

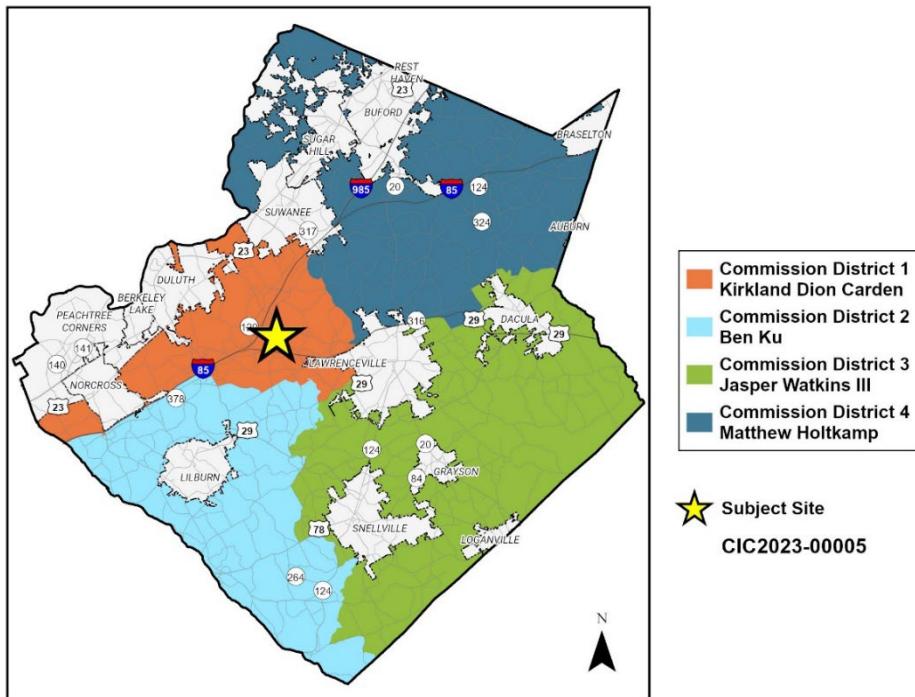


## PLANNING AND DEVELOPMENT DEPARTMENT CASE REPORT

**Case Number:** CIC2023-00005  
**Current Zoning:** C-2 (General Business District)  
**Overlay District**  
**Request:** Change in Conditions  
**Additional Request:** Variance  
**Address:** 1860 Atkinson Road  
**Map Number:** R7081 030  
**Site Area:** 4.96 acres  
**Square Feet:** 15,025  
**Proposed Development:** Multi-tenant Restaurant and Retail Building  
**Commission District:** District 1 – Commissioner Carden  
**Character Area:** Regional Activity Center

**Staff Recommendation:** APPROVAL WITH CONDITIONS

**Planning Commission  
Recommendation:** APPROVAL WITH CONDITIONS



**Planning Commission Advertised Public Hearing Date: 2/8/2023**  
**Board of Commissioners Advertised Public Hearing Date: 2/28/2023**

**Applicant:** Sundial Capital, LLC  
c/o Andersen Tate & Carr, P.C.  
1960 Satellite Boulevard, Suite 4000  
Duluth, GA 30097

**Owner:** Sundial Capital, LLC  
2325 Pleasant Hill Road  
Duluth, GA 30097

**Contact:** Melody Glouton

**Contact Phone:** 770.822.0900

## **Zoning History**

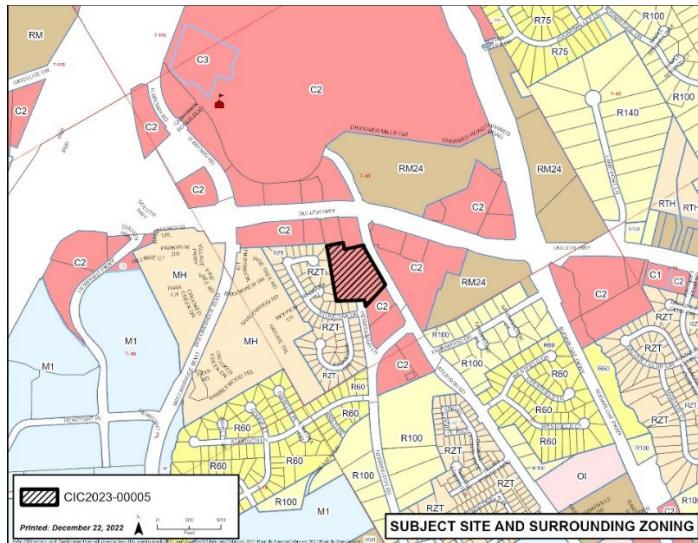
The subject property is zoned C-2 (General Business District). In 1975, as part of an area wide rezoning the northwest portion of the site was rezoned from C-1 (Neighborhood Business District) to C-2, the southwest portion was rezoned from M-1 (Light Industry District) to O-I (Office-Institutional District), and the eastern portion was rezoned from R-100 (Single-Family Residence District) to O-I. In 1978, the southwest portion of the property was rezoned from O-I to RM (Multi-Family Residence District), pursuant to RZ-19-78. A special use permit for outdoor sales/storage and a rezoning application for O-I to C-2 for a plumbing contracting business on the western portion of the property was denied in 1988, pursuant to SUP-71-88 and RZ-126-88, respectively. In 2000, a southeastern portion of the property was rezoned from O-I to C-2, pursuant to RZ-00-038. Lastly, the majority of the site was rezoned from C-2, O-I, and RM to C-2, pursuant to RZC-03-041 in 2003. This change in conditions request is for this approval. The subject property is located in the Civic Center Overlay District.

## **Existing Site Condition**

The subject property is a 4.96-acre parcel located at 1860 Atkinson Road, south of its intersection with Duluth Highway. The property contains a 31,855-square-foot single-story, multi-tenant retail shopping center and parking lot constructed in 2006. The proposed two-story restaurant and retail expansion would be located on the grassed area to the north of the existing shopping center. The site can be accessed via two full access driveways onto Atkinson Road and from Duluth Highway through an interparcel driveway from the property to the north. There is a sidewalk, landscape strip, and overhead power lines along the Atkinson Road frontage. The site slopes downward approximately six feet from the center to the northern property line and 18 feet downward along the southwest corner of the property. The site was developed with a 50-foot-wide landscape buffer with a six-foot-tall wooden fence located along the western property line. The nearest Gwinnett County Transit stop is approximately 150 feet from the subject site.

## **Surrounding Use and Zoning**

The subject site is surrounded by a mixture of uses. A convenience store with fuel pumps and car wash is located to the north of the property, as well as a drive-through restaurant. Farther north, across Duluth Highway is Discover Mills Mall. Herrington Ridge, a single-family detached subdivision is located to the west of the subject property. A multi-tenant shopping center, dental office, and a dollar store are located to the east of the subject property across Atkinson Road. Additionally, a day care is located to the south of the subject site. The following is a summary of surrounding uses and zoning:



Location	Land Use	Zoning	Density
Proposed	Restaurant and Retail	C-2	N/A
North	Commercial	C-2	N/A
East	Commercial	C-2	N/A
South	Single-Family Residence	C-2 R-ZT	4.7 units per acre
West	Single-Family Residence	R-ZT	4.7 units per acre

## Project Summary

The applicant requests approval of a change in conditions to allow for a multi-tenant restaurant and retail building on a 4.96-acre property zoned C-2, including:

- A change in conditions of case RZC-03-041. The applicant is requesting a revision to the following condition:
  - Condition 1B, *“Limit the height of the buildings to no more than one story.”* The applicant is requesting to strike this condition in its entirety to allow a two story building.
- A 15,025 square-foot multi-tenant building including a 6,175 square-foot one-story retail building with a patio area on the southern side of the building, and an 8,850 square-foot two-story restaurant on the northern side of the building.
- An additional 17 parking spaces, located along the front of the proposed building, for a total of 166 parking spaces.
- A 12'x12' dumpster enclosure with screening on three sides and a front access gate, located to the southwest of the new building.
- Maintaining the previously approved 50-foot-wide undisturbed buffer and existing six-foot-tall wooden privacy fence along the eastern property line.
- A five-foot-wide landscape strip along the northern property line as required by existing zoning conditions.
- Architectural elevations were not provided by the applicant.

## **Zoning and Development Standards**

The applicant requests approval of a change in conditions to allow a multi-tenant restaurant and retail building in the C-2, General Business District. The following is a summary of applicable development standards from the Unified Development Ordinance (UDO):

<b>Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Meets Standard?</b>
Building Height	Maximum: 45'	≤45'	YES
Front Yard Setback	Minimum: 15'	>15'	YES
Side Yard Setback	Minimum: 10'	>10'	YES
Rear Yard Setback	Minimum: 30'	>30'	YES
Off-Street Parking	Minimum: 84 spaces Maximum: 208 spaces	166 spaces	YES
Buffer	RZC-03-041: 50' landscaped buffer	50'	YES
Landscape Strip	RZC-03-041: 10' wide	10'	YES

In addition, the following standards apply to development in the Civic Center Overlay District:

<b>Standard</b>	<b>Meets Standard?</b>
For developments exceeding 7,500 square feet, primary building facades and entrances shall be located no more than 70 feet from the public rights-of-way and shall be oriented toward the street and shall provide a sidewalk connecting the front entrance to a continuous sidewalk placed parallel to the street.	NO

The property is located within the Civic Center Overlay District. The Overlay District has additional requirements over and above the base zoning requirements. The table above lists requirements that are not met on the proposed site plan. The applicant has requested a concurrent variance to not meet this standard.

## **Variance Request**

In addition to the change in conditions, the applicant is seeking a variance from the following provision of Title II of the UDO:

1. Section 220-30.3.E.4. Parking and Accessory Structures. For developments exceeding 7,500 square feet, primary building facades and entrances shall be located no more than 70 feet from the public rights-of-way and shall be oriented toward the street and shall provide a sidewalk connecting the front entrance to a continuous sidewalk placed parallel to the street.

The applicant is proposing a building located approximately 211 feet from the right-of-way.

## **Internal and External Agency Review**

In addition to these Development Standards, the applicant must meet all other UDO requirements related to infrastructure improvements. Internal and External agency review comments are attached

(Exhibit F). Standard site and infrastructure improvements will also be required related to transportation, stormwater, water, and sewer utilities. Recommended improvements not already required by the UDO have been added as staff recommended conditions.

## **Staff Analysis**

**Change in Conditions Request Analysis:** According to the UDO, if a proposed amendment is for the rezoning of property and involves a change in zoning classification, or change in conditions, the Department shall evaluate the request and make a recommendation with respect to the standards governing exercise of zoning power as defined in Section 270-20.5. After this evaluation, staff makes the following findings based on the standards from the UDO.

**A. Whether a proposed change in conditions will permit a use that is suitable in view of the use and development of adjacent and nearby property.**

The surrounding area is characterized by similar commercial uses and some residential uses to the south and west. The existing 50-foot-wide buffer contains dense evergreen trees which provide year-round screening from the shopping center to the residences. The proposed site plan shows no alteration to the existing buffer. A two-story building approximately 60 feet from the property line is suitable in view of the use and development of nearby properties.

