

**OCTOBER 16, 2018 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 4**

ITEM OB-052

PURPOSE

To consider a stipulation amendment for ALDI, Inc. regarding rezoning application Z-54 of 2001 for property located at the southeast intersection of Floyd Road and Joseph Club Drive, and on the north side of Patterns Drive in Land Lot 32 of the 17th District (5020 Floyd Road).

BACKGROUND

The subject property was rezoned to NRC in 2001 for an ALDI grocery store subject to many stipulations. The applicant would like to amend the stipulation #10 from Garvis L. Sams, Jr's letter dated May 9, 2001 which prohibits the sale of alcohol. If approved, all previous stipulations not in conflict with this amendment would remain in effect.

STAFF COMMENTS

No comments.

RECOMMENDATION

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

ATTACHMENT

Other Business application.

Application for "Other Business" Cobb County, Georgia

OB-052-2018

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

BOC Hearing Date Requested: 10/16/2018

Applicant: ALDI, Inc. **Phone #:** (706) 387-7700
(applicant's name printed)

Address: 1597 Dry Pond Road, Jefferson, GA 30549 **E-Mail:** Al.Keeler@aldi.us

SAMS, LARKIN, HUFF & BALLI, LLP

by: Garvis L. Sams, Jr.

Address: 376 Powder Springs Street, Suite 100, Marietta, GA 30064

(representative's name, printed)

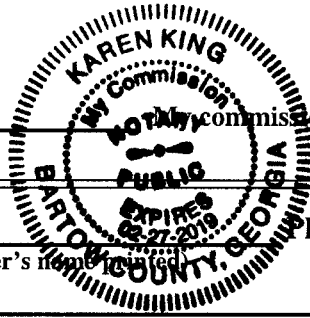
Phone #: (770) 422-7016

E-Mail: gsams@slhb-law.com

(representative's signature)

Signed, sealed and delivered in presence of:

Karen King
Notary Public



My commission expires:

2-27-19

Titleholder(s): See attached **Phone #:** _____
(property owner's name)

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

(Property owner's signature)

Signed, sealed and delivered in presence of:

Notary Public

My commission expires: _____

Commission District: 4 (Cupid) **Zoning Case:** Z-54 of 2001

Size of property in acres: 3.35 acres **Original Date of Hearing:** May 15, 2001

Location: At the southeast intersection of Floyd Road and Joseph Club Drive, north of Patterns Drive
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 32 **District(s):** 17th

State specifically the need or reason(s) for Other Business: To Amend Stipulations to allow Sunday alcohol sales.

(List or attach additional information if needed)

- * Applicant specifically reserves the right to amend any information set forth in this Other Business Application at any time during the Other Business process.

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

WWW.SLHB-LAW.COM

September 11, 2018

VIA HAND DELIVERY

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

Re: Other Business Application of ALDI, Inc. regarding Rezoning Application No. Z-54 of 2001 to Amend Stipulations

Dear John:

I represent ALDI, Inc. concerning the above-captioned Other Business Application. On May 15, 2001, the rezoning of the subject property was approved to the NRC zoning district subject to numerous stipulations and conditions. One of those stipulations included a prohibition disallowing the sale of alcohol. In that regard, ALDI is requesting deletion of that prohibition so that it can apply to the County to allow the sale of alcohol.

Enclosed please find an original Other Business Application which further communicates the underlying foundation and need for the filing of this Other Business Application. Also enclosed are the following:

1. A copy of the May 15, 2001 approved Board of Commissioners' minutes and referenced exhibits with respect to Z-54 of 2001 and a copy of the minutes reflecting the approval of Other Business No. OB-5 in February of this year.
2. A copy of the receipt for payment of 2017 taxes from the Cobb County Tax Commissioner's Office.
3. A check made payable to Cobb County in the sum of \$300.00 representing the application fee. A check for the signage fees will be submitted separately at the time of submission.
4. A Constitutional Challenge.

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

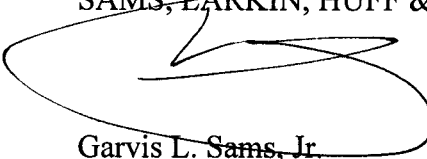
Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
September 11, 2018
Page 2

We are asking that this Other Business Application be heard on the Board of Commissioners' Other Business Agenda which will immediately follow the regularly scheduled Zoning Hearing on October 16, 2018. We will provide notification in writing to all property owners within a thousand feet of the subject property. My staff will handle that notification process and provide your office with a Certificate of Mailing consistent with existing Other Business notification protocols.

Please do not hesitate to contact me should you have any questions whatsoever regarding these matters. With kind regards, I am

Very truly yours,

SAMS, LARKIN, HUFF & BALLI, LLP



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

GLS, Jr./lkj
Enclosures

cc: Mr. Al Keeler, ALDI Inc. (via email)

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

1.

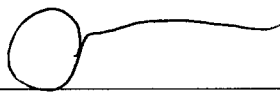
My name is Al Kecker. I am the officer who is delegated the responsibility for authenticating records of *Aldi Inc. (Georgia)*, a Domestic Profit Corporation (the "Titleholder"). I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant's Other Business Application regarding certain real property owned by the Titleholder Company located in Cobb County, Georgia.

2.

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

- (a) That corporate seal or facsimile affixed to the Other Business Application is in fact the seal of *Aldi Inc. (Georgia)*, the sole member of the Titleholder or a true facsimile thereof; and
- (b) That the officer who executed the Other Business Application does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Other Business Application on behalf of the Titleholder, and that the signature of said officer or other representative is genuine; and
- (c) That the execution of the Other Business Application and the filing of the Other Business Application by the Applicant is with the express permission of the Titleholder.

ALDI INC. (GEORGIA)

By:  (CORPORATE SEAL)
Print Name Al Kecker
Its: Director of Real Estate
Title

ATTACHMENT TO APPLICATION FOR OTHER BUSINESS

Application No.: OB- 52
BOC Hearing Date: _____

Applicant: ALDI, INC. JEFFERSON DIVISION
Titleholder(s): ALDI, INC. (GEORGIA)
PIN#: 17003203070

PROPERTY OWNER'S CERTIFICATION

The undersigned(s) below, or as attached, is the owner of the property considered in this application.

