

## MEMORANDUM

To: City Council

From: Paul Leonhardt, Planning & Zoning Manager

Date: September 27, 2021

**Subject: RZ21-01** – 5500 Chamblee Dunwoody Rd & 1244 Dunwoody Village Parkway, Parcel IDs # 18 366 01 001 & 18 366 01 022

### REQUEST

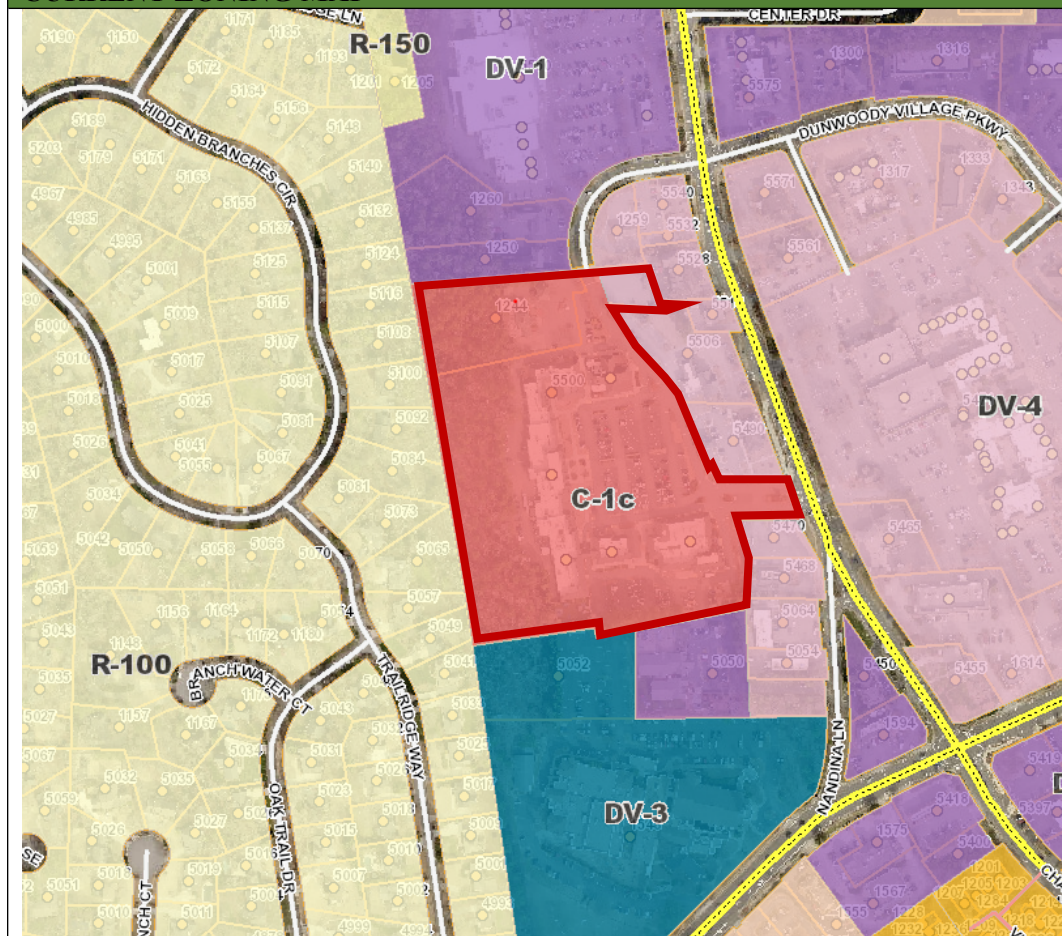
The City of Dunwoody seeks a rezoning from the current C-1 Conditional (Local Commercial) District and Dunwoody Village Overlay District to the DV-1 (Village Commercial) and to the DV-4 (Village Center) District.

### APPLICANT & PROPERTY OWNER

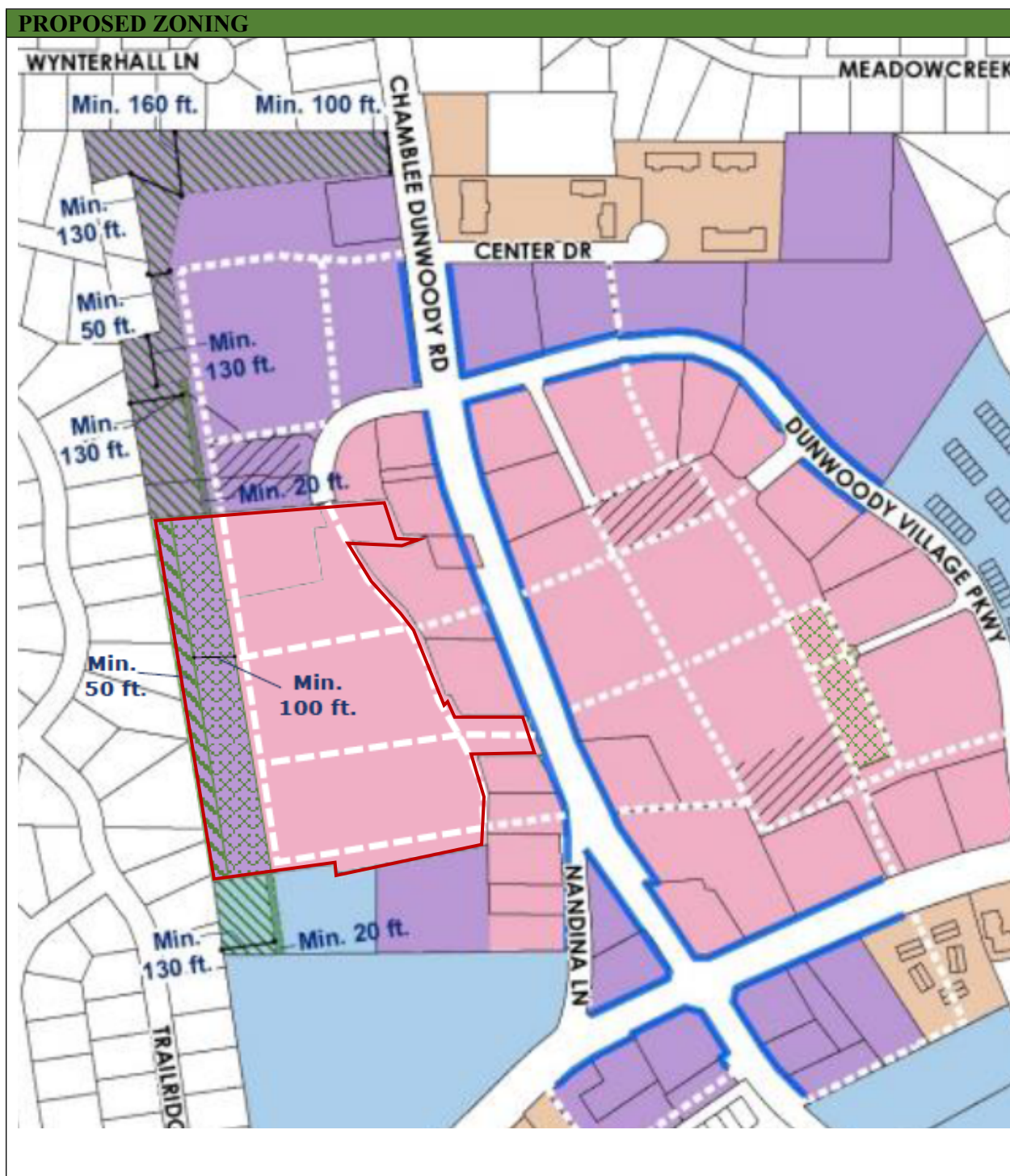
Petitioner: City of Dunwoody

Property Owner: Peachtree Shops of Dunwoody LLC (5500 Chamblee Dunwoody Rd) & Sodop II LLC (1244 Dunwoody Village Pkwy)

### CURRENT ZONING MAP



SURROUNDING LAND USE			
Direction	Zoning	Future Land Use	Current Land Use
N	DV-1/DV-4	Dunwoody Village	Commercial
S	DV-1/DV-3	Dunwoody Village	Commercial/Institutional
E	DV-4	Dunwoody Village	Commercial
W	R-100	Residential	Single-family residential





## BACKGROUND

### UPDATE SEPTEMBER 27, 2021

On September 2021, the City Council deferred the case to allow for additional time for a negotiated agreement between the property owner of the two subject parcels and the neighbors to the east. The resulting proposal includes an increase of the required undisturbed buffer from 35 feet to 50 feet with a corresponding decrease of the required open space area from 115 feet to 100 feet. In addition, these westernmost 150 feet are proposed to be rezoned to the DV-1 (Village Commercial) zoning district, with the remainder of the site to be rezoned to the DV-4 (Village Center) zoning district.

In addition to these changes, the updated proposal has six added zoning conditions, setting parameters for the usage of the 100-foot required open space area and of the remainder of the two parcels. In the required open space area, zoning conditions prohibit amphitheaters, sports fields, and above-ground or surface detention facilities. Additional conditions require Dark Sky-compliant lighting on the western part of the subject parcels and prohibit the expansion of animal care/boarding services without first obtaining a special land use permit.

### UPDATE SEPTEMBER 13, 2021

On August 23, 2021, the City Council conducted its first read of the rezoning. Councilman Secorder requested a visual representation of the visual impact of the 85-foot height limit on the residential neighborhood. The staff has completed that based on the GIS topography information and estimated tree height at three representative locations. The results are included as an attachment to this staff report.

After the meeting, the staff has also received notice from the DeKalb County Department of Planning & Sustainability that the county has found an additional case file. A staff member traveled to the County offices to review the file, with no significant new information being found.

## BACKGROUND

The parcel at 5500 Chamblee Dunwoody Rd. is currently zoned C-1 and is developed with the Shops of Dunwoody shopping center, including businesses such as Nai Thai Cuisine, Dunwoody Tavern, and Taqueria Los Hermanos. The parcel at 1244 is zoned C-1 and is developed with a small two-story commercial building and the Sunshine Carwash facility. Both lots are within the Dunwoody Village Overlay District and are separated by an approximately 150- to 200-foot buffer towards a single-family residential neighborhood to the west.



Along the western part of the subject properties, two streams flow westward from the subject properties towards the neighborhoods.

The image to the left shows the streams' approximate location and their associated 25-foot state stream buffer and the 75-foot city stream buffer. Independent of this zoning decision, the property owners will have to leave these buffers undisturbed and the trees will remain.

On November 30, 2020, the City Council adopted the new zoning code for the Dunwoody Village. As part of the code overhaul, the City comprehensively rezoned properties in the

Dunwoody Village area to four new Dunwoody Village zoning districts. The two subject parcels were initially part of that process; however, the City Council removed both after objections by the property owners.

The main issue of contention was the 130-foot undisturbed buffer plus 20-foot required transition yard along the western property line and adjacent to the Dunwoody West and Hidden Branches subdivisions. The property owners contested that the buffer would amount to a taking.

The staff also conducted an extensive search for zoning conditions. The files transferred by DeKalb County at the time of the City's incorporation are incomplete, with the original zoning file not in the City's possession. Multiple open records requests to the County provided additional documents, including meeting minutes and zoning case files that provided additional clarity. Based on a review of these files, the staff finds that the approved zoning conditions reference a 150-foot to 200-foot buffer between the shopping center and the residential neighborhood. The buffer is also shown on a site plan that appears to be the approved and conditioned site plan. Neither the statement of conditions nor the site plan reference that the buffer is conditioned to be undisturbed.

Review of the meeting minutes shows that the county commission deferred the case multiple times for the developer and the neighbors to come up with an additional private agreement beyond the zoning conditions, which resulted in the private covenants that stipulate the buffer to be undisturbed for twenty years. This 1977 private agreement expired after a 20-year period was not renewed by both parties.

The staff has held negotiations with the property owners of the two subject parcels to complete the Dunwoody Village district-wide zoning project. The proposed agreement rezones the subject properties to the DV-4 (Village Center) and the DV-1 (Village Commercial) district. Along the western property line of the two parcels, a 50-foot undisturbed buffer adjacent to the property line is followed by a 100-foot required open space. This is in line with the 150-foot buffer that is currently conditioned and ensures that no primary structure is placed within 150 feet of the residential neighborhood. The open space area can be used for community purposes such as park land or kiosks and has to be built to specific standards with limits to the amount of impervious area, area covered by structures, and percentage of open water and stormwater features. Proposed zoning conditions prohibit the usage for amphitheaters or sports fields and prohibit the construction of above-ground or surface detention facilities.

## **PLANNING COMMISSION REVIEW**

On its August 10, 2021 meeting the Planning Commission recommended approval with a 4-2 vote. Commissioners Dallas, O'Brien, Abram, and Wagner recommended approval, while Commissioners Harris and Price recommended denial. The Planning Commission appreciated the effort to finalize the Dunwoody Village rezoning effort, and expressed support for the substantive aspects of the proposed compromise. Commissioners Harris and Price expressed concern that the legal status of the buffer is so unclear, but expressed support for searching for an agreeable solution through the rezoning process.

## **DISCUSSION**

Under the 2020 initial draft regulations, the parcel at 1244 Dunwoody Village Parkway was zoned DV-1 (Village Commercial), while 5500 Chamblee Dunwoody Road was split-zoned along a future north-south street with the part fronting Chamblee Dunwoody Road zoned DV-4 (Village Center) and the part to the rear zoned DV-1 (Village Commercial). Under the current proposal, the westernmost 150 feet would be zoned DV-1 (accommodating the required undisturbed buffer and the required open space), while the remainder (the developable portion) would be zoned DV-4.



The DV-4 district is intended as the core of the Dunwoody Village area and provides a mix of uses, centralized open spaces, and highly walkable development patterns at the highest intensity level of the four Dunwoody Village districts. When compared with the DV-1 district, the permitted uses are fairly similar, while the DV-4 district allows an additional story and higher impervious cover (see below table for comparison).

	<b>DV-4</b>	<b>DV-1</b>
<b>Maximum Height (&gt;100 from Single-family)</b>	5 Stories or 80 Feet, Whichever is Less	4 Stories or 65 Feet, Whichever is Less
<b>Maximum Impervious Cover (Sites ≥ 1 Acre)</b>	90 Percent	80 Percent
<b>Mixed-Use Requirement</b>	For All Developments Over 15,000 Square Feet of Floor Area, a Minimum of 2 Use Categories Shall Be Provided	Max. 75% of Floor Area May Be Residential

The heart of the agreement is to shift future development density from the western part of the properties, adjacent to the neighborhood, towards the center of the Dunwoody Village district. The property owner agrees not to construct any primary buildings within 150 feet of the neighborhood, while being granted the additional development potential that comes with the DV-4 zoning. While there are no current development plans, the staff believes that this agreement allows for sufficient development rights to achieve the goals of the Dunwoody Village Master Plan, while reducing impacts on the residential neighborhood.

The combined 50-foot undisturbed buffer and 100-foot open space exceeds the zoning standards for comparable new construction. Adjacent to a single-family residential subdivision, development in the current C-1-district (Local Commercial) would have to provide a TY2 transition yard that is 10 feet deep. Under typical C-1 District regulations, a new retail building could be built within 30 feet of residential properties and a loading area could be within 10 feet of the residential properties.

	<b>Proposed (DV-1 and DV-4)</b>	<b>Typical (C-1)</b>
<b>Undisturbed Buffer</b>	50 ft.	-
<b>Transition Yard</b>	-	10 ft. (TY2 yard)
<b>Required Open Space</b>	100 ft.	-
<b>Proposed street</b>	App. 62 ft.	N/A (buildings would be between proposed street and neighborhood)
<b>Effective Building Distance from Residential Properties</b>	App. 212 ft.	30 ft. (rear building setback)

## **REVIEW AND APPROVAL CRITERIA**

In accordance with Georgia and local law, the following review and approval criteria shall be used in reviewing the respective amendment applications:

Section 27-335. Review and approval criteria.

b. Zoning Map Amendments. The following review and approval criteria must be used in reviewing and taking action on all zoning map amendments:

1. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan;

2. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;
3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
4. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
5. Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal;
6. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources;
7. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The proposed zoning map amendment is not tied to a specific project. Instead, it is intended to complete the comprehensive rezoning of the Dunwoody Village district that was adopted in 2020. As such, there will be no immediate impacts associated with the rezoning.

The Dunwoody Comprehensive Plan includes both subject parcels in the Dunwoody Village character area. The plan calls for a “center of the community, focused on pedestrian and bicycle amenities, functional public open space, a multi-modal transportation environment, architectural controls, connectivity, and place making” (p. 24). Further, the plan suggests, “redevelopment efforts should have a residential component” (p. 24). The zoning map amendment enables both goals by achieving a large public open space, enabling a mix of uses, and requiring the much stricter design standards of the Dunwoody Village zoning district.

Staff does not anticipate negative impacts on neighboring properties. On three sides, the subject properties are surrounded by properties that have Dunwoody Village zoning. Staff anticipates that any future redevelopment will similarly meet the vision for the district as expressed in the Comprehensive Plan. While there is currently a vegetated buffer of approximately 150 to 200 foot along the western property lines, no impacts are anticipated until the property is redeveloped in the future. Under current zoning rules, the property owner could remove large portions of the trees as the buffer is not required to be undisturbed. The proposed rules are significantly more protective, requiring future buildings to be over 200 feet from the property line and maintaining an undisturbed buffer along the western property line.

There are no known historic building or site or archaeological resources affected. Staff anticipates no excessive or burdensome impacts on infrastructure or schools. Staff anticipates that the mix of uses that is enabled by the proposed zoning will contribute to less resource usage than comparatively sized single-use developments would have.

#### DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION

Based on the above analysis and findings staff has determined that the requested zoning map amendment meets the requirements of Sec. 27-335 of the Zoning Ordinance; therefore, staff recommends **APPROVAL** of the rezoning from the current C-1 Conditional (Local Commercial) District and Dunwoody Village Overlay District to the DV-1 (Village Commercial) district for the westernmost 150 feet of the two subject parcels and the DV-4 (Village Center) district for the remainder of the two subject parcels subject to the following conditions:



1. Any area reflected on the Regulating Map as Required Undisturbed Buffer or Required Open Space (hereafter the “150’ Open Space Area”) is considered part of the development area for a master development that includes the subject parcels. As such, it may be used to satisfy open space, impervious cover, development density, and similar requirements that relate to site area.
  2. The following use shall require a Special Land Use Permit: Animal care/boarding services. Any existing animal care/boarding service uses are grandfathered as lawful non-conforming uses.
  3. Within the easternmost 100’ of the 150’ Open Space Area (the 50’-150’ area, as measured from the western property line), select stands of specimen trees are to be preserved. Before tree removal of any specimen trees in said area, a comprehensive tree survey of said area shall be completed. A minimum of 5 specimen trees shall be preserved in said area, subject to City administrative approval. For any specimen trees in excess of meeting this threshold, the regulations of the tree ordinance shall govern.
  4. All external lights, including streetlights, are required to be Dark Sky compliant within the 150’ Open Space Area, the proposed right-of-way that parallels the 150’ Open Space Area, and on the western-facing exterior of any structure that is partially or fully within 40’ of the westernmost future north-south street.
  5. No above-ground structures shall be constructed in the 150’ Open Space Area, except a fully enclosed restroom facility (which shall be located within the easternmost 50’ of the 150’ Open Space Area (the 100-150’ area, as measured from the western property line)) and open air structures, such as gazebos. No amphitheater or sports fields shall be constructed.
  6. There shall be no above-ground or surface detention facilities in the 150’ Open Space Area.
7. A 4-foot vinyl-coated chain-link fence shall delineate the 150’ Open Space Area along the western property line.

STATE OF GEORGIA  
CITY OF DUNWOODY

**ORDINANCE 2021-XX-XX**

**AN ORDINANCE TO AMEND THE CITY OF DUNWOODY ZONING CLASSIFICATION AND MAP OF LOT PARCEL NUMBER 18 366 01 001, and 18 366 01 022 IN CONSIDERATION OF ZONING CASE RZ 21-01 (5500 Chamblee Dunwoody Rd & 1244 Dunwoody Village Pkwy)**

**WHEREAS,** the Mayor and City Council have considered and approved a comprehensive rezoning of properties in the Dunwoody Village area in 2020; and

**WHEREAS,** Most of the development with the Dunwoody Village was constructed in the 1970s and 1980s and as automobile-oriented developments, the buildings are largely one-story in height, contain large surface parking lots and have minimal functional open space; and

**WHEREAS,** By adopting these changes, the City of Dunwoody intends to: maintain and enhance the identity and image of Dunwoody Village; accommodate and promote walkable, development patterns containing a complementary mix of land uses; create opportunities for functional, landscaped, open and gathering spaces in the commercial core of Dunwoody; ensure that new development and substantial additions to existing buildings are designed to promote Dunwoody Village as an area of unique character while requiring that all new construction makes use of design standards and materials that enhance the district, complement existing character, and allow for the introduction of new design elements while encouraging the addition of walkability and green space; support efforts to create a vibrant shopping and entertainment area in which merchants and businesses thrive and grow, thereby helping to maintain property values and keeping vacancy rates low; and maintain and enhance the area's role as a place for civic activities and public gatherings within well-designed open spaces; and

**WHEREAS,** The two subject parcels were originally intended to be part of said comprehensive rezoning and are essential for the implementation of the City's Comprehensive Plan and of the Dunwoody Village Master Plan; and

**WHEREAS,** The Mayor and City Council find that the proposed changes are appropriate and will enhance the public health, safety, and welfare within the City; and

**WHEREAS:** The Mayor and City Council have conducted a public hearing as required by the Zoning Procedures Act prior to adoption of this Ordinance; and



STATE OF GEORGIA  
CITY OF DUNWOODY

**ORDINANCE 2021-XX-XX**

**WHEREAS:** Notice to the public regarding said amendment to the zoning map has been duly published in The Dunwoody Crier, the Official News Organ of the City of Dunwoody, Georgia.

**NOW THEREFORE,** THE MAYOR AND CITY COUNCIL OF THE CITY OF DUNWOODY, GEORGIA HEREBY **ORDAIN AND APPROVE** the rezoning of said properties from the C-1 Conditional (Local Commercial) district and Dunwoody Village Overlay district to the DV-1 (Village Commercial) district for the westernmost 150 feet of the two subject parcels and the DV-4 (Village Center) district for the remainder of the two subject parcels subject to the following conditions:

1. Any area reflected on the Regulating Map as Required Undisturbed Buffer or Required Open Space (hereafter the "150' Open Space Area") is considered part of the development area for a master development that includes the subject parcels. As such, it may be used to satisfy open space, impervious cover, development density, and similar requirements that relate to site area.
2. The following use shall require a Special Land Use Permit: Animal care/boarding services. Any existing animal care/boarding service uses are grandfathered as lawful non-conforming uses.
3. Within the easternmost 100' of the 150' Open Space Area (the 50'-150' area, as measured from the western property line), select stands of specimen trees are to be preserved. Before tree removal of any specimen trees in said area, a comprehensive tree survey of said area shall be completed. A minimum of 5 specimen trees shall be preserved in said area, subject to City administrative approval. For any specimen trees in excess of meeting this threshold, the regulations of the tree ordinance shall govern.
4. All external lights, including streetlights, are required to be Dark Sky compliant within the 150' Open Space Area, the proposed right-of-way that parallels the 150' Open Space Area, and on the western-facing exterior of any structure that is partially or fully within 40' of the westernmost future north-south street.
5. No above-ground structures shall be constructed in the 150' Open Space Area, except a fully enclosed restroom facility (which shall be located within the easternmost 50' of the 150' Open Space Area (the 100-150' area, as measured from the western property line)) and open air structures, such as gazebos. No amphitheater or sports fields shall be constructed.
6. There shall be no above-ground or surface detention facilities in the 150' Open Space Area.

STATE OF GEORGIA  
CITY OF DUNWOODY

**ORDINANCE 2021-XX-XX**

**SO ORDAINED AND EFFECTIVE**, this \_\_\_\_ day of \_\_\_\_\_, 2021.

Approved by:

\_\_\_\_\_  
Lynn Deutsch, Mayor

Attest:

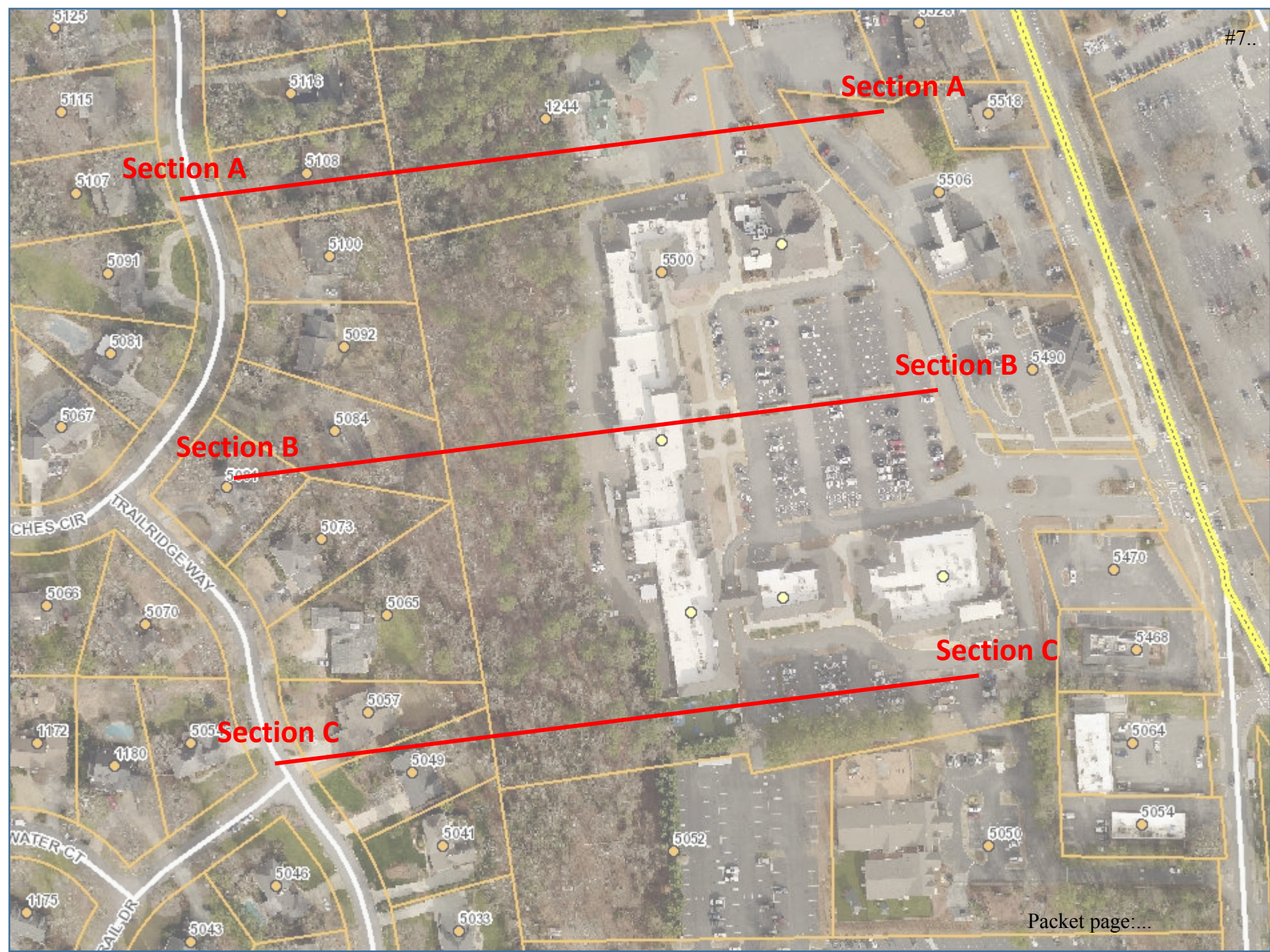
Approved as to Form and Content

\_\_\_\_\_  
Sharon Lowery, City Clerk

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Office of City Attorney

SEAL





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Section A

Section A

Section B

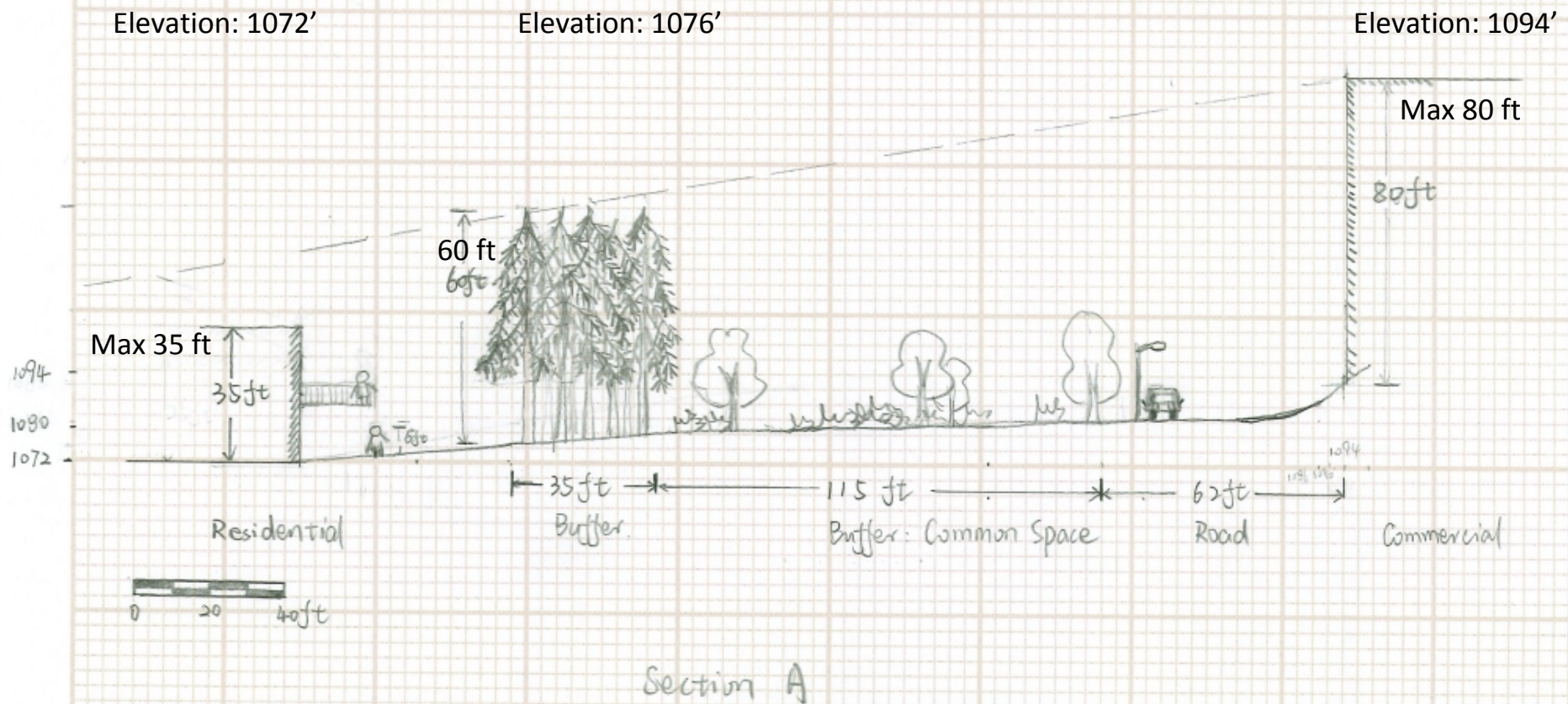
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Section C

