

**OCTOBER 18, 2022 ZONING HEARING**  
**“OTHER BUSINESS”**  
**COMMISSION DISTRICT 4**

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**ITEM 50**

**PURPOSE**

To consider a settlement of litigation for Galaxy Properties & Investment, Inc. regarding rezoning application Z-8 of 2021 in Land Lots 68 and 165 of the 18<sup>th</sup> District. The property is located on the east side of Hickory Trail, and on the southwest side of Veterans Memorial Highway.

**BACKGROUND**

The applicant's application for rezoning from NRC with stipulations to NRC with stipulations for retail and restaurants was denied by the Board of Commissioners on February 15, 2022. The applicant filed a lawsuit in Superior Court challenging the Board of Commissioners' decision. Prior to this case going to trial, meetings and discussions occurred and a proposed agreement was formulated, which is attached for review (See Garvis L. Sam's Letter dated August 16, 2022). The applicant is suggesting rezoning the property to the NRC zoning district for commercial uses, except for a list of prohibited uses including automotive oriented uses. The applicant is also willing to place a deed covenant on the property prohibiting automotive related uses. The Board of Commissioners' 2022 decision is attached along with the original zoning analysis.

**STAFF COMMENTS**

To be submitted.

**RECOMMENDATION**

The Board of Commissioners conduct a Public Hearing and consider the Settlement of Litigation proposal.

**ATTACHMENTS**

Zoning Decision and Original Staff analysis.

Proposed Settlement of Litigation letter and site plan.

**MINUTES OF ZONING HEARING  
COBB COUNTY BOARD OF COMMISSIONERS  
FEBRUARY 15, 2022  
PAGE 12**

**REGULAR AGENDA (CONT.)**

*By general consensus, Z-2 and SLUP-2 (Pat Spencer/U-Haul Company of Atlanta West) were heard concurrently but voted on separately.*

**Z-2**            **PAT SPENCER/U-HAUL COMPANY OF ATLANTA WEST** (William D. Brown, owner) requesting rezoning from **CRC** and **R-20** to **CRC** for a self-storage, truck and trailer rental, retail in land lots 789 and 790 of the 19<sup>th</sup> district. Property is located on the west side of Ernest Barrett Parkway, on the south and east side of Laura Brown Way (6652 Ernest Barrett Parkway).

**SLUP-1**       **PAT SPENCER/U-HAUL COMPANY OF ATLANTA WEST** (William D. Brown, owner) requesting a **Special Land Use Permit** for a self-storage, truck and trailer rental, retail in land lots 789 and 790 of the 19<sup>th</sup> district. Property is located on the west side of Ernest Barrett Parkway, on the south and east side of Laura Brown Way (6652 Ernest Barrett Parkway).

The public hearing was opened; Jeff Billya and Pat Spencer addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Sheffield, second by Birrell, to **deny** Z-2.

VOTE: **ADOPTED** 5-0

*Following the vote for Z-2, the following motion was made for the companion case, SLUP-1:*

MOTION: Motion by Sheffield, second by Birrell, to **deny** SLUP-1.

VOTE: **ADOPTED** 5-0

**Z-8**            **STREAMLINE DEVELOPMENT PARTNERS** (Galaxy Properties & Investment, Inc., owner) requesting rezoning from **NRC** to **NRC** for retail commercial, and restaurants in land lots 68 and 165 of the 18<sup>th</sup> district. Property is located on the east side of Hickory Trail, on the southwest side of Veterans Memorial Highway (Veterans Memorial Highway).

*After Mr. Pederson read Z-8 into the record, Chairwoman Cupid called for a brief recess from 9:58 a.m. until 10:10 a.m.*

The public hearing was opened; Garvis L. Sams, Jr., Ray Thomas (virtual speaker) and Robin Meyer (virtual speaker) addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Sheffield, second by Birrell, to **deny** Z-8.

VOTE: **ADOPTED** 5-0



## Community Development – Zoning Division

John Pederson – Division Manager

### **ZONING CASE**

Z-8-2022

### **SITE BACKGROUND**

Applicant	Streamline Development Partners
Phone	662-638-3698
Email	jdp@sldpllc.com
Representative Contact	Garvis L. Sams, Jr.
Phone	770-422-7016
Email	gsams@samslarkinhuff.com
Titleholder	Galaxy Properties & Investment, Inc.
Property Location	Located on the east side of Hickory Trail, on the southwest side of Veterans Memorial Highway
Address	Veterans Memorial Highway
Access to Property	Hickory Trail, Veterans Memorial Highway

### **QUICK FACTS**

Commission District	4-Sheffield
Current Zoning	NRC
Current Use of Property	Undeveloped, wooded lot
Proposed Zoning	NRC
Proposed Use	Retail commercial, Restaurants
Future Land Use	NAC
Site Acreage	3.804
District	18
Land Lot	68, 165
Parcel #	18016500240
Taxes Paid	Yes

### **FINAL ZONING STAFF RECOMMENDATIONS**

(Zoning staff member: Margie Vazquez)

Based on the analysis of this case, Staff recommends **APPROVAL** subject to the following:

## **Z-8-2022 DEPARTMENT COMMENTS – Zoning Division**

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1. Site plan received by the Zoning Division on December 2, 2021, with District Commissioner approving minor modifications.
2. Site Plan Review Arborist comments and recommendations;
3. Fire Department comments and recommendations;
4. Water and Sewer Division comments and recommendations;
5. Stormwater Management Division comments and recommendations; and
6. Department of Transportation comments and recommendations;
7. Adherence to the Mableton Parkway and Veterans Memorial Hwy design guidelines.





## Z-8 Aerial Map



This map is provided for display and planning purposes only. It is not meant to be a legal description.

