

DECEMBER 18, 2018 ZONING HEARING

“OTHER BUSINESS”

COMMISSION DISTRICT 3

ITEM 071

PURPOSE

To consider a site plan and stipulation amendment for Mt. Bethel Christian Academy, Inc. regarding case SLUP-11 (Mt. Bethel United Methodist Church, Inc.) of 2013. The property is located on the north side of Post Oak Tritt Road, west of Holly Springs Road, in Land Lots 599, 600, 625 and 626 of the 16th District.

BACKGROUND

The subject property was approved for a Special Land Use Permit to operate a private school in 2013. The applicant came back to the Board of Commissioners via Other Business in May 2017 to add a temporary classroom. The applicant has been refining the future plans for the property and finds that an amendment to the site plan and stipulations is necessary in order to allow the school campus to grow. The applicant would like to revise the site plan to allow for a more efficient parking lot/drive aisle layout, move the athletic field, and to reposition some buildings. The applicant would also like to amend the stipulations to allow the athletic field to be lighted with permanent seating. The applicant has submitted a letter dated November 12, 2018 that gives more specifics about the proposed amendment. If approved, all previous stipulations would remain in effect.

STAFF COMMENTS

Cobb County Stormwater Management: Subject to Plan Review comments and approval of revised site plan.

Cobb DOT: 1) Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements; and 2) Recommend applicant confirm campus 625 student maximum and traffic control plans from 2013 do not require revision with proposed site plan changes.

RECOMMENDATION

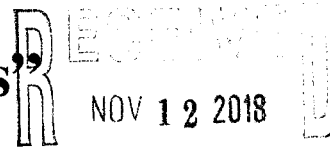
The Board of Commissioners conduct a Public Hearing and consider the proposed site plan and stipulation amendment.

ATTACHMENTS

Other Business application and stipulations.

Application for "Other Business" Cobb County, Georgia

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



OB-071-2018

BOC Hearing Date Requested: December 18, 2018

Applicant: Mt. Bethel Christian Academy, Inc. **Phone #:** (678) 576-5912
(applicant's name printed)

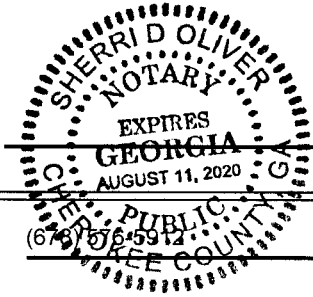
Address: 2509 Post Oak Tritt Road, Marietta, Georgia 30062 **E-Mail:** Trey.holder@thgcpa.net

James N. Ney (Holt Ney Zatzoff & Wasserman, LLP) **Address:** 100 Galleria Parkway, Suite 1800, Atlanta, Georgia 30339
(representative's name, printed)

James N. Ney **Phone #:** (770) 956-9600 **E-Mail:** jney@hnzw.com
(representative's signature)

Signed, sealed and delivered in presence of:

Sherrid Oliver **My commission expires:** _____
Notary Public



Titleholder(s): Mt. Bethel Christian Academy, Inc. **Phone #:** (678) 576-5912
(property owner's name printed)

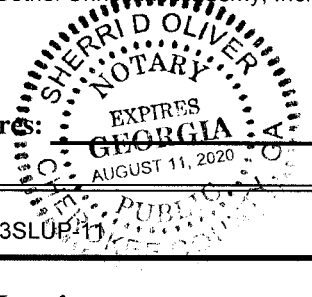
Address: 2509 Post Oak Tritt Road, Marietta, Georgia 30062 **E-Mail:** Trey.holder@thgcpa.net

Mt. Bethel Christian Academy, Inc.

By: BTM, Fin. Chair BOT MBLA
(Property owner's signature) Trey Holder, Finance Chair of the Board of Trustees of Mt. Bethel Christian Academy, Inc.

Signed, sealed and delivered in presence of:

Sherrid Oliver **My commission expires:** _____
Notary Public



Commission District: District 3 **Zoning Case:** 2013SLUP11

Size of property in acres: +/- 33 acres **Original Date of Hearing:** November 19, 2013

Location: 2509 Post Oak Tritt Road, Marietta, Georgia 30062 (intersection of Post Oak Tritt Road and Holly Springs Road)
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 599, 600, 625 and 626 **District(s):** 16th, 2nd Section

State specifically the need or reason(s) for Other Business: See attached letter of intent

(List or attach additional information if needed)

HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5947

TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

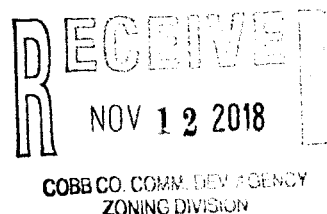
James M. Ney
e-mail jney@hnzw.com

Ryan C. Pulley
e-mail rpulley@hnzw.com

November 12, 2018

BY HAND DELIVERY

Mr. John Pederson
Zoning Division Manager
Community Development – Zoning Division
Cobb County, Georgia
1150 Powder Springs Street, Suite 400
Marietta, Georgia 30064



Re: Application for “Other Business,” Cobb County, Georgia (the “*Application*”), by Mt. Bethel Christian Academy, Inc. (the “*Applicant*”) to Amend the 2013 SLUP-11 (the “*Property*”)

LETTER OF INTENT

Mr. Pederson:

This law firm has the pleasure of representing the Applicant with respect to the Application. The Applicant respectfully submits for your consideration the Application, the approval of which will allow the Applicant to reconfigure, adjust or re-plan the current improvements pursuant to a new site plan and result in the removal of certain conditions imposed on the Property by the 2013 SLUP-11 (the “*Special Use Permit*”), pertaining to the multipurpose track and field that the Applicant intends to develop on the Property and other rather minor changes as shown on the “Proposed Site Plan” defined herein.

