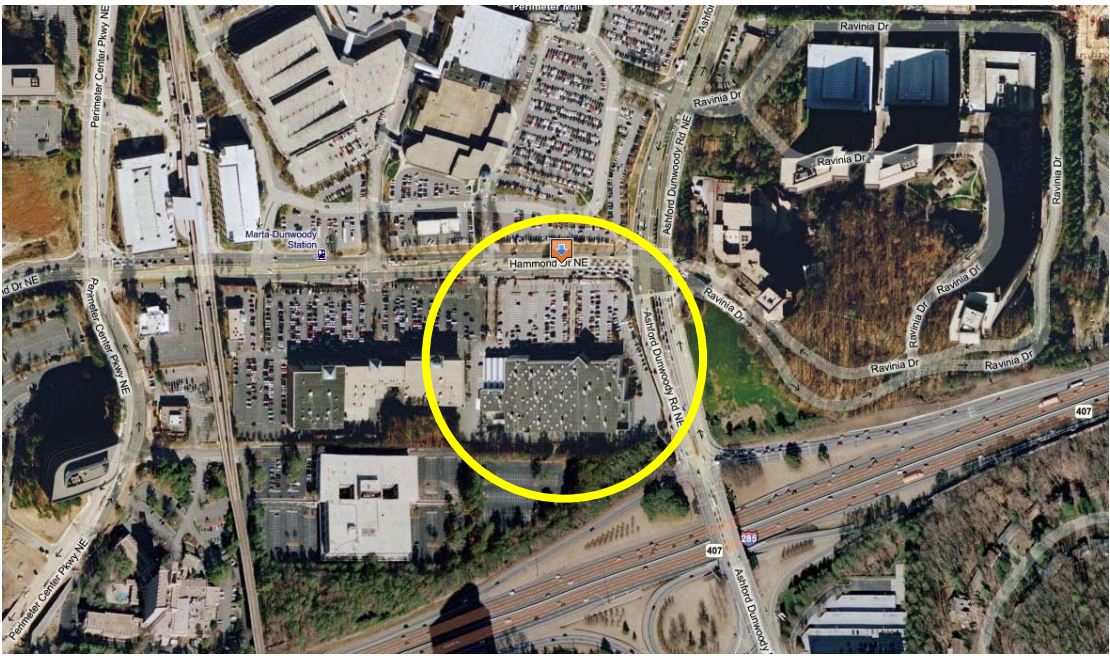


**Property Location:** SW corner of Ashford Dunwoody Road and Hammond Drive (LL 347/348)

**Petitioner:** Seaman Development Corporation  
Represented by Carl Westmoreland, Jr., of Seyfarth Shaw, LLP  
1545 Peachtree Street, Suite 700  
Atlanta, Georgia 30309

**Variance Request:** Seven (7) separate development variances to adaptively re-use an existing planned commercial center

**Vicinity Map**



The site is the former location of Home Depot’s Expo Design Center, located on the southwest corner of the intersection of Ashford Dunwoody Road and Hammond Drive. The property is currently zoned C-1 (Local Commercial District). The applicant’s request is for multiple development and site design variances to facilitate the adaptive re-use of the existing structure; essentially, the requests would permit the new tenants to occupy the space as it is today, rather than correct and improve non-conformities to current day city development standards.

**Site Plan Analysis**

The site is square in shape, at its widest approximately 625 feet wide and 560 feet deep, comprising 365,468 square feet (8.39 acres). The site is a corner lot, with frontages on both Hammond Drive

and Ashford Dunwoody, but only takes direct vehicular ingress/egress from Hammond Drive. The building sits approximately 280 feet south of the Hammond Drive edge of pavement, and 100 feet west of the Ashford Dunwoody edge of pavement, totaling 115,000 square feet. The applicant proposes to expand the footprint on the northwest corner of the one existing building by 6,710 square feet, which will have no appreciable impact on the building's proximity to the right-of-way. After expansion, the new building will house three retail stores: a "Rooms To Go" furniture store, and two as yet un-named retail tenants.

## Requested Variances

The following variances are requested by the developer, to allow the new uses to exist on the previously occupied site. Because of city requirements related to development permits and the value of improvements to a project, the developer would otherwise be required to bring the job site into modern day compliance with our zoning and development codes. Granting these variances would permit the non-conformities on the site to endure despite the adaptive re-use.

- (1) Variance from Chapter 27, Section 2Y-10 to increase the lot coverage permitted from eighty percent (80%) to ninety-one percent (91 %); **Staff does not support this request**, as pervious areas on a lot directly lead to a decrease in the heat island effect, and are useful in the improvement of water run-off quality through direct percolation into the ground rather than running off the site into storm water management facilities. It is assumed by staff that there must exist some creative manner to remove existing impervious surface and replace those areas with open space and landscape, consistent with today's requirement, yet still have the site be useful as a commercial/ retail center.
- (2) Variance from Chapter 27, Section 4-21 to eliminate the landscaping requirements for parking lots and permit the existing landscaping as shown on the site plan included in this application; **Staff does not support** the abandonment of modern-day standards for parking lot landscaping. In addition to shading the dark asphalt areas of the parking lot, reducing heat islands in the city, they shade patron vehicles while parked on site and are an amenity to both the visual character of this highly-visible city gateway area and the specific site as a consumer destination. Much of the most-visible landscape currently on the site is past prime and is in decline. Specifically, the mature trees on site located in parking lot islands are failing to thrive due to insufficient area in which to grow. These trees will shortly, if not already, be hazard trees in need of removal/ replacement. Replacement of this plant material should occur in compliance with the City's requirements for 400 square feet of growing area per over-story shade tree. If that contemporary standard cannot be met, it is better advised to reduce the number of trees planted on the site than to over-plant material in under-performing areas.
- (3) Variance from Chapter 27, Section 2Y-7 to eliminate the 50 foot transitional buffer along the west property line where the site abuts the R-150 zoned cemetery property to permit existing conditions to remain. **Staff supports this request**. The area in question is the property boundary between an existing cemetery and the southwest portion of the site. The boundary is a retaining wall that at its tallest is approximately 9-12 feet tall, and slopes down as you near the southern property line. There is already a highly effective buffer, namely the wall and the old growth vegetation around the wall.
- (4) Variance from Chapter 27, Section 2Y-6(c)(2) to eliminate the five foot landscape strip required within the west interior side yard setback; **Staff supports this variance** as well. To require the patron to remove the existing drive aisle that extends from Hammond Drive south to the interior of the site, a drive aisle that serves the adjacent parcel to the west as well, would cause more harm

*to traffic circulation on the site than any benefit from the establishment of a 5-foot landscape area with questionable arboricultural value. This design standard was not codified with the contingency of subdividing existing sites taken into consideration.*

- (5) Special exception from Chapter 27, Section 2Y-9 to reduce the required parking from 4.5 spaces per 1,000 square feet of retail as granted through a previous variance to 4.15 spaces per 1,000 square feet; **Staff supports this request** for a change in previous conditions. *In fact, were it to please the applicants, staff would request that the parking areas be reduced further through the expansion of existing parking lot islands so that more square footage of open space would be made available for the installation of new over story deciduous trees, especially throughout the parking areas between the building and the two adjacent streets.*
- (6) Special exception from Chapter 27, Section 4-23(b)(1) to reduce the required loading spaces from seven 12'x35' spaces to zero 12'x35 spaces; and *Staff believes that there is adequate space to load and unload delivery vehicles, and supports the idea that existing asphalted areas in the rear of the store should be used for loading/unloading activities that occur with such a relatively short duration in comparison to the time per week that there is no loading activity going on. It is better to waive dedicated loading/unloading spaces and cause a minor traffic circulation inconvenience, than to dedicate large areas of unused or under-used pavement.*
- (7) Variance from Chapter 14, Section 14 to permit the existing grandfathered water quality measures to remain in lieu of implementing the current City of Dunwoody requirements. *Water quantity and quality management are (and rightfully should be) solely the responsibility of the source parcel. Point source and non-point source pollution emanating from antiquated and/or over-taxed water management facilities are directly responsible for the general degradation of our creeks, streams and rivers and helps keep Georgia streams and rivers on the 303(d) list for non-compliance with the Total Maximum Daily Load limits of harmful impurities in these water bodies. It is imperative that we as a municipality, in our oversight of the public health, safety and welfare, manage our storm water and its relationship to environment, not just locally but for the benefit of all those down stream of the point of introduction. Staff does not support the idea that the water quality and quantity facilities on the site should be allowed to endure as a non-conforming use.*

## Conditions of the Zoning Ordinance

Article 5, Section 5D-15 of the City of Dunwoody Zoning Ordinance identifies the following criteria for evaluation that should be examined when determining the appropriateness of a variance:

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this Chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district; *There are no exceptional conditions that would preclude the use of the property as it sits today, without any need for site improvements. Whether or not the highest and best use of these 8+ acres are being realized by this specific project, the site could exist and function as it is today. For that reason, with the possible exception of numbers 3 and 4 above, these requests are discretionary in nature and not grounded in a natural hardship.*

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located; *Granting the variance would allow the site to develop at a decreased rate of off-street parking, approximately 4.15 spaces per 1,000 square feet of floor area, contrasted with the city requirement of 5.50 spaces per 1,000 square feet of floor area. But this same reduced requirement would allow for the conservation of what little green space there is on the site. Were the parking standard to be further relaxed, it is possible to attenuate the site's 91% impervious surface ratio with more open space and landscaped areas which would benefit the community.*
3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located; *No appreciable negative effects to the public welfare would be realized by the granting of these variances.*
4. The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship; and... *There would be no undue nor unnecessary hardship put upon the applicant were the site to be used as it sits today, nor if it were the case that the applicant was required to improve the site to the modern day standard, save for the requirement to remove the asphalt drive aisle on the west property line.*
5. The requested variance would be consistent with the spirit and purpose of this Chapter and the City of Dunwoody Comprehensive Plan text. *The requested variances will compromise the spirit and purpose of the zoning ordinance, in that the parking lot standards for landscaping were implemented to reduce the negative environmental impacts of large lot impervious surfaces. The requests are not necessarily congruent or incongruent with the spirit and purpose of the city's comprehensive plan.*

