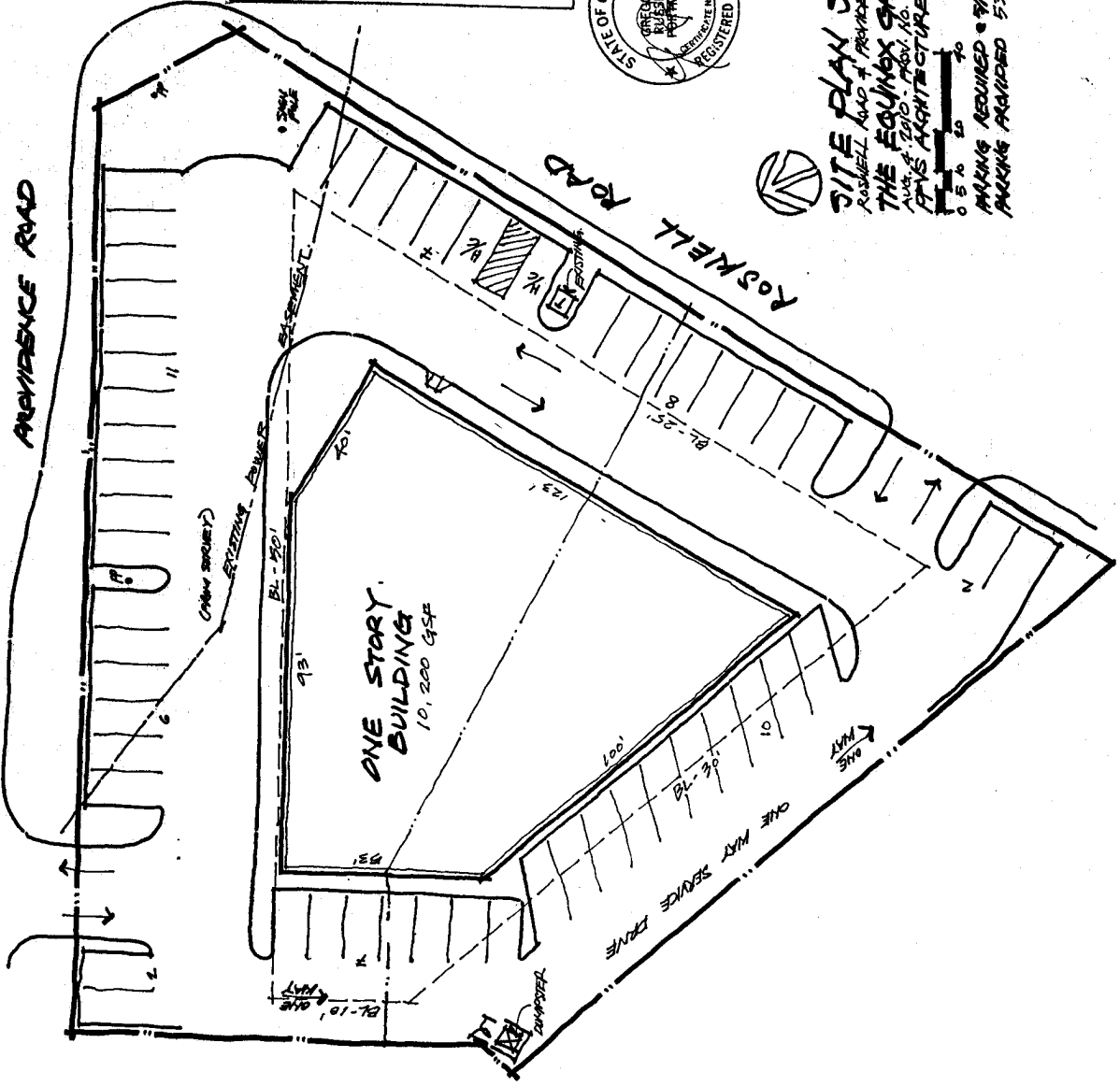


Z-32
(2010)

RECEIVED
AUG 5 2010
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION



SITE PLAN STUDY - 3
ROSWELL ROAD + AVOIDANCE ROAD, COBB COUNTY
THE EQUINOX GROUP INC.
AUG. 2, 2010. PLAN NO. 10027-SPL-1-10
CIVIL ARCHITECTURE
PARKING REQUIRED: 17000 = 41 SPACES
PARKING PROVIDED: 53 SPACES



APPLICANT: 4195 Roswell Road, LLC
770-579-6200

PETITION NO: Z-32
HEARING DATE (PC): 10-05-10

REPRESENTATIVE: Smith, Gambrell & Russell, LLP
Dennis J. Webb, Jr. and Kathryn M. Zickert 404-815-3500

HEARING DATE (BOC): 10-19-10
PRESENT ZONING: NS

TITLEHOLDER: 4195 Roswell Road, Daniel L. Thornton, Christine
H. Thornton

PROPOSED ZONING: GC

PROPERTY LOCATION: Located at the southwesterly intersection
of Providence Road and Roswell Road.