Background

The Property is an approximately 33.255-acre tract zoned R-20, subject to the Special Use Permit, which fronts on the north side of Post Oak Tritt Road. The properties adjoining the northern and eastern boundaries of the Property are zoned R-20. The properties adjoining the western boundary of the Property are zoned R-15/OSC. The properties adjoining the southern boundary of the Property are zoned a combination of R-15 and RA-4. The majority of properties in the surrounding area are also zoned a combination of R-20, R-15 and RA-4. The Applicant developed and operates the Property as a private, not-for-profit high school pursuant to the Special Use Permit. Applicant opened the high school on the Property in 2014, which now serves approximately 150 students in grades 9-12 (the “*High School*”). Accordingly, the Property is currently improved with a number of facilities relating to the High School’s operation, including

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November 12, 2018
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a pool, a pool house, classroom building, a temporary modular classroom building, gymnasium, maintenance building and an office building, totaling approximately 46,750 square feet. In addition to the aforementioned buildings, a baseball field, tennis courts and a pool have been developed.

When the Property was acquired in 2013, the Board of Commissioners approved the Special Use Permit, which allows the Applicant to develop the Property pursuant to that certain Site Plan – Phase-2 for Mt. Bethel Christian Academy Upper School, prepared by Tracy Carusi, Georgia Registered Architect No. 6617, dated August 29, 2013, last revised October 15, 2013 (the “**Approved Site Plan**”), a copy of which is enclosed with the Application. The Approved Site Plan provides for 225,400 square feet of improvements. An “Other Business” Application was submitted by the Applicant in early 2017 to allow the installation of a 5,300 square foot temporary modular classroom building on the Property, increasing the current approved footprint to 230,700 square feet. While the Approved Site Plan would allow the Applicant to further develop the High School, the Approved Site Plan fails to utilize the approximately 33.224 acre tract in an efficient manner, resulting in a great deal of unusable space on the already-small tract. In addition, the Special Use Permit allows for the development of a multipurpose field on the Property, but the Special Use Permit restricts the use of the field by prohibiting lights and permanent seating, both of which are critical elements for a High School athletic field. Accordingly, the Applicant is requesting an amendment to the Special Use Permit to allow the Applicant to reconfigure the development in a more efficient and safe manner pursuant to the new site plan enclosed with the Application (the “**Proposed Site Plan**”) dated November 10, 2018, and develop a multipurpose field with lighting and permanent seating suitable for a competitive high school in our wonderful County.

“Other Business” Request - Amendments to the Special Use Permit

As stated, Applicant desires to amend the Special Use Permit to (i) replace the Approved Site Plan with the Proposed Site Plan to make a more efficient use of the Property, and (ii) to remove the prohibitions that would prevent the multipurpose field from containing lighting and permanent seating.

The Proposed Site Plan is based on an estimated 5 to 10 years of occupancy of the Property and expansion of the High School, similar to the expansion planned under the Approved Site Plan. Under the Proposed Site Plan, the Applicant would re-orient several of the buildings and uses of buildings on the Property and would rotate the multipurpose field clockwise so that it is parallel to the northern boundary of the Property; the majority of the structures will be confined to the interior of the Property. The configuration shown in the Proposed Site Plan allows the Applicant to utilize more space on the Property, including the north side, while maintaining all buffers and setback requirements currently imposed on the Property as well as the

HOLT NEY ZATCOFF & WASSERMAN, LLP

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significant vegetation surrounding the Property. The Proposed Site Plan would also allow the Applicant to increase the parking by 32 parking spaces, which is needed to accommodate the current capacity of students, faculty and staff. While the Proposed Site Plan may appear different than the Approved Site Plan, the changes are in fact de minimis. As shown on the Proposed Site Plan, the Applicant contemplates 222,250 square feet of improvements as opposed to the approximately 230,700 square feet approved in the Approved Site Plan (including the subsequent approval of the temporary modular classroom). This makes clear that the Applicant does not desire to increase the capacity of the High School from what was contemplated in the Approved Site Plan, but rather to create a more efficient layout for the current students.

By the passage of this request, this Proposed Site Plan shall be approved and applicable to this Property.

The Applicant seeks only to modify and amend those remaining conditions that were shown and agreed to in the Special Use Permit as it has been amended, by this Letter of Intent and the "Proposed Site Plan" dated November 10, 2018, prepared on behalf of Mt. Bethel Christian Academy, by Walden, Ashworth & Associates, Inc.