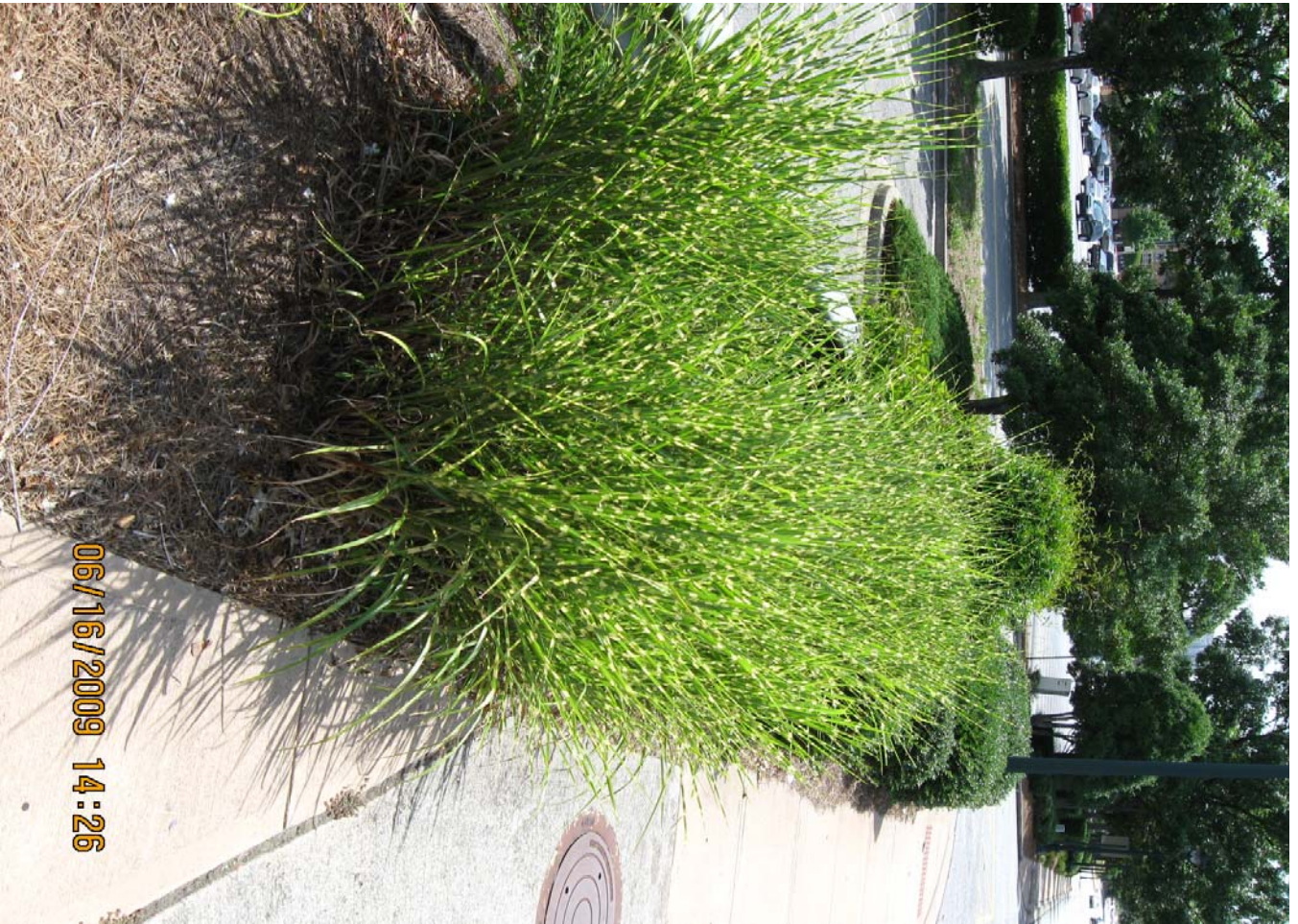
#### **Attachments**

- Application packet
- Staff photographs of the site, taken June 16, 2009.
- Site plan prepared by Pharr Engineering, entitled "Zoning Plan", dated 06/30/09.





06/16/2009 14:27



06/16/2009 14:26



























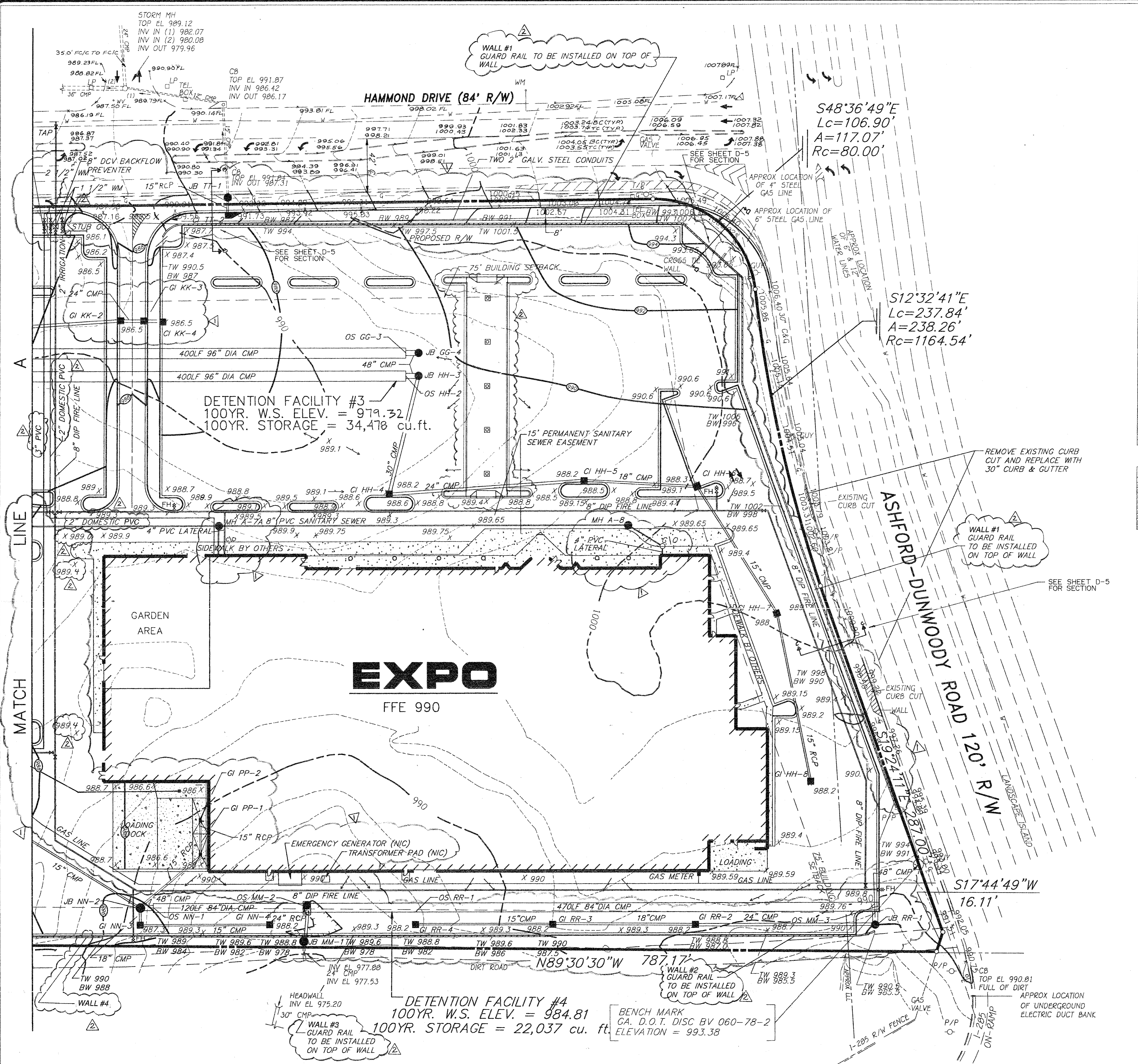






06/16/2009 14:27





STORM SEWER PIPE CHART					
STRUCTURE	TOPFLOW LINE (FROM STRUCTURE)	LENGTH	INVERT		GUTTER SPREAD (FT)
FROM	TO	(FT)	UPSTREAM	DOWNSTREAM	
GI KK-1	OS MM-1	30	989.50	989.50	1.20
GI KK-2	OS MM-1	15	989.50	989.50	0.60
OS MM-1	OS MM-2	150	989.50	989.50	0.60
OS MM-2	OS MM-3	150	989.50	989.50	0.60
OS MM-3	OS MM-4	150	989.50	989.50	0.60
OS MM-4	OS MM-5	150	989.50	989.50	0.60
OS MM-5	OS MM-6	150	989.50	989.50	0.60
OS MM-6	OS MM-7	150	989.50	989.50	0.60
OS MM-7	OS MM-8	150	989.50	989.50	0.60
OS MM-8	OS MM-9	150	989.50	989.50	0.60
OS MM-9	OS MM-10	150	989.50	989.50	0.60

SANITARY SEWER PIPE CHART					
STRUCTURE	TOPFLOW LINE (FROM STRUCTURE)	LENGTH	INVERT		
FROM	TO	(FT)	UPSTREAM	DOWNSTREAM	
MH A-1	MH A-2	15	989.50	989.50	0.60
MH A-2	MH A-3	15	989.50	989.50	0.60
MH A-3	MH A-4	15	989.50	989.50	0.60
MH A-4	MH A-5	15	989.50	989.50	0.60
MH A-5	MH A-6	15	989.50	989.50	0.60
MH A-6	MH A-7	15	989.50	989.50	0.60
MH A-7	MH A-8	15	989.50	989.50	0.60
MH A-8	MH A-9	15	989.50	989.50	0.60
MH A-9	MH A-10	15	989.50	989.50	0.60

REVISIONS:					
NO.	DATE	BY	DESCRIPTION		
1	4-20-93	CFE	REA	CITY COMMENTS	
2	7-11-93	CFE	REA	PER CONSTRUCTION	

SHEET TITLE  
**GRADING PLAN**

0 15' 30' 60' 90'

SCALE: 1" = 30'  
 DATE: 4-1-93  
 FILE NO: 93052

**DEVELOPER:** HOME DEPOT U.S.A., INC.  
**ADDRESS:** 2727 PACES FERRY ROAD TOWER 2, SUITE 1100 ATLANTA, GA. 30339  
**CONTACT:** MR. TED KACZMAROWSKI  
**PHONE NO.:** (404)433-8211

