

**NOVEMBER 21, 2017 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 4**

ITEM OB-060

PURPOSE

To consider a settlement of litigation for Victor Nwala Ngon (Z-2 of 2015) for property located on the east side of Austell Road, north of Byers Drive in Land Lot 701 and 702 of the 19th District.

BACKGROUND

The applicant submitted a rezoning application for 3077 Austell Road to change the zoning district from LRO to NRC for the purpose of a tire store. The rezoning application was denied by the Board of Commissioners on February 17, 2015 and the applicant filed a lawsuit challenging the decision. The applicant and the county have been in discussions since the filing of the lawsuit and have come to a compromise to rezone the property to Limited Retail Commercial (LRC), which is the least intense commercial district in the zoning code. The applicant has agreed to remove “designated recycling collection locations, and radio, television and other communication towers and antennas” from the permitted uses within LRC. Additionally, the applicant has agreed to upgrade the driveway, buffers and signage on the property. The settlement letter is attached for review.

STAFF COMMENTS

Cobb DOT: 1) Recommend a larger turn radius for the entrance on Austell Road; 2) Recommend the driveway apron be upgraded to the commercial standard; 3) Recommend GDOT permits for all work that encroaches upon State right-of-way; and 4) Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the Settlement of Litigation proposal.

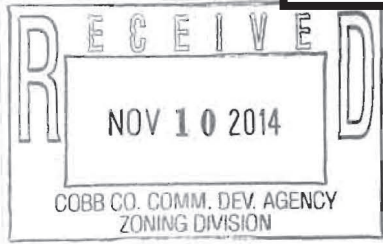
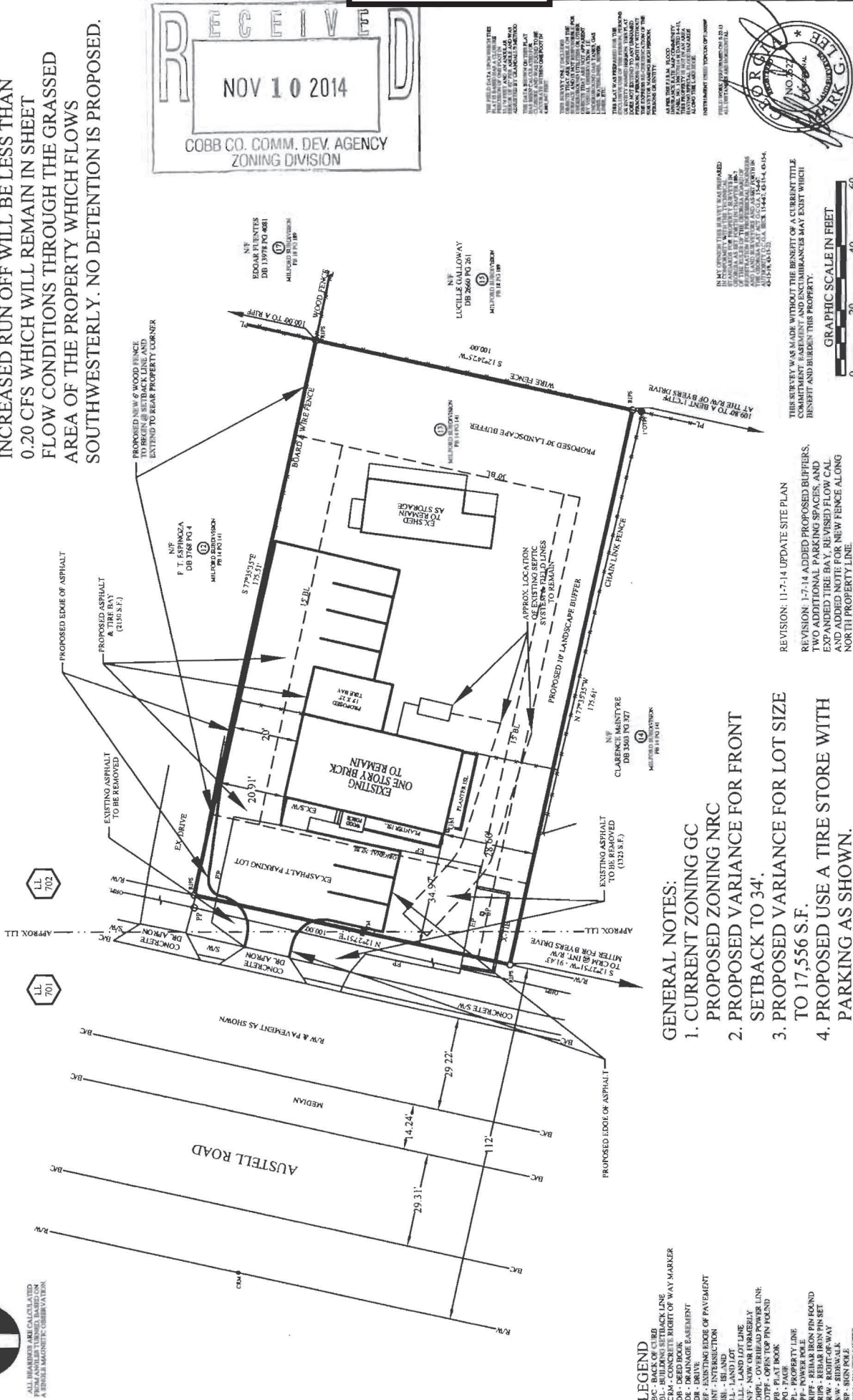
ATTACHMENTS

Staff report from original rezoning application, the zoning hearing minutes and the settlement letter.

TRACT AREA = 0.403 ACRES (17,556 S.F.)



ALL DIMENSIONS ARE CALCULATED FROM AN UNLINED CENTERLINE, BASED ON A DOUBLE MAGNETIC COMBINATION



NOTE; THE PROPOSED PLAN WILL HAVE A NET INCREASE OF 1425 S.F. OF ASPHALT. THE INCREASED RUN OFF WILL BE LESS THAN 0.20 CFS WHICH WILL REMAIN IN SHEET FLOW CONDITIONS THROUGH THE GRASSED AREA OF THE PROPERTY WHICH FLOWS SOUTHWESTERLY. NO DETENTION IS PROPOSED.

- GENERAL NOTES:
1. CURRENT ZONING GC
 2. PROPOSED ZONING NRC
 3. PROPOSED VARIANCE FOR FRONT SETBACK TO 34'
 4. PROPOSED VARIANCE FOR LOT SIZE TO 17,556 S.F.
 5. PROPOSED USE A TIRE STORE WITH PARKING AS SHOWN.

- LEGEND
- BC - BACK OF CURB
 - CL - CENTERLINE
 - CM - CONCRETE RIGHT OF WAY MARKER
 - DE - DEED BOOK
 - DE - DRAINAGE EASEMENT
 - EP - EXISTING EDGE OF PAVEMENT
 - INT - INTERSECTION
 - ISI - ISLAND
 - ISI - ISLAND
 - LL - LAND LOT LINE
 - NF - NOW OR FORMERLY
 - OPPL - OVERHEAD POWER LINE
 - OTPL - OTHER TOP PIN FOUND
 - PG - PAGE
 - PL - PROPERTY LINE
 - PF - POWER POLE
 - PI - PIN FOUND
 - RWS - REBAR IRON PIN SET
 - RW - RIGHT-OF-WAY
 - SW - SIDEWALK
 - WA - WATER METER

THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF A CURRENT TITLE INSURANCE POLICY AND ENCUMBRANCES MAY EXIST WHICH MIGHT AFFECT THIS PROPERTY.

GRAPHIC SCALE IN FEET

0 20 40 60

REVISION: 11-7-14 UPDATE SITE PLAN

REVISION: 1-7-14 ADDED PROPOSED BUFFERS, TWO ADDITIONAL PARKING SPACES, AND EXPANDED TIRE BAY. REVISED FLOW CALC. AND ADDED NOTE FOR NEW FENCE ALONG NORTH PROPERTY LINE.



REZONING PL 17 FOR

VICTOR NAWALA NGON

3077 AUSTELL ROAD, MARIETTA, GA. 30060
 TAX ID # 19070200250 DB 21 99 PG 486
 LOT 13 BLOCK B MILFORD SUBD. PB 14 PG 141
 LAND LOT 702 19TH DISTRICT 2ND SECTION
 COBB COUNTY, GEORGIA
 DATE: 9-20-13

PAUL LEE CONSULTING ENGINEERING ASSOCIATES, INC.
 PLANNING - ENGINEERING - LAND SURVEYING
 3982 AUSTELL-POWDER SPRINGS ROAD - POWDER SPRINGS, GEORGIA 30127
 Ph. (770) 435-2576 - Fax. (770) 943-6912

COMP. _____
 JOB. _____
 701 NUMBER

APPLICANT: Victor Nwala Ngon
PHONE#: 404-645-1452 **EMAIL:** victornwall@yahoo.fr
REPRESENTATIVE: Garvis L. Sams, Jr.
PHONE#: 770-422-7016 **EMAIL:** gsams@slhb-law.com
TITLEHOLDER: Victor Nwala Ngon

PETITION NO: Z-2
HEARING DATE (PC): 02-03-15
HEARING DATE (BOC): 02-17-15
PRESENT ZONING: LRO
PROPOSED ZONING: NRC

PROPERTY LOCATION: East side of Austell Road, north of Byers Drive.
(3077 Austell Rd)

PROPOSED USE: Tire store

ACCESS TO PROPERTY: Austell Road

SIZE OF TRACT: 0.403 acre
DISTRICT: 19

PHYSICAL CHARACTERISTICS TO SITE: Existing One Story Brick House

LAND LOT(S): 701, 702
PARCEL(S): 25
TAXES: PAID X **DUE** _____
COMMISSION DISTRICT: 4

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH:** CF/Commercial Use
- SOUTH:** GC/Commercial Use
- EAST:** CF/Milford Subdivision
- WEST:** R-20/Church

