

**AUGUST 21, 2018 ZONING HEARING
MOTION TO RESCIND
COMMISSION DISTRICT 3**

PURPOSE

To consider a motion to rescind, consider a new motion, and consider a new vote for a previous action taken July 17, 2018 regarding Z-36 (Edgardo Rivera Aguilera) for the purpose of a single-family house in Land Lot 295 of the 17th District. Located on the east side of Fair Oaks Avenue, south of Austell Road.

BACKGROUND

The original application for rezoning was considered by the Board of Commissioners on July 17, 2018. The Board of Commissioners' deleted the applicant's application to Office Service (OS) by a vote of 3-2 (Cupid and Weatherford opposed). On July 25, 2018, Chairman Boyce announced his intention to make a motion to rescind the action previously taken per the Board of Commissioners' Zoning and Land Use Hearing Procedures. According to the procedures this issue can be addressed at the August 21, 2018 Board of Commissioners' Zoning Hearing. The property has been posted and advertised in the County's legal organ.

RECOMMENDATION

The Board of Commissioners consider a motion to rescind the action taken on July 17, 2018 regarding Z-36 of 2018. If the motion to rescind is adopted, a public hearing is to be conducted, after which a new motion and vote shall be taken by the Board of Commissioners'.

ATTACHMENTS

Board of Commissioners' decision and original Zoning Analysis.

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
JULY 17, 2018
PAGE 13

REGULAR AGENDA (CONT.)

Z-36 **EDGARDO RIVERA AGUILERA** (Edgardo Rivera-Aguilera, owner) requesting Rezoning from **GC and R-20** to **R-20** for the purpose of a Single-Family House in Land Lot 295 of the 17th District. Located on the east side of Fair Oaks Avenue, south of Austell Road.

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


MOTION: Motion by Birrell, second by Ott, to delete Z-36 to the **OS** zoning district, subject to:

1. **Final site plan and landscape plan to be approved by the District Commissioner**
2. **Final approval of the use under OS to be approved by the District Commissioner**
3. **Staff comments and recommendations, *not otherwise in conflict***

VOTE: **ADOPTED** 3-2, Cupid and Weatherford opposed

ADJOURNMENT

The hearing adjourned at 10:31 a.m.



Robin L. Presley, Deputy County Clerk
Cobb County Board of Commissioners



Cobb County Community Development Agency
Zoning Division

1150 Powder Springs St. Marietta, Georgia 30064

Case # Z-36

Public Hearing Dates:

PC: 07-03-18

BOC: 07-17-18

SITE BACKGROUND

Applicant: Edgardo Rivera Aguilera

Phone: (678) 913-7874

Email: rivera.edwin46@yahoo.com

Representative Contact: Edgardo Rivera Aguilera

Phone: (678) 913-7874

Email: rivera.edwin46@yahoo.com

Titleholder: Edgardo Rivera-Aguilera

Property Location: East side of Fair Oaks Avenue,
south of Austell Road

Address: 1279 Fair Oaks Avenue

Access to Property: Fair Oaks Avenue

QUICK FACTS

Commission District: 3-Birrell

Current Zoning: GC (General Commercial) and R-20
(Single-family Residential)

Current use of property: Single-family house

Proposed zoning: R-20

Proposed use: Single-family house

Future Land Use Designation: IC (Industrial
Compatible)

Site Acreage: 0.44 ac

District: 17

Land Lot: 295

Parcel #: 17029500270

Taxes Paid: Yes

FINAL ZONING STAFF RECOMMENDATION:

(Zoning staff member: Donald Wells)

Based on the analysis of this case, Staff recommends **DENIAL**.

