

ORIGINAL

Gwinnett County Planning Division
Rezoning Application
Last Updated 8.2008

REZONING APPLICATION

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

APPLICANT INFORMATION	OWNER INFORMATION*
NAME: <u>Con-way Freight, Inc. c/o Doug Dillard</u>	NAME: <u>Con-way Freight, Inc</u>
ADDRESS: <u>3500 Lenox Rd, NE, 4th Floor</u>	ADDRESS: <u>2211 Old Earhart Road</u>
CITY: <u>Atlanta</u>	CITY: <u>Ann Arbor</u>
STATE: <u>GA</u> ZIP: <u>30326</u>	STATE: <u>MI</u> ZIP: <u>48105</u>
PHONE: <u>404-926-4545</u>	PHONE: <u>734-757-1632</u>
CONTACT PERSON: <u>Doug Dillard</u> PHONE: <u>404-926-4545</u>	
CONTACT'S E-MAIL: <u>dottyd@wncwlaw.com</u>	

APPLICANT IS THE:

OWNER'S AGENT PROPERTY OWNER CONTRACT PURCHASER

PRESENT ZONING DISTRICT(S): M-1 REQUESTED ZONING DISTRICT: M-2

LAND DISTRICT(S): 7th LAND LOT(S): 42 ACREAGE: 53.481

ADDRESS OF PROPERTY: Physical address: 1449 Herrington Road

PROPOSED DEVELOPMENT: Expansion of existing truck terminal

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units _____	No. of Buildings/Lots: <u>2 existing, 1 new</u>
Dwelling Unit Size (Sq. Ft.): _____	Total Building Sq. Ft. <u>58,075</u>
Gross Density: _____	Density: <u>58,075 sq ft on 53.481 acres</u>
Net Density: _____	

PLEASE ATTACH A LETTER OF INTENT EXPLAINING WHAT IS PROPOSED

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NOV 02 2012

BY:

LEGAL DESCRIPTION
1449 Herrington Road
Con-Way Transportation Services, Inc.

NOV 08 2012

BY:

ALL THAT TRACT OR PARCEL of land lying and being in Land Lots 42 and 75, 7th District, Gwinnett County, Georgia, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, COMMENCE at a point at the intersection of the southerly right-of-way line for Georgia Hwy. 316 (300-foot right-of-way; a/ka University Parkway) with the westerly right-of-way line for Herrington Road (right-of-way varies), said point being the POINT OF BEGINNING. THENCE along the said westerly right-of-way for Herrington Road South 22 degrees 05 minutes 23 seconds East, a distance of 27.51 feet to a point; THENCE along said right-of-way line South 10 degrees 51 minutes 07 seconds West, a distance of 112.94 feet to a point; THENCE along said right-of-way line South 04 degrees 49 minutes 31 seconds West, a distance of 100.64 feet to a point; THENCE along said right-of-way line South 09 degrees 11 minutes 57 seconds West, a distance of 172.98 feet to a point; THENCE along said right-of-way line South 08 degrees 20 minutes 19 seconds West, a distance of 230.71 feet to a point; THENCE along said right-of-way line along a curve to the right having a radius of 666.20 feet and an arc length of 155.12 feet, being subtended by a chord bearing South 15 degrees 00 minutes 33 seconds West, a distance of 154.77 feet to a point; THENCE along said right-of-way line along a curve to the right having a radius of 1,587.02 feet and an arc length of 11.67 feet, being subtended by a chord bearing South 21 degrees 53 minutes 25 seconds West, a distance of 11.67 feet to a point on the northerly right-of-way line for Oakland Road (80-foot right-of-way); THENCE along said right-of-way line for Oakland Road North 81 degrees 15 minutes 33 seconds West, a distance of 406.95 feet to a point; THENCE along said right-of-way line along a curve to the left having a radius of 60.00 feet and an arc length of 289.42 feet, being subtended by a chord bearing South 08 degrees 44 minutes 27 seconds West, a distance of 80.00 feet to a point; THENCE along said right-of-way line South 81 degrees 15 minutes 33 seconds East, a distance of 385.73 feet to a point on the aforementioned westerly right-of-way line for Herrington Road (right-of-way varies); THENCE along said right-of-way line for Herrington Road along a curve to the right having a radius of 1,587.02 feet and an arc length of 213.07 feet, being subtended by a chord bearing South 28 degrees 56 minutes 08 seconds West, a distance of 212.91 feet to a point; THENCE along said right-of-way line South 32 degrees 46 minutes 52 seconds West, a distance of 70.29 feet to a point; THENCE leaving said right-of-way line North 63 degrees 18 minutes 02 seconds West, a distance of 318.07 feet to a point; THENCE South 40 degrees 39 minutes 58 seconds West, a distance of 891.21 feet to a point on the land lot line dividing Land Lots 41 and 42.; THENCE along said land lot line North 29 degrees 51 minutes 11 seconds West, a distance of 772.94 feet to a point on the land lot corner for Land Lots 41, 42, 75, and 76; THENCE along said land lot line dividing Land Lots 75 and 76 North 30 degrees 30 minutes 43 seconds West, a distance of 1,456.96 feet to a point on the aforementioned southerly right-of-way line for Georgia Hwy. 316 (300-foot right-of-way; a/ka University Parkway); THENCE along said right-of-way line for Georgia Hwy. 316 South 83 degrees 08 minutes 35 seconds East, a

