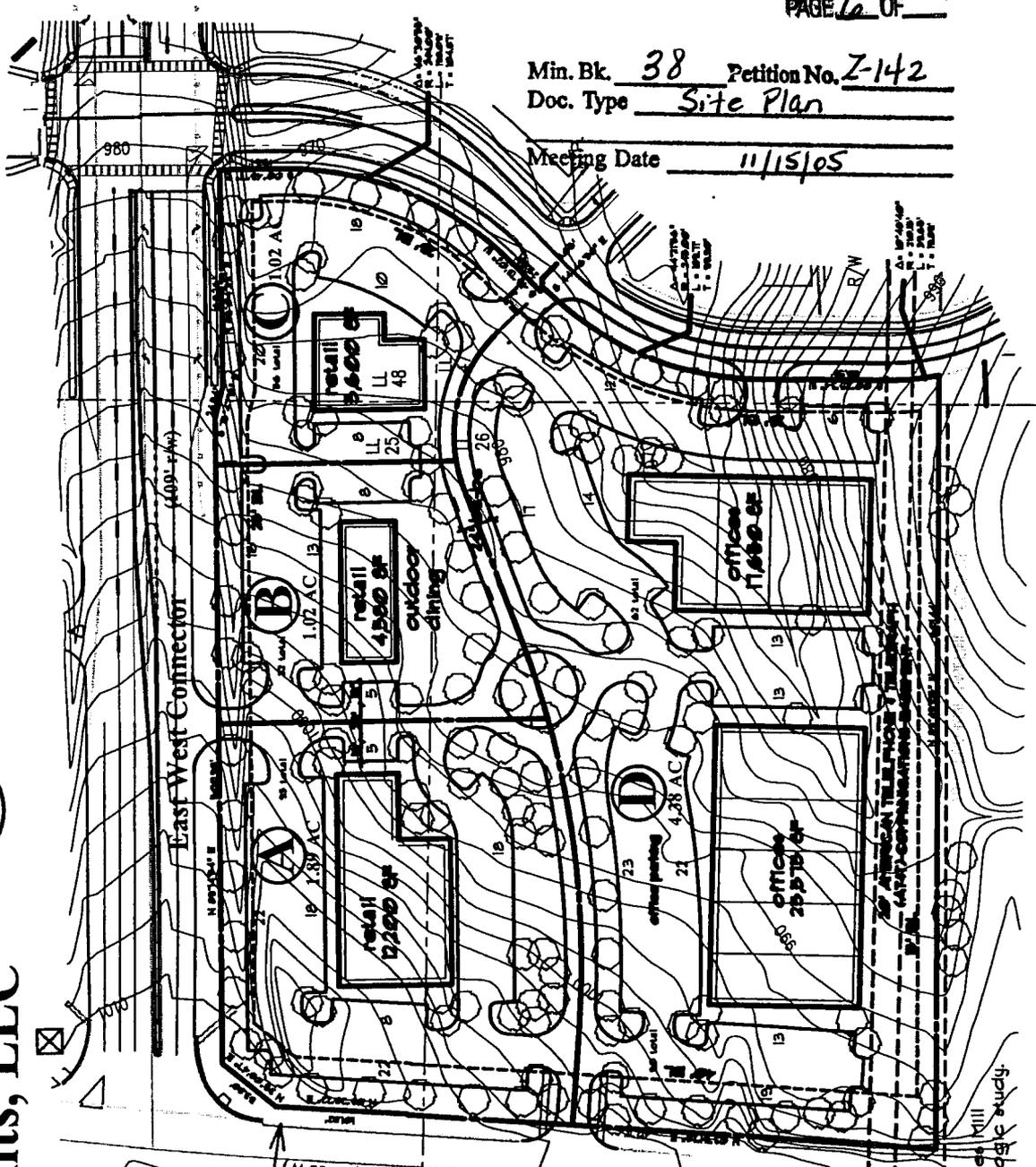


Site Data

Total Site Area: 8.31 AC
 Present Zoning: R-20
 Proposed Zoning: NRC
 Bldg. Area Shown: 65,605 SF
 Total Parking Shown: 333 spaces
 Building Setbacks: (as indicated)

Notes:

- Boundary survey and topographic information by West Georgia Surveyors, April 4, 2003.
- According to Flood Insurance Rate Map (FIRM) 130611207F, August 18, 1995, no portion of this site contains floodplain.
- No cemeteries are known to exist on site.
- Stream and wetland classifications are to be determined.
- No archeological or architectural landmarks are known to exist on site.
- Stormwater to be accommodated offsite by agreement with Barnes Mill Development Inc. Volumes will be determined based on hydrologic study.



HARPER SOUTHEASTERN PROPERTIES, INC.

Post Office Box 5074
Marietta, Georgia 30061
Office (770) 425-6776
Facsimile (770) 425-2711

Min. Bk. 38 Petition No. Z-142
Doc. Type Letter of Agreeable
Stipulations
Meeting Date 11/15/05

October 28, 2005

via: Hand Delivery

Mr. John Pederson, Planner III
Cobb County Community Development Agency
Zoning Division
191 Lawrence Street, Suite 300
Marietta, Georgia 30060-1689

OCT 28
73 4:38 PM

RE: Application: Zoning Case #Z-142, Covered Bridge Investments, LLC
Owners: Janie Louise Twilley and Covered Bridge Investments, LLC

Dear Mr. Pederson:

The undersigned and this firm represent Covered Bridge Investments, LLC ("Applicant"), and Janie Louise Twilley and Covered Bridge Investments, LLC (collectively "Owners"), in their rezoning application for 8.31 acres located at the southeast intersection of the East West Connector and Hicks Road in Land Lots 25, 26, 47 and 48 in the 17th District, 2nd Section, Cobb County, Georgia ("Subject Property"). We have met with Cobb County Staff and had discussions with area residents, and reviewing the staff comments and recommendations and surrounding uses, as authorized by the Applicant and Owner, submit this letter of agreeable stipulations and conditions. These agreeable stipulations and conditions shall become part of the grant of the requested zoning and binding upon the Subject Property if the Application for Rezoning is approved.

The stipulations and conditions provided 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. The Subject Property shall be rezoned from the R-20 zoning category to the Planned Village Concept ("PVC") zoning classification to that certain Preliminary Plan prepared for Covered Bridge Investments, LLC by DGM Land Planning Consultants, Inc. dated July 5, 2005.