**B. Whether a proposed change in conditions will adversely affect the existing use or usability of adjacent or nearby property.**

The existing use and usability of adjacent or nearby properties would not be adversely impacted by the approval of a change in conditions to allow a two-story building. The dense and mature existing 50-foot-wide buffer adjacent to the residence to the south and west will be maintained to provide additional screening. The proposed addition to the shopping center would be beneficial to the commercial area as it would provide additional retail space and new dining options for the area.

**C. Whether the property to be affected by a proposed change in conditions has a reasonable economic use as currently zoned.**

The property has a reasonable economic use as currently zoned.

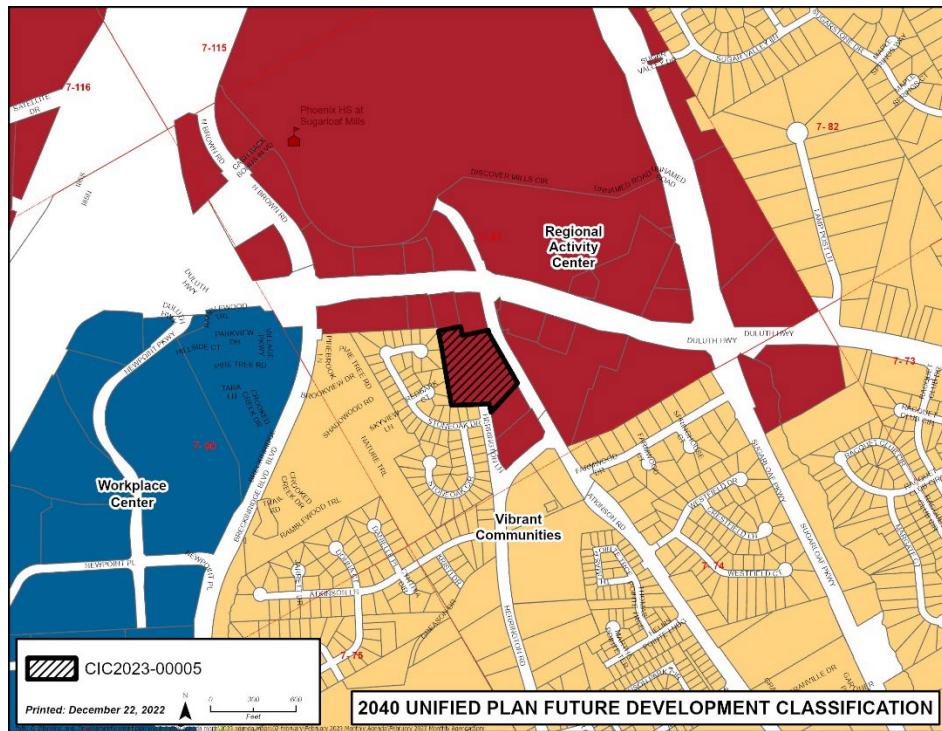
**D. Whether the proposed change in conditions will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

Some impact on public facilities would be anticipated in the form of traffic, utility demand, and stormwater runoff. No impact is anticipated on school enrollment. Agency review comments related to any potential improvements concerning this special use permit request is attached (Exhibit F).

**E. Whether the proposed change in conditions is in conformity with the policy and intent of the Unified Plan and Future Development Map.**

The 2040 Unified Plan and Future Development Map indicates that the subject property is within the Regional Activity Center. Regional Activity Centers serve as major activity centers for Gwinnett County and the broader region and should include a combination of retail, office, high-

density residential uses, and transit-oriented development. To encourage a pedestrian and bicycle-friendly, walkable, live/work/play environment around these activity centers, developments should incorporate pedestrian-friendly and urban design standards. The proposed change in conditions for a two-story restaurant and retail business in an existing shopping center is in conformity with the policy and intent of the Unified Plan and Future Development Map. Additional efforts should be taken to ensure proper pedestrian connectivity.



**F. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposed change in conditions.**

The existing commercial property is surrounded by properties with similar land uses and a single-family residential subdivision to the west. The subject property does not have any active code enforcement cases associated with it. The proposed use of the property is appropriate for its zoning designation, and approval would allow for more vertical development within the Regional Activity Center. Therefore, approval of the change in conditions request to allow a two-story restaurant and retail building in an existing shopping center with existing infrastructure would be appropriate, given the surrounding land uses.

### Staff Recommendation

Based on the staff's evaluation of the request and the standards governing exercise of zoning power, the Department of Planning and Development recommends **APPROVAL WITH CONDITIONS** of the change in conditions request.

In addition, staff recommends **APPROVAL** of the following variance request:

1. To allow a primary building to be located greater than 70 feet from the right-of-way line.

## Planning Commission Recommendation

Based on staff's evaluation of the request, information presented at the public hearing, and the Planning Commission's consideration of the standards governing the exercise of zoning power related to this application, the Planning Commission recommends **APPROVAL WITH CONDITIONS** of the change in conditions request.

In addition, the Planning Commission recommends **APPROVAL** of the following variance request:

1. To allow a primary building to be located greater than 70 feet from the right-of-way line.

## Planning Commission Recommended Conditions (includes Staff Recommended Conditions)

The conditions below are those from RZC-03-041 with suggested changes in bold or strikethrough.

Approval of a Change in Conditions for a multi-tenant retail and restaurant building, subject to the following conditions:

1. To restrict the use of the property as follows:
  - a. Retail and service commercial and accessory uses.
  - b. ~~Limit the height of the buildings to no more than one story.~~
  - c. ~~Buildings shall be finished with architectural treatments of glass and/or brick, stucco or stacked stone. Buildings shall adhere to Category 3 of the architectural design standards of non-residential buildings.~~
2. To satisfy the following site development considerations:
  - a. Provide a 50-foot-wide landscaped buffer, to include a six-foot high opaque wood fence, except for approved perpendicular access and utility crossings, adjacent to residentially zoned property.
  - b. Provide a 10-foot-wide landscape strip outside the right-of-way of Herrington Lane and Atkinson Road.
  - c. Provide a 5-foot-wide landscape strip adjacent to internal property lines and adjacent to non-residentially zoned property.
  - d. Billboards shall be prohibited.
  - e. Provide interparcel access as may be required by the **Department of Planning and Development Division**.
  - f. Lighting shall be contained in cut-off type luminaries and shall be directed in toward the property so as not to shine directly into adjacent properties.

- g. Dumpsters shall be screened by a 100 percent opaque wall matching the building. Dumpster pickup shall be limited to between the hours of 7:00 a.m. and 7:00 p.m.
- h. Natural vegetation shall remain on the property until the issuance of a commercial development permit.
- i. Ground signage shall be limited to a single monument-type sign along Atkinson Road with masonry base matching the building.
- j. Outdoor speaker systems shall be prohibited.
- k. An interparcel pedestrian connectivity and striping plan shall be provided and constructed prior to issuance of a Certificate of Occupancy, subject to review and approval of the Department of Planning and Development.**

3. To abide by the following requirements, dedications, and improvements:

- a. Prior to the issuance of the Development Permit, initiate the abandonment of the existing Herrington Lane right-of-way.

**Exhibits:**

- A. Site Visit Photos and Google Street View Image
- B. Site Plan
- C. Letter of Intent and Applicant's Response to Standards
- D. Application and Disclosure of Campaign Contributions
- E. Previously Approved Resolution (RZC-03-041)
- F. Internal and External Agency Review Comment
- G. Maps

## Exhibit A: Site Visit Photos



**Location of Proposed Building**



**Existing Commercial Building**



**Buffer/Tree Line Image from December 2018 (Google Street View)**

**Exhibit B: Site Plan**

**[attached]**



**Exhibit C: Letter of Intent and Applicant's Response to Standards**

**[attached]**

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12/1/2022

December 1, 2022

**LETTER OF INTENT AND JUSTIFICATION  
FOR CHANGE IN CONDITIONS**

**Change in Conditions Application  
Gwinnett County, Georgia**

**Applicant:**  
Sundial Capital, LLC

**Property:**  
Tax Parcel ID R7081 030  
Zoning District C-2  
± 4.961 Acres of Land  
1860 Atkinson Road, Lawrenceville, Georgia

**Submitted for Applicant by:**

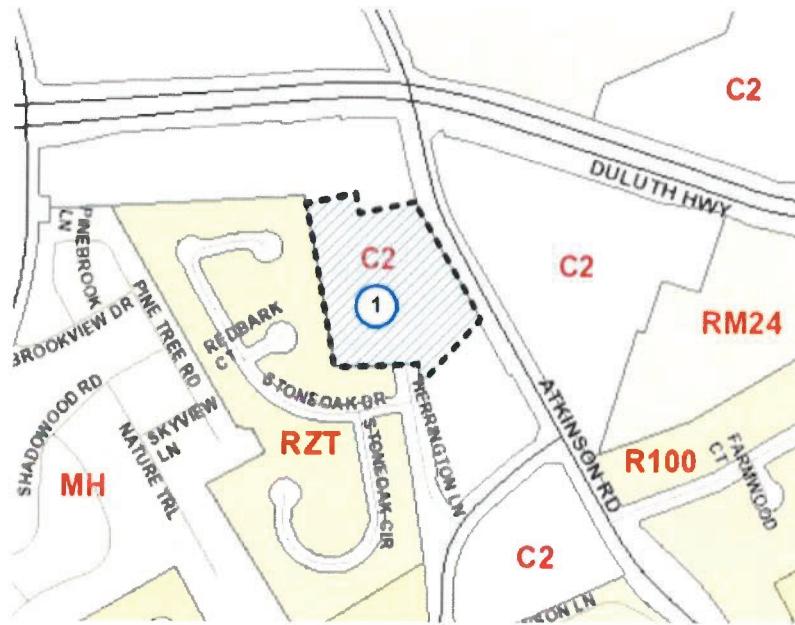
Melody A. Glouton, Esq.  
ANDERSEN TATE & CARR, P.C.  
One Sugarloaf Centre  
1960 Satellite Blvd.  
Suite 4000  
 Duluth, Georgia 30097  
770.822.0900  
[mglouton@atclawfirm.com](mailto:mglouton@atclawfirm.com)

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12/1/2022 I. INTRODUCTION

This Application for Change in Conditions is submitted for a 4.961-acre parcel of land located at 1860 Atkinson Road, Lawrenceville, Georgia and further identified as Tax Parcel R7081 030 (hereinafter the “Property”). The Property is currently zoned C-2 pursuant to RZC-03-041.

The Property is shown on the survey prepared by Lowry & Associates Land Surveying, LLC, dated July 11, 2022, and filed with this Application. The Property that is the subject of this Change in Conditions application is owned by Sundial Capital, LLC and further identified below from the Gwinnett County GIS:



The Applicant, Sundial Capital, LLC (the “Applicant”) now seeks approval to remove condition 1.B. of RZC-03-041 to allow for the construction of an additional restaurant/retail development comprised of one building with multi-tenant spaces, totaling approximately 15,025 square foot. Specifically, the Applicant seeks to eliminate the condition that restricts the “height of the buildings to no more than one story.”

