

OB-57

Application for "Other Business" Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)

BOC Hearing Date Requested: 10-18-2022

Applicant: Clydesdale Holdings, LLC Phone #: (404) 394-6375
(applicant's name printed)

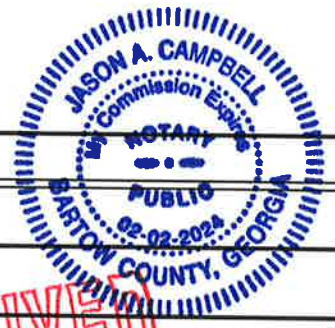
Address: 309 E. Paces Ferry Road, NE, Suite 400, Atlanta, GA 30305 E-Mail: _____
Parks F. Huff

SAMS, LARKIN & HUFF, LLP Address: Suite 100, 376 Powder Springs Street, Marietta, GA 30064
(representative's name, printed)

[Signature] Phone #: (770) 422-7016 E-Mail: phuff@samslarkinbuff.com
(representative's signature)

Signed, sealed and delivered in presence of:

Jason A. Campbell My commission expires: _____
Notary Public



Titleholder(s): SEE ATTACHED SIGNATURE PAGE Phone #: _____
(property owner's name printed)

Address: _____ E-Mail: _____

(Property owner's signature)



Signed, sealed and delivered in presence of:

Notary Public My commission expires: _____

Commission District: 4 **Zoning Case:** Z-74 of 1995

Size of property in acres: 1.0111 ac. **Original Date of Hearing:** 07-18-1995

Location: 4865 Floyd Road (Southeast intersection of Floyd Road and White Boulevard)
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 31 and 42 **District(s):** 17

State specifically the need or reason(s) for Other Business: _____
Site Plan Amendment.

The applicant seeks approval of a revised site plan. However, if development plans are not submitted within 120 days of the approval, the original site plan shall remain in place.

(List or attach additional information if needed)

ATTACHMENT TO APPLICATION FOR "OTHER BUSINESS"

Application No.: OB- 57

BOC Hearing Date: 10-18-2022

Applicant: CLYDESDALE HOLDINGS, LLC

Titleholder: CLYDESDALE HOLDINGS, LLC

Parcel #: 17004200020



The undersigned(s) below, or as attached, are the owners of the property considered in this application.

CLYDESDALE HOLDINGS, LLC

By: [Signature]
Signature

Title: Authorized Officer

Date: September 9, 2022

Address: 309 E Paces Ferry Rd NE
Suite 400
Atlanta, GA 30305

Telephone No.: 404-394-6375

[Signature] 9-9-2022
Signature of Notary Public Date

(Notary Seal)



CERTIFICATE REGARDING CORPORATE AUTHORITY- APPLICATION FOR
“OTHER BUSINESS”

1.

My name is William McCall. I am the officer who is delegated the responsibility for authenticating records of *CLYDESDALE HOLDINGS, LLC*, a Delaware Limited Liability Company (the “Titleholder Company”). I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant’s Application for “Other Business” regarding certain real property owned by the Titleholder Company located in Cobb County, Georgia.

2.

In accordance with the Requirements for completing a Cobb County Application for “Other Business”, I hereby attest on behalf of the Titleholder Company that an authorized representative of Titleholder Company has reviewed the Application for “Other Business” and related documents which are being filed simultaneously therewith on behalf of the Applicant Company (collectively, the “Application for Other Business”) to which this Certificate is attached and hereby certify:

- (a) That corporate seal or facsimile affixed hereto is in fact the seal of the Titleholder Company or a true facsimile thereof; and
- (b) That the officer or other representative of the Titleholder Company who executed the Application for “Other Business” does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Application for “Other Business” on behalf of the Titleholder Company, and that the signature of said officer or other representative is genuine; and

- (c) That the execution of the Application for “Other Business” and the filing of the Application for “Other Business” on behalf of the Titleholder Company by the officer or other representative of the Applicant Company has been duly authorized by the Titleholder Company.