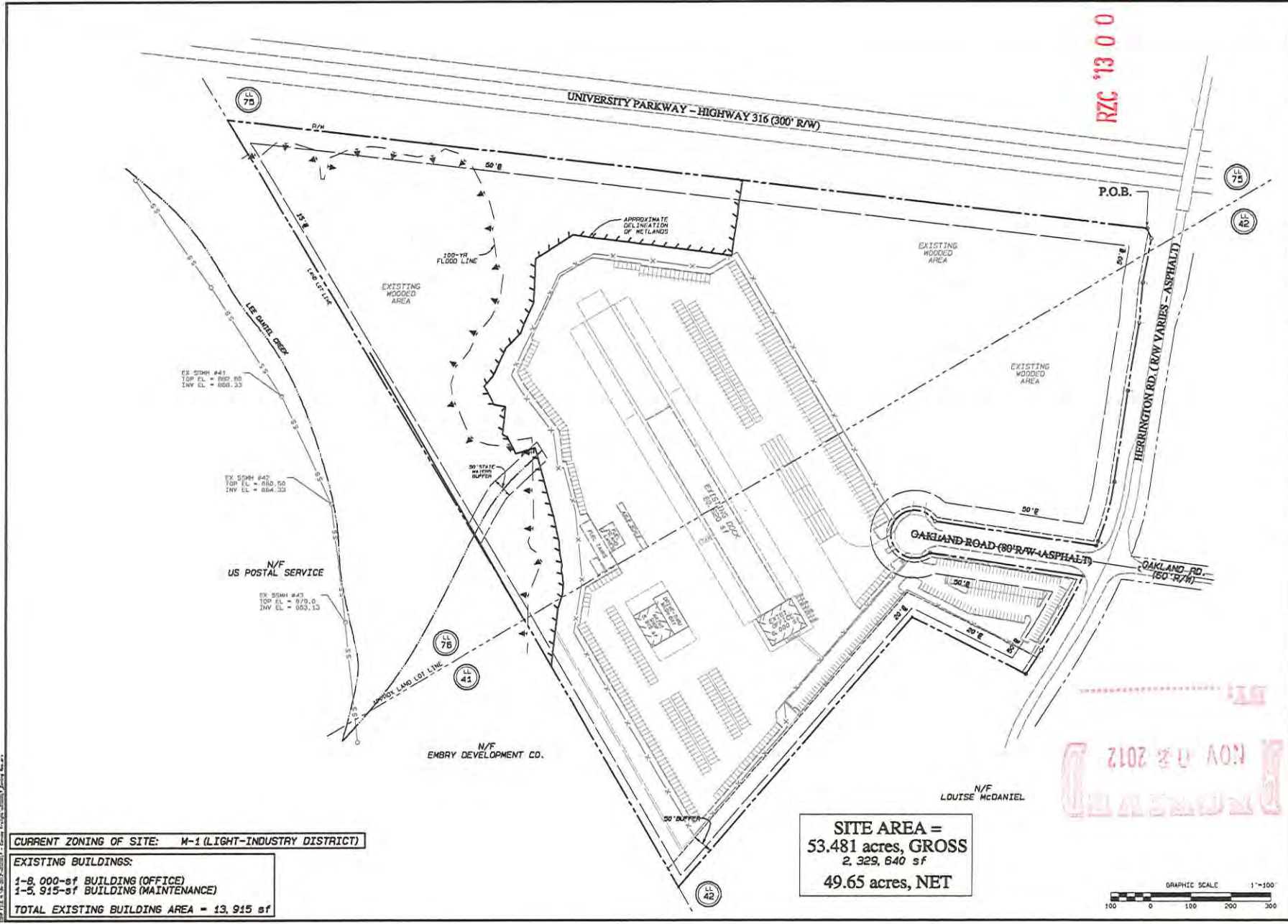
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distance of 2,305.00 feet to an aforementioned point at the intersection of the southerly right-of-way line for Georgia Hwy. 316 (300-foot right-of-way; a/ka University Parkway) with the westerly right-of-way line for Herrington Road (right-of-way varies), said point being the POINT OF BEGINNING.

