

CASE NUMBER RZ-95-075

BOARD OF COMMISSIONERS
GWINNETT COUNTY
LAWRENCEVILLE, GEORGIA
RESOLUTION

READING AND ADOPTION:

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

Present

VOTE

Wayne Hill, Chairman
Tommy Hughes, District 1
Patti Muise, District 2
Judy Waters, District 3
Kevin Kenerly, District 4

AYE
AYE
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AYE
NAY

On motion of COMM. MUISE, which carried 4-1, the following resolution was adopted:

A RESOLUTION TO AMEND THE OFFICIAL ZONING MAP

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

R-75 to C-2

by J. D. MAYS for the proposed use of

COMMERCIAL USES (REDUCTION IN BUFFERS) on a

tract of land described by the attached legal description, which

CASE NUMBER RZ-95-075

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

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

WHEREAS, a public hearing was held by the Gwinnett County Board of Commissioners on May 23, 1995, and objections were not filed.

NOW, THEREFORE, BE IT RESOLVED by the Gwinnett County Board of Commissioners this the 23rd day of May, 1995, that the aforesaid application to amend the Official Zoning Map from R-75 to C-2 is hereby APPROVED subject to the following enumerated conditions:

1. To restrict the use of the property as follows:
 - A. Retail and service commercial and accessory uses.
 - B. Obtain permits from the Development Division to bring the structure up to code for business occupancy.
2. To satisfy the following site development considerations:
 - A. Provide a 50-foot wide natural buffer, undisturbed except for approved perpendicular access and utility crossings and replantings where sparsely vegetated, adjacent to residentially-zoned property.
 - B. Provide a 10-foot wide landscaped strip outside the new dedicated right-of-way of U. S. Highway 29.
 - C. Provide a 5-foot wide landscaped strip adjacent to the property lines adjoining nonresidential zoning.
 - D. No more than one exit/entrance on U. S. Highway 29.
 - E. No billboards are permitted.

CASE NUMBER RZ-95-075

- F. Dumpsters shall be screened by a fence or wall. Dumpster pickup shall be from the hours of 7:00 a.m. to 10:00 p.m.
- G. No outdoor storage allowed.
- H. Provide interparcel access if required by the Development Division.
- I. Lighting shall be contained in cut-off type luminaries and shall be directed in toward the property so as not to reflect into adjacent residential properties.
- J. If property is redeveloped, buildings shall be finished with architectural treatments of glass and/or brick, stone and stucco, or submit alternate architectural plans for approval of the Planning Commission prior to the issuance of a building permit.
- K. At the time of development, provide sidewalks as per Gwinnett County Development Regulations within the new dedicated right-of-way of U. S. Highway 29 across the entire property frontage.
- L. The existing trailer located on the site shall be removed prior to the issuance of a certificate of occupancy.

CASE NUMBER RZ-95-075

- 3. To abide by the following requirements, dedications and improvements:
 - A. Dedicate, at no cost to Gwinnett County (or the State of Georgia) right-of-way from the centerline of U. S. Highway 29 as required by the Georgia Department of Transportation.
 - B. Design required on-site storm water detention facilities such that they are not located within any required buffers.

GWINNETT COUNTY BOARD OF COMMISSIONERS

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

Date Signed: 6-5-95

ATTEST:

Barbara A. Bruce
Clerk

DEED TO SECURE DEBT

0598

GEORGIA, GWINNETT COUNTY.

In consideration of Three Thousand and no/100 (\$3,000.00) Dollars.

the receipt whereof is hereby acknowledged, J. D. Mays

of Gwinnett County, Georgia, of the first part, has this day bargained and sold and does hereby transfer and convey unto the GWINNETT FEDERAL SAVINGS & LOAN ASSOCIATION, its successors and assigns, hereinafter termed "Association," of the second part, the following described property, to-wit:

All that tract or parcel of land lying and being in Land Lot 16 of the 5th Land District, Gwinnett County, Georgia, according to plat and survey of G. L. Veal, prepared May 5, 1950 for Mrs. Lexie Arnold and being more particularly described as follows:

BEGINNING at a point on the Decatur-Lawrenceville paved highway, said point being 429 feet east from the northeast corner formed by the intersection of Decatur-Lawrenceville paved highway with Bethesda School Road, thence North 22 degrees West 412 feet thence North 59 degrees East 200 feet to an iron pin; thence South 22 1/2 degrees East 437 feet to an iron pin; thence in a westerly direction 200 feet along the north side of Lawrenceville-Decatur paved highway to the point of beginning.

