OB-57

RECEIVED
AUG 12 2014
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

# Application for "Other Business"
# Cobb County, Georgia

(Cobb County Zoning Division – 770-528-2035) **BOC Hearing Date Requested:** 9/16/2014

**Applicant:** MT. BETHEL CHRISTIAN ACADEMY, INC. **Phone #:** (770) 971-2880
(applicant's name printed)

**Address:** 2509 POST OAK TRITT RD. **E-Mail:** dan.boswell@mtbethel.org

c/o JAMES M. NEY

Holt Ney Zatcoff + Wasserman **Address:** 100 Galleria Pkwy, Suite 1800, Atlanta GA 30339
(representative's name, printed)

James M. Ney **Phone #:** (770) 956-9600 **E-Mail:** jney@hnew.com
(representative's signature)

**Signed, sealed and delivered in presence of:**

LAURA STEPHENS NOTARY PUBLIC FLOYD COUNTY GEORGIA EXPIRES JULY 28, 2015

**My commission expires:** July 28, 2015

**Notary Public**

**Titleholder(s):** MT. BETHEL CHRISTIAN ACADEMY, INC. **Phone #:**
(property owner's name printed)

**Address:** 2509 POST OAK TRITT RD **E-Mail:**

(Property owner's signature)

**Signed, sealed and delivered in presence of:**

**My commission expires:**

**Notary Public**

**Commission District:** 3 **Zoning Case:** SLUP-11 (#357 - 11/18/86)

**Date of Zoning Decision:** 11/19/2013 **Original Date of Hearing:** 11/19/2013

**Location:** 2905 POST OAK TRITT
(street address, if applicable; nearest intersection, etc.)

**Land Lot(s):** 599, 600, 625 + 626 **District(s):** 16th, 2nd Section

**State specifically the need or reason(s) for Other Business:** To confirm ability to use property for community outreach opportunities and add tennis court locations to site plan.

(List or attach additional information if needed)

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## Cobb County, Georgia

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(representative's name, printed)

_____ **Phone #:** (770) 956-9600 **E-Mail:** jney@hnew.com
(representative's signature)

**Signed, sealed and delivered in presence of:**

_____ **My commission expires:** _____
**Notary Public**

---

**Titleholder(s):** MT. BETHEL CHRISTIAN ACADEMY, INC. **Phone #:** (404) 386-8494
(property owner's name printed)

**Address:** 2509 POST OAK TRITT RD **E-Mail:** BBROWN@HALPERNENT.COM

_____
(Property owner's signature)

**Signed, sealed and delivered in presence of:**

_____ **My commission expires:** _____
**Notary Public**

ELLEN W. SMITH NOTARY PUBLIC COBB COUNTY GEORGIA EXPIRES Dec. 30, 2016

---

**Commission District:** 3 **Zoning Case:** SLUP-11 (Orig. 11/18/80)

**Date of Zoning Decision:** 11/19/2013 **Original Date of Hearing:** 11/19/2013

**Location:** 2905 POST OAK TRITT
(street address, if applicable; nearest intersection, etc.)

**Land Lot(s):** 599, 600, 625 + 626 **District(s):** 16th, 2nd Section

**State specifically the need or reason(s) for Other Business:** To confirm ability to use property for community outreach opportunities and add tennis court locations to site plan.

(List or attach additional information if needed)

# HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800

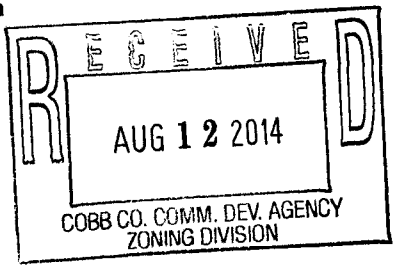
ATLANTA, GEORGIA 30339-5947

TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

**James M. Ney, P.C.**
**e-mail jney@hnzw.com**

**Ellen W. Smith**
**e-mail esmith@hnzw.com**


August 12, 2014




***BY HAND DELIVERY***
Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street, Suite 400
Marietta, Georgia 30064

Re: Application for "Other Business" by Mt. Bethel Christian Academy, Inc. (the "***Application***") with respect to that certain property commonly known as 2509 Post Oak Tritt Road, Marietta, Georgia (the "***Property***")

Ladies and Gentlemen:

This law firm has the pleasure of representing Mt. Bethel Christian Academy, Inc. ("***Mt. Bethel***"), with respect to the Application. Mt. Bethel respectfully submits for your consideration the Application, the approval of which will (i) affirm Mt. Bethel's right to use the Property for a variety of community outreach programs, and (ii) allow for the future installation of up to four (4) additional tennis courts in the areas generally shown on the revised site plan submitted herewith.

## Background

In 2013, Mt. Bethel contracted with the Marcus Jewish Community Center of Atlanta, Inc. (the "***JCC***") to acquire the Property, which is an approximately 33.25-acre tract zoned R-20, and which had been used as a Jewish community center since the mid-1980s (*see* Application No. 357, heard November 18, 1986). On November 19, 2013, the Cobb County Board of Commissioners granted to Mt. Bethel a Special Land Use Permit to allow the Property to be used for a private school. Mt. Bethel subsequently acquired the Property and last week, on August 7, Mt. Bethel is pleased to have opened the doors of its high school on the Property with 9 Freshmen attendees.

## "Other Business" Requests

Mt. Bethel is proposing two modifications to its use of the Property in this Application. Over the past year, Mt. Bethel has continued to conduct due diligence and Mt. Bethel has begun interior renovations of the existing classroom building on the Property. But, Mt. Bethel has also been approached with opportunities to provide community outreach with various programs to be held on the Property including, for example and without limitation, tennis and swim lessons for church and school members. So, first, Mt. Bethel would like to confirm that it can undertake these community outreach opportunities for non-Church or school members as well, in many respects, continuing the community center legacy started by the JCC more than three decades ago.