CLYDESDALE HOLDINGS, LLC

By: Wm

Print Name: William McCall

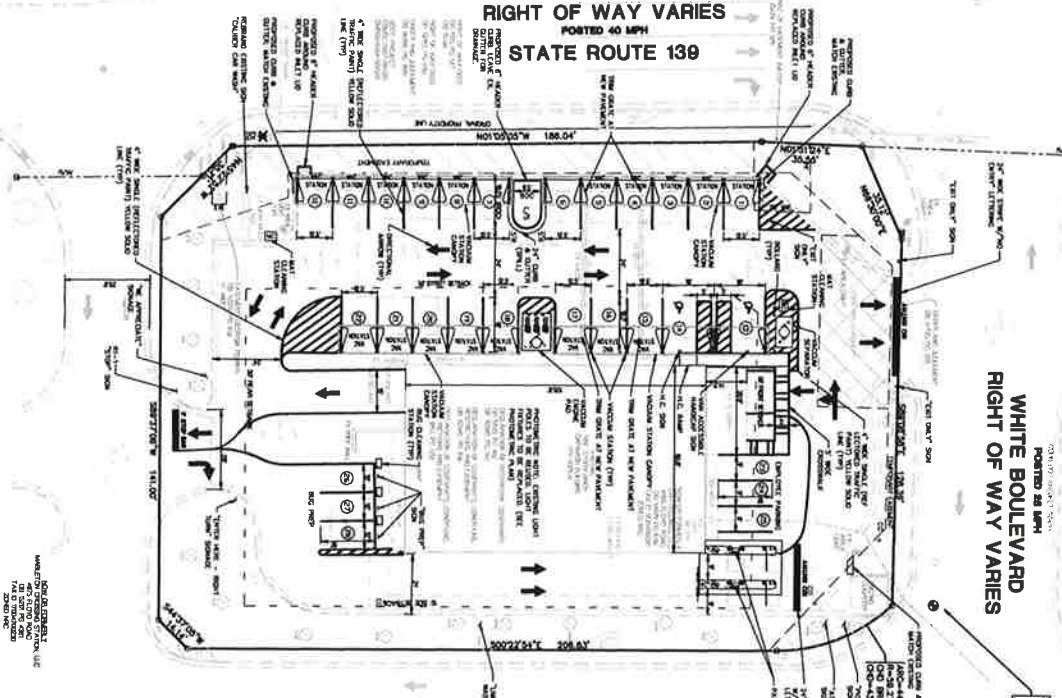
Its: Authorized Officer

(SEAL)

OB-57-2022
Proposed
Site Plan

FLOYD ROAD
RIGHT OF WAY VARIES
POSTED 40 MPH
STATE ROUTE 139

WHITE BOULEVARD
RIGHT OF WAY VARIES
POSTED 40 MPH



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SEP 13 2022
COBB CO COMM. DEV. AGENCY
ZONING DIVISION

LEGEND

Symbol	Description
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...	...
...	...

COBB COUNTY NOTES:

- 1. CONSTRUCTION SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE ROADWAY THROUGHOUT THE PROJECT PERIOD AND SHALL MAINTAIN THE ROADWAY IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR ROADWAY CONSTRUCTION AND MAINTENANCE.
- 2. ANY CONSTRUCTION MATERIALS TO BE EMPLOYED THROUGH THE CONSTRUCTION SHALL BE STORED IN AN APPROPRIATE MANNER TO PREVENT POLLUTION OF THE ADJACENT PROPERTY.
- 3. ANY ADJUTS TO BE PERMITTED THROUGH THE COBB COUNTY ZONING ORDINANCES SHALL BE IN ACCORDANCE WITH THE ZONING ORDINANCES AND THE COBB COUNTY ZONING ORDINANCES SHALL BE IN ACCORDANCE WITH THE ZONING ORDINANCES.
- 4. THE PLANNING OF AND DRAINAGE SHALL CONFORM TO COUNTY ORDINANCES.
- 5. THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE.
- 6. THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE.
- 7. THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE.
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- 9. THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE.
- 10. THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE.

SITE NOTES:

- 1. THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE.
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Cemetery Preservation Note

THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE. THE CONSTRUCTION OF ANY UTILITY SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR UTILITY CONSTRUCTION AND MAINTENANCE.