The referenced stipulations are as follows:

1. The Property is comprised of 8.31 acres and shall be similar architecturally to the existing retail/office component of Covered Bridge at Barnes Mill.
2. In accordance with the Preliminary Plan dated July 5, 2005, prepared by DGM Land Planning Consultants, Inc., with District Commissioner

Mr. John Pederson, Planner III
Cobb County Community Development Agency
October 28, 2005

Petition No. 2-142
Meeting Date 11/15/05
Continued

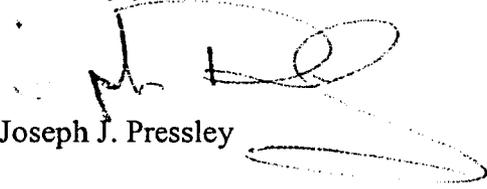
PAGE 8 OF 8

approving any minor modifications to the Plan, the developer shall provide a forty (40) foot landscape buffer using plantings adjacent to the R-20 zoned property to the south of the Subject Property in accordance with the restrictions of the easement of record.

3. Subject to all Water and Sewer comments and recommendations.
4. Subject to all Stormwater Management comments and recommendations.
5. Subject to all Department of Transportation comments and recommendations.
6. All signs shall be ground based monument style in keeping with existing monuments in Covered Bridge at Barnes Mill.
7. The southern most buildings within the Subject Property will be restricted to office uses and shall provide a step-down to the adjoining residential use and shall officially cap off the commercial node. Retail uses shall not include automotive maintenance, adult entertainment, full service gasoline sales, light industrial uses, car washes or emission inspection stations. Retail users currently expressing interest include upscale restaurants, professional offices, coffee shops, bookstores, ice-cream shops and other similar tenants.
8. The Subject Property has been submitted to the Atlanta Regional Commission ("ARC") and the Georgia Regional Transportation Authority ("GRTA"), and the ARC and GRTA have found this project to be in the best interest of the State of Georgia. The Subject Property shall be subject to ARC and GRTA comments and recommendations.

We believe the requested zoning is an appropriate use of the Subject Property, pursuant to the referenced Preliminary Plan and the stipulations set forth herein. The proposed concept is in fitting with the surrounding community and the Covered Bridge at Barnes Mill, which is currently under construction. The proposed development will enhance the Subject Property and will be of the highest quality. Thank you for your consideration of this request.

Sincerely yours,


Joseph J. Pressley



SITE INFORMATION:
 OWNER: PACIFIC POWER & LIGHT, 2000
 TOTAL AREA: 15.1 AC, 6.51 AC
 IMPROVEMENT AREA: 6.51 AC
 UNIMPROVED AREA: 8.59 AC
 ZONING: COMMERCIAL
 PROJECT NO.: 98-001
 DATE: 08/25/98
 SCALE: 1" = 20'

CONSTRUCTION NOTES:
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN JOSE ORDINANCES.
 2. ALL UTILITIES SHALL BE DEPTH MARKED AND PROTECTED.
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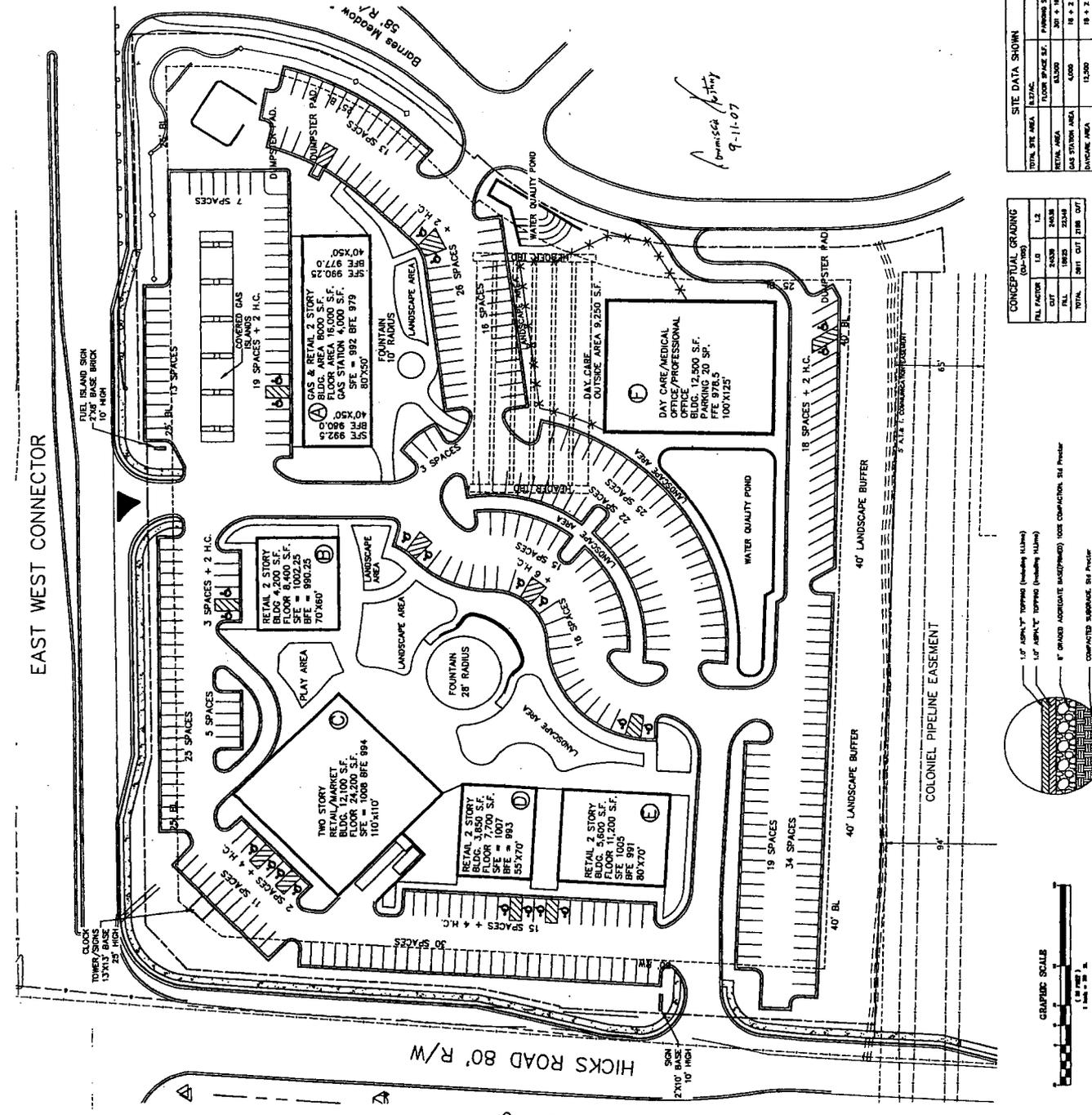
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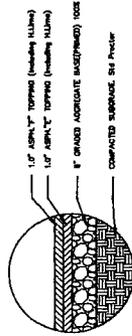
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9-11-07
 [Signature]

SITE DATA SHOWN	
TOTAL SITE AREA	15.1 AC
FLOOR SPACE S.F.	12,500
PARKING SPACES	108
RETAIL AREA	40,000
DAY CARE	18 + 2 A.C.
GAS STATION AREA	12,500
LANDSCAPE AREA	18 + 2 A.C.