Aside from replacing the Approved Site Plan with the Proposed Site Plan, the Applicant desires to amend the Special Use Permit to remove the conditions on the Property that prohibit the multipurpose field from being developed with lights and permanent seating. Since the High School opened in 2014, it has received generous restricted donations, which such donations are restricted to funding the development of a quality multipurpose field that is compatible with fields used by other high schools in the County. One element of this restriction is ensuring that the new multipurpose field contains lights and permanent seating so that soccer, lacrosse, track and other sports competitions may be held at the High School. The Applicant recognizes that the utilization of lights and seating, and the hosting of various competitions, does bring healthier sports, activities and competitions to the site, but the Applicant does not foresee any harm to come to the neighboring properties and will take great efforts to ensure that the multipurpose field will be a reasonable and non-injurious addition. The Applicant is obtaining an extensive light study to ensure that the light will not harm surrounding properties, a copy of which will be provided to the County prior to the December 18, 2018, hearing. Due to the results of the light study and the 85' buffer, the Applicant believes that the restrictions limiting lighting and seating can be removed from the Special Use Permit without harm to the neighbors. The Applicant does not seek to modify the remaining conditions set forth in the Special Use Permit that would otherwise not conflict with this Application.

By replacing the Approved Site Plan with the Proposed Site Plan the requirements of the Proposed Site Plan become the applicable requirements, as the layout of the items may be

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changed or adjusted to allow for better planning and flow without dramatically increasing or modifying the quantity and use of the site.

We have enclosed a check in the amount of \$300.00 for the Application fee and a check in the amount of \$30.00 for sign posting fees. Also enclosed in connection with the Application are the following:

1. The Proposed Site Plan;
2. A copy of the tax receipt reflecting the exempt status of the Property from the Cobb County Tax Assessor's website;
3. Copies of the Board's November 19, 2013 minutes and Applicants zoning conditions letter dated November 11, 2013, reflecting the approval of the Special Use Permit including, without limitation, approval of OB-57 (2014) and OB-18 (2017) (which contains copies of the Approved Site Plan); and
4. A copy of the proposed notice to neighbors.

The Application meets and exceeds the minimum requirements of the Cobb County Zoning Ordinance.¹ We respectfully request the approval of this Application at the Board of

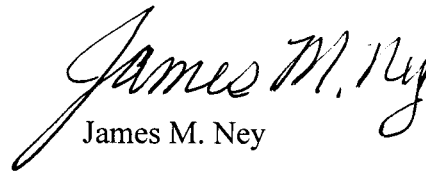
¹ Mt. Bethel notifies Cobb County of its constitutional concerns. If the Board denies the Application in whole or in part, then the Property does not have a reasonable economic use under the Zoning Ordinance. The Application meets the test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power. See Guhl vs. Holcomb Bridge Road, 238 Ga. 322 (1977). If the Board denies the Application in whole or in part, such an action will deprive Mt. Bethel and Owner of the ability to use the Property in accordance with its highest and best use. Similarly, if the Board limits its approval of the amendment to the SLUP by attaching conditions thereto affecting any portion of the Property or the use thereof, either of such actions being taken without Mt. Bethel's consent, then such action would deprive Mt. Bethel and Owner of any reasonable use and development of the Property. Any such action is unconstitutional and will result in a taking of property rights in violation of the just compensation clause of the Constitution of the State of Georgia (*see Ga. Const. 1983, Art. I, § 3, para. 1(a)*), and the just compensation clause of the Fifth Amendment to the United States Constitution (*see U.S. Const. Amend. 5*). To the extent that the Zoning Ordinance allows such an action by the Board, the Zoning Ordinance is unconstitutional. Any such denial or conditional approval would discriminate between Mt. Bethel and Owner and owners of similarly situated property in an arbitrary, capricious, unreasonable and unconstitutional manner in violation of Article I, Section I, Paragraph 2 of the Georgia Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Finally, a denial or a conditional approval of the Application (with conditions not expressly approved by Mt. Bethel) would constitute a gross abuse of discretion and an unconstitutional violation Mt. Bethel's rights to substantive and procedural due process as guaranteed by the Georgia Constitution (*see Ga. Const. 1983, Art. I, § 1, para. 1*) and the Fifth and Fourteenth Amendments of the United States Constitution (*see U.S. Const. Amend. 5 and 14*). Mt. Bethel further challenges the constitutionality and enforceability of the Zoning Ordinance for lack of objective standards, guidelines or criteria limiting the Board's discretion in deciding applications for the amendment to the SLUP.


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Mr. John Pederson
Zoning Division Manager
November 12, 2018
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Commissioner's December 18, 2018 hearing. We are happy to answer any questions or provide any information that the Zoning Division or the Board of Commissioners may have with regard to the Application.

Sincerely,


James M. Ney


Ryan C. Pulley

Enclosures

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
NOVEMBER 19, 2013
PAGE 10

REGULAR CASES (CONT.)

LUP-32 CHANDRA L. YATES (CONT.)

- Occupants to park vehicles only on hardened surface of the driveway
- No on-street parking
- Any further verified code complaints would accelerate enforcement to 30 days from the date of the violation

VOTE: ~~ADOPTED~~ 4-0, Chairman Lee absent

A recess was taken from 10:40 a.m. until 10:47 a.m.

Commissioner Ott announced that he would recuse himself from SLUP-11, due to his affiliation with Mt. Bethel United Methodist Church, Inc.

SLUP-11 MT. BETHEL UNITED METHODIST CHURCH, INC. (Atlanta Jewish Community Center, Inc., owner) requesting a **Special Land Use Permit** for the purpose of a Private School in Land Lots 599, 600, 625 and 626 of the 16th District. Located on the north side of Post Oak Tritt Road, west of Holly Springs Road (2509 Post Oak Tritt Road).