Second, in keeping with its first request, Mt. Bethel also requests a minor amendment to its site plan to allow the location of up to four (4) additional tennis courts on the Property, in the locations generally depicted on the enclosed site plans. These additional tennis courts will be available for use by the school, the Church and, as part of the community outreach programs Mt. Bethel seeks to be able to offer, the community.

Enclosed together with the revised site plan is our law firm's check in the amount of $359.00 (for Application and sign fees). Also enclosed in connection with the Application are the following:

1. A copy of the tax receipt reflecting the exempt status of the Property from the Cobb County Tax Assessor's website; and
2. Copies of the Board's November 19, 2013 minutes and Applicant's zoning conditions letter dated November 11, 2013, reflecting the approval of SLUP-11, the Mt. Bethel private school SLUP.

We confirm that none of the site plan revisions requested impact the conditions of SLUP-11, previously approved and that the proposed location of the new tennis courts meets all of the buffer and setback restrictions applicable to the Property.

Mt. Bethel's Application meets and exceeds the minimum requirements of the Zoning Ordinance. We respectfully request the approval of this Application at the Board's September 16, 2014 hearing.

We are happy to answer any questions or provide any information that the Division, its consultant or the Board may have with regard to the Application.

Sincerely,

James M. Ney

James M. Ney

Ellen W. Smith

JMN/EWS/ews
Enclosures

OB-57
Proposed

# MT. BETHEL CHRISTIAN ACADEMY UPPER SCHOOL

2509 POST OAK TRITT ROAD - MARIETTA, GA 30062

## MT. BETHEL CHRISTIAN ACADEMY, INC.

2509 POST OAK TRITT ROAD - MARIETTA, GA 30062

SITE PLAN
PHASE 1

Z-1

Not Released For Construction

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AUG 12 2013
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

REGULAR CASES (CONT.)

LUP-32 CHANDRA L. YATES (CONT.)

- **Occupants to park vehicles only on hardened surface of the driveway**
- **No on-street parking**
- **Any further verified code complaints would accelerate enforcement to 30 days from the date of the violation**

VOTE: **ADOPTED** 4-0, Chairman Lee absent

A recess was taken from 10:40 a.m. until 10:47 a.m.

Commissioner Ott announced that he would recuse himself from SLUP-11, due to his affiliation with Mt. Bethel United Methodist Church, Inc.

SLUP-11 **MT. BETHEL UNITED METHODIST CHURCH, INC.** (Atlanta Jewish Community Center, Inc., owner) requesting a **Special Land Use Permit** for the purpose of a Private School in Land Lots 599, 600, 625 and 626 of the 16th District. Located on the north side of Post Oak Tritt Road, west of Holly Springs Road (2509 Post Oak Tritt Road).

The public hearing was opened and Mr. Jim Callis and Ms. Ellen Smith addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Goreham, to **approve** Special Land Use Permit **subject to**:

- ***Revised* Phase I and Phase II site plans dated 10/15/13, with the District Commissioner approving minor modifications (attached and made a part of these minutes)**
- **Traffic flow plans (Phase I and Phase II) received by the Zoning Division September 25, 2013, with the District Commissioner approving minor modifications (attached and made a part of these minutes)**
- **Statement of proposed site improvements dated September 3, 2013 (attached and made a part of these minutes)**
- **Letter of agreeable conditions from Ms. Ellen W. Smith dated November 4, 2013 (attached and made a part of these minutes) with the following changes:**

**REGULAR CASES (CONT.)**

**SLUP-11 MT. BETHEL UNITED METHODIST CHURCH, INC. (CONT.)**

- **Item No. 7 – amend to read: *"... on any day of the week, or before 7:00 a.m. on weekdays and before 9:00 a.m. on Saturdays and Sundays."***
- **Item No. 11 – amend second sentence to read: *"For purposes of this paragraph, any modifications that increase density or intensity of the proposed uses; reduce the size or composition of an approved buffer...."***

- **Letter of agreeable conditions from Ms. Ellen W. Smith dated November 11, 2013 (attached and made a part of these minutes)**
- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations**

VOTE: **ADOPTED** 3-0-1, Chairman Lee absent, Commissioner Ott recused himself

**OTHER BUSINESS**

**O.B. 1** To consider correcting the zoning hearing minutes relating to rezoning application Z-33 of 2013 (Blake Properties, Inc.), for property located on the west side of West Sandtown Road, southwest of Dallas Highway in Land Lots 331 and 332 of the 20th District.

Mr. Pederson provided information regarding the correction of zoning hearing minutes for Z-33 of 2013. The public hearing was opened and Mr. Bruce Goodman and Ms. Keli Gambril addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Goreham, second by Ott, to **approve** Other Business Item No. 1 for correction of zoning hearing minutes regarding application Z-33 of 2013 (Blake Properties, Inc.), for property located on the west side of West Sandtown Road, southwest of Dallas Highway in Land Lots 331 and 332 of the 20th District **subject to:**

# HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5960

TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

**Ellen W. Smith**
**e-mail esmith@hnzw.com**

November 11, 2013

**BY HAND DELIVERY**
Mr. Jason Campbell
Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street
Suite 400
Marietta, Georgia 30064

Re: Application for Special Land Use Permit No. SLUP-11 by Mt. Bethel United Methodist Church, Inc. for private school (the "***Application***")

**REVISED CONDITIONS TO APPLICATION**

Dear Jason:

As you know, this law firm has the pleasure of representing Mt. Bethel[1] with respect to the Application. Mt. Bethel hereby submits the following proposed zoning conditions (*revised pursuant to the comments by the Planning Commission on November 5, 2013*) with respect to the Application. If Mt. Bethel's Application is approved by the Board of Commissioners, as requested, Mt. Bethel agrees to comply with the following conditions:

1. SLUP #11 shall be conditioned generally upon the Phase I and Phase II site plans prepared by Collins Cooper Carusi, dated August 29, 2013, last revised October 15, 2013, and filed with Cobb County on October 24, 2013 (collectively, the "***Site Plans***").