Z-36 2018-Aerial Map



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

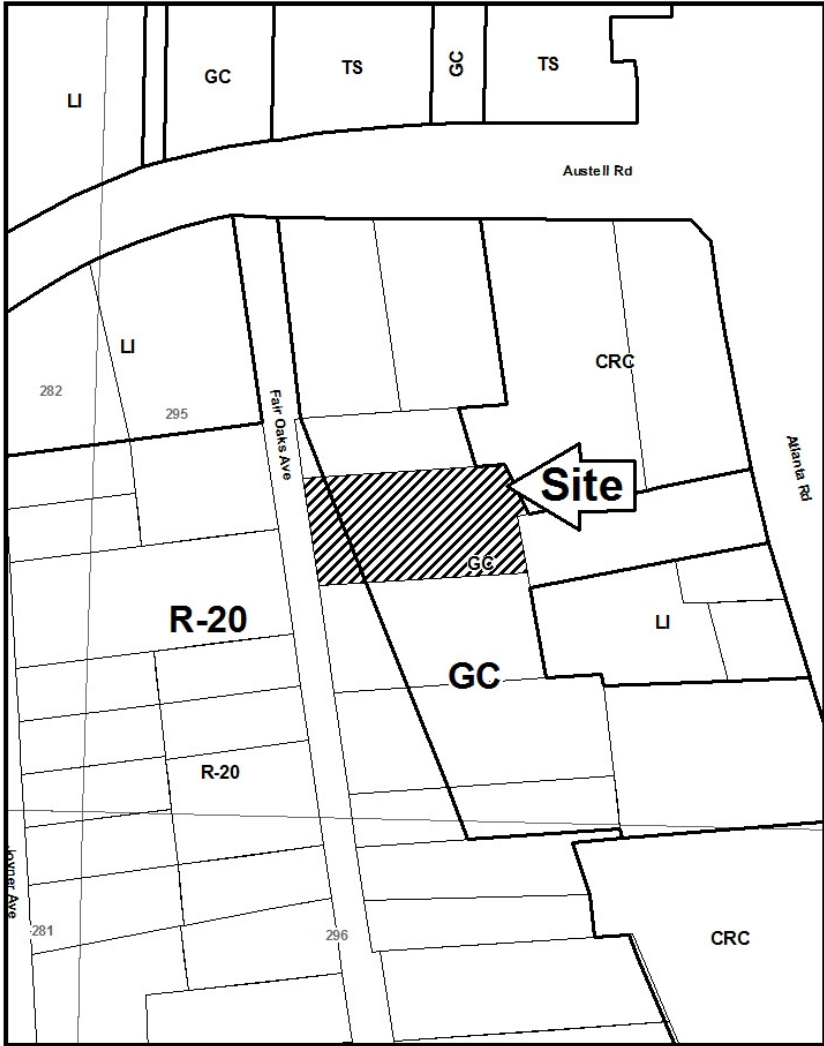
0 100 200 Feet

Land Lot
City Boundary

North

Zoning: GC (General Commercial)/ R-20 (Single Family Residential)
Future Land Use: IC (Industrial Compatible)

Z-36 2018-GIS



WEST

Zoning: R-20 (Single Family Residential)
Future Land Use: IC (Industrial Compatible)

EAST

Zoning: GC (General Commercial)
Future Land Use: IC (Industrial Compatible)

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

0 100 200 Feet

City Boundary
 Zoning Boundary

SOUTH

Zoning: GC (General Commercial)/ R-20 (Single Family Residential)
Future Land Use: IC (Industrial Compatible)

DEPARTMENT COMMENTS- Zoning Division

Current zoning district for the property

The GC district is established to provide locations for retail commercial and service uses which are oriented toward automotive businesses, are land intensive with a need for major road access and visibility, are generally not listed as a permitted uses within the NRC (neighborhood retail commercial) and CRC (community retail commercial) districts or may have existing stipulations and conditions that limit certain intensive uses and are located in areas delineated within a community activity center and regional activity center as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990.

The R-20 district is established to provide locations for single-family residential uses or residentially compatible institutional and recreational uses which are within or on the edge of properties delineated for any residential category as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990. When residentially compatible institutional and recreational uses are developed within the R-20 district, they should be designed and built to ensure intensity and density compatibility with adjacent single-family detached dwellings and otherwise to implement the stated purpose and intent of this chapter.

Requested zoning district for the property

The R-20 district is established to provide locations for single-family residential uses or residentially compatible institutional and recreational uses which are within or on the edge of properties delineated for any residential category as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990. When residentially compatible institutional and recreational uses are developed within the R-20 district, they should be designed and built to ensure intensity and density compatibility with adjacent single-family detached dwellings and otherwise to implement the stated purpose and intent of this chapter.

