

DEC 1 2015

Special Land Use Permit Plan

3662 Shallowford Road

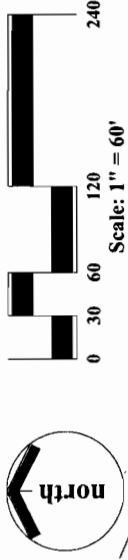
Cobb County, Georgia
Land Lot 402, 16th District, 2nd Section

prepared for:
Legacy Christian School, Inc.

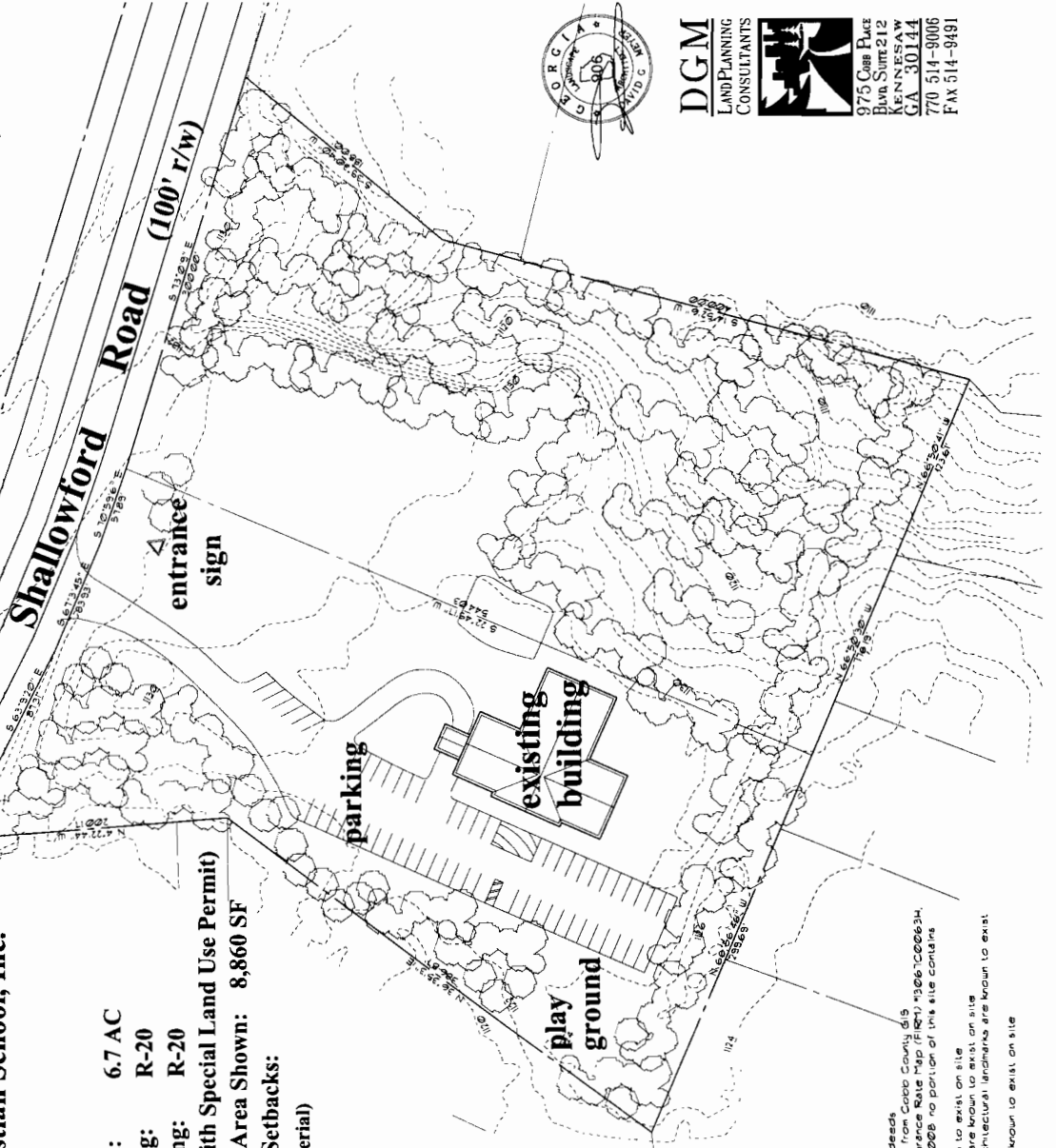
Site Data

Total Site Area: 6.7 AC
Existing Zoning: R-20
Proposed Zoning: R-20
(with Special Land Use Permit)
Total Building Area Shown: 8,860 SF
R-20 Building Setbacks:

front: 40' (arterial)
side: 10'
rear: 35'



December 1, 2015



DGM
LAND PLANNING
CONSULTANTS



975 Cobb Place
Bldg. Suite 212
KENNESAW
GA 30144
770 514-9006
FAX 514-9491

- NOTES:**
1. Accuracy from warranty deeds.
 2. Topographic information from Cobb County GIS.
 3. According to Flood Insurance Rate Map (FIRM) 13061C0003H, dated December 16, 2009 no portion of this site contains floodplain.
 4. No cemeteries are known to exist on site.
 5. No streams or wetlands are known to exist on site.
 6. No archeological or architectural landmarks are known to exist.
 7. No utility easements are known to exist on site.

APPLICANT: Legacy Christian School, Inc.

