

5

Application for "Other Business"

Cobb County, Georgia

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

COBB COUNTY GEORGIA
FILED IN OFFICE

BOC Hearing Date Requested: 2013 JUN 10 PM 2:22 July 16, 2013

COBB COUNTY ZONING DIVISION

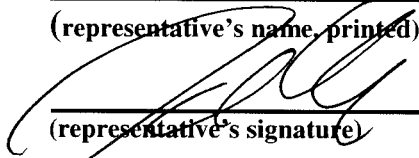
Applicant: John Wieland Homes & Neighborhoods **Phone #:** See Representative

(applicant's name printed)

Address: See Representative. **E-Mail:** See Representative

James A. Balli, Esq. **Address:** 376 Powder Springs St., Ste. 100, Marietta, GA 30064

(representative's name, printed)



Phone #: 770-422-7016 **E-Mail:** jballi@semlarkinhuff.com

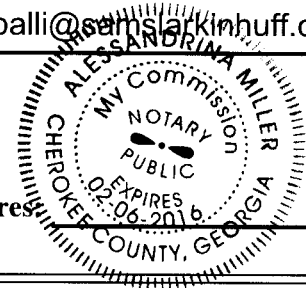
(representative's signature)

Signed, sealed and delivered in presence of:



Notary Public

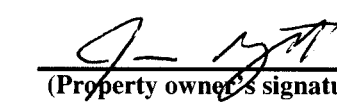
My commission expires:



Titleholder(s) : JW HOMES, LLC (d/b/a JWLN) **Phone #:** See Representative

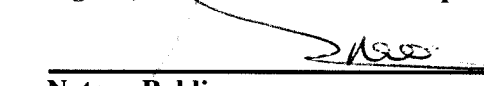
(property owner's name printed)

Address: 4125 Atlanta Road S.E., Atlanta, GA 30080 **E-Mail:** See Representative



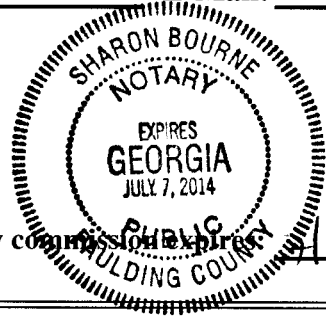
(Property owner's signature)

Signed, sealed and delivered in presence of:



Notary Public

My commission expires:



Commission District: 2 **Zoning Case:** Z-34 of 2012

Date of Zoning Decision: 9-18-2013 **Original Date of Hearing:** 9-18-2013

Location: Settlement Road (former) at or near its road frontage on Woodland Brook Drive
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 835, 836 and 892 **District(s):** 17th

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

Removal of Item 55 of the applicable Zoning Ordinance to allow for safe and timely compliance with the terms of the R-30 OSC Zoning Ordinance and related requirements.

(List or attach additional information if needed)

CERTIFICATE REGARDING CORPORATE AUTHORITY TO PURSUE OTHER BUSINESS

1.

My name is JASON GARRETT. I am the secretary, assistant secretary, member, manager or other officer to whom the operating agreement has delegated the responsibility for authenticating records of the company JW HOMES, LLC d/b/a "John Wieland Homes & Neighborhoods (the "Applicant Company"). I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant's Application to amend a zoning for certain real property owned by the Applicant Company located in Cobb County, Georgia.

2.

In accordance with the Requirements for Completing a Cobb County Application for Other Business, I hereby attest on behalf of the Applicant that I have reviewed the Other Business Application and related documents which are being filed simultaneously therewith on behalf of the Applicant Company (collectively, the "Other Business Application") to which this Certificate is attached and hereby certify:

- (a) That corporate and/or company seal or facsimile affixed to the Other Business Application is in fact the seal of the Applicant Company or a true facsimile thereof; and
- (b) That the officer or other representative of the Applicant Company who executed the Other Business Application does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Other Business Application on behalf of the Applicant Company, and that the signature of said officer or other representative is genuine; and
- (c) That the execution of the Other Business Application and the filing of the Other Business Application on behalf of the Applicant Company by the officer or other representative of the Applicant Company has been duly authorized by the Applicant Company.

Jason Garrett

Print Name JASON GARRETT

J. Garrett

Signature

(CORPORATE SEAL)

VICE PRESIDENT

Title AUTHORIZED AGENT OF JW HOMES, LLC

TO THE COBB COUNTY BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA

COBB COUNTY GEORGIA
FILED IN OFFICE
2013 JUN 10 PM 2:23
COBB COUNTY ZONING DIVISION

CONSTITUTIONAL CHALLENGE

COMES NOW, JW HOMES, LLC d/b/a JOHN WIELAND HOMES &
NEIGHBORHOODS hereinafter referred to as the "Applicant", and asserts the following, to
wit:

1.

By application to which this exhibit relates, Applicant has applied for an amendment to certain conditions of rezoning of certain real property lying and being in Cobb County, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application for Amendment to certain conditions of zoning of the property seeks to remove an illegal purported reversion clause that would allegedly revert the property to a R-30 zoning category and re-create numerous non-conforming, grandfathered parcels with a density in excess of the existing category of R-30 OSC, as established by the governing authority of Cobb County, Georgia to the zoning categories of R-30 OSC and as set forth in Z-34 of 2012.

3.

The current R-30 OSC (conditional) zoning classification of the property and all intervening classifications between same and R-30 OSC (conditional as amended) are unconstitutional in that they deprive the Applicant under and pursuant to Article 1, Section I,

Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States. This deprivation of property without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.

The zoning classification of R-30 OSC (conditional) and all intervening classifications between same and R-30 OSC (amended conditional) as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing zoning classification does not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said classifications are unconstitutional in that they are arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The Cobb County Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with zoning applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. Further, any alleged reversion would violate the laws of the State of Georgia and violate the safeguards provided by the United States and the State of Georgia Constitutions.

6.

Pursuant to O.C.G.A. §§ 36-11-1 and 36-33-5, please consider this your notice that as of today's date the Owner/Applicant is contending that Cobb County's unconstitutional zoning classifications of the property have caused damages to the Owner/Applicant. As a direct and proximate result of the unconstitutional zoning classifications, the Owner/Applicant has suffered and will continue to suffer monetary damages in the nature of attorneys' fees and costs, interest and other expenses on pending loans on the property, loss of income from the property and other related damages. This amount cannot be calculated to an exact certainty; however, the Owner/Applicant will assist the County by providing whatever additional information, if any, the County feels is necessary to adequately investigate this claim. If the Owner/Applicant does not receive a timely request for additional information, it will be presumed that the County does not require any additional information and can make a determination within the allowed statutory period.

Respectfully submitted, this the 10 day of June, 2013.

SAMS, LARKIN & HUFF, LLP

By: 

JAMES A. BALLI
Attorney for Applicant
Ga. Bar No. 035828

September 18, 2012
BOC Minutes

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 18, 2012
PAGE 4

REGULAR CASES (CONT)

Z-33 SOLOMON AJIBOGUN (CONT.)

MOTION: Motion by Thompson, second by Ott, to deny Rezoning request, *with the following directive:*

- Applicant to work with Staff regarding relocation of materials so that property complies with allowable uses on LI zoning category

VOTE: **ADOPTED** 4-0, Commissioner Birrell recused herself due to the recycling aspect of this Application

Z-34 **JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.** (owner) requesting Rezoning from **R-30** to **R-20 OSC** for the purpose of Single-Family Residential in Land Lots 835, 836 and 892 of the 17th District. Located at the northerly intersection of Woodland Brook Drive and Settlement Road.

The public hearing was opened and Mr. James Balli, Mr. Bob Goodsell, Ms. Patricia Griner, Mr. John Wieland, Mr. Glenn Dyke, Mr. Joseph Carroll, Mr. James Bikoff, Mr. Bill Voegeli, Ms. Martha Glisson, Mr. Robert Barker, Mr. James Polk, and Mr. Ron Sifen addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Ott, second by Thompson, to delete Rezoning to the **R-30 OSC** zoning district **subject to:**

- Site plan received by the Zoning Division on July 3, 2012, showing a maximum of 45 lots, and with the District Commissioner approving minor modifications (attached and made a part of these minutes)
- Letter of agreeable conditions dated August 29, 2012 from Mr. James Balli (attached and made a part of these minutes), *with the following changes:*
 - Stipulations from minutes of Planning Commission Zoning Hearing for Z-34 (John Wieland Homes and Neighborhoods) dated September 6, 2012 (attached and made a part of these minutes), *not otherwise in conflict*

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 18, 2012
PAGE 5

REGULAR CASES (CONT)

Z-34 JOHN WIELAND HOMES AND NEIGHBORHOODS, INC. (CONT.)