SITE DATA TABLE

Item	Quantity
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ADA NOTES:

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SPR-2022

GEORGIA811

1865 FLOYD ROAD
CALIBER CAR WASH
LEAKAGE

LAND LOT 11
COBB COUNTY, GEORGIA SECTION

TAX ID: 1700400200

1869 Tree Lane, Suite 4100, Marietta, GA 30078
Carter & Hankerrod Group

SHEET C2.0

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ZONING DIVISION

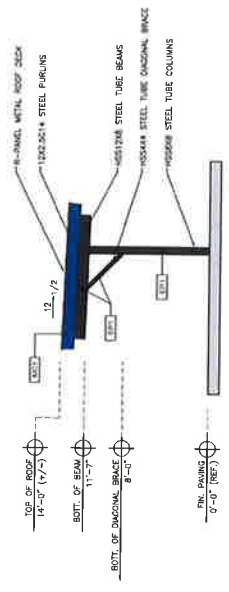
PROPOSED VACUUM CANOPY ELEVATIONS
PROTOTYPICAL DESIGN (LOCATION TO BE DETERMINED)

CONN + ARCHITECTS

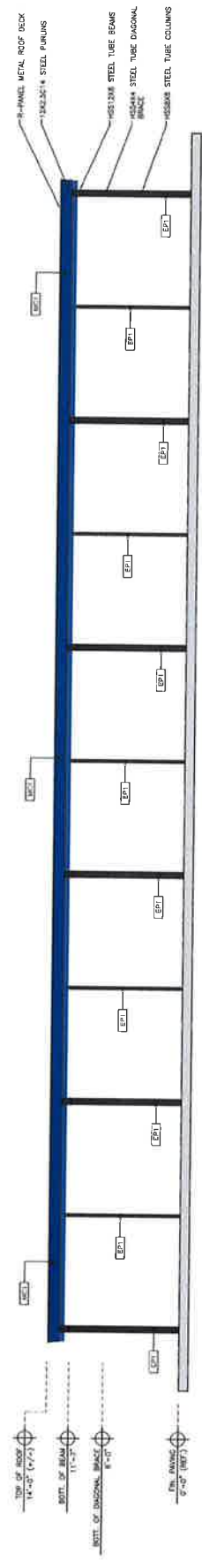
PROGRESS SET • NOT FOR CONSTRUCTION

DATE	JULY 21, 2022
BY	SAM
NO.	21-XXX
SCALE	A2.0

OB-207
Proposed



1 PROPOSED VACUUM CANOPY SIDE ELEVATION
(OPP. SIDE ELEVATION SIMILAR)
SCALE: 3/16" = 1'-0"
A2.0



2 PROPOSED VACUUM CANOPY FRONT ELEVATION
(REAR ELEVATION SIMILAR)
SCALE: 3/16" = 1'-0"
A2.0

EXTERIOR FINISH MATERIAL LEGEND	
MARK	SPECIFICATIONS
MAT	1/8" THICK PANGLOSS CAP PLATING OR EQUIVALENT G160 GALV. UNFIN. 100% HDG GALV. PLATE
INT	INTERIOR FINISHES
STR	STRUCTURAL STEEL
COL	1 1/2" DIA. BLACK PAVILION COLUMNS

(PAY STATION CANOPY ELEVATIONS SIMILAR)

THIS DOCUMENT IS THE PROPERTY OF CONN + ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED THEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF CONN + ARCHITECTS.

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SEP 13 2022
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION





Z-74

WISE PROPERTIES (Janie W. Ayers and Mary W. Green, owners) for Rezoning from OI and R-15 to CRC for the purpose of Neighborhood Shopping Center in Land Lots 31, 32, 41 and 42 of the 17th District. 12.5 acres. Located at the northeast intersection of Floyd Road and Nickajack Road. The Board of Commissioners deleted application to the NRC zoning district subject to: 1) letter of agreeable conditions submitted dated July 14, 1995, marked as Exhibit "A" (item #8 clarified to reflect that the 20 foot landscape buffer along Nickajack Road will end at the approximate location of the rear wall of those retail shops immediately adjacent to said buffer); 2) no portion of the site to be used for a business which principally features sexually explicit products or drug-related paraphernalia; 3) delivery truck access via Floyd Road only; 4) maximum of two (2) outparcels; 5) site plans for outparcel sites to be approved by the Board of Commissioners prior to permits being issued for each site; 6) landscape plan to be approved by Staff through the Plan Review process; 7) protective covenants are to be filed on property pertaining to signage, landscaping and style of buildings - covenants are to be filed before building permits are issued; 8) owner/developer is to provide comprehensive hydrology/detention to include the development of any outparcels; 9) developed runoff must be controlled to not exceed the capacity of the existing storm drainage system downstream; 10) owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns; 11) owner/developer to coordinate with the Cobb DOT Engineering Division, Construction Section prior to development plan approval in order to ensure compatibility with the roadway project; 12) owner/developer to install an additional lane along the entire property frontage of Floyd Road; 13) owner/developer to install 150 foot deceleration and acceleration lanes for ingress/egress at all access locations on Nickajack Road; 14) owner/developer to provide interparcel access to serve the adjacent property owner; 15) curb and gutter to be reinstalled along Floyd Road if disturbed due to construction. Motion by Byrne, second by Wysong, carried 5-0.