PHONE#: (678) 640-4498 **EMAIL:** heidimilton@comcast.net

REPRESENTATIVE: Adam J. Rozen

PHONE#: (770) 422-7016 **EMAIL:** arozen@slhb-law.com

TITLEHOLDER: Noonday Baptist Association, Inc.

PROPERTY LOCATION: South side of Shallowford Road,
west of North Hembree Road
(3662 Shallowford Road).

ACCESS TO PROPERTY: Shallowford Road

PHYSICAL CHARACTERISTICS TO SITE: Existing church

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH:** R-20/Shallowford Heights Subdivision
- SOUTH:** R-15/Hembree Hills Subdivision
- EAST:** R-20/Single-family houses
- WEST:** R-15/Hembree Hills Subdivision; R-20/Single-family house

PETITION NO: SLUP-2

HEARING DATE (PC): 02-02-16

HEARING DATE (BOC): 02-16-16

PRESENT ZONING: R-20

PROPOSED ZONING: Special Land
Use Permit

PROPOSED USE: Private School

SIZE OF TRACT: 6.7 acres

DISTRICT: 16

LAND LOT(S): 402

PARCEL(S): 3, 6

TAXES: PAID X **DUE** _____

COMMISSION DISTRICT: 3

Adjacent Future Land Use:

- Northwest: Low Density Residential (LDR)
- Southwest: Low Density Residential (LDR)
- Southeast: Low Density Residential (LDR)
- Northwest: Low Density Residential (LDR)