2. The 85-foot and 65-foot buffers shown on the Site Plans along the northern and northwestern property lines adjacent to properties fronting on Alberta Drive shall be maintained for so long as those properties adjacent to such northern property line but fronting on Alberta Drive are (i) used for single-family residences or (ii) are owned by a party other than Mt. Bethel. Once the conditions of (i) or (ii) are satisfied, then notwithstanding condition #1 above or this condition, such buffers shall be reduced to 35-feet.

3. With respect to traffic and parking related issues:

   a. Mt. Bethel shall provide, when and as necessary between the hours of 7:00 a.m. to 8:30 a.m., a traffic officer to direct and facilitate traffic ingress and egress to and from the Property.

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Summary of Intent submitted with the Application.

b. Mt. Bethel shall provide, when and as necessary, bi-directional shuttles to and from the Property to its campus at 4385 Lower Roswell Road, Marietta, Georgia, in an effort to mitigate traffic impacts during the academic year.

4. The new multi-purpose field with surrounding track shall not be lighted. There shall be no stadium (meaning no permanent, fixed seating) constructed in connection with such multi-purpose field.

5. Any new lighting which Mt. Bethel installs either as replacement lighting for existing lighted playing fields, parking or otherwise, or as new lighting in connection with new improvements shown on the Site Plans, including new parking lots and drives, shall be environmentally sensitive and directed downward and inward to minimize light glare and spillage on adjacent neighbors' properties.

6. The following shall be honored during any construction activities on the Property (in addition to compliance with all Cobb County construction standards):

   a. Construction staging (including all equipment, vehicles, materials storage and construction parking) shall take place entirely on the Property. No construction vehicles or equipment shall be parked along Post Oak Tritt Road.

   b. No construction activities (expressly including deliveries of materials or equipment) shall occur (i) between the hours of 7:00 p.m. to 7:00 a.m., Monday through Friday (provided that the 7:00 p.m. hour may be extended to 8:00 p.m. during Daylight Savings Time); and (ii) at any time on Sunday. Furthermore, construction activities on Saturdays shall be only between the hours of 8:00 a.m. and 5:00 p.m.

   c. Mt. Bethel shall notify the District Commissioner at least ten (10) days prior to the commencement of construction of new structures on the Property. Also, during the period of construction, Mt. Bethel will provide the District Commissioner and the President of the East Cobb Civic Association of a contact name and telephone number which will be answered 24 hours a day, 7 days a week regarding problems with the construction.

7. No equipment or machinery used for landscape maintenance or the cleaning of drives or parking lots shall be allowed to operate past 9:00 p.m. on any day of the week, or before 7:00 a.m. on weekdays and before 9:00 a.m. on Saturdays and Sundays.

8. All garbage and refuse containers shall have lids which shall remain closed when not in use. Dumpsters and trash containers shall only be emptied between the hours of 7 a.m. and 6 p.m. on non-holiday week-days (provided that Mt. Bethel shall use commercially reasonable efforts to ensure that emptying of dumpsters shall not occur during carpool drop-off times).

9. Once the Phase II new drive and parking have been constructed along the eastern property line of the Property, in the event of damage or destruction of the existing mature trees and buffering along said property line, Mt. Bethel shall replant such buffer with similar types of new vegetation

and trees in coordination with the Cobb County Arborist to allow for growth that will mature to replace the buffer against neighboring property owners. Furthermore, Mt. Bethel agrees that there shall be no lighting installed within the buffering adjacent to any such new Phase II drive.

10. Mt. Bethel shall limit the number of students in the Mt. Bethel Christian Academy (its Private School on the Property) to 625 full-time students; provided, however this number shall not impact the Mt. Bethel Christian Academy campus located at 4385 Lower Roswell Road, Marietta, Georgia which operates pursuant to a separate Special Land Use Permit.

11. The District Commissioner shall have the authority to approve minor modifications to these stipulations and the site plan as the development proposal proceeds through the Plan Review process and thereafter. For purposes of this paragraph, any modifications that increase density and intensity; reduce the size or composition of an approved buffer or landscape strip to adjacent property; relocate a structure closer to a property line; or, increase the height of a building adjacent to property which are in direct contradiction to or conflict with the foregoing stipulations, will come back through the public hearing process as an "Other Business" Application.

12. The following Staff Recommendations: (a) Water and Sewer Division comments and recommendations; (b) Stormwater Management Division comments and recommendations; and Department of Transportation comments and recommendations. *Please note that the first three conditions of the Staff Recommendations are address above. To the extent that there is any conflict between the Staff Recommendations and the 12 enumerated conditions contained in this letter, the 12 enumerated conditions contained herein shall govern.*

Mt. Bethel respectfully requests the consideration of these proposed conditions, which have been presented to members of the East Cobb Civic Association Board, and Mt. Bethel respectfully respects approval of this application. Please let me know if you have any questions. Thank you.