PROPOSED USE: Commercial Development

ACCESS TO PROPERTY: Providence Road, Roswell Road

SIZE OF TRACT: 0.9637 acre

PHYSICAL CHARACTERISTICS TO SITE: Existing Blockbuster
Video store and existing Free-Flite Bicycles store

DISTRICT: 16

LAND LOT(S): 898, 903

PARCEL(S): 51, 74

TAXES: PAID X **DUE** _____

COMMISSION DISTRICT: 2

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH:** GC & R-20/Fifth Third Bank and power station
- SOUTH:** R-15/Seven Springs Subdivision
- EAST:** GC/Existing commercial developments
- WEST:** CRC/Existing retail center

OPPOSITION: NO. OPPOSED **PETITION NO:** _____ **SPOKESMAN** _____

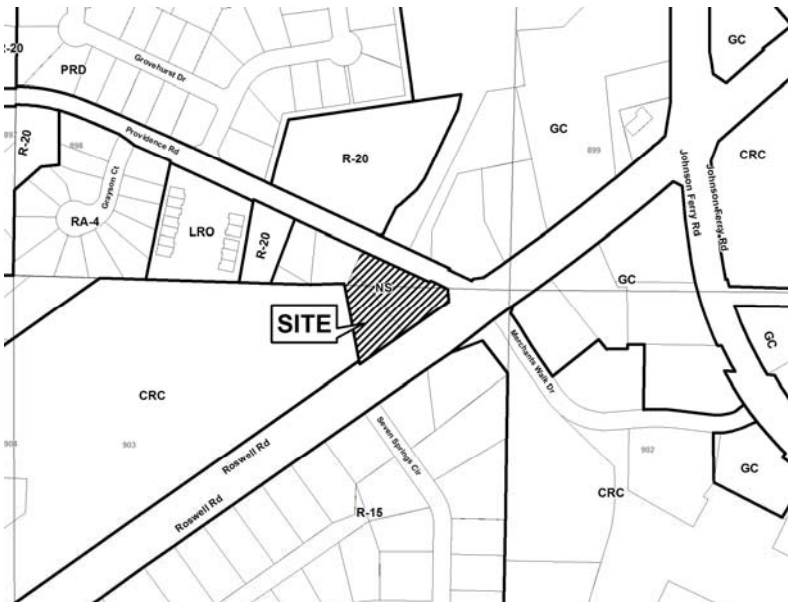
PLANNING COMMISSION RECOMMENDATION

APPROVED _____ **MOTION BY** _____
REJECTED _____ **SECONDED** _____
HELD _____ **CARRIED** _____

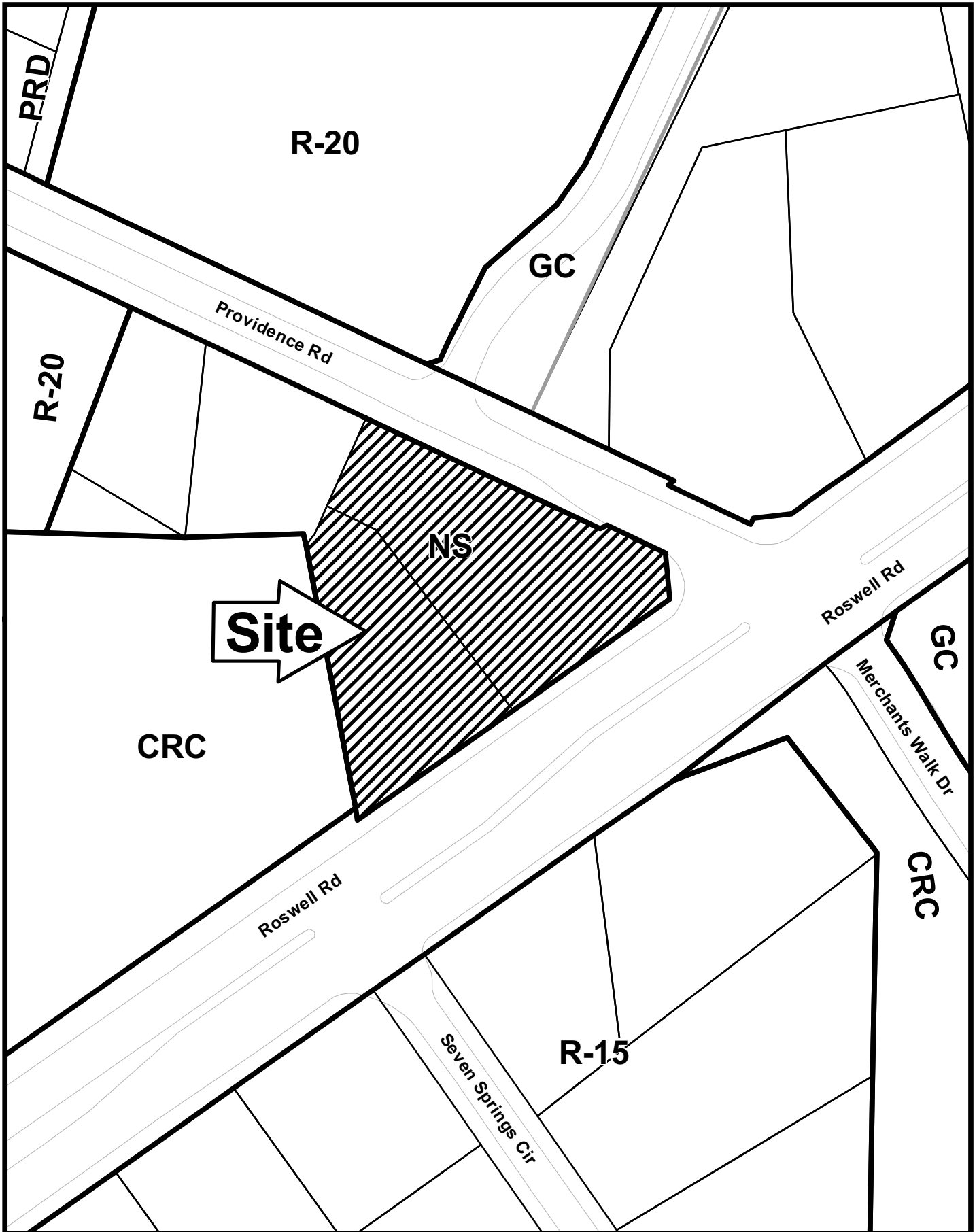
BOARD OF COMMISSIONERS DECISION

APPROVED _____ **MOTION BY** _____
REJECTED _____ **SECONDED** _____
HELD _____ **CARRIED** _____

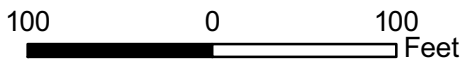
STIPULATIONS:





Z-32



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



-  City Boundary
-  Zoning Boundary

APPLICANT: 4195 Roswell Road, LLC

PETITION NO.: Z-32

PRESENT ZONING: NS

PETITION FOR: GC

ZONING COMMENTS:

Staff Member Responsible: Jason A. Campbell

Land Use Plan Recommendation: Community Activity Center

Proposed Number of Buildings: 1 **Total Square Footage of Development:** 10,200

F.A.R.: 0.24 **Square Footage/Acre:** 10,408

Parking Spaces Required: 51 **Parking Spaces Provided:** 53

Applicant is requesting the GC zoning district in order to utilize the existing structures at the present time and to ensure its ability to utilize the GC zoning district in the future. Applicant has indicated that it is anticipated that the portion of the property containing the Block Buster Video store will soon be vacant and in need of a new tenant. The plans are to continue to use the tracts "as is" for the foreseeable future, maintaining them as they are currently configured. The conceptual site plan submitted indicates the future plan to jointly redevelop both properties for a one-story building with a maximum of 10,200 gross square feet, approximately 2,000 less than now exists on the subject property. The applicant agrees to voluntarily condition the rezoning so as to prohibit the following uses: nightclubs; pawn shops (including title pawn); homeless shelters; gold, silver and platinum purchasers, but not to exclude jewelry stores; tattoo parlors; and adult entertainment establishments. The applicant has submitted a statement of intent and zoning impact analysis which is attached for your review.