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

PLANNING COMMISSION RECOMMENDATION

APPROVED _____ **MOTION BY** _____

REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

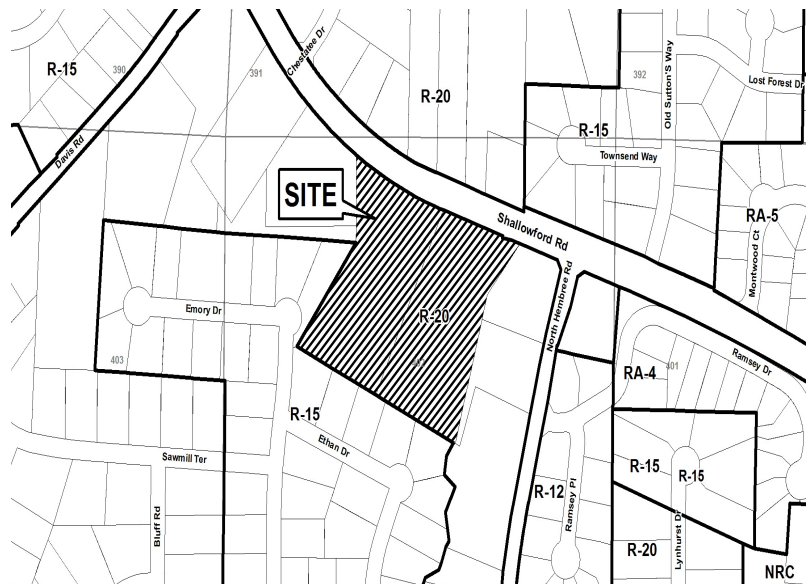
BOARD OF COMMISSIONERS DECISION

APPROVED _____ **MOTION BY** _____

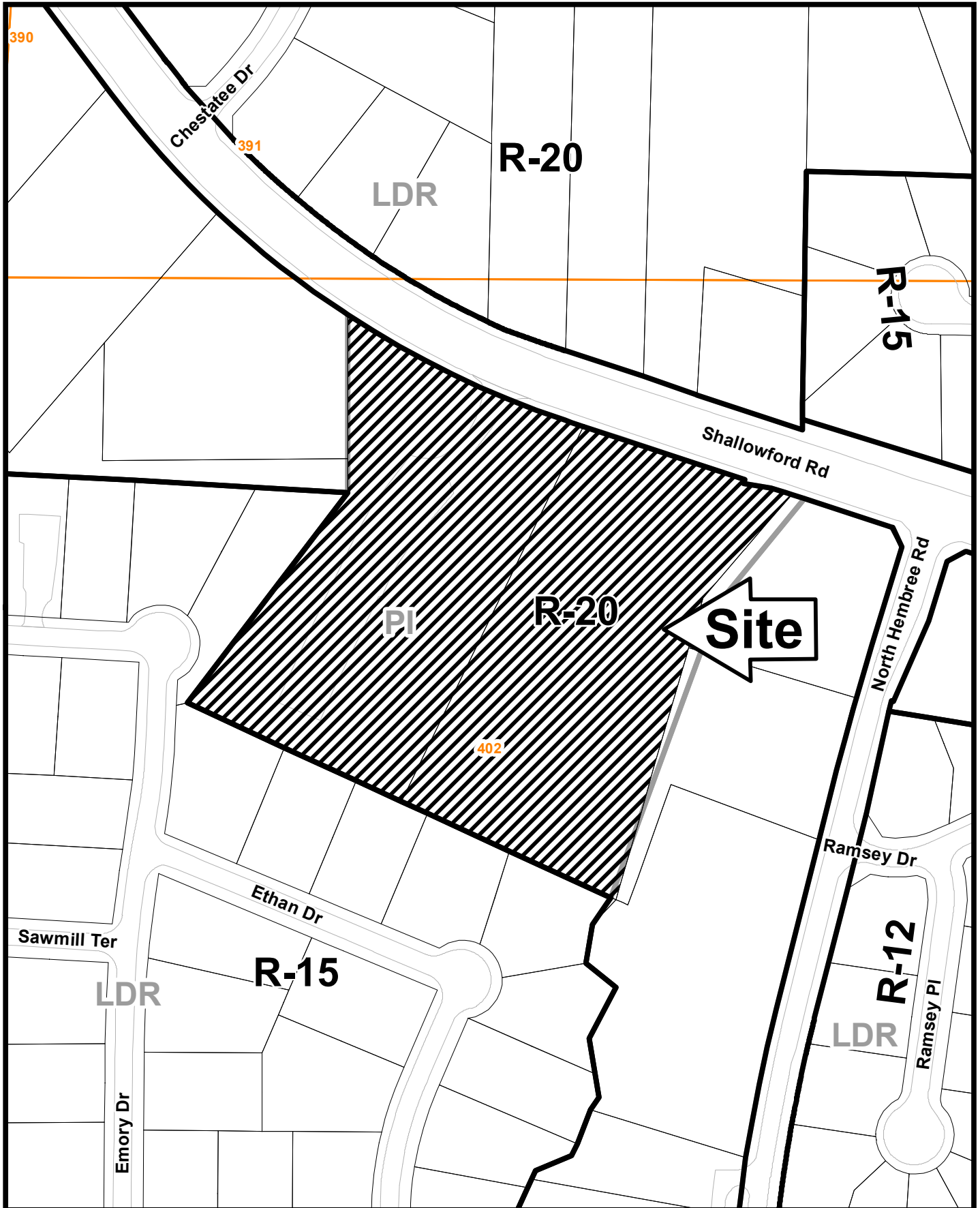
REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