- Item No. 2 – strike all references to “*Community Development Director (or designee)*”
- Item No. 7 – add to end: “*In the event that John Wieland Homes and Neighborhoods sells the property or no longer has the design center, the project will come back to the Board of Commissioners for approval of specific design guidelines and elevations.*”
- Item No. 8 - revise to second sentence to read: “*The homes shall be custom built homes constructed of a mixture of brick, masonry, stacked stone, and stones.*”
- Item No. 8 - add to end: “*No hardi-plank or wood for exterior finishes except for accents, aesthetic enhancements, and period trim.*”
- Item No. 9 - add to end: “*All final elevations to be approved by the District Commissioner.*”
- Item No. 10 - revise second sentence to read: “*Standard features will include 10 foot ceilings on the first floor, and 9 foot ceilings on the second floor.*”
- Item No. 28 – add to end: “*Notice of conservation easement and prohibition on land disturbance or development of any open space or buffer areas will be added to each respective deed.*”
- Item No. 42 – revise to read: “*Per Staff Comments, parking (four spaces) shall be allowed at the spaces shown immediately adjacent to the Cemetery on the Plan.*”
- Item No. 47 – add end of first sentence: “*...and will be fenced with a fence to match the fence around the Cemetery.*”
- Add Item No. 55 – “*If roads and associated infrastructure are not in place within one year from zoning approval, property will revert back to the R-30 zoning category.*”
- Add Item No. 56 – “*Applicant to have a new or up to date Traffic Study performed for proposed development.*”
- Historic Preservation comments and recommendations
- Cemetery Preservation comments and recommendations
- Planning Division comments and recommendations
- Fire Department comments and recommendations

**MINUTES OF ZONING HEARING
COBB COUNTY PLANNING COMMISSION
SEPTEMBER 6, 2012
9:00 A.M.**

The Planning Commission Zoning Hearing was held on Thursday, September 6, 2012 at 9:00 a.m. in the second floor public meeting room of the Cobb County Building, 100 Cherokee Street, Marietta, Georgia. Present and comprising a quorum of the Commission were:

Murray Homan, Chairman
Bob Hovey
Mike Terry
Christi Trombetti
Judy Williams

CHAIRMAN HOMAN – CALL TO ORDER

Chairman Homan called the meeting to order at 9:07 a.m. and explained the procedures regarding the public hearing.

CONTINUED, HELD, OR WITHDRAWN CASES

- SLUP-5 LAKEVIEW SEVENTH-DAY ADVENTIST CHURCH** (Georgia-Cumberland Association of Seventh-Day Adventists, Inc., owner) requesting a **Special Land Use Permit** for the purpose of Church School (Pre-K, Kindergarten and Day Care) in Land Lots 724 and 725 of the 19th District. Located at the southwest intersection of Macedonia Road and Forest Hill Road (4001 Macedonia Road). **WITHDRAWN BY STAFF**
- Z-39 BANK OF AMERICA, N.A.** (Bank of America, N.A., as trustee for the registered holders of First Union Nation Bank-Chase Manhattan Bank Commercial Mortgage Trust, owner) requesting Rezoning from **RM-12** to **RM-12 with Stipulations** for the purpose of Multi-Family Residential in Land Lots 421, 422 and 444 of the 17th District. Located on the west side of Atlanta Road, north of Daniell Drive (1940 Atlanta Road). *(Continued by Staff; therefore was not considered at this meeting)*

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 18, 2012
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REGULAR CASES (CONT.)

Z-34 JOHN WIELAND HOMES AND NEIGHBORHOODS, INC. (CONT.)

- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations, *with the exception of the sidewalks on Woodland Brook Drive***
- **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** 3-2, Chairman Lee and Commissioner Goreham opposed

Clerk's Note: Commissioner Ott directed Planning Staff to review the language contained in the Vinings Vision Master Plan to determine if verbiage needs to be modified to better reflect the community's expressed intention.

Chairman Lee directed Mr. Rob Hosack, Community Development Agency Director and Mr. Dana Johnson, Planning Division Manager, to review the verbiage contained in the Cobb County Code for the Open Space Community Overlay District in order to bring clarity and to eliminate any questions that may arise in terms of interpretation.

Following the vote on Z-34, a brief recess was taken from 11:06 a.m. until 11:09 a.m.

Z-35 **JAMES H. GROOME, JR.** (Barbara A. Shaw, owner) requesting Rezoning from **R-30** to **R-20** for the purpose of a Subdivision in Land Lots 954 and 973 of the 17th District. Located at the southerly intersection of Paces Ferry Road and New Paces Ferry Road (4258 and 4252 Paces Ferry Road).

The public hearing was opened and Mr. James Groome, Mr. Glenn Dyke, and Mr. Ron Sifen addressed the Board. Following presentation and discussion, the following motion was made:

September 6, 2012
Planning Commission
Minutes

MINUTES OF ZONING HEARING
COBB COUNTY PLANNING COMMISSION
SEPTEMBER 6, 2012
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REGULAR CASES (CONT.)

Z-33 SOLOMON AJIBOGUN (owner) requesting Rezoning from **GC** and **LI** to **HI** for the purpose of a Recycling Center in Land Lots 499 and 503 of the 18th District. Located on the northeasterly side of Mableton Parkway, northwest of Discovery Boulevard (7023 Mableton Parkway).

The public hearing was opened and Mr. Solomon Ajibogun and Ms. Robin Meyer addressed the Commission. Following presentation and discussion, the following motion was made:

MOTION: Motion by Homan, second by Hovey, to recommend denial of Rezoning request, *with deferral of Code Enforcement action until January 1, 2013.*

VOTE: **ADOPTED** unanimously

Z-34 JOHN WIELAND HOMES AND NEIGHBORHOODS, INC. (owner) requesting Rezoning from **R-30** to **R-20 OSC** for the purpose of Single-Family Residential in Land Lots 835, 836 and 892 of the 17th District. Located at the northerly intersection of Woodland Brook Drive and Settlement Road.

The public hearing was opened and Mr. James Balli, Mr. Glenn Dyke, Mr. Jim Polk, Mr. Joseph Carroll, Mr. Daniel White, and Mr. Robert Barker addressed the Commission. Following presentation and discussion, the following motion was made:

MOTION: Motion by Terry, second by Hovey, to recommend approval of Rezoning to the **R-20 OSC** zoning district **subject to:**

- site plan received by the Zoning Division on July 3, 2012, with the District Commissioner approving minor modifications (on file in the Zoning Division)
- letter of agreeable conditions dated August 29, 2012 (on file in the Zoning Division), *with the following changes:*

MINUTES OF ZONING HEARING
COBB COUNTY PLANNING COMMISSION
SEPTEMBER 6, 2012
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REGULAR CASES (CONT.)

Z-34 JOHN WIELAND HOMES AND NEIGHBORHOODS, INC. (CONT.)

- Item No. 1 – 1st sentence, add to end: “, to be in compliance with the signage standards of Cobb County.”
- Item No. 2 - 1st sentence, add to end: “, or his or her designee.”
- Item No. 9 – last sentence, add to end – “, and no home may have any side consisting of 100% hardiplank or similar material.”
- Item No. 15 – strike 2nd sentence and replace with: “No construction work of any kind will be conducted on Sunday except supervisory operations.”
- Item No. 20 – add to end: “Further, trees identified by the County Arborist as healthy and identified to be saved will have security fencing installed at the drip line of each tree and encroachment into this secure area will not be allowed during the constructing phase.”
- Item No. 35 – revise 2nd sentence to read: “This buffer shall be gated and fenced with wrought iron appearance/style material/metal alloy (black) appearance fencing or wood split rail fencing with a minimum height of six feet (6’) so as not to interfere with the view shed of the area.”
- Item No. 41 – add to end: “, and no land disturbance within this defined area except as needed for the clean up process.”
- Item No. 42 – revise 2nd sentence to read: “Per Staff Comments, parking (a minimum of four spaces) shall be allowed at the spaces shown immediately adjacent to the Cemetery and the Earthwork.”
- Item No. 43 – add to end: “The County Historic Preservation Planner will be notified when the survey is being conducted on the site and the final survey report will be submitted to the Planner before any permits are obtained.”
- Item No. 46 – add to end: “The wording will be submitted and approved by a majority vote of the Vinings Historic Preservation Society with final approval for the signs to be by the County Historic Preservation Commission.”
- Item No. 47 – add to end: “Any detention ponds must be landscaped and screened from view on all sides.”

MINUTES OF ZONING HEARING
COBB COUNTY PLANNING COMMISSION
SEPTEMBER 6, 2012
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REGULAR CASES (CONT.)

Z-34 JOHN WIELAND HOMES AND NEIGHBORHOODS, INC. (CONT.)

➤ Item No. 50 – 2nd sentence, add to end: “, up to and including the height of Woodland Brook Drive.”

- Historic Preservation comments and recommendations
- Cemetery Preservation comments and recommendations
- Planning Division comments and recommendations
- Fire Department comments and recommendations
- Water and Sewer Division 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

A brief recess was taken from 11:10 a.m. until 11:24 a.m.

Z-35 **JAMES H. GROOME, JR.** (Barbara A. Shaw, owner) requesting Rezoning from **R-30** to **R-20** for the purpose of a Subdivision in Land Lots 954 and 973 of the 17th District. Located at the southerly intersection of Paces Ferry Road and New Paces Ferry Road (4258 and 4252 Paces Ferry Road).

The public hearing was opened and Mr. James Groome and Mr. Glenn Dyke addressed the Commission. Following presentation and discussion, the following motion was made:

MOTION: Motion by Terry, second by Trombetti, to recommend deletion of Rezoning to the **R-20 and R-30** zoning district **subject to:**

STAFF COMMENTS

APPLICANT: John Wieland Homes and Neighborhoods, Inc.
770-703-1654

REPRESENTATIVE: James A. Balli
770-422-7016

TITLEHOLDER: John Wieland Homes and Neighborhoods, Inc.