Sincerely,
HOLT NEY ZATCOFF & WASSERMAN, LLP

Ellen W. Smith

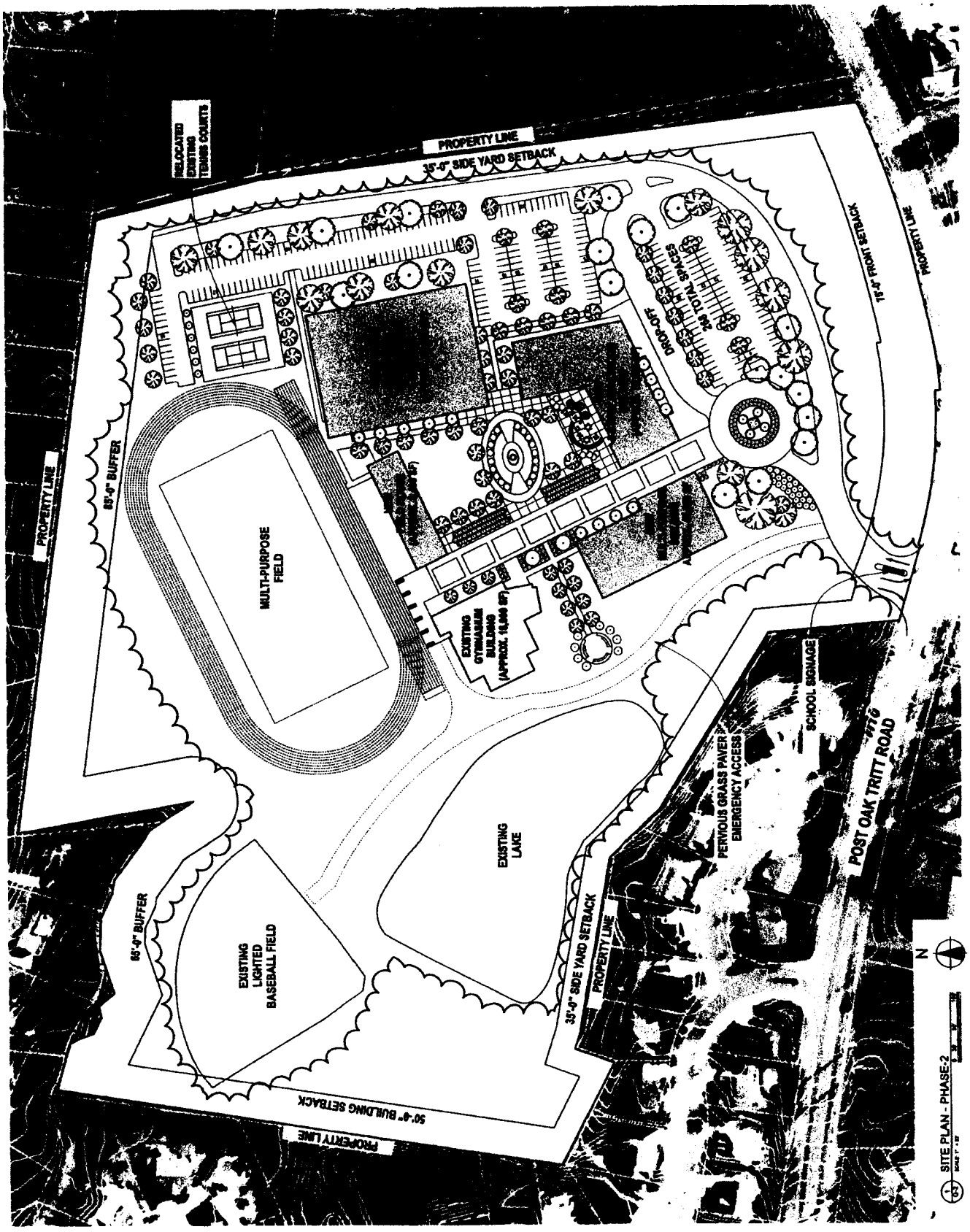
EWS/JMN/ews
cc: The Honorable JoAnn Birrell, District Three Commissioner
The Honorable Tim Lee, Chairman
The Honorable Helen Goreham, District One Commissioner
The Honorable Bob Ott, District Two Commissioner
The Honorable Lisa Cupid, District Four Commissioner
(all by e-mail only)