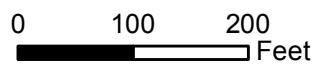
STIPULATIONS:



SLUP-2



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



City Boundary
Zoning Boundary

APPLICANT: Legacy Christian School, Inc.

PETITION NO.: SLUP-2

PRESENT ZONING: R-20

PETITION FOR: SLUP

ZONING COMMENTS:

Staff Member Responsible: Jason A. Campbell

Applicant is requesting a Special Land Use Permit (SLUP) for the purpose of operating a private school at the existing Shallowford Road location of the First Baptist Church Woodstock. This location was formerly utilized as a preschool and is currently outfitted for the proposed classroom use. The proposed school will be for children ages 2-6 and will include kindergarten (which requires the SLUP). Legacy will have six classrooms. The school will also implement a carpool schedule and a traffic circulation plan for daily drop-off and pick-up times. The expected hours of operation will be Monday through Thursday from 9 a.m. until 12 p.m. The applicant proposes up to 50 students and 14 employees, plus a director.

Historic Preservation: No comment.

Cemetery Preservation: No comment.

WATER & SEWER COMMENTS:

Property is served by public water and sewer.

TRAFFIC COMMENTS:

Recommend a traffic circulation plan.

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

FIRE COMMENTS:

Plans must be submitted to the Cobb County Fire Marshal's Office to initiate the Certificate of Occupancy process.

STAFF RECOMMENDATIONS

SLUP-2 LEGACY CHRISTIAN SCHOOL, INC.

There are fifteen criteria that must be considered for a Special Land Use Permit. The criteria are below in italics, with the Staff analysis following in bold.

- (1) Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.*
The property has been utilized as a church and preschool for many years. The new proposal will add kindergarten, which adds a small amount of children coming to this property.
- (2) Whether or not the use is otherwise compatible with the neighborhood.*
The proposed use is compatible with the surrounding neighborhoods. Also, this use is typically found in residential areas.
- (3) Whether or not the use proposed will result in a nuisance as defined under state law.*
The proposed use will not result in a nuisance as defined under state law.
- (4) Whether or not quiet enjoyment of surrounding property will be adversely affected.*
Quiet enjoyment of the surrounding property will not be adversely affected. Nearby properties are used for single-family, churches, and educational facilities. The property has accommodated a church and preschool for a number of years.
- (5) Whether or not property values of surrounding property will be adversely affected.*
Property values will not be adversely affected. The proposed use will be similar to the existing use, but will be adding kindergarten.
- (6) Whether or not adequate provisions are made for parking and traffic considerations.*
The site plan submitted provides sufficient parking for the proposed use. A traffic routing plan for drop-offs and pick-ups will be submitted for approval.
- (7) Whether or not the site or intensity of the use is appropriate.*
The applicant will utilize existing structures and the proposal meets the lot size for a private school. The SLUP is needed for the addition of the kindergarten grade that is offered in public schools.
- (8) Whether or not special or unique conditions overcome the board of commissioners' general presumption that residential neighborhoods should not allow noncompatible business uses.*
The proposed use is compatible with other uses in the area. The property is located in the Public Institutional land use category.
- (9) Whether or not adequate provisions are made regarding hours of operation.*
The proposed hours of operation are proposed to be Monday through Thursday from 9 a.m. until 12 p.m. and will not conflict with other traffic of the church.
- (10) Whether or not adequate controls and limits are placed on commercial and business deliveries.*
Deliveries to the property are proposed to be minimal.