0 100 200 Feet

Land Lot  
City Boundary

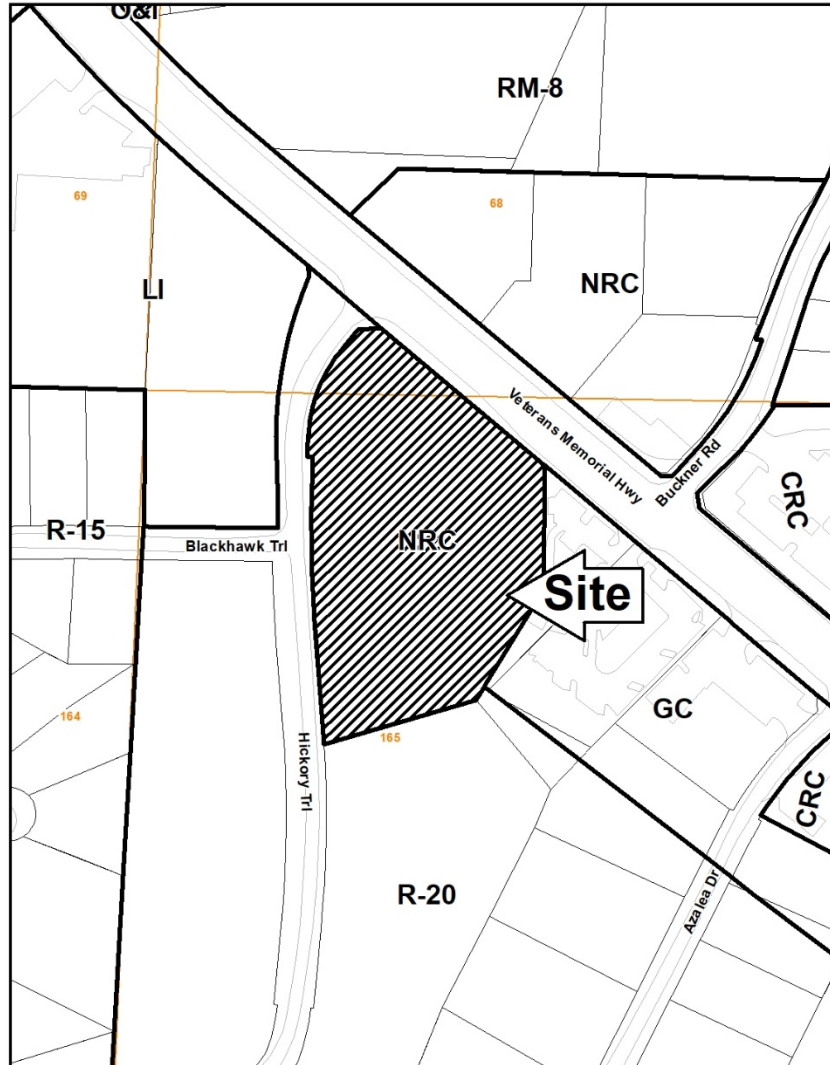
## Z-8-2022 DEPARTMENT COMMENTS – Zoning Division

### North

**Zoning:** NRC/Retail

**Future Land Use:** NAC

### Z-8 2022-GIS



This map is provided for display and planning purposes only. It is not meant to be a legal description.

0 100 200 Feet

□ Zoning Boundary  
■ City Boundary

### WEST

**Zoning:** LI and R20/wooded lots

**Future Land Use:** LDR

### EAST

**Zoning:** NRC and GC/retail and restaurant

**Future Land Use:** NAC

### SOUTH

**Zoning:** R-20/Single-family homes

**Future Land Use:** MDR

## **Z-8-2022 DEPARTMENT COMMENTS – Zoning Division**

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### **Current zoning district for the property**

The NRC district is established to provide locations for convenience shopping facilities which are on properties delineated within a neighborhood activity center, community activity center or regional activity center as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990. These convenience shopping facilities should have retail commercial uses that have a neighborhood-oriented market and which supply necessities that usually require frequent purchasing with a minimum of consumer travel. Areas zoned for the NRC district should be located at or near an intersection within the center of a neighborhood activity center as opposed to the edge of a neighborhood activity center. The NRC district may also be used to provide step-down nodal zoning away from more intensive commercial uses within a community activity center or a regional activity center. The scope at which properties are developed within the NRC district should reflect their relatively small neighborhood service area. Additionally, properties developed within the NRC district should be architecturally compatible with other nonresidential uses permitted within a neighborhood activity center as defined by the comprehensive plan and the neighborhood residences they serve.

### **Requested zoning district for the property**

The NRC district is established to provide locations for convenience shopping facilities which are on properties delineated within a neighborhood activity center, community activity center or regional activity center as defined and shown on the Cobb County Comprehensive Plan: A Policy Guide, adopted November 27, 1990. These convenience shopping facilities should have retail commercial uses that have a neighborhood-oriented market and which supply necessities that usually require frequent purchasing with a minimum of consumer travel. Areas zoned for the NRC district should be located at or near an intersection within the center of a neighborhood activity center as opposed to the edge of a neighborhood activity center. The NRC district may also be used to provide step-down nodal zoning away from more intensive commercial uses within a community activity center or a regional activity center. The scope at which properties are developed within the NRC district should reflect their relatively small neighborhood service area. Additionally, properties developed within the NRC district should be architecturally compatible with other nonresidential uses permitted within a neighborhood activity center as defined by the comprehensive plan and the neighborhood residences they serve.