Accordingly, the Applicant is requesting to amend the Conditions of Approval of RZC-03-041 (attached as Exhibit A) as follows:

Condition #1:

~~B. Limit the height of the buildings to no more than one story.~~

As indicated, the Property is zoned C-2 (General Business District). The C-2 zoning classification is intended to provide adequate space in appropriate locations along major streets, thoroughfares and intersections for various types of business use. Moreover, the C-2 zoning

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classification anticipates uses to include the retailing of major goods and services, general office facilities and public functions that would serve a community area of several neighborhoods. The C-2 zoning classification allows for a maximum height of 45 feet for non-residential developments.

The Applicant is also requesting the following variance:

(1) Variance from Section 220.30.E.4: The UDO states “(f)or developments exceeding 7,500 square feet, primary building facades and entrances shall be located no more than 70 feet from the public rights-of-way and shall be oriented toward the street and shall provide a sidewalk connecting the front entrance to a continuous sidewalk placed parallel to the street.” As such, the requested variance is related to the proximity of the primary structure to the right of way due to its location within the Civic Center Overlay District (“Overlay”). The Property is zoned C-2 for general commercial use within the Overlay and currently contains an existing retail development. The Applicant is seeking to develop additional restaurant and retail space as permitted under the current C-2 zoning classification. The proposed building will consist of 15,025 sf, with approximately 10,600 sf of retail space on the first floor, and 4,425 sf on the second floor.

The Applicant submits that granting relief of the above-referenced variance would not cause substantial detriment to the public good. Rather, by granting relief, the Property would be developed as a permitted use under the C-2 zoning classification, and complement surrounding the existing retail development and land uses.

This document is submitted as the Letter of Intent, Response to Standards Governing the Exercise of Zoning Power, and other materials required by the Gwinnett County UDO.

## **II. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA**

The Property is a 4.961-acre parcel, zoned C-2 (General Business District). The property is located along Atkinson Road between the intersections of Duluth Highway and Herrington Road. The Property currently contains an existing retail development with multiple tenants containing retail, service, and restaurant uses. The Property is surrounded by a mixture of commercial uses and is in close proximity to Sugarloaf Mills Mall. The Applicant requests approval of a Change in Conditions to a prior rezoning to allow the construction of additional restaurant/retail space with a portion of the new building as two-story tenant space.

The Future Development Map of the Gwinnett County 2040 Unified Plan (the “2040 Plan”) classifies this Property as within the “Regional Activity Center Character Area,” of the Gwinnett County Future Development Map. The Regional Activity Center Character Area is intended for areas that have intense commercial, office/employment activity, and some residential elements. Developments would include a combination of retail, office, and mid to high rise residential uses that encourage a walkable live/work/play environment. As such, this proposed retail development would be compatible with the Character Area. As referenced above, most surrounding properties in the area are zoned or used for commercial purposes. Below is a summary of the surrounding uses and the zoning classifications:

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Location	Land Use	Zoning
Proposed	Restaurant/Retail	C-2
North	Commercial	C-2
East	Commercial	C-2
South	Commercial	C-2
West	Residential	RZT

### **III. PROJECT SUMMARY AND REQUESTED CHANGE**

As shown on the zoning site plan prepared by Evans Design Group, Inc., dated July 15, 2022 (revised October 26, 2022), and filed with this Application (hereinafter the “Site Plan”), the Applicant proposes to develop additional restaurant/retail space comprised of one building with multi-tenant spaces. The proposed building will consist of 15,025 sf, with approximately 10,600 sf of retail space on the first floor, and 4,425 sf on the second floor. The development will add an additional 17 parking spaces to the Property, for a total of 166 parking spaces to serve both the existing and proposed commercial development. Removal of the height restriction from the current condition would permit the site to be developed in accordance with the site plan and offer additional retail, service, and restaurant uses to surrounding residents.

### **IV. SITE IMPACT ANALYSIS**

Pursuant to UDO § 270-20.6, entitled “Impact Analysis,” the Applicant submits its written impact analysis which shows that a change in conditions for the subject property is warranted, satisfies UDO § 270-20.5, entitled “Standards Governing Exercise of the Zoning Power,” as follows:

**(A) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:**

Yes, approval of the proposed Change in Conditions will permit a use that is suitable in view of the use and development of adjacent and nearby property. The Property is located along Atkinson Road with an existing retail development on site. The Property is near intense, large-scale commercial developments.

**(B) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL ADVERSELY AFFECT THE EXISTING USE OR USEABILITY OF ADJACENT OR NEARBY PROPERTY:**

No, the proposed Change in Conditions Application will not adversely affect the existing use or usability of any of the nearby properties. The proposed change in conditions would allow for a development that is compatible with existing commercial uses on adjacent and nearby properties.

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**12/1/2022 (C) WHETHER THE PROPERTY TO BE AFFECTED BY A PROPOSED CHANGE IN CONDITIONS HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:**

The Applicant's proposal would allow for the Property to be developed for a use that is consistent with surrounding properties and those along Duluth Highway and Atkinson Road.

**(D) WHETHER THE PROPOSED CHANGE IN CONDITIONS WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:**

No, the proposed change in conditions application will not result in an excessive or burdensome use of the infrastructure systems. The Property has convenient access to Duluth Highway and Interstate 85. The proposed development would be compatible with the existing commercial uses in the area and provide additional restaurant and retail options for residents in the area.

**(E) WHETHER THE PROPOSED CHANGE IN CONDITIONS IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:**

The proposed change in conditions application is in conformity with the policy and intent of the Gwinnett County 2040 Unified Plan. The Property is located within the Regional Activity Center Character Area of the 2040 Future Development Map and is intended to include intense commercial and office/employment activity.

**(F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER THE APPROVAL OR DISAPPROVAL OF THE PROPOSED CHANGE IN CONDITIONS:**

The Applicant submits that the character of the surrounding developments and the existing mix of the same or similar intense commercial uses in the area provide supporting reasons for approval of the change in conditions request. The Applicant submits that the Property's location, size, and dimensions, as well as its location and close proximity to I-85, provide further support for approval of the proposed change in conditions application.

## **V. JUSTIFICATION FOR REZONING**

The Applicant respectfully submits that "The Unified Development Ordinance of Gwinnett County, Georgia" (the "Ordinance"), as amended from time to time, to the extent that it classifies the Property in any zoning district, or conditions the Property, in such a way that would preclude development of a restaurant and retail building is unconstitutional as a taking of 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. Any existing inconsistent zoning or conditions of the Property pursuant to the Ordinance deprives the

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~~12/1/2022~~ Applicant and Property owner of any alternative reasonable use and development of the Property. Additionally, all other zoning classifications would deprive the Applicant and Property owner of any reasonable use and redevelopment of the Property. Further, any attempt by the Gwinnett County Board of Commissioners to impose greater restrictions upon the manner in which the Property will be redeveloped than presently exist would be equally unlawful.

Accordingly, Applicant submits that the current zoning classification and any other zoning of the Property save for what has been requested as established in the Ordinance constitute an arbitrary and unreasonable use of the zoning and police powers because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant and Property owner. All inconsistent zoning classifications and changes to conditions different than requested hereunder would constitute an arbitrary and unreasonable use of the zoning and police powers because they bear or would bear no substantial relationship to the public health, safety, morality, or general welfare of the public and would substantially harm the Applicant and Property owner. Further, the existing inconsistent zoning conditions on the Property constitutes a taking of the owner's 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 and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Further, the Applicant respectfully submits that failure to approve the requested change in conditions application would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and Property owner 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.

Finally, the Applicant respectfully submits that the Gwinnett County Board of Commissioners cannot lawfully impose more restrictive standards upon the development of the Property than presently exist, as to do so not only would constitute a taking of the Property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution.

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

**VI. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that this Application for Change in Conditions be approved. The Applicant welcomes the opportunity to meet with the

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12/17/2022 Gwinnett County Planning Department staff to answer any questions or to address any concerns relating to this Letter of Intent or supporting materials.

Respectfully submitted this 1<sup>st</sup> day of December, 2022.

**ANDERSEN, TATE & CARR, P.C.**

*Melody A. Glouton*

Melody A. Glouton, Esq.

Enclosures  
MAG/dwb

**Exhibit D: Application and Disclosure of Campaign Contributions**

**[attached]**

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12/1/2022

Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 10/2021

**CHANGE IN CONDITIONS APPLICATION**

AN APPLICATION TO AMEND THE OFFICIAL ZONING MAP OF GWINNETT COUNTY, GEORGIA

APPLICANT INFORMATION	PROPERTY OWNER INFORMATION*
NAME: Sundial Capital, LLC c/o Andersen Tate & Carr, P.C. 1960 Satellite Blvd S-4000	NAME: Sundial Capital, LLC 2325 Pleasant Hill Road
CITY: Duluth	CITY: Duluth
STATE: GA ZIP: 30097	STATE: GA ZIP: 30097
PHONE: 770-822-0900	PHONE: 770-402-8474
EMAIL: mglouton@atclawfirm.com	EMAIL: panjwanialex@gmail.com
CONTACT PERSON: Melody Glouton	PHONE: 770-822-0900
CONTACT'S E-MAIL: mglouton@atclawfirm.com	

APPLICANT IS THE:		
<input type="checkbox"/> OWNER'S AGENT	<input checked="" type="checkbox"/> PROPERTY OWNER	<input type="checkbox"/> CONTRACT PURCHASER
ZONING DISTRICT(S): C-2	PRIOR ZONING CASE:	C-2
PARCEL NUMBER(S): R7081 030	ACREAGE:	4.961
ADDRESS OF PROPERTY: 1860 Atkinson Road, Lawrenceville, GA		
PROPOSED CHANGE IN CONDITIONS: allow two story retail/restaurant development; prior zoning RZC-03-041; <del>request to eliminate Condition (1)(B) to allow two story building</del>		
RESIDENTIAL DEVELOPMENT:		NON-RESIDENTIAL DEVELOPMENT:
NO. OF LOTS/DWELLING UNITS:		NO. OF BUILDINGS/LOTS: 1
DWELLING UNIT SIZE (Sq. Ft.):		TOTAL GROSS SQUARE FEET: 15,025 SF
GROSS DENSITY:		DENSITY:
NET DENSITY:		

**PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED**

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12/1/2022

Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 10/2021

**CHANGE IN CONDITIONS APPLICANT'S CERTIFICATION**

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.

Melody A. Glouton  
Signature of Applicant

12/1/22  
Date

Melody A. Glouton, Attorney for Applicant Sundial Capital, LLC  
Type or Print Name and Title

D. Glouton  
Signature of Notary Public

12/1/22  
Date



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12/1/2022

Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 5/2021

**CHANGE IN CONDITIONS PROPERTY OWNER'S CERTIFICATION**

THE UNDERSIGNED BELOW, OR AS ATTACHED, IS THE OWNER OF THE PROPERTY  
CONSIDERED IN THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO  
APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED  
UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF  
COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE  
SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6)  
MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.