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

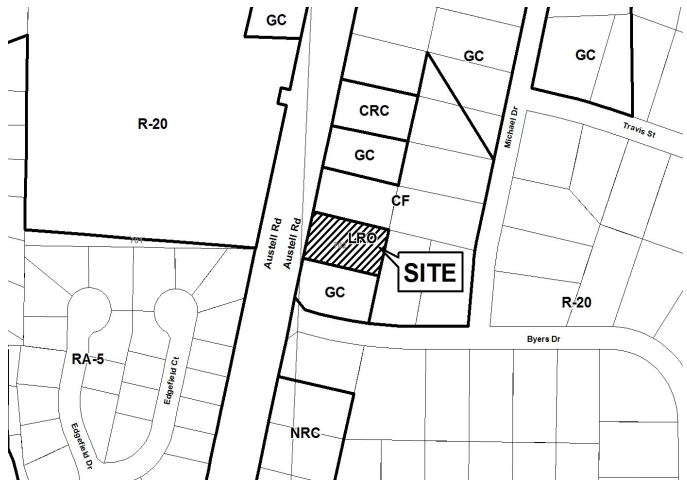
PLANNING COMMISSION RECOMMENDATION

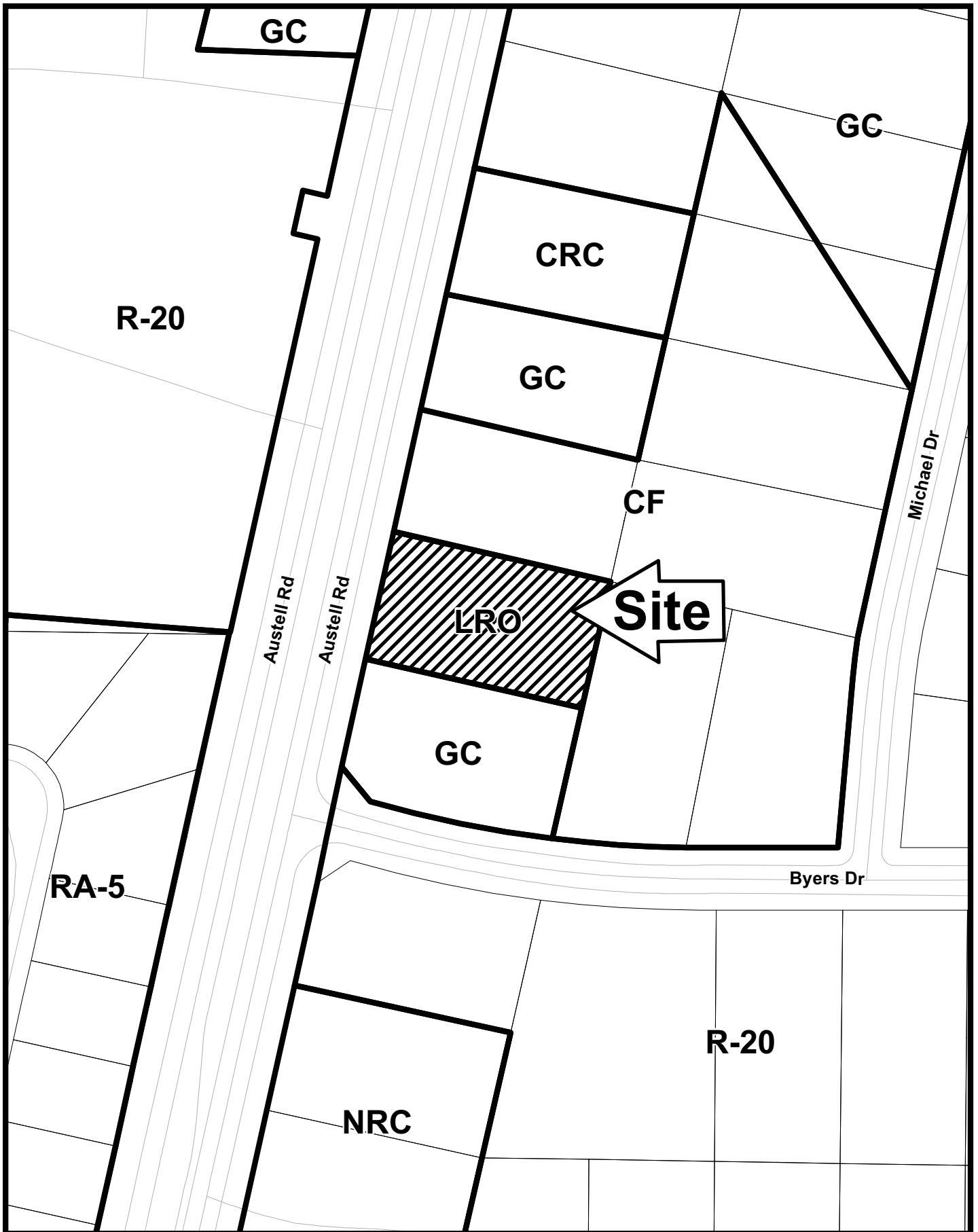
APPROVED _____ **MOTION BY** _____
REJECTED _____ **SECONDED** _____
HELD _____ **CARRIED** _____

BOARD OF COMMISSIONERS DECISION

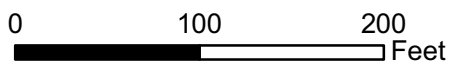
APPROVED _____ **MOTION BY** _____
REJECTED _____ **SECONDED** _____
HELD _____ **CARRIED** _____

STIPULATIONS:





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



- City Boundary
- Zoning Boundary

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-2

PRESENT ZONING: LRO

PETITION FOR: NRC

ZONING COMMENTS:

Staff Member Responsible: Kim Wakefield

Land Use Plan Recommendation: Neighborhood Activity Center

Proposed Number of Buildings: 2 **Total Square Footage of Development:** 2305

F.A.R.: 0.13 **Square Footage/Acre:** 5,720

Parking Spaces Required: 5 **Parking Spaces Provided:** 5

This property was deleted to LRO low rise office in March, 2014. The applicant proposes to utilize the existing house as an office and the addition of a 13' X 25' building containing a work bay to the rear of the house for a tire store. The existing shed to the rear of the property will remain as storage. The hours of operation will be Monday through Saturday 7 a.m. to 7 p.m. and Sunday 9 a.m. to 4 p.m. The applicant requests a front setback variance from the required 50 feet to an existing 34 feet and a lot size variance from 20,000 to 17,556 square feet. Also, as proposed, the site plan reflects the need for a variance of the drive aisle width from the required 24' to 20.91' and a waiver of the Code-required 8' landscape enhancement strip where the parking area lies adjacent to the right-of-way. There is an existing pole sign on the property.

Applicant's representative has submitted a letter of agreeable conditions outlining proposed improvements to the building facility which are intended to address any noise concerns resulting from the proposed use. These improvements include construction techniques and specialty materials designed to provide maximum noise abatement.

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

FIRE COMMENTS:

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

ACCESS: Fire apparatus access roads shall extend to within 150 feet of all portions of the facility or any portion of the exterior wall of the first floor (State Modifications IFC 503.1 2006 Edition).

All access roads shall meet the American Association of State and Highway Transportation Officials (AASHTO) design manual live load standard HS20 (75,000 lbs.) with an unobstructed width of not less than 20 feet, 25 foot inside radius, 50 foot outside turning radius and unobstructed vertical clearance of not less than 13 feet 6 inches.

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-2

PRESENT ZONING: LRO

PETITION FOR: NRC

PLANNING COMMENTS:

The applicant is requesting a rezoning from LRO to NRC for purpose of tire store. The 0.403 acre site is located on the east side of Austell Road, north of Byers Drive.

Comprehensive Plan

The parcel is within a Neighborhood Activity Center (NAC) future land use category, with LRO zoning designation. The purpose of the (NAC) category is to provide for areas that serve neighborhood residents and businesses. Typical land uses for these areas include small offices, limited retail and grocery stores.

Master Plan/Corridor Study

Not applicable.

Historic Preservation

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

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?

Incentive Zones

Is the property within an Opportunity Zone? Yes No

The Opportunity Zone is an incentive that provides \$3,500 tax credit per job in eligible areas if two or more jobs are being created. This incentive is available for new or existing businesses.

Is the property within an Enterprise Zone? Yes No

The Enterprise Zone is an incentive that provides tax abatements and other economic incentives for qualifying businesses locating or expanding within designated areas for new jobs and capital investments.

Is the property eligible for incentives through the Commercial and Industrial Property Rehabilitation Program? Yes No

The Commercial and Industrial Property Rehabilitation Program is an incentive that provides a reduction in ad valorem property taxes for qualifying redevelopment in eligible areas.

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-2

PRESENT ZONING: LRO

PETITION FOR: NRC

PLANNING COMMENTS: (Continued)

Special Districts

Is this property within the Cumberland Special District #1 (hotel/motel fee)?

Yes No

Is this property within the Cumberland Special District #2 (ad valorem tax)?

Yes No

Is this property within the Six Flags Special Service District?