Z-75

BRINKER INTERNATIONAL (V.F. B. L., Inc., owner) for Rezoning from HI to CRC for the purpose of a Restaurant in Land Lots 650 and 651 of the 16th District. 3.822 acres. Located at the southwest intersection of I-75 ramp and Ernest Barrett Parkway, north of Cobb Place Boulevard. The Board of Commissioners, as part of the Consent Agenda, approved application subject to: 1) the existing driveway is to be upgraded to commercial standards; 2) owner/developer required to meet all Cobb County development requirements and ordinances related to project improvements; 3) project subject to Drainage Division comments. Motion by Poole, second by Wysong, carried 5-0.

JOHN H. MOORE
THOMAS H. ROGERS, III
STEPHEN C. STEELE
WILLIAM R. JOHNSON
ROBERT D. INGRAM
J. BRIAN O'NEIL
G. PHILLIP BEGGS
ELDON L. BASHAM
MATTHEW J. HOWARD
SARAH L. BARGO
DIANE M. BUSCH
DAVID IAN MATTHEWS
JERE C. SMITH
CLAYTON O. CARMACK
JEFFREY A. WATKINS
ROSS E. LONGOOD
ROBERT E. JONES (FLA)
GREGORY J. CRABB
MICHELLE S. DAVENPORT
KENNETH T. ISRAEL

MOORE & ROGERS

A LIMITED LIABILITY COMPANY

ATTORNEYS AT LAW

192 ANDERSON STREET

MARIETTA, GEORGIA 30060

POST OFFICE BOX 3308
MARIETTA, GEORGIA 30061

TELEPHONE
(404) 428-1499

TELECOPIER
(404) 428-8831

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JUL 14 1995

COMMUNITY DEVELOPMENT DEPT.
ZONING DIVISION

July 14, 1995

Hand Delivered

Ms. Judy Williams
Senior Planner
Cobb County Planning and Zoning Department
Suite 500
100 Cherokee Street
Marietta, GA 30090-9674

Z-74 of '95

EXHIBIT "A"

As referenced in
Zoning minutes of
7-18-95. *Kankee*
Dep. Clerk

RE: Application for Rezoning
Application No.: Z-74
Applicant: Wise Properties
Owners: Janie W. Ayres; Mary W. Green;
and Penelope Ayres Gurley
Property: Approximately 12.5 acres
located in Land Lots 31, 32,
41, and 42; 17th District;
2nd Section, Cobb County,
Georgia

Dear Judy:

As you know, this firm represents Wise Properties, hereinafter "Applicant," and Janie W. Ayres, Mary W. Green, and Penelope Ayres Gurley, hereinafter collectively referred to as "Owners," in their Application for Rezoning with regard to the above-referenced property. After discussions and meetings with zoning and planning staff and additional meetings and discussions held with area residents and businesses concerning the proposed development, we have been authorized by the Applicant and Owners to submit this letter of agreed stipulations which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the property. This letter shall supersede and replace in full our previous letter to you dated June 30, 1995. The referenced stipulations are as follows:

- (1) The Application for Rezoning shall be from R-15 and O&I to CRC; provided that the CRC request shall be deleted to NRC.