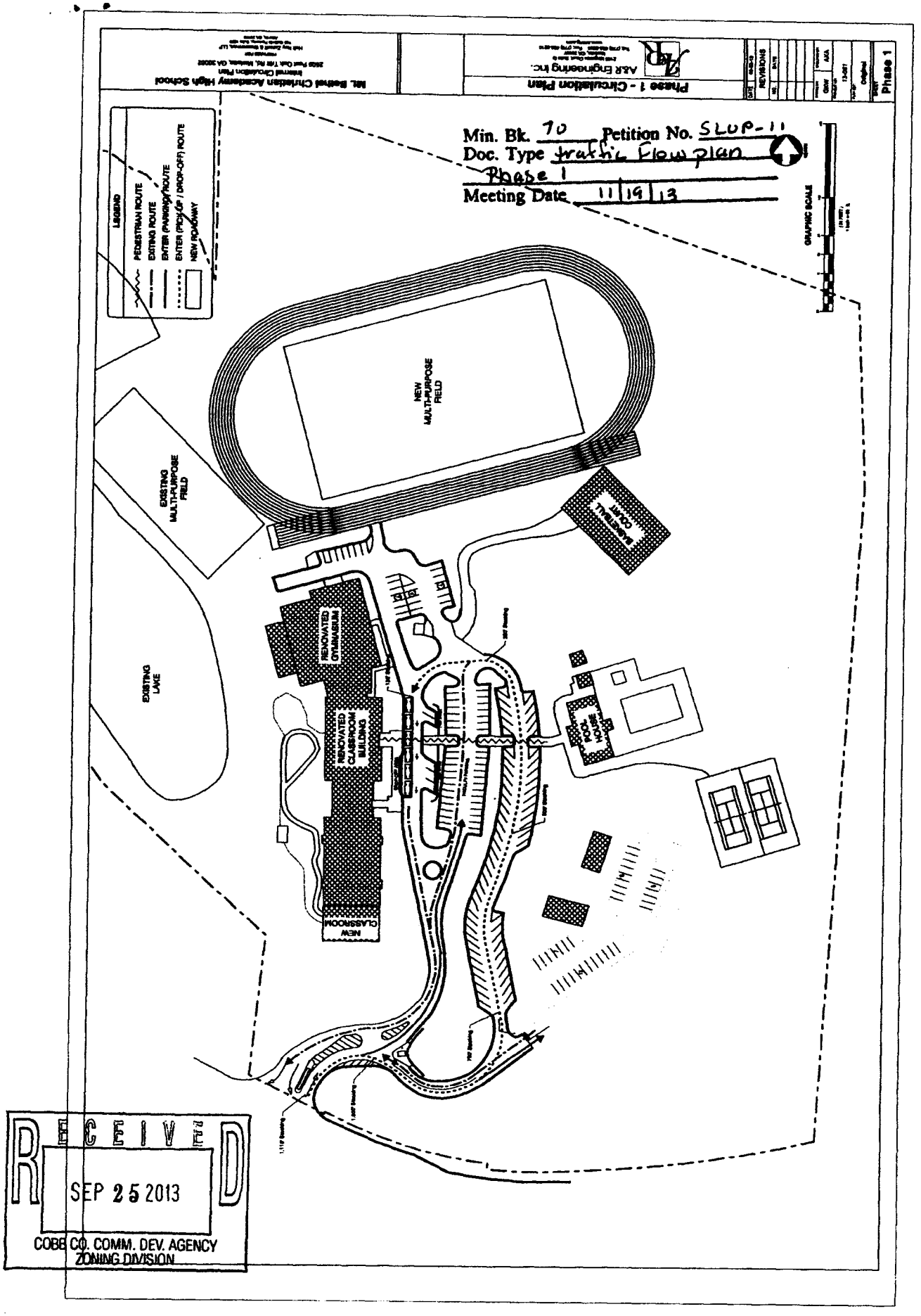
Min. Bk. 70 Petition No. SLUP-1
Doc. Type Site plan - phase one
Meeting Date 4/9/13

G-1

Min. Bk. 70 Petition No. SLUP-11
Doc. Type site plan - phase two
Meeting Date 11/19/13

G-2



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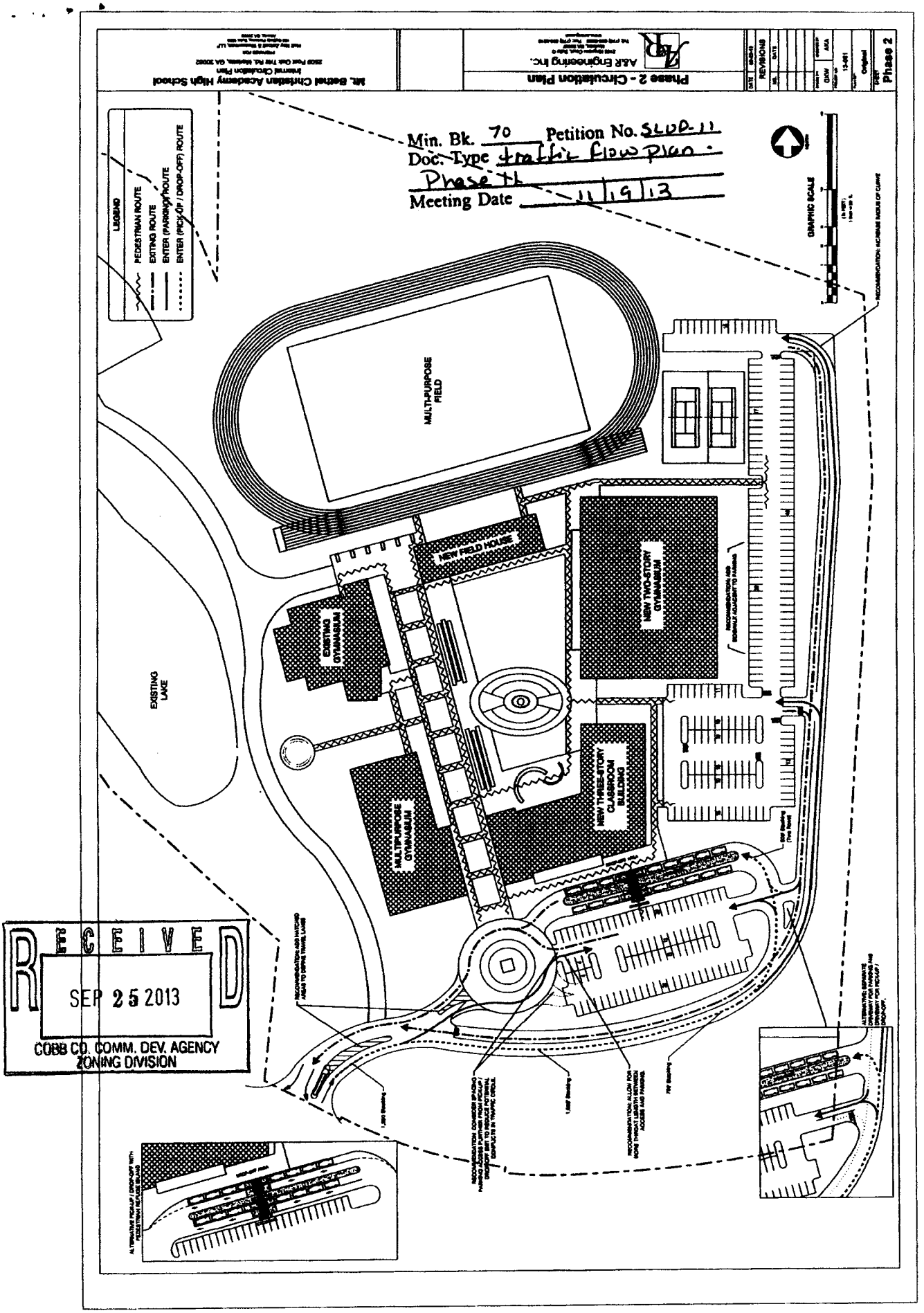
SEP 25 2013
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION


Mt. Bethel Christian Academy High School
Internal Circulation Plan
3500 Post Oak Tree Rd. Atlanta, GA 30062
Phase 2 - Circulation Plan
ASR Engineering Inc.
REVISIONS
Original
Phase 2
Min. Bk. 70 Petition No. SLUP-11
Doc. Type traffic flow plan
Phase II
Meeting Date 11/19/13
LEGEND
PEDESTRIAN ROUTE
EXITING ROUTE
ENTER (PARKING) ROUTE
ENTER (PICK-UP / DROP-OFF) ROUTE
GRAPHIC SCALE
MULTI-PURPOSE FIELD
NEW FIELD HOUSE
EXISTING GYMNASIUM
NEW TWO-STORY GYMNASIUM
EXISTING LAKE
MULTI-PURPOSE GYMNASIUM
NEW THREE-STORY CLASSROOM BUILDING
RECEIVED
SEP 25 2013
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

Min. Bk. 70 Petition No. SLUP-11
Doc. Type statement of proposed improvements
Meeting Date 11/19/13


# HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5947

TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

**James M. Ney, P.C.**
**e-mail jney@hnzw.com**

**Ellen W. Smith**
**e-mail esmith@hnzw.com**


September 3, 2013

***BY HAND DELIVERY***
Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street, Suite 400
Marietta, Georgia 30064

Re: Application for Special Land Use Permit, Cobb County, Georgia by Mt. Bethel United Methodist Church, Inc. for private school (the "***Application***") on the property now known as the Marcus Community Center at 2509 Post Oak Tritt Road, Marietta, Georgia (the "***Property***")

**STATEMENT OF PROPOSED SITE IMPROVEMENTS**

Ladies and Gentlemen:

This law firm has the pleasure of representing Mt. Bethel United Methodist Church, Inc. (the "***Mt. Bethel***"), with respect to the Application. Mt. Bethel respectfully submits for your consideration the Application, the approval of which will result in the County's issuance of a special land use permit ("***SLUP***") to allow the Property to be used for a private school.

**Background - The Property**

The Property, which has been owned and operated by the Marcus Jewish Community Center of Atlanta, Inc. (the "***JCC***") since 1986 ("***Owner***"), is an approximately 33.255-acre tract zoned R-20, which fronts on the north side of Post Oak Tritt Road. The JCC holds a special land use permit for the purpose of a Jewish community center, which was originally granted pursuant to Application No. 357, heard November 18, 1986, and which has been amended several times in the almost thirty years since its original approval. The majority of the adjacent properties are zoned R-20, although there are several neighborhoods to the south of the Property zoned R-15 OSC and RA-4.

Currently, the Property is improved with an approximately 21,000 square foot classroom building, an approximately 14,000 square foot gymnasium, covered basketball courts, an approximately 4,000 square foot pool and an outdoor pool, tennis courts, a lighted baseball field and other existing structures more particularly shown on the survey of the Property submitted with this Application. The Property is served by one large driveway from Post Oak Tritt Road.

Although the JCC discontinued classroom use of the Property several years ago, it continues to use the gymnasium and playing fields on a regular basis. The Property has been marketed for sale for

approximately 2 years. The JCC and Mt. Bethel have entered into a sales contract pursuant to which Mt. Bethel has the right to seek a special land use permit application for a private school and to acquire the Property upon the terms and conditions of the parties' sales contract. Mt. Bethel's proposed private school is a permitted use for the Property, upon issuance of the requested SLUP.

**Mt. Bethel's Proposed SLUP**

Mt. Bethel's currently owns and will continue to operate on its approximately 44-acre campus in East Cobb at 4385 Lower Roswell Road. Mt. Bethel has served the church and community needs at this location since 1971 and in this portion of Cobb County for over 100 years. Since 1998, Mt. Bethel has operated the Mt. Bethel Christian Academy (the "***Academy***") on its existing church campus. Specifically, on August 21, 1998, the Academy opened with two kindergarten classes. The Academy now serves approximately 500 students in grades Kindergarten through Eighth. The Academy enjoys full dual accreditation through the Southern Association of Independent Schools (SAIS) and Southern Association of Colleges and Schools (SACS).

For a number of years, Mt. Bethel has been committed to expanding its educational outreach by offering high school grades Nine through Twelve, and it is committed to doing so in Cobb County. To that end, Mt. Bethel has been looking for an appropriately sized tract of land that would support an Academy High School. The Property provides an excellent opportunity for this expansion.

Mt. Bethel proposes to operate the Academy's High School on the Property with minimal initial site improvements, and Mt. Bethel has engaged the architectural firm of Collins Cooper Carusi to assist in its site planning and renovations. Specifically, as shown on the Phase I Site Plan enclosed, Mt. Bethel is proposing the following additional improvements: (i) an approximately 4,000 square foot addition to the existing classroom building (with interior renovations as well), (ii) an approximately 2,000 square foot addition to the existing gymnasium building, (iii) a slightly widened driveway, new parking, and (iv) a new multi-purpose field. Mt. Bethel anticipates that these Phase I improvements would serve the Academy's High School for several years, as students matriculate from its existing Eighth Grade and the High School builds its reputation and student population.