PROPERTY LOCATION: At the northerly intersection of Woodland Brook Drive and Settlement Road.

ACCESS TO PROPERTY: Settlement Road

PHYSICAL CHARACTERISTICS TO SITE: Developed and undeveloped property with dilapidated structures, illegal dumping and vandalism

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH:** R-30/Clark A. Baker Subdivision
- SOUTH:** RA-4/Brook Grove of Vinings Subdivision
- EAST:** R-30/Vinings Park Subdivision
- WEST:** R-30/Single-family residential and undeveloped acreage

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:

PETITION NO: Z-34

HEARING DATE (PC): 09-06-12

HEARING DATE (BOC): 09-18-12

PRESENT ZONING: R-30

PROPOSED ZONING: R-20 OSC

PROPOSED USE: Single-Family Residential

SIZE OF TRACT: 23.94 acres

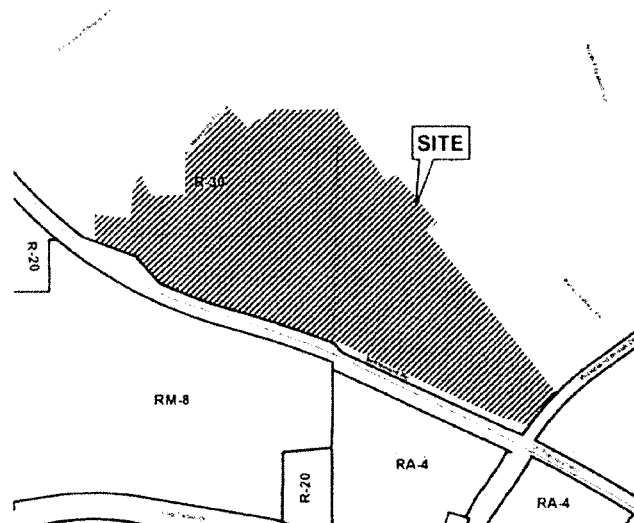
DISTRICT: 17

LAND LOT(S): 835, 836, 892

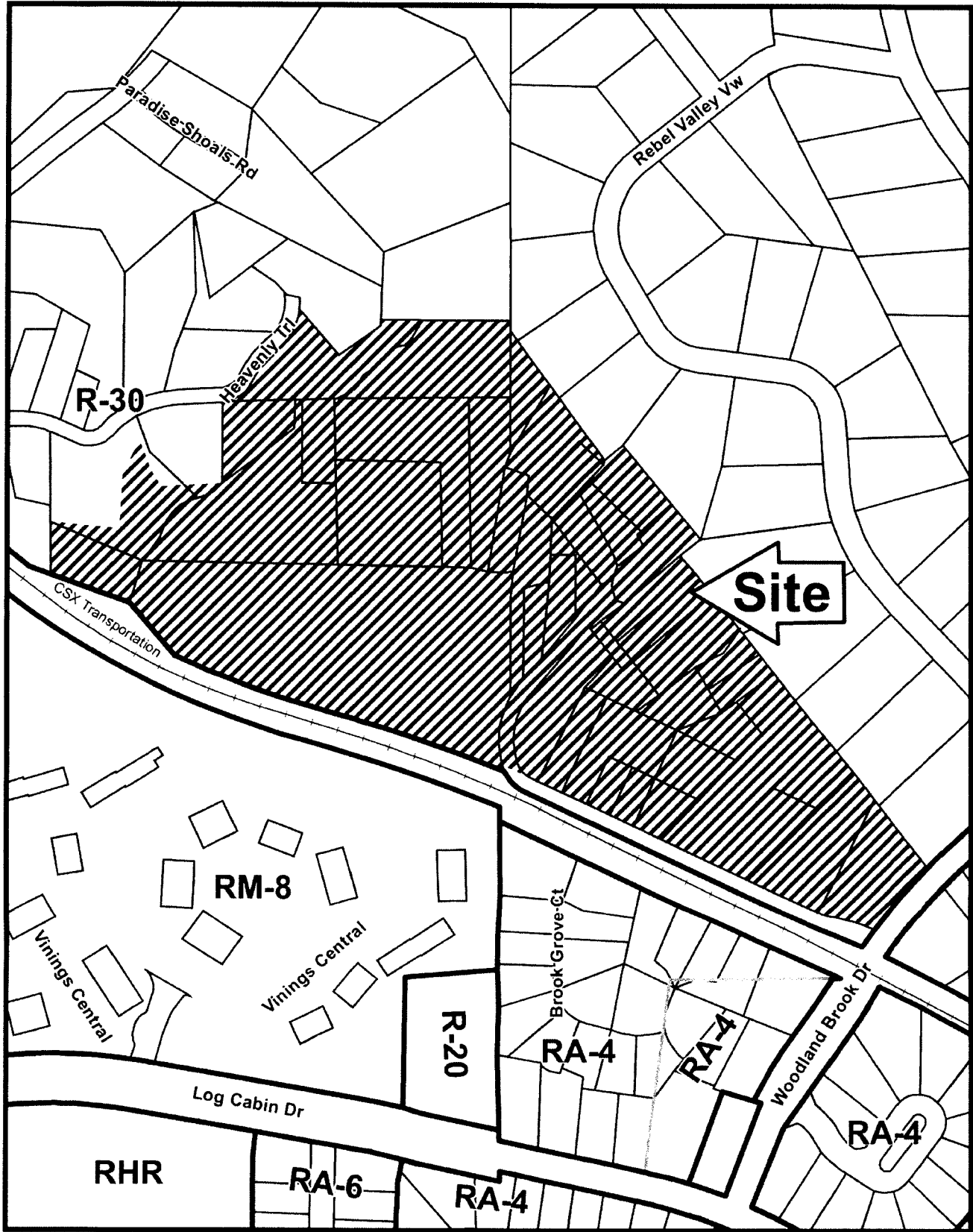
PARCEL(S): (see file for parcels)

TAXES: PAID X **DUE** _____

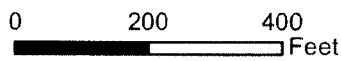
COMMISSION DISTRICT: 2



Z-34



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



City Boundary
Zoning Boundary

APPLICANT: John Wieland Homes and Neighborhoods, Inc. **PETITION NO.:** Z-34
PRESENT ZONING: R-30 **PETITION FOR:** R-20 OSC

ZONING COMMENTS: **Staff Member Responsible:** John Pederson and Jason Campbell

Land Use Plan Recommendation: Very Low Density Residential (VLDR) 0-2 upa

Proposed Number of Units: 45 **Overall Density:** 1.92 **Units/Acre**

Present Zoning Would Allow: 49(Nonconforming Lots) **Decrease of:** 4 **Units/Lots**

Applicant is requesting the R-20 OSC zoning category for the development of a single-family residential subdivision having 45 lots. The proposed houses will be custom built with four sided architecture and will range in price from \$700,000 and up. In keeping with the *Vinings Vision Plan*, the proposed site plan indicates that there will be 12.01 acres of open space preserved for the development. The proposed plan also indicates a 40-foot buffer abutting the R-30 property to the northeast, as well as private streets and a gated entry.

Cemetery Preservation: The Cobb Cemetery Preservation Ordinance and the County Development Standards for Cemeteries call for:

- A. Prepare a site plan identifying the full boundaries with a metes and bounds description.
- B. Provide a fifty (50) foot undisturbed natural buffer from the common property line; or a fifty (50) foot undisturbed natural buffer around the perimeter of the outermost burials of the cemetery; whichever provides the greatest protection for the cemetery. The outermost burials to be determined by a professional archaeologist (Cobb County Code 26-29 Section C). The archeology survey will locate all grave shafts and define the boundary. Member(s) of Cemetery Preservation Commission must be present during archaeology survey. Lots adjacent to the fifty (50) foot undisturbed natural buffer shall have setbacks in addition to the buffer. The fifty (50) foot undisturbed natural buffer shall be recorded as a conservation easement with the Cemetery Preservation Commission having third party right of enforcement.
- C. Provide uninhibited daylight access to the cemetery via at least a twenty (20) foot wide graveled easement to the cemetery with an area allotted for two (2) parking spaces from the nearest public road. The outer boundaries of this easement may be landscaped.
- D. A plat to be prepared by a registered surveyor denoting the location of all grave shafts, the cemetery property line, fence line and the access easement. The archaeology survey and the register surveyor's plat **must** be submitted to the Cemetery Preservation Commission three (3) business days prior to any zoning hearing, or three (3) business days prior to Plan Review if the subject tract is not being rezoned.
- E. Provide and install a permanent six (6) foot chain link fence with gate on the outer perimeter of the fifty (50) foot undisturbed natural buffer. Fence must be 9 gauge with top and bottom rails, and fence posts must be set in concrete. Fence may be upgraded to vinyl coated chain link and/or wrought iron.
- F. Provide and install an orange protective fence on the outer perimeter of the fifty (50) foot undisturbed natural buffer before beginning construction. The protective fence to be maintained in good repair throughout the development phase of the project. At completion of the project, the orange protective fence shall be removed from the premises.
- G. Permanent signs stating CEMETERY PRESERVATION BUFFER – DO NOT DISTURB shall be erected at fifty (50) foot intervals along the outer perimeter of the fifty (50) foot undisturbed natural cemetery preservation buffer, the signs shall be visible at all times.
- H. Compliance with all State and local laws and ordinances.
- I. All Cemetery Preservation requirements must be Site Plan specific.