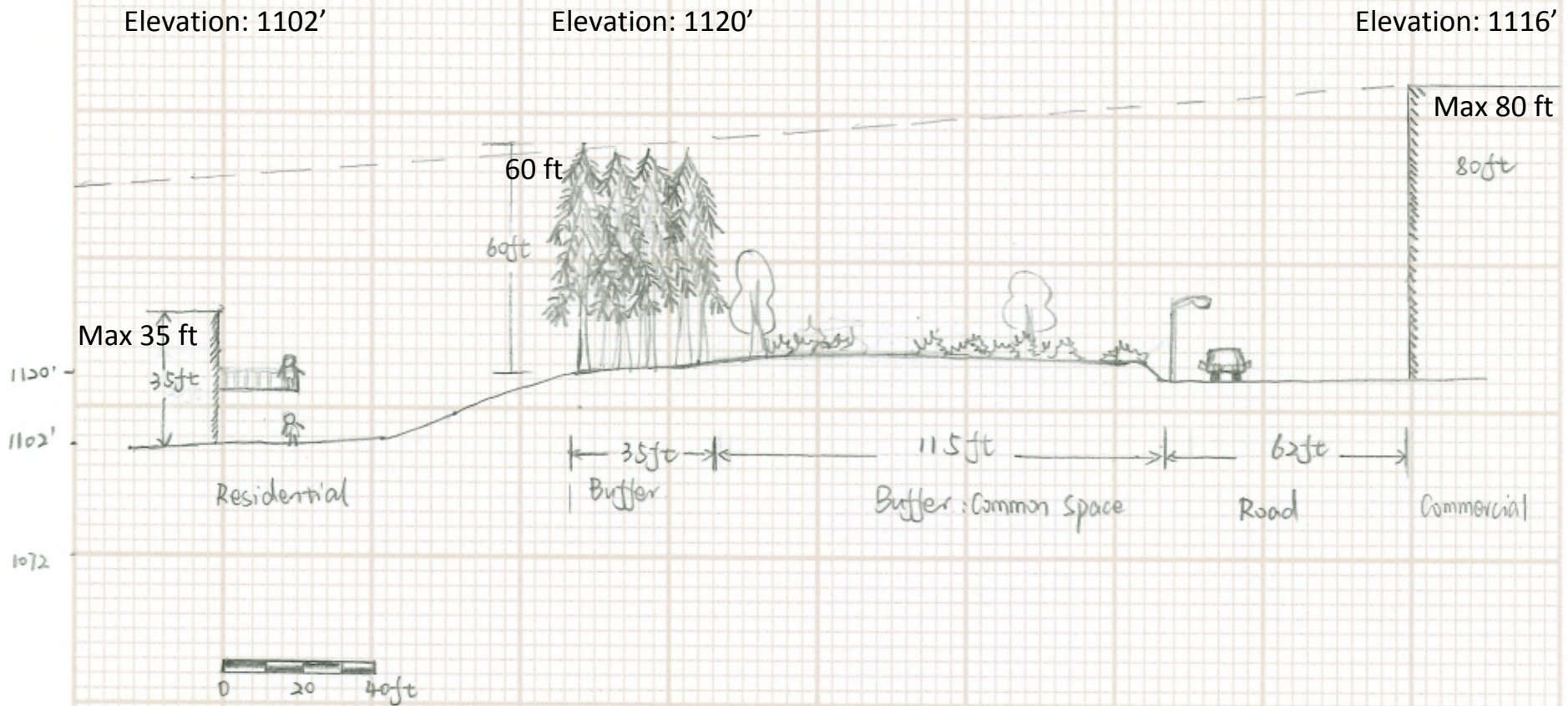
Section C

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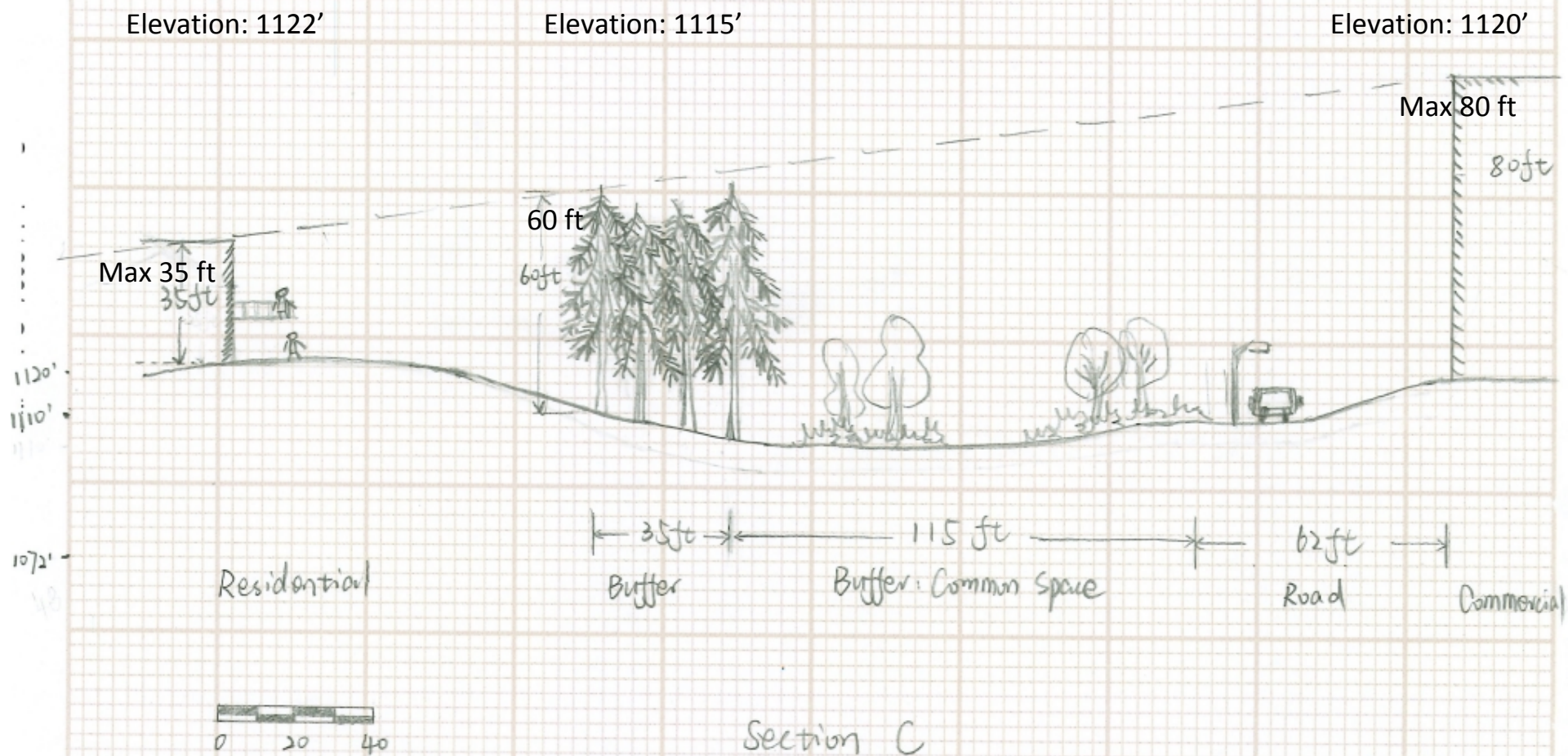






Section B





## ACTION TAKEN ON PRELIMINARY ITEMS:

A) 01-52-30

B) Zoning re:  
S. Lowell  
WammockC) Chamblee  
Dunwoody  
Nandina  
Lane

12. Initiation of rezoning application - S. Lowell Wammock property on Chamblee-Dunwoody Road: To consider initiation of an application to rezone property located on the west side of Chamblee-Dunwoody Road at its intersection with Nandina Lane from R-150 to C-1 (conditional). The property has frontage of 377' on Chamblee-Dunwoody Road, 211' on Nandina Lane and contains approximately 18.84 acres.

On January 25, 1977 the Board denied the above referenced proposal. Direction was given by the Board that initiation of rezoning would be considered only after the applicant, homeowners' association and staff were agreeable to conditions relative to buffers, access, drainage and architecture.

The conditions attached with this proposal provide sufficient buffers and fencing for screening purposes, limitation of access to Chamblee-Dunwoody Road and Nandina Lane, protection of buffer area from drainage facilities and architectural design requirements for buildings.

Mr. Steve Nelson, Planning Director, stated that Mr. Wammock and representatives of the homeowners' association had indicated they would be present this morning, but had not yet arrived.

Motion was made by Commissioner Manning, seconded by Commissioner Maloof, and unanimously passed to defer to public hearing.

The following action was taken at the public hearing:

Mr. Lowell Wammock, 3496 Paces Place, N. W. Atlanta spoke for his application and requested initiation of his application as modified as a result of having met with the Planning Staff, abutting landowners, and leaders and directors of the Dunwoody Homeowner's Association. He indicated that the 36 acres to the south fronting on Mount Vernon Road, which was approved for R-100 at the January meeting, will be developed shortly. It will be similar to the Hidden Branch Subdivision. He stated he has met with abutting landowners and the homeowners' association in an attempt to resolve their differences and he feels they have a plan acceptable for everyone. He reviewed briefly plans relating to buffers, drainage, traffic, curb cuts, and architectural design. He asked that the application be reinstated for consideration either in July or August of this year as time is of the essence. He will continue to meet with the people in Dunwoody if this is necessary. He also indicated that he is in agreement with the seven conditions recommended by the Planning Department.

Opposition: Mr. Bill Cason, 1155 Cordellie Court, Dunwoody, Vice President of the Dunwoody Homeowners' Association, stated they did meet with Mr. Wammock but as far as the membership is concerned they have not reached a conclusion so at this time they are neither pro or con. With a good many people out-of-town he stated it would take two to three weeks to call a general meeting.

Mr. Jerry Lang, 4797 Kingsdown Road, Dunwoody, stated they were only 11 of their people who met with Mr. Wammock. He feels the proposals were made in good faith, but with the existing problems in Dunwoody at the present time, they could not take a position until they get approval from the general membership.

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PRELIMINARY ITEMS (Cont.)

## 12. (Cont.)

It was emphasized during discussion that Board initiation of the rezoning is not to be interpreted as an endorsement of the zoning. With that in mind, both parties need to come to an agreement.

MOTION was made by Commissioner Lanier, seconded by Commissioner Patterson, and passed 6-1, to approve the initiation of an application to conditionally rezone property located on the west side of Chamblee-Dunwoody Road at its intersection with Nandina Lane from R-150 to C-1 (conditional).

Opposed: Commissioner Williams

A) 01-61-10

B) Grant,  
Summer  
Feed-A-Kid  
Program

C) Feed-A-Kid  
Program  
Grant

15. Grant Acceptance for Summer Feed-A-Kid Program: To consider acceptance of a grant from the U. S. Department of Agriculture for \$37,744 for the 1977 Summer Feed-A-Kid Program.

This program is needed to insure nutritious meals for the children of DeKalb during the summer months (June 20-August 19). Many children depend upon the schools to provide hot meals throughout the year. This program extends the hot meal concept through the summer months.

MOTION was made by Commissioner Maloof, seconded by Commissioner Levetan, and unanimously passed to approve and authorize Chairman to execute acceptance of grant from the U. S. Department of Agriculture for \$37,744 for the 1977 Summer Feed-A-Kid Program.

A) 72-11-10

B) Grant  
Appl.  
French/Drain.  
Landfill

C) Landfill  
Fence/Drain.  
Grant  
Appl.

26. Grant application for Funds to Fence and Drain Landfill: To consider Grant Application to Georgia Environmental Protection Division for \$50,000 to be used to procure and install additional fencing and French Drainage at the DeKalb County Sanitary Landfill.

Installation of this fencing will provide greater security to the area than would be present with initial fencing. French Drain corrects a drainage problem created by a spring uncovered during construction. Total cost of the project is \$100,000. The County's portion of \$50,000 would come from CIP 81-76-25 Sanitation CIP Project, the balance in which on June 2nd was \$237,841. This application has been approved by the Grants Review Board.

MOTION was made by Commissioner Maloof, seconded by Commissioner Levetan, and unanimously passed to approve

## ZONINGS

## 19. (Cont.)

Opposition: Mr. Bill Clark, 1811 Chancery Lane, Chamblee, represented the Gainsborough 500 Civic Association. He asked members of the association to stand to show that the area is predominantly residential, not commercial. They are opposed to the request for withdrawal without prejudice. They feel that rezoning to C-1 for a shopping center would not be compatible with existing uses. This is the applicant's third attempt to rezone this property. The present application, even the modified version, is inconsistent with the Comprehensive Plan and would seriously alter the office and low density residential plans for that area and would set a precedent for strip rezoning and higher density rezoning along Chamblee-Dunwoody Road. The property is not suitable for a shopping center because of ingress and egress problems which will not be cured by any modifications.

Planning Department, Planning Commission Recommendation:  
Denial

MOTION was made by Commissioner Williams, seconded by Commissioner Maloof, and passed 5-2 to Deny the application as recommended by the Planning Department and Planning Commission.

Opposed: Commissioners Patterson, Lanier.

A) 01-52-30

B) Zoning re:  
DeKalb Co.  
Board of Com.

C) Chamblee-  
Dunwoody Rd.  
Nandina Lane

20. CZ-77105

Commissioner District 1

Application of the DeKalb County Board of Commissioners to rezone property located on the west side of Chamblee-Dunwoody Road at its intersection with Nandina Lane from R-150 to C-1 (conditional). The property has frontage of 377' on Chamblee-Dunwoody Road, 211' on Nandina Lane and contains approximately 18.84 acres. The application is conditioned as to buffers, screening access and architecture.

Mr. Lowell Wammock spoke for the application as owner. Since the last time they were here, they have tried to work out something with abutting property owners and feel they have support. He reviewed the conditions of the application.

No one appeared in opposition.

Planning Department, Planning Commission Recommendation:  
Approval

MOTION was made by Commissioner Williams, seconded by Commissioner Maloof, and unanimously passed, to defer to the August 9th meeting.

## PUBLIC HEARINGS

## 10. (Cont.)

1. There is sufficient amount of land in the RM Districts.
2. There is the ability in the RM Districts to give a developer a latitude of development styles.
3. The reduction of the single family lot area in the RM District would be appropriate.

Commissioner Maloof expressed his concern that placing residential units where apartments had been designated would cause a variety of problems, and he did not understand why the Planning Department had made such a recommendation. Mr. Steve Nelson, Planning Department Director, stated that the Planning Department had recommended this action because of complaints from developers who could not get apartment financing due to the recent economic difficulties. Commissioner Williams was concerned with the impact this recommendation would have on schools in the area, since single family units usually carried more school age children than apartment units.

After further discussion, MOTION was made by Commissioner Patterson, seconded by Commissioner Williams, to deny the recommendation of the Planning Department in accordance with the Planning Commission's recommendation. MOTION passed 5-1-1, Commissioner Manning opposed; Chairman Russell abstained.

A) 01-52-30

B) Rezoning  
Applic.  
L. Wammock

C) L. Wammock  
Rezoning  
Appl.  
Defer

11. Lowell Wammock Property -- Rezoning Application:  
To consider conditional rezoning from R-150 to C-1 property on the west side of Chamblee-Dunwoody Road at the Nandina Lane intersection. This application was deferred for action only from the July 26th meeting.
- Mr. Lowell Wammock, 3476 Paces Place, N.W. Atlanta, spoke for the application. He has worked diligently with the County, the homeowners, and the adjacent property owners on this item, and has agreed to dedicate buffers to the County, construct a library, and apply a 2 year reversion of the access of parcels A, B, and C, to Chamblee Dunwoody Road if the service road is not constructed. This condition is in conflict with the Planning Department's recommendation that access to lots A, B, and C shall be to internal service road system and not to Chamblee-Dunwoody Road or Nandina Lane.

Mr. Steve Nelson, Director of Planning recommended that the Board approve the project with the conditions suggested by the Planning Department; and allow the Homeowners Association to enter into its own agreement with Mr. Wammock.

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## PUBLIC HEARINGS

## 11. (Cont.)

Mr. Herbert Sprague, President of the Dunwoody Homeowners Association, spoke against the application, his only objection being that the covenants involved in the rezoning of the property had not been signed by all parties concerned. He would approve the rezoning if the Board of Commissioners would make the condition that the signatures would have to be obtained.

MOTION was made by Commissioner Williams, seconded

by Commissioner Levetan, to defer this item to the

August 23 meeting. MOTION passed 5-2-0, with

Commissioner Patterson and Chairman Russell opposed.

- A) 01-52-60
- B) Appeal  
M. Culpepper
- C) M. Culpepper  
Appeal

12. Mrs. Martha Culpepper -- Appeal of Administrative Decision: To consider an appeal by Mrs. Martha Culpepper from a decision by the Board of Appeals which denied her appeal from an administrative decision denying building improvements to a non-conforming use day care center at 1732 Cooledge Road. The property, on the west side of Cooledge Road approximately 347 feet north of Bishop Drive, is zoned R-75.

Mrs. Martha Culpepper 1732 Cooledge Road, Tucker, Georgia, spoke for the application. She has made improvements to the property and has a current enrollment of 50 children. The building improvements would allow her to increase her enrollment to 60 children, thus increasing her income.

Mr. B. F. Owens, 1731 Ronald Road, Tucker, Ga. spoke in opposition. He lives behind the day care center, and finds it difficult to sleep during the day when the children are out. Mr. Owens works at night, and asks that the Board deny the appeal.

MOTION was made by Commissioner Williams, seconded by Commissioner Maloof to deny the appeal of Mrs. Martha Culpepper to allow building improvements to day care center at 1732 Cooledge Road. MOTION passed 4-3-0, with Commissioners Levetan, Lanier, and Manning opposed.

## REGULAR ADDENDUM

## 1. (Cont.)

A portion of the equipment cost (\$13,357,000) was approved by the Board of Commissioners on May 11, 1976 to be included in the existing South River Construction grant. For funding purposes, all the equipment will now be funded under a new grant to be applied for after approval of the attached resolution.

The revised total estimated DeKalb share for this request and the May 11, 1976 approval is now \$7,818,390. Another agenda item and another EPA grant will be required after August 15, 1977 for Snapfinger construction. At that time, revisions to the 1976 Bond Brochure will be requested.

MOTION was made by Commissioner Williams, seconded by Commissioner Lanier, and passed 5-1, to approve the attached resolution authorizing the Chairman to take all necessary action and sign all necessary documents to apply for EPA grant assistance for the purchase of process equipment for the Snapfinger and Pole Bridge AWT facilities in the South River AWT project.

Opposed: Commissioner Manning

Attachment

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 PUBLIC HEARING

A) 01-52-30

B) Zoning re:  
Lowell  
Wamrock

C) Chamblee-  
Dunwoody  
Nandina  
Lane

1. Lowell Wamrock Property -- Rezoning Application: To consider conditional rezoning from R-150 to C-1 property on the west side of Chamblee-Dunwoody Road at the Nandina Lane intersection. This application was deferred, for action only, from the August 9th meeting.

Recommendations:

Planning Department: Approval as conditioned.

Planning Commission: Approval as conditioned.

Mr. Lowell Wamrock, 3476 Paces Place, N.W. Atlanta, stated they have all the necessary signatures and everyone is in total agreement.

Mr. Herbert Sprague, President of the Dunwoody Homeowners Association, stated that Mr. Wamrock has shown great concern for the needs and desires of the Homeowners Association and they support his request.

MOTION was made by Commissioner Manning, seconded by

Commissioner Levetan, and unanimously passed, to approve the application as conditioned.

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STATEMENT OF ZONING CONDITIONS  
(for use with conditional zoning amendment only)

Applicant D.C.B.C.

Application # CZ-77105

1. Site Plan: ☒ Yes ☐ No

2. Land Use

- ☒ All district uses  
☐ Specific use(s) as described below:

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3. Density

- ☒ Not applicable  
☐ Maximum density of district requested  
☐ Modification of density as described below:

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4. Timing of Development

- ☒ No limitation  
☐ Limitations as described below:

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5. Development Standards

- ☒ Building height maximum of district requested  
☐ Limitation of building height as described below:

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- ☐ Minimum buffer requirements of district requested  
☒ Variation of buffer requirements as described below:

150' to 200' Buffer adjoining Hidden Branches  
per site plan. 10' buffer variance at Southern-  
most drive per site plan

Packet page:....

5. Development Standards (continued)

- ☐ Minimum yard requirements of district requested
- ☐ Variation of minimum yard requirements as described below:

- ☐ Minimum standards of access
- ☒ Limitation of points of access as described below:

1 pt. on Chamblee Dunwoody Rd. 1 pt. on  
Nandina Ln. and connector to Dunwoody Village  
Pkwy per site plan. Access to lots A, B, and C  
via internal service roads

6. Drainage Plan: ☐ Yes ☒ No

7. Road Improvements

- ☐ Yes as described below: ☒ No

8. Other Conditions

- ☐ Yes as described below: ☐ No

6' screening Fence on Westernmost property line.  
architecture to be Williamsburg style  
no drainage retention in undisturbed buffer.

Applicant's Acknowledgement

I have reviewed that portion of the Zoning Ordinance pertaining to Amendments and acknowledge that the conditions contained in this Statement are acceptable as conditionally binding upon development and use of this property should the map amendment be approved.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

- ☐ Minimum yard requirements of District requested
- ☐ Limitation of minimum yard requirements as described below:

- ☐ Minimum standards or scales
- ☒ Limitation of points of access as described below:

1 pt. on Chamblee Dunwoody Rd. 1 pt. on  
Nandina Ln. and connector to Dunwoody Village  
Pkwy. per site plan. Access to lots A, B, and C  
via internal service roads

6. ☐ Yes ☒ No

7. ☐ Yes as described below: ☒ No

8. ☐ Yes as described below: ☐ No

6' screening Fence on Westernmost property line.  
architecture to be Williamsburg style  
no drainage retention in undisturbed buffer.

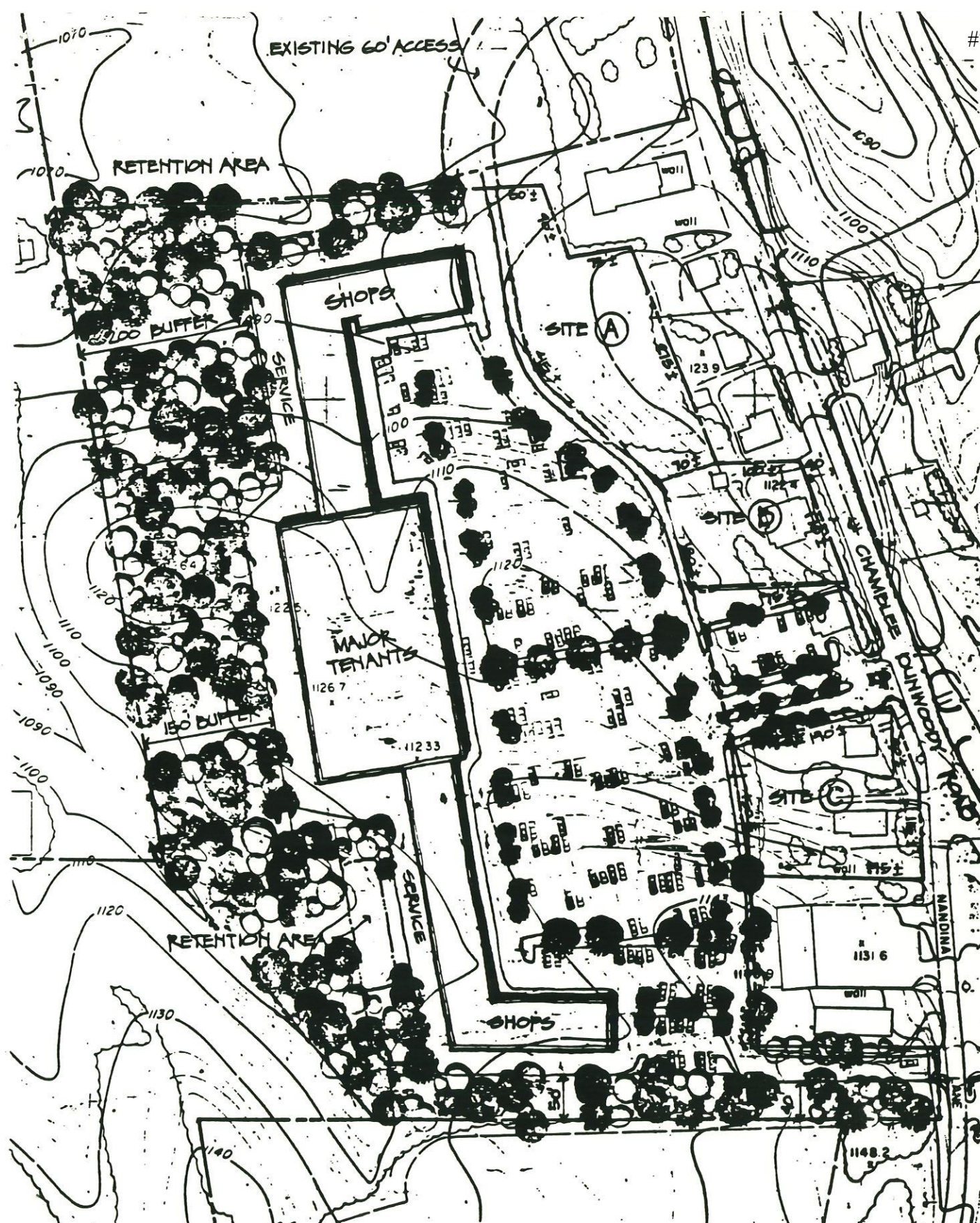
#### Applicant's Acknowledgement

I have reviewed that portion of the Zoning Ordinance pertaining to Amendments and acknowledge that the conditions contained in this Statement are acceptable as conditionally binding upon development and use of this property should the map amendment be approved.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

#3





- TOTAL AREA IN BUFFER - 4.7 ACRES ±
- TOTAL FL. AREA IN CENTER - 92,000 SQ. FT.
- PARKING @ 5.5 CARS/1000 SQ. FT. - 506 CARS

#18

APPROVED PLAN  
CZ-77105



8/23/77

*Not condition of  
Zoning*STATE OF GEORGIA )  
COUNTY OF DEKALB )AGREEMENT AND DECLARATION OF  
COVENANTS AND RESTRICTIONS

THIS AGREEMENT made this \_\_\_\_ day of August, 1977 by and between S. LOWELL WATMOCK, RUSSELL G. HENDERSON and CICERO GARNER, JR., DOUGLAS W. MORGAN and CURTIS R. PAGE (hereinafter called the "Developers"), the DUNWOODY HOMEOWNERS ASSOCIATION, INC. (hereinafter called the "DHA"), and ROBERT A. LEAVY and FRANK R. COLIANO (hereinafter referred to as "Adjoining Property Owners") with SOLOMAN J. BANKS, MYRON D. WOLF and PEACHTREE FEDERAL SAVINGS AND LOAN ASSOCIATION joining in the execution of this Agreement for the purposes hereinafter set forth.