The public hearing was opened and Mr. Jim Callis and Ms. Ellen Smith addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Goreham, to approve Special Land Use Permit **subject to**:

- *Revised Phase I and Phase II site plans dated 10/15/13, with the District Commissioner approving minor modifications (attached and made a part of these minutes)*
- *Traffic flow plans (Phase I and Phase II) received by the Zoning Division September 25, 2013, with the District Commissioner approving minor modifications (attached and made a part of these minutes)*
- *Statement of proposed site improvements dated September 3, 2013 (attached and made a part of these minutes)*
- *Letter of agreeable conditions from Ms. Ellen W. Smith dated November 4, 2013 (attached and made a part of these minutes) with the following changes:*

**MINUTES OF ZONING HEARING
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REGULAR CASES (CONT.)

SLUP-11 MT. BETHEL UNITED METHODIST CHURCH, INC. (CONT.)

- **Item No. 7 – amend to read: “... on any day of the week, or before 7:00 a.m. on weekdays and before 9:00 a.m. on Saturdays and Sundays.”**
- **Item No. 11 – amend second sentence to read: “For purposes of this paragraph, any modifications that increase density or intensity of the proposed uses; reduce the size or composition of an approved buffer....”**
- **Letter of agreeable conditions from Ms. Ellen W. Smith dated November 11, 2013 (attached and made a part of these minutes)**
- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations**

VOTE: ADOPTED 3-0-1, Chairman Lee absent, Commissioner Ott recused himself

OTHER BUSINESS

O.B. 1 To consider correcting the zoning hearing minutes relating to 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 331 and 332 of the 20th District.

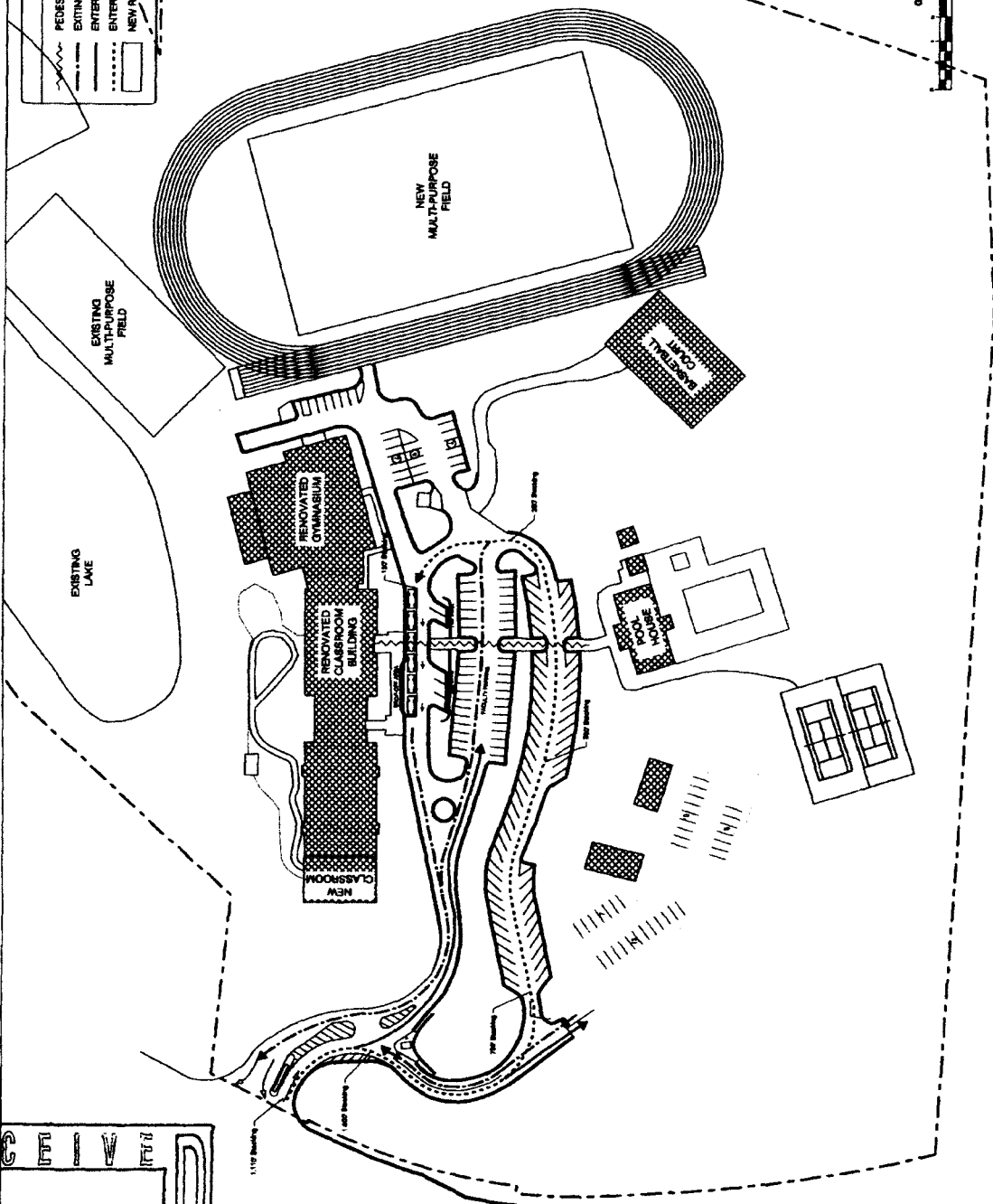
Mr. Pederson provided information regarding the correction of zoning hearing minutes for Z-33 of 2013. The public hearing was opened and Mr. Bruce Goodman and Ms. Keli Gambriel addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Goreham, second by Ott, to approve Other Business Item No. 1 for correction of zoning hearing minutes regarding 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 331 and 332 of the 20th District **subject to:**