Mt. Bethel also is submitting for consideration and approval a Phase II Site Plan, based on an estimated 5 to 10 years of occupancy of the Property and expansion of the Academy's High School. As shown on the Phase II Site Plan, Mt. Bethel would re-orient several of the buildings and uses of buildings on the Property. As shown on the enclosed Phase II Site Plan, all buffers and setback requirements would be maintained, as well as significant vegetation surrounding the Property, with the bulk of structures remaining to the interior of the Property.

**Zoning Requirements**

Chapter 134 of the Official Code of Cobb County, Georgia, as the same is amended from time to time (such Chapter being the "***Zoning Ordinance***"), and specifically, Section 134-271(7) thereof, sets forth the zoning requirements applicable to SLUP applications for private schools on property within the County. In satisfaction of these requirements, and in addition to this Statement, Mt. Bethel submits the following documents for the Division's review:

1. Application for Special Land Use Permit, Cobb County Georgia, including the requisite corporate authorization of Owner;
2. Copies of the Property warranty deeds to Owner;
3. Metes and Bounds legal descriptions of Property and Site;
4. Copy of the paid tax receipt for the Property[1];
5. Zoning Standards Analysis (addressing SLUP considerations);
6. Site Plans (5 full sized copies; 2 copies measuring 8 ½ x 11);
7. Survey;
8. Consent of Contiguous Occupants or Land Owners[2];
9. Application Fee ($1,000.00); and
10. Sign Deposit and Fees ($318.00).

Mt. Bethel's Application meets and exceeds the minimum requirements of Section 134-271(7) of the Zoning Ordinance. Furthermore, Mt. Bethel is seeking no concurrent variance requests in connection with the Application.

[1]Note: the JCC is a tax-exempt entity as is Mt. Bethel. The tax status of the Property will not change.

[2]Mt. Bethel understands that Cobb County requires applicants seeking special land use permits to discuss the proposed use with the contiguous neighbors and to seek their consent to the proposed use. On Thursday, August 29, 2013, one of Mt. Bethel's members visited all contiguous property owners and attempted to obtain their consent on the petition to accompany this Application. The results of that initial outreach attempt are enclosed. Mt. Bethel will continue to contact these neighbors, and Mt. Bethel will also notify in writing all property owners within a 1,000-foot radius of the subject property as shown on the most current tax records. Such notice will be accomplished by mailing a copy of the Application form and proposed site plans by first class mail. Mt. Bethel will then file with the Zoning Division of Cobb County a certificate of mailing from the United States Post Office.

The Application and the accompanying documents support Mt. Bethel's request for the Academy High School SLUP and comply with all Cobb County zoning requirements.[3] The Owner and Mt. Bethel respectfully request that the Division recommend the approval of the Application to the Board for consideration at the next available public hearing.

We are happy to answer any questions or provide any information that the Division, its consultant or the Board may have with regard to the Application.

Sincerely,

James M. Ney

Ellen W. Smith

JMN/EWS/ews
Enclosures

[3] Mt. Bethel notifies Cobb County of its constitutional concerns. If the Board denies the Application in whole or in part, then the Property does not have a reasonable economic use under the Zoning Ordinance. The Application meets the test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power. See Guhl vs. Holcomb Bridge Road, 238 Ga. 322 (1977). If the Board denies the Application in whole or in part, such an action will deprive Mt. Bethel and Owner of the ability to use the Property in accordance with its highest and best use. Similarly, if the Board limits its approval of the SLUP by attaching conditions thereto affecting any portion of the Property or the use thereof, either of such actions being taken without Mt. Bethel's consent, then such action would deprive Mt. Bethel and Owner of any reasonable use and development of the Property. Any such action is unconstitutional and will result in a taking of property rights in violation of the just compensation clause of the Constitution of the State of Georgia (*see Ga. Const. 1983, Art. I, § 3, para. I(a)*), and the just compensation clause of the Fifth Amendment to the United States Constitution (*see U.S. Const. Amend. 5*). To the extent that the Zoning Ordinance allows such an action by the Board, the Zoning Ordinance is unconstitutional. Anysuch denial or conditional approval would discriminate between Mt. Bethel and Owner and owners of similarly situated property in an arbitrary, capricious, unreasonable and unconstitutional manner in violation of Article I, Section I, Paragraph 2 of the Georgia Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Finally, a denial or a conditional approval of the Application (with conditions not expressly approved by Mt. Bethel) would constitute a gross abuse of discretion and an unconstitutional violationMt. Bethel's rights to substantive and procedural due process as guaranteed by the Georgia Constitution (*see Ga. Const. 1983, Art. I, § I, para. I*) and the Fifth and Fourteenth Amendments of the United States Constitution (*see U.S. Const. Amend. 5 and 14*). Mt. Bethel further challenges the constitutionality and enforceability of the Zoning Ordinance for lack of objective standards, guidelines or criteria limiting the Board's discretion in deciding applications for SLUP.

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**Ellen W. Smith**
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November 4, 2013

**BY HAND DELIVERY**
Mr. Jason Campbell
Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street
Suite 400
Marietta, Georgia 30064

Min. Bk. 70 Petition No. SLUP-11
Doc. Type letter of agreeable conditions
Meeting Date 11/19/13

Re: Application for Special Land Use Permit No. SLUP-11 by Mt. Bethel United Methodist Church, Inc. for private school (the "***Application***")

## CONDITIONS TO APPLICATION

Dear Jason:

As you know, this law firm has the pleasure of representing Mt. Bethel[1] with respect to the Application. Mt. Bethel hereby submits the following proposed zoning conditions with respect to the Application. If Mt. Bethel's Application is approved by the Board of Commissioners, as requested, Mt. Bethel agrees to comply with the following conditions:

1. SLUP #11 shall be conditioned generally upon the Phase I and Phase II site plans prepared by Collins Cooper Carusi, dated August 29, 2013, last revised October 15, 2013, and filed with Cobb County on October 24, 2013 (collectively, the "***Site Plans***").