## W I T N E S S E T H:

WHEREAS, the Developers are the owners of certain tracts of real property located in Land Lot 366, 18th District, Dekalb County, Georgia as more particularly described in Exhibit "A", attached hereto and by reference made a part hereof (hereinafter called the "Property"); and

WHEREAS, the parties hereto desire that the Property be subject to certain covenants and restrictions hereinafter set forth in connection with the development of the Property as a shopping center and other commercial uses permitted by zoning (the "Shopping Center").

NOW, THEREFORE, in consideration of the premises of this Agreement and the mutual undertakings by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

✓ 1. The Property will be developed pursuant to the following architectural guidelines:

✓ (a) Design--The Shopping Center, identified as Dunwoody West, will be developed in an architectural design comparable to the style and theme of the main portion of Dunwoody Village Shopping Center.

#3



✓ (b) Facade--The entire structure will be faced with building materials which are comparable to or reasonable facsimiles of the building materials used in similar locations of the main portion of Dunwoody Village Shopping Center, except that less expensive materials may be utilized, at the Developers' choice, in portions of the buildings which will not be exposed to either public view or adjacent homes.

✓ (c) Windows--No windows will face the housing to the west of the Shopping Center.

✓ (d) Building Height--The building height of the Shopping Center shall not exceed twenty-five (25) feet from grade level, at the roof peak, except for towers where deemed necessary by the Developers to maintain the proper design proportion.

✓ (e) Roofing--The roofing shall meet the same design and building material requirements set forth in paragraphs 1 (a) and (b) above.

2. In order to protect the Adjoining Property Owners, the Developers agree as hereinafter set forth.

(a) Buffers--Except as provided in paragraph 2 (b), there shall be appropriate undisturbed buffers, as defined in the shopping center plan, Dunwoody West, dated October 4, 1976, and revised February 9, 1977. Said buffers are generally defined as from 150 feet to 200 feet on the west. Solely at the option of DHA and the adjacent homeowners, the buffer property may be: (1) deeded to adjacent homeowners, with covenants providing for the undisturbed character for 20 years; or (2) deeded to DHA with the same covenants; or <sup>NR</sup>(3) deeded to Dekalb County, with the same covenants; (4) remain as a part of the shopping center property under the same covenants or (5) leased to DHA with the same covenants. Such election shall be made within ninety (90) days after the rezoning by the Dekalb County Commissioners. Except as provided in paragraph 2 (b), such buffer property shall remain undisturbed and will not be encroached upon any further than shown on the above-described shopping center plans. The Developers further agree that additional plantings may be desirable or necessary in the buffer property to reduce visual impact on adjacent homeowners.

#3

In the event that this is necessary, DHA will grant written permission to plant additional evergreen trees and shrubs, provided that no damage is done to existing foliage as described in paragraph 3 (1).

✓ (b) Berms--In those areas where adjacent homeowners will be exposed to sight of the buildings of the Shopping Center, it is agreed that berms and plantings will be provided to create a visual screen to such buildings. In order to create this visual screen between such buildings and the adjacent property owners, it is additionally agreed that all such berms and plantings described herein shall not utilize more than twenty-five (25) feet of that portion of the buffer property described in paragraph 2 (a) above which is adjacent to the Shopping Center, provided that no damage is done to existing foliage as described in paragraph 3 (1). Such berms and plantings shall be of appropriate height and density to accomplish the objectives stated in this paragraph. In the absence of a grading plan, no specifics can be practically established; however, they shall be no less than 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, with a slope ratio of not less than 1.5 to 1 and planted with multiple rows of evergreen trees 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, at the closest possible intervals near the top of each berm.

✓ (c) Fence--A six-foot security fence, topped with multi-stranded barbed wire, will be placed at the grading contour line, prior to beginning of building construction and planted with appropriate evergreen shrubs to provide additional screening and protection to adjacent homeowners. Such fence and plantings shall be permanently maintained by the Shopping Center ownership in a good state of repair and shall not encroach upon the established buffer property, except as it relates to berms.

(d) Lighting--All outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties. In no case will the total height of the lights be more than 25 feet

#3

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from grade level. All lighting for the purposes of parking will be located to the front of the buildings. Any lighting located in the rear of the buildings shall be no more than ten feet in height.

✓ (e) Garbage and Trash Storage--All garbage, trash and refuse generated by the operation of the Shopping Center shall be stored in central "dumpster" type containers located in an area to the rear of the main structure and appropriately screened to be out of the view of surrounding neighbors and within twenty (20) feet of the main structure.

3. The Developers agree that development of the Property will be restricted as set forth below.

✓ (a) Uses--It is agreed that the Property may be developed only for retail commercial and business offices and/or institutional purposes in accordance with the restrictions set forth herein.

✓ (b) Location of Buildings and Improvements--The location of buildings and improvements on the Property, including, but not limited to, streets, pavement areas, parking and parking lots, embankments, retaining walls, trees, fences, entrances from public roads and curb lines shall be as generally shown on the plan referred to in paragraph 2 (a), subject to final architectural and site plan design reflecting the objectives set forth herein. It is recognized that the plan referred to in paragraph 2 (a) is a preliminary plan that is subject to modification as required by final architectural and site plan design set forth above.

✓ (c) Floor Area Limitation--Not more than 92,000 square feet of total floor area shall be constructed on sites defined on the shopping center plan described in paragraph 2 (a), excluding Sites A, B, and C as delineated thereon. With respect to Sites A, B, and C, each site will be limited to a total floor area not to exceed 8,000 square feet per site.

✓ (d) Construction--Site development construction, except for the finishing of concrete, shall occur only between the hours of 7 A.M. and 7 P.M. Monday through Saturday, except for unusual circumstances created by substantial inclement weather, and with the prior written approval of DHA, which approval will not be unreasonably withheld.

#3

✓ (e) Entrances/Exits--There shall be no curb cuts, entrances, or exits to the Property, either now or in the future, except as defined on the above-described shopping center plan. Specifically, there shall only be one on Chamblee-Dunwoody Road, one on Nandine Lane and one from the adjacent development via Dunwoody Village Parkway.

✓ (f) Signs--The Developers agree to cooperate with DHA in their efforts to establish an overall criteria as to the design, size and location of signs in the Dunwoody area. It is further generally agreed that neon or internally lighted signs are not to be used and that sign height shall be compatible with the architectural and graphic scale and proportion established by the style and design objectives set forth herein.

✓ (g) Restrictions against Offensive Businesses--Businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic book stores, peep shows, or movies which would be offensive, noxious or detrimental to the community or use of the land in the vicinity shall not be carried on or permitted to be carried on within the Property. Neither shall the operation of any restaurant create or emit cooking odors objectionable to landowners in the vicinity.

✓ (h) Site and Grade Plan--The final site plan and grading plan shall be subject to the written approval of the DHA to assure conformity with the intent, as well as the substance, of the stipulations contained herein, such approval to not be unreasonably withheld. DHA shall have fifteen (15) days from the receipt of the final site and grading plans in which to approve or disapprove such plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such plans shall be deemed to have been given. In the event DHA disapproves such plans, any resubmission of revised plans shall be approved or disapproved by DHA within fifteen (15) days of receipt of such revised plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such revised plans shall be deemed to have been given.

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✓(i) Residential Development--S. Lowell Wammock agrees that development of the tract to the southwest and abutting the shopping center property shall begin at the earliest possible date as currently zoned (R-100) and in substantial conformity to site plan proposed for S. Lowell Wammock, with home construction to begin as soon as practical, but in any case, to precede development of the Property.

✓(j) Common Site Development--It is explicitly agreed that all Property included in the rezoning application, including Site A, Site B, and Site C, shall be developed in a unified plan which will be in conformity to the stipulations contained herein.

✓(k) Drainage--It is agreed that all permanent retention ponds or facilities required for water run-off shall be constructed as underground facilities, located in the parking lot areas. It is further agreed that proper provision shall be made for handling water run-off during site construction, including silt and debris barriers, such that no nearby property owners or buffer property shall be damaged in any way by such run-off.

✓(l) Foliage Retention--It is agreed that the Developers will make their best efforts to retain all substantial trees on the property, which are not located in the area defined for the buildings of the Shopping Center. Such retained trees shall be protected at the minimum by building wells around them to protect roots before grading begins and exercising caution during grading to prevent root and trunk damage.

✓(m) Historic Structures--As to the possible historic structures located on the Property, specifically that thought to be built by Major Dunwoody, the Developers agree to make a reasonable effort to save it in its entirety, if such can be done without prohibitive cost and within the architectural and design objectives set forth herein, and to use said structure as a curio shop or some similarly appropriate activity.

✓(n) Community Library--The Developers agree to make their best efforts to provide an appropriate area and amount of floor space for a community library for reasonable compensation within the budgetary constraints of Dekalb County and the Dunwoody community.

#3

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✓(o) Delivery Vehicles--The Developers understand that commercial truck traffic for the purpose of deliveries to the Shopping Center establishments is a matter of concern and agrees that said deliveries shall be made during normal business hours and in such a manner as to be inoffensive to nearby homeowners and that delivery vehicles will be parked only for the time necessary to perform delivery and will be promptly removed thereafter.

✓(p) Hours of Operation and Traffic Areas--The Developers further understand the desire to limit operation of the establishments in the Shopping Center to reasonable hours and agree that no business shall operate or be open in the shopping center past midnight on any day, except for any restaurant or theater operation. The Developers further agree that those establishments generally construed to be "high traffic" shall be located, in so much as possible, in the center of the proposed building where nearby residents will be more shielded from the activity generated by those establishments.

✓(q) The Developers understand that heavy truck traffic during construction hours potentially jeopardizes the safety and lives of the community residents and children. It is therefore agreed that all such traffic should operate within normal traffic laws and with extreme care and concern for the safety and lives of the community.

✓(r) The Developers agree to allow appropriate community organizations access to the property during reasonable hours, but not the buffer area, for the purpose of removing plants, shrubs, etc. prior to grading, provided that such groups indemnify and hold harmless the Developers against any and all loss or damage arising out of such activities. The Developers reserve the right to retain certain shrubs, plants, etc. which shall be properly designated. Groups allowed access for these purposes must be approved by the DHA and accompanied by a Board Member, designated by the Board of DHA.

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4. The Developers hereby declare that the Property described in Exhibit "A" is and shall be developed, owned, occupied, operated, transferred, sold and conveyed subject to the covenants and restrictions hereinabove set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the property owned by the Adjoining Property Owners. Such covenants and restrictions shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof, the Adjoining Property Owners and the DHA. The covenants and restrictions contained herein shall run with the Property for a period of twenty (20) years. At the end of such twenty (20) year period, upon the request of the DHA, the Developers and their successors or assigns agree to renew said covenants and restrictions and subject the Property to said covenants and restrictions for an additional twenty (20) year period. Notwithstanding anything contained herein to the contrary, in the event that construction of the entrance way and the perimeter road on the Property pursuant to paragraph 3(b) herein are not substantially completed within two (2) years from the date hereof, then and in that event, the restrictions contained in paragraphs 3(e) and 3(j) herein providing respectively for entrances and exits to the Property and for the development of the Property in a unified plan shall cease to be covenants and restrictions running with the Property or any portion thereof. Except as herein provided, all other covenants and restrictions contained herein shall remain in full force and effect.

5. Solomon J. Banks and Myron D. Wolf join in the execution hereof as the holders of security interests in that portion of the Property owned by S. Lowell Wammock to evidence and confirm their consent to the covenants and restrictions contained herein, and do hereby subordinate the lien of their security interests to the covenants and restrictions contained herein.

6. Peachtree Federal Savings and Loan Association joins in the execution hereof as the holder of a security interest in that portion of the Property owned by Cicero Garner, Douglas W. Morgan and Curtis R.

#3

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Page to evidence and confirm its consent to the covenants and restrictions contained herein, and does hereby subordinate the lien of its security interest to the covenants and restrictions contained herein.

7. This Agreement constitutes the entire agreement between the parties hereto and may not be amended, modified or revoked without the prior written consent of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Agreement.

8. This Agreement may be executed in any number of counterparts by the parties hereto with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed and shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above set forth.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

"DEVELOPERS"

\_\_\_\_\_  
S. LOWELL WAMMOCK (SEAL)

\_\_\_\_\_  
RUSSELL G. HENDERSON (SEAL)

\_\_\_\_\_  
CICERO GARNER, JR. (SEAL)

#3

030



Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
DOUGLAS W. MORGAN (SEAL)

\_\_\_\_\_  
CURTIS R. PAGE (SEAL)

DUNWOODY HOMEOWNERS ASSOCIATION, INC.

By: \_\_\_\_\_  
HERB SPRAGUE, President

Attest: \_\_\_\_\_  
Secretary

(CORPORATE SEAL)

\_\_\_\_\_  
ROBERT A. LEAVY (SEAL)

\_\_\_\_\_  
FRANK R. COLIANO (SEAL)

PEACHTREE FEDERAL SAVINGS AND LOAN  
ASSOCIATION

By: \_\_\_\_\_

Attest: \_\_\_\_\_

(CORPORATE SEAL)

#3

031



Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
MYRON D. WOLF

(SEAL

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
SOLOMAN J. BANKS

(SEAL

\_\_\_\_\_  
Notary Public

#3

REV. 3/89

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ZONING - AGENDA/MINUTES

MEETING DATE January 9, 1990

**FILE COPY**

351 #7..

ITEM NO. 1

PREL.     

ACTION     

PUB.HRG. X

RESOLUTION     

ORDINANCE X

PROCLAMATION     

SUBJECT: Alteration of Conditions Application - Jacoby Management, Inc.

COMMISSION DISTRICT: 1

DEPARTMENT: Planning

PUBLIC HEARING: X Yes      No

ATTACHMENT: X Yes      No 31 pp

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

(Deferred from 12/12/89 public hearing)

PURPOSE:

CZ-77105, CZ-85016, & CZ-88036 - To consider the application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter the site plan and other conditions. (The application was deferred to allow additional time for agreements to be made between the applicant and community.)

SUBJECT PROPERTY:

18-366-1-1, 2 & 10 (0000, 5500, and 5506 Chamblee Dunwoody Road).

RECOMMENDATION(s):

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.

A) 5210

B) Alteration of Conditions -  
Jacoby Management, Inc.C) Chamblee Dunwoody  
Rd. Nandina LaneD) Withdra-  
Prejudice

352

PREP #7..

## FOR USE BY COMMISSION OFFICE/CLERK ONLY

## ACTION:

MOTION was made by Commissioner Williams, seconded by Commissioner Collins, and passed 7-0-0-0 to withdraw the application without prejudice.

ADOPTED: JAN 09 '90  
(DATE)

Robert E. Lanier  
PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS

CERTIFIED: JAN 09 '90  
(DATE)

[Signature]  
CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

Mr. Larry Barker, 1800 Century Place, #200, Atlanta, Georgia 30345, spoke for the application and represented Jacoby Management. He stated that the applicant had answered most of the concerns expressed by the homeowners, but there are some additional concerns with the seller. For this reason, Mr. Barker requested that the application be withdrawn without prejudice.

No one spoke in opposition.

## ATTACHMENT

	FOR	AGAINST	ABSTENTION	ABSE
DISTRICT 1 - Jean Williams	<input checked="" type="checkbox"/>			
DISTRICT 2 - Sherry Sutton	<input checked="" type="checkbox"/>			
DISTRICT 3 - Nathaniel Mosby	<input checked="" type="checkbox"/>			
DISTRICT 4 - Robert J. (Bob) Morris	<input checked="" type="checkbox"/>			
DISTRICT 5 - John S. Fletcher, Jr.	<input checked="" type="checkbox"/>			
AT-LARGE - Robert Lanier	<input checked="" type="checkbox"/>			
AT-LARGE - Annie Collins	<input checked="" type="checkbox"/>			



REV. 3/89

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ITEM NO. \_\_\_\_\_

ZONING - AGENDA/MINUTES

PREL.	_____
ACTION	_____
PUB.HRG.	<u>X</u>

MEETING DATE December 12, 1989

RESOLUTION	_____
ORDINANCE	<u>X</u>
PROCLAMATION	_____

SUBJECT: Alteration of Conditions Application - Jacoby Management, Inc.

COMMISSION DISTRICT: 1

DEPARTMENT: Planning

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

ATTACHMENT: X Yes \_\_\_\_\_ No 31 pp

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

(Deferred from 11/28/89 zoning hearing)

PURPOSE:

CZ-77105, CZ-85016, & CZ-88036 - To consider the application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter the site plan and other conditions. (The application was deferred to allow additional agreements to be made between the applicant and community.)

SUBJECT PROPERTY:

18-366-1-1, 2 & 10 (0000, 5500, and 5506 Chamblee Dunwoody Road).

RECOMMENDATION(s):

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.

FILE COPY

REV. 3/89

DEKALB COUNTY  
BOARD OF COMMISSIONERSITEM NO. 12.

## ZONING - AGENDA/MINUTES

PREL.	___
ACTION	___
PUB.HRG.	<u>X</u>

MEETING DATE November 28, 1989

RESOLUTION	___
ORDINANCE	<u>X</u>
PROCLAMATION	___

SUBJECT: Alteration of Conditions Application - Jacoby Management, Inc.COMMISSION DISTRICT: 1

DEPARTMENT:	Planning
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PUBLIC HEARING:	<u>X</u> Yes	___ No
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ATTACHMENT:	<u>X</u> Yes	___ No	<u>31</u> pp
-------------	--------------	--------	--------------

INFORMATION CONTACT:	Mac Baggett or <sup>77</sup> Charles Coleman
PHONE NUMBER:	371-2155 <i>CC</i>

PURPOSE:

CZ-77105, CZ-85016, & CZ-88036 - To consider the application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter the site plan and other conditions.

SUBJECT PROPERTY:

18-366-1-1, 2 &amp; 10 (0000, 5500, and 5506 Chamblee Dunwoody Road).

RECOMMENDATION(s):

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.



A) 5230

B) Alteration of Conditions  
Jacoby Management, Inc.C) Chamblee Dunwoody D) Deferre  
Road, Nandina Lane

764 PAGE 2

## FOR USE BY COMMISSION OFFICE/CLERK ONLY

ACTION:

MOTION was made by Commissioner Williams, seconded by Commissioner Mosby, and passed 7-0-0-0, to defer this application to the December 12, 1989, Board of Commissioners Meeting, 10:00 a.m. Public Hearing Segment.

ADOPTED: NOV 29 '89  
(DATE)

CERTIFIED: NOV 29 '89  
(DATE)

Robert E. Lanier  
PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS

Alvin D. Jones  
CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

Mr. Larry Barker, 1800 Century Place, Suite 200, Atlanta, Georgia, 30345, spoke for the application and represented the applicant. He requested either approval of the application subject to the formalization of proposed amendments to the covenants or deferral until the covenants could be formalized.

Mr. Bob Lundston, 4059 Chesnut Ridge, Dunwoody, Georgia, 30338, spoke in opposition, requesting a deferral until the covenants could be signed by the parties involved.

In response to a question from the Board, County Attorney Sid Johnson stated that the Board could not condition its action around a private party agreement (the formalization of the covenants), and suggested deferral.

	FOR	AGAINST	ABSTENTION	ABSENT
DISTRICT 1 - Jean Williams	<input checked="" type="checkbox"/>			
DISTRICT 2 - Sherry Sutton	<input checked="" type="checkbox"/>			
DISTRICT 3 - Nathaniel Mosby	<input checked="" type="checkbox"/>			
DISTRICT 4 - Robert J. (Bob) Morris	<input checked="" type="checkbox"/>			
DISTRICT 5 - John S. Fletcher, Jr.	<input checked="" type="checkbox"/>			
AT-LARGE - Robert Lanier	<input checked="" type="checkbox"/>			
AT-LARGE - Annie Collins	<input checked="" type="checkbox"/>			



ALTERATION ANALYSIS

CZ-77105

CZ-85016

AGENDA NO. 12 ZONING CASE NO. CZ-88036 MONTH OF November 1989APPLICANT Jacoby Managemant, Inc. OWNER ( ) AGENT (X)AGENT AUTHORIZED BY Shops of Dunwoody, Ltd.ORIGINAL APPLICANT DeKalb County Board of Commissioners, William L. Wilson, and Donald R. and Hilda A. WiggsLOCATION Westerly intersection of Chamblee Dunwoody Road and Nandina Lane

\*\*\*\*\*

ACREAGE 20.4 DATE OF ZONING 8/23/77  
1/22/85EXISTING ZONING C-1 COMMISSIONER DISTRICT 2/23/88  
1

\*\*\*\*\*

CONDITIONS APPLIED TO EXISTING ZONING: See attached.Note: The application was amended 11/2/89.

\*\*\*\*\*

ALTERATION REQUESTED:

CZ-77105 - Change the site plan.

CZ-85016 - Increase total floor area by 2,500 square feet. Add an entrance/exit to the property from Nandina Lane.

CZ-88036 - Replace existing property use of "Florist and gift shop only" with all uses permitted by a C-1 designation except for businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic bookstores, peep shows, or movies which would be offensive, noxious or detrimental to the community.

The above requested conditional zoning alterations will also be substantially in accordance with the attached plan.

\*\*\*\*\*

## ATTACHMENT D

## SHOPS OF DUNWOODY

9/27/89 "CONDITIONAL ZONING ALTERATIONS"

## CZ-77105

- REDUCE THE 200' + 150' BUFFER AT THE WEST SIDE OF THE SITE TO 100'

## CZ-85016

- INCREASE TOTAL FLOOR AREA BY 2500 SF
- REDUCE THE 150' BUFFER AT THE WEST SIDE OF THE SITE TO 100'
- THE ADDITION OF AN ENTRANCE/EXIT TO THE PROPERTY FROM NANDINA LANE
- ALL ADDITIONAL TEMPORARY OR PERMANENT DETENTION/RETENTION STRUCTURE WILL BE SURFACE BASINS, BUT WILL NOT EXTEND INTO THE REVISED BUFFER AREA

## CZ-88036

- REPLACE EXISTING PROPERTY USE OF "FLORIST AND GIFT SHOP" ONLY WITH ALL USES PERMITTED BY A C-1 DESIGNATION EXCEPT FOR BUSINESSES SUCH AS POOL HALLS, BILLARD PARLORS, AMUSEMENT ARCADES, ADULT OR PORNOGRAPHIC BOOKSTORES, PEEP SHOWS, OR MOVIES WHICH WOULD BE OFFENSIVE, NOXIOUS OR DETRIMENTAL TO THE COMMUNITY.

THE ABOVE REQUESTED CONDITIONAL ZONING ALTERATIONS WILL ALSO BE SUBSTANTIALLY IN ACCORDANCE WITH THE ATTACHED PLAN.

# JMI

Jacoby Management, Inc.

October 31, 1989



Mr. George Lambie  
Zoning Manager  
DeKalb County  
120 West Trinity Place  
Room 309-Calloway Building  
Decatur, GA 30030

Re: Shops of Dunwoody  
Alterations to Conditions CZ-77105 and CZ-85016

Dear Mr. Lambie:

Please consider this letter as our request to amend our application for Conditional Zoning Alterations dated September 28, 1989 in behalf of the Shops of Dunwoody, Ltd. as follows:

CZ-77105 Delete "Reduce the buffer behind the major tenant to 100'"

CZ-85016 Delete "Reduction of the buffer at the west side of the site to accommodate the major tenant"

All other items on the Application for Conditional Zoning Alterations will remain as included on the application dated September 28, 1989.

Sincerely,

JACOBY MANAGEMENT, INC.

A handwritten signature in blue ink, appearing to read 'Larry N. Barker'.

Larry N. Barker  
Development Coordinator

HW/jt



DeKalb County, Georgia



Planning Department

*Callaway Beck*  
 Courthouse Square, Decatur, Georgia 30030

October 20, 1989

NOTICE OF PUBLIC HEARINGS ON  
 ALTERATION OF CONDITIONS APPLICATION

The application described below will be heard by the DeKalb County Planning Commission on Tuesday, November 7, 1989, at 7:30 p.m. and by the DeKalb County Board of Commissioners on Tuesday, November 28, 1989, at 1:00 p.m. Both meetings will be held in the Auditorium of the Manuel J. Maloof Center for DeKalb County Government Administration Building, 1300 Commerce Drive.

12. CZ-77105

Commissioner District 1

CZ-85016

CZ-88036

18-366-1-1, 2 &amp; 10

Application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nardina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter site plans, reduce buffers, add a point of access, and alter other conditions.

Since this notice will not necessarily reach everyone in the area, please discuss it with other interested residents. Anyone wishing to be heard on this matter should arrange to be represented through petition or through a spokesman at the public hearings. For further information, please call the Planning Department at 371-2155.

**Peachtree Shops of Dunwoody, LLC  
SODOP II, LLC  
RZ21-01  
Text Amendments to Dunwoody Village Overlay District/Regulating Map**

**Constitutional and Legal Objections**

The Dunwoody Village Overlay District and Master Plan, facially and as applied to the Subject Property, is unconstitutional in that it would destroy the Owners' property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The Dunwoody Village Overlay District and Master Plan is unconstitutional, illegal, null and void, constituting a taking of the Owners' Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests. Approval would constitute an arbitrary and capricious act by the City of Dunwoody without any rational basis therefore constituting an abuse of

discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The approval by the City of Dunwoody of the Dunwoody Village Overlay District and Master Plan would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Owners' and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The approval of the Dunwoody Overlay District and Master Plan would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

The approval of the Dunwoody Overlay District and Master Plan would be invalid inasmuch as the Zoning Ordinance of the City of Dunwoody is unlawful, null and void because its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*



The Zoning Ordinance of the City of Dunwoody lacks adequate standards for the City Council to exercise its power to review and vote on this Application. The standards are not sufficient to contain the discretion of the Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section III, Paragraph I and Article I, Paragraphs I and II of the Constitution of State of Georgia.

The owner hereby raises the defenses of standing, failure to exhaust administrative remedies and waiver of the right to appeal due to the failure to raise constitutional objections.

**STATEMENT OF OPPOSITION and**  
**IMPACT ANALYSIS**  
**and**  
**Other Material in Opposition of**  
**RZ-21-01**

Amendment To Amend Chapter 27 of the City of Dunwoody Village Zoning Ordinance to Rezone from  
*C-1conditional* and Dunwoody Village Overlay District to the DV-4 (Village Center) District, 5500  
Chamblee Dunwoody Rd. and 1244 Dunwoody Village Parkway:

Without complying with the Planning Commission's Previous Recommendation to preserve the Buffer  
at the shared property line with the adjacent residential properties.

