

CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council DATE: June 13, 2012

FROM: John McDonough, City Manager

AGENDA ITEM: **ZM12-002/CV12-006** - 8610 Roswell Road, *Applicant: Dr. Beatris Dragonu*, To modify the site plan approved under Z65-020 to allow creation of an outparcel, with concurrent variances

MEETING DATE: For Submission onto the June 19, 2012, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Zoning Modification Petition

APPROVAL BY CITY MANAGER: JFM APPROVED

_____ NOT APPROVED

PLACED ON AGENDA FOR: 6/19/2012

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: [Signature]

REMARKS:

MAYOR AND CITY COUNCIL

ZM12-002

8610 Roswell Road

Dr. Beatris Dragonu

To: John McDonough, City Manager
From: Angela Parker, Director of Community Development 
Date: June 1, 2012 for submission onto the June 19, 2012 City Council meeting

Agenda Item: **ZM12-002/CV12-006 8610 Roswell Road**, a request to delete any and all Site Plans for the Shopping Center portion of application Z65-0020 and substitute and place in lieu thereof the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012 and requesting two (2) concurrent variances.

CMO (City Manager's Office) Recommendation:

APPROVAL CONDITIONAL of the request to request to delete any and all Site Plans for the Shopping Center portion of application Z65-0020 and substitute and place in lieu thereof the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012.

Background:

The site is located on the west side of Roswell Road, about 1040' north of the intersection of Hightower Trail and Roswell Road. The property is zoned CUP (Community Unit Plan District) conditional under Fulton County zoning case Z65-0020. The subject property is located within the Suburban District of the Sandy Springs Overlay District.

Discussion:

The applicant is requesting to delete any and all Site Plans for the Shopping Center portion of application Z65-0020 and substitute and place in lieu thereof the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012 and requesting two (2) concurrent variances.

1. To the site plan received by the Department of Community Development dated April 3, 2012. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy. (ZM12-002)
2. To delete the required ten (10) foot Landscape Strip along the easterly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012. (CV12-006 #1)
3. To delete the required ten (10) foot Landscape Strip along the northerly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012. (CV12-006 #2)

Concurrent Review:

The staff held a Focus Meeting on May 2, 2012 at which the following city departments provided comments:

- Building and Development Division
- Fire Department
- Transportation Division
- Code Enforcement

In addition, the following external departments were contacted for comment:

- Atlanta Regional Commission
- Fulton County Board of Education
- Fulton County Department of Planning and Community Services (*comments received*)
- Fulton County Department of Public Works
- Fulton County Environmental Health Services (*comments received*)
- Sandy Springs Council of Neighborhoods
- Sandy Springs Revitalization Inc.
- Georgia Department of Transportation
- City of Atlanta Department of Watershed Management (*comments received*)
- U.S. Postal Service Address Management Systems
- MARTA
- Fulton County Emergency Management



Zoning Modification Petition No. ZM12-002/CV12-006

HEARING & MEETING DATES

Community Zoning Information Meeting

April 24, 2012

Design Review Board Meeting

March 27, 2012

Mayor and City Council Hearing

June 19, 2012

APPLICANT/PETITIONER INFORMATION

Property Owner

Najco, Inc.

Petitioner

Dr. Beatris Dragonu

Representative

Nathan V. Hendricks III

PROPERTY INFORMATION

Address, Land Lot, and District 8610 Roswell Road (SR 9) Land Lot 363, District 6

Council District 2

Frontage and Area 430 feet of frontage along Hightower Trail and 320 feet of frontage along Roswell Road. The subject property has a total area of approximately 11.90 acres (518,364 square feet).

Existing Zoning and Use CUP (Community Unit Plan District) conditional under zoning case Z65-0020 and currently developed with a shopping center.

Overlay District Suburban District

2027

Comprehensive Future Land Use Map Designation Commercial (C), Node 14: Northeast Corner of Roswell Road and Dunwoody Place Intersection.

Proposed Use Retail and Service Commercial

INTENT

MODIFICATION OF CONDITIONS OF PETITION Z65-0020 (APPROVED BY THE FULTON COUNTY BOARD OF COMMISSIONERS ON JUNE 2, 1965), WITH CONCURRENT VARIANCES

The applicant intends to delete any and all Site Plans for the Shopping Center and substitute and place in lieu thereof the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012.