APPLICANT: John Wieland Homes and Neighborhoods, Inc. **PETITION NO.:** Z-34
PRESENT ZONING: R-30 **PETITION FOR:** R-20 OSC

PLANNING COMMENTS:

The applicant is requesting a rezoning from R-30 to R-20, OSC for purposes of single family residential. The 23.94 acre site is located at the northerly intersection of Woodland Brook Drive and Settlement Road.

Comprehensive Plan

The parcel is within a Very Low Density Residential (**VLDR**) category with R-30 zoning designation. The purpose of the (**VLDR**) category is to provide for housing, with densities of zero to two dwelling units per acre.

Open Space Requirement- Staff Analysis

Property Location: Settlement Rd. & Woodland Brooke Dr.
Land Lot/District: 892,835,836 / 17
Current Zoning: R-30
Proposed Use: R-20 OSC

Total Area: 23.94
Floodplain/Wetland Area/Cemetery: 0.5
Net Buildable Area: 23.44
Base Density Allowed: 1.75 upa
Base Density Allowed w/Bonus: 1.92 upa
Proposed Lots: 45
Net Density: 1.92 upa

Open Space Requirement: 8.38 acres or 35% for Bonus 9.22 acres or 38.5%
Open Space Provided: 12.01 acres or 50.2%
Min. Outside 100 Year Flood: N/A
Open Space in 100 Year Flood: N/A

Setbacks:
Front: 15'
Rear: 20'
Side: 5' with 15' minimum between Structures

Comments:

1. Must have Cobb Department of Transportation approve lighting plan if outdoor lighting (except for individual residential lots) is proposed
2. Any pedestrian easements should be signed as access points
3. Provide architectural renderings and description of the façade treatments that will be used on the proposed housing units
4. Proposed Site Plan stamp dated July 3, 2012 meets the OSC slope requirements

APPLICANT: John Wieland Homes and Neighborhoods, Inc. PETITION NO.: Z-34
PRESENT ZONING: R-30 PETITION FOR: R-20 OSC

PLANNING COMMENTS: CONTINUED

5. The proposed site plan for Z-34 appears to be compatible with the Vinings Vision Plan. The proposed project is within the Vinings Residential Neighborhood character area, which is described as being under primarily R-30 with some R-30 non-conforming lots and some R-20 lots. The future land use is Very Low Density Residential, which creates lower density suburban characteristics. This project area is also specially noted in the Vinings Vision Plan. The master plan encourages that any future development should emphasize the preservation of open space, be compatible with surrounding homes and preserve the cemetery and Civil War earthwork on the property. See historic preservation comments below for further information.
6. A Restrictive Covenant or Conservation Easement must be recorded in the mandatory subdivision covenants and with Cobb Superior Court, thereby protecting "open space" from development in perpetuity as owned by the mandatory Home Owners Association.

Master Plan/Corridor Study
Vinings Vision Plan

Historic Preservation

The project is within the vicinity of known Civil War earthworks and the site of the St. John's Baptist Church. The church was demolished by the property owner in 2011 per a nuisance abatement claim. As part of the nuisance abatement process, Judge Bloom was presented possible mitigation measures for demolition of the church.

1. An archaeological survey has been completed on the St. John's Church cemetery and the Civil War earthwork located behind the former church building. However, due to the Civil War trenches and earthworks in the area, additional archaeological survey work is necessary on the remaining parcels associated with the rezoning and shall be completed prior to issuance of land disturbance permit. The archaeological survey should be submitted to the Historic Preservation for further review.
2. The existing Civil War earthwork, as identified by the archaeological survey completed by R. S. Webb & Associates (dated September 27, 2011) shall be preserved and protected. An undisturbed 50-foot buffer on all sides shall be retained, beginning at the stakes the archaeologist placed at the site. A split rail fence shall be erected at the edge of the buffer on all sides. The location of the earthwork should also be noted on the site plan for the project.
4. It is preferable that the parcel of the former St. John's Church building be set aside as green space and be identified as the location of the church building. The current site plan shows one lot encroaching on the footprint of the building.
5. The applicant will develop and install interpretive signage for the Civil War trench. The developer will also develop and install interpretive signage on St. John's Church and Cemetery, as well as the history of the Settlement Road African-American community. The signs will be coordinated with the Historic Preservation Planner and approved by the Cobb County Historic Preservation Commission. The signs will be placed on site at the location of the former church building, the cemetery and the Civil War trench.

APPLICANT: John Wieland Homes and Neighborhoods, Inc.

PETITION NO.: Z-34

PRESENT ZONING: R-30

PETITION FOR: R-20 OSC

PLANNING COMMENTS: CONTINUED

6. Additional stipulations may be required depending on the outcome of the additional archaeological survey.

Design Guidelines

Is the parcel in an area with Design Guidelines? Yes No

If yes, design guidelines area _____

Does the current site plan comply with the design requirements?

Yes No Not applicable

APPLICANT: John Wieland Homes and Neighborhoods, Inc.
PRESENT ZONING: R-30

PETITION NO.: Z-34
PETITION FOR: R-20 OSC

SCHOOL COMMENTS:

<u>Name of School</u>	<u>Enrollment</u>	<u>Capacity Status</u>	<u>Number of Portable Classrooms</u>
Teasley Elementary	711	Over	
Campbell Middle	985	Under	
Campbell High	2,280	Under	

High
*School attendance zones are subject to revision at any time.

Additional Comments: Teasley Elementary School is currently severely over-crowded; therefore, approval of this zoning could adversely impact enrollment at Teasley Elementary School.

FIRE COMMENTS:

GATE: Gates securing fire apparatus access shall be a minimum 14 feet in clear width for a single lane and 20 feet for a double lane. Gate shall be swing or sliding type. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access (Knox Switch). Emergency opening devices shall be approved by the Cobb County Fire Marshal's Office. (Cobb County Development Standards 401.08.02.1)

GUEST PARKING: When projects contemplate less than 20 foot separation between units, guest parking shall be provided or the streets shall be labeled as a fire lane.

APPLICANT: John Wieland Homes & Neighborhoods, Inc.

PETITION NO.: Z-34

PRESENT ZONING: R-30

PETITION FOR: R-20 OSC

STORMWATER MANAGEMENT COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Gilmore Creek FLOOD HAZARD INFO: Zone X

- FEMA Designated 100 year Floodplain Flood.
- Flood Damage Prevention Ordinance DESIGNATED FLOOD HAZARD.
- Project subject to the Cobb County Flood Damage Prevention Ordinance Requirements.
- Dam Breach zone from (upstream) (onsite) lake - need to keep residential buildings out of hazard.

WETLANDS: YES NO POSSIBLY, NOT VERIFIED

Location: Within stream buffers and adjacent to onsite streams.

- The Owner/Developer is responsible for obtaining any required wetland permits from the U.S. Army Corps of Engineer.

STREAMBANK BUFFER ZONE: YES NO POSSIBLY, NOT VERIFIED

- Metropolitan River Protection Area (within 2000' of Chattahoochee River) ARC (review 35' undisturbed buffer each side of waterway).
- Chattahoochee River Corridor Tributary Area - County review (undisturbed buffer each side).
- Georgia Erosion-Sediment Control Law and County Ordinance - County Review/State Review.
- Georgia DNR Variance may be required to work in 25 foot streambank buffers.
- County Buffer Ordinance: 50', 75', 100' or 200' each side of creek channel.

DOWNSTREAM CONDITION

- Potential or Known drainage problems exist for developments downstream from this site.
- Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system.
- Minimize runoff into public roads.
- Minimize the effect of concentrated stormwater discharges onto adjacent properties.
- Developer must secure any R.O.W required to receive concentrated discharges where none exist naturally
- Existing Lake Downstream .
Additional BMP's for erosion sediment controls will be required.
- Lake Study needed to document sediment levels.
- Stormwater discharges through an established residential neighborhood downstream.
- Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on the downstream receiving stream including several existing private driveway culverts and stream crossings at Rebel Valley View, North Elizabeth Lane and Sedberry Hill Court.

APPLICANT: John Wieland Homes & Neighborhoods, Inc.

PETITION NO.: Z-34

PRESENT ZONING: R-30

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STORMWATER MANAGEMENT COMMENTS – Continued

SPECIAL SITE CONDITIONS

- Provide comprehensive hydrology/stormwater controls to include development of out parcels.
- Submit all proposed site improvements to Plan Review.
- Any **spring activity** uncovered must be addressed by a qualified geotechnical engineer (PE).
- Structural fill _____ must be placed under the direction of a qualified registered Georgia geotechnical engineer (PE).
- Existing facility.
- Project must comply with the Water Quality requirements of the CWA-NPDES-NPS Permit and County Water Quality Ordinance.
- Water Quality/Quantity contributions of the existing lake/pond on site must be continued as baseline conditions into proposed project.
- Calculate and provide % impervious of project site.
- Revisit design; reduce pavement area to reduce runoff and pollution.

INSUFFICIENT INFORMATION

- No Stormwater controls shown _____
- Copy of survey is not current – Additional comments may be forthcoming when current site conditions are exposed.
- No site improvements showing on exhibit.