Filed on behalf of:

**Dunwoody Homeowner's Association, Inc.,**

**John and Joan Weiss, Members/Owners**  
5116 Hidden Branches Circle

**Craig Wolpert, Member/Owners**  
5084 Hidden Branches Circle

**Felicia Maltese Voloschin Member/Owner**  
1205 Hidden Ridge Lane

**Scott and Aimee Doyne Members/Owners**  
5065 Trailridge Way

**Carrie Hancock Member/Owner**  
1206 Hidden Ridge Lane

**Bob and Jane Leavey Members/Owners**  
5108 Hidden Branches Circle

**Sharon Frank Member/Owner**  
5049 Trailridge Way

**Sarah McBride Member/Owner**  
5148 Hidden Branches Circle

(collectively, hereinafter described as "**Opponents**")

**Submitted for Opponents by:**

Brian E. Daughdrill

***Giacoma, Roberts & Daughdrill, LLC***  
945 East Paces Ferry Road, Suite 2750  
Atlanta, Georgia 30326  
(404) 924-2854

## I. INTRODUCTION

This Statement of Opposition and Impact Analysis is submitted in **OPPOSITION** to the Rezoning Application No. Z-21-01 to rezone the Peachtree Shops of Dunwoody, LLC's Property located at 5500 Chamblee Dunwoody Road and 1244 Dunwoody Village Parkway from C-1 *conditional* to the newly adopted Dunwoody Village Overlay District *without* preserving the existing buffer lying between the Property and the adjacent residential property along Hidden Branches Circle and Trail Ridge Way. *Unless* the rezoning complies with the Planning Commission's previous recommendation to maintain Buffer Option 3 (i.e. preserve the original undisturbed buffer imposed when the Subject Property was developed), the grant of this Application will substantially and significantly impact the adjacent residential neighbors who have purchased and owned property otherwise adjacent to the shopping center premised upon such buffer.

Opponents incorporate by reference all previous material filed in opposition to the Rezoning Application creating the Dunwoody Village Overlay District and revised map as was heard and decided by the City Council in 2020. It and all of the statements, exhibits and other material filed or previously referenced are incorporated herein are for inclusion in the Record of this Matter. The Opponents want to be clear – it is not the concept of a rezoning to bring this property to bring it within the Dunwoody Village Overlay District about which they object, it is the wildly disparate treatment of the buffer for the Subject Property in comparison to the property lying north and south of the Subject Property for whom such buffers were preserved that is objectionable. Critically, although presented as a C-1 zoned property to be rezoned, there is no credible dispute that it is a *conditionally* zoned property – the 1977 Application *expressly requested rezoning conditioned on the imposition buffer*. In disregard of this and in denial of their predecessors' in title's actions, the current owner specifically seeks to eliminate what has historically, for over 40 years, been recognized as an undisturbed buffer between the residential properties to the west and the C-1 (conditional) Subject Property.

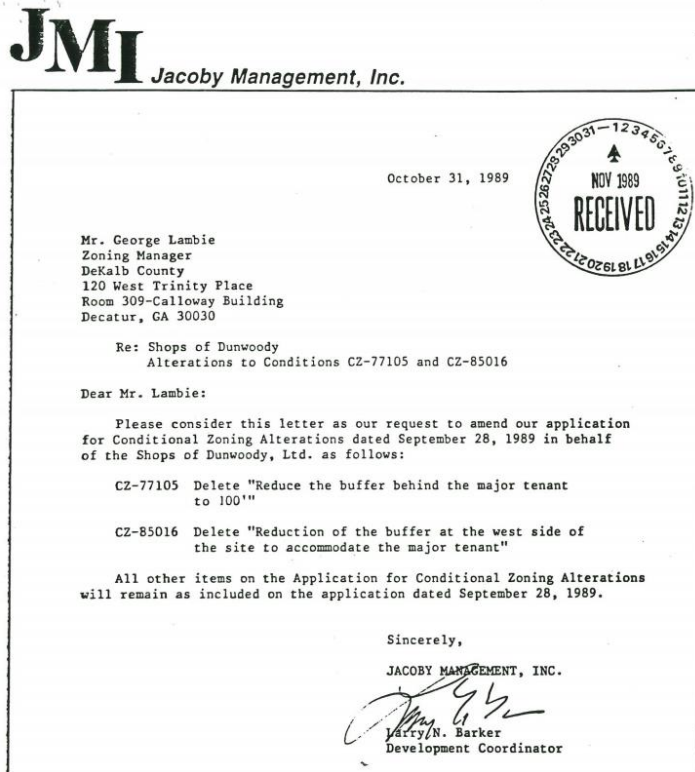
The existing undisturbed, mature wooded buffers presently shield the Opponents from the existing commercial development and are even more critical, now where the rezoning contemplates *re*-development of that commercial area is at a significantly *higher* density. These buffers were negotiated and agreed upon when the Subject Property was developed *and memorialized* both in private written agreements with the developer, a copy of which is attached hereto as **"Exhibit A"** and incorporated into the rezoning application filed by the current Applicant's predecessor in title. *See* **"Exhibit B"**.



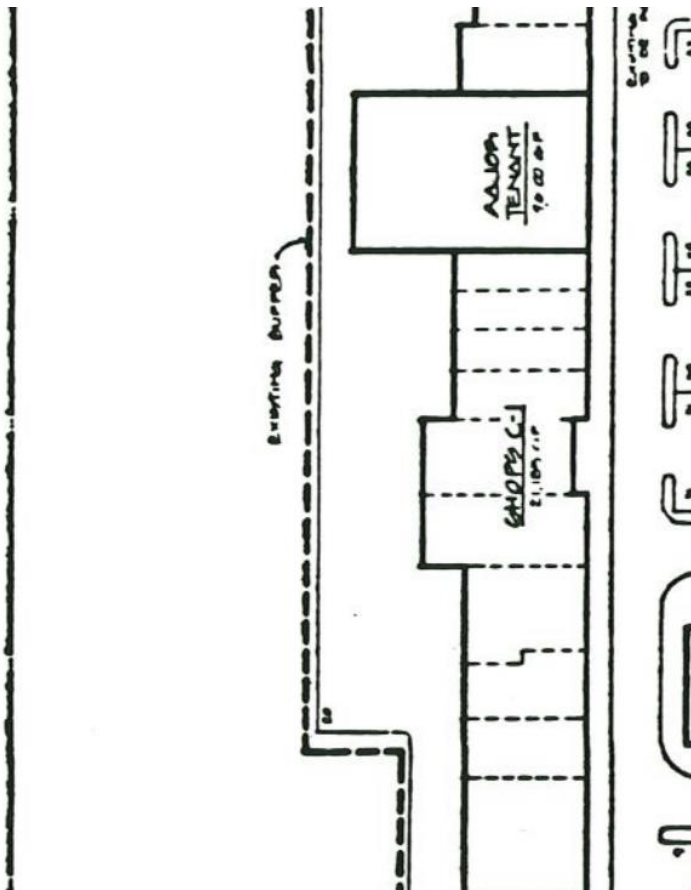
## **HISTORY**

The Subject Property was purportedly rezoned from R-150 to C-1 *conditional* in 1977 – CZ77105. See **“Exhibit C”**. Although the ordinance rezoning the Subject Property has yet to be located by DeKalb County, there is no question what is in DeKalb County’s records pertaining to subsequent rezonings connected to adding property to the original development. In 1989, Jacoby Management, Inc. applied to *alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina*. Attached to that 1989 application is a copy of the original 1977 rezoning application, which expressly includes a request to condition the rezoning on the imposition of a “150’ to 200’ Buffer adjoining Hidden Branches per sit plan.” 1989 Application, attached hereto as *Ex. B*. On January 9, 1990, the DeKalb Board of Commissioners considered the 1989 application of Jacoby Management, Inc. There the Property’s owner (current Applicant’s predecessor in title) *acknowledged* in its application that the existing zoning was *conditional*. See Jan. 9, 1990 Minutes, **“Exhibit D”**. Similarly, the December 12, 1989 Minutes for the application reflect, “*The three separate zoning applications [CZ-77105, CZ-85016, and CZ-88036] limited development by site plans, buffers, points of access, and other conditions. The request is to alter the site plan and other conditions.*” See Dec. 12, 1989 Minutes attached as **“Exhibit E”**; see also Nov. 28, 1989 Minutes listing the matter as “Item 12” attached hereto as **“Exhibit F”**. Critically, attached to the Nov. 28, 1989 Minutes is a letter from Jacoby Management, Inc. (then-owner), dated October 31, 1989 that *expressly admits* the existence of a “buffer” *in excess of 100’* on the western margin of the Property, reciting:

Statement of Opposition and Impact Analysis with Legal and Constitutional Objections re: RZ-21-01  
 August 10, 2021  
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See Ex. F. Attached to the letter is a site plan showing the *existing* limits of the buffer adjacent to the edge of pavement. See below:



Each of these items is marked “#12” in the bottom corner of the exhibit. Similarly attached are the August 23, 1977 Minutes on CZ-77105, the rezoning that purportedly<sup>1</sup> converted this Property from R-150 to C-1.

Those Minutes reflect that the Property was rezoned as C-1 *conditional*:

<sup>1</sup> The Applicant fails to apprehend – if the *conditions* cannot be proven because of the absence of the original ordinance, the *rezoning* itself *similarly cannot be proven*. Where is the evidence it was rezoned from R-150 to C-1 anything?



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 August 10, 2021  
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Recommendations:

Planning Department: Approval as conditioned.

Planning Commission: Approval as conditioned.

Mr. Lowell Wammock, 3476 Paces Place, N.W. Atlanta, stated they have all the necessary signatures and everyone is in total agreement.

Mr. Herbert Sprague, President of the Dunwoody Homeowners Association, stated that Mr. Wammock has shown great concern for the needs and desires of the Homeowners Association and they support his request.

MOTION was made by Commissioner Manning, seconded by Commissioner Lovettan, and unanimously passed, to approve the application as conditioned.

#12

095

There again, among those exhibits is the *Application* that Mr. Lowell Wammock, the original developer, submitted to initiate the 1977 rezoning – CZ-77105, also attached to the November 1989 Agenda. That application expressly requests that the rezoning be conditioned upon:

☐ Minimum buffer requirements of district requested

☒ Variation of buffer requirements as described below:

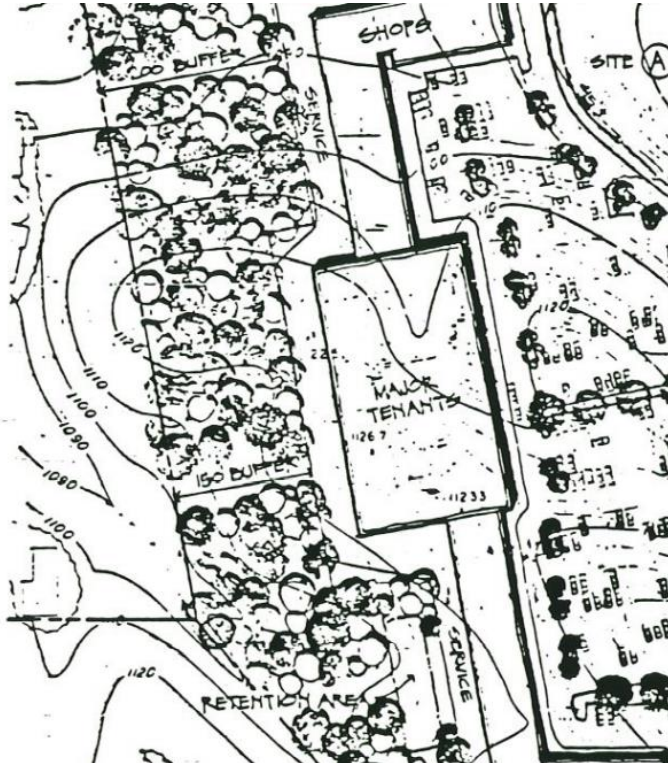
150' to 200' Buffer adjoining Hidden Branches  
per site plan. 10' buffer variance at Southern-  
most drive per site plan

#12

096

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Attached, at Page 9 of *Ex. F*, is the site plan *prepared for Lowell Wammock*, similarly marked with “#12” in the corner, itself expressly depicting the 150-200’ buffer:



Whether DeKalb County has, during the pandemic, adduced a copy of the 1977 *ordinance*, there is no question what was voted on in 1977 was requested, *by the Applicant*, to be C-1 *conditional*, conditioned on an attached site plan depicting a 150-200’ buffer.

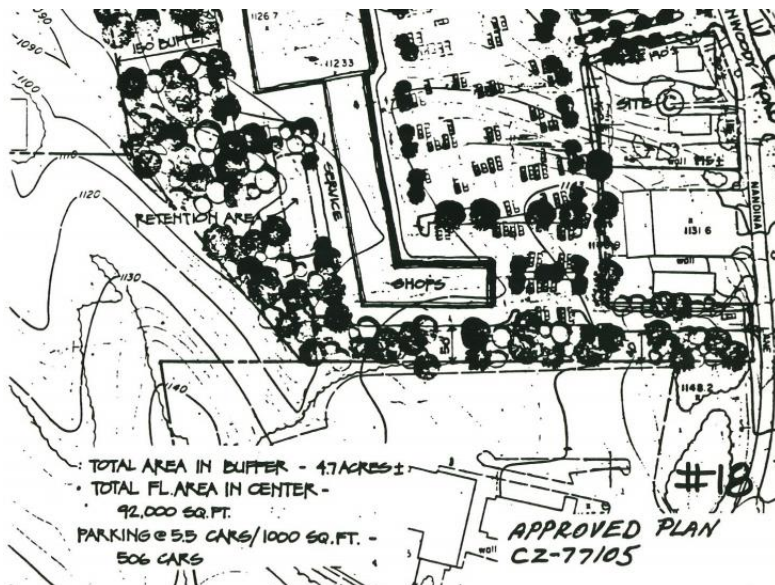
Next in the package is the January 22, 1985 Zoning Minutes for CZ-85016, which added property to that property originally rezoned in 1977 similarly asking for rezoning from R-150 to C-1 *conditional*. The 1985 Minutes are attached here as **“Exhibit G”**.

Attached to that set of Minutes, Page 3, is a list of conditions including, specifically, condition No. 8:

- 8. A one hundred and fifty foot "undisturbed buffer" will be maintained across the rear of the subject property adjacent to neighboring single family residential development. Said "undisturbed buffer" shall not prohibit the addition of plantings which may be added to the buffer property to reduce visual impact on adjacent homeowners, provided that no damage is done to existing foliage.**

It is without question that County records show that this part of the Subject Property was rezoned conditioned on the buffer. The Minutes of the February 23, 1988 Zoning meeting for CZ-88036 similarly seek to rezone a third property from R-150 to C-1 *conditional*. The site plan attached to those Minutes similarly depicts the "undisturbed buffer" at the western margin of the Property. The February 23, 1988 Minutes are attached hereto as **"Exhibit H"**.

In 1991, the Property was again the subject of rezoning, appearing on the March 26, 1991 Agenda as Item No. 18, to "approve the alteration of conditions based on the attached site plan." See **"Exhibit I"**. Attached to that Agenda, similarly marked **"#18"** in the corner, is a document which recites, "Approved Plan CZ-77105 and depicts 4.7 acres as the "Total area in Buffer" on the Plan prepared by the Applicant.



The fact that the matter being presented is a rezoning from C-1 to Dunwoody Village Overlay District alone is grounds to defer this Application as the advertising fails to comply with either the Zoning Procedures Law or the City of Dunwoody's Zoning Ordinance.



But it is disingenuous to suggest that the Property is not conditioned on a site plan depicting a 150-200' buffer and there are multiple contemporaneous and historical filings by the present Applicant's predecessor in title that the Property's zoning was conditioned on a 150-200 foot undisturbed buffer. To treat the residents adjacent to the Subject Property in a manner differently than those lying immediately north and south is to violate their equal protection rights and to effect an inverse condemnation of their property in violation of the Georgia and U.S. Constitution as more particularly described below.

While there is no question that the private written agreements have since expired (as further discussed below), the Applicant's predecessors each acknowledged, in writing, that their property was rezoned conditioned upon the imposition of the buffer presently shown on the maps. Multiple subsequent rezoning applications filed on this Property each have recognized the *conditional* nature of the rezoning and many of those subsequent rezoning include as part of the material considered an "Approved Site Plan" from the 1977 Rezoning.

This current "rezoning" is being presented as the City's "settlement" in a litigated matter, Civil Action File No. 20CV8060 filed by Applicant against the City while the Overlay District was being contemplated *without* joining necessary and indispensable parties including the residents who share a common property line against which the City is contemplating a **nearly eighty percent (80%) reduction in the existing, mature undisturbed buffer** contemplated by this Rezoning. Thus, Opponents have an interest in the Subject Property which the City is not privileged to take absent the payment of just compensation.

The Planning Commission, in reviewing the previous Rezoning Application proposal, in the last, actual "normal" and meaningful public hearing process, heard and understood the concerns of nearly a hundred residents, in some of the most heavily attended hearings, who attended to make their concerns known. Based on those concerns, the Planning Commission previously recommended what was described, as "**Buffer Option 3.**" This Option *preserved* the buffer depicted in multiple rezoning applications between 1977 and the present including applications which themselves represented the conditional nature of the 1977 rezoning.

Since the Planning Commission deferred the last meeting regarding the rezoning application, the Opponents, defined herein, the Opponents have served numerous Open Record Act requests to multiple departments in DeKalb County, have reached out to the Commissioner for the district and enlisted his assistance.

They have reached out to the City about the City utilizing discovery devices available to it within the existing litigation to aide in locating the original 1977 rezoning ordinance. (Ordinances are *required*, by state law, to be maintained in the records of the County). On November 25, 2020, the Applicants filed a Complaint for Declaratory Judgment in the Superior Court of DeKalb County, Civil Action No. 20CV8060 (the “Litigation”). The Applicants therein sought a declaration from the Court that the 150-200 foot buffers were not a condition of the original 1977 rezoning (despite the admissions of their predecessors in title), such that only a 30 foot buffer applies. In the absence of their interests being represented in this suit, some of the Opponents now have been forced to file a Motion to Intervene in said Litigation to protect their interests in preserving the existing 150-200 foot buffer that was a *condition* of the 1977 rezoning and, should the rezoning be granted without addressing the concerns raised herein, will have no option but to challenge such decision as violative of their constitutionally-protected property rights.

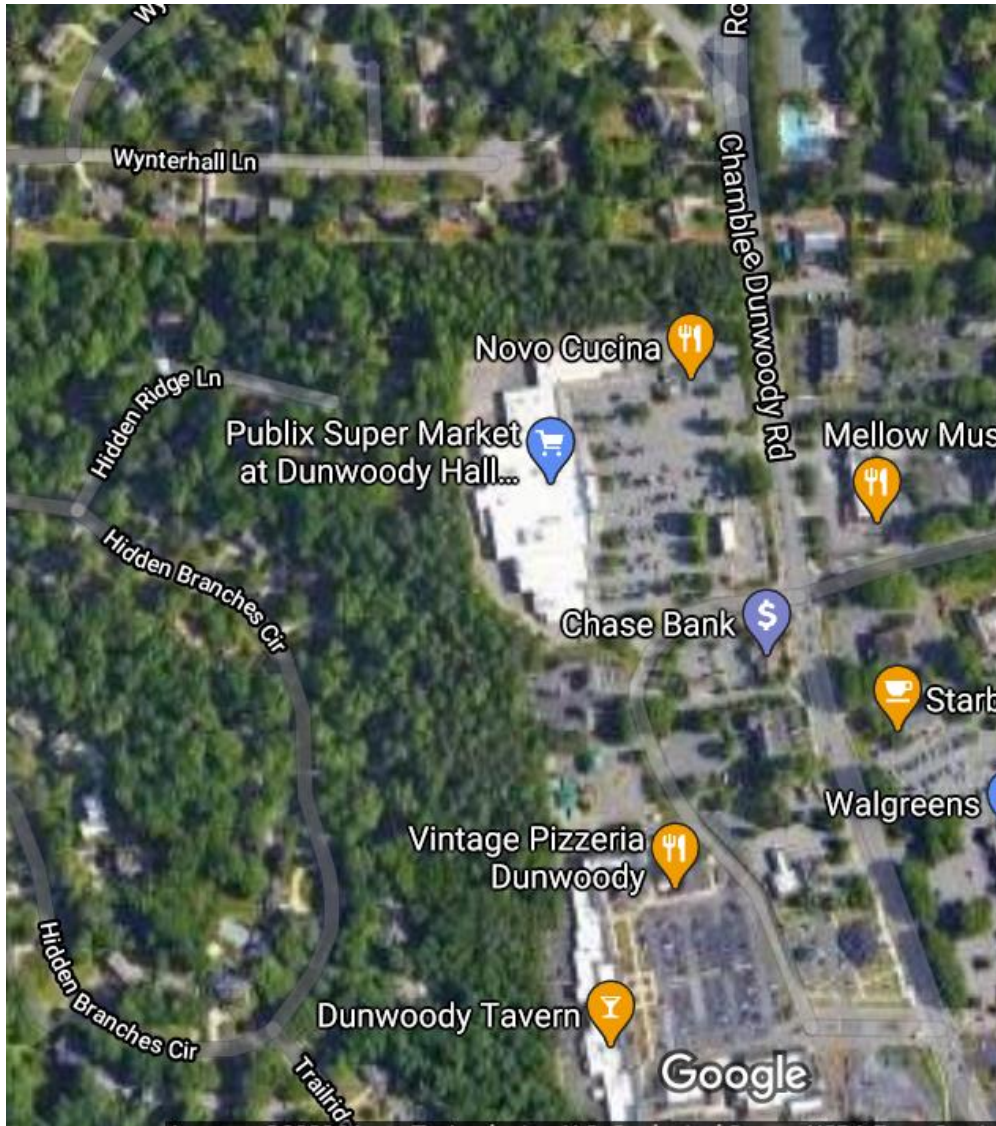
The Opponents have substantial interests via their ownership of real property lying immediately adjacent to Dunwoody Village (the “Subject Property”) and the historical zoning maintaining, repeatedly, the existing buffers, for which the City is presently contemplating an 80% reduction. The proposed amendment suggests that the various owners of Dunwoody Village to re-develop the Subject Property, at a higher density would, without permission or right, thereafter be authorized by the City to destroy buffers they contractually and legally agreed to preserve – buffers that the Planning Commission recommended protecting and buffers that were a condition of the original 1977 zoning to permit the site to be developed. Currently, the Opponents enjoy a mature, wooded undisturbed buffer imposed on the commercial users,

Statement of Opposition and Impact Analysis with Legal and Constitutional Objections re: RZ-21-01

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as zoning conditions and via private agreements, over the past 40 years.



The Opponents include:

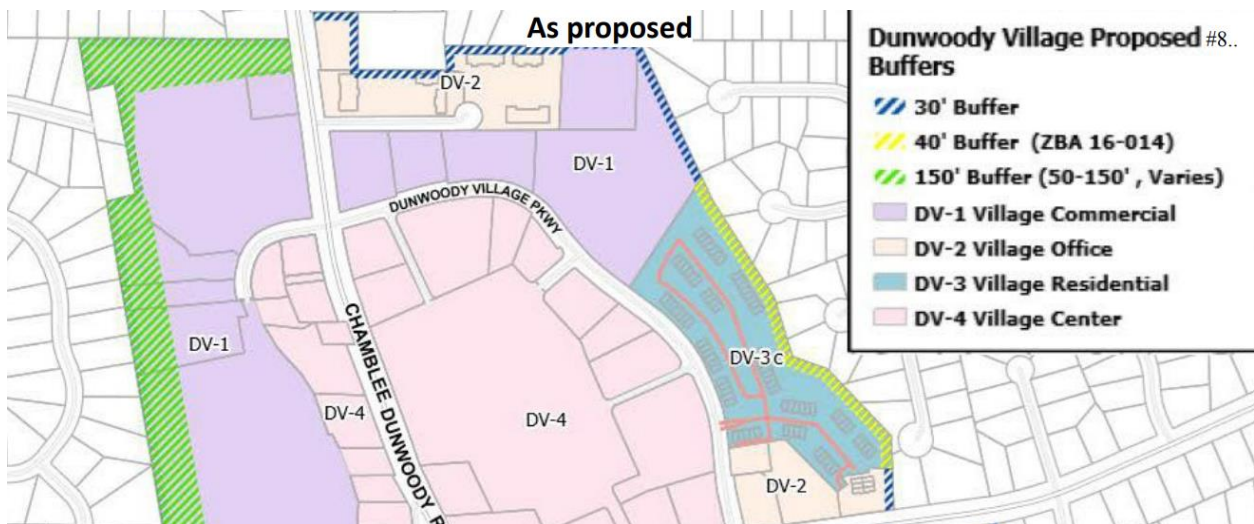
**Dunwoody Homeowners' Association, Inc.**, a member organization that has, for more than 50-years, covered and overseen development in the area East of GA-400, North of I-285, West of Peachtree Industrial Blvd, and North to the Chattahoochee or Gwinnett County with a primary goal of protecting residential neighborhoods. In 2008 the DeKalb portion of that coverage area was used for the border lines within DeKalb when the City of Dunwoody was approved by 85% of the voters in the affected locality. DHA presently has more than 800 individual members, including the Members/Owners listed above. It is organized to advance the cause of and to protect those neighborhoods from development and re-development which is inconsistent with the established neighborhoods within the City.



The Individual Opponents are all homeowners owning homes located immediately or closely adjacent to these buffers, many of whom have been residents for thirty-plus years.

These Individual Opponents each *joined* DHA specifically to aid and further DHA's goals of preserving the buffers to protect the integrity and privacy of their back yards which back directly up to the buffers that were specifically negotiated for these properties. Bob Fiscella, one of the top 15 individual agents with Keller Williams, and current President of DHA, opined that depriving these homes of the current buffer could devalue the specific homes by as much as ten percent (10%) and that, additionally, the homes would spend significantly more time on the market compared to other residents not so impacted. The Individual Opponents' ownership and that adverse impact grants them standing under the two-part "substantial interest/specially aggrieved" test for same. Their membership in the above organization, itself devoted to advancing the interest of its members in protecting residential neighborhoods gives the Associations standing under Georgia's test for same.

These neighborhoods each were specifically protected by DeKalb County when it approved the rezonings for the land making up the Subject Properties.



## II. IMPACT ANALYSIS

### A. The Proposed Rezoning Fails to Satisfy the Dunwoody Zoning Ordinance Approval Criteria.

Pursuant to the Dunwoody Zoning Ordinance § 27-335(b) mandates, in considering:

**(1) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;**

Clearly, the uses contemplated by both the existing zoning and that which is contemplated by the proposed rezoning and the neighboring property owners are dissimilar. That dissimilarity was significant enough that when these properties originally were granted their zoning, DeKalb County imposed significant undisturbed buffers to protect the adjacent neighborhoods. Those buffers were described, referenced and maintained over the next 15 years in *numerous* subsequent rezoning applications and expressly admitted and acknowledged by Applicant's predecessor in title. Their current owners bought with an investment backed expectation that their homes would continue to be protected by the buffers their predecessors in title had fought for and secured. While it is understood that there are opportunities for the owners of the Subject Property to re-develop their property at higher densities to make the properties more valuable and more profitable, the City cannot, for the benefit of one property owner, significantly and adversely affect another – doing so is the definition of an unconstitutional taking and an act of inverse condemnation. If the City believes it's wise to redevelop the Village at a higher density it owes, at a minimum, *at least the same protection* to these neighborhoods as they enjoyed opposite *lower density* development – *not less*. Unless the City adopts the Planning Commission's original Buffer Option 3 it will have failed this requirement but the City cannot say *increasing* the density while *reducing* the buffer is "suitable" in light of the existing adjacent uses.

**(2) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;**

The City does not owe the owners of the Subject Property the right or opportunity to secure the most money possible or to procure even a higher rate of return. The properties are presently developed, for commercial use and those uses have thrived over the past 40-years in a symbiotic relationship where the higher density property shielded the lower density property with a mature, undisturbed buffer. This is no abandoned or decrepit shopping center, these commercial properties are actively operating and generating a "reasonable economic" return as they presently are configured. Opponents do not begrudge

these owners the opportunity to make more with their property, they simply require them to not do so at the Opponents' expense particularly where, as here, protecting both interests are possible.

**(3) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;**

As evidenced by the statements of the individual opponents and a broker, stripping the existing, mature, wooded buffers away or reducing them substantially to allow development to move closer to the boundaries of the Subject Properties will adversely affect the value of the neighboring homes as well as damage, significantly, their use and enjoyment, privacy, and auditory sanctity of their homes. Thus, it cannot fairly be debated that the proposed Rezoning Application does not satisfy this condition *unless, at a minimum*, the Planning Commission's recommendations are followed with Buffer Option 3 clarified as provided for above.