Yes No

APPLICANT Victor Nwala Ngon

PETITION NO. Z-002

PRESENT ZONING LRO

PETITION FOR NRC

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

Available at Development: Yes No

Fire Flow Test Required: Yes No

Size / Location of Existing Water Main(s): 8" DI / E side of Austell Road

Additional Comments: Existing commercial water customer

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

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

In Drainage Basin: Yes No

At Development: Yes No

Approximate Distance to Nearest Sewer: W side of Austell Road ROW

Estimated Waste Generation (in G.P.D.): A D F= 166 Peak= 400

Treatment Plant: South Cobb

Plant Capacity: Available Not Available

Line Capacity: Available Not Available

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

Drv Sewers Required: Yes No

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

Flow Test Required: Yes No

Letter of Allocation issued: Yes No

Septic Tank Recommended by this Department: Yes No

Subject to Health Department Approval: Yes No

Additional Health Dept approval required for continued use of existing septic system.
Comments:

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

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-2

PRESENT ZONING: LRO

PETITION FOR: NRC

STORMWATER MANAGEMENT COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Mill Creek #2 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: _____

- 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 _____.

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-2

PRESENT ZONING: LRO

PETITION FOR: NRC

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 proposed site modifications do not exceed the threshold to require stormwater management for the site. However, if the site is redeveloped or expanded beyond the 5000 square foot threshold current stormwater management requirements must be met.

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-2

PRESENT ZONING: LRO

PETITION FOR: NRC

TRANSPORTATION COMMENTS

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

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Austell Road	30,100	Arterial	45	GDOT	100'

Based on [2012] traffic counting data taken by Cobb County DOT

COMMENTS AND OBSERVATIONS

Austell Road is classified as an arterial, a state route, and according to the available information the existing right-of-way does meet the minimum requirements for this classification.

RECOMMENDATIONS

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

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

Recommend the driveway apron be upgraded to the commercial standard.

THIS

PAGE

INTENTIONALLY

LEFT

BLANK

STAFF RECOMMENDATIONS

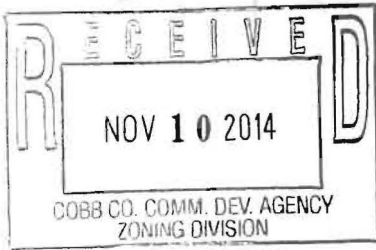
Z-2 VICTOR NWALA NGON

- 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 request proposes upgrades to the property that will allow a use similar to those in the area.
- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse effect on the usability of adjacent or nearby property. The property and its proposed upgrades present no adverse effects on the adjacent properties since it is surrounded by commercial users to the north and south. The additional landscape screening to the rear as well as the proposed building improvements aimed at noise abatement further supports this opinion.
- C. It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.
- D. It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*. Located in an area delineated as NAC neighborhood activity center on the future land use map, the proposed use will serve the Plan's intent of uses servicing neighborhood residents and businesses.
- 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 requested rezoning with the improvements to the site may serve to improve the surrounding area and limit any potential adverse effect upon the adjacent properties. With enhancements such as replacing the current existing sign with a ground based monument style sign, allowing for a landscaping enhancement strip along the front parking area and possibly providing a rear 20' landscaped screening buffer, the property can become an asset to the surrounding community.

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

- Final site plan to be approved by the District Commissioner;
- Letter of agreeable conditions from Garvis L. Sams, Jr. dated January 5, 2015;
- Replacement of existing pole sign with a ground based monument style sign;
- Allowance of Code-required 8' landscape enhancement strip where first parking space lies adjacent to the ROW;
- Provision of 20' landscape screening buffer along rear (eastern) property line;
- Fire Department comments and recommendations;
- Water and Sewer Division comments and recommendations;
- Stormwater Management Division comments and recommendations;
- 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.



Application #: Z- 2
PC Hearing Date: February 3, 2015
BOC Hearing Date: February 17, 2015

Summary of Intent for Rezoning

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

- a) Proposed unit square-footage(s): _____
- b) Proposed building architecture: _____
- c) Proposed selling prices(s): _____
- d) List all requested variances: _____

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

- a) Proposed use(s): Continental Tires & Rims shop.
- b) Proposed building architecture: Utilization of the existing house which will be used as an office and the addition of a 13' x 25' building containing work bay to the rear of the house.
- c) Proposed hours/days of operation: Monday thru Saturday 7:00 a.m. to 7:00 p.m.
Sunday 9:00 a.m. to 4:00 p.m.
- d) List all requested variances: Waive the front setback to 34 feet and waive the lot size from 20,000 square feet to 17,556 square feet (0.403 acres)

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

The subject property is surrounded by non-residential uses and is located within the confines of a Neighborhood Activities Center ("NAC").

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

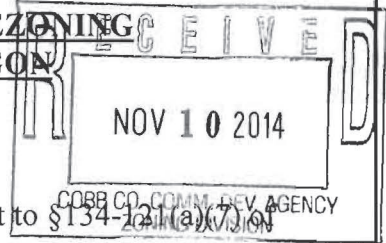
(Please list all Right-of-Ways, Government owned lots, County owned parcels and/or remnants, etc., and attach a plat clearly showing where these properties are located). N/A

.....
Part 5. Is this application a result of a Code Enforcement action? No ; Yes _____ (If yes, attach a copy of the Notice of Violation and/or tickets to this form).

Applicant signature: Date: 11/10/14

Applicant name (printed): Garvis L. Sams, Jr., Attorney for Applicant

ZONING IMPACT STATEMENT FOR THE REZONING
APPLICATION OF VICTOR NWALA NGON



COMES NOW, Victor Nwala Ngon, and, pursuant to §134-21(a)(7) of

the Cobb County Zoning Ordinance, files this Zoning Impact Statement, as follows:

- A. The zoning proposal will permit a use of the property which is suitable in the context of development and existing zonings along this section of the Austell Road Corridor.

- B. The zoning proposal will have no adverse effect or impact upon the existing uses or usability of adjacent or nearby properties. The property is located within a Neighborhood Activity Center (NAC) under Cobb County’s Future Land Use Map. The property has adjoining Commercial properties.

- C. The subject property to be affected by the zoning proposal has no reasonable economic use as currently zoned in that the fair market value of same falls below the range of values of similarly zoned and situated properties with equivalent utility. Additionally, the present owner of the subject property is suffering a significant economic detriment by virtue of the continuation of the present classification of LRO.

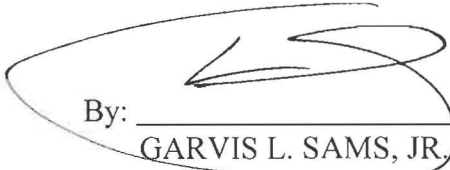
- D. The zoning proposal will have no adverse impact upon the existing County infrastructure including, but not limited to, existing streets, transportation facilities, utilities or schools.

- E. The zoning proposal is located within a Neighborhood Activity Center (NAC) and is consistent with those uses and purposes contemplated under Cobb County's Comprehensive Land Use Plan and Future Land Use Map.

- F. There is no substantial relationship between the existing zoning classification of LRO which limits the property in terms of its present utilization and the public health, safety and general welfare. Additionally, considered in the context of development along this section of the Austell Road Corridor, there are no established land use planning principles or political considerations which would vitiate the zoning proposal.

Respectfully submitted, this the 7th day of November, 2014.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 
GARVIS L. SAMS, JR.
Attorney for Applicant
Ga. Bar No. 623950

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF
JAMES A. BALLI

SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

770-422-7016
TELEPHONE
770-426-6583
FACSIMILE

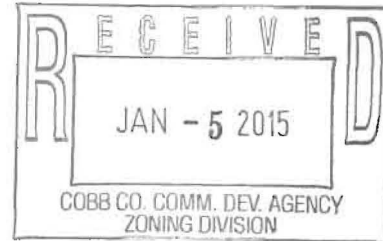
ADAM J. ROZEN

SLHB-LAW.COM

January 5, 2015

VIA EMAIL

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



Re: Application of Victor Nwala Ngon to Rezone a 0.403 Acre Tract
from LRO to NRC (No. Z-2)

Dear John:

This firm has been engaged by and represents the Applicant who is also the property owner concerning the above-captioned application for rezoning. In that regard, the application is scheduled to be heard and considered by the Cobb County Planning Commission on February 3, 2015 and, thereafter, the application is scheduled to be heard and considered for final action by the Cobb County Board of Commissioners on February 17, 2015.

While this application has been pending and during the pendency of a previous application for rezoning concerning the same property, a dialogue has been established with the County's professional staff and with others including local residential, office and retail owners in the area. In that regard, we have been authorized to submit this letter of agreeable stipulations which, if the application for rezoning is approved as submitted shall become conditions and a part of the grant of the rezoning and binding upon the subject property thereafter. The referenced stipulations are as follows to wit:

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 concerning the property which constitutes the subject matter of the above-captioned application for rezoning.
2. The rezoning of the subject property shall be from the existing zoning category of LRO to NRC for the utilization of the subject property for Continental Tires & Rims and for the other certain permitted uses under the NRC district which are specifically prohibited as set out in paragraph No. 6 below.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
January 5, 2015
Page 2

3. The rezoning of the subject property shall be in substantial conformity to that certain rezoning site plan, prepared by Paul Lee Consulting Engineering Associates, Inc. which was filed concurrently with the application for rezoning.

The present intention is to utilize the existing formerly converted residential structure as office space for a tire & rim store while adding a 15' by 25' tire changing and installation bay to the rear of that structure. Additionally, the existing shed to the rear of the building will remain and will be utilized for storage purposes.