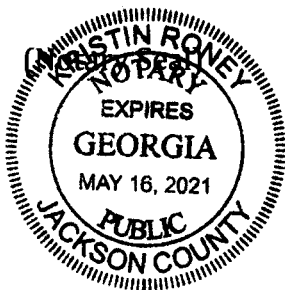
[Signature] 9/10/18
Signature of Owner Date
Title: Director of Real Estate
Printed Name: Al Keeler

Address: 1547 Dry Pond Rd.
Jefferson, GA 30547

Telephone No.: (706) 387-7700

[Signature]
Signature of Notary Public

Date 9/10/18



**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
MAY 15, 2001
PAGE 4**

HELD AND CONTINUED CASES:

- Z-35 Development Company of Georgia, Inc. (Held indefinitely by the Board of Commissioners from their March 20, 2001 hearing)
- Z-48 FVY Development Company, Inc. (Held by the Planning Commission until their June 5, 2001 hearing)
- Z-50 OWF Investments Corporation (Continued by the Planning Commission until their June 5, 2001 hearing)
- Z-53 HBW Development Company, LLC (Continued by the Planning Commission until their June 5, 2001 hearing)
- Z-55 Yonas Bayou (Held by the Planning Commission until their June 5, 2001 hearing)
- Z-58 Mitchell F. Cooke (Held by the Planning Commission until their June 5, 2001 hearing)

REGULAR AGENDA -- NEW BUSINESS:

Rezoning:

- Z-54 ALDI, INC.** (W. C. Barnes and Sibyl Ragan, owners) for Rezoning from R-20 to NRC for the purpose of a Grocery Store and Retail in Land Lot 32 of the 17th District. Located at the southeast intersection of Floyd Road and Joseph Club Drive, north of Patterns Drive.

Due to the number of people present in opposition to this application, the Board of Commissioners agreed to hear Z-54 as the first case on the Regular Agenda. The public hearing was opened and Mr. Garvis Sams, Mr. David Kwon, Mr. Jim Williams and Ms. Cheryl Vinson addressed the Board. Following presentations and discussion, the following motion was made:

MOTION: Motion by W. Thompson, second by J. Thompson, to **approve** rezoning to the NRC zoning district subject to:

- Letter of agreeable stipulations from Mr. Garvis Sams dated May 9, 2001, not otherwise in conflict (copy attached and made a part of these minutes)
- Revised site plan prepared by Stormwater Management Division (copy attached and made a part of these minutes)
- Building to be brick on all sides


**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
MAY 15, 2001
PAGE 5**

Z-54 ALDI, INC. (Continued)

- **Landscape plan to be approved by Staff**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations**
- **Water and Sewer Division comments and recommendations**

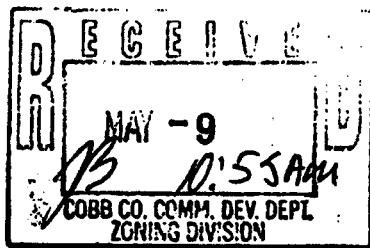
Commissioner Olens asked Commissioner W. Thompson if he would amend his motion to add additional stipulations regarding a deed covenant in greenspace for the buffer along the western property line; and also installation of curbs, gutters, and sidewalks along both sides of Patterns Drive. Commissioner W. Thompson agreed to include the amendments offered by Commissioner Olens. Therefore, the motion is restated to include amendments as follows:

AMENDED MOTION: Motion by W. Thompson, second by J. Thompson, to **approve** Rezoning request to the NRC zoning district subject to:

- 
- **Letter of agreeable stipulations from Mr. Garvis Sams dated May 9, 2001, not otherwise in conflict (copy attached and made a part of these minutes)**
 - **Revised site plan prepared by Stormwater Management Division (copy attached and made a part of these minutes)**
 - **Building to be brick on all sides**
 - **Landscape plan to be approved by Staff**
 - **Stormwater Management Division comments and recommendations**
 - **Cobb DOT comments and recommendations**
 - **Water and Sewer Division comments and recommendations**
 - **Buffer along the western property line to be deed restricted green space in perpetuity**
 - **Installation of curbs, gutters, and sidewalks along both sides of Patterns Drive**

VOTE: **ADOPTED 4-1; Byrne opposed**

~~Z-47 **DIODATI PROPERTIES, LLC. (Massachusetts Mutual Life, owner) for Rezoning from OI to OS for the purpose of an Office/Warehouse in Land Lot 173 of the 20th District. Located at the northwest intersection of Roberts Boulevard and Cobb Place Boulevard. WITHDRAWN WITHOUT PREJUDICE**~~



SAMS & LARKIN
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064

Min. Bk. 17 Petition No. Z-54
Doc. Type Letter of Agreeable
Stipulations
Meeting Date May 15, 2001

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF
M. KYLE GREENE
RICHARD A. HARRAH
OF COUNSEL
DAVID P. HARTIN

May 9, 2001

(770) 422-7016
TELEPHONE
(770) 426-6583
FACSIMILE
SAMSLARKIN@AOL.COM
E-MAIL

VIA HAND DELIVERY

Mr. Edwin L. Thomas, Jr., Planner III
Cobb County Zoning Department
Suite 300
191 Lawrence Street
Marietta, Georgia 30060-1661

Re: Application of ALDI, Inc. to Rezone a 3.35 Acre Tract from R-20 to NRC
(No. Z-54)

Dear Ed:

Enclosed please find five (5) full sized copies of a revised site plan and an 8½ x 11 copy of same concerning the above-captioned application for rezoning. The revisions to the site plan embody the applicant's efforts to address and resolve the issues raised during the context of the meeting before the Cobb County Planning Commission on May 1, 2001. As you know, the application is now scheduled to be heard by the Cobb County Board of Commissioners on May 15, 2001.