SLUP-2 LEGACY CHRISTIAN SCHOOL, INC. (Continued)

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

The property is currently landscaped with mature trees, shrubs and other vegetation.

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

The public health, safety, welfare or moral concerns of the surrounding areas will not be adversely affected.

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

The proposed use meets the requirements for a Special Land Use Permit.

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

The applicant has presented the required information and will also be submitting a traffic flow plan to be approved for staggered drop-off and pick-up times.

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

The applicant has provided required information and the proposal meets the requirements for a private school and a special land use permit.

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

1. Site plan and traffic circulation plans to be approved by the Board of Commissioners, with the District Commissioner approving minor modifications;
2. Fire Department comments and recommendations; and
3. Department of Transportation comments and recommendations.

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

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STATEMENT OF INTENT

OF

LEGACY CHRISTIAN SCHOOL, INC.

**Special Land Use Permit Application (No. SLUP- 2)
Concerning an approximate 6.7 Acre Tract of Land located in
Land Lot 402, 16th District, 2nd Section,
Cobb County, Georgia
(3662 Shallowford Road)**

Submitted for the Applicant by:

**Adam J. Rozen
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arozen@slhb-law.com**

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I. INTRODUCTION

This Application seeks a Special Land Use Permit (“SLUP”) to allow the operation of a preschool in the existing Shallowford location of the First Baptist Church Woodstock (“FBCW”). The preschool will be owned and operated by the Applicant Legacy Christian School, Inc. (“LCS”). The Cobb County Planning Commission is scheduled to hear this Application on February 2, 2016 and, thereafter, heard and considered for final action by the Cobb County Board of Commissioners on February 16, 2016.

The proposal to allow the preschool concerns a 6.7 acre tract of land on Shallowford Road east of its intersection with Davis Road and slightly less than 1.5 miles from its intersection with Sandy Plains Road (“Subject Location”) with an address commonly known as 3662 Shallowford Road (“Subject Property”). The subject property is located in an area on Cobb County’s Future Land Use Map (“FLUM”) which is denominated as Low Density Residential (“LDR”) but itself is denominated as Public Institutional (“PI”) within an R-20 zoning district.

The subject property is located within .3 miles of a Neighborhood Activity Center (“NAC”), Medium Density Residential (“MDR”) and multiple other areas denominated as PI and currently being utilized as a church, elementary school and preschool.

The Subject Location was formerly utilized as a preschool and is currently outfitted for the proposed classroom use. The Applicant plans to lease the existing classroom space to accommodate its students but will also be allowed access to other areas within the Church building. LCS will work to establish a firm foundation for spiritual growth and academic success for children ages two through six years. LCS will utilize the Biblically based ABEKA

curriculum as part of an age-appropriate balanced program that includes music, art, science, and creative play while celebrating individual success in preparation for primary school readiness.¹

The Applicant's expected hours of operation for the preschool, will be Monday – Thursday from 9:00 a.m. until 12:00 p.m. and will substantially comport with the Cobb County School Calendar. The teachers and staff at LCS collectively hold decades of teaching and ministry experience. LCS looks forward to providing ministry that will shape children and families in East Cobb in a location that will be greatly enriched by this added resource for education.

II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS

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

The subject property is surrounded and served by preschool and child care facilities, elementary education and worship centers. The proposed use will enhance the Woodstock Church location and the neighborhood as it will serve as an additional outlet for East Cobb's growing preschool demand. The "neighborhood" or area in which LCS will operate is appropriate to accommodate such use as seen by the surrounding zonings and as positioned on the County's FLUM within LDR, PI and NAC. Therefore, the proposed preschool use is consistent with the uses on adjacent or nearby properties and will have no adverse effect upon them.

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

The "neighborhood" within which the subject property is located is primarily zoned for residential and uses that serve the nearby residential. Given these facts and the reality of

¹ Excerpt language from LCS's mission statement by Founder/Director, Heidi Milton.

