

**APRIL 19, 2016 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM OB-018

PURPOSE

To consider a stipulation amendment for KM Homes, LLC regarding rezoning application Z-85 of 2006 (Taylor & Mathis, Inc.), for property located on the south side of Townpark Lane, north of Chastain Road in Land Lots 362 and 363 of the 16th District.

BACKGROUND

The subject property was rezoned in 2006 as part of a mixed use development consisting of retail, a hotel, restaurants and residential. At the time of rezoning there was a zoning condition that limited the townhouses to a maximum of 10% for leasing. Of the 37 approved townhouses, 16 are built and 21 lots are unbuilt. The applicant would like to amend this stipulation to abolish the lease cap due to heavy commercial and heavy multifamily development in the area. If approved, all previous zoning stipulations not in conflict would remain in effect.

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the stipulation amendment.

ATTACHMENTS

Other Business application and current zoning stipulations.

Application for "Other Business" Cobb County, Georgia

OB-018-2016

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

BOC Hearing Date Requested: April 19, 2016

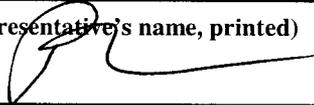
Applicant: KM Homes, LLC **Phone #:** (678) 321-2004
(applicant's name printed)

Address: 5780 Windward Parkway, Ste 200, Alpharetta, GA 30005 **E-Mail:** dstrall@kmhomes.com

SAMS, LARKIN, HUFF & BALLI, LLP
by: Parks F. Huff, Esq.

Address: 100 Cherokee Street, Suite 100, Marietta, GA 30064

(representative's name, printed)

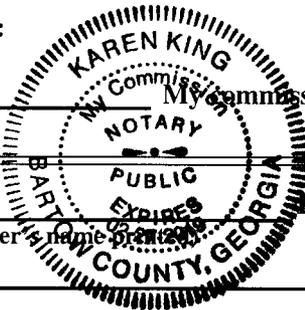


Phone #: 770-422-7016 **E-Mail:** phuff@slhb-law.com

(representative's signature)

Signed, sealed and delivered in presence of:

Karen S. King
Notary Public



My commission expires: 2-27-19

Titleholder(s): See Attached **Phone #:** _____
(property owner name printed)

Address: _____ **E-Mail:** _____

(Property owner's signature)

MAR 15 2016

Signed, sealed and delivered in presence of:

Notary Public My commission expires: _____

Commission District: 3 (Birrell) **Zoning Case:** Z-85 of 2006

Size of property in acres: _____ **Original Date of Hearing:** June 20, 2006

Location: North side of Chastain Road, west side of Townpark Drive and south side of Townpark Lane.
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 362 & 363 **District(s):** 16th

State specifically the need or reason(s) for Other Business: To request removal of stipulation requiring leasing be limited to not greater than 10% of the total units.

* Applicant specifically reserves the right to amend any information set forth in this Other Business Application or any other portion of the Other Business Application, at any time during the Other Business process.

(List or attach additional information if needed)

**CERTIFICATE REGARDING CORPORATE AUTHORITY
TO PURSUE APPLICATION FOR OTHER BUSINESS**

My name is Curtis O. Hicks I am the secretary, assistant secretary or other officer to whom the operating agreement or bylaws has delegated the responsibility for authenticating records of the company, DJ Arrow Townpark, LLC (the "Property Owner 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 Other Business Application regarding certain real property owned by the Property Owner Company located in Cobb County, Georgia.

2.

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

- (a) That signature or facsimile affixed to the Other Business Application is in fact the seal of the Property Owner Company and is a true representation thereof; and
- (b) That the officer or other representative of the Property Owner 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 Property Owner 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 by the Applicant is with the express permission of the Property Owner Company.

 (SEAL)

President
Title

MAR 15 2016

ATTACHMENT TO APPLICATION FOR OTHER BUSINESS

Application No.: OB 18
BOC Hearing Date: 4-19-16

Applicant: KM Homes, LLC

Titleholder Signature: [Signature] Curtis O. Hicks, President

(Titleholder's Name Printed) DJ Arrow Townpark, LLC

Address: 350 Research Ct

Telephone: (770) 246-0085

MAR 16 2016

Signed, sealed and delivered
in the presence of:

[Signature]
Notary Public

Commission Expires: 10/27/17

(Notary Seal)



MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JUNE 20, 2006
PAGE 18

MAR 15 2010

Z-85 **TAYLOR & MATHIS, INC.** (Argonaut Associates, Ltd., A Georgia Limited Partnership, owner) requesting Rezoning from **GC** to **UVC** for the purpose of Mixed Use Development in Land Lots 362 and 363 of the 16th District. Located on the north side of Chastain Road and the south side of Townpark Lane, between George Busbee Parkway and Townpark Drive.