CONCEPTUAL GRADING	
ALL FACTOR	1.0
1.0	1.2
CUT	2400
FILL	2200
TOTAL	1800
NET CUT	1800
NET FILL	1800



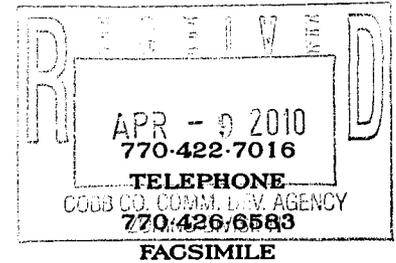
24HR. EMERGENCY PHONE NO. 678-267-0587, CONTACT HUSEIN HAMIRANI
 TYPICAL PAVEMENT DETAIL

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP

SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF
JAMES A. BALLI

MELISSA P. HAISTEN
JUSTIN H. MEEKS



SAMSLARKINHUFF.COM

April 9, 2010

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
191 Lawrence Street
Suite 300
Marietta, Georgia 30060-1661

Re: Other Business Agenda Application to Amend Previously Approved
Site Plan and Stipulations/Conditions Regarding the Application of
Covered Bridge Investments, LLC (No. Z-142 [2005])

Dear Mark:

As you know, this firm represents Merganser Enterprises, Inc. ("Merganser") concerning the above-captioned application. The application is scheduled to be heard and considered by the Cobb County Board of Commissioners on April 20, 2010 on its "Other Business" agenda which will immediately follow the regularly scheduled zoning hearings that day.

Merganser's proposal seeks to revise the site plan and modify certain stipulations which were made a part of the above-captioned rezoning in 2005, as amended later by a revised site plan approved by former Commissioner Annette Kesting on September 11, 2007. More specifically, Merganser proposes retail/restaurant/bank uses (31,964± square feet) anchored by a grocery store (45,600± square feet) and a commensurate change in stipulations/ conditions dictated by the proposal.

While the application has been pending, discussions have ensued with area residents and business owners. Additionally, my clients have interfaced with the newly elected members of the Barnes Mill HOA Board of Directors. In that regard, this letter will constitute Merganser's agreement with the following stipulations which shall become conditions and a part of the grant of the requested proposal and binding upon the subject property thereafter. The referenced stipulations are as follows, to-wit:

1. The stipulations and conditions set forth herein as well as the components of the site plan filed with the application shall be in addition to the existing stipulations and conditions which were negotiated and approved in connection with the original rezoning in 2005 and

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
Page 2
April 9, 2010

the subsequent site plan approved in 2007 and will only supercede same where in conflict.

2. Approval of the "Other Business" application shall be in substantial conformity to the site plan prepared by Paulson Mitchell which was filed contemporaneously with the application on March 16, 2010. However, it shall be understood that there may be circumstances which require that the site plan to be modified slightly during the Plan Review process, subject to review and approval by the District Commissioner.
3. Restaurants which exceed 3,000 square feet in floor area shall be allowed.
4. The architectural style, composition and treatment of all buildings shall be in substantial conformity to the photographs being submitted contemporaneously herewith which depict The Village Shops at Windemere which is located in Forsyth County. The composition of the buildings shall be uniform throughout the development and shall consist of a mixture of brick or brick-like materials, EFIS, stacked stone, stacked stone-like materials and related materials with stucco-type components.

The formation of an Architectural Control Committee consisting of representatives of Barnes Mill HOA, the developer and the Community Development Agency. With respect to any issues which can not be resolved, the Community Development Agency representative shall be the final arbiter with respect to such issues.

5. Entrance signage for the proposed development shall be ground-based, monument style, with finished materials and colors matching the architectural style and composition as aforementioned.
6. Parking area lighting shall be environmentally sensitive, low level luminaries fitted with non-glare lenses and cut-off shields to minimize illumination from penetrating outside the boundaries of the subject property.
7. All dumpsters servicing the proposed retail center which are visible from adjacent properties or public rights-of-way shall be enclosed with a minimum 6' high enclosure consistent with the architectural style as aforementioned on three (3) sides with an opaque wooden door on the access side which shall remain in a closed position except when the dumpsters are being emptied. All dumpsters shall have rubber lids to minimize noise.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
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8. The submission of a landscape plan during the Plan Review process subject to review and approval by the Community Development Agency, including the following:
 - a. The formation of a landscape oversight committee consisting of representatives of Barnes Mill HOA, the developer and the Community Development Agency who shall be the final arbiter with respect to the resolution of any issues which can not otherwise be resolved.
 - b. All landscaping for the proposed retail center shall be professionally designed, maintained and irrigated. Additionally, said landscaped areas shall be perpetually maintained and any dead or irrevocably diseased vegetation shall be replaced as necessary.
 - c. Those areas between sections of the subject property reserved for required parking, as well as public rights-of-way, shall be included in the final landscape plan. The landscaping and foliage contained within the parking islands shall consist of both upper and lower vegetative canopies.
 - d. All HVAC and/or mechanical systems shall be screened in accordance with PVC District regulations.
 - e. All landscaped and buffer areas may be penetrated for purposes of access, utilities, and stormwater management including, but not limited to, detention/retention facilities, drainage facilities and any and all slope and other required engineering features.
9. Compliance with all Cobb County Department of Transportation comments and recommendations.
10. Compliance with all recommendations from the Stormwater Management Division with respect to the location, configuration and methodology of detention and water quality which, based upon discussions with the Stormwater Management Division, shall be located underground.
11. Compliance with the recommendations from the Cobb County Fire Department.
12. Compliance with the recommendations from the Cobb County Water System with respect to the availability and acquisition of water and sewer to service the subject property.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
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13. Minor modifications to the site plan, the landscape plan, the architecture and these stipulations/conditions may be approved by the District Commissioner.

Cobb County is provided with a unique opportunity to approve a development proposal which is entirely appropriate considered in the context of existing and proposed development in which the subject property is located and in view of the stipulations/conditions to which Merganser has agreed. Moreover, with the subject property being located within the an area under Cobb County's Future Land Use Map which is denominated as a Neighborhood Activity Center (NAC), the property is properly positioned for the commercial purposes proposed.