Said parcel or tract of land contains 53.481 acres, or 2,329,640 square-feet, more or less.

RECORDED
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BY:

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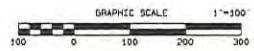
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CURRENT ZONING OF SITE: M-1 (LIGHT-INDUSTRY DISTRICT)

EXISTING BUILDINGS:
 1-8, 000-sf BUILDING (OFFICE)
 1-5, 915-sf BUILDING (MAINTENANCE)
TOTAL EXISTING BUILDING AREA = 13, 915 sf

SITE AREA =
53.481 acres, GROSS
2, 329, 640 sf
49.65 acres, NET



Urban Engineers, Inc.
 1504 MONTGOMERY DRIVE, N.E., SUITE 100
 ATLANTA, GEORGIA 30324
 PHONE: (404) 873-5514 / FAX: (404) 873-5477



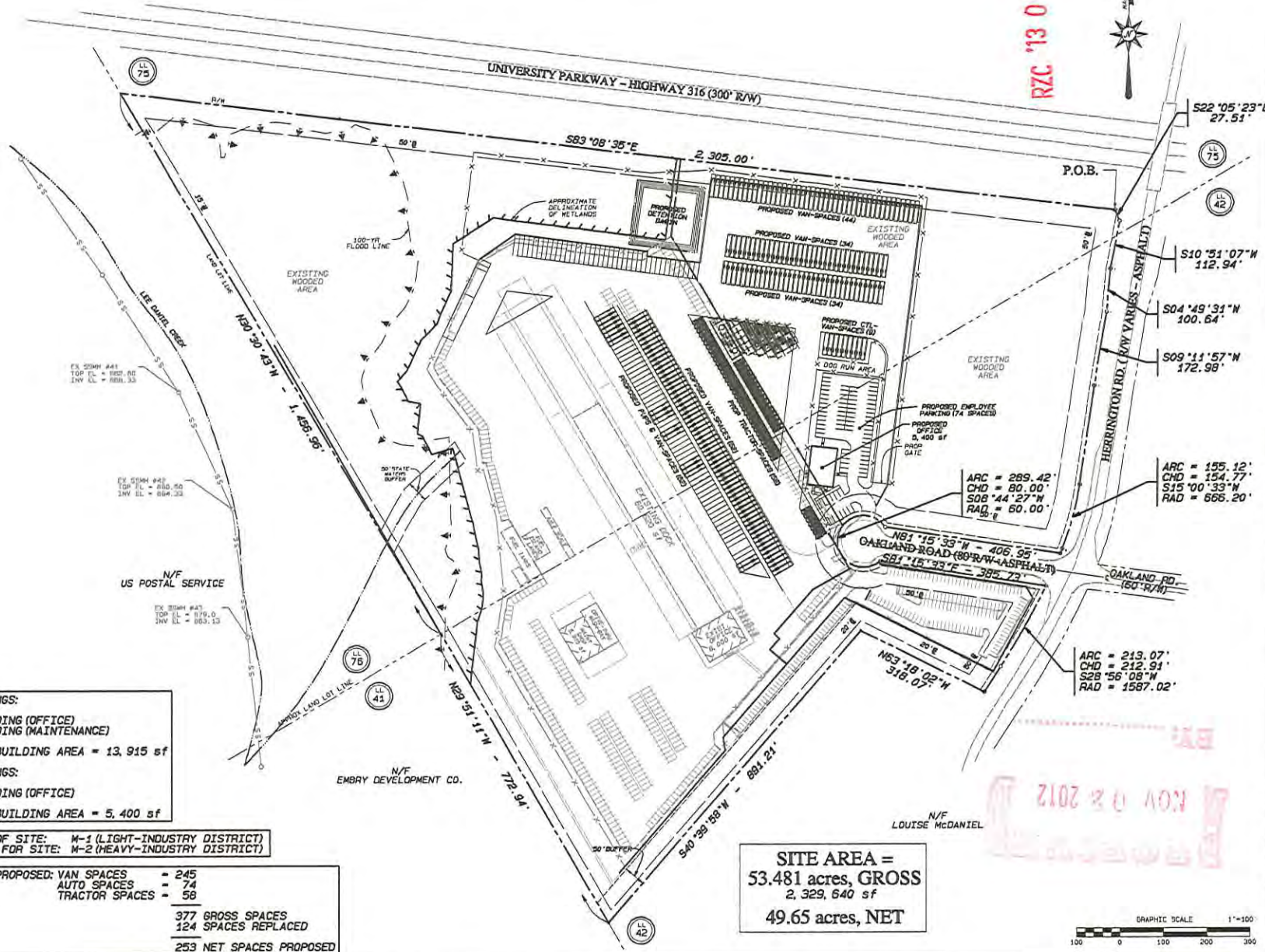
REVISIONS	
DATE	DESCRIPTION

EXISTING CONDITIONS
CONWAY TRANSPORTATION

PROJECT NO.: 8810-7	DATE: 10/26/12
LAND LOT(S): 42 & 75	
DISTRICT: 710	
COUNTY: GWINNETT	
SCALE: 1" = 100'	
DRAWING NO.:	

Z-1

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EXISTING BUILDINGS:
 1-8,000-sf BUILDING (OFFICE)
 1-5,915-sf BUILDING (MAINTENANCE)
 TOTAL EXISTING BUILDING AREA = 13,915 sf

PROPOSED BUILDINGS:
 1-5,400-sf BUILDING (OFFICE)
 TOTAL PROPOSED BUILDING AREA = 5,400 sf

CURRENT ZONING OF SITE: M-1 (LIGHT-INDUSTRY DISTRICT)
PROPOSED ZONING FOR SITE: M-2 (HEAVY-INDUSTRY DISTRICT)

PARKING SPACES PROPOSED: VAN SPACES = 245
 AUTO SPACES = 74
 TRACTOR SPACES = 58

377 GROSS SPACES
 124 SPACES REPLACED
 253 NET SPACES PROPOSED

SITE AREA =
 53.481 acres, GROSS
 2,329,640 sf
 49.65 acres, NET



Urban Engineers, Inc.
 1941 MONROE DRIVE, N.E. SUITE 100
 ATLANTA, GEORGIA 30329
 PHONE: (404) 873-5874 / FAX: (404) 873-5877



REVISIONS	DESCRIPTION

ZONING MAP
CONWAY TRANSPORTATION