NORTH

SHEET

PERIMETER MARKET & ASHFORD DUNWOODY

PLANNERS AND ENGINEERS COLLABORATIVE

3105 planning - landscape architecture - civil engineering - (404) 451-2749  
 4100 Perimeter park south - atlanta, georgia

DRAWN: DUNWOODY, GEORGIA  
 DISTRICT: 187N



## LETTER OF INTENT

Pursuant to this application, the applicant seeks the following variances and special exceptions:

- (1) Variance from Chapter 21, Section 12(b) to permit a 150 square foot wall sign on the Ashford Dunwoody Road side of the existing retail building;
- (2) Variance from Chapter 21, Section 12(b) to permit two additional wall signs on the Hammond Drive façade of the existing building to permit each tenant in the building to have its own sign identifying the main entrance of each store;
- (3) Variance from Chapter 27, Section 2Y-10 to increase the lot coverage permitted from eighty percent (80%) to ninety-one percent (91 %);
- (4) Variance from Chapter 27, Section 4-21 to eliminate the landscaping requirements for parking lots and permit the existing landscaping as shown on the site plan included in this application;
- (5) Variance from Chapter 27, Section 2Y-7 to eliminate the 50 foot transitional buffer along the west property line where the site abuts the R-150 zoned cemetery property to permit existing conditions to remain.
- (6) Variance from Chapter 27, Section 2Y-6(c)(2) to eliminate the five foot landscape strip required within the west interior side yard setback;
- (7) Special exception from Chapter 27, Section 2Y-9 to reduce the required parking from 4.5 spaces per 1,000 square feet of retail as granted through a previous variance to 4.15 spaces per 1,000 square feet;
- (8) Special exception from Chapter 27, Section 4-23(b)(1) to reduce the required loading spaces from seven 12'x35' spaces to zero 12'x35 spaces; and
- (9) Variance from Chapter 14, Section 14 to permit the existing grandfathered water quality measures to remain in lieu of implementing the current City of Dunwoody requirements.

The variances and special exceptions sought by the applicant are necessary to renovate the existing Home Depot Expo building to accommodate a 6,710 square foot expansion of the existing building. Upon renovation the building will be occupied by two or three national retailers, including a Rooms To Go furniture store. Due to the extent and value of the proposed renovations, the applicant is required to bring the existing, grandfathered improvements into compliance with the existing City of Dunwoody ordinances.



**Lot Coverage, Parking Lot Landscaping, Transitional Buffer  
and Interior Side Yard Setback Landscape Strip Variances**

The applicant requests (1) a variance from Chapter 27, Section 2Y-10 to increase the lot coverage permitted from eighty percent (80%) to ninety-one percent (91%); (2) a variance from Chapter 27, Section 4-21 to eliminate the landscaping requirements for parking lots to permit the existing landscaping as shown on the site plan included in this application; (3) a variance from Chapter 27, Section 2Y-7 to eliminate the 50 foot transitional buffer along the west property line where the site abuts the R-150 zoned cemetery property to permit existing conditions to remain; and (4) a variance from Chapter 27, Section 2Y-6(c)(2) to eliminate the five foot landscape strip required within the west interior side yard setback. The requested variances are necessary to permit the applicant to utilize the existing improvements on the subject property. Due to the value of the renovations, the previously grandfathered improvements must be brought into compliance with the current City of Dunwoody regulations. Although the proposal generally does not increase the existing legal nonconformities associated with the site, variances are required to implement the proposed renovation.

**Chapter 27 - Section 5D-15 Criteria**

- (1) **By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this Chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;**

The scope of the existing improvements on the subject property limit the ability of the applicant to reduce the lot coverage or retrofit the existing surface parking lot to implement the current landscaping, buffer and landscape strip requirements. The intent to use the existing improvements and the limited areas for redevelopment make this site unusual.

- (2) **The requested variance does not go beyond the minimum necessary to avoid relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located;**

The applicant is seeking a variance to permit existing improvements and surface parking areas to remain. Although a small expansion of the existing building is proposed, the expansion area replaces a portion of the existing surface parking lot.. The applicant is seeking the minimum amount of relief necessary for the existing improvements to be permitted to remain upon renovation of the existing building.

- (3) **The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located;**



The requested variances are not materially detrimental to the public welfare or injurious to the property or improvements in the C-1 zoning district. The applicant is renovating an existing building that is currently vacant. Upon renovation, the existing improvements will still be used for retail purposes consistent with other uses in this commercial node. Granting the variances will permit the same type and scope of operation as previously operated on this site.

- (4) **The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship; and**

The lot coverage, transitional buffer, interior side yard landscape strip and parking lot landscaping requirements are being imposed upon the subject property due to the value of the proposed renovations of existing improvements. To require the applicant to comply with these requirements prior to redevelopment of the site with new improvements or a change in use of the site would cause an undue and unnecessary hardship.

- (5) **The requested variance would be consistent with the spirit and purpose of this Chapter and with the City of Dunwoody Comprehensive Plan text.**

The Zoning Ordinance provides for the guiding of growth, development and redevelopment of projects within the City of Dunwoody and for the encouragement of economic development activities. In general, Comprehensive Plan texts support the inclusion of retail uses within commercial nodes such as the intersection of Ashford Dunwoody Road and Hammond Drive. This application seeks to renovate an existing vacant retail building to update the improvements and provide a viable retail use in this commercial center. The variances are necessary to be able to use the existing improvements and activate the currently vacant site. Granting the variances would be consistent with the spirit and purposes of both the Zoning Ordinance and the City of Dunwoody Comprehensive Plan text.

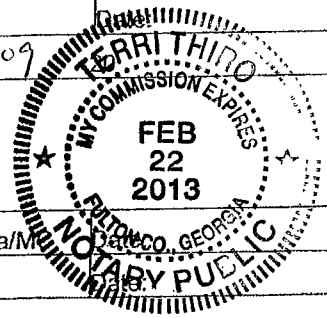


# Variance Application



City of Dunwoody  
 400 Northridge Road, Suite 1250  
 Atlanta, GA 30350  
 Phone: (678) 382-6800  
 Fax: (678) 382-6701

<b>Type</b>	Type of Request: <input checked="" type="checkbox"/> Variance (BZA) <input type="checkbox"/> Variance (Administrative)					
	Concurrent Variance(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No      If yes, please provide rezoning case #:					
			Square Feet		Acre	
			Minimum Setback Requirements		Proposed Setback Requirements	
	Total Area of Lot	365,599	8.393	Front 75	Front	N/A
Building Footprint	per site-plan		Side 20	Front	N/A	
# of Parking Spaces	per site-plan		Rear 30	Front	N/A	
Height			Other	Front	N/A	
<b>Project</b>	Name of Project/Subdivision:					
	Property Address/Location: southwest intersection of Ashford Dunwoody Road and Hammond Drive					
	Land Lot: 347/348	District: 18		Section:	Property ID:	
	Lot Number:	Block:		Present Zoning: C-1C	Proposed Zoning:	
<b>Applicant Information</b>	Name: Seaman Development Corp.					
	Company:					
	Address: 400 Perimeter Center Terrace, Suite 800, Atlanta, Ga. 30346					
	Phone: (678) 475-0499			Fax: (770) 352-9953		
	Cell:			Email: jfinkel@roomstogo.com		
<b>Representative</b>	Name: Carl E. Westmoreland, Jr.					
	Company: Seyfarth Shaw LLP					
	Address: 1545 Peachtree Street, Suite 700, Atlanta, Ga. 30309					
	Phone: (404) 885-6704			Phone:		
<b>Affidavit</b>	Cell:      Cell email: cwestmoreland@seyfarth.com					
	To the best of my knowledge, this variance application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I understand that failure to supply all required information (per the relevant Applicant Checklists and Requirements of the Dunwoody Zoning Ordinance) will result in the rejection of this application. I have read the provisions of the Georgia Code Section 36-67A-3 as required regarding Campaign Disclosures. My Signed Campaign Disclosure Statement is included with the Application.					
	Applicant's Signature: <i>[Signature]</i>				Date: 6/3/09	
<b>Notary</b>	Representative's Signature: <i>[Signature]</i>					
	Sworn to and subscribed before me this 3 Day of June 2009					
	Notary Public: Terri Thiro					
<b>Office Use</b>	Signature: <i>[Signature]</i>					
	Date: June 3, 2009					
Fee: \$		Payment: <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> CC - Visa/M				
<input type="checkbox"/> Approved <input type="checkbox"/> Denied		By:				





**Property Owner(s)  
Notarized Certification**



City of Dunwoody  
400 Northridge Road, Suite 1250  
Atlanta, GA 30350  
Phone: (678) 382-6800  
Fax: (678) 382-6701

The owner and petitioner acknowledge that this ~~Land Use Petition~~ <sup>Variance</sup> application form is correct and complete. If additional materials are determined to be necessary, the understand that they are responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinances.

<b>Property Owner</b>	Signature: <u>Home Depot USA, Inc., by: Thomas K. Anderson</u>	Date: <u>6-2-2009</u>	
	Address: <u>2455 Paces Ferry Rd</u>	City, State: <u>Atlanta, GA</u>	Zip: <u>30339</u>
	Phone: <u>770-384-5085</u>		
	Sworn to and subscribed before me this <u>2nd</u> day of <u>June</u> , 20 <u>09</u>		
Notary Public: <u>Evelyn R. Clayton</u>			
<b>Property Owner (If Applicable)</b>	Signature:	Date:	
	Address:	City, State:	Zip:
	Phone:		
	Sworn to and subscribed before me this _____ day of _____, 20_____		
Notary Public:			
<b>Property Owner (If Applicable)</b>	Signature:	Date:	
	Address:	City, State:	Zip:
	Phone:		
	Sworn to and subscribed before me this _____ day of _____, 20_____		
Notary Public:			

Writer's direct phone  
(404) 885-6729  
Writer's e-mail  
jlhill@seyfarth.com  
Writer's direct fax  
(404) 724-1729

June 4, 2009

**VIA HAND DELIVERY**

Ms. Jennifer Peterson  
Community Development Director  
City of Dunwoody  
41 Perimeter Center East  
Dunwoody, Georgia 30346

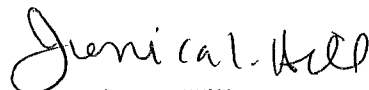
Re: Seaman Development Corp. variance application for property located at the  
intersection of Hammond Drive and Ashford Dunwoody Road

Dear Jennifer:

This letter explains the relationship of the parties in the above captioned variance application. Home Depot USA, Inc. owns the subject property. Seaman Development Corp., the Applicant in the above captioned application, has the property under contract to purchase. Seyfarth Shaw, LLP is the law firm representing Seaman Development Corp. in the variance application and is listed in the application as the Representative. Please let me know if further clarification is required.