*Melody A. Glouton*  
Signature of Property Owner

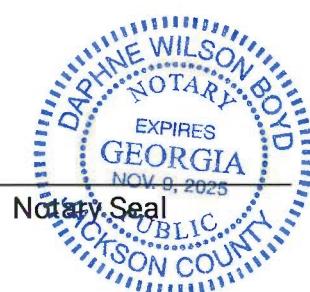
*12/1/22*  
Date

Melody A. Glouton, Attorney for Sundial Capital, LLC

Type or Print Name and Title

*D. Wilson*  
Signature of Notary Public

*12/1/22*  
Date



RECEIVED

12/1/2022

Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 5/2021

**CONFLICT OF INTEREST CERTIFICATION FOR CHANGE IN CONDITIONS**

The undersigned below, making application for a change in conditions, has complied with the Official Code of Georgia Section 36-67A-1, et. seq, Conflict of Interest in Zoning Actions, and has submitted or attached the required information on the forms provided.

Signature of Applicant      Date      Type of Print Name and Title

Date

Type of Print Name and Title

Signature of Applicant's  
Attorney or Representative      Date      Type or Print Name and Title

Signature of Applicant's  
Attorney or Representative      Date      Type or Print Name and Title

Signature of Applicant's  
Attorney or Representative      Date      Type or Print Name and Title

---

**Signature of Notary Public**

Date \_\_\_\_\_



## DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

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

YES

NO

Andersen, Tate & Carr

Your Name

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

NAME AND OFFICIAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or More)	DATE CONTRIBUTION WAS MADE (Within last two years)
Kirkland Carden Commissioner Ben Ku	\$2,800 \$1,000	11/16/2021 03/25/2022
Kirkland Carden Marlene Fosque	\$500 \$1,500	05/05/2022 06/08/2022
Commissioner Ben Ku	\$1,500	10/06/2022

Attach additional sheets if necessary to disclose or describe all contributions.

RECEIVED

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*Melody A. Glouton* 12/1/22

Signature of Applicant

Date

Melody A. Glouton, Attorney for Applicant

Type of Print Name and Title

Signature of Applicant's  
Attorney or Representative

Date

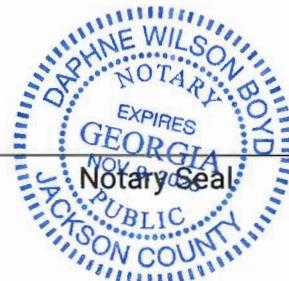
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YES

NO

Sundial Capital, LLC

Your Name

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Attach additional sheets if necessary to disclose or describe all contributions.

RECEIVED

12/1/2022

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Change in Conditions Application  
Last Updated 5/2021

**VERIFICATION OF CURRENT PAID PROPERTY TAXES**  
**FOR CHANGE IN CONDITIONS**

THE UNDERSIGNED CERTIFIES THAT ALL GWINNETT COUNTY PROPERTY TAXES BILLED TO DATE FOR THE PARCEL LISTED BELOW HAVE BEEN PAID IN FULL TO THE TAX COMMISSIONER OF GWINNETT COUNTY, GEORGIA. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION FOR REZONING BE PROCESSED WITHOUT SUCH PROPERTY VERIFICATION.

\* **NOTE:** A SEPARATE VERIFICATION FORM MUST BE COMPLETED FOR EACH TAX PARCEL INCLUDED IN THE REZONING REQUEST.

PARCEL I.D. NUMBER: 7th - 81 - 030  
(Map Reference Number) District Land Lot Parcel

Melody A. Glouton November 30, 2022  
Signature of Applicant Date

Melody A. Glouton, Attorney for Applicant

Type or Print Name and Title

\*\*\*PLEASE TAKE THIS FORM TO THE TAX COMMISSIONERS OFFICE AT THE GWINNETT JUSTICE AND ADMINISTRATION CENTER, 75 LANGLEY DRIVE, FOR THEIR APPROVAL BELOW.\*\*\*

**TAX COMMISSIONERS USE ONLY**

(PAYMENT OF ALL PROPERTY TAXES BILLED TO DATE FOR THE ABOVE REFERENCED PARCEL HAVE BEEN VERIFIED AS PAID CURRENT AND CONFIRMED BY THE SIGNATURE BELOW)

Chris Nelson

NAME

Tax Services Associate

TITLE

November 30, 2022

DATE

**Exhibit F: Previously Approved Resolution (RZC-03-041)**

**[attached]**

CASE NUMBER RZC-03-041

BOARD OF COMMISSIONERS

GWINNETT COUNTY

LAWRENCEVILLE, GEORGIA

RESOLUTION

READING AND ADOPTION:

At the regular meeting of the Gwinnett County Board of Commissioners, held in the Justice and Administration Center Auditorium, 75 Langley Drive, Lawrenceville, Georgia.

<u>Present</u>	<u>VOTE</u>
Wayne Hill, Chairman	<u>AYE</u>
Marcia Neaton, District 1	<u>AYE</u>
Albert Nasuti, District 2	<u>ABSENT</u>
John Dunn, District 3	<u>AYE</u>
Kevin Kenerly, District 4	<u>AYE</u>

On motion of COMM. NEATON, which carried 4-0, the following resolution was adopted:

A RESOLUTION TO AMEND THE OFFICIAL ZONING MAP

WHEREAS, the Municipal-Gwinnett County Planning Commission has held a duly advertised public hearing and has filed a formal recommendation with the Gwinnett County Board of Commissioners upon an Application to Amend the Official Zoning Map from

C-2, O-I & RMD to C-2

by PERIMETER PROPERTIES for the proposed use of COMMERCIAL RETAIL USES (REDUCTION IN BUFFERS) on a tract of land described by the attached legal description, which

is incorporated herein and made a part hereof by reference; and

WHEREAS, notice to the public regarding said Amendment to the Official Zoning Map has been duly published in THE GWINNETT DAILY POST, the Official News Organ of Gwinnett County; and

WHEREAS, a public hearing was held by the Gwinnett County Board of Commissioners on OCTOBER 28, 2003 and objections were filed.

NOW, THEREFORE, BE IT RESOLVED by the Gwinnett County Board of Commissioners this the 28TH day of OCTOBER, 2003, that the aforesaid application to amend the Official Zoning Map from C-2, O-I & RMD to C-2 is hereby APPROVED subject to the following enumerated conditions:

1. To restrict the use of the property as follows:

- A. Retail and service commercial and accessory uses.
- B. Limit the height of the buildings to no more than one story.
- C. Buildings shall be finished with architectural treatments of glass and/or brick, stucco or stacked stone.

2. To satisfy the following site development considerations:

- A. Provide a 50-foot wide landscaped buffer, to include a six-foot high opaque wood fence, except for approved perpendicular access and utility crossings, adjacent to residentially-zoned property.
- B. Provide a 10-foot wide landscape strip outside the rights-of-way of Herrington Lane and Atkinson Road.

- C. Provide a 5-foot wide landscape strip adjacent to internal property lines and adjacent to non-residentially zoned property.
- D. Billboards shall be prohibited.
- E. Provide interparcel access as may be required by the Development Division.
- F. Lighting shall be contained in cut-off type luminaries and shall be directed in toward the property so as not to shine directly into adjacent properties.
- G. Dumpsters shall be screened by a 100 percent opaque wall matching the building. Dumpster pickup shall be limited to between the hours of 7:00 a.m. and 7:00 p.m.
- H. Natural vegetation shall remain on the property until the issuance of a commercial development permit.
- I. Ground signage shall be limited to a single monument-type sign along Atkinson Road with a masonry base matching the building.
- J. Outdoor speaker systems shall be prohibited.

3. To abide by the following requirements, dedications and improvements:

- A. Prior to the issuance of a Development Permit, initiate the abandonment of the existing Herrington Lane right-of-way.

GWINNETT COUNTY BOARD OF COMMISSIONERS

By: F. Wayne Hill  
F. Wayne Hill, Chairman

Date Signed: Nov. 5, 2003

ATTEST:  
Bonita McElroy  
County Clerk

## Perimeter Properties Rezoning Tract

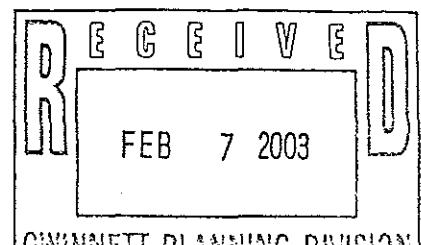
### Land Description

All that tract or parcel of land lying and being in land lot 81 of the 7<sup>th</sup> district, Gwinnett County, Georgia, being more particularly described as follows:

Commencing at the southwestern end of a mitered corner formed by the right-of-way intersection of the southern right-of-way of Duluth Highway (State Route 120) (r/w varies) and the western right-of-way of Atkinson Road (r/w varies) as THE POINT OF BEGINNING; Thence from said POINT OF BEGINNING South 10 degrees, 31 minutes, 16 seconds East a distance of 16.99 feet to a point; thence South 12 degrees, 09 minutes, 24 seconds East a distance of 156.28 feet to a point; thence along an arc having a radius of 813.94 feet a distance of 88.23 feet being subtended by a chord bearing South 15 degrees, 15 minutes, 49 seconds East a distance of 88.19 feet to THE POINT OF COMMENCEMENT; thence along an arc having a radius of 813.94 feet a distance of 15.30 feet being subtended by a chord bearing South 18 degrees, 54 minutes, 27 seconds East a distance of 15.30 feet to a point; thence South 75 degrees, 12 minutes, 30 seconds West a distance of 4.07 feet to a point; thence along an arc having a radius of 389.47 feet a distance of 10.49 feet being subtended by a chord bearing South 29 degrees, 20 minutes, 14 seconds East a distance of 10.49 feet to a point; thence South 30 degrees, 06 minutes, 47 seconds East a distance of 315.06 feet to a point; thence South 29 degrees, 34 minutes, 43 seconds East a distance of 90.56 feet to a point; thence South 42 degrees, 19 minutes, 01 seconds West a distance of 278.51 feet to a point; thence North 10 degrees, 13 minutes, 39 seconds West a distance of 61.82 feet to a point; thence South 88 degrees, 21 minutes, 18 seconds West a distance of 267.81 feet to a point; thence North 09 degrees, 31 minutes, 42 seconds West a distance of 209.72 feet to a point; thence North 09 degrees, 31 minutes, 26 seconds West a distance of 207.78 feet to a point; thence North 11 degrees, 41 minutes, 45 seconds West a distance of 41.54 feet to a point; thence North 77 degrees, 50 minutes, 36 seconds East a distance of 344.66 feet to THE POINT OF COMMENCEMENT.