PROJECT NO:	21212-7
LAND LOT(S):	42 & 75
DISTRICT:	EMORETT
COUNTY:	DEKALB
SCALE:	1" = 100'
DATE:	11/20/12

DRAWING NO.: **Z-2**

NOV 22 2012

REZONING APPLICANT'S RESPONSE

STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER

PURSUANT TO SECTION 1702 OF THE 1985 ZONING RESOLUTION, THE BOARD OF COMMISSIONERS FINDS THAT THE FOLLOWING STANDARDS ARE RELEVANT IN BALANCING THE INTEREST IN PROMOTING THE PUBLIC HEALTH, SAFETY, MORALITY OR GENERAL WELFARE AGAINST THE RIGHT TO THE UNRESTRICTED USE OF PROPERTY AND SHALL GOVERN THE EXERCISE OF THE ZONING POWER.

PLEASE RESPOND TO THE FOLLOWING STANDARDS IN THE SPACE PROVIDED OR USE AN ATTACHMENT AS NECESSARY:

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

Yes, the proposed rezoning is an expansion of an existing use, property is in an industrial park.

- (B) WHETHER A PROPOSED REZONING WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY:

No, a truck terminal already exists on the site. Nearby properties will not be affected.

- (C) WHETHER THE PROPERTY TO BE AFFECTED BY A PROPOSED REZONING HAS REASONABLE ECONOMIC USE AS CURRENTLY ZONED:

Yes, the subject property already exists as a truck terminal.

- (D) WHETHER THE PROPOSED REZONING WILL RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS:

The truck terminal is an existing use that does not cause an excessive or burdensome use of streets. The existing road network is adequate to handle traffic generated by this expansion.

- (E) WHETHER THE PROPOSED REZONING IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE LAND USE PLAN:

When the existing truck terminal was built, it was in conformity with the industrial intent of the 316 Corridor. The new comp plan designates it "Preferred Office".