Additionally, the applicant is requesting two (2) concurrent variances as follows:

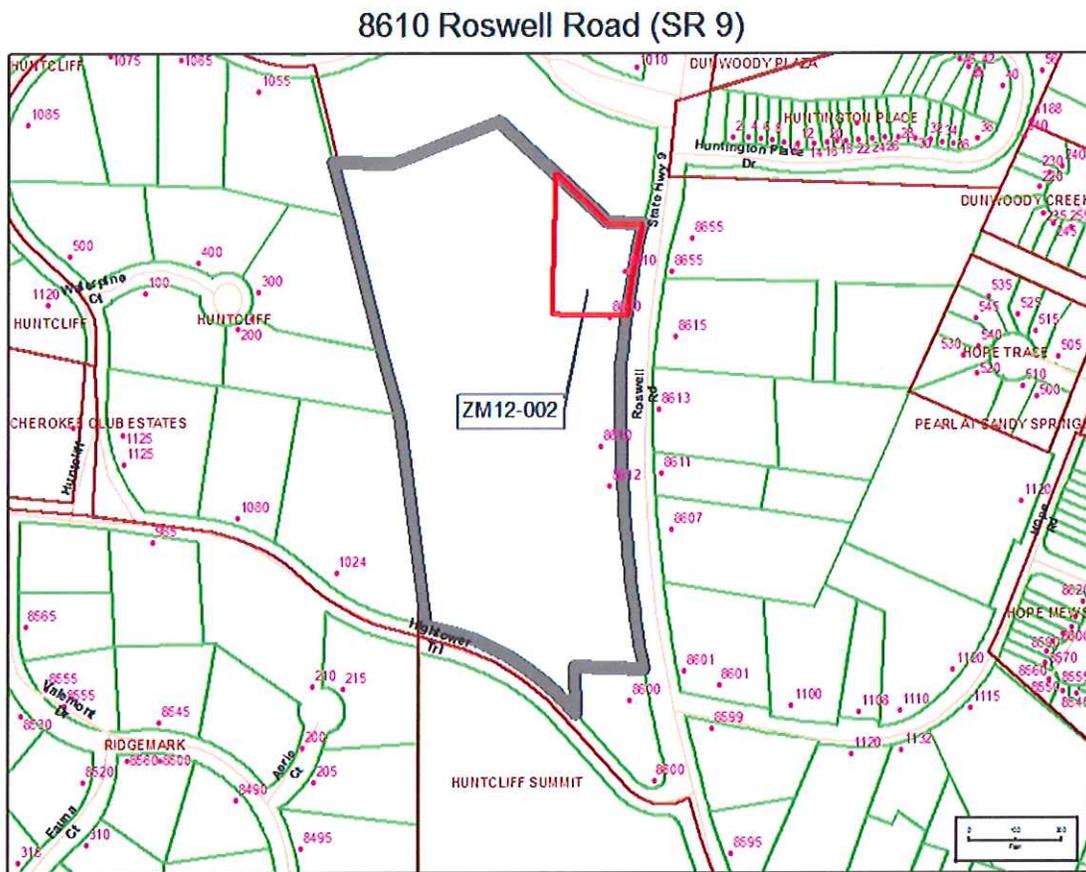
- 1. Variance from Section 4.23.1 of the Zoning Ordinance to delete the required ten (10) foot Landscape Strip along the easterly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012.
2. Variance from Section 4.23.1 of the Zoning Ordinance to delete the required ten (10) foot Landscape Strip along the northerly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION
ZM12-002 - APPROVAL CONDITIONAL
CV12-006#1 - APPROVAL CONDITIONAL
CV12-006#2 - APPROVAL CONDITIONAL

DESIGN REVIEW BOARD
ZM12-002 - RECOMMENDED APPROVAL
CV12-006#1 - RECOMMENDED APPROVAL
CV12-006#2 - RECOMMENDED APPROVAL

At the March 27, 2012 meeting the Design Review Board Recommended Approved (4-0, Porter, Mobley, Landeck, and Richard for; Ealick-Anderson and Gregory absent; Lichtenstein not voting.)

Location Map



BACKGROUND

The site is located on the west side of Roswell Road, about 1040' north of the intersection of Hightower Trail and Roswell Road. The property is zoned CUP (Community Unit Plan District) conditional under Fulton County zoning case Z65-0020. The subject property is located within the Suburban District of the Sandy Springs Overlay District.