4. The proposed hours of operation will be Monday -- Saturday, from 7:00 a.m. until 7:00 p.m. and on Sunday from 9:00 a.m. until 4:00 p.m.
5. The architectural style and composition of the primary building which will be utilized for office purposes on the subject property shall remain as-built. The 15' by 25' tire changing bay to the rear of the primary structure shall be built in conformance with that certain letter from Honest Home Builders, dated March 2, 2014 (attached hereto) and shall include, but not necessarily be limited to, the following:
 - a. Exterior walls will be constructed of 2" by 4" #2 or better wood with a 2" air gap between each wall layout. This constitutes a double-wall system totaling 10" in width including the double drywall system.
 - b. Spray foam 250 Sound Barrier spray foam or its equivalent will be applied to the exterior walls as well as the ceiling of the new tire bay area. The foam sound barrier will reduce noise levels in a standard 2" by 4" wall application.
 - c. Porous expanded polypropylene acoustical ceiling panels (silencers) will be installed where the garage door motors mount to the new ceiling.
 - d. The installation of ThermoCore or equally insulated steel garage doors consisting of a continuous layer of polyurethane insulation between two layers of corrosion resistant steel for maximum thermal efficiency.
6. The uses on the subject property shall be limited to retail automobile tire and rim sales, service and installation or, in the alternative, neighborhood retail uses (as defined in the Cobb County Zoning Ordinance), banks or financial institutions and professional offices.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
January 5, 2015
Page 3

7. All tire changing, repair, installation or other work upon the subject property shall be conducted completely inside the existing and proposed structures as shown on the referenced site plan. No such work will be conducted exterior to any such existing or proposed structures.
8. There shall be no outside storage or display of tires, rims, automobile parts, supplies or other inventory, materials or equipment associated with any use of the subject property. All such items, supplies, inventory, materials, and equipment shall be kept indoors at all times.
9. Mechanical and installation activities upon the subject property shall be properly baffled, muffled, and/or attenuated so as not to constitute a nuisance to surrounding or adjacent properties.
10. All activities upon the subject property shall at all times comply with the requirements of the Cobb County Noise Ordinance, as amended.
11. The submission of a formal landscape plan during the Plan Review process which will be subject to the Arborist's review and approval and which will consist, but not necessarily be limited to, the following:
 - a. Fully opaque wooden privacy fence (8' in height) shall be maintained along the northern boundary of the subject property, from the front building setback line to the rear (northeastern) corner of the subject property.

As mentioned above, the fence shall be 8' in height with the following exceptions:

- i) from the front setback, for a distance of 13' the height of the fence shall be 6';
 - ii) from 13' to 26', from the front setback, the height of the fence shall be 7'.
- b. A 30' natural maintained and enhanced landscape buffer shall be installed and maintained along the rear (easterly) property line in order to provide a visual and sound attenuation barrier. Also, along the southern property boundary, from the building's front setback to the rear property line, a 10' landscape buffer shall be installed and maintained.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
January 5, 2015
Page 4

- c. Landscaping and vegetation for the buffers described above shall be in substantial conformity to the "Suggested Evergreen Shrub Varieties for Cobb County Landscape Screening Buffer Plantings" which requires a minimum size of 2' in height at the time of installation with spacing varying by variety and/or species of vegetation.
 - d. The installation of the code-required 8' landscape enhancement strip where the first parking space lies adjacent to the right-of-way. As a result thereof, the elimination of the parking space which is closest to Austell Road.
12. Granting of the following contemporaneous variances: waiving the front setback to 34' and waiving the lot size from 20,000 square feet to 17,556 square feet.
13. Subject to recommendations from the Stormwater Management Division with respect to detention, hydrology, water quality and downstream considerations. However, the proposed site modifications do not exceed the threshold which requires stormwater management for the site with the understanding that if the site is redeveloped or expanded beyond the 5,000 square foot threshold that current stormwater management requirements shall be met.
14. Compliance with following recommendations from the Cobb County Department of Transportation:
 - a. Securing GDOT permits for any work encroaching upon Austell Road which is a State right-of-way.
 - b. Upgrading the driveway to commercial standard width.
 - c. Compliance with all Cobb County Development Standards and Ordinances related to project improvements.
 - d. DOT will not be seeking additional right-of-way on Austell Road, nor will DOT or GDOT require the installation of additional lanes.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
January 5, 2015
Page 5

15. Compliance with recommendations from the Cobb County Water System with respect to the availability of water and sewer for the subject property. Currently, the subject property operates by virtue of a septic tank system which was recently inspected by the Cobb & Douglas Public Health, Center for Environmental Health.
16. Compliance with recommendations from the Cobb County Fire Department with respect to Life-Safety and Fire Prevention issues.
17. Signage along Austell Road shall consist of ground-based, monument style signage with materials and colors being complementary and in substantial conformity to the color and design of the existing and proposed buildings. Said signage shall be in lieu of and shall replace the existing pole sign on the subject property.
18. All stipulations/conditions shall be met prior to a Certificate of Occupancy being issued by Cobb County.
19. The District Commissioner shall have the authority to approve certain minor modifications as the development proposal proceeds through the Plan Review process and thereafter, except for those that:
 - a. Reduce the size of an approved buffer to property which is zoned the same or in a more restrictive zoning district.
 - b. Relocate a structure closer to the property line of an adjacent property which is zoned the same or in a more restrictive zoning district.
 - c. Increase the height of a building adjacent to property which is zoned in the same or more restrictive zoning district.
 - d. Change access locations to a different roadway.
 - e. Violate the Cobb County Zoning Ordinance.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
January 5, 2015
Page 6

Please do not hesitate to contact me should you or the Staff require any further information or documentation prior to the formulation of the final Zoning Analysis and Staff recommendations. With kind regards and best wishes for the New Year, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP



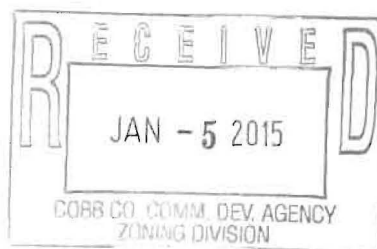
Garvis L. Sams, Jr.
gsams@slhb-law.com

GLS/klk

- cc: Members, Cobb County Board of Commissioners (via email w/attachment)
Members, Cobb County Planning Commission (via email w/attachment)
Mr. Robert L. Hosack, Jr., AICP Director (via email w/attachment)
Mr. Dana Johnson, AICP Deputy Director (via email w/attachment)
Mr. Jason Campbell, Planner III (via email w/attachment)
Mr. Terry Martin, Planner II (via email w/attachment)
Mr. David Breaden, P.E. (via email w/attachment)
Mr. Eric Meyer, P.E. (via email w/attachment)
Mr. Tim Davidson, Cobb County Water System (via email w/attachment)
Ms. Lori Barton, Deputy County Clerk (via email w/attachment)
Richard W. Calhoun, Esq. (Attorney for Dr. Frank Espinoza) (via email w/attachment)
Mr. Victor Ngon (via email w/attachment)
Mark G. Lee, P.E. (via email w/attachment)

March 02, 2014

Honest Home Builders
334 Harper Drive
Stockbridge, GA 30281
(770) 231-9888
License # 1142
joeeddings@gmail.com



Client Information
Mr. Victor Nwala Ngon
3077 Austell Rd. SW
Marietta, Ga. 30008
(404) 645-1452

To whom it may concern,

Upon the request of Mr. Victor Nwala Ngon we provided an onsite inspection at the property described above. To analyze and recommend a conclusive system of noise reduction for the adjacent neighbors as well as community. The recommendations to accomplish this goal without fail are as follows.

1. The exterior walls will be constructed of 2" by 4" #2 or better wood with a 2 inch air gap between each wall layout. This is typical in a construction project application where a sound barrier is required such as a recording studio for example. This is a double wall system totaling 10" in width including the double drywall system.
2. Spray foam 250 Sound Barrier Spray foam or equal will be applied to the exterior walls as well as the ceiling of the new tire bay area. Foam Sound Barrier is excellent for sound deadening and reducing noise levels in a standard 2" by 4" wall application. However with the custom wall system described in line # 1 the noise cancellation is guaranteed to be reduced by 75% minimum.
3. Porous Expanded Polypropylene Acoustical Ceiling panels (silencers) will be installed where the garage door motors mount to the new ceiling.

4. **Installation of Thermacore or equal Insulated steel garage doors are the best application for this project. Thermacore doors consist of a continuous layer of Polyurethane insulation between two layers of corrosion resistant steel for maximum thermal efficiency.**

The system described above in its entirety guarantee's the maximum noise reduction that can be accomplished in an economical yet effective budget.

We have 17 plus years of experience in residential as well as commercial construction services and look forward to assisting you in the future.

Thanks for the opportunity to serve you.

Joe Eddings

Manager

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
MARCH 18, 2014
PAGE 8

REGULAR CASES (CONT.)

Z-66^{'13} VICTOR NWALA NGON (owner) requesting Rezoning from GC to NRC for the purpose of a Tire Store in Land Lots 701 and 702 of the 19th District. Located on the east side of Austell Road, north of Byers Drive (3077 Austell Road). *(Previously held by the Planning Commission from their December 3, 2013 and February 4, 2014 hearings)*

The public hearing was opened and Mr. Ken Waldrop and Mr. Victor Nwala Ngon addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Cupid, second by Ott, to delete Rezoning to the LRO zoning district subject to:

- Substantial conformity to site plan received January 16, 2014 (attached and made a part of these minutes) *with the following changes/additions:*
 - Deletion of parking space closest to Austell Road
 - Eight foot landscape enhancement strip adjacent to Austell Road right-of-way
 - Final site plan subject to approval by the District Commissioner
- Letter of agreeable conditions from Mr. Richard Calhoun dated February 3, 2014 (attached and made a part of these minutes), *not otherwise in conflict*
- Replacement of existing pole sign with a ground based monument sign
- Fully opaque wooden privacy fence shall be maintained along the northern boundary front building setback to the rear (easterly) corner of the property; fence shall be eight feet in height *with the following exceptions:*
 - From the front setback, for a distance of 13 feet, the height shall be six feet
 - From 13 feet to 26 feet, from the front setback, the height shall be seven feet
- Along the rear (easterly) property line, a 30 foot natural maintained and enhanced landscape buffer shall be installed and maintained (the purpose of the buffer is to provide a visual and sound barrier); along the southerly property boundary from the building front setback to the rear property line, a 10 foot landscape buffer shall be maintained, with final approval by the County Arborist (including time of year that trees will be planted)
- Building shall be constructed in conformance with the letter from Honest Home Builders dated March 2, 2014 (for the purpose of soundproofing) (attached and made a part of these minutes)

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
MARCH 18, 2014
PAGE 9

REGULAR CASES (CONT.)