Given the policies and goals of the existing Comprehensive Plan, this requirement is of critical import. In no less than ten places, the Comprehensive Plan calls for protection and preservation of "Suburban Residential" character areas. For example, under the heading "Preserve Our Neighborhoods," the Comprehensive Plan states: **"Protect properties located on borders of Suburban Residential Neighborhoods Character Area with compatible height, building placement, densities, massing and scale, buffers, tree protection and other associated site development and building regulations."** (2015 Comprehensive Plan at p. 9). The Comprehensive Plan expressly calls for protection of suburban neighborhoods adjoining the Dunwoody Village: **"The periphery of the [Dunwoody Village] character area will include a large transitional area to adequately protect single-family residential and other residential homes in the area."** (*Id.* at p. 18 (emphasis added)).

**(4) Whether there are other existing or changing conditions affecting the use and development of the property that provide supporting grounds for either approval or disapproval of the zoning proposal.**

As provided for above, there are existing conditions – residential neighborhoods presently shielded and protected from the noise, light and visual intrusion of commercial development. The contemplated rezoning allows densities on that commercial property to be increase significantly and, of critical import *taller buildings*. No "planted" landscaping or "open space" can shield the existing homes from buildings in excess of 55-feet in height located behind a 35' "buffer."



**B. If Approved, the Rezoning Application Will Lead to a Violation of the Dunwoody Tree Preservation Ordinance.**

The proposed Rezoning also will permit violations of the tree preservation ordinance. Chapter 16, Article II, Division 6 provides for tree preservation. The Rezoning Application proposes to greatly reduce the buffer, thereby allowing development into the existing forested buffer of 150'. The tree ordinance applies "to any activity of real property which requires the issuance of a development permit, substantial building permit, or tree removal permit within the City of Dunwoody." Sec. 16-105(d). The tree ordinance was established to make "the City of Dunwoody a more attractive place to live, provide a healthy environment, and to better maintain control of flooding, noise, glare and soil erosion." Sec. 16-105(a). Among the stated benefits of the tree ordinance is reduction of noise and glare, aesthetics, scenic amenity, and increased property value. Sec. 16-105(c). Importantly, the tree ordinance mandates that "Nothing in these regulations may be construed as allowing the removal of vegetation in a natural, undisturbed buffer required by zoning or land development regulations." Sec. 16-108. Plainly as set forth above, there is an existing, natural, undisturbed buffer required by the original (and all subsequent) rezoning applications.

If the Rezoning Application were approved, the previously undisturbed buffer between the Subject Property and the Opponents' property would meaningfully cease to exist. The owners of the Subject Property would be able to remove all trees within the current buffer except for the last 35 feet, and could with no reason or justification, remove the trees which otherwise could qualify as Open Space, Parks. The City adopted the tree ordinance for this very reason, to protect residential neighborhoods and maintain the existing tree canopy. Approving the Rezoning Application would eliminate a buffer that has been in place for over forty (40) years, opening the door to the removal of a vast number of trees separating the glaringly different zoning districts.

**III. CONSTITUTIONAL AND LEGAL OBJECTIONS**

The Opponents' property will be directly and adversely affected and harmed by the proposed rezoning. Accordingly, on behalf of the Opponents, it is submitted that the Dunwoody Zoning Ordinance and the mandatory Dunwoody Comprehensive Plan, to the extent it is ignored or interpreted to permit a Rezoning Application which causes a significant detriment to the homeowners adjacent to the Subject Property is unconstitutional as a taking of private property, a denial of equal protection, an arbitrary and capricious act, and an unlawful delegation of authority under the specific constitutional provisions later

set forth herein. A recommendation or vote of approval in violation of these mandates will constitutes an arbitrary and unreasonable use of the zoning and police powers of the City of Dunwoody because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Opponents. An approval of the Rezoning Application would constitute a taking of the Opponents' private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Failure to adopt Buffer Option 3 as the basis upon which the Rezoning Application is predicated would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Opponents and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Opponents further object to the Rezoning Application on the basis that an equitable servitude has been established on the Subject Property and thus an approval of the Rezoning Application violates the doctrine of equitable servitude. The previous private Agreement and Declaration of Covenants and Restrictions (the "Covenant") between the Developer and DHA, while expired, they bind the Property in Equity. "If a grantor sells his property with restrictions which he intends are for the benefit of his neighbors, the neighbors, as beneficiaries, may enforce the benefitting restrictions." Southeast Toyota Distribs. v. Fellton, 212 Ga. App. 23, 25 (1994); Jones v. Gaddy, 259 Ga. 356, 357 (1989). The owners of the Subject Property took title to the Subject Property with full knowledge of the Covenants and the previous zoning, indeed the Applicant's current attorney was involved in at least some of these rezonings and has actual knowledge of the previous conditions – why else were "Alteration of Conditions" applications being filed instead of *rezoning* applications – development of this Property was *conditioned* upon the buffers that have protected the adjacent neighborhoods. The Opponents took title to their property with knowledge of the buffer and had a reasonable expectation that said Buffer would be maintained. An equitable servitude as been established by way of the Covenant that shall run with Opponents' property and the Subject Property. It is "immaterial in such cases whether the covenant runs with the land or not, the general rule being that it will be enforced according to the intention of the parties." Southeast Toyota Distribs. v. Fellton, 212 Ga. App. 23, 26 (1994).

Finally, Opponents object to the process under which review of this Rezoning Application has been accomplished as a denial of procedural due process and a violation of the Zoning Procedures Law in that the “public hearings” over the past year were not held in accordance with the ZPL nor in compliance with Dunwoody’s own codified procedures, did not afford concerned residents a meaningful opportunity to appear in opposition during the extraordinary times of the Covid-19 pandemic, and did not provide the statutory and ordinance required notice or notice in compliance with such requirements.. There is no substitute for a face-to-face public hearing where voices may be heard *simply by their presence* and where elected officials have to look their constituents in the eye. Being reduced to a postage-stamp “video” image via a Zoom conference wherein all opponents cannot be visually seen simultaneously deprives the residents of a meaningful opportunity to be heard. Upon information and belief, no new procedures were adopted by the City, in compliance with the ZPL and their own procedures, to change the mechanism for holding a public hearing and the entire process is flawed until such hearings can be held.

#### **IV. CONCLUSION**

For the foregoing reasons, the Opponents respectfully requests that Dunwoody either adopt Buffer Option 3 (with the clarification above) or deny this Rezoning Application.

Respectfully Submitted,

**GIACOMA ROBERTS  
& DAUGHDRILL, LLC**

***/S/ BRIAN E. DAUGHDRILL***

Brian E. Daughdrill



# EXHIBIT A

**ORIGINAL**

**COVENANTS**

STATE OF GEORGIA )  
COUNTY OF DEKALB )

AGREEMENT AND DECLARATION OF  
COVENANTS AND RESTRICTIONS

CLERK OF SUPERIOR COURT

THIS AGREEMENT made this 9th day of August, 1977 by and between  
S. LOWELL WAMMOCK, RUSSELL G. HENDERSON and CICERO GARNER, JR.,  
DOUGLAS W. MORGAN and CURTIS R. PAGE (hereinafter called the "Developers"),  
the DUNWOODY HOMEOWNERS ASSOCIATION, INC. (hereinafter called the  
"DHA"), and ROBERT A. LEAVEY and JAMES LIESENDAHLE (hereinafter referred to as  
"Adjoining Property Owners") with SOLOMAN J. BANKS, MYRON D. WOLF and  
PEACHTREE FEDERAL SAVINGS AND LOAN ASSOCIATION joining in the execution of  
this Agreement for the purposes hereinafter set forth.

WITNESSETH:

WHEREAS, the Developers are the owners of certain tracts of real property  
located in Land Lot 366, 18th District, Dekalb County, Georgia as more particularly  
described in Exhibit "A", attached hereto and by reference made a part hereof  
(hereinafter called the "Property"); and

WHEREAS, the parties hereto desire that the Property be subject to certain  
covenants and restrictions hereinafter set forth in connection with the development  
of the Property as a shopping center and other commercial uses permitted by zoning  
(the "Shopping Center").

NOW, THEREFORE, in consideration of the promises of this Agreement and the  
mutual undertakings by the parties hereto, and other good and valuable consideration,  
the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree  
as follows:

1. The Property will be developed pursuant to the following architectural  
guidelines:

(a) Design--The Shopping Center, identified as Dunwoody West, will  
be developed in an architectural design comparable to the style and theme of the  
main portion of Dunwoody Village Shopping Center.



3705 112140

Packet page:...



(b) Facade--The entire structure will be faced with building materials which are comparable to or reasonable facsimiles of the building materials used in similar locations of the main portion of Dunwoody Village Shopping Center, except that less expensive materials may be utilized, at the Developers' choice, in portions of the buildings which will not be exposed to either public view or adjacent homes.

(c) Windows--No windows will face the housing to the west of the Shopping Center.

(d) Building Height--The building height of the Shopping Center shall not exceed twenty-five (25) feet from grade level, at the roof peak, except for towers where deemed necessary by the Developers to maintain the proper design proportion.

changed

(e) Roofing--The roofing shall meet the same design and building material requirements set forth in paragraphs 1 (a) and (b) above.

2. In order to protect the Adjoining Property Owners, the Developers agree as hereinafter set forth.

(a) Buffers--Except as provided in paragraph 2 (b), there shall be appropriate undisturbed buffers, as defined in the shopping center plan, Dunwoody West, dated October 4, 1976, and revised February 9, 1977. Said buffers are generally defined as from 150 feet to 200 feet on the west. Solely at the option of DMA and the adjacent homeowners, the buffer property may be: (1) deeded to adjacent homeowners, with covenants providing for the undisturbed character for 20 years; or (2) deeded to DMA with the same covenants; or (3) deeded to DeKalb County, with the same covenants; (4) remain as a part of the shopping center property under the same covenants or (5) leased to DMA with the same covenants. Such election shall be made within ninety (90) days after the rezoning by the DeKalb County Commissioners.

Except as provided in paragraph 2 (b), such buffer property shall remain undisturbed and will not be encroached upon any further than shown on the above-described shopping center plans. The Developers further agree that additional plantings may be desirable or necessary in the buffer property to reduce visual impact on adjacent homeowners.

In the event that this is necessary, <sup>13p10</sup> ~~the~~ <sup>14p10</sup> ~~will~~ <sup>15p10</sup> ~~be~~ <sup>16p10</sup> ~~given~~ <sup>17p10</sup> ~~written~~ <sup>18p10</sup> ~~permission~~ to plant additional evergreen trees and shrubs, provided that no damage is done to existing foliage as described in paragraph 3 (1).

(b) Berms--In those areas where adjacent homeowners will be exposed to sight of the buildings of the Shopping Center, it is agreed that berms and plantings will be provided to create a visual screen to such buildings. In order to create this visual screen between such buildings and the adjacent property owners, it is additionally agreed that all such berms and plantings described herein shall not utilize more than twenty-five (25) feet of that portion of the buffer property described in paragraph 2 (a) above which is adjacent to the Shopping Center, provided that no damage is done to existing foliage as described in paragraph 3 (1). Such berms and plantings shall be of appropriate height and density to accomplish the objectives stated in this paragraph. In the absence of a grading plan, no specifics can be practically established; however, they shall be no less than 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, with a slope ratio of not less than 1.5 to 1 and planted with multiple rows of evergreen trees 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, at the closest possible intervals near the top of each berm.

(c) Fence--A six-foot security fence, topped with multi-stranded barbed wire, will be placed at the grading contour line, prior to beginning of building construction and planted with appropriate evergreen shrubs to provide additional screening and protection to adjacent homeowners. Such fence and plantings shall be permanently maintained by the Shopping Center ownership in a good state of repair and shall not encroach upon the established buffer property, except as it relates to berms.

(d) Lighting--All outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties. In no case will the total height of the lights be more than 25 feet

from grade level. All lighting for the purposes of parking will be located to the front of the buildings. Any lighting located in the rear of the buildings shall be no more than ten feet in height.

(c) Garbage and Trash Storage--All garbage, trash and refuse generated by the operation of the Shopping Center shall be stored in central "dumpster" type containers located in an area to the rear of the main structure and appropriately screened to be out of the view of surrounding neighbors and within twenty (20) feet of the main structure.

3. The Developers agree that development of the Property will be restricted as set forth below.

(a) Uses--It is agreed that the Property may be developed only for retail, commercial and business offices and/or institutional purposes in accordance with the restrictions set forth herein.

(b) Location of Buildings and Improvements--The location of buildings and improvements on the Property, including, but not limited to, streets, pavement areas, parking and parking lots, embankments, retaining walls, trees, fences, entrances from public roads and curb lines shall be as generally shown on the plan referred to in paragraph 2 (a), subject to final architectural and site plan design reflecting the objectives set forth herein. It is recognized that the plan referred to in paragraph 2 (a) is a preliminary plan that is subject to modification as required by final architectural and site plan design set forth above.

(c) Floor Area Limitation--Not more than 92,000 square feet of total floor area shall be constructed on sites defined on the shopping center plan described in paragraph 2 (a), excluding Sites A, B, and C as delineated thereon. With respect to Sites A, B, and C, each site will be limited to a total floor area not to exceed 8,000 square feet per site.

(d) Construction--Site development construction, except for the finishing of concrete, shall occur only between the hours of 7 A.M. and 7 P.M. Monday through Saturday, except for unusual circumstances created by substantial inclement weather, and with the prior



(e) Entrances/Exits--There shall be no curbs, cuts, entrances, or exits to the Property, either now or in the future, except as defined on the above-described shopping center plan. Specifically, there shall only be one on Chamblee-Dunwoody Road, one on Mandina Lane and one from the adjacent development via Dunwoody Village Parkway.

(f) Signs--The Developers agree to cooperate with DHA in their efforts to establish an overall criteria as to the design, size and location of signs in the Dunwoody area. It is further generally agreed that neon or internally lighted signs are not to be used and that sign height shall be compatible with the architectural and graphic scale and proportion established by the style and design objectives set forth herein.

(g) Restrictions against Offensive Businesses--Businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic book stores, peep shows, or movies which would be offensive, noxious or detrimental to the community or use of the land in the vicinity shall not be carried on or permitted to be carried on within the Property. Neither shall the operation of any restaurant create or emit cooking odors objectionable to landowners in the vicinity.

(h) Site and Grade Plan--The final site plan and grading plan shall be subject to the written approval of the DHA to assure conformity with the intent, as well as the substance, of the stipulations contained herein, such approval to not be unreasonably withheld. DHA shall have fifteen (15) days from the receipt of the final site and grading plans in which to approve or disapprove such plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such plans shall be deemed to have been given. In the event DHA disapproves such plans, any resubmission of revised plans shall be approved or disapproved by DHA within fifteen (15) days of receipt of such revised plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such revised plans shall be deemed to have been given.

#7

(i) Residential Development--S. Lowell Wamock agrees that development of the tract to the southwest and abutting the shopping center property shall begin at the earliest possible date as currently zoned (R-100) and in substantial conformity to site plan proposed for S. Lowell Wamock, with home construction to begin as soon as practical, but in any case, to precede development of the Property.

(j) Common Site Development--It is explicitly agreed that all Property included in the rezoning application, including Site A, Site B, and Site C, shall be developed in a unified plan which will be in conformity to the stipulations contained herein.

(k) Drainage--It is agreed that all permanent retention ponds or facilities required for water run-off shall be constructed as underground facilities, located in the parking lot areas. It is further agreed that proper provision shall be made for handling water run-off during site construction, including silt and debris barriers, such that no nearby property owners or buffer property shall be damaged in any way by such run-off.

(l) Foliage Retention--It is agreed that the Developers will make their best efforts to retain all substantial trees on the property, which are not located in the area defined for the buildings of the Shopping Center. Such retained trees shall be protected at the minimum by building wells around them to protect roots before grading begins and exercising caution during grading to prevent root and trunk damage.

(m) Historic Structures--As to the possible historic structures located on the Property, specifically that thought to be built by Major Dunwoody, the Developers agree to make a reasonable effort to save it in its entirety, if such can be done without prohibitive cost and within the architectural and design objectives set forth herein, and to use said structure as a curio shop or some similarly appropriate activity.

(n) Community Library--The Developers agree to make their best efforts to provide an appropriate area and amount of floor space for a community library for reasonable compensation within the budgetary constraints of DeKalb County and the Dunwoody community.

(o) **Delivery Vehicles**—The Developers understand that commercial truck traffic for the purpose of deliveries to the Shopping Center establishments is a matter of concern and agrees that deliveries shall be made during normal business hours and in such a manner as to be inoffensive to nearby homeowners and that delivery vehicles will be parked only for the time necessary to perform delivery and will be promptly removed thereafter.

(p) **Hours of Operation and Traffic Areas**—The Developers further understand the desire to limit operation of the establishments in the Shopping Center to reasonable hours and agree that no business shall operate or be open in the shopping center past midnight on any day, except for any restaurant or theater operation. The Developers further agree that those establishments generally construed to be "high traffic" shall be located, in so much as possible, in the center of the proposed building where nearby residents will be more shielded from the activity generated by those establishments.

(q) The Developers understand that heavy truck traffic during construction hours potentially jeopardizes the safety and lives of the community residents and children. It is therefore agreed that all such traffic should operate within normal traffic laws and with extreme care and concern for the safety and lives of the community.

(r) The Developers agree to allow appropriate community organizations access to the property during reasonable hours, but not the buffer area, for the purpose of removing plants, shrubs, etc. prior to grading, provided that such groups indemnify and hold harmless the Developers against any and all loss or damage arising out of such activities. The Developers reserve the right to retain certain shrubs, plants, etc. which shall be properly designated. Groups allowed access for these purposes must be approved by the DHA and accompanied by a Board Member, designated by the Board of DHA.

4. The Developers hereby declare that the Property described in Exhibit "A" is and shall be developed, owned, occupied, operated, transferred, sold and conveyed subject to the covenants and restrictions hereinabove set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the property owned by the Adjoining Property Owners. Such covenants and restrictions shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof, the Adjoining Property Owners and the DHA. The covenants and restrictions contained herein shall run with the Property for a period of twenty (20) years. At the end of such twenty (20) year period, upon the request of the DHA, the Developers and their successors or assigns agree to renew said covenants and restrictions and subject the Property to said covenants and restrictions for an additional twenty (20) year period. — Notwithstanding anything contained herein to the contrary, in the event that construction of the entrance way and the perimeter road on the Property pursuant to paragraph 3(b) herein are not substantially completed within two (2) years from the date hereof, then and in that event, the restrictions contained in paragraphs 3(c) and 3(d) herein providing respectively for entrances and exits to the Property and for the development of the Property in a unified plan shall cease to be covenants and restrictions running with the Property or any portion thereof. Except as herein provided, all other covenants and restrictions contained herein shall remain in full force and effect.

5. Solomon J. Banks and Myron D. Wolf join in the execution hereof as the holders of security interests in that portion of the Property owned by S. Lowell Warlock to evidence and confirm their consent to the covenants and restrictions contained herein, and do hereby subordinate the lien of their security interests to the covenants and restrictions contained herein.

6. Peachtree Federal Savings and Loan Association joins in the execution hereof as the holder of a security interest in that portion of the Property owned by Cicero Garner, Douglas W. Morgan and Curtis L.

20  
+  
20  
—  
40 yrs.  
2017  
—



113  
1810  
4 20  
1.24

Page to evidence and confirm its consent to the covenants and restrictions contained herein, and does hereby subordinate the lien of its security interest to the covenants and restrictions contained herein.

7. This Agreement constitutes the entire agreement between the parties hereto and may not be amended, modified or revoked without the prior written consent of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Agreement.

8. This Agreement may be executed in any number of counterparts by the parties hereto with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed and shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above set forth.

Signed, sealed and delivered in the presence of:

[Signature]  
Unofficial Witness  
[Signature]  
Notary Public for State of Utah  
My Comm. Expires Jan. 31, 1982

Signed, sealed and delivered in the presence of:

[Signature]  
Unofficial Witness  
[Signature]  
Notary Public  
My Comm. Expires Jan. 31, 1982

Signed, sealed and delivered in the presence of:

[Signature]  
Unofficial Witness  
[Signature]  
Notary Public  
My Comm. Expires Jan. 31, 1982

"DEVELOPERS"

[Signature] (SEAL)  
S. LOWELL RAMBOCK

[Signature] (SEAL)  
RUSSELL C. HENDERSON

[Signature] (SEAL)  
CICERO GARNER, JR.

Signed, sealed and delivered  
in the presence of:

M. D. Hall  
Unofficial Witness

Notary Public, Georgia State at Large  
My Comm. Expires Mar. 31, 1940.

Signed, sealed and delivered  
in the presence of:

M. D. Hall  
Unofficial Witness

Notary Public, Georgia State at Large  
My Comm. Expires Mar. 31, 1940.

Signed, sealed and delivered  
in the presence of:

M. D. Hall  
Unofficial Witness

Notary Public, Georgia State at Large  
My Comm. Expires Mar. 31, 1940.

Signed, sealed and delivered  
in the presence of:

M. D. Hall  
Unofficial Witness

Notary Public, Georgia State at Large  
My Comm. Expires Mar. 31, 1940.

Signed, sealed and delivered  
in the presence of:

M. D. Hall  
Unofficial Witness

Notary Public, Georgia State at Large  
My Comm. Expires Mar. 31, 1940.

Signed, sealed and delivered  
in the presence of:

M. D. Hall  
Unofficial Witness

Notary Public, Georgia State at Large  
My Comm. Expires Mar. 31, 1940.

Douglas W. Morgan, D. U. M. (SEAL)  
DOUGLASON, MORGAN

Curtis E. Page (SEAL)  
CURTIS E. PAGE

DUREWOODY HOMEOWNERS ASSOCIATION, INC.

By: Herb Sprague  
HERB SPRAGUE, President

Attest: \_\_\_\_\_ Secretary

(CORPORATE SEAL)

Robert A. Leavelle (SEAL)  
ROBERT A. LEAVELLE

James H. Linsendahl (SEAL)  
JAMES H. LINSENDAH

TEACHTREE FEDERAL SAVINGS AND LOAN  
ASSOCIATION

By: David C. Edwards  
David C. Edwards, President

Attest: Frederick A. Cox  
Frederick A. Cox, Assistant Vice President

(CORPORATE SEAL)

Signed sealed and delivered  
in the presence of:

Stanley D. Wolff  
Unofficial Witness

Myron D. Wolff  
MYRON D. WOLFF

(SEAL)

Notary Public  
Official Public, Common State of Texas  
My Comm. expires August 31, 1962

Signed sealed and delivered  
in the presence of:

William B. Cazalza  
Unofficial Witness

Solomon J. Banks  
SOLOMON J. BANKS

(SEAL)

Notary Public  
Official Public, Georgia, State at Large  
My Comm. expires August 31, 1962

Michael J. Kelly  
Unofficial Witness

Notary Public  
Official Public, Georgia, State at Large  
My Comm. expires August 31, 1962

# EXHIBIT B



# JMI

**Jacoby Management, Inc.**

October 31, 1989



Mr. George Lambie  
Zoning Manager  
DeKalb County  
120 West Trinity Place  
Room 309-Calloway Building  
Decatur, GA 30030

Re: Shops of Dunwoody  
Alterations to Conditions CZ-77105 and CZ-85016

Dear Mr. Lambie:

Please consider this letter as our request to amend our application for Conditional Zoning Alterations dated September 28, 1989 in behalf of the Shops of Dunwoody, Ltd. as follows:


CZ-77105 Delete "Reduce the buffer behind the major tenant to 100'"

CZ-85016 Delete "Reduction of the buffer at the west side of the site to accommodate the major tenant"

All other items on the Application for Conditional Zoning Alterations will remain as included on the application dated September 28, 1989.

Sincerely,

JACOBY MANAGEMENT, INC.

  
Larry N. Barker  
Development Coordinator

HW/jt

#12



# SITE DATA

## BUILDING AREA

LOWER LEVEL RETAIL	10,400	SF
DRUG STORE	1,410	SF
BOOKSTORE	10,000	SF
MAJOR TENANT	1,800	SF
EXISTING OFFICE	1,800	SF
EXISTING SHOPS	7,800	SF
EXISTING SHOPS	89,700	SF
NEW SHOPS	10,000	SF
TOTAL	119,400	SF

## PARKING INFORMATION

PARKING PROVIDED 400 SPACES

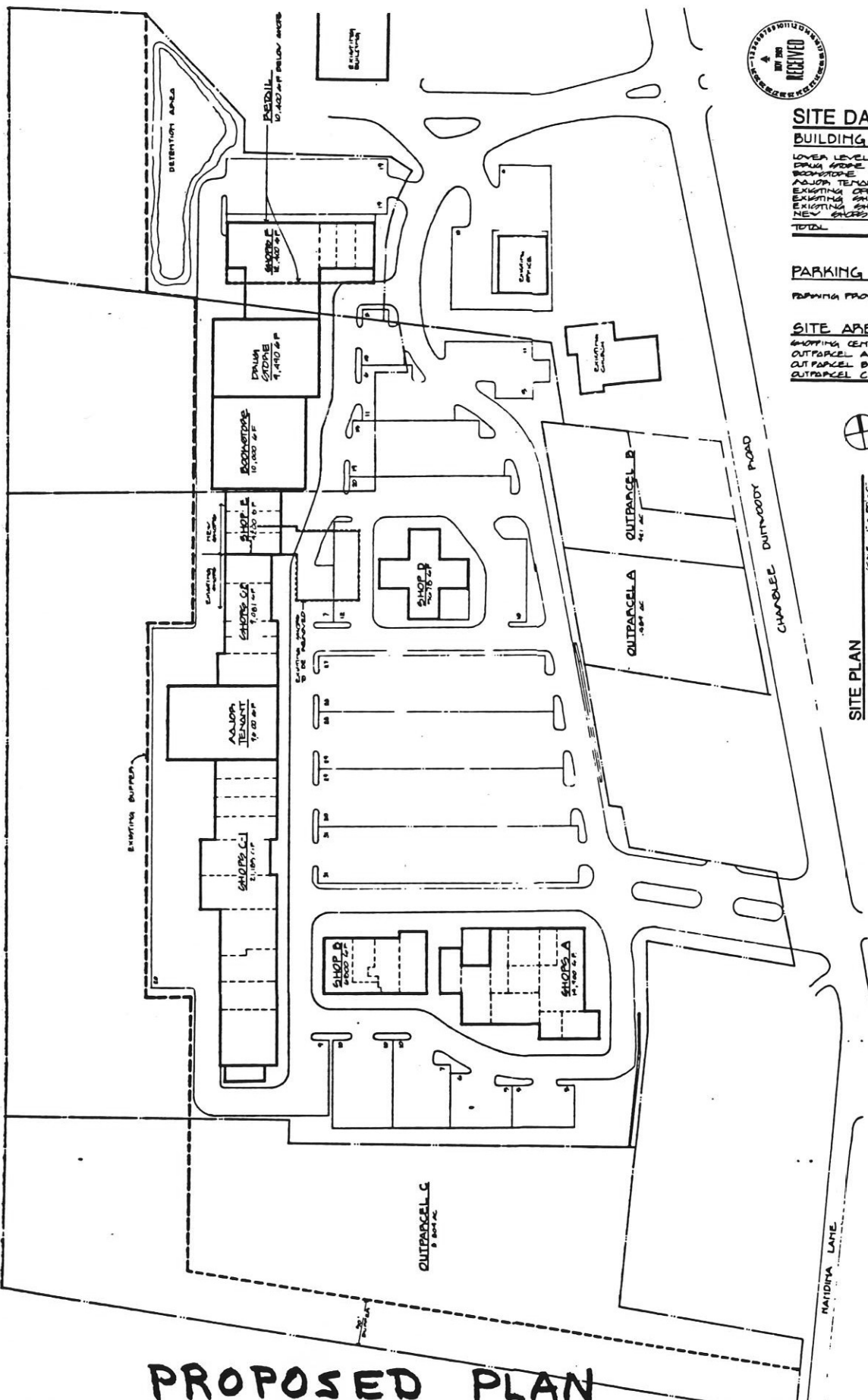
## SITE AREA

SHOPPING CENTER	19,500	AC
OUTPARCEL A	409	
OUTPARCEL B	481	
OUTPARCEL C	9,804	
TOTAL	20,500	AC



SITE PLAN

SCALE 1" = 20'-0"



PROPOSED PLAN

#12

## 1. (Cont.)

A portion of the equipment cost (\$13,357,000) was approved by the Board of Commissioners on May 11, 1976 to be included in the existing South River Construction grant. For funding purposes, all the equipment will now be funded under a new grant to be applied for after approval of the attached resolution.

The revised total estimated DeKalb share for this request and the May 11, 1976 approval is now \$7,818,390. Another agenda item and another EPA grant will be required after August 15, 1977 for Snapfinger construction. At that time, revisions to the 1976 Bond Brochure will be requested.