### **Summary of the applicant's proposal**

The applicant is requesting to rezone to the NRC (neighborhood retail commercial) district to develop a commercial retail and restaurant center on a 3.8-acre site. The two (2) buildings will consist of a 6,170 square foot restaurant and a 7,430 sq. ft. building to be utilized for retail space. The hours of operation will be 7:00 am until 7:00 pm for the retail space and 6:00 am – 11:00 pm for the restaurant.



## **Z-8-2022 DEPARTMENT COMMENTS – Zoning Division**

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### **Non-residential criteria**

Proposed # of buildings: 2

Proposed # of stories: n/a

Total sq. footage of development: 13,600

Floor area ratio: 0.08

Square footage per acre: 3,575

Required parking spaces: 99

Proposed parking spaces: 102

Acres in floodplain or wetlands: None

Impervious surface shown: 58%

### **Are there any zoning variances?**

No.

12/15/21

**CCFMO is acceptable to the proposed zoning case as presented. A full review will be conducted when a full set of plans are submitted**

**Approval based on Professional Engineer-stamped plans that signify overall plan conformance to all Georgia State and Cobb County Codes. Design Professional and Developer maintain the sole responsibility for the design and for correcting all errors, omissions, problems, and code violations (if any) exposed during construction AFTER authorization by Cobb County.**

**IFC 510- EMERGENCY RESPONDER RADIO COVERAGE:**

New buildings are required to provide radio coverage for emergency responders per the International Fire Code. Testing is required by a third party and when deemed necessary amplification systems are required before the building will be issued a certificate of occupancy. This serves as an early notification to owners and developers for budgeting purposes.

**FIRE DEPARTMENT ACCESS:**

ACCESS: Fire apparatus access roads shall extend to within 150 feet of all portions of the facility or any portion of the exterior wall of the first floor (State Modifications IFC 503.1 2018 Edition and Cobb County Development Standards 402.11).

All access roads shall meet the American Association of State and Highway Transportation Officials (AASHTO) design manual live load standard HS20 (75,000 lbs.) with an unobstructed width of not less than 20 feet, 25 foot inside radius, 50 foot outside turning radius and unobstructed vertical clearance of not less than 13 feet 6 inches. (Cobb County Development Standards 402.11)

Maximum slope of the access road in reference to the apparatus is 10% Front to Back and 5% Side to Side. Maximum grade of roadways leading to Fire Access roads refer to the Cobb County Development Standard Section 400: 14% for Non-Residential. Maximum angle of departure is 8.5%.

Dead-end access roads more than 150 feet shall be provided with a turn-around (IFC Chapter-5, 120-3-3 Rules and Regulations, CCDS Section-401 & 402). Refer to APPENDIX-D for dimensional criteria for turn-arounds in commercial developments.

(continued)

**SPECIFIC FIRE DEPARTMENT ACCESS (INTERNATIONAL FIRE CODE APPENDIX D):**

Aerial apparatus access shall be required for all structures over 30 feet in height measured from the lowest level of fire department access to the ceiling height of the highest occupied floor level. Aerial fire apparatus access roads shall be a minimum width of 24 feet maximum of 40 feet from the structure and be positioned parallel to one entire side of the building. No overhead utility and power lines shall be located within the aerial fire apparatus access. (Cobb County Development Standards 401.8.2.1)

**COMMERCIAL AND INDUSTRIAL DEVELOPMENTS**

**D104.1 Buildings exceeding three stories or 30 ft in height.** A minimum of two remote means of fire department access roads must be provided

**D104.2 Buildings exceeding 62,000 square feet in area.** A minimum of two remote means of fire department access roads must be provided

**Exception:** Buildings not exceeding 124,000 sq ft and protected with an approved automatic sprinkler system a single fire department access road is permitted

**D104.3 Remoteness.** Where two fire department access road are required, they must be placed a distance apart equal to not less than one half the length of the maximum overall diagonal dimension of the lot or area to be served

**MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENTS****D106.1 Projects having more than 100 dwelling units.**

Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.

**Exception:** Projects having up to 200 dwelling units may have a single approved fire apparatus access road when all buildings, including nonresidential occupancies, are equipped throughout with approved automatic sprinkler systems installed in accordance with Section 903.3.1.1 or 903.3.1.2

**CERTIFICATE OF OCCUPANCY:**

Plans must be submitted to the Cobb County Fire Marshal's Office to initiate the Certificate of Occupancy process.

(continued)

**FIRE HYDRANT:**

The maximum distance of a hydrant to the most remote portion of a structure shall be 500 feet. Distance shall be measured around the structure and from the fire apparatus access road. (Cobb County Development Standards 410.5.2)

## SECTION D103

## MINIMUM SPECIFICATIONS

**D103.1 Access road width with a hydrant.**

Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet, exclusive of shoulders (see Figure D103.1 in Appendix D).

**FIRE PROTECTION:**

Automatic sprinkler protection must be provided where mandated by the applicable codes.

**Josh Davis**

(770) 528-8161

[Josh.davis@cobbcounty.org](mailto:Josh.davis@cobbcounty.org)



## **Z-8-2022 DEPARTMENT COMMENTS – Site Plan Review (Arborist)**

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**12/21/2021**

**The submitted site plan does not appear to satisfy the minimum parking lot tree standards of the Cobb County Tree Ordinance. Additional parking lot peninsulas may be required, as determined by the Cobb County Arborist during the Site Plan Review process.**

## **Z-8-2022 DEPARTMENT COMMENTS – Cemetery Preservation**

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No comment

## **Z-8-2022 DEPARTMENT COMMENTS – School System**

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**2/1/22**

Approval of this petition will not have an impact on the enrollment of schools.