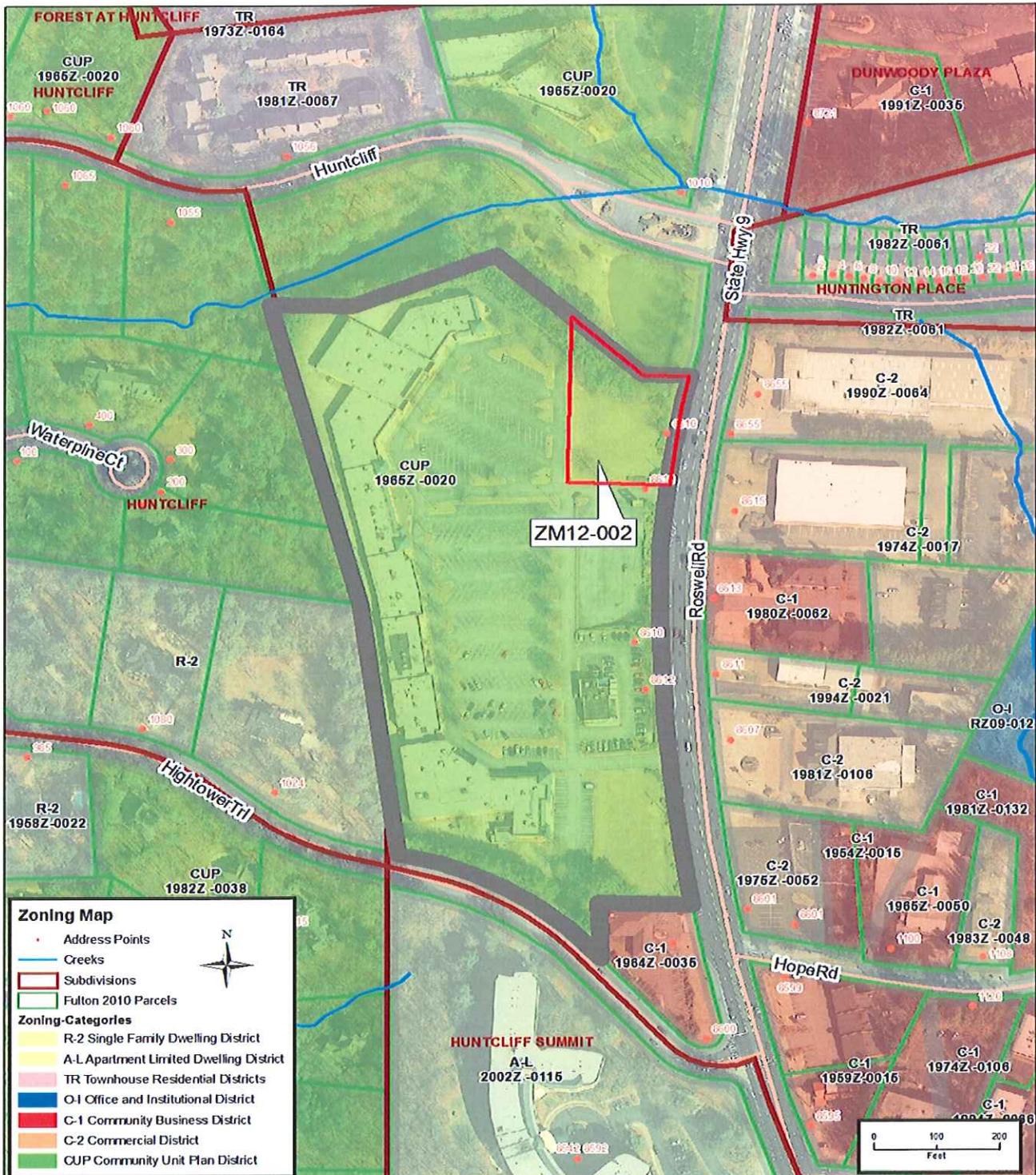
EXISTING LAND USE AND ZONING OF ABUTTING PROPERTY

SUBJECT PETITION RZ12-003/CV12-002	Requested Zoning	Proposed Use	Land Area (Acres)	Square Footage	Density (Square Footage per Acre)
	C-1	Medical Office	0.671	3,500 s.f.	5,216.10 s.f./ac