ADDITIONAL COMMENTS

1. The site is characterized by moderate slopes ranging from 8 to 25%. The site is drained by two small tributaries that flow through the site to the northeast which discharge through the Baker Clark Subdivision located just downstream. The entire stream buffer area for these streams is to be included in the proposed open space area. A conservation easement will be required to be recorded for protection of this buffer area.
2. The development is proposed to be a private subdivision. All detention ponds and stormwater infrastructure will be privately maintained. A maintenance agreement must be included in the subdivision covenants and adequate reserves created to maintain the system in perpetuity. Both detention facilities must have a 20-foot access easement provided for maintenance.

APPLICANT: John Wieland Homes and Neighborhoods, Inc. PETITION NO.: Z-34

PRESENT ZONING: R-30 PETITION FOR: R-20 OSC

COBB COUNTY DEPARTMENT OF TRANSPORTATION RECOMMENDATIONS

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
Woodland Brook Drive	5100	Minor Collector	35 mph	Cobb County	60'
Settlement Road	N/A	Local	25 mph	Cobb County	50'

Based on 2008 traffic counting data taken by Cobb County DOT (Woodland Brook Drive)

COMMENTS AND OBSERVATIONS

Woodland Brook Drive is classified as a minor collector and according to the available information the existing right-of-way does not meet the minimum requirements for this classification.

RECOMMENDATIONS

Recommend applicant consider entering into a development agreement pursuant of 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 west side of Woodland Brook Drive, a minimum of 30' from the roadway centerline.

Recommend curb, gutter, and sidewalk along Woodland Brook Drive frontage.

Recommend a deceleration lane on Woodland Brook Drive for the entrance.

Recommend applicant verify that minimum intersection sight distance is available and if it is not, implement remedial measures, subject to the Department's approval, to achieve the minimum requirement of 390 feet.

Recommend applicant verify that minimum stopping sight distance on Woodland Brook Drive is available and if it is not, implement remedial measures, subject to the Department's approval, to achieve the minimum requirement of 250 feet.

Recommend the owner/developer/applicant petition the Board of Commissioners for abandonment of Settlement Road right-of-way.

Recommend if streets are private then be built to the Cobb County Standard Specifications.

Recommend 75' minimum separation between proposed access gate and right-of-way if the proposed streets are maintained as private.

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

Recommend entrance configuration to be determined in Plan Review.

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

STAFF RECOMMENDATIONS

Z-34 JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

- 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 character of the area includes many types of housing styles and densities. Area single family houses on R-30 size lots include Baker subdivision and Vinings Park subdivision that have densities of 1.1 units per acre (upa). Area single family houses on small lots zoned RA-4 include Brook Grove subdivision and Drummond subdivision that have densities of 3.9 upa and 2.71 upa, respectively. Area condominiums include Vinings Central condominiums that have a density of 8.2 upa.
- 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 applicant's single family residential use would be compatible with adjacent and nearby properties, and would provide a reasonable transition in density from the higher densities to the south, to the lower densities to the north. The applicant's proposal would be an improvement to this property which has had problems with dilapidated structures, illegal dumping and vandalism. Staff believes that 49 houses could be built on this property through the use of many of the non-conforming lots of record and legal size R-30 lots. If the property were developed under this scenario, then the resulting development could adversely affect the adjacent properties in the six following ways: 1) the development would have no organization or continuity as far as the streetscape or which way the houses face. 2) the development would not be required to install detention ponds, 3) the development would not be required to make road improvements to Woodland Brook Drive, 4) the development would not have required buffers in perpetuity adjacent to adjacent R-30 lots, 5) the development would not be required to preserve any Civil War trenches, and 6) the development will not have a limited grading plan and will not have a strong tree save plan.
- 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. Staff believes the proposal would be a reduction in obtainable density. The proposed plan will reduce clearing and grading. Additionally, the County will benefit from the stormwater and transportation related improvements.
- 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*. The property is in the Very Low Density Residential Land Use Category which allows for densities between zero to two units per acre. The proposed density is 1.92 units per acre, which is consistent with the Plan. The proposed development is compatible with the *Vinings Vision Plan*. The proposed project is within the Vinings Residential Neighborhood character area, which is described as being under primarily R-30 with some R-30 non-conforming lots and some R-20 lots. This project area is specially noted in the *Vinings Vision Plan*, which encourages that any future development should emphasize the preservation of open space, be compatible with surrounding homes and preserve the cemetery and Civil War earthwork on the property, which this project complies. Additionally, the applicant's proposal is in compliance with the Open Space Community (OSC) zoning criteria.

CONTINUED ON THE NEXT PAGE

STAFF RECOMMENDATIONS

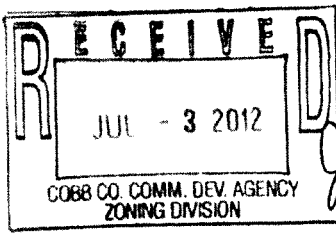
Z-34 JOHN WIELAND HOMES AND NEIGHBORHOODS, INC. (CONTINUED)

- 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 approving the applicant's rezoning proposal. The applicant's proposal will permit a residential use that is very similar to adjacent and nearby properties. The applicant's proposal does fit the character of the area. This property would provide a reasonable transition from the more intense uses to the lower intensity uses. The applicant's proposal would not adversely affect adjacent or nearby properties; approval of the request would eliminate the six concerns listed in paragraph B above. The applicant's proposal would have a positive effect on adjacent and nearby properties. The applicant's proposal is consistent with the *Cobb County Comprehensive Plan*, the *Vinings Vision Plan* and the OSC Zoning Code.

Based on the above analysis, Staff recommends APPROVAL subject to the following conditions:

- Site plan received by the Zoning Division July 3, 2012, with the District Commissioner approving minor modifications;
- Historic Preservation comments;
- Cemetery Preservation comments;
- Planning Division comments;
- Fire Department comments;
- Water and Sewer comments and recommendations;
- Stormwater Management comments and recommendations;
- 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.

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.



Application No. Z-34

Sept. 2012

Summary of Intent for Rezoning

.....
Part 1. Residential Rezoning Information (attach additional information if needed)

- a) Proposed unit square-footage(s): 2400 and up
- b) Proposed building architecture: Custom four sided architecture (elevations to follow)
- c) Proposed selling prices(s): \$700,000 and up.
- d) List all requested variances: Request site plan be approved as per OSC ordinance.

.....
Part 2. Non-residential Rezoning Information (attach additional information if needed)

- a) Proposed use(s): n/a
- b) Proposed building architecture: n/a
- c) Proposed hours/days of operation: n/a
- d) List all requested variances: n/a

.....
Part 3. Other Pertinent Information (List or attach additional information if needed)

Plan shows a density that conforms with the Future Land Use Map see the plan filed contemporaneously herewith.

.....
Part 4. Is any of the property included on the proposed site plan owned by the Local, State, or Federal Government?

(Please list all Right-of-Ways, Government owned lots, County owned parcels and/or remnants, etc., and attach a plat clearly showing where these properties are located).

n/a

SAMS, LARKIN & HUFF, LLP
ATTORNEYS AT LAW

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SUITE 100
MARIETTA, GA 30064-3448

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August 29, 2012

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Community Development Agency
Zoning Division
1150 Powder Springs Road
Suite 400
Marietta, GA 30064

Re: Application of John Wieland Homes and Neighborhoods, Inc. to Rezone a 23.94
Acre Tract from R-30 (non-conforming) to R-20 OSC; Land Lots 835, 836 &
892, 17th District, 2nd Section, Cobb County, Georgia ("Property") (Z-34)

Dear John:

As you are aware, I represent the Applicant, John Wieland Homes and Neighborhoods, Inc. ("JWHN") with regard to the re-zoning request for a R-20 Open Space Community as shown on the plan submitted with the rezoning request ("Plan"). Prior to filing, and subsequent to filing, JWHN has had the opportunity to obtain input from Staff, surrounding property owners, interested civic organizations and members of the Planning Commission. Accordingly, after having reviewed Cobb County's professional Analysis and having considered requests received from persons who expressed comments regarding Z-34, JWHN is prepared to submit a stipulation letter to accompany the Application and that compliments Staff's recommendation of approval. I would appreciate you circulating this letter to everyone involved with this Application who is not otherwise copied. The following stipulations, upon approval by the Board of Commissioners, shall become conditions of the zoning ordinance applicable to this Property, shall run with the land and become binding on any and all subsequent owners:

GATEWAY TO PROJECT

The Vinings Vision Master Plan ("VVMP") that was recently approved includes mention of certain areas acting as "gateways" to the Vinings area and also mentions the scenic characteristics of Woodland Brook Drive. As the entrance is located on Woodland Brook Drive

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Cobb County Community Development Agency
Zoning Division
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in the area of one of the "gateways", JWHN is appreciative of those facts and has attempted to design a gateway to the project that is consistent with the VVMP.