Very truly yours,

SEYFARTH SHAW LLP

  
Jessica L. Hill



# Variance Application



City of Dunwoody  
 400 Northridge Road, Suite 1250  
 Atlanta, GA 30350  
 Phone: (678) 382-6800  
 Fax: (678) 382-6701

<b>Request</b>	<p>Please explain the reason for the request and attach additional information as necessary.</p> <p style="text-align: center;">SEE ATTACHED</p>
<b>Orientation</b>	<p><i>Prior to the submission of a variance application, the applicant is required to schedule an orientation meeting with the appropriate planner in the Planning and Zoning Division of the Community Development Department. The purpose of this meeting is to determine the number and nature of the variances requested, become familiar with the appeals process and obtain preliminary input from staff. A meeting date before the Board of Zoning Appeals will be scheduled upon a determination of completeness and compliance of the application. The applicant or representative must attend the meeting and make the presentation. An Orientation Meeting is NOT required for an Administrative Variance.</i></p>
	<p>Orientation Meeting Date: May 7, 2009</p>
<b>Remarks</b>	<p>Board Meeting Date:</p> <p>Zoning Director Comments:</p>
	<p>Planning &amp; Zoning Director: _____ Date: _____</p>

**Statement of Current Zoning and Land Use of Property and Proposed Land Use**

The subject property is currently zoned C-1 conditional and is currently used for retail purposes. The comprehensive land use plan is still in the process of being adopted by the City of Dunwoody. The applicant seeks to continue to use the subject property for retail purposes.



# Campaign Disclosure Statement



City of Dunwoody  
400 Northridge Road, Suite 1250  
Atlanta, GA 30350  
Phone: (678) 382-6800  
Fax: (678) 382-6701

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission?

YES  NO

Applicant / Owner	Signature: <i>Thomas K. Anderson</i>
	Address: <i>2455 Paces Ferry Rd, Atlanta, GA 30339</i>
	Date: <i>6-2-09</i>

*Home Depot USA, Inc., S2!*

*Thomas K. Anderson*

*2455 Paces Ferry Rd, Atlanta, GA 30339*

*6-2-09*

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

# Campaign Disclosure Statement



City of Dunwoody  
 400 Northridge Road, Suite 1250  
 Atlanta, GA 30350  
 Phone: (678) 382-6800  
 Fax: (678) 382-6701

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission?

YES  NO

<b>Applicant / Owner</b>	Signature: <i>Seaman Development Corp.</i> <i>John H. Seaman Jr. Vice President</i>
	Address: <i>400 Perimeter Center Terrace, Ste 500, Atlanta GA 30346</i>
	Date: <i>6-3-2009</i>

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount



ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 347 and 348 of the 18th District of Dekalb County, containing 8.393 acres and being more particularly described as follows:

BEGINNING at a scribe "X" on the south line of Land Lot 347 at the Westerly right-of-way line of Interstate 285 on-ramp at Ashford Dunwoody Road; thence along said Land Lot Line North  $89^{\circ}30'30''$  West at a distance of 787.17 feet to a 1/2" rebar found; leaving said Land Lot line, thence North  $03^{\circ}40'46''$  East at a distance of 99.62 feet to a 2" open top pipe found; thence North  $00^{\circ}29'30''$  East at a distance of 25.00 feet to a scribe "X" found; thence South  $88^{\circ}51'13''$  East at a distance of 60.77 feet to a PK nail found; thence North  $00^{\circ}29'30''$  East at a distance of 234.83 feet to a 1/2" rebar found; thence South  $89^{\circ}30'30''$  East at a distance 8.58 feet to a 1/2" rebar found; thence North  $00^{\circ}29'30''$  East at a distance of 205.95 feet to a scribe "X" on a water meter concrete lid located on the South right-of-way line of Hammond Drive (right-of-way varies), thence along said right-of-way line North  $89^{\circ}22'15''$  East at a distance of 62.38 feet to a mag nail set; thence South  $88^{\circ}40'52''$  East at a distance of 53.36 feet to a 1/2" rebar set; thence North  $89^{\circ}09'21''$  East at a distance of 393.43 feet to a 1/2" rebar set on the North East corner of the mitered right-of-way intersection of Hammond Drive and Ashford Dunwoody Road (120 foot right-of-way), thence South  $45^{\circ}50'39''$  East at a distance of 77.64 feet to a 1/2" rebar found, leaving said mitered right-of-way, thence along the Westerly right-of way line of Ashford Dunwoody Road along a curve to the right having a radius of 80.00 feet and an arc distance of 3.64 feet and being subtended by a chord bearing of South  $07^{\circ}59'43''$  East, a distance of 3.64 feet to a point; thence along a curve to the left having a radius of 1,164.54 feet and an arc distance of 238.26 feet and being subtended by a chord bearing of South  $12^{\circ}32'41''$  East, a distance of 237.84 feet to a point; thence South  $19^{\circ}24'11''$  East at a distance of 181.91 feet to a scribe "X"; thence South  $69^{\circ}52'53''$  West at a distance of 9.73 feet to a 1/2" rebar set; thence South  $19^{\circ}24'11''$  East at a distance of 117.81 feet to a scribe "X" and THE TRUE POINT OF BEGINNING.



[Return to Console](#) [Print Receipt](#)

## City of Dunwoody Sales Receipt

Thursday June 04, 2009

Permit #

Order # 1341

Transaction Date: 6/4/2009

Transaction Status: APPROVED

Transaction Amount: 1200.00

Account# 0630....0047

 Collapse All Rows

Description	Quantity	Amount	Tran #
-------------	----------	--------	--------



Signature

By clicking the process payment button, you authorize an electronic debit from your checking account that will be processed through the regular banking system. If your full order is not available at the same time, you authorize partial debits to your account, not to exceed the total authorized amount. The partial debits will take place upon each shipment of partial goods. If any of your payments are returned unpaid, you will be charged a returned item fee up to the maximum allowed by law. To exit without authorizing, click Cancel.



DEKALB COUNTY  
BOARD OF COMMISSIONERS

433

ITEM NO. 10.

ZONING - AGENDA/MINUTES

FILE COPY

MEETING DATE March 23, 1993

PREL.       
ACTION       
PUB.HRG.  X

RESOLUTION       
ORDINANCE  X   
PROCLAMATION     

**SUBJECT:** Alter Conditions - Home Depot USA, Inc.

**COMMISSION DISTRICTS:**  1 & 6

DEPARTMENT:  Planning

PUBLIC HEARING:  X  Yes      No

ATTACHMENT:  X  Yes      No  21  PP

INFORMATION CONTACT:  Ray White or Charles Coleman   
PHONE NUMBER:  371-2155  *cc*

**PURPOSE:**

CZ-85164 - To consider the application of Home Depot USA, Inc., to alter conditions of zoning on property located at the southwest intersection of Ashford Dunwoody Road and Hammond Drive. The property was rezoned to C-1 on November 26, 1985, with conditions limiting it to a site plan for high density office, commercial, apartments, and a hotel plus other conditions. This request is to alter the conditions for construction of a retail center based on a site plan plus other conditions.

**SUBJECT PROPERTY:**

18-348-2-1, 3 & 18 (0000, 4308, and 4324 Ashford Dunwoody Road).

**RECOMMENDATION(S):**

**PLANNING DEPARTMENT:** Approval as conditioned. The request has been reviewed by applicable county departments and recommended as proposed. The proposed commercial development will not adversely affect nearby properties and its effect on traffic in the area will be substantially less than the development conditioned with the original zoning.

**PLANNING COMMISSION:** Approval.

**COMMUNITY COUNCIL:** Approval.

434

FOR USE BY COMMISSION OFFICE/CLERK ONLY

ACTION:

MOTION was made by Commissioner Boyer, seconded by Commissioner Brown, and passed 5-0-0-2, to approve the application as conditioned. Commissioners Scott and Williams absent and not voting.

Ms. Kathy Zickert, no card, spoke for the application representing the applicant. She stated that the following were the conditions imposed on the development: The front of the Home Depot Expo Store has been moved up towards Hammond Drive; overall footprint of the retail space on the site has increased: it is 294,000 square feet, but this is less than the 300,000 square feet permitted in the original zoning; (continued below under MINUTES)

ADOPTED: MAR 23 1993  
(DATE)

CERTIFIED: MAR 23 1993  
(DATE)

*Gale Walldorff*  
\_\_\_\_\_  
PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS

*Donald J. ...*  
\_\_\_\_\_  
CLERK,  
DEKALB COUNTY BOARD OF  
COMMISSIONERS

MINUTES:

an earlier reference to a temporary MARTA easement has been deleted, but the applicant will continue to work with MARTA; and condition number 6 filed with the application stated that Phase I construction on this site would start with 125,000 square feet of retail space: this is a typographical error and should have read 100,000 square feet of retail space.

No one spoke in opposition.

ATTACHMENT/

	FOR	AGAINST	ABSTENTION	ABSENT
DISTRICT 1 - ELAINE BOYER	✓			
DISTRICT 2 - GALE WALLDORFF	✓			
DISTRICT 3 - HOSEA WILLIAMS				
DISTRICT 4 - KEN DAVIS				✓
DISTRICT 5 - WILLIAM C. "BILL" BROWN	✓			
DISTRICT 6 - JUDY YATES	✓			
DISTRICT 7 - JACQUELINE SCOTT				✓

ALTERATION ANALYSIS

AGENDA NO. 10 ZONING CASE NO. CZ-85164 MONTH OF March 1993

APPLICANT Home Depot USA, Inc. OWNER ( ) AGENT (X)

AGENT AUTHORIZED BY Hammond Realty, Inc.