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what uses are in the area and served by the nearby NAC, the proposed use is compatible with the neighborhood.

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

The proposed use will not result in a nuisance, either public or private, as that term is defined by Georgia law. Moreover, the residential area enhanced by religious and educational facilities in which the subject property is located is compatible with the proposed use, currently includes such uses and previously included such use on the subject property and within the current church facility.

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

The surrounding properties consist almost exclusively of churches, schools and residential uses, being used in a manner similar to that which the Applicant proposes.

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

The surrounding properties consist almost exclusively of churches, educational facilities and residential developments and are used in a manner similar to the manner in which the Applicant will operate its preschool and utilize the existing facility. Therefore, the values of the surrounding properties will not be adversely affected but instead will be enhanced.

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

The Applicant is submitting an as-built site plan contemporaneously with the SLUP Application. The plan shows the expanse of parking space and fluid route for traffic ingress and egress. With respect to provisions made for parking, the site will meet Cobb County Parking Ratio Requirements and there will be no adverse impact upon turning movements, ingress/egress to and from the preschool or the overall volume of student or staff traffic to and from the school. Additionally, there will be little, if any, effect upon a.m./p.m. peak hour traffic generation as the classroom hours will begin after morning

rush-hour and end hours before afternoon rush-hour. Parking and traffic flow for FBCW and LCS will not conflict as LCS will operate on completely different days and hours than those of FBCW.

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

The subject property consists of approximately 6.7 acres with an existing church worship building, corresponding church staff office space and classroom space located thereon.

The Applicant proposes to utilize the office building in its as-built circumstances as well as the existing parking spaces with there being more than adequate property and space to accommodate the necessary classroom space, minimal amount of staff parking needed and traffic flow and parking from parents.

H. Whether or not special or unique conditions overcome the Board of Commissioners' general presumption that residential neighborhoods should not allow non-compatible business uses.

The sub-area currently benefits from similar religious and educational uses and the proposed use is entirely compatible with existing Educational, Religious and Residential uses within the area.

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

The hours of operation are expected to be Monday-Thursday from 9:00 a.m. until 12:00 p.m. which will not conflict with traffic or other uses of the Church.

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

Deliveries to the subject property will be minimal and will remain commensurate in number and type to existing deliveries on nearby Educational, Religious and Residential properties.

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

The subject property is presently heavily landscaped with mature trees, shrubs and other vegetation within the property which also create a natural buffer surrounding and screening the property. The landscaping is fashioned similar to adjacent and contiguous properties.

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

The surrounding “neighborhood” consists of a preponderance of Educational, Religious and Residential uses, all of which are comparable to the use proposed.

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

The application and proposed use is appropriate for a SLUP and meets all of the requirements for a Special Land Use Permit pursuant to Sec. 134-37 and Sec. 134-197. All required information has been supplied.

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

The Applicant has addressed all issues raised by law. The Applicant also remains available to respond to any questions or issues raised by the County’s Professional Staff or by Members of the Planning Commission or Board of Commissioners.

O. In all Applications for a Special Land Use Permit the burden shall be on the Applicant both to produce sufficient information to allow the County to fully consider all relevant factors and to demonstrate that the proposal complies with all applicable requirements and is otherwise consistent with the policies reflected and the factors enumerated in this Chapter for consideration by the County.

The Applicant has carried its burden and produced ample information to allow the County to fully consider all relevant facts and factors which demonstrate that the proposal complies with all applicable requirements.

III. PRESERVATION OF CONSTITUTIONAL RIGHTS

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

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

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

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

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

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

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

I, Paragraph IX of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

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

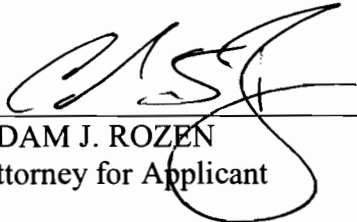
IV. CONCLUSION

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

Respectfully submitted, this the 3rd day of December, 2015.

SAMS, LARKIN, HUFF & BALLI, LLP

By:


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