Said Tract contains 4.72 Acres (205,481 SF)

RZC 03 0 4 1



**Exhibit E: Internal and External Agency Review Comments**

**[attached]**



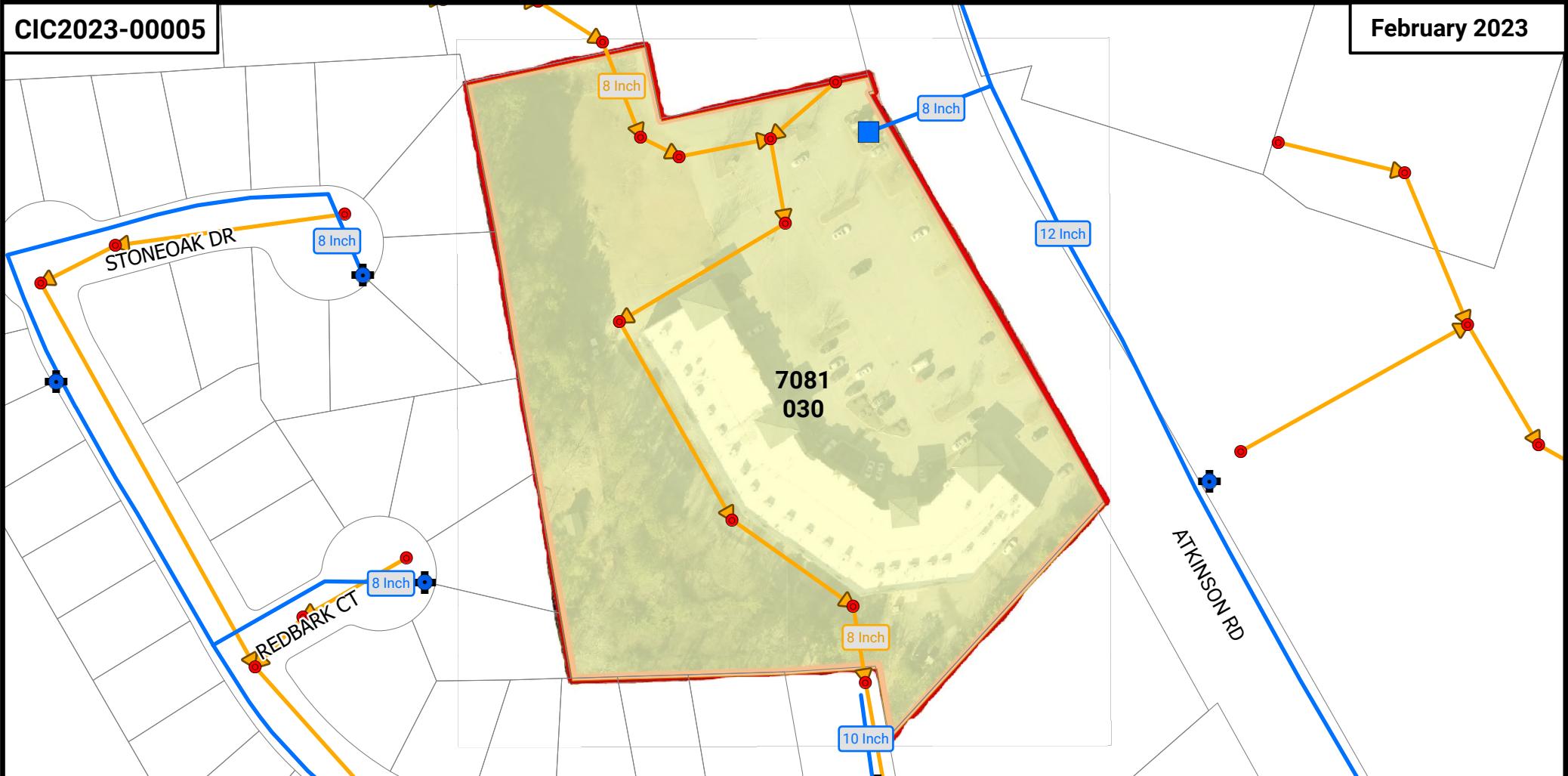
**Department of Planning and Development**  
**TECHNICAL REVIEW COMMITTEE**

<b>TRC Meeting Date:</b> 1.18.2023			
Department/Agency Name: Transportation			
Reviewer Name: Brent Hodges			
Reviewer Title: Construction Manager 1			
Reviewer Email Address: <a href="mailto:Brent.Hodges@gwinnettcounty.com">Brent.Hodges@gwinnettcounty.com</a>			
Case Number: CIC2023-00005			
Case Address: 1860 Atkinson Road, Lawrenceville, 30043			
<b>Comments:</b>		<input checked="" type="checkbox"/> <b>YES</b>	<input type="checkbox"/> <b>NO</b>
1	Atkinson Road is a major collector. ADT = 13,513.		
2	150-feet to the nearest transit facility (#2334774) Atkinson Road and Shell Gas Station.		
3			
4			
5			
6			
7			
<b>Recommended Zoning Conditions:</b>		<input type="checkbox"/>	<b>YES</b>
1			
2			
3			
4			
5			
6			
7			



**Department of Planning and Development**  
**TECHNICAL REVIEW COMMITTEE**

<b>TRC Meeting Date:</b>	
Department/Agency Name: DWR	
Reviewer Name: Mike Pappas	
Reviewer Title: GIS Planning Manager	
Reviewer Email Address: <a href="mailto:Michael.pappas@gwinnettcounty.com">Michael.pappas@gwinnettcounty.com</a>	
Case Number: CIC2023-00005	
Case Address: 1860 Atkinson Road	
<b>Comments:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
1	Water: The proposed development may connect to the existing master meter on the site.
2	Sewer: Sewer Capacity Certification C2022-367-10 was approved in December 2022 for 8,850 sq ft of restaurant space and 6175 sq ft of retail space. The development may connect to an existing 8-inch gravity sewer main located on the west side of the subject parcel.
3	
4	
5	
6	
7	
<b>Recommended Zoning Conditions:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
1	
2	
3	
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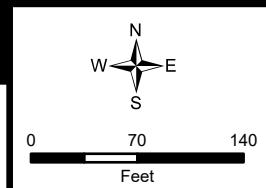
## 1860 Atkinson Road

C-2

# Water & Sewer Utility Map

### LEGEND

▲ Flow Management	◆ Hydrant	▲ Sewer Force Main
▲ Pump Station	◆ City	▲ Effluent Outfall
◆ Regional	◆ Water Main	▲ Sewer Collector
● Manhole	◆ Reuse Main	▲ Sewer Interceptor



### LOCATION



**Water Comments:** The proposed development may connect to the existing master meter on the site.

**Sewer Comments:** Sewer Capacity Certification C2022-367-10 was approved in December 2022 for 8,850 sq ft of restaurant space and 6175 sq ft of retail space. The development may connect to an existing 8-inch gravity sewer main located on the west side of the subject parcel.

**Water Availability:** Water demands imposed by the proposed development may require upsizing or extensions of existing water mains in order to meet Gwinnett County Standards and fire flow demands. Any cost associated with such required improvements will be the responsibility of the development. Current Gwinnett County Standards require a minimum of 12" pipe size for commercial developments and a minimum of 8" pipe size for residential developments. Additionally, connection to a minimum of 12" and 8" mains are required for commercial and residential developments, respectively. It is the responsibility of the developer's engineer to confirm pressure and volumes are available for the development.

**Sewer Availability:** A Sewer Capacity Certification must be obtained from Gwinnett County to confirm the existing system can serve the development. Sewer demands imposed by the proposed development may require upsizing and/or extensions of existing sewer mains, and/or upsizing of an existing pump station, and/or installation of a new pump station. Any cost associated with such required improvements will be the responsibility of the development. The developer shall provide easements for future sewer connection to all locations designated by Gwinnett County during plan review.

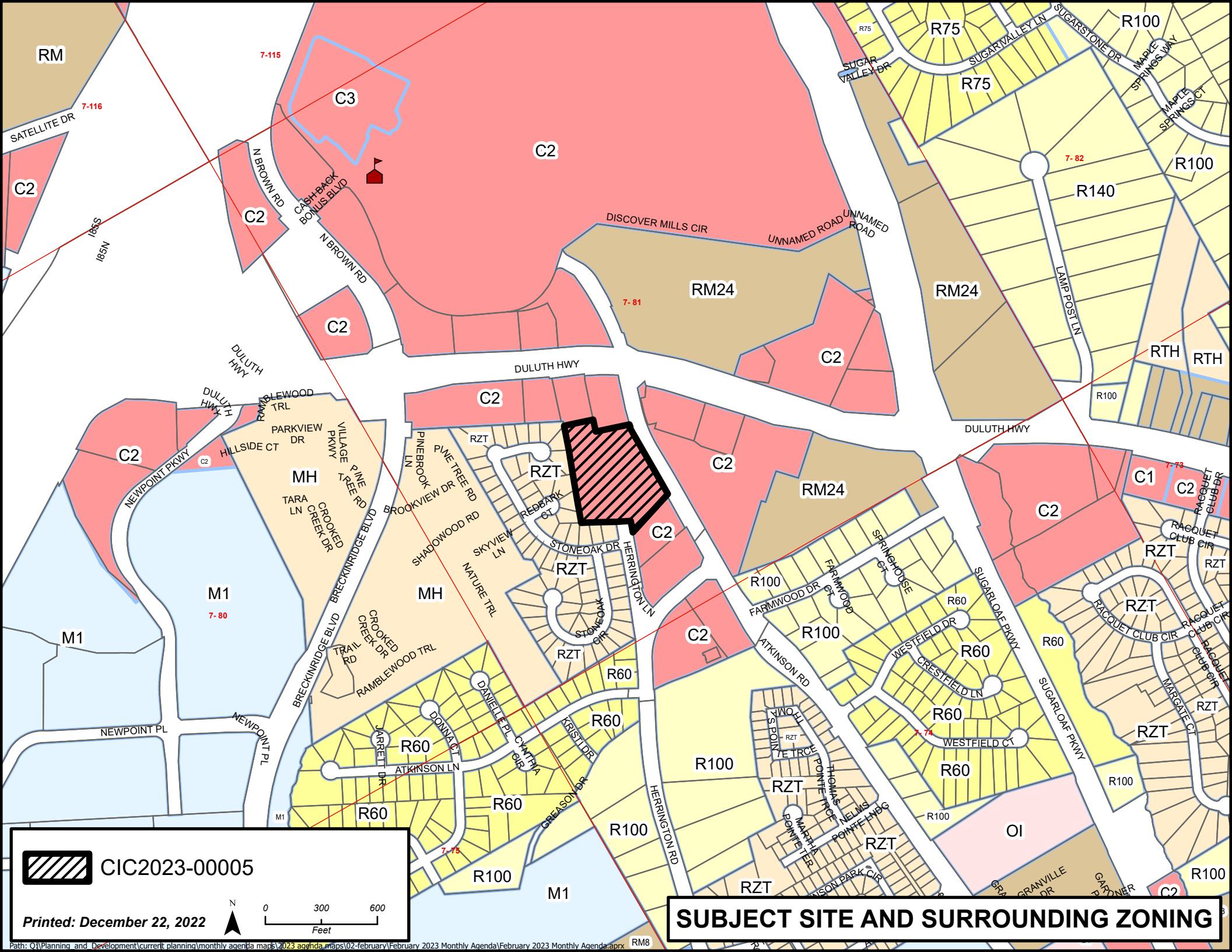
**Water and Sewer Design and Construction Requirements:** Extensions of the water and/or sanitary sewer systems within the subject development must conform to this department's policies, Gwinnett County's ordinances, and the Water Main and Sanitary Sewer Design and Construction Standards and Specifications, dated April 5th, 2016. Subsequent to design, construction, inspection, and final acceptance of the required utilities, service would then become available under the applicable utility permit rate schedules.

**Private Road Developments:** Any development with private roads must comply with the Standard Policy Requirement for the Installation of Water and Sanitary Sewer Mains within Private Developments. This policy stipulates minimum easement requirements and location of public mains and appurtenances, among other requirements.