Min. Bk. 70 Petition No. SLUP-11
 Doc. Type traffic flow plan
Phase 1
 Meeting Date 11/19/13

LEGEND

- PEDESTRIAN ROUTE
- EXITING ROUTE
- ENTER PARKING ROUTE
- ENTER (PICK-UP / DROP-OFF) ROUTE
- NEW ROADWAY



RECEIVED

SEP 25 2013

COBB CO. COMM. DEV. AGENCY
 ZONING DIVISION

Min. Bk. 70 Petition No. SLUP-11
Doc. Type statement of
proposed improvements
Meeting Date 11/19/13

HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800
ATLANTA, GEORGIA 30339-5947

TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

James M. Ney, P.C.
e-mail jney@hnzw.com

Ellen W. Smith
e-mail esmith@hnzw.com

September 3, 2013

BY HAND DELIVERY

Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street, Suite 400
Marietta, Georgia 30064

Re: Application for Special Land Use Permit, Cobb County, Georgia by Mt. Bethel United Methodist Church, Inc. for private school (the "*Application*") on the property now known as the Marcus Community Center at 2509 Post Oak Tritt Road, Marietta, Georgia (the "*Property*")

STATEMENT OF PROPOSED SITE IMPROVEMENTS

Ladies and Gentlemen:

This law firm has the pleasure of representing Mt. Bethel United Methodist Church, Inc. (the "*Mt. Bethel*"), with respect to the Application. Mt. Bethel respectfully submits for your consideration the Application, the approval of which will result in the County's issuance of a special land use permit ("*SLUP*") to allow the Property to be used for a private school.

Background - The Property

The Property, which has been owned and operated by the Marcus Jewish Community Center of Atlanta, Inc. (the "*JCC*") since 1986 ("*Owner*"), is an approximately 33.255-acre tract zoned R-20, which fronts on the north side of Post Oak Tritt Road. The JCC holds a special land use permit for the purpose of a Jewish community center, which was originally granted pursuant to Application No. 357, heard November 18, 1986, and which has been amended several times in the almost thirty years since its original approval. The majority of the adjacent properties are zoned R-20, although there are several neighborhoods to the south of the Property zoned R-15 OSC and RA-4.

Currently, the Property is improved with an approximately 21,000 square foot classroom building, an approximately 14,000 square foot gymnasium, covered basketball courts, an approximately 4,000 square foot pool and an outdoor pool, tennis courts, a lighted baseball field and other existing structures more particularly shown on the survey of the Property submitted with this Application. The Property is served by one large driveway from Post Oak Tritt Road.

Although the JCC discontinued classroom use of the Property several years ago, it continues to use the gymnasium and playing fields on a regular basis. The Property has been marketed for sale for

HOLT NEY ZATCOFF & WASSERMAN, LLP

Zoning Division
Community Development Agency
Cobb County, Georgia
September 3, 2013
Page 2

Petition No. SLUP-11
Meeting Date 11/19/13
Continued

approximately 2 years. The JCC and Mt. Bethel have entered into a sales contract pursuant to which Mt. Bethel has the right to seek a special land use permit application for a private school and to acquire the Property upon the terms and conditions of the parties' sales contract. Mt. Bethel's proposed private school is a permitted use for the Property, upon issuance of the requested SLUP.

Mt. Bethel's Proposed SLUP

Mt. Bethel's currently owns and will continue to operate on its approximately 44-acre campus in East Cobb at 4385 Lower Roswell Road. Mt. Bethel has served the church and community needs at this location since 1971 and in this portion of Cobb County for over 100 years. Since 1998, Mt. Bethel has operated the Mt. Bethel Christian Academy (the "*Academy*") on its existing church campus. Specifically, on August 21, 1998, the Academy opened with two kindergarten classes. The Academy now serves approximately 500 students in grades Kindergarten through Eighth. The Academy enjoys full dual accreditation through the Southern Association of Independent Schools (SAIS) and Southern Association of Colleges and Schools (SACS).

For a number of years, Mt. Bethel has been committed to expanding its educational outreach by offering high school grades Nine through Twelve, and it is committed to doing so in Cobb County. To that end, Mt. Bethel has been looking for an appropriately sized tract of land that would support an Academy High School. The Property provides an excellent opportunity for this expansion.

Mt. Bethel proposes to operate the Academy's High School on the Property with minimal initial site improvements, and Mt. Bethel has engaged the architectural firm of Collins Cooper Carusi to assist in its site planning and renovations. Specifically, as shown on the Phase I Site Plan enclosed, Mt. Bethel is proposing the following additional improvements: (i) an approximately 4,000 square foot addition to the existing classroom building (with interior renovations as well), (ii) an approximately 2,000 square foot addition to the existing gymnasium building, (iii) a slightly widened driveway, new parking, and (iv) a new multi-purpose field. Mt. Bethel anticipates that these Phase I improvements would serve the Academy's High School for several years, as students matriculate from its existing Eighth Grade and the High School builds its reputation and student population.