The public hearing was opened and Mr. John Moore addressed the Board. Following discussion and presentations, the following motion was made:

MOTION: Motion by Lee, second by Thompson, to approve rezoning to the UVC zoning district **subject to:**

- **site plan received by the Zoning Division on April 6, 2006, with the District Commissioner approving minor modifications (copy attached and made a part of these minutes)**
- **letter of agreeable stipulations from Mr. John Moore dated May 31, 2006 with the following additions (copy attached and made a part of these minutes):**
 - **Page 7, Paragraph 21: Change to read *“Applicant agrees to conduct a pre- and post-lake study of Snake Lake prior to development of the subject site.”***
 - **Page 8, I. Retail/Office Component, add Paragraph 6 to read: *“Parcel “D” will not be utilized as a fast food restaurant with drive-thru facility, and further that any type drive-thru for other uses is to be approved by the District Commissioner***
 - **Page 8, II. Townhomes, add Paragraph 3 to read: *“Leasing shall be limited to not greater than 10% of the total units.”***
- **architectural renderings received by the Clerk on June 20, 2006 (copy attached and made a part of these minutes)**
- **architecture to be approved by District Commissioner**
- **Fire Department comments**
- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations to be finalized at Plan Review subject to District Commissioner approval**
- **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

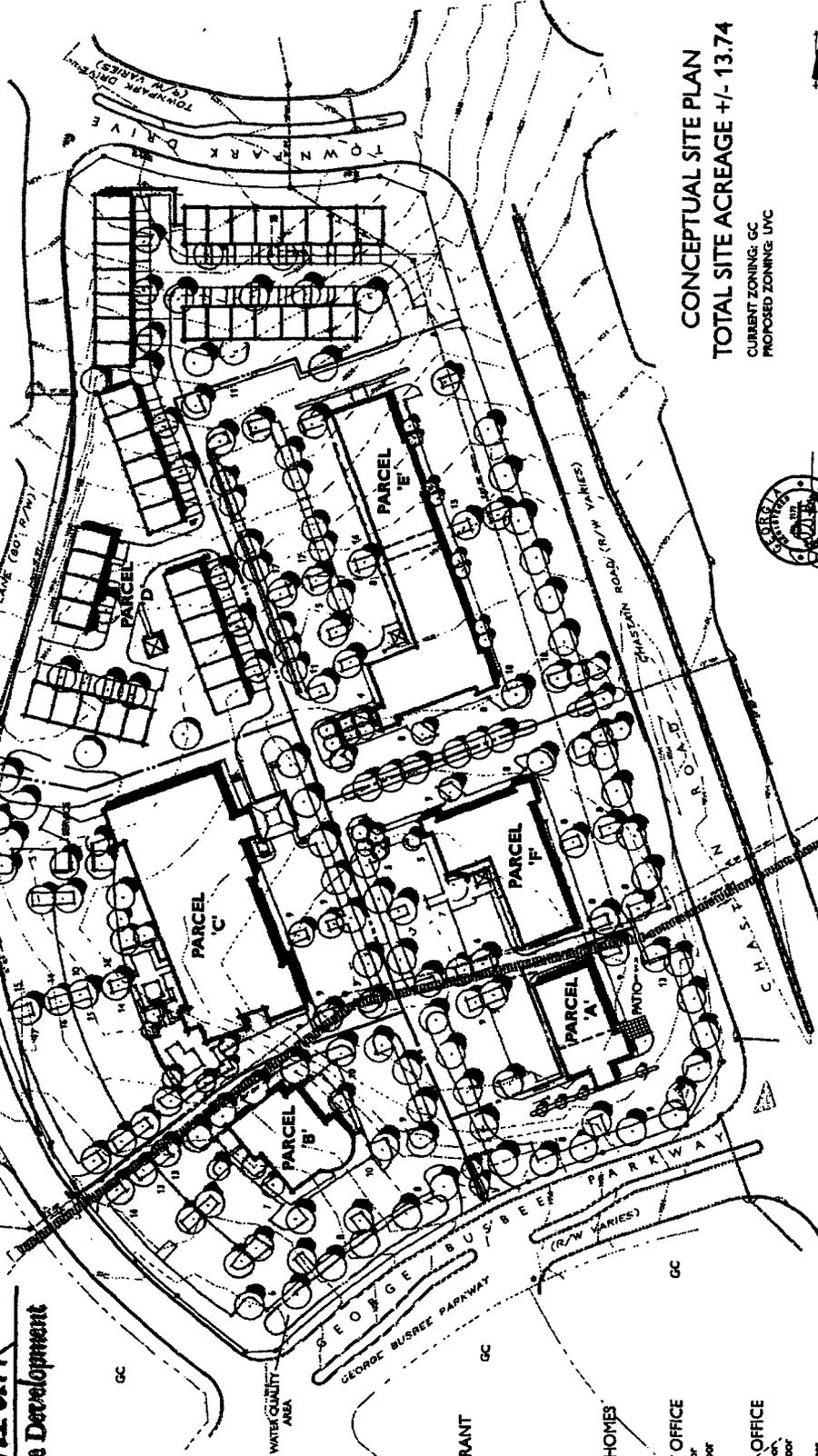
The Village at TownPark

A Mixed-Use Development

Min. Bk. 47 Petition No. 2-85
 Doc. Type Reduced s. to plan
received April 6, 2006
 Meeting Date June 29, 2006

TAYLOR & MATHIS

[Handwritten Signature]



TABULATIONS:

- PARCEL 'A' - RETAIL