Historic Preservation: After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps, staff finds that no known significant historic resources appear to be affected by this application. No further comment. No action by applicant requested at this time.

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

FIRE COMMENTS:

No Comments.

APPLICANT 4195 Roswell Rd.

PETITION NO. Z-032

PRESENT ZONING NS

PETITION FOR GC

WATER COMMENTS: NOTE: Comments reflect only what facilities were in existence at the time of this review.

Available at Development: Yes No

Fire Flow Test Required: Yes No

Size / Location of Existing Water Main(s): **10" DI /N side Roswell Rd, 8" DI/S side Providence**

Additional Comments: Records show both addresses connected

Developer may be required to install/upgrade water mains, based on fire flow test results or Fire Department Code. This will be resolved in the Plan Review Process.

SEWER COMMENTS: NOTE: Comments reflect only what facilities were in existence at the time of this review.

In Drainage Basin: Yes No

At Development: Yes No

Approximate Distance to Nearest Sewer: **Adjacent to W property line of 4165 (4177)**

Estimated Waste Generation (in G.P.D.): **A D F +0 Peak= +0**

Treatment Plant: **Sutton**

Plant Capacity: Available Not Available

Line Capacity: Available Not Available

Projected Plant Availability: 0 - 5 years 5 - 10 years over 10 years

Drv Sewers Required: Yes No

Off-site Easements Required: Yes* No *If off-site easements are required, Developer must submit easements to CCWS for review/approval as to form ans stipulations prior to the execution of easements by the property owners. All easement acquisitions are the responsibility of the Developer

Flow Test Required: Yes No

Letter of Allocation issued: Yes No

Septic Tank Recommended by this Department: Yes No

Subject to Health Department Approval: Yes No

Additional Comments: Records show both addresses connected

Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains, obtaining on and/or offsite easements, dedication of on and/or offsite water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.

APPLICANT: 4195 Roswell Road

PETITION NO.: Z-32

PRESENT ZONING: NS

PETITION FOR: GC

DRAINAGE COMMENTS

Upon redevelopment, site will be required to meet current stormwater management design standards.

APPLICANT: 4195 Roswell Road

PETITION NO.: Z-32

PRESENT ZONING: NS

PETITION FOR: GC

TRANSPORTATION COMMENTS

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Roswell Road	38900	Arterial	45 mph	GDOT	100'
Providence Road	7500	Minor Collector	35 mph	Cobb County	60'

*Based on 2008 traffic counting data taken by Cobb County DOT (Roswell Road).
Based on 2005 traffic counting data taken by Cobb County DOT (Providence Road).*

COMMENTS AND OBSERVATIONS

Roswell Road is classified as an arterial and according to the available information; the existing right-of-way does meet the minimum requirements for this classification.

Providence Road is classified as a minor collector and according to the available information; the existing right-of-way does meet the minimum requirements for this classification.

GDOT permits will be required for all work that encroaches upon State right-of-way.

RECOMMENDATIONS

Recommend no additional access to Roswell Road or Providence Road.

Recommend GDOT permits for all work that encroaches upon State right-of-way.

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

STAFF RECOMMENDATIONS

Z-32 4195 ROSWELL ROAD, LLC

- A. It is Staff's opinion that the applicant's rezoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The applicant's proposal is located in an area that contains a mixture of commercial and retail establishments and a shopping center.
- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse affect on the usability of adjacent or nearby property. The subject property has been used commercially for many years and the applicant plans to continue to use the property "as is" for the foreseeable future, maintaining existing buildings, driveways, parking stalls, signage, landscaping and other site features as currently configured.
- C. It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.
- D. It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property to be within a Community Activity Center.
- E. It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for deleting the applicant's rezoning proposal. The applicant's proposal is in accordance with the *Cobb County Comprehensive Plan*, which indicates this property is in the Community Activity Center land use category. The applicant's proposal is located in an area containing numerous commercial and retail centers and the subject property has been used commercially many years under the NS zoning district. The applicant is requesting the GC zoning district in order to provide greater flexibility to prospective tenants. Staff believes deleting the request to CRC would be consistent with recent zoning decisions in the area, and would prohibit uses that are not wanted in the area.