MOTION was made by Commissioner Williams, seconded by Commissioner Lantier, and passed 5-1, to approve the attached resolution authorizing the Chairman to take all necessary action and sign all necessary documents to apply for EPA grant assistance for the purchase of process equipment for the Snapfinger and Pole Bridge AWT facilities in the South River AWT project.

Attachment

Opposed: Commissioner Manning

## PUBLIC HEARING

- A) 01-52-30
- B) Zoning re:  
Lowell  
Marmock
- C) Chamblee-  
Dunwoody  
Nandina  
Lane

1. Lowell Marmock Property -- Rezoning Application: To consider conditional rezoning from R-150 to C-1 property on the west side of Chamblee-Dunwoody Road at the Nandina Lane intersection. This application was deferred, for action only, from the August 9th meeting.

Recommendations:

Planning Department: Approval as conditioned.

Planning Commission: Approval as conditioned.

Mr. Lowell Marmock, 3476 Paces Place, N.W. Atlanta, stated they have all the necessary signatures and everyone is in total agreement.

Mr. Herbert Sprague, President of the Dunwoody Homeowners Association, stated that Mr. Marmock has shown great concern for the needs and desires of the Homeowners Association and they support his request.

MOTION was made by Commissioner Manning, seconded by Commissioner Levitan, and unanimously passed, to approve the application as conditioned.

STANDARD DISTRICT APPLICATION  
(for use with conditional use district amendment only)

Applicant D.C.B.C.

Application # CZ-77105

1. Site Plan: ☒ Yes ☐ No

2. Land Use

☒ All district uses

☐ Specific use(s) as described below:

3. Density

☒ Not applicable

☐ Maximum density of district requested

☐ Modification of density as described below:

4. Timing of Development

☒ No limitation

☐ Limitations as described below:

5. Development Standards

☒ Building height maximum of district requested

☐ Limitation of building height as described below:

☐ Minimum buffer requirements of district requested

☒ Variation of buffer requirements as described below:

150' to 200' Buffer adjoining Hidden Branches  
per site plan. 10' buffer variance at Southern-  
most drive per site plan

Packet page:....

#12



5. Development Standards (continued)

- ☐ Minimum yard requirements of district requested
- ☐ Variation of minimum yard requirements as described below:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- ☐ Minimum standards of access
- ☒ Limitation of points of access as described below:

1 pt. on Chamblee Dunwoody Rd. 1 pt. on  
Nandina Ln. and connector to Dunwoody Village  
Pkwy per site plan. Access to lots A, B, and C  
via internal service roads

6. Drainage Plan: ☐ Yes ☒ No

7. Board Approval:

- ☐ Yes as described below: ☒ No
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

8. Other Conditions

- ☐ Yes as described below: ☐ No

6' screening Fence on Westernmost property line.  
architecture to be Williamsburg style  
no drainage retention in undisturbed buffer.

\_\_\_\_\_

Applicant's Acknowledgement

I have reviewed that portion of the Zoning Ordinance pertaining to Amendments and acknowledge that the conditions contained in this Statement are acceptable as conditionally binding upon development and use of this property should the map amendment be approved.

Date: \_\_\_\_\_

Applicant: \_\_\_\_\_

#12

# EXHIBIT C

and Planning Commission.

#7..

Opposed: Commissioners Patterson, Lanier.

---

7/26/77

- A) 01-52-30
- B) Zoning re:  
DeKalb Co.  
Board of Com.
- C) Chamblee-  
Dunwoody Rd.  
Nandina Lane

20.

CZ-77105

Commissioner District 1

Application of the DeKalb County Board of Commissioners to rezone property located on the west side of Chamblee-Dunwoody Road at its intersection with Nandina Lane from R-150 to C-1 (conditional). The property has frontage of 377' on Chamblee-Dunwoody Road, 211' on Nandina Lane and contains approximately 18.84 acres. The application is conditioned as to buffers, screening access and architecture.

Mr. Lowell Wammock spoke for the application as owner. Since the last time they were here, they have tried to work out something with abutting property owners and feel they have support. He reviewed the conditions of the application.

No one appeared in opposition.

Planning Department, Planning Commission Recommendation:  
Approval

MOTION was made by Commissioner Williams, seconded by Commissioner Maloof, and unanimously passed, to defer to the August 9th meeting.

---

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8/9/77

A) 01-52-30

B) Rezoning  
Applic.  
L. Wammock

C) L. Wammock  
Rezoning  
Appl.  
Defer

11. Lowell Wammock Property -- Rezoning Application:  
To consider conditional rezoning from R-150 to C-1 property on the west side of Chamblee-Dunwoody Road at the Nandina Lane intersection. This application was deferred for action only from the July 26th meeting.

Mr. Lowell Wammock, 3476 Paces Place, N.W. Atlanta, spoke for the application. He has worked diligently with the County, the homeowners, and the adjacent property owners on this item, and has agreed to dedicate buffers to the County, construct a library, and apply a 2 year reversion of the access of parcels A, B, and C, to Chamblee Dunwoody Road if the service road is not constructed. This condition is in conflict with the Planning Department's recommendation that access to lots A, B, and C shall be to internal service road system and not to Chamblee-Dunwoody Road or Nandina Lane.

Mr. Steve Nelson, Director of Planning recommended that the Board approve the project with the conditions suggested by the Planning Department; and allow the Homeowners Association to enter into its own agreement with Mr. Wammock.



096

## PUBLIC HEARINGS

## 11. (Cont.)

Mr. Herbert Sprague, President of the Dunwoody Homeowners Association, spoke against the application, his only objection being that the covenants involved in the rezoning of the property had not been signed by all parties concerned. He would approve the rezoning if the Board of Commissioners would make the condition that the signatures would have to be obtained.

MOTION was made by Commissioner Williams, seconded by Commissioner Levetan, to defer this item to the August 23 meeting. MOTION passed 5-2-0, with Commissioner Patterson and Chairman Russell opposed.

## PUBLIC HEARING

8/23/77

- A) 01-52-30
- B) Zoning re:  
Lowell  
Mannock.
- C) Chamblee-  
Dunwoody  
Nandina  
Lane

1. Lowell Mannock Property -- Rezoning Application: To consider conditional rezoning from R-150 to C-1 property on the west side of Chamblee-Dunwoody Road at the Nandina Lane intersection. This application was deferred, for action only, from the August 9th meeting.

Recommendations:

Planning Department: Approval as conditioned.

Planning Commission: Approval as conditioned.

Mr. Lowell Mannock, 3476 Paces Place, N.W. Atlanta, stated they have all the necessary signatures and everyone is in total agreement.

Mr. Herbert Sprague, President of the Dunwoody Homeowners Association, stated that Mr. Mannock has shown great concern for the needs and desires of the Homeowners Association and they support his request.

MOTION was made by Commissioner Manning, seconded by Commissioner Levatan, and unanimously passed, to approve the application as conditioned.

# EXHIBIT D

DEKALB COUNTY  
BOARD OF COMMISSIONERS

351 #7..

ITEM NO. 1

## ZONING - AGENDA/MINUTES

MEETING DATE January 9, 1990

FILE COPY

PREL.     ACTION     PUB.HRG. XRESOLUTION     ORDINANCE XPROCLAMATION     SUBJECT: Alteration of Conditions Application - Jacoby Management, Inc.COMMISSION DISTRICT: 1DEPARTMENT: PlanningPUBLIC HEARING: X Yes      NoATTACHMENT: X Yes      No 31 ppINFORMATION CONTACT: Mac Baggett or  
Charles Coleman  
PHONE NUMBER: 371-2155 *cc*

(Deferred from 12/12/89 public hearing)

PURPOSE:

CZ-77105, CZ-85016, & CZ-88036 - To consider the application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter the site plan and other conditions. (The application was deferred to allow additional time for agreements to be made between the applicant and community.)

SUBJECT PROPERTY:

18-366-1-1, 2 &amp; 10 (0000, 5500, and 5506 Chamblee Dunwoody Road).

RECOMMENDATION(s):

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.



A) 5210

B) Alteration of Conditions -  
Jacoby Management, Inc.C) Chamblee Dunwoody  
Rd. Nandina LaneD) Withdra-  
Prejudice

352

PREP #7..

## FOR USE BY COMMISSION OFFICE/CLERK ONLY

ACTION:

MOTION was made by Commissioner Williams, seconded by Commissioner Collins, and passed 7-0-0-0 to withdraw the application without prejudice.

ADOPTED:

JAN 09 '90

(DATE)

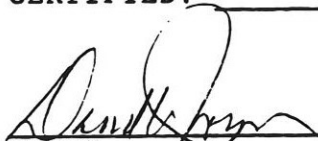


PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS

CERTIFIED:

JAN 09 '90

(DATE)



CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

Mr. Larry Barker, 1800 Century Place, #200, Atlanta, Georgia 30345, spoke for the application and represented Jacoby Management. He stated that the applicant had answered most of the concerns expressed by the homeowners, but there are some additional concerns with the seller. For this reason, Mr. Barker requested that the application be withdrawn without prejudice.

No one spoke in opposition.

## ATTACHMENT

	FOR	AGAINST	ABSTENTION	ABSE
DISTRICT 1 - Jean Williams	<input checked="" type="checkbox"/>			
DISTRICT 2 - Sherry Sutton	<input checked="" type="checkbox"/>			
DISTRICT 3 - Nathaniel Mosby	<input checked="" type="checkbox"/>			
DISTRICT 4 - Robert J. (Bob) Morris	<input checked="" type="checkbox"/>			
DISTRICT 5 - John S. Fletcher, Jr.	<input checked="" type="checkbox"/>			
AT-LARGE - Robert Lanier	<input checked="" type="checkbox"/>			
AT-LARGE - Annie Collins	<input checked="" type="checkbox"/>			

# EXHIBIT E

REV. 3/89

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ITEM NO. \_\_\_\_\_

ZONING - AGENDA/MINUTES

PREL.	_____
ACTION	_____
PUB.HRG.	<u>X</u>

MEETING DATE December 12, 1989

RESOLUTION	_____
ORDINANCE	<u>X</u>
PROCLAMATION	_____

SUBJECT: Alteration of Conditions Application - Jacoby Management, Inc.

COMMISSION DISTRICT: 1

DEPARTMENT: Planning

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

ATTACHMENT: X Yes \_\_\_\_\_ No 31 pp

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

(Deferred from 11/28/89 zoning hearing)

PURPOSE:

CZ-77105, CZ-85016, & CZ-88036 - To consider the application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter the site plan and other conditions. (The application was deferred to allow additional agreements to be made between the applicant and community.)

SUBJECT PROPERTY:

18-366-1-1, 2 & 10 (0000, 5500, and 5506 Chamblee Dunwoody Road).

RECOMMENDATION(s):

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.

# EXHIBIT F



REV. 3/89

DEKALB COUNTY  
BOARD OF COMMISSIONERS**FILE COPY**

763

ITEM NO. 12.**ZONING - AGENDA/MINUTES**

PREL.	<u>      </u>
ACTION	<u>      </u>
PUB.HRG.	<u>  X  </u>

MEETING DATE November 28, 1989

RESOLUTION	<u>      </u>
ORDINANCE	<u>  X  </u>
PROCLAMATION	<u>      </u>

SUBJECT: Alteration of Conditions Application - Jacoby Management, Inc.COMMISSION DISTRICT:   1  

DEPARTMENT:	Planning
-------------	----------

PUBLIC HEARING:	<u>  X  </u> Yes <u>      </u> No
-----------------	-----------------------------------

ATTACHMENT:	<u>  X  </u> Yes <u>      </u> No <u>  31  </u> pp
-------------	--

INFORMATION CONTACT:	Mac Baggett or <sup>TH</sup> Charles Coleman
PHONE NUMBER:	371-2155 <i>CC</i>

PURPOSE:

CZ-77105, CZ-85016, & CZ-88036 - To consider the application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter the site plan and other conditions.

SUBJECT PROPERTY:

18-366-1-1, 2 &amp; 10 (0000, 5500, and 5506 Chamblee Dunwoody Road).

RECOMMENDATION(s):

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.

REV. 3/89

**DEKALB COUNTY  
BOARD OF COMMISSIONERS**

ITEM NO. 12.

**ZONING - AGENDA/MINUTES**

MEETING DATE November 28, 1989

PREL.	<u>    </u>
ACTION	<u>    </u>
PUB.HRG.	<u>X</u>

RESOLUTION	<u>    </u>
ORDINANCE	<u>X</u>
PROCLAMATION	<u>    </u>

SUBJECT: Alteration of Conditions Application - Jacoby Management, Inc.COMMISSION DISTRICT: 1DEPARTMENT: PlanningPUBLIC HEARING: X Yes      NoATTACHMENT: X Yes      No 31 pp
 INFORMATION CONTACT: Mac Baggett or *TAC*  
 Charles Coleman  
 PHONE NUMBER: 371-2155 *CC*
PURPOSE:

CZ-77105, CZ-85016, & CZ-88036 - To consider the application of Jacoby Management, Inc., to alter conditions of zoning applied to property located at the westerly intersection of Chamblee Dunwoody Road and Nandina Lane. Part of the property was zoned C-1 August 23, 1977, part of the property was zoned C-1 January 22, 1985, and part of the property was zoned C-1 February 23, 1988. The three separate zoning applications limited development by site plans, buffers, points of access, and other conditions. This request is to alter the site plan and other conditions.

SUBJECT PROPERTY:

18-366-1-1, 2 &amp; 10 (0000, 5500, and 5506 Chamblee Dunwoody Road).

RECOMMENDATION(s):

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.

ALTERATION ANALYSIS

CZ-77105

CZ-85016

CZ-88036

AGENDA NO. 12 ZONING CASE NO. CZ-88036 MONTH OF November 1989APPLICANT Jacoby Managemant, Inc. OWNER ( ) AGENT (X)AGENT AUTHORIZED BY Shops of Dunwoody, Ltd.

DeKalb County Board of Commissioners, William L.

ORIGINAL APPLICANT Wilson, and Donald R. and Hilda A. WiggsLOCATION Westerly intersection of Chamblee Dunwoody Road and Nandina Lane

\*\*\*\*\*

ACREAGE 20.4 DATE OF ZONING 8/23/77  
1/22/85EXISTING ZONING C-1 COMMISSIONER DISTRICT 1  
2/23/88

\*\*\*\*\*

CONDITIONS APPLIED TO EXISTING ZONING: See attached.Note: The application was amended 11/2/89.

\*\*\*\*\*

ALTERATION REQUESTED:

CZ-77105 - Change the site plan.

CZ-85016 - Increase total floor area by 2,500 square feet. Add an entrance/exit to the property from Nandina Lane.

CZ-88036 - Replace existing property use of "Florist and gift shop only" with all uses permitted by a C-1 designation except for businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic bookstores, peep shows, or movies which would be offensive, noxious or detrimental to the community.

The above requested conditional zoning alterations will also be substantially in accordance with the attached plan.

\*\*\*\*\*

RECOMMENDATIONS:

PLANNING DEPARTMENT: Approval of the amended request (revised 11/7/89). Staff recommendation supports the amended application as it relates to CZ-77105, CZ-85016, and CZ-88036. This action supports the proposed site plan as amended.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: No recommendation.





Courthouse Square, Decatur, Georgia 30030

## MEMORANDUM

October 27, 1989



TO: Assistant Planning Director, Zoning  
FROM: Associate Director of Public Works, Roads and Drainage  
SUBJECT: Additional Comments for the November Applications

This department has the following comments on these applications.

3. Z-89119

This will require the dedication of Right-of-Way 40 ft. from centerline along both parcels entire frontage with North Clarendon Avenue. North Clarendon Avenue will have to be widened to 24 ft. from centerline with curb and gutter installed along the frontage of both parcels. In addition the intersection with Cedar Street will have to be improved and a 100 ft. taper will need to be installed as a transition back to existing pavement at the southern end of this widening. Access to this site will be limited to one standard 30 ft. driveway on each street. These driveways should be located as far from the intersection as possible. The proposed parking layout will have to be modified to remove any parking from within the proposed right-of-way.

6. CZ-88167

The widening for this site should be coordinated with the Georgia Department of Transportation. The minimum county requirement for this site will be that Lilburn Stone Mountain Road be widened to 24 ft. from centerline along this properties entire frontage and Hugh Howell Road be widened for an additional 12 ft. lane along this properties entire frontage. The access to Lilburn Stone Mountain Road is acceptable as shown on this plan. The plan shows two driveways to Hugh Howell Road with the applicant proposing to close the one farthest from the intersection, we believe the one nearest the intersection should be closed.

12. CZ-77105, CZ-85016, CZ-88036

This will require the dedication of right-of-way 50 ft. from centerline along all frontage with Chamblee Dunwoody Road. Access to all outparcels should be restricted to internal development streets, no direct access to Chamblee Dunwoody Road or Nandina Lane.

*Richard P. Daniel*  
Richard P. Daniel, P. E.

#12

RPD:REH

cc: Director, Public Works  
Assistant Director, R & D  
Deputy Director, Traffic

Packet page:... 002

# JMI

Jacoby Management, Inc.

October 31, 1989



Mr. George Lambie  
Zoning Manager  
DeKalb County  
120 West Trinity Place  
Room 309-Calloway Building  
Decatur, GA 30030

Re: Shops of Dunwoody  
Alterations to Conditions CZ-77105 and CZ-85016

Dear Mr. Lambie:

Please consider this letter as our request to amend our application for Conditional Zoning Alterations dated September 28, 1989 in behalf of the Shops of Dunwoody, Ltd. as follows:

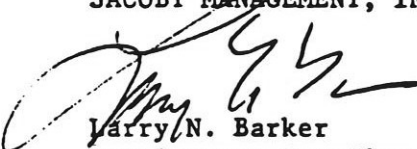
CZ-77105 Delete "Reduce the buffer behind the major tenant to 100'"

CZ-85016 Delete "Reduction of the buffer at the west side of the site to accommodate the major tenant"

All other items on the Application for Conditional Zoning Alterations will remain as included on the application dated September 28, 1989.

Sincerely,

JACOBY MANAGEMENT, INC.

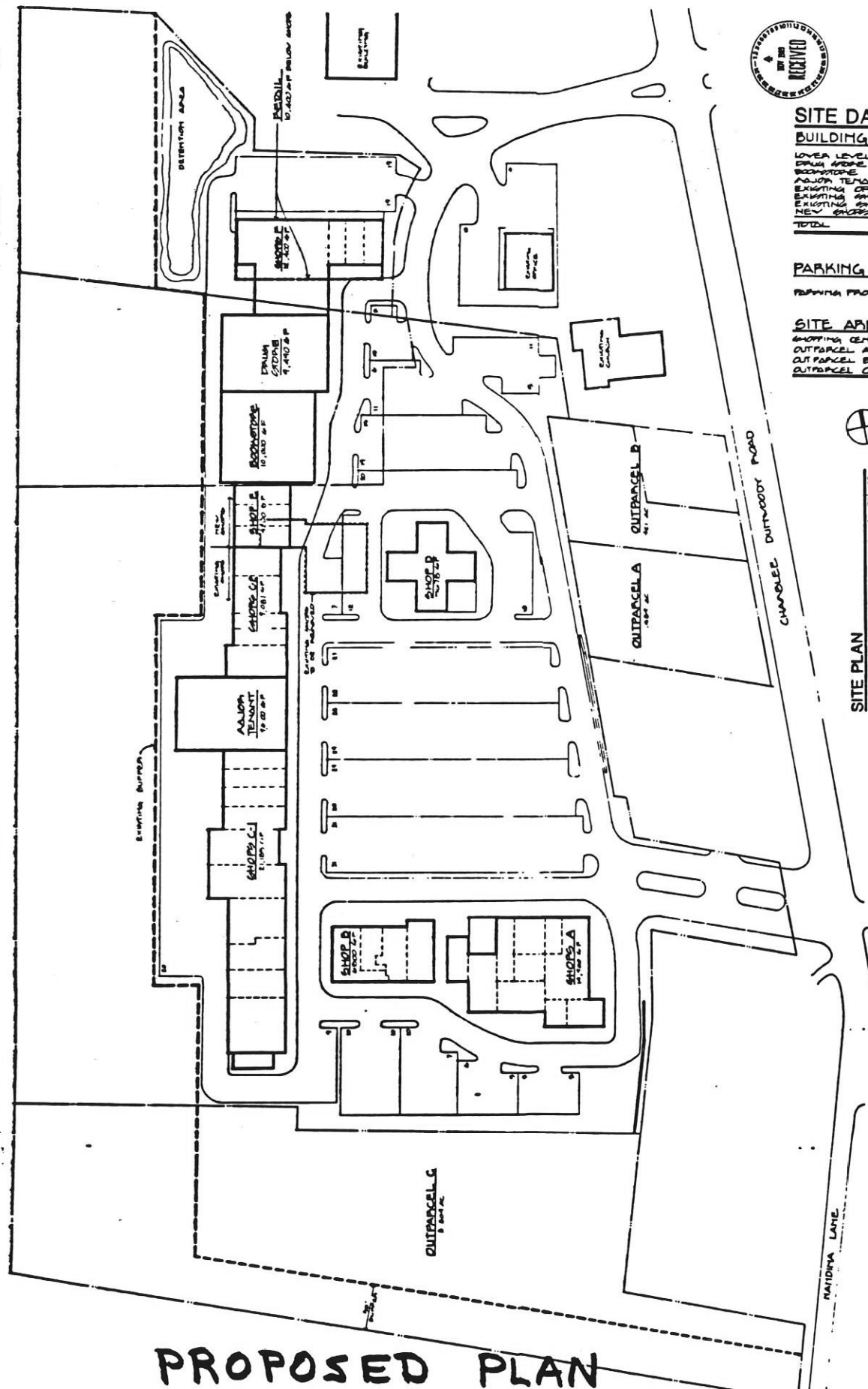


Larry N. Barker  
Development Coordinator

HW/jt

#12

Packet page



### SITE DATA

#### BUILDING AREA

LOWER LEVEL RETAIL	10,130	SF
DRUG STORE	9,410	SF
BOOMSTONE	10,130	SF
SHOP E	7,130	SF
EXISTING OFFICE	4,800	SF
EXISTING SHOP	7,000	SF
EXISTING SHOP	99,700	SF
NEW SHOP	10,000	SF
TOTAL	114,100	SF

#### PARKING INFORMATION

REMARKS PROVIDED: 400 SPACES

#### SITE AREA

SHOPPING CENTER	10,900	AC
OUTPARCEL A	400	AC
OUTPARCEL B	401	AC
OUTPARCEL C	5,001	AC
TOTAL	16,702	AC



SITE PLAN

#12

Packet page:...

094

## REGULAR ADDENDUM

## 1. (Cont.)

A portion of the equipment cost (\$13,357,000) was approved by the Board of Commissioners on May 11, 1976 to be included in the existing South River Construction grant. For funding purposes, all the equipment will now be funded under a new grant to be applied for after approval of the attached resolution.

The revised total estimated DeKalb share for this request and the May 11, 1976 approval is now \$7,818,390. Another agenda item and another EPA grant will be required after August 15, 1977 for Snapfinger construction. At that time, revisions to the 1976 Bond Brochure will be requested.

MOTION was made by Commissioner Williams, seconded by Commissioner Lanier, and passed 5-1, to approve the attached resolution authorizing the Chairman to take all necessary action and sign all necessary documents to apply for EPA grant assistance for the purchase of process equipment for the Snapfinger and Pole Bridge AMT facilities in the South River AMT project.

Attachment

Opposed: Commissioner Manning

## PUBLIC HEARING

- A) 01-52-30
- B) Zoning re:  
Lowell  
Hammock
- C) Chamblee-  
Dunwoody  
Nandina  
Lane

1. Lowell Hammock Property -- Rezoning Application: To consider conditional rezoning from R-150 to C-1 property on the west side of Chamblee-Dunwoody Road at the Nandina Lane intersection. This application was deferred, for action only, from the August 9th meeting.

Recommendations:

Planning Department: Approval as conditioned.

Planning Commission: Approval as conditioned.

Mr. Lowell Hammock, 3476 Paces Place, N.W. Atlanta, stated they have all the necessary signatures and everyone is in total agreement.

Mr. Herbert Sprague, President of the Dunwoody Homeowners Association, stated that Mr. Hammock has shown great concern for the needs and desires of the Homeowners Association and they support his request.

MOTION was made by Commissioner Manning, seconded by Commissioner Levitan, and unanimously passed, to approve the application as conditioned.



SEATTLE CITY LIGHTS  
(for use with conditions of use amendment only)

Applicant D.C.B.C.

Application = CZ-77105

1. Site Plan: ☒ Yes ☐ No

2. Land Use

☒ All district uses

☐ Specific use(s) as described below:

3. Density

☒ Not applicable

☐ Maximum density of district requested

☐ Modification of density as described below:

4. Timing of Development

☒ No limitation

☐ Limitations as described below:

5. Development Standards

☒ Building height maximum of district requested

☐ Limitation of building height as described below:

☐ Minimum buffer requirements of district requested

☒ Variation of buffer requirements as described below:

150' to 200' Buffer adjoining Hidden Branches  
per site plan. 10' buffer variance at Southern-  
most drive per site plan Packet page:...

#12

5. Development Standards (continued)

- ☐ Minimum yard requirements of district requested
- ☐ Variation of minimum yard requirements as described below:

- ☐ Minimum standards of access
- ☒ Limitation of points of access as described below:

1 pt. on Chamblee Dunwoody Rd. 1 pt. on  
Nandina Ln. and connector to Dunwoody Village  
Pkwy. per site plan. Access to lots A, B, and C  
via internal service roads

6. Drainage Plan: ☐ Yes ☒ No

7. Board Utility Maps

- ☐ Yes as described below: ☒ No

8. Other Conditions

- ☐ Yes as described below: ☐ No

6' screening Fence on Westernmost property line.  
architecture to be Williamsburg style  
no drainage retention in undisturbed buffer.

Applicant's Acknowledgement

I have reviewed that portion of the Zoning Ordinance pertaining to Amendments and acknowledge that the conditions contained in this Statement are acceptable as conditionally binding upon development and use of this property should the map amendment be approved.

Date: \_\_\_\_\_

Applicant: \_\_\_\_\_

#12

8/23/77

STATE OF GEORGIA )  
COUNTY OF DEKALB )

AGREEMENT AND DECLARATION OF  
COVENANTS AND RESTRICTIONS

*Not condition  
of zoning.*

THIS AGREEMENT made this \_\_\_\_ day of August, 1977 by and between S. LOWELL WATMOCK, RUSSELL G. HENDERSON and CICERO GARNER, JR., DOUGLAS W. MORGAN and CURTIS R. PAGE (hereinafter called the "Developers"), the DUNWOODY HOMEOWNERS ASSOCIATION, INC. (hereinafter called the "DHA"), and ROBERT A. LEAVY and FRANK R. COLIANO (hereinafter referred to as "Adjoining Property Owners") with SOLOMAN J. BANKS, MYRON D. WOLF and PEACHTREE FEDERAL SAVINGS AND LOAN ASSOCIATION joining in the execution of this Agreement for the purposes hereinafter set forth.

W I T N E S S E T H:

WHEREAS, the Developers are the owners of certain tracts of real property located in Land Lot 366, 18th District, Dekalb County, Georgia as more particularly described in Exhibit "A", attached hereto and by reference made a part hereof (hereinafter called the "Property"); and

WHEREAS, the parties hereto desire that the Property be subject to certain covenants and restrictions hereinafter set forth in connection with the development of the Property as a shopping center and other commercial uses permitted by zoning (the "Shopping Center").

NOW, THEREFORE, in consideration of the premises of this Agreement and the mutual undertakings by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

✓ 1. The Property will be developed pursuant to the following architectural guidelines:

✓ (a) Design--The Shopping Center, identified as Dunwoody West, will be developed in an architectural design comparable to the style and theme of the main portion of Dunwoody Village Shopping Center.

#12

✓ (b) Facade--The entire structure will be faced with building materials which are comparable to or reasonable facsimiles of the building materials used in similar locations of the main portion of Dunwoody Village Shopping Center, except that less expensive materials may be utilized, at the Developers' choice, in portions of the buildings which will not be exposed to either public view or adjacent homes.

✓ (c) Windows--No windows will face the housing to the west of the Shopping Center.

✓ (d) Building Height--The building height of the Shopping Center shall not exceed twenty-five (25) feet from grade level, at the roof peak, except for towers where deemed necessary by the Developers to maintain the proper design proportion.

✓ (e) Roofing--The roofing shall meet the same design and building material requirements set forth in paragraphs 1 (a) and (b) above.