2. The 85-foot and 65-foot buffers shown on the Site Plans along the northern and northwestern property lines adjacent to properties fronting on Alberta Drive shall be maintained for so long as those properties adjacent to such northern property line but fronting on Alberta Drive are (i) used for single-family residences or (ii) are owned by a party other than Mt. Bethel. Once the conditions of (i) or (ii) are satisfied, then notwithstanding condition #1 above or this condition, such buffers shall be reduced to 35-feet.

3. With respect to traffic and parking related issues:

   a. Mt. Bethel shall provide, when and as necessary between the hours of 7:00 a.m. to 8:30 a.m., a traffic officer to direct and facilitate traffic ingress and egress to and from the Property.

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in theSummary of Intent submitted with the Application.

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b. Mt. Bethel shall provide, when and as necessary, bi-directional shuttles to and from the Property to its campus at 4385 Lower Roswell Road, Marietta, Georgia, in an effort to mitigate traffic impacts during the academic year.

4. The new multi-purpose field with surrounding track shall not be lighted. There shall be no stadium (meaning no permanent, fixed seating) constructed in connection with such multi-purpose field.

5. Any new lighting which Mt. Bethel installs either as replacement lighting for existing lighted playing fields, parking or otherwise, or as new lighting in connection with new improvements shown on the Site Plans, including new parking lots and drives, shall be environmentally sensitive and directed downward and inward to minimize light glare and spillage on adjacent neighbors' properties.

6. The following shall be honored during any construction activities on the Property (in addition to compliance with all Cobb County construction standards):

a. Construction staging (including all equipment, vehicles, materials storage and construction parking) shall take place entirely on the Property. No construction vehicles or equipment shall be parked along Post Oak Tritt Road.

b. No construction activities (expressly including deliveries of materials or equipment) shall occur (i) between the hours of 7:00 p.m. to 7:00 a.m., Monday through Friday (provided that the 7:00 p.m. hour may be extended to 8:00 p.m. during Daylight Savings Time); and (ii) at any time on Sunday. Furthermore, construction activities on Saturdays shall be only between the hours of 8:00 a.m. and 5:00 p.m.

c. Mt. Bethel shall notify the District Commissioner at least ten (10) days prior to the commencement of construction of new structures on the Property. Also, during the period of construction, Mt. Bethel will provide the District Commissioner and the President of the East Cobb Civic Association of a contact name and telephone number which will be answered 24 hours a day, 7 days a week regarding problems with the construction.

7. No equipment or machinery used for landscape maintenance or the cleaning of drives or parking lots shall be allowed to operate past 9:00 p.m. on any day of the week, or before 6:30 a.m. on weekdays and before 9:00 a.m. on Saturdays and Sundays.

8. All garbage and refuse containers shall have lids which shall remain closed when not in use. Dumpsters and trash containers shall only be emptied between the hours of 7 a.m. and 6 p.m. on non-holiday week-days (provided that Mt. Bethel shall use commercially reasonable efforts to ensure that emptying of dumpsters shall not occur during carpool drop-off times).

9. Once the Phase II new drive and parking have been constructed along the eastern property line of the Property, in the event of damage or destruction of the existing mature trees and buffering

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along said property line, Mt. Bethel shall replant such buffer with similar types of new vegetation and trees in coordination with the Cobb County Arborist to allow for growth that will mature to replace the buffer against neighboring property owners. Furthermore, Mt. Bethel agrees that there shall be no lighting installed within the buffering adjacent to any such new Phase II drive.

10. Mt. Bethel shall limit the number of students in the Mt. Bethel Christian Academy (its Private School on the Property) to 625 full-time students; provided, however this number shall not impact the Mt. Bethel Christian Academy campus located at 4385 Lower Roswell Road, Marietta, Georgia which operates pursuant to a separate Special Land Use Permit.

11. The District Commissioner shall have the authority to approve minor modifications to these stipulations and the site plan as the development proposal proceeds through the Plan Review process and thereafter. For purposes of this paragraph, any modifications that increase density; reduce the size or composition of an approved buffer or landscape strip to adjacent property; relocate a structure closer to a property line; or, increase the height of a building adjacent to property which are in direct contradiction to or conflict with the foregoing stipulations, will come back through the public hearing process as an "Other Business" Application.

12. The following Staff Recommendations: (a) Water and Sewer Division comments and recommendations; (b) Stormwater Management Division comments and recommendations; and Department of Transportation comments and recommendations. Please note that the first three conditions of the Staff Recommendations are address above. To the extent that there is any conflict between the Staff Recommendations and the 12 enumerated conditions contained in this letter, the 12 enumerated conditions contained herein shall govern.

Mt. Bethel respectfully requests the consideration of these proposed conditions, which have been presented to members of the East Cobb Civic Association Board, and Mt. Bethel respectfully respects approval of this application. Please let me know if you have any questions. Thank you.

Sincerely,
~~HOLT~~NEY ZA~~TCOFF~~F & WASSERMAN, LLP

Ellen W. Smith

EWS/JMN/ews
cc: The Honorable JoAnn Birrell, District Three Commissioner
The Honorable Mike Terry, Planning Commission Chairman
The Honorable Christi Trombetti, Planning Commissioner, District Three
The Honorable Bob Hovey, Planning Commissioner
The Honorable Galt Porter, Planning Commissioner
The Honorable Judy Williams, Planning Commissioner
James M. Ney, Esq.
(all by e-mail only)