- (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 REZONING:

This is an existing use that was zoned correctly at the time it was built. Ten years ago, truck terminals were changed to be part of M-2 zoning. The applicant wishes to expand the facility.



ORIGINAL

Weissman Nowack
Curry & Wilco 
ATTORNEYS AT LAW

G. Douglas Dillard
Direct Dial: (404) 926-4545
Direct Fax: (404) 926-4745
Email: dougd@wncwlaw.com

November 2, 2012

One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
Telephone: (404) 926-4500
Fax: (404) 926-4600
www.wncwlaw.com

Chairman Charlotte J. Nash
and Members of the Gwinnett County
Board of Commissioners
75 Langley Drive
Lawrenceville, GA 30046

Re: Application of Con-way Truck Terminal located at 1449 Herrington Road,
Parcel # R7042 006

Dear Chairman Nash and Members of the Board:

Con-way Freight Inc. owns a truck terminal located at 1449 Herrington Road, in an existing industrial park. The property is 53.481 acres in size. Currently there are two one story buildings on site, an 8,000 square feet office and a 5,915 square feet maintenance building. There are currently 400 parking spaces for tractor trailers, the front and back parts of the property are wooded.

When Con-way Freight built this facility in 1999, it was zoned M-1. At the time, M-1 was the appropriate zoning for truck terminals and the Georgia Highway 316 corridor was envisioned for industrial uses. Approximately 10 years ago, truck terminals were reclassified to the M-2, Heavy Industry zoning district, separating distribution facilities from freight terminals. With their current zoning, M-1 Light Industry, the Con-way truck terminal is a legal non-conforming use.

At this time, Con-way Freight would like to reconfigure and expand their truck terminal to accommodate 58 more tractor trailer parking spaces, 74 passenger car spaces and 245 van spaces; and build a one story 5,400 square feet office building. This will bring the total building square footage to 19,315 square feet on their 53.481-acre lot. They are not purchasing any property for this expansion; it will all be contained on their existing site. Because the zoning ordinance has been amended as it relates to truck terminals, the facility must now have M-2 zoning to accommodate their expansion.

At this time, Con-way Freight respectfully requests a rezoning to M-2 so that they may continue and expand their operations in Gwinnett County. Please see the attached rezoning application, site plans, and property tax payment documentation.

The hereinafter constitutional notice is now required by Georgia law.

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BY:

Chairman Charlotte J. Nash
and Members of the Gwinnett County
Board of Commissioners
November 2, 2012
Page 2



The portions of the Gwinnett County Zoning Ordinance, facially and as applied to the Property, which restrict the Property to any zoning classification, uses, or to any zoning district other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Gwinnett County Zoning Ordinance, facially and as applied to the Property, which restrict the Property to any zoning classification, uses, or to any zoning classification other than the classification as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would constitute an arbitrary and capricious act by the Gwinnett County Board of Commissioners without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by Gwinnett County to rezone the Property to the classification as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any rezoning of the Property 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 Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

The existing zoning classification on the subject property is unconstitutional as it applies to the property. This notice is being given to comply with the provisions of O.C.G.A. § 36-11-1 to afford the County an opportunity to revise the Property to a constitutional classification. If action is not taken by the County to rectify this unconstitutional zoning classification within a reasonable time, a claim will be filed in the Superior Court of Gwinnett County demanding just

WEISSMN, NOWACK, CURRY & WILCO, P.C.

Chairman Charlotte J. Nash
and Members of the Gwinnett County
Board of Commissioners
November 2, 2012
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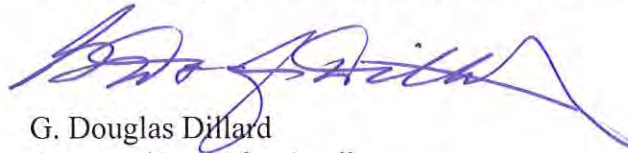
and adequate compensation under Georgia law for the taking of the Property, diminution of value of the Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

Accordingly, your Applicant respectfully requests that this Application be granted as requested by the Applicant.

If there are any questions about this rezoning request, you may contact me at 404-926-4545 or at dottyd@wncwlaw.com.

Sincerely,

WEISSMAN, NOWACK, CURRY & WILCO, P.C.



G. Douglas Dillard
Attorney/Agent for Applicant

GDD/drd

cc: Gwinnett County Planning Staff
Con-way Freight, Inc.