1. The Entrance to the Neighborhood shall be constructed as shown in the attached color rendering. (See Exhibit "A"). The Entrance shall be gated, with ground based monument-style brick columns and wall as shown on the elevation.
2. The Entrance shall be professionally landscaped and maintained as shown on Exhibit "A." During Plan review, a Landscape Review Committee for the Entrance shall be appointed consisting of a representative of JWHN, the County Arborist, the Community Development Director (or designee) and the President of the Vining's Village Homeowner's Association. A Landscape Plan consistent with Exhibit "A" shall be submitted to the Committee for review and comment with the Community Development Director (or his/her designee) being the final arbiter of the Plan.
3. A gatehouse shall be constructed of stone and brick and will be extremely similar, if not identical, to the gatehouse depicted in the elevation attached hereto as Exhibit "B."
4. To facilitate access to the St. John's Baptist Church Cemetery or to view the Civil War Earthwork, the gates to the Community shall remain open during normal daylight hours. Daylight hours being interpreted as 9:00 a.m. to 7:00 p.m. for summer months and 9:00 a.m. to 6:00 p.m. during winter months.
5. The gates shall be of a width approved by the Cobb County Fire Marshall's Office and shall be equipped with a means of opening the gates by public safety/fire department personnel for emergency access. The opening device (Knox Switch) shall be approved by the Cobb County Fire Marshall's Office.

SINGLE FAMILY RESIDENTIAL PRODUCT QUALITY

6. The Property shall be developed with the construction of a maximum of forty-five (45) single family homes. Pursuant to staff's recommendation and analysis, this is a reduction in density from over 2.00 units per acre down to the 1.92 units per acre density of the proposed Plan which shall not exceed 45 homes.
7. The homes offered by JWHN shall be custom built single family homes and will have price points beginning at \$700,000 to \$1,000,000 and up. JWHN has its own design center that will allow customers to select the interior and exterior options that best

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Cobb County Community Development Agency
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.....

suit their needs and desires. Renowned Atlanta Architect, Bill Baker¹, will be making his design services available for the homes. The focus shall be on allowing a homebuyer to determine which square footage design options (1 ½ floors vs. 2 floors, heated basement/non-heated basement, etc.) is more appropriate. That being said, while the unique ability to custom design and select your home remains a very important part of the process, the customer will be required to comply with the standards set forth in this stipulation letter.

8. The homes shall be a minimum of 2,400 square feet to 4,000 square feet or larger residences with minimum two-car garages. The homes shall be custom built homes constructed of a mixture of brick, masonry, stacked stone, stone, hardi-plank, wood designs for aesthetic purposes and period trim. All homes are covered under the JWLN 20 year warranty, the premier standard in the industry.
9. The exteriors shall be custom designed and consistent with the elevations attached hereto as Exhibit "C" and as shown on the elevations depicted on Exhibit "A."² To the extent any homeowner wishes to construct a residence that (1) meets the minimum square footage, (2) meets the construction material requirement and (3) meets the minimum price point, but may more than minimally vary from the attached elevations, any proposed elevation and building footprint would be required to be submitted to the District Commissioner for review and input before a building permit may be issued. In no instance may any of the homes contain vinyl siding and no home may have four sides consisting only of hardi-plank material.
10. Interior of the custom homes shall consist of premium grade features and design options. Standard features may include 10 foot ceilings on the first floor, and 9 foot ceilings on the second floor. The options include, but are not limited to, leaded glass, woodmold brick, cast stone mantles, cherry cabinets, enclosed wine racks, granite and marble countertops, hardwood cabinets, stainless steel appliances, cultured marble, natural stone tile, hardwood floors, plantation shutters, master closets and other design features intended to make the interior of the home of the same quality and design as the exterior. Examples of some of the interiors are attached hereto as Exhibit "D."

.....

¹ Portfolio available at www.wtbaker.com.

² Elevations on Exhibit "A" show garage to the side while elevations on Exhibit "C" has garage on the side and one example of a garage to the rear of the home. Examples of the architectural design of the home styles can be viewed at www.wtbaker.com.

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INITIAL DEVELOPMENT PROTECTIONS

11. JWHN **shall not** seek vehicular road access, nor will same be allowed, from the Property to North Elizabeth Lane, Rebel Valley View, Sedberry Hill Court or Heavenly Trail. Additionally, vehicular road access shall not be allowed across any open-space and shall not be allowed from the western-most road shown on the Plan to or across any open-space toward Heavenly Trail. This shall be a permanent condition of zoning.
12. A landscape plan for the homes shall be submitted during Plan Review which shall be subject to staff review and approval and shall include:
 - a. Sodded or otherwise landscaped front yards and other areas.
 - b. The installation of underground utilities.
 - c. All landscaping throughout the community shall be irrigated and maintained by the HOA or the homeowner and same being enforceable by Covenants.
13. All lighting throughout the entire project will be environmentally sensitive, energy efficient, horizontal cut-off luminaries so as to eliminate light pollution and prevent illumination from penetrating outside the boundary of the property.
14. Prior to installing any lighting not specifically for an individual residential lot, JWHN shall be required to submit a Lighting Plan to the Staff for review and approval, designed to control any stray light from entering upon adjacent properties and shall include:
 - a. Arrangement of all poles (with dimensions).
 - b. Height of all poles.
 - c. Number of luminaries per pole.
 - d. Mounting heights of luminaries.
 - e. Wattage of proposed lights.
 - f. Mounting angle of fixtures; and
 - g. Lamp source to be used.
15. Regular construction hours at the Property shall be restricted to 7:00 a.m. to 7:00 p.m. Monday through Friday and from 9:00 a.m. to 6:00 p.m. on Saturday. Supervisory operations will be allowed but there will be no heavy equipment used at the Site on Sundays.

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Cobb County Community Development Agency
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16. All existing homes/structures on the Property shall be boarded within thirty (30) days of final approval of the rezoning and demolished within sixty (60) days of final approval of the rezoning.
17. Construction traffic shall enter and leave the Property from the Log Cabin Drive/Atlanta Road area. Construction traffic shall not utilize Woodland Brook Drive to access the Property toward or from Paces Ferry Road.
18. During all stages of construction and until construction is complete, JWHN shall maintain and protect a forty foot (40') undisturbed buffer (as shown on the Plan) along the rear of Lots 1-7 and that portion of the Property adjacent to Rebel Valley View. For further protection of the buffer area, JWHN will install orange protective fencing along the boundary line of the buffer so as to prohibit encroachment during construction. After construction, and after review by the Cobb County Arborist with direct notification and input from the adjacent property owner, certain areas of the forty foot (40') buffer may be enhanced with professionally landscaped mature greenery to replace any invasive species such as kudzu, poison ivy, poison oak or the like.
19. A preliminary grading plan shall be submitted to Staff for review and approval. The limited grading plan shall attempt to avoid mass grading and shall not improperly disturb any open space or buffer areas.
20. Prior to issuance of a land disturbance permit, the submitted grading plan shall be submitted to Staff and shall clearly delineate the limits of grading, the tree save areas, open space areas and other features to be excluded from land disturbance activities.

PERMANENT DEVELOPMENT BENEFITS

The Application is being submitted as an Open Space Community. The density of 1.92 units per acre is in compliance with the Cobb County Future Land Use Plan and the VVMP. In addition to the protections and benefit of an Open Space Community, JWHN believes the additional language will be beneficial to all concerned.

21. Although the OSC ordinance would only require thirty-five percent (35%), the Plan to be approved is a site plan specific Plan showing over fifty percent (50%) open space.

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Cobb County Community Development Agency
Zoning Division
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22. The setbacks for all homes shall be Front fifteen feet (15'), Rear twenty feet (20') and Side five feet (5') with fifteen feet (15') minimum between structures.
23. Any pedestrian access to the Open Space Area shall be signed as access points.
24. A mandatory Homeowner's Association shall be formed with a Declaration of Covenants, Conditions and Restrictions which shall be recorded of public record and include, among other things, strict landscaping, buffer protection and architectural controls. The Covenants shall also provide the HOA with the power of immediate enforcement of any violations or encroachment upon any of the open space or any buffer area as shown on the Plan.
25. The Open Space shall be protected from development in perpetuity by mandatory covenants of the subdivision in favor of Cobb County for conservation uses. The protection from development shall also require a covenant running with the land, created and noticed as required by O.C.G.A. § 44-5-60 et al.
26. All buffer areas and open space shall be protected from any development or land disturbance via a conservation easement in favor of Cobb County for conservation uses.
27. As a result of the above, Cobb County shall maintain the right of immediate enforcement of these conditions via Code Enforcement, including any criminal right of enforcement as set forth in the Cobb County Code.
28. All prospective home buyers shall be informed in writing of the conservation easements and the prohibition on land disturbance or development of any of the open space or buffer areas.
29. The forty foot (40') buffer area shown on the Plan at or near Lots 1-7 shall be designated a conservation easement protected area.
30. To further protect the buffer area described above in perpetuity, JWHN shall install boundary markers identifying the buffer and restricting any encroachment. The markers shall be no less than three feet (3') in height and constructed of brick and stone. The markers shall be maintained by the HOA and shall be installed at each property line of Lots 1-7 where said property line meets the buffer area.

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31. The homes are being designed as upscale single family homes for fee-simple ownership only. However, to further that goal, there shall be no more than 10% of any of the homes rented at any given time. Further, these restrictions shall be included in the Declarations and Restrictions for the HOA and shall be so enforceable.
32. The HOA'S responsibility shall also include ownership of the St. John's Church Cemetery area as shown on the boundary delineation of St. John's Church Cemetery prepared by R.S. Webb & Associates for Cobb County dated September 20, 2011. The HOA shall be responsible for maintaining the Cemetery and conducting all landscaping in compliance with State law and the Cobb County Code. The Cemetery shall be the responsibility of the HOA and there shall not be a need or permission for the "Adopt a Cemetery Program."
33. The HOA shall also take ownership of the portion of the earthwork that is located on the Property as shown by the September 27, 2011 archeological survey prepared by R.S. Webb & Associates. The HOA shall be responsible for maintaining said earthwork in compliance with State law and Cobb County Code.