With respect to the foregoing, please allow this letter to serve as my clients' expression of agreement with the following stipulations which shall become conditions and a part of the grant of the rezoning, as amended and revised, and binding upon the subject property thereafter. This letter and enclosures supersede all previous submissions concerning this application:

1. Rezoning of the subject property shall be from R-20 to NRC specifically for purposes of an ALDI grocery store.
2. The hours of operations shall be from 9:00 A.M. until 9:00 P.M., Monday through Saturday with the store being closed on Sundays.

VIA HAND DELIVERY

Mr. Edwin L. Thomas, Jr., Planner III
Cobb County Zoning Department
Page 2
May 9, 2001

3. Architectural style shall be brick on all sides and consistent with the architectural renderings and photographs provided to staff during the pendency of the application.
4. Landscaping for the proposed development shall be pursuant to a specific landscape plan which shall be submitted during the Plan Review process and which shall be subject to staff and the Arborist's review and approval, including the following:
 - a. A 70' buffer along the western property line which shall remain undisturbed with the exception of required grading and utility installation. Those areas disturbed shall be re-landscaped. Existing trees shall remain in the buffer and same shall be enhanced (where needed) with Leyland Cypress trees, Crepe Myrtle, Willow Oaks, Red Maple, Burford Holly and a 6' wooden screen fence.
 - b. Installation of extensive landscaping along the subject property's frontages on Joseph Club Drive and Patterns Drive, respectively.
 - c. The landscaped areas shall be well kept with trees, foliage and other vegetation and regularly maintained by the applicant and/or its successors in title.
 - d. Grass planted within the landscaped areas or otherwise shall be sod.
 - e. Dumpsters shall be incorporated into the landscape plan and shall be screened on at least three (3) sides consistent with the architectural theme and composition as aforementioned. All dumpsters shall have rubber lids and bumpers to minimize noise or, in lieu of dumpsters, the applicant or its successors in title may utilize at-grade trash compaction facilities which also shall be screened.
 - f. HVAC and mechanical systems shall be incorporated into the landscape plan and screened from view or, in the alternative, situated on the roof of the building (which will be a maximum of 22.5 feet in height) and screened from view.
 - g. The areas between those sections of the subject property reserved for required parking, as well as public rights of way, shall be included in the final landscape plan and shall be landscaped in a manner consistent with the landscape plan provided to staff and the Arborist during Plan Review.

Petition No. 2-54
Meeting Date May 15, 2001
Continued

VIA HAND DELIVERY

Mr. Edwin L. Thomas, Jr., Planner III
Cobb County Zoning Department
Page 3
May 9, 2001

5. Subject to recommendations from the Stormwater Management Division with respect to the ultimate location and configuration of detention facilities on the site.
 - a. Exercising sensitivity with respect to all Erosion and Sediment Control Ordinance requirements and Clean Water Act provisions including an agreement that stormwater stored on the site shall not be released at a rate exceeding pre-development stormwater flows.
 - b. Undertaking appropriate measures recommended by the Stormwater Management Division in order to preserve and protect downstream properties and any lakes and streams located thereon.
 - c. Controlling site stormwater discharge so as not to exceed the capacity of downstream stormwater systems and in order to minimize stormwater runoff.
 - d. Detention area shall be landscaped and fenced in accordance with landscape plan submitted during Plan Review.
6. Compliance with all Cobb County Development Standards and Ordinances related to project improvements, except as otherwise approved by the Board of Commissioners.
7. Subject to Cobb County Department of Transportation's recommendations, including the following:
 - a. Alignment of the Floyd Road access with the commercial driveway across Floyd Road.
 - b. The installation of a 150' deceleration lane with a 50' taper at the Floyd Road access.
 - c. No access to Joseph Club Drive and only one (1) point of access on Patterns Drive.
 - d. The installation of curb, gutter and sidewalk along the subject property's frontages on Floyd Road, Patterns Drive and Joseph Club Drive.

VIA HAND DELIVERY

Mr. Edwin L. Thomas, Jr., Planner III
Cobb County Zoning Department
Page 4
May 9, 2001

- e. An agreement to upgrade traffic signalization at the intersection of Floyd Road and Patterns Drive.
 - f. Entering into a Development Agreement, pursuant to O.C.G.A. §36-71-13, for the dedication of the foregoing system improvements.
 - g. It is the applicant's understanding that DOT will not require the additional voluntary conveyance of right-of-way.
8. Proposed lighting will be wedge series, with cut-off luminaire down-facing heads and high pressure sodium, 400 watt bulbs. Any and all pole lights within the premises shall be no higher than 30'.
9. Utilization of ground based, monument style signage consistent with the architectural theme and composition as aforementioned. There shall be no flashing sign components or the exterior illumination of any signs by remote floodlighting. Additionally, applicant shall construct and erect replacement signage for the Patterns Condominiums and shall replace and enhance vegetation and plantings.
- 10. There shall be no outside storage, no food preparation and the sale of alcohol and tobacco products shall be prohibited.

As you know, the subject property is located within the confines of a Neighborhood Activity Center (NAC). In that regard and with respect to the efforts which my clients have exerted in order to provide stipulations/conditions which insure a successful development and the protection of nearby residences, we submit to you that the rezoning proposal is appropriate from a land use planning perspective.

VIA HAND DELIVERY

Mr. Edwin L. Thomas, Jr., Planner III
Cobb County Zoning Department
Page 5
May 9, 2001

Please do not hesitate to call should you or the staff require any further information or documentation.

Very truly yours,

SAMS & LARKIN, LLP



Garvis L. Sams, Jr.

GLSjr/jbmc
Enclosures

cc: Members, Cobb County Board of Commissioners - VIA Hand Delivery - w/enclosure
Ms. Malinda Bradley, Assistant County Clerk - VIA Hand Delivery - w/enclosure
David Y. Kwon, Esquire - w/enclosure
Mr. David Nickamp - w/enclosure
Mr. Kirk Buttle, Trammell Crow Co. - w/enclosure

Min. Bk. 84 Petition No. 0.B.5
Doc. Type letter
Meeting Date 2-20-18



February 14, 2018

Cobb County Board of Commissioners
100 Cherokee Street
Marietta, GA 30090

Re: OB 005 ALDI Inc.