Z-66'¹³ VICTOR NWALA NGON (CONT.)

- Permitted uses shall be restricted to banks, financial institutions, cultural facilities, in-home daycare, and professional office
- District Commissioner to approve minor modifications except those that increase the density of the residential project; cause a reduction in the size of the approved buffers adjacent to the properties with the same or more restrictive zoning; cause the relocation of a structure closer to the property line of an adjacent property that is zoned the same or more restrictive zoning; increases the building height that is adjacent to a property that is zoned the same or more restrictive zoning; or changes access location to a different roadway
- All stipulations to be met prior to issuance of Certificate of Occupancy
- Fire Department comments and recommendations, *not otherwise in conflict*
- Water and Sewer Division comments and recommendations, *not otherwise in conflict*
- Stormwater Management Division comments and recommendations, *not otherwise in conflict*
- Cobb DOT comments and recommendations, *not otherwise in conflict*

VOTE: ADOPTED 4-0, Lee absent

Z-12 DUNCAN LAND INVESTMENTS, LLC (Jacqueline J. Stroud and Elois Auito, owners) requesting Rezoning from R-20 and R-30 to R-15 for the purpose of a Residential Subdivision in Land Lot 114 of the 16th District. Located on the north side of Mountain Road, west of Outlook Place, east of Outlook Drive (3665 and 3675 Mountain Road).

The public hearing was opened and Mr. Richard Duncan addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Goreham, to approve Rezoning to the R-15 zoning district subject to:

- Site plan received by the Zoning Division January 3, 2014 with the District Commissioner approving minor modifications (attached and made a part of these minutes)

Z-66 (2013)
REVISED
Site Plan

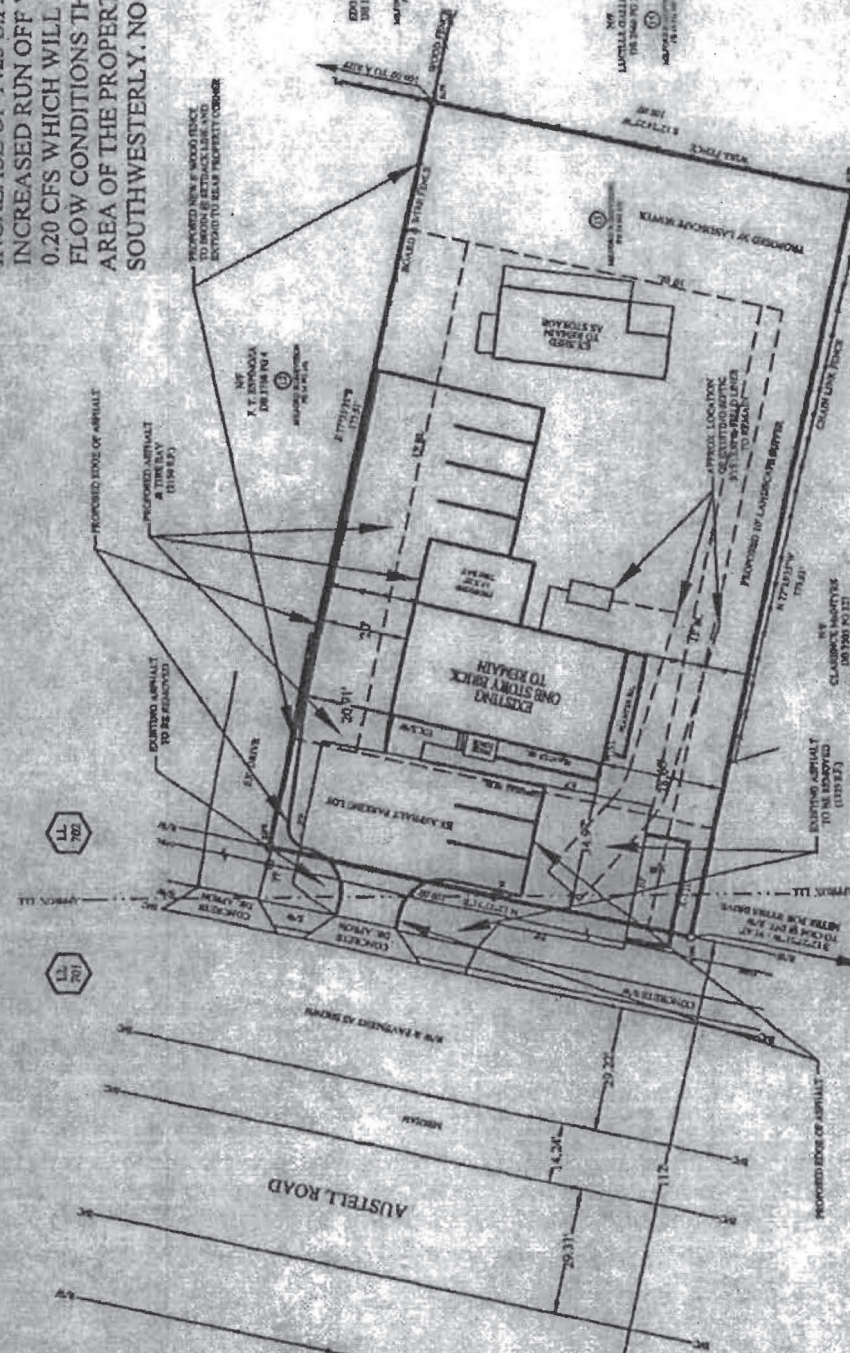
REVIS

RECEIVED
JAN 16 2014
CORRECTION DEV AGENCY DIVISION

id. Bl. 71 Petition No. Z-666
Doc. Type side plan
Meeting Date 3/18/14

NOTE: THE PROPOSED PLAN WILL HAVE A NET INCREASE OF 1425 S.F. OF ASPHALT. THE INCREASED RUN OFF WILL BE LESS THAN 0.20 CFS WHICH WILL REMAIN IN SHEET FLOW CONDITIONS THROUGH THE GRASSED AREA OF THE PROPERTY WHICH FLOWS SOUTHWESTERLY. NO DETENTION IS PROPOSED.

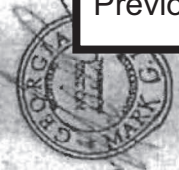
TRACT AREA = 0.403 ACRES (17,556 S.F.)



- GENERAL NOTES:**
1. CURRENT ZONING GC
 2. PROPOSED ZONING NRC
 3. PROPOSED VARIANCE FOR FRONT SETBACK TO 34'. TO 17,556 S.F.
 4. PROPOSED USE A TIRE STORE WITH PARKING AS SHOWN.

LEGEND

- BC - BACK OF CLUB
- BL - BUILDING SETBACK LINE
- CL - CONCRETE CURB
- CR - CURB
- DR - DRIVE
- FR - FENCE
- GL - GROUND LEVEL
- HT - HEIGHT
- IS - INTERSECTION
- LL - LANDSCAPING
- LV - LANDSCAPING VARIATION
- MT - MOUNTAIN
- OR - OPEN SPACE
- PA - PAVED AREA
- PL - PLANTING
- PR - PAVED ROAD
- PS - PAVED SIDEWALK
- RA - RAMP
- RD - ROAD
- RF - RAILROAD
- SG - SIGN
- SK - SKYLINE
- ST - STREET
- TR - TRAIL
- WA - WATER
- WB - WATER BODY
- WC - WATER CURB
- WD - WOOD
- WF - WOOD FENCE
- WP - WOOD PAVEMENT
- WS - WOOD SIGN
- WV - WOOD VARIATION
- WY - WOOD YARD



PAUL LEE CONSULTING ENGINEERING ASSOCIATES, INC.
1981 AUSTELL AVENUE, SUITE 1000
AUSTELL, GEORGIA 30108
TEL: 770.433.5276 FAX: 770.433.5277

1981 AUSTELL ROAD, MARIETTA, GA 30060
TAX ID # 1907002020
DR 2100 PG 848
LOT 13 BLOCK B MILFORD SUBD PH 14 PG 141
LAND LOT 702 191TH DISTRICT 2ND SECTION
CORB COUNTY GEORGIA
DATE 9-20-11
SCALE 1" = 20'

VICTOR NWALA NGON



770.426.6155 FAX
49 ATLANTA STREET
MARIETTA, GEORGIA 30060
WWW.GREGORYDOYLEFIRM.COM

Richard W. Calhoun
rwc@gregorydoylefirm.com

Min. Bk. 71 Petition No. Z-66
Doc. Type letter of agreeable
conditions
Meeting Date 3/18/14

February 3, 2014

Cobb County Planning and Zoning Committee
P. O. Box 649
Marietta, GA 30061

Re: Z-66 Victor Nwala Ngon/3077 Austell Rd

Dear Planning Commission Members,

Our firm represents Dr. Frank Espinoza, who owns and operates a medical office adjoining the subject property to the north.