 +/- 6,300 SF - One Level
- PARCEL 'B' - RESTAURANT
 +/- 10,000 SF - One Level
- PARCEL 'C' - HOTEL
 +/- 150,000 G.S.F. - 7 Stories
 156 Rooms
- PARCEL 'D' - TOWNHOMES
 +/- 43 Townhouses
 2 Car Garage Provided
- PARCEL 'E' - RETAIL / OFFICE
 +/- 21,000 SF Retail on 1st. floor
 +/- 21,000 SF Office on 2nd. floor
- PARCEL 'F' - RETAIL / OFFICE
 +/- 11,000 SF Retail on 1st. floor
 +/- 11,000 SF Office on 2nd. floor

Total Parking Counts: 577 spaces

BOUNDARY AND TOPOGRAPHY INFORMATION
 PROVIDED BY: HIGHLAND ENGINEERING, INC.

CONCEPTUAL SITE PLAN
 TOTAL SITE ACREAGE +/- 13.74

CURRENT ZONING: GC
 PROPOSED ZONING: UVC



UNUSUAL ARCHITECTURAL
 DESIGN & FINISHES

DATED: MARCH 2006

HYDROLOGIST NOTE:
 THE HYDROLOGIST HAS REVIEWED THE SITE PLAN AND HAS DETERMINED THAT THE PROPOSED DEVELOPMENT WILL NOT CAUSE ANY ADVERSE EFFECTS ON THE ADJACENT WATER QUALITY. THE PROPOSED DEVELOPMENT CAN BE CONSIDERED TO BE A QUALITY DEVELOPMENT AND WILL BE HANDLED WITH A SERIES OF TECHNICAL AND NATURAL SET MANAGEMENT PRACTICE DEVICE.

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP

WWW.MIJS.COM

192 ANDERSON STREET

MARIETTA, GEORGIA 30060

TELEPHONE (770) 429-1490
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BILLING ADDRESS

POST OFFICE BOX 3305
MARIETTA, GEORGIA 30061

TENNESSEE OFFICE

CEDAR RIDGE OFFICE PARK
SUITE 463
408 N. CEDAR BLUFF ROAD
KNOXVILLE, TENNESSEE 37823

TELEPHONE (865) 692-9030
TELECOPIER (865) 692-9071

JEFFREY K. STINSON
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CHRISTOPHER L. MOORE
JENNIFER S. WHITE**
KRISTIE L. KELLY J
RYAN G. PRESCOTT
RICARDO J. DAMEDEROS
BRETT A MILLER
KAREN S. KURTZ
CHRISTOPHER C. MINGLEDORF
MORGAN E. FOSTER
KATHERINE G. CRONE
RYAN E. JARRARD**
ANN A. HAMMENECKER
JAMES D. BUSCH**
ESTHER VAYMAN

OF COUNSEL
JOHN L. SKELTON, JR.