Dear Mr. Chairman and Commissioners:

On behalf of the Mableton Improvement Coalition, based upon the attached elevations (revision dated January 25, 2018), we recommend approval of this application with the following two stipulations discussed and agreed to by the applicant's representative, Mr. Keeler.

1. ALDI will incorporate into their regular landscape maintenance plan their property, sidewalks, and right of way along Joseph Club Dr. and Patterns Dr. This includes cleaning up this area and the removal of invasive weeds and trash. While the balance of ALDI property is well maintained, these two small areas leading into adjoining neighborhoods have been overlooked and the subject of numerous code enforcement complaints through the years. We appreciate Mr. Keeler agreeing to this condition.
2. Revision of hours of operation to 9:00a.m. to 9:00 p.m. seven days a week. The prior zoning (Z-54 2001) stipulated no Sunday operation, but ALDI has been open on Sundays for many years without issues.

We are pleased to see ALDI thrive in our community and look forward to the updated look from this expansion. As always, thank you for the opportunity to be a part of this public comment process. If you have any questions, please feel free to contact me at 770 948-5394.

Sincerely,

Robin Meyer
Chairman of the Board

cc: John Pederson, Cobb County Zoning Division Manager
Robin Presley, Deputy County Clerk
MIC Board of Directors and Zoning Committee
Al Keeler, ALDI Representative

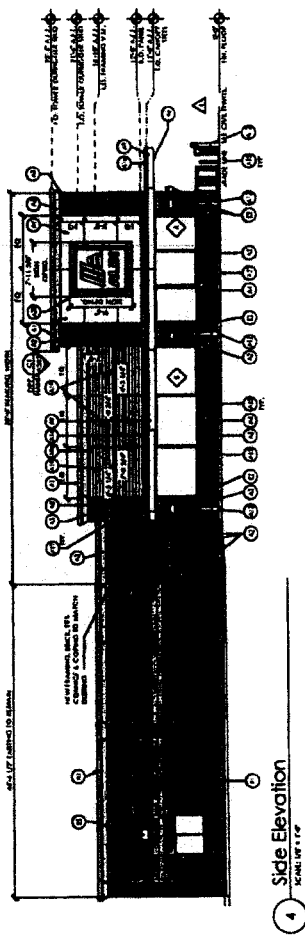
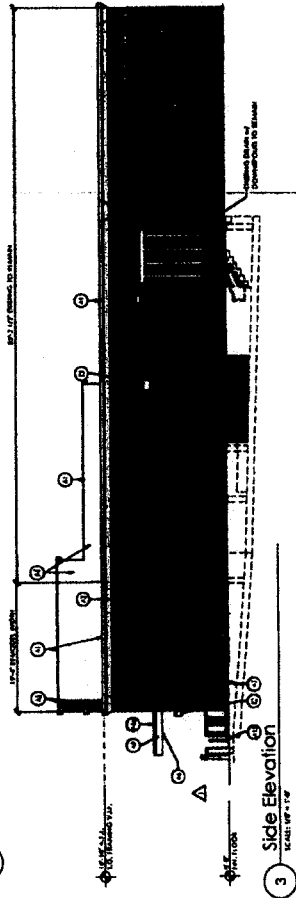
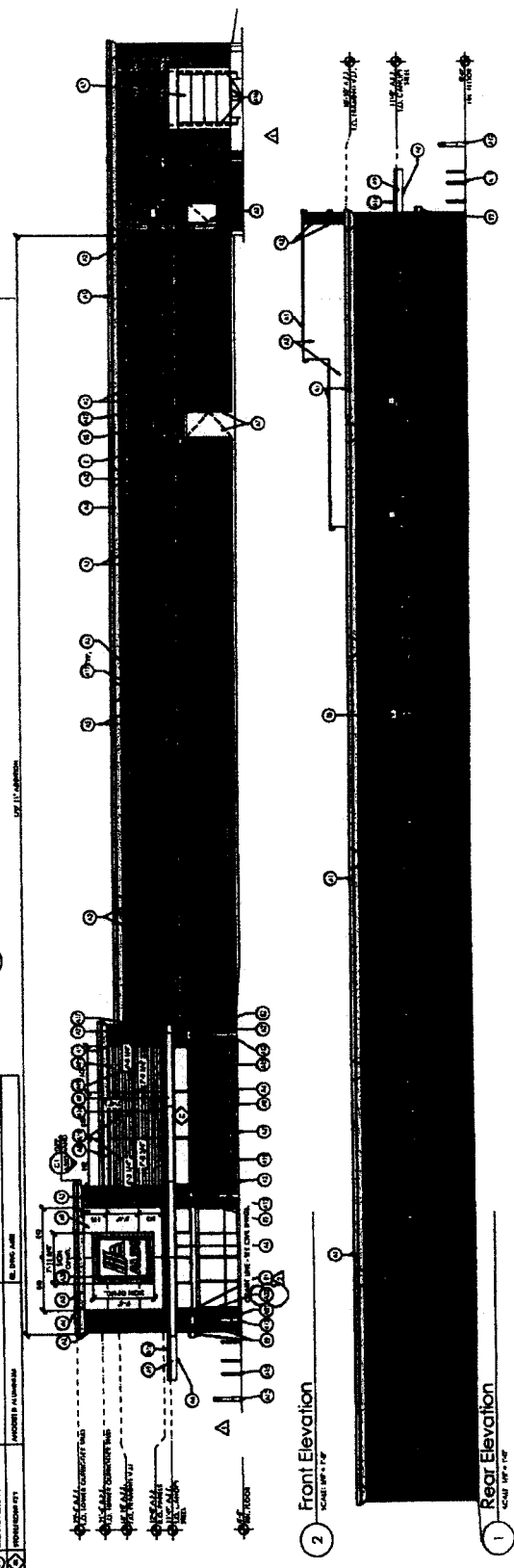
Mableton Improvement Coalition P.O. Box 491 Mableton, GA 30126 www.mableton.org
MIC is a nonprofit, nonpartisan organization and does not endorse political parties or candidates.