Based on the above analysis, Staff recommends DELETING the request to the CRC zoning district subject to the following conditions:

- Allowing the applicant to continue to use the property "as is" in its current configuration until time of redevelopment, at which time it will be subject to the conceptual plan submitted, with the District Commissioner approving minor modifications;
- Water and Sewer comments and recommendations;
- Stormwater Management Division comments and recommendations; and
- DOT comments and recommendations.

The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.

ORIGINAL

**Z-32 (2010)
Zoning Impact Analysis and
Statement of Intent**

STATEMENT OF INTENT

and

Other Material Required by
Cobb County Zoning Ordinance
for the
Rezoning Application

of

4195 Roswell Road, LLC

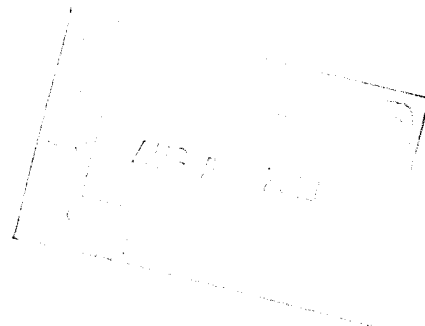
for

± .98 Acres of Land
located in
Land Lots 898 and 903, 16th District, Cobb County
4165 (a/k/a 4177) and 4195 Roswell Road

NS to GC

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
Smith, Gambrell & Russell, LLP
1230 Peachtree Street, N.E.
Promenade II, Suite 3100
Atlanta, Georgia 30309
404-815-3500



I. INTRODUCTION

This Application seeks to rezone $\pm .98$ acres in Land Lots 898 and 903, 16th District of Cobb County (the "Subject Property"), from NS (Neighborhood Shopping District), a now defunct zoning category, to GC (General Commercial District). The Subject Property is located in a "Community Activity Center" according to the County's Future Development Map, a category which supports the proposed rezoning.

The Subject Property consists of two (2) tracts at the northwest quadrant of the intersection of Roswell Road and Providence Road that have a combined total of $\pm 12,173$ square feet of building space. The larger of the tracts, 4195 Roswell Road, consists of $\pm .59$ acres. It contains a single-story, $\pm 6,417$ square foot, lawful, non-conforming structure that currently houses a Blockbuster Video store. The smaller tract, 4165 (a/k/a 4177) Roswell Road, consists of $\pm .38$ acres and has a two-story, $\pm 5,756$ square foot, lawful, non-conforming building that is home to Free-Flite Bicycles.

The primary reason the Applicant has filed this request is because it is anticipated that 4195 Roswell Road will soon be vacant and in need of a new tenant. The GC zoning district will provide greater flexibility, an important factor given the current economic downturn and existing commercial vacancies in the area. The owners of 4195 Roswell Road and 4165 (aka 4177) Roswell Road note, however, that both intend to continue to use the tracts "as is" for the foreseeable future, maintaining existing buildings, driveways, parking stalls, signage, landscaping and other site features as currently configured.

Secondarily, the owners of 4195 Roswell Road and 4165 (aka 4177) Roswell Road also would like the flexibility to jointly redevelop the Subject Property under the GC district at a later date. To that end, they have commissioned a conceptual site plan, submitted with this Application. The conceptual site plan shows that future development will be limited to a one-

story building with a maximum of 10,200 gross square feet, approximately 2,000 less than now exists on the Subject Property. It also shows that, unlike the current improvements, any future development will conform to the relevant district regulations, including minimum setbacks and parking requirements.

In anticipation of community concerns, the Applicant agrees to voluntarily condition the rezoning so as to prohibit the following uses:

1. Nightclubs;
2. Pawn Shops, including Title Pawn;
3. Homeless Shelters;
4. Gold, Silver and Platinum Purchasers, but not to exclude Jewelry Stores;
5. Tattoo Parlors; and
6. Adult Entertainment Establishments.

These restrictions shall bind the Subject Property now and in the event of future redevelopment.

Further, to demonstrate the commitment to continue to use the Subject Property “as is” for the foreseeable future and to limit the scope of any future redevelopment, the Applicant agrees to the following additional condition:

1. The Owners shall be entitled the use the already developed Subject Property in the configuration reflected on the survey entitled “4195 Roswell Road, LLC/Daniel L. Thornton & Christine H. Thornton,” dated July 30, 2010, and submitted with the rezoning application (the “Survey”). The Owners shall not be required to construct any additional deceleration lanes as long as the Subject Property remains in the configuration shown on the Survey. Future redevelopment of the Subject Property shall be restricted to a building not to

exceed 10,200 gross square feet and any future redevelopment plans shall first be submitted to the District Commissioner for review and approval.