Please do not hesitate to call should you or the staff require any further information or documentation prior to the formulation of your Zoning Analysis and staff recommendations. With regards, I am

Very truly yours,

SAMS, LARKIN & HUFF, LLP



Garvis L. Sams, Jr.
gsams@samslarkinhuff.com

GLSjr/brl

Enclosures

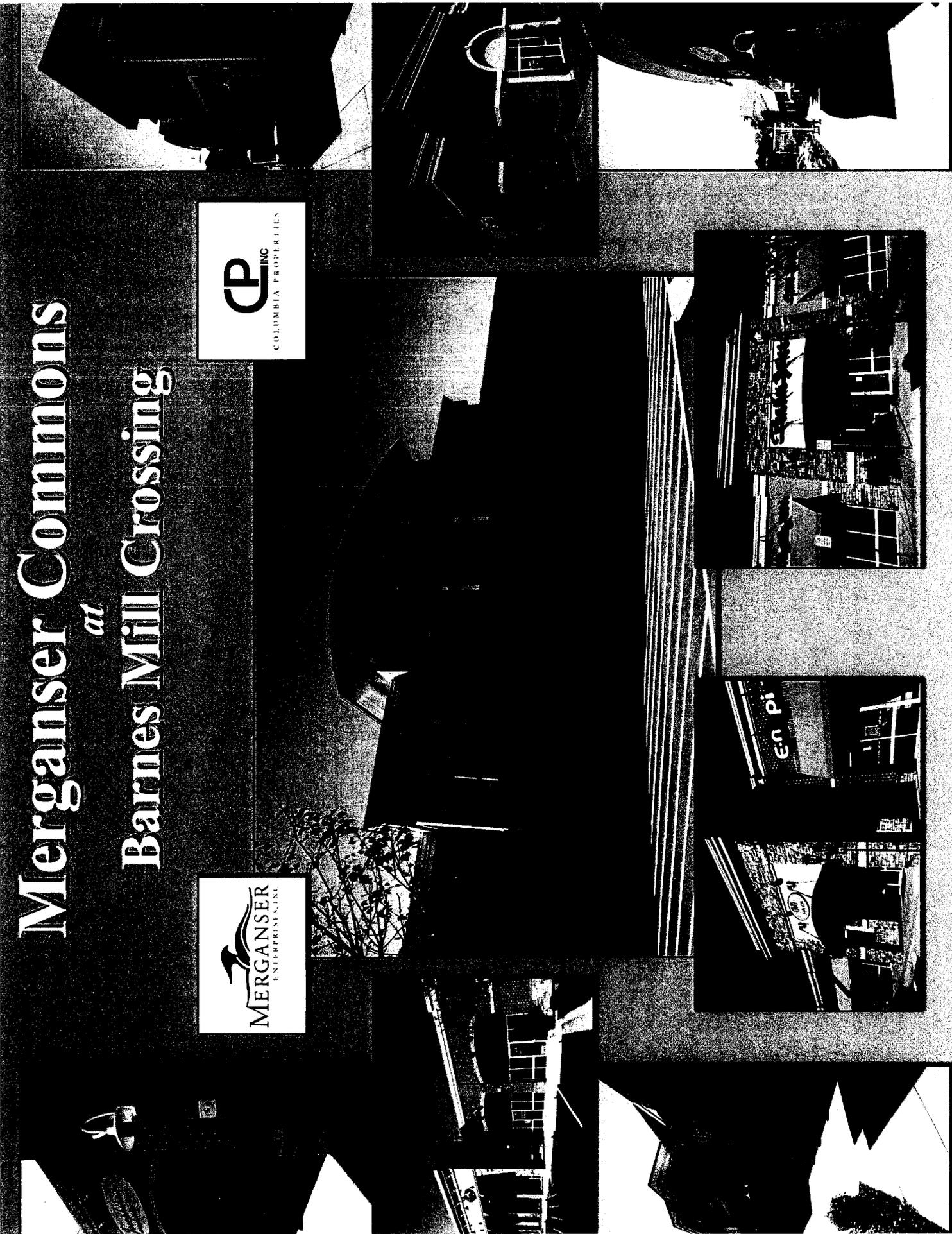
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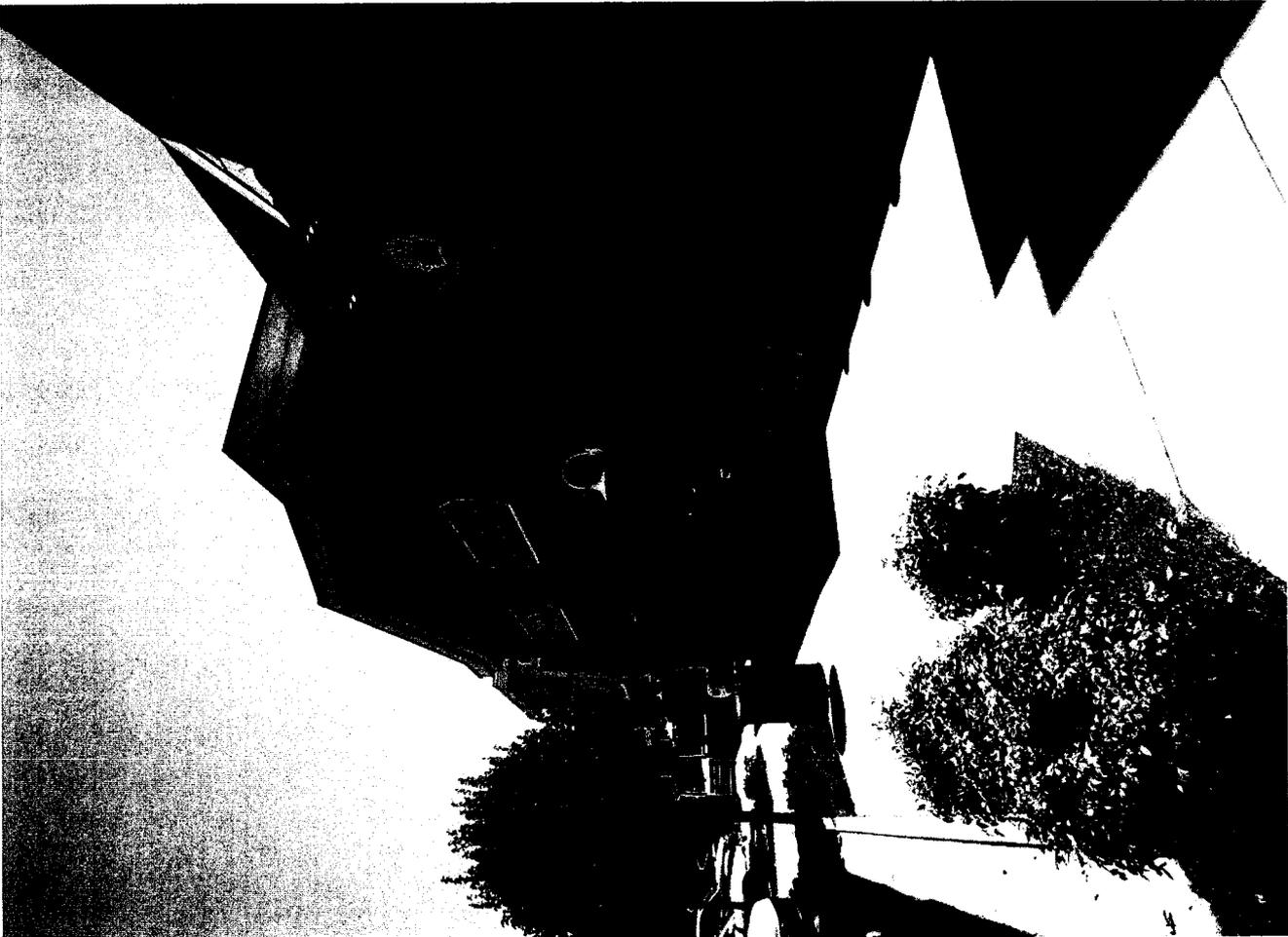
VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
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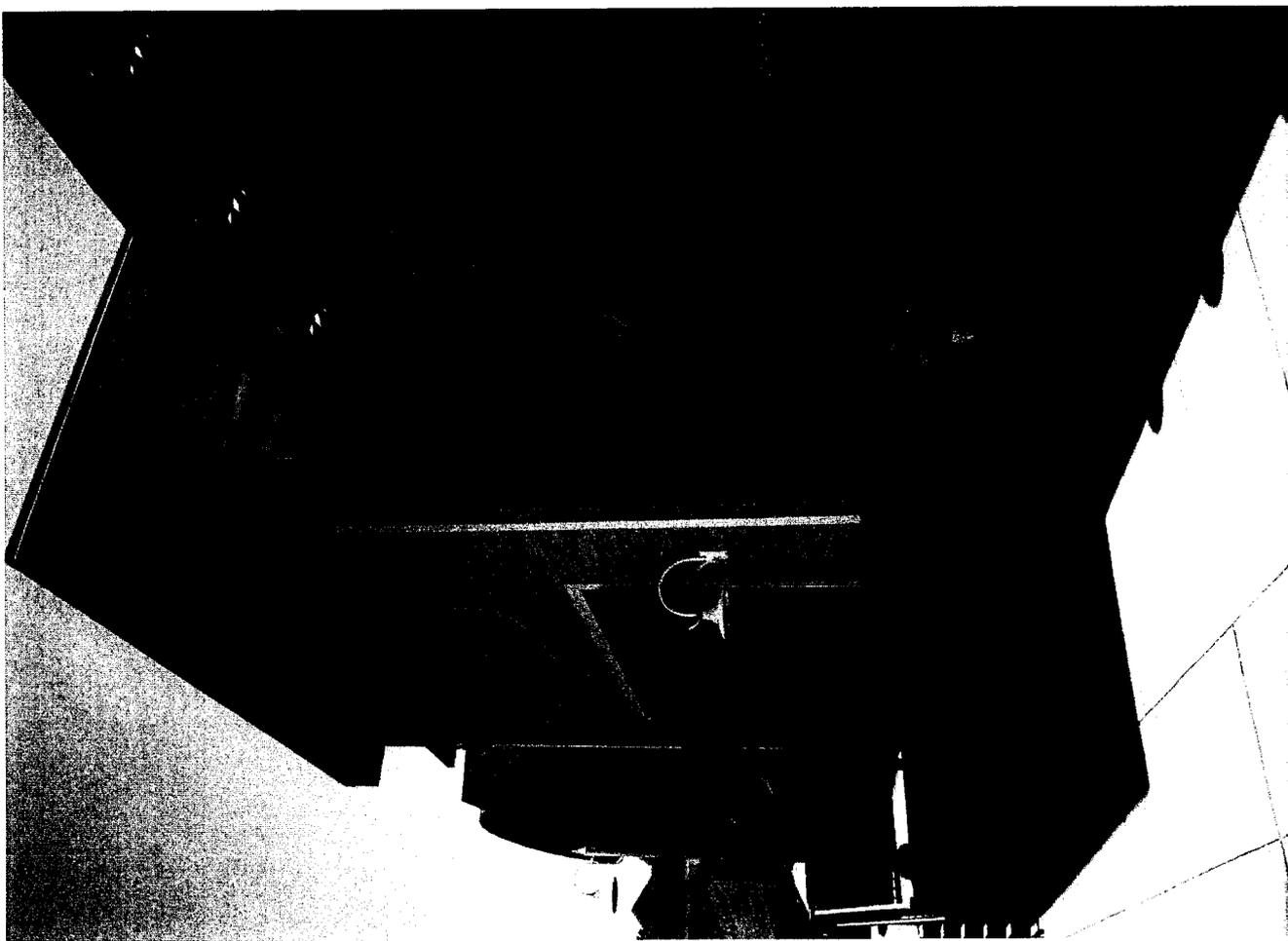
cc: Mr. Woody Thompson, Interim Chairman, – VIA Hand Delivery – w/enclosures
Members, Cobb County Board of Commissioners – VIA Hand Delivery – w/enclosures
Mr. Murray Homan – w/enclosures
Mr. Robert L. Hosack, Jr., AICP, Director – VIA E-Mail – w/attachments
Mr. Dana Johnson, AICP, Planning Division Manager – VIA E-Mail – w/attachments
Mr. John P. Pederson, AICP, Planner III – VIA E-Mail – w/attachments
Mr. David W. Breden, P.E., Senior Stormwater Review Engineer –
VIA E-Mail – w/attachments
Ms. Jane Stricklin, PE, Development & Review Engineer – VIA E-Mail – w/attachments
Ms. Karen King, Assistant County Clerk – VIA E-Mail – w/attachments
Ms. Lori Presnell, Deputy County Clerk – VIA E-Mail – w/attachments
Mr. Ned Crystal – VIA E-Mail – w/attachments
Mr. Carl Fleming – VIA E-Mail – w/attachments
Ms. Christina Kempter – VIA E-Mail – w/attachments
Mr. Shawn Eisenberg – VIA E-Mail – w/attachments
Mr. Ben Clopper, Mableton Improvement Coalition – VIA E-Mail - w/attachments
Mr. R. L. “Merg” Hoffman – VIA E-Mail – w/attachments
Mr. Eric Rafalik – VIA E-Mail – w/attachments
Mr. Dan O’Neil – VIA E-Mail – w/attachments