Petition No. 0.8-5
 Meeting Date 2-26-18
 Continued

101-A-V

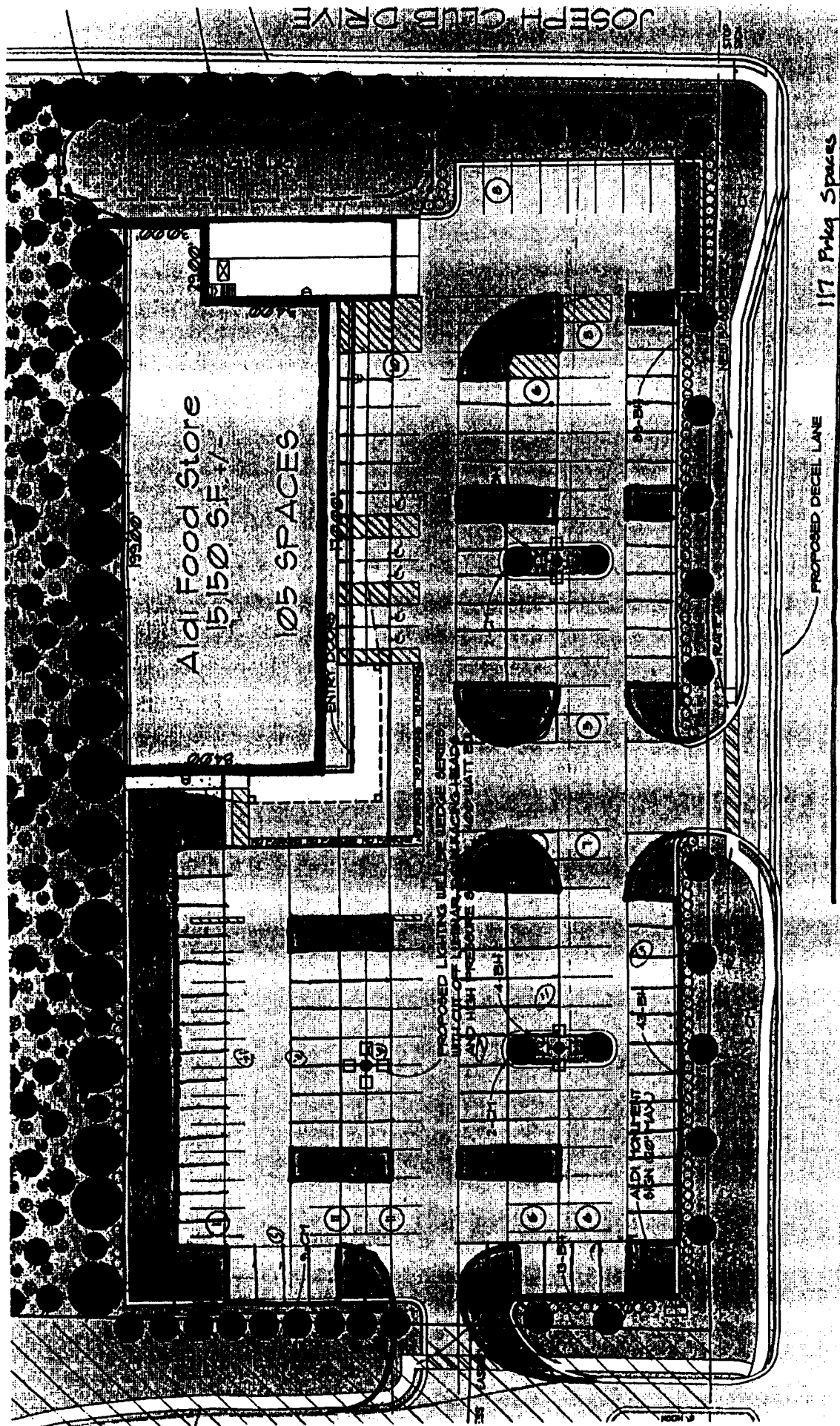
NO. 101-A-V
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ALDI FOOD STORE # 69
 6020 Floyd Rd. SW
 Marietta, GA 30126



DESCRIPTION	QUANTITY	UNIT	ESTIMATED
CONCRETE	7	YD	100
STEEL	1	TON	100
WOOD	1	CU YD	100
PAINT	1	1000 GAL	100

NO.	DESCRIPTION	QUANTITY	UNIT	ESTIMATED
1	CONCRETE	7	YD	100
2	STEEL	1	TON	100
3	WOOD	1	CU YD	100
4	PAINT	1	1000 GAL	100
5	GLASS	1	SQ YD	100
6	BRICK	1	1000	100
7	ROOFING	1	SQ YD	100
8	MECHANICAL	1	UNIT	100
9	ELECTRICAL	1	UNIT	100
10	PLUMBING	1	UNIT	100
11	LANDSCAPE	1	UNIT	100
12	INTERIOR FINISH	1	SQ YD	100
13	EXTERIOR FINISH	1	SQ YD	100
14	MECHANICAL	1	UNIT	100
15	ELECTRICAL	1	UNIT	100
16	PLUMBING	1	UNIT	100
17	LANDSCAPE	1	UNIT	100
18	INTERIOR FINISH	1	SQ YD	100
19	EXTERIOR FINISH	1	SQ YD	100
20	MECHANICAL	1	UNIT	100
21	ELECTRICAL	1	UNIT	100
22	PLUMBING	1	UNIT	100
23	LANDSCAPE	1	UNIT	100
24	INTERIOR FINISH	1	SQ YD	100
25	EXTERIOR FINISH	1	SQ YD	100
26	MECHANICAL	1	UNIT	100
27	ELECTRICAL	1	UNIT	100
28	PLUMBING	1	UNIT	100
29	LANDSCAPE	1	UNIT	100
30	INTERIOR FINISH	1	SQ YD	100
31	EXTERIOR FINISH	1	SQ YD	100
32	MECHANICAL	1	UNIT	100
33	ELECTRICAL	1	UNIT	100
34	PLUMBING	1	UNIT	100
35	LANDSCAPE	1	UNIT	100
36	INTERIOR FINISH	1	SQ YD	100
37	EXTERIOR FINISH	1	SQ YD	100
38	MECHANICAL	1	UNIT	100
39	ELECTRICAL	1	UNIT	100
40	PLUMBING	1	UNIT	100
41	LANDSCAPE	1	UNIT	100
42	INTERIOR FINISH	1	SQ YD	100
43	EXTERIOR FINISH	1	SQ YD	100
44	MECHANICAL	1	UNIT	100
45	ELECTRICAL	1	UNIT	100
46	PLUMBING	1	UNIT	100
47	LANDSCAPE	1	UNIT	100
48	INTERIOR FINISH	1	SQ YD	100
49	EXTERIOR FINISH	1	SQ YD	100
50	MECHANICAL	1	UNIT	100