ORIGINAL APPLICANT Rosewood Properties, Inc.

LOCATION Southwest intersection of Ashford Dunwoody Road & Hammond Drive

ACREAGE 18.97 DATE OF ZONING 11/26/85

EXISTING ZONING C-1 COMMISSIONER DISTRICT 1 & 6

CONDITIONS APPLIED TO EXISTING ZONING:

See list on following two pages.

ALTERATION REQUESTED:

See list on following two pages.



RECOMMENDATIONS:

PLANNING DEPARTMENT: Approval as conditioned. The request has been reviewed by applicable county departments and recommended as proposed. The proposed commercial development will not adversely affect nearby properties and its effect on traffic in the area will be substantially less than the development conditioned with the original zoning.

PLANNING COMMISSION: Approval.

COMMUNITY COUNCIL: Approval.

Attachment D

WRITTEN STATEMENT DEFINING  
SPECIFIC ALTERATION REQUESTED

Home Depot USA, Inc., requests an alteration of zoning conditions imposed upon approval of CZ-85164 (Rosewood Properties) to permit construction of a new retail store known as "Home Depot Expo". This request necessitates minor revision of these original conditions, but most would remain intact. The end result would be that the following conditions would apply to development of this property should this request be granted:

1. The various components of the development shall not exceed the following sizes:

- (a) 780,000 net leasable square feet of office;
- (b) 300,000 net square feet of retail;
- (c) 250-room hotel; and
- (d) 200 residential units.

If the 250-room hotel is not constructed, Applicant shall have the right to construct an additional 150,000 net leasable square feet of office space.

(This condition has not changed from the original application)

2. Parking shall be provided through decked, underground or surface facilities at the following ratios:

- (a) 3 spaces per 1,000 net leasable square feet of office space;
- (b) 4.5 spaces per 1,000 gross square feet of retail space;
- (c) 1.2 spaces per hotel room; and
- (d) 2 spaces per residential unit.

Construction of the parking facilities shall coincide with construction of the project so that the minimum ratio of parking to all uses is maintained.

(§ 2(b) has been reduced from 5.5 spaces/1000 to 4.5 spaces)

3. No office building shall exceed twenty (20) stories in height (exclusive of basements, rooftop mechanical rooms, etc.) and the hotel shall not exceed twenty (20) stories in height. (Same as original condition).
4. Points of access to and from Hammond Drive and the site shall be limited to 3 points as shown on the conceptual site plan, with the approval of the DeKalb Roads and Drainage Department. (Same as original condition).
5. The following traffic improvements shall be the responsibility

of the Applicant:

(a) Applicant shall request and, if approved, install at its expense a traffic signal at the intersection of the central drive into the project and Hammond Drive, and coordination of that signal with signals on Hammond Drive at Perimeter Center Parkway and Ashford-Dunwoody Road.

(b) Applicant shall dedicate right-of-way along entirety of Hammond Road frontage of property sufficient to accommodate construction of additional lane on Hammond Road.

These improvements shall be made without forfeiture of rights to seek pro rata contribution or reimbursement for the cost thereof under whatever impact fee system, if any, is in place and/or applies in DeKalb County, and under state law governing same, O.C.G.A § 36-71-1 et seq.

6. The first phase of construction of this development shall consist of at least ~~125,000~~ 100,000 square feet of retail space.

(This condition has changed to comport with new site plan.)

7. The Applicant shall work with MARTA to accommodate future MARTA rail line over the extreme western boundary of the Subject Property.

(This condition has been modified to comply with State law regarding taking/use of private property).

8. Subject Property shall not be used for nude dancing establishments, bingo or billiard parlours, freestanding car washes, or bowling alleys.

(This condition is new and relates to a request made by the Dunwoody Homeowner's Association.)

9. The "Conceptual Site Plan" filed with the Application constitutes an expression of the general development intent of the Applicant. The "Conceptual Site Plan" may be modified so long as the following conditions are satisfied prior to the issuance of any permits required for actual development of the property.

(This condition remains the same.)

To simplify an evaluation of these changes, the original conditions, site plan and renderings are attached.



Revised 11/25/85  
See our file # 281

12/84

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ITEM NO. 27.

ZONING AGENDA/MINUTES

PREL. \_\_\_\_\_  
ACTION \_\_\_\_\_  
PUB. HRG. X

MEETING DATE November 26, 1985

RESOLUTION \_\_\_\_\_  
ORDINANCE X  
PROCLAMATION \_\_\_\_\_

SUBJECT: Rezoning Application - Rosewood Properties, Inc.

DEPARTMENT: Planning

PUBLIC HEARING: X Yes \_\_\_\_\_ No

ATTACHMENT: X Yes \_\_\_\_\_ No 18 pp

INFORMATION CONTACT: Mac Baggett or Charles Coleman  
PHONE NUMBER: 371-2155 CC

PURPOSE: CZ-85164 - To consider the application of Rosewood Properties, Inc., to rezone property located at the southwest intersection of Hammond Drive and Ashford Dunwoody Road from R-150 to C-1 (conditional). The application is conditioned on development of the property for a mixed use facility based on a site plan.

DISTRICT: X 1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_ 4. \_\_\_\_\_ 5. \_\_\_\_\_ N/A

SUBJECT PROPERTY: 18-348-2-1, 3 & 18 (4308 and 4324 Ashford Dunwoody Road). The property has frontage of 1,358' on Hammond Drive, 521' on Ashford Dunwoody Road and contains 18.9 acres.

RECOMMENDATION(s): PLANNING DEPARTMENT: Pending. The development plan submitted with this application is being reviewed by the Public Works and Public Safety departments in order to evaluate service needs that would be generated by the proposal. Impacts associated with the projected land use include road widening improvements, traffic signalization, sewage generation, water adequacy and safety factors related to fire and emergency medical services. The plan identifies the following:

- 25-story buildings (7 stories higher than any other building in DeKalb County)
- 56,760 square feet of office/retail floor area per acre (13,000 square feet </>acre greater than any density approved in DeKalb County).
- Parking variance of approximately 2,000 spaces (34% of Code requirement).

PLANNING COMMISSION: Approval in concept with maximum density of all uses not to exceed 49,000 square feet per acre.

COMMUNITY COUNCIL: No recommendation

#10

ROSEWOOD  
Properties,

C) Hammond  
Ashford  
Dunwoody  
Rds.

FOR USE BY COMMISSION OFFICE/CLERK ONLY

ACTION:

Motion was made by Commissioner Williams, seconded by Commissioner Schulman and passed 7-0, to approve the amended application.

ADOPTED:

NOV 26 '85  
(DATE)

CERTIFIED:

NOV 26 '85  
(DATE)

*Jean Williams*  
\_\_\_\_\_  
PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS

*Donald Payne*  
\_\_\_\_\_  
CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

Mr. Doug Dillard, Attorney, 800 Monarch Plaza, 3414 Peachtree Road, Atlanta, represented the applicant and offered a video presentation. They have met with area residents and amended their application reducing height and density. The development will enhance the entire Perimeter Center area.

Opposition: Mr. Bill Tilghman, President of Dunwoody Homeowners Association, stated that after many meetings with the developers, they favor a compromise which is reflected in the amended application.

	FOR	AGAINST	ABSTENTION	ABSENT
ISTRICT 1 - Jean Williams	✓	_____	_____	_____
ISTRICT 2 - Sherry Schulman	✓	_____	_____	_____
ISTRICT 3 - John Evans	✓	_____	_____	_____
ISTRICT 4 - Robert J. (Bob) Morris	✓	_____	_____	_____
ISTRICT 5 - John S. Fletcher, Jr.	✓	_____	_____	_____
-LARGE - Brince H. Manning, III	✓	_____	_____	_____
-LARGE - Robert Lanier	✓	_____	_____	_____

CONDITIONS TO REZONING - ROSEWOOD PROPERTIES, INC.

18.9443 ACRES LOCATED AT ASHFORD-DUNWOODY  
ROAD AND HAMMOND DRIVE

NOVEMBER 26, 1985

The "Conceptual Site Plan" filed with the Application constitutes an expression of the general architectural and development intent of the Applicant. The "Conceptual Site Plan" may be modified so long as the following conditions are satisfied prior to the issuance of any permits required for actual development of the property.

1. The various components of the development shall not exceed the following sizes:
  - a. 900,000 net leaseable square feet of office;
  - b. 300,000 net square feet of retail (any retail square footage in excess of 180,000 net square feet shall be taken from square footage otherwise approved for office use at a ratio of 1 net square foot of office per 1 net square foot of retail);
  - c. 250 room hotel; and
  - d. 200 residential units.
2. Parking shall be provided in the combination of decked, underground and surface facilities at the following ratios:
  - a. 3 spaces per 1,000 net leaseable square feet of office space;
  - b. 5.5 spaces per 1,000 gross square feet of retail space;
  - c. 1.2 spaces per hotel room; and
  - d. 2 spaces per residential unit.

Construction of the parking facilities shall coincide with construction of the project so that the minimum ratio of parking to all uses is maintained.

3. No office building shall exceed 20 stories in height (exclusive of basements, rooftop mechanical rooms, etc.), and the hotel shall not exceed 20 stories in height (exclusive of basements, rooftop mechanical rooms, etc.).
4. Points of access to and from Hammond Drive and the site shall be limited to 3 points as shown on the "Conceptual Site Plan" with the approval of the DeKalb Roads and Drainage Department.
5. Within 12 months after receipt of the first building permit, the Applicant shall construct the following traffic improvements:
  - a. A traffic signal at the intersection of the central drive into the project and Hammond Drive and coordination of that signal with signals on Hammond Drive at Perimeter Center Parkway and Ashford-Dunwoody Road;



- b. The widening of Hammond Drive between Perimeter Center Parkway and Ashford-Dunwoody Road and median modifications in this area; and
- c. Upgrading the intersection of Hammond Drive at Perimeter Center Parkway.

In addition, the Applicant shall contribute the necessary right-of-way along Hammond Drive to accommodate one additional lane and shall reserve and dedicate sufficient right-of-way to accommodate an additional right-turn lane for movement from Ashford-Dunwoody Road onto the westbound on-ramp for I-285.