We have been in communication with counsel for the applicant in this matter, and are in agreement with the applicant that the following conditions of zoning should be included as conditions of zoning for the subject property, in addition to the recommended staff conditions:

1. The subject property shall be zoned site plan specific to the to the attached revised "rezoning plat" site plan by Paul Lee Consulting Engineering Associates, Inc. , dated 9-20-13.
2. Uses of the subject property shall be limited to retail automobile tire sales, service and installation, bank or financial institution, professional offices, or neighborhood retail uses (as defined in the Cobb County Zoning Ordinance), only.
3. All tire changing, repair, or other work upon the subject property shall be conducted completely inside the existing or proposed structures shown on the above referenced site plan. No such work shall be conducted exterior to any such existing or proposed structures.
4. There shall be no outside storage or display of tires, automobile parts, supplies, or other inventory, materials or equipment associated with any use of the subject property. All such items, supplies, inventory, materials, and equipment shall be kept indoors at all times.
5. A fully opaque wooden privacy fence 8 feet in height shall be maintained along the northern boundary of the subject property, from the front building setback line to the rear (northeastern) corner of the property.

February 3, 2014
Page 2

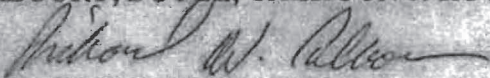
Petition No. Z-666
Meeting Date 3/18/14
Continued

6. Mechanical and installation activities upon the subject property shall be properly baffled, muffled, or attenuated so as not to become a nuisance to surrounding properties.

7. All activities upon the subject property shall at all times comply with the requirements of the Cobb County noise ordinance, as amended.

Thank you for your attention to this matter, and if you should have any questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,
GREGORY, DOYLE, CALHOUN & ROGERS, LLC



Richard W. Calhoun
For the Firm

RWC/pgc

cc: Dr. Frank Espinoza
Cobb County Zoning Department
Ken Waldrop, Esq.

YOUR LOGO
HERE

Company Name

March 02, 2014

Honest Home Builders
334 Harper Drive
Stockbridge, GA 30281
(770) 231-9888
License # 1142
joceddings@gmail.com

Client Information
Mr. Victor Nwala Ngon
3077 Austell Rd. SW
Marietta, Ga. 30008
(404) 645-1452

FILED WITH COUNTY CLERK THIS 4th DAY
OF March 2014 BY V. Walrop
RE Z-666
Joni Paulson
COUNTY CLERK/ASST. COUNTY CLERK/DEPUTY COUNTY CLERK
COBB COUNTY, GEORGIA

Min. Bk. 71 Petition No. Z-666
Doc. Type letter

Meeting Date 3/18/14

To whom it may concern,

Upon the request of Mr. Victor Nwala Ngon we provided an onsite inspection at the property described above. To analyze and recommend a conclusive system of noise reduction for the adjacent neighbors as well as community. The recommendations to accomplish this goal without fail are as follows.

1. The exterior walls will be constructed of 2" by 4" #2 or better wood with a 2 inch air gap between each wall layout. This is typical in a construction project application where a sound barrier is required such as a recording studio for example. This is a double wall system totaling 10" in width including the double drywall system.
2. Spray foam 250 Sound Barrier Spray foam or equal will be applied to the exterior walls as well as the ceiling of the new tire bay area. Foam Sound Barrier is excellent for sound deadening and reducing noise levels in a standard 2" by 4" wall application. However with the custom wall system described in line # 1 the noise cancellation is guaranteed to be reduced by 75% minimum.
3. Porous Expanded Polypropylene Acoustical Ceiling panels (silencers) will be installed where the garage door motors mount to the new ceiling.

Petition No. 2-666
Meeting Date 3/18/14
Continued

4. Installation of Thermacore or equal Insulated steel garage doors are the best application for this project. Thermacore doors consist of a continuous layer of Polyurethane insulation between two layers of corrosion resistant steel for maximum thermal efficiency.

The system described above in its entirety guarantee's the maximum noise reduction that can be accomplished in an economical yet effective budget.

We have 17 plus years of experience in residential as well as commercial construction services and look forward to assisting you in the future.

Thanks for the opportunity to serve you.

Joe Eddings

Manager

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-66

PRESENT ZONING: GC

PETITION FOR: NRC

ZONING COMMENTS:

Staff Member Responsible: Terry Martin, MPA

Land Use Plan Recommendation: Neighborhood Activity Center

Proposed Number of Buildings: 2 Total Square Footage of Development: 2,305 sq. ft.

F.A.R.: 0.13 Square Footage/Acre: 5,720

Parking Spaces Required: 5 Parking Spaces Provided: 5

This property, zoned GC general commercial district, is located within a NAC neighborhood activity center future land use area and therefore would be considered to be "grandfathered" as a result. This circumstance has necessitated the current request as the previous use (plumbing company) has been out of business since late 2009 according to County records. The applicant proposes to utilize the existing formerly converted residential structure as office space for a tire store while adding a 13' by 25' tire changing bay to the rear. There is also an existing shed to the rear of the property that will remain as storage. The hours of operation will be Monday through Saturday 7 a.m. to 7 p.m. and Sunday 9 a.m. to 4 p.m. The applicant requests a front setback variance from the required 50 feet to an existing 34 feet and a lot size variance from the required 20,000 sq. ft. to the existing 17,556 sq. ft. Also, as proposed, the site plan reflects the need for a variance of the drive aisle width from the required 24' to 20.91' and a waiver of the Code-required 8' landscape enhancement strip where the parking area lies adjacent to the right-of-way. There is also an existing pole sign on the property.

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

FIRE COMMENTS:

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

APPLICANT Victor Nwala Ngon

PETITION NO. Z-066

PRESENT ZONING GC

PETITION FOR NRC

WATER COMMENTS:

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

Available at Development: Yes No

Fire Flow Test Required: Yes No

Size / Location of Existing Water Main(s): 8" DI / E side of Austell Road

Additional Comments: existing commercial water customer

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

SEWER COMMENTS:

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

In Drainage Basin: Yes No

At Development: Yes No

Approximate Distance to Nearest Sewer: W side of Austell Road ROW

Estimated Waste Generation (in G.P.D.): **A D F** 166 **Peak=** 400

Treatment Plant: **South Cobb**

Plant Capacity: Available Not Available

Line Capacity: Available Not Available

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

Drv Sewers Required: Yes No

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

Flow Test Required: Yes No

Letter of Allocation issued: Yes No

Septic Tank Recommended by this Department: Yes No

Subject to Health Department Approval: Yes No

Additional Comments: Health Dept approval required for continued use of existing septic system. If improvements to septic system are necessary, site must connect to sanitary sewer

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

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-66

PRESENT ZONING: GC

PETITION FOR: NRC

STORMWATER MANAGEMENT COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Mill Creek #2 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: _____

- 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 _____.

APPLICANT: Victor Nwala Ngon

PETITION NO.: Z-66

PRESENT ZONING: GC

PETITION FOR: NRC

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 proposed site modifications do not exceed the threshold to require stormwater management for the site. However, if the site is redeveloped or expanded beyond the 5000 square foot threshold current stormwater management requirements must be met.

APPLICANT: Victor Nwala Ngon PETITION NO.: Z-66

PRESENT ZONING: GC PETITION FOR: NRC

TRANSPORTATION COMMENTS

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

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Austell Road		Arterial	45 mph	Georgia DOT	100'

Based on 2012 traffic counting data taken by Georgia DOT (Austell Road)

COMMENTS AND OBSERVATIONS

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

RECOMMENDATIONS

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

Recommend the driveway apron be upgraded to the commercial standard.

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

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
FEBRUARY 17, 2015
PAGE 17

REGULAR AGENDA (CONT.)

~~SLUP-21¹⁴ BARRY WOOD (B.W.W., Inc., owner) requesting a Special Land Use Permit for the purpose of Crushing Concrete in Land Lot 777 of the 18th District. Located on the east side of White Road, south of Factory Shoals Road.~~

~~The public hearing was opened and Ms. Terry Carden addressed the Board. Following presentation and discussion, the following motion was made:~~

~~MOTION: Motion by Cupid, second by Ott, to approve SLUP-21 for 18 months, subject to:~~

- ~~• Fees to be waived upon application of permanent SLUP~~
- ~~• Upon issuance of permanent SLUP, the following stipulations may apply:~~
 - ~~➢ Installation of a heavy landscape buffer along the entire length of the site along White Road to address privacy, noise, dust, and aesthetic appeal, which will be subject to Community Development's assessment of control of dust on the site, and with landscape plan subject to final approval by the District Commissioner~~
 - ~~➢ Applicant address Community Development's concerns regarding gravel being driven from the site onto White Road~~
 - ~~➢ Incorporate dust control measures inclusive of but not limited to the tree buffer~~
- ~~• Stormwater Management Division comments and recommendations, *not otherwise in conflict*~~
- ~~• Cobb DOT comments and recommendations, *not otherwise in conflict*~~

~~VOTE: **ADOPTED** unanimously~~

Z-2 VICTOR NWALA NGON (owner) requesting Rezoning from LRO to NRC for the purpose of a Tire Store in Land Lots 701 and 702 of the 19th District. Located on the east side of Austell Road, north of Byers Drive (3077 Austell Road).

The public hearing was opened and Mr. Garvis L. Sams, Jr. and Mr. Brian Morrow addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Cupid, second by Ott, to deny rezoning request Z-2.

VOTE: **ADOPTED** 4-1, Weatherford opposed

Chairman Lee called for a recess at 12:00 p.m. The hearing reconvened at 1:00 p.m.