Mt. Bethel also is submitting for consideration and approval a Phase II Site Plan, based on an estimated 5 to 10 years of occupancy of the Property and expansion of the Academy's High School. As shown on the Phase II Site Plan, Mt. Bethel would re-orient several of the buildings and uses of buildings on the Property. As shown on the enclosed Phase II Site Plan, all buffers and setback requirements would be maintained, as well as significant vegetation surrounding the Property, with the bulk of structures remaining to the interior of the Property.

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Zoning Division
Community Development Agency
Cobb County, Georgia
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Petition No. SLUP-11
Meeting Date 11/19/13
Continued

Zoning Requirements

Chapter 134 of the Official Code of Cobb County, Georgia, as the same is amended from time to time (such Chapter being the “*Zoning Ordinance*”), and specifically, Section 134-271(7) thereof, sets forth the zoning requirements applicable to SLUP applications for private schools on property within the County. In satisfaction of these requirements, and in addition to this Statement, Mt. Bethel submits the following documents for the Division’s review:

1. Application for Special Land Use Permit, Cobb County Georgia, including the requisite corporate authorization of Owner;
2. Copies of the Property warranty deeds to Owner;
3. Metes and Bounds legal descriptions of Property and Site;
4. Copy of the paid tax receipt for the Property¹;
5. Zoning Standards Analysis (addressing SLUP considerations);
6. Site Plans (5 full sized copies; 2 copies measuring 8 ½ x 11);
7. Survey;
8. Consent of Contiguous Occupants or Land Owners²;
9. Application Fee (\$1,000.00); and
10. Sign Deposit and Fees (\$318.00).

Mt. Bethel’s Application meets and exceeds the minimum requirements of Section 134-271(7) of the Zoning Ordinance. Furthermore, Mt. Bethel is seeking no concurrent variance requests in connection with the Application.

¹Note: the JCC is a tax-exempt entity as is Mt. Bethel. The tax status of the Property will not change.

²Mt. Bethel understands that Cobb County requires applicants seeking special land use permits to discuss the proposed use with the contiguous neighbors and to seek their consent to the proposed use. On Thursday, August 29, 2013, one of Mt. Bethel’s members visited all contiguous property owners and attempted to obtain their consent on the petition to accompany this Application. The results of that initial outreach attempt are enclosed. Mt. Bethel will continue to contact these neighbors, and Mt. Bethel will also notify in writing all property owners within a 1,000-foot radius of the subject property as shown on the most current tax records. Such notice will be accomplished by mailing a copy of the Application form and proposed site plans by first class mail. Mt. Bethel will then file with the Zoning Division of Cobb County a certificate of mailing from the United States Post Office.

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Zoning Division
Community Development Agency
Cobb County, Georgia
September 3, 2013
Page 4

Petition No. SLUP-11
Meeting Date 11/19/13
Continued

The Application and the accompanying documents support Mt. Bethel's request for the Academy High School SLUP and comply with all Cobb County zoning requirements.³ The Owner and Mt. Bethel respectfully request that the Division recommend the approval of the Application to the Board for consideration at the next available public hearing.

We are happy to answer any questions or provide any information that the Division, its consultant or the Board may have with regard to the Application.

Sincerely,


James M. Ney

Ellen W. Smith

JMN/EWS/ews
Enclosures

³ Mt. Bethel notifies Cobb County of its constitutional concerns. If the Board denies the Application in whole or in part, then the Property does not have a reasonable economic use under the Zoning Ordinance. The Application meets the test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power. See Guhl vs. Holcomb Bridge Road, 238 Ga. 322 (1977). If the Board denies the Application in whole or in part, such an action will deprive Mt. Bethel and Owner of the ability to use the Property in accordance with its highest and best use. Similarly, if the Board limits its approval of the SLUP by attaching conditions thereto affecting any portion of the Property or the use thereof, either of such actions being taken without Mt. Bethel's consent, then such action would deprive Mt. Bethel and Owner of any reasonable use and development of the Property. Any such action is unconstitutional and will result in a taking of property rights in violation of the just compensation clause of the Constitution of the State of Georgia (see Ga. Const. 1983, Art. I, § 3, para. 1(a)), and the just compensation clause of the Fifth Amendment to the United States Constitution (see U.S. Const. Amend. 5). To the extent that the Zoning Ordinance allows such an action by the Board, the Zoning Ordinance is unconstitutional. Any such denial or conditional approval would discriminate between Mt. Bethel and Owner and owners of similarly situated property in an arbitrary, capricious, unreasonable and unconstitutional manner in violation of Article I, Section I, Paragraph 2 of the Georgia Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Finally, a denial or a conditional approval of the Application (with conditions not expressly approved by Mt. Bethel) would constitute a gross abuse of discretion and an unconstitutional violation Mt. Bethel's rights to substantive and procedural due process as guaranteed by the Georgia Constitution (see Ga. Const. 1983, Art. I, § 1, para. 1) and the Fifth and Fourteenth Amendments of the United States Constitution (see U.S. Const. Amend. 5 and 14). Mt. Bethel further challenges the constitutionality and enforceability of the Zoning Ordinance for lack of objective standards, guidelines or criteria limiting the Board's discretion in deciding applications for SLUP.

HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

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Ellen W. Smith
e-mail esmith@hnzw.com

November 4, 2013

BY HAND DELIVERY

Mr. Jason Campbell
Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street
Suite 400
Marietta, Georgia 30064

Min. Bk. 70 Petition No. SLUP-11
Doc. Type letter of agreeable
conditions
Meeting Date 11/19/13

RECEIVED
NOV 19 2013
COURT CLERK
COURT CLERK

Re: Application for Special Land Use Permit No. SLUP-11 by Mt. Bethel United Methodist Church, Inc. for private school (the "Application")

CONDITIONS TO APPLICATION

Dear Jason:

As you know, this law firm has the pleasure of representing Mt. Bethel¹ with respect to the Application. Mt. Bethel hereby submits the following proposed zoning conditions with respect to the Application. If Mt. Bethel's Application is approved by the Board of Commissioners, as requested, Mt. Bethel agrees to comply with the following conditions:

1. SLUP #11 shall be conditioned generally upon the Phase I and Phase II site plans prepared by Collins Cooper Carusi, dated August 29, 2013, last revised October 15, 2013, and filed with Cobb County on October 24, 2013 (collectively, the "Site Plans").
2. The 85-foot and 65-foot buffers shown on the Site Plans along the northern and northwestern property lines adjacent to properties fronting on Alberta Drive shall be maintained for so long as those properties adjacent to such northern property line but fronting on Alberta Drive are (i) used for single-family residences or (ii) are owned by a party other than Mt. Bethel. Once the conditions of (i) or (ii) are satisfied, then notwithstanding condition #1 above or this condition, such buffers shall be reduced to 35-feet.
3. With respect to traffic and parking related issues:
 - a. Mt. Bethel shall provide, when and as necessary between the hours of 7:00 a.m. to 8:30 a.m., a traffic officer to direct and facilitate traffic ingress and egress to and from the Property.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Summary of Intent submitted with the Application.

HOLT NEY ZATCOFF & WASSERMAN, LLP

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- b. Mt. Bethel shall provide, when and as necessary, bi-directional shuttles to and from the Property to its campus at 4385 Lower Roswell Road, Marietta, Georgia, in an effort to mitigate traffic impacts during the academic year.
4. The new multi-purpose field with surrounding track shall not be lighted. There shall be no stadium (meaning no permanent, fixed seating) constructed in connection with such multi-purpose field.
5. Any new lighting which Mt. Bethel installs either as replacement lighting for existing lighted playing fields, parking or otherwise, or as new lighting in connection with new improvements shown on the Site Plans, including new parking lots and drives, shall be environmentally sensitive and directed downward and inward to minimize light glare and spillage on adjacent neighbors' properties.
6. The following shall be honored during any construction activities on the Property (in addition to compliance with all Cobb County construction standards):
 - a. Construction staging (including all equipment, vehicles, materials storage and construction parking) shall take place entirely on the Property. No construction vehicles or equipment shall be parked along Post Oak Tritt Road.
 - b. No construction activities (expressly including deliveries of materials or equipment) shall occur (i) between the hours of 7:00 p.m. to 7:00 a.m., Monday through Friday (provided that the 7:00 p.m. hour may be extended to 8:00 p.m. during Daylight Savings Time); and (ii) at any time on Sunday. Furthermore, construction activities on Saturdays shall be only between the hours of 8:00 a.m. and 5:00 p.m.
 - c. Mt. Bethel shall notify the District Commissioner at least ten (10) days prior to the commencement of construction of new structures on the Property. Also, during the period of construction, Mt. Bethel will provide the District Commissioner and the President of the East Cobb Civic Association of a contact name and telephone number which will be answered 24 hours a day, 7 days a week regarding problems with the construction.
7. No equipment or machinery used for landscape maintenance or the cleaning of drives or parking lots shall be allowed to operate past 9:00 p.m. on any day of the week, or before 6:30 a.m. on weekdays and before 9:00 a.m. on Saturdays and Sundays.
8. All garbage and refuse containers shall have lids which shall remain closed when not in use. Dumpsters and trash containers shall only be emptied between the hours of 7 a.m. and 6 p.m. on non-holiday week-days (provided that Mt. Bethel shall use commercially reasonable efforts to ensure that emptying of dumpsters shall not occur during carpool drop-off times).
9. Once the Phase II new drive and parking have been constructed along the eastern property line of the Property, in the event of damage or destruction of the existing mature trees and buffering