1 ALSO ADMITTED IN TN
2 ALSO ADMITTED IN FL
3 ALSO ADMITTED IN NC
4 ADMITTED ONLY IN TN

JOHN H. MOORE
STEPHEN C. STEELE
WILLIAM R. JOHNSON I
ROBERT D. INGRAM I
J. BRIAN O-NEEL
G. PHILIP BEGGS
ELDON I. BASHAM
MATTHEW J. HOWARD
JERE C. SMITH
CLAYTON O. CARMACK
KEVIN B. CARLOCK I
ALEXANDER T. GALLOWAY III I
J. KEVIN MOORE
RODNEY R. MCCOLLOCH
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DANIEL A. LANDIS***
BRIAN D. SMITH
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W. TROY HART I

JEFFREY A. DAXE
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JOYCE W. HARPER
AMY K. WEBER
COURTNEY H. MOORE
KIM A. ROPER
TARA C. RIDDLE
KELLI L. WOLK
TANYA L. GROSSE**
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VICTOR P. VALMUS
JEFFERY L. DICKERSON
T. SHANE MAYES
ANGELA H. SMITH
OPHELIA W. CHAN
DARRELL L. SUTTON
KASI R. WHITAKER
AUTUMN L. VEAZEY
NICHOLAS J. PETERSON**

May 31, 2006

Mr. John P. Pederson
Planner III
Zoning Division
Cobb County Community Development Agency
Suite 300
191 Lawrence Street
Marietta, Georgia 30060-1661

Min. Bk. 42 Petition No. 2-85
Doc. Type Letter of agreeable
Conditions dated May 31, 2006
Meeting Date June 20, 2006

Hand Delivered

COBB COUNTY CLERK'S OFFICE

2006 MAY 31 PM 3:31

COBB COUNTY, GEORGIA
FILED IN OFFICE

RE: Application for Rezoning

Application No.: Z-85 (2006)

Applicant: Taylor & Mathis, Inc.

Property Owner: Argonaut Associates, Ltd.,
A Georgia Limited Partnership

Property: 13.74 acres located at the
northeasterly intersection of
George Busbee Parkway and
Chastain Road, Land Lots 362 and
363, 16th District, 2nd Section,
Cobb County, Georgia

Dear John:

As you know, the undersigned and this firm represent Taylor & Mathis, Inc., the Applicant (hereinafter referred to as "Applicant"), and Argonaut Associates, Ltd., the Property Owner (hereinafter referred to as "Owner"), in their Application for Rezoning with regard to a total tract of approximately 13.74 acres located at the northeasterly intersection of George Busbee Parkway and Chastain Road, and the southerly side of Townpark Lane, Land Lots 362 and 363, 16th District, 2nd Section, Cobb County, Georgia (hereinafter referred to as the "Property" or the "Subject Property"). After meetings with planning and zoning staff; ongoing discussions and meetings with area

MOORE INGRAM JOHNSON & STEELE

Mr. John P. Pederson
Planner III
Zoning Division
Cobb County Community Development Agency
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Meeting Date June 20, 2006
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residents and homeowner representatives; reviewing the staff comments and recommendations; and reviewing the uses of surrounding properties, we have been authorized by the Applicant and Owner to submit this letter of agreeable stipulations and conditions, which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the Subject Property. The stipulations are as follows:

- (1) The stipulations and conditions set forth herein shall replace and supersede in full any and all prior stipulations and conditions, in whatsoever form, which are currently in place on the Subject Property.
- (2) Rezoning of the Subject Property shall be from the General Commercial ("GC") zoning category to the Urban Village Commercial ("UVC"), site plan specific to that certain revised Conceptual Site Plan prepared for Applicant by b+c Studio, dated and last revised May 22, 2006, submitted contemporaneously herewith.
- (3) By this letter of agreeable stipulations and conditions, Applicant further amends its Application for Rezoning to include the revised Conceptual Site Plan hereinabove set forth, same being prepared by b+c Studio, dated and last revised May 22, 2006.
- (4) The Subject Property consists of approximately 13.74 acres of total site area.