Location in relation to subject property	Zoning	Use	Land Area (Acres)	Square Footage or Number of Units	Density (Square Feet or Units Per Acre)
North	CUP Z65-020	Huntcliff Homes Association Office	3.43	1,200 s.f.	349.85 s.f./ac
East	C-2 Z90-064	Commercial	3.45	30,000 s.f.	8,695.65 s.f./ac
East	C-2 Z74-017	Children's Wish Foundation	1.65	21,500 s.f.	13,030.30 s.f./ac
South	CUP Z65-020	Loehmann's Shopping Center	12.45	83,800 s.f.	6,730.92 s.f./ac
West	CUP Z65-020	Loehmann's Shopping Center	12.45	83,800 s.f.	6,730.92 s.f./ac

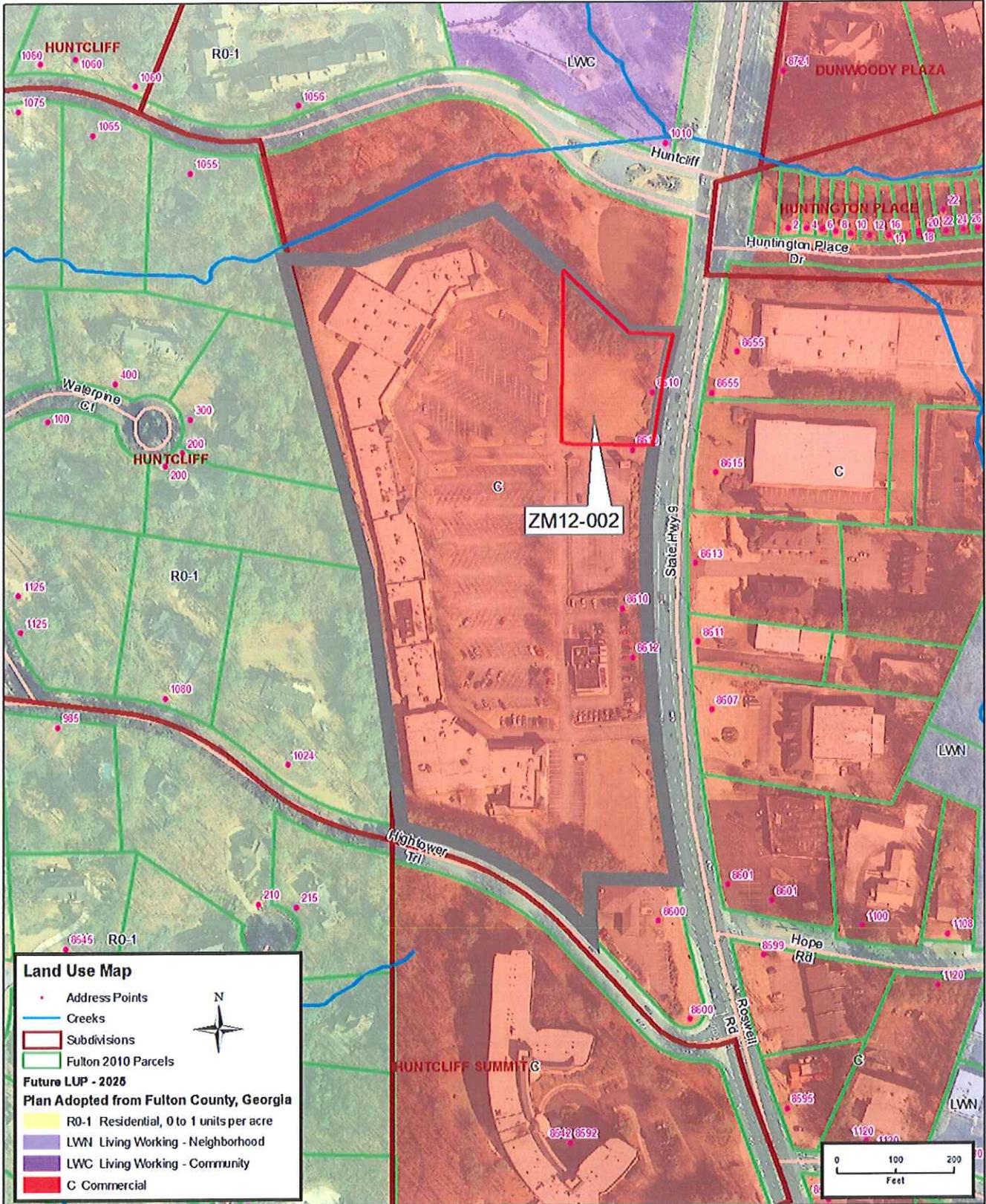
Zoning Map

8610 Roswell Road (SR9)



Future Land Use Map

8610 Roswell Road (SR9)





Subject Property
Location of proposed office building



Subject Property
South side of Shopping Center



Property to the south (proposed Christian Brothers)