6. The first phase of construction of this development shall consist of:
  - a. 450,000 net leaseable square feet of office space;
  - b. A 250 room hotel; and
  - c. 180,000 net square feet of retail space.

The second phase of the development shall include the remainder of the approved uses, and occupancy of such second phase shall not occur before January 1, 1990.

7. The Applicant shall reserve and agree to dedicate the right-of-way to accommodate the future MARTA rail line over the extreme western boundary of the Applicant's property in accordance with current MARTA plans not later than R/W acquisition by MARTA.
8. If the 250 room hotel shown on the Conceptual Site Plan is not constructed, the Applicant shall have the right to construct an additional 150,000 net leaseable square feet of office space.
9. In the event of conflict between these Conditions and the Conceptual Site Plan, these Conditions shall control.
10. All road improvements listed above shall be completed before issuance of any Occupancy Permit.

APPLICATION AUTHORIZATION  
DEKALB COUNTY, GEORGIA

CHECK TYPE OF APPLICATION

January 21, 1993

DATE

- ( ) LAND USE
- ( ) REZONING
- (X) ALTERATION OF CONDITIONS

TO WHOM IT MAY CONCERN:

(I) (We), Hammond Realty, Inc.

being (owner) (owners) of the property described below or attached,  
hereby delegate authority to Home Depot U.S.A., Inc.

to file an application in (my) (our) behalf.

**MARGARET F. MURPHY**  
Notary Public, State of New York  
No. 4846127  
Qualified in New York County  
Commission Expires February 28, 1994

Margaret F. Murphy  
NOTARY PUBLIC

HAMMOND REALTY, INC.

BY: Benedict J. Tockarszewsky  
OWNER  
**BENEDICT J. TOCKARSZEWSKY**  
President

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
OWNER

ALL APPLICATIONS TO AMEND THE COMPREHENSIVE LAND USE PLAN OR OFFICIAL ZONING MAPS OR ALTER CONDITIONS OF ZONING MUST BE SUBMITTED BY THE OWNER OF THE AFFECTED PROPERTY OR THE AUTHORIZED AGENT OF THE OWNER. SUCH AUTHORIZATION SHALL BE NOTARIZED AND ATTACHED TO THE APPLICATION.

HUDDLESTON & MEDORI

ATTORNEYS AT LAW

TWO DECATUR TOWNCENTER

125 CLAIRMONT AVENUE

SUITE 420

DECATUR, GEORGIA 30030

H. MARTIN HUDDLESTON  
EUGENE A. MEDORI, JR.

OF COUNSEL  
KATHRYN M. ZICKERT, P.C.  
ROBERT G. MORTON

TELEPHONE (404) 377-3441  
FACSIMILE (404) 377-3533



January 22, 1993

Mr. Charles Coleman  
Assistant Planning Director  
DeKalb County Planning Department  
1300 Commerce Drive, Suite 400  
Decatur, Georgia 30030

Re: Home Depot USA alteration of condition request  
(Hammond Drive and Ashford Dunwoody Road)

Dear Charlie:

Enclosed for filing with your Department are the following documents:

- (a) Application for Alteration of Conditions of Home Depot USA, with all required attachments.
- (b) Three (3) copies of a Conceptual Site Plan for the property; and
- (c) My check in the amount of \$100.00 as the filing fee.

To signify your receipt of this application, please date-stamp the copy of this letter also enclosed and return it to me.

As always, I look forward to working with you and your Department.

Sincerely,

Kathryn M. Zickert, P.C.

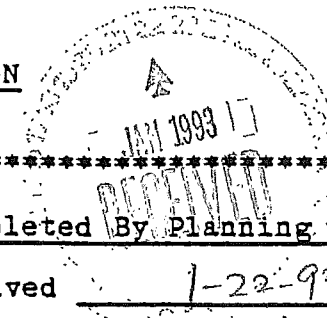
KMZ/mm

Enclosures

cc: Mr. Duke Sullivan



APPLICATION FOR  
CONDITIONAL ZONING ALTERATION  
 Filing Fee: \$100.00



\*\*\*\*\*

Applicant: Home Depot USA, Inc.	*	<u>To Be Completed By Planning Dept.</u>
_____	*	Date Received <u>1-22-93</u>
Applicant's <u>Mailing</u> Address:	*	Conditional Zoning # <u>CZ-85164</u>
c/o Kathryn M. Zickert, Esq.	*	Date of Cond. Zoning <u>11-26-85</u>
<u>Sté. 420, 125 Clairmont Ave.</u>	*	Map Reference <u>18-748-2-1, 318</u>
Decatur, GA 30030	*	Orig. Applicant <u>Rosewood Properties, Inc.</u>
Attn: _____ ZIP CODE _____	*	Fee Paid <u>7/00.00</u>
Telephone No. <u>377-3441</u>	*	_____

\*\*\*\*\*

Attachments required for application:

- A. Notarized authorization for application if applicant is not property owner.
- B. Legal description of property for which application is requested.
- C. Three copies of a plat; drawn to scale, prepared and sealed by an architect, engineer, landscape architect or land surveyor whose State registration is current and valid showing the following:
  - 1. North arrow, land lot and district.
  - 2. Property lines with dimensions and angles of turns.
  - 3. Adjoining streets with present right-of-way and paving widths.
  - 4. Location of existing structures and Intermediate Regional Floodplain.
  - 5. Acreage.
- D. Written statement defining specific alteration(s) of zoning condition(s) requested and other supporting materials related to the request.
- E. Written justification for alteration(s) requested.

\*\*\*\*\*

Michael M. ...  
 Notary  
 My Commission expires: 11/09/96

Kathryn M. Zickert attorney for  
 Signature of Applicant  
 Home Depot USA, Inc

\_\_\_\_\_ Date \_\_\_\_\_

Check One: Owner  Agent

\*\*\*\*\*

**NOTE:** The alteration requested by this application has been reviewed and, in my opinion, does not change the intent of the conditional zoning approval or adversely affect county services or other properties or uses.

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Planning Director \_\_\_\_\_

Attachment B

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 347 and 348 of the 18th District, DeKalb County, Georgia, being more particularly described as follows:

COMMENCE at the point formed by the corner common to Land Lots 347, 348, 329 and 330 of the 18th District, DeKalb County, Georgia which is the TRUE POINT OF BEGINNING. RUN THENCE westerly along the Land Lot line common to Land Lots 348 and 329 a distance of 747.95 feet to an iron pin found at the southeasterly corner of a cemetery; run thence northerly along a line (which is a boundary line between the subject property and the cemetery) forming an interior angle of  $86^{\circ}48'13''$  with the previous course a distance of 99.24 feet to an iron pin found; run thence westerly along a line (which is a boundary line between the subject property and the cemetery) forming an interior angle of  $272^{\circ}29'22''$  with the previous course a distance of 195.73 feet to an iron pin found; run thence southerly along a line (which is a boundary line between the subject property and the cemetery) forming an interior angle of  $267^{\circ}23'42''$  with the previous course a distance of 101.67 feet to an iron pin found on the Land Lot line common to Land Lots 348 and 329; run thence westerly along the Land Lot line common to Land Lots 348 and 329 (which line forms an interior angle of  $93^{\circ}18'43''$  with the previous course) a distance of 554.80 feet to an iron pin found; run thence northerly along a line forming an interior angle of  $95^{\circ}08'29''$  with the previous course a distance of 562.89 feet to an iron pin found on the southerly right-of-way line of Hammond Drive (80-foot right-of-way); run thence easterly along the southerly right-of-way line of Hammond Drive (which right-of-way line forms an interior angle of  $85^{\circ}52'13''$  with the previous course) a distance of 1358.00 feet to a point on the southerly right-of-way line of Hammond Drive (at which point a curve to the southeast begins, which merges the right-of-way of Hammond Drive and the right-of-way of Ashford Dunwoody Road, a variable width right-of-way); run then southeasterly along the arc of a curve an arc distance of 51.48 feet to a point on the curvature of the line marking the transition from the right-of-way of Hammond Drive to the right-of-way of Ashford Dunwoody Road (said curve being subtended by a chord 50.60 feet in length on a line forming an interior angle of  $162^{\circ}04'03''$  with the previous course); run thence along the arc of a curve an arc distance of 68.34 feet to a point on the southeasterly right-of-way line of Ashford Dunwoody Road (said curve being subtended by a chord 66.29

feet in length on a line forming an interior angle of  $139^{\circ}42'23''$  with the chord line previously described); run thence southeasterly along and following the curvature of the southwesterly right-of-way line of Ashford Dunwoody Road along the arc of a curve an arc distance of 237.94 feet to a point on the southwesterly right-of-way line of Ashford Dunwoody Road (said curve having a radius of 895.25 feet and being subtended by a chord 237.24 feet in length on a line forming an interior angle of  $160^{\circ}21'00''$  with the chord line previously described); run thence along the southwesterly right-of-way line of Ashford Dunwoody Road (which right-of-way line forms an interior angle of  $186^{\circ}52'00''$  with the chord line previously described) a distance of 284.17 feet to an iron pin set on the southwesterly line of Ashford Dunwoody Road [at which point, the right-of-way of Ashford Dunwoody Road: (a) is 110.00 feet in width; and (b) begins to merge with the right-of-way of Interstate 285]; run thence along the westerly merging right-of-way line of Ashford Dunwoody Road/Interstate 285 (which westerly merging right-of-way line forms an interior angle of  $142^{\circ}50'00''$  with the previous course) a distance of 16.83 feet to an iron pin set on the westerly merging right-of-way line of Ashford Dunwoody Road at the point formed by the intersection of such right-of-way line with the Land Lot line common to Land Lots 347 and 330; run thence along the Land Lot line common to Land Lots 347 and 330 (which Land Lot line forms an interior angle of  $107^{\circ}09'52''$  with the previous course) a distance of 39.00 feet to the TRUE POINT OF BEGINNING.

Said tract shown as containing 18.9692 acres on Survey for STEWART TITLE GUARANTY COMPANY, LINCOLN-ROSEWOOD ATLANTA, CITICORP REAL ESTATE INC., AND ANY AFFILIATES OF CITICORP REAL ESTATE INC. by Joseph C. King, Georgia Registered Land Surveyor No. 1418, dated November 18, 1991.