**Exhibit F: Maps**

**[attached]**





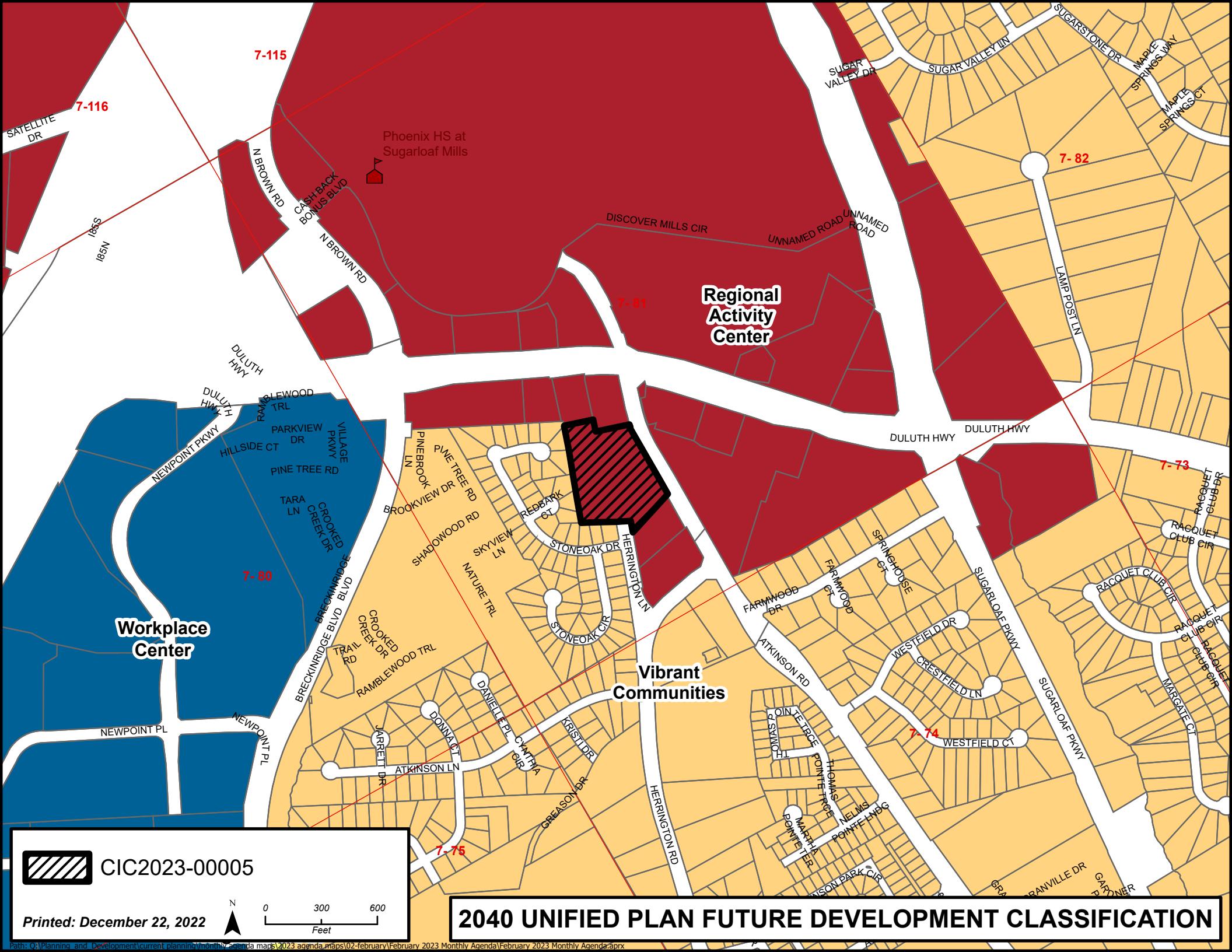
CIC2023-00005

Printed: December 22, 2022

N

A horizontal number line starting at 0 and ending at 600. There is a tick mark at 300. Below the line, the word "Feet" is written in italics.

## **SUBJECT SITE AND SURROUNDING ZONING**



RECEIVED

12/1/2022

Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 10/2021

**CHANGE IN CONDITIONS APPLICATION**

AN APPLICATION TO AMEND THE OFFICIAL ZONING MAP OF GWINNETT COUNTY, GEORGIA

APPLICANT INFORMATION	PROPERTY OWNER INFORMATION*
NAME: Sundial Capital, LLC c/o Andersen Tate & Carr, P.C. 1960 Satellite Blvd S-4000	NAME: Sundial Capital, LLC 2325 Pleasant Hill Road
CITY: Duluth	CITY: Duluth
STATE: GA ZIP: 30097	STATE: GA ZIP: 30097
PHONE: 770-822-0900	PHONE: 770-402-8474
EMAIL: mglouton@atclawfirm.com	EMAIL: panjwanialex@gmail.com
CONTACT PERSON: Melody Glouton	PHONE: 770-822-0900
CONTACT'S E-MAIL: mglouton@atclawfirm.com	

APPLICANT IS THE:		
<input type="checkbox"/> OWNER'S AGENT	<input checked="" type="checkbox"/> PROPERTY OWNER	<input type="checkbox"/> CONTRACT PURCHASER
ZONING DISTRICT(S): C-2	PRIOR ZONING CASE:	C-2
PARCEL NUMBER(S): R7081 030	ACREAGE:	4.961
ADDRESS OF PROPERTY: 1860 Atkinson Road, Lawrenceville, GA		
PROPOSED CHANGE IN CONDITIONS: allow two story retail/restaurant development; prior zoning RZC-03-041; <del>request to eliminate Condition (1)(B) to allow two story building</del>		
RESIDENTIAL DEVELOPMENT:		NON-RESIDENTIAL DEVELOPMENT:
NO. OF LOTS/DWELLING UNITS:		NO. OF BUILDINGS/LOTS: 1
DWELLING UNIT SIZE (Sq. Ft.):		TOTAL GROSS SQUARE FEET: 15,025 SF
GROSS DENSITY:		DENSITY:
NET DENSITY:		

**PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED**

RECEIVED

12/1/2022

Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 10/2021

**CHANGE IN CONDITIONS APPLICANT'S CERTIFICATION**

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL AN APPLICATION OR REAPPLICATION BE ACTED UPON IN LESS THAN SIX (6) MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS.

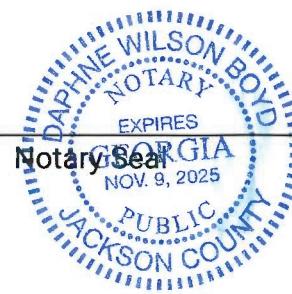
Melody A. Glouton  
Signature of Applicant

12/1/22  
Date

Melody A. Glouton, Attorney for Applicant Sundial Capital, LLC  
Type or Print Name and Title

D. Glouton  
Signature of Notary Public

12/1/22  
Date



RECEIVED

12/1/2022

Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 5/2021

**CHANGE IN CONDITIONS PROPERTY OWNER'S CERTIFICATION**

THE UNDERSIGNED BELOW, OR AS ATTACHED, IS THE OWNER OF THE PROPERTY  
CONSIDERED IN THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO  
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*Melody A. Glouton*  
Signature of Property Owner

*12/1/22*  
Date

Melody A. Glouton, Attorney for Sundial Capital, LLC

Type or Print Name and Title

*D. Wilson*  
Signature of Notary Public

*12/1/22*  
Date



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Change in Conditions Application  
Last Updated 5/2021

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Signature of Applicant      Date      Type of Print Name and Title

Date

Type of Print Name and Title

Signature of Applicant's  
Attorney or Representative      Date      Type or Print Name and Title

Signature of Applicant's  
Attorney or Representative      Date      Type or Print Name and Title

Signature of Applicant's  
Attorney or Representative      Date      Type or Print Name and Title

---

Signature of Notary Public

Date \_\_\_\_\_

A circular notary seal with a double-lined border. The outer border contains the text "DAPHNE WILSON BOYD" at the top and "NOTARY" at the bottom, both in a blue serif font. The inner circle contains "EXPIRES" at the top, "NOV. 9, 2025" in the center, and "GEORGIA" at the bottom. The bottom half of the inner circle features "JACKSON COUNTY" and "PUBLIC" stacked vertically. The entire seal is rendered in blue on a white background.

## DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

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

YES

NO

Andersen, Tate & Carr

Your Name

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

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Kirkland Carden Commissioner Ben Ku	\$2,800 \$1,000	11/16/2021 03/25/2022
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Melody A. Glouton 12/1/22

Signature of Applicant

Date

Melody A. Glouton, Attorney for Applicant

Type of Print Name and Title

Signature of Applicant's  
Attorney or Representative

Date

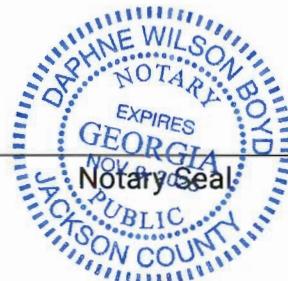
Type or Print Name and Title

D. Wilson

Signature of Notary Public

12/1/22

Date



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NO

Sundial Capital, LLC

Your Name

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Gwinnett County Planning Division  
Change in Conditions Application  
Last Updated 5/2021

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**FOR CHANGE IN CONDITIONS**

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\* **NOTE:** A SEPARATE VERIFICATION FORM MUST BE COMPLETED FOR EACH TAX PARCEL INCLUDED IN THE REZONING REQUEST.

PARCEL I.D. NUMBER: 7th - 81 - 030  
(Map Reference Number) District Land Lot Parcel

Melody A. Glouton November 30, 2022  
Signature of Applicant Date

Melody A. Glouton, Attorney for Applicant

Type or Print Name and Title

\*\*\*PLEASE TAKE THIS FORM TO THE TAX COMMISSIONERS OFFICE AT THE GWINNETT JUSTICE AND ADMINISTRATION CENTER, 75 LANGLEY DRIVE, FOR THEIR APPROVAL BELOW.\*\*\*

**TAX COMMISSIONERS USE ONLY**

(PAYMENT OF ALL PROPERTY TAXES BILLED TO DATE FOR THE ABOVE REFERENCED PARCEL HAVE BEEN VERIFIED AS PAID CURRENT AND CONFIRMED BY THE SIGNATURE BELOW)