APPLICANT'S INTENT

The applicant is requesting to delete any and all Site Plans for the Fulton County zoning case Z65-0020 (Loehmann's Shopping Center) and substitute and place in lieu thereof the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012.

The staff is of the opinion that the applicant's request to modify the site plan would be in harmony with the intent of the zoning ordinance and will not adversely effect adjacent or nearby properties. The request would comply with the Future Land Use guidelines. Therefore, the staff recommends APPROVAL CONDITIONAL of this modification request.

VARIANCE CONSIDERATIONS

Article 22 of the Zoning Ordinance indicates the following are considerations in granting variances, of which only one has to be proven:

- A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or,
- B. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or,
- C. Conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements cannot be read from an adjoining public road.

The applicant is requesting two (2) concurrent variance as follows:

Both variance from Section 4.23.1 of the Zoning Ordinance to delete the required ten (10) foot Landscape Strip along the (Variance #1) northerly property line and abutting the northern most Out Parcel and (Variance #2) easterly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012.

The applicant has indicated this variance will not result in any harm to the health and safety of the general public and that application of the requirement would place a hardship on the applicant. The applicant has indicated that this variance is in harmony with the area and in harmony with the general purpose and intent of the Zoning Ordinance.

The staff is of the opinion the variance requests are in harmony with the intent of the Zoning Ordinance and the proposal would not be a detriment to the public. The northern and easterly property lines are adjacent to an existing driveway and the parking lot of the Shopping Center. Therefore, based on these reasons, the staff recommends APPROVAL CONDITIONAL of the variances to delete the required ten (10) foot Landscape Strip along the easterly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012.

DEPARTMENT COMMENTS

The staff held a Focus Meeting with Transportation, Building and Permitting, Fire, Code Enforcement, Site Development, and the Arborist on May 2, 2012 at which the following departments commented:

Sandy Springs Fire Protection Engineer	<ul style="list-style-type: none"> ▪ If the new building is larger than 5,000 it must be sprinkled per the sandy springs fire ordinance. A fire hydrant must be located within 600 feet of the most remote corner
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Sandy Springs Transportation Planner	<ul style="list-style-type: none"> ▪ For informational purposes only: Public works has reviewed the zoning modification petition and advises that applicant should extend the internal sidewalk along entire driveway frontage to rear property line. This comment was also provided for rezoning case: RZ12-003/CV12-002
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Georgia Department of Transportation	<ul style="list-style-type: none"> ▪ There are no GDOT requirements that need to be addressed at this time.
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The staff has not received any additional comments from the Fulton County Board of Education or the Fulton County Emergency Services Department.

STAFF RECOMMENDATION

The staff recommends **APPROVAL** of the zoning modification request. However, should the Mayor and City Council decide to approve the request, the staff recommends that the conditions of Fulton County zoning case Z65-0020 be modified to be read as follows. Where these revisions conflict with the stipulations and offerings contained in the Letter of Intent, these conditions shall supersede unless specifically stipulated by the Mayor and City Council.

1. To the site plan received by the Department of Community Development dated April 3, 2012. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy. (ZM12-002)
2. To delete the required ten (10) foot Landscape Strip along the easterly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012. (CV12-006 #1)
3. To delete the required ten (10) foot Landscape Strip along the northerly property line abutting the northern most Out Parcel as shown on the Site Plan, filed by the owner/applicant, received by the Department of Community Development on April 3, 2012. (CV12-006 #2)

Attachments

Letters of Intent dated received April 3, 2012

Site Plan received April 3, 2012

Letter Fulton County Dept. of the Planning and Community Services dated received May 7, 2012

APR 03 2015 2

Letter of Intent

City of Sandy Springs
Community Development
Department

The subject property is bounded on the east by Roswell Road and on the south by Hightower Trail and is commonly known as Loehmann's Plaza Shopping Center (the "Property"). The Property is zoned to the CUP Classification pursuant to Z65-20 F.C.