SR 139 FLOYD ROAD

Min. Bt. 17 Petition No. Z-54
 Doc. Type Revised Site Plan
 Meeting Date May 15, 2001

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
FEBRUARY 20, 2018
PAGE 6**

CONSENT AGENDA (CONT.)

LUP-1 **SHIRLEY STREETMAN** (Paul Lamar Streetman, owner) requesting a **Land Use Permit (Renewal)** for the purpose of a Beauty Shop in Land Lot 236 of the 17th District. Located on the east side of Woodview Drive, south of Church Road.

To **approve** LUP-1 for **24 months**, subject to:

- 1. No on-street parking**
- 2. Customers by appointment only**
- 3. No employees**
- 4. No signs**

O.B. 5 To consider a site plan amendment for ALDI, Inc. regarding rezoning application Z-54 of 2001 for property located at the southeast intersection of Floyd Road and Joseph Club Drive, in Land Lot 32 of the 17th District.

To **approve** O.B. 5, subject to:

- 1. Proposed site plan contained in the Other Business packet, with the District Commissioner approving minor modifications (attached and made a part of these minutes)**
- 2. Letter of agreeable conditions from the Mableton Improvement Coalition dated February 14, 2018, (attached and made a part of these minutes)**
- 3. Stormwater Management Division comments and recommendations**
- 4. All previous stipulations and conditions, *not otherwise in conflict*, to remain in effect**

O.B. 8 To consider amending the zoning stipulations for Black Builders, LLC regarding rezoning application Z-33 of 2013 (Blake Properties, Inc.), for property located on the west side of West Sandtown Road, southwest of Dallas Highway in Land Lots 22 & 23 of the 19th District, and Land Lots 331 & 332 of the 20th District.

To **approve** O.B. 8, subject to:

- 1. Reversion date extended to August 20, 2019**
- 2. All previous stipulations and conditions, *not otherwise in conflict*, to remain in effect**

CONSENT VOTE: ADOPTED 5-0



Printed: 9/7/2018

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
ALDI INC

ALDI INC JEFFERSON DIVISION

Payment Date: 9/29/2017

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2017	17003203070	10/15/2017	Pay: N/A or	\$0.00

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$22,541.27	\$0.00



Scan this code with your mobile phone to view this bill!

J.C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

After recording, return to
Paul M. McLarty, Jr.
McLarty, Robinson & Van Voorhies
150 E. Ponce de Leon Avenue, Suite 330
Decatur, GA 30030 (404-377-6464)

14.00

LIMITED WARRANTY DEED

STATE OF GEORGIA
COUNTY OF DEKALB

THIS INDENTURE, made the 10th day of October in the year two thousand one (2001) between W. C. BARNES and SIBYL M. RAGAN, as Trustee of the Sibyl M. Ragan Revocable Trust dated July 30, 1992, of the County of Cobb and State of Georgia, as parties of the first part, hereinafter called GRANTOR, and ALDI INC. (GEORGIA), a Georgia corporation, as party of the second part, hereinafter called GRANTEE (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATIONS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, its successors or assigns, the following described property, to-wit: ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 32 of the 17th District, 2nd Section of Cobb County, Georgia, being more particularly described on Exhibit A attached hereto and made a part hereof.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

THE FOREGOING is hereby made subject to Grantor's reservation of the right to enforce the following restrictions as to that portion of the transferred property more particularly described on Exhibit "C" attached hereto (the "Buffer Zone"). The Buffer Zone shall remain undisturbed with the exception of required grading and utility installation. Those areas of the Buffer Zone disturbed shall be re-landscaped. Existing trees shall remain in the Buffer Zone and same shall be enhanced (where needed) with Leyland Cypress trees, Crepe Myrtle, Willow Oaks, Red Maple, Burford Holly and a six foot (6") wooden screen fence, all to the extent required by the Cobb County, Georgia Board of Commissioners. To the extent the foregoing restrictions are not required by the Cobb County, Georgia Board of Commissioners, such restrictions shall cease to burden the Buffer Zone. Nothing herein shall prevent Grantor, or their successors or assigns, from permanently disturbing the Buffer Zone for the construction of improvements therein if required by any governmental agency, or in order to comply with governmental codes or regulations, or to promote the welfare, benefit, or life safety of the public. Nothing herein shall prevent Grantor, or their successors or assigns, from properly maintaining the Buffer Zone.