Summary of the applicant's proposal

The applicant is requesting the R-20 zoning district to build a new house. The property is split zoned with much of the property being zoned GC. The applicant intends to build new house that will be at least 1750 square feet. The property was originally platted in 1924 as two lots, and sometime in the past it was combined into one lot that is just short of meeting the minimum lot size for R-20. Prior to 2011, there was a mobile home on the property for many years.

DEPARTMENT COMMENTS- Zoning Division (continued)

Residential criteria

Allowable units as zoned: 0

Proposed # of units: 1

Net density: 1

Increase of units: 1

Acres of floodplain/wetlands: 0

Impervious surface shown: Maximum will be 35%

Are there any zoning variances?

- Waive the minimum lot size from 20,000 square feet to 19,383 square feet.

DEPARTMENT COMMENTS- Fire Department

No comment.

DEPARTMENT COMMENTS- Site Plan Review (County Arborist)

No comment.

DEPARTMENT COMMENTS- 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.

DEPARTMENT COMMENTS- School System

School	Student Capacity	Student Enrollment	Capacity Status
Fair Oaks ES	875	911	36 over capacity
Griffin MS	1162	1403	241 over capacity
Osborne HS	2062	2119	57 over capacity

COMMENTS

Approval of this petition will cause concern for CCSD, as it will result in an impact on the enrollment for schools already over capacity.

Note: Griffin MS will be relieved of overcrowding with the construction of a new Smyrna area middle school.

DEPARTMENT COMMENTS- Stormwater Management

1. Flood hazard: No
2. Flood hazard zone: Zone X
3. Drainage Basin: Rottenwood Creek
4. Wetlands: No
5. Streambank buffer zone: No
6. Subject to lot plan approval prior to issuance of building permit.

DEPARTMENT COMMENTS- Planning Division

Cobb 2040 Comprehensive Plan: The parcel is within the Industrial Compatible (IC) future land use category. The purpose of the IC category is to provide for areas that can support light industrial, office/warehouse and distribution uses. Typical land uses for these areas include professional business parks and distribution centers.

Comprehensive Plan Designation: Consistent Inconsistent

House Bill 489 Intergovernmental Agreement Zoning Amendment Notification

Is the proposal within one-half mile of a city boundary? Yes No

Was the City notified? Yes No N/A

Specific Area Policy Guidelines: Yes No

Masterplan/ Corridor Study – Atlanta Road Corridor Study Yes No

Design guidelines area? Yes No

Does the proposal plan comply with the design requirements? Yes No N/A

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 for new or existing businesses)

Is the property within an Enterprise Zone? Yes No

(The Smyrna-Osborne 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 investment)

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)

(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)

Note: For more information on incentives, please call the Community Development Agency- Economic Development Division at 770-528-2018 or find information online at www.cobbcounty.org/econdev.

(Planning comments continued on the next page)

DEPARTMENT COMMENTS- Planning Division (continued)

Special District

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

Dobbins Air Reserve Base Zones

Is the property within the Dobbins Airfield Safety Zone? Yes No

Is the property within the Clear Zone (CZ)? Yes No

Is the property within the Accident Potential Zone (APZ I)? Yes No

Is the property within the Accident Potential Zone II (APZ II)? Yes No

Is the property within the Noise Zone? Yes No

Is the property within the Bird/Wildlife Air Strike Hazard Area (BASH)? Yes No

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.

DEPARTMENT COMMENTS- Water and Sewer

Water comments:

Available at development: YES NO

Fire flow test required: YES NO

Size and location of existing water main(s): 6" in Fair Oaks Ave.

Additional water comments: CCWS records show existing water service

Note: These comments only reflect what facilities were in existence at the time of this review. Developer may be required to install/upgrade water mains based on fire flow test results or Fire Department code. This will be addressed in the Plan Review process.