The Applicant submits this Statement of Intent as required by the Cobb County Zoning Ordinance. The document also is intended to address and substantiate the requisite responses to the State "Steinberg Act", O.C.G.A. § 36-67-1 et seq. An as-built survey of the Subject Property and other required material has been filed contemporaneously with this Application.

II. CRITERIA TO BE APPLIED TO REZONING APPLICATIONS

A. Whether the Zoning Proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

Yes. The Subject Property has frontage on Roswell Road, one of the busiest roadways in Cobb County, and is surrounded by commercially zoned properties, including the GC, NS, and CRC (Community Retail Commercial District) zoning districts. Hence, the proposed zoning is suitable in view of the use and development of adjacent and nearby property.

B. Whether the Zoning Proposal will adversely affect the existing use or usability of adjacent or nearby property.

No. The area in which the Subject Property is located contains all manner of general commercial uses. Equally important, the County has designated the area as a "Community Activity Center" ("CAC") on its Future Land Use Map. That category is intended to encourage commercial and office areas "that can meet the immediate needs of several neighborhoods or communities." 2030 Comprehensive Plan, p. 29. Hence, the County has codified its intention to reserve the area for commercial uses in the future.

C. Whether the property to be affected by zoning proposal has a reasonable economic use as currently zoned.

No. The County no longer recognizes the NS zoning district. Although the Subject Property is "grandfathered," it remains non-conforming and subject to the risks inherent in that

classification. Equally important, the defunct NS zoning district limits the permitted uses allowed at the Subject Property in a manner that other properties similarly situated and in immediate proximity are not limited.

Further, this Applicant states that any portion of the Cobb County Zoning Ordinance which would classify the Subject Property so as to prohibit the zoning requested by this Application would destroy the Owners' property rights without first paying just compensation for such rights in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia; Article I, Section III, Paragraph I of the Constitution of the State of Georgia; and the Fifth and Fourteenth Amendments to the United States Constitution.

The Subject Property is not suitable for its present zoning. Accordingly, a denial of this Application would constitute an arbitrary and capricious act by Cobb County without any rational basis therefore, constituting an abuse of discretion and a violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia; Article I, Section II, Paragraph I of the Constitution of the State of Georgia; and the Fifth and Fourteenth Amendments to the United States Constitution.

A refusal by Cobb County to approve this Application and permit the only feasible economic use of the Subject Property would be unconstitutional and would discriminate in an arbitrary and capricious and unreasonable manner between the owners of the Subject Property and owners of similarly-situated property in violation of Article I, Section II, Paragraph III of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

This Application meets favorably the prescribed tests set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and

land use regulations as an expression of the government's police power, Guhl v. Holcomb Bridge Road, 238 Ga. 322 (1977).

D. Whether the Zoning Proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

No. The zoning proposal will have no effect on schools. Further, for the foreseeable future, the Subject Property will remain unchanged and have no additional impact on existing streets, transportation facilities and utilities. When and if the Subject Property is redeveloped, the built space on-site will decrease by approximately 2,000 square feet, which has the potential to lessen the impact on existing streets, transportation facilities and utilities.

E. Whether the Zoning Proposal is in conformity with the policy and intent of the Land Use Plan.

Yes. The Subject Property is designated as "Community Activity Center" under the County's adopted Future Land Use Plan. This category specifically authorizes the Subject Property to be zoned to the GC district.

F. Whether there are other existing or changing conditions affecting the use and development of the property, which give supporting grounds for either approval or disapproval of the Zoning Proposal.

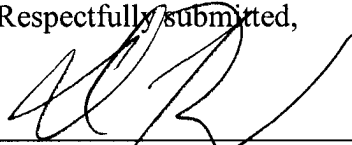
The proposed zoning is appropriate for the Subject Property. It is consistent with the County's future development plans. It also is suitable in light of adjacent and nearby developments and uses, as detailed herein.

III. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Application be approved. The Applicant also invites and welcomes any comments from Staff or other officials of Cobb County so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 5th day of August, 2010.

Respectfully submitted,



Kathryn M. Zickert
Dennis J. Webb, Jr.
Attorneys For Applicant

Smith, Gambrell & Russell, LLP
1230 Peachtree Street, N.E.
Promenade II, Suite 3100
Atlanta, Georgia 30309