COBB COUNTY ATTORNEY'S OFFICE

100 Cherokee Street, Suite 350
Marietta, Georgia 30090-7003
Phone: (770) 528-4000 Fax: (770) 528-4010

Deborah L. Dance
County Attorney

October 6, 2017

(Sent via email & US mail)

Victor Nwala Ngon
1884 Gherry Drive
Austell, Georgia 30106

Re: 3077 Austell Road, Marietta, Georgia
Ngon v. Cobb County, Georgia
Civil Action File Number 15-1-1469-52
Cobb County Superior Court

THIS IS AN OFFER TO COMPROMISE AND SHALL NOT BE ADMISSIBLE
TO PROVE LIABILITY FOR OR INVALIDITY OF ANY CLAIM OR ITS AMOUNT

Dear Mr. Ngon:

As we recently discussed on the phone, the lawsuit that you filed to appeal the Cobb County Board of Commissioners' ("BOC") zoning decision on February 15, 2015 related to the property referenced above is still pending. Although the parties mediated the matter in good faith, an impasse was reached. Your counsel, Mr. Garvis Sams, has withdrawn from the case and the matter has been languishing since discovery has ran.

In August of 2017, you filed a zoning application to change the zoning classification in order to utilize the property for a beauty salon. Cobb County cannot take action on the new application until the existing lawsuit has been resolved. In order to dispense with the zoning appeal and, hopefully, satisfy your goals, Cobb County is proposing that the parties do a settlement of litigation rather than a new zoning application. If you are agreeable and the BOC approves the settlement, then you will not need to pursue the zoning application and any funds paid for the rezoning application will be refunding to you.

As an offer of settlement, Cobb County proposes to rezone the property to the Limited Retail Commercial ("LRC") classification. I have attached a copy of the written guidelines which will be applicable, subject to the following additional conditions:

1. Designated recycling collection locations and radio, television and other communication towers and antennas are prohibited.
2. Replacement of existing pole sign with ground based monument style sign.
3. Final site plan to be approved by the District Commissioner.
4. 8-foot landscape enhancement strip where first parking space lies adjacent to the right-of-way.
5. Provision of 20-foot landscape screening buffer along rear (eastern) property line with a six-foot privacy fence to be installed on the interior buffer line.
6. Items Four and Five as to landscaping to be approved by the District Commissioner.
7. No outside storage or displays will be allowed.
8. Granting of the following contemporaneous variances: waiving the front setback from 50-feet to the existing 34-feet and a lot size variance from 20,000 to 17,556 square feet.
9. Hours of operation for the business to be 8:00 a.m. to 6:30 p.m., Monday through Saturday.
10. Upgrade the driveway to commercial standard width.
11. Compliance with all Cobb County Development Standards and Ordinances.

If you are agreeable to the above stipulations, you will need to contact me at the number above on or before October 11, 2017. You will then be provided signs of a settlement of litigation that need to be posted on the property for 30 days before the matter will be heard by the BOC. These signs will need to be posted on or before October 20, 2017. Cobb County Attorney's Office will discuss this offer with the BOC in executive session on October 23, 2017. If they are agreeable to moving forward, the matter will be put on the agenda for the November 21, 2017 zoning hearing. You will need to attend the zoning hearing in November.

If you have any additional questions, please feel free to give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra L. Blair".

Debra L. Blair

Enclosure.

Sec. 134-214. - LRC limited retail commercial district.

The regulations for the LRC limited retail commercial district are as follows:

- (1) Purpose and intent. The LRC district is established to provide locations for specialized or limited low intensity shopping facilities which are on properties delineated within a neighborhood activity center, community activity center or regional activity center as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990. These convenience shopping facilities should have low intensity retail commercial uses that have a neighborhood-oriented market and which supply necessities that usually require purchasing with a minimum of consumer travel. Areas zoned for the LRC district are appropriately located at or adjacent to intersections as opposed to the edge of a neighborhood activity center. The LRC district may also be used to provide step-down nodal zoning away from more intensive commercial uses within a community activity center or a regional activity center. The scope at which properties are developed within the LRC district should reflect their relatively small neighborhood service area. Additionally, properties developed within the LRC district should be architecturally compatible with other nonresidential uses permitted within a neighborhood activity center as defined by the comprehensive plan and the neighborhood residences they serve.
- (2) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - a. Community fair means a festival or fair such as the North Georgia State Fair conducted wholly within public areas owned by a local government, provided that any activity is conducted at least 200 feet from any property line. Any event shall not exceed 21 days.
 - b. Group home means a dwelling shared by six or less persons, excluding resident staff, who live together as a single housekeeping unit and in a longterm, family-like environment in which staff persons provide care, education and participation in community activities for the residents with the primary goal of enabling the residents to live as independently as possible in order to reach their maximum potential. This use shall apply to homes for the handicapped. As used in this subsection, the term "handicapped" shall mean:
 1. Having a physical or mental impairment that substantially limits one or more of

such person's major life activities so that such person is incapable of living independently;

2. Having a record of having such an impairment; or
3. Being regarded as having such an impairment.

However, the term "handicapped" shall not include current illegal use of or addiction to a controlled substance, nor shall it include any person whose residency in the home would constitute a direct threat to the health and safety of other individuals. The term "group home for the handicapped" shall not include alcoholism or drug treatment centers, work release facilities for convicts or ex-convicts, or other housing facilities serving as an alternative to incarceration.

- c. Limited retail uses means commonly found specialized low scale or low intensity retail uses, with square footages not to exceed 5,000 square feet unless noted in this subsection, that offer basic services and frequently purchased goods to the immediate surrounding residential areas, such as the following: antique shop, bakery, barbershop or beauty shop, beverage shop, bookstore (but not including adult bookstores), bridal shop, camera shop, china and pottery store, clothing store, craft and hobby shop, delicatessen, dog grooming shop, draperies and interior decorating supplies, drugstore or hardware store with no permanent outside display (provided that the gross floor area does not exceed 10,000 square feet total), dry goods store, florist, furniture store, gifts and stationery store, jewelry store, manicurist shop, meat market or butcher shop, millinery store, mimeograph and letter shop, music store, novelty shop, pedicurist shop, shoe repair shop, shoe store, market or grocery store (provided that the gross floor area does not exceed 35,000 square feet), or tailor shop.
- d. Nonautomotive repair uses means commonly found low intensity repair shops such as jewelry, camera, home appliance, television and videocassette recorder repair shops.
- e. Professional office means a structure wherein services are performed involving predominately administrative, professional or clerical operations such as the following: law, doctor, optician, audiologist, accounting, tax preparation, real estate, stockbroker, architect, engineer, manufacturer representative, professional counselor, dentist, investigative services, photographer, insurance, contractor, land surveyor, telephone sales, political/campaign, veterinarian or travel bureau.

(3) Permitted uses. Permitted uses are as follows:

Banks and financial institutions or automated transfer machines with no drive-through facilities unless located under the main roof of a shopping center with at least two other retail uses.

Churches, chapels, temples, synagogues, and other such places of worship.

Commercial produce and agricultural product stands.

Community fairs.

Cultural facilities.

~~Designated recycling collection locations.~~

Film developing and printing facilities with no drive-through facilities unless located under the main roof of a shopping center with at least two other retail uses.

Group homes.

In-home day care.

Laundry and dry cleaning pickup establishments with no drive-through unless located under the main roof of a shopping center with at least two other retail uses.

Limited retail uses.

Nonautomotive repair service establishments.

Nonprofit (seasonal use) fishing lakes.

Nursery schools and child day care centers.

Parking for vehicles.

Private parks.

Professional offices.

~~Radio, television and other communication towers and antennas subject to section 134-273.~~

Rest homes, personal care homes and convalescent homes.

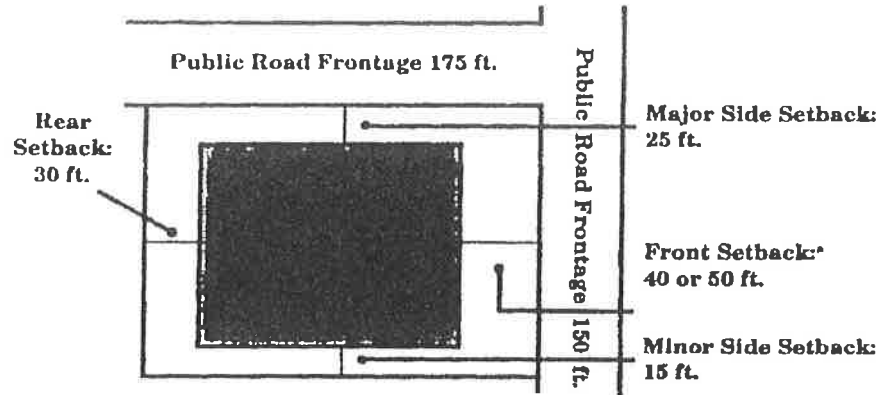
Temporary uses.

- (4) Lot size and setback requirements. Lot size and setback requirements are as follows:
 - a. Minimum lot size: 20,000 square feet.
 - b. Minimum lot width at front setback line: 60 feet.
 - c. Minimum public road frontage: 50 feet.
 - d. Minimum building setbacks: As shown and applied in the following diagram:

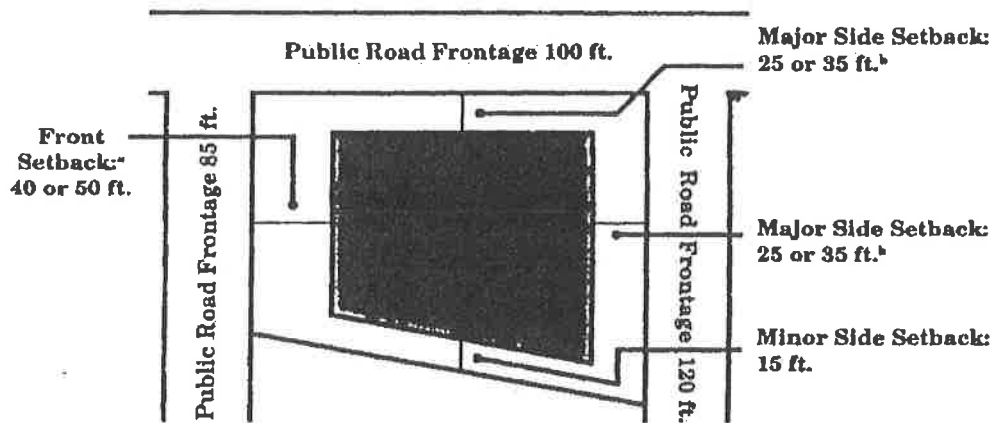
MINIMUM BUILDING SETBACK REQUIREMENTS FOR LRC DISTRICT

Note: All setbacks shall be measured from future right-of-way.