Chris Nelson  
NAME

Tax Services Associate  
TITLE

November 30, 2022  
DATE





GWINNETT COUNTY  
PLANNING AND DEVELOPMENT

RECEIVED

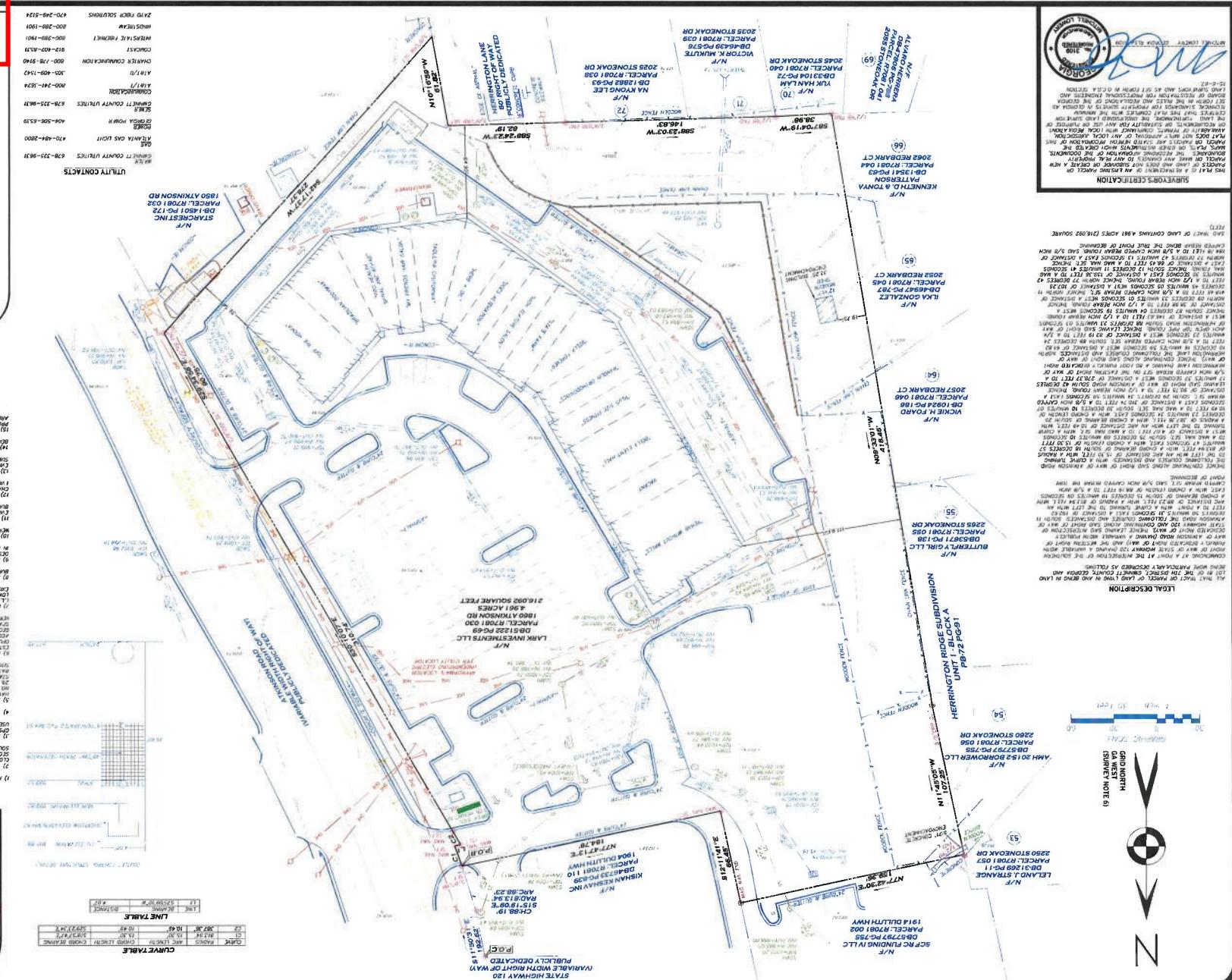
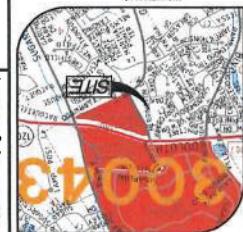
12/1/2022



REVISIONS	DESCRIPTION	DATE
1	Initial Submission	12/1/2022

PREPARED FOR:  
ALEX PALMER

LOWERY & ASSOCIATES  
LAND SURVEYING, LLC  
377 GRASSLEY ROAD  
CANTERBURY, GA 30231  
T 770.962.1000 | F 770.962.1002  
INFO@LOWERYANDASSOCIATES.COM  
GEORGIA C.C. #AL-LS-00102





RECEIVED

12/1/2022

December 1, 2022

**LETTER OF INTENT AND JUSTIFICATION  
FOR CHANGE IN CONDITIONS**

**Change in Conditions Application  
Gwinnett County, Georgia**

**Applicant:**  
Sundial Capital, LLC

**Property:**  
Tax Parcel ID R7081 030  
Zoning District C-2  
± 4.961 Acres of Land  
1860 Atkinson Road, Lawrenceville, Georgia

**Submitted for Applicant by:**

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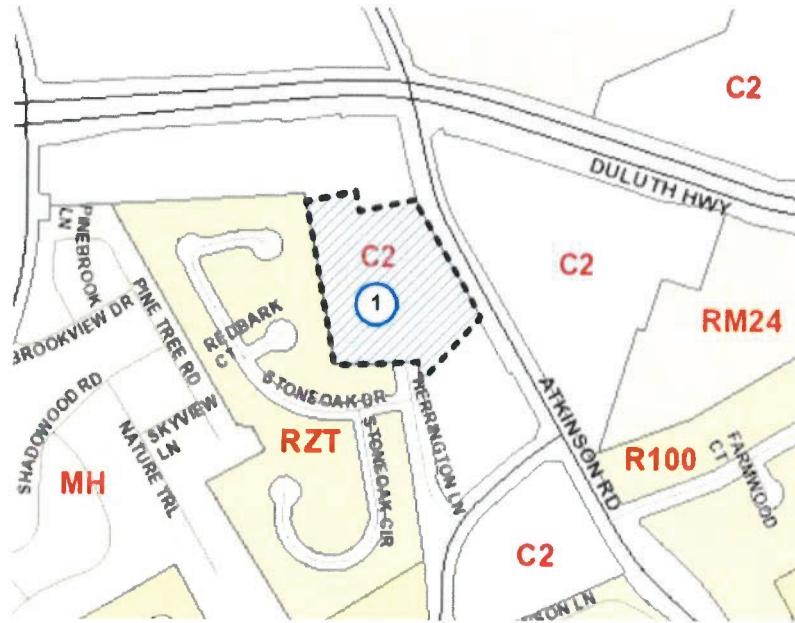


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12/1/2022 I. INTRODUCTION

This Application for Change in Conditions is submitted for a 4.961-acre parcel of land located at 1860 Atkinson Road, Lawrenceville, Georgia and further identified as Tax Parcel R7081 030 (hereinafter the “Property”). The Property is currently zoned C-2 pursuant to RZC-03-041.

The Property is shown on the survey prepared by Lowry & Associates Land Surveying, LLC, dated July 11, 2022, and filed with this Application. The Property that is the subject of this Change in Conditions application is owned by Sundial Capital, LLC and further identified below from the Gwinnett County GIS:



The Applicant, Sundial Capital, LLC (the “Applicant”) now seeks approval to remove condition 1.B. of RZC-03-041 to allow for the construction of an additional restaurant/retail development comprised of one building with multi-tenant spaces, totaling approximately 15,025 square foot. Specifically, the Applicant seeks to eliminate the condition that restricts the “height of the buildings to no more than one story.”

Accordingly, the Applicant is requesting to amend the Conditions of Approval of RZC-03-041 (attached as Exhibit A) as follows:

Condition #1:

~~B. Limit the height of the buildings to no more than one story.~~

As indicated, the Property is zoned C-2 (General Business District). The C-2 zoning classification is intended to provide adequate space in appropriate locations along major streets, thoroughfares and intersections for various types of business use. Moreover, the C-2 zoning

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classification anticipates uses to include the retailing of major goods and services, general office facilities and public functions that would serve a community area of several neighborhoods. The C-2 zoning classification allows for a maximum height of 45 feet for non-residential developments.

The Applicant is also requesting the following variance:

(1) Variance from Section 220.30.E.4: The UDO states “(f)or developments exceeding 7,500 square feet, primary building facades and entrances shall be located no more than 70 feet from the public rights-of-way and shall be oriented toward the street and shall provide a sidewalk connecting the front entrance to a continuous sidewalk placed parallel to the street.” As such, the requested variance is related to the proximity of the primary structure to the right of way due to its location within the Civic Center Overlay District (“Overlay”). The Property is zoned C-2 for general commercial use within the Overlay and currently contains an existing retail development. The Applicant is seeking to develop additional restaurant and retail space as permitted under the current C-2 zoning classification. The proposed building will consist of 15,025 sf, with approximately 10,600 sf of retail space on the first floor, and 4,425 sf on the second floor.

The Applicant submits that granting relief of the above-referenced variance would not cause substantial detriment to the public good. Rather, by granting relief, the Property would be developed as a permitted use under the C-2 zoning classification, and complement surrounding the existing retail development and land uses.

This document is submitted as the Letter of Intent, Response to Standards Governing the Exercise of Zoning Power, and other materials required by the Gwinnett County UDO.

## **II. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA**

The Property is a 4.961-acre parcel, zoned C-2 (General Business District). The property is located along Atkinson Road between the intersections of Duluth Highway and Herrington Road. The Property currently contains an existing retail development with multiple tenants containing retail, service, and restaurant uses. The Property is surrounded by a mixture of commercial uses and is in close proximity to Sugarloaf Mills Mall. The Applicant requests approval of a Change in Conditions to a prior rezoning to allow the construction of additional restaurant/retail space with a portion of the new building as two-story tenant space.

The Future Development Map of the Gwinnett County 2040 Unified Plan (the “2040 Plan”) classifies this Property as within the “Regional Activity Center Character Area,” of the Gwinnett County Future Development Map. The Regional Activity Center Character Area is intended for areas that have intense commercial, office/employment activity, and some residential elements. Developments would include a combination of retail, office, and mid to high rise residential uses that encourage a walkable live/work/play environment. As such, this proposed retail development would be compatible with the Character Area. As referenced above, most surrounding properties in the area are zoned or used for commercial purposes. Below is a summary of the surrounding uses and the zoning classifications:

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Location	Land Use	Zoning
Proposed	Restaurant/Retail	C-2
North	Commercial	C-2
East	Commercial	C-2
South	Commercial	C-2
West	Residential	RZT

### **III. PROJECT SUMMARY AND REQUESTED CHANGE**

As shown on the zoning site plan prepared by Evans Design Group, Inc., dated July 15, 2022 (revised October 26, 2022), and filed with this Application (hereinafter the “Site Plan”), the Applicant proposes to develop additional restaurant/retail space comprised of one building with multi-tenant spaces. The proposed building will consist of 15,025 sf, with approximately 10,600 sf of retail space on the first floor, and 4,425 sf on the second floor. The development will add an additional 17 parking spaces to the Property, for a total of 166 parking spaces to serve both the existing and proposed commercial development. Removal of the height restriction from the current condition would permit the site to be developed in accordance with the site plan and offer additional retail, service, and restaurant uses to surrounding residents.

### **IV. SITE IMPACT ANALYSIS**

Pursuant to UDO § 270-20.6, entitled “Impact Analysis,” the Applicant submits its written impact analysis which shows that a change in conditions for the subject property is warranted, satisfies UDO § 270-20.5, entitled “Standards Governing Exercise of the Zoning Power,” as follows:

**(A) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY:**

Yes, approval of the proposed Change in Conditions will permit a use that is suitable in view of the use and development of adjacent and nearby property. The Property is located along Atkinson Road with an existing retail development on site. The Property is near intense, large-scale commercial developments.