Merganser Commons *at* Barnes Mill Crossing

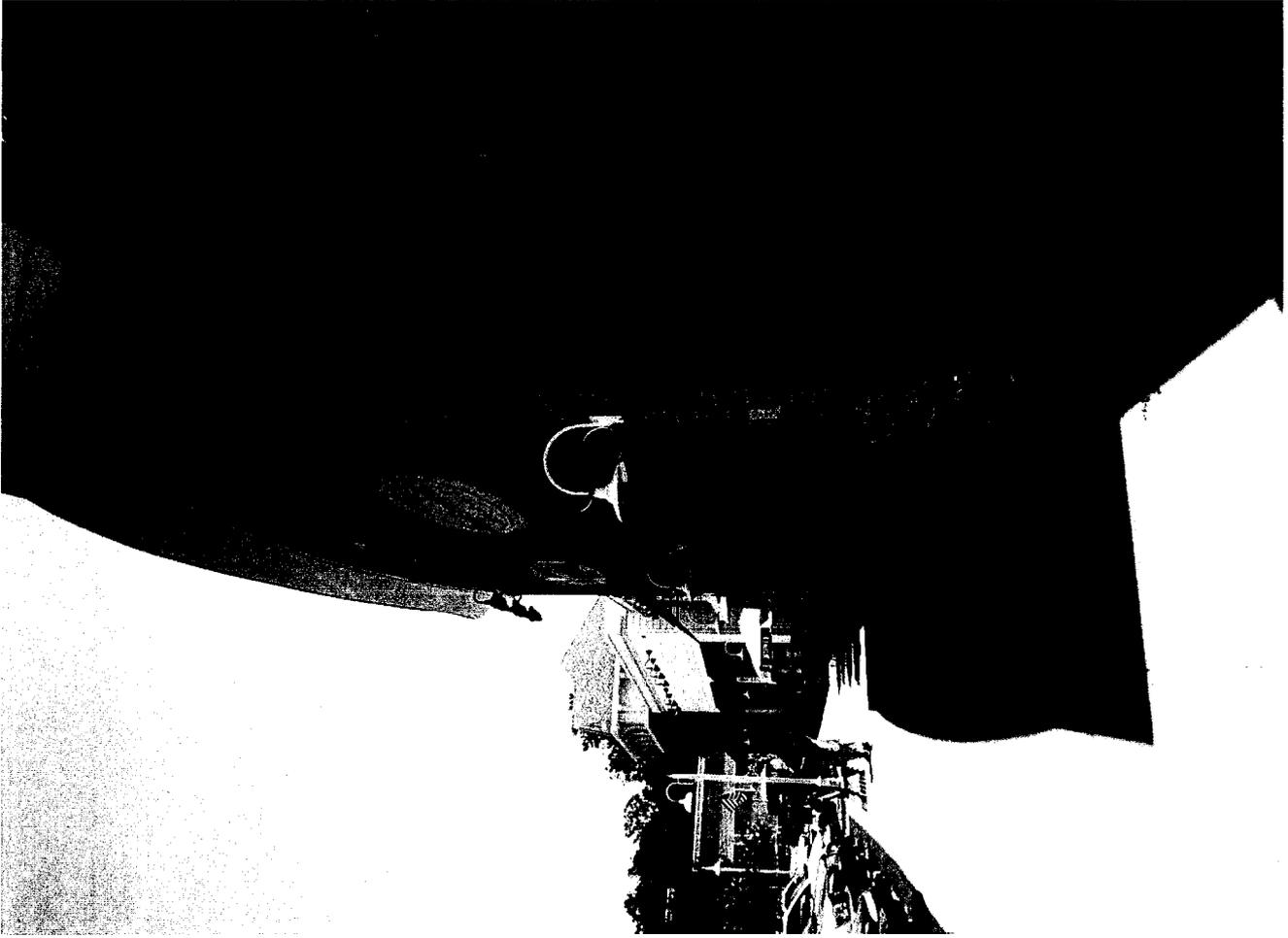




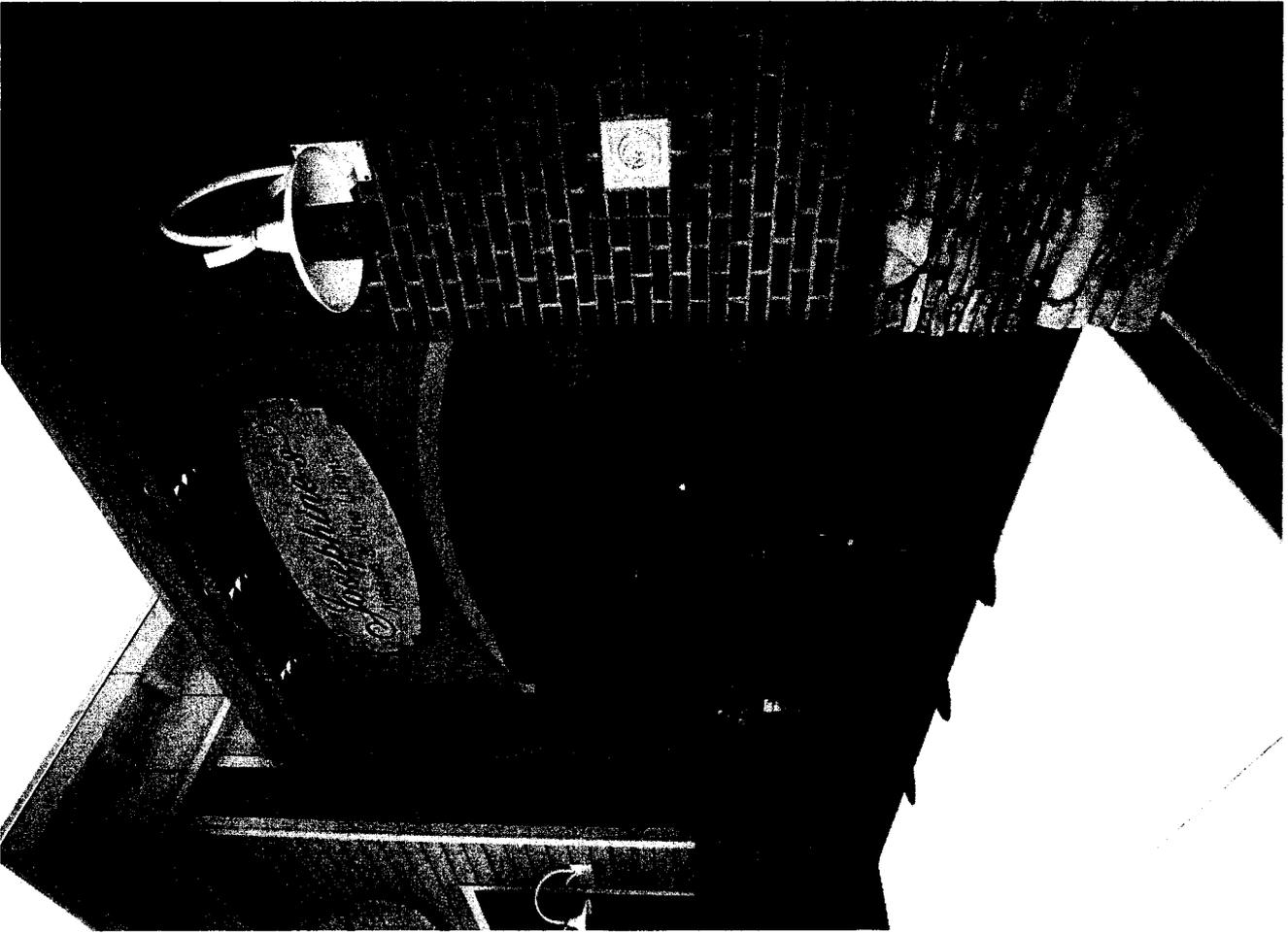
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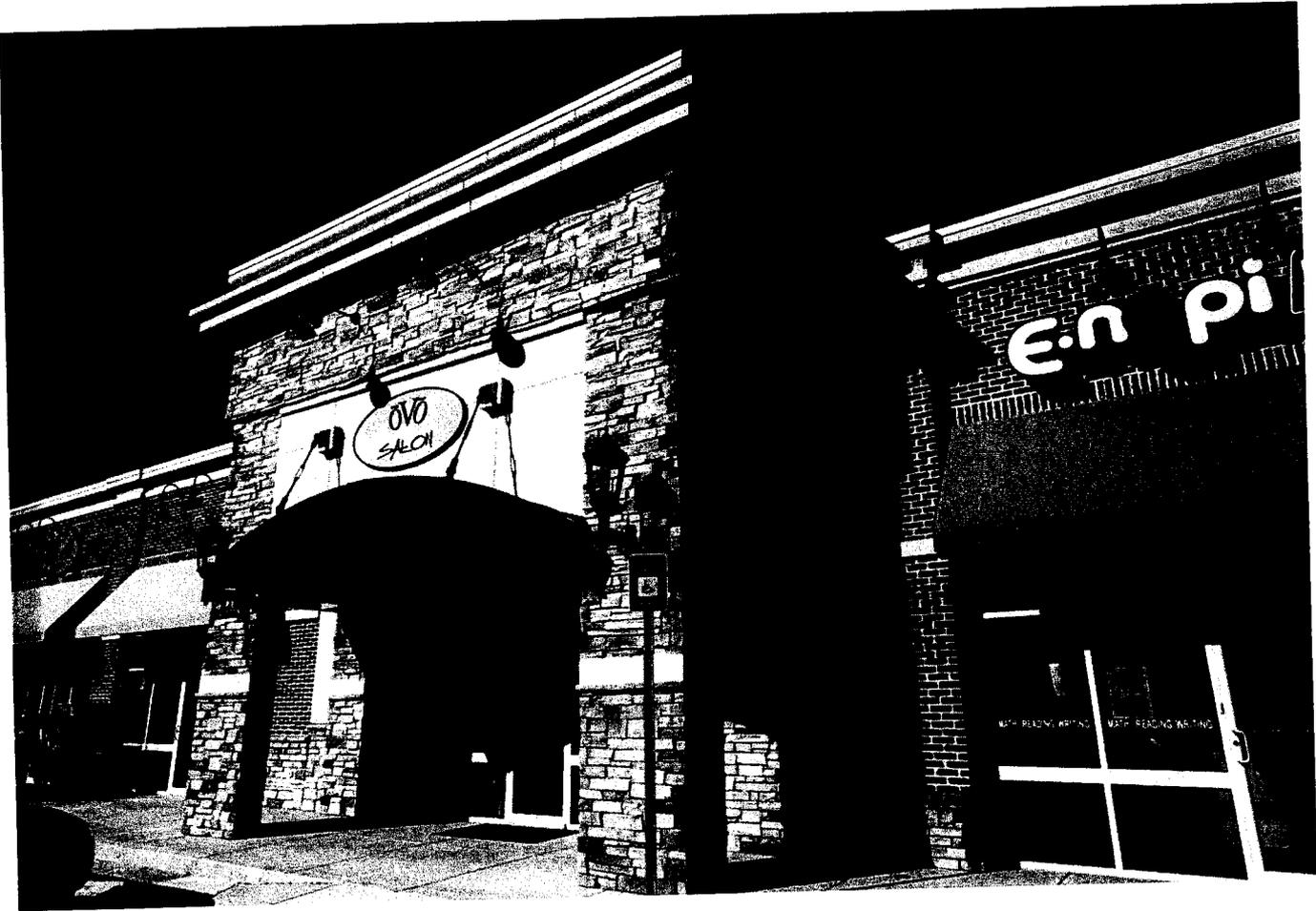