The Applicant has the property under contract to purchase known as 8610 Roswell Road and being the northeast corner of the Property (the "8610 Property"). The Applicant is currently pursuing a rezoning of the 8610 Property for a C-1 Classification pursuant to RZ12-003/CV12-002 for its intended medical and medical clinic use. As a result of the parcelization of the Property and the 8610 Property that will result from the approval of the referenced rezoning, the Applicant has filed this Modification and Concurrent Variance Application for the purpose of reflecting the resulting parcelization as shown on the Site Plan filed simultaneously herewith. Accordingly, the Applicant requests that any and all Site Plans for the Shopping Center referenced under Z65-20 F.C. be deleted and that there be substituted and placed in lieu thereof the Site Plan filed simultaneously herewith. Due to the unique hardship resulting from the referenced parcelization pursuant to Article 4.23.1. of having to maintain a 10' landscape strip along the westerly and southerly property lines of the 8610 Property, the Applicant requests a Concurrent Variance to delete the required 10' landscape strips along the easterly and northerly Property lines of the Property abutting the westerly and southerly property lines of the 8610 Property. Without the approval of this Concurrent Variance the required landscape strips would respectively be within the northerly most entry drive to the Property from Roswell Road as well as within the parking field on the Property at its northeast corner. The approval of this Concurrent Variance would be in harmony with the policies and intent of the Zoning Ordinance and would not result in any harm to the health, safety and welfare of the general public while requiring compliance with Article 4.23.1. would place an undue hardship on the owner of the Property. Accordingly, this Modification and Concurrent Variance Application is entirely appropriate and the appropriateness of same and the constitutional assertions of the Applicant are more particularly stated and set forth on Exhibit "A" attached hereto and by reference thereto made a part hereof.

Now, therefore, the Applicant requests that this Modification and Concurrent Variance Applicant be approved as submitted in order that the Applicant be able to proceed with the lawful use and development of the Property and the 8610 Property.

EXHIBIT "A"

APPROPRIATENESS OF APPLICATION
AND
CONSTITUTIONAL ASSERTIONS

The refusal to approve the Modification requested will result in a taking of the Applicant's valuable property rights in violation of the just compensation clause of the Constitution of Georgia 1983, Article 1, Section 3, Paragraph 1 and the just compensation clause of the Fifth Amendment to the United States Constitution. Further, such refusal to approve the requested Modification discriminates in an arbitrary, unreasonable, capricious and unconstitutional manner between the Applicant and owners of similarly situated property in violation of Article 1, Section 1, Paragraph 2 of the Constitution of the State of Georgia and in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Additionally, such refusal to approve the requested Modification would constitute a gross abuse of discretion and would constitute a violation of the Applicant's rights to substantive and procedural due process as guaranteed by the Constitution of the State of Georgia 1983, Article 1, Section 1, Paragraph 1 as well as the Fifth and Fourteenth Amendments to the United States Constitution.

Any approval of this Modification request subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting the Applicant's utilization of the subject property would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove. The refusal to approve this requested Modification would result in a real, substantial and significantly detrimental hardship to be borne by the Applicant without any corresponding public benefit or legitimate connection to public health, safety, morals and general welfare. The community at large will not be affected by the approval of the requested Modification.

Any approval of of this Modification without the simultaneous approval of the Concurrent Variance requested would also constitute an arbitrary, capricious and discriminatory act and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.



FULTON COUNTY

Department of Planning and Community Services
Fulton County Government Service Center at Fulton Industrial
5440 Fulton Industrial Boulevard
Atlanta, GA 30336

May7, 2012

Patrice S. Dickerson, Manager of Planning & Zoning
City of Sandy Springs
Department of Community Development
Planning and Zoning Division
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350

Dear Ms. Dickerson:

I am in receipt of your zoning package soliciting comments on the upcoming City of Sandy Springs zoning agenda for the June Planning Commission and July Mayor and City Council Meetings. I have reviewed all items within the package and find none of them have a significant impact on Unincorporated Fulton County. Thank you for the opportunity to review the requests.

Sincerely,

Randy Beck, Director
Planning and Community Services

RZ12-005

RZ12-006

ZM12-002

ZM12-003

ZM12-004

ZM12-005

Received

MAY 09 2012

*City of Sandy Springs
Community Development
Department*