THIS CONVEYANCE is subject to the matters set forth on Exhibit B attached hereto and made a part hereof.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons claiming by through or under Grantor.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered
in the presence of:

Katherine Sney
Unofficial Witness
Paul M. McLarty, Jr.
Notary Public

W.C. Barnes (SEAL)
W. C. BARNES

Sibyl M. Ragan, Jr. (SEAL)
SIBYL M. RAGAN, as Trustee of the Sibyl M. Ragan Revocable Trust dated July 30, 1992

My commission expires

(R:\DCX\MWV\1751410-170)



EXHIBIT A

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 32 of the 17th District, 2nd Section of Cobb County, Georgia, being more particularly described as follows:

BEGINNING at a five-eighths-inch rebar set on the western right-of-way line of SR 139 Floyd Road (having a 100-foot right-of-way width) at its intersection with the southern right-of-way line of Joseph Club Drive (having a 50-foot right-of-way width); run thence in a southeasterly direction along the western right-of-way line of said SR 139 Floyd Road, the following courses and distances: South 00 degrees 16 minutes 15 seconds East, a distance of 91.68 feet to a five-eighths-inch rebar set; along the arc of a 37,372.58-foot radius curve an arc distance of 292.41 feet to a five-eighths-inch rebar set (said arc being subtended by a chord lying to the east thereof, bearing South 01 degree 13 minutes 14 seconds East, and having a length of 292.41 feet); and South 02 degrees 10 minutes 14 seconds East, a distance of 135.07 feet to a five-eighths-inch rebar set; thence, leaving the right-of-way line of said SR 139 Floyd Road, run North 89 degrees 29 minutes 25 seconds West along property now or formerly owned by W. C. Barnes and Sybil (sic) Ragan, a distance of 282.05 feet to a five-eighths-inch rebar set; run thence North 01 degree 35 minutes 31 seconds West, along property now or formerly known as The Patterns Condominiums and along Lot 1, Duncan Heights, a distance of 515.09 feet to a one-quarter-inch rebar found on the southern right-of-way line of Joseph Club Drive; thence North 89 degrees 40 minutes 43 seconds East, along the southern right-of-way line of said Joseph Club Drive, a distance of 284.57 feet to the five-eighths-inch rebar set on the western right-of-way line of SR 139 Floyd Road and the **Point of Beginning**.

The above-described property, containing 3.343 acres, is more particularly shown on and is described according to that certain ALTA/ACSM Land Title Survey for Aldi, Inc., Georgia, prepared by James R. Freeland, Georgia Registered Land Surveyor No. 2221, Freeland & Associates, Inc., dated January 25, 2001, last revised October 9, 2001, said survey being incorporated herein by reference.

EXHIBIT B

PERMITTED ENCUMBRANCES

1. All taxes subsequent to the year 2001.
2. Easement contained in Warranty Deed from W.C. Barnes and O. L. Ragan to Horne & Associates, Inc., a Georgia corporation, dated November 10, 1972, recorded in Deed Book 1366, Page 702, Cobb County, Georgia records; and corrected by Corrective Warranty Deed dated December 28, 1973, recorded in Deed Book 1489, page 169, aforesaid records.
3. Grant of Water Easements in favor of Cobb County, a political subdivision of the State of Georgia, as follow:
 - a. from W. C. Barnes, dated May 1, 1995, recorded in Deed Book 8915, page 232, aforesaid records;
 - b. from Sibyl M. Ragan, dated May 8, 1995, recorded in Deed Book 8915, page 229; and
 - c. from Sibyl M. Ragan, dated May 8, 1995, recorded in Deed Book 8915, page 245, aforesaid records.
4. Easements contained in Right-of-Way Deed from W.C. Barnes and Sibyl M. Ragan, as Trustee of the Sybil M. Ragan Revocable Trust, to Cobb County, Georgia, dated April 26, 1999, recorded in Deed Book 13301, page 2974, aforesaid records.
5. Sanitary Sewer Easement from W.C. Barnes and O. L.. Reagan (sic) to Cobb County, a political subdivision of the State of Georgia, dated May 3, 1973, recorded in Deed Book 1475, page 273, aforesaid records.
6. ALTA/ACSM Land Title Survey for Aldi Inc. Georgia, prepared by James Ralph Freeland, Georgia Registered Land Surveyor No. 2221, Freeland & Associates, Inc., dated January 25, 2001, last revised October 9, 2001, reveals the following:
 - a. forty-foot building setback line along SR 139 Floyd Road;
 - b. thirty-five-foot side and rear building setback lines;
 - c. water easement located in southeastern corner of subject property (being the same as that recorded in Deed Book 8915, Page 232, aforesaid records);
 - d. sanitary sewer line with manhole traversing southern portion of subject property;
 - e. light poles, spigots, irrigation control valves, water pit and electric meter located in southern portion of subject property;
 - f. underground electric, underground telephone, underground television and overhead electric lines traversing southern portion of subject property;
 - g. Patterns Drive (Private) traversing southern portion of subject property; and
 - h. deed restricted area located in western portion of subject property.
7. Rights of others for ingress and egress purposes in and to the use of Patterns Drive (Private) located on subject property.

EXHIBIT C

BUFFER ZONE

All that tract or parcel of land lying and being in Land Lot 32, 17th District, 2nd Section of Cobb County, Georgia, being more particularly described as follows:

Commencing at an iron pin set (5/8" rebar) located at the intersection of the western right-of-way of SR 139 - Floyd Road (100' right-of-way) and the southern right-of-way of Joseph Club Drive (50' right-of-way); thence along said southern right-of-way of Joseph Club Drive S 89-40-43 W for 236.56 feet to a point being the POINT OF BEGINNING; thence leaving said right-of-way along lines running through the Aldi Inc. (Georgia) Tract the following courses and distances: S 01-35-31 E for 250.54 feet to a point; thence N 88-24-29 E for 26.50 feet to a point; thence S 01-35-31 E for 186.22 feet to a point on the line of the northern side of an 80' Access Easement (Deed Book 1489, page 169); thence along said northern side of said Access Easement N 89-29-01 W for 74.55 feet to an iron pin found (3/4" crimp top pipe); thence leaving said Access Easement along the common line of The Patterns Condominiums (Tax Map Parcel 32-17) and Lot 1 of Duncan Heights Subdivision (Plat Book 78, page 155) N 01-35-31 W for 435.09 feet to a point on the southern right-of-way of Joseph Club Drive; thence along said right-of-way N 89-40-43 E for 48.01 feet to a point being the Point of Beginning. Said easement contains 0.593 acres or 25,821 square feet more or less.