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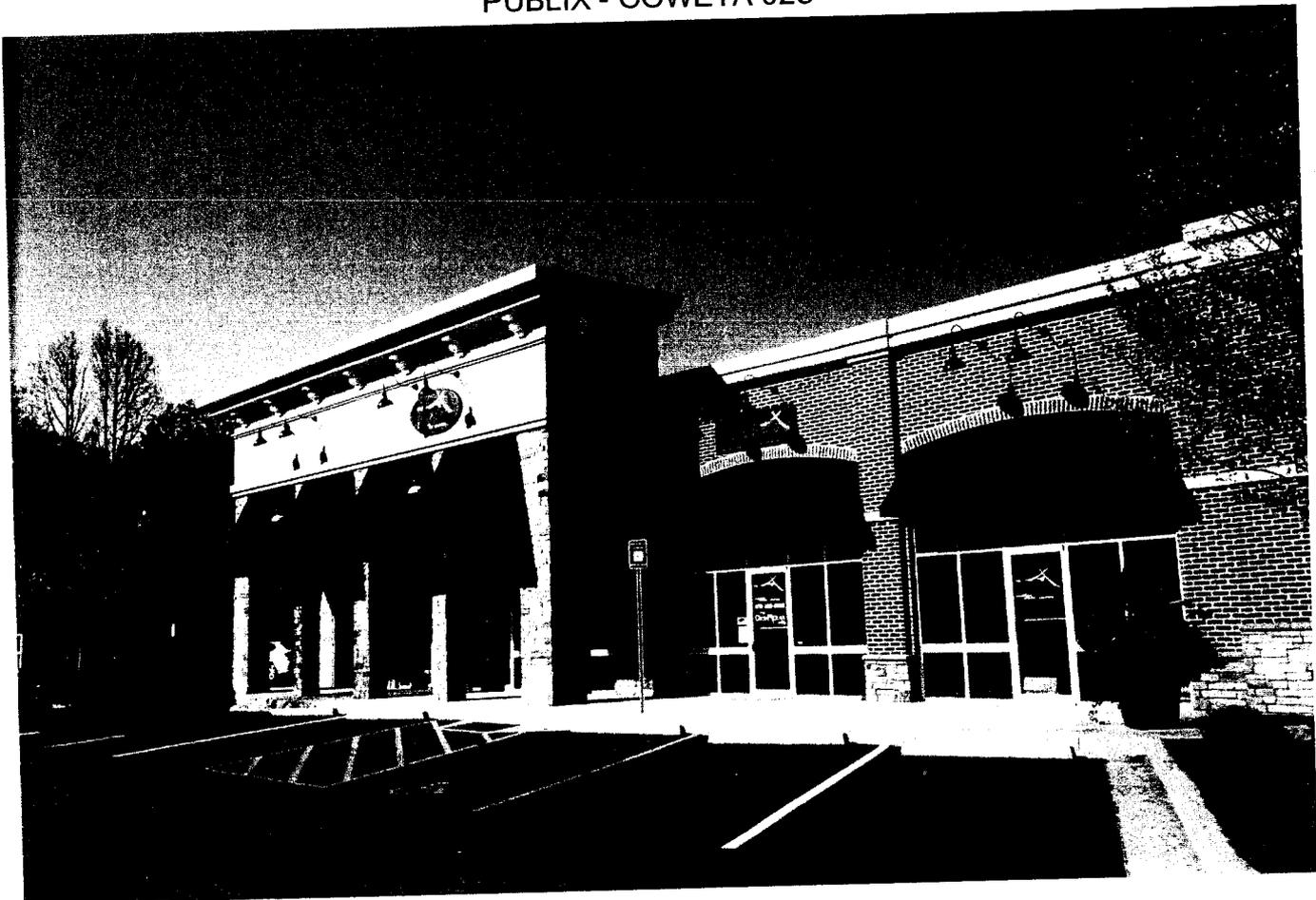
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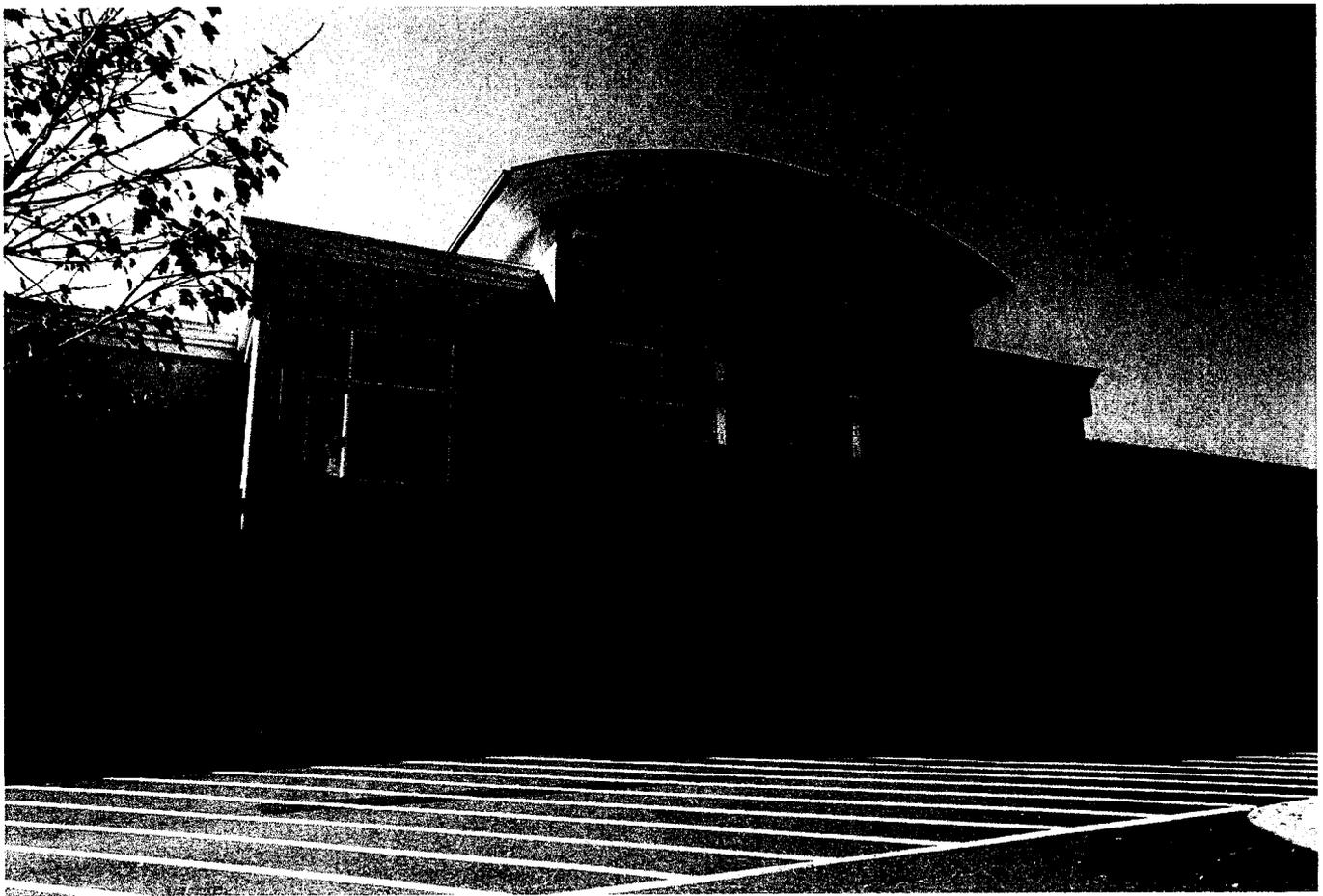
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PUBLIX - COWETA 023