**12/29/2021**

### **Project Information**

1. Address: Veterans Memorial Parkway
2. District: 4
3. Existing Zoning: NRC                      Existing Allowable Impervious Coverage: 70%
4. Proposed Zoning: NRC                      Allowable Future Impervious Coverage: 70%

### **Site Data**

1. Flood Damage Prevention Designated Flood Hazard: No
2. Drainage Basin: Liberty Hill Branch
3. State Stream Buffers: No
4. County Stream Buffer Ordinance: No
5. Wetlands: No

### **Comments and Recommendations**

*These comments and recommendations are typically required at the time of plan review and permitting.*

1. Stormwater discharges must be controlled not to exceed the existing capacity of the downstream storm drainage system including drainage swales and roadside ditches.
2. Substantially mitigate any effects of concentrated stormwater discharges onto adjacent properties. Level spreaders may be required to disburse the stormwater discharge.
3. Developer must secure drainage easement(s) to receive concentrated discharges where none naturally exist downstream.
4. Stormwater discharges through an established residential neighborhood downstream.
5. Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on existing downstream drainage system(s). Including hydrologic routing through the downstream detention pond or lake.
6. At the time of plan review and permitting provide comprehensive hydrology/stormwater controls to include development of out- parcels.
7. Any spring activity discovered must be addressed by a qualified registered geotechnical professional engineer (PE) at the expense of the owner/developer.
8. Structural fill must be placed under the direction of a qualified registered geotechnical engineer (PE) at the expense of the owner/developer.
9. At the time of plan review calculate and provide percentage of impervious coverage for the project site. Impervious calculations for residential subdivision design shall be based the maximum allowable percentage per the zoning category plus additional impervious areas including but not limited to roads, sidewalks and amenity areas.



## **Z-08-2022 DEPARTMENT COMMENTS – Stormwater Management**

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(continued)

10. The proposed onsite storm drain system and stormwater management facility is considered private. All annual inspections, maintenance and repairs are the responsibility of the property owner. A stormwater facility maintenance agreement and access easement will be required at the time of the land disturbance permit with the Cobb County Stormwater Management Division.
11. As of January 1, 2021, Stormwater Runoff Reduction is required per the Georgia Stormwater Management Manual (GSMM); unless it is determined to be infeasible during plan review. If it is determined to be infeasible additional water quality designs will be required in accordance with the GSMM.
12. At the time of plan review all Erosion Control Best Management Practices (BMP's) shall be designed in accordance with the "Manual for Erosion and Sediment Control in Georgia".

12/29/2021

**Cobb 2040 Comprehensive Plan:** The subject tract is within the Neighborhood Activity Center (NAC) future land use category. The purpose of the NAC category is to provide for areas that serve neighborhood residents and businesses. Typical land uses for these areas include small offices, limited retail and grocery stores.

**Comprehensive Plan Designation:**☒ Consistent☐ Inconsistent

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**House Bill 489 Intergovernmental Agreement Zoning Amendment Notification**

Is the proposal within one-half mile of a city boundary?

☐ Yes☒ No

If yes, which City:

Was the city notified?

☐ Yes☐ No☒ N/A

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**Specific Area Policy Guidelines:**☐ Yes☒ No

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**Masterplan/ Corridor Study:**

South Cobb Implementation Strategy

☒ Yes☐ No

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**Design guidelines area?**☒ Yes☐ NoIf yes, design guidelines area: Mableton Pkwy and Veterans Memorial Hwy Design Guidelines

Does the proposal plan comply with the design requirements?

☐ Yes☒ No☐ N/A

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**Is the property within an Opportunity Zone?**

*(The Opportunity Zone is an incentive that provides \$3,500 tax credit per job in eligible areas if two or more jobs are being created. This incentive is for new or existing businesses)*

☐ Yes☒ No

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**Is the property within an Enterprise Zone?**

*(The South Cobb Enterprise Zone is an incentive that provides tax abatements and other economic incentives for qualifying businesses locating or expanding within designated areas for new jobs and capital investment)*

☒ Yes☐ No

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**Is the property eligible for the Façade Improvement Program?**

*(The Façade Improvement Program is an incentive for owners and tenants to enhance the appearance of buildings. The CDBG program provides the funding. Properties must be either on the current inventory of redevelopment sites or in a corridor study area and be in a census tract with at least 51% low and moderate income. The program serves to improve the economic viability of these areas.)*

☐ Yes☒ No

(continued)

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**Is the property eligible for incentives through the Commercial and Industrial Property Rehabilitation Program?**☒ Yes ☐ No

*(The Commercial and Industrial Property Rehabilitation Program is an incentive that provides a reduction in ad valorem property taxes for qualifying redevelopment in eligible areas)*

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**Note: For more information on incentives, please call the Community Development Agency- Economic Development Division at 770-528-2018 or find information online at [www.cobbcounty.org/econdev](http://www.cobbcounty.org/econdev).**

**Special District**

Is this property within the Cumberland Special District #1 (hotel/motel fee)?

☐ Yes ☒ No

Is this property within the Cumberland Special District #2 (ad valorem tax)?

☐ Yes ☒ No

Is this property within the Six Flags Special Service District?

☐ Yes ☒ No

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**Dobbins Air Reserve Base Zones**

Is the property within the Dobbins Airfield Safety Zone?

☐ Yes ☒ No

Is the property within the Clear Zone (CZ)?

☐ Yes ☒ No

Is the property within 3000' of Dobbins ARB?

☐ Yes ☒ No

Is the property within the Accident Potential Zone (APZ I)?

☐ Yes ☒ No

Is the property within the Accident Potential Zone II (APZ II)?

☐ Yes ☒ No

Is the property within the Noise Zone?

☐ Yes ☒ No

Is the property within the Bird/Wildlife Air Strike Hazard Area (BASH)?