MOORE & ROGERS

Ms. Judy Williams
Senior Planner
Cobb County Planning and Zoning Department
Page Three
July 14, 1995

2-74 8'95

- (10) There shall be a 35 foot undisturbed buffer along the property line immediately adjacent to the property of Mrs. Nix, which buffer may be penetrated only for installation of utilities. If Applicant, or Applicant's successors in title, should ever acquire the Nix property, then and in such event this stipulation and condition shall stand automatically rescinded.
- (11) The most easterly curb cut along Nickajack Road shall be deleted and the Applicant/Owner, and their successors in title, shall not submit a request for another curb cut in the same or similar location without first apprising Mr. and Mrs. David Peeler of such request.
- (12) There shall be no Cobb County Department of Transportation requirement for a left-turn lane on Nickajack Road for the most eastern curb cut. Applicant will be required to add a 125 foot long, 12 foot wide, curb and guttered decel lane, together with a 5 foot wide sidewalk at the most eastern curb cut. Applicant shall also place a 12 foot wide curb and guttered accel/decel lane between the curb cuts on Nickajack Road, together with a 5 foot wide sidewalk. Applicant shall dedicate to the Cobb County Department of Transportation the additional right-of-way which will be required to widen Nickajack Road so that the accel/decel lanes and sidewalk are within the right-of-way.
- (13) Applicant will re-install the curb and gutter along Floyd and Nickajack Roads if disturbed due to construction.
- (14) Applicant agrees to control development run-off from the site so as not to exceed capacity of the existing storm drainage system downstream and shall further provide during the plan review process a comprehensive hydrology/detention study which will include development of the planned out parcels.
- (15) Out parcels 1 and 2, as reflected on the above-referenced site plan, shall each have a maximum building square footage of 7,500 square feet.

MOORE & ROGERS

Ms. Judy Williams
Senior Planner
Cobb County Planning and Zoning Department
Page Five
July 14, 1995

2-74 8/95

c: Cobb County Board of Commissioners:
William J. Byrne, Chairman
William A. Cooper
C. Freeman Poole
Joe L. Thompson
Gordon J. Wysong

Cobb Planning Commissioners:
Henley A. Vansant, Chairman
Murray Homan
Richard M. Jones
Jerry Dawson
Jean Hallinan

c: Area Residents:

Ms. Anne Bolton
Phillip W. Bracken, D.D.S.
Mr. John W. Hammond
Mr. Steve Neck
Ms. Pat Patterson
Mr. and Mrs. David Peeler
Mr. Richard R. Schmid
Ms. Carole Wilson

Mr. Garvis L. Sams, Jr.
Sams & Larkin
Attorneys at Law

TO THE COBB COUNTY BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA



CONSTITUTIONAL CHALLENGE

COMES NOW, CLYDESDALE HOLDINGS, LLC, hereinafter referred to as the "Applicant", for itself and/or acting on behalf of the Owner, asserts the following, to wit:

1.

By Application to which this exhibit relates, the Applicant has applied for an Other Business Item regarding certain real property lying and being in Cobb County, Georgia, a more particular description and delineation of the subject property hereinafter referred to as the "Subject Property", being set forth in said Other Business Application.

2.

The Application seeks approval of an Other Business Application and for grant of special exception by the governing authority of Cobb County, Georgia to waive certain zoning condition(s) imposed by the current zoning conditions.

3.

Applicant states that a literal interpretation and enforcement of Ordinance provisions creates an unnecessary and unreasonable hardship with no resulting substantial benefit to the public good.

4.

The exception sought by the Applicant concerning the Subject Property will not impair the purpose, spirit and intent of the Ordinance and stands to alleviate any and all non-compliance of the foregoing requirements while causing no substantial detriment to the public good.

5.

The current zoning classification and any conditions are unconstitutional in that they deprive the Applicants under and pursuant to Article 1, Section I, Paragraphs I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States. This deprivation of property rights without due process violates constitutional prohibitions against the taking of private property without just compensation.

6.

The zoning conditions and stipulations as they presently exist violate the Applicant's right to the unfettered use of the property in that the existing conditions and stipulations do not bear a substantial relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said requirements are unconstitutional in that they are arbitrary and unreasonable, resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicants.


7.

The Cobb County Zoning Ordinance is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with Other Business Applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law.

Respectfully submitted, this the 13 day of Sept, 2022.

SAMS, LARKIN & HUFF, LLP

By: _____


PARKS F. HUFF
Attorney for Applicant
Ga. Bar No. 375010