STIPULATIONS APPLICABLE TO THE OVERALL DEVELOPMENT

- (1) This rezoning proposal is for a mixed-use development consisting of retail, office, hotel, and residential consisting of townhome units.

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- (2) There shall be master protective covenants for the entire development which will include all phases of the development; and concurrent therewith a master association, and possibly sub-associations, will be formed which will include all component parts of the proposed development. The master association shall be responsible for the oversight, upkeep, and maintenance of the entrance areas, common areas, open space areas, detention, and the like contained within the overall development.
- (3) The master association, and any sub-associations, to be formed hereunder shall have architectural design regulations which shall control such items as signage for individual units, and other such usual and necessary covenants and restrictions to protect the quality and integrity of the total development.
- (4) Entrances to the proposed development shall be as more particularly shown and reflected on the referenced Conceptual Site Plan.
- (5) Entrance signage for the proposed overall development shall be ground based, monument style signage, with the finish, materials, and color being in conformity with the architecture and design of the various components. Such signage shall contain no flashing sign components.
- (6) The entrance areas, together with all islands and planted areas, shall be professionally designed, landscaped, and maintained. These areas shall be part of the overall landscape plan approved by staff as part of the plan review process, as more hereinafter more particularly set forth.
- (7) Lighting within the proposed development shall be environmentally sensitive, decorative, and themed to

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the architecture and style of the respective components of the development.

- (8) There shall be no tenant vehicles or vehicles of any type parked in front of the proposed buildings containing tenant identification signage or advertising signage. This provision shall be contained within any lease between Applicant and any prospective tenant, and Applicant agrees to enforce these provisions against any tenant which violates the foregoing. Additionally, there shall be no vehicles parked in front of the proposed retail centers with "for sale" signs posted thereon.
- (9) Minor modifications to the within stipulations, the referenced Conceptual Site Plan, lighting, landscaping, architecture, site features, and the like, may be approved by the District Commissioner, as needed or necessary.
- (10) All setbacks and buffer areas may be penetrated for purposes of access, utilities, and stormwater management, including, but not limited to, detention/retention facilities, drainage facilities, and any and all slopes or other required engineering features of the foregoing.
- (11) Applicant agrees to comply with all Cobb County development standards and ordinances relating to project improvements, except as approved by the Board of Commissioners or by the Department of Transportation or Community Development Agency, as their authority may allow.
- (12) All streets within the proposed development shall be private with the construction therefor complying in all respects as to materials, base, and other requirements to the Cobb County Code.

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- (13) There shall be interparcel access among the various components of the overall proposed development, as more particularly shown and reflected on the referenced Conceptual Site Plan.
- (14) All landscaping referenced herein shall be approved by the Cobb County Arborist as part of the plan review process and incorporated into the overall landscape plan for the proposed development; excepting only that the requirements of the Arborist shall be superseded by any sight distance requirements of the Cobb County Department of Transportation.
- (15) Applicant agrees to comply with all Cobb County Stormwater Management requirements applicable to the Subject Property.
- (16) All utilities for the proposed development shall be located underground.
- (17) The following uses shall be prohibited from the proposed overall development:
 - (a) Video arcades as a primary use;
 - (b) Adult-themed bookstores as a primary use;
 - (c) Automotive sales, repair, and/or service facilities;
 - (d) Gas station;
 - (e) Truck and trailer leasing facilities;
 - (f) Automotive paint and body repair shops;
 - (g) Automotive upholstery shops;

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- (h) Billiards and pool halls which are the sole or predominant use;
 - (i) Bus stations (not to exclude bus stops);
 - (j) Fraternity and sorority house;
 - (k) Full-service gas stations;
 - (l) Light automotive repair;
 - (m) Rooming houses and boarding houses;
 - (n) Any form of adult entertainment business; and
 - (o) Nightclubs and bars, except that same would be permitted within a restaurant or hotel provided they are an integral part of a restaurant or hotel operation.
- (18) The parking spaces delineated herein may be reduced if shared parking among the various uses so allows; subject to the approval of the District Commissioner.
- (19) Applicant agrees to construct all necessary roadway improvements, as more particularly shown and reflected on the referenced Conceptual Site Plan.
- (20) Further, Applicant agrees to the following improvements to mitigate traffic concerns:
- (a) Installation of a one hundred fifty (150) foot deceleration lane at each access point, as more particularly set forth on the referenced Conceptual Site Plan;
 - (b) Extension of left-turn storage lane for left turns from Busbee Parkway into the proposed development;