☐ Yes ☒ No

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**Historic Preservation**

After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps, staff finds that no known significant historic resources appear to be affected by this application.

## Z-8-2022 DEPARTMENT COMMENTS – Water and Sewer

12/29/21 – DATE OPTIONAL

### Water comments:

At development: ☒ YES ☐ NO

Fire flow test required: ☒ YES ☐ NO

Size and location of existing water main(s): 8" in Veterans Memorial Hwy, 6" in Hickory Trail

Additional water comments:

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### Sewer comments:

In the drainage basin: ☒ YES ☐ NO

At development: ☐ YES ☒ NO

Approx. distance to nearest sewer: 80' SE in Veterans Memorial Hwy

Estimated waste generation (in G.P.D.): Average daily flow = 640

Peak flow = 1,600

Treatment plant: South Cobb WRF

Plant capacity: ☒ Yes ☐ NO

Projected plant availability: ☐ 0-5 years ☐ 5-10 years ☒ over 10 years

Off-site easement required: ☐ YES\* ☒ NO

Line capacity study required: ☐ YES ☒ NO

Letter of allocation issued: ☐ YES ☒ NO

Septic tank recommended by this department: ☐ YES ☒ NO

Subject to Health Department approval: ☐ YES ☒ NO

\*If off-site easements are required, the developer/owner must submit easements to CCWS for review and approval as to form and stipulations prior to the execution of easements by the property owners. All easement acquisitions are the responsibility of the developer/owner.

Additional sewer comments:

Note: These comments only reflect what facilities were in existence at the time of this review. Developer may be required to install/upgrade water mains based on fire flow test results or Fire Department code. This will be addressed in the Plan Review process. The developer/owner will be responsible for connecting to the existing county water and sewer systems, installing and/or upgrading all outfalls & water mains, obtaining onsite and/or offsite easements, and dedication of onsite and/or offsite water and sewer to Cobb County as may be required. Rezoning does not guarantee water/sewer availability or capacity unless so stated in writing by the Cobb County Water System.



Roadway	Roadway classification	Speed limit (MPH)	Jurisdictional control	Min. R.O.W. requirements
Veterans Memorial Highway	Arterial	45	Georgia DOT	100'
Hickory Trail	Local	25	Cobb County	50'

Roadway	Location	Average daily trips	Level of service
Veterans Memorial Highway	West of Pilot Mountain Way	24,400	C
Hickory Trail	NA	NA	NA

*Based on 2019 AADT counting data taken by GDOT, as published on their website, for Veterans Memorial Highway.*

*Planning Level of Service based on available Average Daily Trips using GRTA guideline thresholds. Classification thresholds for LOS A and LOS B are not available for arterial roads from this data source.*

*LOS C or D is acceptable based on GDOT Design Policy Manual criteria.*

### Comments and observations

Veterans Memorial Highway is classified as an arterial road and according to the available information the existing right-of-way does meet the minimum requirements for this classification.

Hickory Trail is classified as a local road and according to the available information the existing right-of-way does meet the minimum requirements for this classification.

### Recommendations

1. Recommend GDOT permits for all work that encroaches upon State right-of-way.
2. As necessitated by this development, recommend Veterans Memorial Highway access to include deceleration lane. A deceleration lane is shown on the site plan received December 3, 2021. Recommend final location and design be determined during plan review, subject to GDOT and Cobb DOT approvals.
3. Recommend applicant verify that minimum intersection sight distance is available for the Veterans Memorial Drive driveway, and if it is not, implement remedial measures, subject to the Department and GDOT's approval, to achieve the minimum requirement of 630'.
4. Recommend applicant verify that minimum intersection sight distance is available for the Hickory Trail driveway, and if it is not, implement remedial measures, subject to the Department's approval, to achieve the minimum requirement of 280'.

(continued)

5. Recommend installation of a striped bulb-out island to separate proposed development drive with existing deceleration lane for the adjacent development to the east. Recommend final location and design be determined during plan review, subject to GDOT and Cobb DOT approvals.
6. Recommend replacing disturbed curb, gutter, and sidewalk along the Veterans Memorial Highway frontage.
7. Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

## **Z-8-2022 DEPARTMENT COMMENTS – Zoning Division**

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### **STAFF ANALYSIS**

Per section 134-122 of the Official Code of Cobb County, below is a written zoning analysis relating to the following (question in bold; the answer is not bold):

**A. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;**

It is Staff's opinion that the applicant's rezoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property. The property is in an area with similar commercial and retail uses.

**B. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;**

It is Staff's opinion that applicant's rezoning proposal will not affect the existing use or usability of adjacent or nearby property.

**C. Whether the zoning proposal will result in a use which will or could cause an excessive burdensome use of existing streets, transportation facilities, utilities, or schools;**

It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.

**D. Whether the zoning proposal is in conformity with the policies and intent of the comprehensive plan;**

It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the Cobb County Comprehensive Plan, which delineates this property to be within the Neighborhood Activity Center, NAC future land use category. This request is consistent with the NAC land use designation.

**E. 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 zoning proposal;**

It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for approving the applicant's rezoning proposal. This area contains a mixture of residential, retail and office use.