HISTORIC PRESERVATION

JWHN understands that the Property is the previous location of St. John's Baptist Church and an earthwork purportedly representing a portion of a Civil War earthwork. Accordingly, to appreciate and address those facts, JWHN stipulates as follows.

34. A fifty foot (50') undisturbed natural buffer around the outermost burials of the cemetery as shown on the September 20, 2011 boundary delineation prepared by R.S. Webb & Associates.
35. The fifty foot (50') undisturbed natural buffer shall be included in the area recorded as a conservation use easement with Cobb County having third party right of enforcement. This buffer shall be gated and fenced with wrought iron appearance/style material/metal alloy (black) appearance fencing or wood split rail fencing with a minimum height of four feet (4') so as not to interfere with the view shed of the area.
36. At least one week prior to issuance of a land use permit, JWHN shall confirm the outermost burial sites by a professional archaeologist which shall also locate all grave

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- shafts. The surveyor/archeologist must prepare a survey showing same and submit said survey to the Cobb County Cemetery Preservation Commission.
37. All actions by JWHN on the Property shall comply with O.C.G.A. § 36-72-2 et al and there shall be no disturbance of any graves by any person. No artifact recovery shall be allowed by any person within the Cemetery area as fenced.
 38. There shall be uninhibited daylight access to the Cemetery and Earthwork via the road shown on the Plan. Any and all access shall only be at the risk of the person seeking said access and JWHN shall post signs setting said assumption of the risk in writing. Any identification of the Property by Cobb County shall include a warning that any visitation to the Property is to be conducted at your own risk. The warning language shall be in a form approved by the County Attorney and JWHN's counsel. (Access as listed in Stipulation 4).
 39. As shown on the archeological survey completed by R.S. Webb & Associates dated September 27, 2011, JWHN shall construct a fence outside of the forty-five feet (45') of the earthwork shown as being on the Property. The fenced area shall be consistent with the fencing provided around the Cemetery buffer area.
 40. Permanent signs shall be installed in no less than fifty foot (50') intervals stating "Cemetery Preservation Buffer-Civil War Earthwork-Do Not Disturb."
 41. Prior to issuance of a Land Disturbance Permit and during construction, JWHN will provide and install an orange protective fence around the entire perimeter of the buffer areas surrounding the Cemetery and the Earthwork.
 42. Visitors to the Cemetery/Earthwork area shall be provided parking as shown on the Plan. Per Staff Comments, parking (two spaces) shall be allowed at the spaces shown immediately adjacent to the Cemetery on the Plan.
 43. Pursuant to Staff's Comments, prior to issuance of a land disturbance permit, JWHN shall obtain an archeological study of the entire Property. While for numerous past decades, if not a century, there has not been any interpretable archeology areas not already identified (NPS Study performed April 2011, 1992 book by William Schaife), JWHN will have the archeological study performed to facilitate any artifact recovery. Any areas shown as having any significance shall be so noted and become a focus of any artifact recovery during development.

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44. During construction, all workers on the Property shall be informed that there is an archeological artifact management program in place on the Property and directed to turn in any found artifacts to JWHN for collection.
45. Any artifacts recovered shall be donated to the Vinings Historic Preservation Society.
46. JWHN shall commission and install two (2) historical interpretive signage markers for the Property which shall be installed at the Property. One sign shall be dedicated to the St. John's Baptist Church and Cemetery. The second sign shall be dedicated to the Earthwork. The signs shall be of material and construction similar to the historical markers already in the surrounding area (pg. 94 of VVMP for reference). The wording shall be prepared and submitted by a majority vote of the Vinings Historic Preservation Society with input from the Coordinator of the River Line Historic Area. The District Commissioner shall be the final arbiter of any dispute regarding wording on the markers.

SPECIFIC COMMENTS ON STAFF ANALYSIS

JWHN agrees that, unless otherwise in conflict with this Stipulation letter, Staff Comments and Recommendations of Approval shall govern this rezoning. However, JWHN wants to specifically state the following stipulations:

47. All detention ponds and stormwater infrastructure will be privately maintained by the HOA. The HOA covenants will include a maintenance agreement of said area and adequate reserves created to maintain the areas in perpetuity.
48. All detention areas shall have a twenty foot (20') wide access easement provided for maintenance that shall be shown on the Plan and confirmed during Plan Review.
49. Construction of curb and gutter **only** along frontage of Woodland Brook Drive. Per VVMP requests that sidewalks not be constructed along the western side of Woodland Brook, JWHN will not construct a sidewalk on its frontage with Woodland Brook Drive.
50. JWHN will verify site distances for stopping and intersections to achieve the safety guarantees as stated in the Cobb County DOT Comments. If necessary, remedial measures shall be implemented at Plan Review, subject to Staff's approval, to achieve said distances.

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51. Private streets shall be built to Cobb County Standard Specifications.
52. JWHN will voluntarily donate five feet (5') of additional right of way such that a minimum of thirty feet (30') from the roadway centerline is achieved.
53. JWHN will enter into a Development Agreement pursuant to O.C.G.A. § 36-71-13 for dedication of system improvements to mitigate traffic concerns.
54. The District Commissioner shall have the sole authority to review and must approve/deny any minor modifications to these stipulations as well as the Final Site Plan.

While not everyone's requested stipulations can be achieved, these stipulations represent a blended majority of the requested stipulations and further reflect a continuation of JWHN's commitment to long term quality development. Please submit this letter to the Planning Commissioners and Board of Commissioners for inclusion in the Application.

Thank you for your time and assistance.

Very truly yours,

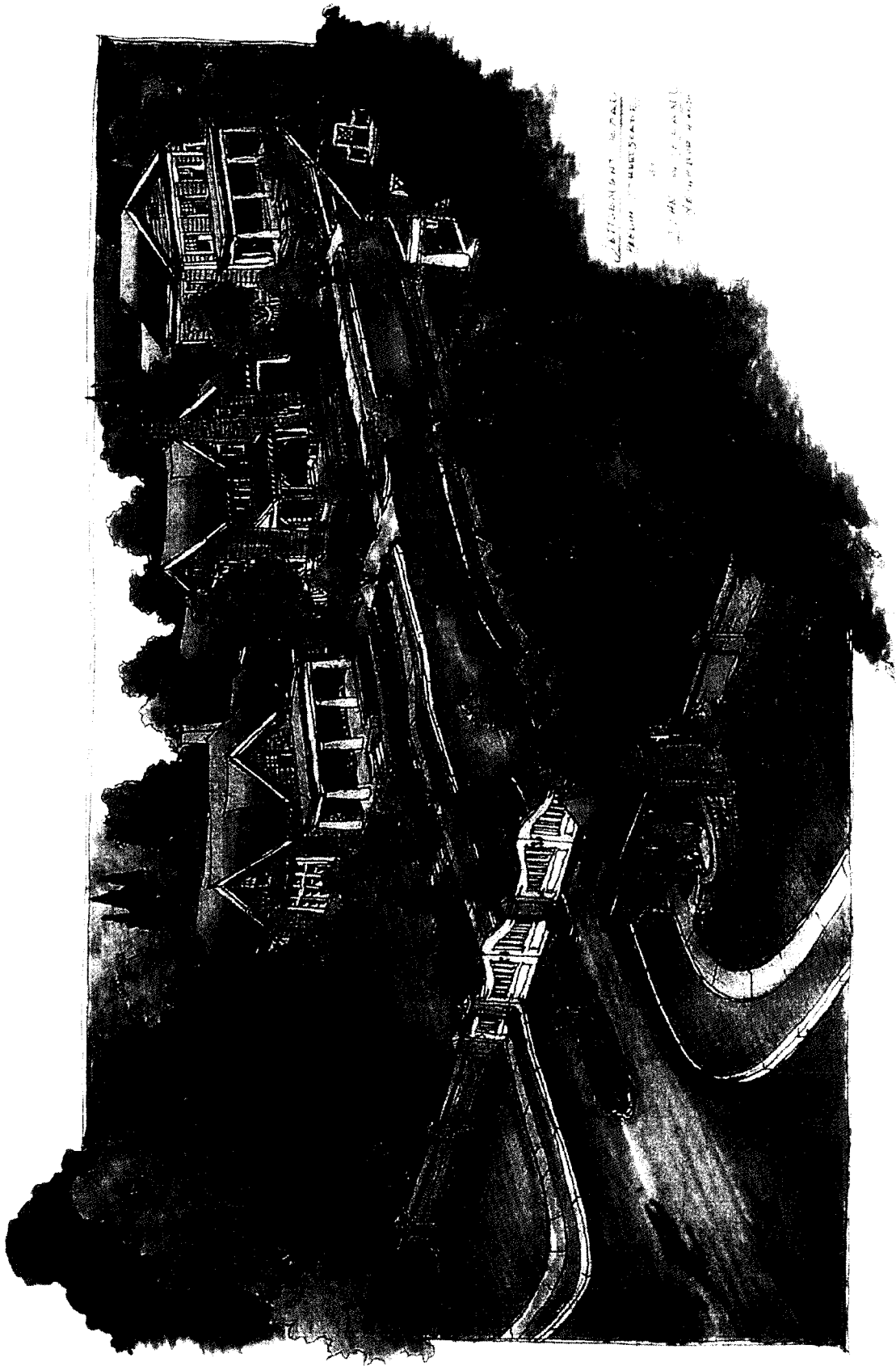
SAMS, LARKIN & HUFF, L.L.P.