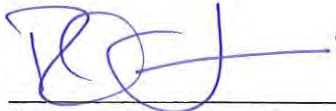
BY:

100284356

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REZONING 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.



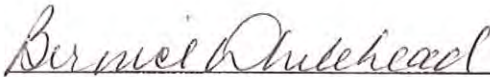
Signature of Property Owner

11.1.12

Date

Con-way Freight, Inc. By Rod Fracassi

Type or Print Name and Title



Signature of Notary Public

11/1/2012


Date

Notary Seal

BERNICE WHITEHEAD
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission expires January 7, 2017
Acting in the County of Rashelene

REZONING APPLICANT'S CERTIFICATION

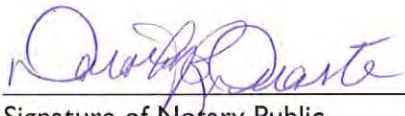
THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE BOARD OF COMMISSIONERS UNLESS WAIVED BY THE BOARD OF COMMISSIONERS. IN NO CASE SHALL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


Signature of Applicant

November 1, 2012
Date

G. Douglas Dillard, Attorney/Agent for Con-way Freight, Inc.

Type or Print Name and Title


Signature of Notary Public

11/1/12
Date



Notary Seal

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NOV 02 2012

BY:

CONFLICT OF INTEREST CERTIFICATION FOR REZONING

The undersigned below, making application for a Rezoning, 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.



11.1.12

CON-WAY FREIGHT INC
 BY: RODERICK J. FRACASSI
 ITS: Chief Counsel & Asst Secretary

SIGNATURE OF APPLICANT

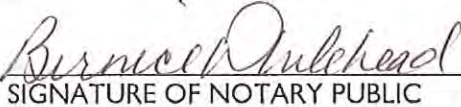
DATE

TYPE OR PRINT NAME AND TITLE

SIGNATURE OF APPLICANT'S
 ATTORNEY OR REPRESENTATIVE

DATE

TYPE OR PRINT NAME AND TITLE



11/1/2012

BERNICE WHITEHEAD
 NOTARY PUBLIC - STATE OF MICHIGAN
 COUNTY OF WAYNE

Commission expires January 7, 2017
 Acting in the County of Wayne NOTARY SEAL

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 Con-way Freight, Inc. by Rod Fracassi
 YOUR NAME

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

NAME AND OFFICAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or More)	DATE CONTRIBUTION WAS MADE (Within last two years)

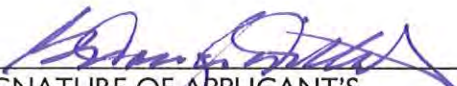

Attach additional sheets if necessary to disclose or describe all contributions.

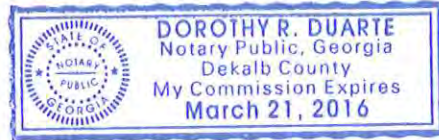
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		Con-way Freight, Inc. by Ron Fracassi
SIGNATURE OF APPLICANT	DATE	TYPE OR PRINT NAME AND TITLE
	11/1/12	G. Douglas Dillard
SIGNATURE OF APPLICANT'S ATTORNEY OR REPRESENTATIVE	DATE	TYPE OR PRINT NAME AND TITLE
	11/1/12	
SIGNATURE OF NOTARY PUBLIC	DATE	NOTARY SEAL



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 Con-way Freight, Inc. by Rod Fracassi
 YOUR NAME

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

NAME AND OFFICAL POSITION OF GOVERNMENT OFFICIAL	CONTRIBUTIONS (List all which aggregate to \$250 or More)	DATE CONTRIBUTION WAS MADE (Within last two years)

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

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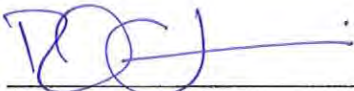
VERIFICATION OF CURRENT PAID PROPERTY TAXES FOR REZONING

THE UNDERSIGNED BELOW IS AUTHORIZED TO MAKE THIS APPLICATION. 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:
(Map Reference Number)

R 7042 006
----- " ----- " -----
District Land Lot Parcel



11.1.12

Signature of Applicant

Date

Con-way Freight, Inc. by Rod Fracassi

Type or Print Name and Title

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)

NAME

TITLE

DATE

2012 taxes for \$9117.90 are outstanding and due by 1/1/13.
All current year taxes must be paid prior to signing this
verification.

RZC '13 0 0 1


**GWINNETT COUNTY
TAX COMMISSIONER**