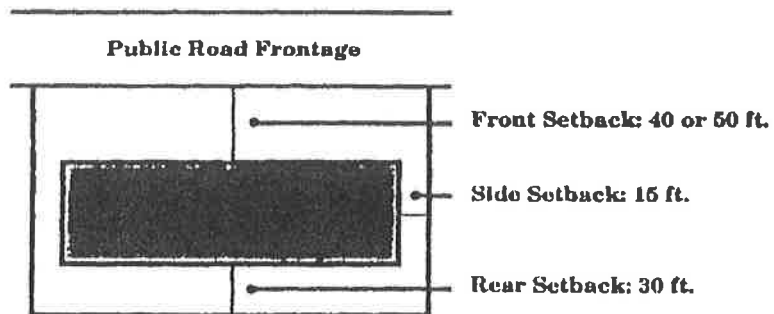
LRC



Example for Property with two (2) Public Road Frontages



Example for Property with three (3) Public Road Frontages



Example for Property with one (1) Public Road Frontage

Minimum Building Setback Requirements for LRC District

Notes:

^a Property with shorter amount of road frontage will be the front setback for determining other setbacks (major side, side, rear).

^b If structure fronts a major side setback, major side setback shall be 35 feet.

(5) Landscape buffer and screening requirements. Unless otherwise noted within this district's requirements, any property within an LRC district which abuts residentially zoned property shall have a minimum 20-foot landscaped screening buffer adjacent to all residentially zoned property, which will be subject to the county landscape architect's approval. Required buffers may be included within required setbacks; however, in such case that the required buffer is greater than the required setback, the required buffer shall be adhered to. Additionally, necessary private utilities and access drives may be allowed through, over or across a landscaped buffer. Any such uses which are proposed through, over or across a designated undisturbed buffer must be approved pursuant to an original site plan or site plan modification as set forth under section 134-126.

a. Objectives. Undisturbed, planted landscape buffers and berms shall be implemented in connection with a permitted project and shall address the following objectives:

1. Screening to enhance aesthetic appeal;
2. Control or direction of vehicular and pedestrian movement;
3. Reduction of glare;
4. Buffering of noise; and
5. Establishment of privacy.

b. Standards. Buffers and berms shall be required when a LRC district is located adjacent to a residential district; a minimum twenty-foot buffer is required.

1. Buffers. Landscape buffers are subject to review and approval by the county arborist or county landscape architect in accordance with the following standards:

- i. Plantings are to be a mix of evergreen trees and shrubs.
- ii. Species are to be ecologically compatible to the site and appropriate for the design situation.
- iii. Unless public safety concerns dictate otherwise, buffers should provide a 100 percent visual barrier to a height of six feet within two years of planting.
- iv. Minimum height of plant materials at installation is five feet for trees and two feet for shrubs.

- v. Fencing or walls are to be a minimum of six feet in height as approved by the county landscape architect or county arborist.
 - vi. Trees included in buffer plantings may be counted toward site density calculations as required by chapter 50, article VI, pertaining to tree preservation and replacement, subject to review and approval of county arborist.
 - vii. Buffers shall be regularly maintained by the property owner to ensure that the objectives and standards set out in this subsection are met.
 - viii. When topography and existing conditions allow, the required 20-foot buffer should be an undisturbed buffer.
 - ix. Any appeals from a determination by the county landscape architect or county arborist shall be to the board of zoning appeals.
2. Berms. Berms are subject to review and approval by the county landscape architect or county arborist in accordance with the following standards:
- i. Berms shall be utilized when consistent with surrounding property features.
 - ii. Berms shall be stabilized.
 - iii. Berms shall be constructed to be consistent with natural or proposed drainage patterns.
 - iv. Berms shall be regularly maintained by the property owner.
- (6) Floodplain and wetlands preservation requirements. Any development must also meet state and federal requirements relating to areas subject to the provisions of section 134-283, regarding mountain and river corridor protection act areas, and section 134-284, regarding metropolitan river protection act areas.
- (7) Building and structure requirements. Maximum building height is 35 feet, with no more than two stories.
- (8) Parking requirements. See section 134-272 for paved parking specifications.
- (9) Lighting requirements. Any project permitted within the LRC district which proposes a lighted facility must have a county department of transportation approved lighting plan in accordance with the minimum conditions listed in section 134-269.
- (10) Special exception uses. See section 134-271 for special exception uses and requirements for all districts. Special exception uses for the LRC district are the uses listed in section 134-271.
- (11) Use limitations.

- a. Maximum floor area ratio is 5,000 square feet per acre.
- b. All structures located within the LRC district shall be appropriately scaled in relation to the transitional nature of the immediate area.
- c. No business establishment shall occupy more than 5,000 square feet of gross floor area, except that either one drugstore or one hardware store may occupy up to 10,000 square feet of gross floor area, or a food store may occupy up to 35,000 square feet of gross floor area provided that the acreage is sufficient so as not to exceed the maximum floor area ratio.
- d. All refuse and designated recycling collection location facilities must be contained within completely enclosed facilities.
- e. No overnight parking of commercial vehicles is permitted, except for mini-vans or cars.
- f. It is found and declared that outside storage on properties within unincorporated Cobb County is a health risk and undesirable in that it provides harborage for rodents and insects, lowers property values, and constitutes a public nuisance; therefore, no outside storage or permanent outside display is permitted, unless otherwise allowed in this article. Within the LRC district, outside storage shall not include commercial vehicles used for a permitted use. Outside storage shall include any automobiles or vehicles that are being repaired or serviced in conjunction with a permitted use.
- g. No laboratories or clinics are permitted.
- h. No drive-through facilities are permitted unless specifically permitted and located under the main roof of a shopping center with at least two other retail uses.
- i. No uses that emit noxious odors, fumes or sounds are permitted.
- j. No adult entertainment uses are permitted.
- k. No outside runs are permitted with any veterinary office use permitted within this district.
- l. No loading docks or facilities may be located in the front of any primary structure.
- m. Maximum impervious surfaces (80 percent—RAC, 70 percent—CAC and NAC) shall be established within activity centers as identified by the Cobb County Comprehensive Plan, as may be amended from time to time.

Required buffers may be included within required setbacks; however, in such case that the required buffer is greater than the required setback, the required buffer

shall be adhered to. Additionally, necessary private utilities and access drives may be allowed through, over or across a landscaped buffer. Any such uses which are proposed through, over or across a designated undisturbed buffer must be approved pursuant to an original site plan or site plan modification as set forth under section 134-126.

- (12) Accessory buildings, structures, uses and decks. Any accessory building or structure in excess of 1,000 square feet of gross space shall be located to the rear of the primary structure and at least 40 feet from any residential property line. Any accessory building or structure which exceeds 1,000 square feet of gross space must have the approval of the division manager of zoning or his designee as to the location, architectural design and size prior to commencing construction. The division manager of zoning or his designee shall consider the following criteria for determining the appropriateness of the architectural design and size of the accessory building or structure: compatibility with the surrounding neighborhood, style of exterior (the exterior is to be compatible in style with the primary structure), use of the proposed accessory structure, impact on adjacent properties, and requirements as deemed appropriate by plan review as set forth in this subsection. All accessory buildings, structures and uses in excess of 1,000 gross square feet shall be required to submit for plan review through the community development department or receive approval from the director of the community development department or his designee. Permitted accessory structures and uses are as follows:
- a. Accessory storage buildings, to include parking garages, subject to the following conditions:
 1. Maximum height is two stories, not to exceed 35 feet.
 2. Such structures shall be located on the same lot as and to the rear of the principal building to which they are accessory.
 3. No accessory building shall be constructed upon a lot until construction of the principal building has commenced.
 4. On a corner lot, no accessory building shall be located closer to the side street right-of-way line than the principal building.
 5. When abutting any other nonresidential district, no garage or other accessory building shall be located closer than five feet to a side or rear lot line.
 6. When an accessory building is attached to the principal building by a breezeway, passageway or similar means, it shall comply with the yard requirements of the principal building to which it is accessory.

7. Where any nonresidential lot adjoins the side or rear of a residential lot, an accessory building shall not be located within any required buffers.
- b. Antennas and satellite dishes, which shall meet the requirements set forth in section 134-274.
- c. Heating and air conditioning units, subject to the following conditions:
 1. When abutting any residential property line, heating and air conditioning units shall not be located within any required buffers.
 2. When abutting any other nonresidential district, no heating and air conditioning units shall be located closer than five feet to a side or rear lot line.
 3. Heating and air conditioning units may be installed on the roof of any structure zoned commercially so long as the heating and air conditioning unit does not exceed the height restrictions stated in this section and the units are placed so as to be hidden from front or side view.
 4. No ground-based heating and air conditioning units shall exceed 35 feet in height.
- d. Incidental storage, provided that the material stored is incidental to the permitted use, as determined by the division manager of zoning or his designee, and stored completely within a portion of the enclosed principal structure permitted within the district, or within a permitted accessory structure.

(Ord. of 10-27-92; Ord. of 7-11-95; Ord. of 6-24-97 (eff. 7-1-97); Ord. of 2-9-99; Ord. of 9-10-02; Ord. of 7-27-04; Ord. of 7-26-05; Amd. of 2-24-15)