Attachment D

WRITTEN STATEMENT DEFINING  
SPECIFIC ALTERATION REQUESTED

Home Depot USA, Inc., requests an alteration of zoning conditions imposed upon approval of CZ-85164 (Rosewood Properties) to permit construction of a new retail store known as "Home Depot Expo". This request necessitates minor revision of these original conditions, but most would remain intact. The end result would be that the following conditions would apply to development of this property should this request be granted:

1. The various components of the development shall not exceed the following sizes:

- (a) 780,000 net leasable square feet of office;
- (b) 300,000 net square feet of retail;
- (c) 250-room hotel; and
- (d) 200 residential units.

If the 250-room hotel is not constructed, Applicant shall have the right to construct an additional 150,000 net leasable square feet of office space.

(This condition has not changed from the original application)

2. Parking shall be provided through decked, underground or surface facilities at the following ratios:

- (a) 3 spaces per 1,000 net leasable square feet of office space;
- (b) 4.5 spaces per 1,000 gross square feet of retail space;
- (c) 1.2 spaces per hotel room; and
- (d) 2 spaces per residential unit.

Construction of the parking facilities shall coincide with construction of the project so that the minimum ratio of parking to all uses is maintained.

(§ 2(b) has been reduced from 5.5 spaces/1000 to 4.5 spaces)

3. No office building shall exceed twenty (20) stories in height (exclusive of basements, rooftop mechanical rooms, etc.) and the hotel shall not exceed twenty (20) stories in height. (Same as original condition).
4. Points of access to and from Hammond Drive and the site shall be limited to 3 points as shown on the conceptual site plan, with the approval of the DeKalb Roads and Drainage Department. (Same as original condition).

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5. The following traffic improvements shall be the responsibility of the Applicant:

- (a) Applicant shall request and, if approved, install at its expense a traffic signal at the intersection of the central drive into the project and Hammond Drive, and coordination of that signal with signals on Hammond Drive at Perimeter Center Parkway and Ashford-Dunwoody Road.

- (b) Applicant shall dedicate right-of-way along entirety of Hammond Road frontage of property sufficient to accommodate construction of additional lane on Hammond Road.

These improvements are not required by this project and are system improvements. These improvements shall be made without forfeiture of rights to seek appropriate contribution or reimbursement for the cost thereof under whatever impact fee system, if any, is in place and/or applies in DeKalb County, and under state law governing same, O.C.G.A § 36-71-1 et seq.

6. The first phase of construction of this development shall consist of at least 125,000 square feet of retail space.:

(This condition has changed to comport with new site plan.)

7. The Applicant shall work with MARTA to accommodate future MARTA rail line over the extreme western boundary of the Subject Property.

(This condition has been modified to comply with State law regarding taking/use of private property).

8. Subject Property shall not be used for nude dancing establishments, bingo or billiard parlours, freestanding car washes, or bowling alleys.

(This condition is new and relates to a request made by the Dunwoody Homeowner's Association.)

9. The "Conceptual Site Plan" filed with the Application constitutes an expression of the general development intent of the Applicant. The "Conceptual Site Plan" may be modified so long as the following conditions are satisfied prior to the issuance of any permits required for actual development of the property.

(This condition remains the same.)

To simplify an evaluation of these changes, the original conditions, site plan and renderings are attached.

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Attachment E

WRITTEN JUSTIFICATION FOR ALTERATION  
OF ZONING CONDITIONS

On or about November 26, 1985, the Board of Commissioners of DeKalb County approved rezoning application CZ-85164 to permit Rosewood Properties, Inc. to construct a mixed use development on the Subject Property (18.9443 acres). Approval of the mixed use petition was conditioned upon the then-owner's willingness to observe certain requirements relating to the development of the property. Many of these conditions related to site development issues such as requisite parking, height, access and road improvements. Other conditions, however, were imposed as to the use of the property. Thus, the Board of Commissioners approved a development which was to contain components of 900,000 net leasable square feet of office space; up to 300,000 net square feet of retail space; a 250-room hotel; and a 200 unit residential development. Construction was phased and was to begin with the development of 450,000 net leasable square feet of office space, the hotel, and 180,000 net square feet of retail space. Additionally, certain traffic improvements, such as signalization at Hammond Drive, the widening of Hammond Drive, and the upgrading of the intersection of Hammond Drive and Perimeter Center Parkway, were to follow within 12 months after receipt of the first building permit.

Since the original rezoning, Rosewood Properties lost the Subject Property to foreclosure, primarily due to its inability to secure financing for this mixed-use project. Home Depot USA, Inc., faced with the need to obtain a favorable location to permit the construction of its new Expo store, now is interested in constructing such a facility on the subject property. The successful operation of this new store will translate into hundreds of new jobs, substantial property taxes, and sales tax revenues. Moreover, since there is no substantial change in use of the site occasioned by the request, (if anything, it is being down-zoned); and given its location between Perimeter Center Mall to the immediate north and I-285 to the immediate south, approval of this location for Home Depot's new store would serve the public interest.

Home Depot, USA, in advance of filing this application, presented its concept plan to the Board of Directors of the Dunwoody Homeowners Association. This presentation was well-received, and the DHA and Home Depot are working together to derive reasonable conditions to be imposed in conjunction with the development of this site. Many of these conditions already have been imposed herein by Home Depot as a consequence of DHA input.

This particular portion of DeKalb County continues to serve as

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one of Atlanta's prime retail markets. Perimeter Mall is a major regional mall which serves the affluent residential base as well as the extensive numbers of employees in this established office market. Unfortunately, many larger national retailers have been forced to locate along Roswell Road instead of within the Perimeter Mall area due to the unavailability of suitable sites. Utilization of this site by Home Depot will enhance the vitality of this commercial activity node. Development as per Home Depot's plans also will service several important goals of the DeKalb County Land Use Plan, as follows:

**DEKALB COUNTY LAND USE PLAN GOAL NO. B.5.**

"Assure that public funds, services and facilities are allocated in the most cost-effective manner possible and that the taxpayer does not become excessively burdened."

Commercial projects tend to produce more public revenue relative to the public service demands they generate. Additionally, this request is particularly cost effective given Home Depot's commitment to road improvements. Although this type of fiscal consideration should not be permitted to outweigh other factors in reaching a zoning decision, it is certainly one of the factors that should be included in the balance.

**DEKALB COUNTY LAND USE PLAN GOAL NO. D.1.**

"Provide a balanced distribution of regional, community and neighborhood commercial and mixed-use office centers."

An express policy of the Plan adopted to further this goal is to encourage the "clustering" of shopping facilities "in nodes convenient to population concentrations and major transportation facilities", both of which are evident here. In addition to Perimeter Mall, ease of access to I-285 and the future MARTA station which will serve the mall make this site particularly

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suitable for commercial expansion. Perimeter Mall expressly was recognized by the Land Use Plan drafters as a "regional commercial activity node". This proposed use falls squarely within those which customarily are to be found in such major nodes.

**DEKALB COUNTY LAND USE PLAN GOAL NO. D.2.**

"Reduce the spread of strip-type commercial development."

Both policies intended to carry out this goal are observed by this project. First, the application represents large lot development with minimal curbcuts, quality landscaping and reasonable signage. Second, adequate site design standards have been incorporated into Home Depot's Site Plan in regard to off-street parking and loading, signs, building locations, and landscaping to ensure non-interference with traffic movements and consistency with adjacent land uses.

**DEKALB COUNTY LAND USE PLAN GOAL NO. H.2**

"Provide a comprehensive transportation system that encourages desirable land use patterns and appropriate timing for adjacent land development."

Home Depot's willingness to work with MARTA to coordinate construction of the Perimeter Station will help prevent traffic flow disruption.

**DEKALB COUNTY LAND USE PLAN GOAL NO. C.1.B.**

Encourage appropriate transitions between various residential zoning districts by applying appropriate intermediate land uses between radically different land uses and appropriate buffers along adjoining boundaries and street frontages."

The proposed development would simply fill in an open site, thus eliminating any mystery about its eventual use and solidifying the Perimeter Center activity node. The applicant's attention to buffering, with infill landscaping as necessary, assures appropriate transition in uses.

In summary, the proposed development serves to implement specific goals, objectives and policies of the County's Land Use Plan.

Any portion of the DeKalb County Zoning Ordinance or Comprehensive Land Use Plan which would classify the Subject Property so as to prohibit the use reflected by this Application would destroy the Applicant's property rights and the identical rights of the actual property owners without first paying just compensation for such rights in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia; Article I, Section III, Paragraph I of the Constitution of the State of Georgia; and the Fifth and Fourteenth Amendments to the United States Constitution.

The Subject Property is presently suitable for the use requested and is not suitable for other C-1 permitted uses. Accordingly, a denial of this Application would constitute an arbitrary and capricious act by DeKalb County without any rational basis therefore constituting an abuse of discretion and violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia; Article I, Section III, Paragraph I of the Constitution of the State of Georgia; and the Fifth and Fourteenth Amendments to the United States Constitution.

A refusal by DeKalb County to alter the conditions of rezoning applicable to the Subject Property so as to permit the only feasible economic use of the property would be unconstitutional and would discriminate in an arbitrary and capricious and unreasonable manner between the Applicant and owners of similarly-situated property in violation of Article I, Section II, Paragraph III of the Constitution of the State of Georgia and the Equal Protection

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Clause of the Fourteenth Amendment to the United States Constitution.

This Application meets favorable the prescribed test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning as an expression of the government's police power, Guhl v. Holcomb Bridge Road, 238 Ga. 322 (1977).



HUDDLESTON & MEDORI

ATTORNEYS AT LAW

TWO DECATUR TOWNCENTER

125 CLAIRMONT AVENUE

SUITE 420

DECATUR, GEORGIA 30030

H. MARTIN HUDDLESTON  
EUGENE A. MEDORI, JR.

OF COUNSEL  
KATHRYN M. ZICKERT, P.C.  
ROBERT G. MORTON

TELEPHONE (404) 377-3441  
FACSIMILE (404) 377-3533



February 3, 1993

HAND DELIVERED

Mr. Charles Coleman  
Assistant Director of  
Planning for Dekalb County  
1300 Commerce Drive  
Decatur, GA 30030

Re: Home Depot Alteration of Condition Request (Pending)

Dear Charlie:

I need to amend the above-referenced application. Specifically, Home Depot USA wishes to substitute the enclosed Site Plan for the concept plan filed January 22 with the application. Please advise whether I need to do anything further than send these Site Plans to you with this letter.