This is the same property conveyed to J. D. Mays by Mrs. Lexie Arnold by warranty deed, dated August 9, 1954 and recorded in Deed Book 114, page 554, Gwinnett County records.

There is located on the abovedescribed premises an eight room frame dwelling.

The above-described tract or parcel of land being the same contained in quitclaim deed from Mrs. Sybil A. Griffin to J. D. Mays, dated December 29, 1954, recorded in deedbook 96, page 484, and described therein as follows:

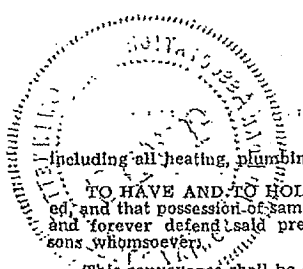
COMMENCING at a point on the north side of the Lawrenceville-Decatur Highway, which point is 291 feet east from intersection of the original land District line between the 5th and 6th Land Districts, with the right of way line of said highway, and running thence North 22 degrees West 412 feet, measured from the north edge of the pavement; thence North 59 degrees East 200 feet to an iron pin; thence South 22 1/2 degrees East 437 feet to an iron pin; thence in a westerly direction 200 feet along the north side of the Lawrenceville Decatur paved highway to the point of beginning.

GEORGIA INTANGIBLE TAX PAID

\$ 9.00
Jan. 4 1955

Henry J. Wagon
Clerk, Superior Court

Gwinnett County



including all heating, plumbing and lighting fixtures and equipment attached to or used in connection with said real estate.

TO HAVE AND TO HOLD said premises in fee simple; and said first party warrants said premises to be unencumbered, and that possession of same and the lawful right to convey same is in said first party, and said first party will warrant and forever defend said premises to said Association, its successors and assigns against the lawful demands of all persons whomsoever.

This conveyance shall be construed as a deed passing title and not as a mortgage and is intended to secure a debt evidenced by a note for the principal sum of Three Thousand and no/100 Dollars, executed this date by said first party to the order of said Association with interest thereon from date, said principal

and interest being repayable \$40.00 monthly, the terms and conditions being more fully set out in said note, together with any other indebtedness due said Association, now existing or hereafter created. The Association may make any future advance or advances to the party of the first part, and such advances shall be secured by this deed to secure debt. So long as this deed to secure debt is not canceled by the Association the debt secured hereby may be increased by advances to the party of the first part, or reduced by payment in whole or in part, but shall nevertheless remain in full force and effect and shall constitute a first and paramount lien on the property described herein until actually canceled by the Association. It is the purpose of this deed to secure debt to operate as a continuing security deed, and shall secure any indebtedness in favor of the Association created at any time before this instrument is actually canceled.

First party further agrees that the Association, its successors or assigns, shall be subrogated to all right, title, lien, or equity of all persons to whom it may have paid moneys in settlement of liens, charges, or in acquisition of title of or for its benefit hereunder, or for the benefit and account of the first party at the time of making the loan evidenced by this security deed, or subsequently under any of the provisions herein.

The said first party and the heirs, legal representatives, successors and assigns of said first party covenant and agree to pay when due all taxes, assessments, and other charges levied or assessed against said property and furnish receipts therefor, if requested; to keep all improvements on said property in good order and repair and not to do or permit waste thereof or thereon; to keep said improvements insured against fire and tornado in such sum and with such company as said Association may require; to pay all premiums thereon promptly when due, such insurance to carry clauses approved by said Association providing that loss or damage shall be payable to said Association as its interest may appear. Said Association may pay any taxes, assessments or insurance premiums which the first party may have failed to pay and amounts so paid shall become a part of the principal hereby secured. Should the first party fail to pay any installment

PLANNING BOOK 16

1955

TO: GWINNETT COUNTY, GEORGIA by and through
F. WAYNE HILL, Chairman, Board of Commissioners of Gwinnett
County; Patti Muise, Kevin Kennerly, Judy Waters, and Tommy
Hughes, Members, Board of Commissioners of Gwinnett County and
Mike Williams, Director, Gwinnett County Planning, Community
Development Department.