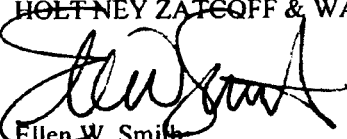
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- along said property line, Mt. Bethel shall replant such buffer with similar types of new vegetation and trees in coordination with the Cobb County Arborist to allow for growth that will mature to replace the buffer against neighboring property owners. Furthermore, Mt. Bethel agrees that there shall be no lighting installed within the buffering adjacent to any such new Phase II drive.
10. Mt. Bethel shall limit the number of students in the Mt. Bethel Christian Academy (its Private School on the Property) to 625 full-time students; provided, however this number shall not impact the Mt. Bethel Christian Academy campus located at 4385 Lower Roswell Road, Marietta, Georgia which operates pursuant to a separate Special Land Use Permit.
 11. The District Commissioner shall have the authority to approve minor modifications to these stipulations and the site plan as the development proposal proceeds through the Plan Review process and thereafter. For purposes of this paragraph, any modifications that increase density; reduce the size or composition of an approved buffer or landscape strip to adjacent property; relocate a structure closer to a property line; or, increase the height of a building adjacent to property which are in direct contradiction to or conflict with the foregoing stipulations, will come back through the public hearing process as an "Other Business" Application.
 12. The following Staff Recommendations: (a) Water and Sewer Division comments and recommendations; (b) Stormwater Management Division comments and recommendations; and Department of Transportation comments and recommendations. Please note that the first three conditions of the Staff Recommendations are address above. To the extent that there is any conflict between the Staff Recommendations and the 12 enumerated conditions contained in this letter, the 12 enumerated conditions contained herein shall govern.

Mt. Bethel respectfully requests the consideration of these proposed conditions, which have been presented to members of the East Cobb Civic Association Board, and Mt. Bethel respectfully respects approval of this application. Please let me know if you have any questions. Thank you.

Sincerely,
HOLT NEY ZATCOFF & WASSERMAN, LLP

Ellen W. Smith

EWS/JMN/ews

cc: The Honorable JoAnn Birrell, District Three Commissioner
The Honorable Mike Terry, Planning Commission Chairman
The Honorable Christi Trombetti, Planning Commissioner, District Three
The Honorable Bob Hovey, Planning Commissioner
The Honorable Galt Porter, Planning Commissioner
The Honorable Judy Williams, Planning Commissioner
James M. Ney, Esq.
(all by e-mail only)

HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

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Ellen W. Smith

e-mail esmith@hnzw.com

November 11, 2013

BY HAND DELIVERY

Mr. Jason Campbell
Zoning Division
Community Development Agency
Cobb County, Georgia
1150 Powder Springs Street
Suite 400
Marietta, Georgia 30064

Min. Bk. 70 Petition No. SLUP-11
Doc. Type Letter of agreeable
conditions
Meeting Date 11/19/13

Re: Application for Special Land Use Permit No. SLUP-11 by Mt. Bethel United Methodist Church, Inc. for private school (the "*Application*")

REVISED CONDITIONS TO APPLICATION

Dear Jason:

As you know, this law firm has the pleasure of representing Mt. Bethel¹ with respect to the Application. Mt. Bethel hereby submits the following proposed zoning conditions (*revised pursuant to the comments by the Planning Commission on November 5, 2013*) with respect to the Application. If Mt. Bethel's Application is approved by the Board of Commissioners, as requested, Mt. Bethel agrees to comply with the following conditions:

1. SLUP #11 shall be conditioned generally upon the Phase I and Phase II site plans prepared by Collins Cooper Carusi, dated August 29, 2013, last revised October 15, 2013, and filed with Cobb County on October 24, 2013 (collectively, the "*Site Plans*").
2. The 85-foot and 65-foot buffers shown on the Site Plans along the northern and northwestern property lines adjacent to properties fronting on Alberta Drive shall be maintained for so long as those properties adjacent to such northern property line but fronting on Alberta Drive are (i) used for single-family residences or (ii) are owned by a party other than Mt. Bethel. Once the conditions of (i) or (ii) are satisfied, then notwithstanding condition #1 above or this condition, such buffers shall be reduced to 35-feet.
3. With respect to traffic and parking related issues:
 - a. Mt. Bethel shall provide, when and as necessary between the hours of 7:00 a.m. to 8:30 a.m., a traffic officer to direct and facilitate traffic ingress and egress to and from the Property.

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**MINUTES OF ZONING HEARING
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CONSENT AGENDA (CONT.)

O.B. 18 To consider a site plan and stipulation amendment for Mt. Bethel Christian Academy, Inc. regarding case SLUP-11 (Mt. Bethel United Methodist Church, Inc.) of 2013. The property is located on the north side of Post Oak Tritt Road, west of Holly Springs Road, in Land Lots 599, 600, 625 and 626 of the 16th District.

To **approve** O.B. 18 for 24 months, subject to:

- 1. Temporary classroom to be removed by June 1, 2020**
- 2. Stormwater Management Division comments and recommendations**
- 3. All previous stipulations and conditions, *not otherwise in conflict*, to remain in effect**

CONSENT VOTE: **ADOPTED** 5-0, *with the exception of O.B. 18, which was a 4-0 vote, Commissioner Ott having recused himself.*

CONTINUED, HELD, AND WITHDRAWN (CONT.)

O.B. 15 To consider a Settlement of Litigation for T.M. Denome a/k/a Toni Barnes regarding rezoning application Z-35 (Adventur Living, LLC) of 2016, for property located on the east side of Ebenezer Road and at the western terminus of Cedar Ridge Road in Land Lots 304 of the 16th District.

Mr. Lawton Jordan, attorney for adjacent property owner, addressed the Board to request a continuance for O.B. 15; thereafter, the following motion was made:

MOTION: Motion by Birrell, second by Ott, to **continue** O.B. 15 until the June 20, 2017 Board of Commissioners Zoning Hearing.

VOTE: **ADOPTED** 5-0