PUBLIX - COWETA 039



PUBLIX - COWETA 051



PUBLIX - COWETA 066



PUBLIX - COWETA 071

Application for "Other Business" Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2045)

BOC Hearing Date Requested: 04/20/10

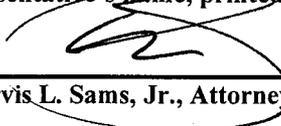
Applicant: Merganser Enterprises, Inc./Eric Rafalik Phone #: (770) 333-9912
2255 Cumberland Parkway, Building 700, Suite B

Address: Atlanta, GA 30339 E-Mail: erafalik@merganser.biz

SAMS, LARKIN & HUFF, LLP 376 Powder Springs Street, Suite 100

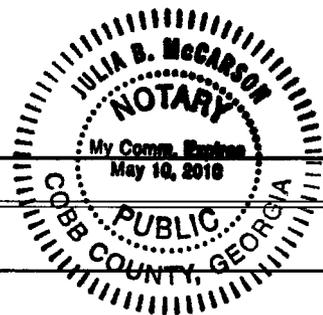
Garvis L. Sams, Jr. Address: Marietta, GA 30064

(representative's name, printed)

By:  Phone #: (770) 422-7016 E-Mail: gsams@samslarkinhuff.com
Garvis L. Sams, Jr., Attorney for Applicant

Signed, sealed and delivered in presence of:

Julia B. McCarsen My commission expires: _____
Notary Public



Titleholder(s) MSSN Enterprises, Inc. Phone #: _____
(property owner's name, printed)

Address 2590 Gadsen Walk, NW, Duluth, GA 30097 E-Mail: _____

(See attached)
(Property owner's signature)

Signed, sealed and delivered in presence of:

Notary Public My commission expires: _____

Commission District: 4 (Woody Thompson) Zoning Case: Z-142 (2005)

Date of Zoning Decision: 11/15/05 Original Date of Hearing: 11/15/05

Location: Southeast intersection of Hicks Road and East-West Connector
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 25, 26, 47 & 48 District(s): 17th

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

To seek approval of a revised site plan which proposes retail/restaurant/bank uses (31,964± square feet)
anchored by a grocery store (45,600 square feet).

(List or attach additional information if needed)