**(B) WHETHER A PROPOSED CHANGE IN CONDITIONS WILL ADVERSELY AFFECT THE EXISTING USE OR USEABILITY OF ADJACENT OR NEARBY PROPERTY:**

No, the proposed Change in Conditions Application will not adversely affect the existing use or usability of any of the nearby properties. The proposed change in conditions would allow for a development that is compatible with existing commercial uses on adjacent and nearby properties.

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**12/1/2022 (C) WHETHER THE PROPERTY TO BE AFFECTED BY A PROPOSED CHANGE IN CONDITIONS HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:**

The Applicant's proposal would allow for the Property to be developed for a use that is consistent with surrounding properties and those along Duluth Highway and Atkinson Road.

**(D) WHETHER THE PROPOSED CHANGE IN CONDITIONS WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:**

No, the proposed change in conditions application will not result in an excessive or burdensome use of the infrastructure systems. The Property has convenient access to Duluth Highway and Interstate 85. The proposed development would be compatible with the existing commercial uses in the area and provide additional restaurant and retail options for residents in the area.

**(E) WHETHER THE PROPOSED CHANGE IN CONDITIONS IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:**

The proposed change in conditions application is in conformity with the policy and intent of the Gwinnett County 2040 Unified Plan. The Property is located within the Regional Activity Center Character Area of the 2040 Future Development Map and is intended to include intense commercial and office/employment activity.

**(F) WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER THE APPROVAL OR DISAPPROVAL OF THE PROPOSED CHANGE IN CONDITIONS:**

The Applicant submits that the character of the surrounding developments and the existing mix of the same or similar intense commercial uses in the area provide supporting reasons for approval of the change in conditions request. The Applicant submits that the Property's location, size, and dimensions, as well as its location and close proximity to I-85, provide further support for approval of the proposed change in conditions application.

## **V. JUSTIFICATION FOR REZONING**

The Applicant respectfully submits that "The Unified Development Ordinance of Gwinnett County, Georgia" (the "Ordinance"), as amended from time to time, to the extent that it classifies the Property in any zoning district, or conditions the Property, in such a way that would preclude development of a restaurant and retail building is unconstitutional as a taking of 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. Any existing inconsistent zoning or conditions of the Property pursuant to the Ordinance deprives the

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~~12/1/2022~~ Applicant and Property owner of any alternative reasonable use and development of the Property. Additionally, all other zoning classifications would deprive the Applicant and Property owner of any reasonable use and redevelopment of the Property. Further, any attempt by the Gwinnett County Board of Commissioners to impose greater restrictions upon the manner in which the Property will be redeveloped than presently exist would be equally unlawful.

Accordingly, Applicant submits that the current zoning classification and any other zoning of the Property save for what has been requested as established in the Ordinance constitute an arbitrary and unreasonable use of the zoning and police powers because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant and Property owner. All inconsistent zoning classifications and changes to conditions different than requested hereunder would constitute an arbitrary and unreasonable use of the zoning and police powers because they bear or would bear no substantial relationship to the public health, safety, morality, or general welfare of the public and would substantially harm the Applicant and Property owner. Further, the existing inconsistent zoning conditions on the Property constitutes a taking of the owner's 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 and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Further, the Applicant respectfully submits that failure to approve the requested change in conditions application would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and Property owner 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.

Finally, the Applicant respectfully submits that the Gwinnett County Board of Commissioners cannot lawfully impose more restrictive standards upon the development of the Property than presently exist, as to do so not only would constitute a taking of the Property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution.

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

**VI. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that this Application for Change in Conditions be approved. The Applicant welcomes the opportunity to meet with the

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12/17/2022 Gwinnett County Planning Department staff to answer any questions or to address any concerns relating to this Letter of Intent or supporting materials.

Respectfully submitted this 1<sup>st</sup> day of December, 2022.

**ANDERSEN, TATE & CARR, P.C.**

*Melody A. Glouton*

Melody A. Glouton, Esq.

Enclosures  
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Exhibit "A"

All that tract or parcel of land lying and being in Land Lot 81 of the 7<sup>th</sup> District of Gwinnett County, Georgia, containing approximately 4.961 acres and being shown on that certain survey entitled "Boundary Survey of: 1860 Atkinson Rd NW, Lawrenceville, GA 30043", prepared by Lowery & Associates Land Surveying, LLC, bearing the seal and certification of Mitchell Lowery, Georgia Registered Land Surveyor No. 3109, dated June 29, 2022, and being more particularly described as follows:

To find the TRUE POINT OF BEGINNING, commence at a point located at the intersection of the southerly right-of-way line of State Highway 120 (having a variable width right-of-way) with the westerly right-of-way line of Atkinson Road (having a variable width right-of-way); run thence along said westerly right-of-way line of Atkinson Road South 11 degrees 50 minutes 31 seconds East a distance of 192.62 feet to a point; continue thence along said right-of-way line and following the arc of a curve to the left an arc distance of 88.23 feet to a point marked by a five-eighths inch capped rebar set, said point being the TRUE POINT OF BEGINNING (said arc having a radius of 813.94 feet and being subtended by a chord bearing South 15 degrees 19 minutes 09 seconds East a distance of 88.19 feet); from said TRUE POINT OF BEGINNING, run thence along said right-of-way line of Atkinson Road and following the arc of a curve to the left an arc distance of 15.30 feet to a point marked by a mag nail set (said arc having a radius of 813.94 feet and being subtended by a chord bearing South 18 degrees 57 minutes 47 seconds East a distance of 15.30 feet); continue thence along said right-of-way line South 75 degrees 09 minutes 10 seconds West a distance of 4.07 feet to a point marked by a mag nail set; continue thence along said right-of-way line and following the arc of a curve to the left an arc distance of 10.49 feet to a point marked by a mag nail set (said arc having a radius of 387.36 feet and being subtended by a chord bearing South 29 degrees 23 minutes 34 seconds East a distance of 10.49 feet); continue thence along said right-of-way line South 30 degrees 10 minutes 07 seconds East a distance of 310.74 feet to a point marked by a five-eighths inch capped rebar set; continue thence along said right-of-way line South 29 degrees 34 minutes 58 seconds East a distance of 90.75 feet to a point marked by a one-half inch rebar found; thence leaving said right-of-way line, run South 42 degrees 17 minutes 37 seconds West a distance of 278.37 feet to a point marked by a five-eighths inch capped rebar set; run thence North 10 degrees 16 minutes 59 seconds West a distance of 61.82 feet to a point marked by a five-eighths inch capped rebar set; run thence South 88 degrees 24 minutes 23 seconds West a distance of 82.19 feet to a point marked by a three-quarter inch open top pipe found; run thence South 88 degrees 23 minutes 03 seconds West a distance of 146.83 feet to a point marked by a one-half inch rebar found; run thence South 87 degrees 04 minutes 19 seconds West a distance of 38.98 feet to a point marked by a one-half inch rebar found; run thence North 09 degrees 33 minutes 01 second West a distance of 418.46 feet to a point marked by a five-eighths inch capped rebar set; run thence North 11 degrees 45 minutes 05 seconds West a distance of 107.25 feet to a point marked by a one-half inch rebar found; run thence North 77 degrees 42 minutes 30 seconds East a distance of 159.36 feet to a point marked by a mag nail found; run thence South 12 degrees 11 minutes 41 seconds East a distance of 66.45 feet to a point marked by a mag nail set; run thence North 77 degrees 47 minutes 13 seconds East a distance of 184.78 feet to a point marked by a five-eighths inch rebar set on the westerly right-of-way line of Atkinson Road, said point being the TRUE POINT OF BEGINNING.

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CASE NUMBER RZC-03-041

BOARD OF COMMISSIONERS

GWINNETT COUNTY

LAWRENCEVILLE, GEORGIA

RESOLUTION

READING AND ADOPTION:

At the regular meeting of the Gwinnett County Board of Commissioners, held in the Justice and Administration Center Auditorium, 75 Langley Drive, Lawrenceville, Georgia.

<u>Present</u>	<u>VOTE</u>
Wayne Hill, Chairman	<u>AYE</u>
Marcia Neaton, District 1	<u>AYE</u>
Albert Nasuti, District 2	<u>ABSENT</u>
John Dunn, District 3	<u>AYE</u>
Kevin Kenerly, District 4	<u>AYE</u>

On motion of COMM. NEATON, which carried 4-0, the following resolution was adopted:

A RESOLUTION TO AMEND THE OFFICIAL ZONING MAP

WHEREAS, the Municipal-Gwinnett County Planning Commission has held a duly advertised public hearing and has filed a formal recommendation with the Gwinnett County Board of Commissioners upon an Application to Amend the Official Zoning Map from

C-2, O-I & RMD to C-2  
by PERIMETER PROPERTIES for the proposed use  
of COMMERCIAL RETAIL USES (REDUCTION IN BUFFERS)  
on a tract of land described by the attached legal description,  
which

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is incorporated herein and made a part hereof by reference; and

WHEREAS, notice to the public regarding said Amendment to the Official Zoning Map has been duly published in THE GWINNETT DAILY POST, the Official News Organ of Gwinnett County; and

WHEREAS, a public hearing was held by the Gwinnett County Board of Commissioners on OCTOBER 28, 2003 and objections were filed.

NOW, THEREFORE, BE IT RESOLVED by the Gwinnett County Board of Commissioners this the 28TH day of OCTOBER, 2003, that the aforesaid application to amend the Official Zoning Map from C-2, O-I & RMD to C-2 is hereby APPROVED subject to the following enumerated conditions:

1. To restrict the use of the property as follows:

- A. Retail and service commercial and accessory uses.
- B. Limit the height of the buildings to no more than one story.
- C. Buildings shall be finished with architectural treatments of glass and/or brick, stucco or stacked stone.

2. To satisfy the following site development considerations:

- A. Provide a 50-foot wide landscaped buffer, to include a six-foot high opaque wood fence, except for approved perpendicular access and utility crossings, adjacent to residentially-zoned property.
- B. Provide a 10-foot wide landscape strip outside the rights-of-way of Herrington Lane and Atkinson Road.

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- C. Provide a 5-foot wide landscape strip adjacent to internal property lines and adjacent to non-residentially zoned property.
- D. Billboards shall be prohibited.
- E. Provide interparcel access as may be required by the Development Division.
- F. Lighting shall be contained in cut-off type luminaries and shall be directed in toward the property so as not to shine directly into adjacent properties.
- G. Dumpsters shall be screened by a 100 percent opaque wall matching the building. Dumpster pickup shall be limited to between the hours of 7:00 a.m. and 7:00 p.m.
- H. Natural vegetation shall remain on the property until the issuance of a commercial development permit.
- I. Ground signage shall be limited to a single monument-type sign along Atkinson Road with a masonry base matching the building.
- J. Outdoor speaker systems shall be prohibited.

3. To abide by the following requirements, dedications and improvements:

- A. Prior to the issuance of a Development Permit, initiate the abandonment of the existing Herrington Lane right-of-way.

GWINNETT COUNTY BOARD OF COMMISSIONERS

By: F. Wayne Hill  
F. Wayne Hill, Chairman

Date Signed: Nov. 5, 2003

ATTEST:  
Brenda McElroy  
County Clerk