APPLICANT: J. D. Mays
2965 U. S. Highway 29
Lawrenceville, Georgia 30244

OWNER: J. D. Mays
2965 U. S. Highway 29
Lawrenceville, Georgia 30244

Requested Zoning: R-75 to C2
Location: 2900 Block, U. S. Highway 29
Size: 1.8 acres
District and Land Lot: 5th / 18
Proposed Development: Commercial Uses

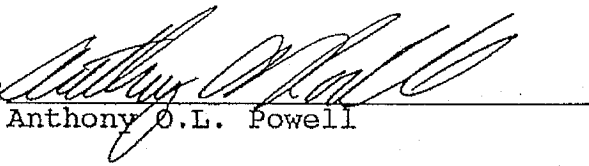
AMENDMENT TO REZONING APPLICATION

COMES NOW the Applicant and amends the above-styled
application as follows:

(1) The Applicant hereby asserts the contentions contained in
Exhibit "A" attached hereto and incorporated herein by reference.

This 18th day of May, 1995.

WEBB, TANNER & POWELL

By: 
Anthony O.L. Powell

P.O. Box 27
Lawrenceville, Georgia 30246
(404) 963-3423

EXHIBIT "A"

In addition to the reasons stated in the printed portion of the zoning application, Applicant also alleges that the zoning classification of R-75, as applied to the subject property constitutes a taking of the property without the payment of adequate compensation. Barrett v. Hamby, 235 Ga. 262, 219 S.E.2d 399 (1975). In addition, arbitrary and capricious denial of the zoning application would constitute a violation of due process and equal protection. Tuggle v. Manning, 224 Ga. 29, 159 S.E.2d 705 (1968).

In the words of the Supreme Court of Georgia, "As the individual's right to the unfettered use of his property confronts the police power under which zoning is done, the balance the law strikes is that a zoning classification may only be justified if it bears a substantial relation to the public health, safety, morality or general welfare. Lacking such a justification, the zoning may be set aside as arbitrary or unreasonable." Barrett v. Hamby, 235 Ga. 262, 265 (1975).

Factors to be considered in judging whether there has been a taking without adequate compensation and whether the zoning classification to the property may be set aside as arbitrary or unreasonable include the following:

- (1) Existing uses and zoning of nearby property;
- (2) The extent to which property values are diminished by the particular zoning restrictions;
- (3) The extent to which the destruction of property values of the owner promotes the health, safety, morals or general welfare of the property;
- (4) The relative gain to the public, as compared to the hardship imposed by the individual property owner;
- (5) The suitability of the subject property for the zoned purposes; and
- (6) The length of time the property has been vacant as zoned, considered in the context of land development in the area in the vicinity of the property. Guhl v. Holcomb Bridge Road Corp. 238 Ga. 322, 323-324 (1977).

In that connection, Applicant notes as follows:

(1) There is no promotion of the health, safety, morals or general welfare of the public arising from the present zoning classification that would be lost by the change to the desired zoning.

(2) There is no gain to the public as compared to the hardship imposed upon the individual property owner by retaining the zoning classification presently applicable to the property. The current zoning classification is less protective of public, health, safety, morals and general welfare because it provides for no limitation on the use.

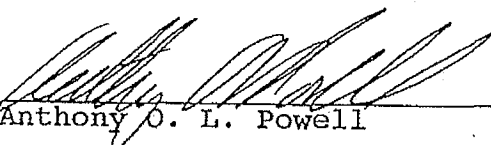
(3) The subject property is more suitable to the purposes allowed in a C-2 zoning classification.

To summarize, it is the contention of Applicant that failure to grant the requested rezoning would constitute a taking of the owner's property without just compensation and denial of this zoning application would constitute arbitrary and capricious action.

Based upon the above reasons, the property is not suitable for development, as zoned. The proposed zoning or use will not adversely affect the public health, safety or welfare and the property is not zoned to allow the owner the best use of the property, and this would violate his constitutional rights to use his property under Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Georgia Constitution of 1983 and under the Fifth and Fourteenth Amendments of the United States Constitution.

Respectfully submitted, this 18th day of May, 1995.

WEBB, TANNER & POWELL

By: 
Anthony O. L. Powell

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