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- (c) Installation of sidewalk, curb, and gutter on all road frontages;
 - (d) The access located on Chastain Road shall be right-in/right-out only;
 - (e) Abandonment of right-of-way on Chastain Road in exchange for donated right-of-way at the intersection of George Busbee Parkway and Town Park Lane; and
 - (f) Verification of minimum sight distance of four hundred forty (440) feet on Town Park Lane; and if necessary, take such remedial measures as to meet or exceed the minimum sight distance; and further, any sight distance requirements set forth herein shall supersede any landscape requirements of the Cobb County Arborist.
- (21) Applicant agrees to conduct a pre- and post-lake study for Chastain Lakes prior to development of the subject site.

STIPULATIONS SPECIFIC TO THE UVC COMMUNITY

The proposed rezoning includes mixed-use components consisting of retail, office, hotel, and townhomes, as follows:

I. Retail/Office Component:

- (1) Building 100 (Suites 100-110) will contain approximately 7,000 square feet of retail area with a drive-thru facility.

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- (2) Building 200 (Suites 200-240) will contain approximately 11,000 square feet of retail space on the first floor and approximately 11,000 square feet of office space on the second floor.
- (3) Building 300 (Suites 300-340) will contain approximately 10,500 square feet of retail space on the first floor, and approximately 10,500 square feet of office space on the second floor.
- (4) Building 400 (Suites 400-440) will contain approximately 8,500 square feet of retail space on the first floor, and approximately 8,500 square feet of office space on the second floor.
- (5) Retail space denominated on the Conceptual Site Plan as Parcel "D" will contain square footage ranging from 8,000 square feet to 13,000 square feet and is proposed for a restaurant.

II. Townhomes

- (1) Applicant proposes a total of forty-two (42) townhomes as shown and reflected on the referenced Conceptual Site Plan.
- (2) The units shall range in square footage from 1,800 square feet to 2,400 square feet, and greater; shall be two and three stories in height; shall be constructed of brick/stone with accents; and shall contain a two-car garage.

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III. Hotel

- (1) The hotel component of the proposed development is shown and denominated on the referenced Conceptual Site Plan as Parcel "C," which shall be a hotel eight (8) stories in height and containing one hundred fifty-six (156) rooms and constructed of stone/brick/stucco/glass and steel.
- (2) This hotel may be a "suite hotel," meaning that there will be a separate sitting area from the bedroom area for each room within the hotel.

Applicant will present at the Planning Commission Zoning Hearing and the Board of Commissioners Zoning Hearing renderings and/or photographs depicting the differing component parts which will represent the quality of each component part being proposed.

We believe the requested zoning, pursuant to the revised Conceptual Site Plan and the stipulations set forth herein, is an appropriate use of the Subject Property. The proposed development is an exciting concept which fits together numerous types of product into one development. The Applicant has gone to great detail in planning the development and working with area residents and businesses. The proposed development shall promote the "live where you work" concept; shall be of the highest quality; shall be compatible with surrounding retail developments, businesses, and neighborhoods; and shall be an enhancement to the Subject Property and Cobb County as a whole. Thank you for your consideration in this request.

MOORE INGRAM JOHNSON & STEELE

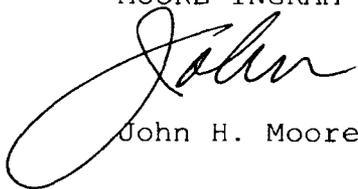
Mr. John P. Pederson
Planner III
Zoning Division
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With kindest regards, I remain

Very truly yours,

MOORE INGRAM JOHNSON & STEELE, LLP



John H. Moore

JHM:cc

Enclosures

c: Cobb County Board of Commissioners:
Samuel S. Olens, Chairman
Helen C. Goreham
Annette Kesting
Joe L. Thompson
Tim Lee
(With Copy of Enclosure)

Cobb County Planning Commission:
Murray Homan, Chairman
Judy Williams
Bob Hovey
Christi S. Trombetti
Bob Ott
(With Copy of Enclosure)

Jean Cantrell
Chastain Lakes Subdivision
(With Copy of Enclosure)

Hilda W. Towery
Bells Ferry Civic Association, Inc.
(With Copy of Enclosure)

Taylor & Mathis, Inc.
(With Copy of Enclosure)