TO THE COBB COUNTY BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA

CONSTITUTIONAL CHALLENGE

COMES NOW, ALDI, INC., hereinafter referred to as the "Applicant", and for themselves and/or acting on behalf of the Owners, asserts the following, to wit:

1.

By application to which this exhibit relates, Applicant has applied for an Other Business Item regarding certain real property lying and being in Cobb County, Georgia, a more particular description and delineation of the subject property, hereinafter referred to as the "Property", being set forth in said Application.

2.

The Application seeks approval of an Other Business Application by the governing authority of Cobb County, Georgia to amend the stipulations pertaining to a Rezoning; Application No. Z-54 of 2001 (ALDI, Inc.).

3.

The current zoning stipulations/conditions are unconstitutional in that they deprive the Applicants under and pursuant to Article 1, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States. This deprivation of property rights without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.


The zoning conditions/stipulations as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing conditions and stipulations do not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said requirements are unconstitutional in that they are arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The Cobb County Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with Other Business Applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 11TH day of September 2018.



SAMS, LARKIN, HUFF & BALLI, LLP

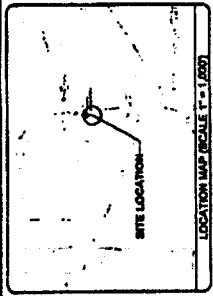
By: 
GARVIS L. SAMS, JR.
Attorney for Applicants
Ga. Bar No. 623950

SAMS, LARKIN, HUFF
& BALLI, LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
SUITE 100
376 POWDER SPRINGS ST.
MARIETTA, GA 30064
770.422.7016

08005
Proposed

34th Pk. 84 Petition No. 085
Doc. Type Proposed Site Plan
Meeting Date 2-20-18

Date: _____ Sheet: _____ of _____ Title: _____ Author: _____ Date: _____		PROJECT NO: _____ DATE: _____ DRAWN BY: _____ CHECKED BY: _____		ALDI Inc. 17200 Highway 100 Grand Prairie, TX 75050	PROPOSED EXPANSION ALDI STORE #69 528 FLOYD ROAD SW MARLBTON, GA 30148	Project Name & Location SITE PLAN	Drawing Name: Date: 4/12/17 Project No.: Scale: C-4.0 Drawing By: MGS Scale: 1"=50'
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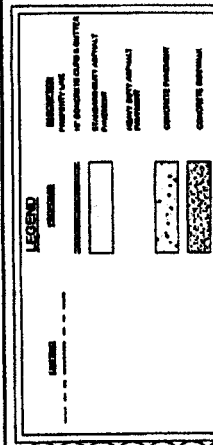


GENERAL SITE NOTES

1. THE PLANNED ALDI EXPANSION STORE #69 IS LOCATED ON THE EAST SIDE OF FLOYD ROAD SW, MARLBTON, GA, BETWEEN PATTERNS DRIVE AND JOSEPH CLUB DRIVE.
2. THE PROPOSED STORE #69 IS A 20,000 SQ. FT. STORE WITH A DRIVE-THRU WINDOW.
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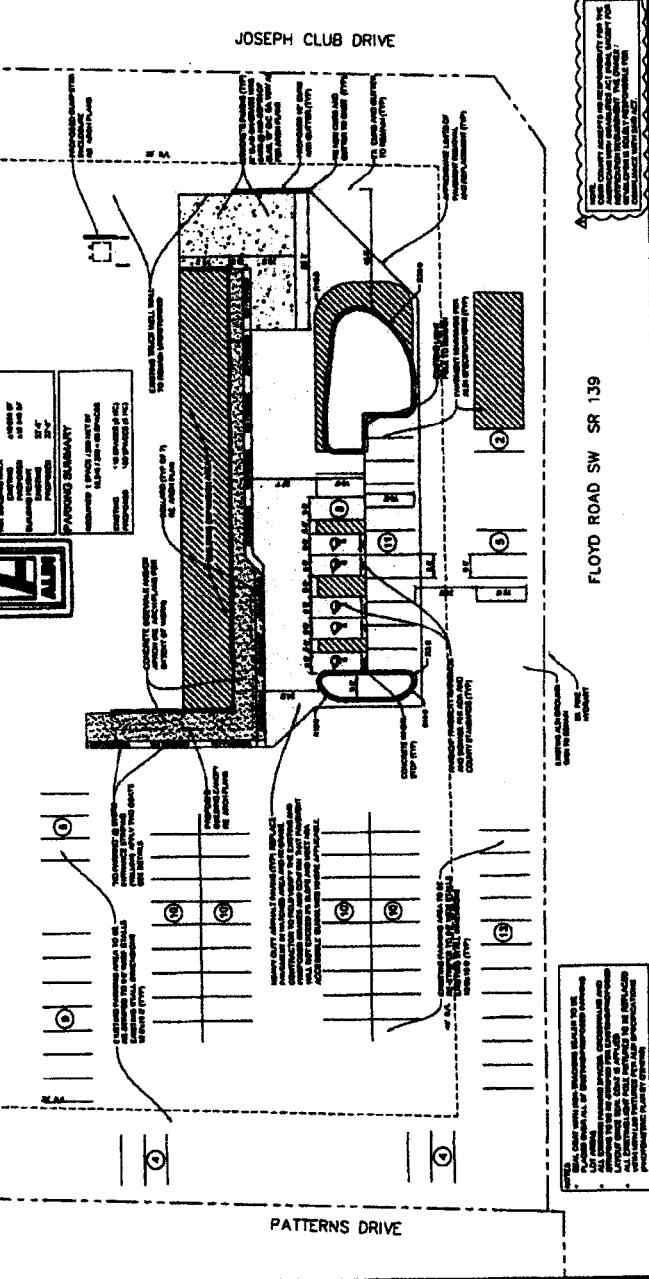


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