James A. Balli
jballi@samslarkinhuff.com

Enclosures

cc: John Wieland Homes and Neighborhoods, Inc.
Members, Cobb County Board of Commissioners
Members, Cobb County Planning Commission
Mr. Robert L. Hosack, Jr., AICP, Director
Mr. Dana Johnson, AICP, Manager Planning Commission
Mr. Jason Campbell, Planner III
Mr. Glenn Dyke, President, Vinings Village HOA
Mr. Ron Sifen, President, Cobb County Civic Coalition
Ms. Helga Hong, Cobb County Cemetery Preservation Commission

Exhibit “A”



CASTLETON BAY
PARKWAY
1970
1/2 MILE
SOUTH OF

Exhibit “B”

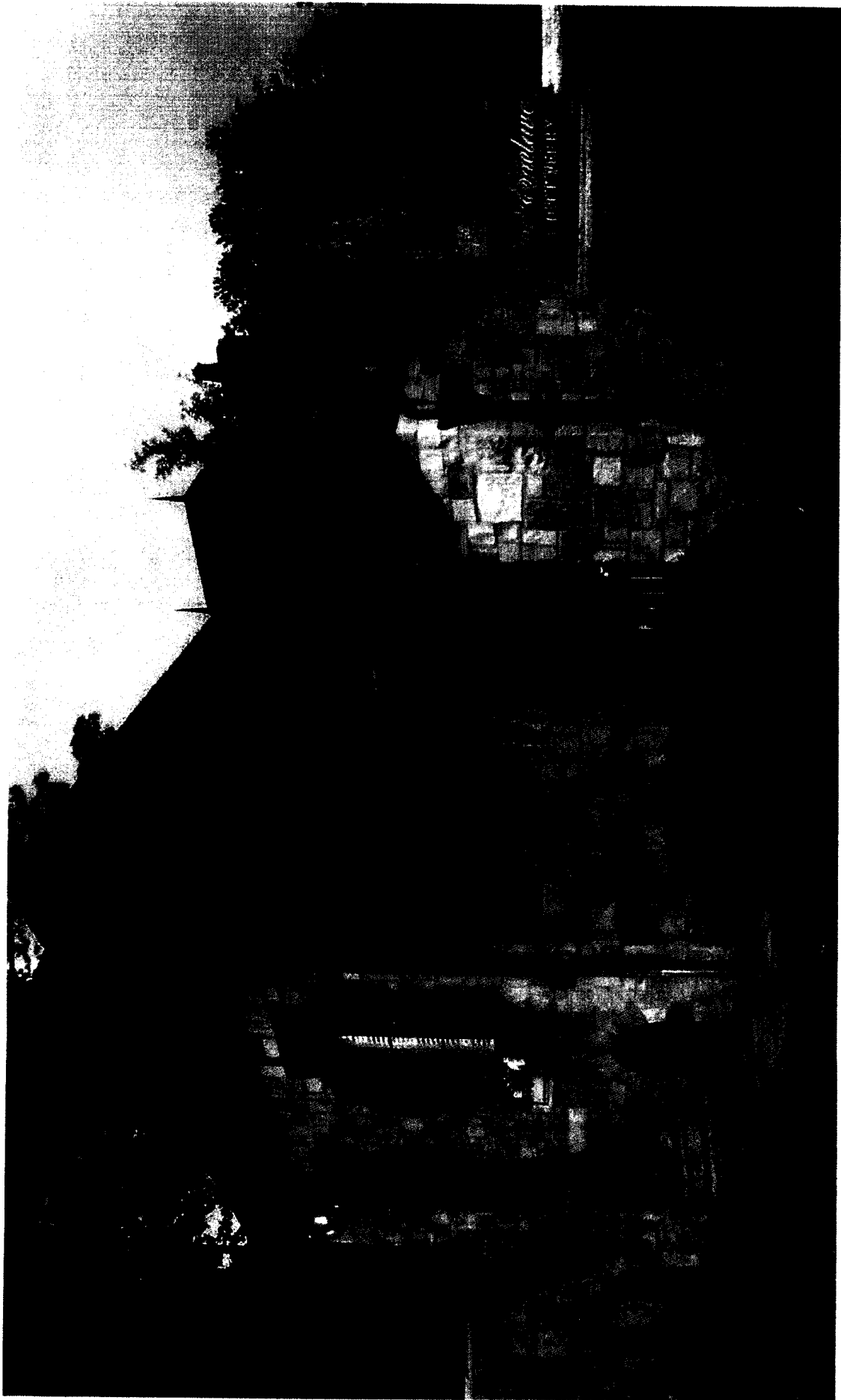


Exhibit “C”

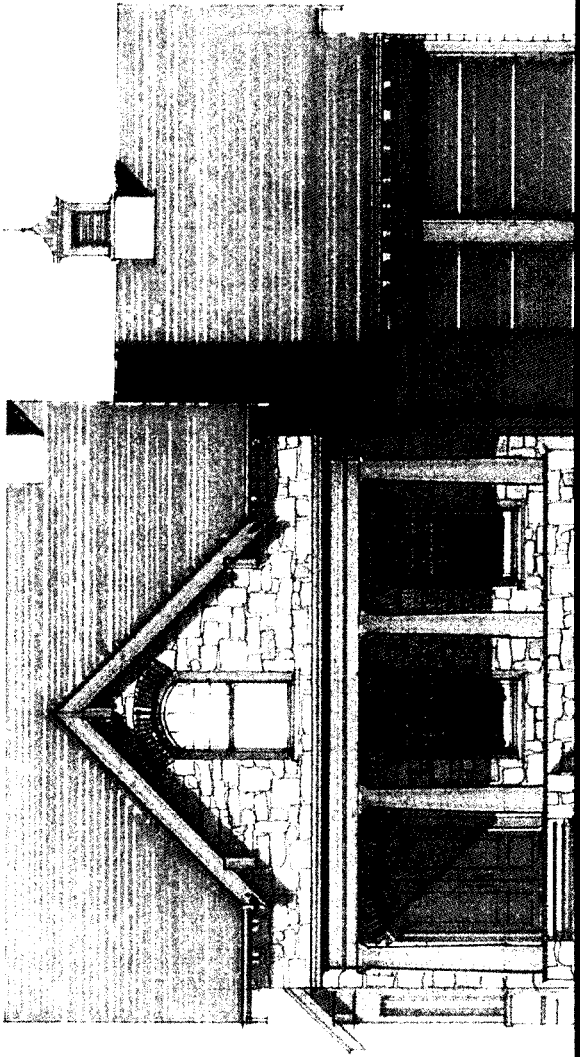
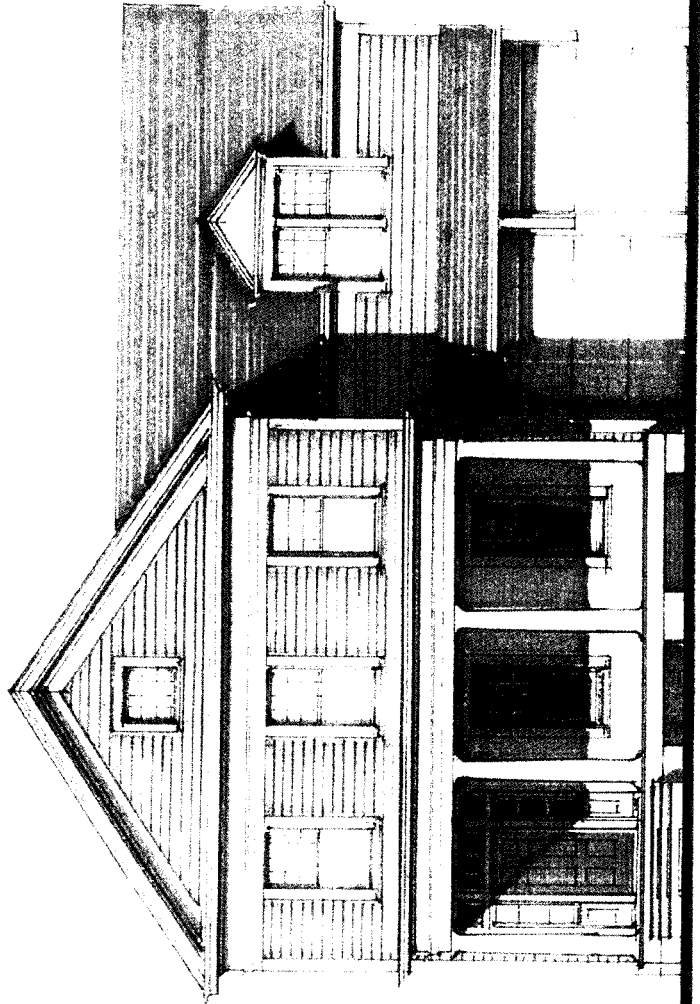


Fig. 1

Architectural Drawing of a Building
No. 1



PLAN 2
SOUTH SIDE



Exhibit “D”