2. In order to protect the Adjoining Property Owners, the Developers agree as hereinafter set forth.

(a) Buffers--Except as provided in paragraph 2 (b), there shall be appropriate undisturbed buffers, as defined in the shopping center plan, Dunwoody West, dated October 4, 1976, and revised February 9, 1977. Said buffers are generally defined as from 150 feet to 200 feet on the west. Solely at the option of DHA and the adjacent homeowners, the buffer property may be: (1) deeded to adjacent homeowners, with covenants providing for the undisturbed character for 20 years; or (2) deeded to DHA with the same covenants; or <sup>NR</sup>(3) deeded to Dekalb County, with the same covenants; (4) remain as a part of the shopping center property under the same covenants or (5) leased to DHA with the same covenants. Such election shall be made within ninety (90) days after the rezoning by the Dekalb County Commissioners. Except as provided in paragraph 2 (b), such buffer property shall remain undisturbed and will not be encroached upon any further than shown on the above-described shopping center plans. The Developers further agree that additional plantings may be desirable or necessary in the buffer property to reduce visual impact on adjacent homeowners.

#12



In the event that this is necessary, DHA will grant written permission to plant additional evergreen trees and shrubs, provided that no damage is done to existing foliage as described in paragraph 3 (1).

✓ (b) Berms--In those areas where adjacent homeowners will be exposed to sight of the buildings of the Shopping Center, it is agreed that berms and plantings will be provided to create a visual screen to such buildings. In order to create this visual screen between such buildings and the adjacent property owners, it is additionally agreed that all such berms and plantings described herein shall not utilize more than twenty-five (25) feet of that portion of the buffer property described in paragraph 2 (a) above which is adjacent to the Shopping Center, provided that no damage is done to existing foliage as described in paragraph 3 (1). Such berms and plantings shall be of appropriate height and density to accomplish the objectives stated in this paragraph. In the absence of a grading plan, no specifics can be practically established; however, they shall be no less than 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, with a slope ratio of not less than 1.5 to 1 and planted with multiple rows of evergreen trees 6 to 8 feet in height, where necessary to provide the visual screening contemplated herein, at the closest possible intervals near the top of each berm.

✓ (c) Fence--A six-foot security fence, topped with multi-stranded barbed wire, will be placed at the grading contour line, prior to beginning of building construction and planted with appropriate evergreen shrubs to provide additional screening and protection to adjacent homeowners. Such fence and plantings shall be permanently maintained by the Shopping Center ownership in a good state of repair and shall not encroach upon the established buffer property, except as it relates to berms.

(d) Lighting--All outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties. In no case will the total height of the lights be more than 25 feet

#12

from grade level. All lighting for the purposes of parking will be located to the front of the buildings. Any lighting located in the rear of the buildings shall be no more than ten feet in height.

✓ (e) Garbage and Trash Storage--All garbage, trash and refuse generated by the operation of the Shopping Center shall be stored in central "dumpster" type containers located in an area to the rear of the main structure and appropriately screened to be out of the view of surrounding neighbors and within twenty (20) feet of the main structure.

3. The Developers agree that development of the Property will be restricted as set forth below.

✓ (a) Uses--It is agreed that the Property may be developed only for retail commercial and business offices and/or institutional purposes in accordance with the restrictions set forth herein.

✓ (b) Location of Buildings and Improvements--The location of buildings and improvements on the Property, including, but not limited to, streets, pavement areas, parking and parking lots, embankments, retaining walls, trees, fences, entrances from public roads and curb lines shall be as generally shown on the plan referred to in paragraph 2 (a), subject to final architectural and site plan design reflecting the objectives set forth herein. It is recognized that the plan referred to in paragraph 2 (a) is a preliminary plan that is subject to modification as required by final architectural and site plan design set forth above.

✓ (c) Floor Area Limitation--Not more than 92,000 square feet of total floor area shall be constructed on sites defined on the shopping center plan described in paragraph 2 (a), excluding Sites A, B, and C as delineated thereon. With respect to Sites A, B, and C, each site will be limited to a total floor area not to exceed 8,000 square feet per site.

✓ (d) Construction--Site development construction, except for the finishing of concrete, shall occur only between the hours of 7 A.M. and 7 P.M. Monday through Saturday, except for unusual circumstances created by substantial inclement weather, and with the prior written approval of DHA, which approval will not be unreasonably withheld.

✓ (e) Entrances/Exits--There shall be no curb cuts, entrances, or exits to the Property, either now or in the future, except as defined on the above-described shopping center plan. Specifically, there shall only be one on Chamblee-Dunwoody Road, one on Nandine Lane and one from the adjacent development via Dunwoody Village Parkway.

✓ (f) Signs--The Developers agree to cooperate with DHA in their efforts to establish an overall criteria as to the design, size and location of signs in the Dunwoody area. It is further generally agreed that neon or internally lighted signs are not to be used and that sign height shall be compatible with the architectural and graphic scale and proportion established by the style and design objectives set forth herein.

✓ (g) Restrictions against Offensive Businesses--Businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic book stores, peep shows, or movies which would be offensive, noxious or detrimental to the community or use of the land in the vicinity shall not be carried on or permitted to be carried on within the Property. Neither shall the operation of any restaurant create or emit cooking odors objectionable to landowners in the vicinity.

✓ (h) Site and Grade Plan--The final site plan and grading plan shall be subject to the written approval of the DHA to assure conformity with the intent, as well as the substance, of the stipulations contained herein, such approval to not be unreasonably withheld. DHA shall have fifteen (15) days from the receipt of the final site and grading plans in which to approve or disapprove such plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such plans shall be deemed to have been given. In the event DHA disapproves such plans, any resubmission of revised plans shall be approved or disapproved by DHA within fifteen (15) days of receipt of such revised plans. If DHA has not given notice of its approval or disapproval within said fifteen (15) day period, approval for such revised plans shall be deemed to have been given.

#12

✓(i) Residential Development--S. Lowell Wammock agrees that development of the tract to the southwest and abutting the shopping center property shall begin at the earliest possible date as currently zoned (R-100) and in substantial conformity to site plan proposed for S. Lowell Wammock, with home construction to begin as soon as practical, but in any case, to precede development of the Property.

✓(j) Common Site Development--It is explicitly agreed that all Property included in the rezoning application, including Site A, Site B, and Site C, shall be developed in a unified plan which will be in conformity to the stipulations contained herein.

✓(k) Drainage--It is agreed that all permanent retention ponds or facilities required for water run-off shall be constructed as underground facilities, located in the parking lot areas. It is further agreed that proper provision shall be made for handling water run-off during site construction, including silt and debris barriers, such that no nearby property owners or buffer property shall be damaged in any way by such run-off.

✓(l) Foliage Retention--It is agreed that the Developers will make their best efforts to retain all substantial trees on the property, which are not located in the area defined for the buildings of the Shopping Center. Such retained trees shall be protected at the minimum by building wells around them to protect roots before grading begins and exercising caution during grading to prevent root and trunk damage.

✓(m) Historic Structures--As to the possible historic structures located on the Property, specifically that thought to be built by Major Dunwoody, the Developers agree to make a reasonable effort to save it in its entirety, if such can be done without prohibitive cost and within the architectural and design objectives set forth herein, and to use said structure as a curio shop or some similarly appropriate activity.

✓(n) Community Library--The Developers agree to make their best efforts to provide an appropriate area and amount of floor space for a community library for reasonable compensation within the budgetary constraints of Dekalb County and the Dunwoody community.

#12

✓(o) Delivery Vehicles--The Developers understand that commercial truck traffic for the purpose of deliveries to the Shopping Center establishments is a matter of concern and agrees that said deliveries shall be made during normal business hours and in such a manner as to be inoffensive to nearby homeowners and that delivery vehicles will be parked only for the time necessary to perform delivery and will be promptly removed thereafter.

✓(p) Hours of Operation and Traffic Areas--The Developers further understand the desire to limit operation of the establishments in the Shopping Center to reasonable hours and agree that no business shall operate or be open in the shopping center past midnight on any day, except for any restaurant or theater operation. The Developers further agree that those establishments generally construed to be "high traffic" shall be located, in so much as possible, in the center of the proposed building where nearby residents will be more shielded from the activity generated by those establishments.

✓(q) The Developers understand that heavy truck traffic during construction hours potentially jeopardizes the safety and lives of the community residents and children. It is therefore agreed that all such traffic should operate within normal traffic laws and with extreme care and concern for the safety and lives of the community.

✓(r) The Developers agree to allow appropriate community organizations access to the property during reasonable hours, but not the buffer area, for the purpose of removing plants, shrubs, etc. prior to grading, provided that such groups indemnify and hold harmless the Developers against any and all loss or damage arising out of such activities. The Developers reserve the right to retain certain shrubs, plants, etc. which shall be properly designated. Groups allowed access for these purposes must be approved by the DHA and accompanied by a Board Member, designated by the Board of DHA.

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4. The Developers hereby declare that the Property described in Exhibit "A" is and shall be developed, owned, occupied, operated, transferred, sold and conveyed subject to the covenants and restrictions hereinabove set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the property owned by the Adjoining Property Owners. Such covenants and restrictions shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof, the Adjoining Property Owners and the DHA. The covenants and restrictions contained herein shall run with the Property for a period of twenty (20) years. At the end of such twenty (20) year period, upon the request of the DHA, the Developers and their successors or assigns agree to renew said covenants and restrictions and subject the Property to said covenants and restrictions for an additional twenty (20) year period. Notwithstanding anything contained herein to the contrary, in the event that construction of the entrance way and the perimeter road on the Property pursuant to paragraph 3(b) herein are not substantially completed within two (2) years from the date hereof, then and in that event, the restrictions contained in paragraphs 3(e) and 3(j) herein providing respectively for entrances and exits to the Property and for the development of the Property in a unified plan shall cease to be covenants and restrictions running with the Property or any portion thereof. Except as herein provided, all other covenants and restrictions contained herein shall remain in full force and effect.

5. Solomon J. Banks and Myron D. Wolf join in the execution hereof as the holders of security interests in that portion of the Property owned by S. Lowell Wammoth to evidence and confirm their consent to the covenants and restrictions contained herein, and do hereby subordinate the lien of their security interests to the covenants and restrictions contained herein.

6. Peachtree Federal Savings and Loan Association joins in the execution hereof as the holder of a security interest in that portion of the Property owned by Cicero Garner, Douglas W. Morgan and Curtis R.

Page to evidence and confirm its consent to the covenants and restrictions contained herein, and does hereby subordinate the lien of its security interest to the covenants and restrictions contained herein.

7. This Agreement constitutes the entire agreement between the parties hereto and may not be amended, modified or revoked without the prior written consent of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Agreement.

8. This Agreement may be executed in any number of counterparts by the parties hereto with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed and shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above set forth.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

"DEVELOPERS"

\_\_\_\_\_  
S. LOWELL WAMMOCK (SEAL)

\_\_\_\_\_  
RUSSELL G. HENDERSON (SEAL)

\_\_\_\_\_  
CICERO GARNER, JR. (SEAL)

#12

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
DOUGLAS W. MORGAN (SEAL)

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
CURTIS R. PAGE (SEAL)

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
HERB SPRAGUE, President

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
Secretary

(CORPORATE SEAL)

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
ROBERT A. LEAVY (SEAL)

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
FRANK R. COLIANO (SEAL)

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

PEACHTREE FEDERAL SAVINGS AND LOAN  
ASSOCIATION

By: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_

(CORPORATE SEAL)

#12

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
MYRON D. WOLF (SEAL

\_\_\_\_\_  
Notary Public

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
SOLOMAN J. BANKS (SEAL

\_\_\_\_\_  
Notary Public

#12

TRACT NO. 1

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the parcel herein described commence at the point where the west line of Land Lot 366 intersects the northwestern right of way line of Mount Vernon Highway, said point also being located a distance of 918.5 feet southwesterly as measured along the northwestern right of way line of Mount Vernon Highway from the intersection of the northwestern right of way line of Mount Vernon Highway and the west right of way line of Nandina Lane; running thence in a northerly direction along the west line of Land Lot 366 a distance of 894.9 feet to the true point of beginning thus established continuing thence in a northerly direction along the west line of Land Lot 366 north 09 degrees 39 minutes west a distance of 766.9 feet to an iron pin located on the south side of a 20-foot alley; running thence north 83 degrees 00 minutes east along the south side of said 20-foot alley a distance of 629.3 feet to an iron pin; running thence south 18 degrees 35 minutes east a distance of 410.2 feet to an iron pin; running thence south 04 degrees 03 minutes east a distance of 300.0 feet to an iron pin; running thence south 29 degrees 41 minutes east a distance of 201.8 feet to an iron pin located on the west right of way line of Nandina Lane; running thence south 04 degrees 38 minutes east and along the west right of way line of Nandina Lane a distance of 83.3 feet to an iron pin; running thence south 89 degrees 37 minutes west a distance of 861.3 feet to an iron pin and the point of beginning; as per survey for "Lowell Wamrock" prepared by Southland Engineers & Surveyors, Inc. dated August 26, 1971, last revised October 19, 1971, and containing 12.192 acres according to said survey.

TRACT NO. 2

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at a point marked by an iron pin found located a distance of 969.26 feet southerly as measured southerly along the west line of Land Lot 366 from the common corner of Land Lots 365, 366, 376, and 377; thence running South 84 degrees 01 minutes East a distance of 398.88 feet to a point marked by an axle; thence running South 84 degrees 15 minutes East a distance of 187.60 feet to a point; thence running South 10 degrees 00 minutes East a distance of 90.00 feet to a point; thence running South 84 degrees 17 minutes East a distance of 75.00 feet to a point; thence running South 10 degrees 40 minutes East a distance of 272.59 feet to a point located on the center line of an abandoned street, formerly known as Christopher Street, said point being located a distance of 100.00 feet westerly as measured westerly along the center line of the aforesaid abandoned street from the intersection formed by the center line of the aforesaid abandoned street with the western margin of the right-of-way of Chamblee-Dunwoody Road; thence running North 81 degrees 18 minutes 41 seconds West along the aforesaid center line of the abandoned street a distance of 724.66 feet to a point located on the west line of Land Lot 366; thence running North 01 degree 24 minutes West along the west line of Land Lot 366 a distance of 315.04 feet to the point of beginning.

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TRACT NO. 3

All that tract of land in Land Lot 366 of the 18th District of DeKalb County, Georgia, more particularly described as follows:

BEGINNING at the iron pin found at the intersection of the west side of Chamblee-Dunwoody Road (formerly known as Roswell Street) with the center line of the strip of land formerly known as Christopher Street (an abandoned street); and running thence South 11 degrees 52 minutes 56 seconds East, 148.91 feet along the west side of Chamblee-Dunwoody Road to an iron pin at the north line of property conveyed by Dr. N. Strickland to A. N. Burnham by warranty deed dated December 16, 1919, of record in Deed Book 123, page 183, DeKalb County Records (said adjoining property now or formerly being owned by Russell G. Henderson); thence North 83 degrees 24 minutes 04 seconds West along the north line of said Henderson property and along a stone wall 200 feet to the east line of property now or formerly owned by Austin; thence North 10 degrees 59 minutes 09 seconds West, 155.8 feet along the line of said Austin property to the center line of the former Christopher Street (abandoned); thence South 81 degrees 18 minutes 41 seconds East along the center line of former Christopher Street (abandoned) 200 feet to an iron pin at the west side of Chamblee-Dunwoody Road and the point of beginning.

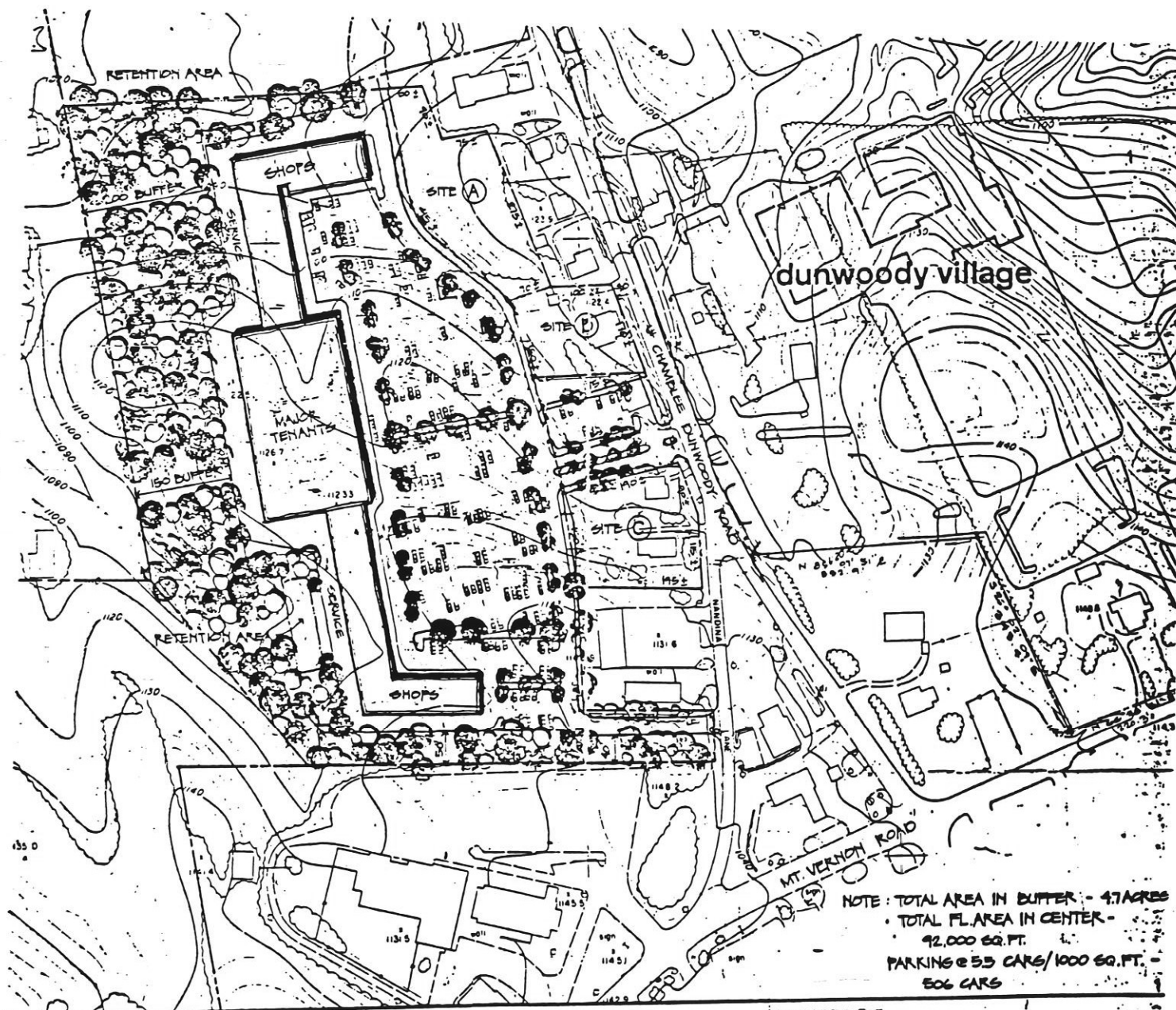
TRACT NO. 4

All that tract or parcel of land lying and being in Land Lot No. 366 of the 18th District of DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at a point on the western side of Chamblee-Dunwoody Road, formerly known as Roswell Street, at the northeast corner of the S. T. Spruill, then B. T. Pierce property, said beginning point being at the northeast corner of Lot 13 as shown on the map hereinafter referred to, and being located 50 feet north of the intersection of the western side of Chamblee-Dunwoody Road with the west side of Mandina Lane; and running thence northwesterly along the western side of Chamblee-Dunwoody Road 156.4 feet to the southern side of a stone wall at the south line of the N. Strickland property; running thence westerly in a straight line along the southern line of said N. Strickland property 195.19 feet to an iron pin at the northwestern corner of Lot 16 as shown on the map hereinafter referred to; thence southeasterly along the line of property now or formerly owned by Austin, which is along the rear line of Lots 16, 15 and 14, as shown on the map hereinafter referred to a distance of 150 feet to an iron pin at the northwest corner of said Lot 13; running thence easterly along the northern line of said S. T. Spruill, then B. T. Pierce property, which is along the northern line of said Lot 13, a distance of 197.36 feet to an iron pin on the western side of Chamblee-Dunwoody Road at the point of beginning; said property being all of Lots 14, 15 and 16, and a portion of Lot 17 as shown on Map of Dunwoody recorded in Plat Book 9, page 73, DeKalb County Records.

Being the same property conveyed by Warranty Deed from The Citizens and Southern National Bank, as Trustee under Agreement of the James H. Cowart, Inc. Profit Sharing Plan "4937 H", to Russell G. Henderson, dated January 29, 1971, filed for record February 1, 1971, recorded in Deed Book 2609, page 781, in the Office of the Clerk of the Superior Court of DeKalb County, Georgia.

#12



opping center plan

# REZONING PLAN

#12

REV: 12/84

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ZONING AGENDA/MINUTES

MEETING DATE January 22, 1985

REL.     

ACTION     

PUB.HRG.. X

CZ-85016  
minutes  
+  
cards.

346

#7..

ITEM NO. 20

RESOLUTION     

ORDINANCE X

PROCLAMATION     

SUBJECT: Rezoning Application - William L. Wilson

DEPARTMENT: Planning

PUBLIC HEARING: X Yes      No

ATTACHMENT: X Yes      No 10 pp

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

PURPOSE: CZ-85016 - To consider the application of William L. Wilson to rezone property located on the west side of Dunwoody Village Parkway, approximately 340 west of Chamblee Dunwoody Road, from R-150 to C-1 (conditional). The application is conditioned by a list of conditions.

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

SUBJECT PROPERTY: 18-366-1-10 (0000 Chamblee Dunwoody Road). The property has frontage of 171' and contains 2.27 acres.

RECOMMENDATION(s): PLANNING DEPARTMENT: Approval as amended. The proposal as amended is consistent with recommendations of the Comprehensive Plan and compatible with area zoning and development.

PLANNING COMMISSION: Approval.

AREA 1 COMMUNITY COUNCIL: Approval subject to applicant following all agreements and covenants.

#12

A) 5230 B) Zoning:  
347 William L.  
Wilson

C) Dunwoody  
Village  
Parkway/  
Cham. Dun. Rd.

PAGE 2

FOR USE BY COMMISSION OFFICE/CLERK ONLY


ACTION:

MOTION was made by Commissioner Manning, seconded by Commissioner Fletcher, and passed 7-0, to approve the application as recommended by the Planning Department.

ADOPTED: JAN 24 1985  
(DATE)

CERTIFIED: JAN 24 1985  
(DATE)

  
PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS

  
CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

No one appeared to speak in opposition.

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

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CONDITIONS OF REZONING

William L. Wilson  
Zoning Case No. CZ-85016

1. The property may be developed only for Retail, Commercial and Business Offices and/or Institutional purposes in accordance with these proposed conditions of rezoning.
2. Not more than 20,000 square feet of total floor area shall be constructed on the site.
3. Businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic bookstores, peep shows, or movies which would be offensive, noxious or detrimental to the community or use of the land in the vicinity shall not be carried on or permitted to be carried on within the property. Neither shall the operation of any restaurant create or emit cooking odors objectionable to land owners in the vicinity.
4. Improvements will be developed in the colonial architectural design comparable to the style and theme of the adjacent shops of Dunwoody and Dunwoody Hall and Dunwoody Village Shopping Centers.
5. The proposed structure will be faced with building materials which are comparable to or reasonable facsimiles of the building materials used in similar locations of the main portion of Dunwoody Village Shopping Center, except that less expensive materials may be utilized, at the developer's choice, in portions of the buildings which will not be exposed to either public view or adjacent homes.
6. The building height of the improvements shall not exceed two stories from grade level, except for towers where deemed necessary by the developers to maintain the proper design proportion.
7. The roofing shall meet the same design and building materials set forth in Paragraphs 4 and 5 above.
8. A one hundred and fifty foot "undisturbed buffer" will be maintained across the rear of the subject property adjacent to neighboring single family residential development. Said "undisturbed buffer" shall not prohibit the addition of plantings which may be added to the buffer property to reduce visual impact on adjacent homeowners, provided that no damage is done to existing foliage.
9. A six foot security fence, topped with multi-stranded barbed wire, will be placed at the grading contour line, prior to the beginning of building construction and planted with appropriate evergreen shrubs to provide additional screening protection to adjacent homeowner's. Such fence and plantings shall be permanently maintained by the developer in a good state of repair and shall not encroach upon the aforementioned buffer property.
10. All outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties. In no case will the total height of the lights be more than 25 feet from grade level. All lighting for the purposes of

EXHIBIT (A)

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#12



parking will be located to the front of the buildings. Any lighting located in the rear of the building shall be no more than 10 feet in height.

11. All garbage, trash and refuse generated by the operation of the development shall be stored in central "dumpster" type containers located in the area to the rear of the main structure and appropriately screened to be out of the view of surrounding neighbors and within 20 feet of the main structure.
12. Site development construction, except for the finishing of concrete, shall occur only between the hours of 7:00 A.M. and 7:00 P.M. Monday through Saturday, except for unusual circumstances created by substantial inclement weather.
13. There shall be no curb cuts, entrances, or exits to the property, either now or in the future, except from Chamblee-Dunwoody Road and from the adjacent development via Dunwoody Village Parkway extension.
14. Neon or internally lighted signs shall not be used in the development.
15. All permanent retention ponds or facilities required for water runoff shall be constructed as underground facilities, located in the parking lot areas. Proper provision shall be made for handling water runoff during site construction, including silt and debris barriers to insure that nearby property owners or buffer property shall not be damaged in any way by such runoff.
16. Commercial truck traffic delivery shall be made during normal business hours and delivery vehicles will be parked only for the time necessary to perform delivery and will be promptly removed thereafter.
17. No business in the development shall operate or be open past midnight on any day, except for any restaurant or theater operation.

#20

#12

12/84

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ZONING AGENDA/MINUTES

MEETING DATE February 23, 1988

CZ-88036 #7.. 682  
Minutes

ITEM NO. 16.

PREL.     

ACTION     

PUB.HRG. X

RESOLUTION     

ORDINANCE X

PROCLAMATION     

SUBJECT: Rezoning Application - Donald R. and Hilda A. Wiggs

DEPARTMENT: Planning

PUBLIC HEARING: X Yes      No

ATTACHMENT: X Yes      No 6 pp

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

PURPOSE: CZ-88036 - To consider the application of Donald R. and Hilda A. Wiggs to rezone property located on the southwest side of Chamblee Dunwoody Road, approximately 400' southeast of Dunwoody Village Parkway, from R-150 to C-1 (conditional). The application is conditioned on use of the property for a florist and gift shop.

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

SUBJECT PROPERTY: 18-366-1-2 (5500 Chamblee Dunwoody Road). The property has frontage of 196' and contains .5 acre.

RECOMMENDATION(s): PLANNING DEPARTMENT: Approval with condition. The request is consistent with recommendations of the Comprehensive Plan and compatible with area zoning. Staff supports the rezoning application subject to approval of access and road improvements as may be required by the Public Works Department.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: Approval subject to having only one curb cut and the buildings to be renovated in a manner compatible with the adjoining renovated building.

#12

A) 5230 B) Zoning C) Chamblee  
Appl. Dunwoody Rd.,  
Wigys Dunwoody  
683 Village Pkwy.

PAGE

FOR USE BY COMMISSION OFFICE/CLERK ONLY

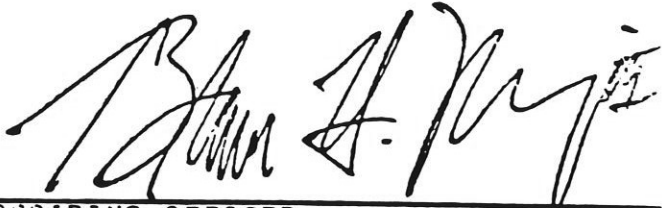
ACTION:

MOTION was made by Commissioner Williams, seconded by Commissioner Schulman, and passed 5-0-0, to approve the application as recommended by the Planning Department.