## **Z-8-2022 DEPARTMENT COMMENTS – Zoning Division**

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**The staff analysis and recommendation made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.**

Application No. z-

PC: Feb. 1, 2022

BOC: Feb. 15, 2022

## Summary of Intent for Rezoning

.....  
**Part 1. Residential Rezoning Information (attach additional information if needed) \***

- a) Proposed unit square-footage(s): N/A
- b) Proposed building architecture: \_\_\_\_\_
- c) List all requested variances: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

.....  
**Part 2. Non-residential Rezoning Information (attach additional information if needed)**

- a) Proposed use(s): Commercial Retail & Restaurant(s)
- b) Proposed building architecture: As shown on Renderings/elevations  
(to be provided under separate cover)
- c) Proposed hours/days of operation: 7 a.m. - 7 p.m. - Retail; 6 a.m. - 11 p.m. Restaurant(s)
- d) List all requested variances: As shown on submitted site plan.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

.....  
**Part 3. Other Pertinent Information (List or attach additional information if needed)**

See attached

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

.....  
**Part 4. Is any of the property included on the proposed site plan owned by the Local, State, or Federal Government?**

(Please list all Right-of-Ways, Government owned lots, County owned parcels and/or remnants, etc., and attach a plat clearly showing where these properties are located). None known at this time.

\_\_\_\_\_

\_\_\_\_\_

\* Applicant specifically reserves the right to amend any information set forth in the Summary of Intent for Rezoning, or any other portion of the Application for Rezoning, at any time during the Rezoning process.

## Streamline Development Partners – Summary of Intent for Rezoning

### Part 3. Other Pertinent Information (additional information)

The Subject Property was included as part of a 16.05 acre assemblage which was rezoned to NRC in 2016 (Z-71) with an attendant SLUP for a private school. Because of the intensity of the proposed private school, its scale and size of the facility, the rezoning was approved use specific. The private school never closed on the assembled properties. Since that time the Subject Property has lain idle and undeveloped. The property is located within a Neighborhood Activity Center ("NAC") FLUM designation on 3 sides and the property located to the south of the Subject Property is designated as MDR, but which is mostly undeveloped. Along Veterans Memorial Highway the existing zonings include GC, CRC, NRC and LI. The proposed use will provide a step-down type use along Veterans Memorial Highway and will supply relatively small neighborhood services with a minimum of consumer travel.



**ZONING IMPACT STATEMENT FOR THE**  
**REZONING APPLICATION**  
**OF STREAMLINE DEVELOPMENT PARTNERS**

COMES NOW, STREAMLINE DEVELOPMENT PARTNERS, and, pursuant to §134-121(a)(7) of the Cobb County Zoning Ordinance, files this Zoning Impact Statement, as follows:

- A. The zoning proposal will permit a use of the property which is suitable in the context of development and existing zonings and uses located along this section of the Veterans Memorial Highway Corridor. To the east of the Subject Property along Veterans Memorial Highway is developed as a Dunkin' Donuts, McDonalds restaurant, and is otherwise contiguous to commercially zoned and utilized properties which run along Veterans Memorial Highway from Hickory Trail to Azalea Drive and beyond.

Along the southern boundary of the Subject Property there is undeveloped R-20 zoned property which is located within an area designated as Medium Density Residential on the FLUM. To the west, across Hickory Trail, are zoned and utilized LI properties. Directly across Veterans Memorial Highway is currently being development for a shopping center, including Dollar Tree Store, Guthrie's Restaurant, Extra Space Storage and other retail establishments.

This proposal will provide a premier retail commercial auto accessory and supply business and a restaurant(s), both of which will supply necessities and will be supported by the quantity of nearby industrial-type, commercial and residential uses within this sub-area of Cobb County.

- B. The zoning proposal will have no adverse effect or impact upon the existing uses or usability of adjacent or nearby properties, the preponderance of which are commercial, industrial-type and residential uses. A preponderance of the properties located along the north and south sides of this section of Veterans Memorial Highway are commercially zoned and utilized.
- C. The Subject Property to be affected by the zoning proposal has no reasonable economic use as currently zoned in that it was rezoned specifically for the use of a private school as part of Z-71 and SLUP-10 of 2016, precluding any other use on the property.
- D. The zoning proposal will have no adverse impact upon the existing County infrastructure including, but not limited to, existing streets, transportation facilities, utilities or schools.
- E. The zoning proposal is consistent with those uses and purposes contemplated under Cobb County's Comprehensive Land Use Plan and Future Land Use Map with the Subject Property lying within a NAC designation.
- F. There is no substantial relationship between the existing zoning classification of the Conditional NRC with a SLUP for a private school only which limits the property in terms of its present utilization and the public health, safety and general welfare. Additionally, considered in the context of development along the Veterans Memorial Highway Corridor, there are no established land use planning principles or political considerations which would have an adverse effect upon this proposed rezoning.



Respectfully submitted, this the 2<sup>nd</sup> day of December, 2021.

SAMS, LARKIN & HUFF, LLP

By: 

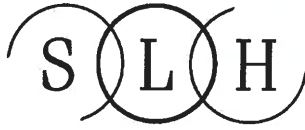
GARVIS L. SAMS, JR.

Attorney for Applicant

Streamline Development Partners

Ga. Bar No. 623950





GARVIS L. SAMS, JR.  
JOEL L. LARKIN  
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FACSIMILE

August 16, 2022

**(PROPOSED SETTLEMENT OF LITIGATION  
PURSUANT TO MEDIATION BETWEEN THE PARTIES & COUNSEL)**

**VIA EMAIL:**

Brian Scott Johnson, Senior Associate County Attorney, Esq.  
100 Cherokee Street, Suite 595  
Marietta, GA 30090

Re: Galaxy Properties & Investment, Inc., et al. v. Cobb County, Georgia, et al.;  
Cobb Superior Court Civil Action File No. 221-01780-68

Application of Streamline Development Partners ("Galaxy Properties &  
Investment, Inc.") to Rezone a 3.804 Acre Tract from Conditional NRC (School  
Use Only) to NRC (No. Z-8 [2022])

Dear Brian:

As you know, this firm represents Galaxy Properties & Investment, Inc. ("Galaxy") regarding the above-captioned litigation and the underlying rezoning from which the litigation emanates from a denial of the rezoning. The above-case was tentatively settled by the District Commissioner at a mandatory Mediation Conference which occurred on July 28, 2022.