Also enclosed please find substitute surveys to accompany our Application.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn Zickert".

Kathryn M. Zickert, P.C.

KMZ/mm  
Enclosures  
cc: Mr. Duke Sullivan

HUDDLESTON & MEDORI

ATTORNEYS AT LAW

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TWO DECATUR TOWNCENTER  
125 CLAIRMONT AVENUE

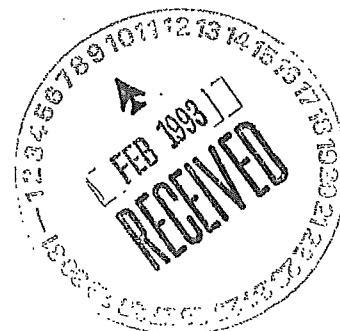
TELEPHONE (404) 377-3441  
FACSIMILE (404) 377-3533

OF COUNSEL  
KATHRYN M. ZICKERT, P.C.  
ROBERT G. MORTON

SUITE 420  
DECATUR, GEORGIA 30030

February 9, 1993

HAND DELIVERED



Mr. Charles Coleman  
Assistant Planning Director  
DeKalb County Planning Department  
1300 Commerce Drive, Suite 400  
Decatur, Georgia 30030

Re: Expo Application, Home Depot USA (Hammond Drive and  
Ashford Dunwoody Road)

Dear Charlie:

Home Depot is anxious to make sure that the conceptual Site Plan submitted in conjunction with the above project is as accurate as possible given what still is some uncertainty as to end users. However, inasmuch as Cousins/New Market now has been identified as a potential purchaser of the balance of this site, we are in position to file a somewhat more detailed Site Plan which reflects conceptual development of the site as a whole. I have enclosed an original and three (3) copies of that Site Plan for your use. I would appreciate it if you would amend our application to attach it as the conceptual Site Plan we will be using to discuss this alteration of condition request.

I also need to file an amendment to the Written Statement Defining the Alteration Requested (Attachment D). The change in this document was occasioned by our conference and relates to the need to clarify that the road improvements referenced in paragraph 5 are "system" improvements as opposed to "project" improvements. If you would substitute the enclosed Attachment D for the one originally filed with the application, I also would be very appreciative. To signify your acceptance of the revised conceptual Site Plan and the new Attachment D, I would very much

HUDDLESTON & MEDORI

ATTORNEYS AT LAW

appreciate it if you would date-stamp the copy of this letter enclosed herewith and return it to me in the envelope provided. As always, thank you for your assistance. I enjoyed meeting with you last Thursday and look forward to our continued work on this project.

Sincerely,

*Kathryn M. Zickert/mm*

Kathryn M. Zickert, P.C.

KMZ/mm

Enclosures

cc: Mr. Duke Sullivan  
Mr. David Chestnut

Attachment D

WRITTEN STATEMENT DEFINING  
SPECIFIC ALTERATION REQUESTED

Home Depot USA, Inc., requests an alteration of zoning conditions imposed upon approval of CZ-85164 (Rosewood Properties) to permit construction of a new retail store known as "Home Depot Expo". This request necessitates minor revision of these original conditions, but most would remain intact. The end result would be that the following conditions would apply to development of this property should this request be granted:

1. The various components of the development shall not exceed the following sizes:

- (a) 780,000 net leasable square feet of office;
- (b) 300,000 net square feet of retail;
- (c) 250-room hotel; and
- (d) 200 residential units.

If the 250-room hotel is not constructed, Applicant shall have the right to construct an additional 150,000 net leasable square feet of office space.

(This condition has not changed from the original application)

2. Parking shall be provided through decked, underground or surface facilities at the following ratios:

- (a) 3 spaces per 1,000 net leasable square feet of office space;
- (b) 4.5 spaces per 1,000 gross square feet of retail space;
- (c) 1.2 spaces per hotel room; and
- (d) 2 spaces per residential unit.

Construction of the parking facilities shall coincide with construction of the project so that the minimum ratio of parking to all uses is maintained.

(§ 2(b) has been reduced from 5.5 spaces/1000 to 4.5 spaces)

3. No office building shall exceed twenty (20) stories in height (exclusive of basements, rooftop mechanical rooms, etc.) and the hotel shall not exceed twenty (20) stories in height. (Same as original condition).

4. Points of access to and from Hammond Drive and the site shall be limited to 3 points as shown on the conceptual site plan, with the approval of the DeKalb Roads and Drainage Department. (Same as original condition).



5. The following traffic improvements shall be the responsibility of the Applicant:

- (a) Applicant shall request and, if approved, install at its expense a traffic signal at the intersection of the central drive into the project and Hammond Drive, and coordination of that signal with signals on Hammond Drive at Perimeter Center Parkway and Ashford-Dunwoody Road.

- (b) Applicant shall dedicate right-of-way along entirety of Hammond Road frontage of property sufficient to accommodate construction of additional lane on Hammond Road.

These improvements are not required by this project and are system improvements. These improvements shall be made without forfeiture of rights to seek appropriate contribution or reimbursement for the cost thereof under whatever impact fee system, if any, is in place and/or applies in DeKalb County, and under state law governing same, O.C.G.A § 36-71-1 et seq.

6. The first phase of construction of this development shall consist of at least 125,000 square feet of retail space.;

(This condition has changed to comport with new site plan.)

7. The Applicant shall work with MARTA to accommodate future MARTA rail line over the extreme western boundary of the Subject Property.

(This condition has been modified to comply with State law regarding taking/use of private property).

8. Subject Property shall not be used for nude dancing establishments, bingo or billiard parlours, freestanding car washes, or bowling alleys.

(This condition is new and relates to a request made by the Dunwoody Homeowner's Association.)

9. The "Conceptual Site Plan" filed with the Application constitutes an expression of the general development intent of the Applicant. The "Conceptual Site Plan" may be modified so long as the following conditions are satisfied prior to the issuance of any permits required for actual development of the property.

(This condition remains the same.)

To simplify an evaluation of these changes, the original conditions, site plan and renderings are attached.

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ROBERT G. MORTON

DECATUR, GEORGIA 30030

March 22, 1993

HAND DELIVERED

Mr. Charles Coleman  
Assistant Director of  
Planning for Dekalb County  
1300 Commerce Drive  
Decatur, GA 30030

Re: Home Depot USA  
"Expo" Application for Alteration of Conditions

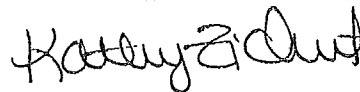
Dear Charlie:

I want to make sure there is no confusion in reference to the new conditions to be imposed in this matter. In filing the amendments that have been submitted to date, I think a typographical error has appeared in the written statement defining the specific alterations requested. Specifically, Condition 6 should read that the first phase of construction should consist of at least 100,000 square feet of retail space, as opposed to 125,000 square feet of space.

Additionally, although the Site Plan is conceptual only, I do not want any confusion concerning what is depicted on it. Accordingly, I am also submitting with this letter the most up-to-date version we have to reflect our development intentions. Please note that the front portion of the Expo store has moved forward. The square footage of the New Market retail space has increased. We also have deleted the temporary easement for MARTA reflected on earlier plans, given that as yet we have been unable to work out an arrangement with them.

Please call me if you have any questions about the foregoing. I apologize for submitting this document the day before the hearing, but I just now received the plan.

Sincerely,



Kathryn M. Zickert, P.C.

KMZ/mm  
Enclosures  
cc: Mr. Duke Sullivan

#10



Courthouse Square, Decatur, Georgia 30030

MAR 1993  
RECEIVED

MEMORANDUM

March 1, 1993

MAR 1993  
RECEIVED

TO: Charles Coleman, Assistant Planning Director  
FROM: John W. Seibert III, Associate Director Public Works  
Roads and Drainage  
SUBJECT: March Rezoning, Additional Comments

Acknowledging your February 10 request for a review of the March rezoning applications, I have reviewed your questions and have listed my comments on the respective applications. My comments on those rezoning applications deferred from the January zoning agenda remain the same.

- 2. Z-93007 District 18, Land Lot 203 Proposed Residential Development  
Clairmont Road

Access should be restricted to Clairmont Road. Georgia Department of Transportation permit required.

- 6, 2. CZ-93019 District 18, Land Lot 212 Proposed Office Development  
Lavista Road at Henderson Road

Access should be restricted to Lavista Road. Georgia Department of Transportation permit required.

- 9. CZ-93020 District 15, Land Lot 192 Proposed Residential Development  
South Hairston Road

The access point to this development should align with the approved median break on the South Hairston Road widening project at Woodway Drive. Given the scope of this proposed development, a traffic signal will be required for safe access onto South Hairston Road. The developer is to escrow \$30,000.00 for the purchase of a traffic signal at this intersection.

Accurate topographic information and field location of the 100 year Intermediate Regional Flood Limits are to be supplied to the Development Department prior to the issuance of a Development Permit. Discrepancies exist between the Flood Line shown on the site plan and Flood Line on the Flood Insurance Rate Maps.

- 10. CZ-85164 District 18, Land Lot 384 Proposed Commercial Development  
Hammond Drive

The Traffic Engineering Division has reviewed the proposed site plan and Traffic Impact Study for this development and concurs and approves those recommendations as defined in the impact study. Recommendations include the installation of a traffic signal at driveway #2 of the development. This driveway is to include a deceleration lane as illustrated on the attached plan, beginning 100 feet from the driveway and continue to Hammond Drive. The lane is to be 12 feet wide, as measured from the existing pavement edge. Access locations are approved as shown on the proposed site plan. After discussions with the developer and consultant, the Traffic Engineering Division will prepare a detailed cost for traffic signal installation. When the cost estimate is finalized, a copy will be forwarded to the Zoning and Development Departments.

- 13. Z-93014 District 18, Land Lot 185, Proposed Industrial Development

The Traffic Engineering Department is to review any access point onto Herbert Drive.

*John W. Seibert III*  
John W. Seibert III

ME

cc: Mike England, Acting Deputy Director Roads and Drainage  
Traffic Engineering