COBB COUNTY

ZONING APPLICATION Z-39 (2018)

Application of Mableton Center, Inc.

6145 Mableton Pkwy., Mableton, GA 30126

Planning Commission Meeting August 7, 2018

Board of Commissioners’ Meeting August 21, 2018

CONSTITUTIONAL OBJECTIONS

 These constitutional objections are submitted on behalf of the Applicant and all owners (hereafter “Applicant”) of the Property in the above-referenced Rezoning Application and request for two Contemporaneous Variances (herein after collectively called “Application”), and are directed to the governing authority of Cobb County. The intent of this statement is to apprise and place the governing authority of Cobb County on notice that denial of the referenced rezoning Application would be unconstitutional as stated herein, and allowing said governing authority the opportunity to prevent these unconstitutional actions, as well as to respectfully comply with all notice requirements imposed by the Georgia and federal judiciary.

 The Applicant submits that this rezoning Application meets all of the criteria specified in state law and Part I, Chapter 134 of the Official Code of Cobb County, including but not limited to Sections 134-1 et seq., Sections 134-121 - 128, Sections 134-227, et seq.; Sections 134-213, et seq.; Sections 134-272 et seq.; as well as those County ordinance provisions governing the Cobb County Comprehensive Plan (CCP). Any application of the Cobb County Zoning Ordinance or action by the Planning Commission or the Board of Commissioners of Cobb County that would fail to rezone the subject site to the NRC zoning category so as to authorize the use and site plan requested by the applicant on the entire parcel (including the part of the parcel currently zoned GC and the part of the parcel currently zoned R-20) would constitute an abuse of the zoning authority and be unconstitutional, illegal, null and void. The portions of the Cobb County Zoning Ordinance that classify or may classify the subject property exclusively to the existing districts or to any district or classification other than that requested by the Applicant are or would be unconstitutional in that they constitute a destruction of Applicant’s protected property interests and a taking of Applicant’s property in violation of the Just Compensation Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and the Equal Protection and Due Process Clauses of the Georgia Constitution and the Constitution of the United States.

 Denial of this rezoning Application and the continued imposition of the existing districts or any zoning district or classification other than that requested by the Applicant would constitute an abuse of discretion and an arbitrary and capricious act by the governing body of Cobb County without any rational basis in violation of Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. To the extent that the proposed Application is denied because of Cobb County standards and criteria, Applicant contends said standards and criteria are unconstitutionally vague and otherwise unconstitutional in violation of Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

 Denial of the rezoning Application proposed by Applicant as applied to this property would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

 Property restrictions imposed as a part of this rezoning Application process that constitute system improvements within the meaning of the Georgia Development Impact Fee Act would violate the terms of that Act as well as the takings clauses of the State and Federal Constitutions. Further, any rezoning on the subject property that would impose conditions restricting the utilization of the subject site or that do not ameliorate the impact of this project on neighboring properties or for which no substantial nexus exists between the condition(s) and the project would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove, particularly the referenced takings clauses of said State and Federal Constitutions.

 Denial of the rezoning Application proposed by Applicant would be unconstitutional under both the Constitutions of the State of Georgia and the United States and would constitute a violation of the [Religious Freedom Restoration Act](https://en.wikipedia.org/wiki/Religious_Freedom_Restoration_Act) (“RFRA”), a federal law that mandates that religious liberty of individuals can only be limited by the "least restrictive means of furthering a compelling government interest". The denial of the Application would not be the least restrictive means of furthering any compelling government interest that the County may have in this case. As such, a denial of the Application would violate the Applicant’s right to be free from religious discrimination.