With respect to the foregoing, it is my understanding from our discussions, that this matter will ultimately take the form of an "Other Business Application" if the Board of Commissioners ("BOC") in Executive Session ratify the tentative Agreement reached through Mediation.

It is my understanding that this matter will be discussed within the context of an Executive Session on August 22, 2022. In that regard, the submission of this letter (which embodies the tentative agreement reached through Mediation) is being sent to and received by you in a timely fashion in order to constitute an "Agenda Item" for that BOC Executive Session wherein the BOC can discuss personnel matters, the potential acquisition or sale of real estate and/or cases in litigation.



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Brian Johnson, Senior Associate County Attorney, Esq.  
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The property at issue ("Subject Property") consists of an approximate 3.804 acre tract of land which is located on the south side of Veterans Memorial Highway ("VMH") and the east side of Hickory Trail. The Subject Property is within an area denominated as a Neighborhood Activity Center ("NAC") under Cobb County's Future Land Use Map ("FLUM") which contemplates the type of uses proposed by Galaxy.

The Subject Property was originally rezoned as a part of a 16.05 acre assemblage which formed the underlying subject matter of an Application for Rezoning (No. Z-71 [2016]) and a Special Land Use Permit (SLUP No. 10 [2016]) which were collectively approved by the Board of Commissioners on August 16, 2016. However, the granting of the Rezoning and SLUP were exclusively and specifically for the purposes of the construction and development of a private school and attendant campus, including a building 96,495 square feet in size with associated parking, outside classroom areas, sports fields, et. al. The private school never closed on nor did it purchase the assembled properties and the Rezoning did not include any type of "reversionary" language.

Since the action taken by the BOC in 2016, the Subject Property has lain idle and undeveloped. Although, in July of 2021, a Rezoning Application seeking to develop 1.1 acres of the Subject Property for a retail auto parts and supply company was "Withdrawn Without Prejudice" (No. Z-47 [2021]). In the original and in the subsequent rezoning/entitlement process, Galaxy requested a rezoning for the purposes of the construction, buildout and development of a restaurant and/or retail uses analogous to those uses discussed during the pendency of the Application for Rezoning and for an AutoZone store with co-utilization of a single point of ingress/egress. The professional staff in both the Planning and Zoning Divisions of the Community Development Agency of Cobb County, recommended that the application be approved; however, it was not approved and was, in fact, denied in its totality.

As one of the required components of litigation, the parties and counsel scheduled a mediation and agreed upon a mediator wherein the case was tentatively settled as mentioned above subject to the following stipulations which shall become conditions and a part of the grant of the Other Business Application/Settlement of Litigation and which shall be binding upon the Subject Property thereafter. The referenced Settlement of Litigation Stipulations are as follows, to wit:

1. The stipulations and conditions set forth within the body of this proposed Settlement of Litigation shall replace and supersede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the Subject Property which constitutes the subject matter of the above-captioned Application.



**VIA EMAIL:**

Brian Johnson, Senior Associate County Attorney, Esq.

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2. The settlement reached between the parties, by and through Counsel, anticipates the development of the Subject Property under the Neighborhood Retail Commercial (“NRC”) zoning district for all permitted uses thereunder except for those which are hereinafter expressly and conditionally set out.
3. The architectural style and composition of the buildings shall be consistent with the Mableton Parkway and VMH Design Guideline, adopted by Cobb County in 2017. With respect to architectural considerations and constructions, as well as final approval of a Revised Site Plan, which shall be subject to review and ultimate approval by the District Commissioner.
4. The proposed operating hours for the permitted uses under the NRC zoning district, except for those hereinafter expressly prohibited, shall be from 7:00 a.m. until Midnight, Monday through Saturday and on Sundays from 9:00 a.m. until 10:00 p.m.
5. Construction hours concerning the development of the buildings and related infrastructure on the Subject Property shall be from 8:00 a.m. until 6:00 p.m., Monday – Friday; from 9:00 a.m. until 4:00 p.m. on Saturdays; and, there shall be no construction on the Subject Property on Sundays.
6. The following otherwise permitted uses under the NRC district shall be expressly and conditionally prohibited, as follows, to wit:
  - a. Automotive or truck sales or rentals.
  - b. Full-service gas stations.
  - c. Automotive paint and/or body repair shops.
  - d. Billiards and/or pool halls.
  - e. Bus stations.
  - f. Recycling collection locations.
  - g. Pain clinics and/or pain management clinics.
  - h. Rest homes, personal care homes.
  - i. Rooming homes or boardinghouses.



**VIA EMAIL:**

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- j. Self-service laundry facilities.
- k. Sale of adult-themed books, magazines or materials.
- l. Gaming arcade machines except those associated with legally-sanctioned uses such as the Georgia Lottery.
- m. Pawn shops and check cashing establishments.
- n. Tattoo or body piercing parlors and any business which principally features sexually explicit products or drug related paraphernalia.
- o. The sale of knives, guns or weapons.
- p. Light automotive or any type of vehicular repair.
- q. Bail bondsmen's offices.
- r. Gold and precious metal sales.
- s. Flea markets.
- t. Vehicle inspections/emissions stations.
- u. Drive-thru window (subject to determination to be made by the District Commissioner between "fast-casual and fast-food").
- v. Liquor stores.