Sewer comments:

In the drainage basin: YES NO

At development: YES NO

Approximate distance to nearest sewer: in Fair Oaks Ave ROW

Estimated waste generation (in G.P.D.): Average daily flow = 160; Peak flow = 400

Treatment plant: South Cobb

Plant capacity: Yes NO

Line capacity: YES NO

Projected plant availability: 0-5 years 5-10 years over 10 years

Dry sewers required: YES NO

Off-site easement required: YES* NO

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

*If off-site easements are required, the developer/owner must submit easements to the CCWS for review and 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/owner.

Additional sewer comments: CCWS records show existing sewer service

Note: The developer/owner will be responsible for connecting to the existing county water and sewer systems, installing and/or upgrading all outfalls & water mains, obtaining onsite and/or offsite easements, and dedication of onsite and/or offsite water and sewer to Cobb County as may be required. Rezoning does not guarantee water/sewer availability or capacity unless so stated in writing by the Cobb County Water System.

DEPARTMENT COMMENTS- Transportation

Roadway	Roadway classification	Speed limit (MPH)	Jurisdictional control	Min. R.O.W. requirements
Fair Oaks Ave	Local	25	Cobb County	50'

Roadway	Location	Average daily trips	Level of service
Fair Oaks Ave	N/A	N/A	N/A

Comments and observations

Fair Oaks Avenue is classified as a local roadway and according to the available information the existing right-of-way does not meet the minimum requirements for this classification.

Recommendations

1. Recommend applicant consider entering into a development agreement pursuant to O.C.G.A. 36-71-13 for dedication of the following system improvements to mitigate traffic concerns: a) donation of right-of-way on the east side of Fair Oaks Avenue, a minimum of 25' from the roadway centerline.
2. Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.
3. If a Land Disturbance Permit is required, recommend applicant submit site details to Cobb DOT for coordination with Cobb County Airport Manager to determine potential need for a FAA study.
4. Recommend driveway on Fair Oaks Avenue be paved with a treated hardened surface for a minimum of 25' from the edge of pavement or to the County right-of-way, whichever is greater in length.

STAFF ANALYSIS

Per section 134-122 of the Official Code of Cobb County, below is a written zoning analysis relating to the following (question in bold; the answer is not bold):

A. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;

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. Properties to the west, south, and north are all single-family homes.

B. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

It is Staff's opinion that the applicant's rezoning proposal will not affect the existing use or usability of nearby properties. The applicant's proposal will be similar in size with nearby residentially zoned properties.

C. Whether the zoning proposal will result in a use which will or could cause an excessive burdensome use of existing streets, transportation facilities, utilities, or schools;

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, or utilities. This opinion can be supported by the departmental comments contained in this analysis. The School Board does have concerns regarding this proposal.

D. Whether the zoning proposal is in conformity with the policies and intent of the comprehensive plan;

It is staff's opinion that the applicant's proposal is not in conformity with the policies and intent of the comprehensive plan which delineates this property to be in the Industrial Compatible (IC) category. The IC category is to provide for areas that can support light industrial, office/warehouse, and distribution uses. Typical land uses for these areas include professional business parks and distribution centers.

STAFF ANALYSIS (Continued)

E. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal;

It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give grounds for denying the applicant's request. The subject property is located in the Dobbins AFB's military airport hazard district, APZ 1 (Accident Potential Zone) and Noise Contour 2. Section 134-275 of the zoning ordinance recommends residential uses are not compatible in this area.

The staff analysis and recommendation 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.

RECEIVED
MAR 15 2018
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION

Application No. Z-36

July 2018

Summary of Intent for Rezoning

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

- a) Proposed unit square-footage(s): 1750 House
- b) Proposed building architecture: _____
- c) List all requested variances: _____

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

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

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

.....
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).

Planning Commission Decision

NO. OPPOSED: _____ APPROVED _____ DENIED _____ DELETED TO _____
NO. IN SUPPORT _____ MOTION BY: _____ SECONDED: _____ VOTE: _____

Names of those Opposed:	Comments:
_____	_____
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Stipulation letter from _____ dated _____
Stipulation letter from _____ dated _____
Stipulation letter from _____ dated _____

Board of Commissioners Decision

NO. OPPOSED: _____ APPROVED _____ DENIED _____ DELETED TO _____
NO. IN SUPPORT _____ MOTION BY: _____ SECONDED: _____ VOTE: _____

Names of those Opposed:	Comments:
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