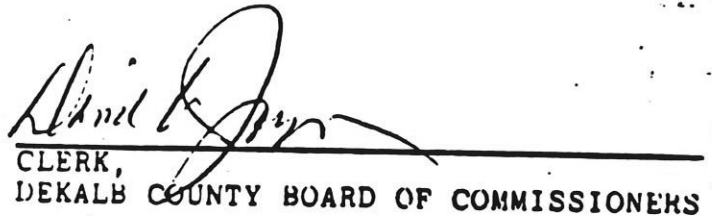
Commissioner Fletcher out of the room and not voting.  
(Commissioner Evans absent due to wife's illness)

ADOPTED: FEB 23 '88  
(DATE)

CERTIFIED: FEB 23 '88  
(DATE)



PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS



CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

Mr. James Anthony, 365 Saddle Lake Drive, Roswell, represented the applicant.

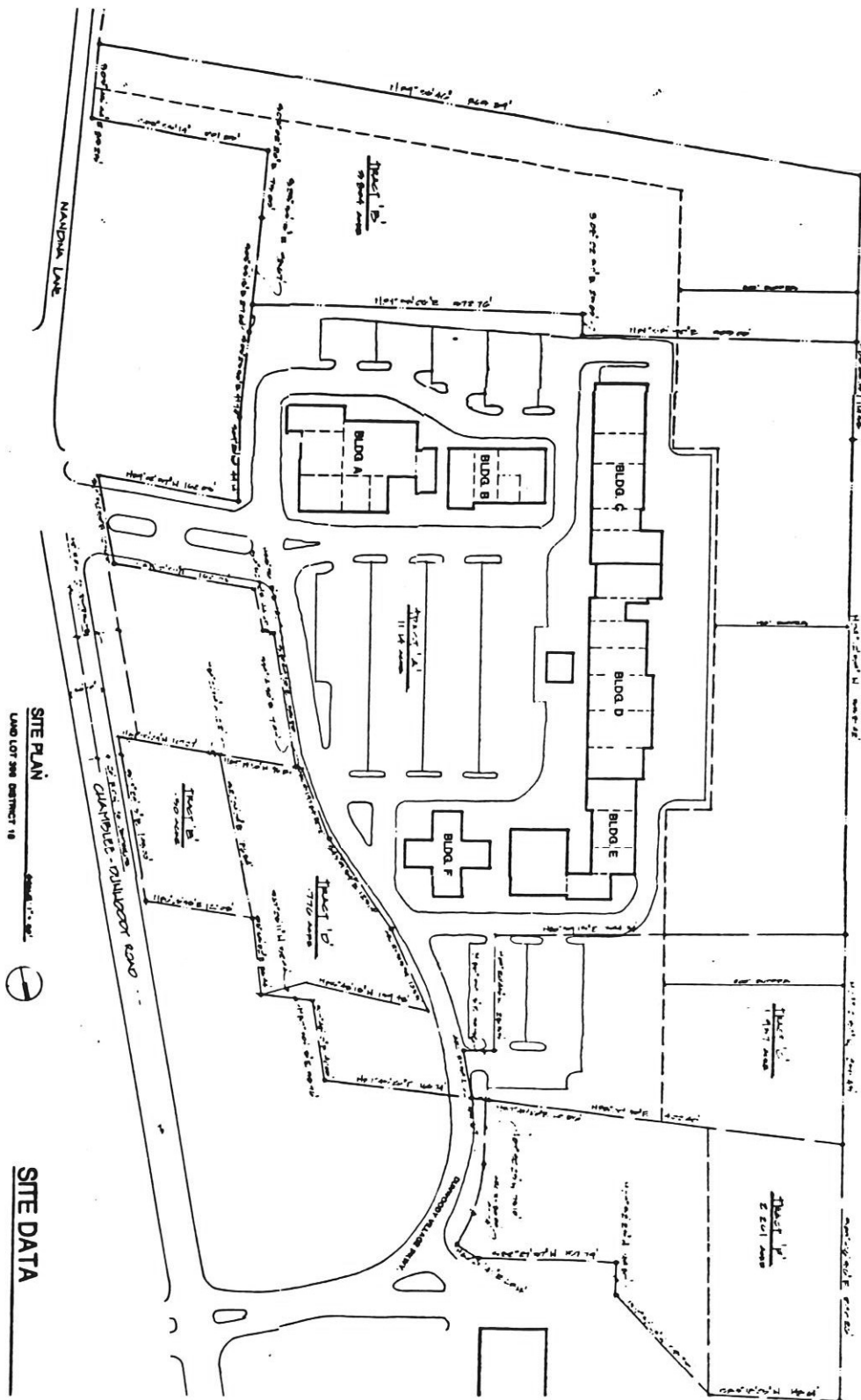
Opposition: None.

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

# EXISTING DEVELOPMENT

118

#12



## SITE PLAN

LAND LOT 298 DISTRICT 18



## SITE DATA

TOTAL BUILDING AREA 68,210 S.F.  
TOTAL ACRES 20.418

NOTE: THERE ARE NO FLOOD PLANS LOCATED ON THESE SITES.

C2-77105  
 C2-85016  
 C2-88036  
 ALTERATION OF  
 CONDITIONS

001-00

R-159

C-1

C-1

1-7

10.27AC 5 40.93910 40.93847  
ORDER.  
COMMERCIAL USE

Back page



# EXHIBIT G

REV: 12/84

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ZONING AGENDA/MINUTES

MEETING DATE January 22, 1985

REL.     

ACTION     

PUB.HRG.. X

CZ-85016  
minutes  
+  
cards.

346

#7..

ITEM NO. 20

RESOLUTION     

ORDINANCE X

PROCLAMATION     

SUBJECT: Rezoning Application - William L. Wilson

DEPARTMENT: Planning

PUBLIC HEARING: X Yes      No

ATTACHMENT: X Yes      No 10 pp

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

PURPOSE: CZ-85016 - To consider the application of William L. Wilson to rezone property located on the west side of Dunwoody Village Parkway, approximately 340 west of Chamblee Dunwoody Road, from R-150 to C-1 (conditional). The application is conditioned by a list of conditions.

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

SUBJECT PROPERTY: 18-366-1-10 (0000 Chamblee Dunwoody Road). The property has frontage of 171' and contains 2.27 acres.

RECOMMENDATION(s): PLANNING DEPARTMENT: Approval as amended. The proposal as amended is consistent with recommendations of the Comprehensive Plan and compatible with area zoning and development.

PLANNING COMMISSION: Approval.

AREA 1 COMMUNITY COUNCIL: Approval subject to applicant following all agreements and covenants.

#12

A) 5230 B) Zoning:  
347 William L.  
Wilson

C) Dunwoody  
Village  
Parkway/  
Cham. Dun. Rd.

PAGE 2

FOR USE BY COMMISSION OFFICE/CLERK ONLY


ACTION:

MOTION was made by Commissioner Manning, seconded by Commissioner Fletcher, and passed 7-0, to approve the application as recommended by the Planning Department.

ADOPTED: JAN 24 1985  
(DATE)

CERTIFIED: JAN 24 1985  
(DATE)

  
PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS

  
CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

No one appeared to speak in opposition.

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

#12

CONDITIONS OF REZONING

William L. Wilson  
Zoning Case No. CZ-85016

1. The property may be developed only for Retail, Commercial and Business Offices and/or Institutional purposes in accordance with these proposed conditions of rezoning.
2. Not more than 20,000 square feet of total floor area shall be constructed on the site.
3. Businesses such as pool halls, billiard parlors, amusement arcades, adult or pornographic bookstores, peep shows, or movies which would be offensive, noxious or detrimental to the community or use of the land in the vicinity shall not be carried on or permitted to be carried on within the property. Neither shall the operation of any restaurant create or emit cooking odors objectionable to land owners in the vicinity.
4. Improvements will be developed in the colonial architectural design comparable to the style and theme of the adjacent shops of Dunwoody and Dunwoody Hall and Dunwoody Village Shopping Centers.
5. The proposed structure will be faced with building materials which are comparable to or reasonable facsimiles of the building materials used in similar locations of the main portion of Dunwoody Village Shopping Center, except that less expensive materials may be utilized, at the developer's choice, in portions of the buildings which will not be exposed to either public view or adjacent homes.
6. The building height of the improvements shall not exceed two stories from grade level, except for towers where deemed necessary by the developers to maintain the proper design proportion.
7. The roofing shall meet the same design and building materials set forth in Paragraphs 4 and 5 above.
8. A one hundred and fifty foot "undisturbed buffer" will be maintained across the rear of the subject property adjacent to neighboring single family residential development. Said "undisturbed buffer" shall not prohibit the addition of plantings which may be added to the buffer property to reduce visual impact on adjacent homeowners, provided that no damage is done to existing foliage.
9. A six foot security fence, topped with multi-stranded barbed wire, will be placed at the grading contour line, prior to the beginning of building construction and planted with appropriate evergreen shrubs to provide additional screening protection to adjacent homeowner's. Such fence and plantings shall be permanently maintained by the developer in a good state of repair and shall not encroach upon the aforementioned buffer property.
10. All outside lighting shall be arranged and installed so as not to reflect or cause glare on adjacent properties. In no case will the total height of the lights be more than 25 feet from grade level. All lighting for the purposes of

EXHIBIT (A)

#20

#12

parking will be located to the front of the buildings. Any lighting located in the rear of the building shall be no more than 10 feet in height.

11. All garbage, trash and refuse generated by the operation of the development shall be stored in central "dumpster" type containers located in the area to the rear of the main structure and appropriately screened to be out of the view of surrounding neighbors and within 20 feet of the main structure.
12. Site development construction, except for the finishing of concrete, shall occur only between the hours of 7:00 A.M. and 7:00 P.M. Monday through Saturday, except for unusual circumstances created by substantial inclement weather.
13. There shall be no curb cuts, entrances, or exits to the property, either now or in the future, except from Chamblee-Dunwoody Road and from the adjacent development via Dunwoody Village Parkway extension.
14. Neon or internally lighted signs shall not be used in the development.
15. All permanent retention ponds or facilities required for water runoff shall be constructed as underground facilities, located in the parking lot areas. Proper provision shall be made for handling water runoff during site construction, including silt and debris barriers to insure that nearby property owners or buffer property shall not be damaged in any way by such runoff.
16. Commercial truck traffic delivery shall be made during normal business hours and delivery vehicles will be parked only for the time necessary to perform delivery and will be promptly removed thereafter.
17. No business in the development shall operate or be open past midnight on any day, except for any restaurant or theater operation.

#20

#12



# EXHIBIT H

12/84

DEKALB COUNTY  
BOARD OF COMMISSIONERS

ZONING AGENDA/MINUTES

MEETING DATE February 23, 1988

CZ-88036 #7.. 682  
Minutes

ITEM NO. 16.

PREL.     

ACTION     

PUB.HRG. X

RESOLUTION     

ORDINANCE X

PROCLAMATION     

SUBJECT: Rezoning Application - Donald R. and Hilda A. Wiggs

DEPARTMENT: Planning

PUBLIC HEARING: X Yes      No

ATTACHMENT: X Yes      No 6 pp

INFORMATION CONTACT: Mac Baggett or ~~Charles Coleman~~  
PHONE NUMBER: 371-2155 *cc*

PURPOSE: CZ-88036 - To consider the application of Donald R. and Hilda A. Wiggs to rezone property located on the southwest side of Chamblee Dunwoody Road, approximately 400' southeast of Dunwoody Village Parkway, from R-150 to C-1 (conditional). The application is conditioned on use of the property for a florist and gift shop.

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

SUBJECT PROPERTY: 18-366-1-2 (5500 Chamblee Dunwoody Road). The property has frontage of 196' and contains .5 acre.

RECOMMENDATION(s): PLANNING DEPARTMENT: Approval with condition. The request is consistent with recommendations of the Comprehensive Plan and compatible with area zoning. Staff supports the rezoning application subject to approval of access and road improvements as may be required by the Public Works Department.

PLANNING COMMISSION: Approval per staff.

COMMUNITY COUNCIL: Approval subject to having only one curb cut and the buildings to be renovated in a manner compatible with the adjoining renovated building.

#12

A) 5230 B) Zoning C) Chamblee  
Appl. Dunwoody Rd.,  
Wigys Dunwoody  
683 Village Pkwy.

PAGE

FOR USE BY COMMISSION OFFICE/CLERK ONLY

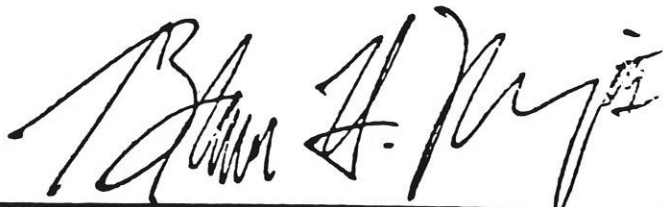
ACTION:

MOTION was made by Commissioner Williams, seconded by Commissioner Schulman, and passed 5-0-0, to approve the application as recommended by the Planning Department.

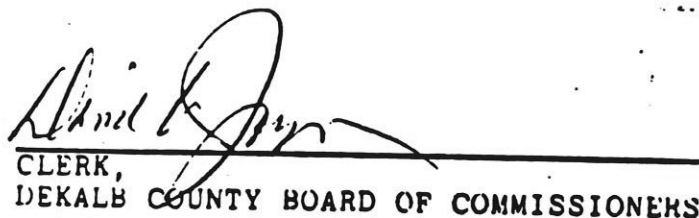
Commissioner Fletcher out of the room and not voting.  
(Commissioner Evans absent due to wife's illness)

ADOPTED: FEB 23 '88  
(DATE)

CERTIFIED: FEB 23 '88  
(DATE)



PRESIDING OFFICER  
DEKALB COUNTY BOARD OF COMMISSIONERS



CLERK,  
DEKALB COUNTY BOARD OF COMMISSIONERS

MINUTES:

Mr. James Anthony, 365 Saddle Lake Drive, Roswell, represented the applicant.

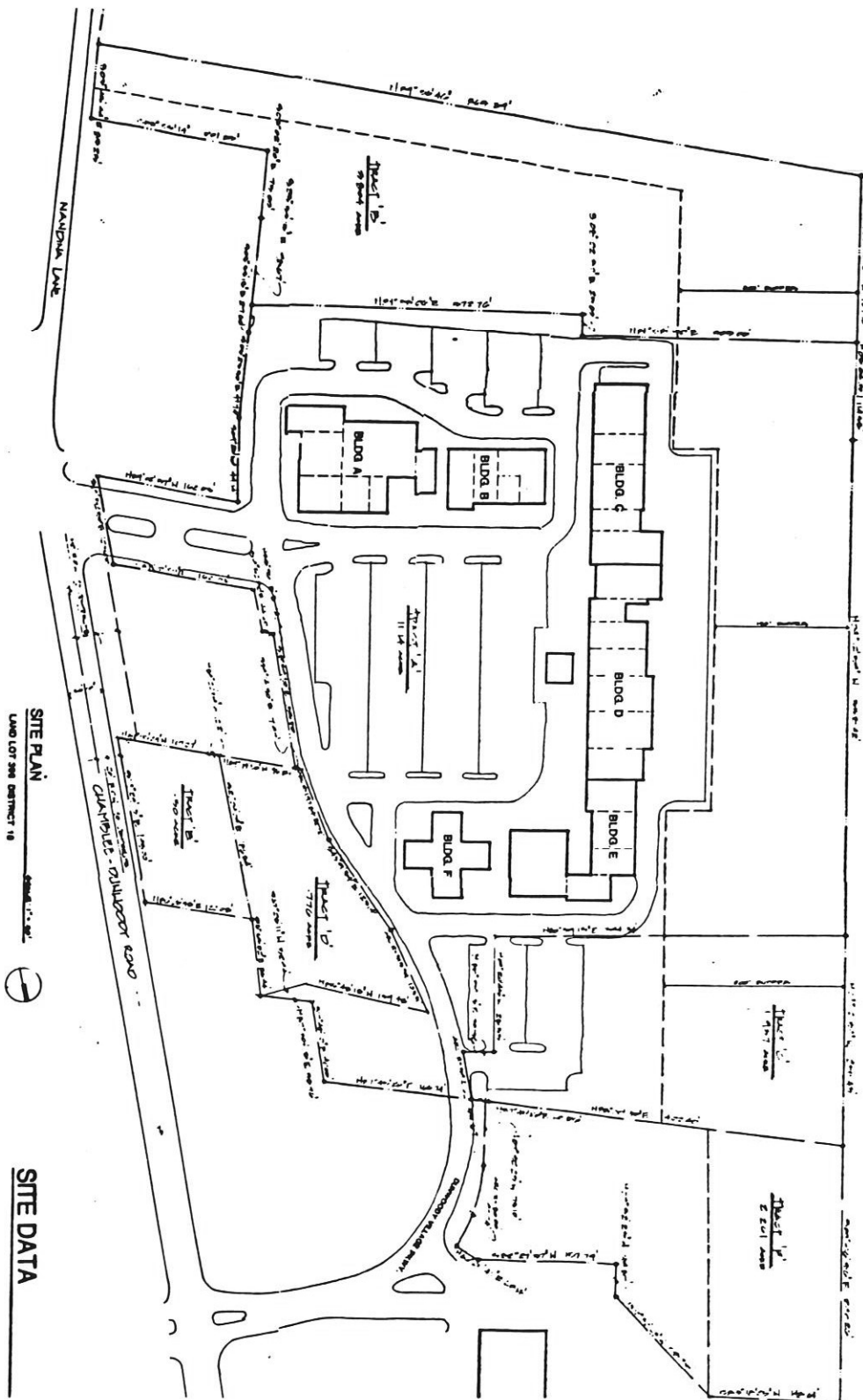
Opposition: None.

	FOR	AGAINST	ABSTENTION	ABSENT
DISTRICT 1 - Jean Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DISTRICT 2 - Sherry Schulman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DISTRICT 3 - John Evans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DISTRICT 4 - Robert J. (Bob) Morris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DISTRICT 5 - John S. Fletcher, Jr.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AT-LARGE - Brince H. Manning, III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AT-LARGE - Robert Lanier	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

# EXISTING DEVELOPMENT

118

#12



**SITE PLAN**  
LAND LOT 298 DISTRICT 18



## SITE DATA

TOTAL BUILDING AREA 68,210 S.F.  
TOTAL ACREAGE 20.418

NOTE: THERE ARE NO FLOOD PLANS LOCATED ON THESE SITES.

119  
12

ALTERATION OF  
CONDITIONS  
CZ-77105  
CZ-85016  
CZ-88036

R-100

R-150

R-100

R-100

C-1

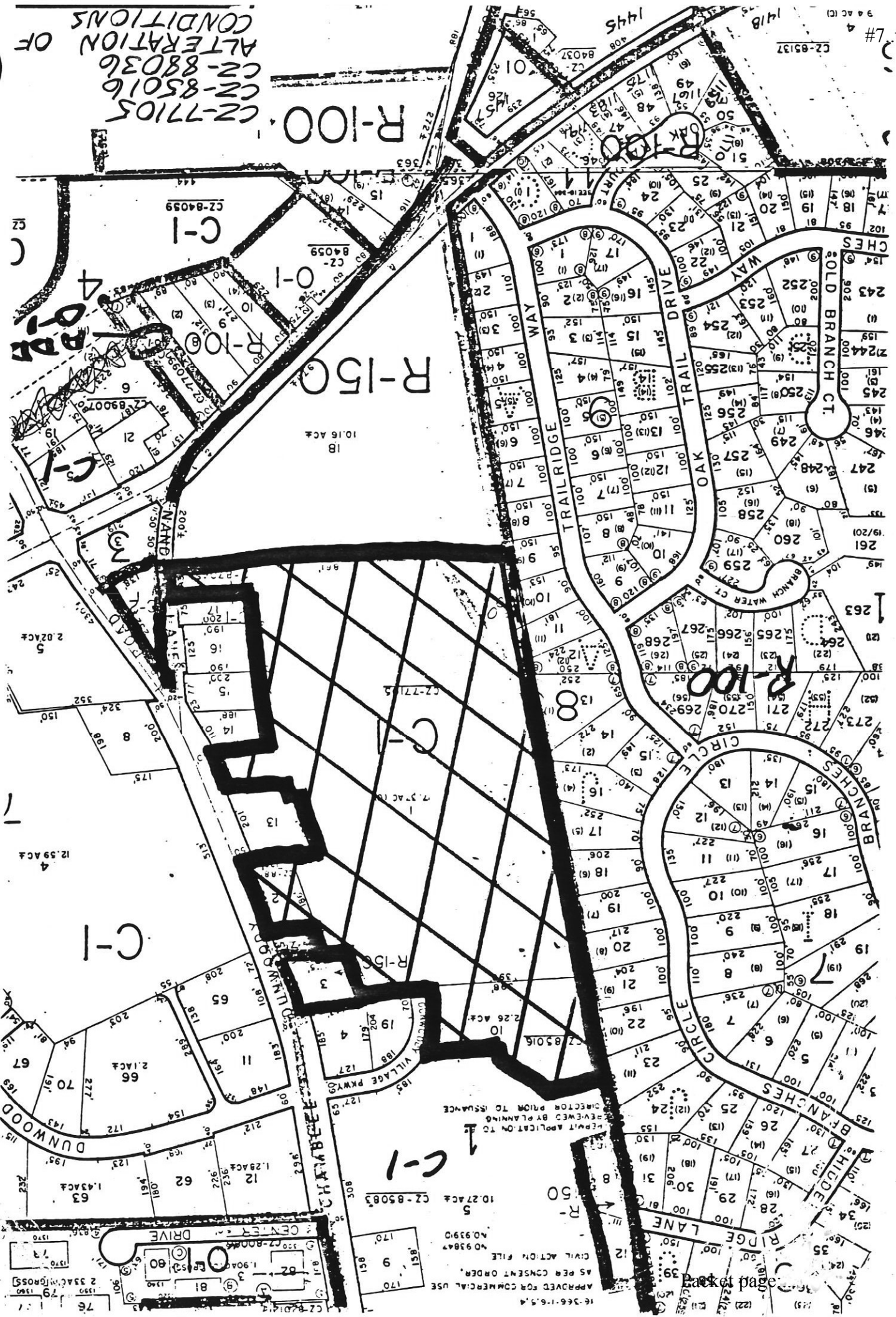
C-1

DRIVE

APPROVED FOR COMMERCIAL USE  
AS PER CONSENT ORDER  
CIVIL ACTION FILE  
NO 93847  
NO 93890  
10.27 AC. CZ-85083  
1.28 AC. 5  
1.43 AC. 63  
2.33 AC. (GROSS)  
79 1360  
1370

REMIT APPLICATION TO  
BE REVIEWED BY PLANNING  
DIRECTOR PRIOR TO ISSUANCE

Back of page

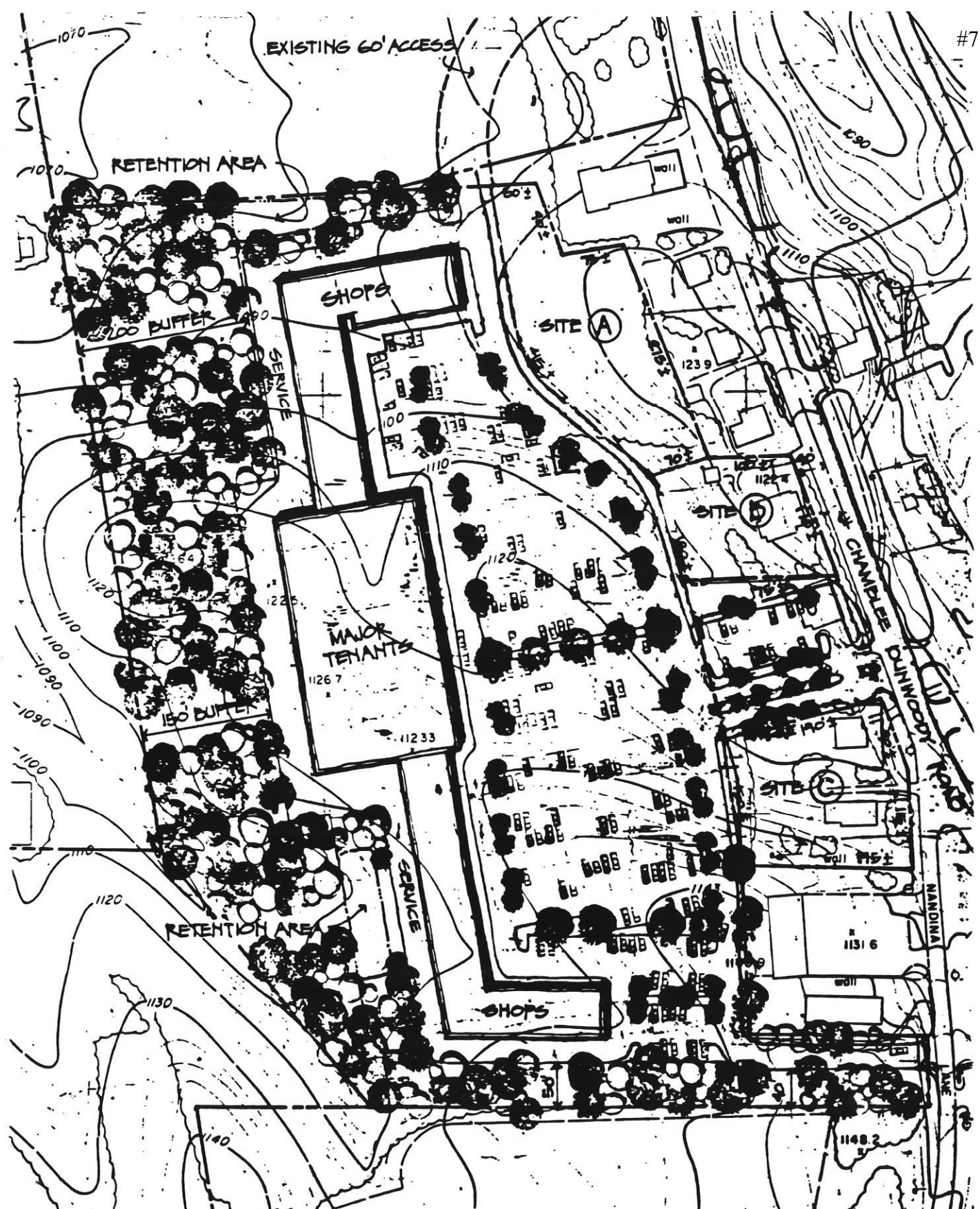




# EXHIBIT I

Rezoning and Land Use Decisions  
March 26, 1991

1. General Mills Restaurants, Inc. - CZ-91011 - approved C-1 for a restaurant based on the following conditions:
  1. The property is developed in accordance with the attached site plan submitted by the applicant.
  2. Access to be approved by Georgia DOT.
12. Trevor A. Waldemar - Z-91017 - Approved OI.
13. Jolly Development Corp., Inc., - LP-91008 - Denied.
14. Jolly Development Corp., Inc., - CZ-91010 - Withdrawn without prejudice.
15. Mrs. Martha Barry Smith - CZ-91013 - Approved C-1 subject to the following conditions:
  1. Current structures may be used but only in compliance with state and local codes.
  2. Access is limited to one point unless changes are approved by Georgia DOT and DeKalb Public Works.
16. Edwin T. Elliott, Jr., - CZ-86135 - Approved the alteration of conditions to remove all conditions of zoning.
7. Michelle Neary - CZ-84215 - Denied the alteration of conditions.
18. Shops of Dunwoody - CZ-77105 & CZ-88036 - Approved the alteration of conditions based on the attached site plan.



TOTAL AREA IN BUFFER - 4.7 ACRES ±  
TOTAL FL AREA IN CENTER -  
92,000 SQ. FT.  
PARKING @ 5.5 CARS/1000 SQ. FT. -  
506 CARS

APPROVED PLAN  
CZ-77105

**From:** [REDACTED]  
**To:** [Dunwoody Zoning Board of Appeals](#)  
**Cc:** [REDACTED]  
**Subject:** Dog Day Care  
**Date:** Thursday, August 12, 2021 12:37:20 PM

---

Caution: External Message

To whom it may concern,

After reading in the news that the shops of Dunwoody are in a plan for re-zoning I became very concern.

My fur baby Bella is a camper at Camp Run A Mutt which is like her second home for her.

Bella is a rescue dog that in the past experienced a lot of abuse by bad people. As a result, she became

Very frightened and did not trust anybody. After we adopted her it took some time to develop connection.

With the help of Camp Run A mutt and their wonderful staff, Bella became more trusting and playful.

It took me a while to find the right place for Bella. Camp Run A Mutt is a unique place that allow dogs to

Be cage free and to develop friendship with other dogs. There is no other place like that.

Having this jewel of a place in Dunwoody is life saving for fur babies and their families.

I hope that in your planning to re-zone you are not considering to move our second home from The Shops

Of Dunwoody. Camp Run A mutt is located at a perfect place and needs to stay where it is.

Than you,

Esti and Bella Blue