In addition to the foregoing, the Subject Property shall be "Deed Restricted" in order to prohibit any type of business enterprise which includes the sale, storage, maintenance, supply, merchandizing of vehicular related businesses of any kind whatsoever for the maximum term allowed by law; embodied in a document reflecting same; and, recorded as a part of the Deed Records of the Superior Court of Cobb County which shall be submitted to said Deed Records within forty-five (45) days of the approval of this Settlement of Litigation and/or Other Business Application; and which will "run" with the Subject Property's chain of title.



**VIA EMAIL:**

Brian Johnson, Senior Associate County Attorney, Esq.  
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Within five (5) days subsequent to the recordation of the deed restrictions as aforementioned, Galaxy shall cause to be filed a Dismissal of its litigation against Cobb County, et al.

7. Signage shall be ground-based, monument-style and consistent with provisions of the Cobb County Sign Ordinance and Design Guidelines adopted by the County in 2017. Additionally, there shall be identification signage on the buildings as allowed by Code. The entrance signage shall be incorporated into the Landscape Plan for the Subject Property with the entrance area being landscaped, lighted and irrigated.
8. The submission of a Landscape Plan during the Plan Review Process which shall be subject to review and approval by the County Arborist and final review and approval by the District Commissioner.
9. Compliance with recommendations from the Cobb County Department of Transportation, as follows:
  - a. Deceleration lane location will be determined during the Plan Review process, with the final location of the point of ingress/egress being approved by GDOT.
  - b. The installation of a striped “bulb-out” island to separate the proposed development drive with the existing deceleration lane for the adjacent development to the east.
  - c. Replacing any curb, gutter and/or sidewalk along VMH frontage which may be disturbed during construction and build-out and the installation of curb, gutter and sidewalk on Hickory Trail to the extent that such extends parallel to the stormwater pond as shown on the site plan.
  - d. All work permitted in the right-of-way of VMH to be approved by GDOT.
10. Compliance with directives from the Cobb County Fire Marshal’s Office regarding Life, Safety and Fire Prevention issues, including the following:
  - a. Compliance with International Fire Code (“IFC No. 510”).
  - b. Ensuring internal maneuverability and accessibility within the site for purposes of Fire and Public Safety vehicles and related firefighting apparatus.



**VIA EMAIL:**

Brian Johnson, Senior Associate County Attorney, Esq.

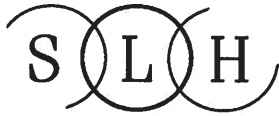
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- c. All construction and employee vehicles and equipment shall work from and remain on the site during the construction and build-out of the project infrastructure and there shall be no parking of such vehicles allowed on any of the adjacent public rights-of-way during the construction and build-out of the Subject Property.
  - d. The buildings shall be protected with Fire Sprinkler Systems if determined to be necessary during the Plan Review Process.
- 11. The submission of a photometric plan which shall include details regarding the utilization and lighting of the site and the inclusion of low-intensity, environmental type lighting, the illumination of which shall be contained within the Subject Property. Security lighting in the form of wall-packs with full cutoff shields shall be allowed for security purposes around and/or on the buildings.
- 12. Subject to recommendations from the Stormwater Management Division with respect to detention, hydrology, stormwater management, water quality and downstream considerations. This stipulation includes recommendations regarding the ultimate location and configuration of on-site detention and water quality.
- 13. The District Commissioner shall have the authority to approve minor modifications as this development proposal proceeds through the Plan Review process and thereafter, except for those that:
  - a. Reduce the size of an approved buffer adjacent to property which is zoned in a more restrictive zoning district.
  - b. Relocate a structure closer to the property line to an adjacent property which is zoned in a more restrictive zoning district.
  - c. Increase the height of a building adjacent to property which is zoned in a more restrictive zoning district.
  - d. Change access location to different roadways.
  - e. Seek Variances to provisions of the Cobb County Zoning Ordinance.





**VIA EMAIL:**

Brian Johnson, Senior Associate County Attorney, Esq.

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The above and foregoing stipulations/conditions embody the tentative settlement reached between the parties and counsel subject to review/approval and/or ratification by the BOC in Executive Session. Thereafter, the application will proceed as an "Other Business Application ("OB") and scheduled as directed by the County Attorney and the Zoning Division Manager of the Community Development Agency.

Please do not hesitate to contact me should you have any questions or need any additional information or documentation prior to presenting this to the BOC for the purposes of it being heard, considered and discussed at the Executive Session Meeting of the BOC on August 22, 2022.

With kind personal regards, I am

Very truly yours,

SAMS, LARKIN & HUFF, LLP

A handwritten signature in black ink, appearing to read "Garvis L. Sams, Jr.", is enclosed within a hand-drawn oval. Below the signature, the text "Garvis L. Sams, Jr." and the email address "gsams@samslarkinhuff.com" are printed.

Garvis L. Sams, Jr.  
[gsams@samslarkinhuff.com](mailto:gsams@samslarkinhuff.com)

GLS, Jr./dls

cc: Members, Cobb County Board of Commissioners (via email)  
Dr. Jackie McMorris, County Manager (via email)  
Board of Commissioners Assistants (via email)  
Ms. Jessica Guinn, AICP, Director (via email)  
Mr. John Pederson, AICP, Zoning Division Manager (via email)  
Ms. Jeannie Peyton, Senior Planner (via email)  
Ms. Pamela Mabry, County Clerk (via email)  
Ms. Robin Stone, Deputy County Clerk (via email)  
Ms. Leila Washington, Deputy County Clerk (via email)  
Mr. Jeffrey L. Byrd, Fire Marshal's Office (via email)  
Ms. Amy Diaz, P.E., Cobb DOT (via email)  
Mr. Carl Carver, P.E., Stormwater Management Division (via email)  
Mr. Tim Davidson, Plan Review Engineer, Water System (via email)  
Mr. Mohammed Ilyas (via email)